
City of Cleveland v. The Cleveland Illuminating
Company, 1980

Transcripts

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Volume 26 (Part 2)

District Court of the United States for the Northern District of Ohio, Eastern Division

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Gaffin - direct

THE COURT: Approach the bench.

- - - - -
 {The following proceedings were had at the bench:}

MS. COLEMAN: Object to the relevance of this question.

MR. MURPHY: Your Honor, the purpose of -- the relevance is simply to bring home to the jury the general nature of sampling techniques, that Mr. Gaffin will explain how he scientifically uses sampling techniques to achieve an adequate result.

I think it is helpful for the jury to understand what Mr. Gaffin does is simply a scientific way of doing what people do in an unscientific way in their everyday lives.

THE COURT: Overruled.

{End of bench conference.}

- - - - -
 MR. MURPHY: Your Honor, may I have the question read, please?

THE COURT: Read the question back, please.

{The last question was read by the reporter

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2 as follows:

3 "Q Mr. Gaffin, you mentioned one point
4 in your answer, the use of sampling techniques.

5 "Before we get into how you used those
6 techniques, can you tell us, please -- perhaps give
7 us some examples of how lay people that use sampling
8 techniques perhaps in an unscientific way in their
9 day-to-day lives?"

10 A Yes, Mr. Murphy.

11 As a pollster, people are always asking me how
12 it is that we can make judgments about lots of
13 people by interviewing relatively small numbers of
14 people.

15 So I usually try to give examples of how we all
16 tend to do that in day-to-day life, and the best
17 example that I think I can give is:

18 Suppose that I'm about to buy a new car, and
19 I'm -- I've looked at a bunch of models, and I have
20 come to the conclusion that I'm either going to buy
21 a Chevrolet or a Datsun, and it's going to be one of
22 the two but I'm really not sure.

23 So my tendency is to ask some people who I
24 might know, friends or neighbors or relatives, who
25 have bought Chevrolets recently, or who have bought

1 Gaffin - direct

2 Datsuns recently, what their experiences have been.

3 I might be concerned, for example, about
4 repair problems.

5 Again, I'm lucky enough to know five people who
6 have bought Chevrolets recently, and I ask them
7 about their experience with repairs, and they say
8 that they have had no problems.

9 And I'm lucky enough to know five people who
10 have bought Datsuns, and I asked them about their
11 experience with repair, and they say they have had
12 problems -- all five of them say they have had
13 problems.

14 My inclination will be to come down on the side
15 of buying a Chevrolet.

16 I have done a sampling, an unscientific
17 sampling, and I have talked to very few people --
18 I mean, there must have been hundreds of thousands
19 of Chevrolets sold and purchased fairly recently,
20 and the same with Datsuns perhaps, but I'm likely
21 to make my decision about repair reliability on
22 the basis of a very small and unscientific sampling.

23 Q Thank you.

24 Mr. Gaffin, you also used the phrase in your
25 answer a couple of questions ago: "Random sample."

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Would you define for us what that phrase means in your business?

A I will define it, and I would appreciate the opportunity to make a small illustration of it, if I can, at the easel.

Q Feel free to do so.

A A random sample is a sample in which every element in the universe to be sampled has an equal probability of being chosen.

That's the definition.

I would like to make an illustration of it, if I could.

Q Yes, certainly.

{The witness steps down to the easel.}

Q I think you can probably leave the microphone on.

A All right.

Q Be careful.

A Okay.

{The witness steps to the easel containing

a large white pad.}

A I'm not the artist that Mr. Magruder was.

I'm going to label this "A very small universe of M and Ms."

{The witness writing on the sheet on the

1 Gaffin - direct

2 easel.}

3 THE WITNESS: I don't know whether
4 you can see this.

5 THE COURT: Can everyone see it?

6 {Several jurors raise their hands.}

7 THE COURT: I'm sorry, we have
8 three ladies.

9 MR. MURPHY: Your Honor, may I
10 have permission to have Mr. Gaffin move it out?

11 THE COURT: Yes, he can move it
12 out.

13 {The easel was moved forward so jurors 5,
14 6 and 7 could see the illustration being made
15 by the witness.}

16 THE COURT: Mrs. Meador, can you
17 see it?

18 JUROR 5: Yes.

19 THE COURT: How about you, Mr.
20 Kangas, can you see it?

21 ALTERNATE JUROR No. 7: Yes.

22 THE COURT: All right.
23 Go ahead.

24 THE WITNESS: This very small
25 universe of M and Ms will consist of ten

Gaffin - direct

M and Ms, and I'm going to surround it with my version of a picture frame.

{The witness drawing on the sheet on the easel.}

THE WITNESS: I'm doing that because this word "universe" is sometimes called "frame", and I might refer to something as a frame, and sometimes I might refer to it as a universe so it might help to illustrate this.

These M and Ms will have little Ms {the witness writing on the pad on the easel}, and what I like to illustrate is what a random sample of this small universe of M and Ms would look like and how it might be selected.

The first thing you do is you have to know that you have got all the elements of the universe in the frame.

Then what you have to do is you have to number each element. So you might take a tag with the No. 1 and attach it to this M and M; and No. 2, and attach it to this M and M; No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, and No. 10. So now I have attached a number tag to each of the M and Ms.

Gaffin - direct

Now, a random sample -- let's say that I would like to draw a random sample of five of those ten M and Ms.

What I need to do, I need to ask a computer -- which is the normal procedure for this -- I need to ask a computer to select a series of numbers between 1 and 10 at random; and each time it selects a number, it tells me the number; and then I will choose the M and M with that number tag on it as part of the sample of five.

Now, this is the way it's done formally, in terms of a random sample.

There are other ways of doing this that seem almost as good, but may not be.

For example, I could take the 10 M and Ms and put them in a bag and shake the bag up, and stick my hand in and pick out one M and M at a time.

That seems like it might be random, but it might not be, because the numbers might be larger than another M and M, or might be heavier than another M and M.

So the best way to do it is to give each element in the universe or the frame a number,

Gaffin - direct

and then have the computer select numbers from that group of numbers at random, and that's really what a random sample is.

MR. MURPHY: Thank you.

{The witness returns to the witness stand.}

BY MR. MURPHY:

Q Mr. Gaffin, in connection with this litigation, would you tell us, please, what we asked you to do?

A Yes.

You asked me whether it would be possible for me to form an opinion or make a judgment about certain customers of CEI.

THE COURT: Just a moment.

Let's move the easel back so that the jurors may view the witness as he testifies.

{After an interval.}

Q Would you like the question reread?

A Please.

{The last question was read by the reporter.}

THE WITNESS: Could you read my answer, please?

{The last answer was read by the reporter.}

A That's what you asked me to do.

Q What form of judgments did we ask you to form?

1 Gaffin - direct

2 A You asked me to form two judgments basically:

3 One, a judgment about why certain customers who
4 had switched service from Muny Light to CEI during a
5 specific period of time, between 1971 and 1975, why
6 those customers had switched service?

7 And you also asked me to make a judgment about
8 whether or not there was any -- whether or not the
9 decisions to switch had anything to do with free
10 wiring which might have been provided by a contractor
11 hired by CEI.

12 MR. MURPHY: Kathy, would you
13 hand Mr. Gaffin CEI Exhibit 1297, please?

14 {Exhibit handed to the witness by Ms.
15 Doyle.}

16 BY MR. MURPHY:

17 Q Mr. Gaffin, can you identify that document?

18 A Yes.

19 Exhibit 1297 is "A study of certain electric
20 utility customers in the Cleveland, Ohio area."

21 It's a report of a series of public opinion
22 studies that we did in conjunction with the
23 request that you made to us.

24 Q Mr. Gaffin, based on that study, have you been able
25 to form a professional opinion as to why people

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switched from Muny Light to CEI from 1971 to 1975, and whether the wiring done by a contractor at CEI's expense was a substantial motivating factor in that decision?

A Yes.

Q Mr. Gaffin, I'd like to ask you a series of questions now about what steps you followed in performing your study for us here.

Would you please describe the steps that you followed, the procedure that you followed in your report?

A Yes.

The first step was to determine from you what subject matters you wished judgments to be formed about, and we have already discussed that.

I then proceeded to draft a series of questionnaires, designing each questionnaire draft to properly interview each class of customer that we would be asked to make judgments about.

It turned out that there were --

Q Excuse me, Mr. Gaffin.

I would appreciate it if you could restrict your answer, for the moment, to identifying the individual steps you followed, and then we will go

1 Gaffin - direct

2 into each in somewhat more detail.

3 A Okay.

4 Questionnaires were designed.

5 Random samples were drawn of each type of
6 customer to be surveyed.

7 The questionnaires were printed and pre-tested.

8 Following the pre-tests, the interviewers were
9 trained to administer the questionnaires.

10 The interviewers then, in fact, administered
11 the questionnaires. The results of the interviewing
12 were transferred to computer; they were then
13 tabulated by computer; those results were then
14 analyzed by myself; a written report of the
15 results was prepared, and my judgments about those
16 results was formed.

17 Q In addition, Mr. Gaffin, did you obtain any material
18 from CEI as to the identity of the people who had
19 shifted?

20 A Yes. The universe lists, the frames, were obtained
21 from CEI.

22 Q Mr. Gaffin, are the procedures that you followed in
23 doing the work here those that a professional
24 pollster customarily follows in performing a survey
25 of this sort?

Gaffin - direct

A Yes, they are.

Q Would you tell us, please, who determined what procedures you were to follow?

A I did.

Q In the course of your work, did you have complete control over what procedures to follow?

A Yes, I did.

Q Mr. Gaffin, I would like you now to go back and take the steps that you outlined for us and discuss each one in somewhat more detail, as the case may be.

A Okay.

Q I think the first thing you told us that you did was that you determined from us what we wanted you to do.

What did we ask you to do?

A You asked me whether I could form judgments about two general areas:

You asked me whether I could form judgments about why customers who switched from Muny service to CEI service between 1971 and 1975 did, in fact, make the switch.

And, secondly, you asked me to determine what effect -- what impact, if any, the fact that CEI provided free wiring to those customers who did change during that period through contractors might

Gaffin - direct

have had.

Q Mr. Gaffin, one of the things you mentioned was that you obtained information from CEI, which you explained.

The third thing you said was that you drafted the questionnaire.

First of all, will you tell us how many different questionnaires you drafted?

A I drafted five questionnaires.

Q Why was that?

A Because there were at least five separate categories of customers, in my view, to be interviewed.

Q Could you tell us what those categories were?

A Yes.

First, there was a category called industrial customers, and those were customers who were basically large companies, very large companies.

Then there were commercial customers; and commercial customers were customers like dry cleaning establishments, for example.

There were two subclasses of commercial customers, in my view:

There was a subclass of commercial customers who had switched during the period in question, and

Gaffin - direct

who still were being billed at the address that the switch was made at.

Then there was a subclass of commercial customers who had made the switch during the period in question but had since moved from that address.

There were also two subclasses of residential customers in the same way -- residential customers being a person like you or I, in our home or apartment.

The two classes in my view are residential customers who are still at the address; that they were at at the time the service switch was made; and then residential customers who made the switch during the period in question, but who no longer lived at that address where the switch was made.

Q Mr. Gaffin, for those customers who moved, -- the group, I think, you describe as "movers" --

A Yes.

Q -- how did you obtain their current addresses and phone numbers so that you could use them in your work?

A Not easily.

What we had to do was to actually go through the Cleveland area White Pages phone directories, and also use the latest edition of the Haines Criss-Cross Directories, and what we had to do is, if the name

1 Gaffin - direct

2 was obviously the same name, for example, if it was
3 James P. Murphy, and there was only one James P.
4 Murphy in those directories, then we made the
5 assumption that we were trying to interview that
6 person, whether or not he was the James P. Murphy
7 who used to live at 1244 Lorain Avenue.

8 But there might be more than one James P.
9 Murphy now living in the Cleveland area.

0 In that case, all of the James P. Murphy's
1 were clumped together and assigned one sample point;
2 and then we had to interview all of those until we
3 discovered who the James P. Murphy was who, in fact,
4 lived at the address on Lorain Avenue during the
5 period of the switch.

6 Q Mr. Gaffin, between the movers and the constants,
7 those who had moved and those who had lived where
8 they were at the time they switched, did you discern
9 in your work any significant difference in the ability
0 of those groups in recalling the events surrounding
1 their decisions to switch?

2 A I would say generally no; but, in some cases, yes.

3 Q In what cases did you find a difference?

4 A The persons and companies who had moved tended to have,
5 in my view, worse recollections of the events of 1971

Gaffin - direct

to 1975 than those who were still at the original addresses.

Q In your professional judgment, Mr. Gaffin, what impact, if any, did this difference of recollection have on the reliability of your study and the opinion you formed on the basis of it?

A I don't think it had any effect on the reliability, and I don't think it had any effect on my opinion; but there are matters concerning that that I would be happy to discuss.

Q Mr. Gaffin, generally speaking, what considerations do you have in mind when you draft a questionnaire? In other words, what do you try to gain or obtain from the drafting of the questionnaire?

A There are several things. First, and foremost, the questionnaire has to be designed in a way that is neutral, unbiased, and objective. It cannot lead the respondent to a particular answer or group of answers that I might want or the client might want, or somebody else might want to hear.

Secondly, the introduction to the questionnaire has to be properly designed. It has to do two things. First of all, it has to encourage the respondent to answer the questions of the questionnaire. But,

1 Gaffin - direct

2 secondly, it cannot give the respondent any information
3 about the purpose of the study or who the client or
4 clients might be; and those are the two main
5 considerations.

6 Q Did you draft a questionnaire here with those
7 considerations in mind?

8 A Yes, I did.

9 Q Mr. Gaffin, in light of the fact that you were asking
10 people about a switch of electric service that they
11 made anywhere from 10 to 6 or 7 years ago, what
12 safeguards, if any, did you design into your
13 questionnaire to reflect people's recollections or
14 to make certain that your results were not biased by
15 the duration of time?

16 A Well, I don't know that we made any preparation to
17 make sure that the results were not biased by the
18 passage of time.

19 I think what we did was to design the questions
20 in such a way that if, in fact, the passage of time
21 was a factor, it would be reflected in the results of
22 the questionnaires.

23 Q Mr. Gaffin, you stated that one other procedure you
24 followed in this instance -- as you normally do --
25 was the pre-testing of the questionnaire.

1 Gaffin - direct

2 First of all, will you describe for us briefly
3 what the purpose of pre-testing is?

4 A The purpose of pre-testing basically is to make sure
5 that the questionnaire works in the manner that it
6 was intended to work.

7 That is, first of all, that people agree to be
8 introduced through the introduction.

9 But, more importantly, that questions which are
10 designed to be heard and understood in a certain way
11 by the person who drafts the questions, that those
12 questions are, in fact, heard and understood by the
13 respondent.

14 Q You said the next thing that you did was select
15 random samples.

16 Did you do that in this instance?

17 A Yes.

18 Q Were you successful in using the random sampling
19 technique here?

20 A Random samples were successfully drawn, but we were
21 not successful in using the random samples only for
22 these studies.

23 Q Will you tell us, please, why not?

24 A In my judgment, in four of the five cases of customers
25 which we interviewed, the exhaustion of the random

Gaffin - direct

samples, which means the interviewing of -- the attempts to interview everybody in the random samples, produced very low numbers of completed interviews.

Q What did you do instead of random samples?

A Well, in addition to the random samples, --

Q Excuse me.

A -- we did something that we don't normally have the luxury of doing, and that is, we attempted to interview every element of each of the universes of the four subgroups that I mentioned we had problem with.

Q Mr. Gaffin, in canvassing the entire universe, did this technique produce an adequate number of responses for you to form a professional opinion as to why people switched from Muny to CEI, and whether the wiring provided was a motivating factor in their doing so?

A I'm sorry, could the question be repeated?

THE COURT: Read the question

back, please.

MR. MURPHY: I'll repeat it,

your Honor.

BY MR. MURPHY:

Q Mr. Gaffin, did the canvassing technique you used of the entire universe produce, in your

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1
2 professional judgment, an adequate number of responses
3 for you to form a professional opinion as to why
4 people shifted from Muny to CEI service, and whether
5 the work done by contractors paid for by CEI was a
6 motivating factor in making the switch?

7 A Yes, to both parts of that.

8 Q What impact, if any, did the canvassing technique
9 have on the reliability of the opinion you formed?

0 A Well, on the reliability of the survey results, I
1 can say that the canvassing technique produces a
2 result which is not subject to normal sampling
3 error.

4 Q Mr. Gaffin, I think you told us the next thing you
5 did in your procedure was the actual interview.

6 Before we get into that, would you explain to
7 us, please, who did the interviewing?

8 A The interviewing was done by professional interviewers
9 of my company who have been trained by me; and, in
0 fact, in this particular study, I used a very small
1 number of interviewers, in fact, I believe five or
2 six interviewers in my company who are most senior
3 in terms of length of service.

4 Q What training did you give the interviewers before
5 they conducted the interviews?

Gaffin - direct

A Well, in addition to the training that they have had in doing other studies, they each had to attend a session where they were trained specifically to administer the instrument, the questionnaire, that they were going to be working with in these studies.

Gaffin - direct

Q Mr. Gaffin, to what extent did the interviewers know who your client was in this instance or what the purpose of the survey was?

A Well, I believe that they did not know who the client was.

