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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)

Complainant,)

vs.)

No. PCB 96-98

SKOKIE VALLEY ASPHALT CO., INC.,)
an Illinois corporation, EDWIN L.)
FREDERICK, JR., Individually and)
as owner and president of SKOKIE)
VALLEY ASPHALT CO., INC., and)
RICHARD FREDERICK, Individually)
and as owner and vice-president)
of SKOKIE VALLEY ASPHALT CO.,)
INC.,)

Respondents.)

The deposition of MITCHELL COHEN, called
for examination, taken pursuant to the provisions of
the Code of Civil Procedure and the Rules of the
Supreme Court of the State of Illinois pertaining to
the taking of depositions for the purpose of
discovery taken before KELLY A. BRICHETTO, CSR No.
84-3252, State of Illinois, Certified Shorthand
Reporter of said state, at 5487 North Milwaukee
Avenue, Chicago, Illinois, on the 14th day of
November, A.D. 2006, at 2:00 p.m.

1 APPEARANCES:

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
ATTORNEY GENERAL LISA MADIGAN, by
MR. MICHAEL C. PARTEE
188 West Randolph Street
Chicago, Illinois 60601
(312) 814-2069
on behalf of the Complainant;

MR. MICHAEL B. JAWGIEL
5487 North Milwaukee Avenue
Chicago, Illinois 60630
(773) 774-0814
on behalf of the Respondents;

MR. DAVID S. O'NEILL
5487 North Milwaukee Avenue
Chicago, Illinois 60630
(773) 792-1333
on behalf of the Respondents.

REPORTED BY: KELLY A. BRICHETTO, CSR NO. 84-3252

1 (Witness sworn.)

2 MR. JAWGIEL: State your full name for the
3 record, please.

4 THE WITNESS: Mitchell Lee Cohen.

5 MR. JAWGIEL: Could you spell it, last name
6 only?

7 THE WITNESS: C-O-H-E-N.

8 MR. JAWGIEL: Just because there's different
9 spellings.

10 Let the record reflect that this is the
11 discovery deposition of Mitchell L. Cohen taken
12 pursuant to notice on this date of November 14th,
13 2006.

14 Mitch, you've been to and you've taken
15 numerous depositions. I'm not going to give you the
16 admonishments. You know what they are, I assume?

17 THE WITNESS: I think so.

18 MR. JAWGIEL: The only thing is if you don't
19 understand a question that I ask, don't answer it.
20 Just ask me to repeat it, rephrase it, whatever you
21 need to do until you have a full understanding of
22 what I'm asking. If you do answer it, it will be
23 assumed that you fully understood the question.
24 Okay?

1 THE WITNESS: Yes.

2 WHEREUPON:

3 M I T C H E L L C O H E N,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 E X A M I N A T I O N

7 by Mr. Jawgiel

8 Q. I have a copy of your curriculum vitae.
9 I'm going to mark it as Deposition Exhibit Number 1.
10 I'll show it to you, of course. What I'm going to
11 ask you: Is this up to date or are there any
12 additions or deletions you'd like to make on this
13 particular document?

14 A. It is not up to date. I've received two
15 promotions in the Office of the Attorney General.
16 Though I still work at the Office of the Attorney
17 General.

18 Q. What's your current position with the
19 Office of the Attorney General?

20 A. I'm chief of the Environmental Crimes
21 Bureau.

22 Q. What are the duties and responsibilities
23 of the chief of the Environmental Crimes Bureau?

24 A. We investigate and prosecute

1 environmental crimes.

2 Q. According to this, you've been with the
3 Attorney General's Office since May of 2001?

4 A. Correct.

5 Q. Was your only time in private practice
6 with William Donovan & Associates in Tulsa,
7 Oklahoma?

8 A. No.

9 Q. When was the other -- oh, I see Michael
10 Taylor?

11 A. Correct.

12 Q. You were involved in private practice in
13 Tulsa, Oklahoma since 1987; is that right?

14 A. No. I started with Brune, Pezold, Richey
15 & Lewis in 1989.

16 Q. '89, okay.

17 A. That was private practice.

18 Q. Now, with Brune, Pezold and the other law
19 firms that you were involved in private practice did
20 you have to keep time sheets?

21 A. The only firm that I worked at where I
22 had to keep, I wouldn't say time sheets but billable
23 hours --

24 Q. Okay.

1 A. -- was Brune, Pezold, Richey & Lewis.

2 Q. What differentiates time sheets from
3 billable hours in your understanding of it?

4 A. Time sheets is the way we kept track of
5 our time during the day, and some of that time was
6 billable hours to clients.

7 Q. So time sheets -- was it Donovan's office
8 that you did time sheets?

9 A. No, Brune, Pezold, Richey & Lewis.

10 Q. Time sheets at Brune, Pezold would
11 require you to keep track of when you went to lunch?

12 A. I wouldn't say it that way, but I kept
13 track of other things besides billable hours. If I
14 was doing administrative work that I had to do,
15 reading my mail, that type of thing, I would keep
16 track of that and show that that was time to the
17 office as opposed to billable hours to a client.

18 Q. Fair enough. Did you attend any seminars
19 or receive any training in how to keep time sheets
20 in your career?

21 A. No. No.

22 Q. Are you familiar with the ABA guidelines
23 with respect to reporting attorney's time?

24 A. I'm not.

1 Q. Are you familiar with any attorney
2 association's guidelines with respect to attorneys
3 reporting their time?

4 A. No.

5 Q. Are you familiar with the ethical codes
6 of the Illinois Supreme Court that apply to
7 attorneys recording their time?

8 A. I hate to say no to that. I don't, I
9 cannot recall specific ethical guidelines related to
10 billable hours.

11 Q. Fair enough. Now during the time that
12 you were with the Cook County State's Attorney's
13 Office were you required to keep any sort of time
14 sheets?

15 A. We did not keep time sheets. There was a
16 period of time where we punched in and out.

17 Q. Then the Kane County State's Attorney's
18 Office, did you keep time sheets at all?

19 A. No.

20 Q. Then at the Attorney General's Office did
21 you keep time sheets?

22 MR. PARTEE: In any case?

23 MR. JAWGIEL: Yes.

24 THE WITNESS: A. I mean I keep track of my

1 time for certain cases, but I don't keep all of my
2 time recorded.

3 MR. JAWGIEL: Q. Now, what would
4 differentiate the situation where you'd keep your
5 time as opposed to where you wouldn't keep your time
6 while you were employed or still employed at the
7 Attorney General's Office?

8 A. When I was in the, practicing in the
9 Civil Bureau, when I say that I mean the Civil
10 Environmental Bureau, there were certain cases where
11 attorney fees were possible. Section 42(f) of the
12 Illinois Environmental Protection Act sort of
13 describes what type of cases those were, so if I
14 had, if I was working on a case where I saw those
15 conditions, then I kept track of my time.

16 Q. All right. You would know right from the
17 inception of filing the complaint whether or not you
18 would be seeking reimbursement of attorney's time in
19 a case, any particular case because you would know
20 what sort of allegations you were bringing, wouldn't
21 that be a fair statement?

22 A. It's a fair statement to say that I would
23 know that that might be the type of charge or the
24 facts of the case where I would keep track of time.

1 Q. Now in the Skokie Valley case, and that's
2 mainly what we're here for, so if I refer to the
3 case or anything along those lines, I'm referring to
4 the Skokie Valley case unless I qualify it
5 differently during the course of the deposition. Is
6 that understood?

7 A. Yes.

8 Q. Now, in the Skokie Valley case did you
9 know from the time that the initial complaint was
10 filed in the case that you would be seeking
11 reimbursement of attorney's time?

12 A. No.

13 Q. When did you first become aware that you
14 would be seeking attorney's time, reimbursement for
15 attorney's time in the Skokie Valley case?

16 A. The case was not originally assigned to
17 me. When the other attorney met with me the first
18 time and we discussed the facts of the case and what
19 was going on in the case I learned then that there
20 were allegations of repeated violations, so I knew
21 that was the type of case where I would keep track
22 of my hours.

23 Q. Now who was the other attorney?

24 A. I think the attorney that I got it from

1 was Kelly Cartwright.

2 Q. When did you become aware that you would
3 start to keep track of your time in the Skokie
4 Valley case?

5 A. I'm not sure of the exact date, but it
6 was sometime in the middle of the litigation for the
7 Skokie Valley case.

8 Q. Was it within a reasonable period of time
9 after you met with the other attorney, I forget her
10 name, Kelly?

11 A. Kelly Cartwright. Yeah, it was right at
12 that time.

13 Q. Were the Fredericks a respondent in the
14 case at the time you met with Kelly?

15 A. No.

16 Q. Now did you start keeping records of your
17 time contemporaneous to the events that you actually
18 participated in from the time that you met with
19 Kelly and knew that you were going to seek
20 reimbursement?

21 A. Yes.

22 Q. Now, let's take a step back. When you
23 started keeping your time in the Skokie Valley case
24 did the Attorney General's Office have any policies

1 and procedures with respect to how the attorneys
2 were to record their time in a case that you were
3 going to seek attorney's fees?

4 A. Not that I'm aware of.

5 Q. Currently does the Attorney General's
6 Office have any sort of guidelines that it uses in
7 informing its attorneys how to keep track of their
8 time in a case that you're seeking reimbursement of
9 attorney's fees?

10 A. Not that I'm aware of.

11 Q. How did you keep track of your time in
12 the Skokie Valley case?

13 A. We have a -- well, at the time when I
14 started on the Skokie Valley case our computer
15 system used a program called Group Wise. I recall
16 that it's a calendar program. It may do other
17 things but I don't remember. I would document my
18 time on my calendar Group Wise.

19 Q. Now when you would document your time in
20 the Skokie Valley case, would you give the best
21 description you possibly could give with respect to
22 your tasks that you did at that time?

23 A. I wouldn't say that, no.

24 Q. Why not?

1 A. I was just giving a summary of what I
2 did.

3 Q. Well, why wouldn't you give enough detail
4 to describe what you actually did at that time as
5 opposed to a summary?

6 A. Probably to save time.

7 Q. I see. Any other reason?

8 A. None that I can think of.

9 Q. Have you reviewed any documents before
10 your deposition today?

11 A. Yes.

12 Q. What did you review?

13 A. I looked at the docket sheet for the
14 case. I looked at the closing rebuttal argument,
15 the section where we detailed the request for
16 attorney fees. I looked at the fee petition, and I
17 looked at the, I should say the text of the fee
18 petition, and I looked at the Excel spreadsheet.

19 Q. Did you bring any of those documents with
20 you today?

21 A. I did not.

22 Q. Why not?

23 A. I didn't think I'd need them.

24 Q. Did you bring your notice of deposition

1 with you?

2 A. I did not.

3 Q. Your notice of deposition requests that
4 you bring all documents in the case. Did your
5 attorney give you a copy of your notice of
6 deposition?

7 A. He did not. I didn't realize that.

8 MR. PARTEE: I think that you served a copy on
9 him, number one. Number two, everything you've
10 mentioned has been disclosed in discovery.

11 MR. JAWGIEL: But I want to see the actual
12 documents he reviewed. I don't necessarily want to
13 see what you disclosed in discovery. I want to know
14 what he actually looked at, whether there were notes
15 in there, whether he made notes on them. All those
16 things are very pertinent to my cross-examination of
17 him in this interrogation, not that it's an
18 interrogation by any stretch of the imagination, but
19 it's certainly prejudicial to my ability to ask this
20 witness questions with respect to his impression of
21 those documents, the actual documents he reviewed to
22 confirm that those documents are documents we have,
23 and all these things certainly prejudice our ability
24 to proceed forward today.

1 MR. PARTEE: You can ask him those questions.

2 MR. JAWGIEL: No, I don't need to ask him
3 those questions. The notice was very clear what he
4 was supposed to do, and he didn't comply.

5 MR. PARTEE: Well, you have all of the
6 documents from discovery, and you can ask him those
7 questions today should you want to. I don't see any
8 prejudice.

9 MR. JAWGIEL: We are going to reserve our
10 right to call you back. We're going to ask that you
11 produce those documents to us in the condition, in
12 the same condition as they existed after you
13 reviewed them. If you made any marks on them, we
14 want the marks. You might have put in there Mike is
15 a dunce. I don't care. I want everything that you
16 reviewed sent to us, and we reserve the right to
17 call you back and ask you questions if we deem
18 necessary.

19 Obviously your counsel certainly can
20 object and this could be another issue. It's our
21 position you did not comply with our notice.

22 Q. Although you didn't have, apparently
23 you didn't see the notice or did you see the notice?

24 A. I believe I did see it in my box and just

1 brought it over to Mr. Partee.

