

1 BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

2 EVERGREEN TRAILS, INC., a)
3 Washington corporation, d/b/a)
4 Grayline of Seattle,)
5)
6 Complainant,) No. TC-900407
7) VOLUME II
8 vs.) Pages 167-458

9 SAN JUAN AIRLINES, INC., a)
10 Washington corporation, d/b/a)
11 SHUTTLE EXPRESS,)
12 Respondent.)
13 -----)

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

14 A hearing in the above matter was held on
15 June 28, 1990 at 9:00 a.m. at 1300 South Evergreen
16 Park Drive, Olympia, Washington, before Chairman
17 SHARON NELSON, Commissioners A.J. PARDINI and
18 RICHARD CASAD, and Administrative Law Judge STEVEN
19 LUNDSTROM.

20 The parties were present as follows:

21 THE COMMISSION, by ROBERT D. CEDARBAUM,
22 Attorney at Law, 1400 Heritage Plaza Building,
23 Olympia, Washington 98109.

24 RESPONDENT SHUTTLE EXPRESS, by BRUCE A.
25 WOLF, Attorney at Law, 5120 Columbia Center, Seattle,
Washington 98104.

EVERETT AIRPORTER SERVICES ENTERPRISES, by
MRS. DIANE COOMBS, 6303 Swan's Trail Road, Everett,
Washington 98205.

SUBURBAN AIRPORTER, INC., RICHARD
REININGER, President, 200 118th S.E., Bellevue,
Washington 98005.

EVERGREEN TRAILS, by CLYDE H. MacIVER,
Attorney at Law, Suite 4400, 2 Union Square,
Seattle, Washington

24 Marilyn Johnson, RPR
25 Court Reporter

ORIGINAL

1 I N D E X

2	WITNESS:	D	C	RD	RC	COMM
	ROGER FERLEMAN	174-M	192-W			208-P
3	DOUGLAS C. HOLBROOK	210-M	244-W	304-M	311-W	293-N
		244-M	246-W			295-C
4			290-C			300-P
	DALE D. LONHEIM	315-M	320-W			
5	GORDON BARR	325-M	355-W			
			386-C	403-M	406-W	389-N
6						393-C
						395-P
7	GARY W. MOSS	409-W	430-M	441-C		
	RICHARD REININGER					447-J
8	DIANE J. COOMBS					452-J

9	<u>EXH. NO.</u>	<u>MARK</u>	<u>ADMIT</u>
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1 P R O C E E D I N G S

2 JUDGE LUNDSTROM: The hearing will please
3 come to order. The hearing is reconvening in the
4 matter of Evergreen Trails, Incorporated, dba Gray
5 Line of Seattle, complainant, versus San Juan
6 Airlines, Incorporated, a Washington corporation,
7 dba Shuttle Express, respondent, in Docket No.
8 TC-900407, before the Washington Utilities and
9 Transportation Commission, consisting of chairman
10 Sharon L. Nelson, Commissioner Richard D. Casad and
11 Commissioner A.J. Pardini. This is Thursday, the
12 28th of June, 1990. The administrative law judge is
13 Steven E. Lundstrom. Okay. I would like to take
14 appearances now, please, beginning with the
15 complainant.

16 MR. MacIVER: My name is Clyde MacIver,
17 your Honor. My address is as stated on the record
18 yesterday. I represent the complainant in this
19 proceeding.

20 JUDGE LUNDSTROM: Thank you. Respondent,
21 please?

22 MR. WOLF: Yes, your Honor. Bruce A. Wolf,
23 representing the respondents in this proceeding.
24 Address the same as stated yesterday.

25 JUDGE LUNDSTROM: Thank you.

1 MR. CEDARBAUM: Representing the
2 Commission, Robert Cedarbaum, Assistant Attorney
3 General. My business address is also as stated
4 yesterday.

5 JUDGE LUNDSTROM: Any other appearances to
6 be made this morning? Okay. Hearing no response,
7 are there any procedural matters that any party
8 would like to take up before the presentation of
9 evidence commences once again?

10 MR. CEDARBAUM: One for my part at least,
11 your Honor. Yesterday there was some discussion
12 with regard to a reference within Exhibits No. 1 in
13 this proceeding to Exhibit No. 38 in the prior King
14 County original application proceeding, as to
15 whether or not Exhibit 38 was in effect a concession
16 agreement between the Port of Seattle and Shuttle
17 Express at the time testimony was taken in that
18 earlier proceeding, and I think the parties have
19 agreed to stipulate that the concession agreement
20 that was contained in that old Exhibit 38 was a
21 proposed but not yet effective agreement at the time
22 that Mr. Sherrell testified in that proceeding, but
23 that Mr. Sherrell's intentions were to conform his
24 operations to the terms of that agreement, if and
25 when that agreement became effective. So at the

1 time it wasn't effective, but there was an intent on
2 the part of the company at that point in time to
3 conform operations to comply when the contract
4 became effective, if it became effective.

5 JUDGE LUNDSTROM: Okay. Are you offering
6 that as a stipulation?

7 MR. CEDARBAUM: I believe -- we can
8 stipulate to that, yes.

9 MR. WOLF: Yes, your Honor.

10 JUDGE LUNDSTROM: Mr. MacIver?

11 MR. MacIVER: Yes, your Honor.

12 JUDGE LUNDSTROM: Very well. The
13 stipulation has been offered, appears reasonable,
14 and will be accepted for purposes of findings of
15 fact in this proceeding. Are there any other
16 procedural matters or motions?

17 MR. WOLF: There is one from the
18 respondent, your Honor. I note the absence of the
19 two parties that petitioned for intervention
20 yesterday. I note their absence today. I guess my
21 first question would be one of inquiry. Has your
22 Honor or the Commission received any telephone calls
23 with an explanation as to their absence?

24 JUDGE LUNDSTROM: Well, I --

25 MR. WOLF: I have not.

1 JUDGE LUNDSTROM: I've heard nothing and I
2 know of no inquiry to the Commission or Commission
3 staff.

4 MR. WOLF: I would move at this time for a
5 dismissal of the interventions of the two
6 intervenors that intervened yesterday on the basis
7 that they have failed to appear and continue to
8 prosecute their interventions.

9 JUDGE LUNDSTROM: Okay. Anyone else want
10 to be heard on that?

11 MR. MacIVER: Yes, I would object to that,
12 your Honor. An intervenor doesn't even have to
13 present testimony if they don't wish to. I was
14 advised after the hearing yesterday that they
15 planned to be here and present testimony when it's
16 time for them to do so, so I think it would be
17 inappropriate to dismiss them now. They had
18 indicated that they had no cross-examination so they
19 really don't have to be here until it's time for
20 them to testify.

21 JUDGE LUNDSTROM: Thank you. Mr.
22 Cedarbaum?

23 MR. CEDARBAUM: I would also oppose the
24 motion. There are numerous instances where
25 intervenors aren't at every hearing session but

1 their interventions are not subject to dismissal
2 just for that reason, so I don't see any basis for
3 them to be dismissed at this time.

4 JUDGE LUNDSTROM: Yes. Intervenors in
5 hearings which are multi-day hearings frequently do
6 not appear for certain periods of a hearing. Any
7 party that does not appear of course is deemed to
8 have accepted the risks of not appearing for that
9 particular segment of the hearing. However, that is
10 not a ground or a basis for dismissing the
11 intervention. I will note once again that the
12 intervention is granted for very specific and
13 limited purpose for the intervenors to offer comment
14 on a very limited area of facts at issue in this
15 proceeding, so I will not grant the motion to
16 dismiss the interventions. Anything further? Okay.
17 Hearing nothing, then, Mr. MacIver, are you prepared
18 to call your next witness?

19 MR. MacIVER: Call Mr. Ferleman, please.
20 Whereupon,

21 ROGER FERLEMAN,
22 having been duly sworn, was called as a witness and
23 was examined herein and testified as follows:

24 JUDGE LUNDSTROM: Be seated, please.

25

1 DIRECT EXAMINATION

2 BY MR. MacIVER:

3 Q. Mr. Ferleman, would you state your name
4 and address, please?

5 A. Roger Ferleman, 16401 - 209th Northeast,
6 Woodinville, Washington.

7 Q. What is your occupation, Mr. Ferleman?

8 A. I am an independent investigator.

9 Q. Would you please describe briefly for the
10 record what your experience as an investigator is?

11 A. I worked for Travelers Insurance for 15
12 years as a field investigator, and a claims
13 supervisor, trained claims adjustors and
14 investigators. I then worked for one and a half
15 years for the law firm of Houger, Garvey and
16 Schubert in Seattle, and since 1981 I've been
17 self-employed.

18 Q. As an investigator, sir?

19 A. Right.

20 Q. Were you hired by me, Mr. Ferleman, by my
21 office to conduct an investigation with respect to
22 the activities of Shuttle Express at Sea-Tac Airport
23 and at certain hotels in Seattle?

24 A. Yes, I was.

25 Q. And what were your instructions so far as

1 making your observations?

2 A. Well, I was instructed to go to the
3 airport, to Sea-Tac Airport to the lower concourse,
4 to go out and -- out in the front of the baggage
5 area where the taxis and vans come by and pick up
6 passengers, and to generally observe what Shuttle
7 Express operations were, and particularly to note
8 whether there was cruising by the vans or
9 solicitation by the drivers, or taking walk-up
10 passengers.

11 Q. On what dates did you make your
12 observations at Sea-Tac Airport, Mr. Ferleman?

13 A. March 29th and April 3rd of this year.

14 Q. Did you also make any observations on June
15 23rd of this year?

16 A. Oh, right. I forgot. June 23rd of this
17 year.

18 Q. With respect to March 29 in 1990, would
19 you please describe what you observed at the airport
20 with respect to the operations of Shuttle Express?

21 A. Well, I observed vans cruising by on
22 pretty much of a continuous basis, usually with
23 their lights blinking and driving at a pretty much
24 of a walking pace. I observed vans pulling up and
25 parking when no passengers or prospective customers

1 were visible. I saw drivers getting out of the vans,
2 standing around with their door open. I saw them
3 approach passengers and solicit them. I saw the
4 drivers making phone calls for the passengers or
5 directing the passengers to the telephones. I was
6 approached and solicited myself.

7 Q. With respect to that, Mr. Ferleman,
8 approximately what time of the day did you arrive on
9 the lower ramp at the airport on March 29th?

10 A. 1:00.

11 Q. And you walked out from the luggage area
12 on to the sidewalk at the lower concourse area?

13 A. Right. Right.

14 Q. How long had you been on the sidewalk
15 before you were first approached by a Shuttle
16 Express driver?

17 A. When I walked out of the door of the
18 airport, I took four or five steps until I was
19 approached by a Shuttle Express driver, asking me if
20 I was going to Seattle. I told him I was. He
21 quoted me the rate of \$12. I told him that I might
22 wait around and look for a friend, to try and meet a
23 friend, but he was explaining that if I wanted to go,
24 I could just pick up the phone and call, and I could
25 get on the bus, and he said the phone call was a

1 formality.

2 Q. I gather -- I had instructed you not to
3 actually ride the buses so that you could remain at
4 the airport and continue your observations; is that
5 correct?

6 A. Right.

7 Q. So you did not accept these rides?

8 A. That's right.

9 Q. After the first solicitation by a Shuttle
10 Express driver, how long was it before you were
11 approached the second time by a driver?

12 A. Five minutes.

13 MR. WOLF: Your Honor, I am going to
14 interpose an objection at this time about any
15 evidence with regard to solicitation of passengers.
16 The permit of Shuttle Express that has been
17 introduced as Exhibit 3 in this proceeding contains
18 absolutely no prohibition against the solicitation
19 of passengers. It cannot be a violation of the
20 terms of this permit to solicit a passenger and I
21 would object to any testimony in that regard on that
22 basis.

23 MR. MacIVER: Is Mr. Wolf done?

24 MR. WOLF: Yes, I am, sir.

25 MR. MacIVER: Your Honor, that is very

1 much an issue in this case. These drivers are
2 aggressively soliciting passengers on the sidewalk.
3 If you recall, Mr. Sherrell testified yesterday that
4 he felt that it was offensive and obscene for
5 drivers to solicit people at airports and that he
6 wouldn't have his drivers do this. It is our
7 position that Shuttle Express is aggressively
8 soliciting patrons at the airport. They are not
9 prior reservation customers. They are providing an
10 on the van, hail the van, walk-up service, and I
11 think this testimony is very relevant. The
12 Commission ultimately will decide whether this
13 activity is appropriate or not, but this is evidence
14 we want to submit in support of our complaint, and I
15 think we ought to be able to do it. If Mr. Wolf
16 wants to argue later, despite Mr. Sherrell's denial
17 of doing this activity, that it's appropriate, he's
18 welcome to do that, but we have the burden of proof
19 here and we're trying to present evidence as to how
20 Shuttle Express is operating. I think it is most
21 appropriate and relevant.

22 JUDGE LUNDSTROM: Thank you. Mr.
23 Cedarbaum, do you want to be heard on that?

24 MR. CEDARBAUM: Just to say that I think
25 from a factual point of view that solicitation may

1 be probative of violations of the on-call
2 restriction, depending on specific facts. That's
3 obviously for the Commission to determine, but I
4 think it could be relevant.

5 JUDGE LUNDSTROM: I think it --
6 considering the issues presented by this complaint,
7 it is relevant to hear this testimony. The question
8 is relevant. I'll overrule the objection. Go ahead,
9 please.

10 MR. WOLF: So I can understand your ruling,
11 your Honor, it's probative as background information
12 but that solicitation itself is not a violation of
13 the terms of this permit.

14 MR. MacIVER: I don't believe there is any
15 such ruling and I would certainly hope that one
16 wouldn't be made. At this point, at least.

17 MR. WOLF: Well, I challenge counsel to
18 demonstrate to me where in the permit authority
19 there is a prohibition against solicitation.

20 JUDGE LUNDSTROM: One of the issues in
21 this proceeding before the Commission is the
22 appropriate scope of on-call service, and the
23 complainant has assumed the affirmative burden of
24 showing that the service which is actually provided
25 is inconsistent with that, so considering that

1 position, this certainly is relevant, relevant
2 testimony.

3 MR. WOLF: Thank you, your Honor. I
4 understand your ruling.

5 Q. Now, Mr. Ferleman, you indicated you were
6 testifying that within five minutes of the first
7 time you were approached by a Shuttle Express driver
8 you were approached again?

9 A. That's right.

10 Q. This is on March 29, 1990?

11 A. That's right. The van number 517, and,
12 again, the driver approached me. I would estimate
13 that I was standing 20 feet or so away from one of
14 their posts where they have their phones, again
15 asked if I was going downtown and told me how much
16 it cost and so forth, and, again, I declined and he
17 again mentioned I would just have to pick up the
18 phone, it's just a formality. After that -- do you
19 want me to just continue?

20 Q. Yes, with your observations, confining
21 them for the moment to March 29.

22 A. Yeah. After that I just kind of walked
23 around and stood around and observed -- I saw two or
24 three instances, maybe four instances, where Shuttle
25 Express drivers entered the terminal, came back out.

1 I didn't keep a tally, but it appeared to me that
2 the bulk of the passengers that they were taking
3 were using the phone at the spot, that they
4 apparently had not had prior reservations, at least
5 the driver was directing them to the phone and
6 sometimes the driver would use the phone or
7 sometimes the passengers would.

8 Q. These phones are the phones on the curb
9 outside --

10 A. They have three posts, three spots where
11 they can pull in and in each spot there is a phone
12 and they're marked A, B and C.

13 Q. And moving on -- does that complete the
14 nature of the observations you made on March 29th?

15 A. Right. Oh, no, there's one other note I
16 made to myself here that -- something I observed
17 frequently. A driver would stop the van, get out,
18 and walk up and down the sidewalk calling out a name,
19 like Johnson or Smith, and in only one instance did
20 I ever see anyone respond to that name, but I saw
21 them do this possibly 10 or 20 times.

22 Q. Did the drivers that were calling these
23 names out stop and engage other people on the
24 sidewalk in conversation during this process?

25 A. Right. Yes.

1 Q. Mr. Ferleman, would you proceed to April --
2 to your observations made on April 3, 1990?

3 A. Well, then --

4 Q. Before you testify on that, approximately
5 what time of the day were you there on this day?

6 A. On March 29th?

7 Q. No, on -- well, let's go back. Before we
8 leave March 29, during what period of the day were
9 you there on March 29?

10 A. I was there from 1:00 until 3:45, and I
11 was solicited two more times before I left.

12 Q. I'm sorry, I thought you had finished your
13 observations. Please continue with March 29.

14 A. At 1:57 p.m., I was seated on a bench
15 probably 30 or 40 feet away from one of their posts.
16 A van 503, the driver approached me and offered to
17 take me -- asked if I was going to Seattle, offered
18 to take me downtown, and, again, I declined, and
19 then at 3:30, again I was seated on another bench
20 and van 314 stopped. He approached me, asked if I
21 was going to Seattle. I declined. I told him that
22 I was trying to make connections with a friend and I
23 wasn't sure what I was going to do and he said,
24 well, if you change your mind, I'll be back around.
25 I'll make another loop, he said, and then within a

1 few minutes after that conversation, I left.

2 Q. Now, Mr. Ferleman, your next observations
3 at the airport were conducted on April 3?

4 A. Right.

5 Q. And during what time of the day were you
6 there on that date?

7 A. I was there from -- I don't have the exact
8 hours, but I was there from approximately noon until
9 2:00. I was there slightly over two hours.

10 Q. And would you describe your observations
11 made on April 3, sir?

12 A. They were just as I've described on March
13 29th except for some reason there seemed to be less
14 overall airport activity. There didn't seem to be
15 quite as many vans coming by. The first day they
16 were just swarming through there, it seemed like,
17 and the second day there didn't seem to be quite as
18 much activity but it was the same pattern.

19 Q. Were you directly solicited by a Shuttle
20 Express driver while you were there on April 3?

21 A. Yes. At 1:00, approximately 1:00, it may
22 have been a few minutes either way, by the driver of
23 van 503, and he was up at the A post which is the
24 northernmost phone at the terminal. I was walking
25 towards the Gray Line terminal which is up at the

1 north end, and 503 was parked there and the driver
2 was standing out on the sidewalk and he approached
3 me and asked if I was going to Seattle. I said yeah,
4 I'm looking for the Gray Line bus, and he offered to
5 take me to Seattle. He gave me a -- what I say is a
6 sales pitch. He said they could -- he asked where I
7 was going, I told him the Four Seasons. He said, we
8 can take you there. We can take you anywhere
9 downtown. We operate just like a taxi. I said how
10 much? He said \$12. I said, well, I think -- I
11 think that Gray Line is more like 4 or \$5. He said
12 no, it's eight and he said they only leave once an
13 hour. So I said well, I think I'd better go up to
14 the Gray Line anyway and he said, well, if you
15 change your mind, I'll be here, so that was the end
16 of that.

17 Q. And do you have any further specific
18 observations to report on the -- on your visit to
19 the airport on April 3 other than -- did you observe
20 the practice of cruising slowly along the walk?

21 A. They were cruising and soliciting and
22 doing basically what I described on March 29th.

23 Q. Mr. Ferleman, you then went back to the
24 airport a final and third time on June 23.

25 A. Right.

1 Q. Just last week; is that correct?

2 A. Yes.

3 Q. And had I asked you to take some
4 photographs of the vans and the position of the
5 phone to illustrate how these vans operate in
6 connection with proximity to the telephones that are
7 on -- that we've been talking about on these posts?

8 A. Yeah. I was asked to kind of photograph a
9 more or less typical transaction.

10 Q. And did you do that, sir?

11 A. Right.

12 MR. MacIVER: Your Honor, I have seven
13 photographs and I have put them in envelopes. I
14 don't know if you would like them individually
15 marked or mark them as a set and have him go through
16 and explain each one. We can do it either way,
17 however you think would accommodate the record best.

18 JUDGE LUNDSTROM: Well, if you're going to
19 describe what's going on in each individual picture,
20 possibly they should be marked individually.

21 MR. MacIVER: All right.

22 JUDGE LUNDSTROM: I can mark them as a
23 series.

24 MR. MacIVER: Whichever way is most
25 convenient to you.

1 JUDGE LUNDSTROM: Sure. I am just going
2 to start at the top of the series that you've
3 provided me.

4 Q. Mr. Ferleman, approximately what time of
5 day were these photographs taken?

6 A. They were taken around approximately 9:30
7 or 9:45 in the morning.

8 Q. And where were you positioned when you
9 took these pictures?

10 A. I was positioned at the walkway that
11 crosses over the lower concourse level there, the --
12 when you go from the parking garage over to the
13 terminal.

14 Q. Now, the woman looking at -- the first
15 picture we see a Shuttle Express van with a downtown
16 Seattle reader board on it, correct?

17 A. Right.

18 Q. And we see a post there with a yellow box
19 on the post.

20 A. That's their telephone.

21 Q. Is that their telephone?

22 A. Yes.

23 Q. Now, do you know who the gentleman is
24 standing there?

25 A. No.

1 Q. Do you know who the woman is standing
2 there?

3 A. Yes, I know who that is.

4 Q. Was that woman working with you?

5 A. Right.

6 Q. Did she have a prior reservation to ride
7 with Shuttle Express?

8 A. No, she did not.

9 Q. Okay. Would you describe, then, starting
10 with each picture --

11 MR. MacIVER: Do you want to mark each
12 picture as the exhibit next in order, then, your
13 Honor?

14 JUDGE LUNDSTROM: Okay.

15 MR. MacIVER: Maybe if we did that in
16 advance I could refer to them.

17 JUDGE LUNDSTROM: Sure. I think that's
18 desirable. Let the record show that the top one
19 with the lady standing in it directly in front of
20 the post with the telephone box mound on it is
21 Exhibit 6 for identification.

22 (Marked Exhibit 6.).

23 JUDGE LUNDSTROM: The next one, she's
24 standing in the same place and the gentleman in a
25 white shirt is immediately to her right is Exhibit

1 number 7.

2 (Marked Exhibit 7.)

3 JUDGE LUNDSTROM: The next one, a
4 gentleman in a white shirt and tie talking on the
5 telephone, I am just making this brief as possible
6 to identify them, No. 8 for identification.

7 (Marked Exhibit 8.)

8 JUDGE LUNDSTROM: The one following that
9 where a group of three immediately to the left of
10 the pillar appear in conversation, Exhibit 9.

11 (Marked Exhibit 9.)

12 JUDGE LUNDSTROM: The one following that,
13 a gentleman in the white shirt walking off to the
14 right of the pillar with his back to the camera,
15 marked for identification as Exhibit 10.

16 (Marked Exhibit 10.)

17 JUDGE LUNDSTROM: Next one, similar, once
18 again with a gentleman in the white shirt with his
19 back to the camera, Exhibit 11.

20 (Marked Exhibit 11.)

21 JUDGE LUNDSTROM: The last one, the only
22 person visible is a gentleman in a white shirt and a
23 tie facing the camera, and the doors of the van are
24 open, exhibit for identification number 12.

25 (Marked Exhibit 12.)

1 JUDGE LUNDSTROM: Go ahead, please.

2 Q. Now, over what span of time did you take
3 these seven pictures that have been marked for
4 identification as Exhibits 6 through 12?

5 A. I would say two to three minutes.

6 Q. All right. Starting with the first
7 picture, would you describe, is the individual in
8 the white shirt the Shuttle Express driver?

9 A. Yes.

10 Q. And the man is an unknown?

11 A. That's right.

12 Q. And the woman is your operative?

13 A. Yes.

14 Q. Would you move to the next picture?

15 A. Okay.

16 Q. And describe that.

17 A. Okay. Referring back to the first picture,
18 the driver had been in a discussion with this person
19 who was on the sidewalk. At this point he is
20 discussing something with the young lady.

21 Q. And then move to the third picture.

22 A. He is now the -- the Shuttle Express
23 driver is using the telephone where the other two
24 people are standing there.

25 Q. And the next picture which is Exhibit 9?

1 A. Okay. The Shuttle Express driver is
2 passing the telephone to the gentleman.

3 Q. And then Exhibit 10, the gentleman is
4 talking on the phone?

5 A. He's talking on the phone. The next
6 picture --

7 Q. Excuse me. Before you leave Exhibit 10,
8 the Shuttle Express driver is walking towards the
9 van, the back of the van?

10 A. That's right.

11 Q. Do you know what he did?

12 A. He opened the back doors. That's where
13 they load the luggage.

14 Q. And the next picture, Exhibit 11, shows
15 what?

16 A. Now the young lady is talking on the phone
17 and the gentleman has picked up his baggage and is
18 just starting to move towards the Shuttle Express
19 van.

20 Q. And did the first gentleman talking on the
21 phone hand the phone off to the woman or did the
22 driver come back and hand off the phone?

23 A. No, the gentleman in the blue shirt passed
24 the phone to the young lady.

25 Q. And that's your operative?

1 A. Right.

2 Q. And the final picture, had the gentleman
3 entered the van at the time this picture was taken?

4 A. He was already in the van and the young
5 lady is just stepping into the van at that point,
6 and the driver is coming around to close up the
7 doors.

8 Q. And this sequence took place, this total
9 sequence took how long?

10 A. Two to three minutes, I would estimate,
11 maybe close -- probably two minutes.

12 MR. MacIVER: Move to admit Exhibits 6
13 through 12.

14 JUDGE LUNDSTROM: Objection, Mr. Wolf?

15 MR. WOLF: None, your Honor.

16 MR. CEDARBAUM: No objection.

17 JUDGE LUNDSTROM: The record will show
18 Exhibits 6 through 12 will be admitted.

19 (Admitted Exhibits 6 through 12.)

20 JUDGE LUNDSTROM: Go ahead, please.

21 MR. MacIVER: No further questions.

22 JUDGE LUNDSTROM: Cross-examination, Mr.
23 Wolf?

24 MR. WOLF: Thank you, your Honor.

25

1

CROSS-EXAMINATION

2 BY MR. WOLF:

3 Q. Mr. Ferleman, am I pronouncing it
4 correctly?

5 A. That's correct.

6 Q. Is this the first case of this type that
7 you've ever had during your experience as an
8 investigator?

9 A. The first case involving van -- yeah, this
10 type, I guess that's right.

11 Q. Had you in your prior experience any prior
12 experiences in dealing at all with the Port of
13 Seattle?

14 A. I had one prior experience.

15 Q. Could you just tell us briefly about that?

16 A. They were a defendant in a lawsuit. Their
17 attorneys had asked me to do some investigation. It
18 was a bodily injury type lawsuit.

19 Q. Did it have anything to do with the
20 providing of ground transportation services at
21 Seattle-Tacoma International Airport?

22 A. No, it did not.

23 Q. During your career as an investigator,
24 have you ever had anything to do with the Washington
25 Utilities and Transportation Commission?

1 A. No.

2 Q. Would it be fair to say, sir, that you are
3 not familiar with the laws, rules and regulations of
4 the Washington Utilities and Transportation
5 Commission?

6 A. That's a fair statement.

7 Q. And you are not familiar, are you, sir,
8 with the statutes and regulations that govern the
9 operations of the Port of Seattle at the
10 Seattle-Tacoma International Airport?

11 A. That's true.

12 Q. Would it also be fair or would I also be
13 correct in my understanding, sir, that you have
14 never seen a copy of the operating authority of
15 Shuttle Express, the respondent in this proceeding?

16 A. I don't believe I've ever seen that.

17 Q. And you are not here -- and, if you
18 remember, sir, you have never seen a copy of the
19 operating agreement, the concession agreement that
20 is had between Shuttle Express and the Port of
21 Seattle?

22 A. I'm quite sure I have not.

23 Q. You are not here, sir, are you, to express
24 any opinions or conclusions as to whether or not
25 Shuttle Express has in any manner or method violated

1 the terms of its operating permit with the Utilities
2 and Transportation Commission?

3 MR. MacIVER: Your Honor, I will certainly
4 stipulate to that. This is an investigator
5 reporting observations. He is not here to give
6 legal opinions.

7 Q. Is that a yes to the answer?

8 JUDGE LUNDSTROM: He can answer.

9 A. Yes. That's true.

10 Q. And when you commenced your investigations,
11 proceeded through your investigations and concluded
12 your investigations, you were not aware, sir, of any
13 of the operating limitations contained in the
14 Shuttle Express permit authority?

15 MR. MacIVER: Your Honor, I might shorten
16 this. I will stipulate. I showed Mr. Ferleman -- I
17 did not show him the operating authority nor the
18 concession agreements or contracts. I didn't want
19 him concerned with issues -- legal issues. I wanted
20 him to simply make observations and report them, so
21 I can shortcircuit all this by stipulating with Mr.
22 Wolf if witness is not presented to give opinions.
23 He is presented only to give facts concerning
24 observations.

25 JUDGE LUNDSTROM: Will that satisfy the

1 objectives of your line of questioning, Mr. Wolf?

2 MR. WOLF: I guess I have a stipulation
3 that prior to, during and after the investigations,
4 Mr. Ferleman was not aware of the operating
5 limitations, if any, in the Shuttle Express permits.

6 MR. MacIVER: That's true. I didn't
7 bother Mr. Ferleman with any legalities. I asked
8 him to make observations at the airport.

9 JUDGE LUNDSTROM: Would you offer such a
10 stipulation?

11 MR. MacIVER: Oh, yes.

12 JUDGE LUNDSTROM: Will you accept that,
13 Mr. Wolf?

14 MR. WOLF: Yes, sure.

15 JUDGE LUNDSTROM: Will you accept that,
16 Mr. Cedarbaum?

17 MR. CEDARBAUM: I don't oppose it. I
18 don't know what he was assigned to do other than
19 what I've heard today.

20 JUDGE LUNDSTROM: The stipulation is
21 offered -- if it's accepted, it would be conclusive
22 as to matters of fact contained in that, so I have
23 an obligation to ask you if you accept that
24 stipulation.

25 MR. CEDARBAUM: For purposes of this

1 record, I can agree to that.

2 MR. WOLF: Great.

3 MR. MacIVER: I hope I understand the
4 stipulation. I can stipulate that I simply asked
5 Mr. Ferleman without coloring him, with telling him
6 what I thought was right or wrong, simply to make
7 observations and report what he saw. He is not a
8 legal expert nor is he a regulatory expert.

9 JUDGE LUNDSTROM: I think we understand
10 that is the substance of the stipulation, is that
11 not correct, Mr. Wolf?

12 MR. WOLF: I understand the stipulation as
13 I stated it. What I am really asking for, the point
14 here is I am -- I am trying to make the point, I
15 don't want to belabor it, is that at the time Mr.
16 Ferleman was doing his work, he was not aware of any
17 of the operating limitations contained in the
18 Shuttle Express permit.

19 JUDGE LUNDSTROM: Well, I think that
20 representation has been offered, the stipulation.

21 MR. WOLF: Then maybe I'm making too much
22 of it. Am I right?

23 MR. MacIVER: That's correct. I just
24 asked him to observe and report back.

25 MR. WOLF: It's hard for lawyers to agree

1 on anything but I think we do in this case.

2 JUDGE LUNDSTROM: The stipulation appears
3 acceptable. We accept it. Thank you very much. Go
4 ahead, please.

5 Q. Mr. Ferleman, you were at the airport on
6 three occasions conducting your investigations?

7 A. Yes.

8 Q. Those investigations totaled how many
9 hours, lumping all three days together?

10 A. Slightly less than six hours.

11 Q. And did you have the operations of Shuttle
12 Express under observation during the entirety of
13 those six hours?

14 A. No. There was probably 30 minutes or 45
15 minutes where I was inside the terminal taking a
16 break or something like that.

17 Q. Okay. During that time you watched people
18 board the Shuttle Express vans and you watched their
19 operations, did you not?

20 A. Right.

21 Q. During any of the time that you observed
22 the operations at Shuttle Express did you ever see a
23 passenger get on the van without prior to boarding
24 the van utilizing the telephones?

25 A. Yes.

1 Q. In those instances where that occurred,
2 did you ever talk with those passengers?

3 A. No.

4 Q. And then you have no idea, do you, sir,
5 whether or not those passengers that boarded the van
6 without utilizing the telephone had made a telephone
7 call inside?

8 A. That's correct.

9 Q. And you have no idea, sir, and you offer
10 no testimony here today to the contrary that those
11 passengers that boarded the van without make --
12 using the telephone on the wall, on the concourses,
13 had a prior previously arranged reservation with
14 Shuttle Express?

15 A. I kind of lost the question there, I guess,
16 but, no, I don't know if they had made prior
17 arrangements, right.

18 Q. But you did testify, sir, that there were
19 a number of people that approached the Shuttle
20 Express vans and were denied access to the van until
21 they had utilized the telephone; isn't that correct?

22 A. That's correct.

23 Q. Let me direct your attention to your
24 observations on March 29, 1990. I believe you said
25 you testified that you would watch the vans pull up

1 and park?

2 A. Yes.

3 Q. Does that fact mean anything to you or did
4 you draw any conclusion from the fact that vans were
5 pulling up and parking?

6 A. I just thought that it was strange, I
7 guess, that they would pull up and park when there
8 seemed to be no passengers around.

9 Q. Are you aware, sir, that there are three
10 definitive zones where Shuttle Express may in
11 accordance with their operating agreement pull up
12 and park?

13 A. Right. Yeah, I'm familiar with -- they're
14 painted yellow, yeah.

15 Q. And they would park in these areas; is
16 that correct?

17 A. Right.

18 Q. Now, did you ever talk to a driver of one
19 of these vans that you watched pull up and park?

20 A. I talked to several of them.

21 Q. With regard to the drivers that you saw
22 pulling up and parking, do you have any idea, sir,
23 whether or not they may have been called into the
24 airport and were waiting for their passengers to
25 come -- to gather their baggage and come out to the

1 concourse? You don't know that, do you, sir?

2 A. No.

3 Q. And that's a very distinct possibility, is
4 it not, sir?

5 MR. MacIVER: Objection.

6 Q. Is that a possibility?

7 JUDGE LUNDSTROM: What's the grounds for
8 the objection?

9 MR. MacIVER: I just objected to the form
10 of the question as a very distinct possibility.

11 MR. WOLF: Let me rephrase.

12 JUDGE LUNDSTROM: Okay.

13 BY MR. WOLF:

14 Q. That is a possibility, is it not, sir?

15 A. Well, if you're asking for my opinion, yes,
16 it's a possibility.

17 Q. Wouldn't you agree with me, sir, that it's
18 even probable that that's what the driver was doing?

19 A. No, I wouldn't agree with that.

20 Q. But you don't know, do you, sir?

21 A. No.

22 Q. Secondly, I believe you testified that you
23 watched those vans stand with -- drivers stand
24 outside with the door open.

25 A. Yes.

1 Q. And didn't you also see them drop the step
2 stool?

3 A. Right.

4 Q. To make it more convenient for their
5 passengers to board the van, would you assume?

6 A. Right.

7 Q. And again with respect to those drivers
8 who pulled out, opened the doors, dropped the step
9 stool and stood by the van, they may very well have
10 been waiting for a passenger to gather their baggage
11 and come to meet the van?

12 A. That's possible.

13 Q. Now, did you ever talk with anyone at the
14 Port of Seattle with regard to whether or not --
15 about the operations of Shuttle Express?

16 A. Do you mean talking to someone who
17 represented the Port?

18 Q. Yes, sir.

19 A. Oh, no, I didn't.

20 Q. So you didn't have the opportunity to
21 learn that the Port of Seattle operating
22 instructions preclude the Shuttle Express vans from
23 coming into the airport unless they had been called
24 in by a passenger, you didn't know that, did you,
25 sir?

1 A. No.

2 Q. And you further did not know, sir, that
3 the operating instructions of the Port of Seattle
4 preclude a Shuttle Express van from coming on to the
5 airport property from their staging area without
6 specific direction and authorization from the ground
7 transportation dispatch at the Seattle Tacoma
8 International airport?

9 A. I wasn't familiar with the rules.

10 Q. But still you think or you start to form
11 the thought that they had come in there -- that
12 these vans that had come in, came in, pulled up and
13 parked solely to solicit passengers without any
14 prearranged passenger coming to that van at all?