We tried to take great care in preparation of the questionnaires, not only to try not to indicate to the respondent who the client might be, but also we tried to take great care in the design of the questionnaire and in the training session to not indicate to give any indication to the interviewers who the client might be.

Q Mr. Gaffin, how were the interviews actually conducted?

A They were conducted by telephone from Columbus.

Q And the respondents were not told why the interview was being taken?

A No. They were not.

Q In fact, sir, what if anything did you do in designing the questionnaire to, if I might call it, camouflage the reason why the interview was being undertaken?

A I don't know that we did anything to camouflage, but in the introduction to each questionnaire it was a

Gaffin - direct

general introduction, and it said that, for example -- let me give you an example which might be helpful:

The interviewer -- if the interviewer is a woman, the interviewer starts a particular questionnaire with, "Hello, my name is Mary Peterson," and I am calling long-distance from Ira Gaffin & Associates, a research firm in Columbus, Ohio," and in the case, for example of an industrial questionnaire, the introduction went on to say that, "We are conducting a survey of businesses and individuals in the Cuyahoga County area," and we ask whether we can speak with a particular person at a particular company, and when that person said, "Yes," then we continue the questionnaire at that point.

So there is nothing in the questionnaire that identifies the subject matter of the questionnaire.

Then, there are a series of introductory questions which are designed to make the respondent comfortable with answering the question in the questionnaire.

And it also is designed -- I try to design it in a way that would introduce the respondents to the general subject matter without biasing the respondents in any way toward my client, to be frank

Gaffin - direct

with you.

For example, the introductory questions I asked normally had to do with electrical bills, and whether they were higher or lower now than they had been several years ago; so I thought that would introduce the subject matter, and if it biased in any way, it would bias against the utility company presently providing service.

Q After the interviews were conducted, how did you tabulate the results?

A The results were keypunched directly from what is called the CRT, which is like a typewriter with a television set attached to it, and they are punched directly from that typewriter through a telephone line to our computer.

Q And after you obtained the results from your computer printout, did you prepare the reports that have been marked as CEI Exhibit 1297?

A My company did. I did not.

Q On the basis of that report, Mr. Gaffin, have you formed an opinion on the questions that you officially undertook to answer?

A Yes, I have.

Q And, Mr. Gaffin, tell us, please, what opinions do

Gaffin - direct

you have as to why customers switched from Mundy Light to CEI service, and whether the wiring provided by contractor, paid for by CEI, was a motivating factor in their doing so?

MS. COLEMAN: May I approach the bench?

THE COURT: Yes.

 {The following proceedings were had at the bench:}

MS. COLEMAN: I am going to insist that the witness's opinion be expressed in the only form that he is qualified to express it, which is in terms of what the survey shows as respects to any samples, what they might indicate by the universe.

I don't think he is qualified to express an opinion beyond that.

The form of the type of answer is suggested in the defendant's brief in the quotation from the Scott Paper case, and it is couched in terms of the universe, if the universe were questioned, they might answer certain ways, based on what I saw in the sample.

1 Gaffin - direct

2 MR. MURPHY: I think the testimony
3 of Mr. Gaffin has demonstrated he is not simply
4 or solely in the business of interviewing and
5 obtaining numerical results; that part of his
6 business is to form opinions based upon those
7 results, and I think on that basis he is entitled
8 to give his opinion, and I assure Ms. Coleman
9 that we intend to go into detail on the basis
10 for that opinion.

11 THE COURT: Well, I will overrule
12 the objection, certainly, as to the admissibility.
13 His qualifications, at least at this juncture, are
14 such that they qualify him to express an opinion,
15 and needless to say, it is all subject to
16 cross-examination.

17 MS. COLEMAN: Let me show the way
18 in which the expression of opinion from an expert
19 has been noted in the case cited by the defendants
20 in their brief -- and that is the Scott Paper
21 case, Mr. Murphy.

22 THE COURT: Well --

23 MS. COLEMAN: I don't believe he
24 can express an opinion beyond that type of an
25 opinion.

1 Gaffin - direct

2 I think the witness should be confined to
3 that.

4 THE COURT: I will overrule the
5 objection. Let's proceed.

6 {End of bench conference.}

7 - - - - -

8 MR. MURPHY: May I have the
9 question read?

10 THE COURT: You may.

11 {Pending question read by the reporter as
12 follows:

13 "Q And, Mr. Gaffin, tell us, please,
14 what opinions do you have as to why customers
15 switched from Munny Light to CEI service, and
16 whether the wiring provided by contractor,
17 paid for by CEI, was a motivating factor in
18 their doing so?"

19 A In my judgment the great majority of the customers
20 who switched during that period, in all five classes
21 of customer that we have interviewed, switched
22 because they felt that they would have better
23 service from CEI.

24 Insofar as the matter of payment for wiring
25 changes was concerned, in my judgment, that had a

1 Gaffin - direct

2 very minimal effect on the decision to switch.

3 Q Mr. Gaffin, do you have CEI Exhibit 131B before you?

4 A Yes, I do.

5 MR. MURPHY: Pat, would you give

6 that to the Court, please.

7 {After an interval.}

8 Q Mr. Gaffin, could you explain just what that document
9 is, please?

10 A CEI-131B is a summary of the results of some of the
11 questions from the questionnaires for each of the
12 five categories of customers.

13 MR. MURPHY: Jack, would you put

14 the first page of CEI Exhibit 131B on the screen,
15 please.

16 {After an interval.}

17 BY MR. MURPHY:

18 Q Mr. Gaffin, what I would like to do, and there are
19 about four pages of these, I think -- if you would
20 simply take each of the questions and explain to us
21 how the data, what the data was that you obtained
22 from each question, and how the data assisted you in
23 forming your opinion.

24 A Okay.

25 Let me start with the first question, and what

1 Gaffin - direct

2 this exhibit does is that it shows the question
3 basically -- for example, the question was, "What
4 electrical utility company now serves your company?"

5 Now, understand, when we are talking about
6 business and industrial customers, commercial
7 customers, that was similar to the wording used in
8 the questionnaires, but when we talk about
9 residential customers, we are not asking about their
10 company, we are asking them about their household.

11 But given that, they are then given two
12 alternatives:

13 Was their present electrical utility company
14 {A} a Municipal Electric, or Muny Light, or
15 {B} Cleveland Electric Illuminating Company, or CEI?

16 And the alternatives were read to the
17 respondents, and then the table which follows shows
18 the percentage of answers given by each class of
19 customers, and if I might, Mr. Murphy, I would like
20 to go through that first one for you so that I can
21 show you how it is read and what opinions I drew
22 from it.

23 Q Feel free.

24 A The categories of responses possible are listed on
25 the left; that is, the respondent could have said

1 Gaffin - direct

2 "Muny Light, and he could have said "CEI," and he
3 could have said that he or she didn't know or
4 didn't remember or he could have refused to answer
5 the question.

6 For the first column then the results are shown
7 in percentage form for the industrial customers
8 interviewed, and you can see from the data that none
9 of the industrial customers interviewed said that
10 they were now served by Muny Light.

11 91 percent said that they were served by CEI
12 presently, and 9 percent didn't know who served them
13 presently, and none refused to answer the question.

14 Certainly the residential constants, the next
15 column, shows none of the residential constants
16 interviewed -- and those are the people who
17 switched and are still living at their same address --
18 none said that they were now served by Muny Light,
19 and 99 percent said that they were served by CEI,
20 and 1 percent said they were not sure, and no one
21 refused to answer the question.

22 For the residential mover group, 10 percent
23 said they were served by Muny Light, and 83 percent
24 said by CEI, and 5 percent said they were not sure,
25 and 3 percent refused, and that is an interesting

1 Gaffin - direct

2 result because there is a possible apparent confusion;
3 that is, are they asking people who used to live at
4 the residence, for instance, that a switch was made
5 between Muny Light and CEI, and that is that we know
6 that that occurred, and now we are interviewing them,
7 and they are at a different address, and we are
8 asking who now serves this address and 10 percent
9 are saying that Muny Light now serves their
10 address, so that is quite possible.

11 For the commercial constants the result was that
12 none said that they were presently served by Muny
13 Light, and 97 percent said they were now served by
14 CEI, and 3 percent are not sure, and none refused.

15 And in the last category of customer interviewed,
16 and that was commercial movers, and in the commercial
17 movers none said that Muny Light now serves their
18 company, and 50 percent say that CEI now serves their
19 company, and 50 percent don't know, and those people
20 were people basically who are saying that we could
21 have classified them as refusers, but they
22 answered the question, but what they said was, "We
23 don't have a company any more, so the question
24 isn't applicable to us."

25 So that is basically how the percentages read.

1 Gaffin - direct

2 They all read in the same way, and all of the
3 numbers are percentages of responses.

4 Q Would you look at Question 2, and what data does that
5 show?

6 A In Question 2 we informed the respondents that our
7 research indicated that between 1971 and 1975, their
8 company or they switched utility companies, and we
9 asked them whether they happen to recall switching
10 utility companies then.

11 Now, the wording of this question was, in my
12 opinion, crucial.

13 We stipulated that we had researched, and that
14 indicated that they had switched, because we didn't
15 believe that there was any point of contention about
16 that.

17 We were not trying to test their memory about
18 that, but we were wanting to give them permission to
19 say that they didn't recall switching at that time,
20 and so we worded that question, "Do you happen to
21 recall," and when we word a question that way, we
22 give the respondent permission to say "No."

23 The respondents tend to be embarrassed if they
24 can't answer a question, and they also want to please
25 the interviewers usually, so in a situation like this

1. Gaffin - direct

2 we have to give them permission to say "No," and so
3 we worded it that way, "Do you happen to recall,"
4 and the results were of the industrial customers,
5 73 percent said yes, that they recalled, and 18
6 percent said no, they didn't recall that, and 9
7 percent weren't sure. Nobody refused among the
8 industrial group.

9 Q Mr. Gaffin, I notice in looking across the answers
10 to Question No. 2 --

11 A Yes.

12 Q -- the residential movers answered 45 percent that
13 they didn't have -- that they didn't happen to recall.

14 What significance do you give to that number?

15 A Well, I give it significance in one respect:

16 The proportions in answer to that question among
17 the residential movers are different from the
18 proportions among the other four classes of customers.

19 So I think there is a significant difference in
20 relation as to between residential movers and the
21 other four classes of customers.

22 Q Could you go on, please, to Question No. 3.

23 What information did you try to elicit there,
24 and what results did you get?

25 A Well, here we were trying to ask them two substantive

1 Gaffin - direct

2 questions, and this is the first one, and there was
3 one that followed that.

4 We were trying to ask them whether interruptions
5 in electrical service were more frequent after the
6 switch to CEI or less frequent after the switch to
7 CEI or about the same frequency after switching to
8 CEI.

9 MR. MURPHY: Jack, could you push
10 that up to get a better light on it?

11 {After an interval.}

12 Q Proceed.

13 A We asked the question for two reasons: {1} We wanted
14 to see whether we could test the memory of the
15 respondents and {2} We wanted to see what in fact
16 they thought they remembered about interruptions.

17 Q Generally speaking, did you find the memory of
18 respondents pretty good?

19 A Yes, very good.

20 MR. MURPHY: Jack, would you go
21 on to the second page.

22 THE COURT: Perhaps this would
23 be an opportune time to take our morning break.

24 Please, ladies and gentlemen of the jury,
25 during the recess keep in mind the Court's

1 Gaffin - direct

2 admonition.

3 {Recess taken.}

4 THE COURT: Please be seated.

5 Call the jury in.

6 {The jury was reseated in the jury box.}

7 BY MR. MURPHY:

8 Q Mr. Gaffin, what is on the screen now is page 2 of
9 CEI's Exhibit 1318?

10 A Yes.

11 Q The first number is obliterated. I think it is No. 4?

12 A Yes.

13 Q Could you proceed and explain what the data is that
14 you obtained from these questions?

15 A Yes.

16 Summarized here, the next one is, "Would you
17 say that you were more satisfied on the whole with
18 service by Muny Light, or that you were more
19 satisfied with service by CEI," and you can see that
20 the great majority of respondents in the customer
21 categories responded "CEI, 91 percent of the
22 industrial; and 74 percent of the residential
23 constants; and 53 percent of the residential
24 movers; and 77 percent of the commercial constants;
25 and 71 percent of the commercial movers.

1 Gaffin - direct

2 Q Before we go to the next question, let me ask you
3 about a question that is in your questionnaire, but
4 it is not on the screen.

5 Did you ask the respondents simply why they
6 switched from Muny Light to CEI service?

7 A Well, we asked them not only whether they switched
8 but also why.

9 Q In what form did you ask the question?

10 A It was an open-ended question. The question was
11 basically, "Why did you switch?"

12 Q What results did you obtain from that question?

13 A If I could read from page 20 of our report, the
14 paragraph that is entitled, "Reason for Switching",
15 and this is from the report of the interviewers
16 with the residential constants.

17 The respondents present were informed that the
18 records show that they switched from Muny Light to
19 CEI, and we asked if they recall why they made the
20 switch.

21 75 percent stated poor service and power
22 outages, 14 percent said they had always been with
23 CEI, and 5 percent said they had switched because
24 the billing was switched, and this refers to
25 apartment dwellers, and 2 percent said they had moved.

1 Gaffin - direct

2 and 2 percent stated billing and cutoff problems,
3 and 1 percent cited high rates, and 1 percent
4 recalled free installation of an electrical appliance,
5 and 6 percent said that they didn't know.

6 Q Now, would you move on to the next question on the
7 screen, and tell us in summary form what the data
8 was that you obtained from those questions.

9 A Question No. 5 was a question which asked them, told
10 them that certain changes had to be made in the
11 wiring for a switch to be made, and it asked them
12 whether they remembered whether wiring changes had
13 been made; and as you can see, the yes's were always
14 quite high with one exception, and that exception
15 being the residential movers; but I think the 55
16 percent of the industrials remembered wiring
17 changes, and the same percent of residential
18 constants, and almost two-thirds of the commercial
19 constants, and 50 percent of the commercial movers
20 recalled, but in the case of residential movers,
21 the greatest percent did not have a recollection or
22 could not answer the question, and 35 percent said
23 no, they didn't recall wiring changes, whether they
24 had been made, and only 20 percent said that they
25 could.

1 Gaffin - direct

2 Q Move on to Question No. 6, please.

3 A Question No. 6 was, "Do you recall who paid for the
4 new wiring when you switched?" And there again four
5 of the classes seemed to have considerable
6 recollection, ranging anywhere from 64 percent of
7 the industrials and the commercial movers saying
8 that they did recall down to again the residential
9 movers saying only 20 percent or a fifth of those
10 were able to recollect.

11 Q Go to the next page now, and again, the number is
12 obliterated, Mr. Gaffin, and the question is who
13 was that -- does that refer to who paid for the
14 new wiring?

15 A Yes, I believe it did, yes.

16 "Do you recall who paid for that new wiring, and who
17 was that."

18 And here the categories are listed there, but
19 they were not read to the respondents. They were
20 listed on the questionnaires, and the interviewers
21 were instructed to record if the respondent
22 volunteered one of those answers, but they were not
23 read to the respondents.

24 Question 8 was, "Did the matter of paying for
25 the wiring changes have any effect on your decision

Gaffin - direct

to change from Muny Light to CEI?"

MR. MURPHY: Jack, would you move

that up farther, please. Thank you.

{After an interval.}

A There you can see again the greatest percent are in the "No" answer.

64 percent of the industrial customers said "No," and 62 percent of the residential constants said, "No," and 48 percent of the residential movers and 80 percent of the commercial constants and 98 percent of the commercial movers.

Q What was the significance of this answer in forming your opinion?

A Well, it was very important to my opinion because it indicated to me that certainly in four of the cases for sure, and potentially the fifth, that the respondents did not recollect the matter of paying for the wiring changes to have had any effect on their decision to change.

Q Move on to the next page, please.

A Well, we asked a hypothetical question there.

We asked them, "If CEI had not paid for the new wiring, did the respondent think that that fact alone would have made them more inclined to switch or

1 Gaffin - direct

2 less inclined or no difference," and the response
3 almost always, almost all the time, the responses
4 were in the "No difference" category, although
5 anywhere from a little over 10 percent to about a
6 fifth said that they would have been not as inclined
7 to switch if CEI had not paid for the changes.

8 Q What significance did that response have in forming
9 your opinion?

10 A Well, it had a considerable impact in two ways:

11 First, it seemed to me in the majority of the
12 cases that the respondents were saying that it made
13 no difference, but in some cases, as much as a
14 fifth of the cases, the respondents were saying
15 that if there had not been payment, it would have
16 made them less inclined to switch.

17 It also indicated, I think, to me, again, a
18 fairly reasonable consistency in response.

19 Q Mr. Gaffin, in Question No. 9 of your report, the
20 tabulated numbers, the back of the report, are
21 different from what is shown on the screen?

22 A Yes.

23 Q Would you explain what happened with respect to that
24 difference?

25 A Yes. This was a typographical error made in the

1 Gaffin - direct

2 table of the report.

3 Those numbers are correct, and they are the
4 numbers that were obtained.

5 Q All right.

6 Would you go on, please, to Question No. 10.

7 A In Question No. 10 we stated to the respondents that
8 it was true that it was a fact that CEI paid for new
9 wiring changes to customers who switched between
10 1971 and 1975, and we asked them if they had known
11 about that, would it have made any difference in the
12 decision to switch; that is, whether or not they
13 knew about it, and if they had known about it, would
14 it have made a difference, and the results again
15 were either a clear majority or close to it said
16 that it would have made no difference, and that again
17 we had a response here, and this time that anywhere
18 from 11 percent to a quarter of the respondents said
19 that had they known, they would be even more
20 inclined to switch.