2 Q. So you saw it, you brought it over to
3 Mr. Partee who is the attorney handling the case
4 currently but you didn't review it?

5 A. Correct.

6 Q. Fair enough.

7 MR. PARTEE: Well, I do want to object for the
8 record to your recalling him as a witness.

9 MR. JAWGIEL: That's understandable. You can
10 object.

11 MR. PARTEE: If he made any notes, that would
12 be privileged. If I made any notes that he saw,
13 arguably that would be privileged.

14 MR. JAWGIEL: Q. Is he your attorney in this
15 case?

16 MR. PARTEE: Yes.

17 MR. JAWGIEL: Q. Is Mr. Partee your attorney?

18 MR. PARTEE: I do represent Mitch in this
19 case.

20 THE WITNESS: A. Yes.

21 MR. JAWGIEL: Fair enough. You certainly can
22 bring a 201(n) log outlining what documents that you
23 believe are privileged and why they're privileged
24 and that can be brought up before the Board.

1 MR. PARTEE: No, what I'm telling you --

2 MR. JAWGIEL: The bottom line is he was
3 required by the notice to bring all documents that
4 he reviewed, and he did not bring those.

5 Certainly you could have brought the
6 documents and at some point in time said these
7 documents we're not going to produce because he has
8 made a mark on them that I believe to be privileged
9 and we could have discussed that, but we don't have
10 that in front of us to discuss. The condition of
11 those documents are not in front of us now, and
12 certainly we can't go back retrospectively, and you
13 may have made marks on it after this deposition that
14 you will now claim are privileged and, therefore,
15 you have prejudiced us in bringing our case.

16 THE WITNESS: I understand what you're saying.
17 I can --

18 MR. PARTEE: I think we should talk about --

19 MR. JAWGIEL: My argument is with your
20 attorney.

21 MR. PARTEE: -- how you would be prejudiced.

22 MR. JAWGIEL: Not with you.

23 MR. PARTEE: How could you be prejudiced?

24 MR. JAWGIEL: How can I be prejudiced by it?

1 MR. PARTEE: Let me finish. He hasn't
2 reviewed anything that you don't have.

3 MR. JAWGIEL: Mr. Partee, I have three hours.
4 I'm not spending time talking to you about it.

5 MR. PARTEE: It would be helpful if we --

6 MR. JAWGIEL: You've made your objection.
7 This is not helpful.

8 MR. PARTEE: Fine, if you don't want to talk
9 about it --

10 MR. JAWGIEL: Not on the record and not during
11 my deposition.

12 MR. PARTEE: Here is the problem. You won't
13 call me pursuant to 201(k). I've written both of
14 you guys countless times. You refuse to return the
15 letters.

16 MR. JAWGIEL: Don't grandstand on my
17 transcript. You are wasting my time, and I will go
18 beyond three hours if you continue to do this.

19 MR. PARTEE: If you want to defer the
20 discussion so that you don't have to call me back or
21 refuse to, I want that on the record.

22 MR. JAWGIEL: Mr. Partee, I have never refused
23 to call you back.

24 Now that being said, I'm going to

1 continue on with my deposition.

2 Q. Mr. Cohen, I'm going to show you what
3 I'm going to mark as Deposition Exhibits 2 and 3.
4 Do you recognize those documents?

5 A. Yes.

6 Q. Your signature is affixed to Exhibit
7 Number 2?

8 A. Yes.

9 Q. Is that your signature on Exhibit Number
10 3?

11 A. Yes.

12 Q. The statements made in the affidavit and
13 in the attachments were true and accurate to the
14 best of your ability at the time?

15 A. At the time they were true and accurate
16 to the best of my ability.

17 Q. Has that changed at all?

18 A. Yes.

19 Q. Why has it changed?

20 A. When I prepared Deposition Exhibit Number
21 2, I indicated that the costs incurred by the
22 Attorney General's Office was \$5,574.84. I believe
23 this was contained in, as part of the closing
24 rebuttal argument submitted to the Pollution Control

1 Board. You and your clients raised an objection to
2 the way we submitted the costs and fees, and that
3 resulted in the People having to file a separate fee
4 petition.

5 When I went back to check everything for
6 the separate fee petition filed after the trial,
7 after the closing rebuttal argument, I was not able
8 to substantiate the same number for a total in terms
9 of the bill. I was only able to substantiate for
10 our fee petition \$3,482.84, so I corrected that in
11 the affidavit submitted with the fee petition.

12 Q. Why weren't you able to substantiate the
13 \$5,574.85?

14 A. I don't really know. I don't really know
15 why I couldn't substantiate. The amounts in the fee
16 petition corresponded to bills that I had in the
17 file.

18 Q. Well, what did you use in order to come
19 up with the figures that are in Exhibit Number 2?

20 A. In Exhibit Number 2, this was prepared
21 during the course of completing the closing
22 argument. We had a -- I had asked a paralegal in
23 our office to gather all the information for the
24 costs. Somehow while I was working on that the task

1 got assigned to a paralegal student intern, someone
2 who was in paralegal school at the time, was
3 interning for us. She collected all the information
4 to support the costs and put that information
5 together. Either I made a mistake in the addition,
6 she made a mistake in the addition or a bill was
7 lost or something like that.

8 Q. Well, I take it before you signed Exhibit
9 Number 2 you would have reviewed all the receipts
10 that were attached or were there receipts attached?

11 A. There were no receipts attached to
12 Exhibit Number 2 as I recall, just this outline, and
13 I believe the paralegal student intern prepared a
14 table of some sort listing all the costs.

15 Q. Did you ask to see the receipts in order
16 to support the \$5,574.84 amount?

17 A. I don't remember.

18 Q. So you don't remember what you did before
19 you signed the affidavit which is now Exhibit Number
20 2, is that a fair statement?

21 MR. PARTEE: Well, he's not saying he doesn't
22 know what he did. He doesn't remember if he
23 reviewed receipts.

24 THE WITNESS: A. That's a better way to say

1 it. I don't remember if I reviewed specifically
2 receipts. I do remember seeing some sort of table
3 that had been prepared. Whether I saw the receipts
4 underneath it or not I don't recall.

5 MR. JAWGIEL: Q. Did you rely solely on this
6 table that was prepared by the student paralegal?

7 MR. PARTEE: I would object that that's asked
8 and answered.

9 THE WITNESS: A. I don't remember if I relied
10 solely on that table or not.

11 MR. JAWGIEL: Q. Do you remember what you
12 relied on before you signed Exhibit Number 2?

13 A. I believe I relied on the paralegal
14 student intern and the information she provided.

15 Q. Which would be this table that we were
16 talking about?

17 A. This table, correct.

18 Q. All right. Did you ever bring a motion
19 to withdraw or correct Exhibit Number 2?

20 A. No.

21 Q. Why not?

22 A. I felt that I did correct it when I
23 submitted the fee petition, and that was the first
24 time that the error came to my attention.

1 Q. Just so we're clear, the first time that
2 there was a petition for fees at all in the case was
3 in your rebuttal?

4 A. I don't know that I would call it a
5 petition, but we put a section in the closing
6 rebuttal argument asking for costs and fees.

7 Q. That was the first time it was raised in
8 the closing argument?

9 MR. PARTEE: Objection to relevance.

10 THE WITNESS: A. No.

11 MR. JAWGIEL: Q. Was it raised in your
12 initial closing arguments?

13 MR. PARTEE: Same objection.

14 THE WITNESS: A. Yes.

15 MR. JAWGIEL: Q. Was there an amount
16 calculated at that time?

17 A. No.

18 Q. Why not?

19 A. Why wasn't an amount for attorney fees
20 calculated when we did the closing argument, is
21 that --

22 Q. Right. When you submitted your initial
23 closing argument, why didn't you submit an amount
24 for the attorney's fees prayed for and costs?

1 A. I didn't know the amount at that time.

2 Q. Why not?

3 A. There was a lot more work left to do in
4 the case, and the attention was focused on bringing
5 the facts of the case to light before the Pollution
6 Control Board.

7 Q. So at the time that you drafted your
8 closing argument in this case you did not have a
9 tally of the attorney's fees or attorney's hours
10 that were spent in this case?

11 A. I don't recall having a tally at that
12 time.

13 Q. Do you know why you wouldn't have had a
14 tally at that time?

15 A. Well, again, the case was not over.
16 There was still more work to do. I knew we had a --

17 Q. Whether the case was over or not you
18 still had a tally at that point in time?

19 MR. PARTEE: Well, I would object to the term
20 tally and what exactly that means.

21 MR. JAWGIEL: He didn't say he didn't
22 understand it.

23 Q. Go ahead. Do you understand the word
24 tally?

1 A. I seem to think that we listed everything
2 together and calculated a total amount.

3 Q. Yes, up to the date of doing your closing
4 argument and including the closing argument?

5 A. No, we did not do that.

6 Q. Why not?

7 MR. PARTEE: Objection, argumentative.

8 THE WITNESS: A. We just -- there was more
9 work to do in the case.

10 MR. JAWGIEL: Q. Fair enough. I agree. You
11 had to do a rebuttal certainly. You had to review
12 the response certainly. But you certainly could
13 have conditioned your request for attorney's fees
14 saying up to and including this closing argument
15 we've incurred attorney's fees of and we anticipate
16 there will be additional attorney's fees for the
17 rest --

18 MR. PARTEE: That's not a question.

19 MR. JAWGIEL: Q. -- fair enough?

20 A. That's true.

21 MR. PARTEE: Objection, asked and answered.

22 Objection, argumentative.

23 MR. JAWGIEL: Q. So why wasn't it done that
24 way?

1 MR. PARTEE: Objection, asked and answered.
2 Objection, argumentative.

3 THE WITNESS: A. I've never done it that way.
4 I've never thought to do it that way.

5 MR. JAWGIEL: Q. Fair enough. Were you aware
6 of a total amount of attorney's hours spent when you
7 did your closing argument?

8 MR. PARTEE: Objection, asked and answered.

9 THE WITNESS: A. I'm not sure I understand
10 the question.

11 MR. JAWGIEL: Q. Sure. Mr. Murphy was
12 involved in the case. Obviously you were involved
13 in the case. We know Mr. Sternstein was involved
14 but his hours were redacted?

15 A. Correct.

16 Q. At the time that you did your closing
17 arguments did you have a total for the amount of
18 hours that you spent in the case up to the point of
19 the closing arguments?

20 MR. PARTEE: Objection, asked and answered.

21 THE WITNESS: A. I don't think so.

22 MR. JAWGIEL: Q. Why not?

23 MR. PARTEE: Objection, asked and answered.

24 Objection, argumentative. That's like ten times

1 now.

2 THE WITNESS: A. I wasn't at a point where I
3 was ready to total them up.

4 MR. JAWGIEL: Q. Well, were they listed
5 somewhere?

6 A. For my hours they were on my computer.

7 Q. What's involved in totaling your hours
8 once they're entered into the computer?

9 A. You have to go back to each date and pull
10 that information up and then put it in a list
11 somewhere and add up all the different hours.

12 Q. How did you figure out what dates you
13 performed certain tasks for the Skokie Valley case?

14 A. At what point?

15 Q. When you calculated the total amount.

16 A. When I put together the list for the
17 attorney fees, I went back to my calendar to find
18 which days I worked on the Skokie Valley case.

19 Q. So you went through the entire calendar
20 to figure out what days you did something on Skokie
21 Valley?

22 A. Correct.

23 Q. You didn't print those out and put them
24 in the file as you did it?

1 A. Not as I did it, no.

2 Q. So you had to spend time literally going
3 through years of your calendar to figure out what
4 days you actually worked on the Skokie Valley case
5 as opposed to any other case?

6 A. Correct.

7 Q. Do you consider that to be efficient?

8 MR. PARTEE: Objection.

9 THE WITNESS: A. I don't know of a more
10 efficient way but --

11 MR. JAWGIEL: Q. Well, how about printing it
12 out as you enter it into the computer system and
13 keeping a file in your file of attorney hours spent?

14 MR. PARTEE: Objection, argumentative.

15 MR. JAWGIEL: Q. Would you consider that to
16 be more efficient?

17 MR. PARTEE: Mike, that's argumentative.

18 THE WITNESS: A. Not for me.

19 MR. JAWGIEL: Q. Fair enough. Now, did you
20 review Mr. Murphy's hours that he spent on this
21 case?

22 A. At any time or --

23 Q. Well, do you have recollection of those
24 hours?

1 A. Specifically?

2 Q. Right.

3 A. No.

4 Q. Do you have any opinions with respect to
5 Mr. Murphy's hours as you sit here today?

6 A. Opinions of his hours?

7 Q. Any opinions, whether they're adequate,
8 whether they were sufficient, whether they were
9 inflated, anything?

10 MR. PARTEE: Why don't you ask him the
11 specific questions and then he can answer?

12 MR. JAWGIEL: Q. Do you have any opinions
13 regarding Mr. Murphy's hours?

14 MR. PARTEE: I'll object on vagueness grounds,
15 and that calls for a narrative response.

16 THE WITNESS: A. Well, I guess part of the
17 answer has to include my knowing Mr. Murphy. I
18 worked with him. I worked for him. He was my
19 supervisor. I don't believe the hours were inflated
20 at all. He, you know, had to jump into a case very
21 late and put on a trial and do the best he can, so
22 it was a very tight schedule for Mr. Murphy.

