

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In the Matter of Determining)
4 the Proper Carrier Classifi-) DOCKET NO. TG-920304
5 cation of:)
6 ENOCH ROWLAND d/b/a KLEENWELL) VOLUME II
7 BIOHAZARD AND GENERAL ECOLOGY) PAGES 190-316
8 CONSULTANTS)
9 _____)

8 A hearing in the above matter was held on
9 June 11, 1992 at 9:30 a.m., at 1313 West Meeker, Kent,
10 Washington, before Administrative Law Judge LISA A.
11 ANDERL.

13 The parties were present as follows:

15 ENOCH ROWLAND d/b/a KLEENWELL BIOHAZARD
16 AND GENERAL ECOLOGY CONSULTANTS, by JAMES T. JOHNSON,
17 Attorney at Law, Two Union Square, Suite 3000, 601
18 Union Street, Seattle, Washington, 98101-2324.

18 RABANCO COMPANIES, by RICHARD A. FINNIGAN,
19 Attorney at Law, 1201 Pacific Avenue, Suite 1900
20 Tacoma, Washington, 98402.

20 WASHINGTON WASTE MANAGEMENT ASSOCIATION, by
21 JAMES SELLS, Special Counsel, 510 Washington Avenue,
22 Bremerton, Washington, 98310.

22 RYDER DISTRIBUTION RESOURCES, INC., by BOYD
23 HARTMAN, Attorney at Law, 11000 Main, Bellevue,
24 Washington, 98004.

24 Rebecca S. Cain
25 Court Recorder

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RECORDS MANAGEMENT
92 JUN 15 PM 3:49
STATE OF WASH.
UTIL. AND TRANS.
COMMISSION

ORIGINAL

1 APPEARANCES (Continued)

2 AMERICAN ENVIRONMENTAL MANAGEMENT
3 CORPORATION, by DAVID W. WILEY, Attorney at Law, 1700
4 Bellevue Place, 10500 N.E. 8th Street, Bellevue,
Washington, 98004.

5 CLARK COUNTY DISPOSAL, INC., AND BUCHMANN
6 SANITARY SERVICES, INC., by CINDY HORENSTEIN, Attorney
at Law, 900 Washington Street, Suite 900, Vancouver,
Washington 98660.

7 WASHINGTON UTILITIES AND TRANSPORTATION
8 COMMISSION, by STEVEN W. SMITH, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
9 Olympia, Washington, 98504.

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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
PROF. DEMPSEY	195	232 254 270 275 276		285	
MR. BURTON	288	302 306 308	313		

EXHIBIT	MARKED	ADMITTED
30	195	199
31	195	315
32	298	302

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PROCEEDINGS

9:30 a.m.

JUDGE ANDERL: The hearing will come to order.

This is the second day of hearing in Docket TG-920304. Today's date is June 11, 1992, and we are convened at the Commission hearing room in Kent, Washington.

Let's go ahead and take appearances at this time. You don't have to state your address if it has not changed since the first hearing session in this matter. Mr. Smith?

MR. SMITH: Your Honor, Steven W. Smith, Assistant Attorney General, appearing for the Commission.

JUDGE ANDERL: Mr. Johnson?

MR. JOHNSON: James D. Johnson, appearing for Kleenwell.

JUDGE ANDERL: Mr. Hartman?

MR. HARTMAN: Boyd Hartman for Ryder Distribution Resources, Inc.

JUDGE ANDERL: Mr. Finnigan?

MR. FINNIGAN: Rick Finnigan for Sure-Way Medical Services, formerly Rabanco Medical Waste Services.

1 JUDGE ANDERL: Mr. Sells?

2 MR. SELLS: Thank you, if Your Honor,
3 please, James Sells for protestant, Washington Waste
4 Management Association.

5 MR. WILEY: Your Honor, David W. Wiley for
6 protestant, American Environmental Management
7 Corporation.

8 MS. HORENSTEIN: Your Honor, Cindy
9 Horenstein, representing Clark County Disposal, Inc.
10 and Buchmann Sanitary Service.

11 JUDGE ANDERL: When we were last convened,
12 I believe we agreed that we would start today with
13 your witness, Mr. Smith. So unless there are any
14 preliminary matters before that we can go ahead with
15 that.

16 MR. SMITH: Thank you, Your Honor. I'll
17 call Professor Paul Dempsey, please.
18 Whereupon,

19 PROFESSOR PAUL DEMPSEY
20 having been first duly sworn, was called as a witness
21 herein and was examined and testified as follows:

22 MR. SMITH: Your Honor, I predistributed
23 two documents perhaps I could have marked next in
24 line.

25 JUDGE ANDERL: All right. I'll mark the

1 multi-page resume as Exhibit No. 30, and the
2 Administrative Law Review article as Exhibit No. 31.

3 (Marked Exhibits 30 and 31.)

4 MR. SMITH: Thank you, Your Honor.

5

6

DIRECT EXAMINATION

7

BY MR. SMITH:

8

Q. Would you please state your name and give
9 us your business address?

10

A. I'm Paul Steven Dempsey. My business
11 address is the University of Denver College of Law,
12 1900 Olive Street, Denver, Colorado, 80220.

13

Q. And in what capacity are you employed at
14 the University of Denver College of Law?

15

A. I am a professor of law and director of the
16 transportation law program.

17

Q. And Professor Dempsey, where did you
18 receive your undergraduate degree?

19

A. The University of Georgia.

20

Q. In what area?

21

A. Journalism.

22

Q. Do you hold any other degrees?

23

A. Yes, I have a J.D. from the University of
24 Georgia as well. I also have a Master of Law degree
25 from George Washington University, and a Doctor of

1 Civil Laws Degree from McGill University.

2 Q. Do you have any other formal training?

3 A. Yeah, well, I studied also at Georgetown
4 University Law School, at the Law and Economics
5 Institute for Law Professors at Dartmouth College.
6 I've attended a multitude of seminars in continuing
7 legal education programs, or taught at them.

8 Q. And would that training appear in what has
9 been marked for identification as Exhibit 30?

10 A. My resume, yes.

11 Q. Professor Dempsey, are you licensed to
12 practice law in any jurisdiction?

13 A. I am. I'm actively licensed in Colorado.
14 I'm also inactively licensed in the District of
15 Columbia and the State of Georgia.

16 Q. In your capacity at the University of
17 Denver College of Law, do you specialize in any
18 particular area?

19 A. I specialize in transportation law as
20 director of its program.

21 Q. Could you briefly tell us something about
22 the College of Law's transportation law program?

23 A. The University of Denver began offering
24 continuing legal education in transportation about 20
25 years ago in cooperation with what was then the Motor

1 Carrier Lawyers Association, what is today the
2 Transportation Lawyers Association. That has been a
3 successful program. We have continued since. We
4 hold it alternatively in San Francisco and Washington
5 D.C. in the fall of each year.

6 In the mid 1970's, we took over publication
7 of the Transportation Law Journal, which had
8 previously been published by Osgoode Hall Law School
9 in Canada. At that time, we established a separate
10 educational program in transportation law for our
11 students enrolled in the J.D. program, and I was
12 appointed director of that program in 1979 after
13 having left service in the federal government in two
14 agencies that regulated transportation there and
15 where I have remained since.

16 The students have a variety of courses from
17 which to choose. This is one of our specialized
18 programs. We're a very large law school. We're
19 about the twelfth or thirteenth largest law school in
20 the United States. We have other programs in natural
21 resources law, international law, business planning
22 and advocacy skills.

23 Q. Do you have any relationship to the -- or
24 with the Transportation Law Journal?

25 A. I'm the faculty editor of that article.

1 Q. Do you have any other professional
2 experience in the area of transportation and
3 transportation regulation?

4 A. Yes, after I graduated from law school in
5 1975, I went to work for the Interstate Commerce
6 Commission, remained there for two years when I left
7 there and went to work for the Civil Aeronautics
8 Board and worked there for two years until 1979.

9 At the Interstate Commerce Commission we
10 were regulating trucks, motors carriers and busses.
11 At the Civil Aeronautics Board, we were deregulating,
12 rather enthusiastically, the airline industry.

13 In the early part of the Reagan
14 Administration, I was also invited back to serve as a
15 legal advisor to the Chairman of the ICC, Reese
16 Taylor. That was in, I believe, 1981-82.

17 Q. And I referred to it briefly, I might as
18 well move for its entry now. Do you have before you,
19 or are you familiar with what's been marked for
20 identification as Exhibit 30?

21 A. Yes.

22 Q. And is that a resume of your educational
23 and professional experience?

24 A. Yes, and my publications.

25 MR. SMITH: Your Honor, I would move for

1 admission of Exhibit 30.

2 JUDGE ANDERL: Any objections to that
3 exhibit being made part of the record?

4 MR. JOHNSON: No, I have no objection.

5 JUDGE ANDERL: Hearing no objection,
6 Exhibit 30 will be admitted.

7 (Admitted Exhibit No. 30.)

8 BY MR. SMITH:

9 Q. Now Professor Dempsey, you referred to your
10 publication. Have you authored any books on the
11 topic of transportation regulation?

12 A. Yes, Law and Economic Regulation and
13 Transportation in 1986; the Law and Foreign Policy in
14 International Aviation in '87; the Social and
15 Economic Consequences of Deregulation in 1989; The
16 Airline -- let's see, what's it called -- Flying
17 Blind, The Failure of Airline Deregulation in 1990,
18 and I have a book coming out this summer called
19 Airline Deregulation and Laissez-faire Mythology.
20 And I've got a couple of more books in progress.

21 Q. And would those publications appear in
22 Exhibit 30?

23 A. They do.

24 Q. Have you published articles on the subject
25 of transportation regulation?

1 A. Yes, quite a number of them, both in law
2 reviews and in popular periodicals, trade periodicals
3 and economics journals.

4 Q. And do those articles appear in Exhibit 30?

5 A. Yes, all of the most recent ones.

6 Q. Have you lectured or made presentations
7 regarding transportation regulation?

8 A. Yeah, I have kind of a healthy speaking
9 commitment, series of commitments. I guess I
10 probably speak, on average, of about ten or 15 times
11 a year around the country to transportation
12 organizations.

13 Q. And have you appeared as an expert witness
14 or consultant in matters regarding transportation
15 regulation?

16 A. I have.

17 Q. And can you tell us what those occasions
18 were, or what bodies you appeared before?

19 A. I've appeared before the Public Utilities
20 Commissions of Colorado, California, Ohio, and the
21 Motor Carrier Commission of British Columbia; the
22 state legislatures, or transportation committees of
23 the state legislatures of Michigan, Texas, Colorado;
24 the relevant transportation committees of the United
25 States House of Representatives and the United States

1 Senate, and the Canadian Senate as well. I don't
2 know if I've mentioned I've also appeared before the
3 Pennsylvania Public Utilities Commission.

4 Q. Have any of your presentations or
5 publications dealt specifically with the subject of
6 transportation deregulation?

7 A. A great many of them have.

8 Q. Have any of your presentations or
9 publications dealt with market entry regulation in
10 the transportation industry?

11 A. Yes.

12 Q. Could you tell us what you mean by "market
13 entry regulation"?

14 A. Regulation of entry traditionally involves
15 the issuance of a Certificate of Public Convenience
16 and Necessity to an applicant seeking to enter a
17 particular market. That requires an assessment, both
18 of competition factors, general public interest
19 factors and fitness of the applicant. Once their
20 certificate is issued, it also involves a continuing
21 supervision of both the carrier's fitness and its
22 obligation to serve the public as a common carrier,
23 to provide non-discriminatory service at a just and
24 reasonable price.

25 Q. Have you dealt with the subject of rate

1 regulation in any of your lectures or publications?

2 A. Yes, I have.

3 Q. Now, Professor Dempsey, in preparation for
4 this hearing, have you become familiar with the
5 statutes and rules administered by the Washington
6 Utilities and Transportation Commission regarding
7 solid waste collecting companies?

8 A. Yes, I have.

9 Q. And does that regulatory scheme include any
10 limitations on market entry?

11 A. It does. It includes the issuance of a
12 Certificate of Public Convenience and Necessity to an
13 applicant, and it seems to include a presumption that
14 there will be only a single certificate issued unless
15 the existing carrier is, in some sense, inadequate.

16 Q. And are you aware that Kleenwell Biohazard
17 is collecting infectious waste in the state of
18 Washington and disposing that waste in California in
19 order to avoid the regulation of the Washington
20 Commission?

21 A. That is my understanding, yes.

22 Q. Let me ask you, as a general matter,
23 whether free market entry leads to any adverse
24 consequences in the transportation industry?

25 A. It appears to have at the interstate level.

1 It has tended to cause a problem in terms of
2 declining productivity, lower load factors, an anemic
3 level of profitability, inadequate profits for the
4 industry as a whole; a higher level of bankruptcies,
5 a higher failure rate; a declining ability to either
6 provide resources for new equipment or to maintain
7 existing equipment adequately, and an inability to
8 pay labor the wages that have been traditionally paid
9 in the industry; all of that causing a deterioration
10 in the level of service, particularly for small
11 communities, and a higher transportation price for
12 service for small communities and small shippers.

13 Q. Can the deregulation of rates lead to
14 negative consequences in the transportation industry?

15 A. Yes.

16 MR. JOHNSON: I'm going to object to the
17 question unless it were sought for the witness'
18 opinion. I don't think he's in a position to make a
19 statement of anything other than his own opinion.

20 MR. SMITH: Your Honor, I can rephrase the
21 question and we'll get into empirical evidence
22 shortly.

23 JUDGE ANDERL: Okay.

24 BY MR. SMITH:

25 Q. Professor Dempsey, in your opinion, can the

1 deregulation of rates lead to negative consequences
2 in the transportation industry?

3 A. Yes, the traditional requirements of both
4 non-discriminatory rates and just and reasonable
5 rates were imposed to make sure that rates are
6 precisely that; that there's not discrimination
7 between larger and smaller users of the system,
8 between urban and rural users of the system.
9 Elimination of those controls puts the rate making
10 apparatus at the whims of the individual carriers who
11 may have market power in certain markets, and certain
12 individual shippers who have monopsony power where
13 they tender large volumes of freight. This puts
14 pressure on small communities and small shippers,
15 that they pay a higher portion of the fixed costs of
16 operation.

17 Also, the rate making structure works in
18 two directions: by assuring a just and reasonable
19 rate for consumers. There's also a mandate in the
20 regulatory charter that in exchange for providing
21 common carrier service ubiquitously throughout their
22 service territories, the regulatory authority will
23 assure that a reasonable return on investment is
24 earned so that we don't have the problem of a high
25 turnover in the identity of carriers, or the

1 inability of carriers approaching bankruptcy to
2 maintain their operations in a safe and effective
3 manner.

4 We also have placed into the regulatory
5 structure, embraced within the just and reasonable
6 rate obligations, a prohibition against the
7 extraction of monopoly rents in markets where
8 carriers have market power, and a prohibition on the
9 down side of predatory pricing to drive smaller
10 companies out of business, and you see this now in
11 the airline industry, for example. Most people
12 understand that. People who begin or end their trips
13 at a monopoly hub pay prices, according to the GAO,
14 which are 21 percent higher than they could pay in
15 competitive markets. That's because of the monopoly
16 characteristics, or the monopoly opportunities which
17 exist for airlines which control those hubs, and yet
18 we know, or at least it has strongly been suggested
19 in the recent price wars that American Airlines
20 inaugurated, that was motivated by desire to engage
21 in predatory activity with respect to smaller and
22 weaker carriers and drive them out of the market.

23 Rate regulation tends to avoid those kinds
24 of consequences. It avoids a parity and equity, and
25 the rate structure for larger and smaller users,

1 urban and rural users, and it provides a more stable
2 and healthy economic regime for carriers.

