

JON CANNON: Good afternoon, everyone. I hope you've had a chance to check in on the program this morning, which was great, very informative and insightful. Everybody's got lunch who wants it. That's good. So I'm Jon Cannon, I teach at the law school, and my job today is a pleasurable one to introduce my good friend Avi Garbo, who is a prominent member of the environmental law and policy community, loosely defined, and has been for many years.

Avi is a graduate of this law school. He is a classmate. A law classmate and contemporary of Jim Ryan, just to make all the connections that might be relevant or interesting to folks here. I want to say to those of you who are in the state of being law students, that he prepared himself for his distinguished career by serving on the VELF review, and he also-- this was before I think VELF was in existence-- but he also was among the group that spearheaded the recycling program at the law school so that the nice bins that you see now that are managed by facilities were in Avi's days put out by law students and picked up and emptied by them or and taken to the appropriate place.

So he was a pioneer and in developing environmental programs at the law school. And now he's come back to enrich the program that we have now. So he has gone on from his law school days to have a distinguished career in environmental law and now beyond.

He was Deputy General Counsel of EPA for a number of years and then General Counsel during the Obama administration, and in that capacity, he did work on a whole range of rule makings and other legal enterprises that the agency was involved in, but particularly I will say he was instrumental in helping the agency craft the landmark climate change initiatives that the agency took on during the Obama administration and which are now unfortunately under assault, but which laid the groundwork, I think, for a reasonable and effective climate change policy under the existing Clean Air Act, and maybe we'll come back to that in at some future date.

Anyway, he performed Distinguished Service at EPA, and he left EPA as the longest serving General Counsel, having served for 3 and 1/2 years. It doesn't sound long, but in General Counsel years, that's really a long time.

[LAUGHTER]

I have a word about that really, because I was General Counsel of EPA for a while. Exactly three years and one week I think. And when I left, I was the longest serving General Counsel, and my good friend and successor Scott Fulton became the longest serving General Counsel after I left. I think he added another couple of weeks just to make the claim. And now Avi,

having succeeded Scott, is the longest serving General Counsel.

I say that just to offer you the opportunity in your future career to best us all. And I know one of you will or may. So after his EPA service, Avi went to a law firm in Washington DC, Gibson Dunn & Crutcher, which has a distinguished environmental law practice, and there he did the things that environmental lawyers do in firm practice in DC for two years. And then he made an inspired move earlier this year to go to Patagonia as Patagonia's environmental advocate.

And this you heard in the earlier panel that there are new positions being created within companies that have some interest in environmental sustainability. New positions that offer environmental lawyers-- among others-- opportunities to contribute in a new and exciting ways, and Avi's part of that movement, and he has moved with a company Patagonia that has a long history from its early days in developing rock climbing and outdoor equipment.

A long history of commitment to environmental values, and in its present form, that commitment is carried forward in a number of exciting and effective ways. And Avi's job is to provide leadership and strategy for that commitment to make it real, to keep it real, and to make sure the effort is effective and impactful over time, and he'll tell you more about that with his talk.

But it's my real and personal pleasure to introduce Avi to you.

**AVI GARBOW:** Thanks, John. Great.

[APPLAUSE]

So I'm really grateful, one, for the introduction, mostly for the opportunity to get back to Charlottesville and spend some time with you all. I, as John said, got my law degree here in '92. Actually one of the reasons I came here, I don't know if it still exists, but there was an Oceans Law and Policy Institute, and so I got also a Master's degree in Marine Affairs through the graduate school environmental school, and my aspiration at the time, and in fact, my first job inquiry was to the Cousteau Society as I fashion myself one of those lawyers on a dinghy with blue whales and it was also my first rejection letter. But nevertheless, things have worked out just fine after that.

So I'm going to use my time with you all just to discuss some of my observations on where we are in terms of climate change, really focusing a little bit on Green New Deal and some business aspects. Obviously, these observations are shaped through two primary lenses. I

think one is my service in government. And when I started at the agency, Mike Vandenberg, who you heard from earlier, was Carol Browner's Chief of Staff. I still remember sitting in the outer ring of several meetings with Mike presiding, and then we had John as our General Counsel, so it was a great place to begin one's career.

