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SPECIAL JOINT LEGISLATIVE COMMITTEE  
TO INVESTIGATE PUBLIC UTILITIES

RE: PUBLIC )  
 )  
UTILITIES HEARING )

HEARING

October 25, 1984  
10:30 A.M.

State House  
Augusta, Maine

Reporter: Erin M. Durkin, RPR

JUN 13 1985

REPORTING  
ASSOCIATE

P.O. BOX 25

NO. WINDS:

MAINE 04011

1 CHAIRMAN BALDACCI: Members of the Joint Selection  
2 Committee to Investigate Public Utilities, ladies and  
3 gentlemen. Before we begin today's business, I want to bring  
4 up my fellow members up to date on the events following our  
5 hearings of October 9, 10 and 11, 1984. I am certain that we  
6 were all impressed by the presentations of Chairman Bradford,  
7 Commissioner Moskovitz, Vice-president Jalkut of New England  
8 Telephone, President Rowe of Central Maine Power Company, Mr.  
9 Libby and Mr. Foster of the Department of Audit and Mr.  
10 Larkin. The issues raised that week were of great interest  
11 to us all. There was remarkable agreement among the  
12 regulators, the utilities, our auditors and our outside  
13 expert on several points.

14 First, basic time and efforts reporting practices  
15 of Maine utilities are neither standardized nor effective in  
16 capturing company expenditures on political activities. This  
17 is understandable since the PUC has not given direction to  
18 the utilities on what activities should be reported, how it  
19 should be reported and how it should be valued.

20 In fact, testimony before this committee told us  
21 that in non-rate case years, the PUC did not even look at the  
22 utility filings.

23 Second, utilities have multiple reporting  
24 requirements to the commission on governmental ethics and  
25 election practices for contributions to the Secretary of

1 State for lobbying activities and to the PUC for political  
2 expenditures.

3 Third, the utilities and auditors call for guidance  
4 from the legislature or Public Utilities Commission to create  
5 a common understanding as to what and how they report.

6 Questions were raised by the witnesses and committee members  
7 regarding what kind of activities should be reported and how  
8 they should be valued. These are serious issues that we will  
9 continue to address.

10 During this time, our staff has continued to work  
11 on these issues, talks have commenced with the Secretary of  
12 State and the PUC to develop a preliminary basis for uniform  
13 reporting to these agencies. Staff is also working initially  
14 with New England Telephone and Central Maine Power Company to  
15 explore creating a standardized reporting system. As soon as  
16 possible the state auditors and other utilities will be  
17 brought into the process. I hope these efforts will begin to  
18 meet some of the problems raised in our hearings.

19 In addition, staff is obtaining information on the  
20 treatment on in-kind contributions by the Federal Election  
21 Commission. Progress in these areas will be reported as  
22 quickly as possible to the committee. I am confident that we  
23 will be able to provide a positive response to the issues  
24 raised by our hearings. The openness and cooperative spirit  
25 displayed by the utilities, the PUC and the Secretary of

1 State in moving to resolve these issues goes well for  
2 ratepayers of the State of Maine.

3 By previous order this committee shall be convened  
4 for the purposes of receiving documents from Christian P.  
5 Potholm. On October 12, 1984, I as chairman of the Joint  
6 Select Committee to Investigate Public Utilities made  
7 application to the Kennebec County Superior Court to compel  
8 obedience by Mr. Christian Potholm to two subpoenas  
9 previously issued by this committee. One to Mr. Potholm  
10 individually and one to him in his capacity as president of  
11 Command Research.

12 Pursuant to Section 165-7 of Title III of the Maine  
13 Revised Statutes, Superior Court Justice Morton Brody issued  
14 an order in civil action 84-430 commanding Mr. Potholm to  
15 appear before this committee today and bring with him the  
16 documents not previously provided. Accordingly, the members  
17 of this committee have reconvened.

18 On September 7, 1983, the Maine Senate and House of  
19 Representatives enacted legislative joint order senate paper  
20 643 directing that an investigation be initiated on the  
21 nature and extent of the participation of public utilities.  
22 Either directly or indirectly in political processes and  
23 activities and whether that political participation involved  
24 violations of state laws. A report and recommendation for  
25 legislative action are to be made not later of the convening.

1 of the 112th Legislature.

2 Having been duly established by the legislative  
3 counsel, this committee has proceeded with its investigation  
4 by means of soliciting testimony and documents and writings  
5 from the public utilities in their officers, employees, and  
6 from several other individuals. Among these individuals Mr.  
7 Christian P. Potholm who is a professor of government at  
8 Bowdoin College in Brunswick, Maine, and also president of  
9 Command Research, a private corporation providing consulting  
10 and polling services.

11 On June 7, 1984, this committee issued a request  
12 for production of documents to Mr. Potholm in his individual  
13 capacity requesting all documents and writings in his  
14 possession relating to polls, opinion surveys or tracking  
15 studies which he conducted or sponsored for Maine utility  
16 companies and non-utility clients.

17 On June 8, 1984, this committee issued a similar  
18 request for production of documents to Mr. Potholm as  
19 president of Command Research seeking similar information.  
20 Mr. Potholm responded to both production requests on August  
21 27, 1984.

22 While he did provide several thousand documents,  
23 most of which were derived from news articles, Mr. Potholm  
24 declined to provide those documents in his possession  
25 relating to non-utility clients which could inform this

1 committee on the expenditure and utilization of funds of  
2 regulated Maine utilities or lead to such information.

3 As a consequence, this committee duly met on  
4 September 7, 1984, and voted to issue a subpoena duces tecum  
5 to Mr. Potholm individually and another to Command Research  
6 requesting the information not previously provided. The  
7 response to both subpoenas was made on September 19, 1984.  
8 Once again Mr. Potholm refused to provide the documents  
9 requested in most of the questions posed.

10 Feeling continually frustrated in its efforts to  
11 obtain certain information from Mr. Potholm, the members of  
12 this committee met on October 10, 1984, and voted to apply to  
13 Superior Court according to the provisions of Section 165-7  
14 and 423 of the Maine Revised Statutes Annotated to compel  
15 obedience to these subpoenas. Having secured an order for  
16 compliance, this committee now awaits Mr. Potholm's delivery  
17 of the documents to its staff, specifically Mr. Asch who is  
18 here present. Is Mr. Potholm in the room?

19 MR. RICHARDSON: You know, he is, Mr. Chairman.

20 CHAIRMAN BALDACCI: Mr. Potholm, would you please --

21 MR. RICHARDSON: Mr. Chairman, my client wishes to  
22 exercise his right to submit after sworn statements to the  
23 committee and I ask that he be given that opportunity to do  
24 that in accordance with the provisions of Title III, Section  
25 456. He is entitled to make a sworn statement, I believe, in

1 the interest of attempting to focus the committee's attention  
2 on what I believe the issues are. I believe that he should  
3 be accorded that opportunity at this time.

4 May I also say that Mr. Potholm is here prepared to  
5 answer all questions of this committee and staff, its  
6 attorneys concerning anything that is within the scope and  
7 subject matter of this committee's investigation.

8 CHAIRMAN BALDACCI: Thank you, very much, Mr.  
9 Richardson. We'll accept Mr. Potholm's testimony and receive  
10 it before the meeting is over. But the purposes of this  
11 meeting is to receive documents.

12 MR. RICHARDSON: Mr. Chairman, we have not been  
13 advised that there was any limited scope to the committee's  
14 inquiry. We are prepared as we have been to testify. Mr.  
15 Potholm is prepared to testify concerning any questions that  
16 have to do with the scope and subject matter of this  
17 investigation.

18 You, of course, Mr. Chairman, will, I guess, decide  
19 what questions are asked, but I want the record to be clear  
20 that Mr. Potholm is prepared to testify concerning his  
21 involvement with utilities.

22 CHAIRMAN BALDACCI: Thank you, very much, Mr.  
23 Richardson. Once the committee has an opportunity to review  
24 the documents supplied by Dr. Potholm, then we would be in a  
25 better position to ask questions.



1 CHRISTIAN P. POTHOLM, having been duly sworn by the Notary  
2 Public, was examined and deposed as follows:

3 EXAMINATION-BY CHAIRMAN BALDACCI OF MR. POTHOLM:

4 Q. Mr. Potholm, this committee is pleased to have you  
5 appear before us this morning. And we understand that you  
6 are here today in response to the subpoenas, is that correct?

7 A. Pardon me?

8 Q. We understand you are here today in response to the  
9 subpoenas, is that correct?

10 A. That is really not correct. I am here because I want to  
11 be here. I have been anxious to come here since August, and  
12 I am delighted to have the opportunity to be here.

13 Q. Mr. Potholm, would you please turn over to this  
14 committee at this time all documents or writings of any kind  
15 relating or incident to any poll, opinion survey or tracking  
16 study drafted or prepared in whole or in part by you for  
17 clients other than Maine utility companies that show -- that  
18 contain the question which measured approval or disapproval  
19 of the person interviewed of the performance of President  
20 Ronald Reagon?

21 A. For the reasons that I would like to give to the  
22 committee, I am prepared to turn over a large number of those  
23 polls, having been authorized by my clients to do so.

24 In a number of other situations, I have not been  
25 authorized by my clients; and therefore, I respectfully upon

1 advice of counsel am not in a position to turn over some of  
2 those polls. The distinction between those two categories is  
3 very important to me, to my clients; and I will certainly  
4 look forward to the opportunity to explaining to the  
5 committee in detail why I am producing some of the documents  
6 and not others. .

7 Q. Excuse me. Could you explain what the basis is for that,  
8 what basis are you claiming for that?

9 MR. HIGGINS: May I interrupt for a minute. It  
10 seems to me that Mr. Potholm came here to give the statement,  
11 and he should be afforded the opportunity to say what he came  
12 to say which probably will answer a lot of questions that may  
13 be asked at a later date. It seems to me that any other or  
14 ever other people appearing which I have been involved with --  
15 this is sort of a special exception. But it still seems to  
16 me that at the outset that Dr. Potholm should be given the  
17 opportunity to make the statement to the committee perhaps  
18 and move on after that.

19 CHAIRMAN BALDACCI: All right. I agree with you,  
20 Representative Higgins, and I told Dr. Potholm he would have  
21 an opportunity to do so.

22 MR. HIGGINS: Do so now.

23 MR. KELLEHER: If I may ask the question. Did I  
24 understand Mr. Potholm to say -- am I correct that I  
25 understood Mr. Potholm to say that he is prepared to give us

1 some information now because he had the consent of former  
2 clients, but you are going to withhold other information now  
3 because your clients didn't give you the consent to do so, is  
4 that what --

5 THE WITNESS: That is correct, Mr. Kelleher. They  
6 have, in fact, instructed me I am under penalties of breaking  
7 my contracts with them should I do so. And they've ordered  
8 me, in fact, not to do so.

9 MR. KELLEHER: Who are they?

10 THE WITNESS: Well --

11 MR. RICHARDSON: If I may.

12 MR. KELLEHER: If I may ask, who are they?

13 Q. Mr. Potholm.

14 A. Is there any particular reason why I can't read my  
15 statement --

16 MR. RICHARDSON: The statement if he were permitted  
17 to make it would answer your questions, Representative  
18 Kelleher and would clarify in my opinion the whole thing.

19 MR. HIGGINS: I will reiterate my position that he  
20 ought to be allowed to read his statement.

21 CHAIRMAN BALDACCI: Mr. Higgins, he will be allowed  
22 to -- I just want to get clear on these points that were  
23 raised in the subpoena, the five questions to him personally,  
24 the seven questions to him as president of Command Research,  
25 and then there will be time for Dr. Potholm to make a

1 presentation or his testimony. I indicated that. And I  
2 don't intend not to.

3 MR. RICHARDSON: Mr. Chairman. Can I ask a  
4 question please, as Mr. Potholm's lawyer? Should he answer  
5 Mr. Kelleher's question?

6 CHAIRMAN BALDACCI: First --

7 MR. KELLEHER: My question is, and I wanted to  
8 understand correctly that Chris Potholm has got some  
9 information for us based on consent of his clients to release  
10 as he views it, and he is not presenting other information  
11 based on the fact client-privilege or I don't know what you  
12 are basing it on?

13 THE WITNESS: In the course of my statement, I will  
14 be reading precisely what client says and what client B says,  
15 and I will be giving you the information that you are  
16 requesting.

17 Q. Dr. Potholm, not yet.

18 MR. KELLEHER: I understand one, that you have got  
19 some information you are going to give us and others -- you  
20 have others you are not going to give us. That is as far as  
21 I am interested at this point which --

22 A. I am not clear why it would not be simple to let me give  
23 my statement.

24 Q. Dr. Potholm, I think there will be an opportunity for  
25 that later. The question was from the subpoena that you were.

1 to turn over all documents or writings of any kind relating  
2 or incident to any poll, opinion survey or tracking study  
3 drafted or prepared in whole or in part for by any clients  
4 other than Maine utility companies that contained a question  
5 which measured the approval or disapproval of the person  
6 interviewed of President Ronald Reagan. It is my understanding  
7 what you have said is you are going to give some information  
8 in that area, but you are not going to give everything else  
9 because of a proprietary privilege, is that the claim that  
10 you are making? What are you basing -- what is your claim?

