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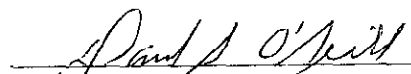
DEC 12 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD, STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
	)	PCB 96-98
	)	
v.	)	Enforcement
	)	
	)	
SKOKIE VALLEY ASPHALT, CO., INC.,	)	
EDWIN L. FREDERICK, JR., individually and as	)	
owner and President of Skokie Valley Asphalt	)	
Co., Inc., and RICHARD J. FREDERICK,	)	
individually and as owner and Vice President of	)	
Skokie Valley Asphalt Co., Inc.,	)	
Respondent	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the RESPONDENTS' MOTION FOR FINAL ORDER, a copy of which is hereby served upon you.

  
David S. O'Neill

December 12, 2006

David S. O'Neill, Attorney at Law  
5487 N. Milwaukee Avenue  
Chicago, IL 60630-1249  
(773) 792-1333

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,	)	
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owner and President of Skokie Valley Asphalt	)	
Co., Inc., and RICHARD J. FREDERICK,	)	
individually and as owner and Vice President of	)	
Skokie Valley Asphalt Co., Inc.,	)	
Respondents	)	

**RESPONDENTS' MOTION FOR FINAL ORDER**

The Respondents, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc., and RICHARD J. FREDERICK, individually and as owner and Vice President of Skokie Valley Asphalt Co., Inc., by and through its attorney, David S. O'Neill, herein move this Board to dismiss with prejudice the Complainant's Request for Attorneys' Fees and Costs and in support thereof states as follows:

**PROCEDURAL HISTORY**

1. On January 15, 2004, the Complainant filed its Closing Argument and Post Trial Brief in the above captioned matter along with a Motion to File Instantly which was required because the closing argument was filed after the deadline for filing set by the hearing officer's order. In the Closing Argument and Post Trial Brief, the Complainant failed to ask for attorneys' fees with the specificity required under Illinois law and instead made an ambiguous plea for "Complainant's costs and fees". (Complainant's Closing Argument of January 15, 2004 at 48)
2. On April 15<sup>th</sup>, 2004, the Complainant filed its Closing Rebuttal Argument and Reply Brief

which included a petition for attorneys' fees and costs. (Complainant's Rebuttal Argument and Reply Brief at 38.)

3. On May 17, 2004, the Respondents filed a Post Trial Motion to Strike and Objections to Complainant's Closing Argument and Reply Brief, in which, in part, the Respondents objected to the Complainant introducing materials beyond the scope of rebuttal in the filing including the petition for attorney's fees and costs. Resp. Mot at 1-2.
4. In its Order of September 2, 2004 the Board failed to address the issue of whether or not the Complainant could seek attorneys' fees if it had not raised the issue at hearing or in closing arguments.
5. In its order of September 2, 2004, the Board granted the Respondents motion to strike in regards to attorneys' fees and costs. (Order of September 2, 2004.)
6. Because the issue of attorneys' fees was not raised by the Complainant at hearing or in its closing argument and because the Board granted the Respondents' motion to strike "that portion of the People's reply that addresses attorney fees and cost exceed the scope of the arguments made in the respondents' brief..." (Id at 6.) The issue of attorneys' fees and costs was never the brought to the Board for consideration.
7. However, the Board somehow granted the Complainant's non-existent request for attorneys' fees and costs (Id. at 23) and in doing so the Board stated that it would "withhold a decision regarding attorney fees and cost until the matter is fully addressed by the parties." (Id. at 2) (emphasis added).
8. On December 16, 2004 the Board contradicted its Order of September 2, 2004 by issuing an order in which it stated that it would not hold any hearings on the issues of fees and costs. (Order of December 16, 2004 at 3) In doing so, the Board, without basis or justification, denied the Respondents the right to fully address the issue of attorneys' fees and cost that the Board had granted to the Respondents in the Order of September 2, 2004.
9. April 7, 2005, the Board issued an Order in which the Board granted the Respondents' motion for extension of time to allow for discovery. The Order states that "the Board will grant the respondents additional time in order to conduct discovery..." (Order of April 7,

2005 at 3). This Order again contradicts the Board's granting of the Respondents' right to fully address the attorneys' fees and costs issues in the September 2, 2004 Order by stating that "the Board grants the respondents' motion for extension of time to allow for **limited** discovery". (Id. At 1. Emphasis added.) In the Conclusion of the Order, the Board "grants respondents' motion for extension of time and authorizes respondents to conduct discovery on the attorney fees issue". (Id at 4.). The Board also directed the hearing officer to proceed to hearing as expeditiously as possible. (Id.)

10. On April 25, 2005, the Respondents filed with the Board the "Respondents' First Set of Interrogatories Regarding Attorneys' Fees, Costs and Expenses", Respondents' First Set of Document Requests Regarding Attorneys' Fees, Costs and Expenses", "Respondents' First Request for Admission of Facts Regarding Attorneys' Fees, Costs and Expenses" and "Notice of Deposition Regarding Attorneys' Fees, Costs and Expenses".
11. On April 19, 2005, Mr. Michael Partee, Esq. filed an appearance in this matter on behalf of the Complainant. As such, Mr. Partee's costs and fees became potentially eligible for recovery under the Complainant's petition for fees and costs and therefore subject to discovery.
12. In its Notice of Deposition, the Respondents requested that the Complainant produce Mr. Mitchell Cohen and Mr. Bernard Murphy for deposition on June 24, 2005 pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure.
13. The Complainant failed to produce either Mr. Cohen or Mr. Murphy for deposition on June 24, 2005 as required under Section 2-1003 of the Illinois Code of Civil Procedure.
14. On July 6, 2005, the Respondents filed a Motion to Strike Complainant's Objections to Discovery and Motion to Compel Complainant's Response to Discovery Request in which the Respondents requested the Board to strike Complainant's objections to discovery and compel Complainant's responses to discovery and cooperation in scheduling depositions.
15. On July 20, 2005, the Complainant filed a Complainant's Response to Respondents' Motion to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery and Complainant's Motion for Protective Order and Response to Motion to Compel Complainant's Response to Discovery Request.

16. In its Order of November 11, 2005, the Board refused to uphold the People's objection to discovery. (Order at 9.) The Board allowed the Respondents thirty days from the date of the Order to further respond to each objection. The Board also stated that it would direct the hearing officer to reserve ruling on the Respondents' Motion to Compel until the time for additional response is lapsed. (Id.)
17. Consequent to the Respondent's filing of its further responses of December 19, 2005, the Complainant filed a barrage of trivial motions in an attempt to avoid responding to the Respondents' discovery request.
18. In its order of September 7, 2006, the Board once again further limits the Respondents' rights to fully address the issue of attorneys' fees and costs that it had granted to the Respondents in its Order of September 2, 2004 by establishing a very limited pre-hearing schedule for discovery and stating that no further discovery request would be allowed. (Order of September 7, 2006 at 8)
19. The Order of September 7, 2006 stated that Notices of Depositions needed to be filed by October 31, 2006. (Id.)
20. In the Order of September 7, 2006, the Board clearly stated its intent to strictly enforce the established timetable to complete discovery by stating:

"All discovery activities must be completed on or before the dates provided above."

and

"The parties are notified that any failure to abide by the schedule set forth will result in sanctions that may include the barring of testimony of the striking of pleadings pursuant to Section 101.800 of the Board's procedural rules."
21. The Complainant failed to file and serve new responses to all of the pending written discovery by September 19, 2005 as ordered by the Board.
19. During a status hearing on October 5, 2006, the Respondents repeatedly requested that the Complainant comply with the Board's order and file and serve new responses to all of the pending written discovery that had been requested by the Respondents.
20. The Complainant repeatedly stated to both the Respondents and the Hearing Officer that it had no intention of complying with the Board Order of September 7, 2006 and would not be filing and/or serving new responses to the pending written discovery that had been

- requested by the Respondents.
21. On October 10, 2006 the Respondents filed a motion for sanctions with the Board based on the Complainant's failure to comply with the discovery schedule established by the Board in its Order of September 7, 2006 and the Board's statements in the same Order stating that it would strictly enforce the established timetable.
  22. On November 2, 2006, the Board issued an Order in which it denied the Respondents' motion for sanctions.
  23. On October 18, 2006, the Respondents filed a Deposition Notice to Complainant Regarding Complainant's Fee Petition. In the Notice, Respondents requested to take the discovery deposition of Mr. Michael C. Partee commencing at 2:00 p.m. on Friday November 10, 2006.
  24. In the Order of September 7, 2006, the Board stated that Objections to Notices must be filed and served by November 8, 2006. *Id.*
  25. The Complainant did not file an Objection to the Respondents' Notice to Deposition with the Board prior to November 8, 2006.
  26. The Complainant failed to produce Mr. Partee for deposition on November 10, 2006 as required under Section 2-1003 of the Illinois Code of Civil Procedure.
  27. In the Order of September 7, 2006, the Board clearly stated its intent to strictly enforce the established timetable to complete discovery by stating:

"All discovery activities must be completed on or before the dates provided above."

and

"The parties are notified that any failure to abide by the schedule set forth will result in sanctions that may include the barring of testimony of the striking of pleadings pursuant to Section 101.800 of the Board's procedural rules."
  28. On November 15, 2006, the Respondents filed a Second Motion for Sanctions based on the Complainant's failure to produce a witness for deposition as required by the Board's Order of September 7, 2006.
  29. Even with the limited discovery allowed the Respondents, there is a clear showing that the Complainant does not have the evidence it requires to advance an argument for attorneys' fees and cost in this matter.

LEGAL STANDARD FOR RECOVERING ATTORNEYS' FEES AND COSTS

30. Section 42 of the Environmental Protection Act allows a court of competent jurisdiction to award costs and reasonable attorneys' fees to the attorney General in a case where it has prevailed against a party that has committed a wilful, knowing or repeated violation of the Act. (415 ILCS 5/42(f) (2002)).
31. In all cases, only those fees which are determined to be reasonable are to be allowed. (Fiorito v. Jones (1978), 72 Ill.2d 73, 377 N.E.2d 1019; In re Estate of Healy (1985), 137 Ill.App.3d 406, 484 N.E.2d 897)
32. The party seeking the fees bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness. (Ealy v. Peddy (1985). 138 Ill.App 3d 397, 485 N.E.2d 1182)
33. The trial court has the discretion to determine what is reasonable in awarding attorneys' fees. (Pietrzyk v. Oak Lawn Pavilion, Inc. 329 Ill.App.3d 1043,1046, 769 N.E.2d 136,137 (2002); Leader v. Cullerton (1976) 62 Ill.2d 483, 343 N.E.2d 897)
34. The reasonableness of fees can not be determined on the basis of conjecture or by the opinion or the conclusions of the attorney seeking the fees (Flynn v. Kucharski (1974), 59 Ill.2d61, 319 N.E.2d 1; In re Marriage of Angiuli (1985), 134 Ill.App.3d 417, 480 N.E.2d 513)
35. The petition for fees must specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate charged therefore. (Ealy v. Peddy (1985). 138 Ill.App3d 397, 485 N.E.2d 1182, Fiorito v. Jones (1978), 72 Ill.2d 73, 377 N.E.2d 1019)
36. The petitioner must present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated. (Flynn v. Kucharski (1974), 59 Ill.2d61, 319 N.E.2d 1)
37. If the documents supporting the fee petition lack foundation and are devoid of any meaningful information to assist in determining the reasonableness of the fees charged, they can not be the basis for determining the reasonableness of legal fees. (Kaiser v.

MEPC American Properties, Inc. 164 Ill.App.3d 978 (1987) 518 N.E. 2d 424)

38. The courts have no power to award costs and fees on merely equitable grounds.  
(Vincencio v. Lincoln-Way Builders, Inc. 204 Ill.2d 2959 (2003), 789 N.E.2d 290)

**RESPONDENTS' MOTION FOR FINAL OFFER BASED ON COMPLAINANT'S FAILURE  
TO SUBMIT SUFFICIENT EVIDENCE OF ATTORNEYS' FEES AND COSTS**

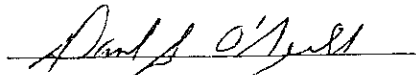
39. The evidence submitted by the Complainant fails to support the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness.
40. The evidence submitted by the Complainant in support of its petition for fees fails to specify the services performed and the time expended thereon.
41. In deposition testimony, witness Bernard Murphy was unable to review any of his time records submitted as evidence of attorneys' fees and determine what work was performed for the time listed (see Murphy's Deposition Transcripts of November 8, 2006 at page 29, line 6; page 36, line 21; page 37, line 12; page 38, line 3; page 38, line 16; page 35, line 4; page 58, line 13; page 62, line 20, page 63, line 4; page 65, line 6; page 72, line 9; page 72, line 12; page 76, line 7 and 13; page 77, line 8,14 and 18 and page 79, line 11).
42. In deposition testimony, witness Mitchell Cohen was unable to specify what work he performed for the hours listed on his time records (see Cohen Deposition Transcript of November 14 at page 33, line 20; page 34, line 9; page 36, line 12; page 48, line12; page 52, line 12; page 53,line 13 and line 21; page 54, lines 1 and 8; page 59, lines 11, 18 and 21; page 61, line 21 and 24; page 67, line 19; page 71, line 20; page 93, line 1; page 95, line 20; page 97, line 10; page 107, line 6; page 109, line 21 and page 110, lines 7, 11 and 22)
43. If the evidence available to support the Complainant's petition for attorneys' fees is so lacking in detail of description of the work performed that even the attorneys that prepared the time sheets and performed the work can not ascertain the actual work performed and the hours committed to the work, it is unreasonable to expect the Board to



be able to determine what is reasonable without conjecture or opinion.

44. In deposition testimony, witness Mitchell Cohen admits that he does not remember if he reviewed the receipts that supported the request for cost and fees of \$5,574.28 (see Cohen Deposition Transcript of November 14 at page 20 line 17)
45. In deposition testimony, witness Mitchell Cohen admits that he changed the amounts of the fees and the costs in the affidavits (see Cohen Deposition Transcript of November 14 at page 19, line 11) and that he never brought a motion to withdraw either affidavit even though they contained conflicting information (see Cohen Deposition Transcript of November 14 at page 221, line 20).
46. The Board can not rely on this conflicting and incomplete evidence as the only evidence of fees and costs before the Board in granting the Complainant's petition for fees and costs and therefore, can not fees and costs on evidentiary basis.

Wherefore, the Respondents respectfully request this Board to issue a final order with respect to the Complainant's petition for attorneys' Fees and Cost and determine that no evidence of fees and costs have been produced to allow the Board to reasonably determine the amount of attorneys' fees and cost for this matter.

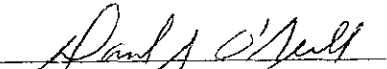
  
David S. O'Neill

David S. O'Neill, Attorney at Law  
5487 N. Milwaukee Avenue  
Chicago, Illinois 60630-1249  
(773) 792-1333

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' MOTION FOR FINAL ORDER by hand delivery on December 12, 2006, upon the following party:

and Mitchell Cohen, Esq  
Mr. Michael Partee, Esq.  
Environmental Bureau  
Assistant Attorney General  
Illinois Attorney General's Office  
188 W. Randolph, 20th Floor  
Chicago, IL 60601

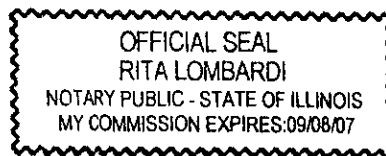
  
David S. O'Neill

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 12th

day of December, 20 06

  
Notary Public



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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 BERNARD MURPHY, 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 8th day of  
November, A.D. 2006, at 2:30 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: Mr. Murphy, can you state your  
3 full name for the record, please?

4 THE WITNESS: Sure. My name is Bernard J.  
5 Murphy, Jr. Bernard is spelled B-E-R-N-A-R-D.  
6 Murphy is spelled M-U-R-P-H-Y.