15 A. I didn't say that. I didn't testify to
16 that.

17 Q. All right. You also testified that you
18 witnessed Shuttle Express drivers going up and
19 talking to passengers, to what appeared to be either
20 airline or ground transportation passengers; is that
21 correct?

22 A. Right, that's correct.

23 Q. Did you ever hear any of those
24 conversations?

25 A. Yes, quite a few.

1 Q. You did. You testified that you were in
2 your opinion solicited yourself; is that correct?

3 A. That's correct.

4 Q. Let me direct your attention, if I could,
5 to -- let's take April 3rd.

6 A. Okay.

7 Q. Do you recall that date from your
8 investigation?

9 A. Yes.

10 Q. You arrived at the airport at noon; is
11 that right?

12 A. Approximately.

13 Q. Generally how were you dressed?

14 A. Approximately like I am today. I carried
15 a suitcase and looked like -- about like this.

16 Q. What kind of suitcase did you carry?

17 A. It was a -- you know, the kind that you
18 can hang up or then fold over and carry that way, a
19 soft suitcase.

20 Q. As a matter of fact, sir, in preparing for
21 this investigation, you tried to pick an attire and
22 accessories that would suggest that you were a
23 passenger who had just disembarked from an airline
24 trip; isn't that correct?

25 A. Yes, ma'am, that's right.

1 Q. And you also wanted to make yourself look
2 like you were in need of getting away from the crowd
3 and congestion of the airport, isn't that correct?

4 MR. MacIVER: Object to the form of the
5 question.

6 JUDGE LUNDSTROM: Well, go ahead and
7 answer if you can, please.

8 A. Yeah. I wanted to appear like I belonged
9 out there with the other passengers.

10 Q. And, now, did you begin your stance at
11 noon on April 3?

12 A. Approximately noon, right.

13 Q. So you were out on the airport drive for
14 almost an hour before any driver of Shuttle Express
15 approached you; is that correct?

16 A. That's right.

17 Q. Was it your understanding from your
18 conversations with the drivers of Shuttle Express
19 that you would not be permitted to board a van until
20 you had utilized the telephone?

21 A. That's correct.

22 JUDGE LUNDSTROM: Excuse me, Mr. Wolf. If
23 I may interrupt for a moment, is there anyone in the
24 hearing room here for the V J's Delivery hearing?
25 Go ahead, please.

1 MR. MacIVER: Excuse me. I'm a party to
2 that but I had arranged for -- I had a little bit of
3 a conflict here.

4 (Discussion off the record.)

5 JUDGE LUNDSTROM: Thank you very much. Go
6 ahead, please.

7 Q. So, again, sir, I think where we left off
8 is that based on all the conversations you had with
9 drivers of Shuttle Express, you left with the firm
10 conviction that you would not be permitted to ride a
11 Shuttle Express van prior to your utilizing the
12 telephone?

13 A. That's true.

14 Q. You witnessed a number of passengers
15 utilizing the three telephones that are on the
16 airport drive at Seattle-Tacoma International
17 Airport, did you not?

18 A. Yes.

19 Q. Did you hear either end of that telephone
20 conversation?

21 A. I heard many of the conversations. I
22 could just hear obviously the people who were
23 talking at the post. I couldn't hear what was going
24 on on the telephone.

25 Q. You couldn't hear the other side?

1 A. Right.

2 Q. Obviously. What kind of things were the
3 passengers saying in the telephone?

4 A. Frequently they'd say, it's me, or they'd
5 say, I want to go, the driver having handed them the
6 phone and telling them, just say, it's me, and
7 they'd say, it's me, and they'd kind of chuckle and
8 get on the phone -- or get on the van, and sometimes
9 the driver would say, just tell them you want to go,
10 hand it to the person. They'd say, I want to go and
11 they'd all go get on the van, and they'd always
12 explain, it's just a formality.

13 Q. Did you listen to what the driver would
14 say also?

15 A. Yeah, sometimes the driver would say I
16 have a Mr. Jones or a Mr. Brown or whoever here,
17 going to Seattle or the Westin or whatever, and then
18 the driver would hand the phone to the passenger.

19 Q. So the driver would reflect the -- did you
20 ever hear anyone get on the van without -- where you
21 heard the full conversation, where the driver and
22 the -- I mean the name of the passenger and the
23 destination was not passed over the telephone? That
24 information was always passed over the telephone,
25 was it not?

1 A. I believe so. Now, there would be a lot
2 of instances where I would hear the passenger and
3 the driver conversing, and hear the passenger on the
4 phone. Sometimes I wouldn't hear exactly what the
5 driver was saying, just from the way I would be
6 positioned.

7 Q. And in those instances, would the driver --
8 would the passenger be giving their name and
9 destination?

10 A. Well, I think the way it usually worked is
11 the driver would ask the passenger what their name
12 was and where they were going, and the driver would
13 give that to the dispatcher, then hand the phone to
14 the passenger who would confirm that he was Mr.
15 Jones or that he did want to go. That's pretty much
16 the way it worked almost every time.

17 Q. So I guess what you're telling me is these
18 drivers were making these telephone calls on behalf
19 of the passengers; is that right?

20 A. Most of the time. Sometimes the passenger
21 would initiate the call after being directed to the
22 phone by the driver.

23 Q. I think just one other area. You also
24 testified that you witnessed drivers going into the
25 terminal area.

1 A. Right.

2 Q. Did you ever follow them in?

3 A. No, I did not.

4 Q. Do you know why they were going in?

5 A. No.

6 Q. We talked about some possibilities before,
7 but wouldn't it be possible, sir, that those drivers
8 were going into the terminal to look for a
9 prearranged passenger that had made a reservation
10 and hadn't arrived at the van yet?

11 A. I suppose so.

12 Q. Thank you, Mr. Ferleman. I don't have any
13 further questions.

14 JUDGE LUNDSTROM: Mr. Cedarbaum?

15 MR. CEDARBAUM: I have no questions.

16 JUDGE LUNDSTROM: The witness is now
17 available for questions from the Commission.

18 CHAIRMAN NELSON: I don't have any.

19 COMMISSIONER CASAD: I have no questions.

20

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

22 BY COMMISSIONER PARDINI:

23 Q. Mr. Ferleman, did you ever observe any of
24 the airport security people telling the drivers to
25 move their van or cease and desist any of the

1 contacts with the people that they were soliciting?

2 A. I didn't -- I don't recall seeing anything
3 like that happening.

4 Q. Did you ever observe any of the vans
5 moving into the yellow area and then departing
6 without a passenger?

7 A. Oh, yes, frequently.

8 Q. In the instances where you testified that
9 the drivers indicated that they would make the loop
10 and come back, did you ever identify that van making
11 that loop and coming back?

12 A. I saw lots of instances of that.

13 Q. Same van making the continuous loop?

14 A. Right.

15 Q. Were they carrying passengers.

16 Q. Same van making the continuous loop?

17 A. Right.

18 Q. Were they carrying passengers?

19 A. Yes.

20 Q. Thank you.

21 JUDGE LUNDSTROM: Mr. MacIver?

22 MR. MacIVER: I have no further questions,
23 your Honor.

24 JUDGE LUNDSTROM: Thank you very much.

25 MR. MacIVER: My next witness will be Mr.

1 Holbrook from the Port of Seattle.

2 Whereupon,

3 DOUGLAS C. HOLBROOK,

4 having been duly sworn, was called as a witness and
5 was examined herein and testified as follows:

6 JUDGE LUNDSTROM: Thank you. Be seated,
7 please.

8

9 DIRECT EXAMINATION

10 BY MR. MacIVER:

11 Q. Mr. Holbrook, would you please state your
12 name and give us your business address, please.

13 A. My name is Douglas C. Holbrook. I work
14 for the Port of Seattle at Sea-Tac International
15 Airport, Post Office Box 68727, Seattle, Washington,
16 98168.

17 Q. What is your occupation at the airport,
18 Mr. Holbrook?

19 A. Assistant director, aviation operations.

20 Q. How long have you been employed there?

21 A. I've been employed by the Port of Seattle
22 for 13 years.

23 Q. Mr. Holbrook, I appreciate very much you
24 coming down here. I realize this is a long way from
25 where you're working.

1 A. No problem.

2 Q. Mr. Holbrook, would you briefly describe
3 your responsibilities at the airport?

4 A. As assistant director of aviation
5 operations, I am responsible for overseeing and
6 administering the sections of the airport, security,
7 operations, ground transportation, employee parking,
8 public parking, and lost and found.

9 Q. You mentioned ground transportation, sir.
10 Would that include the operations of what we
11 commonly refer to as airporters operating between
12 Sea-Tac and the surrounding territories?

13 A. That's correct.

14 Q. Does the Port have certain rules, rules
15 and regulations which airporters such as Shuttle
16 Express, Gray Line, Suburban, Capital Airporter,
17 must comply with?

18 A. Correct.

19 Q. Does the Port employ enforcement personnel
20 to check on these airporter operations from time to
21 time to monitor their compliance with the Port's
22 laws, rules and regulations?

23 A. Yes, they do.

24 Q. And I take it that these are spot-checks
25 only, in that you can't constantly monitor

1 airporters?

2 A. That's correct. They're just one facet of
3 the operation.

4 Q. So that when you have issued citations to
5 an airporter over a period of time, it doesn't
6 necessarily mean that this is the total picture of
7 their violations, but only those observed on the --
8 during the spot check?

9 A. That's correct.

10 Q. When the Port personnel observes
11 activities in violations of the Port's rules and
12 regulations, what do they do?

13 A. When a -- one of my personnel observes a
14 violation, they write that up in a violation form,
15 that is then forwarded to their supervisor for
16 review, investigation, whatever, and then that
17 violation, if it's determined to be, you know, that
18 the violation was written up correctly, that it is a
19 violation of the terms and conditions of the
20 agreement, then that is forwarded on to the operator,
21 and if there's a monetary fine associated with it,
22 they're advised of the monetary fine or whatever
23 action needs to be done to correct that.

24 Q. So the violations once observed, reported
25 to you or your staff, they are then evaluated and if

1 it's deemed to be a violation of the regulations,
2 the airporter is advised in writing of the violation?

3 A. Correct.

4 Q. Now, are all airporters required to enter
5 into written concession agreements with the airport
6 in conjunction with their operations there?

7 A. Yes, they are.

8 Q. And are these concession agreements
9 expected to be complied with by the various
10 airporters?

11 A. Yes, they are.

12 Q. And are citations issued for violations of
13 the terms of the concession agreements if they are
14 observed?

15 A. Yes, they are.

16 Q. Are airporters also cited by the Port for
17 driver misconduct, such as leaving their vehicles,
18 going to the improper zones, soliciting, entering
19 the terminal and that type of activities?

20 A. Yes, they are.

21 MR. WOLF: Nothing, your Honor.

22 JUDGE LUNDSTROM: Go ahead.

23 A. Yes, they are.

24 Q. Are you familiar, then, sir, with the
25 violations that have been issued to Shuttle Express,

1 carrier involved in this proceeding, during 1989 and
2 1990?

3 A. Yes, I am.

4 Q. Mr. Holbrook, I have handed you a packet
5 of documents which are in the form of letters from
6 the Port of Seattle to the Shuttle Express. Are
7 these the citations that -- I received these letters
8 from the Port of Seattle in response to a request
9 for copies of all citations issued to Shuttle
10 Express for the calendar year 1989 and for 1990
11 through up until May 1, 1990. Correct?

12 A. Yes.

13 Q. And are these the copies of the citations
14 that were provided to me?

15 A. Yes, that appears to be a complete set of
16 what we've provided you.

17 Q. And I note that, for example, a letter
18 would be dated, like the top letter, dated February
19 7, 1989, but it would refer to violations on an
20 earlier date, using the top letter as an example,
21 dated February 7 but down below the violation is
22 described in the first indented paragraph of the
23 letter; is that correct?

24 A. My copy I have March 10th is the first
25 letter on the top here, but, yes, a violation letter

1 would be after the date of the actual violation.

2 Q. I am going to give you a -- does the
3 Commission's copy show February 7 as the top letter?

4 CHAIRMAN NELSON: Yes.

5 Q. I will give you this.

6 JUDGE LUNDSTROM: The one you provided for
7 the official record also shows February 7 as the top
8 letter.

9 MR. MacIVER: Thank you.

10 Q. Now, these are citations for what you
11 would refer to as operational violations only as
12 contrasted to violations for not payment of bills
13 when due or that type of thing?

14 A. That's correct.

15 Q. Mr. Holbrook, I would like to briefly go
16 through some examples here of the types of
17 violations that have been brought to your attention
18 by your enforcement personnel. Would you please
19 refer to the March 10 letter?

20 MR. WOLF: Your Honor, I would object to
21 any testimony with regard to the exhibit until it's
22 been offered and admitted as evidence.

23 MR. MacIVER: I offer Exhibit 13.

24 (Marked Exhibit 13.)

25 JUDGE LUNDSTROM: Marked for

1 identification the document that you've handed me as
2 Exhibit 13. That's a multi-page document, at the
3 top of which is the Port of Seattle letter dated
4 February 7 in, 1989.

5 MR. WOLF: And I would object, your Honor,
6 on the basis of relevancy and materiality, and there
7 are a couple of objections. First of all, this
8 exhibit purports to encompass periods of time that
9 precede the granting of Washington Utilities and
10 Transportation Commission authority to Shuttle
11 Express. Mr. Cedarbaum, I believe, stated the date
12 yesterday with respect to delivery of the service
13 which was in late November, 1989. It would be my
14 understanding that this Commission would not have --
15 Shuttle Express was not a certificated carrier
16 subject to the jurisdiction until that time, so I
17 think that the exhibit contains more than we need
18 here.

19 Secondly, and perhaps even more
20 importantly, your Honor, the allegations in this
21 complaint are that Shuttle Express has violated the
22 terms of its UTC operating permit, and as a result
23 of that Gray Line has in some fashion been damaged.
24 There is no allegation with regard to -- or it is
25 not a violation of the WUTC operating permit to have

1 a citation with respect to the Port of Seattle
2 operating agreement. They are two independent --
3 independently operating regulatory agencies, so on
4 that basis I believe these documents are irrelevant.

5 Finally, and again another important
6 document, there is an allegation in the complaint
7 with regard to solicitation. I have made the
8 argument here that solicitation is not a violation
9 of the Port of -- is not a violation of the UTC
10 operating permit. I understand that it is a
11 violation of the Port of Seattle operating permit.
12 I have looked through the exhibit here and done --
13 because we've seen it before, and of the breadth of
14 this, there are two citations for solicitation that
15 occurred in November 1989, and there have been no
16 violations for solicitation since.

17 So on all three of those bases, I think it
18 is extremely -- irrelevant, immaterial, and
19 extremely prejudicial to introduce Exhibit No. 13.

20 JUDGE LUNDSTROM: Okay. Care to respond,
21 Mr. MacIver?

22 MR. MacIVER: Yes, thank you. I would
23 start by reminding your Honor that Commissioner
24 Pardini in his concurring opinion when the authority
25 was granted in this case made note of his concern

1 that this carrier appeared to have a pattern of
2 continuing and frequent violations of the laws,
3 rules and regulations at the Port of Seattle.

4 Commissioner Pardini further warned the
5 applicant and other carriers in that concurring
6 opinion that he would not tolerate a carrier that
7 chooses to select those laws, rules and regulations
8 which they will abide with and those laws, rules and
9 regulations which they will not abide with.

10 On a great part of our case here is to
11 establish the method and mode of operation of
12 Shuttle Express at the airport. These violations
13 spell out a very interesting picture as to how they
14 are in fact operating at the airport. Many, many of
15 these violations, not only are violations of the
16 rules and regulations of the court, but are in
17 direct conflict with how Mr. Sherrell has repeatedly
18 represented under oath to this Commission how he is
19 operating as a regulated carrier, how he is
20 conducting himself in securing traffic out of the
21 airport. So they are very relevant, not only as to
22 whether or not he's operating in excess of his
23 on-call restriction of his permit, but relevant to
24 show that he is operating in frequent violation of
25 the laws, rules and regulations of the Port of

1 Seattle.

2 JUDGE LUNDSTROM: Could you describe,
3 please, some of the factual matters you believe are
4 demonstrated by these documents that you would like
5 to have considered?

6 MR. MacIVER: Sure.

7 JUDGE LUNDSTROM: Excuse me. Could you
8 sit down, please, and speak to the microphone so
9 that everyone can hear you?

10 MR. MacIVER: The second letter,
11 repeatedly picked up passengers in zones other than
12 those designated for Shuttle Express use on at least
13 nine occasions. That's the letter dated March 10.
14 April 18th, observed cruising the lower drive but
15 not picking up passengers. Letter dated May 25,
16 driver of Shuttle Express van 321 was observed
17 running after and loading passengers out of his zone.
18 When approached by a Port of Seattle employee, he
19 refused to load in his zone, which was open.
20 Citations more numerous to count picking up outside
21 their loading zones. Letter dated July 27th, driver
22 asked if he was a waiver of the appropriate Shuttle
23 Express loading zone. Driver replied yes, but
24 continued to load outside the designated Shuttle
25 Express loading zone.

1 You recall I had pointed out yesterday in
2 the testimony that these drivers have been given an
3 inducement by Mr. Sherrell in the form of one-third
4 of the gross revenue of the company for all fares
5 transported and it is our position that that
6 inducement is causing flagrant activity at the
7 airport. For example, on August 24, 1989, this
8 citation says, your company van 304 was loading in
9 taxi zone number five. The driver stated "He could
10 care less where his zone is and that he will stop
11 where he wants."

12 Now, I think this is all very relevant
13 information. This is the Port of Seattle citing
14 this carrier for this behavior. It's flagrant
15 behavior, not only in violation of its operating
16 authority but in violation of the laws, rules and
17 regulations of this Commission.

18 JUDGE LUNDSTROM: You intend to offer
19 arguments as to why these -- some of the things that
20 you pointed out?

21 MR. MacIVER: Very true.

22 JUDGE LUNDSTROM: Okay.

23 MR. WOLF: Some of the things that are
24 pointed out what? Excuse me? I didn't follow that
25 colloquy, your Honor.

1 JUDGE LUNDSTROM: I think that Mr. MacIver
2 is alleging that these conducts all relate to his
3 allegation that the conduct involved is outside of
4 the authority. That's the way I understand the
5 offer of this document.

6 MR. MacIVER: And in violation of the laws,
7 rules and regulations of the Port which is part of
8 the responsibility of any regulated carrier to abide
9 by. As Commissioner Pardini pointed out, he will
10 not tolerate a carrier which selects laws to abide
11 by and selects laws to ignore.

12 JUDGE LUNDSTROM: Okay. Mr. Wolf, I think
13 first of all that these are documents which under
14 the Administrative Procedures Act definition of
15 admissible evidence are the kind of thing that a
16 person would consider in the ordinary course of
17 their business, and therefore qualify for admission
18 as evidence in general under the APA. I think the
19 objection goes to the weight which ought to be
20 accorded the contents of these documents rather than
21 to their admissibility. I think if you remember
22 that, as has been pointed out before, one of the
23 issues this Commission will decide is the scope of
24 the on-call authority and whether conduct is
25 consistent with that and consistent with the laws,

1 rules and regulations of the Commission.

2 Therefore, I am going to overrule the
3 objection and admit the document.

4 (Admitted Exhibit 13.)

5 JUDGE LUNDSTROM: Excuse me. We didn't
6 get to Mr. Cedarbaum. I am overruling that
7 objection. Mr. Cedarbaum, do you have any objection?

8 MR. CEDARBAUM: I have no objection. I
9 think -- I agree with your ruling that to the extent
10 this type of activity may constitute a violation of
11 the on-call restriction which the Commission will
12 decide, they're relevant. I would say also state
13 that to the extent that there are violations from
14 the Port which preceded the issuance of the
15 company's certificate, the company operated without
16 certificate authority from this Commission, and that
17 is clearly illegal operation so that would be
18 relevant in and of itself. So I have no objection.

19 JUDGE LUNDSTROM: All right. I think I've
20 ruled on the objection. The document will be
21 admitted. Go ahead, please, and examine.

22 Q. Mr. Holbrook, you have Exhibit 13 in your
23 hand, correct?

24 A. Yes.

25 Q. The March 10, which is the second document,

1 cites Shuttle Express for repeatedly picking up
2 passengers in zones other than designated for
3 Shuttle Express. Is this a serious infraction or
4 just a frivolous matter, in your opinion?

5 A. Well, all violations of our terms and
6 conditions are serious matters. We wouldn't have
7 those terms and conditions if they weren't -- we
8 didn't consider them serious.

9 Q. And do you make it known to itself
10 airporter operators that these violations are not to
11 be taken lightly?

12 A. Yes, we do.

13 Q. Have you made that known to Mr. Sherrell
14 of Shuttle Express?

15 A. Yes, we have.

16 Q. Do you consider it a serious violation for
17 an airporter, any airporter, including Shuttle
18 Express, to run after passengers on the sidewalk, as
19 stated in the May 25, 1989 letter citation to
20 Shuttle Express?

21 A. I don't know the exact details of that
22 particular incident. I would have to have a lot
23 more information on that one. It was -- I'll put it
24 this way. My employees felt it was serious enough
25 to be a violation. They wrote it up. It was

1 investigated by my management staff and it was
2 forwarded on as a violation, so in that context, it
3 would be serious.

4 Q. And that same violation, after running
5 after that passenger, the violation also cited
6 Shuttle Express for, quote, refusing to load in his
7 or her zone which was open after being approached by
8 the Port, end quote. Do you consider that a serious
9 infraction?

10 A. Yes, I consider it a serious infraction
11 when my staff directs an operator to conduct their
12 business in a certain manner to comply with the
13 terms and conditions of the agreement and they do
14 not do it.

15 Q. Referring to the May 24, 1989 letter,
16 again, it was Shuttle Express were cited for, and I
17 quote, drivers refused to cooperate when told by
18 Port personnel they were causing a congestion
19 problem. Is that a serious infraction in your
20 opinion, sir?

21 A. Yes. The terms and conditions of all the
22 agreements are set up to help control a finite
23 facility and a finite capacity we have at the
24 airport, so, yes, that is a serious violation.

25 Q. On August 8, 1989, there's another example,

1 Shuttle Express was cited for cruising with flashers
2 through the entire lower drive at approximately four
3 to five miles an hour. Why do you discourage that
4 type of activity at the airport, Mr. Holbrook?

5 A. Well, again, we have a finite capacity,
6 finite resource at the airport and the drive
7 capacity. We do not desire any vehicles being on
8 the drive without a need to, on the drive system, so
9 that's why we have terms and conditions in the
10 agreements prohibiting cruising or unnecessary
11 driving through the drive system.

12 Q. On August 24, Shuttle Express, one of five
13 instances that they were cited for was the driver
14 stated to your port enforcement people, "He could
15 care less where his zone is and that he will stop
16 where he wants." Is that in your opinion a serious
17 infraction?

18 A. Yes, it is.

19 Q. Directing your attention to December 5,
20 let me read you this infraction as another example.
21 On November 24, 1989, infraction, you're aware, are
22 you not, that the Commission wrote Mr. Sherrell on
23 November 15, 1989, instructing him not to accept
24 hail-the-van and walk-up passengers, it was the
25 opinion that the Commission gave him which caused

1 you to amend his concession agreement, correct?

2 A. In November 1989, right.

3 Q. So I am now reading to you from a November
4 1984 incident citation which reads as follows. The
5 driver of Shuttle Express van 401 was observed
6 soliciting passengers in front of door two and T-1
7 Shuttle Express zone. He approached a woman and
8 asked her if she needed a ride to Seattle. He asked
9 a Port of Seattle ground transportation controller
10 who was standing outside if she needed a ride. He
11 also asked a gentleman waiting for a different
12 Shuttle Express van to approach two men who were
13 waiting for a taxi cab and tell them that Shuttle
14 Express was half the cab fare.

15 Is this type of solicitation of airport
16 patrons considered a serious infraction by an
17 airporter of your rules and regulations?

18 A. Yes, it is.

19 Q. And in fact in Shuttle Express' concession
20 agreement, they are specifically prohibited from
21 soliciting patrons of the airport, are they not?

22 A. That is correct.

23 MR. WOLF: Excuse me, Counsel. What's the
24 date of this, was this November of '89?

25 MR. MacIVER: Violation that occurred

1 November 24, 1989, cited by letter December 5, 1989
2 by the Port of Seattle.

3 MR. WOLF: Thank you.

4 Q. Again, on November 26, 1989, a citation by
5 letter dated December 5, 1989, an event which
6 occurred on November 26 was cited which reads as
7 follows, "The driver of Shuttle Express van number
8 503 was observed soliciting passengers on the walk
9 to the T-2 Shuttle Express zone. He asked all those
10 walking by him if they needed a ride. He also asked
11 Port of Seattle ground transportation controller who
12 was standing outside if he needed a ride."

13 Again, is this a direct violation of the
14 concession agreement of Shuttle Express to solicit
15 patrons of the airport on the properties of the
16 airport?

17 A. Yes, it is.

18 Q. On January 26, 1990, citation referring to
19 an incident on January 16, 1990, Shuttle Express was
20 again cited with the following language, driver of
21 Shuttle Express number 520 went around the drive
22 four times. Is that what you refer to as prohibited
23 cruising activity?

24 A. Yes, it is.

25 Q. By letter dated March 16, 1990, Shuttle

1 Express was cited for an incident dated March 10,
2 1990, for "picked up a passenger when the passenger
3 hailed the van." Is accepting hail-the-van traffic
4 an infraction of your rules and regulations?

5 A. Yes, it is.

6 MR. WOLF: I don't want to slow you down,
7 but I couldn't find that one. Again, that date was?

8 MR. MacIVER: The infraction occurred on
9 March 10, 1990. It was cited in letter dated March
10 16, 1990.

11 Q. I notice you also have cited Shuttle
12 Express in 1990 for leaving vans unattended, parking
13 in the zone and leaving van unattended. Is that an
14 infraction of your rules and regulations?

15 A. Yes, it is.

16 Q. And is it also an infraction of the terms
17 of the concession agreement of Shuttle Express with
18 the Port?

19 A. Yes, it is.

20 Q. Mr. Sherrell, you have reviewed the next
21 document which is a four-page document which is for
22 ease of reference a summary of all of the violations
23 in the previous exhibit.

24 A. I'm Mr. Holbrook.

25 Q. What did I say?

1 A. Mr. Sherrell.

2 Q. I'm sorry. Mr. Holbrook. Sherrell is on
3 my mind.

4 JUDGE LUNDSTROM: Let the record show I am
5 marking for identification a multi-page document
6 which has been provided to -- the first page says
7 Summary of Shuttle Express Violation. Marked
8 Exhibit 14 for identification.

9 (Marked Exhibit 14.)

10 Q. Mr. Sherrell, Exhibit 14 is --

11 A. Mr. Holbrook.

12 Q. Boy, once I get off the track, I'm hard to
13 get back on sometime. Exhibit 14, Mr. Holbrook, is
14 simply a summary of the volume of documents that has
15 already been admitted into evidence as Exhibit 13,
16 correct?

17 A. Yes. It appears to be a complete summary.

18 Q. I move for admission of Exhibit 14.

19 MR. WOLF: Who prepared the summary?

20 MR. MacIVER: I did and it has been
21 reviewed by Mr. Holbrook.

22 MR. WOLF: May I voir dire, your Honor?

23 JUDGE LUNDSTROM: Go ahead.

24 MR. WOLF: Mr. Holbrook, you've had a
25 chance to look at this summary before?

1 THE WITNESS: Yes, I had looked at it this
2 morning.

3 MR. WOLF: Did you compare it to Exhibit
4 No. 13?

5 THE WITNESS: Not in exact detail, we just
6 flipped through it and tried to ascertain that it
7 was -- like I said, it appeared to be a pretty
8 complete set.

9 MR. WOLF: You made spot checks and they
10 seemed to check out?

11 THE WITNESS: Yes, sir.

12 MR. WOLF: You didn't find any mistakes,
13 did you?

14 THE WITNESS: No, I did not find any
15 mistakes.

16 MR. WOLF: All right. With regard to
17 proposed Exhibit No. 14, it doesn't have the
18 ultimate disposition of the violation, does it?
19 There's no column for that, is there?

20 THE WITNESS: No, there is not.

21 MR. MacIVER: That's going to be in an
22 exhibit to follow.

23 MR. WOLF: I have no objection to Exhibit
24 14.

25 MR. CEDARBAUM: No objection.

1 JUDGE LUNDSTROM: Let the record show
2 Exhibit 14 will be admitted.

3 (Admitted Exhibit 14.)

4 JUDGE LUNDSTROM: Go ahead, please.

5 Q. Now, each of the letters that were --
6 letter citations that were sent to Shuttle Express
7 indicated that if Shuttle Express wanted to respond
8 in writing to seek mitigation or contest the
9 violations, that they had seven days to do so.

10 A. Yes, that's correct.

11 Q. And did I request that your office provide
12 me with copies of all responses received from
13 Shuttle Express, written responses, to the citations
14 which are the subject of the previous exhibit which
15 were received by you for the period of 1990 through
16 May 1 -- 1989, through May 1 of 1990?

17 A. Yes, you did.

18 Q. And did you provide me with copies of
19 those responses?

20 A. Yes, we did.

21 JUDGE LUNDSTROM: Let the record show I am
22 marking for identification as Exhibit 15 a
23 multi-page document, first page of which is a letter
24 on the letterhead of Shuttle Express dated August
25 9th, 1989. Go ahead, please.

1 (Marked Exhibit 15.)

2 Q. Mr. Holbrook, from this exhibit it appears
3 that you received in response to the 1989 and '90
4 violation notices six letters from Shuttle Express.

5 A. Yes.

6 Q. And these are copies of those letters?

7 A. Yes, they are.

8 MR. MacIVER: Move for Exhibit 15.

9 MR. WOLF: No objection.

10 MR. CEDARBAUM: No objection.

11 JUDGE LUNDSTROM: Let the record show
12 Exhibit 15 will be admitted.

13 (Admitted Exhibit 15.)

14 JUDGE LUNDSTROM: Let the record show I
15 have been provided with a single-page document
16 entitled Sea-Tac Port of Seattle airporter
17 violations, 1989-1990, single-page document. I am
18 marking that as Exhibit 16 for identification.

19 (Marked Exhibit 16.)

20 JUDGE LUNDSTROM: Go ahead, please.

21 Q. Mr. Holbrook, I had also asked you to
22 provide me with copies of citation letters to
23 Suburban Airporter, Everett Airporter, Capital
24 Airporter and Gray Line airporter for the calendar
25 year 1989 and up through May 1 of 1990, did I not?

1 A. Yes, you did.

2 Q. And by that I mean operational citations
3 similar to the types of citations that I had asked
4 for for Shuttle Express.

5 A. Operational citations, yes.

6 Q. And I received no copies of any citations
7 from the Port to any of the other airporters for
8 1989 to May 1 1990, so is it fair for me to conclude,
9 Mr. Holbrook, that the other airporters that I named,
10 Suburban, Everett, Capital and Gray Line, received
11 no operational citations from the airport for
12 violation of the Port's laws, rules and regulations
13 or their concession agreement for those periods of
14 time?

15 MR. WOLF: Your Honor, I am going to
16 object. The manner and method of any other carrier
17 outside of Shuttle Express is not relevant to this
18 proceeding.

19 JUDGE LUNDSTROM: Care to respond?

20 MR. MacIVER: Yes, I think it's relevant
21 to point out, your Honor, so that we don't get in
22 argument later that while these are very difficult
23 laws, rules and regulations to comply with and we
24 may have had violations, but I bet the other
25 airporters had violations too and I brought those

1 along so that argument can't be made. I wanted it
2 to be the total picture, not just Shuttle Express'
3 picture, but if any of these other airporters had
4 been cited, I wanted to know so we could compare the
5 compliance history of other airporters with Shuttle
6 Express.

7 MR. WOLF: I suggest that if that argument
8 were to be made by anyone, that this would be
9 appropriate rebuttal to be made if such argument
10 were to be made. I don't think that's relevant now
11 and I object to it on that basis.

12 JUDGE LUNDSTROM: Mr. Cedarbaum, do you
13 have any --

14 MR. CEDARBAUM: I have no objection to the
15 exhibit.

16 JUDGE LUNDSTROM: Well, I think, once
17 again, it's having the record of the violation,
18 letters from the Port of Seattle and the responses
19 there to, that this document -- the weight to be
20 accorded to this document is the more important
21 factor here, and so I'll overrule the objection.

22 (Admitted Exhibit 16.).

23 JUDGE LUNDSTROM: Go ahead, please.

24 Q. Mr. Holbrook, referring to -- is this --
25 what exhibit?

1 JUDGE LUNDSTROM: Let the record show
2 Exhibit 16 for identification is admitted.

3 MR. MacIVER: And this is 17, is it?

4 JUDGE LUNDSTROM: This is 16.

5 MR. MacIVER: This is 16?

6 JUDGE LUNDSTROM: Correct.

7 MR. MacIVER: The Sea-Tac Airporter
8 Citations Summary.

9 JUDGE LUNDSTROM: Correct.

10 Q. Mr. Holbrook, the second column shows the
11 appeals that you received from Shuttle Express for
12 the violations we have been discussing, is that
13 correct, three in 1989 and 13 in 1990?

14 A. Yes, that appears to be correct.

15 Q. And then the final column in response to a
16 question Mr. Wolf had earlier, I want to know the
17 action taken by the Port. The final column shows
18 that of the 40 1990 violations cited Shuttle Express,
19 1989, two were rescinded in response to three
20 appeals.

21 A. Yes, that appears to be correct.

22 Q. And in 1990, eight were rescinded in
23 response to 13 appeals from Shuttle Express, is that
24 what is indicated?

25 A. That's what's indicated on this document,

1 yes.

2 MR. MacIVER: I move for admission -- 16
3 has been admitted.

4 Q. Mr. Holbrook, there has been some amount
5 of discussion in this record prior to your being
6 here about the Shuttle Express receiving a letter
7 from the Commission dated November 15, 1989,
8 instructing Shuttle Express to cease handling on-
9 call, hail-the-van demand type fares. Have you been
10 made aware of or in fact seen this letter?

11 A. Yes, I have.

12 Q. And did the Port after receiving this
13 letter in fact amend Shuttle Express' concession
14 agreement to delete therefrom the provision that
15 Shuttle Express could transport hail-the-van or
16 walk-up fares?

17 A. We amended the agreement to require the
18 use of a telephone prior to being transported by the
19 vehicle.

20 Q. And prior to that did the concession
21 agreement have a provision in there that
22 hail-the-van or walk-up fares could be handled?

23 A. Yes. It had a walk-up provision in that
24 and that was deleted by this amendment.

25 Q. Right. Now, when that provision was in

1 the concession agreement of Shuttle Express was it
2 in there due to the Port's belief that it was legal
3 for Shuttle Express to transport hail-the-van and
4 walk-up fares?

5 A. The provision on walk-up customers was in
6 the agreement under the court's belief that that was
7 permissible.

8 Q. Right. And Mr. Sherrell had advised the
9 Port that in his opinion that was permissible, had
10 he not, and that is why that provision was in the
11 agreement allowing him to conduct that activity
12 under the concession agreement?

13 A. Mr. Sherrell testified to the Port
14 Commission that that was permissible. Our
15 investigation at that time determined under our --
16 under our understanding that that was permissible
17 and therefore it was inclusive.

18 Q. So is it your position on behalf of the
19 Port of Seattle, sir, that the concession agreement
20 will be structured in a fashion to be consistent
21 with the carriers's operating authority as
22 understood by the Port?

23 A. Yes. All of our agreements are structured
24 with our understanding of what the -- that authority
25 that has a jurisdiction in the matter, whatever

1 their requirements and regulations are, we require
2 the operator to adhere to those fully.