23 MR. JAWGIEL: Q. Were you the lead counsel on
24 the case once Mr. Murphy was involved?

1 A. Yes.

2 Q. Did you divide the tasks amongst you and
3 Mr. Murphy that would be done in preparation for the
4 trial?

5 A. I wouldn't say that I did it like a
6 supervisor like you're going to do this, you're
7 going to do that. We met and discussed that and
8 split the tasks.

9 Q. What sort of safeguard did you have that
10 you weren't overlapping your efforts?

11 A. I don't know what you mean by safeguard.

12 Q. Well, what was your procedure to make
13 sure that Mr. Murphy wasn't doing the same thing
14 that you were doing, if you had one at all?

15 A. Yeah, I don't know that we had a
16 procedure. We split up witnesses. That was
17 probably the main way we divided the work at that
18 point. I think Mr. Murphy only started within a
19 month of the trial date.

20 Q. Did Mr. Murphy start once you initially
21 became aware that Mr. Sternstein was going to be
22 removed from the case?

23 A. No. He started a little bit before that
24 as I recall.

1 Q. Why would he start before you became
2 aware that Mr. Sternstein was going to be removed
3 from the case?

4 MR. PARTEE: I object to the form of the
5 question.

6 THE WITNESS: A. As I recall, it was because
7 the case was going to trial, a Pollution Control
8 Board case which doesn't go to trial very often, and
9 so I believe the Office assigned a third attorney,
10 and Murphy was that attorney.

11 MR. JAWGIEL: Q. So Mr. Murphy was going to
12 be assigned regardless of whether or not
13 Mr. Sternstein was going to be involved in the case
14 or not?

15 A. I think so.

16 Q. Fair enough. How did you determine that
17 the billable hours should be \$150 an hour?

18 A. That was based on Pollution Control Board
19 precedent.

20 Q. Cases that had been submitted before and
21 approved?

22 A. Correct.

23 Q. Fair enough. Can you cite any cases that
24 you were involved in where you received a \$150 an

1 hour fee prior to the Skokie Valley case?

2 MR. PARTEE: Even in private practice?

3 MR. JAWGIEL: Only with respect to the
4 Attorney General's Office. That's a very fair
5 question, clarification.

6 THE WITNESS: A. No.

7 MR. JAWGIEL: Q. Are you aware of any cases
8 that Mr. Murphy might have been involved in where he
9 submitted a petition for attorney's fees at \$150 an
10 hour and they were approved?

11 A. I'm not.

12 Q. What sort of cases then are you referring
13 to that were approved for a rate of \$150 an hour in
14 this type of circumstance?

15 A. Pollution Control Board cases. There's
16 case opinions or case orders from Pollution Control
17 Board cases that indicate \$150 an hour is a fair and
18 reasonable rate for the Attorney General's Office.

19 Q. Do you know the names of those cases?

20 A. I don't know them off the top of my head.
21 I think they are in the, either or both the closing
22 rebuttal argument and the fee petition.

23 Q. Fair enough. What increment of time did
24 you record your time at?

1 A. I typically did not put any time down if
2 it was less than an hour working on a case. I
3 typically rounded down to the nearest half hour.

4 Q. So when we look at your time sheets,
5 we're seeing rounded hours or half hours; is that
6 correct?

7 A. Correct.

8 Q. Any task that would be less than a half
9 hour or less than an hour you wouldn't bill?

10 A. I believe that's correct.

11 Q. But you also block billed; is that
12 correct? You put multiple tasks or billed for
13 multiple tasks at the same time; is that correct?

14 MR. PARTEE: I object to the use of the phrase
15 block billed.

16 MR. JAWGIEL: Q. Do you know what I mean by
17 the phrase block billing?

18 A. I'm not really sure.

19 Q. Fair enough. If you're not familiar with
20 a term that I use, let me know. If I defined the
21 term block billing to mean including multiple tasks
22 in the same time frame that's being charged or
23 recorded as being block billing, for example, and
24 this is just an example, review interrogatories

1 propounded by the respondent, prepare preliminary
2 answers to those, prepare responses to the request
3 to produce, review documents in file in response to
4 request to produce, those are multiple tasks, would
5 you agree with me?

6 A. Yes.

7 Q. Each one of those tasks would command a
8 certain time element, fair enough?

9 A. Yes.

10 Q. Certainly there's a demarcation between
11 one task and the next?

12 A. Yes.

13 Q. Is that understood?

14 A. Yes.

15 Q. If I billed for that string of tasks two
16 hours and I just put two hours down, I've billed a
17 block of tasks for a particular charge?

18 A. I understand.

19 Q. Is that what you did?

20 A. Yes.

21 Q. So if we look at your time sheets and we
22 see, for example, on October 2nd, 2003 trial prep as
23 a phrase, trial prep and then document review,
24 Garretson test, that would be considered a block

1 billing?

2 A. Yes.

3 Q. Could you tell me how much time you spent
4 on that particular day for trial prep as opposed to
5 document review?

6 A. No.

7 Q. Could you tell me specifically what you
8 did for trial prep?

9 A. No.

10 Q. So there's no way looking at the sheets
11 that you have kept and the time notations that you
12 kept for us to determine in any more detail than is
13 recorded in the sheet how much time you spent per
14 task, is that a fair statement?

15 A. That's a fair statement.

16 Q. And there's no way for us to tell how
17 much time you would have spent specifically --
18 Strike that.

19 There's no way for us to tell what you
20 did with respect to specifically expanding any term
21 that's a general term, for example, trial prep?

22 A. From those time sheets, that's correct.

23 Q. Is there anything that you know of in
24 your review of the materials or your recollection of

1 this case that would clarify those time sheet
2 entries either with respect to detailing the general
3 terms or breaking apart the various tasks into
4 incremental time spent for each task?

5 A. I don't remember ever breaking up the
6 time incrementally like if I did more than one task
7 in a day. I don't remember ever putting down
8 different amounts of time for that case of the day.
9 It was always block time.

10 Q. Okay.

11 A. The Excel spreadsheet may be less
12 detailed than the entry on the calendar, so I'd have
13 to see that to know, and then the other at this
14 point being so long ago, that's probably the best I
15 could do.

16 Q. Fair enough. I'm going to show you what
17 I'm going to mark as Exhibit 4. It's really Group
18 4. I'm just going to write group on the tag. Did
19 you review something similar to this, not these
20 exact documents, but before your deposition
21 something similar to this? They're double-sided
22 documents just so we're clear.

23 A. Right. I did not review these, but I'm
24 familiar with these.

1 Q. Is this the Excel printout or is this --

2 A. This is, this is the printout from the
3 Group Wise, so it's not the Excel.

4 Q. Fair enough. This would be the calendar
5 program, am I correct in characterizing it that way?

6 A. Right.

7 Q. Now did you and Mr. Murphy at any point
8 in time discuss how incrementally you were going to
9 bill your time? For example, you described every
10 half hour I would bill and I would bill down to that
11 half hour?

12 A. I don't recall ever discussing that with
13 Mr. Murphy.

14 Q. Now, the Attorney General's Office, and
15 if I refer to it as the AG's Office just for the
16 sake of brevity, did they have a policy or procedure
17 or ever discuss that you should keep a record of
18 your time in these half hour increments and bill
19 down, so to speak?

20 A. No.

21 Q. Where did you pick up this practice?

22 A. I did, as we discussed earlier with
23 Deposition Exhibit 1, I did do billable hours at
24 Brune, Pezold, Richey & Lewis and kept track of my

1 time there. It was a little stricter. At the
2 Attorney General's Office we have no requirement for
3 billable hours. It doesn't affect my employment in
4 any way, so I chose this method sort of loosening up
5 the technique I used at Brune, Pezold, Richey &
6 Lewis.

7 Q. What was the technique at Brune that you
8 were required to use while employed there?

9 A. I don't know if it was a requirement, but
10 I tried not to bill if I was spending less than an
11 hour on a client's matter, and I rounded down to
12 quarter hours at Brune, Pezold, Richey & Lewis.

13 Q. So Brune, I'll just call it Brune because
14 I have a terrible recollection on the full name, but
15 at Brune's office you wouldn't bill unless it was an
16 hour spent on the file?

17 A. I don't recall.

18 Q. It's your recollection that you would
19 bill it at increments of a quarter hour?

20 A. Correct.

21 Q. You would round down to the quarter?

22 A. Correct.

23 Q. Were your billing statements ever
24 reviewed and discussed at Brune's office?

1 A. Sure.

2 Q. How many billable hours were you required
3 to maintain there?

4 A. I don't know that there was a
5 requirement, and I don't remember billable hours in
6 private practice well enough, but for some reason
7 the number 1800 comes to mind.

8 Q. Fair enough. Since you've become a
9 department head have you instituted any program or
10 taught other Attorney Generals, Assistant Attorney
11 Generals at any point in time regarding time keeping
12 methods or techniques?

13 A. No.

14 Q. Do you have any plans on doing so?

15 A. No.

16 Q. Are you aware of the AG's Office having
17 any seminars or training materials in the works
18 regarding keeping time sheets?

19 MR. PARTEE: I would object to the relevance
20 of this given Mitch's current position in the AG's
21 Office on the criminal side.

22 MR. JAWGIEL: Fair enough. I certainly
23 understand you're on the criminal side. It might
24 differ on the civil side.

1 Q. Are you privy to meetings with other
2 department heads regarding what's going on in the
3 AG's Office in general?

4 A. Mostly criminal at this point.

5 Q. Mostly criminal?

6 A. Yes.

7 Q. Your involvement with the civil side or
8 departments has pretty much been weaned to nothing,
9 would that be a fair statement, other than maybe --

10 A. Other than working with the Environmental
11 Bureau.

12 Q. Right. There's some connection with the
13 environmental but you certainly don't have any
14 merging of your policies or anything along those
15 lines?

16 A. No.

17 Q. Okay. That's fair. I'm going to show
18 you what I'll mark as Exhibit 5. I have some real
19 basic questions with respect to it. Let me show it
20 to you first before I launch into those. Just let
21 me know when you've had a chance to review it. I
22 think it's double-sided documents as well. Yours
23 are all single. I apologize. Mine happen to be
24 double-sided.

1 (Witness peruses document.)

2 A. Okay.

3 Q. Now there's some handwriting on these
4 documents. If you start with, I guess it would be
5 your Page 3, there looks to be some sort of
6 handwritten section there. Is that your
7 handwriting?

8 A. Yes.

9 Q. Is it your handwriting on the first two
10 pages as well in the handwritten portions?

11 A. Yes.

12 Q. Now, the first two pages, how were these
13 typewritten portions generated?

14 A. If you don't mind, I'm going to compare
15 this with -- no, you didn't give me this.
16 Generated, I typed it if that's what you're asking.

17 Q. Well, how did you come to the month and
18 year and hours spent?

19 A. As I recall this document, I think this
20 is -- well, this is obviously a work sheet, but I
21 think the original of this document or the clean
22 copy was part of the closing rebuttal argument. I
23 went through my calendar and tried to summarize what
24 happened, the number of hours and what happened

1 within a month for what I consider a summary sort of
2 time presentation, so this, the information comes
3 from my calendar, and I typed this up.

4 Q. So the summary of work performed, would
5 that be the same entries that we would see in your
6 calendar?

7 A. No, I don't think so, because in this
8 document I only, I was summarizing a whole month.
9 In the other documents I think I went day by day.

10 Q. Why were you generating Exhibit Number 5
11 in the first two pages to summarize the whole month?

12 A. At this point we don't know whether we'll
13 be the prevailing party, whether there will be any
14 objection to a fee application or anything like
15 that. I'm working very hard to finish the closing
16 rebuttal argument, and this is a, sort of an
17 expedited way to get in a summary fee petition.

18 Q. Well, when did you generate this
19 document, the first two pages obviously --

20 A. Right.

21 Q. -- not the handwritten portions that are
22 attached?

23 A. I think I generated it at some point
24 while I'm working on the closing rebuttal argument

1 in April of 2004 to -- I think that this was
2 attached, a clean copy was attached to the closing
3 rebuttal argument.

