

1 really --

2 MR. COBURN: No, I wasn't there. I'm just saying
3 that --

4 MR. BERRY: No, I know. I know. But I'm just --

5 THE WITNESS: I'm not in a position to second-guess you.

6 Q. BY MR. BERRY: Okay. I'm not asking you to second-guess
7 me.

8 A. Okay.

9 Q. I'm not even asking a question, but you asked me if I
10 would --

11 A. Yeah.

12 Q. -- provide you with information and I did. So you don't
13 specifically recall --

14 A. I don't.

15 Q. -- editing this document?

16 A. I don't specifically recall editing this document.

17 Q. And just so I can be clear, you do have a vague memory
18 of this document or no memory at all?

19 A. I don't have a memory of this document. But I do have a
20 memory of being told that you told my lawyers that I edited a
21 business plan for Member Schaumber. And --

22 Q. Well, I'm not asking about that. I'm asking about
23 before that. And I'm not trying to tell you what to say.

24 A. Well, what I'm telling you is that I don't recall doing
25 this.

1 Q. Okay. I believe I also told your counsel that in some
2 respects we had questions that were not really related to you
3 as a subject but more as a witness. Some of the questions
4 may be in that vein. But we have other interests that we're
5 pursuing, so you should not consider each one of my questions
6 as indicating that I think you've done anything wrong with
7 regard to the particular exhibit. Okay?

8 MR. COBURN: Thanks for letting us know that.

9 MR. BERRY: I'm going to show you another exhibit which
10 is similar.

11 MR. FINE: David, that's another good reason why we
12 should have a chance to comment on whatever report there is
13 at the end and why we're renewing the request because we're
14 not making objections or saying what's authorized or not.
15 And it would be nice to be able to have an opportunity at
16 some point to do it.

17 MR. BERRY: I'm probably 90 percent willing to do what
18 you're asking me.

19 MR. FINE: Great.

20 MR. BERRY: But I would like to think about it --

21 MR. FINE: All right.

22 MR. BERRY: -- before I do that. And I think probably
23 when you were in IG, you would probably think about stuff
24 before you made your decision.

25 MR. FINE: I would definitely think about it before I

1 made a decision, yes.

2 MR. BERRY: Okay.

3 MR. FINE: Although I would have done it as well. That
4 was our standard practice. But I don't begrudge you an
5 opportunity to think about it.

6 MR. BERRY: I think we've tried to be more than fair to
7 Member Flynn. We've provided you guys with more information
8 than we normally provide in investigations prior to an
9 investigatory interview. So we'll do our best to accommodate
10 Member Flynn and to ensure that he receives due process and a
11 fair review of the facts.

12 MR. FINE: Okay.

13 MR. BERRY: I want to show you what we've marked and are
14 calling Investigative Exhibit 22. And just to identify it,
15 this one has sort of like a little title or header on it, it
16 says Peter C. Schaumber, Supplement to Business Plan.

17 **(Investigative Exhibit 22 marked for identification.)**

18 Q. BY MR. BERRY: Do you recall this document?

19 A. Again, I don't specifically recall commenting on this.
20 I'm not saying I didn't. I just don't recall it.

21 Q. That's fine, okay.

22 **(Investigative Exhibit 23 marked for identification.)**

23 Q. BY MR. BERRY: I'm showing you what we're calling
24 Investigative Exhibit 23, which is a document with the title
25 the Emerging Agenda of the Obama Board.

1 A. Okay.

2 Q. Do you recall seeing this document before?

3 A. I believe this is an op-ed piece that Member Schaumber
4 had -- former Member Schaumber had sent to me to look at.

5 Q. Now, if you look at the last page of that document,
6 these are the tracked changes, and it has T. Flynn. I think
7 this occurs when the track changes won't fix next to the
8 thing, so --

9 A. That's what the document says.

10 Q. T. Flynn would seem to identify you. Do you recall
11 editing this document?

12 A. As I say, I think this was an op-ed piece that
13 Member Schaumber was working on and sent to me to take a look
14 at.