21 Q Go on to the last page.

22 A Yes. At the end of the questionnaire we asked
23 them some questions, and I don't know if they are
24 germane to this litigation, but we thought they may
25 have some value to you.

1 Gaffin - direct

2 We asked them if they had ever been sorry they
3 had switched from Muny Light to CEI, and in each case,
4 for each class of customer, the greatest response was
5 in the "No" category.

6 91 percent of the industrials said no they were
7 never sorry, and 80 percent of the commercial
8 constants, and 93 percent of the commercial movers,
9 and 48 percent of the residential movers.

10 On the other hand, almost a fifth of the
11 residential constants and almost a fifth of the
12 residential movers said in fact that they had been
13 sorry that they switched from Muny Light to CEI

14 MR. MURPHY: No further questions,
15 your Honor.

16 THE COURT: Cross-examination.

17 - - - - -

18
19 CROSS-EXAMINATION OF MR. IRA GAFFIN

20
21 BY MS. COLEMAN:

22 Q Mr. Gaffin, if you don't have your universe properly
23 defined, or you haven't taken your samples right,
24 your hands might be covered with a thin chocolate
25 mess; is that right?

Gaffin - cross

1
2 A I suppose you are referring to the M and Ms.

3 Q Mr. Gaffin, when were the surveys that you testified
4 to done?

5 A The actual interviews were begun the week following
6 the Fourth of July weekend, and they were continued
7 for approximately 10 days thereafter.

8 Q When did you first meet with the attorneys for
9 Squire, Sanders & Dempsey?

10 A I never met with them.

11 Q You talked to them by phone?

12 A That is correct.

13 Q And when was that?

14 A The first phone conversation I believe was near the
15 end of May.

16 Q Do you know the purpose of the survey that you took?

17 A Pardon me?

18 Q Did you know the purpose, the ultimate use of the
19 survey that you took?

20 A I am not sure what you mean by that.

21 Q Did you know that you were going to be testifying in
22 court?

23 A I was told that that might be the case, yes.

24 Q And were you familiar with this litigation?

25 A In a cursory way.

Gaffin - cross

1
2 Q You knew something about it from the publicity
3 down in Columbus?

4 A There has been very little publicity in Columbus,
5 but I knew about it just generally, that it was
6 occurring.

7 Q Who gave you the names and the addresses of the
8 customers?

9 A The customer lists were provided to me by CEI.

10 Q By CEI or by the attorneys?

11 A By CEI.

12 Q And did they provide you with the names of original
13 customers who switched to CEI?

14 A They provided me with two kinds of lists.

15 They provided me with lists of original
16 customers who switched, and they provided me with
17 lists of customers at the same addresses at the end
18 of 1980.

19 Q Now, you stated that the people who did the
20 interviews were your senior interviewers; is that
21 correct?

22 A Yes.

23 Q Is that uniformly so?

24 A Yes.

25 Q And they were supposed to know the regular procedures

Gaffin - cross

1
2 of the Ira Gaffin & Associates, and how to carry out
3 any survey that is done; is that right?

4 A That is correct.

5 Q And they should know how to fill out the forms and
6 when and where to fill out the forms, and so forth?

7 A Yes.

8 Q And how to conduct themselves in the interview?

9 A Yes.

10 Q There are some places on the survey form, are there
11 not, where the interviewer is supposed to fill in
12 information other than checking off yes or no?

13 A Yes.

14 Q For example, there is supposed to be -- they are
15 supposed to fill in the name of the person to whom
16 they spoke, aren't they?

17 A Not necessarily, no.

18 Q They were not supposed to fill in the name of the
19 person to whom they spoke?

20 A No.

21 Q It doesn't matter who they spoke to?

22 A Yes.

23 Q How can they ascertain that if the name is not
24 written there?

25 A I think you are probably referring to the

Gaffin - cross

introduction to the questionnaires, are you not?

Q Right.

A They were not required to write the names of the people to whom they spoke on the questionnaires.

They are required to read the names of the persons they are attempting to interview.

Q Well, how can you verify if you are reviewing the questionnaires whether they in fact spoke to the people they were supposed to speak to if the name is not written on the questionnaire?

A Well, that wouldn't verify the fact that you are referring to.

Q Well, they could have made it up, and then filled it in?

A It is conceivable. The only way to verify would be to actually call back each of the people listed in the sample and universe and ask if they had been interviewed.

Q And you had no interest in -- you didn't do any of the interviewing?

A No.

Q And as a supervisor of the project, you didn't have an interest if there was a record on the survey question of the person to whom the interviewer talked;

Gaffin - cross

is that right?

A No, I did not.

Q Now, there were spaces on the survey questionnaires for both the name of the person that the interviewer is supposed to have talked to and the address to be filled in, if I recall correctly; is that right?

A In certain cases.

In the case, for example, of the introduction to the interview for the residential movers, the interviewer was to ask for John Smith, "Are you the John Smith who used to live at 1129 Lorain Avenue?"

Q And that was the form in which they were supposed to introduce the survey questionnaires; is that right?

A That is correct.

Q Now, none of your interviewers wrote down the address on the face of the questionnaire used for the particular interview, did they?

A I am not sure about that. I haven't looked at each questionnaire.

Q Well, if the name of the person to be interviewed and the address of the person to be interviewed is unwritten on the questionnaire, then the interviewer is, I suppose, looking at some other piece of paper when they are on the phone; is that right?

1 Gaffin - cross

2 A Some other piece of paper?

3 Q Yes.

4 A No.

5 Q You have them memorize the names and addresses when
6 they make the telephone calls?

7 A No. They have two pieces of paper in front of them,
8 the list of persons, and the names and addresses and
9 phone numbers, and they have a blank questionnaire.

10 Q That is what I asked you.

11 A Yes.

12 Q And they shift back and forth between the two if
13 they haven't bothered to write the name and address
14 on the survey questionnaire.

15 Q But in the introduction they have got to shuffle
16 back and forth?

17 A Yes.

18 Q And they make some other notes on this sheet of
19 the prospective interviewees or respondents?

20 A Yes.

21 Q And that is what I am asking you, they shift back
22 and forth?

23 A Yes.

24 Q Now, at the end of the questionnaire there is a
25 certificate.

Gaffin - cross

1
2 Is that a customary practice that you have in
3 doing the surveys?

4 A A certification of the interview?

5 Q Right.

6 A Yes. Is that correct?

7 Q That is your standard practice; is that right?

8 A That is correct.

9 Q And this is your standard certification, isn't it?

0 A It is one of the standard certifications, yes.

1 Q And the only thing that this certification indicates
2 is that, "I, the interviewer, certify that the
3 above information was obtained and accurately recorded
4 on the date at the time from a respondent and at
5 the phone number listed above?"

6 A That is correct.

7 Q And it doesn't say "the" person. It says "a respondent,"
8 right?

9 A That is correct.

0 Q Now, you listed for us the types of surveys that your
1 firm customarily does, and you mentioned market
2 research, site selection, and political polling?

3 A Yes.

4 Q Market research is what -- things like product
5 identification -- "Do you recall what detergent comes

1 Gaffin - cross

2 in an orange box?"

3 A It can be, although the market research we customarily
4 do is research of a more specific nature.

5 For example, I think I mentioned that we had done
6 work in the past for the Accent Draper Company in
7 Columbus, Ohio, and the research involved as an
8 investigation of their current market in terms of
9 customers and potential market, and that is what is
10 meant.

11 Product research is different, and that
12 involves actually taking a look at a specific product
13 such as a detergent or an automobile and making a
14 judgment about that.

15 We really don't do product research.

16 Q In other words, the focus of your inquiry is whether
17 these individuals that you call have brought the
18 draperies or might be interested in buying them?

19 A That is right.

20 Q Now, site selection, and that deals with reactions
21 of people to the potential location of large
22 buildings in their area, or what?

23 A No. It involves, for example, a fast food restaurant
24 chain which might wish to open a new unit in a city
25 where they have no units, and they might retain us

Gaffin - cross

1
2 to do a survey research in that city, to determine
3 whether or not a unit would be well received, and
4 if so, where the unit might do the best.

5 Q So you are asking people there, "What do you think
6 about having a McDonald's four blocks away at the
7 intersection of X and Y street?"

8 A Not really.

9 Q Is that generally the kind of questioning that you
10 are asking?

11 A We ask them those kinds of questions, but not
12 specifying, "Would you like to have a McDonald's."

13 Q You might ask them whether they are interested in
14 a restaurant, and a particular kind of food?

15 A Yes, do they eat out often, and so forth.

16 Q Now, the last type of polling you mentioned was
17 political polling, and you mentioned a number of
18 candidates for whom you had done a poll.

19 What essentially is your purposes in those
20 polling surveys?

21 A The purpose there is generally to render judgments
22 for the clients about whether or not they ought to
23 run for a specific office, and what their chances
24 might be, and also to provide guidance to them
25 about where the electorate stands on issues that

1 Gaffin - cross

2 they might have to address in the course of the
3 campaign, and to provide guidance to them about what
4 kinds of things and what types of media they might
5 want to apply to give messages to potential voters.

6 Q If I understand that, part of your business -- you are
7 asking people what their present opinion is on certain
8 issues or certain persons or parties; is that correct?

9 A Some of the questions are those kinds, yes.

10 Q Is there some other major category of question that
11 you asked in political polls?

12 A Yes; questions of fact, for example, what the age of
13 the respondent is, and where the respondent lives, and
14 what the respondent's household income might be, and
15 what the respondent's race or religion might be.

16 Q Do you have classifications, or does it also bear on
17 whether you use the results of that interview or not --
18 are you having trouble hearing me?

19 A A little bit. I am sorry.

20 Q Let me repeat my question.

21 A Thank you.

22 Q When you ask questions like the age or the sex of the
23 respondent, are those merely for your own internal
24 classification, or do you use them to determine
25 whether to use that interview in your tabulation or

Gaffin - cross

1
2 results?

3 A No. We do not use them to determine whether or not
4 to use the interview. They were used for analytical
5 purposes.

6 Q Well, if the respondent is 16 years old and he is
7 ineligible to vote in the next election, do you use
8 his response in your tabulation?

9 A No, but he would be filtered out in a series of what
10 we call "filter questions" early in the
11 questionnaire, and the interview would be terminated.

12 Q I see.

13 They answer that they are 16, and the
14 interviewer gracefully exits and thanks the respondent
15 and goes on to the next one?

16 A Hopefully gracefully.

17 Q Mr. Gaffin, what is the universe of response that
18 you had in this case? Is that defined in your report?

19 A Yes; there were five universes.

20 Q Well, you are referring to specific classes of
21 customers when you say that; is that right?

22 A Yes.

23 Q What is the source of your information on what
24 class, industrial, commercial, or residential,
25 to put the customer in?

Gaffin - cross

1
2 A CEI was the source.

3 Q And as to the broad universe study, is that described
4 in the introduction to your survey in a study of,
5 "electrical utility customers who switched service
6 from Muny Light to CEI between 1971 and 1975?

7 A Broadly that describes the five universes.

8 Q Now, what information -- strike that.

9 Isn't it a fact, Mr. Gaffin, that of the people
10 that have been interviewed, none switched in the year
11 1975?

12 A I don't know that to be the case.

13 MR. MURPHY: Objection, your Honor.

14 THE COURT: Overruled.

15 MS. COLEMAN: Mrs. Richards --

16 well, okay, never mind.

17 Q What was the source of your information as to the
18 time span involved, the 1971 to 1975 bracket. What
19 was the source of your information?

20 A The source of the information was Squire, Sanders &
21 Dempsey.

22 Q They told you to refer to the years 1971 to 1975 in
23 your interviews?

24 A That is correct.

25 Q And if that time period is incorrect, that introduces

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Gaffin - cross

an element of error in the forms of the question that refer to those years, doesn't it?

A Not necessarily.

Q Well, if the respondent switched sometime between 1971 and 1975, and none of them switched in 1975, even though they all switched within that time frame, you are introducing an irrelevant item?

A It may be irrelevant, but I don't think it introduces error.

Q Well, it makes sense to have the respondent think over the period broader than the one that you are really interested in?

A Pardon me?

Q If you have the respondent thinking back to 1971 to 1975, they are thinking back over a broader time frame than is actually the source of concern?

A I don't know that to be the case.

Q Is it your understanding that you interviewed all of those persons who switched from Muny Light to CEI between 1971 and 1975?

A No.

Q But that is the way that you characterized the universe in your survey, isn't it?

A No.

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Gaffin - cross

1
2 Q There is no limiting language in the characterization
3 of the universe here on page 1, is there?

4 A Not on page 1.

5 Q Well, there is no limiting language, and I am not
6 talking about classifications now.

7 There is no limiting language anywhere else
8 in the description of the survey work, is there?

9 A Yes.

10 Q Would you please show me where it is.

11 A Yes.

12 It is first on page 2, and there is a description
13 of the universe of industrial customers, and if I may,
14 I would like to read the language of that paragraph.

15 Q All right.

16 A "Ira Gaffin & Associates obtained from the Cleveland
17 Electric Illuminating Company, CEI, copies of
18 contracts, letters, sent to each of 16 industrial
19 companies regarding service and whether there were
20 any changes made between 1971 and 1975."

21 So there is a description of the universe
22 interviewed in the case of industrial customers.

23 Q And you have similar descriptions of the number of
24 respondents that you talked to throughout?

25 A Yes. We described the size of the universes and

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1 Gaffin - cross

2 the sizes of the totals of people interviewed in each
3 universe.

4 Q Now, aside from the description of the size of the
5 universe that you have referred to here, and other
6 places in your report, what description is there of
7 the characteristics of the universe? That would be
8 who these people are and what does the whole group
9 represent -- other than on page 1?

10 A None.

11 Q Now, would you accept, Mr. Gaffin, that the total
12 number of persons who switched from Muny Light to
13 CEI during the period 1971 to 1975 is in excess of
14 2,500 people?

15 MR. MURPHY: Objection.

16 THE COURT: Approach the bench.

17 -----
18 {The following proceedings were had at the
19 bench:}

20 MR. MURPHY: I object to the
21 question, number one, on the ground of
22 relevancy; and secondly, on the ground that
23 Ms. Coleman knows better concerning the universe
24 from which this study was done.

25 There are voluminous places in the report

1 Gaffin - cross

2 where it makes clear that the universe consists
3 not only of the people who switched from Muny
4 Light to CEI, but who also had wiring changes
5 paid for by contractors, and it mentions that
6 in the report a number of times, and you know
7 that, Ms. Coleman.

8 MS. COLEMAN: We have a couple of
9 issues here.

10 You laid out this morning the criteria which
11 has to be satisfied if this material can come
12 into evidence.

13 If the universe is not the proper one to
14 study, or if the description of it is erroneous,
15 that goes to the reliability of the survey and
16 whether it has been done properly, and this
17 series of questions deals with that issue.

18 MR. MURPHY: If I may go on, the
19 issue that was raised in this case is that we
20 paid for wiring services performed by a
21 contractor, and that induced people to shift
22 from Muny Light to CEI, and then they go on and
23 claim there was unfair trade practice.

24 The purpose of Mr. Gaffin's testimony is
25 to demonstrate the plaintiff's contention is

1 Gaffin - cross

2 erroneous, specifically concerning the people who
3 received wiring services provided by a contractor,
4 and that is the whole point of this.

5 The whole point is not to analyze why
6 everybody who switched did so.

7 THE COURT: Yes. I thought the
8 testimony was limited to that, the effect of
9 the free-wiring service on the switching.

10 MS. COLEMAN: The testimony is
11 limited to that, but Mr. Gaffin reports overclaims,
12 and to the extent he is making misleading
13 statements, I want to bring that out. This is
14 cross-examination.

15 THE COURT: I will sustain the
16 objection.

17 {End of bench conference.}

18 - - - - -

19 BY MS. COLEMAN:

20 Q Mr. Gaffin, is it your statement that the universe
21 of industrial and residential and commercial
22 customers that you studied is less than the total
23 who switched -- is not intended to be the total who
24 switched from Muny to CEI during the period 1971 to
25 1975?

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Gaffin - cross

Repeat that, please.

Is it your contention that you had not taken as the universe the total of customers who switched from Muny to CEI during the time period of 1971 to 1975?

MR. MURPHY: Objection.

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

THE COURT: You are asking the same question. Let's proceed.

MS. COLEMAN: I am trying to establish the groundwork.

THE COURT: I just sustained the objection. Why do you ask the same question.

Let's proceed.

{End of bench conference.}

- - - - -

THE COURT: Limit it to the direct testimony Ms. Coleman.

BY MS. COLEMAN:

Mr. Gaffin, did you study only those customers that switched from Muny Light to CEI who you were informed received payments through a contractor on

1 Gaffin - cross

2 whose behalf payments to a contractor were made?

3 A Yes.

4 Q And was your universe that whole group; is that
5 your understanding?

6 A Yes. That is my understanding.

7 MS. COLEMAN: Mrs. Richards, please

8 give Mr. Gaffin Plaintiff's Exhibit 3103.