7 MR. JAWGIEL: Let the record reflect that this  
8 is the discovery deposition of Mr. Bernard J.  
9 Murphy, Jr., and it is taken pursuant to subpoena.  
10 WHEREUPON:

11 B E R N A R D M U R P H Y,  
12 called as a witness herein, having been first duly  
13 sworn, was examined and testified as follows:

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

15 by Mr. Jawgiel

16 Q. Did you receive a subpoena today, sir?

17 A. Yes, I did.

18 Q. Also you received a fee for your,  
19 subpoena fee I should say?

20 A. I did receive a check for the mileage  
21 fee, yes.

22 Q. Are you represented by counsel today?

23 A. I am not.

24 Can we go off the record for a second?

1 MR. JAWGIEL: Sure.

2 (Discussion had off the  
3 record.)

4 THE WITNESS: We had a brief discussion off  
5 the record, and I was just stating to Mr. Jawgiel  
6 and Mr. O'Neill and Mr. Partee that I no longer  
7 represent the State in this matter. I represent the  
8 Board of Education of the City of Chicago currently,  
9 and I am bound by the rules of the Board of  
10 Education's rules from representing anybody else but  
11 the Board of Education.

12 Mr. Partee does not represent me in this  
13 matter. I acknowledge that. I think if he was  
14 asked he would answer the same.

15 I do consider myself to still be bound by  
16 attorney/client and attorney work product privilege  
17 rules to the extent that such privileged matter, to  
18 the extent I was involved in such privileged matters  
19 during the time I worked on the case at issue in  
20 these proceedings.

21 Thank you.

22 MR. JAWGIEL: No problem.

23 Q. Just so the record is clear, the case  
24 you're referring to is the People of the State of

1 Illinois versus Skokie Valley, et al.?

2 A. Yes, sir.

3 Q. Did you bring any documents with you  
4 pursuant to your notice of subpoena for deposition?

5 A. I did.

6 Q. What did you bring with you?

7 A. I brought a letter dated June 14th, 2005  
8 addressed to David O'Neill that was authored by Mike  
9 Partee and I was copied on. I brought the subpoena  
10 that I was served with in connection with this  
11 deposition and also has posted on, contains some  
12 notes that I made concerning telephone calls I made  
13 to Mr. O'Neill concerning that subpoena.

14 MR. PARTEE: I'd like to point out real  
15 quickly that the bottom line is we're here. The  
16 point is it's actually a notice of deposition. It's  
17 called a subpoena on the document but it's not  
18 actually a Board subpoena form that was issued by  
19 the Board. It's really a notice of deposition, but  
20 we're here. We're not contesting it.

21 MR. JAWGIEL: Okay.

22 THE WITNESS: Neither am I for that matter.

23 MR. JAWGIEL: Fair enough.

24 THE WITNESS: A. I brought a printout showing

1 directions to this law office. I brought a copy of  
2 a letter Mr. Partee sent to me dated November 2006  
3 enclosing another witness fee check in connection  
4 with the hearing set for December 12th, 2006.

5 MR. JAWGIEL: Q. The State is a little less  
6 generous, only \$20?

7 MR. PARTEE: No mileage.

8 THE WITNESS: A. Just as I'm not contesting  
9 any flaws in your subpoena, I'm not contesting any  
10 flaws in theirs.

11 MR. JAWGIEL: Q. Did you receive a subpoena?

12 A. Yes. It's right here. I think that's  
13 it. I believe that's it.

14 Q. Looks like it.

15 A. I also brought with a copy of the Board's  
16 decision. I'm not sure when I printed it out but at  
17 some point I did. It's dated September, the  
18 decision itself is dated September 2nd, 2004. It's  
19 been awhile since I looked at it.

20 I also brought with a package of  
21 materials that was sent to me by Mr. Partee. I've  
22 got a binder clip on them. I'll keep that on. You  
23 could go through them if you'd like.

24 Q. When did you receive the documents from



1 Mr. Partee?

2 A. Boy, I'd say it was maybe a week, week  
3 and a half ago, two weeks ago, sometime in that time  
4 frame.

5 Q. I'm going to mark them as Group Exhibit  
6 Number 1 just so we're clear.

7 A. That's fine. That is all I have.

8 MR. JAWGIEL: Mr. Partee, have you brought any  
9 documents with you?

10 MR. PARTEE: I have.

11 MR. JAWGIEL: What have you brought?

12 MR. PARTEE: What I brought is litigation  
13 files from my file.

14 MR. JAWGIEL: Anything pertaining to  
15 Mr. Murphy?

16 MR. PARTEE: I think I have a copy of, I may  
17 have a copy of a letter.

18 MR. JAWGIEL: Of this letter from November  
19 1st?

20 MR. PARTEE: Correct.

21 Other than that, I don't think I have  
22 duplicate copies of what Mr. Murphy just handed you.

23 MR. JAWGIEL: What else do you have?

24 MR. PARTEE: I've got some of my litigation

1 files on depositions and discovery.

2 MR. JAWGIEL: Do you have time sheets for  
3 Mr. Murphy?

4 MR. PARTEE: With me?

5 MR. JAWGIEL: Yes.

6 MR. PARTEE: I don't have -- no, not that I  
7 know of.

8 MR. JAWGIEL: Did you ever have time sheets  
9 for Mr. Murphy that you're aware of?

10 MR. PARTEE: Well, I believe that time records  
11 were disclosed during discovery.

12 MR. JAWGIEL: Time records, a summary of his  
13 time?

14 MR. PARTEE: Correct.

15 MR. JAWGIEL: That's not what I'm asking for.  
16 Actual time sheets contemporaneous to when the  
17 events occurred, did you have that at any point in  
18 time?

19 MR. PARTEE: Everything I have was disclosed.

20 MR. JAWGIEL: Is everything that you have with  
21 respect to Mr. Murphy given to him in Exhibit Number  
22 1?

23 MR. PARTEE: I'm not sure. I'd have to review  
24 it --

1 MR. JAWGIEL: Sure.

2 MR. PARTEE: -- and compare it to my files.

3 MR. JAWGIEL: You don't remember what you gave  
4 him?

5 MR. PARTEE: I do remember what I gave him,  
6 but I'm not going to be able to confirm or deny that  
7 today because I have to confirm this with files in  
8 my office.

9 MR. JAWGIEL: I see. As you sit here today  
10 you don't know if you gave Mr. Murphy everything  
11 that you have, is that fair enough?

12 MR. PARTEE: That's correct.

13 MR. JAWGIEL: With respect to Mr. Murphy  
14 obviously.

15 MR. PARTEE: Yes.

16 MR. JAWGIEL: I'm not asking the entire file.

17 MR. PARTEE: What I gave him were publicly  
18 available information that was filed with the Board.

19 MR. JAWGIEL: What would you consider not to  
20 be publicly available information regarding  
21 Mr. Murphy's available time in this matter?

22 MR. PARTEE: Litigation files that he  
23 generated when he was an attorney in my Office.

24 MR. JAWGIEL: Fair enough. The work product,

1 but that is not the billable time. I'm talking  
2 about the actual time sheets, the recording of time,  
3 the time that he spent. Is there anything that you  
4 consider to be privileged?

5 MR. PARTEE: No.

6 MR. JAWGIEL: Fair enough. Then I'll have to  
7 send you a 201 request, 201(n) request.

8 So just so we're clear, Mr. Partee, you  
9 sent this to Mr. Murphy with the intention that this  
10 was the most pertinent information you had regarding  
11 his testimony limited to the attorney fee issue?

12 MR. PARTEE: Correct.

13 MR. JAWGIEL: Fair enough.

14 Q. Mr. Murphy, I'm not going to belabor  
15 the point but in these documents -- did you review  
16 these documents in Exhibit Number 1?

17 A. I looked through them. There were many  
18 of those I had no part in either generating nor did  
19 it relate to me, so I did not spend a lot of time or  
20 any time really going through those groups of  
21 documents.

22 Q. Fair enough.

23 A. I did review again my CV that's in there  
24 to make sure that it was accurate.

1 Q. We'll talk about that.

2 A. I did, I looked at my affidavit and the  
3 time record attached to it.

4 Q. Any other documents you remember  
5 reviewing?

6 A. I looked through very quickly the written  
7 responses to, responses to the written discovery  
8 requests just to see if anything pertained to me  
9 that I may, you might ask questions about here today  
10 but that's about it.

11 Q. Did you find anything in your review of  
12 the responses to written discovery that you thought  
13 was pertinent to you?

14 A. Not that I can recall. I mean I looked  
15 at them very quickly about a half an hour ago.

16 Q. I'm sorry. When did you say you received  
17 Exhibit Number 1?

18 A. About a week to a week and a half ago I  
19 think was my testimony.

20 Q. Fair enough. Now, Mr. Murphy, when you  
21 were involved in the matter of the State versus  
22 Skokie Valley, did you keep contemporaneous notes  
23 regarding the time that you spent?

24 A. At which period of time?

1           Q.    From the time that you were first  
2 involved with the case to the point that you  
3 concluded your involvement with the case, and keep  
4 in mind the case I'm referring to throughout the  
5 course of this deposition will be the People of the  
6 State of Illinois versus Skokie Valley.

7           A.    At some point I did both, keep track,  
8 start to keep track of my time spent on this case  
9 and also go back and calculate the time I spent on  
10 the case prior to that.

11          Q.    How did you keep a calculation of the  
12 time or keep track of the time that you spent on the  
13 case?

14          A.    I would have kept track of that in  
15 written notes, that once my time record was finished  
16 or completed or my affidavit was finished and  
17 complete I had, I would have either put it in the  
18 file or disposed of it.

19          Q.    In your affidavit -- Strike that.

20                    Do you know in this particular case did  
21 you put them in the file?

22          A.    I don't recall.

23          Q.    You don't know either way?

24          A.    It's been over two years.

1           Q.    Fair enough.  Fair enough.  When you did  
2 your affidavit in preparation for the petition for  
3 attorney's fees and other issues in the case, did  
4 you insert the full description of the task that you  
5 did based on your notes?

6           A.    I'm not sure what you mean by full  
7 description.  When I went through, when I prepared  
8 the affidavit and when I went through it again  
9 today, everything that I have in that summary is  
10 accurate, but I don't know what you mean by the term  
11 full description.

12          Q.    Well, maybe we can clarify that.  Your  
13 handwritten notes regarding the time that you spent  
14 in this case have a more detailed description of  
15 what you did during that period of time that you're  
16 billing than what's in your affidavit or is the  
17 description of what you did in your affidavit a  
18 complete description of what you did at the time  
19 based on your notes?

20          A.    I don't think it's either.  I think the  
21 time record is a formalized and complete, finished  
22 product of the notes I was generating about my time.  
23 My written notes would not have contained more  
24 detail than the time record I submitted along with

1 my affidavit.

2 Q. Fair enough.

3 A. Neither does the time record that I  
4 submitted with my affidavit contain any inaccuracies  
5 or fail to -- well, I'll wait until you ask a  
6 question. But the answer to your question is, the  
7 one you just asked was the notes I prepared would  
8 have simply been something that I was using to  
9 complete the time record that I attached to the  
10 affidavit and would not have contained more detail.

11 Q. Fair enough. So if we look to your  
12 affidavit, we can look at the descriptors in the  
13 affidavit and be confident that those are the best  
14 descriptions that you have generated with respect to  
15 the time you spent in this case, is that a fair  
16 statement?

17 A. Best written description probably.

18 Q. Of course, you might have a recollection  
19 reviewing it?

20 A. Sure.

21 Q. Fair enough I mean?

22 A. If you showed it to me.

23 Q. I understand that as well. Okay. Let's  
24 talk a little bit about your background. We have a



1 CV for you here. I'm mark to mark my copy of it.  
2 I'm going to mark it as Exhibit 2 for anybody  
3 keeping score. Is that your CV, resume, whatever  
4 you want to call it?

5 A. This is a copy of a CV that was current  
6 at one time. It's not current now but it is, it is  
7 a copy of one that was current at one time.

8 MR. O'NEILL: You have a copy in the file.

9 MR. JAWGIEL: Yeah, I have it here.

10 Q. What about it today needs to be  
11 updated in order to make it accurate and current?

12 A. Well, I suppose it would depend on the  
13 purpose of the CV. I mean this doesn't describe  
14 much of the work that I did at the job I had before  
15 I joined the Attorney General's Office, and it  
16 certainly doesn't describe anything that I've done  
17 since I left the Office.

18 Q. You were admitted to the Illinois Bar in  
19 1991; is that correct?

20 A. Correct. November of '91 I was sworn in.

21 Q. All right. Your first position as an  
22 attorney after you were admitted to the Bar was  
23 where?

24 A. It was with a firm whose name changed a

1 few times over the period of time I was with that  
2 firm, associated with that firm. The name of it is,  
3 that I used on this CV was the Law Office of J.  
4 Patrick Donovan. He was one of the partners who  
5 owned the firm throughout the firm's existence, and  
6 he was the sole owner at the time the firm closed.

7 Q. What type of work were you involved in  
8 when you were with Mr. Donovan's firm?

9 A. It was a variety of work areas that I was  
10 involved in. Mr. Donovan did a significant amount  
11 of tort insurance defense work, all with some kind  
12 of aviation theme to it. It could be a slip and  
13 fall in an airport to a wrongful death case stemming  
14 from a helicopter crash. He was also at one time a  
15 hearing officer for the Pollution Control Board at  
16 the time when the Pollution Control Board contracted  
17 that work out. I did assist him in one or two  
18 matters in his function as a hearing officer for the  
19 Board.

20 Q. We understand what Mr. Donovan did. What  
21 did you do when you worked for Mr. Donovan's law  
22 firm other than what you talked about, assisting him  
23 in the Board matters?

24 A. Well, in the aviation tort related

1 matters I would do anything from answer written  
2 discovery to depose witnesses, prepare witnesses for  
3 deposition, motion practice. I did a significant  
4 amount of research and writing.

5 Q. Did you keep time sheets during that  
6 period of time?

7 A. I did.

8 Q. What insurance providers were the  
9 individuals whom you worked for through  
10 Mr. Donovan's office?

11 A. There were a number of them, and I can't,  
12 I'd be guessing at their names right now. I want to  
13 qualify the statement I made before. We did not  
14 keep time sheets for the work for the Pollution  
15 Control Board since that was contract work and not  
16 done on an hourly basis.

17 Q. Fair enough. The work that you did on  
18 aviation aspects with Mr. Donovan's office would  
19 have been on an hourly basis?

20 A. It was.

21 Q. Were you ever given the ABA guidelines in  
22 billing?

23 A. I can't recall if Mr. Donovan ever showed  
24 those to me or if that was part of my training at

1 the firm. I do know that he did conduct training on  
2 billing or his staff did so that I was billing in  
3 the manner that the firm required.

4 Q. Fair enough. Are you aware of the ABA  
5 guidelines for billing?

6 MR. PARTEE: I would object to relevance of  
7 the ABA guidelines.

8 THE WITNESS: A. I would not be surprised if  
9 they had some. I don't recall ever seeing them  
10 before in my 16 years of practice.

11 MR. JAWGIEL: Q. Are you aware of any  
12 guidelines regarding billing practices promulgated  
13 by any organization or insurance company or anybody  
14 else?

15 MR. PARTEE: Objection, relevance.

16 THE WITNESS: A. I would -- I think there are  
17 ethical obligations that are set forth in the rules  
18 of ethics, but other than that I, I'm not familiar  
19 with or can't recall working with any other  
20 guidelines promulgated by any other entity.

21 MR. JAWGIEL: Q. So it would be fair to say  
22 that during your time that you were with the  
23 Attorney General's Office the Attorney General did  
24 not have a set of guidelines with respect to billing

1 and reporting bills; is that correct?

2 A. Billing whom?

3 Q. Well, keeping track of the time in a  
4 billing statement to support an affidavit for a  
5 petition for attorney's fees. Did the Attorney  
6 General's Office have any guidelines regarding what  
7 you should or shouldn't put into a billing statement  
8 to record the amount of time that you spent on a  
9 case that you were going to petition for attorney's  
10 fees, of course, if successful?

11 A. It's been some time since I looked at the  
12 Office's policy and procedure manual. There may be  
13 something set forth in there. I can't recall.

14 What I do remember is personal to my  
15 effort, and that's really the only person I can  
16 speak on behalf of. I just made sure my affidavit  
17 was factual and accurate. It's a conservative  
18 estimate. My recollection is anywhere between half  
19 or less than half of my time actually showed up in  
20 that affidavit. My time, by my time I mean the time  
21 I spent on this case.