3 Q. Have any of your publications described
4 these consequences that you've just referred to?

5 A. Yes, a number of them have.

6 Q. Do you have a copy of this?

7 A. I do.

8 Q. Professor Dempsey, do you have a copy of
9 what's been marked for identification as Exhibit 31?

10 A. If it's an article from the Administrative
11 Law Review that I wrote called Running on Empty, I do
12 have.

13 Q. And I take it you recognize that document?

14 A. Yes.

15 Q. Professor Dempsey, I would ask you to walk
16 us through this -- well, tell me what this document
17 shows, in general terms.

18 A. It is an attempt to assess the theory of
19 deregulation as it has been applied to trucking, the
20 economic rationales for it, the free market ideology
21 and how it has been played out in this industry,
22 beginning in the late 1970's and then culminating in
23 the Motor Carrier Act of 1980, and with
24 administrative deregulation subsequently thereto in
25 the 1980's, and an attempt to explain what has

1 occurred in this industry empirically since those
2 decisions were made.

3 Q. And could you lead us through Exhibit 31
4 and show us the empirical results -- empirical
5 evidence of the consequences you have just described,
6 generally?

7 MR. JOHNSON: Your Honor, I'm going to
8 object to this question and to the witness going
9 through this document. It's quite obviously an
10 indictment of deregulation as to whether or not it's
11 beneficial or not, but it doesn't address any issue
12 here. The question here is whether or not the laws
13 of the state of Washington, which attempt to regulate
14 the movement of medical waste, is constitutional or
15 not, and it's not a question of desirability of
16 regulation or deregulation. The witness obviously
17 has a bias. He's employed by an institution that
18 derives part of its support from transportation
19 lawyers who have an interest in preserving
20 regulation, and Exhibit 31 addresses the desirability
21 of regulation. That's not an issue in this case, as
22 I see it.

23 MR. SMITH: Mr. Smith, would you like to
24 respond to that?

25 MR. SMITH: Yes, Your Honor. Kleenwell and

1 Mr. Johnson are asserting that they are exempt from
2 the UTC's jurisdiction, both as to market entry and
3 rates by virtue of the Commerce Clause of the Federal
4 Constitution. We are entitled to examine the effects
5 that claim of immunity would have on the Washington
6 regulatory scheme. One of the tests for determining
7 whether a state statute impermissibly burdens
8 interstate commerce is to examine the benefits
9 provided by the state scheme in balance with the
10 impact on interstate commerce to see whether that
11 impact is clearly excessive, and that's the relevance
12 of this testimony and this exhibit; the question of
13 the benefits of market entry regulation and rate
14 regulation to the state of Washington.

15 I would also point out that the Medigen
16 case, relied upon by Mr. Johnson in his opening
17 argument, that court went to a similar balancing
18 test. So the examination of the benefits of the
19 state regulatory scheme is directly relevant to the
20 Commerce Clause defense raised by Mr. Johnson.

21 JUDGE ANDERL: I'll overrule the objection
22 and allow this witness to continue to testify.

23 THE WITNESS: Could I comment on the
24 allegation of bias?

25 JUDGE ANDERL: I don't think so. Mr.

1 Smith, if you want to ask questions about that.

2 MR. SMITH: Yes, I think Mr. Johnson will
3 have the opportunity to examine any bias he thinks
4 Professor Dempsey has on cross-examination.

5 BY MR. SMITH:

6 Q. But, Professor Dempsey, since the issue has
7 been raised, do you have any response to Mr.
8 Johnson's assertion that you're biased by virtue of
9 your relationship with the University of Denver
10 College of Law and their transportation section?

11 A. Yes, I do have a couple of comments, the
12 first comment is this: I have tenure. Any position
13 that I take is immune from any sort of retribution.
14 If the transportation law program were to cease to
15 exist tomorrow, I would still have a job, and I do
16 very well. I also teach torts and constitutional law
17 and I teach them pretty well, according to my
18 evaluations.

19 The other part of it, there is a phenomenon
20 of the politically correct on American colleges and
21 universities that you may be familiar with. It is
22 driven, for some reason, by the left with Orwellian
23 passion in sort of remolding the vocabulary about
24 what kind of ideas are appropriate to be discussed.
25 There's also the phenomenon of the economically

1 correct, and it seems to be driven by the right. And
2 there are certain views which are economically
3 correct, and among them is the notion that the free
4 market, unimpeded, ought to be the driving force on
5 the American landscape. I've chosen to assault that
6 conventional wisdom, and have taken, until very
7 recently -- have paid a price for that. So the
8 positions that I take, the conclusions that I've
9 reached, I think, have been reached honestly. They
10 have not been reached without having paid a price for
11 them because they assault the conventional wisdom.

12 And surely now, people are beginning to
13 realize that airline deregulation has some
14 significant problems. I was out on the front of that
15 issue before it became fashionable to be there, but I
16 -- you know, any allegation that somehow because my
17 employer has a relationship with the Bar Association
18 effects my conclusions, I think, is erroneous. We
19 have other people on the faculty who take an opposite
20 point of view, and they do so very well without any
21 sort of retribution.

22 Q. Professor Dempsey, returning to the prior
23 question, could you show us or lead us through
24 Exhibit 31 in your discussion of the evidence that
25 deregulation in the transportation industry leads to

1 the kinds of consequences you have discussed?

2 A. Yes. One of the things that surprised me
3 was that the proponents of deregulation argued that
4 productivity would improve with deregulation; that
5 what we basically had was a situation where, by
6 regulation, we were forcing carriers to return with
7 empty back-hauls, and deregulation would eliminate
8 the empty back-hauls.

9 Actually, what has occurred is that the
10 market has been flooded with new carriers. There are
11 about twice the number of certificated carriers today
12 than there were in 1980, and the amount of freight
13 has not appreciably increased. What that has
14 resulted in is a decline in energy efficiency and a
15 decline in equipment utilization. I've seen four
16 different studies, three of them are reported in
17 here: The average load is down significantly, pre
18 and post-deregulation. The level of productivity by
19 a number of measures has declined under some, has
20 gone flat under others.

21 Professor Robert Gordon, who believes that
22 deregulation is a very good thing, has recently come
23 out with a paper in which he compares productivity
24 and the three modes of transportation that are
25 relevant, air, rail and trucking. And he finds that

1 rail productivity has gone up, but trucking
2 productivity has not and air productivity has not,
3 despite the pre-existing trend of improved
4 productivity.

5 Now what that means is that the trucks that
6 are on the highway are traveling on the highway
7 emptier than they were before. There's a greater
8 input of labor and fuel into moving goods across the
9 United States. Now that, coupled with the fact that
10 carriers are competing very vigorously to take that
11 empty space and fill it up, because empty space in
12 transportation is an instantly perishable commodity;
13 if you can't sell it, you can't warehouse it either,
14 and therefore, there's an imperative to try to put
15 something in the space in order to cover the marginal
16 cost of operation, the fuel and the labor inputs.

17 What has happened is carriers have been
18 chasing the freight and pricing themselves in an
19 unrealistic level trying to steal freight from each
20 other. As a consequence, the profitability of the
21 industry -- if you turn to page 270, there's a chart
22 that shows profitability, and I rather like this
23 chart because it goes back as early as 1973. These
24 are the operating margins for the largest carriers.
25 Now the operating margins is what's left after you

1 pay all of your expenses except --

2 MR. JOHNSON: Your Honor, I would like to
3 inject an objection based on the -- well, in that
4 this article, Exhibit 31, and the witness' testimony
5 obviously relates to the trucking industry generally.
6 And I suggest that perhaps the pre-regulation figures
7 he gave don't include a single medical waste hauler,
8 problems that are entirely different from the motor
9 carrier industry generally. And even in today's
10 list, the carriers in which he basis these
11 intentions, I doubt that they include any medical
12 waste haulers. This is -- what he's talking about
13 has no relevance to the medical waste industry.

14 JUDGE ANDERL: Mr. Smith?

15 MR. SMITH: Yes, Your Honor, it has
16 relevance to the subject of the benefits of market
17 entry regulation and the consequences of market entry
18 deregulation. Before we are through, we will turn to
19 Professor Dempsey's opinion as to what he would
20 anticipate from a deregulation of those matters in
21 the case of the solid waste collecting in the state
22 of Washington.

23 I think what Mr. Johnson is raising are
24 things that he can take up on cross-examination if he
25 wishes to challenge the basis of any of Professor

1 Dempsey's opinions or statements.

2 JUDGE ANDERL: The objection is overruled.

3 Professor Dempsey, I believe we were in the
4 middle of an answer. Do you remember where you were?

5 THE WITNESS: I think I was talking about
6 this chart on page 270.

7 A. And we're talking here about operating
8 margin, which is after having paid all operating
9 expenses, except interest, taxes and profit, this is
10 what's left. And in the 1973-79 period, the
11 operating margin was a little over five percent. It
12 wasn't real good, but, you know, it wasn't as bad as
13 it has been since we deregulated that industry. From
14 1980 to 1987 it fell to less than -- well, about 3.6
15 percent.

16 Now I should add that the profit margin in
17 the airline industry, which has also been
18 deregulated, fell very significantly. It fell 73
19 percent after 1978 to a margin of six-tenths of one
20 percent, and that takes us up to 1988. That's the
21 first decade of deregulation there. And the airline
22 industry in the last two years has now lost all the
23 profit that it made since the Wright brothers flew at
24 Kitty Hawk, plus two billion dollars more, so that
25 these consequences -- and we could do the bus

1 industry, too. The bus industry is in bankruptcy.
2 We went from two carriers to one carrier.
3 Profitability has not been the strong point of
4 deregulation.

5 If you take a look at page 272, we see the
6 profit margin of motor carriers, vis a vis all
7 manufacturers. There, too, we see that they have not
8 done as well as all manufacturers and have done
9 somewhat worse than all manufacturers, and still
10 subject to the same economic conditions as all
11 manufacturers, recession, inflation; all of the
12 economic circumstances in the nation are occurring
13 with respect to all of these entities at the same
14 time.

15 The operating margin of this industry, 3.6
16 percent, is significantly lower than that established
17 by the Interstate Commerce Commission as an
18 acceptable operating margin. They target a seven
19 percent operating margin as acceptable, and the
20 United Parcel Service companies earn a nine percent
21 operating margin. Now if you have this kind of
22 anemic profitability over any period of time, you're
23 going to end up with a high number of bankruptcies.

24 If you turn to page 271, you see the number
25 of bankruptcies in the trucking industry has exceeded

1 more than a thousand a year, each and every year
2 since 1983, although the data are not here because
3 this was -- more recent data for 1989 and 1990 shows
4 that that number has gone up even more significantly.
5 In 1990, the number of bankruptcies reached 1,600,
6 which is an all time high.

7 Now if you take these two charts and put
8 them together, what you see is we've had a phenomenal
9 shake-out of the number of carriers, and the chart on
10 page 270 reflects the operating margin for the
11 survivors; that is to say, one might argue, as the
12 Interstate Commerce Commission has under its pro-
13 deregulation approach, that wiping out these
14 inefficient carriers is good because what we're left
15 with is efficient, strong companies. The truth of
16 the matter is the survivors are not particularly
17 healthy.

18 Other merit measures of profitability, the
19 return on equity for deregulation for the trucking
20 industry, return on equity was about 15 percent. It
21 was nearly identical to that of all manufacturers.
22 After deregulation it fell 41 percent to eight point
23 eight percent, versus twelve point two percent for
24 all manufacturers. Return on investment also shows
25 this downward trend post-deregulation.

1 Operating ratio, which is kind of the flip
2 side of the operating margin chart -- if you'll look
3 at page 268 you'll see the operating ratios.
4 Basically, that's a percentage of operating costs,
5 excluding profit and interest, vis a vis operating
6 revenue. And the troublesome thing about this chart
7 on page 268 is that the threshold for bankruptcy is a
8 97 operating ratio, and you can see the industry is
9 within a fraction -- the industry as a whole, the
10 survivors are within a fraction of the 97 target for
11 operating ratios. So, clearly, this has been an
12 industry which has suffered significantly in terms of
13 profitability, in terms of the large number of
14 bankruptcies.

15 We should compare bankruptcies in the
16 trucking industry to that of all manufacturers. If
17 you turn to page 274, again we want to compare these
18 things because in the early 1980's, we did suffer a
19 recession, so we would have seen some increase
20 throughout the economy, although President Reagan
21 liked to remind us that the 1980's were the longest
22 sustained period of economic growth in the country's
23 history. Not for the trucking industry, and the
24 trucking industry failure rate has been much higher
25 post-deregulation than that of other industries,

1 although pre-deregulation, it was pretty close to it.

2 Now carriers facing bankruptcy have several
3 alternatives. One of the things they try to do is go
4 to the banks and borrow money, and they tend to
5 leverage themselves very highly with debt. The other
6 thing they do is they go to labor and they say we
7 have to roll back your wages. If you turn to page
8 277, these are average wages in the industry, either
9 measured on a per mile basis or a per employee basis.
10 And the data post-1985 are consistent with the trend
11 that you see here. Basically, wages per mile or per
12 employee have declined during this period. People
13 have different views as to whether labor is paid too
14 much or too little in this industry. I won't take a
15 position on that, but I will say that if an
16 individual who drives a truck wants to make the same
17 amount of money that he did pre-deregulation, he will
18 have to stay on the road more hours in order to make
19 that money.

20 Pages 28 -- well, I should add one other
21 thing about drivers. The number one cause of
22 accidents on the highway in commercial truck
23 operations is fatigue of drivers. The federal
24 government, the Department of Transportation, changed
25 its methodology for collecting data in 1985. Up

1 until 1985, we could see a progression in the
2 accident rate. Since they changed the methodology,
3 it's like comparing apples and oranges. We cannot
4 say conclusively that this has driven the accident
5 rate up; again, because the data are no good. But
6 various studies by the American Automobile
7 Association by the American Insurance Association,
8 and by the Office of Technology Assessment have
9 concluded that the accident rates of the motor
10 carrier industry have increased faster than the rate
11 of truck miles traveled.

12 We also know in the industry -- if you look
13 at pages 281, page 281 shows the average age of all
14 trucks on the highway. The industry driven by a
15 wholly unsatisfactory level of profitability has not
16 been able to re-equip with new trucks. The same
17 impact has occurred under airline deregulation, I
18 should tell you, where one-third of the commercial
19 fleet that we now fly exceeds the economic design
20 goals established by the manufacturers. We in the
21 United States now fly the oldest fleet of commercial
22 aircraft in the developed world. Ethiopia has a
23 younger fleet of planes than we do in the United
24 States.

25 Pages 282 and 283 takes a look at the

1 number of trucks 12 years and older, and the number
2 of trucks 12 years or older vis a vis the total
3 trucks in use, and what they show is the fleet is
4 aging.

5 Page 284, we see maintenance expenditures
6 per mile, and we see that it has gone down since
7 1980; again driven by these other things, slow in
8 productivity, poor profitability, a higher failure
9 rate; carriers simply without the resources to
10 provide either maintenance or capital for new
11 equipment purposes. The industry is in a very bad
12 position.

13 If you think about the transportation
14 system as being part of our national infrastructure
15 from a public policy perspective, this investment in
16 our public infrastructure, a number of people believe
17 has a ripple effect on the impact of productivity
18 growth throughout our economy generally, and the
19 tragedy is that both the public and the private
20 sector has disinvested in the transportation arena
21 significantly over the past decade.

