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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

In re)
WASHINGTON PUBLIC POWER SUPPLY)
SYSTEM SECURITIES LITIGATION) MDL No. 551 (All cases)

DEPOSITION UPON ORAL EXAMINATION
OF
WALLACE L. TIMMENY
(Volume 1)
EXPERT TESTIMONY

9:05 a.m.
July 27, 1988
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Leslie Sherman, RPR
Court Reporter

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A P P E A R A N C E S

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FOR CHEMICAL BANK:

CARL HAGENS, ESQ.

Betts, Patterson & Mines

FOR CLASS PLAINTIFFS:

LEONARD SIMON, ESQ.

Milberg, Weiss, Bershad

Specthrie & Lerach

FOR WPUG:

DONALD S. COHEN, ESQ.

Gordon, Thomas, Honeywell,

Malanca, Peterson & Daheim

FOR SUPPLY SYSTEM:

JAMES. L. STENGEL, ESQ.

Donovan, Leisure, Newton

& Irvine

FOR LBYTH:

THOMAS THEISEN, ESQ.

MARGARET SUNDBERG, ESQ.

Williams, Kastner & Gibbs

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1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between the attorneys for the respective parties
3 hereto, that the sealing, filing and certification
4 of the within deposition be, and the same hereby
5 are, waived (consistent with the order on
6 confidentiality dated February 3, 1984); and that
7 said deposition may be signed and sworn to before
8 any officer authorized to administer an oath, with
9 the same force and effect as if sworn to before an
10 officer of this court.

11 Whereupon,

12 WALLACE L. TIMMENY,
13 having been first duly sworn, was called as a
14 witness herein and was examined and testified as
15 follows:

16

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

18 BY MR. SIMON:

19 Q. Good morning, Mr. Timmeny. Could you
20 state your name and address for the record.

21 A. My name is Wallace L. Timmeny. My home
22 address is 8220K, Annandale, Virginia, A N N A N D A
23 L E, Virginia. The zipcode is 22003.

24 My professional address, if you want that,
25 is 1627 Eye Street, that's E Y E, Washington, D.C.

1 20006.

2 Q. By whom are you employed?

3 A. I am employed, if employed is the right
4 word, I am a partner in the law firm of McGuire
5 Woods Battle & Booth in Washington.

6 Q. Do you have any other occupation or
7 employment or anything else that brings you
8 remuneration of any kind other than McGuire Woods?

9 A. Yes. I am an adjunct professor of law at
10 the, presently, at the American University School of
11 Law in Washington, D.C.

12 Q. What course or courses do you presently
13 teach?

14 A. I am about to teach a course in securities
15 regulation.

16 Q. What courses have you taught in the past,
17 if any?

18 A. Well, I taught as an adjunct pretty much
19 for the last 10 years and the courses have all been
20 either basic securities regulation courses or
21 securities enforcement courses.

22 Q. And how long have you been at the AU, did
23 you start there?

24 A. One year I did a business planning course,
25 but whatever. Just starting at AU this next month.

1 Q. Previously were you at George Mason?

2 A. I was at George Mason, and also -- while
3 at George Mason for a couple of years I also taught
4 at Georgetown University School of Law as an adjunct.

5 Q. Is there any other employment that you
6 presently are involved in or any other things you
7 presently are involved in which bring you
8 remuneration of any kind?

9 A. No.

10 Q. I take it your work in this case is part
11 of your employment with or your partnership with
12 McGuire Woods, is that correct?

13 A. That's right.

14 Q. McGuire Woods bills the defendants in this
15 case for your services?

16 A. That's right.

17 Q. At what rate are your services billed for
18 this case?

19 A. At \$175 an hour.

20 Q. At what rate do you charge for other legal
21 work that you do with McGuire Woods?

22 A. Generally \$200 an hour.

23 MR. SIMON: Do we have bills reflecting Mr.
24 Timmeny's work in this case?

25 MR. COHEN: I have the -- I have copies of

1 the bills that we have.

2 They are not complete and we are
3 attempting to find the other ones, but these are the
4 -- I think there may be two missing, at least that's
5 what it seems to be.

6 I should make one clarification on one of
7 these bills if you are going to introduce them in
8 any way. The last one dated April 12, 1988, you'll
9 see at the bottom right there is a scoring through
10 of one figure and then a typed line Payments
11 Received of a certain amount. Those figures were
12 put in by a secretary in our office. The bill was
13 received but there had been money already paid and
14 so the secretary was instructed to make this change
15 in coordination with McGuire Woods just to have an
16 accurate portrayal of what had been paid and what
17 was due at that time. It doesn't change any of the
18 basics of the bill, but that's not from Mr.
19 Timmeny's office, that hatch mark stuff.

20 MR. SIMON: And Don, you believe there are
21 two more bills and that would give us a complete set?

22 MR. COHEN: I think so and the only reason
23 I think that is there are references on a couple of
24 these bills to two different bills that are not
25 included in this group, and they may have been

1 either temporarily or permanently lost in the
2 shuffle between our office and Donovan Leisure and
3 we are trying to track that down. We just realized
4 that late yesterday afternoon. All the bills would
5 be of the same basic format, though.

6 Q. As a general practice does your firm bill
7 for this engagement on a monthly basis?

8 A. Yes.

9 MR. SIMON: It would appear to me there
10 may be more than two bills missing but that ought to
11 be a relatively easy thing to check. We'd like to
12 see the bills before the deposition is over.

13 A. Let me clarify one point. The firm as a
14 general practice bills monthly. Sometimes if I have
15 bills that are minor, you know, very low amount, I
16 might hold the bill and not send it out for the
17 month as a convenience to the clients so they don't
18 have to go through bookkeeping procedures for \$50 or
19 something.

20 Q. Do you recall whether bills have generally
21 been sent on a monthly basis for this matter since
22 your engagement began?

23 A. Yes, but I think I probably held back a
24 few that were pretty low and included them in the
25 next month.

1 Q. Could you describe for us generally the
2 nature of your practice at McGuire Woods at this
3 time?

4 A. At this time generally I am involved in a
5 securities practice. The emphasis is on SEC
6 enforcement work, and in addition I would call it a
7 counseling practice with respect to securities
8 matters for various clients, and some related
9 litigation, 10(b)5 type litigation.

10 Q. I take it from the way you answered the
11 question that litigation is a relatively small part
12 of your practice, is that a fair statement, other
13 than SEC enforcement work?

14 A. It's certainly less than half, less than
15 half. I wouldn't say a small part of it, no. I
16 mean, if you lump litigation, if you include in
17 litigation, for example, defense of SEC disjunctive
18 actions and the like litigation can be a fairly
19 large part of what I do.

20 Q. Do you do what would commonly be called
21 securities transactional work?

22 A. Some.

23 Q. Could you give us an example or a
24 description of the kinds of transactional work that
25 you do?

1 A. Private placement work, and that would
2 include various kinds of issuers. I won't try to go
3 through all that but various issuers. For example,
4 investment partnerships and then the issuers such as
5 real estate syndication, various real estate
6 partnerships, some transactional work related to the
7 issuance of municipal bonds.

8 Q. For what clients have you done municipal
9 bond-related work?

10 A. For authority-type clients. We represent,
11 for example, the Industrial Development Authority of
12 Alexandria, and some water and sewer authorities in
13 the region, and we do work for them, and I have been
14 involved in some projects for them.

15 Q. Did any of those projects include the
16 public offering of securities?

17 A. Yes.

18 Q. Could you please list for us all of the
19 public offerings of municipal securities that you
20 recall working on?

21 A. In private practice?

22 Q. Right.

23 A. Most recently I worked on two waste energy
24 projects for the Industrial Development Authority of
25 Alexandria, it was a \$75 million offering in, I

1 think it was 1985.

2 Another one pretty much a roll over of the
3 same transaction in 1986.

4 Prior to that time I think the best way to
5 describe this is that during my private practice
6 experience at Kutak, Rock and Huie I worked almost
7 exclusively -- not exclusively but a great deal of
8 my practice was limited to municipal securities
9 offerings, almost the whole time I was there, and I
10 couldn't begin to list the number of offerings that
11 I worked on.

12 Q. Maybe we could break it down.

13 A. And I worked on a lot of offerings when I
14 was with Bracewell & Patterson.

15 Q. Break it down firm by firm and at least
16 get a generic description. It will be a little
17 easier.

18 Is the Industrial Development Authority of
19 Alexandria matter the only public offering of
20 municipal securities that you recall working on at
21 McGuire Woods?

22 A. No. I also worked on a waste energy
23 project in a special context, it was in the defense
24 of an SEC investigation, and I spent a lot of time
25 on a municipal -- an issuance of municipal

1 securities in that context.

2 Q. What was the issuer there, was that the
3 same issuer?

4 A. No, no. It was an issuer in New England.

5 Q. What's the name?

6 A. It was, I think it was the Rhode Island
7 Industrial Development Authority or something of
8 that sort.

9 Q. And there was an SEC investigation of the
10 disclosures of that issuer?

11 A. That's right.

12 Q. Your role was that McGuire Woods
13 represented the issuer in the SEC --

14 A. I represented the bond counsel in the SEC
15 investigation.

16 Q. Who was bond counsel?

17 MR. COHEN: Excuse me for just a second.
18 I want to ask Mr. Timmeny off the record whether
19 there are any confidentiality problems involved in
20 this. Off the record just for a moment.

21 (Conference held between witness and
22 counsel out of the hearing of the reporter.)

23 A. I would think that it wouldn't be
24 appropriate for me to name the client in that
25 instance because the SEC investigation was nonpublic,

1 nothing came out of the investigation, and there was
2 a lot of confidential treatment requests that were
3 wholly apart from any professional responsibility I
4 have to the client.

5 Q. There was no -- excuse me. There was no
6 enforcement proceeding filed?

7 A. That's right, that's right.

8 MR. COHEN: It's not a firm involved in
9 this litigation in any way.

10 Q. That was going to be my next question.
11 The firm has no connection with this case that you
12 are aware of?

13 A. Not at all, not at all.

14 Q. In that matter were you one of several
15 McGuire Woods attorneys involved in the matter?

16 A. I was probably the only attorney from the
17 firm involved in the matter. I may have had some
18 associate support at some point. I don't recall.
19 It was unlikely. And the other point I should make
20 is I started that representation with Boothe
21 Pritchard & Dudley which is a firm that merged into
22 McGuire Woods, so when you say -- when I say it's
23 McGuire Woods I am including my stint at Boothe
24 Pritchard & Dudley.

25 Q. Did you have co-counsel in that

1 representation, firms other than Boothe Pritchard
2 or McGuire Woods?

3 A. Representing the client that I represented?

4 Q. Yes.

5 A. No.

6 Q. Was the issuer or any other party subject
7 to an SEC enforcement complaint in that matter?

8 A. Not that I recall.

9 Q. Let's go through your background so it's a
10 little clearer what we are talking about when you
11 refer to the various law firms.

12 You graduated from law school when?

13 A. 1964.

14 Q. And from there you went to work at the SEC?

15 A. No; I went to work in the legal department
16 of Allstate Insurance in New York City.

17 Q. How long were you there?

18 A. A little more than a year, I think.

19 Q. What kind of work did you do there?

20 A. Litigation, litigation-related work I
21 should say.

22 Q. And what was your next position?

23 A. Then I went to the SEC. That was in
24 November of 1965.

25 Q. And how long in total were you with the

1 SEC?

2 A. 14 years.

3 Q. What was the nature of the first position
4 you had there?

5 A. I was an attorney in the -- trial attorney
6 in the office of criminal reference and special
7 proceedings.

8 Q. How long did you hold that position?

9 A. I think until about late '67.

10 Q. Describe for us generally the nature of
11 your responsibilities in that position.

12 A. I did trial work in administrative
13 proceedings brought by the SEC against the regulated
14 entities, and I worked on what we called criminal
15 reference matters, criminal reference reports, and
16 worked with the U.S. attorney's office primarily in
17 the Southern District, Southern District of New York,
18 on criminal matters.

