

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RESIDENTS AGAINST A POLLUTED)
ENVIRONMENT and THE EDMUND B.)
THORNTON FOUNDATION)
)
Petitioners,)
)
-vs-) NO. PCB 97-139
)
COUNTY OF LASALLE and LANDCOMP)
CORPORATION,)
)
Respondents.)

TRANSCRIPT OF PROCEEDINGS of the public
hearing held in the above-entitled matter; taken before
ANN L. PELLICAN, C.S.R., a Notary Public in and for the
County of LaSalle, State of Illinois, at The LaSalle
County Courthouse, Room 300, Ottawa, Illinois, on the
22nd day of April, 1997, commencing at the hour of 10:00
a.m.

PRESIDING: MR. MICHAEL L. WALLACE, Hearing Officer.

ANN L. PELLICAN, CSR

(815) 223-5994

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APPEARANCES:

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appearing on behalf of the Petitioners;

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appearing on behalf of the County of LaSalle.

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Attorneys at Law
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appearing on behalf of LandComp Corporation.

ALSO PRESENT: Members of the public.

INDEX

PAGE

LandComp Exhibit No. 1 marked	142*
LandComp Exhibit No. 2 marked	178*

WITNESSES:

PAT COGDAL	
Direct Examination by Mr. Mueller	11
Cross-Examination by Mr. Eschbach	24
Cross-Examination by Mr. O'Brien	25
Redirect Examination by Mr. Mueller	26
MIKE JAMES	
Direct Examination by Mr. Mueller	29
MARY LOWERS	
Direct Examination by Mr. Mueller	35
Cross-Examination by Mr. O'Brien	40

1	INDEX, CONT'D.	PAGE
2	DONALD JORDAN	
	Direct Examination by Mr. Mueller	41
3	Cross-Examination by Mr. Eschbach	53
	Redirect Examination by Mr. Mueller	55
4		
	RONALD ROSENGREN	
5	Direct Examination by Mr. Mueller	57
6	THOMAS MOWINSKI	
	Direct Examination by Mr. Mueller	65
7		
	DONALD BAKER	
8	Direct Examination by Mr. Mueller	70
9	PAUL MURPHY	
	Direct Examination by Mr. Mueller	74
10		
	PAT HARRISON	
11	Direct Examination by Mr. Mueller	80
	Cross-Examination by Mr. Eschbach	83
12	Cross-Examination by Mr. Rubin	83
13	ARTHUR RIGBY	
	Direct Examination by Mr. Mueller	84
14		
	GLENN GARRETSON	
15	Direct Examination by Mr. Mueller	86
	Cross-Examination by Mr. Rubin	91
16	Redirect Examination by Mr. Mueller	92
17	BETH NEWCOMER	
	Direct Examination by Mr. Mueller	93
18	Cross-Examination by Mr. Rubin	98
19	ROBERT ESCHBACH	
	Direct Examination by Mr. Mueller	101
20	Direct Examination by Mr. Rubin	110
21	JOSEPH HETTEL	
	Direct Examination by Mr. Mueller	114
22	Cross-Examination by Mr. Eschbach	119
	Redirect Examination by Mr. Mueller	120
23	Cross-Examination by Mr. O'Brien	120
24		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX, CONT'D.

WITNESSES:

PAUL DeGROOT	
Direct Examination by Mr. Mueller	121
VICKY SCHARENBERG	
Direct Examination by Mr. Mueller	125
Cross-Examination by Mr. O'Brien	130
Direct Examination by Mr. O'Brien	223
BRUCE MARKWALTER	
Direct Examination by Mr. Rubin	139
Cont'd. Direct by Mr. Rubin	186
Cross-Examination by Mr. Mueller	206
Redirect Examination by Mr. Rubin	210
Rebuttal Direct by Mr. Mueller	227
Rebuttal Cross by Mr. Rubin	228
ANDREE-MARIE KOBAN	
Direct Examination by Mr. O'Brien	162
Cross-Examination by Mr. Mueller	181
Redirect Examination by Mr. O'Brien	185
ARIO FRANZETTI	
Direct Examination by Mr. Rubin	211
Cross-Examination by Mr. Mueller	222

STATEMENTS BY MEMBERS OF THE PUBLIC:

Twila Yednock	230
Diane Kalembe-Gassman	233

*LandComp Exhibit Nos. 1 & 2 were retained by Counsel.

1 HEARING OFFICER WALLACE: Pursuant to the
2 direction of the Illinois Pollution Control Board,
3 I now call docket PCB 97-139. This is a pollution
4 control facility siting appeal by the Residents Against
5 a Polluted Environment and the Edmund B. Thornton
6 Foundation, the petitioners, versus the County of
7 LaSalle and LandComp Corporation, respondents.

8 I would like to have appearances for the
9 record, please, for the respondents -- or for the
10 petitioners. I'm sorry.

11 MR. MUELLER: George Mueller, Ottawa, Illinois,
12 for Residents Against a Polluted Environment and the
13 Edmund B. Thornton Foundation.

14 HEARING OFFICER WALLACE: County?

15 MR. ESCHBACH: Robert Eschbach, Special Assistant
16 States Attorney for LaSalle County. Also present is
17 Mr. Keith Leigh, attorney -- county attorney for LaSalle
18 County.

19 MR. RUBIN: James Rubin and Kevin O'Brien for
20 LandComp.

21 HEARING OFFICER WALLACE: Thank you. Let the
22 record reflect there are no other appearances at today's
23 hearing.

24 As I stated off the record, my name is Michael

1 Wallace. I'm the chief hearing officer for the
2 Pollution Control Board. I am filling in for the
3 assigned hearing officer, Deborah Frank, at today's
4 hearing.

5 This is a pollution control facility siting
6 appeal. The petitioners have appealed the County
7 Board's decision to the Pollution Control Board, and
8 this hearing will be conducted on that appeal.

9 The members of the public, time permitting, at
10 the conclusion of the parties' cases, I will allow brief
11 statements to be made -- to be made into the record for
12 the consideration of the Board.

13 All right. I believe we had some preliminary
14 matters to bring up.

15 Mr. Rubin?

16 MR. RUBIN: Yes. I understand that Mr. Mueller has
17 issued subpoenas to three former county board members,
18 Messrs. Johnson, Krogulski, and Renwick. And I was
19 advised earlier by Mr. Mueller that he does not intend
20 to call them as witnesses; is that correct?

21 MR. MUELLER: Mr. Hearing Officer, I am in receipt
22 of an order and opinion by the Board of April 17th past
23 which states in response to a motion to clarify
24 previously filed by the citizens in this matter that we

1 are precluded from bringing in evidence of any matters
2 that predate the filing of this application; namely,
3 November 1, 1995. To the extent that I had intended to
4 ask the three named individuals, Mr. Johnson,
5 Mr. Krogulski, and Mr. Renwick, with respect to matters
6 that predate November 1, 1995, I believe the order of
7 the Board effectively precludes me from getting their
8 testimony into evidence; and accordingly, I will not
9 call them.

10 MR. RUBIN: Just to make it perfectly clear, if --
11 and this is the position we took before the Pollution
12 Control Board -- to the extent that there are
13 allegations regarding fundamentally unfair procedures
14 that occurred following the filing of the application on
15 October 31st, 1995, that those are, according to the
16 Pollution Control Board, appropriate subject matter for
17 this hearing. And that would be so regardless of when
18 they started, if they continued past October 31st. I
19 just want to make it clear that Mr. Mueller's decision
20 to not call those witnesses is his decision and not
21 based on anything we've done or said.

22 MR. MUELLER: Mr. Wallace, I think the order of the
23 Board speaks for itself.

24 HEARING OFFICER WALLACE: I think so. Just having

1 looked at this file briefly yesterday evening, the April
2 17th, '97, order does appear to reflect that testimony
3 prior to the filing of the application is prohibited,
4 so -- all right.

5 And Mr. Mueller, you had a preliminary matter?

6 MR. MUELLER: We would move to exclude witnesses
7 during this hearing.

8 HEARING OFFICER WALLACE: Any objection?

9 Mr. Eschbach?

10 MR. ESCHBACH: No objection, Your Honor. We have a
11 a list of the witnesses that are going to appear. I
12 don't know if Mr. Mueller intends on calling anyone or
13 Mr. Rubin intends on calling anyone other than those
14 people.

15 MR. RUBIN: We have no objection as long as we
16 know who all the witnesses are.

17 HEARING OFFICER WALLACE: Motion to exclude
18 witnesses granted. Have you identified who your
19 witnesses are?

20 MR. MUELLER: Mr. Wallace, I think that would
21 include everyone that's received a subpoena. I will
22 police any other witnesses that I may call without
23 subpoena and make sure that they won't be here.

24 Obviously, those are witnesses, if I didn't have to

1 subpoena, that I have a more direct communication with.
2 We would ask Mr. Markwalter, as the designated
3 representative of the petitioner citizens group, be
4 allowed to remain.

5 HEARING OFFICER WALLACE: All right. All of those
6 who received a subpoena and may be called to testify,
7 you may step outside and wait to be called.

8 Before everyone leaves, I will say we have
9 some people filming these proceedings. According to the
10 rules of the Pollution Control Board, I can allow such
11 taping. But if you are called as a witness and you do
12 not wish to be taped, let me know, and I will instruct
13 the operators to turn their cameras off pursuant to the
14 rules of the Board. Thank you.

15 MR. ESCHBACH: Mr. Hearing Officer, I would also
16 note that the County is a party in this cause. The last
17 time this matter arose in a fundamental fairness hearing
18 it was the ruling of the hearing officer that a
19 representative of the County could be present. At this
20 time the Board chairman is present, Joe Hettel, and I
21 would ask that he be allowed to remain during the
22 hearing.

23 HEARING OFFICER WALLACE: Leave is so granted
24 for -- Mr. Hettel?

1 MR. ESCHBACH: That's correct.

2 MR. RUBIN: And Mr. DeGroot is here. He is
3 president of LandComp, and he would be LandComp's
4 designated representative.

5 HEARING OFFICER WALLACE: Mr. DeGroot may stay,
6 also.

7 All right. Now, if the potential witnesses
8 would please wait outside.

9 All right. No other preliminary matters?
10 Anyone wish to make an opening statement?

11 MR. MUELLER: There is one other preliminary
12 matter, Mr. Wallace, just for housekeeping purposes.
13 Edmund Thornton is in the room. He is, in fact, a named
14 party as the representative of the Edmund B. Thornton
15 Foundation, one of the petitioners. I think, therefore,
16 he's a entitled, as a matter of law, to stay. I, quite
17 frankly, don't even anticipate calling him as a witness.
18 I don't know if Mr. Rubin does either.

19 MR. RUBIN: At this point I don't anticipate
20 calling him as a witness.

21 HEARING OFFICER WALLACE: Mr. Thornton may stay.

22 Mr. Mueller, you wish to make an opening
23 statement?

24 MR. MUELLER: We'll waive opening statement.

1 HEARING OFFICER WALLACE: Mr. Rubin?

2 MR. RUBIN: We will waive.

3 HEARING OFFICER WALLACE: And Mr. Eschbach?

4 MR. ESCHBACH: We will waive.

5 HEARING OFFICER WALLACE: First witness,

6 Mr. Mueller?

7 MR. MUELLER: We'll call Pat Cogdal.

8 PAT COGDAL, called as a witness herein, upon
9 being first duly sworn on oath, was examined and
10 testified as follows:

11 (Witness sworn.)

12 HEARING OFFICER WALLACE: Please speak clearly and
13 loudly so everyone can hear.

14 THE WITNESS: All right. Okay. I think you'll
15 hear me.

16 HEARING OFFICER WALLACE: You may proceed.

17 DIRECT EXAMINATION BY:

18 MR. GEORGE MUELLER

19 MR. MUELLER: Would you identify yourself for the
20 record, please.

21 THE WITNESS: I'm Pat Cogdal.

22 Q. And Ms. Cogdal, where do you resides?

23 A. Route 1, Utica.

24 Q. Ma'am, you are a member of the LaSalle County

1 Board?

2 A. Yes, I am.

3 Q. How long have you been a member?

4 A. On my own?

5 Q. Yes.

6 A. Since December.

7 Q. Were you previously a member with someone

8 else?

9 A. No. I was filling in for my husband because

10 he passed away.

11 Q. What was your husband's name, ma'am?

12 A. James.

13 Q. You indicated that you were filling in for

14 him?

15 A. Well, I was appointed.

16 Q. And who appointed you, ma'am?

17 A. The county board.

18 Q. When were you appointed?

19 A. November of -- of '95.

20 Q. So you've been on the county board a total of

21 about a year and a half?

22 A. Yes, I have.

23 Q. And you won election in your own right last

24 November?

1 A. Yes, I did.

2 Q. Ma'am, do you own a business?

3 A. Yes, I do.

4 Q. What type of business is that?

5 A. Hauling, the landfill.

6 Q. What is the name of the business?

7 A. Starved Rock Sanitation.

8 Q. Can you tell us, ma'am, what Starved Rock

9 sanitation does?

10 A. It hauls refuse or garbage into the landfill,

11 LandComp.

12 Q. What communities does your business serve?

13 A. LaSalle -- just a few, Utica and Deer Park in

14 LaSalle County.

15 Q. Principally Utica and Deer Park areas?

16 A. Yes.

17 Q. How long have you been in business, ma'am?

18 A. 34 -- going to be 35 years.

19 Q. Where do you presently dump?

20 A. LandComp.

21 MR. RUBIN: I think we can stipulate --

22 MR. MUELLER: Actually, ma'am, there is no LandComp

23 facility right now.

24 THE WITNESS: Okay. States Landfill then.

1 Q. You understand that LandComp and States though
2 are, for your purposes, one in the same?

3 A. Yes.

4 Q. And they are Mr. DeGroot, right?

5 A. Yes.

6 Q. Now, you're the sole owner of Starved Rock
7 Sanitation?

8 A. Yes.

9 Q. And previously you owned it with your husband?

10 A. Yes.

11 Q. Was he the person that operated the business
12 while he was alive?

13 A. Yes.

14 Q. Did you take any active role in running the
15 business while your husband was alive and well?

16 A. Just the bookwork.

17 Q. How long have you known Mr. DeGroot?

18 A. Mr. DeGroot, in himself -- maybe Jim knew him.
19 I didn't know him that well. I met Mr. DeGroot one time
20 before my husband passed away, and then I met him at the
21 wake. And I would say Jim knew him as long as he's been
22 States Landfill.

23 Q. And your husband did business exclusively with
24 Mr. DeGroot, right?

1 A. He just brought in the garbage, yes.

2 Q. In other words, he didn't dump anywhere else?

3 A. No.

4 Q. And you do business exclusively with

5 Mr. DeGroot?

6 A. Yes.

7 Q. And you've gotten along well with him since

8 you've taken over the business?

9 A. Yes.

10 Q. About how long a drive --

11 A. Could I ask one question, Mr. Mueller?

12 HEARING OFFICER WALLACE: No, ma'am. Mr. Mueller

13 is asking the questions.

14 MR. MUELLER: About how long a drive, Mrs. Cogdal,

15 is it for your trucks from the Utica or Deer Park area

16 to the States Landfill area that they presently dump at?

17 THE WITNESS: I'd say about three, four miles. And

18 then from Deer Park it'd be more miles.

19 Q. Maybe five or six miles from Deer Park?

20 A. Yes.

21 Q. And you understand that the proposed LandComp

22 facility is more or less adjacent to the existing States

23 Landfill facility?

24 A. Pardon me?

1 Q. You understand that the proposed new facility
2 is more or less next to the existing facility?

3 A. Yes.

4 Q. That's a pretty convenient place for you,
5 right?

6 A. Yes.

7 Q. And you're concerned that you continue to have
8 a convenient place to -- to deposit the waste you pick
9 up, right?

10 MR. RUBIN: I'm going to object to the form of the
11 question. It's leading.

12 MR. MUELLER: I think this is a hostile witness.
13 She's a county board member who voted in favor of the
14 application.

15 MR. RUBIN: That does not make her a hostile
16 witness.

17 HEARING OFFICER WALLACE: To the extent that you
18 didn't bring that up ahead of time, I haven't ruled that
19 she's a hostile witness, so the question is leading.

20 MR. MUELLER: Mrs. Cogdal, how did you vote on this
21 application?

22 THE WITNESS: I voted for landfill.

23 Q. You voted for --

24 A. I voted for landfill.

1 Q. You voted for a landfill?

2 A. For a landfill, um-hum, yes. I'm not opposing
3 landfill.

4 Q. And that's because your business needs a
5 landfill, right?

6 MR. ESCHBACH: I object. That's a leading
7 question, Your Honor.

8 MR. MUELLER: I think now I've established that she
9 voted for a landfill.

10 MR. ESCHBACH: Doesn't make her an adverse witness.
11 She hasn't been declared as an adverse witness.

12 MR. MUELLER: I'd ask that she be declared a
13 hostile witness based upon the fact that she voted
14 contrary to the position that the petitioners are taking
15 in this matter.

16 HEARING OFFICER WALLACE: Pursuant to the Pollution
17 Control Board's rule 103 -- 103-209, Mr. Mueller's
18 motion is granted, and Mrs. Cogdal can be treated as an
19 adverse witness.

20 MR. MUELLER: Thank you.

21 May I have the reporter read back my last
22 question.

23 HEARING OFFICER WALLACE: Would you read back the
24 last question.

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(Record read.)

MR. MUELLER: Let's start off there again.

Your business needs a landfill in order to deposit the waste that it picks up, right?

THE WITNESS: Yes.

Q. And you would prefer one that is closer to you than one that's farther away for economic reasons, right?

A. Yes.

Q. In fact, didn't your husband in the past tell you that your company's economic survival depended upon it's relationship with Mr. DeGroot?

A. To me did he say this?

Q. Yes.

A. No.

Q. Are you aware that he ever said that to any citizens groups in the area?

A. Just according to your paper.

Q. So you have read in the paper that your husband's alleged to have said that?

A. That's right.

Q. And, ma'am, when it came time to vote on this proposal, wasn't it your position that you were going to vote the way that your husband would have wanted you to

1 vote?

2 MR. RUBIN: I'm going to object to the form of the
3 question.

4 HEARING OFFICER WALLACE: Overruled.

5 MR. RUBIN: We haven't established how her husband
6 wanted her to vote, Your Honor. It's, at this point, a
7 completely speculative matter.

8 HEARING OFFICER WALLACE: Overruled.

9 You may answer the question.

10 THE WITNESS: I have to answer the question?

11 Would you repeat it, Mr. Mueller, please?

12 MR. MUELLER: When it came time for you to vote on
13 this landfill application, wasn't it your position that
14 you were going to vote the way that your husband had
15 wanted you to vote?

16 THE WITNESS: Yes. I think both him and I talked
17 about that, yes. We've been in the business long
18 enough.

19 Q. And isn't it true, Mrs. Cogdal, that you feel
20 that Mr. DeGroot's getting this new landfill is
21 necessary to your business' economic survival?

22 A. Yes.

23 Q. Ma'am, did Mike James, the State's Attorney,
24 ever talk to you about reclusing yourself from the vote

1 in this matter because of your economic interest in the
2 outcome?

3 A. Do I have to answer that, Mr. Mueller?
4 Because I feel he is the State's Attorney. I'm a county
5 official, and I think that's private. That's between
6 him and I.

7 MR. ESCHBACH: It appears, Your Honor, that
8 Mrs. Cogdal's invoking an attorney-client privilege
9 here, which she has a right to do.

10 MR. MUELLER: As I understand the attorney-client
11 privilege, first of all, it extends to the attorney and
12 not to the client. Secondly, as a public official being
13 advised by another public official with respect to
14 conflict of interest, it would certainly not be
15 something that's privileged. Thirdly, I understand that
16 Mrs. Cogdal had private counsel that advised her after
17 she spoke with Mr. James, the State's Attorney.

18 MR. ESCHBACH: I would just comment that I think
19 the privilege has to be claimed by the client, not the
20 attorney. She would be the client here. Whether she
21 had conversation with another attorney would be
22 irrelevant to the particular objection here.

23 HEARING OFFICER WALLACE: Okay. Mr. Eschbach, are
24 you objecting on behalf of the County that there is a

1 attorney-client privilege in this situation?

2 MR. LEIGH: I would think at this time, Your Honor,
3 on behalf of Mrs. Cogdal, who is a member of the county
4 board, and Mike James, the LaSalle County State's
5 Attorney, we would object to the question as it invades
6 the privilege.

7 HEARING OFFICER WALLACE: All right.

8 MR. MUELLER: I've made my comment, Mr. Wallace. I
9 won't belabor it. I don't think the privilege can be
10 invoked by the client even if she is a client. I think
11 what she is is a public official who was advised by
12 another public official. And one would hope that those
13 kinds of matters would be above Board and not subject to
14 secrecy and claims of privilege.

15 MR. LEIGH: Mr. Mueller's comment is totally
16 uncalled for. He's well aware there's a very sacred
17 privilege between an attorney and client. And the fact
18 that it involves the government does not make the
19 privilege any less sacred. And to suggest that because
20 one asserts the privilege that there's something
21 untoward going on is really uncalled for.

22 MR. MUELLER: I have one other question. Am I
23 going to be dealing with Mr. Leigh or with Mr. Eschbach,
24 or are they going to take turns jumping in?

1 HEARING OFFICER WALLACE: Well, that's rather
2 immaterial. Mr. Leigh has entered his appearance as a
3 county attorney, so he can interpose objections if he
4 wants.

5 The objection is a rather novel one. I am not
6 sure as to the exact privilege nature that county
7 officials would have with the county State's Attorney.
8 Insofar as this is a fundamental fairness hearing and
9 the petitioners are allowed to go into whether or not
10 the county board tendered a fundamentally fair process,
11 I think the question is -- is fairly relevant, and the
12 objection is denied.

13 MR. RUBIN: Excuse me. Are you ruling that there
14 is no attorney-client relationship between the county
15 board and the State's Attorney?

16 HEARING OFFICER WALLACE: I am -- well, to the
17 extent that I'm overruling the objection, I guess that
18 would be my ruling. I'm not so sure that such a thing
19 exists. And in this context of the landfill siting, did
20 the county board provide a fundamentally fair hearing, I
21 think that this is something that may be inquired.

22 THE WITNESS: I answer then, sir?

23 HEARING OFFICER WALLACE: Yes.

24 THE WITNESS: Yes, I did.

1 Q. Did Mr. James advise you that he thought you
2 had a conflict of interest and should not vote on the
3 application?

4 A. No, he didn't.

5 Q. What did Mr. James advise you?

6 A. He asked me to read the letter, and I read the
7 letter. And I told him that I seen other advice from an
8 attorney, and that attorney said I was not a conflict of
9 interest. And I went, and I voted.

10 Q. So Mr. James didn't advise you either way?

11 A. Either way.

12 Q. Who was the other attorney that you sought
13 advice from?

14 A. Do I have to answer that?

15 HEARING OFFICER WALLACE: You retained him in --
16 as a private counsel?

17 THE WITNESS: Mr. Berry.

18 MR. MUELLER: You did tell Mr. James, though, in
19 response to his inquiry that you were going to vote the
20 way that your husband had wanted you to vote?

21 THE WITNESS: I did vote -- my husband voted once.
22 I voted once, and I voted again.

23 Q. Ma'am, did you tell Mr. James you were going
24 to vote the way your husband wanted you to vote?

1 A. No. I voted the way I wanted to vote.

2 Q. That's all. Thank you, Mrs. Cogdal.

3 HEARING OFFICER WALLACE: Cross-examination?

4 CROSS-EXAMINATION BY:

5 MR. ROBERT M. ESCHBACH

6 MR. ESCHBACH: Mrs. Cogdal, when you voted to
7 approve the landfill application with conditions this
8 past January, did you base your vote upon the evidence
9 that was presented during the hearings?

10 THE WITNESS: Yes, I did.

11 Q. Did -- you had indicated that you're involved
12 in the garbage hauling business. Is it true that if
13 this landfill was not approved and you had to haul your
14 garbage to say the Streator area facility or to a
15 transfer station somewhere in LaSalle County, that all
16 other haulers in the county, your competitors, in
17 essence, would also have to do the same thing?

18 A. Also six of us would.

19 Q. And you would basically all be in the same
20 boat; is that correct?

21 A. Yes.

22 Q. So from a competition standpoint, you wouldn't
23 be any different than they are?

24 A. No.

1 Q. You wouldn't be affected in any way different
2 than the others; is that correct?

3 A. No.

4 MR. MUELLER: I understand this is cross, but I
5 don't think the leading questions are appropriate.
6 Since she was a hostile witness for me, she's obviously
7 Mr. Eschbach's witness.

8 MR. ESCHBACH: This is cross-examination, Your
9 Honor.

10 MR. MUELLER: He's just putting words into her
11 mouth.

12 HEARING OFFICER WALLACE: That's correct. The
13 objection's sustained.

14 MR. ESCHBACH: Is the answer stricken?

15 HEARING OFFICER WALLACE: No. The answer will
16 stand. Let's try not to do leading questions.

17 MR. ESCHBACH: I have no other questions.

18 HEARING OFFICER WALLACE: Mr. Rubin?

19 MR. RUBIN: Can we have one moment, please?

20 CROSS-EXAMINATION BY:

21 MR. KEVIN O'BRIEN

22 MR. O'BRIEN: Mrs. Cogdal, my name's Kevin
23 O'Brien. I have a couple questions for you.

24 How many other hauling companies do you

1 currently compete with for business?

2 THE WITNESS: Five.

3 Q. Five?

4 A. (Nodding.)

5 Q. And do those hauling companies serve LaSalle
6 County?

7 A. Yes.

8 Q. If there is no landfill sited in LaSalle
9 County, will your company continue to compete with those
10 five other companies?

11 A. That will be a decision for me to make, and I
12 haven't made that decision as of yet.

13 Q. If you decide to stay in competition with
14 those companies, will you all be in the same situation
15 of having to use a landfill outside of LaSalle County?

16 A. Right, yes.

17 Q. That's all. Thank you.

18 HEARING OFFICER WALLACE: Redirect?

19 REDIRECT EXAMINATION BY:

20 MR. GEORGE MUELLER

21 MR. MUELLER: Ma'am, do you know a John Roelfsema
22 of Illinois Valley -- Waste Management of Illinois
23 Valley?

24 THE WITNESS: Pardon me?

1 Q. Do you know a John Roelfsema of Waste
2 Management of Illinois Valley?

3 A. No.

4 Q. Did the other haulers in the county ever get
5 together to decide whether or not to publicly voice
6 their support for Mr. DeGroot?

7 A. No.

8 Q. Are you aware of any comments made to the
9 press by Mr. Roelfsema on behalf of the garbage haulers
10 in this county?

11 MR. ESCHBACH: Your Honor, I'm going to object.
12 These questions are beyond the scope.

13 MR. MUELLER: It goes to this whole issue of other
14 haulers in competition.

15 HEARING OFFICER WALLACE: Sustained. It's beyond
16 the scope.

17 MR. MUELLER: The truth is, ma'am, if -- if you had
18 to haul to Streator or Pontiac or even Whiteside County,
19 you don't know whether you'd be able to stay in
20 business, right?

21 THE WITNESS: Do you want a yes or no, or can I
22 speak?

23 Q. Do you know whether you'd be able to stay in
24 business?

1 A. I would like to stay in business; and if I
2 could, I would. I have a son to raise. I have a
3 15-year-old son I have to raise, and I would try to do
4 my best in any part.

5 Q. And that's why the approval of Mr. DeGroot's
6 landfill is important to you, correct?

7 A. Yes.

8 MR. RUBIN: I object to the form of the question.
9 I move to strike.

10 MR. MUELLER: It's cross-examination. She answered
11 the question.

12 HEARING OFFICER WALLACE: Motion to strike is
13 granted.

14 Recross?

15 MR. MUELLER: If she -- if you struck -- no further
16 questions.

17 MR. ESCHBACH: I have no cross.

18 MR. O'BRIEN: Nothing.

19 (Witness excused.)

20 MR. MUELLER: We'll call Mike James.

21 MIKE JAMES, called as a witness herein, upon
22 being first duly sworn on oath, was examined and
23 testified as follows:

24 (Witness sworn.)

1 HEARING OFFICER WALLACE: You may proceed.

2 DIRECT EXAMINATION BY:

3 MR. GEORGE MUELLER

4 MR. MUELLER: Would you identify yourself for the
5 record.

6 THE WITNESS: My name is Mike James.

7 Q. Mr. James, you're a State's Attorney of
8 LaSalle County?

9 A. That's correct.

10 Q. You took office last December?

11 A. That's correct.

12 Q. At some time shortly after you took office,
13 were you contacted by a representative of Residents
14 Against a Polluted Environment expressing concern
15 regarding a possible conflict of interest that Pat
16 Cogdal may or may not have had in connection with voting
17 on the landfill application?

