

00287

1 The ILLINOIS POLLUTION CONTROL BOARD

2 STATE OF ILLINOIS

3 -----X

4 DAVID AND SUSI SHELTON :

 Plaintiff

5 - against - : No. PCB 96-53

6 ARI STEVEN CROWN & NANCY CROWN :

7 Defendant. :

8 -----X

VOLUME II (Day 2)

9 REPORT OF PROCEEDINGS, taken in the
 above-entitled cause, taken before JUNE C. EDVENSON, ESQ.,

10 HEARING OFFICER for the Illinois Pollution Control Board,
 taken at 100 West Randolph Street, 9th Floor, Chicago,

11 Illinois, on the 2nd day of July, 1996 at the hour of 1:00
 p.m..

12

APPEARANCES:

13

 JEFFREY R. DIVER, ESQ.

14 STEVEN P. KAISER, ESQ.
45 S. Park Boulevard
15 Glen Ellyn, IL 60137
Appeared on behalf of the Complainant

16

REECE ELLEDGE, ESQ.

17 ROBERT A. CARSON

GOULD & RATNER

18 222 North LaSalle Street
Chicago, IL 60601

19 Appeared on behalf of the Respondent

20

21

22

VERNITA HALSELL-POWELL

23 HALSELL & HALSELL REPORTERS

24

00288

1 HEARING OFFICER: Back on the record.

2 MR. DIVER: We will proceed with Complainant
3 calling as their next witness, Alan Shiner and ask that the
4 be sworn.

5 (Witness Sworn.)

6 PROCEEDINGS

7 WHEREUPON

8 ALAN SHINER,

9 having been duly sworn to tell the truth, the whole truth,
10 and nothing but the truth, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. DIVER:

14 Q Would you state your name, please?

15 A My name is Alan Shiner, S-l-i-n-e-r.

16 Q Mr. Shiner, what is your profession?

17 A I'm an acoustical engineer.

18 Q In performing your profession as an acoustical
19 engineer, are you periodically called upon to measure
20 sound?

21 A That's right.

22 Q Could you explain to the Hearing Officer and
23 through the Hearing Officer to the Board, what training
24 you went through to become able to measure sound?

00289

1 A In 1963 I was hired by the United States
2 Gypsum Company as a research engineer. In 1964 the
3 decided that I should begin my training in acoustics. I
4 was sent to San Francisco, California to work in the
5 Office of an acoustical consultant, acoustical engineer
6 and I got my introduction to acoustics working with this
7 other acoustical engineer. His name, Winword Olipfant,
8 O-l-i-p-f-a-n-t. At the same time I was enrolled in the
9 University of California, Berkeley and also at Stanford
10 University to take courses in acoustical engineering.

11 In 1966 the U.S. Gypsum Company asked
12 that I return back to the Chicago area where I became
13 Manager of Acoustic Research. I was in charge then in
14 the building of and the management of the acoustic
15 research operation for the United States Gypsum Company.

16 In 1972 I left their employ and I
17 opened up the offices of Shiner & Associates, Acoustic
18 Engineer, and I've been in business since 1972.

19 Q Ifi could interrupt you. Mr. Shiner, could
20 you tell us in as far as you've gone so far in your
21 professional career or in your training, what the nature
22 of that training was as it was oriented to the actual
23 measurement of sound?

24 A The entire science of acoustics was originally

00290

1 based on the air. It was only after the second world war
2 that the electronics became so sophisticated that they
3 were able to develop instrumentation for the measurement
4 of sound. Part of my education in San Francisco and then
5 continued on at the U.S. Gypsum Research Laboratories was
6 in the acquisition and operation of instrumentation so
7 that we would be able to perform our research activities.

8 Q This instrumentation is actually used to
9 capture and measure in some form the intensity and
10 duration of sound. Can you explain?

11 A Yes. It is to measure the sound pressure
12 level as a function of frequencies as an example.

13 Q In addition to the training that you had in
14 that instrumentation and measurement in your undergraduate
15 education and with your early employment, have you had
16 continuing education with respect to use of particular
17 instrumentation in the measurement of sound?