15 Q. And did you, in fact, edit it or provide suggested
16 changes?

17 A. I commented on it and suggested possible changes.

18 Q. Okay. Now, do you know what happened to this op-ed
19 piece?

20 A. I don't remember. I don't know if it ever was placed.
21 It may have been.

22 Q. I don't know, either, but I do know it's identified as a
23 *Wall Street Journal* article in its file name. I don't know
24 if that helps you recall anything?

25 A. That would be a matter -- I think you would be able to

1 find it. I don't know if it was published in the *Wall Street*
2 *Journal* or not.

3 MR. COBURN: I could look for it, if I could plug in my
4 data --

5 MR. BERRY: You can bet we have looked for it.

6 MR. COBURN: Oh, okay.

7 THE WITNESS: And so it wasn't published?

8 Q. BY MR. BERRY: I don't know whether it was published. I
9 mean I just know I can't find it. I'm asking you if you know
10 it is published.

11 A. No. That's the problem with op-ed pieces; they don't
12 often get published.

13 MR. COBURN: Really, you're so right about that, I can
14 tell you, personal experience.

15 **(Investigative Exhibit 24 marked for identification.)**

16 Q. BY MR. BERRY: I'm showing you what we've marked as
17 Investigative Exhibit 25 [sic], which is an e-mail dated
18 Wednesday, May 4, 2011, at 5:34 p.m.

19 A. Okay.

20 Q. Do you recall sending that e-mail?

21 A. I don't specifically recall it, but it appears as if I
22 did.

23 Q. That e-mail originates with Les Heltzer. Do you know
24 who Les Heltzer is?

25 A. Yes.

1 Q. And what is his role at the Agency?

2 A. He's the Executive Secretary.

3 Q. What does the Executive Secretary do?

4 A. I'm not sure all of his duties, but he is a liaison for
5 the public, also the liaison for the Board and the
6 General Counsel.

7 Q. If you could take a chance and read his e-mail?

8 A. Okay. I have.

9 Q. Is that public information?

10 A. No.

11 Q. Okay, thank you.

12 MR. COBURN: Can I take a quick gander at that before it
13 goes?

14 MR. BERRY: Sure.

15 MR. COBURN: Thank you so much.

16 **(Pause.)**

17 MR. COBURN: Thank you so much.

18 **(Investigative Exhibit 25 marked for identification.)**

19 Q. BY MR. BERRY: I'm showing you what we've marked or are
20 calling Investigative Exhibit 26 [sic], which is an e-mail
21 dated Friday, June 10, 2011, 9:02 a.m.

22 A. Okay.

23 Q. I'd like to focus your attention on Member Peter
24 Schaumber's e-mail, which is the second e-mail.

25 A. Yes.

1 Q. Do you know what hearing he's talking about?

2 A. No.

3 Q. Okay.

4 A. As I say in my reply.

5 Q. In your reply, what did you mean on the second or the
6 last sentence, If later, Brian will have the details and
7 contact info probably. Who is Brian?

8 A. I assume that's Brian Hayes.

9 Q. And why would Member Hayes or why did you believe
10 Member Hayes would have the details and contact information
11 for the hearing, which the one you're referencing is on the
12 Hill?

13 A. Well, I didn't know what hearing he was talking about.
14 And I said, I was asking is there one on the Hill. And if
15 there is one on the Hill, Brian would be more likely to know
16 about it than me.

17 Q. And why did you think that?

18 A. Because Brian worked on the Hill.

19 Q. Do you know was Member Hayes having any communication
20 with the Hill regarding this hearing?

21 A. I have no idea.

22 Q. I'm showing you what we're calling Investigative
23 Exhibit 26, which is an e-mail dated Thursday, July 28, 2011,
24 at 3:37 p.m.

25 MR. COBURN: Was this Exhibit 27, Dave?

1 MR. BERRY: No, it's 26.

2 MR. COBURN: This is 26? I think the last one was 26.

3 MR. BERRY: Did I screw that up?

4 COURT REPORTER: Yes, the last one was 26.

5 MR. BERRY: I can fix this. The last one should be 25;
6 I'm sorry, the prior discussion involves 25.

7 MR. COBURN: That makes sense because 24 got left out,
8 so that means that 24 is the May 4, 2011 e-mail from Flynn to
9 Schaumber.