19 Q. When you used the words "regulated
20 industries" in answering my question --

21 A. Regulated entities.

22 Q. Regulated entities.

23 -- what did you mean?

24 A. Broker/dealers.

25 Q. Anything else fall within the category of

1 regulated entities?

2 A. Later, but not at that time.

3 Q. And what was your next position at the SEC?

4 A. Around 19 -- late '67 I went to work in
5 the division of corporate regulation as a trial
6 attorney, and there the focus of the work was --
7 were investment companies. It's '40 Act work, in
8 short, 1940 Act, and I did investigative and related
9 litigation work in that unit for about two years, I
10 guess, 18 months, two years.

11 Q. Investment companies would be mutual funds
12 and the like?

13 A. Yes, uh-huh, that's right.

14 Q. What was your next position at the SEC?

15 A. Around 19-- late '68 or early '69 I became
16 the legal assistant to commissioner Hugh Owens.

17 Q. O W E N S?

18 A. Yes, that's correct, first name was Hugh,
19 H U G H.

20 Q. How long did you hold that position?

21 A. A little more than a year.

22 Q. And what were your responsibilities in
23 that position?

24 A. Basically to review all the
25 recommendations that were made by the operating

1 divisions and the general counsel's office and to
2 give an independent analysis and recommendation to
3 the commissioner on all these recommendations, and
4 in addition to review and write commission opinions
5 with respect to litigation before the commission in
6 its adjudicatory capacity, and to review for the
7 commissioner and to make a recommendation to the
8 commissioner of all the registration statements that
9 were at that time declared effective by the SEC
10 under the '33 act.

11 That was a time in the commission's
12 history when the commission approved every
13 registration statement as opposed to delegating that
14 authority to the division of corporate finance, so
15 the legal assistants were charged with preparing an
16 independent analysis of the disclosures in the
17 registration statements and discussing it with the
18 commissioners before the commissioners voted on
19 approval.

20 Q. Now, up to this point, up to that point in
21 your career, up to the time you finished your stint
22 as legal assistant to Commissioner Owens, what
23 exposure, if any, had you had to securities work
24 relating to municipal bonds specifically?

25 A. None.

1 Q. What was the next position you had at the
2 SEC?

3 A. Next I was appointed the assistant
4 director in the division of trading and markets, and
5 specifically I was in charge of the office of
6 criminal reference and special proceedings. That
7 was the unit that I had started in when I first went
8 to the commission.

9 Q. But at this point you were the assistant
10 director?

11 A. Yes.

12 Q. How long did you hold that position,
13 approximately what years?

14 A. About three, I think, three or four. I
15 think three.

16 Q. And was there any involvement with
17 municipal bonds in that position?

18 A. Yes, substantial involvement.

19 Q. Could you please describe that generally
20 for us?

21 A. Sometime in late '70 or maybe early '71, I
22 can't remember which, I read an article about bond
23 dealers in Memphis, it was in the Wall Street
24 Journal, and it described the practices of the bond
25 dealers in Memphis, sales practices. And I took

1 that article and I suggested to my then boss,
2 Stanley Sporkin, who was then associate director I
3 think of the division of trading and markets, that
4 it would be appropriate for me to look into this
5 area of activity and to make a recommendation as to
6 whether we should have some sort of enforcement
7 program in the area. He suggested, he thought that
8 was a good idea, so I studied the area, took a trip
9 through Memphis and some other spots in the south
10 and was taken for a tour of some broker/dealers and
11 whatnot who were essentially municipal securities
12 dealers, and I returned to Washington and I
13 suggested to Mr. Sporkin and to his boss, the
14 director of the division, Irving Pollack, that we
15 should have an enforcement program dealing with
16 municipal securities, and they agreed, and they said
17 fine, they put me in charge of it. So from that
18 point on through the rest of my stint in the
19 division of enforcement I was in charge of the SEC's
20 program with respect to municipal securities.

21 And we devoted -- I devoted heavy
22 resources to the project, heavy in the sense
23 considering we had limited resources overall, and
24 basically diverted the people who would normally
25 have been working on criminal reference matters into

1 municipal securities projects and developed the
2 municipal securities enforcement program.

3 Q. Prior to the time you read this article
4 and followed up on it what activity had the SEC
5 undertaken, if any, with regard to municipal
6 securities?

7 A. Almost none. I was familiar with one
8 enforcement proceeding, I think, at the SEC, and
9 that's involving a new issue of municipal securities
10 maybe in 1967, but not much more than that.

11 Q. What did that 1967 investigation involve,
12 do you recall?

13 A. I don't remember offhand. It was an
14 action, an administrative action against a major
15 warehouse in connection with the sale of municipal
16 securities.

17 Q. What was it about the Wall Street Journal
18 article or the practices that you became aware of
19 shortly thereafter which caused you to recommend to
20 Mr. Sporkin and others that further activity be
21 undertaken in the municipal area?

22 A. Well, I thought from reading the article
23 that what was described were essentially the boiler
24 room practices pretty much stamped out in the
25 securities business in other respects in the '50s

1 and '60s, early '60s.

2 Q. Was the focus of your attention at that
3 time on potentially fraudulent or improper sales
4 practices by brokers rather than conduct by issuers
5 and those affiliated with the issuers?

6 A. Initially it was very much on the sales
7 practices, that's right, but it didn't stay there.

8 Q. I take it that a time came when the SEC's
9 involvement in municipal securities broadened to
10 include something other than the conduct of brokers,
11 is that correct?

12 A. That's right.

13 Q. When did that occur?

14 A. Well, it was very shortly after we got
15 into this area.

16 We used to employ what we called an access
17 strategy, and we began to look at the conduct of the
18 professionals in the business who were -- who
19 assisted promoters and whatnot in bringing issues to
20 market, and in that context we began to focus on the
21 activities of bond counsel with respect to certain
22 issues, of course the investment bankers and
23 underwriters, and as that shift took place, when we
24 started to look at certain transactions the shift
25 went from sales practices over into the new issue

1 market, and I don't know whether it was, you know,
2 sort of chicken and egg whether we started looking
3 at the activities of the professionals in that
4 connection first or we started looking at those
5 transactions and then at the professionals, but it
6 was an evolutionary thing.

7 Q. Did a time come when there was a separate
8 division or subdivision or office set up at the SEC
9 to specialize in municipal securities?

10 A. Yes.

11 Q. And when was that?

12 A. Well, de facto it was in -- when I did it
13 in, I'm going to say '71 or '2, but we actually went
14 through it in terms of the organizational structure
15 and for budget purposes, in other words we actually
16 put a label on the unit that way, somewhat later.
17 It might have been '74, it might have been '77. I'm
18 not sure.

19 There came a time when I was an associate
20 director of the division and part of my title at
21 that point was associate director in charge of
22 criminal reference, special proceedings, municipal
23 securities, so forth and so on, and then somewhere
24 again in about I think between '74 and '77 we
25 actually appointed an assistant director for

1 municipal securities and put a unit under him with a
2 couple of branches.

3 Q. Do I understand correctly then that the
4 division you had previously been involved with
5 underwent a name change in which the term "municipal
6 securities" was added to the name?

7 A. Not the division, but a unit within the
8 division.

9 Q. A unit, sorry. And that occurred sometime
10 between '74 and '77?

11 A. Roughly.

12 Q. Were you the director or assistant
13 director of that unit?

14 A. Well, it was under me. By that point I
15 had become an associate director of the division and
16 it was one of the units underneath, you know, in my
17 area of supervision.

18 Q. Did you go from being assistant director
19 to being associate director of the division?

20 A. That's right.

21 Q. When did that occur?

22 A. I think about '74.

23 Q. And for how long did you hold the position
24 associate director of the division?

25 A. About three years, until about '77.

1 Q. During that period of time, '74 to '77,
2 how much of your time or responsibilities were taken
3 up with municipal securities matters?

4 A. A substantial amount.

5 Q. More than half?

6 A. We were very busy at that point on
7 municipal securities matters. We actually undertook
8 to advance a legislative program in about '75 and I
9 was busy at that time not only selecting cases for
10 investigation and pursuing investigation and
11 pursuing litigation, but also in working up a
12 legislative approach, testimony and hearings on the
13 proposed bill, and a lot of dealings with the
14 industry, the municipal securities industry in terms
15 of what an appropriate bill would be and the shape
16 that it should take. So a very, very substantial
17 portion of my time from '74 to '77 was devoted to
18 municipal securities.

19 We also did the New York City
20 investigation in that period.

21 Q. I was going to ask you about that. What
22 was your role in the New York City investigation?

23 A. Initially the investigation was conducted
24 out of the New York regional office, and I
25 coordinated the activities of the New York regional

1 office with the home office and pretty much kept
2 abreast of what they were doing. And we made
3 suggestions from the home office as to, you know, go
4 in this direction or don't go in that direction, but
5 it was very much in the New York regional office of
6 investigation. And then eventually we got to the
7 point where the home office dispatched a team to New
8 York to pull the investigation together and to write
9 a report that was published by the commission on the
10 sale of the New York City securities, and I was
11 involved in that activity, too.

12 Q. You were involved in the writing or the
13 finalization of the report?

14 A. Yes, uh-huh.

15 Q. What was your role in the report; were you
16 the final --

17 A. No. The final arbiter at that point in
18 most respects was Mr. Sporkin, and my role was to
19 pretty much function on the section of the report
20 dealing with bond counsel.

21 Q: Would it be fair to say, Mr. Timmeny, that
22 as a result of the New York City investigation that
23 disclosure standards in the municipal bond industry
24 were enhanced?

25 A. I think the investigation and the report

1 had a significant effect on disclosure in the
2 industry, yes.

3 Q. I take it that effect was one -- was a
4 positive one?

5 A. I think it was positive, yes.

6 Q. Toward better disclosures?

7 A. Yes. In the New York City instance it had
8 nowhere to go but up.

9 Q. What about as a general matter, my
10 question was really directed toward municipal
11 securities in general, would it be fair to say that
12 your judgment at the time was that disclosures in
13 the municipal securities area generally should be
14 improved?

15 A. Well, I think at the time, I guess you
16 would go back to '75, '76, in that range, and very
17 much as you say with respect to the New York City
18 report there was a reaction to what the SEC was
19 doing. And the reaction was generally to heighten
20 the awareness of the professionals who were engaged
21 in the process to the need for improved disclosure.
22 But I'd say that it's hard to say exactly, I mean I
23 couldn't put myself in the position of saying
24 exactly how everyone reacted to the New York City
25 report and other things that the SEC were doing, but

1 I got to be a speaker frequently at PLI programs and
2 other seminars, ALI-ABA type seminars, ALI-ABA type
3 seminars on municipal securities. And there was a
4 very, very heightened awareness I think on the part
5 of professionals in this whole area of disclosure in
6 the municipal arena. It had gone from a point where
7 in, say, '75 there were arguments being made that no
8 disclosure documents were even necessary in some
9 instances, to the point where in '77 people were
10 beginning to focus on the need for improved
11 disclosure.

12 And in fact the MFOA, that's the Municipal
13 Finance Officers Association, was beginning to put
14 out guidelines then to enhance or increase the
15 ability of the issuers to come up with good
16 disclosure.

17 Q. To what extent was the focus of the New
18 York City investigation on the professionals as
19 against the issuer?

20 A. Well, the investigation was really broken
21 down into several parts. Part of the focus was
22 clearly on the underwriters; part of the focus was
23 clearly on bond counsel; part of the focus was on
24 the role of the rating agencies; part of the focus
25 was on the role of the officials of the issuer, the

1 city; part of the focus was on the, really wasn't on
2 the accountants as much as on the, just the
3 accounting generally as it related to the New York
4 City investigation.

