

# **EXHIBIT 37**

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF COLUMBIA  
 3  
 4 AMERICAN SOCIETY FOR TESTING ) Case No.  
 5 AND MATERIALS d/b/a ASTM ) 1:13-cv-01215  
 6 INTERNATIONAL; ) TSC-DAR  
 7 )  
 8 NATIONAL FIRE PROTECTION )  
 9 ASSOCIATION, INC.; and )  
 10 )  
 11 AMERICAN SOCIETY OF HEATING, )  
 12 REFRIGERATING, AND AIR )  
 13 CONDITIONING ENGINEERS, )  
 14 )  
 15 Plaintiffs-Counterdefendants )  
 16 vs. )  
 17 )  
 18 PUBLIC.RESOURCE.ORG, INC., )  
 19 Defendant-Counterclaimant )  
 20 )  
 21 )  
 22 )

Videotaped Deposition of Mary H. Saunders  
 Washington, D.C.  
 August 15, 2019  
 10:16 a.m.

Reported by:  
 Bonnie L. Russo  
 Job No. 3461686  
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 9 Videotaped Deposition of Mary Saunders held at:  
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 11 Veritext Legal Solutions  
 12 1250 Eye Street, N.W.  
 13 Washington, D.C.  
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 15 Pursuant to Notice, when were present on behalf  
 16 of the respective parties:  
 17  
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 19  
 20  
 21  
 22

Page 3

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 22 Daniel Russo, Videographer

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Page 10	<p>1 P R O C E E D I N G S</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Good morning. We</p> <p>4 are going on the record at 10:16 a.m. on August</p> <p>5 15, 2019.</p> <p>6 Please note that the microphones are</p> <p>7 sensitive and may pick up whispering, private</p> <p>8 conversations and cellular interference.</p> <p>9 Please turn off all cell phones or place them</p> <p>10 away from the microphones as they can interfere</p> <p>11 with the deposition audio. Audio and video</p> <p>12 recording will continue to take place unless</p> <p>13 all parties agree to go off the record.</p> <p>14 This is Media Unit 1 of the</p> <p>15 video-recorded deposition of Mary Saunders</p> <p>16 taken by counsel for defendant in the matter of</p> <p>17 American Society for Testing and Materials</p> <p>18 d/b/a ASTM International, National Fire</p> <p>19 Protection Association, Incorporated, and</p> <p>20 American Society of Heating, Refrigerating and</p> <p>21 Air Conditioning Engineers,</p> <p>22 plaintiffs-counterdefendants, versus</p>	Page 12	<p>1 witness.</p> <p>2 MR. FEE: Kevin Fee from Morgan</p> <p>3 Lewis on behalf of ASTM.</p> <p>4 MS. WISE: Jane Wise from Morgan</p> <p>5 Lewis on behalf of ASTM.</p> <p>6 MS. MILLER-ZIEGLER: Rachel</p> <p>7 Miller-Ziegler, Munger, Tolles &amp; Olsen on</p> <p>8 behalf of NFPA.</p> <p>9 MS. EVERETT: Sally Everett, NFPA.</p> <p>10 THE VIDEOGRAPHER: Will the court</p> <p>11 reporter please swear in the witness.</p> <p>12 MARY H. SAUNDERS,</p> <p>13 being first duly sworn, to tell the truth, the</p> <p>14 whole truth and nothing but the truth,</p> <p>15 testified as follows:</p> <p>16 EXAMINATION BY COUNSEL DEFENDANT</p> <p>17 BY MR. BECKER:</p> <p>18 Q. Good morning, Ms. Saunders. Have</p> <p>19 you ever had your deposition taken before?</p> <p>20 A. I have not.</p> <p>21 Q. Have you ever been involved in any</p> <p>22 lawsuits before?</p>

<p style="text-align: right;">Page 13</p> <p>1 A. I have not.</p> <p>2 Q. Let's see. So in that case, we will</p> <p>3 set out some preliminaries. In a deposition,</p> <p>4 I'm going to be asking you questions and you</p> <p>5 will provide answers.</p> <p>6 Do you understand that you are</p> <p>7 giving testimony under oath today?</p> <p>8 A. I do.</p> <p>9 Q. Just as you would in a court of law?</p> <p>10 A. Yes, I do.</p> <p>11 Q. You understand that the court</p> <p>12 reporter is taking down everything that you</p> <p>13 say.</p> <p>14 A. Yes, I do.</p> <p>15 Q. In that case, we need only audible</p> <p>16 responses and not just gestures or sort of</p> <p>17 something of the like.</p> <p>18 A. I understand.</p> <p>19 Q. Thank you. If at any point you</p> <p>20 don't understand a question, will you please</p> <p>21 let me know and I will try to rephrase?</p> <p>22 A. I will.</p>	<p style="text-align: right;">Page 15</p> <p>1 A. No.</p> <p>2 MR. BECKER: Please mark this</p> <p>3 Exhibit 1.</p> <p>4 (Deposition Exhibit 1 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. BECKER:</p> <p>7 Q. Ms. Saunders, I am handing you what</p> <p>8 has been marked as Exhibit 1.</p> <p>9 Do you recognize this document?</p> <p>10 A. Yes, I do.</p> <p>11 Q. What is this document?</p> <p>12 A. It's a subpoena to testify at a</p> <p>13 deposition in a civil action.</p> <p>14 Q. Is this a subpoena that you</p> <p>15 received?</p> <p>16 A. I did receive it.</p> <p>17 Q. And are you familiar with this</p> <p>18 lawsuit, ASTM, et al., versus</p> <p>19 Public.Resource.Org?</p> <p>20 A. Yes. I'm generally aware of the</p> <p>21 lawsuit, yes.</p> <p>22 MR. BECKER: Can you please mark</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. And in that case, I'm going to try</p> <p>2 to give you the clearest questions I can so</p> <p>3 long as you promise to let me know if you don't</p> <p>4 understand the question. All right?</p> <p>5 A. Yes.</p> <p>6 Q. All right. If you ever need a break</p> <p>7 for any reason, please let me know and as long</p> <p>8 as a question isn't pending, I'll provide one.</p> <p>9 A. Yes, thank you, I understand.</p> <p>10 Q. If you come to realize that any of</p> <p>11 your answers that you previously provided is</p> <p>12 not completely correct, just let me know and we</p> <p>13 will address it. Okay?</p> <p>14 A. Yes.</p> <p>15 Q. After the transcript and deposition</p> <p>16 is prepared, you will have a chance to review</p> <p>17 it and make changes to it. However, I can</p> <p>18 comment on any changes that you make. Do you</p> <p>19 understand?</p> <p>20 A. Understood.</p> <p>21 Q. Is there any reason preventing you</p> <p>22 from giving your best testimony today?</p>	<p style="text-align: right;">Page 16</p> <p>1 this as Exhibit 2.</p> <p>2 (Deposition Exhibit 2 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. BECKER:</p> <p>5 Q. Ms. Saunders, I am handing you what</p> <p>6 has been marked as Exhibit No. 2.</p> <p>7 Have you seen this document before?</p> <p>8 A. I have seen this document.</p> <p>9 Q. What is this document?</p> <p>10 A. It's a letter from Russell Craig,</p> <p>11 who's the associate chief of the general</p> <p>12 litigation division at the U.S. Department of</p> <p>13 Commerce, RE: Subpoenas to Mary H. Saunders</p> <p>14 for a deposition and document production.</p> <p>15 Q. When you say it's a letter to --</p> <p>16 A. I'm sorry.</p> <p>17 Q. You mean it's a letter to --</p> <p>18 A. It's a letter to Russell Craig from</p> <p>19 you as I remember.</p> <p>20 Q. Do you understand what the purpose</p> <p>21 of this letter is?</p> <p>22 A. I do.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. What is the purpose of this letter?  2 A. My understanding is that you had a  3 conversation with Mr. Craig and Henry Wixon who  4 is the general counsel for the National  5 Institute of Standards and Technology regarding  6 topics that were not open for discussion with  7 me since I'm testifying in my personal capacity  8 from the time when I was a government official.  9 These are internal -- any internal government  10 deliberations are protected under process  11 privilege.  12 Q. Did you have any conversation with  13 Mr. Craig about this matter?  14 A. About the letter?  15 Q. About this litigation.  16 A. I'm not following. About the letter  17 or about the --  18 Q. Have you had any conversation with  19 Mr. Craig about the Public Resource litigation?  20 A. I had a conversation with Mr. Craig  21 and Henry Wixon about my deposition, not about  22 the litigation per se.</p>	<p style="text-align: right;">Page 19</p> <p>1 A. No. I did not talk -- I spoke with  2 both Henry and Russell Craig yesterday at 2:00.  3 Q. Do you have any written  4 communications with Mr. Craig or Mr. Wixon  5 about this litigation?  6 A. Not about the litigation. I sent an  7 e-mail to Russell Craig, I believe a couple of  8 weeks ago asking if he had actually engaged  9 with you regarding what would be permissible  10 and not permissible. That's all that I have.  11 Q. Did you receive a response?  12 A. Yes. He said that he had, and  13 that's -- the result is this letter as I  14 understand it.  15 MR. BECKER: Would it be possible to  16 see a copy of that e-mail?  17 MR. GRIFFIN: If you are requesting  18 it, we will go back and look for it.  19 MR. BECKER: Sure, on a break, that  20 would be great. Thank you.  21 MR. GRIFFIN: I'm not sure I'll be  22 able to get it to you today, but after the</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. When did that conversation take  2 place?  3 A. That was yesterday. That was  4 yesterday at 2:00.  5 Q. And what did you talk about?  6 A. We talked about the contents of this  7 letter that you sent to Mr. Craig. We just  8 wanted to make sure that I had the same  9 understanding that he and Henry, Mr. Wixon with  10 regarding -- with respect to what is not open  11 for discussion.  12 I also asked if they were planning  13 to be available and I understand Mr. Craig and  14 Mr. Wixon will be available by phone if needed.  15 Q. Did you talk about anything else?  16 A. No.  17 Q. Is there any other time, other than  18 yesterday at 2:00, that you talked to Mr. Craig  19 about this litigation?  20 A. No, there is no other time.  21 Q. And is there any other time that you  22 talked with Mr. Wixon about this litigation?</p>	<p style="text-align: right;">Page 20</p> <p>1 deposition, yes.  2 Can we agree that this is the letter  3 that memorializes your agreement with Russell  4 Craig with respect to the questions that you  5 can and cannot ask Ms. Saunders today?  6 MR. BECKER: Yes.  7 MR. GRIFFIN: Okay. Thank you.  8 MR. BRIDGES: By this, Counsel,  9 you're referring to --  10 MR. GRIFFIN: Exhibit 2, correct.  11 BY MR. BECKER:  12 Q. Ms. Saunders, are there any other  13 names other than Mary Saunders that you have  14 gone by?  15 A. My maiden name is Mary Catherine  16 Howard.  17 Q. Ms. Saunders, where do you work  18 today?  19 A. I'm currently the vice president for  20 government relations and public policy at the  21 American National Standards Institute.  22 Q. And that's -- the American National</p>

<p style="text-align: right;">Page 21</p> <p>1 Standards Institute is more commonly referred 2 to as ANSI? 3 A. That's correct. 4 Q. How long have you held that position 5 for? 6 A. I have held that position since the 7 1st of March, 2017. 8 Q. What was your employment immediately 9 before being VP of government relations and 10 public policy at ANSI? 11 A. I was the associate director for 12 management resources at the National Institute 13 of Standards and Technology also known as NIST. 14 I retired from federal service on the 3rd of 15 February, 2017. 16 Q. What is NIST? 17 A. NIST is the National Measurement 18 Institute for the United States. It is a 19 bureau of the U.S. Department of Commerce and 20 it has additional response -- mission related 21 responsibilities I can go into if you would 22 like me to, which were delegated under the --</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Yes. 2 Q. -- have you held -- have you been 3 employed in any position other than the VP of 4 government relations and public policy at ANSI 5 and the associate director for management 6 resources at NIST? 7 A. I understand. No, I have not. 8 Q. What was your employment immediately 9 before being associate director at NIST? 10 A. You want me to go backwards. Okay. 11 So from March, the end of March 2011 12 through November 2012, I was the director of 13 the standards coordination office at NIST. 14 Q. Prior to that position, what was 15 your employment? 16 A. No, it's easier for me to do it 17 doing forward. 18 So going backwards, I was -- prior 19 to that, I was the deputy assistant secretary 20 for manufacturing and services at the 21 International Trade Administration which is 22 also a bureau of the Department of Commerce. I</p>
<p style="text-align: right;">Page 22</p> <p>1 in 1988, under a revision to NIST 2 responsibilities. So NIST has broader 3 technology and standards-related 4 responsibilities as well as being the National 5 Measurement Institute for the United States. 6 Q. How long did you hold the role of 7 associate director for management resources for 8 NIST? 9 A. From the end of November 2012 until 10 the time that I retired, which as I mentioned, 11 was the 3rd of February, 2017. 12 Q. Did you hold any other employment 13 positions between -- sorry, let me rephrase 14 this. 15 Were you employed in any other 16 positions at any organization or entity between 17 November 2012 and today, other than the two 18 that you just referred to? 19 A. The two -- I'm sorry. I'm not 20 following. I was a federal employee so I was 21 employed at NIST from -- 22 Q. Since November 2012 --</p>	<p style="text-align: right;">Page 24</p> <p>1 occupied that position from the 18th of 2 December, 2008, through the end of March 2011. 3 Q. What position did you hold before 4 that? 5 A. From October 2001 through the 18th 6 of -- well, 17th of December, 2008, I was the 7 chief of the standards services division at -- 8 which is a component of technology services at 9 the National Institute of Standards and 10 Technology. 11 Q. And what was your employment 12 immediately prior to that? 13 A. So I transferred from the 14 international trade administration to NIST in 15 July of 1993 and I was an international 16 economist in -- what was called in 1993, the 17 office of standards services. 18 The office of standards services was 19 renamed the standards services division as part 20 of a realignment within NIST, so '93 to 2001, I 21 was in the -- what became the standards 22 services division but I was -- became the chief</p>

<p style="text-align: right;">Page 25</p> <p>1 in October of 2001.</p> <p>2 Q. Prior to July of 1993, what was your 3 employment immediately prior to that?</p> <p>4 A. So I began my commerce department 5 career in January of 1996 at the International 6 Trade Administration. I held positions as an 7 international trade specialist in two offices 8 of the International Trade Administration, the 9 office of capital goods and the second position 10 was in the office of European community 11 affairs.</p> <p>12 Q. When I refer to "standards," do you 13 know what I'm referring to?</p> <p>14 A. Yes.</p> <p>15 MR. GRIFFIN: Objection.</p> <p>16 BY MR. BECKER:</p> <p>17 Q. How would you define a standard?</p> <p>18 A. So depending on context, there may 19 be a variety of definitions but the -- there 20 are standards of conduct, there are a variety 21 of standards, but if you are asking me about 22 technical standards, those are standards for</p>	<p style="text-align: right;">Page 27</p> <p>1 internally within NIST with respect to 2 standards-related activities, documentary 3 standards-related activities and it means 4 working externally within -- with other federal 5 agencies and with White House offices and the 6 private sector in the context of the NIST 7 activities related to documentary standards, 8 particularly policy activities related to 9 documentary standards.</p> <p>10 Q. When you refer to policy activities 11 related to document -- related to standards, 12 what is it that you are referring to?</p> <p>13 A. I am referring to responsibilities 14 that NIST has under the National Technology 15 Transfer and Advancement Act of 1995, 16 specifically as expressed in NIST's mission as 17 it's described by Congress.</p> <p>18 Q. What is the National Technology 19 Transfer and Advancement Act of 1995?</p> <p>20 A. So I can't speak to the entire 21 National Technology Transfer Act of 1995, it 22 was a -- it's a revision. I can speak</p>
<p style="text-align: right;">Page 26</p> <p>1 products, processes or services. There is a 2 definition. The International Organization for 3 Standardization has a definition, the World 4 Trade Organization's technical barriers to 5 trade agreement has a definition. Those are 6 the definitions I believe you are referring to.</p> <p>7 Q. Between those two definitions, is 8 there any difference?</p> <p>9 MR. GRIFFIN: Objection.</p> <p>10 THE WITNESS: I don't know. I don't 11 believe there is, but I haven't looked in 12 detail at those documents recently. I believe 13 the WTO TBT agreement takes its definition from 14 ISO.</p> <p>15 BY MR. BECKER:</p> <p>16 Q. What does standards coordination 17 mean?</p> <p>18 A. In the context of the standards 19 coordination office?</p> <p>20 Q. Yes.</p> <p>21 A. So in the context of the standards 22 coordination office, it means coordinating</p>	<p style="text-align: right;">Page 28</p> <p>1 specifically to Section 12 of the National 2 Technology Transfer -- NTTAA of 1995 which 3 specifically directs federal agencies to use 4 technical standards developed by voluntary 5 consensus bodies in support of mission 6 activities where relevant and appropriate in 7 lieu of developing government-unique standards.</p> <p>8 Q. Do you understand that today when I 9 use the word "standards," I will be referring 10 to technical standards unless I say otherwise?</p> <p>11 A. Yes, I do.</p> <p>12 MR. GRIFFIN: Objection.</p> <p>13 THE WITNESS: Sorry. I will pause.</p> <p>14 MR. GRIFFIN: That's okay.</p> <p>15 BY MR. BECKER:</p> <p>16 Q. When did you first begin working in 17 a position that required you to be familiar 18 with standards?</p> <p>19 A. In my first position at the 20 International Trade Administration around the 21 time period 1989, I was in the office of 22 capital goods at the time, a component of the</p>



<p style="text-align: right;">Page 29</p> <p>1 International Trade Administration and the  2 European community at that time led by the  3 European commission was embarking upon its  4 internal market program, which involved the  5 passage of a large amount of European  6 legislation related to product -- related to  7 how the European community would deal with  8 product safety and health requirements,  9 otherwise supported by standards.  10 These are technical regulations, but  11 in the European community at the time, now the  12 European Union, there are technical standards  13 that support legislation and that's how I first  14 became involved in standards in the trade  15 context.  16 Q. Had you been involved in standards  17 in any other context prior to that?  18 A. No.  19 Q. Does the United States develop its  20 own standards?  21 A. It's a little bit difficult to  22 answer that question. So standards are -- by</p>	<p style="text-align: right;">Page 31</p> <p>1 specific government agency or a part of an  2 agency has a need to support a regulation or --  3 a regulation or an other mission-related  4 activity and there is no technical standard  5 available in the private sector, the agency may  6 write its own documents. They are called  7 government-unique standards.  8 BY MR. BECKER:  9 Q. Typically, why is it that there  10 wouldn't be a standard available in the private  11 sector as required by the agency?  12 MR. GRIFFIN: Objection.  13 THE WITNESS: I don't know the  14 answer to that.  15 BY MR. BECKER:  16 Q. Do you offhand know of any standards  17 that a U.S. Government agency has developed?  18 A. I am aware generally of EPA test  19 methods which in some cases are -- have been  20 developed by the Environmental Protection  21 Agency.  22 Q. Do you know the names of any of</p>
<p style="text-align: right;">Page 30</p> <p>1 the United States, do you mean the United  2 States Government or the United States -- I'm  3 not quite following.  4 Q. The United States Government. Does  5 the United States Government develop standards?  6 A. The United States Government at  7 large does not develop its own standards.  8 Individual federal agencies may develop  9 government-unique standards in support of  10 mission activities. I mentioned the National  11 Technology Transfer and Advancement Act, so  12 individual agencies may engage in standards  13 activities.  14 Q. In what situations do individual  15 U.S. Government agencies develop their own  16 standards?  17 MR. GRIFFIN: Objection.  18 THE WITNESS: So let me give you a  19 little bit more background. The  20 standardization system in the United States is  21 private sector led with government agency's  22 participation. In areas where government, a</p>	<p style="text-align: right;">Page 32</p> <p>1 those?  2 A. I do not.  3 Q. Do you know why the EPA would have  4 developed those standards rather than using a  5 standard that was privately developed?  6 MR. GRIFFIN: Objection to form.  7 MR. FEE: Objection.  8 THE WITNESS: I can't answer that  9 question. You would have to ask someone at the  10 EPA about that.  11 BY MR. BECKER:  12 Q. Have you ever had affiliations with  13 standard development organizations?  14 A. If by "affiliations," you mean have  15 I served on the boards of standards -- specific  16 standards development organizations, yes.  17 Q. Have you been a member of standards  18 development organizations?  19 A. I have, yes. During my federal  20 career, I was a member of ASTM International.  21 For a period of time, I was also a member of  22 the Institute for Electrical and Electronics</p>

Page 33	<p>1 Engineers.</p> <p>2 Q. And that last organization is often</p> <p>3 referred to as the IEEE, correct?</p> <p>4 A. It is, correct.</p> <p>5 Q. Any other standards development</p> <p>6 organizations?</p> <p>7 MR. GRIFFIN: Objection.</p> <p>8 THE WITNESS: Can you clarify, have</p> <p>9 I been a member --</p> <p>10 BY MR. BECKER:</p> <p>11 Q. A member of --</p> <p>12 A. -- of any other standards</p> <p>13 development organizations?</p> <p>14 Q. Yes.</p> <p>15 A. No, I have not.</p> <p>16 Q. Do you understand what I am</p> <p>17 referring to when I use the term "standards</p> <p>18 development organization?"</p> <p>19 MR. GRIFFIN: Objection.</p> <p>20 THE WITNESS: Yes, I do.</p> <p>21 BY MR. BECKER:</p> <p>22 Q. What is a standards development</p>	Page 35	<p>1 consensus standards developed under a process</p> <p>2 including the characteristics that I</p> <p>3 highlighted.</p> <p>4 There are consortia standards.</p> <p>5 There are open standards. There are many</p> <p>6 different types of standards that are used</p> <p>7 widely globally and in the United States.</p> <p>8 BY MR. BECKER:</p> <p>9 Q. What is an open standard?</p> <p>10 A. And so my understanding here is</p> <p>11 limited, but an open standard might -- as I</p> <p>12 have heard it described, it's very common in</p> <p>13 the IT sector. It's a standard where</p> <p>14 individual technical experts come together and</p> <p>15 discuss a particular technical area and may --</p> <p>16 the document is open to input manipulation --</p> <p>17 manipulation is a bad word, but open to input</p> <p>18 and change from a variety of different sources.</p> <p>19 It's, as I said, common in the IT sector.</p> <p>20 Q. When you referred to a voluntary</p> <p>21 consensus standard, you said that it's a</p> <p>22 standard produced by a process that includes</p>
Page 34	<p>1 organization?</p> <p>2 A. A standards development organization</p> <p>3 is an organization that engages in the</p> <p>4 administration of process that leads to the</p> <p>5 development of standards. We typically focus</p> <p>6 on voluntary consensus standards.</p> <p>7 Q. What is a voluntary consensus</p> <p>8 standard?</p> <p>9 A. A voluntary consensus standard is</p> <p>10 defined in OMB Circular A-119, and I will be</p> <p>11 paraphrasing, a voluntary consensus standard is</p> <p>12 produced through a process that includes</p> <p>13 characteristics of openness, transparency,</p> <p>14 balance and consensus, due process as well.</p> <p>15 Q. Is there an alternative to a</p> <p>16 voluntary consensus standard?</p> <p>17 MR. GRIFFIN: Objection.</p> <p>18 THE WITNESS: There are many</p> <p>19 different types of standards. There are</p> <p>20 standards developed by treaty organizations</p> <p>21 such as the International Telecommunications</p> <p>22 Union. There are, as I mentioned, voluntary</p>	Page 36	<p>1 characteristics of openness, transparency,</p> <p>2 balance and consensus and due process; is that</p> <p>3 correct?</p> <p>4 A. That is correct.</p> <p>5 Q. What do you mean by "balance?"</p> <p>6 A. A balance of interest across</p> <p>7 materially interested in affected parties, so</p> <p>8 there are interest categories which may vary</p> <p>9 depending on what type of standard is under</p> <p>10 consideration, but generally speaking, interest</p> <p>11 categories might include producer, user,</p> <p>12 general interest, might include consumer, might</p> <p>13 include labor interest. It's an intent to</p> <p>14 achieve balance or a representation amongst --</p> <p>15 across a range of interests in a particular</p> <p>16 topic.</p> <p>17 Q. What stakeholders participate in the</p> <p>18 development of voluntary consensus standards?</p> <p>19 MR. FEE: Objection to form.</p> <p>20 THE WITNESS: It's -- I can't</p> <p>21 speak -- that's a very general question. I</p> <p>22 can't speak to that. I said materially</p>

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1 interested in affected parties which may differ  
 2 depending on the technical topic.  
 3 BY MR. BECKER:  
 4 Q. Do members of government participate  
 5 in the development of voluntary consensus  
 6 standards in the United States?  
 7 MR. FEE: Objection to form.  
 8 THE WITNESS: They -- technical  
 9 staff and individual federal agencies may  
 10 participate in the development of standards.  
 11 They would be classified in the general  
 12 interest category.  
 13 BY MR. BECKER:  
 14 Q. Who else would be in the general  
 15 interest category?  
 16 A. I can't speak to that. It's not  
 17 solely government, but again, it depends on the  
 18 standard at -- under development as to who  
 19 would have a general interest. It would be any  
 20 individual organization that is not either a  
 21 producer, a user or in another category, but I  
 22 can't speak specifically to your -- in answer

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1 to your question.  
 2 Q. What are the -- other than the  
 3 general interest category, what are the other  
 4 categories of participants?  
 5 A. Again, that depends on the balance  
 6 and how that is achieved depends on the  
 7 individual standard at -- at issue. I am  
 8 speaking to high level categories as laid out  
 9 in the ANSI essential requirements for the  
 10 development of American national standards,  
 11 producer, user, general interests. Other  
 12 possible categories depending on the standard  
 13 include consumer interest, labor interests. It  
 14 depends.  
 15 Q. Is there industry interests?  
 16 A. Of course, producer, user, those can  
 17 both -- those categories can include industry  
 18 representatives.  
 19 Q. Any other interests?  
 20 MR. FEE: Objection to form.  
 21 THE WITNESS: It depends on the  
 22 standard under -- under development.

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1 BY MR. BECKER:  
 2 Q. Do government and representatives  
 3 participate in standard development?  
 4 MR. GRIFFIN: Objection.  
 5 THE WITNESS: So the National  
 6 Technology Transfer and Advancement Act, as I  
 7 mentioned, Section 12, specifically directs  
 8 federal agencies to use technical standards  
 9 developed by voluntary consensus standards  
 10 bodies. The law also directs the agencies to  
 11 participate in standards development activities  
 12 when those activities are relevant to their  
 13 mission interests.  
 14 BY MR. BECKER:  
 15 Q. And how -- how do members of  
 16 government participate in standards development  
 17 activities when those activities are relevant  
 18 to their mission interests?  
 19 MR. GRIFFIN: Objection.  
 20 MR. FEE: Objection to form.  
 21 THE WITNESS: The type of  
 22 participation, as I understand, will vary from

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1 agency to agency. Individual agencies have  
 2 particular guidelines for how their technical  
 3 staff participate in standards development  
 4 activities, so I -- I can't speak to the  
 5 general question. It varies from agency to  
 6 agency.  
 7 BY MR. BECKER:  
 8 Q. When you refer to "technical staff,"  
 9 are you referring to government employees?  
 10 A. Yes, I am referring to government  
 11 employees.  
 12 Q. Is ANSI an SDO?  
 13 A. No. ANSI is not a standards  
 14 development organization.  
 15 Q. What is ANSI?  
 16 A. ANSI is the -- ANSI's mission is to  
 17 represent the private sector-led  
 18 standardization system in the United States and  
 19 represent its interests.  
 20 ANSI is also -- as part of that  
 21 mission, ANSI is the national standards body  
 22 representing -- national standards body to the

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1 International Organization for Standardization  
 2 and through the U.S. national committee to the  
 3 International Electrotechnical Commission which  
 4 are two international -- two organizations that  
 5 develop international standards.  
 6 Q. So by that, do you mean ANSI  
 7 represents standards development organizations?  
 8 MR. GRIFFIN: Objection.  
 9 THE WITNESS: No, I do not mean that  
 10 ANSI represents -- you mean generally speaking?  
 11 Standards -- ANSI has several member  
 12 categories where ANSI is a federation, there is  
 13 a government member category, so government  
 14 agencies are members of ANSI. Organizational  
 15 membership category which includes standards  
 16 development organizations and other  
 17 organizations. There is a company member  
 18 category, there is a consumer category.  
 19 BY MR. BECKER:  
 20 Q. Any other categories?  
 21 MR. GRIFFIN: Objection.  
 22 THE WITNESS: Those are all the ones

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1 I remember.  
 2 BY MR. BECKER:  
 3 Q. You said that organizational  
 4 category includes standards development  
 5 organizations and other organizations.  
 6 What other organizations?  
 7 A. Trade associations that may not  
 8 develop standards.  
 9 Q. Any other organizations?  
 10 A. Not that I can enumerate currently.  
 11 Q. Are you a member of ANSI?  
 12 A. I'm on the staff of ANSI. I'm not a  
 13 member of ANSI.  
 14 Q. Were you previously a member of  
 15 ANSI?  
 16 A. Personally, no. The National  
 17 Institute of Standards and Technology was -- is  
 18 a government member of ANSI and I was a staff  
 19 member of the National Institute of Standards  
 20 and Technology.  
 21 Q. So you were never personally a  
 22 member of ANSI but you were -- you participated

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1 in ANSI through NIST?  
 2 A. That's correct.  
 3 MR. GRIFFIN: Objection. Wait one  
 4 second.  
 5 BY MR. BECKER:  
 6 Q. How did you participate in ANSI  
 7 through NIST?  
 8 A. In a variety of ways. I was a  
 9 member of the ANSI national policy committee.  
 10 I served as chair of the national policy  
 11 committee for a term. I participated in  
 12 international policy committee, I participated  
 13 in representing NIST in ANSI activities that  
 14 are relevant to the NIST mission.  
 15 Q. Did NIST pay any membership or  
 16 participation fee for you when you were  
 17 participating in ANSI?  
 18 MR. GRIFFIN: Objection.  
 19 THE WITNESS: Not for me personally.  
 20 BY MR. BECKER:  
 21 Q. Did NIST pay any membership or  
 22 participation fee so that you were able to

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1 participate in ANSI as a member -- as a person  
 2 employed by NIST?  
 3 A. Yes.  
 4 Q. Do you know what fees those were?  
 5 A. I mentioned that ANSI has different  
 6 membership categories. NIST paid the fees  
 7 relevant to the government membership category.  
 8 I don't have the details of those dues.  
 9 Q. Did you participate in any standards  
 10 development organizations in your capacity at  
 11 NIST?  
 12 A. I participated as a member of an  
 13 ASTM committee from 1993 probably for a couple  
 14 of years specifically. I believe the number is  
 15 E50. It's the ASTM committee that served as  
 16 the -- that administered the technical advisory  
 17 group to ISO, Technical 207 which is  
 18 environmental management systems, so I was a  
 19 member of that committee for a period of time.  
 20 Q. Do you know approximately how long  
 21 you were a member of that committee for?  
 22 A. Approximately two years would be my

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1 guess. It's been -- '93, 2003, it's been more  
 2 than 25 years.  
 3 Q. Did NIST pay your membership dues  
 4 when you were participating in that committee?  
 5 MR. GRIFFIN: Objection.  
 6 THE WITNESS: I paid my \$75  
 7 membership dues to ASTM when I was  
 8 participating in that committee personally.  
 9 BY MR. BECKER:  
 10 Q. Did you get those dues reimbursed?  
 11 A. No, I did not.  
 12 Q. Were you participating in that ASTM  
 13 committee in your personal capacity or in -- or  
 14 in a government employee capacity?  
 15 MR. FEE: Objection to form.  
 16 THE WITNESS: So as I mentioned  
 17 earlier, the National Technology Transfer and  
 18 Advancement Act directs federal agency  
 19 employees to participate in standards  
 20 development activities that are relevant to  
 21 their missions and that direction is also  
 22 codified in OMB Circular A119, so yes, I was

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1 participating pursuant to law and policy as a  
 2 NIST employee.  
 3 BY MR. BECKER:  
 4 Q. Did ASTM have a government  
 5 membership category at that time?  
 6 A. I'm not following that question.  
 7 Q. Was there -- did you pay a different  
 8 fee to ASTM as a member of government as  
 9 opposed to one you might pay if you were a  
 10 member of the private sector at the time?  
 11 A. No. My understanding is that the  
 12 \$75 membership fee applies to anyone who would  
 13 like to be a member of ASTM.  
 14 Q. Did you participate in the IEEE in  
 15 your capacity as a government employee?  
 16 A. I was a member of the IEEE standards  
 17 association board for one term in my capacity  
 18 as a NIST employee.  
 19 Q. When was that?  
 20 A. I would have to look at my risumi to  
 21 remember. I believe it was the early 2007,  
 22 2008, but I would have to look at my risumi to

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1 remind myself of the actual timing.  
 2 Q. Have you participated in any  
 3 standards development organizations in your  
 4 personal capacity?  
 5 A. No, I have not.  
 6 Q. When did you first become involved  
 7 with ANSI?  
 8 A. Again, it's been a long time. Let  
 9 me think. I mentioned I moved from the  
 10 International Trade Administration to NIST to  
 11 July of 1993 to the office of standards  
 12 services, it would have been sometime following  
 13 July of 1993.  
 14 Q. How were you involved with ANSI  
 15 initially?  
 16 MR. GRIFFIN: Objection.  
 17 THE WITNESS: I -- as I mentioned,  
 18 in 1993, that's more than 25 years ago. I  
 19 would have to go -- I can't give you a specific  
 20 answer. It would probably have been -- I can't  
 21 give you a specific answer.  
 22 BY MR. BECKER:

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1 Q. When you said that you were -- first  
 2 became involved with ANSI in July 1993, are you  
 3 referring to work that involved ANSI or in your  
 4 government capacity?  
 5 MR. GRIFFIN: Objection.  
 6 THE WITNESS: So as I mentioned  
 7 earlier, I moved to NIST to the office of  
 8 standard services in July of 1993. NIST, at  
 9 that time and still, is a member on behalf of  
 10 the Department of Commerce in ANSI.  
 11 So I would have been aware as a  
 12 staff person in the office of standards  
 13 services about NIST's participation in ANSI. I  
 14 believe at that time, participation in policy  
 15 committees was limited to board members so I  
 16 would not, at that time, have been directly  
 17 engaged in policy activities.  
 18 BY MR. BECKER:  
 19 Q. When did you first become directly  
 20 engaged in activities at ANSI?  
 21 A. Again, I would have to go look at my  
 22 risumi to remind myself of the particular

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1 dates, but as I mentioned, it's likely -- let's  
 2 see. Chief of global standards program --  
 3 2001, which is when I became chief of the  
 4 standards services division would be a  
 5 reasonable time frame to begin engagement in  
 6 policy activities at ANSI.  
 7 Q. What kind of policy activities were  
 8 you involved in with ANSI in -- when you were  
 9 chief of standards services division?  
 10 A. So I -- as I mentioned, I had a term  
 11 as the chair of the international policy  
 12 committee of ANSI. I also served as the chair  
 13 of the national -- not at the same time,  
 14 consecutively, as the chair of the national  
 15 policy committee of ANSI. I was on an  
 16 accreditation board dealing with environmental  
 17 management systems for a period of time.  
 18 Q. Subsequent to that, what other --  
 19 can you tell me the -- the positions that you  
 20 have held in ANSI in chronological order?  
 21 MR. GRIFFIN: Objection.  
 22 THE WITNESS: I would be happy to

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1 provide you with a copy of my risumi. I don't  
 2 have that data in my head that I could tell  
 3 you.  
 4 BY MR. BECKER:  
 5 Q. Do you recall some of the other  
 6 positions that you've held at ANSI?  
 7 MR. GRIFFIN: Objection.  
 8 THE WITNESS: Not off the top of my  
 9 head, no.  
 10 BY MR. BECKER:  
 11 Q. No other positions than those?  
 12 MR. GRIFFIN: Objection.  
 13 THE WITNESS: I would be happy to  
 14 provide you with my risumi which lists all the  
 15 positions.  
 16 BY MR. BECKER:  
 17 Q. Do you have a copy of your risumi  
 18 available today?  
 19 A. No, but I can send you one.  
 20 Q. What work did you do as chair of  
 21 international -- of the international policy  
 22 committee at ANSI?