10 MR. BERRY: Yes.

11 MR. COBURN: 25 is the June 2, 2011, e-mail from Flynn
12 to Schaumber. And this is 26.

13 MR. BERRY: I think that's June 10th, 25 is the June 10.

14 MR. COBURN: Oh, maybe I wrote that, yeah, I think I
15 wrote the date down wrong. Okay, good. And then this is
16 July 28, 2011.

17 MR. BERRY: Wait a second. So --

18 COURT REPORTER: This is the order that you went.

19 MR. BERRY: Right. So 25 should be Friday, June 10.

20 MR. COBURN: Got it.

21 MR. BERRY: So the one we're looking at currently is 26,
22 which is Thursday, July 28, 2011, 3:37 p.m.

23 **(Investigative Exhibit 26 marked for identification.)**

24 THE WITNESS: Okay.

25 Q. BY MR. BERRY: Do you recall sending that e-mail?

1 A. It doesn't stick out in my mind, but it appears
2 Member Schaumber e-mailed myself and Bob [Name] and asked if we
3 remembered a particular case or cases dealing with unlawful
4 transfers or relocations because he was going on a news show
5 to discuss the topic. And I responded that the only one I
6 remembered was the potato chip case. And there was another
7 case that we had done involving a movie studio in Mexico, and
8 so that's what I responded to Member Schaumber. Again, I get
9 those kind of inquiries from people pretty regularly.

10 **(Investigative Exhibit 27 marked for identification.)**

11 Q. BY MR. BERRY: I'm showing you what we're calling
12 Investigative Exhibit 27, which is an e-mail with an
13 attachment. The e-mail is dated Friday, July 29, 2011, at
14 11:07 a.m.

15 A. Okay.

16 Q. Can you tell me why you sent that to Member
17 Peter Schaumber?

18 A. I believe I sent this to Member Schaumber to advise him
19 of the fact that Lafe Solomon, the Acting General Counsel,
20 had sent a letter to the Attorney General of the State of
21 California taking a position on that certain California
22 legislation was preempted.

23 Q. Why did you send it?

24 A. To inform Member Schaumber of the fact that the General
25 Counsel had taken a public position that the statute was

1 preempted.

2 Q. I understand that was the result of your sending it.

3 But what prompted you to send it?

4 A. Because Member Schaumber was a former Board Member, had
5 an interest in things relating to the Board.

6 Q. As a former Board Member, did he have a right to have
7 special access to information?

8 MR. COBURN: Well, that question presupposes that this
9 is some kind of special access. So I'm just noting an
10 objection that this is --

11 MR. BERRY: Well, in general, did Member Schaumber have
12 a right to access internal Agency documents?

13 MR. COBURN: I think again you're presupposing that
14 there is something kind of confidential or private or
15 internal about the information in question. I think you need
16 to ask that predicate question first.

17 Q. BY MR. BERRY: Did you look at the document before you
18 sent it?

19 A. I assume that I did.

20 Q. So the document is -- the first document is to who?

21 A. When you say the first document --

22 Q. The attached document. There are several memorandum and
23 letters in there. So if you look at the first one, the memo
24 dated July 28, 2011, who is that to?

25 A. That is the memo from Lafe advising the Board that he

1 had taken a public position with respect to the preemption of
2 the California statute.

3 Q. Okay. If you could look through there and find the memo
4 dated February 25, 2011?

5 A. Well, after that first one is the actual letter that he
6 sent, that he referenced. And then the next one is another
7 February 25th, is that the one you're referring to?

8 Q. Right, February 25, 2011.

9 A. Um-hum. In that one, the General Counsel advised the
10 Board that he has sent an attached letter to the Attorney
11 General of California taking a public position with respect
12 to the preemption of that statute, and it attaches the letter
13 that he sent to the Attorney General of the State of
14 California. And it also includes a letter to the National
15 Right to Work Legal Foundation from somebody, from or to, no,
16 from Right to Work to the Board.

17 Q. And we have shown this February 25, 2011 memorandum to
18 [REDACTED] and the Agency's legal ethics officer. Their
19 belief is that this document contains privileged
20 communication between Lafe and the Board.

21 MR. COBURN: Well, that's not something he can answer.

22 MR. BERRY: Well, I'm just telling you that.

23 Q. BY MR. BERRY: Could you look at it again? You said you
24 read it before you sent it. Did you read this document
25 before you sent it?