Spent some time at the Justice Department as an Environmental Crimes Prosecutor, and I think the most certainly notable experience I had was the privilege and opportunity to serve in the Obama administration first term as its Deputy General Counsel to a terrific friend and mentor, Scott Fulton, who was the General Counsel then, and then getting the nod and also importantly, the confirmation of the Senate to serve as General Counsel in the second term really with Gina McCarthy there as administrator and the directives from the president to really focus on climate change.

But then also the lens which I now have as in my current capacity is Patagonia's environmental advocate. So I see a little bit more clearly from the private sector, not only what can be done, but I should say I have even more strongly held views on what should be done. And oftentimes, there's a distance between what you can do and what you should do, and more and more I find myself being a little bit preachy on the what should we do, and it's a little easier coming from Patagonia, but that doesn't stop my evangelizing on the topic. So you'll get a little bit of that today, too.

I want to start out with two sayings or quotes that I think kind of animate the way I think about climate change, and they're both ones that came to me more recently in my time at Patagonia. The first is a great saying that I've often like from Yvon Chouinard, who is the founder of Patagonia. And for those of you that have not read it, he did write a really interesting book among many called "Let My People Go Surfing," but it's a story of-- it's a great business book. It's about how Yvonne came to found the company and how enmeshed in it is environmental ideals.

But one of the things that he says there, that he's certainly said several times since sounds quite obvious, but if you want to do good, you actually have to do something. And we forget sometimes that there's this constant drive to-- you know-- I'm going to do something good today, and then you kind of sit back your phone or your screen or whatever it is. And it is a wonderful call to action, right? If you're going to do good, you actually do have to do something.

And the second thing that I think marries up quite nicely with that is also a quote I found in that book. It's attributed to an unnamed Navajo medicine man, and it says, we are the people who we've been waiting for. And when you think about those two for me for climate change, it really is the call to action for us to do something. And when I hear people talk about the Green New Deal and you see our youth marching in the street, that's what I hear them saying.

It's a bit of a time is up now. We are the people we've been waiting for, and we actually have to do something. Now, before I kind of talk a little bit about the Green New Deal and where we are now, I thought it would be helpful to do a little bit of a rewind on a 20 year story that helps me think about where we are today, and it's no coincidence when I found out that John would be introducing me, I changed the entirety of my remarks just to make sure I was mentioning John at the beginning of this story.

[LAUGHTER]

But it's where the story starts for me. And if you go back 20 or so years ago, John's time at the agency, John will remember the details quite well, and when I mess them up, you'll correct me privately afterwards. But congressman from Texas, Tom Delay, in the appropriations process of the agency at that point in time, late 1990s, asks whether or not the agency has the authority to control greenhouse gases under the Clean Air Act. And keep in mind, this is already six to eight years after the first assessment report came out from the IPCC talking about climate change, the UNFCCC. The Framework Convention on Climate Change was underway.

So we're now six to eight years after all of that, and finally people are beginning to ask the question, well, is there existing authority to address greenhouse gases under the Clean Air Act? And so John in the office that he led-- and I was privileged to lead much later-- ran through the analysis and issued a really quite famous opinion letter to the administrator in which John confirmed that yes, the Clean Air Act did provide the requisite authority to address and to regulate greenhouse gases from the electric power sector. That's what they were talking about at that time.

And then the environmental community I think, certainly getting wind of both that and knowing the urgency of the crisis, petitioned the EPA and then in 1999 to actually start regulating new motor vehicles under the Clean Air Act, and John's successor, Gary Guzy, comes out with some statements confirming that the agency is presumably gearing up to do something, and

then the country has an election.

And a new group comes in to political power at the agency, and lo and behold, the administrative process slows down. Takes a different kind of turn. Now a number of states, Massachusetts, other states on the eastern seaboard and elsewhere, begin to get worried about their coastal communities. They begin to urge the agency to take action on greenhouse gases. And another General Counsel, I think acting at that time, decides that he will issue a very different legal opinion.