5 Q. What was the next position you had at the
6 SEC?

7 A. I was the deputy director of the division
8 under Mr. Sporkin from '77 to '79.

9 Q. Deputy director of the division of
10 enforcement?

11 A. Yes. What happened was that in -- under
12 Chairman Casey, William Casey, the division of
13 trading and markets was split into two divisions.
14 The division of trading and markets where I had been
15 assistant director of the division became the
16 division of enforcement, and the market function, if
17 you will, the market regulation function of the
18 division of trading and markets became the division
19 of market regulation. So we had a name change and a
20 structure change so that by '73, I'd say, we were
21 the division of enforcement. So when I'm giving you
22 titles, I was assistant director, associate director
23 and deputy director for the division of enforcement
24 from '77 to '79.

25 Q. What were your responsibilities in that

1 role?

2 A. We were pretty much responsible for
3 everything that the division did, you know, as a
4 function as a deputy to Mr. Sporkin.

5 Q. To what extent were you involved in
6 municipal securities issues during that period of
7 time?

8 A. Pretty much the same extent. We had a
9 vigorous municipal securities program, and it was
10 under my direct supervision, all those issues
11 generally -- not generally. They all came to me. I
12 handled all that stuff.

13 Q. When you say a vigorous municipal
14 securities program, give us an idea of what kinds of
15 activities you are talking about there.

16 A. Well, the division would have conducted
17 investigations and brought follow-up litigation with
18 respect to problem areas.

19 By this point the '75 amendments had been
20 enacted to the '34 Act, that's the Securities and
21 Exchange Act of 1934, and municipal securities
22 dealers were subject to regulation.

23 Q. Prior to the 1975 amendments municipal
24 securities dealers had not been subject to
25 regulation?

1 A. That's right. The only thing they were
2 subject to, at least in the eyes of the Securities
3 and Exchange Commission, would have been the
4 anti-fraud provisions, and in the eyes of some
5 municipal securities dealers they weren't even
6 subject to the anti-fraud provisions. That debate
7 was ended quickly.

8 Q. What about municipal securities issuers,
9 were they subject to SEC regulation prior to 1975?

10 MR. COHEN: Excuse me, hold on just for a
11 second.

12 (Discussion off the record.)

13 MR. COHEN: Go ahead.

14 A. If I recall your question correctly --

15 Q. We can read it back.

16 THE WITNESS: Let's read it back.

17 (Record read as requested.)

18 A. No.

19 Q. Were they subject to SEC anti-fraud
20 enforcement proceedings prior to 1975?

21 A. Well, you've got a couple of concepts
22 flipped in there. Your question really doesn't make
23 sense, try it again.

24 Q. I'll try to do better. Prior to 1975 were
25 municipal issuers of securities subject to being

1 sued by the SEC for violations of any of the
2 anti-fraud provisions of the securities laws?

3 A. The SEC would take the position that
4 issuers were subject to suit for violation of the
5 anti-fraud provisions, but I won't fence with you.
6 The municipal securities issuers were not subject to
7 regulation at any time prior to '75 nor post-'75.

8 Q. All right. But prior to '75 it was the
9 SEC's position that, for example, an issuer could be
10 sued under section 10(b), is that correct?

11 A. Uh-huh, yes.

12 Q. Do you recall whether that was, that view
13 was debated by any people in the industry?

14 A. Yes.

15 Q. And what about post 1975, I take it it was
16 still the SEC's view that issuers were subject to
17 suit under section 10(b)?

18 A. That's correct.

19 Q. And under section 17(a) of the '33 Act as
20 well?

21 A. That's correct.

22 Q. And was there continuing debate from the
23 issuers or others as to whether that was true or was
24 the debate now over?

25 A. I'm not going to ask you to define the

1 term "debate," I mean there is certainly -- to my
2 knowledge there was some issuers who would have
3 questioned that.

4 Q. Fewer than prior to 1975?

5 A. That's hard to say. I don't know.

6 Q. All right.

7 A. The '75 amendments really went to
8 securities dealers, as I said, as opposed to issuers,
9 but there was sufficient enforcement activity, I
10 think, in the period '73 on, '73 on that -- where
11 the commission advanced its position that they could
12 sue an issuer.

13 Q. What's the first case in which you recall
14 the commission advancing its position that it could
15 sue a municipal issuer?

16 A. It might have been right here in Seattle.

17 Q. Tell us about it.

18 A. There was a public utility district issue
19 somewhere around here, it was called Whatcom County,
20 and I believe -- I'm not sure but I think the
21 commission sued the district and its officials in an
22 enforcement case, and at about the same time, this
23 would have been, I'm going to say '75, '76, the
24 commission also sued a public utility district in
25 Texas, San Antonio Municipal Utility District No. 1,

1 and I recall -- well, I think those were at least
2 two cases where the commission sued an issuer at
3 that time.

4 Q. During your time at the commission I take
5 it you had no involvement in any matter relating to
6 the Washington Public Power Supply System, is that
7 correct?

8 A. That's correct.

9 Q. Do you recall having any involvement in
10 any matter relating to any of the members of the
11 Washington Public Power Supply System or the
12 participants in Projects 4 and 5?

13 A. Not to my knowledge.

14 Q. Did you leave the commission in 1979?

15 A. I did.

16 Q. And what did you next do?

17 A. I went with the Washington office of the
18 law firm of Bracewell & Patterson.

19 Q. What was your position at Bracewell &
20 Patterson when you started work there?

21 A. I was a partner in the Washington office.

22 Q. How long were you with that firm?

23 A. About 18 months, I think a little less
24 than 18 months.

25 Q. What was the nature of your practice with

1 Bracewell?

2 A. I guess it pretty much had two components.
3 I represented a regional broker/dealer in connection
4 with municipal securities transactions, and I did
5 SEC enforcement work, and some transactional work,
6 too.

7 Q. You represented a particular regional
8 broker/dealer?

9 A. Yes, I did.

10 Q. Which one was that?

11 A. Underwood Newhouse.

12 Q. Where are they located?

13 A. The principal office is in Houston, Texas.

14 Q. What kind of work did you do for Underwood
15 Newhouse?

16 MR. COHEN: Just a second. If there is a
17 confidentiality problem here describe this only in
18 the broadest of generalities, if you can even do
19 that. I don't know whether you can or not.

20 A. It didn't relate to enforcement work, it
21 was all transactional.

22 As I said, all the work was transactional,
23 and it was essentially counsel to them in their
24 capacity as financial advisor to issuers.

25 Q. Do you recall the names of any of the

1 municipal issuers as to whom Underwood Newhouse was
2 financial advisor?

3 A. No. They were essentially utility
4 districts in the Southwest.

5 Q. And those utility districts were involved
6 in the public offering of municipal securities?

7 A. That's right.

8 Q. Prior to the time that you began
9 representing Underwood Newhouse were you generally
10 familiar with the role of a financial advisor in a
11 municipal offering of securities?

12 A. Yes.

13 Q. And during your representation of
14 Underwood Newhouse I take it you became more
15 familiar with that role?

16 A. Yes.

17 Q. Could you describe for us as a general
18 matter the role of a financial advisor in a typical
19 municipal securities offering, public offering?

20 A. I guess with some generality here because
21 of your use of the word "typical" I would say that
22 the financial advisor would be a -- it's a market,
23 the financial advisors are market professionals who
24 understand the concepts involved in raising money
25 through the financial markets, and they advise the

1 municipal issuers on the steps that have to be taken
2 in order to raise money, and the process for raising
3 that money. They are including guidance with
4 respect to timing of an offering, pricing of an
5 offering, disclosure that is necessary in the
6 marketplace. I think that's it generally.

7 Q. Are you familiar with the differences
8 between a municipal bond offering sold through
9 competitive bids and a municipal bond offering which
10 is sold through a negotiating process with a
11 syndicate of underwriters?

12 A. Yes.

13 Q. Do you have an understanding of the role
14 of the underwriters, respective role of the
15 underwriters in each of those processes?

16 A. Yes.

17 Q. Please describe for us your understanding
18 of the role of an underwriter in a competitive bid
19 municipal bond offering?

20 A. In a competitive bid typically you will
21 have competing syndicates that will bid on the bond
22 offering.

23 The underwriters in the winning syndicate
24 will be charged with the usual duties of an
25 underwriter in connection with the sale of municipal

1 bonds, and that would be to purchase the bonds,
2 typically conduct the level of due diligence that's
3 appropriate, and resell the bonds to the investors.

4 Q. I'm not sure what you mean by the level of
5 due diligence which is appropriate. Maybe you can
6 help me with that.

7 A. Well, in my view underwriters should
8 perform due diligence in connection with an offering.
9 I think that's the expectation of the marketplace.

10 However, a due diligence investigation is
11 not mandatory. The failure to conduct a due
12 diligence investigation doesn't result in any kind
13 of a violation, so that's why I say conduct the
14 level that's appropriate. It's really the call of
15 the underwriter, if they want to conduct due
16 diligence they can. I think it's appropriate they
17 can. In some transactions little or any due
18 diligence is done. Little or none would be a better
19 way to put it.

20 Q. Again we are talking about competitive bid
21 offerings?

22 A. Yes, in the context of competitive -- that
23 was your question.

24 Q. Right. In a competitive bid offering do I
25 understand correctly that the syndicate -- that a

1 particular syndicate bidding for the bonds might or
2 might not get the bonds?

3 A. That's right.

4 Q. Would your understanding be that the due
5 diligence, whatever due diligence is to be conducted
6 would be conducted before or after the bid was made?

7 A. It depends. It can be done before.

8 Q. And at that time they would be conducting
9 due diligence on an offering which they might not
10 ever get?

11 A. That's right, unless they have sort of a
12 history of being in the syndicates, they have some
13 familiarity with the projects and whatnot, so it's
14 really sort of an update of something they have done
15 before.

16 In addition I have seen transactions where
17 the due diligence is essentially performed by the
18 financial advisor, and the underwriters then adopt
19 that diligence, if you will.

20 Q. Is your understanding of the due diligence
21 that an underwriting firm would perform in a
22 municipal offering different for a negotiated sale
23 of municipal bonds?

24 A. It doesn't have to be.

25 Q. As a matter of industry --

1 A. As a matter of practice it is, yes, it's
2 typically different.

3 Q. And how does it differ as a matter of
4 practice?

5 A. In negotiated transactions it's generally
6 more detailed, the investigative process is more
7 detailed.

8 Q. Why is that?

9 A. Well, the underwriters will say it's
10 because of the constraints of time, and time isn't
11 available in connection with the competitive bid
12 transactions.

13 Q. What time constraints are there on the
14 underwriters in a competitive bid situation?

15 A. Often they don't get involved in the
16 transaction until they submit a bid and once the bid
17 is accepted, boom, off they are, they have purchased
18 the bonds and they go to market.

19 Q. Whereas in a negotiated sale would they be
20 generally involved in more of the planning and
21 drafting stages of the offering?

22 A. Absolutely.

23 Q. Now, you mentioned just a couple of
24 minutes ago in some cases the financial advisor
25 would conduct the due diligence and that would be

1 essentially adopted or borrowed, I forget the word
2 you used, by the underwriters?

3 A. Yes.

4 Q. Were you referring then to a competitive
5 situation or a negotiated situation, or does that
6 happen in both?

7 A. I was referring to a competitive situation.
8 It was my experience in the competitive transactions
9 that we did with Underwood Newhouse that was the way
10 we did it. In other words, I did the due diligence
11 as counsel to the financial advisor.

12 Q. Would it be fair to say that in a
13 competitive situation, competitive bid municipal
14 bond situation given the industry practices and the
15 time constraints that the responsibilities of a
16 financial advisor are greater than they are in a
17 negotiated offering?

18 A. I'm sorry, would you do that again, give
19 me the question again.

20 Q. Let me restate the question and make it
21 more clear.

22 Let me start in a more elementary level.
23 Do municipal issuers generally have financial
24 advisors in both competitive and negotiated sales?

