OVERSIGHT HEARINGS TO EXAMINE THE LAWS, POLICIES, PRACTICES, AND OPERATIONS OF THE DOI, DOE., AND OTHER AGENCIES PERTAINING TO PAYMENTS TO THEIR EMPLOYEES, INCLUDING PAYMENTS RELATIVE TO MINERAL ROYALTY PROGRAMS AND POLICIES FROM PUBLIC LANDS AND INDIAN LANDS

OVERSIGHT HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MAY 4 AND 18, 2000, WASHINGTON, DC

Serial No. 106–73

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://www.house.gov/resources

U.S. GOVERNMENT PRINTING OFFICE

65–382 ⇆ WASHINGTON : 1999

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OVERSIGHT HEARING TO EXAMINE THE LAWS, POLICIES, PRACTICES, AND OPERATIONS OF THE DEPARTMENT OF THE INTERIOR, DEPARTMENT OF ENERGY, AND OTHER AGENCIES PERTAINING TO PAYMENTS TO THEIR EMPLOYEES, INCLUDING PAYMENTS RELATIVE TO MINERAL ROYALTY PROGRAMS AND POLICIES FROM PUBLIC LANDS AND INDIAN LANDS

THURSDAY, MAY 4, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in Room 1334, Longworth House Office Building, Hon. Barbara Cubin, chairman of the Subcommittee, presiding.

STATEMENT HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. The Subcommittee on Energy and Minerals meets today to examine the laws, policies, practices, and operations of the Department of Interior, Department of Energy, and other agencies pertaining to payments to their employees, including payments relative to mineral royalty programs and policies from public and Indian lands. This oversight hearing will now please come to order.

Taxpayers should get every penny of oil royalties from public domain lands that they have coming, period. I say that up front and I mean that very, very seriously.

Oil royalties are an important subject underlying our work and grounding our jurisdiction. In fact, the Subcommittee on Energy and Mineral Resources has conducted extensive oversight of the Minerals Management Service and their ability to collect royalties for the past four years, since I have been chairman of this Subcommittee, and we have proposed a broad-based royalty in-kind collection system. Had that system that we proposed been in place during the period of the underpayments, that fraud could not have been committed.

I have been active in trying to ensure that every single penny, no more and no less, of royalties that are owed are collected. The cumbersome and costly procedures for collecting the government's

share of revenue from production on Federal lands could be drastically reduced if the MMS were to expand the use of the R-I-K program where it now has pilot programs.

Additionally, Congress has several times barred the MMS from finalizing a proposed rule because of concerns that it would create an enormous uncertainty for lessees associated with shifting the valuation far downstream from the wellhead. But last Fall—and I pointed out that it was the Congress that stopped that, not this Subcommittee—last Fall, the Congress gave the green light to MMS to finalize this rule. My concern continues to be the integrity of the rulemaking process and the integrity of the information received from the Department of Interior in regard to our efforts to reform how oil should be valued for royalty payment purposes.

But our primary focus for today's oversight hearing is different. This oversight review is framed to study the policies, practices, and operations of the Department of Interior and the Department of Energy related to payment by non-government organizations or by individuals to employees of those departments who deal with oil royalty policy.

Consequently, our exercise today examines one instance where a private corporation made payments to department employees involved in Federal royalty policies. Before the word of the payments became known—there was no reporting of those payments and no disclosure of them. After the payments became known, what appears to be an elaborate cover story was developed to hide the true nature of the payment.

Our witnesses today will help us to understand the details of the lawsuit, agreements, and transactions involving payment by the Project on Government Oversight to Mr. Robert A. Berman, an employee of the Department of Interior, and Mr. Robert A. Speir, an employee of the Department of Energy. Those agreements and transactions which resulted in payments of $383,600 to each of these gentlemen with the promise of more to come. Each of them worked at their departments on Federal oil royalty policy, a subject within the jurisdiction of this Subcommittee.

The details of those agreements and transactions will allow members of the Subcommittee to make informed judgments about whether the laws, policies, ethical standards, and procedures that apply to people who work in areas of the Subcommittee's jurisdiction is adequate or whether they need to be changed.

We study this example because it illustrates how even good intentions can corrupt the Federal decision making process, and I believe collecting the accurate, the right amount of royalty, is a good intention. This Subcommittee has a duty to monitor that decision making process and ensure that the operation of programs within our jurisdiction is free of undue influence.

Our responsibility under the rules of the U.S. House of Representatives requires us to review this type of matter. Payments of this magnitude by anyone or any group to an agency policy advisor cut to the core of what our system of government should not be about. Will agency employees make judgments subject to the influence of $383,600 in cash or will their counsel be given in the public interest?

We have learned much, but not everything, in the year that the Committee and Subcommittee have studied how these two Federal oil policy employees got paid $383,600 each. This hearing will lay out some of what we think we know and we hope to fill in some details about which we are unsure.

The review and our hearing today begins with the money, the two checks for $383,600. Where did the money come from? How did a private, well-intentioned watchdog corporation with an annual budget of about $300,000 get an extra $767,200 to make the lottery-sized payments to the Federal employees who advised on oil policy?

The answer, in part, will come from our first panel, Mr. Johnson and Mr. Martineck. They brought the original lawsuit in February 1996 for the United States to recover what they described as oil royalty underpayments. Their lawsuit alleged that major oil companies paid too little in royalties to the United States because they set an unfairly low value for the oil pumped from the Federal land. If there are whistleblowers on royalty underpayments in this room, then these gentlemen are it, Mr. Johnson and Mr. Martineck. They had the expertise and they had the knowledge required by law to expose the royalty underpayments, and they did it first.

Mr. Johnson and Mr. Martineck will help us to understand the basic nature of their lawsuit and how their lawsuit relates to the Project on Government Oversight. They will lead us to the second point, a better understanding of the agreements and understandings between POGO and themselves and POGO and Mr. Berman and Mr. Speir. Remember, the agreements resulted in the transaction that paid nearly three-quarters of a million dollars to Federal employees, with the promise of far more to come after the first checks were out.

Mr. Johnson and Mr. Martineck, I want you to know that I sincerely appreciate your cooperation with the Subcommittee and I appreciate your being here today.

Our second witness, Mr. Kritzer, is a known oil valuation expert, but he did not receive a six-digit public service award. He will help us to understand the underlying issue of oil valuation and what it takes to be an expert, as he certainly is one.

Our third witness is Mr. Brock. POGO recruited him as an expert to testify in POGO's "nearly identical"—in the words of the Department of Justice—lawsuit to Mr. Johnson's suit. His past statements are a good indication of his qualification and knowledge about oil valuation and royalties. He has profited by about $1 million of the recovery thus far. The big question for him is what did he know that motivated POGO to give him a $1 million jackpot?

Our fourth witness is Keith Rutter, the Assistant Executive Director of POGO. Mr. Rutter kept the records of the organization and wrote checks to Mr. Berman and Mr. Speir. We need to understand what he knows about the agreement and the transaction that led to his signature on these checks.

Our fifth panel is all of the known members of POGO's board of directors who held office when the agreements were made with and the payments made to the Federal employees.

This is an important panel. We need to understand from them what debate and discussion took place when the agreement was

made to pay the Federal employees way back in December 1996. We need to understand how deeply the board was involved in the decision making process when the secret agreement was reduced to writing in January 1998 and again in October of 1998.

We need to understand what role, if any, the Federal employees who are paid by their agencies to advise about oil policy played in injecting POGO into Mr. Johnson's and Mr. Martineck's lawsuit. Remember, this is the lawsuit that ultimately provided the funds to pay the Federal employees.

Were Federal employment positions used to gain knowledge about the Johnson/Martineck sealed lawsuit or about its theories? We understand there were phone calls and notes, but we need to hear from the recipient of these calls. We need to know what the board knew about the role of these Federal employees in this lawsuit. What did the board know of the decision to state that the payments were public service awards? Why was it necessary for POGO to invent this deception? Did the board approve this? Perhaps when the group consulted lawyers about the proprieties of all these things, someone knew the line had been crossed.

As it turns out, the agreement with the Federal employees and the corporation's $383,600 payments to them nearly compromised the integrity of Mr. Johnson's and Mr. Martineck's oil royalty lawsuit, and we have reviewed the court transcript on that issue.

The payments and secret agreements certainly have cast a shadow on the integrity of the Department's efforts to deal with the royalty issue in general. The agreement and the payments leave a broad question in my mind. Just what were those involved in the secret agreements, the transactions, and the payments thinking?

We are here today to determine and to verify the facts. We are interested in nothing more than the facts. Intentions are not relevant to our work here today. Neither are the most noble ends. The facts are what matter. This is what Chairman Young and I want to bring out today.

We spent one year gathering facts without much cooperation from the Project on Government Oversight. I really wonder why a self-described watchdog group is so interested in hiding the facts about this transaction from us. POGO has defied lawful Committee subpoenas. They did so openly and by choice, even when we tried to accommodate their concerns.

As I said before, this oversight hearing is conducted as part of the Committee on Resources' inquiry into the operations, policies, and practices of the Department of Energy and the Department of Interior, and into rules which were either circumvented or which were inadequate to prevent this apparent and serious conflict of interest. Chairman Young set the parameters of our oversight review in the request letters that launched this investigation and in transmitting the matter to the Subcommittee. We have made this material generally available to everyone. These are matters within the jurisdiction of this Subcommittee.

The scope of this hearing means that we are not—listen very carefully—we are not going to rehash the oil royalty policy rules, the new ones nor the old ones. Although there are many questions related to the new rule, the Congress authorized the agency to publish this rule and the proper venue to sort out those questions is

now the courts, or in possibly another oversight hearing of this Committee, but not this hearing. That is not what we are here to talk about today.

The witnesses have been subpoenaed to testify today. I advised each witness weeks ago that they will be sworn in. I expect to hear truthful and complete answers. Witnesses were also advised that they could bring a lawyer to advise them of constitutional rights because the testimony will be sworn. However, only the witnesses will address the Subcommittee. Their lawyers may not address the Subcommittee. This means that I do not want to hear any words from any attorneys who are accompanying their witness.

Lawyers should note that the rules of the House of Representatives restrict counsel to advising the witness in the assertion of constitutional rights and privileges. Lawyers may not sit at the witness table, but I have reserved a seat in the first row so that lawyers may counsel their client if the need arises. Lawyers may not coach their clients. The rules of the House will be enforced firmly and impartially. I will not allow this Subcommittee to be detoured or filibustered by debates or lawyers' antics.

I remind everyone that this is a Subcommittee hearing that proceeds under Rule XI 2(g)(2) of the Rules of the House of Representatives. Procedures associated with those rules apply. This is an open hearing. This is not an investigative hearing. The Subcommittee has not voted to launch an investigation. We may consider that issue at another date.

Witnesses will not make oral summaries of their testimony, but they may place statements that comply with the rules in the record.

As we begin this hearing, I ask everyone in the audience, the media, Mr. Johnson, and the POGO board, everyone, to undertake the following exercise. Imagine just two changes in what we now know. First, imagine that it was Exxon or Shell or Mobil Oil instead of POGO that made the two $383,600 payments. Imagine that one of those major oil companies called them public service awards and they secretly promised one-third of everything it saved on the oil royalties to two Federal policy advisors. Just imagine that. If that scenario makes the Federal employees silent partners of the oil company, then the POGO payment makes the Federal employees silent partners of POGO. Agency decision makers should not be silent partners of anyone.

I guarantee every person here that if the situation were reversed, instead of the case we now have in front of us today, as witnesses we would have the executives and the board members of that oil company in front of us, and rightfully so.

I now turn to our ranking Democratic member, Mr. Underwood, for any opening statement he might have.

[The prepared statement of Mrs. Cubin follows:]

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

The oversight hearing will come to order.

Taxpayers should get every penny in oil royalties from public domain lands that we are owed, period. I say that up front to clear the air.

Oil royalties are an important subject underlying our work and grounding our jurisdiction. In fact, the Subcommittee on Energy and Mineral Resources has con-

ducted extensive oversight of the Minerals Management Service's (MMS) ability to collect royalties for the last four years and has proposed a broad-based "royalty in-kind" (R-I-K) system. Had it been in place during the period of the alleged under-payments of royalties made, the fraud could not have occurred.

I have been active in trying to ensure that every penny-no more, no less—of royalties owed are collected. The cumbersome and costly procedures for collecting the government's share of revenue from production on Federal leases could be drastically reduced if MMS were to expand the use of the RIK method.

Additionally, Congress has several times barred MMS from finalizing a proposed valuation rule because of concerns that it would create an enormous uncertainty for lessees associated with shifting valuation far downstream from the wellhead. But last fall the Congress gave the green light to MMS to finalize its rule.

My concern continues to be the integrity of the rule-making process and the integrity of the information received from the DOI in regard to our efforts to reform how oil should be valued for royalty payment purposes.

But our primary focus for today's oversight hearing is different.

This oversight review is framed to study the policies, practices, and operations of the Department of Interior and the Department of Energy related to payments by non-government organizations or by individuals to the employees of those departments who deal with oil royalty policy.

Consequently, our exercise today examines one instance where a private corporation made payments to department employees involved in Federal royalty policies. Before word of the payments became known, there was no reporting of these payments, and no disclosure of them. After the payments became known, what appears to be an elaborate cover story was developed to hide the true nature of the payments.

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We study this example because it illustrates how even good intentions can corrupt the Federal decision making process, and I believe collecting the correct royalty is good. This Subcommittee has a duty to monitor that decision making process and to ensure that the operation of programs within our jurisdiction are free of undue influence.

Our responsibility under the Rules of the U.S. House requires us to review this type of matter. Payments of this magnitude by anyone or any group to an agency policy advisor cut to the core of what our system of government should not be about. Will agency employees make judgments subject to the influence of $383,600 in cash or will their counsel be given in the public interest.

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As I said before, this oversight hearing is conducted as part of the Committee on Resources' inquiry into the operations, policies, and practices of the Departments of the Interior and Energy, which were either circumvented or which were inadequate to prevent this apparent and serious conflict of interest. Chairman Young set the parameters of our oversight review in record request letters that launched this investigation and in transmitting the matter to the Subcommittee. We have made this material generally available. These matters are within the jurisdiction of the Subcommittee.

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I guarantee every person here that if the situation were reversed, instead of the cast we have in front of us today as witnesses, we would have the executives and board members of that oil company in front of us. And rightfully so.

Mr. UNDERWOOD. Mr. Miller will make the opening statement for our side.

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. I thank the gentleman for yielding. Madam Chair and fellow members, I am attending today's oversight hearing to express my very strong concern about the manner in which this investigation is being handled. I believe that the rights of the witnesses have been abused in the process of this hearing.

Today, the Committee is investigating ostensibly whether or not a nonprofit group and two Federal employees violated any regulations or law when the group made a public service award to employees for their work in exposing serious underpayment of Federal royalties owed to American taxpayers by numerous large oil companies. The Committee is not investigating the fact that the oil companies have regularly underpaid hundreds of millions of dollars of royalties that are owed to the American taxpayer.

This Committee has been used time and again on behalf of special interests who find themselves on the wrong side of the law. Once again today, we find the Committee coming to the aid of the oil industry that has already settled numerous cases out of court for hundreds of millions of dollars because they underpaid royalties that they rightfully owed the American taxpayer. Members of this Committee and others in the House and Senate tried for years to delay the administration's method of determining the proper roy-

alty payments, and now they have launched an investigation against those who brought those underpayments to light.

Let me be clear, no one is condoning the potential misconduct that is being alleged. If any wrongdoing is discovered, those responsible should be held accountable. But the alleged wrongdoing is already under investigation by the proper authorities at the Department of Justice and Interior.

When this Committee investigation was started last June over the objections of the Department of Justice, the Office of Inspector General, the Department of Interior, and the Democratic members of the Committee, the Subcommittee chair said, "It is not the intent of the Committee to intervene in the criminal investigation at all, but we do have a need to know what is going on because we have things in front of us as far as oil valuation is concerned that are the purview of the Committee."

Right now, the administration, the Minerals Management Service, have some regulations and proposed regulations that should not go into effect because we do not know whether this payment of money or anything to do with the new regulations. We just need to know whether the two people involved had any influence in MMS. The administration has testified that these two individuals did not effect the new regulations, but instead of dropping the investigation, this Committee has gone off and appears on a witch hunt or, at best, tangent without any additional direction or input from members of the Committee. We now find ourselves embroiled in a private dispute between litigants who successfully sued the oil companies for defrauding the American people of hundreds of millions of dollars. Let me describe some of the actions by the Majority that should concern every objective member of this Committee.

Dina Rasor, a member of the board of the Project on Government Oversight, was contacted by Mr. Casey of the Majority staff who reportedly dismissed a repeated request to consult with her attorney. Ms. Rasor is a private investigator more than a little familiar with the appropriate interrogation methods and witnesses' rights. Mr. Casey reportedly became belligerent when Ms. Rasor insisted on speaking with her attorney and the conversation was terminated. Soon thereafter, Ms. Rasor received a subpoena to appear today. She was not afforded an opportunity to voluntarily appear as a witness.

Further, due to an error by the Majority staff, the subpoena was sent to the Southern California Branch of the U.S. Marshals Service and was not properly delivered to Ms. Rasor, who lives in my Bay Area district, until April 21. The Majority did not inform Ms. Rasor nor the other out-of-town witnesses they subpoenaed that under House rules, the Committee must pay their actual travel expenses and the Federal rate of per diem. My understanding is that the Majority staff, in fact, refused to pay these expenses until my staff cited the House rules.

Only on April 26, last Wednesday, did the Majority fully concede the point, and even then, they refused to reimburse actual expenses and instead offered each witness the value of a government rate e-ticket. Of course, having first been informed that the Committee would not pay their travel expenses, most of the witnesses had already purchased their own or made their own travel arrange-

ments. The Majority staff told my constituent, Ms. Rasor, to take the overnight red-eye from San Francisco to Washington to appear before the Committee and return to California the same day, presumably to avoid having to pay the per diem expenses.

This not only ignores the clear rules of the House but comes close to harassing witnesses that the Majority summoned to appear in the first place. The Committee should not force witnesses that it has compelled to testify, whom it has misinformed about the conditions of the testimony, to bear the financial brunt of the Committee incompetence. I ask the Committee reimburse her actual transportation costs and regular government per diem expenses consistent with the House rules for any witness that is subpoenaed here today.

I also submit for the record the correspondence from POGO's attorney, Mr. Stanley Brand, former counsel to the House, outlining his objections to the manner in which the inquiry is being conducted, the latest of which is the chair's refusal to allow witnesses time to make oral statements. I find it appalling that the Committee would summon these people to participate in clearly adversarial proceedings, then deny them the opportunity to make statements on their own behalf.

[The information of Mr. Miller follows:]

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Madame Chair and fellow Members, I am attending today's oversight hearing to express my very strong concern about the manner in which this investigation is being handled. I believe the rights of witnesses have been abused in the process of this hearing and I believe the Committee has been derelict in its investigative responsibilities.

Today, the Committee is investigating ostensibly whether a non-profit group and two Federal employees violated any regulations or laws when the group made a public service award to the employees for their work in exposing serious under-payments of Federal royalties owed to American taxpayers by numerous large oil companies.

The Committee is not investigating the fact that oil companies have regularly underpaid hundred of millions of dollars in royalties owed to the taxpayer.

This Committee has been used time and again on behalf of special interests who find themselves on the wrong side of the law.

Once again today, we find the Committee coming to the aid of the oil industry that has already settled numerous cases out of court for hundreds of millions of dollars because they underpaid royalties to the taxpayer. Members of this Committee and others in the House and Senate tried for years to delay the Administration's new method of determining proper royalty payments. And now they have launched this investigation against those who brought the under-payments to light.

Let me be clear. No one is condoning the potential misconduct that is being alleged.

If any wrongdoing is discovered, those responsible should be held accountable. But, the alleged wrongdoing is already under investigation by the proper authorities at the Departments of Justice and Interior.

When this Committee's investigation was started last June, over the objections of the Department of Justice, the Office of the Inspector General of the Department of the Interior and the Democratic Members of this Committee, the Subcommittee Chair said,

> "It isn't the intent of the Committee to intervene in the [criminal investigation] at all, but we do have a need to know what is going on because we have things in front of us as far as oil valuation is concerned that are the purview of this Committee. Right now the Administration and the Minerals Management Service [have] some regulation or proposed regulation that should not go into effect ... because we don't know whether this ... payment of money has anything to do with the new regulations. We just need to know whether the two people involved had any influence on the MMS."

The Administration has testified that these two individuals did not effect the new regulations but instead of dropping the investigation, this Committee has gone off on what appears to be a witch hunt or at best a tangent—without any additional direction or input from the Members of this Committee.

And we now find ourselves embroiled in a private dispute between litigants who successfully sued the oil companies for defrauding the American people of hundreds of millions of dollars.

Let me describe some of the actions by the Majority that should concern every objective Member of this Committee.

Dina Rasor, a member of the Board of the Project on Government Oversight, was contacted by Mr. Casey of the Majority staff who reportedly dismissed her repeated requests to consult with her attorney.

Ms. Rasor is a private investigator, and more than a little familiar with appropriate interrogation methods and witness rights. Mr. Casey reportedly became belligerent when Ms. Rasor insisted that he speak with her attorney, and the conversation was terminated. Soon thereafter, Ms. Rasor received a subpoena to appear today. She was not afforded an opportunity to voluntarily appear as a witness. Further, due to an error by the Majority staff, the subpoena was sent to a Southern California branch of the U.S. Marshals' Service, and was not properly delivered to Ms. Rasor, who lives in my Bay Area district, until April 21.

The Majority did not inform Ms. Rasor, nor the other out-of-town witnesses they subpoenaed, that under House Rules, the Committee must pay their actual travel expenses and a Federal-rate per diem. My understanding is that the Majority staff in fact refused to pay these expenses until my staff cited the House Rules.

Only on April 26—last Wednesday—did the Majority finally concede the point, and even then, they refused to reimburse actual expenses and instead offered each witness the value of a government-rate "e-ticket". Of course, having first been informed the Committee would not pay their travel expenses, most of the witnesses had already made their own travel arrangements.

The Majority staff told my constituent, Ms. Rasor, to take the overnight "red-eye" from San Francisco to Washington, appear before the Subcommittee, and return to California the same day, presumably to avoid having to pay per diem expenses.

This not only ignores the clear Rules of the House, but comes close to harassing witnesses that the Majority summoned to appear in the first place!

The Committee should not force witnesses it has compelled to testify, and whom it has misinformed about the conditions of that testimony, to bear the financial brunt of the Committee's incompetence.

I ask that the Committee reimburse the actual transportation cost and regular government per diem expenses, consistent with the House Rules, for any witness it has subpoenaed to be here today. I also submit, for the record, the correspondence from POGO's attorney, Mr. Stanley Brand—former Counsel to the House—outlining his objections to the manner in which this inquiry has been conducted—the latest of which is the Chair's refusal to allow the witnesses time to make oral statements.

I find it appalling that the Committee would summon these people to participate in a clearly adversarial proceeding and then deny them the opportunity to make a statement on their own behalf.

As I said at the outset, I cannot help but wonder why the Committee is expending substantial amounts of time and money to investigate people who exposed hundreds of millions of dollars in royalty under-payments, but has utterly failed to focus on those who illegally shortchanged the taxpayers in the first place!

Mobil settled its False Claims suit last year for $45 million. Altogether, the oil companies have already coughed up over $300 million dollars in settlement costs.

But where are the witnesses from the oil industry today? When is the Committee going to focus on the systematic cheating of the American taxpayer?

The only attention this subject has received so far is the Majority's ceaseless promotion of its sham Royalty-In-Kind scheme which the Department of the Interior and the General Accounting Office say would cost taxpayers $330 million a year.

Madame Chairwoman, I would hope this Committee would devote at least as much energy and money to investigate the hundreds of millions of dollars the oil industry has underpaid the Federal taxpayer, state governments, Indian tribes and school children of this country as it has investigating the people who revealed those under-payments in the first place.

Mr. MILLER. As I said at the outset, I cannot help but wonder why the Committee is expending substantial amounts of time and money to investigate people who exposed hundreds of millions of dollars in royalty underpayments but have utterly failed to focus

those on who illegally shortchanged the taxpayers in the first place. Mobil settled its false claims suit last year for $45 million. Altogether, the oil companies have already coughed up over $300 million in settlement costs. But where are the witnesses from the oil industry today? When will the Committee focus on the systematic cheating of the American taxpayer? The only attention this subject has received so far is the Majority's ceaseless promotion of the sham royalty-in-kind scheme which the Department of Interior and the General Accounting Office say would cost the taxpayers $330 million a year.

Madam Chairwoman, I would hope that this Committee would devote at least as much energy and money to investigate the hundreds of millions of dollars the oil industry has underpaid the Federal taxpayer, State governments, Indian tribes, and school children of this country as it is investigating the people who revealed those very same underpayments in the first place.

Mrs. CUBIN. I would like to remind the ranking member on the Committee that this underpayment by the major oil companies apparently went on for at least ten years before I became chairman of this Subcommittee, and ever since I have been chairman of this Committee, for the last three-and-a-half years, we have recognized the problem and we have sought a solution. While Mr. Miller did not like our proposed solution, if he is being honest, he should be hard pressed to say that we have not recognized the problem and sought a solution.

But I would like to remind him, that is not what this hearing is about. What this hearing is about is examining the policies, the practices of the Department of Interior and the Department of Energy to see how this sort of payment from a nongovernmental agency, from a private corporation, could be made to employees of those departments while they were advisors in making oil royalty rules.

So with that, I would like to recognize Mr. Thornberry for two motions.

Mr. THORNBERRY. Madam Chairman, under Clause 2(J)(2)(b) of Rule XI of the Rules of the House of Representatives, I move that you, myself, Mr. Tancredo, Mr. Brady, Mr. Gibbons, and Minority members of the Committee be allowed to question the witnesses, Mr. Johnson and Mr. Martineck, for equal periods of time, not to exceed 30 minutes.

Mrs. CUBIN. Without objection.

Mr. MILLER. Reserving the right to object, if you would just explain, that is 30 minutes a person or are you going to split that time on your side——

Mrs. CUBIN. It is per side.

Mr. THORNBERRY. It is 30 minutes a side.

Mr. MILLER. [continuing] to be equally divided?

Mr. THORNBERRY. It is 30 minutes a side, but it just avoids dealing with the five-minute rule. So it can be longer blocks of time.

Mr. MILLER. And that is for each panel, each witness?

Mrs. CUBIN. That is for each witness.

Mr. MILLER. So on the last panel, you have, what, five witnesses?

Mrs. CUBIN. This is for the first panel only.

Mr. MILLER. You are doing this just for the first panel?

Mr. THORNBERRY. That was my motion, just for the first panel.

Mrs. CUBIN. Do you withdraw your right to object?

Mr. MILLER. No objection. Madam Chair, I would like to request that our distinguished colleague, Carolyn Maloney from New York, be allowed to join us on the dais.

Mrs. CUBIN. I have no objection.

Mr. MILLER. Thank you.

Mr. THORNBERRY. Madam Chair, under Clause 2(J)(2)(b) of Rule XI, the Rules of the House of Representatives, I move that Tom Casey of the Majority staff and a staff member designated by the Minority each be allowed to question the witnesses, Mr. Johnson and Mr. Martineck, for equal periods of time, not to exceed 30 minutes each.

Mrs. CUBIN. Is there any objection?

Mr. MILLER. Reserving the right to object, do this again? So that is an additional 30 minutes?

Mr. THORNBERRY. For the staff to question the two witnesses in the first panel.

Mr. MILLER. Well, the Minority was not informed of this. I do not object to it, but I wish—you know, it is just incredible how you continue to run this Committee and you do not consult with us on these kinds of procedures, but that is what is wrong with this hearing from the beginning in any case.

Mrs. CUBIN. Mr. Miller, we have genuinely tried to share every single piece of information we have had and——

Mr. MILLER. Do not do that.

Mrs. CUBIN. Well, it is.

Mr. MILLER. Do not insult me.

Mrs. CUBIN. It is, because——

Mr. UNDERWOOD. For clarification, what is the total amount of time we are going to spend on the first panel?

Mrs. CUBIN. The total amount of time on the first panel will be one hour divided for questioning of the staff——

Mr. MILLER. By members.

Mrs. CUBIN. [continuing] 30 minutes by members, right, and then one half-hour divided into—or 15 minutes on each side.

Mr. MILLER. Reserving the right to object, let me ask, since we were not notified of the staff request, if the members on this side want to use that 30 minutes, that we be allowed to use that 30 minutes.

Mrs. CUBIN. Absolutely. And the chair would like to welcome Ms. Maloney to the dias and hope that you heard the opening statements and understand what the scope and view of this hearing is.

Now I would like to introduce our first panel, Mr. John Martineck and J. Benjamin Johnson, Jr. Would you please come forward and sit at the table.

I would like to ask the panel to remain standing. The witnesses had previously been advised of the Subcommittee's right to place the witnesses under oath. Would you please raise your right hands.

Do you solemnly swear or affirm under the penalty of perjury that the responses given and the statements made will be the truth, the whole truth, and nothing but the truth?

Mr. MARTINECK. Yes.

Mr. JOHNSON. Yes.

Mrs. CUBIN. I would like to remind the witnesses that there will be no opening statement from the panel today. Throughout the scope of the questioning, I think that we will be able to bring out a lot of information about you, your expertise, and what not. So thank you very much for being here, and also thank you for cooperating with our subpoenas for this appearance and for cooperating in the subpoenas for the important records that you gave us.

Mr. Johnson and Mr. Martineck, what is your background in the oil industry, both of you?

STATEMENTS OF JOHN MARTINECK AND J. BENJAMIN JOHNSON, JR.

Mr. MARTINECK. My background started on the financial end with ARCO Oil and Gas. I recorded the revenues as they came in from the other oil companies, followed up with a long-term assignment in the marketing end of the business that started in 1985, and I have been working in the marketing business ever since that time.

Mrs. CUBIN. Mr. Johnson?

Mr. JOHNSON. Yes, I am a petroleum engineer by background. I worked for Atlantic Richfield Company, or ARCO Oil and Gas, since the late 1970s doing various projects, exploring, developing oil reserves around the United States. In 1991, I took the position of senior manager of crude oil marketing for the Eastern half of the U.S. for ARCO. At that time, I learned about the oil marketing systems and have worked in oil marketing since that time.

Mrs. CUBIN. While at ARCO as consultants, did you gain firsthand experience in how major oil producers, marketers, and refiners trade and price oil pumped from Federal leases?

Mr. MARTINECK. Yes, absolutely. The first assignment that I had in the marketing side was to work the offshore marketing area. I started as an area representative there, where we actually went out and negotiated with each one of these companies, later taking on an assignment for managing the group that did all of the offshore marketing operations for ARCO. At the time that Benjie came to the organization, he took over the job that I had in that area and he continued that assignment for two years after I had left it.

Mr. JOHNSON. By the time the two of us were co-managing marketing for ARCO, we were the final approvers for all of the marketing contracts with all of the other major—well, all of the oil companies in the United States for oil, not including California and Alaska.

Mrs. CUBIN. In the world of lawyers, economists, Federal and State officials concerned with oil royalties, the names of John Martineck and Benjie Johnson and Summit Resources were well known and respected, even before your False Claims Act suit was made public, isn't that true?

Mr. JOHNSON. Yes.

Mrs. CUBIN. You do not have to be modest. Thank you. We know that was true.

Gentlemen, how did you conclude that a False Claims Act suit was necessary to address the underpayment of Federal oil royalties?

Mr. JOHNSON. Well, we had spoken with government employees, Federal employees of the MMS. We had presented seminars to State oil royalty people and we provided that information freely from about 1994 through 1995. We worked as consultants on some projects, as well, and it became obvious to us that nothing was being done to recover previous oil royalty underpayments by the Federal Government. That is when, in early 1996, we decided to file the False Claims Act case.

Mrs. CUBIN. When and where was your suit filed?

Mr. JOHNSON. The suit was filed in Lufkin, Texas, on early January, or February, I guess, 1996.

Mrs. CUBIN. And where? You did say where that was?

Mr. JOHNSON. It was in Lufkin, Texas.

Mrs. CUBIN. Thank you. When False Claims Act suit cases are filed, it is done in secret, is it not?

Mr. JOHNSON. Yes. This case was filed under seal.

Mrs. CUBIN. And what is the reason for that secrecy, because secrecy is unusual in Federal courts.

Mr. MARTINECK. It gives the government time to do their own private investigation before it becomes public, to decide whether or not they are going to intervene in the case and to decide whether or not there is any merit behind the case.

Mrs. CUBIN. Mr. Johnson, during the period of court-imposed secrecy in your case, you learned that Danielle Brian, who is the Executive Director of POGO, appeared to have learned of the case, did you not?

Mr. JOHNSON. That is correct.

Mrs. CUBIN. Would you please tell the Subcommittee how you reached that conclusion?

Mr. JOHNSON. Well, in September—in fact, on September 23 of 1996, I received a phone call from Danielle and she—we had spoken before, so this was not the first time I had ever spoken with her, but in this phone call, she informed me that she had heard that John Martineck and I had filed a qui tam, or False Claims Act, case, and she proceeded to want to ask me some questions about it. Well, I said, first of all, if we had, we would not be able to talk about it. It would be under seal. And Danielle at that time said, "Okay, do not talk, just listen," and then proceeded to give me the name and the phone number of a lawyer she recommended that we work with. She told me that there were some other government employees who were thinking about joining or working on a lawsuit, qui tam, False Claims Act case, and she suggested that we call this lawyer.

Mrs. CUBIN. Mr. Martineck, you and Mr. Johnson are business partners and you are also co-relators in the case that was still secret at the time of that call. Did Mr. Johnson tell you about Danielle Brian's phone call of September 23, 1996?

Mr. MARTINECK. Yes, absolutely. He called me immediately after receiving that call and was surprised that some one had found out that our case was out there.

Mrs. CUBIN. How did you feel about that? Was that disturbing to the two of you?

Mr. JOHNSON. We were surprised, knowing that it was under seal.

Mrs. CUBIN. Mr. Johnson, in answering a subpoena for records required by this inquiry, you withheld a memo to your attorneys about the substance of that September 23, 1996, phone conversation with Ms. Brian. The memo was withheld under a claim of attorney-client privilege. The attorney-client privilege was devised by the courts to serve purposes which are valid but germane only to the judicial branch of government and their objectives. It is not a privilege that is established by the Constitution. It is not binding on the legislative branch of the Federal Government.

Because that phone call is important to this inquiry, I would ask you to produce it now, because the record was produced under subpoena, and because I overruled your claim of privilege, producing it will not prejudice a claim of privilege to protect that document in litigation. Do you have the document with you now?

Mr. JOHNSON. Yes, I do.

Mrs. CUBIN. May I have it, please?

Mr. MILLER. Madam Chairman, if I might——

Mrs. CUBIN. Mr. Miller?

Mr. MILLER. I just think that for you to——

Mrs. CUBIN. Stop the clock, the questioning clock.

Mr. MILLER. Stop the questioning clock?

Mrs. CUBIN. Yes, stop the questioning clock, not Mr. Miller.

Mr. MILLER. For you to sit here and assure what a court may or may not do or what a privilege may not be honored I do not think is accurate. I do not think you can do that. You may believe that, but that does not necessarily mean that that will be the case, that that will be a determination that a judge at some future time will make. I just think the witnesses and others ought to know that, that that may or may not be the case.

Mrs. CUBIN. I believe the information that I presented to you is, in fact, correct. So did staff pick up the—would staff——

Mr. MILLER. Once again, this Committee finds itself constantly dabbling in other people's court cases and releasing testimony and evidence that is asserted under privilege or for other reasons, and constantly is releasing that evidence. We ought to go into executive session. You ought to receive the memo, if that is what you want to do. Obviously, you have the right to do that. But it ought to be done under some efforts not to screw up other people's litigation, whether it is the Department of Justice or whether it is the private litigation of these individuals or others.

Mrs. CUBIN. Mr. Miller——

Mr. MILLER. You know, it is a wonderful role this Committee plays of just wandering around the justice system when your sense of——

Mrs. CUBIN. Reclaiming my time, I certainly appreciate that you do not like the facts that are coming out and going——

Mr. MILLER. It is not about the facts, it is about——

Mrs. CUBIN. Mr. Miller——

Mr. MILLER. [continuing] it is about protecting——

Mrs. CUBIN. This Committee will stay in order.

Mr. MILLER. This is not about the facts.

Mrs. CUBIN. This Committee will stay——

Mr. MILLER. This is about the process and the procedure of this Committee.

Mrs. CUBIN. Reclaiming my time——

Mr. MILLER. This is about the process and the procedure and the fairness of this Committee and whether or not people's rights are going to be protected or whether you are going to ride roughshod——

Mrs. CUBIN. Mr. Miller, the document was subpoenaed——

Mr. MILLER. [continuing] over individuals' rights.

Mrs. CUBIN. The tapes were subpoenaed and this Committee has the right to get them.

Mr. MILLER. You guys use subpoenas to take a drink of water, I mean, you know——

Mrs. CUBIN. The legislative branch of the Federal Government is not bound by attorney-client privilege.

Mr. MILLER. I appreciate that, but you ought to do what you can——

Mrs. CUBIN. Will the staff please——

Mr. MILLER. [continuing] to protect people's rights and fairness in other proceedings.

Mrs. CUBIN. [continuing] please pick up the—would the staff please give me the paper.

Mr. JOHNSON. Madam Chairman, we are producing this without——

Mrs. CUBIN. Thank you.

Mr. JOHNSON. [continuing] hopefully, without waiving other privilege——

Mrs. CUBIN. Absolutely.

Mr. JOHNSON. [continuing] and because we are being ordered to do so.

Mrs. CUBIN. I believe you are absolutely correct and I think that your own attorneys can advise you whether or not you are——

Mr. MILLER. Judge Judy is going to rule next, but, I mean, this is——

[Laughter.]

Mrs. CUBIN. A sense of humor is helpful.

Mr. INSLEE. Madam Chair?

Mrs. CUBIN. Yes?

Mr. INSLEE. Madam Chair, over here, may I be recognized just for a minute?

Mr. MILLER. May I have a copy of that?

Mrs. CUBIN. Yes, you can have a copy, and you can be recognized, Mr. Inslee, when your side has the time.

Mr. INSLEE. It has a bearing on the use of this document, if I may ask the chair a question.

Mrs. CUBIN. No. When you have the time, when your side has the time, you can bring up all the information that you want.

Mr. MILLER. Madam Chairman, again——

Mr. INSLEE. But Madam Chair, I have a question.

Mr. MILLER. [continuing] this is about a process and a procedure of this Committee. A member of the Committee is asking you about procedure and the action that you are taking.

Mrs. CUBIN. I would ask the staff to keep track of the time that the other side is using.

Mr. MILLER. It is not related to the—subtract it from our time.

Mrs. CUBIN. Mr. Miller, you are out of order——

Mr. MILLER. If we have got to lose a bit of our time to protect people's rights——

Mrs. CUBIN. [continuing] and subtract the time.

Mr. MILLER. [continuing] we are fully prepared to do that.

Mrs. CUBIN. We will let Mr. Miller have his tantrum on their time, not ours.

Mr. INSLEE. Madam Chair, may I be—I would like to ask the chair a question about your intentions.

Mrs. CUBIN. Mr. Inslee, we are in the middle of questioning the witnesses. When you have time, you can ask the chair a question.

Mr. INSLEE. Madam Chair, you are about to violate——

Mrs. CUBIN. Mr. Inslee, you are out of order.

Now I would like to go on——

Mr. MILLER. This Committee is out of order.

Mr. BRADY. Madam Chairman, if I may ask, because this is a serious subject, we do have a lot of ground to cover today. While the theatrics are very entertaining, I would think, just from a decorum standpoint, if members would ask to be recognized, then wait to be recognized to ask that question, I really think we could get to the heart of the matter much faster than that.

Mr. MILLER. That is what Mr. Inslee just asked——

Mr. BRADY. And there is another example.

Mr. MILLER. That is what Mr. Inslee just asked.

Mrs. CUBIN. Thank you, Mr. Brady.

Mr. INSLEE. Madam Chair, may I be recognized?

Mr. MILLER. We would be happy to live by those rules.

Mrs. CUBIN. We will continue on.

Mr. BRADY. I do not think you have to be subject to——

Mr. MILLER. Apparently I am not going to be recognized——

Mr. BRADY. If I may reclaim my time, Mr. Miller, this issue is not about fairness. This is about harassing the chairman for trying to get to the truth. Now, if we will all hold our questions——

Mr. MILLER. This is about a process.

Mr. BRADY. Yes, it is, so let us honor the process of this Committee and give the chairwoman a chance to get this thing moving and ask those questions——

Mr. MILLER. So under your——

Mr. BRADY. And I still have my time, Mr. Miller, if you would wait for me to finish, and you know better. You know that we need to have decorum, so let us rely upon a fair process to go through this.

Mr. INSLEE. Madam Chair, I have a——

Mrs. CUBIN. There was an opportunity for the Minority to object to the procedure when we set it out at the beginning of the hearing, which was 30 minutes questioning time that belongs to one side, the Majority side, and then 30 minutes which belongs to the Minority side. I can guarantee you that the Majority side will not be interrupting, playing games, being rude and unprofessional during their questioning period and I would ask the same of the Minority side.

Mr. INSLEE. Madam Chair, may I be recognized for a serious question of the chair——

Mrs. CUBIN. Now, I would like to go on.

Mr. INSLEE. [continuing] regarding the use of this document? Please, let me ask you the question.

Mrs. CUBIN. Because, Mr. Inslee, you were not here at the beginning of the hearing. Had you been, you could have posed that then. Unfortunately, you were not. When your time comes, you can make any point and ask any question that you wish.

Mr. INSLEE. It may be moot.

Mrs. CUBIN. I am going to proceed with my questioning, Mr. Inslee.

Mr. MILLER. Madam Chairman, he would not have been able to pose that question——

Mrs. CUBIN. Because the phone call——

Mr. MILLER. [continuing] because he did not know you were going to ask for this document which essentially waives their privilege. So now that you have done that——

Mrs. CUBIN. The document was subpoenaed and we have provided all of the subpoena requests to the other side. If he is not prepared, I cannot—that is his responsibility, not mine. Now, I am going to continue on asking questions. Mr. Johnson——

Mr. INSLEE. May I make a parliamentary inquiry?

Mrs. CUBIN. [continuing] in a sealed Federal court hearing last November, you also gave testimony describing a series of phone calls initiated by Bob Berman, the Interior Department employee who is party to the agreement with POGO and who was paid $383,600 from POGO's share of the first settlement in your suit. Will you tell the Subcommittee in detail about those calls?

Mr. JOHNSON. The first call I received from Robert Berman was on April 11, 1996. I just receive a phone message from him. I returned the call the following day. In that conversation, Mr. Berman first told me that he was "the watchdog" or a watchdog for the MMS, that he was not in the Minerals Management Service but he was in the Interior Department. He told me that he had heard of Mr. Martineck's and my work in oil royalty issues and he asked pointedly how much we thought the underpayments could have been. In particular, he told me that they had been investigating underpayments in California, but there had not been investigations concerning east of the Rockies or non-California and he knew that we had spoken about that type of underpayment.

I did not give him any specific numbers, especially with regard to Federal oil royalty underpayments, but I did tell him what had been publicly stated in public hearings before, that the underpayment number was generally somewhere between 3 and 10 percent of the total revenue received on the oil. That was the end of that conversation.

Over the remaining year and a half, I spoke with Mr. Berman several times. He called. He told me that he had received information that we had given the State of New Mexico in some work, consulting work we had done for the State of New Mexico. He told me that he had been assigned to develop new oil royalty payment regulations and he asked me about how oil was marketed and how crude oil could be valued. In particular, he wanted to know how the value of crude oil could be hidden and have not been discovered to date.

I spent, over the course of a year and a half, I spent several hours on the phone with Mr. Berman, I guess in total, explaining to him many of the intricacies of oil marketing and how that worked. I sent him a fax, a long fax with graphics and I sent him a spreadsheet showing some of the financial calculations.

He called me on June 12, 1996, and he told me that he was going to be testifying to Congress shortly thereafter—I believe it was June 17, 1996—and he asked for, again, a reiteration of what I thought the underpayments were on the private side, not the Federal side, and what we had seen. He called me then later after his testimony to Congress in July and he told me that his testimony to Congress had been based upon the values that I had given him, the 3 to 10 percent of the revenue. He had simply taken the revenue and multiplied it by 3 to 10 percent to come up with the "alleged underpayments."

I spoke with him several times after that. The last record of a conversation I have with Mr. Berman was on June 2 of 1997, and that was just a quick call and that was the last record I have of any conversation with him.

Mrs. CUBIN. Thank you. At this point, without objection, I understand that—well, certainly. The Committee subpoenaed your calendar and entries about these calls, is that correct?

Mr. JOHNSON. That is correct.

Mr. INSLEE. Madam Chair, may I be recognized for stating an objection? I have a sincere issue I would like to raise with the chair if you will allow me ten seconds. I would like to make a parliamentary inquiry whether the chair intends to keep under seal for executive purposes of the Committee any of these documents which the witnesses have described as subject to some privilege so that the privileges will not be——

Mrs. CUBIN. That is not——

Mr. INSLEE. Let me finish my question.

Mrs. CUBIN. Mr. Inslee, that is not a parliamentary inquiry.

Mr. INSLEE. Well, let me make it a non-parliamentary inquiry then to ask you what your intentions are in this regard, because I think it would be important for this Committee not to prejudice the judicial system in their ability to deal with the questions of these privileges and keeping these in the executive session of this Committee would be appropriate, and I would suggest you do so and I would ask you what your intentions are in that regard.

Mrs. CUBIN. We are not in executive session. Everything that we subpoenaed, we have the right to bring forward here. I will bring forward the documents that I think are pertinent to determining whether the policies and practices of the Department of Interior and the Department of Energy are adequate to protect the public interest in not allowing Federal employees to take payments that may affect their advisory capacity in oil royalty or any other Federal issues.

Mr. INSLEE. I might inquire, I think the Committee needs to have a discussion about whether these should be kept under seal so that it will not prejudice the ability to raise these claims in court, and I would suggest the Committee needs to have that discussion. I would ask you, what would be the appropriate time to do so? I would be happy to do that now by motion or otherwise,

but if there is another time to do so before disclosure, I would be happy to accommodate the chair in that regard. Otherwise, I would like an opportunity to raise this issue through motion with this Committee and I would ask you, when would be the best time for your purposes to allow us to do that?

Mrs. CUBIN. Mr. Inslee, if you are going to make an objection, we have documents which have have been subpoenaed. But they are not under seal.

Mr. INSLEE. I understand.

Mrs. CUBIN. All right. If you would like to object when I ask for unanimous consent to put something in the record, you certainly have the right to object——

Mr. INSLEE. We will deal with it——

Mrs. CUBIN. [continuing] and then we will take a vote at the Committee and——

Mr. INSLEE. Very well. Thank you. Thank you.

Mr. MILLER. Madam Chairman, on my reservation, let me ask you, if I look at the—do we have information—have you subpoenaed information from the Justice Department or from the Department of Interior or others, Energy?

Mrs. CUBIN. I am not sure that I understand your question, Mr. Miller.

Mr. MILLER. As I read the subpoena, it is said that information received from the Department of Justice, the Office of Inspector General, the Department of Interior, which is received in response to subpoena issued by the authority of the motion in response to the previous Committee document request in the matter be treated as received in executive session. Access is limited to members and the staff designated by the chairman and senior Democratic member. Release of any such material in any form must be authorized by a vote of the full Committee. I just do not know if this information is being received under that same basis or is this different——

Mrs. CUBIN. It is only the Department of Justice information——

Mr. MILLER. That is directly from them, whether it is involved in their litigation——

Mrs. CUBIN. That is directly from them, that is correct, that is directly from the Department of Justice.

Mr. MILLER. And from the Inspector General, right.

Mrs. CUBIN. And from the Inspector General, but not the Department of Interior generally.

Mr. MILLER. But if we receive information from witnesses that is involved in their investigations, that will not be treated in this fashion? That can be——

Mrs. CUBIN. No, not necessarily. Information from another source is exemptible.

So, reminding the witness, I asked if you have a calendar and you made entries in that calendar about these calls. You provided them to be entered in the record and I would ask unanimous consent to allow the notes provided by Mr. Johnson under subpoena and the telephone records provided by the Interior Department subpoena to be entered into the record. These records indicate the key dates of telephone conversations between Mr. Johnson and Mr. Berman. Notably, these government records suggest that Mr. Berman found no reason——

Mr. MILLER. Wait. Wait. Reserving the right to object——

Mrs. CUBIN. Let me finish my statement and then I will give you time. Notably, these government records suggest that Mr. Berman found no reason to call Mr. Johnson in the year before his secret suit was filed and called Mr. Johnson on only one occasion after the POGO suit was filed in the same court hearing the then-secret Johnson and Martineck suit.

So, Mr. Miller?

Mr. MILLER. Just again, and I seek this for clarification, because I guess I am at a loss. You just said—I do not have your statement in front of me, but you said these are the calendars you got from Mr. Johnson and from the Department of Interior.

Mrs. CUBIN. The calendar is from Mr. Johnson. The phone calls——

Mr. MILLER. The phone calls are from——

Mrs. CUBIN. The phone calls are from the Department of Interior, from Mr. Berman's number at the Department of Interior to Mr. Johnson, and those are the only calls.

Mr. MILLER. The documents you received from the Department of Interior, will those be treated as though we are in executive session?

Mrs. CUBIN. No. No. Those are public. Those came from the investigators. Excuse me, they did not come from the investigators.

Mr. INSLEE. Madam Chair?

Mr. MILLER. Again, if you will explain the conditions under which these will be released to the public, the Department of Interior documents. Are those separate from the Inspector General documents, or do we know if those are part of the Inspector General's investigation?

Mrs. CUBIN. Those are the property of the Committee as they came in as a result of the subpoena and they are available for public information.

Mr. MILLER. Well——

Mrs. CUBIN. It is very simple and straightforward, Mr. Miller. The phone calls are calls to—what the phone call records will do is they will just——

Mr. MILLER. Before you say what they show, that is the whole point.

Mrs. CUBIN. I am going to say, what they will show is that the calls——

Mr. MILLER. Why do you not just trample on people's rights.

Mrs. CUBIN. The records indicate that the calls did occur to which Mr. Johnson is testifying, the calls from Mr. Berman to him.

Mr. MILLER. And the subpoena says that release of any material in this form must be first authorized by a vote of the full Committee. This is your subpoena.

Mrs. CUBIN. These are not law enforcement records, Mr. Miller. These are not law enforcement records. So——

Mr. INSLEE. Madam Chair, I had——

Mrs. CUBIN. Mr. Inslee?

Mr. MILLER. They are part of the investigation by the Inspector General and it says here in your subpoena, the Inspector General, Department of General——

Mrs. CUBIN. They are documents that the investigative people on the Majority side got from Interior but not from the I.G.

Mr. MILLER. I know. They got them by subpoena. That is why the subpoena protects the documents from public release. It says you have to have a vote of the Committee. I am asking you——

Mrs. CUBIN. Only if it is law enforcement records. Only if it is law enforcement records. But we do not need to continue to discuss this. Mr. Inslee?

Mr. INSLEE. Yes. I would object to public—putting these in the record in other than in executive session to the extent that any of these documents are either subject to a claim or privilege in the existing litigation that the witnesses have claimed and has not been adjudicated yet——

Mr. MILLER. Or others have claimed.

Mr. INSLEE. [continuing] number one, or others have claimed, or two, records that were produced subject to a subpoena which my understanding, according to what Mr. Miller says, specifically said would be subject to a vote of the Committee before they are put in any form subject to public release, and let me suggest why I do this. I think it is an important point about how we in Congress proceed in these investigations at the same time where the Justice Department or the Judicial system has an ongoing litigation. I think it is important not for us in Congress to prejudice or jeopardize the judicial system's ability to deal with this. I speak as a former prosecuting attorney in this regard, and there are instances where our efforts could, frankly, foul up ongoing investigations and I think we should be sensitive to that in Congress.

So I would suggest to us that in the pursuit of this, we should adopt a procedure by which material that is provided to us but there is an objection as to a privilege in the judicial system investigation, that we use those in executive session, and I would object to the introduction of them in other form, and if you would like to, I would put this in the form of a motion and we can argue this right now, because there may be other documents that come up, so we can deal with this right now. We can make a rule for the Committee and abide by it. So I will state my objection——

Mrs. CUBIN. But this is not—fine. It just is astonishing to me.——

Mr. MILLER. The gentleman has objected.

Mr. INSLEE. Yes. Let me——

Mrs. CUBIN. And I am really not——

Mr. MILLER. You asked unanimous consent.

Mrs. CUBIN. Okay. He has objected. All right. Let me respond to the gentleman and then I will ask for a vote by the Committee. It is amazing to me that the Minority thinks that phone calls from the workplace of a Federal employee have to be kept a secret. The Supreme Court has repeatedly affirmed the breadth of Congress' right to investigate the government's conduct of criminal and civil litigation. The courts have also explicitly held that agencies may not deny Congress access to agency documents, even in situations where the inquiry may result in the exposure of criminal corruption or maladministration of agency officials. The Supreme Court has noted, "But surely a Congressional Committee which is engaged in a legitimate legislative investigation need not grind to a

halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding or crime or wrongdoing is exposed."

Nor does the actual pendency of litigation disable Congress from the investigation of facts which have a bearing on that litigation where the information sought is needed to determine what, if any, legislation should be enacted to prevent further ills, and as I have stated, that is, in fact, the very purpose of this oversight hearing. So, having heard your objection——

Mr. MILLER. Madam Chairman, on your point——

Mrs. CUBIN. [continuing] having heard your objection, I will now——

Mr. MILLER. Madam Chairman——

Mrs. CUBIN. All those in favor of allowing the calendar and the phone records to be entered into the record will please say aye.

Mr. INSLEE. Madam Chairman——

[Chorus of ayes.]

Mrs. CUBIN. Opposed.

[Chorus of noes.]

Mrs. CUBIN. The ayes have it.

Mr. INSLEE. Madam Chair, I want to make clear just——

Mr. MILLER. Madam Chairman——

Mrs. CUBIN. The ayes have it.

Mr. MILLER. Madam Chairman?

Mr. INSLEE. Madam Chair, could I make one point clear? Just to make sure that we understand so that we do not have further disagreement in this regard, my objection is only to allowing some of these purportedly privileged documents to go out beyond executive session, and I agree with everything you said, that we have the right and responsibility on investigations. My only concern is, I think some of these could be held and used in executive session that could allow us to proceed with our inquiry and not prejudice the judiciary body and proceeding. That is the nature of my objection.

I simply suggest on those specific documents where there is a privilege, we proceed with our investigatory function in this Committee but we do so in executive session so we do not prejudice their ongoing litigation rights. That is the nature of my objection, and I do not know if the last vote, if that was the specific intent of the chair or not, but that is the nature of what I would suggest.

Let me pose a motion, if I can, just so I can make sure that we understand your ruling in this regard. I would move that during the remaining portion of this hearing, that any articles that are subject to a claim of privilege by any of the witnesses that we handle in an executive session mode, that we accept them into the record but they are held for use in executive session, meaning that they are not disseminated to the public and thereby not, frankly, fouling up the ongoing litigation. I would make that motion. I think we can deal with this motion and have a ruling of the Committee.

Mr. MILLER. Madam Chairman, on the motion——

Mr. BRADY. Madam Chairman, on the motion myself, I think it is important to note here that the phone records are not under investigation from the standpoint of Mr. Johnson or his colleague broke any rules, unethical, illegal rules, that the Federal employees

are being looked at. I think one of the points we are looking at today is did the Justice Department, which is conducting the investigation, did the Department of Energy, and did the Department of Interior turn a blind eye to the illegal and unethical conduct of their colleagues. And so information that can help us ascertain that truth, which these phone records are, I think are an important part of getting to the truth.

So if we have nothing to hide, I think this information should be part of this open hearing for the public, because so much of this illegal conduct was conducted in secret, let us make sure that we inquire in the open government forum that we have today.

Mrs. CUBIN. Mr. Brady, imagine that, again, an oil company where the executives were protesting the admission of certain documents. I can hear the screams and cries from the other side.

Mr. MILLER. Madam Chairman, on the motion——

Mrs. CUBIN. The motion is out of order. The motion is out of order. I read from the Rules for the Committee on Resources, let me give you the cite here, Rule 4(i), Claims of Privilege. Claims of common law privileges made by witnesses in hearings or by interviewees or by deponents in investigations or inquiries are applicable only at the discretion of the chairman, subject to appeal to the Committee, which means the chairman decides what is privileged and if the Committee disagrees with the decision of the chair, then they can move to overrule the chair and a vote will be taken on that.

Mr. MILLER. Madam Chairman?

Mrs. CUBIN. So the chairman——

Mr. MILLER. Madam Chairman, parliamentary inquiry.

Mrs. CUBIN. Yes?

Mr. MILLER. If I might make a parliamentary inquiry, and that is this question. Nobody here is challenging the right of this Committee to have these documents. We have been through this before and clearly, as you stated in the portion of the opinion you read, this Committee has a right to these documents, whether the privilege is asserted or not.

The parliamentary inquiry I have is whether or not the release of these documents in public, not the right of the Committee to look at them and to look at them in executive session, whether or not—if the gentleman would let me finish my parliamentary inquiry—as to whether or not we can receive them, look at them in private as the conditions of the subpoena in the authorization for the subpoena set forth, because it appears that some of the information that you have, and that you have a right to have and you have a right to use in this hearing, but maybe not to use publicly, may be part of the criminal investigation with respect to the Department of Justice that apparently is now ongoing and is also received from the Department of Interior which has the Inspector General.

So this is not about whether or not we have a right to look at this and to use it and to form our opinions and make findings of this Committee, but whether or not, as in the authorizing of the subpoena, it says that they will be treated as if received in executive session and access thereto limited to members and staff designated by the chairman and the senior Democrat.

This is not an attempt to keep this information away from the Committee and let the chips fall where they may, but it is a question of the language authorizing the subpoena and whether or not we are going to comply with that. At some point, people have a right to rely on the actions of this Committee, and my parliamentary inquiry is to whether or not the public release of these documents that have been received in this manner are in compliance with the authorization received by the Committee for the subpoena of these documents.

Mrs. CUBIN. Mr. Miller, you will recall the same exact debate going on when I was chairing hearings on the hard rock mining bonding issue. At that time, I assured you that I will follow the rules of the Committee and the House. I give you that assurance again. At that time, I also told you that I would judiciously look at the information and not release publicly information that I thought would be harmful. I told you that then. I lived up to that—or that would be harmful to a case—and I will do that again.

As chairman of this Committee, I have the responsibility of getting this information out in the best possible way, and that is my intention, and so what I——

Mr. MILLER. Madam Chairman, I do not for a moment——

Mrs. CUBIN. I am not finished. What I will do is after the hearing is over, if the Minority has—as we go, we will enter the documents into the record. If the Minority has particular heartburn over a certain document, I will discuss it with them. But we will proceed as though they are going to be made public, and then I am a reasonable person and you can, just as we did with the other issue, and I was good to my word, you were too, and you can expect me to be again.

Mr. MILLER. Madam Chairman, as I understand what you are about to do, you are about to read from those very documents. They will now be public. It will not matter what the Majority says three weeks from now or two weeks from now. They will be displayed upon the public record here in the next few minutes and that is——

Mrs. CUBIN. Some of the documents absolutely will, but——

Mr. MILLER. And that is contrary to the authority, if you want to obey the rules, the authority that we voted on in this Committee, in the Subcommittee, the subpoena——

Mrs. CUBIN. Now listen, Judge Wapner——

[Laughter.]

Mrs. CUBIN. Now listen, Judge Wapner, the subpoena authority only speaks to the criminal law enforcement records that we received. It does not speak to the things that we received from Interior generally.

Mr. MILLER. With all due respect, you do not know factually whether or not these are part of that criminal investigation or not. Clearly, you are going to do what you do.

Mrs. CUBIN. Right.

Mr. MILLER. I am just telling you that you are trampling on the authority of this Committee, you are violating the rules of this Committee, and I think you are trampling on a criminal investigation and you may also be trampling on the rights of the parties to that criminal investigation. But Madam Chairman, I have known

you long enough to know that you will proceed in the manner in which you proceed, and fortunately, you do keep a good sense of humor about you while you do it.

But nevertheless, I think you are about to trample on some people's rights and that should not be what this Committee should do and it should especially not do it to contradict the exact authority that the members of this Committee voted to give you and the conditions in which it was given.

Mr. INSLEE. Madam Chair, I think that the chair has ruled. I take your statements as a ruling and I respect them. But I do, pursuant to Rule 4(i) appeal the ruling of the chair——

Mrs. CUBIN. Okay.

Mr. INSLEE. [continuing] to the Committee——

Mr. THORNBERRY. Madam Chairman?

Mr. INSLEE. [continuing] and let me state the basis of my appeal, if I may.

Mr. THORNBERRY. I move to table the appeal.

Mr. INSLEE. Well, let me state the basis of my appeal before you hear your motion to table. The basis for my appeal is this, Madam Chair. I think we really——

Mr. SCHAFFER. Madam Chairman, a parliamentary inquiry?

Mrs. CUBIN. Yes?

Mr. SCHAFFER. Is a motion to appeal the chair——

Mrs. CUBIN. It is not a debatable motion——

Mr. SCHAFFER. [continuing] a debatable motion?

Mrs. CUBIN. [continuing] because the motion has been made to table it, so it is not——

Mr. INSLEE. Well, I have not finished. I would appreciate my ability to finish my motion before we hear a motion to table it.

Mr. SCHAFFER. I would like an answer to my inquiry. Is the motion before us a debatable motion?

Mrs. CUBIN. The motion before us is not a debatable motion. Mr. Thornberry moved to table, and all in favor, say aye.

[Chorus of ayes.]

Mrs. CUBIN. Opposed.

[Chorus of noes.]

Mrs. CUBIN. The ayes have it, so we—oh, I know. Gee, right to the heart.

[Laughter.]

Mrs. CUBIN. Okay. Now I need to recognize where we are. We have entered into the record the documents that have been discussed. I am going to ask one last question, and so the time needs to go back on.

Just to finish this up, to be clear, Mr. Johnson, all of the calls that are on the records that we just put into the record were initiated by Bob Berman, is that correct?

Mr. JOHNSON. That is correct. Mr. Berman called me, although many times I returned his calls.

Mrs. CUBIN. But he initiated the conversation, but you did return his calls sometimes?

Mr. JOHNSON. That is correct.

Mrs. CUBIN. Thank you very much.

Now the chair recognizes Mr. Thornberry.

Mr. THORNBERRY. Mr. Johnson, I want to try to get back together on the context for the suit that we are talking about. As I understand your testimony, you all filed your lawsuit in February 1996 and then, beginning in April 1996, you started getting some phone calls from Mr. Berman of the Department of Interior asking you lots of those questions, and those calls went on for more than a year, and in September 1996, you got a call from Ms. Brian with POGO saying that she knew you filed this case and you would not talk to her. Is that kind of a summary of where we have been so far?

Mr. JOHNSON. Yes, really.

Mr. THORNBERRY. Now, one of my questions is, why did you talk with Mr. Berman? A few months later, you would not talk to Ms. Brian. Why did you talk to Mr. Berman?

Mr. JOHNSON. Well, first of all, we were right in the middle of a Justice Department investigation into our lawsuit. The lawsuit was under seal at the time. We had a number of people from the Federal Government calling, asking questions. Mr. Berman never identified himself specifically as an investigator in our lawsuit, although he did ask a lot of questions related to the subject, and without knowing if he was officially part of the investigation or even if he knew about our lawsuit, we responded. I gave him full cooperation, as I had with all government questioning.

Now, I had spoken with Danielle Brian at other times and I did give him information concerning not the Federal lawsuit, not underpayments on Federal lands, but the work that we had done on private litigation and we had cooperated with Ms. Brian, as well.

Mr. THORNBERRY. My understanding is, you cooperated fully with Mr. Berman. If he asked a question, you answered it?

Mr. JOHNSON. Absolutely.

Mr. THORNBERRY. Now, I also understand that you sent a letter to the Department of Justice to let them know those phone calls took place, is that right?

Mr. JOHNSON. Mr. Berman had been the most persistent in his questioning and his phone calls, and as I mentioned, he never had identified himself as being an investigator in our lawsuit. Because of that, we sent a memo to the Justice Department letting them know that he had been calling.

Mr. THORNBERRY. Did you ever hear back from the Justice Department?

Mr. JOHNSON. Not to my knowledge.

Mr. THORNBERRY. When you file one of these suits, is it important to have very detailed knowledge of the subject matter that you file the suit about, or can you make some vague allegations and fill in the blanks later?

Mr. JOHNSON. Well, I am not an expert on the law, on the false claims act. It is certainly my understanding that we had to have very detailed personal direct knowledge, which we did, of this issue.

Mr. THORNBERRY. So you had to have that kind of detailed personal direct knowledge for your lawsuit?

Mr. JOHNSON. That is correct.

Mr. THORNBERRY. In your conversations with Mr. Berman that lasted over a year, did you form an impression about whether he

had the same kind of detailed direct personal knowledge about how this stuff works?

Mr. JOHNSON. Clearly, Mr. Berman had a general understanding of oil prices, but he clearly did not have an understanding of the details involving how oil was sold from leases in the country and how it was actually valued and how the exchanges worked.

Mr. THORNBERRY. And were those the areas that you helped him with in your conversations?

Mr. JOHNSON. Very much so, yes.

Mr. THORNBERRY. Now, at some point, you, or you all both entered into an agreement with POGO and others to share in any money that you get out of these lawsuits, is that correct?

Mr. JOHNSON. That is correct.

Mr. THORNBERRY. I guess one of my biggest questions in this whole thing is why in the world you, who filed your suit first—and as I understand, that is the key, if you file your suit first, everybody else is shut out pretty much—you filed your suit first and yet you agreed, entered into an agreement to share part of the money that you get with these people who filed later suits. Why did you agree to share with POGO?

Mr. JOHNSON. Well, at the time we entered into that agreement, it was not so clear to us what the law was. There certainly was a question as to if simply being the first to file answered all of the issues or if, in fact, there could have been another person, such as Mr. Brock, who a court or a jury could perhaps believe that he had been, in fact, the first person ever to bring this issue public. That was a question in our mind.

Mr. THORNBERRY. Now, you need to explain to us, I think, a little bit who Mr. Brock is, how he enters into it, and how that figured into your calculation.

Mr. JOHNSON. Well, Mr. Brock was—we had never met him at the time we signed the agreement, but it was represented to us by his attorneys he was in with the POGO, Danielle Brian, co-relators in their competing lawsuit, and we were told that he had been the first person back in the 1970s to bring up the issue of oil royalty underpayments in California. We were told that he understood and knew oil pricing and that he was, in fact, current on it and knew how oil underpayments could have been made or were made up into the 1990s, as well.

Mr. THORNBERRY. So was he represented to be an expert that could help you with your case, or is he another claimant out there?

Mr. JOHNSON. Well, actually, he was another claimant.

Mr. THORNBERRY. All right. And so based on what you were told, he might have had a claim that could in some way threaten your claim, and so to prevent that from happening, you agreed to share?

Mr. JOHNSON. Yes, and the long and short of it is, that is correct.

Mr. THORNBERRY. Did you find, in your dealings with him, did he help you? Did he have expert knowledge beyond what you had? Did he contribute?

Mr. JOHNSON. No. After we got into the case and met Mr. Brock, we saw that that was not the case.

Mr. THORNBERRY. I understand that after it became public that POGO had these agreements with Mr. Berman and Mr. Speir to give them part of POGO's share of whatever they recovered, you

and your lawyers hired somebody to look at this and got concerned about how it affected your ability to continue the suit, is that roughly what happened?

Mr. JOHNSON. Certainly, after we learned of that, yes.

Mr. THORNBERRY. What sort of ethics expert did you all look at and what did he tell you?

Mr. JOHNSON. Well, I mean, I am not an ethics expert and I am not sure how all that worked. It was my understanding that certainly there was a question whether government employees could be paid and whether, in fact, these people were—would have been witnesses in our litigation, and it, of course, has been my understanding that you cannot pay witnesses for their testimony. It certainly looked bad.

Mr. MARTINECK. And at the time we signed these agreements, we had no knowledge that these individuals were involved on that. So certainly we wanted to bring that to light, that we had found that out.

Mr. THORNBERRY. I want to ask that direct question. I think you have answered. But at the time that you reached the agreement with POGO and for a while thereafter, did you have any idea that POGO had these side agreements with these Federal officials to pay them part of what POGO received in any settlement? Did you all know that?

Mr. MARTINECK. No, we had no knowledge of that.

Mr. JOHNSON. Absolutely not.

Mr. THORNBERRY. And so it was a surprise to you when you found out?

Mr. JOHNSON. Yes.

Mr. MARTINECK. Very much so.

Mr. THORNBERRY. I think that is all the questions I have at this time.

Mrs. CUBIN. Excuse me. I was trying to cut time short by possibly avoiding future disagreements. The chair now recognizes Mr. Schaffer.

Mr. SCHAFFER. Thank you, Madam Chairman.

I want to go back to the contacts by Mr. Berman and explore that a little further. I just want to be clear, all of the calls, the conversations that you had, were they initiated by Mr. Berman?

Mr. JOHNSON. Yes, I believe that is correct.

Mr. SCHAFFER. If you were to have called him back, would that just be in the course of returning phone calls, or did you initiate any at any time?

Mr. JOHNSON. I do not know of any phone calls that I initiated to him, so I believe that the calls from my phone to his would have been in a response to a question from him.

Mr. SCHAFFER. Mr. Berman mentioned or gave you the impression, as you stated, that he was an important player of some sort in oil royalty policy decisions at the Department of Interior. Did he ever specifically mention your case?

Mr. JOHNSON. No, he never did.

Mr. SCHAFFER. Did you take steps to assure yourself that Mr. Berman was genuine?

Mr. JOHNSON. Well, we, of course, wrote the letter to the Department of Justice informing them of his questioning and we did know

that the phone number that he gave me to return his calls was in the government office.

Mr. SCHAFFER. You came to that conclusion on your own?

Mr. JOHNSON. Well, the conclusion——

Mr. SCHAFFER. Or was that the answer the Justice Department gave you?

Mr. JOHNSON. No. The Justice Department did not give us an answer.

Mr. SCHAFFER. They gave you no answer at all as to these phone calls, the propriety of them or——

Mr. JOHNSON. I do not recall them telling us anything on that.

Mr. SCHAFFER. Now, during these calls, did Mr. Berman not also ask you to help prepare him for testimony before Congress in June of 1996?

Mr. JOHNSON. He did call me prior to his testimony and asked several pointed questions about the alleged underpayments.

Mr. SCHAFFER. I understand why Mr. Berman would need your expertise to help him prepare for that hearing, but if we assume, and I stress that for now this is an assumption, if we assume that Mr. Berman and POGO were planning to file a lawsuit similar to yours, why would it be valuable to know the details of the oil trading described in your suit?

Mr. MARTINECK. Well, first of all, you have to have firsthand knowledge that you gained through your own efforts to be able to be qualified for the suit, and if he was wanting to meet that hurdle, he would have to be able to answer certain questions.

Mr. SCHAFFER. When you say firsthand knowledge, direct knowledge?

Mr. MARTINECK. Yes. It has to be direct independent knowledge, firsthand, that you had gained through your own efforts.

Mr. SCHAFFER. Now, during these many phone conversations, did Mr. Berman discuss with you the new oil royalty regulation then being developed by the Department of Interior?

Mr. JOHNSON. Mr. Berman first told me that he was the person charged with developing new regulations and he did mention several times the fact that new regulations were being considered, but he never, at least to my recollection, specifically discussed the essence of proposed new regulations.

Mr. SCHAFFER. Did he characterize his involvement as perhaps framing the overall policy of the rule?

Mr. JOHNSON. I do not recall those particular words, but he did certainly say that he was very much an integral part of the new regulations.

Mr. SCHAFFER. Through all of these phone calls, beginning soon after the Interior lawyers and MMS experts began a secret review of your sealed lawsuit and concluding just seven days before POGO filed a complaint which the Justice Department found to be nearly identical to yours, did you form an impression of whether Bob Berman had a sophisticated understanding of the actual details of oil trading, other than the education you had given him?

Mr. JOHNSON. Well, I formed the understanding that he did not know that on his own.

Mr. SCHAFFER. I understand that POGO received a share of the settlement, a similar question to that that the gentleman from

Texas just raised, a similar settlement. Did you provide POGO with such a large share because they could provide access to Berman and Speir?

Mr. JOHNSON. At the time we entered into the agreement, we absolutely had no idea there was a connection there, so the answer is no.

Mr. SCHAFFER. But is it not true that Ms. Brian offered you access to government experts in the September 23, 1996, phone call?

Mr. JOHNSON. No. That was not the essence of the phone call. The phone call was that there were a couple of government employees who were looking at filing their own competing qui tam lawsuit.

Mr. SCHAFFER. One last question. You mentioned that Ms. Brian referred you to a lawyer?

Mr. JOHNSON. That is correct.

Mr. SCHAFFER. Who was the lawyer or law firm?

Mr. JOHNSON. Lon Packard.

Mr. SCHAFFER. Thank you, Madam Chairman. I have no further questions.

Mrs. CUBIN. I am going to reserve the balance of the Majority's time and now recognize the Minority side for 30 minutes of questions.

Mr. MILLER. Thank you very much. How did you and POGO get joined here as relators?

Mr. JOHNSON. Well, we signed an agreement to work together, to join our two lawsuits. I'm not sure I understand the complete question.

Mr. MILLER. So that is how it was done? You were brought together how? I mean, you knew of one another, or you knew you both had lawsuits? Were there other lawsuits, or just these two?

Mr. JOHNSON. There was one other lawsuit, as well, and——

Mr. MILLER. Were they joined as relators?

Mr. JOHNSON. Yes, they were.

Mr. MARTINECK. They were also part of that agreement.

Mr. MILLER. Pardon?

Mr. MARTINECK. They were also part of that agreement.

Mr. MILLER. And so that brought you together as relators, and then your action was successful and you have started to be paid a portion that you are entitled to under the law of the underpayments of the findings, correct?

Mr. JOHNSON. Yes.

Mr. MILLER. And then since that, what, you have sued the other relators?

Mr. JOHNSON. No, we have not sued the other relators.

Mr. MILLER. What legal steps have you taken with regard to your agreement?

Mr. JOHNSON. We filed a motion—after learning about the Berman and Speir payments, we filed a motion in our—in the same court where our false claims act case is pending to have the relator, Multi-Relator Counsel Agreement set aside or taken apart with regard to POGO.

Mr. MILLER. And what did you allege in that motion?

Mr. JOHNSON. The allegations there were that we were fraudulently induced to enter into the agreement.

Mr. MILLER. And then what happened on that? What happened to the motion?

Mr. JOHNSON. The judge had denied the motion.

Mr. MILLER. Have you filed other motions since then?

Mr. JOHNSON. No, we have not.

Mr. MILLER. So the court looked at this, your allegation that, what, that there was misrepresentation or there was fraud or something in your agreement and determined that that is not the case?

Mr. JOHNSON. That is correct, or he denied our motion to have it set aside.

Mr. MILLER. Right. So apparently, he disagreed with your allegation that there was fraud and misrepresentation and, therefore, it should be set aside. So then you are now in the position of having to live with your agreement, and as opposed to getting, what, 100 percent, you got 30 percent? What do you get, a third? There are three entities here?

Mr. JOHNSON. There are three groups.

Mr. MILLER. And it is divided how?

Mr. JOHNSON. It is divided 20 percent to one and then 40 percent to the other two groups.

Mr. MILLER. And your share is?

Mr. JOHNSON. Mr. Martineck's and my share is of the 40 percent group.

Mr. MILLER. So the two of you are 40 percent. POGO is what?

Mr. JOHNSON. Forty percent.

Mr. MILLER. And the third party is whom?

Mr. JOHNSON. Mr. Gene Wright, and that is 20 percent.

Mr. MILLER. And where did his suit come from?

Mr. JOHNSON. He had also filed a competing false claims act case some months after we had initially filed.

Mr. MILLER. So it was not a question of being first in time?

Mr. JOHNSON. I am sorry?

Mr. MARTINECK. We were the first. Mr. Wright was the second.

Mr. MILLER. But the law does not provide the first in time, it is winner-take-all. They look at all the lawsuits filed and then, in this case, apparently, join those lawsuits?

Mr. MARTINECK. Actually, the law does say the first to file.

Mr. JOHNSON. There are a variety of legal questions on that and we are not legal experts to tell you how the law works, but generally, the first to file gets the 100 percent. However, there are questions as to how that works and we did not have the answer to that.

Mr. MILLER. I do not understand, then, why did you enter into this agreement? Who brought the agreement to you?

Mr. JOHNSON. Actually, I do not recall how we ended up all being introduced to each other.

Mr. MARTINECK. I think the seal was released as to just let the other parties know that there were other suits filed out there so that we could find out who the other parties were, but it was only—the seal was only lifted as to that.

Mr. MILLER. Did you talk to the other parties? Did you talk to Mr. Wright and to POGO?

Mr. MARTINECK. We had all gotten together to——

Mr. MILLER. You all got together and you shared information?

Mr. MARTINECK. I do not know about sharing information.

Mr. MILLER. Did you look at their, Mr. Wright's allegations and POGO's allegations and your allegations to see if you are all on the same track here or could you strengthen your case or was your case strengthened or was their case strengthened by your work back and forth? I mean, because you are about to sign an agreement to give away 60 percent of the proceeds here. I assume you wanted to know whether or not their information is worth 60 percent of the pot.

Mr. MARTINECK. Correct. In our minds, it was not so much the information that they provided as that there may be some question in the judge's mind that there may have been somebody like a Lenny Brock out there back in the 1970s that had an issue.

Mr. MILLER. This is not a new issue.

Mrs. CUBIN. Mr. Miller, I am sorry to interrupt you. I was just notified that there is a brown document case right out the back side door there with the initials "CBM" on it and if someone does not claim it in the next few minutes, the Capitol Hill Police will have to take it and we will have to clear the room, so if it is yours, please go get it. Go ahead. Is it Mrs. Maloney's? Will you send someone after it?

[Laughter.]

Mr. MILLER. Would you mind going and getting it?

[Laughter.]

Mrs. CUBIN. I am sorry for the interruption. Go ahead, Mr. Miller.

Mr. MILLER. No, that is okay.

Mrs. CUBIN. I thought it meant coal bed methane.

[Laughter.]

Mr. MILLER. Such tunnel thought. This is not a new subject, underpayments. In my State of California, the State sued many years ago. Mr. Brock has been out there. The State Lands Commission, whether on the issues of seepage or actual royalty underpayment, the subject has been kicking around for a long time. We kicked it around when we had the Committee and obviously it has been done since then.

It is not yours? Oh. I guess we still need someone to come forward for the briefcase. Do they have it?

Mrs. CUBIN. Oh, okay.

Mr. MILLER. Okay. Is that correct?

Mr. JOHNSON. Certainly, underpayments, oil royalty underpayments have been around for years and years. What we bring, the information that we brought was very specific with regard to a specific type and methodology used for underpaying oil royalties.

Mr. MILLER. Right. No, no, and I am—so, but the point of the process here, at some point, you got together with Mr. Wright and with POGO and yourselves and you compared this information. You discussed where you thought you were legally. You are obviously trying to protect your case, and more power to you. I mean, I am a strong supporter of this law. I believe it is very important. And then you made a determination that you would join in your efforts and an apportionment was agreed upon? At that time, was an apportionment agreed upon, or was that later?

Mr. JOHNSON. It was agreed up.

Mr. MILLER. It was agreed upon at that time, and you went forward. Now you do not like that agreement.

Mr. MARTINECK. Well, actually, we had realized that we had met the first hurdle, to be the first to file, and there was a question on whether or not a court might see that differently as far as, like you said, the issue being out there——

Mr. MILLER. No, I understand that. I mean, that is what I am saying. You sat down and somebody said, look, this could be a problem for us. This could be a problem for you. There is this fellow out there from California and so you weighed all that and you made the agreement. It is not that necessarily you were right or they were right, but that is an agreement. That is what you do. You weigh the trade-offs and the liabilities and the assets and you entered into it, and now you do not like it, so you went to court to get it dissolved and you alleged that there was fraud or there was misrepresentation and the court said no, your agreement is your agreement.

Mr. MARTINECK. Well, yes, it is not that we did not like the agreement. The fact of the matter is is they did not disclose a lot of information to us prior to entering into that agreement.

Mr. JOHNSON. And we never protested the agreement. We had not filed a motion with the court to disband the agreement until we found out about the involvement of Berman and Speir in this with POGO.

Mr. MARTINECK. And it was not until some time after that agreement was signed that we did find that out.

Mr. MILLER. Are you sure that is right in the chronology?

Mr. MARTINECK. Yes.

Mr. JOHNSON. Yes.

Mr. MILLER. Okay. So, therefore, then you made a series of allegations to the court about the agreement and about their activities, and the court denied your motion, correct?

Mr. JOHNSON. That is correct.

Mr. MILLER. At this time, I will yield time to Mr. Inslee.

Mrs. CUBIN. Mr. Inslee?

Mr. MILLER. How much time do we have remaining?

Mrs. CUBIN. You have 21 minutes and 20 seconds.

Mr. MILLER. Thank you.

Mr. INSLEE. Well, I must say, I am a relatively new member of the U.S. Congress and I think I share a view of Americans who would be listening to this hearing of absolutely being stunningly shocked, shocked at what you gentlemen are telling us and what this hearing has disclosed is that some powerful corporations ripped off with a capital "R" and a capital "O" the American taxpayers for over $300 million, who reached their corporate hands into my constituents' back pockets and took $300 million out of their hard-earned tax money and did not pay it to the taxpayer when it was legally owed, and the whistleblower statute, which has been an incredibly effective statute, which allowed these taxpayers to be protected, to get their $300 million back, that this Committee, instead of investigating the robbers, is trying to investigate the cops—the cops, the ones who found the $300 million theft, the whistleblower statute that allowed them to do so, the taxpayers

who have the only protection in statute which they enjoy, which is the whistleblower protection.

And here we are, intelligent, well-minded people with 50 days left in this session, instead of trying to figure how to make sure the mining industry and the oil and gas industry pays the taxpayers what they have coming, are messing around, mucking up an ongoing investigation by the Justice Department.

Now, as a new member of Congress, I find this relatively shocking and I think Americans will, too, when they find out that groups that have massive campaign contributions to this institution took $300 million out of taxpayers' pockets, and what does the Majority party turn around and try to reduce the ability of taxpayers to get their money back. That is wrong.

Now, I made some procedural objections to what is going on here, and there may be legitimate issues that the Justice Department is looking at in this investigation, but I am concerned that we are looking in the wrong direction, that the American people ought to have us looking and using our energies to figure out how to be fair to the American taxpayers, fix our royalty payment system and our whistleblower statute so the American taxpayers can be treated fairly and so the agencies are treated fairly. We are not doing that today. We do have an organ of body that is doing that, the Justice Department, which is looking into this issue, and yet we have prejudiced their ability by allowing public disclosure of this. I am concerned about this, speaking as a former prosecuting attorney.

I just want to make sure I understand this. To make sure that my shock is not misplaced, I am going to ask you fellows this. My understanding is is that the Federal court ruled, and I am reading a quote, "Whether POGO shared the proceeds of the Mobil settlement with Berman Speir has no bearing on whether the defendants paid royalties in compliance with the Federal regulations." In other words, the Federal court has ruled that what happened has no bearing on whether the taxpayers were offended or not. Is that your understanding of what happened here?

Mr. JOHNSON. I actually do not recall the court—those words from the court, but I do understand that that was the ruling.

Mr. INSLEE. Well, my understanding is, if that is correct, that our hearing today is not designed to take care of the taxpayers. It may be designed for other purposes. And I will tell you that I think this hearing today is a perfect example why we have got to pass meaningful campaign finance reform. The issue here is whether we are going to be fair to the taxpayers and not allow certain industries to abuse the American taxpayer. That ought to be the issue. We ought to be talking about campaign finance reform today so that we protect the whistleblower statute rather than weaken it, and this means if the Justice Department can find any nefarious dealings, they are going to do so and we should not prejudice their abilities in a moment.

But I think what this hearing has disclosed is that this Committee is less interested in taking care of the taxpayers and more interested in reducing the ability of whistleblowers to point out to the American public that they have been abused by folks in certain industries. The American public needs to know this. And instead of trying to shine the light of truth, which the whistleblower stat-

ute does, this effort is trying to put a cloak of darkness to allow the continued abuse of the American taxpayer, and that is what has gone on in this hearing to date.

Let me just ask you, I understand you fellows are whistleblowers yourselves. I assume you would characterize yourselves as that, is that a fair characterization?

Mr. MARTINECK. That is correct.

Mr. JOHNSON. Yes.

Mr. INSLEE. Is it not your belief, is it not your firm belief, based on knowledge that you personally have, that a certain industry ripped off the American taxpayers for over $300 million in this case and that that was brought to light only because of the protection and incentives of this Whistleblower Act, is that not correct?

Mr. MARTINECK. We had actually brought this issue to the government's attention prior to getting involved in this case and that took place probably a year and a half prior to us filing the case. So, I mean, we tried to inform the government of what was going on prior to getting involved in this whistleblowers' case. When no action was taken, that is when we filed our case.

Mr. INSLEE. And so what we need to tell the American people is, the only reason we eventually got this $300 million back for the taxpayers is we had a whistleblower statute that worked in inspiring people to bring a lawsuit to uncover this inappropriate—failure to pay taxpayers, is that not right? I mean, it worked, right?

Mr. MARTINECK. The first case that was brought would have accomplished that.

Mr. INSLEE. So the whistleblower statute worked, is that not right?

Mr. JOHNSON. In this case, we certainly have recovered settlements approximating $300 million, yes.

Mr. INSLEE. And do you think we in Congress should be at least somewhat concerned about efforts to intimidate whistleblowers by Congress? Do you think we should be a little concerned about that? Let me tell you why I suggest that.

When you are a whistleblower, you are taking a big, big risk. When you are an employee of any agency, you are hanging out, you are sticking your neck out to take a big risk to expose the nefarious dealings where there has been a $300 million, I will not use the word "theft," but inappropriate failure to pay the U.S. taxpayers. There is a big risk. There is fear. There is concern. There is trepidation. Would you agree with me that the U.S. Congress ought to be a little bit Congress before it adds to the intimidation of whistleblowers?

Mr. JOHNSON. Well, I guess it is not our place to make policy or to dictate policy on that. Certainly, there are a lot of risks associated with being a whistleblower. There is a huge burden associated with that. It needs to be appropriately and properly done.

Mr. MARTINECK. And that is why the people that take the risks should be the ones that share the reward that comes along with that risk taken.

Mr. INSLEE. I think that is fair and it has been successful, as this case has indicated, that it has exposed some inappropriate conduct here. But do you think that when Congress tries to put the heat on whistleblowers, that that could reduce the number of people

who may come forward to blow further whistles on further oil and gas industry failure to pay the American taxpayers? Do you think it might have that impact of intimidating future whistleblowers who are out there today who may know something about a failure of an oil and gas company to pay the American taxpayers, and maybe when they hear about these efforts that they may be a little more intimidated and they may be a little more reluctant to blow these whistles? Do you think that might be an impact?

Mr. MARTINECK. Certainly, any time you raise the bar, that might be an impact on people taking the chance on getting involved with something like this.

Mr. INSLEE. And would you agree with me that the American taxpayers really need people to come forward to blow these whistles?

Mr. JOHNSON. Yes.

Mr. INSLEE. I would defer. I just want to make one statement, though, and I have expressed how I feel about this issue. Some have indicated I feel pretty strongly about it. But I want to reiterate, if there are issues here about government employees and their actions after they have, in effect, become whistleblowers, it is important to look at those issues, and there may be legitimate issues here. But I really believe, again speaking as a prosecutor, the Justice Department is better capable of dealing with this, frankly, than we are, and that in these investigations, we ought to be very cautious about fouling up those ongoing investigations and I am concerned that that has happened here.

Mrs. CUBIN. Ms. Maloney?

Ms. MALONEY. Thank you very much.

Mr. MILLER. How much time is remaining?

Mrs. CUBIN. Mr. Miller, approximately 11 minutes.

Ms. MALONEY. Thank you for being part of an effort——

Mrs. CUBIN. Excuse me, Ms. Maloney. The Committee did give unanimous consent to have you seated at the dais, but now I ask the Committee unanimous consent to allow Ms. Maloney to question the witnesses. Without objection.

Ms. MALONEY. Thank you very much, Madam Chairwoman.

As the Ranking Member on the Government Reform and Oversight Committee on Information and Technology, we held two hearings on the undervaluation of oil and Mr. Berman testified at one of those hearings. I issued a report on California alone, it was $300 million undervalued with the State. So when you combine the State with the Federal, the rip-off was in the billions, and the money that was coming to the government, whether it was State or Federal or tribe, was in the billions of dollars for schools and services in our communities. So I thank you for coming forward and being part of an effort that has helped us work together with Mr. Miller and others to change the valuation law.

The MMS says that now they project that the government was losing $66 million a year from this valuation and that the change will bring an additional $66 million. As experts in this field, do you think that number is correct or do you think it is higher or lower?

Mr. JOHNSON. We have not actually looked at those specific numbers. I have heard those numbers, and I am sorry, but I just cannot

comment one way or the other. I just have not looked at the data behind that.

Ms. MALONEY. I think it is important that you look at that because I think your knowledge could be helpful in analyzing it. Personally, I think the people that have worked to put forward this information and bring it to the public should be given awards by government for helping save taxpayers' dollars and not being hauled in front of committees for their actions.

Did you cooperate in any way with POGO in the mini-report that they issued on oil valuation and the loss of dollars to the American public, to the Federal Government, on oil extracted from Federal Government-owned land? Did you cooperate with any of those, I believe it was four or five reports that detailed the underpayment, the rip-off of the American public?

Mr. JOHNSON. Well, as I testified earlier, I did speak with Danielle Brian about some of that information in the later reports. I did not provide her with information, written information. Most of that had been sealed or confidential in other lawsuits. I believe she was able to obtain some of that and did, in fact, use that. But we were—I was open in speaking with her and explaining to her how the underpayments had occurred on private lands.

Ms. MALONEY. Did you ever speak with Mr. Speir about the lawsuit?

Mr. JOHNSON. No, I never did.

Mr. MARTINECK. No.

Ms. MALONEY. And is it correct that Mr. Berman never asked you about the lawsuit?

Mr. JOHNSON. That is correct.

Ms. MALONEY. That is correct, he never asked you. And if Ms. Brian had contacted you about the lawsuit, why did you sign the agreement since that phone call would have been sufficient to have her disqualified as a participant since the phone call was evidence that she did not have direct knowledge of the lawsuit?