9 {After an interval.}

10 Q Mr. Gaffin, Plaintiff's Exhibit 3103, which I invite
11 you to look at, is a document which is in evidence, and
12 it consists of information presented by the CEI
13 company concerning the total number of
14 customers on whose behalf payments were made to
15 electrical contractors to switch them from July,
16 1971, to February, 1974.

17 If you will turn to page 2, Mr. Gaffin, you will
18 see that under the total, that the total number of
19 customers provided by that exhibit is 1,883.

20 Do you see that?

21 A Yes, I do.

22 Q And that is not the number in your universe, is it?

23 A Are you asking me whether it is the number?

24 If I add together all the names that were
25 supplied to me, do I arrive at that number?

1 Gaffin - cross

2 Q If you add together all the names in the universe
3 of respondents that you studied, do you get that
4 number?

5 A No. The answer is no.

6 Q You get something less than that?

7 A The answer is yes.

8 Q Now, Mr. Gaffin, there has been testimony in this
9 case that a certain group of the 1,883 customers on
10 whose behalf wiring payments were made in 1971 to
11 1974, were no longer CEI customers at year-end 1980,
12 and I ask you to assume that to be the case.

13 Now, the number remaining after you make the
14 deduction for those no longer on CEI is 1,781.

15 Will you accept that number?

16 A You are asking me to accept it?

17 Q Yes.

18 A Sure.

19 Q That number is not the number of people in your
20 universe either, is it?

21 A No.

22 Q The number of people in your universe -- and with
23 your leave I will call it the "Gaffin universe" is
24 1,273.

25 Does that look about right to you?

Gaffin - cross

A Could I check that?

Q Sure.

A Thank you.

{After an interval.}

1,273 is the number that I arrive at.

Q Now, going back to your idea of the frame of the universe, and we have then a situation where there are 1,273 residences and businesses and industries in the frame that you studied here; right?

A That is correct.

Q And there are another 610 people who received payments who received the benefit of contract payments who were outside the frame; right?

A I don't know that to be the case.

Q Well, Plaintiff's Exhibit 3103 shows the total number on whose behalf contractor payments were made, and it shows the 1,883?

A I accept that the exhibit shows that, yes.

Q Which is in excess of your universe by some 610, if my quick math is right?

A Yes.

Q Now, you referred in your exhibit to subcategories of residential and commercial customers, to what you called movers and constants?

CYRIL LAW LIBRARY

Gaffin - cross

1
2 A Yes.

3 Q Who did the work of identifying whether a particular
4 customer was a mover or a constant?

5 A-- My company did.

6 Q And if I understand what you did, you compared the
7 customer's name that would be given on a 1974
8 listing of customers to the name given on the 1980
9 listing of customers, and if it was different, then
10 that was a mover?

11 A. We looked both at the names and the addresses.

12 We compared a listing for John Smith at 1221
13 Lorain Avenue -- first we looked to see whether
14 1221 Lorain Avenue was still on the list for 1980,
15 and then if it was, we looked to see if John Smith
16 was still listed as a customer there, and then we
17 considered him part of the residential constant
18 subuniverse, and if there was another name at that
19 address, we considered Mr. Smith part of the
20 subuniverse that we labeled "residential movers."

21 Q And if the Lorain Avenue address that you mentioned
22 is not on the 1980 list, you didn't include it in
23 the universe at all?

24 A If the address was not on the list?

25 Q Right.

Gaffin - cross

1
2 A No; that is not correct.

3 Q If the address was not on the 1980 list, it was
4 included in your universe?

5 A That is right; that is not correct.

6 Q Excuse me. I will try that again.

7 A Okay.

8 Q I gather that you wanted to call all the persons or
9 businesses listed on the 1980 printout; is that right?

10 A That is correct.

11 Q And if the name appeared on the 1974 printout and not
12 on the 1980 printout, you didn't call them; right?

13 A If the name --

14 Q I am sorry -- if the address appeared on the 1974
15 printout and not on the 1980 printout you didn't
16 call them?

17 A That is correct.

18 Q And so those people, even though they did receive
19 contractor payments, they are out in this group
20 [indicating] as far as your universe is concerned,
21 they are outside the frame?

22 A I am not sure of that, no.

23 Q Well, you testified that you didn't consider them
24 part of the universe, didn't you?

CHIEF CLERK LIBRARY

1 Gaffin - cross

2 Q I am talking about, right now, about a situation
3 where the address is not on the 1980 list.

4 A If the address was on the 1974 list and it is not on
5 the 1980 list, and what is it you are asking me?

6 Q You testified that you did not call or try to call
7 those people?

8 A No; I haven't testified to that.

9 MS. COLEMAN: Roy, would you go
10 back about four questions and read the record,
11 please.

12 {Record read by reporter.}

13 MS. COLEMAN: Thank you.

14 Q Are you changing your answer now?

15 THE COURT: I don't think he
16 finished reading the complete context. Read all
17 of it.

18 {Record read by reporter.}

19 THE COURT: Well, I think we
20 have to clarify it for everyone's benefit.

21 MS. COLEMAN: All right.

22 Q Well, you had a 1974 list and a 1980 list?

23 A Right, and each list consisted of names and addresses.

24 Q Yes; and some addresses for this 1974 list were not
25 on the 1980 list?

Gaffin - cross

That is correct.

And to the extent that that occurred, you didn't call those people whose addresses fell into the 1974 list and not into the 1980 list?

I am hearing you make a distinction between calling an address and calling people, and that is what is causing my confusion, so if you could rephrase that, if you could rephrase that and either refer to people or an address, I might be able to help you.

I am referring only to addresses, but somebody has to answer the phone?

Yes, but if the address appeared in the 1974 list --

Right.

-- and the address did not appear in the 1980 list, then, is your question to me, did we attempt to contact the person whose name was associated with the address that appeared in 1974?

Yes.

Okay. The answer to that question is no.

Thank you.

Now, we move from addresses to names.

All right.

You compared the names on the 1974 list to the names on the 1980 list?

Gaffin - cross

1
2 A Correct.

3 Q Now, some of the names were names of companies, and
4 some were names of individuals; right?

5 A That is correct.

6 Q And in a situation where the name is associated with
7 the address -- and maybe so we don't lose track of
8 things, let's pick an address, let's pick 900 Euclid
9 Avenue.

10 A Yes.

11 Q If the name associated with 900 Euclid Avenue in 1974
12 was different from the name associated with 900
13 Euclid Avenue in 1980, you considered that person a
14 mover?

15 A The original person we considered to have moved, or
16 the company.

17 Q Right; and you classified that person or company as a
18 mover?

19 A That is correct.

20 Q And that person interviewed then went into a group
21 with other people so classified?

22 A That is correct.

23 Q If it is the same class of customer?

24 A Yes, within each class of customer.

25 Q Yes; within each class of customer.

EMERSON LAW LIBRARY

Gaffin - cross

1

2 A Right.

3 Q And there is some importance to this classification
4 between movers and constants because you have
5 different questionnaires for them; right?

6 A The introductions are different, and the main
7 questionnaire, the main question sequence is the
8 same.

9 Q And they are tabulated separately, you tabulate a
10 moving group together and a constant group together?

11 A That is correct.

12 Q Now, did you, did your staff make any independent
13 checks to see if the 1974 people you called movers
14 really moved?

15 A We attempted to call those people if we could identify
16 from their names that they might still be in the
17 Cleveland area.

18 Q Now, where the name changed between 1974 and 1980,
19 that name change could be the result of a variety of
20 factors, couldn't it?

21 A Yes.

22 Q Could it be a situation where Mr. Jones owned the
23 building, and in 1974 he had a tenant, Mr. Smith, and
24 in 1980 he had a new tenant, Mr. Rogers?

25 A Yes.

Gaffin - cross

1
2 Q -- or we could have a situation in which a company
3 is doing business, and in 1974 their electrical bill
4 comes to Mr. Jones, the bookkeeper, and in 1974 --
5 correction -- in 1980 the electrical bill comes to
6 Mr. White, the bookkeeper, since Mr. Jones is no
7 longer there; right?

8 A I am not so sure about that.

9 If it is the same company, unless the company
10 changed its name, it seems to me that the company
11 would be receiving the bill, and it might be in
12 somebody's attention, but the company name would still
13 be there.

14 Q If the name you were given on the list by CEI gave
15 you was the name of the bookkeeper or accountant,
16 because that is the way the company treats the
17 matter, if the name changes, you treat it as a mover;
18 right?

19 A If the name changes, we try to find the person who
20 was named in the 1974 list, yes .

21 Q And when you find that person, you treat the
22 results of the interview in the mover classification?

23 A That is correct.

24 Q Now, there are at least a couple of instances in your
25 classifications where it is suggested on the face of

Gaffin - cross

1
2 the customer lists themselves that there is probably,
3 probably has been no change, and there may have been
4 no change in the customer in 1974, and the customer
5 in 1980, and I direct your attention to -- it was
6 1974 -- and it was "Les's Cleaners, 4457 Broadview,"
7 and that was the name on the account in 1974,
8 and you are welcome to check this if you have the
9 printout to see that that was one of the addresses
0 and names.

1 Will you accept that?

2 A I will reserve the right to check it, but go ahead.

3 Q And in 1980 for 4457 Broadview the name of the
4 account is Les Uler.

5 A Okay.

6 Q And it certainly may be the case that Les Uler has
7 always been there doing business as the cleaner or
8 otherwise?

9 A That is possible.

10 Q And he was treated as a mover, I submit to you, and
11 that could be wrong; right?

12 A It could be.

13 Q And in other situations when the name change was the
14 name of a change of a bookkeeper or an individual
15 business becoming incorporated, you might have the
16

Gaffin - cross

same kind of problem creeping in; right?

MR. MURPHY: Objection, your

Honor.

THE COURT: Well, this is an appropriate time to go to lunch.

Ladies and gentlemen, please during the lunch hour keep in mind the Court's admonition, and you will please come back at 1:30.

{The jury was excused from the courtroom.}

- - - - -

{The following proceedings were had at the bench:}

MR. MURPHY: I object, only for the reason that there is an unfounded inference that there were other such instances.

If Ms. Coleman wants to ask the question as a hypothetical, I have no objection.

THE COURT: Yes, if you are going to hypothecate some facts, I think you ought to make it clear in the question that you are hypothecating them.

MS. COLEMAN: All right. I thought I had. Okay.

MR. MURPHY: Thank you.

Gaffin - cross

{Court was adjourned for the luncheon
necess.}

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AMERICAN LIBRARY

1 FRIDAY, SEPTEMBER 18, 1981, 1:40 O'CLOCK P.M.

2
3 THE COURT: Please be seated.

4 Bring in the jury.

5 {The jury entered the courtroom and the
6 following proceedings were had in their hearing
7 and presence.}

8 THE COURT: Please be seated.

9 - - - - -

10
11 I R A G A F F I N,

12 resumed the stand and testified further
13 as follows:

14
15 THE COURT: You may proceed,

16 Ms. Coleman.

17 MS. COLEMAN: Thank you, your

18 Honor.

19
20 CROSS-EXAMINATION OF IRA GAFFIN {Resumed}

21
22 BY MS. COLEMAN:

23 Q Mr. Gaffin, did you have a chance to check 4454 --

24 4457 Broadview?

25 A Pardon?

Gaffin - cross

1
2 Q Did you have a chance to check the address we were
3 talking about at the end of the hour --

4 A No, I did not.

5 Q At lunch?

6 I did, and I find that it was -- our research of
7 that shows that Les Uler is the owner of that
8 property rather than the CEI list.

9 It is possible from public records, in your
10 experience, to determine ownership of property?

11 A To determine ownership?

12 Q Yes.

13 A Yes, it is.

14 Q It's like the County Recorder's office or something
15 like that?

16 A Yes.

17 Q And looking at the situation that we talked about in
18 the hypothetical where, in fact, there is a name
19 change but it's because of a new accountant or
20 because a proprietorship has become a corporation,
21 if those situations exist among the lists of businesses
22 that you have, there may be some error introduced
23 in the classification of someone as a mover or a
24 constant?

25 A I don't think so.

Gaffin - cross

1
2 Q If you classify someone as a mover because the name
3 has changed, but the fact is that the business is
4 still operating there, doesn't that introduce some
5 error in the situation into your classification of
6 the customer?

7 A I don't think so.

8 I would like to explain why I don't think so.

9 Suppose -- this is a hypothetical, again, on
10 my part.

11 Suppose there was a company by the name of
12 ABC Company at the address on Lorain Avenue and they
13 changed the name of the company to XYZ.

14 Our attempt would have been to find ABC Company.
15 We would have put ABC Company in our universe of
16 movers.

17 We would not have interviewed ABC Company unless
18 we had found a listing for ABC Company elsewhere in
19 the county and had asked the respondent whether the
20 respondent was ABC Company, and the respondent had
21 said "Yes."

22 So the answer to my question for you is no.

23 Q Well, rather than the name change, if it were an
24 individual, and the individual listed is the
25 bookkeeper for the company --

Gaffin - cross

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A Yes.

Q -- and the bookkeeper's name is changed, and so you called the original bookkeeper and located him or her in the home addresses of the phone book?

A Yes. That is the person that we do wish to interview, since that is the person whom we assume made the decision.

Q You assume made the decision?

A Yes, assumed.

Q In the completed interview with that former bookkeeper will be classified in the mover's classification, will it not?

A That is correct.

If that person tells us that she or he is the same person who we were looking for and made the decision, and then we would complete the interview, and we will classify that interview as a completed residential mover or commercial mover; correct.

Q And if he or she has moved on, but the company is still there, you nevertheless classify the completed interview as a mover interview?

A Yes, that is correct.

Q And you mentioned that in the conversation with this person that we have called to conduct the interview,

LIBRARY

Gaffin - cross

1
2 you would identify whether they are the person that
3 made this decision.

4 Is there anywhere on the questionnaire where you
5 ask whether the respondent is the person who makes
6 the decision about electric bills?

7 A No.

8 Q Is there anywhere on the questionnaire where you ask
9 if that is the person that made the decision about
10 switching?

11 A No.

12 Q Let's turn from the question of universe to the
13 question of sample, Mr. Gaffin.

14 You referred us before to a simple situation
15 where, I assume, everyone in the universe is the same,
16 although the M and Ms may be different colors; is
17 that right?

18 A You mean that everyone is an M and M?

19 Q Everyone is an M and M.

20 A Yes.

21 Q Some may be red and some may be chocolate all the
22 way, but as far as you are concerned, they are all
23 M and Ms?

24 A Yes.

25 Q And your sampling technique involved the assigning

1 Gaffin - cross

2 of numbers to each one of the units, and then have a
3 random number generator tell you which ones to pick
4 out for your sample; is that right?

5 A Yes.

6 Q Now, when you chose this sample, that is a very
7 important exercise of the overall integrity of the
8 survey?

9 A Yes.

10 Q Because what you want to be able to see at the end
11 is that, I think, that the sample that I have chosen
12 is representative of the whole universe that I was
13 supposed to be studying; is that right?

14 A Yes. That is the case of the sampling.

15 Q And the use of the random numbers is considered by
16 the people who make surveys as perhaps the best way
17 to guarantee this idea that the group chosen will be
18 representative of the whole if you were choosing a
19 sample; is that right?

20 A No.

21 The reason for choosing a random sample is not
22 that it guarantees the representativeness of the
23 sample in relation to the universe, but it enables
24 you to know precisely what the range of sampling
25 error might be.

Gaffin - cross

1
2 Q Because if you had a random sample, you can calculate
3 sampling error for a statistical method; is that
4 correct?

5 A That is right.

6 Q And if you don't have a random sample, you cannot?

7 A That is correct.

8 Q Now, let's look at the actual situation that you had
9 in the particular survey that you come to testify
10 about today.

11 The universe which the attorneys for CEI gave
12 you to work with was 1273?

13 A That is correct.

14 Q And you started out -- and perhaps I should start with
15 a clean slate here -- well, let's go back.

16 You started out with a universe of 1273 within
17 the frame?

18 A Well, they were really -- there were really five
19 universes.

20 Q Five universes.

21 Now, for convenience --

22 A Start with No. 3.

23 Q All right. We will start with No. 3, and
24 essentially the frame -- the frame was that group
25 of customers CEI gave you to look at; right -- I am

FBI/DOJ LIBRARY

Gaffin - cross

sorry. Perhaps it is bad phrasing of the question.

Your universe was the 1273?

A That was a super universe that was a class of all customers who had switched, but for purposes of discussing the report and the sampling and the universe, I think you have to refer to them combined.

Combined together they add to the 1273.

Q Can we for the purposes of my question have an understanding at this stage that if I refer to universe, I am referring to this group as a whole?

A You can have that, but I don't know that I will be understanding you.

Q Well, I would like to make sure that my questions are in the same terms that you are going to answer.

So, for the time being, when I am referring to universe, can you accept that I am referring to this whole group, unless I indicate otherwise?

A Sure.

Q Thank you.

Now, you stated that that was the universe of all people who switched from Muni Light to CEI, but we established this morning that due to facts that you are not familiar with, that that may not be the case?

1 Gaffin - cross

2 A I don't know that that is established.

3 Q You only know you remember working with this number
4 {indicating} 1273?

5 A That is correct.

6 Q And that is a super universe. That is not the
7 universe from which your samples were taken
8 directly, is it?

9 A That is correct.

10 Q And in fact the first thing that you had to set out to
11 do when you had the 1273 in the universe was to find
12 out whether you would be able to call them; is that
13 right?