22 Now some of this translates in terms of
23 pricing and in terms of service to small communities
24 and small shippers. The industry has been driven by
25 a couple of things: One is that there is a

1 phenomenon of monopsony or oligopsony power on behalf
2 of large shippers. Large shippers are able, by
3 virtue of their vast volumes of freight, to extract a
4 price which is non-compensatory effectively; it
5 doesn't cover the fully allocated costs of
6 operations, and they do so on a take-it-or-leave-it
7 basis.

8 To give you some idea of what has been
9 going on in terms of pricing discrimination, the
10 Interstate Commerce Commission in the last decade
11 approved pricing increases of some 51 percent from
12 1983 to 1988. It is all rates --

13 MR. JOHNSON: 1983 to what?

14 THE WITNESS: 1983 to 1988.

15 A. All rates, all general freight rates went
16 up more than 50 percent. The discounts for the
17 largest shippers run up to 70 percent, which means
18 that they receive a price which is a lower than the
19 pre-deregulation price. Small shippers, however,
20 often receive no discount at all, and to the extent
21 that they do receive a discount, they receive a
22 discount of between five and 15 percent, so it's
23 significantly less than that offered to large
24 shippers. Large shippers can do it because they have
25 large volumes of freight. They have something known

1 as monopsony or oligopsony power.

2 It has gotten so bad that the large
3 shippers are even demanding these rebates on
4 shipments shipped freight collect where the consignee
5 pays the freight bill. In other words, they're
6 demanding that the carrier rebate the discount on
7 freight collect consignee paid shipments where the
8 consignee gets no discount. This is a bit of fraud
9 being practiced on small businesses.

10 Now since small businesses create 90
11 percent of the country's jobs, one would wonder
12 whether any rational government would adopt a policy
13 which would disadvantage the job creators in our
14 society. If job creation is at all important, if the
15 unemployment rate is at all of consequence, then this
16 kind of impact, with respect to a major
17 infrastructure industry, is, in my view, distressing.

18 The other thing that occurs is that there
19 are lucrative and unprofitable traffic lanes. Urban
20 areas generally are lower cost areas in many
21 instances, unless you're talking about Los Angeles
22 where you can't move your truck more than 15 miles an
23 hour because of the economies and densities which
24 exist in urban areas; therefore, there's been no
25 cream-skimming that goes on in the urban corridors

1 leaving the smaller communities with less service.

2 Generally speaking, a number of studies
3 have shown that service has declined in smaller
4 areas, and rates have increased in smaller areas, and
5 they've increased because of the absence of
6 regulatory control. They've also increased because
7 of, again, this problem of declining productivity.
8 There simply is not the volume the freight that once
9 existed that could fill up a fewer number of trucks
10 and allow these productivity savings to be passed on
11 to users of the system.

12 It is intrinsically more efficient to have
13 one full truck providing service to a smaller
14 community than two half empty trucks providing
15 service, just as it would be intrinsically less
16 costly to a society to have one telephone line
17 serving that community, or one electric line serving
18 that community.

19 If you take a look at what's happened in
20 transportation generally under deregulation, small
21 communities have paid a very high price. A 130 small
22 communities that were on the air transport map in
23 1978 no longer are. There are about 120 more that
24 receive subsidies from the federal government for the
25 provision of service. The Republican administrations

1 have every year tried to eliminate those subsidies,
2 but if they are eliminated, undoubtedly a significant
3 number of those communities will also drop off the
4 air transport map.

5 With the disintegration of the bus industry
6 under deregulation, 4,500 small communities fell off
7 the bus map. 900 had that service replaced. That's
8 a net loss of 3,400 communities. And the rail
9 industry, with its abandonment ability under the
10 Stagger's Rail Act, has dropped service to 1,200
11 small communities.

12 And in trucking, there are two studies I
13 have seen: One focused on 11 western states and
14 revealed that 66 percent lost all general freight
15 trucking service; 38 percent in another study in
16 California lost all general freight trucking service,
17 so that prices appear in rural communities to be
18 higher. Service appears to have deteriorated, and
19 the equity goals, which can only be advanced by
20 government, have been abandoned under this process.

21 Q. Professor Dempsey, you've been discussing
22 the effects of deregulation on haulers and on the
23 public in various sectors of the transportation
24 industry. Would you anticipate some or all of these
25 consequences if solid waste collection were

1 deregulated in the state of Washington?

2 A. I would believe -- I would anticipate the
3 same consequences, only they would be somewhat worse.
4 The ability of carriers to enjoy the economies of
5 density to provide service in urban and rural areas,
6 urban as well as rural areas, would be diminished by
7 cream-skimming. They would be denied lucrative
8 market opportunities with which to cover their fixed
9 cost of operation. There would be no regulatory
10 oversight to assure that carriers fulfilled any
11 notion of a common carrier responsibility to provide
12 service to less profitable, or perhaps non-
13 profitable venues, and I think particularly of rural
14 areas. To the extent that service was provided to
15 rural areas, it would undoubtedly be at a higher
16 price.

17 Now here's the twist. When we're talking
18 about garbage or refuse, or medical waste, you have
19 to recognize that transportation has important
20 externalities with respect to the communities that it
21 serves and the shippers that it serves. It has
22 external costs and benefits. The existence of just
23 and reasonable prices and ubiquitous service means
24 that all communities, all regions, all shippers are
25 linked to the circulatory system of the nation; that

1 they participate in the economic trade, which is
2 fostered by a vibrant capitalist system. Cutting
3 them off or inhibiting service in some ways has a
4 ripple effect economically; that it affects other
5 industries. This is the way the infrastructure is.
6 It's not in isolation. It is an integral part of the
7 nation's economy.

8 The difference, when we're talking about
9 waste, is that it's not like tennis shoes. Tennis
10 shoes have an economic value. There will be an
11 economic motive to have it transported to its market.
12 But when you're talking about waste, in most
13 instances, if you're not talking about recyclables,
14 it has no economic value. In fact, it has a negative
15 economic value, because when you get it to
16 destination, you have to pay to have it disposed of
17 in a landfill, or a waste disposal facility of some
18 kind. It means that you don't realize any economic
19 gain by having it transported. You incur an economic
20 loss; thus, the motive, absent the compelling force
21 of government, is to dispose of it quickly and
22 cheaply.

23 It is the externality's problem of
24 pollution that we see in the magnificent essay
25 written by Garrett Hardin, The Tragedy of the

1 Commons. We all have an economic incentive to
2 externalize the cost of production. To put smoke
3 stack scrubbers on a smoke stack and keep the
4 carcinogens from entering the air is not in our
5 economic interests. It is in our economic interests
6 to externalize that cost.

7 When we're dealing with waste, it is
8 expensive to dispose of it properly; and yes, there
9 are some good samaritans who will dispose of it
10 properly because they have a conscience, because
11 they're good, God fearing members of the community.
12 But there are a great many people who are driven by
13 the economics of the business, and the economics of
14 the business drive the disposal entirely the wrong
15 direction. If the cost of transportation becomes
16 higher for smaller communities; if the level of
17 service becomes worse for smaller communities, then
18 there will be an enhanced incentive to dispose of the
19 waste improperly, to bury it on private land or
20 public land, or do something with it.

21 New Jersey, which is one of the few states
22 that does not regulate trucking, had syringes and
23 needles wash up on its shore. I don't know if there
24 is any correlation between the two, but the fact of
25 the matter is, the economics of disposing of this

1 kind of waste are such that it is -- it makes
2 economic sense, not social sense, but economic sense
3 to dispose of it in the cheapest way possible, and
4 that may well endanger not only the aesthetic beauty
5 of the land it pollutes, but also the health and
6 safety of the people who come into contact with it.

7 Q. Professor Dempsey, can a regulatory scheme,
8 such as Washington has for the collection of solid
9 waste, including infectious waste, succeed in
10 providing universal service to both urban and rural
11 areas at non-discriminatory rates if some of the
12 entrants in that market are regulated as to rates,
13 service, safety and others are not?

14 A. No, it certainly cannot succeed if there
15 are two groups of carriers; one which are regulated
16 and one which are not. The unregulated group will
17 engage in cream-skimming. They will go for the most
18 lucrative traffic depriving the established carriers,
19 who are, by the way, left with a common carrier
20 responsibility to provide their entire service
21 territories with just and reasonable rates with the
22 freight that is most attractive, the freight that is
23 easiest to pick up; the freight that is less costly
24 to transport, the freight that has a higher profit
25 margin. It will obliterate really the ability of the

1 regulated group to continue to provide that service.
2 What you will likely see over time is that the
3 regulated group will themselves either go out of
4 business, or try to become part of the unregulated
5 group because they have -- you know, they have to
6 make a profit in order to survive. They're owned by
7 private investors, and they can't -- their ability to
8 make a profit in a deregulated scheme is going to be
9 significantly impeded.

10 Q. Does the Washington regulatory scheme, in
11 your opinion, promote non-discriminatory pricing in
12 the provision of waste collection service?

13 A. Yes, it does so explicitly. It requires
14 that all rates charged shall be non-discriminatory;
15 that they shall be just and reasonable. It imposes a
16 common carrier obligation that carriers provide
17 service throughout their service territories, and it
18 regulates the safety of these companies providing
19 this service.

20 Q. Does that statutory scheme promote economic
21 efficiency?

22 A. Yes, actually, certainly better than the
23 federal system of total deregulation does. Moreover,
24 it advances a series of very important public
25 interest goals that are much more important than we

1 see in most modes of transportation. The statute
2 explicitly says that it is its purpose to protect
3 public health and safety, and to ensure solid waste
4 collection services are provided to all areas of the
5 state. I believe the statute was passed in 1985
6 after the state legislature had had an opportunity to
7 at least witness five years of the experience of
8 federal deregulation. To come back this strongly and
9 this affirmatively and recognize the significant
10 environmental health and safety problems that are
11 unique, somewhat unique to this industry, I think
12 expresses a great deal of wisdom on behalf of your
13 legislature.

14 Q. Without the regulatory scheme provided by
15 the Washington statute, do you have any opinion as to
16 whether rural areas will receive solid waste
17 collection service at a non-discriminatory rate?

18 A. They certainly will not at non-
19 discriminatory rates, and some of them will not
20 receive service at all. Again, some small
21 communities have lost transportation service in rural
22 areas of other kinds. You know, a farmer can always
23 get in his pickup truck and drive 50 or 100 miles and
24 buy a pickup load of fertilizer and take it back to
25 his farm, so there are other alternatives. But when

1 you're talking about the disposal of waste,
2 infectious waste, medical waste, there's going to be
3 every economic incentive in the world to do something
4 with it that shouldn't be done.

5 Q. One last question, Professor Dempsey: In
6 your opinion, is it possible to meet a state-wide
7 need -- and I, again, am referring to both rural and
8 urban needs -- for reasonably priced solid waste
9 collection service, including infectious waste by
10 allowing free market entry without any sort of rate
11 regulation?

12 A. No, it isn't. If you had no regulation at
13 all, you would have a highly discriminatory pricing
14 system. The service would be spotty. The economic
15 condition of the industry would be weak, and the
16 economic forces driving the disposal of waste in
17 entirely the wrong direction for purposes of public
18 health and safety would be stronger.

19 MR. SMITH: Thank you, Professor Dempsey.
20 Your Honor, I'd move for admission of
21 Exhibit No. 31 if I haven't done so already.

22 JUDGE ANDERL: You haven't. Any objection
23 to Exhibit 31?

24 MR. JOHNSON: I would like to ask you to
25 reserve ruling pending cross-examination.

1 JUDGE ANDERL: Okay. How much cross do you
2 have; can you give me a time estimate on your cross-
3 examination?

4 MR. JOHNSON: Well, first of all, I need to
5 have a little bit of time to look over what's been
6 presented.

7 JUDGE ANDERL: Why don't we take our
8 morning break, then, at least 15 minutes and
9 reconvene at quarter to 11:00.

10 (Morning recess taken.)

11 JUDGE ANDERL: We're back on the record
12 after our morning recess.

13 Mr. Johnson, we'll go to you for cross-
14 examination.

15

16 CROSS EXAMINATION

17 BY MR. JOHNSON:

18 Q. Professor Dempsey, your first degree from a
19 law school was awarded to you in 1975, is that
20 correct?

21 A. That's right.

22 Q. And immediately upon graduation, you went
23 to work for the Interstate Commerce Commission as an
24 attorney advisor?

25 A. Yes, sir.

1 Q. What were your duties as an attorney
2 advisor from '75 to '77? Apparently you -- yes,
3 that's my question.

4 A. I handled operating rights applications and
5 some rule making petitions in the area of trucking
6 and bus operations.

7 Q. Then in '77, you moved over to the Office
8 of General Counsel as an attorney advisor, but this
9 was a job with the CAB, is that correct?

10 A. That's correct.

11 Q. And who was the general counsel at that
12 time?

13 A. Phil Bakes, who subsequently became the
14 first man to bankrupt two airlines, first at
15 Continental and then at Eastern.

16 Q. He put his Interstate Commerce -- or, I
17 mean, CAB knowledge to work, or regulatory knowledge
18 to work and failed, is that right?

19 A. He was a fervent proponent of deregulation.
20 That's what he put to work.

21 Q. Then you became -- there was a hiatus there
22 between '79 and '81 that apparently you went to
23 Denver College of Law at that time?

24 A. That's correct.

25 Q. As an associate professor?

1 A. That's right, an assistant professor --
2 well, I can't remember. Assistant, then associate,
3 and then ultimately full.

4 Q. I see. And then you took a leave of
5 absence from that position, apparently from '81 to
6 '82, to serve as legal advisor to the chairman of the
7 ICC?

8 A. Yes, that's right.

9 Q. Who was the chairman at that time?

10 A. Reese Taylor.

11 Q. Are you currently a member of the
12 Transportation Lawyers Association?

13 A. Yes, I am.

14 Q. And you receive their distinguished service
15 award in 1986?

16 A. That's correct.

17 Q. And is that association made up primarily
18 of lawyers who represent trucking companies and other
19 transportation entities?

20 A. Yes, predominantly trucking, but also the
21 other modes and not just U.S. attorneys, also
22 Canadian attorneys.

23 Q. And they were formerly called the -- the
24 association was formerly called the Motor Carrier
25 Lawyers Association, you told us?

1 A. Yes, sir.

2 Q. That change in name suggests a little
3 broader interest than simply motor carriers, is that
4 true?

5 A. Uh huh, there was a recognition that the
6 practice of law had changed, and also an effort to
7 diversify membership.

8 Q. This Exhibit 31, the article contained in
9 it was copyrighted in 1991. Over what period of time
10 did you actually write that?

11 A. I would be guessing. I would probably say
12 1988 and '89, or '89 and '90; somewhere in there.

13 Q. Now in getting together your data for that
14 article, you focused primarily on the effects -- not
15 entirely -- but primarily on the effects which
16 regulation has on carriers as opposed to shippers, is
17 that --

18 A. No, no, I don't think that's right. I
19 spend a good deal of time talking about the impact on
20 small shippers and upon small communities as well.

21 Q. Of the total volume of freight that moves
22 in this country, how much moves to or from -- what
23 percentage moves to or from small -- what you would
24 characterize as small communities; less than one
25 percent?

1 A. I would only be guessing, but my guess
2 would be it would be larger than that. I don't know
3 the precise percentages.

4 Q. Now is it your position that a small
5 community is deserving of rates which are non-
6 compensatory to the carrier?

7 A. It is my position that all regions of the
8 country ought to have ubiquitous and reasonably
9 priced transportation service, as well as tele-
10 communication service and electric power service for
11 both economic and social reasons.

12 Q. What is a "reasonably priced service"; how
13 does it -- what is its relationship to cost of
14 providing service; is it less than the cost of
15 providing service in some cases?