Mr. JOHNSON. I am not sure that the phone call was evidence that she did not have direct knowledge of the issues. Clearly, she did know about our lawsuit, but I am not sure and we were not sure at the time as to whether that would disqualify her or not.

Mrs. CUBIN. Could I get clarification? That is while the lawsuit was still under seal, is that right, or not?

Mr. JOHNSON. Yes, it was.

Mr. MARTINECK. That is correct.

Ms. MALONEY. Did you mention the call to the Department of Justice?

Mr. JOHNSON. No, we did not.

Ms. MALONEY. But you did mention the call from Mr. Berman?

Mr. JOHNSON. Yes. Mr. Berman called repeatedly and asked very detailed questions and he was representing himself to be the government watchdog, or the MMS watchdog within the government on this issue.

Ms. MALONEY. When did you first mention this alleged phone call from Ms. Brian?

Mr. MARTINECK. To who?

Mr. JOHNSON. To who?

Ms. MALONEY. To anyone.

Mr. JOHNSON. Immediately after the phone call, I called Mr. Martineck and the two of us then immediately called Mr. Richard Coffman, our attorney at that time, and explained it to him. The issue there was that there were potentially some competing relators or people planning to file a competing lawsuit, not the fact that she knew about it.

Ms. MALONEY. How long do you think this underpayment and rip-off of the American taxpayer and the Federal Government was going on, how many years?

Mr. JOHNSON. Our lawsuit alleges that at least from 1986, and primarily from 1988 forward, included in our lawsuit.

Ms. MALONEY. And I feel that it is important that we understand the lawsuit, and I am reading from the document on the consolidated false claims complaint that was filed in September of 1998. You had seven scenarios that the oil companies were using to shortchange the government, the taxpayers, the people of royalties. Could you go over the most frequently used form that they underpaid?

Mr. MARTINECK. Probably the——

[Witnesses conferring with counsel.]

Mrs. CUBIN. They can talk to their attorneys but the attorney cannot talk to us.

Mr. MILLER. Only on constitutional questions.

Ms. MALONEY. I think this is an important question.

Mr. JOHNSON. Well, without compromising the ongoing litigation, because we still are right in the middle of the lawsuit with several remaining defendants, we can say that what we said in that complaint holds. All of those methods that we listed in the complaint are important and were used and we are still continuing to pursue that and to fight that in court.

Ms. MALONEY. Well, could you describe one of the methods? Take the posted price. Instead of the market price which they sold oil to each other, they had a posted price. Can you explain that?

Mr. JOHNSON. One of the methods listed in the lawsuit itself was that the companies used the posted price to sell oil—to transfer oil essentially to themselves in an intra-company transfer and then actually received a higher value for that oil but paid their Federal royalties on the lower posted oil price. That is one of the methods.

Ms. MALONEY. So in other words, they kept two sets of books, one for themselves to rip off the government and one for the government when they charged them the higher price—the lower price, right?

Mr. JOHNSON. I am not sure that I could characterize it as, quote, two sets of books, but clearly, they understood what they had received and that it was more than the posted price transferred.

Ms. MALONEY. So two sets of methods, one that benefited them greatly at the expense of the American people.

I yield to the distinguished ranking member and I thank him for his leadership on this issue.

Mr. MILLER. When was that practice first discovered?

Mr. JOHNSON. The issue of intra-company transfers? That particular issue has—the potential for that has been around for——

Mr. MILLER. A long time, right?

Mr. JOHNSON. [continuing] many, many years.

Mr. MILLER. And the posting of sour crude versus sweet crude, taking the sweet oil and paying sour prices for it, how long has that been going on?

Mr. MARTINECK. That has also been——

Mr. MILLER. A long time in California, right?

Mr. JOHNSON. A long time.

Mr. MILLER. Is that correct?

Mr. MARTINECK. That is correct.

Mr. MILLER. So the information, I mean, if you were going to put together one of these lawsuits, not making light of your technical capabilities or anything, but there is an awful lot of information and allegations out in the domain, in the public discussion about this practice, certainly since California started its aggressive actions and alleging these various actions, is that not true?

Mr. JOHNSON. There is a lot of information concerning some of those practices in the public domain, yes.

Mr. MILLER. And do not let me characterize it, but one of the things when you first sat down to testify, and do not let me put words in your mouth, but essentially what you are saying was there is this huge amount of information and it became rather apparent to you the Federal Government was never going to do a damn thing about it, and that is why you filed your lawsuit, that the taxpayers for all of these schemes that you alleged were ongoing, pretty well substantiated by practices that you knew from within the industries and other that allege, whether it was the State or people involved in California, this was out there but what was not happening was the Federal Government was not reacting to this to try to straighten out these practices and get the royalties and that was the basis for your lawsuit, was it not?

Mr. MARTINECK. I mean, clearly, we were aware of the issues for a period of time and that is the reason why we brought the lawsuit.

Mr. MILLER. And others may have made that same decision.

[Witnesses conferring with counsel.]

Mrs. CUBIN. The rule is that the attorneys cannot coach the witnesses, only advise them on their constitutional rights.

Mr. MILLER. Give me your constitutional answer.

[Laughter.]

Mr. MARTINECK. Clearly, there was other cases filed.

Mr. JOHNSON. Well, yes.

Mrs. CUBIN. And it seems to me that Mr. Miller is doing what he accused me of, of possibly compromising your case, so be careful with your answers.

Mr. MILLER. Oh, I will be careful with my questions. I was asking him about the general state of public knowledge, but I think our time is expired. We are going to go vote and come back or what?

Ms. MALONEY. When were you aware of the underpayments?

Mr. JOHNSON. From the time we were working with this, myself in the early 1990s——

Ms. MALONEY. So you knew in the early—when did you start working for ARCO? Was this in 1986 or when?

Mr. MARTINECK. In 1981.

Ms. MALONEY. In 1981. Were you aware of the practices in 1981?

Mr. MARTINECK. We were aware of what they were paying at that time. We did not understand the implications of it at that time because we were only seeing that they were paying on posted prices. We did not know how that related into the grand scheme of things.

Mr. JOHNSON. It was not until the early 1990s——

Mr. MARTINECK. Right.

Mr. JOHNSON. [continuing] that we actually saw how this fit together.

Mr. MARTINECK. When we got involved on the marketing side of it.

Ms. MALONEY. When you got in the marketing, then you put the pieces together and you understood?

Mr. MARTINECK. Right.

Ms. MALONEY. How much money do you think they have ripped off from the American government over the years?

Mr. MARTINECK. I would even hesitate to guess what that number is.

Mr. JOHNSON. We have no way to actually answer that.

Mrs. CUBIN. The time has expired. The members have a vote. We will go vote, give everyone a chance to grab something quick to eat, real quick. We will be back and reconvene in 20 minutes.

[Recess.]

Mrs. CUBIN. The Committee will please come to order, and I apologize that we are late. We ended up having two votes instead of one.

The Subcommittee, the oversight hearing will return to regular order. We will be operating under the five-minute rule prior to the staff questioning the witnesses.

I do want to first make a statement regarding Mr. Inslee's questioning. I want to refocus the Committee that this is an oversight hearing. I think all of us are outraged at the practices that cost the Federal taxpayer, people in my own State, our State treasury money because oil companies did not pay what they actually owed. Everyone is outraged by that. It was testified that since 1986, these underpayments had been made.

Now, I have only been chairman of this Committee three-and-a-half years. Ever since I have been chairman of this Committee, I have recognized that there is an underpayment problem and the pilot projects for royalty-in-kind, although some people disagree that is the way to go, the ones that are in place are working very well, and this could not have happened had that been in place at the time. So for Mr. Inslee to indicate that this Committee and these members do not want to get what is owed the government is simply, simply wrong.

Also, his statement about intimidation of witnesses and reducing the government's ability to get the taxpayer everything they are owed in Federal royalties is absolutely absurd. The only thing that has been reduced, that reduces the ability of the taxpayer to collect the properties that they are rightly due is the fact that POGO made a payment to two government employees who were, in fact, in the business of dealing with oil royalties and oil valuation. That weakens the Federal taxpayers' case horribly in future settlements in future lawsuits. That is the only undermining of authority that

has happened. It is due to POGO and the two employees that took the payments.

So with that, thank you for your indulgence. With that, we will now go under the five-minute rule. Mr. Brady?

Mr. BRADY. Thank you, Madam Chairman.

Let me address some of the issues raised earlier. I appreciate Mr. Inslee raising the issue of campaign contributions. I want to commend and congratulate our Democratic Minority on their record amount of soft money contributions and record amount of hard dollar contributions that they have so gainfully acquired this year.

I just wish the Minority were as interested in Federal, special interest purchasing Federal employees, which is the case here today, as their new-found interest in campaign reform, because, make no mistake, these are the whistleblowers in front of us right now. Mr. Johnson and Mr. Martineck are the ones who are at risk, who developed their information for this suit on their own. They were misled, intentionally misled by those inside with information. Their suit, the seal was breached. The confidentiality was not upheld and they were encouraged by everyone from insiders to a U.S. Attorney to enter into agreements that they feel, and rightfully so, does not pass the smell test.

It seems clear to all that we have three, at least three fairly common thieves, Robert Berman, Robert Speir, and Danielle Brian, who used their inside information gained from their position of public trust to line their own pockets. They had unprecedented means and motives. The secrecy with which they have worked so hard to conceal their actions is damning alone. I think the question before us is, did the Justice Department, Energy, and Interior Department turn a blind eye to special interest purchasing Federal employees or did these three intentionally and successfully hide their legal conduct from the authorities?

My one question, because it—two questions, because it goes to the heart of the matter, to Mr. Johnson and Mr. Martineck, from what you have learned, from what you know now, do you believe that the seal and secrecy of your original suit was upheld or breached, and I am not going to follow it up with who you might think and how it might have happened. I am simply asking, do you believe that the seal and the secrecy of your original suit was upheld or breached?

Mr. JOHNSON. It clearly had been breached at some point.

Mr. BRADY. In, and the final question, it is a simple one, from what you know now, do you believe that Mr. Berman, Ms. Brian, others who contacted you about the suit, do you believe that they honestly represented to you their intentions and motives in this case, honestly represented to you all their intentions and motives in this case, from what you know now?

Mr. JOHNSON. As I testified last November in a hearing, clearly, we were not told about the payments to Berman and Speir. Mr. Berman never indicated to me anything either way. Danielle Brian did not tell us about that and we did not learn about it until April of 1999.

Mr. MARTINECK. And clearly, there was a good period of time that passed between the time the agreement was signed with those individuals, meaning the other relator groups and ourselves, until

the time we found out that Mr. Berman and Mr. Speir were involved in this.

Mr. BRADY. Thank you for being candid, in being cautious in your answers, because you do have a great deal to lose in this case. You are the true whistleblowers. It is our responsibility to take that breach of confidentiality, the damning secrecy, the misrepresentation, and to find out, again, did our authorities turn a blind eye or did these three successfully conspire to hide their actions, and that is at the heart of this issue, not the oil royalty matter, which I would love to debate at any time, and I love that issue. But unfortunately, that is not the one before us today.

Thank you, Madam Chairman.

Mrs. CUBIN. Thank you. Mr. Underwood?

Mr. UNDERWOOD. I do not have any real questions other than one and then I will yield to Mr. Miller. In your estimation, either one of you, since many of the questions apparently have called for some speculation, how was the seal breached? Do you have any idea?

Mr. JOHNSON. We do not know how the seal was breached.

Mr. UNDERWOOD. Mr. Martineck?

Mr. MARTINECK. No. I would echo Mr. Johnson's response. The only thing that we did know is that it was breached.

Mr. UNDERWOOD. Okay. George?

Mr. MILLER. I thank the gentleman for yielding. I am delighted that Mr. Brady has arrived at his conclusion at the outset of the hearing. He could have waited for the rest of the evidence.

Mr. BRADY. Mr. Miller, it is what it is——

Mr. MILLER. No, no——

Mr. BRADY. [continuing] and sometimes common sense really dictates that.

Mr. MILLER. [continuing] that is interesting, except based upon exactly the—this is my time—based upon exactly what you said——

Mr. BRADY. And Madam Chairman, I will respect Mr. Miller's right to finish his statement.

Mrs. CUBIN. Thank you, Mr. Brady. The time——

Mr. MILLER. The court determined exactly otherwise. It was not as you said it was, and that is why these gentlemen are here today, because they are still looking for the other 60 percent of their agreement. But, in fact, the court said that that was not the case. The fact of the matter is, I do not know, and this hearing may help determine that, but clearly the Justice Department investigations and the Inspector General's investigations will also help determine that, but the two, as I understand the law, and correct me if I am wrong, the Federal employees can and do file these very same cases. They are entitled under the law to do so.

In this particular case, it appears that they were not the formal petitioners, and whether or not they were paid to develop information or not, those are all allegations that have yet to be proved and this Committee has yet to hear from those individuals, so I find it disconcerting when we rush to judgment even before you have heard from the last panel and others who were directly involved in that. But that is the nature of this Committee, unfortunately, all too often.

As was testified before we went to the vote, there clearly was sufficient evidence in the public domain, in hearings and records developed by the State of California, by other people who have been involved in this issue, by Committees of Congress, by reports issued, that if you wanted to put together the specifics for this lawsuit, and, in fact, POGO here had been involved with the State of California, with others, in those investigations, in those legal proceedings under false claims.

So we really do not know yet what happens if people are engaged in wrongdoing. Traditionally, as I understand it, if a Federal employee had filed such a case, they would have been walled off at that point. That, I think, is a normal process, because in this case, they were not formally filing. Their departments apparently did not know of that until later. So there is an awful lot that yet is to be determined before we rush to judgment. But what is not yet to be determined, or what has been certainly determined to the extent to which rewards have already been received, and that is the allegations of the false claims.

In your claim, you say that, in your first scenario, you say that the companies are misrepresenting that the first sale of oil under a buy or sell agreement between themselves and/or other parties is the actual value received for the oil. What are you telling us there?

Mr. JOHNSON. Okay. That is an issue that had not been brought forward before, was not used, and was not understood well by the government. This is an issue that we were the first people to bring out and to really explain to the government. This is the understanding that when a company enters into what is called a buy/sell agreement, that they essentially exchange the oil from one place to another, but it is structured in the manner of a sale at one location for some price and a purchase at another location for some related price, and the fact of the matter is, and what we have said, is that price is really irrelevant to the actual value of the oil.

Mr. MILLER. That is a paper transaction? It is not a real—you say that is not a real sale?

Mr. JOHNSON. There are checks written, there are invoices created, wire transfers made. There are a lot of audit trails created from that, but they are not real.

Mr. MILLER. It sounds like a Colombian cartel.

Mrs. CUBIN. The gentleman's time is expired.

I would like to make a point of clarification. While, in fact, it is true that Federal employees can file in suits like this, these two employees did not file. And when Federal——

Mr. MILLER. That is what I said.

Mrs. CUBIN. Yes. I am not arguing with you. I am making a point. When Federal employees do file these suits, the vast, vast majority of the time, they are dismissed because the judicial branch of government and the Department of Justice do not want money to influence a government employee's decision about how they do their job. And so that is why they are practically always dismissed, and when they are not, as Mr. Miller said, the government employees are walled off from any further action on the issue at hand, in this case, oil valuation, and this did not happen. As a matter of fact, one of the people who received a check for $383,600 and more

to come described himself as the key person in the regulatory revision process in this. So those are the facts. I just wanted to make sure they were on the record clearly.

Mr. Schaffer?

Mr. SCHAFFER. Thank you, Madam Chairman.

Mr. Johnson, just in answering Mr. Miller's question, I do not remember exactly how he characterized the particular methods that were used to obscure the value of the subsequent royalties in question, but your answer was that the government had not previously been aware of this scheme and this strategy or something to that effect. Did I characterize that so far correctly?

Mr. JOHNSON. That is correct. The government did not understand it and was not aware of it.

Mr. SCHAFFER. The government, does that include Mr. Berman or Mr. Speir?

Mr. JOHNSON. Mr.—I do not know about Mr. Speir because I have never spoken to him. Mr. Berman did not understand how it worked. Clearly, the government and Mr. Berman were aware that those, quote, buy/sell agreements existed, but they were not aware of how they were used and the resulting impact.

Mr. MARTINECK. And the other thing I would like to point out, too, is Mr. Miller was referring to all these things being out in the public, and a lot of the issues that were brought in our case were unique to our case and they were not out in the public's eye as he would suggest in his statement.

Mr. SCHAFFER. I have not had a chance to go through the details of the differences in the three false claims acts, but were these unique discoveries included in either of the other two claims?

Mr. JOHNSON. No.

Mr. SCHAFFER. No? Okay. In the previous question, I asked you about the attorney you were advised to contact by Ms. Brian and you said the name of that attorney mentioned or suggested to you was Lon Packard. I neglected to ask, did you contact Lon Packard?

Mr. JOHNSON. No, neither I nor my attorney contacted him.

Mr. SCHAFFER. Thank you. Given your previous answers about the level of understanding by Mr. Brock of many of these issues, did you try to take advantage—and the testimony that he provided was more evidence that his level of understanding was perhaps not what you would suspect in being part of false claims suit—did you try to take advantage of his disappointing testimony to renegotiate the contract that you had?

Mr. JOHNSON. Well, we certainly had discussed, after we learned about his actual background, we did have discussions with POGO and their attorneys regarding the renegotiation of the contract. However, in the end, we decided not to make any change and actually sent a letter saying essentially a deal is a deal. We are going to abide by the terms of this agreement. We signed it and we will honor it, and that was prior to the time we learned about Berman and Speir.

Mr. SCHAFFER. I really want to explore that particular aspect, because, obviously, at one point, you thought POGO and their witnesses or those collaborating in their particular interest, their false claims act, were credible additions to perhaps enhance the success of your claim. Later, you came to a different conclusion. What was

it that persuaded you that POGO had something to add to your efforts?

Mr. MARTINECK. It was not so much that they had something to add, because we knew our knowledge of the facts were correct. We had seen the dealings of these companies in the past and we had all the certainty that we needed to know that we would be successful in proving our case. The fact of the matter is, we were not sure how a judge might see us as relators down the road and that was why we signed that agreement.

Mr. SCHAFFER. Were there any persuasive efforts by the U.S. Attorney to enter into this agreement with these other two false claims claimants?

Mr. JOHNSON. Well, certainly the U.S. Attorney's office encouraged all of the relators to work together. It is in the best interest of the country, the nation, for the relators not to be arguing and for there to be one suit versus three. But other than that, I mean, that was the motivation there.

Mr. SCHAFFER. One last thing. Two others have asked already, but I just want to ask one more time, if you were a member of Congress, where would you look to find out where this breach in secrecy took place, as to the fact that the claim was—if you were me, where would you look?

Mrs. CUBIN. The gentleman's time has expired. Would you like to answer the question?

Mr. JOHNSON. My answer is, I really have no idea where I would look for that. It could have been a number of places.

Mr. MARTINECK. My response would be somewhere internal, because we filed it to the government and we expected that to be kept secret, like we were expected to keep it secret.

Mr. SCHAFFER. Sure. Thank you, Madam Chair.

Mrs. CUBIN. The gentleman's time is expired. Mr. Miller?

Mr. MILLER. Thank you, Madam Chairman.

Mr. Johnson, another way that in your suit you say that the oil companies would cheat the taxpayers is that they would falsely classify oil as lower priced sour—that is oil with a higher sulfur content, crude oil—or as oil subject to quality penalties when such oil was, in fact, higher valued sweet oil. Can you explain that, what the oil companies were doing there?

Mr. JOHNSON. That involves a situation where the oil companies take sweet oil and perhaps classify it as sour and pay a lower price than what it is really worth, or where it may, in fact, be blended and mischaracterized from that standpoint.

Mr. MILLER. So these would be—sweet oil and sour oil are not necessarily found in the same place, is that correct? In California, you can find sour oil, I think, in Bakersfield and sweet oil you might find offshore or something, is that correct?

Mr. JOHNSON. You can find sweet and sour oil in the same fields, the same locations, not within the same well.

Mr. MILLER. Not in the same well. So this would be a conscious decision to label oil as sour or label oil that was subject to penalties when, in fact, it was not. You would have to make that conscious decision?

Mr. JOHNSON. Clearly, in our lawsuit, we said this was done consciously.

Mr. MILLER. Another one that you allege was that they used sales to affiliated companies to mask the true value of the oil. What are they doing there? What are the oil companies doing there to be deceptive?

Mr. JOHNSON. As I believe I mentioned this morning in testimony, they have what they call a transfer price, which is usually the posted price, to represent the value of the oil at which royalties are paid. That is not necessarily what they actually receive for the oil and we have shown we knew that they had received higher values, in fact, for the oil.

Mr. MILLER. Again, that would have to be a conscious decision. You would have to go through these transactions, paper transactions or otherwise, to make it appear as though the sale to the subsidiary had accomplished that fact?

Mr. JOHNSON. Certainly. As we alleged in our lawsuit, they were aware of the situation.

Mr. MILLER. Another one was the suggestion that the oil companies would pay royalties on the basis of the API gravity penalties when, in fact, the oil had been commingled to yield a mixture of oil that would not be subject to that. What is going on there? That is a variation on the sour/sweet scheme.

Mr. JOHNSON. Yes. That refers to the situation where oil of a, say, a lower gravity may be blended with oil of a higher gravity, yet still may be sweet. Both streams may be sweet. The final commingled stream is sold for a higher value than either of the two entry streams are paid on royalties.

Mr. MILLER. So there, the oil companies are paying a royalty to the Federal Government. They are paying a royalty based upon a sour price or a penalty price. They then commingle that oil and when they then go to sell that oil in the real market, that oil is not subject to penalties because it has been commingled, either due to a sourness and sweetness or because of the penalty nature of the oil. They then sell that at a higher price and the royalty does not reflect that higher price.

Again, here, an oil company would have to make a conscious decision to commingle the oil, blend it to such a state so that the purchaser would not be subject to penalties, and then report two different prices to the government in the State of California or to the Federal Government.

Mr. MARTINECK. Just one correction on what you said there, was that it does not necessarily have to be a sour barrel. It could be a lesser gravity——

Mr. MILLER. There are two classifications. You could do this with sweet and sour oil or you could do this with penalty oil, which is not subject to questions of sweet and sourness.

Mr. MARTINECK. Correct.

Mr. MILLER. But the point is here, you have to make a series of conscious decisions to defraud the public. You have to make a decision to take penalty oil and commingle it with non-penalty oil but pay the government a royalty based upon the penalty oil, and then when you sell the commingled oil, which is now of higher quality, you get a higher price, do not tell the government what the real sale price or the real value of that oil was. That is the process you go through.

Mr. MARTINECK. That is what we allege, sir.

Mr. MILLER. Again, that would have to be a conscious decision?

Mr. MARTINECK. Yes.

Mr. MILLER. That is why it is called fraud. You make an intentional decision to perpetrate a fraud.

Mr. MARTINECK. Yes. That is what we alleged in our lawsuit.

Mr. MILLER. This was very prevalent, I know, in my State and in Wyoming, where you have various grades of oil in relation to one another, is that correct?

Mr. MARTINECK. That is correct.

Mr. MILLER. Thank you.

Mrs. CUBIN. The gentleman's time is expired. I would like to point out that while Mr. Miller's questioning did not fall within the jurisdiction or within the subject of this oversight hearing, I was glad to allow that information to go onto the record because I find that practice just as distasteful, despicable, if you will, as Mr. Miller does. However, that is not the subject of this hearing, although having it on the record certainly——

Mr. MILLER. Will the gentlewoman, because I would like to——

Mrs. CUBIN. Yes, sir.

Mr. MILLER. God knows, I would not intentionally violate the rules of this Committee.

Mrs. CUBIN. Oh, I know.

[Laughter.]

Mrs. CUBIN. Nor I.

Mr. MILLER. Just teasing.

Mrs. CUBIN. Nor I.

Mr. MILLER. Nor you, absolutely. We have difference of opinions.

But my point here is that these were practices that were fairly common, tragically so for the taxpayer, but these were fairly common in my State. These were tragically common business practices that were ongoing and they could not have been conducted without a lot of people being involved in order to do this.

Mrs. CUBIN. Mr. Miller?

Mr. MILLER. You know, you are not dealing with a suitcase full of cocaine. You are dealing with a train of tanker cars or trucks or pipelines, so you are moving a lot of product here to get $66 million on royalties a year just from the Federal Government, and that is pertinent to this because the question, one of the underlying questions of the investigation is, how was this information developed, was the seal breached, was it taken from a breached seal, was it developed by government employees and then back-channeled to somebody else, or did POGO or, what was the other person, Mr. Wright, did they develop this on their own independently, and as we see, was it developed from public documents? I mean, I think——

Mrs. CUBIN. Mr. Miller, I allowed——

Mr. MILLER. So, you see, I did not intentionally break the rules——

Mrs. CUBIN. Obviously, and I was certainly glad to have that.

Mr. MILLER. Good. Thank you. I feel better.

Mrs. CUBIN. Now, would it be rude——

Mr. MILLER. I feel like I got a Good Housekeeping seal of approval.

Mrs. CUBIN. Would it be rude, Mr. Miller, if I were to ask you why, when you were chairman of this Committee, if you knew this was going on, why did you not do anything about it?

Mr. MILLER. We went after them, and——

Mrs. CUBIN. Why was no attempt made——

Mr. MILLER. The same reason the whistleblowers——

Mrs. CUBIN. [continuing] to change this until I became chairman of this Subcommittee?

Mr. MILLER. Because for the same reason our whistleblowers found out——

Mrs. CUBIN. Mr. Tancredo?

Mr. MILLER. [continuing] that the Reagan-Bush Administration would not deal with this——

Mr. TANCREDO. Thank you, Madam Chairman. I appreciate the time that you have allowed me to speak.

Mrs. CUBIN. The question was, would it be rude? I guess the answer would be yes?

[Laughter.]

Mr. MILLER. I was traveling all over Wyoming chasing these people around. Where were you? You should have run for office earlier.

Mrs. CUBIN. It was not these oil people you were chasing around in Wyoming.

Mr. MILLER. Oh yes, it was. It was those people up there in that tight, tight sands. Is that not where a tax break breaks oil——

Mrs. CUBIN. What you were calling tight then?

Mr. MILLER. There were tight, tight sands and apparently the only way you can get oil out of tight, tight sands is through a tax break.

[Laughter.]

Mr. MILLER. You do not even have to drill for it. You ask the Ways and Means Committee.

Mrs. CUBIN. Mr. Tancredo—those tight sands are gas, not oil.

Mr. MILLER. That is gas?

Mrs. CUBIN. Mr. Tancredo?

Mr. MILLER. They were selling it as oil.

[Laughter.]

Mrs. CUBIN. Were they collecting royalties? The Committee will come to order.

Mr. MILLER. Back to the subject matter at hand.

Mrs. CUBIN. Mr. Tancredo?

Mr. TANCREDO. Thank you, Madam Chairman. I have something in common with Mr. Inslee and his earlier comments, strangely enough, in that I, too, am relatively new to the Congress and I, too, I guess I will use the word "shocked" in the Casablancan sense of that word, as I think Mr. Inslee was using it, shocked. But our shock is at two different things entirely.

We were apparently observing two different events, because although there has been a certainly sometimes spirited and constantly blatant attempt on the part of the Minority to refocus the direction of this Committee's work onto issues totally irrelevant to the original, to the stated purpose, it is nonetheless important for us to try and determine where true concern should exist and why, if we are shocked, why we should be concerned as public policy people here.

And I think we have a right to be concerned and, indeed, shocked because, in fact, although some oil companies have settled in this situation, in this case, others have not, and very large oil companies have not yet settled. It is my concern that, in fact, those cases may have been—the government's case against them may very well have been jeopardized by the actions taken by these employees. Certainly, the possibility that these two gentlemen working for the Federal Government in policymaking roles in the oil industry receiving huge payments from people who benefitted as a result of legal actions brought against oil companies, surely that would bring question, at least question, to the mind of any juror or any judge in cases not yet settled.

And that is what we should all be concerned about here, whether or not the government's case has been jeopardized, not whether the oil companies are going to get—these greedy oil companies, we are not getting at them enough. I am worried about the government's case here and that is the real purpose of this hearing, is to determine what policies need to be changed, perhaps, looked at in the Department of Interior and the Department of Energy so as to prevent this kind of thing from happening again. And that is something we all have a responsibility for, it seems to me, and that is where we are trying to go with this hearing, all bantering to the contrary, not being relevant.

I would like to ask you, you mentioned earlier, I think, that there were other members of—well, no, let me ask you this. Did the Justice Department ask you at any time to brief Interior employees in regard to your allegations?

Mr. JOHNSON. Yes, they did.

Mr. TANCREDO. So other members of the Federal Government, other employees of the Department of Interior knew, while you were under seal, they knew about your allegations. That is essentially the purpose of putting it under seal, so that, what, people can begin to look at this from—I am not sure exactly why they would have to know. Could you help me understand that part?

Mr. JOHNSON. This is a very technical lawsuit——

Mr. TANCREDO. Oh.

Mr. JOHNSON. [continuing] and the Justice Department did not have the expertise within the Justice Department to understand it and they enlisted the aid of the Interior Department personnel, selected people. We do not know who all they talked to. We do not know who all knew about it. There were some meetings where we had Interior Department or Minerals Management Service people present. There were other times when we were not sure if maybe the people who we initially talked to had perhaps told others about it and then they were calling to ask questions. We did field a number of questions from Interior Department people.

Mr. TANCREDO. So it is true, then, that many other Federal employees knew about at least your allegations in this case?

Mr. JOHNSON. Yes, that is true.

Mr. TANCREDO. So when there is some sort of attempt to deflect attention to the idea that these people, Berman and others, were just two good employees and therefore deserved almost $400,000 in payments, just because they were a couple of good guys, but there were a lot of people. Do you know of anybody else in the Federal

Government, any of these other people who were involved who knew about this case? Do you know of any of the others that got any money from it?

Mr. MARTINECK. No.

Mr. JOHNSON. No.

Mr. TANCREDO. No, just Berman and Wright. What an interesting——

Mr. MARTINECK. Berman and Speir.

Mr. TANCREDO. Berman and Speir, excuse me. What an interesting coincidence. Thank you, Madam Chair.

Mrs. CUBIN. The gentleman's time is expired.

We will now move to the staff questioning period. Under the prior motion, Mr. Casey is recognized on behalf of the Majority for 15 minutes. We will then turn to the Minority side to have staff or member, whomever they decide, to do their questioning. Mr. Casey?

Mr. CASEY. Thank you, Madam Chairman.

Mr. Johnson and Mr. Martineck, did the court in your case ever rule that the seal had been breached? Did they ever address that issue?

Mr. JOHNSON. It was never addressed.

Mr. CASEY. Did the court in your case, when you made your motion to void the sharing agreement, the Multi-Relator Counsel Agreement, rule on whether or not the payments to Mr. Berman and Mr. Speir were appropriate or proper or address them at all?

Mr. JOHNSON. No, the judge did not address that directly.

Mr. CASEY. I want to make sure I understand it. I have read the file there, and as I understand it, Judge Hannah was simply ruling that you had not made your claim that you had been fraudulently induced into that contract, and that is all he said?

Mr. MARTINECK. That is correct. I believe all he said was, motion denied.

Mr. CASEY. Thank you. Let me go back to the telephone calls from Mr. Berman. In those telephone calls, was this a mutual education or was he seeking information or giving you information or was it all one way?

Mr. JOHNSON. From the technical standpoint of how the oil was marketed and how oil could be valued, that was strictly one way. I helped Mr. Berman understand that. Mr. Berman did, however, tell me occasionally that activities within the Interior Department, he expressed disappointment in the way that the MMS had behaved at times. He was frustrated at times and he, perhaps the word is vented to me about that.

Mr. CASEY. I am sorry. Did I interrupt you, Mr. Martineck?

Mr. MARTINECK. No.

Mr. CASEY. During the occasions when you briefed other Interior employees on your case, and I think, as I understand it, there was at least one large session out in Colorado at the request of the Justice Department, were the government employees at that meeting that you recall given any kind of explicit warning that this case was under seal and the facts of it were to be kept confidential?

Mr. JOHNSON. Yes. Clearly, at the beginning of the one large meeting that I had, I know that that was discussed and that this was strictly under seal and not to be talked about.

Mr. CASEY. So I think we can assume that a Justice Department lawyer would have understood that. So any Interior employee who learned of this case in the course of his or her job, as far as you know, was expressly warned that the case was under seal and that it should not be discussed outside the workplace, and, in fact, a limited crew within the workplace?

Mr. JOHNSON. To the best of my knowledge, every time that was discussed or was explained to an Interior Department employee, they were told that this was under seal.

Mr. CASEY. Back to the telephone call with Ms. Brian, if I heard you correctly and if I understand correctly, she did make reference to some kind of government employees considering their own qui tam or suggesting they might want to join yours or something of that sort. Did she suggest to you why it would be that she would want to call your lawyer and have them get in touch with these folks?

Mr. JOHNSON. Well, she explained that, or she told me that these folks, these government employees, did not have the degree of understanding that Mr. Martineck and I did, but that they had been around for a long time and that there could be some confusion about whether they had, in fact, been the first. She clearly understood and made clear to me that she believed we were the ones who had the specific information and knew it, but she did say that these other people might be considered by somebody, a court, to be the first, and—and—she encouraged that we should talk to them and see about joining with them.

Mr. CASEY. Now, prior to the time of you filing your case and subsequent to the Long Beach cases, the State of Alaska, the State of Texas, as well as the State of California had succeeded in suits on related claims, similar allegations, if you will. So when Ms. Brian refers to government employees, did you even have any clue that she was talking about Federal employees, or might it have been a State employee or a city employee?

Mr. JOHNSON. Well, in fact, the groups who had actually collected the money were the State of California and the State of Alaska, to my recollection. I was not sure and she did not make clear to me.

Mr. CASEY. Okay. Did I deduce properly during your earlier answers when you were discussing the MRCA, the sharing agreement—let me just sort of rephrase it and see if I am correct—that when the point is reached at which there is your case filed first, Mr. Wright's case filed second, and the POGO, Brian, and Brock case filed third, that the best strategic decision in the interests of moving ahead, establishing the fact of the allegations in your case, putting an end to the underpayments, collecting past royalties, was for all three groups to make a common cause and cooperate with each other.

Mr. JOHNSON. That is correct. We did, in fact, join with each other and we filed a joint suit after that.

Mr. CASEY. Now, at the moment, I mean, there has been some mixing of terms and we all—terms like relator and so forth become comfortable, but, in fact, right now, who are the relators in Johnson v. Shell?

Mr. MARTINECK. Mr. Johnson and Mr. Martineck. We are the only ones that the court saw to be proper relators.

Mr. CASEY. Is Harold E. "Gene" Wright a relator?

Mr. MARTINECK. No, he is not.

Mr. JOHNSON. No.

Mr. CASEY. Is Danielle Brian a relator?

Mr. MARTINECK. No, she is not.

Mr. CASEY. Is Leonard Brock a relator?

Mr. MARTINECK. No, he is not.

Mr. CASEY. Is the Project on Government Oversight a relator?

Mr. MARTINECK. No.

Mr. CASEY. Do any of those parties contribute at this point to the prosecuting of the case on a daily basis? Do you all meet together and plan trial strategy, share information and so forth?

Mr. MARTINECK. No, we do not.

Mr. CASEY. Who does that job?

Mr. MARTINECK. Our attorneys are the only ones that are working on the legal side of it, and myself and Mr. Johnson are the ones that handle the details.

Mr. CASEY. So you carry the burden of proving this case and effectively following through on the whistleblowing, is that right?

Mr. MARTINECK. That is correct.

Mr. CASEY. But Mr. Wright continues to receive his share of settlement checks as they come through?

Mr. MARTINECK. Yes, he does.

Mr. CASEY. And POGO continues to receive a share? The POGO, Brian, and Brock group continues to receive a 40 percent share of every settlement check that comes through?

Mr. MARTINECK. That is correct.

Mr. CASEY. And they do not participate in carrying this workload or proving the allegations?

Mr. MARTINECK. None whatsoever.

Mr. CASEY. I forget who used the phrase. Is that what is meant by the phrase "mailbox money"? You just sit back and wait and you do not have to do anything?

Mr. MARTINECK. I have heard that term before.

Mr. CASEY. Somebody along the way had used that. I would reserve my time.

Mrs. CUBIN. The gentleman reserves the balance of his time. Now I recognize the Minority side for whomever would wish to ask questions.

Mr. MILLER. Thank you. Thank you, Madam Chairman. I would ask unanimous consent that a letter from Mr. Lon Packard to Chairman Young and myself be made a part of this hearing record.

Mrs. CUBIN. Without objection, so ordered.

[The information of Mr. Miller follows:]

Mr. MILLER. Mr. Johnson, how much time have you spent with the Majority staff on this Committee going over testimony?

Mr. JOHNSON. Prior to the hearing today, we met with them one time, one meeting.

Mr. MILLER. When was that?

Mr. JOHNSON. Last week, I believe.

Mr. MILLER. For how long?

Mr. JOHNSON. I am not sure, but it was several hours.

Mr. MILLER. What did you do?

Mr. MARTINECK. We talked about how the process would be handled as far as, you know, how we are to address people, how the room was going to be set up, what types of things we could be expecting.

Mr. MILLER. Did you go over questions?

Mr. MARTINECK. No, we did not go over questions.

Mr. MILLER. No questions at all?

Mr. MARTINECK. No.

Mr. MILLER. Did you go over the characterizations of the various parties, POGO or other relators or non-relators or people or what have you?

Mr. JOHNSON. No, I do not believe so. I think that had been pretty clear.

Mr. MILLER. On the question of when you say that you are now involved in the continued prosecution, what is left to continue to prosecute?

Mr. JOHNSON. Well, we have three remaining defendants who have not settled. We are taking depositions. We are attending depositions. We are—both Mr. Martineck and I have participated in writing an expert report and doing the calculations of damage analysis, pretty much a full-time job.

Mr. MILLER. You are the lead on this?

Mr. JOHNSON. That is correct.

Mr. MILLER. What is the Justice Department doing?

Mr. JOHNSON. Well, the Justice Department is taking depositions on two of the companies in which they have intervened against, two of the defendants. However, we are participating with them. We attend their depositions. We actually help write questions for them.

Mr. MILLER. So it is not just you. The Justice Department is involved in, what, two of the three, is that what you are saying?

Mr. JOHNSON. That is correct.

Mr. MARTINECK. That the Justice Department has taken the lead on those two, but we play a substantial role in helping them in that.

Mr. MILLER. Who will make the decisions whether there will be settlements or not or whether there will be prosecution or to go forward or not?

Mr. JOHNSON. That is a joint——

Mr. MARTINECK. Yes.

Mr. JOHNSON. That is a joint effort. We jointly do the calculations with the Interior Department personnel and the Justice Department people. Any time a settlement is reached or negotiated, we work——

Mr. MILLER. No, but, I mean, do you get to make a decision? Do you or the other relators, do you have a veto over a decision to settle as opposed to go to trial?

Mr. MARTINECK. We are certainly a signing party to that settlement and we could hold up the settlement——

Mr. MILLER. You could hold up that settlement?

Mr. MARTINECK. Yes, if we deemed it not to be appropriate.

Mr. MILLER. And the other relators could do that also?

Mr. JOHNSON. I am not sure that they could.

Mr. MILLER. No, I mean, do they have the authority under your agreement and under the way the suit is progressing? Did they review settlement agreements?

Mr. JOHNSON. No.

Mr. MILLER. Are they signatories to it?

Mr. JOHNSON. No.

Mr. MILLER. And so when we see settlements, we can assume that you have, in fact, agreed to each of those settlements?

Mr. MARTINECK. We have agreed to the compromise to settle the case.

Mr. MILLER. I am sorry?

Mr. MARTINECK. We have agreed to the compromise to settle the case, taking into consideration all the risks of taking a suit such as that to trial. In that you may be unsuccessful, there is a lot of risk to weigh in that, so yes.

Mr. MILLER. And if you decided otherwise, Justice would not be able to bring about that settlement?

Mr. MARTINECK. I believe that is right. We have never encountered that situation.

Mr. MILLER. Yes. But what is the role of the other joint parties here, in the three joined parties?

Mr. JOHNSON. Right now——

Mr. MILLER. Are you their agent in this case? I mean, do you stand in their shoes, or——

Mr. JOHNSON. We are not lawyers, and so I am not sure—I do not know legally how that works. I know we have an agreement with them. We are prosecuting the case to the best of our ability and——

Mr. MILLER. That was the original agreement when the three cases were brought together?

Mr. JOHNSON. I am not sure that the original agreement ever anticipated exactly how it ended up, where the other relators were actually dismissed. But because we were left in, we have continued to do this to the best of our ability, to bring the maximum value return in a reasonable manner.

Mr. MARTINECK. Without their assistance.

Mr. MILLER. Have you differed with the government? I mean, you have some experience in these valuations. Have you differed with the government on valuations at time of settlement?

Mr. MARTINECK. Sure. We have had issues that have come up that we have had to reach compromise on. They have got facts that we do not have that we have looked at, and what we have always come to the bottom line, that the facts are what they are and we come to an agreement on what the settlement should be.

Mr. MILLER. Madam Chairman, I will reserve the balance of my time until we vote.

Mrs. CUBIN. Actually, I did not hear what you said. You reserve the balance of your time?

Mr. MILLER. Yes. We have a vote on, so we have to go vote.

Mrs. CUBIN. Okay.

Mr. MILLER. You have reserved your time, so you will get to ask questions when you come back or I will ask questions when we come back.

Mrs. CUBIN. Let us just go vote and we will be straight back, and we will keep your time.

[Recess.]

Mrs. CUBIN. The Subcommittee will please return to order. The chair recognizes Minority staff to conclude their questioning. Ms. Lanzone?

Ms. LANZONE. Thank you. Mr. Johnson or Mr. Martineck, the Multi-Relator Counsel Agreement dated March 9, 1999, that is still in effect, correct?

Mr. JOHNSON. Yes.

Mr. MARTINECK. Yes, it is.

Ms. LANZONE. And on page two of that document, paragraph two, it says that the agreement clearly says that any relator's recovery shall be divided 40/40/20 after the payment of the 2 percent consulting fee to Johnson and Martineck. That would be you, correct?

Mr. JOHNSON. That is correct.

Mr. MARTINECK. That is correct.

Ms. LANZONE. And you are receiving that two percent off the top?

Mr. JOHNSON. Yes, we have.

Ms. LANZONE. Okay. And then on the next page, there is a series of conditions, I guess, which include—four, five, and six relate to fees, attorneys' fees, manpower, I mean, I will give this to the chairman so that it can go into the record, but it looks like the other relators in the agreement are contributing significant costs to the ongoing litigation, is that correct?

Mr. JOHNSON. No, it is my understanding that there are not. There have been some contributions from the other groups, but——

Ms. LANZONE. It says, each group must invest equal manpower to the case. In other words, if it takes 21 attorneys and 21 paralegals working full time to prosecute the case, then each group must commit seven full-time lawyers and seven full-time paralegals. Is that not——

Mr. MARTINECK. That has not happened.

Mr. JOHNSON. That has not happened, that is correct.

Ms. LANZONE. That has not happened. Okay. What about expenses of the common litigation fund must be paid equally by the three groups? That is not happening? Right now, the Brock/POGO group would owe $220,000 and the Wright group would own—own or owe?—$170,000 to achieve parity.

Mr. MARTINECK. I know at some point, all those groups contributed something. I do not believe that they have continued to contribute. I think the Wright group has continued to honor their obligations. I am not sure that the Brock/POGO group has.

Ms. LANZONE. Okay. Well, maybe we will—I guess next week we can pursue that.

Mr. JOHNSON. The answer to that is that we do not know exactly how all that has worked.

Ms. LANZONE. Okay. So before, when you were saying that you are doing everything and they do nothing, then that is not exactly correct if they are contributing financially by paying your attorneys, I guess——

Mr. JOHNSON. Well——

Ms. LANZONE. [continuing] and you get the 2 percent off the top. That is really all I was asking.

Mr. JOHNSON. Well, in answer to your question, we are doing all the work in the case and we do know that we have contributed the vast majority of the money. But in response to your question, we do not know exactly how much the other groups have contributed.

Ms. LANZONE. Even though the agreement says it will be shared equally?

Mr. JOHNSON. That is correct.

Mr. MARTINECK. That is correct.

Mrs. CUBIN. Do you yield back the balance of your time?

Ms. LANZONE. Yes. I am sorry.

Mrs. CUBIN. Thank you. Mr. Casey?

Mr. CASEY. Thank you, Madam Chairman.

I have perhaps just two, and forgive me, I continue to get confused a bit and I want to make sure it is clear on the record. The purpose of the Multi-Relator Counsel Agreement, well, its purpose but its motivation, I guess you might say, originally was to strengthen the joint effort to expose the underpayments, put a stop to it, collect past-due underpaid royalties, is that correct?

Mr. JOHNSON. Sure.

Mr. CASEY. So when you moved to void that contract back in November, there had already been other disputes within the group. Had you made any attempts, formal or otherwise, prior, in relation to those disputes, to void the contract? As I understand it, there has been friction regarding the various weight that parties brought to that agreement and contributions and knowledge and expertise they were making and there were some serious disagreements within the three groups, Wright, Johnson/Martineck, POGO/Brian/Brock. Had you, Mr. Johnson and Mr. Martineck, made prior attempts to void the contract?

Mr. JOHNSON. I do not—no, I do not think you could say we tried to void it. We certainly had negotiated changes to the situation. We had disagreements. There is no question about that. But in the end, we agreed unilaterally on our side. We wrote a letter to the other groups and said we are going to abide by this. A deal is a deal and we will honor those terms.

Mr. CASEY. So after learning about the payments, and as I understand it, you learned essentially when the rest of the world learned, after learning about the payments to Mr. Berman and Mr. Speir, what about that caused you to take the drastic step, and very difficult legally, as I understand it, step of trying to void the contract?

Mr. MARTINECK. Clearly, there was information that they withheld from us when we entered into that agreement which would have entered into our decision to make an agreement with them, and without knowledge of that, there is no way we would have signed that agreement.

Mr. CASEY. At a hearing back in November of 1999 on your motion to void the contract, an attorney who was a witness for POGO, in other words, opposing your motion to void the contract, gave a deposition in which he offered the opinion that neither Mr. Berman nor Mr. Speir would have qualified as a relator or a fact witness or an expert witness in your case and that neither POGO nor Danielle Brian would have qualified as a relator in a Federal oil royalty false claims case. Do you take issue with that assessment?

Mr. JOHNSON. Based upon the knowledge that we have today, I would agree with that. But that was not the knowledge that we had at the time we originally entered into that agreement.

Mr. CASEY. Thank you, ma'am.

Mrs. CUBIN. Since we still have a little over three minutes on the Majority side, I just have one question for you, Mr. Johnson. If the government were to have taken large volumes, and I mean large volumes of its royalty oil in kind rather than in value, could the sweet versus sour misclassification have occurred?

Mr. JOHNSON. That particular misclassification would have been much more difficult to have been hidden.

Mrs. CUBIN. Thank you very much, and I thank you both, Mr. Martineck and Mr. Johnson, for your candid testimony. It has been highly educational. I think that you have given us a firm and credible account of everything that happened. The phone calls from Ms. Brian and from Mr. Berman, in my opinion, are quite disturbing. I appreciate your willingness to respond to the subpoena and answer our questions. Those folks will have an opportunity in two weeks to provide their version of the conversations, but in the meantime, please accept the Committee's thanks for being here and your cooperation in this oversight hearing. You are now free to go get some lunch or something, so thank you very much.

Mrs. CUBIN. Next, the chairman requests Mr. Bernard Kritzer to come forward to the table. I think he is out in the hall. Would someone ask him to come in? Mr. Kritzer has been here waiting and is just not here for the moment.

Mr. Kritzer, would you please take a seat at the table? Oh, before you are seated, as you know, we had advised you earlier that all the witnesses would be sworn in and so I ask you to raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the responses and statements given will be the truth, the whole truth, and nothing but the truth?

Mr. KRITZER. I do.

Mrs. CUBIN. Thank you very much. I would like to start out by saying how relieved and glad we are that all your medical tests turned out all right. Thank you for being here today and please accept my apology for having to wait for so long before you have been able to come forward. Your testimony will be very important to us and I do appreciate your cooperation.

Mr. KRITZER. Thank you.

Mrs. CUBIN. We will start out, I would like to just make a brief statement. Mr. Kritzer is now a Commerce Department expert on international chemical weapons treaty enforcement. Previously, Mr. Kritzer was the Department of Commerce's expert on oil markets. He was a widely known and highly regarded, and I would like to underscore that, authority on undervaluation of oil and royalties in the California market. Mr. Kritzer's work on oil matters is cited as a key source by Bob Armstrong, former Assistant Secretary at Interior.

Mr. Kritzer has also been cited, along with Mr. Berman, Mr. Speir, and Mr. Henry Banta and the Lobel law firm, who were comrades in arms in fighting for greater Federal attention on California royalty underpayments. Yet in the December 1996 agree-

ment and then again in November 1998, the checks that were awarded to Mr. Speir and Mr. Berman were kept secret from Mr. Kritzer.

I think we will learn that Mr. Kritzer's depth of knowledge and depth of feeling on this matter is matched by the strength of his commitment to be an honest public servant. So with that, I would like to begin questioning.

We are back under the five-minute rule, which is regular order for the Committee, so I will allow the questioning to begin with Mr. Brady.

Mr. BRADY. Madam Chairman, if I may reserve my question at this time.

Mrs. CUBIN. Certainly. I will go ahead, then, for five minutes and then I will yield to the other members of the Committee.

Mrs. CUBIN. Mr. Kritzer, would you please describe your career at Commerce and your responsibility for analyzing oil markets?

STATEMENT OF BERNARD KRITZER

Mr. KRITZER. My career at Commerce began in 1982. At that time, I worked for the Under Secretary for the International Trade Administration who was responsible for export control matters, among other things, controls on oil and natural gas equipment that was sold to East Bloc countries, and this involved in great detail work on the Soviet pipeline embargo and the sanctions in 1982-83.

Following that, I worked on the Alaskan oil and did a study on Alaskan oil in the 1980s, followed by a study on West Coast oil markets and the opportunities to export heavy crude oil from California in the late 1980s. At the same time that these things were going on, I worked on a whole series of national security studies involving imports of oil, involving U.S. energy trade with Communist countries.

Sometime in the mid-1990s, I began to move away from oil, specifically in 1996, and with the exception of work on a Section 232 analysis, in the last four years, my work has been in high technology and it has been, now, in the chemical weapons and nonproliferation areas.

Mrs. CUBIN. Are you generally familiar with the oil royalty problems that were described by Mr. Johnson and Mr. Martineck and do you agree with their conclusions about the underpayment of the royalties?

Mr. KRITZER. I was not here for the attendance. I was outside, so I cannot—since I did not hear their conclusions, I cannot—I can tell you, based on personal experience, I am familiar with the problems and recognize that for some time there has been underpayment.

Mrs. CUBIN. And I think that you have been pretty vocal about that, is that correct?

Mr. KRITZER. Yes.

Mrs. CUBIN. It has been no secret that you have been aware of the practices, as well?

Mr. KRITZER. Yes.

Mrs. CUBIN. Interior, I believe, should have come forward and done more and done it sooner. How long ago did Interior have sufficient information to start collecting underpayments and to put a

stop to those continuing underpayments, do you know—an estimation.

Mr. KRITZER. If I had to estimate the time at which the situation obviously became very sensitive to all was in late 1991. After a period of approximately 10 or 15 years, the State of California was able to settle with the oil industry for some $350 million. Around that time, the State of Alaska also worked out a settlement for greater sums of money.

Mrs. CUBIN. You are an acknowledged expert in oil markets. In fact, you played a key role in Interior's interagency study on California's undervaluation. Let me ask you, do you consider yourself a whistleblower?

Mr. KRITZER. How do you define a whistleblower?

Mrs. CUBIN. Well, I think maybe that is the question. What is a whistleblower? You were an expert. You vocalized the underpayment, how it was done. You wanted this practice to stop. But you did not ever get any money for having done that, is that correct?

Mr. KRITZER. That is correct.

Mrs. CUBIN. Did you know about the Johnson and Martineck False Claims Act suit while it was sealed?

Mr. KRITZER. My only familiarity with that suit came as a result of some discovery requests in the last couple of years and an occasional reading of the newspapers. In these last four years, I really have not been heavily involved in this area. So other than occasional glimpse at the newspaper or in some request under discovery and, I believe, FOIA, that this was going on.

Mrs. CUBIN. How long have you known Bob Speir and have you worked on oil matters together?

Mr. KRITZER. I have known Mr. Speir approximately a decade. We worked on a wide variety of issues together.

Mrs. CUBIN. So that is quite a long time. You have known him very well, and have you collaborated on these oil underpayments work with Mr. Speir?

Mr. KRITZER. Mr. Speir and I were members of the Interagency Task Force in Interior between 1994 and 1996 and we worked together as part of a team on that.

Mrs. CUBIN. And what about Mr. Berman? Have you consulted with Mr. Berman or has he consulted with you on oil issues?

Mr. KRITZER. I have known Mr. Berman for a similar amount of time. We have worked on a number of issues. I would say that in both instances, since many of the studies that my agency did and other agencies do in the field of petroleum are interagency, I worked with these two gentlemen on many studies, and at the time, on a wide variety of energy issues, I found them to be highly competent, authoritative, and they did a very good job.

Mrs. CUBIN. Mr. Berman was not a member of that task force; is that correct? But you and Mr. Speir were?

Mr. KRITZER. That is correct.

Mrs. CUBIN. Did Mr. Berman work closely with the task force? Was he at the meetings of the task force? And although he didn't belong to the task force, per se, did he frame the study that was being developed by the task force?

Mr. KRITZER. To the best of my recollection in 1993 and 1994, Mr. Berman was part of a process at Interior where a study was set up. For whatever decisions they made, he was not a member of the task force. I found him, in the times that we consulted, to be a useful source of technical information or if I wanted to corroborate, he was among the number of people you could corroborate if there was something that had been said to us, you know, by people from Interior.

Mrs. CUBIN. And did he attend most of the task force or all of the task force meetings?

Mr. KRITZER. To the best of my recollection, no, he did not.

Mrs. CUBIN. Do you have any idea how many he did attend?

Mr. KRITZER. I can't recollect that. I don't think many——

Mrs. CUBIN. But he did attend——

Mr. KRITZER. I don't think many, if any, but I don't have a——

Mrs. CUBIN. But you don't know.

Mr. KRITZER. [continuing] complete recollection.

Mrs. CUBIN. Okay. Thank you very much. My time has expired. And now I will recognize Mr. Brady.

Mr. BRADY. Thank you, Madam Chairwoman, and thank you Mr. Kritzer for being here.

I am curious, you are very knowledgeable in the area of oil valuation. You had, like the others, inside access to information dealing with this issue. You had perhaps the same motivation in that you think and believe strongly it is unfair how the valuation has been paid and collected, and you want to see that righted. But you weren't approached, you weren't part of a scheme to pay off Government officials for insider information. Knowing what you know now, but more importantly knowing your own principles, why do you think you weren't approached?

Mr. KRITZER. Excuse me for a second.

[Witness conferring with counsel.]

Mr. KRITZER. To answer your question, Mr. Congressman, in general, there at one time was a passing conversation between myself and Mr. Banta about the possibilities of looking into this. The conversation took place sometime in 1996, long before the California study was over. Absent that conversation, there were no other discussions.

Mr. BRADY. Sure. And I was asking more so, in that conversation, do you feel like you encouraged more contact with Mr. Banta or discouraged more conversation with him about this issue?

Mr. KRITZER. Well, all I can tell you is the issue never came up again in that context.

Mr. BRADY. Good. Let me ask you this: If looking at that check to a Government official, looking at that agreement between two Government officials and a special interest group, if you had been approached, in your personal view, if you had been approached to provide information that would enter into an agreement to receive payment for that information, would you have considered that agreement illegally supplementing the salary of a Federal employee, in your belief?

Mr. KRITZER. Well, one, I am not expert on, you know, what's legal and——

Mr. BRADY. No, I'm just asking you——

Mr. KRITZER. [continuing] illegal in this.

Mr. BRADY. [continuing] your personal view from——

Mr. KRITZER. My mandate, my mission at that point in time, in light of where I was in my career and the assignments I had, was to complete the study, to bring to the attention of the Congress what was going on on this issue. We'd hoped that there would be a public to deal with it.

Mr. BRADY. So——

Mr. KRITZER. Once I completed that mission, that was my, that was my job.

Mr. BRADY. So, no, you wouldn't see—you would have thought that agreement was just fine?

Mr. KRITZER. No, I didn't say that.

Mr. BRADY. Would you have viewed it as unethical?

Mr. KRITZER. I don't think I want to choose to use words and judge something where other people may be sort of viewing it. This as something I would not have gotten into. But I cannot, you know, I'm not going to judge what others——

Mr. BRADY. Sure. And I'm not asking you. The reasons you wouldn't have gotten into it, was it it would have been simply personal ethics? Would it have been statutory law against that? Would it have been disclosure or ethical regulations which you were under as an employee? Any of those?

Mr. KRITZER. Throughout my career, in addition to the work that I have done, there have been a number of times where I have done a number of things that were pro bono, that were supplemental to what I did. Once I have completed the assignment, I move on. I think that's about as clear as I can make it to you.

Mr. BRADY. Well, that's—I was hoping you'd be a little clearer than that. But just let me summarize because your answer is, I take it, you didn't see anything unethical, improper, any violation of law or ethical standards with an agreement had you approached to participate in this scheme?

Mr. KRITZER. I was, until the news came up last year that this had broke, I was unaware of any agreement.

Mr. BRADY. Sure.

Mr. KRITZER. Okay.

Mr. BRADY. But, again, back to the question. Had you been approached to participate in that agreement, receiving that type of check for the information that was provided, would you have viewed that to be proper?

Mr. KRITZER. I would have viewed it as something I would not have done.

Mr. BRADY. So improper?

Mr. KRITZER. You can, you know, you can determine as appropriate with that.

Mr. BRADY. I don't——

Mr. KRITZER. I'm not trying to——

Mr. BRADY. Oh, I'm not asking you to cast aspersions. I'm just trying to find out——

Mr. KRITZER. It's not something that I would be involved with.

Mr. BRADY. Yeah. It's not something you would be involved in.

Mr. KRITZER. Yeah. That is correct.

Mr. BRADY. And the reason is personal beliefs or statutory, agency laws, regulations against such an agreement?

Mr. KRITZER. A series of things, to be——

Mr. BRADY. Both?

Mr. KRITZER. A combination of things.

Mr. BRADY. A combination of both?

Mr. KRITZER. A combination of those issues, plus the fact that at the time, after some 25 years in the field, I was moving away from the field, so that I was seeking other assignments, plus the fact that I just, I just do my job, and I, you know, go about my business.

Mr. BRADY. So you see your job——

Mrs. CUBIN. The gentleman's time has expired.

Mr. BRADY. Thank you very much.

Mrs. CUBIN. Mr. Schaffer is now recognized for 5 minutes, and Mr. Jones's phone needs to be answered before it keeps ringing.

Mr. SCHAFFER. Thank you, Madam Chairman.

I want to get back to your impressions of a couple of issues with respect to Mr. Berman. You stated that, although that he did not belong to that study team—let me state it a different way.

During Mr. Johnson's testimony, he had suggested that his role in new oil royalty regulations being developed by the Department of Interior were rather substantive, and that suggested that he took some credit for framing the overall policy of the rule. Do you believe that to be accurate? Was Mr. Berman—how involved was he in framing policy and the rules at the Department of Interior?

Mr. KRITZER. My comments on Mr. Berman's activities in this area would have to cut off in the middle of 1996. I think that he was a very good analyst. He worked on some of these issues. And to the best of my knowledge and recollection, he worked on a whole series of other issues related to coal, Indian issues, other things.

Mr. SCHAFFER. And although he was not a member of the study team, would you say he framed the study?

Mr. KRITZER. I think he was one of a number of people who had initially identified or framed the issues prior to the start-up of the study based on his knowledge.

Mr. SCHAFFER. A number of people being how many?

Mr. KRITZER. Whoever else would have been over there in Interior working with him, which I assumed would have been MMS people.

Mr. SCHAFFER. His involvement you would characterize as substantial, as remote, what? Can you give us a better picture of——

Mr. KRITZER. Once the study began, he was a person if you had a question, a technical question, a question on an issue that had been represented to us by MMS, he was one of a number of people that I could check on because I make a practice that when I work on a study that I corroborate facts to make sure that they are accurate, and there frankly were some times I was not sure that the facts I received were accurate.

Mr. SCHAFFER. Thank you. Do you know POGO?

Mr. KRITZER. Yes, I know POGO.

Mr. SCHAFFER. Do you know Danielle Brian and Henry Banta?

Mr. KRITZER. Yes, I know them.

Mr. SCHAFFER. Do you know other members of the law firm of Lobell, Novins, Lamont?

Mr. KRITZER. I know several.

Mr. SCHAFFER. Do you know why they would be interested in oil valuation in royalty matters?

Mr. KRITZER. I think probably this was something that they had done in the past and had some past activity and involvement in with regard to the State of California.

Mr. SCHAFFER. Did Berman or Speir ever tell you they were going to share proceeds of such a suit with——

Mr. KRITZER. No.

Mr. SCHAFFER. [coninuing] POGO, Mr. Banta and Ms. Brian are clearly familiar with your work in oil royalty underpayments. Did Banta, Brian or anyone else connected with POGO ever offer you a public service award?

Mr. KRITZER. No.

Mr. SCHAFFER. Any other kind of recognition, plaque, citations, certificates, anything like that——

Mr. KRITZER. Again, I would have to mention——

Mr. SCHAFFER. [continuing] awards of any sort?

Mr. KRITZER. [continuing] one thing to you, Mr. Congressman, that I can talk to you and help you, in terms of the valuation study in the 1994-1996 period. Once I left this area, my knowledge of what activities went on or were alleged to have gone on, I have no knowledge of it. I was removed and involved in other activities.

Mr. SCHAFFER. Sure. Thank you. In your view, would former Interior Assistant Secretary Bob Armstrong deserve credit for supporting efforts to address the California underpayment problems?

Mr. KRITZER. I would like to say this: That I thought that Assistant Secretary Armstrong was an outstanding person. I found that it was a pleasure to serve with him, that he had to balance a whole series of competing interests, including not only his staff, but for the first time taking people from another agency, integrating them into a study, being prepared to recognize that everybody brought a different perspective, had different things that they could bring to share. Had he not been on the study, I think that, and somebody else had directed the study, the results could have been much more confrontational.

Mr. SCHAFFER. I just want to, before that light turns red, did he, in your opinion, support or oppose the efforts by you, Berman, Speir, POGO and the Lobell firm?

Mr. KRITZER. I wouldn't phrase it that way. I thought he supported the efforts by the members of the team to do the best job possible. I always felt it was kind of sad that he became sick at the end when it was an important time to shape things. But he was one of the best people in this field that I've worked with in my years in the government.

Mr. SCHAFFER. So you couldn't say whether you would characterize it as support or——

Mr. KRITZER. He worked—all I know is my contact with Bob Armstrong was through that team.

Mr. SCHAFFER. Yeah.

Mr. KRITZER. It was not through any other activity. I have not seen him since probably April or May of 1996.

Mr. SCHAFFER. Any indication that he opposed the efforts?

Mr. KRITZER. The efforts of the Interagency Working Group?

Mr. SCHAFFER. Yes.

Mr. KRITZER. No. I thought he was, without him——

Mr. SCHAFFER. That and the subsequent False Claims Act.

Mr. KRITZER. I have no knowledge that he was involved in that. As I tried to tell you a little earlier and to your colleagues, once I left in 1996, I moved on to other things, so my knowledge in those areas is nonexistent.

Mr. SCHAFFER. Thank you, Madam Chairman.

Mrs. CUBIN. The chair now recognizes Mr. Gibbons.

Mr. GIBBONS. Thank you, Madam Chairman.

Mr. Kritzer, welcome. We are pleased that you have come here to help us better understand the issue that's before us today. I would like to step back, if I could, to that time frame in the 1996 time frame.

Prior to you leaving, your area of expertise dealing with oil royalties in, as you said, I believe, 1996——

Mr. KRITZER. Uh-huh.

Mr. GIBBONS. Had you any knowledge at that point in time when you left of the Johnson and Martineck qui tam lawsuit or false claim lawsuit?

Mr. KRITZER. I think the answer is no, but I really don't recollect.

Mr. GIBBONS. You told the Committee that you learned of it through news reports, newspaper.

Mr. KRITZER. It was either newspaper reports or, which mentioned the whole series of false claims, or more appropriately, when I first dealt with it in the sense that I had to deal with it directly, it was through some discovery requests for documents in my Department.

Mr. GIBBONS. Do you remember what time frame that would have been?

Mr. KRITZER. The document request would have been last year some time.

Mr. GIBBONS. So you had no knowledge of the Johnson qui tam lawsuit prior to 1999.

Mr. KRITZER. There was a general knowledge through reading several articles that there were a number of people who were pursuing lawsuits. And I think one of the articles identified one of these people.

Mr. GIBBONS. Now, general knowledge, though, is what I'm trying to get at. What did you generally——

Mr. KRITZER. It would have just been reading the industry press. That's all.

Mr. GIBBONS. Okay. You indicated that you know of the Program on Government Oversight or POGO——

Mr. KRITZER. Uh-huh.

Mr. GIBBONS. When did you first become familiar with them?

Mr. KRITZER. Well, I knew about them because Mr. Banta and I have been friends for a number of years.

Mr. GIBBONS. And when would that friendship have developed?

Mr. KRITZER. This friendship developed in the 1980s, long before these issues were raised.

Mr. GIBBONS. And I would presume that that friendship carried over into some of your roles in the 1980s dealing with the California oil royalty issues?

Mr. KRITZER. There were no California oil royalty issues in the 1980s. The only issue that occurred was in the 1988 Omnibus Trade and Competitiveness Act, there was a requirement placed by Members of the Congress, the California delegation, to take a look at the heavy oil in California, which basically was not able to be marketed because there was such an excess, and to see if it was appropriate to consider an experiment to market small quantities of that oil. And at that time he and I got, you know, met.

Mr. GIBBONS. You indicated that you knew Ms. Danielle Brian. How do you know her?

Mr. KRITZER. I met her on several occasions through Mr. Banta.

Mr. GIBBONS. Do you recall the first time you met her?

Mr. KRITZER. It was probably at a Christmas party.

Mr. GIBBONS. Do you recall when that was?

Mr. KRITZER. Possibly the mid-1990s. I don't have that good a recollection.

Mr. GIBBONS. Okay. What relationship have you had with POGO since you left your oil valuation job in 1996? What relationships have you been involved with POGO?

Mr. KRITZER. Okay. Well, oil valuation was just one of a number of activities I did.

Mr. GIBBONS. Well——

Mr. KRITZER. Okay.

Mr. GIBBONS. Okay.

Mr. KRITZER. My relationship——

Mr. GIBBONS. You know what I'm asking the question about.

Mr. KRITZER. My relationship was, other than occasionally having lunch and keeping up contact as old friends, none.

Mr. GIBBONS. So nothing professional.

Mr. KRITZER. No, just keeping up contact as old friends or if somebody were to call me. And on occasions, Mr. Banta would call me about nothing related to oil, but just say, "I have a case in a particular area. Who should I contact at your Department?" You know, it would be a social call for a couple of minutes.

Mr. GIBBONS. And you indicated in your testimony that no one ever advised you that Mr. Speir or Mr. Berman was going to be paid any sort of a fee for their efforts in this lawsuit; is that correct?

Mr. KRITZER. That's correct.

Mr. GIBBONS. When did you ever hear that they were paid or going to be paid?

Mr. KRITZER. I heard allegations that they were going to be paid surprisingly in sometime about this time a year ago, when I was convening an interagency study on an issue. And following the meeting, I went up to someone and just said, "You know, we have a mutual friend." And I forget, one of them I identified, and somebody said to me, "Oh, by the way, did you know this?" That was the first time I had any, you know, clear indications or allegations that this had gone on.

Mr. GIBBONS. Mr. Kritzer, I presume in all of your time that you've spent within Federal Government in the employment of our Nation that you are familiar with the ethics requirements.

Mr. KRITZER. Yes.

Mr. GIBBONS. Can you help this Committee understand what the ethics rules are with regard to unsolicited gifts?

Mr. KRITZER. I have never accepted anything.

Mr. GIBBONS. Do you know if the ethics rules address that issue?

Mr. KRITZER. Yes, it does address that issue.

Mr. GIBBONS. Would you expect that most employees in the employment of the Federal Government would understand the same thing you understand?

Mr. KRITZER. I can only speak for myself, sir.

Mr. GIBBONS. Well, just your expectation.

Mr. KRITZER. There is certainly an expectation of that.

Mr. GIBBONS. Thank you, Madam Chairman.

Mrs. CUBIN. Thank you.

I just have one final question that I wanted to ask you, Mr. Kritzer. If I understand your view correctly, you saw correcting the royalty underpayment problems, when you were involved in that, to be your duty as a Federal employee; is that right?

Mr. KRITZER. It was to provide a completed report, which then hopefully recommendations would be made, and they would have been acted upon to revise the basis upon which oil royalties were evaluated for the State of California at that time and that, you know, some other—any other actions that were necessary would have been carried out.

Mrs. CUBIN. But you never viewed that as a personal financial opportunity for yourself; is that correct?

Mr. KRITZER. No.

Mrs. CUBIN. I would like to commend you for the work that you do. And frankly, Mr. Kritzer, I think that you are an excellent model for other Federal employees to follow. I think that your integrity and your personal behavior certainly is above reproach, and I appreciate that very much coming from any government employee. So I do thank you for that. I think if someone was handing out awards for diligent, public-spirited people that understand the problems in valuation of oil, that you certainly ought to be a person to receive that credit.

So, with that, I would like to ask if you would be willing to respond in writing to any further questions that the Committee might have at a future time.

Mr. KRITZER. Yes, I will. I'd be glad to.

Mrs. CUBIN. The record will be kept open for 2 weeks, as is the policy of this Committee.

So, with that, I thank you again very much for being here, and you are excused.

Mr. KRITZER. Thank you.

Mrs. CUBIN. Thank you.

The chair now will call forward Mr. Leonard Brock. If you would just remain standing for a moment, Mr. Brock. Again, we advised you earlier that your testimony would be taken under oath.

[Witness sworn.]

Mrs. CUBIN. Thank you very much.

Mr. Brock, I want to start out by acknowledging the hardship that you have gone through in coming all of the way from California. Believe me, if anyone knows that travel isn't easy, I am one.

We will try to not keep you any longer than necessary, but I do thank you for being here.

You have been subpoenaed to help this Subcommittee learn whether a valid public service award program motivated you, Danielle Brian and POGO to share your information of Johnson v. Shell proceeds with two Federal employees.

Mr. Brock, POGO told Mr. Martineck, Mr. Johnson and Mr. Wright that you provided the key to success in any False Claims Act. They highly value your contribution to the case. What share do you receive from the settlement proceeds paid to the group consisting of you, Ms. Brian and POGO? What is your share?

STATEMENT OF LEONARD W. BROCK

Mr. BROCK. I'd like you to rephrase that, please.

Mrs. CUBIN. Okay. Do you receive 25 percent of the amount distributed by the relators to the Brian, Brock and POGO group? Do you receive 25 percent?

Mr. BROCK. That's right.

Mrs. CUBIN. Did you participate in the decision to share the money with Mr. Berman and Mr. Speir?

Mr. BROCK. I never heard those names until the thing hit the fan with the other relators.

Mrs. CUBIN. Did Mr. Banta or Ms. Brian or anyone connected with your suit tell you that POGO had a plan or an agreement to share the money with two Federal employees?

Mr. BROCK. Never until the thing came to light.

Mrs. CUBIN. So POGO represented to their partners in the settlement sharing contract that you were a highly valued ally, so valuable that Ms. Brian and POGO deserved a share equal to the relators, but POGO never told you a key fact about their intention for that money, which was to share it with Mr. Berman and Mr. Speir. Do you approve of POGO paying those Federal employees and withholding the information from you and the other parties until it was too late to stop the first check?

Mr. BROCK. I don't know enough about what they did and why to comment on that.

Mrs. CUBIN. As a general principle, would you think it was appropriate for Federal employees to accept this sort of payment?

Mr. BROCK. I don't know what it was for.

Mrs. CUBIN. We don't either. That's what we're trying to find out.

Mr. BROCK. That's good. You're not going to find out from me.

[Laughter.]

Mrs. CUBIN. As a City of Long Beach employee, can I ask you if you would have accepted payment like this, as a city employee in the Long Beach case?

Mr. BROCK. There would have been no reason for any city employee to have to be paid to give them any information about any of our oil properties. Anything we did was a public record, and we're very happy to discuss with anybody what we got, and why and how.

Mrs. CUBIN. Mr. Brock, I know that is true, and I'd like to say amen to that. Wish it were the case in this situation.

Mr. BROCK. If it were, you wouldn't have this problem.

Mrs. CUBIN. That's right. We wouldn't be here today.

How did POGO recruit you to join the false claim act suit?

Mr. BROCK. You'll have to ask them on that. I got a call from Danielle, asked me if I would like to participate in this, and I told her yeah.

Mrs. CUBIN. And so you didn't really think that you had a lot of pertinent information.

Mr. BROCK. I knew I had as much as anybody about California.

Mrs. CUBIN. About the California, the Long Beach lawsuit.

Mr. BROCK. That's right.

Mrs. CUBIN. Okay. Did you know Ms. Brian at that time? Had you ever spoken to her before?

Mr. BROCK. She called me one day. I'm not sure how she got my name or why, but she called me, and we discussed it, and then after several discussions, I agreed that I would help her.

Mrs. CUBIN. So did you know her before that time?

Mr. BROCK. Never.

Mrs. CUBIN. And what kind of help was it that she told you you could give to the case?

Mr. BROCK. Well, in what we discussed was the fact that the Federal Government leases in California were being underpaid. I knew that, and I told her I would be involved and help her.

Mrs. CUBIN. And what would that involvement entail? I mean, what actions—was it just lending your name or were there——

Mr. BROCK. Would you like me to tell you why?

Mrs. CUBIN. Pardon me?

Mr. BROCK. Would you like me to tell you why?

Mrs. CUBIN. Yes.

Mr. BROCK. I had dealt on my job, and by the way, I'm not a whistleblower. I worked for the City of Long Beach and the State of California, and it was my job to get as much money for the oil as I could.

Mrs. CUBIN. Good.

Mr. BROCK. I wrote contracts that I thought would do that. I tried to get the top price that we could get and deserved for our oil, and I was doing that when price controls came in. We got frozen—low-gravity oil got frozen at a depressed level, and I tried to convince the DOE, the cost of living or whoever they were, whoever would listen, Senators, Congressmen, that the price of oil was low, and it was frozen wrong, and they should change it.

And along the line, when I was trying everything I knew why, it dawned on me, look, the Feds are probably getting paid on the posted price, so they're getting robbed. And so I tried to get from the Fed, not me personally, but my staff—I had a good staff of petroleum engineers—they tried to find out what royalty oil was in California from the Feds, what they were paid for it, and they were told that that was proprietary information and they couldn't get it.

So what I did, I had my staff find out from the Conservation Committee of California how much Federal oil there was. I assumed that probably the royalty was 12.5 percent because I had seen bids that that's what it was. So I took 12.5 percent of that. I knew how much the oil was underpriced, and so I came up with a number. And I went to the Interior, to the DOE, to Senators, to Congressmen, and in our discussions I said that the Federal Gov-

ernment is being underpaid on Federal oil by "X" number of dollars.

Mrs. CUBIN. And that——

Mr. BROCK. I was told by one gentleman in the FEA that their duty was to keep the price of gasoline down and not worry about what oil was. To me, that's wrong. My life has been in the oil business. When it came up that this other was coming up, I was very happy to lend what little support I could give to it, and I thought it might be substantial.

Mrs. CUBIN. So just to sum this up, your expertise all related to the situation in the Long Beach suit, and you didn't really have any knowledge of oil valuation and taxation or royalties in the rest of California. Would that be correct for me to say?

Mr. BROCK. Not at all. I represented the California Independent Producers Association before the DOE and before Congress Committees and whatever, and we collaborated on what the prices were and what people were being paid for. We had an evaluation made of the price of California low crude oil. We had a very complete study that the oil companies never refuted, except the fact that they said that it didn't include amortization. Well, after several years, you know, a buck a barrel at 100,000 barrels a day pays out pretty fast. And so we tried to get them to change, to give us an answer again, and that's when they had just started to change what they were doing, and the Feds put the price control on.

During this period of time, one of the contracts that I was very instrumental in drawing up, we had the right to have the oil companies tell us what they paid for oil all over, what they paid for our oil and everything. And in one of these discussions that we had, it happened, I believe it was in 1974, one of—I'm not sure if it was my people or one of the State people, but somebody got a letter they picked up from the oil company, and in there it showed the scheme that they were using, which is called a three-cut exchange, how they were concealing to us what the value of the oil was. The oil companies tried to hide that. We finally had to, I guess Ken Corey [ph] probably went to court, and we got that. That's when we decided to file the oil suit.

And after the oil suit——

Mrs. CUBIN. Excuse me, Mr. Brock. While that is very interesting, the focus of this oversight hearing is to determine the payment to two Federal employees who were involved in policymaking about oil valuation. So it really isn't relevant. But I do thank you for your information.

My time has expired, and the Chair will now recognize Mr. Brady.

Mr. BROCK. Let me say you asked me why I was involved. I was trying to tell you.

Mrs. CUBIN. Thank you very much.

Mr. BROCK. I'm a good citizen of the United States. I was a Boy Scout, and I felt that it was important that I gave my knowledge to somebody that would listen and maybe do something about it.

Mrs. CUBIN. And I commend you for that. And I certainly would agree that you are a good citizen. Your being here also demonstrates that. Thank you, Mr. Brock.

Mr. Brady?

Mr. BRADY. Thank you, Madam Chairman.

Let's go back to something you said that's very important. I don't know how you were raised, but in Washington one of the excuses for dismissing inquiries like this is that everybody does it, everybody does things like this. As a city employee, as a government employee in a position of trust, with inside information on the California royalty issue, would you have entered into agreement like this? Would you have accepted that check, as a Federal—as a government employee, for the information you had dealing with oil royalties in California?

Mr. BROCK. It wouldn't be necessary in California.

Mr. BRADY. So California would have stopped you from it or your own ethics would have stopped you from it?

Mr. BROCK. No. That information that—I can't think of any information that anybody would need that wasn't readily available in California.

Mr. BRADY. So, in that case, you didn't provide any additional expertise. But had you been approached to participate, you would not have or you would have? No problem or it wouldn't have been—earlier you said, "In California we are very open. We don't go, we don't do things like this." I'm just trying to clarify would you have participated in that——

Mr. BROCK. That is our side of it. That is the government side of it.

Mr. BRADY. So it's no problem from your standpoint? You'd have been happy to be——

Mr. BROCK. Well, I don't know——

Mr. BRADY. I don't get the impression you would, and I don't know why you wouldn't simply say "no." Because I get the impression from you that you were doing your job, that you felt it was a duty, and you feel strongly about it. And in your earlier statement you said this would not have happened in our government, in our city government. So is the answer, yes, you would have participated or, no, you wouldn't have?

Mr. BROCK. Participated in what?

Mr. BRADY. In any agreement where, as a government official, you were paid by special interest to provide insider information that ultimately lined everyone's pocket.

Mr. BROCK. I can't think of any information that I would have that somebody would be willing to pay me for.

[Laughter.]

Mr. BRADY. But, well, now you've been paid $900,000 for the information you were supposed to have known in this case.

Mr. BROCK. In this case? Look, I did in California——

Mr. BRADY. And I would think having a million-dollar expertise didn't occur overnight. So are you knowledgeable or are you not knowledgeable?

Mr. BROCK. Would you like me to finish?

Mr. BRADY. Sure.

Mr. BROCK. Okay. I did and presented for the State and city exactly the same thing that Benjie Johnson and his partner are doing, and they're getting millions of dollars for it. When I was in California, I did it for the city and State and got nothing except my paycheck. I felt that the government was being taken, and when

I had an opportunity, somebody suggested to me will I help them, I agreed.

Now, do you think that those two gentlemen there had an agreement with us and said that we'll give you 40 percent——take 40 percent and give 20 percent to somebody else if they didn't think, at that time, there was a good reason for it? We could have been the relators and they could have been on the outside.

Mr. BRADY. In that case, because you bring it to a wonderful close, in that case, if they had come to you, and you were an employee of the government and had that million-dollar, $900,000-information that you possess, would you have, as a government employee, would you have entered into this secret agreement to be paid for that information?

Mr. BROCK. I probably wouldn't.

Mr. BRADY. I don't think you would.

Final question: There's 600 courts in America these suits can be filed in. I don't know how many other cases you're a relator in. I would imagine not a lot. Is there reason out of 600 that you chose the Lufkin court to file this brief in?

Mr. BROCK. Pardon?

Mr. BRADY. Is there a reason your attorneys, on your behalf in this important case, filed it in the Lufkin court?

Mr. BROCK. I don't understand that. Rephrase that.

Mr. BRADY. As an important part of this case, filing a very important lawsuit on an issue you're very knowledgeable on, a suit was filed in the Lufkin court on your behalf. What was the reason, from your knowledge, why was the Lufkin court chosen to file this suit?

Mr. BROCK. Well, you'll have to ask them.

Mr. BRADY. No. But you are them.

Mr. BROCK. Pardon?

Mr. BRADY. I apologize. But you are them. You filed the suit.

Mr. BROCK. Okay.

Mr. BRADY. So why did you choose Lufkin court, out of 600 in the country, to file?

Mr. BROCK. Well, I still don't understand.

Mr. BRADY. Was there——did you want to say something? Does your attorney understand that question?

Mr. BROCK. No, I didn't understand it, and all of the legal——

Mr. BRADY. No, I'm sorry. Does your attorney understand it?

Mr. BROCK. All of the legal stuff that went on has been done by the attorneys. When I entered this thing, I had never heard of a, what is it, a qui pay or whatever, or a relator or any of those things. I had never heard of those. I was doing the end of my job that I wasn't being able to do in California.

Mr. BRADY. Thank you, Madam Chairman.

Mrs. CUBIN. The gentleman's time has expired.

You stated, Mr. Brock, that you did all of the work in Long Beach and you didn't get one dime for yourself out of all of the millions that were recovered in unpaid royalties in that suit. And then you referred to Mr. Johnson and Mr. Martineck, who have received millions. And you asked if that was right.

So what I wanted——

Mr. BROCK. You misunderstood me if you said if I thought that was right. Of course it was right. That's the law. I'm not objecting to that. I'm just saying that you seem—the Committee seems to have the feeling that those two guys are doing a great job for the government, and nobody seems to think that I have anything to do with it. I think the questions of your attorneys, "You mean, you're not doing anything, and you're getting all of this money?" I think that we were part of the law. We had an agreement with them, and the only reason they made that agreement was because they thought that we might have been the only relators. That's what they said, if you read between the lines.

Mrs. CUBIN. Okay. So——

Mr. BROCK. They didn't give us 40 percent for nothing.

Mrs. CUBIN. Was what you were trying to say that you think you deserved the million dollars that you have so far received? You think you deserved that because of the work that you did in Long Beach?

Mr. BROCK. No, I think I deserve that because I had an agreement with them. What I'm getting has no affect on what the government gets. They get it all, and then because of a side agreement they had with me, I get my share.

Mrs. CUBIN. Mr. Schaffer?

Mr. SCHAFFER. Thank you, Madam Chairman.

Mr. Brock, a minute ago you—Mr. Brady mentioned that you had received about $900,000 as your, so far, for your involvement in the suit; is that accurate?

Mr. BROCK. That sounds about right.

Mr. SCHAFFER. Does that sound right? Let me ask you about the False Claims suit. Your deposition was delayed about a day. Why was that? Do you remember? It was scheduled for, I don't remember the date, but it was pushed back one day. Do you know why? Can you tell us why?

Mr. BROCK. When was this?

Mr. SCHAFFER. In Dallas. You were scheduled for the deposition, and it had to be delayed for one day?

Mr. BROCK. Oh, I had a back problem.

Mr. SCHAFFER. Is it true that the other parties questioned your knowledge in the case?

Mr. BROCK. Pardon?

Mr. SCHAFFER. Was it true that the other parties questioned your knowledge in the case——

Mr. BROCK. I don't believe so.

Mr. SCHAFFER. [continuing] about the case for that day.

Mr. BROCK. I don't believe so.

Mr. SCHAFFER. You don't believe so?

Mr. BROCK. No.

Mr. SCHAFFER. Okay.

Mr. BROCK. I don't think that anybody there has ever questioned my knowledge on that case.

Mr. SCHAFFER. Did Mr. Wright ever request that you be removed from the case at that time?

Mr. BROCK. I'm not sure. They had some—that side agreement came and went, and I don't know how long it took to get it.

Mr. SCHAFFER. Did you show up the next day for the briefing——

Mr. BROCK. Pardon?

Mr. SCHAFFER. Did you show up the next day for the deposition with three pages of handwritten notes?

Mr. BROCK. Yes. Yes.

Mr. SCHAFFER. Did you have three pages of handwritten notes?

Mr. BROCK. Pardon?

Mr. SCHAFFER. Did you have three pages of notes with you?

Mr. BROCK. Three pages of notes?

Mr. SCHAFFER. Were you coached/briefed on what needed to be, on the matters of the case at the deposition?

Mr. BROCK. Yeah.

Mr. SCHAFFER. You were. Okay. How about for today's testimony?

Mr. BROCK. How about what now?

Mr. SCHAFFER. How about for today's testimony? Were you briefed and coached on your presentation to the Committee today?

Mr. BROCK. Well, not really. I was briefed on how this thing works, and what I'm doing, why I'm here, and that sort of stuff. It had nothing to do with what I'm going to say, if that's what you mean.

Mr. SCHAFFER. Okay. As far as content, what you're telling us is your own——

Mr. BROCK. Yeah. They said what this is, and what you're doing——

Mr. SCHAFFER. Very good.

Mr. BROCK. And why I'm here, which is a little——I don't understand.

Mr. SCHAFFER. How would you characterize your knowledge of the suit filed?

Mr. BROCK. Pardon?

Mr. SCHAFFER. How would you characterize your knowledge, your involvement with the specifics of the False Claims case? Are you very knowledgeable about it? Are you involved in a detailed sort of way?

Mr. BROCK. No. Let me say this: I think it came out in all of this that my knowledge of the Texas problems is limited. However, I think I know probably together as much as anybody else about California. This lawsuit went to both California and every place, the United States. There is no doubt but what Benjie Johnson and those guys know so much more about Texas than I do. However, I know a whole heck of a lot more about California than they do.

Mr. SCHAFFER. Well, congratulations.

Mr. BROCK. Now, then, when the relators split out, they, for their own reasons, I don't know, decided to handle it all alone. They never talked to me. They're doing it all themselves, and that's their legal right. They are a relator and I'm not. However the judge could have made it the other way.

Mr. SCHAFFER. How do you know the law firm Lobell, Novins and Lamont?

Mr. BROCK. How? Pardon?

Mr. SCHAFFER. How do you know them, the law firm? How did you come into contact with them? How did you learn about them? How do you know them?

Mr. BROCK. Which ones are you talking about?

Mr. SCHAFFER. The name of the law firm, Lobell, Novins and Lamont, are you familiar with them?

Mr. BROCK. Very well, from California.

Mr. SCHAFFER. How did you come to know them?

Mr. BROCK. Well, they were the lawyers for the State of California, and——

Mr. SCHAFFER. Very good. How long have you closely worked with them?

Mr. BROCK. Probably from early seventies, after price control.

Mr. SCHAFFER. Do you know Lon Packard?

Mr. BROCK. Yes.

Mr. SCHAFFER. Did Mr. Packard ever discuss with you the False Claims case that you're involved in?

Mr. BROCK. I can't recall specifically anything. And I understand that my lawyer and I have a privilege on such things.

Mr. SCHAFFER. Thank you, Madam Chairman.

Mrs. CUBIN. The gentleman's time has expired.

Mr. Brock, could you refresh my memory. Who are the relators in this case?

Mr. BROCK. Benjie and his partner.

Mrs. CUBIN. The only ones?

Mr. BROCK. No.

Mrs. CUBIN. The chair now recognizes Mr. Inslee for 5 minutes.

Mr. INSLEE. Thank you, Madam Chair.

Mr. Brock, you expressed some kind of mysticism as to why you're here, and some of us share that view. But I want to take a stab at explaining to you how that's come about. And I guess the best way I can try to explain it is to sort of explain the way this Committee works at the moment, and I want to give just kind of a metaphor. Perhaps you'll understand.

Mr. BROCK. I think I've seen.

[Laughter.]

Mr. INSLEE. It's kind of like this: Let's assume that you were standing outside of a bank, and these two big trucks pulled up beside the bank, and these guys went into the bank, and they came out with about—big sacks stuffed with $300 million, and they threw it in the back of the truck, and the trucks had "Acme" written on the big side, and the other one said "AAA, Inc." on the other side of the other truck. And then the trucks pulled away, and the bank tellers came out screaming, "These guys just heisted $300 million from us," and then this Committee showed up on the scene. What we would do is haul, give a subpoena to you to investigate you about whether you had removed tags from your mattresses or not——

[Laughter.]

Mr. INSLEE. [continuing] in violation of the prohibition against removal of the tags from mattresses that is an important American policy. And I just want to explain to you that, so you'll understand how this works because essentially that's what we're doing here today, and we're not using our time to make sure the taxpayers' get their monies' worth, and we're not using our time how to make sure whistleblowers will continue to have faith in this system to allow us to save money for taxpayers, and we are also not allowing

the Justice Department review of the facts of this case to continue unimpeded by politics.

And I just want to tell you that it's a sad day that the politics of this have intruded in this situation. And when I get a chance in this Committee, we're going to ask questions about the fellows in the trucks, rather than the fellows and the mattresses, and I appreciate your attendance here, Mr. Brock, and patience.

Mr. BROCK. Well——

Mrs. CUBIN. Mr. Inslee's comments clearly reveal that he hasn't been here for the hearing and really doesn't understand what the oversight hearing is about.

The chair now calls on Mr. Gibbons for 5 minutes.

Mr. GIBBONS. Thank you, Madam Chairman. And certainly, Mr. Brock, if those two big guys coming out of that bank with two big sacks of money stopped and gave you or tried to give you money, would you have taken it? Certainly not. I mean, that's a rhetorical question, but it ought to bring us all back to reality.