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1 A. So the international policy  
 2 committee of ANSI is a committee which provides  
 3 information to ANSI members or members of the  
 4 community on international activities ranging  
 5 from the activities in the International  
 6 Organization for Standardization and the  
 7 International Electrotechnical Commission to --  
 8 reports on standards developments in other  
 9 parts of the world, such as the European Union,  
 10 China and so forth, its international policy.  
 11 Q. What work did you do as a member of  
 12 the national policy committee at ANSI?  
 13 A. So the responsibilities of the  
 14 national policy committee are to look at  
 15 national issues related to standardization.  
 16 The national policy committee has a committee  
 17 on education which focuses on education related  
 18 to standards activities, so that was a topic of  
 19 discussion and the national policy committee  
 20 also was the policy committee to which the ANSI  
 21 executive standards council and the board of  
 22 standards review reported.

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1 Those two committees are responsible  
 2 for overseeing the ANSI essential -- the  
 3 implementation of the ANSI essential  
 4 requirement and the development of American  
 5 national standards.  
 6 Q. What do you mean by "education  
 7 related to standards activities?"  
 8 A. So, there is a great interest in the  
 9 community at large, the private sector and the  
 10 government community in ensuring future  
 11 availability of standards professionals and  
 12 there are -- there are a growing number of  
 13 universities that include standards -- a  
 14 component in their education, engineering,  
 15 legal education, other education programs,  
 16 education programs focused on those types of  
 17 activities.  
 18 Q. So the committee on -- correct me if  
 19 I am mistaken, the committee on education  
 20 assisted in the education of future standards  
 21 professionals?  
 22 MR. GRIFFIN: Objection.

<p style="text-align: right;">Page 53</p> <p>1 THE WITNESS: You can look at the 2 information on the committee on education, I 3 believe it's available on the ANSI website but 4 the committee on education was a committee of 5 interested ANSI members who would either 6 provide materials that might be used in 7 universities or -- or discuss the value of 8 including knowledge about standards in various 9 university -- relevant university programs.</p> <p>10 BY MR. BECKER:</p> <p>11 Q. Other than as a member of the ASTM 12 Committee E50, have you had any other roles at 13 ASTM?</p> <p>14 A. As I mentioned earlier, I was on the 15 board of ASTM for one term from 2010 to 2012.</p> <p>16 Q. What did you do as a member of the 17 board of ASTM?</p> <p>18 A. So I -- as a member of the board, I 19 heard reports from the president of ASTM and 20 from -- reports from the head of technical 21 operations at ASTM. We received reports and 22 had discussions.</p>	<p style="text-align: right;">Page 55</p> <p>1 in the International Trade Administration 2 because of my trade expertise, and I agreed to 3 be a candidate for the board and I was elected 4 by the membership of the board.</p> <p>5 Q. Who asked --</p> <p>6 A. By the membership of ASTM.</p> <p>7 Q. Who asked you to stand?</p> <p>8 A. I -- it's -- I believe Jim Thomas 9 who was then the president of ASTM asked me if 10 I was willing to be a candidate.</p> <p>11 Q. Were there other government 12 employees who were a member of the board of 13 ASTM at the time that you served as a member of 14 the board?</p> <p>15 A. I would have to go back and look at 16 the membership at the time. That's almost ten 17 years ago. It's possible. I just can't 18 remember off the top of my head.</p> <p>19 Q. Do you recall approximately how many 20 people comprised the board of ASTM at the time 21 that you served?</p> <p>22 A. I believe it was 12 or 15. Again,</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Did you participate in 2 decisionmaking activities for ASTM when you 3 were a member of the board?</p> <p>4 MR. GRIFFIN: Objection.</p> <p>5 THE WITNESS: From my experience in 6 one term on the ASTM board, I don't remember 7 taking any specific decisions. As a government 8 employee, I recused -- would recuse myself from 9 any budgetary issues, items, fiduciary items.</p> <p>10 BY MR. BECKER:</p> <p>11 Q. Did you recuse yourself from any 12 other items other than budgetary and fiduciary 13 at ASTM?</p> <p>14 A. No. As I -- no.</p> <p>15 Q. How did you become a member of the 16 board at ASTM?</p> <p>17 A. So NIST, as I have experienced, I 18 can only speak to NIST, NIST has had a -- had, 19 previously had a member of the ASTM board for 20 many -- for several terms. I was actually 21 asked to stand for a member election as a 22 potential member of the ASTM board when I was</p>	<p style="text-align: right;">Page 56</p> <p>1 from memory.</p> <p>2 Q. Have you served in -- have you 3 participated as a member at ASTM in any other 4 capacity other than with E50 and as a member of 5 the board in 2010 to 2012?</p> <p>6 A. So for a couple of years toward the 7 end of my tenure at NIST, I was a member of E60 8 which is the sustainability committee.</p> <p>9 Q. What did you do as a member of E60?</p> <p>10 A. I commented on draft -- I voted on 11 draft documents.</p> <p>12 Q. When you say, "draft documents," 13 what kind of documents?</p> <p>14 A. Standards.</p> <p>15 Q. Was that voting on the revision of 16 draft standards?</p> <p>17 A. So the sustainability committee was 18 created at the time that I became a member so 19 the initial effort was to develop new 20 standards.</p> <p>21 Q. Okay. So you voted on drafts of new 22 standards --</p>

<p style="text-align: right;">Page 57</p> <p>1 A. That's correct.</p> <p>2 Q. -- as a member of E60?</p> <p>3 A. I did.</p> <p>4 Q. And at approximately what time was</p> <p>5 that?</p> <p>6 A. Probably 2015 to -- or 2014 to 2017</p> <p>7 when I retired. Again, the time frame is</p> <p>8 coming from memory.</p> <p>9 Q. When you were a member of the E60,</p> <p>10 did E60 end up developing any standards that</p> <p>11 were finalized and released to the public?</p> <p>12 A. I don't remember specifically.</p> <p>13 Q. What considerations went into your</p> <p>14 decisions when you were voting on draft</p> <p>15 standards?</p> <p>16 A. So sustainability is an area that</p> <p>17 was of -- is of interest to the national -- to</p> <p>18 NIST, and I looked at the draft documents to --</p> <p>19 with a view to whether they were -- how they</p> <p>20 were written and whether they were easy to</p> <p>21 understand.</p> <p>22 Q. What is the purpose of voting on</p>	<p style="text-align: right;">Page 59</p> <p>1 MR. FEE: Objection to form.</p> <p>2 THE WITNESS: I was essentially a</p> <p>3 corresponding member of E60. I did not attend</p> <p>4 a committee meeting so I can't speak to how</p> <p>5 those drafts were developed.</p> <p>6 BY MR. BECKER:</p> <p>7 Q. What does "corresponding member"</p> <p>8 mean?</p> <p>9 A. It means I did not attend a meeting.</p> <p>10 I received electronic versions of documents and</p> <p>11 I voted on them.</p> <p>12 Q. Did you ever contribute any text to</p> <p>13 a standard when you were participating with</p> <p>14 ASTM?</p> <p>15 A. No, I did not.</p> <p>16 MR. FEE: Objection to form.</p> <p>17 BY MR. BECKER:</p> <p>18 Q. What aspects of the draft standards</p> <p>19 did you evaluate?</p> <p>20 MR. GRIFFIN: Objection.</p> <p>21 THE WITNESS: As I -- I'm not -- the</p> <p>22 question is not clear. Can you rephrase that.</p>
<p style="text-align: right;">Page 58</p> <p>1 draft standards as a member of E60?</p> <p>2 MR. GRIFFIN: Objection.</p> <p>3 MR. FEE: Objection to form.</p> <p>4 THE WITNESS: The purpose of voting?</p> <p>5 As I mentioned earlier, committees looked to</p> <p>6 achieve a balance of interests and those</p> <p>7 interests are -- it is the expectation that</p> <p>8 those interests will vote on standards.</p> <p>9 BY MR. BECKER:</p> <p>10 Q. Do the members of E60 have to</p> <p>11 approve a standard by majority vote in order</p> <p>12 for the draft to be published --</p> <p>13 MR. FEE: Objection to form.</p> <p>14 MR. GRIFFIN: Objection.</p> <p>15 BY MR. BECKER:</p> <p>16 Q. -- as final?</p> <p>17 A. You would have to check with ASTM</p> <p>18 about that, what their requirements are for</p> <p>19 moving a draft through the various stages of</p> <p>20 the process.</p> <p>21 Q. How were drafts of standards</p> <p>22 developed when you were a member of E60?</p>	<p style="text-align: right;">Page 60</p> <p>1 BY MR. BECKER:</p> <p>2 Q. Sure. Were there certain criteria</p> <p>3 you used when reviewing draft standards, draft</p> <p>4 ASTM standards?</p> <p>5 A. My background is heavily in</p> <p>6 trade-related issues, also I have a background</p> <p>7 in political science and economics, so I looked</p> <p>8 at the text of the draft standards, as I</p> <p>9 mentioned earlier, for readability,</p> <p>10 understandability, those types of issues, those</p> <p>11 types of aspects.</p> <p>12 Q. Did you ever submit any comments</p> <p>13 referring to -- did you ever submit any</p> <p>14 comments when you were a member of E60</p> <p>15 suggesting changes in any of the drafts that</p> <p>16 you reviewed?</p> <p>17 A. I did not.</p> <p>18 Q. Was your participation as a member</p> <p>19 of E60 limited to just voting?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ever vote against a draft as</p> <p>22 a member of E60?</p>



<p style="text-align: right;">Page 61</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you ever vote for a draft as a</p> <p>3 member of E60?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Other than as a member of E60 and a</p> <p>6 member of E50 and a board member in 2010 to</p> <p>7 2012, have you participated in ASTM in any</p> <p>8 other capacity?</p> <p>9 A. I was an invited speaker at an ASTM</p> <p>10 event hosting standards -- national standards</p> <p>11 bodies from I believe Latin America, so I was</p> <p>12 an invited speaker on behalf of NIST at that</p> <p>13 ASTM event.</p> <p>14 Q. Other than that and the involvement</p> <p>15 we just previously discussed, is there any</p> <p>16 other way in which you participated in ASTM?</p> <p>17 A. No.</p> <p>18 Q. How have you participated in IEEE?</p> <p>19 MR. GRIFFIN: Objection.</p> <p>20 THE WITNESS: As I mentioned, I was</p> <p>21 on the IEEE Standards Association board of</p> <p>22 governors for one term, I believe it was 2007,</p>	<p style="text-align: right;">Page 63</p> <p>1 standards association at -- in expanding the</p> <p>2 international visibility of IEEE, so I engaged</p> <p>3 with other members of the board in activities</p> <p>4 related to international engagement and</p> <p>5 visibility.</p> <p>6 BY MR. BECKER:</p> <p>7 Q. Is there any other way that you</p> <p>8 participated as a member of the board of</p> <p>9 governors at IEEE?</p> <p>10 A. Not that I remember, no. I think</p> <p>11 that characterizes my engagement. Again, I was</p> <p>12 -- understand primarily on the board of</p> <p>13 governors because of my trade expertise.</p> <p>14 Q. How do you become a member of the</p> <p>15 board of governors at IEEE?</p> <p>16 A. Again, there is an election of the</p> <p>17 members. The slate of proposed board of</p> <p>18 governors, new board of governors members is</p> <p>19 sent out to the membership for a vote. A staff</p> <p>20 person at the IEEE Standards Association asked</p> <p>21 me if I would stand for election to the board</p> <p>22 of governors.</p>
<p style="text-align: right;">Page 62</p> <p>1 2008. That is the extent of my engagement with</p> <p>2 IEEE.</p> <p>3 BY MR. BECKER:</p> <p>4 Q. What do you do in that position at</p> <p>5 the IEEE?</p> <p>6 A. So the board of governors of the</p> <p>7 standards association oversees</p> <p>8 standards-related activities of the IEEE, so we</p> <p>9 received reports from the patent committee, we</p> <p>10 received reports from the various committees</p> <p>11 that are available at IEEE to advise on</p> <p>12 standards activities.</p> <p>13 Q. When you say, "you oversee</p> <p>14 standards-related activities," what does that</p> <p>15 involve?</p> <p>16 A. I should have said --</p> <p>17 MR. GRIFFIN: Objection.</p> <p>18 THE WITNESS: A better way to</p> <p>19 support standards-related activities at the</p> <p>20 IEEE. I mentioned the patent committee. At</p> <p>21 the time that I was on the board of governors,</p> <p>22 there was quite a bit of interest within the</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Do you know who that staff person</p> <p>2 was?</p> <p>3 A. Judy Gorman who was at that time the</p> <p>4 executive director of the standards</p> <p>5 association.</p> <p>6 Q. When you refer to "the standards</p> <p>7 association," what are you referring to?</p> <p>8 A. It's a subcomponent of IEEE.</p> <p>9 Q. Do you know why Judy Gorman asked</p> <p>10 you to serve as a member of the board of</p> <p>11 governors of IEEE?</p> <p>12 MR. GRIFFIN: Objection.</p> <p>13 THE WITNESS: I didn't ask her why</p> <p>14 she asked me. I assumed it's because of my</p> <p>15 trade expertise.</p> <p>16 BY MR. BECKER:</p> <p>17 Q. What board positions have you held</p> <p>18 at ANSI?</p> <p>19 A. Board positions?</p> <p>20 Q. Yeah.</p> <p>21 MR. GRIFFIN: Objection.</p> <p>22 THE WITNESS: I was a director at</p>

<p style="text-align: right;">Page 65</p> <p>1 large on the board of ANSI. As I mentioned  2 earlier, as chair of the international policy  3 committee and also later as chair of the  4 national policy committee, those chairs are --  5 ex-officio are members of the board, so I was  6 both a director at large and I have also been  7 on the board as the IPC and the NPC chairs.  8 BY MR. BECKER:  9 Q. Have you had any other involvement  10 with -- as a member of the board of ANSI?  11 MR. GRIFFIN: Objection.  12 THE WITNESS: Have I had any other  13 positions? Is that your question?  14 BY MR. BECKER:  15 Q. Yes.  16 A. So I neglected to mention earlier  17 because I did not remember until now, that I  18 was -- I served as a vice chair of ANSI as well  19 and as a vice chair, I was also a member of the  20 board.  21 Q. What is the role of a vice chair of  22 ANSI?</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Yes.  2 Q. How did you become the vice chair of  3 ANSI?  4 A. I put my hat in the ring to be  5 nominated to be a vice chair of ANSI and I was  6 selected by the nominating committee of ANSI --  7 or recommended by the nominating committee of  8 ANSI.  9 Q. Were you already a director at large  10 at the time that you became vice chair of ANSI?  11 A. I would have to go back and look if  12 I was a member of the board as -- on the basis  13 of chairing a policy committee or if I was a  14 director at large. I don't have those dates at  15 my fingertips.  16 Q. What were your responsibilities as a  17 director at large of ANSI?  18 A. So the ANSI board is very large.  19 There's 53 members of the ANSI board and I was  20 one of those 53 individuals. The board meets  21 twice a year and it receives briefings from the  22 staff of ANSI and the president and CEO on</p>
<p style="text-align: right;">Page 66</p> <p>1 A. So there are -- there are four vice  2 chairs at ANSI. And the four vice chairs,  3 along with the chairman of the board, the past  4 chair advice the president and CEO of ANSI on  5 issues that he raises with that small group.  6 Q. When you refer to "that small  7 group," what are --  8 A. The four vice chairs, the chairman  9 of the board and the past chair.  10 Q. When were you vice chair of ANSI?  11 A. Let me think. It's in my risumi so  12 let's see. It would have -- certainly through  13 2016. So back up.  14 Probably, I would have to back it up  15 from there, but certainly through -- through  16 the end of 2016.  17 Q. Do you know approximately how many  18 years you served in that position?  19 A. I think it's two two-year terms.  20 Q. Two separate two-year terms?  21 A. Yes.  22 Q. Were those consecutive?</p>	<p style="text-align: right;">Page 68</p> <p>1 ANSI's activities.  2 Q. Did you attend each of those  3 meetings?  4 A. I did.  5 Q. Did you have any other  6 responsibilities as director at large of ANSI?  7 A. I'm not following your -- I was a  8 member of the board and --  9 Q. Other than attending those meetings?  10 A. And chairing the policy committees  11 when I -- at the time I was a chair? No.  12 Q. Was chairing the policy committees a  13 required component of being a director of the  14 board?  15 A. No. As I mentioned earlier, there  16 are different types of board members. Chairs  17 of policy committees are automatically members  18 of the board ex-officio, and then other members  19 of the board are directors at large who are  20 elected based -- directly to the board.  21 Q. As a member of the ANSI board, did  22 you vote on policy decisions by ANSI?</p>

<p style="text-align: right;">Page 69</p> <p>1 MR. GRIFFIN: Objection.  2 THE WITNESS: So as I mentioned,  3 members of the board would receive briefings on  4 ANSI's activities. ANSI's strategic objectives  5 were presented to the board every year, ANSI's  6 activities in ISO and ISE were briefed to the  7 board on a regular basis.  8 There probably were instances where  9 the board was asked to vote. I don't remember  10 the specifics of those votes. I would have  11 recused myself from any fiduciary votes that  12 the board -- the board approves the budget  13 every year. I did not vote on that.  14 BY MR. BECKER:  15 Q. Did you ever participate in any  16 votes of the board of ANSI?  17 A. I'm sure I did.  18 Q. Do you recall any of those votes  19 that you participated in?  20 MR. GRIFFIN: Objection.  21 THE WITNESS: Not off the top of my  22 head.</p>	<p style="text-align: right;">Page 71</p> <p>1 you applied for at that time?  2 A. No.  3 Q. What is the Association for the  4 Advancement of Medical Instrumentation?  5 A. It's a nonprofit organization that  6 engages in activities, including standards  7 development activities related to the health  8 technology sector.  9 Q. When did you learn that you had  10 gotten the position as VP of government  11 relations and public policy at ANSI?  12 A. As I said, I had already made my  13 retirement plans. This was post-government  14 employment. I filed all the required  15 disclosure forms with the Department of  16 Commerce. I learned in December of 2016 that I  17 had been -- the job was offered to me in  18 December of 2016.  19 Q. Do you know when you accepted the  20 job?  21 A. I can't -- presumably about that  22 time. I can't remember specifically. As I</p>
<p style="text-align: right;">Page 70</p> <p>1 BY MR. BECKER:  2 Q. How did you become the VP of  3 government relations and public policy at ANSI?  4 A. I applied for the position and I was  5 selected.  6 Q. Were there other candidates for that  7 position?  8 A. I don't know.  9 Q. When did you apply for that  10 position?  11 A. In the fall of 2016. I had made my  12 retirement plans and I was looking at  13 post-government employment. It was one of  14 several positions I applied for.  15 Q. What were the other positions that  16 you applied for?  17 A. I applied for positions at other  18 501(c)(3) organizations, that -- well, I  19 applied for a position at the Association for  20 the Advancement of Medical Instrumentation as  21 well.  22 Q. Were there any other positions that</p>	<p style="text-align: right;">Page 72</p> <p>1 said, I filed all the necessary disclosure  2 forms with the Department of Commerce prior to  3 engaging in a job search.  4 Q. What are the -- those disclosure  5 forms?  6 A. What organizations I was seeking a  7 position with and a disclaimer that I would --  8 information that I would recuse myself from any  9 decisions related to those organizations.  10 Q. Did you recuse yourself from any  11 decisions related to ANSI during that time?  12 A. I was the associate director for  13 management resources so I had -- at the time at  14 NIST, so I had no direct responsibilities with  15 respect to ANSI decisions in standards  16 activities.  17 Q. What was your job as associate  18 director for management resources?  19 A. So the associate director for  20 management resources is directly responsible  21 for all of the operational activities at NIST,  22 which are facilities and property management,</p>

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1 acquisitions and grants management, health and  
 2 safety, human resources. The chief financial  
 3 officer reported to me as did the chief  
 4 information officer, so all of the operational  
 5 activities at NIST.  
 6 Q. So does that mean that you oversaw  
 7 the human resources department and other  
 8 departments?  
 9 A. That's correct. I reported to --  
 10 the chief officers reported to me.  
 11 MR. GRIFFIN: Objection.  
 12 BY MR. BECKER:  
 13 Q. What are your responsibilities as  
 14 the VP of government relations and public  
 15 policy at ANSI?  
 16 A. I'm responsible for ANSI's  
 17 relationships with federal -- with government  
 18 agencies not just federal agencies. Federal --  
 19 government agencies as well as keeping track of  
 20 any Congressional activities that might be  
 21 relevant to standards -- the standardization  
 22 community for ANSI.

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1 Q. When you refer to "the  
 2 standardization community," what are you  
 3 referring to?  
 4 A. I am referring to standards as well  
 5 as -- and assessment of conformity to  
 6 standards. That's why we use the term  
 7 standardization.  
 8 Q. When you refer to "assessment of  
 9 conformity to standards," what are you  
 10 referring to?  
 11 A. Testing, product certification,  
 12 inspection, verification and validation. Those  
 13 are confirming assessment activities.  
 14 Q. Does ANSI itself engage in any  
 15 assessment of conformity to standards?  
 16 A. No. ANSI, through its division, the  
 17 American National Accreditation Board accredits  
 18 conformity assessment activities. It does not  
 19 engage in the activities that I listed.  
 20 Q. When you say it "accredits those  
 21 activities," what are you referring to?  
 22 A. There are a suite of international

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1 standards establishing a hierarchy for what we  
 2 call conformity assessment activities  
 3 accreditation. It is a -- there are standards  
 4 at the accreditation level, ISO standards,  
 5 which speak to determining the competence of  
 6 conformity assessment organizations, so ANSI is  
 7 an accreditor.  
 8 Q. What is a conformity assessment  
 9 organization?  
 10 A. It could be a test lab, a product  
 11 certifier, an inspection body, a validation and  
 12 verification body, personnel certification.  
 13 There are a range of types of activities,  
 14 conformity assessment activities, all of which  
 15 have international standards associated with  
 16 them.  
 17 Q. Are there any instances you are  
 18 aware of in which a conformity assessment  
 19 organization requires ANSI accreditation in  
 20 order to operate?  
 21 A. Are you asking -- can you repeat the  
 22 question or clarify the question.

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1 Q. Are there any instance you are aware  
 2 of in which a conformity assessment  
 3 organization requires ANSI accreditation in  
 4 order to operate?  
 5 A. The question is still not clear. So  
 6 ANSI accreditation -- you're asking me if ANSI  
 7 accreditation is mandatory in specific cases?  
 8 Q. Yes.  
 9 A. Not specifically ANSI accreditation.  
 10 Q. What do you mean by that?  
 11 A. Accreditation -- well, the U.S.  
 12 system for conformity assessment, like the U.S.  
 13 standards system, has a multiplicity of --  
 14 there is not a national accreditation body in  
 15 the United States. There are multiple  
 16 accreditation bodies of which the ANSI national  
 17 accreditation board is one.  
 18 Accreditation generally may be --as  
 19 demonstration of a competence through  
 20 accreditation generally may be required by  
 21 purchasers, by specifiers, by particular  
 22 interests, and ANSI may be one of those

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1 accreditors. It's not the only one.  
 2 Q. Is accreditation ever required by  
 3 government law or regulation?  
 4 MR. FEE: Objection to form.  
 5 THE WITNESS: Do you want to  
 6 rephrase, please.  
 7 BY MR. BECKER:  
 8 Q. Yeah. Is accreditation ever  
 9 required by government law?  
 10 MR. FEE: Objection to form.  
 11 THE WITNESS: I can't -- I don't  
 12 know the answer whether any law requires  
 13 accreditation. There are regulations where  
 14 accreditation is determined to be a means of  
 15 demonstrating competence.  
 16 I would have to go back and read --  
 17 the Food Safety Modernization Act might be one  
 18 example, but I'm more familiar with the  
 19 regulation activities than I am with the laws.  
 20 BY MR. BECKER:  
 21 Q. Are there any specific regulations  
 22 that you know of, sitting here today, that

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1 require accreditation in this capacity?  
 2 MR. GRIFFIN: Objection.  
 3 MR. FEE: Objection to form.  
 4 THE WITNESS: I mentioned the Food  
 5 Safety Modernization Act when the FDA  
 6 established its program for oversight of food  
 7 safety. There is a provision for accreditation  
 8 of competent organizations. The FDA  
 9 administers that overall program. I mean -- go  
 10 ahead.  
 11 BY MR. BECKER:  
 12 Q. Are there any other specific  
 13 regulations that you can think of, sitting here  
 14 today, that require accreditation?  
 15 MR. GRIFFIN: Objection.  
 16 MR. FEE: Objection.  
 17 THE WITNESS: I'll speak generally.  
 18 A component of the National Technology Transfer  
 19 and Advancement Act, we covered the standards  
 20 related -- directions under Section 12.  
 21 Section 12 also directs federal agencies to  
 22 coordinate their conformity assessment

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1 activities with those of the private sector.  
 2 The most recent revision of OMB  
 3 Circular A119 has an extensive section on  
 4 conformity assessment activities in it which  
 5 reflect both developments in the -- at the  
 6 World Trade Organization's technical barriers  
 7 to trade agreement as well as other government  
 8 policies, and those documents encourage federal  
 9 agencies to rely on private sector conformity  
 10 assessment activities wherever feasible.  
 11 BY MR. BECKER:  
 12 Q. Going back to my question: Are  
 13 there specific examples of regulations, other  
 14 than the Food Safety Modernization Act, that  
 15 you know of that require accreditation?  
 16 MR. GRIFFIN: Objection.  
 17 MR. FEE: Objection to form.  
 18 THE WITNESS: So the Federal  
 19 Communications Commission directs accredit --  
 20 that telecommunication certification bodies be  
 21 accredited. FCC's recognition of testing  
 22 laboratories that do electromagnetic

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1 compatibility testing, requires accreditation.  
 2 EPA's Energy Star Program, but EPA administers  
 3 that program.  
 4 BY MR. BECKER:  
 5 Q. Does ANSI provide the accreditation  
 6 in either the FCC examples that you just  
 7 provided or the Food Safety Modernization Act?  
 8 A. Yes, both. ANSI has been evaluated  
 9 and is recognized by both the FCC and EPA as a  
 10 qualified accreditation body as are others.  
 11 Q. Do you know approximately how many  
 12 other qualified accreditation bodies there are?  
 13 A. Not off the top of my head.  
 14 Q. Do you have an estimate?  
 15 A. Let's see. In the Food Safety  
 16 Management Act, I believe one other  
 17 accreditation body is -- has demonstrated  
 18 technically competent, but I -- again, you  
 19 would have to look on the -- at the FDA  
 20 website.  
 21 Q. Do you recall what -- what  
 22 accreditation body that is?

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1 A. I believe it's the American  
 2 Association for Laboratory Accreditation.  
 3 Q. Does ANSI charge a fee for providing  
 4 accreditations?  
 5 A. All accreditation bodies charge fees  
 6 for accreditation.  
 7 Q. Do you know what ANSI's fee is?  
 8 A. I do not.  
 9 Q. And can I take that as a yes, that  
 10 ANSI does charge a fee to provide  
 11 accreditation?  
 12 A. Yes, accreditation is a  
 13 fee-for-service activity.  
 14 Q. Is ANSI listed in the Food Safety  
 15 Modernization Act as a body that can provide  
 16 accreditation?  
 17 A. Not under the Act, no.  
 18 Q. Is ANSI listed under a regulation as  
 19 a body that can provide accreditation under the  
 20 requirements of the Food Safety Modernization  
 21 Act?  
 22 A. As I mentioned, the Food and Drug

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1 Administration has evaluated ANSI with respect  
 2 to its competence to provide services related  
 3 to the Food Safety Modernization Act and its --  
 4 ANSI -- the American National Accreditation  
 5 Body, ANAB, the division of ANSI is listed I  
 6 believe by the FDA.  
 7 Q. Listed in a regulation?  
 8 A. No, listed on its website.  
 9 Q. Okay. Do any standards development  
 10 organizations provide conformity assessment --  
 11 provide accreditation for conformity assessment  
 12 organizations?  
 13 MR. FEE: Objection to form.  
 14 THE WITNESS: Are you asking me if  
 15 any standards development organizations are  
 16 also accreditors?  
 17 BY MR. BECKER:  
 18 Q. Yes.  
 19 A. No. Not to my knowledge.  
 20 Q. Why is that, do you know?  
 21 MR. FEE: Objection to form.  
 22 THE WITNESS: I -- I don't have an

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1 opinion on that.  
 2 BY MR. BECKER:  
 3 Q. Do you know what -- approximately  
 4 what portion of ANSI's revenues are derived  
 5 from accreditation?  
 6 A. I believe that information is  
 7 available in the annual report. I don't have  
 8 that number at my fingertips.  
 9 Q. Do you have an estimate?  
 10 A. I would have to go look at the  
 11 annual report.  
 12 Q. Is that annual report provided to  
 13 the public?  
 14 A. Yes.  
 15 Q. Under the Food Safety Modernization  
 16 Act and its related regulations, is there any  
 17 other means for a conformity assessment  
 18 organization to operate other than by  
 19 accreditation by ANSI or the other accreditors  
 20 that you had referenced?  
 21 MR. GRIFFIN: Objection.  
 22 MR. FEE: Objection to form.

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1 THE WITNESS: I can't answer that.  
 2 You would have to go look at the FDA website.  
 3 BY MR. BECKER:  
 4 Q. What's the role of a conformity  
 5 assessment organization in the scope of the  
 6 Food Safety Modernization Act?  
 7 A. I can't answer that.  
 8 MR. FEE: Objection to form.  
 9 THE WITNESS: I don't have the  
 10 details on the Food Safety Modernization Act.  
 11 That wasn't within my area of expertise.  
 12 BY MR. BECKER:  
 13 Q. Do you know what the term  
 14 "incorporation by reference" means?  
 15 MR. FEE: Objection to form.  
 16 THE WITNESS: In what context?  
 17 BY MR. BECKER:  
 18 Q. In the context of law.  
 19 MR. FEE: Same objection.  
 20 MR. GRIFFIN: Objection.  
 21 THE WITNESS: I am familiar with the  
 22 National Archives and Records Administration

<p style="text-align: right;">Page 85</p> <p>1 Incorporation by Reference Handbook for 2 incorporation into regulations, and I am 3 familiar with the OMB Circular A119 discussion 4 of incorporation by reference. 5 BY MR. BECKER: 6 Q. What's the National Archives and 7 Records Administration's Incorporation by 8 Reference Handbook? 9 A. The National Archives and Records 10 Administration houses the Office of Federal 11 Register. The Incorporation by Reference 12 Handbook is NARA's instructions to agencies as 13 to the appropriate way to incorporate material 14 by reference into regulations which will become 15 part of the Code of Federal Regulations. 16 Q. When you say, "it's NARA's 17 instructions to agencies," what do you mean by 18 that? 19 A. As I mentioned, the National 20 Archives and Records Administration houses the 21 Office of Federal Register and in that context, 22 it provides instructions to regulation writers</p>	<p style="text-align: right;">Page 87</p> <p>1 THE WITNESS: Not having been a 2 regulation writer, I can't speak directly to 3 that. 4 BY MR. BECKER: 5 Q. What is "incorporation by 6 reference?" 7 A. Incorporation by reference is 8 incorporating a document by reference to that 9 document in a -- in a notice of proposed 10 rulemaking or a rule itself. 11 Q. What is the effect of incorporation 12 by reference? 13 MR. GRIFFIN: Objection. 14 MR. FEE: Objection to form. 15 THE WITNESS: I can only speak to 16 the effect of incorporation by reference as 17 defined in the NARA IBR handbook for materials 18 that are published in the Federal Register and 19 in the Code of Federal Regulations. It's 20 incorporated in by reference into the Code of 21 Federal Regulations. I can't speak beyond 22 that.</p>
<p style="text-align: right;">Page 86</p> <p>1 and agencies as to how to prepare materials for 2 publication in the Office of Federal Register, 3 and at the end of the rulemaking, in the Code 4 of Federal Regulations. 5 Q. When you say, "it provides 6 instructions," are these instructions that the 7 regulation writers and agencies are required to 8 follow or is this just guidance? 9 MR. FEE: Objection to form. 10 THE WITNESS: The IBR -- the NARA 11 IBR handbook is available on the website. You 12 can review it directly. It is instructions for 13 how to prepare material to be published in the 14 Federal Register and in the Code of Federal 15 Regulations. 16 BY MR. BECKER: 17 Q. And my question was: Are those 18 instructions -- excuse me. 19 Are the writers of regulations and 20 agencies required to follow the instructions in 21 that handbook? 22 MR. FEE: Objection to form.</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. BECKER: 2 Q. Why is incorporation by reference 3 used? 4 MR. FEE: Objection to form. 5 MR. GRIFFIN: Objection. 6 THE WITNESS: Again, I refer to the 7 NARA handbook and the instructions. There are 8 a variety of reasons and for reasons of 9 efficiency, for reasons of reducing the volume 10 of the materials that are actually published, 11 and very importantly for copyright reasons, 12 documents that are copyrighted have protection 13 under the law. 14 BY MR. BECKER: 15 Q. Can you speak more to that? 16 MR. FEE: Objection to form. 17 MR. GRIFFIN: Objection. 18 THE WITNESS: What -- I'm not clear 19 about what additional -- 20 BY MR. BECKER: 21 Q. When you say, "very importantly for 22 copyright reasons," what do you mean by that?</p>

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1 A. So NARA -- the NARA handbook lists  
 2 several considerations that agencies should  
 3 take under advisement, as does the OMB  
 4 circular, with respect to incorporating  
 5 materials by reference, and one of those is  
 6 copyright obligations, obligations to protect,  
 7 to -- obligations to protect copyright.  
 8 Q. What do you mean by "obligations to  
 9 protect copyright?"  
 10 A. Well, copyrighted documents are  
 11 protected by the Copyright Act.  
 12 Q. So how does incorporation by  
 13 reference relate to an obligation to protect  
 14 copyright?  
 15 A. Incorporation by reference is in  
 16 lieu of producing -- reproducing an entire  
 17 copyrighted document in a federal document.  
 18 mean --  
 19 Q. And again, how does incorporation by  
 20 reference relate to an obligation to protect  
 21 copyright?  
 22 MR. FEE: Objection.