14 A No.

15 Q Well, it was one of the things that you had to do in
16 order to make your interview; right?

17 A In order to complete the interviews.

18 Q -- because your interviews were done by phone?

19 A That is correct.

20 Q And therefore you had to find the phone numbers for
21 these people or businesses?

22 A Yes.

23 Q And that undertaking was done with the benefit of
24 the phone directory, the Haines directory, the
25 Criss-Cross directory which takes you from

FBI LIBRARY

Gaffin - cross

addresses to phone numbers and vice-versa?

A Yes.

Q And when that work was undertaken, the result was, if I follow your report correctly, that out of the 1,273 in the universe you found numbers for only 701 potential respondents; is that right?

A I can check.

Q Will you check that.

A Sure.

{After an interval.}

701; that is correct.

Q Thank you.

Now, as the interviewing itself progressed, your interviewers encountered some problems with the phone numbers that they had found, that some were wrong numbers, and some were not working; is that right?

A I don't know that there were any wrong numbers. There were a number of numbers not in service.

Q If there were wrong numbers, then the interviewer would note "Wrong number" on the work sheet that he had beside him or her at the phone ?

A Yes.

Q And if we find the notation "Wrong number", that is what that signifies?

Gaffin - cross

1
2 A That is correct.

3 Q You testified in response to questions by Mr. Murphy,
4 about the instance where you were dealing with the
5 name of an individual, and when you went to the phone
6 directory, you found several people by that name;
7 do you recall?

8 A Yes.

9 Q And it was your testimony that in those instances
0 you called each one of the numbers in order to trace
1 the person that you wanted to talk to; do you recall
2 that?

3 A The person of the specific name.

4 Q Now, in fact, what your interviewers did when they
5 found there were several people with the same names,
6 they would give up?

7 A No.

8 Q Would you look at the work sheet for the commercial
9 movers, please?

10 A Yes.

11 Q And this is, I gather, the sheet which the interviewer
12 would have at hand when making telephone calls; is
13 that right?

14 A Yes; that is one of the sheets, yes.

15 Q And they would have an interview form?

PUBLIC LIBRARY

Gaffin - cross

1
2 A Yes.

3 Q And this work sheet provides information on the name
4 of the person, the address, the telephone number
5 found by your researcher; is that right?

6 A That is correct.

7 Q And information is supposed to be noted on here as to
8 the results of the attempted interviews; right?

9 A It is not necessary that it be noted, but the
10 interviewers for their own benefit usually do make
11 notes.

12 Q And is it your understanding that when they have a
13 star, that signifies another completed interview?

14 A Sometimes.

15 Q At any rate, since they were making telephone calls,
16 they cannot complete an interview unless they have
17 a telephone number associated with a particular
18 person; is that right?

19 A It is correct that unless there was a telephone
20 number associated, that that person or that company
21 would not have been a part of the universe from which
22 the random sample was drawn.

23 Q And the universe from which the random sample was
24 drawn is, as we were saying, a different universe,
25 a subgroup of the universe of names that you were

NATIONAL LAW LIBRARY

Gaffin - cross

1
2 given; right?

3 A Yes.

4 Q And it is shaped not for random selection, but by the
5 question of whether you can get a phone number or
6 not; right?

7 A Yes.

8 Q Now, on this work sheet, whether someone was eligible
9 for selection because they had a phone number is
10 signalled by whether there is a number in the
11 right-hand column of the page; is that right?

12 A Yes, all the way on the right-hand column.

13 Q All the way over in the handwritten -- is that right?

14 A Yes.

15 Q And if you look, please, you have got numbers down
16 the far left-hand side indicating the number of lines
17 on the page, do you not?

18 A Right.

19 Q And will you look with me at the industries numbered
20 14, number 35, number 71, and number 84, and number 86,
21 and number 96, and number 144, and I am referring to
22 the numbers on the left-hand side.

23 A Oh.

24 Q And -- should I do that again?

25 A Yes.

INDUSTRIAL LIBRARY

Gaffin - cross

1
2 Q Would you look at the numbers on the left-hand side
3 indicating the entry --

4 A Yes.

5 Q -- No. 14, --

6 A Yes.

7 Can we stop with that one for a second, No. 14?

8 Q Let's go through and identify them first, please.

9 A Okay.

10 Q Would you look at No. 14?

11 A Uh-huh.

12 Q No. 35?

13 A Uh-huh.

14 Q No. 71, No. 84, No. 86, No. 96, No. 144?

15 A Yes.

16 Q And in all of those instances, your staff member has
17 noted either three or four or two people, same name
18 or listings, or something to that effect in each of
19 those entries, isn't that right?

20 A That's correct.

21 Q And there are no phone numbers in those lines at all,
22 are there?

23 A That is correct.

24 Q And there is no sample number on the right-hand side
25 there, is there, --

Gaffin - cross

1
2 A That's correct.

3 Q -- on any of those.

4 And, therefore, none of that group we have just
5 looked at were included in the group that had
6 telephone numbers that was remaining for you to
7 choose a sample from, is that right?

8 A Yes.

9 Q Now, therefore, when we come to the question of what
10 universe you really are working for the purpose of
11 your survey, it's not the 1,273, because you didn't
12 find phone numbers for all of them, is that right?

13 A Correct.

14 Q And it's not the -- there is also a group in the
15 1,273 for which you couldn't trace -- for which no
16 one traced down a phone number to a specific person,
17 right?

18 A That's correct.

19 Q And so there were 701 telephone numbers in the
20 universe that you worked with, right?

21 {Ms. Coleman writing on the large white
22 pad on the easel.}

23 A Yes.

24 Well, there actually were more telephone
25 numbers than 701.

AMERICAN LIBRARY

Gaffin - cross

1
2 Q Well, someone might have said one or the other of these
3 phone numbers, and so on?

4 A But both phone numbers --

5 Q Both phone numbers were tried?

6 A But both phone numbers would have been listed on your
7 numbering as one phone number.

8 Q Right.

9 So there are 701 respondents associated with
10 telephone numbers after all this work is completed
11 by the staff, right?

12 A Basically.

13 Q And so it's on this then which is the universe from
14 which you took the samples which you, in the first
15 instance, took samples?

16 A That's correct.

17 Q And there is no statistical rule which would tell you
18 that this group is necessarily representative of this
19 group {indicating}, right?

20 A Correct.

21 {Ms. Coleman turns to a claim page on the
22 large white pad on the easel.}

23 Q Now, in the instance -- turning to the subuniverses
24 which you wanted to talk about, separate classes of
25 customers --

Gaffin - cross

1
2 A -- uh-huh.

3 Q -- in the instance of the industrial group, because
4 there were so few of them, you were given 1b names,
5 is that right?

6 A 1b companies, yes.

7 Q 1b companies.

8 And your staff set out to contact each one of
9 them?

10 A No.

11 Q Each one of the 1b?

12 A No.

13 Q I may be confusing you, Mr. Gaffin, by jumping from
14 sampling to the actual interviewing.

15 When it came down to the process of interviewing
16 the respondents for the purpose of your survey report,
17 it was your intention to speak to each one of those,
18 was it not?

19 A No.

20 Q You told Mr. Murphy that the first thing that you did
21 when you made the survey was to take a sample, is
22 that right?

23 A Correct.

24 Q In the instance of the industrial customers, you
25 didn't take a sample, but you did do a pre-test, right?

Gaffin - cross

1
2 A Did both.

3 Q You did both?

4 A Correct.

5 Q And you did the pretest out of the sample, is that
6 right?

7 A No, that's not.

8 Q Well, let's turn to --

9 {After an interval.}

10 Q Let's turn to your discussion of the survey technique.

11 What you say you did is from the universe of
12 16 industrial customers, a scientific random sample
13 of 13 companies was selected?

14 A That's correct.

15 Q And that left you 3?

16 A That's correct.

17 Q And you did the pretest on the three?

18 A From those three, that's correct.

19 Q And when you finished with the pretest, you then
20 called or tried to call the remaining 13, right?

21 A Correct.

22 Q And then when you tabulated your results, you threw
23 the results of the pretest in with the results of
24 the phone calls of the remaining random sample for
25 the tabulation, right?

Gaffin - cross

1
2 A They were included but not thrown in with them.

3 Q Well, you did it as carefully as you could?

4 A No.

5 They were included because -- they were included
6 because all of the companies of the 13 had been
7 attempted to be contacted and, therefore, in the
8 pretest, the three remaining companies had been
9 attempted to be contacted, two of which were
10 contacted.

11 So what we ended up with in the case of the
12 industrial was not a poll on the basis of the sample,
13 but a canvass on the basis of interviewing or
14 attempting to interview every member of that
15 universe; and that's why the pretest interviews were
16 included with the interviews completed from the
17 random sample.

18 Q And so, as I said, you did attempt to call all 16
19 of the industrial customers, right?

20 A Yes.

21 Q Now, when you turn the question of the commercial
22 and residential customers, there were quite a large
23 number of them, so that you determined, in the first
24 instance, what you were going to try to do is, you
25 were going to call some of them and you would take

Gaffin - cross

1
2 a sample, is that right?

3 A Correct.

4 Q And so you started out with this universe of 701
5 total, and of that group, there were 16 industrial,
6 and there were phone numbers found for 528 commercial --
7 I'm sorry -- 528 residential and 157 commercial?

8 A Yes.

9 Q And, by the way, there were only phone numbers found
10 for 15 of the industrials?

11 A That's correct.

12 Q And you decided that you would, in the first
13 instance, start out to take a sample from the
14 157, and a sample from the 528, --

15 A Right.

16 Q -- as we have already discussed?

17 A Right.

18 Q But the methodology here was to assign 150 tags to
19 the people for whom you had phone numbers, and then
20 use this random generation, is that right?

21 A That's correct.

22 Q And you picked out 240 would be your sample of this
23 residential, and you picked out 100 to be your
24 sample of the commercial, is that right?

25 A I don't think so.

1 Gaffin - cross

2 I think one of those is correct, but let me just
3 check.

4 Q I have added together the movers and the constants.

5 Do you understand my question that way?

6 A Yes.

7 Let me just check anyway, if I could.

8 {After an interval.}

9 A Yes, okay.

10 If you're adding to the samples of 45
11 commercial movers and 55 commercial constants, you
12 have a total of the two samples of 100; but there are
13 two separate samples.

14 And then the same thing in the same way occurred
15 with the residential: There were two samples of
16 residential.

17 Q So when you said you took a random sample, you took
18 a random sample out of the group that had phone
19 numbers, right?

20 A That's correct.

21 Q And when you took the sample, when you started out
22 with that method, I would assume that you had in
23 mind that you would get a certain rate of responses
24 among those people, is that right?

25 A No.

Gaffin - cross

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2 Q Well, in deciding, in the first instance to take a
3 sample, what you started out to do, rather than to
4 try to talk to everyone who had phone numbers, you
5 considered that you might be able to get the
6 information you needed based on the sample rather
7 than calling everyone, isn't that right?

8 A For economic reasons, yes.

9 Q Did you have in mind that calling 240 residential
10 customers would produce any number -- any particular
11 number of completed interviews?

12 A No; because there was no experience rate of
13 completion in this case.

14 Q Did you have any range in mind that you would find
15 acceptable?

16 A I wanted to complete 240 interviews among the
17 residential groups and 100 interviews among the
18 commercial groups for statistical reasons.

19 Q Right.

20 And if you couldn't complete all of them, what
21 range of responses out of the 240 residential or
22 out of the 100 commercial would you have found
23 satisfactory so that you could stop at the completion
24 of the sample?

25 A None.

NATIONAL ARCHIVES

Gaffin - cross

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2 Q In your survey, Mr. Gaffin, you state that after you
3 chose the pretest group -- I believe I'm correct --

4 {Ms. Coleman examining her papers}

5 Q No, it's after the pretest, pretested the questionnaire.

6 Then you state that interviews were attempted
7 with each of the accounts in the two samples.

8 After three days of interviewing, it became
9 apparent that the samples would not yield sufficient
10 interviews for the project; do you recall that
11 statement?

12 A Yes; that statement is in the report.

13 Q And that statement is in four places in the report:
14 For the commercial movers, the commercial constants,
15 residential movers and the residential constants?

16 A Correct.

17 Q And that statement indicates that whatever it is
18 you were getting as a result of the sampling you
19 thought wasn't enough, right?

20 A In terms of numbers, correct.

21 Q In terms of numbers.

22 My question is:

23 What response rate were you getting when you
24 tried to get the calls off the samples that you
25 decided was inadequate?

AMERICAN LIBRARY

Gaffin - cross

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2 A It wasn't the rate that was inadequate; it was the
3 number of completions that was, in my judgment,
4 inadequate.

5 Q Did you understand that the number of completions --
6 I'm trying to establish terminology, excuse me.

7 When I refer to "response rate", I have in
8 mind the relationship of the number of the potential
9 respondents, the number of completed interviews?

10 A Yes.

11 Q And expressed as a rate, the number of completed
12 interviews compared to the number of potential
13 respondents would be a response rate?

14 A Yes.

15 That's not relevant to the question at hand,
16 I believe, Ms. Coleman.

17 The number of interviews desired determines,
18 in the case of a sample, what the margin of sampling
19 error would be.

20 The number of the interviews selected for each
21 sample size initially were based on that statistic.
22 So the reason that a sample size of 13 was chosen for
23 the industrial group was that if completions had
24 been made with 13, the sampling error -- that is,
25 the error that would have occurred by completing

1 Gaffin - cross

2 the 16 -- the 13, rather, but not the 16 -- would
3 have been known and measurable, and those considerations
4 were the considerations that went into choosing the
5 original sizes of the samples.

6 The statement about the numbers of interviews not
7 being satisfactory related to the numbers not as a
8 percentage of the total numbers wanted, but numbers
9 as themselves, because that determines what the range
10 of sampling error is given the size of the
11 universe and given the size of each completed sample.

12 Q Let me see if I understand this.

13 You are saying that if you want to treat the
14 sample as representative, you would have had to
15 complete 240 residential interviews in order to be
16 able then to see what the sampling error would be
17 as regards the 528 phone numbers?

18 A No.

19 If I had wanted to say that the sampling --
20 that the results of the surveys of residential
21 were at a rate of 1 plus or minus X percent at some
22 level of confidence, then I would have to have
23 completed the 240 interviews.

24 Completion of fewer interviews, assuming that
25 they were all attempted, would have been satisfactory

AMERICAN LIBRARY

Gaffin - cross

1
2 in one sense, but would have yielded a larger
3 potential sampling error.

4 Q Now, as we went over before, you can only calculate
5 sampling error and level of confidence if you have
6 used the random sample method, is that right?

7 A No.

8 Q Well, in this situation where you're not working off
9 a random sample, you can't use statistical methods to
10 calculate the level of confidence, can you?

11 A No, that is not true that you can't only in those
12 calculations involved, because if you exhaust the
13 universe, then there is no sampling error.

14 Q Well, Mr. Gaffin, in this instance, the universe was
15 701 phone numbers, persons with phones, right
16 {Ms. Coleman writing on the large white pad on the
17 easel}?

18 A Uh-huh.

19 Q And the number of interviews completed, according to
20 your report, was 214, right?

21 A That's correct.

22 Q So you didn't exhaust the universe in terms of making
23 completed surveys with everyone in the universe, right?

24 A No; wrong.

25 We did, in fact, exhaust the universe.

ADMINISTRATIVE

Gaffin - cross

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Q You exhausted the universe in trying to call people?

A Correct.

Q But in terms of completed interviews, you did not complete interviews with everyone in the universe of the 701 phone numbers?

A That is correct.

Q And the 214 interviews that you did complete are not necessarily a random sample of the 701 phone numbers, are they?

A They are not at all a random sample.

Q They are not a random sample because you came down to this as a result of a variety of forces, including, first, people not being home when they're called, is that right?

A That could be, yes.

Q And, second, people refusing to cooperate; right?

A Uh-huh.

Q And, third, the staff got the wrong phone number, or the phone number was not in service?

A Yes.

Q So that when you talk about what the responses were, you can be completely confident to the extent your survey is properly put together if 214 people said what the survey says they said, right?

CONFIDENTIAL

Gaffin - cross

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2 A That's part of what you can be completely confident of,
3 yes.

4 Q But because this is not a random group as compared
5 either with the group of phone numbers or with the
6 group of 1,273 in the initial pool, you cannot use
7 statistical methods to say that this group necessarily
8 is representative of that group {indicating}?

9 A That's correct.

10 Q When we were talking about the industrial customers,
11 Mr. Gaffin, you stated that you ended up including
12 the pretest results with the completed interview
13 results in your tabulations, right?

14 A Yes; the pretest results were included with the
15 results from the original random sampling.

16 Q In the case of the commercial interviews -- I have to
17 go back to specific statistics here --

18 {Ms. Coleman steps to the easel.}

19 Q {Continuing} In the case of the industrial customers,
20 you started out with 16 candidates.

21 You had phone numbers for 15, and you had a
22 pretest of 3, and you report that you had interviews
23 complete with 11, right? {Ms. Coleman writing on the
24 large white pad on the easel}.

25 A That includes the pretest completions.

1 Gaffin - cross

2 Q That includes the pretest.

3 So there were 8 additional completed?

4 A There were actually 2 pretest completions and 9 --
5 the numbers that you have as 3 and 8 should read
6 "2" and "9"; there were 9 completions from the random
7 sample, and there were two completions from the pretest,
8 a total of 11 completions for the industrial group.