3 Q. And so while the concession agreement at
4 some point in time allowed in the concession
5 agreement with the Port Shuttle Express to pick up
6 walk-up and hail-the-van fares, that was in there
7 because Mr. Sherrell had represented to you that he
8 could legally transport those types of passengers,
9 wasn't it?

10 MR. WOLF: Objection. It misstates his
11 prior testimony. It was Mr. Sherrell's testimony as
12 well as his own independent investigation.

13 Q. Yes. You were under the belief that that
14 was consistent with his operating authority issued
15 by the Commission, wasn't it?

16 A. Yes.

17 MR. WOLF: Same objection.

18 Q. And when you --

19 JUDGE LUNDSTROM: Excuse me. I think he's
20 testifying as to his knowledge, his impression, so
21 overruled. Go ahead, please.

22 Q. Right. The point I am simply trying to
23 make, Mr. Sherrell, is that you --

24 A. I'm Mr. Holbrook.

25 Q. Mr. Holbrook. The point I am simply

1 trying to make, sir, is that it is your intent at
2 all times to have the concession agreement
3 consistent with the airporter's operating authority
4 issued by this Commission?

5 A. That is correct.

6 Q. And if in fact a concession agreement with
7 an airporter at any given time authorizes conduct
8 which is in excess of the carrier's operating
9 authority, it is not your intent to do that? Maybe
10 I've confused you.

11 A. Say that again, Clyde.

12 Q. Right. If at any given point in time the
13 concession agreement in fact allows an activity by
14 an airporter which is in excess of that airporter's
15 operating authority issued by this Commission, it is
16 not your intent that that occur, is it?

17 A. Yeah. Normally we would not put in
18 provisions or terms that would exceed or vary from
19 the regulatory agency. My point is maybe assurance
20 requirement, we may request assurance requirement
21 higher than the regulatory --

22 Q. Right. But as far as manner of operations
23 that we're talking about here, it is your intent and
24 has always been your intent with respect to Shuttle
25 Express to have the concession agreement consistent

1 with that carrier's -- the scope of that carrier's
2 operating authority?

3 A. Correct.

4 Q. And if it in fact varied from that
5 carrier's plating authority, it was not your intent
6 to have it do so?

7 A. Correct.

8 Q. And likewise, sir, is it your intent and
9 are you willing to enforce to the best of your
10 ability any restrictions that are in fact in an
11 airporter's operating authority with respect to the
12 manner and method of operations at your airport?

13 A. Within the best of our ability, yes, we
14 will do that. We'll carry that out.

15 Q. Did Mr. Sherrell recently approach your
16 staff, sir, and request that his loading zones at
17 the airport be converted to holding zones for the
18 express purpose of allowing his vans to stay in the
19 zones until fully loaded before leaving the airport?

20 MR. WOLF: Object to the form of the
21 question. It's leading. I've been patient with
22 regard to the form of the questions.

23 JUDGE LUNDSTROM: Okay. Perhaps you could
24 ask --

25 Q. It'll take a little longer but I didn't

1 think this was -- did Mr. Sherrell make any request
2 to convert his what are now simply loading zones at
3 the airport to receive permission to use those zones
4 for some additional purpose?

5 A. Yes.

6 Q. And what did he request to do in those
7 zones?

8 A. He requested that the vans wait in the
9 zones for basically an unlimited time period.

10 Q. And, sir, did you grant or deny that
11 request?

12 A. We denied that request.

13 Q. Why did you deny that request?

14 A. The reason we denied that request is
15 there's a provision in the agreement that only
16 permits the vans to enter the drive system in front
17 of the terminal, only under the condition that there
18 is a customer, a known customer waiting for that
19 vehicle in the waiting zone.

20 Q. And was there another reason, sir?

21 A. Well, we didn't want the van to be sitting
22 there waiting as customers are walking out.

23 Q. Had you used the term converting to an on
24 demand carrier before in discussing this subject?
25 Would in your opinion converting those zones to the

1 purpose Mr. Sherrell wanted them converted them, to
2 holding and waiting until they're loaded, change the
3 nature of his operation at the airport as you
4 currently perceive it?

5 A. It may, yes.

6 Q. And how would it change it?

7 A. Well, instead of an operation of coming
8 down to the drive system and coming down to the zone
9 with a known customer standing there waiting for it,
10 they would be sitting there as people are walking
11 out of the doors from the baggage claim on to the
12 curb side area.

13 Q. And do you refer to that as an on-demand
14 type carrier?

15 A. We have other carriers that we call on
16 demand, and, yes, that is probably getting very
17 close to being that type of an operation.

18 Q. And that is what Mr. Sherrell had recently
19 asked permission to do with you, isn't it, you or
20 your staff, convert these zones from pickup zones to
21 holding zones?

22 A. Yes, he requested that.

23 Q. And, again, you denied that?

24 A. Yes, we did.

25 JUDGE LUNDSTROM: Mr. MacIver, are you

1 nearing the end of your examination?

2 MR. MacIVER: Oh, if this is a proper time
3 to take a break, it would be fine.

4 JUDGE LUNDSTROM: Let's take a recess,
5 reconvene at 10:45.

6 (Recess.)

7 JUDGE LUNDSTROM: The hearing will please
8 come to order, resuming the examination of Mr.
9 Holbrook by Mr. MacIver. Go ahead, please.

10 BY MR. MacIVER:

11 Q. Mr. Holbrook, if Shuttle Express drivers
12 persist in the type of frequency of the violations
13 that we have been discussing before the break, would
14 you at some point consider more severe enforcement
15 action than has taken place to date?

16 A. Yes, I would.

17 Q. And have you in fact so admonished Shuttle
18 Express personnel of that fact?

19 A. Yes, I have.

20 Q. In other words, is it your testimony that
21 the continuation of this type of conduct by Shuttle
22 Express at the airport is not going to be tolerated?

23 MR. WOLF: Objection. Leading.

24 JUDGE LUNDSTROM: I don't think it's
25 prejudicial. Go ahead, please. Answer the question.

1 A. Yes.

2 MR. MacIVER: I have no further questions.

3 JUDGE LUNDSTROM: Cross-examination?

4 MR. WOLF: Thank you, your Honor.

5

6 CROSS-EXAMINATION

7 BY MR. WOLF:

8 Q. Mr. Holbrook, good morning. We've met
9 before.

10 A. Hi, Bruce.

11 Q. I have various areas of inquiry in
12 response to --

13 MR. MacIVER: Excuse me. I'm very, very
14 sorry. I have one other question I wanted to ask
15 and I forgot.

16 MR. WOLF: No objection, your Honor.

17 JUDGE LUNDSTROM: Go ahead, please.

18

19 DIRECT EXAMINATION

20 BY MR. MacIVER:

21 Q. Mr. Holbrook, there are certain what you
22 call on-demand modes of transportation to move
23 people between Sea-Tac and points in downtown
24 Seattle, by on demand I mean types of multi-passenger
25 vehicles, public transportation, that move people

1 without prior arrangement; is that correct?

2 A. Yes, there are.

3 Q. Would you list for me the alternative
4 modes of transportation that currently exist between
5 Sea-Tac and downtown Seattle in addition to Shuttle
6 Express which you would call on demand type carriers?

7 A. Yes.

8 MR. WOLF: Are we classifying Shuttle
9 Express as an on demand carrier in the question,
10 Counsel?

11 MR. MacIVER: I certainly classify them as
12 such.

13 A. Okay.

14 MR. MacIVER: At least in the way they're
15 operating, I do.

16 A. We have public transit, taxicabs,
17 limousines, luxury limousines, and Gray Line
18 Downtowner, Airporter Express.

19 Q. So, in addition to Shuttle Express, there
20 are four on demand types of public transportation
21 available to patrons currently to move between
22 Seattle and the downtown area, between the airport
23 and downtown Seattle?

24 A. Yes, there are.

25 MR. MacIVER: Thank you. I have no

1 further questions.

2

3

CROSS-EXAMINATION

4 BY MR. WOLF:

5 Q. Mr. Holbrook, you are at the
6 Seattle-Tacoma International Airport the top person
7 or the one that is fully in charge of the ground
8 transportation of passengers to and from
9 Seattle-Tacoma International Airport, are you not?

10 A. Yes, I am.

11 Q. But that is just one of your duties, you
12 have others as you described to us, do you not?

13 A. Yes, I do.

14 Q. I want to direct my inquiry here just to
15 your duties as they relate to the ground
16 transportation of passengers to and from
17 Seattle-Tacoma International Airport, and I want to
18 talk first with you, sir, with regard to the
19 enforcement mechanisms that have been established.
20 You're fully familiar, are you not, with the entire
21 enforcement scheme?

22 A. Yes, I am.

23 Q. Every carrier of passengers in a ground
24 transportation mode must have, in order to come into
25 or out of the port there, the airport, an operating

1 and/or concession agreement with the Port of Seattle;
2 is that correct?

3 A. That is correct.

4 Q. And that extends all the way from taxicabs
5 through Gray Line through scheduled airporters and
6 to Shuttle Express, does it not?

7 A. Correct.

8 Q. And you have, have you not, sir, developed
9 a team and a manner and mechanism of enforcing or
10 insuring compliance to the best of the carrier's
11 ability with the particular concession agreement
12 applicable to that carrier?

13 A. Yes, we have.

14 Q. What kind of staff do you have in that
15 regard? First of all -- well, yes, what kind of
16 staff? Could you tell us, what staff is maintained
17 for that purpose?

18 A. Are you talking about their level of
19 training, the number of staff? What are you talking
20 about, Bruce?

21 Q. Well, let me ask first, sir, how many
22 staff people are employed in the enforcement
23 capacity?

24 A. We have 11 ground transportation
25 controllers. We currently have three supervisors,

1 one manager, and an assistant superintendent of
2 ground transportation and myself that are involved
3 in the enforcement of the agreements themselves, and
4 we have Commission police officers that take care of
5 the criminal activities.

6 Q. So the ones you mentioned first, then,
7 let's exclude police officers, and that would only
8 be criminal activity that they would be associated
9 with; is that correct?

10 A. That is correct.

11 Q. I believe you said that you had 11 --

12 A. Ground transportation controllers.

13 Q. Controllers, and what do they do?

14 A. They basically are our operations
15 enforcement arm of our area. They give out ground
16 transportation information, they dispatch the
17 taxicabs, and they enforce all the rules,
18 regulations, terms and conditions of our agreements
19 with the operate organization.

20 Q. Is their place of employ out on the
21 concourses, or where do they work on a daily basis?

22 A. They work on a daily basis on the curb
23 side of the pick-up drive and the check-in drive of
24 the airport main terminal.

25 Q. Are there a certain number of persons that

1 are regularly on duty on a daily basis on the lower
2 drive? That's the pick-up, isn't it?

3 A. Yes, the lower drive is the pick-up drive.

4 Q. How many people are on duty at any one
5 time on the lower drive?

6 A. We try to keep a minimum of three people
7 on duty.

8 Q. Is that 24 hours a day?

9 A. No, 20 hours a day.

10 Q. At sometimes do you have more than three
11 people?

12 A. Yes, we do.

13 Q. And that's a daily basis, is it not?

14 A. Yes, that's correct.

15 Q. What's the most that you would ever have
16 at one particular point in time?

17 A. Approximately seven.

18 Q. Now, and their job, is it not, is to
19 monitor carriers such as Shuttle Express?

20 A. That is correct. That's one of their
21 duties.

22 Q. And they are watching them constantly, are
23 they not, in that regard?

24 A. They're watching all operations constantly,
25 yes.

1 Q. And of course, sir, Shuttle Express would
2 be included within those all operations?

3 A. Shuttle Express is one facet of those
4 operations, yes.

5 Q. Mr. MacIver in his questions to you with
6 regard to these citations referred to them as the
7 results of spot checks. Do you consider your daily
8 maintaining of at least three people, three
9 enforcement officers on the lower drive, as a spot
10 check?

11 A. I don't know if I can answer that quite.
12 They're out there. I mean, it's just like a state
13 patrol officer driving up and down Interstate 5.
14 There are violations going on all the time of
15 drivers speeding and stuff but they don't see every
16 one of them. Whenever we see a violation occur, it
17 is enacted upon.

18 Q. And my point is, sir, that your
19 enforcement officers are to the best of their
20 ability watching all the time?

21 A. The best of their ability, yes, they are
22 watching and observing all operators all the time.

23 Q. And with regard to the listing of
24 citations that comes in in Exhibit No. 13, those are
25 not the result of a decision being made that just on

1 certain days we're going to go out and we're going
2 to check Shuttle Express today, that's not the way
3 it works, is it?

4 A. There has been no direction to my staff to
5 do that.

6 Q. Do you consider your enforcement employees
7 to be hard working?

8 A. Of course, yes.

9 Q. And you demand that, do you not?

10 A. Yes, I demand it.

11 Q. Do you have an opinion, sir, as to whether
12 or not overall they're doing a good job?

13 A. I think they're doing a pretty good job,
14 yes.

15 Q. Now, the enforcement officers, I call them
16 enforcement officers -- are you comfortable with
17 that?

18 A. No, not really.

19 Q. What term would you prefer that I use,
20 then?

21 A. They're ground transportation controllers.

22 Q. With regard to the ground transportation
23 controllers, they are able and they have the
24 authority to issue a citation, do they not?

25 A. They issue a written notice of violation.

1 A citation, I want to make clear, a citation I
2 normally think of as issued by a Commission police
3 officer. They are not commissioned officers in any
4 manner.

5 Q. So they issue a notice of violation, then?

6 A. Correct.

7 Q. They have the authority to do that?

8 A. That's correct.

9 Q. And what we see here are -- in Exhibit No.
10 13 are copies of various of those notices of
11 violation?

12 A. Correct.

13 Q. And then there is a further process, or
14 there is a process whereby the recipient of a notice
15 of violation may file an appeal?

16 A. That is correct.

17 Q. And you have set up, have you not, an
18 appeal process?

19 A. That is correct.

20 Q. Generally, sir, how does that appeal
21 process work?

22 A. The operator receives a notice of
23 violation. They have seven days to respond to that
24 and request an appeal. They can request it through
25 the appeal board, they can request basically a sit-down

1 discussion with the staff that were involved -- that
2 observed the violations and the management staff
3 overseeing those controllers, try and resolve at
4 that point, determine if it is a valid violation,
5 but the operator always has the ability to go to an
6 established hearing board and appeal it through that
7 process.

8 Q. Is that an important part of the
9 enforcement process, as far as you're concerned?

10 A. Yes, it is.

11 Q. And you don't in any manner or method
12 discourage concessionaires at the airport from not
13 utilizing that appeal process, do you?

14 A. We never would discourage them from using
15 that process.

16 Q. As a matter of fact, Shuttle Express has
17 availed itself of the appeal process, has it not?

18 A. Yes, they have.

19 Q. As a result of that appeal process, I
20 think it's your current operating mode to issue a
21 written decision?

22 A. Yes, it is.

23 Q. Did you always do that or is that
24 something a little bit new?

25 A. Well, we've had an appeal board in place

1 for years for taxicabs, and have just recently
2 invoked that for the other operators.

3 MR. WOLF: Your Honor, I would ask at this
4 point that -- I have two exhibits to be marked in
5 order. The first is a multi-page document. The
6 first one is a letter from the Port of Seattle dated
7 June 4.

8 JUDGE LUNDSTROM: Let the record show I am
9 marking the document so described as Exhibit 17 for
10 identification.

11 (Marked Exhibit 17.)

12 JUDGE LUNDSTROM: Go ahead, please.

13 MR. WOLFE: You marked that as 17, your
14 Honor?

15 JUDGE LUNDSTROM: That's correct.

16 MR. WOLF: And then as Exhibit No. 18 I
17 would ask to be marked for identification a letter,
18 Port of Seattle dated June 18, 1990.

19 JUDGE LUNDSTROM: Let the record show a
20 multi-page document described by Mr. Wolf is being
21 marked for identification as Exhibit 18.

22 (Marked Exhibit 18.)

23 Q. Mr. Holbrook, let's me hand you, please,
24 sir, what has been marked for identification as
25 Exhibit No. 18 -- excuse me, 17, and ask you, sir,

1 is that not the written notification of the decision
2 on the appeal of certain notices of violation for
3 Shuttle Express?

4 A. Yes, it certainly appears to be.

5 Q. And that comes issued by Mr. Kenneth Lyles,
6 ground transportation manager?

7 A. Yes, it is.

8 Q. He is one of your direct employees, is he
9 not?

10 A. Yes. He doesn't report directly to me,
11 but he is one of my employees.

12 Q. And he's under your supervision?

13 A. Correct.

14 Q. Similarly, sir, is Exhibit No. 18 the same
15 thing as 17 but relating to other results of appeals?

16 A. Yes, it appears to be.

17 MR. WOLF: I offer 17 and 18.

18 MR. MacIVER: No objections.

19 JUDGE LUNDSTROM: Objections?

20 MR. CEDARBAUM: I have no objection. I
21 just have a question, if it can be explained what
22 the handwritten numbers on the left-hand side of the
23 pages are, if the witness knows or if Mr. Wolf knows.

24 MR. WOLF: I think that was a -- those are
25 coordinating numbers that were utilized internally

1 at Shuttle Express to organize things.

2 THE WITNESS: I have no idea what the
3 numbers are.

4 MR. WOLF: I will state that they were put
5 on there by Sue Johnson, and I would have no
6 objection to marking them off if you want to.

7 MR. MacIVER: Sue Johnson is an employee
8 of Shuttle Express?

9 MR. WOLF: That's right.

10 MR. CEDARBAUM: But they have no impact on
11 the content of what's described in the exhibit,
12 they're just an internal filing numbering system?

13 MR. WOLF: The latter is correct.

14 MR. CEDARBAUM: I have no objection. With
15 that explanation, I don't think we need to mark up
16 the exhibit, to take them off.

17 JUDGE LUNDSTROM: Let the record show
18 Exhibits 17 and 18 will be admitted.

19 (Admitted Exhibits 17 and 18.)

20 JUDGE LUNDSTROM: Go ahead, please.

21 Q. With regard to the enforcement process as
22 we continue through it, after the appeal -- an
23 appeal decision is made to either rescind or to stay
24 with the notice of violation; is that right?

25 A. Yes.

1 Q. And is there any further appeal procedure?
2 Let's assume that as a result of the appeal process,
3 the imposition of a fine is ordered or ordered that
4 that be maintained -- the fine be maintained, the
5 fine stand. Is there any further appeal process?

6 A. No.

7 Q. Shuttle Express has received some
8 violations, has it not?

9 A. Yes, they have.

10 Q. Are they delinquent with you with respect
11 to the payment of any fines?

12 A. With fines?

13 Q. Yes.

14 A. No, they are not delinquent with us on
15 fines.

16 Q. One of the citations in Exhibit No. 13 was
17 an alleged violation for an allegation of a hailing
18 of the van, or taking a passenger that hailed the
19 van, occurring on March 10, allegedly occurring on
20 March 16, 1990. It's one of the ones that Mr.
21 MacIver drew particular attention to during his
22 questions on direct examination, and that related to
23 Shuttle Express van number 502. If my coordination
24 is proper, and please correct me if I'm wrong, but
25 that violation was -- that notice of violation was

1 rescinded, was it not?

2 If I can direct your attention to Exhibit
3 No. 17, particularly page four of it, the ultimate
4 result of that violation was a rescission, was it
5 not?

6 A. You're referring -- Exhibit 17, page four
7 of the appeal hearing notice?

8 Q. No, actually page three of that.

9 A. Okay. And you're referring to the bottom
10 violation, violation of March 10, 1990?

11 Q. That's correct.

12 A. Okay.

13 Q. The ultimate result was that the violation
14 was rescinded, was it not?

15 A. According to this document, yes.

16 Q. And if we 32 at the front pages of 17 and
17 18, they purport to -- they give us a summary, do
18 they not, of the further described appeals on the
19 following pages?

20 A. Yes. They're a summary of those documents.

21 Q. Getting back to the general enforcement,
22 we've talked about notices of violations. The Port
23 of Seattle and particularly Seattle-Tacoma
24 International Airport has very broad regulatory
25 authority over its providers of ground

1 transportation, does it not?

2 A. You'd have to define broad for me.

3 Q. Well, there are a number of sanctions that
4 you can -- that the Port has authority to impose
5 upon its concessionaires. First of all, what I'm
6 getting at is you can give them a notice of
7 violations?

8 A. Yes.

9 Q. In order to enforce the operating
10 agreements and in order to keep the airport on a
11 smooth running basis, the Port has a lot of
12 regulatory authority and can -- has a whole level of
13 sanctions that can be imposed against operating
14 concessionaires, that's my question?

15 A. Okay. When you speak of regulatory
16 authority, our regulatory authority is the terms and
17 conditions of our agreements, our contractual
18 agreement with the operator, yes.

19 Q. Now, isn't the ultimate -- the Port would
20 have the ultimate authority, would it not, if it saw
21 fit, to initiate proceedings to terminate and to
22 cancel the operating authority?

23 A. Of the contract we have with them, yes.

24 Q. And that's within -- and that's contained
25 in and that's within the Port's power?

1 A. That is correct.

2 Q. Have any such proceedings ever been
3 initiated against Shuttle Express?

4 A. No.

5 Q. Are there any under current contemplation?

6 A. Not formally at this time, no.

7 Q. With regard to the Exhibit No. 13, I have
8 looked through that exhibit -- let me ask you first.
9 There is a particular form of notice of violation
10 for solicitation. Soliciting of passengers by
11 Shuttle Express on the downstairs drive there is a
12 violation of the Port operating agreement, is it not?

13 A. Yes, that is correct.

14 Q. And that's one that you enforce, correct?

15 A. Yes, it is.

16 Q. And that's one that your enforcement
17 officers are watching for as they observe the
18 operations of Shuttle Express, correct?

19 A. Our controlling officers -- controllers
20 are, yes.

21 Q. And if there were a violation for
22 solicitation, there are a couple of examples -- the
23 notice of violation will state so, will it not?

24 A. That's correct.

25 Q. I've looked through Exhibit No. 13 and I

1 can find only two of those, one occurring on
2 November 24, 1989 and the other occurring on
3 November 26, 1989. Mr. Holbrook, are you aware of
4 any other violations for -- notices of violation for
5 violating the prohibition in the Port operating
6 agreement of Shuttle Express against solicitation?

7 MR. MacIVER: I object to the form of the
8 question as characterizing an exhibit only as to the
9 exhibit is replete with solicitation violations.

10 JUDGE LUNDSTROM: Well, the question I
11 think asks the witness to point those out, so could
12 you?

13 Q. I am aware of only two that reference
14 soliciting as a violation. Are you aware of any
15 others that reference soliciting as a violation?

16 A. There are -- in that packet there are no
17 other documents that specifically call out
18 violations of solicitation specifically.

19 Q. And then the last time that we see one
20 that refers to -- that utilizes the term
21 solicitation is for an incident occurring on
22 November 26, 1989.

23 A. That is correct.

24 Q. I also notice here, sir, that the last
25 violation that was received by Shuttle Express was

1 on May 1, 1990, Exhibit No. 14.

2 A. The last violation?

3 Q. Yes.

4 A. Yes, I believe that's true.

5 Q. Your staff has been conducting the same
6 type of enforcement since May 1, 1990, has it not?

7 A. Yes, they have.

8 Q. And so since -- from May 1, 1990 through
9 the present day, are you aware of any notices of
10 violation, then, sir that have been issued to
11 Shuttle Express that are not reflected here?

12 A. I am not aware of any.

13 Q. Does that reflect to you that the manner
14 and method of Shuttle Express compliance with the
15 Port operating instructions is improving?

16 A. I think that would be conjecture on my
17 part. We do not have any written violations since
18 that date that I am aware of.

19 Q. May I have just a minute, your Honor, just
20 a second?

21 JUDGE LUNDSTROM: Sure.

22 Q. Shuttle Express has been operating into
23 and out of the Seattle-Tacoma International Airport
24 since September of 1987, has it not?

25 A. That's correct.

1 Q. During that period of time, you have
2 become familiar with their operations, have you not?

3 A. Yes, I have.

4 Q. And you've also become familiar with those
5 operations via conversations with Mr. Sherrell?

6 A. Yes, I have.

7 Q. The summary put together by Mr. MacIver
8 and admitted as Exhibit No. 16 reflects 40 citations
9 in 1989 and in 1990, 29, eight of which were
10 rescinded, and that's over a five-month period in
11 1990, is it not?

12 A. Yes.

13 Q. So we're looking at an average, then, of
14 about, if my math is correct, about four or five per
15 month, well, actually -- go ahead. For the first
16 five months of 1990.

17 MR. MacIVER: It's four months, Counsel.
18 And it's more than four or five. That's an
19 incorrect characterization of the exhibit.

20 JUDGE LUNDSTROM: Are you objecting to
21 that, Mr. MacIver?

22 MR. MacIVER: Yes, to the form of the
23 question.

24 MR. WOLF: Well, I'll start back again.

25 JUDGE LUNDSTROM: Okay.

1 Q. Exhibit No. 16 reflects 29 violations --
2 notices of violations issued in 1990 up to May 1,
3 1990.

4 A. Yes.

5 Q. And it also reflects that of those 29,
6 eight were rescinded?

7 A. Yes.

8 Q. That leaves us with 21, does it not?

9 A. Yes, it does.

10 Q. And we've also been made aware of no
11 citations that have been issued subsequent to May 1,
12 1990, are we?

13 A. No.

14 Q. So let's just -- let's assume that none
15 were issued through June, that would be -- from May
16 one to -- through June. That would give us six
17 months in 1990, would it not?

18 A. Yes.

19 Q. So we're going to average now about three
20 to four per month of notices of violations that were
21 upheld after appeal. Is my math correct in that
22 regard?

23 A. Yes.

24 Q. If we were interested in averages.

25 A. Yes.

1 Q. But, again, sir, don't get me wrong, every
2 violation is important to you?

3 A. Yes.

4 Q. Have you ever discussed that with Mr.
5 Sherrell, the importance of not violating the Port
6 agreement?

7 A. Yes, I have.

8 Q. What kind of -- does Mr. -- can you tell
9 us whether or not based on those conversations you
10 think Mr. Sherrell agrees or disagrees with you?

11 A. He agrees the violations are serious.

12 Q. Have you talked with Mr. Sherrell with
13 regard to improving the performance?

14 A. Yes, I have.

15 Q. Have you had a positive or negative
16 response from Mr. Sherrell? Was it cooperative or
17 uncooperative?

18 A. A cooperative response from him.

19 Q. Going back to our numbers, now, we're
20 talking about an average of three to four per month,
21 are you aware, sir, that Shuttle Express is
22 transporting approximately 20,000 passengers to and
23 from Seattle-Tacoma International Airport on a
24 monthly basis?

25 MR. MacIVER: Irrelevant. Object.

1 MR. WOLF: It's relevant to the volume and
2 level of the violations, your Honor. We have a
3 comparison that was put into evidence as Exhibit No.
4 16 with regard to the Everett Airporter that may
5 come into the airport may maybe six times a day, and
6 I am going to -- entitled to show the volume, the
7 frequency of Shuttle Express' operations at that
8 airport.

9 MR. MacIVER: Excuse me. I just want to
10 make a point, that these are all intentional
11 premeditated violations. They're not like you're
12 driving down the highway concentrating on something
13 else and slip above the speed limit ten miles an
14 hour.

15 MR. WOLF: Your Honor, what does that have
16 to do with the relevancy of --

17 JUDGE LUNDSTROM: Let Mr. MacIver finish.

18 MR. MacIVER: These are intentional
19 infractions by drivers. The number of passengers
20 aboard a van has nothing to do with the culpability
21 of a driver who breaks a rule, whether his van is
22 empty or whether his van has six people, an
23 intentional infraction is an intentional infraction,
24 and the number of passengers being transported is
25 virtually irrelevant to that. It's as if a carrier

1 is operating without his operating authority in
2 excess and said, well, I only had five pounds on
3 here, so it's not very serious, but if you had a
4 10,000 pound load, its would be less serious?

5 JUDGE LUNDSTROM: Well, as I understand,
6 the point Mr. Wolf wishes to make is that violations
7 may be related to volume. If that's his theory of
8 his presentation, this is a relevant question.
9 Overruled. Go ahead, please.

10 Q. Are you aware that Shuttle Express is
11 transporting approximately 20,000 passengers per
12 month to and from Seattle-Tacoma International
13 Airport?

14 A. Jim Sherrell advised me that's
15 approximately how many he transports, yes.

16 Q. Are you also aware that the vans are going
17 either into or out of the airport drive
18 approximately 250 to 300 times per day?

19 MR. MacIVER: Objection. Unless you have
20 specific knowledge that that's true. This is Mr.
21 Wolf's testimony, not Mr. Holbrook's.

22 JUDGE LUNDSTROM: He is asking the
23 question and the witness may respond if he knows.
24 Overruled. Go ahead, please.

25 A. I know how many trips he's done, outbound

1 trips from the lower drive because that's -- their
2 payment schedule is based on that, so -- and that's
3 the information that Jim Sherrell has advised me
4 from time to time.

5 Q. Wouldn't you agree with me, sir, that the
6 Port regulations are detailed, the operating
7 instructions are detailed?

8 A. Yes, they are.

9 Q. And there's a good reason for the detail
10 in that, is there not, sir?

11 A. Yes, there is.

12 Q. And that's to avoid to the best of your
13 ability the congestion on the lower drive, is that
14 one of the reasons?

15 A. That is one of the reasons, yes.

16 Q. And it is to expedite the inflow -- the
17 pickup and dropoff of passengers, that's another
18 reason for the type and detailed operating
19 instructions, is it not?

20 A. Yes, it is.

21 Q. Would you agree with me, sir, that there
22 is a potential for violation of one of those
23 multiple terms of the concession agreement every
24 time a Shuttle Express van goes into or out of the
25 airport?

1 A. I don't quite understand the question,
2 Bruce.

3 Q. Well, there is --

4 MR. MacIVER: We will stipulate there is
5 such a potential any time any vehicle is on the
6 airport that they could violate rules and
7 regulations of the airport.

8 MR. WOLF: I accept that will.

9 Q. Congestion is a problem at times on the
10 lower drive, is it not?

11 A. That's correct.

12 Q. And it is a problem that you are
13 constantly working in an attempt to alleviate, is it
14 not?

15 A. That is one of my duties, yes.

16 Q. And to do that, you must work with your
17 concessionaires and you must have the cooperation of
18 your concessionaires?

19 A. That is correct.

20 Q. Do you feel that you have received
21 assurances from Mr. Sherrell of Shuttle Express to
22 receive that cooperation to help you in your job?

23 A. Yes. He's given me his assurance of
24 cooperation.

25 Q. Would you agree with me that some of the

1 violations that -- notices of violations that have
2 occurred that are included within Exhibit No. 13 are
3 the result of congestion on the lower drive?

4 A. I would have to investigate each
5 particular violation to determine if that may have
6 been a factor, and my staff in the appeal process,
7 if they determined that was a factor and through
8 their investigation, would probably rescind the
9 violation.

10 Q. Okay. Shuttle Express has three specific
11 designated spots where they can stop; is that right?

12 A. Yes.

13 Q. Sometimes other people other than Shuttle
14 Express park in those spots, do they not?

15 A. Yes, they do.

16 Q. Not to digress, but in some instances in
17 that regard, where Shuttle Express may have been out
18 of their stop, could it have been, sir, because
19 there was someone else blocking the Shuttle Express
20 spot and therefore their passengers' access to the
21 van in that spot?

22 A. Well, the controller observes that, would
23 observe the violation occurring, and they should
24 note that. If there's someone that is in the
25 Shuttle Express zone and they can't -- the Shuttle

1 Express van cannot get into the zone, no, that
2 wouldn't be considered a violation. They are unable
3 to get into their zone. But that should be taken
4 into consideration on the investigation, observance
5 of the controller and of the management staff that
6 do the investigation.

7 Q. And you have so instructed your staff to
8 take those expedient factors into consideration; is
9 that correct?

10 A. Yes, I have.

11 Q. By the way, with regard to your ground
12 controllers, it is true, is it not, that your ground
13 controllers control the entry of every Shuttle
14 Express van on to the airport property from its
15 holding area?

16 A. No.

17 Q. Don't they have to clear for authority to
18 enter the airport property?

19 A. No.

20 Q. They are not to enter the airport property,
21 are they, unless they have a specific passenger to
22 pick up?

23 A. That is correct.

24 Q. Okay. They are not permitted to go in
25 without at least one designated passenger for pickup?

1 MR. MacIVER: I object to the form of the
2 question. It's a violation of the concession
3 agreement for them to go in but there's no one at
4 the port physically blocking them, is there? They
5 do in fact go in without prior calls.

6 MR. WOLF: I am talking about the terms of
7 their operating agreement.

8 Q. It would be a violation of their operating
9 agreement to go in without at least one designated
10 passenger to pick up?

11 A. Yes, that would be a violation of the
12 terms and conditions of the operating agreement.

13 Q. Now, if they receive a call to go in for a
14 passenger and before the van gets there, additional
15 telephone calls are received from additional
16 passengers, who would be conveniently placed on that
17 same van, nothing in the Port agreement precludes
18 them from then taking those additional passengers
19 that have called between leaving the holding area
20 and eventually leaving the airport property?

21 A. Nothing in the provisions of the agreement
22 precludes that.

23 Q. Mr. MacIver mentioned one of the
24 violations that the van had gone around too many
25 times. You remember that?

1 A. Yes, I do.

2 Q. I think you have said the van went around
3 four times.

4 A. Yes.

5 Q. How many times -- to comply with the Port
6 operating agreement, how many times can they go
7 around?

8 A. They're permitted twice around.

9 Q. Do you know why they're permitted twice
10 around?

11 A. Yes. That has to do with they'll be
12 coming down to pick up a passenger. They can't find
13 the passenger. We don't want them to sit and wait
14 for a long time period. We want them to keep moving
15 and so they move around. It also may be they get a
16 call as they're leaving, starting to leave the drive,
17 and they -- to come back around and pick up another
18 person.

19 Q. That would be a call from a new passenger?

20 A. Collect.

21 Q. And that would be okay?

22 A. Yes, that would be permissible under the
23 agreement.

24 Q. So it would be possible, would it not, for
25 an investigator to observe a van coming up to spot

1 number A, or the first parking spot, stop, open his
2 van, put out the stepstool, wait for his passenger
3 and then to get up and leave without picking up that
4 passenger -- without picking up any passengers
5 because his passenger did not show up; is that right?

6 A. That is a possibility, yes.

7 Q. As a matter of fact, to comply with the
8 Port instructions, the Port operating instructions,
9 he cannot say in that loading spot for more than
10 five minutes; is that correct?

11 A. That is correct.

12 Q. And then in that instance he could make
13 another trip around, just one more trip around, and
14 stop again for another five minutes; is that right?

15 A. That is the term of the agreement, yes,
16 condition of the agreement.

17 Q. And with regard to the citation that
18 involved the driver going around four times, no one
19 disputes that that's a violation, do they? That is
20 a violation?

21 A. It's clearly a violation.

22 Q. Does anybody know in that instance or do
23 you know, sir, whether or not, despite the violation,
24 the driver may have been looking for a passenger
25 that didn't show up?

1 A. I don't know what the conditions are of
2 that particular violation, what caused it, or may
3 have caused it.

4 Q. Have you ever seen a copy of Shuttle
5 Express' operating permit from the Utilities and
6 Transportation Commission, Washington Utilities and
7 Transportation Commission?

8 A. Yes, we have a copy of that in our files.

9 Q. So you're aware that that permit, then,
10 contains -- describes the services authorized by
11 Shuttle Express to be on-call door-to-door service?

12 A. I believe that's what the permit permits
13 or allows.

14 Q. Have you ever heard the term on call
15 before?

16 A. Yes, I have.

17 Q. Prior to November 15, 1989, we heard
18 testimony from Mr. Sherrell that his operations, an
19 operational mode, were in conformance with his
20 personal belief or understanding that on call was a
21 term utilized to distinguish his type of service
22 from the scheduled service of other airport carriers.
23 You were not here for that testimony, were you?