1 A. I don't know whether I read all the attachments to the
2 document. I probably did not.

3 Q. Are you aware of the regulation that requires Agency
4 employees to obtain the Chairman's permission before
5 releasing documents?

6 A. No.

7 Q. Can I have it back, please?

8 MR. FINE: Dave, do you have a cite for that regulation
9 offhand?

10 MR. BERRY: Not off the top of my head, I don't. It's
11 like a 112, 29, it is 29 C.F.R. 118, 112? It basically
12 states that documents -- employees are not allowed to release
13 documents without permission of the Chairman or the General
14 Counsel, depending on where the document originated. It's
15 part of the FOIA regulations. Requests for documents need to
16 go through the FOIA process. We can give you the cite before
17 you leave.

18 MR. FINE: Okay.

19 MR. BERRY: I just can't think of it right off the top
20 of my head. Okay, I'm going to show you an e-mail dated
21 Wednesday, August 3, 2011.

22 MR. COBURN: Is this 28?

23 MR. BERRY: Oh, yes. Sorry. It's 29, actually. We're
24 skipping --

25 MR. COBURN: No problem, August 3, 2011.

1 (Investigative Exhibit 29 marked for identification.)

2 THE WITNESS: Okay.

3 Q. BY MR. BERRY: So this appears to be an e-mail that you
4 drafted to Peter Schaumber; is that correct?

5 A. Appears to be.

6 Q. Okay. In this e-mail, you're discussing several things,
7 some of which we're concerned about. One is it says Brian's
8 dissent simply references prior positions which mirror yours
9 now. Brian is Member Hayes?

10 A. I believe that's a reference to Member Hayes.

11 Q. Okay. And were those dissents public at that time?

12 A. The Beck cases that were being issued at that time
13 included dissents by Member Hayes, I believe.

14 Q. Further down it says Lafe is recommending [REDACTED]

15 [REDACTED] And, again, Lafe is
16 the Acting General Counsel?

17 A. I believe that's a reference to Lafe, yeah.

18 Q. Okay. And the reference to his recommendation, that's a
19 recommendation to the Board?

20 A. I believe probably, yes.

21 Q. Thank you.

22 (Investigative Exhibit 30 marked for identification.)

23 Q. BY MR. BERRY: I'm showing you what we're calling
24 Investigative Exhibit 30, which is the top e-mail is dated
25 Wednesday, August 10, 2011, at 9:35. Just to actually help

1 you, I actually only want to talk to you about the e-mail
2 below that, which is from you to Peter Schaumber dated August
3 10, 2011, at 7:07.

4 A. Okay.

5 Q. Who is [REDACTED] Attorney

6 A. [REDACTED] Attorney is my Chief Counsel.

7 Q. Okay. At that time who was he or what was his position
8 at that time?

9 A. He was a staff attorney, I believe, perhaps a
10 supervisor.

11 Q. Okay. To who?

12 A. I'm not sure whose staff he was on.

13 Q. And it says I've [REDACTED] the Chairman that
14 she -- who was the Chairman at that time?

15 A. It's a reference to she, so it would have to be --

16 Q. Well, it was August 10th.

17 A. Yeah, Chairman Liebman.

18 Q. Did Chairman Liebman give you permission to discuss what
19 her positions were or her --

20 A. Her position was set forth in the case which is
21 described in the blur, which is right off the -- I believe
22 right off the *Daily Labor Reporter*.

23 Q. Right. But --

24 A. Her position is set forth in that decision.

25 Q. Yes, my --

1 A. It would be a unanimous three-member decision.

2 Q. Well, I'd just draw your attention to [REDACTED]
3 [REDACTED] the Chairman, and that would, to me at
4 least, indicate that she [REDACTED]

5 [REDACTED]

6 MR. COBURN: Are you asking whether she was?

7 MR. BERRY: It would appear that he was indicating she

8 [REDACTED]

9 MR. COBURN: Do you have a question pending right now
10 then?

11 MR. BERRY: I did, actually.

12 Q. BY MR. BERRY: Did the Chairman authorize you to release
13 that information regarding her deliberations?

14 A. I don't believe that includes anything regarding her
15 deliberations. This makes reference to the position that she
16 took in the case, which was published at that time.