And this is one that said no, in fact, the agency does not have jurisdiction to regulate in this area. A lot of pronouncements, it's all well and good for EPA to do research, but certainly regulation under the existing authorities is off the table. And so in response to that, environmental groups and states get together, early 2000s, they file a lawsuit against EPA to get it to act and to use the authority that it has, goes to the DC circuit, and EPA wins. Meaning those who thought EPA had no authority, because that was the agency's position there, prevailed in a split decision in the DC circuit.

You get a petition for cert to the Supreme Court in 2006, and then we have this great decision Massachusetts v EPA in 2007. It took eight years for the Supreme Court to confirm what John wrote in back in 1998 that yes, the Clean Air Act does indeed allow for the regulation of greenhouse gases under the requisite scenario, that the definition of pollutant, they said, is capacious enough to include greenhouse gases.

So 2007 comes out. Supreme Court it kind of confirms the authority and shall we say, there was not a rampant effort to run with that in 2007, but then we had an election. And so, I came in with the new Obama administration team in 2009. Among the first things we began to look at is what should be done in the wake of the 2007 Mass v EPA, and one of the very first things that we did under administrator Lisa Jackson was to look at the science and come out with what was then called the Endangerment Finding.

The new scientific predicate and confirmation that these mixture of six greenhouse gases was, in fact, creating an endangerment to human health and welfare. And in fact, that the emissions from motor vehicles was contributing to that endangerment. And so we began the regulatory process to regulate greenhouse gas emissions from our mobile sources.

But the biggest source of emissions was then what I think it was even back in the 1990s and that was stationary power plants. So fast forward a little bit. Now 2013, I remember this quite

well. President Obama goes to Georgetown University, sweltering summer day, predictably wiping the sweat off his brow, facing a large group of young folks on the lawn there, and gives what many of us consider to be one of the greatest environmental speeches ever given by an environmental president.

And he talks about how we are the first generation to feel the effects of climate change, but the last generation that can do anything about it. He says that he refuses to condemn us and our children to a planet that's beyond fixing, and he announces his climate action plan. And part of that climate action plan is to direct the agency to finally do regulatory standards to control greenhouse gases from power plants.

So I'm there. It's one of the first things that I get the opportunity to do as the new General Counsel in 2013 as we begin to have listening sessions open to the public. Just a remarkable way of engaging, I found, with the public. I went to the one in DC, Senator McConnell came among others. He provided his views on whether or not we ought to regulate, but it was just a great display of engaged citizenry.

You had guys like this with three career officials at the agency, and you had people in high school coming in you had older folks coming in, lawyers with their papers, people reading poems. I believe some of the comments were delivered in song, but all I think in many ways informative, and so EPA puts out its Clean Power Plan Proposal, to which we get 4 million comments. The most of any that the agency has ever done.

Side note, that summer that the agency puts out the Clean Power Plan Proposal, I had the opportunity to lead the EPA delegation to Beijing in what was then called the Strategic and Economic Dialogue, and we had negotiations with our Chinese counterparts on climate. And I gave a speech in Beijing just open to the public, and the degree to which both at that public speech and in the private negotiations, the Chinese community was aware of a regulatory proposal put out by EPA was astonishing.

And one of the things that it told me is that American leadership-- on the issue of climate change-- was and is paramount. That I believe that it was those regulatory proposals that groundswell of activity begun at that time in the Obama administration, that catalyzed a lot of the progress that led the international community to sign the Paris Accords.

So come back to the United States. We issue the Clean Power Plan, certainly a lot of fanfare amongst some communities, and then predictably within 60 days, we are in court in the DC

circuit litigating the case. And we had industry on both sides. We had states on both sides. I think at the end of the day, 47 or 48 of the 50 states were on one side or the other, which is to the best of my knowledge still the largest number of states participating together in a regulatory action like that. Just to give you a sense of everybody's positioning and involvement.

We ended up before an en banc DC circuit. An interesting aspect of that was it was, in effect, there was a leadership void. The Chief Justice of the DC circuit at the time was Merrick Garland, who had just been nominated by President Obama, and essentially sat in stasis without a hearing, and could not participate in the briefing of the Clean Power Plan because of that position. And so for the duration of the litigation, Merrick Garland was essentially sitting on the sideline.