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1 THE WITNESS: I just -- I thought I  
 2 just answered that.  
 3 BY MR. BECKER:  
 4 Q. Are you saying that by not  
 5 publishing a document in full in a law or  
 6 regulation, the entity that is publishing that  
 7 law or regulation thereby avoids copyright  
 8 infringement?  
 9 MR. FEE: Objection.  
 10 MR. GRIFFIN: Objection.  
 11 THE WITNESS: Well, I'm not a  
 12 copyright lawyer so I can't speak to the  
 13 details of that. I refer you to the OMB  
 14 circular which has a very extensive discussion  
 15 of considerations for agencies and  
 16 incorporating material by reference as well as  
 17 the NARA handbook.  
 18 BY MR. BECKER:  
 19 Q. Do you know when the NARA handbook  
 20 was first published?  
 21 A. I do not.  
 22 Q. Do you know who drafts the NARA

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1 handbook?  
 2 A. The staff of the Office of Federal  
 3 Register is my understanding.  
 4 Q. Do you know how the NARA handbook is  
 5 drafted?  
 6 A. I do not.  
 7 MR. GRIFFIN: Objection.  
 8 BY MR. BECKER:  
 9 Q. Do you know who has input on the  
 10 contents of the NARA handbook?  
 11 MR. GRIFFIN: Objection.  
 12 THE WITNESS: I do not.  
 13 BY MR. BECKER:  
 14 Q. Do you have any estimate as to when  
 15 the NARA handbook was first issued?  
 16 MR. GRIFFIN: Objection.  
 17 THE WITNESS: I do not.  
 18 BY MR. BECKER:  
 19 Q. How long have you been referring to  
 20 the NARA handbook?  
 21 MR. GRIFFIN: Objection.  
 22 THE WITNESS: As a source document?

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1 The NARA handbook was -- is updated  
 2 periodically. The NARA handbook was updated in  
 3 -- following the publication -- I think  
 4 immediately prior to the publication of the  
 5 current version of the OMB circular. OMB  
 6 deferred to NARA to update its regulations  
 7 prior to completing the update of the OMB  
 8 circular and I -- the current version of the  
 9 NARA handbook is dated 2018.  
 10 BY MR. BECKER:  
 11 Q. Did you refer to the NARA handbook  
 12 as an authoritative source of information when  
 13 you were a government employee?  
 14 MR. GRIFFIN: Objection.  
 15 THE WITNESS: As I said, I never was  
 16 in a position to be a regulation writer.  
 17 Relevant documents are pointed to on  
 18 standards.gov and so it's the National  
 19 Technology Transfer and Advancement Act, the  
 20 OMB circular and the NARA handbook. There may  
 21 be other documents as well, but I have never  
 22 been a regulation writer.



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1 BY MR. BECKER:  
 2 Q. Did you ever refer to the NARA  
 3 handbook when you were a government employee?  
 4 A. Personally, no, because I never  
 5 wrote a regulation.  
 6 Q. Did you ever read the NARA handbook  
 7 while you were a government employee?  
 8 A. I have read the NARA handbook, yes.  
 9 Q. While you were a government  
 10 employee?  
 11 A. Yes.  
 12 Q. Why was it that you read the NARA  
 13 handbook while a government employee?  
 14 A. As I mentioned, there are -- the  
 15 relevant documents are the National Technology  
 16 Transfer and Advancement Act, the OMB circular  
 17 and the NARA handbook. There are related  
 18 executive orders as well as 1512866 and other  
 19 memos. I read all those documents. I was  
 20 familiar with those documents at a high level  
 21 because NIST is directed by Congress to promote  
 22 reliance on private voluntary consensus

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1 standards by federal agencies and those are  
 2 operative documents.  
 3 Q. When you say, "operative documents,"  
 4 what do you mean?  
 5 A. Those are relevant documents.  
 6 Q. Okay. How is the NARA handbook  
 7 relevant to the promotion of reliance on  
 8 private voluntary consensus standards by  
 9 federal agencies?  
 10 A. It speaks to good practices in  
 11 incorporated material by reference in the Code  
 12 of Federal Regulations and the material may  
 13 include standards.  
 14 Q. Is there a more authoritative source  
 15 of information on the practices for  
 16 incorporation by reference of material into  
 17 regulations?  
 18 MR. FEE: Objection to form.  
 19 MR. GRIFFIN: Objection.  
 20 THE WITNESS: I have listed the  
 21 documents I am aware of.  
 22 BY MR. BECKER:

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1 Q. But my question was: Is there a  
 2 more authoritative document other than that?  
 3 MR. FEE: Objection to form.  
 4 MR. GRIFFIN: Objection.  
 5 THE WITNESS: I don't know.  
 6 BY MR. BECKER:  
 7 Q. Do you consider the IBR handbook to  
 8 be an authoritative document?  
 9 MR. FEE: Objection to form.  
 10 THE WITNESS: I consider the IBR  
 11 handbook to be relevant to agencies that are  
 12 incorporating material by reference.  
 13 BY MR. BECKER:  
 14 Q. What kind of documents are  
 15 incorporated by reference into law?  
 16 MR. FEE: Objection to form.  
 17 MR. GRIFFIN: Objection.  
 18 THE WITNESS: I'm familiar with  
 19 regulations, not the law.  
 20 BY MR. BECKER:  
 21 Q. What's the distinction between law  
 22 and regulations?

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1 MR. GRIFFIN: Objection.  
 2 THE WITNESS: At the federal -- I am  
 3 familiar with the federal level, federal agency  
 4 activities only, which typically, agencies  
 5 issue regulations pursuant to laws that  
 6 Congress has passed.  
 7 BY MR. BECKER:  
 8 Q. So by laws, are you referring to  
 9 statutes?  
 10 MR. FEE: Objection.  
 11 THE WITNESS: I'm referring to  
 12 legislation that passes Congress and is signed  
 13 by the President.  
 14 BY MR. BECKER:  
 15 Q. Okay. When I - today, when I refer  
 16 to "law,"  
 17 I will be including regulations in the term  
 18 law.  
 19 If I want to refer to statutes or  
 20 legislations specifically or regulations  
 21 specifically, I will use those terms.  
 22 Does that make sense to you?

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1 A. I understand what you said. I will  
 2 continue to refer to them as regulations though  
 3 because I see a difference.  
 4 Q. What kind of documents are  
 5 incorporated by reference into regulations?  
 6 MR. FEE: Objection to form.  
 7 THE WITNESS: So I can't speak to  
 8 that general question. I haven't looked at  
 9 every regulation in terms of what documents  
 10 might be incorporated.  
 11 BY MR. BECKER:  
 12 Q. Can you give me examples of  
 13 documents that are incorporated by reference  
 14 into regulation?  
 15 A. Yes. There are -- some standards  
 16 are incorporated by reference into regulation.  
 17 Q. Are you aware of other documents,  
 18 other than standards, that are incorporated by  
 19 reference into regulation in the United States?  
 20 A. Not specifically.  
 21 Q. Are you aware of specific -- excuse  
 22 me.

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1 Are you generally aware of other  
 2 documents that are incorporated by reference  
 3 into regulation in the United States other than  
 4 standards?  
 5 A. I am aware that there is the  
 6 possibility that other documents may be  
 7 incorporated by reference. I don't have any  
 8 direct experience.  
 9 Q. Do you know what types of other  
 10 documents might be incorporated by reference  
 11 into regulation in the United States?  
 12 A. I do not.  
 13 MR. GRIFFIN: Objection.  
 14 BY MR. BECKER:  
 15 Q. Who makes the decision to  
 16 incorporate a document by reference into a  
 17 regulation in the United States?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection.  
 20 THE WITNESS: Who makes the  
 21 decision? So agencies -- regulatory agencies  
 22 have regulatory staff that write draft

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1 regulations which are subject to the  
 2 Administrative Procedures Act, which means that  
 3 they go out for public comment. The agency  
 4 responds to those comments and then moves  
 5 through the process to a final rule. So  
 6 agencies are responsible for proposing  
 7 regulations and proposing material incorporated  
 8 in those regulations. Those actions are  
 9 subject to the Administrative Procedures Act.  
 10 BY MR. BECKER:  
 11 Q. So when you say that "an agency is  
 12 responsible for proposing material incorporated  
 13 into regulations," who makes the final decision  
 14 as to what material will be incorporated into  
 15 those regulations?  
 16 MR. GRIFFIN: Objection.  
 17 MR. FEE: Objection to form.  
 18 THE WITNESS: I can't speak to  
 19 internal agency processes as to who the  
 20 decisionmakers are. Likely, various from  
 21 agency to agency. It will be an internal  
 22 review process for a notice of proposed

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1 rulemaking, and for certain rules over a  
 2 certain economic threshold, the Office of  
 3 Management and Budget will also reviews those  
 4 proposed rules.  
 5 BY MR. BECKER:  
 6 Q. Do members of the public have input  
 7 as to what documents will be incorporated by  
 8 reference into regulations in the United  
 9 States?  
 10 MR. GRIFFIN: Objection.  
 11 MR. FEE: Objection to form.  
 12 THE WITNESS: I mentioned that  
 13 regulations are subject to the Administrative  
 14 Procedures Act which means they are subject to  
 15 notice and comment by the public.  
 16 BY MR. BECKER:  
 17 Q. And what does notice and comment by  
 18 the public involve?  
 19 MR. GRIFFIN: Objection.  
 20 THE WITNESS: An agency develops and  
 21 publishes in the Office of Federal Register, a  
 22 notice of proposed rulemaking, allows a certain

<p style="text-align: right;">Page 101</p> <p>1 period of time for comment on that proposed  2 rule, and then under the Administrative  3 Procedures Act must take the comments into  4 account and respond to those comments and move  5 through the process. That's what I mean.  6 BY MR. BECKER:  7 Q. Earlier, you had discussed the  8 reasons for incorporation by reference and --  9 as opposed to stating the contents of the  10 document that would be incorporated verbatim  11 into the law or regulation, and you had  12 mentioned that those reasons included  13 efficiency and also copyright concerns; is that  14 correct?  15 A. Yes.  16 MR. GRIFFIN: Objection.  17 BY MR. BECKER:  18 Q. Are there other reasons other than  19 efficiency and copyright concerns?  20 MR. GRIFFIN: Objection.  21 THE WITNESS: The OMB circular has  22 an extensive section on considerations that</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. Are you aware of any instance in  2 which there has been a change in a proposed  3 incorporation by reference of a standard in a  4 regulation as a result of input by the standard  5 development organization that publishes that  6 standard that would be incorporated by  7 reference?  8 A. I don't have the details of a  9 particular -- any particular rulemaking  10 process, so I can't speak to that.  11 Q. Sitting here today, are you aware of  12 any such instances?  13 MR. GRIFFIN: Objection.  14 THE WITNESS: No.  15 BY MR. BECKER:  16 Q. Are you aware of any instances in  17 which a standards development organization has  18 asked that its standard not be incorporated by  19 reference into a regulation?  20 A. Not personally, no.  21 Q. Are you aware of any change in a  22 proposed incorporation by reference of a</p>
<p style="text-align: right;">Page 102</p> <p>1 agencies need to take into account when  2 incorporating standards by reference into  3 regulations. I don't have at my fingertips  4 that full list, but I would refer you to that.  5 BY MR. BECKER:  6 Q. Are you referring to A119?  7 A. I'm referring to OMB Circular A119,  8 correct.  9 Q. What is the OMB Circular A119?  10 A. OMB Circular A119 is instructions to  11 federal agencies on use of voluntary consensus  12 standards and participation and standards  13 activities.  14 Q. Are you aware of any change in a  15 proposed incorporation by reference of a  16 standard in a regulation as a result of public  17 comment?  18 MR. GRIFFIN: Objection.  19 THE WITNESS: I wouldn't have that  20 information, since I have never worked at an  21 agency that issues regulations.  22 BY MR. BECKER:</p>	<p style="text-align: right;">Page 104</p> <p>1 standard in a regulation as a result of any  2 proceeding under the Administrative Procedure  3 Act?  4 MR. GRIFFIN: Objection.  5 THE WITNESS: I am not personally  6 aware of that.  7 BY MR. BECKER:  8 Q. Are you generally aware of any  9 instance where a standards development  10 organization has asked that its standard not be  11 incorporated by reference into a regulation?  12 A. No.  13 MR. GRIFFIN: Objection.  14 BY MR. BECKER:  15 Q. Are you generally aware of any  16 instances where a standards development  17 organization has asked that its standard be  18 incorporated by reference in a regulation?  19 A. No.  20 Q. So you are not aware of any instance  21 where a standards development organization has  22 asked that its standard be incorporated by</p>

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1 reference into a regulation?  
 2 MR. GRIFFIN: Objection.  
 3 THE WITNESS: So my responsibilities  
 4 at NIST and the responsibilities of the  
 5 standards coordination office were at a very  
 6 high policy level. We did not engage in  
 7 specific -- specific engagements between  
 8 standards development organizations and  
 9 agencies.  
 10 BY MR. BECKER:  
 11 Q. What about in your role at ANSI or  
 12 at any of the standards development  
 13 organizations that you have participated with?  
 14 MR. GRIFFIN: Objection.  
 15 MR. FEE: Objection.  
 16 THE WITNESS: M I aware of any  
 17 instance in which a standards development  
 18 organization asked to have a standard? No.  
 19 BY MR. BECKER:  
 20 Q. Have you ever discussed with anyone  
 21 the possibility of a standards development  
 22 organization asking that its standard not be

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1 incorporated by reference into a regulation?  
 2 MR. GRIFFIN: Objection.  
 3 THE WITNESS: Not to my knowledge.  
 4 BY MR. BECKER:  
 5 Q. Did you ever come to hear directly  
 6 or indirectly that a standards development  
 7 organization asked that its standard not be  
 8 incorporated by reference into a regulation?  
 9 MR. GRIFFIN: Objection.  
 10 THE WITNESS: Not to my knowledge.  
 11 BY MR. BECKER:  
 12 Q. Is there any benefit to a standards  
 13 development organization in having its standard  
 14 incorporated by reference into a regulation?  
 15 MR. FEE: Objection to form.  
 16 THE WITNESS: So since I have never  
 17 been employed by a standards development  
 18 organization, I can't speak to the benefit that  
 19 might accrue.  
 20 BY MR. BECKER:  
 21 Q. Even despite being a board member of  
 22 two standards development organizations?

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1 A. In my memory, those issues were not  
 2 discussed at the board level.  
 3 Q. Was incorporation by reference ever  
 4 discussed at the board level at either of the  
 5 standards development organizations that you  
 6 were a board member of?  
 7 A. Not that I represent.  
 8 Q. Was incorporation by reference ever  
 9 discussed at the board level at ANSI?  
 10 A. There are several board meetings  
 11 which reports on incorporation by reference  
 12 were provided. I believe Public.Resource.Org  
 13 has those documents as a result of a FOIA  
 14 request made to NIST.  
 15 Q. Does -- does ANSI advocate for the  
 16 incorporation by reference of standards into  
 17 regulation?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection to form.  
 20 THE WITNESS: ANSI advocates for  
 21 federal agencies reliance on voluntary  
 22 consensus standards in carrying out their

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1 mission responsibilities.  
 2 BY MR. BECKER:  
 3 Q. When you say, "reliance," what do  
 4 you mean by that?  
 5 A. So depending on the agency, organic  
 6 legislation and their authorities, there are  
 7 various ways that agencies can rely on  
 8 voluntary standards to carry out their  
 9 missions.  
 10 Q. Does that -- including incorporation  
 11 by reference --  
 12 A. Yes.  
 13 Q. -- in the regulations?  
 14 A. That includes incorporation by  
 15 reference into regulations.  
 16 Q. What are the other ways that an  
 17 agency could rely on voluntary standards to  
 18 carry out its mission?  
 19 MR. FEE: Objection to form.  
 20 THE WITNESS: In the guidance area,  
 21 agencies can point to standards that are  
 22 relevant to an agency mission space and

<p style="text-align: right;">Page 109</p> <p>1 identify those for interested members of the 2 regulated community. 3 BY MR. BECKER: 4 Q. When you say, "point to standards 5 that are relevant to an agency mission and 6 identify those for interested members of the 7 regulated community," what's the difference 8 between that and incorporation by reference? 9 A. Incorporation by reference is a very 10 specific term. It's for documents that are 11 incorporated by reference into the Code of 12 Federal Regulations, so that is different than 13 identifying standards as part of guidance. 14 Q. Why wouldn't an agency just identify 15 a standard as part of guidance? 16 MR. GRIFFIN: Objection. 17 THE WITNESS: It depends on the 18 agency. What their -- their organic act and 19 the -- Congress, the direction Congress has 20 given to them as to how to carry out their 21 regulatory responsibilities so it's unique, it 22 depends on the agency.</p>	<p style="text-align: right;">Page 111</p> <p>1 with agency -- with those particular agencies. 2 MR. GRIFFIN: Just pause for one 3 second. 4 Before you answer, just pause for 5 one second. 6 THE WITNESS: Sorry. 7 BY MR. BECKER: 8 Q. Are you aware of any instances where 9 an agency both refers to standards and uses 10 incorporation by reference? 11 A. Not off the top of my head. I'm 12 sure there are instances where that occurs. 13 MR. GRIFFIN: We just hit the 14 two-hour mark, so whenever you -- 15 MR. BECKER: Sure. We can take a 16 break in just a few minutes unless someone is 17 dying to take a break right now. 18 MR. GRIFFIN: No, no. 19 BY MR. BECKER: 20 Q. You said that ANSI advocates for 21 federal agencies to rely on consensus standards 22 in carrying out their mission responses, and</p>
<p style="text-align: right;">Page 110</p> <p>1 BY MR. BECKER: 2 Q. I'm not certain I understand. 3 A. You would have to look to the 4 particular agency, scope of responsibilities 5 and how they are directed by Congress to carry 6 out those responsibilities. It differs from 7 agency to agency. 8 Q. So why would an agency -- why would 9 an agency just refer to a standard rather than 10 using incorporation by reference? 11 A. It may not -- 12 MR. GRIFFIN: Objection. 13 MR. FEE: Objection to form. 14 THE WITNESS: It may not be 15 permitted under their authorizing legislation. 16 BY MR. BECKER: 17 Q. Why wouldn't referring to a standard 18 be permitted under authorizing legislation? 19 A. Well, I can't speak to that. 20 MR. FEE: Objection to form. 21 MR. GRIFFIN: Objection. 22 THE WITNESS: You'd have to check</p>	<p style="text-align: right;">Page 112</p> <p>1 that there are various ways that agencies can 2 rely on voluntary standards to carry out their 3 missions. 4 One way of relying on those 5 standards is by incorporation by reference and 6 the other is by simply referring to those 7 standards, correct? 8 MR. FEE: Objection. 9 MR. GRIFFIN: Objection. 10 THE WITNESS: "An" other way, not 11 "the" other way. 12 BY MR. BECKER: 13 Q. And what are -- other than 14 incorporation by reference and referring to 15 these standards, are there other ways that an 16 agency could rely on voluntary standards to 17 carry out its mission? 18 A. So that is outside of my area of 19 expertise. 20 Q. Are you aware of any other ways, 21 other than referring to standards or 22 incorporating standards by reference into</p>

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1 regulation?  
 2 A. So I'm not going to guess as to  
 3 possible ways agencies may rely. It differs  
 4 from agency to agency.  
 5 Q. Does ANSI ever advocate for an  
 6 agency referring to a standard rather than  
 7 incorporating a standard by reference into  
 8 regulation?  
 9 A. That's the agency's decision.  
 10 Q. Is that a no?  
 11 A. That's a no.  
 12 Q. Does ANSI ever advocate for an  
 13 agency incorporating a standard by reference  
 14 into regulation rather than simply referring to  
 15 the standard?  
 16 A. No. I said that's the agency's  
 17 decision.  
 18 Q. Does ANSI ever discuss the benefits  
 19 or detriments of incorporation by reference  
 20 versus other reference to a standard in  
 21 regulation?  
 22 MR. GRIFFIN: Objection.

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1 THE WITNESS: ANSI as an institute?  
 2 I referred to the OMB Circular A119 and other  
 3 relevant documents I referred to earlier that  
 4 provides the overall context for this situation  
 5 so ANSI operates within that context.  
 6 BY MR. BECKER:  
 7 Q. And my question is: Does ANSI, as  
 8 an organization, ever discuss the benefits or  
 9 detriments of incorporation by reference versus  
 10 other reference to a standard in regulation?  
 11 MR. GRIFFIN: Objection.  
 12 THE WITNESS: With agencies?  
 13 BY MR. BECKER:  
 14 Q. Or generally.  
 15 A. No, not at that level of  
 16 specificity.  
 17 Q. Do they do so at a different level  
 18 of specificity?  
 19 A. No, you are asking for my personal  
 20 recollection.  
 21 MR. GRIFFIN: Objection.  
 22 THE WITNESS: The institute does not

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1 get into those types of differentiations.  
 2 BY MR. BECKER:  
 3 Q. Did NIST ever advocate for reference  
 4 to a standard as opposed to incorporation by  
 5 reference of a standard into regulation?  
 6 A. No, again, that's the agency's  
 7 decision.  
 8 Q. Did NIST ever provide guidance as to  
 9 when an agency should reference a standard  
 10 versus incorporate the standard by reference  
 11 into regulation?  
 12 A. No. That's the responsibility of  
 13 the individual regulatory agency.  
 14 MR. BECKER: We can take a break.  
 15 THE VIDEOGRAPHER: We are going off  
 16 the record. This is the end of Media Unit No.  
 17 1. The time is 12:23.  
 18 (A short recess was taken.)  
 19 THE VIDEOGRAPHER: We are going back  
 20 on the record. This is the start of Media Unit  
 21 No. 2. The time is 1:11.  
 22 BY MR. BECKER:

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1 Q. Ms. Saunders, are there any answers  
 2 to questions earlier today that you realized  
 3 are incorrect or that you would like to change?  
 4 A. I think we've covered the point that  
 5 I neglected to mention the first time you asked  
 6 me about my positions in which -- at ANSI,  
 7 which I neglected to mention, I was a vice  
 8 chair but we covered that in a later exchange.  
 9 Beyond that, I don't think I have  
 10 any connections.  
 11 Q. Okay. And, Ms. Saunders, if you  
 12 wouldn't mind, if you could just try to speak a  
 13 little bit slower --  
 14 A. I am trying.  
 15 Q. So our court reporter can get  
 16 everything and your attorney can make  
 17 objections. I know it's -- it's hard to do --  
 18 speak at the cadence required for a deposition.  
 19 A. I will do my best.  
 20 MR. BECKER: Can you please mark  
 21 that. I believe that is Exhibit 3.  
 22 (Deposition Exhibit 3 was marked for

<p style="text-align: right;">Page 117</p> <p>1 identification.)</p> <p>2 BY MR. BECKER:</p> <p>3 Q. I have handed you what has been</p> <p>4 marked as Exhibit No. 3.</p> <p>5 This is the document produced by</p> <p>6 ANSI at Bates No. ANSI 1536.</p> <p>7 Do you recognize this document?</p> <p>8 A. Yes, I do.</p> <p>9 Q. What is this document?</p> <p>10 A. This is the current ANSI</p> <p>11 organizational chart.</p> <p>12 Q. So this document was produced in</p> <p>13 2015. Is there -- has there been any change to</p> <p>14 the ANSI organizational chart between 2015 and</p> <p>15 today that you are aware of?</p> <p>16 MR. GRIFFIN: Objection.</p> <p>17 THE WITNESS: This looks -- this</p> <p>18 looks accurate as of 2019.</p> <p>19 BY MR. BECKER:</p> <p>20 Q. Great. What positions on this ANSI</p> <p>21 organization chart have you held?</p> <p>22 MR. GRIFFIN: Objection.</p>	<p style="text-align: right;">Page 119</p> <p>1 has been marked as Exhibit No. 4.</p> <p>2 This is a document produced as</p> <p>3 PRO_00264718 to PRO_00264723.</p> <p>4 Have you ever seen this document</p> <p>5 before?</p> <p>6 A. I must have, since it was a document</p> <p>7 provided as part of discovery in response to</p> <p>8 the FOIA request. It is a printout, as it says</p> <p>9 at the top, of the NIST standard committee</p> <p>10 participation database.</p> <p>11 Q. Starting on the third to last page</p> <p>12 of Exhibit No. 4 which is Bates-stamped</p> <p>13 PRO_00264721, does this have a listing of the</p> <p>14 SDOs that you have had a membership with?</p> <p>15 MR. GRIFFIN: Objection.</p> <p>16 MR. FEE: Objection to form.</p> <p>17 THE WITNESS: It lists the standards</p> <p>18 activities in which I participated that are</p> <p>19 recorded in the standard committee</p> <p>20 participation database. It appears to include</p> <p>21 everything.</p> <p>22 BY MR. BECKER:</p>
<p style="text-align: right;">Page 118</p> <p>1 THE WITNESS: I have served, as we</p> <p>2 noted earlier, on the ANSI board of directors.</p> <p>3 I have served on the national policy committee</p> <p>4 and as the chair of the national policy</p> <p>5 committee. I have actually served on the</p> <p>6 appeals board. This is one level below the</p> <p>7 national policy committee.</p> <p>8 I have served as a member and also a</p> <p>9 chair of the international policy committee,</p> <p>10 and as a government member, I was a member of</p> <p>11 the government member from up here.</p> <p>12 BY MR. BECKER:</p> <p>13 Q. That's the government member listing</p> <p>14 under forums?</p> <p>15 A. Correct. And I served on several</p> <p>16 occasions on the nominating committee which is</p> <p>17 not a standing committee that's reconstituted</p> <p>18 every year. Hold on a second. That's it.</p> <p>19 (Deposition Exhibit 4 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. BECKER:</p> <p>22 Q. Ms. Saunders, I have handed you what</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Here, it lists ANSI as an SDO; is</p> <p>2 that correct?</p> <p>3 A. It lists ANSI as an SDO. It doesn't</p> <p>4 list ANSI -- it lists ANSI as an SDO because</p> <p>5 the database does not make provisions for other</p> <p>6 types of organizations. ANSI is not an SDO.</p> <p>7 Q. Are there other types of</p> <p>8 organizations other than SDOs and ANSI that</p> <p>9 would be listed in this database?</p> <p>10 MR. FEE: Objection.</p> <p>11 THE WITNESS: No. ANSI is the only</p> <p>12 one, but ANSI is unique in that the database</p> <p>13 was developed to track standards committee</p> <p>14 participation which is mostly in SDOs. ANSI is</p> <p>15 a policy level organization and it is included</p> <p>16 in the database.</p> <p>17 BY MR. BECKER:</p> <p>18 Q. Looking over the -- this list, are</p> <p>19 there any committees that you have been part of</p> <p>20 for an SDO or ANSI that are not listed here?</p> <p>21 A. The standards committee</p> <p>22 participation database does not list my</p>

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1 participation in ASTM E50 because I believe  
 2 that would have been 1993. That predated the  
 3 existence of the database.  
 4 Q. Anything else?  
 5 A. No.  
 6 Q. When you were participating with --  
 7 on the committee for ASTM E50, what was your  
 8 role?  
 9 MR. GRIFFIN: Objection.  
 10 THE WITNESS: I was a member of the  
 11 standards committee.  
 12 BY MR. BECKER:  
 13 Q. What does a member of the standards  
 14 committee do?  
 15 A. A member of the standards committee  
 16 participate in the development of documents --  
 17 standards under the -- that come under the  
 18 purview of that committee.  
 19 In this specific case, because E50  
 20 operated and operates as a U.S. technical  
 21 advisory group to the International  
 22 Organization for Standardization technical

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1 committee 207, it operated as -- in developing  
 2 U.S. positions on standards that were being  
 3 developed in ISO.  
 4 Q. Did E50 develop any ASTM standards?  
 5 MR. FEE: Objection to form.  
 6 THE WITNESS: I was specifically  
 7 participating in that committee in its role as  
 8 the U.S. technical advisory group to ISO, so  
 9 the documents I commented on and in which I  
 10 participated in discussions were to be ISO  
 11 standards.  
 12 BY MR. BECKER:  
 13 Q. When you say, "to be ISO standards,"  
 14 what's the distinction between that and an ASTM  
 15 standard?  
 16 A. Those are two different --  
 17 MR. GRIFFIN: Objection.  
 18 THE WITNESS: Those are two  
 19 different standards organizations. The  
 20 International Organization for Standardization  
 21 is headquartered in Geneva, participation is on  
 22 a national standards body basis, and ANSI is

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1 the national standards body representing the  
 2 U.S. to ISO. ANSI accredits U.S. technical  
 3 advisory groups. In this case, the technical  
 4 advisory group to TC 207 was administered by  
 5 ASTM.  
 6 BY MR. BECKER:  
 7 Q. Going back to Exhibit No. 3, and now  
 8 that you have the benefit of having Exhibit No.  
 9 4 in front of you, are there any additional  
 10 positions on the ANSI organization chart that  
 11 you have participated in that you didn't  
 12 previously tell me about?  
 13 A. I neglected to mention the executive  
 14 committee and I think a reason I did not  
 15 mention that is by dent of my -- it's a  
 16 chairman chair position first for the IPC and  
 17 the national policy committee, you are -- those  
 18 chairs are also automatically members of the  
 19 ANSI executive committee as are ANSI vice  
 20 chairs are automatically members of the ANSI  
 21 executive committee.  
 22 Q. Approximately how many individuals

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1 are on the ANSI executive committee?  
 2 A. Approximately 18.  
 3 Q. What is the role of the ANSI  
 4 executive committee?  
 5 A. The ANSI executive committee is --  
 6 serves as a subset of the ANSI board. The  
 7 executive committee meets three times a year  
 8 and is typically the committee where ANSI  
 9 policy positions that will be further  
 10 deliberated by the board are first -- first  
 11 discussed.  
 12 The executive committee is also  
 13 responsible for approving nominations of chair  
 14 positions I believe.  
 15 Q. What are the ANSI forums that's  
 16 listed here on the upper left side of Exhibit  
 17 No. 3?  
 18 A. As I mentioned earlier, ANSI has  
 19 different membership categories. These --  
 20 there is a forum for each of the membership  
 21 categories.  
 22 Q. When you say, "there is a forum for



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1 each of the membership categories," what  
 2 exactly is the forum?  
 3 A. So as a government member of -- I  
 4 say representative of a government member,  
 5 ANSI, I was automatically a member of the  
 6 forum. It is -- each of the fora are -- forums  
 7 are places where a membership category can meet  
 8 or -- to discuss shared interests and can share  
 9 information.  
 10 Q. So this is where government -- the  
 11 government member forum would be one where  
 12 government members of ANSI would meet and share  
 13 information?  
 14 A. Yes.  
 15 MR. GRIFFIN: Objection.  
 16 BY MR. BECKER:  
 17 Q. Did you ever participate in the ANSI  
 18 government member forum?  
 19 MR. GRIFFIN: Objection.  
 20 THE WITNESS: As an employee of a  
 21 government member, I was automatically a member  
 22 of the government member forum.

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1 BY MR. BECKER:  
 2 Q. Did you use that forum to engage in  
 3 communications with other government members?  
 4 A. Well, official communications? I  
 5 mean, can you clarify? I mean, the forum  
 6 periodically -- the forum periodically had  
 7 meetings.  
 8 Q. Did you participate in those  
 9 meetings?  
 10 A. I probably participated in a few of  
 11 those meetings.  
 12 Q. Do you know how regularly they had  
 13 meetings?  
 14 A. The forum -- the government member  
 15 forum did not meet regularly.  
 16 Q. Would that be once a year or there  
 17 is just no -- when you say, "it doesn't meet  
 18 regularly," do you mean that there is no set  
 19 number of meetings per year?  
 20 MR. GRIFFIN: Objection.  
 21 THE WITNESS: What I meant is that  
 22 in my memory, the government member forum would

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1 meet periodically.  
 2 BY MR. BECKER:  
 3 Q. Do you recall approximately how  
 4 frequently?  
 5 A. One to two times a year.  
 6 Q. What is the role of the appeals  
 7 board on the national policy committee?  
 8 A. So the -- I mentioned earlier, that  
 9 two of the committees which currently come  
 10 under the responsibility of the national policy  
 11 committee are the ANSI executive -- the ANSI  
 12 board of standards review and the ANSI  
 13 executive standards council. These two  
 14 entities are responsible for managing the  
 15 process by which American national standards  
 16 are developed and approved.  
 17 As part of the ANSI essential  
 18 requirements for process, there is a dispute  
 19 settlement provision so -- and there can be an  
 20 appeal at several levels of an action that is  
 21 taken by an accredited standards developing  
 22 organization or -- and there can be appeal

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1 about a particular standard, an American  
 2 national standard as well. The appeals board  
 3 is the final level of appeal at ANSI with  
 4 respect to actions related to American national  
 5 standards.  
 6 Q. What kind of disputes would come  
 7 under that dispute settlement provision?  
 8 MR. GRIFFIN: Objection.  
 9 THE WITNESS: Organizations can  
 10 raise questions about conformance to the ANSI  
 11 essential requirement, emulates to the process  
 12 of developing American national standards. It  
 13 specifically does not touch on the technical  
 14 content of the standard.  
 15 BY MR. BECKER:  
 16 Q. What are the ANSI essential  
 17 requirements?  
 18 A. So you can find a copy of the ANSI  
 19 essential requirements documents on the ANSI  
 20 website. As I mentioned earlier, the ANSI  
 21 essential requirements relate to openness,  
 22 transparency, balance, due process and

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1 consensus.

2 Q. Are you aware of any instances when

3 anyone has complained about the difficulty in

4 accessing a standard that is incorporated by

5 reference into federal regulation?

6 A. May I just add to my previous

7 answer.

8 Q. Of course.

9 A. Lack of dominance is an essential

10 requirement that I forgot.

11 Q. What is lack of dominance?

12 A. So balance and lack of dominance are

13 related, a balance of interest and the lack of

14 dominance of any particular interest category

15 in the consensus process.

16 Q. So does that mean that if, say,

17 industry had a majority of members or something

18 like that in the development of a standard,

19 then it might not be given ANSI accreditation?

20 MR. GRIFFIN: Objection.

21 THE WITNESS: What it means is that

22 standards developing organizations who process,

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1 conform to the essential requirements must make

2 best efforts to ensure balance, but also within

3 that balance, lack of dominance.

4 They may do that a variety of ways,

5 so if one interest category has a larger number

6 of participants then another interest category,

7 they can address -- they can address lack of

8 dominance through weighted devoting. There are

9 a variety of different ways.

10 BY MR. BECKER:

11 Q. Are you aware of any instance where

12 ANSI refused to -- or excuse me.

13 Are you aware of any instance where

14 ANSI declined to provide accreditation for a

15 particular standard?

16 MR. GRIFFIN: Objection.

17 THE WITNESS: So the actual

18 terminology would be that ANSI accredits

19 standards developing organizations, as

20 standards developing organizations may apply

21 for accreditation by ANSI, and the

22 accreditation relates to the conformance of the

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1 process that the standards developing

2 organization administers to the ANSI essential

3 requirements.

4 Only accredited SDOs can submit

5 draft -- can submit draft standards for

6 consideration as American national standards.

7 So they -- so they don't -- ANSI does not

8 accredit the standard. It accredits the

9 standards developing organization.

10 BY MR. BECKER:

11 Q. Thank you.

12 What is the benefit of having an

13 organization accredited by ANSI so that it can

14 submit draft standards for consideration as an

15 American national standard?

16 MR. GRIFFIN: Objection.

17 THE WITNESS: So ANSI considers the

18 benefit to be that the essential requirements

19 are the bedrock of the voluntary consensus

20 standards process. Very similar requirements

21 are reflected in the World Trade Organization's

22 technical barriers to trade agreement in its

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1 description of the process for international

2 standards development.

3 Typically, and a standards

4 developing organization will submit a

5 particular project for processes in American

6 national standard because its stakeholders find

7 that valuable. That may be -- its stakeholders

8 find that valuable.

9 BY MR. BECKER:

10 Q. Are there other benefits to being

11 able to submit a standard as an American

12 national standard?

13 MR. GRIFFIN: Objection.

14 THE WITNESS: Yes, but I can't

15 recall them -- I can't reflect them for you

16 right off the top of my head. We have an

17 entire set of pages on the American national

18 standards process and a presentation that our

19 senior standards coordinator gives

20 periodically, but I'm not recalling all the

21 benefits at this time.