11 A. Well, again if I could just read my statement, all of  
12 these questions would be answered, and we wouldn't have to be  
13 jumping around from A to B to E to C to D.

14 Q. Dr. Potholm, I am trying to stick with the seven  
15 questions that were asked in the subpoena, and then we can  
16 jump all over the place and say anything else you would like  
17 to say at that time. I would appreciate it if you would  
18 answer the question that I asked.

19 MR. RICHARDSON: Are you asking for his reason for  
20 refusal for some of the materials?

21 CHAIRMAN BALDACCI: That's correct.

22 MR. RICHARDSON: I would like to answer that.

23 Q. Dr. Potholm is asked to be here. If he would like to  
24 confer with counsel for an answer, Dr. Potholm may give it.

25 This is not for counsel.

1 MR. RICHARDSON: You are saying that I can't  
2 indicate to the committee the legal basis for my client's  
3 position?

4 CHAIRMAN BALDACCI: Sure, you can. What is the  
5 legal basis for your client's --

6 MR. RICHARDSON: The statute under which this  
7 investigation is proceeding specifically provides that the  
8 authorization creating an investigating committee shall  
9 clearly state and thereby limit the subject matter and scope  
10 of the study or investigation. No investigating committee  
11 shall exceed the limits set forth in such authorization. It  
12 is and has been my advice to Dr. Christian Potholm that the  
13 scope of this question, the questions that you have submitted  
14 to him concerning his association with non-utility clients,  
15 non-political clients, people who are totally disassociated  
16 from politics or the political process or from the public  
17 utility regulatory process, those questions are in my opinion  
18 beyond the scope and subject matter of this committee's  
19 investigation.

20 There are other important reasons that also bear on  
21 this. Dr. Potholm as the president of Command Research is  
22 under contractual relationships with other non-utility,  
23 non-politically related in the common sense of the word  
24 clients, and they have specifically instructed him not to  
25 violate their contractual arrangements with respect to these

1 polls.

2 He would -- and I have advised him to that end, he  
3 would be violating not only his contractual obligations to  
4 those clients, but his ethical responsibilities to them as a  
5 professional person. He has both ethical and legal  
6 responsibilities.

7 Now, some of his clients rather than get involved  
8 in these problems have authorized him because he wrote to  
9 them and asked them this is the situation. I now have a  
10 subpoena. I respect the process but what shall I do. And he  
11 was told by some of these including two in particular, Ad  
12 Media which apparently produced the same information months  
13 ago, he was told by Ad Media, go ahead and produce this  
14 because it has already been produced and also another client,  
15 Weil & Firth said it is already a matter of public domain.  
16 Go ahead and produce those. Those records are here. We are  
17 prepared to produce them.

18 So that the legal reason, the reason for my advice  
19 to Christian Potholm is as I have stated it. And in addition  
20 to that fact, no showing notwithstanding my repeated requests  
21 of your attorneys, Mr. Chairman, has ever been made -- no  
22 showing has ever been made of the pertinency of the  
23 relationship of the requested information to the subject  
24 matter and the scope of your investigation.

25 CHAIRMAN BALDACCI: Thank you, Mr. Richardson and

1 Mr. Potholm. I would give you an explanation as is set forth  
2 in the statutes as to why the questions you were asked  
3 individually and in your capacity as president of Command  
4 Research are within the scope of this committee's review  
5 legally and also why the claim of privilege will be overruled.

6 The authorization for this investigating committee,  
7 legislative joint order senate paper 643 specifically sets  
8 forth in accordance with Section 412, Title III of the Maine  
9 Revised Annotated Statutes that the matters which this  
10 committee's charged to investigate specifically paragraphs 2  
11 and 3 of the joint order as follows: The nature and extent  
12 of the participation of public utilities either directly,  
13 indirectly or through their subsidiaries, affiliates,  
14 political action committees, officers, employers or  
15 contractors in political processes and activities including  
16 both referenda campaigns and election campaigns. Whether  
17 that political participation has involved a violation by  
18 public utilities or other persons of laws relating to  
19 election, registration of voters, initiatives and referenda,  
20 campaign report or finances or political or election  
21 activities or practices.

22 Q. As far as the claim -- because of your contractual  
23 relationship, Dr. Potholm, with Central Maine Power Company,  
24 New England Telephone Company and Save Maine Yankee for  
25 polling services and your contractual relationship with other



1 clients in which political masking questions were included in  
2 polls conducted on their behalf, it is this committee's  
3 belief that you had the opportunity and did avail yourself of  
4 the opportunity to share political information between and  
5 among utility and non-utility clients and thus may have  
6 contributed to the utilities unauthorized participation in  
7 political processes. The writings sought may well shed light  
8 on these activities.

9           The committee is of the belief that your  
10 relationship with these several clients, many of whom may  
11 have been political candidates or committees permitted the  
12 transfer of polling information by you to them and vice-versa  
13 much of which had been or may have been originally contracted  
14 for by a regulated utility.

15           I therefore direct you to comply with this request  
16 for the documents as far as the scope of the investigation  
17 objection that was made. As far as the privilege, you have a  
18 propriety privilege that you have claimed. And pursuant to  
19 Section 457 of Title III of the Maine Revised Statutes  
20 Annotated, you are to be given the benefit of any privilege  
21 which could be claimed in a court of law as a party to a  
22 civil action.

23           However, this committee knows of no such privilege  
24 under the statutes or rules of evidence in this state.

25 Accordingly, I direct you to comply with the request for the

1 documents.

2 A. Mr. Baldacci, on the advice of counsel, I am going to  
3 refuse to do that. Since this committee has no idea whom my  
4 clients non-utility are, it strikes me that it is a rather  
5 bizzare set of assumptions that you are making about who got  
6 what. Again if I could give my statement --

7 Q. Dr. Potholm, I have to go through each one of these  
8 so -- and at that time at the end of it to give your  
9 statement, and then I think as we go through these, you will  
10 be able to put the entire pie together.

11 Would you please turn over to this committee all  
12 documents or writings of any kind relating or incident to any  
13 poll, opinion survey or tracking study drafted or prepared in  
14 whole or in part by you for clients other than Maine utility  
15 companies that contained a question which measured the voting  
16 preferences of the person interviewed with the respect to the  
17 1982 United States senatorial election?

18 A. On advice of counsel, I would turn over some of the  
19 material. I will not turn over all the material.

20 Q. What is the basis of that? What basis are you using for  
21 that?

22 A. The same basis as the previous question.

23 MR. RICHARDSON: I want to add to that at some  
24 point you should understand that Dr. Potholm's statement  
25 concerning who these clients are, non-utility clients are and

1 his statements under oath concerning the interrelationship  
2 which you suggest, Mr. Chairman, and for which I suggest  
3 there is no evidence at all anywhere, I think that the  
4 committee should understand the response to these specific  
5 requests in the light of his statements under oath if he is  
6 ever given an opportunity to make them.

7 Q. So the basis that you're making is what for this  
8 particular question? You're claiming it is beyond the scope  
9 of the investigation?

10 A. Yes.

11 Q. And that you're also claiming that it is of a  
12 proprietary privilege?

13 A. Yes.

14 MR. RICHARDSON: Excuse me. As his attorney, the  
15 reasons to every one of these requests, Mr. Chairman, is  
16 going to be the same except as modified by the statement and  
17 by the documents which he has here and is prepared to produce.

18 Q. Well, for the legal proceedings, I have to inform you as  
19 to why it is not beyond the scope of the committee's review  
20 and explain that to you legally. Do you need to have it read  
21 each time?

22 A. No, I do not.

23 MR. RICHARDSON: I take it it will be the same  
24 thing you read the last time?

25 CHAIRMAN BALDACCI: Yes.

1 MR. RICHARDSON: You don't need to read that again.

2 CHAIRMAN BALDACCI: We don't have an objection to  
3 that. I am on question 3.

4 Q. Mr. Potholm, please turn over to this committee as  
5 directed by the subpoena all documents or writings of any  
6 kind relating or incident to any poll, opinion survey or  
7 tracking study drafted or prepared in whole or in part by you  
8 for clients other than Maine utilities that contained a  
9 question which measured the approval or disapproval of the  
10 person interviewed of the Maine governor, Joseph Brennan.

11 A. On advice of counsel, I will turn over some of these  
12 documents. I will not turn over all the documents.

13 Q. And the basis of that is?

14 A. Same.

15 Q. That it is beyond -- what is your basis?

16 MR. RICHARDSON: Mr. Chairman, if we are going --

17 MR. KELLEHER: May I ask a question. If you are  
18 asking Mr. Potholm a question and he says the same, I would  
19 ask that you ask Mr. Potholm to state the same. At least for  
20 the benefit of this member of the committee for the record  
21 each time you go through your specific questions.

22 CHAIRMAN BALDACCI: All right, Representative  
23 Kelleher.

24 MR. KELLEHER: If we are going to do it for the  
25 record, let's do it as properly as possible.

1 Q. Your answer, Mr. Potholm?

2 A. On the advice of counsel, I will be giving some of these  
3 documents. I will not not be giving the others. The reasons  
4 my attorney has indicated.

5 Q. Which are?

6 MR. RICHARDSON: The reasons are number one --

7 CHAIRMAN BALDACCI: Mr. Richardson, this is Mr.  
8 Potholm's appearance. If he would like to confer with you to  
9 help him with the questions that are being asked, he has a  
10 right to have counsel. If Mr. Potholm would please answer  
11 the questions on your conference and he confer with you, I  
12 would appreciate it very much.

13 Q. Mr. Potholm, what is the claims that you're making as  
14 far as this question?

15 A. I am going to defer to my attorney. That is why he is  
16 here.

17 CHAIRMAN BALDACCI: Mr. Richardson.

18 MR. RICHARDSON: Section 412 of Title III provides  
19 that it is unlawful for this committee to exceed the scope of  
20 its investigation, and that statute is clear. And the whole  
21 statute, Title III, Section 401 in the following section is  
22 predicated on that basis. It was adopted in 1973 in an  
23 atmosphere which was designed to ensure that committees --  
24 investigating committees had authority to -- at the same time  
25 had certain guidelines. The statute is specific and clear.

1 MR. SOULE: May I interrupt just a moment. Are you  
2 telling us anything different than your previous answer as to  
3 basis?

4 MR. RICHARDSON: Sir, he, the chairman, has asked  
5 my client who is not a lawyer to explain the legal basis. He,  
6 my client, has deferred to me. I would be happy to shortcut  
7 all of this.

8 MR. SOULE: If you could give us an answer without  
9 all the historical background, perhaps, just as to an answer  
10 as to whether you are standing on proprietary privilege and  
11 as to whether or not you are refusing because of the  
12 inquiries are outside the scope of the investigation, I  
13 believe that would be sufficient for purposes of the record.

14 MR. RICHARDSON: All of the inquiries which the  
15 chairman has read to date are objectionable on the basis of  
16 Sections 412, 453, 457 and 456 or 457 rather of the Title III.  
17 And all of those issues have previously been discussed. They  
18 were in court previously discussed. I have discussed them in  
19 response to an earlier request. I have no interest in  
20 repeating them over and over again unless you or another  
21 member of the committee has a question about it. But I had  
22 understood the chairman's question to require my client who  
23 is not a lawyer, that is the only thing he is not charged  
24 with apparently, to try to give an answer to a legal question.

25 MR. SOULE: It is fair that you answer those

1 questions. If you are telling us something different, that's  
2 fine. If not, I think you could shortcut it somewhat without  
3 historical backgrounds.

4 CHAIRMAN BALDACCI: For the objections, violations  
5 or accusations in regard to Section 412 and 457, the Chair  
6 would note that in paragraphs 2 and 3 of the joint order, it  
7 specifically points out why these questions were within the  
8 scope of the review. And as far as Section 457, it is the  
9 state of the privilege is that I would direct you to comply  
10 with the request because I know of no such privilege under  
11 the statutes or rules of evidence in this state in 454.

12 Q. Mr. Potholm, would you please turn over to this  
13 committee as directed by the subpoena all documents or  
14 writings of any kind relating to our incident to any poll,  
15 opinion survey or tracking study drafted or prepared in whole  
16 or in part by you for clients other than Maine utility  
17 companies that contained the question which measured the  
18 voting preferences of the person interviewed with respect to  
19 the 1982 Maine gubernatorial election.

20 A. On advice of my counsel, I will be turning over to the  
21 committee some of these materials. I will not be turning  
22 over all of the materials.

23 Q. And the basis for that?

24 A. I will defer to my attorney for the legal basis --

25 CHAIRMAN BALDACCI: Mr. Richardson?

1 A. -- for my refusal.

2 MR. RICHARDSON: The basis remains the same. And  
3 will remain the same, all deference to you, Mr. Chairman.

4 Q. Your objection to my question whether this is within the  
5 scope of the investigations, one of the objections and  
6 objection on privilege I will repeat earlier that I know of  
7 no such privilege under the statutes of rules of evidence in  
8 this state which should be claimed in the court of law or as  
9 a party to a civil action. And as far as the scope of the  
10 committee's review, specifically subparagraphs 2 and 3 of the  
11 joint order clearly point out the relevance in that these  
12 questions were within the scope of the committee's review.