22 Q. What do you base that on?

23 A. Well, I remember when I was putting the  
24 affidavit together that I was conservative in the

1 amount of time that I listed and I did that  
2 consciously.

3 Q. Why?

4 A. Because I wanted a conservative statement  
5 of my time in the affidavit.

6 Q. How did you actually keep track of the  
7 time you spent on any given task that's in your  
8 affidavit?

9 A. How did I keep track?

10 Q. Right.

11 A. Well, I think as I mentioned before  
12 earlier in this deposition, I kept written notes at  
13 some point keeping track of the time I spent going  
14 forward and also calculating the time that I spent  
15 before that point on this case.

16 Q. So would it be fair to say that when you  
17 made your notes regarding the amount of time that  
18 you spent they weren't necessarily contemporaneous  
19 to the event that you or the task that you had  
20 performed?

21 A. No, some were.

22 Q. Some were; some weren't?

23 A. Some as I said were calculations of  
24 historical time that I also said were conservative

1 calculations.

2 Q. Well, how much time was there between the  
3 time that you gave the historical accounting and the  
4 actual event or task?

5 A. You'd have to show me something that  
6 points out the dates.

7 Q. Sure. We have that. I'm going to show  
8 you what I've marked as Exhibit Number 3, and this  
9 is a document notarized September 16th, 2004 and I  
10 believe to be signed by you. We'll ask you to  
11 confirm that.

12 A. That does appear to be my signature on  
13 it, yes.

14 Q. This is one of the affidavits that you  
15 submitted in the case; is that correct?

16 A. One of the affidavits?

17 Q. That is correct.

18 A. It is an affidavit that I signed, and I  
19 believe it was submitted in the case.

20 Q. Now, you see on the second page, it's a  
21 two-page exhibit, you see on the second page there's  
22 dates, I believe a list of tasks and then a time  
23 entry?

24 A. Yes, sir.

1 Q. Which one or which of those were done  
2 historically?

3 MR. PARTEE: I would object to the form of the  
4 question on vagueness grounds.

5 THE WITNESS: A. Well, my best recollection  
6 is that after the trial was done and we began to  
7 prepare the written closing argument is when I  
8 started keeping time, keeping track of the time that  
9 I was spending in the office. I certainly kept  
10 track of the time that I spent traveling to  
11 destinations to prepare witnesses and then however  
12 long it took to get back home from there, the time I  
13 spent at trial, the time after the hearing, the day  
14 of the hearing that I spent preparing back at the  
15 hotel room. So I would guess, my best guess is that  
16 right when we started traveling to prepare witnesses  
17 and doing the trial work and then later when we were  
18 preparing the closing argument when I was, at the  
19 start of that process is when I began keeping track  
20 of my time that I was spending on that. Then at the  
21 same time I would have begun the process of  
22 calculating the time that I spent prior to that.

23 MR. JAWGIEL: Q. Now what date would you  
24 believe that you started keeping contemporaneous



1 notes with respect to the tasks you were performing  
2 in this case?

3 A. Well, like I said, it's my best  
4 recollection that it would have been sometime around  
5 October 17th or October 22nd, sometime in there.

6 Q. So it would be fair to say before October  
7 17th certainly those entries were done on a  
8 historical basis based on your memory, is that a  
9 fair statement?

10 A. Well, I mean memory, perhaps reviewing  
11 entries on the computer system we used for tracking  
12 time or at least arranging meetings, scheduling  
13 things, reviewing materials that I had put together  
14 in connection with the trial, so it wasn't just  
15 sitting at my desk and closing my eyes and  
16 meditating on how much time I spent on different  
17 tasks. It was looking at what was already in the  
18 file, what I had prepared and preparing a  
19 conservative estimate about how much time I spent on  
20 each.

21 Q. Let me ask you this question: You went  
22 back into the file to make the entries before  
23 October 17th, 2003 so you would know the dates that  
24 you were at least involved in the file and to give

1 yourself what you considered to be a value of the  
2 amount of time you spent?

3 A. Value?

4 Q. Right.

5 A. Time value, that's what you mean?

6 Q. Correct.

7 A. Well, maybe some context is helpful here.

8 I mean I was asked to, if I was available to help  
9 out on this trial right around the October 3rd date  
10 which would be about four weeks before the actual,  
11 less than four weeks before the actual trial  
12 started, and I was asked to assist because  
13 Mr. Sternstein had been disqualified from the case  
14 by the Board. That's a very short period of time.

15 Q. Well, my point is -- and I don't mean to  
16 interrupt you. I understand how you got involved in  
17 the case. I do understand how you basically came in  
18 at the eleventh hour and I understand that. My  
19 point to you and my question to you really is is  
20 that before October 17th, 2003 you did not make any  
21 notes with respect to the actual time spent in the  
22 tasks from October 3rd, 2003 through and including  
23 the tasks of October 16th, 2003 --

24 A. Well --

1 Q. -- is that a fair statement?

2 A. My answer to that question earlier was  
3 that's my best recollection. That's how I remember  
4 these events lining up and what I did going back  
5 three years now.

6 Q. So it would be fair to say that when you  
7 went back to review the file to determine the  
8 entries for October 3rd, 2003 through October 16th,  
9 2003 you did not review notes that you took  
10 regarding how much time you actually spent for those  
11 tasks?

12 MR. PARTEE: Objection, asked and answered.

13 THE WITNESS: A. As I said, I looked at what  
14 was in the file, things I had produced or generated,  
15 so I think that's my answer to the question. I did  
16 not look at a time sheet, no, that I kept.

17 MR. JAWGIEL: Q. With respect to October 3rd,  
18 2003, what pleadings did you review?

19 A. Say that again, please.

20 Q. Sure. With respect to October 3rd, 2003,  
21 it says pleading review, what pleadings did you  
22 review?

23 A. Again, this would be my best  
24 recollection, but since I was assigned to this case

1 in my first involvement with this case I would have  
2 started with the complaint and answer and then the  
3 other motions filed in the case as a starting point  
4 to get familiar with the facts and legal issues.

5 Q. How much time did that take?

6 A. My affidavit says 2.5 hours.

7 Q. What did you do for trial preparation  
8 other than review the pleadings?

9 A. Well, I would have considered anything I  
10 did on that file from when I started until  
11 conclusion to be trial preparation up until the  
12 preparation of the closing statement.

13 Q. Fair enough.

14 A. So I --

15 Q. Other than reviewing the pleadings what  
16 else did you do on October 3rd, 2003 in order to  
17 prepare for the trial?

18 A. I can't recall specifically, but I do  
19 remember it probably would have taken a half a day  
20 to go through all the pleadings that were on that  
21 old file at that time. I would not be surprised if  
22 the only thing I did was review the pleadings.  
23 There could have been more. I don't remember.

24 Q. Why wouldn't you just review the most

1 recent complaint and answer and any motions  
2 pertaining to it?

3 MR. PARTEE: Objection, argumentative.

4 THE WITNESS: A. Are you telling me there are  
5 amended complaints and amended answers?

6 MR. JAWGIEL: Q. I don't know.

7 A. I don't recall.

8 Q. So you don't know what was in the file as  
9 you sit here today that you reviewed for two and a  
10 half hours on October 3rd, 2003?

11 MR. PARTEE: Objection, argumentative.

12 THE WITNESS: A. That's not accurate.

13 I'm sorry.

14 MR. PARTEE: That's okay.

15 THE WITNESS: A. That's not accurate. The  
16 record is what it is. I answered the question.

17 MR. JAWGIEL: Q. Okay. Can you tell me  
18 specifically what motions you reviewed on  
19 October 3rd, 2003?

20 A. As I sit here today, I cannot.

21 Q. Can you tell me what you reviewed as far  
22 as pleadings other than the answer and the  
23 complaint?

24 A. As I sit here today, I cannot, but it

1 would be a fairly academic exercise to go back and  
2 recalculate that since there would be file dates on  
3 anything that was filed, and I did review the entire  
4 file before I did the trial.

5 Q. On October 6, 2003 you have document  
6 review. What did you review specifically on  
7 October 6, 2003 that took four hours?

8 A. I --

9 MR. PARTEE: Let me ask some clarification,  
10 and perhaps this is rhetorical, but you're asking a  
11 witness what specific documents he reviewed more  
12 than three years ago?

13 MR. JAWGIEL: Yes.

14 MR. PARTEE: Okay.

15 MR. JAWGIEL: That's the reason why you keep  
16 accurate records when you bill people.

17 Go ahead.

18 THE WITNESS: A. I generally use this term to  
19 describe materials that have been produced by the  
20 opposing party in litigation, everything your  
21 clients would have produced in the case, everything  
22 that Illinois EPA would have generated in the case,  
23 both the privileged and the non-privileged materials  
24 we would consider using as exhibits at trial, so

1 that term document would include that. I use the  
2 term document to draw a distinction between formal  
3 pleading filed with the Pollution Control Board.

4 MR. JAWGIEL: Q. Do you remember what  
5 documents you reviewed on October 6, 2003?

6 A. Specifically no, but I can describe what  
7 they would have been. They would have been  
8 everything your client submitted to the Illinois EPA  
9 that was included in Illinois EPA's file. It would  
10 have been everything your client tendered to the  
11 attorneys at the Attorney General's Office in  
12 connection with the written discovery from that  
13 case. It would have been every document EPA  
14 included in the enforcement file that came up from  
15 Springfield, and it would have been everything we  
16 would have used as an exhibit at trial.

17 Q. It says here trial preparation next to  
18 that. Did you do anything in addition to what you  
19 just described in order to do trial preparation?

20 A. No. At that time that was plenty.

21 Q. So trial preparation basically just is a  
22 general category of why you're reviewing the  
23 documents; is that correct?

24 A. My sense is I included the trial

1 preparation statement to indicate that I knew that  
2 the trial was coming. I knew what types of things I  
3 typically do to get ready for a trial, and this was  
4 not just a case of reviewing one motion to get ready  
5 for the next status call.

6 Q. Now, with respect to the entries from  
7 October 3rd, 2003 through October 16th, 2003, when  
8 did you generate those entries?

9 A. You mean the entries on my affidavit?

10 Q. Correct.

11 A. I've already answered that question.

12 Q. Indulge me.

13 MR. PARTEE: I'll object that it was asked and  
14 answered.

15 THE WITNESS: A. The record is what it is.

16 MR. JAWGIEL: Q. Sometime you said after the  
17 hearing; is that correct?

18 A. No, that's not correct. It's not what I  
19 said, and the record is what it is.

20 Q. Okay. So you're not going to answer the  
21 question?

22 A. I've answered the question a number of  
23 times already.

24 Q. All right.



1           A.    I think I'm the only one that's not  
2 getting paid to be here today.

3           Q.    Do you know the specific date on which  
4 you generated those entries?

5           MR. PARTEE:  Objection, asked and answered.

6           THE WITNESS:  A.  The specific date, again,  
7 yes, that was asked and answered.

8           MR. JAWGIEL:  A.  Do you know the specific  
9 date, sir?

10          MR. PARTEE:  Same objection.

11          THE WITNESS:  A.  Mike, I've answered the  
12 question.

13          MR. JAWGIEL:  Q.  You don't, is that a fair  
14 statement?

15          MR. PARTEE:  Well, I think you're  
16 mischaracterizing the testimony.

17          MR. JAWGIEL:  Q.  When did you generate the  
18 date for October 3rd, 2003, that entry, when did you  
19 generate that entry?

20          MR. PARTEE:  Objection, asked and answered.

21          THE WITNESS:  A.  My answer to this question  
22 would not be any different than the other two or  
23 three answers that I gave to the specific question  
24 earlier in this deposition.

1 MR. JAWGIEL: Q. And what is the answer to  
2 this specific question I'm asking you because that  
3 hasn't been asked?

4 A. Well, in an effort to move this  
5 deposition along, I'll repeat what I said earlier.  
6 At some point I began keeping track of my time as I  
7 spent time going forward, and I also did a  
8 calculation of the time that I had spent  
9 historically. I remember starting that process  
10 right around the time we were going to begin to  
11 travel to prepare witnesses for the trial and to go  
12 to the trial ourselves, and it would have been  
13 sometime around that point when I started keeping  
14 track of the time going forward and calculating the  
15 time I spent up to that point.

16 Q. Let me ask you this question then, sir:  
17 When you first became involved in this case right  
18 around October 3rd, 2003, were you aware that there  
19 was, a potential petition for attorney's fees may be  
20 submitted by the State in your experience?

21 A. Yes.

22 Q. So you knew from the get-go when you got  
23 involved in this case that somewhere down the road  
24 there was the potential that you were going to have

1 to record your time and present it in an affidavit?

2 A. It was possible. It depended upon the  
3 proof that we would have been able to get into the  
4 record at the hearing.

5 Q. Why didn't you record your time right  
6 from the time you started with this case as opposed  
7 to approximately two weeks later?

8 MR. PARTEE: Objection, asked and answered.

9 THE WITNESS: A. Why?

10 MR. JAWGIEL: Q. Correct.

11 A. Well, there are a variety of reasons.  
12 Number one, the case could have settled. Number  
13 two, we could have put on a case where the proof  
14 wouldn't have shown that the State was entitled to  
15 attorney's fees under the statute. Such was not the  
16 case as it turns out. I had enough to do to  
17 familiarize myself with the case to be as helpful as  
18 I could to the first chair on the case to get ready  
19 for trial in addition to juggling all the other  
20 cases that I had at the time in my managerial  
21 responsibilities, so in the initial process I think  
22 those would have been the reasons why I didn't spend  
23 the time keeping track of my time, every minute I  
24 spent on this case.

1           As I said, at the end of the day, you  
2 know, there's anywhere from half to a third of my  
3 time that I actually spent on this matter that  
4 showed up in this affidavit.

5           Q.     When you reviewed the pleadings on  
6 October 3rd, 2003, particularly the complaint, did  
7 it pray for attorney's fees?

8           A.     You'd have to show me a copy of the  
9 complaint in this case specifically but I remember  
10 that as a --

11          MR. O'NEILL:   The complaint or the -- I've got  
12 it.

13          MR. JAWGIEL:   No, I don't need to pull it  
14 down. We'll pull it out later.

15          THE WITNESS:   A.   It was a standard operating  
16 procedure for the Office to include that prayer in  
17 every complaint that was filed --

18          MR. JAWGIEL:   Q.   Fair enough.

19          A.     -- during the time I was there.

20          Q.     What's your understanding of how the  
21 ethical rules guide the billing practices of  
22 attorneys?

23          MR. PARTEE:   I'm going to object on vagueness  
24 grounds as to which ethical rules.

1           MR. JAWGIEL: Q. You said that the code of  
2 ethics applies to the billing. That's your only  
3 knowledge of any sort of billing practices. I want  
4 to know what's your understanding of how the ethical  
5 code applies to billing practices?

6           A. Well, I understand that there are many  
7 ethical rules that relate to money passing from a  
8 client to an attorney and from an attorney to a  
9 client and trust funds and things like that. I have  
10 never really been in a position of authority at a  
11 private firm to monitor those kinds of things on  
12 behalf of that firm, so what my approach simply was  
13 both at the private firm I was at and in this matter  
14 to be as factual, to be factual about the time I  
15 spent on the case and what I was doing. I think if  
16 I did that that would satisfy any ethical obligation  
17 that would apply to the situation. That's what I  
18 did.

19           Q. Take a look at your entry for October  
20 7th, 2003. It says attend hearing and then trial  
21 preparation?

22           A. Um-hum.

23           Q. What hearing did you attend?

24           A. Well, as I look through this, the rest of

1 the affidavit, I don't see any other reference to  
2 telephone conference statuses that are conducted  
3 with Board hearing officers on Board cases. I do  
4 remember I was present for one, possibly two or  
5 three on this case before it went to trial, and  
6 that's what that attend hearing reference would  
7 apply to. It was --

8 Q. Go ahead. I'm sorry.

9 A. -- a telephone conference where we  
10 assembled all the trial attorneys on this case in a  
11 room, we spoke to the hearing officer, someone on  
12 behalf of your clients, in fact, I think you were on  
13 the phone as well at the time.