16 A. Well, as Ross Perot says, "There's no way
17 to sound bite that." The cost of providing service
18 is a complicated factor. You're talking about fixed
19 costs, marginal cost, or a combination of the two
20 being fully allocated costs. I think, in some
21 instances, what you have seen is that regulatory
22 commissions have allowed carriers to have a service
23 territory that includes both lucrative and less
24 remunerative regions, and expects them to cross-
25 subsidize internally the costs of providing the

1 service and the revenue to cover the full cost of
2 providing service so that in the aggregate, the
3 carrier is a profitable enterprise.

4 And with respect to particular communities,
5 or users of the service, they each provide -- have
6 some equitable access to that, again, circulatory
7 system of the country, that they can buy the same
8 products and have the same opportunities to enter the
9 market with respect to the products that they've
10 reduced in that broader market for the sale of
11 commodities.

12 Q. But if a -- let's say a doctor's office in
13 an area that's 120 miles from the nearest provider of
14 service in the transportation of medical waste,
15 should that office expect as frequent and as
16 reasonably priced service from a medical waste hauler
17 as the doctor's office that's located in a
18 metropolitan area near many other doctors' offices
19 whose medical waste can be picked up in a single
20 morning?

21 A. Within reason, yes. The one circumstance
22 that the regulatory would want to guard against is a
23 pricing or a service disadvantage such that the
24 doctor who lives in the rural area would have an
25 incentive to dispose of the waste improperly.

1 Q. Have you ever written any books or articles
2 dealing with medical waste?

3 A. No, I have not.

4 Q. Have you ever studied medical waste haulers
5 and their particular problems?

6 A. In preparation for this testimony, I
7 studied them a bit. I would say that there are other
8 areas of transportation that I'm more familiar with
9 than medical waste haulers.

10 Q. Are you aware that there are -- that
11 virtually the entire map of the state of Washington
12 is covered by -- each point is covered by at least
13 one garbage hauler who has the authority under his
14 garbage certificate to handle medical waste?

15 A. No, I'm not aware of that.

16 Q. Looking at page 260, I note that there's a
17 statement that: "Today, much of North American is
18 dominated by its four largest trucking companies,
19 i.e. United Parcel Service, Yellow, Consolidated
20 Freightways and Roadway, or its single bus company,
21 Greyhound."

22 In looking at your tables of the named
23 trucking companies back on, for instance, page 317, I
24 see Consolidated, Roadway, Yellow all mentioned, not
25 United Parcel. Is that because United Parcel was in

1 a different category and not included in the lists
2 that are reflected here?

3 A. Yes, this chart was not prepared by me, but
4 frequently, United Parcel Service is segregated out
5 because it has a different product line. Its product
6 line predominantly is parcels which basically compete
7 with the U.S. Postal Service as opposed to LTL
8 service which generally handles larger packages and
9 larger volume shipments.

10 Q. And you would agree, would you not, that
11 those same carriers, or major carriers, are the same
12 trucking companies or major companies when
13 deregulation came to the Interstate Commerce
14 Commission?

15 A. United Parcel Service was?

16 Q. Yes.

17 A. Yes, I would agree.

18 Q. And the others, Yellow and so on?

19 A. Yes.

20 Q. And on page 264, you state that: "Between
21 1983 and '88, the Interstate Commerce Commission
22 approved ten general rate increases, totalling 51.3
23 percent."

24 Now do you know how those increases
25 compared with the general trend of pricing in other

1 industries, or products or services?

2 A. It is my belief that that is significantly
3 higher than the inflation rate during those years in
4 question, the Consumer Price Index. I don't believe
5 it increased 50 percent but in those five or six
6 years.

7 Q. Now those rate increases, the rates that
8 applied to carriers that were just -- to large
9 carriers, or many, many carriers operating to whom
10 those rates didn't apply, isn't that correct?

11 A. It's my understanding that those rates are
12 universal; they're applicable to all carriers who
13 participated in them.

14 Q. Who participated. But don't most,
15 numerically at least, carriers publish their own
16 rates and they're not subject to these general rates?

17 A. I would have to say that these are the
18 rates that were filed by the major rate bureaus, and
19 all member carriers represented in those rates which
20 must account for -- although, numerically, not the
21 largest number of carriers, certainly by volume
22 measured any way you want -- by the lion's share of
23 the nation's freight.

24 Q. And you indicate a large number of -- I'm
25 unable to put my finger on the point right now -- but

1 a large number of certificates were granted in the
2 years following 1980. Would you agree that many,
3 many -- a large percentage of those were granted to
4 single truck operators?

5 A. Yes, and I should add one other thing, that
6 although my chart which shows the number of
7 bankruptcies being a thousand a year, each and every
8 year since 1983, which is on page 271, that's
9 understated because the Interstate Commerce
10 Commission has revoked 20,000 certificates for
11 failure to file insurance, so that a huge proportion
12 -- a huge number of the carriers which have received
13 operating authority either have gone into bankruptcy,
14 or have ceased operations without going into
15 bankruptcy, or have never started up.

16 Q. So those figures that relate to the number
17 of carriers are really not very meaningful, are they?

18 A. No, and as I point out in a section of the
19 piece, the industry is becoming more concentrated.
20 The meaningful players in this industry are becoming
21 fewer and fewer, so that a number of these carriers
22 which do receive operating authority don't last.
23 However, in the short term, they do take away freight
24 from established carriers.

25 Q. Can you tell me if any large carrier

1 organizations, such as the trucking industry, those
2 which represent the trucking industry, are making any
3 significant efforts to reregulate the industry?

4 A. No, the American Trucking Association is a
5 fractured organization politically on this issue.
6 There are large carriers that believe that they will
7 survive. There are some small carriers that believe
8 that they will grow. There are other carriers that
9 are worried and concerned. A number of carriers
10 basically have their hands full trying to stay alive
11 and don't have time for the politics of this issue at
12 all. But basically, the American Trucking
13 Association has been neutralized on this issue
14 politically, although the trucking industry, more
15 generally, has expressed resistance to further
16 deregulation; for example, federal pre-emption of
17 intrastate regulation, and I should add elimination
18 of the filed rate docket in light of the Supreme
19 Court's decision in Maislen.

20 Q. I saw an article in the Seattle Post
21 Intelligencer just two days ago which describe a
22 couple of decisions that I haven't -- I don't have
23 the decisions, but it suggests -- it says that, "The
24 Supreme Court set aside a ruling yesterday that would
25 have let people bump from over-selling the airline

1 flights sue under state law and collect monetary
2 damages, and this Justice has said a Federal Appeals
3 Court should restudy its ruling in a Montana case in
4 light of their decision last week that federal law
5 preempts states from regulating various aspects of
6 the airline industry." And then it talks about
7 trucking decisions, also.

8 Are you aware of the decisions that are
9 referred to in that article?

10 A. Yes, I haven't read them either, but I have
11 read the summaries of them in the press. But I
12 should add that the Airline Deregulation Act includes
13 a specific pre-emption provision in it, explicitly
14 preempting the states from regulating air
15 transportation.

16 Q. But the article goes on to say the Court,
17 without -- well, let's see -- "In a separate order
18 yesterday, the high court also refused to let
19 California, and by extension, at least eight other
20 states, including Washington, impose fees or other
21 forms of economic regulation on federal express
22 trucking operations. The court, without comment,
23 left intact the ruling that states such state
24 regulation, even for trucks that never leave the
25 state, is preempted by federal law."

1 You haven't seen that decision either?

2 A. I have not, but it was my understanding
3 they simply denied certiorari, not that they issued
4 an opinion. And a Denial of Certiorari, as you well
5 know, doesn't mean that the court affirms the lower
6 court's decision. It may well mean that their docket
7 is so congested that they prefer to deal with other
8 issues right now.

9 Q. But you don't know what the situation is
10 there?

11 A. I've talked with people in the news media
12 about it who have asked me to comment, and they all
13 told me that it was a Denial of Certiorari.

14 Q. Now you talk about the increase in
15 bankruptcies, but it's true, is it not, that the
16 business and personal bankruptcies generally have
17 been increasing over the last few years at a rapid
18 rate?

19 A. Yes, our federal policy over the last
20 decade has had a significant impact upon American
21 industry generally; but, again, I refer to page 274
22 where you see the failure rate of trucking being much
23 worse than that in the post-deregulation period than
24 that of all American industry. Yes, it went up for
25 all industry. It just went up a whole lot worse for

1 trucking.

2 Q. Of course, the bankruptcy of a one truck
3 operator and one with 5,000 trucks, they're each
4 treated as one concern in these figures, are they
5 not?

6 A. Well, so are small business, vis a vis
7 Fortune 500 corporations.

8 Q. The average number of trucks operated per
9 carrier back in 1979, say, was a lot greater than the
10 average number of trucks operated by today's
11 carriers?

12 A. I wouldn't know. There are so many
13 carriers certificated that that would make the
14 numerator or the denominator -- I don't know which -
15 - but it would make it very large.

16 Q. Now as far as safety is concerned, the
17 economic -- the federal government under its
18 Environmental Protection Laws, regulates safety
19 factors as far as the handling of hazardous waste of
20 all kinds, does it not?

21 A. The federal government does have a
22 regulatory structure under which it regulates all
23 trucking, and it regulates the movement of hazardous
24 materials more stringently. One of the things that
25 the federal government has tried to do for all

1 trucking is under the Federal Highway Assistance
2 Program provide the states with revenue whereby they
3 can monitor the safety of trucks on the highway.

4 What some states have found in the recent
5 years in just a random audit of trucks is that in
6 some states, up to 60 percent of the drivers or the
7 vehicles were so unfit that they were pulled
8 completely off the highway.

9 Q. Hasn't that been going on for a lot longer
10 than just the period of deregulation?

11 A. No, these figures are much worse than they
12 were prior to deregulation. Certainly, safety has
13 always been a genuine concern of government with
14 respect to transportation. I remember reading that,
15 I believe, the first two automobiles in Ohio collided
16 on dirt roads. The problem is that the margin of
17 safety seems to be deteriorating.

18 Q. Now most of this data that you've collected
19 and show reflected in various graphs and so on, does
20 that relate to the operation of large trucks which
21 travel many, many miles -- a large number of miles
22 per day, and we're not talking about the same kind of
23 vehicles, like little vans that people use to pick up
24 medical waste?

25 A. Well, some of the charts refer to the

1 general freight sector of the industry, and those are
2 generally larger companies. But some of the other
3 charts refer to the industry more generally, and that
4 includes all companies, large and small, to include
5 truckload operations, less than truckload operations,
6 carriers of various sizes in terms of fleet sizes; in
7 terms of stage lengths, and in terms of operating
8 revenue.

9 Q. How does the requiring of a Certificate of
10 Public Convenience and Necessity impact the safety of
11 operations by a carrier?

12 A. Well, in the determination of whether or
13 not the public convenience and necessity exists, the
14 regulatory authority has some responsibility to take
15 a look at the market factors and ensure that the
16 industry isn't flooded with so much capacity that the
17 carriers will not be able to earn a reasonable return
18 on their investment. That's part of what the
19 regulatory authority does. By issuing a certificate,
20 they insure that the carrier continues to provide
21 ubiquitous service under its common carrier
22 obligations. To the extent that there are regulatory
23 problems which arise, safety or otherwise,
24 discriminatory pricing otherwise, there is always the
25 possibility of revoking or suspending that license

1 and putting the carrier out of business.

2 So both in terms of determining which
3 carriers shall go through the gate and making sure
4 that only those that are responsible, have a good
5 safety record, are fit, and there's an economic need
6 for the provision of their service; and on the back-
7 end, by potentially re-revoking the certificate, they
8 ensure that carriers maintain operations that are
9 safe, adequate, dependable and reasonably priced.

10 Q. Now you, as a transportation lawyer -- I'm
11 not talking about medical waste in particular now,
12 I'm talking about trucking operations -- you would
13 agree that a carrier whose operations are interstate
14 in nature and is regulated by the Interstate Commerce
15 Commission, that those -- even though that regulation
16 may be not economic regulation in the sense that we
17 used to know -- that those carriers are not subject
18 to regulation in their interstate operations by any
19 individual state, are they?

20 A. It's my understanding the ICC has exempted
21 waste haulers from its jurisdiction so that they are
22 not regulated at the federal level at all.

23 Q. No, they aren't. But the -- I mean, you've
24 stated that the haulers of other commodities, say, a
25 pickup and delivery carrier; this is picking up and

1 delivering freight to the line that's going to take
2 it in interstate commerce. Now their operations are
3 not subject to state regulation, are they, to the
4 extent that they are interstate in nature?

5 A. A carrier which is certificated by the
6 Interstate Commerce Commission to operate in
7 interstate commerce, to the extent that it actually
8 is operating in interstate commerce, is exempt from
9 regulation by the state governments. But I want to
10 point out one difference: In the regulatory
11 structure in the Interstate Commerce Act versus the
12 Airline Deregulation Act which you spoke about
13 earlier, the Airline Deregulation Act of 1978
14 included a specific, explicit provision preempting
15 the states from regulating air operations. The
16 Interstate Commerce Act does something quite
17 different. It provides an explicit exemption for
18 intrastate operations from the jurisdiction of the
19 Interstate Commerce Commission, in the same way that
20 the Federal Communications Act of 1934 provides a
21 similar exemption from federal regulation for the
22 states, so that we've got a different regulatory
23 structure here. And the real question is whether or
24 not the operations are interstate or intrastate in
25 nature, and that's --

1 Q. But what I'm talking --

2 A. Go ahead.

3 Q. What I'm talking about are those carriers
4 that provide service, pick-up and delivery service,
5 under the exemptions. They don't have a certificate
6 from the Commission at all. They're providing as an
7 exempt hauler. Now the state has no jurisdiction
8 over those carriers, does it, as far as economic
9 regulation is concerned?

10 A. It may very well. There is no explicit
11 pre-emption. The question is what is the burden on
12 Interstate Commerce imposed by the state with respect
13 to its regulation.

14 Q. But you wouldn't have the state impose --
15 or the state's regulations with respect to medical
16 waste apply, even to interstate operations, simply
17 because the federal government has seen fit not to
18 regulate?

19 A. You're asking what I would do if I were in
20 a position of --

21 Q. I mean, that's what you're asking in this
22 proceeding, in effect; you're supporting the position
23 that the activity should be regulated.

24 A. Would you restate the position you think
25 I'm taking?

1 Q. Well, carriers who provide service under -
2 - say, pick-up and delivery service of general
3 freight. Then their operations are not economically
4 regulated by the state authority.

5 A. Well, they are to the extent that they are
6 intrastate in nature.

7 Q. Well, but it doesn't make them intrastate
8 simply that the operations are within the borders of
9 the state?

10 A. If their operations -- if they pick up in
11 one part of the state and deliver it to the other,
12 they may well be operating in intrastate commerce and
13 are not exempt from the jurisdiction of the State
14 Public Utilities Commission.

15 Q. You don't agree there are such things as
16 carriers who never leave the state who service as
17 strictly interstate, then?

18 A. The Interstate Commerce Commission has
19 taken the opinion in some of its recent decisions,
20 beginning with Armstrong, that there is such a
21 phenomenon. It's my understanding the Circuits are
22 split on this question. The Supreme Court has not
23 decided it. It is my view that the traditional view
24 of the Commission; that is, you look to the fixed and
25 persisting intent of the shipper at the time of the

1 shipment to determine whether or not any movement
2 which has a prior or subsequent movement in
3 interstate commerce determines whether or not the
4 movement is in interstate or intrastate commerce. I
5 believe that that is prudent law.

6 Q. Well, you don't believe, then, that the
7 intent at the time the shipment is made determines
8 whether or not its interstate or intrastate?