4 Q. So you were able to come up with the
5 amount of hours spent for the closing rebuttal
6 argument which happens to be the last entry on the
7 second page, you knew that and then you started to
8 generate the first two, these two pages, would that
9 be a fair statement?

10 A. Well, as I'm, I think as I'm preparing
11 the closing rebuttal argument and we're going to
12 seek costs and fees is when I start generating this
13 document.

14 Q. Now we see these handwritten pages
15 afterwards, after the typewritten pages, and there
16 are notations on the typewritten pages as well. We
17 see those. Now what are these documents?

18 A. I think -- oh, you just want me to talk
19 about those pages?

20 Q. Yes. What are they?

21 A. These look to be the documents I
22 prepared, a working document, that after the
23 objection was made to the fees and the closing
24 rebuttal argument and we had to do the separate fee

1 petition I then went through my calendar and wrote
2 down what the entry was in my calendar by hand.

3 Q. So as opposed to just printing out the
4 calendar and calculating the figure, what's in your
5 calendar, you actually went through the calendar and
6 actually wrote it out by hand?

7 A. Right.

8 Q. Why?

9 A. I am, if there was a shorter or shortcut
10 way to do it, I didn't know, and I believe this is,
11 the handwritten part of this document is also what I
12 used to type up the Excel spreadsheet.

13 Q. So the entries that we see here, it says
14 abbreviated DESCR. I take it that means
15 description?

16 A. Correct.

17 Q. That's the description you had in your
18 calendar?

19 A. I think so.

20 Q. Did you bill or claim time for the time
21 you spent going through your calendar and writing
22 out this document in your petition?

23 A. I would assume so.

24 Q. I see. How much time did it take you to

1 generate these handwritten pages?

2 A. I don't know.

3 Q. But that would be something that would be
4 in, at least in part part of what you have recorded
5 in your time spent to draft the fee petition?

6 MR. PARTEE: He already said he doesn't
7 recall. He would assume so.

8 THE WITNESS: A. That's correct. I think
9 that that is true. I do remember something else
10 that relates to one of your previous questions. You
11 asked me whether it would be more efficient to have
12 printed these sheets out from the calendar which are
13 this stack in Group Exhibit Number 4. I didn't know
14 that these could be printed out I think until we got
15 the discovery request and then we figured out that,
16 yes, in fact, these could be printed out. I think
17 the first time I ever knew that these could be
18 printed out was after, well after I prepared my
19 Excel spreadsheet.

20 MR. JAWGIEL: Q. Is there anything that would
21 have prevented you from having a paralegal or a
22 secretary at the office go through your calendar and
23 actually calculate off of your calendar the amount
24 of time you spent for the Skokie Valley case?

1 A. No one else in the office would have
2 access to my calendar. If you printed off the face
3 of the calendar, for example, to give to someone to
4 look at, you would not be able to see the
5 information that's contained in the entry.

6 Q. Why not?

7 A. It doesn't appear on the face of the
8 calendar. You have to actually open up the box so
9 that the information contained in here can be seen.

10 Q. At the time obviously, things might have
11 changed, I know computer systems change, but at the
12 time nobody but you had access to your calendar?

13 A. Correct.

14 Q. Had you prior to the Skokie Valley case
15 ever submitted a petition for attorney's fees in any
16 case?

17 MR. PARTEE: Ever?

18 MR. JAWGIEL: Q. With the AG's Office?

19 A. I think so.

20 Q. How many times?

21 A. I think once before this case.

22 Q. Do you remember the name of the case?

23 A. People versus Humane Manufacturing.

24 Q. Was your time scrutinized in that case?

1 Was it contested?

2 A. It's difficult for me to answer that.

3 Q. Why is that?

4 A. The court did not award attorney's fees,
5 and that was made clear at a certain point that it
6 didn't become as big an issue.

7 Q. What was your understanding of why the
8 court didn't award attorney's fees?

9 A. I have no understanding of why the court
10 did that.

11 Q. There was no order?

12 A. The order said it wasn't going to, it
13 didn't really explain. I think it said something
14 like each party would be responsible for their own
15 costs and fees.

16 Q. To bear their own costs and fees?

17 A. Right.

18 Q. There was no explanation as to why your
19 petition wasn't granted?

20 A. Correct.

21 Q. Was your petition for attorney's fees
22 contested by the other side, the respondents?

23 A. Not that I know of.

24 Q. Was your request for attorney's fees

1 under the same provisions of the EPA Act as what we
2 have here in Skokie Valley?

3 A. Yes.

4 Q. Why don't we have Exhibit 5 in front of
5 you?

6 A. Sure.

7 Q. I'm just trying to figure out, and I know
8 part of it is cut off, it says something oops missed
9 two days?

10 A. Yes.

11 Q. That's your handwriting?

12 A. That's my handwriting.

13 Q. Do you have any recollection what you're
14 referring to at that time?

15 A. Yes. I don't remember the exact dates,
16 times and hours, but when I went back through day by
17 day and compared it to the summary that I had
18 already prepared I had missed two days from my
19 calendar, my Group Wise calendar.

20 Q. That was recalculated and then put into
21 your affidavit which I believe is Exhibit 2?

22 A. This relates to costs.

23 Q. That's costs. I apologize. Strike that.

24 The corrected figure was the figure that

1 you petitioned for?

2 A. I don't remember.

3 Q. I'm going to refer you to an August entry
4 in the handwritten pages. There's a circled 34 by
5 it. It says dep prep Huff and there's a six hour
6 entry; dep prep Huff, there's a four hour entry and
7 then there's dep prep Huff/Kallis, K-A-L-L-I-S, Huff
8 is H-U-F-F, a five hour entry. Were you in
9 communication with Mr. Huff for six hours on that
10 date or was that dep prep of, your preparation for
11 his deposition?

12 A. It was my preparation for his deposition.
13 He was one of your experts.

14 Q. Well, what did you review for six hours
15 in preparation for Mr. Huff's dep?

16 A. I believe in August we had part of a
17 consultant's report that he had put together related
18 to the site remediation.

19 Q. Anything else?

20 A. I might have had some past deposition
21 transcripts of his. I don't recall.

22 Q. So you don't know what you reviewed then
23 specifically other than the report and possibly past
24 dep transcripts?

1 A. Correct, I don't remember.

2 Q. How would we find out whether or not you
3 had past dep transcripts, would they be in the file?

4 A. I don't recall if they're in the file, if
5 they would be in the file. I don't recall if we
6 borrowed them from somebody in another case and they
7 might have been given back for that case.

8 Q. So it's equally as possible you did have
9 dep transcripts?

10 A. Correct.

11 Q. All right. So you don't know one way or
12 the other?

13 A. I don't remember.

14 Q. Would you take notes if you reviewed the
15 dep transcripts?

16 A. If there was something of interest that
17 related to the facts of this case, I might have
18 taken a note. That's not typically the case when I
19 review other transcripts, so I just read it.

20 Q. I'm going to refer you back to, and I
21 apologize for shuffling through your exhibits here,
22 I think it's 2, I'm sorry, 4.

23 A. Okay.

24 Q. We could pick any day. Let's use --

1 what's your first day that's on there?

2 A. May 29th, 2002.

3 Q. I just want to make sure I'm on the same
4 page. If we look at that entry May 29, 2002, this
5 is a typical entry of each one of the ones that
6 you've entered, is that a fair statement, in the
7 sense that the heading is the same, SVA hours, so on
8 and so forth?

9 A. It's typical, yes.

10 Q. The date recorded here start would be the
11 date that you did the task?

12 A. Correct.

13 Q. And the end it has May 30th, 2002. Is
14 that the date that you ended the task?

15 A. No. The task was only, you know, an hour
16 in this case, but the way the system works, if, if
17 you just put the date down it just shows the whole
18 24-hour period.

19 Q. Because it's a calendar?

20 A. Right.

21 Q. It inserts the time that the entry would
22 have been made?

23 A. No, not that I'm --

24 Q. Clarify. I'm sorry. I don't have an

1 understanding. I'm not familiar with this program.

2 A. When you open up to put in an entry as
3 opposed to an appointment, it seems to, and, again,
4 this is, I was just looking at this, you know, when
5 we printed them out, but it just covers the whole
6 time period. If you were making an appointment, a
7 specific appointment, I think you could limit the
8 time period.

9 Q. So this program, was this program from
10 your understanding designed to record time?

11 A. No.

12 Q. Now if we look at your entry in Exhibit 5
13 to match up with May 29th, 2002, we see that you
14 edited the entry from what we see in Exhibit Number
15 4. It says BRF. I assume that's an abbreviation
16 for brief?

17 A. Correct.

18 Q. And MTG, meeting, I would assume --

19 A. Correct.

20 Q. -- with Kelly, call to David O'Neill?

21 A. Correct.

22 Q. If we look on Exhibit 5 for May of 2002
23 since it's the only entry I believe for May 2002 it
24 says meeting Re: Transfer or file transfer call to

1 opposing counsel?

2 A. Correct.

3 Q. So the text of what's in Exhibit 4 not
4 necessarily is the same text we're going to see in
5 Exhibit 5?

6 A. Correct.

7 Q. Which one is more accurate?

8 MR. PARTEE: Objection to the form of that
9 question. I mean that assumes that one is
10 inaccurate.

11 MR. JAWGIEL: Well, it doesn't assume it's
12 inaccurate. I said more accurate.

13 THE WITNESS: A. Yeah, I can't, I can't
14 answer that one.

15 MR. JAWGIEL: Q. Why did you change the
16 language?

17 A. I was typing this stuff up myself and
18 just typed it up in a way that I could figure out
19 what happened. I did not -- I would expect that the
20 entries on my calendar are not exact to the entries
21 on this exhibit and are not exact to the entries on
22 the Excel spreadsheet and probably aren't exact to
23 the handwritten notes attached.

24 Q. So my question to you then: Which is

1 your best representation of your time?

2 MR. PARTEE: I object to the form of the
3 question again.

4 THE WITNESS: A. I can only answer it this
5 way: Group Exhibit Number 4 is the information I
6 wrote contemporaneously when I did the task, so to
7 me it's accurate. Entries made later may not be
8 exactly this but are to me an accurate reflection of
9 what I did on that day.

10 MR. JAWGIEL: Q. All I'm saying is: Which
11 one do you put forth as your best representation of
12 the time that you spent? That's all I'm asking.

13 A. Yeah, I really can't answer it as a best.
14 I can only say that the calendar is the
15 contemporaneous one.

16 MR. PARTEE: I would object to the form. I
17 don't think he's required to choose between one or
18 the other.

19 MR. JAWGIEL: Q. How much time on May 29th,
20 2002 did you spend in a meeting with Kelly?

21 A. I don't recall.

22 Q. How much time did you spend in the
23 telephone conversation with David O'Neill on that
24 day?

1 A. I don't recall.

2 Q. It says meeting status, what does that
3 mean, in Exhibit Number 4?

4 MR. PARTEE: Where are you looking?

5 MR. JAWGIEL: Q. It's the last typed portion.
6 It says meeting status and then there's an entry.
7 Underneath it says for Mitch Cohen. What is that?

8 A. Meeting status and across it says meeting
9 organizer?

10 Q. Yes. I don't know what that means. Do
11 you have any idea what that means, what the purpose
12 of that is?

13 A. I don't know for sure. I can give you a
14 guess.

15 Q. No, don't guess. Don't worry about.

16 A. I don't know.

17 Q. The case is not going to turn on it. I'm
18 just trying to do it for clarification.

19 It says show time as. Then it says free.
20 Was that something that you typed in?

21 A. No.

22 Q. Is that something that comes up on the
23 program automatically?

24 A. Yes.

1 Q. Why wouldn't you -- can you change that?

2 A. For the record, I'm flipping through
3 randomly.

4 Q. Yeah, they all say free. Look at that.
5 All free.

6 A. I don't know. All I can do is give you a
7 guess based on my understanding of the program.

8 Q. You have no understanding of the program
9 as you sit here today why it comes up with free, the
10 word free?

11 A. I think I know but I'm not --

12 Q. I want your understanding. I'm not going
13 to hold you to your expertise. I just want to know
14 what your understanding is.

15 A. My thought is that because I did not put
16 a meeting time that it comes up as a block of free
17 time on the calendar.

18 Q. Where would you put the meeting time, on
19 the start period, where it says start?

20 A. We don't -- I don't know. I don't
21 remember.

22 Q. When you put this entry in where it says
23 start and it says Wednesday, May 29th, 2002 and then
24 you actually insert a time there as opposed to just

1 having, I assume just 12 a.m., you weren't in the
2 office at 12 a.m. I would imagine on that day, were
3 you?