13 MR. RICHARDSON: I as an attorney respectfully  
14 disagree with you.

15 Q. Mr. Potholm, please turn over as directed by the  
16 subpoena to this committee all documents or writings of any  
17 kind relating or incident to the identity of the non-utility  
18 company clients of your opinion survey activities for  
19 political consulting activities.

20 A. Upon advice of counsel, I will be turning over some of  
21 that information. I will not be turning over all of that  
22 information.

23 CHAIRMAN BALDACCI: Counsel, your basis for that?

24 MR. RICHARDSON: Same basis as previously stated.

25 And I would submit the request has been made in that question



1 isn't even germane.

2 CHAIRMAN BALDACCI: The same response as previously  
3 given for the other questions and objections that it is  
4 within the scope, and that there is no privilege which does  
5 exist. And that has already been reiterated into the record  
6 that it is within the scope. It is repetitive, that comment.

7 Q. Mr. Potholm, would you please turn over as directed by  
8 this committee all documents or writings of any kind relating  
9 or incident to any debts or obligations that were or have  
10 been outstanding for over a period of 30 days and that were  
11 incurred by a federal office holder, a state office holder, a  
12 state candidate, a federal candidate, a political party, a  
13 Maine ballot question campaign or the Committee to Save Maine  
14 Yankee to you as a result of services performed by you.

15 A. Upon advice of counsel, I refuse to do so.

16 Q. What basis would that be?

17 MR. RICHARDSON: I want to add an additional basis  
18 for this objection. Apparently, questionnaires had been sent  
19 to virtually every candidate for state or federal officers in  
20 the state over the past X number of years. I submit to you  
21 that it is a rather indirect way of attempting to determine  
22 whether or not an individual candidate had an obligation to  
23 Command Research that was more than 30 days old. I haven't  
24 been shown these questions, but if one might ask why you  
25 don't ask the candidates that.

1 My point is that Mr. Potholm on the advice of me as  
2 his attorney feels that if you really want that information,  
3 you ought to get it from the candidates who are required to  
4 make filings with the courts, who are required by election  
5 laws to indicate the accounts concerning their political  
6 campaigning activities. And it seems to us that is the place  
7 to get that.

8 CHAIRMAN BALDACCI: As far as your basis for --

9 MR. RICHARDSON: All the other bases without  
10 repeating.

11 CHAIRMAN BALDACCI: Scope and privilege.

12 MR. RICHARDSON: Mr. Chairman, I don't accept your  
13 definition. If we can have the record understand when I say  
14 the same objection, it is the objection that I have  
15 previously stated, and the record will indicate what that is.  
16 Q. I understand that you're claiming three things, three  
17 objections for this particular question; one would be that it  
18 is outside the scope of the review of this particular  
19 committee, are you claiming a proprietary privilege on this  
20 particular question, Mr. Potholm?

21 MR. RICHARDSON: Yes.

22 CHAIRMAN BALDACCI: And also that these questions  
23 aren't germane, is that also --

24 MR. RICHARDSON: That the information sought is not  
25 pertinent to the subject matter and scope of the

1 investigation, that no satisfactory explanation has been  
2 given at any point, and I respectfully suggest to you that  
3 the explanation you have given of the claim to pertinency  
4 still doesn't meet the requirements of Section 453 of the  
5 statute, and I do not share your view of what constitutes  
6 privileged information. And I guess that Judge Brody is  
7 going to decide that if the committee after it hears Mr.  
8 Potholm's explanation of what this situation amounts to  
9 decides to apply to Judge Brody. We would --

10 CHAIRMAN BALDACCI: We haven't gotten to that point,  
11 Mr. Richardson.

12 MR. RICHARDSON: I want you to understand.

13 CHAIRMAN BALDACCI: I would like to deal with Mr.  
14 Potholm and the questions that were asked in the subpoena.  
15 As far as the questions being asked of the political  
16 candidates, they have been asked and they have all been sent  
17 interrogatories and we have some responses. Others that are  
18 coming in. But it is very important that we ask these  
19 questions of Mr. Potholm because it is within the scope of  
20 the investigation as pointed out specifically in  
21 subparagraphs 2 and 3 of the joint order and also it is no  
22 privilege that I know of as the Section 457 points out that  
23 you -- that Dr. Potholm is to be given the benefit of any  
24 privilege that would be claimed in the court of law as a  
25 party to civil action, and I find no privilege there. And I

1 would direct compliance as far as this particular request as  
2 I have for the others.

3 MR. HIGGINS: I want to state for the record your  
4 opinion does not reflect that of everybody on the committee  
5 just for the record.

6 CHAIRMAN BALDACCI: So noted.

7 Q. Mr. Potholm, please turn over as directed by the  
8 subpoena to this committee all documents or writings of any  
9 kind not produced pursuant to another document request  
10 relating or incident to any solicitation, collection or  
11 donation of contributions by you on behalf of any political  
12 committee, political party, state candidate or federal  
13 candidate.

14 MR. RICHARDSON: Excuse me.

15 A. I am under the impression we have turned over to the  
16 committee everything in this category that is in our  
17 possession.

18 MR. SOULE: Is that your testimony here today that  
19 you have turned over everything?

20 MR. RICHARDSON: I want to review the request and  
21 our response to it. Listening to you read that, I am not  
22 aware -- I thought that we had answered that there were no  
23 such records, but I want to review the response before he  
24 stands on that if I may.

25 MR. SOULE: May I get the record clarified what

1 your testimony is, Mr. Potholm?

2 A. I believe we have complied with that portion by turning  
3 over everything we had that was in that category.

4 MR. RICHARDSON: Relating to solicitations of  
5 candidates and donations?

6 CHAIRMAN BALDACCI: Yes, solicitations.

7 MR. RICHARDSON: Would you give my just a moment to  
8 check that, because I am not aware that was a matter in issue?  
9 May we have the paragraph number?

10 CHAIRMAN BALDACCI: Just a second.

11 MR. RICHARDSON: Mr. Chairman, would you tell me in  
12 which subpoena the question appears?

13 CHAIRMAN BALDACCI: I said Estelle just went to get  
14 a copy of the subpoena. We are going to take a five-minute  
15 recess waiting for the documents to be reviewed so there will  
16 be a five-minute break.

17 MR. RICHARDSON: May we be excused during that time?

18 CHAIRMAN BALDACCI: Yes.

19 (A short break was taken.)

20 Q. Mr. Potholm, it is my understanding that your question  
21 was in response to paragraph number 8 of the subpoena that  
22 acknowledges that you have given everything?

23 MR. RICHARDSON: Paragraph 8 of which?

24 CHAIRMAN BALDACCI: The subpoena.

25 MR. RICHARDSON: Well, paragraph 8, Mr. Chairman of

1 the subpoena directed to him as president of Command Research  
2 is as we read it identical to paragraph 56 of the request for  
3 production of documents directed to Command Research. And  
4 the answer to that was if any such documents existed, they  
5 would be confidential and privileged and would lie beyond the  
6 scope of the joint committee's investigation. Without  
7 waiving this objection to this paragraph, however, Command  
8 Research voluntarily discloses that no such documents have  
9 been found. So that we have answered that question by  
10 indicating to you that with respect to the subpoena duces  
11 tecum, there are no such documents.

12 Q. Mr. Potholm, the question was are there any writings,  
13 documents of any kinds not produced pursuant to another  
14 document request relating or incident to any solicitations,  
15 collection or donation of contributions by you on behalf of  
16 any political committee, political party, state candidate or  
17 federal candidate. And the response on the Joint Select  
18 Committee to Investigate Public Committees response of  
19 Christian Potholm to subpoena duces tecum answer to paragraph  
20 number 8 here says, that paragraph 8 of the subpoena addressed  
21 to Christian Potholm is apparently a copy of paragraph number  
22 39 of the request for production of documents addressed to  
23 Christian Potholm.

24 The request remains unintelligible to the extent  
25 this paragraph may be interpreted as seeking the identity of

1 non-utility company clients, Christian Potholm respectfully  
2 declines to produce any such documents and incorporates by  
3 reference his response to paragraph number 1 of this subpoena.  
4 So what you said here today isn't what is said here.

5 A. The question is not the same as the question was before  
6 either.

7 Q. What is your testimony today for the question that was  
8 asked?

9 A. All documents relating or incident to the identity of  
10 clients of opinion survey activities or political consulting  
11 activities, we have answered that one. All documents not  
12 produced pursuant to other document requests relating or  
13 incident to any solicitation, collection or donation of  
14 contributions by you on behalf of any political committee,  
15 political party, state candidate or federal candidate. If  
16 any such documents existed, they would be confidential and  
17 privileged and would lie beyond the scope of the joint  
18 committee's investigation. Without waiving its objection to  
19 this paragraph, however, Command Research voluntarily  
20 discloses that no such documents have been found.

21 Q. Do they exist?

22 A. No.

23 Q. Thank you very much.

24 A. Well, they don't exist in my presence -- I mean in my  
25 possession. I don't know. If any existed somewhere sometime

1 I don't know.

2 Q. Personally or corporately do they exist?

3 A. They're not in my possession. I don't have any  
4 recollection of them existing.

5 Q. Thank you very much, Dr. Potholm, for that question.  
6 This is the last one that I have for you. Mr. Potholm,  
7 please turn over as directed by the subpoena to this  
8 committee all documents or writings of any kind not produced  
9 pursuant to another document request relating or incident to  
10 the corporate records of Command Research. Your response?

11 A. On advice of counsel, I refuse to produce the corporate  
12 records of Command Research.

13 Q. Basis?

14 A. For the reasons my attorney will give.

15 MR. RICHARDSON: I want to incorporate by reference  
16 all of the previous statements that I have made. I see no  
17 reason to burden the committee or the record with those. I  
18 do want to indicate one additional thing, however, that I  
19 really have a great deal of difficulty in understanding how  
20 the financial records of this company reflecting its dealing  
21 with non-utility and non-politically related activities have  
22 anything to do with this investigation.

23 If this investigation were being conducted in what  
24 I would regard as a somewhat less adversarial situation, we  
25 might be willing to permit a designated party to look at



1 these financial records. But given the current status of  
2 this situation, I just can't see any basis whatever why you  
3 should be permitted to paw around or why the committee should  
4 be permitted to give access to financial records that have  
5 nothing to do with the scope of this investigation.

6 And for that matter, the scope of the inquiry is so  
7 broad that it might get into his own personal financial  
8 records. And I just don't think that is it appropriate. And  
9 therefore I have instructed him that as his attorney, I do  
10 not believe he should produce his records.

11 CHAIRMAN BALDACCI: My response to those claims are  
12 the same also that they are within the scope of the  
13 committee's investigation, and they are also -- no claim for  
14 privilege exists. As far as the Command Research records, I  
15 think it is important to point out that these accounts may  
16 identify sources of and recipients of polling data. And it  
17 is for that reason that they are within the scope of the  
18 questions asked within the scope of review of this particular  
19 committee.

20 MR. RICHARDSON: I state as a fact they don't  
21 contain such information, but I guess the court is going to  
22 have to resolve that.

23 CHAIRMAN BALDACCI: You're not the witness today.

24 MR. RICHARDSON: Are you telling me I can't speak?

25 CHAIRMAN BALDACCI: No, I didn't say that. I said

1 you weren't the witness today.

2 Q. Mr. Potholm, this committee has been patient in  
3 attempting to receive certain documents --

4 MR. HIGGINS: I would like to comment on the last  
5 statement that you asked. And I would again say for the  
6 record that your reaction to his failure to produce this  
7 information is not shared by every member of the committee.  
8 And I am sorry that I did not bring that point up earlier in  
9 the debate on the questioning, the cross-examining or  
10 whatever you want to call it, but I want to make it clear  
11 that all the questions at least from my standpoint your  
12 responses are not indicative of my personal position.

13 MR. KELLEHER: Mr. Chairman, I think that  
14 Representative Higgins has raised an interesting point in  
15 regards to the position of the committee as he sees it in  
16 your statements on behalf of the committee in response to the  
17 various questions that were raised here today. And I  
18 appreciate it. I for one think that you are speaking for the  
19 committee, and I respectfully ask you to poll us, to poll us  
20 now to see if we are in agreement or disagreement with your  
21 answers to the question that was raised -- your answer to the  
22 answer of Mr. Potholm in regards to privilege in not  
23 submitting all the information as he has.

24 So I think in fairness to each one of us in the  
25 committee that you would poll us. Mr. Higgins has stated his

1 opinion that he doesn't necessarily agree with it. And I  
2 have stated mine that I have. So I would ask that you poll  
3 whatever is here, whomever is here in regards to -- in  
4 regards to your opinion on behalf of the committee in  
5 response to the questions. So if we have got a clerk here  
6 that can do that, I would ask that the clerk does it.

7 MS. SEWALL: If we are going to get into polling  
8 and deciding who is going to respond to one legal question  
9 and another, I think the minority ought to at least have our  
10 counsel here. I know that you could set this date so that  
11 majority could have all kinds of counsel here today and you  
12 know that we don't have any. And if we are going to get into  
13 questions of law of how we think those questions are asked,  
14 as a member of this committee and as a matter of personal  
15 privilege to me, I would like to consult my minority counsel  
16 if we are going to get into deciding if the questions are  
17 properly written or not.