9 A. I think that's one variable. It certainly
10 is one variable.

11 Q. You mentioned the New Jersey situation
12 where medical waste was found washing up on the
13 shores. What is your understanding as to what
14 experts stated as to where that was coming from?
15 That waste wasn't coming from points in New Jersey in
16 many cases, was it?

17 A. So it was interstate commerce?

18 Q. Yeah, because much of it was coming from
19 New England, was it not?

20 A. Okay, I will concede that. It was
21 interstate commerce.

22 Q. And the fact that New Jersey is not
23 regulated had nothing to do with --

24 A. No, and I said at the time that I was not
25 making any assessment of the correlation between the

1 two.

2 Q. I see. But can you relate any instances
3 that come to your attention where there have been
4 adverse safety episodes that have come about due to
5 the lack of regulation of movement of the medical
6 waste?

7 A. No, but that doesn't mean that there's not
8 a compelling state interest to prohibit them from
9 occurring.

10 Q. What did you do to prepare for your
11 testimony in this case other than to examine the
12 Washington laws on the subject of solid waste?

13 A. I read prior decisions of this Commission
14 on the issue of waste transportation. I studied the
15 statutes and regulations. I took a look at a summary
16 of the evidence which has been adduced in this case,
17 and I read the West Virginia decision handed down by
18 the Federal District Court.

19 MR. JOHNSON: I don't think I have any
20 further questions.

21 JUDGE ANDERL: We go to the intervenors,
22 then. Mr. Hartman?

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CROSS EXAMINATION

BY MR. HARTMAN:

Q. Professor Dempsey, I enjoyed your comments very much. I must say that when you talk about the bottom lines of the motor carriers, when I think of deregulation, I'm more concerned with bread lines. But when you get down to the point of what the effect is on the Commission's probable action in this cause, we're talking basically about a complaint case here where the product has been moving out of state, allegedly for the purpose of avoiding state regulation. Do you understand that that's basically the nature of this case?

A. Yes, I do.

Q. And the transportation here involved could have apparently occurred in-state because of the disposal site in the state, and that has been converted to an interstate move to avoid that regulation, at least those are the allegations.

When the transportation is converted in this sense to interstate, I'm curious as to your impression of the right of the state to interfere.

A. There is no explicit pre-emption. The Interstate Commerce Commission has exempted this type of product from its jurisdiction. So then the only

1 question is a constitutional one, which is whether or
2 not it is an unreasonable interference on interstate
3 commerce for the state to foster its objectives of
4 protecting the safety and health and well-being of
5 its citizens.

6 On the state side, you asked the question
7 what is the state's purpose; what's the legitimate
8 state interest? The legitimate state interest here,
9 as is expressed in the statute, is to protect the
10 safety and health of its citizens.

11 There is no effort here to engage in, as
12 far as I've been able to see, favoritism with respect
13 to in-state companies. I believe all the parties
14 that are relevant to this proceeding are in-state
15 companies. It's also my understanding that this
16 commerce, this waste, will continue to move to
17 California if it is determined that the operations at
18 question here are unlawful.

19 So the commerce -- there's no inhibition on
20 either the commodity moving in interstate commerce;
21 the parties, both out of state and in-state parties,
22 have equal access to the State Public Utilities
23 Commission's procedures to apply for operating
24 authority. This is a very weak case that there's any
25 sort of burden on Interstate Commerce here. There

1 clearly is no favoritism, so the Pennsylvania vs. New
2 Jersey rule doesn't apply. There's no virtual per se
3 rule of invalidity.

4 Q. Well, would you say the ultimate result,
5 then, in this particular case would be that the
6 Commission could adjoin them in transporting the
7 waste out of state?

8 A. Yes, as it could any carrier operating
9 without a certificate.

10 Q. As far as the transportation of waste out
11 of state, you had indicated that you had reviewed
12 certain cases decided by this Commission. I wonder,
13 sir, if you could advise us of which cases those
14 were?

15 A. If you let me go to my briefcase.

16 Q. Certainly.

17 A. In the Matter of Evergreen Waste Systems
18 before the Washington Utilities and Transportation
19 Commission; In the Matter of Superior Refuge Removal
20 Corporation; this proceeding of course, Enoch
21 Rowland, Kleenwell Biohazard; and then these West
22 Virginia cases, Medigen of Kentucky.

23 Q. That was it?

24 A. That's it.

25 Q. You weren't given, say, The All Counties

1 Disposal Cause?

2 A. No.

3 Q. As far as American Environmental's decision
4 before this Commission, or that of Sure-Way, did you
5 have an opportunity to review those?

6 A. I have not.

7 Q. The disposition in those cases, and I
8 believe it was touched on in Evergreen, is it your
9 understanding Evergreen had anything to do with the
10 transportation of medical infectious waste, or just
11 garbage in general?

12 A. I think it was just garbage.

13 Q. And that the other cases that I cited,
14 the American Environmental and Sure-Way Incineration
15 cases, had more to do with the transportation of this
16 specific product we're here discussing; and in those
17 cases, one of the carriers was transporting out of
18 state to begin with. That was the intention. And as
19 part of its case before the Commission, it stated
20 that it was hauling to its own facility at that time
21 in Rancho Cordova, California.

22 The other carrier, Sure-Way Incineration,
23 had applied for disposal sites within the state of
24 Washington, and the Commission more or less stated
25 that as a result of its decision, although the

1 application was denied, that it applied for authority
2 for a local facility that could not transport its
3 waste out of the state.

4 But in respect to those two instances,
5 would it be your assumption that the Commission had
6 extended its jurisdiction to regulate the commerce
7 beyond its borders?

8 MR. FINNIGAN: I object.

9 MR. WILEY: Your Honor, I'm going to object
10 to the form of this question. Mr. Finnigan, I'll let
11 go first, I'm sorry.

12 MR. FINNIGAN: First of all, I'm going to
13 object because I believe that's a mischaracterization
14 of the holdings in those two cases. The holdings
15 went to the form of the application where the
16 applications themselves listed in them the disposal
17 sites, and the applicant had restricted themselves by
18 their application. So the premise for Mr. Hartman's
19 question is erroneous.

20 MR. WILEY: Your Honor, my objection is to
21 the form of the question, similar to Mr. Finnigan's
22 objection; but, also, to a mis-statement in the form
23 of the question relating to American Environmental
24 Management Corporation, my client, which did not ask
25 for authority to Rancho Cordova, but restricted its

1 application to facilities owned and/or operated by
2 American Environmental Management Corporation
3 disposal facility, not identifying by its application
4 where those were located. And we've had that issue
5 arise on the previous day of hearing.

6 I want it very clear, Your Honor, that we
7 did not seek jurisdiction for disposal in California,
8 but at the present time, that's the only facility we
9 had. That did not limit us to disposing in
10 Washington or in any other state if it was our owned
11 or operated facility, so that's a mis-statement of
12 the premise of the application.

13 JUDGE ANDERL: Mr. Hartman?

14 MR. HARTMAN: I don't believe that the
15 objections are at all well founded in the context of
16 my statement before -- the Commission had the record
17 before the American Environmental case as to what the
18 transportation was and where it was being
19 transported, and I think that was the context of my
20 question as to the record revealed in the case, was
21 it was being transported out of state. That's all I
22 was intending to do. I think it's immaterial that
23 they had authority also to haul to any other
24 facilities if they only had one, and that was the one
25 that was identified on the record.

1 As far as the other comment by Mr.
2 Finnigan, I disagree with his characterization of the
3 record, and I think I correctly stated it.

4 But, in any event, accepting it even as a
5 hypothetical that it was revealed on the record in
6 American Environmental that the product was going out
7 of state, and that in respect to Sure-Way, the
8 Commission did state that it would be precluded from
9 transporting out of state because of the nature of
10 its application, my question still stands as to
11 whether or not he would -- in his opinion, that would
12 constitute an effort on the part of this Commission
13 to regulate the movement of commerce beyond the
14 state.

15 JUDGE ANDERL: Does that satisfy your
16 objections?

17 MR. FINNIGAN: Well, he just asked the same
18 question again, and my objection still stands that
19 the question that he's asking was not a question
20 before the Commission because the Commission was
21 prescribed by the form of the applications that was
22 submitted by the applicants rather than resolving the
23 jurisdictional question.

24 JUDGE ANDERL: Well, I don't know,
25 actually, that that's -- I'm sure Professor Dempsey

1 can tell us whether he has enough information to
2 answer the question.

3 THE WITNESS: That's the problem.

4 JUDGE ANDERL: He's already admitted that
5 he hasn't had an opportunity to read either of those
6 orders. I know that they are both quite lengthy, and
7 I don't know if that question even gives him a fair
8 enough background to be able to formulate an answer.

9 I think I'll sustain the objection to the
10 question.

11 MR. HARTMAN: I'm willing to ask the -- let
12 me ask the witness:

13 BY MR. HARTMAN:

14 Q. What part of the question do you find to be
15 unclear or make it impossible for you to answer?

16 MR. SELLS: Well, Your Honor, I'm going to
17 object to that question. Your Honor has already
18 ruled. If it's a hypothetical question, it assumes
19 facts that are not in evidence, and it's asking this
20 witness to comment on something that is not a part of
21 this record that he's never read and he's testified
22 he hasn't read, too. It's beyond the scope of
23 direct, if nothing else.

24 MR. SMITH: Your Honor, I would have to
25 agree. I'm willing to let Professor Dempsey answer

1 if he wishes, but it's a bit unfair to ask this
2 witness what he assumes the Commission meant based on
3 Mr. Hartman's summary of the decisions in those
4 cases.

5 JUDGE ANDERL: Yes, and that was the
6 problem that I had was just knowing the complexity
7 and the length of those orders, that I didn't think
8 an answer that Professor Dempsey could make based on
9 that summary would even be fair, or accurate or
10 relevant.

11 MR. HARTMAN: Well, my hypothetical is
12 based strictly upon orders published by this
13 Commission, and so, in that context, it is not
14 objectionable. As far as the parties are concerned,
15 they're always entitled to question the hypothetical
16 and put in additional facts, but I am entitled to ask
17 a hypothetical question that is related to the issue
18 in this proceeding.

19 MR. SELLS: Not if it's based upon
20 documents that; a) counsel is interpreting and we
21 disagree with that interpretation; and b) the witness
22 has never seen or heard of.

23 JUDGE ANDERL: As I said, I've sustained
24 the objection to that question, so let's move on.

25 MR. HARTMAN: Then let me put it in this

1 context:

2 BY MR. HARTMAN:

3 Q. What is your understanding from your review
4 as to where the medical waste transported in this
5 state is destined?

6 A. California.

7 MR. SMITH: I have a clarification. You
8 mean by Kleenwell?

9 JUDGE ANDERL: I don't -- which did you
10 mean, Mr. Hartman?

11 MR. HARTMAN: My question was to medical
12 waste in general.

13 A. Oh, to medical waste in general, I don't
14 know. With respect to Kleenwell, it's my
15 understanding it goes to California.

16 BY MR. HARTMAN:

17 Q. And as far as the facilities for the
18 handling of medical waste within the state of
19 Washington, do you have any conception of what
20 facilities are available?

21 A. I understand that there are facilities that
22 are available in the state of Washington that would
23 handle the waste that is being transported by
24 Kleenwell.

25 Q. And what is your understanding as to what

1 facilities are available?

2 A. The name of the facilities, I don't know.
3 I just understand that there are facilities
4 available.

5 Q. And are you aware of the fact that each of
6 the transporters of medical infectious waste under
7 the rules of the Commission must have on, or at least
8 available for inspection, a medical waste infectious
9 control program that designates their point of
10 destruction?

11 A. I was not aware of that.

12 Q. And are you aware also that they have to
13 have contingency plans in case something happens with
14 their immediate or approved site that they have to be
15 able to transport it to another point for destruction
16 and disposal?

17 A. I was not aware of that either.

18 Q. If the facilities in the state of
19 Washington should be closed or become inadequate and
20 the transportation had to occur for disposal out of
21 the state because of that emergency, what effect does
22 that have, in your opinion, on the character of the
23 transportation, as to whether it remains intrastate
24 or interstate?

25 A. Again, it depends on a constitutional

1 analysis; weighing and balancing the state interests,
2 vis a vis the burden on Interstate Commerce. You
3 will recall in the Maine Bait Fish case, the Supreme
4 Court upheld a regulation by the State of Maine to
5 prohibit the importation of all bait fish because
6 there was a concern about the disease that the bait
7 fish carried, and the impact that disease could have
8 on fish in the state of Maine.

9 Here we have infectious waste that doesn't
10 affect something as innocuous as bait fish, but could
11 potentially affect human beings. There is a
12 legitimate state interest in protecting the safety,
13 and health and welfare of the citizens of this, or
14 any other state.

15 It has traditionally been sanctioned under
16 the police power of the state, since the beginning of
17 our republic. So the state interest here with
18 respect to protecting the health of its citizens is
19 strong. Then you would have to assess the burden on
20 Interstate Commerce. I could imagine an analysis
21 which would require regulation and certification of
22 all carriers in order to protect the safety and
23 health of its citizens, irrespective of where the
24 waste was dumped.

25 Q. And that gets to my question. Is there a

1 distinction between disposal and the collection of
2 the waste within the state, where the state can have
3 jurisdiction over one and not the other?

4 A. I don't think so. I think it only goes to
5 the question of what the burden on Interstate
6 Commerce is. When I teach constitutional law, I draw
7 the scales of justice on the blackboard, and I say
8 you put some things on one side of the scales and
9 some things on the other side of the scales when
10 you're doing this kind of analysis, and that has to
11 do with the burden of Interstate Commerce side of the
12 scales. It is if you are restricting the places
13 where this thing can be picked up, or you are
14 restricting the places where this thing can be
15 disposed of, or you're restricting the highways over
16 which it can be moved, or all of the above; the more
17 of those things you have, the more of a burden you
18 have on interstate commerce if, indeed, the thing
19 crosses the state line, or if, indeed, the provider
20 of the service is an out-of-state firm.

21 So there is no cut and dry -- you know,
22 again, I can't give you a sound bite. There is no
23 cut and dry answer. If you play with the variables,
24 you have more of a case that this is implicitly
25 preempted under Article I, Section 8 of the

1 Constitution. But, again, we have a legitimate state
2 interest here that is stronger than most we will ever
3 see in constitutional analysis, and it is to protect
4 the people of the state of Washington from the spread
5 of communicable diseases.

6 Q. I'm not arguing that point, which I accept
7 that there is a legitimate state interest in the
8 preservation of health and welfare, and that's always
9 been one of the constitutional tests of how far a
10 state will go in exercising jurisdiction over
11 commerce.

12 My question is still if the -- is there --
13 well, in a case you read, I believe, the Evergreen
14 case, they made a distinction, if I recall that case
15 correctly, of the collection service conducted, the
16 garbage and refuse collection service which is
17 defined in the Washington statutes, and disposal; and
18 the language of the Commission that it does not
19 control or regulate disposal sites, only the
20 collection service.

21 Viewing it in that context, if I have
22 correctly stated that case in your understanding, is
23 there a situation where there are, in fact, two areas
24 of commerce here: one of which the state can regulate
25 and one of which it does not or couldn't?

1 A. No, not from a constitutional perspective.
2 If the statute lends itself to regulation only of the
3 transportation, then it is so statutorily
4 constrained, but not constitutionally constrained.
5 And certainly, a part of the reason that we have, or
6 the state of Washington has imposed regulation upon
7 the transportation of waste, is to avoid a disposal
8 which could endanger the health and well-being of its
9 citizens. So there is some concern here over
10 improper disposal. Indirectly, disposal is being
11 regulated by regulating its transportation.