9 Q Perhaps we are getting too refined here.

10 The commercial group had -- let me start on a
11 fresh sheet.

12 {Ms. Coleman turns to a clean sheet on the
13 large white pad on the easel.}

14 Q What you did, Mr. Gaffin, as far as the commercial
15 group and the residential group were concerned, was
16 also to include the pretest results in your
17 tabulations; wasn't it?

18 A Yes.

19 Q And you started out with the universe in commercial --
20 in the commercial group of 293 total businesses called --

21 A Combining the commercial.

22

23

24

25

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Gaffin - cross

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2 Q And of that group you found numbers for 157 of them,
3 combining the two?

4 A Yes.

5 Q And then separating them out, you had telephone
6 numbers for 69 of the movers and 89 of the
7 constants?

8 A I believe that is correct.

9 Q And your original sample from this group was 49 of
10 the 69 phone numbers, and 55 of the 88 phone
11 numbers; is that right?

12 A Correct.

13 Q And it was your opinion that if you had been able
14 to call these, then you could measure the level of
15 confidence about the response of the 88; right?

16 A That is correct.

17 Q Now, in fact, you had completed interviews according
18 to your report with only 15 of the movers, and
19 according to your report, 35 of the people who were
20 still where they had been; right?

21 A Correct.

22 Q And of this group there were, according to your report,
23 five pretest interviews of the 15 and five pretest
24 interviews of the 35?

25 A I think it is 4 and 5.

ALBERT I. ALLEN-FOOTNOTES

1 Gaffin - cross

2 Q Actually it is 4 and 5, even though your report says
3 5 and 5?

4 A I believe the truth is 5 and 5.

5 Q So, actually, this number is only 14; right?

6 A I am not sure about that.

7 Q Well, you can check that.

8 A Yes.

9 Q Now, your statistics then that you display here in the
10 slide are based for the commercial class on this
11 response given by these 14 or 15 and the responses
12 given by those 35?

13 A Yes, given the fact, however, that each of the 69 and
14 the 88 were attempted.

15 Q Right.

16 You found the situation when you started to call
17 the 45 and the 55, that in the language that you used
18 here, "The samples would not yield sufficient
19 interviews for the project," right?

20 A In my opinion, correct.

21 Q How many interviews did you conduct these three days
22 of interviews of the commercial group?

23 A I don't have that number available.

24 Q But you end up with complete interviews of 14 and 35?

25 A I believe 15 and 35, or even 14 and 15 and 35.

1 Gaffin - cross

2 Q Now, when you testified in response to Mr. Murphy's
3 questions that you were -- that your survey actually
4 consisted of a census rather than a sample, what you
5 meant is you tried to call all of the people for
6 which there were phone numbers; is that right?

7 A That is correct.

8 Q But it was not a census of the 293?

9 A That is correct.

10 Q And in terms of the completed interviews, there were
11 only 49 total interviews; right?

12 A There were 49 or 50.

13 Q Or 50.

14 Now, as far as the residential group is concerned,
15 we had the same sort of breakdown.

16 Of the residential, you had a total, using the
17 same terms here for your universe, of what was given
18 to you by CEI as 964 residential consumers; right?

19 A Yes, sir, that is correct.

20 Q And you found telephone numbers for only 528 of them?

21 A I found numbers for 528, that is correct.

22 Q And looking at them as movers and constants you found
23 phone numbers for 290 of the movers and you found
24 phone numbers for 238 of the constants?

25 A Correct.

1 Gaffin - cross

2 Q Now, your original sample here consisted of 125
3 movers and 115 of the constants?

4 A That is correct.

5 Q And as regards the residential group, also it was your
6 statement that after three days of interviewing,
7 it became apparent that the sample would not use
8 sufficient interviews for the project."

9 Do you recall that statement?

10 A Yes.

11 Q How many interviews of the residential consumer were
12 made during the three days when you made that
13 document?

14 A I don't have that available.

15 Q You don't have it for residential either?

16 A No. I don't have them available.

17 Q Well, the interviews actually completed of this group
18 were 40 of the movers and 113 of the constants; is
19 that correct?

20 A That is right.

21 Q When you had completed your interviews of the
22 residential, you also included 5 pretest in with
23 the 40, so it is 35 plus 5?

24 A That is correct.

25 Q And the 113 includes 5 pretest interviews?

1 Gaffin - cross

2 A That is correct.

3 Q And similarly, here, when we talk about making a
4 census, you set out to call all of the 528 for which
5 you had phone numbers; right?

6 A Correct.

7 Q Which was not going to be a census of the 964?

8 A Correct.

9 Q And in terms of your completed interviews of the 964,
10 you only spoke to 153?

11 A We spoke to 153.

12 Q Mr. Gaffin, when you were testifying in response to
13 questions by Mr. Murphy this morning -- well, strike
14 that.

15 Let me turn to another unrelated subject:

16 We are talking -- we were talking about this
17 morning, about some of your political polling
18 interviews, and what happened if you found yourself
19 speaking to a 16-year-old high school student about
20 whether he or she wanted to vote, who they wanted to
21 vote for in the coming election; do you recall those
22 questions?

23 A Yes.

24 Q You used the term "filtering questions"?

25 A Yes.

Gaffin - cross

1
2 Q When we discussed that?

3 A Yes.

4 Q And what you meant by "filtering questions" was a
5 question which is designed to make sure the
6 interviewer is talking to someone who is informed on
7 the subject and will give you good answers, and by
8 "good" we mean informed answers; that this is a
9 person who knows what he or she is talking about;
10 right?

11 A No.

12 Q Do you make surveys where it is important to determine
13 whether or not the individual is eligible to respond
14 to the survey because of the uses to be put on the
15 type of information that you were gathering?

16 A Not with regard to the uses to be put.

17 With regard to the information to be gathered,
18 that could be applicable.

19 Q If you wanted to report to the Ohio Democratic
20 Committee on the number of people who believed that
21 particular individual was a good candidate for
22 governor --

23 A Yes.

24 Q -- you would want to be reporting to them in terms
25 of registered voters at the very least, would you not?

Gaffin - cross

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2 A Probably.

3 Q -- and perhaps even registered Democrats?

4 A If we were dealing with a primary contest.

5 Q Yes, probably so; and therefore, in terms of collecting
6 your information, it would introduce an error into the
7 tabulations if the responses concerning preferences
8 for a particular candidate in that situation came
9 from persons who were not registered voters or persons
10 who were not registered Democrats?

11 A Right, conceivably.

12 Q Now, in the survey that you did for CEI here, it was
13 important, wasn't it, for you to determine whether
14 the person -- and when I say "you" I mean your staff --
15 that they spoke, -- that the person that they spoke
16 to was someone who was knowledgeable about the
17 subject matter of the interview, was it not?

18 A Not necessarily.

19 Q You were supposed to be finding out what a particular
20 group of people thought; isn't that right?

21 A Yes.

22 Q So it was important for you to find out whether the
23 person who answered the phone was someone competent
24 to give you information on the subject of the
25 information; right?

Gaffin - cross

1
2 A No.

3 Q You mean you didn't care who you talked to, who the
4 interviewer talked to?

5 A No.

6 Q Well, it was then important, wasn't it, to establish
7 the respondent's eligibility to answer the question on
8 the questionnaire?

9 A It was important to establish that the respondent
10 was the person who was on the list of persons or
11 companies to be called.

12 Q Because if the person who answered the phone is not
13 the person on the list, then their responses shouldn't
14 be tabulated in the questionnaire; right?

15 A No person who is not listed on the list ought to have
16 been interviewed.

17 Q Now, it may be, that the extent that persons listed
18 on the CEI list, that the person is the bookkeeper
19 of the company, for example, that that is not the
20 person who made the decision to switch; right?

21 A Is that possible?

22 Q Yes.

23 A I suppose so.

24 Q You took the names from CEI, and you assumed that the
25 names they gave you would be people who would be in a

1 Gaffin - cross

2 position to answer the questions that were asked; is
3 that right?

4 A Yes.

5 Q So that there are no questions in your questionnaire
6 which ask whether the individual who was called knew
7 about the service to that location, the electrical
8 service six or ten years ago; right?

9 A No.

10 Q And there is no question which asks whether the person
11 who answers the phone knows about the electrical
12 service given to the company at the date they are
13 called; right?

14 A No. I believe that is not correct.

15 Q Well, you did have questions which said, "Who serves
16 this location," right?

17 A Yes.

18 Q And you had in mind that question when you answered
19 "No" to my earlier question; right?

20 A At least that question.

21 Q That is -- I think it is the first question on the
22 questionnaire, if I am not mistaken?

23 A You are mistaken.

24 Q We have some initial questions that the interviewer
25 is supposed to ask, "Are you the Mr. Jones who used to

1 Gaffin - cross

2 be located at 4454 Broadview?"

3 A Right. That is in the introduction.

4 Q And that is in the introduction?

5 A Yes.

6 Q And in the body of the questionnaire the first
7 question is, "What electrical utility company now
8 serves your company?"

9 A No. That is the first question for the industrial
10 respondents.

11 Q But you structured the questionnaire differently for
12 the commercial and residential; is that right?

13 A Yes. The introductions are different, and the
14 first questions are different.

15 Q So that, although the first question was Question No.
16 1, in each of the questions it is different, each
17 respondent gets asked what company serves you,
18 right, within the first few questions of the
19 interview?

20 A Either what company serves you or what company
21 serves your present address, yes.

22 Q And preliminarily to asking that question or to
23 asking a question about whether the person believes
24 their electrical bill is higher or lower, there is
25 no filter question to determine if your respondent

1 Gaffin - cross

2 is knowledgeable about those issues, is there?

3 A Is knowledgeable?

4 Q Yes.

5 A No.

6 Q Isn't he -- you accept a situation where the person
7 may answer "Don't know" to those two questions;
8 right, and you just include that?

9 A Which two questions?

10 Q If your respondent doesn't know what the electrical
11 bill, whether it is higher or doesn't know who serves
12 you, you check "Don't know"?

13 A That is right.

14 Q And you go on to the next question?

15 A That is correct.

16 Q Now, when you were interviewing businesses, your survey
17 questionnaire called for the interviewer to ask for
18 the president or the chief operating officer of the
19 company; is that right?

20 A When we were interviewing commercial customers; that
21 is correct.

22 Q And in those instances where the interviewers did
23 not write in the information about the name of the
24 company or the name of the person, then they had to
25 glance back to the other work sheet and fill in that

Gaffin - cross

1
2 information?

3 A Pardon me?

4 Q In those instances where the interviewer did not fill
5 in before making the call the name of the company and
6 the address they wanted to ask, "Are you the
7 so-and-so who lives at such-and-such, and they have
8 to glance back at the work sheet to get that?"

9 A You are asking about two different types of
10 interviews, I believe.

11 The commercial interviews that I thought you were
12 asking about initially, since there are two
13 possibilities, the name of an individual could have
14 been listed, or the name of a company listed, and if
15 the name of an individual was listed, then the
16 interviewer asked to speak to the individual.

17 If the name of the company was listed, then
18 the interviewer asked to speak with the President
19 or the Chief Operating Officer of the company.

20 Q How do you know that is the person that your
21 interviewer spoke to?

22 A How do I know?

23 Q How do you know, looking back now at the survey
24 questionnaire.

25 A I believe that my interviewers are truthful.

Gaffin - cross

1
2 Q I see.

3 Now, when you told us about the industrial
4 customers in your discussion of that group in your
5 report, you stated --

6 A Which customers? . .

7 Q The industrial customers.

8 A Thank you.

9 Q You stated that the persons -- that your interview
10 is attempting to call those persons who signed the
11 contract letter, or failing that, any person who was
12 connected with the company; is that right? And I am
13 reading from your report here.

14 A Let me check that.

15 {After an interval.}

16 A That is correct.

17 Q And there was not in the survey questionnaire itself
18 for industrial customers any guidance for the
19 interviewer as to who to ask for if the president
20 wasn't there; right?

21 A They were not asking for the president in the
22 industrial companies.

23 Q I am sorry. They were asking for the person on the
24 letter?

25 A Yes.

1 Gaffin - cross

2 Q And if they don't get the person on the letter, the
3 survey questionnaire does not tell them who then to
4 ask for?

5 A That is correct.

6 Q So they are then without written instructions as to
7 how to proceed, and they may proceed however they see
8 fit; is that right?

9 A No.

10 Q When you give these interviewers work to do in the
11 nature of questionnaires, you attempt to lay out what
12 has to be done in the survey questionnaire, do you
13 not?

14 A The procedures, yes.

15 Q And those procedures would go even so far as to
16 include telling them what code name to use, what they
17 call the respondents; is that correct?

18 A Yes.

19 Q Do you tell them they ought to use the code name
20 "Tom" or "Mary Peterson"?

21 A That is correct.

22 Q And if it is appropriate for themk if they don't find
23 the person whose name is on the letter, then to look
24 for someone else, and there ought to be an instruction
25 on what they should do then to find the proper

1 Gaffin - cross

2 respondent; right?

3 A I don't believe so.

4 Q You leave them to their own devices on that?

5 A No.

6 The reason that there was no instruction in the
7 questionnaire about that as far as the industrials
8 were concerned was that it was our experience from
9 the pretest that when we asked for the individual
10 who had signed the contract letter, and if that
11 person was not there, we would be referred to some
12 appropriate person or department within the company
13 who dealt with these matters or knew about who had
14 dealt with these matters.

15 Q How does the interviewer know -- let me back up.

16 How does the respondent know what the
17 questionnaire was about if the first question was
18 the one on the industrial questionnaire, and that
19 is, "Hello, I am Mary Peterson, and I am calling
20 long-distance. May I speak to blank, please?"

21 How can the respondent tell from that who ought
22 to be talking to Mary Peterson?

23 A By asking for a specific person.

24 Q I understand that, Mr. Gaffin, but if the specific
25 person is not there, how does the person on the

Gaffin - cross

1
2 other end of the line, the respondent, know who you
3 ought to be referred to?

4 A Are you asking me how the respondent knows or the
5 interviewer?

6 Q How the respondent knows.

7 A Well, the respondent will say one of several things,
8 either, "Mr. and Mrs. So-and-So is not here or no
9 longer works for the company, or we will connect
10 them."

11 Q Or they will say, "We will let you talk to Mr. Hart,"
12 or whoever, and my question is, how would the
13 respondent know they ought to connect you to some
14 other person than you asked for? How would they know
15 who to select?

16 A Okay, in most cases the respondent may not know if
17 the respondent isn't the respondent being asked for
18 until the first couple of questions of the
19 interview have been completed.

20 At that point the respondent will either be able
21 to continue, or the respondent will say, "Wait a
22 minute. You are talking about something not in my
23 bailiwick. Let me connect you with someone who
24 knows more about this."

25 Q So that in the case of the industrial interviews, at

1 Gaffin - cross

2 least there is some preliminary conversation between
3 the interviewer and the first person who picked up
4 the phone, which doesn't get recorded on the survey
5 questionnaire?

6 A That is correct.

7 Q And it may well be that in the course of that
8 preliminary conversation your interviewers are
9 introducing topics in order to seek out the right
10 person which is going to tend to bias the results
11 that come out of it?

12 A I don't believe so.

13 Q Well, they have an opportunity in this discussion,
14 because they were trying to track down some other
15 person and to say things which are not listed on the
16 survey questionnaire; right?

17 A Yes, but they receive very specific instructions
18 about that.

19 Q And you rely on them to follow them, and you do not
20 require that information to be recorded on the survey
21 questionnaire; right?

22 A That is correct.

23 Q Now, where there is an individual name listed --
24 strike that.

25 There are sometimes individuals names listed

1 Gaffin - cross

2 for commercial enterprises in this work that you did;
3 right?

4 A Yes.

5 Q And you call the individual and ask him about his
6 business's electrical bill?

7 A Yes.

8 Q Which is one of the questions on the questionnaire?

9 A Yes.

10 Q How do you know that person understands what you are
11 referring to?

12 A I don't know where there would be room for confusion.

13 Q Suppose the individual is the landlord, and he owns
14 several properties. What is he to understand you
15 mean when you say, "I want to ask you whether your
16 business's electric bill is higher or lower or just
17 about right?"

18 A We have already pinned him down to a specific address
19 initially.

20 Q When you have done that, you have done it through a
21 question which says, "Are you the Mr. Brown who used
22 to be located at such and such an address, or are you
23 located at such and such an address," right?

24 A Yes.

25 Q And if you ask him, "Are you the Mr. Brown, and are

Gaffin - cross

1
2 you located at such and such an address, and Mr.
3 Brown is the landlord, and he is not at that time
4 located at that address, and he is only located
5 there when he goes there to check the properties,
6 how is he going to understand your question that
7 deals with the electric rates at that property?

8 A I really don't think there is a problem, but let me
9 check the introduction to that group of
10 questionnaires.

11 {After an interval.}

12 A I don't see any ambiguity.

13 Q You do not.

14 Isn't it true when your interviewer made the
15 calls for the respondents, that there are many
16 instances where the respondents would say, "I don't
17 have a company. I have no business"?

18 A Not initially.

19 Q But later on?

20 A Yes.

21 Q And there were actually some initially where they
22 said that, if you look.

23 A Where interviews were not completed.

24 Q The landlord may not think of his ownership of
25 rental property as a business, particularly if he

1 Gaffin - cross

2 is doing something else at the same time; right?