25 A. Sometimes they do, sometimes they don't.

1 I wouldn't generalize.

2 Q. Do they typically have financial advisors
3 in competitive sales?

4 A. Yes.

5 Q. And in negotiated sales they might or
6 might not?

7 A. That's right.

8 Q. Would it be fair to say that the due
9 diligence work typically undertaken by the senior
10 managers in a negotiated sale is generally done by
11 the financial advisor on a competitive sale?

12 A. Your question is is that generally the
13 case?

14 Q. Right.

15 A. In my experience that was the case but I
16 can't say generally. I don't know.

17 Q. Would it be fair to say that the
18 disclosure responsibilities of a financial advisor
19 are heightened in your judgment by the lack of a
20 negotiated sale underwriting syndicate?

21 MR. STENGEL: Can I hear the question back,
22 please?

23 THE WITNESS: Try that question on me
24 again or just read it back.

25 MR. SIMON: Would you read it back, Leslie?

1 (Record read as requested.)

2 THE WITNESS: Read the last part again.

3 Q. Let me restate the question. It's not
4 very clear.

5 The question, Mr. Timmeny, is whether in a
6 competitive sale of municipal bonds the due
7 diligence work that would ordinarily be performed by
8 the underwriters in a negotiated sale is performed
9 instead principally by the financial advisor?

10 A. That could be the case.

11 Q. Is that generally the case in the industry?

12 A. In the sense that the financial advisor
13 would probably displace the underwriter in the
14 drafting process of the Official Statement, and in
15 that context I would expect that the financial
16 advisor would perform a level of due diligence with
17 respect to the drafting process and the disclosures
18 in the Official Statement, so in general I'd say the
19 answer to your question would be yes.

20 Q. And in that situation would the financial
21 advisor as a general matter endeavor to assure
22 himself that the Official Statement was fair and
23 accurate?

24 A. Well, I mean you can't say what every
25 financial advisor would do, but we would be well

1 advised to do that. I mean I would advise them to
2 do that if they were could.

3 Q. Is it your understanding in industry
4 practice that financial advisors as a general matter
5 attempt to assure themselves that the disclosures in
6 the Official Statement are fair and accurate?

7 A. I think so.

8 Q. Are you familiar with the work that Blyth
9 Eastman did in connection with the offerings of
10 Supply System 4-5 bonds?

11 A. Yes.

12 Q. Is it your understanding that they in
13 serving as financial advisor to the Supply System on
14 those offerings were attempting to assure themselves
15 that the Official Statements were fair and accurate?

16 A. Yes, based on what I reviewed.

17 Q. Do you have any opinion at this time as to
18 whether or not they performed satisfactorily in that
19 function?

20 A. I don't think I have been asked to give an
21 opinion on that score, but if you want me to I will
22 say that yes, I think they did perform
23 satisfactorily in that function.

24 Q. Is there anything you've seen in the
25 record for which you would fault Blyth Eastman in

1 this case?

2 A. No.

3 Q. What's your understanding of the role of
4 bond counsel in a competitive bid municipal bond
5 offering in which an opinion of bond counsel is
6 appended to the Official Statement?

7 A. The role of the bond counsel in a
8 competitive bid transaction is to issue an opinion
9 with respect to the validity of the bonds, and also
10 typically with respect to taxation.

11 Q. In this case, Mr. Timmeny, as I'm sure you
12 are well aware, there is also an opinion with
13 respect to the validity or enforceability of some of
14 the underlying obligations, underlying contracts.
15 Would that also be a part of bond counsel's role in
16 some municipal offerings?

17 A. It could be, could be.

18 Q. I take it you've seen it occur in
19 circumstances other than WPPSS 4-5?

20 A. Yes. Counsel can opine on some of the
21 underlying contracts or whatnot, uh-huh.

22 Q. What's your understanding of the role that
23 bond counsel has with regard to the rest of the
24 Official Statement, that is the Official Statement
25 excluding his own opinion?

1 A. It's hard to generalize, but it really
2 depends on the nature of the transaction. In some
3 transactions bond counsel will be involved in the
4 drafting process, drafting the Official Statement
5 and the like, and they will sort of step out
6 somewhat from the restrictions that are sort of
7 self-imposed by some bond counsel with respect to
8 the transaction.

9 Some bond counsel will limit their
10 activities to issuing the bond opinion; others are
11 more deeply involved in the transaction in a broader
12 sense. It varies from transaction to transaction.

13 Q. Does it basically vary from bond counsel
14 firm to bond counsel firm?

15 A. Yeah, and it's varied from time to time,
16 too. I would say that as the enforcement activity
17 at the SEC heated up I think there was sort of a
18 reaction on the part of bond counsel who began to
19 see a lot of qualifications and what-not or caveats
20 with respect to the role of counsel in a transaction.

21 The counsel were generally saying their
22 work would be limited to issuing the opinion and no
23 more, whereas say pre-'74 or '75 counsel might have
24 been the driving force, bond counsel might have been
25 the driving force in the transaction taking

1 responsibility for preparing the offering document
2 and rendering an opinion and whatever.

3 Q. Do you have an understanding of what role
4 Wood Dawson played in the offerings of Supply System
5 4-5 bonds?

6 A. Yes.

7 Q. And what is your understanding?

8 A. They issued the bond opinion, they issued
9 an opinion with respect to the participants
10 agreement, validity and enforceability, and they
11 were members of the finance group that I think
12 played a great key role in the disclosure process.

13 Q. As members of the finance group is it your
14 understanding that they were involved in writing or
15 reviewing Official Statements?

16 A. Yes.

17 Q. And in that capacity would it be your
18 understanding that they would have attempted to
19 assure themselves that the disclosures contained in
20 the Official Statement were fair and accurate?

21 A. Yes, that's my understanding.

22 Q. Have you come across anything in the
23 record of this case which suggests to you that bond
24 counsel in this case should be faulted in any
25 fashion for their work?

1 A. No.

2 Q. You are aware, I take it, that the law
3 firm of Houghton Cluck Coughlin & Riley served as
4 what is called special counsel in this case?

5 A. Yes.

6 Q. Is special counsel a term that has any
7 general meaning in the context of a municipal
8 securities offering?

9 A. Like local bond counsel. I wouldn't say
10 there is any general meaning. It can vary from
11 transaction to transaction. Typically it's somebody
12 brought in on the opinion at the local level.

13 Q. Is that your understanding of the role
14 that Houghton Cluck had in this case?

15 A. Yes, generally.

16 Q. Have you come across anything in the
17 record of this case which suggests to you that
18 Houghton Cluck should be faulted in any fashion for
19 its work?

20 A. No.

21 Q. You are aware that there were syndicates
22 of underwriters who purchased Supply System 4-5
23 bonds at competitive sales?

24 A. Generally.

25 Q. What is your understanding of the role

1 that those underwriters had in the disclosure
2 process in connection with Supply System 4-5 bonds,
3 if any?

4 A. My understanding is that after the bid
5 process was completed there were what I would call
6 due diligence meetings for the benefit of the
7 winning syndicate. That may not be the term that's
8 been used by the underwriters in the case, but there
9 were some sort of informational sessions with
10 respect to the Official Statement and the disclosure
11 process.

12 Q. This would have occurred after the bids
13 were submitted and the winning syndicate was chosen?

14 A. Yes, that's my understanding.

15 Q. Is it your understanding that that was a
16 meeting between the winning syndicate and the issuer,
17 financial advisor, bond counsel and others involved
18 in the offering process?

19 A. Yes.

20 Q. Is it your understanding that that meeting
21 was open to the public or it was private?

22 A. I think it was open to the public.

23 Q. Pardon me?

24 A. I think it was open to the public.

25 Q. Was it announced someplace, publicized?

1 A. That I don't know; that I don't know.

2 Q. Do you recall what your source of
3 information is for this point?

4 A. It was the testimony of Steven Buck.

5 MR. SIMON: Mr. Stengel, we have two or
6 three different lists of materials that Mr. Timmeny
7 has reviewed in connection with his work here. Is
8 that complete or is there either another list on the
9 way or another set of documents that he has reviewed
10 recently which are not yet in any of our lists?

11 MR. STENGEL: I believe that is
12 essentially complete. Let me confer with Mr. Cohen
13 for a moment and make sure.

14 (Discussion off the record.)

15 MR. STENGEL: That list is current and
16 complete.

17 MR. COHEN: We updated it as of last week.

18 MR. SIMON: We will mark those a little
19 later in the day and we will have a record on that.

20 Q. I take it, Mr. Timmeny, that the views you
21 are expressing about any issue in this case, rather
22 than industry practice or your background but about
23 what Blyth did or Wood Dawson did, come from your
24 review of briefs, other filings, depositions,
25 exhibits which have been provided you by defense

1 counsel in this case?

2 A. That's correct.

3 Q. Might they also come from conversations
4 you have had with defense counsel in this case
5 independent of your review of any documentation?

6 A. Well, only in the sense that in reviewing
7 certain documentation I might ask for additional
8 documentation to follow up and say I've looked at
9 something and say I'd like to see something else and
10 I would explain to them why I would want to see
11 something else. In that connection occasionally
12 defense counsel would suggest, "Yes, there is
13 information along those lines, it's such and such
14 and such and such and we will get it for you."

15 MR. COHEN: When you get to a logical
16 break point let's take a couple minutes.

17 MR. SIMON: This is as good as any.

18 (Recess.)

19 BY MR. SIMON:

20 Q. Mr. Timmeny, we were going through the
21 cast of characters on the Supply System bond
22 offerings. The next one I'd like to direct your
23 attention to is R. W. Beck. Do you recall that they
24 served as consulting engineer for the 4-5 bond
25 offerings?

1 A. Yes, I do.

2 Q. Is consulting engineer a role which is
3 commonly a part of a municipal bond offering?

4 A. It is in a revenue bond offering.

5 Q. So it's a concept you are familiar with?

6 A. Yes.

7 Q. Or a role you are familiar with?

8 A. Yes, uh-huh.

9 Q. Would you describe for us what function
10 the consulting engineer ordinarily performs in a
11 municipal revenue bond offering?

12 A. Essentially they produce a feasibility
13 report.

14 Q. And have you looked at the R. W. Beck
15 opinion letters that are attached to the 14 Official
16 Statements for offerings of 4-5 bonds in this case?

17 A. Yes, I have.

18 Q. Is that what you would call a feasibility
19 report or feasibility study?

20 A. Yes.

21 Q. Is it your understanding that the report
22 of R. W. Beck attached to the 4-5 Official
23 Statements was intended to convey to the market that
24 in R. W. Beck's opinion the projects were
25 economically feasible?

1 A. Yes.

2 Q. Is there anything you've come across in
3 your review of the record of this case which would
4 cause you to fault the work of R. W. Beck in any
5 fashion?

6 A. No.

7 Q. Are you aware that United and Ebasco
8 Engineering firms were involved in the 4-5 offerings
9 in the role of architects/engineers?

10 A. Yes.

11 Q. What is your understanding of the role of
12 an architectural/engineering firm which signs an
13 opinion letter appended to an Official Statement for
14 an offering of municipal revenue bonds?

15 A. They are basically opining that the
16 construction schedule and costs and the like are
17 within reason, appropriate, and that the engineering
18 design is workable.

19 Q. From your review of the record in this
20 case do you have any basis to fault the work of
21 United or Ebasco in connection with Projects 4 and 5?

22 A. No.

23 Q. Now, you referred earlier to the finance
24 group for Projects 4 and 5, do you recall using that
25 term?

1 A. Yes.

2 Q. And you would include in that group Wood
3 Dawson?

4 A. Yes.

5 Q. Houghton Cluck?

6 A. Yes.

7 Q. Beck?

8 A. Yes.

9 Q. Blyth Eastman?

10 A. Yes.

11 Q. The Supply System itself?

12 A. Yes.

13 Q. Anyone else?

14 A. No.

15 Q. And in your understanding of the factual
16 circumstances here was that the group that was
17 principally involved in the drafting and editing of
18 the Official Statements for Projects 4 and 5?