18 A Certainly. As the scientist progress, new
19 instrumentation has come up and the evolution now of
20 instrumentation that one can hold in the hand where before
21 it took about four or five suitcases to hold. And so
22 certainly we're leading edge I would have to say, probably
23 say.

24 Q What is the kind of sound measuring

00291

1 instrumentation that you personally use, primarily these
2 days?

3 A Specifically, the instrumentation I use as an
4 example, the measurement for the Sheltons was Bruel &
5 Kjaer, I think it was Model 2209, Precision Sound Level
6 Meter and Opie Band Analyzer.

7 Q And for how long a period of time have you
8 been using that particular kind of Bruel & Kjaer product?

9 A That kind or that particular --

10 Q That particular one.

11 A That particular one, probably the last ten
12 years.

13 Q Previous to that, were you using other Bruel &
14 Kjaer products?

15 A Correct.

16 Q Are you still called upon by clients to
17 actually perform the measurement of sound and the
18 translation of those measurements into numerical figures?

19 A Yes.

20 Q Were you ever called upon to perform such
21 services in measuring sound on behalf of the Complainants
22 here, David and Susi Shelton?

23 A Yes, I was.

24 Q And approximately when was that, if you can

00292

1 recall?

2 A July 5th, 1994.

3 Q And where were you asked -- what sound

4 emitting source were you asked to measure sound emissions

5 from?

6 A The neighboring property had an air

7 conditioning unit, air cooler condensing unit that they

8 felt was emitting higher noise levels than they felt

9 acceptable.

10 Q And did you, on or about July 5th actually

11 enter upon the Shelton property and establish your

12 instrumentation for the purpose of measuring sound from

13 that source?

14 A Yes, I did.

15 Q And were you familiar at that time with the

16 regulatory requirements of the Illinois Pollution Control

17 Board with respect to the measurement of sound being

18 received at what is known as a Class A property?

19 A Yes.

20 Q And did you establish your instrumentation on

21 that day, on July 5th as those regulations required?

22 A In my opinion, yes.

23 Q Where actually physically did you locate with

24 respect to the Crown property line, if you can tell us?

00293

1 A We were on the south edge of the Shelton
2 property line. In line, I think, with the condenser unit.

3 Q I'm going to show you what has previously been
4 marked as Exhibit 2 and has been admitted being a hand
5 drawn diagram of relative locations. I wonder if you
6 could mark on that in yellow felt type pen the approximate
7 location.

8 Okay, indicating an arrow south --
9 strike that -- indicating an area north of the fence line
10 on the Crown property, but actually on the Shelton
11 property.

12 A Correct.

13 Q And could you tell me what time of day it was
14 that you actually conducted this measurement?

15 A According to my notes, it was at 2:40 in the
16 afternoon.

17 Q Okay. I'm showing you now what has been
18 marked as Exhibit 61 for Identification. Could you tell
19 me what that document is, Mr. Shiner?

20 A Those are my notes of the readings that I took
21 on the 5th of July at 2:40p.m

22 Q When you say those are your notes, there's a
23 line in the center of the page going from left to right
24 kind of breaking up the page?

00294

1 A Right.

2 Q Are your notes of that particular reading the

3 numbers above or below that line?

4 A Above the line.

5 Q Do you have a recollection of what the numbers

6 are below the line?

7 A No.

8 Q Okay. The numbers above the line indicate

9 that there are certain numbers in the left-hand column at

10 31.5, 63, et cetera.

11 A Yes.

12 Q What are those numerical entries? What do they

13 refer to?

14 A Those are the frequency octave band

15 frequencies.

16 Q And when you conducted the measurement here,

17 you actually determined what the sound pressure levels

18 were in various octave band frequencies?

19 A Correct.

20 Q To the right of that column there are three

21 other columns?

22 A Correct.

23 Q What do those indicate; that is, what numbers

24 were put in each of those columns?