22 BY MR. BECKER:

<p style="text-align: right;">Page 133</p> <p>1 Q. Are American national standards more 2 likely to be used by industry versus if a 3 standard is not designated an American national 4 standard? 5 MR. GRIFFIN: Objection. 6 THE WITNESS: The American national 7 -- the body of American national standards is a 8 very small subset of the overall body of 9 standards that are used generally in the United 10 States or globally. There are about 12,000 and 11 they tend to be -- they tend to be -- have 12 tended to be health and safety standards in 13 long established industry sectors. 14 BY MR. BECKER: 15 Q. Going back to my question: Are 16 American national standards more likely to be 17 used by industry versus if a standard is not 18 designated an American national standard? 19 MR. GRIFFIN: Objection. 20 THE WITNESS: Not to my knowledge. 21 BY MR. BECKER: 22 Q. Are American national standards more</p>	<p style="text-align: right;">Page 135</p> <p>1 must conform to a standard. 2 So purchasers of products, either 3 individual products or retailers, for example, 4 who have requirements for qualified suppliers, 5 it's possible insurance companies could give a 6 preference to particular standards. 7 Q. Did -- does NIST track the 8 incorporation by reference of standards into 9 regulations? 10 A. So NIST until 2016 maintained the 11 standards incorporated by reference database, 12 and in that sense, yes, provided information on 13 incorporations into the Code of Federal 14 Regulations. 15 Q. What happened in 2016? 16 MR. GRIFFIN: Objection. 17 THE WITNESS: The database had been 18 maintained by a contractor to the standard 19 services division. I believe that contractor 20 retired. In addition, ANSI had begun the 21 development and maintenance of the ANSI 22 incorporation by reference portal.</p>
<p style="text-align: right;">Page 134</p> <p>1 likely to be used by agencies for incorporation 2 by reference than standards that are not 3 designated American national standards? 4 MR. FEE: Objection to form. 5 THE WITNESS: So ANSI does not track 6 the implementation of particular American 7 national standards. ANSI is responsible for 8 the process by which those standards are 9 developed. 10 BY MR. BECKER: 11 Q. What do you mean by 12 "implementation?" 13 A. Use. The use of the standard. 14 Q. Is incorporation by reference a form 15 of implementation? 16 A. Yes. 17 Q. What are some other forms of 18 implementation? 19 A. A purchaser of a product that may be 20 -- as covered by an American national standard 21 may specify to suppliers that in order to be 22 considered a part of their supply chain, they</p>	<p style="text-align: right;">Page 136</p> <p>1 BY MR. BECKER: 2 Q. So what is the ANSI incorporation by 3 reference portal? 4 A. So the ANSI IBR portal is a 5 read-only portal providing read-only access to 6 standards that are incorporated by reference 7 into the Code of Federal Regulations. 8 Q. So earlier, when I said, are 9 American national standards more likely to be 10 used by agencies for incorporation by reference 11 than standards that are not designated American 12 national standards, you said ANSI does not 13 track the temporary -- excuse me. The text is 14 not complete here. 15 But I believe you said that ANSI 16 doesn't track the incorporation by reference of 17 standards; is that true? 18 MR. GRIFFIN: Objection. 19 THE WITNESS: So ANSI, as an 20 institute, does not track the incorporation by 21 reference in the Code of Federal Regulations. 22 ANSI -- NIST provided the database, the</p>

<p style="text-align: right;">Page 137</p> <p>1 standards incorporated by reference database to 2 ANSI as a basis for the creation of the -- of 3 the ANSI portal and ANSI maintains that portal. 4 When federal agencies incorporate a 5 standard by reference, either as part of a 6 notice of proposed rulemaking or later on as an 7 actual final rule, they reach out to ANSI and 8 ask to have that standard reflected in the 9 portal. 10 BY MR. BECKER: 11 Q. How did the creation of the ANSI IBR 12 portal affect the maintenance of the SIBR 13 database? 14 MR. FEE: Objection. 15 THE WITNESS: So the standards 16 incorporated by reference database is different 17 than the ANSI IBR portal. The standards 18 incorporated by reference database listed the 19 -- would list the reference, the specific 20 reference in the Code of Federal Regulations. 21 The agency that was incorporating the reference 22 and the place in the Code of Federal</p>	<p style="text-align: right;">Page 139</p> <p>1 BY MR. BECKER: 2 Q. Why is it then that you referenced 3 the creation of the ANSI IBR database when I 4 asked what happened in 2016 to cause the -- 5 NIST to cease maintaining the SIBR database? 6 A. 2016 was also the year that they 7 revised OMB Circular A119 was published in 8 January of 2016 with an extensive discussion of 9 reasonable availability when agencies 10 incorporate by reference. 11 My understanding is that ANSI 12 developed and offered the IBR portal as a means 13 of reasonable availability, and as I mentioned 14 earlier, it was my understanding that NIST 15 standards coordination office provided the SIBR 16 database to ANSI as a basis for that portal, 17 but I wasn't part of the decision as to timing. 18 Q. When did ANSI create the IBR portal? 19 A. I wasn't part of that decision as to 20 timing so I can't speak to that. 21 Q. Do you know why ANSI created the IBR 22 portal?</p>
<p style="text-align: right;">Page 138</p> <p>1 Regulations where the reference could be found, 2 and a -- and the number or title, in most cases 3 there is a number of the standard and the 4 sponsoring standards developing organization. 5 The SIBR database did not include 6 any standards content. It simply identified 7 the referenced document by title or by number. 8 The ANSI IBR portal provides read-only access 9 to the documents that are incorporated by 10 reference for those SDOs that do not maintain 11 their own link, their own portal for reasonable 12 availability. 13 BY MR. BECKER: 14 Q. Was the creation of the ANSI IBR 15 portal a factor in NIST's decision to stop 16 maintaining the SIBR database? 17 MR. GRIFFIN: Objection. 18 THE WITNESS: I don't know the 19 answer to that because that decision was taken 20 while I was the associate director for 21 management resources, so I have no part in that 22 decision.</p>	<p style="text-align: right;">Page 140</p> <p>1 MR. GRIFFIN: Objection. 2 THE WITNESS: To assist the federal 3 agency community with addressing the reasonable 4 availability principle. 5 BY MR. BECKER: 6 Q. Was there a concern that without the 7 ANSI IBR portal, standards incorporated by 8 reference into regulations otherwise would not 9 be reasonably available? 10 MR. GRIFFIN: Objection. 11 THE WITNESS: ANSI provided the 12 portal as an assistance, an aid to small 13 standards developing organizations that might not 14 have the resources to provide their own 15 read-only access provisions. 16 ANSI also as the national standards 17 body to ISO and IEC is the only organization in 18 the U.S. that could arrange with ISO and IEC 19 for access to those documents. 20 BY MR. BECKER: 21 Q. My question was: Was there a 22 concern that without the ANSI IBR portal,</p>

<p style="text-align: right;">Page 141</p> <p>1 standards incorporated by reference into 2 regulations otherwise would not be reasonably 3 available? 4 MR. GRIFFIN: Objection. 5 MR. FEE: Objection. 6 THE WITNESS: No, I don't believe 7 that was the -- there was a general concern. I 8 believe -- ANSI provided the portal as an 9 assistance to small SDOs to minimize the burden 10 with respect to reasonable availability. I 11 would not say that there was a concern that 12 without it, there wouldn't be reasonable 13 availability. 14 BY MR. BECKER: 15 Q. Have you ever heard someone say that 16 without a read-only access, standards 17 incorporated by reference into regulations are 18 not reasonably available? 19 A. No. Both the OMB circular -- the 20 OMB circular specifically lists a variety of 21 different ways, which I will not be able to 22 repeat since I don't have the circular in front</p>	<p style="text-align: right;">Page 143</p> <p>1 comment. 2 BY MR. BECKER: 3 Q. Have you ever heard Carl Malamud say 4 that standards incorporated by reference into 5 regulations are not reasonably available? 6 A. Yes. 7 Q. Have you heard anybody else say that 8 standards incorporated by reference into 9 regulations are not reasonably available? 10 MR. GRIFFIN: Objection. 11 THE WITNESS: So there were 12 significant discussions as part of the 13 administrative conference for the -- of the 14 U.S., and as part of the administrative 15 conference of the U.S., who the administrative 16 of conference developed their recommendation of 17 incorporation by reference, and as part of 18 those discussions, in which I believe Carl 19 Malamud participated as well as did many other 20 individuals, administrative law practitioners 21 and many others, I'm sure those comments came 22 up.</p>
<p style="text-align: right;">Page 142</p> <p>1 of me, for it to assure reasonable availability 2 including read-only access but not limited to 3 read-only access. 4 Q. So you are saying you have never 5 heard the -- anyone opine that without 6 read-only access, standards incorporated by 7 reference into regulations are not reasonably 8 available? 9 MR. GRIFFIN: Objection. 10 THE WITNESS: I can't answer that. 11 That is very general. I mean, I may have heard 12 an individual say that. It's not something 13 that I can attest to. 14 BY MR. BECKER: 15 Q. Have you ever heard -- have you ever 16 heard anyone opine that standards incorporated 17 by reference into regulations generally are not 18 reasonably available? 19 MR. GRIFFIN: Objection. 20 MR. FEE: Objection. 21 THE WITNESS: I may have heard that 22 comment. Again, I can't attest to that</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. BECKER: 2 Q. Did you participate in that? 3 A. Yes. 4 Q. Who else participated in that -- in 5 that discussion? 6 MR. GRIFFIN: Objection. 7 THE WITNESS: You would have to -- 8 I'm sure the ACUS -- the administrative 9 conference of the U.S. has the records of the 10 participation. There were several public 11 meetings and I think at least a six-month 12 process of discussion in the development of the 13 ACUS, A-C-U-S recommendation. 14 BY MR. BECKER: 15 Q. Have you ever heard someone say that 16 a particular standard is not reasonably 17 available -- excuse me. 18 Have you ever heard someone opine 19 that a particular standard incorporated by 20 reference into regulations is not reasonably 21 available? 22 MR. GRIFFIN: Objection.</p>

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1 THE WITNESS: I can't speak to that.  
 2 It's very -- nonspecific question, have I ever  
 3 heard.  
 4 BY MR. BECKER:  
 5 Q. Are you aware of any instance where  
 6 an individual has said that they were unable to  
 7 access a standard that was incorporated by  
 8 reference into regulation?  
 9 A. It is likely that there are  
 10 constituencies that have made that comment.  
 11 Q. So my question was: Whether you  
 12 have ever heard that -- have you ever learned  
 13 of an individual complaining of not being able  
 14 to access a standard incorporated by reference  
 15 into regulation?  
 16 MR. FEE: Objection to form.  
 17 THE WITNESS: In my position at  
 18 NIST, we never -- I never -- I am not aware  
 19 that we received comments -- a comment directly  
 20 from an individual about that.  
 21 BY MR. BECKER:  
 22 Q. What about other than in your

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1 position at NIST?  
 2 MR. FEE: Same objection.  
 3 THE WITNESS: I didn't -- I haven't  
 4 received any of that -- any comment of that  
 5 type from -- in my position at ANSI.  
 6 BY MR. BECKER:  
 7 Q. Have you ever heard of an individual  
 8 saying that, that individual was unable to  
 9 access a standard that was incorporated by  
 10 reference into regulation?  
 11 MR. FEE: Objection to form.  
 12 THE WITNESS: It's possible. I  
 13 don't have a specific memory.  
 14 BY MR. BECKER:  
 15 Q. Do you have a general memory of an  
 16 individual stating that he or she was unable to  
 17 access a standard that was incorporated by  
 18 reference into regulation?  
 19 MR. FEE: Objection to form.  
 20 MR. GRIFFIN: Objection.  
 21 THE WITNESS: So what I can speak to  
 22 is the fact that there are a variety of means

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1 that agencies make available to their -- the  
 2 regulated constituency and the public reading  
 3 rooms, depository libraries, a variety of  
 4 different means to access regulations and  
 5 related documentation.  
 6 BY MR. BECKER:  
 7 Q. I don't think you have answered my  
 8 question, so I'm going to go back and say it  
 9 again.  
 10 Do you have a general memory of an  
 11 individual stating that he or she was unable to  
 12 access a standard that was incorporated by  
 13 reference into a regulation?  
 14 MR. GRIFFIN: Objection. Asked and  
 15 answered.  
 16 MR. FEE: Objection.  
 17 THE WITNESS: As I said, I don't  
 18 have a memory of an individual expressing that  
 19 concern. I am aware that there were extensive  
 20 discussions under the auspices of the  
 21 administrative conference of the U.S. and in  
 22 the process of revising the OMB circular where

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1 those comments may have been made.  
 2 BY MR. BECKER:  
 3 Q. Are you aware of any instance where  
 4 a government employee has said that he or she  
 5 was unable to access a standard that had been  
 6 incorporated by reference into a regulation?  
 7 MR. FEE: Objection to form.  
 8 MR. GRIFFIN: Objection.  
 9 THE WITNESS: I -- you have to give  
 10 me an example. I can't answer that general --  
 11 a general statement like that. It's --  
 12 BY MR. BECKER:  
 13 Q. Is there any instance you know of  
 14 where a government employee has said that he or  
 15 she was unable to access a standard that had  
 16 been incorporated by reference into a  
 17 regulation?  
 18 MR. FEE: Objection.  
 19 MR. GRIFFIN: Objection.  
 20 THE WITNESS: Not to my knowledge.  
 21 BY MR. BECKER:  
 22 Q. Did you ever learn of a report of a

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1 person or entity saying that they were unable  
 2 to access a standard incorporated by reference  
 3 into regulation?  
 4 MR. GRIFFIN: Objection.  
 5 THE WITNESS: I thought I answered  
 6 that. A report -- can you repeat the question.  
 7 BY MR. BECKER:  
 8 Q. Yes. Did you ever learn of a report  
 9 of a person or entity saying that they were  
 10 unable to access a standard incorporated by  
 11 reference into regulation?  
 12 MR. GRIFFIN: Objection.  
 13 THE WITNESS: So I was chief of the  
 14 standard services division for seven years and  
 15 the head of the standards coordination office  
 16 for -- in my position as chief of the standard  
 17 services division for seven years and director  
 18 of the standards coordination office for a  
 19 little over a year and a half, it is possible  
 20 that I came into contact with a comment like  
 21 that but I have no specific memory about that.  
 22 (Deposition Exhibit 5 was marked for

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1 identification.)  
 2 BY MR. BECKER:  
 3 Q. I've handed you what's been marked  
 4 as Exhibit 5.  
 5 This is the document produced by  
 6 ANSI as ANSI 2690 to ANSI 2692.  
 7 Do you recognize this document?  
 8 A. I remember the joint meeting, yes.  
 9 Q. What is this document?  
 10 A. It's the draft report of a joint  
 11 interagency committee on standards policy, ANSI  
 12 government member forum meeting with standards  
 13 developers.  
 14 Q. What is ICSP?  
 15 A. The ICSP is the Interagency  
 16 Committee on Standards Policy. The committee  
 17 is established under OMB Circular A119 and it  
 18 is comprised of the standards executives of the  
 19 federal agencies that are tasked with  
 20 implementing the circular.  
 21 Q. Is that a government committee?  
 22 A. That is.

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1 Q. What is GMF?  
 2 A. GMF is the ANSI Government Member  
 3 Forum.  
 4 Q. So is this a meeting of a government  
 5 committee and an ANSI committee?  
 6 A. That's correct.  
 7 Q. This took place on April 21, 2011?  
 8 A. That's what the document says, yes.  
 9 Q. Were you present at that meeting?  
 10 A. Yes.  
 11 Q. It says that you conducted the  
 12 opening of the meeting; is that correct?  
 13 A. Yes, in my position as chair of the  
 14 interagency committee on standards policy.  
 15 Q. Do you remember what the purpose of  
 16 this meeting was?  
 17 MR. GRIFFIN: Objection.  
 18 THE WITNESS: The purpose of the  
 19 meeting is outlined in Paragraph 3: "ANSI  
 20 staff agreed to arrange a meeting that would  
 21 allow the SDO community to showcase their  
 22 efforts to meet the needs of federal agencies

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1 with respect to access to standards and  
 2 participation in the development of standards."  
 3 BY MR. BECKER:  
 4 Q. What were the needs of the federal  
 5 agencies for access to standards?  
 6 A. So federal agencies -- it is useful  
 7 for federal agencies, regulatory agencies in  
 8 particular to have access to standards as -- in  
 9 support of them conducting their mission  
 10 activities which include but are not limited to  
 11 development -- writing regulations.  
 12 Q. What is the role of federal agencies  
 13 in the development of standards?  
 14 MR. FEE: Objection to form.  
 15 THE WITNESS: So as I mentioned  
 16 earlier, the law, the National Technology  
 17 Transfer and Advancement Act as supported by  
 18 the OMB circular directs federal agencies where  
 19 consistent with the mission and public need to  
 20 also -- not only use voluntary consensus  
 21 standards but to participate in their  
 22 development.

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1 BY MR. BECKER:  
 2 Q. How is it that federal employees  
 3 participate in the development of standards?  
 4 MR. FEE: Objection to form.  
 5 THE WITNESS: From my experience as  
 6 a NIST employee, we -- technical staff at NIST  
 7 participated as members of committees. They  
 8 might, if determined by the committee, actually  
 9 chair a committee. Those are methods of  
 10 participation. Obviously, serving on boards of  
 11 standards developing organizations as well  
 12 where relevant.  
 13 BY MR. BECKER:  
 14 Q. At this meeting, did federal  
 15 employees opine that they would like to have  
 16 free access to standards?  
 17 MR. FEE: Objection to form.  
 18 MR. GRIFFIN: Objection.  
 19 THE WITNESS: I have no memory of  
 20 that.  
 21 BY MR. BECKER:  
 22 Q. Could you turn to the third page of

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1 Exhibit No. 5.  
 2 Could you read the paragraph at the  
 3 top of that page.  
 4 A. "At least one federal agency noted  
 5 that they billed standards into their business  
 6 models and opined that it would be more  
 7 beneficial to pay the same membership dues as  
 8 all other participants, if it meant that access  
 9 to the standards was free. Free access to  
 10 standards as part of their membership would  
 11 also support their participation in the  
 12 development process as opposed to paying for  
 13 individual standards and receiving a special  
 14 membership discount."  
 15 Q. How is it that free access to  
 16 standards as part of a membership would support  
 17 government participation in the development  
 18 process?  
 19 MR. GRIFFIN: Objection.  
 20 MR. FEE: Objection to form.  
 21 THE WITNESS: I can't -- I can't  
 22 speak to that comment since it came from an

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1 unidentified federal agency and I don't know.  
 2 BY MR. BECKER:  
 3 Q. Three paragraphs below that, it  
 4 says: "The open discussion concluded noting  
 5 that each of the six SDOs have different  
 6 business models but nonetheless each one makes  
 7 provisions to accommodate the needs of the  
 8 federal agencies to achieve greater  
 9 participation in the development process and  
 10 access to the standards themselves."  
 11 What kind of provisions do SDOs  
 12 engage in to accommodate the needs of federal  
 13 agencies to access standards?  
 14 MR. FEE: Objection to form.  
 15 MR. GRIFFIN: Objection.  
 16 THE WITNESS: So while I know  
 17 generally that they do, I am not privy to the  
 18 business operations of individual SDOs so I  
 19 can't answer that.  
 20 BY MR. BECKER:  
 21 Q. Does this draft report accurately  
 22 characterize the discussion at the meeting to

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1 the best of your knowledge?  
 2 MR. FEE: Objection to form.  
 3 THE WITNESS: So given that the  
 4 meeting took place more than eight years ago, I  
 5 -- it seems accurate to me.  
 6 BY MR. BECKER:  
 7 Q. Were these reports regarding the --  
 8 this meeting and other meetings like it  
 9 regularly prepared and maintained in the course  
 10 of ANSI business?  
 11 MR. FEE: Objection to form.  
 12 THE WITNESS: Meeting reports of all  
 13 -- of policy commitments are developed and  
 14 maintained and certainly for forum meetings as  
 15 well, yes.  
 16 (Deposition Exhibit 6 was marked for  
 17 identification.)  
 18 BY MR. BECKER:  
 19 Q. I am handing you what has been  
 20 marked as Exhibit No. 6.  
 21 This is a document produced by ANSI  
 22 as ANSI 2296.



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1 Do you recognize this document?  
 2 A. It is the draft agenda of the same  
 3 meeting we just discussed.  
 4 Q. Were draft agendas such as this  
 5 regularly prepared and maintained in the course  
 6 of ANSI business?  
 7 A. Yes, draft agendas for meetings are  
 8 generally maintained -- prepared and  
 9 maintained.  
 10 (Deposition Exhibit 7 was marked for  
 11 identification.)  
 12 BY MR. BECKER:  
 13 Q. Including this one?  
 14 MR. GRIFFIN: Objection.  
 15 BY MR. BECKER:  
 16 Q. Exhibit No. 6?  
 17 MR. GRIFFIN: Objection.  
 18 THE WITNESS: So this was a joint  
 19 meeting of the interagency committee on  
 20 standards policy and the joint and the  
 21 government member forum. A portion of the  
 22 meeting involving the government member forum

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1 was an open meeting. The follow-on session  
 2 after lunch, the interagency committee on  
 3 standards policy was a closed session just for  
 4 government members of the interagency  
 5 committee.  
 6 BY MR. BECKER:  
 7 Q. My question to you was whether  
 8 Exhibit No. 6 had been prepared and maintained  
 9 in the course of business?  
 10 MR. GRIFFIN: Objection.  
 11 MR. FEE: Objection.  
 12 THE WITNESS: So I'm not following  
 13 your reference. The two are exactly the same  
 14 except the second one includes the closed  
 15 session of the interagency committee on  
 16 standards policy.  
 17 BY MR. BECKER:  
 18 Q. Do you have any reason to believe  
 19 that either Exhibit 6 or Exhibit 7 are not --  
 20 excuse me.  
 21 Do you have any reason to believe  
 22 that Exhibit 6 is a document that was not

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1 maintained -- prepared and maintained in the  
 2 regular course of business?  
 3 MR. GRIFFIN: Objection.  
 4 THE WITNESS: This agenda would have  
 5 been developed and maintained as part of the  
 6 regular course of business for ANSI and for the  
 7 ICSP.  
 8 BY MR. BECKER:  
 9 Q. I have handed you Exhibit No. 7  
 10 which is ANSI 2538.  
 11 Do you recognize this document?  
 12 A. As I said earlier, it's the same  
 13 agenda for the joint meeting but includes the  
 14 reference to the closed ICSP session that  
 15 followed the joint meeting.  
 16 MR. BECKER: Let's take a short  
 17 break.  
 18 THE VIDEOGRAPHER: We are going off  
 19 the record. This is the end of Media Unit No.  
 20 2. The time is 2:07.  
 21 (A short recess was taken.)  
 22 THE VIDEOGRAPHER: We are going back

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1 on the record. This is the start of Media Unit  
 2 No. 3. The time is 2:36.  
 3 BY MR. BECKER:  
 4 Q. Ms. Saunders, during the break, have  
 5 you come to the realization that any of your  
 6 prior answers was incorrect that you would like  
 7 to -- or are there any answers that you would  
 8 like to amend?  
 9 A. I would simply like to note that  
 10 Exhibit 6 is the draft agenda for the joint  
 11 meeting and Exhibit 7 is the final agenda which  
 12 includes what was in the draft plus the  
 13 addition of the closed session. That's the  
 14 only difference I seen between the two  
 15 documents.  
 16 (Deposition Exhibit 8 was marked for  
 17 identification.)  
 18 BY MR. BECKER:  
 19 Q. Ms. Saunders, I have handed you what  
 20 has been marked as Exhibit 8 which starts with  
 21 the Page No. 1 and says: "Technical barriers  
 22 to trade," at the very top and then ends on

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1 Page 26.  
 2 Do you know what this document is?  
 3 A. It's the World Trade Organization's  
 4 technical barriers to trade agreement.  
 5 Q. Is this the document that you had  
 6 referenced earlier when you talked about the  
 7 definition for standards?  
 8 A. Yes.  
 9 Q. And if you turn -- if you turn to  
 10 Page 23, is that the definition for standards  
 11 at Bullet Point No. 3 towards the bottom that  
 12 you had referenced earlier:  
 13 A. "A technical specification approved  
 14 by a recognized standardizing body for repeated  
 15 or continuous application with which compliance  
 16 is not mandatory." That is accurate. That's  
 17 not the -- yes.  
 18 Q. What were you going to say?  
 19 A. I was referring to the ISO  
 20 definition of standardization which I believe  
 21 is the same.  
 22 Q. Okay. So it says: "A standard is a

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1 technical specification approved by a  
 2 recognized standardizing body for repeated or  
 3 continuous application with which compliance is  
 4 not mandatory," correct?  
 5 A. Yes.  
 6 Q. And above, at Bullet Point No. 1, it  
 7 references the definition of technical  
 8 specification; is that correct?  
 9 A. Yes.  
 10 Q. It says: "A specification contained  
 11 in a document which lays down characteristics  
 12 of a product such as levels of quality,  
 13 performance, safety or dimensions. It may  
 14 include or deal exclusively with terminology  
 15 symbols, testing and test methods, packaging,  
 16 marking or labeling requirements as they apply  
 17 to a product;" is that correct?  
 18 A. Yes. So you take the two together.  
 19 This is a technical specification and then down  
 20 in standard, it's a technical specification,  
 21 referring to this paragraph, which is approved  
 22 by a recognized standardizing body. Take the

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1 two together.  
 2 Q. And then it references at Point No.  
 3 2, technical regulation --  
 4 A. Yes.  
 5 Q. -- and defines that as: "A  
 6 technical specification including the  
 7 applicable administrative provisions with which  
 8 compliance is mandatory;" is that correct?  
 9 A. Yes.  
 10 Q. What is -- in your understanding,  
 11 what is the difference between a technical  
 12 specification and a technical regulation?  
 13 A. One is mandatory and the other is  
 14 not.  
 15 Q. Is a standard that has been  
 16 incorporated by reference into a regulation a  
 17 technical regulation?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection.  
 20 THE WITNESS: Not itself. It's a  
 21 component of a technical regulation.  
 22 BY MR. BECKER:

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1 Q. What are the other components of a  
 2 technical regulation?  
 3 A. So depending on the agency, a  
 4 technical regulation would include all of the  
 5 requirements with which the agency deems  
 6 necessary for the regulated community to  
 7 comply. It might, as part of that, might  
 8 include reporting requirements, a variety of  
 9 other actions. So I can't speak any more  
 10 specifically than that. It depends on the law  
 11 that is being implemented.  
 12 (Deposition Exhibit 9 was marked for  
 13 identification.)  
 14 BY MR. BECKER:  
 15 Q. I have handed you what has been  
 16 marked as Exhibit 9.  
 17 This is a document titled: "IBR  
 18 Handbook, July 2018, Office of the Federal  
 19 Register."  
 20 Do you recognize this document?  
 21 A. I do.  
 22 Q. What is this document?

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1 A. This document is the IBR handbook  
 2 that is produced by the Office of the Federal  
 3 Register.  
 4 Q. Is this the IBR handbook that we  
 5 were discussing earlier in the deposition  
 6 today?  
 7 A. Yes, it is.  
 8 Q. Could you please turn to Page 7 of  
 9 Exhibit 9.  
 10 And at the bottom of that page, it  
 11 says: "What is the required availability for  
 12 IBR material? A, incorporated materials must  
 13 be reasonably available."  
 14 Do you see that?  
 15 A. I do.  
 16 Q. And do you see the paragraph  
 17 immediately under that that's labeled .1?  
 18 A. Yes, I do.  
 19 Q. It says: "Material that is  
 20 incorporated by reference must be 'reasonably  
 21 available' during the life cycle of the  
 22 relevant regulation and its regulatory

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1 programs. This can pose a challenge for agency  
 2 especially when material is copyrighted. We  
 3 interpret 'reasonably available' in a flexible  
 4 case-by-case manner that takes specific  
 5 considerations into consideration. However,  
 6 the agency must provide the basis for a finding  
 7 of reasonably available."  
 8 Then it says: "2, when necessary,  
 9 the responsible agency should collaborate with  
 10 the standards development organizations and  
 11 other publishers of incorporated material to  
 12 ensure that the public has reasonable access to  
 13 the incorporated documents."  
 14 Do you see that?  
 15 A. I do.  
 16 Q. Are you aware of any efforts within  
 17 the U.S. Government to collaborate with SDOs to  
 18 ensure that the public has reasonable access to  
 19 incorporated documents?  
 20 A. So an individual agency when it  
 21 engages in a rulemaking may reach out to the  
 22 owner of the copyrighted standards that the

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1 agency intends to incorporate in whole or in  
 2 part, to make -- to discuss with the owning SDO  
 3 ways to make the material reasonably available.  
 4 To publish a notice of proposed  
 5 rulemaking in the Office of the Federal  
 6 Register, it is good practice to have a copy of  
 7 the standard that is incorporated by reference  
 8 available at a minimum in an agency reading  
 9 room.  
 10 So yes, I am aware of times when  
 11 agencies have reached out to SDOs to discuss  
 12 access to incorporated documents.  
 13 Q. What is an agency reading room?  
 14 A. So each agency has a --  
 15 historically, it was a physical reading room, a  
 16 room that people -- that interested parties  
 17 could come to in an agency where -- for a  
 18 regulatory agency, hard copy notices of  
 19 proposed rules and other documents would be  
 20 available for reading. Many agencies these  
 21 days have what are called electronic reading  
 22 rooms.

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1 Q. Is that a reading room that is  
 2 available online?  
 3 A. It can be, yes.  
 4 Q. Do those agencies' electronic  
 5 reading rooms provide copies of standards that  
 6 are incorporated by reference into regulations?  
 7 MR. FEE: Objection to form.  
 8 THE WITNESS: So I don't know the  
 9 specifics of individual reading rooms. I do  
 10 know that some agencies will point to the  
 11 owning organization, the owning centers  
 12 development organization, if that organization  
 13 has a -- their own portal or reading room. In  
 14 some cases, agencies have pointed interested  
 15 parties to the ANSI IBR portal, because ANSI  
 16 posts documents on request from federal  
 17 agencies that are engaged in proposed  
 18 rulemaking. It varies from agency to agency.  
 19 BY MR. BECKER:  
 20 Q. Are you aware of specific instances  
 21 where agencies have collaborated with SDOs to  
 22 ensure that the public has reasonable access to

<p style="text-align: right;">Page 169</p> <p>1 an incorporated standard?</p> <p>2 MR. GRIFFIN: Objection.</p> <p>3 THE WITNESS: I think that's a good</p> <p>4 practice for agencies, so yes.</p> <p>5 BY MR. BECKER:</p> <p>6 Q. Can you name any of those particular</p> <p>7 instances that you are aware of?</p> <p>8 MR. GRIFFIN: Objection.</p> <p>9 THE WITNESS: Department of</p> <p>10 Transportation across a range of its programs</p> <p>11 makes -- works with relevant SDOs to assure</p> <p>12 reasonable access and there are likely others.</p> <p>13 BY MR. BECKER:</p> <p>14 Q. How do you define "reasonable</p> <p>15 access?"</p> <p>16 MR. GRIFFIN: Objection.</p> <p>17 MR. FEE: Objection to form.</p> <p>18 THE WITNESS: So as I mentioned</p> <p>19 right down here on the bottom of Page 8B, NARA</p> <p>20 outlines a few ways of -- that agencies may</p> <p>21 make incorporated material reasonably</p> <p>22 available. There is also a discussion of</p>	<p style="text-align: right;">Page 171</p> <p>1 in place.</p> <p>2 BY MR. BECKER:</p> <p>3 Q. Are you aware of potential uses of</p> <p>4 material that's been incorporated by reference</p> <p>5 into regulations beyond uses that include</p> <p>6 reading or accessing that material?</p> <p>7 MR. FEE: Objection to form.</p> <p>8 MR. GRIFFIN: Objection.</p> <p>9 THE WITNESS: I'm sorry. Could you</p> <p>10 repeat that. I didn't quite follow.</p> <p>11 BY MR. BECKER:</p> <p>12 Q. Yes. Are you aware -- so other than</p> <p>13 reading or accessing, are you aware of other</p> <p>14 potential uses of IBR standards?</p> <p>15 MR. FEE: Objection to form.</p> <p>16 MR. GRIFFIN: Objection.</p> <p>17 THE WITNESS: I'm sorry, I'm still</p> <p>18 not following.</p> <p>19 BY MR. BECKER:</p> <p>20 Q. So it says in the second sentence</p> <p>21 that I had read a moment ago: "If the</p> <p>22 regulated parties are not able to use the</p>
<p style="text-align: right;">Page 170</p> <p>1 reasonable availability in -- as part of the</p> <p>2 ACUS proceeding, administrative conference of</p> <p>3 the U.S. as well as in the OMB circular.</p> <p>4 BY MR. BECKER:</p> <p>5 Q. It says at the bottom of Point B on</p> <p>6 Page 8 that you're referencing: "Remember,</p> <p>7 read-only access on its own may not meet the</p> <p>8 reasonable availability requirement at the</p> <p>9 final rule stage of rulemaking. If the</p> <p>10 regulated parties are not able to use the</p> <p>11 material (which may be different than simply</p> <p>12 reading or accessing it) throughout the life of</p> <p>13 the rulemaking, this could lead to enforcement</p> <p>14 issues."</p> <p>15 What do you understand that to mean?</p> <p>16 MR. GRIFFIN: Objection.</p> <p>17 MR. FEE: Objection to form.</p> <p>18 THE WITNESS: I understand that to</p> <p>19 be an advice to agencies regarding the fact</p> <p>20 that read-only access might need to be</p> <p>21 supplemented by other means of access in -- at</p> <p>22 the final rule stage, when the rule is finally</p>	<p style="text-align: right;">Page 172</p> <p>1 material which may be different than simply</p> <p>2 reading or accessing it," what other uses of</p> <p>3 incorporated material is there other than</p> <p>4 reading or accessing?</p> <p>5 MR. GRIFFIN: Objection.</p> <p>6 MR. FEE: Objection.</p> <p>7 THE WITNESS: Well, many industry --</p> <p>8 many industries that are regulated have</p> <p>9 subscriptions to standards as a normal course</p> <p>10 of business that they use in terms of</p> <p>11 conducting their every day business, so a use</p> <p>12 of a material would include actually</p> <p>13 implementing and ensuring that if your product</p> <p>14 needs to comply with a particular -- conform to</p> <p>15 a particular standard, your engineers have</p> <p>16 access to those documents so that they can</p> <p>17 ensure that's the case.</p> <p>18 BY MR. BECKER:</p> <p>19 Q. Would a use of the material also</p> <p>20 include duplicating a portion of the</p> <p>21 incorporated document and providing that to a</p> <p>22 colleague?</p>