18 MR. ESCHBACH: Your Honor, at this point I'm going
19 to have to raise the same objection -- objection similar
20 to what was raised during Ms. Cogdal's testimony. It's
21 my understanding that the client and the attorney-client
22 relationship can invoke that privilege. When that's
23 done, it's my understanding and my belief that the
24 attorney has to honor that decision. And since, on the

1 stand, Ms. Cogdal indicated that she considered that
2 matter privileged, it ought to be consistent that the
3 County take the same position and the State's Attorney
4 take the same position. And for the record, we would
5 have to object on that basis.

6 MR. MUELLER: First of all, Mr. Eschbach's
7 objection is premature, because I'm laying a foundation
8 at this point as to how the matter came to Mr. James'
9 attention. Secondly, Mrs. Cogdal testified that she
10 never received any advice from Mr. James; but rather he
11 brought a matter to her attention, and she told him that
12 she had conferred with private counsel of her own.
13 Therefore, it appears that there was no attorney-client
14 privilege or even attorney-client relationship between
15 these individuals, even assuming arguendo that a
16 privilege would apply to an official communication from
17 one public official to another public official.

18 MR. ESCHBACH: I would just state for the record
19 that Mrs. Cogdal's --

20 (The reporter requested
21 clarification.)

22 MR. ESCHBACH: I'll state for the record simply
23 that Mrs. Cogdal's testimony in that regard was over the
24 objection of the County.

1 HEARING OFFICER WALLACE: Right. Your objection at
2 this time is noted. And to the extent it may be
3 premature, I'll let -- Mr. Mueller may continue
4 questioning him.

5 THE WITNESS: Could you -- George, could you repeat
6 the question?

7 MR. MUELLER: To summarize the last question,
8 Mr. James, at some point shortly after you were elected,
9 did a representative of Residents Against a Polluted
10 Environment Contact you about a possible conflict on the
11 part of Mrs. Cogdal?

12 THE WITNESS: I was contacted by two friends of
13 mine that are members of that organization, one of which
14 was Mr. Markwalter.

15 Q. And in follow-up to those contacts, sir, did
16 you have a meeting with Pat Cogdal regarding this issue?

17 A. Not following up from those contacts, no.

18 Q. Did you have a meeting with her, though,
19 regarding the issue of any conflict she might have had?

20 A. I received a letter from Mr. Markwalter on the
21 day of the hearing regarding possible conflicts.

22 Q. Did you talk to Pat Cogdal about that letter?

23 A. I think that would invoke the attorney-client
24 privilege, the substance of what I talked to her about.

1 Q. Well, I first want to find out whether you
2 even talked to her.

3 A. I did talk to her.

4 Q. And where did that conversation take place?

5 A. At the courthouse.

6 Q. And was that shortly prior to the vote that
7 was taken ultimately in this matter?

8 A. It was the morning of the vote.

9 Q. And, sir, did you advise Mrs. Cogdal that you
10 thought she should recluse herself?

11 MR. ESCHBACH: At this point I think it is
12 appropriate -- the need should be raised regarding the
13 attorney-client privilege, and I raise that.

14 MR. MUELLER: I would point out, number one, there
15 is no privilege between public officials. Number two,
16 Mrs. Cogdal's testified she didn't receive any advice;
17 accordingly, there wasn't an attorney-client
18 relationship. And thirdly, this question would go to
19 impeach her.

20 HEARING OFFICER WALLACE: Objection's overruled.

21 THE WITNESS: In answering that -- or not answering
22 that question, I was elected to be the County's legal
23 advisor, and that includes duties and obligations to
24 advise county board members, county officials, and the

1 County as an entity. And so I can't answer that
2 question.

3 MR. MUELLER: Sir, let me ask it again. Did you
4 advise Mrs. Cogdal to recluse herself from the vote?

5 THE WITNESS: I can't answer that question.

6 Q. Mr. Wallace, I'd ask that you direct the
7 witness to answer.

8 HEARING OFFICER WALLACE: Mr. James, I am
9 directing you to answer that question.

10 THE WITNESS: I understand that, Your Honor. But
11 it's my law license. I'm not going to jeopardize it by
12 answering a question that I feel threatens the
13 attorney-client privilege.

14 HEARING OFFICER WALLACE: All right.

15 MR. MUELLER: Mr. James --

16 HEARING OFFICER WALLACE: Let's move on,
17 Mr. Mueller. Continue.

18 MR. MUELLER: Mr. James, did Mrs. Cogdal tell you
19 that it was her intention to vote the way that her dead
20 husband would have wanted her to vote?

21 THE WITNESS: That would, again, involve the
22 conversation -- the substance of the conversation I had
23 with Mrs. Cogdal, and that would involve the
24 attorney-client privilege.

1 HEARING OFFICER WALLACE: At this point,
2 Mr. Mueller, I am, as an administrative law judge for
3 the Pollution Control Board, limited in any sanctions
4 that may or may not be imposed on Mr. James invoking his
5 privilege. He is refusing to answer questions. If you
6 feel the need to ask and get a refusal on every
7 question, go ahead. But at the risk of further
8 delaying, I don't see the result from that.

9 MR. MUELLER: Well, I think we've covered the two
10 questions, sir.

11 HEARING OFFICER WALLACE: All right.

12 MR. MUELLER: And I'll seek my sanction from the
13 Board itself.

14 Mr. James, you are the legal advisor for the
15 entire county, correct?

16 THE WITNESS: That's correct.

17 Q. And it was the county board that passed or
18 voted affirmatively on this landfill application,
19 correct?

20 A. That's my understanding.

21 Q. And Mrs. Cogdal voted for the application,
22 right?

23 A. That's my understanding.

24 Q. Sir, do you understand yourself to work for

1 the county board or for the citizens of LaSalle County?

2 A. Well, the county board is elected by the
3 citizens of LaSalle County. They're the representative.
4 This is a representative government, just as I was
5 elected to represent, in a legal capacity, the county.

6 MR. MUELLER: I have no further questions.

7 MR. ESCHBACH: I have no questions.

8 HEARING OFFICER WALLACE: Mr. Eschbach?

9 MR. ESCHBACH: I have no questions.

10 MR. O'BRIEN: No questions.

11 HEARING OFFICER WALLACE: Thank you, Mr. James.

12 You may step down.

13 (Witness excused.)

14 HEARING OFFICER WALLACE: Next witness?

15 MR. MUELLER: We'll call Mary Lowers.

16 MARY LOWERS, called as a witness herein, upon
17 being first duly sworn on oath, was examined and
18 testified as follows:

19 (Witness sworn.)

20 HEARING OFFICER WALLACE: You may proceed.

21 DIRECT EXAMINATION BY:

22 MR. GEORGE MUELLER

23 MR. MUELLER: Would you identify yourself for the
24 record, please.

1 THE WITNESS: I'm Mary Lowers, L-o-w-e-r-s.

2 Q. You're going to have to speak up just a little
3 bit, Mary.

4 Where do you reside?

5 A. At 2552 North 2950 Road in Marseilles,
6 Illinois.

7 Q. And you're a -- you are, obviously, a resident
8 of LaSalle County, have been for a while?

9 A. Yes.

10 Q. Do you know Mike James?

11 A. Yes.

12 Q. And what is the capacity in which you know
13 Mr. James?

14 A. I am a friend of his, and I am -- I also acted
15 in the capacity of campaign manager for his run for the
16 LaSalle County State's Attorney.

17 Q. In January of this year, did you have a
18 conversation with Mr. James about Pat Cogdal?

19 MR. RUBIN: Excuse me. I may have missed
20 something. I didn't catch her employment.

21 MR. MUELLER: I don't think I asked her.

22 MR. RUBIN: I'm sorry. Is Mrs. Lowers an employee
23 of the County?

24 MR. MUELLER: Let me -- for background purposes,

1 I'll clear it up, Mr. Wallace.

2 HEARING OFFICER WALLACE: Okay, if you wish.

3 MR. MUELLER: You don't work for the County, do
4 you, Mary?

5 THE WITNESS: No, I do not.

6 Q. But you were active in Mr. James' campaign for
7 State's Attorney?

8 A. Yes, I was.

9 Q. And you've known him for a while, and you
10 consider him a friend of yours?

11 A. Yes, I do.

12 Q. In January of this year, did you have a
13 conversation with Mike James about Pat Cogdal?

14 A. Yes, I did.

15 Q. And was that conversation on or shortly after
16 the day that the County actually voted on this matter?

17 A. It was on the day that the County --

18 Q. All right. And what did Mr. James tell you
19 that he had told Pat Cogdal with respect to any conflict
20 of interest she might have had?

21 MR. LEIGH: To which we'd object. It's not only
22 hearsay, but also invades the privilege.

23 MR. MUELLER: It's not hearsay to the extent that
24 the witness who made the utterance has been on the

1 stand, and he refused to answer the question.

2 MR. LEIGH: To the extent that this witness is
3 going to testify as to the substance of the conversation
4 by someone else is hearsay.

5 HEARING OFFICER WALLACE: The objection is
6 sustained. It is hearsay.

7 MR. MUELLER: Mr. Wallace, with all respect, I
8 believe it is only hearsay to the extent that a witness
9 is not available. A witness that is available can be
10 impeached, or his testimony can be completed if the
11 witness refuses to answer questions. The purpose of the
12 hearsay rule is to get to the exclusion of unreliable
13 evidence. Since Mr. James is available, has been on the
14 stand, and is available to go back on the stand, this
15 would not be hearsay. It would, in fact, be
16 impeachment. Also goes to prove that if there's an
17 attorney-client privilege claimed now, that's somewhat
18 disingenuous in light of the fact that Mr. James was
19 apparently not concerned about such a privilege when he
20 was having conversations with his friends and campaign
21 workers about what he was telling county board members
22 and what they were telling him.

23 HEARING OFFICER WALLACE: All right. It is still
24 hearsay. It is not impeachment, because he did not

1 answer the question to be impeached with. If you wish
2 to place this into the record as an offer of proof, I
3 will allow that.

4 MR. MUELLER: Thank you, Mr. Wallace.

5 HEARING OFFICER WALLACE: Please designate when you
6 begin and end your offer of proof.

7 MR. MUELLER: I would at this point make an offer
8 of proof with respect to the matter.

9 Mrs. Lowers, what did Mike James tell you that
10 he told Pat Cogdal on the day of the vote?

11 THE WITNESS: He told me that he had had a
12 conversation with her. He had had -- he had advised
13 her, based on the information that had been provided to
14 him, the case law that had been given to him regarding
15 conflict of interest. He said he had also spoken with
16 Mr. Leigh about this prior to speaking with
17 Mrs. Cogdal and that she -- even though being advised
18 that this is a potential conflict of interest because of
19 the nature of her relationship or possible relationship
20 with Mr. DeGroot, she still felt that she should vote
21 the way that her husband would have voted on this
22 application. That's the gist of what he said.

23 Q. Was it your understanding that he advised her
24 to recluse herself or abstain from voting?

1 A. Yes.

2 Q. That completes my offer of proof.

3 I have no further questions.

4 HEARING OFFICER WALLACE: Mr. Eschbach?

5 MR. ESCHBACH: No questions.

6 HEARING OFFICER WALLACE: Mr. Rubin?

7 CROSS-EXAMINATION BY:

8 MR. KEVIN O'BRIEN

9 MR. O'BRIEN: Couple questions, Ms. Lowers. Are
10 you a member of the Residents Against a Polluted
11 Environment?

12 THE WITNESS: Yes, I am.

13 Q. Do you hold any office in that group?

14 A. No, I do not.

15 Q. How long have you been a member of the
16 Residents group?

17 A. I would say over two years I've been involved.

18 Q. So since at least 1995?

19 A. Yeah, at least, um-hum.

20 Q. Have you participated in any activities on
21 behalf of RAPE against the landfill application
22 submitted by LandComp?

23 A. What do you mean, against?

24 Q. Have you taken any position or participated in

1 any activities of the RAPE group in order to try to
2 defeat or argue against the application submitted by
3 LandComp?

4 A. You mean to county board members or to --

5 Q. No, just generally to anyone in the public.

6 A. In general have I spoken against the
7 landfill?

8 Q. Yes.

9 A. Yes, I have.

10 Q. That's all.

11 HEARING OFFICER WALLACE: Redirect?

12 MR. MUELLER: No questions.

13 HEARING OFFICER WALLACE: Thank you. You may step
14 down.

15 (Witness excused.)

16 HEARING OFFICER WALLACE: Next witness?

17 MR. MUELLER: Now call Mr. Jordan.

18 DONALD JORDAN, called as a witness herein,
19 upon being first duly sworn on oath, was examined and
20 testified as follows:

21 (Witness sworn.)

22 HEARING OFFICER WALLACE: You may proceed.

23 DIRECT EXAMINATION BY:

24 MR. GEORGE MUELLER

ANN L. PELLICAN, CSR

41

(815) 223-5994

1 MR. MUELLER: Would you identify yourself for the
2 record.

3 THE WITNESS: Donald Jordan, District 27, Streator,
4 Illinois, 110 West Tenth Street.

5 Q. Mr. Jordan, District 27 refers to the county
6 board district that you represent, correct?

7 A. I figured that's why I'm here. Yes, sir.

8 Q. And when, sir, were you elected to the county
9 board?

10 A. I took office December 1st or 2nd, whatever
11 that day was.

12 Q. So you were not on the board during the first
13 round of hearings that occurred in February or March of
14 last year, right?

15 A. No, sir.

16 Q. Did you read the transcript from those
17 hearings?

18 A. I read quite a few of the summaries.

19 Q. Tell me what you mean by summaries?

20 A. Well, I asked how I could get information.
21 And they said the best thing, if you could pick up the
22 summaries from the circuit clerk's office rather than
23 word-for-word.

24 Q. Do you know who prepared these summaries?

1 A. Not really.

2 Q. Do you know who Devin Moose (phonetic) is,
3 sir?

4 A. Who?

5 Q. Devin Moose.

6 A. I think I -- no, not in particular. It was
7 last winter when I read 'em.

8 Q. So you didn't read the actual transcripts?

9 A. There was testimony in the summaries. Now, I
10 couldn't tell you. I was trying to do the best I could
11 to update myself.

12 Q. I understand, and a pretty short time to get
13 ready at that, correct?

14 A. Yes.

15 Q. So you read quite a few of 'em, but not all of
16 'em, right?

17 A. I couldn't tell you whether I picked up six or
18 eight or ten. It was quite a few and --

19 Q. So I suppose, Mr. Jordan, you had to rely on
20 other people to kind of help fill the issues out and
21 give you some input on the matter, right?

22 A. In a way. Everybody I talked to talked about
23 criteria both for and against.

24 Q. Now, sir, you ended up voting for the

1 application, correct?

2 A. Yes.

3 Q. And did you have a conversation with Pat
4 Harrison of the Ottawa Daily Times about your vote?

5 A. After the vote?

6 Q. Yes.

7 A. I talked to somebody afterwards, but I
8 couldn't tell you who.

9 Q. And do you recall telling Mr. Harrison from
10 the Daily Times that you voted yes because most of the
11 criteria had been met?

12 A. I don't remember saying that, but that's what
13 came back to me. What time did she call me -- or did he
14 call me?

15 Q. Well, sir, do you remember talking to
16 Mr. Harrison right after the meeting on January 18th
17 telling him, quote, "But most of the criteria have been
18 met, and the EPA is going to control things anyway,"
19 unquote?

20 A. At the time I was trying to plow snow and
21 finish my snow business and talking on the portable
22 phone, so that was a busy night. I don't remember the
23 most. Now, maybe I did, and maybe I didn't.

24 Q. Well, which criteria weren't met, sir?

1 A. As far as I'm concerned, all nine criteria was
2 met.

3 Q. That's your opinion today?

4 A. That was my opinion that day.

5 Q. But you still told the newspaper that only
6 most of them had been met?

7 MR. ESCHBACH: I object. That misstates what the
8 witness said. He said he didn't remember saying that.

9 HEARING OFFICER WALLACE: Sustained.

10 MR. MUELLER: You did read the article about
11 yourself in the newspaper, right?

12 THE WITNESS: I'm trying to think what came in the
13 Streator paper. I heard more than I read.

14 Q. Did you ever complain to anyone that you were
15 misquoted in the paper?

16 A. No.

17 Q. Sir, what committees do you serve on?

18 A. ESDA, Fee & Salary, Courthouse & Jail, County
19 Development, Zoning & Planning.

20 Q. What's the first one you gave me?

21 A. ESDA, Emergency Disaster.

22 Q. Sir, are there any other first-term county
23 board members on the Zoning & Planning Committee?

24 MR. RUBIN: I'm going to object to the relevance.

1 MR. MUELLER: I'll tie it up in a second.

2 HEARING OFFICER WALLACE: You can answer the
3 question.

4 THE WITNESS: I'm trying to figure out who's on
5 there. I believe I'm the only one.

6 MR. MUELLER: And are there any other first-term
7 county board members on the Fee & Salary Committee?

8 MR. RUBIN: Object to relevance.

9 MR. MUELLER: I'll tie it up, again, in a second.

10 HEARING OFFICER WALLACE: All right. You can
11 answer.

12 THE WITNESS: Yes. There's another one on there on
13 the Fee & Salary.

14 MR. MUELLER: Who's that?

15 THE WITNESS: Ron Landers I believe, if I've got
16 the right committee straight. I didn't bring a list
17 with me.

18 Q. Any other first-term members on the
19 Development Committee?

20 A. Yes.

21 Q. Who would that be?

22 A. Richard Foltynewicz.

23 Q. You're the only first-timer, though, that's on
24 all three of these committees, correct?

1 MR. RUBIN: I'm going to object to the relevance.
2 MR. MUELLER: I'm going to tie this up in one
3 second.
4 THE WITNESS: I'd have to check my list.
5 HEARING OFFICER WALLACE: Wait.
6 Objection is noted. Continue.
7 MR. MUELLER: In fact, sir, you're the only
8 first-termer that's on even two of these committees,
9 right?
10 MR. RUBIN: Same objection.
11 HEARING OFFICER WALLACE: Noted.
12 MR. MUELLER: Is that correct, sir?
13 THE WITNESS: Without checking the list, I guess
14 so.
15 Q. Did Mr. Hettel, the county board chairman,
16 ever talk to you about why he was appointing you to
17 these committees?
18 A. No.
19 MR. RUBIN: Objection. Relevance.
20 HEARING OFFICER WALLACE: Are you still tying this
21 together?
22 MR. MUELLER: I'm getting there.
23 HEARING OFFICER WALLACE: All right. Noted.
24 Your answer was?

1 THE WITNESS: No.

2 MR. MUELLER: Did Mr. Hettel, the county board
3 chairman, ever talk to you at any time, sir, about how
4 he hoped or thought you would vote on the landfill
5 application?

6 MR. RUBIN: Objection. That would invade,
7 certainly, the minds of the county board members with
8 respect to deliberations.

9 MR. MUELLER: Well, if one -- if the county board
10 chairman rewards someone for their vote with certain
11 committee assignments, that would be highly probative on
12 the issue of fundamental fairness.

13 MR. RUBIN: I don't believe that was the question.

14 HEARING OFFICER WALLACE: Yes. That wasn't the
15 question. The objection is sustained.

16 MR. MUELLER: Sir, hadn't you prior to the vote
17 stated to a number of people that you would give great
18 weight to the recommendation of the Siting Hearing
19 Committee?

20 MR. RUBIN: Objection, same. Invades the mind of
21 this person and any deliberations if those conversations
22 were with county board members, any deliberations of the
23 county board.

24 MR. MUELLER: Sir, I indicated as to non-county

1 board members.

2 THE WITNESS: Pardon? Repeat that.

3 Q. Hadn't you told people in the public and even
4 people when you were running for office that you would
5 give great weight to the recommendation of the Siting
6 Hearing Committee?

7 A. No. I said I'd make up my own mind and find
8 out all I could on it.

9 Q. The Siting Hearing Committee recommended that
10 this application be rejected, correct?

11 A. Yes, sir.

12 Q. You voted in favor of the application?

13 A. Yes.

14 Q. And, sir, you were one of only two democrats
15 that voted in favor of this application, correct?

16 MR. RUBIN: Objection. Relevance.

17 HEARING OFFICER WALLACE: What is the relevance of
18 the party affiliation?

19 MR. MUELLER: It goes back to what he may or may
20 not have been promised or given in exchange for his vote
21 as a political matter.

22 HEARING OFFICER WALLACE: Overruled.

23 Answer the question, please.

24 THE WITNESS: I don't know how the rest of 'em

1 voted. It was all a matter of record.

2 MR. MUELLER: Mr. Jordan, it was politically
3 expedient for you in terms of your committee assignments
4 to vote for this application, wasn't it?

5 MR. RUBIN: Objection, relevance. This is far
6 beyond the scope of what is normally permitted or have
7 been permitted in these kinds of fairness hearings.
8 Political expedience is not an issue.

9 MR. MUELLER: Well, we've got a witness who only
10 read some summaries, who's a new county board member,
11 who gets plumb committee assignments. Where there's
12 smoke, there's fire.

13 HEARING OFFICER WALLACE: The objection's
14 sustained.

15 MR. MUELLER: No one ever talked to you, sir, about
16 why you got those committee assignments?

17 THE WITNESS: No.

18 Q. To your knowledge those committee assignments
19 were not linked in any way, shape, or form with your
20 position on the landfill?

21 A. No. I thought those assignments was there
22 before the vote.

23 Q. Did you request any specific committees, sir?

24 A. I asked to be considered on one.

1 Q. Which one?

2 A. ESDA.

3 Q. And you got that one, also?

4 MR. RUBIN: Objection.

5 HEARING OFFICER WALLACE: Overruled.

6 MR. MUELLER: You got that committee, also?

7 THE WITNESS: My former -- the person I replaced

8 was his committee. He'd been on it, and I'd like to

9 keep that one I asked.

10 Q. Did you replace an individual named

11 Mr. Daugherity?

12 A. Yes.

13 Q. Clarence Daugherity?

14 A. Yes.

15 Q. Sir, did you have his support when you ran to

16 replace him?

17 A. Yes.

18 MR. RUBIN: Objection.

19 MR. ESCHBACH: I'd also object as being irrelevant.

20 HEARING OFFICER WALLACE: All right. Sustained.

21 The answer's stricken.

22 MR. MUELLER: He retired. Correct, sir?

23 THE WITNESS: Yes.

24 Q. And did he help you understand how you should

1 vote on the landfill issue?

2 A. He said I had to make up my mind, make my own
3 decision on whatever I done when I got that job.

4 Q. And he had voted in favor of it also, hadn't
5 he?

6 A. It's on the record somewhere.

7 HEARING OFFICER WALLACE: Do you know?

8 THE WITNESS: I believe he voted yes.

9 MR. MUELLER: Sir, you've been singled out by the
10 media as having cast a key vote on this proposal. Are
11 you aware of that?

12 MR. RUBIN: Objection. Relevance.

13 MR. ESCHBACH: I would also object as being
14 irrelevant. This is something that apparently occurred
15 after the vote, so this certainly didn't affect his
16 decision in any way.

17 HEARING OFFICER WALLACE: Overruled.

18 MR. MUELLER: Sir, are you aware of the fact that
19 you've been singled out by the media as having cast a
20 key vote on this?

21 THE WITNESS: Yes.

22 Q. How do you feel about that?

23 MR. RUBIN: Objection. That invades the mind of
24 the deliberations of someone who voted on this matter.

1 That is specifically precluded by the Pollution Control
2 Board's prior decision.

3 MR. ESCHBACH: I would also object on the grounds
4 of relevance. It really isn't relevant now as to what
5 the witness thought after he voted, about some issue
6 after he cast his vote.

7 HEARING OFFICER WALLACE: Sustained.

8 MR. MUELLER: By the way, sir, you never attended
9 any of the hearings, did you?

10 THE WITNESS: I came to one evening meeting.

11 Q. How long were you there?

12 A. Couple hours.

13 Q. Was that a meeting where there was public
14 comment or --

15 A. Public comment.

16 Q. So you never heard any of the testimony?

17 A. No.

18 Q. That's all.

19 HEARING OFFICER WALLACE: Mr. Eschbach?

20 CROSS-EXAMINATION BY:

21 MR. ROBERT M. ESCHBACH

22 MR. ESCHBACH: Mr. Jordan, you talked about
23 reading summaries. Were you talking about documents that
24 were at the county clerk's office; is that correct?

1 THE WITNESS: Yes, sir.

2 Q. And you said circuit clerk, but you meant --

3 A. At the county clerk, yeah.

4 Q. And those documents, were they -- did they
5 consist of questions and answers verbatim of the
6 witnesses?

7 A. Yes.

8 Q. Would they have been, in essence, the
9 transcripts of the proceedings?

10 A. Yes.

11 MR. MUELLER: I'm going to object to the leading
12 nature of the question. Again, it's Mr. Eschbach's
13 witness.

14 MR. RUBIN: He's not a hostile witness. This is
15 cross-examination.

16 HEARING OFFICER WALLACE: Overruled.

17 Go ahead, Mr. Eschbach.

18 MR. ESCHBACH: When you said summaries, in essence,
19 you meant the transcripts of the proceedings; is that
20 correct?

21 THE WITNESS: Yes. But somehow they said summaries
22 now. That's what I asked for, and I was told that that
23 would update me quite a bit.

24 Q. That's what somebody in the clerk's office

1 called them?

2 A. I hope so, because I was trying to get some
3 information for myself.

4 Q. Just one second, please.

5 I have no other questions.

6 HEARING OFFICER WALLACE: Mr. Rubin?

7 MR. RUBIN: No questions.

8 HEARING OFFICER WALLACE: Redirect?

9 REDIRECT EXAMINATION BY:

10 MR. GEORGE MUELLER

11 MR. MUELLER: Sir, do you remember where you picked
12 up these summaries?

13 THE WITNESS: At the clerk's office downstairs in
14 the courthouse.

15 Q. Out at the north courthouse?

16 A. Yes, sir.

17 Q. And would they like just give 'em to you to
18 take home, or did you have to bring 'em back.

19 A. Gave 'em to me to use and to read. They
20 never mentioned nothing about bringing 'em back.

21 Q. You never brought 'em back?

22 A. Don't think so.

23 Q. How long would a summary be?

24 A. I don't know, quite a few pages (indicating).

1 HEARING OFFICER WALLACE: Are you showing a couple
2 of inches?

3 THE WITNESS: Yeah, the thickness of the document,
4 yeah, half, three-quarters to an inch, inch and a half.

5 MR. MUELLER: You think you read about six or eight
6 of those?

7 THE WITNESS: At least, if not more.

8 Q. What's the most you could have read?

9 A. That was last January.

10 Q. You didn't read any 3,000 pages, did you?

11 A. Couldn't have, no.

12 Q. Thank you. That's all.

13 HEARING OFFICER WALLACE: Mr. Eschbach?

14 MR. ESCHBACH: No questions.

15 HEARING OFFICER WALLACE: Mr. Jordan, what year did
16 you begin on the county board?

17 THE WITNESS: December of '96.

18 HEARING OFFICER WALLACE: December of '96.

19 Okay. Thank you, sir. You may step down.

20 (Witness excused.)

21 HEARING OFFICER WALLACE: Next witness?

22 MR. MUELLER: Mr. Rosengren.

23 RONALD ROSENGREN, called as a witness herein,
24 upon being first duly sworn on oath, was examined and

1 testified as follows:

2 (Witness sworn.)

3 DIRECT EXAMINATION BY:

4 MR. GEORGE MUELLER

5 MR. MUELLER: Would you state your name, please.

6 THE WITNESS: Ronald Rosengren.

7 Q. Mr. Rosengren, where do you live?

8 A. Route 1, Serena.

9 Q. What do you do for a living?

10 A. I work for the State of Illinois in the
11 wintertime, and I'm also the Road Commissioner in Serena
12 Township.

13 Q. What do you do for the State of Illinois in
14 the winter?

15 A. I'm called a full-time temp. I'm there eight
16 hours a day, five days a week; unless it's snowing, then
17 it's usually overtime.

18 Q. You're able to get away from that job in order
19 to go to county board meetings?

20 A. When it's not snowing I could probably get
21 away.

22 Q. You're able to get to your committee meetings?

23 A. If it's not snowing. I've been to a few.
24 I've missed most of 'em.

1 Q. You are a county board member, correct?

2 A. Yes, sir.

3 Q. How long have you been on the county board?

4 A. Since 1980.

5 Q. When this case came up for a vote last spring
6 after the first go-around of hearings, how did you vote
7 on the landfill?

8 HEARING OFFICER WALLACE: Would you state the year.

9 MR. MUELLER: In 1996.

10 THE WITNESS: You have to explain a little bit
11 more. You mean when the county board first voted on it?

12 Q. Yeah.

13 A. I voted, if I understand it right, against
14 LandComp.

15 Q. Okay. And at the -- the vote of January 1997,
16 you weren't present, sir, were you?

17 A. No.

18 Q. Where were you?

19 A. I was working.

20 Q. Do you remember specifically what you were
21 doing?

22 A. Yes, plowing snow.

23 Q. It had snowed the previous day?

24 A. I'm not for sure. It must have.

1 Q. Now, do you recall telling other board
2 members, Ario Franzetti and Andree-Marie Koban, that you
3 would, in fact, be there and that you'd have a cell
4 phone with you so that you could come to the meeting?