4 A. No.

5 Q. So you actually put the time that you
6 started these tasks that are listed below. Could
7 you have put below that Wednesday, May 29th, 2002,
8 the time that you actually ended the task or tasks?

9 A. I did not do that.

10 Q. But could you?

11 A. I don't know.

12 Q. So you actually didn't have any sort of
13 clocking of your time through this program?

14 A. Correct.

15 Q. You don't know whether or not the program
16 would have allowed you to do that or is it something
17 you just didn't do?

18 A. I don't think the program allows for
19 that.

20 Q. How did you know that you spent an hour?

21 A. I kept track of the time.

22 Q. So you looked at your watch?

23 A. Correct.

24 Q. Or some sort of clock and you said, okay,

1 I met with Kelly, I talked to Dave, that was an
2 hour?

3 A. Right.

4 Q. You went to the computer and you put this
5 in?

6 A. Correct.

7 Q. How do we know the date that you actually
8 put this in?

9 A. How do you know?

10 Q. Yes. How do we verify that in this
11 document? Is there any way to verify it in the
12 document?

13 A. I don't think so.

14 Q. Are you aware of any part of this program
15 that would let us know when these entries were
16 actually input into the system?

17 A. I don't know of any feature that would
18 allow that.

19 Q. We can't tell from the documents
20 themselves other than the start date what day the
21 entries were made?

22 A. Correct.

23 Q. The start date is a true and accurate
24 representation of when you made the entry?

1 A. The start date?

2 Q. Date, yes, not the time.

3 A. In other words, did I make the entry on
4 the day that it's indicated?

5 Q. That says start.

6 A. I believe I made the entries on the day
7 that I did the task. I don't know that I did that
8 -- again, I'm flipping through this exhibit, and
9 they all say the same thing, the 12 a.m. to, of the
10 day of the task to 12 a.m. the next day, so I
11 believe they were made the same day as the, as the
12 date of the task.

13 Q. The start date?

14 A. Yes.

15 Q. As opposed to the end date?

16 A. Yes.

17 Q. Did you work on weekends?

18 A. Yes.

19 Q. How did you record your weekend time? I
20 see here a Sunday. You would put the day that you
21 worked on the weekend? For example, if it was a
22 Sunday or Saturday, you would do an entry Sunday or
23 Saturday, whatever the case may be?

24 A. Correct.

1 Q. Did you work from home at any point in
2 time or out of the office?

3 A. I probably did work from home at times.

4 Q. Did you work out of the office?

5 A. Other than at home?

6 Q. Other than at home, yes.

7 MR. PARTEE: Other than the hearing itself,
8 depositions?

9 MR. JAWGIEL: Depositions all went at the
10 office.

11 THE WITNESS: A. The only possibility, I
12 might have met with, other than the hearing I might
13 have met with Chris Kallis once in Des Plaines, but
14 I don't, I didn't work a lot out of the office on
15 this case.

16 MR. JAWGIEL: Q. How much time approximately
17 did you work at home on the case?

18 A. I don't remember.

19 Q. Fair enough. Could you access your
20 calendar once you were at home?

21 A. If you can, I didn't not know how to do
22 it.

23 Q. When you were at the hearing were you
24 able to access your calendar or get into your

1 calendar?

2 A. No.

3 Q. So you had to be in the office in order
4 to make these entries?

5 A. Correct.

6 Q. You could set the start date any date you
7 wanted even if it wasn't the date you were making
8 the entry; is that correct?

9 MR. PARTEE: I would object. That
10 mischaracterizes his testimony.

11 MR. JAWGIEL: I'm not saying he did do that.
12 I'm saying it was possible to do that.

13 THE WITNESS: A. If you mean by start date
14 could I go back in my calendar and record time that
15 I had already worked, yes. Now that you mention the
16 hearing, I'm sure that's what I did.

17 MR. JAWGIEL: Q. More than likely, yeah. You
18 got back to the office at some point in time and you
19 entered it into your calendar whatever that day was?

20 A. Right.

21 Q. Now did Joel Sternstein stay with you
22 when you were in Libertyville for the hearing?

23 A. Not that I recall, no.

24 Q. Did Joel have his own room?

1 A. No. I -- no.

2 Q. Did you review any documents or e-mails
3 or printouts of anything that indicated you
4 requested a room for Joel?

5 A. I recall requesting a room for Joel.

6 Q. Why did you do that?

7 MR. PARTEE: Object on relevance grounds.

8 THE WITNESS: A. We had a trial coming up.
9 Our procedure in the Office is we have to request
10 travel arrangements in advance, and we were planning
11 to be out there for the hearing, so I did make a
12 request as I recall.

13 MR. JAWGIEL: Q. Why were you planning on
14 getting a room for a hearing that was going in
15 Libertyville, Illinois?

16 A. I'm not sure I understand the question.

17 Q. Well, I mean how long did it take to get
18 from either your -- well, how long did it take you
19 to get from home to Libertyville, Illinois at the
20 time of the hearing?

21 A. I don't remember.

22 Q. How much time did it take to get from the
23 office to Libertyville, Illinois?

24 A. I don't remember.

1 Q. Do you have any estimate of time for
2 those distances?

3 A. I don't remember. I don't even remember
4 what the distance is.

5 Q. All right. You don't have to give me the
6 address. I don't want your address. No offense but
7 I'm not going to send you any holiday cards or
8 anything along those lines. But what time did you
9 -- what town did you live in at the time of this
10 hearing which was October, end of October --

11 A. Chicago.

12 Q. -- 2003?

13 You were in Chicago?

14 A. Yes.

15 Q. North side, west side, south side, east,
16 east in the lake?

17 A. Almost in the lake, north side.

18 Q. At any point in time did you drive from
19 home to Libertyville during the course of the
20 hearing?

21 A. I think I -- I don't remember if we left
22 from the office or if I left from home, but I did
23 drive out there.

24 Q. Using a State car or your own car?

1 A. I used my car.

2 Q. Did you have anybody with you when you
3 went out there initially?

4 A. I don't think so.

5 Q. I'm going to show you Exhibit Number 6.
6 That's an e-mail from you; is that correct?

7 A. Yes.

8 Q. I think it's October 3rd; is that right,
9 when that was?

10 A. That's the date on here, yes.

11 Q. Now, Mr. Murphy I believe was put on the
12 case right around October 3rd as well; is that
13 right?

14 A. I don't remember when Bernie was put on
15 the case.

16 Q. I think you had indicated it was the
17 intention to have Mr. Murphy on the case regardless
18 of whether Mr. Sternstein was involved or not?

19 A. That's how I recall.

20 Q. So Mr. Murphy's position was basically
21 get ready for trial on short notice, at least it was
22 anticipated he would be able to do so?

23 A. You know, I don't remember what we
24 thought his responsibility would be right at the

1 beginning because Joel was still involved in the
2 case.

3 Q. You don't have any recollection what role
4 Mr. Murphy would have played if Mr. Sternstein was
5 still in the case?

6 A. No, not at all.

7 Q. You have no recollection what the
8 intention was of having Mr. Murphy involved in the
9 case?

10 A. I do not.

11 Q. Do you know who would?

12 A. Probably Bernie, but other than that I
13 don't know.

14 Q. All right. Who was the person at the
15 AG's Office who made the decision to put Mr. Murphy
16 on the case?

17 A. It was either Rosemary Cazeau's or Bernie
18 Murphy's.

19 Q. Is Miss Cazeau still with the Attorney
20 General's Office?

21 A. Yes.

22 MR. PARTEE: I'm going to object on relevance
23 grounds, and to the extent we're getting into any
24 attorney privilege material we're not waiving that

1 privilege. How we assign attorneys to cases is
2 irrelevant and privileged.

3 MR. JAWGIEL: Q. Mr. Cohen, I'm going to show
4 you what I'm going to mark as Exhibit Number 7.

5 (Witness peruses document.)

6 It's a group exhibit just so the record
7 is clear.

8 A. Okay.

9 Q. Exhibit Number 7, are these documents
10 that you submitted for travel expenses and
11 supporting documents?

12 A. Not all of them, no.

13 Q. Which ones are not documents that you
14 submitted for expenses as well as travel expenses?

15 A. The top page.

16 Q. What is the top page? I'll let you go
17 through the rest of them as we go along.

18 A. It looks like a table of the expenses.

19 Q. Did you draft this table?

20 A. I did not.

21 Q. Do you know who did?

22 A. I do not.

23 Q. You don't know if it's accurate or not as
24 you sit here obviously other than going through the

1 receipts and matching it up?

2 A. Not just looking at the top sheet,
3 correct.

4 Q. It has here in the first entry for
5 October 28th, 2003 PLU separate word file dash PKG.
6 Do you know what that means?

7 A. I do not know what it means looking at
8 the description there, but from further back in the
9 package I was able, I'm able to figure that out.

10 Q. All right. Can you give me what your
11 understanding is of what it means based on what's in
12 the rest of the package?

13 A. Yeah, I think it relates to parking that
14 I probably did downtown to pick up the files and the
15 boxes that we needed for the case.

16 Q. So on October 28, 2003 you drove down,
17 parked your car and put the boxes in the car and
18 you're billing for the parking?

19 A. That's what it looks like.

20 Q. You also went to work that day, I take
21 it?

22 A. I don't remember what day of the week it
23 was but probably.

24 Q. Well, let's see if we have a time entry

1 for it. We do have a time entry. That day you
2 billed 12 hours --

3 A. Okay.

4 Q. -- is that right?

5 The parking receipt would tell us when
6 you parked your car at least. Is this the Wells --
7 you got in, well, you parked your car at 7:29 at
8 Lake and Wells; is that correct, on that day?

9 A. Yes.

10 Q. You pulled out of the lot or at least
11 paid at the machine at 18:28 hours which by my
12 recollection is about 6:29; is that right?

13 A. Yes.

14 Q. Did you work at home that night?

15 A. It's possible.

16 Q. Is it possible you didn't?

17 A. It's possible I didn't.

18 Q. You don't recall one way or the other?

19 A. I don't recall.

20 Q. All right. Now, when you worked in the
21 AG's Office during the Skokie Valley case were you
22 required to swipe a card or sign in whenever you got
23 in or out of the office?

24 A. No.

1 Q. So you basically had free flow when you
2 could go in and out of the office without recording
3 it on anything?

4 A. Correct.

5 Q. Fair enough. How would you get down to
6 work on a regular average day when you were going to
7 the office obviously?

8 A. I commute by bus.

9 Q. Bus?

10 A. Usually.

11 Q. You obviously have to pay the CTA a
12 little something to get down there and get home?

13 A. Yes.

14 Q. What would be your round trip cost to get
15 down to the office using the CTA?

16 MR. PARTEE: Objection to relevance.

17 THE WITNESS: A. It's gone up several times.
18 It's now 3.50 a day. I think back then it was
19 probably \$3 a day.

20 MR. JAWGIEL: Q. Fair enough. Was there any
21 reason why you didn't deduct the cost that you would
22 normally pay to get downtown from the parking
23 expense if you made exception to come down there not
24 just to pick up the file but to work obviously that

1 day?

2 A. Can you ask the question again?

3 MR. JAWGIEL: Sure. Can I have it read back,
4 Kelly? It might be poorly phrased, so certainly I'd
5 be more than happy to rephrase it if it is.

6 (Requested portion of the
7 record read.)

8 I can rephrase that question.

9 Q. On October 28th, 2003 it wasn't your
10 sole intention to pick up the file that day;
11 obviously you were going to work that day as well;
12 is that correct?

13 A. Correct.

14 Q. You were scheduled or at least you were
15 required to come in that day into the office; fair
16 enough?

17 A. Yes.

18 Q. So regardless of whether you were going
19 to pick up the file or otherwise, you had to
20 obviously get to the office somehow, and you didn't
21 deduct the cost of, the normal cost of getting into
22 the office from what you're claiming in expenses.
23 My question to you is: Why didn't you do that?

24 MR. PARTEE: I object on foundation grounds

1 because I'm not sure -- you haven't asked whether he
2 could do that.

3 MR. JAWGIEL: Q. Why didn't you deduct the
4 cost of commuting from the CTA to the office which
5 was your normal mode of transportation?

6 A. That's not the office practice.

7 Q. Is this a written practice?

8 A. I don't know.

9 Q. What practice does the AG or did the AG's
10 Office use back then in order to determine what
11 would be expenses related to a case?

12 MR. PARTEE: Objection to the form. Objection
13 on vagueness grounds.

14 THE WITNESS: A. I don't know that there's a
15 distinction between expenses to a case versus
16 out-of-pocket expenses, but we, if we have an
17 expense we turn in receipts for that expense and it
18 gets reimbursed.