00295

1 A Those were three separate measurements of the
2 noise being emitted by the air cooling condenser unit.

3 Q All measurements being made at that location
4 that you have just indicated?

5 A Correct.

6 Q Did you then take this raw data shown on this
7 Exhibit 61 and transfer it onto a written or typewritten
8 form?

9 A Correct.

10 Q Now, showing you what has been marked as
11 Exhibit 56, I ask you is that the typewritten document
12 onto which you entered the data from your raw examination?

13 A Correct.

14 Q Such that the numbers that are entered under
15 the various band readings are the center of the three
16 numbers that you actually read from your raw data?

17 A Correct.

18 Q Having tossed out the biggest and the smallest
19 number?

20 A Yes.

21 Q In addition, you have shown two other sets of
22 numbers in your July 5 typewritten report being Exhibit
23 56.

24 A IPCB daytime standards, IPCB nighttime

00296

1 standards.

2 Q What do those numbers relate to?

3 A Those are the Illinois Pollution Control Board
4 standards for daytime and nighttime emissions, Class A,
5 Land.

6 Q And Class A land, as you understood it in this
7 particular site, vis-a-vis the Shelton property, was
8 what?

9 A Residential IPCB.

10 MR. DIVER: I move admission of 56 and 61.

11 MR. ELLEDGE: No objection.

12 HEARING OFFICER: 61 and 56 will be admitted
13 into evidence.

14 (Complainant's Exhibit Nos. 56 & 61 was
15 received into evidence.)

16 BY MR. DIVER:

17 Q Showing you what has been marked Exhibit 58
18 being a single document on your letterhead. Is that
19 document in your hand?

20 A Yes.

21 Q And it indicates that something was
22 transmitted on July 6th, 1994 to Brad Mautner.

23 A Correct.

24 Q And the information that you transmitted to

00297

1 Mr. Mautner on that date, was that the typewritten
2 document that we just spoke about being Exhibit 56?

3 A That's correct.

4 Q After this date on July 5th, 1995 -- strike
5 that -- '94, were you asked again by the Sheltons to
6 measure the sound being emitted from this particular
7 chiller unit?

8 A Yes.

9 Q And did you actually go out to their property
10 on another date to do those measurement?

11 A Yes, I did.

12 Q And do you recall what that date was?

13 A You have the file.

14 Q Well, I'll show you now what's been marked as
15 Exhibit 67 and ask if that helps to refresh your
16 recollection?

17 A Yes, on June 19, 1995 I returned to the
18 Shelton property to repeat the measurements of the
19 condenser unit.

20 Q Okay. I'm going to ask you to look again at
21 Exhibit 2 and in red pen on this exhibit, indicate where
22 it was that you placed your instrument.

23 Indicating that essentially the same
24 location that you did the measurement on July 5th?

00298

1 A Correct.

2 MR.ELLEDDGE: Can I see that?

3 MR. DIVER: Sure.

4 Move admission of the amended Exhibit 2
5 being amended by the placement of the yellow highlighter
6 and the red marking.

7 MR.ELLEDDGE: Do we have a foundation for this
8 document, counsel? Has Number 2 been admitted?

9 MR. DIVER: Yes, it was with respect to the
10 relative location as far as Steven Crown was aware of the
11 Crown property structures. Now, this witness has
12 indicated that relative to the Crown property he located
13 his instrumentation at a point north of that property.

14 MR.ELLEDDGE: Objection.

15 HEARING OFFICER: I think Exhibit Number 2 was
16 entered into evidence for a limited purpose on an
17 objection related to whether it was an accurate reflection
18 of the distance between various buildings and the road, et
19 cetera.

20 MR.ELLEDDGE: And you're introducing this for
21 what purpose now?

22 MR. DIVER: To indicate the location of the
23 instrumentation.

24 Let me ask a couple of additional

00299

1 questions of this witness before I make my motion again.