We then began to litigate the case, and in a fateful day that I will never forget sitting in the administrator's office worrying about Flint, Michigan and the drinking water crisis there, somebody comes in to me, hands me a note, I'm sitting right to the right of the administrator, and tells me that in a near unprecedented way, the Supreme Court has just voted to stay the implementation of the Clean Power Plan. This is long before the DC circuit has had an opportunity to render its opinion.

I will say that that was probably, and certainly tragically, the last vote ever cast by Justice Scalia who passed away two days thereafter. And so the end of the Obama administration, we are left with a Clean Power Plan. I like to think both lawful, well thought out, and putting us on pace to meet our nationally determined contribution at the Paris Agreement, and now its implementation is stayed while we've got judicial review, and then we have an election, and everything changed, of course.

We then had a new Justice Department that went into the DC circuit and whereas, months earlier, we were eager to have a ruling from the DC circuit about the legality of the Clean Power Plan and move it along. To address our climate crisis, we now had filings where this administration was saying, we need to take a pause, we need to slow down, we're going to rethink this. We're not sure where we're heading with this.

The DC circuit obliged and for months, nothing happened in the litigation until predictably, because we knew where the president was heading with this, the administration proposed and just this past summer finalized a repeal of the Clean Power Plan, put their own substitute rule

in place, and now we are in certain ways back to where we started. We are getting geared up in the DC circuit to once again litigate these cases.

And so you ask yourself, or certainly I ask myself, what's the moral of the story? What's the point of going back 20 years and kind of rehashing what we've been through? Well, we need to think about going forward and the Green New Deal. And the reason that I tell it is because 20 years after we looked at existing authority to control discrete emissions from an arguably small number of sources in this country. Something that EPA is really set up to do.

We are in many ways back where we started. Rudderless I think on federal climate policy, and certainly from a government standpoint, in great need of a dose of leadership and certainty. And we're going to have another election soon, and there is a lot of talk about, well, if we can just kind of change who's in office, we will either go back to what we were doing, or we've got all these great new plans. And in my back of my mind I'm thinking, I know exactly how this is going to play out.

You can substitute the next climate plan for the Clean Power Plan, and there will be entrenched interests on both sides that will litigate it, and it will take some period of time to get through. I mention this, as despondent as I may make it sound, not because I'm giving up on government. In fact, to the contrary, I'm a firm believer that we cannot solve our climate crisis without government action and intervention.

I don't think the private sector can do it alone. Individuals can make differences. I do think that there has to be government policy, government regulation, government investment, government leadership to really drive things. And I should say as well, it does not only need to happen at the federal level, the states are in many ways the greatest havens for innovation when it comes to environmental regulation and unleashing the capacity of states like California, or New York, or Washington, or others, to really figure out what works in their communities and their states and be tutors in a way for the federal government. I think we ought to do that as well.

So I don't want to give up on government. I think it's necessary, but it's a sober for me and a very serious reminder of the duality of potential and performance. Where the potential to do good does not always lead to a good performance or a good environmental outcome. Just as it was difficult and uncertain and messy and political to get to where we are now in '20 years, it will be the same going forward. So it's not enough to deal with our crisis.



Now, the Green New Deal is a government path, right? If you think about what's been proposed, goes a lot beyond what we have tried so far, but recall the opening phrases of the Green New Deal. And you know, paraphrase, but it says recognizing the duty of the federal government to create a Green New Deal. All right. Whereas, the federal government led mobilizations during World War II, and the New Deal created the greatest class that the United States has ever seen. The House of Representatives recognize that a new national, social, industrial, and economic mobilization on a scale not seen since World War II and the New Deal is needed.

It's needed to provide jobs. It's needed to provide unprecedented prosperity and economic security. It's needed importantly to counteract systemic injustices that we have lived through in decades in this country. And so the resolution is go forth federal government, have a 10 year mobilization period, and achieve the objectives of this resolution. And so when I start out and I think how far we have come or not come, if you will, in 20 years using existing authorities. And then I throw this lofty Green New Deal on board, it makes me wonder what are we setting ourselves up from for.

But I will tell you that in a bit of a confession that I think we have to push for a Green New Deal. Part of me-- certainly with the inside experience I have-- recognizes all of the criticisms of it. How can we possibly attain this? It's too big. It's just a grab bag of a bunch of lefty desires. It's too much. We don't have the coalitions. We don't have the consensus. And I'm not sure that I would disagree with any of that.