Page 173	<p>1 MR. GRIFFIN: Objection.</p> <p>2 MR. FEE: Objection to form.</p> <p>3 THE WITNESS: So my understanding --</p> <p>4 as I mentioned earlier, standards are</p> <p>5 copyrighted documents and individuals in</p> <p>6 companies or elsewhere can buy an individual</p> <p>7 copy of a copyrighted document. A company or</p> <p>8 organization can pay for a -- what is called a</p> <p>9 site license so that any number of individuals</p> <p>10 at that company or organization can use the</p> <p>11 document, but if you buy an individual copy, my</p> <p>12 understanding of copyright protection is that</p> <p>13 you are not to make copies of that document.</p> <p>14 BY MR. BECKER:</p> <p>15 Q. Have you had any training in</p> <p>16 copyright law?</p> <p>17 MR. GRIFFIN: Objection.</p> <p>18 THE WITNESS: No, I have not had any</p> <p>19 training in copyright law.</p> <p>20 BY MR. BECKER:</p> <p>21 Q. My question was: Would the use of</p> <p>22 incorporated material also include duplicating</p>	Page 175	<p>1 reference other than simply reading or</p> <p>2 accessing it as described in the IBR handbook.</p> <p>3 And I am asking if the transcription</p> <p>4 of a portion of the incorporated document and</p> <p>5 providing that transcription to a colleague</p> <p>6 would constitute use?</p> <p>7 MR. GRIFFIN: Objection.</p> <p>8 MR. FEE: Objection.</p> <p>9 THE WITNESS: That's beyond my</p> <p>10 capabilities to answer. I mean, you can call</p> <p>11 anything you want to use, I suppose. I think</p> <p>12 the intention of the National Archives and</p> <p>13 Records Administration was with respect to what</p> <p>14 we typically understand to be use of a standard</p> <p>15 which is to purchase a copy and actually apply</p> <p>16 it to the relevant product process or system.</p> <p>17 BY MR. BECKER:</p> <p>18 Q. Have you consulted with any</p> <p>19 copyright experts to form your views on</p> <p>20 copyright as applied to incorporated by</p> <p>21 reference standards?</p> <p>22 MR. GRIFFIN: Objection.</p>
Page 174	<p>1 a portion of the incorporated document and</p> <p>2 providing it to a colleague? Yes or no.</p> <p>3 MR. GRIFFIN: Objection.</p> <p>4 MR. FEE: Same objection.</p> <p>5 THE WITNESS: I wouldn't call that</p> <p>6 an authorized use of the material.</p> <p>7 BY MR. BECKER:</p> <p>8 Q. I didn't ask about authorized use.</p> <p>9 I said, would a use of a material</p> <p>10 also include duplicating a portion of the</p> <p>11 incorporated document and providing that to a</p> <p>12 colleague?</p> <p>13 MR. FEE: Same objection.</p> <p>14 MR. GRIFFIN: Objection.</p> <p>15 THE WITNESS: You'd have to have</p> <p>16 access to the entire document to begin with so</p> <p>17 that you could copy the incorporated portion so</p> <p>18 I mean, I don't know -- I'm not clear what you</p> <p>19 are getting at, I mean.</p> <p>20 BY MR. BECKER:</p> <p>21 Q. My -- so I am trying to identify</p> <p>22 other uses of material incorporated by</p>	Page 176	<p>1 THE WITNESS: I have not.</p> <p>2 BY MR. BECKER:</p> <p>3 Q. Do you know what the Fair Use</p> <p>4 Doctrine is?</p> <p>5 A. I have a general idea. I do not</p> <p>6 know the specifics of the Fair Use Doctrine.</p> <p>7 Q. What do you know about the Fair Use</p> <p>8 Doctrine?</p> <p>9 MR. FEE: Objection to form.</p> <p>10 THE WITNESS: That a very minimal</p> <p>11 portion of a copyrighted document may be</p> <p>12 subject to fair use, may be allowed to be</p> <p>13 reproduced for fair use purposes. I don't know</p> <p>14 the extenuating circumstances.</p> <p>15 BY MR. BECKER:</p> <p>16 Q. What is the basis of that view?</p> <p>17 A. My view?</p> <p>18 Q. Yes.</p> <p>19 A. As I said general -- I have heard</p> <p>20 generally about the Fair Use Doctrine. I know</p> <p>21 nothing about the specifics of the Fair Use</p> <p>22 Doctrine.</p>

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1 Q. Do you have a view as to the effect  
 2 on a regulation if an incorporated standard is  
 3 not reasonably available?  
 4 MR. GRIFFIN: Objection.  
 5 MR. FEE: Objection.  
 6 THE WITNESS: No.  
 7 BY MR. BECKER:  
 8 Q. Do you have a view as to the  
 9 enforcement of a regulation if an incorporated  
 10 standard is not reasonably available?  
 11 MR. GRIFFIN: Objection.  
 12 MR. FEE: Objection.  
 13 THE WITNESS: I do not.  
 14 BY MR. BECKER:  
 15 Q. I would like to turn to Page 9 of  
 16 this Exhibit No. 9.  
 17 At the top, it says: "C, balancing  
 18 procedural requirement and substantive  
 19 statutory authority. 1, when you propose to  
 20 incorporate material by reference, under the  
 21 NTTAA, you must balance the following: A,  
 22 statutory obligations regarding reasonable

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1 availability of the standards under FOIA, B,  
 2 U.S. copyright law, C, U.S. international trade  
 3 obligations, and D, the ability to  
 4 substantively regulate under its own  
 5 authorizing statutes."  
 6 What is -- do you know what NTTAA  
 7 refers to here?  
 8 A. It's the National Technology  
 9 Transfer and Advancement Act.  
 10 Q. Are you aware of any consultation by  
 11 any U.S. government agency with the copyright  
 12 office of the Library of Congress on copyright  
 13 issues related to incorporation by reference?  
 14 MR. FEE: Objection.  
 15 THE WITNESS: Not personally, no.  
 16 BY MR. BECKER:  
 17 Q. Are you aware of the U.S. Copyright  
 18 Office's position on the copyrightability of  
 19 edicts of government?  
 20 MR. GRIFFIN: Objection.  
 21 THE WITNESS: No, I am not.  
 22 BY MR. BECKER:

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1 Q. Are you aware of any standard  
 2 development organization consulting with the  
 3 copyright office regarding any copyright issues  
 4 concerning incorporation by reference?  
 5 A. I'm not personally aware of any  
 6 interactions.  
 7 Q. Have you received any information  
 8 about any party or individual consulting with  
 9 the U.S. Copyright Office regarding copyright  
 10 issues concerning incorporation by reference?  
 11 A. Not that I remember.  
 12 (Deposition Exhibit 10 was marked  
 13 for identification.)  
 14 BY MR. BECKER:  
 15 Q. I have handed you Exhibit 10 which  
 16 is produced as ANSI 0638 to 0644.  
 17 Do you recognize this document?  
 18 A. Draft minutes of an executive  
 19 committee meeting of the ANSI board of  
 20 directors from 2012.  
 21 Q. Were you present at that meeting?  
 22 A. It's likely that I was. I don't

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1 have a specific memory.  
 2 Q. Could you please turn to Page 4 of  
 3 that document.  
 4 A. Okay.  
 5 Q. Agenda Item 2.3: "Federal  
 6 engagement and standards activities."  
 7 It says that: "Ms. Saunders  
 8 discussed the work of the National Science and  
 9 Technology Council subcommittee on standards  
 10 who met several times in 2011;" is that  
 11 correct?  
 12 A. Yes.  
 13 Q. So does this refresh your  
 14 recollection that you were --  
 15 A. Yes.  
 16 Q. -- present? Okay.  
 17 On the following page, Page No. 5,  
 18 there is Agenda Item 2.6, current activities of  
 19 the copyright task group.  
 20 In the second paragraph -- well,  
 21 actually let me back up.  
 22 In the first paragraph it says Ms.

Page 181	<p>1 Griffin.</p> <p>2 Who is Ms. Griffin?</p> <p>3 A. Patty Griffin is the general counsel</p> <p>4 for ANSI.</p> <p>5 Q. Do you know if she was a general</p> <p>6 counsel at -- on this date, on March 22, 2012?</p> <p>7 A. She has been the general counsel</p> <p>8 since 2004.</p> <p>9 Q. Okay. It says: "Ms. Griffin</p> <p>10 discussed recent activities of the ANSI</p> <p>11 copyright task group including its development</p> <p>12 of an ANSI position paper on copyright</p> <p>13 implications of government incorporation of</p> <p>14 voluntary consensus standards."</p> <p>15 What is the ANSI copyright task</p> <p>16 group?</p> <p>17 A. So ANSI -- intellectual property</p> <p>18 rights policy committee has two task groups,</p> <p>19 two standing task groups, and one is the</p> <p>20 copyright task group and the other is the</p> <p>21 trademark, I think, task group. It's a task</p> <p>22 group of the intellectual property rights</p>	Page 183	<p>1 materials incorporated by reference into the</p> <p>2 Code of Federal Regulations.</p> <p>3 Do you know what that petition is</p> <p>4 that it's referring to?</p> <p>5 A. I don't remember, that was eight,</p> <p>6 not eight, seven years ago.</p> <p>7 Q. It says: "Ms. Griffin noted that a</p> <p>8 position paper would be sent to the ANSI IPRPC</p> <p>9 for further input prior to ANSI governance</p> <p>10 review."</p> <p>11 What is the ANSI IPRPC?</p> <p>12 A. It's the ANSI Intellectual Property</p> <p>13 Rights Policy Committee.</p> <p>14 Q. Have you ever been a member of the</p> <p>15 IPRPC?</p> <p>16 A. I have not.</p> <p>17 MR. GRIFFIN: Objection.</p> <p>18 BY MR. BECKER:</p> <p>19 Q. Do you know what is referred to by</p> <p>20 ANSI governance review?</p> <p>21 A. ANSI governance means executive</p> <p>22 committee and board review.</p>
Page 182	<p>1 policy committee.</p> <p>2 Q. Are you a member or have you ever</p> <p>3 been a member of the ANSI copyright task group?</p> <p>4 A. I have not.</p> <p>5 MR. GRIFFIN: Objection.</p> <p>6 BY MR. BECKER:</p> <p>7 Q. Have you ever assisted the ANSI</p> <p>8 copyright task group?</p> <p>9 MR. GRIFFIN: Objection.</p> <p>10 THE WITNESS: I have not.</p> <p>11 BY MR. BECKER:</p> <p>12 Q. Do you know what the ANSI position</p> <p>13 paper on copyright implications of government</p> <p>14 incorporation of voluntary consensus standards</p> <p>15 is?</p> <p>16 A. I do not have a memory of that. It</p> <p>17 may be posted on the ANSI website but I don't</p> <p>18 personally remember that.</p> <p>19 Q. It refers to a February 27, 2012</p> <p>20 Federal Register Notice regarding a petition to</p> <p>21 amend the National Archives and Records</p> <p>22 Administration's regulations governing</p>	Page 184	<p>1 Q. Remind me, were you on the ANSI</p> <p>2 board as of March 22, 2012?</p> <p>3 A. I believe so.</p> <p>4 Q. The next paragraph says: "Mr.</p> <p>5 Cooper discussed a box of documents including</p> <p>6 73 standards that had been sent to ANSI by Mr.</p> <p>7 Carl Malamud, founder of Public.Resource.Org,</p> <p>8 who has been challenging SDOs rights to charge</p> <p>9 for standards especially those incorporated by</p> <p>10 reference."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Had you known of Carl Malamud prior</p> <p>14 to the date of this meeting on March 22, 2012?</p> <p>15 A. Yes.</p> <p>16 Q. How did you know of Carl Malamud?</p> <p>17 A. I had exchanges with Mr. Malamud</p> <p>18 regarding -- early, much earlier than this,</p> <p>19 regarding our -- the NIST standards</p> <p>20 incorporated by reference database. He had</p> <p>21 some questions about the information in the</p> <p>22 database and some recommendations as I remember</p>

<p style="text-align: right;">Page 185</p> <p>1 for making the information more -- for  2 improving how the information was presented, so  3 I was aware of Mr. Malamud.  4 Q. Do you know when those exchanges  5 occurred?  6 A. That would have been when I was the  7 chief of the standards services division so  8 that would be -- would be no later than the end  9 of 2008.  10 Q. This also refers to a related topic,  11 as it refers to it, the Pipeline Safety,  12 Regulatory Certainty and Job Creation Act of  13 2011, which is shortened to Pipeline Bill HR  14 2845.  15 Do you know what the pipeline bill  16 is?  17 A. I remember the piece of legislation,  18 yes.  19 Q. Going back just a moment, you had  20 said that Carl Malamud had sent recommendations  21 to you.  22 Do you recall what those</p>	<p style="text-align: right;">Page 187</p> <p>1 the underlying approach to creating the  2 standards incorporated by reference database.  3 I don't remember the specifics.  4 I think he may have pointed out some  5 incorrect references in the database and we  6 corrected those.  7 BY MR. BECKER:  8 Q. Do you have any recollection as to  9 how much correspondence, in terms of number of  10 e-mails, you had with Mr. Malamud?  11 A. Not specifically.  12 Q. Do you have an estimate?  13 A. My estimate would be three to four  14 exchanges.  15 Q. Did you produce any of those  16 documents in your discovery responses?  17 A. I don't have those documents.  18 Q. And why is that?  19 A. Because I retired from the federal  20 government and all my documents remained with  21 the Department of Commerce. I have nothing.  22 Q. And all of your communications were</p>
<p style="text-align: right;">Page 186</p> <p>1 recommendations were?  2 A. I don't. That would have been ten  3 years ago. I do remember having exchanges with  4 him about the standard incorporated by  5 reference database, but that's the extent of my  6 memory.  7 Q. Do you know if anyone acted on Mr.  8 Malamud's recommendations to you?  9 MR. GRIFFIN: Objection.  10 THE WITNESS: I believe that -- of  11 course, as a federal government employee, we  12 would have taken advice and implemented that  13 advice where we could, so yes, I don't remember  14 the specifics.  15 BY MR. BECKER:  16 Q. It says -- so are you saying that  17 some of the recommendations that Carl Malamud  18 provided were implemented?  19 MR. GRIFFIN: Objection.  20 MR. FEE: Objection to form.  21 THE WITNESS: I don't remember. I  22 remember having an exchange with him explaining</p>	<p style="text-align: right;">Page 188</p> <p>1 with your government e-mail address?  2 A. That's correct.  3 Q. Okay. Further down on Page 5, it  4 says: "It was noted that ASTM is working with  5 ASME and NFPA on a public relations outreach  6 campaign and plans to meet with the heads of  7 regulatory agencies to talk about the  8 contributions of SDOs."  9 Do you see that?  10 A. Yes, I do.  11 Q. Do you know what is being referred  12 to there?  13 A. Well, not more than what it says in  14 the text.  15 Q. Do you have any recollection from  16 the -- what discussion occurred at the meeting  17 regarding the public outreach campaign?  18 A. I do not.  19 Q. It then says at the next paragraph:  20 "Mr. Pauley noted that it was important to  21 address the free standards issue and the  22 misunderstanding by some of how the</p>



<p style="text-align: right;">Page 189</p> <p>1 standardization system works."  2 Do you know what the free standards  3 issue is?  4 A. My understanding is that Mr. Pauley  5 is referring to the comment above that -- let's  6 see. I want to get the exact wording. The  7 standards incorporated by reference should be  8 available for free.  9 Q. Who is Mr. Pauley?  10 A. Jim Pauley at the time, 2012, was  11 the chairman of the board of ANSI.  12 Q. Did -- was Mr. Pauley also  13 affiliated with NFPA at that time?  14 A. He -- Mr. Pauley's employer was the  15 electronics company. I am missing the name  16 now. Anyway, he was employed by a private  17 company in the electronics --  18 electro-electronics field. He may have been --  19 he was probably a member of the National Fire  20 Protection Association. He is an engineer.  21 Q. It goes on to say, this is referring  22 to Mr. Pauley: "He suggested that ANSI may</p>	<p style="text-align: right;">Page 191</p> <p>1 documents was because I had not seen any such  2 documents like that.  3 I have handed you what has been  4 marked as Exhibit No. 11.  5 This is the document produced as  6 PRO_00167221 to 167222.  7 Do you recognize this document?  8 A. I do now that you give it to me, and  9 that was when I was -- it was not in 2008, but  10 the second stint at NIST.  11 Q. This was the correspondence between  12 you and Carl Malamud that you were just  13 referring to; is that correct?  14 A. Yes.  15 Q. And so Mr. Malamud asked you  16 questions about the SIBR database; is that  17 correct?  18 A. Yes, that's correct.  19 Q. And he says that -- he is asking  20 about when the last time is that -- that NIST  21 had done an audit of the SIBR database; is that  22 correct?</p>
<p style="text-align: right;">Page 190</p> <p>1 need to engage a public relations firm to help  2 ANSI's communications team craft the  3 appropriate messaging to explain how the  4 standard system works and the public benefits  5 it brings."  6 Do you know if ANSI engaged a public  7 relations firm for that purpose?  8 A. ANSI did not.  9 Q. Why is that?  10 MR. FEE: Objection.  11 THE WITNESS: I don't know. I just  12 -- I know that ANSI -- the institute did not  13 engage a public relations firm.  14 (Deposition Exhibit 11 was marked  15 for identification.)  16 THE WITNESS: My timing was wrong.  17 BY MR. BECKER:  18 Q. That was going to be my next  19 question.  20 A. I apologize. I did not remember the  21 timing.  22 Q. My reason for asking about the</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Yes, that's correct.  2 Q. And he is concerned that there are  3 errors?  4 A. Correct.  5 Q. And he also says that he is -- he  6 references a few instances or several instances  7 where he believes there are errors; is that  8 correct?  9 A. Yes, correct.  10 Q. And then he says he is finding a lot  11 of references to fed spec and fed STD  12 documents.  13 A. Yes.  14 Q. Do you know what those -- what that  15 refers to?  16 A. GSA documents, General Services  17 Administration documents.  18 Q. Are those produced by the U.S.  19 Government?  20 A. Yes.  21 Q. And then he raises a concern about  22 how current the database is.</p>

<p style="text-align: right;">Page 193</p> <p>1 A. Correct. I see that.</p> <p>2 Q. And you respond that: "With respect</p> <p>3 to the currency of the information compared to</p> <p>4 the latest version of the C.F.R., the database</p> <p>5 is not intended to be a real-time index of what</p> <p>6 is in the C.F.R. It does not represent any</p> <p>7 specific C.F.R. citation as it may be on a</p> <p>8 particular day other than the day that a</p> <p>9 specific record was verified as identified in</p> <p>10 the database;" is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. What did you mean by "verified?"</p> <p>13 A. As I mentioned earlier, we had an</p> <p>14 individual on contract who was charged with</p> <p>15 searching the Code of Federal Regulations on a</p> <p>16 daily basis to identify citations that should</p> <p>17 be included in the standards incorporated by</p> <p>18 reference database, so he would verify on that</p> <p>19 day but might not go back to reverify.</p> <p>20 Q. When you say, "might not go back to</p> <p>21 reverify," what does that distinction mean?</p> <p>22 MR. FEE: Objection.</p>	<p style="text-align: right;">Page 195</p> <p>1 SIBR database contained the letters NDG or no</p> <p>2 date given in the edition column. NIST uses</p> <p>3 the acronym in the database when a text found</p> <p>4 in a specific paragraph of the C.F.R.</p> <p>5 references a voluntary consensus standard, VCS,</p> <p>6 without citing a specific edition of the</p> <p>7 standard."</p> <p>8 A. Yes.</p> <p>9 Q. Are there instances in U.S.</p> <p>10 regulations where the text references a --</p> <p>11 excuse me, where the text incorporates a</p> <p>12 standard by reference but doesn't say what</p> <p>13 edition of that standard is being incorporated</p> <p>14 by reference?</p> <p>15 MR. GRIFFIN: Objection.</p> <p>16 THE WITNESS: Well, there must be at</p> <p>17 least as reflected in the versions of the Code</p> <p>18 of Federal Regulations that were being</p> <p>19 reviewed. It is considered best practice for</p> <p>20 agencies to cite the year of the edition that</p> <p>21 they are referencing.</p> <p>22 BY MR. BECKER:</p>
<p style="text-align: right;">Page 194</p> <p>1 THE WITNESS: Well, what I -- what I</p> <p>2 meant was, he would identify a record as needs</p> <p>3 to be included in the standards incorporated by</p> <p>4 reference database and on the day that he</p> <p>5 identified it, it would be included. If there</p> <p>6 were updates to that reference later, they</p> <p>7 might not be picked up.</p> <p>8 BY MR. BECKER:</p> <p>9 Q. Your e-mail goes on to say: "The</p> <p>10 range of review data to be incorporated into</p> <p>11 the database runs from 2001 through 2011;" is</p> <p>12 that correct?</p> <p>13 A. Where are you? Oh, I see, the next</p> <p>14 page. Yes. Yes, I said it in my e-mail.</p> <p>15 Q. And so what does that mean?</p> <p>16 MR. GRIFFIN: Objection.</p> <p>17 THE WITNESS: That the individual</p> <p>18 was reviewing the Code of Federal Regulations</p> <p>19 from, as it existed in 2001 through 2011.</p> <p>20 BY MR. BECKER:</p> <p>21 Q. He then in the next paragraph</p> <p>22 writes: "You noted that several entries in the</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. You then write: "Some confusion may</p> <p>2 occur when misuse of the acronym NDG for a</p> <p>3 specific standard in one SIBR record, while it</p> <p>4 cites the specific edition of the standard in</p> <p>5 another related record from the same agency,</p> <p>6 such as in the case identified in your</p> <p>7 Public.Resources.Org comments to the OFR;" is</p> <p>8 that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Had you read Mr. Malamud's comments</p> <p>11 to the OFR that you are referencing?</p> <p>12 A. I had at the time obviously.</p> <p>13 Q. You then say: "This is not an</p> <p>14 error. It is and has been NIST's practice to</p> <p>15 cite regulatory language exactly as it appears</p> <p>16 in the text of each specific C.F.R. citation</p> <p>17 and to not make assumptions about what a</p> <p>18 regulatory agency intended in its regulation;"</p> <p>19 is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Why didn't NIST make assumptions</p> <p>22 about what a regulatory agency intended in its</p>

<p style="text-align: right;">Page 197</p> <p>1 regulation?</p> <p>2 A. That would be irresponsible and out</p> <p>3 of our scope of responsibility.</p> <p>4 Q. Why would that be irresponsible?</p> <p>5 A. NIST is not -- NIST is not a</p> <p>6 regulatory agency. We don't have any -- NIST</p> <p>7 did not have any authority over regulatory</p> <p>8 agency activities. It's the responsibility of</p> <p>9 the regulatory agency to make accurate</p> <p>10 citations.</p> <p>11 Q. Wasn't NIST able to figure out what</p> <p>12 edition of the standard was -- the agency had</p> <p>13 intended to incorporate?</p> <p>14 MR. FEE: Objection to form.</p> <p>15 THE WITNESS: No. Only the agency</p> <p>16 would know that.</p> <p>17 BY MR. BECKER:</p> <p>18 Q. Why is it a best practice to refer</p> <p>19 to a particular edition of a standard when</p> <p>20 incorporated by reference?</p> <p>21 A. Because agencies are incorporating</p> <p>22 specific -- a standard as it stood in a</p>	<p style="text-align: right;">Page 199</p> <p>1 example, when NIST compiled the initial</p> <p>2 inventory of standards incorporated by</p> <p>3 reference, the Mine Safety and Health</p> <p>4 Administration, MSHA, referenced the National</p> <p>5 Fire Protection Association, NFPA, National</p> <p>6 Electric Code, NFPA 70 in 30 C.F.R. 57.12048,</p> <p>7 without citing a specific edition. NDG appears</p> <p>8 in the edition column for that record."</p> <p>9 "However, NIST also found other MSHA</p> <p>10 references to NSPA 70 that identified a</p> <p>11 specific edition. For example, in Paragraph 3,</p> <p>12 C.F.R. 75.513-1, MSHA references the 1968</p> <p>13 edition of NFPA 70. In this record, 1968</p> <p>14 appears in the edition column. NIST cannot</p> <p>15 speculate that the nondated incorporation</p> <p>16 refers to or is intended to refer to the 1968</p> <p>17 edition of NFPA 70 referenced in the date of</p> <p>18 incorporation."</p> <p>19 "That intent or interpretation is up</p> <p>20 to the regulatory agency promulgating the</p> <p>21 regulation. The format and manner in which</p> <p>22 SIBRs are identified in the C.F.R. is an</p>
<p style="text-align: right;">Page 198</p> <p>1 specific point in time. As the standard is</p> <p>2 updated, the content of the standard may change</p> <p>3 and an agency would have to make a separate</p> <p>4 decision about incorporating an updated</p> <p>5 reference.</p> <p>6 Q. Did NIST ever contact an agency to</p> <p>7 try to find out what edition of a standard was</p> <p>8 intended to be incorporated by reference into a</p> <p>9 regulation?</p> <p>10 A. No. Periodically, we distributed</p> <p>11 portions of the standards incorporated by</p> <p>12 reference database to each agency so you can</p> <p>13 sort by agency as well as by -- you can sort by</p> <p>14 any column. We would distribute on a periodic</p> <p>15 basis DOT's sections to the Department of</p> <p>16 Transportation, Departments of Interior's</p> <p>17 section to them and just note to them, you</p> <p>18 might -- you might want to look at the data.</p> <p>19 It's their responsibility, not NIST's</p> <p>20 responsibility.</p> <p>21 Q. You then give an example, you say:</p> <p>22 "For example," in the next paragraph: "For</p>	<p style="text-align: right;">Page 200</p> <p>1 individual agency decision;" is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. So can you explain to me so I better</p> <p>4 understand why is it that -- that NIST couldn't</p> <p>5 just assume that the earlier reference to NFPA</p> <p>6 70 in the MSHA referred to the 1968 edition,</p> <p>7 seeing as elsewhere in the MSHA, it referred to</p> <p>8 the 1968 edition?</p> <p>9 A. We wouldn't have the information</p> <p>10 necessary to make that determination and we are</p> <p>11 not going to guess.</p> <p>12 Q. In the next paragraph, you describe</p> <p>13 NIST providing agency standards executives</p> <p>14 Excel spreadsheets containing the referenced</p> <p>15 records for their review.</p> <p>16 Was that what you were earlier</p> <p>17 describing in which NIST tried to point out</p> <p>18 errors to certain agencies?</p> <p>19 A. When I --</p> <p>20 MR. GRIFFIN: Objection.</p> <p>21 THE WITNESS: -- mentioned earlier</p> <p>22 that we would provide hard-copied portions of</p>

<p style="text-align: right;">Page 201</p> <p>1 the database, the Department of Transportation  2 portion, the Department of Interior and so on,  3 to each agency to review through their  4 standards management system, yes, that's what I  5 was referring to.</p> <p>6 BY MR. BECKER:  7 Q. At the bottom of the page, you say:  8 "In addition to cross-references for  9 incorporation in the C.F.R., such as those  10 above, there are many federal specifications,  11 military specifications and other federal GSA  12 standard documents cited in the C.F.R. by  13 various agencies. Many of these have been  14 withdrawn, replaced or updated by the issuing  15 agency but not by the using agency. The  16 references will be retained in the database  17 until the using agency reviews and revises its  18 regulation in the C.F.R."</p> <p>19 What's the distinction between an  20 issuing agency versus a using agency?  21 A. So a military specification is a  22 Department of Defense document. The Department</p>	<p style="text-align: right;">Page 203</p> <p>1 particular recommendation that Mr. Malamud  2 made?  3 A. Yes.  4 Q. Do you know if the SIBR database  5 was, in fact, identified -- updated to reflect  6 additional BSI standards as a result of any  7 action in response to Mr. Malamud's e-mail?  8 A. I can commit that the -- that the  9 person responsible for reviewing the Code of  10 Federal Regulations, I asked him to take a --  11 to take a specific look and update the database  12 if he identified additional references.</p> <p>13 MR. BECKER: Thank you. Let's take  14 a short break.  15 THE WITNESS: Okay.  16 THE VIDEOGRAPHER: We are going off  17 the record. This is the end of Media Unit No.  18 3. The time is 3:29.  19 (A short recess was taken.)  20 THE VIDEOGRAPHER: We are going back  21 on the record. This is the start of Media Unit  22 No. 4. The time is 3:41.</p>
<p style="text-align: right;">Page 202</p> <p>1 of Defense might withdraw a military  2 specification. If another agency such as the  3 Coast Guard or another component of an agency  4 outside of the Department of Defense had  5 referenced that military specifications, they  6 are the using agency.  7 Q. Is that the same -- kind of the same  8 thing as where a standards development  9 organization might withdraw their standard but  10 it might still be listed as incorporated by  11 reference into a particular regulation?  12 A. That's correct.  13 Q. You then say: "Finally, you note  14 that you identified five BSI standards  15 referenced in the C.F.R. while the SIBR  16 database only identified two. This is likely  17 due to the fact that NIST's periodic review has  18 not yet captured the additional three  19 references. We will take a closer look at this  20 specific case and update the database."  21 Was this the instance that you were  22 referring to about taking action on a</p>	<p style="text-align: right;">Page 204</p> <p>1 (Deposition Exhibit 12 was marked  2 for identification.)  3 BY MR. BECKER:  4 Q. I am handing you what has been  5 marked as Exhibit No. 12.  6 Do you recognize this document?  7 This is the document produced as  8 ANSI 0303 to ANSI 0307.  9 A. Yes. I recognize this to be an  10 agenda of the ANSI board of directors meeting.  11 Q. Were you in attendance at this board  12 of directors meeting?  13 A. I was.  14 Q. As you -- it says on the third page  15 that you are listed as presenting the federal  16 engagement and standards activities  17 information/discussion; is that correct?  18 A. Correct.  19 Q. It says that you are going to  20 provide updates on recent activities of the  21 National Science and Technology Council  22 subcommittee on standards and OMB A119</p>

<p style="text-align: right;">Page 205</p> <p>1 revision.</p> <p>2 A. Yes.</p> <p>3 Q. And above that, it says that there</p> <p>4 is going to be updates, that standards</p> <p>5 incorporated by reference into law are going to</p> <p>6 be discussed and there will be updates on</p> <p>7 incorporation by reference, Public.Resource.Org</p> <p>8 and IBR portal; is that correct?</p> <p>9 A. I see that, yes.</p> <p>10 (Deposition Exhibit 13 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. BECKER:</p> <p>13 Q. I have handed you what has been</p> <p>14 marked as Exhibit No. 13.</p> <p>15 This is a document produced as ANSI</p> <p>16 0308 to ANSI 0327.</p> <p>17 Do you recognize this document?</p> <p>18 A. Yes.</p> <p>19 Q. What is this document?</p> <p>20 A. It's the presentation that is</p> <p>21 referenced in the board agenda on copyright</p> <p>22 infringement and incorporation by reference,</p>	<p style="text-align: right;">Page 207</p> <p>1 Brazil, I think was a significant problem area,</p> <p>2 and India.</p> <p>3 Q. The next page says: "The unique</p> <p>4 problem, standards incorporated by reference,</p> <p>5 IBR, into law. Many countries are struggling</p> <p>6 with what to do about standards that have been</p> <p>7 incorporated by reference into law. Arguments</p> <p>8 have been made that such standards should be</p> <p>9 freely available. Counter-arguments have been</p> <p>10 made that such standards are copyright</p> <p>11 protected and that copyright should not yield</p> <p>12 to free access;" is that correct?</p> <p>13 A. That's what it says on the slide.</p> <p>14 Q. Do you know who was making the</p> <p>15 arguments that standards should be freely</p> <p>16 available?</p> <p>17 A. Referring to Bullet 2?</p> <p>18 Q. Yes.</p> <p>19 A. Not specifically. There are general</p> <p>20 arguments on both -- on both sides of the</p> <p>21 issue.</p> <p>22 Q. The following three pages refer to</p>
<p style="text-align: right;">Page 206</p> <p>1 recent developments.</p> <p>2 Q. Were you present for this</p> <p>3 presentation?</p> <p>4 A. I'm sure I was.</p> <p>5 Q. It says on Slide 2, so that would be</p> <p>6 the second page: "Copyright infringement up</p> <p>7 generally. The posting of unauthorized</p> <p>8 copyrighting standards on the internet has</p> <p>9 skyrocketed over the last year;" is that</p> <p>10 correct?</p> <p>11 A. That's what it says, yes.</p> <p>12 Q. Were you aware of concerns at that</p> <p>13 time about the posting on the internet about</p> <p>14 unauthorized copies of standards?</p> <p>15 A. Yes.</p> <p>16 Q. What is Attributor Guardian?</p> <p>17 A. I -- other than it appears to be a</p> <p>18 service that searches the web for violations,</p> <p>19 for posting of copyrighted documents. Most of</p> <p>20 the issues that were being faced -- many of the</p> <p>21 issues being faced by copyright owners were</p> <p>22 with respect to foreign postings, in China,</p>	<p style="text-align: right;">Page 208</p> <p>1 countries either requiring free access to</p> <p>2 standards that have been incorporated into law</p> <p>3 or countries that -- as is phrased here, uphold</p> <p>4 copyright in IBR standards; is that correct?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. It lists eight countries that have</p> <p>7 acquired free access to standards that are</p> <p>8 incorporated into law and it lists four</p> <p>9 countries that have not; is that correct?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. It then goes on to list the --</p> <p>12 U.S.A. requires reasonable access for IBR</p> <p>13 standards, correct?</p> <p>14 A. Yes.</p> <p>15 Q. It says: "Some U.S.-based SDOs make</p> <p>16 IBR standards available on a read-only basis</p> <p>17 online and without fees, e.g., ASTM reading</p> <p>18 room, API government cited and safety</p> <p>19 documents, NFPA free access. Other SDOs do not</p> <p>20 view reasonable access as requiring free online</p> <p>21 access. "</p> <p>22 What is the ASTM reading room?</p>

<p style="text-align: right;">Page 209</p> <p>1 A. My understanding is that's ASTM's 2 electronic portal where they provide read-only 3 access to ASTM standards that have been 4 incorporated by reference into regulation. 5 Q. What is the API government cited and 6 safety documents? 7 A. I don't have specific knowledge, but 8 I assume it's a similar service, but I don't 9 know. 10 Q. Is API a standards development 11 organization? 12 A. It's the American Petroleum 13 Institute. 14 Q. What is NFPA free access? 15 A. National Fire Protection Association 16 free access. Again, that would be an NFPA 17 service. 18 Q. It says -- do you know what SDOs do 19 not view reasonable access as requiring free 20 online access? 21 MR. FEE: Objection to form. 22 MR. GRIFFIN: Objection.</p>	<p style="text-align: right;">Page 211</p> <p>1 on IBR, NARA petition." 2 What -- what does NARA stand for? 3 A. The National Archives and Records 4 Administration. 5 Q. It says: "On February 27, 2012, a 6 Federal Register Notice called for comment on a 7 petition filed by a group of academics to amend 8 the National Archives and Records 9 Administration, NARA's regulations governing 10 the approval of agency requests to incorporate 11 materials by reference into the Code of Federal 12 Regulations." 13 Are you familiar with that Federal 14 Register Notice? 15 A. Well, I was at the time. I don't 16 have any memory of it currently. 17 Q. Then it says: "ANSI developed a 18 consensus response on behalf of the 19 standardization community;" is that correct? 20 A. Yes. 21 Q. Did you participate in the consensus 22 response that ANSI developed?</p>
<p style="text-align: right;">Page 210</p> <p>1 THE WITNESS: I don't have specific 2 knowledge about that. There are 240 accredited 3 standards developing organizations in the 4 United States and many more that are not 5 accredited by ANSI. It's a large number of 6 organizations. 7 BY MR. BECKER: 8 Q. Do you know of any specific 9 standards setting organizations -- excuse me, 10 standards development organizations that do not 11 provide free online access to standards that 12 have been incorporated by reference? 13 A. Well, I suppose I -- you could make 14 that determination by the process of 15 elimination. The three standards developing 16 organizations who are listed here with the 17 reading rooms and the SDOs who have made their 18 standards available via the IBR portal. I 19 don't have that number, but I can speak to the 20 positive. I don't have information about the 21 negative. 22 Q. The next page says: "U.S. dialogue</p>	<p style="text-align: right;">Page 212</p> <p>1 A. I don't remember. 2 Q. Do you remember what that consensus 3 response stated? 4 A. No, but it should be available in 5 NARA's record. 6 Q. On Slide 10, it refers to the 7 pipeline safety bill. 8 A. Yes. 9 Q. Do you recognize that to be the same 10 pipeline bill that we discussed earlier today? 11 A. I do. 12 Q. It says: "The U.S. Department of 13 Transportation Pipeline Hazardous Materials 14 Safety Administration, PHMSA, contacted SDOs to 15 request that their standards incorporated by 16 reference in PHMSA legislation be made 17 available online for free;" is that correct? 18 A. Yes. 19 Q. Do you recall that event occurring? 20 A. I recall hearing about it. 21 Q. Do you know what the justification 22 was for asking SDOs to make their standards</p>

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1 incorporated by reference in PHMSA legislation  
 2 available for -- online for free?  
 3 MR. GRIFFIN: Objection.  
 4 MR. FEE: Objection to form.  
 5 THE WITNESS: So my -- well, if you  
 6 read the Section 4 of the bill, prohibited the  
 7 reference -- prohibited DOT from referencing  
 8 any standard unless the documents were made  
 9 available free of charge on an internet  
 10 website, so my understanding is that DOT then  
 11 reached out to SDOs to determine whether that  
 12 was feasible. With a view to making the  
 13 argument to the Congressional committee that it  
 14 was -- that this was not necessarily feasible  
 15 in all cases.  
 16 BY MR. BECKER:  
 17 Q. When you say, "with a view to making  
 18 the argument to the Congressional committee  
 19 that it was not necessarily feasible in all  
 20 cases," what is your basis for that knowledge?  
 21 A. There was a technical correction  
 22 made to the -- not to bill itself but to the

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1 record related to the legislation, which  
 2 altered this requirement and made it -- made it  
 3 more flexible so DOT, Department of  
 4 Transportation, Congressional legislative  
 5 affairs folks worked with the committee on the  
 6 technical correction to the bill.  
 7 Q. How is it that you -- strike that.  
 8 Have you -- had you spoken with  
 9 anybody from DOT about their views on the  
 10 pipeline bill?  
 11 A. Not since the time period 2012, 2013  
 12 when that was in play.  
 13 Q. At that time in 2012 or 2013, had  
 14 you spoken with anybody from the Department of  
 15 Transportation about their view on the pipeline  
 16 bill?  
 17 A. I actually participated in an open  
 18 community meeting that the Department of  
 19 Transportation, Pipeline and Hazardous Material  
 20 Safety Administration convened to discuss the  
 21 incorporation by reference in the particular  
 22 context of the bill, so I participated in a

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1 meeting that they held. It's on C-SPAN or  
 2 YouTube. It's available.  
 3 Q. So is it your view that the  
 4 Department of Transportation did not actually  
 5 want SDOs to make their standards incorporated  
 6 by reference in PHMSA legislation available  
 7 online for free?  
 8 MR. GRIFFIN: Objection.  
 9 MR. FEE: Objection to form.  
 10 THE WITNESS: I don't have an  
 11 opinion on that. The Department of  
 12 Transportation was working with the  
 13 Congressional committee to ensure that they  
 14 could comply with the committee's intent, while  
 15 at the same time, enable them to still continue  
 16 carrying out their regulatory responsibilities.  
 17 BY MR. BECKER:  
 18 Q. Moving on to Slide 12, that slide  
 19 discusses Public.Resource.Org; is that correct?  
 20 A. Yes, it does.  
 21 Q. Slide 13 then refers to a lawsuit  
 22 between Public Resource and the Sheet Metal and

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1 Air Conditioning Contractor's National  
 2 Association, Inc.; is that correct?  
 3 A. Yes.  
 4 Q. And that is a SDO, correct?  
 5 A. I believe so, yes, it's national  
 6 standards, yes.  
 7 Q. It's referred to as SMACNA?  
 8 A. Yes.  
 9 Q. SMACNA sent Public Resource a cease  
 10 and desist letter using Contributor Guardian in  
 11 response to posting SMACNA standards; is that  
 12 correct?  
 13 A. That's what the slide says, right.  
 14 Q. Were you -- at this time, were you  
 15 keeping updated on developments in the SMACNA  
 16 lawsuit?  
 17 A. No.  
 18 Q. Did you subsequently keep updated on  
 19 developments in the SMACNA lawsuit?  
 20 A. No.  
 21 Q. Slide 14 discusses the ANSI IBR  
 22 portal.