5 A. No. They asked me if I could show up, and I
6 told 'em I'd be there if it wasn't snowing, if I wasn't
7 working.

8 Q. Didn't you, in fact, tell them you'd have a
9 cellular phone with you?

10 A. Yeah. Maybe I did. I don't know. I usually
11 do have one with me.

12 Q. And did anyone call you that morning asking
13 you to come to the meeting for the vote?

14 A. I think somebody did call me. I'm not for
15 sure.

16 Q. And, sir, why didn't you come to the meeting
17 then?

18 A. Because I was working.

19 Q. You couldn't have gotten away for a half hour
20 to come in for the vote?

21 A. No.

22 Q. If you had been able to make it to the
23 meeting, how would you have voted?

24 MR. RUBIN: I'm going to object. It calls for

1 speculation. It also seeks to invade the mind of one of
2 the county board members. I think that it's highly
3 improper to ask this witness.

4 MR. MUELLER: To the extent that one of the
5 allegations here is that this meeting was illegally
6 convened on improper notice and we've got a board member
7 who missed the meeting, it's certainly very relevant.
8 Also, how can it call for speculation since I'm asking
9 him to tell us his opinion.

10 MR. RUBIN: Calls for speculation because it asks
11 this witness months after the fact to explain how he
12 would have voted on that day; and therefore, it calls
13 for speculation. It is also, whether Mr. Mueller wants
14 to admit it or not, seeks to invade the mind and the
15 deliberations of one of those who are -- who is a county
16 board member. Pollution Control Board has ruled
17 repeatedly that it will not seek -- permit invasion of
18 the deliberations of county board members or their
19 thought processes.

20 MR. MUELLER: I'm not asking his thought process,
21 Mr. Wallace. I'm asking him his conclusion, if he knows
22 it. Maybe he doesn't know.

23 MR. ESCHBACH: Your Honor, I'd also object on the
24 grounds of relevance and also point out that

1 Mr. Mueller's claiming that one of the issues here is
2 the manner in which the meeting had been called -- I
3 mean postponed. It's never been put to Mr. Rosengren
4 whether he would have been available to attend the
5 meeting the day before, before we had the substantial
6 snow, and basically the courthouse and the entire county
7 was shut down.

8 HEARING OFFICER WALLACE: I'm sorry. I didn't hear
9 the last --

10 MR. ESCHBACH: The point is that the meeting that
11 Mr. Rosengren missed was originally scheduled for a day
12 earlier. Mr. Mueller seems to be implying that if the
13 meeting had not been changed and rescheduled,
14 Mr. Rosengren would have been there. But that has not
15 been established. And he pointed that out that the
16 reason the meeting had been continued a day was because
17 of the snow. And it's this witness' testimony that
18 that's the very reason he was not present on the date of
19 the hearing.

20 HEARING OFFICER WALLACE: Okay. The objection's
21 sustained.

22 MR. MUELLER: Ask to make an offer of proof.

23 HEARING OFFICER WALLACE: You may proceed.

24 MR. MUELLER: By way of offer of proof,

1 Mr. Rosengren, do you know how you would have voted if
2 you'd been able to make the meeting?

3 MR. RUBIN: Excuse me. I'm not sure that this is
4 an appropriate subject for an offer of proof either.

5 MR. LEIGH: And as a county attorney, Mr. Rosengren
6 is a member of the county board. I would direct him not
7 to answer the question.

8 MR. MUELLER: This is not a discovery deposition.
9 Mr. Leigh can't be making directions here.

10 HEARING OFFICER WALLACE: The objections are
11 overruled. You may continue with your offer of proof.

12 MR. MUELLER: Mr. Rosengren, do you know how you
13 would have voted?

14 THE WITNESS: I'm not for sure.

15 Q. Sir, did anyone --

16 HEARING OFFICER WALLACE: Wait just a minute.

17 And not regarding Mr. Leigh's direction to
18 you, does that change your answer? Because I'm
19 directing you to answer Mr. Mueller's question.

20 THE WITNESS: No. I'm not for sure. I'm just not
21 for sure.

22 MR. MUELLER: That concludes my offer of proof.
23 I'm going on to regular testimony.

24 Mr. Rosengren, were you aware of the meeting

1 at which this vote took place?

2 THE WITNESS: Um-hum, yes.

3 Q. And you never told anyone that they should
4 call you on your cell phone, and you'd get over here to
5 vote if they could just give you 20-minutes notice?

6 A. That's what they told me, to take 20 minutes.
7 I told 'em to give me a call; I'll see what I was doing.
8 And I was plowing snow. I couldn't get away.

9 Q. Did you take a lunch break that day, sir?

10 A. No.

11 Q. Are you entitled to a lunch break when you
12 work for the State?

13 A. Yeah. You're entitled for a half hour.

14 Q. And this vote took place around 12:30, didn't
15 it?

16 A. I don't have any idea.

17 Q. Did anyone call you that morning and tell you
18 about 12 o'clock that the County was getting ready to
19 vote?

20 A. Um-hum.

21 Q. Do you know who called you?

22 HEARING OFFICER WALLACE: I'm sorry. Your answer
23 was?

24 THE WITNESS: Yes.

1 MR. MUELLER: Do you know who called you?

2 THE WITNESS: I believe it was the State Police,
3 which I'm not real happy about.

4 Q. It was your choice that you didn't want to go
5 over to the meeting; is that correct?

6 A. No. I was working. I couldn't get away.

7 Q. No further questions.

8 HEARING OFFICER WALLACE: Mr. Eschbach?

9 MR. ESCHBACH: No questions.

10 HEARING OFFICER WALLACE: Mr. Rubin?

11 MR. RUBIN: No questions.

12 HEARING OFFICER WALLACE: Could you spell your last
13 name for the reporter?

14 THE WITNESS: R-o-s-e-n-g-r-e-n.

15 HEARING OFFICER WALLACE: You may step down, sir.
16 Thank you.

17 (Witness excused.)

18 HEARING OFFICER WALLACE: Next witness?

19 MR. MUELLER: We'll call Mr. Mowinski.

20 THOMAS MOWINSKI, called as a witness herein,
21 upon being first duly sworn on oath, was examined and
22 testified as follows:

23 (Witness sworn.)

24 HEARING OFFICER WALLACE: Mr. Mueller?

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DIRECT EXAMINATION BY:

MR. GEORGE MUELLER

MR. MUELLER: Would you identify yourself for the record, please.

THE WITNESS: Tom J. Mowinski.

Q. Mr. Mowinski, where do you reside?

A. Lake Holiday, 1282 Holiday Drive, Sandwich, Illinois.

Q. Are you a county board member of LaSalle County?

A. Yes, I am.

Q. How long have you been a county board member?

A. Going on three years.

Q. And, sir, you were not present when the vote was taken in this matter in January, were you?

A. No, sir.

Q. Had you previously told individuals that after considering all of the evidence you would have voted against LandComp?

A. Would you state that again, please? I would have voted what?

MR. MUELLER: Against the application.

MR. RUBIN: Before you answer, I have to interpose the same objection that I made earlier. That is to

1 extent that Mr. Mowinski has conversations with members
2 of the county board, that Mr. Mueller's question would
3 seek to invade the deliberative process of the county
4 board.

5 MR. MUELLER: Let me qualify the question then by
6 have you told non-county board members that you would
7 have voted against LandComp?

8 THE WITNESS: Not to the best of my knowledge, no.

9 Q. You never told Vicky Scharenberg that?

10 A. I had very little conversation with Vicky
11 Scharenberg.

12 Q. And, sir, does that mean that you didn't tell
13 her that or that you might have just told her that in a
14 little conversation?

15 A. I don't recall telling her anything like that.

16 Q. Did you ever tell her, sir -- well, let me ask
17 you this.

18 Did Mr. Hettel, county board chairman, ever
19 tell you that if you didn't vote for the landfill, then
20 the State would come in and site it wherever they
21 wanted?

22 A. No, sir.

23 MR. RUBIN: I'm going to object.

24 HEARING OFFICER WALLACE: State your objection.

1 MR. RUBIN: Again, conversations between county
2 board members with respect to the landfill application
3 have been held by the Board to be beyond the appropriate
4 scope of these hearings because it seeks to invade the
5 deliberative process.

6 MR. MUELLER: But influence by one county board
7 member that misstates the facts or misstates the law is
8 inappropriate.

9 MR. RUBIN: The Pollution Control Board has ruled
10 that only where there is preexisting evidence of some --
11 what the Board has referred to as improper conduct will
12 the Board permit such questions. There is no such
13 evidence here.

14 HEARING OFFICER WALLACE: Objection's sustained.
15 If the answer was recorded, it is stricken.

16 MR. MUELLER: Was it your impression, sir, that if
17 you didn't vote yes on the landfill that the State would
18 come in and site it?

19 MR. RUBIN: Objection. He's already testified that
20 he did not vote on the landfill in January. He was not
21 present.

22 HEARING OFFICER WALLACE: Overruled. Answer the
23 question, please.

24 THE WITNESS: Ask the question again, please.

1 MR. MUELLER: Was it your understanding that if the
2 landfill was not approved, that the State would come in
3 and site it wherever they wanted?

4 MR. RUBIN: Objection. It seeks to invade the mind
5 of the county board member; and again, that is beyond
6 the scope of the proper inquiry.

7 HEARING OFFICER WALLACE: This question does not.
8 Your objection's overruled.

9 Answer the question, please.

10 THE WITNESS: No, sir.

11 MR. MUELLER: And no one ever told you anything
12 like that; is that right?

13 THE WITNESS: Things like that -- it may have been
14 mentioned, but it didn't influence any decisions I would
15 have made at the time.

16 Q. Did Joe Hettel ever tell you anything like
17 that?

18 A. No, sir.

19 Q. I believe you were quoted in one of the
20 newspapers as saying you were going to vote for the
21 application. Do you recall that?

22 A. That's a possibility, yes, sir. I think it
23 was asked sometime afterward.

24 Q. Did you complain that you were misquoted?

1 A. At the time I don't recall if I complained or
2 not.

3 Q. Do you know, sir, how you would have voted if
4 you'd been there?

5 MR. RUBIN: Same objection. It's the same issue
6 which was raised with the previous witness.

7 HEARING OFFICER WALLACE: Sustained.

8 MR. MUELLER: I have no further questions.

9 HEARING OFFICER WALLACE: Mr. Eschbach?

10 MR. ESCHBACH: I have no questions.

11 HEARING OFFICER WALLACE: Mr. Rubin?

12 MR. RUBIN: I have no questions.

13 HEARING OFFICER WALLACE: Give the spelling of your
14 name to the court reporter.

15 THE WITNESS: Sure. M-o-w-i-n-s-k-i. Tom is easy.

16 HEARING OFFICER WALLACE: You may step down.

17 (Witness excused.)

18 HEARING OFFICER WALLACE: Next witness?

19 DONALD BAKER, called as a witness herein,
20 upon being first duly sworn on oath, was examined and
21 testified as follows:

22 (Witness sworn.)

23 HEARING OFFICER WALLACE: You may proceed.

24 DIRECT EXAMINATION BY:

1 MR. GEORGE MUELLER

2 MR. MUELLER: Would you identify yourself for the
3 record, please.

4 THE WITNESS: My name is Donald Baker, mayor of
5 Peru.

6 Q. And, sir, you had publicly expressed on a
7 number of occasions that you were in favor of the
8 LandComp application, correct?

9 A. Correct.

10 Q. And, in fact, you even made that statement to
11 the media that if they don't site the landfill, it's
12 going to cost the City some considerable money, right?

13 A. That's correct.

14 Q. Referring to the City of Peru which you're
15 mayor of?

16 A. Yes.

17 Q. Now, sir, who's your county board
18 representative?

19 A. Well, we have several.

20 Q. Who are the ones from Peru?

21 A. Art Rigby, Erwin Hageman, and I'm not sure --
22 other than that, Walt Zborowski. I don't know if he
23 still is or not. That's all that I know.

24 Q. And, sir, did you ever talk to any of your

1 county board representatives about how you felt they
2 should vote?

3 A. I've talked to Mr. Rigby. I also talked to
4 Mr. Hageman.

5 Q. Did you tell either one of those individuals,
6 sir, that if they didn't vote for the landfill, it would
7 be political suicide?

8 A. I did not.

9 Q. Did you ever talk to Ms. Newcomer about her
10 vote?

11 A. Not to my knowledge.

12 Q. Did Paul DeGroot ever -- or anyone who works
13 for Mr. DeGroot ever approach you about lobbying board
14 members for their support?

15 A. He did not.

16 Q. Do you know Mr. DeGroot personally?

17 A. Slightly, yes.

18 Q. Sir, after the county board approved this
19 application, there was comment in the media that the
20 vote seemed to have been geographic, with people from
21 Ottawa typically voting no, and everyone else in the
22 county voting yes. Did you have anything to do with
23 making sure that people at your end of the county got
24 the message to vote yes?

1 MR. RUBIN: Excuse me. May I have the question
2 read back. I missed part of it.

3 HEARING OFFICER WALLACE: Could you read the
4 question, back?

5 (Record read.)

6 MR. RUBIN: I think that the question misstates
7 the record. I don't believe it is accurate to say that
8 everyone else outside of Ottawa voted yes.

9 MR. MUELLER: Let me rephrase the question.

10 HEARING OFFICER WALLACE: All right.

11 MR. MUELLER: Mr. Baker, I believe that
12 Mr. Savitch, a west-end county board member, was quoted
13 as -- strike that.

14 Did anyone besides Mr. Rigby from the west end
15 vote against this landfill?

16 THE WITNESS: I don't know.

17 Q. Do you know how Mr. Savitch voted?

18 A. I don't know Mr. Savitch.

19 Q. Do you know John Janko?

20 A. I know John Janko, yes.

21 Q. Did you talk the him about his vote?

22 A. I did not.

23 Q. Do you believe, sir, that there was geographic
24 pressure from the west end, which would include LaSalle

1 and Peru, in favor of this landfill?

2 MR. RUBIN: Objection. Calls for speculation.

3 HEARING OFFICER WALLACE: Overruled.

4 THE WITNESS: What was the question?

5 MR. MUELLER: Do you know, sir, whether there was
6 political pressure applied by west end leaders, such as
7 yourself, in favor of this landfill?

8 THE WITNESS: Not to my knowledge.

9 Q. That's all. Thank you, sir.

10 HEARING OFFICER WALLACE: Mr. Eschbach?

11 MR. ESCHBACH: I have no questions.

12 HEARING OFFICER WALLACE: Mr. Rubin?

13 MR. RUBIN: No questions.

14 HEARING OFFICER WALLACE: Mr. Mueller, when you say
15 west end, are you talking about the west side of the
16 county?

17 MR. MUELLER: That's correct.

18 HEARING OFFICER WALLACE: Thank you.

19 Thank you, sir. You may step down.

20 (Witness excused.)

21 (A brief recess was taken.)

22 PAUL MURPHY, called as a witness herein, upon
23 being first duly sworn on oath, was examined and
24 testified as follows:

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(Witness sworn.)

DIRECT EXAMINATION BY:

MR. GEORGE MUELLER

MR. MUELLER: Would you identify yourself for the record, please.

THE WITNESS: Sir?

Q. Would you identify yourself for the record.

A. Paul Murphy.

Q. Mr. Murphy, were you, up until April of this year, mayor of LaSalle?

A. From '89 to '97, that's correct.

Q. And, sir, like Mr. Baker, was it also your position that the siting of the LandComp facility would be good for the City of LaSalle?

A. Not just my position, but the counsel's position, also. We are on record.

Q. And you felt it would also be good for your citizens?

A. Yes, sir.

Q. And did you talk to county board members about that?

A. Well, the only county board member I talked to is -- we have breakfast a lot -- is with Mr. Panzica.

Q. Did you ever talk to Ms. Newcomer about your

1 position with respect to the landfill?

2 A. To my knowledge, I have no knowledge of that.

3 Q. How about Mr. Rigby? Did you ever talk to
4 him?

5 A. I wouldn't know Mr. Rigby if he was sitting
6 there with you.

7 HEARING OFFICER WALLACE: So your answer is no?

8 THE WITNESS: No, sir.

9 MR. MUELLER: Sir, did you tell the media ever that
10 it would be political suicide for a board member to vote
11 against the application?

12 THE WITNESS: No. The only thing, I made a
13 statement, to my recollection, would be that I said that
14 having a lot of experience with the EPA and the
15 Pollution Control Boards for the past eight years, I
16 leave that judgment up to them; that I'm not qualified
17 to make that kind of a judgment. If they think it's all
18 right, then it's all right with us. And we would be
19 saving our taxpayers probably 100 to \$150 a month in
20 cost. And if that answers the question, I -- that was
21 my position.

22 Q. Sir, did you make the statement to the News
23 Tribune on December 17th with respect to the landfill
24 that, quote, "I really think we could have some

1 influence with our county board members," unquote?

2 A. Based on that statement, I would say that is
3 because the council has approved it, and we would
4 recommend it to our board members, yes.

5 Q. What did you do, sir --

6 A. I mean, after all, if you're going to be a
7 politician, you don't have your own personal thoughts or
8 your own personal things. You do what's best for the
9 public. The public -- the council felt it was best for
10 the public. We acted on that.

11 Q. Mr. Murphy, so you made the statement that you
12 thought you could have some influence with your county
13 board members?

14 A. Did I ever make that statement?

15 Q. Yeah, to the News Tribune.

16 A. I would hope I would have some influence with
17 any politician.

18 Q. What did you do by way of attempting to
19 influence county board members in follow-up to the
20 statement that you gave the press?

21 A. The only thing I did talk with Mr. Panzica and
22 say that the council and I are in favor of it, and we
23 hope that the constituency that you represent would be
24 in accord.

1 Q. And none of the county board members that
2 service LaSalle, other than Mr. Rigby, voted for -- or
3 voted against the application, correct?

4 A. Voted against the application?

5 MR. RUBIN: I'm sorry. I got confused.

6 MR. MUELLER: Did any of your constituent county
7 board members vote against this application?

8 THE WITNESS: I don't quite understand what you
9 mean by that.

10 MR. RUBIN: I'm sorry. I have an objection.

11 MR. MUELLER: Let me rephrase it again. I'll
12 withdraw the question.

13 Sir, who are the county board members that
14 have territory or parts of their territories within the
15 city of LaSalle?

16 THE WITNESS: We have Mr. Panzica. We have
17 Mr. Savitch, and then Mr. -- the last one that got
18 elected out of Oglesby somewhere that I don't know that
19 gentleman at all.

20 Q. And Mr. Panzica, Mr. Savitch voted in favor of
21 LandComp, right?

22 A. I would hope so.

23 HEARING OFFICER WALLACE: No. Do you know if they
24 did or did not?

1 THE WITNESS: Do I know if they did or did not?

2 Sure. That was public information.

3 MR. MUELLER: So you did a good job in your
4 political influence for your city, right?

5 MR. RUBIN: I'm going to object to the form of the
6 question.

7 THE WITNESS: I don't think that I --

8 HEARING OFFICER WALLACE: Wait, wait. He's
9 objecting.

10 MR. RUBIN: I apologize, Mr. Murphy. From time to
11 time I have to interpose an objection.

12 THE WITNESS: All right, sir.

13 MR. RUBIN: The question is leading, which is
14 improper since this is Mr. Mueller's witness. And it is
15 also based on speculation, and it's also irrelevant.

16 HEARING OFFICER WALLACE: Sustained as leading.

17 MR. MUELLER: Do you know Mr. DeGroot?

18 THE WITNESS: Very well.

19 Q. And did he ever contact you and ask you for
20 help in getting approval for this facility?

21 A. Mr. DeGroot has contacted me, yes, sir. He's
22 contacted me. But I contacted Mr. DeGroot eight years
23 ago before I even knew Mr. DeGroot.

24 The City of LaSalle at that time, if I may

1 explain, sir --

2 HEARING OFFICER WALLACE: No. There's no question
3 pending.

4 MR. MUELLER: So Mr. DeGroot's helped you in the
5 past, and you've helped him, right?

6 THE WITNESS: We probably were the first city that
7 ever had a contract with Mr. DeGroot.

8 Q. So the two of you have helped each other,
9 right?

10 A. Definitely.

11 Q. No further questions.

12 A. Okay.

13 HEARING OFFICER WALLACE: Mr. Eschbach?

14 MR. ESCHBACH: I have no questions.

15 HEARING OFFICER WALLACE: Mr. Rubin?

16 MR. RUBIN: No questions.

17 HEARING OFFICER WALLACE: Thank you, Mr. Murphy.
18 You may step down.

19 THE WITNESS: Thank you very much.

20 (Witness excused.)

21 MR. MUELLER: Pat Harrison.

22 PAT HARRISON, called as a witness herein, upon
23 being first duly sworn on oath, was examined and
24 testified as follows:

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(Witness sworn.)

DIRECT EXAMINATION BY:

MR. GEORGE MUELLER

MR. MUELLER: Would you identify yourself for the record.

THE WITNESS: Pat Harrison.

Q. Mr. Harrison, you're a reporter for the Daily Times?

A. City editor.

Q. I've been waiting for this a long time.

Sir, did you have an opportunity to write numerous articles in connection with the LandComp proceedings over the last couple of years?

A. Yes.

Q. And did you, Mr. Harrison, write an article for the Daily Times on January 18th of 1997?

A. If my byline's on it.

Q. Let me show you, sir, a copy of the article. But I'll show it to counsel first.

HEARING OFFICER WALLACE: Mr. Harrison, would you keep your voice up so people can hear?

THE WITNESS: Oh, all right, sure.

MR. MUELLER: Let me show you, sir, what purports to be a copy of an article from the Daily Times dated

1 January 18th, 1997, with the headline "Streator's Jordan
2 Makes Key Vote" and has a byline by Pat Harrison.

3 THE WITNESS: That's mine.

4 Q. That is, in fact, your article?

5 A. Yes.

6 Q. Is that a true and correct copy of the article
7 that appeared in the paper that day?

8 A. Yes.

9 Q. By the way, Pat, who writes your headlines?

10 A. Copy editors.

11 Q. Did you write the headline for that story, or
12 just the story?

13 A. I sometimes put a suggested headline. I don't
14 remember who wrote that headline, if that was mine or
15 somebody else, you know.

16 Q. Sir, I've highlighted a portion of the article
17 that purports to be a quotation from Donald Jordan, a
18 county board member. See that, sir?

19 A. Yes.

20 Q. Can you read the portion of Mr. Jordan's
21 statement that is in quotation marks?

22 A. Okay. "But most of the criteria were met, and
23 the IEPA is going to control things anyway. If it isn't
24 right, he isn't going to operate it."

1 Q. Sir, when you write a story and insert
2 something that someone said around quotation marks, what
3 does that mean about whether or not the person said it?

4 A. Well, to me it's his quote.

5 Q. Are you paraphrasing, or are those the actual
6 words a person would have used?

7 A. No. Those are the actual words.

8 Q. Now, Mr. Harrison, do you do anything to
9 ensure the accuracy of your quotes?

10 A. In this case, Mr. Jordan was tape recorded.

11 Q. And you would have taken that quote right off
12 of the tape?

13 A. Yes.

14 Q. No further questions.

15 Excuse me. I do have one more.

16 Did Dan Jordan ever contact you asking for you
17 to retract that quote or complaining that he'd been
18 misquoted?

19 A. No.

20 Q. I mean Don Jordan?

21 A. Right, no.

22 Q. Did he ever contact you, sir?

23 A. No.

24 Q. Thank you. That's all I have.

1 HEARING OFFICER WALLACE: Mr. Eschbach?

2 CROSS-EXAMINATION BY:

3 MR. ROBERT M. ESCHBACH

4 MR. ESCHBACH: Mr. Harrison, was this interview
5 with Don Jordan a person-to-person interview or --

6 THE WITNESS: No. It was right after the board
7 meeting.

8 Q. At the county complex?

9 A. Right.

10 Q. No other questions.

11 HEARING OFFICER WALLACE: Mr. Rubin?

12 CROSS-EXAMINATION BY:

13 MR. JAMES I. RUBIN

14 MR. RUBIN: Do you recall that there was -- there
15 were recommendations both in majority and minority
16 reports given by the siting hearings during the
17 deliberations leading up to the vote on January 17th?

18 THE WITNESS: Yes.

19 Q. Do you recall that the majority report said
20 that the majority of the siting criteria had been met?

21 A. Yes.

22 Q. And that the minority report said that all of
23 the criteria had been met, all nine?

24 A. Yes.

1 Q. Okay. And that, therefore, there was
2 agreement among the siting hearing members that the
3 majority of the criteria had been met; is that correct?

4 A. Yes.

5 Q. No further questions.

6 HEARING OFFICER WALLACE: Redirect?

7 MR. MUELLER: No questions.

8 HEARING OFFICER WALLACE: Thank you, Mr. Harrison.

9 THE WITNESS: Okay.

10 (Witness excused.)

11 HEARING OFFICER WALLACE: Next witness?

12 MR. MUELLER: Mr. Rigby.

13 ARTHUR RIGBY, called as a witness herein,
14 upon being first duly sworn on oath, was examined and
15 testified as follows:

16 (Witness sworn.)

17 HEARING OFFICER WALLACE: Proceed, please.

18 Speak loudly so that everyone can hear.

19 THE WITNESS: Yes.

20 HEARING OFFICER WALLACE: You may proceed.

21 DIRECT EXAMINATION BY:

22 MR. GEORGE MUELLER

23 MR. MUELLER: Would you identify yourself for the
24 record?

1 THE WITNESS: My name is Arthur J. Rigby, Jr.
2 Q. Mr. Rigby, where do you live?
3 A. I live in Peru.
4 Q. And are you a county board member, sir?
5 A. I am.
6 Q. When were you elected?
7 A. I was elected this last election, 1996.
8 Q. And Mr. Rigby, you participated in the vote on
9 the LandComp application?
10 A. I did.
11 Q. Sir, prior to that vote did you ever speak
12 with Paul Murphy or Don Baker about the issue?
13 A. I did not.
14 Q. Neither one of them ever spoke to you?
15 A. No, they didn't.
16 Q. No further questions.
17 HEARING OFFICER WALLACE: Mr. Eschbach?
18 MR. ESCHBACH: No questions.
19 MR. O'BRIEN: No questions.
20 HEARING OFFICER WALLACE: Thank you, Mr. Rigby.
21 You may step down.
22 (Witness excused.)
23 MR. MUELLER: Mr. Garretson.
24 GLENN GARRETSON, called as a witness herein,

1 upon being first duly sworn on oath, was examined and
2 testified as follows:

3 (Witness sworn.)

4 HEARING OFFICER WALLACE: Mr. Mueller?

5 DIRECT EXAMINATION BY:

6 MR. GEORGE MUELLER

7 MR. MUELLER: Would you identify yourself for the
8 record, please.

9 THE WITNESS: My name is Glenn Garretson.

10 Q. Mr. Garretson, where do you reside?

11 A. I reside at Route 1, Streator, Illinois.

12 Q. You're a member of the LaSalle County Board?

13 A. I'm a member of District 29, LaSalle County
14 Board.

15 Q. And how long have you been on the board?

16 A. About seven years going on.

17 Q. How many of the hearings in connection with
18 the LandComp application did you actually attend?

19 A. I never attended a full -- I did several part
20 of the meetings. When I was having a meeting over
21 there, I stopped a couple times, but I never attended.

22 Q. So you'd pop in and out occasionally is what
23 you're saying?

24 A. Right.

1 Q. You never sat through a full day of hearings
2 though?

3 A. I did not.

4 Q. What did you do, sir, to get yourself
5 acquainted with the evidence and the issues?

6 A. Well, of course, I picked up the information,
7 but I read -- I didn't go through all of it. I never
8 read all of it. But the final version, I went through
9 all of that, what was documented.

10 Q. Now, I don't understand, Mr. Garretson. You
11 say you didn't read all of it, but then you went through
12 a final version.