24 A. No, I was not.

25 Q. There are other -- and there are other

1 airport carriers, airporters at Seattle-Tacoma
2 International Airport that are -- operate only on a
3 scheduled basis; isn't that correct?

4 A. Yes.

5 Q. For example, Gray Line is one of those
6 carriers, is it not?

7 A. Yes, it is.

8 Q. One of the intervenors, Suburban Airporter,
9 is one of those carriers, is it not?

10 A. Yes, it is.

11 Q. And, similarly, the other intervenor, ease,
12 is one of those carriers?

13 A. Yes, they are.

14 Q. The services of Shuttle Express are unscheduled,
15 are they not?

16 A. Yes, they are.

17 Q. Do you ever utilize the term, sir, on call
18 to distinguish an unscheduled carrier from a
19 scheduled carrier?

20 MR. CEDARBAUM: Your Honor, I'll --

21 MR. MacIVER: Go ahead.

22 MR. CEDARBAUM: You first.

23 MR. MacIVER: Go ahead.

24 MR. CEDARBAUM: I was going to object.

25 This is getting into this witness offering

1 interpretations of what he believes on call to mean.
2 I can see that coming from Mr. Sherrell since he is
3 the respondent in this proceeding, but the Port of
4 Seattle can contract with its concessionaires any
5 way it sees fit.

6 MR. WOLF: I'll withdraw it.

7 JUDGE LUNDSTROM: Okay. Do you have much
8 more in the way of examination for this witness?

9 MR. WOLF: I would think certainly no more
10 than five to seven minutes.

11 JUDGE LUNDSTROM: Okay. Go ahead, please.

12 Q. Mr. Holbrook, prior to November 17, or
13 prior to the middle of November 1989, Shuttle
14 Express was picking up passengers who had not made a
15 prior telephone request for service. Were you aware
16 of that?

17 A. Yes.

18 Q. They were taking passengers who solicited
19 their service by waving them down at the curb,
20 you're aware of that, are you not?

21 A. Yes.

22 Q. Through any conversations with Mr.
23 Sherrell, do you know whether or not Mr. Sherrell,
24 that was felt that those type of operations were in
25 conformity with the -- with his WUTC operating

1 permit?

2 MR. CEDARBAUM: Your Honor, again I'll
3 object. Mr. Sherrell testified as to what he
4 believed and that's fine. To ask Mr. Holbrook to
5 testify as to what Mr. Sherrell told him Mr.
6 Sherrell believed is hearsay, probably repetitive,
7 and not proper testimony from this witness. We've
8 already had Mr. Sherrell testify to all this.

9 MR. MacIVER: I would join in that
10 objection, your Honor.

11 JUDGE LUNDSTROM: I think that it's
12 repetitive. I'll sustain the objection. Go ahead,
13 please.

14 Q. I believe you stated that you conducted or
15 your staff conducted some investigation to determine
16 whether or not that was okay.

17 A. Yes, we did.

18 Q. What did you do, sir?

19 A. We reviewed it, we were -- we put in a
20 request to our legal counsel, and we made phone
21 calls and had discussions with state of Washington
22 enforcement people.

23 Q. The Port of Seattle has its own what we
24 call in-house counsel, attorneys; is that correct?

25 A. Yes, we do.

1 Q. Whom did you talk to? Well, strike that.
2 Anyway, you consulted with those attorneys.

3 A. Yes, we did.

4 Q. And did those attorneys advise that in
5 their opinion the taking of passengers who hailed
6 the van at the curb was in conformity and allowed by
7 the then existing WUTC permit?

8 MR. MacIVER: Your Honor, I object to this
9 question for several reasons. We have asked for any
10 advice they may have given internally on this
11 subject, and they have claimed privilege, that this
12 is a client attorney privilege and they would not
13 tell us that advice, and even if they had told us
14 that advice, I don't know how relevant it is to this
15 proceeding in any event. That's attorney-client
16 information that we have asked for and been denied
17 under the privilege and I --

18 JUDGE LUNDSTROM: You asked Mr. Holbrook
19 for this?

20 MR. MacIVER: Yes.

21 JUDGE LUNDSTROM: Okay.

22 MR. WOLF: Has he asked you, Mr. Holbrook?

23 JUDGE LUNDSTROM: Is that true, Mr.
24 Holbrook?

25 THE WITNESS: Yes, he has.

1 JUDGE LUNDSTROM: And you have claimed the
2 privilege?

3 THE WITNESS: Yes, we have.

4 JUDGE LUNDSTROM: And you do so now?

5 THE WITNESS: Yes.

6 Q. That's fine if you want to.

7 A. Yes, I feel it's proper.

8 JUDGE LUNDSTROM: Then the objection is
9 sustained.

10 Q. So one thing -- you posed the question to
11 your counsel; is that right?

12 A. Yes, we did.

13 Q. And, in addition, you made telephone
14 inquiries of staff of the Washington Utilities and
15 Transportation Commission?

16 A. The Department of Licensing, yeah. I
17 assume is a branch of the enforcement branch of the
18 WUTC.

19 MR. MacIVER: Just a point of
20 clarification, Counsel, could we make my cross a
21 little shorter, put this in a time frame.

22 Q. I'm not sure what even time frame you're
23 talking about.

24 Q. May I ask that, then? At what time was
25 your investigation ongoing?

1 A. We always have an ongoing investigation
2 and that particular issue had been all of last year,
3 all of 1989.

4 Q. As a result of your -- is it not true, Mr.
5 Holbrook, that the purpose of your investigation was
6 to determine in your own mind whether taking
7 passengers who solicited at the curb was within the
8 confines of the on-call language of the Shuttle
9 Express operating permit?

10 MR. MacIVER: I don't want to disrupt it,
11 but I think this is the fourth time the question has
12 been asked and answered. It's just repetitive. He
13 said in the fall of '89 he's checked to determine
14 with the staff or he was investigating to determine
15 what the staff felt the on-call restriction meant.
16 He's just said that.

17 JUDGE LUNDSTROM: Well, go ahead and and
18 answer the question, will you, please?

19 Q. Is that the purpose of this particular
20 investigation?

21 A. We would always ask our in-house counsel
22 to do an investigation, venture an opinion of
23 whether this would be permissible, and then we take
24 their advice.

25 Q. If they had told you that it was not

1 permissible, what action would you have taken with
2 regard to Shuttle Express?

3 MR. MacIVER: Objection.

4 Q. Let me rephrase it. At the conclusion of
5 their investigation, what action if any did you take
6 to Shuttle Express to advise them to change their
7 manner and method of operation?

8 A. We --

9 MR. MacIVER: Am I not -- counsel, there's
10 already been testified the concession agreement by
11 Mr. Holbrook was revised with the on-call,
12 hail-the-van permission taken out of it in the fall
13 of 1989. I think we've been over this. Instructed
14 Shuttle Express not to do that, took it out of their
15 concession.

16 Q. Did you have your --

17 JUDGE LUNDSTROM: Are you objecting?

18 MR. MacIVER: Well, yes.

19 MR. WOLF: I'll ask another question.

20 MR. MacIVER: Been asked and answered.

21 Q. Did you have your opinion from counsel
22 with regard to that question prior to Mr. Sherrell
23 showed you the Commission's letter which is the
24 first page of Exhibit No. 1 which is dated November
25 15, 1989?

1 A. I am not really sure on the time frame
2 there, Bruce. I can't really conjecture what the
3 sequence of events was.

4 Q. But in any event up to and including
5 November 15, 1989, you had not taken any steps to
6 eliminate the ability of Shuttle Express in
7 accordance with the operating agreement to take
8 passengers who solicited by hand at the curb?

9 A. That's correct.

10 Q. With regard to the telephones that were
11 installed on the lower drive, those phones couldn't --
12 was it Mr. Sherrell who suggested the installation
13 of those telephones, or how did the idea come about?

14 A. The way the idea came about on the
15 telephones and the drive is Mr. Sherrell came to see
16 myself and my immediate supervisor, Charles Blood,
17 with a series of what he said were improvements for
18 his customer service for his operation. Telephones
19 at the load, unload zones designated for Shuttle
20 Express was one of several suggestions that he
21 forwarded to us.

22 Q. What other suggestions did he have at that
23 time?

24 A. One of the other ones was having curb
25 coordinators or supervisors on there. I think that

1 might have been the time that they requested that
2 they have vans hold in the zones, have more than one
3 van in the zone. There's some others. I don't
4 recall the whole list he submitted to us.

5 Q. Then the phones couldn't be installed
6 without approval of the Port; isn't that correct?

7 A. That's correct.

8 Q. And did you folks then go through a
9 discussion and approval process?

10 A. Yes. We went through our normal review
11 and approval process on such a request.

12 Q. And you did eventually approve the
13 installation of the telephones?

14 A. Yes, we did.

15 Q. Were there any -- what are your reasons as
16 to why -- do you think the installation of the
17 phones would be a good idea?

18 A. Yes.

19 Q. Why? What are your reasons behind that?
20 How is it helpful to you?

21 A. The reasons I gave my approval to the
22 installation of the telephones on the curb was the
23 fact that we have a ground transportation
24 information booth, and we have in the baggage claim
25 area 14 phones that dial directly into that

1 information booth for customers to get information
2 in general on ground transportation. There was a
3 huge quantity of those phone calls that came into
4 our booth asking about Shuttle Express, where to
5 pick up Shuttle Express, when is the Shuttle Express
6 van coming to pick me up to take me to wherever, a
7 large quantity of those, and all we were doing is
8 turning around saying, you have to use a pay phone
9 or whatever or use the courtesy phone to call
10 Shuttle Express, and that was tying up my staff, a
11 lot of my staff's time. My preference was the
12 customer deal directly with Shuttle Express so that
13 they can get the information that they need, because
14 my staff didn't have that and it was just tying up
15 their time. Based on that, I gave my approval to
16 the phones.

17 Q. Keeping in mind your original basis for
18 approval, has it helped tie up the congestion that
19 you described, the installation of the three phones?

20 A. Has it helped to tie up the congestion?

21 Q. Has it helped to eliminate that bottleneck?

22 A. Yes, it has helped to eliminate the
23 bottleneck, the number of inquiries received on
24 Shuttle Express.

25 Q. From an airport operational standpoint and

1 from your standpoint, would you like to see those
2 phones remain on the lower drive?

3 A. For that reason, yes.

4 Q. Just to conclude, I think, there are, are
5 there not, a variety of types of ground
6 transportation services available to travelers
7 coming to or leaving from Seattle-Tacoma
8 International Airport?

9 A. Yes, there are.

10 Q. It's important from the Port's perspective
11 to have such a variety?

12 A. The Port's perspective is, yes, to provide
13 a -- and encourage as many means of alternative
14 transportation to and from the airport.

15 Q. Do you have any internal classification of
16 the types of carriers?

17 A. Yes, we do.

18 Q. Is Gray Line in a class?

19 A. Yes, they are.

20 Q. You put Shuttle Express in the same class
21 as Gray Line?

22 A. No, we do not.

23 Q. Do you put Shuttle Express in the same
24 class as either Suburban or Ease Airporter?

25 A. No, we do not.

1 Q. What class do you put them in, sir?

2 A. Shuttle Express is put in a class we call
3 unscheduled vans.

4 Q. We have all heard news reports with regard
5 to the expectations or the actually having
6 experienced an increased amount of travel or air
7 passenger travel into and out of Seattle-Tacoma
8 International Airport. Have you experienced that
9 during your experience as a Port -- as being in
10 charge of ground transportation?

11 MR. MacIVER: Excuse me. I might make a
12 preliminary objection and inquire, are we getting
13 into public convenience and necessity suits? We're
14 willing to address them but I just wondered whether
15 you're now moving into that area.

16 MR. WOLF: No.

17 MR. MacIVER: Then I would object to these
18 questions on the basis of not being relevant.

19 JUDGE LUNDSTROM: Would you state the
20 relevance, please?

21 MR. WOLF: I think it's important to
22 understand the nature of the services provided by
23 Shuttle Express at Seattle-Tacoma International
24 Airport and how if any that helps alleviate growing
25 congestion problems. I think that's an important

1 inquiry. I won't be on it for very long.

2 MR. MacIVER: We made it clear at the
3 outset of this proceeding, our goal is not to put
4 Shuttle Express out of business. Our goal is to
5 cause Shuttle Express to be required to operate
6 within the limits of their operating authority and
7 provide an on-call service. We don't contest that
8 there is a need for door-to-door on-call service.

9 JUDGE LUNDSTROM: Well, I think that -- to
10 me I think the limits of relevance have been reached
11 here. I am going to sustain the objection. Go
12 ahead, please.

13 Q. Are you familiar with the manner and
14 method by which Shuttle Express is utilizing the
15 telephones on the lower drive?

16 A. Yes.

17 Q. Do you consider the manner and method by
18 which they are utilizing the telephones to be in any
19 way in violation of their Port operating agreement?

20 MR. MacIVER: Objection, unless the manner
21 and method is described so we know what Mr. Holbrook
22 has in mind.

23 Q. What's your understanding, sir?

24 JUDGE LUNDSTROM: Yes. That's sustained.
25 Go ahead.

1 Q. Lay some foundation. What's your
2 understanding, sir?

3 A. The telephones are to be used by the
4 customer either to make inquiries as to the service,
5 confirm their service, or make a reservation for the
6 service.

7 Q. Based on that understanding, sir, I will
8 ask my earlier question, then. The manner and
9 method by which the telephones are utilized, is that
10 in any way in violation of the current Port
11 operating agreement?

12 A. As I have just described it, no, that is
13 not a violation.

14 Q. Okay. And, finally, Mr. Holbrook, have
15 you -- as you did with regard to the hail down a van
16 by hand on the curb, have you asked your counsel or
17 consulted any other administrative agencies for an
18 opinion on that?

19 A. Yes, we have.

20 Q. Who?

21 A. We requested advice from both our in-house
22 counsel and state of Washington law enforcement in
23 this matter.

24 Q. Have you received opinions from those
25 folks?

1 A. We've received an opinion from in-house
2 counsel and a preliminary informal opinion from the
3 state of Washington.

4 Q. Has anything that you received caused you
5 to in any manner change the current terms of the
6 operating agreement with Shuttle Express?

7 A. Not at this time.

8 Q. Thank you very much, Mr. Holbrook. I have
9 nothing further.

10 JUDGE LUNDSTROM: Mr. Cedarbaum?

11

12 CROSS-EXAMINATION

13 BY MR. CEDARBAUM:

14 Q. Just a few questions, to start off with
15 that last point, when you say you've requested an
16 opinion from the state of Washington, who were you
17 talking about?

18 A. We were just discussing it with both the
19 local law enforcement agency and administrators at
20 the WUTC.

21 Q. The local law enforcement agency for the
22 WUTC or state patrol? Again, who are you speaking
23 about, specifically?

24 A. It's the state of Washington -- I am --
25 it's the people in Tukwila, the uniform officers in

1 Tukwila.

2 Q. That are employed by the WUTC, I believe
3 is who you're speaking about?

4 A. Yes.

5 Q. Just a couple of items. Mr. MacIver had
6 asked you whether or not the Port was contemplating
7 any penalties against Shuttle Express for violations
8 of the concession agreement more serious than the
9 notice of violations and the fines and you indicated
10 that you were. What are you contemplating, either
11 formally or informally?

12 A. Yeah. I stated that would be informally.
13 We don't have any formal proceedings at this time.
14 It's a matter of I sit down with my staff and I
15 review what's going on in general with all
16 operations and ground transportation, and we
17 evaluate the operations and if in our opinion we're
18 not having an improvement, if we're having some
19 major problems with an operator, for whatever the
20 reason may be, then we'll make a determination to
21 proceed with a default notice or termination
22 proceedings on that operator.

23 Q. I thought you said, maybe I misunderstood
24 your testimony, is that you were engaging in that
25 type of a process for Shuttle Express. Is that true?

1 A. No, we don't have any formal proceeding at
2 this time.

3 Q. Anything informal that you're discussing
4 now?

5 A. No. Just basically sitting down with my
6 staff on a periodic basis and discussing the matter
7 with them, but we have not reached a decision to
8 proceed any further than we're at at this time.

9 Q. There's also been some discussion about
10 solicitation. Can you define for me what the Port
11 defines as solicitation?

12 A. Certainly. We do not allow any of the
13 operators to solicit in the manner of the customer
14 just walks out the door and is standing there and
15 looking around, and is approached by the operator
16 and basically it's stated to them, would you like to
17 go to downtown Seattle? Would you like to take
18 Suburban Airporter? Would you like to take a taxi,
19 whatever. We want the customer to make the initial
20 contact and make the decision of which operation
21 they want to choose. We don't want this active
22 solicitation coming from the vendor to the customer.

23 Q. So when you define solicitation, you mean
24 something overt like approaching a potential
25 passenger?

1 A. Correct.

2 Q. Either physically or verbally, I assume?

3 A. Yes.

4 Q. One last question. You were asked whether
5 or not some of the solicitation or notices of --
6 notices of violation in Exhibit 13 could have been
7 caused by congestion, and I believe you said that
8 was possible. To the extent that it was caused by --
9 or that congestion contributed to the violation,
10 would it be reflected in Exhibits 17 and 18 which
11 are the final dispositions of appeals by Shuttle
12 Express?

13 A. Yes, it would be a factor that would be
14 weighted into consideration.

15 MR. CEDARBAUM: Those are all my questions.
16 Thank you.

17 JUDGE LUNDSTROM: The witness is available
18 for questions from the Commission.

19

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

21 BY CHAIRMAN NELSON:

22 Q. A few, Mr. Holbrook. I am a frequent user
23 of Sea-Tac Airport.

24 A. Yes, I know.

25 Q. And I have never noticed the phone booths

1 that your people man to give apparently strangers
2 information about ground transportation. I think
3 you indicated you have 14?

4 A. Yes, we do.

5 Q. When a stranger to Sea-Tac calls your
6 people, do they disclose to them options, prices and
7 so on? What exactly do your people -- are they
8 authorized to tell the inquiring passenger?

9 A. It all depends on the question that's
10 posed to them. If they're asked how do I -- what
11 are my options from getting from Sea-Tac Airport to
12 Bellevue, my staff is to give them all the options
13 and all the prices and as much information on the
14 schedule availability as they possibly can. If you
15 ask them what's the fastest way to get from here to
16 Bellevue, specifically a hotel or something like
17 that, their response may be a taxi or limousine,
18 whatever, you know, based on the destination, so
19 that their instructions are to assist the customer
20 and help them make the best decision possible
21 without being prejudicial or preferential in that
22 opinion.

23 Q. Besides the phones, do you have any other
24 method of directing information to consumers? Do
25 you have signs posted?

1 A. Yes. We have ten ground transportation
2 information displays, inside baggage claims that
3 gives them information, and then we have six signs
4 at the curb side, directly at curb side, giving
5 information on ground transportation options and
6 prices.

7 Q. Thank you. That's helpful. I suppose
8 since it's my hometown I just never had reason to
9 notice.

10 Then, although I have on occasion taken a
11 taxi, are the people who man the taxi phones, are
12 they taxi employees or Port employees?

13 A. Those are Port employees.

14 Q. Okay. Thank you. That's all I have.

15

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

17 BY COMMISSIONER CASAD:

18 Q. Mr. Holbrook, are the ground managers whom
19 you deploy, are they uniformed personnel?

20 A. Yes, they wear a uniform.

21 Q. Do commissioned officers also assist in
22 directing traffic and cleaning up jams and that kind
23 of thing?

24 A. Yes. That's one of the duties of our
25 commissioned Port of Seattle police officers.

1 Q. Do they issue citations for blocking
2 traffic and that kind of thing?

3 A. The Commission police officers?

4 Q. Yes.

5 A. Yes, they do.

6 Q. Is there any record of commissioned police
7 officers citing Shuttle Express at any time?

8 A. Yes, there are.

9 Q. How many of those would there be?

10 A. We don't know at this time.

11 Q. But there are a number of citations issued
12 by commissioned officers?

13 A. I don't know what you consider a number.
14 I'm aware that there are violations -- or citations
15 been written up on Shuttle Express by our
16 commissioned police officers.

17 Q. And those citations would not be included
18 in the data which has been made available to us?

19 A. No. Those are just violations of the
20 agreement, the contractual agreement we have with
21 Shuttle Express.

22 Q. So the data issued by the Commission had
23 officers would be for traffic violations and that
24 type of activity?

25 A. Yes.

1 Q. I would like to make a bench request.
2 Could you provide to us a list of the citations and
3 a description of the citations issued by
4 commissioned officers to Shuttle Express at the
5 airport?

6 A. I will attempt to do that, yes. See what
7 I can do on that.

8 (Bench Request No. 1.)

9 JUDGE LUNDSTROM: Let the record show that
10 that's Bench Request No. 1.

11 COMMISSIONER CASAD: Thank you. That's
12 all.

13 MR. CEDARBAUM: I guess a procedural
14 question is what -- I assume the hearing is going to
15 get over with today or tomorrow. What are we going --
16 when are we going to get bench requests and what do
17 we do with them once we get it?

18 JUDGE LUNDSTROM: Okay. How soon can you
19 respond with that, Mr. Holbrook?

20 THE WITNESS: Well, as soon as I get back
21 to the airport, I'll call the chief of police, ask
22 him if he can compile those records and I'm not sure
23 it's how they compile the records, whether they do
24 it on an individual operator or not. I think we
25 basically have had that request in before and have

1 been basically unable to receive that information.

2 I think it's a -- the police --

3 MR. MacIVER: We didn't request that. I
4 didn't realize there was a distinction there.

5 THE WITNESS: I think we made the request.
6 Can I confer with my assistant on this?

7 JUDGE LUNDSTROM: Well --

8 MR. MacIVER: I would like Mr. Holbrook to
9 be able to leave, if he could, rather than keep him
10 over the noon hour.

11 JUDGE LUNDSTROM: Maybe I could say that --

12 COMMISSIONER CASAD: In order to not
13 unnecessarily hold up the proceedings, let me ask a
14 couple of more questions of Mr. Holbrook and maybe I
15 can satisfy this.

16 Q. Is there a person present in the hearing
17 room who might have a better idea of approximately
18 how many of those citations might be issued in those
19 circumstances?

20 A. No. The reason I'm looking at her is
21 because we have a recent request in for that type of
22 information and the police said they were unable to
23 get it to us.

24 MR. MacIVER: You know, might it be
25 possible to ask Shuttle Express, I would assume

1 Shuttle Express would keep copies of citations.

2 MR. WOLF: This is not testimony,
3 obviously, but I've just been advised that if any of
4 those citations were issued, they go directly to the
5 driver. Shuttle Express doesn't get them. They're
6 a traffic infraction, and the -- it's -- it's like a
7 ticket.

8 THE WITNESS: I'm not sure even on the
9 ticket whether it would say that they're a Shuttle
10 Express operator or not. We've made the request and
11 we've had extreme difficulty in getting that exact
12 information.

13 Q. In view of the witness' indication that
14 they have attempted to develop that information in
15 the past and have been unable to produce it, I will
16 withdraw my bench request and be satisfied with
17 testimony that in fact citations have been issued by
18 commissioned police officers which are in addition
19 to these violations appearing here to Shuttle
20 Express and let the record reflect that. Thank you
21 very much.

22 A. Okay.

23 COMMISSIONER PARDINI: Your Honor, I had a
24 couple of questions and I have a little difficulty
25 in formulating these questions because one of them

1 was asked and there were objections raised to it and
2 before you ruled on the objection, the question was
3 withdrawn, so let me state it and even before I pose
4 the question, let me see what happens with counsel.

5

6

E X A M I N A T I O N

7 BY COMMISSIONER PARDINI:

8 Q. In response to Mr. MacIver's question, Mr.
9 Holbrook, you indicated that you considered an on-demand
10 classification of ground transportation at the
11 airport taxi, Gray Line, metro and airporter vans.

12 A. And limousines.

13 Q. And limousines. And then I am confused in
14 breaking that down between scheduled and unscheduled,
15 which was a later classification that you made in
16 response to a question from Mr. Wolf. You indicated
17 that you considered Shuttle Express an unscheduled
18 and Gray Line to be a scheduled. If that is the
19 case, is there a differentiation -- what is that
20 differentiation, if they're both on demand, and my
21 ultimate question is if Mr. Holbrook is able to
22 express what the Port views as on demand, what they
23 consider solicitation, why can he not tell us what
24 on call means to him?

25 MR. WOLF: I surely have no objection to

1 Mr. Holbrook responding.

2 MR. MacIVER: I certainly don't object to
3 him responding to the best of his ability.

4 JUDGE LUNDSTROM: The witness can respond.
5 Mr. Holbrook.

6 A. What part do you want me to respond to,
7 Commissioner?

8 Q. Okay. Let's -- clear up for me the
9 scheduled and nonscheduled, both of them being in
10 the on-demand category.

11 A. Okay. A scheduled service will have a
12 posted service, a posted schedule, they're going to
13 leave the airport this time, this time, this time,
14 during the day, et cetera. An unscheduled service
15 would have no such schedule. We may require them to
16 operate a given number of hours during the day,
17 given time period during the day, whatever, but they
18 are not required to depart or come to the airport on
19 any given schedule.

20 Q. What do you perceive on call to be?

21 A. I guess I'm not really sure. During all
22 these proceedings there's been a number of terms
23 used, on call, on demand, et cetera, et cetera, and
24 the Port of Seattle's provision -- position on that
25 has been to allow the regulatory agency that has

1 jurisdiction in this manner to define that and
2 advise us of what that is, and then we will make
3 observations of the operation of that particular
4 vendor and from our observations from the definition
5 we receive from that regulatory agency, determine
6 whether there has been a violation or not.

7 Q. In some questioning, I think it was by Mr.
8 Wolf, maybe by Mr. MacIver, you were asked if you
9 had seen the series of letters designated as Exhibit
10 No. 1, the letter from the Commission to Mr.
11 Sherrell dated November 15th, and then the
12 subsequent responses to that letter, and you
13 indicated that you had reviewed those; is that
14 correct?

15 A. Yes.

16 Q. In the response of Shuttle Express dated
17 November 21 and the letter from Bruce Wolf back to
18 Mr. Paul Curl, the secretary of the Commission, at
19 page four of that letter, Mr. Wolf paraphrases the
20 transcript, and he says as follows, at page 554 of
21 the transcript. Mr. Sherrell testified as follows.
22 Quote, in the recent proposed agreement with the
23 Port, we are allowed, going to be allowed to take
24 customers that solicit or hail our vans where in the
25 past we used to have to inconvenience them and ask

1 them to walk back into the terminal and summon the
2 same van to pick them up.

3 Mr. Holbrook, in your negotiations on the
4 terms and conditions of the Port agreement, is this --
5 do you have the same impression that Mr. Sherrell
6 has portrayed in his testimony that they were going
7 to be allowed to hail vans?

8 A. Yes. He had a request in to the Port of
9 Seattle to be allowed to do that and, as I testified
10 here today, we investigated that. We did put
11 provisions and certain conditions on the ability to
12 do that, but it was our understanding at that time
13 he was allowed to operate in that manner.

14 Q. And what caused you to change your opinion
15 that he was allowed to operate in that manner and
16 restrict them from answering hail of the van?

17 A. Provisions of the permit that he received
18 from the Washington state.

19 Q. And that permit that you have examined and
20 from that you went to the telephone system?

21 A. Well, he made a request on the telephone
22 system. Could have been in that time period. I'm
23 not exactly sure when that time period was. I think
24 the phones were installed in December.

25 Q. Phones were installed in December?

1 A. Yes.

2 Q. Of 1989?

3 A. Correct.

4 Q. That's all. Thank you.

5 JUDGE LUNDSTROM: Okay. Mr. MacIver?

6

7 REDIRECT EXAMINATION

8 BY MR. MacIVER:

9 Q. Yes, I have a few and I am very mindful of
10 what time it is, so I will try to keep it short.

11 With regard to Commissioner Pardini's questions, Mr.
12 Holbrook, you understand that a scheduled carrier
13 must show up on schedule and leave on schedule
14 regardless of whether there are passengers there; is
15 that correct?

16 A. That's correct.

17 Q. A scheduled carrier is required to be
18 there?

19 A. Yes, that's true.

20 Q. And the type of passengers that utilize
21 that type of a carrier are passengers without prior
22 reservations for a service?

23 A. Right.

24 Q. They just walk up and on demand are able
25 to board that service and -- is that correct --

1 MR. WOLF: Objection, your Honor. I make
2 the same objection. We're into public convenience
3 and necessity there.

4 MR. MacIVER: I am just trying to elicit
5 further information on how he characterizes the
6 different services out there. I am not talking
7 about need.

8 JUDGE LUNDSTROM: That's fine. That's
9 overruled. Go ahead, please.

10 Q. So you understand that the customers of
11 the scheduled carrier who is required to be there
12 with his equipment are on-demand type people without
13 prior arrangements to utilize the service through a
14 reservation?

15 A. Yes, that's my understanding.

16 Q. Didn't Mr. Sherrell -- let me back up. We
17 wrote you and inquired about the reasons you allowed
18 the phones on the lower drive. Do you recall that,
19 Gray Line did?

20 A. Yes.

21 Q. And that you responded to that letter?

22 A. Yes, we did.

23 Q. And isn't it a fact that you responded
24 that Mr. Sherrell had advised you that the purpose
25 for putting the phones on the lower drive were

1 simply to allow customers who had prearranged for
2 service to call in vans, to report that they were on
3 the lower drive and ready to depart, as contrasted
4 to making the initial reservation from the phone?

5 MR. WOLF: Your Honor, this is leading,
6 hearsay and also not the best evidence. If we have
7 a letter --

8 Q. You wrote the letter, did you not?

9 A. I physically did not write the letter. My
10 staff wrote it for me.

11 Q. You signed it?

12 A. Yes.

13 Q. I'll just phrase it a different way.
14 Isn't it a fact that Mr. Sherrell advised you that
15 the reason he needed the phones on the curb were so
16 that passengers who had already made arrangements
17 for his service could report that they were ready to
18 depart and he could dispatch a van to pick them up,
19 thereby complying with your regulations not to
20 dispatch vans before the customer was there? Isn't
21 that in fact what Mr. Sherrell told you?

22 A. That's one of the reasons he gave for
23 putting the phones on the -- requesting the phones
24 be put there.

25 Q. And that would be consistent with your

1 concession agreement, would it not, that he not
2 dispatch vans to the lower drive unless called out
3 by a customer?

4 A. That's correct.

5 Q. And you so advised us along those lines
6 when we inquired and you wrote us a letter in
7 January of this year?

8 A. Yes.

9 Q. Quickly going back, Mr. Wolf asked you a
10 bunch of questions about your Port police, do they
11 have constant surveillance, all airporters at all
12 times, so that the violations given would really be
13 representative of the total actual infractions. Do
14 you recall those questions?

15 A. It wasn't on the Port police. It was on
16 our ground transportation controls.

17 Q. Right, itself ground transportation
18 control people would issue citations such as exhibit --

19 A. Right. They control to the best of their
20 ability.

21 Q. And there are only three of those people
22 down there doing that?

23 A. Well, we try to have a minimum of three
24 people on duty at any given time, and we can get up
25 to seven people during peak periods.

1 Q. And they patrol both the upper and lower
2 drive; is that correct?

3 A. That's correct, along with other duties.

4 Q. And what are their other duties?

5 A. They will go out to the charter bus
6 holding lot, they'll go down to the taxi holding lot,
7 they'll inspect vehicles for cleanliness and
8 appearance, et cetera, et cetera.

9 Q. So they have a variety of responsibilities
10 other than simply observing and issuing citations?

11 A. Right. And one of their primary
12 responsibilities is to give information to the
13 customers.

14 Q. Do you have an opinion as to whether or
15 not they actually observe and report all infractions?

16 MR. WOLF: Objection, your Honor. This is
17 speculative. He's trying to lay an impression that
18 there are some --

19 MR. MacIVER: Mr. Wolf had a whole line of
20 questions on this trying to leave one impression and
21 I am simply trying to straighten the record. Mr.
22 Wolf spent the first 15 minutes trying to leave the
23 impression that this was not representative but
24 total infractions, and I am asking the witness now,
25 maybe we can short it up, do you believe that this

1 represents all the actual violations of Port
2 concession agreement and rules and regulations,
3 Exhibit 13, that occurred during 1989 and the first
4 four months of 1988?

5 MR. WOLF: Objection. Speculative.

6 JUDGE LUNDSTROM: I'll sustain that. Go
7 ahead, please.

8 A. Okay.

9 Q. Do you believe that your Port enforcement
10 people spot and cite all infractions?

11 MR. WOLF: Objection. Speculative.

12 MR. MacIVER: No, I do not think that's
13 speculative. I think this man supervises that area
14 of the operations and he has --

15 CHAIRMAN NELSON: Mr. MacIver, I think the
16 trier of fact can recognize that police don't catch
17 every crime.

18 MR. MacIVER: All right. I'll move on.

19 COMMISSIONER CASAD: Although they try
20 like hell.

21 Q. You indicated that you'd recently talked
22 to Mr. Sherrell and he was most cooperative and
23 positive in his attitude towards his violations; is
24 that correct?

25 A. Yes.

1 Q. And in fact you have had numerous past
2 conversations with Mr. Sherrell on this same subject,
3 have you not?

4 A. Yes, we have.

5 Q. And each and every time he has been most
6 cooperative and positive in his attitude towards
7 improving his behavior at the airport?

8 A. Yes, he has.

9 Q. And in fact he has not done so, has he,
10 his operations continue to incur uniquely high
11 degree of citations?

12 MR. WOLF: Object to the form, uniquely
13 high.

14 Q. Unique as compared to the number given to
15 other airporters --

16 JUDGE LUNDSTROM: Excuse me. I think --
17 well --

18 MR. MacIVER: I was just going to rephrase
19 the question. Unique as compared to other
20 airporters as depicted in Exhibit 16.

21 A. Yes, as compared to other airporters,
22 Shuttle Express has more violations than the other
23 airporters, than the airporters.

24 Q. In fact, many more?

25 A. Yes, that is correct.

1 Q. Mr. Wolf asked a series of questions,
2 well, if -- about loading out of their designated
3 loading zones, and wouldn't it be true that if there
4 are other cars there, they would have to load out of
5 their other loading zones. Do you recall that
6 series of questions?

7 A. Yes, I do.

8 Q. And if that circumstance were involved,
9 they wouldn't be cited for loading out of their
10 zones, would they?

11 A. They should not be cited for that, no.

12 Q. And in the instances where they were cited
13 were those occasions where they were cited for
14 loading but could have used their own loading zone,
15 had they been operating in accordance with the rules
16 at the airport?

17 A. If the violation carried through the
18 appeal process and was not rescinded, yes, that was
19 most likely the scenario.

20 MR. MacIVER: No further questions.

21 JUDGE LUNDSTROM: Okay. Mr. Wolf?

22 MR. WOLF: Just one that I think needs to
23 be cleared up because I'm confused in my own mind.

24

25

RECROSS-EXAMINATION

1 BY MR. WOLF:

2 Q. Mr. Holbrook, in response to questions
3 from Commissioner Pardini, he was asking whether you
4 were familiar with the series of letters -- I'm
5 sorry, your Honor, may I approach the witness and
6 show him?

7 JUDGE LUNDSTROM: Sure.

8 Q. The series of letters from Secretary Curl
9 to Mr. Sherrell and responses back. Do you recall
10 that question?

11 A. Yes.

12 Q. All right. And I want to show you the
13 November 15, 1989 letter which is number one from
14 the Commission, and I am going to try and expedite
15 this. Did you see that one?

16 A. I don't recall seeing this particular -- I
17 always -- you're asking the question on the
18 November 15th. I assume you're talking about the
19 personality they received, Shuttle Express received
20 in that time period.

21 Q. Right. What I am referring here to is the
22 November 15, 1989 letter, and where it says, "The
23 Commission order in that docket clearly indicated
24 that the on-call restriction allowed Shuttle Express
25 to transport on an unscheduled basis only those

1 passengers who have made a telephone request for
2 service prior to boarding a Shuttle Express motor
3 vehicle." Do you recall seeing that ever?