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1 A. Uh-huh.  
 2 Q. It says: "ANSI intends to provide a  
 3 portal for read-only access to a subset of  
 4 standards incorporated by U.S. federal agencies  
 5 in rulemaking. Goal is to make it easier for  
 6 interested parties to find IBR standards and to  
 7 access them via the internet at no cost."  
 8 How would this make it easier for  
 9 interested parties to find IBR standards and  
 10 access them via the internet with no cost?  
 11 MR. GRIFFIN: Objection.  
 12 MR. FEE: Objection.  
 13 THE WITNESS: So the IBR portal is a  
 14 portal which provides read-only access to a  
 15 number of -- to standards that are maintained  
 16 by a number of standards developing  
 17 organizations including ISO and IEC in one  
 18 place, so having all that information in one  
 19 place would make it easier for interested  
 20 parties to find the standards.  
 21 BY MR. BECKER:  
 22 Q. At this time, the ANSI IBR portal

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1 was not yet in existence; is that correct?  
 2 A. Correct.  
 3 Q. It says: "One important motivation  
 4 for providing this access is to encourage the  
 5 U.S. Government's reference to private sector  
 6 standards and regulations in lieu of having the  
 7 government develop its own standards;" is that  
 8 correct?  
 9 MR. FEE: Object to form.  
 10 THE WITNESS: That's correct.  
 11 BY MR. BECKER:  
 12 Q. Can you explain that motivation?  
 13 MR. GRIFFIN: Objection.  
 14 MR. FEE: Objection.  
 15 THE WITNESS: The National  
 16 Technology Transfer and Advancement Act directs  
 17 federal agencies to rely on private voluntary  
 18 consensus standards in lieu of developing their  
 19 own standards. That's simply a repetition of  
 20 the text of what -- the direction under the  
 21 law.  
 22 BY MR. BECKER:

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1 Q. How does the ANSI IBR portal factor  
 2 into that?  
 3 MR. GRIFFIN: Objection.  
 4 MR. FEE: Objection to form.  
 5 THE WITNESS: Well, as you mentioned  
 6 earlier and the bullet above, it provides it  
 7 easier, simpler access to a range of standards  
 8 that are incorporated by reference into  
 9 regulations.  
 10 BY MR. BECKER:  
 11 Q. And why would simpler access have  
 12 any relation to the U.S. Government's reference  
 13 to private sector standards and regulations in  
 14 lieu of having the government develop its own  
 15 standards?  
 16 MR. GRIFFIN: Objection.  
 17 MR. FEE: Objection.  
 18 THE WITNESS: Well, I mentioned that  
 19 the Bullet 3 refers to the direction from  
 20 Congress to federal agencies. That statement  
 21 simply supports what the direction that the law  
 22 provides. ANSI's IBR portal is -- was intended

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1 to be and currently is a tool for assisting  
 2 federal agencies and providing reasonable  
 3 access, reasonable availability.  
 4 BY MR. BECKER:  
 5 Q. It says on the next page: "Phase 1  
 6 will include only IBR standards that have been  
 7 developed by ANSI-accredited SDOs as well as by  
 8 IEC and ISO;" is that correct?  
 9 A. That's what it says.  
 10 Q. Is that -- when the ANSI IBR portal  
 11 was first made publicly available, did it  
 12 include only standards developed by  
 13 ANSI-accredited SDOs as well as by IEC and ISO?  
 14 A. That's -- I believe that -- that's  
 15 what it says on the slide. I can't  
 16 independently confirm that but I see no reason  
 17 to say that's not the case.  
 18 Q. It says: "A number of SDOs have  
 19 already given permission for ANSI to either  
 20 include their standards or a link to their  
 21 site;" is that correct?  
 22 A. That's what it says.



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1 Q. Through your involvement with ANSI  
 2 at this time, were you aware of ANSI believing  
 3 that it needed to get permission in order to  
 4 include a SDO standard on its read-only site?  
 5 MR. GRIFFIN: Objection.  
 6 THE WITNESS: That copyright belongs  
 7 to the copyright owner which in all of these  
 8 cases is the standards development  
 9 organization, so yes, ANSI could not post  
 10 copyrighted information even for read-only  
 11 purposes without permission from the copyright  
 12 owner.  
 13 BY MR. BECKER:  
 14 Q. Through your experience with ANSI at  
 15 this time, were you aware of ANSI believing it  
 16 needed to get permission from an SDO in order  
 17 to link to the SDO's own read-only site?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection.  
 20 THE WITNESS: I know what is listed  
 21 on the slide. I don't think general practice  
 22 is -- I think it is good practice to reach out

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1 to owning organizations with respect to either  
 2 posting the copyrighted information or linking  
 3 to their sites for a specific purpose.  
 4 BY MR. BECKER:  
 5 Q. And why is that good practice?  
 6 A. Just sounds like good corporate  
 7 practice to me.  
 8 MR. FEE: Objection.  
 9 THE WITNESS: Why would you link  
 10 without permission.  
 11 BY MR. BECKER:  
 12 Q. Do you think that people typically  
 13 ask for permission each time that they link to  
 14 somewhere on the internet?  
 15 MR. GRIFFIN: Objection.  
 16 MR. FEE: Objection to form.  
 17 THE WITNESS: Well, that's ANSI's  
 18 practice. I can't speak to any other  
 19 organization.  
 20 BY MR. BECKER:  
 21 Q. Is that ANSI's practice for any  
 22 outbound link to another website?

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1 A. I don't know. You'd have to check  
 2 with our publications staff about that.  
 3 Q. Does ANSI make IBR standards  
 4 available to the print disabled?  
 5 MR. FEE: Objection to form.  
 6 THE WITNESS: I don't know. You  
 7 would have to look at the portal to see.  
 8 BY MR. BECKER:  
 9 Q. Are you aware of any availability to  
 10 the print disabled of IBR standards?  
 11 MR. FEE: Objection. Form.  
 12 THE WITNESS: I have no personal  
 13 knowledge.  
 14 BY MR. BECKER:  
 15 Q. Slide 16 discusses -- it says:  
 16 "Multiple dimensions of protection."  
 17 Do you know what that is referring  
 18 to, or what do you understand that to refer to?  
 19 A. I am assuming it is referring to the  
 20 bullets that are listed below the title.  
 21 Q. What does -- what is protection  
 22 referring to?

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1 A. Copyright protection is my  
 2 assumption.  
 3 Q. It says: "Read-only access users  
 4 can only open and read the licensed materials.  
 5 Print restriction, user cannot print the  
 6 licensed material. Text copy prevention,  
 7 contact cannot be copied. Screen shot  
 8 prevention, screen prints are disabled.  
 9 Machine limits, the licensed materials cannot  
 10 be copied to a different computer or network  
 11 file system. Watermarks, a watermark  
 12 containing text provided by the content  
 13 provider will be added to the protected license  
 14 to materials;" is that correct?  
 15 A. That's correct.  
 16 Q. Is this referring to aspects of the  
 17 ANSI read-only portal?  
 18 A. It's referring to the IBR -- the  
 19 ANSI IBR portal, yes.  
 20 Q. It then says on the next page:  
 21 "User will be presented with a form that must  
 22 be completed before the user is given access to

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1 the licensed materials. The form collects such  
 2 information as name, e-mail address, company or  
 3 organization name, and stores this information  
 4 in a secure database."  
 5 Do you know why users were required  
 6 to fill out this form before accessing the ANSI  
 7 IBR portal?  
 8 MR. GRIFFIN: Objection.  
 9 THE WITNESS: I do not.  
 10 BY MR. BECKER:  
 11 Q. Do you know if ANSI still requires  
 12 users to fill out this form in order to access  
 13 the IBR portal?  
 14 A. I do not know that.  
 15 Q. Do you know -- what -- do you know  
 16 whether this information that is collected is  
 17 used by ANSI in any way?  
 18 A. No.  
 19 MR. FEE: Objection to form.  
 20 THE WITNESS: I have no knowledge of  
 21 that.  
 22 BY MR. BECKER:

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1 Q. Who would know whether this  
 2 information collected by ANSI is used in any  
 3 way?  
 4 MR. FEE: Objection to form.  
 5 THE WITNESS: That's a part of our  
 6 business operations so somebody in the  
 7 standards facilitation staff would probably  
 8 know. I don't have that information and I  
 9 don't know who has that information.  
 10 BY MR. BECKER:  
 11 Q. It then says: "User will be  
 12 required to sign an end user license agreement,  
 13 EULA, before being permitted to access a  
 14 licensed material."  
 15 Do you recall any debate within ANSI  
 16 as to whether an end user license agreement  
 17 should be required in order to use the ANSI IBR  
 18 portal?  
 19 A. I do not.  
 20 Q. Do you know what the terms of the  
 21 end user license agreement are?  
 22 A. I have no idea.

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1 Q. On Slide 19, it says: "The portal  
 2 will also include the following statement:  
 3 Caution, the standards available on this site  
 4 are the versions and year dates actually  
 5 referenced in the respective federal  
 6 legislation or law. The standard reference may  
 7 not be the most recent or up-to-date version  
 8 available. It is possible that the standard  
 9 and/or technology at issue has changed or been  
 10 updated during the period of time since the  
 11 regulation/law was enacted. ANSI does not  
 12 control which standards and versions hereto are  
 13 referenced in federal regulations or laws of  
 14 the U.S.A."  
 15 Do you know why that statement was  
 16 included on the ANSI IBR portal?  
 17 A. I don't have any personal knowledge  
 18 of why that statement was included.  
 19 Q. Do you have a guess as to why this  
 20 statement was included?  
 21 MR. GRIFFIN: Objection.  
 22 MR. FEE: Objection to form.

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1 THE WITNESS: You want me to guess.  
 2 I think it's good practice to let individuals  
 3 who access a particular source of information  
 4 know if the reference is not the most recent or  
 5 up-to-date version.  
 6 BY MR. BECKER:  
 7 Q. Is there a concern -- are you  
 8 concerned that there could be a negative  
 9 result, as a result due to somebody relying on  
 10 an out-of-date standard?  
 11 MR. GRIFFIN: Objection.  
 12 MR. FEE: Objection to form.  
 13 THE WITNESS: So as I mentioned  
 14 earlier, agencies incorporate standards by  
 15 reference into regulations when it's relevant  
 16 and it helps them fulfill their mission. A  
 17 good practice is that agencies provide dated  
 18 references so it's the responsibility of the  
 19 agency to have a process in place to  
 20 periodically look to update references. But if  
 21 they don't update references, then those are  
 22 the references that are relevant for a

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1 particular regulation.  
 2 BY MR. BECKER:  
 3 Q. What does ANSI do for its IBR portal  
 4 when the regulation incorporating a standard  
 5 doesn't list the particular edition of that  
 6 standard?  
 7 MR. GRIFFIN: Objection.  
 8 THE WITNESS: I don't know the  
 9 answer of that. I don't know the details of  
 10 the portal. I have actually never looked at  
 11 it.  
 12 BY MR. BECKER:  
 13 Q. You've never used the portal?  
 14 A. No, I've never used the portal.  
 15 (Deposition Exhibit 14 was marked  
 16 for identification.)  
 17 BY MR. BECKER:  
 18 Q. I have handed you what has been  
 19 marked as Exhibit No. 14.  
 20 This is a document produced as ANSI  
 21 0328 to 0336.  
 22 Do you recognize this document?

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1 A. I do.  
 2 Q. What is this document?  
 3 A. These appear to be the minutes of  
 4 the -- related to two agenda items on the -- at  
 5 the May 16, 2013 meeting of the ANSI board of  
 6 directors.  
 7 Q. This is the same meeting that we  
 8 have been discussing for the past several  
 9 minutes, correct?  
 10 A. That's correct.  
 11 (Deposition Exhibit 15 was marked  
 12 for identification.)  
 13 BY MR. BECKER:  
 14 Q. I have handed you what has been  
 15 marked as Exhibit No. 15.  
 16 This is the document marked as ANSI  
 17 2860.  
 18 Do you recognize this document?  
 19 A. Yes.  
 20 Q. What is it?  
 21 A. It's an e-mail from Scott Cooper at  
 22 ANSI to Patricia Griffin, Fran Schrotter and

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1 Liz Neiman regarding my participation in an  
 2 ANSI review group.  
 3 Q. Do you know what review group that  
 4 is?  
 5 A. Let's see. Given the date March 1,  
 6 2012, it is probably a response to the NARA  
 7 request for information, request for input.  
 8 Q. It says further on: "Mary Saunders,  
 9 she would be pleased to be part of an ANSI  
 10 review group. She didn't think NIST would  
 11 respond on their own but I think she was  
 12 pleased to have the ANSI venue to allow her to  
 13 weigh in."  
 14 Do you know what is being -- what do  
 15 you understand it to mean when Scott Cooper  
 16 says: "She didn't think NIST would respond on  
 17 their own?"  
 18 MR. GRIFFIN: Objection.  
 19 THE WITNESS: That NIST would not  
 20 submit NIST comments to NARA on the -- on the  
 21 request.  
 22 Although, I would note, since you

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1 have given me now the minutes that NARA --  
 2 there was a comprehensive -- let's see. U.S.  
 3 Government, ICE -- no, never mind. That's not  
 4 relevant.  
 5 Government agencies did not respond  
 6 to NARA's requests I don't think.  
 7 (Deposition Exhibit 16 was marked  
 8 for identification.)  
 9 BY MR. BECKER:  
 10 Q. I have handed you what has been  
 11 marked as Exhibit No. 16.  
 12 This is the document Bates-stamped  
 13 ANSI 3083.  
 14 Do you recognize this document?  
 15 A. I am an addressee on this -- or I'm  
 16 copied on this e-mail to -- it's hard to tell  
 17 who the addressees are, but I'm copied on the  
 18 e-mail.  
 19 Q. It says on February 27 -- excuse me,  
 20 actually let me back up a moment.  
 21 Do you recall receiving this e-mail?  
 22 A. No, I do not.

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1 Q. Do you have any reason to believe  
 2 that this e-mail produced by ANSI and listing  
 3 your name and e-mail address as under the BCC  
 4 line is not authentic?  
 5 A. No, I do not.  
 6 Q. Do you have any reason to think that  
 7 you didn't receive this e-mail?  
 8 A. No, I don't have any reason to think  
 9 I didn't get it.  
 10 Q. And the e-mail that's listed for you  
 11 is Mary.Saunders@NIST.gov; is that correct?  
 12 A. That's correct.  
 13 Q. Did you always use your NIST e-mail  
 14 address when conversing with ANSI prior to  
 15 leaving NIST?  
 16 A. Yes.  
 17 Q. The e-mail says: "On February 27, a  
 18 Federal Register Notice called for comments on  
 19 a petition filed by a group of academics to  
 20 amend the National Archives and Records  
 21 Administration, NARA's regulations governing  
 22 the approval of agency requests to incorporate

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1 materials by reference, IBR, into the Code of  
 2 Federal Regulation. I am writing to you  
 3 because you volunteered to take part in a  
 4 review group that would participate in the  
 5 development of ANSI's response to this notice;"  
 6 is that correct?  
 7 A. Yes, that's correct.  
 8 Q. Is this -- is the subject of this  
 9 Exhibit 16 the same as the subject of Exhibit  
 10 15?  
 11 MR. FEE: Objection to form.  
 12 THE WITNESS: Hold on. Which is  
 13 Exhibit 15?  
 14 BY MR. BECKER:  
 15 Q. That was the e-mail we just looked  
 16 at saying that --  
 17 A. Got it.  
 18 Q. -- "you would be pleased to be part  
 19 of an ANSI review group."  
 20 A. Yes.  
 21 Q. Did you volunteer to take part in  
 22 this particular review group?

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1 A. I must have.  
 2 (Deposition Exhibit 17 was marked  
 3 for identification.)  
 4 BY MR. BECKER:  
 5 Q. I have handed you what has been  
 6 marked as Exhibit 17.  
 7 This is produced by ANSI as Bates  
 8 No. 3084 to 3089.  
 9 Do you recognize this document?  
 10 A. It's the ANSI response, request for  
 11 comments on incorporation by reference which  
 12 was sent to the National Archives and Records  
 13 Administration.  
 14 Q. Is this the document that was  
 15 attached to the e-mail we just looked at,  
 16 Exhibit No. 15?  
 17 MR. FEE: Objection. Form.  
 18 THE WITNESS: Well, I don't know.  
 19 This is the final -- this is the final document  
 20 that was submitted.  
 21 BY MR. BECKER:  
 22 Q. Are you certain that this is the

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1 final document?  
 2 MR. FEE: Objection.  
 3 THE WITNESS: No, I'm not certain.  
 4 It looks like the final document but I can't  
 5 tell you.  
 6 BY MR. BECKER:  
 7 Q. Looking back at Exhibit 16, the  
 8 e-mail, the attachment line says: "ANSI  
 9 response IBR\_031512\_review.docX"; is that  
 10 correct?  
 11 A. Yes, it does.  
 12 Q. And in the third paragraph -- the  
 13 final sentence of the third paragraph says:  
 14 "As such, we respectfully request that you send  
 15 any comments you have on this document by noon  
 16 on Monday, March 19, staff will then compile  
 17 your comments into a new version that will go  
 18 to the IPRPC;" is that correct?  
 19 A. That's what it says.  
 20 Q. After reviewing that, does this  
 21 refresh -- excuse me.  
 22 Does this refresh your recollection

<p style="text-align: right;">Page 237</p> <p>1 that Exhibit 17 was a draft of the ANSI 2 response that was attached to Exhibit 16? 3 MR. GRIFFIN: Objection. 4 THE WITNESS: I can't tell. There 5 is no date on that document. 6 (Deposition Exhibit 18 was marked 7 for identification.) 8 BY MR. BECKER: 9 Q. I have handed you what has been 10 marked as Exhibit No. 18 which ANSI produced as 11 Bates No. 3121 to 3122. 12 Do you recognize this document? 13 A. Yes. 14 Q. What is this document? 15 A. It's an e-mail from -- that I sent 16 to Liz Neiman at ANSI noting that I had 17 attached comments on the draft document all on 18 Page 6 of the draft. 19 Q. It lists an attachment on this 20 e-mail; is that correct? 21 A. Right. 22 (Deposition Exhibit 19 was marked</p>	<p style="text-align: right;">Page 239</p> <p>1 Q. Do you recall inserting that text 2 into the draft? 3 A. No, but I must have, it's a 4 statement of fact. 5 Q. Do you recall inserting the 6 statement on the next line down: "Which was 7 passed on a voice vote at the December 2011 8 ACUS Plenary?" 9 A. I do not recall, but again, that's a 10 statement of fact. 11 Q. And then under Bullet Point No. 9, 12 the final sentence of that paragraph says: 13 "This could have a chilling effect on agencies' 14 willingness to refer to voluntary standards in 15 support of regulatory actions." 16 Do you recall adding that text to 17 this draft? 18 A. No, but I take the point that I must 19 have added it. 20 Q. How would an extended review period 21 at various stages of rulemaking have a chilling 22 effect on agencies' willingness to refer to</p>
<p style="text-align: right;">Page 238</p> <p>1 for identification.) 2 BY MR. BECKER: 3 Q. I have handed you what has been 4 marked as Exhibit 19. 5 This is the document produced as 6 ANSI 3123 to ANSI 3128. 7 Is this the draft that you had sent 8 as part of Exhibit No. 18? 9 MR. GRIFFIN: Objection. 10 THE WITNESS: Well, I can't tell. 11 There is no date or any other identification. 12 BY MR. BECKER: 13 Q. If you turn to the -- actually, can 14 you compare the final page of Exhibit 19 with 15 the final page of Exhibit 17. 16 A. Yes. 17 Q. Do you see that in Exhibit 19, in 18 the -- let's see. The second line at the top 19 of the page, it says: "It is both an 20 independent federal agency and a federal 21 advisory committee." 22 A. Yes.</p>	<p style="text-align: right;">Page 240</p> <p>1 voluntary standards in support of regulatory 2 actions?" 3 MR. FEE: Objection. 4 THE WITNESS: My -- I don't have 5 memory -- my memory is not specific enough to 6 remember the context. I mean, at the time, I 7 obviously had read the NARA petition and 8 related documents but it's been seven years so 9 I don't remember. 10 BY MR. BECKER: 11 Q. Do you know what was being referred 12 to there regarding an extended review period? 13 A. No, I don't remember it. It must 14 have been part of the petition. 15 (Deposition Exhibit 20 was marked 16 for identification.) 17 BY MR. BECKER: 18 Q. I have handed you what has been 19 marked as Exhibit No. 20. 20 This is a document produced as ANSI 21 3602 to ANSI 3604. 22 Do you recognize this document?</p>

<p style="text-align: right;">Page 241</p> <p>1 A. I am a recipient of the e-mail, so 2 yes. 3 Q. What is this e-mail? 4 A. It's an e-mail from Liz Neiman of 5 ANSI to all ANSI members plus additional 6 addressees regarding the fact that the deadline 7 for comment has been extended to June 1 for the 8 ANSI -- deadline for comment on the NARA 9 incorporation by reference petition. 10 Q. Do you know why you were 11 specifically BCC'd on that? 12 A. It's not BCC. Those are all -- I'm 13 an addressee but in order to avoid every 14 addressee getting responses, they put you all 15 on BCC. I misspoke the first time. 16 No, I don't know why we are called 17 out separately. 18 Q. Do you know -- when it refers to all 19 ANSI members, is that all organizations that 20 are part of ANSI or is that a broader group? 21 A. I don't know what that e-mail alias 22 refers to specifically.</p>	<p style="text-align: right;">Page 243</p> <p>1 depository libraries, so that people without 2 internet access could actually have access to 3 the documents. 4 BY MR. BECKER: 5 Q. So in that case, do you think that 6 if reasonably available required online access 7 for free, that it wouldn't create a digital 8 divide by excluding people without internet 9 access? 10 MR. GRIFFIN: Objection. 11 MR. FEE: Objection. 12 THE WITNESS: I don't have an 13 opinion on that. 14 BY MR. BECKER: 15 Q. Are you aware of whether ANSI has an 16 opinion on whether requiring reasonably 17 available to include -- excuse me, let me 18 strike that. 19 Do you -- are you aware of whether 20 ANSI has an opinion on whether reasonably 21 available requiring free online access would 22 result in a digital divide?</p>
<p style="text-align: right;">Page 242</p> <p>1 Q. The following page lists questions 2 from the notice and the first one is: "Does 3 reasonably available mean that the material 4 should be available for free to anyone online," 5 and then it says: "Create a digital divide by 6 excluding people without internet access." 7 Do you believe that if reasonable -- 8 reasonably available meant that a document 9 needed to be available for free online that it 10 would create a digital divide by excluding 11 people with no internet access? 12 MR. GRIFFIN: Objection. 13 MR. FEE: Objection to form. 14 THE WITNESS: So the question here 15 is, does reasonably available create a digital 16 divide by excluding people without internet 17 access. 18 Reasonable availability, as I 19 understand it under the circular and with 20 respect to NARA, includes as one option, if 21 available via internet. There are other 22 options I mentioned, reading room, hard copy,</p>	<p style="text-align: right;">Page 244</p> <p>1 MR. FEE: Objection. 2 THE WITNESS: If you want, I can 3 read you the relevant section from the ANSI 4 response. It does not speak directly to the 5 digital divide issue. 6 BY MR. BECKER: 7 Q. What does it say? 8 A. It says: "ANSI believes the text of 9 standards and associated documents should be 10 available to all interested parties on a 11 reasonable basis, which may include 12 compensation where appropriate." That 13 statement is footnoted. 14 "Reasonably available should not be 15 strictly defined using terms such as for free 16 and to anyone online. Rather, the definition 17 should encompass a broad spectrum of access 18 options." 19 The ANSI response does not address 20 the question regarding digital divide, so I 21 don't -- I don't see that ANSI took a position 22 on that.</p>

<p style="text-align: right;">Page 245</p> <p>1 Q. If a standard is not available for 2 free online and a person must instead either 3 purchase the standard or fly to a location 4 where the standard is -- a physical copy of the 5 standard is housed to review the standard, does 6 that create a financial divide? 7 MR. GRIFFIN: Objection. 8 MR. FEE: Objection. 9 THE WITNESS: Now you've asked me 10 about a financial divide. I don't have an 11 opinion on that. 12 (Deposition Exhibit 21 was marked 13 for identification.) 14 BY MR. BECKER: 15 Q. I have handed you what has been 16 marked as Exhibit No. 21. 17 This is the document produced by 18 ANSI as Bates No. 3792 to 3793. 19 A. Yes. 20 Q. Do you recognize this document? 21 A. I do. 22 Q. What is this document?</p>	<p style="text-align: right;">Page 247</p> <p>1 felt that the requirements would have 2 significant -- of the bill as written 3 initially, would have significant adverse 4 effects on their ability to carry out their 5 regulatory responsibilities and they asked -- 6 so they were seeking public comment for 7 suggestions on how to address that problem or 8 that issue. 9 And I also mentioned to you that the 10 Department of Transportation worked with the 11 Congressional committee to implement, to work 12 with the technical, the Congressional committee 13 as the committee developed a technical 14 correction to the bill which resolved the issue 15 further outlined here. 16 (Deposition Exhibit 22 was marked 17 for identification.) 18 BY MR. BECKER: 19 Q. I have handed you what has been 20 marked as Exhibit 22. 21 This is a document Bates-stamped 22 ANSI 3844.</p>
<p style="text-align: right;">Page 246</p> <p>1 A. Well, it's an e-mail string. The 2 operative portion of which is Ms. Griffin 3 asking me for my thoughts on Department of 4 Transportation's proposed public workshop, 5 which is where I participated as a speaker and 6 my response to her request. 7 Q. Your response says: "Patty, my 8 understanding is that DOT feels like they are 9 likely to be sued either way. If they make 10 docs freely available, violating copyright, or 11 if they don't, pipeline safety community" 12 issue -- "issues. The issues the FR notice 13 outlines are all valid issues. My guess is 14 that DOT is looking for additional data to 15 support a request to the Hill for more time." 16 What was the basis for your guess 17 that DOT was looking for additional data to 18 support a request to the Hill for more time? 19 A. Well, as I mentioned earlier in our 20 discussion about the pipeline safety bill, the 21 Department of Transportation, Congressional 22 legislative affairs and the technical folks</p>	<p style="text-align: right;">Page 248</p> <p>1 This is an e-mail between Scott 2 Cooper and Elizabeth Neiman, CC'ing Patricia 3 Griffin and Fran Schrotter, and it says -- 4 well, in the first e-mail, Elizabeth Neiman is 5 asking Scott Cooper about Friday, what is 6 referred to as Friday's workshop on the 7 webcast, and then Scott Cooper responds: "I 8 thought it went quite well. Mary Saunders and 9 Emily Bremer were showcased and were able to 10 make good points on importance of copyright for 11 USG, and need to continue to refine reasonable 12 availability." 13 Do you know what workshop they are 14 referring to? 15 A. It's the workshop that I referred to 16 earlier and which is referred to in the earlier 17 e-mail as well. It was a public workshop. I 18 don't have the dates, but so DOT first is noted 19 in the earlier exchange should the Federal 20 Register Notice seeking public input on the 21 construction of the pipeline safety bill. They 22 asked for public input and they -- public</p>

<p style="text-align: right;">Page 249</p> <p>1 comment, they also had a public meeting.  2 That's the workshop I was referring to.  3 It was held at the Department of  4 Transportation, and as I mentioned earlier, I  5 was one of the speakers.  6 Q. Who is Emily Bremer?  7 A. Emily Bremer at the time was a staff  8 person working for the administrative  9 conference of the U.S. She's an administrative  10 law lawyer.  11 Q. Do you know Emily Bremer?  12 A. I do know Emily.  13 Q. How long have you known Emily Bremer  14 for?  15 A. I met Emily during the ACUS  16 deliberations.  17 Q. Did Emily Bremer have a standpoint  18 that you understood -- excuse me.  19 Did you understand Emily Bremer to  20 have a standpoint with regard to what  21 reasonable availability meant?  22 MR. FEE: Objection.</p>	<p style="text-align: right;">Page 251</p> <p>1 Q. -- to 4481.  2 Have you seen either of these  3 documents before?  4 A. Not that I -- no, not that I  5 remember. I am not an addressee on any of the  6 e-mails.  7 Q. So on June 29, 2012, Emily Bremer  8 writes -- excuse me.  9 Scott Cooper writes to Emily Bremer  10 and describes what looks like elements of  11 perhaps a panel or something like that. The  12 subject is: "ACUS ANSI IBR Conference."  13 Do you know what is being referred  14 to as the ACUS ANSI IBR conference?  15 A. No, I don't.  16 Q. Then Scott Cooper forwards the  17 e-mail and says -- to Joe Bhatia.  18 Who is Joe Bhatia?  19 A. Joe Bhatia is the president and CEO  20 of ANSI.  21 Q. And he says: "Dear Joe. There are  22 a number of fronts where the IBR issues are</p>
<p style="text-align: right;">Page 250</p> <p>1 THE WITNESS: So as I mentioned  2 earlier, the webcast of the pipeline safety  3 workshop is still available online. You can  4 access it. You can listen to Emily's statement  5 and mine as well. I don't -- I don't remember  6 the specifics of Emily's position.  7 BY MR. BECKER:  8 Q. Do you know if Emily Bremer  9 advocated against making standards available  10 for free?  11 MR. FEE: Objection.  12 THE WITNESS: I don't have that  13 information. No, I do not know.  14 (Deposition Exhibit 23 was marked  15 for identification.)  16 (Deposition Exhibit 24 was marked  17 for identification.)  18 BY MR. BECKER:  19 Q. I have handed you what has been  20 marked as Exhibit 23 which is ANSI 4530 to 31,  21 as well as Exhibit 24, ANSI 4472 --  22 A. Right.</p>	<p style="text-align: right;">Page 252</p> <p>1 being played out. We have developed an  2 outreach plan to take the ANSI IBR message to  3 Congress and relevant agencies. Attached is  4 the updated outreach list. You and I have our  5 first meetings with the majority and minority  6 staff directors from the technology and  7 innovation subcommittee of health science on  8 July 27. Patty and I are meeting with lawyers  9 from ACUS and the Coast Guard to talk about IBR  10 copyright on July 23rd."  11 And then Exhibit 24 is a spreadsheet  12 that on the first page is titled: "House  13 Outreach Matrix," and then on the page  14 Bates-stamped ANSI 4478 is labeled:  15 "Administration Outreach Matrix."  16 Do you see that?  17 A. I do.  18 Q. And do you see yourself listed there  19 on Row 140, Mary Saunders. It says:  20 "Relevance is missed."  21 A. Right. Apparently I am on their  22 outreach list.</p>



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1 Q. And then on the following page, Row  
 2 140 continued, and under where it says: "Date  
 3 of meeting," it says: "11-30-11 conference  
 4 call with Mary Saunders, Henry Wixon, Gordon  
 5 Gillerman and Ajit Jillavenkatase."  
 6 A. Jillavenkatase.  
 7 Q. Pardon me.  
 8 Do you recall having that conference  
 9 call?  
 10 A. I do not.  
 11 Q. Do you have any reason to doubt that  
 12 that conference call occurred?  
 13 A. I do not.  
 14 Q. Who is Henry Wixon?  
 15 A. Henry Wixon is the general counsel  
 16 for NIST.  
 17 Q. Who is Gordon Gillerman?  
 18 A. Gordon Gillerman and Ajit  
 19 Jillavenkatase at that time were both staff  
 20 members of the standards coordination office  
 21 working for me.  
 22 Q. Do you know why ANSI would have had

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1 an outreach call to you regarding IBR issues?  
 2 MR. GRIFFIN: Objection.  
 3 MR. FEE: Objection to form.  
 4 THE WITNESS: I don't know why they  
 5 would or would not.  
 6 BY MR. BECKER:  
 7 Q. What is your understanding of the  
 8 purpose of this outreach matrix?  
 9 MR. GRIFFIN: Objection.  
 10 MR. FEE: Objection to form.  
 11 THE WITNESS: I have never seen it  
 12 so I don't know. I can't speak to -- I mean,  
 13 this is a Scott Cooper document. I don't know.  
 14 BY MR. BECKER:  
 15 Q. What is your understanding of why  
 16 ANSI would have wanted to reach out to you on  
 17 the IBR message?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection.  
 20 THE WITNESS: They might -- they  
 21 might have wanted to inform us about their Hill  
 22 meetings. I don't know.