2 MR.ELLEDDGE: Fine.

3 BY MR. DIVER:

4 Q Mr. Shiner, these locations that you've
5 indicated in yellow highlighter and in red, approximately
6 how many feet north of the crown property line is that
7 actually located?

8 A According to my previous notes?

9 Q I'm going to show you again, to the extent it
10 helps you to refresh your recollection, Exhibit 61.

11 A My notes of July 5, 1994, your Exhibit Number
12 61 shows 15 feet from the property line.

13 Q And is that your recollection that that's the
14 approximate location north of the property line?

15 A Right.

16 Q That is this yellow and red marking?

17 A I'm assuming that this is five feet.

18 MR. DIVER: Okay. With that amendment, we
19 would re-move for introduction of this document,
20 indicating the relative location with respect to the Crown
21 property of the instrumentation for measurement of sound on
22 July 5th, 1994 and June 19th, 1995.

23 MR.ELLEDDGE: I would object to admission of
24 this document because it's still a document that shows

00300

1 various configurations and dimensions which are I think
2 not established by any competent testimony. He has
3 testified that he was 15 feet from the property line, but
4 I don't know that the mark really is very helpful and
5 reflective. So, I would object to the introduction of
6 this document at this time.

7 MR. DIVER: I'll withdraw my offer at this
8 moment.

9 BY MR. DIVER:

10 Q Mr. Shiner, could you tell *me with respect to
11 that location that you've identified on the document, the
12 yellow highlighter and the red circle, where with respect
13 to the face of the chiller unit itself were you located?
14 That is, were you located to the left of the face, the
15 right, the center?

16 A We try to be head on to the unit.

17 Q Pretty much smack in the center of the chiller
18 unit?

19 A Straight lines.

20 MR. DIVER: I'll withdraw the offer at this
21 point.

22 Q You prepared data with respect to this second
23 monitoring event?

24 A That's correct.

00301

1 Q Now, previous to entering that data, had you
2 established your instrumentation, established your
3 location consistent with the requirement of the Illinois
4 Pollution Control Board regulations governing the
5 methodology for measurement of sound to establish a
6 violation or not on Class A property?

7 A That's correct.

8 Q The numbers that are shown on this exhibit,
9 these are written in your hand?

10 A Correct.

11 Q At the top there are various notations that
12 look like 1C, 3, 4, 5. Could you tell me what those refer
13 to?

14 A Before beginning this testing procedure, we
15 developed a protocol of different operating conditions to
16 test and so as on the second page of this exhibit, Item 1c
17 says that the cones on the condenser unit would be on,
18 compressor A on, compressor B on, but the Shelton unit
19 off. Protocol on or test procedure 3 or condition 3 would
20 be compressor A on, compressor -- or compressor A off,
21 compressor B off and the Shelton condense unit off;
22 basically ambient conditions. Procedure 4 was compressor A
23 off, B off, Shelton on and continuing on.

24 Q There's actually I believe at the top of your

00302

1 raw data sheet an indication of a 5?

2 A Yes.

3 Q Correct?

4 A Yes.

5 Q That doesn't appear to be described in the

6 document that follows.

7 A Right.

8 Q Is it described--

9 A It says east property line. During our

10 testing of that evening, one of the Shelton neighbors came

11 up I guess and we were going to go and check what the

12 level would be on the west side -- east side of the

13 property line.

14 Q Okay. I'm asking you to just turn around for

15 a second here. I'm looking at Exhibit 51 being the Crown

16 property. When you made that measurement shown at Number

17 5, were you on or on the borderline of the Crown property?

18 A That's correct.

19 Q I'm giving you a red pen and asking you to put

20 an X on that exhibit showing the location where, to the

21 extent that you recall it, you had your instrumentation

22 placed for the purposes of measuring the sound?

23 A Is this a fence?

24 Q East is this way.

00303

1 A Oh, east is this way.

2 Q This is the east line here I believe.

3 A And where would the --

4 Q Shelton property is up here.

5 A Okay. So, the condenser was--

6 Q In this red area here.

7 A Okay. So, we were approximately right here.

8 Q Would you put a red X at that location,

9 please?