19 MR. JAWGIEL: Q. Now, you left on the 29th
20 from your home at 6 a.m. to go up to Libertyville
21 according to what we have on Page 2 of Exhibit
22 Number 7?

23 A. Okay.

24 Q. With whom were you meeting at that time,

1 if anyone?

2 A. In Libertyville?

3 Q. Right.

4 A. I was meeting with Mr. Murphy and we had
5 witnesses lined up for trial prep.

6 Q. Where were you meeting the witnesses?

7 A. At the place where the trial was held.

8 Q. In the town hall or whatever it was?

9 A. Right.

10 Q. I forget exactly the name. It was a
11 governmental building?

12 A. Right.

13 Q. Did you reserve a conference room there?

14 A. We had asked permission to use the actual
15 room where the hearing was.

16 Q. Oh, okay. All right. You arrived there
17 at 8:15 a.m.?

18 A. Yes.

19 Q. What time was your first meeting?

20 A. I don't recall.

21 Q. Was Mr. Murphy present during the
22 meeting, the first meeting?

23 A. I think so.

24 Q. Check-in time obviously at the hotel

1 would have been a little bit later than 8:15 a.m. ;
2 fair statement?

3 A. Yes.

4 Q. Do you remember what the check-in time
5 was at the Holiday Inn I believe?

6 A. No.

7 Q. So the only reason why you drove down the
8 day before was because you wanted to get an early
9 start on the 29th, is that a fair characterization?

10 A. No.

11 Q. Why didn't you leave from the office on
12 the 29th?

13 MR. PARTEE: Do you understand the question?

14 THE WITNESS: A. I think we're getting dates
15 confused or I'm getting the dates confused.

16 MR. JAWGIEL: I'll clarify.

17 Q. On the 28th you drove down to pick up
18 the file because you wanted to get an early start on
19 the 29th?

20 A. Correct.

21 Q. That was to make the meeting that you
22 were going to have or at least the first meeting?

23 A. Correct.

24 Q. On the 29th you drove around in

1 Libertyville for six miles. Was that basically to
2 the hotel or where were you going?

3 A. I believe the hotel was a fair distance.

4 Q. It was in Gurnee. I'm looking at the
5 Holiday Inn receipt.

6 A. Okay.

7 Q. Was it in Gurnee?

8 A. Yes.

9 Q. You couldn't find a hotel in the
10 Libertyville area?

11 A. I didn't look. We have travel
12 coordinators for this.

13 Q. Oh, there's people who take care of this
14 for you?

15 A. Right, and there are only certain hotels
16 that are authorized for State or government
17 contracts.

18 Q. Fair enough.

19 A. We were told that was the closest one.

20 Q. Do you know what hotels there are
21 approved at this time obviously for government
22 contracts? Obviously Holiday Inn was one of them.

23 A. I'm not sure if it's by chain or by cost
24 in a particular area.

1 Q. Oh, I see. Do you know what the costs
2 would have been in a particular area? I mean
3 obviously \$87 was within that cost per day.

4 A. It's actually different depending on what
5 part of the state you go to, whether you go out of
6 state, that type of thing.

7 Q. This is not something you would have
8 handled?

9 A. Correct.

10 Q. This is all handled by this other
11 group --

12 A. Correct.

13 Q. -- who does the travel arrangements?

14 A. Correct.

15 Q. At the conclusion of the hearing which
16 was on Halloween, the 31st, at 3:30 p.m. you drove
17 home?

18 A. Correct.

19 Q. Why didn't you go back to the office?

20 A. I was tired.

21 Q. Fair enough. That took you about two and
22 a half hours to get home from there?

23 A. Correct.

24 Q. Did you experience heavy traffic on the

1 29th coming up to Libertyville or any unusual road
2 conditions, construction or anything along those
3 lines?

4 A. Not that I remember.

5 Q. Do you know the route you took?

6 A. Not as we sit here, no.

7 Q. Do you have any idea why it took you two
8 hours and 15 minutes to travel 40 miles?

9 A. Are you referring to on the 29th?

10 Q. Correct.

11 A. I'm guessing traffic.

12 Q. But you don't know?

13 A. I don't remember it being particularly
14 unusual, but I do know based on experience that
15 coming out of the city can be very difficult, and
16 that's probably why I allowed so much time.

17 Q. Are you near any of the major
18 expressways? You said you were east?

19 A. I'm east.

20 Q. By Lake Shore Drive?

21 A. Yeah.

22 Q. So you'd have to get over to the Edens
23 Expressway?

24 A. Well, I had to get to the Kennedy.

1 Q. The Kennedy and the Edens split or
2 Kennedy to 294?

3 A. Right.

4 Q. So you would take 90/94, if you will --

5 A. Right.

6 Q. -- which is the Kennedy?

7 How would you get over there?

8 A. How would I get to the Kennedy?

9 Q. Right.

10 A. I live at Irving Park and Lake Shore
11 Drive.

12 Q. You would take Irving Park?

13 A. I took Irving Park west to the highway,
14 and I can tell you from experience sometimes getting
15 to the highway at Irving Park to get on to the
16 highway can take 15, 20 minutes easy.

17 Q. Did you keep the toll receipts or were
18 you required to get toll receipts?

19 A. Not required to get toll receipts.

20 Q. Is that a policy as well of the Office?

21 A. As far as I know, yes.

22 Q. So if you had tolls, you took 294?

23 A. No. It's possible, but even if I took 94
24 I believe 94 turns into a toll road, and I don't

1 remember where the exit would have been.

2 Q. Well, 94 would have taken you to the
3 spur, and then once you get off the spur you don't
4 hit another toll.

5 A. I'm not sure what you mean by spur.

6 Q. There's the spur ramp that goes from 94
7 to 294 as you go through Deerfield.

8 A. Okay.

9 Q. There's a toll there but once you get on
10 294 there's no toll when you get off at
11 Libertyville. There's no toll that you get charged
12 from the time you get off the spur ramp until the
13 time you get to Libertyville.

14 MR. PARTEE: That's not a question.

15 MR. JAWGIEL: Q. Is that your recollection?

16 A. I don't remember the route we took, the
17 route I took, I should say. Just looking at this,
18 it looks like I had two tolls. Just to add to
19 that --

20 Q. Go ahead. I'm sorry.

21 A. -- though this indicates --

22 Q. The travel voucher, is that what you're
23 looking at?

24 A. I'm still looking at the same second

1 page. It indicates October 30th, 2003.

2 Q. Right.

3 A. And it indicates 80 cents. The person
4 who prepares this form gets the information from the
5 second to the last page in my package, and it's not
6 broken down by date. It's just broken down by
7 tolls, and it indicates 80 cents, so it's possible
8 it was one toll, one 40 cent toll each way.

9 Q. Each way?

10 A. Correct.

11 Q. I see what you're saying. Because
12 there's no tolls on the way home?

13 A. It looks that's how she did it, yes.

14 Q. Fair enough. On the last page, I think
15 your last page is the same one I have, it's a travel
16 request form?

17 A. Correct.

18 Q. It has down there, it says meals. It's
19 in the bottom third of the document. It says travel
20 cost meals. There's 12 there?

21 A. Correct.

22 Q. Did you have 12 meals?

23 A. I don't recall.

24 Q. You keep yourself in pretty good shape

1 for somebody who eats six times a day. Do you think
2 it was maybe two?

3 A. Well, it's a per diem based on --

4 Q. Quarters?

5 A. -- time worked, your hours.

6 Q. What's the --

7 A. If you would have asked me without
8 showing me this, I would have guessed nine, three
9 days, three full days, but based on the number of
10 hours worked each day --

11 Q. You get a higher per diem?

12 A. -- it may have been a higher per diem.

13 Q. In the miscellaneous, what compiles the
14 miscellaneous expenses?

15 A. This form is prepared if possible before
16 the travel, and at the time this was prepared I was
17 not familiar with these forms. More recently I've
18 had to fill them out, and I've been instructed to
19 put in an amount into that line just in case
20 something happens while you're on the road so that
21 it is accounted for within this form. This is not
22 the exact, this is not the form used to receive
23 reimbursement.

24 Q. Fair enough. So this is a request form

1 so that you can anticipate potential costs --

2 A. Correct.

3 Q. -- when the task actually occurs?

4 A. Correct.

5 Q. It's kind of a budgeting form?

6 A. Exactly.

7 Q. So we don't look to the travel request
8 form for accuracy of the actual charges; fair
9 statement?

10 A. Correct.

11 Q. We would look to, the travel voucher
12 would be the most accurate?

13 A. Correct.

14 Q. That's your signature down at the bottom
15 there?

16 A. Correct.

17 Q. Who is the person who signed as the
18 division head?

19 A. It looks like Rosemarie Cazeau.

20 Q. Oh, that's Rosemarie.

21 What receipts are you required to submit
22 with your travel voucher under the AG's policy at
23 the time?

24 A. I certainly wouldn't represent that I

1 know all of this policy. I can tell you from my
2 practice if I pay for the hotel I submit the hotel
3 receipt. Sometimes the Office does direct billing,
4 in which case I wouldn't be paying, and it wouldn't
5 be part of the travel voucher. If I'm driving my
6 own car, then it's just mileage and no receipts. If
7 I'm driving a pool car, gas receipts would be
8 required. If I'm driving a rental car, the rental
9 contract, gas receipts would also be required. I've
10 never, tolls or meal receipts we've never had to
11 submit that I'm aware of. Let me just add --

12 Q. And parking receipts are also added on?

13 A. Parking, and if you look back at that
14 last page, the travel request form, if you're taking
15 a trip where you're flying, for example, or taking a
16 train or something like that.

17 Q. Other means of transportation?

18 A. Correct.

19 Q. All right.

20 MR. JAWGIEL: Do you want to take a break?

21 THE WITNESS: I was going to say if we could
22 take five.

23 MR. JAWGIEL: Go ahead.

24 (WHEREUPON, a short recess

1 A. Two days.

2 Q. The district court case, was it?

3 A. Yes.

4 Q. District court case was a bench trial.

5 How long was that?

6 A. I think the trial lasted, 28 days of
7 trial over approximately a six-month period.

8 Q. That was quite large then?

9 A. Yes.

10 Q. Were you lead counsel on both of those
11 cases?

12 A. No.

13 Q. What was your role in the bench trial in
14 Circuit Court?

15 A. I started assisting lead counsel which
16 was Kelly Cartwright during the, at some point
17 probably that May time frame. She was leaving the
18 Attorney General's Office, so then I became lead
19 counsel.

20 Q. Fair enough. During the hearing you were
21 lead counsel, I mean during the bench trial you were
22 lead counsel, I should say?

23 A. After Kelly left, yes.

24 Q. I'm talking about the Circuit Court bench

1 trial.

2 MR. PARTEE: They both were --

3 MR. JAWGIEL: Q. Oh, they both were Circuit
4 Court bench trials. The 28 day one --

5 A. The 28 day one was a Circuit Court case,
6 and I was lead counsel after Kelly Cartwright left
7 the Office.

8 Q. Was that during the course of the trial
9 that she left?

10 A. Yes.

11 Q. That's always fun.

12 Now before coming to the AG's Office, and
13 I'm going to do this in a lump basically because we
14 can go through each place you were at, how many jury
15 trials had you had?

16 A. This probably isn't an exact number but
17 about half a dozen.

18 Q. That's a fair estimate.

19 How many bench trials did you have before
20 the AG's Office?

21 A. I couldn't give an accurate number.
22 Many, greater than 100.

23 Q. So quite a few?

24 A. Yes.

1 Q. Fair enough. How many hearings similar
2 to the type of hearing that we had with Skokie
3 Valley were you involved in? It doesn't have to be
4 an EPA case. It could be any sort of case in that
5 similar type of format with a hearing officer.

6 A. When I practiced in Oklahoma, I had one
7 hearing before the Corporation Counsel which is the
8 regulatory agency in Oklahoma.

9 Q. Did you find anything to be particularly
10 difficult with the Skokie Valley case in the sense
11 of, in preparing your closing argument?

12 A. For me preparing a closing argument for
13 the Pollution Control Board was very difficult.
14 Part of the reason was without even getting into the
15 technical aspect you had to rely on the trial
16 record, the transcript. I believe in this case
17 there were 40 or 50 exhibits, some of which were
18 complicated. Just pulling all that together is
19 complicated writing for me.

20 Technically the NPDS and DMR violations
21 were not that difficult to address for the Pollution
22 Control Board. The oil spill, the oil leaking into
23 the creek and the subsequent clean-up and
24 remediation Huff & Huff was involved in was

1 technically challenging.