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1 BY MR. BECKER:  
 2 Q. What are their Hill meetings?  
 3 A. The Hill meetings is what I am  
 4 talking about.  
 5 Q. The meetings with each of the  
 6 members of Congress and their staff?  
 7 A. Yes.  
 8 Q. What is your understanding of why  
 9 ANSI set up meetings with members of Congress  
 10 and their staff on this issue?  
 11 MR. GRIFFIN: Objection.  
 12 MR. FEE: Objection.  
 13 THE WITNESS: I don't know anything  
 14 more than is in this e-mail. I didn't  
 15 participate in any of these meetings and I  
 16 don't remember.  
 17 BY MR. BECKER:  
 18 Q. Bullet Point No. 3 in -- on Exhibit  
 19 23 says: "We have agreement with ACUS to put  
 20 on a late fall ACUS ANSI IBR event that would  
 21 bring in Congressional staff and the SDO  
 22 community to discuss reasonable availability.

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1 There is a brief discussion on that proposed  
 2 event attached below."  
 3 Do you know what ACUS ANSI IBR event  
 4 is being referred to there?  
 5 A. No, I didn't --  
 6 MR. GRIFFIN: Objection.  
 7 THE WITNESS: Sorry. I do not.  
 8 (Deposition Exhibit 25 was marked  
 9 for identification.)  
 10 BY MR. BECKER:  
 11 Q. I have handed you what has been  
 12 marked as Exhibit 25.  
 13 This is a document ANSI produced  
 14 Bates-stamped ANSI 8056.  
 15 In the lower e-mail on this page  
 16 titled: "For review, IBR testimony for 1/14,"  
 17 in the second paragraph, the second says -- or  
 18 the first sentence says: "Next step is to send  
 19 to the select group that Scott/Joe e-mailed  
 20 yesterday evening. Patty also proposed that we  
 21 include Mary Saunders in this review group."  
 22 Do you know what review group they

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1 were discussing?

2 A. It appears to be a group to review

3 the testimony that Patty Griffin gave before a

4 Congressional committee on January 14.

5 Q. In the e-mail above, Joe Bhatia

6 writes: "Somewhere, somehow, we should mention

7 that standards development in this country is

8 one of the earliest and most successful

9 examples of the public private partnership

10 which has benefitted our nation tremendously on

11 many fronts" - particularly, excuse me,

12 competitiveness -- I'm sorry.

13 "Competitiveness, public safety, successfully

14 commercializing American innovations globally,

15 and on and on. Congressmen particularly the

16 Republican ones should eat that up."

17 Why do you think that Joe Bhatia

18 would have suggested that Republican

19 Congressmen would be in favor of referring to a

20 public private partnership?

21 MR. GRIFFIN: Objection to form.

22 THE WITNESS: I have no insight into

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1 Joe's thinking on this matter.

2 BY MR. BECKER:

3 Q. Have you ever heard Joe Bhatia

4 suggest that -- the reference to public private

5 partnership should be made related to IBR

6 issues?

7 A. The public private partnership is

8 comprehensive. It's the public private

9 partnership in the development of voluntary

10 consensus standards.

11 Q. Do you recall any instances when Joe

12 Bhatia has suggested that referring to the

13 public private partnership would be especially

14 successful in influencing Republican

15 Congressmen?

16 A. He never made that statement to me.

17 MR. GRIFFIN: Objection.

18 BY MR. BECKER:

19 Q. What is your understanding of why

20 Joe Bhatia would have said this?

21 MR. GRIFFIN: Objection.

22 MR. FEE: Objection to form.

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1 THE WITNESS: I don't know. I

2 wasn't in on that conversation.

3 (Deposition Exhibit 26 was marked

4 for identification.)

5 BY MR. BECKER:

6 Q. I have handed you what has been

7 marked as Exhibit No. 26.

8 This is the document produced as

9 ANSI 8802 to ANSI 8805.

10 In the e-mails below the first and

11 most recent one, does this reflect an e-mail

12 correspondence that you had with -- with other

13 individuals?

14 A. Yes.

15 Q. Do you recall having this e-mail

16 correspondence?

17 A. No.

18 Q. Do you have any reason to think that

19 the e-mail correspondence is not accurate or

20 authentic?

21 A. I do not.

22 Q. In the earliest e-mail, if you turn

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1 to ANSI 8804, Patricia Griffin sends to you as

2 well as Mary McKiel an e-mail.

3 Who is Mary McKiel?

4 A. Mary McKiel at that time was the

5 standards executive for the Environmental

6 Protection Agency.

7 Q. Patricia Griffin says: "Hi Mary and

8 Mary. I hope you are doing well and

9 congratulations, Mary S on your new position."

10 What was that new position at the

11 time, do you recall?

12 A. Must be associate director for

13 management resources position.

14 Q. She goes on to say: "I wanted to

15 bring to your attention that Carl Malamud has

16 filed a declaratory judgment lawsuit Friday

17 against an ANSI accredited SDO who has sent

18 Public.Resource.Org a cease and desist letter

19 relating to IBR standard posted to Malamud's

20 site. I am going to be speaking to some

21 developers at U.S. and non-U.S. later in the

22 morning about steps others may be taking to

<p style="text-align: right;">Page 261</p> <p>1 address Malamud's activities."  2 Did you learn of steps that were  3 considered for addressing what is referred to  4 as Malamud's activities here?  5 MR. FEE: Objection.  6 THE WITNESS: I wasn't privy to  7 those conversations.  8 BY MR. BECKER:  9 Q. Ms. Griffin goes on to say: "One  10 question I will be asking is the status of the  11 U.S. Government efforts to address the  12 reasonable availability question is the  13 OMB/NARA initiative. Last I recall, OMB had  14 crafted a draft which it circulated to other  15 federal agencies for input. My understanding  16 was that a draft (either the original one or an  17 updated one) reflecting other agency comments  18 would then be available for public review at  19 some point. Do you know of any developments  20 that you could share with me (and me with other  21 SDOs currently looking into this issue)?"  22 Do you know what she is requesting</p>	<p style="text-align: right;">Page 263</p> <p>1 THE WITNESS: I don't know.  2 BY MR. BECKER:  3 Q. You then respond -- sorry.  4 Mary McKiel responds and then you  5 respond on top of that, saying: "Patty and  6 Mary, the latest version of the draft circular  7 that I have seen still has the neutral language  8 that Mary McKiel references below. I don't  9 think there is much/any interest at OMB in  10 leaning forward on this issue, that is, in  11 changing current practice dramatically."  12 What did you mean when you were  13 referring to "leaning forward?"  14 A. Changing current practice  15 dramatically.  16 Q. What do you mean by "changing  17 current practice dramatically?"  18 A. The question was with respect to  19 incorporation by reference or reasonable  20 availability, so that's what I meant. Changing  21 current practice with respect to -- in 2013,  22 and with respect to reasonable availability.</p>
<p style="text-align: right;">Page 262</p> <p>1 -- what do you understand her to be requesting  2 there?  3 MR. GRIFFIN: Objection.  4 THE WITNESS: She is asking if -- if  5 and when a draft of the revision to the OMB  6 circular -- she is asking me when and if a  7 draft of the revised circular would be  8 available for public comment which it was not  9 at that time.  10 BY MR. BECKER:  11 Q. How is it that you would know  12 whether -- at that time whether a revision to  13 the OMB circular was available for public  14 comment at that time?  15 A. If it was available for public  16 comment, it would have been posted in the  17 Federal Register so I would know about it.  18 Q. What is your understanding of why  19 Ms. Griffin would have asked you instead of  20 checking the Federal Register herself?  21 MR. GRIFFIN: Objection.  22 MR. FEE: Objection to form.</p>	<p style="text-align: right;">Page 264</p> <p>1 Q. What was the basis for your belief  2 that there wasn't much or any interest at OMB  3 in terms of changing current practice  4 dramatically?  5 A. So I think this falls under the  6 exclusion that you talked with Henry and  7 Russell Craig about. These are internal  8 government deliberations, specifically with  9 respect to the circular. I can look at the  10 letter if you want.  11 Q. And you shared your -- this  12 information with Ms. Griffin?  13 A. No. You asked me how I would know  14 and that is -- those are nonpublic aspects. I  15 did not share any nonpublic information, but  16 you asked me how I would know about it through  17 discussions with OMB. I made a high-level  18 statement.  19 MR. GRIFFIN: I have to instruct her  20 not to answer the questions given the agreement  21 that you have with DOC that we put on the  22 record at the beginning until we get</p>

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1 clarification if you need.  
 2 MR. BECKER: I understand that, but  
 3 I would like to know why it would be  
 4 permissible to discuss this with Ms. Griffin at  
 5 that time.  
 6 MR. GRIFFIN: She just said that she  
 7 didn't.  
 8 THE WITNESS: I didn't.  
 9 BY MR. BECKER:  
 10 Q. But you said that you believed that  
 11 there wasn't much or any interest at OMB in  
 12 changing current practice dramatically?  
 13 A. It was a general statement.  
 14 Q. So it's permissible to share a  
 15 general statement about internal political  
 16 deliberations, but it's not okay to share more  
 17 specific information?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection to form.  
 20 THE WITNESS: You asked me how I  
 21 knew, which leads -- which would have led me to  
 22 discuss internal government deliberations. The

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1 information I shared was not privileged.  
 2 BY MR. BECKER:  
 3 Q. What would be the distinction  
 4 between privileged and nonprivileged  
 5 information in this context?  
 6 MR. GRIFFIN: Objection.  
 7 MR. FEE: Objection.  
 8 MR. GRIFFIN: Again, I'm going to  
 9 instruct her not to answer given the agreement  
 10 you have with DOC.  
 11 MR. BECKER: I am not looking for  
 12 the specifics, but I would like to know --  
 13 MR. GRIFFIN: You are sort of coming  
 14 close to that though.  
 15 MR. BECKER: I want to know what the  
 16 basis is for the distinction that she's making.  
 17 MR. GRIFFIN: Right. And you're  
 18 going to have to talk to DOC about that as you  
 19 agreed to do in your letter.  
 20 MR. BECKER: I don't think I need to  
 21 speak with DOC to know what the basis is for  
 22 her saying that one piece of information is

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1 privileged and another piece of information is  
 2 not privileged.  
 3 MR. GRIFFIN: I'm telling you that I  
 4 think you are crossing the line on what she is  
 5 permitted pursuant to the agreement to testify  
 6 to, and I'm going to err on the side of caution  
 7 and you can discuss it with Russell Craig as  
 8 you agreed to do.  
 9 BY MR. BECKER:  
 10 Q. Ms. Saunders, was it publicly known  
 11 at that time that OMB did not have much or any  
 12 interest in changing current practice  
 13 dramatically?  
 14 MR. FEE: Objection to form.  
 15 THE WITNESS: It might have been. I  
 16 don't have any reason to -- I don't know.  
 17 BY MR. BECKER:  
 18 Q. I'm sorry, you don't have any reason  
 19 to what?  
 20 A. I don't have any -- I can't answer  
 21 that question, was it publicly known. It's  
 22 likely. OMB -- the OMB staff have

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1 conversations with quite a few people, private  
 2 sector and government.  
 3 Q. Do you not know one way or the  
 4 other?  
 5 A. I do not know one way or the other.  
 6 (Deposition Exhibit 27 was marked  
 7 for identification.)  
 8 BY MR. BECKER:  
 9 Q. I have handed you what has been  
 10 marked as Exhibit No. 27.  
 11 This is a document produced by ANSI  
 12 as 9053 to 9056.  
 13 On the first page at the bottom,  
 14 there is an e-mail from Scott Cooper to Fran  
 15 Schrotter and Patricia Griffin and it says: "I  
 16 sent a message to Mary Saunders to see if she  
 17 wanted NPC to offer its good offices for the  
 18 corner bakery SDO activities."  
 19 What -- do you know what -- what do  
 20 you understand NPC to mean there?  
 21 A. National -- I don't know. My first  
 22 thought would have been national policy

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1 committee, but that doesn't make any sense.  
 2 Q. Why doesn't that make sense?  
 3 A. It makes no sense to have the ANSI  
 4 national policy committee offer its good  
 5 offices for some bakery meeting. I don't  
 6 understand what this e-mail is meaning.  
 7 Q. Have you ever heard of the corner  
 8 bakery meetings?  
 9 A. They are -- yes, they are meetings  
 10 of Washington representatives of standards  
 11 developing organizations who get together  
 12 monthly just to share information.  
 13 Q. Do you know what the subjects of the  
 14 meetings are?  
 15 A. Well, I do now since I am an ANSI  
 16 staff, but I didn't then. I was not aware at  
 17 that point of the corner bakery meeting.  
 18 Q. Have you ever provided an office for  
 19 a corner bakery meeting?  
 20 A. No.  
 21 Q. Do you know which standards  
 22 development organizations are involved in the

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1 corner bakery meetings?  
 2 A. The -- as I mentioned, it's the  
 3 Washington reps SDOs. Some SDOs have  
 4 Washington offices, others do not. There are,  
 5 I believe about 28 individuals on the e-mail  
 6 list.  
 7 Q. What is your understanding of why  
 8 SDOs maintain Washington offices?  
 9 MR. GRIFFIN: Objection.  
 10 MR. FEE: Objection to form.  
 11 THE WITNESS: I don't have a  
 12 specific -- the same reason any nonprofit  
 13 organization or company would maintain a  
 14 Washington office. I don't have anything more  
 15 specific than that.  
 16 BY MR. BECKER:  
 17 Q. What does that mean?  
 18 MR. GRIFFIN: Objection.  
 19 MR. FEE: Objection to form.  
 20 THE WITNESS: I can't speak to the  
 21 construct of individual SDO's Washington  
 22 offices. I just know that some of them have

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1 offices with staff in Washington.  
 2 BY MR. BECKER:  
 3 Q. Is it to be able to meet with  
 4 policymakers?  
 5 MR. GRIFFIN: Objection.  
 6 MR. FEE: Objection to form.  
 7 THE WITNESS: I can't -- I can't  
 8 answer that.  
 9 (Deposition Exhibit 28 was marked  
 10 for identification.)  
 11 BY MR. BECKER:  
 12 Q. I have handed you what has been  
 13 marked as Exhibit 28.  
 14 And this is a document produced by  
 15 ANSI as ANSI 9121 to ANSI 9124.  
 16 The earliest e-mail in this chain is  
 17 an e-mail from Ms. Griffin and it says: "In  
 18 light of the discussions last week at the NPC  
 19 IPRPC and board meetings, I revamped the  
 20 proposed e-mail to the copyright group and  
 21 given the urgency of these issues, proposed  
 22 sending an e-mail along these lines out today."

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1 And then in the draft of the  
 2 copyright task group e-mail on the following  
 3 page, it says at the bottom of the second  
 4 paragraph: "Recall that in response to the  
 5 NARA Federal Register Notice, ANSI said that  
 6 'reasonable available' should not be strictly  
 7 defined using terms such as for free and to  
 8 anyone online. Rather, the definition should  
 9 encompass a broad spectrum of access options.  
 10 For example, some SDOs make certain standards  
 11 available online on a read-only basis and many  
 12 SDOs make standards available at discounts or  
 13 without charge to consumers, policymakers and  
 14 small businesses."  
 15 Do you believe that making a  
 16 standard that is incorporated by reference  
 17 available at a discount constitutes reasonably  
 18 available?  
 19 MR. GRIFFIN: Objection.  
 20 MR. FEE: Objection to form.  
 21 THE WITNESS: As I mentioned  
 22 earlier, there are many different mechanisms

Page 273	<p>1 for achieving reasonable availability. That</p> <p>2 may be one of them.</p> <p>3 BY MR. BECKER:</p> <p>4 Q. Why would SDOs -- what is your</p> <p>5 understanding of why SDOs would make standards</p> <p>6 that are incorporated by reference available at</p> <p>7 a discount to policymakers?</p> <p>8 MR. GRIFFIN: Objection.</p> <p>9 MR. FEE: Objection to form.</p> <p>10 THE WITNESS: The reference -- the</p> <p>11 specific sentence speaks to NIST makes</p> <p>12 standards at large generally available at</p> <p>13 discounts or without charge to consumers, to</p> <p>14 policymakers and small businesses. It speaks</p> <p>15 to standards generally.</p> <p>16 BY MR. BECKER:</p> <p>17 Q. Further down, on the two paragraphs</p> <p>18 down, Ms. Griffin writes: "In light of the</p> <p>19 forgoing, I would be grateful if you would send</p> <p>20 by me Friday, June 1, specific examples of what</p> <p>21 you are doing if anything to make incorporated</p> <p>22 by reference standards reasonably available."</p>	Page 275	<p>1 anything, ASME did to make standards reasonably</p> <p>2 available?</p> <p>3 MR. GRIFFIN: Objection.</p> <p>4 THE WITNESS: I do not. I have no</p> <p>5 knowledge of that.</p> <p>6 BY MR. BECKER:</p> <p>7 Q. What is your understanding of what</p> <p>8 Ms. Neiman meant by "the good work that we</p> <p>9 could include from other organizations like</p> <p>10 ASTM, NFPA and others?"</p> <p>11 MR. GRIFFIN: Objection.</p> <p>12 MR. FEE: Objection.</p> <p>13 THE WITNESS: I don't know. I</p> <p>14 wasn't the addressee on this e-mail.</p> <p>15 BY MR. BECKER:</p> <p>16 Q. Is that referring to the fact that</p> <p>17 ASTM and NFPA had their own read-only websites?</p> <p>18 MR. GRIFFIN: Objection.</p> <p>19 MR. FEE: Objection to form.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 BY MR. BECKER:</p> <p>22 Q. Does it seem to you that that's</p>
Page 274	<p>1 Are you aware of any compilation by</p> <p>2 ANSI of means that SDOs had taken to make</p> <p>3 standards reasonably available?</p> <p>4 A. No, I am not.</p> <p>5 Q. In the e-mail that follows,</p> <p>6 Elizabeth Neiman responds and says: "Hi,</p> <p>7 Patty. Thanks very much for this. Just a few</p> <p>8 typos below plus some other recommendations are</p> <p>9 highlighted. More philosophically, I am not</p> <p>10 sure though including the examples of access in</p> <p>11 our own FR response. Beyond the deadline</p> <p>12 issue, I think that it is enough for ANSI to</p> <p>13 say that there are different ways to get it</p> <p>14 done, as we have in the excerpt you included</p> <p>15 below. If we get too specific, it may look</p> <p>16 prescriptive, like, only the few examples given</p> <p>17 are ANSI-endorsed. I am thinking here of ASME,</p> <p>18 in particular, who are unlikely to give us an</p> <p>19 example and may feel slighted by all the good</p> <p>20 work that we could include from other</p> <p>21 organizations, like ASTM, NFPA and others."</p> <p>22 Do you know at that time what, if</p>	Page 276	<p>1 likely what she was referring to?</p> <p>2 MR. GRIFFIN: Objection.</p> <p>3 MR. FEE: Objection to form.</p> <p>4 THE WITNESS: It's possible.</p> <p>5 BY MR. BECKER:</p> <p>6 Q. I just want to step back a moment to</p> <p>7 Exhibit No. 26.</p> <p>8 Do you have that in front of you?</p> <p>9 A. I do.</p> <p>10 Q. On the second page, there was an</p> <p>11 e-mail from you that was responding to the</p> <p>12 earlier e-mail from Ms. Griffin that referred</p> <p>13 to the Carl Malamud SMACNA declaratory judgment</p> <p>14 lawsuit, and at the bottom of your e-mail, you</p> <p>15 say: "It would be very interesting to track</p> <p>16 the California case that Public Resource</p> <p>17 filed."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. What -- why did you think that it</p> <p>21 would be interesting to track the SMACNA</p> <p>22 lawsuit?</p>

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1 A. I don't remember. Let me look at  
 2 the e-mail to see if I can -- I don't know.  
 3 Q. Did you track the SMACNA lawsuit?  
 4 A. No, I did not.  
 5 Q. Did you track the lawsuit that ASTM,  
 6 NFPA and ASHRAE have filed against Public  
 7 Resource?  
 8 A. I did not.  
 9 Q. Have you read any of the documents  
 10 that have been filed in the lawsuit filed by  
 11 ASTM, et al., against Public Resource?  
 12 A. I have. I read the ANSI amicus  
 13 filing and I read the recent circuit court  
 14 decision, the appeal, May 11 of last year or  
 15 something like that. That's it.  
 16 Q. No other documents?  
 17 A. No.  
 18 Q. When did you read those documents?  
 19 A. Pretty close to the time that they  
 20 were published.  
 21 Q. Why did you read those documents  
 22 around the time that they were published?

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1 A. Why not? I mean, I was on -- I was  
 2 a member of the ANSI board so I think we were  
 3 all -- ANSI membership was -- was circulated a  
 4 copy of the ANSI amicus brief, so I just read  
 5 it for general -- general interest.  
 6 Q. How about the -- why did you read  
 7 the appeal decision?  
 8 A. Because as an ANSI staff member, it  
 9 was circulated to me when it was issued.  
 10 Q. Were there other filings in this  
 11 litigation that have been circulated to you?  
 12 MR. GRIFFIN: Objection.  
 13 THE WITNESS: No, not to my  
 14 knowledge.  
 15 BY MR. BECKER:  
 16 Q. Did you have any involvement in the  
 17 organization or drafting of the ANSI amicus  
 18 brief?  
 19 A. I don't remember having involvement  
 20 in the amicus brief.  
 21 (Deposition Exhibit 29 was marked  
 22 for identification.)

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1 BY MR. BECKER:  
 2 Q. I have handed you what has been  
 3 marked as Exhibit No. 29.  
 4 This document was produced by ASTM,  
 5 Bates-stamped ASTM 015659 to --  
 6 MR. FEE: Matt, you can't show her  
 7 this document unless it says on the face of the  
 8 document that she's received it as a  
 9 confidential under the protective order.  
 10 MR. BECKER: My apologies.  
 11 MR. FEE: We will just take it away  
 12 from you.  
 13 MR. GRIFFIN: I suppose I can't see  
 14 it either.  
 15 It's 5:15 now. Do you know how long  
 16 you're going to go and if it's longer, maybe we  
 17 could take a break.  
 18 MR. BECKER: It is longer, but we  
 19 can take a break. Sure. That's fine.  
 20 THE VIDEOGRAPHER: We are going off  
 21 the record. This is the end of Media Unit No.  
 22 4. The time is 5:18.

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1 (A short recess was taken.)  
 2 THE VIDEOGRAPHER: We are going back  
 3 on the record. This is the start of Media Unit  
 4 No. 5. The time is 5:37.  
 5 (Deposition Exhibit 30 was marked  
 6 for identification.)  
 7 BY MR. BECKER:  
 8 Q. Ms. Saunders, I have handed you what  
 9 has been marked as Exhibit No. 30.  
 10 What is this?  
 11 A. It's my LinkedIn page.  
 12 Q. Does this accurately reflect the  
 13 contents of your LinkedIn profile?  
 14 A. Yes.  
 15 Q. Is the information on your profile  
 16 accurate?  
 17 A. To the best of my knowledge, yes.  
 18 MR. GRIFFIN: I think we are on 29.  
 19 MR. BECKER: Excuse me. We struck  
 20 29 so this should actually be 30. So we will  
 21 leave it as 30 and we are striking 29 for the  
 22 record.

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1 BY MR. BECKER:  
 2 Q. Under ANSI vice president for  
 3 government relations and public policy, can you  
 4 please read to yourself what it says there.  
 5 A. Mary leads ANSI --  
 6 MR. GRIFFIN: No, read it to  
 7 yourself.  
 8 BY MR. BECKER:  
 9 Q. You can read it to yourself.  
 10 A. Oh, read it to myself. Okay. Fine.  
 11 Okay.  
 12 Q. Where you write: "Mary leads ANSI"  
 13 -- excuse me, actually let me just ask, have  
 14 you -- did you write this description?  
 15 A. Yes.  
 16 Q. Where you write: "Mary leads ANSI'S  
 17 efforts to advocate greater use of voluntary  
 18 consensus standards and conformance programs by  
 19 government agencies," what do you mean by  
 20 "use?"  
 21 A. I mean the same meaning that is in  
 22 the National Technology Transfer and

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1 Advancement Act and in OMB Circular A-119, use  
 2 in support of agency mission activities,  
 3 regulation, procurement and policy activities.  
 4 Q. Can you break that down a little bit  
 5 more for me, like, what you personally mean  
 6 here when you say "greater use of voluntary  
 7 consensus standards?"  
 8 MR. GRIFFIN: Objection.  
 9 BY MR. BECKER:  
 10 Q. What are the examples of use?  
 11 MR. GRIFFIN: Objection.  
 12 THE WITNESS: Agencies may use  
 13 standards as we discussed by incorporating by  
 14 reference in regulation. They may -- agencies  
 15 may use standards internally with respect to  
 16 their internal operations. Agent --  
 17 procurement agencies may use standards as part  
 18 of procurement actions. Agencies may use  
 19 standards in relationship to their policy  
 20 activities. There is a variety of different  
 21 ways of using standards.  
 22 BY MR. BECKER:

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1 Q. Do agencies enforce standards as one  
 2 of their uses?  
 3 A. Agencies enforce regulations.  
 4 Q. Do agencies enforce regulations that  
 5 incorporate standards by reference?  
 6 MR. GRIFFIN: Objection.  
 7 MR. FEE: Objection to form.  
 8 THE WITNESS: Agencies enforce  
 9 regulations which may incorporate standards by  
 10 reference.  
 11 BY MR. BECKER:  
 12 Q. Are you aware of any instances of an  
 13 agency enforcing the terms of a standard as  
 14 incorporated by reference into a regulation?  
 15 A. I'm not specifically aware of agency  
 16 enforcement activities. That is outside of my  
 17 agreement.  
 18 Q. Are you aware that U.S. federal  
 19 agencies do enforce the terms of standards as  
 20 incorporated by reference into regulations?  
 21 A. Agencies enforce regulations, some  
 22 of which incorporate standards by reference, so

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1 they enforce the regulation. That's what I'm  
 2 aware of. I don't have any specific examples  
 3 of enforcement actions by agencies.  
 4 Q. And if those regulations contain  
 5 standards incorporated by reference, do those  
 6 agencies then also enforce the terms of the  
 7 standards as incorporated?  
 8 MR. GRIFFIN: Objection.  
 9 MR. FEE: Objection to form.  
 10 THE WITNESS: I don't have direct  
 11 knowledge of how agencies enforce their  
 12 regulations so I can't speak to that.  
 13 BY MR. BECKER:  
 14 Q. You also write: "She also works  
 15 with ANSI members to create  
 16 standardization-related outreach programs to  
 17 legislators and to increase understanding of  
 18 the private sector standards community among  
 19 agencies involved in trading commerce issues."  
 20 A. Yes.  
 21 Q. What is the outreach that you are  
 22 describing there?



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1 A. So the most common form of outreach  
 2 are posting panel events on the Hill in -- at  
 3 the Longworth Building and Rayburn Building,  
 4 for example. These are open events where we --  
 5 ANSI hosts and features member organizations  
 6 talking about their standards activities and  
 7 how, in the case of the most recent event,  
 8 standards contribute to technology and  
 9 innovation supporting the nation's  
 10 infrastructure.  
 11 Those are informational events,  
 12 Congressional staff and others are invited to  
 13 attend those events. It's simply an  
 14 information-sharing activity.  
 15 Q. Does outreach legislature -- excuse  
 16 me.  
 17 Does outreach to legislators include  
 18 the suggestion of actions that they can take?  
 19 A. Not by me. ANSI is a 501(c)(3)  
 20 organization. We don't lobby. We educate, so  
 21 I don't make any recommendations about actions  
 22 that legislators might take.

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1 Q. Do you consider making a  
 2 recommendation as to what a legislator -- or  
 3 what action a legislator might take to be  
 4 lobbying?  
 5 MR. GRIFFIN: Objection.  
 6 MR. FEE: Objection to form.  
 7 THE WITNESS: I have a very narrow  
 8 definition of what is permitted under  
 9 educational activities and I adhere to that  
 10 definition.  
 11 BY MR. BECKER:  
 12 Q. Does ANSI have its own definition as  
 13 to what is permitted under educational  
 14 activities?  
 15 A. Not that is written down that I know  
 16 of.  
 17 Q. What is your definition of what is  
 18 permitted under educational activities?  
 19 A. In my personal role as the vice  
 20 president of government relations and public  
 21 policy, I provide fact-based information to  
 22 legislators. I mentioned the Hill event, just

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1 a statement of actions that are activities that  
 2 are taking place, but I don't cross the line  
 3 into making a specific recommendation for --  
 4 with respect to a piece of legislation.  
 5 Q. Does your outreach include the  
 6 suggestion that legislature -- legislation or  
 7 regulation favor the use of voluntary consensus  
 8 standards?  
 9 MR. GRIFFIN: Objection.  
 10 THE WITNESS: So as I have  
 11 mentioned, the law passed by Congress in early  
 12 -- and signed by presidential law in early  
 13 1996, directs federal agencies to rely on, to  
 14 use technical standards developed by voluntary  
 15 consensus standards organizations in conducting  
 16 their mission-related activities, so I hue to  
 17 that direction from Congress notifying  
 18 Congressional staff about the existence of the  
 19 law and the existence of OMB policy. It's a  
 20 fact-based activity.  
 21 BY MR. BECKER:  
 22 Q. Do you provide fact-based

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1 information about regulations that are suitable  
 2 for incorporation by reference?  
 3 A. No.  
 4 Q. Do you provide fact-based  
 5 information about standards that are suitable  
 6 for incorporation by reference?  
 7 MR. GRIFFIN: Objection.  
 8 THE WITNESS: No.  
 9 (Deposition Exhibit 31 was marked  
 10 for identification.)  
 11 BY MR. BECKER:  
 12 Q. I am handing you what has been  
 13 marked as Exhibit 31.  
 14 This is the document produced as  
 15 ASTM 016254 to 016265.  
 16 What is this document?  
 17 A. It's a draft meeting report of the  
 18 ANSI national policy committee meeting on -- of  
 19 October 27, 2011.  
 20 Q. Were you present at that meeting?  
 21 A. Yes. I was the chair of the  
 22 meeting.

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<p>1 Q. Does this draft meeting report                  2 appear to accurately reflect the proceedings of                  3 that meeting?                  4 A. I'm guessing that it does. I                  5 haven't looked at it but I'm sure it does.                  6 (Deposition Exhibit 32 was marked                  7 for identification.)                  8 BY MR. BECKER:                  9 Q. I have handed you what has been                  10 marked as Exhibit 32.                  11 This document was produced as ANSI                  12 1179 to ANSI 1187.                  13 What is this document?                  14 A. It's a draft meeting report of the                  15 ANSI national policy committee meeting of May                  16 21, 2012.                  17 Q. Does it accurately reflect the                  18 proceedings?                  19 A. I assume so.                  20 (Deposition Exhibit 33 was marked                  21 for identification.)                  22 BY MR. BECKER:</p>	<p>1 entitled: "Standards incorporated by reference                  2 into law, presented by Scott Cooper, vice                  3 president government relations, and Patricia                  4 Griffin, vice president and general counsel at                  5 the ANSI board meeting of May 24, 2012."                  6 Q. Is that a PowerPoint presentation                  7 that was presented at that same meeting?                  8 A. I assume so.                  9 MR. FEE: Objection to form.                  10 BY MR. BECKER:                  11 Q. Were you present at that meeting?                  12 A. Yes.                  13 (Deposition Exhibit 35 was marked                  14 for identification.)                  15 BY MR. BECKER:                  16 Q. I have handed you what's been marked                  17 as Exhibit 35.                  18 This is a document produced as ANSI                  19 02677.                  20 What is that document?                  21 A. It is a draft minutes of the ANSI                  22 board of directors meeting of May 24, 2012,</p>
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<p>1 Q. I have handed you what has been                  2 marked as Exhibit 33.                  3 This is the document produced as                  4 ANSI 0263.                  5 What is this document?                  6 A. This is a draft proposed agenda for                  7 the ANSI board of directors meeting of May 24,                  8 2012.                  9 Q. Does it accurately reflect the                  10 proceedings?                  11 A. It accurately reflects the proposed                  12 agenda for that meeting, at least the portion                  13 that is reproduced.                  14 (Deposition Exhibit 34 was marked                  15 for identification.)                  16 BY MR. BECKER:                  17 Q. I have handed you what's been marked                  18 as Exhibit 34.                  19 This document was produced as ANSI                  20 0268.                  21 What is this document?                  22 A. It's a PowerPoint presentation</p>	<p>1 specific excerpts, Agenda Items 2.2 through                  2 2.4.                  3 Q. Does that document accurately                  4 reflect the proceedings?                  5 MR. FEE: Objection to form.                  6 THE WITNESS: Without reading it, I                  7 will stipulate that it does.                  8 (Deposition Exhibit 36 was marked                  9 for identification.)                  10 BY MR. BECKER:                  11 Q. I have handed you what has been                  12 marked as Exhibit 36.                  13 This is a document produced as ANSI                  14 0680.                  15 What is this document?                  16 A. It's entitled: "Proposed agenda                  17 executive committee of ANSI board of                  18 directors," of a meeting date is March 21,                  19 2013, and it's an excerpt covering two agenda                  20 items.                  21 Q. Does this accurately reflect the                  22 proposed agenda for that meeting?</p>

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1 A. It appears to.  
 2 Q. Were you present for that meeting?  
 3 A. I was.  
 4 Q. Who prepares the agendas for these  
 5 meetings?  
 6 A. ANSI staff prepare the agendas for  
 7 these meetings.  
 8 (Deposition Exhibit 37 was marked  
 9 for identification.)  
 10 BY MR. BECKER:  
 11 Q. When you say, "staff," what staff  
 12 are you referring to?  
 13 A. The senior management team. The  
 14 lead is typically taken by ANSI's general  
 15 counsel and Patricia Griffin with input from  
 16 ANSI senior staff with respect to agenda items  
 17 that would be relevant for discussion at either  
 18 the executive committee or the board.  
 19 Q. I have handed you what has been  
 20 marked as Exhibit 37.  
 21 This is a document produced as ANSI  
 22 0685.