3 MR. MURPHY: Objection. May I
4 approach the bench?

5 THE COURT: Yes.

6
7 {The following proceedings were had at the
8 bench:}

9 MR. MURPHY: Your Honor, it strikes
10 me that we have gone beyond the hypothetical and
11 we are entering an area of speculation, and I
12 object.

13 THE COURT: Where are you going with
14 this? What are you going to prove?

15 MS. COLEMAN: Your Honor, the
16 survey is in the realm of speculation, and I
17 intend to prove that since you would not exclude
18 it on the basis of its unreliability displayed
19 on its face --

20 THE COURT: I mean, you know,
21 Ms. Coleman, that anything is possible in this
22 world, anything is possible in the area of
23 speculation.

24 Now, I think that I have given you a wide
25 latitude here to speculate, but there comes a

1 Gaffin - cross

2 point beyond which it becomes an absurdity.

3 You can go on for days hypothecating
4 speculative situations.

5 MS. COLEMAN: I am dealing with
6 specific instances.

7 THE COURT: Well, let's get
8 down to specifics.

9 I will sustain the objection, and let's
10 proceed to something specific.

11 {End of bench conference.}

12 - - - - -
13 THE COURT: I will sustain the
14 objection, and proceed to something material,
15 please.

16 BY MS. COLEMAN:

17 Q Mr. Gaffin, when you mentioned to us "filter
18 questions" before, the purpose of those is to filter
19 out those people who you don't want ending up in the
20 ultimate tabulations of answers; isn't that right?

21 A There were two purposes.

22 Q What is that?

23 A The second one is to make respondents comfortable
24 with the process of answering the questions in the
25 questionnaire.

1 Gaffin - cross .

2 Q You are saying that sometimes you use a filter
3 question that has no significance?

4 A Correct. The purpose is to not qualify or disqualify
5 a respondent, but to make them more comfortable with
6 the process of answering questions.

7 Q And you do conduct questionnaires with respect to
8 qualifying or disqualifying the respondent, and you
9 do that by asking filter questions?

10 A Yes.

11 Q In this case, however, in every one of the interviews
12 that you completed, you kept going on with the
13 questions, even if someone responded to you that
14 they did not know the answer to the initial questions;
15 right?

16 A Yes.

17 MS. COLEMAN: This is a problem
18 because I don't have these charts.

19 Q Turning back, Mr. Gaffin, to the situation in which
20 we started out with the total number of phone
21 numbers --

22 THE COURT: Supposing we take
23 our afternoon recess.

24 Ladies and gentlemen --

25 MS. COLEMAN: That is fine, I

1 Gaffin - cross

2 could use the time.

3 THE COURT: Ladies and gentlemen,
4 please during the recess keep in mind the Court's
5 admonitions. Thank you.

6 {Recess taken.}

7 THE COURT: Please be seated.
8 Bring in the jury.

9 {The jury was reseated in the jury box
10 and the trial continued as follows:}

11 THE COURT: You may continue,
12 Ms. Coleman.

13 MS. COLEMAN: Thank you, your
14 Honor.

15 BY MS. COLEMAN:

16 Q During the break, Mr. Gaffin, I was able to spare us
17 the agony of waiting while I write this up, and I
18 have placed on the board by class of customers and
19 total the information that we have gone through as
20 far as the Gaffin universe, the numbers that you were
21 given to work with.

22 A Yes.

23 Q Which is here {indicating}, and the number in each
24 includes, for whom you found phone numbers here,
25 and the number of completed interviews, which is on

1 Gaffin - cross

2 the third line, and are those numbers correct as they
3 stand?

4 A I believe so.

5 Q And I have also put up the information gleaned from
6 your survey regarding the number in each class, and
7 the total who said that they recalled switching
8 companies when the interviewer asked them the
9 question, and that was 113 of the residential and
10 45 of the commercial and 8 of the industrial and --
11 and for a total of 166.

12 Are those figures correctly taken from your
13 survey?

14 A I believe they are.

15 Q And that 166 who recalled switching is less than the
16 total number of completed interviews which was 214?

17 A Correct.

18 Q Now, of the 38 people who did not recall switching,
19 your interviewers continued to ask them the remaining
20 questions on the questionnaire; right?

21 A That is correct.

22 Q And their responses are included in the completed
23 interviews?

24 A That is correct.

25 Q Even though they didn't recall the switching when

1 Gaffin - cross

2 asked?

3 A Even though they said they didn't recall.

4 Q And similarly you have a question -- you have
5 incorporated two questions whether they recall
6 wiring changes; is that right?

7 A There are at least two questions about wiring
8 changes, yes.

9 Q And if we look at your survey report on the number
10 who recalled wiring, there were 67 of the
11 residential, 30 total of the commercial, and 5 of
12 the industrial, for a total of 102 people; right?

13 A I am not certain about some of those figures.
14 Might I check them?

15 Q Sure.

16 {After an interval.}

17 Q {Continuing} I believe my numbers, if it will help
18 you, come from the first time that people were asked
19 the question?

20 A That is what I meant, for the industrial, at any rate,
21 the first time the person was asked, and then five of
22 them.

23 And there were -- they were asked the second --
24 in which six were able to respond to, and the third
25 question, which dealt with who paid, and seven were

Gaffin - cross

1
2 able to respond to that one.

3 Q Now, stopping at the threshold question, the first
4 time that they were asked whether they recalled
5 wiring, 67 of the residential and 30 of the
6 commercial and 5 of the industrial, for a total of
7 102, said they recalled wiring changes; right?

8 A Initially, yes.

9 Q And there are a number of questions which follow the
10 question whether they recall wiring changes, are there
11 not?

12 A That is correct.

13 Q -- dealing with how they were influenced by who paid,
14 essentially?

15 A How or whether.

16 Q And you asked the 44 -- pardon me -- the 64 people who
17 did not recall wiring changes in the first instance,
18 the remaining questions on the questionnaire, even
19 though they didn't remember the wiring changes when
20 asked that question?

21 A I think you are talking about two different questions.
22 You are talking about remembering the switch and
23 remembering the wiring.

24 Q Right. Out of 214 completed interviews, less than
25 half the people recalled wiring switching in response

1 Gaffin - cross

2 to that question; right?

3 A That initial question.

4 Q And you asked those 112 people who didn't recall
5 wiring when asked the first time, you asked the
6 remaining questions on the questionnaire?

7 A Yes. That is a standard procedure to shake out
8 additional information from people who may be
9 reluctant to volunteer information initially.

10 Q You kept asking the people who said they didn't
11 recall the wiring -- as to whether they said they
12 were influenced by who paid for the wiring?

13 A That is right.

14 Q And you don't know today what overlap there is between
15 the 42 -- I am wrong again -- the 48 people -- I will
16 put a crib on here in case I need to refer to it --
17 the 48 people who didn't recall switching at all,
18 and the 112 people who didn't recall wiring changes?

19 A I am sorry. What is your question?

20 Q My question is, there were 48 people who didn't
21 recall switching?

22 A Initially.

23 Q And there were 112 people who didn't recall the
24 wiring changes?

25 A Again, initially.

1 Gaffin - cross

2 Q And you don't know whether the 112 includes the 48
3 or not, right?

4 A I don't have that information with me, although that
5 information is available from the data.

6 Q One could sit down and sort it out, but that is not
7 something you have sorted out before you came here
8 today?

9 A That is correct.

10 Q It could be that there is no overlap between the
11 two, so as many as 160 people are involved who
12 didn't know the answers to these -- to one or the
13 other of these questions, or there may be 112 people,
14 and that is the range, between 112 and 160 people
15 that didn't know the answer to one or the other of
16 these questions or both?

17 A Not necessarily.

18 You would have to go actually back in and take a
19 look at it, because it is possible that a person
20 didn't know the answer to the first question about
21 switching, but he did know the answer to the question
22 about wiring changes.

23 Q Right.

24 A And, for example, it is possible that that entire
25 102 -- theoretically it is not the case, but it is

1 Gaffin - cross

2 possible that the entire 102 could be different
3 from the entire 166, but that can't be the case
4 because they add up to more than 214; so there is some
5 overlap, and we don't know if it is a complete overlap
6 or just a little?

7 A Right.

8 Q It is well over 100 who didn't know the answer to one
9 of those two questions?

10 A Yes.

11 Q Now, all of the questionnaires relating to the 166
12 people who didn't recall switching, and all of the
13 questionnaires of the 102 people who didn't recall
14 wiring are included in the completed interviews that
15 are the basis for the statistics that you put on the
16 screen for us this morning; right?

17 A No.

18 Q Pardon me?

19 A No. Some of the statistics on the screen --

20 Q All right.

21 A Some of the statistics refer to percentages of those
22 responding.

23 Q Right. You have two instances where they are
24 broken out separately?

25 A Yes.

1 Gaffin - cross

2 Q But aside from those two instances, the statistics
3 on questions of who is influenced by who paid are
4 drawn from these 214 completed interviews?

5 A Yes, but where there were "No" answers or "Don't
6 know" answers, there were also reported in the
7 percentages on the slides.

8 Q And this 214 includes these two {indicating}. It
9 includes the 48 people who didn't recall switching
10 and the 112 who didn't recall wiring?

11 A If in fact there were 112, right.

12 Q Now, Mr. Gaffin, given that there were so many people
13 who didn't recall switching or who didn't recall
14 the wiring, that creates some uncertainty about the
15 percentages that you had given us on the question of
16 effect on your decision, doesn't it?

17 A No.

18 Q Not in your mind?

19 A No. There is no uncertainty about the percentages.

20 Q Mr. Gaffin, you have testified this morning that
21 when you asked the people initially whether they
22 recalled the switching, that you were not trying to
23 test their recall.

24 Do you remember so testifying?

25 A No.

Gaffin - cross

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Q And is that your testimony?

A Yes; I do not.

Q You are not trying to test their recall.

When you asked them whether they recalled switching, you were not trying to test their recall; is that correct?

A Are you asking me about something I testified to this morning?

Q I am asking you right now.

Is it your testimony that when you asked the consumer whether they recalled switching, that you were not trying to test their recall?

A The answer to that question is no.

Q When you ask the various groups of customers; whether they recalled switching -- of the residential and the commercial group of both consumers and movers, there were between 10 and 30 percent of the respondents who said they didn't recall; right, depending on the class?

A I believe that is true, but if you give me a moment to check it, I would appreciate it.

Q Please do.

{After an interval.}

A Are you referring now to all four classes of

1 Gaffin - cross

2 residential and commercial respondents?

3 Q What I am referring to is all four classes of
4 residential and commercial respondents, and I am
5 referring specifically to the answers given in
6 response to the question, "Why did you switch."

7 A And your question to me was? --

8 Q My question is, among those four classes, isn't it
9 true that between 10 and 30 percent of the
10 respondents said they didn't recall switching, that
11 they never switched?

12 A That is not true.

13 Q Looking at the commercial movers on page 8 of your
14 report, you say, "10 percent gave the response that
15 they never switched," is that right?

16 A Well, I am looking at page 24, and I will go back to
17 that page if you wish, but on page 24, which is the
18 summary of the percentage results in tabular form --

19 Q I appreciate that, Mr. Gaffin. I am referring your
20 attention -- and if I didn't make it clear, I
21 apologize -- I am referring your attention to one of
22 the questions which you asked that Mr. Murphy
23 specifically inquired of you about, and it was the
24 question that you called an open-ended question, and
25 you said, "We asked the customer why they switched."

1 Gaffin - cross

2 Do you recall?

3 A The "why" --

4 Q "Why did you switch?"

5 A Yes.

6 Q And in response to that question, between 10 and 30
7 percent of the respondents said, "I never switched,"
8 among these residential and commercial classes; isn't
9 that true?

10 A Now, let me check that.

11 Q Yes.

12 A Again, I am afraid, Ms. Coleman, I am afraid I have
13 to answer you in the negative.

14 It is actually between -- well, okay. You are
15 talking about the reason -- again, I am sorry, my
16 apologies. The answer is yes.

17 Q And didn't that raise a question in your mind as to
18 whether or not your interviewers had talked to the
19 right people or had the right names to begin with?

20 A No.

21 Q Now, how often does your firm, how often have they
22 done surveys which involve testing involving
23 asking questions about someone thought? Let me back up.

24 When I asked you when the survey was done, you
25 testified it was on July, and July of what year?

1 Gaffin - cross

2 A This year.

3 Q This year in July?

4 A Yes.

5 Q And the people that you were asking -- to whom you
6 were asking questions, had, according to the
7 information given to you, switched between 1971 and
8 1975?

9 A Correct.

10 Q And therefore, in terms of your questions about how
11 high the bill was and why they switched, you were
12 dealing with trying to elicit their recollection of
13 information which they, if they were qualified, knew
14 six or ten years ago?

15 A Yes.

16 Q Now, do you have an opinion as to whether there is a
17 relationship between the ability to recall and the
18 time lapse since the event?

19 A In this case?

20 Q Generally.

21 A Generally.

22 Q Yes.

23 A No.

24 Q Isn't it true -- I take that back.

25 The farther that someone gets from an event,

1 Gaffin - cross

2 the less that he may remember about it; isn't that
3 right?

4 A I don't know that for a fact, no.

5 Q And have you done any other surveys which involve
6 asking people for information which they learned
7 ten years ago?

8 A Which they learned ten years ago?

9 Q Yes.

10 Have you done any surveys involving asking
11 people what they believed ten years ago?

12 A Yes.

13 Q And was that the primary concern of those surveys?

14 A Sometimes, yes, and sometimes no.

15 Q It was in this case, however?

16 A It was one of the primary concerns.

17 Q Now, when you look through the results of your survey,

18 Mr. Gaffin --

19 MS. COLEMAN: Mrs. Richards, would

20 you place on the screen -- I am trying to tell

21 you which slide here.

22 {After an interval.}

23 Q {Continuing} You haven't provided slides for all of
24 the questions in your questionnaire; is that right,
25 Mr. Gaffin?

Gaffin - cross

1
2 A I provided no slides.

3 Q And if we wanted to have information about the
4 opinions on bills or the opinions on reasons for
5 no switching, we ought to look to your survey rather
6 than the slides?

7 A I don't believe there is anything in slide form on
8 the open-ended questions.

9 Q I think that is correct; so let's look at the
10 questionnaire.

11 Isn't it true that in terms of the commercial
12 movers, one of your interview groups, that more of
13 them recalled what they thought about their light
14 bills seven to ten years ago than could tell you now
15 whether they thought their bills were high or low?

16 A In terms of the commercial movers?

17 Q Right.

18 A In terms of the commercial movers, it is true that
19 the percentage who were undecided about the cost of
20 present service is higher than the percentage who
21 were undecided about the cost of past service; that
22 is true.

23 Q And also for this group more of them gave a reason
24 for switching than recalled switching in the first
25 place?

1 Gaffin - cross

2 A Where are you getting that?

3 Q If you compare the statistics you gave for the
4 open-ended question on the reasons for switching --

5 A That is a percentage of those who recall switching.
6 That is a percentage of those who gave a reason.

7 The percentages reported there are percentages
8 of people who gave a reason.

9 Q Oh, is that right?

10 A Yes.

11 Q Now, looking at your commercial mover summary on page
12 7, you state, "Respondents were informed that the
13 record showed that they switched to Muny Light from
14 CEI at the previous address," and you asked if they
15 recalled why they made a switch, and you stated that,
16 "All respondents were able to recall a reason."

17 A Yes.

18 Q And now you are telling us that when you said,
19 "All respondents," you didn't really mean "all
20 respondents." You meant all who were able to recall
21 a reason were able to recall a reason?

22 A That is correct.

23 It was meant there was that each of the
24 respondents who was able to give a reason was able
25 to give a specific reason.

1 Gaffin - cross

2 Q Although it doesn't say that?

3 A No.

4 Q And certainly for the commercial movers, Mr. Gaffin,
5 there were fully 50 percent of them who didn't know
6 who served their company; right?

7 A Who didn't know who served their company today.

8 Q Right.

9 A Yes.

10 MS. COLEMAN: Mrs. Richards, would

11 you put the first slide on so we can talk about
12 that one. It is hard to talk about numbers
13 without that.

14 {After an interval.}

15 Q The commercial movers category, Mr. Gaffin, and it is
16 the first question, 50 percent of them did not know
17 who served their premises?

18 A Yes.

19 Q However, on Question 2, when you asked them if they
20 recalled switching, 86 percent did?

21 A Yes.

22 Q And they recalled switching even though they didn't
23 know who served them?

24 A Well, that is a little bit misleading, I believe.

25 The 50 percent of the respondents who were

1 Gaffin - cross

2 categorized as DK or "Don't Know" really were not
3 people who in fact said, "I don't know."

4 If you read through the questionnaires in that
5 group and look at the answers that the interviewers
6 reported in connection with that response, I think
7 you will remember that a great proportion of that
8 50 percent, computer coded as "Don't Know" were
9 people who made comments like, "We don't have a
10 business any longer, so the question is not
11 applicable to us," but they didn't refuse to answer
12 the question.

13 Q Oh, I wasn't looking at the refused category, and
14 there are 50 percent categorized as, "Don't Know
15 who serves their company," right?

16 MR. MURPHY: Objection.

17 THE COURT: Approach the bench.

18 - - - - -

19 {The following proceedings were had at the
20 bench:}

21 MR. MURPHY: I object to the
22 repetition. Mr. Gaffin just gave an explanation
23 of what that 50 percent on the sheet as "Don't
24 Know" meant, and he answered, "They are not in
25 business any longer," and he said exactly the

1 Gaffin - cross

2 same thing on direct examination.