What we're here to talk today about is the ethical problems of whether two Government employees illegally or unethically took money they weren't entitled to for their part in discovering the illegal payments or failure to make payments to the United States for royalty problems. So that's where we're going with this Committee hearing, and I hope that it's evidently clear to you and your attorney, who is sitting behind you. This is not a hearing on whether or not you, Mr. Brock, have committed any crime at all. What we're trying to do is discover the facts and circumstances surrounding whether or not two Government employees should or should not have been paid by a private corporation money. This is where we're going, and this is where we want to focus on. Nothing should be drawn to any other conclusion other than that.

Now, when, Mr. Brock, did you file your lawsuit, your qui tam or False Claim lawsuit in this case?

Mr. BROCK. I'm not sure. The attorneys did that.

Mr. GIBBONS. Do you remember even the year you filed it?

Mr. BROCK. Probably 1997.

Mr. GIBBONS. Probably 1997. Do you recall why you chose the lawyers you chose?

Mr. BROCK. I didn't choose anything. The attorneys did it.

Mr. GIBBONS. All right. So you are sort of an innocent bystander, and they came along and asked you to be a named relator in this lawsuit.

Mr. BROCK. I submitted a lot of data to them.

Mr. GIBBONS. When did you or when were you first contacted by Danielle Brian and POGO?

Mr. BROCK. Sometime in the middle nineties.

Mr. GIBBONS. Middle nineties. Would that have been 1995?

Mr. BROCK. It could have been.

Mr. GIBBONS. Had they contacted you at any point in time from the middle nineties about filing a lawsuit or joining them in their lawsuit?

Mr. BROCK. When I first talked to them, I don't know that we discussed a lawsuit. I agreed that I would help to try to correct the inequities that was being paid for the Federal Government oil. I wasn't sure at the time if it involved a lawsuit. I haven't been in-

volved in one for 15 years in California. I thought it was a very distinct possibility.

Mr. GIBBONS. You've already testified that you didn't know anything about the royalty process in Texas. Did you agree——

Mr. BROCK. The sale of oil?

Mr. GIBBONS. The Texas royalty problems in Texas.

Mr. BROCK. I wasn't familiar with how the oil was sold. I didn't know what schemes they were using in Texas.

Mr. GIBBONS. Certainly. Did you agree when your lawyers indicated that they wanted to file your suit in Texas?

Mr. BROCK. I don't even know if I was considered in where they filed it.

Mr. GIBBONS. I certainly understand that.

Could you have filed your complaint for a false claim in California?

Mr. BROCK. What did you say, should I have?

Mr. GIBBONS. Could you have?

Mr. BROCK. I don't know why not.

Mr. GIBBONS. I would agree. Let me go back——

Mr. BROCK. And I certainly don't know why they filed in Lufkin, Texas.

Mr. GIBBONS. Thank you. And I agree. We don't know why either, and that's part of the process and part of the problem that we want to find out about later on.

Mr. BROCK. Good luck.

Mr. GIBBONS. I agree.

[Laughter.]

Mr. GIBBONS. It's going to be difficult because there are so many people that here are intentionally avoiding answers or that come here with a convenient lapse of money that we have got to delve into.

Let me ask you what you talked to Danielle Brian about when she invited you to be part of the process to recover these oil royalties? How did she talk to this matter with you?

Mr. BROCK. Well, as I say, it's about as fuzzy as when it was. But I'm sure that over a period of several conversations we talked about what I could offer, what my involvement was in California. And I made it very clear to her that I didn't want to get stuck with a bunch of attorneys' fees. I think you have a letter in front of you which was our agreement that she show that. I was willing to get involved, and do some help and try to correct something that was very wrong, and I was willing to get involved, but I just didn't want to pay a bunch of attorneys.

Mr. GIBBONS. One final question, Madam Chairman, and I see my time has elapsed. But let me say that you can obviously remember that you did not want to get in touch—or did not want to get settled with a bunch of attorneys' fees. Did she ask you about what you knew about the oil royalty schemes in Texas at the time?

Mr. BROCK. I don't know that we discussed that.

Mr. GIBBONS. The gentleman's time has expired.

The chair recognizes Mr. Underwood for 5 minutes.

Mr. UNDERWOOD. Thank you, Madam Chairwoman. I appreciate the opportunity to interact with obviously the star witness of the afternoon, Mr. Brock.

I'm trying to understand as well how it is, what is the nature of your appearance before the Committee. Are you an expert on ethics laws?

Mr. BROCK. Pardon? Am I what?

Mr. UNDERWOOD. Are you an expert on ethics?

Mr. BROCK. Hardly.

Mr. UNDERWOOD. Are you an expert on the False Claims Act?

Mr. BROCK. No, I've never even read it.

Mr. UNDERWOOD. So what it is that you really think that you could contribute to these hearings that will clarify some of the questions that have been raised before the Committee relative to the payments to Berman and Speir?

Mr. BROCK. Well, that's a difficult question. I think that there isn't anything that can be done to solve the overall problem as long as there are people that are willing to make undercover deals. You have an industry that controls the refining. And if they do not fairly deal with the government or anybody else, I'm not sure there's anything that you can do.

Mr. UNDERWOOD. Well, I appreciate that very much because I think that brings us back to the nub of the question that should be in front of the Committee. And while I appreciate and understand the majority's insistence on drawing attention to the problems that they are trying to draw attention to, I think that your statement there really indicates where we should focus our attention.

Thank you very much.

Mr. INSLEE. Would the gentleman yield some of your time just for a moment?

Mr. UNDERWOOD. Sure.

Mr. INSLEE. I'd like to ask a question. Perhaps one of the members of the panel or the Chair could help me on this. Is there any question but that the two government employees themselves could have been the relators in this case? Is it clear that they, if they had chosen so, that there is nothing that would have prohibited them for themselves initiating this lawsuit? Is that clear or is there an issue about that?

Mrs. CUBIN. Mr. Inslee, I suggest you discuss that with your staff. I'm sorry that you aren't prepared.

Mr. INSLEE. I was looking for a higher power. So I was seeking the Chair's comments in this regard. And I guess reclaiming my friend's time, my understanding, and I have been advised by our staff that the two employees, should they have decided to, could themselves have been the relators in the case. And if that is true, they could have legally received the compensation associated with being a relator in a whistleblower case one way or another, whether they get it first through a third party or they get it directly as the relators themselves.

And the reason I ask that is, assuming that's true, and to my knowledge that is true, I am having difficulty seeing the difference of an effect receiving it from a third party, assuming that they had not involved themselves in any decision making that would somehow create——

Mrs. CUBIN. Would the gentleman yield?

Mr. INSLEE. I would certainly do that. And I would appreciate your wisdom in that regard.

Mrs. CUBIN. The fact is, and had you been able to stay, I understand you are busy, and we can't all always be here, the fact is that it is true that Federal employees can file a qui tam suit. They, however, the vast, huge majority of the time are thrown out by the courts because the courts do not want money to be the determining factor in policy decisions that Federal employees or government employees might have to make. But in the very, very small percentage of cases where the Federal employee, where it may not be thrown out, in those cases, that employee is then walled off from any decision relating to the issue at hand.

So Mr. Berman and Mr. Speir would have been walled off from advising on the new oil valuation regulation. They would have been walled off, not been able to advise or make any policy. So that is where it falls short. That's where the break in ethics and possibly the legal system goes.

Mr. BRADY. Madam Chairman, may I inquire——

Mrs. CUBIN. The time is Mr. Underwood's.

Mr. UNDERWOOD. Go ahead.

Mr. INSLEE. If I could reclaim just for a moment. My understanding is we haven't had any witnesses involving the False Claims Act who are experts on it. And I would suggest that if that is really the thrust of this inquiry, that really is what we should be looking for on how to deal with issues that you raise under the False Claims Act. And I would suggest to you if that is the inquiry of the Committee, we would be well advised to sort of seek some expert testimony in that regard. It's just a suggestion. It's a friendly suggestion, and I'm sincere about it.

Mrs. CUBIN. Thank you.

Mr. Brady?

Mr. BRADY. Madam Chairman, I have an inquiry of the Chair. As I understand it, Mr. Brock filed a suit on a State topic with which he wasn't familiar with, under an Act he never read, based on knowledge that many people in California had and received $900,000 for it. My question to you is we don't know anything either. Can we get in on this lawsuit before it ends?

Mrs. CUBIN. Mr. Brady, your question is out of order.

Mr. Brock, the last thing of you, and thank you very much for being here. We do appreciate that it was difficult for you, and thank you for being here.

Mr. BROCK. I was happy to be here.

Mrs. CUBIN. Thank you.

I want to make this clear: You did offer something to this lawsuit, to POGO, and that is you gave them information, and that is why you are being paid, why you have raised money; isn't that correct?

Mr. BROCK. Yes.

Mrs. CUBIN. That's what your testimony is. And so do you think it's fair then to say that's why the other people who have received money from this lawsuit; that is, like Mr. Berman and Mr. Speir, they received the money because of information they provided as well?

Mr. BROCK. I'm not sure. I had nothing to do with that, and I don't know what the deal was.

Mrs. CUBIN. Thank you very much. And again thank you for your testimony and have a safe trip back to California.

Mr. BROCK. Thank you.

Mrs. CUBIN. Mr. Schaffer, did you have a——

Mr. SCHAFFER. Yes. Thank you, Madam Chairman. Just in response to the questions raised by Mr. Inslee. There's an e-mail here that I would quote from, and it's to the senior attorney in the Johnson case. He says, I don't want to mention exactly who.

Mrs. CUBIN. Mr. Schaffer——

Mr. SCHAFFER. Madam Chairman, that essentially characterizes the point that you just made. It's that it's important to note that had the Department of Interior known that employees were actively involved in a case of that sort, that they would have been walled off for fear of giving the appearance, effectively, that Federal regulators are subject to personal gain as a result of their involvement. And your characterization of the likely effect is not just one of speculation, but one that this Committee is aware is a very real consideration.

Mrs. CUBIN. So do you have a document that you are asking to be submitted to the record?

Mr. SCHAFFER. No, Madam Chairman.

Mrs. CUBIN. Oh, okay then. We'll move on to——

Mr. INSLEE. Mr. Schaffer, would you yield? I want to ask you a question about that document. Would you entertain one question?

Mrs. CUBIN. Certainly, Mr. Inslee.

Mr. INSLEE. Mr. Schaffer, I just took a look at the document I think you're referring to. Has there been any suggestion by any quarter that, in essence, the oil companies paid too much because of some action by the two employees in question here? Has anyone asserted that somehow their actions resulted in the oil companies paying more than they should have because these individuals made some decision that was influenced adversely by this payment? Has there been any suggestion like that? To my knowledge, I have not heard any.

And the reason I think that's significant in this inquiry is so far I haven't seen an assertion that there has been any damage to any party resulting from this. I haven't heard anyone saying these, you know, these agents of the government made me pay more to the government than I was supposed to. Now, I've heard the opposite. I've heard that the oil companies have been made to pay what they were supposed to pay due to litigation and whistleblower efforts that they did not pay and were required to do so. But I haven't heard anyone say that these employees made a mistake and made us pay more than we were supposed to. Is there any assertion like that, that anyone is aware of?

I'm seeing the Chair shake her head no. And if that is not true, aren't we sort of looking a little bit down a dead end here if we don't have any injury, if we don't have anything that went wrong here, if nothing's broke, I haven't seen anybody assert that there was a broken leg economically suffered by anyone, as a result of these employees' misconduct. And I guess what I'm questioning is

if we haven't seen a crime, what are we looking for here? And that's a serious question.

Mrs. CUBIN. Mr. Inslee, I'd like to respond to your question because I agree with you.

The only party—I can't say the only party—but the party that we care most about that may have been damaged are the American public, are the taxpayers, are the people who should be receiving every single penny of royalties that are due them. It is not out of the realm of possibility—okay. So, first of all, number one, we have to protect the integrity of the process of government. We have to protect the ethical rules that apply to public servants for the sake of the public. But then going beyond that, my sincere question is, and I am sincere about this, has POGO damaged or has POGO, through good intentions. I am not saying that I think anyone set out to do anything evil, but because of the payments to these two Federal employees, there are still lawsuits out there that are pending.

Now, because these employees were involved in the new oil valuation regulation, they remained involved after they had the agreement for sure and possibly after they received the checks. Have they damaged the standing of the citizens of the United States so that those oil companies will be more brazen about going to court and challenging the existing rule? In my opinion, the existing rule is tainted by the fact that two advisers at least and policy makers at most took this money. That's the damaged party, Mr. Inslee.

So now with that, the Chair would call Mr. Keith Rutter to the table please.

Mr. Rutter, thank you for being here.

[Witness sworn.]

Mrs. CUBIN. Thank you very much. I appreciate your being here.

Mr. Rutter, as the assistant executive director of POGO, you have been subpoenaed to help the Subcommittee understand the process which resulted in POGO reporting to the Internal Revenue Service that payments to Mr. Berman and Mr. Speir were one-time public service awards; the process by which the POGO board decided to establish such an award program, if they did; the decisions by the board to file and prosecute an oil royalty lawsuit and the meeting minutes reflecting their decisions.

I'd like to start out with just some preliminary questions. How long have you been employed by POGO, Mr. Rutter?

STATEMENT OF KEITH RUTTER

Mr. RUTTER. Since 1989.

Mrs. CUBIN. And what are your responsibilities?

Mr. RUTTER. I have a variety of duties throughout the organization.

Mrs. CUBIN. Excuse me? I couldn't hear what you said. Is your microphone on?

Mr. RUTTER. My responsibilities include a variety of things throughout the organization.

Mrs. CUBIN. So do they include handling tax matters and record keeping, such as board minutes?

Mr. RUTTER. Yes, they do.

Mrs. CUBIN. Are you generally familiar with the requirements for making IRS Form 990 and IRS Form 1023 available to the public?

Mr. RUTTER. I'm sorry. Could you——

Mrs. CUBIN. Yes. I just wonder if you are generally familiar with the requirements for making those two Internal Revenue Service forms available to the public.

Mr. RUTTER. I'm sorry. When you say "generally familiar——"

Mrs. CUBIN. You are aware that there is a requirement to make those forms public.

Mr. RUTTER. Yes. We comply with the IRS regulations.

Mrs. CUBIN. Can anyone just walk in off the street and review a copy of those records in your office?

Mr. RUTTER. Yes. Anyone can walk off the street and review those records.

Mrs. CUBIN. Well, then can you tell me why POGO won't furnish those documents to this Committee.

[Witness conferring with counsel.]

Mr. RUTTER. Madam Chair, I am advised by my counsel that the Committee may require me to answer all questions pertinent to the subject under inquiry. My attorney advises me that this question is not pertinent to a proper subject before the Committee.

Mrs. CUBIN. Mr. Rutter, I would advise you that the forms that I referred to were subpoenaed by this Committee, and therefore they are pertinent to this hearing.

[Witness conferring with counsel.]

Mr. RUTTER. The chairman, according to the rules of the House and of this Committee, the chairman is solely authorized to determine what is pertinent for a hearing and what is not. Additionally, the proceeds from those lawsuits, Mr. Rutter, are reported on those forms. And since the payments to Mr. Berman and Mr. Speir came out of the proceeds of that lawsuit, which is reported on that form, I again ask you, since these are public documents and since someone can walk in off of the street and see them, what is the reason that POGO refused to honor the subpoena and supply those to this Committee?

Mr. RUTTER. With respect, and I understand the chair's position, and upon advice of counsel, I will stand by my objection.

Mrs. CUBIN. Upon advice of counsel, excuse me? I didn't hear the last.

Mr. RUTTER. I said that upon advice of counsel, I am going to stand by my objection.

Mrs. CUBIN. Moving right along. Were you asked to consult an accountant and lawyers about POGO's payments to Mr. Berman and Mr. Speir? I want to point out I am not asking what advice those experts gave, but according to some of the minutes that I saw, I will repeat the question. Were you asked to consult an accountant and lawyers about the payments to Mr. Speir and Mr. Berman?

Mr. RUTTER. I'm sorry. When you say "was I asked to consult an accountant and an attorney——"

Mrs. CUBIN. Yes, or did you just do that of your own accord? According to the minutes, an accountant and lawyers were contacted about POGO's payments to Mr. Berman and Mr. Speir.

Mr. RUTTER. Correct.

Mrs. CUBIN. And who contacted those accountants and lawyers?

Mr. RUTTER. I was involved in the meetings with the accountants and the lawyers.

Mrs. CUBIN. So you selected the lawyers and the accountants yourself or did someone recommend that to you?

Mr. RUTTER. The accountant we have had for several years, and I don't recall who suggested this particular lawyer that we went to see.

Mrs. CUBIN. Who determined that there was a necessity for an accountant, and particularly a lawyer, to be consulted regarding those payments?

Mr. RUTTER. I think it probably was a joint decision.

Mrs. CUBIN. A joint decision of whom?

Mr. RUTTER. Of the staff.

Mrs. CUBIN. And the staff would be you and Danielle Brian and no one else?

Mr. RUTTER. No. There are more staff members than just Danielle and I.

Mrs. CUBIN. So who decided then—please give me the names—that it was necessary to contact an accountant and an attorney to give these awards?

Mr. RUTTER. I don't know if it was, when you say "it was necessary," it was, you know, probably reached upon agreement. It was a good idea.

Mrs. CUBIN. Who decided that it was a good idea and who decided who you should call?

Mr. RUTTER. I think the staff. I'm sure there were——

Mrs. CUBIN. Please give me the names of all of the people that were involved in the decision.

Mr. RUTTER. At the time of——

Mrs. CUBIN. When the decision was made.

Mr. RUTTER. Right. The staff at the time would have been Danielle Brian, myself, Marcus Corbin. I don't know if there was anybody else at the time. I'm not familiar with——

Mrs. CUBIN. So you're saying it was your own decision to do that. Danielle Brian didn't recommend you to do that or tell you to do that.

Mr. RUTTER. No. I said it was a joint decision. I'm sure that we were in, you know, contact with the board of directors as well.

Mrs. CUBIN. That was my next question. Who on the board did you consult about whether or not you needed to contact an attorney?

Mr. RUTTER. I can't recall specifically.

Mrs. CUBIN. But you do recall that the board was in on that decision or not?

Mr. RUTTER. Yes. The board was aware.

Mrs. CUBIN. Were they aware prior to the time that you contacted the accountant and the attorney or were they notified after?

Mr. RUTTER. As I recall, some of the board might have been aware prior to the contacting of the attorney and the accountant.

Mrs. CUBIN. Okay. So you have a recollection about that. Which board members were those that you recall?

Mr. RUTTER. No, I said, you know, I'm sure somewhere. I don't know. I don't know specifically.

Mrs. CUBIN. You do know that, you do remember that you're under oath.

Mr. RUTTER. Yes.

Mrs. CUBIN. And you do recall that there were board members that knew prior to the time you, but you don't know who they were; is that your testimony?

Mr. RUTTER. No. I'm saying that I'm recalling that they were, but I don't remember specifically who each particular one was or not.

Mrs. CUBIN. Any one, not each—any one.

Mr. RUTTER. I'm sorry. Any one?

Mrs. CUBIN. Any one board member that was aware before you contacted the accountant and the attorney.

Mr. RUTTER. You know, more than likely it would have been, you know, David Hunter I think was chair at the time, but——

Mrs. CUBIN. Mr. Banta was chairman at the time.

Mr. RUTTER. I don't think that's correct, ma'am.

Mrs. CUBIN. Oh, okay. Hunter in 1998. Did Mr. Banta take part in—did Mr. Banta specifically take part in the notification and the contacting of an accountant and an attorney?

Mr. RUTTER. I'm sorry?

Mrs. CUBIN. Did Mr. Banta contribute anything to that decision?

Mr. RUTTER. I don't think so. I don't recall.

Mrs. CUBIN. So you don't know. Okay.

So your testimony is that the accountants were accountants that you had used on a regular basis.

Mr. RUTTER. Uh-huh.

Mrs. CUBIN. And that the lawyers, you don't know how they were selected.

Mr. RUTTER. No, they were just recommended.

Mrs. CUBIN. And who recommended them?

Mr. RUTTER. I don't know. I don't recall.

Mrs. CUBIN. Do you recall if the lawyers were specifically identified to you as experts in the field of employee ethics?

Mr. RUTTER. [No response.]

Mrs. CUBIN. I mean, why would you feel the need to call an attorney is my question. You don't know who told you to do it, you did it, and you don't remember why you would feel the need to do it? I'm confused here.

Mr. RUTTER. We were—we were going to share the settlement money, and we wanted——

Mrs. CUBIN. And was there some question of whether or not that was legal or ethical?

Mr. RUTTER. We wanted to make sure that we took all of the proper procedures to ensure that the funds were distributed in a proper manner. And these were just some of the steps that we took.

Mrs. CUBIN. So was there a question then whether or not——

Mr. RUTTER. We had never done this before. We wanted to talk to people who had advice on, you know, doing it.

Mrs. CUBIN. So these lawyers were experts in ethics?

Mr. RUTTER. I don't know.

Mrs. CUBIN. But your question was based on ethical concerns; is that correct?

Mr. RUTTER. When you say "ethical concerns," we wanted to make sure the decisions were, that the payments were made properly.

Mrs. CUBIN. And what do you mean by "properly"? What do you mean by that?

Mr. RUTTER. Within the rules.

Mrs. CUBIN. Pardon me?

Mr. RUTTER. Within the rules.

Mrs. CUBIN. Within what rules?

Mr. RUTTER. Well, the rules of law and the rules of accounting.

Mrs. CUBIN. The rules of law? So there was a question in your mind whether or not this was legal.

Mr. RUTTER. No, ma'am. I said we wanted to make sure that they were done properly. I'm not saying that there was any question at the time.

Mrs. CUBIN. Does POGO keep minutes of all of their board meetings?

Mr. RUTTER. Yes, we do.

Mrs. CUBIN. Are they circulated to the board after the meetings?

Mr. RUTTER. Yes, they are.

Mrs. CUBIN. Are they then approved at the next meeting?

Mr. RUTTER. Yes.

Mrs. CUBIN. And whose job is it to take minutes at the meetings?

Mr. RUTTER. It is my job.

Mrs. CUBIN. And you type them, file them, and circulate them to the members?

Mr. RUTTER. Yes, I do.

Mrs. CUBIN. Were you present at the December 9th, 1996, board meeting?

Mr. RUTTER. I think I was.

Mrs. CUBIN. Did you keep the minutes of that meeting?

Mr. RUTTER. Yes. If I was there, I would have kept the minutes.

Mrs. CUBIN. Were you present at the October 27, 1998, board meeting?

Mr. RUTTER. I don't have the minutes in front of me, but if I was there, I would have kept the minutes.

Mrs. CUBIN. You would have typed and kept the minutes of that meeting as well?

Mr. RUTTER. Yes.

[Discussion off the record.]

Mrs. CUBIN. I'm going to have a copy of some minutes that we have run and delivered to Mr. Rutter. So I will yield to Mr. Underwood.

Mr. UNDERWOOD. Well, thank you, Madam Chair.

I just wanted to clarify, I thought we were operating under the 5-minute rule. And—pardon me? It was a little bit more than that.

I just want to clarify, we are operating under the——

Mrs. CUBIN. I only have two ears and a lot of people asking.

Mr. UNDERWOOD. Yeah, well, you can give me some attention now.

Mrs. CUBIN. I am happy to do that.

[Laughter.]

Mrs. CUBIN. You certainly deserve it.

Mr. UNDERWOOD. So are operating under the 5-minute rule for this?

Mrs. CUBIN. Yes.

Mr. UNDERWOOD. Okay. Thank you.

Mr. Rutter, I guess some inferences have been made about the fact that you asked, POGO asked for legal assistance or some kind of legal representation in the process of acquiring this sum of money. Did POGO ever have experience, an experience like this previously?

Mr. RUTTER. No, we did not.

Mr. UNDERWOOD. And so wouldn't it have been kind of a prudent course of action, don't you think, that if you all of a sudden came into this large sum of money that you would then do the prudent thing, which is to seek legal assistance? Is that the general spirit in which you sought legal assistance?

Mr. RUTTER. Yes, it is.

Mr. UNDERWOOD. And so there was nothing, at the time that you asked for it, there was nothing nefarious or, at the time, there was nothing like that in your consideration.

Mr. RUTTER. No, not at all.

Mr. UNDERWOOD. I would also like to ask about the nature of your services to the organization. How would you characterize the minutes that you keep for POGO board meetings. We have a very organized and formal set-up here, where we have a stenographer, and we have lots of people here taking minutes, and we have all kinds of staff up here recording every single nuance. And even then we have disagreement about what our intentions were or trying to read back in the record.

So maybe you could just characterize for the Committee how do you keep minutes, and were they transcribed? Were these impressions? Did you just use paper and pencil? And was it just solely left up to you? Could you describe that.

Mr. RUTTER. Yes. These minutes are not verbatim minutes. I will take notes, brief notes at the time. Sometimes it's, you know, a few days afterwards, and I will, when I get the time, I will type them up, and I'll send them out to the board. The board reviews them. I might give the minutes to the board again. At the next board meeting, they review the minutes and vote to accept the minutes or edit or amend them.

Mr. UNDERWOOD. So would it be fair to characterize the nature of the minutes as kind of impressionistic on your part? You know, you'd have the——

Mr. RUTTER. Absolutely.

Mr. UNDERWOOD. [continuing] the details are in there, but you know, if you put in an additional word or two, there was not a lot of quibbling in the subsequent board meeting about what did you mean by this or——

Mr. RUTTER. Yes.

Mr. UNDERWOOD. [continuing] as there would be today, perhaps.

Mr. RUTTER. It's my imp—yes, it was totally based on my impression of what transpired.

Mr. UNDERWOOD. Okay. Since you weren't allowed to, in the conduct of this hearing, witnesses are not allowed to give an opening statement. Perhaps there's something you would like to say to the

Committee, and perhaps you'd like to—is there—I'm sure there's a lot of, maybe the temptation would be not to say anything, and that would be better. You'd be better off not saying anything. But is there something that you would like to add based on your observation of the previous witnesses and the likely questions and the kinds of questions that have been asked? Is there something that you would like to characterize your end of the decision-making process?

Mr. RUTTER. I greatly appreciate the offer, but I'm going to abstain from at this time.

Mr. UNDERWOOD. Okay. Thank you.

Jay, would you like to ask a quick question?

Mr. INSLEE. I would appreciate a moment if I could.

Mr. UNDERWOOD. Sure.

Mr. INSLEE. Mr. Rutter, approximately how much has been paid by the oil companies to the Federal Government or their agencies as a result of the whistleblower activities, approximately?

Mr. RUTTER. It's my understanding it's over $300 million.

Mr. INSLEE. And could you help me on the sequence of those payments relative to when the payment to the whistleblowers in this case took place?

Mr. RUTTER. I'm sorry. Could you rephrase that?

Mr. INSLEE. Tell me the sequence of the payments by the oil companies to the Federal Government relative to when knowledge came out about these payments to the whistleblowers.

Let me start again. Let's scrub that.

Mr. RUTTER. Okay.

Mr. INSLEE. It's late in the afternoon. Let me try a different tack.

What I'd like to know is whether anyone has, to your knowledge, asserted that they were injured, wrongfully injured, as a result of the decisions or any actions by the two government employees in this case? In other words, have any of the oil companies said, "We paid too much. We paid $300 million, and we only should have paid $250 million"? In any of these lawsuits, have they made that assertion?

Mr. RUTTER. Not to my knowledge.

Mr. INSLEE. Have they made that assertion anywhere in public, to your knowledge?

Mr. RUTTER. No, not to my knowledge.

Mr. INSLEE. Have you been sitting through this hearing? I had to step out to some other hearings. Have you been here the whole time?

Mr. RUTTER. No, I've been in and out. Sorry.

Mr. INSLEE. Okay. Thank you.

Thank you, Madam Chair.

Mrs. CUBIN. The gentleman's time has expired.

The chair now recognizes Mr. Brady.

Mr. BRADY. Thank you, Madam Chairman.

Mr. Rutter, did Mr. Berman or Mr. Speir provide any information to POGO or to POGO's attorneys that led to or were incorporated into the lawsuit that you filed?

Mr. RUTTER. Not to my knowledge.

Mr. BRADY. So you are saying that Mr. Speir and Mr. Berman absolutely provided no information to the organization or to your

attorneys that was used, incorporated, developed for that lawsuit, none whatsoever?

[Witness conferring with counsel.]

Mr. RUTTER. Not to the best of my knowledge.

Mr. BRADY. To your knowledge, absolutely no information was provided.

Mr. RUTTER. No.

Mr. BRADY. What then, what services then were Mr. Berman and Mr. Speir compensated for to the tune of $383,000, as your minutes and agreement reflect?

Mr. RUTTER. I'm sorry. When you say "services," they had, for years, spoken out loud to anybody who would listen to them about the problem.

Mr. BRADY. Let me read you the minutes of December 9th.

"Ms. Brian informed the board that POGO was pursuing a False Claims lawsuit that Mr. Banta, then chair, know that POGO is the only relator that is public. The others are in private agreements. Ms. Brian mentioned that an agreement had been worked out if there was some reward or whatever and whenever an amount would be won, that the individuals that have been doing this for years would be compensated." These individuals, she confirms, are Mr. Berman and Mr. Speir.

My question is, since my guess is POGO doesn't write a lot of $383,000 checks and that people simply don't walk out and give them to people along the street, my question is simple, and any common-sense person would ask it.

What services did they provide that POGO compensated them for?

Mr. RUTTER. As I said, they didn't provide any information——

Mr. BRADY. They provided no services?

Mr. RUTTER. For the lawsuit.

Mr. BRADY. Even though they were identified as to be compensated, they were confirmed that they were owed that money, owed that money as the prior agreement had said, and you're saying that there was no services whatsoever provided that they were compensated. I just want to make clear.

Mr. RUTTER. Right. Could I see the—incidentally, you're reading from this. Can I see a copy of those minutes?

Mr. BRADY. Of the minutes of December 9th? Sure. Since you provided them to us, I was hopeful that you might have a copy.

Mr. RUTTER. Okay. I'm sorry, sir, you're reading from the?

Mr. BRADY. December 9th, 1996 minutes.

Mr. RUTTER. Oh, I have the October 27, '98.

Mrs. CUBIN. Would staff please get Mr. Rutter the correct minutes?

Mr. BRADY. The pertinent question still remains. What services were they compensated for?

Mr. RUTTER. I just want to make sure that I'm reading the same thing, so that——

Mr. BRADY. Sure.

Mr. RUTTER. I mean, you're referring to something that was in the minutes, correct?

Mr. BRADY. Yes, sir.

Mr. RUTTER. Well, in this instance here, sir, of the board minutes, when I say "compensated" I just mean that—you know, I'm referring to they'd be doing this work for years, and if we saw any money from the lawsuit, we would share it with them.

Mr. BRADY. But later on you pursued—when one of the insiders protested that they weren't being paid as per the agreement—so under award, this was an agreement—your executive director, Ms. Brian, confirmed, "Yes, we will pay you as we promised to." My question is very simple. What services did they provide you that warranted $383,000?

Mr. RUTTER. They provided no services for the lawsuit.

Mr. BRADY. That is hard to believe, and for an entity that purports to be open and honest in their dealings, it is unbelievable. I think POGO can rightfully change its name to "Paying Off Government Officials", because clearly, in this case, unless you're the greatest Santa Claus that ever walked this earth—and I have some suggestions of other people who could use $383,000 for doing nothing for your organization—your testimony is not believable.

Thank you, Mr. Chairman.

Mr. GIBBONS. [presiding] Mr. Inslee.

Mr. INSLEE. If I may inquire of my friends across the aisle or the chair—and this is maybe a procedural question as much as anything—it seems to me that there's two questions I don't think we're going to get to today as far as answers that I think are really pertinent here. One is what the real policies are of the respective agencies regarding situations like this where there might be compensation to an employee, either as a relator or as a witness who's getting information. And my understanding is, at least today, we're not going to have testimony. I guess the question is, in any part of this hearing do we intend to do that? And second, are we going to hear any testimony that you're aware of to assert that these employees in fact did something inappropriate that changed a person's payment to the Federal Government?

And that is a question, because I think those really are the important questions, and I don't think we're going to get to them today. And I would just my friends across the aisle if they have any intention to bring witnesses forward on those issues?

Mr. GIBBONS. First, Mr. Inslee, let me say that we're well aware of those questions, that we certainly can bring those at a later time. I think also one would have to also be aware that the purpose and policies of asking these very questions go to standards of conduct of government employees, and that's the basis by which we're trying to get to the matter at hand. According to 5 CFR 2635, Subpart B, which is the Ethical Requirements of all Government Employees, there are some rules and regulations in which they have violated that we are going after with this determination, and relevancy of the testimony as regard to those violations of those standards of conduct. We would be happy to bring, in my view, and I would make the recommendation along with you, that another hearing we do delve into the questions of those standards and whether or not these employees violated those standards.

And I am informed also that there is a hearing planned for the 18th on those issues.

Mr. INSLEE. Well, let me just suggest that the real kernel of the issue here ought to be was someone prejudiced or injured wrongfully by these employees' conduct? And I would just suggest that if someone's going to assert that, that we need to hear testimony, and of course, the Majority's in charge of the panel who will be called, so let me just make that suggestion. If people want to know that, we need to hear testimony in that regard.

Mr. GIBBONS. And I would suggest to you, Mr. Inslee, that any time there's a breach of ethical violation, there is indeed a damage done to the American public, and that is the damage we're after.

Mr. INSLEE. I would agree with you. I would agree with that rhetorical statement.

Mr. GIBBONS. Thank you. Did you have any questions, Mr. Inslee?

Mr. INSLEE. No, thank you.

Mr. GIBBONS. Mr. Schaffer? Mr. Schaffer, before you begin your questioning, let me say we've just been called on a vote of approving the conference report for the Africa Trade Bill. I will defer to the chairwoman of the Committee, but I would think that if we recessed for a short break to go vote and come back, that would be appropriate, rather than delaying any further comments.

We will recess for approximately 20 minutes.

[Recess.]

Mr. BRADY. Madam Chairman?

Mrs. CUBIN. Mr. Brady.

Mr. BRADY. Under Clause 2(j)(2)(c) Rule 11 of the Rules of House of Representatives, I move that Tom Casey of the Majority staff, and a staff member designated by the Minority each be allowed to question the witness, Keith Rutter, for equal periods of time not to exceed 30 minutes.

Mrs. CUBIN. Without objection, so ordered.

Mr. Tancredo, who has been here for most of the hearing, does desire to question this witness. He's tied up for a few minutes. So I think I would like to make one point, and then hopefully Mr. Tancredo will be here, and if not then—oh, here he is right now—then I'll recognize Mr. Thornberry.

Mr. Rutter, I'm referring back to your not answering the question that I asked regarding the Internal Revenue Service forms because you declare that answering is not pertinent. Pertinency is important. It is one of the four elements that must be proven to convict someone in a criminal contempt of Congress.

Here is how pertinency fits in. First of all, the Subcommittee must have jurisdiction over the subject of the hearing. It does fall under the House Rules. Then the Subcommittee must have the authority to conduct oversight. Our authority comes from Article I of the Constitution, under which Congress has the authority to collect information so that it can legislate. That authority was delegated by the House Rules to the Committee, and then by the Committee Rules to the Subcommittee. Third, the Subcommittee must have a legislative purpose. It is clear, based on the Subcommittee's past work on oil policy. Finally, the testimony or records subpoenaed must be pertinent to the inquiry.

Because these elements exist, the Committee's oversight project is valid. Its subpoenas for documents and testimony can be prop-

erly enforced. So I ask you again, do you wish to answer the question about the Internal Revenue Service forms that I referred to?

Mr. RUTTER. I'm sorry. Those questions specifically were?

Mrs. CUBIN. The questions were—the question was: why did you refuse to produce the documents according to the subpoena? Why did you refuse to answer the questions about the documents here in front of the Committee today, the Internal Revenue documents that in fact had the award from the settlement included in those documents, and other years?

[Witness conferring with counsel.]

Mr. RUTTER. Madam Chair, in addition to my pertinency objection, I have also been advised by my counsel that the jurisdiction of this Committee is limited to matters delegated to the Committee under House Rules 10, Clause 1(L), Mineral Resources of Public Lands; and under House Rule 10, Clause 2(A), Oversight and Administration of the Department of Interior. I have also been advised that POGO's tax status and its compliance with applicable tax laws do not come within that delegation of authority, and therefore, I decline to respond.

Mrs. CUBIN. Mr. Rutter, I would like to remind you that—and to warn you—that failure to answer the question or to provide the documents that were subpoenaed by the Committee—the Committee determines that the material is pertinent and the Chairman determines that the material is pertinent—can cause you to be held in contempt of Congress. Are you aware of that?

Mr. RUTTER. Yes, I am aware of that.

Mrs. CUBIN. Mr. Rutter, will you turn those documents over to the Subcommittee at this time?

[Witness conferring with counsel.]

Mr. RUTTER. With respect—and understand the Chair's position, and upon advice of counsel, I will stand on my objection.

Mrs. CUBIN. Do you wish at this time to answer the question about the Form 990?

Mr. RUTTER. I'm sorry. And the question being?

Mrs. CUBIN. To produce it and tell the Committee why you would not explain the form, and why you would not give it to the Committee?

[Witness conferring with counsel.]

Mr. RUTTER. You know, I'm going to stand on the advice of my counsel, and also stand on my objection.

Mrs. CUBIN. Mr. Rutter, it's easy for the former counsel to the House to instruct you that way, because he's not on the line here. He's not the one who can be charged with contempt of Congress, and sir, his advice to you is bad, because I want you to know that I will pursue in every way that I can contempt of Congress charges against you, not as thinking that it is the material that is the most important factor. It is the contempt that you are showing for the process and for Congress.

So with that, I will now recognize Mr. Tancredo for 5 minutes questioning.

Mr. TANCREDO. Thank you, Madam Chairman.

Mr. Rutter, understanding that you will not produce the documents in question or not tell us why, perhaps you would tell me in fact—let me back up and ask you another question.

How long have you worked for POGO as an executive director?

Mr. RUTTER. Sir, I'm not the executive director.

Mr. TANCREDO. Well, in whatever capacity you serve.

Mr. RUTTER. I've been with the organization since 1989.

Mr. TANCREDO. And what exactly do you do there; what are your responsibilities?

Mr. RUTTER. My duties include doing the administrative work of the administration. I do fund raising for the organization, and I do some research for the organization.

Mr. TANCREDO. In the administrative work that you do for the organization, are you responsible for the preparation of the IRS Form 990?

Mr. RUTTER. When you say am I responsible for the preparation, we have accountants that do the IRS Form 990.

Mr. TANCREDO. And when the accountant calls POGO and asks for information, who gives it to him?

Mr. RUTTER. That's exactly what I was going to say. The accountant then will call me or meet with me, and say, "We need, you know, this information", and I supply the information.

Mr. TANCREDO. And when you prepared or worked on or in whatever capacity you serve POGO that allows you to work on the IRS Form 990, do you recall listing the source of income for your organization on that IRS Form 990? Do you recall, first of all, saying anything about the amount of money that POGO takes in in a year?

Mr. RUTTER. No.

Mr. TANCREDO. On the IRS Form 990. Do you remember that? That's what's part of——

Mr. RUTTER. Well, specifically, which IRS Form 990 are we talking about, sir?

Mr. TANCREDO. Any year that you want.

Mr. RUTTER. Any year that I want.

Mr. TANCREDO. Yes.

Mr. RUTTER. Do I recall listing the amount of the organization's——

Mr. TANCREDO. Do you recall that that's actually one of the things on a IRS Form 990, an amount of money that the——

Mr. RUTTER. I'm sure it is, but I can't recall that that's a specific question.

Mr. TANCREDO. In your preparation or in your help for the creation of the IRS Form 990, exactly what information did you provide the accountant?

Mr. RUTTER. I'm sorry. Could you say that again?

Mr. TANCREDO. Yes. In your aid, in the aid that you give the accountant in the preparation of the IRS Form 990, what information did you provide for last year or the year before? The one that you recall, any one that you recall?

Mr. RUTTER. I provide the accurate information.

Mr. TANCREDO. Like what?

Mr. RUTTER. I provide the accurate information.

Mr. TANCREDO. Be specific. What kind of information?

Mr. RUTTER. Whatever the question.

Mr. TANCREDO. Do you have any idea what's on there at all?

Mr. RUTTER. Not really. I mean, there's a variety of questions that the accountants ask me.

Mr. TANCREDO. Do you know the purpose of the IRS Form 990?

Mr. RUTTER. It's to publicly disclose information.

Mr. TANCREDO. About what?

Mr. RUTTER. About our tax information.

Mr. TANCREDO. About tax information.

Mr. RUTTER. But we're actually a non-profit, so——

Mr. TANCREDO. I know exactly what you are. And I ran a non-profit. I also know what's in a IRS Form 990, and I'm asking—and I know the administrator from my organization knew very well what was in a IRS Form 990 and what his responsibilities were. And I'm trying to figure out—how many people work there at POGO in the administrative division?

Mr. RUTTER. Well, in the administrative division——

Mr. TANCREDO. It's just you?

Mr. RUTTER. It's just me at the time.

Mr. TANCREDO. And so therefore, since you're the only person there that helps prepare the IRS Form 990, it seems to me logical that you would have some information available to you about what is actually on there, and the structure of it.

Mr. RUTTER. I didn't—I'm sorry. Did I——

Mr. TANCREDO. Do you recall, for instance, telling your accountant the source of or the amount of the income that POGO had for the preceding year, for last year?

Mr. RUTTER. As I said, sir, if that's a question, I must have done it.

Mr. TANCREDO. Okay. You gave him the information about the source of income for POGO. Do you recall giving him information directly related to the funds that came to POGO as a result of this lawsuit?

Mr. RUTTER. Yes, we were very open with our accountants as far as funds coming from this lawsuit.

Mr. TANCREDO. So that's listed on there someplace.

Mr. RUTTER. That's my understanding.

Mr. TANCREDO. And were payments listed on there, payments to anybody else, payments that came out of those funds listed on your 990?

Mr. RUTTER. When you say payments to anybody else——

Mr. TANCREDO. Expenditures, costs to the organization.

Mr. RUTTER. If it's a question on the 990, we provided the answer to our accountants.

Mr. TANCREDO. If you know what's on the 990 and you know exactly what it is—you know that it requires and you know what you told them.

Mr. RUTTER. I'm not here as an accountant, sir. I'm not——

Mr. TANCREDO. I know. You're an administrative officer. I know that. But if you know that, if you know what I just asked, what's on it and what's required and what you provided, then why can't you tell us what that was, what that is?

Mr. RUTTER. I'm sorry. What the information was? I'm telling you that I provided the information to the accountants.

Mr. TANCREDO. We're not going to get anywhere here. Let's move on to the IRS Form 1023. Are you familiar with that particular document?

Mr. RUTTER. I'm not very familiar with it, no. Prior to last year nobody had requested our IRS Form 1023s before.

Mr. TANCREDO. But you do know what's on them?

Mr. RUTTER. It's a form and a file, sir. When somebody requests it, we make a copy. I don't reread—

Mr. TANCREDO. You've never looked at it?

Mr. RUTTER. Yes, I——

Mr. TANCREDO. When you make a copy.

Mr. RUTTER. Not when I've made a copy, no. I'm not being quizzed on the IRS Form 1023, sir.

Mr. TANCREDO. Well, I'm asking you about the IRS Form 1023.

Mr. RUTTER. I understand that, but I didn't realize there was going to be a quiz on the IRS Form 1023.

Mr. TANCREDO. Well, you know, are these questions really all that challenging for an administrative officer for an organization of this nature?

Mr. RUTTER. I can only tell you what I know, sir.

Mr. TANCREDO. Do you know whether on your IRS Form 1023 you listed the payment of any public service awards?

Mr. RUTTER. On our IRS Form 1023?

Mr. TANCREDO. Yes.

Mr. RUTTER. I wouldn't think so, but I have no idea. The IRS FOrm 1023's an old document.

Mr. TANCREDO. That is true. Let me ask you this. Your testimony here, have you ever testified before a Committee of the Congress before, by the way?

Mr. RUTTER. Not this one, no, not a congressional Committee.

Mr. TANCREDO. But have you supplied testimony to——

Mr. RUTTER. To different panels and forums, things like that, workshops.

Mr. TANCREDO. But nothing of the Congress?

Mr. RUTTER. Nothing of the Congress, sir.

Mr. TANCREDO. Madam Chairman, I really do not think we're going to get really much farther here, and I just don't have any other questions I think will be answered, frankly and candidly, and we're just wasting time, and I apologize.

Mrs. CUBIN. The Chair now recognizes Mr. Casey for staff questioning for 15 minutes.

Mr. CASEY. Thank you, Madam Chairman.

And there are a couple of things I do want to go over with you that were touched on earlier, Mr. Rutter, and perhaps a few things that are new.

I don't think we, at least in my mind, clarified who were among the people, to the best of your recollection, among the POGO staff and on the POGO board of directors, who thought out loud, directed or suggested that lawyers and accountants might be or should be or could be consulted before writing the checks in November 2nd of '98 to Mr. Berman and Mr. Speir.

Could you try again to go through the names of the folks who you—to the best of your recollection were probably involved, or if

there's anyone you could exclude who was on staff or on the board at the time?

Mr. RUTTER. Well, as I mentioned, you know, Marcus Corbin, Danielle Brian and I, I think were the folks on staff at the time. I don't think that necessarily Marcus Corbin—I think one of your questions directed me?

Mr. CASEY. I gave you a variety of—directed, suggested, thought out loud, you don't seem to recall very——

Mr. RUTTER. I'm sure he was aware of that, but I don't know that he directed, suggested. But you know, we're a small office. I'm sure he was aware of that. As far as the board of directors, I don't remember who on the board knew and who didn't, and the only thing I can recall is it's more than likely I would think that Mr. Hunter, being the chair of the board at the time, that he was aware of it.

Mr. CASEY. Is there anybody on the board or on the staff who you can exclude as having taken part in this general discussion or decision or direction?

Mr. RUTTER. No, there's nobody that—but when—no. I mean, exclude.

Mr. CASEY. Again, not asking, as Mrs. Cubin did not, not asking what advice was given by the accountants or by the lawyers, among the issues presented to the accountants and the lawyers, did it include only accounting procedures and IRS matters?

[Witness conferring with counsel.]

Mr. RUTTER. What we said to our lawyer is privileged, but, you know, we did go to see the accountant.

Mr. CASEY. Did you show the lawyers or the accountant, when you consulted them on this in—must have been, I guess, October or at some point in the second half of '98, it would appear, before November 2nd—did you show them either the board meeting minutes such as they are from December 9th of 1996, or the January 5, 1998 agreement signed by Mr. Berman, Mr. Speir and Ms. Brian?

Mr. RUTTER. As I said before, as far as our attorneys are concerned, I can't speak to that. However, what the accountants—you made a list of things. I can take them one at a time if you'd like.

Mr. CASEY. Of course.

Mr. RUTTER. And could you do me a favor and read them back? Did I show our accountants——

Mr. CASEY. Did you show the accountant either the December 9th, 1996 board meeting minutes——

Mr. RUTTER. No.

Mr. CASEY. The discussion pertaining to this question, the agreement to pay?

Mr. RUTTER. No.

Mr. CASEY. Did you show the accountant the January 5, 1998 agreement signed by Ms. Brian, Mr. Speir and Mr. Berman?

Mr. RUTTER. No.

Mr. CASEY. Did you provide them any information, whether on paper or otherwise, that at some point the board of directors had decided to establish a program of public service awards?

Mr. RUTTER. I don't think so. I can't recall exactly, but I don't think so.

Mr. CASEY. Since December of '96, has your IRS Form 1023 been amended or modified or renewed in any way to include, among the organization's exempt charitable purposes, awarding cash public service awards?

[Witness conferring with counsel.]

Mr. RUTTER. I've been advised by my attorneys that the answer to that question is not pertinent, and not within jurisdiction.

Mr. CASEY. If I could—all right. If I could just make sure I understand correctly, your position is that the giving of cash public service awards by POGO is not pertinent to this inquiry?

[Witness conferring with counsel.]

Mr. RUTTER. Sir, that wasn't your question before. Your question before related to the IRS Form 1023.

Mr. CASEY. And whether the IRS Form 1023 reflects now or originally that one of POGO's exempt charitable purposes is to make cash public service awards?

[Witness conferring with counsel.]

Mr. CASEY. Are you all talking case or constitutional law?

Mr. RUTTER. Constitutional law, sir.

Mr. CASEY. Good.

Mr. RUTTER. I'm just going to have to stand on my objection, sir.

Mr. CASEY. Okay. I'm not sure I followed the discussion about the board meeting minutes and them being impressionistic, but could I just recount my understanding and see if I have it right, that during board meetings, you keep notes?

Mr. RUTTER. Sometimes I do——

Mr. CASEY. Sometimes you don't?

Mr. RUTTER. As I said, sometimes I actually write out notes; sometimes I jot along—if there's a board agenda or an outline, sometimes I'll just make note, you know, "discussed", something like that. Sometimes I'll just totally go by memory.

Mr. CASEY. When did you reduce to typed form the documents that were produced as board meeting minutes for December 12—excuse me—December 9, 1996?

Mr. RUTTER. I can't recall, sir.

Mr. CASEY. You can't recall. Do you think it was in December of '96?

Mr. RUTTER. I'm pretty sure it was in December of '96.

Mr. CASEY. I think somebody handed you that document before. So you believe—are you testifying that you believe that you typed up the December 9, 1996 minutes as they appear now in the excerpt you have, in the month of December 1996?

Mr. RUTTER. Yes. Usually, as I stated before, it might be, you know, a day or two. Ideally it would be a day, the next day, but——

Mr. CASEY. But proximate to the date of the actual meeting.

Mr. RUTTER. But it would usually be within a week or so of the meeting.

Mr. CASEY. Did you retype them before they were produced to this Committee or anybody else under a subpoena?

Mr. RUTTER. No. Did I retype the minutes that were already typed?

Mr. CASEY. Is the document that was produced to this Committee or to anybody else under a subpoena, the document that you see in front of you now, at least the relevant portion, or did you at

some point take what you had typed up in December of 1996 and put it in a different format, or reword or restate it?

Mr. RUTTER. Okay. I think what you're alluding to, sir——

Mr. CASEY. I'm not alluding to anything, Mr. Rutter. I'm asking a direct question.

Mr. RUTTER. Well, then, I'm sorry. Then can you state the question again?

Mr. CASEY. As I understand it, sometime in the month of December 1996 you took your memory and your notes from that board meeting, and you typed them up as something called minutes. Is that the document that's in front of you right now in the very same form, same format, et cetera?

Mr. RUTTER. No, that is not the exact document that I typed up.

Mr. CASEY. How is it different?

Mr. RUTTER. How it is different is I gave our attorneys the full document, the minutes. They went through and looked at what was the relevant part of the minutes relating to the questions on the subpoena. And in this particular case here, I guess they just put pieces of white paper—I don't know what they did—cut out to submit to you.

Mr. CASEY. Is the wording exactly the same as you gave it to the lawyers?

Mr. RUTTER. I guess so, but without having it exactly in front of me—I mean, it seems like it is, but I can't be 100 percent unless I had——

Mr. CASEY. Can't be 100 percent sure, but it is possible that your lawyers altered the minutes before they were given to the Committee?

Mr. RUTTER. No. I was referring to that it's possible that you might have altered them prior to giving them back here to me.

Mr. CASEY. I can rule that out.

Mr. RUTTER. Well, I can probably rule—well, I can check with the attorneys to see if they altered them, but it's my understanding they did not.

Mr. CASEY. Is the document you gave to the attorneys exactly the same as the one you typed up in December of '96, or did you in any way alter it before giving it to them?

Mr. RUTTER. I did not do anything to alter that before I gave it to my attorneys.

Mr. CASEY. Did anybody?

Mr. RUTTER. Not that I know of.

Mr. CASEY. Can you exclude that possibility?

Mr. RUTTER. You know, I guess you can't.

Mr. CASEY. Okay. So of the December 1996 board minutes we have are a true and genuine document, why is there no mention of a public service award? Was there a discussion that was not recorded about making public service awards to the two individuals named?

Mr. RUTTER. I can't recall, sir.

Mr. CASEY. If there had been such a discussion do you think you would have included it in the minutes?

Mr. RUTTER. I don't know.

Mr. CASEY. Do you recall any discussion from any prior board meeting about establishing a public service award that would be paid in cash?

Mr. RUTTER. No.

Mr. CASEY. Same exercise—similar exercise on the October 27, '98 board meeting minutes. Is what you have there exactly what you gave to the lawyers—we know that things have been redacted—but is the description of that meeting that you have in front of you now exactly what you gave to your lawyers?

Mr. RUTTER. No. I gave the full minutes to the lawyers.

Mr. CASEY. No. I'm talking about just the relevant portion that you have in front of you.

Mr. RUTTER. I gave the full minutes to the lawyers, and the lawyers made the decision on what portion was relevant or not.

Mr. CASEY. Okay. On the portion that they deemed relevant and that's in front of you now, is that exactly the way you gave it to them?

Mr. RUTTER. No.

Mr. CASEY. How is it different?

Mr. RUTTER. This is different, because after giving the full minutes to the lawyers, they said about that there are certain relevant parts, and they said that we only need to turn over to the questions, the certain relevant parts.

Mr. CASEY. Do you recall information in the original full minutes that dealt with the payments to Mr. Berman and Mr. Speir that are not in the document that you have in front of you? You don't have to tell me what those discussions were, but if there are discussions that were in the document you gave them which pertained to the payments to Mr. Berman and Mr. Speir and which are not in the documents in front of you.

[Witness conferring with counsel.]

Mr. RUTTER. I'm sorry. Can you repeat the question for me, please?

Mr. CASEY. Do you recall that in the original document you gave to the lawyers, whether there was any discussion or reference to the payment to Mr. Berman and Mr. Speir, which is not in the document in front of you now? But I'm not asking what the substance of that discussion was, merely if there's any missing discussion or missing part that is relevant to the payments to Berman and Speir.

Mr. RUTTER. Okay. I don't know the answer to that, sir.

Mr. CASEY. You don't know the answer.

Mr. RUTTER. I don't know. I mean, without the full minutes here to compare, I don't know.

Mr. CASEY. All right. Now, the phrasing, which I can't quote from memory—here we go. "The staff consulted with our consultants and a non-profit/tax attorney recommended by Mr. Hunter to make sure we were following proper procedure. The staff also consulted with a constitutional attorney. The lawyers and our accountant agreed that we send a letter stating that it was an award for public service, and that we would send them the appropriate tax form at the end of the year."

At that meeting, did the board affirmatively decide, by vote or assent, to make a public service award to Mr. Berman or Mr. Speir?

Mr. RUTTER. No. I mean, if there was a vote, it would be reflected in the minutes, and so if there wasn't a vote, then it means that—you know, and would come to some consensus.

Mr. CASEY. Did they acquiesce in or confirm a staff decision to make a public service award?

Mr. RUTTER. I would say they came to consensus. If there was dissension. If somebody had a problem, an issue or something like that, you know, anybody could say, "Let's vote on this", or there would have been more of a debate.

Mr. CASEY. Was there a debate about making these men a public service award at that meeting?

Mr. RUTTER. Not that I recall. I would have reflected it if there would have been a——

Mr. CASEY. So there was never an affirmative decision by the POGO board to award cash public service awards to Mr. Berman or Mr. Speir at any time?

Mr. RUTTER. Well, when you say an affirmative decision, I mean, as I said, the board does things by consensus, and so if there wasn't consensus——

Mr. CASEY. When did they reach the consensus to establish a public service award program or to make one-time public service awards to Mr. Berman and Mr. Speir?

Mr. RUTTER. I don't know as far as the minutes are concerned.

Mr. CASEY. Well, leave aside the minutes. In your memory, do you know when that was?

Mr. RUTTER. No, I can't recall.

Mr. CASEY. Did it ever happen?

Mr. RUTTER. What I was going to say is I can't recall. I guess it happened during this meeting here.

Mr. CASEY. And if it's not reflected in that meeting—those meeting minutes, then it never happened?

Mr. RUTTER. Well, I'm not saying it never happened. I'm just saying that as I recall, I can only—you know.

Mr. CASEY. Would you have forgotten a consensus or decision that resulted in the checks to Berman and Speir?

Mr. RUTTER. No, I don't think I would have forgotten, but you know, these minutes accurately reflect the proceedings of the board meetings.

Mrs. CUBIN. The gentleman's time has expired.

I thank the witness for his testimony. You are dismissed. Oh, I'm sorry. Yes, I knew they didn't have questions over there. They had already told me that, so officially for the record, the Minority has no questions for this witness.

Thank you very much for your testimony, what there was of it, and you'll hear from us again.

I would like to ask the next Panel to please come forward, Anne Zill, Marjorie Sims, Dina Rasor, Jack Mitchell, Morton Mintz, David Hunter, Charles Hamel, Michael Cavallo, David Burnham and Henry Banta.

Would you please rise and raise your right hand?

[Witnesses sworn.]

Mrs. CUBIN. Mr. Thornberry, for the purpose of making a motion.

Mr. THORNBERRY. Under Clause 2(J)(2)(b) of Rule 11 of the House of Representatives, I move that Chairman Cubin, myself,

Mr. Brady and a Minority member of the Committee each be allowed to question the panel now seated for equal periods of time, not to exceed 30 minutes each.

Mrs. CUBIN. Without objection, so ordered.

Mr. THORNBERRY. Madam Chairman, under Clause 2(J)(2)(c) of Rule 11 of the Rules of the House of Representatives, I move that Tom Casey, the Majority staff, and a staff member designated by the Minority, each be allowed to question the panel now seated for equal period of time not to exceed 30 minutes.

Mrs. CUBIN. Without objection, so ordered.

Ladies and gentlemen, you have been subpoenaed to tell this inquiry how you decided to enter into an agreement among POGO, Robert A. Berman and Robert A. Speir, to share all the proceeds of an oil royalty suit filed by POGO. We also seek to understand whether you intended this agreement and the payments made pursuant to it, to be public service awards from the inception in early December 1996. We also wish to understand the process by which you, as the responsible governing party of a private corporation with substantial financial interests in Federal royalty policy matters, chose two Federal employees involved in those matters as recipients of payments running well into seven figures.

Attempts by Committee staff to informally interview the directors were blocked by POGO attorneys. Those lawyers have repeatedly insured the Committee that all relevant board meeting minutes have been produced. If so, they shed no light on the why and how of selecting Messrs. Berman and Speir to become multimillionaires.

So the only way to determine what qualifications and ethical or fiduciary considerations were discussed is to ask you here today.

Because of the number of witnesses necessary for today's hearing, and because the Subcommittee is keenly interested in your answers, your written statements will be entered in the record, rather than taking the time for statements at this time. With your cooperation in making concise, candid answers, we will try to make this round of questioning run smoothly, and we will try to get this finished as quickly as we can.

I am going to ask a series of questions. Each question will be stated once, and would you please answer in turn with the first question by identifying yourself, and then giving an answer?

For the convenience of the reporter, as I said, the court reporter, I guess we need you to identify yourself each—we don't? Okay. So the first time around please identify yourself for the convenience of the reporter.

I have a question for all of you. At the time of the meeting of December 9, 1996, did you specifically understand that the agreement described by Mr. Banta and Ms. Brian, was that POGO would split its proceeds in equal thirds with Mr. Berman and Mr. Speir? We could start to my left, please. Identify yourself, and answer the question.

STATEMENT OF CHARLES HAMEL

Mr. HAMEL. My name is Charles Hamel. Would you repeat the question, please? I didn't know it was for me.

Mrs. CUBIN. Certainly. At the time of the December 9th meeting of 1996, did you specifically understand that the agreement described by Mr. Banta and Ms. Brian, was that POGO would split its proceeds in equal thirds with Mr. Berman and Mr. Speir; did you understand that on December the 9th?

Mr. HAMEL. I don't think you've read my statement. I have recused myself at all meetings having to do with the oil industry of the United States of America.

Mrs. CUBIN. So, Mr. Hamel, you were present at the meeting; is that correct?

Mr. HAMEL. I stepped—I don't know about that particular meeting, because every time the word "Exxon, et al." came up, I left the room, didn't return again until we were on a new subject.

Mrs. CUBIN. The next?

STATEMENT OF MORTON MINTZ

Mr. MINTZ. I'm Morton Mintz. I did not become a member of the board until September 1997.

Mrs. CUBIN. The reporter would ask you to please speak into the microphone.

Mr. MINTZ. My name is Morton Mintz. I did not become a member of the board of POGO until September 1997, so the question is absolutely irrelevant to me.

Mrs. CUBIN. Thank you, Mr. Mintz. And certainly we would have known that, had POGO decided to honor the subpoena and give us the names of the people on the board of directors.

Mr. MINTZ. I have that information in my prepared statement.

Mrs. CUBIN. No, I'm talking about the board of directors for the last few years, over the time that is relevant to this situation.

Next person, please.

STATEMENT OF HENRY BANTA

Mr. BANTA. Madam Chair, I'm Henry Banta. I'm not sure I would characterize the decision of the board to share the proceeds as an agreement. I think it was just a decision to award these people for their distinguished service.

Mrs. CUBIN. Next person, please.

STATEMENT OF JACK MITCHELL

Mr. MITCHELL. My name is Jack Mitchell. I'm sorry, but I don't have any recollection of the specific dates you've cited, Madam Chairwoman, so I'm not positive, not having had an opportunity to review any of these minutes, that the timing of this is right. I generally recall some discussion about this. I don't remember a particular proportion as you've stated, but I do recall there being a discussion at some point among the board of making a public service award of a type to these two gentlemen.

Mrs. CUBIN. Do you recall what year that would have been in?

Mr. MITCHELL. I'm sorry, I do not, without benefit of seeing the minutes that would record both what meetings I was at, which might not have been all of them, at which they were discussed. I honestly don't recall at this time if I participated in all of the meetings at which this might have been discussed. I cannot give you the year. I'm sorry.

Mrs. CUBIN. Once again, it would certainly benefit the Committee if we had access to those minutes. Then we too would understand that, although it's my understanding that you were listed as present at that meeting, but if you don't know, then——

Mr. MITCHELL. And I certainly don't say that I was not there. I just honestly after—we're talking three and a half years—if I was there on that particular date, without a review of the written record.

Mrs. CUBIN. And I can certainly understand that, sir, Mr. Mitchell.

STATEMENT OF DAVID HUNTER

Mr. HUNTER. Hello, Madam Chair. My name is David Hunter. I'm the current chair of the Board of the Project on Government Oversight, and on behalf of the board I'd like to introduce an objection at this time to the Subcommittee's refusal to allow us to present our oral presentations, the board members' written statements. This decision violates the Committee of Resources own Rule——

Mrs. CUBIN. Excuse me. Could you speak a little slower? I couldn't hear what rule you said it violated?

Mr. HUNTER. I'm sorry. This decision violates the Committee on Resources' own Rule 4(b), which requires that each witness shall have an opportunity to provide a 5-minute summary of his or her written statement. Rule 4(b) provides no basis for the elimination of this oral presentation.

Mrs. CUBIN. The issue—that issue would be for the courts to decide, but this is certainly a creative theory that is completely wrong. The Rules of the House and the Committee Rules do not give any witness a right to make a statement. In fact, House Rule XI(2)(f) imposes a limitation on initial presentations by witnesses to brief summaries of their written statements. It does not grant a right to a witness to make an opening statement. Furthermore, Committee Rule 4(b) echoes that limitation on oral presentations. It says that witnesses shall, quote, "limit his or her oral presentation to a five-minute statement unless the time is extended by the chairman or Ranking Member. This limitation is a ceiling, not a floor."

While it may be customary to allow a five-minute statement, we are treating all witnesses equally today, and none of them will be making statements. This is in the interest of time and efficiency. It is within the discretion of the Chair, but your entire comments will be seen in the record. We appreciate the point of view of your counsel, but unfortunately his judgment is mistaken at this time.

Now, do you wish to answer the question?

Mr. HUNTER. Yes, I do, and I stand by my objection. Thank you, Madam Chair.

I don't recall exactly the conversations, but I do recall generally on the board that we have discussed this matter, and again, I don't actually recall specifically the time when it would have been, but, yes, we did discuss it at the board that we would provide award to—at some point to two whistle-blowers—this is what I recall—who had been working for a long time to promote this issue and to get it into the public realm after years when nobody seemed to,

in this town, want to talk about the oil fraud that was being perpetrated by the industry.

Mrs. CUBIN. So let me get this clear. You don't know the time frame of that; is that what you said; you don't know when that was that that discussion took place on the board? You don't know if it was December 9th, 1996?

Mr. HUNTER. I don't have at this point in time any recollection of the exact time. I have reviewed the minutes of the December board date, and I have no reason to believe that wasn't the time of the discussion.

Mrs. CUBIN. And it's interesting that the Committee subpoenaed the minutes and was to have received and purportedly did receive all of the information in the minutes that were pertinent to this investigation and to this, quote, unquote, public service award. It was never mentioned in the minutes until the payments were actually made, so I think that's quite an interesting point.

Mr. HUNTER. If I may add, I don't know what the point is, but that the—I would like to say something about our minutes. They're not meant to be verbatim, as Mr. Rutter had mentioned. But they give a general reflection of what was discussed, and I think a lot is trying to be made out of a specific verbiage that's used in those minutes, and I think you're trying to make too much out of it, quite frankly.

Mrs. CUBIN. Well, you're certainly entitled to your opinion, and I think you're making too little.

Next witness, please.

STATEMENT OF DINA RASOR

Ms. RASOR. Yes, I'm Dina Rasor. And while I may not have recalled the exact dates of the minutes, I also need to put in the caveat that sometimes I was at the board meetings via telephone since I live in California.

But I recall these discussions, and I recall the board's view of it, and by the way, I have a lot of confidence in Keith Rutter's record keeping. I hired him in 1989, and he's been a marvelous person.

Mrs. CUBIN. Thank you. You say you recollect discussions. Do you recollect when they took place?

Ms. RASOR. Not exactly, because I don't have the board minutes in front of me.

Mrs. CUBIN. Next person.

STATEMENT OF MARJORIE SIMS

Ms. SIMS. My name is Marjorie Sims, and I do not recall conversations on that specific date, but I do recall being at board meetings where we discussed honoring the service of those two Federal employees.

Mrs. CUBIN. Do you recall whether that occurred before or how long before the checks were actually issued?

Ms. SIMS. I do not recall specifics at all.

Mrs. CUBIN. Could you give me an idea within a year?

Ms. SIMS. I have no idea.

Mrs. CUBIN. Next person.

STATEMENT OF ANNE ZILL

Ms. ZILL. I'm Anne Zill. I was in the process of moving to Maine, so it's very possible that I wasn't at that board meeting. I don't recall.

What I do recall is during this entire last four and a half years, there have been discussions about this not-for-profit organization wishing to honor people who do a tough job, who work in bureaucracies—sometimes they're called whistle-blowers; others call them truth-tellers—who face adversity, and who try to get the government to do the right thing on the behalf of the American people, and it was in that context, the board—from my general recollection, nothing specific—felt that it would be a good idea to help the people who had been in the trenches for ten years, in this case these two public servants.

Mrs. CUBIN. It's curious to me that these two public servants who were involved with the rule-making on oil valuation are the ones that were rewarded, when Mr. Kritzer, who certainly had at least during the same time period, spoken out as ardently against the practices that were taking place, he wasn't offered an award.

And I assume that Assistant Deputy Mr. Armstrong, who also, going years and years back, tried to bring this out, wasn't offered an award either. And neither of them were involved with the rule-making process, so I find that somewhat curious. The next person, please.

STATEMENT OF MICHAEL CAVALLO

Mr. CAVALLO. My name is Michael Cavallo. I'm not sure whether I was at the December meeting in question. I may have been. I remember general discussions about sort of recognizing these two individuals, and that the board saw no objection in that, and in many cases were wholeheartedly behind the idea.

Mrs. CUBIN. Thank you. Next person, please.

STATEMENT OF DAVID BURNHAM

Mr. BURNHAM. My name is David Burnham. I was not on the board at the time of this meeting.

Mrs. CUBIN. The chair will now yield to Mr. Brady.

Mr. BRADY. Thank you, Madam Chairman. My question is really very simple.

During your term of service on the board—and I'll start with Mr. Banta first, so we'll have some fair warning. During your term of service on the board, did you have full knowledge of the private agreement between POGO and the two government insiders, and of the legal ramifications of the compensation POGO paid Mr. Berman and Mr. Speir? Did you have full knowledge of that agreement and of the legal ramifications? I'm sorry, Mr. Banta.

Mr. BANTA. We didn't hear who you were addressing. I'm sorry.

Mr. BRADY. Did you have full knowledge of the private agreement between POGO and the two government insiders, and of the legal ramifications of the compensation you paid Mr. Berman and Mr. Speir?

Mr. BANTA. Well, if you would note from my statement, I recused myself after the lawsuit was filed.

Mr. BRADY. So you had no knowledge of either the private agreement——

Mr. BANTA. No. I understood the decision to make the awards, but after the lawsuit was filed, I recused myself. So I was involved in the first part of——

Mr. BRADY. Well, then let's go to some of those who we know at least served in 1998. Ms. Sims, did you have full knowledge of the private agreement and the legal ramifications of the compensation?

Ms. SIMS. No, I didn't, and I just want to make a clarification, because we just received these minutes, and I was not at this board meeting on December the 9th, 1996.

Mr. BRADY. Actually, I'm looking at October 27, 1998.

Ms. SIMS. No. I was making a clarification on an earlier comment that I made, and no, I'm not aware of that.

Mr. BRADY. So you did not have full knowledge of this private agreement nor of the legal ramifications?

Ms. SIMS. No.

Mr. BRADY. Knowing what you do today, that this compensation is not disclosed, that it is illegal to supplement a Federal employee's salary, and that the Justice Department clearly and emphatically advised against such compensation, would you as a board member approve that compensation today?

Ms. SIMS. I'm still not aware that that is the law. I just heard that you stated that. I'm not aware of that being the law.

Mr. BRADY. Are you aware the Justice Department advised against——

Ms. SIMS. No, I'm not.

Mr. BRADY. Do you think anyone else on the board knows that?

Ms. SIMS. I'm not certain. I don't know.

Mr. BRADY. It's a complete surprise to everybody.

Ms. SIMS. I don't know. I am just stating what I understand and know.

Mr. BRADY. Thank you. Well, let's go to another member who was there. Mr. Mitchell, did you have full knowledge of this private agreement and the legal ramifications of compensation?

Mr. MITCHELL. Well, I doubt if I would have what you would term as full knowledge. There was discussion among the board. Our view was that the staff was carrying out the details of these matters. We are board members as advisors, and we discuss these issues. We are not always involved in the details themselves, and in terms of what you said, the full legal ramifications, I'm not an attorney, and I would trust the organization to—as your counsel earlier referred—to seek whatever legal counsel we needed to make sure we were doing things according to appropriate procedure.

Mr. BRADY. Now, as a Federal employee, clearly you knew the requirement that disclose compensation. You know it is illegal to supplement the salary of a Federal employee. Did you need to be advised on that or——

Mr. MITCHELL. I didn't know that.

Mr. BRADY. [continuing] as placed on this board——

Mr. MITCHELL. Mr. Brady, my understanding is that the Federal ethics laws is for each individual Federal employee to know and understand and follow those. And I try to do that, and I believe I've done that very rigorously.

I cannot speak for anyone else as to what their understanding is, and I do not know, with all due respect, that it is correct that Federal employees may not receive any kind of outside compensation. I don't know that to be a fact.

Mr. BRADY. But your answer is, you did not have full knowledge?

Mr. MITCHELL. I did not have full knowledge of all of the legal ramifications in the sense I'm not an attorney.

Mr. BRADY. Knowing what you do now, as a fiduciary board member of POGO, would you approve such compensation to the two government insiders?

Mr. MITCHELL. I wouldn't refer to them as government insiders, with all due respect, sir.

Mr. BRADY. Well, one was employed by the government, and one was a recent retiree. Would you call them a——

Mr. MITCHELL. That's your phrase. We saw them as public servants in this particular instance.

Mr. BRADY. Would you approve such compensation knowing what you know now?

Mr. MITCHELL. I've heard no evidence that these gentlemen did anything appropriate, and as a matter of fact, it's my understanding, and it was represented to me, that the Interior Department has said that neither of these gentlemen were involved in the decision or policy-making process involving this. And I have no reason, even at this time, to disbelieve that.

Mr. BRADY. So you're not aware that the Justice Department advised POGO's attorneys against this?

Mr. MITCHELL. No, I'm not aware of that.

Mr. BRADY. The first time you've heard of it. Come on now, you're under oath. The first time you've heard of it?

Mr. MITCHELL. I'm aware that there was some contact by the Justice Department.

Mr. BRADY. Let's go forward. Let's see if we can get a straight answer from someone here.

David Hunter, did you have full knowledge of the private agreement between POGO and the government insiders, and did you know the legal ramifications of the compensation?

Mr. HUNTER. Thank you. Yes, I did know about the arrangement. I am going to have to object to your continuing use of the legal ramifications of the compensation. It suggests that there is——

Mr. BRADY. Actually, I am using your board minutes which term them compensation.

Mr. HUNTER. But the legal ramifications, I don't think that there are any legal ramifications that arise from the verbiage of those minutes. I don't think there are any legal ramifications——

Mr. BRADY. When the Justice Department advises against it——

Mr. HUNTER. May I—excuse me—may I——

Mr. BRADY. [conmtinuing] do you believe that there are legal ramifications?

Mr. HUNTER. Excuse me, Congressman, with all due respect, if I could be given an opportunity to finish my answers, then——

Mr. BRADY. If I could ask you to answer, I would respectfully allow you to.

Mr. HUNTER. Okay. We never know what we don't know. I had some knowledge, so let's get away from full knowledge, because I

don't know what the full knowledge. I don't know what I don't know. I don't know—I don't think we have agreement on what the, quote, unquote, legal ramifications are. I do not think there are any legal ramifications from use of the word "compensation." It was not compensation as we understood it. It was an award. That's what we were doing. We had our—if I may continue and finish—as a board and what I understood, is that we were going to provide an award for people who had for a long time been trying to disclose and get people in this town to pay attention to what had been going on for a long time. I think that that's a worthwhile thing to do when we can do it, and I'm glad that we were able to do it.

Mr. BRADY. I applaud that public view, but your own board, your own organization says that's not the case. Your own organization says "We are entering into a private agreement to compensate individuals who have been doing this work for years." So my question to you would be, what services did these two government insiders provide POGO that you awarded them, compensated them $383,000?

Mr. HUNTER. Let me be clear. I have no understanding, nor do I believe that there were any services that were provided by these two employees to POGO. That was not what we gave them money for, and it was not in that sense compensation. So if you would——

Mr. BRADY. So you agree that no information was provided by Mr. Berman and Mr. Speir to POGO, their attorneys, that was included, used, developed or a portion of your lawsuit, absolutely no information from those two individuals?

Mr. HUNTER. To my knowledge, no.

Mr. BRADY. Thank you, Madam Chairman.

Mrs. CUBIN. Mr. Thornberry?

Mr. THORNBERRY. Thank you, Madam Chairman.

Ms. Zill, in answering the questions earlier, you mentioned that you remember some conversations about trying to acknowledge people's work that were doing a tough job, and you remember that coming up from time to time at board meetings. Do you remember specifically these two individuals, and talking about rewarding or compensating them in some way?

Ms. ZILL. I've heard the names, but I don't remember at which board meetings, and I only now learn that I was at the first board meeting that we have part of the minutes for, but not at the second.

No, what I know, because I've been on the board for almost ten years, is that this is an organization that is concerned with the non-profits' mandate to do things, not for special interest, but for the public interest. And so it's a different concept than a for-profit operation.

Mr. THORNBERRY. And I appreciate that perspective. Are you aware of any other times that the board has looked at rewarding, compensating, acknowledging someone for their work, where there were written agreements on how much these people would receive?

Ms. ZILL. No, I don't have any knowledge of that.

Mr. THORNBERRY. Mr. Cavallo, I think you said that you remembered some discussions at various board meetings about these folks. Do you remember how many times you discussed it at board meetings?

Mr. CAVALLO. No, I don't remember exactly how many times.

Mr. THORNBERRY. Can you give me your best estimate, understanding that it's been a while?

Mr. CAVALLO. If I were going to make a wild guess, I would say that this situation came up at maybe three of the board meetings that I attended, just a guess.

Mr. THORNBERRY. And do you recall when it came up at these board meetings, three or four or two times, do you recall that you all were made aware that there were written agreements between POGO and these individuals, that whatever was received from POGO at whatever time, that these individuals would get a share of it?

Mr. CAVALLO. I wasn't aware that there were written agreements, but I understood is as sort of the intention of POGO to not keep all of whatever money it received in these settlements, but to distribute it to other people who had been sort of fighting the good fight on this issue for a long time.

Mr. THORNBERRY. Ms. Rasor, let me ask you. You said that you didn't recall for sure if you were there, because you were in California, and as a matter of fact, neither of these board minutes seem to indicate your presence. Do you think you might have been there, but—listening on the telephone, but they just didn't make a note of that?

Ms. RASOR. I would trust that if I was on the telephone, that Keith Rutter would have recorded that I was there.

Mr. THORNBERRY. Okay. Well, do you remember having payments to Mr. Berman and Mr. Speir discussed at board meetings when you were sitting in listening, listening on the telephone?

Ms. RASOR. Yes, very much so, yes.

Mr. THORNBERRY. You do remember that?

Ms. RASOR. Oh, yes.

Mr. THORNBERRY. Okay. Do you remember approximately how many times you heard these payments to these—or compensation in some way to these specific individuals discussed?

Ms. RASOR. I need to make a distinction here. I had discussions with the—much like Mr. Hunter, I'm the treasurer of the organization, and I have discussions with the staff about items outside of board meetings. And so——

Mr. THORNBERRY. And so you can't distinguish when you discussed it from one time to another?

Ms. RASOR. It's very hard to do that when you're in weekly contact with people and talking about things, when yo discussed it in a board meeting, when you discussed it otherwise.

Mr. THORNBERRY. Okay. Were you aware of these written agreements with Mr. Berman and Mr. Speir before the checks were made?

Ms. RASOR. Yes, I was.

Mr. THORNBERRY. When did you become aware of them?

Ms. RASOR. Can't remember. Part of that long stream of consciousness discussion you have over two or three years.

Mr. THORNBERRY. Do you recall that raising any red flags, that we are here to try to recognize what these people have done over a period of years, and yet we have, one, a written agreement that says we're going to pay a third of—or a third each of whatever we

get; and then there appears to be some specific need to reinforce it? It's like somebody was getting nervous. And so there's another memo later in 1998 that says, "We're really going to do what we've promised you to do." Did that concern you at all that that's not exactly—that would maybe not be consistent with public service recognition?

Ms. RASOR. No, not at all. You may not know it, I was the founder of this organization, and in 1981, and one of the things that I have learned from doing 22 years of working with whistle-blowers, and I have to say I'm very proud of this board because most of us have done exactly the same thing. You don't make decisions, you don't do things unless you know. You don't go out and criticize the Federal government or large corporations if you don't have a clean house. If they were going to get something on us, you know, I've been deposed by Lockheed, numerous people.

So the bottom line was, when this came up, I remember in one of the board meetings a very strong sense of the board that you dot your "i's" and you cross your "t's", and we felt that these people had toiled for a long time without—you know, one thing that needs to be brought in context here, we worked on this issue way before a lawsuit was ever filed.

Mr. THORNBERRY. Sure.

Ms. RASOR. So I'm just saying that when we came down to this kind of decision to award these people for what went on way before the lawsuit, you better believe everybody on this board makes sure their tax forms—if you're going to criticize the government and you're going to be criticizing corporations, you'd better have a clean closet, and I am confident that this board does. And that was the reason that we went to professionals, because we're not all lawyers, to review this.

Mr. THORNBERRY. Sure. Well, can I understand what you're saying if I summarize it by saying that because of the nature of the work you do and your past experience, you felt certain that these payments were thoroughly vetted with lawyers and ethics people, everybody—they were checked out before these agreements were made or before the checks were written? I mean, as a board member you felt that was checked out and it was okay.

Ms. RASOR. I don't want to go into ethics situations. I'm telling you right now we specifically went to the professional people you go to—as Mr. David Hunter said, the most dangerous thing in the world is you don't know what you don't know.

Mr. THORNBERRY. Sure.

Ms. RASOR. So we knew we didn't know. We wanted to make sure our "t's" were crossed, "i's" were dotted. We checked it out. We felt confident. We felt confident of the staff. We felt confident of the professionals, and the board has had no reason to ever doubt our staff before.

Mr. THORNBERRY. Sure. Let me move. Mr. Mitchell, I think you also said that you recalled at board meetings this coming up. Do you recall how many times the payments to Mr. Berman, Mr. Speir, or a desire to compensate Mr. Berman and Mr. Speir, recognize them in some way, how many times that came up at board meetings?

Mr. MITCHELL. Sir, again that would be a guess on my part, and I would say between one and three times, probably twice I would say, in my own memory, relative to perhaps my own participation or my own memory.

Mr. THORNBERRY. Do you recall whether you were aware that there were written agreements which Mr.—a written agreement which Mr. Berman and Mr. Speir signed about what they would receive by way of payments from POGO?

Mr. MITCHELL. I don't recall the written agreements, per se, formally, but I do remember the discussion of them and——

Mr. THORNBERRY. Of the written agreements?

Mr. MITCHELL. No, discussion of Mr. Berman and trying to award him this public service award for his getting out in front of this issue in the past, something we've been working on for many years. We were briefed on that by the staff, and we felt that was—as you've already heard—a very legitimate idea to do so.

Mr. THORNBERRY. Sure. And I appreciate—you all have expressed that very well.

Mr. MITCHELL. And again, in terms of the time, I'd just like to add that we started talking about this—we had no idea what kinds of monies, if any, would be involved, because we didn't know exactly what was going to happen in the future.

Mr. THORNBERRY. Sure. But is it consistent with your idea of a public service award, recognizing someone for working away and toiling, to have this kind of a written agreement that we've seen, where POGO agrees that it will share the proceeds, a third with each of them, whenever they occur?

Mr. MITCHELL. Well, Congressman, I'd just like to note that POGO's made a lot of public service awards—and this probably was a little bit different in the sense that we've given many whistle-blower awards in the past, including one I recall to senator Grassley. This, because it involved a sum of money, was different. And as Dina has just said, to whatever extent we found the staff, and the professional staff should do it, they needed to make sure that they consulted the appropriate people to follow through on this in whatever way they thought was appropriate, and my recollection is the board supported that.

Mr. THORNBERRY. You've given me my question, which I guess I've been fumbling around to try to understand. Of all of the public service awards that POGO has ever given, is any of the witnesses on this panel aware of a prior agreement with the recipient of the public service award, on how much they're going to get or how that public service award is going to be decided?

Ms. ZILL. Well, I'm the President of the Fund for Constitutional Government, which used to be the fiscal sponsor for POGO before it was POGO. And what I can say is that I think that what isn't reflected in the minutes, but that was discussed every time we heard about this, the whole issue of oil royalties, was the unlikely nature of every getting any money. It isn't really the case that POGO has ever gotten huge sums of money. This was an almost unimaginable windfall. And so I think it ought to be seen as very much out of the ordinary situation.

Mrs. CUBIN. Would the gentlemen yield?

Mr. THORNBERRY. Yes. Can I——

Mrs. CUBIN. Go ahead.

Mr. THORNBERRY. Is there anyone, of all the public service awards that POGO has received, that can recall a specific written agreement with the recipient of the public service award? And I understand, and I wanted to actually get to this area later with Mr. Banta, about whether there was a likelihood of recovery, but can anybody remember the recipient of the public service award saying, "I agree that I'm going to get this much money", and have it in writing?

Mr. HUNTER. No.

Mr. THORNBERRY. Madam Chairman, I don't see any response. I'll be happy to yield.

Mrs. CUBIN. I wanted to ask Ms. Zill. You were talking about a foundation that gives public service awards, and I believe those are generally $10,000 awards, is it? Oh, that's Cavallo. Excuse me. I had the wrong award. Okay.

Do you have a written policy or do you have a procedure by which these awards are approved?

Mr. CAVALLO. Yes, we do.

Mrs. CUBIN. But there's no such procedure or policy involved here; is that correct?

Mr. CAVALLO. I believe this—whereas, that was the regular main purpose of my foundation, this was an unusual situation for POGO.

Mrs. CUBIN. You know, I have been a member of a non—of many non-profits for 25 years, so even more than you, Dina. And this is exactly the sort of thing that every board member should be having nightmares about, letting situations, letting things go on that you are not aware of, letting executive directors have enough authority that they can make secret agreements that all of you admit you didn't know anything about, but you don't know when you knew it, so, you know, that isn't very good dotting "i's" and crossing "t's", as far as I'm concerned.

Mr. Brady, I think you had some follow up.

Mr. BRADY. Yes, Madam Chairman. It seems incredible that a public service award would be given after not only an agreement was signed, but your honoree demanded his fair share of the award that he believed was coming to him. I don't know how grateful these honorees are these days, but routinely, I'd say they don't demand enough so that a board has to—an executive has to reaffirm their commitment.

The bottom line is, this was not a public service award. Your records clearly show this was a contractual agreement between POGO and these two government insiders. Your records show that you reaffirmed that commitment in writing to them, and then only after that did you decide to cloak it in a public service award.

It still comes back to the point, what services under this written contract did these two government insiders provide POGO? And let me tell you, they are not whistle-blowers. They have not filed whistle-blower suits. They do not have or claim to be whistle-blowers. These are two government officials you paid for some contractual service you entered into. So what was that service?

Mr. HUNTER. I believe you've asked and I've answered that question. There was no service.

Mr. BRADY. No service. It was—we're the Santa Claus of Washington, and that we are, while we've entered into this agreement, we do it of our own goodwill. This contractual agreement.

Ms. ZILL. Well, about whistle-blowers I have a few facts. In the 27 years that I've been associated with the Fund for Constitutional Government, we've worked with whistle-blowers, both in the military audit project originally, then the project on military procurement, and the project on government oversight, the government accountability project, a series of projects. There are several facts about whistle-blowers that aren't true. They are difficult to work with. They have difficult jobs. They are frequently vilified by their agencies. In the best of circumstances, they do not get recognition, and they very often do not get their agencies to do the right thing from the point of view of open, honest and accountable government.

Mr. BRADY. And in those cases, thankfully, our law provides for a whistle-blower protection for them, which these two didn't accrue. The other thing is most whistle-blowers that I'm aware of—are you aware of any whistle-blower who has demanded payment from a special interest for an agreement they entered into?

Ms. ZILL. I'm not aware that these two did. I'm just not aware of it.

Mr. BRADY. Well, your records show that you did enter into an agreement. Your records show that you did have to reaffirm that commitment. And while we're dealing in facts, while you say you were uncertain that there would be any money due to this lawsuit, the fact of the matter is, California had settled for $350 million almost a decade ago, Alaska $1.5 billion. You had every expectation of receiving compensation, and you entered into a contract for some type of service with two government officials who were legally prevented from doing so, and no claim of no knowledge, or we're good guys, or this is a great service award, those arguments or excuses really, simply aren't credible.

Thank you, Madam Chairman.

Mrs. CUBIN. The time of the Committee has expired. The Chair now recognizes Mr. Casey—there's no member to do on the other side, so the Chair now recognizes Mr. Casey for staff questioning.

Mr. CASEY. Thank you, Madam Chairman.

At any time in the last, let's say two years, let's say since January 1st of 1998, has the board as a whole or any subset of the board undertaken any effort to reassure itself that you knew all you think you should have known in December of 1996 or after that, about what was put on paper, what Mr. Berman and Spear may have expected, and what they—what POGO was perhaps—had committed itself to do on paper or verbally?

In other words, to sum up, knowing what you do now, in the last year since this has become an issue, a controversy, and even beyond that, have you taken any steps—if so, what—to make sure that everybody who signed that January 5, 1998 agreement understood that it did not mean what it said?

Mr. HUNTER. We've taken no steps to reassure ourselves, because at least speaking for myself, I don't need any reassurance, and as far as I know, the second part of your question, no, I don't—certainly I have not, and I don't believe any other member of the

board has approached any member who signed that agreement, other than obviously the conversations we had with our staff.

Mr. CASEY. Does anybody else have a different or a fuller answer?

[No response.]

Mr. CASEY. Ms. Zill, the Fund for Constitutional Government makes grants, I think you said, you have given grants to POGO. Is it the practice of the Fund for Constitutional Government to give grants without any written application?

Ms. ZILL. We have projects that are of long standing. We adopt in a sense projects after a long review, or sometimes they are created, and there's always paperwork, but——

Mr. CASEY. And a long review?

Ms. ZILL. But I don't mean to imply that we get a grant request in a long written form every time we make a grant. We make an annual grant or sometimes divided into two.

Mr. CASEY. But I think there is a staff for you, a formal—whether it's on paper or not, there's a formalized process to review the progress of the project and its suitability?

Ms. ZILL. Yes, we get progress reports from the project directors at least twice and sometimes three times a year or four times a year on occasion.

Mr. CASEY. Do you recall your organization ever giving out as much as $750,000 without any kind of written record or formal staff process or board process, to assure itself that the "i's" were dotted and the "t's" were crossed?

Ms. ZILL. Well, what I would say is that we have not given out a grant of that size to my knowledge. On the other hand, we are not—we haven't engaged in the kind of activities that POGO has, and I don't think in the case of POGO that the monies were distributed without a very careful review and the crossing of "i's" and dotting—dotting of "i's" and crossing of "t's."

Mr. CASEY. Thank you. Mr. Banta, at what exact time did you recuse yourself from discussions of the payments to Mr. Berman and Speir?

Mr. BANTA. I don't remember. I think they're reflected in the board minutes that you have.

Mr. CASEY. No, sir, they're not. You have in front of you what we have.

Mr. BANTA. I can't remember that. It was in between the—it was shortly after the lawsuit gets filed. I don't remember when it was.

Mr. CASEY. Well, this first complaint was filed June 9th, 1997.

Mr. BANTA. It was later than that. It was——

Mr. CASEY. Later than that. How much later?

Mr. BANTA. I haven't a clue.

Mr. CASEY. Please try to remember. Before the end of that year?

Mr. BANTA. I don't remember. I really don't.

Mr. CASEY. Is there any written record in the board meeting minutes; did you put something in writing in the board files, in the POGO files to indicate that you were formally recusing yourself from the issue of the payments, not the lawsuit in general, the payments to Mr. Berman and Mr. Speir with regard to the——

Mr. BANTA. No. My recusal was with regard to everything relating to the lawsuit.

Mr. CASEY. And that would include the payments to Berman and Speir?

Mr. BANTA. That included everything.

Mr. CASEY. Oh, good. So the payments to Berman and Speir are related to the lawsuit?