17 Q. Did Chairman Liebman authorize you to discuss that she
18 had to be [REDACTED] by [REDACTED] to take the position
19 [REDACTED]? Let me just ask
20 this, did you have any conversations with the Chairman about
21 this e-mail?

22 A. No.

23 Q. Thank you.

24 MR. COBURN: Maybe this would be a good time for a
25 couple-minute break? We've been at this for quite a while.

1 What do you think, two minutes?

2 MR. BERRY: Okay. All right, as long as you want.

3 MR. COBURN: Okay. Two minutes. You don't need to go
4 off the record unless you really want to.

5 MR. BERRY: I think she wants to.

6 **(Off the record until 3:40 p.m.)**

7 MR. BERRY: Okay. I'm showing you what we marked as
8 Investigative Exhibit 33 [sic], which is an e-mail dated
9 Wednesday, August 31, 2011.

10 **(Investigative Exhibit 32 marked for identification.)**

11 MR. COBURN: Tell me the exhibit number again, if you
12 don't mind.

13 MR. BERRY: 32.

14 MR. COBURN: 32.

15 MR. BERRY: I believe I said 33, but it's 32.

16 COURT REPORTER: You said 33.

17 MR. COBURN: August 31st.

18 Q. BY MR. BERRY: Do you recognize that e-mail?

19 A. I don't remember it specifically, but it's an e-mail
20 from me to Peter apparently.

21 Q. Okay. Did you discuss this e-mail with Member [REDACTED]
22 before you sent it?

23 A. No.

24 Q. Okay, thank you. I don't want to cut you off, but I
25 thought you were done. Were you going to say something else?

1 A. I don't -- I wouldn't have discussed this with
2 Member [REDACTED]. I was offering my opinion.

3 Q. Okay. Hold on. Was it public knowledge what
4 Member [REDACTED] was researching at that time?

5 A. Well, that was -- I didn't know whether Member [REDACTED]
6 was researching it or not. It was my prediction to Peter
7 that that's what was going to happen.

8 Q. Well, look at it again.

9 A. Yeah.

10 Q. So your prediction. It says currently, and [REDACTED]
11 currently has people researching [REDACTED]

12 [REDACTED]

13 A. Yeah.

14 Q. That doesn't seem to be a prediction.

15 A. Well, I mean I didn't know, I didn't know and couldn't
16 know what Member [REDACTED] was actually doing, but it was my
17 belief that he did not intend to [REDACTED] and
18 was looking for ways to try and avoid it. But I wouldn't
19 have been in a position to know what Member [REDACTED] was doing.

20 Q. Well, if you weren't in a position to know that, why
21 would you say he was doing that?

22 A. Well, I was suggesting to Peter that that's what he was
23 going to do.

24 Q. So that's just your speculation?

25 A. That's my belief.

1 (Investigative Exhibit 33 marked for identification.)

2 Q. BY MR. BERRY: I'm showing you what we're calling
3 Investigative Exhibit 33, which is an e-mail dated Tuesday,
4 August 30, 2011, at 2:09 p.m.

5 A. Okay.

6 Q. Have you looked at the attachment that was included with
7 that e-mail?

8 A. Yes.

9 Q. Okay. Do you recall seeing that attachment?

10 A. Yes. I believe this is another op-ed piece that Peter
11 was working on that he asked me to look at.

12 Q. And did you?

13 A. I did.

14 Q. And did you make edits to it or suggestions?

15 A. I made suggestions.

16 Q. Okay. Do you know what happened to this after you made
17 your edits?

18 A. I do not.

19 Q. Do you want me to tell you?

20 MR. COBURN: Well --

21 MR. BERRY: I mean I can tell you it was published in
22 the *National Review*.

23 MR. COBURN: Okay.

24 (Investigative Exhibit 35 marked for identification.)

25 MR. BERRY: I'm showing you Investigative Exhibit 35,

1 which is an e-mail dated Thursday, September 15, 2011.