2 Q. You used that phrase for me. Was it for
3 you because you hadn't done this before with respect
4 to drafting a closing argument?

5 A. I had drafted a closing argument by that
6 point. I had drafted it in the district court case
7 that I mentioned earlier.

8 Q. The closing argument was in a written
9 form in that case as well?

10 A. Yes, it was.

11 Q. Why did you use that phrase for you it
12 was difficult?

13 A. I'm not sure that it's difficult for
14 other people. This was my, being at the AG's Office
15 was the first time I've had to do written closing
16 arguments relying on a transcript, many documents,
17 that type of thing.

18 Q. So just so I have an understanding of it,
19 you had submitted a written closing argument in the
20 Circuit Court case but that wasn't relied upon, you
21 weren't relying upon transcripts at that point in
22 time?

23 A. I was.

24 Q. Oh, you were?

1 A. Yes.

2 Q. That was submitted before the Skokie
3 Valley case closing argument?

4 A. I think so.

5 Q. Because you spent and I don't exactly --
6 let me see if I can get an exact number.

7 (Counsel peruses documents.)

8 Well, we see you start drafting your
9 closing argument on December 18th -- I take that
10 back. It looks like on December 10th, 2003 you have
11 closing argument review transcripts. Is that when
12 you started to prepare your closing argument?

13 A. I'm not exactly sure but I'm looking
14 at --

15 Q. Well, you certainly can look at your
16 sheets here which is Exhibit Number 4. I have
17 December 10th, 2003 as the starting point where it
18 says closing argument review transcript.

19 A. Would it be possible to see my Excel
20 spreadsheet?

21 Q. Do you have that with you?

22 A. I do not.

23 Q. I don't know that I have it available.

24 A. I mean I can look at that date for you.

1 Q. Let me see if I have it available.

2 (Counsel peruses documents.)

3 MR. PARTEE: I believe it was disclosed.

4 THE WITNESS: A. Flipping through this stack
5 of printouts in Group Exhibit Number 4, it looks
6 like December 10th, 2003 I started reviewing the
7 transcript that was prepared by the court reporter
8 for the closing arguments.

9 MR. JAWGIEL: Q. Would you consider that your
10 starting point in preparation for the closing
11 argument? I mean that's when you start preparing
12 your closing argument. Obviously you review the
13 transcript; is that right?

14 A. It looks like from this stack of
15 printouts that that's when I started, yes.

16 Q. Do you remember doing anything else on
17 December 11th, 2003 other than review the
18 transcript?

19 A. I believe it's December 10th, at least
20 the sheet I'm looking at.

21 Q. I apologize, December 10th. That was the
22 end date that I was picking up, the 11th.

23 A. It looks like that's all I did, but it's
24 possible since I did write closing argument there

1 that I might have done some outlining as well or
2 something like that.

3 Q. Note taking?

4 A. Sure.

5 Q. Keep that section there, please. Then on
6 December 13th, 2003 it says review transcript. I
7 guess that's also in preparation for your closing
8 argument as well?

9 A. Right.

10 Q. Keep going down. December 14, 2003 we
11 have REV TRANSC. I guess that's review transcript?

12 A. It looks like that, yes.

13 Q. That's also in preparation for your
14 closing argument?

15 A. Yes.

16 Q. Obviously we see closing arguments,
17 closing argument, closing argument dash home. On
18 January 11th, 2004 we have closing arguments dash
19 home. Is that an indication you were working from
20 home?

21 A. Yes.

22 Q. Was it part of your practice to note when
23 you worked from home?

24 A. Yes, I tried to do that.

1 Q. Then I have a total amount of hours spent
2 in preparation for your closing argument as 91
3 hours. I don't know that you want to take the time
4 to calculate it. If you could look at your summary
5 sheet if there is any way. Is that about right, 91
6 hours for preparation of closing argument?

7 A. Well, my summary sheet, looking at
8 Deposition Exhibit Number 5, it shows that in
9 January 2004 I spent it looks like 40 hours all
10 closing arguments. There's certainly some time in
11 December that's related to closing argument. I
12 don't know that it equals 90 hours but it certainly
13 could.

14 Q. 91 hours, yeah.

15 A. It certainly could.

16 Q. The hearing itself didn't last that long,
17 did it?

18 A. No.

19 Q. Do you type your own closing argument?

20 A. Yes.

21 Q. Did the AG have secretarial staff to type
22 documents on behalf of the attorneys --

23 MR. PARTEE: I would object to that. That
24 assumes that he handwrote it in the first place.

1 MR. JAWGIEL: Q. -- at the time of this
2 incident? Please note the -- at the time of this
3 hearing I should say? Please note the objection.

4 THE WITNESS: A. There were. We do have
5 secretaries, yes.

6 MR. JAWGIEL: Q. Did you have an option of
7 having one of those secretaries draft the closing
8 argument?

9 A. Draft, no.

10 Q. Well, not draft. Did you dictate?

11 A. We don't have dictation.

12 Q. You didn't have dictation. How would you
13 transfer a document you wanted a secretary to
14 prepare?

15 MR. PARTEE: You're assuming in your question
16 that he didn't type it in the first place.

17 MR. JAWGIEL: No, I asked him did you type it
18 in the first place. He said yes I did type it in
19 the first place.

20 Q. Isn't that correct?

21 A. Yes, I typed the closing argument.

22 Q. What's your typing speed?

23 MR. PARTEE: This is ridiculous. I would
24 object that this is ridiculous.

1 MR. JAWGIEL: Q. What's your typing speed?

2 A. I'm sure I haven't been tested since high
3 school.

4 Q. Fair enough.

5 A. But I'm a very slow typist.

6 Q. Fair enough. You billed for your entire
7 time it took you to actually type the document as
8 well as the time that it took you to think of the
9 thoughts that are in the document itself --

10 MR. PARTEE: Object to the form of the
11 question.

12 MR. JAWGIEL: Q. -- is that right?

13 A. That's true.

14 Q. So you didn't differentiate the
15 administrative tasks of typing and preparing the
16 document from the attorney time in thinking the
17 thoughts contained in the document?

18 MR. PARTEE: Object to the form, and you're
19 assuming that he didn't type the document in the
20 first place which he testified that he, he already
21 testified that's what he did. He didn't testify
22 that there were any administrative costs.

23 THE WITNESS: A. The way I work I wouldn't
24 and don't think it's possible to make a distinction.

1 I am simultaneously doing the thinking and typing.
2 It's not as if I, for example, handwrote a section
3 and then just went in to type it or something like
4 that.

5 MR. JAWGIEL: Q. Well, certainly you think
6 faster than you can type, do you not?

7 A. I don't know how to answer that.

8 MR. PARTEE: I would object to that question
9 too. It's argumentative.

10 MR. JAWGIEL: Q. Did you take any handwritten
11 notes?

12 A. While working on the closing argument?

13 Q. Right.

14 A. Well, in some ways I did because I went
15 back to the calendar for at least the attorney fee
16 portion and handwrote that out. I don't remember
17 handwriting any particular section or -- it's
18 possible I took handwritten notes in reviewing
19 documents. There might have been something in a
20 document that I saw that I felt was important. I
21 might put a yellow sticky on there, you know, put
22 this in such and such a section.

23 Q. Do you write faster than you type?

24 A. Probably.

1 Q. Is there any reason why you didn't write
2 your closing argument and give it to a secretary to
3 type?

4 MR. PARTEE: Objection, argumentative.
5 Objection, asked and answered.

6 THE WITNESS: A. Again, this is a, for me
7 writing these closing arguments is very difficult
8 when you have to bring in the cites to the
9 transcripts, cites to the exhibits and that type of
10 thing. I believe I did it with a footnote fashion
11 in this case. Though I write faster, though I may
12 write faster than I type, when you factor in putting
13 in footnotes, referring to different things, I don't
14 think that would have been faster, and I don't think
15 I have a secretary who could have done that.

16 MR. JAWGIEL: Q. Your closing argument was
17 filed late in this case, was it not?

18 A. Correct.

19 Q. Did you bill for the closing argument
20 even though you filed it late?

21 A. I billed for the closing argument, yes.

22 Q. Did you also bill for tasks that were
23 overruled by the hearing board?

24 A. I don't think I made a distinction.

1 Q. So you billed for everything you did
2 regardless of whether or not the hearing board
3 accepted it or not?

4 MR. PARTEE: Granted it or not?

5 MR. JAWGIEL: Q. Fair enough. Granted it or
6 not?

7 A. I did not make any distinction.

8 Q. Did you also bill for -- Well, strike
9 that.

10 As you typed it was that your final draft
11 of the closing argument?

12 A. No way.

13 Q. So did you bill for times that you spent
14 redrafting and editing your closing argument?

15 A. Yes.

16 Q. How do we differentiate how much time you
17 spent in editing as opposed to how much time you
18 spent in drafting the original closing argument?

19 MR. PARTEE: Objection, relevance.

20 THE WITNESS: A. Certainly there's -- I don't
21 know of any way to do it from my time sheets.

22 MR. JAWGIEL: Q. How else would we do it?

23 A. And I don't know of any way to do it just
24 by the way I work. I'm constantly editing as I'm

1 going along.

2 Q. Was there any point in time that you had
3 a draft of it and went back and edited again or was
4 it editing constantly as you were going along?

5 A. I have no independent recollection of
6 this case, but typically what I do is once I get a
7 draft that I'm satisfied with I do stop. I do ask
8 others to read it, make any corrections, comments,
9 suggestions, and then I do at some point later bring
10 those copies back and rework it again.

11 Q. You bill or clock your time, charge for
12 your time to rework it again?

13 A. Yes.

14 Q. Do the attorneys who review it also bill
15 for their time?

16 A. They have not in the cases where I've
17 done that.

18 Q. Was Mr. Murphy one of the people who you
19 had review your closing argument in the Skokie
20 Valley case?

21 A. I would think Mr. Murphy did review it,
22 and I would think that Mr. Murphy being an attorney
23 on the case would have billed for it, but I
24 typically give it to people who don't know about the

1 case.

2 Q. Get a fresh set of eyes on it, so to
3 speak?

4 A. Correct, and those people did not bill
5 for it.

6 Q. There's no way for us to figure out how
7 much time was spent editing as opposed to drafting
8 the closing argument or the rebuttal?

9 MR. PARTEE: Objection, relevance.

10 THE WITNESS: A. No.

11 MR. JAWGIEL: Q. And there's no way looking
12 at this or any other document to tell us what you
13 did on any particular day other than you worked on
14 the closing argument?

15 A. Correct.

16 Q. If I can direct your attention to the
17 entry for April 11th, 2004.

18 A. In Group Exhibit Number 4?

19 Q. Please.

20 A. Okay.

21 Q. You have it in front of you?

22 A. Yes.

23 Q. I have on there that you have closing,
24 rebuttal, some home?

1 A. Correct.

2 Q. You would indicate that, when you worked
3 only partially at home, you'd use that phrase some
4 home?

5 A. Yes.

6 Q. The rest of it would have been in the
7 office; is that correct?

8 A. Yes.

9 Q. You're also billing for settlement
10 discussions and attempts to resolve this matter?

11 A. If you can point me to an entry or give
12 me my Excel spreadsheet. If it's in there, yes.

13 Q. Look to December 21st, 2004 with a
14 telephone conversation to me, and I appreciate that
15 you spelled my name correctly. Very nice of you to
16 do that.

17 A. Can you give me the date again?

18 Q. Yes, December 21st, 2004.

19 A. Yes.

20 Q. You also charged on April 20th, 2005 to
21 have a discussion with Mr. Partee. I'm not asking
22 what that discussion was.

23 A. Yes.

24 Q. Is that right?

1 Did you bill your time for supervising --
2 Well, strike that.

3 Did you supervise Mr. Sternstein when he
4 was on the case?

5 MR. PARTEE: I'll object on relevance grounds,
6 but you can answer.

7 THE WITNESS: A. I don't like the word
8 supervise because I wasn't superior or anything. I
9 was lead attorney on the case.

10 MR. JAWGIEL: Q. What --

11 A. We did --

12 Q. What phrase would you prefer? I'm not
13 trying to be sarcastic. I'm just trying to get to a
14 question that we can get an answer. I mean you're
15 lead counsel?

16 A. Right.

17 Q. You have managerial responsibilities
18 because you're the point person, if you will, you're
19 the person responsible for bringing this to a head.
20 Mr. Sternstein was a second chair at the time that
21 he was involved and certainly would be looking to
22 you for guidance and assignment of tasks?

23 A. Yes.

24 Q. Would that be a fair statement?

1 A. Yes.

2 Q. Did you bill for the guidance and the
3 assignment of tasks that you gave Mr. Sternstein
4 during the course of this case? Is that part of
5 what is built into your hours?