Mr. BANTA. Very funny.

Mr. CASEY. Do you think you had recused yourself before January 5, 1998?

Mr. BANTA. I just don't remember. I really don't.

Mr. CASEY. Do you recall meeting in your office on or about that day with Mr. Berman, Mr. Speir and Danielle Brian to sign the agreement dated that day?

Mr. BANTA. I remember being—I remember knowing of the agreement. Whether it was signed in my office or not, I knew about it. Whether I was physically present—but, yeah.

Mr. CASEY. Do you remember being asked about this very subject in your deposition for the November 29 hearing on the motion to void the MRCA?

Mr. BANTA. I probably was, yes.

Mr. CASEY. And do you remember what you said in that deposition about your physical presence when that agreement was signed?

Mr. BANTA. I don't. I'm sure you'll refresh my——

Mr. CASEY. You said you were present, and you said it was in your office.

Mr. BANTA. Okay.

Mr. CASEY. Do you remember being present, apparently sometime in early December 1996, in your office with Mr. Berman, Mr. Speir and Danielle Brian, to discuss the filing of a False Claims Act lawsuit dealing with oil royalties?

Mr. BANTA. I remember having discussions. I can't give you dates. I am just lost on dates.

Mr. CASEY. Do you recall the December 9, 1996 board meeting at which you gave a presentation along with Ms. Brian——

Mr. BANTA. Yes, I do remember that.

Mr. CASEY. [continuing] the decision to fill the suit.

Mr. BANTA. Yes, I do remember it.

Mr. CASEY. Do you remember a meeting shortly before that with Mr. Berman, Mr. Speir and Ms. Brian to discuss that plan?

Mr. BANTA. I have no specific recollection of it, but——

Mr. CASEY. Do you recall——

Mr. BANTA. [continuing] I'm sure there was conversations.

Mr. CASEY. Do you recall being asked, in your deposition taken for the November 29 hearing on the motion to void the MRCA, do you remember being asked whether the agreement put in writing in January 5th, 1998, and signed on that day, essentially reflected the agreement reached in your office with Mr. Berman, Mr. Speir and Ms. Brian?

Mr. BANTA. That's probably the case, yes.

Mr. CASEY. Probably the case.

Mr. BANTA. Yes.

Mr. CASEY. When did you give us the chairmanship of the POGO board?

Mr. BANTA. Help me, Dave. I don't—when did you become chairman?

Mr. HUNTER. I took over in February of '98, I believe.

Mr. CASEY. February of '98. So if someone under oath recollected that it was early January of 1998, would that—can we exclude that as being possible?

Mr. HUNTER. My recollection is——

Mr. CASEY. Did it take place at a board meeting?

Mr. HUNTER. Yes.

Mr. CASEY. Was there a vote to make you chairman, Mr. Hunter?

Mr. HUNTER. Yes.

Mr. CASEY. Could you give us that portion of that board meeting sometime in the next two weeks?

Mr. HUNTER. I will certainly consider it without waiving any objections at this time on pertinency or any other objections.

Mr. CASEY. Okay. Now, the answer to many questions from many of you, you've stated your great faith in Mr. Rutter, Danielle Brian and the rest of the POGO staff, and how you've trusted them to carry out the details of this agreement and other things. Did any of you understand in December of '96, in January of '98 or at any time since then, that Mr. Banta took a direct part in negotiating the agreement which resulted in the payments to Mr. Berman and Mr. Speir? Anybody? And in fact, everybody, please, except for Mr. Banta, who obviously knows what he did or didn't do.

Mr. HUNTER. I think I probably have a general understanding that Mr. Banta was often in contact with Ms. Brian——

Mr. CASEY. A specific understanding that he took a direct part in the signing of the January 5, 1998, agreement and a direct part in the——

Mr. HUNTER. I can't recall whether I——

Mr. CASEY. You can't recall. Does anybody recall having that specific understanding at any time?

[No response.]

Mr. CASEY. I assume your silence means nobody has such a recollection.

Ms. RASOR. Well, you are saying "specific." I think that is why you are not getting any answers. You know, we all knew that Hank Banta was the chairman and was working very closely with Danielle Brian on the suit. But we all weren't standing there specifically with a glass to the wall listening.

Mr. CASEY. Okay. The meeting minutes from December of 1996 reflect that there was a general presentation of some kind by Mr. Banta and/or Ms. Brian about the likelihood of success in the lawsuit. At that meeting or at any prior meeting, did the POGO Board discuss explore asking a law firm as a pro bono matter to undertake litigation that would have stopped the underpayments and/or even collected past royalties owed, but would not enrich POGO, an injunction of some kind?

A couple of you are lawyers. I am sure you could think of something. In other words, any kind of discussion of that?

Mr. BANTA. The cost of such a lawsuit would have been prohibitive.

Mr. CASEY. I said pro bono, Mr. Banta.

Mr. BANTA. Yes. The cost would have prohibited a pro bono effort in that regard.

Mr. CASEY. But did you ask? Was any law firm approached or asked?

Ms. ZILL. Well, not to my knowledge, but one of the things I believe is correct is that the Fund for Constitutional Government produced a little booklet on the history of the qui tam—the history of the qui tam Act, not Act, but whatever.

Mr. CASEY. Ma'am, we are running out of time. Is the answer——

Ms. ZILL. So the reason we went that route is because we knew something about it and it seemed at least vaguely possible. At least that is my memory of it.

Mr. CASEY. If POGO wished to stop the underpayments and provide money to those who had taken part in all of this, why not give away everything after paying your expenses?

Mr. HUNTER. First, let me say that I don't know that we ever discussed, and I don't think we did discuss, doing it in any other way. We did discuss, and I think we decided that a qui tam lawsuit was a good way of highlighting and publicizing what was going on. That is why we did it, I believe, and my recollection was we didn't really think we were going to ever win anything.

Mr. CASEY. I understand that.

Mr. HUNTER. Now, as far as—could you repeat your last question about why we don't give it all away? We still may. We have to cover some of our expenses right now, but let me be quite serious about this.

Mr. CASEY. Well, I don't know that that is giving it away.

Mr. HUNTER. Let me be quite serious about this, about the money, because it seems to be something that some of you are having a difficulty understanding. And I think somebody twice now has referred to POGO as Santa Claus, and I am reminded of the movie "Miracle on 42nd Street" where we had a whole bit of a trial about whether Santa Claus existed.

One of the things that is most disconcerting about this process is that it seems to be inconceivable to the members of this Congress that a small non-profit could give away some resources. We don't necessarily want to grow bigger. We are not a for-profit company. We don't have investors for whom we have to maximize profits.

This was in some ways—once money started appearing, it provides a challenge for us. We have to go through strategic planning. This wasn't why we did it. We did it to get the rules changed and we got the rules changed.

Mr. BRADY. I just want to point out the reason you did it is you had a contractual relationship that you have to provide, and the only reason you are here today is that someone blew the whistle on you and that is why we are here.

Mr. HUNTER. May I respond to that?

Mr. BRADY. I would yield back to Mr. Casey.

Mr. CASEY. We are getting short of time.

Mr. HUNTER. Madam Chairman?

Mrs. CUBIN. Yes. Mr. Casey has the time.

Mr. CASEY. Once POGO discovered that two solid relator groups had preceded you in this cause of action, or one extremely similar, and that therefore there would be in all likelihood a False Claims Act lawsuit that would put a stop to this process, why did you push forward with your own if the motivation wasn't money?

If the motivation was to stop the underpayments, recoup past underpayments, make it a public issue, why did you need to proceed with your own case when you discovered that there were two before you?

Mr. HUNTER. First off, I am not certain when the Board discovered there were two before us. And, secondly—well, I can only speak for myself—we never really addressed it. The lawsuit was being handled. It didn't come up. It wasn't something—so we filed it in order to highlight the things and it kept going; it had its own momentum.

Mr. CASEY. Ms. Rasor, have you ever been employed by any of the law firms of Packard, Packard and Johnson, or Packard and Packard?

Ms. RASOR. Not Packard and Packard, but I have been employed by Packard, Packard and Johnson.

Mr. CASEY. Did you play any role in putting together the Packard law firms in POGO?

Ms. RASOR. Yes. I would also have liked to—since that was a general question, the last question, I work quite intimately with a lot of qui tam lawsuits and it is one of my areas of expertise, even though I am not an attorney. And one of the things that you find in a qui tam lawsuit when there are multiple cases that are combined together is that everybody brings something to the table.

And so it would probably have not been a good idea to stop the bleeding of the taxpayers' money for us to just say, oh, they have got it, forget it, because we had knowledge that would also add to—each relator brought information.

Mr. CASEY. Okay, I get your drift.

In your experience with the False Claims Act, have you become aware that the False Claims Act itself specifically prohibits retaliation against Federal employees who file as relators openly? Yes or no, please.

Ms. RASOR. I worked to get the law passed and so I am very aware of it. Now, repeat your question because it doesn't make sense to me.

Mr. CASEY. Are you aware of any provision of the False Claims Act which provides that Federal employees who openly file as relators may not be retaliated against for doing so by their agencies?

Ms. RASOR. Yes. In fact, I worked on getting that provision passed. Unfortunately, getting laws passed and getting what reality happens to a Federal whistleblower is two different things.

Mr. CASEY. Mr. Hunter, have your attorneys in this case, the attorneys representing the organization, been authorized to use private investigators to look into the private lives of any member of this Subcommittee?

Mr. HUNTER. Not that I now of. Which attorneys?

Mr. CASEY. Brand and Frulla.

Mr. HUNTER. Not that I know of.

Mr. CASEY. Would you authorize them to or would you prohibit them to do that?

Mr. HUNTER. I never thought about it one way or the other.

Mr. CASEY. Your attorneys have. According to the National Journal of March 25 of this year, it is standard operating procedure.

Are any of you—and I think this is my last question, Madam Chairman—are any of you——

Mr. HUNTER. Will this one be pertinent, because I am——

Mr. CASEY. Are any of you aware of any specific harm to the career, to the prospects, to the finances, to the physical well-being of Mr. Berman or Mr. Speir for the positions they took on the subject of oil royalty underpayments?

[No response.]

Mr. CASEY. Do I take that as a no?

Mr. BANTA. I don't know about Mr. Speir, but I know that Mr. Berman got into some difficulty when the first memo went to Lakewood asking for a response to his questions. I know that there was some—that was not an appropriate question for him to ask in his position, at least in the view of some of his superiors. You would have to ask him about the details, but I think there was a problem.

Mr. CASEY. In the meeting in your office sometime in early December, it appears, possibly very late November of 1996, at which you and Ms. Brian and Mr. Berman and Mr. Speir discussed the filing of an oil royalty lawsuit, did either gentleman clearly indicate that he feared retaliation or retribution from his agency if he openly filed such a suit?

Mr. BANTA. Yes, that was discussed.

Mr. CASEY. Do you have a clear recollection that either or both gentlemen——

Mr. BANTA. I think both of them.

Mr. CASEY. [continuing] affirmatively represented——

Mr. BANTA. My recollection is that both of them expressed fears of that kind.

Mr. CASEY. If I might, let me ask again and try to be specific and see if this changes your answer. Did either of them specifically and affirmatively say that they feared retribution or retaliation from their agencies if they put their names on a False Claims Act lawsuit dealing with oil royalties?

Mr. BANTA. It is difficult for me, you know, at this distance in time to be that precise, Mr. Casey, but that is a sense that I still have that that type of fear was there and that they expressed it. I am a little reluctant to—I mean, I know you want precision and I am a little reluctant to give it to you because I can't. But my present recollection is that that type of fear was expressed.

Mr. CASEY. Earlier today, Mr. Kritzer recalled a conversation with you about filing a False Claims Act dealing with oil royalties. Do you remember that conversation?

Mr. BANTA. Yes, I do.

Mr. CASEY. Do you have a more clear recollection than he did about how it went and what the discussion was?

Mr. BANTA. Not much more. I think that once again it reflects what one of my colleagues represented, which is that at least certainly in my mind at the time the chances of recovery weren't very

great. And I suppose I said something to Bernie, would you like to have a piece of the pie in the sky.

And I think his characterization of it as being somewhat—I forget how he put it, but being rather vague probably was accurate. But I did have the conversation with him and my recollection does pretty much comport with his.

Mr. CASEY. And I promise this really is the last one, Madam Chairman.

Earlier, Mr. Schaffer was asking about advice from the Justice Department that the payments should not be made, and I honestly forget—one of you represented that, yes, there was some kind of general discussion.

Was that you, Mr. Mitchell?

Mr. MITCHELL. I believe I was asked if I was aware that the Justice Department had disapproved or told us not to do that, and I wasn't aware of that.

Mr. CASEY. I am sorry. You were told, but you weren't aware of it?

Mr. MITCHELL. I thought the question was, was I aware that the Justice Department had told us not to do this, and my answer was I was not at the time aware that that representation was made.

Mr. CASEY. Were you aware that any of the False Claims Act attorneys had reservations or objections to it?

Mr. MITCHELL. Not specifically, no, I was not.

Mr. CASEY. Does anybody else have a specific recollection of whether you had any impression or information that either the Justice Department, the office of the U.S. Attorney for the Eastern District of Texas, or your own False Claims Act lawyers had reservations or objections or qualms about proceeding with the payments to Mr. Berman and Mr. Speir?

Mr. MITCHELL. That is a lot broader than the question you asked me, but I will let Mr. Hunter field that.

Mr. HUNTER. Well, one portion of that with respect to discussions with our lawyers is protected by attorney-client privilege and we won't answer it.

Mr. CASEY. Well, the Packards specifically deny that they represent you on the subject of paying Mr. Berman and Mr. Speir.

Mr. HUNTER. That is fine.

Mr. CASEY. Okay.

Mr. HUNTER. You can repeat the question if you like, but——

Mr. CASEY. Excuse me?

Mr. HUNTER. That is fine.

Mrs. CUBIN. Would you like us to read the documentation we have from the Packards that they don't represent you?

Mr. HUNTER. No, I don't——

Mrs. CUBIN. Are you claiming they do represent you in this?

Mr. HUNTER. With respect to the payments, no. But the question was very broad. I didn't understand which lawyers he meant and I was just——

Mr. CASEY. Would it help if I stated it again more specifically?

Mr. HUNTER. I am sorry?

Mr. CASEY. Would it help if I stated it again more specifically?

Mr. HUNTER. Certainly.

Mr. CASEY. To each of you, not just Mr. Hunter, what, if anything, do you recall about having an impression or information that any of your False Claims Act lawyers—and among those would be the firm of Rio, Morgan and Quinn; Packard, Packard, and Johnson; and Packard and Packard—that any of those attorneys expressed qualms or reservations or objections about proceeding to pay Mr. Berman and Mr. Speir?

[Mr. Hunter conferring with counsel.]

Mr. HUNTER. If I may, I would like to continue the objection because though they may not—the exact scope of what they represent or not, they did continue to be our attorneys within the litigation.

Mr. CASEY. Okay.

Mr. HUNTER. There may have been some conversations that are still protected by attorney-client privilege, and I believe they are.

Mr. CASEY. Okay.

Mrs. CUBIN. Excuse me. Mr. Hunter, I think I have said this before, but it has been a long day and so I am not sure. But the attorney-client privilege and other judicial privileges that are not grounded in the Constitution, as this is not, are not applicable in this hearing as a general rule.

This includes the attorney-client privilege and the attorney work product privilege. Courts created these privileges for their proceedings. They are not applicable to this hearing because this Subcommittee's authority comes from Article I of the Constitution dealing with the Legislative Branch, not Article III dealing with the courts.

In practice, some Committees have exercised discretion on whether to accept or reject these privileges, weighing the need for disclosure against the possible injury resulting from that disclosure. Therefore, the privileges are within the chairman's discretion to accept or reject.

I find that the Subcommittee needs this information to understand the subject that we are investigating. Compelled disclosure, on the other hand, does not constitute a waiver of the privilege on the part of the witnesses, so possible harm is not great. I find that the question that is asked ought to be answered.

Mr. HUNTER. Thank you. I respect your position, but on advice of counsel, I will stand on my objection that this is covered by the attorney-client privilege, and I don't believe that what you have stated has been definitively decided otherwise. Thank you.

Mrs. CUBIN. Again, as in the case with Mr. Rutter, failure to answer these questions after the determination by the chairman of the Committee that privilege is not accepted could constitute grounds for you and the other Board members to be held in contempt of Congress.

I don't want to have to go that route, but this Subcommittee does need the information that we have asked for. We need the information that we have subpoenaed in order to complete this oversight responsibility. So would you please answer the question?

Mr. HUNTER. Thank you. And, again, with all due respect and on advice of counsel, I will stand by the objection on the attorney-client privilege. Thank you.

Mrs. CUBIN. Well, your objection is overruled.

Mr. Casey, would you——

Mr. CASEY. Thank you, ma'am. To complete the restatement, I will pose it again, and this time regarding any Federal Government lawyer, the Justice Department specifically, anybody employed in the office of the United States Attorney for the Eastern District of Texas, and this question is posed to each of you.

Were you in any way aware on any level that any Federal lawyer—Justice Department, Civil Division, in Washington; U.S. Attorney out in Texas—had expressed qualms, objections, reservations, any such negative advice regarding the plan to pay Mr. Berman and Speir on November 2 of 1998?

Are you planning an attorney-client relationship with the Justice Department?

Mr. HUNTER. No, I am not, but I am claiming the objection on advice of counsel because any information I may have with respect to that would have come from my attorney. Thank you.

Mrs. CUBIN. Thank you.

As I said, my career is being a wife and a mother, and during the time I was raising my children I truly served on many, many non-profits boards. And I think it is certainly a noble way to spend your time, and I congratulate all of you for that.

I am mystified, however, at the entire Board's reluctance, number one, to honor the subpoenas that were earnestly issued by the chairman of this Committee. I don't understand why it is that you would want to keep anything secret. In my opinion, letting the light of day shine on all of the activities of a non-profit is your best protection and your best insulation from any sort of thing like this.

So I guess the last question of the day is I would just like to ask you each, did you vote as a Committee not to honor the subpoenas? As a Board, each one of you, did you vote on that?

Mr. MITCHELL. No. I would say that I received one subpoena and that was for the appearance today, and I have appeared and spent all day here at the pleasure of the——

Mrs. CUBIN. Were you aware of all of the subpoenas asking for documents from POGO? Were you aware of that?

Mr. MITCHELL. I am generally aware of them, and POGO and our counsel, our good counsel, was dealing with that. That was not my responsibility. I received the subpoena to appear here today to answer the Subcommittee's questions.

Mrs. CUBIN. And we thank you for that.

Mr. MITCHELL. And I have honored that.

Mrs. CUBIN. We thank you for that. However, being the responsible governing Board of the organization, and not granting the documents that we feel necessary to determine whether or not the existing policy and procedures that are in place are adequate to ensure that Government employees don't receive money in exchange for a decision on royalty evaluation, for example—I just don't understand why you are reluctant to honor the subpoenas of this Committee.

Mr. HUNTER. Madam Chair, may I answer that with respect to me at least and as the Chair?

Mrs. CUBIN. Well, I am not sure because you have so many other secrets, I am sure I am interested in this information.

Mr. HUNTER. Well, you asked the question. I assumed you wanted the answer.

Mrs. CUBIN. I have wanted a lot of answers that you have refused to give me, Mr. Hunter.

Mr. HUNTER. I would like to answer the question about why we didn't provide questions from this Committee and documents regarding our IRS status. I would like to answer that. I don't believe that is within your jurisdiction, and I received a letter from the Chair of this Committee that, in my view, was a veiled threat about our status. I don't think that our IRS status is a part of the jurisdiction of this Committee.

Mrs. CUBIN. I don't think it is either.

Mr. HUNTER. So I am comfortable not answering those questions. Thank you.

Mrs. CUBIN. I certainly don't think your status as a non-profit is within the jurisdiction of this Committee either, and you haven't heard those words come from any Member.

Ms. ZILL. I think if you examine the long history of POGO, you will see that their hallmark is openness and——

Mrs. CUBIN. Well, it certainly isn't today, Ms. Zill.

Ms. ZILL. And you will see that they have a long reputation for openness.

Mrs. CUBIN. It certainly hasn't been since we have been asking, in the kindest way, first of all, to cooperate. We received no cooperation. We couldn't get the documents by request. We subpoena them, and then you refuse to honor the subpoena. That certainly does not indicate an open organization to me.

I do thank you for your endurance. It has been a long day for all of us.

Deborah, do you have questions?

Ms. LANZONE. Yes.

Mrs. CUBIN. Certainly. The Chair yields 15 minutes to the Minority side staff.

Ms. LANZONE. Mr. Hunter, why did you decide to serve on the Board of POGO?

Mr. HUNTER. Because I thought at the time, and I still think at the time, that it is one of those rare non-profit organizations that have a real chance of making a difference in this town, making Government work better. I am very proud to have made that decision and I am very proud to still be a member of it. Thank you.

Ms. LANZONE. Ms. Rasor, why did you decide to serve on the Board, and how much are you paid for serving on the Board? Maybe that goes to all of you.

Ms. RASOR. Well, to my knowledge, no one on the Board is paid to serve on the Board. I served on the Board because I started this organization. Danielle Brian was my employee, and when she agreed to come back and take over the organization, I was delighted. And I agreed to serve on the Board when we finally became our own freestanding non-profit because I knew that she would keep the integrity and the effectiveness of this organization, not make it into a large bureaucracy, not have it be—you know, be a place for whistleblowers to come and be safe.

And that is what I wanted to do in 1981, and I am really proud that it is still going on and that we have—I have such a deep respect for all the other Board members because they have all dedicated their lives to the same kind of thing.

Ms. LANZONE. How often does the Board meet? Is it once a month or every two months or so? Is it a regularly scheduled——

Mr. HUNTER. No, it is not regular. It is basically quarterly or thereabouts.

Ms. LANZONE. Quarterly. So would you be the correct people to ask about—I mean, to what degree do you stay on top of the day-to-day operations of POGO and any kinds of exchanges that would be going on between POGO's attorneys and the Department of Justice or people involved in the qui tam, I mean, to the extent that you can answer that question?

Mr. HUNTER. As a Board, I don't think that is our role to stay involved in day-to-day operations of an organization as a Board. As individuals, I think we have different expertises and we bring different types of advice. Some of us have been more involved than others in different aspects, and I have certainly at times been involved in at least weekly discussions, if not daily, on different aspects of different cases and controversies.

Ms. LANZONE. And there is some ongoing dispute about whether or not POGO's attorney's contacted the Justice Department or to what degree they contacted them, and back and forth. So it is not, at least to my knowledge, an absolute actual fact that the Justice Department told somebody that POGO shouldn't write these checks. Is that correct? Or maybe you don't know the answer to that question or you shouldn't answer it either. I don't know.

Mr. HUNTER. I can't answer that question, with respect, as I mentioned before, with privilege.

Ms. LANZONE. You know, in the staff I have read, it looks like there seems to be some ongoing questions about that.

Ms. Zill, when you were talking earlier about whistleblowers, I don't know that you have ever met Mr. Berman or Mr. Speir, but from what you do know about whistleblowers, is it true that they are often—their ability to get things done within the department that they work in is minimized because of their activism? And so it would not be surprising that, say, Mr. Berman, would say to someone that he was involved in one area, but he really wasn't.

Ms. ZILL. I don't know Messrs. Berman and Speir, but I do know a lot of other whistleblowers, and I have appeared before the various congressional Committees with them. And my sense, in general, is that you need a great sense of humor, which it is hard to have when you are beleaguered, and that lives of people who tell the truth about things that are not being done correctly within their own agencies are changed forever.

And I have seen many people who commit truth, as it is also known, go off the deep end and lose it. So it is a hard role to play, and it is an unfortunate fact of a democracy today that isn't functioning perfectly as a democracy that we have to depend on whistleblowers.

And the problem with the whistleblower rule is that it isn't often carried out. The law is not honored correctly. So there are a lot of people who do get vilified and whose lives are ruined, really, and so it is a sad commentary on where we are at this point.

Ms. LANZONE. Ms. Rasor, did you have something to add to that?

Ms. RASOR. Well, I just wanted to say that when we founded the Project of Military Procurement, which became POGO—and this is

still POGO's thing—I don't think that you understand the situation that there are whistleblowers who decide to go public and decide to take the risk. And we really go through there and say, do you realize that your life will never be the same? You are going to be shunned, get ready.

But then the Project has been for years a place for people to come inside corporations or inside the government bureaucracy to give information anonymously so that they don't have to ruin their lives to do the right thing. So you have to understand there are two levels of that, and POGO is pretty unique on that that this is a place for whistleblowers to come, give the information, let us be the front for the information, so that their lives are not ruined for doing the right thing.

Ms. LANZONE. Thank you.

Chairman Cubin, since you are the only Member left, I thank you for the time.

Mrs. CUBIN. Thank you.

I think I would like to mention to this panel that despite POGO's self-described good intentions to fix the oil valuation problems—and I do believe that the intentions were good—I think the lack of oversight by your Board has allowed Ms. Brian and Mr. Banta to make a major mistake in agreeing to pay the Federal employees with what can only be described as a resultant diminishment in the ability of the government to recover greater sums in settlements, in future jury awards, and the new royalty, which it is no secret I disagreed with all along, but did not do anything as a Committee chairman or a Member to stop that from happening.

That rule may well be struck down because of the involvement of these two gentlemen and because of these payments. And I think that is tragic because, as I said, I do believe and I do know that all of your intentions, as well as Ms. Brian's, are good and I agree with them. And I am personally insulted and indignant at the practices of the oil companies, where they tried to fleece the taxpayer out of what was duly owed them.

So with that, I do thank you for your endurance. It has been a long day. You have been very patient and I appreciate that very much.

Mr. Banta, the Subcommittee has more questions for you that don't require the presence of the rest of the Board, and so to give you a fair opportunity to answer those questions, we will again issue you a subpoena for the May 18 hearing, I believe it is, at 2.

I thank everyone for their participation.

[The prepared statements of Messrs. Banta, Burnham, Cavallo, Hamel, Hunter, Mintz, Mitchell; and Ms. Rasor, Ms. Sims, and Ms. Zill follow:]

Mrs. CUBIN. With that, the Subcommittee is adjourned.

[Whereupon, at 5:49 p.m., the Subcommittee was adjourned.]

OVERSIGHT HEARING TO EXAMINE THE LAWS, POLICIES, PRACTICES, AND OPERATIONS OF THE DEPARTMENT OF THE INTERIOR, DEPARTMENT OF ENERGY, AND OTHER AGENCIES PERTAINING TO PAYMENTS TO THEIR EMPLOYEES, INCLUDING PAYMENTS RELATIVE TO MINERAL ROYALTY PROGRAMS AND POLICIES FROM PUBLIC LANDS AND INDIAN LANDS

THURSDAY, MAY 18, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:13 p.m., in Room 1324, Longworth House Office Building, Hon. Barbara Cubin, [chairman of the Subcommittee], presiding.

STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. This oversight hearing will come to order.

Two weeks ago, this Subcommittee held the first hearing conducted as part of the Resources Committee's inquiry into an agreement between POGO and two Federal employees to share cash proceeds from an oil royalty lawsuit and into the policies and practices of the Department of Energy and the Department of the Interior, which were either circumvented or inadequate to stop the deal.

If that agreement had not been uncovered by the press and pursued by this Committee, POGO, Mr. Berman, and Mr. Speir would have split $5.7 million as of today, and that is only from 5 of 18 defendants writing settlement checks so far. After we hear testimony from two Justice Department officials, we will hear from Robert A. Berman. Mr. Berman is a highly paid GS-15 in the Office of the Secretary of the Interior. He has pocketed $383,600 already and has another million dollars coming to at him, at least.

There was a secret handshake that took place in this agreement. That secret handshake was among Bob Berman, Danielle Brian, Bob Speir, and Henry Banta, and it was wrong. It was wrong because Federal employees are not allowed to have secret financial interests which may be affected by their work. Messrs. Berman and Speir actively pursued involvement in oil royalty matters. By De-

cember of 1996, when the deal was finalized, they were up to their eyeballs in it.

This deal is wrong because Mr. Banta and his law firm relied on relationships with Mr. Berman and Mr. Speir in promoting the interests of their biggest oil royalty client. Indeed, everyone approached by POGO to share these riches has long ties to Lobel, Novins & Lamont and to its clients' stake in Federal oil valuation policies: Mr. Kritzer and former California State Controller Ken Cory, who prudently declined participation in the deal, Bob Berman, Bob Speir and Lenny Brock, who foolishly accepted the offer, were involved with the firm. In fact, as the Subcommittee learned 2 weeks ago, Mr. Brock had been of no service to POGO and had never heard of it, and he had no background in Federal royalty issues involved in this litigation. But Mr. Brock does have a decades-long association with the Lobel law firm and with its biggest client.

Mr. Banta's firm claims to specialize in legal ethics. Was it ethical and appropriate for Mr. Banta to use his power at POGO to enrich those who enriched his law firm? This secret deal was also wrong because it was secret. Mr. Berman and Mr. Speir know now and they knew in 1996 that this was so. There were several conversations leading up to the secret handshake of November 1996. After that meeting, more than a year elapsed before the deal was put on paper. But during those 13 months, nobody revealed the secret to ethics officials. After the deal was put on paper, something that they must all regret by now, 9 months passed before the first check was written. But still, no one breathes a word to their agency. Mr. Berman's ethics file confirms this. Mr. Speir acknowledges that he had no clearance for this agreement while employed at the Department of Energy.

Each year, these two public servants filed financial disclosure reports. Why was the agreement with POGO left out of those reports? Because it was not a money maker? I am sorry, but that is not the rule. Losing money- as well as winning investments and partnerships have to be disclosed.

If this was a public service award, what harm could come from getting the approval required before accepting it? If this was a contract to share in a lawsuit either employee could have filed himself, what harm could come from revealing this direct and predictable financial interest? Mr. Berman, and Mr. Speir, and Ms. Brian, and Mr. Banta know the answer. I will tell you what they knew all along, what Mr. Speir has already admitted to. If this award, or agreement which is what it really was, had been revealed and cleared by Interior and Energy ethics officials, Mr. Berman and Mr. Speir would have been barred from further involvement in matters directly linked to the financial prospects of POGO, of the Lobel law firm and of themselves. After the fact and in the glare of public scrutiny, they call that retaliation. I call that ethics.

If Mr. Berman and Mr. Speir had put their names on the case and if their knowledge had been the basis for claiming status as the whistleblower, the Justice Department would have insisted on sealing them off from decisions related to the litigation and underlying policy. The Justice Department takes a dim view of Federal employees seeking to profit from False Claims Act suits directly re-

lated to their work. Once the defendants had been notified of the case and learned who Berman and Speir were, they would have launched an all-out effort to dismiss the case. They probably would have succeeded. That would mean nobody, not POGO, not Berman, not Speir not any other long-time asset of the Lobel law firm would have made a nickel.

The select few of POGO's leadership who knew of the secret handshake include experts in the False Claims Act. The Utah lawyers POGO chose to file their case in Lufkin, Texas, are experts in False Claims Act cases. Everybody knew that putting Berman's and Speir's names on the case meant Federal whistleblower protection for both of them. But that would be at the price of their continued participation in vital oil royalty debates. The only retribution reasonably feared by this crowd was a motion filed by the defendants to dismiss the lawsuit.

Before proceeding to the first panel of witnesses, let me summarize what I believe our oversight inquiry has learned. All of these statements are based on POGO's own documents to the limited extent that they were supplied to us and to the limited extent that our subpoenas were complied with. They are based on sworn testimony from the principal players and from staff interviews with cooperating sources.

Early in December 1996, Mr. Banta, Ms. Brian, Mr. Berman and Mr. Speir agreed that POGO would divide its expected royalty litigation proceeds in equal thirds and share it with Berman and Speir. This deal included no other conditions. Further POGO board approval was not required or sought. Agency ethics office approval and Justice Department notification was not required. The January 5th, 1998, written agreement is the sum and substance of the pact made early in December 1996.

In December of 1996 and thereafter, there was a wealth of legal, ethics, False Claims Act and whistleblower protection expertise available to Banta, Brian, Berman and Speir, yet no one "dotted the i's" or "crossed the t's" of this deal in advance. And everyone understood that it was an agreement to share the money. It was not a public service award. When asked under oath to cite specific acts of whistleblowing by Berman or Speir, after a struggle, all Ms. Brian could come up with was a memo or two. POGO's after-the-fact paperwork praises Mr. Speir for a decade of work to focus attention on royalty underpayment. Yet, Mr. Speir's own sworn testimony admits that he did not work on the issue at all until 1994. He retired in 1997.

But Mr. Speir, Mr. Berman and Mr. Brock, along with Mr. Kritzer and Mr. Cory, who declined to accept the money, can claim a long history of holding views on a host of valuation questions which directly benefitted the Lobel law firm. In late 1993, Mr. Banta, then and now a member of POGO board of directors, brought together Danielle Brian and his firm's key Federal employee allies on oil valuation matters. Soon thereafter, POGO embarked on a campaign which succeeded, by their own claims, in changing Interior oil valuation policy. This benefited the Lobel firm's top client and succeeded in making millionaires of three of the Lobel firm's key allies.

The same Henry Banta, who brought together this alliance; who agreed to pay Berman and Speir as if they were plaintiffs in the case; and who sits by as POGO concocts a defense that these Federal employees were whistleblowers who could have benefited had they filed a case on their own, told a different tale when POGO stood to lose its millions. Under penalty of perjury, Mr. Banta acknowledged that Danielle Brian, Bob Berman and Bob Speir probably could not have qualified as relators under the False Claims Act. He also acknowledges that the two public servants supposedly rewarded for 10 years of work to expose oil royalty underpayments could not have qualified as expert witnesses or as fact witnesses in *Johnson v. Shell.*

This breathtaking arrogance and duplicity is not unique to Mr. Banta. In sworn testimony and in public, Ms. Brian has asserted that there was never an agreement to pay either Federal official. No, there was simply POGO's unilateral commitment to do what was morally right, to honor these men as the moral equivalents of plaintiffs in this case. The January 5, 1998, agreement calls itself an agreement because that is what it was. But Ms. Brian says it just states what Berman and Speir could expect when the oil company money started flowing.

But now that questions are being asked, she says that there were key conditions that were not included in that supposedly clear statement of her moral commitment. When a different question is asked, Ms. Brian acknowledges under oath that it was an agreement after all, but says that POGO will not live up to its part of the bargain. Why? Not for any moral reason, but because she and her board decided that neither Berman nor Speir would succeed in court if they tried to force POGO to comply. Maybe that is why, as we understand it, Mr. Berman threatened to pursue legal action against POGO if it did not live up to its agreement.

Finally, our oversight inquiry has learned this: The Interior Department did a very poor job of maintaining secrecy over the *Johnson v. Shell* case while it was under seal. Even Mr. Speir, who was located over at Energy, admits the case was "coffee table conversation" while under seal. Interviews indicate that dozens of MMS and Interior employees knew about the case. Anyone who tells us today that they did not know at least one sealed False Claims Act case alleging oil royalty underpayments was pending in Eastern Texas is the only person in that loop who did not know. Yet only two of these Federal employees have been paid from that case.

So far, this appears to be a classic and tragic Washington scandal: hypocrisy, and greed and coverup. In the hunger for profits, a nonprofit lost sight of its guiding principles. In the scramble to cover the truth, rather than make a mistake, a watchdog refuses to be watched. In the name of public service, lies are told and retold. An organization once fighting to expose Government wrongdoing now says, "So what? Others have done worse things." This is truly a shame.

The board of directors and the record keeper with no records who sat before us 2 weeks ago have been manipulated by Mr. Banta and Ms. Brian. Mr. Banta, the trusted lawyer and chairman, recruited POGO to benefit his law firm, and he and Danielle Brian

should both be ashamed of what they have done to the reputation of POGO.

As I said at our last hearing, this oversight hearing is conducted as a part of the Committee on Resources' inquiry into the operations, policies and practices of the departments of the Interior and Energy which were either circumvented or which were inadequate to prevent this serious conflict of interest. The parameters of this oversight review are contained in the letter transmitting the inquiry to the Subcommittee from Chairman Young. These matters are within the jurisdiction of this Committee.

The witnesses have been subpoenaed to testify today. I advised each witness that he or she will be sworn in. Witnesses were also advised that they could bring a lawyer to advise them of constitutional rights because the testimony will be sworn. However, only the witnesses will be allowed to address the Subcommittee. Lawyers should note that the rules of the House of Representatives restrict counsel to advising witnesses in the assertion of constitutional rights and privileges. That means, after a consultation with a lawyer, I should hear one of two things: an assertion of a constitutional right or the answer to the question.

Lawyers may not sit at the witness table, but I have reserved seats in the first row so that lawyers may counsel their client if need be. Lawyers may not coach their clients. The Rules of the House will be enforced firmly and impartially. I remind everyone that this is a Subcommittee hearing which proceeds under Rule XI 2(g)(2) of the Rules of the House of Representatives. Procedures associated with those rules apply. This is an open hearing under those rules. This is not an investigative hearing.

Witnesses will not make oral summaries of their testimony, but may place statements which comply with the rules in the record.

As I announced at our last hearing, our exercise examines an instance where a private corporation made payments to Federal employees involved in royalty policies and rules. Our Subcommittee is responsible for ensuring that there is integrity in the Federal policy and rule-making process concerning oil royalties from public domain land. We are responsible for ensuring that the departments are organized and operated properly. The hearing today is to gather the facts to discharge our responsibility.

At our last hearing, I became quite concerned with how the payments affected advice, recommendations and deliberations concerning the Subcommittee's proposal on royalty in-kind system. Did the employees have an incentive to keep the system in place so that they could collect their share of the settlements under the secret agreement with POGO? We worked on the R-I-K proposal and oversight for 4 years to ensure a fair system that allows collection of every penny of royalties that is owed. But did the payments affect the policy of the Interior Department regarding our proposal? How can any of us know?

Now, we have a new rule for royalties, but the integrity of the rule-making process is in serious question because of the payments to Mr. Berman and Mr. Speir. POGO supported the approach followed in the rule, and Mr. Berman wrote the first paper outlining that approach.

As we begin this hearing, I ask everyone to imagine that it was an oil company, instead of POGO, that made two $383,600 payments to Federal employees who worked on oil policy. Imagine that the employees wrote papers that advocated a position similar to that of the oil companies. Imagine that the employees fed the companies information over the years or sat on task forces concerning oil valuation policies? Then imagine that when the payments were made the oil companies called them public service awards. If you are a member of the press, imagine what you would write. Well, write that story as you listen to today's testimony, but every time you write the name of that oil company, strike it out and insert "the Project on Government Oversight." Agency policy advisers should not be silent partners of anyone.

[The prepared statement of Mrs. Cubin follows:]

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Mr. Banta's firm claims to specialize in legal ethics. Was it ethical and appropriate for Mr. Banta to use his power at POGO to enrich those who enriched his law firm?

This secret deal is also wrong because it was secret. Mr. Berman and Mr. Speir know now and they knew in 1996 this was so. There were several conversations leading up to the secret handshake of December 1996. But neither public employee asked his agency ethics office for advice. After that meeting, more than a year elapsed before the deal was put on paper. But during those 13 months, nobody revealed the secret to ethics officials. After the deal was put on paper—something they must regret by now—nine months passed before the first check was written. But still, no one breathes a word to their agency. Berman's ethics file confirms this. Mr. Speir acknowledges that he had no clearance for this agreement while employed at Energy.

Each year, these two public servants filed financial disclosure reports. Why was the agreement with POGO left off? Because it was not a certain moneymaker? I am sorry but that is not the rule. Losing and winning investments and partnerships have to be disclosed.

If this was a "public service award," what harm could come from getting the approval required before accepting it? If this was a contract to share in a law suit ei-

ther employee could have filed himself, what harm could come from revealing this direct and predictable financial interest? Berman and Speir and Brian and Banta know the answer.

I'll tell you what they knew all along—what Mr. Speir has already admitted—if this "award" or agreement had been revealed and cleared by Interior and Energy ethics officials, Mr. Berman and Mr. Speir would have been barred from further involvement in matters directly linked to the financial prospects of POGO, of the Lobel law firm, and of themselves. After the fact and in the glare of public scrutiny, they call that "retaliation."

I call it ethics.

If Berman and Speir had put their names on the case and their knowledge had been the basis for claiming status as the whistle-blower, the Justice Department would have insisted on sealing them off from decisions related to the litigation and underlying policy. The Justice Department takes a dim view of Federal employees seeking to profit from False Claims Acts suits directly related to their work. Once the defendants had been notified of the case and learned who Berman and Speir were, they would have launched an all-out effort to dismiss the case. They probably would have succeeded.

That would mean that nobody—not POGO, not Berman, not Speir, not any other long-time asset of the Lobel law firm would have made a nickel!

The select few of POGO's leadership who knew of this secret handshake include experts in False Claims Act cases. The Utah lawyers POGO chose to file their case in Lufkin, Texas are experts in False Claims Act cases. Everybody knew that putting Berman and Speir's names on the case meant Federal whistleblower protection for Berman and Speir but at the price of their continued participation in vital oil royalty debates. The only retribution reasonably feared by this crowd was a Motion to Dismiss filed by the defendants.

Before proceeding to the first panel of witnesses, let me summarize what I believe our oversight inquiry has learned. All of these statements are based on POGO's own documents—to the limited extent they complied with our subpoenas—on sworn testimony from the principal players, and from staff interviews with cooperating sources:

> In early December 1996, Mr. Banta, Ms. Brian, Mr. Berman and Mr. Speir agreed that POGO would divide its' expected oil royalty litigation proceeds in equal thirds and share it with Berman and Speir. This deal included no other conditions. Further POGO Board approval was not required nor sought. Agency ethics office approval and Justice Department notification was made. The January 5, 1998 written agreement is the sum and substance of the pact made in early December 1996.
>
> In December of 1996 and thereafter, there was a wealth of legal, ethics, False Claims Act, and whistle-blower protection expertise available to Banta, Brian, Berman, and Speir. Yet no one "dotted the i's or crossed the t's" of this deal in advance, and everyone understood that it was an agreement to share money—not a "public service award." When asked under oath to cite specific acts of "whistle-blowing" by Berman or Speir, after a struggle, all Ms. Brian could come up with was a memo or two. POGO's after-the-fact paperwork praises Mr. Speir for a decade of work to focus attention on royalty under-payment. Yet, Speir's own sworn testimony admits that he did not work on the issue at all until 1994. He retired in 1997.

But, Mr. Speir, Mr. Berman, and Mr. Brock—along with Mr. Kritzer and Mr. Cory who declined to accept money—can claim a long history of sharing views on a host of oil valuation questions which directly benefited the Lobel law firm. In late 1993, Mr. Banta, then and now a member of Lobel, Novins & Lamont and the single most influential member of the POGO Board of Directors, brought together Danielle Brian and his firm's key Federal Government allies on oil valuation matters. Soon thereafter, POGO embarked on a campaign which succeeded—by their own claims—in changing Interior oil policy. This benefited the Lobel firm's top client and succeeded in making millionaires of three of the Lobel firm's key allies.

The same Henry Banta, who brought together this alliance, who agreed to pay Berman and Speir as if they were plaintiffs in the case, and who sits by as POGO concocts a defense that these Federal employees were whistle-blowers who could have file the case on their own told a different tale when POGO stood to lose its millions. Under penalty of perjury, Mr. Banta acknowledged that Danielle Brian, Bob Berman and Bob Speir probably could NOT have qualified as Relators under the False Claims Act. He also acknowledges that the two public servants supposedly rewarded for ten years of work to expose oil royalty under-payments could NOT have qualified as expert witnesses or fact witnesses in Johnson v. Shell.

This breathtaking arrogance and duplicity is not unique to Mr. Banta. In sworn testimony and in public, Ms. Brian has asserted that there was never an agreement to pay either Federal official. No. There was simply POGO's unilateral commitment to do what was morally right—to honor these men as the moral equivalents as plaintiffs in the case. The January 5, 1998 agreement calls itself an "agreement" but Ms. Brian says it just states what Berman and Speir could expect when the oil company money started flowing.

But now that questions are being asked, she says there were key conditions not included in that clear statement of her moral commitment. When a different question is asked, Ms Brian acknowledges under oath that it was an agreement after all—but says POGO will not live up to its part of the bargain. Why? Not for any moral reason. Because she and her Board decided that neither Berman nor Speir would succeed in court if they tried to force POGO to comply. **Maybe that is why we understand that Mr. Berman threatened to pursue legal action against POGO if it did not live up to its end of the deal.**

Finally, our oversight inquiry has learned this: the Interior Department did a very poor job of maintaining secrecy over the Johnson v. Shell case while it was under seal. Even Mr. Speir, who was located over at Energy, admits the case was "coffee table conversation" while under seal. Interviews indicate that dozens of MMS and Interior employees knew about the case. Anyone who tells us today that they did not know that at least one sealed False Claims Act case alleging oil royalty under-payments was under seal in eastern Texas is the only person in that loop who did not know. Yet, only two of those Federal employees have been paid from that case.

So far this appears to be a classic and tragic Washington scandal. Hypocrisy and greed and cover-up. In the hunger for profits, a non-profit lost sight of its' guiding principles. In the scramble to cover the truth rather than admit a mistake, a watchdog refuses to be watched. In the name of public service, lies are told and re-told. An organization once fighting to expose government wrongdoing now says, "So what, others have done worse things." **This is truly a shame.**

The Board of Directors and the record-keeper with no records who sat before us two weeks ago have been manipulated by Mr. Banta and Ms. Brian. Mr. Banta, the trusted lawyer and Chairman who recruited POGO to benefit his law firm, and Danielle Brian should be ashamed.

As I said at our last hearing, this oversight hearing is conducted as part of the Committee on Resources' inquiry into the operations, policies, and practices of the Departments of the Interior and Energy, which were either circumvented or which were inadequate to prevent this apparent and serious conflict of interest. The parameters of our oversight review are contained in the letter transmitting the inquiry to the Subcommittee from Chairman Young. These matters are within the jurisdiction of the Subcommittee.

The witnesses have been subpoenaed to testify today. I advise each witness that he or she will be sworn in. Witnesses were also advised that they could bring a lawyer to advise them of constitutional rights because the testimony will be sworn. However, only the witnesses will address the Subcommittee.

Lawyers should note that the Rules of the House of Representatives restrict counsel to advise the witness in the assertion of constitutional rights and privileges. That means after a consultation with a lawyer, I should hear one of two things—an assertion of a CONSTITUTIONAL right or an answer to the question.

Lawyers may *not* sit at the witness table, but I have reserved a seat in the first row so that lawyers may counsel their client if need be. Lawyers may not coach their clients. The Rules of the House will be enforced firmly and impartially.

I remind everyone that this is a Subcommittee hearing that proceeds under Rule XI 2(g)(2) of the Rules of the House of Representatives. Procedures associated with those rules apply. This is an open hearing under those rules. This is not an investigative hearing.

Witnesses will not make oral summaries of their testimony, but may place statements that comply with the rules in the record. (The rules afford no right to an opening statement.)

As I announced at our last hearing, our exercise examines an instance where a private corporation made payments to department employees involved in Federal royalty policies and rules. Our Subcommittee is responsible for ensuring that there is integrity in the Federal policy and rule making process concerning oil royalties from public domain land. We are responsible to ensure that the departments are organizing and operating properly. The hearing today is to gather the facts to discharge our responsibility.

At our last hearing I became quite concerned with how the payments affected advice, recommendations, and deliberations concerning the Subcommittee's proposal

on a "royalty in-kind" (R-I-K) system. Did the employees have an incentive to keep the system in place so that they could collect their share of the settlements under the secret agreement with POGO? We worked on the R-I-K proposal and oversight for four years to ensure a fair system that allows collection of every penny of royalties owed, but did the payments affect the policy position of the department on our proposal? How can we know?

Now we have a new rule for royalties, but the integrity of the rule making process is in serious question because of the payments to Mr. Berman and Mr. Speir. POGO supported the approach followed in the rule, and Mr. Berman wrote the first paper outlining that approach.

As we begin this hearing, I again ask everyone, to imagine that it was an oil company instead of POGO that made two $383,600 payments to Federal employees who worked on oil policy. Imagine they had a three year secret written agreement to pay the employees money. Imagine that the employees wrote papers that advocated the positions similar to oil companies' positions. Imagine that the employees fed the companies information over the years or sat on task forces concerning oil valuation policy. Then imagine that when the payments were made, the oil companies called them "public service awards."

If you are a member of the press, imagine what you would write. Well write that story as you listen to today's testimony, but every time you write the name of that oil company, strike it out and insert the "Project On Government Oversight." Agency policy advisors should not be silent partners of anyone.

I call the first panel. Mr. Schiffer and Mr. Dodd, will you please stand at the witness table. Mr. Dodd, will you raise your right hand and be placed under oath, please. (Schiffer is providing expert opinion and does not need to be sworn.)

Mrs. CUBIN. Now, I recognize Mr.——

Mr. UNDERWOOD. I yield my time to Mr. Miller.

Mrs. CUBIN. Mr. Miller for an opening statement.

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. I thank the gentleman for yielding. And first of all, I would like to make a request that our colleague, Ms. Maloney, from New York be allowed to sit with the Committee and make a statement at the appropriate time.

Mrs. CUBIN. The gentlelady from New York certainly is welcome to sit at the dais. And I have informed her that she can make a statement at the end of the hearing, that she can be the last person to testify or she also has the option, if she cannot stay that long, of submitting her testimony for the record or Mr. Underwood has asked for a day to have Minority witnesses, and she certainly would be welcome to testify first at that hearing.

Mr. MILLER. Well, that is certainly within your prerogative to do that, just as it is in the prerogative of this Committee to allow people to sit and not sit. We have had a long tradition. We have even had members who are not members of this Committee chair hearings in this Committee. And the Minority has agreed to that. But we have allowed numerous members from the other side of the aisle to sit with this Committee because obviously this Committee affects many Western members' districts who are not members of this Committee, and they have given statements, along with members of this Committee, and they have testified and they have asked questions. And if we are not going to allow that here, then I don't think the Majority should look forward to a continuation of the Minority's cooperation of those future requests from members of the Minority.

Mrs. CUBIN. Mr. Miller, I am allowing it. And you will recall that I allowed Ms. Maloney to sit at the dais and question——

Mr. MILLER. And I appreciate that, and I am asking for the same rights in this hearing.

Mrs. CUBIN. And certainly she has that. If she can save her testimony until later on in the hearing, she is certainly welcome.

Mr. MILLER. Well, just remember that if other members on the Minority side, Mr. Herger and others, who have been such members on the Forestry Committee and the rest if they can wait until after all of the witnesses are done, then they are welcome to do the same. We just want to understand what the rules are because we have tried to have that comity back and forth.

Mrs. CUBIN. That is good. Then, we do all understand.

Mr. MILLER. Okay.

Finally, then, I would say that once again we find the Majority speaking in conclusion with regard to actions that have been alleged. And they are certainly entitled to put their spin on them. But the suggestion that these have, in fact, been proven yet I think is to get way ahead of the game. And I think once again, as I said at the previous hearing, it is to trample upon the rights of those who are under investigation for what may be illegal acts, for what may be criminal acts, for what may be huge mistakes in judgment and all of the rest of that. But that is currently under investigation, I believe by both the Department of the Interior and the Department of Justice.

In one case, in the Justice Department, I think clearly there is much at risk for those who are under investigations. But this Committee has sought again to wade into the middle of that. It is not as though somebody is ignoring this effort. But rather than wait the outcomes of that to determine whether or not those investigations and oversight have been done properly, this Committee has sought to weigh in. Because the whole point of this Committee is to really get at the oil valuation rules, and to get at the oil valuation rules not because of the oil valuation rules not because of the conclusions they cited, but because they don't like the fact that finally the oil companies are going to have to stop bilking the people of this Nation for the leases and the oil that they take off of public lands.

So this is about litigation and involvement in both lawsuits and in a regulatory manner to destroy the valuations and the determinations that have been put before the Congress, that have been held up time and again, but fortunately now it appears that they will go through. And I assert again that that is what is really going on here. That is not to condone or not to suggest that these actions did or did not take place because we don't know that.

But here we are. We had these same conclusions at the outset of the hearing. Now we have these same conclusions at half-time. And I guess we will have the same conclusions at the end of the game. But the important conclusions will, of course, be what is found out both by the Department of Interior, and more importantly, by the Department of Justice. So I am sorry that that is the case.

Also, in our discussions with the parliamentarian, I would just like to note for the audience that you keep suggesting that this is not an investigative hearing. The parliamentarian tells us that you may not want to call this an investigative hearing. But when you

have gone through the process of subpoenaing witnesses and the rest of that, that takes on the nature of an investigative hearing. And I appreciate why you are trying not to have this be an investigative hearing, it is, in fact, an investigative hearing, and I yield back the balance of my time.

Mrs. CUBIN. Thank you, Mr. Miller.

The chair now recognizes Mr. Tauzin for the purpose of a motion regarding questioning of witnesses.

Mr. TAUZIN. Madam Chairman, under Clause 2(j)(2)(b) of Rule XI under the Rules of the House of Representatives, I move that Congressmen Gibbons, Schaffer and Tancredo, Majority members, and a Minority member of the Committee designated by the Ranking Member be allowed to question the witnesses on our first panel for a total of 20 minutes, equally divided between our two parties.

Mr. MILLER. I don't understand. Are you saying that is 10 minutes a side?

Mr. TAUZIN. Ten minutes a side.

Mr. UNDERWOOD. Ten minutes a side, but you are allowing three people to ask questions.

Mr. TAUZIN. Yes. That is correct.

Mr. UNDERWOOD. And only one on this side.

Mrs. CUBIN. No. It is 10 minutes. You can divide it up however you want, equally divided.

Mr. TAUZIN. Madam Chairman, what I am suggesting is the Minority can designate one or more members of the Minority.

Mr. MILLER. Let me ask you, we did this last hearing, and I didn't object to it at that time. And then we went back into the 5-minute rule. Are you planning on doing that again? You would do this and then go into the 5-minute rule because we—I don't know if it was intentional or not, but we lapsed back into the 5-minute rule.

Mr. TAUZIN. My understanding is not for this panel; is that correct?

Mrs. CUBIN. That is correct, not for this panel. We will have a motion from the Majority side for a block of time, just as on all of the rest of the panels as well.

Mr. MILLER. Well, then I would object because under the Rules of the House, not of the Committee, under the Rules of the House, each member has the right to ask each witness questions for 5 minutes. So we would be entitled to 10 minutes, in any case. Mr. Underwood would be entitled to 10 minutes, I would be entitled to 10 minutes, and Mr. Inslee would be entitled to 10 minutes. Those are the Rules of the House.

Mr. TAUZIN. Then I ask for a vote on the motion, Madam Chairman.

Mr. MILLER. You can't supersede the Rules of the House. I have a right to ask each witness, each member does.

Mrs. CUBIN. Then, let's see, we have——

Mr. MILLER. Why don't we just proceed because I don't think it is going to take any more time.

Mrs. CUBIN. I don't either. That is why I don't understand why you are making the point.

Mr. MILLER. Because I am just reserving my rights. Why would I end up with 10 minutes, when we have got three people here that

may, in fact, want to ask questions and ask three? I don't know what they want to do.

Mrs. CUBIN. Would the gentleman amend his motion to 15 minutes on each side?

Mr. TAUZIN. Would the gentleman, Mr. Miller, accept 15 minutes on each side?

Mr. MILLER. I would object. I am just going to insist on the Rules of the House, which is each——

Mrs. CUBIN. All in favor of 15 minutes——

Mr. MILLER. The Committee must abide by the Rules of the House.

Mrs. CUBIN. All in favor, say aye.

Those opposed?

Mrs. CUBIN. So there will be 15 minutes' questioning on each side.

The chair now calls the panel forward and will swear them in. Would O. Kenneth Dodd and, Mr. Schiffer, since you are testifying as an expert and not specifically about this case, we don't require your being sworn in. But if you wouldn't mind, we can swear you in, too. But anyway, Mr. Dodd, would you——

Mr. MILLER. Madam Chairman, under the Committee rules, one sworn, all sworn. It doesn't matter what their status is.

Mrs. CUBIN. Would you both rise.

[Witnesses sworn.]

Mrs. CUBIN. Thank you. Please be seated.

The chair now recognizes Mr. Gibbons for questioning of the panel.

Mr. GIBBONS. Thank you very much, Madam Chairman. And I would simply like to begin my series of questioning with Mr. Dodd.

You are a False Claim expert in your office, are you not?

STATEMENT OF OLEN KENNETH DODD, ASSISTANT UNITED STATES ATTORNEY, EASTERN DISTRICT OF TEXAS

Mr. DODD. I try to be.

Mr. GIBBONS. Prior to June 1997, you were working with the Packards on False Claims Act suits alleging health care fraud; is that true?

Mr. DODD. I couldn't hear the first part of your——

Mr. GIBBONS. Prior to June 1997, you had been working with the Packards involving False Claim Act suits alleging health care fraud issues; is that correct?

Mr. DODD. Yes.

Mr. GIBBONS. Where were those cases being tried?

Mr. DODD. They were filed in the Beaumont Division of the Eastern District of Texas.

Mr. GIBBONS. How far is Beaumont, Texas, from Lufkin, Texas?

Mr. DODD. It's about an hour-and-a-half drive, about 85/90 miles.

Mr. GIBBONS. If you were a—let's hypothetically look at this. If I am someone looking to foster a good working relationship with you, might not I be doing myself a disfavor by filing claims at a distance from your office or where you normally practice?

Mr. DODD. Well, I know for a fact that the Packards considered filing cases in other divisions of the Eastern District of Texas and seriously considered that. I had no objection to that, and they knew

that. So I'm not quite sure whether that is responsive or not. But I don't think they were going to get any kind of ill will from me by filing it in some other part of my district.

Mr. GIBBONS. It was rather a rhetorical question, and I appreciate your answer. But let me move on to another question.

Before the Packards filed the POGO case on June 9th of 1997, did they tell you about the case and that they had decided which court to file in?

Mr. DODD. Sir, they told me that at a meeting at my office—actually, it wasn't "they." It was Von Packard—at a meeting at my office to discuss the health care fraud cases, at the conclusion of that meeting, as we were stepping out into the hall, Mr. Packard mentioned that he had an oil royalty valuation underpayment case that he was planning on bringing in the Eastern District of Texas. He did not say that he was going to be bringing that in the Beaumont Division. But clearly he was wanting to know if I was interested in the case and if I thought I had enough time to work on that case, in addition to the other cases that I had.

Mr. GIBBONS. Mr. Dodd, do you recall when that conversation took place?

Mr. DODD. No, I do not. It would—it would have been very shortly before it was filed. I would say maybe a couple of weeks. That is my memory.

Mr. GIBBONS. Before the June 9th, 1997 filing.

Mr. DODD. Yes.

Mr. GIBBONS. When they told you or this Von Packard told you of his plan to file a False Claims Act with regard to oil royalties, did you get the impression that they sought your views on their filing of that case and your view as to where they had decided to file it?

Mr. DODD. It was a very brief conversation in a hallway, sir. And it is difficult for me to remember that sort of impression. I know that they were considering whether or not they should file it in the Beaumont Division or some other division within the Eastern District of Texas. And I got the impression, it was mostly out of a concern of whether or not I would be able to handle it if it were in another division of our district or if I was going to handle it, would I have enough time to work on the case, given the other cases that I had. But I don't recall them specifically saying anything about any particular division that they were contemplating filing it in within the Eastern District of Texas.

Mr. GIBBONS. Before early November 1998, did any of the Packards ever tell you that their client, POGO, planned to pay two Federal employees who were possible witnesses in the Johnson v. Shell case?

Mr. DODD. No.

Mr. GIBBONS. Now, isn't it true that a party knowing that Johnson v. Shell and Mr. Wright's case were under seal in the Eastern District of Texas would not have needed a tipoff to file in Lufkin because a published order of the judge was already out and would have indicated to a trained eye that he was handling an oil royalty litigation already?

Mr. DODD. Well, there was a case filed in the Eastern District of Texas. It was U.S.A. v. Chevron, wherein the United States

sought to compel Chevron to produce documents that we had subpoenaed and that they had refused to comply with. And the judge had issued a public ruling on that. Now, Judge Hannah had cases both in Tyler and in Lufkin, and I cannot recall right now whether or not U.S.A. v. Chevron was filed in Tyler or Lufkin, but it was certainly filed in Judge Hannah's court. So that case would have given any intelligent person looking at it an insight that the United States was conducting an investigation into at least Chevron and seeking to get documents from Chevron.

Mr. GIBBONS. Going back to my previous question about POGO and the Packards. I understand that you had many phone calls with the Packards on issues including Johnson v. Shell, but other cases as well, and that you have reviewed your records from our notes here and could not determine the exact date of the conversation that you were informed of POGO's decision or payments to Berman and Speir.

But did Lon Packard ever represent to you that the payments had already been made to these individuals or were planned to be made to these individuals?

Mr. DODD. At the time of the phone call that both parties admit occurred; is that the question?

Mr. GIBBONS. Yes.

Mr. DODD. At this time, let me mention that I know that we are not to make opening statements, but there is a prepared statement that has been provided to the Committee that I would ask that would be included into the hearing record because it deals directly with this issue.

Mrs. CUBIN. Yes.

Mr. DODD. Sir, I believe my statement states, and I want to reiterate, that at the time of the phone call, Mr. Packard did not tell me that the money was already paid, and in fact, I believe went to some lengths to, let us just say I never during the conversation or afterwards felt that the money had been paid already or that, frankly, they agreed that it should be paid. The nature of the phone call to me was they were giving me a "heads up" to let me know that POGO was planning on making a payment and planning on having a press conversation to announce that payment. And I don't want to get into the rest of it until I have a question.

Mr. GIBBONS. Sure.

Mr. DODD. I think I have addressed your statement.

Mr. GIBBONS. You did. What did you respond to Mr. Packard with regard to that payment? Did you express an opinion or a statement?

Mr. DODD. First of all, it did come out of the blue. I had absolutely no hint or idea that this was going to happen prior to the phone call. I get the phone call, and I am told that it is their understanding that a payment is going to be made or that POGO has decided to make a payment to Mr. Berman and Mr. Speir. I had heard of Mr. Berman's name before, but not Mr. Speir. They told me he was an employee of the Department of Interior—Mr. Berman was an employee of the Department of Interior, and Mr. Speir was a former Federal employee who had been employed at the Department of Energy.

Most of my comments focused on Mr. Berman because as a current pending Federal employee, I felt more comfortable making statements about him. I wasn't exactly sure what the rules were in regards to a former employee or the time of his leaving. But I hope I haven't lost the train of thought here, but the fact of the matter is is that I was not told prior to it that they had made the payment.

And when I was told about the possibility of the payment, I am the one who told Lon Packard, specifically, that I felt that POGO should not have a press conference, that I felt that it was POGO's attempt to basically solicit information from Federal employees that if you give us your dirt that if we can figure out a way of making money out of it, we will share it with you. And I didn't think that was a good thing to do. And, also, that I felt that it would—I didn't comment upon this to them—but in my heart, I felt that it would lock, if they had a press conference, it would commit them to paying the money, and I did not want the money paid. I didn't think the money should be paid, and I told them that. And I told them that I did not see how a Federal employee could accept the money, and that if they could not accept the money, I did not see how POGO could pay the money.

Mr. GIBBONS. Mr. Schiffer, the False Claims Act permits suits to be filed by civilian and Federal employees, does it not?

STATEMENT OF STUART E. SCHIFFER, DEPUTY ASSISTANT ATTORNEY, CIVIL DIVISION

Mr. SCHIFFER. I think what I can say is that it doesn't expressly preclude such suits, nor does it expressly provide for such suits.

Mr. GIBBONS. But it also provides protections against retaliation from supervisors in providing for Federal whistleblower actions that are taking a valid course or route to stop fraud on the taxpayers, does it not?

Mr. SCHIFFER. Congressman, the False Claims Act, indeed, has protections against retaliation with respect to Federal employee whistleblowers, and I am not sure, you know, it's a major distinction, but there's a separate statutory scheme Whistleblower Protection Act that provide protection.

Mr. GIBBONS. So if these gentlemen, Berman and Speir, were some kind of in fear of retaliation, they would have been protection putting their names on the POGO case?

Mr. SCHIFFER. We would probably have moved to dismiss such a case, as we do without uniform success, but as we do with respect to most suits where Federal employees attempt to file suit as relators.

Mr. GIBBONS. Well, when a Federal employee files a qui tam case, are they permitted to work on matters directly related to that suit?

Mr. SCHIFFER. We would certainly urge the employing agency that they be walled off from working on the case.

Mr. GIBBONS. I have read your very clear, very forceful written statement, Mr. Schiffer, and I would like to make sure everyone in this room understands why it is important that the seal on a qui tam case be strictly observed by Federal employees who are aware or who participate in deliberations leading to a recommendation

that your office would subsequently intervene in that litigation. Could you explain why that is so important.

Mr. SCHIFFER. Well, during the legislative process that led to the 1986 amendments of the False Claims Act, we expressed several concerns about earlier versions of the statute, including concerns that, for example, an ongoing criminal investigation might be impacted if a suit was filed. And we also wanted time for ourselves to investigate such suits. Of course, the seal is really there, it is a court seal, but we view it as there basically for our protection, to protect the integrity of the investigation we are conducting.

Mr. GIBBONS. The ethics rules generally are presented to every Federal employee, are they not?

Mr. SCHIFFER. That is correct, Congressman.

Mr. GIBBONS. And those ethics rules would cover the disclosure of a secret interest in a qui tam suit, would they not?

Mr. SCHIFFER. I am sorry. If I can ask you to repeat the question. They would cover the disclosure of?

Mr. GIBBONS. That is correct. They would cover the disclosure.

Mr. SCHIFFER. This isn't something I have confronted before. I would certainly think, I mean, were it I—I haven't been so blessed—but were it I, I would obviously feel the need to disclose that I had an interest in such a matter.

Mr. GIBBONS. Madam Chairman, I think we have got a few seconds, but I will reserve the balance of my time for any follow-up that may be needed.

Mrs. CUBIN. Thank you, Mr. Gibbons.

The chair now recognizes Mr. Underwood and the Minority side for 15 minutes.

Mr. UNDERWOOD. Thank you. We will begin with Mr. Miller.

Mr. MILLER. Just a point of clarification, the 15 minutes is up, right? There is no time left or is that 15 minutes for each person?

Mrs. CUBIN. No, it is 15 minutes on a side, and I think there are about 10 seconds left on the clock. But now we recognize——

Mr. GIBBONS. I reserved the balance of the 15 minutes.

Mr. MILLER. Mr. Schiffer, if I could just pick up where Mr. Gibbons left off.

There is nothing against the law for a Federal employee to file a qui tam case; is that right?

Mr. SCHIFFER. I think what I was trying to say in my own way was that the law is not clear on that point.

Mr. MILLER. But you have challenged that, and as you said, without uniform outcomes. So in some cases, the courts have said this is fine, and other cases the courts have said they are going to dismiss the case.

Mr. SCHIFFER. There have been a limited number of cases where Federal employees have been permitted to proceed as relators. I do want to emphasize, Congressman, though, that——

Mr. MILLER. So you may not agree with it, but as of now, it is not illegal.

Mr. SCHIFFER. With respect to those cases in which the Courts have permitted them to proceed, certainly the Court has felt they were——

Mr. MILLER. So——

Mr. SCHIFFER. But I do want to emphasize, Congressman, that we don't, of course, regard these cases as cases where employees appeared as relators, which is the term used for the——

Mr. MILLER. I understand. And in a case where an employee would be involved in one of these, you said that the Justice Department does what? You recommend that they be walled—the term we used in the earlier hearing was "walled off." You would recommend that they be walled off?

Mr. SCHIFFER. We would, and we certainly wouldn't consult them in any way, as the case progressed.

Mr. MILLER. And your recommendation to wall off employees is to whom? To the head of the other Agency, whether it is Defense or Interior or whatever?

Mr. SCHIFFER. Yes, sir.

Mr. MILLER. And then they then take that action. Is there a requirement that they take that action?

Mr. SCHIFFER. I guess I can't envision a situation where that wouldn't be done because I think we would all be worried about, at the very least, the appearance that might result.

Mr. MILLER. I don't know. In the law, is there a requirement that they then do that? I can understand clearly why you would do it, but does the law require that?

Mr. SCHIFFER. I can't point to a statutory provision. I think if there was an ethical matter, it would be necessary.

Mr. MILLER. Mr. Dodd, back to you were informed by the Packards that, if I am correct here, that POGO might be making this payment, right? That is your testimony, if I read it correctly?

Mr. DODD. Yes. Yes, sir.

Mr. MILLER. And you said that they wanted your opinion and you gave it to them.

Mr. DODD. Yes.

Mr. MILLER. And the end of that conclusion was you didn't know what they were going to do, whether they were going to make the payment, not make the payment, have a press conference or not have a press conference; is that correct? Let me ask you, you were led to believe what when you hung up the phone?

Mr. DODD. I did not know what were going to do because clearly POGO wasn't my client, and I couldn't tell them to do anything. However, I had the impression that they would pass my word on, and I felt that, with somebody making a statement as firmly and as forcefully as I was making it, that at least they would delay or hesitate about making the payment. And I felt that I would hear something from them definitive before a payment was made.

Mr. MILLER. And then you did what? You notified whom?

Mr. DODD. I contacted the Commercial Litigation Branch of the Department of Justice.

Mr. MILLER. That is who? Who is that?

Mr. DODD. The person that I was working most directly with and longest with there was Dodge Wells. And so he tended to be the person I called routinely when I had news.

Mr. MILLER. So did you talk to Dodge Wells about this?

Mr. DODD. Yes, I did.

Mr. MILLER. And what did you tell him?

Mr. DODD. I tried to pass on, as——

Mr. MILLER. What do you mean you "tried to pass"? what did you tell him?

Mr. DODD. In a much shorter conversation than I had with the Packards, I tried to pass on exactly what they had told me so that he and the Department of Justice would be aware of it and they could take what action they felt was necessary.

Mr. MILLER. And you told him what?

Mr. DODD. I told him that the Packards had just given me a call and told me that POGO was planning on having a press conference and announcing that they were paying Berman and Speir in excess of $300,000 apiece and that I had told them that I didn't think they should do it. I thought it was wrong. I thought there were all kinds of problems with it and that they shouldn't be having a press conference. And he listened and seemed to understand, and told me that he would have to talk to his people about it.

Mr. MILLER. So he listened to you and then he told you that he would talk to his people about it.

Mr. DODD. Yeah.

Mr. MILLER. Did he talk to his people about it?

Mr. DODD. As far as I know, I know he did.

Mr. MILLER. Pardon?

Mr. DODD. I believe he did.

Mr. MILLER. But do you know whether he did or not?

Mr. DODD. Based upon subsequent conversations, I have reason to believe he did, but I was not a participant of any of those discussions. And——

Mr. MILLER. Did you ever hear back from them? When did you first hear that they were involved in questioning whatever arrangement was made?

Mr. DODD. Well, I don't believe I heard from them on this issue again until I had learned that POGO had already made the payment.

Mr. MILLER. That was when?

Mr. DODD. A few days later. And I again turned around and called DOJ and let them know that I had just heard from I believe it was Von Packard at that point, but it may have been——

Mr. MILLER. DOJ is who?

Mr. DODD. My memory is a little vague on this. I believe that I tried to contact Dodge Wells, and I got his voice mail. So then I called Alan Kleinberg, his reviewer, and tried to let them know as well. And——

Mr. MILLER. Did you let them know?

Mr. DODD. Yes, I did.

Mr. MILLER. So then what did they say?

Mr. DODD. They were surprised, but relatively noncommittal to me.

Mr. MILLER. But had Mr. Wells said anything to them before?

Mr. DODD. I'm sorry, sir?

Mr. MILLER. Did Mr. Wells say anything to them before?

Mr. DODD. Say anything to——

Mr. MILLER. Was there any indication that your first conversation with Mr. Wells was related to anyone else?

Mr. DODD. Yes. I believe that it had been communicated to Mr.——

Mr. MILLER. How do you know that?

Mr. DODD. I cannot remember specific conversations, sir.

Mr. MILLER. You believe, but you don't remember?

Mr. DODD. I remember the sense that it had been done, but I cannot point to a specific conversation or a memory of recollection that would say that based upon this phone call or this conversation I know that Mr. Kleinberg knew of it the same day I called. But I do know that he knew about it because it was discussed in my presence subsequently.

Mr. SCHIFFER. It was brought to my attention as well.

Mr. MILLER. So that is what you remember? I mean, I don't—I'm sorry. But you don't remember how you remember it. But it was discussed. We'll just leave that there.

But it was discussed in your presence. So you would assume from that, if nothing else, that Mr. Wells had passed on the information of the possible payment or not?

Mr. DODD. I believe that Mr. Wells passed it on. I know, in retrospect, that he did, and I have no reason to believe that he did not do it very contemporaneous to my conversation with him.

Mr. MILLER. And your second conversation was for the purposes of saying that the payment had been made?

Mr. DODD. That I had been told that the payment had been made.

Mr. MILLER. But you hadn't seen anything in the media because they had—there was no press conference, apparently.

Mr. DODD. My actual conversation with Mr. Packard had been involving something else, and it was only toward the end of it I asked him, "Whatever happened about——"

Mr. MILLER. What happened to that subsequent—how was that followed up on by Justice?

Mr. DODD. At some point later on, I think much later on——

Mr. MILLER. Like how much later on?

Mr. DODD. I don't have a sense of that, sir.

Mr. MILLER. Months?

Mr. DODD. It could have been certainly weeks. It may have been a couple of months. I was told that the matter had been turned over to, I believe, Public Integrity Unit of the Criminal Division, where it is my understanding this matter is being investigated criminally.

Mr. MILLER. Do you know when that was?

Mr. SCHIFFER. It was within weeks of the time that the payments were made.

Mr. MILLER. Excuse me.

Mr. SCHIFFER. I'm sorry, sir.

Mr. MILLER. Back up and do it because I don't know all of the data. I don't particularly know——

Mr. SCHIFFER. Well, I can't speak to the entire sequence. I mean, our staff attorney has a record of a call from Mr. Dodd on November the 4th of 1998. I was certainly informed at least after the payments were made. I can't recall at this time whether I was informed the day before we were told the payments had been made or the day after. Our staff discussed the matter with ethics experts, and with our supervisors and with me, and we determined that this was a matter that we should refer to the Criminal Division,

not with any foregone conclusion, but because we considered it sufficiently troubling and unusual that we felt it merited referral to the Criminal Division. That referral was made I believe it was several weeks. But there was not a sense of time urgency as far as making an actual referral.

Mr. MILLER. Was there urgency because this Committee was indicating it was going to get involved?

Mr. MILLER. No, sir.

Mr. SCHIFFER. None.

Mr. MILLER. None whatsoever.

I'm a little bit at a loss here because if the determination was made that this was wrong and you conveyed that this was wrong to people, did anybody pick up the phone to the Packards and say, "You're in a heap of trouble here. Do you know who these people are you are dealing with? Do you understand the ramifications for our lawsuit or their lawsuit or anybody else's lawsuit or a violation of law here?"

Mr. DODD. Is that a question to me, sir?

Mr. MILLER. Yeah. I just don't know what happened. I'm trying to—not you or anybody else. I don't know.

Mr. DODD. In the very first phone conversation I had with him, I was very blunt and somewhat profane, and I guarantee you rather repetitive in stating that they should not be doing this, that it was wrong, it was a misjudgment, it was potentially very complicating and potentially a violation of ethics rules. I went at some length to discuss how a Federal employee can't be accepting this sort of thing. So they clearly understood my viewpoint.

Mr. UNDERWOOD. Would you yield?

Mr. MILLER. Yes.

Mr. UNDERWOOD. I have here a letter, Mr. Dodd, from Lon Packard, which is addressed to both Mr. Miller and Mr. Young, in which he says that his records reflect that he had a conversation with you on or about October 27, 1998. "And in that conversation, I informed Mr. Dodd that POGO was planning to disburse some of its share of the Mobil settlement proceeds arising out of the Johnson litigation to both Mr. Berman and Mr. Speir. Mr. Dodd did not advise me that he believed that POGO should not make the disbursements, and Mr. Dodd made no request that POGO do nothing until after he consulted with our Department."

How do you react to that?

Mr. DODD. Given the gentile company, I will try to moderate my reaction, but I will say that it is absolutely not true that I did not object or state my disagreement or tell them that the payment should not be.

Mr. MILLER. Did you write any memos to this effect?

Mr. DODD. No. I got off the phone call, and I called DOJ. I felt this was above my pay grade. Washington and Commercial Litigation, in particular, was someone who had had dealings with POGO and these kind of entities in the past. I did not presume to be an expert on what employees could or could not do. And I felt that it was above my pay grade and that somebody else higher up needed to deal with it, and I felt that they were.

Mr. MILLER. So you were very strong to POGO, but you didn't write any memo to the file, and yet this obviously was considered by you a major event within the litigation.

Mr. DODD. Mr. Miller, the date—let me address that first. Mr. Packard says that the phone call happened around the 28th of October. I don't know when that phone call happened. All I know is that when the phone call did happen, I turned around and called DOJ right away. And——

Mr. MILLER. Did DOJ call POGO?

Mr. DODD. No. DOJ says that that phone call happened on the 4th of November.

Mr. MILLER. Which phone call?

Mr. DODD. The first one from me relating the Packards' call to me. And so I have to rely upon their date. I don't know of any other——

Mr. MILLER. I'm sure you do want to rely on that date. But we don't know yet whether it was the 27th, 28th or the 4th.

Mr. DODD. The important thing, Congressman, to me, is not the date, whether they called me before the conversation—excuse me—before the payment was made or after the payment was made; to me, the important thing was that I expressed to them my belief that the payment should not be made. And they understood that. They understood that directly.

And, in fact, one of the last things that I said to them, and you have to keep in mind that I felt very friendly toward the Packards. They had brought a lot of cases to my district. I had had a good relationship with them. The context of the phone call was that they didn't necessarily agree with this thing either, that they were just running it by me to give me a "heads up."

And I told them that I was—one of the very last things I said to them was that I was going to have to call DOJ and let them know. In fact, I told them I was going to have to call Dodge. And they said, "Oh, well, we think that's premature——"

Mr. MILLER. I understand that. So we still don't know the date of that phone call. We know the date of your phone call to DOJ, and that's your testimony and that's your fine. But the Packards dispute that, and I guess that's——

Mr. DODD. It's their word against mine.

Mr. MILLER. I guess that's what the investigation is about.

Mr. DODD. If I tried to call Dodge Wells and not gotten him and not been able to get anybody at DOJ, I probably would have done an e-mail memo to them to record the fact that the call happened and the context of the call and what was said. But since I had an opportunity to talk with him so quickly after the call and while it was still fresh in my mind, and I had sort of put it in their court, I didn't feel the need to memorialize it in writing. Because, frankly, while it was an important thing, and I had taken a strong and forceful stand on it, I think, it was just one of many things that happened in this case that were important things that I had to deal with.

Mr. MILLER. Dodge Wells didn't do anything with respect to contacting POGO after he received your call.

Mr. DODD. I don't think so. POGO wasn't our client. We would have had to call POGO's lawyers.

Mr. MILLER. I understand that. I thought—but it's about your lawsuit.

Mr. DODD. I couldn't hear the last comment.

Mr. MILLER. I understand they are not your client. But it was about your lawsuit.

Mr. DODD. Yeah. We would have communicated with POGO through their attorney.

Mr. MILLER. But Mr. Wells did not.

Mr. DODD. No, I did.

Mr. MILLER. Okay.

Mrs. CUBIN. The gentleman's time has expired.

Mr. MILLER. Thank you.

Mrs. CUBIN. Mr. Dodd, did the Packards ever follow up with a letter to you confirming your conversation and stating that they understood that you had no objection to the payments?

Mr. DODD. No, ma'am. And in fact, Madam Chairwoman, I guess is the proper term——

Mrs. CUBIN. Either way.

Mr. DODD. I did not know about Mr. Packards' letter to the Committee even until it came out in, I believe, Mr. Berman's deposition or maybe it was Ms. Brian's deposition, when the Department of Justice mentioned it and courteously sent me a copy. Up until that moment, I had no reason to believe that Mr. Packard, any of the Packards, were disagreeing with my statement.

Mrs. CUBIN. Well, I think it's odd that a lawyer would not protect his client by following up that way, that you had no objection certainly is odd. I would hope for better representation.

Mr. DODD. If I could just state, I read that letter rather late. And frankly it made me sort of angry. The letter essentially says that they ran this by me or they informed me, and I did not make any statement that it should not be paid. And as I have stated before, that was absolutely untrue. But I would have thought, and I thought at the time when I read that letter, that in all decency he should have sent me a copy of the letter that he sent to the Committee contradicting what I had said, and he never did that.

Mrs. CUBIN. Is there anything either of you would like to add to your testimony?

[No response.]

Mrs. CUBIN. Then thank you very much.

Mr. MILLER. If I might, I would only——

Mrs. CUBIN. No, 15 minutes passed. Your side——

Mr. Inslee is recognized for 5 minutes.

Mr. INSLEE. Mr. Schiffer had a comment, I believe, Madam Chair, it sounded like he wanted to make.

Mrs. CUBIN. Excuse me. I didn't mean to interrupt.

Mr. SCHIFFER. I'm sorry. I was only going to respond to your invitation to add anything. I would, by the way, ask that my statement also be included in the record.

Mrs. CUBIN. Without objection.

Mr. SCHIFFER. But I also want to stress that we at least see a separation between two issues: On the one hand, the propriety of these payments, which is something that is being investigated in the Department, and on the other hand, our strong view that the integrity of the litigation has not, in any discernable way, been af-

fected by the payments that were made. The decision to intervene in the litigation was our decision in the Department, along with lawyers in the Department of Interior. The litigation has produced, to date, actual or anticipated payments for the Federal Treasury of over $300 million. In other words, I think the litigation itself has proceeded the way one could have expected it to proceed. And Messrs. Berman and Speir had no major roles in any of our decision-making process.

Mr. DODD. If I could make a very brief comment. I would like to share in Mr. Schiffer's statement and also state that until the phone call from Mr. Packard, I don't recall ever even hearing Mr. Speir's name. As I said, I had heard Mr. Berman's, but he played absolutely no role in my office's, and as I understand it, Commercial Litigation's decision to intervene in these cases, an evaluation of the merit of the cases against the oil companies, any settlements or settlement discussions with any of the oil companies or any of the computations of damage analysis that were done, which, as Mr. Schiffer has stated, has resulted in I believe it is now in excess of $300 million recovered from major oil companies for underpaying the government.

Mr. INSLEE. Thank you, Madam Chair.

Mr. UNDERWOOD. He should get 5 minutes from now because they were just finishing up their comment.

Mrs. CUBIN. Actually, I have the rules, and Mr. Miller was mistaken. But if you want to press the subject, I will cite the rules for you. This is certainly a silly thing to waste our time on.

Is there anybody else on the Minority side that has any questions?

Mr. INSLEE. I do, Madam Chair.

Mr. MILLER. Let me tell you in 6 years——

Mrs. CUBIN. They are in the book, Mr.Miller. In 18 years, you didn't do anything about collecting all of the unpaid royalties that the oil companies owed. In the last 4 years, I have had hearings to do the job. For the life of me, I don't understand why you are trying to protect and defend corruption and at the same time collecting royalties.

Mr. MILLER. I'm not protecting——

Mrs. CUBIN. This Subcommittee has done more to collect royalties——

Mr. MILLER. Look, Madam Chairman, you don't get away with characterizing my position. I don't characterize your position.

Mrs. CUBIN. [continuing] than you ever have.

Mr. MILLER. I don't characterize your position. I am asking questions here because you have drawn conclusions about what has taken place. I asked a series of questions about what took place and not took place. This Committee will decide what they think took place or didn't. Hopefully, they will do it after the evidence is presented. The Department of Interior will make a decision at the end of the process, as will the Justice Department. And so——

Mrs. CUBIN. So they don't need your defense, Mr. Miller. The panel is——

Mr. MILLER. Your two witnesses just said they had no impact on the determination——

Mrs. CUBIN. The panel is dismissed.

Mr. MILLER. [continuing] or the rulemaking, and you keep saying they do.

[The prepared statement of Mr. Dodd follows:]

[The prepared statement of Mr. Schiffer follows:]

STATEMENT OF MR. STUART E, SCHIFFER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Madam Chairwoman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to talk about the False Claims Act. I have been asked to describe briefly the structure of the Act and the qui tam, or citizen suit, provisions in particular. We are also aware that the hearings are focused on certain payments which were made to two current and former government employees. Although the circumstances under which these payments were made are under current investigation by the Department, I will attempt to speak briefly to these payments as well.

The False Claims Act was significantly amended in 1986 to encourage insiders (known as relators) with new and valuable information about fraud to file complaints under seal in Federal court. The Government then investigates and determines whether to intervene in the suits. Since 1986, over 3,000 of these suits, known as qui tam actions, have been filed and the Department of Justice has recovered more than $3.5 billion in the cases in which it has intervened, It has paid private persons in those actions more than half a billion dollars. The Treasury has thus obviously benefited greatly from the 1986 amendments of the qui tam provisions of the False Claims Act.

The False Claims Act provides that to be a relator, and enjoy the substantial benefits that come from this status, the private person must file a complaint, identify himself as the relator, and provide the government with all material information in the person's possession relevant to the case. In providing monetary awards to relators, and protection against retaliation, the statute contemplates an identifiable person who comes forward with valuable information, and who can be a witness, and recognizes that, by coming forward, that person takes risks, including the risk of dismissal if he or she is a corporate insider. A relator therefore cannot file a legitimate qui tam complaint but hide his identity from the Government. In other words, there is no valid status called "undisclosed relator."

Since the 1986 Amendments, a substantial number of suits have been filed by government employees. I need speak only briefly about these since, in our view, the two government employees who received payments from the Project on Government Oversight did not file suit and were not relators. Suffice it to say that qui tam suits filed by government employees cause us substantial concern for the obvious reason that relator status generally strikes us as in conflict with the fiduciary duties owed by government employees to their employer, the United States. While the courts have dismissed the majority of efforts by government employees to appear as relators, the results have not been uniform and relator status has been upheld in a small number of cases. To the extent that there is a common thread, one can generalize by saying that the courts have been most troubled by these suits where the government employee relators were in positions such as investigators or auditors whose pre-existing duties involved uncovering or acting on the very information which formed the basis of their suit.

As evidenced by our referral for investigation, we share the concern of many regarding payments made by POGO to Messrs. Berman and Speir of a portion of the Mobil qui tam relators share. We had no knowledge of any kind of an arrangement among POGO, Berman, and Speir until we were informed by a lawyer for POGO of the payments. Had we known that such an arrangement might exist, Berman and Speir would have been walled off from the internal Government investigation of the complaints which had been filed. At most, information conveyed to them would have been similar to the types of information provided to other non-government relators.

As you know, Mr. Speir left the Department of Energy before the Mobil settlement, After leaving Energy, he worked for a consulting firm which was retained by the Department of Justice to analyze sales contracts for both the. Johnson v. Shell case and for a gas royalty underpayment case. Although Mr. Speir worked primarily on the gas sales contracts, had we known of his relationship with POGO, we likely would have not permitted him to work on either of these matters. Indeed, shortly after we learned of the payments, we terminated his participation in these cases.

Finally, Madame Chairwoman, I would like to note that many of the defendants in the Johnson v. Shell case have chosen to settle rather than dispute the allegations of royalty underpayments. The Federal treasury and Indian Tribes have bene-

fited by more than $200 million. Additional settlements are under discussion. Our own decisions to intervene against certain defendants in the oil and gas royalty underpayment cases were made independent of any views of Robert Berman or Robert Speir, and we believe that those decisions were correct, Department counsel did discuss the allegations in the case with Messrs. Berman and Speir, at a time when the Department had no knowledge that they were possibly considering attempting to benefit personally from this type of information. Our ultimate decision to intervene, however, was based on our own analysis and on the recommendation by the Solicitor of the Department of the Interior, and not on any information that we obtained from Messrs, Berman or Speir.

In sum, while we share the Committee's concern about these payments, we firmly believe that the integrity of the underlying case was in no way compromised.

Mrs. CUBIN. Would Mr. Bob Berman please come forward. Thank you very much Mr. Dodd and Mr. Schiffer, for your testimony and your time in answering the questions. Thank you very much.

Mr. INSLEE. Madam Chair, may I be recognized for a moment?

Mr. MILLER. Under the rules, members have rights to ask questions.

Mr. INSLEE. Madam Chair, may be I recognized? I'd like to make an inquiry.

My understanding——

Mr. MILLER. You have a right to ask questions.

Mr. INSLEE. My understanding is I would be entitled an opportunity to ask 5 minutes of questions of the witnesses. Now, that was my understanding of how we were progressing here.

Mrs. CUBIN. Actually, the rules say that we don't have to allow 5 minutes of questions after we have an extended questioning time. We can do that. And I certainly want to accommodate the Minority so that they have all of the time to ask all of the questions that they want. That is what I am trying to do. And Mr. Miller's continued petty objections to how we are doing it, it stands up under the rules. Mr. Inslee, you are absolutely welcome to ask all of the questions that you might have.

Mr. INSLEE. Thank you. I appreciate that, except the panel just left.

[Laughter.]

Mr. INSLEE. I can ask them, but I can't answer them very well.

Mrs. CUBIN. Well, you had said already that you had no further questions. So I think——

Mr. INSLEE. No, no, no, ma'am. Excuse me, Madam Chair. I am really sorry, and I know this looks bad to the public, appropriately so.

Mrs. CUBIN. It really does.

Mr. INSLEE. The reason I yielded to the witnesses, they wanted to say something in response to your question about making further comments. I did mean to indicate I didn't have any questions. I have some questions of the witnesses. I will try to keep them brief. I would appreciate an opportunity to ask them.

Mrs. CUBIN. Well, you can submit them in writing.

Mr. Berman, would you please stand and take the oath.

[Witness sworn.]

Mrs. CUBIN. Thank you. Please be seated.

The chair recognizes Mr. Thornberry for the purpose of making a motion.

Mr. THORNBERRY. Madam Chair, I move, under Clause 2(j)(2)(b) of Rule XI of the Rules of the House of Representatives that myself,

Mr. Schaffer, Mr. Gibbons and the chairwoman, as members of the Majority, and Minority members designated by the Ranking Member be allowed to question the witness, Mr. Berman, for a total of 60 minutes, equally divided.

Mrs. CUBIN. All in favor?

[Chorus of ayes.]

Mrs. CUBIN. Any opposed?

[No response.]

Mrs. CUBIN. The ayes have it.

Mr. THORNBERRY. Madam Chair?

Mrs. CUBIN. Mr. Thornberry?