14 Q. Might have been. You would have only  
15 billed the amount of time of the hearing in  
16 relationship to your involvement in that telephone  
17 conference?

18 A. Well, the hearing itself was not a long  
19 hearing.

20 Q. How long was it?

21 A. It was a matter of minutes, but the rest  
22 of that day was as I was doing the days before --  
23 getting familiar with the file, getting ready to put  
24 on witnesses, learning the issues of the case.

1 Q. We see that phrase again trial  
2 preparation. Can you tell me what you did for trial  
3 preparation outside of let's say the half an hour  
4 for the hearing?

5 A. Specifically I can't, but generally I can  
6 describe that it would have been more of the same of  
7 the first two days -- reviewing pertinent pleadings,  
8 going through the written discovery, going through  
9 the deposition transcripts if there were any.

10 Q. Well, did you complete your review of the  
11 documents on October 6, 2003?

12 A. Probably not because I remember --

13 Q. I keep getting probably not, I don't  
14 know, I think so. But do you specifically have, do  
15 you have a recollection whether or not you did? I'm  
16 not asking you for probabilities. I'm asking what  
17 you remember. Do you remember completing your  
18 review of the file on October 6th, 2003?

19 MR. PARTEE: I think that's been asked and  
20 answered.

21 THE WITNESS: A. I remember that I was not  
22 complete in my preparation to put on the hearing on  
23 October 30th and 31st. No, I did not complete my  
24 trial preparation on that date.

1 MR. JAWGIEL: Q. So on October 7th, 2003 what  
2 did you do for trial preparation?

3 A. As I said before, more of the same that I  
4 did on the 3rd and the 6th. There were pretrial  
5 motions I believe that were filed in this case. I  
6 might have been responsible for those.

7 Q. Did you draft them at that time?

8 A. You'd have to show me them.

9 Q. The date that they were drafted, that  
10 would be indicated where on the document?

11 A. Perhaps. I would have to see the  
12 document.

13 Q. Fair enough. So you don't know as you  
14 sit here today specifically what you did for trial  
15 preparation on October 7th, 2003?

16 A. Like I said, specifically, no, but  
17 generally yes.

18 Q. Did you review any of the pleadings again  
19 on October 7th, 2003?

20 A. Well, Mike, I don't know how it is for  
21 you to get ready for trial, but when I am new to a  
22 case and the case is fairly old I might have to look  
23 at something once, twice, maybe three times before  
24 all the dots start lining up for me. It's very



1 possible I went back to review some of the pleadings  
2 I did on the first day back on October 3rd. On  
3 October 7th I went back and reviewed those that were  
4 not reviewed on October 3rd. I was reviewing things  
5 that I looked at from the first day on all the way  
6 through the trial all the way through the completion  
7 of the written argument, closing argument.

8 Q. Now, during the time you were doing this  
9 trial preparation up to the hearing date on October  
10 30th or so were you coordinating your efforts with  
11 Mr. Cohen?

12 A. Absolutely.

13 Q. What portion of the trial were you  
14 responsible for?

15 A. If you showed me the transcript I could  
16 tell you which witnesses I was responsible for  
17 putting on, cross-examining. That would give me  
18 some indication of what portion of the closing  
19 argument I was assigned to draft. I would need to  
20 see things from the file.

21 Q. So if we look back at the hearing  
22 transcript, the witnesses that you put on or  
23 cross-examined and the participation that you had at  
24 the hearing would be complete with respect to your

1 involvement in what you needed to do in order to  
2 prepare for the hearing?

3 A. What do you mean by complete?

4 Q. Well, we look back to it and we see,  
5 okay, Mr. Murphy put on a witness. You obviously  
6 needed to prepare to put on that particular witness?

7 A. Yes.

8 Q. You maybe were involved in some of the  
9 closing statements that were given at the conclusion  
10 of the hearing or some of the statements given at  
11 the conclusion of the hearing?

12 A. Was there oral closing argument? I don't  
13 think there was. I think there was just written.  
14 That's my recollection.

15 Q. There was written closing arguments given  
16 at the end. There was also statements made at the  
17 end as far as -- let me ask you this question: Were  
18 you involved in the trial preparation for any of the  
19 motions in limine in this case?

20 A. You'd have to show me them, but I would  
21 not be surprised if I was.

22 Q. Were you involved in any of the other  
23 hearing motions that were presented?

24 A. Same answer. I can't recall

1 specifically. I don't have a recollection  
2 specifically, but if you showed me them that might  
3 refresh my recollection and I might remember.

4 Q. The documents that you were involved in  
5 generating for the hearing, would they have your  
6 signatures on it?

7 A. They could.

8 Q. And they could not?

9 A. Well, I was not the first chair of this  
10 case. I've done a number of trials. I did a number  
11 of trials while I was at the Attorney General's  
12 Office, and in most instances I was the second chair  
13 helping out the first chair. I just defer to the  
14 first chair about how they wanted to put the case  
15 on, so if they wanted a certain task done I was  
16 happy to do that task. I'd show it to them so they  
17 were comfortable with what was going to get filed or  
18 done at the hearing. If they wanted to sign their  
19 name to it or add things to it, I was fine with  
20 that.

21 Q. So Mr. Cohen was lead counsel in this  
22 particular hearing?

23 A. You know, he was after I got on it. I  
24 can't recall whether he was before Mr. Sternstein

1 was disqualified.

2 Q. Fair enough. From the time you were  
3 involved in the case Mr. Cohen was the lead counsel?

4 A. He was simply because, if he wasn't  
5 already he was simply because he had spent more time  
6 on the file than I had.

7 Q. Did he have more experience, trial  
8 experience than you at that time?

9 A. At that time, I don't know how much trial  
10 experience Mr. Cohen has had. My sense was that,  
11 yes, he did have more actual trial experience where  
12 you're in front of a jury or a judge in a bench  
13 trial and you're actually putting on a case. My  
14 sense is he did more of that than I did before we  
15 did this.

16 Q. Did he have more hearing experience of  
17 this nature than you?

18 A. What do you mean by hearing?

19 Q. Going to one of the EPA hearings. Do you  
20 consider this to be a trial?

21 A. I considered it to be a final hearing  
22 before the Pollution Control Board.

23 Q. Did he have more experience on a final  
24 hearing before the Pollution Control Board than you

1 at the time the hearing was put on in this case?

2 A. You'd have to ask him. I don't know.

3 Q. Okay.

4 A. I could tell you how much I had. I can't  
5 tell you how much he did.

6 Q. How much did you have up to the date that  
7 the hearing went forth?

8 A. Okay. Let me sit here and see if I can  
9 remember how many I did. Do you have a pen and a  
10 paper so I can keep notes?

11 Q. Sure.

12 A. I'm 40 years old and the mind isn't what  
13 it used to be. It helps.

14 Thank you.

15 (Brief pause.)

16 I'm coming up with five either trials or  
17 final hearings before the Pollution Control Board.  
18 There could have been one more. Of the five that  
19 I've, that I'm recollecting, Skokie Valley was the  
20 only Pollution Control Board final hearing.

21 Q. You had jury trials before Skokie Valley?

22 A. I second chaired one jury trial at the  
23 job I had before I joined the Attorney General's  
24 Office.

1 Q. Any bench trial experience?

2 A. I didn't have any bench, oh, well, I  
3 didn't have any bench trial experience until I  
4 joined the Office. I just mentioned how many I did  
5 there.

6 Q. Was it within the count?

7 A. I'm sorry, within the?

8 Q. Within the count you gave?

9 A. The five I mentioned?

10 Q. Yes.

11 A. Like I said, it's at least five, perhaps  
12 one more I'm leaving out.

13 Q. Five or six?

14 A. Right.

15 Q. Those bench trials would be within those  
16 five or six that you indicated?

17 A. Yes.

18 Q. Fair enough. On October 8th, 2003 you  
19 have trial preparation. Do you specifically  
20 remember what you did on that date?

21 A. Specifically no, but I just remember it  
22 was quite a considerable task to be handed, at least  
23 I thought so, maybe other attorneys wouldn't think  
24 so, to be handed a file a month before trial with

1 the amount of pleadings and discovery that I  
2 recollect were done on that case to get ready for  
3 trial and at the same time carry all the other cases  
4 that I had scheduled throughout this time period so  
5 that nothing, you know, the Office didn't come up  
6 short on any of those during that time period.

7 Q. How many other cases were you handling  
8 other than the Skokie Valley case during this time  
9 period reflected on the affidavit?

10 A. Well, I had managerial duties to some  
11 extent during this time period, and I also had a  
12 case load, an active case load that was as I recall  
13 in the neighborhood of 30 to 40 cases, somewhere in  
14 there.

15 Q. What were your managerial duties at the  
16 time?

17 A. Well, as the CV says, I assisted the  
18 bureau chief in managing that bureau in her absence.  
19 I also had to execute certain tasks she gave me when  
20 she was present. Any of the attorneys that had  
21 issues on their cases would come to me for advice.  
22 Sometimes I could help them. Sometimes I could not.  
23 Sometimes the issues were novel to me. It was  
24 somewhat of a routine thing to be assigned to a

1 matter that was somewhat pressing like this to help  
2 out the people that are in it because they needed  
3 help. There weren't many trials assigned like that,  
4 but there were contested hearings that I would go  
5 over with the front line assistant to help them out  
6 at that hearing.

7 Q. Were you given a title for these  
8 managerial tasks that you did?

9 A. Yeah, it's reflected on the CV, assistant  
10 bureau chief.

11 Q. Then were you supervisor of Mr. Cohen at  
12 the time or his superior?

13 A. I suppose on the org chart that's the way  
14 it would reflect. I mean he was an Assistant AG at  
15 the time. Subsequent -- well, yes, he was an  
16 Assistant AG at the time.

17 Q. I think he's become a department head or  
18 something along those lines?

19 A. He's a bureau chief himself now, yes,  
20 that's what I've heard.

21 Q. Have you talked to Mr. Cohen at all about  
22 your testimony here today?

23 A. No.

24 Q. Have you talked to him at all about the



1 attorney's fee issue in this case?

2 MR. PARTEE: When?

3 MR. JAWGIEL: Any point in time.

4 THE WITNESS: A. I did when I was assisting  
5 in the preparation of the closing statement and the  
6 preparation of my affidavit and time record.

7 MR. JAWGIEL: Q. Did you coordinate your time  
8 records with his time records?

9 A. What do you mean by coordinate?

10 Q. Make sure that you weren't overlapping on  
11 tasks?

12 A. What do you mean by overlapping?

13 Q. Well, you were preparing for the same  
14 witness that he was preparing for --

15 A. Oh.

16 Q. -- or reviewing the same motion to do a  
17 response that he was reviewing to do a response or  
18 anything along those lines?

19 A. My recollection was Mitch was very good  
20 about discussing trial assignments in a way that was  
21 productive and efficient and then executing on those  
22 discussions, and I tried to stay within that  
23 framework too because I did not want to do double  
24 work. I had enough to do as it was.

1 Q. Fair enough. Did he lay that out for you  
2 in some sort of written form?

3 A. Written form, no, I don't think so. I  
4 think we would have taken notes because there was a  
5 lot to do and a lot of assignments back and forth.  
6 I don't think he came up with a plan and asked me to  
7 review it and sign off on it if that's what you  
8 mean.

9 Q. I didn't ask you to sign off on it. But  
10 did he give you any sort of written document that  
11 would indicate what your responsibilities were with  
12 respect to preparing for this hearing, the final  
13 hearing in the Skokie Valley case?

14 A. I don't recall specifically.

15 Q. So was it your recollection as you sit  
16 here today that Mr. Cohen orally told you what you  
17 were going to be doing?

18 A. My recollection is he and I would have  
19 discussed it. We would have discussed what each  
20 witness would testify about. He would have had  
21 knowledge about the subject matter of their  
22 testimony. He would have probably suggested I take  
23 one witness as opposed to another or something like  
24 that to accommodate the fact that I was very new to

1 the case but still be able to get stuff done to help  
2 out to get the case done. That's my recollection  
3 about how it would have happened. Since he knew the  
4 case better my recollection is he would have  
5 proposed something, and I just would have, it would  
6 have been an iterative process back and forth.

7 Q. Did you have an understanding whether or  
8 not you had any more expertise in any area that  
9 Mr. Cohen lacked or you had more trial experience  
10 than Mr. Cohen or anything along those lines from  
11 your understanding of why you were brought in on  
12 this case?

13 A. Well, it wasn't Mr. Cohen's decision to  
14 put me in on the case.

15 Q. Whose decision was it?

16 A. My recollection was it was my bureau  
17 chief's decision.

18 Q. Who was that?

19 A. Rosemarie Cazeau.

20 Q. Did she explain to you why she wanted you  
21 on this case?

22 A. No. My recollection was they asked me to  
23 come down to her office. They explained that Joel  
24 had been disqualified from the case by the Board,

1 and they asked me if I was available to help out on  
2 this trial, and I had just gotten done with another  
3 one in September that year, and I said sure I'd help  
4 out. I like doing trials.

5 Q. Did you keep time sheets on the other 30  
6 or 40 cases you had at the time?

7 MR. PARTEE: Objection, relevance.

8 THE WITNESS: A. What do you mean by time  
9 sheets?

10 MR. JAWGIEL: Q. Sheets recording the time  
11 spent on various tasks in those cases.

12 A. Some of them, yes.

13 Q. Why no on the others?

14 A. They would settle. Maybe the violations  
15 didn't support the request for relief.

16 Q. With respect to a case settling, you  
17 wouldn't know that when you started the case, fair  
18 enough?

19 A. Correct.

20 Q. So you would then have to go back if the  
21 case didn't settle and recreate what you did; is  
22 that correct?

23 A. Well, I think I would have -- I'm sorry.  
24 Can you repeat the question?

1 (Requested portion of the  
2 record read.)

3 If we're talking about in terms where  
4 there was a finding in liability or there was a  
5 judgment in favor of the State against the defendant  
6 or respondent and the trier of fact had determined  
7 that the State was entitled to attorney's fees, then  
8 I would have done something similar to what I did  
9 here, yes.

10 MR. JAWGIEL: Q. I think we talked about  
11 October 8, 2003. I'm going to go to October 14th,  
12 2003. It says trial preparation, resolve discovery  
13 issues. Do you remember specifically what you did  
14 for trial preparation on October 14th, 2003?

15 A. Not as I sit here today. If I saw some  
16 documents, that might refresh my recollection.

17 Q. Fair enough. Do you remember  
18 specifically what you did to resolve discovery  
19 issues on October 14th, 2003?

20 A. Not specifically. I remember vaguely  
21 there were some that needed to be resolved. I  
22 couldn't tell you right as I sit here right now  
23 without seeing the file what they were.

24 Q. On October 16th, 2003 you have review

1 Board order. Is that the order that you brought  
2 here today?

3 A. I don't think it is, no.

4 Q. A different order?

5 A. Yes, because that one appears to be dated  
6 September 2nd, 2004.

7 Q. How long did it take you to review the  
8 Board order?

9 A. I'm not sure what Board order it was, but  
10 my recollection was it wouldn't have been more than  
11 12 or 15 pages, so it wouldn't have taken me more  
12 than maybe half an hour, 45 minutes to do that.

13 Q. When you review a Board order, what do  
14 you do, basically read it?

15 A. Yes.

16 Q. Anything else that would fall under the  
17 category of review Board order?

18 A. It depends on what the order would say.  
19 I mean if it was an order that said something that  
20 might have affected how the final hearing went  
21 forward, then I might go back to it two, three, four  
22 times to make sure I had it right.

23 Q. So you'd have to read it two or three,  
24 four times?

1           A.    It also depends on how clearly it was  
2 written, how clearly it was written and what it  
3 might, what the different meanings in the Board  
4 order might be that we'd have to account for.

5           Q.    When you calculated your time with  
6 respect to reviewing the Board order, would you  
7 charge for each time you reviewed it?

8           A.    I don't think I did.  As I said before,  
9 this is a very modest representation of the time I  
10 spent on the file.

11          Q.    So in reviewing the Board order or  
12 reading the Board order and possibly rereading the  
13 Board order depending on the complexity and maybe  
14 some vagueness in the order, anything else you do in  
15 reviewing the Board order that falls under that  
16 category?