6 A. I would assume it is. Again, we were
7 really co-workers.

8 Q. Right.

9 A. We would meet, divvy tasks, so to speak.

10 Q. We got this witness coming up; what are
11 your thoughts; my thoughts are X; what are your
12 thoughts; my thoughts are Y; how do you think, what
13 do we need to get out of this witness; what
14 difficulties are we having, whatever the case may
15 be; should we draft a motion; what's your thoughts,
16 those types of things?

17 A. Right.

18 Q. But you were the person ultimately
19 responsible for the end product that would come out
20 from these meetings, would that be a fair
21 assessment?

22 A. I don't think so because if there was a
23 motion or a brief in support of a motion or
24 something like that and Joel, Mr. Sternstein did the

1 work related to that --

2 Q. You can call him Joel.

3 A. -- I would certainly read it but as far
4 as -- I'm pretty sure he signed the documents and
5 filed them.

6 Q. Did you sign any of the documents that he
7 prepared?

8 A. Did I sign any?

9 Q. Yes.

10 A. It's possible.

11 Q. Is there any way for us to tell which
12 documents Mr. Sternstein may have prepared that you
13 signed?

14 A. Not that I can think of with what we have
15 here today.

16 Q. Anything? You're familiar with the file
17 certainly?

18 A. If we looked at every document in the
19 file, there might be some that I signed that he did
20 the bulk of the work on. There were some times
21 where I was tied up in other trials or matters and
22 he, I think there's some hearings that he
23 participated in by himself.

24 Q. The hearings we'll set aside. Those we

1 obviously know he was present, whatever the case may
2 be. What we don't know necessarily is who worked on
3 documents that were the end product of the AG's
4 Office.

5 A. Joel worked on a lot of documents that
6 resulted in an end product. Whether he signed them
7 or I signed them I don't remember.

8 Q. Did you bill for documents that you would
9 have signed that Mr. Sternstein prepared?

10 MR. PARTEE: Do you understand the question?

11 THE WITNESS: A. I think so with an
12 explanation. If I didn't -- I didn't bill for
13 Mr. Sternstein's time that he spent on a document.
14 I would have billed for any time I spent reviewing
15 the document or doing related research to the
16 document or something like that, so I did not bill
17 Mr. Sternstein's time into my hours.

18 MR. JAWGIEL: Q. Well, let me ask you how you
19 coordinate, if there is any plan of coordinating the
20 time actually spent between attorneys on tasks. Was
21 there a policy that the AG's Office had with respect
22 to coordinating the time spent on tasks between
23 multiple attorneys?

24 MR. PARTEE: I would object that that's been

1 asked and answered earlier.

2 THE WITNESS: A. Not that I'm aware of.

3 MR. JAWGIEL: Q. Did you ever check
4 Mr. Sternstein's billable hours in this case to
5 determine whether or not he had any tasks that he
6 billed for that you actually billed for as well?

7 A. No, but there could be many tasks where
8 we both billed for it.

9 Q. What would those tasks be?

10 A. As I just stated, if he worked on a
11 motion or a brief in support of a motion, he would
12 bill for the time that he worked on it, and then if
13 he asked me to read it, to review it, I would bill
14 for the time I worked on it.

15 Q. How would you note in your documents
16 based on your practices and procedures a review of
17 Mr. Sternstein's work as opposed to drafting of your
18 own document? Is there a certain notation that you
19 use?

20 MR. PARTEE: Object on relevance grounds.

21 THE WITNESS: A. As we flip through these
22 today, I don't recall ever seeing anything like
23 that. I would just note my time that I worked on
24 that task.

1 MR. JAWGIEL: Q. But we wouldn't know that
2 from looking at the billing statements that you
3 reviewed Mr. Sternstein's work? I mean if I look at
4 the totality of Exhibit Number 4, I don't see any
5 entry in there that says review Mr. Sternstein's
6 proposed motion to do whatever or review
7 Mr. Sternstein's memorandum of law on this issue or
8 review Mr. Sternstein's anything, is that a fair
9 statement?

10 A. I don't recall any entry like that.

11 Q. So there's no way for us to find out
12 based on what we have in the billing statements and
13 in your affidavit or any other document that you've
14 submitted from the fee petition whether you were
15 reviewing Mr. Sternstein's work or drafting it
16 yourself?

17 A. I think if you only look at my time
18 sheets and my spreadsheet that's probably true.

19 Q. What do we look to then to make that
20 differentiation?

21 A. There might be, and I certainly haven't
22 looked at Mr. Sternstein's time sheets, but there
23 might be the way he kept his time sheets where he
24 might have said drafted motion for whatever, and

1 then that would indicate to me that he did the
2 drafting. If that same document appears in my time
3 records, it would indicate that he did the drafting,
4 I might have done the reviewing.

5 Q. So basically we'd have to look to
6 Mr. Sternstein's time sheets in order to
7 differentiate what he did on any particular task
8 that you and he may have jointly worked on?

9 A. I'm not sure, because I haven't seen his
10 time sheets.

11 Q. If the entry is made where he indicates
12 drafted or something along those lines?

13 A. That might be a possibility. Otherwise,
14 I didn't make that distinction in my time sheets.

15 Q. Why not?

16 MR. PARTEE: Objection, relevance. Who cares?
17 What's the relevance of this? He can review
18 Sternstein's work. He can review Bernie's work. He
19 could review my work and bill for it.

20 THE WITNESS: A. I guess my purpose in
21 keeping the time sheets was just to indicate what
22 time I worked and what I was doing in relation to
23 the case, not so much in relation to my co-workers.
24 I never thought to do that.

1 MR. JAWGIEL: Q. Is there anywhere in your
2 notation indicating that you actually drafted any
3 motion or petition in this case where you actually
4 note draft?

5 A. The best document for me to look for that
6 would be the Excel spreadsheet.

7 MR. PARTEE: Mike, isn't that what you're
8 looking at?

9 MR. JAWGIEL: This is our own, this is my own
10 internal spreadsheet which, of course, is
11 attorney/client privilege. I don't know that we
12 have Excel spreadsheets. Mike says that we have
13 them.

14 MR. O'NEILL: I don't remember ever seeing
15 them.

16 THE WITNESS: I think it's attached to the fee
17 petition.

18 MR. JAWGIEL: We'll have to take a look for
19 it.

20 THE WITNESS: A. We've got it. Flipping
21 through again Group Exhibit Number 4 --

22 MR. JAWGIEL: Q. I'm not going to hold you to
23 each and every one.

24 A. -- here is an example, July 19th, 2002 --

1 Q. Okay.

2 A. -- draft amended complaint.

3 Q. Now any motions or petitions?

4 A. Where I indicated the word draft?

5 Q. Draft?

6 A. I don't recall specifically, and in
7 thinking of the entries for closing argument and
8 closing rebuttal arguments, I did not put the word
9 draft there.

10 Q. Did Mr. Murphy draft part of the closing
11 argument as well?

12 A. I think so.

13 Q. Do we know how much of it he drafted as
14 opposed to you, I mean do you have any idea?

15 A. I'm not sure that -- I don't recall.

16 Q. Do you remember what subject matters he
17 was to draft in closing argument?

18 A. I don't recall in this case.

19 Q. Did you review his work, his drafting of
20 the closing argument, at least the sections of it
21 that he might have been involved in?

22 A. If he drafted a particular section, I
23 definitely reviewed it.

24 Q. And you billed your time for that as

1 well?

2 A. And I billed my time for that.

3 Q. Did you bill your time to incorporate his
4 into yours?

5 A. Well, that's what I mean by reviewing it.

6 Q. Reviewed it and then --

7 A. Yes, I certainly would have incorporated
8 it into the main document, had to have.

9 Q. Have to make it so it flows?

10 A. Correct. Just let me be clear. I don't
11 recall Bernie doing a particular section in this
12 case.

13 Q. Did he do any research or anything along
14 those lines?

15 A. Related to the closing argument?

16 Q. Yes.

17 A. I don't remember.

18 Q. Did Mr. Sternstein assist in any way in
19 the closing argument?

20 A. No.

21 Q. Did Mr. Sternstein assist in any way in
22 the rebuttal?

23 A. No.

24 Q. Did Mr. Murphy assist in any way in the

1 rebuttal?

2 A. I would assume so.

3 Q. But you don't know? I mean you might not
4 have a recollection. That's fine.

5 A. I don't have a recollection to a
6 particular section, but if nothing else I would have
7 expected him to have at least read and commented on
8 the closing rebuttal.

9 Q. Do you know if he was involved in any
10 research for the rebuttal, and this is Mr. Murphy
11 just so we're clear?

12 A. I don't recall.

13 Q. If you could look in Exhibit Number 4 for
14 October 7th, 2004.

15 A. Okay.

16 Q. It says, correct me if I'm wrong,
17 research, outline, etc., response, fee petition
18 (Union League Club)?

19 A. Correct.

20 Q. Were you at the Union League Club?

21 A. Yes.

22 Q. What were you doing there?

23 A. I don't remember exactly. There was some
24 sort of seminar there.

1 Q. Seminar on what?

2 A. I'm sure it was related to environmental
3 law but I don't remember.

4 Q. Did it have anything to do with your
5 research, outline, et cetera, response and fee
6 petition?

7 A. No.

8 Q. So you were actually drafting while you
9 were at this seminar or researching while you were
10 at the seminar?

11 A. Correct.

12 Q. How were you researching during the
13 seminar?

14 A. I was sitting in the back of the room at
15 a table with my Skokie Valley Asphalt file working
16 on my fee petition.

17 Q. Well, that would be reviewing the file.
18 How were you researching?

19 MR. PARTEE: Objection, argumentative.

20 THE WITNESS: A. How was I researching?

21 MR. JAWGIEL: Q. Yes.

22 A. I would expect that I had the case law
23 with me and was reading the case law.

24 Q. What were you doing in the etc. section

1 at that time?

2 A. I don't know exactly, but I think I was
3 working on the fee petition.

4 Q. How long did this seminar last?

5 A. I think it was an all-day seminar.

6 Q. Did you take lunch while you were at the
7 AG's Office on a regular basis?

8 A. Yes.

9 Q. Did you also take breaks as well?

10 A. Yes.

11 Q. What sort of breaks would you take in an
12 average day while you were in the office obviously?

13 A. I might just stand up from my desk and
14 walk around and bug somebody else.

15 Q. Did the AG have a policy at the time you
16 were working on the Skokie Valley case that they
17 required you to take a certain, you know, two
18 15-minute breaks or something along those lines?

19 A. No.

20 Q. How long were your lunches on average?

21 A. Well, I think we can take an hour lunch
22 break.

23 Q. How long were yours?

24 A. Mine were typically just a few minutes to

1 run out, grab something to eat, grab something,
2 bring it back to my desk, eat at my desk.

3 Q. Typically eat at your desk?

4 A. Typically.

5 Q. Basically it was just a matter of leaving
6 the office, getting some food or whatever you were
7 going to eat that day and coming back?

8 A. Right.

9 Q. How long would that take on average?

10 A. Ten, fifteen minutes.

11 MR. JAWGIEL: Michael, of course you have the
12 right to ask some questions. I will transfer the
13 witness over to you so to speak.

14 MR. PARTEE: I appreciate it, but I don't have
15 any questions for the witness.

16 MR. JAWGIEL: Mr. Cohen, I want to thank you
17 for the record for being here today and congratulate
18 you again for your promotions.

19 THE WITNESS: Thank you.

20 MR. JAWGIEL: You know about signature.

21 THE WITNESS: Correct.

22 MR. JAWGIEL: Certainly we'd like to know what
23 your decision is on signature.

24 THE WITNESS: I'd like to reserve signature.

1 MR. JAWGIEL: Fair enough. We'll show
2 signature has been reserved.

3 That will conclude the deposition.

4 (Witness excused.)

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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 PEOPLE OF THE STATE OF ILLINOIS)
 3 by LISA MADIGAN, Attorney General))
 4 of the State of Illinois,)
)
) Complainant,)
 5)
) vs.) No. PCB 96-98
 6)
 7 SKOKIE VALLEY ASPHALT CO., INC.,)
 et al.,)
) Respondents.)
 8

9 I hereby certify that I have read the
 10 foregoing transcript of my deposition given at the
 11 time and place aforesaid, consisting of Pages 1 to
 12 112, inclusive, and I do again subscribe and make
 13 oath that the same is a true, correct and complete
 14 transcript of my deposition so given as aforesaid
 15 and includes changes, if any, so made by me.

16 MITCHELL COHEN

17 SUBSCRIBED AND SWORN TO before

18 me this day of ,

19 A.D., 2006.

20 NOTARY PUBLIC