2 MR. COBURN: Did you say this was 35?

3 MR. BERRY: This should be 35.

4 MR. COBURN: Thanks.

5 THE WITNESS: Okay.

6 Q. BY MR. BERRY: Do you recall sending this e-mail?

7 A. I believe that Member Schaumber sent me a list of what
8 he considered to be the significant cases that the Board had
9 decided and asked me if I saw anything that was missing from
10 that list.

11 Q. Do you know what he was going to do with the list?

12 A. No idea.

13 MR. COBURN: Can I see it again real quick? Sorry.

14 Thanks a lot.

15 Q. BY MR. BERRY: Did you do anything with the list?

16 A. I believe I looked at it. I believe I also shared it,
17 as I suggested I would, with other folks to see if they
18 thought it was complete, other folks on the staff.

19 **(Investigative Exhibit 36 marked for identification.)**

20 Q. BY MR. BERRY: Okay. I'm going to show you what we're
21 calling Investigative Exhibit 36, which is an e-mail dated
22 Thursday, September 15, 2011, at 11:12 p.m.

23 A. Okay.

24 Q. So who are the people that you sent this list to?

25 You've identified I think James Name and Robert Name

1 earlier, but we haven't identified the other two. If you
2 could just explain who they are, please?

3 A. Doug [Name] and Grant [Name] are two attorneys on
4 Member Schaumber's staff, former Member Schaumber's staff,
5 now my staff.

6 Q. Now, why did you send -- how did you pick these
7 individuals to send it to?

8 A. These are -- they're supervisors on the Schaumber and
9 the -- Jim was at the time I believe Member Hayes' counsel,
10 Chief Counsel.

11 Q. Now, do you have any idea how Member Peter Schaumber
12 intended to use this list?

13 A. I do not.

14 Q. The whole thing. Here. Now, do you know is Member
15 Schaumber active in any of the campaigns, the presidential
16 campaigns at this time?

17 A. I saw a -- someone circulated an announcement that he
18 was going to be a policy advisor to the Romney campaign,
19 which I recall because the picture that was sent around was
20 of Lafe Solomon rather than Peter, and it was somewhat
21 ironic.

22 Q. I'd say really ironic given what was going on at that
23 time. But, okay, so do you recall when that announcement was
24 made?

25 A. I don't.

1 Q. I don't really have any questions about -- well, hold
2 on. This is Investigative Exhibit 37. I'll just show it to
3 you. It's dated Monday, September 19, 2011. It's just -- do
4 you recognize that? It just appears that you're just
5 responding back to Member Schaumber.

6 **(Investigative Exhibit 37 marked for identification.)**

7 MR. COBURN: Can I see it?

8 Q. BY MR. BERRY: Do you want to say something? You made
9 an expression of displeasure when I showed it to you. Is
10 there --

11 MR. COBURN: I didn't interpret it that way.

12 MR. BERRY: Okay. Well, I mean I don't know how to
13 interpret that expression.

14 Q. BY MR. BERRY: It appears to me that this is an e-mail
15 where you are reporting back to Peter Schaumber what the
16 other staff members had to say about the list. Is that
17 correct?

18 A. That's your characterization that I --

19 Q. Well, what's your characterization?

20 MR. COBURN: Well, it speaks for itself, right?

21 THE WITNESS: I agree.

22 MR. BERRY: Can we go off the record for a second?

23 **(Off the record until 3:50 p.m.)**

24 MR. BERRY: I'm showing you what we're calling
25 Investigative Exhibit 38, which is an e-mail dated

1 September 19, 2011, at 3:39 p.m.

2 **(Investigative Exhibit 38 marked for identification.)**

3 MR. COBURN: September 19th?

4 MR. BERRY: Yes, September 19th.

5 Q. BY MR. BERRY: Do you recall sending this e-mail to
6 Peter Schaumber?

7 A. I don't specifically recall it, but it appears I did.

8 Q. Okay. And there is an attachment to this e-mail. Do
9 you recognize what that attachment is?

10 A. I do.

11 Q. And how would you describe that attachment?

12 A. It is a list. We call this list the major issues list
13 or lead case list. And it describes the significant cases
14 that are currently pending before the Board. It is a
15 document that is shared in various forms with the developing
16 labor law and practicing procedure committees at the annual
17 conferences that we have.