4 A. I think we did. I think I have seen this
5 particular document.

6 Q. And just to bring this -- it was in
7 response to this, was it not, that you started the
8 process to change the Port operating agreement and
9 to preclude Shuttle Express from taking passengers,
10 hail the van at curbside?

11 A. Yes. It was the WUTC ruling on this
12 matter that prompted our actions.

13 Q. And that's because it's your process to
14 defer to the Utilities and Transportation Commission
15 with respect to the interpretation of UTC operating
16 permits?

17 A. Correct. We're not a regulatory agency.

18 MR. WOLF: Thank you, Mr. Holbrook.

19 I don't have anything further.

20 JUDGE LUNDSTROM: Mr. Cedarbaum?

21 MR. CEDARBAUM: No questions.

22 JUDGE LUNDSTROM: From the Commissioners,
23 any further questions?

24 COMMISSIONER CASAD: Lunch.

25 JUDGE LUNDSTROM: Let's recess and come

1 back at 1:30.

2 (Lunch recess at 12:15 p.m.)

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AFTERNOON SESSION

1:30 p.m.

JUDGE LUNDSTROM: Hearing will come to order, please. Will you call your next witness, Mr. MacIver?

MR. MacIVER: Yes. Mr. Lonheim, please. Whereupon,

DALE D. LONHEIM, having been duly sworn, was called as a witness and was examined herein and testified as follows:

JUDGE LUNDSTROM: Be seated, please.

DIRECT EXAMINATION

BY MR. MacIVER:

Q. Mr. Lonheim, would you please give your name, spelling your first and last name?

A. Dale, D A L E, Lonheim, L O N H E I M.

Q. What is your business address, Mr. Lonheim?

A. 300 Elliot Avenue West, Seattle, Washington, 98119.

Q. And by whom are you employed?

A. West Tours.

Q. Is West Tours affiliated with Gray Line?

A. Yes, it is.

Q. And do you work under the direction and

1 supervision of a gentleman by the name of Mr. Gordon
2 Barr?

3 A. Yes, I do.

4 Q. Did you have occasion recently to observe
5 Shuttle Express activities at Seattle hotels served
6 by Gray Line?

7 A. Yes, I did.

8 Q. Were you specifically asked to make these
9 observations as part of an investigation by Gray
10 Line of Shuttle Express activities at Seattle hotels
11 served by it?

12 A. Yes.

13 Q. When did you make these observations, Mr.
14 Lonheim?

15 A. June 11th of this year.

16 Q. At which hotels did you make these
17 observations?

18 A. The Westin and the Stouffer Madison.

19 Q. These are both hotels that Gray Line
20 operates between those hotels and the airport?

21 A. Yes.

22 Q. Describe the type of investigation you
23 conducted, what you did at these hotels.

24 A. I went to the airports -- to the hotels
25 until -- that have been stated and solicited a ride

1 to the airport on the Shuttle Express.

2 Q. Had you made a prior reservation?

3 A. No, I hadn't.

4 Q. How did the Shuttle Express bus happen to
5 be there at the specific time you were there?

6 A. I was with another individual who had
7 called ahead of time and made a reservation.

8 Q. To bring a Shuttle Express bus to the
9 hotel?

10 A. That's correct.

11 Q. Did the individual who called ahead of
12 time make a reservation, pay the fare and actually
13 ride the van to the airport?

14 A. Yes.

15 Q. So you weren't causing Shuttle Express to
16 make a dry run to a hotel?

17 A. No.

18 Q. When the van arrived, did you walk up to
19 the Shuttle Express driver and inquire as to service
20 to the airport?

21 A. Yes.

22 Q. Which was the first hotel where you did
23 this?

24 A. At the Westin.

25 Q. And this is on June 11th?

1 A. Correct.

2 Q. At approximately what time of day?

3 A. Approximately 12:30 in the afternoon.

4 Q. After you walked up to the Shuttle Express
5 driver and requested information concerning service,
6 would you just describe in your own language what
7 happened?

8 A. I went up and said, are you going to the
9 airport? The driver said yes. I said, can I go?
10 He said yes. I got aboard, went to the airport.

11 Q. Did you make a telephone call before
12 riding to the van to the airport to Shuttle Express?

13 A. No. No.

14 Q. Did the driver make a telephone call
15 before you boarded --

16 A. No.

17 Q. -- the van?

18 A. No.

19 Q. Did the driver use his or her radio after --
20 before or after you were on the van to report you
21 were riding to the airport?

22 A. Not prior. Might have after I was on, but
23 I was sitting in the back and didn't hear anything.

24 Q. Did you even give the driver your name?

25 A. No.

1 Q. To the best of your knowledge, there was
2 no telephone call or radio call made concerning your
3 trip to the airport?

4 A. Correct.

5 Q. Did you then repeat this procedure at
6 another hotel?

7 A. Correct.

8 Q. On the same day?

9 A. Yes.

10 Q. Which hotel was that?

11 A. Stouffer Madison.

12 Q. And what was the time of day that occurred?

13 A. Approximately 2:30 p.m.

14 Q. When you walked up to the Shuttle Express
15 driver at the Stouffer Madison, what happened?

16 A. The driver asked if I had a reservation.
17 I said no. The driver said then, one moment. Went
18 to the radio in the vehicle and called dispatch,
19 made an inquiry as to whether there was room for me
20 on the van or not. They said yes. The driver then
21 took my name down and I got on board and went to the
22 airport.

23 Q. And you had not made a prior reservation
24 by telephone before entering that van?

25 A. No.

1 Q. And the driver did not use a telephone
2 concerning your trip before you entered the van?

3 A. No.

4 Q. The driver reported on the driver's radio
5 the fact that you were riding the van to the airport;
6 is that correct?

7 A. Correct.

8 Q. Did you talk on the radio at any time?

9 A. No.

10 Q. No further questions.

11 JUDGE LUNDSTROM: Mr. Wolf,
12 cross-examination?

13

14 CROSS-EXAMINATION

15 BY MR. WOLF:

16 Q. Mr. Lonheim, am I pronouncing okay?

17 A. That's fine.

18 Q. Mr. Lonheim, when you traveled with the
19 Westin -- when you were investigating and doing your
20 observations at the Westin Hotel, you were
21 accompanied; is that right, somebody was with you?

22 A. Yes.

23 Q. And who was with you?

24 A. Colleen Donahue.

25 Q. Is she a friend of yours or --

1 A. Employee.

2 Q. An employee of what -- of whom?

3 A. Of Westours, green division. That's why I
4 hesitated.

5 Q. Now, are you familiar with what Colleen
6 did to set up her reservation?

7 A. Yes.

8 Q. And how did you become familiar with that?

9 A. I talked with her previously about what
10 she was going to do.

11 Q. Was she part of your investigation?

12 A. Yes.

13 Q. So this was something that was planned out,
14 then, between yourself and Colleen?

15 A. Yes.

16 Q. And Colleen phoned ahead, did she phone
17 from the Westin?

18 A. No. She phoned over the weekend ahead of
19 time.

20 Q. And so she had a specific designated time?

21 A. Correct.

22 Q. And did the Shuttle Express van -- was it
23 on time to pick up Colleen?

24 A. Within its time frame as I understand it,
25 yes.

1 Q. What you're telling me, then, sir, I think,
2 and please correct me if I'm wrong, is that the
3 Shuttle Express van did not go into the Westin
4 facilities with no passenger to pick up?

5 A. Correct.

6 Q. Similarly at the -- were you accompanied
7 by the same person at the Stouffer?

8 A. Yes.

9 Q. If I asked you the same sort of questions,
10 would your answers be the same?

11 A. Yes.

12 Q. Let's assume that you were not conducting
13 an investigation, but you were in fact a traveling
14 passenger, and really intended to go to the airport
15 to meet a flight. Did you present -- did you and
16 Colleen present yourselves as two persons that were
17 traveling together?

18 A. No, we didn't.

19 Q. There was no talking or exchange between
20 you while you were in front of the van?

21 A. None whatsoever.

22 Q. Okay. Let's assume that at that point the
23 Shuttle Express driver had directed you back into
24 the Westin facilities to telephone Shuttle Express.
25 Would you have had any objection to that procedure?

1 MR. MacIVER: I fail to see the relevancy
2 on this and I will object.

3 MR. WOLF: I think it goes to the
4 definition of on call which is an issue in this
5 proceeding, and how on call should be defined.

6 MR. MacIVER: This is not proper
7 cross-examination of this witness who was simply
8 investigating activities in Shuttle Express at the
9 airport. We're not asking this witness to define on
10 call. It's improper cross. I'm sorry, the judge
11 was involved in a discussion.

12 JUDGE LUNDSTROM: Okay. There was a bench
13 discuss.

14 (Record read as requested.)

15 MR. MacIVER: And that was where I posed
16 my objection, your Honor. This is an investigative
17 witness simply reporting what he saw at the hotel,
18 not to offer opinions as to what would be convenient
19 or inconvenient for him to do vis-a-vis other types
20 of service, and so it's improper cross and is beyond
21 the scope of this person's both knowledge and his
22 direct testimony.

23 JUDGE LUNDSTROM: Well, I don't believe
24 there's any particular prejudice to it. He's
25 testified about what he did. Mr. Wolf's theory of

1 the case I think comes to some inquiry along these
2 lines, so I'll allow the question. Go ahead, please.

3 A. I think it depends. If I was trying to
4 catch a flight right away, which I've been in
5 numerous cities around the country, depending on how
6 desperate I was, if it was tight, I would have
7 probably used about anything that was available. If
8 I was on a flexible schedule and had plenty of time,
9 there probably wouldn't have been any problem. Does
10 that answer your question?

11 Q. I think it does, sir.

12 MR. WOLF: I have no further questions.

13 MR. MacIVER: I have no further questions.

14 JUDGE LUNDSTROM: Okay. The witness --
15 excuse me. Mr. Cedarbaum?

16 MR. CEDARBAUM: I have no questions.

17 JUDGE LUNDSTROM: The witness is available
18 for questions by the Commission.

19 CHAIRMAN NELSON: No questions.

20 COMMISSIONER CASAD: No questions.

21 COMMISSIONER PARDINI: No questions.

22 JUDGE LUNDSTROM: Redirect?

23 MR. MacIVER: No further questions.

24 JUDGE LUNDSTROM: Witness may be excused.

25 Call your next witness, please.

1 MR. MacIVER: Mr. Gordon Barr, please.

2 Whereupon,

3 GORDON BARR,

4 having been duly sworn, was called as a witness and

5 was examined herein and testified as follows:

6 JUDGE LUNDSTROM: Be seated, please.

7

8 DIRECT EXAMINATION

9 BY MR. MacIVER:

10 Q. Mr. Barr, would you please state your name
11 and spell your last name.

12 A. Gordon F. Barr, B A R R.

13 Q. What is your business address, Mr. Barr?

14 A. 300 Elliot Avenue West, Seattle,
15 Washington, 98134.

16 Q. What is your occupation?

17 A. I am vice-president of transportation for
18 Holland America Line Westours.

19 Q. Are you directly responsible for
20 supervising the motor coach auto transportation
21 company operations of your company?

22 A. Yes.

23 Q. And does that include the operations of
24 Gray Line?

25 A. Yes, it does.

1 Q. Which in turns includes the airporter
2 service to and from the airport?

3 A. Yes, it does.

4 Q. So does the manager of Gray Line report
5 directly to you?

6 A. Yes.

7 Q. And are you familiar with the day-to-day
8 operations of Gray Line?

9 A. Intimately.

10 Q. And are you familiar with the financial
11 results of operations of Gray Line?

12 A. Very much so.

13 JUDGE LUNDSTROM: Let's the record show I
14 have been provided with a single-page document and
15 it is a graph and it's entitled Sea-Tac Airport and
16 Gray Line Airporter Current Month Passengers, Versus
17 A Year Ago. That appears to be the title of it.
18 And it's a single-page document. Marked for
19 identification as Exhibit 19.

20 (Marked Exhibit 19.)

21 JUDGE LUNDSTROM: Go ahead, please.

22 Q. Mr. Barr, did you cause this graph to be
23 prepared by your staff?

24 A. Yes, I did.

25 Q. And is it prepared from records of your

1 company and records obtained from Sea-Tac concerning
2 traffic volumes?

3 A. Yes, it is.

4 Q. Would you please explain what this graph
5 depicts in your own words, Mr. Barr?

6 A. Okay. This graph uses as the base year
7 1988 passenger volume by month. The graph actually
8 depicts where it says 1988, that is, January of 1989.
9 It is comparing, for example, in the first column
10 directly under 1988, it compares in red Gray Line
11 airport express passenger volume in 1989 compared to
12 1988, so if one were to look at this, and there's
13 not delineations between the hundred percent and the
14 110, but I would estimate based on how this graph
15 looks, it's approximately 104 percent over where it
16 was in January of 1988. Correspondingly the next
17 line shows the Sea-Tac arrivals and departures
18 versus a year ago, so January of 1989 reflects an
19 increase over January of 1988 of about three or four
20 percent, so in other words --

21 Q. Airport traffic?

22 A. Airport traffic, arrivals and departures
23 at the airport. February of 1989 reflects a
24 substantial increase over '88. In explaining that
25 kind of anomaly, it is related to convention

1 activity in February of 1989 as opposed to '88, and
2 one could say the same about April, is the NC2A that
3 occurred in Seattle, so some of these anomalies
4 where you see these tremendous increases, as you
5 follow that across, this graph ends in 1989, April
6 of 1989, and that would represent the last column.
7 The 1989 numbers compare to the 1980 -- excuse me.
8 The 1990 numbers compare to the 1989 actual numbers
9 for the Port.

10 So as we look at the last column on this
11 graph which represents April of 1990, it is
12 comparing the actual activity at the Port and Gray
13 Line of Seattle compared to 1989 for the same period,
14 so, in other words, in April of 1990, Gray Line of
15 Seattle experienced less than -- less volume than it
16 did the prior year while the Port was up slightly
17 over where they were a year ago.

18 Q. With respect to your company over the time
19 span depicted by this, which is time span really for
20 the calendar year 1989 and the first --

21 A. Four months of '90.

22 Q. -- what does this graph design illustrate?

23 A. This graph shows that Gray Line passenger
24 counts in mid-1989 took or started to lose pace with
25 the activity at the airport and in fact shows a

1 significant loss in passenger volume as compared to
2 the growth in passenger volume at Seattle-Tacoma
3 International Airport.

4 JUDGE LUNDSTROM: Let the record show I
5 have been handed an additional single-page document
6 and it again is a graph and it is entitled Gray Line
7 Airporter Total Revenue and Cost, and I am marking
8 that as Exhibit 20 for identification.

9 (Marked Exhibit 20.)

10 JUDGE LUNDSTROM: Go ahead, please.

11 Q. Mr. Barr, did you have Exhibit 20 for
12 identification prepared from the books and records
13 of your company?

14 A. Yes, I did.

15 Q. Would you please describe to the
16 Commission what this graph depicts?

17 A. The left-hand column depicts dollars in
18 millions of dollars. Both across the bottom are
19 years. For example, in 1988, shows revenue of
20 slightly over \$1,600,000 and costs of just slightly
21 under \$1,500,000, so the blue line on this graph
22 reflects revenue. The yellow -- excuse me, the red
23 line depicts costs. You can see as you follow
24 across the in 1986, 1987, we showed a profit on the
25 airport express operation. In 1988 we showed a

1 slight loss. In 1989 we increased our rates 10
2 percent, so we showed a slight increase. That was
3 in January of 1989. And based on the current trends
4 that we've seen with our revenue for the first five
5 months of 1990, we show that our revenue will be
6 down in spite of a 10 percent increase in January of
7 this year, and our costs remaining about flat, so we
8 expect to lose money on this operation.

9 Q. In fact, from January of 1989 through to
10 date, you have increased your rates by 20 percent on
11 the airporter service, have you not?

12 A. That's correct.

13 Q. From \$5 to \$6?

14 A. That's correct.

15 Q. And you were still showing a loss?

16 A. That's correct.

17 Q. Mr. Barr, before I forget, both exhibits,
18 the prior one, Exhibit 19 and this one, 20, these
19 are depicting only revenues and costs of the
20 airporter operation; is that correct?

21 A. That's correct.

22 Q. You're not including in here revenues and
23 costs from charter operations or from sightseeing
24 operations or from any of the other activities?

25 A. That's correct. This is isolated to our

1 airport express operation.

2 JUDGE LUNDSTROM: Let the records show
3 that I have been handed an additional document which
4 I am marking for identification as Exhibit 21. That
5 is another chart entitled Gray Line Airporter
6 Revenues and Cost Per Mile.

7 (Marked Exhibit 21.)

8 JUDGE LUNDSTROM: Go ahead, please.

9 Q. Mr. Barr, directing your attention to what
10 has been marked for identification as Exhibit 21,
11 was this chart prepared by your staff from your
12 company's records and accounts?

13 A. Yes, it was.

14 Q. Would you please, sir, describe what is
15 depicted on Exhibit 21?

16 A. Exhibit 21 depicts revenue and costs per
17 mile for the airport express operation from 1986
18 through 1990 estimated. It shows in 1986 when our
19 fare was between 4.75 and \$5, our revenue per mile
20 was approximately \$3.25, and then our costs for
21 operating was slightly under \$3, and that analogy
22 follows all the way across. It depicts in 1988 that
23 we had an operating loss. It depicts a slight
24 profit in 1989, and an anticipated operating loss in
25 1990.

1 Q. Again, you had a 10 percent increase in
2 1989?

3 A. That's correct.

4 Q. And another 10 percent -- when was your
5 last increase?

6 A. I believe mid-January of this year.

7 Q. So this projection is with the projected
8 \$6 rate?

9 A. That's correct. So I would just -- when
10 comparing these, our rate in the fall of 1988
11 through December was \$5, and that our rate now is \$6,
12 and that just to clarify the 10 percent rate
13 increase in reality from 5.50 to \$6 is not quite 10
14 percent, but when you break them apart that way.

15 Q. But your rates have gone up 20 percent
16 from the beginning of '89 to date?

17 A. That's correct.

18 JUDGE LUNDSTROM: Let the record show I
19 have been handed another document which is another
20 chart entitled Sea-Tac Airport, Passenger Arrivals
21 and Departures. And I am marking that for
22 identification as Exhibit 22.

23 (Marked Exhibit 22.)

24 JUDGE LUNDSTROM: Go ahead, please.

25 Q. Mr. Barr, did you have your staff prepare

1 Exhibit 22 based on departure and arrival data
2 supplied to you by the Port of Seattle?

3 A. Yes, I did.

4 Q. And is this graph a regression analysis of
5 the total arrivals and departures, passenger
6 arrivals and departures at Sea-Tac throughout parts
7 of the period of May of 1986 through -- '85 up
8 through May 1 of 1986?

9 A. Yes, it is.

10 Q. Of '90. I'm sorry.

11 A. Yeah.

12 Q. Would you describe basically what a
13 regression analysis is?

14 A. What a regression -- what a regression
15 analysis attempts to do is to take a trend line over
16 time of the direction of all of the individual
17 points on the graph, so it depicts from May 1985
18 that the direction and the number of passengers
19 arriving in and out of Sea-Tac are on an upward
20 swing. It takes out the seasonality of any
21 particular item and shows the overall direction.

22 JUDGE LUNDSTROM: Let the record show I
23 have been handed another document which is another
24 chart which is entitled Sea-Tac Airport Regression
25 on Arrival. I am marking that document as Exhibit

1 No. 23 for identification.

2 (Marked Exhibit 23.)

3 JUDGE LUNDSTROM: Go ahead, please.

4 Q. Mr. Barr, regarding Exhibit 23, was this
5 regression analysis also prepared from data supplied
6 to your staff by the airport?

7 A. Yes, it was.

8 Q. And is this regression analysis which is
9 part of the prior exhibit but this one is directed
10 towards arrivals at Sea-Tac only during the same
11 period of time that Exhibit 22 showed total?

12 A. That's correct.

13 Q. And what is this graph and analysis
14 designed to depict?

15 A. This graph is designed to show an overall
16 trend of the arrivals at the airport and the trend
17 shows that the arrivals at Sea-Tac International
18 Airport are on an upward swing over time and the
19 particular graph also depicts that, so you can see
20 not only the individual years but overall in the
21 five-year period it's on its way up.

22 JUDGE LUNDSTROM: Let the record show I
23 have been handed an additional document. It's a
24 single-page document and once again a chart showing
25 Sea-Tac Airport's regression on departure. That's

1 marked for identification as Exhibit 24.

2 (Marked Exhibit 24.)

3 JUDGE LUNDSTROM: Go ahead, please.

4 Q. Mr. Barr, regarding exhibit for
5 identification 24, is this a similar regression
6 analysis over the same period of time but depicting
7 this time the trend in departures from Sea-Tac?

8 A. That's correct.

9 Q. And was this also prepared by your staff
10 based on information supplied to it by the Port?

11 A. Yet.

12 JUDGE LUNDSTROM: Let the record show I
13 have been provided with another document, a chart
14 entitled Gray Line Airporter Total Passengers. I am
15 marking that as Exhibit No. 25 for identification.

16 (Marked Exhibit 25.)

17 JUDGE LUNDSTROM: Go ahead, please.

18 Q. Mr. Barr, with respect to Exhibit 25 for
19 identification, was this prepared from your
20 company's books and records?

21 A. Yes, it was.

22 Q. And would you please describe what is
23 depicted in this graph?

24 A. This graph depicts the total number of
25 passengers that the Gray Line Airport Express

1 carried both to and from the airport from May of
2 1985 into a period in 1990. It depicts that, for
3 example, in the summer of 1986 we carried close to
4 46 or 47,000 passengers. You can see another peak
5 in the summer of 1987, another peak in the summer of
6 1988, another peak in the summer of 1989. You can
7 also see from this graph in terms of total passenger
8 volume that our passenger volume starting in 1987
9 had a slight decrease from 1986 and the summer of
10 1987 had a -- summer of '88 had a slight decrease, a
11 substantial decrease in the summer of '89 and the
12 trend is continuing on the low side there, is that
13 the winter months are still soft.

14 JUDGE LUNDSTROM: Let the record show I
15 have been provided with another document. This is
16 another chart entitled Greyhound Airporter airporter
17 passengers to Sea-Tac Airport. I am marking that as
18 Exhibit 26 for identification.

19 (Marked Exhibit 26.)

20 JUDGE LUNDSTROM: Go ahead, please.

21 Q. Now, was Exhibit 26 for identification
22 prepared under your direction and supervision?

23 A. Yes, it was.

24 Q. And from your company's records?

25 A. Yes.

1 Q. Does this exhibit, Mr. Barr, instead of
2 showing total passengers, show Gray Line passengers
3 from Seattle hotels to Sea-Tac Airport for the same
4 period that the previous exhibit?

5 A. Yes, it does.

6 Q. And what does this exhibit illustrate?

7 A. This exhibit illustrates the impact --
8 actually the graphical view of our actual numbers of
9 passengers by month from 1985 through the period in
10 1990. It shows, for example, in 1987, we had a
11 slight downturn, significant downturn coming from
12 hotels to Sea-Tac. In 1988, we recaptured most of
13 that. In 1989, we have a slight downward trend.

14 Q. Finally, Mr. Barr, I am handing you a
15 one-page exhibit showing for the same period a chart
16 illustrating passengers carried by Gray Line from
17 Sea-Tac to the hotels.

18 JUDGE LUNDSTROM: Let the record show I
19 have been provided a copy of the document provided
20 by Mr. MacIver and marking it for identification as
21 Exhibit No. 27. Go ahead, please.

22 (Marked Exhibit 27.)

23 Q. Mr. Barr, was this exhibit prepared by
24 your staff from your company records?

25 A. Yes, it was.

1 Q. What does this exhibit illustrate, Mr.
2 Barr?

3 A. Similar to the other exhibits, this
4 exhibit illustrates passenger volume on the
5 left-hand side and years on the lower side. It
6 depicts actual activity from 1985 to 1990. If you
7 look at the graph closely -- actually not even
8 closely, you can see that we were on an upward trend
9 from 1985 through 1987. In 1988, there was an
10 erosion of passenger volume coming from the airport
11 to downtown hotels and then a significant decline
12 again in 1989, not only on the upper side but also
13 on the lower side during the slow months, it appears
14 that there's a downward trend also.

15 Q. So if one were -- this erosion illustrated
16 by Exhibit 27 is quite severe, is it not?

17 MR. WOLF: Objection. It's leading,
18 suggestive. This is Mr. MacIver's own witness.

19 Q. Would you characterize the erosion in 19 --
20 during the period indicated from the airport to
21 Seattle as compared to the erosion from Seattle to
22 the airport shown by Exhibit 26, Mr. Barr?

23 A. As the chief person who's responsible for
24 the operation of the Gray Line Airport Express,
25 these results are pretty significant and put into

1 question the viability of us operating this service.

2 Q. Now, Mr. Barr, you've shown through these
3 charts and exhibits and regression analysis what the
4 trends at the airport are, and what the trends in
5 your business are.

6 A. Yes.

7 Q. Would you describe -- well, let me ask
8 this. Is the airporter service that your company
9 operates now, between Sea-Tac and Seattle hotels, a
10 profitable operation or a losing operation?

11 A. It is a losing operation.

12 Q. Mr. Barr, you have requested as a form of
13 relief from the Commission in this complaint
14 proceeding that the Commission restrict Shuttle
15 Express from the hotels in downtown Seattle that you
16 serve. Would you explain why your company has
17 requested that relief, in your own words?

18 A. Without some form of relief -- this is
19 really a two prong answer, so I hope you give me the
20 ability to answer that question -- without some form
21 of relief, I have been instructed by the president
22 of our company that --

23 MR. WOLF: Objection. This is hearsay.

24 A. Okay.

25 Q. No, don't say okay to Mr. Wolf's objection.

1 I'll respond to Mr. Wolf's objection.

2 MR. WOLF: I made an objection. He's
3 purporting to repeat what someone else has said.

4 MR. MacIVER: May I respond to the
5 objection?

6 JUDGE LUNDSTROM: Yes, go ahead.

7 Q. Have you discussed with the president of
8 your company -- would you identify that individual?

9 A. A. K. Lannerman, president, chief
10 operating officer of Holland America Lines Westour.

11 Q. Is it part of your responsibility as
12 vice-president in charge of the bus operations of
13 your company to discuss from time to time the
14 results of operations of the companies under your
15 direction and supervision?

16 A. Very frequently.

17 Q. And in the normal course of your business
18 activities at Holland America, do you take direction
19 from your president?

20 A. Yes.

21 Q. Has your president advised you what you
22 are to do if there is not an improvement in the
23 Seattle airporter service?

24 A. Yes, he has.

25 Q. And what has he instructed you that you

1 are to do?

2 MR. WOLF: Same objection.

3 MR. MacIVER: I believe that's a proper
4 question, your Honor.

5 MR. WOLF: You're asking for the
6 repetition of something out of this tribunal in this
7 tribunal. The person that made that statement is
8 not here for cross-examination.

9 JUDGE LUNDSTROM: Well, you're not
10 offering that for -- to establish the truth of
11 matters asserted in a statement as far as
12 evidentiary facts. As I understand it, you're
13 offering it as evidence of a management directive
14 rather than the facts it contains.

15 MR. MacIVER: Right. I'm asking what he's
16 been instructed to do by his superiors at the
17 company.

18 MR. WOLF: This is not being offered for
19 the truth of the matter asserted, is that correct,
20 then?

21 JUDGE LUNDSTROM: I understand that it's
22 being offered as a management directive and not to
23 establish the existing of facts in the statement.

24 MR. MacIVER: Right.

25 JUDGE LUNDSTROM: Okay. So that's fine.

1 The objection is overruled. Go ahead, please.

2 A. I have been directed and my personal
3 assessment of the viability of the airporter would
4 be that I would stop operation of the airporter,
5 redeploy the assets, both the motor coaches, and our
6 human resources into other areas of our operation,
7 and/or, should that not be available, to furlough
8 employees and sell assets.

9 Q. Is that the result that you would like to
10 see?

11 A. No, not at all. I view and have been
12 complimented very frequently on the quality of our
13 service, the price of our service. I have over time
14 in the last year attempted to rectify this situation
15 by increasing fares 20 percent. That obviously has
16 not worked. In my personal opinion, in my
17 observations of the activity of Mr. Sherrell --

18 MR. WOLF: I am going to -- is this a
19 personal observation, sir? I am going to object.
20 There's no foundation.

21 MR. MacIVER: He's stating the basis for
22 his decision.

23 JUDGE LUNDSTROM: Continue the answer,
24 please. Overruled.

25 A. -- that Mr. Sherrell will evade or be

1 elusive or not comply --

2 MR. WOLF: Your Honor, this is an opinion.

3 It is not fact.

4 THE WITNESS: It's what I'm using to base

5 my opinion on.

6 MR. WOLF: I believe --

7 JUDGE LUNDSTROM: He is offering his

8 judgment and the state of his belief, so you can

9 cross-examine him on this. Go ahead, please.

10 A. Basically it's my opinion that unless we
11 receive some form of relief that could be enforced,
12 that this operation will not turn around.

13 Q. Have you read the Commission's order that
14 was issued after we filed the petition for
15 reconsideration requesting that the authority
16 granted to Shuttle Express be restricted against
17 service to these hotels?

18 A. Yes, I have.

19 Q. And do you recall in that order that the
20 Commission indicated that they defined that petition
21 in part because they believed that the on-call
22 restriction as they understood it would provide
23 sufficient protection to protect the integrity of
24 your company's operations?

25 A. Yes. My recollection of the decision or

1 the motion for reconsideration was that the on-call
2 requirement was to afford us and other airporters
3 some protection from the way Shuttle Express was
4 then operating, and is currently interpreting their
5 on-call requirements.

6 Q. As you followed the results of your
7 company's operations since that order, do you have
8 an opinion as to whether or not the on-call
9 restriction is protecting your traffic from
10 diversion by Shuttle Express?

11 MR. WOLF: Objection. It calls for an
12 opinion and there must be some foundation for this
13 witness to express an opinion with regard for the
14 reasons as to why in the increase of more traffic --
15 constantly increasing traffic coming into
16 Seattle-Tacoma International Airport, their revenues
17 are not increasing faster.

18 Q. I'll ask that. Do you have an opinion as
19 to why that is occurring, Mr. Barr?

20 A. Yes, I do.

21 Q. And what is it?

22 MR. WOLF: A lack of foundation.

23 MR. MacIVER: I am asking --

24 MR. WOLF: There's got to be some sort of
25 foundation laid as to what studies he's done in

1 order to formulate this opinion. He's giving
2 essentially an expert opinion. It's got to be more
3 than --

4 JUDGE LUNDSTROM: Do you intend to ask
5 questions on the basis of this?

6 MR. MacIVER: He's the officer and the
7 manager of the company. I'm asking if he has an
8 opinion what's causing this turnaround in his
9 company's operations from a profitable to an
10 unprofitable while the traffic at the airport is
11 going in the other way.

12 JUDGE LUNDSTROM: Do you intend to
13 question on the basis of that?

14 MR. MacIVER: Yes.

15 JUDGE LUNDSTROM: All right. Fine. The
16 objection is overruled. He is the manager and he
17 can give testimony concerning his business decision
18 and the basis therefor. Go ahead, please.

19 Q. Do you personally go to the airport in
20 connection with your management of the airporter?

21 A. Frequently, not only to observe this
22 operation but to travel in and out of the airport.

23 Q. Were you here during the testimony of Mr.
24 Holbrook?

25 A. Yes, I was.

1 Q. Did you hear the type of violations that
2 they had cited the Shuttle Express for?

3 A. Yes.

4 Q. And were you here during the investigator's
5 testimony that observed Shuttle Express at the
6 airport?

7 A. Yes, I was.

8 Q. Have you personally made observations at
9 the airport yourself?

10 A. Yes, I have.

11 Q. Would you describe the type of activities
12 you have observed Shuttle Express engaging in?

13 MR. WOLF: Could we have the date, time,
14 manner and method of observation?

15 Q. However you wish to do it, Mr. Barr.

16 A. If you're asking me specific dates, I am --
17 I don't have specific dates other than to say that I
18 go to the airport probably on average once a week.
19 I travel to and from Alaska and other destinations
20 very frequently, so my observations are frequent.
21 In terms of what I have observed during those
22 particular times, I have observed in a general sense
23 what I would term solicitation on the lower drive of
24 passengers as they walk out of the doors, similar to
25 what has been repeated, where the driver in several

1 occasions has got out, walked around his vehicle,
2 walked on to the curb, walked up and down the curb.
3 In some cases he's carried passengers, in some cases
4 has not carried passengers, some cases he's talked
5 to individuals, some cases they have picked up the
6 phone and made the phone calls. So my
7 interpretation of what has happened is that the
8 operation of Shuttle Express has evolved over time
9 from a reservation service, which was what Mr.
10 Sherrell had indicated that he was performing, and
11 moved into a demand responsive kind of service.

12 I have sat through the hearings, the King
13 County hearing and several other pieces of this long
14 and lengthy record, and it seems to me that the
15 Shuttle Express operation was depicted as having
16 prior reservations. To me prior reservations meant,
17 and I believe was stated, where these reservations
18 were made when the airline ticket was originally
19 purchased. We have now evolved into an
20 instantaneous reservation where, as has been
21 testified here, someone can walk to the curb, say, I
22 want to go to Seattle, and go into Seattle. That's
23 a significant change in the method of operation.

24 Q. Is that the type of customer that your
25 company must rely upon, the on demand type?

1 A. Absolutely.

2 Q. You don't provide a reservation type
3 service?

4 A. That's correct.

5 Q. Either in Seattle or at the airport, do
6 you?

7 A. That's correct. We rely solely on those
8 people who come into the airport. Our service runs
9 frequently from 20 minutes to an hour service to
10 downtown hotels, and that schedule is based on the
11 demand.

12 Q. You operate, did you say, a 20 minute to
13 half hour schedule between the airport and the hotel?

14 A. That's correct.

15 Q. And during what period of time of the day
16 do you do that?

17 A. Roughly 5:30 in the morning to 11:40 at
18 night.

19 Q. Mr. Barr, if your demand type traveler is
20 diverted to another carrier, what other type of
21 traveler can you attempt to market to fill that loss?

22 A. None.

23 Q. You're also restricted only to Seattle
24 hotels, are you not?

25 A. Seattle hotels and airline ticket offices.

1 Q. And if that -- if you lose that traffic,
2 you can't market any other origination or
3 destination, can you?

4 MR. WOLF: Your Honor, objection. I think
5 this line of inquiry is irrelevant to these
6 proceedings. This was gone over extensively at the
7 original King County proceedings plus again in
8 response and on reconsideration of that decision.
9 It goes directly to the issues that were all fully
10 decided at the Shuttle Express application hearing,
11 the market, what the public wanted, all those issues.
12 This goes directly to that.

13 MR. MacIVER: I beg to differ. I believe,
14 your Honor, members of the Commission, that at the
15 time of the petition for reconsideration, the
16 Commission felt in good faith that the on-call
17 restriction was going to afford some protection to
18 the existing carrier, who is indeed confined to on
19 demand passengers going to or from hotels. If that
20 traffic leaves this carrier, there is no way that
21 carrier can replace it, because it is restricted to
22 that traffic, so the impact on this carrier from the
23 loss of that traffic is extremely important to the
24 issues in this case because we have a viable good
25 carrier here that is about ready to discontinue

1 service and that's not in the public interest, and
2 the reason is the carrier can't replace its traffic
3 through any other source. It has -- serves only on
4 demand people going to hotels. That's it. Once
5 that traffic is gone, this carrier has no way
6 through any marketing system to replace it. Once
7 gone, it's always gone, and I think Mr. Barr's
8 comments along this line as to the protection being
9 afforded by the on-call restriction are very
10 important. We feel that the Commission in good
11 faith felt that that restriction would afford some
12 protection. The reason we're here to tell this
13 story is that it is not, and we need some help and
14 that's the very reason we filed this complaint, and
15 if Mr. Barr can't discuss these issues there's no
16 reason for us to be here.