18 CHAIRMAN BALDACCI: Representative Kelleher.

19 MR. KELLEHER: As just a plain old lay member of  
20 committee who has absolutely no background and training  
21 whatsoever, I certainly understood, and I am sure that the  
22 honorable senator from Damariscotta, too, understands that  
23 Mr. Higgins rightfully stated on his behalf that he doesn't  
24 agree with your position in regards to responding to Mr.  
25 Potholm's position on answering questions. And I respect his

1 as I know Lin Higgins would respect mine.

2 I don't think anyone -- any of us have to confer  
3 with legal counsel to say yes or no that we agree with the  
4 Chair's responses, and I would respectfully ask so that there  
5 will be no doubt on any record wherever that should go or  
6 requested from where Mr. Kelleher stands in regards to the  
7 Chair's position as he so stated, and I think that Mr.  
8 Higgins has so stated that he disagrees. And I would like to  
9 have it for the record show whether the majority or --  
10 whether you have the support of the committee in your  
11 position. And if you don't, you will have to back off. And  
12 if you do, you can proceed on.

13 MS. SEWALL: Mr. Chairman, I would like to say in  
14 Mr. Kelleher's absence, we did actually have a vote like that  
15 on the minority side of this, the unrepresented side today,  
16 did vote that we would like a judge to decide these matters,  
17 and that we had hoped when we went to court that these  
18 matters would be decided right then. Whether or not these  
19 things were germane to this. And that vote has already been  
20 taken. I think you have your opinion on the record.

21 MR. KELLEHER: Mr. Chairman, I am present here  
22 today, and I certainly appreciate the gentlelady's opinion,  
23 but I would like to go back to the point that this committee  
24 be polled in approval or disapproval of your announcement on  
25 behalf of the committee in regards to the previous statements.

1 CHAIRMAN BALDACCI: It is the feeling of the Chair  
2 and appreciative comments by Representative Kelleher and  
3 noted comments by Representative Higgins, that it is the  
4 feeling of the Chair that unless otherwise moved that the  
5 decision of the Chair shall stand.

6 MR. KELLEHER: Fine with me. It may not be so  
7 agreeable with the other side, and I think they ought to have  
8 an opportunity to show it.

9 CHAIRMAN BALDACCI: It also should be pointed out  
10 Mr. Linnell who is the minority counsel who is to be used as  
11 minority counsel to confer and consult with minority was well  
12 aware and well briefed of this particular proceeding and what  
13 was envisioned in this particular proceeding and had his  
14 consent, and that he would not be able to be here because of  
15 a previously scheduled vacation.

16 Now, Mr. Potholm, I understand that you have a  
17 statement that you would like to read. Do you have a copy of  
18 it for me or members of the committee?

19 A. We'll have copies when I am finished.

20 MR. SOULE: Do you have copies now that we might  
21 follow while you are speaking?

22 MR. RICHARDSON: Yes, here is the original, and  
23 that is sworn in accordance with the statute.

24 CHAIRMAN BALDACCI: Mark, why don't you see copies  
25 of that get made, and we'll have a short recess until copies

1 are made.

2 MR. RICHARDSON: I have sufficient copies of the  
3 committee.

4 CHAIRMAN BALDACCI: Is everybody in possession of  
5 the statement of Christian P. Potholm, Thursday, October 25,  
6 1934?

7 MR. RICHARDSON: Mr. Chairman, I wish to point out  
8 that the original is the one that I wish incorporated in the  
9 record. It is signed in the presence of the notary public.  
10 It is a sworn statement. There are some copies that are not  
11 because -- whichever one that is signed is the only one I  
12 have, and I would appreciate that being incorporated. That  
13 is the one you should be incorporating.

14 CHAIRMAN BALDACCI: The record shall reflect.

15 MR. RICHARDSON: The second thing I wish to  
16 indicate is that if I may -- the other thing I want to  
17 indicate to having participated in committee hearings before  
18 as a member of the committee, if you have something in front  
19 of you, it is difficult to listen to the witness. And I  
20 would ask on Dr. Potholm's behalf that you would listen to  
21 what he has to say because I think in some areas, I think he  
22 can give some explanation which perhaps isn't included within  
23 the sworn statement, the written one that would be helpful to  
24 you.

25 A. First of all, I would like to thank the committee for

1 giving me this opportunity to share my views with you in  
2 person. I have been willing and, in fact, anxious to testify  
3 before this committee for a very long time. And I believe  
4 that any of the adversarial relationship which has developed  
5 between myself, the investigators and some members of this  
6 committee could well have benefited from an earlier or  
7 informal, more friendly intercourse.

8 It would be my hope that this committee would see  
9 both my point of view with respect to the documents which I  
10 had provided, and it is very important to me that you  
11 understand why I have provided the documents I have as well  
12 as why I have not provided the documents that I have not.

13 I believe that I am in a position to give you a  
14 great deal of insight into the role of the utilities in Maine  
15 politics during the period 1980 to 1983. Let me make a few  
16 observations for the record.

17 I am not sure how this committee got to be as  
18 bipartisan as I sitting on the outside think it has become.  
19 I was under the impression that this committee was going to  
20 be bipartisan in terms of looking at the whole scope of  
21 utility activity.

22 With regard to Atlantic Research where I would like  
23 to begin my statement, Atlantic Research was formed with the  
24 intent of providing Central Maine Power with an ongoing  
25 supply of reliable and readily available polling data at a

1 lower cost than was then commercially available. In the  
2 corporate reorganization which would have accompanied the  
3 formation of Maine industries, Atlantic Research was to  
4 become a profit center, one which would accept clients from  
5 within the state and outside the state.

6 It is very important that this committee recognize  
7 that at least from my prospective, Atlantic Research was not  
8 designed to assist one group or one party or one point of  
9 view. In fact, it was to be a polling firm open to all. And  
10 I stress all because I think somewhere in the discussions of  
11 Atlantic Research, this dimension has been lost.

12 Atlantic Research was from its inception a  
13 non-partisan activity. I can only speak of those  
14 conversations which I had with prospective clients but such  
15 prospective clients as Arkansas Power & Light, commissioner  
16 of business regulation, Harvey DeVane and John O'Leary and  
17 John Kerry. In fact, I feel very strongly that Skip  
18 Thurlow's willingness to have Atlantic Research engage in a  
19 discussion about doing polling for John Kerry who was at  
20 least in Skip's mind both anti-nuclear and anti-utility  
21 clearly to me underscores the non-partisan nature of Atlantic  
22 Research.

23 In addition to the non-partisan search for clients,  
24 Atlantic Research never allowed its so-called infrastructure,  
25 its computer, its memory banks, all of that paraphernalia



1 that has been referred to in the press. To my knowledge,  
2 this was never offered or utilized by either the Republicans  
3 or the Democratic party at the state level or at the national  
4 level. And, in fact, to my knowledge, there was no  
5 discussion of ever having Atlantic Research used in this what  
6 would have been partisan way for either the Republicans or  
7 the Democrats.

8 A second major point has to deal really with the  
9 philosophical underpinnings of both this committee and my  
10 relationship to the world of politics that I know. I have no  
11 idea what the committee's ultimate decision may be with  
12 regard to further regulation. In my opinion, the utilities  
13 of Maine had every right to generate the polling data they  
14 did. And how anybody could or would want to assume that the  
15 utilities of Maine did not want to know who the next governor  
16 was going to be or who the next United States senator was  
17 going to be is just simply not clear to them.

18 If you look at the world of politics and you look  
19 at the importance of a George Mitchell on the Finance  
20 Committee or a Bill Cohen on the Armed Services Committee or  
21 any other number of permutations, for the largest utilities  
22 in the state not to want to know that kind of information is  
23 just not clear to me.

24 So philosophically, I think that like any other  
25 corporation the utilities had every right to generate the

1 polling data they did and to utilize that data in any way  
2 they saw fit.

3 Now, I recognize not the whole committee may feel  
4 that way. But I believe that the opinions of Maine people as  
5 generated by the survey research were very important to the  
6 runnings of those utilities. And it seems obvious to me that  
7 any client takes a poll with the intent of using that  
8 information. And I again -- this is from a philosophical  
9 point of view, not to rewrite history but how and when a  
10 client chooses to utilize its polling data it seems to me is  
11 a matter for the client to decide.

12 Central Maine Power undertook an educational  
13 program that improved the public's perception of that company.  
14 New England Telephone discovered that certain segments of the  
15 Maine population wanted, in fact, to receive different kinds  
16 and newer kinds of equipment. Why these companies should be  
17 expected to burry that information or not use it is beyond me.

18 Certainly utilities were at the heart of the  
19 political process during the three referenda under review.  
20 Save Maine Yankee I, the elected PUC in 1981 and Save Maine  
21 Yankee II in 1982 were critical to the future of those  
22 companies as they perceived it. So naturally, they got  
23 involved in the referenda, and naturally they worked hard to  
24 utilize their polling data to defend their position.

25 Maine utilities wanted the support of major

1 political figures in this state. They tried to get the  
2 support of many of those political leaders. CMP and New  
3 England Telephone to my knowledge actively sought the support  
4 of political candidates from both parties. On those issues  
5 which effected the future ability of that function and in  
6 terms of what the various referenda were trying to do, A,  
7 shut down Maine Yankee and B, put the PUC out of business.

8 Now, when it comes to this relationship between the  
9 utilities and the public figures, I believe from a  
10 philosophical as well as a practical point that the utilities  
11 had every right to utilize the data they collected in order  
12 to gain the support from those political people for their  
13 position.

14 And I think if you are honest about the Maine  
15 political landscape during this period, 1980 to 1983, there  
16 is no question but that Democrats were more important to the  
17 successful outcome than Republicans.

18 And as I had indicated in August, and I believe as  
19 recently as last Friday, Governor Brennan has suggested as  
20 well, Governor Brennan was the central figure in the  
21 political dramas known as Maine Yankee and the elected PUC.  
22 Just as other institutions, other companies, other  
23 individuals tried to get the Governor to see things their way,  
24 just as other corporations and individuals and institutions  
25 wants its support, so the utilities sought his help and made

1 sure that he and his administration got the information  
2 necessary to encourage him to do so. It is a painful but  
3 nevertheless practical point that I would make that most  
4 major Republican figures were already on the side of the  
5 utilities in the referenda of 1931 and '82, and frankly many  
6 were perceived as being irrelevant to the outcome. The  
7 utilities simply took the Republicans for granted.

8 Now, when it comes to the central role of Governor  
9 Brennan, again I say so not in any partisan sense because I  
10 believe Governor Brennan did not want to shut down Maine  
11 Yankee, and he certainly didn't want Bruce Reed to be the  
12 chairman of the PUC. So I believe that Governor Brennan had  
13 every right to want to know where he stood with the  
14 electorate, how his performance could effect the outcome of  
15 these referenda to which he was interested in. And there was  
16 in my judgment absolutely nothing wrong with his  
17 participation in any of these referenda or in the utilities  
18 interest in securing that participation.

19 A simple commonality of interest prevailed, and I  
20 can't think of any better example than the elected PUC  
21 activity in 1981. I have no idea to what extent you have  
22 gotten into that or will get into it. Clearly there was a  
23 commonality of interest to it. In my judgment I don't know  
24 whether the telephone company went to Brennan or whether  
25 Brennan went to the telephone company. Obviously, the desire

1 of those two parties to defeat Bruce Reed was indeed central  
2 to the outcome.

3 And if I might say so with regards to 1982, it is  
4 my professional judgment based on the polling that we saw in  
5 the spring of 1982 that if the Governor had not wanted to  
6 keep Maine Yankee open in 1982, his position might well have  
7 reversed the outcome of that referenda. I say this by way of  
8 background to indicate the extent to which philosophically I  
9 believe the utilities had a right to use their polling data.  
10 And the political figures, whoever they are and whoever they  
11 were had every right to utilize the information in order to  
12 make up their minds one way or the other.

13 Now, when we come to this question of the value of  
14 polling data, I think this is a very tricky concept, and it  
15 is one that I would have the committee at least pause and  
16 think about before you rush to judgment in one way or another.  
17 I frankly don't know what the candidates and the office  
18 holders and the other political figures who were exposed to  
19 the polling data, I don't know how they treated those. I  
20 would assume though that most of them in a common sensical  
21 way made the assumption that the polling data they received  
22 was only of marginal importance to their particular race.

23 Now, while the price of a poll is pretty clear to  
24 the client who pays the price, if I say I will do a poll for  
25 this committee and I charge you \$20,000 for that, that is

1 pretty clear. But by the time some or all of you give the  
2 information, second and third or fourthhand, it is very  
3 difficult to put any kind of an objective value on it. And  
4 indeed, much of the relevance of a particular poll's data  
5 really depends on how old it is and how many other people  
6 have, in fact, seen it, that there isn't at least in my  
7 judgment a common sensical standard that we could apply to  
8 polling data as it ages, as it goes over time.

9 And again, if we could just take a step back. I am  
10 not here to try to make a lot of debating points, but I do  
11 think it is important that the committee take a step back and  
12 look at the common sensical examples that we know occurred.

13 I think of two people that were in the audience of  
14 Maine Yankee that I briefed, John Chapman who is a Republican  
15 and John Kerry who is a Democrat. Both of the them were in  
16 an audience during something called a briefing. I can't  
17 imagine if either of them thought that briefing had any  
18 relevance for their particular senatorial campaign. If they  
19 did, I can't imagine how the two of them would agree on what  
20 the value was of that briefing. Even if John Chapman and  
21 John Kerry could agree on the value of the particular polling,  
22 I am not sure how value could be arrived at that a third  
23 party would agree to whatever value they put on it.