10 Okay, thank you.

11 MR. DIVER: I would ask for a stipulation just

12 as we provided with respect to the other markings on this

13 particular exhibit.

14 MR. CARSON: Exhibit 51?

15 MR. DIVER: Yes, Exhibit 51, the red X

16 indicates where the particular witness, Mr. Shiner, had

17 stood with his instrumentation for the conduct of the test

18 on June 19th, 1995.

19 MR. CARSON: We're stipulating that he placed

20 a red X in response to your question.

21 MR. DIVER: Yes, that's fine.

22 MR. CARSON: On Exhibit 51.

23 MR. DIVER: Yes.

24 BY MR. DIVER:

00304

1 Q Okay. The data that that is recorded

2 underneath each of those various protocols?

3 A Uh-huh.

4 Q Are your actual recorded data with respect to

5 each of the octave bands?

6 A Correct.

7 Q And on this particular circumstance, did you,

8 as you had done before, do three different readings or

9 just one?

10 A No, we just did one reading.

11 Q Okay. Did you at a subsequent hour or day

12 translate that raw data into a typewritten form?

13 A That's correct.

14 Q Showing you now what's been marked as Exhibit

15 60 and ask you to look at that and tell me whether or not

16 that is the document onto which you translated the raw

17 data?

18 A That's correct.

19 Q The one exception seems to be that the raw

20 data from protocol 5, that is the location where the red X

21 is, was not actually translated onto the written form?

22 A That's right.

23 Q And have you actually compared the raw data

24 with the numbers that were written to verify that there

00305

1 was no transliteration or other kind of mistake in the
2 movement of the data from one to the other?

3 A To the best of my knowledge, everything is
4 correct.

5 MR. DIVER: Move the introduction of Exhibit
6 60 and 62.

7 MR.ELLEDDGE: No objection.

8 (Complainant's Exhibit Nos. 60 & 62 were
9 admitted into evidence.)

10 BY MR. DIVER:

11 Q And last showing you, Mr. Shiner, Exhibit 57
12 being photocopies of a couple of what appear to be a
13 couple of fax sheets from your office dated June 20th I
14 believe this is 1995, is that correct?

15 A Correct.

16 Q And what was it that you sent to the
17 individuals noted here, Brad Mautner and Steven Crown?

18 A Copies of my report.

19 Q Of this June 30th report that we just
20 identified as Exhibit 60?

21 A Correct.

22 MR. DIVER: No further questions. Thank you,
23 Mr. Shiner.

24 HEARING OFFICER: We will have cross

00306

1 examination.

2 MR. DIVER: I would ask the opportunity to
3 reopen my examination of this witness just to ask him
4 whether on the exhibit of June 19, 1995 he had been
5 engaged both by Mr. Mautner at Mid/Res Company as well as
6 the Sheltons to conduct the noise reading?

7 A No, we were engaged by MrShelton to make
8 measurements.

9 Q For the second reading, the one in June of
10 1995?

11 A Yes. We were paid by MrShelton to make the
12 measurements.

13 Q You don't recall then having been paid by Mr.
14 Mautner as well for that event?

15 A No, we were not.

16 MR. DIVER: All right. No further question.

17 HEARING OFFICER: We'll then proceed with the
18 cross-examination of Mr. Shiner.

19 CROSS-EXAMINATION

20 BY MR. ELLEDGE:

21 Q I show you what's been previously marked as
22 Number 60 and if you'll -- do you have the original, your
23 Honor?

24 HEARING OFFICER: I have a copy of 60.

00307

1 MR.ELLEDDGE: May I show this to him?

2 HEARING OFFICER: Please.

3 Q I'd like to direct your attention to the line
4 that's three up from the bottom of the page and that's
5 with Shelton air conditioner on.