12 Q. And that's the area I think my question is
13 going to. To the point when we get down to the
14 mechanics of how it is done, the certificate that
15 would be issued to a carrier for the transportation
16 of waste, if it be unrestricted and allows him to
17 engage or to dispose of it at any point where you
18 have the permitted facility, and that facility is out
19 of the state, I guess you're saying that the state
20 has a right, in some context, to regulate that
21 disposal effort and be assured in its mind that the
22 disposal out of state is occurring at an appropriate
23 and licensed facility, and in a manner acceptable to
24 the state jurisdiction?

25 A. Within reason, yes.

1 Q. The other questions I have are a little
2 less substantive. I am looking at your Exhibit No.
3 31, if I may, and the last appendices there -- it's
4 all kind of like looking down an old memory list of
5 old friends -- I take it on the last -- page 315,
6 that's comparable to what's shown on 317; it's an
7 attempt to list the same carriers, only eliminate
8 those who have gone bankrupt and out of business?

9 A. That's right.

10 Q. I notice, if we brought it more current,
11 aren't we losing a few others?

12 A. Yeah, I believe so.

13 Q. In fact, Garrett Freightlines is now out of
14 business, ANR; and hasn't Pacific Air Mountain
15 Express closed up?

16 A. Yes. If you turn to page 319, I tried to
17 take it up to 1990, but even that is too generous a
18 list today, as you're correctly pointing out. PIE
19 and Transcon, I believe, are both gone.

20 MR. HARTMAN: Those are all my questions.
21 Thank you.

22 JUDGE ANDERL: Mr. Finnigan?

23 MR. FINNIGAN: Thank you.

24 ///

25 ///

1 CROSS EXAMINATION

2 BY MR. FINNIGAN:

3 Q. Mr. Dempsey, if I were to summarize your
4 testimony, one of the elements of your testimony is
5 that the deregulation experiment undertaken at the
6 federal level has not been a success. Would that be
7 one of the points of your testimony?

8 A. Yes. It has been a success for some users
9 of the system. It has been a success for Fortune 500
10 companies. It may, in the long-term, be a success
11 for certain large carriers. But for smaller users of
12 the system, remote geographic locations, for labor,
13 workers in the system, stockholders, investors by and
14 large, and most companies, it has not been a success.

15 Q. And on balance, if it's a success for some
16 and not a success for others, on balance, in terms of
17 the U.S. economy and the societal good for the U.S.,
18 how would you characterize the deregulatory
19 experiment?

20 A. My own view is that we need a strong
21 infrastructure which has an adequate level of
22 investment to provide a continuation of the growth
23 and productivity that we saw before deregulation. We
24 need a system which is expeditious, a high level of
25 service provided at a fair price for all users of the

1 system, and it is my view that neither these
2 economicals, nor indeed the social goals, trying to
3 make sure that rural and smaller users of the system
4 are treated fairly are being accomplished under this
5 regime of advocacy of government oversight.

6 Q. I take it also from your testimony, then,
7 that there are some elements of the nation's
8 infrastructure, such as transportation; and I believe
9 you also mentioned telecommunications and
10 electricity, provisional electricity, that are, in
11 your opinion, areas which should not be economically
12 deregulated, which should be subject to the powers of
13 the state to control entry and --

14 MR. JOHNSON: Objected to as immaterial and
15 irrelevant. I know it's fun to question an expert,
16 but to question him in the areas that have no
17 relationship to whether or not transportation of
18 medical waste is properly affected by the --

19 MR. FINNIGAN: That was --

20 MR. JOHNSON: -- state regulations, I just
21 don't see how -- we're now going too far afield.

22 MR. FINNIGAN: Well, I was trying to
23 summarize his testimony. That was actually a
24 preliminary question. The next question would be is
25 medical waste disposal one of those areas.

1 JUDGE ANDERL: I'll allow the question.

2 BY MR. FINNIGAN:

3 Q. Do you have the question in mind?

4 A. The one you asked earlier?

5 Q. The one just before the objection, yes.

6 A. Yes. In my view, the transportation,
7 communications and energy are the infrastructure of
8 the nation. They are the foundation for economic
9 growth, for commerce, communications and national
10 defense. If you think about -- take a look at the
11 World Bank. When the World Bank decides whether it's
12 going to give money to a particular country to
13 encourage them to grow out of the sort of medieval
14 economic culture in which they exist, they will
15 provide economic assistance for transportation,
16 energy and communications first because without that
17 infrastructure, you don't have economic growth.

18 Now traditionally, we've had the best
19 system of transportation in the world. In the
20 1970's, the Department of Transportation used to say
21 we had the finest system of transportation in the
22 world. Today, when you fly through the geriatric
23 planes in our crowded congested skies, get off, get
24 into a taxi or a bus that is a generation old, and
25 dodge potholes in the interstate, we have a

1 transportation system that would embarrass a third
2 world nation, and that's what we've done, both in
3 terms of deregulation driving away the private
4 investment in technology, and government prohibiting
5 the investment in the public sector infrastructure in
6 highways and airports. We've got billions of dollars
7 sitting in the trust fund that goes unspent because
8 our federal government refuses to.

9 And in the long-term, it can only have an
10 inimicable impact --

11 MR. JOHNSON: Your Honor, I object. The
12 question is not being responded to. He's going off
13 on a long answer that doesn't -- I haven't heard
14 medical waste mentioned yet.

15 JUDGE ANDERL: Well, I think medical waste
16 was the next question. I think he's still on the
17 first one.

18 You can go ahead.

19 THE WITNESS: I'll finish it.

20 A. In the long-term, that can only have an
21 inimicable impact throughout our economic system.
22 Those industries are unique, and they should be
23 treated differently by government, and traditionally,
24 they have, fortunately for us, with private
25 ownership, but with government oversight.

1 Now medical waste, I see nothing different
2 in the transportation of medical waste and in the
3 transportation of any other commodity, except for one
4 thing: The argument for government oversight are
5 much more compelling in the area of anything that
6 could affect the health of the public because here
7 you have health concerns and environmental concerns
8 that you don't have when you ship tennis shoes. You
9 don't have -- when you ship garments, or even gold,
10 there is a -- this commodity has no economic value,
11 no positive economic value. There is an economic
12 cost incurred in terms of its consumption. Most
13 commodities have the opposite economic attribute.
14 Tennis shoes have an economic value when they're sold
15 in a Nike store. Nobody will buy, give you any money
16 for medical waste; not even the Russians will buy it
17 anymore, so, therefore, the arguments for regulating
18 transportation in this sector are much more
19 compelling than they are in virtually any other
20 sector. I mean, nuclear waste, I think, would be
21 another comparable area where there could be, or
22 ought to be a more stringent government oversight.
23 But when you get away from commodities like this that
24 has no economic value in terms of their consumption,
25 and which are potentially harmful to the public if

1 they are disposed of improperly, these are unique
2 commodities where the government interest is
3 stronger, not weaker.

4 MR. FINNIGAN: Thank you. That concludes
5 my questions.

6 JUDGE ANDERL: Mr. Sells?

7 MR. SELLS: Thank you. Your Honor.

8

9 CROSS EXAMINATION

10 BY MR. SELLS:

11 Q. Professor Dempsey, my name is Jim Sells. I
12 represent the Washington Waste Management
13 Association, which is a trade association composed of
14 privately held garbage and solid waste carriers in
15 the state.

16 One question: Do you have an understanding
17 of why the ICC has exempted solid waste permits under
18 state regulation, and if so, what is that
19 understanding?

20 A. I believe the Interstate Commerce
21 Commission exempted waste because they believed that
22 it would have an economic impact upon its movement
23 comparable to that of the movement of exempt
24 agricultural commodities; that is, it would
25 facilitate its movement by essentially opening it up

1 for transportation and empty back-hauls by any
2 carrier who wants to carry it. But I haven't studied
3 the exemption decision in some years. I wrote about
4 it in one of my books, but I believe that that's the
5 reason, but I'm not certain.

6 Q. Have you not seen any movement on the part
7 of the ICC to reverse that position?

8 A. No, the Interstate Commerce Commission is
9 comprised of people who embrace the theology of
10 Laissez-faire, whose implicit thesis is that
11 unconstrained human greed will produce a better
12 society. They essentially would like to deregulate
13 the universe.

14 MR. SELLS: Thank you.

15 JUDGE ANDERL: Mr. Wiley, any questions?

16 MR. WILEY: Yes.

17

18 CROSS EXAMINATION

19 BY MR. WILEY:

20 Q. Professor Dempsey, while many of us are
21 chomping at the bit to ask you questions that we've
22 stored up for years, we'll resist that temptation.

23 A few questions: First of all, this is the
24 first opportunity you've had to appear before this
25 Commission in regulatory proceedings?

1 A. That's correct.

2 Q. You mentioned in your testimony that you
3 referred in passing to what was termed by you a
4 "mandate or a common carrier charter." Would you
5 define that more specifically for the record,
6 specifically with respect to the common carrier
7 obligation for pricing and service?

8 A. The regulatory agreement between a
9 government and its people on the one hand, and a
10 carrier on the other is essentially as follows: The
11 government says to the carrier, you are a common
12 carrier; you have certain responsibilities to serve
13 the public fairly. We're going to provide oversight
14 to make sure that you do. Your obligation is to
15 provide service throughout your certificate territory
16 at a just and reasonable price without discrimination
17 in pricing or service. In exchange for that, we will
18 provide you with some reasonable assurance that your
19 economic health will be jeopardized -- we'll provide
20 you with some assurance that your economic health
21 will not be jeopardized by an excessive amount of
22 competition, and we will attempt to ensure that you
23 earn a a reasonable return on your investment, but no
24 more than that. And that is sort of the social
25 compact, in the Lockian sense, that is concluded

1 between a government and its carriers.

2 And in an historic sense, common carriers
3 have always been viewed as having certain unique
4 obligations to the public. You can go back to the
5 Roman era and see it in their bills of lading. And
6 in the anglo-American common law before regulation,
7 there was a whole body of common law that imposed
8 upon carriers the obligation to provide service as
9 common carriers without discrimination, and to
10 provide the service at just and reasonable rates.

11 The codification in 1887 of regulation,
12 beginning with the railroad industry, was, in part,
13 merely an effort to embrace that body of law which
14 was pre-existing in the common law; and, again, it is
15 a social compact of the nature that I have described.

16 Q. With respect to that regulatory bargain or
17 "compact," as you've termed it, you testified about
18 the statutory scheme for garbage or solid waste entry
19 in this state, and I believe you indicated that it
20 was -- you characterized it as more restrictive than
21 a normal, say, motor carrier entry scheme; is that
22 correct?

23 A. It includes all of the elements that we see
24 in traditional public utility regulation; entry
25 regulation, rate regulation. We also have safety

1 regulation, and a recognition that the public
2 interest here includes an additional element; the
3 protection of the public health and safety of the
4 people.

5 Q. And vis a vis entry, did you indicate that
6 you had some comment about, you know, service to the
7 satisfaction of the Commission, or something with
8 respect to whether new entry would be authorized in
9 the absence of that showing; do you recall that
10 testimony? My question goes to whether you did a
11 comparative view on motor carrier entry in general,
12 versus that statute for entry in the solid waste
13 field, and whether you felt one was more stringent on
14 entry than another? And if you haven't done that,
15 that's fine.

16 Q. Well, there are several different models
17 that an entry statute could take, okay? One would be
18 the Interstate Commerce Commission's model whereby
19 public convenience and necessity is evaluated, but
20 the burden of proof is on the protestant to show that
21 the public convenience and necessity would not be
22 served by new entry.

23 Another model, and that embraced by most
24 states with respect to trucking generally, is a
25 public convenience and necessity model, the burden of

1 proof being on the applicant. Another model would be
2 a regulated monopoly statute, which basically
3 provided that there is one carrier per service
4 territory.

5 This statute appears to me to be a blend of
6 the latter two approaches, in that it says the
7 Commission may issue a certificate only if an
8 existing waste collection company or companies
9 serving the territory will not provide service to the
10 satisfaction of the Commission, which suggests a
11 presumption in favor of monopoly operating
12 territories, except where the existing carrier
13 provides inadequate service.

14 Q. Thank you.

15 With respect to your description of the
16 common carrier charter or compact, would you expect
17 that those same sorts of criteria for service that
18 you alluded to would apply as well to common carriers
19 of solid waste under the statute that you just
20 analyzed?

21 A. Yes.

22 Q. Would you anticipate that those sorts of
23 criteria about fair, just and reasonable rates and
24 universal service would be honored or achieved by
25 unregulated haulers competing in an industry

1 environment with regulated haulers?

2 A. No, I would not. An unregulated company is
3 driven predominantly by its profit motive. To the
4 extent that those objectives were consistent with a
5 profit motive that would be accomplished. In many
6 markets, they would not be consistent with the profit
7 motive and they would be ignored.

8 Q. In listing what you've described as the
9 effects of free market entry at the federal
10 interstate motor carrier level and at the beginning
11 of your testimony in alluding to Exhibit 31, you
12 didn't specifically focus on the issue of competition
13 as a factor. And my question to you is, particularly
14 using the airline industry as an example, would it be
15 correct that you would also -- is lesson competition
16 a reality now today in a deregulated industry, such
17 as the airline industry; and if so, why?

18 A. Yeah, you can view these things short-term
19 or long-term. At any particular time you want to
20 take a Polaroid picture of an industry going through
21 a set of regulatory changes, as these modes of
22 transportation have gone through, you will get a
23 different understanding of what is occurring. So
24 it's better to, I think, stand back and take a longer
25 term view.

1 In the short-term, in the airline industry,
2 there was a tremendous level of competition; new
3 carriers emerged, People Express, Air Florida, that
4 began providing new, low cost service to consumers,
5 and everybody applauded the victory. But of the 176
6 airlines which emerged since deregulation, only one
7 became a major airline and it, too, is now in Chapter
8 11 bankruptcy. That's America West.

9 We have an industry which is more highly
10 concentrated than at any time in its history, and the
11 process is not done. It is a metamorphosis in which
12 some people estimate we will have as few as two or
13 three major airlines if nothing is done.

14 And inevitably, the trucking industry may
15 proceed down -- or is proceeding, I think, down the
16 same path. There are differences in trucking, vis a
17 vis other modes of transportation that are
18 significant; that pull and push the industry in both
19 directions. That is a result that it is even more
20 brutally competitive in the short run and more
21 monopolistic or oligopolistic in the long-run, and
22 some that pull it in the other direction.

23 In terms of it being more competitive, more
24 a -- they described it in the 1930's as "destructive
25 competition," the costs of entry in trucking are

1 lower; therefore, it's easier to get into the
2 industry. The LTL section is another situation. The
3 costs are higher there.

4 The opportunities in the rail sector and
5 the air sector to control a monopoly bottleneck are
6 greater. And if you can control an airport, you can
7 charge monopoly rents. If you can control a rail
8 line, you have a monopoly along the rail line. In
9 trucking, you can't do that. If you build an LTL
10 terminal facility, another company can build one
11 across the street. And in truckload transportation,
12 you don't even need to make that investment. You
13 compete on the same highway. And since all of
14 transportation sells an instantly perishable
15 commodity, those tend to drive the industry toward
16 the economic disintegration that I described earlier,
17 as described in my article.

18 On the other side, there are a couple of
19 things that shield the trucking industry from the
20 excessive level of competition that we see in the
21 other modes: one being the fact that we do not have
22 federal pre-emption of intrastate trucking.
23 Overwhelmingly, most states continue to regulate
24 intrastate trucking. And we have some measure of a
25 shield, a competitive shield in terms of a limited

1 rate bureau anti-trust immunity. Those militate in
2 that direction.

3 As I point out in the paper, I don't know
4 of any industry that has suffered as badly under
5 deregulation than trucking, other than the savings
6 and loan industry. And the savings and loan fiasco
7 will cost everybody in this room \$5,000. That's what
8 the burden is per tax payer.