19 A. That's correct.

20 Q. What is your understanding of the role
21 which Beck performed separate and apart from the
22 issuance of its own opinion letter attached to the
23 Official Statement, if any?

24 A. Other than as we have mentioned as a
25 member of the finance group, I don't know of any

1 other role.

2 Q. As a member of the finance group what
3 would their role be?

4 A. I think that they were part of a team that
5 was put together to work on the disclosure in
6 connection with the offerings.

7 Q. Do you have a view as to whether their
8 role as a member of that team would be greater or
9 lesser than the role of other team members?

10 A. That's hard to say. Based on the
11 materials I've reviewed I've seen frequent
12 references to the participation of the R. W. Beck
13 representative on the finance group. It's hard for
14 me to determine whether the role was less
15 significant than the role of others.

16 Q. I believe when we started this description
17 of the roles of various professionals and others in
18 the municipal finance world we had identified your
19 responsibilities at Bracewell & Patterson. Could
20 you tell me what caused you to leave the SEC and to
21 join Bracewell?

22 A. Well, it was a confluence of a couple of
23 things.

24 First, I had been at the SEC for 14 years
25 by 1979, and I felt there was only one position left

1 on the staff that I could aspire to, and that was
2 the, actually there were several but one of them was
3 the director of the division, and Mr. Sporkin held
4 that position. And I thought that it would be
5 difficult for me to spend the next 20 or 25 years of
6 my career as the deputy director of that division.

7 The then chairman was kind enough to offer
8 me some post as regional administrator in various
9 regions but it wasn't economically feasible to take
10 those jobs. For example I could have been regional
11 administrator of California but there wasn't any way
12 I could move to California from Northern Virginia
13 and live on a government salary because of housing
14 costs and so forth.

15 So I felt that my career at the commission
16 was pretty much ended, deadended, although it was an
17 exciting place to be, not in the sense of lack of
18 professional interest or anything, but in terms of
19 ability to advance.

20 There also came on the scene in about 1978
21 something called the Ethics in Government Act, it
22 was a revolving door provision that was put in place.
23 Initially the agencies which would determine or
24 designate the persons within the agency that would
25 be subject to the revolving door provisions, the SEC

1 initially determined that I was not subject to it as
2 a deputy director of the division, but when that was
3 reviewed by the Justice Department the justice
4 changed the designation and told me that I would be
5 subject to it, and they gave me something like 60 or
6 90 days grace before I would be actually subject to
7 the statute.

8 And I thought at that time that a one-year
9 prohibition against appearing before the agency
10 would make it difficult for me to seek private
11 employment, so I decided to leave the agency then
12 rather than become subject to the revolving door
13 provision.

14 And also some personal considerations in
15 my leaving, essentially one to see if I could make
16 enough to money the school tuition for my kids.
17 That was a very significant factor in the process.

18 Q. What caused you to leave Bracewell and
19 move on to your next position which I guess we have
20 not yet identified.

21 A. Well, I left Bracewell & Patterson to go
22 with Kutak, Rock and Hule, that is the Washington
23 office of a Nebraska law firm. There it was a
24 two-fold -- obviously more than one reason, but the
25 two principal reasons were that I was really

1 enjoying the municipal work that I was doing and I
2 wanted to do more of it, and the Kutak firm did
3 principally municipal work. That was pretty much
4 the entire professional diet of that law firm at the
5 time.

6 And I was friendly with Mr. Kutak, the
7 senior partner in the firm. I had discussed going
8 with him prior to the time that I had gone to
9 Bracewell & Patterson, and I essentially thought
10 that because of my professional interest in the bond
11 business that I had made a mistake in going into the
12 Bracewell firm because while I was drawing bond
13 business, so to speak, on my own, the firm itself
14 had no significant bond business other than what I
15 produced.

16 So I decided to go with the Kutak firm
17 essentially for a change in professional diet, and
18 it also came at a time when the Bracewell firm
19 experienced a severe downturn in its Washington
20 business because of the deregulation in the energy
21 field and the practice in the Washington office of
22 that firm except for me was largely an energy
23 practice. So I felt that the office was somewhat --
24 it was not the best platform from which to develop a
25 practice. Therefore I left and went with the Kutak

1 firm.

2 Q. What year did you start at Kutak?

3 A. In 1981.

4 Q. And what was your position when you
5 started there?

6 A. I was a partner in the Washington office.

7 Q. How long were you there?

8 A. Until the end of 1983.

9 Q. Describe for us generally your work at
10 Kutak.

11 A. Well, as I mentioned to you the firm
12 primarily was engaged in the municipal bond field,
13 either as bond counsel or as underwriters' counsel,
14 and my work in the firm was divided between work as
15 underwriters' counsel on various bond transactions
16 and SEC enforcement work.

17 Q. And those two categories would cover the
18 bulk of your work at the Kutak firm?

19 A. Generally.

20 Q. When you served as underwriters' counsel
21 could you describe for us the underwriters and/or
22 the issuers that you worked for and with?

23 A. That's pretty hard. There was a steady
24 diet over this, I guess two and a half year period,
25 but the firm I think, we did a lot of work for E. F.

1 Hutton.

2 There was -- we did work for regional
3 underwriters such as J. C. Bradford and Underwood
4 Newhouse.

5 I think we did work for Kidder Peabody.
6 And there were other major underwriters that I'm
7 sure the firm did work for, I just can't remember
8 all of them.

9 My role was sort of an in-house guru on
10 disclosure stuff and all sorts of transactions came
11 before me and half the time I didn't even know who
12 was involved and who the underwriters were.

13 Q. You were sort of a counselor to your --

14 A. To the firm.

15 Q. -- to your partners at the firm as to
16 special issues or unique matters that came up in
17 their --

18 A. Generally tough disclosure questions, they
19 pulled me in and had me look at the transaction and
20 work with them on the transactions. I did a lot of
21 due diligence on transactions for them.

22 For example, I recall one situation where
23 no one in the firm had ever done due diligence on a
24 GO, so they asked me to do it, sort of set a
25 standard because I had had the experience in the New

1 York City investigation. Those were the kinds of
2 assignments that I had.

3 Q. Were there particular issuers or
4 particular types of municipal bonds which comprised
5 a large chunk of the offerings you were involved in
6 at Kutak?

7 A. I think you could say that the issuers
8 were, in many cases they were industrial development
9 authorities. But as time went on they also did GO
10 work, too.

11 I think they did a lot of power issues,
12 too, if I'm not mistaken, but they were done out of
13 Omaha and I wasn't involved in them for the most
14 part.

15 Q. And Industrial Development Authority, I
16 guess you better give us a definition of that for
17 the record.

18 A. Well, it can vary, but basically that's an
19 entity that's empowered by a state to issue bonds in
20 order to advance, you know, to advance industrial
21 development within the state, and -- but it got to
22 be such a broad category over the years and the
23 bonds were being issued through industrial bond
24 authorities for all kinds of purposes. And I
25 mentioned to you earlier I worked on a very

1 substantial power issue for the Industrial
2 Development Authority of Alexandria. They were a
3 conduit issuer on behalf of the County of Arlington
4 and the City of Alexandria who issued -- for
5 whatever reason didn't have the direct authority to
6 issue the bonds so the bonds were issued through the
7 Industrial Development Authority, and I think that
8 was typically the case in many states. The
9 Industrial Development Authority would be issuing
10 bonds for all kinds of purposes within the state,
11 although now it's very limited because of tax
12 concerns.

13 Q. Did you work on any bond offerings for
14 nuclear power projects during your time at Kutak or
15 at Bracewell?

16 A. No.

17 Q. Did you work on any power bonds of any
18 kind at either of those firms?

19 A. No.

20 Q. Did you work with public utility districts
21 or rural cooperatives on any offering you worked on
22 at Bracewell or Kutak?

23 A. Public utility districts, yes.

24 Q. Describe for us the work you did with
25 public utility districts.

1 A. Well, as I said, I was the counsel to the
2 financial advisor to the public utility districts
3 while at Bracewell & Patterson. Most of the
4 offerings that I worked on were public utility
5 district offerings.

6 Q. And what was the -- they were revenue
7 bonds, I take it?

8 A. Yes, in a sense.

9 Q. What kinds of projects were they?

10 A. They were pretty much water and sewer,
11 things of that sort.

12 Q. Why did you leave the Kutak firm?

13 A. Essentially to join Boothe Prichard &
14 Dudley. I was approached by a friend of mine who
15 said that Boothe Prichard & Dudley was looking for
16 someone with my capabilities, and it came at a time
17 where I was delighted to leave the Kutak firm,
18 essentially because of, I would call it internal
19 politics in the firm.

20 Q. Did Boothe Prichard & Dudley have a
21 municipal bond practice at that time?

22 A. Yes, some. I wouldn't call it extensive,
23 but they had a municipal bond practice.

24 Q. And you joined Boothe Prichard in what
25 year?

1 A. January 1984.

2 Q. And --

3 A. By this time I was looking for a law firm
4 with peace and quiet as opposed to worrying about my
5 professional diet.

6 Q. Do I understand that Boothe Prichard
7 merged into McGuire Woods & Battle?

8 A. That's right, that was in February 1987.

9 Q. And so you have been with Boothe Prichard
10 or its merger successor since January 1984?

11 A. That's correct.

12 Q. You have had no other positions, temporary
13 positions or appointments in that time?

14 A. No.

15 Q. You were a partner in the Boothe Prichard
16 firm when you joined it, is that correct?

17 A. That's right.

18 Q. Describe for us the nature of your
19 practice at Boothe Prichard when you began there for
20 the first year or two you were there.

21 A. Well, initially by this time I was
22 carrying around a fairly heavy portfolio of SEC
23 enforcement work, and that continued to grow at
24 Boothe Prichard & Dudley. Also, as I mentioned, the
25 firm had something of a municipal practice and I

1 worked with the lawyers in the firm who did that
2 work.

3 As I mentioned earlier we represented
4 certain authorities, principally the Industrial
5 Development Authority of Alexandria, and they were
6 issuing bonds frequently, although my role was
7 pretty much limited to working on two waste energy
8 issues, two power issues that came out in, it was
9 late '84 and again in '85.

10 And I also -- I was doing some
11 transactional work with what I would call a local as
12 opposed to a national focus in northern Virginia,
13 that sort of thing, whereas my enforcement practice
14 was national.

15 Q. Just for the record an enforcement, SEC
16 enforcement practice as you referred to it, is the
17 counseling and the defense of entities who are
18 threatened with charges by the SEC?

19 A. Yes, and SEC investigations or SEC
20 proceedings, sometimes grand juries.

21 Q. And I take it that work that you've done
22 in all the firms you've been in has not been limited
23 to the municipal area?

24 A. No, no, it's been broader than the
25 municipal area.

1 Q. Principally in other areas?

2 A. In fact, principally in other areas, the
3 only investigation I participated in in the
4 municipal area is the one I mentioned to you where I
5 represented bond counsel for a period there of a
6 couple of years. I guess after I went with Boothe
7 Prichard & Dudley, or during -- I guess I started
8 that work as I was leaving Boothe Prichard & Dudley
9 and I continued to represent this client through the
10 SEC vehicles after I went with Boothe Prichard &
11 Dudley.

12 Q. So other than that one matter your SEC
13 enforcement practice has been basically focused on
14 equity securities?

15 A. Yeah. It's just a broad practice,
16 broker/dealer defense work, some issuer work and
17 individuals, you know, who are employed by
18 broker/dealers and issuers, cases, all kinds of
19 cases, accounting cases, I represent accountants,
20 lawyers, whatever.