17          A.    As I said, I don't think I charged for  
18 rereading the order more than once.  The trial  
19 preparation, resolve discovery issues would have  
20 accounted for everything else I did that day.

21          Q.    Do you charge if you have to review the  
22 pleadings more than once after you've reviewed them?

23          A.    Do I charge?  I don't charge anybody.  I  
24 didn't charge anybody for the work.  We didn't

1 charge any client for the work that we did at the  
2 Attorney General's Office.

3 Q. Let me ask you this question: Do you  
4 record that as time spent to review the pleadings if  
5 you review them more than once?

6 A. Say that again, please.

7 Q. Sure. Did you record the time spent to  
8 review the pleadings more than once?

9 MR. PARTEE: I think you're assuming that he  
10 did that, and I think you may be misstating  
11 testimony.

12 MR. JAWGIEL: I'm not because he said later on  
13 that he reviewed the pleadings possibly and trial  
14 preparation again and that was an entry later in the  
15 list here somewhere on October 7th, 2003, as a  
16 matter of fact, actually on October 6th, 2003. Of  
17 course, the record that we've made today will  
18 reflect that.

19 Q. But my question to you is very  
20 simply: Do you record time that you spend in  
21 reviewing the pleadings more than once?

22 A. What I did was record the time I spent  
23 getting ready for the hearing, and if it meant  
24 reviewing something more than once to get ready for



1 that hearing I might do it. I don't think I would  
2 have reviewed a Board order more than once, but they  
3 tended to be generally fairly clearly written and  
4 addressed the issue squarely.

5 Q. How about the pleadings?

6 A. Well, I would have reviewed the pleadings  
7 more than once, yes.

8 Q. Did you record your time as time spent  
9 each time you reviewed the pleadings?

10 A. When you say record, what do you mean by  
11 that?

12 Q. Put it in your affidavit as time that you  
13 spent.

14 A. I think if you look at the balance of  
15 this affidavit and the entries I have there it would  
16 include whatever I did to prepare for the hearing  
17 but a modest representation of that, so if I  
18 reviewed the pleadings more than once to get ready  
19 for the hearing, I might have it included in here, I  
20 might not. There's some of my time I don't have  
21 included in this affidavit.

22 Q. How many hours did you bill on your other  
23 cases on October 3rd, 2003?

24 A. I have no idea as I sit here.

1 MR. PARTEE: I would object on relevance  
2 grounds too.

3 MR. JAWGIEL: Q. Do you have any idea how  
4 many hours you spent billing on your other cases  
5 from October 3rd, 2003 or any of the dates on this  
6 affidavit?

7 MR. PARTEE: Objection, relevance. We're only  
8 here to talk about Skokie Valley.

9 THE WITNESS: A. My affidavit doesn't reflect  
10 that. You haven't shown me anything that would  
11 refresh my recollection of what happened three years  
12 ago.

13 MR. JAWGIEL: Q. So when you spent time  
14 allotments of 7.5 hours and 9 1/2 hours, 14 hours,  
15 it would be fair to say you didn't bill any other  
16 cases, would that be a fair statement?

17 A. Probably. There might have been some  
18 other things I had to handle during that time. It  
19 was not uncommon for me to spend 13 hours at the  
20 office, 14 hours at the office sometimes when these  
21 cases were about to go to hearing.

22 Q. Let me ask you this question: At the  
23 Attorney General's Office did you have to check in  
24 when you came in for the day?

1           A.    At some point there was a requirement  
2   that we do that via computer.  I'm not sure when  
3   that started.

4           Q.    Do you remember in October of 2003 did  
5   you have to do that?

6           A.    I don't remember that.

7           Q.    Did you have a pass that you have to  
8   swipe across, electronic security in order to get  
9   into the office?

10          A.    I don't remember ever having something  
11   like that to get in where our offices were.

12          Q.    Did you have any sort of device or method  
13   of recording how much time you were actually in the  
14   office on any given day from October 3rd, 2003 until  
15   the last date here, September 16th, 2004?

16          A.    It's been three years but I vaguely  
17   remember there might have been a sign-in sheet where  
18   you did it manually.  It's three years now.  I can't  
19   remember.

20          Q.    You would sign in when you got into the  
21   office.  Would you sign out for breaks, like if you  
22   went to lunch or went out?

23          A.    I may have.

24          Q.    Were you supposed to is the question?

1           A.    I can't recall what the office policy was  
2 on that.

3           Q.    Were you required to sign out when you  
4 left for the day?

5           A.    I think that's what the expectation was  
6 on the part of our management, yes.  That's my  
7 recollection.  I could be wrong.

8           Q.    On October 16th, 2003 we have conference  
9 with Sternstein and I believe that to be Mr. Cohen  
10 just that the N was dropped off?

11          A.    Right.

12          Q.    How long did that conference last?

13          A.    It could have lasted a very long time  
14 because if you note from my previous entries I did,  
15 there aren't many references or any references to  
16 any conversations or meetings with Joel or Mitch,  
17 Joel Sternstein or Mitch Cohen, so my recollection  
18 is I jumped into the file as best I could.  I did  
19 not want to distract Mitch from his preparation  
20 until I had questions that I worked up on my own and  
21 I had acquired some kind of background knowledge of  
22 the file before I troubled him with his time to sit  
23 and explain things to me.  That conference could  
24 have took some time as they explained certain things

1 about the case that I could not have gotten to in  
2 the limited amount of preparation I had before that.

3 Q. Now at the point that you had this  
4 conference on October 16th, 2003 you knew  
5 Mr. Sternstein had been removed as the attorney from  
6 this case by the Board; is that correct?

7 A. I don't recall the date of that order. I  
8 don't recall what specifically the order said. I do  
9 know that he was disqualified by the Board at some  
10 point. I'm also not sure what else dropped off that  
11 entry besides the N in Cohen's last name.

12 Q. Are these entries more than one line?

13 A. I don't know if they are or not. What I  
14 do see is the N in Mr. Cohen's name is missing, and  
15 I'm wondering what else was, if there is anything.

16 Q. Up to that point certainly all the  
17 entries were as descriptive as you were with respect  
18 to your tasks; is that right, because there are no  
19 missing letters and there's certainly enough space  
20 to keep typing?

21 A. They appear to be, but I don't recall how  
22 this was put together as far as the mechanics went.

23 Q. Did you actually draft this --

24 A. I could have.

1 Q. -- on the computer?

2 A. Could have.

3 Q. Was there any reason why you couldn't  
4 give yourself more space if you wanted to add more  
5 on to the entry for October 16th, 2003?

6 A. I'm not sure looking at this what program  
7 either I used or whoever drafted this used to put  
8 this together, so I can't answer that question.

9 Q. Fair enough. On October 17th, 2003 it  
10 says file review. Now if we compare that to the  
11 entry for October 8th, 2003, there's no file review  
12 there, just trial preparation?

13 A. Right.

14 Q. Why would you have file review trial  
15 preparation for October 17th, 2003 but not for  
16 October 8th, 2003?

17 A. I don't recall specifically. It could  
18 mean that I was not working with the file at that  
19 point and I was working with transcripts of  
20 depositions and preparing testimony, Q and A, that  
21 type of thing.

22 Q. You don't consider the transcripts to be  
23 part of the file?

24 A. I don't consider myself to be the last

1 word of how to describe how someone gets, prepares  
2 for a trial and the terms I use necessarily as terms  
3 of art that apply to everybody.

4 Q. Well, let's figure out your definition of  
5 what's considered the file. What in your definition  
6 is contained in the file?

7 A. It would have been everything that came  
8 up from Illinois EPA. It would have been everything  
9 that was filed before the Pollution Control Board up  
10 to that point. It would have been all the discovery  
11 that was exchanged between the parties up to that  
12 point, anything that any of the attorneys or the  
13 assistants that were on the file before I started  
14 working on it had generated and put in the file.  
15 I'm trying to recollect if there was anything else  
16 but I think that covers the waterfront.

17 Q. Do dep transcripts fall into your  
18 definition of what's in a file?

19 A. It could.

20 Q. It could?

21 A. It could. It depends on, it depends on  
22 the meaning of the word I use at the time. I mean  
23 there's no --

24 Q. Well, let me ask you: At the time that

1 you wrote this entry on October 17th, 2003 file  
2 review, did the word file mean deposition  
3 transcripts?

4 A. It could have.

5 MR. PARTEE: That's been asked and answered.

6 MR. JAWGIEL: Q. You don't know?

7 A. I don't recall specifically.

8 Q. I see. Then let me go down to  
9 October 22, 2003. Strike that.

10 Let's go back up to October 17th, 2003.  
11 You believe this might be where you started to make  
12 contemporaneous notes with respect to what you did?

13 A. Well, the record is what it is at that  
14 point on that right now.

15 Q. On October 22, 2003 you have trial  
16 preparation?

17 A. Correct.

18 Q. What did you do for trial preparation  
19 specifically on that date?

20 A. I can't recall specifically. Generally I  
21 could tell you what my practice was, what I  
22 recollect somewhat vaguely what I did back then but  
23 specifically I can't recall.

24 Q. What I would like to know is what your



1 actual recollection is as you sit here today that  
2 you specifically did if you have any recollection.

3 A. My recollection is a general one, and I  
4 think it's, my recollection is, jives with what is  
5 here in the affidavit. I would have started with  
6 the pleadings. I would have started reviewing  
7 whatever else Illinois EPA sent up in referral. I  
8 would have moved from there to the motions, the  
9 written discovery that was exchanged between the  
10 parties. I would have moved from there to the  
11 deposition transcripts, probably throughout the  
12 process going back to certain things that I looked  
13 at before to answer questions I developed as I went  
14 through these materials. When we got to the days --  
15 let's see. We're only about a week before the  
16 hearing at that point. What are we at, the 22nd?

17 Q. Yes.

18 A. Yeah, we're about a week before the  
19 hearing at that point, and my practice was to have  
20 every question I was going to ask, a question  
21 scripted out legibly in a form I could read with the  
22 answer that I expect from the written discovery or  
23 the deposition transcripts together with the page  
24 from the transcript where that answer should be or

1 any other kind of proof that would allow me to  
2 either refresh the witness's recollection or impeach  
3 the witness if I got a different answer so that when  
4 I was done preparing I would have that.

5 (WHEREUPON, there was a  
6 brief interruption, after  
7 which the following  
8 proceedings were had; to  
9 wit:)

10 Q. Go ahead, sir.

11 A. My purpose was to have every question  
12 scripted with the answer that the question should  
13 have generated together with some kind of reference  
14 back to the discovery where I could find proof of  
15 that answer or corroboration of that answer and have  
16 that ready to go when we got to trial or final  
17 hearing. Plus whatever I was supposed to do in the  
18 way of pretrial motions, I would have that ready to  
19 go. If I was assigned to do the opening statement,  
20 I would have that scripted out and shared with the  
21 other attorney on the team. I can't recall who did  
22 the opening in this case, but that is how I prepare  
23 for trial and generally moving from the pleadings  
24 through the written Q and A, and that would probably

1 conclude my preparation once I finished that.

2 Q. We understand your general ideas of how  
3 you proceed forward in a case. But as you sit here  
4 today you can't give me specifics about what you  
5 actually reviewed on October 22, 2003?

6 A. Not based on my recollection, no, I  
7 cannot.

8 Q. That would hold true with respect  
9 basically to all the entries regarding trial  
10 preparation that we see here throughout the course  
11 of the affidavit, you could not give me a specific  
12 answer of what you did on that particular day?

13 A. Other than prepare for this hearing, no,  
14 I could not.

15 Q. We have here travel to trial venue on  
16 October 29th, 2003; is that correct?

17 A. Correct.

18 Q. What time did you leave to go to the  
19 trial venue?

20 A. You'd have to show me the form. That  
21 would have to refresh my recollection. I do  
22 remember that the hearing was in --

23 Q. Libertyville.

24 A. Right, some public building in

1 Libertyville. That's a fair distance from where I  
2 live.

3 Q. Where do you live, sir?

4 A. I live on the southwest side of Chicago,  
5 and I live in the same location at the time of the  
6 entry.

7 Q. What's your address?

8 A. My address?

9 Q. Yes.

10 MR. PARTEE: Were you leaving from home?

11 THE WITNESS: I was leaving -- you know what,  
12 that's a good question. I'd have to see the form.  
13 It would be set out on the form.

14 MR. JAWGIEL: Q. The form would tell you?

15 A. Right.

16 Q. What's the form? What is it entitled,  
17 this form?

18 A. I don't remember what it's entitled, but  
19 I do remember filling them out any time I had to  
20 travel for Attorney General Office business. We had  
21 the northern half of the state as our territory, and  
22 we frequently filled out those forms when we  
23 traveled.

24 Q. As you sit here today you don't know

1 whether you left from the office or you left from  
2 home to go up to Libertyville on the 29th?

3 A. The document would refresh my  
4 recollection.

5 Q. Do we have it? We'll take a look and  
6 see.

7 A. It should be listed there.

8 Q. Is it called a travel voucher, is that  
9 what it's called?

10 A. That was one form we were required to  
11 fill out. I'm not sure if that would have my  
12 jumping off point from the journey and my  
13 destination. It may.

14 Q. Let's take a look. Maybe you can help us  
15 out with this. Exhibit Number 4, this is a group  
16 exhibit, travel expenses for Bernard Murphy for  
17 Skokie Valley Asphalt. The second page is the  
18 travel voucher. It indicates office there; is that  
19 correct, for the 29th?

20 A. Yes.

21 Q. Does that refresh your recollection?

22 A. Yes, it does.

23 Q. With whom did you ride, if anyone, from  
24 the office to Libertyville that day?

1           A.    I didn't think I rode with anybody. My  
2 recollection is I went by myself in a car provided  
3 by the Office.

4           Q.    Does it indicate what time you left?

5           A.    It does.

6           Q.    What time was that?

7           A.    9:45 a.m.

8           Q.    How long did it take you to get up to  
9 Libertyville from the loop?

10          A.    What this form says is 10:30 a.m.

11          Q.    So about 45 minutes?

12          A.    That would be the difference.

13          Q.    Did you stay in a hotel when you went out  
14 to Libertyville?

15          A.    My recollection is I did.

16          Q.    Why?

17          A.    Well, because we were going to be  
18 spending a significant amount of time in the morning  
19 getting ready for the hearing on the days that the  
20 hearing was going to be conducted. We'd be spending  
21 a significant amount of time after the hearing going  
22 over what happened that day and preparing for the  
23 next day. It was not my practice to travel back to  
24 my home and from my home during the days a trial was

1 going on because you never know what's going to  
2 happen. You need to be where the trial is happening  
3 so that the trier of fact can expect you're going to  
4 show up and prosecute the case. I mean I think  
5 everyone here would agree it wouldn't look too good  
6 if an attorney didn't show up the day a trial was  
7 scheduled, so it was my practice to stay near where  
8 the trial was being held so I could ensure that that  
9 happened.

10 Q. At the time that you decided to get a  
11 room up in the Libertyville area did you have an  
12 expectation of how long the trial or hearing was  
13 going to last?

14 A. I think -- well, the affidavit shows that  
15 it lasted two days, and my recollection is we  
16 thought, Mitch and I thought it would be a two-day  
17 hearing based on the number of witnesses we had and  
18 the documents we had to get into evidence. We did  
19 not know at the time what your case would consist  
20 of, but we had a rough estimate of what ours was,  
21 and it ended up sticking to two days.

22 Q. You had no idea what the respondent's  
23 case was going to be even though you reviewed the  
24 discovery?

1           A.    I knew generally what the issues were,  
2           and I know what, I knew what the, your clients said  
3           in their depositions, but I had no idea what tactics  
4           you or Mr. O'Neill would employ at the hearing, no.

5           Q.    Well, you also had a disclosure of  
6           witnesses --

7           A.    Right.

8           Q.    -- that we were going to present?

9                    You had the depositions of the experts  
10           that we were going to present?

11          A.    Yes.

12          Q.    You had all of that, did you not?

13          A.    I did, but I did not have any script of  
14           the Q and A that you prepared if you did prepare  
15           some for your witnesses, and I had no idea prior to  
16           the hearing how long you or Mr. O'Neill would take  
17           with each witness or the cross-examination of our  
18           witnesses.