17 JUDGE LUNDSTROM: Mr. Wolf, do you want to
18 say anything more?

19 MR. WOLF: This complaint alleges that the
20 permit authority has been violated and as a result
21 of that, as a direct result of those violations,
22 Gray Line has been damaged. It does not relate to
23 any issues with respect to public convenience and
24 necessity. That's exactly what this -- exactly what
25 this line of inquiry is designed to elicit. I have --

1 as I have said, my -- to inquire with respect to
2 public convenience and necessity, Mr. MacIver's
3 objections along those lines have been sustained,
4 and I think this is -- I make the same objection for
5 the same reasons now.

6 MR. MacIVER: We are not attempting to
7 prove PC and N for one service or another. We are
8 simply defining our market as a limited market and
9 the issue in this case is, is Shuttle Express taking
10 that market away by not operating in accordance with
11 the letter or spirit of its on-call restriction.
12 It's simple as that. We are not arguing PC and N
13 here.

14 JUDGE LUNDSTROM: I don't hear the
15 question as arguing public convenience and necessity.
16 Under the statutes governing this proceeding, the
17 statutes governing auto transport and also the
18 complaint statute, this tribunal is vested with
19 certain responsibilities to consider remedies based
20 upon the consequences of any conduct shown to exist
21 by the evidence in this proceeding, and so for the
22 purpose for which this evidence is being offered I
23 think the inquiry is proper. I'll overrule the
24 objection.

25 Go ahead, please.

1 Q. Mr. Barr, I don't remember specifically
2 the question before you, but the general area was is
3 it not correct that your company serves only on-demand
4 passengers?

5 A. That's correct.

6 Q. And that you don't provide service on a
7 scheduled prearranged basis to any passengers
8 operating between Sea-Tac and the hotels?

9 A. I'm sorry. Can you repeat that question?

10 Q. You don't provide service on a scheduled --
11 on a prearranged reservation basis to any customers
12 between Sea-Tac and the hotels?

13 A. On a prearranged?

14 Q. Reservation basis.

15 A. That's correct.

16 MR. MacIVER: Before I forget, I would
17 offer Exhibits 19 through 27.

18 JUDGE LUNDSTROM: Objections?

19 MR. WOLF: May we reserve ruling on this
20 until after cross-examination, your Honor? I don't
21 know that I have a -- I don't know that I have an
22 objection.

23 JUDGE LUNDSTROM: Well, in the interests
24 of --

25 MR. WOLF: If I had to state one now, I

1 wouldn't be able to state one, but I don't know
2 whether -- there are some questions with respect to
3 what I have that may raise some objections.

4 JUDGE LUNDSTROM: Okay. Well, in the
5 interests of avoiding a voir dire and possibly
6 facilitating a briefer total examination of this
7 witness, would you have any objection to that, Mr.
8 MacIver?

9 MR. MacIVER: No, no objection.

10 JUDGE LUNDSTROM: Fine. Go ahead. Any
11 further questions?

12 Q. Mr. Barr, do you have anything to add as
13 to the reasons your company has brought its story to
14 the Commission in the form of this complaint
15 proceeding, that we haven't discussed?

16 A. I think to state briefly our reason for
17 coming today before the Commission was that during
18 the motion for reconsideration and in the decision
19 for the motion for reconsideration, there was some
20 emphasis placed on the on-call requirement, and that
21 that would provide some relief to scheduled
22 operators such as ourselves. It now appears that
23 the way this on-call restriction is being
24 interpreted is that it really has no restriction,
25 because it's instantaneously. One can walk out on

1 to the sidewalk, pick up the phone, and walk
2 immediately on to a van, and in many cases, as we've
3 heard, perhaps not even pick up the phone call,
4 either from downtown or at the airport, so we're
5 coming to say that the restrictions that were placed,
6 while good intended, may not in the real world be
7 able to be enforced on this particular carrier, that
8 the restrictions aren't working, or aren't clear
9 enough, and that we as an operator have invested
10 time and money in this operation.

11 I believe that the airporter provides a
12 very economical alternative and without some form of
13 relief, this airporter will go away. There's
14 absolutely no question in my mind that this airport
15 operation will go away and that \$6 fare, even if
16 it's raised to seven or eight, based on what we've
17 seen, is not going to -- they're not going to turn
18 it around. We need some form of relief for on-demand
19 kind of service if we want to have this kind of
20 operation continue to be available to the traveling
21 public. There's a significant number of people here
22 who ride this service, so we want to make an effort
23 to try to keep this service available to the
24 traveling public and, as Mr. Sherrell said, the
25 little old ladies who carry their bags, and can't

1 afford to spend \$12 or \$20 or whatever it may be.

2 MR. MacIVER: Thank you, Mr. Barr. I have
3 no further questions.

4 JUDGE LUNDSTROM: Cross-examination?

5 MR. WOLF: Thank you, your Honor.

6

7

CROSS-EXAMINATION

8 BY MR. WOLF:

9 Q. What does on call mean to you?

10 A. On call to me based on my understanding
11 that was derived in part out of Mr. Sherrell's
12 testimony is that an individual makes a prior
13 reservation, and in this particular case during the
14 time they made a reservation for an air ticket, or
15 certainly an advance, made a prior reservation.

16 This is how I understood --

17 Q. No, I'm asking what does it mean to you,
18 sir.

19 A. That's what I just said.

20 Q. Okay. That's your definition of on call?

21 A. Prior reservation.

22 Q. Then I gather, sir, that you disagree with
23 the Commission's interpretation as expressed in
24 their correspondence of November 15, 1989, where in
25 the Commission's interpretation was that the on-call

1 restriction allowed Shuttle Express to transport on
2 an unscheduled basis only those passengers who have
3 made a telephone request for service prior to
4 boarding a Shuttle Express motor vehicle?

5 A. I don't disagree with that.

6 Q. So that is also your definition of on call?

7 A. Yes

8 Q. Gray Line, how long have you been with
9 Gray Line, actually Westours?

10 A. Since 1977, so 13 years.

11 Q. Is Gray Line a separate corporate legal
12 entity?

13 A. No.

14 Q. Is Gray Line --

15 A. Let me define. Gray Line is a dba of
16 Evergreen Trails, Inc., which is a separate
17 corporation.

18 Q. Are there any other dba's of Evergreen?

19 A. Yes.

20 Q. What are they?

21 A. Gray Line Convention Hosts, American
22 Sightseeing of Seattle, I'm sure there's one or two
23 others, but off the top of my head, I can't recall
24 them. Those are the ones that I do recall.

25 Q. And is Evergreen a -- is that a Washington

1 corporation?

2 A. Yes, it is.

3 Q. You mentioned Westours and Holland America.

4 Does Holland America own Evergreen Trails?

5 A. I believe Holland America is owned by
6 Westours. Well, I am not sure who ultimately owns
7 it, but ultimately -- let me just say ultimately --
8 there's a number of corporations. Ultimately
9 Evergreen is owned by Holland America Line Westours,
10 Inc. I am not trying to be evasive. I just --
11 there's a number of entities involved.

12 Q. Isn't it true that Gray Line is but one
13 small part of a large corporate operation?

14 A. Large is a relative term, so you'd have to
15 define that.

16 Q. Well, why don't you give me an idea. It
17 is part of a corporate family, isn't it?

18 A. Yeah.

19 Q. Are you aware of the gross revenues for
20 the last fiscal year for that corporate family?

21 A. I have a vague idea.

22 Q. Could you please give it to us, sir?

23 A. Somewhere in the order of 300 million,
24 although I am not -- I am not sure.

25 Q. Is that large, in your opinion, sir?

1 A. Not particularly.

2 Q. What were the gross revenues for just the
3 Gray Line operation during that same period of time?

4 A. I assume you're referring to Evergreen
5 Trails.

6 Q. Okay.

7 A. Okay. Somewhere in the vicinity of 8 or
8 \$9 million.

9 Q. And would those all be revenues derived
10 from the airport operations?

11 A. No, as was depicted in the chart, one of
12 the exhibits, that depicted revenue, somewhere in
13 the vicinity of a million six.

14 Q. All right.

15 A. Let me also state, if I may, to explain,
16 that Holland America, Westours or whoever you choose
17 to call us, views all of their operating entities as
18 stand-alone companies, and each individual operation
19 is viewed on its own profitability, so investment in
20 or withdrawal of investment from those companies is
21 based on its ability to show a return on investment,
22 so although it is part of a larger corporation, that
23 larger corporation does not and will not support a
24 losing operation.

25 Q. Are you asking the Commissioners in this

1 proceeding or was it a reason for bringing this
2 complaint proceeding that you're asking the
3 Washington Utilities and Transportation Commission
4 to bail out Gray Line?

5 MR. MacIVER: I object to the form of the
6 question.

7 JUDGE LUNDSTROM: Could you rephrase that?
8 I am not sure it's fair to ask the witness to
9 interpret the term bail out.

10 Q. To save.

11 A. I think what I'm asking the Commission to
12 do is to protect us from an operation that is proved
13 to be on the edge of operating legally, to allow us
14 to continue to operate service for hundreds of
15 thousands of people to and from Sea-Tac, and to
16 continue to afford the traveling public an
17 economical way to get to and from downtown Seattle.

18 Q. So your answer to my question is yes?

19 A. I answered the question.

20 Q. Let me put the question to you directly,
21 sir. Are you asking the Commission in this
22 proceeding to save Gray Line, if you can answer it
23 yes or no, you can -- go ahead. If you feel you
24 absolutely cannot answer that yes or no, please just
25 tell me.

1 MR. MacIVER: The question has been asked
2 and it has been answered by the witness already. It
3 is the precise question he just explained and
4 answered.

5 JUDGE LUNDSTROM: Well, I think the
6 witness gave his answer.

7 Q. Can you answer that question, sir, yes or
8 no?

9 A. I answered it.

10 MR. WOLF: Your Honor, I would instruct
11 that the witness be directed to answer the question
12 whether or not he can answer it yes or no.

13 MR. MacIVER: If Mr. Wolf would explain
14 what he means by save Gray Line, maybe Mr. Barr
15 would be a little more specific in his response with
16 yes or no. I think it's a vague question. "Save"
17 has all sorts of connotations to it that I frankly
18 don't understand.

19 JUDGE LUNDSTROM: Well, I think the
20 witness has done his best to give an answer, Mr.
21 Wolf.

22 MR. WOLF: Then I'll get off the line of
23 questioning, your Honor.

24 Q. Isn't it true, Mr. Barr, that for whatever
25 relief you are asking for in this proceeding, you

1 are asking that that relief be granted at the
2 expense of the respondent in this proceeding,
3 Shuttle Express?

4 A. I am not asking at the expense of Shuttle
5 Express. I gave testimony earlier, Shuttle Express
6 didn't know whether or not they carried many
7 passengers.

8 Q. Nor do you, do you, sir? Have you done
9 any studies to determine to what -- with what
10 frequency Shuttle Express is transporting a
11 passenger either from one of your 12 hotels or to
12 one of your 12 hotels?

13 A. Observations.

14 Q. Tell me what -- who has conducted those
15 observations, sir.

16 A. Private investigators.

17 Q. Have you done any yourself, sir?

18 A. Yes. As I stated earlier, I've made
19 several observations as I go to and from the airport.

20 Q. Okay. Now, as a result of those
21 observations can you give me a figure, sir, as to
22 how many passengers were transported by Shuttle
23 Express to or from any one of the facilities that
24 you fill over the last six months?

25 A. No.

1 Q. One month?

2 A. Nope.

3 Q. Last year?

4 A. Nope.

5 Q. As a matter of fact, sir, you can't give
6 me any hard figures at all, can you?

7 MR. MacIVER: I might add, in protection
8 of this witness, we subpoenaed records to show us
9 that and Shuttle Express did not produce them. So
10 this is ridiculous.

11 JUDGE LUNDSTROM: Excuse me. Is that an
12 objection?

13 MR. MacIVER: Well, yes. He's asking can
14 you tell us the specific number of passengers
15 Shuttle Express carried between the airport and the
16 hotels and that's a little irritating to me when we
17 subpoenaed the information and Mr. Sherrell answered
18 he couldn't answer that. And I pointed out to him
19 in page 552 of the transcript in the King County
20 case where he had earlier testified he had that kind
21 of information yet he didn't produce it.

22 JUDGE LUNDSTROM: I think the question is
23 proper and I am going to overrule the objection. If
24 you wish to pursue that question, Mr. Wolf --

25 MR. MacIVER: The point is we've asked for

1 the information. We haven't received it and so he
2 doesn't have the information, obviously.

3 JUDGE LUNDSTROM: Well, I think the
4 question doesn't necessarily ask -- presuppose that
5 the information come from any specific source, so I
6 think the question is proper.

7 MR. MacIVER: Okay.

8 JUDGE LUNDSTROM: So do you have the
9 question in mind, Mr. Barr?

10 THE WITNESS: No. If you could repeat the
11 question.

12 JUDGE LUNDSTROM: Will you read it back,
13 please?

14 (Record read as requested.)

15 JUDGE LUNDSTROM: Would you answer the
16 question, please, Mr. Barr?

17 A. I cannot give you a specific anything.
18 What I can do is to take a look at the trend at the
19 airport, the arrivals, departures, how many
20 passengers as a percentage of arrivals and
21 departures that Gray Line has operated or carried
22 over the past number of years, to look at our
23 product, any changes that may have occurred or not
24 occurred, look at as many pieces of peripheral
25 information as I can, and make a management

1 assessment without those records that Jimmy Sherrell
2 does keep, and determine that there is an impact.
3 The new thing in the marketplace and the violations
4 that have occurred that have been testified to do
5 have some impact. I cannot tell you --

6 Q. Mr. Barr --

7 A. I cannot tell you the exact impact because
8 I wasn't afforded those records.

9 Q. Mr. Barr, I guess your answer then is no,
10 I can't give you those because those records were
11 not made available, can't give you any numbers
12 because records were not made available, is that
13 what you're saying?

14 A. The records were not made available. I
15 guess that's the answer to the question that you
16 want.

17 Q. Did Mr. MacIver share with you my letter
18 to him in response to his subpoena which went out as
19 early as Thursday of last week, almost a week ago,
20 advising him that the records from which those
21 figures could be obtained were contained in boxes in
22 storage and they would be made available to him at
23 any time prior to the hearing for his perusal to do
24 with whatever he wanted to with them? Did Mr.
25 MacIver tell you about that?

1 MR. MacIVER: Just a minute. Those
2 records were not available.

3 A. I am --

4 JUDGE LUNDSTROM: Excuse me.

5 MR. MacIVER: So I object to the form of
6 the question.

7 CHAIRMAN NELSON: Mr. Wolf, could you
8 simmer down, and sit down?

9 MR. WOLF: Yes. I'm sorry, your Honor.

10 Q. Did Mr. MacIver share with you my
11 correspondence to him in that regard?

12 A. I ever not seen or read your
13 correspondence. Can I expand a little bit? I know
14 this is dangerous for me to do but I feel I have to
15 do this. In the classification hearing for the King
16 County case, I know what records were kept because
17 there were some conversations between Jimmy Sherrell
18 and myself.

19 MR. WOLF: Your Honor, is there a question
20 before the witness? I don't think the witness is
21 responding to a question.

22 THE WITNESS: I wanted to expand --

23 JUDGE LUNDSTROM: Excuse me. I think you
24 did place a question before the witness. It had to
25 do with this other information about your letter

1 that was imparted to him.

2 MR. WOLF: That's right, and I don't think
3 that this is responsive.

4 JUDGE LUNDSTROM: Okay. Could you answer
5 that question, please, sir?

6 THE WITNESS: I'm not sure what question I
7 am supposed to answer, other than I don't -- I
8 didn't read the letter and what I was going to do is
9 to give you a little insight into what happened in '89,
10 but that's fine. I won't have to do that. I won't
11 bring that up.

12 MR. MacIVER: Maybe we could just end this
13 whole thing. Is your answer that you do not know
14 the specific number of passengers transported by
15 Shuttle Express?

16 THE WITNESS: Right. I do not know the
17 specific number of passengers.

18 MR. MacIVER: Okay.

19 Q. Were you aware that two representatives
20 from Mr. MacIver's office appeared at the premises
21 of Shuttle Express on Tuesday morning at 11:00 a.m.
22 for the purpose of reviewing the records that would
23 have enabled you to obtain those figures? Were you
24 aware of that, sir?

25 A. I am aware that I have two people that

1 work for Clyde MacIver that are doing research. I
2 am not aware of any visit to your office.

3 Q. Has anyone ever discussed with you the
4 results of that visit to the premises of Shuttle
5 Express?

6 MR. MacIVER: Mr. Wolf, maybe we can bring
7 this to a head. If you recall, when Mr. Sherrell
8 got on the witness stand, my very first series of
9 questions to him were, Mr. Sherrell, why haven't you
10 responded with the data request, and in paragraph
11 number two of my subpoena, paragraph number two of
12 the subpoena, requested all documents that show the
13 number of passengers transported by Shuttle Express,
14 as an airporter, not as a charter operator, between
15 hotels and Seattle and Sea-Tac. You responded with
16 respect to document request number two, you should
17 be advised that such a request is overly burdensome
18 and oppressive. Independent records of
19 transportation of passengers between Seattle hotels
20 and the airport are not maintained.

21 I asked Mr. Sherrell, when he got on the
22 witness stand, my very first question, was, Mr.
23 Sherrell, why do you say -- why did your counsel
24 refer to me in that fashion, when on page 552 in the
25 King County case, you testified that you -- once we

1 have the reservation and it's confirmed, this is
2 then passed into dispatch, and dispatch conducts a
3 routing the day before travel and puts usually three
4 pickups together so that we can facilitate higher
5 utilization of our vans.

6 I was trying to get the information. If
7 it's there, it is so disbursed and through a rash of
8 documents that we couldn't put it together.

9 MR. WOLF: Is there a longer response to
10 that --

11 MR. MacIVER: Rather daily individual
12 driver recap records, of driver total shipped
13 activity is maintained.

14 MR. WOLF: Was there an offer of
15 availability?

16 JUDGE LUNDSTROM: Excuse me, Mr. Wolf.
17 Let Mr. MacIver finish. Go ahead, please.

18 MR. MacIVER: Mr. Sherrell explained those
19 don't even show originations and terminations.
20 They're little things clipped on a board somewhere.
21 The end result is we don't know. We went and looked.
22 We don't know the traffic. I wish we did know, but
23 we don't, and Mr. Barr doesn't know, so maybe rather
24 than you and I quarreling about it, we can just go
25 on to another subject. We don't know.

1 MR. WOLF: Your Honor, may I request that
2 we go off the record, because it's a colloquy and I --
3 may I make that request?

4 JUDGE LUNDSTROM: Okay. What did you want
5 to do? What did you want to discuss? Did you want
6 to discuss something with counsel?

7 MR. WOLF: Here is my concern. I am very
8 concerned that an insinuation was left that there
9 were some documents that were not provided and my
10 immediate concern now is, because I knew I drafted
11 the response to the subpoena and I made all of those
12 records available. For you now -- if I'm making a
13 mountain out of a molehill in this regard and --
14 it's contained in the letter that Mr. MacIver has
15 just been reading from, and I don't -- I don't want
16 it left on this record any insinuation at all that
17 there were any records denied, or that access was
18 denied at all, because if you read the whole
19 response there, it says and these records were
20 available, they were made available, and
21 representatives from Mr. MacIver's office came out
22 to Shuttle Express and they were granted all the
23 time they wanted to look through all of those
24 records.

25 That's why I'm so upset and I apologize

1 for being upset and I don't want that insinuation to
2 be left that Gray Line was denied any records that
3 precluded them from putting together their case.

4 JUDGE LUNDSTROM: Mr. MacIver, you were --
5 excuse me. I want to ask you something. Are you
6 making an objection here?

7 MR. MacIVER: No, I'm just trying to get
8 it so we can move on. I am saying the witness
9 doesn't have the data. We've requested the data.
10 We don't have the data. I am not saying Mr. Wolf
11 withheld data. I am saying whatever data my people
12 looked at, the answer to that question couldn't be
13 discerned. It wasn't there. I am not saying Mr.
14 Wolf withheld that. I am saying the data provided
15 him that he in turn provided us didn't show this.
16 That's all I'm saying.

17 JUDGE LUNDSTROM: Okay. Do you object to
18 the line of questioning?

19 MR. MacIVER: No, I just wish we could go
20 on. The witness doesn't know how much traffic was
21 handled and --

22 JUDGE LUNDSTROM: Very well. If that is
23 indeed the witness' -- state of the witness'
24 knowledge, you can so inquire. Mr. Wolf?

25 Q. Okay. I'll get off this line of

1 questioning. As you earlier testified, you don't
2 know the number and that's your testimony now, is it
3 not?

4 A. It's the same as before, yes.

5 Q. Can I direct your attention to Exhibit No.
6 19?

7 A. Yes.

8 Q. I believe in response to Exhibit No. 19,
9 you testified that what this indicates to you is
10 that in mid-1989 your traffic started to decline?

11 A. Well, what it indicates is a relationship
12 to Gray Line of Seattle's traffic and the Port of
13 Seattle's traffic, and how one grows and the other
14 one doesn't grow, yes, that's correct, because the
15 relationship is -- again, it compares 1988 to 1989
16 and shows that there was growth or no growth
17 depending on which -- you know, you're looking at
18 the red line or the blue line, in relationship to
19 the prior year.

20 Q. And I believe I thought I heard you
21 testify that the dividing line there where you
22 started to see the change was mid-1989?

23 A. Approximately mid-1989.

24 Q. Shuttle Express had been in operation for
25 how long as of mid-1989?

1 A. Since 19 --

2 Q. That's all right, two years, isn't it?

3 A. 19 -- September of 1987, somewhere in that
4 range, under a certain kind of operating scenario
5 that took a significant change in 1989.

6 Q. Directing your attention to Exhibit No. 20 --

7 A. Yes.

8 Q. -- were these revenue and cost figures
9 compiled from the books and records of the company?

10 A. Yes, they were.

11 Q. And you have direct access to those, do
12 you not?

13 A. Yes.

14 Q. I see an increase in revenue from 1988 to
15 1989.

16 A. That's correct. If you recall, my
17 testimony that we increased our fares 10 percent,
18 our revenue in 1988 was roughly a million six. If
19 you added ten percent to that, our revenue should
20 have gone up to, what, a million seven six zero. It
21 did not.

22 Q. This period of time where you experienced
23 an increase in revenues, Shuttle Express was
24 engaging in operations, was it not?

25 A. Yes.

1 Q. With regard to the cost figures or
2 analysis, do you have any information or have you
3 provided this tribunal with any information with
4 regard to the manner and method of cost calculations?

5 A. No.

6 Q. You have provided us with no underlying
7 information to let us analyze what type of cost
8 categories were included or excluded?

9 MR. MacIVER: I might add, Mr. Wolf, we do
10 have underlying data to these exhibits if you want
11 to look at them.

12 JUDGE LUNDSTROM: Excuse me. Are you
13 objecting?

14 MR. MacIVER: No, I forgot to indicate
15 that to Mr. Wolf. We have the underlying data
16 available from which Mr. Barr worked up these
17 figures.

18 Q. You can go ahead and answer.

19 A. What am I supposed to answer?

20 Q. Let me try and repeat the question. You
21 have provided this tribunal by way of offers into
22 evidence any itemization or indication as to the
23 categories that were utilized and included in the
24 cost category on Exhibit No. 20?

25 A. That's correct.

1 Q. Similarly, with regard to revenues, have
2 you -- there's no underlying itemization as to the
3 items that went into the revenue?

4 A. Nothing other than it's a public record.
5 I mean, the Port of Seattle --

6 Q. Well, the point is you haven't offered
7 anything into evidence here, have you?

8 A. No. But, as I said earlier, I do have
9 underlying data that I used for these things.

10 Q. If I read Exhibit No. 20 correctly, your
11 costs are increasing, are they not?

12 A. We do have a labor agreement with our
13 operators that would -- let's see. A minor increase
14 in our labor rate every year. Insurance has gone up,
15 as you know, being in the business, so, yes, there
16 are a couple of underlying reasons for that,
17 primarily liability insurance, fuel, and labor. We
18 have a UTU labor agreement at Evergreen Trails.

19 Q. Your answer to my question as to whether
20 or not costs are increasing is yes; is that correct?

21 A. Absolutely.

22 Q. You aren't suggesting at all, are you,
23 that Shuttle Express has anything to do with your
24 increasing costs?

25 A. No.

1 Q. I looked with interest at Exhibits 22, 23,
2 24, which is the -- the graphs that depict the gross
3 airport traffic.

4 A. Yes.

5 Q. Is that a fair way to categorize those,
6 Mr. Barr?

7 A. Well, 22 shows gross. 23 shows arrivals.
8 24 shows departures. That's correct.

9 Q. Okay. And this --

10 A. So that some of 23 and 24 would be 22, in
11 reality.

12 Q. This is total Seattle-Tacoma International
13 Airport traffic?

14 A. That's correct.

15 Q. Passengers coming in and out?

16 A. Total -- 22 is the total arrivals and
17 departures combined, that's correct.

18 Q. No matter how they got there or left; is
19 that right?

20 A. They're measured -- these are airline
21 arrivals or departures at Sea-Tac. These aren't
22 ground transportation.

23 Q. Are you -- I couldn't even begin to do a
24 multiple or a regression analysis.

25 A. I can.

1 Q. Can you do that?

2 A. I am educated in numbers, so, yes, I have
3 the ability to analyze numbers.

4 Q. Well, that was going to be my question.
5 Did you actually do the regression analysis here or
6 did you --

7 A. I oversaw the operation of doing the
8 regression analysis, personally.

9 Q. Do you have any opinion as to whether or
10 not the airport expects this trend of increased
11 airport traffic to continue?

12 A. Based on everything I see and read, they
13 do.

14 Q. And as that trend continues, those
15 passengers are going to need transportation to and
16 from the airport, are they not?

17 MR. MacIVER: I object to this questioning.
18 He's now shifting into PC and N issues. I don't
19 think that's relevant.

20 MR. WOLF: I think it's relevant as to
21 whether or not there should be any remedy fashioned
22 in the instant case.

23 MR. MacIVER: I think whether or not a
24 remedy is fashioned depends upon whether or not
25 Shuttle Express is operating consistent with its

1 authority and/or whether or not if it is not,
2 whether that is adversely impacting Gray Line.

3 JUDGE LUNDSTROM: Well, I'll allow the
4 question. Go ahead, please.

5 Q. You can go ahead and answer.

6 A. I believe the question was those increased
7 passengers would need transportation? I'm not sure
8 exactly what the question was. You'd better repeat
9 it.

10 Q. As that trend of increase continues those
11 passengers are going to require transportation to
12 and from Seattle-Tacoma International Airport?

13 A. Yes. I would assume that there would be a
14 relationship between growth and passenger volume out
15 of Sea-Tac and ground transportation needs.

16 Q. Now, I guess, Mr. Barr, your argument here,
17 as you have expressed in your opinion, is we have
18 seen an increase over the let's just say two years
19 of the passenger count at Sea-Tac International
20 Airport; is that right?

21 A. Well, in actuality over the past five
22 years, we have seen a trend of an upward shift.

23 Q. Okay.

24 A. And prior to that also.

25 Q. And your argument here is that Gray Line

1 isn't getting enough of that, is that it?

2 A. I am not sure that's my argument. It's
3 not my argument.

4 Q. Is Gray Line getting in your opinion, sir,
5 a sufficient share of that increased traffic?

6 A. My opinion is that Gray Line's on-demand
7 kind of passenger that we're limited to are being
8 taken or solicited prior to having the opportunity
9 to ride my service, so that's a roundabout answer to
10 your question.

11 Q. All right. Now, let's just assume that
12 your criticisms of the Shuttle Express operations
13 are correct. Is it your opinion here that Shuttle
14 Express is diverting existing traffic of Gray Line,
15 is that what you're saying?

16 A. Yes. Yes.

17 Q. And are you also saying that Shuttle
18 Express is diverting your fair share of the increase
19 in traffic in and out of Seattle-Tacoma
20 International Airport?

21 A. I would say you could draw that analogy,
22 yes.

23 Q. So you're saying that Shuttle Express is
24 hitting you from both sides, then, is that what
25 you're saying?

1 A. I don't know what both sides means.

2 Q. All right. Forgive the colloquialism.

3 Shuttle Express you feel is taking away from both of
4 those aspects, number one, existing traffic as well
5 as what you consider to be your fair share of the
6 increase and the annual increase in passenger counts
7 at Seattle-Tacoma International Airport?

8 MR. MacIVER: Your Honor, if I may, I
9 object to the form of that question. I think Mr.
10 Barr previously testified his objection is that
11 Shuttle Express is diverting on demand traffic.
12 Whether it's existing or future is really not
13 relevant. It's not a traffic trend he's talking
14 about, it's diverting traffic on demand type
15 customers away from the -- their service.

16 JUDGE LUNDSTROM: Well, I think the
17 question is quite proper and understandable. I'll
18 overrule the objection. Go ahead, please.

19 THE WITNESS: So I answer the --

20 JUDGE LUNDSTROM: Yes.

21 A. Okay. In the sense that they would be
22 diverting the passengers who were on demand, I would
23 have to agree with that, that there is a
24 relationship between current passengers or the
25 percentage arrivals or departures that Gray Line

1 currently carries. One could follow a trend back
2 from the '60s to say that that percentage is
3 reasonably close or should be at some point in the
4 future.

5 Q. Mr. Barr, you expressed an opinion that
6 this -- the financial condition, or current
7 financial condition of Gray Line was due to the
8 activities of Shuttle Express. Isn't that your
9 opinion?

10 A. I did not express an opinion as to the
11 financial stability of Gray Line. I expressed an
12 opinion as to the operation that we classify as our
13 airport express which is just a small portion of
14 that operation.

15 Q. Have you done any market studies to
16 determine why passengers may be selecting the
17 carrier Shuttle Express rather than the carrier Gray
18 Line?

19 A. Not a specific study that says anything --
20 I mean, we've done studies as to who our customer is
21 and who travels on our service, but no. If you want
22 to give me phone numbers or addresses, I can do a
23 study.

24 Q. But you're telling us that you have not
25 done any.

1 A. That's correct.

2 Q. As a matter of fact, you have not even
3 engaged any studies to determine whether or not
4 passengers are choosing Shuttle Express over Gray
5 Line, have you?

6 A. No.

7 Q. And you have not conducted or retained any
8 studies to determine the reason for the apparent
9 decline in the revenues of Gray Line as depicted on
10 your graphs and charts here, have you?

11 A. What was the first part of that question?

12 Q. You have not retained anyone to conduct
13 any study to determine the reasons for the revenue
14 picture of Gray Line as depicted on your charts here?

15 A. Well, in a sense I have.

16 Q. Please tell us what sense that is, sir.

17 A. In filing this complaint, we have retained
18 independent investigators through our counsel, Mr.
19 MacIver. We have sent out employees which you met
20 one of today, who testified that Shuttle Express
21 took him on two occasions from the downtown hotels
22 to the airport without prior reservation. You heard
23 testimony this morning by one of the investigators
24 that had the same kind of information from the
25 airport to downtown, and I guess I can take that

1 information and say I have done a study. The study
2 indicates that Shuttle Express was not conducting
3 its operations the way it should have conducted its
4 operations.

5 Q. Is that the full scope and extent of your
6 study or inquiry into the current revenue picture of
7 Gray Line?

8 A. I guess beyond personal observation and
9 observation of employees, that's correct.

10 Q. You were present at the King County
11 application hearing, were you not?

12 A. Yes. If not for the whole thing,
13 certainly for what seemed like it.

14 Q. Can you recall from your presence there
15 any discussion on that record at all with regard to
16 telephone calls for service?

17 MR. MacIVER: Sorry. I missed the
18 question.

19 Q. Can you recall any discussions regarding
20 telephone calls for service as being within the
21 meaning of the term on call?

22 A. I believe I recall the testimony at the
23 King County case, is that there was testimony by I
24 believe 22 witnesses, which I may be off by one or
25 two, but it seemed like quite a few, and all of

1 those witnesses indicated that they made prior
2 arrangements by telephone for their service. Many
3 of them, if not all of them, said that they made
4 those reservations when they made their airline
5 reservations, as I recall.

6 Q. You conduct your operations in, what,
7 about 46-passenger buses?

8 A. Yes. If you're referring solely to the
9 Airport Express.

10 Q. Solely to the airport, that's correct.

11 A. Actually there are occasions that we may
12 use different sized vehicles, but for the most part
13 47 to 53-passenger vehicles.

14 Q. Have you done any market study of your
15 customers to determine whether or not maybe your
16 revenue picture is because they prefer to ride in a
17 seven passenger van than a 46 passenger bus?

18 A. Our studies don't indicate that.

19 Q. What studies have you done, sir?

20 A. We've done an analysis of -- actually a
21 fairly extensive study on who our customer was, and
22 I don't have that here, but as a general rule, the
23 individual who rides our airporter is a fairly
24 sophisticated traveler, generally a businessman.
25 We're not tailored towards those people who are

1 residents of this particular market, more so
2 transient people, business people, visitors, and
3 they're generally a fairly sophisticated customer
4 that has a relatively high income, which I know when
5 I first reviewed that information, surprised me. I
6 thought that it would be a low income person that
7 solely rode it, but the mix is actually on the
8 visitor side, the little old lady, and on the
9 business side, a fairly sophisticated traveler down
10 to a salesman.

11 Q. Have you done any studies of travelers
12 utilizing the services of Shuttle Express as to why
13 they chose Shuttle Express over Gray Line?

14 A. No, I have not. I think I answered that
15 earlier.

16 Q. Some of your passengers were customers
17 that would drive to a downtown hotel location, park
18 their car and then get on the airporter directly to
19 the airport; is that correct?

20 A. There perhaps were some. Not very many.
21 I mean, when you look at the price of parking in
22 downtown Seattle, it doesn't make economic sense to
23 do that.

24 JUDGE LUNDSTROM: Mr. Wolf, it's 3:00
25 p.m. Let's take the afternoon recess now and come

1 back at 3:15.

2 (Recess.)

3 JUDGE LUNDSTROM: Hearing will come to
4 order, please, resuming the cross-examination of Mr.
5 Barr by Mr. Wolf. Go ahead, please.

6 Q. I have one more question. You have
7 testified regarding your experience observing
8 Shuttle Express. Have you ever been solicited
9 yourself, sir?

10 A. No.

11 Q. Okay. If you stood at the airport for 32
12 hours, do you have -- out in the baggage area there
13 or out on the drive, do you have any opinion as to
14 how many times you feel you would be solicited by
15 Shuttle Express?

16 MR. MacIVER: Excuse me. I hate to
17 belabor this, but that's such an obviously
18 objectionable question that I must object.

19 JUDGE LUNDSTROM: Well, I think it might
20 be -- it's highly speculative. I don't see how the
21 witness can answer it.

22 Q. Let me just try it one more way. Do you
23 have an opinion, sir, that if you stood on the lower
24 drive there at the airport for a period of 32 hours,
25 whether or not you would be solicited by Shuttle

1 Express? That's my last question.

2 A. My opinion would be that depending on
3 where I was in the lower drive and how I observed
4 and how I interpreted what solicitation was, that I
5 would be solicited to ride Shuttle Express.

6 Q. Thank you.

7 JUDGE LUNDSTROM: Mr. Cedarbaum?

8

9 CROSS-EXAMINATION

10 BY MR. CEDARBAUM:

11 Q. Just a couple of questions, Mr. Barr.
12 Well, first off, are these going to be reoffered now
13 or --

14 JUDGE LUNDSTROM: Did you have any
15 objection to -- I interpret them as being offered,
16 Exhibits 19 through 20 --

17 MR. WOLF: I have no objection.

18 MR. CEDARBAUM: I have no objection.

19 JUDGE LUNDSTROM: Exhibits 19 through 27
20 will be admitted. Go ahead, please.

21 (Admitted Exhibits 19 through 27.)