Mr. THORNBERRY. Under Clause 2(j)(2)(c) of Rule XI of the Rules of the House of Representatives, I move that Mr. Tom Casey, a Majority staff member, and a Minority member or staff member designated by the Ranking Member each be allowed to question the witness, Mr. Berman, for 60 minutes, equally divided.

Mrs. CUBIN. Is there an objection?

Mr. INSLEE. I object, Madam Chair. Let me tell you why I object. Let me state my objection.

The chair, a few minutes ago, recognized me to ask 5 minutes of questions of two witnesses. Now, I understand the chair was uncomfortable for doing that. The chair did that. I then deferred, out of comity, to the witnesses who wished to make a statement to you, and the result of it is is a U.S. Member of the Congress doesn't get to ask questions of a witness in an investigatory hearing. And I object to further proceedings until I am allowed to do so.

I just was trying to show courtesy to these witnesses, and I would just suggest to you to reconsider what you are doing here. I think it looks bad to the public, it looks bad for the Committee. And if we are going to investigate this, let me have 5 minutes to ask these questions.

Mrs. CUBIN. Mr. Inslee, the Minority side and the Majority side have a half an hour each. I should think that your Ranking Member of the Subcommittee and the Ranking Member of the full Committee would be able to find 5 minutes out of their 30 minutes for you to ask questions.

Mr. INSLEE. The problem is, Madam——

Mr. MILLER. He is entitled to his own 5 minutes. You gave the time, and you are properly doing that. But when you are all done aggregating the time, to screw a member out of his 5 minutes that he's entitled to under the House rules——

Mrs. CUBIN. Mr. Miller, would you read the rules.

Mr. MILLER. Yes. It says, "Subject to (a) and (b)——"

Mrs. CUBIN. Subject to (a) and (b), that is correct.

Mr. MILLER. [continuing] you are going to aggregate the time. Members are still entitled to their 5 minutes.

Mr. THORNBERRY. Madam Chair, I have a motion.

Mrs. CUBIN. Yeah. There is a motion on the floor. All in favor of allowing the counsel to question the witness after the members have finished their testimony say aye.

[Chorus of ayes.]

Mrs. CUBIN. Opposed?

[Chorus of noes.]

Mrs. CUBIN. The ayes have it.

Mr. MILLER. Call for the roll.
Mrs. CUBIN. The Clerk will call the roll.
The CLERK. Mrs. Cubin?
Mrs. CUBIN. Aye.
The CLERK. Mrs. Cubin votes aye. Mr. Tauzin?
Mr. TAUZIN. [No response.]
The CLERK. Mr. Thornberry?
Mr. THORNBERRY. Aye.
The CLERK. Mr. Thornberry votes aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon votes aye. Mr. Brady?
[No response.]
The CLERK. Mr. Schaffer?
Mr. SCHAFFER. Aye.
The CLERK. Mr. Schaffer votes aye. Mr. Gibbons?
Mr. GIBBONS. Aye.
The CLERK. Mr. Gibbons votes aye. Mr. Walden?
[No response.]
The CLERK. Mr. Tancredo?
[No response.]
The CLERK. Mr. Underwood?
Mr. UNDERWOOD. No.
The CLERK. Mr. Underwood votes no. Mr. Rahall?
[No response.]
The CLERK. Mr. Faleomavaega?
[No response.]
The CLERK. Mr. Ortiz?
[No response.]
The CLERK. Mr. Dooley?
[No response.]
The CLERK. Mr. Kennedy?
[No response.]
The CLERK. Mr. John?
[No response.]
The CLERK. Mr. Inslee?
Mr. INSLEE. No.
The CLERK. Mr. Inslee votes no.
Mrs. CUBIN. The Clerk will call the names of those members not present.
The CLERK. Mr. Tauzin?
[No response.]
The CLERK. Mr. Brady?
[No response.]
The CLERK. Mr. Walden?
[No response.]
The CLERK. Mr. Tancredo?
[No response.]
The CLERK. Mr. Rahall?
[No response.]
The CLERK. Mr. Faleomavaega?
[No response.]
The CLERK. Mr. Ortiz?
[No response.]
The CLERK. Mr. Dooley?

[No response.]

The CLERK. Mr. Kennedy?

[No response.]

The CLERK. Mr. John?

[No response.]

Mrs. CUBIN. The Clerk will announce the vote.

The CLERK. On this vote, there are 5 ayes and 2 nays.

Mrs. CUBIN. The motion is passed.

This morning, I received a letter from Mr. Berman's attorney, Mr. Steven Tabackman, stating that Mr. Berman objects to the conduct of a public hearing as violative of the Rules for the House Committee on Resources, which expressly incorporates by reference Rule XI of the House of Representatives. "As chairperson of the Subcommittee, you must be aware that Section (g)(1) of Rule XI requires that the Subcommittee meetings be held in executive session when disclosure of matters to be considered would tend to defame, degrade or incriminate any person." That quote is from Mr. Tabackman's letter.

Members have been provided a copy of Mr. Tabackman's letter raising this objection. It is in your folders.

In an earlier effort, Mr. Berman asked the Committee for immunity to provide testimony today, but he refused to provide any information which would permit the Committee to assure itself that the cause of justice would not be harmed by granting him immunity. The Subcommittee must now decide if the cause of justice, the public interest and our legislative need for the information will be aided by hiding Mr. Berman's testimony. By one estimate, Mr. Berman has refused to answer questions about his agreement with POGO 205 times. Before we address the issue, I ask Mr. Berman whether, if we go behind closed doors, you will fully describe all of the discussions and events leading to the December 1996 agreement, the January 1998 memorialization, and the October 8th, 1998, letter to you?

STATEMENT OF ROBERT A. BERMAN, DEPARTMENT OF THE INTERIOR

Mr. BERMAN. Madam Chairwoman, I object to this hearing being held in public as a violation of House Rule XI(g)(1), which requires the Subcommittee meeting to be held in executive session when there will be a discussion that intends to defame any person, among other things.

Two weeks ago, virtually every member of the Majority, including you, defamed me. One of the members, Mr. Brady, went so far as to call me, on the record, a common thief. That type of conduct exceeds any appropriate balance of proper public discourse and discloses the illegitimate nature of this Subcommittee's inquiry.

As my lawyer advised you by letter yesterday, but for the Speech and Debate clause immunity that you and your colleagues enjoy, I would have already brought suit against at least Mr. Brady. But unless he and other members waive their immunity, which I call on them to do today, right now, on the record, that remedy, unfortunately, is not available to me.

However, because of the defamatory conduct of the Majority, I will not answer any questions put to me by any member of this Subcommittee unless one of the following occurs:

One, every member of the public, every member of the Majority, publicly waives immunity from suit brought under the Speech and Debate clause so that the allegations made against me can be brought to a court of law, where they will have to defend scurrilous accusations or every member of the Majority publicly retracts any statement in which they describe me as a common thief, stated that public officials—clearly referring to me—were up for the highest bidder or otherwise stated that I had engaged in illegal conduct and publicly acknowledge that he or she has no basis to refer to me or to describe my conduct in that fashion.

Mrs. CUBIN. The rule that Mr. Tabackman cites in his letter is not applicable to this proceeding. Rule XI 2(g)(1) applies to Committee meetings, such as markups, not Committee hearings. The chair has announced, and the Committee clearly indicates that this is an oversight hearing and not a Committee meeting for the transaction of business. Procedures for oversight hearings are governed by Rule XI 2(g)(2), not Clause 2(g)(1). And the chair has made this clear repeatedly.

The chair notes that Committee Rule 3(e) speaks only to participation in Committee proceedings by members, not by attorneys representing witnesses. Indeed, the rule makes it clear that attorneys are here only to advise these clients as to their constitutional rights, not to address the Committee. So Mr. Tabackman can't enter objections or make motions.

Nonetheless, in order to be fair, the chair will describe the situation and enter an objection properly for Mr. Berman, even though Mr. Berman's attorney cannot be recognized to make that objection for him. And then the Subcommittee will dispose of the issue.

Rule XI 2(g)(2)(a) requires open hearings. However, under Rule XI 2(g)(2)(b), the Subcommittee may take the significant and very rare step of closing a hearing, of closing our open process of government for only one of two purposes:

First, we may, and I say "may," close the hearing to discuss whether the testimony violates 2(k)(5), and that is only for discussion as to whether or not the testimony would violate that clause. Or, second, we may, again "may," close the hearing, as provided under Investigative Hearing Procedures, spelled out in Clause XI 2(k).

To take either of these actions and to close the doors of this hearing room and hide the details of these agreements and transactions that led to huge payments to two public servants, a majority of those present must agree to hide that information from the public.

So that we can dispose of this issue, even though the chair will vote no, I will now enter a motion, under Rule XI 2(g)(2)(b), that the Subcommittee agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would violate the Clause 2(k)(5) regarding investigative hearings.

All in favor?

Mr. MILLER. Madam Chairman, if I might, just for a point of clarification——

Mrs. CUBIN. Yes, sir?

Mr. MILLER. You are moving under (k)(5), under Investigative Hearings; is that what you are saying?

Mrs. CUBIN. No, I am not.

Mr. MILLER. You are not moving under that.

Mrs. CUBIN. No. I am moving under (g)(2)(a).

Mr. MILLER. Let me ask you a question, if I might.

Mrs. CUBIN. Yes?

Mr. MILLER. Our discussions were that, with the parliamentarian, that this was, in fact, an investigative hearing, and I realize you have said that this is not an investigative hearing. And we were informed that Rule (k)(5)(a), if I am reading this right, would come into order, which basically says that "such testimony and evidence shall be presented in executive session in the presence of the number of members required under the rules of the Committee for the purposes of taking testimony," which I assume is a quorum for this purpose.

"The Committee determines, by a vote of the majority present, that such evidence or testimony may tend to defame, degrade or incriminate any person."

The only time I know—I don't know if we have used this on this Committee before or not, but I think we used this when the Committee was doing the Alyeska pipeline investigation——

Mrs. CUBIN. That is correct.

Mr. MILLER. Is that right?

Mrs. CUBIN. That is correct.

Mr. MILLER. Where there was some concern by members, I think it was actually by the now chairman, about what was going to be said and not be said in open hearing with respect to people's reputations and what have you.

But you are not using that. You are using——

Mrs. CUBIN. I am not using that clause. That is correct.

Mr. MILLER. So you are using what clause? I don't under—the basis for the motion would be what?

Mrs. CUBIN. What is your question? The basis for the motion would be what?

Mr. MILLER. You are putting a motion to us. The question is what?

Mrs. CUBIN. The question is whether or not the Committee should go behind closed doors to discuss whether testimony or evidence to be received would violate Clause 2(k)(5) regarding investigative hearings. And that is the motion.

The reason I say this is an oversight hearing, is that certainly, the parliamentarian hasn't made any such ruling to us that this is an investigative hearing. This is strictly an oversight hearing, and it has been stated many times, but I will state it one more time for the record, the object of this hearing is to examine the laws, policies, practices, and operations of the Department of the Interior, Department of Energy and other agencies pertaining to the payments to their employees, including payments relative to mineral royalty programs and policies from public lands and Indian lands.

Now, we have already heard that the, not testimony here today, but in the documents that we have, that it was common knowledge that there were sealed qui tam suits related to oil valuation. Now,

it was common knowledge in the Department of the Interior. That certainly indicates there is a breakdown in the operation or the administration in the Department of the Interior. This is what our oversight is. This is what we are trying to achieve.

And so, therefore, this is not an investigative hearing, and I will now call for the vote.

Mr. GIBBONS. I move the previous question.

Mr. MILLER. Madam Chairman, in the quest for your oversight, are you not investigating whether or not these things took place or not? You have issued subpoenas. I mean, you should not be ashamed it is an investigate hearing. I think it is a rather dramatic investigative hearing.

Mr. GIBBONS. I move the previous question.

Mr. MILLER. Yeah, move it. I think we ought to discuss it.

Mrs. CUBIN. All in favor of the motion, say aye.

Mr. MILLER. This is to discuss whether or not we should go into executive session to discuss whether or not we go into executive session.

Mrs. CUBIN. No, that is not what it is, Mr. Miller. But if that is what you——

Mr. MILLER. Oh, no, you just said this is to go in to discuss whether or not we should go into——

Mrs. CUBIN. I enter a motion, under Rule XI 2(g)(2)(b), that the Subcommittee agree to close the hearing for the sole purpose of discussing whether the testimony or evidence to be received would violate 2(k)(5) regarding the investigative hearings. In other words, does the Committee believe, is the Committee's intention that this is an oversight hearing or does the Committee intend for this to be an investigative hearing? And a vote of aye says this is an oversight hearing, and we will——

[Laughter.]

Mr. MILLER. Go ahead and vote.

Mrs. CUBIN. So all in favor. Are you guys in favor of going behind closed doors? You would vote aye if you are.

[No response.]

Mrs. CUBIN. All opposed?

[Chorus of noes.]

Mrs. CUBIN. The motion is not agreed to.

Mr. MILLER. I don't understand the motion, Madam Chairman. But you are going to vote no matter what.

I would raise an objection, and I think our witness, Mr. Berman, may want to wait before he responds to this Committee so the parliamentarian can rule whether or not this is an investigative hearing or an oversight hearing because it may determine whether or not the members of this Committee would vote whether or not——

Mrs. CUBIN. There you are, Judge Wapner.

Mr. MILLER. [continuing] on whether or not this defames or doesn't defame. But that is just a matter of justice. But what the hell, we are a little short on that here today.

Mrs. CUBIN. We did vote not to close the hearing, Mr. Miller.

I would like to start the questioning.

Mr. Berman, did you threaten to sue POGO if they did not make the payments to you?

Mr. BERMAN. Madam Chairman, I object to this hearing——

Mrs. CUBIN. You don't have to read the whole thing. Go ahead.

Mr. BERMAN. [continuing] being held as a violation of House Rule XI (g)(1), which requires that the Subcommittee meetings be held in executive session when there will be a discussion that tends to defame any person, among other things. Two weeks ago, virtually every member of the Majority, including you, defamed me. One of the members, Mr. Brady, went so far as to call me, on the record, a common thief. That type of conduct exceeds any appropriate bounds of proper public discourse and discloses the illegitimate nature of this Subcommittee's inquiry.

As my lawyer advised you by letter yesterday, but for the Speech and Debate clause immunity that you and your colleagues enjoy, I would have already brought suit against at least Mr. Brady. But unless he and the other members waive their immunity, which I call on them to do today——

Mrs. CUBIN. Mr. Berman, we have just disposed of the issue——

Mr. BERMAN. [continuing] right now, on the record——

Mrs. CUBIN. And I call on you to answer the question or——

Mr. BERMAN. [continuing] that remedy, unfortunately, is not available to me. However, because of the defamatory conduct of the Majority, I will not answer any questions put to me——

Mrs. CUBIN. Mr. Berman——

Mr. BERMAN. [continuing] put to me by——

Mrs. CUBIN. You can be subject to Contempt if you don't answer the question or claim a constitutional privilege to not answer the question.

Would you like me to repeat the question?

[Witness conferring with counsel.]

Mr. BERMAN. Are you waiving your immunity, ma'am?

Mrs. CUBIN. No, sir. Would you like me to repeat the question?

[Witness conferring with counsel.]

Mr. BERMAN. No.

Mrs. CUBIN. And your answer is?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. I am sorry. I didn't understand what you said.

Mr. BERMAN. I said I adopt my previous statement.

Mrs. CUBIN. Mr. Berman, did you threaten to sue POGO if they did not make the payments to you?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Mr. Berman, please look at the document. Does he have the document, dated January 5, 1998, and the document, dated October 8, 1998?

If you will take a look at those for the moment. At what point, before October 8, 1998, did you become concerned that POGO might not pay you a full one-third share of the Mobil settlement, and thus notify POGO that you were considering steps to enforce the agreement?

Mr. BERMAN. Are you waiving your immunity, ma'am?

Mrs. CUBIN. Mr. Berman, you are subject to Contempt of Congress if you don't answer the question or exercise your constitutional right to take the Fifth Amendment on this.

So do you want me to repeat the question or——

Mr. BERMAN. I don't need the question repeated.

Mrs. CUBIN. Are you going to answer the question?

Mr. BERMAN. Are you going to waive your immunity, ma'am?

Mrs. CUBIN. Mr. Berman, will you please look at the document that is, I hope, going to be handed to you. It is a paper authored by you in December of 1996. Does he have that? Would the staff please get that to him.

Mr. MILLER. [Off microphone.]

Mrs. CUBIN. They are all in the records, Mr. Miller, but surely staff will give them to you.

Mr. MILLER. But I don't have them in front of me. You are referring to them.

Mrs. CUBIN. They will give them to you.

This is a paper that was authored by you in December 1996, as you entered into an agreement with POGO to share its expected lawsuits proceeds. Your paper recommends a new regulatory policy for valuing crude oil and assessing royalties. The cover note sending this copy to a Justice Department lawyer says, "You should have already received a fax of my recommended preamble." Does that refer to a preamble of a draft regulation or just what is that a preamble to?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Will you produce that recommended preamble to the Committee within 7 days?

Mr. BERMAN. I adopt——

Mrs. CUBIN. Do you have that?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Did you discuss with Mr. Speir your concerns about POGO living up to your expectations under the December 1996 agreement?

Mr. BERMAN. I adopt my previous statement, ma'am.

Mrs. CUBIN. Did you discuss it with Mr. Banta?

Mr. BERMAN. I adopt my previous statement, ma'am.

Mrs. CUBIN. Did you discuss it with Mr. Hunter?

Mr. BERMAN. I adopt my previous statement, ma'am.

Mrs. CUBIN. Did you discuss it with Ms. Brian?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Did you hire a lawyer to help you resolve your problem with POGO?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Did that lawyer contact the Packards, Ms. Brian, Mr. Banta or Mr. Hunter?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Mr. Berman, I truly don't wish to have to pursue Contempt of Congress charges against you, but you are treating the institution in a contemptful way. You are displaying your contempt, and for your own sake, either answer the question or take the Fifth.

Have you or your lawyer agreed with POGO or its lawyer that neither of you will discuss your differences about your share of the POGO settlement checks?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. POGO informed the court hearing *Johnson v. Shell* that it will not make further payments to you under any circumstances, even if the Justice Department does not charge you

with a crime. Has POGO informed you or your lawyer that it intends to make no further payments to you?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Did they do that—when did they do that? And did they put it in writing or did they just tell you?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. As of December 1996, did you understand that POGO would split all of its lawsuit proceeds with you or did you clearly understand that it would share only the portion which remained after Mr. Brock got his 25-percent share?

Mr. BERMAN. I adopt my previous statement.

Mrs. CUBIN. Mr. Berman, Mr. Hunter and Ms. Brian have testified that the October 1998 letter addressed to you is the result of your agitating for assurance that one-third of the Mobil money would be paid to you. They testified in their deposition to that.

On October 2, 1998, you received a check for $383,600, which included interest earned by POGO on the Mobil settlement. Did you or your lawyer request or insist on having part of that interest as well?

Mr. BERMAN. I have already given you the conditions under which I would answer your questions, ma'am.

Mrs. CUBIN. Well, Mr. Berman, I see no need to continue questioning. I would like to warn you, in the words of the Supreme Court, that "an erroneous determination on his part that the question is not pertinent, even if made in the utmost good faith, does not exculpate him if the Court would later rule that the questions were pertinent to the question under the inquiry." That is *Watkins v. United States.*

Sir, please answer the question.

Mr. BERMAN. I have already given you the conditions under which I will do that, ma'am.

Mrs. CUBIN. This is your last chance, Mr. Berman. I need one more time to ask you to answer the question.

Mr. BERMAN. I have given you my conditions, ma'am.

Mrs. CUBIN. Thank you. I reserve the balance of our time, and we recognize the Ranking Member, Mr. Underwood, and that side for 30 minutes.

Mr. INSLEE. Madam Chair, may I make just a parliamentary inquiry? I think it might be helpful to all of us before you proceed and while the witness is still at the desk.

I know the chair is profoundly interested in this subject, and I want to tell you that the chair brought a motion earlier, before we started testimony of this witness, and despite 3 years of legal training and 18 years of practicing law, I couldn't make heads or tails of what the chair intended by it. I point this out to you because I think in the event that this matter moves to a contempt issue, I think it will be very important to have a very clear record on this issue as to how the Committee proceeded. I think it is very unclear right now. I know the court reporter was having difficulty catching up with all of this.

I just want to suggest to you that you take a look at Rule—my eyesight fails me—XXI (k)(1). And I just——

Mrs. CUBIN. I didn't hear the cite.

Mr. INSLEE. Excuse me. Rule XXI (k)(1). And I just want to read it because I think there is a motion that has not been made yet that really needs to be made before you proceed. And that basically states that "in an investigative hearing," and I realize the chair believes this is not one. I disagree with you in your assessment, but "in an investigative hearing," this is subparagraph (5), "whenever it is asserted that the evidence or testimony at an investigative hearing may tend to defame, degrade or incriminate any person (a) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the Committee for the purpose of taking testimony, the Committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade or incriminate any person."

Now, I don't think there has been a motion to find that there is such a tendency here. Until that is done, I think that your efforts really to address this issue of contempt might not be consistent with this rule.

Now, if the chair believes this rule is entirely nonconsistent and tends to ignore it, we will respect that decision. I think it is grievously wrong. I think it will not result in a contempt citation of this witness because there is an issue about that. I just point it out for your consideration.

Mrs. CUBIN. Mr. Inslee, I thank you for your concern and advice, and I do believe that it was sincerely given, and I appreciate that.

Mr. UNDERWOOD. Madam Chair, I think we have the time.

Mrs. CUBIN. Certainly.

Mr. UNDERWOOD. I don't want to ask Mr. Berman a series of questions for fear that he would give me the same answers, but I did want to point out that I think that the whole nature, and I wanted to simply amplify on the point that Mr. Inslee has already made. And that is that this is a little bit more than an oversight hearing. It may be framed that way, but I think, clearly, by the nature of the kinds of questions that we are asking, I think by the nature of the detailed questions that we are asking, and I think by the nature of the kinds of questions that we are asking about specific acts, it inevitably involves questions of the rights of this individual and how he is perceived in public. And he does have a right to some protection of his person, no matter what we may believe he has done.

And it is of some serious concern to me, even though I must admit that normally, in this whole particular issue, I did not come to this hearing, I did not come to the initial hearing, even though I am Ranking Member, with any preconceived notion about the nature of the case that we are looking at or the nature of the alleged acts that occurred in the Department of Energy and Department of Interior that we are examining. But I cannot help but feel that we have gone down the road of an investigative hearing.

I mean, you can cite all of the rules you want, and I know you have the votes to impose those rules. So it may not do well to try to appeal to those rules. But I did just simply want to appeal to the common sense of all of the members here. And that is, under a dictionary definition of oversight, it has two definitions, "an unintentional omission." Well, there is nothing unintentional about this

hearing. And secondly, "watchful care or management." "Watchful care or management," and that implies some responsibility on our part to be watchful as we manage and as we look at the events that we are investigating.

Investigation is to inquire in detail and to examine systematically. Now, given the nature of all of the inquiries and the nature of the questions that are lined up here, I can't help but feel that this is a very detailed examination involving something that we know is under investigation in a different venue. And while I have no idea or not whether Mr. Berman or Mr. Speir or any of these other individuals did something which is beyond the—which is outside the law or simply unethical or perhaps poor judgment on their part, I don't know those facts. I don't know, and I am not prepared to make that determination. But it certainly seems clear to me that all of these individuals deserve some opportunity to protect themselves.

So I would have to concur, along with Mr. Inslee, that as we proceed with this and if we are going down the road of citing these individuals with contempt, we better be on some very firm ground because I think we are clearly treading on ground here regarding the way that they are treated and the way that they are held. And it is clearly an investigation into very specific activities that they engaged in rather than the watchful care or management, which oversight implies.

I yield to Mr. Miller.

Mr. MILLER. Thank you. I tend to concur with my colleagues. Mr. Berman has chosen his path and his answer. And given how this hearing has been run, I think he has probably chosen wisely. That doesn't mean he has chosen without jeopardy, but that is a decision that is for him to make because as it was quoted in the Supreme Court opinion, it is for the Court to determine, and you don't know whether you have jeopardized yourself or not, and people don't know that. And that is why this matter could be pursued to determine whether or not you are or are not in contempt if it is pursued in that fashion or whether or not you were within your rights. But I think at a minimum you would want to know whether this is an investigative hearing under which you have one set of protections, and members have one set of questions in an oversight hearing.

All of these witnesses were testified. Most of them were not given an opportunity to testify voluntarily, so they were subpoenaed. So this goes way beyond that notion. I don't know whether these people are guilty, not guilty or whether they show real bad judgment or they have engaged in criminal acts. And this is not about defending them. But there is something terribly wrong here, when the full force and effect of this Committee can come down in such an arbitrary fashion, run a Committee in such an arbitrary manner. There is contempt for Congress. It is out there in the country when people see this kind of activity being taken by the Congress against our own citizens.

They may have engaged in criminal activity or civil violations or judgment call, all of the rest of that, but there has got to be some rules how you properly determine it, and it has to be protected. And it is not just the chair of a Committee banging a gavel and moving on and taking votes yes or no. It is about protecting the

rights of citizens. They may have not done anything. You know, the only Court determination I think we have had so far was the Court told Mr. Johnson every man is entitled to his bargain. Now, we are going to determine whether or not that bargain was ethical or not or whether it was legal or not and all of the rest of that. But for the moment, that is all that I think has passed muster in a court, in a legal determination.

The Justice Department, as the two witnesses previous to this said, they are apparently in an investigation, and part of their conclusion was that part of this hearing was directed at and has been changed subsequent to those conclusions are the same as the Interior Department that it didn't have an impact on various decisions made by Justice or Interior.

So, so far, we don't know if these people have done anything. I have got to admit it looks pretty bad, but we don't know. But that doesn't give us a right to trample on your rights, and it doesn't give you a right to trample on the rights of Members of Congress. Mr. Inslee was precluded from asking questions. And it doesn't give you a right to trample on the rules of the House.

We are not raising these points to be arbitrary or to protect people or to bias the hearing. We have gone to the parliamentarian. We asked him because we didn't know how these hearings are going to be proceeding because you are not exactly communicating with the Minority. So we are asking people what do we think is going to happen, what the contingencies are. And as they come up, we are raising points of order and based upon rules and interpretations that have been given to us by the parliamentarian. But all we have is your ruling because the parliamentarian is not here, so we will have to determine that later. And Mr. Berman will have to determine that later, and it will be determined later.

But this Congress ought not to be about trampling on people's rights, whether we think that—whatever our previous disposition is about whether we think people have done something wrong or not, we ought to arrive that in a reasoned and in a fashion that is somewhat consistent with justice. And certainly that ought to include the members of this Committee to fully participate, even members who are not members of this Committee, who have some expertise and some knowledge in this to participate. But those determinations have been made.

I don't know what Mr. Berman is going to do or not do, and I don't know what you are going to do or not do, Madam Chairman. But I think, clearly, we have exceeded the bounds in terms of the rules of the House, the rules of this Committee, and basic protections for American citizens.

We still have time.

Mr. INSLEE. May I be recognized, Madam Chair?

Mrs. CUBIN. You have the time.

Mr. INSLEE. Thank you.

I will just tell you there is something I know and something I don't know about this and something we may never know. The one thing I do know is the chair did make reference to a scandal when she started this hearing. There is one thing I do know that there is and was a scandal that American taxpayers' money was not guarded and that some oil and gas companies got into the pocket

of American taxpayers for about $300 million, and that was a scandal. There is no question about that. And it has since seemed to me that these hearings have exposed that scandal. We know about that scandal.

The second issue as to whether or not there is a scandal in some other sense regarding the whistleblowers that protected the taxpayers and allowed the taxpayers to get the $300 million they had coming to them, I just don't think this Committee is helping to find that out, unfortunately, for two reasons: Number one, I am concerned that the way this has been managed will jeopardize the ongoing criminal investigation of this matter. I am a former prosecutor. I wasn't the biggest prosecutor in the world. I prosecuted misdemeanor cases for a small town in Eastern Washington. But I was enough of a prosecutor to know that when the U.S. Congress acts more for political purposes than to help really discover the truth, you can foul up a criminal investigation. And I believe we have a high tendency and likelihood to do that in this case.

The second thing is——

Mr. CANNON. Would the gentleman yield?

Mr. INSLEE. Just for a minute, I'll finish and then I'll yield in just a moment.

The second thing I would say is, and this is kind of professional advice, and I won't even send a bill in this regard to the chair, when you are attempting to impose contempt, and you may decide to attempt to do so, it is very, very important to follow the rules. And I really believe the chair has not followed the rules in regard to this witness, in regard to the rule that I have cited. And I want to reiterate that the chair has not brought the motion contemplated by this rule that would otherwise waive the necessity of this hearing be in executive session. And absent that, I believe ultimately, should you seek contempt of this witness, you will probably fail or you may fail, assuming that this witness has the right to bring that issue, which is a legal principle that, frankly, I am not sure of.

But I just want to reiterate that I think that we have not followed the rules here, and it will jeopardize this Committee's ability ultimately to get to the truth.

Mr. CANNON. Would the gentleman yield for just one question?

Mr. INSLEE. Certainly. We'll charge you for this one, though.

[Laughter.]

Mr. CANNON. Okay. We'll have dinner on the outcome or something.

Has the Justice Department objected at all to the inquiry we are having here?

Mr. INSLEE. My understanding, through staff, is there is a concern that has been raised, and let me ask to confirm that. Is that accurate?

Mr. CANNON. I mean, there is a formal process for——

Mr. INSLEE. Let me answer your question.

Apparently, we have been asked to restrict the questions of the previous witness. I don't know if they have said in all cases. But I will say this: I really do believe there is a legitimate issue to be in executive session for the purposes while this investigation is proceeding. That is my view, realizing the connection between Con-

gress and the judicial body. And I just tend to prefer to defer, when there is an ongoing criminal investigation, to the judicial branch.

Somebody has just handed me a letter here, and it says,"Committee staff has several specific——"

Do you want to point out exactly what is pertinent here to help me out? I want to answer your question, Mr. Cannon.

Mr. CANNON. While we are waiting for staff on that, is that a letter to the chairman of the Committee, to the Minority——

Mr. INSLEE. Yes. It is a letter to Mr. Young. And I will have somebody hand it to you here in a minute. But is there a pertinent point, do you think?

I will just read the part that is highlighted, and I can't promise that it is relevant because I haven't seen it before.

Mr. CANNON. And I won't charge you for the advice.

Mrs. CUBIN. What is the date on the letter?

Mr. INSLEE. This is January 28, year 2000, to Chairman Young. It is from Robert Rabin, assistant attorney general.

It says, "Congressional inquiries during the pendency of a matter, however, pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risks that the public and the courts will perceive undue political and congressional influence over law enforcement and litigation decisions. The open matters concern is especially significant with respect to ongoing law enforcement investigations," and I ask this to be given to Mr. Cannon.

And I will just tell you, we all recognize what politics can do to people's perception, and I think it is very important for criminal investigations to be able to proceed without political pressure. And I just think that is something we have ignored in this Committee, and I don't think that will help us in the long run.

Mrs. CUBIN. Does the Minority yield back the balance of their time?

Mr. CANNON. Madam Chairman, may I just follow up and point out I haven't had a chance to read the whole letter.

I don't believe this is even a request. It ends up, "I hope this information is helpful and want to assure you, et cetera." This is not a request that we back off what we are doing here, just to be careful, and we want to be careful all of the time, of course.

Mrs. CUBIN. Excuse me. Would the clerk make sure that the balance of the Minority's time is reserved, and this is now the time reserved by the Majority.

Go ahead.

Mr. CANNON. So we are now on our own time.

Mrs. CUBIN. We are on our own time.

Mr. CANNON. Well, I will be careful.

We had DOJ here testifying here today. Thank you, by the way, Madam Chairman, for recognizing me.

My understanding is that the DOJ has understood what the witnesses were going to be here today—they actually were here testifying today, and I think they are doing that. My understanding is that that is because they understand the distinction which I sense that the minority side is not getting, which is the distinction between an investigative hearing and an oversight hearing. It is pret-

ty straightforward. It is pretty simple. What we are doing here is oversight.

There is an appropriate time. And even when you have a majority, which is a different party from the administration, there is an appropriate time to investigate. And when you find that that, in conjunction with the Justice Department, is appropriate, we do that. I just don't see any problem, and all of the emotion from the other side doesn't cover over the fact that there are many problems in government. And let me just agree with Inslee, we don't know about the $300 million yet. We have to take a look at that. That may be significant. But we have an action here that we are looking into and doing so, I think, very appropriately.

Thank you.

Mrs. CUBIN. Will the gentleman yield?

Mr. CANNON. Yes, I yield back to the chair.

Mrs. CUBIN. I have to point out that the two witnesses on the previous panel were not subpoenaed. Their testimony was cleared, their appearance was cleared by the Department of Justice. So I think that——

Mr. MILLER. They weren't subpoenaed?

Mrs. CUBIN. They were not subpoenaed. No, they were not.

And I have to point out that the Minority is just putting up a bunch of smoke screens. They talk about whistleblowers being protected. The real whistleblowers were Johnson and Martinek. They were the whistleblowers. They were the ones who exposed the fact that affiliated oil companies were not valuing the oil properly, and therefore had been defrauding the government, the taxpayers of this country, of royalties. Those were the two whistleblowers. These two government employees were not whistleblowers.

Then the Minority side says that we are jeopardizing an ongoing investigation, that we are not following the rules. The bottom line is they want to divert the attention away from the fact that two government employees who were involved in royalty valuation policy took checks for $383,600 with an expectation to get millions more. Now, they can rant, and rave, and whine about procedures and be as petty as they want to be and argue about 3 minutes or 5 minutes, but the bottom line is this: We are here to determine if, in fact, the way the Department of the Interior and the Department of Energy operate oil valuation policies allows this sort of thing to happen, and if it does, we need to change it. Or if it doesn't, we need to see that the rules are followed. And it would appear from the testimony of the previous panel, that ethical rules were not followed.

So blow all the smoke you want, but the bottom line is the wrongdoers are not sitting up here. The wrongdoers are sitting there.

Mr. Brady, I recognize you for as much time as you may consume.

Mr. BRADY. Thank you, Madam Chairman.

I guess my question is fairly simple. When will Mr. Berman answer the question: What services did you provide to POGO in return for $383,000?

Mr. BERMAN. Mr. Brady, will you waive your Speech and Debate clause immunity?

Mr. BRADY. I will not. We are giving you an unprecedented opportunity to tell the truth and your side of the story. And as someone who I understand has pled the Fifth more than 200 times in deposition, I wouldn't be the one asking others to waive their rights. You are taking full use of yours, and I think it is reasonable that each of us take full use of our rights.

This is very simple, in essence, and this gives you a wonderful opportunity. It appears, in fact, the facts show that you used a position of trust of many years within our Federal Government, financed by taxpayers, used that information, worked with a special interest group to develop a lawsuit and reached an agreement to split the proceeds of that lawsuit. You spent more than a year on the phone with the true whistleblowers in this case developing more information, stopped those calls a mere week before the lawsuit was filed, reached an agreement, got upset when you didn't get your share of the loot, finally did get your share of the loot, neglected to tell, in violation of law and ethics, your Agency or anyone in a position to rule on whether this was right or wrong. You purposely did not do that.

And so it is very clear that the public, in a very reasonable way, simply wants to know what services you provided to POGO in return for $383,000. It is a simple question. Perhaps there is a good answer, and I invite you to answer it.

Mr. BERMAN. Mr. Brady, do you waive your immunity?

Mr. BRADY. As I said, no. Are you willing to tell the truth? Is it time to tell the American public what you did in return—nothing in life is free. What did you do, what services contractually did you provide to POGO in return for $383,000? And it is a simple question.

Mr. BERMAN. Mr. Brady, I have already given my conditions for answering.

Mr. BRADY. Thank you, Madam Chairman.

Mrs. CUBIN. The Majority reserves.

Mr. MILLER. We'd reserve for the moment. I don't know if you have other questions.

Mrs. CUBIN. No, we don't. So we recognize the Minority.

Mr. MILLER. Do you have any questions?

Mr. INSLEE. Just as an inquiry, Madam Chair. Has the Committee, and I am sorry, I missed a part of the meeting. I was late for it. My apologies. Has the Committee considered compelling testimony of this witness by granting him immunity and compelling him to testify? Has the chair considered that at all?

Mrs. CUBIN. This has been considered. Mr. Berman asked for immunity. And the information that he was apparently willing to give was not—it was strictly about policy, and it had nothing to do with the arrangements, the details of the agreement and whatnot.

Mr. INSLEE. I just throw it out, and I don't make a motion in that regard at the moment. But I do——

Mrs. CUBIN. That what, sir?

Mr. INSLEE. I don't make a motion. I am just asking a question of the chair at the moment, and the reason I say that is I suspect that if we are successful in compelling the witness to answer, despite his current objections, that there may be a Fifth Amendment objection thereafter.

Mrs. CUBIN. Well, he hasn't expressed any objections. He has just given conditions under which he will answer the question, which clearly is Contempt of Congress.

Mr. INSLEE. Well, I appreciate it. I am not making a motion on that. I just wanted to inquire if the chair had considered that.

Thank you.

Mr. MILLER. Madam Chairman, do I understand that the Majority is done with this witness for the purpose of questioning? You may not be done with him, but——

Mrs. CUBIN. I have one question. I do appreciate, Mr. Inslee, as I said earlier, your—I believe your sincere effort to clarify what my motion was about. So I'm going to do that at this time.

Mr. Berman's attorney made an objection about whether or not he should have to furnish this information, if you will. He based it on a rule that we are not operating under. I made the motion under Rule XI 2(g)(2)(b) that the Subcommittee agreed to close the hearing for the sole purpose of discussing whether the testimony or evidence to be received would violate the clause that I believe you cited, which is 2(k)(5), regarding investigative hearings.

So then I do have a question I am going to ask one question, and then I do want to close, but then we will yield back, other than my closing.

Mr. Berman, last question. Will you provide this Subcommittee with testimony or evidence that you did not intend an agreement with POGO to share oil royalty litigation proceeds?

Mr. BERMAN. You have my conditions for answering your questions, ma'am.

Mrs. CUBIN. I reserve 60 seconds of our time to close and yield back the rest.

Mr. MILLER. I would just say, in closing, I think Mr. Berman has made his position clear as to any questions from any members of this Committee. I would then, again, register our objection because I appreciate what you have said—the rules on which you believe you are operating. We have been told by the parliamentarian contrary to that. It is for the parliamentarian to decide whether or not the rules are being followed or being interpreted. And I would stand by that, what we have been told by him; that this is, in fact, an investigative hearing which would then present a different question for the members of this Committee as to whether or not they want to go into executive session.

And we will yield back the balance of our time.

Mrs. CUBIN. Thank you.

The last statement that I would like to make while you are here, Mr. Berman, is that the very actions of POGO to proffer money to you and to Mr. Speir has jeopardized the new oil valuation rule, and the likelihood that the remaining defendants will settle their litigation claims. In other words, they have every reason to want to go forward because your actions, at the very least, appear to have tainted that rule. These payments have poisoned the well for the very changes in oil valuation that you, Mr. Speir, Mr. Banta and Ms. Brian all profess to want.

And as I said in the last hearing, I believe that the intentions of the POGO board were not malicious, and I believe that collecting the oil royalties that we are due is important and that that's a good

thing. But, unfortunately, what transpired between then and now is not good and has very well damaged the mission you tried to accomplish.

So you are dismissed, Mr. Berman.

Mrs. CUBIN. The chair now calls Mr. Robert Speir to the table.

[Witness sworn.]

Mrs. CUBIN. Thank you, Mr. Speir. Please be seated.

The chair now recognizes Mr. Brady for the purpose of a motion regarding questioning of witnesses.

Mr. BRADY. Under Clause 2(j)(2)(b) of Rule XI of the Rules of the House of Representatives, I move that Congressman Brady, members of the Majority and the Minority member or members designated by the Ranking Member be allowed to question the witness, Mr. Speir, for a total of 60 minutes, equally divided.

Mrs. CUBIN. All in favor say aye?

Are there any objections?

[No response.]

Mrs. CUBIN. All in favor, say aye.

[Chorus of ayes.]

Mrs. CUBIN. Opposed?

Mr. MILLER. Opposed.

Mrs. CUBIN. The motion is passed.

The chair now recognizes Mr. Schaffer.

Mr. SCHAFFER. Thank you, Madam Chairman.

Mr. Speir, can you tell the Committee when you first met Mr. Banta.

STATEMENT OF ROBERT A. SPEIR, RETIRED, DEPARTMENT OF ENERGY

Mr. SPEIR. I'm sorry?

Mr. SCHAFFER. Can you tell the Committee when you first met Mr. Banta?

Mr. SPEIR. Oh, I believe it was in 1985 or 1986.

Mr. SCHAFFER. Have you ever discussed oil valuation subjects other than the filing of the qui tam suit with Mr. Banta?

Mr. SPEIR. Oh, many, many subjects.

Mr. SCHAFFER. I am sorry?

Mr. SPEIR. Many, many different variations on that subject.

Mr. SCHAFFER. How would you describe your personal and professional association with Mr. Banta? Has it existed outside of the discussion concerning—let me just restate that.

Your personal and professional association with Mr. Banta existed outside discussions concerning POGO's efforts to file a lawsuit and advocate for a new royalty rule; is that correct?

Mr. SPEIR. I am not sure I understand your question, frankly.

Mr. SCHAFFER. Well, I just want to find out if your association with Mr. Banta existed outside of discussions concerning——

Mr. SPEIR. The royalty rule and other matters?

Mr. SCHAFFER. Right. And POGO's effort to file a lawsuit.

Mr. SPEIR. Well, yes. We had had a long informal, technical relationship regarding California issues—oil prices and valuation of oil in California. That is how the relationship initially got started in 1986—1985/1986.

Mr. SCHAFFER. You mentioned California. Do you know the identity of the client which motivated the Lobel law firm's work on California oil valuation?

Mr. SPEIR. Well, over that period, no. I really don't know specifically who their client was. I know that in the latter part of the period we were—the most recent part of the period, I think that the firm represented some entity within the State of California. Who they represented, if anyone, at the time our relationship originally developed, I don't know.

There was not any discussion between me and Hank about exactly who they represented. That was not the nature of the relationship.

Mr. SCHAFFER. When did you first learn of Mr. Banta's association with POGO and Ms. Brian?

Mr. SPEIR. Well, if you mean by that question when did I first learn that he was involved with the Project on Government Oversight's board, it may seen surprising to you, but I really didn't know about that until perhaps as late as 1997. And I think the precipitating event was when he mentioned at one point he had recused himself from the board or something. I knew that they had a common interest in the sense that they were both interested in California oil valuation. But I didn't know whether they had simply a common public interest relationship or exactly what that relationship was.

Mr. SCHAFFER. The 1993 Lobel Christmas party——

Mr. SPEIR. The Christmas party was not all that good, by the way.

[Laughter.]

Mr. SCHAFFER. My point was that party is now pretty legendary as a starting point for your relationship with POGO and POGO's efforts regarding oil valuation.

Mr. SPEIR. Cheap beer and bad food.

Mr. SCHAFFER. What's that?

Mr. SPEIR. Cheap beer and bad food.

Mr. SCHAFFER. Got it. Well, we have been to those.

[Laughter.]

Mr. SCHAFFER. Is there a trend associated with that? I am curious as to how many of those parties have you been invited to? You probably won't be invited this year.

[Laughter.]

Mr. SPEIR. I'm lucky if I can get up from this table after that. Well, never mind.

I don't—I don't really know. I probably started going to their Christmas party in the late 1980s, I suppose, and missed a few along the way.

Mr. SCHAFFER. So you have been to more than one.

Mr. SPEIR. Oh, yeah.

Mr. SCHAFFER. Got it. All right. In your discussions about taking part in POGO's lawsuit, the question of independent legal advice was raised. POGO has long experience dealing with whistleblowers and advertises for whistleblowers and qui tam lawyers on its web site. Did POGO ever offer to refer you to any lawyer specializing in whistleblower protection or False Claims Act law?

Mr. SPEIR. Not that I recall.

Mr. SCHAFFER. Not that you recall. So POGO never took any steps to make sure you had advice, other than what it offered?

Mr. SPEIR. At one point, Ms. Brian recommended that I get legal counsel, but she didn't refer me to any legal counsel, that I recall.

Mr. SCHAFFER. As I read your June 1999 deposition, Mr. Speir, when receiving the check, you relied on POGO's assurances that lawyers on its board, outside lawyers, and the Justice Department had found nothing objectionable about the payment. Our first hearing revealed that POGO's board knew almost nothing about this, and debated it even less in that Mr. Banta claims that he took no part in it. You probably heard that testimony.

Today, you heard the Justice Department testify that it expressed grave concerns about the payments before the checks were written. An investigation of those payments has been underway since shortly thereafter. Do you feel that POGO was fully candid with you on this point?

Mr. SPEIR. Well, yes, yes, I do. You are referring to my deposition testimony last summer, correct? I think I said in that deposition that I felt like there were, after I, in my view, first accepted their offer, contingent as it was, in January of 1998, that there were several more hurdles this had to pass, the last of which was what I considered to be the trip wire, and that was notifying the Justice Department because I always felt that if the Justice Department was notified, and they raised questions, then the whole process leading to the award would be abrogated and would go into review phase.

And, yes, I thought she was candid at all points because there was no incentive on her part——

Mr. SCHAFFER. "She" being who?

Mr. SPEIR. Ms. Brian.

Mr. SCHAFFER. Okay.

Mr. SPEIR. Because there was no incentive to do otherwise. When she notified me the week before she gave the awards that Mr. Packard had notified the Justice Department of the impending award, she was quite excited about that because she said they had been notified, and they raise no objections.

So, you know, I thought about that, and I thought, all right, now what incentives would she have to misrepresent that conversation that she had with her own attorney? And I couldn't figure it out, and I couldn't find any. So, and the long answer to your question is that I thought she was always candid.

Mr. SCHAFFER. Well, I know you have been pretty forthcoming about these things. You have spent hours on the phone with Senate and House staff.

Mr. SPEIR. Yes, against my counsel's advice, I might add.

Mr. SCHAFFER. Give the Subcommittee what your colleagues will not; an account, if you will, of the events leading up to the December 1996 offer from POGO to share its litigation proceeds with you.

Mr. SPEIR. You want me to describe events leading up to that?

Mr. SCHAFFER. Yes, please.

Mr. SPEIR. Well, again, referring back to my deposition testimony last summer, I expressed——

Mrs. CUBIN. Excuse me, Mr. Speir. Your answer might take a little bit of time, and Mr. Schaffer might possibly have more ques-

tions relating to it. So we do have a vote. We actually have a series of four votes. So if everyone would like to take a break, it will take about 35 or 40 minutes. So we will be back in here at 10 minutes after 5.

Mr. SPEIR. Can I have my chair back?

Mrs. CUBIN. Pardon me?

Mr. SPEIR. Can I have my chair back?

Mrs. CUBIN. You bet. Thanks.

The Committee will recess.

[Recess.]

Mrs. CUBIN. The Subcommittee will please come to order.

The chair recognizes Mr. Brady, in Mr. Schaffer's absence, to continue the questioning of Witness Speir.

Mr. BRADY. Thank you. Thank you, Madam Chairman.

Mr. Speir, thank you for being here today. I am sorry that Mr. Berman did not take this opportunity to be open and honest about his role in this scandal. He had an opportunity, clearly, in front of all of America to refute and knock down any challenges to the facts about his role in this scandal.

And this is an opportunity for you to do just the opposite. I would like, if you would, to tell the Subcommittee what your colleagues will not. Would you just give us a narrative account of the events leading up to the December 1996 offer from POGO to share its litigation proceeds with you.

Mr. SPEIR. Well, I'm a little imprecise about exact dates. But my general recollection is that in the few weeks before that meeting—and I might inject here that what I am saying may be somewhat at variance with my testimony from last summer, primarily because I really don't have a precise knowledge or recollection of the exact dates—my general perception is a lot of this took place in early 1997, but I am referencing it to that December 9th meeting.

Mr. BRADY. Sure.

Mr. SPEIR. Ms. Brian and I had a few phone calls in which we did not discuss at length, but the subject came up of being a relator in a qui tam suit that she was thinking about filing. And I didn't accept or decline that suggestion from her in those discussions we had. They weren't really in-depth discussions at all. I wasn't sure at the time what a relator was, legally, and what my obligations were and what I could do.

I was concerned about a number of things, but that led to me neither accepting nor declining the possibility of being a relator. And that was kind of the nature of the discussions. They were very shallow. And then, finally, at one point, and it is hard for me to pin down the exact date, she suggested that we get together face-face-to-face and have a meeting about this. And we did meet at Mr. Banta's office. And as I recall it, the people present were Ms. Brian, Mr. Banta and Mr. Berman and I.

And we talked a little bit about being a relator. Mr. Banta, I believe, conveyed a general pessimism about whether or not the project could actually attain standing in such a case, and even if they did, what their chances were of staying in that case.

We talked about several other peripheral issues. And, finally, I was left with the impression that Ms. Brian wanted me to say, you know, are you going to be a relator or not, and wanted me to an-

swer that question. And my general recollection of that was that I said not at this time or something along those lines.

And then immediately following that, within the same general conversation, she just made an off-handed comment about, well, recognize your difficulties with this. And if we do this and if we ever get any money from it, we want to recognize your contributions to this area with what was implied to be an award, in my mind.

Mr. BRADY. She said this would be an award, in her mind, or that isn't how you said it.

Mr. SPEIR. No. The way that—I can't recreate the precise words. But in my mind, that was the way I interpreted what she said: In recognition of your contributions of this area, calling attention to the crude oil underpricing in California, and the royalty matters and so on. It was an offhanded comment. It didn't require acceptance or rejection at that point.

Mr. BRADY. At that point, you didn't accept or decline, you simply knew of the offer. You had knowledge of the offer?

Mr. SPEIR. Yes. She made what should be viewed, I think, as a very speculative offer or what I viewed, anyway, as being a very speculative, hypothetical-type suggestion that if they ever got, if they filed a suit and they ever got money from it, that she would like to recognize our contributions.

Mr. BRADY. My understanding is that the ethics rules are fairly clear about Federal employees not being able to accept awards of more than $200, not allowed to accept money from organizations or persons with financial interests that might be affected by your duties, that you cannot accept money seeking to influence the Agency or to supplement your salary, to reward for duties that you are already doing. That offer that she made at that time, which you did not accept or declined, but had knowledge of, was in violation of Federal ethics laws and regulations at the time, was it not? An offer of financial reward for the work that you had been doing and were doing at the Agency.

Mr. SPEIR. I guess I should probably try to break your question down into the different components. But, frankly, I am not that conversant in the ethics rules. I felt that, at the time, the situation was so tentative that it didn't require me to, inasmuch as it didn't require me to make any decision one way or another, that I was not entering into an agreement with her, and therefore——

Mr. BRADY. When it became less tentative, you were given a check, did you then disclose to all relevant agencies the dollars that you had gotten, that hypothetically were illegal when you first knew of the offer, but then moved from hypothetical to reality when you did accept the check?

Mr. SPEIR. Well, I knew, my extent of knowledge about the ethics rules at that time were that if there was a concrete offer there, where someone, for example, was saying, you know, "Here is a check, will you accept it?" during the time I was in the government, that there were certain hurdles I would probably have to pass. And I was not aware specifically of what I would have had to have done to receive this award during the time I was in the Federal service. But during the remaining time I was in the Federal Government,

which was until October of 1997, the offer remained hypothetical. There was nothing to it, in my mind.

And then—I want to correct or at least clarify the timing here, then, in January, or perhaps at the earliest a week or so before that January 5th document was signed, Ms. Brian called me and said, "It looks like there really is going to be money flowing as a result of this qui tam case because it looks like there's an impending settlement. And we would like to know, for planning purposes, if, in fact, you are going to accept this if we offer it to you."

And in my mind, simply her desire to have me sign that document at that point was to signify to her whether or not I was going to receive that award if it should become available in the future. And that was the context I put that document in.

At that point, I didn't feel like there was any need to go back and notify the department that I had worked for or anyone else about that offer.

Mr. BRADY. Let us focus on that, if I could. At the time of the meeting, and I want to come back to the meeting because there is some information——

Mr. SPEIR. This was in December of 1996.

Mr. BRADY. At the time of the meeting when she made, Ms. Brian made a hypothetical offer that would have been illegal and unethical at the time had it been executed, it then moved from hypothetical to a reality. And based upon your services and your work as a Federal employee, as inside the government on this issue, it was illegal and unethical, as a hypothetical. When it became a reality, why did you not either decline it or disclose it?

Mr. SPEIR. Well, I don't——

Mr. BRADY. Because you have been a long-time member of the Federal Government, well respected within it. You clearly have a long history of knowledge in this area and passion for it, and you are a very smart man. I can't imagine—I don't know how many $383,000-checks you have been given in your life. I don't have that many. They tend to stick out. And as a Federal employee, wouldn't, you know, wouldn't a red flag have been raised to you at that time?

Mr. SPEIR. Well, I think you are kind of mixing up your time line here a little bit.

Mr. BRADY. Well, now, the time, as you said, you have been a little general as to time, and perhaps I have been as well. But the question still stands, didn't, as a long-time employee who lived by, hopefully, and knew the Federal agency regulations, ethics regulations, why didn't you disclose that or decline it at that time?

Mr. SPEIR. I didn't think it was necessary for me to do it because it was not an offer that could be fulfilled and had, in my view, an extremely low possibility of ever coming true at that time.

Mrs. CUBIN. Will the gentleman yield?

Mr. BRADY. Yes.

Mrs. CUBIN. Thank you.

I would like to read, just for the record, what the agreement, the January 5th, 1998, agreement actually says that Mr. Speir says he didn't think was really an agreement. But here is what the document says: "This is to put in writing the standing oral agreement between the Project on Government Oversight, Mr. Robert Speir

and Mr. Robert Berman concerning our False Claims Act suit regarding the underpayment of—" excuse me. I will start again.

"This is to put in writing the standing oral agreement between the Project on Government Oversight, Mr. Robert Speir and Mr. Robert Berman concerning our False Claims Act suit regarding the underpayment of royalties by oil companies to the Federal Government. Any and all proceeds to come to the Project on Government Oversight or Danielle Brian, through this lawsuit, will be shared equally, 33⅓ percent, between POGO, Mr. Speir and Mr. Berman."

That sounds awfully specific to me, Mr. Speir. I don't really see how there can be much confusion over that.

Mr. SPEIR. Well, I can only testify to what was in my mind at the time. In retrospect, I probably would go back and quibble with that standing oral agreement being at least ambiguous, if not meaning the wrong thing. I never treated this as being anything more than a tentative offer or an agreement on the project's part to make the offer.

Now, I may be splitting hairs here, but I want to refer you——

Mrs. CUBIN. But you did sign the agreement, Danielle Brian signed it and Robert Berman signed it.

Mr. SPEIR. I am just saying it doesn't mean what you are saying it means or didn't mean that way——

Mrs. CUBIN. I am only reading it. I am not saying it means anything. I am only reading it.

Mr. SPEIR. But it didn't mean that I had a standing agreement dating back—agreement in the context of they said, "Will you accept this?" and I said, "Yes," going back into 1996. That simply did not—that agreement did not exist.

Now, why did I sign this? Well, I just didn't quibble about the wording because I knew, I thought, what was in Ms. Brian's mind. That, in her mind, the agreement was synonymous with "offer." And it was their agreement. It was a unilateral agreement, I think using the words that you or someone else used earlier.

I can only talk about what was in my mind and how I interpreted this document at the time.

Mrs. CUBIN. The unilateral agreement is somewhat of an oxymoron. It takes more than one to agree.

Mr. SPEIR. Exactly. That is why it is inappropriate wording.

Mrs. CUBIN. Mr. Brady, would you like to continue?

Mr. BRADY. Thank you, Madam Chairman.

Mrs. CUBIN. Thank you for yielding.

Mr. BRADY. No. Thank you for clarifying that.

Let's step out of your mind for a minute and back to real life. You are a Federal employee. Someone comes up to you, talks to you about becoming involved in a lawsuit. You decide you don't want to, but they say, "Look, we're going to file it anyway, and we're going to give you a ton of money should we win this lawsuit." You say it is hypothetical, but the fact of the matter is you are knowledgeable in this area. You do have a relationship with that special interest group, and in fact, just what was predicted occurs. They come back to you several years later or a year later or so and say, "Here is that moola we talked about earlier. It is $383,000 now, and it is for what we said it was—the services that you have provided throughout the years in your Federal role."

That is both the offer and the fact that it was proven to be a realistic offer at that time is illegal and unethical, and as a long-time employee, you either knew that or should have known that. Is there any of that——

Mr. SPEIR. I don't——

Mr. BRADY. I mean, that is how it occurred.

Mr. SPEIR. I don't accept that what the situation was, that was proposed to me in 1996 was illegal or unethical. If this had been——

Mr. BRADY. Is that because it happens a lot or—does this happen a lot, special interests groups saying, "Hey, we'd love to have you in a lawsuit, and if we get some money out of it, we'd love to give it to you because you're doing lots of good work?"

Mr. SPEIR. No. I'm just saying that I don't, I don't necessarily accept the premise in your statement. I can only say that the reason that I didn't report it to anyone was because I didn't feel like I had to because I didn't feel like someone had been asking me to do something for money. That was clearly not the case, and I didn't go into researching whether I could receive this money because there was no need to do it at the time.

Mr. BRADY. Now, are you sure there was no need to do it? Because you know, as a Federal employee, former Federal employee, you are under ethics laws, as well, for the work that you did. The payment was exactly what the offer was made at the time, verified in another letter to Mr. Berman, verified in the minutes of POGO. And the amount happened to be, as you know, as an expert, exactly a third of that Mobil settlement and exactly a third of that interest to POGO. That didn't raise a red flag to you that the "award," which has never been given before and hasn't been given since, was exactly the share of an offer that was made to you in 1996 or 1997?

Mr. SPEIR. Does your question mean to infer that somehow in 1996 anyone knew that there would be a subsequent settlement?

Mr. BRADY. Absolutely not.

Mr. SPEIR. And that there was an agreement of sharing one-third, one-third, one-third back in 1996? That didn't happen.

Mr. BRADY. The facts show that POGO, in their documents, I believe they reached an agreement with you and Mr. Berman to share the proceeds of this lawsuit. You declined that. You say that it is not the case, but it continues, in reality, between the agreement, then subsequent follow-up to Mr. Berman's demand of some type, and then the actual dollars themselves are exactly as they were presented to you in 1996.

Mr. SPEIR. No, they weren't.

Mr. BRADY. You dispute that?

Mr. SPEIR. Yeah, I do dispute that there was any discussion of shares or any comment about future rewards.

Mr. BRADY. Wait a minute. You said the whole discussion was about that if we win this lawsuit, we want to reward you for the work that you are doing as a Federal employee.

Mr. SPEIR. Yes, but you are extending that and implying, I think, and correct me if I am wrong, implying that the offer that is embodied in this January 5th, 1988, document was spelled out very definitively in 1996, and that was not the case.

Mr. BRADY. I am saying common sense tells you, if someone makes you an offer that is unethical and illegal at the time, that in subsequent years that agreement is executed exactly as was outlined, in violation of ethics laws and rules that you—and it is exactly one-third of a legal lawsuit settlement that you are an expert in—why would that not raise red flags to you?

Mr. SPEIR. There was——

Mr. BRADY. Why did you accept that money? You knew it couldn't have been by circumstance. You knew they hadn't given award before then. You knew you had never been given $383,000 in your life for an award, but you did know you had been offered that money previously. I mean, you did know you had been offered that money previously.

Mr. SPEIR. Under circumstances that were hypothetical and remained hypothetical during the entire time I was in the Federal service.

Mr. BRADY. But they were real.

Mr. SPEIR. Well, they turned out to be real, yes. But who knew at that time?

Mr. BRADY. Well, let's go back to the services that you might have provided. Have you read——

Mr. SPEIR. Let me——

Mr. BRADY. Have you read——

Mr. SPEIR. Can I close out your question here? I am still trying to understand exactly the nature of your question, whether it is why did I receive the money in November of 1998 or why did I not report it to the Department when——

Mr. BRADY. Both.

Mr. SPEIR. Well——

Mr. BRADY. And I think your answer was you didn't—you weren't aware of the law?

Mr. SPEIR. No, I am not sure that that law—that the law would have required me, in 1996, to report this highly tentative suggestion of an award.

Mr. BRADY. When you cashed the check, that didn't——

Mr. SPEIR. No, I don't think——

Mr. BRADY. I guess that common sense——

Mr. SPEIR. I don't think I was under any obligation, at that point, to notify the Department I had worked for. I don't think the ethics rules step back and say that you have to notify the Department that you worked for.

Mr. BRADY. Common sense tells you that position of trust, but let me ask this——

Mr. SPEIR. Yeah, but we're talking about ethics rules here, Mr. Brady.

Mr. BRADY. Did you read the POGO or have you read the POGO lawsuit?

Mr. SPEIR. The qui tam suit?

Mr. BRADY. Yes.

Mr. SPEIR. No.

Mr. BRADY. You haven't—you have not read it at all?

Mr. SPEIR. No.

Mr. BRADY. You are not aware of any of the information in it?

Mr. SPEIR. I don't know whether I'm—I'm not specifically aware of anything that is in that lawsuit because I have never read it. Now, if you ask me about certain facts that are in that lawsuit, I might be familiar with those facts, but not—you would have to tell me, "Here is what the lawsuit says. Are you familiar with that fact?"

Mr. BRADY. Are you—well, let's probe some of those facts.

Mr. SPEIR. I'm not trying to split hairs here. I'm just trying to understand your question.

Mr. BRADY. Are the facts that you are aware of that are in that lawsuit, did you develop any of that information or were those facts and issues before you as a Federal employee?

Mr. SPEIR. I don't know what facts you are referring to.

Mr. BRADY. The facts you just said you were aware of.I don't want you to recite the lawsuit. I was asking your knowledge to it. You said, "I know certain facts about it, but, no, I have not read it."

A logical question was, the facts that you are aware of were those issues, was that information under your purview as a Federal employee?

Mr. SPEIR. I don't——

Mr. BRADY. I mean, it is very easy——

Mr. SPEIR. I don't know what's in the lawsuit that you are asking about. That is the question I have got in my mind. Now, I don't want to put words in your mouth. But if you asked me if I was familiar with royalty underpayment or the sequence of events or the oil trading practices and accounting practices that lead to royalty underpayment, I would tell you yes. Whether or not that is spelled out in that lawsuit or not, I don't know.

Mr. BRADY. So, I guess, maybe a yes or no on this one. Did the work that was within your purview as a Federal employee, was that included in or did it contribute to the collection of millions of dollars of unpaid oil royalties?

Mr. SPEIR. I think the direct answer to that is no, and the reason is that I helped document, along with this California task force that we have been discussing here in this hearing or at least in the previous hearing, helped document that royalties were probably underpaid in California to the tune of hundreds of millions of dollars.

Point of fact, I don't believe that the Interior Department has ever collected monies against those billings, but I am not really real sure about that. But I think that they never have collected monies.

Mrs. CUBIN. The Majority's time has expired.

Mr. BRADY. Thank you.

Mrs. CUBIN. Thank you, Mr. Brady.

The chair now recognizes the Minority for their 30 minutes of questions.

Mr. UNDERWOOD. Thank you, Madam Chair.

I yield to Mr. Inslee for some questions.

Mr. INSLEE. Thank you.

Mr. Speir, do you believe your efforts or some actions, in some regard, assisted the taxpayers' recovering payments that should have been paid to the government?

Mr. SPEIR. Well, I think I helped call attention to a situation that may have led the government in that direction. Whether or not they aggressively pursued those collections or not is a matter of debate, I supposed.

Mr. INSLEE. In what form did you do that? Did you tell somebody about it or write memos or just give me an idea.

Mr. SPEIR. Well, I tried, over a period of years, to call attention to market imperfections or irregularities in California. And correcting those market imperfections or irregularities would have had had the effect of raising posted prices in California, which in turn would have brought independent producers in California more money for their oil. And in a great sense, the Federal Government is an independent producer in California because of our royalty interests.

So I attempted to do this over a period of time. Now, the Department of Energy does not have any direct responsibility in collecting royalties or calling attention to royalty underpayments. So my thrust there was somewhat more indirect, although I certainly had in my mind all along that my actions, if they were carried out, would have an indirect effect to raise royalties.

And then in the period of 1994 to 1996, on sort of a volunteer and ad hoc basis, I participated in this California task force and more specifically looked at company trading practices, company documents and so on, along with, of course, looking at the existing regulations that the Minerals Management Service pursued in collecting royalties and helped document the fact that royalties had been underpaid. I think this was a big change.

I don't want to take responsibility for that because it was a task force decision that royalties had been underpaid, and there were five main working people in that group, but it was certainly a change because the Interior Department had an opportunity to address this problem several times in the preceding years and managed to avoid it. So I think I made a contribution there, although I don't want to say I was the only one.

Mr. INSLEE. Well, some of us believe that it is beneficial to the taxpayers to collect the money that is owed to the government. And to that extent, some of us would be appreciative of yours and other efforts to the extent you helped the taxpayers collect what was coming to them. But there are other issues here, as you are well aware, involving qui tam and the whole host of issues. And let me just kind of tell you what I am thinking here, which is a question. And I would like some of your thoughts about it.

It seems to me that there is a real benefit of qui tam suits, of allowing Federal employees and encouraging them to blow the whistle on inappropriate conduct in the Federal Government. And at least my view is that Federal employees ought to be able to participate in that if, number one, it can act as an incentive to weed out inappropriate conduct by the Federal Government in some way, in a thousand different ways. That is a healthy thing if Federal employees have some incentive to do that, to take the risks associated with blowing the whistle, and there are risks associated with that.

But there are issues when that occurs that we do want to avoid conflicts of interest, we do want to avoid inappropriate incentives

for employees to make decisions based on their own self-interests rather than in the Federal Government's interests. And I guess I would like to ask you an open-ended question. Do you see anything that we can do to improve our rules or personnel or ethics rules to accommodate both of those desires, both the desire to encourage whistleblowers and the desire to assure that that incentive does not distort anyone's decision making? It is an open-ended question. I would appreciate your thoughts.

Mr. SPEIR. Well, it is pretty broad and definitely out of my field. I think some of the things that you heard the Justice Department people saying here today suggests that the Justice Department looks with a very skeptical eye on qui tam suits filed by Federal Service people. And to the extent that, if I interpreted the gentleman's comments correctly, they almost automatically reject those. And if you can bridge that gap where a person with direct knowledge of some sort of improper action—waste, fraud and abuse are the buzz words that are often used—the person can bridge that gap and come forward and provide them some sort of incentive for doing it, that would be great. And I don't know whether it would be a policy decision at the Justice Department level to entertain these in a more friendly environment or whether it would be a legislative solution.

I know—I am told, at least, at one point, the False Claims Act statute was strengthened a few years ago substantially. And I am not really familiar with the details of that statute. I have never read it. I am not sure I would fully understand it if I did. But if you could do something either legislatively or through some sort of administrative procedure to make the Justice Department look in a much more friendly way toward people who would be willing to come forward and expose waste, fraud and abuse, then I think that would be a great step forward.

There is always the problem, and I am sure that they will say this, there is always the problem of someone coming forward and saying—trying to turn in someone or report on something that really was their responsibility, and that is what they tend, I think, to step behind, in many cases. So you have to deal with that.

I am not sure that I really answered your question very well, but that's kind of my thoughts.

Mr. INSLEE. In your case, do you believe you made any inappropriate decision or took any inappropriate action damaging to the Federal Government or even to the appearance of propriety with the Federal Government as a result of the potential that you would have received some economic benefit?

Mr. SPEIR. Well, I don't think I damaged the government's ability to collect money at all.

Mr. INSLEE. Apparently not.

Mr. SPEIR. And as to their future ability to collect under the current royalty rules or the royalty rules that are contemplated, it is not something that I did that is slowing that process down. I was not involved with those rules or the new rule.

So I don't think I did anything that was harmful. There is always the question of the publicity surrounding something like this and a question about whether, in accepting this award, which can be interpreted in negative ways, I caused a problem. And I think

that if—well, I have to really rely on Ms. Brian's interpretation of that award, but it's not my own. But if she—if one looks at the spirit and accepts the spirit in which it was given, there shouldn't be anything by way of impropriety about it.

Mr. INSLEE. What was your understanding as to in what circumstances you should notify other people in the Federal Government about the potential of receiving award in this regard? At the time you were employed, what was your understanding as to the threshold when you should notify someone in that regard?

Mr. SPEIR. Well, my general sense, and I can't cite a section of the ethics rules in answering this question, but my general sense is that if someone had the ability to deliver you money, then you had to subject that to a review by the ethics group of the general counsel, and that situation never arose during the time I was in the Federal Government. This very tentative, hypothetical offer could not have been fulfilled. We tend to look back at it in retrospect and say, well, of course, it was logical because it happened. But I consider it to be, you know, like, you know picking a number on a roulette wheel, and it just happens to turn up. You can't tell that on an a priori basis.

So there was nothing in place that suggested that this would ever take place. And most importantly, there was no quid pro quo associated with it. It was a statement that we would, if we ever were able, would like to reward you for events in the past. And my thought, and still is, that the Project on Government Oversight had no financial reward—they were not asking for anything from me, and they had no financial position that would be affected by anything I was likely to do in the future.

So there just wasn't anything wrong with it, but yet I always kind of, as I stored this back in the back of my mind and, you know, then filed it back there, I thought, well, if at some time in the future there actually are monies and they come forward and they say, "Well, now, we have got this money. We want to give you this award now," I would have to subject it to review.

Now, as I left the Federal Government, that was still a very hypothetical situation. And the whole complexion of what I was required to do changed when I left the government or at least in my view it did.

Mr. INSLEE. Do you think that there ought to be a rule, statute, ethical rule that in any circumstance where that even potential is raised with a Federal employee, knowing what you know now—I am not asking you to say what you knew then—but knowing what you know now, do you think it would be appropriate for us to have some rule that any time a Federal employee in any way, shape or form, is given even the potential of that or there is any discussion of that, that it would be a rule that management be notified of that potential? Do you think that would make sense?

Mr. SPEIR. I don't know. It might be a useful thing to do, but I think that there are an ample number of checks in place right now that would suggest that if someone was making you an offer and they had attached to that some sort of contingency, a quid pro quo, that is—implied or not implied—there are rules and regulations that are in place to cause you to, I believe, to bring that forth as a possible bribe. I'm not trying to say—I'm not trying in that an-

swer to subject that to a legal analysis because I am not qualified, but I think that anyone that entertained the idea of accepting something that was offered, to which there was a quid pro quo, particularly where the person that was offering it would derive some sort of financial benefit from it or your future actions, I think that that ought to ring a lot of bells, and persons—and at that point, you should probably report it, and I think that you would I guess probably be required to report it now, although I'm really not sure.

Mr. INSLEE. This is really, at least I find it kind of a devilish problem because I find it appropriate and healthy for the Federal Government if whistleblowers have the incentive of, in a sense, a quid pro quo, meaning if eventual litigation shows that there was waste, fraud and abuse, and if the taxpayer does save money, it is appropriate, and right and a smart idea to give that an incentive of the employee to root that out. So, to me, that is an appropriate, fair thing to have happen. But I also think that to guard against appearance of fairness issues, that at some threshold, we have to figure out where management gets to know about that relationship so that it can make decisions about who has what responsibility for what decision. And I think that is the proper area of inquiry of our Committee, and that is kind of why we are asking these questions of you.

Do you feel that you would have acted differently in the timing then; that had you remained a Federal employee, you believe you certainly would have had to obtain management approval for this had you remained a Federal employee?

Mr. SPEIR. I believe that that is required, based on what I know now and what I generally thought to be the case back when I was in the Federal Government.

I had an—I don't want to belabor you with war stories—but I did have an incident take place I think probably in the summer of 1996, wherein I was being offered a plane ticket by a U.N. subcommittee to go to Africa to give a speech on some things. And I was immediately kicked into the Ethics Office. And that sort of heightened my attention, I think, to the issue. And I ultimately was, after first being rejected by the Ethics Office, which they always do, I then went back to them, and they determined that that was not a gratuity or anything in violation of the rules. I am not sure "gratuity" is the right word.

But I was generally alerted to the fact that before you, in the Federal Government, before you receive anything of any value, it does have to go through an ethics check. So my general perception and understanding of the rules now and my general sense of them back then was that before I actually received money, I would have had to do something with the Ethics Office, and I just never reached that threshold. Again, I use the word "trip wire." The trip wire is you take an action, and you receive something of value. And before you can receive that something of value, then you have to report it to the Ethics Office and have them review it.

Mr. INSLEE. If you had become a relator in a qui tam suit while still a Federal employee, from your knowledge of your responsibilities, do you think that would have resulted in a change or limita-

tion in your then-current responsibilities? Would that have required that, in your view?

Mr. SPEIR. Well, I was—it would certainly have resulted in an enormous amount of problem for me, careerwise and otherwise.

Mr. INSLEE. Let me, I am going to—I am asking a little different question, I think. Let me try it a little different way, if I can. What I mean is had you notified management of your interest and you had remained an employee—let's go back and say you did not leave the Department—and you became a relator in a qui tam lawsuit, do you think management would have been compelled to change your division, your responsibilities, limit your responsibilities? Do you think that there would have been conflict as a result of that?

Mr. SPEIR. Based on what I was doing and what I heard the Justice Department people here say earlier, I don't think they would have been required to do that. The way I interpreted the Justice Department's people's comments is that I would be walled off from the specific issue, which in this case is probably royalty valuation, royalty undercollection and that sort of thing, and walled off from the case. And that actually is what they specifically said, "walled off from the case."

And because I was not actually engaging in, at the time, in any further royalty-related issue, it sounds like they would not have been required to do anything to me. Yet I know for a fact that that would have caused me an enormous amount of trouble had I come out and identified myself as a participant in a lawsuit against oil companies.

Mr. INSLEE. Why do you say that? What were your——

Mr. SPEIR. Well, because the Department was very oil-company friendly, and I think that immediately that there would have been a controversy there. And I can't really tell how that would have ended up. I thought I was, in fact, I think I was working on some things at the time which were totally unrelated to not only royalties, but unrelated to crude oil, that I was very interested in pursuing. And I knew that if I had identified myself as a relator, that would certainly have complicated my ability to pursue those other things which were unrelated to royalties and crude oil, if not cause me to be closeted or stuck in an organization where I had no expertise at all. I mean, you know, so you end up in Congressional Affairs doing congressional correspondence. You know, what kind of life is that?

[Laughter.]

Mr. INSLEE. We consider it the highest honor, actually.

[Laughter.]

Mr. INSLEE. Well, I guess, I would just leave with a comment. I think that is one of the reasons, at least my view is we ought to find a way that Federal employees can have this incentive, so that they will take the risk that you have identified to root out waste, fraud and abuse. And if we don't find a way to do that while at the same time protecting the integrity of the process, I think we are going to lose the ability to help the taxpayer, and I appreciate your willingness or your honoring the subpoena to come here to help us do that.

Mr. SPEIR. Well, I share your views because I was a government employee for 30 years, perhaps a little more—first, at the Defense

Department, and second at the Energy Department. And I know a lot of people that know things about impropriety, about waste, fraud and abuse, that possibly would come forward, but they are scared to death. I know some people who I consider to be consummate heroes, as far as what they have done, and they have all been unduly punished for it. So I certainly share your ideas there. I wish I had a quick solution I could tell you.

Mr. INSLEE. Thank you, sir. I would yield back my time, Mr. Underwood.

Mr. UNDERWOOD. Thank you. Thank you very much for asking questions which we generally would consider oversight questions——

[Laughter.]

Mr. UNDERWOOD. Questions actually leading to some recommendations which would call for changes, which would actually enhance and improve the operation of government. And along those lines, Mr. Speir, the point has been made that perhaps one of the reasons that we are having this hearing is that we are not so much trying to provide additional information to oil companies, but actually we are concerned that oil companies may, in fact, use the experience which you and Mr. Berman have undergone, as former government employees, as a way to argue that they should not be required to pay royalties, that this provides them some additional kind of defense for their disinclination to pay these additional royalties. How would you respond to that?

Mr. SPEIR. Well, I don't know. If—I hate to think that this matter of the Project on Government Oversight and these awards is slowing down the correction of what I think to be inadequacies in the current royalty rule, I don't—I'm just sorry if that is taking place. And I certainly, you know, expect that the oil companies are looking at this as possibly a way of slowing down implementation of that new royalty rule. And I can't say I would do any different than they are if I was in their shoes because they clearly have a financial interest in slowing the royalty rule down, the new rule.

I only hope that I was not really personally responsible for doing that. As to holding me up as an example of what happens when you step in the way of royalty underpayments, if that is the essence of your question, I don't have any personal knowledge that that is being done.

Mr. UNDERWOOD. I wasn't speaking to the issue of whether the kinds of trials and tribulations you are facing is going to keep people from being whistleblowers in the future, I was speaking more in the nature that the kind of activities that you may be accused of or you are currently under investigation for would be used to, in a way, subvert the royalty rules and regulations.

Mr. SPEIR. Well, if there is a single thing that slowed down the implementation of the royalty rule up to this point, it is the Congress, I think. And I think we have moved into a different phase now, where my understanding is that the Interior Department has said we are going ahead with this, and the companies have sued. And we could have been here 2 years ago, and in that meantime, there was probably a considerable amount of time that royalties, to the extent they ever were being underpaid, are still being underpaid because of the existing rule.

Mr. UNDERWOOD. Well, isn't the basis of that effort the fact that this whole POGO thing has somehow tainted the royalty rulemaking process? Isn't that the basis for that?

Mr. SPEIR. That is the allegation. But in point of fact, the Congress has two letters from the Interior Department that say that Mr. Berman and I were not involved in that royalty rule process, and I can underscore what they wrote in those letters. So——

Mr. UNDERWOOD. Could you just speak to any involvement you had in that rulemaking process? Were you involved in the new Interior rules on royalties?

Mr. SPEIR. Well, no, I wasn't. The principal comment that is being made to infer that I was involved or two e-mails, I believe, that I, personally, pulled out of my files last summer before I was asked to file a deposition in the qui tam case, and they were both—the first one was written to one of the people who were involved with the royalty rule, conveying one of my supervisor's direction to me to identify myself as the point of contact for the Department of Energy and the new royalty rule. And I sent that e-mail, and it was never returned, nor did I get any sort of phone call or anything else back from the people at the MMS on that. And I did it because I was directed to do it, not because I wanted to work on the royalty rule.

Mrs. CUBIN. Would the gentleman yield?

Mr. UNDERWOOD. I will yield to you in just a second, in the interests of comity, even though I know you are going to ask a question that may not be favorable to Mr. Speir here. But just one more additional question.

The POGO payments were made after you left DOE, were they not?

Mr. SPEIR. Yes, sir.

Mr. UNDERWOOD. I just wanted to make sure that that is clear on the record.

I yield to the chairwoman.

Mrs. CUBIN. Thank you, Mr. Underwood.

Mr. Speir, you said that neither you nor Mr. Berman were involved in the new royalty rule?

Mr. SPEIR. Well, I can only speak for my personal knowledge, for myself.

Mrs. CUBIN. Okay, for yourself. Thank you for that correction. You are absolutely right. But you were a participant in this study, the final interagency report on the valuation of oil produced from Federal leases in California, right? That is the task force.

Mr. SPEIR. That is the task force study?

Mrs. CUBIN. That is right. And indeed, the e-mails that you talked about, and some other notes that we have shown that you were heavily involved in pushing the oil valuation rule that you had recommended all along to the task force, and also show the fact that you thought the rule needed to be changed. The genesis of the new March 15th, 2000 rule was the report of May 16, 1996, that you were on the task force for. You were one of the people who pressed Mr. Armstrong to adopt a new rule and to adopt the rule that you wanted. The genesis of the new rule is this report. You're were on the task force. So while you didn't necessarily have direct authority over making the rule, you certainly had influence in de-

veloping the rule, making the recommendation that the rule needed to be changed. Is that fair?

Mr. SPEIR. No, I don't think so. Almost none of that is true.

Mrs. CUBIN. Pardon me?

Mr. SPEIR. Almost none of that is true, in all due respect. If you go back and you look at the records correctly—and there is one instance that I will call into account in just a minute if I get through this—if you go back and you look at the timelines of what happened in the task force study, in 1994, when we first got under way, we went out to California, and we looked at some of the records that were held in secret in the California Long Beach case. And we began to get a sense that there was a very complex situation here, and that we were going to have to step back and look at the royalty rule and determine exactly how it should be interpreted in the context of the trading type operations we saw going on.

The supervisor of the gentleman who was the head of the task force at MMS participated in a lot of these meetings, and once we reviewed that data initially, he jumped in and he said, "Well, this whole thing is too confusing. There may not be any fraud or underpayment here at all. Maybe what we need to do is just rewrite the royalty rule." And there is actually a record in the file that shows sometime in 1994 he made that suggestion. It's in notes taken by Dave Hubbard, the director of the task force. The rewriting of the royalty rule had its genesis in that attempt by him to, in my view at the time, derail the whole royalty investigation and move it off into a royalty rule rewrite.

Mr. Kritzer and I looked at that from a tactical standpoint and said, "Wait a minute. The last thing we want to get involved in is a royalty rule rewrite hassle." I mean the last one took four years or three years. And we have a thoroughly narrow objective here. And so we said, "You guys go ahead and do that if you want to take it offline, but our objectives are different from that."

And the record then shows, I believe, that throughout 1995 the Interior Department embarked on preliminary activities aimed at beginning to rewrite the royalty rule, and I think the first official act was in late 1995, when they issued a notice of intended preliminary rule-making, or something like that. I am not sure what the terminology is.

Now, one thing that you have in your records, again pulled from my records last summer, is what I consider in retrospect a somewhat grandiose statement to one of our people in DOE that the task force activity led to the rewrite of the royalty rule, and at the time, it was just to establish my credentials in this correspondence. And I looked at it in detail last summer because there was this question about whether a sidebar to the royalty investigation in California was development of the new rule. And I went back and I developed this time history that I just related to you. And in retrospect I have to say that that comment was inappropriate at the time.

Mrs. CUBIN. But you did make the comment.

Mr. SPEIR. Well, I made it, but it just—it wasn't true.

Mr. UNDERWOOD. Could I just ask one brief question, Mr. Speir? In this rule-making process, obviously as a result of your expertise,

perhaps you made some suggestions or commentaries along the way?

Mr. SPEIR. On the royalty rule?

Mr. UNDERWOOD. Yes.

Mr. SPEIR. Well, in the first little e-mail I wrote to Mr. Hubbard in, I think, September or October of 1996, after I had been told to identify myself as the point of contact, I made a comment about taking a certain perspective when you write the new royalty rule, and that was an outgrowth of an extended conversation that Mr. Hubbard and I had in that task force. Again, he didn't pick up on that at all. I mean, there was never any return to that.

Mr. UNDERWOOD. I am glad you pointed that out, because even though you may have been asked to make a comment or you may have made some comments along the way, we have a letter from, at that time, Acting Assistant Secretary Land & Minerals Management, Sylvia Bacca, who said that they have found no basis in their review to suggest that MMS either initiated or altered its rulemaking efforts in response to any comment that you have made.

Mr. SPEIR. Yes, that is one of the two letters I referred to earlier I think.

Mr. UNDERWOOD. So how do you feel that your comments were ignored?

[Laughter.]

Mr. SPEIR. Well, they didn't write, they didn't call and send flowers. You know, I got no response.

Mr. UNDERWOOD. Thank you.

Mrs. CUBIN. The chair recognizes Mr. Gibbons for the purpose of a motion.

Mr. GIBBONS. Madam Chairman, I have a motion under clause 2(j)(2)(c) of Rule XI of the Rules of the House of Representatives. I move that Mr. Tom Casey, a Majority staff member, and a Minority staff member designated by the Ranking Member, be allowed to question the witness, Mr. Speir, for 60 minutes equally divided.

Mrs. CUBIN. Are there any objections?

Mr. UNDERWOOD. Yes. Could I just—in the interest of time, since we really don't—obviously we are not as prepared for detailed questioning on this side of the aisle, if we could somehow limit that time because we have no questions at the staff level.

Mrs. CUBIN. Well, then that would limit the time to a half an hour.

Mr. UNDERWOOD. But you know, really, we are really prolonging this, and I would just ask if we could limit it to something like 10 minutes.

Mr. GIBBONS. Let me say to the gentleman, in answer to his question on this motion, it certainly does appear that our side has questions that relate to significant issues which are being covered by this oversight procedure. I would not want to state emphatically, because your side does not have those questions, that we should restrict this side. If we give you the 30 minutes on this, it certainly seems fair that you be allowed to have that time, to deal with that time and those issues as seen fit.

Mr. UNDERWOOD. Well, I appreciate the fact that you have the numbers to make your suggestion, your motion stick, but you know, under that kind of logic, why don't we make it an hour, two

hours equally divided? The point is, is that we are really at a point where we have two more panels, and I am just asking if there is some way to limit the amount of time. That is all. And if you are not willing to do so, that is fine.

Mr. GIBBONS. Thank you.

Mrs. CUBIN. The objection is heard. All in favor of the motion say aye.

[Chorus of ayes.]

Mrs. CUBIN. Opposed?

Mr. UNDERWOOD. No.

Mrs. CUBIN. The motion passes. The Chair recognizes Tom Casey, staff for the Majority, for 30 minutes.

Mr. CASEY. Thank you, Madam Chairman. I think Mr. Brady had wanted some time.

Mr. BRADY. Yes, I will be very brief. Again, I want to go back to this hypothetical offer that turned out not to be hypothetical. As I understand it, this offer was made in December of 1996 in a meeting. You later signed an agreement sharing those oil royalty proceeds, so you memorialized that offer, and then that offer was executed with a check for $383,000. Now, reading the statutes against illegal gratuities that was in effect at the time you were both a public official and as a former public official. It is very clear that it is illegal for anyone to offer or promise anything of value to any public official—that would be you—or former public official—that would be you—for or because of any official act performed, which you did, by such public official—that is you—or former public official—that is you.

It is very clear that that offer became actually reality when you signed an agreement and then it was executed. In effect, you have said today that while a plane ticket trip-wired an ethics issue with you, a check for $383,000 didn't. If we are to believe you—and I will conclude here, if we were to believe you, in effect, if I were to offer you $10,000 right now to lie under oath, you are saying you would neither decline it nor accept it; you would simply ignore it. A week from now we would sign an agreement of some nature, referring to the earlier oral agreement, and then a month later I pay you $10,000 which you then cash. And you are going to tell the American people that that is not a conflict of interest; it is not illegal to do that?

Mr. SPEIR. I guess the simple answer to your statement is that, in my view, the facts are known here, what we did, and there are different interpretations on the wording.

Mr. BRADY. There is a misinterpretation law. An offer was made. It was agreed to in writing and then executed, which is in violation of a number of ethics issues, but specifically law against accepting illegal gifts. And it is not believable that this was a hypothetical offer, because it was executed exactly as presented, as you presented it today.

Mr. SPEIR. Well, the offer—I can only continue to repeat that the offer, when it was originally made, was highly speculative, and the organization had no possibility of fulfilling it. Now at some point, January 1998, it looked like they may have a higher possibility of fulfilling it. And Ms. Brian asked me, at that point, "Are you going

to accept it if we can offer it to you?" That was the time she asked me if in fact I was going to accept it.

Now, my overriding position on this is that the facts are known, and I believe that ultimately, because this is under investigation at the Justice Department, they will make a judgment about it one way or the other, and at that time we will present probably a defense of my actions based on what the record shows.

The case I offered up for the airplane ticket now, your analogy is not very good there, and I was not meaning to say that that was analogous or even imply it was analogous to the POGO situation. What I was saying was that because someone had made me a very specific offer that they could fulfill at that time of a airline ticket, and I had to make a decision on whether to accept it or not while I was in the Federal Government, that I went to the Ethics Office—or I was kicked into the Ethics Office, actually—to have them review that. All I was saying about that was that that was an offer that could have been fulfilled and was fulfilled while I was a Federal service employee, and I had to make a decision about it right then, and it required Ethics Department review. This offer didn't require me to make a decision, and in fact, I didn't make a decision; I didn't accept the——

Mr. BRADY. Well, actually, you did. You had to make a decision on whether to be a relator and to remove yourself from the conflict of interest that you would have entered. You chose to stay inside government. You then, after you left, almost immediately signed an agreement to share proceeds, and then it was executed. So there wasn't a hypothetical offer. It was an offer. And it wasn't illegal or proper because it didn't stand a likelihood of succeeding; it was an illegal offer on its face, which was later agreed to by you, then executed, and you cashed that money willingly. We do agree the facts are very clear in this case.

And at this point let me return the time to you, Mr. Casey.

Mr. CASEY. Thank you, Mr. Brady.

I am going to try, as best I can, Mr. Speir, to frame questions which require short answers or "yes" or "no" answers so we can move this along, and perhaps you will be able to cooperate.

Mr. SPEIR. I will have to say, Mr. Casey, that I may or may not answer those yes or no, because I think that some things might require some amplification.

Mr. CASEY. Here we go killing time already, okay. After the December '96 meeting, at which you did or didn't accept the offer, did Ms. Brian or Mr. Banta ever mention to you again their plans and progress in filing the qui tam suit?

Mr. SPEIR. Their plans and progress in——

Mr. CASEY. Filing the qui tam suit?

Mr. SPEIR. I don't recall any specific discussion we had about that.

Mr. CASEY. Ever again until January of '98?

Mr. SPEIR. I can't say that those—in the part of some other discussion or meeting, that that subject didn't come up. I just don't remember any discussion about their plans or progress.

Mr. CASEY. So are you saying that between December of 1996 and January 5, 1998, neither Mr. Banta nor Ms. Brian ever mentioned to you a qui tam suit again?

Mr. SPEIR. No, I didn't say that. I said I couldn't recall any discussions we had about it, which I think was what your question is.

Mr. CASEY. Were you generally aware that they were proceeding with their plans and had in fact filed their suit?

Mr. SPEIR. No, I wasn't aware when they filed their suit specifically until long after the fact, in fact, last summer. I knew at some point—and I can't say——

Mr. CASEY. When did you become aware they had filed their suit.

Mr. SPEIR. I was going to answer that question next. I can't say when I knew that they filed their suit, if at some point an offhanded comment was made that let me know that they had filed a suit. I mean, at some point, and I can't say when. I specifically had to go back and consult with—because I wanted to know the timing of this—last summer I went back to the Justice Department and asked the people, "When did they file their suit?" And I guess it turned out to be June 1997.

Mr. CASEY. Have you ever told anyone that, after the time POGO and you and Mr. Berman had the December of '96 meeting, that Ms. Brian or Mr. Banta did in fact mention a suit and the potential for sharing money to you again?