On the other hand, the crisis is so important, and when I think about what we've done with the existing tool kit, and what I can foresee happening if we simply go back to that do loop, I tell myself it's not OK. It's not sufficient. And so, I do think we need to, in many ways, go big here.

But I don't want to get kind of held up by focusing right now on what's the pathway for the government to do a Green New Deal, because for me, what's also important is that other lever that we need to pull and we need to pull hard and that's in the private sector. Because as messy and as slow and as uncertain and as political as the government can be, the private sector has the ability-- if it wants to-- to make choices, to make changes that are certain, that are faster, and that are more durable and not susceptible to the vagaries of political winds.

So a lot of the attention, in my judgment, needs to be focused on what companies can do. And so you ask yourself, well, does this mean? What does the Green New Deal mean for

business? Senator Markey, who is one of the strong proponents in the Senate for the Green New Deal, has called it a framework for exerting external pressure on industries. And he also said that it was a framework for internal corporate operations for every industry and could be used to guide their discussion going forward.

So you ask yourself, really, what are the roles? And let me just make the point that private business to the extent it wants to borrow from, or learn from the Green New Deal, cannot afford to wait on the political process to conclude with respect to the Green New Deal. It needs to step up, call it whatever it wants, but start taking its own private sector bold steps.

And maybe-- and this is the way I've started to think about it-- just as many of us who view a lot of governmental programs and regulation as a kind of safety net for what the private sector can't deliver. In many ways, this is where the private sector needs to act as the climate safety net for government, because we know that government has failed us so far, and the people of this country and the people of this world need a safety net that can best, in many ways, be delivered through private industry.

So we need private companies to respond and to do the right thing. So is this possible? Is this realistic at all? And there are a couple of signals to me that-- we're at a bit of a turning point-- that my answer is in the affirmative. For one thing, this is now an era of the Sunrise Movement. The Extinction Rebellion. Fridays, you know, climate strikes.

We've got a Green New Deal again, people have talked about that. We are just a couple years removed from the very first time in which climate related proxy resolutions passed majorities for some of the major oil and gas companies, so the investor community is starting to flex its muscle. Two or three months ago, the Business Roundtable, not known as a bastion for left wing politics, came out with a new statement on principles of corporate governance.

181 CEOs signed on, and basically they said for the first time in 20 years that their ideas about corporate governance no longer revolve solely around the idea that corporations are meant to serve shareholders alone, and that the purpose is simply to maximize shareholder value that lo and behold, companies have surprise, surprise an impact on the planet, and they have stakeholders and communities that they really ought to care for as part of their economic operations and enterprise.

It's their customers, it's their employees, it's their communities, and yes, by the way, it's the environment, and the obligation from a corporate governance standpoint to contribute to a

sustainable environment. And if there was ever a need for that, I would say it's in the area of climate change. Now, it's incumbent upon those 181 CEOs, and it's incumbent, I think, upon all of us to hold them to this that they actually begin to walk the walk. Because what I don't want to have happen is this turn into another We Are Still In.

Now, the We Are Still In movement is great. All right. It happened in the aftermath of Trump's first announcement two years ago that the government intended to withdraw from the Paris Accord, and you know, I felt bad for 24 hours, and then I got really elated because all these companies are signing on, We're still in, it was really great. And if you go to the website now, something like 2,200 companies that are signing on. But if you look a little bit further on that website, there is a dropdown that says well here companies, you can share with people your climate commitments that go beyond your signature in the We Are Still In.

Suffice it to say, it's a minuscule fraction of the companies on the We Are Still In that have identified any changes whatsoever they're doing with respect to the control of carbon emissions. Much less, making those transparent and available for the public. So it's great that the Business Roundtable and these major multinational corporations have figured out that companies actually have responsibilities in an economic and a communal sense to stakeholders to include the environment in their communities. It will be, I think, incumbent on us all to make sure we watch and see that that step gets translated into action.