22 BY MR. CEDARBAUM:

23 Q. Mr. Barr, in some of of the exhibits that
24 have been introduced to you, there's reference to a
25 cost of the airporter service?

1 A. Yes.

2 Q. And my question when I first looked at
3 these was just to ask you to clarify what categories
4 of costs go into the cost data that you used to come
5 up with these graphs.

6 A. We looked at primarily direct operating
7 costs, which would be things like fuel repair,
8 service, tires, driver wages, payroll taxes on
9 driver wages and those kinds of things, and then a
10 portion of the indirect costs that are associated
11 with running our business, a portion based on
12 mileage and the percentage of mileage on the direct
13 cost and on the indirect cost based on those things
14 that are impacted by the airporter.

15 Q. What's an example of an indirect cost?

16 A. Paying for the Ackerley signs at the
17 airport, paying for the schedule on the airporter,
18 paying for a portion of the salesperson who goes
19 around and calls on bellmen. Those would be very
20 good examples. The Ackerley signs, for example, are
21 a part of that. Obviously there's overhead that's
22 attached, the depreciation for the motor coaches,
23 those kinds of things.

24 Q. Finally, you had also mentioned, I think,
25 that if you did terminate your airporter operations,

1 there would be an impact on your employees.

2 A. Yes.

3 Q. Can you just tell me briefly how many
4 employees you have on the airporter service and what
5 the impact on them would be in terms of either
6 laying them off completely or transferring them to
7 other portions of your businesses?

8 A. I would assume we would lay off somewhere
9 in the vicinity of 25 drivers and then some people
10 in the shop, and then maybe some other related staff,
11 accountants and those kinds of people, so perhaps 30
12 or 35 people in total.

13 Q. How many drivers do you have in total?

14 A. We have 200 drivers, 225 drivers including
15 part time. I think we have 65 full time of which
16 most of them run the airporter, so this would
17 probably put full-time employees out of work in the
18 wintertime.

19 Q. And how many other employees are devoted
20 to the airporter services, if that's possible to
21 answer?

22 A. Well, there would be salespeople,
23 accountants, theoretically a portion of my time,
24 although you can't -- I mean, you can't get rid of a
25 quarter of a person or an eighth of a person, so

1 somewhere there would be a meshing together of some
2 jobs to eliminate other jobs, but obviously we would
3 be forced to reduce not only the direct labor costs
4 but the indirect labor costs or the overhead.

5 Q. Thank you.

6 JUDGE LUNDSTROM: The witness is now
7 available for questions from the Commission.

8

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

10 BY CHAIRMAN NELSON:

11 Q. Mr. Barr, I have just a couple for you.
12 The complaint that your company filed has on page 12
13 a statement I would like to ask you about.

14 A. Okay.

15 Q. It's in paragraph 13 and the statement is
16 the second sentence there, "Gray Line's airporter
17 service between Seattle hotels and Sea-Tac is
18 equivalent to or superior to Shuttle Express' in
19 terms of speed, convenience and safety of the
20 passenger." The next sentence says that Shuttle
21 charges double what Gray Line charges.

22 A. That's correct.

23 Q. Now, I know that you're of the opinion
24 that you're losing passengers because of Shuttle's
25 practices, but it seems to me that if you are

1 offering an identical quality of service and you're
2 charging half, that consumers are making decisions
3 which defy both economics and psychology, and I am
4 wondering if you have considered, the company has
5 considered, some hard hitting direct comparison
6 price advertising campaigns to inform consumers of
7 what your view of the facts are in order to regain
8 market share?

9 A. We have -- the type of people that use the
10 service are a very difficult group to market to. We
11 do have several thousand dollars worth of
12 advertising in the airport. There's one means to do
13 that. We also advertise in in-flight magazines, so
14 we do do that. I would say I'm probably similar to
15 a lot of travelers. When I get to an airport, the
16 first thing I do is go down to the baggage claim
17 area and I stick my head out and look for either an
18 airporter or some other means. It's -- we have done
19 it. We've spent a lot of money marketing the
20 airporter, both here in town and at the airport and
21 on magazines, so we have considered -- we have done
22 it, maybe not as effectively, maybe there are better
23 ways, but we have tried to do that.

24 Q. What is your total advertising budget?

25 A. For the airporter?

1 Q. Yes.

2 A. I would say somewhere approximately around
3 \$100,000 a year, on that service, somewhere in that
4 vicinity. I may be off by a couple of thousand
5 dollars one way or the other, but approximately that
6 amount of money, which is a significant amount of
7 the revenue, around 1.6, \$1.7 million.

8 Q. Puzzling. All right. Then with respect
9 to the remedy you have requested, and that is to
10 exclude Shuttle Express from the hotel pickup and
11 transport business?

12 A. Yes.

13 Q. Would that leave your company in a
14 position of being the monopoly service provider to
15 those hotels in your certificate, or are there -- do
16 you face other competition from other types of multi-
17 passenger service?

18 A. There would still be taxicabs that operate
19 to and from, and I am only asking for the hotels
20 that we serve, so -- limousines, taxis and public
21 transportation are all available and would continue
22 to be available at varying prices.

23 Q. Now, if you were to exit the market, does
24 that mean the hotels you currently serve would not
25 be served by any sort of airporter service?

1 A. To the best of my knowledge, that's
2 correct.

3 Q. Now, would you attempt to sell your permit?

4 A. You know, I haven't gone through that
5 thought process. If I were a businessman and faced
6 with a decision to buy an operation that was losing
7 money, I wouldn't pay very much for that service, I
8 think, and looking at San Francisco, that had a
9 similar scenario and is reverting, I think they'd
10 have a difficult time attracting a high capacity
11 vehicle to provide the service. They've had people
12 come in and out of the market. If I could find
13 somebody, I suppose, that would take over the
14 operation, that would be an opportunity for them to
15 lose money, too.

16 Q. I wasn't aware of what was going on in San
17 Francisco. Can you just briefly tell me what that
18 is?

19 A. I'm not familiar with all of the facts,
20 only to say I'm on the board of directors of Gray
21 Line, of which we meet in San Francisco occasionally,
22 and a number of years ago, Super Shuttle essentially
23 did the same thing in California, and it -- the
24 large bus operators went out of business, and
25 effectively have -- that service, if you've been to

1 San Francisco or if you've ridden airporters, used
2 to be probably one of the most economical services
3 available. I believe the service is now back on a
4 very limited basis, but it's certainly not what it
5 was before, certainly doesn't carry the capacity
6 that it did before.

7 Q. Thank you.

8

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

10 BY COMMISSIONER CASAD:

11 Q. Mr. Barr, looking at your cost data,
12 Exhibit 21, which is a revenue and cost per mile, in
13 response to a question by Mr. Wolf and by others,
14 you have indicated that you've had increased wage
15 costs, you had increased operating costs, insurance
16 costs, and you also had an increase -- 10 percent
17 increase in 1989, but looking at this graph, perhaps
18 you can help me a little.

19 A. Sure.

20 Q. Because I find that your revenue and --
21 that your costs per mile in 1990 are slightly less
22 than your costs per mile in 1986. Could you explain
23 to me how that could happen?

24 A. I would -- I don't have the underlying
25 details sitting in front of me. I need to take a

1 look at a profit and loss statement, but how it can
2 happen is costs operate on a costs per mile -- a
3 fairly significant portion of that is repairs and
4 maintenance to equipment, so if I had engines that
5 went on those particular coaches, an engine and an
6 eagle, run somewhere in the vicinity of \$15,000 to
7 replace, in the span of five years we would have
8 replaced engines in all of those coaches. Our labor
9 costs have gone up in the last three years.
10 Actually our labor costs in 1986 were higher. They
11 were 9.33 an hour. We went to 8.67 and stayed flat
12 in 1987, so our -- part of our operating -- our
13 labor cost in our union negotiation, the cost
14 actually dropped in 1987. Part of it is is Gray
15 Line has grown and Holland America has grown. We've
16 been able to buy in some cases insurance at varying
17 different rates, depending on the market. I don't
18 know what the insurance rate was in 1986, but that's
19 certainly a very -- very significant number.

20 For Evergreen Trails in total last year,
21 the insurance cost was somewhere around \$450,000 for
22 liability insurance, so that swings up and down
23 pretty significantly.

24 Q. Seems to me that you seem to be
25 contradicting your own testimony a short time ago

1 which indicated that all these costs were going up,
2 that insurance costs were going up, wages were going
3 up --

4 A. Wages in the last three years have gone up
5 from 8.67 to 9.33 an hour. Okay.

6 Q. And other operating costs. I notice on
7 your total revenue and costs in Exhibit 20 that you
8 do indicate that your costs have risen significantly
9 and your revenues have increased slightly, too, but
10 revenue and cost per mile are such an important
11 component of the costs for a transportation company
12 that they would seem to take far greater weight than
13 almost any other costs that one would have, if the
14 cost of service data or if the cost data was
15 assembled in a way which truly ascribed those costs
16 to operating expenses.

17 COMMISSIONER CASAD: That's all I have.
18 Thank you very much.

19 THE WITNESS: Okay.

20

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

22 BY COMMISSIONER PARDINI:

23 Q. Mr. Barr, are your buses dedicated buses?

24 A. On the airport? Yes. There would be --
25 there's a pool of buses that have Airport Express on

1 the side. There may be an occasion when one of
2 those buses might be used at night or on a charter
3 as it's being positioned out to the airport.

4 Q. How about seasonally, do you make them
5 into ski buses in the wintertime?

6 A. The Airport Express buses? There might be
7 an occasion where it happens, but generally, no.
8 Many of the Airport Express buses don't have
9 restrooms because it's such a short service.

10 Q. I am having difficulty with your numbers
11 and --

12 A. Okay.

13 Q. Let me ask you first of all, why you chose
14 to compare with total landings at Sea-Tac rather
15 than compare with your market which are the 12
16 destination hotels.

17 A. We -- since we have taken the airporter
18 over in 1985 as one of our measurements of service,
19 look at our passenger traffic, both inbound and
20 outbound as a percentage of the total inbound and
21 outbound traffic at Sea-Tac, and we monitor that on
22 a monthly basis. It has ranged somewhere around two
23 percent each -- roughly around two percent.

24 Q. I understand what you're doing, but wasn't
25 there a period of time during this time frame when

1 500 rooms at the Four Seasons were out of service?

2 A. When they converted it from --

3 Q. When they did the remodeling or whatever
4 they did.

5 A. I don't believe that was --

6 Q. Not in this time frame?

7 A. Not in this time frame. I think it was in
8 '70 -- maybe early '80s.

9 Q. I just wonder because there is a lot of
10 growth and a lot of people don't go to downtown and,
11 you know, everybody has a downtown mentality it
12 seems, any more, but downtowns aren't as dynamic as
13 they used to be, particularly for people flying in.
14 They fly in and head for Cle Elum.

15 A. Sure. What I can say is I do sit on the
16 board for the King County Visitor and Convention
17 Bureau, of which we do measure occupancy in hotels,
18 and the occupancy in the hotels downtown has
19 certainly increased enough in the last couple of
20 years that they're able to increase their rates
21 substantially, and there's more growth coming in
22 those hotels.

23 Q. I was a frequent user of your services
24 awhile back and I can't -- again, I've lost time
25 frame, so please help me. Airporters used to run

1 every 20 minutes, 20 after, 20 to and on the hour,
2 both in and out, and then they dropped to every half
3 hour. When did that occur, and would that impact
4 these numbers?

5 A. I don't know when it occurred. Again, we
6 took over the airporter. We have run as frequently
7 as 15-minute service to hotels based on what demand
8 we've had from either the hotels or the guests to
9 our service, so it -- maybe I can relate that back
10 to the total miles in which we operate which is
11 maybe some indication of the service, and the total
12 miles that we've operated have not varied
13 significantly over the course of the last five years,
14 so the level of service has not -- although it may
15 have changed slightly in the mix of the day, it has
16 not changed significantly.

17 Q. Well, that leads me to my basic underlying
18 question, very possibly the last question, is that
19 your operation during this period of time has been a
20 relatively static operation with few changes if any
21 in timing, service, type of vehicle, in a market
22 when you have had declining market, and your
23 response basically has been to do nothing. Is there
24 a restriction in your permit from this Commission or
25 from your operating agreement with the airport that

1 stops you from using smaller vehicles on a more
2 frequent basis to compete with the convenience that
3 appears to be offered by the airporter?

4 A. The Port of Seattle agreement restricts
5 the vehicle that I use to a 47 passenger vehicle,
6 and specific vehicles. We had to testify as to what
7 vehicles we were going to use and they are specific
8 large buses.

9 In response to the other part of the
10 question, we do modify the schedule. We do change
11 the schedule based on input from the hotels that we
12 serve every year, so within the constraints of our
13 operating agreement with the Port of Seattle, which
14 requires us to run 18 hours a day at a minimum of
15 every half hour a departure from Sea-Tac, we are
16 within that modifying our schedule to serve, if need
17 be, other hotels, if need be, more frequently to the
18 Westin or Sheraton or Four Seasons.

19 We have employed such things as wind socks
20 on the top of the coaches to make them attractive or
21 different or stand out in downtown Seattle which is
22 a novelty that, to my knowledge, is only here in
23 Seattle. We've had custom designed work. We've had
24 billboards made, so we have made attempts within the
25 constraints of our operating authority with the Port

1 of Seattle, which is specific as to the size of the
2 vehicle and how frequently I have to run. Whether I
3 have someone or not, I have to run.

4 Q. I thought I heard you say that your run
5 was a minimum, and I was advocating more frequency,
6 not less frequency.

7 A. I have -- we have tried 15-minute service
8 which is very frequent. I mean, I guess I could run
9 every -- more frequently than that, but it's -- you
10 know, every mile you run in this kind of business
11 obviously it costs you more money, and I am just
12 concerned on that side, too.

13 Q. Have you attempted to renegotiate your
14 contract with the airport?

15 A. We did two years ago, or, let me see, is
16 it two years -- roughly two years ago, in which they
17 reduced from I believe 19 and a half hours, I'm not
18 positive about this, the requirement, to 18 hours.
19 The half hour comment was still in there and the
20 size of the vehicle was still in there and in
21 addition the Port of Seattle takes 20 percent of the
22 gross revenue coming out of the airport, which is a
23 fairly significant portion of my cost. It used to
24 be 30 percent. It's now 20 percent, but the Port
25 Commission put a stipulation in there that said that

1 I still have to pay a minimum of \$250,000 a year in
2 fees to the Port.

3 Q. But I presume that's paid by other
4 carriers also, or do they negotiate individual
5 amounts?

6 A. We, as I understand, are the only carrier
7 that pays a percentage of revenue. Shuttle Express
8 I believe, EASE and the other airporters pay a per-trip
9 fee, which is designed to recover the cost to have
10 them serve the airport.

11 We on the other hand are paying a fee
12 that's somewhere in the vicinity of -- the cost for
13 the Port is somewhere around 35 or \$40,000 a year,
14 according to their own cost studies, and we're stuck
15 because this is what's historically been done.
16 We've tried to bring it down. We've requested it
17 come down. We've suggested it go to a per trip fee,
18 and the Port Commission's decided that that -- what
19 we have is what we're going to have, and most
20 significantly, I would just point out, what when you
21 look at the data on item 28, I think is when you
22 look at when the phones started to go into the
23 airport, we've -- that's when we really -- we
24 thought when this application was being filed, that
25 we were going to be most impacted out of downtown

1 hotels. In fact, that was not the case. In fact,
2 where it's happened is out of the airport, and
3 Exhibit 28 indicates that. Our activity out of
4 downtown hotels has stayed reasonably constant.

5 Q. Oh, yeah. You can look at 26 and 27 and
6 airport passengers to Sea-Tac Airport in 26 and
7 there's very little deviation from your high months
8 and your low months. I don't know what the total
9 number is over that period of time. I would suspect
10 that's attributable to the fact that you primarily
11 are serving people that have downtown hotels as
12 destination. They know that the bus leaves in a
13 half hour. They make arrangements to get their
14 baggage down and then they get on, as compared with
15 the significant loss of traffic in number 27,
16 airport passengers to Seattle. They get there, the
17 plane is five minutes late. Your bus has just left.
18 It's a half hour to the next one. They're not going
19 to wait 25 minutes. I am going to look for an
20 alternate form of transportation. It becomes a
21 competitive factor and that's why I'm asking whether
22 your permit restricts you to coming in with a
23 smaller vehicle on a more frequent basis. That
24 obviously is what your competition has done and
25 appears to me that's what's beating you.

1 A. I don't believe the permit restricts me.
2 My agreement with the Port or the agreement that the
3 Port has asked us to participate in restricts us.

4 Q. That's all I have. Thank you. I have no
5 further questions. I don't want to belabor it any
6 longer.

7 JUDGE LUNDSTROM: Mr. MacIver?

8 MR. MacIVER: Yes, I have a few.

9

10 REDIRECT EXAMINATION

11 BY MR. MacIVER:

12 Q. I too was curious on the same thing
13 Chairman Nelson was when I first became involved in
14 this as to why with the rate of \$6 you would be
15 losing traffic to a service with a rate of \$12. Mr.
16 Barr, where -- there is another requirement at the
17 Port you didn't mention. Where must you leave your
18 vans parked for the public to approach your vans at
19 the airport?

20 A. The buses are parked at the extreme
21 northern end and the extreme southern end of the
22 airport as opposed to what was explained for Shuttle
23 Express, the three stop and go zones on the lower
24 drive.

25 Q. And where is Shuttle Express parked at the

1 airport?

2 A. Right outside the doors.

3 Q. Generally the middle of the lower
4 concourse?

5 A. Somewhere -- one is in the middle and two
6 are close to the ends but not quite at the ends.

7 Q. And looking at 27, I gather that your
8 decline in traffic out of the airport commenced in
9 the latter part of '88. Am I looking at that
10 correctly?

11 A. Yes, that's correct.

12 Q. Which is when Shuttle Express after
13 receiving a letter from the Commission put their
14 phones on the curb?

15 A. The decline did occur in 1988, that's
16 correct.

17 Q. Would it be economically feasible for you
18 to run your equipment every 15 minutes or ten
19 minutes out of the airport?

20 A. It would have an impact, direct impact on
21 rates. I suppose we could do anything. It's a
22 function of what kind of revenue you'd get to cover
23 your costs to operate.

24 Q. Did you in fact increase your schedules at
25 all in 1989?

1 A. We did increase our service in 1989
2 slightly in that we went to 15-minute service to
3 many hotels downtown during peak travel times.

4 Q. And do you study ridership on your buses
5 to determine when it's an appropriate time to add or
6 remove a schedule?

7 A. Yes, we do.

8 Q. What kind of factors do you consider in
9 making those decisions?

10 A. Basically demand. We -- out of the
11 airport, for example, track demand, where they're
12 going, what time of day they're going, what hotel.

13 Q. Do you -- excuse me.

14 A. That's all right.

15 Q. Do you have people soliciting traffic off
16 the sidewalks at the airport?

17 A. No, we do not.

18 Q. Do you cruise your equipment along the
19 lower vans with their lights blinking, looking the
20 lower concourse at the airport?

21 A. No.

22 Q. Do you load and unload your passengers at
23 other than your properly designated zones at the
24 airport?

25 A. No, we don't.

1 Q. So you pretty much stick -- have you
2 received any citations from the Port for violating
3 the terms and conditions of how an airporter is to
4 operate at the airport? /

5 A. No, we have not, to my knowledge.

6 Q. In 1989 or 1988.

7 A. I would say from 1985 to 1988, since
8 that's what's on these graphs.

9 Q. Do your drivers leave their buses and go
10 into the terminal around the luggage area at the
11 airport?

12 A. To my knowledge, the only reason they
13 would go into the airport would go would be to use
14 the restroom facilities since the bus doesn't have
15 one.

16 Q. Do you feel if such activities are
17 occurring at the airport which is diverting your
18 traffic that an increase in your schedules would
19 make any difference?

20 A. No, I do not.

21 MR. MacIVER: I have no further questions.

22 JUDGE LUNDSTROM: Okay. Mr. Wolf?

23

24

RE-CROSS-EXAMINATION

25 BY MR. WOLF:

1 Q. Is your current schedule every 15 minutes
2 or every half an hour?

3 A. I believe it's currently 20 minutes during
4 peak travel times, and then half an hour to other
5 hotels or some hotels during other periods in May.
6 In some cases for remote hotels have requested them
7 to give us hourly service, so it varies, but I guess
8 when I say 15 minutes, we're really talking about
9 the key downtown core. There are 14 hotels that we
10 currently serve.

11 Q. The phones, the Shuttle Express phones
12 that we've talked about so much, those were
13 installed in December 1989, were they not?

14 A. I believe so, that's correct.

15 Q. It's fair to say, isn't it, that you have
16 two locations at the airport and Shuttle Express has
17 three stopping places?

18 A. Yeah, that's correct. I have one in the
19 northern spot that's for our bus to stop and the
20 southern stop is a jointly used with all the other
21 airporters that service the airport.

22 Q. Now, you also have ticket booth facilities,
23 do you not?

24 A. That's correct.

25 Q. That are there permanently?

1 A. Temporary but really -- yeah, I understand
2 what you mean. They're there. They're structures.
3 They can be removed, though.

4 Q. I didn't hear you correctly. This may be
5 repetitious, but there -- with regard to the bus
6 size or the frequency of trips, did you tell us
7 there was no restriction in your WUTC permit?

8 A. To my knowledge, that's correct. I guess
9 I have to reread it, but to my knowledge, that's a
10 correct statement. It's my Port agreement that
11 requires the size of the vehicle and the frequency
12 of service.

13 MR. WOLF: Thank you very much, sir. I
14 have nothing further.

15 JUDGE LUNDSTROM: Mr. Cedarbaum?

16 MR. CEDARBAUM: I have no questions.

17 JUDGE LUNDSTROM: Witness is available for
18 the Commission. Okay.

19 Thank you very much, Mr. Barr. You may be
20 excused.

21 MR. MacIVER: Did you have any further
22 witnesses?

23 MR. MacIVER: No, in the spirit of
24 Commissioner Casad, we had another investigator, but
25 I think his testimony would be redundant to what we

1 had heard before, so we have no further witnesses at
2 this time.

3 JUDGE LUNDSTROM: Mr. Wolf?

4 MR. WOLF: Yes, your Honor. I would have
5 but one witness and at this time we call Mr. Moss.
6 I believe we've also had the understanding, your
7 Honor, that the testimony elicited on direct cross
8 will all be considered by the findings of fact.
9 That's why I have not called Mr. Sherrell twice or
10 Mr. Holbrook twice.

11 JUDGE LUNDSTROM: Certainly. You brought
12 that to the attention of the hearing before the
13 commencement of the hearing.

14 Whereupon,

15 GARY W. MOSS,
16 having been duly sworn, was called as a witness and
17 was examined herein and testified as follows:

18 JUDGE LUNDSTROM: Thank you. Be seated,
19 please.

20

21 DIRECT EXAMINATION

22 BY MR. WOLF:

23 Q. Mr. Moss, could you please begin by
24 stating and spelling your name for the record.

25 A. My name is Gary W. Moss, G A R Y, W,

1 M O S S .

2 Q. Mr. Moss, are you currently employed?

3 A. Yes, sir.

4 Q. And where are you employed, sir?

5 A. I'm employed by the State of Washington,
6 Utilities and Transportation Commission.

7 Q. What is your current title with the
8 Washington Utilities and Transportation Commission?

9 A. Motor carrier law enforcement,
10 investigator two.

11 Q. How long you have you been with the
12 Commission?

13 A. Just over ten years.

14 Q. Have you always been in the investigator
15 area?

16 A. No, sir. For the first five months I was
17 with the Commission I was a truck inspector at the
18 Port of entry, Vancouver, Washington.

19 Q. How long then have you held the category
20 or the title of investigator two?

21 A. Approximately nine and a half years.

22 Q. Could you describe for us briefly, sir,
23 what your duties are as investigator two?

24 A. They're quite varied. I still do truck
25 inspections, physical inspections of vehicles. But

1 my main job right now is to carry out investigations
2 of motor carrier operations.

3 Q. And would that include the motor carriers
4 of passengers?

5 A. Yes, sir.

6 Q. Have you been involved recently, sir, in
7 any investigations of the operations of Shuttle
8 Express?

9 A. Yes, sir.

10 Q. And on how many occasions, sir?

11 A. Twice, sir.

12 Q. When was the first time that you were
13 involved in such an investigation?

14 A. It was in -- I closed the assignment on
15 February the 13th of 1990, of this year.

16 Q. First of all, sir, let me ask you what you
17 were asked to do with regard to that investigation.

18 A. I received a service request from
19 headquarters, says, Shuttle Express allegedly is
20 providing service to customers who flag down a van.
21 Their permit is restricted to, quote, on-call,
22 unquote, service. That includes only passengers who
23 telephone or for reservations ahead. View airport
24 area watching for violations before contacting
25 carrier, an investigation.

1 Q. And who gave you that assignment?

2 A. That was given to me by my district
3 supervisor, Richard Rosengreen. Came from
4 headquarters, initials Don Lewis, who is the chief
5 of enforcement.

6 Q. And you carried out that assignment, did
7 you not?

8 A. Yes, sir.

9 Q. Over how many hours?

10 A. Myself and investigator two Lloyd Halstead
11 worked approximately 28 to 32 hours each.

12 Q. Did you write a report of that?

13 A. Yes, sir, I did.

14 MR. WOLF: Your Honor, I would ask that a
15 multi-page document be marked as the exhibit next in
16 order.

17 JUDGE LUNDSTROM: Okay. Let the record
18 show that I have been handed a two-page document and
19 it's an office memorandum addressed to R. G.
20 Rosengreen and I am going to mark that for
21 identification as Exhibit 28.

22 (Marked Exhibit 28.)

23 JUDGE LUNDSTROM: Go ahead, please.

24 Q. I am going to hand you what has been
25 marked for purposes of identification as Exhibit No.

1 28.

2 A. I've got it here.

3 Q. Is that a report that summarizes the
4 nature, scope and extent of your investigation, your
5 first investigation?

6 A. Yes, sir.

7 Q. Your manner and method is described in
8 there?

9 A. Yes, sir, including the instructions from
10 headquarters.

11 Q. And your conclusions; is that correct?

12 A. Yes, sir.

13 Q. Now, as a result of that investigation,
14 there were three citations that were issued. Are
15 you aware of that, sir?

16 A. I was aware there was a penalty assessment
17 issued against Shuttle Express, sir.

18 Q. What was the conclusion of your -- or the
19 results of your investigation?

20 A. My findings were, as is in the report,
21 that we observed no activity by Shuttle Express at
22 either the Westin or the Hilton Hotel. We took
23 statements from the concierge at Westin and the bell
24 captain at the Hilton. I talked to Gray Lines and
25 the garage attendant at the Westin.

1 Q. Who did you talk to with respect to Gray
2 Line at the Westin? Did you speak with a Gray Line
3 representative there?

4 A. I talked to a Judy Fonk, F O N K, and a
5 Jennifer Lennon, Gray Lines Bus Company ticket
6 agents at Westin.

7 Q. Did you learn anything that you considered
8 to be important from those conversations?

9 A. What could be important, yes, sir. They
10 stated to me that they had not observed Shuttle
11 Express doing any solicitation at the Westin Hotel,
12 just pull in, pick up a passenger and leave. The
13 drivers didn't leave the vans, or, if they did, it
14 was just to help a passenger in.

15 Q. Who else did you talk to at the Westin
16 Hotel, or any of the hotels?

17 A. I talked to a gentleman named Terry Burg,
18 who was a parking attendant. He stated basically
19 the same thing, and I talked to Michael Frei, F R E
20 I. He's the concierge at Westin, and he stated that
21 Shuttle was not very often called because Gray Line
22 had a very convenient schedule and price, and that
23 the passengers coming from Westin to the airport not
24 very often wanted to call Shuttle because of the
25 wait for the bus to get there and the price factor.

1 Q. Did that complete the scope of your
2 investigation at the Westin Hotel?

3 A. Yes, sir.

4 Q. Did you then move on to the Hilton Hotel?

5 A. At the same time I was observing at the
6 Westin, Investigator Halstead was in observation at
7 the Hilton Hotel. And I thought I'd put it in my
8 report. Maybe I'm just nervous and I can't find it
9 right now, but Agent Halstead talked to the bell
10 captain. He stated to me that he had interviewed
11 the bell captain at the Hilton who said virtually
12 the same thing as the Westin and Gray Line people
13 had stated to me, that there had been no observation
14 or they had not noticed any solicitation and that
15 Shuttle Express wasn't called very often for trips
16 because Gray Line was more convenient.

17 Q. What was the next step in your
18 investigation?

19 A. We moved from the airport observation to
20 the -- I mean from the hotel observations to the
21 airport observations.

22 Q. Can you tell us what you did there, sir?
23 First of all, were you dressed in uniform or
24 civilian clothes?

25 A. Basically the same as I am now.

1 Q. Thank you. Go ahead. I interrupted you.

2 A. We went to the airport and we observed per
3 instructions. We observed the vans and the drivers
4 of Shuttle Express. Of our approximately 30 hours
5 apiece, 12 hours total were spent at the hotels and
6 all the rest of the time was spent at the airport.

7 Q. That would be 18, then, about 18 hours at
8 the airport?

9 A. Apiece.

10 Q. Thank you. Go ahead.

11 A. We observed the Shuttle Express buses and
12 drivers in their activities going in and out of the
13 lower baggage concourse.

14 Q. Did you observe the telephones being
15 utilized?

16 A. Yes, sir.

17 Q. When you commenced your investigation or
18 as part of your assignment, were you made aware of
19 the Washington Utilities and Transportation
20 Commission, or the letter from Secretary Curl of
21 November 15, 1989?

22 A. Yes, sir.

23 Q. Do you know what I'm referring to there?

24 A. The one where he defines on call to
25 Shuttle Express?

1 Q. Right. Defines it as requiring a
2 telephone request for service prior to boarding a
3 Shuttle Express van.

4 A. Yes, sir.

5 Q. And you observed passengers utilizing the
6 telephones; is that correct?

7 A. Yes, sir.

8 MR. CEDARBAUM: Just a clarification
9 question. When you say the telephones, we're
10 talking which phones, just so I'm clear?

11 Q. The ones on the outside, the three
12 basically outside the terminal on the lower drive.

13 A. At the pick-up points.

14 Q. At the pick-up points, that's correct.

15 A. Yes, sir.

16 Q. When you observed the passengers utilizing
17 the telephones, did you consider that to be a
18 violation or an operation in accordance with the
19 operating permit, the utilization of the telephones?

20 MR. CEDARBAUM: Your Honor, I'll object.
21 I'm not sure that this is within the scope of the
22 investigation. Unless there can be some foundation
23 that this was within the scope of the investigation,
24 I'll object.

25 MR. WOLF: What I am trying to find out is

1 what his instructions were with regard to what
2 should be cited and what shouldn't be cited. That's
3 why I'm asking. I want to know his frame of mind as
4 to when he meant out there whether he was supposed
5 to cite or not supposed to cite that utilization of
6 the telephone.

7 JUDGE LUNDSTROM: Fine. Ask it in that
8 form, then. Go ahead.

9 Q. Do you understand my question, Mr. --

10 A. I would appreciate you repeating.

11 Q. Did you have any particular instructions,
12 or what was your understanding that you had as you
13 conducted your investigation as to whether or not if
14 a passenger utilized one of those three telephones
15 that Shuttle Express was complying or not complying
16 with the on call term in their permit?

17 A. My interpretation of the letter was that a
18 passenger was before boarding the bus to use the
19 telephone, either inside the terminal or at the post,
20 at the pick-up point.

21 Q. I think then what you're telling me, and
22 correct me if I'm wrong, is that as you conducted
23 your investigation, if the passenger was utilizing
24 the telephone, or utilized it prior to getting on
25 the van, no penalty assessment or notice would be

1 issued, correct?

2 A. No, sir. I don't make a determination of
3 the penalty assessment, but I would not -- if the
4 passenger used the telephone prior to approaching
5 the van, the bus, I would not attempt to document or
6 write that in my report as a suspected violation.

7 Q. During your time spent at the airport
8 during your first investigation, were you ever
9 solicited as a -- were you ever solicited by anyone
10 at Shuttle Express?

11 A. No, sir.

12 Q. Did any part of your investigation take
13 place on the premises of Shuttle Express?

14 A. Yes, sir. We had to go to Shuttle Express
15 afterwards. I observed -- I observed a violation,
16 what I determined to be a violation, in that driver
17 Larry Patton, or Lauren Patton, it's in my report,
18 Exhibit A, page two, he had been approached by a Ms.
19 Payne, and she wanted to go downtown and without any
20 prior call, he took her on the van, and then --

21 Q. Which is what you understood to be a
22 violation; is that right?

23 A. Yes, sir, and later, in the continuation
24 of the investigation on a later date, I went myself
25 to the airport and flagged down a van and without

1 prior call the driver took me downtown to the Westin
2 Hotel, and while I was at the Westin Hotel, another
3 driver came inside and I asked him if he would take
4 me to the airport. Without prior call he took me
5 back to the airport. The continuation of that was
6 to go to the Shuttle Express offices to obtain
7 documentary evidence to include with my report to
8 the Commission.

9 Q. So you had to follow up then at the
10 offices of Shuttle Express; is that right?

11 A. Yes, sir.

12 Q. And who did you have contact with there?

13 A. We contacted Mr. Jim Sherrell at the
14 offices of Shuttle Express in Seattle.

15 Q. Did you need to look at -- can you tell me
16 whether or not you found him to be cooperative or
17 uncooperative?

18 A. I found Mr. Sherrell to be very
19 cooperative, sir.

20 Q. Was he helpful to you as you conducted
21 your investigation?

22 A. Yes, sir. He had his employees search and
23 obtain the requested documentation. He explained
24 the documentation that was provided, the drivers'
25 daily recap sheet.

1 Q. Did he provide you with a copy of the
2 drivers' daily recap sheet?

3 A. Yes, sir, and he explained all the
4 individual portions of it to us.

5 Q. There is an -- Exhibit No. 4 is the
6 results of your first investigation and the penalty
7 assessments that arose therefrom. Part of Exhibit
8 No. 4 is one page which I think is a driver recap
9 sheet. Is that the driver recap sheet that Mr.
10 Sherrell provided to you?

11 A. Yes, sir. What you're referring to here
12 is the back side of this sheet which is marked in my
13 packet as Exhibit A.

14 Q. And it says on the front what, sir?

15 A. Says Shuttle Express driver daily recap.

16 Q. How was Mr. Sherrell providing this form
17 to you helpful in your investigation?

18 A. On the page that we're referring to that
19 has the count, time, zip code and customer name,
20 from, to, and fare amount, I found at 6:52 p.m. on
21 this date, a customer named Ms. Payne, P A Y N E,
22 was picked up from United Airlines baggage and taken
23 to the Mayflower Park.

24 Q. So from this information provided to you
25 by Mr. Sherrell, the driver recap sheet, you can

1 determine the point of pick-up and the point of
2 destination, can you not?

3 A. Yes, sir.

4 Q. And that confirmed what you saw with
5 regard to Mrs. Payne; is that correct?

6 A. Yes, sir. Not only what I saw but the
7 discussion that you had with Ms. Payne.

8 Q. And you can also determine from this, let
9 me take you -- an example, Mrs. Payne was picked up
10 at the airport and taken to the Mayflower. There's
11 another instance on this driver recap sheet or --
12 where someone was picked up from the Sheraton and
13 taken to Alaska Airlines.

14 A. Yes, sir.

15 Q. That right?

16 A. Yes, sir.

17 Q. And we don't know whether or not there was
18 a prior telephone call or not with respect to that
19 one?

20 A. No, sir. I asked Mr. Sherrell about that
21 and he told me that these are the only records that
22 they actually keep, and I think I heard Mr. Sherrell
23 testify as to their dispatch process. He walked me
24 through the dispatch process and showed me what
25 happens to the dispatch papers, how the calls come

1 in, they're put on a paper, put on a board, the
2 trips are arranged, and then after the trip is gone
3 and the passengers are picked up, all the dispatch
4 sheets are destroyed or thrown away, and this is the
5 only permanent record that they have of the trips
6 that are made.