13 A. Well, the condensed version I picked up.

14 Q. What was the condensed version, sir?

15 A. Well, it was the highlights I thought was in
16 the condensed version.

17 Q. Who provided you with a condensed version of
18 the evidence?

19 A. Well, I got it from the county clerk.

20 Q. Now, are you aware that the county clerk made
21 volumes and volumes of transcripts available?

22 A. I know. I got them.

23 Q. About 4,000 pages worth?

24 A. Yeah. I had 'em all.

1 Q. Did you read all 4,000 pages?
2 A. No, I did not.
3 Q. About how much of it would you say you read?
4 A. Oh, I wouldn't -- I probably didn't read half
5 of it.
6 Q. Then you indicate that there was something
7 condensed. Is that different than these 4,000 pages
8 we're talking about?
9 A. Well, I thought it'd be easier to understand.
10 Q. Was there like a report from a hearing officer
11 that you read?
12 A. Well, there was different reports that was in
13 there.
14 Q. Do you remember reading a report from a
15 hearing officer, about a hundred-page report?
16 A. Yes.
17 Q. And did you rely on that as a condensed
18 version?
19 A. Well, I -- parts of it, yes.
20 Q. And is that what you based your vote on then?
21 A. No.
22 Q. What did you base your vote on?
23 A. Well, I based my vote on -- I took the -- I
24 was -- I had a --

1 MR. RUBIN: Excuse me. I'm going to object. I may
2 interpose an objection. I apologize. From time to time
3 I have to interpose objections for the record.

4 I think it is improper for Mr. Mueller to ask
5 the witness what he relied upon in making his -- in
6 deciding to vote. I think that that invades the
7 deliberative process.

8 HEARING OFFICER WALLACE: Overruled.

9 MR. MUELLER: Thank you.

10 Mr. Garretson, do you remember my question?

11 THE WITNESS: Would you repeat it.

12 Q. Since you didn't, apparently, read the
13 transcripts -- as you said, you didn't even read half of
14 'em -- what did you base your decision on?

15 A. Well, I based my decision with what the
16 committees came up with. I based it on some of my
17 constituents, what they had told me, and the criteria I
18 thought was filled, and --

19 Q. What did your constituents tell you about
20 this?

21 A. They said make a good decision. Nobody told
22 me how to vote.

23 Q. You said you did listen to the committees
24 though?

1 A. Right.

2 Q. Well, sir, didn't the Siting Hearing
3 Committee, in fact, recommend against LandComp?

4 A. At the very end, yes.

5 Q. So you didn't listen to them either, did you?

6 A. Well, there'd been a change there that I
7 didn't understand, and I still felt the same.

8 Q. Did you -- in other words, your mind had been
9 made up last April?

10 A. No, absolutely not. I wasn't even sure the
11 day I voted, when I went over there, how I was going to
12 vote.

13 Q. In fact, sir, weren't you sleeping when the
14 vote was taken, and you had to be woken up and told how
15 to vote?

16 A. No, I was not.

17 Q. Did you dose off just a little bit, sir?

18 A. No, I did not. I did not.

19 Q. Did anybody else prepare any reports or
20 condensed things that helped you decide what you were
21 going to do?

22 A. Absolutely nobody.

23 Q. So the only condensed thing that you relied on
24 was the report from Dr. Schoenberger?

1 MR. ESCHBACH: I would object. That's not what the
2 testimony was.

3 MR. MUELLER: I thought it was. He said he read
4 that report of about a hundred pages.

5 MR. ESCHBACH: He didn't say that he relied on it.

6 MR. MUELLER: Did you rely on it?

7 THE WITNESS: No. I didn't rely entirely on that,
8 no. I used a little of my common sense.

9 Q. And your common sense told you this was a good
10 idea?

11 A. I felt comfortable with that.

12 Q. You didn't understand why the committee the
13 first time had gone for LandComp and the second time
14 they'd gone against them?

15 A. Not really, no. I didn't understand that.
16 Because that was a turning point right there. I stayed
17 with the first committee.

18 Q. Thank you, sir.

19 HEARING OFFICER WALLACE: Mr. Eschbach?

20 MR. ESCHBACH: I have no questions.

21 HEARING OFFICER WALLACE: Mr. Rubin?

22 CROSS-EXAMINATION BY:

23 MR. JAMES I. RUBIN

24 MR. RUBIN: There was a minority report given at

1 the county board meeting on January 17th by members who
2 had been on the original committee; is that correct?

3 THE WITNESS: That's right.

4 Q. And they recommended in favor of the landfill;
5 is that correct?

6 A. That's right.

7 Q. Did that -- did you rely in part on that?

8 A. Yes, I did.

9 Q. No further questions.

10 HEARING OFFICER WALLACE: Redirect?

11 REDIRECT EXAMINATION BY:

12 MR. GEORGE MUELLER

13 MR. MUELLER: Sir, do you know what the CDM report
14 was?

15 MR. RUBIN: Outside the scope of redirect.

16 MR. MUELLER: Well, he's talking about a minority
17 report. I want to see if the witness knows what the CDM
18 report was.

19 MR. ESCHBACH: I'll also object as beyond the scope
20 of direct examination.

21 HEARING OFFICER WALLACE: Sustained.

22 MR. MUELLER: No further questions.

23 HEARING OFFICER WALLACE: Thank you, Mr. Garretson.

24 You may step down.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 MR. MUELLER: Ms. Newcomer.

4 BETH NEWCOMER, called as a witness herein,
5 upon being first duly sworn on oath, was examined and
6 testified as follows:

7 (Witness sworn.)

8 DIRECT EXAMINATION BY:

9 MR. GEORGE MUELLER

10 MR. MUELLER: Would you identify yourself for the
11 record, please.

12 THE WITNESS: My name is Beth Newcomer.

13 And can I also say that I'd like the cameras
14 shut off.

15 HEARING OFFICER WALLACE: Yes. Would the two
16 gentlemen please turn your cameras off.

17 THE WITNESS: Thank you.

18 MR. MUELLER: Ms. Newcomer, where do you reside?

19 THE WITNESS: I reside at 901 Calhoun Street in
20 Peru, Illinois.

21 Q. You're a member of the LaSalle County Board?

22 A. Yes, I am.

23 Q. And when were you elected?

24 A. I was elected in '92 -- '94. Sorry.

1 Q. You're from a district in Peru, correct?
2 A. Yes, District 9.
3 Q. Have you ever talked to Don Baker about the
4 this application?
5 A. No, I have not.
6 Q. Ever talked to Paul Murphy about this
7 application?
8 A. No, I have not.
9 Q. Do you know Mr. DeGroot?
10 A. I know of Mr. DeGroot.
11 Q. You don't know him personally?
12 A. No, I do not.
13 Q. Do you have any relatives that work for States
14 Land?
15 A. No, I do not.
16 Q. Do you have any relatives that work for
17 Mr. DeGroot or any entity controlled by Mr. DeGroot?
18 A. No, I do not.
19 Q. Last fall, ma'am, when we were about to start
20 the second round of hearings after remand from the
21 Pollution Control Board, I believe you wrote a lengthy
22 letter with respect to the -- what you perceived to be
23 the alleged bias of some of your fellow county board
24 members. Do you recall that letter?

1 A. I do.

2 Q. And did anyone assist you in writing that
3 letter?

4 A. No, they did not.

5 Q. Did anyone give you any input into writing
6 that letter?

7 A. No. I asked a couple questions about it, and
8 things I found out were in that.

9 Q. Who did you ask questions to -- to help you
10 with that letter?

11 A. I did not ask anyone anything to help me with
12 the letter.

13 Q. Well, who did you ask questions to get input
14 from?

15 A. I did ask Susan Grandone-Schroeder.

16 Q. What did you ask her?

17 A. I told her that I had overheard a conversation
18 and that I was uncomfortable with it and was wondering
19 if she knew. I felt that it was not proper action and
20 asked her if she knew anything about what I overheard.

21 Q. And what did Ms. Grandone-Schroeder tell you?

22 A. She said that she had heard Ario Franzetti
23 make the same type of statements in a meeting in front
24 of the Pollution Control Board and that he was told that

1 he could not proceed with that behavior.

2 Q. Ms. Newcomer, you're a long-time supporter of
3 this project, correct?

4 A. That is not true.

5 Q. You're not a supporter of the project?

6 A. I am a supporter. Define lengthy or long.

7 Q. When you wrote this letter last fall you were
8 supporting the project at that time, weren't you?

9 A. Yes, I was.

10 Q. You have no family members or former family
11 members that are employed by Mr. DeGroot or anyone --

12 A. I have a former family member, if you're
13 talking about my ex-husband's brother.

14 Q. And do you still have a relationship with your
15 ex-husband's brother?

16 A. My ex-husband does not even come and see his
17 children. I have no contact with my ex-husband
18 whatsoever or their family.

19 Q. What about his brother and so forth?

20 A. Absolutely not. There's no contact with
21 myself or my children for that fact.

22 Q. Do you receive child support?

23 A. Yes, I do, from my husband -- ex-husband, not
24 from Jeff.

1 Q. Jeff is your former brother-in-law?
2 A. Yes, he is.
3 Q. What's his last name?
4 A. Newcomer.
5 Q. When's the last time you spoke to him?
6 A. To Jeff Newcomer?
7 Q. Yeah.
8 A. Probably at least two years ago.
9 Q. Did you ever talk to Mr. Eschbach about the
10 letter you wrote last fall?
11 A. Not that I recall.
12 Q. You only conferred with Susan Grandone on it?
13 A. Yes.
14 Q. Did you show her a draft of it before you sent
15 it?
16 MR. ESCHBACH: I'll object. That's not what the
17 testimony was. The testimony was that she asked Susan
18 Grandone-Schroeder a question regarding something that
19 precipitated the letter. Your question implies that she
20 consulted with Susan Grandone.
21 MR. MUELLER: Mr. Eschbach's correct as to what the
22 testimony was. Now the testimony is that she conferred
23 with Susan Grandone about the letter.
24 HEARING OFFICER WALLACE: No. The objection's

1 sustained. Rephrase your question.

2 MR. MUELLER: Ms. Newcomer, did you ever show Susan
3 Grandone any earlier draft of that letter?

4 THE WITNESS: No. I may have given her a copy
5 maybe right before or right after I filed it with county
6 clerk's office. I don't recall.

7 Q. And she, of course, encouraged you to file it,
8 correct?

9 A. No. That is not true.

10 Q. No further questions.

11 MR. ESCHBACH: I have no questions.

12 MR. O'BRIEN: Just a minute.

13 CROSS-EXAMINATION BY:

14 MR. JAMES I. RUBIN

15 MR. RUBIN: There was something that you overheard
16 that precipitated a letter that you wrote to the county
17 board; is that correct?

18 THE WITNESS: Yes. That is correct.

19 Q. Could you tell us what it was that you
20 overheard that precipitated writing the letter to the
21 county board?

22 A. Yes. I had come into the board office and
23 overheard a conversation between Ario Franzetti and, at
24 the time, county board chairman Ted Lambert. He had

1 said that he had --

2 Q. He referring to --

3 A. Ario Franzetti had a friend contact --

4 MR. MUELLER: Wouldn't this be hearsay?

5 HEARING OFFICER WALLACE: Are you objecting?

6 MR. MUELLER: Yes.

7 HEARING OFFICER WALLACE: Yes, I believe it would
8 be.

9 Mr. Rubin?

10 MR. RUBIN: Mr. Mueller opened the door asking for
11 information about what led to this letter. And I
12 believe once he's opened the door, it's appropriate to
13 get on the record what it was that led to the letter.

14 MR. MUELLER: The subject matter may be
15 appropriate, but I didn't open the door to inadmissible
16 evidence or to hearsay.

17 MR. RUBIN: I think the idea is that what we need
18 is to put on the record the information, not necessarily
19 for the truth of the matter asserted, but for what
20 precipitated writing the letter.

21 HEARING OFFICER WALLACE: All right. Objection's
22 overruled.

23 THE WITNESS: I heard Ario Franzetti having a
24 conversation with Ted Lambert, and he said that he had

1 had a friend contact the DFI and Superior and that his
2 friend had reported back to him that neither one were
3 interested in siting a landfill in LaSalle County
4 because they didn't feel that it was necessary.

5 MR. RUBIN: Also, there was a reference to a Jeff
6 Newcomer. He was your -- he is your ex-husband's
7 brother?

8 THE WITNESS: That is correct.

9 Q. Mr. Newcomer -- Jeff Newcomer, do you know
10 where he works?

11 A. I believe he works for Mr. DeGroot, if he
12 still does. I don't even know that. I know he did at
13 one time.

14 Q. Thank you. No further questions.

15 HEARING OFFICER WALLACE: Redirect?

16 MR. MUELLER: Nothing.

17 HEARING OFFICER WALLACE: Thank you, Ms. Newcomer.
18 You may step down.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 ROBERT ESCHBACH, called as a witness herein,
22 upon being first duly sworn on oath, was examined and
23 testified as follows:

24 (Witness sworn.)

1 HEARING OFFICER WALLACE: You may proceed.

2 DIRECT EXAMINATION BY:

3 MR. GEORGE MUELLER

4 MR. MUELLER: Would you identify yourself for the
5 record.

6 THE WITNESS: Rob Eschbach.

7 Q. And Mr. Eschbach, what is your current
8 employment?

9 A. I am involved -- I practice law privately in
10 LaSalle County. I also work as a Special Assistant
11 State's Attorney for the LaSalle County State's
12 Attorney's office.

13 Q. How long have you been a Special Assistant
14 State's Attorney?

15 A. Approximately eight years I believe.

16 Q. Has your function in that roll been in the
17 environmental area?

18 A. Yes.

19 Q. Were you the chief legal advisor to the County
20 with respect to matters relating to this landfill
21 application?

22 A. Yes.

23 Q. Directing your attention to January of this
24 year, when was the meeting scheduled for the final vote

1 on the LandComp application?

2 A. It had been scheduled for that Thursday. I
3 believe it was the 16th; is that right?

4 MR. RUBIN: I believe we can stipulate the 16th was
5 a Thursday.

6 THE WITNESS: It would have been Thursday, January
7 16th, 1997.

8 MR. MUELLER: And did the meeting take place on
9 that day, sir?

10 THE WITNESS: No, it did not.

11 Q. Who canceled it?

12 A. Well, the All-Mighty in a sense. The first I
13 heard about it was on the radio, and that was that that
14 morning that the meeting had been postponed or --
15 postponed I guess would be the correct word -- until the
16 following Saturday, which would have been the 18th.

17 Q. Who made the decision to postpone until the
18 18th?

19 MR. RUBIN: Excuse me. I need to interpose an
20 objection. He didn't say that he knew anybody had made
21 that decision. He said that he heard on the radio that
22 that had been what was reported. Mr. Mueller has now
23 converted that into a statement of fact; and certainly,
24 we have no such statement of fact. So I object to the

1 mischaracterization of the witness' testimony.

2 HEARING OFFICER WALLACE: Sustained.

3 MR. MUELLER: Mr. Eschbach, do you know who made
4 that postponement until the 18th?

5 THE WITNESS: My understanding was that it was the
6 board chairman. But I mean he did not consult me
7 directly before that. That was --

8 Q. Did someone consult you indirectly about when
9 to reschedule the meeting?

10 A. The first contact I had -- I went to the
11 office that day. We had a substantial snow that day.
12 The courts were closed. Most businesses were closed. I
13 got to the office and received a telephone call from
14 board member Ario Franzetti indicating that he had heard
15 the radio announcement. I said I had just heard it,
16 also. And he said, I think that date is too late. And
17 I said, I think you're right, meaning Saturday would
18 have been too late to have the meeting. And we
19 double-checked the calendars, and then I attempted to
20 contact Mr. Hettel.

21 Q. You contacted Mr. Hettel?

22 A. I attempted to. It took quite a while. I
23 think it was close to noon by the time that happened.
24 Because of the snow storm, people weren't where they

1 normally were. He wasn't at work. He wasn't at home.
2 And I finally tracked him down. In fact, I left
3 messages for him.

4 Q. At some point, Mr. Eschbach, were you able to
5 prevail upon the county board chairman to have the
6 meeting on Friday the 17th?

7 MR. RUBIN: I'm going to object to the
8 characterization by Mr. Mueller of prevail.

9 HEARING OFFICER WALLACE: Overruled.

10 THE WITNESS: I indicated to him that I thought it
11 would be best if the meeting were held on Friday if at
12 all possible.

13 MR. MUELLER: What, if any, research did you do as
14 to the method by which that Friday meeting could or
15 should be scheduled?

16 THE WITNESS: I don't know --

17 MR. RUBIN: I'm going to object. It asks
18 Mr. Eschbach for his work product. I realize that it's
19 not my objection to make, but I need to point it out for
20 the record.

21 HEARING OFFICER WALLACE: So noted and overruled.

22 THE WITNESS: Your question was what research did I
23 do?

24 MR. MUELLER: What research did you do or inquiry

1 did you make with regard to how that meeting on the 17th
2 should be scheduled and noticed up?

3 THE WITNESS: I don't believe I did any research as
4 such.

5 Q. Who provided directions on how notice of that
6 meeting on the 17th should be given other county board
7 members?

8 A. I had indicated to Mr. Hettel, and we agreed
9 that we would get the maximum amount of notice out as
10 soon as possible. We would contact all of the media,
11 and all of the board members would be contacted
12 directly.

13 Q. And to your knowledge, who contacted the board
14 members?

15 A. I believe it would have been somebody in the
16 board office, probably the board secretary. She was
17 working that day, but I did not do it.

18 Q. So if I understand it, even though the meeting
19 was canceled that day, the board secretary was able to
20 get to work at her office that day?

21 A. That's my understanding.

22 Q. So the county office was open on the 16th?

23 A. I wouldn't say that. I don't know that. I
24 know that she made it in for part -- maybe she didn't.

1 I'm not sure. I talked to her on the phone. I assumed
2 when she called she was at the office, but maybe she
3 wasn't.

4 Q. Was there any notice of the meeting on the
5 17th posted anywhere?

6 A. I don't know.

7 Q. Did you direct that any notices be posted?

8 A. I don't recall doing that.

9 Q. Sir, did you ever receive a complaint from
10 anyone on that day or on the next day that there was
11 improper legal notice of that meeting for Friday the
12 17th?

13 A. Not that I recall.

14 Q. Were you in communication on the 16th with
15 Susan Grandone-Schroeder with respect to scheduling the
16 meeting on the 17th?

17 A. Not that I recall.

18 Q. It was never your idea to schedule the meeting
19 for the 18th?

20 A. That's correct.

21 Q. But you heard that announcement on the media
22 before you had any input; is that right?

23 A. That's correct.

24 Q. Did you ever -- have you ever spoken with Mike

1 Mowinski about the LandComp application?

2 A. You mean Tom Mowinski?

3 Q. Tom Mowinski. Excuse me.

4 A. Not that I recall. Tom Mowinski's a county
5 board member.

6 Q. Yes.

7 A. Not that I recall.

8 Q. Did you ever tell him that if the application
9 wasn't approved, the State would site the landfill?

10 A. Certainly not.

11 Q. Did you ever tell Mr. Hettel that?

12 A. No.

13 Q. Did you ever hear Mr. Hettel tell Mr. Mowinski
14 that?

15 A. No.

16 Q. When's the last time you talked to Susan
17 Grandone-Schroeder?

18 A. Would have been a week ago Monday I believe, a
19 week ago this past Monday.

20 Q. She still work for the County?

21 A. No.

22 Q. She do any consulting for the County?

23 A. Not that I'm aware of.

24 Q. Do you know whether she's working for

1 Mr. DeGroot right now?

2 A. Not that I'm aware of.

3 Q. Do you know whether she has applied for
4 employment by Mr. DeGroot or any entity in which he has
5 an interest?

6 A. No. I'm not aware of that.

7 Q. Do you know whether she's been offered
8 employment by Mr. DeGroot or any entity in which he has
9 an interest?

10 A. No, I do not.

11 Q. What was the purpose of your talking to Susan
12 Grandone-Schroeder a week and a half ago?

13 A. I had come back from a vacation, and I had
14 seen the list of people that had been subpoenaed. And
15 she was one of the people I called. And my basic
16 question to her was if she had any inkling as to why
17 some of these people had been subpoenaed. And that was
18 pretty much the extent of the conversation.

19 Q. So you advised her that there was a subpoena
20 going out to her?

21 A. No, I did not.

22 Q. You advised her she was on the list?

23 A. She apparently knew that.

24 Q. She knew she was on the list of people that

1 had been subpoenaed?

2 A. I'm not sure. I said -- maybe I am the one
3 that told her, now that you mention it.

4 Q. Did she tell you that she was going to refuse
5 to claim her certified mail and the subpoena she
6 suspected was with it?

7 A. No.

8 Q. Where does she work now, Mr. Eschbach, if you
9 know?

10 A. I don't know. My understanding that she does
11 private consulting -- I should say consulting.

12 Q. You don't know either way whether Mr. DeGroot
13 or any entity in which he has an interest is one of her
14 consulting clients?

15 A. I have no knowledge of that being the case.

16 Q. No further questions.

17 HEARING OFFICER WALLACE: Mr. Eschbach, do you wish
18 to make a statement for the record concerning your
19 testimony?

20 THE WITNESS: No.

21 HEARING OFFICER WALLACE: Mr. Rubin?

22 MR. RUBIN: I have a question, although it is well
23 beyond the scope of the direct examination. I could
24 either ask it of Mr. Eschbach while he's on the witness

1 stand, or I could call him back this afternoon, whatever
2 your preference is.

3 HEARING OFFICER WALLACE: Mr. Mueller, do you have
4 any objection to that?

5 MR. MUELLER: As long as we understand he's now
6 taking Mr. Eschbach out of order as his own witness, I
7 have no objection.

8 HEARING OFFICER WALLACE: Do you wish to complete
9 an entire line of questioning?

10 MR. RUBIN: I only have a couple of questions, and
11 that's why I thought it would be convenient to ask him
12 while he's on the witness stand.

13 HEARING OFFICER WALLACE: I think it is
14 convenient. Mr. Eschbach is now your witness.

15 DIRECT EXAMINATION BY:

16 MR. JAMES I. RUBIN

17 MR. RUBIN: Thank you.

18 Mr. Eschbach are you aware of any -- strike
19 that.

20 Are you aware of what parts of the records
21 from the application are available at the county clerk's
22 office?

23 THE WITNESS: At what time?

24 Q. Up through January 17th, 1997.

1 A. My understanding -- my understanding is that
2 all parts of the record would have been available,
3 everything that had been transcribed by that date. And
4 by that date I would think all of the testimony would
5 have been transcribed. Any public comments that had
6 been filed should have been there. The application
7 should have been there.

8 Q. And all of the exhibits that had been
9 introduced during the course of the proceedings?

10 A. All of the original exhibits that were
11 originally submitted to the Pollution Control Board, I
12 took them there personally. I also went up there
13 personally and brought them back to LaSalle County for
14 the second round of hearings, and they were all stored
15 and kept in the county clerk's office.

16 Q. Are you aware of any summaries of the
17 transcripts that were prepared by anyone?

18 A. No, I am not.

19 Q. You didn't prepare any summaries of
20 transcripts?

21 A. I did not.

22 Q. And the county clerk never told you of any
23 summaries that were prepared of the transcripts?

24 A. She did not.

1 Q. Okay. But the transcripts themselves, the
2 exhibits, and the application and public comments were
3 all of available at the county clerk's office?

4 A. As well as copies of public notices. Anything
5 that was a part of the record was there.

6 Q. I have no further questions.

7 HEARING OFFICER WALLACE: Do you care to cross?

8 MR. MUELLER: No.

9 HEARING OFFICER WALLACE: Do you care to make any
10 statement?

11 THE WITNESS: No.

12 HEARING OFFICER WALLACE: Thank you, Mr. Eschbach.
13 You may step down.

14 (Witness excused.)

15 MR. MUELLER: Mr. Wallace, now would be a very
16 convenient time to break for lunch. I only have a few
17 witnesses left, but I'd like to take a break now if we
18 could.

19 HEARING OFFICER WALLACE: We will break for an
20 hour -- an hour and three minutes. We'll come back at
21 1:30. Thank you.

22 (At which time a lunch break
23 was taken.)

24 HEARING OFFICER WALLACE: Back on the record.

1 Let's resume the afternoon session. It's now 1:30.
2 Prior to going to lunch there was a short,
3 off-the-record discussion. Mr. Rubin requested certain
4 documents from the petitioners.

5 Mr. Mueller, you want to make a statement
6 about that for the record at this point or --

7 MR. MUELLER: We've provided Mr. Rubin with some
8 documents which we think are responsive to his subpoena
9 duces tecum. There are some portions of his subpoena
10 which I think go beyond the scope of what's relevant at
11 these proceedings; and therefore, we did not produce
12 certain documents. Specifically, what we did not
13 produce, since Mr. Rubin's going to make a motion in
14 connection with that, are the records of any financial
15 contributions by county board members to Residents
16 Against a Polluted Environment and the internal minutes
17 of the Residents Against a Polluted Environment
18 organization meetings.

19 HEARING OFFICER WALLACE: All right. Mr. Rubin?

20 MR. RUBIN: I think that overstates a bit what --
21 we had time limitations on both of those requests. Both
22 were from October 31st forward; that is, October 31st,
23 1995, the date of the application. What I would
24 suggest, rather than take up time now, that we address

1 this issue when we have Mr. Markwalter on the stand.

2 HEARING OFFICER WALLACE: All right.

3 MR. RUBIN: Certainly, we do not agree that it is
4 appropriate to withdraw documents. Those documents are
5 clearly relevant, but I think we're better off taking it
6 up later.

7 HEARING OFFICER WALLACE: All right. Next witness.

8 MR. MUELLER: We'll call Mr. Hettel.

9 JOSEPH HETTEL, called as a witness herein,
10 upon being first duly sworn on oath, was examined and
11 testified as follows:

12 (Witness sworn.)

13 DIRECT EXAMINATION BY:

14 MR. GEORGE MUELLER

15 MR. MUELLER: Would you identify yourself for the
16 record, please.

17 THE WITNESS: I'm Joseph Hettel.

18 Q. And Mr. Hettel, you are chairman of the
19 LaSalle County Board?

20 A. Yes, I am.

21 Q. How long have you been a county board member?

22 A. I was first elected in April of 1972.

23 Q. When did you become chairman?

24 A. I've -- this is my second term as chairman.

1 Q. When did you become chairman most recently?

2 A. In December 2nd of 1996.

3 Q. And 1996 -- prior to that time you were a
4 board member, correct?

5 A. Yes, sir.

6 Q. When the application came on for a vote
7 originally in April of 1996, you voted against the
8 application of LandComp?

9 A. In April of 19- -- yes, that's correct.

10 Q. And this last time as the chairman you did not
11 vote, correct?

12 A. Right. Yes, sir.

13 Q. Sir, has any member of Residents Against a
14 Polluted Environment ever attempted to improperly
15 influence you in connection with your official duties as
16 a county board member?

17 A. No.

18 Q. Directing your attention, sir, to January 16th
19 of this year, I believe that's the date that the county
20 board meeting to take final action on this application
21 was scheduled, correct?

22 A. Yes.

23 Q. The meeting did not take place on that day,
24 did it?

1 A. No, it did not.

2 Q. And whose decision was it to cancel the
3 meeting?

4 MR. RUBIN: Excuse me. I'm going to object to the
5 use of the term cancel.

6 MR. MUELLER: Well, I'll rephrase it.

7 Whose decision was it that the meeting should
8 not take place on January 16th?

9 THE WITNESS: I don't know if I can answer that
10 correctly. But it was my decision to close the
11 courthouse. So there was nothing that went on in the
12 courthouse; so I guess, in effect, that canceled the
13 meeting. It was also a chief judge's concurrence that
14 the courts be closed that day.

15 MR. MUELLER: Do you know whether the county
16 offices were open on January 16th?

17 THE WITNESS: By county offices, meaning what?

18 Q. County board office.

19 A. I was there.

20 Q. Do you know whether your secretary was there?

21 A. She was not.

22 Q. You live on Grand Ridge?

23 A. I live on a farm between Marseilles and Grand
24 Ridge.

1 Q. And you were able to get to the county offices
2 on January 16th?

3 A. I was able to get to the county offices, but I
4 didn't go to my farm. My son lives here in town, and I
5 stayed at his place.

6 Q. Did you at some point reschedule the meeting?

7 A. Yes.

8 Q. And what was the date that you originally
9 rescheduled it for?

10 A. January 17th.

11 Q. It was never scheduled for the 18th?

12 A. No, it was not.

13 Q. Did you ever inform the press that the meeting
14 would take place on the 18th?

15 A. When I called the radio stations early on the
16 morning of the 16th, I said there was a tentative
17 schedule that may be January 18th, and I would contact
18 them later that day with the firm date.

19 Q. Had you consulted with anyone prior to
20 advising the media of that?

21 A. No.

22 Q. What notice was given to board members of the
23 meeting on the 17th?

24 A. They were all contacted by phone I believe.

1 Q. Do you know who contacted them?

2 A. There were several of us. I think my
3 secretary contacted some from her house. I think I
4 contacted some from the county board office, and I think
5 Susan Grandone-Schroeder may have contacted some of
6 them, too.