21 Q. In your private practice have you ever
22 represented a plaintiff in a securities action?

23 A. One comes to mind.

24 Q. Tell us about that.

25 A. It was an old firm client of Boothe

1 Prichard & Dudley, had been a firm client for many
2 years, had a problem with a major warehouse, and I
3 brought the problem to the attention of the
4 warehouse and worked out a settlement for the client.

5 Q. Without filing suit?

6 A. Without filing suit.

7 Q. You have not represented classes of
8 stockholders or bondholders suing issuers and others
9 affiliated with the issuers, I take it?

10 A. Not as a plaintiffs' lawyer, no.

11 Q. When were you first contacted to work on
12 this matter?

13 A. In the summer of 1987.

14 Q. Prior to that time had you heard of the
15 Washington Public Power Supply System?

16 A. Yes, I had.

17 Q. Do you recall when you first heard of the
18 Washington Public Power Supply System?

19 A. No, I don't. I just recall reading news
20 accounts of the, you know, relating to the public
21 power system.

22 Q. I take it prior to the summer of 1987 you
23 had no professional involvement with or in
24 connection with the Supply System, is that correct?

25 A. Yes, that's correct. The only reason I'm

1 hesitating, I did a lot of -- over the years I did a
2 lot of, as I mentioned before, continuing legal
3 education seminars, and a lot of them are in the
4 bond area. And I think I probably had come across
5 some reference to the Washington Public Power System
6 case, I heard it mentioned anyway, in those seminars
7 or what-not.

8 Q. So you heard it mentioned. Is it possible
9 that you had also used the Supply System and its
10 troubles as an example or an illustration at some
11 point in making your own presentation at a CLE
12 program?

13 A. It's not possible. I did not.

14 Q. You did not?

15 A. I know I did not.

16 Q. Do you retain a file of the materials that
17 you generate for CLE programs?

18 A. Yes, pretty much; notes, the kind of
19 either notes that I take while there or notes that I
20 use in making presentations.

21 Q. What about the kind of --

22 A. Booklets?

23 Q. Booklets, photostated materials, whatever,
24 that are often handed out at CLE programs?

25 A. I have some. I tend to give that to the

1 firm library or whatever.

2 Q. I was referring specifically to ones that
3 you would generate. Have you generated those from
4 time to time in your role as a speaker at one of
5 these programs?

6 A. Sure. You mean outlines and stuff like
7 that?

8 Q. Papers.

9 A. Uh-huh.

10 Q. You keep those in the file?

11 A. I'm not too religious about it. I could
12 be more organized on that score.

13 Q. A lot of us could.

14 Do you recall any CLE or other similar
15 educational program on which you've appeared in
16 which you addressed the subject of disclosure
17 obligations regarding municipal bonds?

18 A. Do I recall any in which I did?

19 Q. Oh, yes.

20 A. Yes, quite a few, yes.

21 MR. COHEN: Len, if you wait until after
22 lunch you may be able to shorten up your examination.
23 Some of those are listed in his curriculum vitae.

24 MR. SIMON: Okay. I'll hold the issue
25 until then.

1 Q. Have you published any articles, law
2 review or otherwise, ABA journal, anything like that,
3 regarding securities?

4 A. Yes.

5 MR. SIMON: Are they listed on the resume
6 as well.

7 MR. COHEN: Some things like that are.

8 MR. SIMON: I think I'll hold on that
9 until after lunch as well.

10 Q. Who contacted you in the summer of 1987
11 regarding this case?

12 A. John McGrath.

13 Q. Did you first talk to him by telephone or
14 in person?

15 A. By telephone.

16 Q. What did he tell you?

17 A. He told me that his firm was involved in
18 the Supply System litigation, and that my name had
19 been mentioned to them as a possible expert witness
20 in connection with disclosure issues.

21 Q. Did he tell you who all mentioned your
22 name?

23 A. I think he said John Peterson had
24 mentioned it, that John Peterson of the Municipal
25 Finance Officers Association, or whatever they call

1 it now, I think they call it the government -- I
2 don't know what the name of it is now, the name has
3 been changed -- the Government Finance Officers
4 Association or something.

5 Q. Did Mr. McGrath describe to you the nature
6 of the work he wanted you to do?

7 A. No.

8 Q. What happened next?

9 A. Mr. McGrath asked me to go to dinner with
10 Mr. Stengel, with Ken Kieffer and with Mr. McGrath.

11 Q. When and where did that take place?

12 A. That was in the summer of '87, and it was
13 in Washington, in Georgetown, I think it was at the
14 Georgetown Club.

15 Q. Did you learn at that dinner meeting what
16 the nature of your, at least proposed role at that
17 time was to be?

18 A. Not really.

19 Q. What did you learn at that dinner meeting,
20 if anything?

21 A. I didn't learn a lot.

22 Q. I hope you had a good dinner.

23 A. We had a nice dinner, we had a nice dinner.
24 I recall Mr. Kieffer is a big Hoyas fan, I don't
25 know if you know the Hoyas, that is the Georgetown

1 basketball team, and I am sort of a Hoya fan, too.

2 MR. COHEN: He is going to bronze this
3 portion of the transcript.

4 A. We talked about the upcoming picks that
5 John Thompson would get for Georgetown and so on.
6 But more to the point, they asked me to describe my
7 background in the securities business, and I went
8 through my background pretty much as we have here
9 this morning, that I worked for the SEC, and I hit
10 the lecture circuit very hard over the years in
11 terms of the municipal bond disclosure issues, that
12 I had written a little bit, and that I had done work
13 in private practice as we have described. So I went
14 through that sort of a description for the fellows
15 at the dinner. And that was pretty much it.

16 Q. They didn't describe to you what they
17 wanted you to do at that point?

18 A. No.

19 Q. What happened next?

20 A. Shortly thereafter Mr. Stengel sent me a
21 copy of the complaint that had been filed in the
22 action, and an OS, and I think a retainer agreement.
23 And the purpose of the retainer agreement really
24 didn't tell me what I was supposed to do, but the
25 point was I was going to get paid for reviewing this

1 material and going on to the next step.

2 Q. You got a complaint. Do you recall
3 whether you got a class action complaint or a
4 Chemical Bank complaint or both?

5 A. It was a class action complaint.

6 Q. And you got one OS?

7 A. One OS.

8 Q. Do you recall which offering it was for?

9 A. I don't. I think it was one of the later
10 ones, like a --

11 Q. I take it it was an offering of the 4-5
12 bonds?

13 A. It was a 4-5 offering, oh, yes, but one of
14 the later 4-5 offerings, too. That's my
15 recollection. It wasn't a '77 offering, it was, I'm
16 going to say it was a 1980C, D, whatever, or
17 something like that.

18 Q. And you got a retainer letter?

19 A. And a retainer letter.

20 Q. Did you sign the retainer and then become
21 retained by these defendants at or about that time?

22 A. I don't think I signed it. I think it
23 just said, "You are hereby retained at an hourly
24 rate of" thus and so, you know, \$175 an hour. We
25 had talked about an hourly rate at dinner, as a

1 matter of fact, I think that was one thing that had
2 come up.

3 And then the materials came in and I
4 reviewed the materials.

5 Q. Have you employed any of your partners or
6 associates at McGuire Woods to assist you on this
7 retention?

8 A. No. I'm almost certain that I haven't,
9 but in fact I know I haven't employed any partners
10 on the retention, but I did notice on one of the
11 bills that were presented to you somebody said
12 conversation with Timmeny, so there must have been
13 somebody else in there that had a conversation with
14 me. It may have been an associate that I might have
15 asked to pull something together for me, go get some
16 materials or whatever.

17 Q. But the work, I take it, is principally or
18 almost exclusively yours?

19 A. It is exclusively mine.

20 Q. When you got the retainer letter from Mr.
21 Stengel what was your understanding as to which
22 parties in the lawsuit were retaining people?

23 A. It was specified in the letter. It was
24 the Supply System and some of the -- one of the
25 utility groups.

1 Q. The utility group that Mr. Kieffer
2 represents?

3 A. Exactly.

4 Q. At that time did you understand that you
5 were also retained by a separate utility group
6 called in this case the Snohomish group represented
7 by the law firm of Pillsbury Madison & Sutro?

8 A. No, that's not my understanding.

9 Q. Did a time come later when you understood
10 that the parties retaining you had been broadened to
11 include the Pillsbury clients?

12 A. It might have been. I don't know. We
13 will get to it, but the next meeting I had was with
14 a broader group of attorneys and some of them may
15 have joined in retaining me for the purposes of
16 representing -- not representing, but appearing as
17 an expert for their clients, but I don't know
18 whether they did or they didn't.

19 Q. What's your current understanding of who
20 you are retained by in this case?

21 A. The clients represented by Mr. Cohen and
22 Mr. Stengel.

23 Q. Let's go forward to the next meeting, then.
24 Let's go one step at a time. I take it you read the
25 complaint?

1 A. I read the complaint and I read the OS
2 very carefully.

3 Q. Okay. Did you at that time undertake any
4 additional work, research, background, what have you,
5 before the next meeting?

6 A. I might have read something. I have a
7 pretty extensive file on municipal matters. I am a
8 rat pack in terms of files, and I might have poked
9 through my own files and pulled up some stuff,
10 general stuff, very generic stuff, maybe some old
11 notes I had from conferences or what-not, you know.
12 I know at conferences I had attended we had talked
13 about power issues, and I used to participate in
14 debates with other lawyers on these panels about
15 disclosure, various and sundry things. And I
16 remember coming across some notes that I had in some
17 municipal bond PLI conference, looking at stuff like
18 that as background. But it wouldn't be -- I can't
19 even tell you what it would be at this point. I
20 just sort of poked around generally but pretty much
21 just read the disclosure document and the complaint.

22 Q. And what happened next?

23 A. We went to -- I was invited to come to
24 Seattle to meet with counsel for various parties to
25 discuss my potential retainer, I guess by other

1 parties in connection with the litigation as an
2 expert.

3 Q. When was that? If referring to these
4 bills will help, that's fine. I'm not trying to
5 make it a memory game.

6 A. It was in the early fall of 1987, I think,
7 late summer, early fall.

8 Q. How long were you in Seattle on that trip?

9 A. Just a day, overnight. I came in, I would
10 say on a Thursday, got here about noon, went to a
11 meeting. At the conclusion of the meeting I went to
12 dinner, went to the hotel, went to bed, got up the
13 next morning and went back to Washington.

14 Q. Who did you meet with?

15 A. I met with Mr. Cohen and his partner Mr.
16 Malanca. Their partner Mr. Kieffer, a lawyer named,
17 I think it was Stellman Keehnell, a lawyer named
18 Stone, I think, Robert Stone, and two other lawyers
19 whose names escape me who were in the room at that
20 time. I just don't know who they were. They were
21 representing -- they represented some clients in the
22 litigation. They were not with Mr. Malanca's firm
23 and they were not with, I think Mr. Keehnell or Mr.
24 Stone -- Stewart, not Stone. I'm saying Stone, it
25 was Robert Stewart.

1 Q. Do you recall whether anybody from
2 Pillsbury Madison & Sutro was there?

3 A. I don't. I don't think there was anyone
4 there from Pillsbury Madison & Sutro.

5 Q. I take it you have never met with or --
6 let me strike the question.

7 You do not understand that you are
8 retained by any of the professional defendants in
9 this case, is that correct?

10 A. I am not retained by any of the
11 professional defendants in the case.

12 Q. And you have not met with counsel for any
13 of the professional defendants in this case in
14 connection with this case, is that true?

15 A. To my knowledge I haven't. Maybe one of
16 those two people who were sitting in the room that
17 day represented professional defendants. I don't
18 think they did. I think they represented utility
19 groups or some city or something.

20 Q. What was discussed at that meeting?

21 A. I was asked to give my curriculum vitae, I
22 went over my resume. I did that. And then I was
23 questioned about my understanding of the, I guess
24 the case in general, you know, what had I gleaned
25 from reading the complaint and reading the OS, what

1 did I think about various theories of liability that
2 were contained in the complaint, what did I think
3 about the -- how did I view the role of the various
4 participants in the disclosure process. I think
5 that was about it.