24 Or take the case of -- I think the most significant  
25 transfer in terms of the actual physical poll, both Governor

1 Brennan and Charles Cragin during 1982 received the same  
2 material and both apparently saw no reason to put any value  
3 on it with regard to their campaign. Governor Brennan has  
4 stated he already had the information. It was nothing new  
5 to him. He didn't need it.

6 Charles Cragin after going door to door for 15  
7 hours a day might not, in fact, have appreciated being told  
8 that his task was impossible and that he was 25 points behind.  
9 But in any case, I would say that those candidates would have  
10 had a very hard time putting a value on the polling data that  
11 he got from New England Telephone.

12 And if I may ask to look at this period from 1980  
13 to 1983, and I am in a position to say, well, some people got  
14 this and some people got that, I would be very hard pressed  
15 if I were a neutral third party to put some kind of value on  
16 the polling data that these various people got.

17 So speaking now if I could as a professor of  
18 government, I understand the committee may want to recommend  
19 to the legislature some way of dealing with in-kind  
20 contributions and record keeping. But with regard to polling,  
21 I think there is an almost insurmountable difficulty in  
22 assigning truly meaningful, quote, values, unquote, to  
23 information transferred.

24 Now, with regard to Command Research and its  
25 utility clients. I have turned over over 13,000 pages to

1 this committee. I have heard second and thirdhand that for  
2 some reason, the investigator thought interest was a great  
3 deal of material that was irrelevant. I would submit that I  
4 only gave to the committee the material that I was asked for,  
5 and I maintain very steadfastly that the material that was  
6 turned over to the committee was material that I received  
7 from Central Maine Power, New England Telephone and Maine  
8 Yankee.

9 With regard to Command Research and its non-utility  
10 polls which I understand is one of the reasons we are here  
11 today, many of the recent accounts over our difference, that  
12 is the position of Command Research. And the position of the  
13 investigators and the position of the committee, I think are  
14 a central issue which I would like to address.

15 After turning over all the polls that we had been  
16 involved in for Atlantic Research and CMP and New England  
17 Telephone, we did not turn over the polls of our non-utility  
18 clients because we felt they were beyond the scope of this  
19 committee. It may be at some future point that a judge will  
20 say they are within the scope of this committee. But I can't  
21 stress too strongly my fervent belief that we have acted here  
22 simply because those polls that are in my possession do not  
23 belong to me. They are the private property of the clients  
24 who commissioned them.

25 And again, with all of the desire to do whatever



1 you want to do to me and Command Research and everything else,  
2 I would ask you to focus on that for a second because it is  
3 not something that I made up on the spur of the moment after  
4 I received the inquiries from the committee. This is  
5 something that is not only standard operating procedure for  
6 Command Research, but it is, in fact, the code of ethics for  
7 the entire polling community. And I would just ask your  
8 indulgence to read a simple sentence from the Code of  
9 Professional Ethics and Practice of the American Association  
10 of Public Opinion Research which states: We shall hold  
11 confidential all information about the client's general  
12 business affairs and about the findings of research conducted  
13 for the clients except when the dissemination of such  
14 information is expressly authorized.

15 The data that our firm collects is expressly the  
16 property of the client and not the research firm. The client  
17 authorizes us to release data, no one else. The copies of  
18 those polls that this committee has asked for are simply not  
19 my property. To have given away somebody else's property  
20 would have violated my contracts with them because the  
21 contracts clearly state that the polls belong to them. It  
22 would have violated the ethics of the profession, and quite  
23 frankly would against my personal sense of what is right and  
24 wrong.

25 Now, this question of private property is a vital

1 one, and maybe it is wrong that you can't decide. Maybe it  
2 has to be decided by the court, and it will obviously be  
3 decided by the court in the committee decision that we turn  
4 over these polls which our clients have specifically told us  
5 not to do.

6 I just can't tell you how troubled and how anxious  
7 and how upset this part of the process has been because this  
8 committee rightly or wrongly or whatever reason has put me in  
9 a position where I am liable for legal action if I do one  
10 thing, and I am liable for legal action if I do another.

11 And I can't tell you how upset it has made me that  
12 I can't abide by the ethics of my profession and not have to  
13 be dragged to court once or twice or however many times.  
14 This is a personal matter of great concern to me, and indeed  
15 I believe the future of Command Research or any other polling  
16 firm depends upon the sanctity of this private property.

17 At the same time, since my objections to this whole  
18 turning over of private property that is not mine, I believe,  
19 is based on a sound set of principals and not on any desire  
20 to instructions. I am not trying to hold back the work of  
21 this committee. I asked Mark Asch when -- the first time I  
22 met him, I said why didn't you come to me in February or  
23 March far from wanting to impede the process of this  
24 committee, I would like to assist it in moving forward. In  
25 the process, I hope I have dispelled some of the

1 misperceptions that seem to be brought.

2 But having been told that I must turn over these  
3 materials, I took the step of formally contacting every  
4 person whose poll was in my possession, and I formally  
5 contacted each person for whom Command Research did a poll  
6 between 1930 and 1983. Command Research did no polling or  
7 other consulting activities for the utilities or utility  
8 related clients in 1984. Several clients responding to my  
9 position wrote me the following letters which will be handed  
10 and made part of the record. I won't read them all -- the  
11 whole thing to you, but Weil & Firth, in the person of Gordon  
12 Weil wrote thank you for your letter of October 11 and for  
13 you having held this private property survey materials  
14 prepared for us until you could ask us if we would agree to  
15 make it public. It goes on to describe all the things we  
16 have done. I appreciate your appropriate concern in not  
17 agreeing, et cetera, et cetera, et cetera. To the extent  
18 that I am informed about the investigation, I do not believe  
19 these materials would be relevant to it.

20 Nevertheless, it goes on to say that because these  
21 materials are already in the public domain as a result of  
22 being part of the public record and because the survey was  
23 conducted by me in the expression of interest of Maine people,  
24 consequently I have no objection to you turning over  
25 materials you may have concerning the survey to the special

1 legislative committee on utilities. So I am in the process  
2 today of turning over to you all of the material relating to  
3 Weil & Firth.

4 The second client who responded in the positive  
5 fashion is Ad Media. It says Dear Chris, thank you for your  
6 letter dated October 11, 1984. Re: The polling information  
7 gathered for us during October, 1983, March, 1983, May, 1983,  
8 and June, 1983. I really appreciate the very ethical posture  
9 you have taken with the special legislative committee on  
10 utilities in order to protect those private properties of Ad  
11 Media and the client for whom we serve.

12 However, we have already made this information  
13 available to the committee via our response to their June,  
14 1984, request. I am sure all this hassle has impacted your  
15 time to no end, and we really appreciate the professional  
16 manner which you have conducted yourself in relation to the  
17 materials contracted for by Ad Media.

18 It is not my place to engage in any kind of debate  
19 with the investigators of this committee. I do find it  
20 rather strange that I am dragged into court to provide four  
21 or five polls that have been turned over to the committee in  
22 July of this year. I find the whole relationship of the  
23 investigation as to how Command Research has been treated  
24 with regard to how other people have been treated as  
25 bordering on the bizarre, but I don't want to deflect our

1 discussions today by getting into those kinds of things.

2 Q. Mr. Potholm --

3 A. The people who have authorized me to turn over the  
4 material, I am very happy to turn it over to the committee  
5 today. The other five clients whose polls I have in my  
6 possession, none of whom are either political figures nor in  
7 any way related to the utilities have asked me and, in fact,  
8 in several cases specifically demanded that I not turn over  
9 their polls. I cannot therefore do so in good conscience,  
10 and I hope the committee as a whole will decide to respect  
11 the wishes of these clients with regard to their private  
12 property.

13 With respect to these non-utility clients, I  
14 believe it would be ethically improper for me to disclose  
15 polling information which is their property. And while my  
16 attorney has advised me that I should not produce the  
17 requested information with respect to non-utility clients for  
18 the reasons that he has described, I think it is important  
19 that you realize and understand that the five non-utility  
20 clients whose polls are in my possession consist of an  
21 industrial corporation, two hospitals and a medical trade  
22 association and an organization of sportsmen. Some of them  
23 may have made their desires on this subject, made these  
24 intentions to you personally. But since the industrial  
25 corporation, the two hospitals and the hospital trade

1 association, let alone the organization of sportsmen have  
2 nothing to do with public utilities, the regulated public  
3 utilities or politicians, I frankly don't see how the  
4 committee in good conscience could go forward and insist that  
5 this material be brought forward by the courts.

6 But in any event, whatever the committee eventually  
7 does with respect to these polls, I hope our time today will  
8 not be overshadowed by this disagreement with regard to the  
9 private property of my non-utility clients. I look forward  
10 to answering all of the questions you may have with regard to  
11 these various subjects.

12 Before I begin to answer your questions, however, I  
13 would like to make one point which apparently has not been  
14 part of the committee's operational information. As the head  
15 of Command Research, I have always been concerned from the  
16 time it was formed in 1980 until the present very concerned  
17 about the possible conflict of interest and indeed the  
18 appearance of conflict of interest, and I believe that  
19 Command Research has bent over backwards to compartmentalize  
20 our activities and to be discreet with regard to the polling  
21 data that we generated for client A, client B and client C.  
22 We believe that we have always and every instance been clear  
23 as to whether client wanted their message disseminated or  
24 their data shared.

25 Second, during the period under review, I was more

1 than a pollster in a number of situations. As a director of  
2 Maine Yankee, I was very free to do with whatever I wanted  
3 with that information as a director. More importantly, I  
4 believe that during the period under review, I had both  
5 explicit and implicit approval of CMP and New England  
6 Telephone to use the information on behalf of their  
7 activities. I believe that -- I have never had any client  
8 raise any question about the dissemination of their material,  
9 their polling data or even opinions about it. I had never  
10 had a single client raise that question.

11 I believe that we handled three very different  
12 referenda, Maine Yankee in 1980, the elected PUC in 1982 and --  
13 and Save Maine Yankee in 1982 with discretion and with  
14 dispatch. And I believe that Command Research has a  
15 reputation for integrity which I value very highly, and I  
16 hope this committee will try to understand the complexity of  
17 the situation in which I find myself doing polling for client  
18 A or client B or client C.

19 Most importantly for the purpose of this committee  
20 really understanding the nature of politics and indeed  
21 understanding the nature of my relationship to the political  
22 process, it should be noted that while I know most of the  
23 Republican office holders and candidates and have worked for  
24 some of them, either personally or as Command Research, each  
25 of the Republican political figures that I am aware of have

1 Command Research to these people.

2 Finally, although this has been an extraordinarily  
3 upsetting and time consuming project with me, I still hope  
4 that I can work with this committee in whatever way you think  
5 appropriate in order to clarify the role of utilities in the  
6 political process during the period 1980 to 1983 and to work  
7 for positively constructive results from your lengthy  
8 deliberations.

9 I am in no way trying to obstruct the legitimate  
10 activities of this committee. I want to help the committee  
11 reach whatever conclusions you deem appropriate as it leads  
12 to the role of utilities and politics. But the one thing I  
13 can't do, I can't go back and rewrite history. I can't give  
14 you what isn't there. I can't give you what was never there.  
15 I can give you only to the best of my recollection what  
16 happened and why it happened.

17 I hope that I have indicated to you the general  
18 nature of the materials you are about to receive. I don't  
19 know if my attorney has any further explanation of the legal  
20 basis for my position.

21 (Exhibit enclosed at this point.)  
22  
23  
24  
25



STATEMENT OF CHRISTIAN P. POTHOLM

Thursday - October 25, 1984

First of all, let me thank you for giving me the opportunity to share my views with you "in person". As my attorney, Mr. Richardson, indicated to Judge Brody at the hearing in Superior Court on October 12 - I have been willing and in fact anxious to appear before this Committee and testify concerning this investigation. I believe that any adversarial relationship which has developed between some members of the Committee, its staff and myself might have been avoided had we been able to talk directly some time ago. I am sorry that there has been such a delay and, frankly, I am very pleased to be here. It would be my hope that this session can enable the Committee to see both my point of view with respect to the documents which have and have not been produced as well as having the benefit of whatever information I have as a result of having observed the role of the utilities in Maine politics during the period 1980 through 1983.

By way of introduction, let me make some observations for the record:

ATLANTIC RESEARCH

Atlantic Research was formed with the intent of providing Central Maine Power Company with an ongoing source of reliable and readily available polling data, at a lower cost than was commercially available. In the corporate reorganization which

would have accompanied the formation of Maine Industries, Atlantic Research was intended to become a profit center, one which would accept clients from within the state of Maine and beyond. To my knowledge, there was never any discussion of barring one type of client or another, or aiding one political group or another. It was to be a polling firm open to all.

#### PROSPECTIVE CLIENTS OF ATLANTIC RESEARCH

Atlantic Research was, from its inception, a non-partisan activity. Discussions were held with such possible clients as Arkansas Power and Light, Commissioner of Business Regulation Harvey DeVane, and supporters of John O'Leary and John Kerry. In fact, I have always felt that Skip Thurlow's willingness to have Atlantic Research do polling for the John Kerry Congressional campaign was the acid test of his commitment to Atlantic's non-partisan nature, given the perception that John Kerry was both anti-utility and anti-nuclear.