Mr. SPEIR. Did I ever tell anyone that they had made this offer?

Mr. CASEY. Have you ever told anyone that, after the December '96 meeting, you did in fact hear from Ms. Brian or Mr. Banta again about their lawsuit and about their plans, hopes, offer, however you characterize it, of sharing money with you?

Mr. SPEIR. I can't recall doing that.

Mr. CASEY. Okay. Mr. Berman, one of the clerks, has a piece of paper I would like you to look at. Did you receive a piece of paper like this with your check or letter in November of 1998?

[No response.]

Mr. CASEY. You don't need to check the math. Do you remember getting a piece of paper like this?

Mr. SPEIR. No, I don't remember getting something like this.

Mr. CASEY. Well, this was faxed by POGO to Mr. Berman on November 2nd of 1998. What can you tell us about Mr. Berman's concerns leading up to the October 8, 1998 letter? Mr. Berman's concerns that POGO might not provide to him the payment he perhaps expected?

Mr. SPEIR. Well, I think all that I can really say is that Mr. Berman and I had some conversations in which he expressed some concerns about when the payment would actually be made. We talked about this, and he seemed to have some urgency in his mind, and as we talked about it, it was fairly clear in—I think in both of our minds, that the longer period of time that went on between the time that the project got the money and the time that they actually made the award, that the longer time that went by would probably lessen the probability that the project would actually live up to its intended—expressed intentions. That was just kind of a general acceptance. It was a—you know, something that we didn't discuss at length. It was just a general attitude both of us had.

And Mr. Berman seemed to be a little bit more emotional about this than I felt, and that, you know, in general is the nature of our conversations about that time.

Mr. CASEY. Did Mr. Berman mention to you that he was considering hiring a lawyer or that he had hired a lawyer to advise him or to contact POGO on the subject of following through on the payments?

Mr. SPEIR. Well, I knew that he—I think he expressed in those conversations that he was associated with a lawyer, who I believe was not an attorney who practiced in this field. I believe it was someone else that he was related to or something. And I can't remember exactly what he said about what he was going to do, I mean, going to do. He threw out quite a few ideas, as I recall it, but—and said a number of things that seemed to be a bit emotional at the time.

Mr. CASEY. Could you name a few of those things?

Mr. SPEIR. Well, he did, I think, at one point or another mention suit, but I don't recall that it was an expression of immediate intent like, "I'm going to get my lawyer and go sue POGO." I think it——

Mr. CASEY. It was hypothetical?

Mr. SPEIR. Huh?

Mr. CASEY. It was hypothetical?

Mr. SPEIR. Well, that's the way I treated it because of my long-term knowledge of Mr. Berman and his temperament.

Mr. CASEY. In December of '96, after the meeting in Mr.—well, let's go back to the meeting in Mr. Banta's office.

Mr. SPEIR. When——

Mr. CASEY. December of '96.

Mr. SPEIR. This is the one that supposedly took place in December of '96, yes.

Mr. CASEY. Do you think it didn't take place in December of——

Mr. SPEIR. Well, I have always said that I'm not sure about that date, and I don't want any testimony that I give here right now to infer that I'm much more certain about it now than I was when I was deposed last summer. I still am very "squishy", if you will, on the exact dates.

Mr. CASEY. You mentioned that two weeks or so leading up to that meeting, Ms. Brian had—you and she had had a few phone calls in which the subject of a qui tam suit was at least touched upon; is that right?

Mr. SPEIR. In perhaps the weeks leading up to that meeting.

Mr. CASEY. Was that the first time that Mr. Banta or Ms. Brian had ever mentioned to you the subject of oil royalty litigation?

Mr. SPEIR. Which time? In that——

Mr. CASEY. During the two weeks of phone calls leading up to the meeting?

Mr. SPEIR. Well, the reason I was talking about those two weeks, I think, was in the context of when did she first suggest to me that maybe I should consider being a relator in that case.

Mr. CASEY. But it wasn't the first time you had heard Ms. Brian or Mr. Banta discuss the subject of oil royalty litigation, was it?

Mr. SPEIR. I rather doubt—and I'm speculating now—rather doubt that in the first conversation in which I had her discussing qui tam cases she asked me to be a relator.

Mr. CASEY. I didn't ask you that question.

Mr. SPEIR. Well, I'm trying to answer it as near as I can. Go ahead and ask it again.

Mr. CASEY. Without asking you to be a relator, prior to the two weeks preceding the meeting which was late November, early December of '96, had Mr. Banta or Ms. Brian ever mentioned to you the subject of oil royalty litigation?

Mr. SPEIR. As in qui tam cases.

Mr. CASEY. We'll start with that.

Mr. SPEIR. I don't—and I have to answer that in a sort of a conjectural way. I don't recall that in the first conversation that we had, or the first conversation that I overheard that involved qui tam cases, she asked me to be a relator. So in answer to your question, if one accepts the fuzziness of my memory, I would say probably not. The first conversation in which I heard her discuss the matter of qui tam cases—or Mr. Banta discuss it or whoever it was—was earlier than that two-week period, two weeks being a very tentative thing.

Mr. CASEY. We'll just work with the date December '96. That appears to be what most people recollect. So understanding you can't pin it down, let's just use that date.

At that December '96 meeting, did Mr. Banta and Ms. Brian tell you that POGO was planning or intending to file a qui tam suit?

Mr. SPEIR. I believe that was clear from the conversation, so that they were——

Mr. CASEY. So, they were working towards the goal of filing a qui tam suit. That would be your understanding?

Mr. SPEIR. That was my understanding, yes.

Mr. CASEY. What did Mr. Berman say when given the offer that was given to you in that meeting?

Mr. SPEIR. The offer being of some future award?

Mr. CASEY. As I understand it, the first offer was: "Would you like to be a relator with us."

Mr. SPEIR. So you're talking about the offer of being a relator, not the offer of some future award.

Mr. CASEY. We'll take them in sequence. When—as I understand your recollection of that meeting, the first of the two offers was, "Would you like to be a relator with us? Put your name on this filing."

Mr. SPEIR. Well, this was not the first time that the subject of relator came up to either one of us, but my recollection at that point was Mr. Berman said no, or negative.

Mr. CASEY. No or negative?

Mr. SPEIR. He was negative on the subject.

Mr. CASEY. Was he like you: he did not accept or decline? Or was he negative?

Mr. SPEIR. I can't discriminate over this period of time that precisely about whether he said, "No, I'm not going to do it", or whether he said, like I thought I implied, "I just don't have enough information to make a positive decision right now." So I can't say that he said, "No, absolutely not."

Mr. CASEY. At that meeting during when the subject came up of, "All right, your name will not be on the suit, but we will share with you at a later time when money is received if money is received" What did Mr. Berman say?

Mr. SPEIR. I don't recall him saying anything positive or negative. It wasn't—the way it was discussed in that meeting was just as an off—what appeared to be an offhanded comment by Ms. Brian at the end of the meeting or toward the end of the meeting, and it was like—well, you know, she had recognized at that point that we were not at that point going to sign up as being relators, and she said something along the lines of, "Well, if we file, and if we ever receive any money from this, we want to share it to you—with you in recognition of your long-term contributions."

Mr. CASEY. All right. You say that there were also peripheral issues discussed at that meeting. You didn't list them. What were they?

Mr. SPEIR. Well, Mr.—the discussion about—and I'm trying to recreate this in my mind now, and I may be quite faulty in doing so, but I remember that a general topic of conversation was whether this had any possibility of forcing the government into—or being successful enough to force or embarrass the government into going after the California underpayments.

Mr. CASEY. Did the peripheral issues include the potential problems, complications, weaknesses of having Federal employees as relators?

Mr. SPEIR. Not in any depth. I think that Mr. Banta may have said something along the lines of having questions about whether, you know, we could qualify, or whether Ms. Brian would be able to get standing with us relators, not so much because of our involvement, just as Federal employees.

Mr. CASEY. During the two weeks of phone calls leading up to that meeting and at that meeting?

Mr. SPEIR. During the period of time that we had phone calls on that subject. I don't want to be precise about that two weeks.

Mr. CASEY. Now, during that period of phone calls leading up to the meeting and at the meeting, did you discuss with POGO, mention to POGO, that you had any wish, or desire, or need for assurance that this was legal or ethical?

Mr. SPEIR. I don't think that I put it to her in the words of legal or ethical. I think what I said was that I didn't know whether I could be a relator as a Federal service employee.

Mr. CASEY. Did you take any steps on your own to resolve that question?

Mr. SPEIR. No, I didn't. I felt at that point that I would have had to go out on my own and spend a substantial amount of money getting a legal opinion on that subject. That was just my attitude about the time, and I actually suggested that she if was in contact with attorneys who were very familiar with qui tam cases, that she might bring someone forward to consult with me on it.

Mr. CASEY. Did she?

Mr. SPEIR. No, she didn't.

Mr. CASEY. Okay. Shortly after this meeting, Ms. Brian and Mr. Banta report to their board of directors that they do in fact have an agreement with you to share the proceeds with the oil litigation that they had decided to pursue. Can you account for that misinterpretation on their part?

Mr. SPEIR. No.

Mr. CASEY. Did you ever correct them on that?

Mr. SPEIR. No, I didn't see that document until——

Mr. CASEY. Did you ever become aware that they were anticipating that you would share with them, and did you ever say, "No, folks, remember, I never accepted that"?

Mr. SPEIR. No, I don't think I made that statement to them. I remained entirely detached from this and carried forward by the same posture I had in that meeting we're discussing.

I never saw the wording that was in those—that is in those board minutes.

Mr. CASEY. I understand you didn't see it.

Mr. SPEIR. And so there was nothing for me to object to.

Mr. CASEY. Okay. Did you work on issues involving the Naval Petroleum Reserve in California while you were at Energy?

Mr. SPEIR. From time to time I did, yes.

Mr. CASEY. When did you and Mr. Banta first begin considering a qui tam suit involving the Naval Petroleum Reserve?

Mr. SPEIR. Well, you're probably talking about—we had this discussion on the telephone, of course, and you're probably talking about a matter I tried to expose when I was a Federal service employee and basically had thrown back in my face. And I wrote a staff paper on that, and——

Mr. CASEY. When did you and Mr. Banta begin discussing the possibility of filing that suit?

Mr. SPEIR. I wrote that staff paper in July of 1997, and shortly after I wrote it, in a conversation with Mr. Banta, I told him that, you know, "I'm doing this, and if the government doesn't go ahead with this, then, you know, there's a possibility of filing a False Claim suit. Would you be interested in this?" It was my initiative.

And he was sort of generally affirmative, as I recall it, and so I floated that staff paper among the staff in DOE, and got no response. And then getting no response, I actually tried to formalize it by sending a memo up my chain and over to the Assistant Secretary who was over the naval petroleum reserve. And——

Mr. CASEY. Mr. Speir, when did you and Mr. Banta first discuss filing that suit?

Mr. SPEIR. As near as I can put it down, it's near that date that the official memo that I've been describing was——

Mr. CASEY. July of '97?

Mr. SPEIR. I believe the date is July '97. I have some copies of that staff paper if you'd like me to submit them to me.

Mr. CASEY. That's fine. You can provide it later. Mr. Speir——

Mr. SPEIR. I note that your letter of invitation did suggest that possibly we bring along materials, and since you and I did discuss this on the telephone, I do have copies of that staff report if you'd like to look at it. Would you like me to submit that to the Committee?

Mr. CASEY. You can submit——

Mr. SPEIR. Not as evidence, but I mean, would you like a copy of it?

Mr. CASEY. If you could submit it after the hearing, that would be very helpful.

After your December '96 meeting, did you have the sense that Mr. Banta was encouraging or discouraging you to be a relator?

Mr. SPEIR. Well, he was certainly being very negative on the possibilities of the suit achieving what was intended at the time, which was basically forcing the Interior Department to collect the monies or the Justice Department to collect the monies. So he was being negative. He wasn't——

Mr. CASEY. Not on the prospects of the success of the litigation, but on you becoming a relator. Was he encouraging or discouraging?

Mr. SPEIR. Oh, he was being factual, I think. He was providing his assessment about the likelihood that this would go anywhere.

Mr. CASEY. You're talking about a different——

Mr. SPEIR. He wasn't saying——

Mr. UNDERWOOD. Could you wait for a second, please?

Yes. The report that Mr. Speir was referring to earlier, could I ask unanimous consent to enter that into the record?

Mrs. CUBIN. Without objection, so ordered.

Mr. UNDERWOOD. Thank you.

[The information follows:]

MEMO FROM THE DEPARTMENT OF ENERGY

During 1994-96, the Policy Office participated in an interagency study of Federal royalty payments for crude oil produced in California and administered by the Department of the Interior. The study determined that royalties have been underpaid and led to companies being billed more than $350 million to date. The attached paper concludes that the same situation probably applies to Naval Petroleum Reserve 2 (NPR-2) production.

Underpayments are the result of oil companies' use of crude oil posted prices as a basis for valuing production from Federal leases. Our analysis employs information developed in the interagency study, more direct evidence of higher values gained from competitive sales of both NPR I and NPR-2 oil, and comparisons of spot and posted prices for oil of quality similar to that produced at NPR-2.

A rough estimate of the amount that might be owed by lessees for the period 1980-96 totals $4.75 million ($1.12 million in royalty underpayment and $3.63 in accrued interest). Starting in 1980 was somewhat arbitrary, but aimed at making our conclusions temporally consistent with those of the interagency study. Seeking restitution for underpayments over a much longer period easily could be justified based on evidence produced in lawsuits on this matter in California.

While it is clear that posted prices in California have understated oil value by a sizable margin, several additional steps must be taken to pursue this issue. The first is to Valyze company payments on NPR-2 production to confirm the basis of valuation rigorously. (The NPR Office in California is now providing for our review more detailed data than that published in annual reports.) The second is to confirm that, legally, leases and their authorizing statutes require that royalties be paid on market value. As noted in the paper, this seems obvious from the lease. Two other points that require confirmation are that no statute of limitations applies to underpaid royalties, and that interest payments on unpaid royalties are authorized. Both are true for Federal leases managed by the Department of the Interior, but our informal request to the DOE Office of General Counsel for information on this matter was not productive.

California settled its pioneering lawsuits initiated. Fifteen years ago for approximately $400 million—an action that led to the interagency study and subsequent billings by the Interior Department. Recently, States east of the Rockies (Texas, Alabama, and others) have taken action to collect underpaid royalties for State production wherein the producers paid based on posted prices. Texas and Alabama have settled with Chevron and Mobil, respectively, in the last few months for tens of millions of dollars. In this context, even though the NPR-2 amount seems small, it would be in the public interest to initiate action as soon as possible.

Advanced drafts provided to:

R. Dobie Langenkamp, DAS, Naval Petroleum and Oil Shale Reserves (FE-60)

OT Williams, Director, Naval Petroleum Reserves-California

Kenneth Meeks, Admin Contracting Officer, Naval Petroleum Reserves-California

James White, Assistant General Counsel for Fossfl Energy (GC-40)

POTENTIAL ROYALTY RECOVERY

FOR NPR-2 CRUDE OIL SALES

BACKGROUND

NPR-2 is located in the Buena Vista Hills oil field of the southern San Joaquin Valley, California. Production comes from 8 zones in the Buena Vista field. Much of the crude is shipped to Los Angeles for refining. Arco's Line 63 from the southern San Joaquin Valley to Hynes Station in Los Angeles has been a major shipper of Buena Vista quality crude oil to Los Angeles for some time. In the 1980s, it became a common carrier and a Los Angeles spot market developed for Line 63 Mix—a blend of San Joaquin Valley crudes that averages about 28 degrees API. A substantial amount of NPR-1 and NPR-2 crude oil probably enters Line 63 as part of its homogeneous mix.

Posted prices are published for Buena Vista or Buena Vista Hills crude by the major integreated California refiners and, from time to time, a few others. Nominally, Buena Vista postings apply to 26 degree API gravity crude oil, with price adjustments of 15 to 25 cents per degree per barrel.[1]

While the U.S. Government (USG) share of NPR-1 (Elk Hills) crude oil usually has been sold in competitive bids, NPR-2 has been operated by lessees since the 1920s. During that period, the USG has been entitled to a royalty share of NPR-2 production. In the late 1970s, the royalty crude oil was about 330 barrels per day (b/d); by 1995, that had fallen to about 211 b/d.

For the most part, the USG has received cash for its NPR-2 royalty share. Conversations with NPR staff in California indicate that the basis of value for these royalties has been the highest of California refiners' posted prices for similar oil (e.g., Buena Vista postings) at least since 1980. The exception was that royalty from the 555 Stevens Zone Unit was taken in kind during 1977-86 and sold to refiners directly or to the Defense Department.

In the 1980s, the City of Long Beach and the State of California sued a number of the larger refiner/crude oil posters to recover under payments for State oil sold from the Wilmington Field. The companies that operated the publicly owned portion of the field had payed the City and State amounts based posted prices for the oil. The State and City alleged that posted prices were not a valid measure of the oil's value, and that the companies conspired to hold posted prices well below the proper value. The body of evidence obtained under discovery showed that companies routinely traded oil at higher prices than posting and recognized that posted prices undervalued California crude oil.

When some success was seen in this suit, the Department of Interior's Minerals Management Service (MMS) briefly considered actions to recover under payments of Federal California royalties that had been based on posted prices. For various reasons, NIMS did not pursue the case until the early 1990s when the oil companies settled with California out of court under pressure of the issue being brought to trial.

In 1994, MMS convened an interagency study group to evaluate the evidence and make recommendations on how to proceed. Representatives from NIMS, Interior's Solicitor's Office, and the Departments of Justice, Commerce, and Energy[2] comprised the group. Over a two-year period, the study group reviewed the Long Beach suit records and considered what could be done under MMSs royalty valuation rules. Two consultants were hired directly by the MMS, both of whom had beeh involved in the Long Beach suit, and MMS royalty auditors were dispatched to two companies (Texaco and Shell) to confirm directly and independenty the interagency group's findings.

In May of 1996, the group concluded that royalties and interest due to the USG over the period 1978-93 totaled between $250 and $850 million. MMS auditors' findings supported the conclusion that royalties were underpaid. Since that time, the

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[1]During much of the 1980s, the adjustment was at the higher value, but usually close to $0.15 per API degree in the 1990s. As of the time this paper was written, the NPR office in California had not responded to information requests regarding the quality of NPR-2 crude oil, so the exact quality of the NPR-2 crude has not been determined. Examination of field/pool specific data for California, however, indicates that the average API gravity for production in the NPR-2 zones is about 8.5 degrees. It follows that NPR-2 crude oil would be worth 50 cents per barrel more than the notional Buena Vista 26 degree API gravity crude in the 1980s and about 30 cents more since 1990.

[2]The author of this paper, Robert A. Speir of DOE's Policy Office, was the representative from the Department of Energy.

Department of Interior has issued bills totaling over $350 million[3] to recover these underpayments.

Over the period examined'in the MMS interagency study, the USG royalty share from NPR-2 totals over a million barrels. Furthermore, the NPR-lessees included most of the companies sued by California and billed by the MMS.[4] In 1997, the author of this paper, by virtue of his experience in the MMS California matter, and on his own initiative, examined the possibility that royalties for NPR-2 crude oil also were underpaid[5]

FINDINGS

In the MMS California study, the participants quickly concluded that it would be impossible to track royalty crude oil specifically. Most of the lessees are integrated companies that transfer crude between their production and trading divisions at posted prices (i.e., in intra corporate "sales"). The marketing/trading affiliates then exchange, and less frequently sell, the production, or transfer it to the refining divisions of the companies.

Royalty oil is not invoiced separately. It is part of the common physical flow of oil from the production area, which, in turn, often is commingled with oil from other leases, or even other fields. Detailed data on NPR-2 royalty payments was requested from the NPR office in California and, as of this writing, are being provided. In the interim it is adequate to note that, based on the comments of the NPR staff, royalty payments were based on posted prices. Assessing value, therefore, must involve examining market transactions involving similar oil in the markets Buena Vista crude oil serves, and/or reviewing the companies' own analyses of the value of the oil. This was the approach followed in the MMS study.

Evidence of NPR-2 Oil Undervaluation

The recent history of California oil markets can be divided into three distinct periods:

- Pre-oil price decontrol—Prior to decontrol of California oil in the late 1970s, prices were fairly low and posted price undervaluation, while present, was low in absolute terms.
- After decontrol, but before 1986, prices and undervaluation were both large. In the MMS study, about 75 percent of the royalty underpayment estimated to have occurred between 1978 and 1993 took place during 1980-85.
- When prices fell in 1986, royalty under payments on a per-barrel basis also dropped in absolute terms.

The examples below apply primarily to the last two periods.

The best evidence that NPR-2 oil was underpriced by postings resides in the royalty in kind (RIK) sales from the Reserve. In 1977, the government elected to take its royalty oil in kind from the 555 Stevens Zone Unit (about 230 b/d). Initially, it received and accepted bids that were discounted about $0.60 per barrel from the highest stripper oil postings in the area.[6] That changed as oil prices were decontrolled in 1980 and climbed due to several world oil emergencies.

- By 1980, the RIK bid discount had disappeared and the 555 Stevens Zone Unit oil sold competitively for $2.65 per barrel higher than the remaining NPR-2 crude (which was, on average, about the same quality).
- In 1981, competitive sales drew a premium of $1.30 per barrel.

In FY 1982, open market sales ceased and the crude was "sold" to the Defense Department at the posted price. No information is available at this writing as to what value the Defense Department obtained when it subsequently sold or exchanged the crude oil. In FY1986, these transfers ceased and the lessees were again

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[3] The principal reasons for the lower amount of the bills issued is that, shortly before the interagency study began, the Interior Department entered into global settlements with Exxon and Chevron that probably foreclosed the opportunity to collect on under payments for California royalties. A significant amount of California royalty oil was also sold in kind by MMS in an essentially non-competitive process at posted prices. MMS has subsequently attempted to obtain additional payments from small refiners that received this oil.

[4] For example, "The current lessees of NPR-2 Government lands include: Mobil Oil Corporation, Atlantic Richfield Company (Arco), Union Oil of California, General American Oil Company of Texas, Getty (now Texaco), and Standard Oil Company of California (now Chevron)." Naval Petroleum Reserve Annual Report, FYI 978, p. 19.

[5] The NIMS investigation broadly addressed all Federal oil production in California, but did not specifically examine the issue of NPR-2 leases-, nor did the subsequent audits and billings include NPR-2.

[6] The royalties had been previously paid by the producer based on a controlled price that was about half the stripper oil posting. Thus, the government actually increased its take substantially by going to RIK.

allowed to pay cash based on posted prices for the government's royalty share of the Unit.

NPR-1 Shallow Zone oil is similar to that from NPR-2, but is about 3 degrees API heavier. In the early 1980s, Shallow Zone oil was sold competitively, using local postings as indices, drawing substantial premia in various bids:

- In FY 1980-81, two sale periods, (August 1, 1980-December 1, 1980, and December 1, 1980-December 1, 1981) obtained average premia over postings of more than $3.00 per barrel.
- In FY 1982, the sale period November 1, 1981-May 1, 1982 drew a $1.27 per barrel premium over posting.
- In FY 1984,[7] two sales were made that netted the government a weighted average of $26.20 for the 25 degree API NPR-1 Shallow Zone crude. In that fiscal year, royalties from the 28 API NPR-2 crude, which were based on posted prices, brought $24.68 per barrel. After adding $0.75 per barrel to the differential to account for the differences in gravity, this yields an average $2.27 premium for competitively bid NPR-1 crude oil.
- The October 1 1984-March 31, 1985 sale in FY 1985 obtained a premium of $1.37 over posting for NPR-1 Shallow Zone crude. Two contracts were awarded in the spring of 1985 for a total of 1339 b/d to be delivered over April 1-September 30, 1985. One was at a $0.05 premium over posting and one was 15 cents below posting. The volume weighted average was essentially equal to posting.

During FY 1986, all Shallow Zone oil was delivered to the Department of Defense, which traded it for jet fuel. Ironically, in the spring of 1986 as oil prices crashed, companies were reluctant to endorse the spot market moves downward and kept their postings high for a time. Unfortunately, the NPR was in the process of receiving bids for the April 1-Septernber 30, 1986 sale cycle. Seeing the high postings, prospective buyers bid discounts on NPR-1 Stevens Zone crude that averaged $4.49 below posting. Shortly after bids were awarded, the major refiners lowered postings, thereby forcing the government to sell their crude at huge discounts to its market value by any measure. In the next bid cycle, the government gave up using postings as a basis for bids, turning to spot prices instead. That practice continued until recently.

In the 1990s, Shallow Zone sales continued to indicate underpricing by posted prices. Comparing the average of daily Buena Vista postings over the fiscal year to Shallow Oil Zone sales, one sees that, in FY 1991, posted prices were low by $2.3 per barrel. In the fiscal years of 1992-95, posted prices were lower by $0.13, $0.57, $0.65, and $0.27, respectively, compared to the quality-adjusted sales from NPR-1 Shallow Oil Zone.

In the above, prices for NPR-1 oil were indexed to the average of Line 63 and Alaskan North Slope spot prices in Los Angeles. A more direct comparison of inland prices is made by adjusting Line 63 spot prices by subtracting out pipeline costs of about $0.50 per barrel to net back to the Buena Vista area. After adjusting for gravity differences the following undervaluation by posted prices is seen: FY1991-$0.80; FY1992-$O.43, FY1993-$0.35; FY1994-$0.53.[8] It is likely that the lower differentials, compared to the Shallow Oil Zone prices above, are due to eliminating the more volatile Alaskan North Slope oil price.

One might contend, with some validity, that the Shallow Oil Zone bonus over posting is really only indicative of the brief period when bids for a six-month contract are submitted. Winners are then bound by the terms of their contract for the next six months while conditions change. However, the fact that adjusted Line 63 spot prices are higher than postings by a significant margin on average throughout the year indicates that the low bias of posted prices is persistent and only varies in magnitude.

The primary information reviewed by the MMS-led interagency group during 1994-96 was obtained through discovery actions by the State of California and the City of Long Beach. Although it was sealed by court order, the study group gained access by signing confidentiality agreements with the companies. Since the study group members are still bound by the terms of the agreement, specific documents cannot be discussed here. In general, however:

- At the outset of the study, two notebooks of contracts and company documents were provided by the California legal staff. These contained numerous contracts between companies where premia over postings were clear. There were also many internal company documents that pointed out that the companies themselves were aware how much postings undervalued California crude oil. Appen-

[7] In FY 1983, the Defense Department was "sold" all NPR-2 crude oil at posted prices.

[8] Line 63 prices for FYI 995 not available at this writing.

dix 4 to the study team's report shows two company analyses (with company identities properly concealed) wherein Buena Vista crude oil is noted as undervalued.

• Examination of the contract data bases for just three companies (Texaco, Shell, and Arco) shows over 70 crude oil sales contracts for San Joaquin Valley light crude produced in the vicinity of the Buena Vista Field (e.g., Yowlumme, Coles Levee, Lost Hills and Buena Vista itself) with significant premia over posted prices. The premia varied up to $2.00 per barrel in the early 1980s, and tended to be in the $0.25 to $0.75 after the 19.86 price drop.

• One of the consultants (Innovation and Information Consultants, Inc.—IIC) hired by the MMS for the study had helped compile the database for the California case. In its report for the MMS study group, IIC concluded that postings undervalued California crude oil by $2.00 to $3.00 prior to 1986 and $0.50 to $1.00 per barrel thereafter. This is well supported by the contract data bases.

Potential Collections of Underpaid Royalty and Interest

As noted earlier, royalties based on posted prices in California have always been too low because posted prices themselves have not reflected the market value of California production. Only in the last few years, a number of States east of the Rockies have realized that the same situation applies and have undertake collection efforts—usually through lawsuits. Several companies have settled on these suits and have agreed to change their basis of valuation to more market-oriented public prices. Inasmuch as the MMS and several States have initiated actions to recover unpaid public funds, it seems that the Department of Energy should also.

Before attempting to collect payments from the lessees, three components of DOE's case should be formalized:

• Confirm that Leases Require that Royalties be Paid on Market Value of Production—It is clear from the leases that this was the intent. After describing when royalty is to be paid, the leases further require the lessee, "To file with the Secretary of the Interior copies of 0 sales contracts for the disposition of oil and gas hereunder, except for production purposes on the land leased, and in the event that the United States shall elect to take its royalties in money instead of oil and gas, not to sell or otherwise dispose of the products of the land leased except in accordance with a sales contract or other method first approved by the Secretary of the Interior."

Wile it is doubtful that lessees have provided their sales contracts to the government (NPR staff could not recall this being done), the implication of this clause is that the lessees must justify the royalties paid by relating the value to their subsequent sales of the oil.

• Confirm that Statute of Limitations Provisions do not Apply—Until the Royalty Fairness Act was implemented, the Federal Government did not recognize any time limitations on the Interior Department's abilities to pursue unpaid royalties. The philosophical underpinning seemed to be that a royalty was a fee, not a fine for wrong-doing. No limitations are imposed by the Royalty Fairness Act since it is not to be applied retrospectively.

• Confirm that Interest is Due on Underpaid Royalties—The Federal lessees are charged interest by the Interior Department according to a schedule that is statutorily mandated. The rates are computed according to Interior's published rule and changed monthly.

During the period 1980-1996, royalties on about 1.2 million barrels of NPR-2 oil were take in value by the USG. Making the reasonable assumption that the three issues above can be settled in the USG's favor, underpayment estimates can be derived using observations from the MMS interagency study discussed above. During 1980-85, the study suggests that a reasonable range of undervaluation was about $2.00 per barrel, after 1985, a (conservative) figure of $0.50 per barrel can be used.

Subtracting out production from the 555 Sevens Zone Unit when it was sold RJK, the royalty underpayment estimate becomes $1.12 million. Interest on these underpayments, computed using the statutory rates published by the Department of the Interior, totals $3.63 million. It should be noted that we have only gone back to 1980 to remain conservative and consistent with the procedure adopted by Interior in pursuing unpaid royalties. Evidence of oil undervaluation was established by the State of California and the City of Long Beach as far back as the 1960s and was alleged to have existed since the California oil fields were originally opened in the early part of this century.

Mr. CASEY. Not on the likelihood of whether the suit would succeed or not, but on you becoming a relator; was Mr. Banta encouraging or discouraging?

Mr. SPEIR. I don't know that he was trying to sway my opinion one way or the other. He was simply stating his views of the possibility of this ever going anywhere.

Mr. CASEY. Did anybody in that meeting observe or suggest that because of the complications and problems inherent in having Federal employees as relators, and as long as POGO was willing to share with you anyhow, perhaps it would be best if you were not a relator?

Mr. SPEIR. No.

Mr. CASEY. And so the answer is no?

Mr. SPEIR. As I understood the question, the answer is no. There was never any comment or inference that we would substitute status as a relator for a status as a potential awardee of monies in the future.

Mr. CASEY. After that December '96 meeting, did you ever again discuss with Mr. Banta other oil valuation questions outside of that suit?

Mr. SPEIR. Outside of that suit. I'm not sure what that means.

Mr. CASEY. Excluding the subject of POGO's qui tam suit, before your retirement, did you discuss with Mr. Banta matters related to oil markets, oil valuation, California prices, et cetera?

Mr. SPEIR. Probably. Probably discussion of California markets. I mean, for example, in the NPR issue that you just addressed, you can't discuss that at all without bringing in the overriding situation in California, so that would be at least one instance of that.

Mr. CASEY. You observed earlier that you did not believe that you were working on any issues that affected POGO's interests; is that correct?

Mr. SPEIR. No. During the time after that December '96 meeting?

Mr. CASEY. Correct. At that time or later.

Mr. SPEIR. I didn't consider myself to be working on anything that affected POGO's interest, yes.

Mr. CASEY. Were you working on anything which bore on the interest of Mr. Banta's clients, as you understood him to be discussing them?

Mr. SPEIR. Well, not that I recall.

Mr. CASEY. Why would he be calling you if not in the pursuit of interests of his clients?

Mr. SPEIR. My focus during the fall of 1996, in fact, almost exclusively the things I was consumed with were unrelated to crude oil.

Mr. CASEY. What were they related to?

Mr. SPEIR. Heating oil.

Mr. CASEY. Heating oil?

Mr. SPEIR. Yes, in the northeast.

Mr. CASEY. Common carrier pipelines?

Mr. SPEIR. For heating oil?

Mr. CASEY. No. Did you also work on that issue?

Mr. SPEIR. Well, in the past, yes.

Mr. CASEY. Did you ever again, before retiring from Energy, work on matters affecting California royalties and valuations?

Mr. SPEIR. I don't think that anything I worked on affected——

Mr. CASEY. Concerning. I didn't mean that in the sense of cause and effect, but touching on, relating to.

Mr. SPEIR. I provided some advice or interpretation to a fellow staff member in the department, who was being lobbied by the independent oil producers about the royalty rule. That's, of course, a matter of record. The ultimate end of that involvement with him was that I suggested to him pretty strongly that the department stay out of the royalty issue.

Mrs. CUBIN. The Majority's time has expired. The Chair now recognizes the Minority for their 30 minutes.

Mr. UNDERWOOD. We won't use our time.

Mrs. CUBIN. You'll yield back?

Thank you, Mr. Speir. We truly do appreciate your openness and your willing to talk to the Committee. You may be dismissed.

The Chair now calls Henry Banta forward.

[Witness sworn.]

Mrs. CUBIN. Please be seated. The Chair recognizes Mr. Gibbons for a motion.

Mr. GIBBONS. Madam Chairman, under Clause 2(j)(2)(b) of Rule XI of the Rules of the House of Representatives, I move that Congressman Brady, Congresswoman Cubin, myself, Congressman Gibbons, members of the Majority, and a Minority member be allowed to question the witness, Mr. Banta, for a total of 60 minutes, equally divided.

Mrs. CUBIN. Are there any objections?

[No response.]

Mrs. CUBIN. Hearing none, all those in favor say aye.

[Chorus of ayes.]

Mrs. CUBIN. Those opposed, no.

[No response.]

Mrs. CUBIN. So the time will be divided 30 minutes per side. I will begin the questioning of Mr. Banta.

Mr. Banta, as you know, you are here today because you are an eyewitness to and a participant in critical events leading to the payments by POGO to Mr. Berman and to Mr. Speir. You claim to have recused yourself because of an apparent or possible conflict of interest with a client.

But the December 1996 agreement was made in your office. The January 1998 written version of that pact was hammered out in your office. Well before that, you introduced POGO to the oil valuation issue and to your firm's key allies in an ongoing effort to change Federal royalty policy. You then oversaw POGO's campaign to boost royalty collection by the Federal Government, much of which would be shared with your California client.

Then two weeks ago, Mr. Banta, you could not recall when or how you recused yourself from POGO's dealings with Mr. Berman and Mr. Speir, and you were also unable to verify the December 1996 and the January 1998 meetings took place in your office. The Committee subpoenaed records that could establish the details of your recusal and those meetings. Both matters are directly and clearly relevant to your dealings with two Federal employees and payments based on how they did their jobs.

Those matters are under the jurisdiction of this Committee and are directly related to this oversight inquiry. You did not produce those records. Do you have them with you today?

STATEMENT OF HENRY M. BANTA, FORMER CHAIRMAN AND CURRENT DIRECTOR OF POGO (PROJECT ON GOVERNMENT OVERSIGHT), AND MEMBER, LOBEL, NOVINS & LAMONT

Mr. BANTA. There are none.

Mrs. CUBIN. There are no records of your recusing yourself?

Mr. BANTA. Right.

Mrs. CUBIN. Did you at any time disqualify yourself from discussions and decisions concerning POGO's oil royalty lawsuit?

Mr. BANTA. Yes, after—whenever I resigned as chairman of the board, sometime before then I did.

Mrs. CUBIN. You can't tell me when that was, when you disqualified yourself?

Mr. BANTA. It was sometimes——

Mrs. CUBIN. Before what?

Mr. BANTA. Before—there's a board meeting—you have the minutes—when I resigned as chairman. It was sometime before then. I can't give you a precise date.

Mrs. CUBIN. We don't have those minutes. So you don't know when you disqualified yourself?

Mr. BANTA. It's in February of '98. It's prior to February or '98.

Mrs. CUBIN. So before February of '98?

Mr. BANTA. Yeah.

Mrs. CUBIN. Why did you recuse yourself?

Mr. BANTA. I was afraid that the qui tam litigation was actually going to go someplace, and that it would appear to have some conflicts with other—with other client interests. I just wanted to avoid all appearances of any impropriety.

Mrs. CUBIN. Can you tell me what the interests of the clients involved were?

Mr. BANTA. No.

Mrs. CUBIN. Even without the names of the clients, you can't tell me what those interests were that might have been in conflict?

Mr. BANTA. I didn't say they would be in conflict. I said there may be the appearance of a conflict.

Mrs. CUBIN. Given that, the appearance of conflict, you can't say, even without naming who the clients were, what the appearance of conflict would be?

Mr. BANTA. Well, there was clearly going to be litigation over proceeds. I'm sorry. There was clearly going to be litigation over money involved in the underpayment of royalties, and I did not want to be in the middle of that.

Mrs. CUBIN. Did you at any time disqualify yourself from discussions and decisions concerning POGO's agreement to share oil royalty litigation proceeds with Mr. Berman and Mr. Speir?

Mr. BANTA. I suppose you could say—yes, and we're talking about the same thing, aren't we?

Mrs. CUBIN. Well, not exactly. We're talking about recusing yourself——

Mr. BANTA. Right.

Mrs. CUBIN. [continuing] officially, and then discussions to disqualify yourself.

Mr. BANTA. Right, yes.

Mrs. CUBIN. And so you did that also?

Mr. BANTA. Yes, sure.

Mrs. CUBIN. So you stopped having discussions.

Mr. BANTA. Yes.

Mrs. CUBIN. When did you do that?

Mr. BANTA. At the same time.

Mrs. CUBIN. At the same time that you recused yourself?

Mr. BANTA. Yes.

Mrs. CUBIN. But you have no record to protect your client that you recused yourself, so the appearance that you were trying to avoid is a giant specter.

Mr. BANTA. Well, I did it. I didn't do anything after that.

Mrs. CUBIN. How did you recuse yourself?

Mr. BANTA. I told Ms. Brian and I told the board.

Mrs. CUBIN. And what did you tell them?

Mr. BANTA. I was no longer participating in any activity relating to the qui tam action or anything relating to the matter of Mr. Berman and Mr. Speir.

Mrs. CUBIN. Now, we are told that we have all of the minutes that had anything pertaining to his agreement, this public service award, whatever you wish to call it, and that recusal isn't in any of the minutes that we have. So if you told the board and you told Ms. Brian, why isn't that in any of the minutes? You have no record that you recused yourself, and there's no record in the minutes that you disqualified yourself.

Mr. BANTA. I thought there was something in the board minute when I resigned as chairman.

Mrs. CUBIN. Will you give us those——

Mr. BANTA. You have them. I—you have everything I have, so I didn't——

Mrs. CUBIN. Well, you are still a board member of POGO?

Mr. BANTA. Yes.

Mrs. CUBIN. Would you give to us the minutes where you disqualify yourself or recuse yourself; can you get those minutes for us?

Mr. BANTA. I can get you the minutes where I resigned as chairman. I haven't a clue what it says in it.

Mrs. CUBIN. But you said that you recused yourself and disqualified yourself at the same time you resigned as chairman.

Mr. BANTA. Right. Well, somewhat prior to that.

Mrs. CUBIN. We don't have those minutes where you resigned as chairman, and we certainly don't have any reference in there to your recusal or disqualification.

Mr. BANTA. I would suggest the minutes are incomplete.

Mrs. CUBIN. And by whose hand would that—who would be responsible for those incomplete minutes?

Mr. BANTA. I don't know. Whoever was taking minutes at that time.

Mrs. CUBIN. At the next meeting, when you approved the minutes, when the board approved the minutes, did you bring up the fact that you had recused yourself and disqualified yourself and it wasn't reflected in the minutes? Because that's a big thing you did. Did you bring that up at that meeting?

Mr. BANTA. I did not. I didn't consider it a big thing at the time.

Mrs. CUBIN. Well, it must have been big if you disqualified yourself or recused yourself. You must have thought it was big enough to do that.

Mr. BANTA. Sure.

Mrs. CUBIN. Mr. Banta, we are looking for the truth.

Mr. BANTA. I should hope so.

Mrs. CUBIN. You have sworn to tell the truth. Some of the answers that you are giving don't lend to believability, if you will. You say it was important enough, the possible appearance of a conflict was important enough that you would recuse yourself and disqualify yourself. And you say that you announced that to the board and to Ms. Brian.

Mr. BANTA. Sure.

Mrs. CUBIN. But you have no personal or professional legal memo that does that. You say someone else made a mistake by not recording that in the minutes, and then that person, whoever it was, made a mistake, but you didn't bother to correct them when the minutes were approved the next time. In fact, you probably voted to approve the minutes.

Mr. BANTA. Yes.

Mrs. CUBIN. That's just not believable, Mr. Banta.

Mr. BANTA. Well, are you suggesting I did something as a board member after that time? Do you have any evidence I did anything?

Mrs. CUBIN. I am not here to answer your questions, Mr. Banta. You are here to answer mine.

Mr. BANTA. I didn't do anything after that date.

Mrs. CUBIN. I'm not sure you did anything on that date. Why did you recuse yourself from matters affecting Mr. Berman and Mr. Speir?

Mr. BANTA. My whole recusal was simply a matter of appearances. The question of whether the—Mr. Berman and Mr. Speir's award was going to come out of the qui tam money, as I said, the dispute over that money was something that I felt that I should not become involved in, period.

Mrs. CUBIN. Mr. Banta, the fact that you have no documents to back up what you say, even to protect your clients from whatever it is you were trying to protect them from, do you think it's considered good legal practice not to commit in writing actions that you take to protect your clients' vital interest?

Mr. BANTA. I'm not suggesting I was protecting a vital interest. All I'm saying is I was protecting myself from some appearances, period.

Mrs. CUBIN. Your firm also had contacts with Mr. Berman and Mr. Speir concerning a number of oil valuation issues such as the common carrier status of California pipelines. Was it reasonable and prudent to assume that Mr. Berman and Mr. Speir could meet in your offices and be offered an enormous amount of money by you, and put that out of their minds the next time someone from Lobel, Novins and Lamont called them?

Mr. BANTA. First, you have a whole bunch of premises in your question. First of all, you're assuming that they were offered a whole bunch of money, and——

Mrs. CUBIN. Well, they were offered a whole bunch of money. They were offered a third of whatever settlements came, of what-

ever money came from the settlement. That is a bunch of money, Mr. Banta.

Mr. BANTA. Well, at the time it certainly wasn't.

Mrs. CUBIN. $383,600?

Mr. BANTA. It wasn't at the time.

Mrs. CUBIN. It's a bunch of money, Mr. Banta.

Mr. BANTA. It wasn't at the time. It was the promise of something——

Mrs. CUBIN. It was an interest——

Mr. BANTA. [continuing] very vague.

Mrs. CUBIN. It was an interest.

Mr. BANTA. It was an interest which was highly unlikely to come true.

Mrs. CUBIN. But it did come true. Did you file a frivolous lawsuit if it was so unlikely to come true?

Mr. BANTA. I didn't file the lawsuit.

Mrs. CUBIN. You're the chairman of the board.

Mr. BANTA. I didn't file the lawsuit. My name is not on it.

Mrs. CUBIN. Yeah, right. Says who?

The purpose of financial disclosure rules for Federal employees and professional responsibility rules for attorneys is to avoid the commingling of public and private interest. Would you agree with that?

Mr. BANTA. Sure.

Mrs. CUBIN. Who is Ken Cory?

Mr. BANTA. Mr. Cory was the state controller of California for a number of years.

Mrs. CUBIN. Do you agree that Mr. Cory, Bernard Kritzer, Leonard Brock, Bob Berman, and Bob Speir, have been known to members of your law firm for many years?

Mr. BANTA. Well, Mr. Cory was certainly known to us for a lot longer than the other people, but I certainly know the other ones.

Mrs. CUBIN. In the period from December 1996 to January 1998, how many times did the POGO board of directors hear a report about or discuss the agreement between Danielle Brian, Mr. Berman and Mr. Speir? Did the board discuss that at all?

Mr. BANTA. Well, first of all, I disagree with your characterization of an agreement, but we've been through that, and we'll just note my objection to that.

Mrs. CUBIN. Right.

Mr. BANTA. Yes, the board discuss that.

Mrs. CUBIN. The board did discuss that between——

Mr. BANTA. Oh, I'm sorry. You've lost me on the dates.

Mrs. CUBIN. Okay. In the time period between December '96 and January '98, how many times did the board discuss that?

Mr. BANTA. I don't remember.

Mrs. CUBIN. But they did, they did discuss it?

Mr. BANTA. It did come up, yes, I think so.

Mrs. CUBIN. I think their testimony was that none of them knew about it until the checks were written. That was their testimony two weeks ago.

Mr. BANTA. I'm sorry. I'm lost on your dates. I don't remember that being the testimony.

Mrs. CUBIN. Pardon me?

Mr. BANTA. I don't remember that being their testimony. I thought that the question of an award to Mr. Speir and Mr. Berman was raised very early before the board.

Mrs. CUBIN. According to the board, they didn't know about it. You were here in the room, you heard it. Only one board member acknowledged knowing about it, and she didn't remember when she learned about it.

I yield to Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Madam Chairman. And I know that we have a vote coming up here shortly. I'll try to take just a few minutes and ask a few very curious questions, and hopefully Mr. Banta can help me understand.

Mr. Banta, you're a very bright man. I've read your biography, your education and the publications you've made. You're a very experienced lawyer, a very well-respected lawyer, I must admit, in the Washington area.

The statement you said, that you have no records, early on to the Chairwoman's question, is that because there are no such records that were ever written or created, or is it that they were destroyed?

Mr. BANTA. No, I made no records with regard to the recusal.

Mr. GIBBONS. And you know of no one else that would have made a record?

Mr. BANTA. I don't think so, unless somebody at the board was taking notes that I didn't know about, or whatever.

Mr. GIBBONS. Did you ever enter into a contingency fee, Mr. Banta?

Mr. BANTA. Have I ever been involved in a contingency fee?

Mr. GIBBONS. Case.

Mr. BANTA. I don't know. I don't recollect one.

Mr. GIBBONS. Do you think they're valueless, contingency fee cases?

Mr. BANTA. I haven't any idea. I mean, what's the pertinency here? I'm not an expert on contingency fees. I don't do that——

Mr. GIBBONS. Relevancy. It's not pertinency here. It would be relevancy, Mr. Banta. The relevancy would be whether or not $386,000 is a relevant fee for doing something, and you said there was no value to it when it was assigned.

Mr. BANTA. I'm sorry. I've—I don't know what your question is.

Mr. GIBBONS. Well, I just asked you a hypothetical, whether you thought contingency fee cases, which are very similar to the agreement that you have established here with Berman and Speir, was a valueless, meaningless sum.

Mr. BANTA. I don't accept that, that it was analogous to a contingency agreement.

Mr. GIBBONS. Well, so then it was a contract to pay.

Mr. BANTA. It was not a contract to pay.

Mr. GIBBONS. Did you draft this agreement up?

Mr. BANTA. I did not.

Mr. GIBBONS. Were you present when it was drafted?

Mr. BANTA. I was not.

Mr. GIBBONS. Were you present when it was ever discussed?

Mr. BANTA. Yes. I'm sorry. I know I've testified previously that I was. I clearly had discussions with Ms. Brian about it.

Mr. GIBBONS. Did you ever talk to Mr. Berman and Mr. Speir about it before it was put on paper?

Mr. BANTA. No.

Mr. GIBBONS. Did you talk to them after it was put on paper?

Mr. BANTA. The agreement? I mean this thing that's called an agreement?

Mr. GIBBONS. Yes. The January 5th, 1998 document.

Mr. BANTA. I don't think so. I don't think I would have had occasion to.

Mr. GIBBONS. Well, following December—sometime in the first days of 1996, you met in your office with Danielle Brian, Bob Berman and Bob Speir.

Mr. BANTA. Right.

Mr. GIBBONS. Now, that meeting was preceded by other discussions about Berman and Speir joining POGO as realtors—as relators—excuse me.

Mr. BANTA. Right.

Mr. GIBBONS. And after that meeting a decision was made that Berman and Speir would not put their names on the filing, but would each receive one-third of any proceeds.

Mr. BANTA. All that was done was that Ms. Brian expressed an intent that if there was ever any success in the case, that she was willing to award Mr. Berman and Mr. Speir a piece of it.

Mrs. CUBIN. If you'd allow me to interrupt at this point. Is this a good time for your questioning, Mr. Gibbons, or would you like to continue?

Mr. GIBBONS. Madam Chairman, whatever you decide, I sit clear over here, I'm willing to go with your decision.

Mrs. CUBIN. I think we will go vote. We have two votes. The first one is a 15-minute vote and the second is a 5-minute vote, so I would like to resume at 7:30 in this room. The Committee is in recess.

[Recess.]

Mrs. CUBIN. The meeting will please come to order. The Chair recognizes Mr. Brady.

Mr. BRADY. Thank you, Madam Chairman.

Mr. Banta, you've objected—despite repeated POGO documents that outline this contractual agreement with Mr. Speir and Mr. Berman, you've objected to the use of that term. For this line of questioning, what phrase would you like to use for the agreement between POGO and the two government insiders?

Mr. BANTA. I don't know. I——

Mr. BRADY. Well, secret deal?

Mr. BANTA. No.

Mr. BRADY. Act of friendship?

Mr. BANTA. It's been, I think, accurately characterized. I thought Mr. Speir——

Mr. BRADY. And that would be?

Mr. BANTA. That it was a offer to share what might come from this, what might come from the qui tam action.

Mr. BRADY. Well, then we'll substitute "this offer."

Let's start at the beginning. You first visited with the board in December '96. You said you informed them that POGO was pursuing false claims law. You, as chairman of the board, noted that

POGO was the only relator that is public; the others are in private offers. That was confirmed by Ms. Brian, who said that an offer had been worked out with—if there's an award, for these individuals for the work they've been doing for years that would be compensated. That was confirmed then.

It was then confirmed a second time with the legal document signed in your office between Mr. Speir, Mr. Berman and Ms. Brian, putting in writing the standing oral offer, as you put it. It's confirmed yet a third time in the October 8th memo from Ms. Brian, saying "This is our firm commitment to live up to our existing offer." And then this offer was executed in fact.

My question to you is, besides the facts just don't hold up for your explanation, when did this oral offer conclude, the one that you identified, was confirmed four times, and then executed. When did that oral offer reach agreement?

Mr. BANTA. First of all, you had a lot of characterizations in that——

Mr. BRADY. No, actually, I didn't. I used your documents and read directly from them.

Mr. BANTA. Well, I disagree.

Mr. BRADY. Well, they are yours. And a lawyer of your stature, don't go there, because it doesn't make any sense for you. Come back and help us understand the original offer, as you put it. When was it concluded?

Mr. BANTA. It—I'm not sure I understand your question.

Mr. BRADY. Well, what do you understand the question is? It's simple. When was the understanding, agreement, offer, between POGO and the two individuals, Mr. Berman and Mr. Speir, when was that oral—standing oral agreement, when was it reached?

Mr. BANTA. I don't think it was. You're characterizing a lot of things here, and I'm not sure that——

Mr. BRADY. No. That is your document. It is not ours. You know, when do you say this oral understanding was reached, that you confirm repeatedly, with your own legal documents?

Mr. BANTA. You keep saying that, and you keep characterizing these things as legal documents. I don't. And you're trying to——

Mr. BRADY. This is to put in writing the standing—"This is to put in writing the standing oral agreement between POGO, Mr. Speir and Mr. Berman, concerning our false claims act suit regarding the underpayment of royalties by oil companies to the Federal Government. Any and all proceeds to come to POGO or Danielle Brian through this lawsuit will be shared equally, one-third each between POGO, Mr. Speir and Mr. Berman."

That is not a characterization. Those are simply your documents. So again, rather than avoid the question——

Mr. BANTA. Well, first of all——

Mr. BRADY. Rather than avoid the question, please, as chairman of that organization, as a leader in this whole movement, surely you do know when the oral understanding was reached, because you told the board it had.

Mr. BANTA. I'm not sure what you mean by oral agreement. I mean, I think that what happened, as has been testified to here, that Ms. Brian told Mr. Berman and Mr. Speir that if there was

going to be any money, she was willing to share it. Ultimately that happened. I——

Mr. BRADY. Do you believe it happened prior to you telling the board there was an agreement? Is it safe to say you didn't make that up, it's true?

Mr. BANTA. No.

Mr. BRADY. No, it's made up, or no, it's true? You told the board, "We have an agreement." Is that true?

Mr. BANTA. I'm not sure what I told the board now, but——

Mr. BRADY. Is it true you told the board you have reached an agreement?

Mr. BANTA. That is not—I don't know what I told the board. What I know happened is, is that Ms. Brian made this offer to Mr. Berman and Mr. Speir.

Mr. BRADY. When?

Mr. BANTA. There wasn't an agreement.

Mr. BRADY. Well, but, okay. The facts say you are lying about that, not me. I mean, your documents, and I wish——

Mr. BANTA. You're asking me to testify.

Mr. BRADY. I wish you could say——

Mr. BANTA. I'm under oath.

Mr. BRADY. I know, and you know, I wish you'd honor that, because the fact of the matter is you do have knowledge when that agreement was reached. Now you don't want to talk about it, but the fact of the matter is, if POGO is open and honest about this arrangement, you won't hesitate to tell us when that oral agreement that you confirmed repeatedly and executed, when it was reached. A simple question. When?

Mr. BANTA. I don't know. I just—I disagree with your characterization of the matter. I can't——

Mr. BRADY. That's fine.

Mr. BANTA. I can't go any further.

Mr. BRADY. Well, no, you can go further. You choose not to go further. Let me ask you this then, under oath: Mr. Banta, do you have—did you have any knowledge of the discussions, offers, intent, oral agreement, that was reached with Mr. Berman and Mr. Speir? Did you have any knowledge of that agreement prior to the December 9th, 1996 board meeting?

Mr. BANTA. I knew that Ms. Brian had made that offer to Mr. Berman and Mr. Speir.

Mr. BRADY. But you were still in question that it had been agreed to?

Mr. BANTA. Yeah.

Mr. BRADY. But you told the board you'd reached an agreement.

Mr. BANTA. I don't remember what I told the board.

Mr. BRADY. Unfortunately, this again damages your credibility to a degree that's almost stunning, for all the—we may disagree on the issue of oil royalties, but I know what your reputation is, and it isn't what you're doing tonight. I'll just tell you that.

Let me ask you a final question. Did you have any knowledge of the Johnson lawsuit while it was under seal? Did you as an individual or professional, in any role, have knowledge of the Johnson lawsuit while it was under seal? And you are under oath, Mr. Banta.

[Conferring with counsel.]

Mr. BANTA. I believe that that issue is not pertinent to the inquiry of this Committee.

Mr. BRADY. So you refuse to answer?

Mr. BANTA. I do.

Mr. BRADY. Thank you. I think that——

Mr. BANTA. On advice of counsel.

Mr. BRADY. I think that speaks volumes.

Mrs. CUBIN. Would the clerk please stop the time?

The Chair understands that Witness Banta has entered an objection because he believes that the answer to the question is not pertinent to the subject under inquiry. The Chair will address the issue and poll the members as to whether they believe the question is pertinent.

The Chair announced in the opening statement that the purpose of this hearing includes an explanation of the policies, practices and operations of the Department of the Interior and Department of Energy related to payments by organizations or individuals to employees of those departments who deal with oil royalty policy. The Chair further announced that we were examining one instance of where such payments were made to Mr. Berman and to Mr. Speir by POGO. We are examining where the money for the payments came from, the agreements and transactions that resulted in the payments, the work of the government employees who took the payments, and differing accounts of the payments.

The gentlemen who took the payments were policy advisors concerning subjects and programs that are within the jurisdiction of this Committee. Our purposes for this oversight relates to the integrity of the Executive Branch and regulatory decision-making concerning programs within the Department of Energy, the Department of the Interior, and the Minerals Management Service, about matters under the jurisdiction of the Committee on Resources.

As we learned more, our purpose was spelled out in the following documents which have been made available publicly: my opening statement for the May 4, 2000 hearing of this Subcommittee; the opening statement of this hearing; a letter from Mr. Young to me, dated March 21st, 2000, that transmitted this inquiry to the Subcommittee; and numerous pieces of correspondence, including letter requests for records to the witnesses and their organizations.

I want to make sure that our purpose is clearly understood, because the Chair rules that the question put to the witness can yield an answer that allows the Subcommittee to better understand the subject matter we are examining. Specifically, the answer to the question will reveal facts about the transactions and true policy agreements related to the payments and their influence on the public domain oil royalty policy; facts about whether the operation of the departments and the Minerals Management Service was subject to influence by the 1996 agreement between POGO, Mr. Berman, Mr. Speir, at a time when you were chairman of the board of POGO; facts about the operation of the departments and possible effects on oil royalty policy rules that have recently been promulgated; facts related to the formulation of agency responses to congressional proposals for new oil valuation systems such as the royalty-in-kind proposal considered by this Subcommittee; facts re-

lated to how the payments were able to be made and accepted by employees who worked in oil royalty policy areas, so that the Subcommittee can formulate legislation if need be to raise standards to ensure that these types of payments and side agreements that bring windfalls to Federal employees will never be allowed to happen again; facts that may be in evidence where the Department of the Interior or personnel within the Department of the Interior have access to sealed lawsuits, and where the information is leaked out to many people.

The answer is necessary to understand the issues and subject matter of our hearing. The Chair therefore determines that the question relates to a constitutionally legitimate purpose. The Chair also determines that the question falls within the authority granted to Congress by the Constitution and by the House to the Committee and Subcommittee. I also want to be clear that our jurisdiction comes in part from Article IV, Section 3 of the U.S. Constitution, which states that, quote: "That Congress shall have power to dispose of and make all needful rules and regulations, respecting the territory or other property belonging to the United States." Unquote. Thus, our jurisdiction and authority is directly conferred by the Constitution, which is unlike the jurisdiction and authority for inquiries of other committees, and this enhances our jurisdiction and authority.

Article I of the Constitution, related to Legislative Branch power, also serves as a basis for our jurisdiction over the subject matter of this hearing. This jurisdiction has also been delegated under House Rule X (1)(l)(11), (12), (17) and (19) to the Committee on Resources, and further delegated to this Subcommittee under Rule VI of the Rules for the Committee on Resources.

Finally, our jurisdiction is additionally based on Rule X (2) of the House Rules, which confers general oversight authority and jurisdiction over the organization and operation of the departments that administer programs under the jurisdiction of the Committee and the Subcommittee. Clearly, oil royalties fall within the Subcommittee's jurisdiction, as do factors that influence oil royalty policy development and implementation within the department, which is clearly an aspect of the operation of the department.

Thus, the question asked falls within the grant of my authority made by the Constitution to the Congress and to the Committee and the Subcommittee by the House.

The Chair wishes to inform the witness that the question meets the two requirements of pertinency. We have a constitutionally legitimate legislative purpose, and the question is within the grant of authority to the Subcommittee. Let me further explain why the question is pertinent. Payments, let alone payments of the magnitude received to date by policy advisors in the departments, certainly can and likely will influence agency decisions. We heard testimony at our last hearing that the payments to Berman and Speir were agreed to in 1996 and that the operation of the department was used to develop the POGO/Brian lawsuit, which led to the payments to Mr. Berman and Mr. Speir. Rules and procedures must be in place to prevent the department and its resources from being used to help litigants learn how to frame competing lawsuits, de-

velop their cases, and prosecute their claims, if in fact that is what was done.

But to determine what was done, we must ask this question and have it answered, or you can be held in contempt. That is why the question and all the questions that relate to the subject of this inquiry are pertinent.

The question, Mr. Banta, is: did you know about the lawsuit that was filed by Benjy Johnson, while it was under seal in the U.S. District Court in Lufkin?

Mr. BANTA. I'll stand on my objection, Madam Chairman.

Mrs. CUBIN. Again, I ask the witness to answer the question, and I remind you, sir, that you can be held in contempt if you do not.

Mr. BANTA. I'll stand on my objection.

Mrs. CUBIN. I warn the witness in the words of the Supreme Court, that, quote, "An erroneous determination on his part that the question is not pertinent, even if made in the utmost good faith, does not exculpate him if the Court should later rule that the questions were pertinent to the question under the inquiry." That's *Watkins v. the United States.*

This is your last chance, Mr. Banta. Will you please answer the question?

Mr. BANTA. Thank you, Madam Chairman. I'll stand on my objection.

Mrs. CUBIN. Do you have further questions, Mr. Gibbons?

Mr. GIBBONS. Yes, Madam Chairman. I just want to go back for a moment with Mr. Banta, and sort of search for some other answers that might help me understand a little bit more.

Mr. Banta, at some point throughout this process, did you ever become aware that Mr. Berman was concerned that POGO might not pay him as expected for his share of its lawsuit money, and that he was considering taking steps to assure POGO performed as he had expected?

Mr. BANTA. No.

Mr. GIBBONS. The agreement that we're talking about, January 5th, 1998—and I label it an agreement because, in the words of the drafter, "This is to put into writing the standing oral agreement." So it is a writing of an oral agreement, relating therefore to being an agreement. Why was it put into writing?

Mr. BANTA. I don't think I know. I don't think I remember.

Mr. GIBBONS. Did—let me see if I can help you—did Mr. Berman or Mr. Speir ask for it to be put into writing?

Mr. BANTA. Not to my knowledge.

Mr. GIBBONS. Who asked it to be put into writing?

Mr. BANTA. I don't know. I know I didn't.

Mr. GIBBONS. We've already discussed your role in this agreement, that you did work on it.

Mr. BANTA. I'm sorry?

Mr. GIBBONS. Didn't you, or you had some role in the construction of this agreement?

Mr. BANTA. No.

Mr. GIBBONS. You didn't draft it?

Mr. BANTA. No.

Mr. GIBBONS. As chairman of the board of POGO, would you have expected an agreement like this, which obligated POGO to have a board approval?

Mr. BANTA. It was—I know that the relationship with Mr. Speir and Mr. Berman was brought to the attention of the board.

Mr. GIBBONS. Well, that didn't answer my question. You know what my question was, and you're looking for another answer to make sure that you don't have to answer it. Do you expect that an agreement, which would obligate POGO, to be approved by the board of directors?

Mr. BANTA. The POGO board of directors did not put a lot of things to a vote. It was brought to their attention, and it was not voted on. But no objections were raised.

Mr. GIBBONS. Well, this agreement was signed in your office, was it not?

Mr. BANTA. I know I said that before. I've later come to the conclusion it probably wasn't, but I knew when it was being signed. I'm not quibbling with you.

Mr. GIBBONS. Did you, as chairman of the board, authorize Ms. Brian to sign it?

Mr. BANTA. I don't think I took a position with her, I mean, authorizing it. I knew she did it. I didn't disapprove.

Mr. GIBBONS. So by tacit omission of your role as chairman, you did, by de facto, agree to her to sign it if in fact you knew about it.

Mr. BANTA. I knew about it.

Mr. GIBBONS. So you could say you did agree to have her authorized to sign it.

Mr. BANTA. Sure.

Mr. GIBBONS. It sure took us a long time to get to that point. Do you know of any other terms that might have been omitted in this agreement?

Mr. BANTA. Well, you keep characterizing it as an agreement.

Mr. GIBBONS. I'm only going to say this one more time, Mr. Banta, because——

Mr. BANTA. You know, I keep disagreeing with that.

Mr. GIBBONS. [continuing] you're an attorney, you've studied law, you're an articulate individual, you've been in this business for a long time, and for you to say that this is a writing which summarizes and puts the standing oral agreement on paper, does not change it to be something other than an agreement.

Mr. BANTA. I still reject your characterization.

Mr. GIBBONS. This is the most remarkable testimony for somebody with your background, your education, your experience, your reputation, to take and say that such a document, which clearly on its face—that you have read, that you're aware of—is not an agreement. And I would say that—or ask if Mr. Speir or Mr. Berman had sued for failure to comply with this document, do you think they would have recovered their fee?

Mr. BANTA. No.

Mrs. CUBIN. The Majority time has expired.

Mr. GIBBONS. Thank you.

Mrs. CUBIN. Now, just for the purposes of clarification, the Chair would like to poll the members on whether or not they believe the

question, quote, "Did you know the lawsuit was sealed—did you know about the lawsuit in Lufkin while it was under seal?" I'd like to poll the panel on the pertinency of it. So vote aye if you believe the question is pertinent, and no if it isn't. And I will just call the roll.

Mr. Gibbons?

Mr. GIBBONS. Aye.

Mrs. CUBIN. Mr. Schaffer?

Mr. SCHAFFER. Aye.

Mrs. CUBIN. Mr. Brady?

Mr. BRADY. Aye.

Mrs. CUBIN. And the Chair votes aye. There are no Democrat members present.

So, Mr. Banta, I'd like to give you one more chance to answer that question. Did you——

Mr. BANTA. I'll stand on my objection. Thank you.

Mrs. CUBIN. Thank you. The Chair recognizes Mr. Brady for a motion.

Mr. BRADY. Madam Chairman, under Clause (2)(j)(2)(c) of Rule XI of the Rules of the House of Representatives, I move that Mr. Tom Casey, a Majority staff member and a Minority member staff member designated by the Ranking Member, each be allowed to question the witness, Mr. Banta, for—I reluctantly say 60 minutes, equally divided.

Mrs. CUBIN. Are there any objections?

[No response.]

Mrs. CUBIN. Hearing none, all in favor say aye.

[Chorus of ayes.]

Mrs. CUBIN. The motion passes. Before Mr. Casey begins his questioning, however, I take note that there are no Minority members present, so therefore, they yield back that time. And the staff will be allowed to question for 30 minutes. Mr. Casey?

Mr. CASEY. Thank you, Madam Chairman.

Mr. Banta, can we assume that whenever your recusal occurred, it occurred after January 5, 1998?

Mr. BANTA. I'm sorry. January 5—what's the date you're——

Mr. CASEY. After January 5——

Mr. BANTA. I'm just asking you what January 5 is.

Mr. CASEY. January 5, 1998.

Mr. BANTA. Yes.

Mr. CASEY. Had you recused yourself by that day?

Mr. BANTA. I'm asking you what the significance of that date is.

Mr. CASEY. I'm asking you if you had recused yourself before that day?

Mr. BANTA. Yes. Why are you using January——

Mr. CASEY. Let's take it one step at a time, Mr. Banta. Had you recused yourself before January 5, 1998?

Mr. BANTA. No.

Mr. CASEY. So you would have been fully aware—you would not have disqualified yourself from knowledge of or participation in the agreement that was signed on that day?

Mr. BANTA. That's true.

Mr. CASEY. Do you have a copy of that agreement handy?

Mr. BANTA. No.

Mr. CASEY. Could the clerks pass one to Mr. Banta, along with the board meeting minutes from December 9 of '96. It's Attachment A. Do you have both, Mr. Banta, the January 5, '98 agreement and the board meeting minutes?

Mr. BANTA. I don't have the board minutes.

Mr. CASEY. Do you know who did write the January 5, 1998 agreement?

Mr. BANTA. No, I do not.

Mr. CASEY. Can you venture a guess?

Mr. BANTA. I won't.

Mr. CASEY. Do you know if Ms. Brian wrote that agreement?

Mr. BANTA. If I knew that, I would have said it.

Mr. CASEY. Can you exclude the possibility that Ms. Brian authored that agreement?

Mr. BANTA. I can exclude—no, I can't exclude the possibility that she wrote it.

Mr. CASEY. At that time was POGO using an outside law firm?

Mr. BANTA. I'm sorry?

Mr. CASEY. Did POGO have any sort of outside legal counsel on January 5, '98?

Mr. BANTA. I don't think so.

Mr. CASEY. So it was probably not written by any outside attorneys.

Mr. BANTA. I think that's probably a fair bet.

Mr. CASEY. Do you consider Ms. Brian to be a reliable and trustworthy executive director at POGO?

Mr. BANTA. Certainly.

Mr. CASEY. Excuse me?

Mr. BANTA. Certainly.

Mr. CASEY. You said certainly?

Mr. BANTA. Yes. Sorry.

Mr. CASEY. Do you know why she would sign a document which calls itself an agreement if it was not an agreement?

Mr. BANTA. She's not a lawyer.

Mr. CASEY. Were you on the POGO board in 1991, Mr. Banta?

Mr. BANTA. 1991. Yes, I think so.

Mr. CASEY. Were you the chairman at the time?

Mr. BANTA. Yes.

Mr. CASEY. Did you take part in drafting the articles of incorporation filed in 1991?

Mr. BANTA. I don't think so. I think a partner of mine did it.

Mr. CASEY. A partner of yours?

Mr. BANTA. Yes.

Mr. CASEY. As chairman, you signed them, however.

Mr. BANTA. Sure.

Mr. CASEY. Sure.

Mr. BANTA. I don't know. You're saying that. I——

Mr. CASEY. Are you aware of the provision in those articles of incorporation which prohibits POGO from paying anybody other than for services rendered?

Mr. BANTA. Did not know that.

Mr. CASEY. Ms. Brian has testified that the POGO board policy was that expenditures in excess of $1,000 had to be approved by

the chairman of the board and the treasurer. Do you agree with that?

Mr. BANTA. I can't—I don't have independent knowledge of that.

Mr. CASEY. In your experience as chairman was that the practice?

Mr. BANTA. I can't remember.

Mr. CASEY. Can't remember ever approving an expenditure over a $1,000?

Mr. BANTA. Yes. It's the dollar limit that I have no specific——

Mr. CASEY. Do you recall approving significant expenditures by POGO?

Mr. BANTA. Yes.

Mr. CASEY. So as of January 6, 1998, if I understand the testimony from various POGO witnesses, the Mobil money was a reality; Mobil had entered settlement talks; they were going to settle; so it was felt it was an appropriate time to make the written agreement signed by the three individuals on that day. Certainly, that's—committing POGO to an expenditure over $1,000, isn't it?

Mr. BANTA. Had you asked me on that day was there a chance of POGO making any money on the agreement—on the settlement, I would have said no.

Mr. CASEY. On January 5, 1998——

Mr. BANTA. Yes, yes. Even in January 5, '98.

Mr. CASEY. Did you believe Mobil was dealing in bad faith at the time?

Mr. BANTA. No. Well, I have no idea what Mobil was doing at the time. I shouldn't be testifying on that point.

Mr. CASEY. If Mobil was in settlement talks, why did you believe that it was of no probability, if I understand you correctly, that Mobil would indeed consummate a settlement and write a check?

Mr. BANTA. I didn't say that.

Mr. CASEY. I believe you just said that if asked on January 5, 1998, you would have said there was no chance——

Mr. BANTA. I said there was no chance of POGO getting money, or insignificant chance.

Mr. CASEY. You were a party to the Multi-Relator/Counsel Agreement by that day, weren't you?

Mr. BANTA. I didn't know about the Multi-Relator Agreement.

Mr. CASEY. You did not know about it?

Mr. BANTA. No.

Mr. CASEY. When did you learn of it?

Mr. BANTA. I don't know.

Mr. CASEY. But after January 5 of '98?

Mr. BANTA. Sure.

Mr. CASEY. Did you learn of it between January 5 of '98 and February 5 of '98?

Mr. BANTA. No.

Mr. CASEY. So you learned of it after you had recused yourself?

Mr. BANTA. Long after.

Mr. CASEY. When the agreement was made—and you'll forgive me for using that word, "agreement"; it is the word that your own documents use—when the agreement——

Mr. BANTA. And I still object.

Mr. CASEY. When the agreement was made in 1996, did you believe that there was no chance POGO would ever have to pay Mr. Berman and Mr. Speir?

Mr. BANTA. Yes.

Mr. CASEY. Is that why you entered into the agreement, because you did not intend to live up to it?

Mr. BANTA. No, I—whoa. No.

Mr. CASEY. Wasn't it POGO's intention, POGO's plan, to file a qui tam lawsuit, to succeed in it, and then to have money that could be distributed to Mr. Berman and Mr. Speir?

Mr. BANTA. It was POGO's intent to file a lawsuit.

Mr. CASEY. Did you file the lawsuit with no intention of succeeding in it?

Mr. BANTA. Well, first of all, as I testified earlier, I didn't file the lawsuit.

Mr. CASEY. Mr. Banta, you were the chairman of the board at the——

Mr. BANTA. Let me——

Mr. CASEY. [continuing] time it was filed. You caused it to be filed. That's a legal fact. Did you walk down to the courthouse in Lufkin, Texas? I'll accept that you didn't.

Mr. BANTA. No.

Mr. CASEY. But you were the chairman of the board. You caused it to be filed in the name of the Project on Government Oversight.

Mr. BANTA. I didn't cause it to be filed, but let me—wait a minute. There was another piece to your question. I'm sorry.

Mr. CASEY. When you filed that suit, wasn't it your intention to succeed in it?

Mr. BANTA. My intention was that that lawsuit would call attention to the fact of under-valuation and underpayment of royalties to the Department of Justice. I did not think that POGO could succeed as a relator.

Mr. CASEY. Was it POGO's sole intention to draw attention to the underpayments?

Mr. BANTA. POGO as a corporate entity, I suppose, doesn't have an intent. My intent was that it would call attention of the—to the under-valuation by the Department of Justice.

Mr. CASEY. And when you learned that Mr. Johnson and Mr. Wright had already filed suits that would do exactly that, and if you had no intention of taking any money out of the litigation, why did you pursue the matter? Why didn't you withdraw your suit when you learned that the job you sought to accomplish, that you intended, would in fact be done?

Mr. BANTA. Excuse me.

[Conferring with counsel.]

Mr. BANTA. Sorry. At that time I did not know that there was a lawsuit that covered California.

Mr. CASEY. At what time?

Mr. BANTA. What was your question?

Mr. CASEY. You just answered it. I assume you know what the question was that you're answering.

Mr. BANTA. You had a time frame in your question and it's out of my mind. So if you can just go back to it, please?

Mr. CASEY. When did you learn that there was another qui tam suit which covered California?

Mr. BANTA. That's the question I refuse to answer on the grounds of pertinency.

Mr. CASEY. I'm sorry. On the grounds of pertinency?

Mr. BANTA. Pertinency, yes.

Mr. CASEY. Well, Mr. Banta, you learned of other suits perhaps 30 days after you filed your suit on June 9th of 1997. The Justice Department informed you and Mr. Wright and Mr. Johnson of the existence of your three suits.

Mr. BANTA. I was not aware of that.

Mr. CASEY. I understand that you recused yourself at some point——

Mr. BANTA. Yes.

Mr. CASEY. [continuing] from the matters involving Mr. Berman and Mr. Speir and the lawsuit.

Mr. BANTA. Right, right.

Mr. CASEY. Did you recuse yourself from POGO board discussions involving POGO's tax exempt status or other tax filing matters?

Mr. BANTA. No.

Mr. CASEY. Did you ever participate in or witness a board discussion involving the tax implications of the payments to Mr. Berman and Mr. Speir? I'm not asking if you complied with tax requirements. We're only asking if there was a discussion.

[Conferring with counsel.]

Mr. BANTA. We have objected to the pertinency of all questions relating to the tax exempt status of POGO other than what was put on the forms relating to the payments.

Mr. CASEY. It's a question about the payments to Mr. Berman and Mr. Speir. Was that assessed by the board in the light of its tax implications? A yes or no. I don't need to know what you said, what you judged of it, only if you assessed it.

[Conferring with counsel.]

Mr. BANTA. I think you asked two different questions there. I think your second question was different from your first one. Where are we?

Mr. CASEY. Do you have any knowledge that the POGO board of directors ever was briefed on, discussed, or assessed, the Federal tax implications of the payments made to Mr. Berman and to Mr. Speir, or the payments contemplated to be made?

[Conferring with counsel.]

Mr. BANTA. No.

Mr. CASEY. You are not aware of any discussion? Do you know of any discussion—well, you wouldn't know if it didn't take place. Did you—all right.

You testified that in the meeting in December of '96 Ms. Brian made the offer; is that correct?

Mr. BANTA. Yes.

Mr. CASEY. Well, you were the chairman at the time, weren't you?

Mr. BANTA. Yes.

Mr. CASEY. And so it was done in your presence?

Mr. BANTA. Yes.

Mr. CASEY. Did you object to it?

Mr. BANTA. No.

Mr. CASEY. All right. Do you—did you understand, as of December 9, 1996, that the arrangement that is called an agreement in the board meeting minutes of that date, called for POGO to share its litigation proceeds with Mr. Berman and Mr. Speir on equal thirds?

Mr. BANTA. Yes.

Mr. CASEY. The board did understand in '96 that it was to be an equal one-third sharing?

Mr. BANTA. No, wait. You're getting me—no. I mean, there was an agreement that—an agreement—there was an offer to share the proceeds. The equal thirds I have no recollection on.

Mr. CASEY. No recollection?

Mr. BANTA. No.

Mr. CASEY. Do you recall being deposed on November 16, 1999?

Mr. BANTA. Yes.

Mr. CASEY. In that deposition, a document labeled as Exhibit 7 was a copy of the January 5, 1998 memorialization of the agreement between POGO, Robert Speir and Robert Berman. You were under oath in that deposition, weren't you, Mr. Banta?

Mr. BANTA. Yes.

Mr. CASEY. I would like to read an exchange to you from that deposition.

Mr. BANTA. Do you want to let me read it too?

Mr. CASEY. I'm afraid I only have one copy. I'll try to be distinct and slow. And I'd like to ask you at the end if that is still your testimony.

Mrs. CUBIN. If you'll wait just a moment, Mr. Casey, I think there is another copy of that that he could refer to. It will be just a moment, Mr. Banta.

Mr. CASEY. I'm looking at page 45, which is the lower right-hand quadrant. And I'm going to start on line 11. Are you with me?

Mr. BANTA. Got you.

Mr. CASEY. The questioner says: "Do you remember if there was anything any different than what is reflected in Exhibit No. 7?" And Exhibit 7, being the January 5, '98 agreement. You answered, "No, no." You were asked: "You don't remember, or it was not different?" You answered: "I know it was not." You were asked again: "Not any different?" And you answered: "Not any different."

Is that still your testimony?

Mr. BANTA. I'm looking at the language up above. I'm not sure that you're——

Mr. CASEY. What you're looking at isn't what I asked about.

Mr. BANTA. I understand.

[Pause.]

Mr. BANTA. I see the testimony.

Mr. CASEY. So you stand by that testimony?

Mr. BANTA. Well, I'm not sure that my recollection at that time was——

Mr. CASEY. Well, we're looking at what you said, not what you think now about what you said.

Mr. BANTA. I understand. I'm not——

Mr. CASEY. What you said at the time was that you did remember, you did understand.

Mr. BANTA. Well, that was my testimony at the time. I'm not sure if that comports with my current recollection, but that was my testimony at that time.

Mr. CASEY. Thank you. Do you know the name Clayton Dark, Mr. Banta?

Mr. BANTA. I'm sorry?

Mr. CASEY. Do you know the name Clayton Dark?

Mr. BANTA. No, I don't.

Mr. CASEY. Have you ever spoken to him?

Mr. BANTA. No.

Mr. CASEY. I want to go back and explore the recusal issue, but not the dates, because I understand we can't pin that down. The concern that you had of an apparent conflict, why did that not exist in December of '96 when POGO decided to file the lawsuit?

Mr. BANTA. Well, there were a number of factors, the most important of which being that——I think the actual reality of the lawsuit focused my thinking. I don't think there was anything more than that.

Mr. CASEY. All right. Why did that apparent conflict not exist on June 9th, '97, when you indeed filed the lawsuit? That's pretty real.

Mr. BANTA. I didn't say that it—I'm sorry, I'm losing your——

Mr. CASEY. The lawsuit became real on June 9th, 1997 when it was filed——

Mr. BANTA. Right.

Mr. CASEY. [continuing] in the Lufkin Division of the United States District Court for the Eastern District of Texas.

Mr. BANTA. Right.

Mr. CASEY. Did you have no concerns at that time that there was an apparent conflict of interest?

Mr. BANTA. No.

Mr. CASEY. Why——

Mr. BANTA. I didn't know the suit had been filed on that date. I don't think I became aware of when the suit was filed until quite sometime afterwards, and I frankly didn't focus on the issue.

Mr. CASEY. But you knew POGO intended to file the lawsuit?

Mr. BANTA. Sure.

Mr. CASEY. And why did you believe that there would be no conflict apparent or real arising when that lawsuit was filed?

Mr. BANTA. I didn't say that.

Mr. CASEY. But I think we can exclude the possibility that you recused yourself as early as June 9th of '97, can't we?

Mr. BANTA. Oh, sure, yes. Yes.

Mr. CASEY. Okay. When you did give us the chairmanship, Mr. Banta, did you inform the rest of the POGO board of this—did you explain to them the nature of your apparent conflict?

Mr. BANTA. No.

Mr. CASEY. No. When you participated in the meetings of the Department of the Interior's interagency study of California oil valuation, did you disclose to the task force or to Interior, your role at POGO?

Mr. BANTA. No. I only attended one meeting of the task force, and I was just there as an observer, so there was no—I played no role.

Mr. CASEY. After December 9th of 1996, did you ever again speak with Mr. Berman about matters relating to California oil valuation?

Mr. BANTA. I have no recollection of any such conversation.

Mr. CASEY. Do you have any recollection of deciding at the time that, because you had participated in offering Mr. Berman a sum of money, you should no longer deal with him on matters related to your law practice?

Mr. BANTA. Well, first of all, I didn't participate in offering him a sum of money, but I'm not sure I understand—your question is that earlier—I didn't talk to him because of what?

Mr. CASEY. You described—earlier you asked to use the word "offer" in the place of "agreement."

Mr. BANTA. I understand.

Mr. CASEY. It took place in your office in front of you. You did not object to it.

Mr. BANTA. Right.

Mr. CASEY. Were you the proverbial potted plant? You had no participation in what was happening between the three people sitting in front of you?

Mr. BANTA. I didn't—but what's your question?

Mr. CASEY. Did you participate in Ms. Brian's offer to Mr. Berman and Mr. Speir in December of '96?

Mr. BANTA. Yes, I think that's fair.

Mr. CASEY. After participating in that offer to Mr. Berman and Mr. Speir, did you make any decision that it would no longer be proper for you, having participated in making that financial offer, to deal with those gentlemen on matters related to their work and yours?

Mr. BANTA. I did not deal with them in any matter relating to the royalty question after that point.

Mr. CASEY. How about California valuation in general, crude oil valuation in general?

Mr. BANTA. I had no contact with Mr. Berman or Mr. Speir regarding those issues after that point.

Mr. CASEY. So you—I want to clarify—your testimony is—and correct me if I'm wrong—that after December 12 of 1996, you had no contact with Mr. Berman or Mr. Speir on matters involving the valuation of crude oil in California?

Mr. BANTA. Yeah, the substantive issue of crude oil valuation. I don't—I have no recollection of any conversation with them on that issue. I mean, I didn't have any reason to have a conversation with them, which is the reason why I'm saying I didn't. I don't remember any.

Mr. CASEY. So the conversations they recall with you about matters affecting California crude oil valuation are incorrect?

Mr. BANTA. I'm sorry. I'm not following you.

Mr. CASEY. If they recall conversations with you about those subjects, are they incorrect?

Mr. BANTA. I just don't remember them. I mean, if they remember something—I don't know.

Mr. CASEY. But you made no conscious decision that you should no longer—having participated in that financial offer, you should no longer intermingle your work and their work; is that correct?

Mr. BANTA. I had no reason to have a conversation with them on that issue.

Mr. CASEY. I didn't ask you if you had any reason to.

Mr. BANTA. And I don't remember any such.

Mr. CASEY. We have asked earlier if you know the name Ken Cory, and you do. Would you agree that Mr. Cory, Bernard Kritzer, Leonard Brock, Bob Berman and Bob Speir, all shared a general view that crude oil pumped from Federal and Indian leases in California was undervalued for state and Federal royalty purposes?

Mr. BANTA. I'm sorry. There was a name on that list that took my be surprise.

Mr. CASEY. Ken Cory, Bernie Kritzer, Lennie Brock, Bob Berman, Bob Speir.

Mr. BANTA. Yes. They all knew that crude oil was undervalued in California, yes.

Mr. CASEY. A sworn deposition give by Martin Lobel indicates that the business on oil matters given to Lobel, Novins and Lamont by Mr. Cory, made possible the founding of the firm. Do you have any basis to disagree with Mr. Lobel on that?

Mr. BANTA. No, I don't think so. I wasn't there at the time, but——

Mr. CASEY. Okay. When Ms. Brian approached Mr. Cory about taking part in POGO's qui tam lawsuit, were you aware of it before it happened or after it happened?

Mr. BANTA. I don't think I knew that Ms. Brian approached Mr. Cory. I can say that I had conversations with Mr. Cory about his participation in a qui tam action regarding oil—the under-valuation of crude oil and the underpayment of royalties.

Mr. CASEY. Did you ask him to join as a relator?

Mr. BANTA. I did not. I don't remember that my conversation even involved POGO. I simply suggested to Mr. Cory that he would be a good relator in a lawsuit, period. The conversation didn't get any further than that.

Mr. CASEY. You are on the POGO board of directors today, correct?

Mr. BANTA. Yes.

Mr. CASEY. What is the current intent of the POGO board of directors regarding the resumption of payments to Mr. Berman and Mr. Speir if the Justice Department declines to charge them or you with a crime?

Mr. BANTA. It's my recollection at the last—well, first of all, I have recused myself from these discussions, so that my—I'm not the right person to be asking the question. It's my under—well, period.

Mr. CASEY. You seem to have an answer though.

Mr. BANTA. I won't speculate.

Mr. CASEY. I thought you were about to say, "It is my understanding."

Mr. BANTA. I started to speculate.

Mr. CASEY. Have you taken part in any discussions with anybody at POGO about whether—have you shared with them the view you

shared with the Subcommittee a little while ago, that if Mr. Berman and Mr. Speir were to sue to enforce that contract, that they would likely fail?

Mr. BANTA. I'm sorry? Did——

Mr. CASEY. A few minutes ago——

Mr. BANTA. Did I share that view with who?

Mr. CASEY. You gave the Subcommittee your view a few minutes ago that if Mr. Berman or Mr. Speir sued to enforce the agreement, that they would likely fail.

Mr. BANTA. Yes.

Mr. CASEY. Have you shared that view with anybody on the POGO board?

Mr. BANTA. I don't think anybody on the POGO board—the subject never came up. I don't think I had that discussion with anybody. I don't recall it.

Mr. CASEY. Have you had that discussion with Ms. Brian?

Mr. BANTA. I don't think so. I don't recall it.

Mr. CASEY. Did you take part in the consultations with attorneys, I believe, Harmon and Charles Tiefer, in the Fall of 1998 regarding the payments to Mr. Berman and Mr. Speir?

Mr. BANTA. I did not.

Mr. CASEY. Were you aware of them?

Mr. BANTA. Not until relatively recently.

Mr. CASEY. Did you take part in the discussions with the accountants in that time frame about the anticipated payments to Mr. Berman and Mr. Speir?

Mr. BANTA. I did not.

Mr. CASEY. Do you know why Mr. Berman and Mr. Speir were paid interest on the money earned by POGO?

Mr. BANTA. I just learned it from your lips, if it's true.

Mr. CASEY. Do you understand—can you confirm that Mr. Berman and Mr. Speir were also paid a portion of interest earned on POGO's own funds?

Mr. BANTA. I didn't know that.

Mrs. CUBIN. The gentleman yields back. The Chair recognizes the Minority side for 30 minutes questioning.

Ms. LANZONE. Thank you, Madam Chairman. Since it's now 8:55 p.m. at night, we do not have additional questions at this time, so we yield back, yield the Minority's time back.

Mrs. CUBIN. Thank you. Thank you, Mr. Banta, for your testimony. You are released to go.

Mr. BANTA. Thank you, Ms. Cubin.

Mrs. CUBIN. The Chair now calls Danielle Brian to the witness table. Would you please stand and be sworn?

[Witness sworn.]

Mrs. CUBIN. Please be seated.

The Chair recognizes Mr. Brady for the purpose of a motion.

Mr. BRADY. Madam Chairman, under Clause (2)(j)(2)(b) of Rule XI of the Rules of the House of Representatives, I move that Congressman Schaffer, Congressman Brady, Chairman Cubin, members of the Majority, and a Minority member designated by the Ranking Member, be allowed to question the witness, Ms. Brian Stockton, for a total of 60 minutes equally divided.

Mrs. CUBIN. Are there any objections?

[No response.]

Mrs. CUBIN. Hearing none, all in favor say aye.

[Chorus of ayes.]

Mrs. CUBIN. Any opposed?

[No response.]

Mrs. CUBIN. The motion is passed. Mr. Brady?

Mr. BRADY. Yes, Madam Chairman. Under Clause (2)(j)(2)(c) of Rule XI of the Rules of the House of Representatives, I move that Mr. Tom Casey, a Majority staff member, and a Minority member of staff member designated by the Ranking Member, each be allowed to question the witness, Ms. Brian Stockton, for 60 minutes equally divided.

Mrs. CUBIN. Are there any objections?

[No response.]

Mrs. CUBIN. Hearing none, all in favor say aye.

[Chorus of ayes.]

Mrs. CUBIN. The motion passes. The Chair now recognizes Mr. Schaffer.

Mr. SCHAFFER. Thank you, Madam Chairman.

Ms. Brian, on May 4th, the Subcommittee learned that your board abdicated its authority in favor of you and Mr. Banta. In this hearing the Subcommittee expects answers, truthful and complete answers.

You claim that POGO is proud to have provided these so-called public service awards to two public servants. Now the public's elected representatives want a full account of the December 1996 meeting with these public employees. The public wants a full account of the hidden story behind the January 1998 agreement that you signed with two public employees, and the October 1998 restatement of that deal. And the public's elected representatives want to know why you conceived and followed through on a deal to compromise the integrity of the public's government, when your organization is dedicated to exposing and eradicating just this kind of cozy secret dealing.

Before beginning the questions, I'll read to you a quote. "We still believe the best way to keep the government honest is to work with people inside the system, and let the government's own documents speak for themselves." That's the end of the quote. And you wrote those words. Today we'll see if you apply that standard to yourself.

My first question involves testimony that you gave under penalty of perjury on August 8th, 1998. The lawyer questioning you, and the public at large, did not know that seven months earlier you signed a document pledging to give Mr. Berman and Mr. Speir one-third each of the Mobil settlement, then expected as well as all other Johnson v. Shell settlement proceeds received by POGO. Sworn testimony by Mr. Banta confirms that this was simply the written version of details agreed to in December of 1996. By August 8th of 1998 you were fully aware that the Mobil settlement was final and your share was soon to be sent to your lawyers. But when asked specifically if POGO ever shared money with whistleblowers, you answered in the negative, but were careful to use past tense. Do you still consider that a truthful answer?