7 Q. Susan Grandone-Schroeder no longer works for
8 the County, correct?

9 A. She does not.

10 Q. Do you know where she's working now?

11 A. No, I do not.

12 Q. Sir, did you contact Tom Mowinski on the 16th?

13 A. Yes.

14 Q. And where were you able to reach him?

15 A. He had left a phone number. I believe it was
16 a California phone number.

17 Q. And how many times did you speak to him on the
18 16th?

19 A. As I recall, only once. I told him that the
20 meeting had been canceled.

21 Q. Did you ever tell Mr. Mowinski that if the
22 landfill was not approved, that the State would come in
23 and put it wherever they wanted?

24 A. I did not.

1 Q. And, sir, if you had been called upon to break
2 a tie on the 17th, how would you have voted?

3 MR. RUBIN: Objection.

4 MR. ESCHBACH: Objection.

5 MR. RUBIN: Same issue as before, Your Honor.

6 HEARING OFFICER WALLACE: Sustained.

7 MR. MUELLER: No further questions.

8 CROSS-EXAMINATION BY:

9 MR. ROBERT M. ESCHBACH

10 MR. ESCHBACH: Mr. Hettel --

11 HEARING OFFICER WALLACE: Just a minute.

12 MR. ESCHBACH: When you did call Mr. Mowinski to
13 tell him that the meeting was canceled, did you also
14 tell him that it was rescheduled for the 17th?

15 THE WITNESS: I think there was a second phone
16 call, as I recall, made then when we did decide what day
17 we were going to have it.

18 Q. And was Mr. Mowinski advised of that?

19 A. Yes.

20 Q. Thank you.

21 A. I want to correct myself. Mr. Mowinski's wife
22 I believe was notified of that. When we called back,
23 I'm not sure that we got Mr. Mowinski. But there was a
24 notification given that it was going to be on the 17th.

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REDIRECT EXAMINATION BY:

MR. GEORGE MUELLER

MR. MUELLER: Sir, do you recall speaking to him at
all on the 16th?

THE WITNESS: 16th I testified that I did speak to
him, yes.

Q. One time?

A. As I recall, right, one time.

HEARING OFFICER WALLACE: Wait.

THE WITNESS: I keep on trying to get out of here.

HEARING OFFICER WALLACE: Mr. Rubin?

CROSS-EXAMINATION BY:

MR. KEVIN O'BRIEN

MR. O'BRIEN: One question, Mr. Hettel.

When you did talk to Mr. Mowinski on the 16th,
was he in California at that time?

THE WITNESS: He had called my secretary and asked
that I return a phone call, and I believe it was a
California phone number. Some of his wife's relatives
live there or something. So I did return the phone call
as my secretary had given me the message.

Q. No further questions.

A. He said he was having trouble --

Q. That's fine. Thank you.

1 HEARING OFFICER WALLACE: Redirect?

2 MR. MUELLER: Nothing else.

3 HEARING OFFICER WALLACE: Now you can get out of
4 here.

5 THE WITNESS: Okay. Thank you.

6 (Witness excused.)

7 MR. MUELLER: We'll call Mr. DeGroot.

8 PAUL DeGROOT, called as a witness herein, upon
9 being first duly sworn on oath, was examined and
10 testified as follows:

11 (Witness sworn.)

12 HEARING OFFICER WALLACE: We've lost some after
13 lunch. Speak loudly so the audience can hear, please.
14 You may proceed.

15 DIRECT EXAMINATION BY:

16 MR. GEORGE MUELLER

17 MR. MUELLER: For the record, would you identify
18 yourself, please.

19 THE WITNESS: Paul DeGroot.

20 Q. Mr. DeGroot, you are the principal of LandComp
21 Corporation, correct?

22 A. That's correct.

23 Q. Sir, are you acquainted with Susan
24 Grandone-Schroeder?

1 A. Pardon me?

2 Q. Are you acquainted with Susan --

3 A. Acquainted? Yes, I'm acquainted.

4 Q. Is she presently working for you?

5 A. No.

6 Q. Is she working for any entity in which you

7 have an interest?

8 A. No.

9 Q. Have you contacted her about doing work for

10 any entity in which you have an interest?

11 A. No, sir.

12 Q. Has she contacted you about doing any such

13 work?

14 A. No.

15 Q. When's the last time you had any contact with

16 Susan either directly or indirectly?

17 A. Been quite a while ago. I don't remember.

18 Q. More than 30 days?

19 A. I would say so.

20 Q. Sir, at this time do you have any plans to

21 sell any interest in LandComp Corporation?

22 A. No.

23 MR. RUBIN: I'm going to object to the question. It

24 is one of those questions that was raised at the

1 hearings themselves, the substantive hearings. Whether
2 or not Mr. DeGroot does or doesn't have any plans is
3 absolutely irrelevant to the issues, the fundamental
4 fairness issues.

5 HEARING OFFICER WALLACE: Sustained. Answer is
6 stricken.

7 MR. MUELLER: So prior to January 17th of this
8 year, had you had any discussions with any
9 representative from Waste Management with respect to the
10 sale or assignment of any interest in LandComp
11 Corporation?

12 MR. RUBIN: Same objection.

13 MR. MUELLER: It goes to the period prior to the
14 decision.

15 MR. RUBIN: This is a fundamental fairness hearing.
16 This is not a substantive hearing into the merits of the
17 application.

18 HEARING OFFICER WALLACE: That's correct. The
19 objection is sustained.

20 MR. MUELLER: Sir, have you ever disclosed to any
21 member of the LaSalle County Board or any employee of
22 LaSalle County any plans to assign or sell or transfer
23 any part of LandComp Corporation to any other entity?

24 THE WITNESS: No, sir.

1 Q. And has your nondisclosure of that fact been
2 an accurate nondisclosure?

3 MR. RUBIN: I'm going to ask him to explain that
4 question. I don't understand. It's vague and confusing
5 and a double-negative.

6 HEARING OFFICER WALLACE: Do you understand the
7 question, Mr. DeGroot?

8 THE WITNESS: I think the answer is no, but I would
9 like it restated.

10 MR. MUELLER: Have you disclosed to the County
11 prior to January 18th everything that was part of --
12 strike that.

13 Prior to January 18th did you advise the --
14 the county board or any employee of LaSalle County of
15 any plans with respect to LandComp that are not part of
16 the record in this matter?

17 THE WITNESS: No.

18 Q. And was your nondisclosure accurate? Meaning
19 were there plans that you had that you simply had
20 omitted to disclose?

21 A. There are no plans that I haven't disclosed.

22 Q. That's all. Thank you.

23 HEARING OFFICER WALLACE: Mr. Eschbach?

24 MR. ESCHBACH: I have no questions.

1 HEARING OFFICER WALLACE: Mr. Rubin?

2 MR. RUBIN: No questions.

3 HEARING OFFICER WALLACE: Thank you, Mr. DeGroot.

4 You may step down.

5 (Witness excused.)

6 MR. MUELLER: We'll call Vicky Scharenberg.

7 VICKY SCHARENBERG, called as a witness herein,

8 upon being first duly sworn on oath, was examined and

9 testified as follows:

10 (Witness sworn.)

11 DIRECT EXAMINATION BY:

12 MR. GEORGE MUELLER

13 MR. MUELLER: Would you identify yourself for the

14 record, please.

15 THE WITNESS: Vicky Scharenberg.

16 Q. Vicky, where do you reside?

17 A. Lake Holiday in Northville Township.

18 Q. Who's county board district is that?

19 A. Mr. Mowinski.

20 Q. Have you previously been a candidate for the

21 county board?

22 A. Yes, I was.

23 Q. When did you run?

24 A. This past November.

1 Q. And were you defeated by Mr. Mowinski?

2 A. Yes, I was.

3 Q. Subsequent to that election, as one of
4 Mr. Mowinski's constituents, did you have conversations
5 with him about the pending landfill application?

6 A. Prior to the election did you say?

7 Q. No, after the election.

8 A. After the election, yes.

9 Q. Did you have any conversation with him on
10 January 16th of this year?

11 A. Yes, I did.

12 Q. And can you tell us how that conversation took
13 place?

14 A. For a couple days I had been trying to get
15 ahold of Mr. Mowinski, leaving messages at his home,
16 spoke to his son. And on the night of January 16th,
17 about 6 p.m., Mr. Mowinski called me, and he said he was
18 in California because he was there with his wife because
19 his mother-in-law had had some series of T strokes he
20 called it. And he said, so why were you calling. And I
21 proceeded to tell him that the reason I was calling is I
22 wanted to know how he was going to vote on the landfill,
23 that I was opposed to the landfill, and that I had
24 talked to some of the people from Lake Holiday, and they

1 too were opposed to a regional landfill.

2 Q. What did Mr. Mowinski say to you at that
3 point?

4 A. At that point he said that he was sorry. He
5 wouldn't be making it into the meeting. He had been in
6 contact with Mr. Hettel three times that day. He had
7 tried to get a flight out from California and could not
8 get a flight out; that he would, in fact -- it was his
9 understanding with talking with Mr. Eschbach and
10 Mr. Hettel that if they didn't approve the landfill the
11 next day, that the State would, in fact, mandate a
12 location. And I was just totally shocked by that
13 reaction. Because having attended the public hearings
14 and having run for office, I had never heard any of
15 those proposals. And especially, you know, why would
16 the State be mandating this. So I questioned him a
17 little further on that. And he said, yes, in fact,
18 that's what -- it was his understanding that in
19 September of this year Mr. DeGroot's landfill would be
20 closing down and that the County needed a landfill, and
21 the State would mandate it if they didn't approve that
22 site.

23 Q. Did you, after further conversation, ask him
24 again how he would vote?

1 A. He said that it was his intent to vote for the
2 siting of the landfill. And then I started to talk to
3 him about the testimony of the hydrogeologists,
4 Mr. Hendron (phonetic) and Mr. Norris, and how could he
5 approve that site knowing that it had flaws in its
6 geological conditions, and wasn't he paying attention.
7 And I just droned on and on. And finally he said to me,
8 well, if everything you're saying is true -- and he
9 said, and I didn't attend all of the hearings, and I
10 haven't been there to read the testimony; but, if, in
11 fact, all of this is what you're saying is true, then I
12 guess I would have to vote against the landfill.

13 Q. Now, Vicky, are you a member of Residents
14 Against a Polluted Environment?

15 A. No.

16 Q. Have you ever been a member of Residents
17 Against a Polluted Environment?

18 A. No.

19 Q. You're not a member of the Edmund B. Thornton
20 Foundation?

21 A. No.

22 Q. Have you ever been a member of the Edmund B.
23 Thornton Foundation?

24 A. No.

1 Q. So on the 17th of January, the day that the
2 county board met and voted on this, were you present?

3 A. Yes.

4 Q. Did you have a conversation immediately after
5 that meeting with Don Jordan?

6 A. Yes, I did.

7 Q. And can you relate that conversation to us?

8 A. Well, Pat Janz, who's an intervener, and
9 myself who had met through those hearings, could not
10 believe that the vote had come down to 14 to 12 and that
11 Don had cast the deciding vote. And having run for the
12 position of county board, I had met Don Jordan during
13 the time that I was campaigning and through the
14 democratic central committee, and he was opposed to the
15 landfill. So I waited for him. He was the last one
16 coming out of the county board room. And I went up to
17 him, and I said, are you Don Jordan. And he looked at
18 me like, well, what do you mean. And I said, are you
19 the same Don Jordan that I ran with for county board;
20 how could you do this. And he laughed, and he said,
21 well, Streator has a landfill. And about that time,
22 then I started to question him further about his being
23 the deciding vote. And he said, no, he wasn't the
24 deciding vote; the vote was 14 to 12. And then Pat

1 Harrison from the newspaper came up, and he asked Don
2 about his vote. And he said, well, he voted for it
3 because -- because it met most of the criteria. And
4 then Pat Janz and I left and left Don there to continue
5 to talk to Pat Harrison.

6 Q. Thank you. I have no further questions.

7 HEARING OFFICER WALLACE: Mr. Eschbach?

8 MR. ESCHBACH: I have no questions.

9 HEARING OFFICER WALLACE: Mr. Rubin or
10 Mr. O'Brien, as the case may be?

11 CROSS-EXAMINATION BY:

12 MR. KEVIN O'BRIEN

13 MR. O'BRIEN: Ms. Scharenberg, did you contact any
14 other board members besides Mr. Mowinski prior to the
15 vote of the 17th of January?

16 THE WITNESS: I called Joe Hettel that night
17 because I had heard on the radio that the meeting was
18 going to be on Saturday and not on Friday. And so then
19 after I talked to Mr. Mowinski, I had also talked to Pat
20 Janz. She said it was her understanding that the
21 meeting was on Friday, the next day. So I called Joe
22 Hettel after my conversation with Pat about 8 o'clock
23 that night to ask, in fact, was the meeting Saturday or
24 on Friday. And he said without a doubt it was the next

1 day, regardless of weather.

2 Q. Had you talked to Mr. Hettel or Mr. Mowinski
3 or any other county board member at any time from
4 September of 1996 up until the day of the 16th which
5 you've just told us about?

6 A. Well, I -- through the precinct committee
7 meeting, Joe Hettel and a few of the county board
8 members were there to advise us as to what the issues
9 were coming up if we were elected. So I probably would
10 have talked to Joe Hettel and -- let me think -- Dick
11 McConville, Dale McConville. But Dick -- I mean Dale
12 wasn't a board member yet, and maybe somebody else that
13 would have been there that I didn't know necessarily
14 personally. But no; other than that scenario, no.

15 Q. At this precinct meeting did you discuss the
16 issue of the landfill with Mr. McConville or Mr. Hettel?

17 A. They brought in guests to talk to everybody
18 about it. So the first time I had heard about it, that
19 it was going to be located very closely to the -- to
20 Ottawa city limits, that was my concern; how could the
21 officials from Ottawa allow this to happen. That was my
22 reaction.

23 Q. What speakers did they bring in to discuss the
24 issue at this meeting?

1 A. They had Bruce Markwalter from the RAPE
2 organization, and Joe Hettel spoke about it. And I
3 think that was all, at least that I can remember.

4 Q. Was this meeting held in Ottawa?

5 A. Yes.

6 Q. Was it on November 16th of '96 or thereabouts?

7 A. No, no.

8 Q. Was it prior to the election?

9 A. Yes. It would have been like in August or
10 September.

11 Q. Do you know where it was held?

12 A. At the democratic headquarters.

13 Q. Where is that located?

14 A. Well, it was on the corner of -- I don't know.
15 There's a street that turns from where you can no longer
16 go south, and you're forced to turn, right there on that
17 corner. I'm not sure of the name of that street.

18 Q. Did anyone speak to the group besides
19 Mr. Markwalter and Mr. Hettel?

20 A. No, not that I -- that I remember.

21 Q. What did Mr. Markwalter say?

22 A. He just explained that -- that it was going
23 back into an appeal process and -- or remanded back I
24 guess was the terminology -- and that there would be

1 public hearings coming up on it again. And he just
2 simply explained that it was being in litigation and
3 that the issue would be revisited by the new county
4 board members, so you should get yourself educated. So
5 as a result of that, I started to buy the Ottawa Daily
6 Times on a daily basis to keep myself informed.

7 Q. Did he explain to you that if you were elected
8 you would then have to be one of the people voting on
9 the application?

10 MR. MUELLER: I'm going to object. It's beyond the
11 scope of direct.

12 MR. O'BRIEN: Certainly her contacts with
13 Mr. Mowinksi and other county board members were a part
14 of direct. This is the cross-examination.

15 MR. MUELLER: Mr. Mowinski wasn't at this meeting.

16 MR. O'BRIEN: Mr. Hettel was at this meeting. She
17 contacted him, too.

18 MR. MUELLER: I didn't ask her about Mr. Hettel.
19 Mr. O'Brien did.

20 HEARING OFFICER WALLACE: Sustained.

21 MR. O'BRIEN: May I have a minute?

22 I'd like to, with the hearing officer's
23 permission, proceed under an offer of proof.

24 MR. RUBIN: Excuse me one second.

1 MR. O'BRIEN: And if the objection is it's beyond
2 the direct, we'll recall her as our own witness.

3 MR. RUBIN: Just for convenience sake --

4 HEARING OFFICER WALLACE: Well, since you're in the
5 middle of cross, I don't really want to turn her into
6 your witness at this time. So we'll recall.

7 MR. RUBIN: Would you instruct the witness that she
8 is to wait around then and then make herself available
9 later today?

10 HEARING OFFICER WALLACE: Are you through with
11 cross right now?

12 MR. O'BRIEN: Couple more questions.

13 HEARING OFFICER WALLACE: Continue with that,
14 please.

15 MR. O'BRIEN: Ms. Scharenberg, how do you know
16 that -- well, strike that.

17 Why did you call Mr. Mowinski on the 16th of
18 January?

19 MR. MUELLER: Object. Mr. Mowinski called her was
20 the testimony.

21 MR. RUBIN: She said she called.

22 MR. O'BRIEN: She called him three times was the
23 testimony.

24 HEARING OFFICER WALLACE: Just a minute. What's

1 your question again? I don't recall her saying that she
2 called him.

3 MR. O'BRIEN: Let me ask it this way.

4 Did you attempt to contact Mr. Mowinski on the
5 16th of January?

6 THE WITNESS: On the -- probably.

7 Q. Did you attempt to contact him on the 15th or
8 the 14th of January?

9 A. Yes.

10 Q. Okay. Now, did you, in fact -- did
11 Mr. Mowinski then return your call on the 16th of
12 January? Is that what happened?

13 A. Yes.

14 Q. Okay.

15 A. Well, he got the message I had called. I was
16 not -- I did not ask his son to return my call. I found
17 out from his son that he was, in fact, in California.

18 Q. Okay.

19 A. So it came as a surprise to me that he
20 returned my call.

21 Q. When you attempted to contact him on the 14th
22 or 15th of January, why did you attempt to do that?

23 A. I attempted to do that to let him know that I
24 had written a letter and had residents of Lake Holiday

1 sign the letter stating the fact that we, in fact,
2 opposed him supporting a landfill in Ottawa that would
3 be a regional landfill. And in the letter I took copies
4 of the newspaper articles where he was interviewed in
5 the Beacon, in Aurora Beacon, that said that he was, in
6 fact, against a regional landfill.

7 Q. Now, you ran for county board against
8 Mr. Mowinski, correct?

9 A. Yes.

10 Q. And when you campaigned for county board
11 against Mr. Mowinski, did you make public your position
12 that you were against the siting of the landfill?

13 A. At the time that I was asked to do the
14 questionnaire for the Aurora Beacon, I still didn't know
15 a whole lot about the landfill, so I said that I thought
16 the landfill issue needed to be more -- be studied more
17 as far as whether or not LaSalle County needed a
18 landfill or didn't need a landfill. Mr. Mowinski's
19 response --

20 HEARING OFFICER WALLACE: He asked you what you
21 did.

22 THE WITNESS: Okay.

23 MR. O'BRIEN: Did you ever make any public
24 statement prior to the election of '96 that you were

1 opposed to the siting of the landfill, other than the
2 questionnaire you described?

3 THE WITNESS: Only in campaigning, knocking on
4 doors, if the subject came up, I would tell people that
5 I was against the landfill.

6 Q. Now, you're aware that there was a prior vote
7 on this landfill application back in April of '96,
8 correct?

9 A. At that time I knew that there had been a
10 prior vote, but I didn't know exactly when.

11 Q. Did you submit any written comments to the
12 county board prior to the first vote in April of 1996?

13 MR. MUELLER: We're way beyond the scope of direct.

14 THE WITNESS: No.

15 HEARING OFFICER WALLACE: Sustained. Answer's
16 stricken.

17 MR. O'BRIEN: No further questions.

18 HEARING OFFICER WALLACE: Redirect?

19 MR. MUELLER: Nothing. Thank you.

20 HEARING OFFICER WALLACE: You may step down, Ms. --
21 would you spell your name?

22 THE WITNESS: Scharenberg, S-c-h-a-r-e-n-b-e-r-g.

23 HEARING OFFICER WALLACE: You may step down at this
24 point, but please remain around in case you're recalled

1 later.

2 (Witness excused.)

3 MR. MUELLER: We have no further witnesses,
4 Mr. Wallace.

5 HEARING OFFICER WALLACE: Thank you. Mr. Eschbach?

6 MR. ESCHBACH: We didn't intend to call anyone at
7 this point.

8 MR. RUBIN: Does that mean that Mr. Mueller and his
9 clients have rested their case?

10 MR. MUELLER: We are not going to rest our case
11 until we are done with the PCB. We have rested the
12 evidence at this fundamental fairness hearing.

13 MR. RUBIN: Thank you.

14 HEARING OFFICER WALLACE: To the extent -- you have
15 no exhibits to offer into evidence?

16 MR. MUELLER: That's correct.

17 MR. RUBIN: Can we go off the record for one
18 minute?

19 HEARING OFFICER WALLACE: What's the purpose?

20 MR. RUBIN: Scheduling witnesses. I want to find
21 out how late a witness that we're going to call is
22 available.

23 HEARING OFFICER WALLACE: Let's go off the record.

24 (A conversation was held off

1 the record.)

2 HEARING OFFICER WALLACE: Let's go back on the
3 record.

4 How many witnesses are you going to call?

5 MR. RUBIN: Three -- four with Ms. Scharenberg.

6 I'm sorry.

7 HEARING OFFICER WALLACE: All right.

8 Mr. Markwalter?

9 BRUCE MARKWALTER, called as a witness herein,
10 upon being first duly sworn on oath, was examined and
11 testified as follows:

12 (Witness sworn.)

13 DIRECT EXAMINATION BY:

14 MR. JAMES I. RUBIN

15 MR. RUBIN: Would you state your name, please.

16 THE WITNESS: Bruce Markwalter.

17 Q. Who are you employed by, Mr. Markwalter?

18 A. Illinois Valley Community College.

19 Q. And what do you do at Illinois Valley?

20 A. College instructor.

21 Q. What do you teach?

22 A. Computers, motorcycles, small engines.

23 Q. I'm sorry. I didn't hear you.

24 A. Computers, motorcycles, small engines.

1 Q. Are you affiliated in any way with the
2 Residents Against Polluted -- Polluting the Environment?

3 A. Yes.

4 Q. What is your position with that organization?

5 A. Currently, president.

6 Q. How long have you been president?

7 A. Last four terms, four years.

8 Q. Four years. Is -- can we agree to use the
9 acronym RAPE for purposes of this proceeding?

10 A. Yes. That'd be fine.

11 Q. Okay. Has -- is RAPE an intervener in this
12 action?

13 A. Yes. RAPE is an intervener in this action.

14 Q. And has it intervened or opposed siting of the
15 landfill?

16 A. We opposed this application.

17 Q. And you intervened -- can you tell me when you
18 intervened?

19 A. We were on record as an intervener from the
20 filing of the application, shortly after October 31st.

21 Q. Have you been served with a subpoena duces
22 tecum in this matter?

23 A. Yes.

24 Q. Did you perform a search in response to that

1 subpoena?

2 A. Yes.

3 Q. A search for documents and records?

4 A. Yes.

5 Q. The first item that was requested in the
6 subpoena duces tecum is all documents relating to a
7 meeting held on November 16th, 1996, attended by
8 yourself and the LaSalle County Board members and
9 members elect, including, but not limited to any notes,
10 list of attendees, or written materials distributed to
11 board members or members elect, correct?

12 A. That's correct.

13 Q. Have you performed a complete search of the
14 records of RAPE in order to determine what responsive
15 documents exist?

16 A. I performed a search on the RAPE records and
17 also my personal records.

18 Q. And have you produced all responsive records
19 in response to that document request No. 1?

20 A. Yes, and supplied that and have a copy for the
21 court.

22 Q. For the Pollution Control Board?

23 A. Pollution Control Board hearing officer.

24 Q. Just before lunch I was handed a black binder

1 of materials, and in that black binder there is a
2 separator that says Section 1 on it. Did you prepare
3 that?

4 A. Yes, sir.

5 Q. And are the documents that are found behind
6 Section 1 those documents which are responsive to the
7 first request in the subpoena?

8 A. I'd have to look at your copy, but I assume
9 that they are.

10 Q. What would you look at my copy of? The
11 subpoena or the documents?

12 A. You brought to my attention that the documents
13 that I gave you were duplex copied and that your copy
14 was missing the back pages.

15 Q. May I approach the witness?

16 HEARING OFFICER WALLACE: Yes.

17 MR. RUBIN: Why don't we identify this binder as
18 our Exhibit No. 1 for these purposes so that I can hand
19 it to the witness to review.

20 (LandComp Exhibit No. 1 was
21 marked for identification.)

22 MR. RUBIN: I'm going to hand you what has been
23 identified for purposes of these proceedings as LandComp
24 Exhibit No. 1, which is a black binder consisting of a

1 number of separators and pages within it.

2 Did you prepare that binder?

3 THE WITNESS: Yes, I did.

4 Q. Are the documents found behind the tab
5 entitled Section 1 responsive to the first request for
6 documents?

7 A. To the best of my ability it was.

8 Q. Okay. There's a second request for documents,
9 all documents relating to any communications or
10 correspondence between Andree-Marie Koban and RAPE and
11 any member of RAPE or any attorney or agent for RAPE
12 between October 31st, 1995, and the present.

13 Did you make a search for those materials?

14 A. Yes, I did.

15 Q. And are all documents responsive to that
16 request found behind the tab Section 2?

17 A. No, they are not.

18 Q. That is, you found documents that are
19 responsive to this document request No. 2 which are not
20 contained in the binder; is that correct?

21 A. That's correct, and I noted so based on your
22 instructions; that if I had a -- if I knew a document
23 had been transmitted, that I should write to that and
24 why we weren't able to include it in the evidence.

1 Q. Okay. This response says: There are no
2 documents relating to any communications or
3 correspondence in existence.

4 Is that correct?

5 A. Not in my possession. Excuse me. Not in my
6 possession. They may still be in existence.

7 Q. What do you mean, not in your possession? Are
8 you talking you personally or RAPE?

9 A. Me personally and RAPE.

10 Q. Okay. So there are no documents responsive to
11 Category 2 of the subpoena that are in the possession of
12 RAPE or yourself other than as noted in this black
13 binder?

14 A. Yes. I noted what documents I believe
15 existed, but I don't have possession of them.

16 Q. No. 3 -- request No. 3 in the subpoena is all
17 documents relating to any membership fees or dues paid
18 to RAPE or donations made to RAPE by any LaSalle County
19 Board members between October 31st, 1995, and the
20 present; is that correct?

21 A. I believe that's correct. You have the
22 exhibit, and you have the papers. I don't know, but
23 that sounds right.

24 Q. In the binder that I've been given, there is

1 no tab or divider for -- identified as Section 3
2 responsive to the third document request; is that
3 correct?

4 A. Yes. That's probably correct.

5 Q. Why don't you take a look at it and tell me
6 whether it's, in fact, correct.

7 A. In your copy there is no Section 3. That's
8 correct.

9 Q. Did you perform a search for documents which
10 are responsive to the third subpoena request?

11 A. Yes, I did.

12 MR. MUELLER: I'm going to object at this point.

13 HEARING OFFICER WALLACE: Well, wait.

14 MR. MUELLER: I've let Mr. Rubin lay his foundation
15 here. Our position is that to the extent that the
16 subpoena duces tecum is discovery related, he may be
17 entitled to certain documents such as the ones in
18 Categories 1 and 2. However, none of this is relevant
19 at this hearing, Mr. Wallace. What we have is the
20 allegation of the Residents that there were improper ex
21 parte contacts between Mr. DeGroot and his
22 representatives or other advocates of the application
23 and county board members. We have other allegations of
24 fundamental unfairness. There are no allegations

1 relating to contacts between Residents and the county
2 board or allegations relating to the conduct of
3 Mr. Markwalter or his contact with any county board
4 members. This testimony would seem to be beyond the
5 scope of the pending petition. It would be beyond the
6 scope of the testimony that's been given so far today;
7 and therefore, the inquiry's entirely irrelevant. This
8 is not LandComp's appeal. Their position is that the
9 proceedings were fundamentally unfair. It is
10 accordingly inappropriate for them to try, by some
11 innuendo, to suggest that there were attempts on the
12 part of some individuals to sway the county board
13 against the application. That's irrelevant.

14 HEARING OFFICER WALLACE: Well, all right. Thank
15 you, Mr. Mueller.

16 You had a question pending, and I would allow
17 you to finish your question if you like, or you can
18 respond at this time. If you want to go ahead and ask
19 your question.

20 MR. MUELLER: Your Honor, to speed this up, we
21 would stipulate that Mr. Markwalter performed a search
22 for the items in Category 3, that he found some material
23 which he believes constitutes a complete response, and
24 that those documents are available pending the Chair's

1 ruling as to whether or not they are relevant or
2 admissible.