19          Q.    I see. How many rooms did you rent when  
20           you went up to Libertyville?

21          A.    Myself?

22          Q.    No, the Office of the Attorney General.

23          A.    I'm only aware that the Office -- well,  
24           the Office didn't rent any. I rented one for



1 myself. I paid for it on my credit card and then  
2 submitted for reimbursement on that, I believe. I  
3 think that's the way it worked. I could be wrong.  
4 They might have changed the process at some time.  
5 That's my recollection.

6 Q. Did Mr. Cohen have his own room?

7 A. He did not share mine.

8 Q. Did Mr. Saperstein have his own room?

9 MR. PARTEE: You mean Sternstein.

10 MR. JAWGIEL: I apologize. Thank you.

11 Q. Mr. Sternstein, did he have his own  
12 room?

13 A. I don't recall if Mr. Sternstein stayed  
14 overnight. I don't know if he did. I have no  
15 knowledge of that.

16 Q. So it would be fair to say when you  
17 headed up to Libertyville on October 29th, 2003 you  
18 were not prepared for the hearing --

19 MR. PARTEE: Objection.

20 MR. JAWGIEL: Q. -- is that correct?

21 A. I would answer that question by saying I  
22 had done some preparation. I wanted to do more. I  
23 think this was going to be -- that day we spent  
24 preparing our witnesses. We had our Q and A drawn

1 up, and we were probably going through that with  
2 them to get ready for the hearing.

3 Q. What witnesses did you prepare on  
4 October 29th, 2003?

5 A. You'd have to show me the transcript from  
6 the hearing. That may help refresh my recollection.

7 Q. You don't as you sit here today  
8 specifically remember who you prepared?

9 A. No.

10 Q. Did you prepare witnesses with Mr. Cohen,  
11 the same witnesses?

12 A. I can't recall specifically. Because of  
13 the short time frame I had to get ready for the  
14 trial or the hearing I would not have spent a lot of  
15 time with Mitch while he prepared for his  
16 responsibilities for that. I would have been  
17 focused on getting ready for mine. It's possible I  
18 could have spent some time with him when we were  
19 both together that day with whatever witnesses we  
20 were talking to but, again, I can't recall  
21 specifically.

22 Q. There's certain phone charges here for  
23 October 29th -- of course, I'll hand this to you so  
24 you can see.

1 A. Sure.

2 Q. -- and also for the 30th and 31st. Are  
3 any --

4 A. Which page are we on?

5 Q. We're still on the second page of Exhibit  
6 4. Are any of those telephone conversations in the  
7 affidavit you provided?

8 A. No, but they would have fallen under the  
9 description trial preparation.

10 Q. All of them?

11 A. Not all of the calls. Not all the calls  
12 I made were business related.

13 Q. Did you exclude any of those from the  
14 voucher you submitted?

15 A. My recollection just going through the  
16 papers that Mr. Partee forwarded to me is that I  
17 did.

18 Q. How did you do that?

19 A. You'd have to show me the form.

20 (Documents tendered to  
21 witness.)

22 Does this go with Group 1?

23 Q. Yes, it does. That's the back end. Go  
24 ahead. If you can find it.

1           A.    You're asking about the telephone record  
2 and how I broke out --

3           Q.    How it was excluded, yes.

4           A.    Can I just look at this one?  It might  
5 even be on that.

6           Q.    Well, I'll take a look at it and see if  
7 it's there.

8           A.    That appears that --

9           Q.    This might be it.

10          A.    If that's mine.  I don't know if that's  
11 Mitch's or --

12          Q.    Yes, it looks like it has your name on  
13 there.

14                    So the two that are circled are business  
15 related; is that correct?

16          A.    That's what this indicates, yes.

17          Q.    And the rest of the conversations were of  
18 a personal nature obviously?

19          A.    They were.

20                    Could we go off the record for a moment?

21          Q.    No.

22          MR. PARTEE:  Well, if you're not comfortable  
23 asking something for privacy reasons then you don't  
24 have to.

1 THE WITNESS: Okay.

2 MR. JAWGIEL: Q. Who did you speak to in the  
3 business conversations?

4 A. Well, the one number I don't recognize,  
5 662-1100, and it's not my, it doesn't appear to be  
6 my handwriting at the top that says it's business  
7 related. It could be. I could have wrote it in a  
8 hurry, but it does not appear the way I would write  
9 it.

10 The second one is business related, that  
11 is circled is business related.

12 Q. Do you recognize the number?

13 A. I do recognize the number.

14 Q. What number is that?

15 A. I'm not going to disclose it.

16 Q. Why is that?

17 A. Because I have privacy issues related to  
18 that number.

19 Q. Privacy issues related to the number?

20 A. Correct.

21 If we go off the record, I'll be happy to  
22 discuss those with you.

23 MR. JAWGIEL: Okay. Let's go off the record.

24

1 (Discussion had off the  
2 record.)

3 Q. I think we're on the 29th. Let's  
4 jump up to the 28th, October 28th, 2003. Pretrial  
5 preparation, is that any different than your trial  
6 preparation?

7 A. Well, this says conduct pretrial, so I'm  
8 wondering if there was a pretrial conference before  
9 the final hearing. I can't recollect, but that's  
10 why I would typically use that kind of term.

11 Q. What was done specifically in the  
12 pretrial preparation?

13 A. I don't know. You'd have to show me what  
14 the pretrial consisted of.

15 Q. Was it anything different than the trial  
16 preparation that you did before?

17 A. As I said, I don't know if there was a  
18 pretrial done in advance of the final hearing or if  
19 that just refers to what we were doing two days  
20 before the hearing started or a day before. I think  
21 the trial started on the 30th.

22 Q. Right.

23 A. So that would have been two days before  
24 the hearing. It could have been a formal pretrial

1 with the hearing officer. It could have just been  
2 more trial preparation. You'd have to show me some  
3 kind of document relating to that day whether there  
4 was a pretrial that would refresh my recollection.

5 Q. Well, how about the next entry on the  
6 28th, it says conducted pretrial, does that refresh  
7 your recollection there was a pretrial that day?

8 A. Not completely. I mean that suggests to  
9 me that there was a separate either telephone  
10 conference or some kind of hearing with the hearing  
11 officer before the trial started.

12 Q. Can you tell me how much time was spent  
13 by you in the pretrial preparation?

14 A. Not without you refreshing my  
15 recollection about what it was about.

16 Q. Can you tell me how long the pretrial  
17 itself lasted?

18 A. Same answer.

19 Q. Can you tell me what the differentiation  
20 is between pretrial preparation from trial  
21 preparation which is the last phrase entered on  
22 October 28th, 2003?

23 MR. PARTEE: I would object that's been asked  
24 and answered.

1 THE WITNESS: A. I think I've answered that  
2 question.

3 MR. PARTEE: Mike, I know that you have to try  
4 to test the witness's memory here, but we're going  
5 back more than three years. After you've done that  
6 if there's documents that you could use to get the  
7 answer that you want and refresh his recollection, I  
8 would encourage you to use them because this is a  
9 long time ago.

10 MR. JAWGIEL: Q. How would we figure out what  
11 documents to use in order to refresh your  
12 recollection regarding what you did in trial  
13 preparation, any of the trial preparation entries  
14 that are on this affidavit?

15 A. The trial preparation entries?

16 Q. Yes.

17 A. You could show me the hearing transcript.  
18 You could show me the written closing arguments.  
19 You could show me whether there was any written  
20 opening arguments or statements. You could show  
21 me --

22 Q. Maybe I'm not clear.

23 A. I was only midway through the answer to  
24 that question. If you want to change it, go ahead.



1 Q. If I go to October 22, 2003 and I want to  
2 refresh your recollection of what you did for trial  
3 preparation on October 22, 2003 with documents, how  
4 do I go about doing that?

5 A. You'd have to show me the file on it.  
6 You'd have to show me the transcripts.

7 Q. If I show you the entire file, you're  
8 confident as you sit here today that you can tell me  
9 what you did on October 22, 2003 with respect to  
10 trial preparation?

11 A. It depends. It depends on what's in  
12 there.

13 Q. So we need the documents contained in the  
14 Attorney General's file in order to determine what  
15 you did on October 22, 2003?

16 MR. PARTEE: No.

17 THE WITNESS: A. No, not all of them.

18 MR. PARTEE: You've turned this into a mockery  
19 already. We're not going to reopen written  
20 discovery or create a situation where we're going to  
21 reopen written discovery. There's a written docket  
22 of this entire case that's available. There are  
23 dockets. The docket is all publicly available. You  
24 have it. We filed some of it. You filed some of

1 it. That's what we're talking about. We're not  
2 talking about attorney/client materials. We're not  
3 talking about materials that haven't been produced  
4 yet.

5 MR. JAWGIEL: Let's find out from the witness.

6 Q. If I get the documents that are  
7 available on line or whatever the case may be and I  
8 hand them to you, do you believe that that will  
9 refresh your recollection or do you need the file  
10 from the Attorney General's Office?

11 A. No, I think you could -- anything that  
12 was filed with the PBC would help. Anything, the  
13 copy of the final transcript would help, but even  
14 with those, if you want me to say which minute of  
15 that day I was spending on which item, I don't think  
16 I could do that as I sit here today.

17 Q. You wouldn't know what you did different  
18 on October 22, 2003 from October 23rd, 2003 or  
19 October 24th, 2003 on those specific days if I hand  
20 you the file?

21 A. When you say the file, the PBC's file or  
22 the Attorney General's file?

23 Q. Let's start with the PBC's file.

24 A. It could.

1 Q. It could?

2 A. It could.

3 Q. How so? What would we look for that  
4 would tell you, hey, you know what, on October 23rd,  
5 2003 Mr. Murphy did X as opposed to what he did on  
6 October 23rd, 2003 or October 24th, 2003?

7 A. Oh, I understand your question.  
8 Differentiating between those two days, I'm not  
9 sure, as I sit here right now I don't know what  
10 document in the PBC's file would refresh my  
11 recollection. Whether there's anything in the  
12 Attorney General Office's file that would do that I  
13 don't know, but as I stated at the outset I've not  
14 been authorized to relinquish or waive attorney work  
15 product privilege. My preparation notes, anything I  
16 did to prepare for this hearing that I generated  
17 would be work product, and I'm not authorized to  
18 relinquish that privilege.

19 Q. You believe that they're still in the  
20 file?

21 A. I have no idea.

22 Q. So as you sit here today you don't know  
23 whether or not the Attorney General file would even  
24 refresh your recollection because you don't know if

1 your notes are in there, is that a fair statement?

2 A. I don't know how to answer that question.  
3 I mean I haven't seen that file in three years.

4 Q. Other than looking at your notes if  
5 they're in the Attorney General's file what else do  
6 you believe would refresh your recollection about  
7 the specific tasks that you performed on October 22,  
8 2003 as opposed to October 23rd, 2003?

9 A. I can't even recall if any of the notes I  
10 prepared to get ready for the trial I kept after it.  
11 I can't tell you whether I discarded those things  
12 going back three years ago.

13 Q. Sure. Sure. But my question to you is:  
14 Outside of your notes is there anything specific  
15 that we can look to in the Attorney General's file  
16 that you believe would refresh your recollection  
17 about what you specifically did on October 22nd as  
18 opposed to October 23rd as opposed to October 24th  
19 as opposed to October 25th or October 27th?

20 A. I would have no idea. I would have no  
21 idea. I mean I can't recall what I did with my  
22 preparation notes. I don't have any knowledge what  
23 anybody did with those notes, if they were still  
24 around after I left the Office. I have no idea.

1           Q.    So it would be fair to say what's in  
2 Exhibit Number 1 certainly didn't refresh your  
3 recollection regarding what you did on October 22,  
4 2003 as opposed to October 23rd as opposed to  
5 October 24th because you've reviewed that file and  
6 you can't tell us as you sit here today what you  
7 did?

8           A.    From one second to the next on those  
9 days, no, I can't but generally --

10          Q.    I'm not asking you generally.

11          A.    Fine. Then you've got your answer.

12          Q.    Yes, I do.

13          A.    From one second to the next, no.

14          Q.    How about one hour to the next?

15          A.    Well, then you start getting into  
16 something where I think I might know because I would  
17 know looking at the transcript of the hearing which  
18 witness I had to prepare for. I can tell as I move  
19 through this affidavit and the entries here how I  
20 was doing it, and it was consistent with the way I  
21 would prepare for any trial I got ready for, so one  
22 hour to the next you're starting to get into the  
23 range where I could tell you.

24          Q.    You certainly can't do it based on what's

1 in Exhibit Number 1 though?

2 A. What's 1?

3 Q. Right to your left.

4 A. Group 1 here?

5 Q. That's correct.

6 A. Well, this doesn't contain the  
7 transcript.

8 Q. That's not my question. My question to  
9 you is: Based on Exhibit Number 1 you can't tell us  
10 what you did from hour to hour; is that correct?

11 A. Correct.

12 Q. That's all I'm asking you.

13 A. Correct.

14 Q. With respect to what you did from hour to  
15 hour or whatever the case may be, you would have to  
16 look back at the transcripts and things of that  
17 nature?

18 A. Right. That's even if -- and other  
19 things as I mentioned.

20 Q. What are the other things? That's what  
21 I'm trying to pin down.

22 A. Well, we talked about my preparation  
23 notes.

24 Q. If they're there?

1           A.    If I kept them after the trial.

2           Q.    Fair enough.  When you prepare your time  
3 listing attached to your affidavit you have  
4 anticipation or at least you have some expectation  
5 that somewhere down the road it's going to be  
6 reviewed by a court or a hearing officer or somebody  
7 in an authoritative position over the outcome of the  
8 case; is that correct?

9           A.    Over the outcome of the fee petition,  
10 correct.

11          Q.    Fee petition?

12          A.    Right.  I had no understanding that  
13 either, anybody would go through the lengths that  
14 you and Mr. O'Neill have with something like this  
15 though.

16          Q.    Have you ever submitted a fee petition  
17 with a similar type of an accounting of your time  
18 and have it rejected by any hearing officer or  
19 court?

20          A.    Not only have I not ever had it rejected  
21 by anybody I've never had an opposing counsel  
22 question it, especially when I was the one that had  
23 the least amount of time of the trial team that put  
24 it together.

1           Q.    How often have you in the five cases that  
2 you've brought to conclusion through a hearing  
3 officer, bench trial, jury trial have you submitted  
4 a fee petition?

5           MR. PARTEE:  Objection, relevance.  We're here  
6 to talk about Skokie Valley.

7           THE WITNESS:  A.  It certainly happened in  
8 addition to Skokie Valley.  Skokie Valley was not  
9 the only case that I was involved with where I did  
10 that.  How many of the five or six that I did that,  
11 I couldn't tell you.  At least one other, and I  
12 wouldn't know which one that was, but I do recall  
13 doing this before.

14          MR. JAWGIEL:  Q.  I see.  So at least one  
15 other case your fees were submitted.  Do you know if  
16 it was more than one?

17          A.    Could be.

18          MR. PARTEE:  Objection, relevance.

19          MR. JAWGIEL:  Q.  Was it all six?

20          A.    I don't recall.  I'm not sure.

21          Q.    How would we find out?

22          MR. PARTEE:  Objection, relevance.

23          THE WITNESS:  A.  I have no idea.

24          MR. JAWGIEL:  Q.  So it's somewhere between



1 one and five?

2 A. Well, like I said, I think I did between  
3 five or six trials or final hearings. It would be  
4 somewhere between one and that, yes.

5 Q. You charge to prepare the affidavit and  
6 statement of hours; is that correct?

7 A. Yes, but I'm not charging for today's  
8 time if you're concerned about it.

9 Q. You charged one hour to prepare this  
10 two-page document?

11 A. Which entry are you looking at?

12 Q. I'm looking at April 12th, 2004,  
13 preparation fees affidavit and statement of hours,  
14 or is that a different affidavit?