STATEMENT OF DANIELLE BRIAN STOCKTON, EXECUTIVE DIRECTOR OF POGO

Ms. STOCKTON. Yes, I do, but I'd like to point out the many inaccuracies that you led that question up with. For example, suggesting that my board said that they had abdicated their authority to me and Mr. Banta, when I was listening to my board, and it was quite clear that they were fully supportive, and in no way suggested that they were unaware of what we were doing, and were in fact proud of our decision.

You also characterize this as "hidden", which is fairly ridiculous, considering that we not only disclosed it to the IRS and the Justice Department, but we were talking about having a press conference regarding it.

And finally, you also suggested that we compromised the integrity of the government's procedures, when your witnesses from the Justice Department earlier today made it clear that neither the rule-making—excuse me?

Mr. SCHAFFER. When did you have that press conference? I'm curious.

Ms. STOCKTON. We didn't have it, in fact, because, as the staff is aware, we were torn on the question of whether or not that would in fact solicit people who wanted to come with information simply in order to make money, and when—it's true, Ken Dodd did suggest that that wasn't a good idea, we decided not to do it for that reason. But I think when you hear all of that evidence, it's fairly hard to suggest that this was all a secret.

But I wanted to make the final point. When you had witnesses earlier today from the Justice Department, that the two procedures that the Subcommittee has suggested they're actually concerned about, which are the rule-making and the lawsuit, and the Justice Department has clearly said, as has the Department of the Interior, that those processes have not been compromised at all.

Mr. SCHAFFER. Thank you for that. But your answer is yes, you do believe that—you do consider that a truthful answer, that——

Ms. STOCKTON. Yes, I do.

Mr. SCHAFFER. Based on the tense, I suppose, of the question that was posed to you.

Ms. STOCKTON. The tense and the fact that at that point we hadn't gone through the steps we planned to take and we did take, to insure that what we were doing was done properly.

Mrs. CUBIN. Will the gentleman yield?

Mr. SCHAFFER. Yes, Madam Chairman.

Mrs. CUBIN. As I recall from your deposition, when you were asked this question before, your reaction was: "Well, I can't help it if they asked the wrong question." So it seems truly that you were trying—in my opinion, that you were trying to deceive, that you knew very well that using the past tense didn't answer the question, and you weren't being upfront and honest about it.

Ms. STOCKTON. Well, that could be your opinion. I mean, if you want to talk about deceiving, what about that first bullet when you say POGO——

Mrs. CUBIN. Now——

Ms. STOCKTON. Excuse me. I want to respond——

Mrs. CUBIN. You will please come—you will come to order.

Ms. STOCKTON. No, I'd like to respond to your characterization——

Mrs. CUBIN. You are not in charge——

Ms. STOCKTON. [continuing] that I was intending to deceive.

Mrs. CUBIN. You are not in charge here. Ms. Brian——

Ms. STOCKTON. I can respond to your characterization that——

Mrs. CUBIN. Ms. Brian——

Ms. STOCKTON. [continuing] I intended to deceive.

Mrs. CUBIN. I will maintain order——

Ms. STOCKTON. How can you say that POGO and Banta and Lobel and Novins have financial interests affected by Interior and DOA decisions?

Mrs. CUBIN. Ms. Brian——

Ms. STOCKTON. I'd love to hear what those are.

Mrs. CUBIN. Ms. Brian, you will be found in Contempt of Congress if you do not abide by the rules.

Ms. STOCKTON. Is there a rule that I can't raise my voice?

Mrs. CUBIN. I am in control of this hearing. I will tell you when you can speak, and you will answer the questions, and answer the questions only, please.

Mr. Schaffer?

Mr. SCHAFFER. Thank you, Madam Chairman.

Ms. Brian, under oath you have claimed that Mr. Rutter made a poor choice of words when writing the minutes of the December 9th, 1996 board meeting. You claim that there was never an, quote, "agreement" with Berman and Speir, yet the minutes attribute use of the word "agreement" separately to you and Mr. Banta. The Subcommittee learned two weeks ago that Mr. Rutter authored those minutes while the meeting was still fresh in his mind. The Subcommittee also learned that the board later approved those minutes without altering the description of your arrangement with Berman and Speir as an agreement. Thirteen months later you and Mr. Banta wrote a document signed by you, Mr. Berman, Mr. Speir, and that document uses the term "agreement" to define itself and to describe the pact formed in December of 1996.

Now, in October of 1996 you wrote a letter to Mr. Berman, reassuring him that you would live up to the January agreement. Do you still contend that all of that resulted from a slip of Mr. Rutter's pen?

Ms. STOCKTON. No. I think it would be very unfair to blame Keith for the multiple use of the word "agreement." I think the bottom line on the word "agreement" is that all of us who used it weren't lawyers, didn't realize that others looking at it, hoping to find nefariousness after the fact, were going to place some sort of significance on it. It was simply a memorialization of what I thought was the right thing to do. And that's a word. It didn't have any significance, and it certainly isn't a pact or a contract, which is what I detect you're trying to draw from the word "agreement." I don't know that agreement even has any legal meaning.

Mr. SCHAFFER. But just to clarify your answer, you answered in the negative, that you do not believe that all of that was a result of a mistake by Mr. Rutter; is that correct?

Ms. STOCKTON. That's correct.

Mr. SCHAFFER. Okay. And secondly, you stated that you intended to use the word "agreement" at one point, but now you think that might have been improper.

Ms. STOCKTON. No. I think what I said was that I used the word. Obviously, I am—and you've spent a lot of time trying to find out who wrote it. I wrote it. No one asked me to write it.

Mr. SCHAFFER. Wrote what?

Ms. STOCKTON. The agreement. I wrote it.

Mr. SCHAFFER. Okay.

Ms. STOCKTON. I didn't have any lawyers looking to decide what words to use. I'm not a lawyer. I just thought it was a prudent thing to do, and I used the word "agreement", and it still doesn't, frankly, mean that it has any legal consequences, but it certainly never occurred to me that it would be, after the fact, described as a contract.

Mr. SCHAFFER. Do you remember at any point any discussion of those minutes when they were approved? Were they—was there discussion before they were approved?

Ms. STOCKTON. I don't know that there was a discussion, no.

Mr. SCHAFFER. Do you recall any objection?

Ms. STOCKTON. No, because I said, I don't think—the word doesn't raise any red flag to me as meaning anything particularly.

Mr. SCHAFFER. Who is Clayton Dark?

Ms. STOCKTON. He is one of the legion of lawyers who were in the qui tam case, that was jointly representing us and Benjy Johnson.

Mr. SCHAFFER. And he—well, in April of last year, after learning of your initial payments to Berman and Speir, he asked for and was granted permission from the court, to resign his representation of POGO. Why was that?

Ms. STOCKTON. I believe any communications between myself and Mr. Dark are attorney/client privileged.

Mr. SCHAFFER. Fair enough. Two weeks ago the Subcommittee received credible evidence from Mr. Johnson, Mr. Martineck, and from their lawyers, which indicated that on September 23rd, 1996, you telephoned Mr. Johnson, and stated that you knew his case was still under seal, and asked that he call your lawyers to join forces. And under oath in September of last year, knowing that Mr. Johnson might provide damaging testimony against you in court, you claimed it was the other way around. You swore that you invited him to join your litigation, but when the Committee subpoenaed evidence that would prove your version of the call, you did not turn over a single scrap of paper about the call or the conversation. Do you still admit to calling Mr. Johnson on September 23rd, 1996?

Ms. STOCKTON. I know this will frustrate you, but anything to do with the litigation is not pertinent to this inquiry. But I can tell you—which may satisfy one of the many conspiracy theories that you guys have been operating on—that neither Mr. Berman nor Mr. Speir, and our decision to share money with them, had anything whatsoever to do with any litigation under seal or not. We didn't learn any information about any lawsuits of any kind from Mr. Berman or Mr. Speir. So it's not pertinent because it has nothing to do with our decision to share the money.

Mr. SCHAFFER. So you will not admit to calling Mr. Johnson on September 23rd, 1996?

Ms. STOCKTON. I will not discuss anything that's not pertinent to this inquiry, and because I'm explaining to you it has nothing to do with Berman or Speir. That's why——

Mr. SCHAFFER. I'd like to give you a chance to deny for the Committee at this point in time. Could you refute the claim—my claim that you called Mr. Johnson on September 23rd, 1996?

Ms. STOCKTON. And as I've said, that question is not pertinent to the inquiry because it has nothing to do——

Mrs. CUBIN. The Chair understands that Witness Brian has entered an objection because she believes that the answer to the question is not pertinent to the subject under inquiry. The Chair will address the issue—please stop the clock. The Chair will address the issue and poll the members as to whether they believe the question is pertinent.

The Chair announced in the opening statement the purpose of this hearing—and has repeatedly reiterated why the Subcommittee has jurisdiction and authority. The Chair furthermore announced that we are examining one instance of where such payments were made to Mr. Berman and Mr. Speir by the Project on Government Oversight, and where the money came from.

We are examining where the money for the payments came from—and it was from the lawsuit, so the question is pertinent—the agreements and transactions that resulted in the payments—that is pertinent as well—and the work of the government employees who took the payments, and differing accounts of the payments.

Our purposes for this oversight relates to the integrity of the Executive Branch and regulatory decision-making concerning programs within the Department of Energy, the Department of the Interior, and the Minerals Management Service about matters under the jurisdiction of the Committee on Resources.

I want to make sure that our purpose is clearly understood, because the Chair rules that the question put to the witness can yield an answer that allows the Subcommittee to better understand the subject matter we are examining. Specifically, the answer to the question will reveal facts about the transactions and the true agreements related to the payments and their influence on public domain oil royalty policy; facts about whether the operation of the departments and the Minerals Management Service was subject to influence by the 1996 agreement between POGO, Berman and Speir; facts about the operation of the departments and possible effect on royalty policy and rules recently promulgated; facts related to the formulation of agency responses to congressional proposals for new oil valuation systems such as the royalty-in-kind proposal considered by this Subcommittee; facts related to how the payments were able to be made and accepted by employees who worked in oil royalty policy areas, so that the Subcommittee can formulate legislation, if need be, to raise the standards to ensure that these type of payments and side agreements that bring windfalls to Federal employees will never be allowed to happen again.

The answer is necessary to understand the issues and subject matter of our hearing. The Chair therefore determines that the question relates to a constitutionally legitimate purpose. The Chair

also determines that the question falls within the authority granted to Congress by the Constitution and by the House to the Committee and the Subcommittee. Our jurisdiction comes in part from Article IV, Section 3 of the U.S. Constitution, which states that, quote: "That Congress shall have power to dispose of and make all needful rules and regulations, respecting the territory or other property belonging to the United States." Unquote.

Article I of the Constitution, related to Legislative Branch power, also serves as a basis for our jurisdiction over the subject matter of this hearing. This jurisdiction has been delegated under House Rule X.1 (2)(11), (12), (17) and (19) to the Committee on Resources.

Finally, our jurisdiction is additionally based on Rule X.2 of the House Rules, which confers general oversight authority and jurisdiction over the organization and operation of departments that administer programs under the jurisdiction of the Committee and Subcommittee. Clearly, oil royalties fall within the Subcommittee's jurisdiction, as do factors that influence oil royalty policy development and implementation within the department, which is clearly an aspect of the operation of the department.

The question asked falls within the grant of my authority made by the Constitution to the Congress, then to the Committee, and the Subcommittee by the House.

The Chair informs the witness that the question meets the two requirements of pertinency. We have a constitutionally legitimate legislative purpose, and the question is within the grant of authority to the Subcommittee. Let me furthermore explain why the question is pertinent. Payments, let alone payments of the magnitude received to date by policy advisors in these departments, certainly can and likely will influence agency decisions. We heard testimony at our last hearing that the payments to Berman and Speir were agreed to in 1996 and that the operation of the department helped to develop the POGO/Brian lawsuit, which led to the payments to Mr. Berman and Mr. Speir. Rules and procedures must be in place to prevent the department and its resources from being used to help litigants learn how to frame competing lawsuits, develop their cases, and prosecute their claims, if that in fact is what was done.

But to determine what was done, we must ask the question and have it answered, or you can be held in contempt. That is why this question and all the questions that relate to the subject of this inquiry are pertinent.

Mr. Schaffer, would you please ask the question of the witness again.

Mr. SCHAFFER. Thank you, Madam Chairman.

Do you still admit to calling Mr. Johnson on September 23rd, 1996?

Ms. STOCKTON. Let me explain to you why my organization, in its entirety——

Mr. SCHAFFER. Just a yes or no. Just a yes or no.

Ms. STOCKTON. [continuing] if going to continue to assert our pertinence privilege, because, frankly, I would love to answer your questions——

Mrs. CUBIN. Excuse me, Ms. Brian——

Ms. STOCKTON. I would love to answer these questions because they——

Mrs. CUBIN. The question put to you was whether or——

Ms. STOCKTON. [continuing] deflect all of these silly conspiracies that you keep coming up with.

Mrs. CUBIN. Again, I ask you to——

Ms. STOCKTON. But let me tell you why I have to assert——

Mrs. CUBIN. [continuing] you can be held in contempt if you do not.

Ms. STOCKTON. You've asked me a question, Madam Chairwoman——

Mrs. CUBIN. I warn the witness——

Ms. STOCKTON. [continuing] and I'm answering why I'm not telling you——

Mrs. CUBIN. [continuing] in the voice of the Supreme Court.

Ms. STOCKTON. [continuing] the answer you want.

Mrs. CUBIN. That an erroneous determination on her part that the question is not pertinent, even if made in the utmost good faith, does not exculpate her in court if——

Ms. STOCKTON. I can save you the time. I heard this before.

Mrs. CUBIN. [continuing] if later ruled that the questions were pertinent to the question under inquiry. Would you please answer the question?

Ms. STOCKTON. Let me explain why we are aggressively protecting——

Mrs. CUBIN. Would you please restate the question, Mr. Schaffer?

Mr. SCHAFFER. Thank you, Madam Chairman.

Ms. STOCKTON. [continuing] our defense of pertinence, which is this——

Mr. SCHAFFER. Ms. Brian, do——

Ms. STOCKTON. [continuing] Subcommittee has asked us questions about our tax exempt status——

Mr. SCHAFFER. [continuing] you still admit calling Mr. Johnson on September 23rd of 1996?

Ms. STOCKTON. [continuing] and has asked for phone records for a year and a half period of my home and organization. It has asked for publications written by our board——

Mrs. CUBIN. You're out of order, Ms. Brian.

Mr. Schaffer, would you please ask the question?

Mr. SCHAFFER. Ms. Brian, do you still admit to calling Mr. Johnson on September 23rd, 1996? Yes or no would be fine, would suffice.

Ms. STOCKTON. If I could finish what I was trying to say. The reason we——

Mrs. CUBIN. The witness will answer the question with a "yes" or "no."

Ms. STOCKTON. I will not answer the question because of my pertinence——

Mrs. CUBIN. Again I ask the witness to answer the question, and again I warn the witness that you can be held in contempt if you do not. This is your last chance. Please answer the question.

Ms. STOCKTON. I am going to have to assert our pertinence defense because this Subcommittee has abused its authority and jurisdiction dramatically, and we realize if we open any doors, they'll never end.

Mrs. CUBIN. We don't need a reason. The Chair rules that the question is pertinent, and now I will poll the members. An aye vote determines whether the Subcommittee agrees that the question is pertinent. Mr. Schaffer?

Mr. SCHAFFER. I vote aye.

Mrs. CUBIN. Mr. Brady?

Mr. BRADY. Aye.

Mrs. CUBIN. And the Chairman votes aye. No other members are present, so the vote is unanimous. The question is pertinent, and this is the last time I will ask the question, Ms. Brian. Would you restate the question one more time?

Mr. SCHAFFER. Thank you, Madam Chairman.

Ms. Brian, do you still admit to calling Mr. Johnson on September 23rd, 1996?

Ms. STOCKTON. My objection remains.

Mrs. CUBIN. Would you proceed, Mr. Schaffer?

Mr. SCHAFFER. Your claim that you invited him to join your lawsuit is one that you have made before. Do you still maintain that you invited him to join your lawsuit?

Ms. STOCKTON. Yet again, because this has nothing to do with our decision to share the proceeds from the Mobil settlement with Mr. Berman or Mr. Speir, I'm not going to answer any questions that have nothing to do with——

Mr. SCHAFFER. Is there any evidence you can provide this Committee to corroborate your version of the story as you have previously testified under oath?

Ms. STOCKTON. Which story?

Mr. SCHAFFER. Your previous statement under oath that you called Mr. Johnson on September 23rd, 1996, and that you claimed that you had invited him to join your lawsuit?

Ms. STOCKTON. As I've said, since that has nothing to do with Mr. Berman or Mr. Speir, I'm not answering it.

Mrs. CUBIN. The Chair again rules that the question is pertinent for the same reasons that I've just outlined. I don't need to go through the script again. But do you understand why? Do you understand the ruling of the Chair or would you like me to go through this again?

Ms. STOCKTON. No, I certainly understand.

Mrs. CUBIN. So I must ask you to answer the question again, and Mr. Schaffer, will you please restate the question?

Mr. SCHAFFER. Can you offer any evidence to the Subcommittee to corroborate your version of this phone call on September 23rd, and the claim that you made at that point in time that—or during your previously sworn testimony, that you invited Mr. Johnson to join your suit?

Ms. STOCKTON. As I've said, and in fact, you have the transcripts of 14 hours of testimony that I have given. I am not afraid of answering these questions. It's simply that in this particular forum it's not relevant and not pertinent.

Mr. SCHAFFER. Is it fair to say that you will not provide evidence to this Committee to corroborate your testimony?

Ms. STOCKTON. Not to this Subcommittee I won't.

Mrs. CUBIN. Again I ask the witness to answer the question, and warn the witness that you can be held in contempt if you do not.

Ms. STOCKTON. My objection remains.

Mrs. CUBIN. Once again I will poll the members as to whether or not the Committee determines that the question is pertinent. Mr. Schaffer?

Mr. SCHAFFER. Aye, the information is pertinent.

Mrs. CUBIN. Mr. Brady?

Mr. BRADY. Aye.

Mrs. CUBIN. And the Chair votes aye. The question is pertinent. I warn the witness in the words of the Supreme Court, that an erroneous determination on her part that the question is not pertinent, even if made in the utmost good faith, does not exculpate her, if the court should later rule that the questions were pertinent to the question under inquiry. This is your last chance to answer the question, Ms. Brian.

Ms. STOCKTON. I'm not answering it to the Subcommittee.

Mrs. CUBIN. Mr. Schaffer, would you like to continue?

Mr. SCHAFFER. Thank you, Madam Chairman.

Ms. Brian, can you offer any evidence to this Subcommittee to corroborate your version of this phone call and the nature of it as you provided in your sworn testimony in September of last year?

Ms. STOCKTON. Are we back to the Benjy Johnson phone call?

Mr. SCHAFFER. Yes.

Ms. STOCKTON. Well, I mean, you're wasting everyone's time, because I'm not going to talk about it.

Mr. SCHAFFER. So the answer is no, you cannot provide evidence to the Committee?

Ms. STOCKTON. The answer is I'm not talking about something that's not pertinent to your inquiry. You can skip down to the next set of questions. I'm just not going to do it.

Mr. SCHAFFER. You're not going to do it? Very good, thank you.

Last November, Henry Banta gave a deposition under oath in a successful effort to defend your continued sharing in cash settlements paid in Johnson v. Shell. A central issue in that hearing was whether paying Mr. Berman and Mr. Speir constituted paying witnesses in that case, and that Mr Banta, an attorney of long experience and great expertise in oil valuations, stated that both Berman and Speir lacked the knowledge to be—the knowledge to be fact or expert witnesses—or expert witnesses in Johnson v. Shell. Do you agree with him?

Ms. STOCKTON. I actually am not a lawyer, so I don't know what it takes for someone to be a witness, but I do know that the Justice Department has said that they never were going to be witnesses.

Mr. SCHAFFER. Well, do you have any reason to disagree with Mr. Banta's——

Ms. STOCKTON. Well, as I said, I'm not——

Mr. SCHAFFER. [continuing] assessment?

Ms. STOCKTON. [continuing] in a position to judge, because I'm not a lawyer. But if Mr. Banta, who is a lawyer, and the Justice Department also say that, then——

Mr. SCHAFFER. I understand the explanation of what you are or are not, but do you have any reason for disagreeing with Mr. Banta?

Ms. STOCKTON. Well, I don't speculate on things I don't have knowledge, so I can't say whether they would or not. I'm just tell-

ing you what I know, which is that those two parties have suggested that.

Mr. SCHAFFER. If you have any reason to disagree, would you share it with the Committee now?

Ms. STOCKTON. I don't understand why you keep asking the same question. I mean, I'm not a lawyer.

Mr. SCHAFFER. Because I'd like an answer.

Ms. STOCKTON. I don't know what it takes—I don't know what it takes for someone to be a witness.

Mr. SCHAFFER. Did you have any reason to disagree? Sounds like you did not. That's the way I'm hearing you. Am I wrong, or did you have a reason to disagree?

Ms. STOCKTON. I'm just—I'm not going to answer that because I don't know what it takes to be a witness. To answer something like that I feel like I would have to make my own judgment, and I can't make my own judgment on that.

Mr. SCHAFFER. So you have nothing to go on as far as making a judgment on that matter?

Ms. STOCKTON. I mean, I really don't mean to be impertinent, but as I've said, I'm not a lawyer. I don't know what it takes for someone to be a witness.

Mr. SCHAFFER. Well, not being a lawyer, do you have any reason to disagree with Mr. Banta's assessment of the credibility of Mr. Berman and Speir, and their usefulness in the case?

Ms. STOCKTON. I can keep saying the same thing over and over again. I am not going to speculate about it. I don't know what it takes to be a witness, but I do know that Justice said they never were going to be witnesses.

Mr. SCHAFFER. In one of your own depositions under oath you were asked about some 11,000 pages of oil-valuation documents collected by POGO and turned over to the oil company defendants. Now, among those 11,000 pages, the only original work done by POGO were newsletters, press releases, and reports provided to supporters. There appeared to be no independent analysis or investigation of oil trading done by POGO. At the time, you conceded that to be true. Do you still take that position?

Ms. STOCKTON. At that time did we have the—well, let's see—we had asked Peter Ashton to do that one analysis for our first report, but are you asking analysis done by myself?

Mr. SCHAFFER. Independent analysis done by POGO.

Ms. STOCKTON. Well, as I said, we asked Peter Ashton to do that analysis for us, so I'm not sure if that counts in what you're asking.

Mr. SCHAFFER. Well, it wasn't your analysis; it was his; is that correct?

Ms. STOCKTON. Correct. Again, because I am not an expert in oil—still I'm not—we rely on documentation provided by other people, our experts.

Mr. SCHAFFER. At the time you gave that testimony under oath, you said that it was true that POGO did not contribute any independent information in those 11,000 documents. Do you still take that position?

Ms. STOCKTON. I think that's correct.

Mr. SCHAFFER. Think it is correct. Two weeks ago, and today, Mr. Banta could not recall when he recused himself from POGO

board discussions of the lawsuit and the payments to Berman and Speir. Do you know when that happened?

Ms. STOCKTON. I don't know when it happened, but I certainly do know it did happen.

Mr. SCHAFFER. Can you tell us how you came to be aware of that?

Ms. STOCKTON. Because I know that it is in our minutes.

Mr. SCHAFFER. It's in your minutes?

Ms. STOCKTON. Yes.

Mr. SCHAFFER. Can the Committee have them?

Ms. STOCKTON. Well, we turned them over to our attorneys, and they judged what was pertinent to your subpoenas, so if you don't have them, our attorneys made that judgment.

Mr. SCHAFFER. Could you direct them to give those minutes to the Committee?

Ms. STOCKTON. I leave the legal decisions up to my attorneys.

Mr. SCHAFFER. Can you direct—could you direct them to give those to the Committee?

Ms. STOCKTON. No. If they made a judgment that it wasn't pertinent to your subpoena, wasn't relevant to your subpoena, then I'm going to——

Mr. SCHAFFER. Without a subpoena, would you give it voluntarily, or does it require a subpoena?

[Conferring with counsel.]

Ms. STOCKTON. I think because of the conduct over the last year by this Subcommittee, I'm not inclined to be voluntarily doing anything.

Mr. SCHAFFER. Was the board notified of this recusal?

Ms. STOCKTON. It was at the board meeting that he recused himself.

Mr. SCHAFFER. Did he leave the room during relevant discussions?

Ms. STOCKTON. As I recall.

Mr. SCHAFFER. As you recall, he did?

Ms. STOCKTON. Uh-huh.

Mr. SCHAFFER. At what function as chairman on these matters—I'm sorry. Who functioned as chairman on these matters in place of Banta?

Ms. STOCKTON. As you may have seen from my board's testimony two weeks ago, it's not a formal group. So I don't know that anyone actually took over the role of chairman. I generally—when Hank was the chairman, I generally, you know, ran through the agenda for those meetings.

Mr. SCHAFFER. You did?

Ms. STOCKTON. I guess I continued——

Mr. SCHAFFER. When you say it's not a formal group, you mean it doesn't act, conduct itself with formal rules, or——

Ms. STOCKTON. It conducts itself very professionally, but there wasn't a concern about titles and who was sitting at the front of a table where there were discussions.

Mr. SCHAFFER. So the term you just used, "formal", relates to the conduct, not any legal standing or anything like that, I take it?

Ms. STOCKTON. I suppose so.

Mr. SCHAFFER. Okay. Let's see. On the May 4th hearing, nobody on your board would admit to knowing when and why Mr. Banta gave up the board chair. When did Mr. Banta give up his post?

Ms. STOCKTON. I don't recall that testimony at all. I was here. What are you referring to? Can you point to where that is in the testimony from the last——

Mr. SCHAFFER. No, I can't. But if you can't recall it, can you recall anybody being knowledgeable of when and why Mr. Banta gave up the board chair?

Ms. STOCKTON. It was sometime in '98, which I thought you did have the minutes of when he—well, our attorneys again decided that it wasn't pertinent to your subpoenas. And he had been the chairman for over eight years, and because—I think the second factor was simply because the litigation was becoming more serious, that because he had recused himself from it, it became more important to have someone who had not recused themselves as chairman.

Mr. SCHAFFER. So once again, when do you recall that he gave up the chair or gave up the post?

Ms. STOCKTON. I recall it sometime in '98, but I don't remember when in '98.

Mr. SCHAFFER. Sometimes in '98. Was it about the time, or the same day, perhaps, that Mr. Hunter rose to the chairmanship?

Ms. STOCKTON. Oh, it would be the same day, certainly.

Mr. SCHAFFER. It was the same day, sometime in 1998. Ms. Brian, the Committee is concerned that POGO has not provided complete and unaltered board of director meeting minutes concerning the matters under inquiry. Did the board discuss the lawsuit or the payments to Berman and Speir on any occasion other than on December 9th, 1996 and October 27th, 1998?

Ms. STOCKTON. If those are the minutes you have, I believe those are the only—certainly those are the only minutes where they were discussed. And that raises something else that I found fairly outrageous in the conduct of the Subcommittee, which was a press release sent by the Subcommittee, accusing us of obstruction of justice. It turned out it was because our board minutes had been excerpted rather than redacted, and so the Subcommittee didn't get four blank pages with the section that was relevant. And based on that, a press release accusing us of obstruction of justice, I find really extraordinary and very unfair.

Mrs. CUBIN. I have to object to one thing: that the behavior of this Subcommittee over the last year prompted you to hold the Congress in contempt. We were only——

Ms. STOCKTON. No. Madam Chairman, I do not hold the Congress in contempt.

Mrs. CUBIN. This was only transmitted to us two months ago, so we haven't even been working on it for a year.

Ms. STOCKTON. You're right.

Mrs. CUBIN. Go ahead, Mr. Schaffer.

Ms. STOCKTON. It's the full Committee that has operated this way, not just the Subcommittee, and I do not hold the full Congress in contempt.

Mr. SCHAFFER. You mentioned that it's your general agreement that the board did discuss the lawsuits of payments—or the pay-

ments to Berman and Speir on December 9th and December 27th. Do you recall any other—any other meetings where these discussions might have taken place?

Ms. STOCKTON. December 27th I'm not familiar with. I think our offices were closed.

Mr. SCHAFFER. December 9th, October 27th.

Ms. STOCKTON. Oh. And what was——

Mr. SCHAFFER. December 9th of 1996, December—or October 27th, 1998.

Ms. STOCKTON. And what was the question? Do I recall any——

Mr. SCHAFFER. Do you recall any other occasions when the board might have discussed the lawsuit or payments to Berman and Speir?

Ms. STOCKTON. Well, as—I believe it was Dina Rasor on our board, who testified, the board members speak with us frequently outside of board meetings, and so I'm sure that many board members on occasion were in touch with us and were aware of what was going on.

Mr. SCHAFFER. Can you explain why we were only given short segments of only two meetings almost two years apart?

Ms. STOCKTON. Because those are the only times that our board, in a meeting, talked about this. There was no—let me explain something, because I know you find this so hard to believe. There was no discomfort within the organization or on the board that there was anything wrong or improper about our decision to share the money with these guys.

Mr. SCHAFFER. So did the board never——

Ms. STOCKTON. Let me just finish because maybe it will help you understand. You know, there's been such an effort to find nefariousness and mal-intent. Because our organization has always worked with whistleblowers and we've never filed any kind of lawsuit—false claims lawsuit before, and there's been so much made of, you know, you've never had public——

Mr. SCHAFFER. Ms. Brian, I appreciate the detail, but I'm under limited time here, and this is really more information than I want. Let me go into the next question. Did the board never visit——

Ms. STOCKTON. Maybe it doesn't fit your conspiracy theories, but it's the truth.

Mr. SCHAFFER. Did the board never visit these matters within that two-year time period?

Ms. STOCKTON. As I said, there were many board members, who would, on occasion, talk to us, but not formally during board meetings.

Mr. SCHAFFER. When did you first learn that POGO had endangered its tax exempt status by launching a new major program without amending the Form 1023, and especially by undertaking a lawsuit which would be seen as designated—excuse me—designed to enrich Mr. Brock, Mr. Berman and Mr. Speir?

Ms. STOCKTON. Well, we certainly never learned that we had endangered our tax status, because we haven't.

Mr. SCHAFFER. Did POGO amend its IRS 1023 form?

Ms. STOCKTON. That's not pertinent to the inquiry.

Mr. SCHAFFER. Let me ask again. Did POGO amend its IRS Form 1023 to reflect a new program of cash public service awards exceeding three times the annual budget?

[Conferring with counsel.]

Ms. STOCKTON. Could you repeat the question, please?

Mr. SCHAFFER. Did POGO amend its IRS Form 1023 to reflect a new program of cash public service awards exceeding three times the annual budget?

Ms. STOCKTON. No, we don't have to. No, we didn't.

Mr. SCHAFFER. You did not amend——

Ms. STOCKTON. No, we did not.

Mr. SCHAFFER. POGO did not amend its IRS 1023 form?

Ms. STOCKTON. No. And that raises something that happened in the last Committee meeting that needs to be cleared up. The Committee has had the relevant tax forms from us for over a year. You've had our 1998 990s——

Mr. SCHAFFER. Nonetheless——

Ms. STOCKTON. [continuing] which reflect the fact that we did—we recorded that we received the money and the fact that we distributed the money to both Mr. Berman and Mr. Speir.

Mr. SCHAFFER. Just to be clear, you did not amend your tax form?

Ms. STOCKTON. No, we didn't, but I think that the—in the last hearing, when the Committee disingenuously badgered Keith Rutter over something the Committee knew it already had, I found really appalling.

Mr. SCHAFFER. In December 1991, when the IRS granted POGO tax exempt status, you were specifically cautioned that if cash distributions are made to individuals, POGO must create a complete written record, including the purpose of awards and the manner of selection. That file must also fully detail the relationship of any awardee to any director of POGO. Two weeks ago your board of directors could not recall any such documentation supporting the selection of Mr. Berman or Mr. Speir for your public service awards. Please listen carefully, because I'm not going to ask about compliance with the IRS requirements. I'm asking you, Ms. Brian, whether such documentation exists, and why it was not produced under any subpoena from this Committee?

Ms. STOCKTON. You're making reference to documentation I'm completely unfamiliar with. That we were required to do what?

Mr. SCHAFFER. Whether—well, the documentation that I'm asking about——

Ms. STOCKTON. These are 990s?

Mr. SCHAFFER. No.

Ms. STOCKTON. Then what are you talking about?

Mr. SCHAFFER. It's a separate requirement. Under tax exempt status you were specifically cautioned that if cash distributions are made to individuals——

Ms. STOCKTON. Who cautioned me?

Mr. SCHAFFER. [continuing] POGO must——

Ms. STOCKTON. Who——

Mr. SCHAFFER. The IRS, ma'am.

Ms. STOCKTON. No, they haven't.

Mr. SCHAFFER. In 1991 they did. That POGO must create a complete written record, including the purposes of awards and the manner of selection. That file must also fully detail the relationships of any awardee to any director of POGO.

Now, two weeks ago your board could not recall any such documentation supporting the selection of Mr. Berman or Mr. Speir for your public service awards.

Ms. STOCKTON. Well, I don't know——

Mr. SCHAFFER. So I want to know——

Ms. STOCKTON. [continuing] if the 1991 regulations that you're talking about are still in effect, but I can guarantee you there are accountants who are experts on tax exempt law, were very careful, as we went through this process, to insure we fulfilled all requirements. So I totally trusted our accountants had us do whatever we needed to do. And I'm not familiar with those requirements at all.

Mr. SCHAFFER. You believe—your guarantee that you just made to the Committee is one that we—that should place confidence——

Ms. STOCKTON. I'm not sure I said "guarantee." I said we had our accountants, who are experts in this—and I don't think Mr. Casey is.

Mr. SCHAFFER. Do you recall making any documentation at all?

Ms. STOCKTON. I don't recall that there's any requirement for such documentation, never heard of such a thing.

Mrs. CUBIN. The time of the Majority has expired. Since there are no Minority members, the time is yielded back. And now I will recognize Mr. Casey for 30 minutes of questioning by staff.

Mr. CASEY. Thank you, Madam Chairman. I believe Mr. Brady has a question.

Mr. BRADY. Thank you, Mr. Casey, Madam Chairman.

Mrs. Brian Stockton, you had knowledge of the Johnson v. Shell qui tam lawsuit while it was under seal, didn't you?

Ms. STOCKTON. As I've said before, that has nothing to do with our decision to—the question has nothing to do with our decision to share——

Mr. BRADY. Mrs. Stockton, you had knowledge, personal knowledge of the Johnson v. Shell qui tam lawsuit while it was under seal. Do you disagree with the accuracy of that statement?

Ms. STOCKTON. We're just going to go through this whole exercise all over again.

Mr. BRADY. Well, really, for a group that prides itself in honesty and openness by exposing——

Ms. STOCKTON. I've answered these questions over 14 hours in depositions. You already got the transcripts.

Mr. BRADY. You have every opportunity to answer simple questions.

Ms. STOCKTON. You already know my answers. You've got the transcript. But simply, this is not the forum for your question.

Mr. BRADY. It is not the forum of your choosing, but it is a constitutional forum. And the bottom line is, what we all know here, is that you as a special interest contracted with two government insiders to provide information for a lawsuit that legally you were not to know of. You then agreed and confirmed repeatedly that you would split the proceeds of that lawsuit with these two government

insiders. You specifically went out of your way to count it as a award, which is ludicrous. And now you——

Ms. STOCKTON. Why is that ludicrous, Mr. Brady?

Mr. BRADY. [continuing] have basically——

Ms. STOCKTON. Why is that so hard for you to understand?

Mrs. CUBIN. The witness will please just answer the question.

Ms. STOCKTON. No, I'm sorry. I keep getting——

Mrs. CUBIN. The witness doesn't have——

Ms. STOCKTON. [continuing] interrupted.

Mrs. CUBIN. [continuing] right to ask the panel questions.

Ms. STOCKTON. I want to understand why that's ludicrous to you, that we would think it was the right thing to do to share the money with these guys? Why can't you understand that?

Mr. BRADY. Madam Chairman, I think this is actually helpful, because your asking that question, why is it ludicrous, tells me that you no longer believe that these questions aren't pertinent. You want to know an answer about why we are questioning you. So let's go down that line of information. Now that you said you want to know the information, let's talk about it.

Ms. STOCKTON. No. I said what—I want to know why you find it's ludicrous that we shared the money with these two men? And I'll talk to you all night about why we shared the money, about these two men.

Mr. BRADY. You had a signed contract.

Ms. STOCKTON. It is not a contract——

Mr. BRADY. Because you've given awards——

Ms. STOCKTON. Are you—you know——

Mr. BRADY. You've never given money——

Ms. STOCKTON. [continuing] it's not a contract. There was no consideration. You know it's not.

Mr. BRADY. No, actually, the bottom line——

Ms. STOCKTON. This Committee continues to say things you know aren't true.

Mr. BRADY. No, you did not give this as an award. You have not given $383,000 to other—other of your "beyond the headlines" award winners, have you? And they have done wonderful——

Ms. STOCKTON. We had never filed a qui tam lawsuit before.

Mr. BRADY. You didn't provide an award because—out of graciousness. It was exactly one-third of your share of your lawsuit, plus—exactly one-third, which is exactly what was testified was the agreement, which was then confirmed four times and then executed by you. Everyone knows——

Ms. STOCKTON. Do you know why I did one-third?

Mr. BRADY. Everyone in America knows that that is ludicrous. And for an agency that—an organization that claims to be for open and forthright government, to stonewall behind pertinency issues, when all you simply need to do is be as truthful as you insist others be, and open as you insist others be. To me, it is so hypocritical, when all you need to do is to tell the truth and to clear your name. But you won't, so let me finish.

Ms. STOCKTON. Mr. Brady——

Mr. BRADY. You had—who imparted——

Ms. STOCKTON. [continuing] you know these questions have already been answered by me.

Mr. BRADY. [continuing] or related knowledge of the Johnson v. Shell lawsuit to Mr. Banta while the suit was under seal. Do you disagree with the accuracy of that statement?

Ms. STOCKTON. I'd like to answer the last point you were making about the one-third, one-third, as though there was some significance to that. That was, frankly, something I just came up with off the top of my head because it seemed the even share. And also the issue that's been raised before on interest, was completely my idea, because when we got the money and we saw—because I had never dealt with that much money—how quickly interest grows, I thought that was a significant amount of money, and that the right thing to do would be to share that as well. So that was not anyone else's idea but my own.

Mr. BRADY. Well, it doesn't matter whose idea it was. The agreement was executed, confirmed, and the checks were cashed.

Ms. STOCKTON. I wrote it. I wrote it. Those were my—that was my idea completely.

Mr. BRADY. Okay. So you're saying it is pertinent about the agreement in your discussion of it, but it is not pertinent for us to ask questions about that agreement and how you arrived at it?

Ms. STOCKTON. No, it is absolutely pertinent, obviously, about this agreement.

Mr. BRADY. Good, good. Then let's do that.

Ms. STOCKTON. About the agreement.

Mr. BRADY. Let's do that.

Ms. STOCKTON. Or any sharing with Berman and Speir.

Mr. BRADY. The agreement dealt with the lawsuit that you filed. The question is: how did you develop the information for the lawsuit for the agreement which you now agree is pertinent.

Ms. STOCKTON. The agreement is pertinent.

Mr. BRADY. The question to you: did you have personal knowledge of the Johnson v. Shell qui tam lawsuit while it was under seal?

Ms. STOCKTON. I can say that neither Mr. Berman nor Mr. Speir gave me any information about any lawsuit or to help me file any lawsuit.

Mr. BRADY. Okay. The question is: did you have personal knowledge of the Johnson v. Shell qui tam lawsuit while it was under seal?

Ms. STOCKTON. Well, to get my answer, which is under oath, you can refer to the testimony I've already given on the subject, but in this forum I cannot——

Mr. BRADY. But for openness and honesty, is it——

Ms. STOCKTON. No, I can't, because this Subcommittee—I have to protect my organization from this Subcommittee's insatiable desire to go into every corner of our——

Mr. BRADY. Excuse me. I'm not asking for the whole organization. I'm asking you. Now that you have said it is pertinent about how you reached this agreement, let's start at the beginning. Did you have personal knowledge of the Johnson v. Shell qui tam lawsuit while it was under seal? Yes or no.

Ms. STOCKTON. And my answer is, it is pertinent.

Mr. BRADY. Thank you. So yes or no.

Ms. STOCKTON. No. My answer is it is pertinent with regards to Mr. Berman and Mr. Speir, and neither of those gentlemen had anything to do with that lawsuit.

Mr. BRADY. Actually, the question isn't about Mr. Berman and Mr. Speir; it is only about your personal knowledge.

Ms. STOCKTON. But that's my point, because that is the only part that's pertinent, is with regards to our sharing money with Mr. Berman and Mr. Speir.

Mr. BRADY. You said—you just testified you came up with one-third, one-third, one-third split on how to divvy up this lawsuit. So let's go back and ask you, since it was your idea and you initiated it. So, as the initiator, did you have personal knowledge of the Johnson v. Shell lawsuit under—while it was under seal? Simple yes or no.

Ms. STOCKTON. The simple answer is you can find the answer to that in my transcript.

Mr. BRADY. Is it yes or no?

Ms. STOCKTON. And I'm not answering it in this forum. I've already answered it.

Mr. BRADY. It is in your transcript.

Ms. STOCKTON. Right.

Mr. BRADY. So we must dig through it, but for the sake of——

Ms. STOCKTON. Well, I'm sure Mr. Casey has the answers there already.

Mr. BRADY. [continuing] timeliness, is the answer yes or no?

Ms. STOCKTON. I have to protect our interest and preserve our defenses against this Subcommittee.

Mrs. CUBIN. Ms. Brian, it is—it has already been ruled as pertinent. Pertinency is decided by the Committee, not the witness. That is the authority of the Committee to do that, and the Committee has determined that the question is pertinent. So——

Ms. STOCKTON. But if you want the answer, you've already got it. You've got the answer in your——

Mr. BRADY. For the sake of brevity, what is the answer?

Mrs. CUBIN. Now, this—I mean this really is silly. You do realize that you can be held in contempt for not answering this question, and——

Ms. STOCKTON. I'm not doing this lightly, Madam Chairman—I'm sorry—Madam Chairwoman, but the reality is, this Subcommittee has been so abusive in its treatment of us that we have to be very aggressive in protecting our rights.

Mrs. CUBIN. Ms. Brian, that is irrelevant to the issue of pertinency.

Ms. STOCKTON. No, it's really not irrelevant.

Mrs. CUBIN. So I will go through the script. We have to do this properly so that when contempt charges are—yes, please restore some time back on the clock for all this—so that when contempt charges are pursued, then we will have done it correctly. So forgive me—I guess you don't need to forgive me; you are requiring this.

The Chair understands that the Witness Brian has entered an objection because she believes the answer to the question is not pertinent to the subject under inquiry. The Chair will address the issue and poll the members as to whether they believe the question is pertinent.

The Chair announced in the opening statement that the purpose of this hearing—the Chair announced the purpose of this hearing, and has repeatedly reiterated why this Subcommittee has jurisdiction and authority. The Chair furthermore announced that we are examining one instance of where such payments were made to Mr. Berman and Mr. Speir by the Project on Government Oversight.

We are examining where the money for the payments came from; the agreements and transactions that resulted in the payments; the work of the government employees who took the payments and differing accounts of the payments.

Our purposes for this oversight relates to the integrity of the Executive Branch and the regulatory decision-making concerns within the Department of Energy, the Department of the Interior, and the Minerals Management Service about matters under the jurisdiction of the Committee.

I want to make sure that the purpose is clearly understood, because the Chair rules that the question put to the witness can yield an answer that allows the Subcommittee to better understand the subject matter we are examining.

The answer is necessary to understand the issues and subject matter of our hearing. The Chair therefore determines that the question relates to a constitutionally legitimate purpose. The Chair also determines that the question falls within the authority granted to Congress by the Constitution and by the House to the Committee and Subcommittee. Our jurisdiction comes in part from Article IV, Section 3 of the U.S. Constitution, which states, quote: "That Congress shall have power to dispose of and make all needful rules and regulations, respecting the territory or other property belonging to the United States." Unquote.

Article I of the Constitution, related to Legislative Branch power, also serves as a basis for our jurisdiction over the subject matter of this hearing. This jurisdiction has also been delegated under House Rule X.1(l)(11), (12), (17) and (19) to the Committee on Resources.

Finally, our jurisdiction is additionally based on Rule X.2 of the House Rules, which confers general oversight authority and jurisdiction over the organization and operation of the departments that administer programs under the jurisdiction of the Committee and Subcommittee. Clearly, oil royalties fall within the Subcommittee's jurisdiction, as do factors that influence oil royalty policy development and implementation within the department, which is clearly an aspect of the operation of the department.

The question asked falls within the grant of authority made by the Constitution to the Congress, then the Committee, and the Subcommittee by the House.

The Chair informs the witness that the question meets the two requirements of pertinency. We have the constitutionally legitimate legislative purpose, and the question is within the grant of authority to the Subcommittee. Let me further explain why the question is pertinent. Payments, let alone payments of the magnitude received to date by policy advisors in these departments, certainly can and likely will influence agency decisions. We heard testimony in the last hearing that the payments to Berman and Speir were agreed to in 1996 and that the operations of the department were

used to develop the POGO/Brian lawsuit, which led to the payments to Mr. Berman and Mr. Speir. It is pertinent because the funds that made the payments came from the *Johnson v. Shell* case, and the subject matter of the suit is in our jurisdiction.

Rules and procedures must be in place to prevent the department and its resources from being used to help litigants learn how to frame competing lawsuits, develop their cases, and prosecute their claims, if in fact that's what was done.

But to determine what was done, we must ask the question and have it answered, or you can be held in contempt. This is why the question and all questions that relate to the subject of this inquiry are pertinent.

Mr. Brady, would you please restate the question?

Mr. BRADY. Yes. Do you have—Ms. Stockton, do you have any knowledge, personal knowledge or otherwise, of the *Johnson v. Shell* qui tam lawsuit while it was under seal?

Ms. STOCKTON. My objection stands.

Mrs. CUBIN. I again ask the witness to the—I again ask the witness to answer the question, and remind the witness that you can be held in contempt if you do not.

Mr. Brady, would you state the question one more time?

Mr. BRADY. Ms. Stockton, do you have any knowledge, personal knowledge or otherwise, of the Johnson v. Shell qui tam lawsuit—I have trouble pronouncing—while under—while it was under seal?

Ms. STOCKTON. My objection stands.

Mrs. CUBIN. I warn the witness in the words of the Supreme Court, that, quote, "An erroneous determination on her part that the question is not pertinent, even if made in the utmost good faith, does not exculpate her if the court should later rule that the questions were pertinent to the question under the inquiry." Cite, *Watkins v. United States*. This is your last chance, Ms. Brian. Would you please answer the question?

Ms. STOCKTON. My objection stands.

Mrs. CUBIN. Would you proceed, Mr. Brady?

Mr. BRADY. Yes. I will note that the witness did agree to answer this question by referring to other documents, and so it seems very hypocritical that she would not simply answer this question.

Ms. STOCKTON. Can I ask what document you're referring to?

Mr. BRADY. You referred to it. You said that you had provided the answer to the Committee in earlier testimony.

Ms. STOCKTON. So?

Mr. BRADY. Surely your memory is not that short.

Ms. STOCKTON. I said I've never answered to the Subcommittee those questions.

Mr. BRADY. You directed us—to answer that question that I asked you, you directed us to our own records which you have provided us. Do you say you didn't?

Ms. STOCKTON. Oh, I didn't provide you anything. No.

Mr. BRADY. What's that?

Ms. STOCKTON. You're talking about the transcripts of the oil companies deposition.

Mr. BRADY. Okay. Well, let me wrap it up real quickly for you. Ms. Stockton, you imparted or related knowledge of the Johnson v.

Shell lawsuit to Mr. Banta while the suit was still under seal. Do you disagree with the accuracy of that statement?

Ms. STOCKTON. I'm going to continue to object to that line of questioning.

Mr. BRADY. Mrs. Stockton, you had knowledge gained from Department of Interior and department of Energy employees, both current and former employees, about the Johnson v. Shell lawsuit while it was under seal. Do you disagree with the accuracy of that statement?

Ms. STOCKTON. I can answer that question because it is—if you're referring to Mr. Berman and Mr. Speir, the answer is no.

Mr. BRADY. That you had no knowledge?

Ms. STOCKTON. No.

Mr. BRADY. That is a pertinent question then?

Ms. STOCKTON. Because you're asking about Mr. Berman and Mr. Speir giving me any information. That's what I told you, if you ask me about them. They did not tell me anything about any losses including Johnson v. Shell.

Mr. BRADY. And so no knowledge, no information developed by Mr. Berman or Mr. Speir, or included in their purview of work responsibilities, wasn't provided for or incorporated into the POGO qui tam lawsuit?

Ms. STOCKTON. Say that again, because, of course, during the years that I was learning about the underpayments, both Mr. Berman and Mr. Speir explained a lot to me about how it works, and so I certainly can't separate out what I learned and how things worked from them and how that ended up in the lawsuit ultimately, but certainly——

Mr. BRADY. Actually, the question wasn't on the process. The question was: is there information contained in your lawsuit that was provided by or in the work purview of Mr. Berman and Mr. Speir—not the process; that's not included in the lawsuit—the facts of your lawsuit.

Ms. STOCKTON. I don't believe so, no.

Mr. BRADY. That's a no?

Ms. STOCKTON. I said I don't believe so. I haven't looked at that lawsuit in years.

Mr. BRADY. Okay. So since we are dealing with the pertinency of your knowledge of this lawsuit, again I'll ask you——

Ms. STOCKTON. No. Pertinence was—you were asking about whether Mr. Berman or Mr. Speir, right?

Mr. BRADY. Yes.

Ms. STOCKTON. Okay.

Mr. BRADY. Now, the pertinency again, we probably won't go back over that. Final question. Do you have any personal knowledge of a phone call from U.S. Attorney Mike Bradford to Mr. Benjy Johnson prior to the filing of your qui tam lawsuit?

Ms. STOCKTON. I guess that's also not pertinent.

Mr. BRADY. Thank you, Madam Chair.

Mrs. CUBIN. The chair recognizes Mr. Casey.

Mr. CASEY. Thank you, Madam Chairman.

Who did tell you about *Johnson v. Shell* before you filed your suit?

Ms. STOCKTON. That's not a pertinent question.

Mr. CASEY. Who told you about Mr. Wright's suit before you filed your own?

Ms. STOCKTON. Mr. who?

Mr. CASEY. Gene Wright.

Ms. STOCKTON. Oh. That's not pertinent.

Mr. CASEY. Do you know the name Pat Holloway?

Ms. STOCKTON. Yes.

Mr. CASEY. Have you ever had a phone conversation with Mr. Holloway?

[Conferring with counsel.]

Ms. STOCKTON. That's not pertinent. I'm sorry. I didn't—that has nothing to do with Mr. Berman or Mr. Speir at all.

Mr. CASEY. Do you acknowledge having a telephone conversation with Mr. Holloway in which you admitted to having knowledge of more than one sealed oil royalty qui tam suit?

Ms. STOCKTON. I'm sorry. What?

Mr. CASEY. Do you admit to having a conversation with Mr. Holloway, telephone conversation, in which you admitted to having knowledge of more than one sealed qui tam oil royalty suit.

Ms. STOCKTON. That's not pertinent.

Mr. CASEY. Do I correctly understand something you said earlier, that the only decision that has been made by POGO is to share the Mobil settlement with Mr. Berman and Mr. Speir?

Ms. STOCKTON. Originally our intent had been to share any money received through the lawsuit. We had no idea how settlements would fall out. But once we discovered that Justice had concerns about our deciding to share with them, we obviously decided that we were going to wait while we did that again, and make sure that Justice was completely satisfied.

Mr. CASEY. What is POGO's current intention regarding——

Ms. STOCKTON. Our intention is to do what Justice tells us to do.

Mr. CASEY. I don't imagine the Justice Department would ever tell you to share with Mr. Berman and Mr. Speir.

Ms. STOCKTON. Well, if the Justice Department says they have no concerns about it, then I—you know, we still have only thought it was the honorable thing to do, and if Justice says they have no concerns, then they have no concerns.

Mr. CASEY. Well, I don't think they'll ever say, "We have no concerns", but if they conclude their investigation without charging POGO or Mr. Berman or Mr. Speir with a crime, will POGO resume one-third payments to Mr. Berman and Mr. Speir from oil royalty settlements?

Ms. STOCKTON. I can't commit the board. We'll have to revisit that at that time. But the board continues to believe that it was the honorable thing to do, so.

Mr. CASEY. Are you saying now that the board has made no decision regarding that as yet?

Ms. STOCKTON. The board's decision is to wait and see what the Justice Department finds.

Mr. CASEY. Haven't you testified under oath that in fact the staff and board of POGO have decided that because you deemed the agreement not to be legally enforceable, it is nullified, and you will make no further payments?

Ms. STOCKTON. I've never said—no. I've never said it was nullified.

Mr. CASEY. You have never used that term "nullified" in relation to the agreement?

Ms. STOCKTON. You can show me a transcript. I don't remember ever using that word.

Mr. CASEY. I'm calling on your memory, not on the transcript.

Ms. STOCKTON. Excuse me?

Mr. CASEY. I'm calling on your memory, not on the transcript. Do you recall ever using the word——

Ms. STOCKTON. I don't recall using the word "nullified", no. I do certainly know that no one on the board or the staff is concerned about it being legally binding. It's simply a case of whether once—if Justice comes, as we believe they will, to the conclusions that there is nothing wrong with having done this, then we'll have to revisit whether we want to continue doing it. We certainly didn't expect all of the hubbub.

Mr. CASEY. Did I just understand you to say that nobody on the board or staff at POGO has any concerns about whether the agreement is legally binding?

Ms. STOCKTON. Yes. It's not.

Mr. CASEY. I'm sorry. It is not legally binding; is that what you're saying?

Ms. STOCKTON. Absolutely.

Mr. CASEY. And did you also say that nobody on the board or on the staff at POGO has ever discussed whether it is legally binding?

Ms. STOCKTON. Well, since your Subcommittee has, in the Washington Times, characterized it as such, we—that was really the first time it ever——

Mr. CASEY. I'm asking what the POGO board and staff has decided, not what the Washington Times has decided.

Ms. STOCKTON. Well, that's when it came up as an issue.

Mr. CASEY. And what is the answer?

Ms. STOCKTON. By being characterized as a contract, and we couldn't imagine why anyone would have thought it was a contract. It's not a contract.

Mr. CASEY. Do you consider it a moral commitment?

Ms. STOCKTON. I do consider it a moral commitment.

Mr. CASEY. Will you live up to that commitment if the Justice Department declines to charge you, Mr. Berman or Mr. Speir, you, or POGO with a crime?

Ms. STOCKTON. If the Justice Department has no concerns——

Mr. CASEY. How do you define "no concerns?"

Ms. STOCKTON. I don't know. I'll have to find out what happens at the end of—when Justice concludes their inquiry. We'll then have to revisit this. I mean, the reality is we've gone through a year of a lot of people making accusations. So I don't know, after that, if the board——

Mr. CASEY. I think Mr. Brand will confirm for you that the typical practice is that the Justice Department, at the end of an investigation, either informs the targets, if there are any, or the subjects, that they're either going to keep it open or that they have concluded it and have decided not to indict anybody at that time. If you are notified that the Justice Department has concluded its

investigation and that they do not intend at that time to charge you, Mr. Berman or Mr. Speir with a crime, do you consider yourself morally obligated to resume payments to Mr. Berman and Mr. Speir?

Ms. STOCKTON. I don't think obligated, no. I think none of us would have dreamed we'd go through this year of whatever you call it, so we'll have to revisit it then and see is it worth it.

Mr. CASEY. So what's happened in the last year, tempers or defines the moral obligation you say you made to these gentlemen in '96? Because it's been living hell, you don't have to do it?

Ms. STOCKTON. Well, not just because it's been a living hell, but because we have never wanted in any way to do anything and have never done anything improper, or look like anything was improper. So if at the end of the day people other than the Washington Times think there was something improper in appearances, we wouldn't want to do that.

Mr. CASEY. Before the December 9, 1996 meeting—or the announcement of that meeting to the board, before that meeting, which was described in detail earlier with Mr. Banta, did you, on behalf of POGO, take any steps to assure yourself that it would not be improper to ask Mr. Berman and Mr. Spear to join your suit, or in the alternative, to offer to share with them?

Ms. STOCKTON. Before December——

Mr. CASEY. Before you met with them in Mr. Banta's office, in evidently early December of '96, did you take any independent steps to assure yourself that it was proper to ask these Federal employees to join your suit as relators, or in the alternative, to share with you in the proceeds?

Ms. STOCKTON. No, but I'm familiar enough with qui tam law to know that there's nothing improper about someone being a relator.

Mr. CASEY. But they weren't relators.

Ms. STOCKTON. Well, you asked me if it was improper to ask them to be relators.

Mr. CASEY. Did you also take independent steps to assure yourself that it was not improper to offer or to commit or promise or agree to share the proceeds with them in the alternative to being a relator?

Ms. STOCKTON. No, I didn't.

Mr. CASEY. You didn't. Could I ask one of the clerks, please, to hand to you the letter or memo dated October 8th, 1998?

Did you write that letter?

Ms. STOCKTON. Yes.

Mr. CASEY. Could you read it for us, please?

Ms. STOCKTON. You want me to read it out loud?

Mr. CASEY. Yes, please.

Ms. STOCKTON. "This is to confirm"—this is from me to Bob Berman—"This is to confirm our commitment to live up to our existing understanding that POGO will share in equal thirds with you and Bob Speir all past and future settlement amounts we received through our filing of the false claims act case regarding the underpayment of oil royalties. We will distribute the shares already received, as well as the accrued interest on or before November 2nd, and will distribute shares from any other settlements promptly upon receipt. You may reach me for any further discussion of this

or any other matter through POGO's attorney, Lon Packard", and his phone number.

Mr. CASEY. At the time you wrote that, did you mean it?

Ms. STOCKTON. Yeah.

Mr. CASEY. Since that time has POGO informed Mr. Berman that it has revoked that commitment?

Ms. STOCKTON. No.

Mr. CASEY. Has the POGO board of directors made a decision to revoke that commitment?

Ms. STOCKTON. No.

Mr. CASEY. I would also ask one of the clerks to give you the page of arithmetic, please.

Have you seen that before?

Ms. STOCKTON. I don't think I have, no.

Mr. CASEY. Do you recognize the——

Ms. STOCKTON. It's from our fax, so it's obviously from us.

Mr. CASEY. So you would concede that somebody at POGO created this document?

Ms. STOCKTON. Well, no, I don't know that. All I know is that it was provided to the Subcommittee by us, but I don't know who created it.

Mr. CASEY. Do people often walk in off the street and use your fax machine?

Ms. STOCKTON. No. I mean, it could have come into our office, could have been mailed to us, and we faxed it out. I don't know who created it.

Mr. CASEY. Would you agree that this appears, at least at a glance—I'm not very good at math, maybe you are——

Ms. STOCKTON. No, I'm awful.

Mr. CASEY. That this appears to demonstrate how the total of $383,600 was arrived at?

Ms. STOCKTON. Oh, yeah. Yes, that certainly is what it appears to be.

Mr. CASEY. Do you know why that might have been sent to Mr. Berman but not to Mr. Speir?

Ms. STOCKTON. I have no idea. As I said, I haven't seen this.

Mr. CASEY. Would you describe for us your view of Mr. Berman's concern that POGO might not pay him as he expected?

Ms. STOCKTON. He was agitating. He was excited that the Mobil settlement had actually become a reality. And we had, as you know, a number of steps that we wanted to take before we shared the money with them, to make sure—not that we had any concerns, but there was any illegality—we wanted to make sure we did it properly. And it took a couple of months to go through those steps. We got the money in August, and we went to attorneys, we went to accountants. We had another meeting of the board just to make sure everyone was comfortable that this was what we were doing, and we told the Justice Department. And that took a while. And Bob was excited and wanted to get his money, and I wrote him a letter that said our intentions, "But you're not getting it yet."

Mr. CASEY. Had a lawyer contacted you about Mr. Berman and this concern of his?

Ms. STOCKTON. No.

Mr. CASEY. Had Mr. Berman told you that he was considering or would consider suing POGO?

Ms. STOCKTON. No.

Mr. CASEY. Did he tell you or suggest to you that he was considering taking any kind of legal steps to secure his payment?

Ms. STOCKTON. No.

Mr. CASEY. Did you hear Mr. Speir's testimony on that subject?

Ms. STOCKTON. Yes, I did.

Mr. CASEY. Do you disagree with anything Mr. Speir said about this?

Ms. STOCKTON. Well, I certainly can't disagree with what Mr. Speir knew.

Mr. CASEY. During the course of your conversations with Mr. Berman, when he was agitating, as you say, for his money, did he suggest to you, did he state that he felt you had committed to pay him that money and he expected it to be done?

Ms. STOCKTON. I don't really recall that being the terms he was using. He was just excited about the money and wanted it, and——

Mr. CASEY. So he was merely impatient?

Ms. STOCKTON. Yeah. I mean, that's probably——

Mr. CASEY. Then why refer him to Lon Packard?

Ms. STOCKTON. Because I was annoyed, I was angry a little bit. I didn't want to deal with him any more. I told him to talk to my lawyer about it.

Mr. CASEY. But Mr. Packard doesn't represent you on this subject, does he?

Ms. STOCKTON. Well, Mr. Packard was our lawyer for this litigation, and anything—I suppose I can't——

Mr. CASEY. Mr. Packard has told the world he doesn't represent you on this subject. He isn't privileged.

[Conferring with counsel.]

Ms. STOCKTON. I do have attorney/client privilege with regard to discussions with Mr. Packard, although I can say that we as an organization actually had separate counsel who had more experience on non-profit law.

Mr. CASEY. But any discussion you had with Lon Packard about the payments to Mr. Berman and Mr. Speir was not an attorney/client communication.

Ms. STOCKTON. He's my lawyer.

Mr. CASEY. He has told the world that he is not your lawyer on the subject of the payments to Berman and Speir.

Ms. STOCKTON. He's still my lawyer, so I can't tell you what I was talking to him about. I mean, the bottom line it——

Mr. CASEY. Did you ever talk about the weather with Mr. Packard?

Ms. STOCKTON. I can't tell you that either. That's also attorney/client.

Mr. CASEY. Okay. I would also ask if the clerks would hand you a copy of the e-mail.

Do you recollect that e-mail?

Ms. STOCKTON. Actually, I don't recollect it, but I believe it.

Mr. CASEY. Could you read it aloud, please?

Ms. STOCKTON. It's to Bob, and—Berman, on November 2nd, which was the day that we shared the money with them, and it

says: "Bob, thanks so much for the beautiful flowers. I'm so glad things have all worked out. I hope we can look forward to more of the same. Danielle."

Mr. CASEY. Did you mean more flowers or did you mean more payments?

Ms. STOCKTON. More settlements, sure.

Mr. CASEY. More payments to Mr. Berman?

Ms. STOCKTON. More settlements, which meant—I know you find it hard to believe, but really, what was thrilling to us was that we finally got somewhere on this underpayment.

Mr. CASEY. Right. But as of November 2, '98, before the Washington Times was making your life difficult, would you have been meaning more of the same, meaning settlements resulting in one-third shares to Mr. Berman?

Ms. STOCKTON. Or settlements resulting in hundreds of millions of dollars to the Treasury.

Mr. CASEY. And a little bit to you too, one-third——

Ms. STOCKTON. And that too, absolutely right.

Mr. CASEY. One-third of which would go to Mr. Berman?

Ms. STOCKTON. Absolutely right.

Mr. CASEY. So that's what you mean when you say you look forward to more of the same.

Ms. STOCKTON. To all of that, yeah.

Mr. CASEY. Can you state categorically today that POGO will make no further payments at any time from the qui tam suit to Mr. Berman or Mr. Speir?

Ms. STOCKTON. Do you think that's what I've said?

Mr. CASEY. I'm asking you if you will make that categorical statement?

Ms. STOCKTON. No, I won't make that categorical statement. We've never believed it was wrong.

Mr. CASEY. I understand—you've already discussed that Mr. Dodd suggested or advised Mr. Packard that there should be no press conference. So it appears you're willing to discuss what Mr. Packard told you about his conversation with Mr. Dodd.

Ms. STOCKTON. No, I'm willing to discuss what Mr. Dodd testified in his opening statement, and——

Mr. CASEY. Was that the first you had ever heard that Mr. Dodd did not wish you to have a press conference? You already cited it as a reason for not having a press conference.

Ms. STOCKTON. Yes, but as you know, I hadn't cited it before Mr. Dodd publicly discussed it.

Mr. CASEY. Yes, but I'm saying that, today——

Ms. STOCKTON. Yes, that's right.

Mr. CASEY. [continuing] you cited it, when asked why you didn't have a press conference, as one of the reasons you cited, the fact that "Mr. Dodd didn't want us to have one."

Ms. STOCKTON. That's right, because today Mr. Dodd spoke of it, and also included that in his opening statement.

Mr. CASEY. But you didn't know that on November 2nd of 1998. You didn't know that until an hour ago.

Ms. STOCKTON. I didn't say that. I didn't tell you that.

Mr. CASEY. A couple hours.

Ms. STOCKTON. Excuse me?

Mr. CASEY. You didn't know it until a couple of hours ago that Mr. Dodd didn't want you to have the press——

Ms. STOCKTON. No, that's not what I said. I said I didn't discuss it with you or anyone publicly because before that, it would have been attorney/client privilege, but since he has spoken of it, it's not now.

Mr. CASEY. All right. Then we agree that the things Mr. Dodd has discussed are things you will talk about.

Ms. STOCKTON. What he's discussed, I think I can.

Mr. CASEY. What was the purpose——

[Conferring with counsel.]

Ms. STOCKTON. Go ahead.

Mr. CASEY. Did you direct Mr. Packard to call Mr. Dodd about the payments?

[Conferring with counsel.]

Ms. STOCKTON. My communication with my attorney is attorney/client privileged, but I have said before tonight that one of our conditions for doing this was insuring that Justice knew we were doing it.

Mr. CASEY. And in order to fulfill that condition, did you direct him to notify Mr. Packard?

Ms. STOCKTON. And as I said, I can't speak to you of what I said to my attorney, but you can draw your own conclusion.

Mr. CASEY. My conclusion is you didn't direct him.

Ms. STOCKTON. Your conclusion is that I didn't direct him?

Mr. CASEY. That you did not direct Mr. Packard——

Ms. STOCKTON. It doesn't surprise me, actually, that that's your conclusion, but I can't help that.

Mr. CASEY. What was the purpose of this notification to the Justice Department?

Ms. STOCKTON. Because it was important to me, now that the money actually was happening, that the attorneys at Justice who were working on the litigation, were aware that these two men had a financial interest.

Mr. CASEY. If you were aware that they had told you not to do it, if you had been made aware of that, would you have not made the payments?

[Conferring with counsel.]

Ms. STOCKTON. Yes. I would absolutely not have done it had I been aware that Justice had said not to do it.

Mr. CASEY. Okay. Mr. Packard's version is that in the first telephone call with Mr. Dodd, Mr. Dodd did not express any view one way or the other about the payments. Why didn't you wait until the second conversation with Mr. Dodd if you wanted the department's approval, affirmative approval of the payments? He had said—by your own lawyer's version, he had said nothing one way or the other. He had not approved of it.

Ms. STOCKTON. Let me read to you what my attorney wrote to your Committee last year.

Mr. CASEY. I've read it, and it doesn't represent that Mr. Dodd approved.

Ms. STOCKTON. I'd like to read it for the record. "Mr. Dodd did not advise me that he believes that POGO should not make the disbursements, and Mr. Dodd made no request that POGO do nothing

until after he consulted with the department. If Mr. Dodd had told me that he felt the disbursements should not be made or had requested that POGO refrain from making such disbursements until after he had consulted with others within Justice, I certainly would have relayed this information to my clients, but as he did not do so, I did not relay any such information to POGO."

Mr. CASEY. So you went to the trouble, according to your testimony, of notifying the Justice Department of your intention to do it. If they had told you not to do it, you would have heeded that advice. Is that correct?

Ms. STOCKTON. That is correct.

Mr. CASEY. But in fact, you went ahead and made the payments without an approval from the Justice Department or even any indication one way or the other?

Ms. STOCKTON. Well, as I have testified before, I wasn't concerned that there was anything wrong in doing it. I just wanted them to know.

Mr. CASEY. As you have just testified now, that if the Justice Department had said, "Don't do it", you would not have done it.

Ms. STOCKTON. That's correct.

Mr. CASEY. Why didn't you wait——

Ms. STOCKTON. I wasn't waiting for approval. There was nothing, as I've just demonstrated from our attorney, to wait for.

Mr. CASEY. So you were merely notifying them to give them a veto?

Ms. STOCKTON. No, I was notifying them so they were aware, because as I said, I wanted them to be aware as the litigation——

Mr. CASEY. You're contradicting yourself.

Ms. STOCKTON. No, I'm not.

Mr. CASEY. You were notifying them, but you had no purpose in notifying them.

Ms. STOCKTON. No. The purpose was to insure that as they moved along with their litigation, that they were aware that these two gentlemen, if they were to turn to them for any information, had a financial interest.

Mr. CASEY. And if you had been made aware before you wrote the checks that Mr. Dodd objected to it, you would not have written the checks, correct?

Ms. STOCKTON. That is absolutely correct.

Mr. CASEY. But the fact is, you went ahead and wrote the checks without knowing that Mr. Dodd approved of them, or anybody else at Justice, correct?

Ms. STOCKTON. Well, actually, I'd like to go on because——

Mr. CASEY. Is that correct?

Ms. STOCKTON. No, it's not correct.

Mr. CASEY. So did you have assurance before you wrote those checks that the Justice Department had affirmatively approved of them in the person of Mr. Dodd or anybody else?

Ms. STOCKTON. No, because as I said, I wasn't concerned about approval, and Mr. Packard went on to say, after his—October 27th with Mr. Dodd.

Mr. CASEY. I know the letter. I think it's simple. Maybe I've gotten you confused. You notified the Justice Department, not because

you were concerned that anything was wrong with it; you just want them to know about it.

Ms. STOCKTON. Right.

Mr. CASEY. But if they were to tell you, "Don't do it", you would have heeded that advice?

Ms. STOCKTON. Yes.

Mr. CASEY. Why then didn't you——

Ms. STOCKTON. I'd like to point out they have still not said that.

Mr. CASEY. Why then did you proceed without an affirmative approval?

Ms. STOCKTON. It didn't even strike me Justice approves or disapproves things.

Mrs. CUBIN. The time of the gentleman has expired. I thank the witness for her testimony. Oh, excuse me. Yes, I yield to the Minority side.

Ms. LANZONE. Ms. Brian, you were not allowed to make an opening statement. That decision was made by the Majority over the objections of our Minority members, as you know. And I meant to preface this by saying that Mr. Miller and Mr. Underwood apologize for not being here at 10:15 this evening to hear your testimony. But they did ask me to give you the opportunity to make any additional comments for the record, if you would like to do so on our time.

Ms. STOCKTON. Thank you very much for the opportunity, but I am going to decline.

Ms. LANZONE. Well, I'm assuming that your opening statement is submitted, it's in the folder as part of the record.

Ms. STOCKTON. Could I have it inserted in the record?

Mrs. CUBIN. That's correct.

[The prepared statement of Ms. Stockton follows:]

STATEMENT OF DANIELLE BRIAN STOCKTON

The Committee Majority is not holding this hearing in an attempt to find the truth. Instead, this hearing marks the continuation of the Majority's efforts to punish and intimidate POGO and government whistleblowers. By doing so, the Majority hopes to silence those of us opposed to the rip-off perpetrated by the oil companies and to ensure that no whistleblower ever dares to stand up to Big Oil and its allies in the Congress again. It won't work.

This constant barrage of unsubstantiated allegations of every imaginable impropriety only strengthens our resolve to investigate and expose oil industry fraud. We know that Big Oil's attacks on us are simply an admission that they cannot fight us on the substance of the issues. Organizations such as ours aren't doing our jobs if moneyed interests aren't concerned about our work. Having overcome Big Oil's best efforts, POGO will now focus on investigating and preventing future underpayment of natural gas royalties—an underpayment estimated to dwarf those of oil royalties.

Sometimes I have to remind myself what we did to elicit such malicious attacks on my organization. In 1993, we began investigating the major oil companies for underpaying royalties to the Federal Government. We issued four reports, briefed Members of Congress, testified before this Subcommittee, and worked with the media to raise public awareness of the billions of dollars stolen from the public by oil companies.

At that time it was abundantly clear that, other than Assistant Secretary Armstrong and Representatives Maloney and Miller, no one in power in the Federal Government had the stomach to pursue Big Oil's fraud. Interior found excuses not to collect the money owed the Federal treasury; Interior and Justice signed global settlements that gave away the government's right to collect the unpaid royalties; and months after we provided the names of knowledgeable people to Justice investigators, the Department was still relying on recalcitrant Interior officials for technical information.

That was the environment at the end of 1996 and in early 1997. Under those conditions, we decided to explore filing a qui tam suit. It is a good thing that we did. Ultimately, $300 million has been returned to the taxpayer, with an expected $200 million more on the way. We have also worked aggressively to ensure the fraud could not reoccur by pushing for the new oil royalty rule that was so vehemently opposed by Committee Chair Young and Subcommittee Chair Cubin. We are here today simply because we won.

Our organization has always operated on an idealistic belief that government can and should do better. We are not anti-government, and we thrill in our victories when we help to push the government toward the public interest and away from powerful moneyed or bureaucratic interests.

This past year's ordeal has made it difficult to maintain our idealism. We even chose—although we could have retained the entire recovery—to share the money with the only two men in the entire Federal bureaucracy who had been pushing their superiors to address the fraud for a decade before we arrived on the scene. POGO's attackers have assailed our motives, both for our work and for sharing our recovery with whistleblowers. Our attackers could not fathom that people would choose to share money for no other reason than that it was the right and honorable thing to do. To suggest that such a proposition is preposterous reflects more on the skeptic's code of ethics than on our own.

I specifically want to clarify a point that the Committee was aware of prior to last week's hearing but neglected to mention: POGO provided our 1998 tax form 990 to the Committee last year. That form reflected both the Mobil recovery that we received, as well as our sharing of this recovery with Mr. Berman and Mr. Speir. We simply object to the Committee's subpoena for our previous tax filings—none of which are remotely pertinent to the Committee's investigation into our decision to share the proceeds from the oil royalty settlements with the two whistleblowers. It is over those records that we asserted the pertinence defense—and over which the Committee disingenuously bullied and badgered our Assistant Director. As we have discovered over the past year—after such thinly veiled threats as questioning our tax-exempt status and issuing subpoenas for all of POGO's and my home phone records for a year and a half period—we must constantly exercise our rights in response to this Committee's harassment campaign.

I have already addressed these non-issues in over 14 hours of depositions taken by oil company lawyers. The Committee has had those transcripts for months. As I stated at the beginning of my statement, these hearings are not about finding the truth. The members of the Committee already know the truth—it just doesn't support their conspiracy theories. Despite the Committee Majority's opposition, we are comforted in knowing that our motives were pure and our actions were proper.

Ms. STOCKTON. Thank you very much. Is it—was my board's testimony also inserted in the record from the hearing, the earlier hearing?

Mrs. CUBIN. Yes.

Ms. STOCKTON. Thank you.

Ms. LANZONE. I yield back our time.

Mrs. CUBIN. Again, thank you for your testimony. The Subcommittee is now adjourned.

[Whereupon, at 10:16 p.m., the Subcommittee adjourned.]

[Additional material submitted for the record follows.]

LAW OFFICES OF
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June 8, 1999

The Honorable Don Young
Chairman, House Resources Committee
House of Representatives
Washington, D.C. 20515

The Honorable George Miller
Ranking Member, House Resources Committee
House of Representatives
Washington, D.C. 20515

Gentlemen:

I have received a copy of the Department of Justice letter dated June 1, 1999, in which the Department made some representations concerning some conversations between Ken Dodd, Esq. and myself regarding certain disbursements made by the Project on Government Oversight, (POGO), to Mr. Berman and Mr. Speir. I am currently out of my office, but wanted to immediately respond to certain aspects of the letter. I would be better able to respond to other matters addressed in the letter if I were in my office and had access to office records. Apparently, the Justice Department does not have records regarding these telephone conversations and is somewhat confused regarding the dates, substance, and parties to these conversations.

The Justice Department is correct in stating that I informed Mr. Dodd of the anticipated disbursements prior to the time the disbursements were made. My records reflect that I had a conversation with him on or about October 27, 1998. In that conversation, I informed Mr. Dodd that POGO was planning to disburse some of its share of the Mobil settlement proceeds arising out of the Johnson litigation to Mr. Berman and Mr. Speir. Mr. Dodd did not advise me that he believed that POGO should not make the disbursements, and Mr. Dodd made no request that POGO do nothing until after he consulted with the Department. If Mr. Dodd had told me that he felt that the disbursements should not be made or had requested that POGO refrain from making such disbursements until after he had consulted with others within the Justice Department, I certainly would have relayed this information to my clients; but as he did not do so, I did not relay any such information to POGO.

On October 29-30, 1998, a status conference was held in the Johnson case in which the Court heard oral argument on a number of matters. Mr. Dodd and multiple attorneys from Main Justice were present. Yet, during the two-day conference and hearing, nobody from the Justice Department mentioned the Berman/Speir disbursements. Records that have been produced to the Defendants in the Johnson litigation reveal that POGO made the disbursements to Mr. Berman and Mr. Speir on November 2, 1998. On November 3rd or 4th 1998, Mr. Dodd called me and inquired about the status of the disbursements. I replied that I believed that the disbursements had already been made and told him that I would check and get back with him. After checking with POGO, I spoke to Mr. Dodd and advised him that the disbursements had already been made. Von Packard was not a participant in any of these conversations.

The allegation by the Department of Justice that I told Mr. Dodd of the anticipated disbursements on November 4, 1998, does not make sense, as the disbursements had been made two days earlier. I had already advised Mr. Dodd of the anticipated disbursements the previous week. I am not suggesting that the Department approved the disbursements prior to the time they were made, but the Department also did not object to or instruct against them prior thereto.

I hope this information is helpful in clarifying this matter.

Sincerely,

Lon D. Packard

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
2 LUFKIN DIVISION
3 UNITED STATES OF AMERICA, ex rel.)
J. BENJAMIN JOHNSON, JR., et al.,)
4 Plaintiffs,)
)
5 VS.) CIVIL ACTION NO. 9:96CV66
) Judge John H. Hannah, Jr.
6)
SHELL OIL CO., ET AL)
7 Defendants.)
8 **********
9 - UNDER SEAL -
10 ORAL/VIDEOTAPED DEPOSITION OF
11 DAVID HUNTER
12 NOVEMBER 16, 1999
13 **********
14
15 ORAL/VIDEOTAPED DEPOSITION OF DAVID HUNTER,
16 produced as a witness at the instance of the RELATORS, and
17 duly sworn, was taken in the above-styled and numbered cause
18 on the 16th day of November, 1999, from 11:50 a.m. to 1:50
19 p.m., before Tracey Richardson, CSR in and for the State of
20 Texas, reported by stenographic method, at the offices of
21 Provost & Umphrey, 1350 New York Avenue, Suite 1030,
22 Washington, D.C., pursuant to the Federal Rules of Civil
23 Procedure, Eastern District of Texas, and the provisions
24 stated on the record or attached hereto.
25

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1 release also involved discussions about release to Justice
2 and to others involved.
3 Q. To what others?
4 A. Well, just generally to let it be known.
5 Q. And do you know whether or not the Department of
6 Justice was notified that you were going to make these
7 payments before they were made?
8 MR. DAN PACKARD: Same objection.
9 A. Yeah. I believe from -- again the only knowledge I
10 would have had would have been in discussing this with
11 Danielle.
12 MR. DAN PACKARD: If you learned this from
13 Danielle, that's fine.
14 A. Yeah, I believe it was made.
15 Q. (By Mr. Powell) You believe what was made?
16 A. That some notice was made to Justice, yes.
17 Q. You say "some notice." What notice?
18 A. What notice -- I don't have -- I don't know the
19 details. My understanding was that Justice was told.
20 Q. Do you know who at the Department of Justice was
21 told?
22 A. No, I didn't know the names.
23 Q. Did anybody write down the names or make a --
24 memorialize the notification to the department that you've
25 seen in any POGO file anywhere?

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1 A. Not that I can recall seeing, no.
2 Q. Did Danielle or Ms. Brian tell you what the
3 Department of Justice's response was to this investigation?
4 A. Not that I recall.
5 Q. Did you not ask?
6 A. Well, I don't recall explicitly; but I would have
7 thought and I would have assumed that if they screamed or
8 hollered, I would have been told.
9 Q. Did she tell you -- Ms. Brian tell you why she
10 thought it was important to notify the Department of Justice?
11 A. I don't recall her saying why.
12 Q. Did you think it important that Justice be
13 notified?
14 A. I didn't have a lot of independent knowledge or
15 room to make judgment at that time about the case, as I've
16 already pointed out. So, I would have been providing advice
17 as Danielle asked and I don't recall her reasons for it but
18 it would have seemed probably reasonable to me at the time.
19 Q. You have no recollection at all as to why she
20 thought it was important to notify the Department of Justice
21 that you were getting ready to pay two Federal employees this
22 sum of money?
23 A. No. I mean, I think that we -- I don't remember
24 any specific conversation or anything but I think that we
25 felt that -- I mean, it wasn't -- it wasn't -- we felt -- and

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1 Danielle felt comfortable about telling everybody and having
2 an award. As I remember, that was Danielle's position; and
3 telling Justice would have been included in that. There is
4 no -- it seemed like a fine and reasonable thing to do. It
5 wasn't a specific -- I mean, in our context at least in
6 conversations between Danielle and I, Danielle's interest was
7 in letting people know and that included Justice.
8 Q. Well, in that --
9 A. I thought that was appropriate and fine.
10 Q. Okay. At the time that the Department of Justice
11 was being notified of these payments, were you aware that
12 POGO had entered into an agreement with other relators?
13 A. At the time --
14 Q. And their counsel?
15 A. At that time -- what time?
16 Q. October of '98.
17 A. October, '98. Around that same amount of time, I
18 don't remember when or where or what but I knew by the time I
19 started to follow a little bit more closely this in the late
20 summer and fall of '98, that we had a multi-relators
21 agreement.
22 Q. All right. And insofar as Ms. Brian's suggestions
23 or observations or suggestion that the Department of Justice
24 be notified and that you would follow her recommendation, did
25 you likewise have discussions with her that your colleagues

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1 to that agreement be notified about this impending payment as
2 well?
3 A. Yes.
4 Q. You did have those discussions. Okay. All right.
5 And was it her decision not to inform the other signatories
6 to that MRCA of the impending payments to be made to these
7 two witnesses?
8 MR. DAN PACKARD: Do you need to consult?
9 A. Well, I sort of need clarification.
10 Q. (By Mr. Powell) That was the decision made?
11 A. Okay.
12 Q. Question: Was that her decision, or was that a
13 board decision?
14 A. Oh, that would not have been -- I don't believe
15 that was ever discussed with the board.
16 Q. So, that was her decision?
17 A. Yes.
18 Q. Okay, sir.
19 A. Although --
20 Q. Now, with respect to the process of future payments
21 to Mr. Berman and Mr. Speir, is it POGO's present intention
22 that if -- and I use a big "if" -- there are any further
23 moneys that come to POGO, that there is intent to share those
24 with Berman and Speir?
25 A. If POGO receives more money, we've decided that we

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1 certainly won't be providing any more award to Mr. Berman or
2 Mr. Speir at least pending the different investigations and
3 things that are going on.
4 Q. Why?
5 A. Why?
6 Q. If they're truly awards, why will you not consider
7 the payment of moneys pursuant to the agreements you've
8 reached with them?
9 A. Well, there are truly awards and the fact that
10 there were awards has not prevented it from being something
11 that other people have tried to distort and as a result, it's
12 caused a lot of people to spend a lot of time and we don't
13 think it would prudent at this point in time to be providing
14 any more awards to them. So, we won't.
15 Q. Are you saying that there's some thought out there
16 by some government agencies that these are not awards but
17 are, in fact, payments to government witnesses?
18 A. No, I don't know what any government agencies think
19 or don't think. But there's certainly been press. There's
20 been things like that. There's this deposition where you
21 keep referring to an agreement.
22 Q. Sir, I just use the words that are contained in the
23 document.
24 A. No, I understand what you're doing. But so, all of
25 that, of course, now. So, at this point in time, no, we

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1 won't be providing any more award.
2 Q. The fact of the matter is there is an investigation
3 ongoing by the Department of Justice, is there not?
4 A. That's my understanding.
5 Q. And there is also an investigation going on by the
6 Department of Interior, is there not?
7 A. That's my understanding.
8 Q. There is a Senate investigation ongoing as we sit
9 here, is there not?
10 A. That's my understanding, yes.
11 Q. And a house investigation as well, correct?
12 A. Uh-huh.
13 Q. The Office of Inspector General is also conducting
14 an investigation, are they not?
15 A. I know there are investigations. I couldn't list
16 who was doing what or what the status of the different
17 investigations are.
18 Q. And are you aware, sir, that as recently as
19 Saturday that the oil industry intends to take the deposition
20 of the United States to ascertain what their knowledge is of
21 these payments that you have made to Mr. Berman and Mr.
22 Speir?
23 A. Yes, I have learned that.
24 Q. Do you not think, sir, that in view of all that has
25 gone on including the investigations and the press attendant

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1 to these payments that the success of this litigation has
2 been impacted in any way whatsoever?
3 A. I have no way to judge that question one way or the
4 other. I don't -- this is not an area of law that I have any
5 experience in.
6 Q. Well, you mentioned this deposition right here.
7 We're here taking this deposition, correct?
8 A. Uh-huh.
9 Q. And we're not taking the depositions in an -- in
10 the -- against an oil company, are we? We're prosecuting the
11 case against the oil company today, are we, sir?
12 A. No.
13 Q. It's a distraction, is it not?
14 A. I think you're here trying to take our money is
15 what I think why we're here.
16 Q. No, sir, I'm not trying to take your money at all.
17 A. Okay.
18 Q. And you can phrase it any way you want to, just
19 like you want to phrase these agreements any way you want to.
20 But the facts are the facts.
21 A. Yes.
22 Q. All right, sir?
23 A. Yes.
24 Q. Now --
25 MR. DAN PACKARD: You're arguing with the

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1 witness, Counsel.
2 MR. POWELL: Once again, just confine your
3 objections appropriate to the rules.
4 MR. DAN PACKARD: Once again, don't argue with
5 the witness.
6 MR. POWELL: Confine your objections to what's
7 appropriate under the rules.
8 MR. DAN PACKARD: Don't argue with the
9 witness.
10 MR. POWELL: I don't have to take instructions
11 from you, Mr. Packard. I'll conduct the examination the way
12 I deem it appropriate. Now, I think I'm about through. Let
13 me take a minute and we may be done.
14 THE VIDEOGRAPHER: Did you want to go off?
15 MR. POWELL: Yeah.
16 THE VIDEOGRAPHER: Okay. Going off the record
17 at 13:52.
18 (Short recess.)
19 THE VIDEOGRAPHER: We're back on the record at
20 13:39.
21 Q. (By Mr. Powell) Mr. Hunter, I just have a few
22 other areas for you. Okay, sir?
23 A. Terrific.
24 Q. Shouldn't be long. You have repeatedly in this
25 deposition made the statements that POGO was not filing this

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION
3
4 BENJAMIN JOHNSON, ET AL : DOCKET NO. 9:96CV66
5 VS. : LUFKIN, TEXAS
6 SHELL OIL COMPANY, ET AL : NOVEMBER 29, 1999
: 1:30 P.M.
7
EXCERPT FROM TRANSCRIPT
8 BEFORE THE HONORABLE JOHN HANNAH, JR.,
UNITED STATES DISTRICT JUDGE
9
10 APPEARANCES: (NOT INCLUDED)
11
12
13
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16
17
18
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20
21
22
23
24 PROCEEDINGS REPORTED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.
25

2

1 THE COURT: I WANT TO ASK A COUPLE OF QUESTIONS
2 BEFORE WE GET UNDERWAY. FROM READING THE DOCUMENTS AND THE
3 PAPERS YOU FILED, I WASN'T ABLE TO ASCERTAIN THESE THINGS.
4 PERHAPS I JUST MISSED THEM IN THE DOCUMENTS.
5 ON PAGE 36 OF BROCK, POGO RESPOND, FOOTNOTE 13, IT SAYS
6 MOVANTS' CONTENTIONS THAT THEY CANNOT ETHICALLY AGREE TO
7 DISTRIBUTE FUNDS TO BROCK AND POGO IS SELF-SERVING ILLUSORY
8 BECAUSE THE UNCONTROVERTIBLE EVIDENCE IS THAT NEITHER BERMAN
9 OR SPIER WILL RECEIVE ANY PORTION OF FUTURE SETTLEMENT
10 PROCEEDS.
11 IS THAT BROCK'S AND POGO'S POSITION?
12 MR. WAGSTAFF: YES, YOUR HONOR. THE DIRECTOR -- IF
13 I MIGHT, THE DIRECTOR OF POGO, WHEN DEPOSED, HAS SET THAT
14 FORTH ON THE RECORD. MS. BRYANT, WHEN DEPOSED, SAID THAT POGO
15 HAD NO INTENTION TO SHARE ANY MONEY WITH THEM.
16 THE COURT: I WOULD ASSUME THAT WILL NOT CAUSE ANY
17 PROBLEM BETWEEN MR. SPIER, MR. BERMAN AND POGO. MY BEST
18 READING IS THAT THERE IS NO CONTRACTUAL RELATIONSHIP. IT WAS
19 SORT OF WE WILL GIVE YOU A LITTLE MONEY IF WE ARE SUCCESSFUL.
20 MR. WAGSTAFF: YES, YOUR HONOR. THERE IS NO --
21 THERE'S NO -- OUR POSITION IS -- WE BELIEVE IT WILL BE THE
22 POSITION OF THE PARTIES THERE IS NO BINDING CONTRACT.
23 THE COURT: AS A MATTER OF FACT, I BELIEVE IN ONE OF
24 THE DEPOSITIONS, EITHER BERMAN OR SPIER, HE ALSO MENTIONED
25 THAT HE DIDN'T FEEL LIKE THERE WAS ANY CONTRACTUAL OBLIGATION.