7 Q. Mr. Moss, did you discuss with Mr.
8 Sherrell personally the results of your 30 hours of
9 investigation for the first investigation?

10 A. Yes, sir, I did.

11 Q. Did you advise him that it may result in
12 some penalty assessments?

13 A. Yes, sir. It's standard procedure to
14 discuss with the carrier the investigation and the
15 investigator's findings.

16 Q. Did Mr. Sherrell have any response when
17 you advised him that you had found violations?

18 A. He was -- he seemed relatively surprised,
19 but I'm not -- I'm not real qualified to judge
20 people's emotions, but he seemed relatively
21 surprised that the violations had occurred and he
22 assured me that steps would be taken to have these
23 type violations not occur.

24 Q. On this first investigation, this is my
25 last question with regard to the first investigation,

1 did you also make attempts to approach the van where
2 service was refused?

3 A. Yes, sir.

4 Q. And is that stated in your report?

5 A. Yes, sir, on page two, second-to-the-last
6 paragraph under -- after Exhibit C, paragraph, prior
7 to the two violations which are Exhibit B and C in
8 my report, I approached six different Shuttle
9 Express vans and was either ignored or was told they
10 couldn't transport me without dispatch okay which
11 would come through a phone call by me to Shuttle
12 Express.

13 MR. CEDARBAUM: Mr. Wolf, is this an
14 exhibit, the report itself? I can't recall --

15 MR. WOLF: Yes, it is. It's number 28.

16 MR. CEDARBAUM: Has it been offered?

17 MR. WOLF: I will offer 28 at this time.

18 MR. REININGER: Excuse me, your Honor. My
19 office has paged me. May I have permission to go?

20 JUDGE LUNDSTROM: Yes. Can I ask you, how
21 long did you intend to take with your presentation?

22 MR. REININGER: About two minutes.

23 JUDGE LUNDSTROM: Fine. Mrs. Coombs, is
24 that approximately --

25 MRS. COOMBS: Three. I'm longwinded.

1 JUDGE LUNDSTROM: Thank you very much. I
2 just wanted to know for information purposes. Go
3 ahead and call, Mr. Reininger.

4 CHAIRMAN NELSON: Mr. Wolf, you will be
5 short, won't you?

6 MR. WOLF: Yes. I would anticipate five
7 minutes, then I'll be complete with Mr. Moss. I
8 just want to cover the second investigation which
9 was not as much. Your Honor, I would ask at this
10 point that a one-page document be marked as the
11 exhibit next in order.

12 JUDGE LUNDSTROM: Let the record show I
13 have been handed a single-page document entitled --
14 typed in letterhead on the Utilities and
15 Transportation Commission date March 22nd, 1990,
16 marked Exhibit 28 for identification. Go ahead,
17 please.

18 (Marked Exhibit 29.)

19 MR. WOLF: And, your Honor, another
20 one-page document to be marked as Exhibit 30.

21 JUDGE LUNDSTROM: Let the record show
22 another one-page document. It is an office
23 memoranda or so entitled dated 3-12 90, single-page
24 document, marked for identification Exhibit 30. Go
25 ahead, please.

1 (Marked Exhibit 30.)

2 Q. Mr. Moss, you did engage in a second
3 investigation of the operations of Shuttle Express,
4 did you not?

5 A. Yes, sir.

6 Q. Did you receive a directive from your
7 superior, Mr. Rosengreen, to conduct that
8 investigation?

9 A. Yes, sir, I did.

10 Q. That directive is in writing encompassed
11 as Exhibit No. -- what has been marked for
12 identification as Exhibit No. 29; is that correct?

13 A. Yes, sir.

14 Q. Did you conduct that investigation in
15 accordance with those instructions?

16 A. Yes, sir, we did.

17 Q. How long did it take?

18 A. According to my report, which a copy of
19 which you handed me, we spent approximately 32 hours.
20 Investigator Halstead and myself again operated on
21 this investigation.

22 Q. Are the conclusions of your investigation
23 contained on what has been marked for identification
24 as Exhibit No. 30, or the results -- your report of
25 your investigation, is that -- are you more

1 comfortable with that term?

2 A. The results of our investigation are
3 included in the last paragraph of the report, sir.

4 Q. And I believe you state there that no
5 solicitations or attempts to solicit were observed
6 by either Investigator Halstead or me?

7 A. Yes, sir.

8 Q. What were you wearing during the 32 hours
9 of investigation?

10 A. The first time I was dressed -- the first
11 day I was dressed a lot like I am right now and the
12 second day I had on jeans and a sweater.

13 JUDGE LUNDSTROM: Maybe the record ought
14 to show you said how you're dressed right now.
15 You're in a white shirt and tie.

16 THE WITNESS: I did have a jacket on, yes,
17 sir. Sorry.

18 JUDGE LUNDSTROM: Is my representation
19 correct?

20 THE WITNESS: Yes, sir.

21 JUDGE LUNDSTROM: Okay. Go ahead.

22 Q. And where did you stand during your hours
23 of investigation?

24 A. We went back and forth along the concourse
25 all the way from Gray Lines north to Gray Lines

1 south and actually out into the parking areas, just
2 moving around. We tried to -- we tried to get as
3 close as possible to the telephones and the pick-up
4 points so that we could observe and listen to what
5 was going on from the drivers and the passengers,
6 trying to get as close as we could to the
7 conversations.

8 Q. And during all of that time at no time
9 were either you or Investigator Halstead approached
10 and solicited to ride the Shuttle Express vans?

11 A. No, sir.

12 MR. WOLF: I would offer Exhibits 29 and
13 30 and I have no further questions of Investigator
14 Moss.

15 JUDGE LUNDSTROM: 28 hasn't been offered,
16 I don't think, however I will take up the admission
17 of that. Objections?

18 MR. MacIVER: No objection.

19 MR. CEDARBAUM: I have no objection. I
20 would though ask with regard to Exhibit 28, there
21 are some internal references to exhibits A, B and C
22 that at least weren't attached to what I got as
23 Exhibit 28. I would just ask that the whole
24 document with those exhibits be produced as well,
25 and maybe we could do that off the record and just

1 substitute that.

2 JUDGE LUNDSTROM: Are you prepared to
3 submit exhibits A, B and C?

4 MR. WOLF: I don't even know if I have
5 them.

6 JUDGE LUNDSTROM: Would the witness be
7 prepared to provide you with those so that they
8 could be submitted as attachments to this document?

9 MR. CEDARBAUM: That's what my suggestion
10 is rather than take up hearing time that we can do
11 it off the record and just give it to you as a
12 replacement for what you have.

13 MR. WOLF: I have A, B and C and I have no
14 objection to amending it to the exhibit after we're
15 out of here.

16 JUDGE LUNDSTROM: Fine. Provide those
17 within seven days for attachment, or maybe we can
18 even do it this afternoon.

19 MR. WOLF: I think I have them. I have
20 them here.

21 JUDGE LUNDSTROM: Okay. Very well. With
22 that understanding, the exhibit will be admitted.

23 (Admitted Exhibits 28 through 30.)

24 JUDGE LUNDSTROM: Did you conclude your
25 examination?

1 MR. WOLF: Yes, I have no further
2 questions. Thank you.

3 JUDGE LUNDSTROM: Cross-examination?
4

5 CROSS-EXAMINATION

6 BY MR. MacIVER:

7 Q. Mr. Moss, my name is Clyde MacIver. I'm
8 representing Gray Line Airporter in this proceeding.

9 A. Good afternoon, sir.

10 Q. Mr. Moss, while you were doing this
11 investigation, were you or your partner carrying any
12 baggage or suitcase or anything like that in your
13 hands?

14 A. On one day, no. On the first
15 investigation, I carried no baggage whatsoever. On
16 the second investigation, the first day, no, the
17 second day I carried my briefcase.

18 Q. And that's it, you didn't carry any
19 clothing baggage or anything like that?

20 A. No, sir.

21 Q. At any time?

22 A. No, sir.

23 Q. Referring to Exhibit 28, what were the
24 days you conducted the actual investigation? I see
25 this is dated February 13, but I have a hard time --

1 I can't determine in here what day you were at the
2 airport.

3 A. According to my officers' log, sir, we
4 were at the hotels on the eighth of February, and at
5 the airport on the ninth, and at the -- on the tenth,
6 we were at Shuttle Express on the 12th.

7 Q. Does that cover the dates?

8 A. No, sir. And on the 13th, I was back at
9 the airport.

10 Q. Those were the days that were involved in
11 the Exhibit 28?

12 A. Yes, sir.

13 Q. All right. When you had these
14 conversations with people at the hotels about their
15 observations, were these people working inside the
16 hotels?

17 A. The concierge at the Westin was working
18 inside the hotel and the bell captain was working
19 inside the hotel, yes, sir. The Gray Lines
20 personnel were working at the Westin. They have a
21 booth set up, a ticket booth set up, I guess it is.

22 Q. Is that inside the hotel?

23 A. No, sir, it's outside, out in the pick-up --
24 there's a U-shaped pick-up area there at the Westin.

25 Q. Right. And the concierge, they have not

1 been asked to make any particular -- asked by you to
2 make any particular observations and report them to
3 you concerning Shuttle Express, had they?

4 A. No, sir.

5 Q. And likewise with the -- was it a young
6 lady at the Gray Line ticket booth?

7 A. There were two young ladies, sir.

8 Q. And you hadn't asked them in advance of
9 your conversation to make any particular
10 observations, to be observant of Shuttle Express?

11 A. No, sir. Prior to that time, I had no
12 contact with anyone there at all.

13 Q. Now, I gather from this letter, you have
14 quotes around, "We were looking for people who would,
15 quote, flag down vans."

16 A. Yes, sir.

17 Q. So on the days you were at the airport on
18 the 9th and the 16th, is that what you were looking
19 for, is instances where someone from the sidewalk
20 would flag down a van?

21 A. Yes, sir. That's in accordance with my
22 instructions from Chief of Enforcement Don Lewis.

23 Q. And I gather that during those
24 investigations you indicate you observed two
25 flag-downs, you couldn't confirm because the

1 passengers boarded and rope off; is that correct?

2 A. Yes, sir, it's extremely difficult --

3 Q. I understand.

4 A. -- if not impossible.

5 Q. Right. I understand. And did you see
6 those passengers make a call on a telephone prior to
7 getting in that bus?

8 A. No, sir.

9 Q. You didn't cite those as violations?

10 A. No, sir.

11 Q. And you also indicated you observed two
12 flag-downs at Sea-Tac and again couldn't
13 substantiate or document. Was that the same thing,
14 where you observed people flagging down a bus,
15 that's at the top of page two, flagging down a
16 Shuttle Express van?

17 A. The first instance, I thought you were
18 talking about the second. The first instance was on
19 page one was Investigator Halstead.

20 Q. Okay. And he made the observations of two
21 flag-downs but couldn't interview the passengers to
22 substantiate or document the suspected violations;
23 is that correct?

24 A. Yes, sir, there were two possible flag-downs.

25 Q. Right. And so no citations were issued?

1 A. No, sir, we didn't issue citations on any
2 of them.

3 Q. Now I'm on page -- at the top of page two
4 and you said "I observed two possible flag-downs
5 that I could not substantiate."

6 A. Yes, sir.

7 Q. And would you tell us what you observed in
8 connection with those flag-downs?

9 A. It's rather common. We observed it
10 throughout our whole investigation, where people
11 would be at the curb and they would see the Shuttle
12 or the TraveLodge or Budget, one of the buses coming
13 by, whichever one they were looking for, and they
14 would wave at them, and the bus would pull in and
15 they would get on after a discussion with the driver.

16 Q. And you say you saw this as a common
17 occurrence with respect specifically now to Shuttle
18 Express?

19 A. Yes, sir.

20 Q. And you didn't cite those instances
21 because you couldn't substantiate whether those
22 passengers had a prior reservation or not?

23 A. No, sir, without following and pulling
24 over the bus and interviewing the passenger, I
25 couldn't do that.

1 Q. Right. I understand that. Then you said
2 there was one flag-down that you could substantiate.

3 A. Yes, sir.

4 Q. And that's where you did intercept in time
5 to talk to a person; right?

6 A. Yes, sir. It was at risk of exposing
7 myself to the Shuttle Express people which is
8 contrary to my investigatory procedures. I put
9 myself between the passenger and the driver, and
10 then I was accosted by the Shuttle Express
11 operations, airport operations manager, I would
12 assume, is what he calls himself, and -- but I had
13 to interpose myself to get the information from the
14 lady.

15 Q. So you did confirm, the one time you were
16 able to intercept the passenger, you did confirm
17 that that was without a prior reservation?

18 A. Yes, sir. Her statements to me were that
19 she had not made a prior call or any prior
20 arrangements whatsoever.

21 Q. All right. And so that was cited, you did
22 issue a citation on that?

23 A. No, sir.

24 MR. CEDARBAUM: I think the testimony is
25 that he makes his recommendation or draws his

1 conclusion and then it's up to headquarters down
2 here to determine whether a penalty assessment
3 should --

4 A. I think it's a terminology factor. A --
5 it's when I write an arrest citation.

6 Q. I understand. Now, you indicated you were
7 accosted by some Shuttle Express individual that was
8 out on the sidewalk that was not the driver.

9 A. Yes, sir. The man's name is Victor Iwata,
10 I W A T A. He's the Shuttle Express Sea-Tac
11 operations manager.

12 Q. And what was he doing? Was he in the van
13 or just out on the sidewalk?

14 A. No, sir. I asked Mr. Sherrell about his
15 function and he told me that they had people who
16 were at the airport occasionally to observe and
17 supervise their drivers. They also helped them get
18 the buses in and out of the parking areas, their
19 pickup areas whenever they have passengers and it's
20 really crowded.

21 Q. He had a person working out on the
22 sidewalk that wasn't even a driver, is that what
23 you're saying?

24 A. No, sir. The man wasn't out on the
25 sidewalk. The man was inside the terminal, in the

1 baggage area, where he could observe the drivers
2 without being observed himself.

3 Q. The Shuttle Express employee?

4 A. Yes, sir.

5 Q. Was in the airport terminal area?

6 A. Yes, sir.

7 Q. And these Exhibits A, B and C were
8 ultimately citations? No, I'm sorry.

9 MR. CEDARBAUM: Exhibits A, B and C are
10 just the documentation which support the
11 Commission's penalty assessment that was later
12 issued. There's some receipts and I think what's
13 included as -- within Exhibit 4, the driver's ledger.
14 I think that's what we're talking about.

15 MR. WOLF: Mr. MacIver, I have them right
16 here if you would like to -- if you want to use them
17 for anything before we make a copy.

18 Q. So were you looking for other activities
19 other than the flag-down activities while you were
20 out there?

21 A. Yes, sir.

22 Q. What would --

23 A. Even in the middle of a very specific and
24 pointed investigation, we always are observant of
25 other violations and we -- if I had observed other

1 violations, I would have noted them and documented
2 them.

3 Q. If I had been a Shuttle Express driver and
4 had -- and you were standing by the curb and I had
5 stopped, pulled over and asked you if you wanted a
6 ride to Seattle and you'd said yes and I'd went over
7 to the phone and I'd placed a call for you, and then
8 said just say your name into this phone and then get
9 in the van, what would you do? Would that be a
10 violation, in your opinion?

11 MR. CEDARBAUM: As long as we're speaking
12 about his opinion, that there is --

13 Q. Would you have cited that activity? I'm
14 sorry.

15 JUDGE LUNDSTROM: I ask that you address
16 the bench.

17 MR. MacIVER: I withdraw the question.

18 Q. Would you have cited or recommended
19 citation for that type of an activity?

20 A. For what you've described?

21 Q. Yes. If you're approached by a driver but
22 then somehow he assists you in making a call before
23 getting on the van, did you understand your
24 directions to be to issue or not to issue a citation
25 for that type of activity, or to write a memo to

1 report it as a potential violation?

2 MR. CEDARBAUM: Your Honor, I don't have
3 any problem with the questions as long as we're
4 talking about what he was assigned to do or his
5 personal opinion.

6 MR. MacIVER: I thought I changed my
7 question.

8 Q. I don't want your personal opinion as to
9 what's legal and illegal because that's -- I
10 apologize for asking that. I just want to know
11 whether you were asked to investigate that type of
12 activity and to report that type of activity, if you
13 were approached and then asked to make a call and
14 then invited aboard a van. I am just trying to
15 determine the scope of your investigation, sir.

16 A. The scope of my investigation is, I can
17 repeat it, it's Shuttle Express allegedly is
18 providing service to customers who flag down a van.
19 Their permit is restricted to quote-unquote on call,
20 on-call service, that includes only passengers who
21 telephone for reservations ahead. My instructions
22 are to view the airport area watching for violations,
23 and that's before I contact the company and/or
24 complete the investigation.

25 MR. MacIVER: No further questions.

1 JUDGE LUNDSTROM: Okay. Mr. Cedarbaum?

2 MR. CEDARBAUM: I have no questions.

3 JUDGE LUNDSTROM: The witness is available
4 for questions from the Commission, please.

5 MRS. COOMBS: Your Honor, before the
6 Commission, would I be allowed to ask the officer
7 any questions?

8 JUDGE LUNDSTROM: When your petition for
9 intervention were granted, they were granted for the
10 specific purpose of allowing you to offer statements
11 concerning matters within your personal knowledge
12 coming to your -- matters within your personal
13 knowledge about Shuttle Express operations at the
14 Sea-Tac terminal and of your specific operations.
15 The Administrative Procedures Act allows a very
16 limited intervention. It allows limited
17 cross-examination as well, and I thought I made that
18 clear at the time that your participation was
19 limited under the terms of your --

20 MRS. COOMBS: You did, your Honor, but you
21 said on the on call, only on the on-call issue, is
22 what you said, not on any economics or on those
23 issues, and this witness is a direct result of that
24 on call, and I think I do have a right to ask him a
25 few questions, if I may.

1 JUDGE LUNDSTROM: Well, my recollection of
2 my granting your petition for intervention was that
3 cross-examination was not part of your presentation.
4 I would certainly encourage you to include any
5 comments that you have in the statement which you
6 offer.

7 MRS. COOMBS: Well, I don't feel that
8 gives me any right for the on-call issue, is what
9 the issue that I was addressing, and this witness
10 directly involved in that very issue. That's why I
11 stayed the entire time, for this particular issue.

12 JUDGE LUNDSTROM: Okay. Go ahead and ask
13 a couple of questions.

14 MRS. COOMBS: It'll be very short.

15

16 CROSS-EXAMINATION

17 BY MS. COOMBS:

18 Q. Mr. Moss, were you there just during the
19 daylight hours?

20 A. No, ma'am.

21 Q. You were there --

22 A. On the first investigation, I worked the
23 hotel from 11:30 a.m. until approximately 1545 p.m.

24 Q. I am interested just in at Sea-Tac.

25 A. At Sea-Tac on the 9th, February the 9th of

1 1990, I was at the airport at 1420 and I left the
2 airport -- I was out of service that evening at 2130.
3 On the 10th I arrived at the airport at
4 approximately 1610, and I went out of service that
5 evening at 2400. On the 12th, I didn't go to the
6 airport -- that was the day I contacted Mr. Sherrell.

7 Q. These are all part of the record, are they
8 not? I would so stipulate that it is in the record,
9 then, that you were --

10 A. No, ma'am, these are not part of the
11 record. This is part of my officer's notebook.
12 That is not part of the record.

13 Q. All right. Wanted to clarify that.

14 A. On the 13th I was at the airport from
15 08:46 to approximately 11:56. That's in the first
16 investigation. Would you like to know the times for
17 the second investigation, ma'am?

18 Q. Since there were no citations issued, I
19 don't believe I --

20 A. Okay. Those were my hours. Agent
21 Halstead worked a different overlapping shift which
22 basically on the days that I have named I would work
23 evening or night, late, and he would work a day
24 shift and we would overlap in the late afternoon
25 where we could cover during a high peak traffic hour,

1 we could cover the concourse on both -- on both ends
2 at the same time.

3 Q. All right. Just two more questions. You
4 stated that on February 13th, you and Officer
5 Halstead went to the Shuttle Express office?

6 A. No, ma'am.

7 Q. When was it you viewed the records?

8 A. That was on the 12th, ma'am.

9 Q. On the 12th?

10 A. Yes, ma'am.

11 Q. On the 12th of February, you went to their
12 office. Is this the office where the drivers are
13 employed and where the whole personnel, the whole
14 operation of the Shuttle Express take place?

15 A. Yes, ma'am. That's what Mr. Sherrell told
16 me. It's where the bus is. He has his maintenance
17 there. He has the driver's room is there, the
18 training room, the dispatch room, his office.

19 Q. So it's conceivable when you did your
20 second investigation that there were employees there
21 that could have identified you as an officer, as an
22 investigative officer to the rest of the driving
23 staff?

24 A. Yes, ma'am.

25 Q. All right. When you are out there doing

1 this investigation under number four exhibit, you
2 stated earlier that you would issue any citations.
3 Is there anything peculiar on this? Do you have
4 access to this driver's recap?

5 A. Yes, ma'am. Could I clarify something?
6 If you're talking about my recognizability because I
7 went to the Shuttle Express office, agent --
8 Investigator Two Halstead was involved in the
9 original investigation a year or so, whatever, ago,
10 year and a half ago, and he also testified at the
11 hearing, and he has been to Shuttle Express offices
12 quite a few times.

13 Q. So then you're saying that it is
14 conceivable that the drivers would have a
15 description and know who you are?

16 A. Well, he was recognizable to any Shuttle
17 Express employee on the first investigation where
18 penalty assessments were issued, so the
19 recognizability of the agent, I don't know if that
20 would be the cause for us not finding violations on
21 the second investigation.

22 Q. Okay. Can I refer to this driver's recap
23 that you reviewed?

24 A. Yes, ma'am.

25 Q. On here you say at 8:20, they picked up a

1 Ms. Bowlmere at Pier 69 and took them to the -- took
2 her to the Holiday Inn.

3 A. Yes, ma'am.

4 Q. Would that be in Shuttle Express'
5 operating authority?

6 A. I have no idea, ma'am.

7 Q. Well, what would be the purpose of your
8 investigation if you can issue citations for other
9 violations with --

10 A. My investigation was relatively clearcut,
11 and my investigation covered the operations at the
12 airport and at the hotels and my purpose for going
13 and obtaining these papers from Mr. Sherrell was to
14 document the violation that I had observed and that
15 I had spoken with the lady. I didn't -- I didn't
16 look at any of the trips for any purpose at all. I
17 didn't extract any of the information from the
18 document to try to find violations on it, ma'am.
19 The only purpose -- the only reason I looked at his
20 authority that's granted by the UTC on the original
21 investigation was to make sure that him coming into
22 and out of the airport was within his authority and
23 the hotel's.

24 Q. That's just what I asked you, sir. We're
25 talking about within his authority and we see an

1 entry right here on what you viewed that you used as
2 documentation that he went from Pier 69 to the
3 Holiday Inn, and I am asking you if that was within
4 his authority.

5 JUDGE LUNDSTROM: Excuse me.

6 MRS. COOMBS: That's all I have, your
7 Honor.

8 JUDGE LUNDSTROM: Okay.

9 A. The Holiday Inn entry on that says to
10 Holiday Inn/STI, and I don't recall whether I
11 questioned that or not. I don't recall looking at
12 it at all.

13 JUDGE LUNDSTROM: Okay. The witness is
14 available for questions from the Commission.

15 COMMISSIONER CASAD: No questions.

16 COMMISSIONER PARDINI: No questions.

17 JUDGE LUNDSTROM: Okay. Redirect?

18 MR. WOLF: I have none.

19 JUDGE LUNDSTROM: Thank you very much.

20 You can be excused, Mr. Moss.

21 THE WITNESS: Thank you.

22 JUDGE LUNDSTROM: Does that conclude the
23 presentation on behalf of the respondent?

24 MR. WOLF: Yes, it does, your Honor.

25 JUDGE LUNDSTROM: We do have two

1 intervenors and I granted limited are intervention
2 at the commencement of the hearing to hearing your
3 observations and positions with regard to operations
4 at the Sea-Tac end of the route, recognizing that
5 your authority as you represented it did not
6 duplicate that. Who would like to go first, please?

7 MR. REININGER: I would.

8 JUDGE LUNDSTROM: Will you step to the
9 witness chair, please?

10 MR. REININGER: Just a minute, I'll get my
11 papers in order here.

12 MR. WOLF: Your Honor, my only request at
13 this juncture is that the witnesses be admonished
14 that they're here now giving testimony and that they
15 should speak of matters of which they have personal
16 knowledge.

17 JUDGE LUNDSTROM: Please take that into
18 consideration. Raise your right hand and be sworn.
19 Whereupon,

20 RICHARD REININGER,
21 having been duly sworn, was called as a witness and
22 was examined herein and testified as follows:

23

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

25 BY JUDGE LUNDSTROM

1 Q. Would you state your name and business
2 address, please.

3 A. Yes. My name is Richard Reininger,
4 president, Suburban Airporter, Bellevue, Washington,
5 2000 118th Southeast.

6 Q. I see. Did you bring a copy of your
7 authority with you?

8 A. No. I operate under C859.

9 Q. Could you please for the benefit of the
10 Commission summarize the authority granted under
11 that permit.

12 A. Yes. The C859 gives me authority to
13 operate from between Sea-Tac Airport and points in
14 the east side, namely, Renton, Mercer Island,
15 Bellevue, Issaquah, Kirkland, Redmond, Woodinville,
16 and Bothell.

17 Q. Thank you. Now, bearing in mind that the
18 only area where your authority duplicates the
19 authority represented in the complaint is the
20 Sea-Tac end --

21 A. Yes.

22 Q. -- and confining yourself please to
23 matters within your own knowledge, do you have
24 matters to relate to the Commission regarding
25 Shuttle Express operations at Sea-Tac?

1 A. Yes, I do.

2 Q. Thank you. Go ahead, please.

3 A. During the year 1989 Suburban Airporter
4 experienced a 18.6 percent passenger growth.
5 However, since the installation of the curb side
6 phones, Suburban Airporter's passenger traffic has
7 been in a steady decline to the point that in May of
8 1990, we had a --

9 MR. WOLF: Objection, your Honor. I think
10 this is beyond the scope of the intervention.

11 THE WITNESS: Sir, this is to point out
12 the effect of the violation -- the effect of the
13 violations of the reservations at Sea-Tac Airport
14 with the telephones.

15 JUDGE LUNDSTROM: Well, you're not the
16 complainant here.

17 THE WITNESS: I understand that.

18 JUDGE LUNDSTROM: So I would ask that you
19 confine your testimony to direct observations of
20 matters occurring at the airport, if you would, sir.

21 MR. WOLF: Rather than -- to avoid this
22 process, I would -- I would like to just have a
23 continuing objection to any testimony beyond the
24 scope of the intervention, allow Mr. Reininger to
25 read his entire statement, and that -- those

1 objections could be -- your Honor is going to
2 determine what evidence on which you would base your
3 decision. I think that would probably expedite this
4 process.

5 JUDGE LUNDSTROM: Well, the Commission
6 will certainly consider anything relevant to the
7 proceeding. Go ahead, please.

8 A. As I was stating, in the year of 1989, we
9 experienced an 18.6 -- 18.6 percent positive
10 passenger growth. However, once the installation of
11 the curbside phones, we experienced a steady decline
12 to the point where in May of 1990, we had a negative
13 eight percent growth versus May of 1989. Also two
14 years ago, our airport ratio, in other words, the
15 ratio of outbound passengers to Sea-Tac versus
16 inbound passengers was 53 percent and 47 percent to
17 inbound. It is now 57 percent to Sea-Tac and 43
18 percent inbound, so we've had a drop of four percent
19 in our passengers from Sea-Tac. My interpretation
20 of the quote prior arrangements, it means that a
21 person desiring transportation by Shuttle Express
22 would be required to contact a Shuttle Express prior
23 to the arrival of the Shuttle Express van and prior
24 to talking with a Shuttle Express employee on the
25 drive.

1 I might add that our company has been also --
2 I also add that our company who's been operating at
3 Sea-Tac Airport since 1971, almost twenty years. We
4 have 26 trips on the airport -- daily. That's
5 approximately 9,500 trips annually, yet we have
6 never had a single violation from either the Port or
7 the WUTC. I would respectfully recommend that the
8 Commission clarify the use of the term quote on call
9 end quote in the certificate of Shuttle Express to
10 specifically require the reservation be made prior
11 to the arrival of the van at the pick-up location
12 and also prior to any contact with a Shuttle Express
13 employee.

14 JUDGE LUNDSTROM: Thank you.

15 THE WITNESS: Thank you.

16 JUDGE LUNDSTROM: Questions, Mr. MacIver?

17 MR. MacIVER: I have no questions.

18 MR. CEDARBAUM: No questions.

19 MR. WOLF: No questions.

20 JUDGE LUNDSTROM: Witness is available for
21 questions from the Commission.

22 COMMISSIONER PARDINI: No. No thank you.

23 CHAIRMAN NELSON: No questions.

24 COMMISSIONER CASAD: No questions.

25 JUDGE LUNDSTROM: Ms. Coombs?

1 Whereupon,

2 DIANE J. COOMBS,

3 having been duly sworn, was called as a witness and
4 was examined herein and testified as follows:

5

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

7 BY MR. LUNDGAARD:

8 Q. Thank you. Be seated, please.

9 A. I'm Mrs. Diane J. Coombs, and I operate
10 Ease Airporter Service. It's a family owned, held
11 corporation. We employ --

12 Q. Would you give your business address,
13 please.

14 A. 63 -- I hate to do it because it's so long,
15 6303 Swan's Trail Road, Everett, 98205.

16 Q. Okay.

17 A. We operate 19 times a day to and from the
18 Seattle Tacoma Airport. We employ 23 people, six of
19 which are family members, and we've been operating
20 since 1971. I am an owner-operator driver.

21 In our business when you have a small
22 business, you have to do a little bit of everything,
23 so I am out at the airport constantly, and I can
24 observe at any given day, any time, violations of
25 the -- of what I consider to be the on-call

1 stipulation in the Shuttle Express' agreement. I
2 can cite you the day before I came here observations
3 that have happened. I am at the airport. I am on
4 the phone at 9:30 in the morning. I am talking to
5 Mr. Reininger about coming to this meeting -- this
6 hearing. Shuttle Express van parks right outside
7 the door number 24, is there for 15 minutes, with
8 three people in the ground transportation booth. He
9 comes into the airport, two and three times, goes
10 down through the carousels, out the other door, and
11 around, talking to people on the sidewalk, just
12 having liberty through all.

13 The gentleman that you referred to, Victor,
14 I've identified him at the airport, I've brought it
15 to the Port that he is in there talking to
16 passengers and soliciting. He has no badge. He
17 wears no identification, Shuttle Express badge when
18 he's there. He does direct the drivers. I've seen
19 him direct the drivers into loading zones and wave
20 them on past. I've also observed stealing of
21 passengers of specifically Mr. Reininger's business
22 at the south end of the airport. There's a great
23 deal of that by the Shuttle Express. I've been
24 there myself. I have seen them back up the -- the
25 luggage in the Suburban Airporter rack, the luggage

1 in Capital Airporters, this has been awhile, and the
2 drivers parking out in the third lane or the second
3 lane and coming up to the counter, up to the curb
4 and asking the passengers if they would like to do
5 this. This happened just recent as June 22nd, which
6 is Friday night, which was a very busy night.

7 I have been there when I've had people
8 waiting for another driver to come, not having a
9 vehicle at the south end, but they're standing
10 behind the pillar. Shuttle Express goes by with
11 downtown Seattle on it, no one in it. He sees all
12 the people in our luggage rack which was four
13 couples. He stops, backs up, gets out of his
14 vehicle and comes to approach the customers, and I
15 waved him off. I said, these are my customers.
16 Please leave. All of these have been reported to
17 the Port of Seattle and no violations have ever been
18 issued that I know of on the word knowingly and
19 understandably by any of the other operators, but
20 these are things that we can see at any time.

21 Sunday I had an opportunity where I backed
22 up another driver because we didn't have the size
23 vehicle I thought we would need at the airport to
24 carry the passengers and so I backed the driver up
25 and I wasn't needed, so I came back out of the

1 airport empty, and heard my driver leaving Everett a
2 few minutes late because of our traffic revision in
3 Everett, and so we had arranged with my daughter in
4 the office that I would call in and say, how many
5 reservations are there on this next run? And she
6 said, there are 14 and I said, how many out of the
7 university? And she said seven, so I pulled into
8 the university, parked my vehicle two blocks away,
9 and walked down and sat into the lobby and waited
10 for the Shuttle Express to come, which I knew they
11 would, and they did, and came in and used a name
12 that they've used before, the same driver I've seen
13 a couple of times, in our area. I used the name
14 Simpson and asked if there was a party of Simpson.
15 Stepped up to the desk, asked the people there if
16 they were Simpson. I always use the same name as
17 the Everett Pacific Hotel.

18 JUDGE LUNDSTROM: I wonder, now --

19 THE WITNESS: One last thing I would like
20 to say is I have people loaded at the Everett
21 Pacific Hotel, this has happened at other hotels but
22 this is just current that I can relate to you with
23 this specific date. I have passengers loaded in my
24 vehicle and fares collected and the Shuttle Express
25 driver pulls up, comes and asks my passengers in the

1 vehicle if they are their passengers, if they are
2 their name, after I've already loaded and collected.

3 This kind of behavior and practice is not
4 acceptable. The other airporters don't do it and I
5 don't think Shuttle Express should be allowed to.
6 Thank you.

7 JUDGE LUNDSTROM: Please remain. Do you
8 have any questions?

9 MR. WOLF: No, your Honor.

10 JUDGE LUNDSTROM: Mr. MacIver?

11 MR. MacIVER: No questions.

12 MR. CEDARBAUM: No questions.

13 JUDGE LUNDSTROM: Thank you very much,
14 Mrs. Coombs. Do you have any rebuttal?

15 MR. MacIVER: No, your Honor, thank you.

16 JUDGE LUNDSTROM: The matter of briefs --
17 the Commission would like to have briefs, like to
18 receive them 30 days from the date of the conclusion
19 of the hearing.

20 MR. MacIVER: Might I inquire when we're
21 going to get the transcript because we have a --

22 JUDGE LUNDSTROM: The transcript arrives
23 at the Commission 14 days after the hearing, or it's
24 scheduled to do that. You can either arrange for a
25 transcript yourself and expedite the transcript or

1 obtain it from the Commission.

2 MR. MacIVER: So briefs are due 30 days
3 from today?

4 JUDGE LUNDSTROM: Right.

5 MR. WOLF: What does that take us to?

6 JUDGE LUNDSTROM: Takes us to the 28th of
7 July. Do you have a question, Mr. Reininger?

8 MR. REININGER: Yes, would we be also
9 permitted to submit briefs, brief briefs?

10 JUDGE LUNDSTROM: Well, you already made
11 your statement on the record.

12 CHAIRMAN NELSON: This is a legal document.
13 If you feel that you're qualified to give legal
14 advice, it would be your call, I would think.

15 JUDGE LUNDSTROM: Right. Okay. Anything
16 further?

17 MR. WOLF: Just that July 28th is a
18 Saturday. Could we have until the -- could we have
19 until the 30th?

20 JUDGE LUNDSTROM: Following Monday, the
21 31st.

22 MR. WOLF: Thank you.

23 JUDGE LUNDSTROM: July 31st, then. Very
24 well. Anything further?

25 Nothing further to come before this

1 hearing will be adjourned.

2 (Hearing adjourned at 5:00 p.m.)

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C E R T I F I C A T E

As Court Reporter, I hereby certify that the foregoing transcript is true and accurate and contains all the facts, matters, and proceedings of the hearing held 6/28/90

Marilyn A Johnson
COLUMBIA REPORTING SERVICE