9 Q. My final question is in response to Mr.
10 Johnson's question about your perceived lack of
11 federal re-regulation efforts. I wonder if you would
12 comment on whether, since approximately 1984, what
13 you -- isn't it correct that states have moved -- for
14 instance, Illinois and some other states -- have
15 moved in the opposite direction or have tightened
16 regulation to motor carrier operations in their
17 state?

18 A. Well, the states have gone in both
19 directions. There are some states that have
20 completely deregulated, and there are other states
21 that are regulating more stringently now than they
22 ever have. So it's a mixed sort of a bag right now.

23 Q. Since 1984, is it correct that no state has
24 deregulated its motor carrier operations?

25 A. I believe that's right, although off the

1 top of my head, I can't remember when Maine
2 deregulated. It may have been after '84.

3 Q. But that was the last day?

4 A. Yes.

5 MR. WILEY: No further questions, Your
6 Honor.

7 JUDGE ANDERL: Okay, thank you. Ms.
8 Horenstein?

9 MS. HORENSTEIN: I have no questions, Your
10 Honor.

11 JUDGE ANDERL: Mr. Smith?

12 MR. JOHNSON: I have one question.

13 JUDGE ANDERL: Mr. Johnson?

14

15 RECROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q. Are you aware that Seattle is located in
18 King County?

19 A. That's right, they call it the Kingdome,
20 don't they?

21 Q. And that Kleenwell is domiciled in King
22 County?

23 A. I'll accept that.

24 Q. And in order to engage in the handling of
25 medical waste, Kleenwell is required, as all are, to

1 obtain -- to pass the standards set by the
2 Seattle/King County Health Department who examines
3 the facilities they -- or truck that's used; the
4 storage facilities that are used, the destruction
5 site of where the medical site is taken; all measures
6 working toward protecting the health of the citizens;
7 are you aware of that?

8 A. It was my understanding that this waste is
9 being disposed of in California, not in King County.

10 Q. It is. But even then, Seattle/King County
11 examines the facility.

12 A. They send people down to go look at the
13 facilities in California?

14 Q. Yes, or have someone do it on their behalf.

15 MR. SELLS: Your Honor --

16 MR. SMITH: Your Honor, I think up to that
17 point, I think it was a fair characterization of the
18 testimony. I don't recall anything in the record
19 that the Seattle/King County Health Department sends
20 anyone to California.

21 JUDGE ANDERL: Yes, I have no recollection
22 of that.

23 MR. WILEY: Your Honor, I object to the
24 form based on my knowledge as well.

25 JUDGE ANDERL: Mr. Johnson, can you clarify

1 that for us?

2 MR. JOHNSON: What's that? That's all I
3 have.

4 JUDGE ANDERL: So you don't want a response
5 to that; you don't want to rephrase the question?

6 MR. JOHNSON: That's okay.

7 JUDGE ANDERL: Mr. Smith, does your witness
8 have any time constraints? Can we go to lunch and do
9 redirect after lunch?

10 MR. SMITH: Your Honor, Professor Dempsey
11 has a 2:30 flight if he can make it, but I have no
12 redirect, if that helps.

13 JUDGE ANDERL: That does, considerably. I
14 have no questions for this witness.

15 (Witness excused.)

16 Then let's break for lunch. We'll be back
17 at 1:30.

18 (Lunch recess taken at 12:15 p.m., to
19 reconvene at 1:30 p.m.)

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AFTERNOON SESSION

1:30 p.m.

JUDGE ANDERL: We're back on the record after our lunch recess.

Mr. Smith, was Professor Dempsey your only witness?

MR. SMITH: Yes, Your Honor.

JUDGE ANDERL: And the intervenors? Ms. Horenstein, I know you have a witness to present.

MS. HORENSTEIN: We do have a witness, Your Honor. We call Weldon Burton.

Whereupon,

WELDON BURTON

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

JUDGE ANDERL: You may go ahead.

DIRECT EXAMINATION

BY MS. HORENSTEIN:

Q. Mr. Burton, would you please state your name and business address for the record?

A. Weldon Burton, B-u-r-t-o-n; 1202 Southeast 103rd Ave., Vancouver, Washington, 98664.

Q. And what is your occupation, Mr. Burton?

A. I'm a CPA.

1 Q. And by whom are you employed?

2 A. I'm currently self-employed. I provide
3 accounting and advisory services to small and medium
4 sized businesses in Clark, Cowlitz, Skamania and
5 Wahkiakum Counties in Washington.

6 Q. Does this also include Clark County
7 Disposal and Buchmann Sanitary Service?

8 A. Yes, it does.

9 Q. Could you give us a little bit of your
10 educational and professional background?

11 A. Graduate of Baylor University with a
12 Bachelor of Business, 1970; various continuing
13 education courses sponsored by the American Institute
14 of CPAs; the Washington Society of CPAs, and the
15 Oregon Society of CPAs; CPA licensed in Washington
16 state in 1975, and licensed in Oregon in 1992.

17 Q. How long have you been providing financial
18 and managerial advisory services to -- I'm going to
19 abbreviate -- CCDI and Buchmann?

20 A. I began in May of 1985 working with the
21 companies providing various financial advisory
22 services.

23 Q. Can you generally describe the type of
24 services you've rendered for CCDI and Buchmann?

25 A. General traditional accounting services,

1 including assistance with their in-house accounting
2 department and closing the books each month, and
3 preparing all year-end work papers necessary for
4 publication of the financial statements; the Class A
5 annual reports filed with the Washington Utilities
6 Commission, and other consulting services as
7 requested and required.

8 Q. Including general business advisory
9 services?

10 A. Including general business advisory
11 services, rate filings, cost studies, cost
12 allocations and other services as necessary.

13 Q. By way of brief background, could you give
14 us an explanation of how long CCDI and Buchmann have
15 been in their certificated areas?

16 A. The company traces its origin back to 1937
17 when Phillip Leitner, the grandfather of the current
18 management, purchased the company and began operating
19 the Vancouver Sanitary Service. That service
20 included the City of Vancouver and the unincorporated
21 Clark County area generally surrounding the city of
22 Vancouver.

23 In 1961, the management at that time
24 consisted of Phillip Leitner's five sons. They
25 purchased a business in Kamas called Twin City

1 Sanitary Service, and then in 1974, the brothers
2 purchased the Buchmann Sanitary Service operation,
3 which is basically most of north Clark County.

4 Q. So these three areas that were acquired
5 comprised substantially all of Clark County?

6 A. They comprised substantially all of Clark
7 County except service in the City of Kamas and the
8 City of Washougal.

9 Q. Are you aware of whether CCDI and Buchmann
10 have experienced any unregulated competition in these
11 areas?

12 A. Yes, CCDI started facing unregulated
13 competition in 1979 when a former employee resigned
14 and began operating what's known as One Way Disposal.
15 In 1982, another unregulated carrier began called All
16 County Disposal; and in 1983, another hauler called
17 Evergreen Waste Systems began operating in the
18 county.

19 Q. Let's focus on Evergreen in particular, Mr.
20 Burton. Can you tell us approximately how long they
21 operated in the Clark County area?

22 A. Evergreen Waste Systems began in 1983 and
23 continued until December of 1986.

24 Q. So you were associated with CCDI and
25 Buchmann during that time and have direct knowledge

1 of the effects of that competition on those
2 companies?

3 A. Yes.

4 Q. Can you tell us whether, as a result of
5 that unregulated competition with Evergreen, whether
6 CCDI and Buchmann sustained customer loss?

7 A. Yes, they did. Evergreen eroded the
8 customer base, the residential customer base by
9 picking up approximately ten percent of the
10 customers, and about 15 percent of the commercial
11 customers. They took away about \$30,000 a month in
12 gross revenue from CCDI and Buchmann.

13 Q. And you indicated that they were competing
14 with CCDI and Buchmann for how long?

15 A. For approximately three years.

16 Q. So about what was the total gross loss to
17 CCDI?

18 A. The total gross loss over the three year
19 period was slightly in excess of a million dollars.

20 Q. Did those customers that CCDI and Buchmann
21 lost to Evergreen fall within a particular geographic
22 area within their territory?

23 A. Yes, Evergreen concentrated on soliciting
24 customers in the highly populated, densely populated
25 areas of Clark County. They did not attempt to move

1 into the city of Vancouver. They concentrated in the
2 unincorporated areas along several major arterials,
3 and would go in and attempt to take the most
4 productive and most profitable commercial accounts
5 and concentrated in the densely populated residential
6 areas in soliciting those accounts.

7 Q. Are you familiar with why Evergreen did not
8 pursue the City of Vancouver?

9 A. The City of Vancouver, by ordinance,
10 prohibits any unlicensed refuse collector from
11 operating within the city, and Vancouver Sanitary
12 Service, a d/b/a of Clark County Disposal, Inc., has
13 an exclusive collection contract with the City of
14 Vancouver.

15 Q. This description you just provided for us,
16 is that a characterization of what Professor Dempsey
17 previously referred to as "cream-skimming"?

18 A. Exactly. Evergreen, as I say, they would
19 work the major arterials where there was a
20 concentration of commercial and residential accounts,
21 and only service those accounts, making it very
22 efficient and expedient to provide service and
23 collect the revenue.

24 Q. Generally, Mr. Burton, can you give us an
25 explanation of the effect that this competition had

1 on the rates that were charged to the customers in
2 the regulated areas?

3 A. Clark County Disposal, Vancouver Sanitary
4 Service -- d/b/a Vancouver Sanitary Service -- had to
5 sustain these losses, and the only way that the
6 losses could be made up were through rate filings
7 with the WUTC for its customers within the regulated
8 tariff area that it served. And we have two rate
9 filings: one in 1984 and one in 1987 to help recoup
10 some of these lost revenues.

11 Q. Was there a reason why there was a delay
12 from when the unregulated competition began in '83
13 until the first rate filing in '84?

14 A. The unregulated carrier could follow along
15 the regulated carrier and adopt a rate structure,
16 generally similar to the regulated carrier,
17 undercutting prices by maybe 15 to 25 cents per
18 service unit, and that way, the unregulated carrier
19 could charge approximately the same rates. And when
20 the regulated carrier went in for a rate increase,
21 the unregulated carrier could raise his rates and
22 hitch-hike along with the regulated carrier by
23 getting the same rate structure without any state
24 regulation or oversight. And every time the
25 regulated carrier had to raise his rates, he would

1 lose customers to the unregulated carrier, and the
2 customers that went to the unregulated carrier would
3 end up paying approximately the same amount as the
4 regulated carrier would provide, but there was no
5 regulation over the unregulated carrier.

6 Q. So just so I understand, the reasons that
7 CCDI and Buchmann didn't go in for an immediate rate
8 increase was; number one, it would have provided
9 basically an immediate rate increase for the
10 unregulated hauler; and number two, probably would
11 have lost customers?

12 A. That is correct. When the regulated
13 carrier went in for rate increases, all we would do
14 is drive away the existing customer base to the
15 unregulated hauler, and the unregulated hauler would
16 then, very quickly after the regulated haulers rates
17 were approved, raise their rates to within, again, 15
18 to 25 cents of the approved rates by the Commission.

19 Q. Mr. Burton, are you familiar with why
20 Evergreen considered themselves to be exempt from
21 regulation?

22 A. They claimed exemption under Interstate
23 Commerce. They were hauling their refuse to the St.
24 John's landfill in Portland.

25 Q. So because of the fact they pick up in

1 Washington and dispose out of state, they argued that
2 they were exempt from UTC jurisdiction?

3 A. Correct.

4 Q. I believe Professor Dempsey talked about
5 this earlier, but is it your understanding as well
6 that as a condition for CCDI and Buchmann to operate
7 under their Certificate of Public Convenience and
8 Necessity, that they need to service everyone in
9 their regulated area?

10 A. They have to abide by all rules and
11 regulations promulgated by the Commission in order to
12 retain their Certificate of Public Convenience and
13 Necessity, and that includes serving customers; not
14 only in the urban, but the rural areas of the county
15 in their service territory.

16 Q. Are there rural areas in the CCDI and
17 Buchmann territories?

18 A. There are large rural areas in the northern
19 part of Clark County. I don't know the population
20 density, but there are many miles of unpopulated
21 forest land, or sparsely populated forest land and
22 farm land in northern Clark County.

23 Q. Could you give us your best estimate on the
24 distance between where CCDI and Buchmann's trucks are
25 housed and the edge of the area they need to service?

1 A. It's approximately 50 miles up to the area
2 known as Lake Merwin, which Buchmann Sanitary
3 services on the northern edge of Clark County and the
4 southern edge of Cowlitz County, and they service
5 customers in those areas at the same rate that they
6 service customers less than five miles from their
7 terminal.

8 Q. Is that because the cost is the same to
9 service those customers?

10 A. No, the cost is obviously not the same.
11 The cost is much greater to drive 50 miles to service
12 one, two, or three customers; but under the concept
13 of universal service in the regulated tariff area,
14 all customers pay the same price, regardless of
15 location.

16 Q. If this requirement were not in place, if
17 the UTC didn't require, for instance, Buchmann to
18 service those folks out there 50 miles from their
19 hub, would you, as a financial advisor, encourage
20 them to focus on the more densely populated areas?

21 A. That's quite obvious that you would
22 definitely focus on the highly populated areas where
23 your trucks are more efficient, your labor is more
24 efficiently used, and your potential profits are
25 obviously much higher.

1 MS. HORENSTEIN: Your Honor, I have a
2 document that I would liked marked.

3 JUDGE ANDERL: That will be Exhibit No. 32.

4 (Marked Exhibit No. 32.)

5 BY MS. HORENSTEIN:

6 Q. Mr. Burton, could you briefly describe the
7 document you've just been handed?

8 A. This is a letter dated July 31, 1985 on
9 stationary with the letterhead of Evergreen Waste
10 Systems, Inc., and this is a letter that they sent to
11 customers in the area in Vancouver, west of 72nd
12 Avenue, and north to 99th Street. And basically the
13 letter says that they will refuse to service any
14 customers outside that geographic area that they
15 described. This is an area that is lightly
16 populated. It's more of a residential area that's
17 somewhat sparsely or lightly populated and has not
18 experienced a great amount of growth in the last five
19 years.

20 Q. You're talking about the area that's
21 excluded?

22 A. That's correct.

23 Q. Based on your experience with Evergreen,
24 what would you expect the effect to be on the solid
25 waste customers in Clark County if Clark County

1 continued to experience such unfettered regulation?

2 MR. JOHNSON: Objected to as being beyond
3 the qualifications of this witness. I don't think
4 he's been qualified to testify to the effect on
5 customers of a service change.

6 MS. HORENSTEIN: Your Honor, based on his
7 previous experience, I'm wondering if he could give
8 us some insight as to whether he would expect the
9 same trend to continue, or if he would expect
10 something else.

11 JUDGE ANDERL: If he can answer that, if he
12 knows, I'll allow the question.

13 A. Yes. The basic concept of the regulated
14 service territory is to service all customers in an
15 efficient, cost effective manner. And the truck
16 driving down the street, if it picks up ten
17 households, and that's the ten households on that
18 street in that block, it's operating at a hundred
19 percent efficiency and its cost to the customer is at
20 the lowest point.

21 If they only pick up six households,
22 they're operating at obviously 60 percent efficiency,
23 and if another competitor comes down the same street
24 with the same truck, or a different truck, they have
25 approximately the same fixed costs so that the

1 consumers on that street are paying for two trucks
2 instead of one; and consequently, the customer must
3 pay a higher rate in the long-run to keep the two
4 companies operating in a competitive manner.