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1 What is this document?  
 2 A. It's a draft minutes of the  
 3 executive committee of the ANSI board of  
 4 directors meeting of March 21, 2013.  
 5 Q. That's the same meeting that the  
 6 previous document was referring to, right?  
 7 A. Yes.  
 8 Q. Does that -- does this exhibit  
 9 accurately reflect the proceedings?  
 10 A. I will stipulate that it does  
 11 without reading it.  
 12 (Deposition Exhibit 38 was marked  
 13 for identification.)  
 14 BY MR. BECKER:  
 15 Q. I have handed you what has been  
 16 marked as Exhibit 38, which has been produced  
 17 as ANSI 1527.  
 18 What is this document?  
 19 A. It's a draft meeting report of the  
 20 -- an ANSI policy committee meeting, a joint  
 21 meeting of the conformity assessment policy  
 22 committee and the national policy committee on

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1 the 14th of May, 2013.  
 2 Q. Were you present at that meeting?  
 3 A. I believe I was.  
 4 Q. Does this draft meeting report  
 5 accurately reflect the proceedings?  
 6 A. I will agree that it does. There  
 7 are two agenda items that are listed.  
 8 (Deposition Exhibit 39 was marked  
 9 for identification.)  
 10 BY MR. BECKER:  
 11 Q. I have handed you what has been  
 12 marked as Exhibit 39.  
 13 That's the document produced as ANSI  
 14 0715.  
 15 What is this document?  
 16 A. It's a draft agenda for the  
 17 executive committee of the ANSI board of  
 18 directors meeting, November 6, 2013.  
 19 Q. Were you present for that meeting?  
 20 A. Yes.  
 21 Q. Does this document accurately  
 22 reflect the proceedings?

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1 A. Yes.  
 2 (Deposition Exhibit 40 was marked  
 3 for identification.)  
 4 BY MR. BECKER:  
 5 Q. I have handed you what has been  
 6 marked as Exhibit 40.  
 7 This is the document produced as  
 8 ANSI 0729.  
 9 What is this document?  
 10 A. It's a draft minutes of the  
 11 executive committee of the ANSI board of  
 12 directors meeting, November 6, 2013.  
 13 Q. Is that the same meeting that -- as  
 14 the previous exhibit?  
 15 A. Yes.  
 16 Q. And does this document accurately  
 17 reflect the proceedings?  
 18 A. Yes.  
 19 (Deposition Exhibit 41 was marked  
 20 for identification.)  
 21 BY MR. BECKER:  
 22 Q. I have handed you what has been

Page 297	<p>1 marked as Exhibit 41.</p> <p>2 This is a document produced as ANSI</p> <p>3 0033.</p> <p>4 What is this document?</p> <p>5 A. It's a copy of a PowerPoint</p> <p>6 presentation entitled: "Discussion on changes</p> <p>7 to the Office of Management and Budget, OMB</p> <p>8 Circular A-119 presented by Patricia Griffin</p> <p>9 March 6, 2014."</p> <p>10 Q. Were you present for that</p> <p>11 presentation on March 6, 2014?</p> <p>12 A. Let's see. It's a webinar. I see.</p> <p>13 I was -- I did participate in the webinar.</p> <p>14 Yes.</p> <p>15 Q. Does -- is this document, Exhibit</p> <p>16 41, accurate and authentic?</p> <p>17 A. I believe so.</p> <p>18 (Deposition Exhibit 42 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. BECKER:</p> <p>21 Q. I have handed you what has been</p> <p>22 marked as Exhibit 42.</p>	Page 299	<p>1 standards activities presented at the ANSI</p> <p>2 executive committee meeting by Scott Cooper,</p> <p>3 July 24, 2014."</p> <p>4 Q. Does this document correspond to the</p> <p>5 same meeting that you said that you were</p> <p>6 present for in the previous exhibit?</p> <p>7 A. Yes.</p> <p>8 Q. Is this Exhibit 43 accurate and</p> <p>9 authentic?</p> <p>10 A. It appears to be. It's not my</p> <p>11 presentation.</p> <p>12 Q. Did you witness that presentation?</p> <p>13 A. I must have since I was at the</p> <p>14 meeting.</p> <p>15 (Deposition Exhibit 44 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. BECKER:</p> <p>18 Q. I have handed you what has been</p> <p>19 marked as Exhibit 44.</p> <p>20 This document was produced as ANSI</p> <p>21 0783.</p> <p>22 What is this document?</p>
Page 298	<p>1 This is a document produced as ANSI</p> <p>2 0771.</p> <p>3 What is this document?</p> <p>4 A. It's a draft agenda of the executive</p> <p>5 committee of the ANSI board of directors</p> <p>6 meeting, July 24, 2014.</p> <p>7 Q. Were you present for that meeting?</p> <p>8 A. Yes.</p> <p>9 Q. Does this exhibit accurately reflect</p> <p>10 the agenda for that meeting?</p> <p>11 A. Agenda Item 2.1. It's the only one</p> <p>12 reproduced.</p> <p>13 (Deposition Exhibit 43 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. BECKER:</p> <p>16 Q. I have handed you what has been</p> <p>17 marked Exhibit 43.</p> <p>18 This is a document produced as ANSI</p> <p>19 0776.</p> <p>20 What is this document?</p> <p>21 A. It's a copy of a PowerPoint</p> <p>22 presentation entitled: "Federal engagement and</p>	Page 300	<p>1 A. Draft minutes of the executive</p> <p>2 committee meeting of the ANSI board of</p> <p>3 directors on July 24, 2014.</p> <p>4 Q. Were you present for that meeting?</p> <p>5 A. Yes.</p> <p>6 Q. Does that document accurately</p> <p>7 reflect the proceedings?</p> <p>8 A. Yes.</p> <p>9 (Deposition Exhibit 45 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. BECKER:</p> <p>12 Q. I have handed you what has been</p> <p>13 marked as Exhibit No. 45.</p> <p>14 This is a document produced as ANSI</p> <p>15 0791.</p> <p>16 What is this document?</p> <p>17 A. Draft minutes of the executive</p> <p>18 committee meeting of the ANSI board of</p> <p>19 directors, November 19, 2014.</p> <p>20 Q. Were you present for that meeting?</p> <p>21 A. Yes.</p> <p>22 Q. Does this document accurately</p>

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1 reflect the proceedings?  
 2 A. With respect to Agenda Item 1.2,  
 3 approval of the agenda, yes.  
 4 Q. Is there anything inaccurate in that  
 5 document?  
 6 A. Not to my knowledge.  
 7 Q. Have you discussed the certiorari  
 8 petition by the State of Georgia to the Supreme  
 9 Court regarding Georgia's litigation with  
 10 Public Resource?  
 11 A. Have I discussed it?  
 12 Q. Yes.  
 13 A. No.  
 14 MR. GRIFFIN: Objection.  
 15 BY MR. BECKER:  
 16 Q. Have you discussed that case?  
 17 MR. GRIFFIN: Objection.  
 18 THE WITNESS: I haven't discussed  
 19 the case.  
 20 (Deposition Exhibit 46 was marked  
 21 for identification.)  
 22 BY MR. BECKER:

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1 Q. I have handed you what's been  
 2 produced by your attorney in response to the  
 3 requests for production that were delivered to  
 4 you along with the subpoena that you are  
 5 responding to today.  
 6 Do you recognize these documents?  
 7 A. Yes.  
 8 Q. These are the documents produced as  
 9 SAU 1 to 162, and it -- along with the cover  
 10 letter from your -- from the law firm of your  
 11 attorney; is that correct?  
 12 A. Yes.  
 13 Q. So did you -- were you the one who  
 14 gathered the documents that are produced as  
 15 Exhibit 46?  
 16 A. Yes.  
 17 Q. Are there -- let's see.  
 18 How did you go about gathering the  
 19 documents to produce for Exhibit 46?  
 20 A. I searched my e-mail files and my  
 21 hard copy files for relevant -- and my notes  
 22 for relevant information.

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1 Q. Could you please turn to SAU 004.  
 2 A. Yes.  
 3 Q. This is an e-mail between you and  
 4 someone at the FAA; is that correct?  
 5 A. That's correct.  
 6 Q. Is this e-mail you produced  
 7 accurate?  
 8 A. Yes.  
 9 Q. The individual at the FAA -- is that  
 10 the Federal Aviation Administration?  
 11 A. That's correct.  
 12 Q. He says in his e-mail towards the  
 13 end of his e-mail: "The portal description  
 14 says that these documents are accessible if  
 15 they are referenced in the C.F.R.s. In most  
 16 cases, the references are in official advisory  
 17 circulars, guidance documents to the rules in  
 18 the C.F.R.s or in policy documents used in  
 19 conjunction with the C.F.R.s. Do these  
 20 references count?"  
 21 And your response in the second  
 22 paragraph says that: "Standards referenced in

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1 advisory circulars and/or policy documents are  
 2 not accessible via the IBR portal."  
 3 Why is it that those documents are  
 4 not accessible via the IBR portal?  
 5 A. The IBR portal specifically focuses  
 6 on standards incorporated as referenced in the  
 7 Code of Federal Regulations.  
 8 Q. Are these -- let's see.  
 9 Could you please turn to SAU 090.  
 10 A. Yes.  
 11 Q. Is this your handwriting?  
 12 A. It is.  
 13 Q. And in this and the following pages  
 14 through SAU 100, what is this that you are  
 15 writing about?  
 16 MR. GRIFFIN: Objection.  
 17 THE WITNESS: So I attended a  
 18 meeting on April 18, 2018, of the pipeline --  
 19 pipeline standards developing organization  
 20 coordinating committee.  
 21 BY MR. BECKER:  
 22 Q. And what was discussed at that

<p style="text-align: right;">Page 305</p> <p>1 meeting?</p> <p>2 A. So the meeting included the</p> <p>3 organizations listed in my notes as well as</p> <p>4 representatives of the Department of</p> <p>5 Transportation's public -- Pipeline and</p> <p>6 Hazardous Materials Safety Administration. It</p> <p>7 is a standing committee that the DOT has</p> <p>8 created.</p> <p>9 Information was exchanged on what</p> <p>10 standards are currently under development by</p> <p>11 these organizations.</p> <p>12 You want me to read my notes?</p> <p>13 Q. Sure.</p> <p>14 MR. GRIFFIN: Objection. You want</p> <p>15 her to read the entire document?</p> <p>16 MR. BECKER: Well, I just want to</p> <p>17 know what the substance of the discussion was.</p> <p>18 MR. GRIFFIN: I think he means to</p> <p>19 review it and see if you can summarize them.</p> <p>20 THE WITNESS: As I remember, it was</p> <p>21 a general information session, the various</p> <p>22 organizations updated the DOT folks on their</p>	<p style="text-align: right;">Page 307</p> <p>1 agreed to contact staff of these Congress</p> <p>2 people to set up informational meetings.</p> <p>3 Contacts were only made actually</p> <p>4 with the House administration committee</p> <p>5 members. No other contacts were made.</p> <p>6 Q. Who prepared this document?</p> <p>7 A. Alec French who is an outside</p> <p>8 consultant to the National Fire Protection</p> <p>9 Association.</p> <p>10 Q. Alec French is at Thorsen French</p> <p>11 Advocacy; is that correct?</p> <p>12 A. I believe so.</p> <p>13 Q. If you turn to SAU 155.</p> <p>14 A. Yes.</p> <p>15 Q. Is that an e-mail from Alec French</p> <p>16 that is attaching the lobbying assignment</p> <p>17 documents that we just discussed --</p> <p>18 MR. GRIFFIN: Objection to form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. BECKER:</p> <p>21 Q. -- as well as a draft of the</p> <p>22 copyright protection for codes and standards</p>
<p style="text-align: right;">Page 306</p> <p>1 current standards activities. I spoke about</p> <p>2 the IBR portal and ANSI accreditation of SDOs</p> <p>3 generally.</p> <p>4 BY MR. BECKER:</p> <p>5 Q. Could you please turn to -- towards</p> <p>6 the end of this compilation of papers.</p> <p>7 Could you please turn to SAU 157,</p> <p>8 very close to the end.</p> <p>9 A. Ah, yes.</p> <p>10 Q. This is a document titled:</p> <p>11 "Lobbying assignments for SDO education</p> <p>12 outreach."</p> <p>13 What is this document referring to?</p> <p>14 A. Oxymoron. These are -- it's</p> <p>15 referring to members of the House</p> <p>16 administration committee and you can see</p> <p>17 members of the House oversight and reform</p> <p>18 committee and House judiciary. It's a very</p> <p>19 long list, and individual staff representatives</p> <p>20 of government relations representatives, in my</p> <p>21 case of ANSI, and in other cases of specific</p> <p>22 SDOs, agreed to -- it's an inaccurate title,</p>	<p style="text-align: right;">Page 308</p> <p>1 document as well as -- excuse me. No, just</p> <p>2 those two documents?</p> <p>3 MR. GRIFFIN: Objection.</p> <p>4 THE WITNESS: As I said, the title</p> <p>5 of the attachment is inaccurate. I did not</p> <p>6 engage in any -- we did not -- the group did</p> <p>7 not engage in any lobbying activities that I</p> <p>8 participated in.</p> <p>9 BY MR. BECKER:</p> <p>10 Q. Is Thorsen French Advocacy a</p> <p>11 lobbying organization?</p> <p>12 MR. GRIFFIN: Objection.</p> <p>13 THE WITNESS: I have no idea.</p> <p>14 BY MR. BECKER:</p> <p>15 Q. Do you know whether anyone</p> <p>16 instructed Mr. French about lobbying</p> <p>17 restrictions on 501(c)(3) organizations?</p> <p>18 A. I have no idea.</p> <p>19 Q. Turning to SAU 161.</p> <p>20 A. Yes.</p> <p>21 Q. Is this an e-mail to you -- excuse</p> <p>22 me, an e-mail from you to Alice Yates and</p>

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1 others?  
 2 MR. GRIFFIN: Objection.  
 3 THE WITNESS: No. On 161?  
 4 BY MR. BECKER:  
 5 Q. Excuse me, you are right. This is  
 6 from --  
 7 A. It's an e-mail from Alice Yates to  
 8 me.  
 9 Q. Yes, to you. And does this e-mail  
 10 contain the attachment that -- the following  
 11 page SAU 162?  
 12 A. Yes.  
 13 Q. What is that document?  
 14 A. It's a one-pager providing  
 15 fact-based information on the importance of  
 16 copyright protection for codes and standards.  
 17 Q. Did anyone object to the  
 18 distribution of this document or contacting  
 19 individuals in government as potentially being  
 20 lobbying?  
 21 MR. FEE: Objection to form.  
 22 THE WITNESS: I'm not clear where

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1 you're going with this. Did anyone object?  
 2 BY MR. BECKER:  
 3 Q. Did anybody object to this document  
 4 as being impermissible lobbying?  
 5 MR. FEE: Objection to form.  
 6 THE WITNESS: This is not a lobbying  
 7 document. I shared this with ANSI, ANSI's  
 8 general counsel as well as the other senior  
 9 staff. It's a fact-based statement of -- it's  
 10 a fact-based statement, it's not a lobbying  
 11 document.  
 12 BY MR. BECKER:  
 13 Q. Did anybody object to the document  
 14 titled: "Lobbying assignments," on the basis  
 15 that you used the word "lobbying?"  
 16 MR. FEE: Objection to form.  
 17 THE WITNESS: I don't think anybody  
 18 was paying that much attention to the title of  
 19 the attachment. As I said, it's not -- the  
 20 purpose was not lobbying.  
 21 MR. BECKER: With that, feel free to  
 22 ask your questions. I have concluded.

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1 MR. FEE: I think it will be best if  
 2 we take just a two or three-minute break.  
 3 MR. BECKER: Sure.  
 4 THE VIDEOGRAPHER: We are going off  
 5 the record. This is the end of Media Unit No.  
 6 5. The time is 6:20.  
 7 (A short recess was taken.)  
 8 THE VIDEOGRAPHER: We are going back  
 9 on the record. This is the start of Media Unit  
 10 No. 6. The time is 6:28.  
 11 EXAMINATION BY COUNSEL FOR ASTM INTERNATIONAL  
 12 BY MR. FEE:  
 13 Q. I just have a few questions for you.  
 14 A. No problem.  
 15 Q. I want to ask you primarily  
 16 questions about your time at NIST and the  
 17 positions that you took on behalf of NIST  
 18 during your employment there. Okay?  
 19 A. Yes.  
 20 Q. So during the time that you were at  
 21 NIST, did NIST have a position as to whether or  
 22 not the standards development organization's

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1 development of standards was a benefit to  
 2 society?  
 3 MR. BECKER: Object to form.  
 4 THE WITNESS: Yes. NIST doesn't  
 5 institute, felt that the activities of the  
 6 standards development organizations are a  
 7 benefit -- do benefit society.  
 8 BY MR. FEE:  
 9 Q. Can you identify some of the  
 10 benefits that NIST believed were -- arose out  
 11 of the standards development organization's  
 12 developments?  
 13 MR. BECKER: Object to form.  
 14 THE WITNESS: So a primary  
 15 contribution of the standards developing  
 16 organizations is to convene a wide range of  
 17 stakeholders in a particular technical activity  
 18 and to manage the process by which those  
 19 volunteers collaborate on the development of  
 20 voluntary standards. In many cases, those  
 21 standards are relevant and help protect public  
 22 health, safety, security and the environment.

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1 BY MR. FEE:  
 2 Q. Why did NIST believe it was  
 3 important to have a wide range of interests  
 4 participating in the development process as  
 5 opposed to just having industry regulators?  
 6 MR. BECKER: Object to form.  
 7 THE WITNESS: So as the national  
 8 measurement institute for the United States and  
 9 also with NIST's broader responsibilities given  
 10 to the institute by Congress under the National  
 11 Technology Transfer and Advancement Act, the  
 12 institute felt strongly that bringing in the  
 13 largest -- a large range of interested and  
 14 affected stakeholders was a best practice way  
 15 to produce robust documents that would meet the  
 16 broadest range of needs. In fact, NIST  
 17 followed -- follows still that practice in its  
 18 own activities.  
 19 BY MR. FEE:  
 20 Q. During your time at NIST, did you  
 21 become aware of the fact that it cost money to  
 22 develop these standards?

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1 A. Yes, I was aware of the fact that it  
 2 is a costly endeavor to support the  
 3 infrastructure that enables the development of  
 4 voluntary consensus standards.  
 5 Q. Do you have an understanding based  
 6 on your time at NIST, as to how standards  
 7 development organizations fund their  
 8 development activities?  
 9 A. Generally speaking, yes.  
 10 MR. BECKER: Object to form.  
 11 THE WITNESS: I am not familiar with  
 12 the business model -- specific business model  
 13 for individual standards developers.  
 14 BY MR. FEE:  
 15 Q. Were you aware of the fact that many  
 16 SDOs relied on copyright protection as part of  
 17 their method for funding their development  
 18 activities?  
 19 MR. BECKER: Object to form.  
 20 THE WITNESS: Yes, I'm aware of that  
 21 fact.  
 22 BY MR. FEE:

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1 Q. Did NIST have a position during the  
 2 time that you were there as to whether or not  
 3 it was appropriate for standards development  
 4 organizations to fund their operations at least  
 5 in part through the sale and licensing of  
 6 copyrighted documents?  
 7 MR. BECKER: Object to form.  
 8 THE WITNESS: I don't remember NIST  
 9 taking a position one way or the other on that.  
 10 BY MR. FEE:  
 11 Q. Does ANSI have a position with  
 12 respect to that?  
 13 MR. BECKER: Object to form.  
 14 THE WITNESS: ANSI strongly supports  
 15 the current private sector model of standards  
 16 development in the United States.  
 17 BY MR. FEE:  
 18 Q. Does that include support for the  
 19 ability to fund standards development through  
 20 the use of copyrights on the standard at issue?  
 21 MR. BECKER: Object to form.  
 22 THE WITNESS: Yes, that's an ANSI

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1 position.  
 2 BY MR. FEE:  
 3 Q. During the time that you were at  
 4 NIST, did the federal government have the  
 5 ability to write all the standards that were  
 6 adopted or incorporated by reference if there  
 7 were not standards development organizations  
 8 running those standards?  
 9 MR. BECKER: Object to form.  
 10 THE WITNESS: So in my personal  
 11 opinion, no, and -- in my personal opinion, no,  
 12 federal agencies did not and do not have the  
 13 capacity, the technical capacity or the  
 14 administrative capacity to develop all the  
 15 standards that they would need to carry out  
 16 their mission responsibilities.  
 17 BY MR. FEE:  
 18 Q. And is that belief based upon the  
 19 work that you did at NIST?  
 20 MR. BECKER: Object to form.  
 21 THE WITNESS: Yes. Pursuant to the  
 22 direction from Congress to federal agencies



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1 under the National Technology Transfer and  
 2 Advancement Act, we at NIST had several -- had  
 3 interactions with federal agencies and were  
 4 very cognizant of the limited technical  
 5 resources, the limited budget resources and the  
 6 value of relying on the private sector that led  
 7 to the standardization system.  
 8 BY MR. FEE:  
 9 Q. During the time that you were at  
 10 NIST, did NIST take any positions with respect  
 11 to whether or not incorporation by reference  
 12 should respect copyright protection?  
 13 A. No.  
 14 Q. During the time you were at NIST,  
 15 were you aware of any other government agencies  
 16 taking the position on that front?  
 17 A. No.  
 18 MR. BECKER: Object to form.  
 19 BY MR. FEE:  
 20 Q. Do you know if the OMB A-119 takes  
 21 any position with respect to whether government  
 22 agencies should respect copyrights of standards

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1 development organizations?  
 2 MR. BECKER: Object to form.  
 3 THE WITNESS: Beginning with the  
 4 1998 version of the OMB Circular A-119, which  
 5 is the first one with which I am familiar, all  
 6 versions pursuant -- succeeding versions have  
 7 directed agencies to respect the copyrights of  
 8 the standards developing organizations.  
 9 BY MR. FEE:  
 10 Q. Are you familiar with 1 C.F.R. Part  
 11 51?  
 12 A. No. Does it have a title?  
 13 Q. Yeah. It's the Office of Federal  
 14 Register's regulation with respect to  
 15 incorporated by reference.  
 16 A. Yes, I am familiar with it.  
 17 Q. Do you know if the Office of Federal  
 18 Register's regulations with respect to  
 19 incorporation by reference, take the position  
 20 with respect to whether or not copyrights  
 21 should be terminated upon incorporation by  
 22 reference?

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1 MR. BECKER: Object to form.  
 2 THE WITNESS: I believe the  
 3 regulations as well as the related IBR handbook  
 4 direct agencies to respect the copyrights of  
 5 standards developing organizations.  
 6 BY MR. FEE:  
 7 Q. During the time that you were at  
 8 NIST, were you involved in any discussion with  
 9 either the OMB or OFR with respect to the issue  
 10 of copyright protection for standards that are  
 11 incorporated by reference?  
 12 A. I was involved in discussions with  
 13 OMB, the office of international -- information  
 14 and regulatory affairs and with representatives  
 15 of the Office of the Federal Register about --  
 16 about the policy of incorporation by reference.  
 17 Q. Did you support OMB and OFR's  
 18 positions with respect to protection of  
 19 copyrighted works after incorporation by  
 20 reference?  
 21 MR. BECKER: Object to form.  
 22 THE WITNESS: Yes, and that was the

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1 Commerce Department's position as well.  
 2 BY MR. FEE:  
 3 Q. During the time that you were at  
 4 NIST, did NIST take any positions with respect  
 5 to whether or not reasonable accessibility  
 6 required free online, ability to print and save  
 7 standards incorporated by reference?  
 8 A. We -- the institute did not take a  
 9 position.  
 10 Q. Are you aware of any government  
 11 agencies that took a position with respect to  
 12 that issue during the time that you were at  
 13 NIST?  
 14 MR. BECKER: Object to form.  
 15 THE WITNESS: No.  
 16 BY MR. FEE:  
 17 Q. Are you aware of any government  
 18 agency that have ever required free online  
 19 access, including the ability to print and  
 20 download in order to be deemed reasonably  
 21 accessible under the Freedom of Information  
 22 Act?

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1 MR. BECKER: Object to form.  
 2 THE WITNESS: No, I'm not aware of  
 3 any.  
 4 BY MR. FEE:  
 5 Q. During the time that you were on the  
 6 ANSI board as -- you're acting on behalf of  
 7 NIST, correct?  
 8 A. That's correct.  
 9 Q. Did you, on behalf of NIST, express  
 10 any objections to the positions that ANSI took  
 11 with respect to copyrightability of standards  
 12 after they become incorporated by reference?  
 13 A. I did not.  
 14 Q. To the best of your recollection,  
 15 did you agree with the positions that ANSI took  
 16 with respect to the need for copyright  
 17 protection after incorporation by reference?  
 18 A. Yes, I did.  
 19 Q. And you were doing that on behalf of  
 20 NIST?  
 21 A. That's correct.  
 22 MR. BECKER: I will object to form

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1 to that last one.  
 2 BY MR. FEE:  
 3 Q. Were you doing that on behalf of  
 4 NIST?  
 5 MR. BECKER: Object to form.  
 6 THE WITNESS: Yes.  
 7 BY MR. FEE:  
 8 Q. Okay. Are you aware of any instance  
 9 in which an individual was unable to access an  
 10 ASTM standard?  
 11 A. No, I am not aware of an instance.  
 12 Q. Are you aware of any instance when  
 13 an individual was unable to access an NFPA  
 14 standard?  
 15 A. No.  
 16 Q. Are you aware of any instance when  
 17 an individual was unable to access an ASHRAE  
 18 standard?  
 19 A. No, I am not.  
 20 MR. FEE: I have no other questions.  
 21 MR. BECKER: I would just like to do  
 22 a quick redirect on that.

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1 MR. GRIFFIN: Okay.  
 2 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT  
 3 BY MR. BECKER:  
 4 Q. Ms. Saunders, prior to -- when Mr.  
 5 Fee started talking to you at 6:28 today, were  
 6 you aware of any of the subjects that Mr. Fee  
 7 might ask you in the past several minutes since  
 8 he first began questioning you?  
 9 A. No.  
 10 Q. You said that it cost money to  
 11 develop standards, correct?  
 12 A. Yes.  
 13 Q. Do only SDOs pay those costs to  
 14 develop a standard?  
 15 MR. FEE: Objection to form.  
 16 THE WITNESS: SDOs bear the cost of  
 17 maintaining the infrastructure, including IT  
 18 infrastructure and organizational  
 19 infrastructure, staff, et cetera, to enable the  
 20 development of standards. That's an expense on  
 21 the part of SDOs.  
 22 BY MR. BECKER:

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1 Q. Do the individuals who participate  
 2 in the development of standards bear costs in  
 3 order to develop those standards?  
 4 A. So it varies based on the interest  
 5 category in which the -- in which the  
 6 participants are categorized. I mentioned many  
 7 standards developing organizations maintained  
 8 low or zero participation fees for the  
 9 volunteers, but volunteers or their home --  
 10 and/or their home organizations will of course  
 11 bear the cost of the travel of the staff to  
 12 participate in a technical committee meeting  
 13 when that travel is necessary.  
 14 Q. And those costs might also include  
 15 hotel or accommodation costs as well, correct?  
 16 A. It's possible, yes.  
 17 Q. And those costs might also involve  
 18 time off of their job and other things like  
 19 that, correct?  
 20 MR. FEE: Objection to form.  
 21 THE WITNESS: So the costs of the  
 22 existing private sector-led standards

<p style="text-align: right;">Page 325</p> <p>1 development system are shared by all of the 2 participants in the system. The standards 3 developing organizations as I mentioned bear a 4 significant share of the cost and the various 5 participants across a broad range of 6 stakeholders also bear some share of those 7 costs as well, distributed across a large range 8 of interested individuals and organizations. 9 BY MR. BECKER: 10 Q. Companies pay costs for their 11 employees to participate in standards 12 development, correct? 13 MR. GRIFFIN: Objection. 14 MR. FEE: Objection. 15 THE WITNESS: Companies have an -- 16 that have an interest in standards because 17 those standards are relevant to their business 18 models in either domestic or global 19 competitiveness, they find that that's a 20 business expense that is relevant for 21 companies. 22 BY MR. BECKER:</p>	<p style="text-align: right;">Page 327</p> <p>1 MR. FEE: Objection to form. 2 THE WITNESS: I actually don't -- 3 I'm not familiar with how universities fund or 4 do not fund their participants. I'm only 5 familiar with the government agencies and 6 company representatives. 7 BY MR. BECKER: 8 Q. Do the participants who develop the 9 standards receive any of the proceeds of the 10 sales of those standards? 11 MR. FEE: Objection to form. 12 THE WITNESS: No. They are not the 13 copyright owner. 14 BY MR. BECKER: 15 Q. Is that the sole determinant of who 16 should receive the proceeds? 17 MR. FEE: Objection to form. 18 MR. GRIFFIN: Objection. 19 THE WITNESS: In my experience, the 20 participants in voluntary standards development 21 process do not receive a share of the proceeds 22 from the sale and licensing of those documents.</p>
<p style="text-align: right;">Page 326</p> <p>1 Q. Governments pay costs for their 2 employees who participate in the development of 3 those standards, correct? 4 A. Government -- 5 MR. GRIFFIN: Objection. 6 MR. FEE: Objection to form. 7 THE WITNESS: Government agencies do 8 support their technical staff participating in 9 standards development. 10 BY MR. BECKER: 11 Q. That's at both the federal and state 12 level, correct? 13 A. I can't -- 14 MR. GRIFFIN: Object to form. 15 MR. FEE: Objection to form. 16 THE WITNESS: -- speak to the state 17 level. 18 BY MR. BECKER: 19 Q. Academics or their institutions pay 20 costs for the academics to participate in 21 standards development, correct? 22 MR. GRIFFIN: Objection.</p>	<p style="text-align: right;">Page 328</p> <p>1 BY MR. BECKER: 2 Q. Even though they bear part of the 3 costs for the development of those documents? 4 MR. GRIFFIN: Objection. 5 MR. FEE: Objection to form. 6 THE WITNESS: As I said, the cost is 7 borne across the entire private sector-led 8 system, it is widely distributed. 9 BY MR. BECKER: 10 Q. You testified that SDOs have a wide 11 range of volunteer stakeholders and that they 12 manage the process by which -- sorry, one 13 second, excuse me. 14 You testified that SDOs have a wide 15 range of volunteers or stakeholders and that 16 they manage the process by which those people 17 collaborate; is that correct? 18 MR. GRIFFIN: Objection. 19 MR. FEE: Objection to form. 20 THE WITNESS: Can you clarify what 21 you mean by "manage the process by which they 22 collaborate."</p>

Page 329	<p>1 BY MR. BECKER:</p> <p>2 Q. Do SDOs manage the collaboration</p> <p>3 between individuals in -- in developing</p> <p>4 standards?</p> <p>5 MR. GRIFFIN: Objection to form.</p> <p>6 MR. FEE: Objection to form.</p> <p>7 THE WITNESS: ANSI-accredited SDOs,</p> <p>8 I can speak to from personal experience, manage</p> <p>9 a process which adheres to the ANSI essential</p> <p>10 requirements which are also reflected in the</p> <p>11 World Trade Organization's technical barriers</p> <p>12 to trade agreement, so that -- those processes</p> <p>13 are open to all materially interested and</p> <p>14 affected stakeholders.</p> <p>15 There is a policy of seeking</p> <p>16 balance, ensuring lack of dominance, ensuring</p> <p>17 that there are dispute settlement procedures</p> <p>18 and reaching consensus.</p> <p>19 BY MR. BECKER:</p> <p>20 Q. You had said just earlier that SDOs</p> <p>21 managed the process by which volunteers</p> <p>22 collaborate; is that correct?</p>	Page 331	<p>1 MR. FEE: Objection to form.</p> <p>2 THE WITNESS: That activity includes</p> <p>3 the process of developing the standard from</p> <p>4 start to finish and participating in both -- as</p> <p>5 the document moves from stage to stage. I</p> <p>6 can't speak to the details of whether federal</p> <p>7 agencies staff actually put pen to paper.</p> <p>8 BY MR. BECKER:</p> <p>9 Q. Do state and municipal governments</p> <p>10 also send employees to participate in the</p> <p>11 development of standards?</p> <p>12 MR. GRIFFIN: Objection.</p> <p>13 MR. FEE: Objection to form.</p> <p>14 THE WITNESS: I have no knowledge of</p> <p>15 the state and municipal level activities.</p> <p>16 MR. BECKER: Okay. All set. Thank</p> <p>17 you.</p> <p>18 MR. FEE: I actually have one more</p> <p>19 question.</p> <p>20 FURTHER EXAMINATION BY COUNSEL FOR ASTM</p> <p>21 INTERNATIONAL</p> <p>22 BY MR. FEE:</p>
Page 330	<p>1 MR. GRIFFIN: Objection.</p> <p>2 MR. FEE: Objection to form.</p> <p>3 THE WITNESS: Did I say that</p> <p>4 specifically?</p> <p>5 BY MR. BECKER:</p> <p>6 Q. That was my recollection.</p> <p>7 MR. GRIFFIN: Objection. That was</p> <p>8 the question.</p> <p>9 BY MR. BECKER:</p> <p>10 Q. Did those volunteers include U.S.</p> <p>11 Government employees?</p> <p>12 MR. GRIFFIN: Objection.</p> <p>13 MR. FEE: Objection to form.</p> <p>14 THE WITNESS: In specific cases</p> <p>15 where the standards development activity or the</p> <p>16 -- either a new standard or the maintenance of</p> <p>17 a standard has a direct -- is of a direct</p> <p>18 interest to a particular agency, the agency may</p> <p>19 assign staff to participate in that activity.</p> <p>20 BY MR. BECKER:</p> <p>21 Q. And does that activity include the</p> <p>22 drafting of standards?</p>	Page 332	<p>1 Q. Can you turn to Saunders Exhibit 1,</p> <p>2 please, the subpoena.</p> <p>3 A. Yes.</p> <p>4 Q. I want you to look at Exhibit A</p> <p>5 which is this -- this issue in this case.</p> <p>6 A. Yes.</p> <p>7 Q. My question is: Do you have any</p> <p>8 knowledge as to whether any government employee</p> <p>9 played any role in any of the standards listed</p> <p>10 in Exhibit A?</p> <p>11 A. I do not.</p> <p>12 MR. FEE: Okay. That's the only</p> <p>13 question I had.</p> <p>14 MR. GRIFFIN: Thank you all.</p> <p>15 MR. BECKER: Thank you.</p> <p>16 THE VIDEOGRAPHER: We are off the</p> <p>17 record at 6:47 p.m. This concludes today's</p> <p>18 testimony given by Mary Saunders. The total</p> <p>19 number of media units used was six and will be</p> <p>20 retained by Veritext Legal Solutions.</p> <p>21 (Whereupon, the proceeding was</p> <p>22 concluded at 6:47 p.m.)</p>

1  
2 I declare under penalty of perjury  
3 under the laws that the foregoing is  
4 true and correct.  
5  
6 Executed on \_\_\_\_\_, 20\_\_\_\_,  
7 at \_\_\_\_\_, \_\_\_\_\_.  
8  
9  
10 \_\_\_\_\_  
11 MARY SAUNDERS  
12  
13  
14 SUBSCRIBED AND SWORN TO BEFORE ME  
15  
16 THIS \_\_\_\_DAY OF \_\_\_\_\_, 2019.  
17  
18 \_\_\_\_\_  
19 (NOTARY PUBLIC) MY COMMISSION EXPIRES:  
20  
21  
22

1 CERTIFICATE OF NOTARY PUBLIC  
2  
3 I, Bonnie L. Russo, the officer before  
4 whom the foregoing deposition was taken, do  
5 hereby certify that the witness whose testimony  
6 appears in the foregoing deposition was duly  
7 sworn by me; that the testimony of said witness  
8 was taken by me in shorthand and thereafter  
9 reduced to computerized transcription under my  
10 direction; that said deposition is a true  
11 record of the testimony given by said witness;  
12 that I am neither counsel for, related to, nor  
13 employed by any of the parties to the action in  
14 which this deposition was taken; and further,  
15 that I am not a relative or employee of any  
16 attorney or counsel employed by the parties  
17 hereto, nor financially or otherwise interested  
18 in the outcome of the action.  
19  
20  
21 \_\_\_\_\_  
22 Notary Public in and for  
the District of Columbia  
My Commission expires: June 30, 2020

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