15 A. That's a fair question. I can't tell  
16 from this affidavit.

17 Q. How many affidavits did you prepare in  
18 the Skokie Valley case?

19 A. I don't recall without seeing them.

20 Q. I marked this as Exhibit Number 5. Now  
21 Exhibit Number 5 is dated April 12th, 2004; is that  
22 right?

23 A. Yes, or actually the notary says April  
24 13th.

1 Q. Oh, okay. It's your signature on that  
2 document; is that right?

3 A. It appears to be.

4 Q. Now that's a two-page document as well;  
5 is that right?

6 A. You're talking about Exhibit 5?

7 Q. Correct.

8 A. The copy I've been shown is, yes.

9 Q. Are you aware or do you have recollection  
10 of more pages than what's been given to you in  
11 Exhibit 5?

12 A. I do not.

13 Q. You charged an hour of time to prepare  
14 Exhibit Number 5; is that right?

15 A. You're referring now to the entry on  
16 Exhibit 3?

17 Q. That's right, from April 12th, 2004. You  
18 indicated you spent an hour, preparation of fee  
19 affidavit and statement of hours?

20 A. Yes.

21 Q. What did you do in order to prepare that  
22 document?

23 A. Well, it would have been drafting this  
24 affidavit myself or using one that Mitch had

1 prepared for his and then tailoring this for mine.  
2 I typically did most of my own word processing,  
3 drafting documents, anything like that. There were  
4 secretaries there that were available to us, but my  
5 practice was to do my own. I found it somewhat  
6 quicker to do that. By doing this I actually saved  
7 the amount of time I guess that I would have spent  
8 on it. I would have drafted the summary attached to  
9 it. I would have drafted the affidavit as I said.  
10 I would have gotten the affidavit notarized, and I  
11 would have as the entry indicated finalized the,  
12 yeah, finalized the entries on the references to  
13 time, the month and the summary of work performed.

14 Q. How did you come to the figure that's in  
15 Exhibit Number 5?

16 A. Which figure?

17 Q. The total amount of hours spent.

18 A. Well, it would have, just looking at the  
19 face of Page 2, it would have been a compilation or  
20 it's the sum of the three rows above without doing  
21 the math.

22 Q. But how did you come to the total amount  
23 of hours spent?

24 A. Total amount?

1 MR. PARTEE: Objection, asked and answered.

2 THE WITNESS: A. Yeah, we've added the three  
3 rows above it.

4 MR. JAWGIEL: Q. Okay. Fair enough. How did  
5 you come to the amount of hours spent for the month  
6 of October for trial preparation, travel and trial?

7 A. Well, that's probably a summary of  
8 everything I've got more specifically stated on Page  
9 2 of Exhibit 3.

10 Q. Well, Page 2 of Exhibit 3 was drafted in  
11 September of 2004. My question to you is: In April  
12 of 2004 which is when this affidavit at least was  
13 notarized how did you come to the calculation of  
14 125.5 hours for October of 2003? How did you arrive  
15 at this figure?

16 A. The same way I did Page 2 for Exhibit 3.

17 Q. Which was?

18 A. I've answered that question. I mean  
19 these are not different hours.

20 Q. They're not?

21 A. No.

22 Q. So you went back and calculated your time  
23 -- let's ask you this question: In April of 2004 is  
24 that when you calculated the time for entries from

1 October 3rd, 2003 to and through October 16th, 2003?

2 A. Can I see that again?

3 Q. Sure.

4 (Witness peruses document.)

5 A. No. My answer is what it is. I've  
6 described how I came up with the entries, how I  
7 calculated the time on Page 2 in Exhibit 3. No,  
8 it's the same hours.

9 Q. That isn't my question to you. My  
10 question to you very simply is: Was it in April,  
11 April 12th, 2004 when you went back and recreated  
12 your time that you spent from October 3rd, 2003  
13 through and including October 16th, 2003?

14 MR. PARTEE: That's been asked and answered.

15 THE WITNESS: A. What do you mean by  
16 recreate?

17 MR. JAWGIEL: Q. Well, you didn't keep notes  
18 so you had to figure out what you did during that  
19 period of time?

20 A. The record is what it is. I've described  
21 how I calculated and compiled the time I spent in  
22 this case.

23 Q. I'm not asking you how, sir. I'm asking  
24 you when.

1 A. I answered that too.

2 Q. Does this document refresh your  
3 recollection when you actually calculated your time  
4 for October 3rd, 2003 through October 16th, 2003?

5 A. I've already stated when I calculated my  
6 time for that time period and how I did it.

7 Q. That's when you started going into the  
8 trial right around October 17th, October 22, right  
9 in that range --

10 MR. PARTEE: That's been asked and answered.

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

12 A. I've answered the question.

13 Q. Now, in order to prepare what is Exhibit  
14 3 you charged in time two hours; is that right?

15 A. I'd have to see --

16 Q. You have it right in front of you.  
17 September 16th, 2004 you charged two hours?

18 A. September 16th?

19 Q. Correct. Compile fee work sheet  
20 affidavit; is that right?

21 A. Right. Yes, that's what it says.

22 Q. Now, what did you do in that two hour  
23 period in order to draft a two-page document?

24 A. Well, I'd have to I think look at what

1 the Board order says there and your motion said and  
2 then I might have a better understanding of why I  
3 used the form that's on Page 2 of Exhibit 3 as  
4 opposed to the form that's on Page 2 of Exhibit, is  
5 it 5 that you have in front of you?

6 Q. Yes, it is.

7 A. Yeah, but it would look like I, just  
8 looking at these two exhibits, it would look like I  
9 had to generate this where I had it summarized in a  
10 different fashion.

11 Q. It's your understanding the reason why  
12 you had to change the summary that's in Exhibit 5 to  
13 what you have in Exhibit Number 3 is because the  
14 Board ordered you to do so?

15 A. That's just a guess. I mean I'm not sure  
16 why, but that would be my guess. I'd have to look  
17 at the Board order. I'd have to go back and look at  
18 your client's motions, our responses to them.

19 Q. You certainly would have already had an  
20 understanding of what you did October 3rd, 2003  
21 through and including October 16th, 2003 when you  
22 calculated the summary of time spent in Exhibit  
23 Number 5 or you wouldn't have been able to calculate  
24 it; isn't that correct?

1 MR. PARTEE: Object to the form of the  
2 question.

3 THE WITNESS: A. Say that again.

4 MR. JAWGIEL: Q. Sure. When you went to  
5 generate the summary sheet that is on Exhibit Number  
6 3, you had already gone through and figured out what  
7 you did on October 3rd, 2003 through October 17th or  
8 October 16th, 2003 in order to calculate the summary  
9 on Exhibit 5; isn't that correct?

10 A. Roughly. I mean I'm not sure, as I sit  
11 here, I can't recall how exactly I made the  
12 transition from that document to this specifically.  
13 I mean the hours were the same. What my notes said  
14 when I was preparing them to do that document,  
15 whether I added notes or used the same notes to do  
16 this one, I can't recall.

17 Q. I see. Are you charging when you  
18 calculate your time the clerical task of actually  
19 typing the document?

20 A. Clerical task?

21 Q. Yes.

22 A. Drafting, it's possible I did.

23 Q. Do you dictate on a tape at the office?

24 A. There are people who do, but it's usually



1 just supervisors. The front line assistants don't  
2 use dictation equipment. The secretaries typically  
3 didn't do it for you. They didn't have the  
4 equipment.

5 Q. So when we look at your time entries with  
6 respect to documents that you prepared, you're also  
7 charging for you to actually type it; is that  
8 correct?

9 MR. PARTEE: As opposed to what?

10 MR. JAWGIEL: Q. As opposed to dictating it,  
11 as opposed to using clerical staff to prepare it?

12 A. Well, it's possible that in this list of  
13 entries that I typed certain documents or drafted  
14 them myself. That's certainly possible. I'm  
15 certain that I did some documents like that.

16 MR. JAWGIEL: Q. Okay. Let's talk about  
17 Exhibit 5. Let's start with Exhibit 5 which is what  
18 I believe I have in front of me. No, I don't. Here  
19 it is. Exhibit 5, did you type this document?

20 A. I can't recall. It's possible --

21 Q. Is there any notation --

22 A. -- even probable.

23 Q. Is there any notation that would  
24 indicate, for example, in the bottom that's your

1 document --

2 A. Can I see it?

3 Q. -- where it says Murphy?

4 A. It does not appear to be a document  
5 tracking line I'll call it. I don't know what the  
6 formal term is for this, that I would use myself.

7 Q. Do you recognize that line as something  
8 that would occur when you typed your own document?

9 A. It could be. It's a guess. I mean I'm  
10 not sure.

11 Q. So there's no way to tell as we look at  
12 this document if you typed it or it was prepared by  
13 the staff?

14 MR. PARTEE: Objection, relevance.

15 THE WITNESS: A. I don't know. What I'm  
16 telling you is my general practice was to prepare  
17 most of the things myself. Sometimes I did give  
18 things to a secretary to type, but generally that  
19 took a little bit longer to get it done. I'd have  
20 to spend more time on it.

21 MR. JAWGIEL: Q. We're talking about  
22 generalities. I want to know specifically with  
23 respect to Exhibit Number 5.

24 A. It would be a guess. I couldn't tell

1 you.

2 Q. Is there any way we could find out that  
3 you're aware of?

4 A. I have no idea.

5 Q. Fair enough. How about Exhibit Number 3  
6 which is the affidavit in front of you, can you tell  
7 me whether you actually typed that document?

8 MR. PARTEE: Objection to relevance.

9 THE WITNESS: A. I can't tell from looking at  
10 it.

11 MR. JAWGIEL: Q. With respect to Exhibits 3  
12 and 5, the first page is the same other than  
13 basically the date and your signature may have  
14 changed a little bit from one day to the next which  
15 is a little common; isn't that correct?

16 A. I'm looking at the language of it now.  
17 They do appear to be substantially similar in  
18 content and form.

19 Q. Do you notice any differences other than  
20 the date that it was executed and maybe who was the  
21 notary?

22 A. Yeah, the second paragraph has some  
23 different language in it from 3 to 5.

24 Q. Obviously the second page of each of the

1 exhibits is different.

2 A. No, no, no, the second paragraph.

3 Q. I know. And the second page is obviously  
4 different from Exhibit 3 to Exhibit 5.

5 A. I understand.

6 Q. What did you do other than prepare the  
7 document to support your hours for September 16th,  
8 2004?

9 A. I've already answered that question a  
10 number of times.

11 Q. How did that differ from what you did to  
12 prepare the document which now is Exhibit Number 5  
13 on April 12th, 2004?

14 A. As I sit here today, I can't recall.

15 Q. On May 21st, 2004 you have review  
16 respondent's motion to strike closing argument?

17 A. Which exhibit are we on now?

18 Q. This is on Exhibit 3.

19 MR. PARTEE: May 12th?

20 MR. JAWGIEL: Q. May 21st, 2004 review the  
21 respondent's motion to strike closing argument?

22 A. Okay.

23 Q. You have three hours?

24 A. Yes.

1           Q.    Does that review just basically mean you  
2 read the respondent's motion to strike closing  
3 argument?

4           A.    Well, I certainly did that.  My practice  
5 was when I was reading motions to sit in front of a  
6 computer that either had Lexus or West Law access,  
7 and when I saw case citations that I wanted to run  
8 down or seemed questionable to me I'd pull the case  
9 up on the screen and look at the relevant portion of  
10 the case as I was reading the motion.

11          Q.    Do you specifically remember doing that  
12 in this case?

13          A.    I do not, no, but what I also note from  
14 that entry is that there's a comma after the word  
15 argument, so I wonder if that entry is in the same  
16 boat as the one up on October 16th, 2003.  As I sit  
17 here, I can't recall why I'd enter an entry like  
18 that and a comma if there wasn't anything after it  
19 or if there should be anything after it that doesn't  
20 appear.

21          Q.    What city or town did you live in in  
22 October of 2004?

23          A.    I lived on the southwest side of Chicago  
24 in the Mt. Greenwood Park neighborhood.

1 Q. 2003, I apologize, same place?

2 A. Yes.

3 Q. How long have you lived in that area?

4 A. I've lived there since 1992 I think,  
5 September, October of '92, '93.

6 Q. Now when the hearing was concluded on  
7 October 31st, 2003 did you go home or did you go  
8 back to the office?

9 A. I went home. I wanted to go home. Well,  
10 you know what, that's a fair question. I'm not  
11 sure. If you showed me that, I'd be able to --

12 Q. Yes, I am going to show it to you. It's  
13 attached actually to Exhibit 4 I believe which is  
14 still in front of you. It's about three pages back,  
15 four pages back on this group exhibit. It has home  
16 circled.

17 A. Yeah, and I'm looking at the second page  
18 of that exhibit, and it's got arrived at residence  
19 on the 31st, so it does appear that I went straight  
20 home. That's my recollection. I knew I wanted to  
21 get home as soon as I could. My newborn son was, it  
22 was his first Halloween. He had a Spiderman  
23 costume. I wanted to see it before daylight was  
24 over.

1 Q. Sure. That's understandable.

2 Is it your understanding that the time  
3 that you spent from leaving Libertyville in order to  
4 get home is all time that should be calculated in  
5 your request for fees?

6 A. Well, that is not for me to say. I mean  
7 it was time I would not have spent had I not done  
8 the trial. I would not have been traveling from  
9 Libertyville had I not done the final hearing. It  
10 was still during business hours that day. It was  
11 part of the job to go home from it.

12 Q. Well, how long would it take you to get  
13 from the office downtown home on an average day?

14 A. Driving?

15 Q. Driving.

16 A. From the loop to the southwest side?

17 Q. Right.

18 A. A little over an hour.

19 Q. Did you take that amount of time out of  
20 the amount of time it would have taken you to get  
21 from Libertyville home?

22 A. Libertyville was more difficult to get  
23 home to my house than from the loop because of rush  
24 hour concerns. I think I was cutting across two or

1 three or using two or three different main lines of  
2 transportation, so facing rush hour traffic that's  
3 why it probably took longer.

4 Q. I'm not asking how long it took. That's  
5 not the question. My question is: Did you subtract  
6 how much time it would normally take you to get home  
7 from the office from the amount of time that you  
8 claimed it took you to get from Libertyville home?

9 A. Oh, I understand the question. On Page 2  
10 I did not. Let me see. On Page, on Page 4 which is  
11 the travel expense sheet I did not do that either.

12 Q. Were there any certain practices or  
13 procedures that the Attorney General's Office would  
14 use as far as calculating expenses that you're aware  
15 of?

16 A. Expenses of what type?

17 Q. Of this nature.

18 A. Travel?

19 Q. Travel expenses, lodging expenses?

20 A. Different ones for each, yeah, different  
21 ones for lodging, different ones for food while you  
22 were on assignment, different ones for use of car  
23 and reimbursement for mileage. At some point, I  
24 don't remember when, the Office made the decision to



1 require staff to use Office pool cars. If they  
2 weren't acceptable, then a rental car would be  
3 arranged for you. There was a period of time I  
4 think before this case, but again I'm not sure, it's  
5 a guess, where the Office would reimburse you for  
6 mileage on your own car. As you can see from this  
7 exhibit, that's not what happened here.

8 Q. Right. You're using a State vehicle?

9 A. A State vehicle, yes, because I don't see  
10 a charge for a rental vehicle that I'm getting  
11 reimbursed for.

12 Q. We could see that. It's clearly marked.  
13 On Office of the Attorney General travel request  
14 form I believe State vehicle is crossed off on the  
15 top quarter of the document. Do you see it there?

16 A. Whether these are what most people would  
17 call policies or regulations or rules I don't know.  
18 It's just the way the Office did it.

19 Q. Now with respect to the State vehicles,  
20 would you travel with somebody when you used that  
21 vehicle?

22 A. Travel with somebody?

23 Q. Yes, travel with Mr. Cohen or travel with  
24 Mr. --

1 MR. PARTEE: Which date?

2 MR. JAWGIEL: Q. On the date that he left, on  
3 October 29th, 2003.

4 A. No. As I said, I went up myself to the  
5 trial assignment and I left by myself, and I did not  
6 car-pool with Mitch back to his residence. He lived  
7 on the north side of the city at the time, and we  
8 were traveling to two different places.

9 Q. You're allowed to take the State vehicle  
10 home; is that correct?

11 A. On the weekend if there's no other way to  
12 get back downtown during business hours then I  
13 believe that, yeah, my best recollection, I think  
14 that's what happened.