#### NON-PARTISAN BASIS OF ATLANTIC RESEARCH

Atlantic Research never let its "infrastructure" be used by the Republican or Democratic State Committees, the Republican or Democratic State Chairperson, the Republican or Democratic National Committee, the Republican or Democratic members of the Reapportionment Committee, or any other group. Further, to my knowledge, there was never any discussion about allowing them to do so.

POLLING RIGHTS OF THE UTILITIES

While I have no idea what the Committee's ultimate decision might be on the issue of further regulation of public utility involvement in the political process, I believe that the utilities of Maine had every right to generate polling data. Why anyone would assume that the utilities of Maine would not want to know how the Governor was perceived or who the newly-elected U.S. Senator would be is not clear to me. In addition, like any other corporation or individual, Central Maine Power Company and New England Telephone Company had every right to use the information they generated and paid for in order to advance their causes, whether in the regulatory or in the political arena. The opinions of the people of Maine on the important issues facing them were of critical importance and certainly should have been taken into account in the public policy process.

It seems obvious to me that any client takes a poll with the intent of using the data generated. How and when the client chooses to utilize its polling data is a matter for the client to decide. Central Maine Power Company, for example, would have no reason to hide the fact that its approval rating went from 49% to 70%; nor would New England Telephone Company wish to withhold the information that its customers wanted new and better services.

CMP defeated two major efforts to shut down its only nuclear plant, and was able to convey its corporate message successfully enough to the public that its approval rating improved by over 20 percentage points. New England Telephone successfully defeated the elected-PUC proposals. The polling information was obviously

very useful in all these instances and the utilities were simply exercising their rights in defending their interests.

Maine utilities wanted the support of political figures throughout the state and acted accordingly. In trying to win the referenda of 1980, 1981 and 1982, the utilities sought political allies. Background briefings of Central Maine Power and New England Telephone material were given to those individuals and groups who could assist the utilities in their efforts to secure victories on the major ballot issues facing them. CMP and NET actively sought support from political candidates on those issues which affected the future ability of the two companies to provide the kind and range of services Maine people expect and want. They wanted help from political candidates far more than they wanted to give help to those candidates.

#### THE UTILITIES AND POLITICAL FIGURES

I believe that the utilities had every right to use the polling data they generated to try to win the referenda of 1980, 1981 and 1982 and to influence the political figures who could make a difference in the outcome. Given the nature of the political realities in Maine during the period under review and the importance of securing bipartisan support for the political efforts of the utilities, Democrats were simply more important than Republicans and Governor Brennan was most important of all. Governor Brennan was the central political figure and his support was indispensable to both the outcome and the margin of the two

Maine Yankee referenda and the referendum on the Maine Energy Commission. Just as other institutions, companies and individuals try to get the Governor to see things their way, so the utilities wanted and needed his help and sought it by making sure he and his Administration got their information—from Save Maine Yankee I, Save Maine Yankee II, NET, CMP, Command Research and Ad Media. The simple fact was that most major Republican figures were already on the side of the utilities in the referenda of 1980, 1981 and 1982 and many were frankly perceived as being irrelevant to the outcome.

GOVERNOR BRENNAN

I believe that Governor Brennan had every right to want to know where he stood with the electorate, to see how the ballot measure campaigns he was interested in were progressing and to determine what impact their progress was having on the voters' perceptions of his performance.

There was, in my judgment, nothing wrong with his participation, or the utilities' interest in securing that participation. A simple commonality of interest prevailed. I believe, for example, that New England Telephone Company could not have defeated the Maine Energy Commission in 1981 without the enthusiastic participation of the Governor in that campaign. Conversely, the Governor could not have defeated Bruce Reeves and the elected-PUC concept in 1981 without the help of the telephone company. And, especially in 1982, if the Governor had not wanted to keep the plant open, his position might well have reversed the outcome of the Maine Yankee referendum.

VALUE OF POLLING MATERIAL

The concept of "value" of polling material is apparently one of the principal concerns of the Committee. I do not know what candidates or office-holders made of the polling data they received. I would assume that most thought it of direct relevance only to the referenda and not of significance to their own political ambitions. While the price of a poll is clear to a client who pays for it, it is extremely difficult to put an objective value on polling data which one receives second or third hand. Indeed, much of a poll's relevance and worth may depend upon how old it is and to what use it can be put in a campaign situation, especially if that material is unsolicited.

Looking at this on a bipartisan basis, take the situations of John Chapman (R) and John Kerry (D), both of whom received briefings at Maine Yankee. I can't imagine that either ever thought that their briefing's "value" should have been reported. But if they had, how would they put a value on it? How could a value be arrived at which would be agreeable to both?

Or take the transfer of polling data to Governor Brennan (D) and Charles Cragin (R) during the summer and fall of 1982 by New England Telephone. Both apparently got the same material and both apparently felt no need to report its value. Governor Brennan undoubtedly already knew he was 20 points ahead and Charles Cragin might well have felt that being told he was 20 points behind was a negative "value". How could either be expected to put a common value on the material which a third party, presumably some future election committee, could agree to?

Looking over the period 1980-1983, I believe that the utilities acted within their rights to generate and disseminate polling material, that candidates and office-holders had a right to receive the information they did and there would be no way to put an "objective" value on any of the material they received.

#### FOR THE FUTURE

As a Professor of Government at Bowdoin College, I can understand that the Committee may perceive a need to recommend legislation to the next session of the Legislature involving the definition of "in kind" contributions and recordkeeping, but with regard to polling, I think there are virtually insurmountable problems in assigning truly meaningful "values" to the information transferred.

#### COMMAND RESEARCH AND ITS NON-UTILITY POLLS

Many of the recent accounts over our differences have obscured what I believe is the central issue. After turning over all polls which were done for Atlantic Research, CMP and NET, we did not turn over the polls of our non-utility clients because we felt that they were outside the scope of this inquiry, but more importantly the copies in our possession were the private property of others. The copies of the polls simply do not belong to us. To have given away somebody else's property would have violated our contracts with those clients, the ethics of the profession and our own sense of right and wrong. It would have been wrong to turn over something that did not belong to us.

This questions of private property is a vital one and one which can only be decided by the Court if the Committee is to insist that we turn over those polls which our clients specifically forbid us to release.

At the same time, since our objections are based on sound principles and not any desire to be obstructionist, we have taken the step of formally contacting each client whose poll we have which falls between 1980 and 1983. Command Research did no polling or other consulting for utility or utility-related clients during 1984.

Several clients have authorized us to release their material and we enclose their letters to that effect. Weil and Firth, while stating that the material is beyond the scope of this investigation, feels that the material is already in the public domain. Ad Media states that their material has been available to the Committee since July 1984 and authorizes us to release our copies to the Committee. Without waiving our objections to the other materials, we will produce those we have been authorized to make available. The other five clients—none of whom are either political figures or related in any way to utilities—have asked me not to release their polls. I cannot therefore do so in good conscience and I hope that the Committee as a whole will decide to respect their wishes with regard to their private property.

With respect to these non-utility clients, while it would be ethically improper for me to disclose polling information which is their property, and while my attorney has advised me that I should not produce the requested information with respect to



non-utility clients for reasons he will describe, I think it is important that you understand that the five non-utility clients consist of an industrial corporation, two hospitals and a hospital trade association, and one organization of sportsmen having nothing to do with regulated public utilities or politicians.

In any event, whatever the Committee eventually does with respect to these polls, I hope that our time together today will not be overshadowed by our disagreement in this matter and I look forward to answering all of your questions to the best of my ability as to the role of Maine utilities in the political process during the period 1980-1983.

#### POSITION OF COMMAND RESEARCH

Before I begin to answer your questions, however, please allow me to make a few points which need clarification. First, Command Research has always been concerned about its various clients and their interests and we have bent over backwards to compartmentalize our activities and to be discrete with regard to their polling data. We have always, in every instance, been clear as to whether a client did or did not want their "message" disseminated or their "data" shared. Second, during the period under review, I was more than a "pollster" in a number of situations. In the case of the Save Maine Yankee Committee during 1980-1983, I was one of the Directors of Save Maine Yankee and therefore much freer to act. More importantly, I believe I had both the explicit and implicit approval of Central Maine

Power and New England Telephone during the period May 1980 to September 1983 to speak out on their behalf. In addition, I have never had any client, for any reason, complain about my handling of their data. This I believe is a very important fact for this Committee to appreciate as we discuss the role of utilities in Maine politics during 1980-1983.

I believe that we handled three very different referenda—Save Maine Yankee I in 1980, the Elected-PUC in 1981 and the Save Maine Yankee II effort in 1982—with skill and dispatch and have established a reputation not just for acumen and discretion but for integrity as well. I value that reputation very highly and hope that this Committee will try to understand the complexities of the Maine situation from a variety of perspectives.

For example, it should be noted that while I know most of the Republican office-holders and candidates and have worked for some of them, either personally or through Command Research, each of them retained their own national polling firms during the period under review. Senator Cohen has used Market Opinion Research out of Detroit since 1972 and his payments to that organization are a matter of public record. Congressman David Emery used V. Lance Tarrance, Jr. out of Houston and Market Opinion Research. Congressman John McKernan, Congresswoman Olympia Snowe and candidate Charles Cragin all used Market Opinion Research as well. On a number of occasions, Command Research lost polling bids to Market Opinion Research. I hope that this information will help put to rest at least some of the speculation about my role.

Finally, although this has been an extraordinarily upsetting and time-consuming project for me, I hope I can work with this Committee in whatever way you think appropriate in order to clarify the role of utilities in the political process in Maine during the period 1980 through 1983 and to work for positively constructive results from its lengthy deliberations.

With respect to those materials which my attorney has advised me not to produce, I hope that now that I have indicated to you the general nature of the materials you will understand Mr. Richardson's explanation of the legal basis for my position.



CHRISTIAN P. POTHOLM

STATE OF MAINE

CUMBERLAND, SS.

Personally appeared the above-named CHRISTIAN P. POTHOLM and gave oath that the foregoing instrument is true and correct to the best of his knowledge and belief.

Before me,



Notary Public

MY COMMISSION EXPIRES  
MARCH 21, 1987.

1           CHAIRMAN BALDACCI: Mr. Richardson, do you have  
2       comments?

3           MR. RICHARDSON: Can I have just a moment please?

4           CHAIRMAN BALDACCI: Sure.

5       A.    I would like to then thank the committee for listening  
6       to me, and I appreciate the opportunity to coming before this  
7       committee. I only wish that I could have come to this  
8       committee several months ago.

9           MR. RICHARDSON: I want to indicate to you if I may,  
10      Mr. Chairman, that we have paginated --

11          CHAIRMAN BALDACCI: Excuse me. I didn't hear what  
12      you said.

13          MR. RICHARDSON: We have paginated, put page  
14      numbers on some but not all of the materials, but I wanted to  
15      make sure that there is not confusion as to what we are  
16      delivering here. There is a whole boxful of polling data,  
17      and I would like to perhaps after this -- after the formal  
18      part of the session is over we can go through a number of  
19      these or your staff can number them. I want to make sure --  
20      there are some that are not numbered. The original of the  
21      letter, for example, from Gordon Weil to Christian Potholm  
22      does not have a number on it. And we --

23          CHAIRMAN BALDACCI: Why don't you give it to the  
24      staff, and then they will go through it with you and then  
25      make the numbers or correlate it in whatever fashion.

1 MR. RICHARDSON: I see. There is a copy. We'll  
2 review it in any event.

3 CHAIRMAN BALDACCI: I would like to point out to  
4 counsel and to Christian Potholm that the investigating  
5 committee statutes, Section 456 say statements in form of  
6 answers, the witness or his counsel may insert in the record  
7 sworn written statements of reasonable length relevant to the  
8 subject matter and scope of the investigation. In giving  
9 testimony, the witness may explain his answers briefly. And  
10 I would just like to point out that even though some of the  
11 remarks may not have played directly with the subpoena duces  
12 tecum that I felt it was what Representative Higgins and  
13 others stated to be reasonable to allow you to make the  
14 statements that you did do.

15 A. Thank you for that opportunity.

16 MR. RICHARDSON: Mr. Chairman, I also want to point  
17 out we were not aware of the narrowed scope. I thought it  
18 appropriate for Dr. Potholm to address some things that are  
19 not specifically related to the question of the subpoena. I  
20 thought it was appropriate that the committee understand that  
21 the basis of his position and some areas which he can be  
22 constructive and helpful in my opinion.

23 CHAIRMAN BALDACCI: Appreciative and --

24 MR. SOULE: I want to thank you also, Mr. Potholm,  
25 for appearing this morning. You had alluded earlier to

1     answering questions, and I did want to make it clear that the  
2     scope of this meeting today was primarily to get your  
3     response from the subpoenas, not only from the scope of the  
4     calling of this meeting but because we had also agreed with  
5     minority counsel, Mr. Linnell that there would be no  
6     questioning of the witnesses today that we are here for that  
7     limited issue. We do hope that you will come back at some  
8     later point and assist us with your expertise.