1 MR. WAGSTAFF: YES, YOUR HONOR. MR. SPIER SAID THAT
2 DURING HIS DEPOSITION VERY CLEARLY.
3 THE COURT: HOWEVER, ON OCTOBER 8, 1998, A LETTER TO
4 BOB BERMAN FROM DANIELLE BRYAN SAYS THIS IS TO CONFIRM OUR
5 COMMITMENT TO LIVE UP TO OUR EXISTING UNDERSTANDING THAT POGO
6 WILL SHARE AN EQUAL THIRD WITH YOU AND BOB SPIER, ALL PAST AND
7 FUTURE SETTLEMENTS. DO YOU HAVE THAT DOCUMENT IN FRONT OF
8 YOU.
9 MR. WAGSTAFF: I DO, YOUR HONOR. I HAVE IT, YOUR
10 HONOR.
11 THE COURT: DO YOU SEE THAT?
12 MR. WAGSTAFF: I DO. THANK YOU, YOUR HONOR.
13 THE COURT: I WOULD ASSUME THAT YOUR POSITION IS
14 THAT DEVELOPMENTS SINCE THEN HAS ABROGATED THE PROMISE OF
15 FUTURE SETTLEMENTS, PAST SETTLEMENTS THAT HAVE ALREADY BEEN
16 DISTRIBUTED.
17 MR. WAGSTAFF: YES, YOUR HONOR, AND TWO-FOLD. ONE
18 IS THIS DOES NOT CONSTITUTE A CONTRACT, AND, FURTHERMORE, THAT
19 THERE IS NO ONGOING REASON TO FULFILL ANY MORAL OR GENTLE
20 PERSON STATEMENT MADE IN THIS LIGHT.
21 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
22 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
23
24 Ron Mason 1-5-00
RON MASON DATE
25

PACKARD & PACKARD
ATTORNEYS AT LAW
87 IH 10 North, Suite 225
Beaumont, Texas 77707
Phone: (409) 832-2300
Fax: (409) 833-8638

BERNARD E. PACKARD
STEVEN S. PACKARD

DAVID B. PACKARD
DANIEL W. PACKARD

January 6, 2000

FAX COVER SHEET

Recipient's Fax No.:	(202) 514-7361
To:	Dodge Wells, Esq.
Company:	U.S. Department of Justice
Re:	Oil Litigation
No. of Pages (INCLUDING COVER SHEET): 9	

From:	Daniel W. Packard
Message:	

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U.S. Department of Justice

MFH:AEK:DWells
DJ 46-75-260

202-307-0407

Washington, D.C. 20530

January 7, 2000

Mr. Daniel Packard
Packard & Packard
87 IH 10 North
Suite 225
Beaumont, Texas 77010

Re: United States ex rel. Johnson, et al. v. Shell Oil Company, et al., Civil Action No. 9:96CV66

Dear Mr. Packard:

Thank you for the deposition and hearing transcripts you forwarded me under a cover letter of January 6, 2000. You sent the materials in response to my inquiry whether the Project on Government Oversight ("POGO") intended to pay Robert Berman or Robert Spier any portion of the funds it may receive from settlement in the above case. Based upon the materials you forwarded, your cover letter and our conversations during the last week, I have concluded that it is the position of POGO, it will not make further payments to Mr. Berman or Mr. Spier, at least until pending investigations concerning past payments by POGO to Mr. Berman and Mr. Spier are concluded. Based upon this understanding, the United States is not taking any action at this time formally to restrain such payments. Please advise me promptly if my conclusion is in any respect incorrect.

Sincerely yours,

Dodge Wells
Trial Attorney
Commercial Litigation Branch
Civil Division

APR-19-00 WED 10:10 PM PACKARD & PACKARD FAX NO. 8338638 P. 16

P. 01

TRANSACTION REPORT

JAN-08-00 FRI 10:20 AM

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PROVOST ✱ UMPHREY

LAW FIRM, L. L. P.

MICHAEL A. HAVARD
ATTORNEY AT LAW

August 27, 1998

Post-it® Fax Note 7671 | Date 8/27/98 | # of pages ▶ 1
To Lorie/Mr. Brian/Dad Packard | From Cassel PP & J
Co./Dept. | Co.
Phone # | Phone #
Fax # | Fax #

Mr. Lon Packard
PACKARD, PACKARD & JOHNSON
675 E. 2100 South, Suite 350
Salt Lake City, UT 84106-1887
Via Facsimile No. (801) 485-3480

Mr. Von Packard
PACKARD, PACKARD & JOHNSON
260 Sheridan Avenue, Suite 208
Palo Alto, CA 94306
Via Facsimile No. (650) 327-0695

Re: Mobil Settlement

Gentlemen:

I write this letter to inform you that I will wire transfer directly to you the sum of $2,658,288 in accordance with my letter of August 19 setting forth the allocation. This payment is being made under protest and with full reservation of all rights of Relators J. Benjamin Johnson, Jr., John Martineck, and Gene Wright and their counsel pertaining to all issues involving the validity and breaches of the Multi-Relator Counsel Agreement.

Sincerely,

Michael A. Havard

Michael A. Havard

MAH/dc

cc: Wayne Reaud – Via Fax No. (409) 833-8238

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PACKARD & PACKARD
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BERNARD E. PACKARD
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DAVID B. PACKARD
DANIEL W. PACKARD
ALISON PACKARD

July 27, 1999

Mr. Robert J. McAuliffe
United States Department of Justice
P. O. Box 261
Ben Franklin Station
Washington, DC 20044

Re: Civil Action No. 9:96CV66; United States of America, *ex rel.* J. Benjamin Johnson, Jr., et al v. Shell Oil Company, et al; In the United States District Court for the Eastern District of Texas – Lufkin Division

Dear Mr. McAuliffe:

Enclosed is a photocopy of the letter from Lon Packard to Honorable Don Young and George Miller.

Very truly yours,

Daniel W. Packard

DWP:ka

Enclosure

LAW OFFICES OF
PACKARD, PACKARD & JOHNSON
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June 8, 1999

The Honorable Don Young
Chairman, House Resources Committee
House of Representatives
Washington, D.C. 20515

The Honorable George Miller
Ranking Member, House Resources Committee
House of Representatives
Washington, D.C. 20515

Gentlemen:

I have received a copy of the Department of Justice letter dated June 1, 1999, in which the Department made some representations concerning some conversations between Ken Dodd, Esq. and myself regarding certain disbursements made by the Project on Government Oversight, (POGO), to Mr. Berman and Mr. Speir. I am currently out of my office, but wanted to immediately respond to certain aspects of the letter. I would be better able to respond to other matters addressed in the letter if I were in my office and had access to office records. Apparently, the Justice Department does not have records regarding these telephone conversations and is somewhat confused regarding the dates, substance, and parties to these conversations.

The Justice Department is correct in stating that I informed Mr. Dodd of the anticipated disbursements prior to the time the disbursements were made. My records reflect that I had a conversation with him on or about October 27, 1998. In that conversation, I informed Mr. Dodd that POGO was planning to disburse some of its share of the Mobil settlement proceeds arising out of the Johnson litigation to Mr. Berman and Mr. Speir. Mr. Dodd did not advise me that he believed that POGO should not make the disbursements, and Mr. Dodd made no request that POGO do nothing until after he consulted with the Department. If Mr. Dodd had told me that he felt that the disbursements should not be made or had requested that POGO refrain from making such disbursements until after he had consulted with others within the Justice Department, I certainly would have relayed this information to my clients; but as he did not do so, I did not relay any such information to POGO.

On October 29-30, 1998, a status conference was held in the Johnson case in which the Court heard oral argument on a number of matters. Mr. Dodd and multiple attorneys from Main Justice were present. Yet, during the two-day conference and hearing, nobody from the Justice Department mentioned the Berman/Speir disbursements. Records that have been produced to the Defendants in the Johnson litigation reveal that POGO made the disbursements to Mr. Berman and Mr. Speir on November 2, 1998. On November 3rd or 4th 1998, Mr. Dodd called me and inquired about the status of the disbursements. I replied that I believed that the disbursements had already been made and told him that I would check and get back with him. After checking with POGO, I spoke to Mr. Dodd and advised him that the disbursements had already been made. Von Packard was not a participant in any of these conversations.

The allegation by the Department of Justice that I told Mr. Dodd of the anticipated disbursements on November 4, 1998, does not make sense, as the disbursements had been made two days earlier. I had already advised Mr. Dodd of the anticipated disbursements the previous week. I am not suggesting that the Department approved the disbursements prior to the time they were made, but the Department also did not object to or instruct against them prior thereto.

I hope this information is helpful in clarifying this matter.

Sincerely,

Lon D. Packard

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BERNARD E. PACKARD
STEVEN S. PACKARD
HAL LaPRAY

DAVID B. PACKARD
DANIEL W. PACKARD
ALISON PACKARD

January 6, 2000

Mr. Dodge Wells
Civil Division
United States Department of Justice
P. O. Box 261
Ben Franklin Station
Washington, D.C. 20044

Re: Civil Action No. 9:96CV66; United States of America, *ex rel.*, J. Benjamin Johnson, Jr., et al v. Shell Oil Co., et al

Dear Mr. Wells:

In response to your request about POGO's position regarding future sharing with Mr. Berman and Mr. Speir, please refer to what POGO has already said on the subject. I have attached a transcript of a portion of the November 29, 1999, hearing before Judge Hannah, as well as a transcript of a portion of David Hunter's deposition. Mr. Hunter is POGO's chairman of the board. As you know, both the deposition and the hearing were conducted under seal.

Very truly yours,

Daniel W. Packard

DWP:ka

Enclosures

cc: Mr. Stan Brand
Brand & Frulla
923 Fifteenth Street, NW
Washington, DC 20005

cc: Ms. Danielle Brian
Project on Government Oversight
1900 L Street NW, Suite 314
Washington, DC 20036

Mr. Carl A. Parker
Parker & Parks, L.L.P.
One Plaza Square
Port Arthur, Texas 77642-5513

Mr. Lon Packard
Packard, Packard & Johnson
675 East 2100 South, Suite 350
Salt Lake City, Utah 84106

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
2 LUFKIN DIVISION
3 UNITED STATES OF AMERICA, ex rel.)
J. BENJAMIN JOHNSON, JR., et al.,)
4 Plaintiffs,)
)
5 VS.) CIVIL ACTION NO. 9:96CV66
) Judge John H. Hannah, Jr.
6)
SHELL OIL CO., ET AL)
7 Defendants.)
8 **********
9 - UNDER SEAL -
10 ORAL/VIDEOTAPED DEPOSITION OF
11 DAVID HUNTER
12 NOVEMBER 16, 1999
13 **********
14
15 ORAL/VIDEOTAPED DEPOSITION OF DAVID HUNTER,
16 produced as a witness at the instance of the RELATORS, and
17 duly sworn, was taken in the above-styled and numbered cause
18 on the 16th day of November, 1999, from 11:50 a.m. to 1:50
19 p.m., before Tracey Richardson, CSR in and for the State of
20 Texas, reported by stenographic method, at the offices of
21 Provost & Umphrey, 1350 New York Avenue, Suite 1030,
22 Washington, D.C., pursuant to the Federal Rules of Civil
23 Procedure, Eastern District of Texas, and the provisions
24 stated on the record or attached hereto.
25

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1 release also involved discussions about release to Justice
2 and to others involved.
3 Q. To what others?
4 A. Well, just generally to let it be known.
5 Q. And do you know whether or not the Department of
6 Justice was notified that you were going to make these
7 payments before they were made?
8 MR. DAN PACKARD: Same objection.
9 A. Yeah. I believe from -- again the only knowledge I
10 would have had would have been in discussing this with
11 Danielle.
12 MR. DAN PACKARD: If you learned this from
13 Danielle, that's fine.
14 A. Yeah, I believe it was made.
15 Q. (By Mr. Powell) You believe what was made?
16 A. That some notice was made to Justice, yes.
17 Q. You say "some notice." What notice?
18 A. What notice -- I don't have -- I don't know the
19 details. My understanding was that Justice was told.
20 Q. Do you know who at the Department of Justice was
21 told?
22 A. No, I didn't know the names.
23 Q. Did anybody write down the names or make a --
24 memorialize the notification to the department that you've
25 seen in any POGO file anywhere?

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1 A. Not that I can recall seeing, no.
2 Q. Did Danielle or Ms. Brian tell you what the
3 Department of Justice's response was to this investigation?
4 A. Not that I recall.
5 Q. Did you not ask?
6 A. Well, I don't recall explicitly; but I would have
7 thought and I would have assumed that if they screamed or
8 hollered, I would have been told.
9 Q. Did she tell you -- Ms. Brian tell you why she
10 thought it was important to notify the Department of Justice?
11 A. I don't recall her saying why.
12 Q. Did you think it important that Justice be
13 notified?
14 A. I didn't have a lot of independent knowledge or
15 room to make judgment at that time about the case, as I've
16 already pointed out. So, I would have been providing advice
17 as Danielle asked and I don't recall her reasons for it but
18 it would have seemed probably reasonable to me at the time.
19 Q. You have no recollection at all as to why she
20 thought it was important to notify the Department of Justice
21 that you were getting ready to pay two Federal employees this
22 sum of money?
23 A. No. I mean, I think that we -- I don't remember
24 any specific conversation or anything but I think that we
25 felt that -- I mean, it wasn't -- it wasn't -- we felt -- and

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1 Danielle felt comfortable about telling everybody and having
2 an award. As I remember, that was Danielle's position; and
3 telling Justice would have been included in that. There is
4 no -- it seemed like a fine and reasonable thing to do. It
5 wasn't a specific -- I mean, in our context at least in
6 conversations between Danielle and I, Danielle's interest was
7 in letting people know and that included Justice.
8 Q. Well, in that --
9 A. I thought that was appropriate and fine.
10 Q. Okay. At the time that the Department of Justice
11 was being notified of these payments, were you aware that
12 POGO had entered into an agreement with other relators?
13 A. At the time --
14 Q. And their counsel?
15 A. At that time -- what time?
16 Q. October of '98.
17 A. October, '98. Around that same amount of time. I
18 don't remember when or where or what but I knew by the time I
19 started to follow a little bit more closely this in the late
20 summer and fall of '98, that we had a multi-relators
21 agreement.
22 Q. All right. And insofar as Ms. Brian's suggestions
23 or observations or suggestion that the Department of Justice
24 be notified and that you would follow her recommendation, did
25 you likewise have discussions with her that your colleagues

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1 to that agreement be notified about this impending payment as
2 well?
3 A. Yes.
4 Q. You did have those discussions. Okay. All right.
5 And was it her decision not to inform the other signatories
6 to that MRCA of the impending payments to be made to these
7 two witnesses?
8 MR. DAN PACKARD: Do you need to consult?
9 A. Well, I sort of need clarification.
10 Q. (By Mr. Powell) That was the decision made?
11 A. Okay.
12 Q. Question: Was that her decision, or was that a
13 board decision?
14 A. Oh, that would not have been -- I don't believe
15 that was ever discussed with the board.
16 Q. So, that was her decision?
17 A. Yes.
18 Q. Okay, sir.
19 A. Although --
20 Q. Now, with respect to the process of future payments
21 to Mr. Berman and Mr. Speir, is it POGO's present intention
22 that if -- and I use a big "if" -- there are any further
23 moneys that come to POGO, that there is intent to share those
24 with Berman and Speir?
25 A. If POGO receives more money, we've decided that we

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1 certainly won't be providing any more award to Mr. Berman or
2 Mr. Speir at least pending the different investigations and
3 things that are going on.
4 Q. Why?
5 A. Why?
6 Q. If they're truly awards, why will you not consider
7 the payment of moneys pursuant to the agreements you've
8 reached with them?
9 A. Well, there are truly awards and the fact that
10 there were awards has not prevented it from being something
11 that other people have tried to distort and as a result, it's
12 caused a lot of people to spend a lot of time and we don't
13 think it would prudent at this point in time to be providing
14 any more awards to them. So, we won't.
15 Q. Are you saying that there's some thought out there
16 by some government agencies that these are not awards but
17 are, in fact, payments to government witnesses?
18 A. No, I don't know what any government agencies think
19 or don't think. But there's certainly been press. There's
20 been things like that. There's this deposition where you
21 keep referring to an agreement.
22 Q. Sir, I just use the words that are contained in the
23 document.
24 A. No, I understand what you're doing. But so, all of
25 that, of course, now. So, at this point in time, no, we

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1 won't be providing any more award.
2 Q. The fact of the matter is there is an investigation
3 ongoing by the Department of Justice, is there not?
4 A. That's my understanding.
5 Q. And there is also an investigation going on by the
6 Department of Interior, is there not?
7 A. That's my understanding.
8 Q. There is a Senate investigation ongoing as we sit
9 here, is there not?
10 A. That's my understanding, yes.
11 Q. And a house investigation as well, correct?
12 A. Uh-huh.
13 Q. The Office of Inspector General is also conducting
14 an investigation, are they not?
15 A. I know there are investigations. I couldn't list
16 who was doing what or what the status of the different
17 investigations are.
18 Q. And are you aware, sir, that as recently as
19 Saturday that the oil industry intends to take the deposition
20 of the United States to ascertain what their knowledge is of
21 these payments that you have made to Mr. Berman and Mr.
22 Speir?
23 A. Yes, I have learned that.
24 Q. Do you not think, sir, that in view of all that has
25 gone on including the investigations and the press attendant

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1 to these payments that the success of this litigation has
2 been impacted in any way whatsoever?
3 A. I have no way to judge that question one way or the
4 other. I don't -- this is not an area of law that I have any
5 experience in.
6 Q. Well, you mentioned this deposition right here.
7 We're here taking this deposition, correct?
8 A. Uh-huh.
9 Q. And we're not taking the depositions in an -- in
10 the -- against an oil company, are we? We're prosecuting the
11 case against the oil company today, are we, sir?
12 A. No.
13 Q. It's a distraction, is it not?
14 A. I think you're here trying to take our money is
15 what I think why we're here.
16 Q. No, sir, I'm not trying to take your money at all.
17 A. Okay.
18 Q. And you can phrase it any way you want to, just
19 like you want to phrase these agreements any way you want to.
20 But the facts are the facts.
21 A. Yes.
22 Q. All right, sir?
23 A. Yes.
24 Q. Now --
25 MR. DAN PACKARD: You're arguing with the

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1 witness, Counsel.
2 MR. POWELL: Once again, just confine your
3 objections appropriate to the rules.
4 MR. DAN PACKARD: Once again, don't argue with
5 the witness.
6 MR. POWELL: Confine your objections to what's
7 appropriate under the rules.
8 MR. DAN PACKARD: Don't argue with the
9 witness.
10 MR. POWELL: I don't have to take instructions
11 from you, Mr. Packard. I'll conduct the examination the way
12 I deem it appropriate. Now, I think I'm about through. Let
13 me take a minute and we may be done.
14 THE VIDEOGRAPHER: Did you want to go off?
15 MR. POWELL: Yeah.
16 THE VIDEOGRAPHER: Okay. Going off the record
17 at 13:32.
18 (Short recess.)
19 THE VIDEOGRAPHER: We're back on the record at
20 13:39.
21 Q. (By Mr. Powell) Mr. Hunter, I just have a few
22 other areas for you. Okay, sir?
23 A. Terrific.
24 Q. Shouldn't be long. You have repeatedly in this
25 deposition made the statements that POGO was not filing this

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION
3
4 BENJAMIN JOHNSON, ET AL : DOCKET NO. 9:96CV66
5 VS. : LUFKIN, TEXAS
6 SHELL OIL COMPANY, ET AL : NOVEMBER 29, 1999
1:30 P.M.
7
8 EXCERPT FROM TRANSCRIPT
BEFORE THE HONORABLE JOHN HANNAH, JR.,
9 UNITED STATES DISTRICT JUDGE
10 APPEARANCES: (NOT INCLUDED)
11
12
13
14
15
16
17
18
19
20
21
22
23 PROCEEDINGS REPORTED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
24 PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.
25

2

1 THE COURT: I WANT TO ASK A COUPLE OF QUESTIONS
2 BEFORE WE GET UNDERWAY. FROM READING THE DOCUMENTS AND THE
3 PAPERS YOU FILED, I WASN'T ABLE TO ASCERTAIN THESE THINGS.
4 PERHAPS I JUST MISSED THEM IN THE DOCUMENTS.
5 ON PAGE 36 OF BROCK, POGO RESPOND, FOOTNOTE 13, IT SAYS
6 MOVANTS' CONTENTIONS THAT THEY CANNOT ETHICALLY AGREE TO
7 DISTRIBUTE FUNDS TO BROCK AND POGO IS SELF-SERVING ILLUSORY
8 BECAUSE THE UNCONTROVERTIBLE EVIDENCE IS THAT NEITHER BERMAN
9 OR SPIER WILL RECEIVE ANY PORTION OF FUTURE SETTLEMENT
10 PROCEEDS.
11 IS THAT BROCK'S AND POGO'S POSITION?
12 MR. WAGSTAFF: YES, YOUR HONOR. THE DIRECTOR -- IF
13 I MIGHT, THE DIRECTOR OF POGO, WHEN DEPOSED, HAS SET THAT
14 FORTH ON THE RECORD. MS. BRYANT, WHEN DEPOSED, SAID THAT POGO
15 HAD NO INTENTION TO SHARE ANY MONEY WITH THEM.
16 THE COURT: I WOULD ASSUME THAT WILL NOT CAUSE ANY
17 PROBLEM BETWEEN MR. SPIER, MR. BERMAN AND POGO. MY BEST
18 READING IS THAT THERE IS NO CONTRACTUAL RELATIONSHIP. IT WAS
19 SORT OF WE WILL GIVE YOU A LITTLE MONEY IF WE ARE SUCCESSFUL.
20 MR. WAGSTAFF: YES, YOUR HONOR. THERE IS NO --
21 THERE'S NO -- OUR POSITION IS -- WE BELIEVE IT WILL BE THE
22 POSITION OF THE PARTIES THERE IS NO BINDING CONTRACT.
23 THE COURT: AS A MATTER OF FACT, I BELIEVE IN ONE OF
24 THE DEPOSITIONS, EITHER BERMAN OR SPIER, HE ALSO MENTIONED
25 THAT HE DIDN'T FEEL LIKE THERE WAS ANY CONTRACTUAL OBLIGATION.

1 MR. WAGSTAFF: YES, YOUR HONOR. MR. SPIER SAID THAT
2 DURING HIS DEPOSITION VERY CLEARLY.
3 THE COURT: HOWEVER, ON OCTOBER 8, 1998, A LETTER TO
4 BOB BERMAN FROM DANIELLE BRYAN SAYS THIS IS TO CONFIRM OUR
5 COMMITMENT TO LIVE UP TO OUR EXISTING UNDERSTANDING THAT POGO
6 WILL SHARE AN EQUAL THIRD WITH YOU AND BOB SPIER, ALL PAST AND
7 FUTURE SETTLEMENTS. DO YOU HAVE THAT DOCUMENT IN FRONT OF
8 YOU.
9 MR. WAGSTAFF: I DO, YOUR HONOR. I HAVE IT, YOUR
10 HONOR.
11 THE COURT: DO YOU SEE THAT?
12 MR. WAGSTAFF: I DO. THANK YOU, YOUR HONOR.
13 THE COURT: I WOULD ASSUME THAT YOUR POSITION IS
14 THAT DEVELOPMENTS SINCE THEN HAS ABROGATED THE PROMISE OF
15 FUTURE SETTLEMENTS, PAST SETTLEMENTS THAT HAVE ALREADY BEEN
16 DISTRIBUTED.
17 MR. WAGSTAFF: YES, YOUR HONOR, AND TWO-FOLD. ONE
18 IS THIS DOES NOT CONSTITUTE A CONTRACT, AND, FURTHERMORE, THAT
19 THERE IS NO ONGOING REASON TO FULFILL ANY MORAL OR GENTLE
20 PERSON STATEMENT MADE IN THIS LIGHT.
21 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
22 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
23
24 Ron Mason 1-5-00
RON MASON DATE
25

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BERNARD E. PACKARD
STEVEN S. PACKARD

DAVID B. PACKARD
DANIEL W. PACKARD

January 6, 2000

FAX COVER SHEET

Recipient's Fax No.:	(202) 514-7361
To:	Dodge Wells, Esq.
Company:	U.S. Department of Justice
Re:	Oil Litigation
No. of Pages (INCLUDING COVER SHEET): 9	

From:	Daniel W. Packard
Message:	

"The information contained in this fax message is intended only for the personal and confidential use of the designated recipients names above. This message may be an attorney-client communication, and as such, is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error; and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error; please notify us immediately by telephone and return the original message to us by mail. Thank you."

U.S. Department of Justice

MFH:AEK:DWells
DJ 46-75-260

202-307-0407

Washington, D.C. 20530

January 7, 2000

Mr. Daniel Packard
Packard & Packard
87 IH 10 North
Suite 225
Beaumont, Texas 77010

Re: United States ex rel. Johnson, et al. v. Shell Oil Company, et al., Civil Action No. 9:96CV66

Dear Mr. Packard:

Thank you for the deposition and hearing transcripts you forwarded me under a cover letter of January 6, 2000. You sent the materials in response to my inquiry whether the Project on Government Oversight ("POGO")intended to pay Robert Berman or Robert Spier any portion of the funds it may receive from settlement in the above case. Based upon the materials you forwarded, your cover letter and our conversations during the last week, I have concluded that it is the position of POGO, it will not make further payments to Mr. Berman or Mr. Spier, at least until pending investigations concerning past payments by POGO to Mr. Berman and Mr. Spier are concluded. Based upon this understanding, the United States is not taking any action at this time formally to restrain such payments. Please advise me promptly if my conclusion is in any respect incorrect.

Sincerely yours,

Dodge Wells
Trial Attorney
Commercial Litigation Branch
Civil Division

APR-19-00 WED 10:10 PM PACKARD & PACKARD FAX NO. 8338638 P. 16

P. 01

TRANSACTION REPORT

JAN-06-00 FRI 10:20 AM

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PROVOST & UMPHREY

LAW FIRM, L. L. P.

MICHAEL A. HAVARD
ATTORNEY AT LAW

August 27, 1998

Post-it® Fax Note 7671 Date 8/27/98 # of pages ▸ 1
To Lorie/Brian/Don From Carol
Co./Dept. Packard Co. P&J
Phone # Phone #
Fax # Fax #

Mr. Lon Packard
PACKARD, PACKARD & JOHNSON
676 E. 2100 South, Suite 350
Salt Lake City, UT 84106-1887
Via Facsimile No. (801) 485-3480

Mr. Von Packard
PACKARD, PACKARD & JOHNSON
260 Sheridan Avenue, Suite 208
Palo Alto, CA 94306
Via Facsimile No. (650) 327-0695

Re: Mobil Settlement

Gentlemen:

I write this letter to inform you that I will wire transfer directly to you the sum of $2,658,288 in accordance with my letter of August 19 setting forth the allocation. This payment is being made under protest and with full reservation of all rights of Relators J. Benjamin Johnson, Jr., John Martineck, and Gene Wright and their counsel pertaining to all issues involving the validity and breaches of the Multi-Relator Counsel Agreement.

Sincerely,

Michael A. Havard

MAH/dc

cc: Wayne Reaud ~ Via Fax No. (409) 833-8236

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BRAND, LOWELL & RYAN
A PROFESSIONAL CORPORATION
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TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

May 28, 1999

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight

Dear Mr. Young:

We represent the Project on Government Oversight ("POGO") and Ms. Danielle Brian in connection with the matters addressed in your May 25, 1999 letter. We are writing to apprise you of the legal and logistical obstacles that presently prevent our clients from furnishing the documents and written testimony that your letter requests.

First, Ms. Brian and POGO lack the practical ability to respond to your letter's request for information. Ms. Brian and POGO are currently under subpoena to produce documents and testify in the pending litigation in *United States of America ex rel. Johnson v. Shell Oil, Inc., et al*, Civ. Action No. 9:96V66 (E.D. Tex.), on June 1 and June 17, 1999, respectively. They are simply unable to respond to your May 25, 1999, request in the short time available, that is, by May 28 and June 4, 1999.

More fundamentally, your letter raises certain legal questions which it will be necessary for us to consider before we can advise our clients on a response. For example, in addition to the request for records, you direct Ms. Brian or POGO to respond to, in effect, written interrogatories on specific subjects. We are unaware of any authority that the House has conferred on its committees to issue such written interrogatories. We would appreciate your directing me to the source of such authority, if any exists.

In addition, before a witness can be compelled to respond to congressional demands, it is necessary for the committee to supply the "connective reasoning" demonstrating how the precise documents and testimony sought relate to the subject under inquiry. While you have referred to the House rules conferring jurisdiction upon the committee, these rules are extremely general. As the courts have stated, the more "loosely worded" and "vague" a committee's "controlling charter" is, the greater the need for specifying to the witness how the requested information relates to the subject under inquiry. *Watkins v. United States*, 354 U.S. 177, 201 (1957). Given the breadth of the rules you cite, we are simply unable to determine whether the Committee has met its burden to "spell out [its] jurisdiction and purpose with sufficient particularity." *Id.*

In that regard, it is also a fundamental precept that the processes of the Congress can be "used only in furtherance of a legislative purpose." *Watkins, supra* at 201. Your letter defines the matter under review as "instances where the Project on Government Oversight ("POGO") made payments of any kind or otherwise transferred funds to any employee or former [sic] of the Department or other federal agency." Of course, enforcement of the law is an executive, not a legislative, function and where a committee announces as its purpose the determination of an issue consigned to another branch (*i.e.*, determination of whether any laws were violated by a particular person or group), the courts have rejected that as a valid legislative purpose. *See, e.g., United States v. Icardi*, 140 F.Supp. 383 (D.D.C. 1956).

Finally, the letter you sent to POGO contains an admonition that states, in relevant part, that "not producing records requested by this letter is a crime punishable by fine and imprisonment." That, of course, is not the law, and no one has ever been prosecuted much less convicted for failing to comply with a committee letter requesting documents. Federal law and House rules set forth a specific process for the enforcement of a subpoena issued by a congressional committee. *See* 2 U.S.C. § 192 *et seq.*

That said, POGO is a law-abiding organization that cooperates with any and all lawful and responsible inquiries into subjects of legitimate public concern and will adhere to that policy in this case. It does not, however, foster a cooperative spirit to brandish threats of criminal prosecution at the very outset of an inquiry, especially when such a threat is unfounded.

BRAND, LOWELL & RYAN

The Honorable Don Young
May 28, 1999
Page 3

We look forward to a response to the issues we have raised so that we may make the determinations necessary under the law.

Sincerely,

Stanley M. Brand/mob

Stanley M. Brand

SMB:mob

cc: Ms. Elizabeth Megginson
Chief Counsel

Mr. Duane Gibson
General Counsel

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

June 11, 1999

Mr. Stanley M. Brand
Brand, Lowell & Ryan
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brand:

This letter responds to your May 28, 1999, letter to me on behalf of the Project on Government Oversight (POGO) and Ms. Danielle Brian. Your letter raises what you refer to as "legal and logistical obstacles" as excuses for your client's failure to comply with the requests in my May 25, 1999, letter.

These excuses are inadequate reasons for the failure of your client, whose ultimate responsibility it is, to produce records and provide information essential to the oversight review of matters that are within the jurisdiction of the Committee. While I took the accommodative approach of *requesting* records and information from your client, your response on her behalf leads me to conclude that more formal means of compelling compliance may well be appropriate.

Nevertheless, I will briefly address points raised in your letter. First, your client's practical ability to comply with the request for records and information is irrelevant. The ten day deadline for compliance is reasonable given the narrow scope of the request and the serious nature of the facts that underlie the Committee's oversight review. Sixteen days have now passed and your client has not complied with the request.

Second, the demands of the civil action to which you refer are also irrelevant. The Supreme Court is clear on the point that pending criminal or civil litigation is no bar to the requirement that information necessary for a Congressional review be provided to the Congress acting through its committees. *See, Sinclair v. United States*, 279 U.S. 263 (1929). The Supreme Court upheld the conviction of a Congressional witness for contempt of Congress, ruling that pending litigation did not remove from Congress the power to investigate administration of the laws. *Id* at 295. The court stated that the authority of Congress, "directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in [criminal] suits." *Id.*

Third, and in connection with the second point, Congress possesses almost *plenary*

authority, acting through its committees, under Article I, Section I of the United States Constitution[1], to collect information needed to fulfill its Constitutional function, which is to legislate on and oversee the administration of laws. Additional authority with respect to many of the subjects delegated by the United States House of Representatives to the Committee on Resources, is contained in Article IV of the United States Constitution.[2] This plenary power gives rise to a quite strong obligation on the part of your client to provide records that I have requested.

Fourth, you raise jurisdictional issues saying that the Rules of the House of Representatives conferring jurisdiction on the Committee are "general," "loosely worded," and "vague," and therefore the Committee has an extra obligation to spell out its jurisdiction and purpose. Tracing the Committee's authority from the Constitution, each clause of Rule X(*l*) of the Rules of the House of Representatives contains the subject matter over which the Committee on Resources retain jurisdiction: "mineral land laws," "mineral resources of public lands," "mining interests generally," "petroleum conservation on public lands," and "public lands" generally. This jurisdiction is by no means unclear, loosely worded, or vague.

Nor is the purpose of the review. The first paragraph of my letter to Ms. Brian states that the Committee is required to "review the laws, policies, practices, and operation of the Department of the Interior and their employees." The same obligation attaches to the Department of Energy with respect to matters within the jurisdiction of the Committee. The next paragraph explains that the oversight review includes "instances where the Project on Government Oversight (POGO) made payments of any kind or otherwise transferred funds to any employee or former employee of the Department of other federal agency." Thus, the review involves an evaluation of the policies and practices of the Department of the Interior and the Department of Energy concerning payments to employees or former employees from sources outside of their department. My letter then requests information about POGO's payments to Mr. Robert Berman, an employee of the Department of the Interior, and Mr. Bob Speir, a former employee of the Department of Energy. According to POGO's press material, each received large payments related to a matter over which the Committee retains jurisdiction–oil and gas royalties for federal public lands. There were regulatory and legislative proposals dealing directly with oil and gas

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[1] "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." United States Constitution, Article I, Section 1.

[2] "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;" United States Constitution, Article IV, Section 3.

royalties pending and under development at the time of those payments.[3] This is one purpose for the review. The purpose is quite clear. The records and information requested are well within the jurisdiction of the Committee and intimately related to the purpose the inquiry. Even so, this detailed explanation is not required because the committee has already established its jurisdiction over this area of inquiry. See, *Barenblatt v. United States*, 360 U.S. 109, 123, "[I]t goes without saying that the scope of the Committee's authority was for the House, not a witness to determine," As a result, the Committee's investigative prerogative is substantial and wide-ranging.

That being said, the Supreme Court has been very clear in its protection of the Congressional right of access to information such as that sought in this oversight review. *See e.g. Watkins v. United States*, 354 U.S. 135, 174-175, 177 (1927); *Watkins v. United States*, 354 U.S. 178, 187, 194-95, 200 n.33 (1957); *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *Eastland v. United States Serviceman's Fund*, 421 U.S. 491, 504-505 (1975); *Nixon v. Administrator of General Services*, 433 U.S. 425, 452-454 (1977). There is no authority applicable to this instance that overcomes the right of Congress, acting through this Committee, to obtain the records and information in possession of your client.

The Committee's jurisdiction is clear. The records requested from your client are needed for this inquiry under that jurisdiction and authorized by the Rules of the House of Representatives. I do not intend to enter a protracted exchange similar to the Committee on Commerce's exchange with parties in the Portals investigation. If your statement that "POGO is

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[3]The Subcommittee on Energy and Minneral Resources has conducted extensive oversight of the Minerals Management Service's (MMS) ability to collect royalties for the last several years and has proposed a new "royalty in-kind" (R-I-K) as opposed to the cash value as is currently paid. The cumbersome and costly collection procedures for collecting the government's share of revenue from production on federal leases could be drastically reduced if MMS were to use the RIK method of valuation. Additionally, Congress has twice barred MMS from finalizing a proposed valuation rule because of concerns that it would create an enormous uncertainty for lessees associated with shifting valuation far downstream from the wellhead. The concern continues to be the integrity of the rule-making process and the integrity of the information received from the DOI in regard to our efforts to reform the valuation of oil for royalty payment purposes.

a law-abiding organization that cooperates with any and all lawful and responsible inquiries into subjects of legitimate public concern" is accurate, then the records requested will be immediately provided.

Sincerely,

DON YOUNG
Chairman

cc: Mike Stern, Senior Counsel, House General Counsel

11/01/99 MON 10:44 TEL ☎202 5 7094 RESOURCES CMTE 003
10/29/99 15:34 002

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

October 29, 1999

Project on Government Oversight
Danielle Brian
Executive Director
Suite 314
1900 L Street, N.W.
Washington, D.C. 20036

Dear Ms. Brian:

The legislative, oversight, and investigative responsibilities under Rule X and Rule XI of the Rules of the United States House of Representatives, Rule 6(b) of the Rules For the Committee on Resources (the Committee), 106th Congress, and Article I of the United States Constitution, require that the Committee on Resources oversee and review the laws, policies, practices, and operation of the Department of the Interior, elements of the Department of Energy, and their employees.

Oversight Matters Under Review. As you know from my May 25, 1999 letter, I have initiated a review of, among other subjects, instances where the Project on Government Oversight (POGO) made payments of any kind or otherwise transferred funds to any employee or former employee of the Department of Interior or the Department of Energy.

Request for Records. The review requires an additional production of records in your possession or in the possession of the Project on Government Oversight that relate in any way to the matter under review. The review requires the production of all records that relate to or concern: (1) a payment or payments or other transfer of funds or promise of funds payable to Mr. Robert A. Speir, Mr. Robert A. Berman or any member of their families, from the Project On Government Oversight (POGO) or any other relator or participant or beneficiary of *United States ex rel. Johnson v. Shell Oil Company et al*, since November 2, 1998; (2) all contact between POGO and Mr. Berman, Mr. Speir, or any member of their families which relate to any False Claims Act lawsuit or which relate in any way to payment or payments or other transfer of funds or promise of funds payable to Mr. Speir, Mr. Berman or members of their respective families, from POGO or any other relator or participant or beneficiary of *United States ex rel. Johnson v. Shell Oil Company et al.*, since November 2, 1998; (3) records of any payment or promise of payment to you or to POGO from any defendant or relator in *United States ex rel. Johnson v. Shell Oil Company et al* including written agreements regarding the sharing of proceeds with you or POGO by relators in that action; and (4) records of any awards or recognition made to any current or former employee of the Department of Interior or Department of Energy, since November 2, 1998.

The review also requires prompt answers to the following question:

(1) Since November 2, 1998, have you or POGO made payments or awards or promised specific payments or awards to Mr. Berman or Mr. Speir?

For purposes of this inquiry, the term "record" , "records" , "document" , "documents", includes, but is not limited to, any and all originals and identical copies of any item written, typed, printed, recorded, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all communications, computer entries, disks, electronic data, electronic notebooks, printouts or leadouts from any magnetic storage device, memoranda, diaries, phone bills, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, lists, agendas, newsletters, resolutions, ordinances, directives, minutes, booklets, charts, schedules, facsimile transmissions, telegrams, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, briefing materials and notes, cover sheets or routing cover sheets or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also include redacted and unredacted versions of the same record. The term includes records that are in the physical possession of the Department of the Interior and records that were formally in the physical possession of the Department of the Interior as well as records that are in storage. Furthermore, with respect to this request, the terms "refer", "relate", and "concerning", means anything that constitutes, contains embodies, identifies, mentions, deals with, in any manner the matter under review.

In addition to the information listed above, this inquiry may include requests for information and interviews with you.

I request that you strictly comply with the deadlines for production which are as follows: response to this letter by **November 3, 1999 and delivery of the records and answers to the question by 4:00 p.m., November 5, 1999, to the attention of Thomas D. Casey, 1324 Longworth House Office Building.** I also request that you provide two sets of all records requested, so that I can give one to the Senior Minority Member, Congressman George Miller, for his use.

Sincerely,

DON YOUNG
Chairman

cc: The Honorable George Miller, Senior Democratic Member

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TELEPHONE: (202) 662-9700
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November 3, 1999

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515
Attn: Mr. Thomas D. Casey

Re: Project on Government Oversight

Dear Mr. Chairman:

I represent the Project on Government Oversight ("POGO") and Ms. Danielle Brian in connection with the matters addressed in your October 29, 1999 letter. In addition, I represent Mr. Henry Banta, Esq. in connection with those same matters.

You are aware, of course, of subpoenas for documents previously served upon POGO from your Committee dated June 18, 1999, timely compliance with which has already been effected by POGO and Ms. Brian. There are no documents covered by your new request that have not already been produced in response to those subpoenas. Mr. Banta has no responsive documents other than copies of certain POGO board meetings which have already been produced.

As to the "questions" proffered in your letter, as you must know, House rules do not grant authority to its committees to issue, or compel answers via written interrogatories. In the very limited circumstances in which such a procedure has been authorized, it has been specifically conferred by resolution. *See, e.g.*, HOUSE RES. 252, § 7 *reprinted in* MANUAL OF OFFENSES AND PROCEDURES, KOREAN INFLUENCE INVESTIGATION, HOUSE COMM. ON STANDARDS OF OFFICIAL CONDUCT, 99th Cong., 1st SESS. 45 (Comm. Print 1977).

BRAND & FRULLA

The Honorable Don Young
November 3, 1999
Page 2

My reluctance to proceed by way of "written interrogatory," even informally, is heightened by the mischaracterization of Ms. Brian's testimony in your letter. I do not believe it is a fair or accurate rendering of Ms. Brian's testimony that she stated that Mr. Banta "originated the suggestion that POGO file a *qui tam* action . . . " Accordingly, at this time, we respectfully decline to provide written responses to the "questions" posed in your letter.

Sincerely,

Stan Brand

Stanley M. Brand

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February 17, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight ("POGO")

Dear Mr. Chairman:

David Hunter has referred your February 14, 2000 letter to me. As you know, I am counsel to POGO and its officers, directors and employees in this matter.

First, I feel compelled to respond to what can only be regarded as a veiled threat to question POGO's tax-exempt status. POGO has a judicially recognized interest in associational freedom, which is neither conditioned by nor dependent on "cooperation" with your Committee. In addition, governmental discovery aimed at the internal records of non-profit associations, such as POGO, which are involved in public issues, seriously threatens First Amendment rights. Indeed, federal courts have held that the First Amendment protects such whistleblower information "unless the government can show a compelling interest that cannot be served by alternative means." *United States v. Garde*, 673 F.Supp. 604, 606 (D.D.C. 1987). POGO's assertion of its legitimate constitutional interest, of course, can play no role in the government's consideration of POGO's claim or entitlement to tax-exempt treatment. Secondly, POGO has been and remains in full compliance with its obligations as a tax-exempt organization and with applicable provisions of the tax code.

I can assure you that POGO is not afraid that you will uncover the truth; to the contrary, the threat to issue undifferentiated subpoenas for telephone toll records of not only POGO, but its staff and board members home and cell phone numbers without any

effort to show a particularized need for such records or how they are pertinent to what you say the Committee is looking into raises the question whether the Committee has embarked on a fishing expedition.

It is difficult to understand how telephone toll records which generally evidence only the date, time and duration of a call can be probative of the decision by POGO to issue the awards that you state are the focus of the committee's inquiry. As you must be aware, both Ms. Brian and others have been deposed on these subjects and so the truth has already been uncovered as to the circumstances surrounding these matters.

Nor does POGO's determination to insist on its legal and procedural rights in the conduct of the Committee's inquiry constitute an election "to impede the Committee," as your letter states. Such a charge is inflammatory, but also represents a further reason why POGO has declined to voluntarily participate in the Committee's inquiry.

For all of the above reasons, we do not believe that the Committee has demonstrated a sufficient basis for POGO to agree to produce the records you have requested.

Sincerely,

Stan Brand

Stanley M. Brand

SMB:mob

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February 28, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight—February 17, 2000 Subpoena

Dear Mr. Chairman:

We are writing on behalf of our client the Project on Government Oversight ("POGO"), as well as Ms. Danielle Brian and Mr. Henry Banta in connection with the subpoenas issued by the Committee on Resources on February 17, 2000. While we have furnished a number of documents in response, we must also apprise you of the legal obstacles that prevent our clients from furnishing a portion of the documents covered by the subpoenas.

As an initial matter, the breadth of the subpoenas indicates that the range of your investigation is not -- as you have previously stated -- confined to POGO's interaction with Mr. Berman and Mr. Speir, but is instead, directed toward POGO's activities in general. For example, Mr. Banta is required to provide all records that "were created by, were directed to, relate to or mention any communication between you and . . . Danielle Brian Stockton." It is hard to imagine how all such documents (Mr. Banta has served as a POGO board member since 1991 and Ms. Brian has been Executive Director since 1993) could be relevant to your investigation. Even more troubling is that POGO and Ms. Brian are directed to provide all "[l]ocal and long distance telephone records including but not limited to bills, call logs, call sheets, message records, and answering machine and/or voice mail recordings from the period of February 1, 1996 through June 30, 1997." Again, such a broad and undifferentiated request reveals that

the scope of these subpoenas far exceeds the subject matter of the Committee's investigation.

Moreover, the nature of disparaging public comments about POGO made by both you and Barbara Cubin, a Republican member of the Committee, render POGO's First Amendment claims against retaliation and harassment by the government for its activities especially persuasive. In testimony before the House Rules Committee Subcommittee on Rules and Organization in July of last year, you described POGO as a "so-called watchdog group" and stated that, "I had never heard of such a thing before – an outside group with an agenda paid government employees a third of a million dollars each because they worked to further their agenda." Echoing your comments, Congresswoman Cubin displayed a similar bias against POGO in an October 4, 1999 letter: "A so called 'government watchdog' group . . . has been caught red-handed paying two high-level federal government employees . . . for their assistance in helping this group sue several oil companies under the Federal False Claims Act." Your obvious hostility and animus toward POGO directly implicates the First Amendment's protection for unpopular or disfavored speech by groups not aligned with the government or critical of its activities.

In response to these new subpoenas, POGO and Ms. Brian have not provided any documents. As we noted in our November 3, 1999 letter to you, POGO and Ms. Brian have already complied in a timely manner with the June 18, 1999 subpoenas for documents from your Committee. On August 2, 1999, POGO responded to the 14 requests in that subpoena by producing -- among other records -- memoranda, minutes of board meetings, and POGO's 1996, 1997, and 1998 tax returns. As the pertinent requests in the new subpoenas essentially duplicate your earlier requests, all pertinent documents have been produced. Accordingly, POGO and Ms. Brian can provide the Committee with no new pertinent documents.

Despite the unduly broad language of Mr. Banta's subpoena, Mr. Banta has provided, for the most part, the documents that you have requested.

In regards to all three subpoenas, however, some documents have been withheld. We have done so because:

(1) certain requested documents are not pertinent to the Committee's investigation;
(2) compelling production of certain documents would violate POGO's right to association under the First Amendment;
(3) certain requested documents are confidential under 29 U.S.C. § 1733(a); or,
(4) certain requested documents are protected by the attorney-client privilege.

I. Pertinency

As you know, a witness before a congressional committee is entitled to a showing that the documents and testimony sought is "pertinent" to the subject under inquiry. *See* 2 U.S.C. § 192. The Committee has the burden of demonstrating such pertinency with the degree "of explicitness and clarity that the Due Process Clause requires." *Watkins v. United States*, 354 U.S. 178, 209 (1957).

Moreover, as you are also undoubtedly aware, in reviewing the powers of Congress to issue and enforce subpoenas, the courts have applied "the exacting standards of criminal jurisprudence . . . in order to assure that the congressional investigative power . . . [is] not . . . abused." *Gojack v. United States*, 384 U.S. 702, 707 (1966). In addition, Congress has "no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress." *Watkins*, 354 U.S. at 187.

The subpoenas issued by your Committee seek information that is not pertinent to your investigation. The "obvious first step in determining whether these questions asked were pertinent . . . is to ascertain what the subject was." *Russell v. United States*, 369 U.S. 749, 758-59 (1962). As the Supreme Court observed, "[t]o be meaningful, the [committee] . . . must describe . . . the connective reasoning whereby the precise" demands made of a witness relate to the areas under investigation. *Watkins*, 354 U.S. at 215.

In your June 11, 1999 letter to me, you stated that, "the review involves an evaluation of the policies and practices of the Department of the Interior and the Department of Energy concerning payments to employees or former employees from sources outside of their department." The Supreme Court has held that:

> There are several sources that can outline the "question under inquiry" in such a way that the rules against vagueness are satisfied. The authorizing resolution, **the remarks of the chairman** or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear.

See Watkins, 354 U.S. at 209 (emphasis added). As this statement constitutes the **only** explication of the subject and scope of the Committee's investigation, we are entitled to rely upon your explanation for guidance. Thus, by your own words, any request for documents unrelated to POGO's interaction with Mr. Berman and Mr. Speir must be deemed not pertinent to your investigation.

A number of the requests contained in your subpoenas do not survive a reasoned pertinency analysis. We do not understand, for example, how a request from POGO for **all** "[l]ocal and long distance telephone records including but not limited to bills, call logs, call sheets, message records, and answering machine and/or voice mail recordings from the period of February 1, 1996 through June 30, 1997" is pertinent. Similarly, your subpoena to Mr. Banta requests all records that "were created by, were directed to, relate to or mention any communications between you and . . . Danielle Brian Stockton . . . ." Again, such an unfocused and wide-ranging request exceeds the pertinency bounds set forth in *Watkins.*

Accordingly, to the extent that POGO possesses documents requested under numbers 1, 2, 3, and 5 of its subpoena, it withholds them because they are not pertinent to the Committee's investigation. Similarly, Ms. Brian also withholds documents requested under numbers 1, 2, 3, and 4 of her subpoena. Finally, Mr. Banta has withheld some documents requested under number 1 of his subpoena. In the next few days, we will provide you with a log listing the documents that have been withheld because they are not pertinent to the Committee's investigation.

2. Right of Association

Moreover, to the extent that the subpoenas request information that would force POGO, Ms. Brian, or Mr. Banta to disclose the identity of individuals who have provided the organization with "whistleblower" information or who provide support to the organization, the subpoenas violate POGO's First Amendment right of association.

Founder in 1981, POGO is a 501(c) organization dedicated to investigating, exposing, and remedying government waste and fraud. It has a record of having uncovered, or having assisted in uncovering, fraud in government procurement programs, including defense systems, consumer protection, and nuclear waste. At times, these activities have brought POGO into sharp dispute with government agencies over government procurement and management policies.

In general, Congress may not compel those engaged in associational activity protected by the First Amendment to produce their records, or provide any other information, about that activity. Instead, the Supreme Court has held that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). Thus, in a legislative inquiry, "before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit constitutionally protected activities or seriously interfere with similarly protected associational rights," the Committee must establish a "foundation" based on "fact and reason" that demonstrates the necessity of disclosure

for a "compelling" public interest. *Gibson v. Florida Legis. Invest. Comm'n*, 372 U.S. 539, 557 & n.7 (1963).

The Supreme Court has emphasized that, "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as . . . freedom of political association." *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957).

Thus, it is "beyond debate" that the First Amendment protects lawful associational activity as well as individual activity. *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958). "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," *Buckley*, 424 U.S. at 15 (*quoting NAACP*, 357 U.S. at 460), and the First Amendment protects the amplified voice of the association, *Buckley*, 424 U.S. at 22. For the purpose of associational rights, "it is immaterial whether the beliefs sought to be advanced by [the] association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the **closest scrutiny**. *NAACP*, 357 U.S. at 460-61 (emphasis added).

Courts applying this high degree of scrutiny have consistently held that "absent a compelling government interest, an organization [can] not constitutionally be compelled to identify the names of its members, agents, contributors, or recipients of contributions if it could be demonstrated that such disclosure would subject those identified to harassment or retaliation by virtue of their association." *United States v. Garde*, 673 F. Supp. 604, 606 (D.D.C. 1987) (*citing NAACP v. Alabama*, 357 U.S. 449 (1958) & *NAACP v. Button*, 371 U.S. 415 (1963)). In *Garde*, the court rejected the government's petition to enforce a Nuclear Regulatory Commission subpoena seeking to compel disclosure of a nonprofit organization's "whistleblower" information. *Id.* The court concluded that, "[t]he First Amendment bars this infringement on constitutionally protected rights unless the government can show a compelling interest that cannot be served by alternative means." *Id.* at 607.

POGO's government watchdog role makes it particularly vulnerable to governmental perusal of its sources of information, subscribers, and inner workings. Accordingly, the First Amendment safeguards POGO from such intrusion. This vital protection "reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Buckley*, 424 U.S. at 14 (*quoting New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). That shield encompasses all aspects and stages of the "debate," from the "'abstract discussion' . . . of political policy generally [to] advocacy of the passage or defeat of legislation," to "the right to engage in 'vigorous advocacy.'" *Buckley*, 424 U.S. at 48 (*quoting New York Times Co.*, 376 U.S. at 269. In short, all political activities, especially the type of role --

often disfavored by the government -- assumed by POGO, "lie at the very core of the First Amendment." *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 97 (1982).

Here, the public statements by Committee members evincing hostility to POGO and animus toward its activities make this government intrusion *via* subpoena extremely troublesome. Absent a compelling and clearly articulated governmental justification, the protection afforded to POGO by the First Amendment bars precisely this type of intrusion into unpopular activities. Clearly, the Committee has proffered no such rationale in this matter.

In sum, the subpoenas issued to POGO, Ms. Brian, and Mr. Banta by your Committee implicate First Amendment protection without demonstrating any compelling interest. By requesting a wide range of telephone records and related information, the subpoenas would force POGO to reveal protected information relating to individuals who have provided POGO with information or other assistance. Considering the narrow range of the investigation that you have previously outlined, we do not believe that the Committee has demonstrated any "compelling interest" in such ancillary information.

Pursuant to rights under the First Amendment, POGO, Ms. Brian, and Mr. Banta withhold all records requested by the subpoena that relate to its associational activities.

3. 29 U.S.C. § 1733(a)

Mr. Banta has also withheld documents that are confidential pursuant to 29 U.S.C. § 1733(a). We will provide the Committee with a log of these documents later this week.

4. Attorney-Client Privilege

Finally, Mr. Banta has withheld documents pursuant to the attorney-client

privilege. We will also provide the Committee with a log of these documents later this week.

Sincerely,

Stanley Brand

Stanley M. Brand
Ross. A. Nabatoff
Andrew D. Herman

SMB:mob

cc: Ms. Elizabeth Megginson
Chief Counsel

Mr. Duane Gibson
General Counsel

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

March 6, 2000

Stanley M. Brand, Esq.
Brand & Frulla
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brand:

Without addressing the legal arguments made in your February 28, 2000 letter, I must correct misstatements and omissions made in that letter and in your statements to the press.

On November 29, 1999, an adversary of your clients' interest in the proceeds of the *Johnson v. Shell* litigation provided sworn testimony in a federal court hearing which appears to directly contradict sworn statements made by your client, Danielle Brian. To begin weighing the merits of those conflicting statements, Committee counsel telephoned you and explained that I intend to subpoena records of telephone calls between POGO or Danielle Brian and that witness. Committee counsel explicitly stated that personal calls and business calls other than to that witness were not sought. You immediately and categorically rejected our request for voluntary production of the telephone numbers in use by POGO and Ms. Brian during the period of February 1, 1996 through June 30, 1997.

To avoid needless confrontation, I wrote the Chairman of the Board of POGO to restate my request for those numbers, to ask for the cooperation of the Executive Director of POGO, and to ask for a roster of the POGO Board of Directors since 1994. You replied to that letter by flatly rejecting each request.

You refused two attempts to acquire telephone numbers necessary for a carefully tailored subpoena for records of calls between POGO or Ms. Brian and their adversary in the November 29 federal court hearing. I thus concluded that a subpoena for records which contained those telephone numbers and details of long distance and cell phone service providers was the only way to begin verifying communication between one specified set of numbers and another specified set of numbers.

Now, you and your clients elect to defy a duly executed and served Congressional subpoena for telephone numbers, the names of long distance and cell service providers in use during a particular period, and the names of the POGO Board of Directors. Before informing the Committee on Resources of this decision, you called a press conference to assail my motives. Yet, at no time did you inform the press of the Committee's two requests that your clients voluntarily provide the requested numbers. Nor did you reveal that Committee counsel had initiated the process by explaining that only calls to and from a specific set of numbers was sought.

Shortly, I intend to ask the Subcommittee on Energy and Mineral Resources under the chairmanship of Representative Barbara Cubin to consider compelling compliance with the February 17, 2000 subpoenas served on your clients, Danielle Brian, the Project on Government Oversight, and Henry M. Banta; and to consider hearings related to this inquiry. The purpose of the Committee's inquiry is to determine the impact to public policy of POGO's sharing of litigation proceeds with a Department of the Interior employee and a now-retired Energy Department employee. Directly related matters include the participation of POGO in the *Johnson v. Shell* litigation, which was the source of the payments made to the federal employees. Delivery of the overdue log of documents withheld from production under the February 17 subpoenas will be useful in considering your objections to those subpoenas.

I encourage you and your clients to reconsider the decision to impede this Committee's work. The Committee on Resources is conducting a disinterested and nonpartisan inquiry which is clearly within our jurisdiction over Department of the Interior and Department of Energy policies.

Committee counsel reports that you agreed last Friday morning to provide properly redacted minutes from all POGO Board of Directors meetings during which the litigation and payments were discussed to cure the deficiencies in the minutes produced in response to a prior subpoena. That is a good step. I await prompt delivery of those minutes. I encourage you to reconsider your decision to block a staff interview of Dina Rasor, a POGO director. Unless the Committee is given access to all relevant records and witnesses, it will be difficult to assess the reliability and accuracy of your clients' version of these events and allegations and meet our responsibilities under numerous House rules including Rule X.1.(l) and Rule X.2.(a) and (b).

Sincerely,

Don Young
Chairman

BRAND & FRULLA
A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

March 8, 2000

HAND DELIVERED

Mr. Thomas Casey
Legislative Staff
United States House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515-6201

Re: Project on Government Oversight ("POGO")

Dear Mr. Casey:

I wanted to respond to your request for interviews with certain directors and officers of the Project on Government Oversight ("POGO") concerning allegations apparently proffered by Benjamin Johnson in connection with POGO's involvement in certain qui tam litigation. More specifically, you indicated in our telephone conversation on Friday, March 3, 2000, that the records subpoenaed by the Committee are necessary to determine whether the representations made by Mr. Johnson respecting POGO's participation in the litigation are truthful. You also stated that you had not necessarily credited Mr. Johnson's representations, but needed to speak with officers at POGO to understand the circumstances surrounding its decision to become a party in *United States of America ex rel. Johnson v. Shell Oil, Inc., et al*, Civ. Action No. 9:96V66 (E.D. Tex.).

We have considered your request to interview officers and directors of POGO but we remain puzzled how the decision whether to enter the litigation is "pertinent" to what you have stated is the subject matter of your investigation, namely the "policies and practices of the Department of the Interior and the Department of Energy regarding payments to employees and former employees of these departments that may be related to the employees past or present work with their department;" and "payments from POGO to Mr. Robert Berman and Mr. Robert Speir." It is unclear how these two

subject matters relate in any way to POGO's decision to participate as a party in qui tam litigation.

Moreover, and much more troublesome from a legal standpoint, the Committee's February 28, 2000 press release states that the subject matter of its investigation concerns "whether POGO or its adversary in a November 29, 1999 federal court hearing is telling the truth about a possible scheme to breach a federal court seal ..." and whether "some people may be facing perjury and obstruction of justice charges." Most recently, the Chairman reiterated in his March 6, 2000 letter to me that you need all these telephone records to "begin weighing the merits of those conflicting statements."

As you no doubt are aware, Congress' investigative power while undeniably broad is an incident of its legislative function and is not unlimited but can only be properly invoked "in and of the legislative function." *Kilbourn v. Thompson*, 103 U.S. 168, 169 (1881). However, "the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under out Constitution to the Executive and the Judiciary." *Quinn v. United States*, 349 U.S. 155, 161 (1955). When Congress seeks to exercise essentially judicial or executive functions, it "has no power to compel the testimony of a witness for other than a bona fide legislative purpose, even though the testimony be relevant to the subject matter of the authorized investigations." *United States v. Cross*, 140 F. Supp. 303, 306 (D.D.C. 1959); see also *United States v. Icardi*, 140 F. Supp. 383, 388 (D.D.C. 1956) ("The investigation must be to aid legislation.")

Obviously, investigating "whether POGO or its adversary ... is telling the truth about a possible scheme to breach a federal court seal" or whether POGO or another party "lied under oath" in a federal court proceeding is not "in aid of the legislative function." *Kilbourn*, *supra* at 189.

Under these circumstances, it is difficult to discern a legislative purpose for the committee interviewing POGO officers and directors or how the decision by POGO to file a civil lawsuit is pertinent to the subject matter of your investigation. Of course, should the Committee articulate a reasonable basis for the pertinency of its inquiries or a legislative purpose that comports with controlling case law, we would consider whether to agree to interviews of POGO officers and directors.

BRAND & FRULLA

Mr. Thomas Casey
March 8, 2000
Page 3

Accordingly, at this time, we respectfully decline to agree to Committee interviews of POGO officers and directors.

Sincerely,

Stanley M. Brand

SMB:mob

cc: Jeff Petrich, Esq.

bcc: Ms. Deborah Lanzone
Legislative Staff
Committee on Resources
186 House Annex 2
Washington, D.C. 20515

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A PROFESSIONAL CORPORATION
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WASHINGTON, D.C. 20005

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March 8, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight Subpoena

Dear Mr. Chairman:

I am responding to your March 6, 2000 letter regarding the subpoenas issued to the Project on Government Oversight ("POGO") by the Committee on Resources and related matters.

As you know, POGO has already provided letters, memoranda, and its tax returns concerning its distribution of awards to Mr. Berman and Mr. Speir. Although you informed POGO of your intent "to subpoena records of telephone calls between POGO or Danielle Brian" and Mr. Johnson, you have never explained why *all* of POGO's telephone records are necessary to review those particular calls. While Committee counsel did call me prior to issuance of the subpoena, he did not explain why the Committee needed POGO to identify *all* of its telephone numbers and telephone vendors to allow the Committee to review only calls between POGO, Ms. Brian, and Mr. Johnson. Your letter provides no insight into the necessity of such a broad subpoena and fails to explain why the Committee could not have issued a more specific request tailored to the investigation at hand.

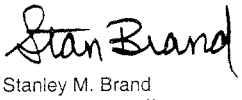
More fundamentally, your letter persists in maintaining that the purpose of your investigation is, "to begin weighing the merits of . . . conflicting statements" made in federal court litigation. As we have noted repeatedly, a Congressional investigation "must be to aid legislation." *United States v. Icardi*, 140 F. Supp. 383, 388 (D.D.C.

1956). The Supreme Court has stated that Congress' "power to investigate must be not be confused with any of the powers of law enforcement; those powers are assigned under the Constitution to the Executive and the Judiciary." *Quinn v. United States*, 349 U.S. 155, 161 (1955). At each and every juncture at which we have requested an explanation for the pertinency of these records you have cited the federal court litigation as a basis, stating now that the records are necessary to determine "who lied under oath." There can be no valid legislative purpose in determining whether a person lied under oath in a specific civil case, for as the courts have held, "There is a clear difference between Congress's legislative tasks and the responsibility of a grand jury, or any other institution engaged in like functions. While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability than a precise reconstruction of past events; *Congress frequently legislates on the basis of conflicting information provided in its hearings*." *Senate Select Committee v. Nixon*, 498 F.2d 725, 732 (D.C. Cir. 1974) (en banc) (denying committee's request for Watergate tapes) (emphasis added). That authority applies with equal force here. Your stunning candor in proffering the litigation as the purpose underlying your Committee's action convinces me that these subpoenas would never be upheld in federal court.

Similarly, we must decline your request to interview POGO board members or other individuals associated with POGO. Under these circumstances, it is difficult to discern a legislative purpose for the committee interviewing POGO officers and directors or how the decision by POGO to file a civil lawsuit is pertinent to the subject matter of your investigation.

Accordingly, at this time, we respectfully decline to agree to Committee interviews of POGO officers and directors. We will provide the privilege log to you by the close of business tomorrow.

Sincerely,



Stanley M. Brand
Ross. A. Nabatoff
Andrew D. Herman

Counsel to Project on Government Oversight

SMB:mob

cc: Elizabeth Megginson, Esq.
Chief Counsel

Duane Gibson, Esq.
General Counsel

Jeffrey Petrich, Esq.

bcc: Ms. Deborah Lanzone

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March 9, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight Subpoena

Dear Mr. Chairman:

Enclosed please find the privilege log detailing documents withheld from production under the Committee's subpoena because of pertinency, attorney-client privilege, attorney work product, or the confidentiality provision of 29 U.S.C. § 1733. We are also producing two additional letters relating to the federal court litigation that we discovered in the course of compiling the privilege log.

Finally, please note that we have already produced all pertinent, responsive POGO Board minutes in redacted form and, thus, have not provided any additional minutes.

Sincerely,

Stan Brand

Stanley M. Brand
Ross. A. Nabatoff
Andrew D. Herman

Counsel to Project on Government Oversight

SMB:mob
Enclosure

cc: Elizabeth Megginson, Esq.
Chief Counsel

Duane Gibson, Esq.
General Counsel

Jeffrey Petrich, Esq.

bcc: Ms. Deborah Lanzone

LOG OF WITHHELD DOCUMENTS

Legend

Attorney-Client Privilege - ACP
Attorney-Work Product - AWP

Description	Date	Reason for Withholding
Hank Banta's notes re: Johnson v. Shell Oil litigation (two copies)	Undated	AWP
Memo from Lee Helfrich, Esq. to Jim Trout re: oil teleconference	7/19/95	ACP
Memo from Lee Helfrich, Esq. to Rick Chivaro re: Mobil settlement	4/10/98	ACP
Draft letter from Lee Helfrich, Esq. to client re: potential conflict of interest	Undated	ACP
Memo from L. Helfrich, Esq. to Rick Chivaro re: settlement	4/30/98	ACP
Memo from L. Helfrich, Esq. to Rick Chivaro re: intervention in False Claims Act litigation	5/21/98	ACP
Memo from L. Helfrich, Esq. to Rick Chivaro re: Mobil settlement, legislation	6/1/98	ACP
Memo from L. Helfrich, Esq. to Rick Chivaro re: Mobil settlement	8/20/98	ACP, 29 U.S.C. § 1733
Memo from L. Helfrich, Esq. to Rick Chivaro re: meeting with MMS	Undated	ACP, AWP
Draft letter from Stanley M. Brand, Esq. to the Honorable Don Young sent via facsimile from Danielle Brian to Hank Banta, Esq.	5/28/99	ACP, AWP
Letter from Hank Banta, Esq. to Robert Spier re: representation	11/21/97	ACP, Pertinency
Contingent fee agreement between Robert Spier and Lobel, Novins & Lamont	12/10/97	ACP, Pertinency

Description	Date	Reason for Withholding
Draft complaint (two copies)	Undated	ACP, AWP, Pertinency
Draft complaint	Undated	ACP, AWP, Pertinency
Letter from Kenneth R. Vogel, Chief, Office of Enforcement, Department of the Interior to Lee Helfrich, Esq. re: Mobil settlement	3/3/98	29 U.S.C. § 1733
Memorandum re: Mobil settlement	Undated	ACP, 29 U.S.C. § 1733
Facsimile from Lee Helfrich, Esq. to Kenneth R. Vogel re: Mobil settlement	3/17/98	ACP, 29 U.S.C. § 1733
Memorandum from Lee Helfrich, Esq. and Hank Banta, Esq. to Rich Chivaro re: Mobil settlement	3/24/98	ACP, AWP
Memorandum from Lee Helfrich, Esq. to Kenneth Vogel re: Mobil settlement	3/20/98	ACP, AWP
Draft letter from Lee Helfrich, Esq. to Kenneth Vogel re: Mobil settlement	3/27/98	ACP, AWP
Memorandum re: Mobil settlement	3/26/98	ACP, AWP
Draft memorandum re: Texaco settlement	Undated	29 U.S.C. § 1733
Facsimile cover sheet with comments from Kenneth Vogel to Bob Fees re: Mobil settlement	7/7/98	29 U.S.C. § 1733

Description	Date	Reason for Withholding
Memorandum re: Mobil settlement	Undated	29 U.S.C. § 1733
Letter from Kenneth Vogel to Lee Helfrich, Esq. re: Mobil settlement	4/6/98	29 U.S.C. § 1733
Letter from Danielle Brian to Hank Banta, Esq. re: POGO interests	12/16/96	Pertinency
POGO Board memorandum	2/14/96	Pertinency
Letter from Danielle Brian to Hank Banta, Esq. re: oil royalty report	8/7/96	Pertinency
Letter from Danielle Brian to POGO Board members re: finances	11/18/96	Pertinency
Letter from Danielle Brian to POGO Board members re: finances	10/21/96	Pertinency
Letter from Danielle Brian to POGO Board members re: finances	11/1/96	Pertinency
POGO Board memorandum re: change of banks (2 copies)	9/28/93	Pertinency
Letter from Danielle Brian to POGO Board re: issues for Board meeting	11/30/94	Pertinency
Report Announcement re: accounts	5/94	Pertinency
POGO Board memorandum from Danielle Brian to POGO Board re: various issues	4/22/97	Pertinency
Danielle Brian to POGO Board re: various issues	12/19/95	Pertinency
Draft memorandum from Danielle Brian to POGO Board re: change of banks	9/28/93	Pertinency
Memorandum from Danielle Brian to POGO Board re: 1995 audit	4/2/96	Pertinency
Letter from Jonathan Turley to Danielle Brian re: Groom Lake	1/24/94	Pertinency

Description	Date	Reason for Withholding
Letter from Danielle Brian to Hank Banta, Esq. re: oil royalty	4/15/94	Pertinency
Danielle Brian to POGO Board memorandum re: Board meeting	3/4/94	Pertinency
Letter from Danielle Brian to POGO Board re: fundraiser	5/30/95	Pertinency
Letter from Danielle Brian to POGO Board re: line of credit	10/21/96	Pertinency
Memorandum from Danielle Brian to POGO Board re: Board meeting	3/30/00	Pertinency
POGO memorandum re: strategic review	4/15/97	Pertinency
Memorandum from Robert Speir to D. Hubbard re: California crude oil valuation	7/13/94	Pertinency
Draft letter from Lee Helfrich, Esq. to Lucy Oueques re: Clevron settlement	Undated	Pertinency
Draft memorandum from Lee Helfrich, Esq. to Jim Trout re: DOI and task force meeting on July 12	Undated	Pertinency
Draft memorandum from Lee Helfrich, Esq. to Jim Trout re: DOI and task force meeting on July 12th	7/13/95	Pertinency
Hank Banta, Esq. to Jim Trout re: California valuation	6/22/95	Pertinency
Hank Banta, Esq. memorandum re: qui tam litigation	undated	AWP
Memorandum from B. McMahon re: Mobil Oil settlement (2 copies)	6/2/98	ACP
Hank Banta, Esq. deposition	9/16/99	Sealed by Court Order
POGO's objections to G. Harmon's subpoena duces tecum (4 copies)	11/12/99	Sealed by Court Order

Description	Date	Reason for Withholding
Reply of Benji Johnson to POGO opposition to motion for order voiding MRCA (2 copies)	11/10/99	Sealed by Court Order
POGO's objections to subpoena duces tecum for Hank Banta, Esq. and D. Hunter (3 copies)	11/11/99	Sealed by Court Order
Memorandum to J. Wagstaffe from D. Packard re: document	11/15/99	Sealed by Court Order
Draft response of POGO re: motion of deposition of Hank Banta, Esq. and subpoena for production of document	11/10/99	ACP, AWP
Motion for order voiding MRCA	10/6/99	Sealed by Court Order
Opposition to Motion for order voiding MRCA	10/20/99	Sealed by Court Order

LAW FIRM, L. L. P.

REUBEN A. GUTTMAN
ATTORNEY AT LAW

November 15, 1999

VIA FAX AND FIRST CLASS MAIL
Lee Ellen Helfrich, Esquire
Lobel, Novins & Lamont
Suit 770
1275 K Street, N.W.
Washginton, D.C. 20005-4048

RE: U.S. ex rel. J. Benjamin Johnson, Jr. et al. v. Shell Oil Company, et al.

Dear Lee:

During our telephone conference last Friday, counsel for Johnson and Martineck posed multiple questions to you with regard to our interest in deposing Hank Banta. You indicated that you would respond to those questions by the close of business. In addition, at the time we posed those questions, your partner-- Marty Lobel--had not responded to queries in my earlier letter.

Today at 3:45 p.m., I received a letter from you which failed to provide any substantive answers to our questions.

Scott Powell will be in Washington tonight at the Phoenix Park Hotel. He will be taking Mr. Banta's deposition. If you can reach an agreement with Mr. Powell tonight, then it is possible to avoid the deposition.

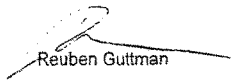
Absent a resolution between you and Mr. Powell, Mr. Banta will not be released from his subpoena.

I had hoped that this matter could be resolved short of a deposition. In any event, if you are correct that Mr. Banta has limited information then I would anticipate the deposition to be expeditious.

Finally, the deposition is part of a sealed proceeding and therefore it is my understanding that the record will be sealed. I will not be at the deposition tomorrow, so I suggest that you reconfirm this on the record.

1350 New York Avenue, NW, Suite 1040, Washington, D.C. 20005-4798
202-637-0400 • FAX 202-637-2977
530 Swede Street, Suite 300, Norristown, PA 19401
610-292-9200 • FAX 610-520-9233
• Beaumont, Texas • Port Arthur, Texas • Houston, Texas

Cordially,



Reuben Guttman

cc: Scott Powell, Esquire
Mike Havard, Esquire
Rayford J. Etherton, Esquire

RAG/jef

PROVOST★UMPHREY, L.L.P
1350 NEW YORK AVENUE, N.W., SUITE 1040
WASHINGTON, D.C. 20005-4793
202-637-0400 (TELEPHONE)
202-637-2977 (FAX)

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EXTRA PAGE. 001

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DATE: November 15, 1999 (6:12PM)

CLIENT NO.: 31263-1

TO: Lee Helfrich 202-371-6643

TO: Rayford Etherton 334-432-1633

TO: Scott Powell 205-324-2165

TO: Michael Havard 409-838-8888

FROM: Reuben A. Guttman

NUMBER OF PAGES (including transmittal): 3

COMMENTS:

PROVOST★UMPHREY, L.L.P
1350 NEW YORK AVENUE, N.W., SUITE 1040
WASHINGTON, D.C. 20005-4798
202-637-0400 (TELEPHONE)
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DATE: November 11, 1999 (5:26PM) CLIENT NO.: 31263-1

TO: Martin Lobel 202-371-6643

TO: Rayford Etherton 334-432-1633

TO: Scott Powell 205-324-2165

TO: Michael Havard 409-838-8888

TO: Daniel Packard 409-833-8638

FROM: Reuben A. Guttman

NUMBER OF PAGES (including transmittal): 3

COMMENTS:

LAW FIRM, L. L. P.

REUBEN A. GUTTMAN
ATTORNEY AT LAW

November 11, 1999

VIA FACSIMILE AND FIRST CLASS MAIL
Martin Lobel, Esquire
Lobel, Novins & Lamont
1275 K Street, N.W., Suite 770
Washington, D.C. 20005-4048

Re: **U.S. ex rel. Johnson et al. v. Shell Oil Co. et al.**

Dear Marty:

During our phone conference yesterday, you seemed to express a desire to immediately resolve issues with regard to Mr. Banta's document production. Accordingly, I forwarded you a letter requesting certain information which would allow us to clarify the document requests. Unfortunately, you have not responded to that letter.

Yesterday evening, my colleague – Traci Buschner – received a correspondence from you which purported to object to the document request attached to Mr. Banta's subpoena. Your letter raises ceratin issues.

First, you write, ". . . we have no other choice but to protect our other clients and ourselves from what is clearly harassment." This statement is somewhat confusing. Who is it that you purport to represent? Are you representing Mr. Banta, the State of California, POGO, yourself, your law firm, or all or some of these entities or individuals?

As I explained in my letter, the subpoena was directed at Mr. Banta and certain documents that he may have in his possession. We are not interested in your firm's client files. Mr. Banta indicated during our phone conversation that he had a limited number of documents relating to POGO. Clearly the production of those documents would not place a burden on Mr. Banta. Therefore, any contention in your letter to Ms. Buschner that there is no time to produce any documents is a contention that is apparently not accurate.

Second, you state that, "[t]his subpoena is an abuse of process because it only relates to a contract dispute which is not properly pending before any court." I think it is reasonable that you advise me immediately of all information – including documents

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530 Swede Street, Suite 300, Norristown, PA 19401
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• Beaumont, Texas • Port Arthur, Texas • Houston, Texas

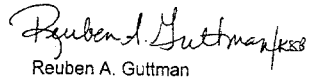
and oral representations by counsel or others in the above case – which supports your contention which I suggest is simply not accurate.

Mr. Banta's deposition is scheduled for Tuesday, November 16, 1999. I indicated to you that we will not withdraw his subpoena at this time. While there may be alternative means to secure the necessary facts from Mr. Banta in order to avoid a deposition, your failure to produce documents makes it impossible for us to contemplate or discuss those avenues.

Naturally, when we take Mr. Banta's deposition, we will inquire about documents requested under the subpoena. If it appears from the testimony that documents should have been produced, we will have cause to continue the deposition and/or seek appropriate relief.

I hope this letter places before you a practical outlook on how Mr. Banta's deposition should be approached.

Cordially,



Reuben A. Guttman

cc: Michael A. Havard, Esquire
Scott Powell, Esquire
Rayford L. Etherton, Jr., Esquire
Daniel Packard, Esquire

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

April 6, 2000

Stanley M. Brand, Esq.
Brand & Frulla
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brand:

On February 17, 2000, I issued subpoenas to your clients Danielle Brian Stockton, Henry M. Banta, and the Project on Government Oversight. By letter dated February 28, 2000, you informed me that Ms. Brian and the Project on Government Oversight would not comply with the subpoena and that Mr. Banta would comply in part.

On March 10, 2000, I received the oft-promised log of records withheld by Mr. Banta. That log of specific records and the stated reason for refusing to produce each record has been reviewed. In some cases, Mr. Banta's objections to production are rejected. In other cases, more information about the record and/or objection is requested or an accommodation is offered. A summary of the Committee's response to each withheld record is included below.

On the question of pertinency raised by each of your clients, I call your attention to prior correspondence in which you were notified that this inquiry is conducted pursuant to legislative, oversight, and investigative authority under Rule X and Rule XI of the Rules of the United States House of Representatives; Rule 6 of the Rules For the Committee on Resources (the Committee), 106th Congress, pursuant to which the Committee has general oversight jurisdiction over the laws, policies, practices, and operation of the Department of the Interior (DOI) and elements of the Department of Energy (DOE); and Article I and Article IV of the United States Constitution.

I also call your attention to my letter of March 21, 2000 to Representative Barbara Cubin directing her to continue this inquiry through the Subcommittee on Energy and Mineral Resources. This letter constitutes the most recent statement of the areas under review and takes into account information received and reviewed since the inquiry began in May, 1999. The inquiry is well within the jurisdiction of the Committee on Resources and the powers and prerogatives of the House of Representatives. My letter to Chairman Cubin directs her and the Subcommittee on Energy and Mineral Resources to:

> "...focus...on the general subject of laws, policies, practices, and operations of the Department of the Interior and the Department of Energy which pertain to

payments by non-government organizations or by individuals to employees involved in federal oil royalty programs and policies; participation by employees in *qui tam* litigation affecting said programs and policies of those departments; and disclosure requirements for employees participating in or promised payment from such *qui tam* suits. The Subcommittee's work should specifically review: (1) payments made by the Project on Government Oversight (POGO) to Robert A. Berman, an Interior employee and to Robert A. Speir, a now-retired Energy employee using funds derived principally from POGO's participation in the *Johnson v. Shell* litigation under the False Claims Act; and (2) allegations that POGO's participation in *Johnson v. Shell* and consequent payments to Mr. Berman and Mr. Speir were facilitated by allegedly improper actions by federal employees."

During the course of this inquiry, the Committee learned of sworn testimony given by J. Benjamin Johnson, Jr. on November 29, 1999. That testimony suggests that your client, Danielle Brian, had knowledge of the *Johnson v. Shell* matter while it was under seal.

After filing a separate but nearly identical *qui tam* complaint on behalf of herself and POGO, in the same court hearing *Johnson*, POGO and Ms. Brian signed a written agreement to share litigation proceeds with Mr. Berman and Mr. Speir. Determining whether improper assistance was provided to POGO and Ms. Brian in selecting a venue and/or in preparing their suit and thus acquiring the funds which were turned over to Mr. Berman and Mr. Speir is highly pertinent to this inquiry. Thus, the Committee seeks to ascertain whether the conversations described by Mr. Johnson occurred.

You have the benefit of the controlling statement of the areas under review. This inquiry necessarily includes allegations that improper actions may have led to the sharing of POGO's litigation proceeds with two federal employees and that possible improper actions by one or both of these employees may have benefitted the participation of Danielle Brian and POGO in the Multi Relator / Counsel Agreement in *Johnson v. Shell*.

Since well before the February 17 subpoena was made necessary by your refusal to voluntarily provide telephone numbers, you have been aware that the Committee's intent is to use that information to subpoena from phone service providers only call records which may support or refute Mr. Johnson's testimony.

In the interest of rapidly moving toward a conclusion which makes known relevant and necessary facts about the areas under inquiry, I make available to your clients an alternative means of complying with portions of the February 17, 2000 subpoena.

If POGO and/or Ms. Brian elect, all telephone-related records which are covered by the subpoena shall be made available for inspection by Committee staff in your office or in their

office. This must be done no later than Noon EDT on April 12, 2000. Committee staff will examine the records and photocopy only those which reflect the telephone numbers in use by POGO and Ms. Brian during the stated period; and/or which indicate the information we seek about cell phone and long distance service providers; and/or which reflect calls during the stated time period between Mr.Johnson's and Mr. Martineck's numbers and those in use by POGO and/ or Ms. Brian.

Records relating to purely personal calls will not be photocopied. Records relating business calls will not be photocopied unless they involve numbers used by J. Benjamin Johnson, Jr., John Martineck, or Summit Resource Management, Inc. during the stated time period. Because this alternative means of production is offered to accommodate your concerns, I require full cooperation in making redactions prior to photocopying; and in making available sufficient time, space, and other resources for inspecting and copying records.

This offer of an alternative means of production for telephone-related records covered by the February 17, 2000 subpoenas addressed to POGO and to Ms. Brian must be accepted in writing before 4:00 PM EDT on April 10, 2000.

Your February 28, 2000 letter ignores the requirement to produce records reflecting the names and office addresses and office telephone numbers of those serving on the POGO Board of Directors since 1994. The Committee's inquiry has found no record of any Board discussion of the merits or fiduciary soundness of awarding cash to federal employees. To pursue evidence to substantiate POGO's own claim, it may be necessary to contact Directors to learn more about the decisions to file an oil royalty law suit and to share the proceeds thereof with two federal employees.

All records answering this item of the February 17, 2000 POGO subpoena must be delivered to the Committee no later than 4:00 PM EDT on April 10, 2000.

My responses to your itemized log of records withheld by Mr. Banta are stated below. For convenience, each withheld record has been numbered. The first page of the log includes records numbered 1 through 12, page two of the log includes records 13 through 23, page three includes records 24 through 39, page four includes records 40 through 54, page five concludes with records 55 through 60.

Title 29, United States Code, section 1733 contains no confidentiality provision applicable to any record withheld under that claim. That objection is frivolous and is rejected. Records numbered 15, 22, 23, 24, and 25 are to be delivered to the Committee no later than 4:00 PM EDT on April 10, 2000.

Judge John H. Hannah, Jr. of the United States District Court for the Eastern District of Texas provided without restriction the record of the November 29, 1999 hearing to consider a

motion to void the Multi Relator / Counsel Agreement in *Johnson v. Shell*. The Committee believes that you are free to produce the records in question. Unless you can establish that you sought permission from the court to produce the records and that permission was denied, records 53, 54, 55, 56, 57, 59, and 60 are to be delivered to the Committee no later than 4:00 PM EDT on April12, 2000.

You are aware that Congress is not bound by court-created and statutory privileges including the attorney-client and attorney work product privileges. During an investigation conducted in the 102nd Congress, then-Chairman George Miller refused to tolerate such a claim for withholding documents subpoenaed by this Committee. I stand with the precedents and powers of the House and the Committee on Resources in rejecting a blanket invocation of these claims.

The Committee has information that intervention in the *Johnson v. Shell* case was not the only *qui tam* litigation opportunity contemplated by individuals central to our inquiry.

Qui tam or other litigation dealing with federal and Indian oil royalty matters considered by Robert A. Speir, Robert A. Berman, Danielle Brian, Leonard W. Brock, or POGO is highly pertinent to our inquiry. For that reason and in the interest of a thorough oversight review, the Committee is unable to honor your claims with respect to certain records. Records 11, 12, and 51 must be delivered to the Committee no later than 4:00 PM EST on April 12, 2000. At that time also produce any other record withheld from production under the February 17, 2000 Banta subpoena which relates to the roles of, relationship to, or interest in *Johnson v. Shell* by POGO, Danielle Brian, Robert. A. Berman, and/or Robert A. Speir; or any other *qui tam* suit or other litigation concerning federal or Indian oil matters investigated, researched, considered, planned, or contemplated by Robert A. Speir, Robert A. Berman, Danielle Brian, or the Project on Government Oversight.

If a client of Mr. Banta or his firm other than POGO, Danielle Brian, Robert A. Speir, or Robert A. Berman wishes to refuse production of a record other than 11,12, or 51, please send me a confidential letter identifying the client and describing the document. The Committee may excuse that record or require an examination of the record, in your office or in Mr. Banta's office, before making a decision to require or excuse production.

The controlling statement of the areas under review is quoted above.

With reference to that statement, your objection to production on grounds of pertinency is rejected with respect to certain records. The following records are deemed pertinent based on your log descriptions and must be delivered to the Committee no later than 4:00 PM EDT on April 12, 2000: 26, 28, 40, 46, 47, 48, 49, and 50. Any record not cited but which relates to any aspect of the February 17 subpoena and which is listed on the log as withheld on grounds of pertinency must also be produced at that time.

LAW OFFICES OF
PACKARD, PACKARD & JOHNSON
A PROFESSIONAL CORPORATION

Reply To Salt Lake City Office

Palo Alto Office
260 Sheridan Avenue, Suite 208
Palo Alto, California 94306
Tel (650) 327-3000
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Fax (409) 832-6243

Salt Lake City Office
675 East 2100 South, Suite 350
Salt Lake City, Utah 84106
Tel (801) 485-6464
Fax (801) 485-3480

June 8, 1999

The Honorable Don Young
Chairman, House Resources Committee
House of Representatives
Washington, D.C. 20515

The Honorable George Miller
Ranking Member, House Resources Committee
House of Representatives
Washington, D.C. 20515

Gentlemen:

I have received a copy of the Department of Justice letter dated June 1, 1999, in which the Department made some representations concerning some conversations between Ken Dodd, Esq. and myself regarding certain disbursements made by the Project on Government Oversight, (POGO), to Mr. Berman and Mr. Speir. I am currently out of my office, but wanted to immediately respond to certain aspects of the letter. I would be better able to respond to other matters addressed in the letter if I were in my office and had access to office records. Apparently, the Justice Department does not have records regarding these telephone conversations and is somewhat confused regarding the dates, substance, and parties to these conversations.

The Justice Department is correct in stating that I informed Mr. Dodd of the anticipated disbursements prior to the time the disbursements were made. My records reflect that I had a conversation with him on or about October 27, 1998. In that conversation, I informed Mr. Dodd that POGO was planning to disburse some of its share of the Mobil settlement proceeds arising out of the Johnson litigation to Mr. Berman and Mr. Speir. Mr. Dodd did not advise me that he believed that POGO should not make the disbursements, and Mr. Dodd made no request that POGO do nothing until after he consulted with the Department. If Mr. Dodd had told me that he felt that the disbursements should not be made or had requested that POGO refrain from making

such disbursements until after he had consulted with others within the Justice Department, I certainly would have relayed this information to my clients; but as he did not do so, I did not relay any such information to POGO.

On October 29-30, 1998, a status conference was held in the Johnson case in which the Court heard oral argument on a number of matters. Mr. Dodd and multiple attorneys from Main Justice were present. Yet, during the two-day conference and hearing, nobody from the Justice Department mentioned the Berman/Speir disbursements. Records that have been produced to the Defendants in the Johnson litigation reveal that POGO made the disbursements to Mr. Berman and Mr. Speir on November 2, 1998. On November 3rd or 4th 1998, Mr. Dodd called me and inquired about the status of the disbursements. I replied that I believed that the disbursements had already been made and told him that I would check and get back with him. After checking with POGO, I spoke to Mr. Dodd and advised him that the disbursements had already been made. Von Packard was not a participant in any of these conversations.

The allegation by the Department of Justice that I told Mr. Dodd of the anticipated disbursements on November 4, 1998, does not make sense, as the disbursements had been made two days earlier. I had already advised Mr. Dodd of the anticipated disbursements the previous week. I am not suggesting that the Department approved the disbursements prior to the time they were made, but the Department also did not object to or instruct against them prior thereto.

I hope this information is helpful in clarifying this matter.

Sincerely,

Lon D. Packard

JUL.-11'00(TUE) 08:04 Submitted by ~~Cubin~~ Hon Cubin

JUL 10 '00 16:52 FR US MARSHAL UTAH 801 524 4359 TO 92023075228 P.02/03

Subpena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Lon D. Packard, Esq.

You are hereby commanded to be and appear before the Sub Committee on Energy and Mineral Resources of the House of Representatives of the United States, of which the Hon. Barbara Cubin is chairman, in Room 1324 of the Longworth Building XXX, in the city of Washington, on July 11, 2000, at the hour of 11:00 a.m. EDT, then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 29th day of June, ~~XX~~ 2000

Chairman.

Attest:

Clerk.

Subpena for Mr. Lon D. Packard, Esq.
2795 East Cottonwood Parkway
Suite 600
Salt Lake City, Utah 84121

before the Committee on the XX Resources
of the United States House of
~~Representatives~~

Served (1.) attempted service 7/5/00, Employee @ above address said not there, not expected. (2.) Attempted service @ residence, wife said at work. (3) Attempted service @ work again, employee said not there, not expected. Left business card and cell phone #. Received no call. (4) 7/6/00 called his office left message for him to call me in my office. Received no call.

House of Representatives

Randall Anderson
US Marshal
D.U.T. 7-6-00