6 Q. What views did you express on the theories
7 of liability in the complaint at that meeting?

8 A. I talked very generally about things like
9 the elements of 10(b)5, I talked about aiding and
10 abetting; I talked about control person liability,
11 but it really -- I didn't really relate it to
12 specifics in the case. I mean, it was just sort of
13 my view that 10(b)5 had a scienter element and I
14 viewed scienter as being such and such, and aiding
15 and abetting consisted of, and then laid out the
16 elements of aiding and abetting and so forth and so
17 on. It was sort of a general description.

18 I think that people were sort of listening
19 and poking around on my understanding of the
20 securities laws.

21 Q. I take it you were discussing at that
22 point the law more than the application of that law
23 to the facts of this case, is that a fair statement?

24 A. More or less, yes, I think that's right.
25 It really was. I think you can characterize it as

1 my view of where the law was in terms of scienter, I
2 think that would be a better way to put it.

3 MR. COHEN: Off the record.

4 (Discussion off the record.)

5 (Recess.)

6 BY MR. SIMON:

7 Q. Mr. Timmeny, at the fall 1987 meeting in
8 Seattle were you given further materials and/or
9 further work to do at that time?

10 A. I don't think so. I think the -- no.
11 Following the meeting to the point that I've
12 described it there was some discussion about the
13 structure of the Supply System. I remember two of
14 the participants made the point that they were
15 formerly in the teaching profession either as law
16 professors or some other end of the teaching
17 profession. They went up and used an easel and drew
18 charts and went through various and sundry
19 descriptions of the power system and so forth and a
20 number of issues and that kind of thing. Other than
21 that I didn't come away with anything in the way of
22 additional information.

23 Q. Were you told at or after that meeting
24 that you were now retained by a larger group of
25 defendants?

1 A. After that meeting the only thing I recall
2 about retainer, the only other development was Mr.
3 Malanca said -- he didn't -- he said he didn't -- he
4 didn't much care what the other parties were going
5 to do, that I would be retained by his clients as an
6 expert, and it remained to be seen what the other
7 people were going to do.

8 Q. Have you discussed at any time with any of
9 these defendants the potential for conflicts among
10 them in connection with your testimony?

11 A. That was discussed in my presence at the
12 meeting.

13 Q. What was said about that?

14 MR. COHEN: Just hold on for a second.

15 (Discussion off the record.)

16 MR. COHEN: You are talking about this
17 meeting?

18 MR. SIMON: So far.

19 A. I just remember there was some discussion
20 about possibly differing interests, even among the
21 defendant group at that meeting, and that my
22 testimony might or might not be useful, I guess is a
23 better way -- good way to put it, to some of the
24 defendants, that they may not have thought that they
25 wanted to use me as an expert.

1 Q. Was it discussed at that meeting -- let me
2 start the question again.

3 Was there any resolution of the conflict
4 issue at that meeting?

5 A. I remember what it was now. I remember.
6 I made a big point about reliance in the meeting.
7 And I made a point about the, what I thought was the
8 practice in the industry and what would be
9 appropriate in the context of this case, and that
10 was that the officials of the issuer would
11 appropriately rely on the advice of what I call
12 market professionals with respect to disclosure
13 issues. And that led to a discussion about
14 conflicts and a discussion about whether or not
15 certain party defendants would want me to testify
16 because something I might say about reliance might
17 be to one's advantage and another one's disadvantage.

18 Q. Do you recall who raised that issue?

19 A. I believe it was Mr. Keehnel.

20 Q. What did he say about the subject?

21 A. I may be wrong on this. I think he
22 represented the City of Seattle.

23 Q. That's correct.

24 A. And I just think that he expressed some
25 possible disagreement with the approach that I had

1 outlined in terms of reliance.

2 Q. Was the issue of possible conflicts
3 resolved at that meeting, for example by way of an
4 agreement that the defendants in the meeting would
5 waive any conflict among them as to your testimony?

6 A. Not to my knowledge.

7 Q. Do you have an understanding of what --

8 A. We are using "conflict" in a different
9 sense, I think, you and I. We better define what
10 you mean by conflict or else we are going to have a
11 horrible record.

12 Q. By conflict I mean a situation in which
13 you are retained as an expert witness by more than
14 one party in this case, which is the case, is that
15 correct?

16 A. Uh-huh.

17 Q. You are now retained by more than one
18 party?

19 A. That's right, that's right.

20 Q. And where the interests of those parties
21 might diverge in the future causing you to be in a
22 loose sense placed between the two parties.

23 A. In a loose sense, I guess -- I don't think
24 it approached that stage. I think it was more a
25 matter of strategy that they were discussing, what

1 they thought would be an appropriate use of
2 testimony from someone like myself in terms of the
3 strategy that would best benefit their client.

4 Q. Let me give you a --

5 A. The conflict issue came up later. There
6 was a specific conflict issue, but --

7 Q. Let me give you a specific example on this
8 first point, the strategic issue so that we are sure
9 we are communicating.

10 The question I was trying to get at would
11 be, for example, if between now and the time you
12 testified at trial Mr. Stengel determined that it
13 was in the interests of his client to ask you to
14 opine on a particular issue and Mr. Cohen determined
15 that it was not in the interests of his client to
16 ask you to opine on that issue, the question I was
17 starting with, at least, was whether there was some
18 resolution at the meeting to your knowledge --

19 A. Of a potential conflict along those lines?

20 Q. Of what would happen in a potential
21 conflict along those lines, whether you had a
22 principal client who would call the shots or whether
23 you would withdraw or what you would do in the event
24 of a conflict?

25 A. There was no resolution of along those

1 lines.

2 Q. Has there been a resolution of that issue
3 along those lines?

4 MR. COHEN: Hold on. Slow down just a
5 little. Some of these areas that may be asking for
6 the mental impressions of the counsel for the groups
7 that you are presently retained by, I may want to
8 instruct you not to answer.

9 A. Not to my knowledge.

10 Q. Do you have a personal understanding of
11 what your obligations would be if a disagreement of
12 the nature I just described arose among counsel for
13 the different parties you are now retained by?

14 A. It wouldn't really be my personal
15 obligation. I have been retained by parties to the
16 litigation and they would present my testimony or
17 they wouldn't present my testimony. I don't think I
18 have to make a call with respect to a conflict, not
19 in this sense.

20 Q. Do you understand that you have a
21 principal client among the people who retained you
22 or not?

23 A. No, no. I have been retained by two
24 parties and all the dealings and communications that
25 I have had have been joint with the parties. I have

1 had an occasional isolated phone call with one or
2 the other, but it was just send some information or
3 whatever.

4 Q. If you perceived a divergence of interests
5 between Mr. Stengel's client and Mr. Cohen's clients
6 would that be something that would cause you concern
7 with regard to your retention in this case?

8 A. I've never approached the retention on
9 that basis. I've just approached it on the basis of
10 calling it as I see it, and they have to decide
11 whether they want to use my testimony.

12 Q. Now, you testified a few minutes ago that
13 you had, I believe you used the word made a big
14 point of reliance at this Seattle meeting in the
15 fall of 1987.

16 A. Yes.

17 Q. Tell me as best you recall what you said
18 on the subject of reliance?

19 A. I said that it appeared to me, this is as
20 best I recall the conversation, that having reviewed
21 the complaint that the Supply System was assisted by
22 what I would call market professionals in the
23 disclosure process, and that it would be proper for,
24 and I suspect that what had happened was that the
25 Supply System officials who were less familiar with

1 the disclosure process than would be these market
2 professionals, would have relied on the market
3 professionals for advice with respect to disclosure,
4 and that in fact the market professionals would have
5 made the final call with respect to disclosure
6 issues.

7 If that were the case I said I thought
8 that that reliance would absolve in my mind the
9 Supply System officials from any allegation that
10 they had acted improperly in connection with the
11 disclosure issues.

12 Q. When you referred in that answer to Supply
13 System officials were you referring to people like
14 Mr. Perko and Mr. Buck and the Supply System itself
15 in this case?

16 A. At that time I didn't know who Mr. Perko
17 and who Mr. Buck were, at least I don't think I did,
18 but yes.

19 Q. Were you referring also to either the
20 members or the participants as those terms are used
21 in this case?

22 A. Yes, uh-huh.

23 Q. So your opinion would be the same as to
24 the members or the participants relying upon
25 professionals?

1 A. Yes.

2 Q. And by "professionals" I take it you were
3 referring to Blyth, Beck, Wood Dawson?

4 A. That's correct.

5 Q. Houghton Cluck?

6 A. That's correct, those four particularly.

7 Q. And at that time I guess you had not
8 reviewed the record in the case at all, is that
9 correct, just one OS and a complaint?

10 A. And a complaint, that's right.

11 Q. Would it be fair to say that you were
12 expressing your views of what the law was or what
13 industry practice was or --

14 A. Yes.

15 Q. -- speculating on what the facts would
16 have been in this case?

17 A. Basically law and industry practice and
18 what I expected to find, you know, upon reviewing
19 the evidence in the case; in other words, I said
20 that what I expected to find would be that the
21 Supply System officials when putting together an
22 Official Statement would have relied heavily on the
23 disclosure expertise of the market professionals in
24 determining what should or should not be disclosed.
25 It was my experience that that's the way things

1 worked.

2 Q. Now, Mr. Timmeny, you've used the term
3 "disclosure issues" or what should or should not
4 have been disclosed on several occasions in the
5 deposition. I take it when you use those terms you
6 are referring generally to a situation in which
7 there is a particular fact or circumstance which is
8 arguably required to be disclosed and persons or
9 entities discuss whether the disclosure is required,
10 is that correct?

11 A. Yeah. I'm referring to situations where --
12 circumstances arise -- where in every transaction
13 where matters are discussed that might or might not
14 be disclosed.

15 Q. And in those situations it is your opinion
16 that market professionals often express views on the
17 disclosure issue which are followed by the issuer?

18 A. That's correct.

19 Q. I take it that line of testimony does not
20 rely, or does not reach a situation in which there
21 are facts regarding the project or regarding the
22 issuer which are not brought to the attention of the
23 market professionals by the issuer?

24 A. That would be correct.

25 Q. That's a different situation?

1 A: Yes.

2 Q. In that situation the obligation -- well,
3 in that situation the issuer would not be relying
4 upon the market professionals to discover facts
5 about the issuer, is that correct?

6 A. I would put it a little differently. I'm
7 not talking about discovering facts about the issuer.
8 I think what you are driving at is basically, as I
9 would put it, is that if the issuer were aware of
10 facts that were not disclosed to the market
11 professionals then the issuer could not state that
12 they had relied on the assistance of the market
13 professionals in determining whether or not to make
14 disclosure.

15 Q. And that's a true statement, the statement
16 you just made, you are not just stating what I was
17 driving at but you are stating that as a correct
18 statement of industry practice as you understand it?

19 A. Yeah, I think that would be in general,
20 that's a statement with respect to industry practice.
21 I'm not applying it to this case, I want to be clear.

22 Q. Right, we are talking in generalities at
23 this point.

24 A. Right, uh-huh.

25 Q. Do you recall any other comments you made

1 at the fall 1987 meeting regarding the issue of
2 reliance?

3 A. No, I don't.

4 Q. Do you recall any other comments you made
5 at the fall 1987 meeting regarding any issue in
6 connection with this case?

7 A. No, I don't.

8 Q. Now, you mentioned scienter back when we
9 started discussing this area. Do you recall saying
10 anything specific about scienter that we have not
11 put on the record this morning?