3 MR. RUBIN: Let me respond to the objection, if I
4 may.

5 HEARING OFFICER WALLACE: Yes.

6 MR. RUBIN: Mr. Mueller is wrong in stating that we
7 have not raised the issue of the conduct of
8 Mr. Markwalter. At the substantive proceedings we filed
9 a motion challenging Mr. Markwalter's -- a meeting that
10 Mr. Markwalter had with certain county board members,
11 and we said that it was an ex parte communication. It
12 was reported in the newspaper. There was a meeting
13 between Mr. Markwalter and county board members on
14 November 16th -- certain county board members. And we
15 filed a motion seeking a hearing before the county board
16 so that we could explore what was clearly an ex parte
17 communication by a party to these proceedings and county
18 board members. The county board declined to hear our
19 motion and said, instead, it was an issue that was best
20 dealt with by the Pollution Control Board. Obviously,
21 we have not appealed the ruling of the county board
22 since the ruling was in favor of LandComp.

23 Nevertheless, we have preserved the issue of
24 whether or not there were improper attempts or, in fact,

1 influences by the -- Mr. Markwalter and the Residents
2 Against a Polluted Environment in dealing with the
3 county board. It is very clearly relevant to the
4 Pollution Control Board to determine whether a party to
5 these proceedings has had ex parte communications; and
6 if so, the nature of those communications; and if so,
7 whether those communications improperly influenced
8 county board members to oppose the application.

9 Mr. Mueller and his clients have appealed
10 saying that there were fundamentally unfair proceedings
11 in regard to this application. And indeed, he's
12 obviously called 10 or 12 witnesses so far today on the
13 fundamental fairness issue asking many of them if they
14 had -- county board members if they had had any
15 influence or been lobbied by LandComp. It is very
16 relevant to these proceedings to determine whether or
17 not Residents Against Polluted Environment has had
18 improper ex parte contacts with members of the county
19 board.

20 Now, the third request that we've raised -- or
21 the third request in this subpoena asks for membership
22 fees or dues paid to RAPE by LaSalle County Board
23 members. I can't imagine a more apparent conflict of
24 interest than a LaSalle County Board member -- and by

1 the way, this is time period October 31st to the
2 present, so it is the relevant time period from the
3 application forward -- if members of the county board
4 are paying dues, making contributions to RAPE in order
5 to support RAPE's opposition to the application. I can
6 imagine no greater conflict of interest. And that is
7 certainly relevant to these -- to the fundamental
8 fairness of the proceedings.

9 MR. MUELLER: If I may respond briefly. Number
10 one, the County's approval of the application renders
11 all of LandComp's prior objections to the fundamental
12 fairness of these proceedings as legally moot, and I
13 would ask that you so find.

14 Secondly, the -- the law is very clear, as
15 expressed by the Pollution Control Board, that members
16 of city councils and county boards may express opinions
17 and may have opinions for or against a project and that
18 the presence of such opinions does not disqualify them
19 or create a conflict so long as they are able to base
20 their final decision upon the evidence. Mr. Rubin's
21 inquiry would seem to want to get only at evidence of
22 whether or not people had opinions, not as to whether or
23 not they based them on the evidence.

24 Thirdly, Mr. Rubin equates membership in or

1 financial support of Residents Against a Polluted
2 Environment with subsidizing opposition to this
3 landfill. In fact, Residents Against a Polluted
4 Environment is a far-reaching organization that does
5 much more than oppose landfills. It conducts Earth Day
6 commemorations. It conducts public education campaigns.
7 It deals with recycling. It is an organization that has
8 existed in this county for a long time prior to this
9 application. It's not a one-issue organization. It is
10 a group principally dedicated to educating the citizenry
11 of this county with respect to environmental issues and
12 to have input in support of the public health, safety,
13 and welfare with respect to those issues, whatever they
14 might be.

15 MR. RUBIN: That goes to the weight of the
16 evidence, certainly not its relevance.

17 HEARING OFFICER WALLACE: All right then. In terms
18 of what you described as Item 3 of your subpoena, I am
19 ruling that the material does not have to be turned over
20 and that I do not see that it's relevant to this
21 proceeding. Also, in terms of whether or not you wish
22 to present evidence that the petitioners may have --

23 MR. RUBIN: Petitioner.

24 HEARING OFFICER WALLACE: That petitioners,

1 Residents Against a Polluted Environment, may have had
2 contacts with the county board, if that's what you're
3 trying to do, I'm not sure that I see the relevance of
4 that in this proceeding. The LandComp Corporation was
5 granted siting approval by the County of LaSalle. So is
6 LandComp complaining that it was denied a fundamentally
7 fair procedure? That's -- in that regard, Mr. Mueller's
8 statement is somewhat valid. I don't quite see the
9 relevance of going into the petitioner's needs as a
10 fundamentally fair process; otherwise, it sounds to me
11 like you may be telling the Board throw the whole thing
12 out again because the petitioners had dirty hands.

13 MR. RUBIN: Let me pose a hypothetical.

14 Mr. Mueller has moved in his -- or raised in
15 his appeal the issue of whether or not one or more
16 county board members ought to be disqualified from
17 voting, and the Pollution Control Board has to address
18 that issue. And one of the issues that the Pollution
19 Control Board has in the past in its decisions
20 considered is whether or not disqualification of a
21 county board member would make any difference. And, in
22 fact, the leading decision, I think they ruled that,
23 well, disqualifying a board member wouldn't make any
24 difference given the vote; and therefore, there's no

1 point in remanding it. And what the Pollution Control
2 Board must consider in that decision on whether or not
3 to remand the proceeding is not simply the question of
4 whether there were ex parte contacts for fundamentally
5 unfair procedures as a result of only the applicant's
6 behavior. The purpose of this hearing is to determine
7 whether or not the procedures conducted by the county
8 board were fundamentally fair. If the procedures
9 conducted by the county board were not fundamentally
10 fair, then the Board has the option, depending on the
11 gravity of the situation, of taking action.

12 It cannot or should not consider the
13 petitioner's position without having all of the evidence
14 on the ex parte communications and contacts by a party
15 to these proceedings.

16 HEARING OFFICER WALLACE: If you wish to continue
17 that's fine. But in terms of Item No. 3, the -- that
18 I'm ruling is not relevant and does not have to be
19 turned over.

20 MR. RUBIN: For purposes of this proceeding, may I
21 request that Item No. 3 be turned over to the Pollution
22 Control Board so that the Pollution Control Board can
23 determine whether or not the hearing officer's ruling
24 was correct or incorrect and so that there is a record

1 to be made of the relevance of that information to these
2 proceedings.

3 HEARING OFFICER WALLACE: Mr. Mueller?

4 MR. MUELLER: Again, the only purpose of Item No. 3
5 would be to prove that this board member or that board
6 member may have purchased a raffle ticket or paid
7 membership dues. That's legally not probative as to any
8 issue, so it simply clutters the record.

9 HEARING OFFICER WALLACE: I think what we'll have
10 to do is I'm not going to take it. If you appeal my
11 ruling, then we will have to make provisions for having
12 those documents submitted in camera.

13 MR. RUBIN: There's no harm in having them
14 submitted in camera. That way the Pollution Control
15 Board has them if it decides to look at them. If you
16 don't accept them and the Pollution Control Board thinks
17 that they were relevant, the Pollution Control Board has
18 no choice but --

19 HEARING OFFICER WALLACE: You haven't appealed the
20 ruling yet. If you're going to appeal it, then we'll do
21 it then.

22 MR. RUBIN: You mean appeal your ruling?

23 HEARING OFFICER WALLACE: I'm ruling that -- that
24 Items 3, the financial information that you've

1 requested, does not have to be produced and is not
2 relevant to this hearing.

3 MR. RUBIN: And all I'm suggesting is if we now
4 have it produced, although not as part of the record,
5 but in camera so that the Pollution Control Board has
6 it, they don't have to remand or hold new hearings --
7 fairness hearings. They'll have the information and
8 know whether or not it was, in fact, relevant. And, in
9 fact, that's what the hearing officer in the last
10 hearings did with respect to the CDM report.

11 HEARING OFFICER WALLACE: Well, the CDM report I
12 think was quite a bit more relevant to these proceedings
13 than these financial records.

14 MR. RUBIN: I realize that that may be your
15 conclusion. All I'm suggesting is a mechanism for
16 avoiding a later problem.

17 HEARING OFFICER WALLACE: All right. I'll -- we'll
18 think about it. Continue with your questioning.

19 MR. RUBIN: Okay.

20 MR. MUELLER: Mr. Wallace, for the record, I would
21 just state that I am in possession of the documents that
22 are responsive to that, and we'll see, as an officer of
23 the court, to their safekeeping pending further ruling.

24 HEARING OFFICER WALLACE: All right.

1 MR. RUBIN: Mr. Markwalter, the fourth request
2 relates to documents pertaining to membership
3 affiliation or participation with RAPE by any LaSalle
4 County Board member. Did you make a search for those
5 documents?

6 THE WITNESS: Yes.

7 Q. And have you produced all responsive
8 documents?

9 A. Yes.

10 Q. That is, you've produced all records of
11 membership that show who -- which county board members
12 are members?

13 A. I'd have to look at the exhibit. If you'd
14 like to bring it back to me, I'd be happy to look
15 through 'em.

16 Q. It's the fourth request that we're dealing
17 with.

18 A. Yes. This is complete.

19 Q. There is a membership list there?

20 A. That is the only extent to which the list is
21 entailed. The question of the rider was -- it said --
22 said: All documents relating to any membership
23 affiliation or participation with RAPE.

24 Yes.

1 Q. So there is no membership roster, is there?

2 A. That's correct.

3 Q. You do have a membership list, don't you?

4 A. That is also correct.

5 Q. And you didn't produce that membership list?

6 A. No. I put down the people that would be
7 county board members that you had asked for in that
8 request, my interpretation of what your instructions
9 were.

10 Q. My instructions -- or the subpoena says: All
11 documents relating to any group, membership affiliation,
12 or participation.

13 You have a membership list, correct?

14 A. Yes.

15 Q. And that was not produced, correct?

16 A. Insofar as my response to your question, yes,
17 I thought it was.

18 Q. But there is no membership list here.
19 You've -- you've given me a list, but you haven't given
20 me the document which is the membership list, have you?

21 A. I'd have to give you my computer system to do
22 that. I'm giving you what is in the documents. I'm
23 producing those people that you instructed me to
24 produce.

1 Q. I didn't instruct you to produce --

2 A. Why don't you read it to me then, please.

3 Q. All documents -- you know what a document is,
4 don't you, Mr. Markwalter?

5 A. I believe there's one in your hand.

6 Q. Correct.

7 Relating to any membership -- and document is,
8 by the way, defined to include electronic material --
9 all documents relating to any membership affiliation or
10 participation with RAPE by any LaSalle County Board
11 members between October 31, 1995, and the present.
12 There is a membership list, correct?

13 A. I've already answered that, yes.

14 Q. And you have not actually produced the
15 physical membership list?

16 A. That's not what I interpreted you to ask me to
17 do.

18 Q. Answer my question. You have not produced the
19 physical membership list, correct?

20 A. I have in my judgment.

21 Q. In your judgment is not what I'm asking for.
22 Is there a membership list that lists all of the
23 members?

24 MR. MUELLER: I'm going to object. Number one,

1 the request does not call for a membership list of the
2 entire organization. Number two, if it did, it would be
3 objectionable and would certainly not be relevant here.

4 MR. RUBIN: What he have is -- obviously, we're
5 wasting time.

6 HEARING OFFICER WALLACE: Right. We are wasting
7 time. The objection's sustained. Move on to something
8 else, please.

9 MR. RUBIN: Whether or not this witness has
10 produced a complete list of the county board members
11 isn't something I can determine from the documents that
12 have been produced.

13 HEARING OFFICER WALLACE: You know, Mr. Rubin, this
14 is actually something that should have been handled in
15 discovery. And instead of waiting until the day of the
16 hearing to start arguing over this is a very
17 inappropriate use of all of our time. If you were going
18 to ask for a membership list of any organization, you
19 should have made a discovery request prior to -- prior
20 to this hearing.

21 Now, from what you've read and what
22 Mr. Markwalter has said, he has complied with your
23 request.

24 MR. RUBIN: So a subpoena duces tecum is

1 inappropriate in the Pollution Control Board's
2 proceedings for the hearing?

3 HEARING OFFICER WALLACE: Ask another question.

4 MR. RUBIN: The fifth request is all minutes or
5 notes of meetings held by RAPE between October 31st,
6 1995, and the present. The request includes list of
7 attendees at any such meeting. Did you make a search
8 for that request?

9 THE WITNESS: Yes, sir.

10 MR. MUELLER: Mr. Wallace, if I may interject, we
11 would stipulate that the search was made, that those
12 materials were found, that they are in our possession.
13 We object to the production of same for the reason that
14 the internal minutes of the petitioner organization is
15 not relevant to any inquiry that we're having today.

16 MR. RUBIN: If I may respond.

17 HEARING OFFICER WALLACE: Yes, you may.

18 MR. RUBIN: We've asked for those because the
19 internal minutes of this organization will show whether
20 any county board members attended those meetings. And
21 again, this is during the period when the application is
22 pending, October 31st onwards. It will show whether any
23 county board members attended. It will show whether
24 there were any contacts with county board members by a

1 party to these proceedings during the proceedings. It
2 will show whether or not there was any plan to influence
3 any county board members either before or after the
4 meeting that is at place.

5 So the minutes of the RAPE membership meetings
6 insofar as they relate to this application and county
7 board members is clearly relevant.

8 MR. MUELLER: If they had lost it would be.

9 HEARING OFFICER WALLACE: The objection is
10 sustained.

11 MR. RUBIN: May I ask that the hearing officer
12 consider whether or not to take those in camera as well
13 so that in the event that the Pollution Control Board
14 disagrees they exist and can be reviewed by the Board?

15 HEARING OFFICER WALLACE: I will take that under
16 consideration.

17 MR. RUBIN: Thank you.

18 The sixth document request is any documents
19 relating to any correspondence, meetings, conversations,
20 or telephone calls between Mr. Markwalter and any
21 LaSalle County Board members or candidates for the board
22 between October 31st, 1995, and present. Did you make a
23 search for those?

24 THE WITNESS: Yes, sir.

1 Q. And have you produced all responsive
2 documents?

3 A. Yes, I have.

4 Q. There was a survey that was sent out to people
5 who were running for the county board on November 5th,
6 1996; isn't that correct -- a survey by RAPE asking
7 questions?

8 A. That's correct.

9 Q. Have you produced the responses from county
10 board members to the extent that you received any?

11 A. We received them, and we passed them onto the
12 paper to have them published. I do not have those in my
13 possession.

14 Q. So RAPE does not have copies of those in its
15 possession?

16 A. That's correct.

17 Q. But other than that, have you produced all of
18 the documents that were responsive?

19 A. Yes.

20 Q. Were any documents responsive to these
21 requests lost or destroyed between the time that they
22 were created and the present?

23 A. Only the ones you just indicated that are in
24 the possession of the Daily Times for publication. They

1 wanted originals. We gave them originals.

2 Q. May I make a suggestion. There is a witness
3 that would like to leave by 3:30. May we take a break,
4 take that witness out of order, who will not be a long
5 witness, and then resume with Mr. Markwalter?

6 MR. MUELLER: I have no objection to that.

7 HEARING OFFICER WALLACE: All right. You may step
8 down.

9 (Witness excused.)

10 HEARING OFFICER WALLACE: Why don't we just keep
11 going.

12 MR. RUBIN: That's fine.

13 MR. O'BRIEN: Call Ms. Koban.

14 ANDREE-MARIE KOBAN, called as a witness
15 herein, upon being first duly sworn on oath, was
16 examined and testified as follows:

17 (Witness sworn.)

18 DIRECT EXAMINATION BY:

19 MR. KEVIN O'BRIEN

20 MR. O'BRIEN: Mrs. Koban, I'm Kevin O'Brien
21 representing LandComp. Would you state your name just
22 for the record.

23 THE WITNESS: Okay. Andree-Marie Koban. Do I need
24 to spell that for you? A-n-d-r-e-e, hyphen, M-a-r-i-e;

1 last name is K-o-b-a-n.

2 Q. Ms. Koban, are you presently employed?

3 A. Yes.

4 Q. By whom?

5 A. American Airlines.

6 Q. And what's your position with American
7 Airlines?

8 A. I'm an international flight attendant.

9 Q. Are you also a member of LaSalle County Board?

10 A. Yes, I am.

11 Q. How long have you been a member?

12 A. Since '94, December of '94.

13 Q. Now, did you receive a subpoena requesting
14 your appearance in this hearing today?

15 A. Yes, I did.

16 Q. Okay. And are you aware that the subpoena had
17 a rider on it which requested that categories of
18 documents be produced. Are you aware of that?

19 A. Yeah. There were four categories.

20 Q. Have you produced any documents responsive to
21 those requests?

22 A. Yes.

23 Q. And to whom have you produced them?

24 A. I have them with me, and I have copies.

1 Q. If I may approach?

2 MR. MUELLER: Again, while Mr. O'Brien's
3 approaching, Mr. Wallace, let me make the objection that
4 to the extent that this inquiry is directed at contacts
5 between the witness and the petitioner, it's legally
6 moot, because LandComp prevailed at the hearings. I've
7 already argued it. I won't belabor it.

8 MR. RUBIN: Did you say the witness and petitioner?

9 MR. MUELLER: And the petitioner Residents.

10 MR. O'BRIEN: For the same reasons that Mr. Rubin
11 stated earlier in Mr. Markwalter's testimony, we don't
12 agree with Mr. Mueller, and we think we're entitled to
13 inquire into this activity as part of this Board's
14 fairness review.

15 HEARING OFFICER WALLACE: Continue.

16 MR. O'BRIEN: If I could have the documents.

17 THE WITNESS: (Furnishing.)

18 Q. Ms. Koban, you stated at a prior Pollution
19 Control Board fairness hearing in this matter that
20 you've always been vocally opposed to the siting of the
21 landfill; isn't that correct?

22 A. I've said that. That's been my position and
23 my platform.

24 Q. And that was the platform you ran on in 1994

1 when you were first elected, correct?

2 A. That's correct.

3 Q. And in 1994 when you ran, this was prior to
4 LandComp's application being filed, correct?

5 A. That's correct.

6 Q. Ms. Koban, are you a member of Residents
7 Against a Polluted Environment?

8 A. Yes, I am.

9 Q. How long have you been a member?

10 A. Probably since I moved here, '92, '93.

11 MR. MUELLER: Mr. Hearing Officer, let the record
12 show my continuing objection to this line of
13 questioning.

14 HEARING OFFICER WALLACE: So noted.

15 MR. O'BRIEN: Have you ever held an office with the
16 RAPE group?

17 THE WITNESS: I believe I was a Board of Director,
18 but that would have been in '92 for a year.

19 Q. Are you a Board of Director now?

20 A. No.

21 Q. When did you cease being one of the members of
22 the Board of Directors?

23 A. Probably when I started having children, '93,
24 '94, I don't recall.

1 Q. That was prior to you being elected to the
2 county board then?

3 A. Yes, it was.

4 Q. Do you pay dues or make contributions to RAPE?

5 A. I've made contributions. They've been in the
6 form of raffle tickets, sponsorship.

7 Q. About how much would you say you've
8 contributed to RAPE since you've been a member?

9 A. Okay. We can be specific. In January, a
10 hundred dollars -- this is of '96-- for raffle tickets.
11 There was a raffle for a car or a cash prize. And then
12 in March of '96 I was a sponsor for the First Annual
13 Earth Day Renaissance Ball, and I donated \$500 to go
14 towards entertainment. And then April of that year,
15 '96, I -- \$60, which was two admission tickets for the
16 ball and \$10 for the raffle tickets, door prizes. And
17 then this year, April of '97, \$25 that was two entry
18 tickets to be able to attend the Second Annual Earth Day
19 Renaissance event.

20 Q. Have you completed your answer?

21 A. Yes.

22 Q. Did you attend meetings -- strike that.

23 Since October 31, 1995, have you attended any
24 meetings held by RAPE?

1 A. I've attended the ones which focused on
2 forming the Earth Renaissance, the Earth Day Ball, when
3 committee meetings met to discuss what we were going to
4 do that year for the ball, the Earth Day event.

5 Q. Okay. There's more than one meeting of that
6 type?

7 A. Oh, yeah.

8 Q. About when were those meetings held, if you
9 remember?

10 A. Well, they would be prior to April, because
11 it's always held on April for Earth Day. So it would be
12 February or March.

13 Q. So this would be February or March of '96?

14 A. This would have been last year. I was more
15 active in it last year.

16 Q. Let me complete my question so we're not both
17 talking at the same time.

18 This would be February and March of 1996 you
19 attended these meetings?

20 A. That's correct.

21 Q. Did you attend meetings of RAPE to prepare for
22 this event in February and March of this year, 1997?

23 A. Just one.

24 Q. Did you ever attend any meetings of RAPE where

1 you advocated opposition to LandComp's landfill
2 application?

3 A. No. If ever I went to a meeting, it was to
4 listen to what the group had to say, to discuss.

5 Q. Did you ever attend a meeting where the
6 landfill application of LandComp was discussed?

7 A. No.

8 Q. Now, did you attend a meeting this past
9 November of 1996 at which board members, board members
10 elect, and RAPE president Bruce Markwalter were all
11 present?

12 A. Yes.

13 Q. Where was that meeting held?

14 A. It was held at the Illinois River Lounge, the
15 end of Main Street.

16 Q. And that's here in Ottawa?

17 A. That's here in Ottawa.

18 Q. Who organized this meeting?

19 A. I called for the meeting.

20 Q. Did you invite people to attend the meeting?

21 A. Yes, I did.

22 Q. Whom did you invite to the meeting?

23 A. I invited current democrats. I invited Tom
24 Walsh. I invited Bruce Markwalter, Daphne Mitchell,

1 because she's part owner of the Illinois River Lounge,
2 and -- and then the newly elected board members.

3 Q. Okay. Let's start with the first group. You
4 invited the democratic members of the county board; is
5 that correct?

6 A. (Nodding.)

7 Q. You have to answer audibly.

8 A. Yes.

9 Q. Did you invite all the members -- the
10 democratic members of the county board?

11 A. Yeah. I made a phone call, yes.

12 Q. Did all the democratic members of the county
13 board attend?

14 A. No.

15 Q. Which democratic members of the county board
16 did attend?

17 A. I'd have to go back and look at my notes. But
18 I know Joe Hettel was there and Art Rigby.

19 Q. Now, just to clarify, Mr. Rigby at that time
20 was a board member elect?

21 A. You're right. I'd have to go back and look at
22 my notes.

23 Q. Now, Daphne Mitchell you stated was there. Is
24 Ms. Mitchell a member of Residents Against a Polluted

1 Environment?

2 A. Yes, she is.

3 Q. How long did this meeting last?

4 A. Let's see. We started about 10:20 and -- a
5 little after 11:30.

6 Q. Okay. Did you speak at this meeting?

7 A. Yes, I did.

8 Q. How long did you speak at the meeting?

9 A. Probably ten minutes. I introduced myself. I
10 introduced everyone that was there. I spoke a little
11 bit about what we were going to talk about at the
12 meeting, some of the issues that were facing the county
13 board.

14 Q. Did you speak about the issue of the pending
15 landfill application?

16 A. I mentioned that it will be one of the issues
17 that the County will be facing along with tax caps and
18 zoning.

19 Q. Did you introduce Mr. Markwalter to the group?

20 A. Yes, I did.

21 Q. And you knew Mr. Markwalter was the president
22 of Residents Against a Polluted Environment, correct?

23 A. Yes, I did.

24 Q. Now, besides you and Mr. Markwalter, did

1 anyone else speak at the meeting?

2 A. Joe Hettel spoke at the meeting.

3 Q. And how long did Joe Hettel speak for?

4 A. 20, 25 minutes.

5 Q. What did Mr. Hettel speak about?

6 A. Mr. Hettel spoke about the committees, the
7 committee structures, some of the rules and regulations
8 that take place at the county board level, insurance,
9 how county board members are paid.

10 Q. Did Mr. Hettel speak about the pending
11 landfill application?

12 A. No. He chose not to.

13 Q. About how long did Mr. Markwalter speak?

14 A. I'd have to go back and look at my notes,
15 because it wasn't -- it was broken up into different
16 times.

17 Q. Did he speak for longer than Mr. Hettel spoke?

18 A. I'd have to look at my notes.

19 Q. Did he speak for longer than the time you
20 spoke at the start of the meeting?

21 A. No, because I was -- I was also speaking at
22 the same time. Not at the same time, but --

23 Q. Let me see if I've got this straight. Were
24 you and Mr. Markwalter speaking to the group at the same

1 time?

2 A. No.

3 Q. Mr. Markwalter spoke after you made your
4 initial remarks, correct?

5 A. Yes, he did.

6 Q. And my question is if you know if
7 Mr. Markwalter spoke for a longer period of time than
8 you did?

9 A. I don't know. I didn't time it.

10 Q. Did you attend -- strike that.

11 Had you been in any other meetings prior to
12 this meeting of November 16th of 1996 where you and
13 other county board members and Mr. Markwalter were all
14 present?

15 A. No.

16 Q. Did you ever attend a meeting with democratic
17 county board candidates where Mr. Markwalter was also
18 present?

19 A. No.

20 Q. Now, you're aware that the Pollution Control
21 Board remanded this case to the LaSalle County Board in
22 September of 1996; is that correct?

23 A. Yes.

24 Q. When did you learn of that decision?

1 A. When it came out in the paper.

2 Q. So it would have been a couple -- a day or two
3 days after the decision came down from the PCB, correct?

4 A. Correct.

5 Q. Between learning of that decision to the
6 present time, and other than the meeting you've
7 described for us, have you had any other communications
8 with Mr. Markwalter?

9 A. I'd have to go back and look at my notes or a
10 calendar.

11 Q. Do you remember any phone conversations with
12 Mr. Markwalter during this time?

13 A. Yes. We've had phone conversations.

14 Q. What did you speak about in the phone
15 conversations?

16 A. Oh, sometimes we'd talk about Main Street. I
17 was president of Main Street at the time. And sometimes
18 we'd talk about chamber issues. Sometimes we'd talk
19 about recycling issues, pollution issues. It just
20 depends.

21 Q. Did you ever speak about the LandComp landfill
22 application during these phone conversations?

23 A. We might have, but -- not the application.
24 About the landfill -- the proposed landfill facility,

1 but not the application.

2 Q. What is the distinction in your mind between
3 the proposed facility and the application?

4 A. I know that I can listen to concerns that are
5 raised about the landfill without going into detail in
6 regards to the application.

7 Q. But if I have it straight, Mr. Markwalter and
8 you were discussing the proposed landfill facility in
9 these phone conversations; is that correct?

10 A. No. I wouldn't put it that way.

11 Q. I thought that your testimony was that you had
12 discussed not the landfill application, but the proposed
13 facility. Are you changing your testimony?

14 A. Then be specific about the facility.

15 Q. The LandComp -- the proposed facility west of
16 Ottawa that has been submitted to the County for
17 decision by LandComp. That's the facility I'm talking
18 about.

19 A. Okay, yes.

20 Q. Okay. And you did discuss that facility with
21 Mr. Markwalter, correct?

22 A. Yes. I listened to some concerns.

23 Q. And these were in the phone conversations that
24 you said took place between the time you learned of the

1 county -- of the remand to the county board and the
2 present, correct?

3 A. When was the remand of the county board?

4 Q. It was in September of 1996.

5 A. Yes.

6 Q. And did -- were these conversations with
7 Mr. Markwalter prior to the county board's vote on the
8 17th of January of this year?

9 A. No. I had no contact with Mr. Markwalter
10 since I gave birth to the baby on November 26th, and
11 then I started attending the hearings.

12 Q. Okay. So you gave birth on November 26th; is
13 that right?

14 A. Correct.

15 Q. Did you have any conversations with
16 Mr. Markwalter other than the meeting we talked about
17 between September of 1996 and the date of the birth of
18 your child?

19 A. Mr. Markwalter called me and congratulated me
20 on the birth of my daughter on November 26th.

21 Q. And that's the only other communication you
22 had with him other than the meeting we already spoke
23 about during that time period?

24 A. As to what I recall.

1 Q. During the time period between the remand to
2 the county board in September of 1996 and the date of
3 the vote of January 17th, 1997, did you have any
4 communications or conversations with other members of
5 the RAPE organization?

6 A. No.

7 Q. Did you have any conversations with any
8 members of the RAPE organization during this time --
9 well, strike that.

10 I want to turn your attention back to the
11 meeting of November 16th, 1996, in Ottawa. Now, at this
12 meeting did Mr. Markwalter state to the group that the
13 Siting Committee should be replaced, the current Siting
14 Hearing Committee?

15 A. Yes, I believe he did.

16 Q. And did he say that if the Siting Committee
17 was replaced, that the County could consider other
18 options than the landfill?

19 A. No. I recall Mr. Markwalter saying it should
20 be replaced so that there's an unbiased and fair
21 committee looking at the new information that is to be
22 presented.

23 Q. Did he say that if the Siting Committee was
24 replaced, the new committee or the County could consider

1 other options than the landfill?