18 Q. Is the document shared in this form?

19 A. Not in this form.

20 Q. Okay. Do you know if the document is ever shared in
21 this form with the public?

22 A. I don't know.

23 Q. Do you know why you sent that to Mr. Schaumber on that
24 date?

25 A. I don't specifically recall.

1 Q. Did he ask for it?

2 A. I remember Peter Schaumber asking me on various
3 occasions what were the cases that were unable to get out
4 prior to the expiration of his term that we had been working
5 on and what were the significant cases that we had been
6 unable to complete before the expiration of his term. And
7 those -- that may have been in response to that.

8 **(Investigative Exhibit 39 marked for identification.)**

9 Q. BY MR. BERRY: I'll show you what we're calling
10 Investigative Exhibit 39, which is an e-mail dated Friday,
11 September 23, 2011, at 11:41 a.m.

12 A. This appears to be the same list.

13 Q. It's actually a different list because it is later in
14 time. I can show you what we're calling 38 but --

15 A. I believe you.

16 Q. Do you know why you sent the list to him on this date,
17 on that date?

18 A. I don't have a specific recollection.

19 **(Investigative Exhibit 40 marked for identification.)**

20 Q. BY MR. BERRY: I'm showing you what we're calling
21 Investigative Exhibit 40, which is an e-mail dated Wednesday,
22 September 28, 2011, at 2:50 p.m. Actually, there is actually
23 a series of e-mail in that exhibit. I'd sort of ask
24 generally if you can recall sending those? The first one you
25 received.

1 A. So which one are you asking me on?

2 Q. Just in general do you recall reviewing first the first
3 one, that e-mail, which is one you received, not one you
4 sent.

5 A. I don't have a specific -- I remember Peter asking me
6 about some language relating to I think a proposed
7 legislative initiative.

8 Q. Do you know what Mr. Schaumber was doing at that time?

9 A. I don't, but I know he was testifying on the Hill at
10 various times. I don't know if it was at this specific time.
11 He appeared in a number of different hearings, I believe.

12 Q. Were you authorized by the Board to discuss pending
13 legislation with outside parties?

14 A. Well, I don't know that this was pending legislation.

15 Q. You just said it was.

16 A. I didn't.

17 MR. COBURN: I mean that presupposes that he would need
18 some sort of explicit authorization to talk about pending
19 legislation. I mean I can --

20 MR. BERRY: Not necessarily.

21 MR. COBURN: Anybody can talk about pending legislation,
22 right?

23 MR. BERRY: Well, you might be able to talk about
24 pending legislation, but not so sure you could use your
25 government computer to talk about pending legislation with

1 someone who is a lobbyist.

2 MR. COBURN: Okay.

3 Q. BY MR. BERRY: But my question is, were you doing this
4 on behalf of the Board? Were you authorized to liaison with
5 the Hill? Were you, you know, why were you talking with
6 Mr. Schaumber about this pending legislation?

7 MR. COBURN: You probably just want him to answer that
8 last one, right? Why?

9 MR. BERRY: I think why would probably explain all the
10 other questions.

11 MR. COBURN: So why were you -- the question is why were
12 you talking to Schaumber about this issue about this subject?

13 MR. BERRY: Correct.

14 MR. COBURN: Okay.

15 THE WITNESS: And the answer is because he asked me what
16 I thought of it.

17 Q. BY MR. BERRY: At that time, were you aware that he was
18 engaged in lobbying?

19 MR. COBURN: Well --

20 THE WITNESS: I don't --

21 MR. COBURN: Yeah, go ahead.

22 THE WITNESS: All I know is that he testified, he was
23 testifying on the Hill. I don't know what he was doing at
24 that specific time.

25 **(Investigative Exhibit 41 marked for identification.)**

1 Q. BY MR. BERRY: I'm showing you an e-mail which we are
2 calling Investigative Exhibit 41. This is an e-mail dated
3 Tuesday, October 11, 2011, at 3:02.

4 A. Okay.

5 Q. Do you recall sending that e-mail?

6 A. I don't specifically recall it, but it appears I did.

7 Q. Why did you ask [Attorney] about that case?

8 A. It appears that Peter asked me if a particular case had
9 issued yet. And I asked [Attorney] who is in charge of
10 [] if the case had issued. He told me no. And I
11 told Peter, no, the case had not issued.