9             THE WITNESS: I am not trying to be either flip or  
10    vindictive, but I hope you will just simply ask me to come  
11    before the committee. It is not necessary to send sheriffs  
12    and bailiffs and subpoenas. I will be happy to come at any  
13    time to discuss anything within the scope of this committee.

14            MR. SOULE: We appreciate that.

15    Q. I think it is important to point out this process has  
16    been going on since the end of May, and this has been a very  
17    lengthy process, and it is not taken lightly the action that  
18    this committee has taken. Each step has been weighed legally  
19    and orally to be accomplished in a fashion which we could do  
20    our investigation and complete it.

21            The action that we have taken by a partisan nature  
22    in the nature of the subpoena to vote that the Senator Soule  
23    seconding the motion. Then there is the enforcement of the  
24    legal process to be obeyed. Every citizen has the right to  
25    argue. That is what the system of law is all about. And I

1 think that is very important.

2 As far as the points that you have made, I think  
3 they were very telling and very interesting in your testimony.  
4 And something that I consider to be very worthwhile to the  
5 ultimate recommendations of this committee. I want to make  
6 perfectly clear to you and to your counsel that we are not  
7 interested in Republican nor Democrat. We are not interested  
8 in whether there is a balanced approach that is being used to  
9 see that polling data is shared both with Democrats and  
10 Republicans as long as one is checked and the other is  
11 checked with, you're fine.

12 Our concern here is with the ratepayers' money and  
13 what was done with it. It is a consideration of the utility  
14 and its operation and political activity of its subsidiaries,  
15 affiliates and contractors in that particular process. And  
16 it is for those reasons that we are concerned. Whether it be  
17 Democratic or Republican. Whoseever hand is in the cookie  
18 jar will find a rude awakening the next day.

19 I would like to point out that we have been very  
20 patient in attempting to receive certain documents from you  
21 relating to this investigation on political participation  
22 into public utilities. Pursuant to Sections 454 and 457 of  
23 Title III of the Maine Revised Statutes Annotated, I am  
24 directing you to comply with the subpoenaeas individually and  
25 as president of Command Research. Do you refuse to honor

1 that directive?

2 A. I have no choice but to refuse.

3 CHAIRMAN BALDACCI: Then I should recommend a  
4 citation for your contempt of this committee pursuant to  
5 Section 473 of Title III and all other applicable laws. And  
6 this committee is in recess.

7 (A short break was taken.)

8 CHAIRMAN BALDACCI: This meeting is reconvened of  
9 the Joint Committee to Investigate Public Utilities. I would  
10 be willing to entertain a motion per my recommendation.

11 MR. KELLEHER: Chairman, in view of Mr. Christian P.  
12 Potholm's refusal to supply this joint committee of the Maine  
13 legislature with the documents and writings requested by its  
14 duly issued subpoenas and despite the chairman's directive to  
15 comply, I move that this committee find that said Christian  
16 P. Potholm be declared in contempt of this committee and that  
17 this committee forthwith issue a citation for such contempt  
18 for appropriate enforcement by a justification of the  
19 Superior Court of the State of Maine.

20 CHAIRMAN BALDACCI: Is there a second to that  
21 motion?

22 MR. CROWLEY: I would second it.

23 CHAIRMAN BALDACCI: Discussion.

24 MR. HIGGINS: Before we vote on the motion, I am  
25 going to explain to you the reason I am going to vote against



1 it. And I think it borders on the real situation in that  
2 Potholm has appeared here today. He has provided us with a  
3 sworn statement under oath. That documents that we are  
4 interested in obtaining belong to non-utility clients. They  
5 are non-political in nature and they are not pertinent to  
6 what we are charged with by joint order to discuss and to  
7 report back to the legislature with. I am not -- I do not  
8 feel that we are in a position to, in essence, call Dr.  
9 Potholm a liar. If members of staff of this committee have  
10 reason to believe otherwise, we have yet to hear it. And I  
11 for one do not think this committee should without any other  
12 data proceed to implication in any way to assume someone is  
13 lying from this committee. I think it is unfortunate, and I  
14 intend to vote against the motion for that reason.

15 CHAIRMAN BALDACCI: Is there any other discussion?

16 MR. KELLEHER: Mr. Chairman.

17 CHAIRMAN BALDACCI: Representative Kelleher and  
18 then Representative Sprowl.

19 MR. KELLEHER: In making my motion, I would like to  
20 have all evidence that is pertinent to this joint select  
21 committee made available. And I respect Dr. Potholm and I  
22 respect his advice of counsel. But necessarily reflecting my  
23 respect for it doesn't necessarily mean I agree with them.  
24 And apparently for I as a member of this committee and the  
25 rest of you who are my colleagues on it, for us to proceed to

1 understand for the charge for which we were created and  
2 appointed, I think that it is unfortunately necessary to see  
3 that this motion of mine is accepted. So we can have all the  
4 evidence as we understand it and as it should be presented  
5 before us to make a reasonable conclusion to our charge.

6 CHAIRMAN BALDACCI: Representative Sproul and then  
7 Representative Allen.

8 MR. SPROUL: Thank you, Mr. Chairman. I also would  
9 like to go on the record just awhile to be opposing this. I  
10 share the same concerns Representative Higgins does. But in  
11 addition, I think that there is perhaps something stronger,  
12 perhaps something that is even more important in my own mind  
13 anyway. And that is the statement on behalf of Dr. Potholm  
14 or his attorney, I forgot which one made it, that these are  
15 not his to give us, that they belong to the clients. And I  
16 believe if this committee really wants to move forward in a  
17 quicker and more expeditious way instead of finding him in  
18 contempt, they wanted those things, they would be issuing a  
19 subpoena to those firms if we could ascertain or those  
20 companies if we could ascertain who they are and that the  
21 subpoenas would go to them rather than finding Dr. Potholm in  
22 contempt.

23 CHAIRMAN BALDACCI: Thank you, Representative  
24 Sproul. Representative Allen.

25 MS. ALLEN: I need some clarification before I am

1 going to make up my mind which way to vote. That is the last  
2 time I voted it was my understanding that we were going to  
3 court so that the judge would take a look at the materials  
4 that we have requested and make a decision as to whether or  
5 not those materials were, in fact, pertinent to our  
6 investigation. That was what I believed I was voting for. I  
7 come back with the understanding that the judge did not do  
8 that. He simply asked or instructed Dr. Potholm to be -- to  
9 appear before this committee. So now before I vote, I would  
10 like to know exactly what I am voting on. What does this  
11 contempt mean in reality? Are we going back to court and  
12 will the judge now do what I thought he was going to do  
13 before or am I sitting here passing judgment on whether or  
14 not I believe Dr. Potholm or am I voting to give a third  
15 party a judge, a judicial court an opportunity to look at  
16 those materials and decide whether, in fact, some of them or  
17 all of them are pertinent to this investigation? And I  
18 cannot vote unless that is perfectly clear to me.

19 MR. SOULE: Representative Allen, I guess we are in  
20 a position now where we are again going back to court. We as  
21 a committee are asking the court to make a decision as to  
22 whether or not we are entitled to as a committee review those  
23 documents. It will be up to the judge to decide how he  
24 wishes to proceed. Whether he wishes as was suggested  
25 previously to examine those documents in camera or in

1 chambers and then make a determination or he may wish to  
2 proceed some other way. We're asking the court basically to  
3 enforce the request that we have made. This was in addition  
4 of staff that we ask the court.

5 MR. RICHARDSON: Mr. Chairman --

6 CHAIRMAN BALDACCI: Senator Sewall.

7 MS. SEWALL: I would like to ask a question because  
8 in this whole proceeding that started last November 21, I  
9 would like to ask our investigator, Mr. Asch, if he has  
10 withheld information which he shared with the majority  
11 members of the committee if he has withheld any information  
12 from minority members of the committee?

13 CHAIRMAN BALDACCI: The reason this discussion or  
14 just the entire investigation?

15 MS. SEWALL: In the entire investigation and in  
16 this.

17 CHAIRMAN BALDACCI: I don't think this is germane  
18 to the discussion of this particular issue.

19 MS. SEWALL: I would like to pursue a little  
20 further. If I am voting on something that is misapprehension  
21 that there is evidence that I have not been shared with as a  
22 member of the committee. I certainly think it is pertinent.

23 CHAIRMAN BALDACCI: As far as discussions of the  
24 individual and president of Command Research and the  
25 questions that were asked of him whether we have information

1 that has not been shared with the entire committee in that  
2 area, I think Mr. Flaherty went over it very nicely at our  
3 first meeting the points of why we were proceeding and cited  
4 from the deposition that was read in exchange, and that was  
5 pointed out to this committee, you know. And I think it  
6 would be -- I think it was handled in an executive session or  
7 a staff briefing. And I think it would be something that  
8 would be inappropriate to discuss any further at this time.  
9 The discussion of this issue is of the contempt citation that  
10 has been made and seconded on that particular issue. This is  
11 what I am entertaining discussion about.

12 MS. SEWALL: Is there any information -- is there  
13 any information pertaining in any way to any of the people or  
14 the scope of anything that has to do with Christian Potholm,  
15 his clients or anyone which has to do with this citation  
16 which has not been presented to minority members?

17 CHAIRMAN BALDACCI: Mr. Asch. Do you have a  
18 comment to that question?

19 MR. ASCH: Are you asking me to lay out before Dr.  
20 Potholm before he delivers his material to us what we have?

21 MS. SEWALL: I am not asking you for information.  
22 I am asking you have you told every member of the committee  
23 the same as you have told everyone else? Do we have the full  
24 information? Do the minority members of this committee have  
25 the full information surrounding exactly what we are doing

1 now or not?

2 CHAIRMAN BALDACCI: It is up to -- my understanding  
3 it would be up to the minority to make themselves available  
4 to information they want. Has anyone been denied access to  
5 information of this committee?

6 MR. ASCH: They have not.

7 CHAIRMAN BALDACCI: We can't start producing -- if'  
8 you want 13,000 documents of Christian Potholm's production,  
9 you are entitled --

10 MR. ASCH: I have not received requests from  
11 majority members other than the chairman.

12 CHAIRMAN BALDACCI: So you have never denied  
13 request for information. Have you ever denied requests for  
14 information from any member of this committee that wanted it?

15 MR. ASCH: I don't believe I have received any. We  
16 had some discussion in executive session, but you were all  
17 here for the executive session.

18 MS. SEWALL: Would Mr. Asch please answer my  
19 question yes or no?

20 MR. HIGGINS: Let me clarify the question I think as  
21 I understand it gets back to my initial statement. Members  
22 of this committee at least I for one, and I would guess from  
23 Senator Sewall's line of questioning want to know. We have a  
24 sworn statement that says information that Dr. Potholm has at  
25 his disposal is not pertinent to our discussion. It was done

1 by non-utilities. We want to know or I think we should know,  
2 all of us, is there other information that Mr. Asch has or  
3 any member of this committee has that would lead one to  
4 believe that Dr. Potholm has, in essence, lied to this  
5 committee in his sworn statement? If there is information  
6 out there that we should be aware of it, if there is not  
7 information out there, then I am willing to accept his sworn  
8 statement.

9 CHAIRMAN BALDACCI: Would you care to go into an  
10 executive session for discussion purposes of that, Mr.  
11 Higgins, or would you like that done --

12 MR. HIGGINS: I think if there is information  
13 available, it should be brought out in front of Dr. Potholm  
14 and everyone else here today.

15 CHAIRMAN BALDACCI: I disagree.

16 MR. HIGGINS: If there is no other information available,  
17 I think we should live by what Dr. Potholm has told me.

18 MR. KELLEHER: It is obvious unless I misunderstood  
19 what was presented here today, it is obvious that there are  
20 material that Mr. Potholm has in his possession and on his  
21 own advice of counsel and other clients, whomever they are,  
22 he feels it is improper to present that information to the  
23 committee. If that is the case, and I respect it to be the  
24 case, then we have as they say, what is it, Paul Harvey. We  
25 haven't heard the whole story. And the reason -- just a

1 minute, Mr. Higgins.

2 MR. HIGGINS: I thought you were done.

3 MR. KELLEHER: I will be done December 5. And we'll  
4 all appreciate that including me. The point is that  
5 obviously we have got to go back now to the court to  
6 determine by legal standing what is his justifiable right to  
7 be presented to this committee. I ask no more and I am sure  
8 Mr. Potholm himself asks no more. But the only -- he has his  
9 opinion through his counsel. And I have my opinion as a  
10 member of this committee. Obviously, there is a great deal  
11 of material by his own admission, by his own statement here  
12 today that he is not going to surrender on advice of counsel.  
13 And I say let the Superior Court of the State of Maine  
14 determine whether we have a right to that information. No  
15 more, and no less.

16 MR. HIGGINS: My statement is not -- goes one step  
17 further than representative Kelleher's. I agree with what he  
18 has said. What he has failed to say or take into account is  
19 that we have in addition to the fact there is information  
20 available in his possession, he has indicated to the  
21 committee it is not pertinent or within the scope of our  
22 discussion.

23 MR. KELLEHER: That is his opinion.

24 MR. HIGGINS: That is his opinion. I am saying to  
25 this committee, number one, do we believe him or not. If we



1 do not believe him, then I want to know is there information  
2 available to the committee that would lead us to believe that  
3 he has lying to the committee.