2 A. I don't recall. I'd have to look at my notes.

3 Q. Are you aware of a newspaper article regarding
4 this meeting that was printed in the Daily Times on
5 Monday, November 18th, 1996?

6 A. Yes. I've seen it.

7 Q. Okay. Are you aware that Mr. Markwalter's
8 quoted in that paper as stating that if the present
9 Siting Committee were replaced with fair and open-minded
10 members, other options besides the landfill could be
11 considered?

12 A. That could be a quote that the reporter took.

13 Q. Do you have any recollection that
14 Mr. Markwalter did not say that at the meeting?

15 A. No. I don't have any recollection.

16 Q. Did Mr. Markwalter say that the proposed
17 landfill was flawed and should be defeated at this
18 meeting?

19 A. I don't recall hearing that.

20 Q. Were you interviewed by a reporter for the
21 Daily Times, man named Brian Slupski, after the meeting
22 on November 16th of '96?

23 A. We spoke, but I was under the impression he
24 didn't seem to be interviewing me. He was just talking

1 to me. Maybe he was interviewing me.

2 Q. Did he -- did you have a conversation with him
3 then?

4 A. I remember having a conversation with him.

5 Q. Okay. Did he ask you questions in this
6 conversation?

7 A. I recall he was talking to some of the newly
8 elected board members.

9 Q. But did he ask you any questions in
10 particular?

11 A. I don't recall.

12 Q. Did he ask you whether one purpose for the
13 meeting was to establish a voting block on the landfill
14 issue?

15 A. I don't recall that.

16 Q. Did you tell him that one purpose for the
17 meeting was to establish a voting block on the landfill
18 issue?

19 A. No, I did not.

20 Q. If I can approach the witness.

21 HEARING OFFICER WALLACE: All right.

22 MR. O'BRIEN: Perhaps we better mark this for
23 identification.

24 (LandComp Exhibit No. 2 was

1 marked for identification.)

2 MR. O'BRIEN: Ms. Koban, I'm showing you what we
3 have marked for identification as LandComp Exhibit 2.
4 And it's a copy of an article from the Daily Times of
5 Ottawa dated Monday, November 18th, 1996, headlined
6 "Some Demos Seek Voting Block on Landfill Issue." I'd
7 like you to take a look at that, and I'd like you to
8 look, if you will, at the third column of the first page
9 that I've given you.

10 THE WITNESS: Okay.

11 Q. And there is -- if you could just bend it this
12 way a bit so I can read it verbatim. "After the
13 meeting" -- and this is referring to you -- "After the
14 meeting she said one purpose was to establish a voting
15 block on the landfill issue." Do you see that written
16 there?

17 A. I see that.

18 Q. Okay. Now, does that refresh your
19 recollection as to what you told Mr. Slupski on November
20 16th of '96?

21 A. I did not tell him that. And I've gone to the
22 editor of the paper to discuss that issue.

23 Q. So then you complained about that after the
24 fact, after this was published in the paper; is that

1 correct?

2 A. That's correct. Because I -- I didn't see
3 that until the paper came out.

4 Q. If -- what, if anything, do you recall telling
5 Mr. Slupski at that meeting of November 16th of '96?

6 A. I remember telling Mr. Slupski that, yes, he
7 could have some of the doughnuts that I brought, even
8 though I hadn't -- strike that.

9 I had told him that the purpose of the meeting
10 was informational and that we wanted to discuss the
11 Siting Hearing Committee. We wanted --

12 Q. Go ahead.

13 A. We wanted to change the Siting Committee to
14 make it a fair committee since we did have new members,
15 and new information was going to be heard.

16 Q. And so one of the purposes of the meeting was
17 to discuss changing the Siting Committee. Is that true?

18 A. Yes.

19 Q. Okay. How was the Siting Hearing Committee
20 selected?

21 A. By the county chairman.

22 Q. The county board members themselves do not
23 vote to elect members of the Siting Hearing Committee,
24 correct?

1 A. That's correct.

2 Q. So none of the people in -- at the meeting,
3 other than Mr. Hettel, would have any direct say as to
4 who the Siting Hearing Committee would be; is that
5 correct?

6 A. They could say, I would like to be on the
7 Siting Committee.

8 Q. Was one of the purposes of this meeting to
9 gather a group of people to ask Mr. Hettel to change the
10 Siting Hearing Committee?

11 A. One of the purposes of the meeting was to
12 discuss the Siting Committee and how we could make it a
13 fair Siting Committee.

14 Q. By changing its membership?

15 A. By changing its membership.

16 Q. I have nothing further for Ms. Koban at this
17 time.

18 HEARING OFFICER WALLACE: Mr. Mueller?

19 CROSS-EXAMINATION BY:

20 MR. GEORGE MUELLER

21 MR. MUELLER: Ms. Koban, you say you invited all of
22 the democrats on the board, correct?

23 THE WITNESS: Correct.

24 Q. Some of those were people that had, last April

1 of 1996, voted in favor of the application, correct?

2 A. Correct.

3 Q. You invited 'em all anyway, right?

4 A. (Nodding.)

5 HEARING OFFICER WALLACE: Yes?

6 THE WITNESS: Yes.

7 MR. MUELLER: In addition, has Bruce Markwalter or
8 any member of RAPE ever tried to influence you as to how
9 you should vote on this application?

10 THE WITNESS: No, they haven't. I've made up my
11 decision on the facts that I've been reading.

12 Q. And that's my next question. Even though
13 you've expressed opinions about this in the past and
14 have been on record with those opinions, did you listen
15 to the evidence?

16 A. I listened to the evidence.

17 Q. Did you read the transcripts?

18 A. I read the transcripts.

19 Q. What did you base your decision on?

20 A. I based it on the new --

21 MR. RUBIN: I'm going to object. I think that
22 invades the deliberative process of a county board
23 member.

24 HEARING OFFICER WALLACE: Overruled.

1 MR. MUELLER: What did you base your decision on,
2 Ms. Koban?

3 THE WITNESS: I based it on the new information,
4 the CDM document, the Volume 7, and then all the
5 transcripts.

6 Q. Now, in terms of getting a -- some new
7 membership on the Siting Hearing Committee, some of the
8 members of the original Siting Hearing Committee were
9 voted out in November, right?

10 A. That's correct.

11 Q. So you needed new members anyway?

12 A. That's correct.

13 Q. And you were not even appointed as a full
14 member of that committee, were you?

15 A. No. I was not a voting member.

16 Q. You got appointed as an alternate, right?

17 A. As an alternate.

18 Q. And did you go to all the sessions that you
19 could attend other than when you had childbearing
20 obligations?

21 A. Yes.

22 Q. At the meeting did Bruce Markwalter -- this is
23 the meeting of November 16th -- did he ever advocate
24 anything other than people keeping an open mind and

1 listening to all of the evidence?

2 A. He was very adamant about people keeping an
3 open mind.

4 Q. Now, you indicated that you've talked to Bruce
5 on a number of occasions in the past about lots of
6 different issues?

7 A. That's correct.

8 Q. I take it then that you and Mr. Markwalter
9 both have lives apart from the landfill?

10 A. That's correct.

11 Q. You have interests in the Chamber of Commerce
12 things, right?

13 A. That's correct.

14 Q. Interest in Main Street projects?

15 A. Yes.

16 Q. Those are all non-landfill things, right?

17 A. That's correct.

18 Q. And you talked to Bruce about those?

19 A. Yes.

20 Q. He talks to you about them?

21 A. Yes.

22 Q. In these phone conversations, have your
23 discussions about the landfill ever gone beyond general
24 and vague sorts of discussions?

1 A. No.

2 Q. Has Bruce ever talked to you about the
3 evidence or the contents of the application?

4 A. No.

5 Q. That's all I have.

6 HEARING OFFICER WALLACE: Mr. Eschbach?

7 MR. ESCHBACH: No questions.

8 HEARING OFFICER WALLACE: Redirect, Mr. O'Brien?

9 REDIRECT EXAMINATION BY:

10 MR. KEVIN O'BRIEN

11 MR. O'BRIEN: Just one question.

12 Mr. Mueller asked you about Main Street. Are
13 you still involved with Main Street today?

14 THE WITNESS: Main Street merged with the Chamber
15 last month.

16 Q. Okay. When you were involved with Main
17 Street, did Main Street take a position with regard to
18 the landfill?

19 A. Yes, it did.

20 Q. And what position did it take?

21 A. Main Street felt that a landfill would be
22 detrimental to the downtown community and the purpose of
23 Main Street.

24 Q. When did Main Street take this position?

1 spent considerable time studying environmental issues,
2 correct?

3 THE WITNESS: More than average I'd say, yes.

4 Q. And you've also investigated and studied waste
5 disposal issues, particularly as they relate to LaSalle
6 County; is that correct?

7 A. Only in the process of serving on county
8 committees those discussions came up when our committee
9 was assigned to those tasks.

10 Q. Okay. And you, I take it, read the complete
11 application filed by LandComp?

12 A. I would say pretty much, pretty thorough.

13 Q. I'm sorry?

14 A. I would say pretty thorough in my review of
15 that application.

16 Q. And you also attended many of the hearings
17 that were held last February and March 1996; isn't that
18 correct?

19 A. Just about all of them.

20 Q. And in your view you've developed fairly
21 strong opinions about the merits of the application;
22 isn't that correct?

23 A. Not so much the merits as the flaws of the
24 application.

1 Q. All right, the flaws. You've developed very
2 strong views about the fact that the application --
3 (Whereupon there was an outside
4 interruption.)

5 HEARING OFFICER WALLACE: Please continue.

6 MR. RUBIN: -- is flawed?

7 THE WITNESS: Yes.

8 Q. Now, during the first round of hearings, RAPE
9 expressed concern about the fundamental fairness of
10 those original proceedings, correct?

11 MR. MUELLER: I'm going to object. Where is this
12 going, Your Honor? It sounds preliminary, but it's also
13 irrelevant.

14 MR. RUBIN: I'm establishing and issuing that
15 Mr. Markwalter is an adverse witness I believe.

16 HEARING OFFICER WALLACE: We could probably shorten
17 that up. Do you object?

18 MR. MUELLER: No. I don't think they're going to
19 get more adverse than Bruce.

20 MR. RUBIN: Okay. Good.

21 HEARING OFFICER WALLACE: We'll consider Bruce
22 adverse.

23 THE WITNESS: But still a kindly witness.

24 MR. RUBIN: Just hostile.

1 Okay. Now, RAPE has formally resolved to
2 oppose the application; isn't that correct?

3 THE WITNESS: RAPE -- yes. We are a formal
4 intervener against that specific application of
5 LandComp.

6 Q. Right.

7 Now, do you recall attending a meeting on
8 November 16th, 1996, with certain county board members?

9 A. Yes.

10 MR. MUELLER: For the record, Mr. Wallace, same
11 objection as to the legal relevance of this. I think
12 it's a moot point.

13 HEARING OFFICER WALLACE: Your objection's noted.

14 Please continue.

15 MR. RUBIN: Thank you.

16 Was Ms. Koban present during that meeting?

17 THE WITNESS: Yes.

18 Q. Mr. Landers?

19 A. Yes.

20 Q. Mr. Landers is a member of the county board;
21 is that correct?

22 A. He is now. He wasn't then.

23 Q. He was a member elect at that time, on
24 November 16th?

1 A. Yes.

2 Q. Mr. Rigby was present?

3 A. Art Rigby was present.

4 Q. And he was then also a member elect?

5 A. Member elect, yes.

6 Q. And Mr. Foltynewicz was present?

7 A. Foltynewicz was present, member elect.

8 Q. And Mr. Jordan was present?

9 A. Mr. Jordan, yes, he was present.

10 Q. And he was a member elect at the time?

11 A. That's correct.

12 Q. And Mr. Dittmer was present?

13 A. Ron Dittmer was present, yes.

14 Q. And was he a member of the county board?

15 A. Member elect as well.

16 Q. Member elect? Excuse me.

17 A. Yes, sir.

18 Q. Also, was Mr. McGurk present?

19 A. Thomas McGurk was present.

20 Q. And what was his status at the time?

21 A. Current board member, Streator.

22 Q. Was Mr. Combs present?

23 A. Yes, sir. Glenn Combs was present.

24 Q. What was his status?

1 A. Current board member.

2 Q. How did you learn of this meeting?

3 A. I was invited by Andree-Marie Koban.

4 Q. When were you invited?

5 A. Couple of days before the meeting she asked if
6 I would be interested in attending an informational
7 meeting for the new county board members elect.

8 Q. Did you see her in person, or did she call you
9 by telephone?

10 A. She called me by phone.

11 Q. Could you speak up?

12 A. She called me by phone.

13 Q. Did you invite anybody to the meeting?

14 A. Not that I recall.

15 Q. Did you arrive with anybody at the meeting,
16 bring anybody to the meeting?

17 A. Not that I recall.

18 Q. Did Mr. Walsh attend the meeting?

19 A. Yes. Tom Walsh was there.

20 Q. And could you identify him for the record?

21 A. Tom Walsh is a former state representative,
22 democrat, worked under Sangmeister as well in the U.S.
23 Congress and served as clerk for 18 years.

24 Q. Did you speak at the meeting?

1 A. Yes, I did.

2 Q. Did Ms. Koban invite you to speak?

3 A. Yes, she did.

4 Q. At what time -- or when did you receive the
5 invitation not just to attend, but when did you receive
6 the invitation to speak at the meeting?

7 A. They started late I remember. Probably about
8 half hour into the meeting or so. She did some
9 preliminary introductions first.

10 Q. When she called you a couple days before the
11 meeting, did she tell you that this would be an
12 opportunity for you to speak or that she would invite to
13 you speak as well as attend?

14 A. She wanted me there to make sure I could
15 answer questions that pertained to background
16 information.

17 Q. Did you prepare notes of what you wanted to
18 tell people at the meeting?

19 A. Yes, sir.

20 Q. In advance of the meeting?

21 A. That morning before I drove out.

22 Q. And are those notes part of this black binder
23 that you've produced?

24 A. Yes. I believe they're pretty complete. It

1 was on a legal pad, so I believe they're in there. I'd
2 have to the look at the exhibit. But I should have
3 included it, because I know I kept it.

4 Q. May I approach the witness?

5 HEARING OFFICER WALLACE: Yes.

6 MR. RUBIN: Is this page of handwritten notes
7 behind Tab 1 those handwritten notes?

8 THE WITNESS: Yeah. Those are my notes.

9 Q. And those were made in advance of the meeting?

10 A. Yes, sir.

11 Q. Now, Ms. Koban introduced you at the meeting;
12 is that correct?

13 A. Yes.

14 Q. Did she say anything nice about you in the
15 introduction?

16 A. I don't recall, but I imagine she would have.
17 We've been friends.

18 Q. Okay. And did she explain that you were the
19 president of RAPE?

20 A. Yes. I think all the people that were in
21 attendance knew that.

22 Q. Even the board members elect?

23 A. Probably, yes.

24 Q. How would the board members elect know that

1 you were president of RAPE?

2 A. We're pretty active in the area and the press
3 as well. So we have pretty heavy coverage in the area
4 throughout the county, but primarily in Ottawa.

5 Q. How long did you speak for at the meeting;
6 that is, your initial remarks before questions?

7 A. Ten minutes perhaps. It was -- it wasn't all
8 just me. And then they were interjecting questions, and
9 there were other people talking. So I had about ten
10 minutes solid where I was given a chance to talk about
11 the history of solid waste management in the county,
12 background information again.

13 Q. Now, did anyone take actual notes during the
14 course of the meeting?

15 A. Yes. I think Andree did. And Daphne
16 Mitchell, of course, took handwritten notes as well.

17 Q. She took --

18 A. Handwritten notes. We all did.

19 Q. You took notes during the meeting?

20 A. I'd have to look at that. If I did, it would
21 have been on that page. If I did and it wasn't on that
22 page, then I didn't keep them. So they must not been
23 important to me. But any notes that I took would have
24 probably been on that page that was included. I'd have

1 to look again.

2 Q. May I approach the witness again?

3 HEARING OFFICER WALLACE: Yes.

4 MR. RUBIN: This is the black binder.

5 THE WITNESS: I just looked at it. Yeah. I added
6 notes to this. That wasn't part of my original, so I
7 would have taken that at the meeting.

8 Q. Were there any other notes that you took at
9 the meeting other than those in this black binder?

10 A. No.

11 Q. What happened to the handwritten notes by
12 Ms. Mitchell?

13 A. Apparently, she destroyed them. I asked
14 everyone to make sure any minutes pertaining to that
15 meeting would be preserved after you had instructed the
16 hearing officer to give that mandate.

17 Q. You're talking about an issue I raised during
18 the substantive hearings that were held in regard to the
19 application?

20 A. I believe so.

21 Q. And those substantive hearings were in
22 December of 1996?

23 A. Roughly, yes, sir.

24 Q. Had Ms. Mitchell destroyed her handwritten

1 notes prior to that time so that there were no other
2 available?

3 A. Yes, I believe so.

4 Q. When were her typed notes prepared?

5 A. It was done probably the day after, or it
6 could have been that afternoon. Because we had a RAPE
7 meeting specifically to regurgitate and go over what
8 happened at this informational meeting for the following
9 day I think, Monday or Tuesday.

10 Q. Are you aware that the Pollution Control Board
11 reversed the initial county board's decision on
12 September 19th, 1996?

13 A. Yes, I was, after the fact. But I assumed
14 that it would happen anyway, so yes.

15 Q. And you were right, weren't you?

16 A. Yes, sir.

17 Q. Now, when did you learn about the reversal and
18 remand by the Pollution Control Board?

19 A. I think -- in fact, I was kind of surprised by
20 it, because I got a letter through the mail to my home
21 address.

22 Q. Within a few days?

23 A. No. It was probably the following week. I
24 got it through Bob Eschbach's office.

1 Q. So it wasn't until the week of September 23rd
2 or something like that that you learned of the Pollution
3 Control Board's decision?

4 A. Roughly, yes.

5 Q. But you knew of the remand as of the time you
6 met with county board members on November 16th, 1996?

7 A. I assumed that that would be in place, so yes.

8 Q. Now, did you have any communications other
9 than the conversation with Ms. Koban to set up the
10 meeting on November 16th? Did you have any
11 communications with county board members or board
12 members elect between the time you learned of the remand
13 by the Pollution Control Board and January 17th?

14 A. No, sir. Pertaining to this meeting you're
15 talking about, we heard about it a few days before, and
16 that was it. And I promised to attend on behalf of RAPE
17 to talk about background.

18 Q. Okay. But for that meeting, that was the only
19 contact you had with county board members or board
20 members elect between September 23rd roughly and January
21 17th?

22 A. Yes.

23 Q. And no telephone conversations or other
24 conversations during that period of time?

1 A. Pertaining to this, yes.

2 Q. Pertaining to what?

3 A. Pertaining to this issue of the application,
4 yes.

5 Q. Well, my question is a little bit more broad.
6 Had you any conversations with county board members and
7 board members elect between September 23rd, when you
8 first learned of the remand, and January 17th, when the
9 county board voted?

10 A. Well, I have personal friendships with Andree
11 and Ario Franzetti, for example. So we see each other
12 or talk to each other sometimes once or twice a month.
13 So probably, yes. But I don't recall -- my answer would
14 be I don't recall any specifics.

15 Q. But you generally talk to Ms. Koban and
16 Mr. Franzetti once or twice a month?

17 A. Generally. I see Ario sometimes more
18 frequently.

19 Q. And do you recall whether you had that pattern
20 of meetings with Mr. Franzetti and Ms. Koban between
21 roughly September 23rd, 1996, and January 17th, 1997?

22 A. I don't recall anything specific.

23 Q. But generally, did you deviate from the
24 pattern of having regular or periodic meetings with

1 those people?

2 A. Yeah. Our schedules are pretty much
3 dissimilar, and it depends on what our schedules were.
4 In the case of Mr. Franzetti, I supplied computer
5 services for him. So I mean I would talk to him and see
6 him to repair his computer frequently.

7 Q. Frequently between September 27th or 23rd and
8 January 17th?

9 A. I don't recall. I'd have to look at my notes.

10 Q. What notes?

11 A. Whatever notes I could find that would give
12 me -- like an invoice or something, that I would have
13 invoiced him for something. But I don't recall
14 anything.

15 Q. What kind of business is it that you do with
16 Mr. Franzetti?

17 A. Well, I run a computer programming business
18 located in Ottawa.

19 Q. And Mr. Franzetti is a purchaser of services
20 from you?

21 A. That's correct.

22 Q. And did he purchase services from you between
23 September 23rd approximately and January 17th?

24 A. Again, I don't recall.

1 Q. He may have?

2 A. He may have, yes.

3 Q. And do you recall seeing him during that
4 period of time?

5 A. Again, I don't recall, but it's likely.

6 Q. Now, did you ever have any casual
7 conversation -- not specific, but casual conversation
8 during that period of time of September to January 17th
9 with Mr. Franzetti regarding the application or
10 Mr. DeGroot or the proposed facility that was the
11 subject of the application?

12 A. I would say no, absolutely not. We were very
13 careful to avoid it.

14 Q. Why do you say you were careful to avoid it?

15 A. Because we knew when the remand being likely,
16 we didn't want to jeopardize any type of illegal ex
17 parte.

18 Q. What would, in your view, be illegal ex parte?

19 A. I don't know. I'm not an attorney. But
20 anything that has to do with the application I stayed
21 far, far afield from.

22 Q. So that in --

23 A. Particularly with county board members.

24 Q. In terms of Mr. Franzetti, you did not talk

1 about the county board or the landfill application?

2 A. In terms of any county board member.

3 Q. Let's go back to the meeting of November
4 16th. Wasn't the subject of the landfill application
5 something that was the subject matter of the November
6 16th meeting?

7 A. Yes. From a historical point of view we said
8 that it had failed in the appellate court, and it would
9 most likely come back and be a major issue for the
10 current county board.

11 Q. So there was at least -- the subject came up
12 during the November 16th meeting?

13 A. Yes, sir.

14 Q. In fact, at the November 16th meeting didn't
15 you tell those assembled that there were alternatives to
16 the landfill proposed by LandComp that might be viable,
17 particularly if waste from the county could be
18 guaranteed for 20 years and at or below costs?

19 A. I don't recall that, but I know -- I may have
20 as an illustration, by way of illustration to a
21 question.

22 Q. Let me -- may I approach the witness?

23 HEARING OFFICER WALLACE: Yes, you may.

24 MR. RUBIN: I'm handing you the black binder. And

1 I've put a little tab next to a sentence that begins --
2 well, you've got to read -- from additionally through
3 these alternatives.

4 THE WITNESS: That's correct, I did as way of
5 illustration in response to Mr. Jordan's question.

6 MR. MUELLER: Mr. Rubin, do you want to direct me
7 to the page?

8 MR. RUBIN: Sure (indicating).

9 Now, Mr. Jordan asked you a question during
10 this meeting; is that correct?

11 THE WITNESS: Based on the minutes, yes.

12 Q. And he asked you what, in your view, was the
13 downside of the county board rejecting the application,
14 correct?

15 A. I believe that's right.

16 Q. And among other things, you explained that
17 there were alternatives to landfilling if the county
18 board rejected the application; isn't that correct?

19 A. No. I said that -- I mean the minutes should
20 reflect this. I thought they did. Maybe not. But they
21 should say that I indicated that no one really knows the
22 numbers.

23 Q. Numbers of what?

24 A. Numbers of what the costs, the downside. I

1 think I said there may be some difference in costs, but
2 really the issue is not -- that's really beyond what
3 we're here to talk about; and what we're here to talk
4 about and what we should focus on is the new Siting
5 Committee and how we need a fair, and open-minded siting
6 committee to look at all the evidence so that each side,
7 both the applicant and the interveners, have a fair and
8 equal opportunity to present their argument.

9 Q. Did you advise those present that you believed
10 that the members that had participated in the Siting
11 Committee from the prior February and March 1996
12 hearings were tainted?

13 A. I clearly said that. Yes, sir, I said that.

14 Q. And did you also tell them that in your view
15 that those county board members who participated in the
16 prior siting hearing -- or on this prior Siting
17 Committee should be replaced?

18 A. Yes. I think what I said -- which may answer
19 both of those questions, your last two questions -- were
20 that the Illinois Pollution Control Board said that
21 the -- this was -- the process was tainted and has to go
22 back and be done again. Because there was the result
23 of, you know, the CDM document and the financial
24 information that was illegally withheld from the

1 interveners.

2 Q. I didn't ask you that question. I asked you
3 whether you advised them that you believed that the
4 county board members who sat on the Siting Committee
5 were tainted?

6 A. Again, I don't recall specifically, but I do
7 recall reading from the -- quoting from the Pollution
8 Control Board's decision that the process was tainted
9 and was fundamentally unfair. Yes, probably to that
10 effect.

11 Q. Now, did you also tell those present at the
12 November 6th (sic) meeting that it was time for the
13 democrats to take control of the landfill issue?

14 A. That sounds like something I would say, yes.

15 Q. Okay. And, indeed, after the November 5th
16 election, the democrats controlled the county board 15
17 to 14; isn't that correct?

18 A. Yes, sir.

19 Q. Did you tell those present that if the Siting
20 Committee was replaced, within your view, of people who
21 were fair and open-minded, that the process would be
22 more effective?

23 A. I don't know that I used that terminology, but
24 if I was paraphrased that way. I thought that it was

1 very, very important, top priority to have the Siting
2 Committee replaced, the one that was -- the Pollution
3 Control Board, that State agency said had tainted the
4 process.

5 Q. And did you advise those who were present
6 November 16th that the landfill had been ramrodded down
7 the public's throats by the republicans?

8 A. I read that in the paper, too, and I objected
9 to the report I read, and I was very upset about that.
10 Because I was seeking to get an invitation by the
11 republicans to speak on the same informational level.
12 And unfortunately, I didn't even pursue that based on
13 that quote. What I think I said was, based on the
14 efforts of Gerald Lambert and -- sorry -- Ted Lambert
15 and Jerry Johnson, which were both republican chairmen
16 of the county board, that yes, indeed, the structure of
17 the committee was -- and the process had been ramrodded
18 down our throats. Yeah. That's accurate then -- but
19 not all republicans, what was quoted.

20 Q. Just those who had ramrodded it down the
21 public's throats, right?

22 A. Just those that were in a position of
23 leadership that did that, yes.

24 Q. Now, just so that the record is clear,

1 Mr. Franzetti, Mr. Foltyniewicz, Mr. Small, and
2 Mr. Mowinski are members of Residents Against a Polluted
3 Environment; is that correct?

4 A. Not to my knowledge. Foltyniewicz is not a
5 member that I'm aware of. And I looked through for
6 every board member and past board member as well. Ario
7 Franzetti is not and never has been. Who was the other?
8 Mowinski, Thomas Mowinski is not a dues paying member
9 of Residents Against a Polluted Environment.

10 Q. So the only one is Ms. Koban?

11 A. Yes. That's correct.

12 Q. May I have one minute?

13 No further questions.

14 HEARING OFFICER WALLACE: Mr. Mueller?

15 CROSS-EXAMINATION BY:

16 MR. GEORGE MUELLER

17 MR. MUELLER: Bruce, after discussing at the
18 November 16th meeting the downside alternatives if the
19 application were rejected, did you then also state that
20 it is most important that the upcoming hearing be open,
21 fair, and unbiased, and that a discussion of
22 alternatives will not be a criterion discussed at the
23 hearing?

24 MR. RUBIN: I'm going to object. Question is

1 leading.

2 HEARING OFFICER WALLACE: Sustained.

3 MR. MUELLER: Well, we'll do it the hard way. I am
4 entitled I think to --

5 MR. RUBIN: I will withdraw the objection rather
6 than take up more time.

7 HEARING OFFICER WALLACE: All right. I would note
8 that so-called friendly cross, you know, of your own
9 witness --

10 MR. RUBIN: Rather than take up time, I withdraw
11 the objection.

12 HEARING OFFICER WALLACE: Had you finished your
13 question?

14 MR. MUELLER: Yes.

15 THE WITNESS: As I think I answered to Mr. Rubin's
16 question, that was my general sentiment, that it --
17 really the most important thing is they look at the
18 evidence, keep a fair and open-minded perspective on it;
19 and that's what's appropriate, what's before the board,
20 not anything else outside of that.

21 Q. And all of that is reflected in the minutes of
22 this November 16th meeting, correct?

23 A. Yes, pretty much.

24 Q. And your statements with respect to a new

1 siting hearing -- or a new Siting Hearing Committee
2 related to, you felt, the need for a fair and unbiased
3 hearing?

4 A. Yes, sir.

5 Q. Did you also urge all county board members at
6 that meeting and board members elect to review all of
7 the previous testimony?

8 A. Yes, sir.

9 Q. Mr. Markwalter, have you ever attempted to
10 influence any county board member with respect to their
11 vote on this proposal?