5 Q. So one of the effects on unregulated
6 competition is an increase in rates to customers?

7 A. That is correct.

8 Q. As demonstrated by the letter that we just
9 discussed, is there any concern with lack of service
10 to customers?

11 A. And also, the customer, if they happen to
12 be outside an area that the unregulated hauler
13 chooses not to serve, they very well may not get
14 service, except for the regulated hauler. And this
15 is not healthy for the county-wide system.

16 As I described to you earlier in the
17 Buchmann service territory, the customer pays the
18 same rate at the southern end of the territory as
19 does the customer that's about 50 miles away.

20 Q. Going back to a previous example, Mr.
21 Burton, when you said that perhaps CCDI would be
22 going down the street in conjunction with another
23 truck and picking up 60 percent of the household, can
24 they not reduce their expenses in proportion to the
25 revenues that have been reduced?

1 A. Not necessarily because there is a fixed
2 cost of the truck leaving the yard every day, and
3 that is the support services to keep the truck on the
4 road in a safe manner, the mechanics, the shop; the
5 supervisors in the shop, the driver supervisor,
6 obviously, the driver; the office support staff, the
7 utilities, keeping the office open, keeping the
8 computers running, keeping the telephones going;
9 keeping heat, light and power to the office. You
10 cannot proportionately, effectively cut that just
11 because you lose a portion of your customer base.

12 Q. Somebody has got to pay for that?

13 A. Someone has to pay for it some way or
14 another.

15 Q. For both haulers?

16 A. That's correct.

17 MS. HORENSTEIN: Your Honor, I'd like to
18 move for admission of Exhibit 32.

19 JUDGE ANDERL: Any objection to that
20 exhibit?

21 MR. JOHNSON: Objected to as being
22 irrelevant, immaterial and the author of the letter
23 isn't here.

24 JUDGE ANDERL: Ms. Horenstein, can you get
25 any additional authentication on this document in

1 terms of how the witness came about having it?

2 MS. HORENSTEIN: Yes.

3 BY MS. HORENSTEIN:

4 Q. Mr. Burton, can you tell us how you came
5 into possession of this document?

6 A. This document was delivered to Clark County
7 Disposal by several of the customers that resided in
8 the area that Evergreen Waste Systems chose not to
9 serve when they requested service from CCDI.

10 Q. It wasn't solicited, it was received in the
11 ordinary course from disgruntled customers?

12 A. That is correct.

13 JUDGE ANDERL: I think that cures that
14 problem, and I will overrule the remaining objections
15 and allow Exhibit 32 into evidence.

16 (Admitted Exhibit No. 32.)

17 MS. HORENSTEIN: I have no further
18 questions of this witness.

19 JUDGE ANDERL: Mr. Johnson, cross?

20

21 CROSS EXAMINATION

22 BY MR. JOHNSON:

23 Q. Do you have any documentary support for any
24 of the statements that you have made here? You've
25 just come here and voiced your opinion that

1 regulation is great and deregulation is terrible.

2 A. Sir, I've worked in the industry in excess
3 of six years. I have testified before this
4 Commission in cases. I have --

5 Q. I just asked if you had any documentation
6 to support your --

7 A. Not with me, no.

8 Q. What is the name of the company on whose
9 behalf you're being presented?

10 A. Clark County Disposal, Inc.

11 Q. And you referred to Vancouver Sanitary
12 Service. Are they now owned by Clark County
13 Disposal?

14 A. Clark County Disposal, Inc. has two
15 d/b/a's: one, Vancouver Sanitary Service, and the
16 second one is Twin City Sanitary Service. They serve
17 two different geographic territories within Clark
18 County.

19 Q. And the Twin City Disposal doesn't serve
20 Kamas or Washougal as it sounds like it would?

21 A. It does not serve the incorporated cities
22 of Kamas and Washougal.

23 Q. How long have you done the CPA work for
24 Clark County Disposal?

25 A. I began working with the company in May of

1 1985.

2 Q. And that was toward the end of the
3 Evergreen Waste Systems operation, is that right?

4 A. Evergreen Waste Systems did not cease
5 operations until December of 1986.

6 Q. But they had commenced in '83?

7 A. That's correct.

8 Q. And during '83, '4 and '5, you weren't with
9 the industry?

10 A. That is correct.

11 Q. Now Clark County Disposal, they are what we
12 might think of as regular solid waste companies.
13 They don't focus particularly on medical waste?

14 A. They have a medical waste division and
15 medical waste operations. They have medical waste
16 tariffs on file with the Commission.

17 Q. And those operations cover only the
18 territories in which they are engaged in the
19 transportation of solid waste, generally?

20 A. No, I -- well, that is correct. I believe
21 they are serving some other areas, but I'm not
22 qualified to comment on that.

23 Q. Not, however, outside of Clark County, is
24 that right?

25 A. I don't know the answer to that question.

1 Q. And what percentage of the total volume of
2 business that the company does is involved in medical
3 waste?

4 A. I cannot recall an exact figure, but it's
5 approximately one to two percent of the total
6 revenue.

7 Q. Do they encounter competition from American
8 Environmental in Clark County?

9 A. Yes, they do.

10 Q. And what has been the effect of that
11 competition?

12 A. I am not qualified to answer that question,
13 sir.

14 Q. I think you referred to a gross loss of a
15 million dollars over the three years that Evergreen
16 Waste Systems was in operation. By "gross loss," are
17 you referring to the revenue loss, or actual loss of
18 that amount from operations?

19 A. It's a gross revenue loss.

20 Q. The company has still operated profitably?

21 A. That is correct.

22 Q. You indicated that regulated carriers --or
23 maybe it was the previous witness -- well, the
24 previous witness indicated that deregulated carriers
25 are driven by the profit motive. Do you agree with

1 that?

2 A. Yes.

3 Q. But aren't regulated carriers also driven
4 by a profit motive?

5 A. Regulated carriers are driven by a profit
6 motive, that is correct.

7 MR. JOHNSON: That's all I have.

8 JUDGE ANDERL: Mr. Smith, any questions for
9 this witness?

10 MR. SMITH: Yes, Your Honor.

11

12 CROSS EXAMINATION

13 BY MR. SMITH:

14 Q. Mr. Burton, you described the situation
15 where rates went up as a direct result of the
16 competition from unregulated carriers, is that
17 correct?

18 A. That's correct.

19 Q. And that every time rates went up, you lost
20 more customers still?

21 A. That's correct.

22 Q. Which, I guess, in turn, put more pressure
23 to raise rates?

24 A. That is correct. It's a spiral.

25 Q. And how long did the Clark County Disposal

1 group companies survive in that kind of spiral?

2 A. Well, the company faced that unregulated
3 competition in 1979 to 1986, and continued to survive
4 on a reduced profit level, but continued to survive
5 and compete with the unregulated carriers.

6 Q. Could those companies continue in that mode
7 forever, in your opinion?

8 A. Two of the three unregulated companies went
9 bankrupt.

10 Q. I'm sorry, the Clark County Disposal
11 company.

12 A. I'm sorry. The Clark County Disposal, Inc.
13 could have survived and would have survived because
14 it had sufficient capital to maintain operations.
15 But it would not have achieved basically a reasonable
16 profitability. It would have achieved a small profit
17 margin, and continued to eek out a meager existence.

18 Q. Would that impact in any way the
19 maintenance of your equipment?

20 A. Over the long run, it would because if the
21 carrier is not earning a sufficient return on its
22 asset base, it cannot afford to invest in new
23 equipment to replace equipment that becomes aged and
24 obsolete.

25 MR. SMITH: Those are all my questions.

1 JUDGE ANDERL: Mr. Hartman?

2 MR. HARTMAN: Just a point of
3 clarification, if I could, on Exhibit No. 32 first.

4

5 CROSS EXAMINATION

6 BY MR. HARTMAN:

7 Q. It says, "Due to the demise of All County
8 Disposal, we have had to draw a line and consolidate
9 in our areas."

10 Could you explain to me what occurred
11 there? Why was Evergreen required to withdraw when,
12 in fact, they had lost competition? I don't think
13 they would have --

14 A. I'm not for sure that I can give an
15 accurate, complete detailed description of what
16 transpired between Evergreen and All County.

17 Q. They were not affiliated companies, I take
18 it?

19 A. That is my understanding, they were not
20 affiliated. It is my understanding that an
21 arrangement was worked out as All County was on the
22 verge of bankruptcy, that Evergreen Waste Systems
23 took over a portion, or their entire customer list.

24 Q. And this was just a portion they didn't
25 want, you say?

1 A. That's correct.

2 Q. As far as the two companies you represent,
3 what disposal facility do they use?

4 A. Currently?

5 Q. Yes.

6 A. Currently, they're using the Columbia
7 Resources Center Transfer Stations.

8 Q. And where does the waste go?

9 A. The waste is being barged to Oregon, to
10 Boardman, Oregon at the Findley-Butes Landfill.

11 Q. And so is that some arrangement --

12 MR. JOHNSON: Excuse me, just for
13 clarification, are you now talking about medical
14 waste or waste in general?

15 MR. HARTMAN: I was going to clear that up,
16 Jim.

17 JUDGE ANDERL: Go ahead.

18 BY MR. HARTMAN:

19 Q: Was that by some agreement with Clark
20 County, some contract arrangement with Clark County?

21 A. The Clark County government entered into a
22 contract with Tidewater Barge Lines approximately two
23 years ago to have the Findley-Butes Landfill on-line
24 January 1, 1992.

25 Q. So as a disposal company, you're hauling it

1 then to a transfer station where the county then
2 takes jurisdiction for the charges and moves it
3 beyond?

4 A. Correct.

5 Q. What's the situation with respect to
6 medical waste?

7 A. Our medical waste is being consolidated and
8 shipped to the incinerator facility that American
9 Environmental owns.

10 Q. Being Rancho Cordova, California?

11 A. I believe that's the case. I'm not for
12 sure exactly where it is going right now.

13 Q. Do they do the transportation?

14 A. We do the transportation locally.

15 Q. And deliver it to them?

16 A. Correct.

17 Q. At what point?

18 A. In our yard site.

19 Q. They pick it up in their equipment?

20 A. That's correct.

21 Q. And as far as your designation, or any
22 generator involvement in a designation, do you
23 request that it be delivered or disposed of at any
24 particular point?

25 A. I don't think I'm qualified to answer that,

1 sir. I'm not for sure.

2 Q. For instance, if American Environmental
3 should start transporting it to another disposal
4 site, would that affect your arrangement at all?

5 A. I don't know.

6 Q. Do you have a contingency plan should you
7 be unable to meet the requirements on a basis of
8 present disposal sites?

9 A. For what type of waste?

10 Q. Medical waste.

11 A. I don't know.

12 Q. And if I asked you what that plan was, I
13 guess we'd get nowhere either.

14 So as far as your designation of a disposal
15 site on the medical waste, you generally leave that
16 up to American Environmental?

17 A. Our operations people work with their
18 operations people.

19 Q. Are you saying you don't know what the
20 details are?

21 A. That's correct.

22 Q. Now this one to two percent -- excuse me.

23 You had indicated in a response to one of
24 Mr. Johnson's questions that American is a competitor
25 of yours. I'm curious as to how that comment

1 coincides with what you've just stated.

2 A. American is a competitor in the sense that
3 they have the ability to service the large, large
4 generators in the community.

5 Q. Do they?

6 A. And they have in the past, yes.

7 Q. Are they now?

8 A. I don't know.

9 Q. Well, as far as the medical -- again,
10 speaking just of the medical waste -- does this one
11 to two percent of the traffic that you have, has that
12 been fairly constant, say, for the last year, or has
13 it grown or decreased?

14 A. Our medical waste revenue, and that is what
15 I'm referring to, the one to two percent of our gross
16 revenue, has grown over the past, I believe, 18
17 months when we filed tariffs with the Commission.

18 Q. And is it correct that in the
19 transportation of this medical waste, you do maintain
20 a different service; and I'm talking about types of
21 equipment, driver personnel?

22 A. We have a designated van and driver and
23 safety equipment for transporting and handling
24 medical waste.

25 Q. What is the plan, if you know, of the

1 county in respect to the segregation of medical
2 waste?

3 A. I don't know the answer to that question,
4 sir.

5 Q. Is it permissible to landfill in your
6 county?

7 A. I don't know the answer to that, sir.

8 MR. HARTMAN: Those are all my questions.

9 JUDGE ANDERL: Mr. Finnigan?

10 MR. FINNIGAN: No questions.

11 JUDGE ANDERL: Mr. Sells?

12 MR. SELLS: No questions, Your Honor.

13 JUDGE ANDERL: Mr. Wiley?

14 MR. WILEY: No questions.

15 JUDGE ANDERL: Anything on redirect?

16 MS. HORENSTEIN: I have a couple of
17 questions.

18

19

REDIRECT EXAMINATION

20 BY MS. HORENSTEIN:

21 Q. Although you indicated you began working
22 directly for CCDI and Buchmann in 1985, were you
23 somehow affiliated with another service provider
24 wherein you obtain the information that you testified
25 to this afternoon?

1 A. In January of 1984, I merged my accounting
2 practice with Moss Adams, a regional accounting firm
3 on the west coast, with offices in California, Oregon
4 and Washington. They have been providing -- Moss
5 Adams has been providing service to Clark County
6 Disposal, Inc., and Buchmann Sanitary Service, Inc.
7 for approximately 18 years, I believe.

8 Q. And following up on one of Mr. Johnson's
9 questions inquiring as to the effect of the
10 competition CCDI and Buchmann have experienced with
11 American Environmental, are we looking not with
12 American Environmental as a regulated competition as
13 opposed to Evergreen unregulated competition?

14 A. That is correct. American Environmental
15 has authority for service state-wide. Our medical
16 waste authority is only within the regulated tariff
17 areas as defined in our "G" certificate for providing
18 service.

19 Q. And although you alluded earlier that the
20 regulated carriers have a profit motive, is the
21 profit not limited, regulated somehow by the
22 Utilities and Transportation Commission?

23 A. The operating profit is regulated by the
24 Utilities and Transportation Commission using the
25 Laredo Gallagher Formula, which provides for a return

1 on gross revenue and net capital investment before
2 interest and income taxes, and that margin currently
3 is slightly less than four percent for Clark County
4 Disposal, Inc.

5 MS. HORENSTEIN: Thank you. That's all I
6 have, Your Honor.

7 JUDGE ANDERL: Anything further for this
8 witness?

9 MR. JOHNSON: Nothing.

10 JUDGE ANDERL: Thank you for your
11 testimony. You may step down.

12 (Witness excused.)

13 My notes indicate that Exhibit 31 has not
14 yet been admitted, and that is the Administrative Law
15 Review article. Mr. Johnson, do you have any
16 objection to the admission of that exhibit?

17 MR. JOHNSON: No.

18 JUDGE ANDERL: No?

19 MR. JOHNSON: No.

20 JUDGE ANDERL: That will be admitted as
21 identified.

22 (Admitted Exhibit No. 31.)

23 Is there anything further to come before us
24 today? I'd like to go off the record and discuss
25 briefs, and then go back on the record to memorialize

1 what we agree on. We'll go off the record.

2 (Discussion off the record.)

3 JUDGE ANDERL: Back on the record.

4 During our brief recess the parties agreed
5 that Mr. Johnson will file Respondent's brief on July
6 8th, or no later than July 8th.

7 The Commission staff and intervenors would
8 file a reply brief no later than the 17th of July,
9 and then Mr. Johnson would have an opportunity to
10 respond to those briefs no later than July 31st.

11 Is there anything further?

12 (No response.)

13 All right, then. We will stand adjourned.

14 (Hearing adjourned at 2:15 p.m.)

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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 on: 6-11-92

Rebecca S. Cain

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