4 If he is not lying to the committee or we have no  
5 information available to any member contrary to that, then I  
6 think our action in going back to court, number one, says  
7 that he is lying and borders actually on harassment of a  
8 person trying to do business in the State of Maine.

9 Now, if there is information available that hasn't  
10 been shared with us, then I would like to hear it right now  
11 in open session so that we can dispute his testimony. I am  
12 willing to accept it. If there are others who don't, then I  
13 want to know why.

14 MR. KELLEHER: Mr. Chairman.

15 CHAIRMAN BALDACCI: Yes, Representative Kelleher.

16 MR. KELLEHER: Representative Higgins, I don't  
17 believe I know any more or any less about the activities of  
18 this committee than you do. So you and I are meeting on firm,  
19 solid ground on that point. And nor should I have any  
20 additional information or should you have any less than I.  
21 That is point number one. And the important point is that  
22 what we want to pursue is what this committee was created for.  
23 And how we can come to that conclusion first by supporting  
24 the motion that I made regretfully so but it has to be done.

25 Dr. Potholm and counsel have their opinion and for

1 us to appreciate it unfortunately, we have to go back to the  
2 judicial process to see whether, in fact, they are right or  
3 wrong. I am not questioning his integrity as an individual,  
4 as a member of this committee, I am not using, and I would  
5 never use the terms that you have just used in describing his  
6 credibility whether we believe or not believe. I think that  
7 is an elementary approach to the point of view that we have  
8 been charged to pursue.

9 MS. SEWALL: I would like to ask the staff of this  
10 committee if the minority members, if there is any  
11 information not for him to produce, have I been given all the  
12 information I need to make this vote? Have I been given  
13 every bit of information so that I am not being set up with a  
14 lot of information perhaps given some people and not others?  
15 I want to know if I have all the information that I need to  
16 vote on this and whether anyone else has been given more  
17 information pertaining to Dr. Potholm or any of the related  
18 things in his scope?

19 CHAIRMAN BALDACCI: First, I will direct the staff  
20 to answer the first question and not answer the second  
21 question unless they are willing to go into an executive  
22 session to discuss these issues. They will not be opened in  
23 a --

24 MS. SEWALL: I am asking if there is information.  
25 Not to produce it. If there is production of it, perhaps we

1 will want an executive session. I want to know before I vote  
2 if the minority members have had all the information that the  
3 staff has shared with majority members, all members.

4 CHAIRMAN BALDACCI: Representative Crowley.

5 MR. CROWLEY: I feel we are a legislative committee  
6 here. We have gone to the court with a subpoena, and we got  
7 a subpoena to get material from Mr. Potholm. And I think  
8 it's contemptuous we are not getting the material we want to  
9 look at. We have been doing this since last whatever. I  
10 think that it is the only way we are going to get any  
11 material that we are going to bring this thing to a  
12 conclusion. If we are not going to have him give it to us,  
13 then we are going to have to get it if we are entitled to it  
14 through the court. I think this is actually a case of  
15 contempt because he was told to come here with materials.  
16 That he refused to give us. I am looking at it in a  
17 different way.

18 MS. SEWALL: I would like Mr. Asch to answer my  
19 question.

20 CHAIRMAN BALDACCI: Mr. Asch, do you have an answer  
21 for Senator Sewall? Does she have enough information to --

22 MR. ASCH: If I understand the question before the  
23 committee, I would think that she did as we had an extensive  
24 discussion in executive session. And at this point without  
25 the transcript of the executive session before me, I am at a

1 disadvantage and certainly would want to reveal the issues  
2 that were discussed in that executive session. So as far as  
3 I know to the best of my knowledge you have.

4 CHAIRMAN BALDACCI: Everybody has the same  
5 information.

6 MR. ASCH: If I knew what Dr. Potholm had to  
7 provide, I would be able to tell you.

8 MS. SEWALL: But as far as you know, I have as much  
9 information as every other member concerning this?

10 MR. ASCH: As far as I know.

11 CHAIRMAN BALDACCI: Anymore discussion?

12 Representative Willey had a comment and then Senator --

13 MR. WILLEY: Just that I seem to be the only one.  
14 As far as I am concerned, in order for me to put a man  
15 through this ritual, I would have to have some indication  
16 that he had done something wrong. As far as I am concerned,  
17 it is shear persecution. There has not been one single  
18 indication that I have heard through this whole thing that  
19 indicates Mr. Potholm is stepping out of the way. He has  
20 chosen not to give certain information which he describes up  
21 and down as not relevant to the situation. I am certainly to  
22 believe him. He also said a number of times that he  
23 volunteered to be here, willing to be here a long time ago to  
24 be heard. And right at the last minute brought here by a  
25 sheriff. That to me is clear shear persecution of what this

1 meeting is all about. I am certainly not going to vote to  
2 put you through anymore of this.

3 CHAIRMAN BALDACCI: Senator Danton.

4 MR. DANTON: Mr. Chairman, maybe I shouldn't say  
5 anything so I will be the only one that is contained. But I  
6 think the motion is fairly clear. Dr. Potholm, I am sure  
7 feels very comfortable with what he hasn't given us. It  
8 doesn't pertain to this. If that is the case, the judge will  
9 say we don't need it. And we will act on what we have. I  
10 think what we are doing to Dr. Potholm right now is we are  
11 reading something into the material that he is withholding  
12 that he is saying there is nothing wrong with. We are saying  
13 that the judge will review it. If he feels that it isn't  
14 relevant to our action here as a committee, then you don't  
15 have to give it to us. And I think that is what the whole  
16 motion is all about.

17 MR. KELLEHER: One further thing, Senator. This  
18 committee has rights. If the court feels we are overstepping  
19 those rights, it will so signify.

20 MS. STEVENS: I certainly can't be the only one not  
21 to speak in this political gathering. I would never want my  
22 vote to be interpreted as being an accusation of Dr. Potholm  
23 as being a liar. That would never be my vote. People of  
24 good intention are apt to disagree on values and standards of  
25 what is relevant and what is irrelevant. Please do not ever

1 interpret a vote of anyone of this committee of accusing  
2 anyone of being a liar. That is what the judicial process is  
3 for to have us make use of the processes available to us to  
4 use what we feel may be relevant. It is not fair to say that  
5 we are persecuting anyone or calling anybody a liar. You  
6 have every right and every responsibility to use the whole  
7 process through the court system to hear the information.

8 MS. SEWALL: I agree with Representative Allen when  
9 she said the last time that everyone -- the last time that  
10 Mr. Potholm was dragged into court, this could have been  
11 cleared up. I would like to ask if counsel asked to have  
12 this question cleared up the last time they went to court and  
13 went through this procedure, was that question even asked  
14 about the material?

15 CHAIRMAN BALDACCI: This is a discussion. Mr.  
16 Flaherty has a comment to give, and this is a discussion of  
17 the committee. There will be no other questions of counsel  
18 or the witness because it was an understanding with the  
19 minority counsel that would not take place. Mr. Flaherty has  
20 comments.

21 MR. FLAHERTY: I have very, very little comment to  
22 make except that we read Title III, Section 165, Subsection 7  
23 as instructing the judge of the Superior Court to quote,  
24 compel obedience to the subpoena. And the court asked me as  
25 majority counsel of the committee what it was that I was

1 asking the court for. And I said I am asking the court for  
2 precisely what the statute dictates. The court said that it  
3 felt that under the circumstances, it had no alternative but  
4 to issue the order requesting. The court further said that  
5 in the absence of agreement by counsel, it could not nor  
6 would it undertake to review any documents in camera or in  
7 chambers as it works out because it felt it was without  
8 authority to do so.

9 I advised the court and I advised some member of  
10 the media that I did not feel that I have authority as  
11 counsel for this committee to agree to deliver over to a  
12 separate branch of government; to wit, the judicial area, the  
13 inherent powers of another separate and independent branch of  
14 government; to wit, the legislature. And I felt that it  
15 would be doing a grand historical disservice to the  
16 legislature of the State of Maine to be so presumptuous to  
17 try to attempt by counsel's agreement to divest this  
18 legislature of its inherent constitutional contempt power.

19 MS. SEWALL: Thank you, Mr. Flaherty. I take it  
20 the answer is no, that question was not asked in court?  
21 Thank you.

22 CHAIRMAN BALDACCI: Are there anymore discussion by  
23 the committee of this particular issue?

24 MR. RICHARDSON: Mr. Chairman, do I understand that  
25 you are indicating that the record of what occurred before

1 the Superior Court and my view as one of the attorneys who  
2 was there cannot be presented?

3 CHAIRMAN BALDACCI: This is -- the public hearing  
4 of this particular situation has closed. This is now a  
5 workshop. As you understand being a former legislator, what  
6 workshop entails is that the public hearing is closed and  
7 discussion for the committee at that time to vote.

8 MR. RICHARDSON: Well, I think the record is  
9 otherwise as to what happened in court.

10 CHAIRMAN BALDACCI: Everybody has their opinions.

11 MS. ALLEN: Could Mr. Flaherty clarify what he will  
12 do when he goes back to court this time? I guess I am still  
13 confused.

14 CHAIRMAN BALDACCI: I think that Mr. Flaherty will  
15 ask for enforcement of the action that has already been taken  
16 by the court. The enforcement of the citation.

17 MS. ALLEN: What happens after that, the judge sent  
18 it back here and we do something back? How long do we --

19 MR. FLAHERTY: I suspect I can't project, I suspect  
20 that the court will be attempted to be persuaded by counsel  
21 for Mr. Potholm that he has certain privileges, and that he  
22 has certain objections that he has a right to make. But I  
23 shall counter by pointing out to the court the unambiguous  
24 provisions of Section 454 and 457 of Title III which states  
25 specifically that after he has asserted his privilege and



1 after he has made his objection, he shall be -- he may be  
2 directed by the chairman to comply nevertheless, and that has  
3 happened here this morning in this chamber. And so if the  
4 court asked me unless I am otherwise instructed by the  
5 committee what action he should take, the answer will be  
6 enforce compliance with the order of the chairman of this  
7 committee and the citation for contempt.

8 If the court is persuaded that it has judicial  
9 authority to evaluate the intrinsic relevancy of any  
10 documents, it will do that, I am sure. If it is persuaded  
11 there are real questions of privilege which it has a right to  
12 address and override this legislature on, I am sure it will  
13 do that. But initially, I shall not ask for that unless this  
14 legislature is prepared to deliver over what is considered to  
15 be an inherent power.

16 CHAIRMAN BALDACCI: All those in favor of the  
17 motion that has been made and seconded. Motion by  
18 Representative Kelleher and seconded by Representative  
19 Crowley cite in contempt of this committee, would -- Andrea  
20 would you read the roll here of the people that are here for  
21 the record. All those in favor signifying by saying yah, all  
22 those opposed by saying no.

23 MS. STAHL: Representative Kelleher?

24 MR. KELLEHER: Yes.

25 MS. STAHL: Senator Danton?

1 MR. DANTON: Yes.

2 MS. STAHL: Representative Allen?

3 MS. ALLEN: Yes.

4 MS. STAHL: Representative Crowley?

5 MR. CROWLEY: Yes.

6 MS. STAHL: Representative Soule?

7 MR. SOULE: Yes.

8 MS. STAHL: Senator Baldacci?

9 CHAIRMAN BALDACCI: Yes.

10 MS. STAHL: Senator Sewall?

11 MS. SEWALL: No.

12 MS. STAHL: Representative Sproul?

13 MR. SPROUL: No.

14 MS. STAHL: Representative Willey?

15 MR. WILLEY: No.

16 MS. STAHL: Representative Higgins?

17 MR. HIGGINS: No.

18 MS. STAHL: Representative Stevens?

19 MS. STEVENS: Yes.

20 CHAIRMAN BALDACCI: Would the clerk read the roll  
21 there, what is the vote?

22 MR. ASCH: Seven and four.

23 CHAIRMAN BALDACCI: Seven voted in the affirmative  
24 and four in the negative. It has been voted. This meeting  
25 is temporarily recessed for approximately 15 minutes so I can

1 confer with counsel and with staff.

2 (A short break was taken.)

3 CHAIRMAN BALDACCI: For the information for this  
4 committee, we'll be going back into public hearing  
5 reconvening on Wednesday morning at 9:30 for the purposes of  
6 several people giving testimony to this committee. So we are  
7 looking at 9:30 on Wednesday for the purposes of taking  
8 testimony from several people next week. So that this  
9 meeting will be recessed until 9:30 on Wednesday next.

10 MR. KELLEHER: So moved.

11 MR. ASCH: Plan on 9:30 to start or 9:00?

12 CHAIRMAN BALDACCI: 9:30.

13 MR. ASCH: We'll probably go all day.

14 CHAIRMAN BALDACCI: Make sure those people are  
15 available.

16 MR. DANTON: Plan all day?

17 MR. ASCH: Possibly Thursday also.

18 (TIME: 1:20 P.M.)

19 - - - - -

20 CERTIFICATE

21 I, Erin M. Durkin, hereby certify that the  
22 foregoing is a correct transcript of my stenographic notes of  
23 the testimony taken before the Joint Committee to Investigate  
24 Public Utilities on the 25th day of October, 1984, at the  
25 State House, Augusta, Maine.