You then have a growing movement of benefit corporations. So I don't know how many folks are familiar with B Corp's for benefit, but Patagonia was the first benefit corporation in the state of California. This is a growing movement and group of companies and states who have benefit corporation rules where the principles of incorporation include verification and certification as to certain environmental and social and worker standards. And so that movement, which is now several thousand strong and 60 companies, is growing. And not surprisingly, I think really on the forefront of private industry leadership when it comes to climate change.

So let me just tell you a little bit about what we're doing at Patagonia, just to give you a sense of, I think, what is possible and what we ought to expect from other companies. Now Patagonia is and has been I think by design a leader in the kind of environmental and social movements for a business, and we are now 100% renewable energy in our owned and operated facilities in the US. I think about 80 or so percent internationally working, of course, I think in the next year to be at 100%.

But for us, that was the low hanging fruit. I think for many companies, being able to kind of tout yourself as you know, we just source our energy and our light bulbs come from wind and solar. It's great, and it's important. But the real enchilada, if you will, is their supply chain footprint. For a company like Patagonia, our carbon emissions come not from the sale of the clothes in the stores or online, it comes from growing the materials, the organic cotton, that's my shirt here, and using the materials and weaving them in our supply chain. That's where the reductions need to happen.

So Patagonia has set for ourselves an ambitious but a goal that we will achieve to be entirely carbon neutral from our supply chain in every tier of our operations by 2025. And this is going to mean working extensively in countries in Southeast Asia and elsewhere with our farmers, in our plants to make sure that sources of renewable energy are available in our supply chain, and it's going to mean doing things that put us on a path hopefully one day to what I call climate positivity, which is to say that you're actually through your operations sequestering more carbon than you are emitting.

And one of the ways that we're doing this is through piloting projects and farms dealing with regenerative organic agriculture. We like to think about the fact that most of your clothes are actually grown. I mean, if you think about it, like food-- food and fiber-- and so figuring out ways of regenerative practices to actually sequester more carbon in the soil from other industries as part of our clothing making business is something we think is in our future and attainable for others.

So that's what we're doing. But again, working with other companies, I think it's really important to make sure that they stand up too. So I want to kind of conclude and then really open it up to any discussion and questions that y'all might have. By observing again, that I think for us to make progress in climate change, there are really only three levers of action that you can pull.

One is the government lever, and although I want to make sure that we fully utilize every existing tool that's out there, having been a part of this, at least in my own time at the agency, I have seen both the successes and in fact, the failures of that process. And none of the institutional barriers that have prevented that from taking off, if you will, those institutional barriers are the things that are part of our body of environmental law and frankly, part of what makes us such a strong nation, which is the ability to challenge your government. The ability of

courts to weigh in on the legality of governmental actions.

The same things that have propelled us in environmental progress have also been used in many cases-- not inappropriately-- to slow things down as well. And I think that no matter how we embrace a Green New Deal and again, my own view is that the time is now to push a more aggressive agenda in politics and elsewhere in government when it comes to the climate change. I also realize that many of the things that have slowed us down before will remain in those paths. So we need to fight it, but we need to understand the government is not the answer.

Individuals, by the way, can make a heck of a difference. I didn't really spend a lot of time talking about this, but I have seen studies done by organizations that have looked at six or seven human behaviors like eating more of a plant based diet, doesn't mean giving up your red meat, it just is eating less. Flying less, buying carbon offsets, getting engaged, looking to electrification of vehicles. Things like that. If 10% of Americans adopted this suite of 6 or 7 behaviors, we could close, if not eliminate the gap between where we are heading, and where we have committed under the Paris Accord.

So individuals can act, but businesses have an obligation to. And again, when I think about the greatest opportunities out there to address climate change, I think it is going to come in the private sector, and my hope is that through marching in the street, through casting votes, through investor pressures, through different recognitions of corporate obligations, and through, I think, pressure from within that we're going to finally see the private sector community stand up and no longer be laggards to government but be leaders.

So let me end there. Thank you all. The discussions today I thought were really fascinating. I don't want to end on a down note. I do think that we have to be optimistic, because there's no other way. The last quote I guess I'll say just because Yvon Chouinard is really full of some really excellent quotes. As he always says, the cure for depression is action. And if you are depressed at all by the state of our politics, or depressed at all by the state of our climate affairs, my only exhortation to you is to act and to do something. So thanks.

[applause]