12 Q. Did you tell -- is it [Attorney] ? [Attorney] that you were
13 requesting this information on behalf of Peter Schaumber?

14 A. That's not reflected in the e-mail.

15 **(Investigative Exhibit 42 marked for identification.)**

16 Q. BY MR. BERRY: I'm showing you a document which we are
17 calling Investigative Exhibit 42.

18 A. Okay.

19 Q. Do you recognize that e-mail? I'm sorry, maybe I didn't
20 say it. It's dated Wednesday, November 30, 2011, at 8:08.

21 A. Right.

22 Q. Do you recognize that e-mail?

23 A. I do.

24 Q. And what is it?

25 A. This was an e-mail that I misdirected to

1 Member Schaumber. It consisted of some internal
2 conversations between me and, well, there had been some
3 possibility that we were going to have some dialogue with the
4 other members. Member Hayes was going to have some dialogue
5 with the other members regarding the election rules. And I
6 had tasked Peter [REDACTED] with working with two other
7 attorneys to come up with some possible comments or
8 compromises that we might be able to make if we were to go
9 forward with these discussions. And this is a compilation of
10 the thoughts of the attorneys that were working with Peter
11 [REDACTED] on putting this together.

12 And I did not remember sending this to Peter Schaumber.
13 I don't know why I would have. There's no reason why I would
14 have sent this to Peter Schaumber. And I believe what
15 happened here is that this was an auto-fill option on my
16 Outlook and that was misdirected to Peter. It should have
17 gone to Peter [REDACTED]. And I discovered that error when we
18 were responding to a FOIA request. And I sent
19 Member Schaumber an e-mail notifying him of -- former Member
20 Schaumber an e-mail notifying him of the error and asking
21 that he return it.

22 Q. When did you send it, the e-mail to former Member
23 Schaumber?

24 A. I don't remember the exact date.

25 Q. In December?

1 A. I don't recall. It would have been when we -- after we
2 were responding to FOIA requests. I'd have to go back and
3 look.

4 Q. We might go back and look, too; but if you could provide
5 that to me, that would be appreciated.

6 MR. COBURN: If we can find it, we'll be happy to
7 provide it to you.

8 MR. BERRY: We can restore the backup, the e-mail from
9 the backup tapes if you give us some indication of when you
10 might have sent it.

11 Q. BY MR. BERRY: Do you recall asking the -- sorry, the
12 law librarian for a list of all the cases that
13 Member Schaumber had participated in?

14 A. Yes.

15 Q. And why did you do that?

16 A. Because the Representative Issa had served a subpoena on
17 or a report of investigation on the Board that was requesting
18 information relating to me, to Member Griffin, and to Member
19 Block regarding all matters that we had worked on while we
20 were at the Agency. And that was in preparing the -- through
21 the Chairman, preparing a response to that. I submitted
22 those documents to the **Deliberative**

[REDACTED]

25 Q. Okay. That concludes my questions. You're welcome to

1 add anything. Normally, in an interview, we let subjects
2 say, you know, they answer our questions, but we let them say
3 whatever it is they want to say.

4 MR. COBURN: That's really kind of you.

5 MR. BERRY: In addition to our questions and provide the
6 opportunity now. You're not required to say anything at all.

7 MR. COBURN: Yeah, I'd like to say something if that's
8 okay as his counsel? You know I mean I say this just very
9 respectfully. You have always been courteous. And we
10 intended to respond exactly the same way. But, you know, a
11 government official does not, by virtue of making the
12 sacrifice required to engage in government service as a
13 political appointee, agree to live in a bubble. It doesn't
14 mean that he has to cut off his contact with other people he
15 knows or other people who used to serve in a government
16 position who he might have become acquainted with that way.

17 And it doesn't mean he's not allowed to comment on
18 things that are public or things that other people might be
19 aware of that are going on inside of the Agency. And to the
20 extent, you know, any sort of de minimis disclosure of what
21 you might characterize as internal agency operations might
22 occur by virtue of like forwarding an e-mail that includes
23 another e-mail or something like that, it's just de minimis.

24 And so I, you know, I say to you very respectfully,
25 because you've always been respectful towards me, you know,