12 A. It was either at this meeting or maybe in
13 a subsequent meeting with Mr. Stengel and Mr. Cohen,
14 but I think it was at this meeting, that I might
15 have -- I said something along the lines of scienter
16 being an element in a 10(b)5 violation, and that
17 scienter clearly had been defined as an intent to
18 defraud or in some circumstances recklessness. But
19 I thought that given the identity of the players
20 here with respect to the Supply System that it would
21 be probably unlikely that anyone would be able to
22 produce evidence that these people intended to
23 defraud anyone. As I was interpreting the concept
24 of scienter.

25 Q. What was the basis for that judgment at

1 that time?

2 A. Just what I expected to find in terms of
3 what I would call the absence of a profit motive or
4 something of that sort.

5 I recall saying something, you know, along
6 the lines of -- that scienter is an element in a
7 10(b)5 case and scienter requires an attempt to
8 defraud, and I don't see how anyone would -- you
9 wouldn't expect to find that the officials of a,
10 something like the Supply System would have set out
11 to defraud the public in connection with the
12 issuance of bonds, unlike many cases that I am
13 involved in where the officials of an issuer might
14 have a profit motive and would seek to -- seek
15 personal gain as a result of their activities.

16 Q. I guess the statement you are making would
17 generally apply to issuers of municipal bonds,
18 architect/engineer?

19 A. It varies. It depends on the kind of
20 issuer you are talking about.

21 Q. Give me an example of an issuer of
22 municipal bonds who would have a profit motive.

23 A. You might have a person who is an official
24 of a utility district who is for all intents and
25 purposes a promoter of the development of the

1 district, who gets himself or a relative elected as
2 an official of the district, and the activities of
3 the, you know, through the issuance of the bonds
4 would promote the scheme or what-not on the part of
5 the developer to go out and issue bonds and so forth
6 and so on, where his personal interests would be
7 advanced.

8 Q. His personal financial interests would be
9 advanced?

10 A. Yes. Yes, I can give you an example of
11 that.

12 I recall there was a case in Tennessee
13 that we worked on one time when I was at the SEC
14 where a developer had himself, or a relative elected
15 an official of a district, and they went ahead and
16 issued bonds to develop the utilities within the
17 district, and they used the proceeds of the bonds to
18 start a pizza parlor for his son-in-law or something
19 of that sort.

20 I mean, I can think of instances where you
21 can find officials of utility districts or what-not
22 who may have advanced issues, municipal issues for
23 their own personal profit, but not in a case like
24 this of the Supply System.

25 Q. And in your view that would tend to

1 absolve the Supply System of liability in this case?

2 A. It would be something that would be
3 considered in determining whether or not to satisfy
4 the elements of 10(b)5.

5 Q. Would the same reasoning apply in your
6 view to the members and the participants?

7 A. Yes.

8 Q. Did you understand that the members and
9 participants in this case were entities who very
10 much wanted these projects to be built?

11 A. I don't know if I adopt your
12 characterization as a very much wanted one of the
13 entities. I think they supported the projects and
14 they wouldn't have signed the participants
15 agreements if they weren't in favor of them.

16 Q. Did you understand that the --

17 A. I didn't understand there to be any
18 opportunity for any personal gain on anyone's part.

19 Q. How about institutional gain?

20 A. You have to define that.

21 Q. Do you understand that, for example, a
22 commissioner of the Snohomish County Public Utility
23 District might feel very strongly that these
24 projects ought to be built, or ought to be continued
25 if they were half built?

1 A. Well, you are defining that as
2 institutional gain?

3 Q. Right, institutional benefit.

4 MR. COHEN: One commissioner's personal
5 viewpoint? Are you sure you've got this going right?

6 Q. Go ahead. You can answer the question if
7 you understand it.

8 A. You have got to restate it. Counsel
9 didn't help me any with his comment.

10 Q. That part I understand completely.

11 A. Try it again.

12 Q. I guess the question I'm getting at is
13 whether the same kind of motive or circumstance
14 which you are discussing in terms of potential
15 personal gain might not also be applicable to
16 institutional gain, institutional benefit,
17 institutional goals in whether a Snohomish County
18 PUD commissioner might not feel strongly that
19 Projects 4 and 5 should be started or should be
20 continued when they are half finished, might not
21 want the power from the projects very much and might
22 not therefore be in the same position or a similar
23 position to the hypothetical parties or the specific
24 parties in Tennessee you are discussing who had a
25 motive of some kind for shading the truth?

1 A. I really -- there is a negative in there
2 that lost me. Do you want to try and restate it
3 again?

4 Q. Isn't it the case that a public utility
5 district commissioner desiring to have these
6 projects built or completed and to obtain the power
7 from the projects --

8 A. In general, some commissioner in general.

9 Q. Some commissioner in general, might not
10 have the same kind or similar kind of motive for --

11 A. You said might he not have an
12 institutional motive, the benefit of the institution
13 or the benefit of his constituents?

14 Q. Right.

15 A. And then would attempt to perpetrate a
16 fraud in order to benefit his constituency?

17 Q. Right.

18 A. It's within the realm of possibility, I
19 suppose.

20 Q. You find it highly unlikely?

21 A. I would think that would be highly
22 unlikely.

23 Q. Why?

24 A. I just, I think that would run contra to
25 the grain of the public service aspect of the people

1 that you are talking about. I think these are
2 people who are charged with looking after the common
3 wheel, seeing to it that there is sufficient power
4 or what-not within their districts. I find it
5 highly unlikely that some sort of institutional
6 benefit or reputation or something would cause them
7 to seek to fob off, you know, a disclosure document
8 to the public that wasn't adequate in order to
9 advance this institutional benefit. I mean it could
10 happen, I mean, it's possible, but I just think it
11 would be very unlikely.

12 Q. We wouldn't need the securities laws to
13 apply to municipal issuers at all if the principle
14 you were espousing was 100 percent true, isn't that
15 the case?

16 A. I think that's true. There have been
17 instances of the need for the application of
18 securities laws to issuers, but as I mentioned to
19 you, I thought that that was pretty much in the
20 context of municipal issuers where there was also a
21 private element such as the case in the utility
22 districts that I mentioned to you where a developer
23 might also be a utility district official.

24 Q. Is it your testimony that you think that's
25 what Congress had in mind exclusively in 1975 when

1 it amended the acts?

2 A. Well, if you recall when Congress amended
3 the acts in 1975, they amended the '34 Act, there
4 was no -- as a result there was no application of
5 specific disclosure provisions to issuers. They
6 were specifically exempted from any sort of
7 disclosure regulation.

8 There was a provision in the '34 Act
9 amendments called the Tower Amendment that
10 specifically indicated that the -- no disclosure
11 burdens were to be put on issuers in connection with
12 this legislation.

13 MR. SIMON: Leslie, could you reread the
14 question?

15 (Record read as requested.)

16 A. I answered the question.

17 Q. Well, Mr. Timmeny, with all due respect I
18 think your answer is an interesting piece of
19 information but has little to do with the question.
20 Let me try it again and see if I can focus it a
21 little bit.

22 The question was whether this particular
23 phenomena you were describing where a municipal
24 issuer might have some impact on people's personal
25 pocketbooks was what Congress had in mind when it

1 amended the act in 1975 to broaden its coverage
2 relating to municipal securities. Can you answer
3 that question?

4 A. No, I don't think Congress had that in
5 mind at all.

6 Q. Congress more generally was broadening the
7 coverage of the 1934 Act with regard to municipal
8 securities?

9 A. With respect to municipal securities
10 dealers.

11 Q. Only?

12 A. Only.

13 MR. COHEN: Excuse me. I don't know how
14 much further you are going to carry this out, but he
15 is not here to give you an expose and treatise on
16 the Congressional enactments. We haven't offered
17 him to give an opinion on whether the 1934 Act
18 applies to this or that.

19 MR. SIMON: I understand that. But he is
20 expressing views about the coverage of the act and
21 his understanding of the act and I think I am
22 entitled to probe his understanding. He was there
23 when the acts were amended.

24 MR. COHEN: I know, and I'm willing to let
25 you go a little further.

1 MR. SIMON: Fine, then let's just go.

2 Q. Is it your view, Mr. Timmeny, that
3 municipal issuers are immunized from liability under
4 the '34 Act unless a profit motive of some kind can
5 be shown?

6 A. No, I didn't say that.

7 Q. Tell me how your view differs from that
8 statement?

9 A. I said that I thought it would be most
10 unlikely that one would establish a scienter element
11 in the context of a lawsuit involving a 10(b)5
12 violation against a municipal issuer because I
13 thought that it would be difficult to establish any
14 kind of a profit motive or an intent to defraud on
15 the part of an official of a municipal issuer.

16 Q. But the only way we could determine
17 whether that is established in this case would be to
18 review all the evidence gathered by the parties, is
19 that correct?

20 A. That would be a factual determination.

21 Q. For the jury?

22 A. For the jury.

23 Q. And you have not attempted to review the
24 entirety of the record and make that determination
25 for yourself, I take it?

1 A. I have reviewed the record in part and
2 have some view. I have not seen any indication of
3 what I would call a personal profit motive or an
4 intent to defraud as I defined it on the part of the
5 Supply System officials.

6 Q. Are you defining an intent to defraud as
7 including a personal profit motive?

8 A. No, no. That's one element of it. That
9 could be an element of it. That could be.

10 Q. Not a necessary one?

11 A. No, not a necessary element.

12 Q. You would agree with me, I take it, that
13 if a, again a PUD county, county PUD official who
14 sat on the Supply System board caused the Supply
15 System to intentionally misstate a fact or allowed
16 an Official Statement to be issued with a fact which
17 he knew to be false, that would be a violation of
18 the act irrespective of whether he or his utility
19 profited by that misstatement?

20 A. That could be, that could be. You really
21 get into an analysis of what is required to
22 establish scienter. Mere knowledge of a
23 nondisclosure isn't always sufficient to establish
24 scienter. I mean, I think there are, in certain
25 circumstances it would have to go beyond that and it

1 would have to be a knowledge of a nondisclosure
2 coupled with an intent to advance -- an intent to
3 defraud to advance some sort of improper conduct.
4 So I think a person could have knowledge of a
5 nondisclosure and still have good faith, still have
6 an intent to do what was correct and not an intent
7 to defraud.

8 Q. He could have a knowledge of a material
9 nondisclosure in an Official Statement for a
10 municipal bond issue?

11 A. Uh-huh, yes.

12 Q. And still not be acting with scienter?

13 A. That's right.

14 Q. What more --

15 MR. COHEN: Let's pick up after lunch.

16 MR. SIMON: Let's finish this line. It
17 will take a minute.

18 Q. What more would he need?

19 MR. COHEN: No, let's break at noon.

20 He is on East Coast time. Earlier on a
21 break. He said, "We are not eating in the 12:00
22 o'clock?" I am not going to let him go and this is
23 a line of questioning that will last longer.

24 MR. SIMON: It will last one or two
25 questions. The witness is having no trouble. I

1 would like to learn from him what he thinks is
2 needed in addition to establish for proof of
3 scienter.

4 MR. COHEN: That sounds to me like more
5 than one or two questions.

6 MR. SIMON: It is a question that is on
7 the record. I would like an answer.

8 THE WITNESS: I lost it.

9 MR. SIMON: Would you read the question
10 back, Leslie?

11 MR. COHEN: You answer this question then
12 we will take a break, if you can answer it.

13 (Record read as requested.)

14 Q. The question I intended to ask there is
15 what more would he need?

16 A. I would say a knowledge and an awareness
17 that the nondisclosure was being -- the fact not
18 disclosed was being withheld in order to prevent
19 disclosure of that fact, for example, to see to it
20 that the bonds were sold when otherwise they
21 couldn't be sold. It would have to be some sort of
22 an awareness that this nondisclosure would result in
23 a -- that the disclosure of the fact in question
24 would result in a cratering of the deal or something
25 of that sort.

1 Q. How about if it would result in a
2 different price?

3 A. That could be a factor.

4 MR. SIMON: Let's go to lunch.

5 (Lunch recess at 12:05 p.m.)

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