15 Q. On October 31st when you left the hearing  
16 and went home you took the State vehicle home, is  
17 that a fair statement?

18 A. I know I went from Libertyville to home,  
19 yes.

20 Q. You used the State vehicle?

21 A. That's what this exhibit says, yes. I  
22 don't see any entries for trying to recover costs  
23 for use of the State vehicle over the weekend or up  
24 until Monday the following week.

1 Q. No. No. I don't want to go down that  
2 road.

3 It says you returned the vehicle November  
4 3rd, 2003 if we look again at the attachment of the  
5 travel request form?

6 A. Yeah, that's what I would have done,  
7 brought it back Monday morning.

8 Q. Is there mileage on the vehicle recorded  
9 anywhere when you took it out and when you brought  
10 it back in?

11 A. I don't recall any, no.

12 Q. How did you calculate the amount of miles  
13 or is it calculated the amount of miles you  
14 traveled?

15 A. Where do you see that?

16 Q. I don't. I'm just asking. Is it  
17 calculated how many miles you traveled?

18 A. Well, the form, if you look at the travel  
19 expense form, it includes a date or a field for that  
20 kind of entry, but I only used that when I filled  
21 out a travel expense form when I was using my own  
22 car. We used these forms back when the Office  
23 reimbursed you for that kind of mileage.

24 Q. Fair enough. This might just be a

1 typographical error. Correct me if I'm wrong.  
2 Travel request form, if you can get that in front of  
3 you again. It says meals, 12 per diem quarters. I  
4 don't know what that means. If you can shed some  
5 light on that I'd appreciate it.

6 A. I don't either. I don't know exactly  
7 what that means. I do know that they gave you a  
8 certain amount of money for meals depending on when  
9 you left and how long you were going to be on  
10 assignment.

11 Q. I mean you have to eat.

12 A. Yeah.

13 Q. That helps.

14 A. Hopefully.

15 Q. Were those meals during working hours  
16 basically or were you responsible for your own  
17 dinner or did they cover breakfast, lunch and dinner  
18 during that period of time?

19 A. Like I said, it depends on when you left  
20 on assignment. Typically they didn't cover  
21 breakfast. If you were traveling and going to  
22 assignment in the morning and you had to eat lunch  
23 while you were out on assignment, they might cover  
24 that. I don't recall the parameters of that per

1 diem, but I know that they were pretty stingy about  
2 breakfast.

3 Q. Yeah, I imagine they would be which is  
4 the cheapest meal of the day.

5 Miscellaneous charges, \$20. Did you have  
6 to attach receipts for those to the documents?

7 A. I don't recall offhand what they would  
8 be.

9 Q. Would you have to submit receipts?

10 A. Typically you had to attach receipts for  
11 anything you spent. That's what they wanted you to  
12 do. Now we would have to pay tolls. I don't think  
13 people attach receipts for those.

14 Q. I mean you have \$1.20 in tolls. You  
15 probably took 294 down I would imagine or 294 up,  
16 whatever the case may be?

17 A. I can't remember which way I went. I'm a  
18 big fan of back roads, a lot less congested.

19 Q. With respect to the charges we see here  
20 for travel costs, it's your understanding you would  
21 have submitted receipts?

22 A. It was my practice. There were times  
23 where I did not, I lost receipts and I had to submit  
24 an affidavit for those, but I don't think that

1 occurred in this case.

2 Q. Now you'll see the last document on this  
3 exhibit which I believe we marked that as 4 --

4 A. The e-mail dated October 3rd?

5 Q. Right. It has your name handwritten  
6 there. Do you recognize that handwriting?

7 A. I don't recognize the handwriting, no.

8 Q. Do you remember receiving this e-mail  
9 from Mr. Mitchell Cohen?

10 A. No. I mean this was, the date of this  
11 e-mail was right around the time I got involved with  
12 this case, and I don't really have any specific  
13 recollection of the trip referenced in the e-mail or  
14 seeing this e-mail.

15 Q. Does this refresh your recollection that  
16 Mr. Sternstein had his own room?

17 A. No, because he would not have been  
18 authorized to get a room. I don't think he stayed  
19 overnight. The room that's referenced in this  
20 e-mail for him I would have used.

21 MR. PARTEE: I would object on relevance  
22 grounds too. Maybe this will help narrow it. We  
23 understand Sternstein's fees to have been disallowed  
24 and they're not included any longer and costs.

1 MR. JAWGIEL: And costs as well.

2 THE WITNESS: A. Yeah, it's more than  
3 recollection. He did not stay overnight that night.  
4 If he did, he wasn't with us and it wasn't anywhere  
5 near our hotel.

6 MR. JAWGIEL: Q. Do you have any  
7 understanding why Mr. Cohen would be asking Arlene  
8 to reserve hotel rooms for Joel and I?

9 A. Yes.

10 Q. Why?

11 A. Because she was the individual in our  
12 bureau that would coordinate the reservation of  
13 hotels.

14 Q. But why would Mr. Cohen from your  
15 understanding if you have an understanding ask  
16 Arlene to reserve a room for Joel referencing Joel  
17 Sternstein as we see in the carbon copy notation?

18 A. It would just be a guess, but I would  
19 have to say that at that time Mitch expected Joel to  
20 be his trial partner for the hearing. It was before  
21 Joel was disqualified.

22 Q. I see. So you actually were put on board  
23 before Joel was disqualified as well; is that  
24 correct?

1           A.    That's not my understanding.

2           Q.    Well, this e-mail went out October 3rd,  
3 2003 and you started working on the case on October  
4 3rd, 2003?

5           A.    My understanding is Rosemarie would have  
6 put in the request for somebody to help Mitch as  
7 soon as they learned Joel was disqualified.  
8 Something like that would not have sat with a trial  
9 coming up in a month.

10          Q.    Well, if it's your statement that Mitch  
11 asked to have Mr., from your understanding, if Mitch  
12 asked to have a room reserved for Mr. Sternstein  
13 because he anticipated Mr. Sternstein would be the  
14 trial attorney on October 3rd, 2003 and you started  
15 working on this case on October 3rd, 2003, then  
16 certainly you were working on this case before  
17 Mr. Sternstein was disqualified?

18          A.    I don't know that. I don't know when  
19 they got the copy of the order. I was not asked to  
20 participate in the case as an active participant on  
21 the trial team prior to Joel being disqualified.

22          Q.    So any charges, if any, that you --  
23 Strike that.

24                    Any hours that you are calculating for



1 your participation before the order was entered  
2 disqualifying Mr. Sternstein would be hours that you  
3 shouldn't be asking for because you weren't on the  
4 team --

5 A. No.

6 Q. -- is that correct?

7 MR. PARTEE: I would object to that. That's  
8 argumentative. I mean he could have been assigned  
9 whenever we wanted to assign him.

10 THE WITNESS: A. My recollection is is that  
11 that was one of Joel's first hearings that he would  
12 have gotten as an attorney, as a trial attorney and  
13 that he and I were talking about different things  
14 about this case before he was disqualified, about  
15 what he would do putting on witnesses, what the  
16 issues were, how he would put his proof on, so when  
17 I mentioned that this is a conservative estimate of  
18 my time, the breakdown on Exhibit 3, I was being  
19 accurate.

20 MR. JAWGIEL: Q. What you're saying when you  
21 make that statement is is that those were  
22 conversations you might have had with Mr. Sternstein  
23 regarding this case as you would have with other  
24 people in the AG's Office in assisting them in

1 preparing their case?

2 A. Perhaps.

3 Q. It was part of your job?

4 A. Correct.

5 Q. You would do that on a regular basis?

6 A. I don't know what you mean by regular,  
7 but attorneys from, my assistants routinely came to  
8 me with questions about how to do this or that on a  
9 certain case. It happened maybe once a day, three  
10 times a week.

11 Q. Do any of the entries before October  
12 16th, 2003 that you have in Exhibit 3 relate to  
13 conversations you had with Mr. Sternstein regarding  
14 this matter?

15 A. Well, there's one on October 16th that --

16 Q. I said before October 16th.

17 A. I'm sorry.

18 MR. PARTEE: I just want to object on  
19 relevance grounds to questions about Sternstein's  
20 hours if that's where you're going.

21 MR. JAWGIEL: That isn't what I'm questioning  
22 him about.

23 THE WITNESS: A. No, there's no entries on  
24 that page for any discussions like that.

1 MR. JAWGIEL: Q. So everything that we see  
2 from October 3rd, 2003 to October 14th, 2003 would  
3 be work that you actually performed?

4 A. That's my sense, yes.

5 Q. Fair enough. How would we find out when  
6 you were assigned to this case, is there a memo that  
7 goes out or anything along those lines?

8 A. I don't think you -- I have no idea. I  
9 mean the person at the Office who tracks assignments  
10 within the bureau would be the bureau chief, and  
11 then I would do that as well in her absence.

12 Q. How is it tracked?

13 A. You'd have to ask her. She did --

14 Q. In your experience you've never seen how  
15 it's tracked?

16 A. Well, not trial assignments. Case  
17 assignments, yes.

18 Q. How are the cases assigned, is there a  
19 list?

20 A. You're going back three years, but when a  
21 case would come in from the agency it was the bureau  
22 chief's practice to get that assigned to an attorney  
23 quickly, an attorney within the bureau, the  
24 Environment Enforcement Bureau, and she kept a

1 running total of the number of cases assigned to  
2 each attorney that was not case specific but was  
3 attorney specific. I would consult that list. I  
4 knew from conversations with her generally where she  
5 wanted the number of cases with each attorney, and  
6 then it was up to my discretion who would get what  
7 case in her absence.

8 Q. Were any of the time entries that you  
9 have before October 16th, 2003 performed before you  
10 were assigned to this case?

11 A. No. No. My understanding, my  
12 recollection is on October 3rd when I learned that  
13 or when the offer was extended to me to participate  
14 on the trial team and I accepted I started working  
15 immediately on it.

16 Q. Who was on the trial team on October 3rd,  
17 2003?

18 A. Again, you're going back to, I mean  
19 that's -- I don't know the date of Joel's  
20 disqualification, so my sense was when he was  
21 disqualified from the Board he was no longer on the  
22 trial team. Now how long before Joel or Mitch  
23 learned about the order and bringing it to  
24 Rosemarie's attention and getting some time to sit

1 with her when she had a free moment to talk about  
2 it, bringing her up to speed, getting me into her  
3 office at a time when I was around to talk about it  
4 and ask me the question, I can't tell you that time  
5 line.

6 Q. Certainly. Is it your recollection at  
7 any point in time there were three members of the  
8 AG's Office that were on the trial team, three  
9 attorneys, three attorneys that were on the trial  
10 team -- you, Mr. Cohen and Mr. Sternstein?

11 MR. PARTEE: Objection, asked and answered.

12 THE WITNESS: A. My understanding was when I  
13 was put on the trial team that the trial team  
14 consisted of myself, Mitch Cohen and that was it.

15 MR. JAWGIEL: I'm going to take a quick break  
16 and we'll possibly conclude.

17 (WHEREUPON, a short recess  
18 was taken.)

19 Q. Mr. Murphy, I don't know that you're  
20 going to know this or not but I'm going to ask you.  
21 There was a charge that was assigned to the hours  
22 spent by the Attorney General's Office in this case  
23 of, I believe it to be \$150 an hour. Were you  
24 involved at all in how that is calculated?

1           A.    No.  My recollection is that that number  
2 is derived from published opinions where you've got  
3 the Pollution Control Board or some other trier of  
4 fact determining that that was a reasonable rate for  
5 government attorneys.

6           Q.    So it's your understanding generally  
7 speaking that that comes from opinions regarding  
8 that that's a reasonable rate for attorneys in the  
9 Chicagoland area?

10          A.    I'd have to look at the opinions.  I  
11 don't know.

12          Q.    But you weren't involved in that in this  
13 particular case, were you, that particular aspect,  
14 assigning a dollar amount for the hours spent or  
15 were you?

16          A.    I can't recall.  No, I think my task was  
17 just compile my time.

18          Q.    Of course, you were involved in the  
19 preparation in the trial presentation as well in the  
20 case?

21          A.    Yeah, I mean Mitch and I broke out  
22 assignments when it came to drafting the closing  
23 argument, but I can't recall if I worked on the, any  
24 portion relating to attorney's fees and what those

1 amounts would be.

2 Q. Other than what we see in the affidavit?

3 A. Or the rates, right.

4 Q. Let's limit it to the rates. You can't  
5 remember whether you were involved in the rates?

6 A. No, I can't. I mean it is what it is in  
7 the decisions.

8 Q. Right. But that's how it's, in your  
9 understanding that's how it's calculated, it's based  
10 on those decisions?

11 A. That's my understanding.

12 Q. Just so we're clear, your testimony is is  
13 that your submissions of hours spent for fee  
14 petitions has never been challenged other than in  
15 this case?

16 A. Correct.

17 MR. PARTEE: Object on relevance grounds.

18 MR. JAWGIEL: Q. And your affidavit for fee  
19 petitions has never been reduced by a court?

20 A. That might have happened. I mean we have  
21 made, my recollection is we have made requests for  
22 both civil penalties and attorney's fees. That is  
23 up to the court's discretion to award, and the court  
24 may have reduced what we were asking for.

1 Q. When you say we, I'm talking about you  
2 specifically?

3 A. Me specifically?

4 Q. Right.

5 A. I can't recall.

6 Q. So you don't recall one way or the other  
7 whether any affidavit you had submitted for hours  
8 spent translating into attorney's fees was ever  
9 reduced?

10 MR. PARTEE: Objection, relevance.

11 THE WITNESS: A. Not because there was some  
12 flaw with the affidavit or some inaccuracy with the  
13 amount of time represented to the court that I spent  
14 on it. The court may have said they've established  
15 that they're entitled to this much in attorney's  
16 fees but I'm going to give you so much less,  
17 something like that, but certainly not, no, this  
18 affidavit doesn't work, this time does not appear to  
19 have been spent on the case, nothing like that.

20 MR. JAWGIEL: Q. Why was no request made for  
21 attorney's fees at the hearing or during the closing  
22 arguments, if you know?

23 A. I don't know. I don't know. It may come  
24 down to whose responsibility it was to do the



1 closing argument or that portion of it.

2 MR. JAWGIEL: Mr. Partee, you certainly have  
3 the right to ask Mr. Murphy questions if you see  
4 fit.

5 MR. PARTEE: I have nothing.

6 Do you want to -- I'm sorry. I have  
7 nothing if you're done.

8 MR. JAWGIEL: You understand signature, I'm  
9 sure?

10 THE WITNESS: I'd like to see it before I  
11 sign.

12 MR. JAWGIEL: Certainly.

13 (Witness excused.)

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1                   BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

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

5                                   Complainant,            )

6                                   vs.                                    )

                                                          ) No. PCB 96-98

7 SKOKIE VALLEY ASPHALT CO., INC., )  
 et al.,                                )

8                                   Respondents.                    )

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

12 119, 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                                   BERNARD MURPHY

17                                   SUBSCRIBED AND SWORN TO before

18 me this            day of                                   ,

19 A.D., 2006.

20                                   NOTARY PUBLIC

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ERRATA SHEET

I hereby make the following changes to my deposition:

PAGE	LINE	CHANGE:	REASON:
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BERNARD MURPHY

DATE

Correction Sheet Page \_\_\_\_ of \_\_\_\_

1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF C O O K )

4 I, KELLY A. BRICHETTO, a Certified  
5 Shorthand Reporter of said state, do hereby certify:

6 That previous to the commencement of the  
7 examination of the witness, the witness was duly  
8 sworn to testify the whole truth concerning the  
9 matters herein;

10 That the foregoing deposition transcript  
11 was reported stenographically by me, was thereafter  
12 reduced to typewriting under my personal direction  
13 and constitutes a true record of the testimony given  
14 and the proceedings had;

15 That the said deposition was taken before  
16 me at the time and place specified;

17 That I am not a relative or employee or  
18 attorney or counsel, nor a relative or employee of  
19 such attorney or counsel for any  
20 of the parties hereto, nor interested directly or  
21 indirectly in the outcome of this action.

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IN WITNESS WHEREOF, I do hereunto set my  
hand this 27th day of November, 2006.



KELLY A. BRICHETTO

CSR License No. 84-3252