12 MR. RUBIN: I'm going to object. I think that's
13 for the Pollution Control Board to determine. That's a
14 request of legal -- what is essentially a legal issue
15 for the Board and ultimate issue.

16 HEARING OFFICER WALLACE: Overruled.

17 THE WITNESS: On this particular issue, one of my
18 functions as the president of RAPE is to drive
19 membership, try to give a reason for that membership to
20 hold onto an issue that's important to the safety,
21 health, and welfare of our community. And so we do
22 lobby as best we can so to make sure that that issue is
23 out among the public, and we encourage the public to
24 deal with their local representatives.

1 So the answer is not in a way that we -- that
2 we were precluded from doing by law, my interpretation
3 of the law. Tried to stay -- make sure that we did not
4 step on any type of court restrictions.

5 MR. MUELLER: Well, at the November 16th meeting
6 with the county board members -- and you've indicated
7 that's the only time you talked to county board people
8 about this between September and the time the decision
9 was made, right?

10 THE WITNESS: Yes.

11 Q. At that meeting did you discuss any of the
12 specific evidence previously given?

13 A. No.

14 Q. Did you discuss any of the specific contents
15 of the application?

16 A. No.

17 Q. Did you express an opinion as to the evidence
18 that had previously been given?

19 A. No, other than quoting the Illinois Pollution
20 Control Board's decision of having it remanded back to
21 the County saying that there was a fundamentally unfair
22 process in our first hearing.

23 Q. That's all.

24 HEARING OFFICER WALLACE: Mr. Eschbach?

1 MR. ESCHBACH: No questions.

2 HEARING OFFICER WALLACE: Redirect?

3 REDIRECT EXAMINATION BY:

4 MR. JAMES I. RUBIN

5 MR. RUBIN: Mr. Markwalter, just for the record,
6 did you attempt to invite a representative of LandComp
7 to this meeting on November 16th?

8 THE WITNESS: The only way I can answer that, I
9 wasn't calling the shots at the meeting. I was invited
10 as a guest, so I didn't think it was appropriate for me
11 to invite anyone.

12 Q. So you didn't invite anybody?

13 A. No. I came alone.

14 Q. No further questions.

15 HEARING OFFICER WALLACE: Mr. Mueller?

16 MR. MUELLER: Nothing else. Thank you.

17 HEARING OFFICER WALLACE: Thank you,
18 Mr. Markwalter.

19 MR. RUBIN: My examination of Mr. Markwalter is
20 over. Of course, I have not been able to examine him
21 with respect to those documents that this hearing
22 officer has ruled upon that I'm not entitled to receive.
23 So obviously, I'm not waiving my right to examine
24 Mr. Markwalter on those documents. I don't want the

1 record to reflect that I'm giving up on that issue.

2 HEARING OFFICER WALLACE: All right. Very well.

3 You may step down.

4 (Witness excused.)

5 (A brief recess was taken.)

6 HEARING OFFICER WALLACE: Back on the record.

7 MR. RUBIN: Mr. Franzetti.

8 HEARING OFFICER WALLACE: Mr. Franzetti?

9 ARIO FRANZETTI, called as a witness herein,
10 upon being first duly sworn on oath, was examined and
11 testified as follows:

12 (Witness sworn.)

13 HEARING OFFICER WALLACE: Back on the record.

14 Mr. Rubin?

15 DIRECT EXAMINATION BY:

16 MR. JAMES I. RUBIN

17 MR. RUBIN: Would you state your name, please.

18 THE WITNESS: Ario Louis Franzetti.

19 Q. Mr. Franzetti, are you a member of the county
20 board?

21 A. Yes, I am.

22 Q. How long have you been a member of the county
23 board?

24 A. Oh, a little over 18 years.

1 Q. Continuously?

2 A. Continuously.

3 Q. How did you vote on the landfill application
4 on January 17th?

5 A. On January 17th?

6 Q. Yes, sir, 1997.

7 A. I voted against the landfill application.

8 Q. Did you attend a meeting -- excuse me. Were
9 you a member of the Siting Hearing Committee of the
10 county board at any point in time?

11 A. Yes. Yes, I was.

12 Q. When did you first become a member of the
13 Siting Hearing Committee in regards to the LandComp
14 application?

15 A. I can't give you the exact dates, but I was --
16 I was -- really, when the -- on the first hearings, I
17 was an alternate on the Siting Committee, and on the
18 second hearings I was a member of the Siting Committee.

19 Q. And indeed, were you chairman of the Siting
20 Hearing Committee?

21 A. Yes, I was.

22 Q. Now, did you attend a meeting of the Siting
23 Hearing Committee of the county board on or about
24 Thursday, November 14th, 1996?

1 A. You're going to have to refresh my memory,
2 you start giving me dates like that.

3 Q. Did the Siting Hearing Committee have, from
4 time to time, meetings?

5 A. Yes. Yes, we did.

6 Q. Do you recall that there was a particular
7 meeting in November before the hearings resumed on
8 remand?

9 A. Well, I can't really recall any particular
10 date. But ask me some questions and refresh my memory.

11 Q. Do you recall having a meeting of the Siting
12 Committee after the election of November 5th, 1996?

13 A. Yes.

14 Q. Okay. Approximately ten days after the
15 election?

16 A. I can't tell you that for sure.

17 Q. But sometime shortly after the election?

18 A. It was sometime -- it was a time before the
19 actual hearing. That's all I can tell you.

20 Q. Now, did you state at the Siting Hearing
21 Committee that was held before the actual substantive
22 hearings on remand that were held in December, did you
23 state to anyone -- any other county board member that
24 you had caused a friend of yours to contact two waste

1 management firms to determine their interest in building
2 a landfill in LaSalle County?

3 A. You're saying did I say that?

4 Q. Yes. Did you say that to any other county
5 board member?

6 A. No.

7 Q. Did you tell any other county board member a
8 friend of yours had contacted two waste management firms
9 to determine their interest in building a landfill in
10 LaSalle County?

11 A. Reword that again.

12 Q. Could you read it back for the witness,
13 please?

14 HEARING OFFICER WALLACE: No. He doesn't
15 understand the question.

16 MR. RUBIN: Oh, he didn't understand the question.
17 I'm sorry.

18 Prior to the substantive hearings in December
19 of 1996, did you state to any other county board member
20 that a friend of yours had contacted two waste
21 management firms to determine their interest in building
22 a landfill in the county?

23 THE WITNESS: No. You said waste management. No.

24 Q. Had a friend of yours contacted two disposal

1 firms to determine their interest in building a landfill
2 in the county?

3 A. That's different. Yes.

4 Q. So in order to make the record clear,
5 Mr. Franzetti, did you state to any other county board
6 member prior to the substantive hearings that were held
7 in December that a friend of yours had contacted two
8 disposal firms to determine their interest in building a
9 landfill in the county?

10 A. Yes, in conversation.

11 Q. Can you tell me who the board members were
12 with whom you had such a conversation?

13 A. The only one that I can really remember was
14 our board chairman.

15 Q. Could you identify him for me?

16 A. That was Ted Lambert.

17 Q. Did you identify who the friend of yours
18 were -- was during that conversation?

19 A. I don't remember if I did or not.

20 Q. Did you tell Mr. Lambert what the friend of
21 yours had told you as a result of his contact with two
22 waste disposal firms?

23 MR. MUELLER: I don't understand the relevance of
24 this, Mr. Wallace. I thought the intricacies of

1 conversations between decision-makers are not relevant.
2 And I might add that Mr. Lambert was not one of the
3 decision-makers in any event, because he left the
4 board -- or he was no longer chairman then.

5 MR. RUBIN: He was a board member, did vote on the
6 application.

7 MR. MUELLER: I'll withdraw that last statement,
8 but I think the first part of the objection is
9 applicable.

10 MR. RUBIN: The question here is whether or not
11 Mr. Franzetti was conveying information that he obtained
12 from a friend of his, not from the record. That's the
13 whole purpose of my inquiry.

14 HEARING OFFICER WALLACE: All right. Objection's
15 overruled.

16 THE WITNESS: Just in conversation, as if -- if
17 you're trying to iterate in any way that -- you know,
18 that I was trying to force my decision on anybody, no.
19 It was just conversation. We were talking. They were
20 talking. It seemed to me like it was more idle talk
21 rather than specifics.

22 MR. RUBIN: Okay. Did you tell Mr. Lambert what
23 your friend told you, having spoken with two waste
24 disposal firms, about the need for a landfill in the

1 county?

2 THE WITNESS: Yeah, I believe I did.

3 Q. And what did you say?

4 A. What did I say?

5 Q. To Mr. Lambert.

6 A. I think I -- I don't know if I can repeat it
7 word-for-word. But I think I told him that a friend of
8 mine, you know, in conversation had told me that there
9 was contact with another -- another firm, and they said
10 they weren't interested.

11 Q. And didn't they -- that friend of yours advise
12 you that the disposal firm had stated to him that there
13 was no need for a landfill in LaSalle County?

14 A. Nobody advises me anything, you know. They
15 can make statements to me, but I advise myself.

16 Q. Let me rephrase the question.

17 Did this friend of yours tell you that the
18 company that he had contacted had stated to him that
19 there was no need for a landfill in LaSalle County?

20 A. I don't know if that was a hundred percent
21 that way. I can't verify that. The only thing I can
22 truly verify is the idea that they were not interested.

23 Q. Did you tell Mr. Lambert that your friend had
24 told you that the waste disposal firms that he had

1 spoken to had advised him that there was no need for a
2 landfill in LaSalle County?

3 A. Not to my knowledge. Like I told you before,
4 it's hard for me to remember whether I did or not.

5 Q. That is, you may have said that?

6 A. It's possible, but I can't remember.

7 MR. ESCHBACH: Mr. Wallace, I think I'd like to
8 interject an objection at this time. Unless this is
9 going to go on to something beyond a conversation, a
10 casual conversation with one county board member who
11 voted in favor of the application anyway. It seems to
12 be a minimal amount of relevance, and he ought to move
13 on.

14 MR. RUBIN: The question is -- obviously, that's
15 argument, and Mr. Eschbach is entitled to make whatever
16 argument he wishes.

17 Did you ever have any other --

18 HEARING OFFICER WALLACE: Are you going to respond
19 to his objection?

20 MR. ESCHBACH: I was raising the objection on the
21 issue of relevancy.

22 HEARING OFFICER WALLACE: Do you wish to respond?

23 MR. RUBIN: Oh, I'm sorry.

24 Clearly, conversations that Mr. Franzetti has

1 with people about the need for landfill outside the
2 record are relevant. Those are clearly ex parte
3 communications as defined by the Pollution Control
4 Board. To the extent that Mr. Franzetti repeats those
5 for other county board members, that is clearly also
6 relevant.

7 HEARING OFFICER WALLACE: All right. You may
8 continue.

9 MR. RUBIN: Can I have the last question and answer
10 read back, please?

11 HEARING OFFICER WALLACE: I would prefer if you
12 would direct that to me instead of the court reporter.

13 MR. RUBIN: I didn't mean to ignore the Chair --
14 the Hearing Officer. I apologize.

15 HEARING OFFICER WALLACE: Now you may do so.

16 (Record read.)

17 MR. RUBIN: Now, did you have any other
18 conversations with this friend that you related to
19 Mr. Lambert?

20 THE WITNESS: You mean talking about the weather?

21 Q. No. Conversations that you related to
22 Mr. Lambert about things told you by this friend?

23 A. No.

24 Q. Did the friend identify to you who the waste

1 disposal firm or firms were that he spoke with?

2 A. I can only remember one.

3 Q. What was that?

4 A. It was Superior.

5 Q. And did you relate the identity of that firm
6 to Mr. Lambert?

7 A. Yeah, I believe I did.

8 Q. And told him that Mr. -- that Superior wasn't
9 interested in building a landfill in LaSalle County?

10 A. Well, I guess I already stated that once
11 already, didn't I?

12 Q. No, you didn't. But I take it that's a
13 correct statement?

14 A. Well, you said a landfill -- didn't you tell
15 me -- you know, you told me that --

16 HEARING OFFICER WALLACE: Just -- Mr. Franzetti, it
17 would be best if you could just answer the questions.

18 THE WITNESS: Yeah. But I have to keep answering
19 the same one over and over again?

20 HEARING OFFICER WALLACE: Just answer the
21 question, please, Mr. Franzetti.

22 THE WITNESS: Okay. What was the question?

23 HEARING OFFICER WALLACE: Would you read the
24 question back to Mr. Franzetti, please.

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(Record read.)

MR. RUBIN: Yes or no was all I --

THE WITNESS: Well, it can't be answered yes or no. I may not have stated it as you stated it. I may not have phrased it as you stated it.

Q. To the best of your recollection --

A. It might have not been in the same -- you know, the same sentence or the same conversation. But in other words, what I'm saying is that it could have been brought out, but not just exactly like you said it, you know, black and white.

Q. Do you recall how you phrased it, Mr. Franzetti?

A. I don't recall it exactly. If I -- if I recalled it exactly, then I would tell you so. That's why I'm questioning when you question me how it was said exactly.

Q. Tell us to the best of your recollection how you phrased it to Mr. Lambert.

A. What I can remember is I said landfills company -- or companies and were not interested. And in the conversation, I don't know whether Lambert asked me or whether I told him one of the companies.

Q. You mean the identity of the company?

1 A. Yes, yeah.

2 Q. Now, do you have any documents or
3 communications that you received from this friend of
4 yours regarding his contact with one or more waste
5 disposal companies?

6 A. No, I haven't.

7 Q. No further questions.

8 HEARING OFFICER WALLACE: Mr. Mueller?

9 CROSS-EXAMINATION BY:

10 MR. GEORGE MUELLER

11 MR. MUELLER: Ario, Ted Lambert with whom you had
12 this conversation voted in favor of the application,
13 didn't he.

14 THE WITNESS: Right.

15 Q. That's all.

16 A. Say, could I make --

17 HEARING OFFICER WALLACE: No, Mr. Franzetti, you
18 may not speak right now.

19 Mr. Eschbach, do you have any questions?

20 MR. ESCHBACH: No questions.

21 HEARING OFFICER WALLACE: Redirect?

22 MR. RUBIN: None.

23 HEARING OFFICER WALLACE: Thank you, Mr. Franzetti.

24 (Witness excused.)

1 MR. RUBIN: We recall Mrs. Scharenberg to the
2 stand.

3 HEARING OFFICER WALLACE: Is Ms. Scharenberg still
4 here?

5 VICKY SCHARENBERG, called as a witness herein,
6 having been previously duly sworn on oath, was examined
7 and testified as follows:

8 (Witness previously sworn.)

9 HEARING OFFICER WALLACE: You're still under oath
10 from earlier.

11 You may proceed.

12 DIRECT EXAMINATION BY:

13 MR. KEVIN O'BRIEN

14 MR. O'BRIEN: Thank you.

15 Mrs. Scharenberg, you referred to in your
16 earlier testimony a meeting you attended prior to the
17 election for county board in November of '96 where
18 Mr. Markwalter was present. Do you recall that
19 testimony?

20 THE WITNESS: Yes.

21 Q. Can you tell us where that meeting took place?

22 A. The democratic headquarters.

23 Q. And the democratic in what town?

24 A. Ottawa.

1 Q. Okay. Who was present besides yourself and
2 Mr. Markwalter?

3 A. Precinct committeemen and candidates.

4 Q. And I take it these were all democratic
5 candidates?

6 A. All democratic candidates.

7 Q. Were any, at that time, current county board
8 members present at that meeting?

9 MR. MUELLER: I don't understand the question,
10 what he means by at that time current.

11 MR. O'BRIEN: Let me rephrase it then.

12 Were any of the people present at that meeting
13 then members of the county board?

14 THE WITNESS: Mr. Hettel.

15 Q. Anyone else?

16 A. Well, there was Senator Welch. There was
17 Frank -- representative Frank Mautino?

18 HEARING OFFICER WALLACE: Just of the county board,
19 ma'am.

20 MR. O'BRIEN: Any other sitting -- I guess the
21 phrase is -- county board members?

22 THE WITNESS: The only one that off the top of my
23 head that I remember is Joe Hettel.

24 Q. Was Mr. Franzetti there?

1 A. He was at a meeting. Whether it was that same
2 meeting or not, I can't answer. But he had been there
3 at another time or that same time to talk about the TIF
4 district and the tax caps.

5 Q. That's a tax district, right?

6 A. Um-hum.

7 Q. You got to answer audibly.

8 A. Yes. I'm sorry.

9 Q. Was Mr. Franzetti at the meeting while
10 Mr. Markwalter was present?

11 A. I don't remember.

12 Q. Was Ms. Koban there at any time?

13 A. No, never.

14 Q. Now, did Mr. Markwalter speak at this meeting?

15 A. Yes.

16 Q. And what did Mr. Markwalter say?

17 A. Well, he was introduced by the democratic
18 chairman, which is Dick McConville. And he was asked to
19 give the history of the landfill issue to bring all of
20 us candidates up to date as to where they'd been and
21 where they were currently on the issue of the landfill.

22 Q. Did Mr. Markwalter give his position on
23 whether the landfill application should be approved or
24 denied?

1 A. No.

2 Q. Did he speak about the merits of the landfill
3 application?

4 A. He talked about the host agreement. But at
5 that time I didn't know what a host agreement was, so it
6 went over my head.

7 Q. Now, the gentleman you said who introduced
8 him, Mr. McConville, is that the Mr. McConville who is
9 now a member of the county board?

10 A. No.

11 Q. That's another person?

12 A. Yes.

13 Q. No further questions.

14 HEARING OFFICER WALLACE: Mr. Mueller?

15 MR. MUELLER: Nothing on cross.

16 HEARING OFFICER WALLACE: Mr. Eschbach?

17 MR. ESCHBACH: I have no questions.

18 HEARING OFFICER WALLACE: Thank you. You may step
19 down.

20 (Witness excused.)

21 HEARING OFFICER WALLACE: Mr. Rubin?

22 MR. RUBIN: Thank you. We have no further
23 witnesses, and we would rest.

24 HEARING OFFICER WALLACE: Mr. Mueller, do you have

1 anyone to call in rebuttal?

2 MR. MUELLER: One second, if I may.

3 We're going to recall Mr. Markwalter.

4 BRUCE MARKWALTER, called as a witness herein,
5 upon being previously duly sworn on oath, was examined
6 and testified as follows:

7 (Witness previously sworn.)

8 REBUTTAL DIRECT EXAMINATION BY:

9 MR. GEORGE MUELLER

10 HEARING OFFICER WALLACE: All right. You're still
11 under oath.

12 THE WITNESS: Thank you.

13 MR. MUELLER: Bruce, when you testified on
14 examination from Mr. Rubin, I thought you were asked
15 about whether you had ever attended any other meetings
16 that the county board members were at besides the one on
17 November 16th.

18 THE WITNESS: During a specific time period I
19 thought he asked me. I don't think that meeting was
20 within that time period if I'm not mistaken.

21 Q. You're talking about the time period from when
22 you learned about the remand until January 17th, right?

23 A. Yes, I believe so.

24 Q. Ms. Scharenberg talked about a meeting of

1 candidates that you allegedly spoke at.

2 A. Yeah. I think that was before the election,
3 if my memory serves me right. That would have been
4 prior to November.

5 Q. Was -- do you know whether that meeting was
6 before or after the remand?

7 A. I think -- I don't know. I'd have to look at
8 the dates on that.

9 Q. Were you at that meeting?

10 A. Yes, I was at that meeting, sure.

11 Q. Did you express any opinions about the
12 application at that meeting?

13 A. No. I expressed an opinion on the convoluted
14 nature of the proceedings for solid waste management in
15 the county, yes.

16 Q. That's all.

17 HEARING OFFICER WALLACE: Mr. Rubin?

18 REBUTTAL CROSS-EXAMINATION BY:

19 MR. JAMES I. RUBIN

20 MR. RUBIN: What do you mean by -- may I ask a
21 question?

22 HEARING OFFICER WALLACE: Yes.

23 MR. RUBIN: What do you mean by convoluted in the
24 context of the answer that you just gave?

1 THE WITNESS: The structures of committees and how
2 those committees were -- the appointments of those
3 committees came to be and how that influenced the final
4 results going before the hearings.

5 Q. The final results with respect to --

6 A. Recommendations of the solid waste management
7 plan that the applicant would have to abide by.

8 MR. RUBIN: No further questions.

9 MR. ESCHBACH: I have no questions.

10 MR. MUELLER: Nothing else.

11 HEARING OFFICER WALLACE: Thank you. You may step
12 down.

13 Anything further, Mr. Mueller?

14 MR. MUELLER: Nothing else.

15 HEARING OFFICER WALLACE: Mr. Rubin, any
16 surrebuttal?

17 MR. RUBIN: No, sir.

18 HEARING OFFICER WALLACE: Thank you. All the
19 parties have rested.

20 Is there anyone in the -- is there anyone in
21 the audience that wishes to come up and make a statement
22 for the record for consideration by the Board?

23 AN AUDIENCE MEMBER: I do.

24 HEARING OFFICER WALLACE: Would you come up. You

1 can use that podium would be fine.

2 Do you wish to give sworn statement or an
3 unsworn statement?

4 AN AUDIENCE MEMBER: Well, it's an opinion. So
5 therefore, I swear it's my opinion.

6 HEARING OFFICER WALLACE: Would you please state
7 your name for the record.

8 AN AUDIENCE MEMBER: It probably won't have any
9 facts in it that can be disproved. You want me to
10 swear?

11 HEARING OFFICER WALLACE: If you swear, these
12 gentlemen can cross-examine you if they so desire.

13 AN AUDIENCE MEMBER: Okay.

14 TWILA YEDNOCK, upon being first duly sworn on
15 oath, gave a statement as a member of the public as
16 follows:

17 (Witness sworn.)

18 HEARING OFFICER WALLACE: Would you state your
19 name for the record?

20 MS. YEDNOCK: Twila Yednock.

21 HEARING OFFICER WALLACE: And your address, please?

22 MS. YEDNOCK: 1915 Champlain Street, Ottawa.

23 HEARING OFFICER WALLACE: And could you spell your
24 last name for the record?

1 MS. YEDNOCK: Y-e-d-n-o-c-k.

2 HEARING OFFICER WALLACE: Now you may begin your
3 statement.

4 MS. YEDNOCK: The decision process on a landfill
5 for LaSalle County was flawed and fundamentally unfair
6 from the beginning when the county board was put in
7 charge of the decision on the siting and the operation
8 of the proposed landfill. Historically, the general
9 public is opposed to the siting near their property or
10 city of any large garbage disposal site such as one
11 which can accept waste from many counties. LaSalle
12 County is no exception to that, and that was evidenced
13 when the advisory referendum that was conducted
14 county-wide. I think there may have been two districts
15 who voted in favor of the landfill. I don't remember
16 the exact record, but the general consensus of this
17 county in every district was we don't need a large
18 regional landfill.

19 Therefore, the most fundamentally unfair
20 aspect of this process was in allowing the decision to
21 be made by the county board in the first place. County
22 board is composed of members who represent -- and I do
23 use that term loosely -- different geographical
24 districts of this county; and therefore it follows that

1 every member of the county board, except one, the
2 district in which the landfill is proposed to be sited,
3 has an absolute, critical interest in siting it in a
4 different district than their own. What is fair about
5 that process? When you have a board composed of 30-some
6 people, all of them except one have a reason not to have
7 it in their district because their constituents won't
8 want it? That's like putting the fox in charge of the
9 hen house. It was unfair from the beginning, right from
10 the start. The county board should not have been in
11 charge of this decision.

12 HEARING OFFICER WALLACE: Just a minute. Does that
13 conclude your statement?

14 MS. YEDNOCK: Yes.

15 HEARING OFFICER WALLACE: Does anyone have any
16 questions of this witness?

17 MR. ESCHBACH: I have none.

18 MR. MUELLER: No.

19 MR. RUBIN: No.

20 HEARING OFFICER WALLACE: Thank you. You may step
21 down.

22 MS. YEDNOCK: Thank you.

23 HEARING OFFICER WALLACE: Are there any other
24 members of the audience that wish to make a statement

1 for the record?

2 Yes, ma'am.

3 Do you wish to give a sworn statement?

4 AUDIENCE MEMBER: Yes, I do.

5 DIANE KALEMBA-GASSMAN, upon being first duly
6 sworn on oath, gave a statement as a member of the
7 public as follows:

8 (Witness sworn.)

9 HEARING OFFICER WALLACE: Would you state your name
10 for the record, please.

11 MS. GASSMAN: Diane Kalembe-Gassman.

12 HEARING OFFICER WALLACE: And your address, please?

13 MS. GASSMAN: 1122 2803rd Road, Utica.

14 HEARING OFFICER WALLACE: You may begin your
15 statement.

16 MS. GASSMAN: Prior to any of the hearings and the
17 application being filed, I called my county board
18 member, who is Jim Cogdal, and I questioned him about
19 his feelings on the landfill. And basically what
20 Mr. Cogdal told me was that he would lose his job --

21 MR. RUBIN: I need to object -- just forgive me,
22 please -- because Mr. Cogdal is deceased and -- and also
23 because this is prior to the application being filed.

24 There are two reasons where -- why statements with

1 respect to what Mr. Cogdal said shouldn't be permitted
2 as evidence in the record.

3 HEARING OFFICER WALLACE: Your objection is noted
4 and overruled.

5 Please continue.

6 MS. GASSMAN: I talked at length with Mr. Cogdal
7 about his experience, and he basically told me his
8 experience was that he was a landfill hauler. And when
9 I questioned him about any conflict of interest, he said
10 he didn't feel it was a problem. He talked with his
11 friends on the county board, and they didn't see that
12 that was an issue. And then I questioned him again
13 about his feelings on the whole landfill issue. He'd
14 already basically made up his mind and again told me
15 that he would be losing his job if this landfill was not
16 in the proposed site and out of county. And that's all
17 I have to say.

18 HEARING OFFICER WALLACE: Any questions?

19 Thank you. You may step down.

20 Anyone else?

21 All right. Thank you. Seeing no further
22 hands, pursuant to the Board rules, the hearing officer
23 finds that there are no credibility issues presented by
24 the witnesses that appeared today. And I would further

1 note that throughout today variously 20 to 25 members of
2 the public have been in attendance. I note that for the
3 record.

4 I previously -- think we were off the record,
5 but I indicated that the decision deadline as set forth
6 in the order is June 19th. It says the board meeting
7 preceding the decision deadline is June 5th. With that
8 deadline, the LandComp Corporation is not waiving that
9 decision deadline; so therefore, the initial brief is
10 due May 14th, and the reply is due May 21st. If it
11 turns out that the June 19th date is the correct date
12 and there is a board meeting that date, the hearing
13 officer will amend the briefing schedule. I will check
14 that with the clerk's office when I get back to my
15 office tomorrow.

16 I would also -- I have taken under
17 consideration the two items that were under subpoena.
18 Mr. Mueller, if you could tender those to me, I will
19 keep them in camera in the event that the board needs to
20 review those. I believe it was Items 3 and 4. Is that
21 correct, Mr. Rubin?

22 MR. MUELLER: 3 and 5.

23 HEARING OFFICER WALLACE: 3 and 5? And you do have
24 those?

1 MR. MUELLER: Yes.

2 HEARING OFFICER WALLACE: When we go off the
3 record, if you would tender those to me, I will keep
4 them.

5 Is there anything else? Mr. Mueller?

6 MR. MUELLER: That's all, Your Honor.

7 HEARING OFFICER WALLACE: Mr. Eschbach?

8 MR. ESCHBACH: Nothing else.

9 HEARING OFFICER WALLACE: Mr. Rubin?

10 MR. RUBIN: No, sir.

11 HEARING OFFICER WALLACE: There being nothing
12 further, I thank everyone for their attendance. I thank
13 the counsel for your presentations, and the hearing is
14 adjourned.

15 Thank you, Ms. Pellican.

16 (At which time the hearing was
17 adjourned.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF LASALLE)

3 I, ANN L. PELLICAN, a Certified Shorthand
4 Reporter and Notary Public in and for the County of
5 LaSalle, State of Illinois, do hereby certify that I
6 reported the public hearing in the above-entitled matter
7 by means of machine shorthand and reduced it to writing
8 by computer-aided transcription; that said hearing was
9 taken at The LaSalle County Courthouse, Ottawa,
10 Illinois; and that the foregoing is a true, correct, and
11 complete transcript of my shorthand notes so taken
12 aforesaid.

13 I further certify that I am not counsel for
14 nor in any way related to any of the parties in this
15 matter, nor am I in any way interested in the outcome
16 thereof.

17 IN TESTIMONY WHEREOF, I have hereunto set my
18 hand and affixed my Notarial Seal this ____ day of
19 _____, 1997.

20

21

ANN L. PELLICAN
Certified Shorthand Reporter
Ill. License No. 084-003080

22

23

24

ANN L. PELLICAN, CSR

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