3 MS. COLEMAN: I don't recall that,
4 but I am just trying to move it along.

5 THE COURT: Let him answer the
6 question. Let's move along.

7 {End of bench conference.}

8 - - - - -

9 THE COURT: You may answer the
10 question.

11 MS. COLEMAN: I will rephrase the
12 question.

13 BY MS. COLEMAN:

14 Q Your tabulation reports, "50 percent of commercial
15 movers did not know who served their company?"

16 A Who now serves their company, right, and my answer to
17 that includes the fact that if you look at the
18 actual responses that were quoted as DK, they
19 included a great number of respondents who said,
20 "Nobody now serves my company because I don't have a
21 company."

22 Q Right; and that may deal with the fact that they
23 no longer have the company, or it may deal with the
24 fact that they had no company in the first place,
25 but that they merely owned the property?

1 Gaffin - cross

2 MR. MURPHY: Objection.

3 THE COURT: Sustained.

4 MS. COLEMAN: Mrs. Richards, would
5 you please place the second slide on the projector.

6 {After an interval.}

7 BY MS. COLEMAN:

8 Q Now, in the industrial category, Mr. Gaffin, in terms
9 of the reported memory of your respondents, we have a
10 situation, do we not, where more people remembered
11 who paid for the wiring than who remembered the wiring
12 in the first place?

13 A That is correct.

14 Q Mr. Gaffin, I believe you testified at some length on
15 direct examination concerning the need for the questions
16 in the survey to be properly framed?

17 A Correct.

18 Q I want to ask you, what was the source of your
19 information that is included in your Question No. 5.
20 Who told you that?

21 A Squire, Sanders & Dempsey.

22 Q And you relied on their representation in including
23 that information in your question?

24 A Yes.

25 Q Now, do you yourself have an understanding of what is

1 Gaffin - cross

2 meant to be triggered in the respondent's mind by
3 that question?

4 A No.

5 Q If you were a respondent to your own survey, and you
6 were asked whether certain changes in wiring were
7 needed, you would think it was at least necessary
8 to switch from a Muny wire to a CEI wire, would you
9 not?

10 MR. MURPHY: Objection.

11 THE COURT: Sustained.

12 Q You found when you did your survey, Mr. Gaffin,
13 didn't you, that there were some instances in which
14 the consumer responded voluntarily that, "Of course
15 the wire had to be done to change from a Muny pole
16 to a CEI pole," didn't you find that?

17 A I don't remember that.

18 Q Would you check that?

19 A It could be checked.

20 Q When you used the language, "Changes in wiring to
21 each location," is that your language or is that the
22 language of Squire, Sanders & Dempsey?

23 A I believe that is my language.

24 Q That is your language, I see.

25 If the change in wiring made for a customer when

1 Gaffin - cross

2 that customer switched to CEI was a modernization of
3 the customer's wiring, would you think that this
4 question would trigger a recollection of that in the
5 respondent's mind?

6 MR. MURPHY: Objection.

7 THE COURT: Sustained.

8 MS. COLEMAN: May we approach
9 the bench?

10 THE COURT: No. There is no
11 necessity to approach the bench. The objection
12 is sustained. It is pure speculation, and he
13 has no way of knowing what would be triggered in
14 somebody else's mind.

15 Please proceed.

16 MS. COLEMAN: I see.

17 Your Honor, strike that.

18 BY MS. COLEMAN:

19 Q Mr. Gaffin, when you made the survey questionnaires,
20 did you try to look at it from the point of view of
21 determining how it is going to be understood by the
22 respondent?

23 A Yes.

24 Q Do you form some judgment in your own mind as to
25 whether the questions are clear or ambiguous?

Gaffin - cross

1
2 A Yes.

3 Q Do you ask yourself the question, "If I were called
4 by someone asking questions on this questionnaire,
5 would I understand what they're talking about?"

6 A Yes.

7 Q I'd like to hypothesize the situation where you are
8 one of the respondents to the survey questionnaire
9 as you put yourself in the shoes of that person to
10 look it over. And, in your particular situation,
11 CEI gave -- paid a contractor to remove the code
12 violations in your wiring as part of the conversion
13 process.

14 My question to you is:

15 When you hear the question: In order to switch
16 a customer from Muni Light service to CEI service,
17 changes in wiring had to be made, do you think that
18 the removal of the code violations would come to mind?

19 MR. MURPHY: Objection, if your

20 Honor please.

21 THE COURT: Sustain the objection

22 as to form.

23 You haven't laid a proper foundation.

24 MS. COLEMAN: May I approach the

25 bench?

1 Gaffin - cross

2 THE COURT: Yes.

3 - - - - -

4 {The following proceedings were had at the
5 bench:}

6 MR. MURPHY: I object on the
7 ground that the question as presently posed calls
8 for nothing but rampant speculation.

9 MS. COLEMAN: Your Honor, I have
10 laid a foundation by establishing that this is a
11 process that Mr. Gaffin goes through in
12 analyzing his questionnaires; --

13 THE COURT: True.

14 MS. COLEMAN: -- and, therefore, it
15 is appropriate to ask him what his thought
16 processes were when he did that.

17 MR. MURPHY: That was not the
18 question.

19 THE COURT: Exactly right.

20 Read the question back.

21 {The pending question was read by the
22 reporter as follows:

23 "I'd like to hypothesize the situation where
24 you are one of the respondents to the survey
25 questionnaire as you put yourself in the shoes of

1 Gaffin - cross

2 that person to look it over. And, in your
3 particular situation, CEI gave -- paid a
4 contractor to remove the code violations in your
5 wiring as part of the conversion process."

6 "My question to you is:

7 "When you hear the question: In order to
8 switch a customer from Muny Light service to CEI
9 service, changes in wiring had to be made, do you
10 think that the removal of the code violations
11 would come to mind?"}

12 THE COURT: Sustained as to form.

13 {End of bench conference.}

14
15 BX. MS. COLEMAN:

16 Q Mr. Gaffin, when you did this work on the survey
17 questionnaire, were you fully familiar with the
18 different types of wiring which was provided by the
19 contractors who were paid by CEI?

20 A No.

21 MS. COLEMAN: Mrs. Richards, would

22 you turn the light on?

23 {Mrs. Richards complies.}

24 Q Nevertheless, even without that information, it was
25 your judgment that Question No. 5 was a good question

1 Gaffin - cross

2 to ask your respondents, is that right?

3 A Yes.

4 MS. COLEMAN: Turn that off, Mrs.

5 Richards.

6 {Mr. Lansdale turns off the light.}

7 BY MS. COLEMAN:

8 Q In the case of the questionnaires, you had a separate
9 questionnaire for each of the five categories of
10 respondents, is that right?

11 A Yes.

12 Q And there were slight variations in the order of the
13 questions on each of the questionnaires and in some of
14 the wording used, isn't that right?

15 A I don't believe there was any variation in the order,
16 specifically, the order of the -- what I would call
17 the substantive questions of the questionnaire.

18 There were variations in the introduction to
19 each of the five versions, and there were variations
20 in what we call the filter questions or the
21 introductory questions but, other than that, there
22 were no variations.

23 Q Now, in terms of the variations that you made, was it
24 your purpose that those should be varied only to
25 adapt them to the particular circumstances of the

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respondent or whether it was a mover or a constant?

A No.

The changes that were made from question to question were only questions -- were only changes that would make sense to the various different classes of respondents.

Q Yes.

And I gather from the way the chart is prepared --

MS. COLEMAN: Can I ask your

indulgence, please, Mrs. Richards, to turn it on?

{Mr. Lansdale turns the light on for the screen display.}

MS. COLEMAN: Thank you, Mr.

Lansdale.

BY MS. COLEMAN:

Q According to the way the chart is prepared where you have, for example here No. 5 and 6, those aren't the numbers on the questionnaire, are they?

A That's correct.

Q Because the numbers on the questionnaires are numbered, and that question was varied from questionnaire to questionnaire?

A That's correct.

Q From class to class?

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2 A Yes.

3 Q But you have grouped all of the questions under a
4 single heading, and by that you intend to signify
5 that no matter what the precise wording of the question
6 was, we ought to be able to compare the results of
7 that question being asked of one group to the question
8 being asked of another group, is that right?

9 A Yes.

10 However, the question wordings were identical,
11 except that in a case where we're dealing with a
12 commercial client, commercial customer, we might use
13 the word "business" or "company"; --

14 Q Right.

15 A -- and in the case where we're dealing with a
16 residential customer, we would use the word
17 "household" or "residence."

18 MS. COLEMAN: Mrs. Richards, place

19 Slide 1 on the screen, please.

20 {Mrs. Richards complies.}

21 MS. COLEMAN: There may not be a
22 slide on that.

23 BY MS. COLEMAN:

24 Q You asked a question of many of the respondents,
25 the question:

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2 "Are your bills higher or lower than --"
3 I'll find what I'm referring to precisely.

4 {After an interval.}

5 Q On the commercial constants, the first question
6 after you identify -- after the interviewer
7 identified himself or herself is:

8 "Do you think your business's present monthly
9 electric bill is extremely high, moderate, low?"

10 Do you recall that?

11 A This was for the commercial constants?

12 Q Right.

13 {The witness examining his papers.}

14 A Yes.

15 The first question after the introduction is,
16 "Do you think that your business's present
17 monthly electrical bill is:

18 "A. Extremely high.

19 "B. Moderate.

20 "Or C. Pretty low."

21 Q And you have that same question as Question 1 for
22 the other commercial group and the two residential
23 groups, right?

24 {The witness examining his papers.}

25 Q Except it doesn't say "Business" --

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2 A Pardon?

3 Q Except it doesn't say "business" for the residential --

4 A It is the first question for the commercial movers.

5 For the residential constants, it reads, instead
6 of, "Do you think that your business's present
7 monthly bill is:" It says, "First, do you think that
8 your present monthly bill is:"

9 Q And there's similar questions for the other group of
10 residential?

11 A Yes.

12 Q And then the follow-up question to that deals with
13 the cost of past electric service in each one of
14 those commercial and residential questionnaires?

15 A Yes.

16 Q Now, when you ask the commercial constant their opinion
17 of past service, your question was:

18 "Thinking about to your business's electric
19 bill when you first moved," isn't that right?

20 A Correct.

21 Q But the question to the mover's groups was worded a
22 little bit differently, and that question was:

23 "Thinking back to your electric bill six to ten
24 years ago?"

25 A Yes.

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2 Q Now, the information that you would get from the
3 movers and from the constants in response to that
4 question is not strictly comparable, is it?

5 A That's true.

6 Q The only --

7 A It might have to --

8 Q -- if the commercial constant moved six to ten
9 years ago, right?

10 A That's true.

11 Q In fact, there was one respondent who, when asked:
12 What your electric bill was when you first moved
13 here? Said, "We first moved here in 1895, I can't
14 tell you."

15 Isn't that true?

16 A I don't know that that's true, but I wouldn't
17 doubt that it might have happened.

18 Q In order for the client to make use of that information,
19 they would need a situation where the questions were
20 comparable to each other so they could use the data
21 from class to class in a consistent matter?

22 A Well, not in the cases of the questions that you're
23 referring to, because the questions that you're
24 referring to are filter questions, and questions
25 designed to ease the respondent into the

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1
2 questionnaire, and aren't what I would call substantive
3 questions, and I would guess that's why they weren't
4 presented on the slides.

5 Q Now, also in presenting the questionnaire and writing
6 up the questionnaire, you testified it's important to
7 try to avoid giving the respondent information, and
8 you want to have the respondent be the source of
9 as much information as possible?

10 A In most cases, that's true.

11 Q Well, it's true here, isn't it?

12 A In most cases here.

13 Q And you want to avoid directing the respondent to
14 answer in a particular way?

15 A That's correct.

16 Q And that is probably especially important where you
17 are asking about opinions from six or ten years ago,
18 wouldn't you say?

19 A No, not necessarily.

20 Q But if one is that much distant from the opinion
21 that they once held, the possibility of their
22 being directed or influenced by the questionnaire
23 to give a certain answer is even greater than it
24 would be if you were asking about an opinion held
25 today?

1 Gaffin - cross

2 A Not necessarily.

3 Q But it may be part of the concern in avoiding that
4 type of question?

5 A It could be.

6 Q Did you not have that concern in formulating your
7 questionnaire to avoid creating memories?

8 A Yes.

9 Q Now, another -- let's turn back to the first line.

10 MS. COLEMAN: Mrs. Richards.

11 {Mrs. Richards places the slide on the
12 machine and turns the light on.}

13 BY MS. COLEMAN:

14 Q Your first question was:

15 "Do you remember what company serves -- what
16 utility serves your company?"

17 And your second question dealt with whether they
18 recalled the switching, at least as far as this
19 questionnaire summary is concerned?

20 A Yes.

21 Q My question is -- to you is, with regard to Question 2:

22 When you said "Our research of public records
23 indicates that you switched utility companies", you
24 were really telling a little fib, weren't you?

25 A Yes.

1 Gaffin - cross

2 Q You don't know of any public records which provide
3 the information that you gave to the respondents in
4 that survey question?

5 A That's not true.

6 Q Did you have at hand public records which provided
7 that information?

8 A I had records.

9 Q You had records?

10 A Yes.

11 Q But your question to the respondent was, "Our research
12 of public records," was it not?

13 A Yes.

14 Q And that would tend to suggest to the respondent that
15 there is available to the general public the
16 information that he or the company switched utility
17 companies, right?

18 A Yes.

19 Q And being told that that information comes from
20 public records, might tend to make that person agree
21 with the statement made to them?

22 A I don't know that the use of the word "public" would.

23 I think that I would agree with you that stating
24 the question in terms of "us having information on
25 research that indicates X or Y" would encourage a

1 Gaffin - cross

2 "Yes" answer.

3 But the reason that that's not of concern to me
4 in Question 2, from my point of view, that was taken
5 as a fact and was not a substantive result. That is,
6 the answers to that question were not of substantive
7 importance.

8 Q Which is why you didn't exclude the people at the time
9 they said they didn't recall --

10 A That's correct.

11 Q -- but continued to ask them questions.

12 Now, in addition to that form of question on the
13 questionnaire, the Question 2 also tells the respondent
14 that they switched utility companies before you asked
15 them, right?

16 A It tells them that we have information indicating that
17 they did; but the, "Do you happen to recall switching
18 utility companies," then gives them permission to
19 say "No."

20 Q Yes.

21 And it also.

22 A And, in fact, a number of them did.

23 Q Right.

24 It also tells them that the use of the word
25 "public," that anybody who was interested could go

1 Gaffin - cross

2 down to some public office -- I don't know what you
3 had in mind -- and find out the same information?

4 MR. MURPHY: Object, your Honor.

5 THE COURT: Overruled.

6 You may answer.

7 A I'm sorry. Did you want me to answer that?

8 Q Yes.

9 A Okay.

10 Q Would you like it read back?

11 A No, I don't think so.

12 I think I would agree with you.

13 MS. COLEMAN: Mrs. Richards, place
14 the second slide of questions indicating 4 and 5
15 on the screen, please.

16 {Mrs. Richards complies.}

17 THE COURT: At this point, it is
18 now 4:00 o'clock, and do you expect to spend some
19 considerable length of time with this witness at
20 this juncture so that we should adjourn now and
21 come back on Monday morning to pick it up, or is
22 it worthwhile to proceed here?

23 MS. COLEMAN: I'm hesitant to
24 answer, your Honor, knowing it's Friday afternoon.

25 I think in another 15 or 20 minutes I could

1 Gaffin - cross

2 be finished, but I don't want to impose on the
3 jury.

4 THE COURT: I don't think it
5 will be an imposition.

6 We don't have any great number of exhibits;
7 so, with that in mind, let's proceed and complete
8 his testimony.

9 BY MS. COLEMAN:

10 Q Mr. Gaffin, in what you have indicated as Question No.
11 5, you tell the respondent that wiring changes had to
12 be made before you ask them if they recalled, don't
13 you?

14 A No.

15 In actual fact, the question orders in the
16 questionnaire did not do that.

17 Q In the questionnaire, the first question asked is:
18 "Do you recall any wiring changes," and people
19 could answer "Yes," "No," or "I don't know"?

20 A That's correct.

21 And after that question --

22 Q And after that, you told them, and then you asked them
23 again?

24 A That's right.

25 Q And as a result of your telling them this information,

1 Gaffin - cross

2 the number of "Yes" responses went up in a number of
3 the categories?

4 A That's correct.

5 Q And it may have gone up purely because you told them
6 that wiring changes took place?

7 MR. MURPHY:

Objection, your Honor.

8 THE COURT:

Approach the bench.

9 MS. COLEMAN:

I'll withdraw the

10 question.

11 THE COURT:

All right.

12 BY MS. COLEMAN:

13 Q We have another instance later on in the
14 questionnaire where first you ask the respondents
15 who paid for the wiring, and then later you tell them
16 who paid, is that right?

17 A Yes.

18 Q And that group of respondents who don't know who paid
19 are asked again -- are asked the further question on
20 the questionnaire after you told them that CEI paid,
21 right?

22 A Yes.

23 Q So, in effect, you're asking a hypothetical question
24 there about the respondents -- what the respondents
25 would have done if they knew something they don't