6 A Correct.

7 Q Could you tell us what that line reflects?

8 A The protocol. I don't remember what the
9 number was.

10 HEARING OFFICER: That was Exhibit 62. Here,
11 Mr. Shiner.

12 A Thank you. Prior to making these measurements
13 and in discussion with Mr. Crown, Mr. Crown asked that as
14 long as we're going to be making the measurements with the
15 Shelton unit on, he would also like to have a measurement
16 with the Crown unit on. He would like to have the Shelton
17 unit on and the Crown unit off.

18 Q And so this reflects--

19 A This reflects the noise transmitted by the
20 Shelton air conditioner unit to the Crown property.

21 Q Okay. Thank you.

22 HEARING OFFICER: Which line are you referring
23 to? Oh, I see it indicated here.

24 Q **And were those measurements conducted in

00308

1 accordance with the same protocol by the measurement

2 testing protocol to which you previously testified to?

3 A Yes.

4 Q Thank you. Now--

5 A IPCB protocols.

6 Q Let me direct your attention to your testimony

7 earlier about your experience and your training.

8 A Okay.

9 Q And I believe you said that you opened your

10 office in -- your own office as a consultant in 1973.

11 A That's correct.

12 Q And you've been continued in the operation of

13 that office as a consultant for the last 20 plus years, is

14 that correct?

15 A That's correct.

16 Q And that has been your exclusive profession

17 during that period?

18 A That's correct.

19 Q And so you would have occasion to take

20 measurements of this type on many occasions during each

21 year, is that not true?

22 A That's correct.

23 Q Would it be in the range of 10 or 15 every

24 year?

00309

1 A Probably 15, 20, somewhere.

2 Q All right. And have you had occasion to
3 observe the effect of various levels of sound upon the
4 people you were testing then for whom you were testing
5 them?

6 MR. DIVER: Objection, your Honor. There's
7 been no foundation laid for this testimony. That's just
8 his capabilities with respect to relating particular sound
9 measurement levels to semantic complaints or physiological
10 or psychological conditions at all. If counsel wants to
11 make him a witness for counsel with respect to that,
12 counsel certain has the opportunity pursuant to the
13 agreement we had earlier. But, it's beyond the scope of
14 direct examination.

15 HEARING OFFICER: MrElledge?

16 MR.ELLEDDGE: Your Honor, it would seem to me
17 that the nature of his experience and the aspects of his
18 various experience in the area of testing all are germane
19 and within the scope of the direct. If it's clear, I'll
20 be happy to do -- rest the cross-examination and then call
21 him as my witness to explore this area.

22 HEARING OFFICER: Objection overruled.

23 MR.ELLEDDGE: Thank you.

24 BY MR. ELLEDGE:

00310

1 Q Have you had occasion to observe the response
2 of the various measurements that you were making?

3 A Yes.

4 Q And you, of course, have heard it yourself, is
5 that correct?

6 A That's correct.

7 Q How would you characterize the sound levels
8 that you measured on July of 1994, the July 5th
9 measurements, 1995?

10 MR. DIVER: Objection, your Honor,
11 mischaracterization of this witness. Other than the
12 respect to the numerical measurements he made, is beyond
13 the scope of the direct examination. There's no
14 foundation. It's beyond the scope of the direct
15 examination. Again--

16 HEARING OFFICER: It's not clear to me that
17 he's being asked to answer anything that's beyond the
18 scope of direct.

19 MR. DIVER: I thought he was being asked to
20 explain how he would characterize this sound and, of
21 course, he's characterized it in the written document.
22 That's the only characterization we offered the witness
23 for. If there's some other characterization that counsel
24 wants to go into, I suggest again that this witness be

00311

1 made counsel's witness and he can go into it then.

2 HEARING OFFICER: Objection overruled.

3 Q Okay. Now, would you characterize the sound
4 that you measured on the first occasion?

5 A Could I see the first series?

6 Q That was Exhibit Number --

7 A I have it here.

8 Q Exhibit 56 or do you want 61?

9 A I'd like to see the raw data.

10 Q The witness is being handed Exhibit Number 61.

11 A Was A weighted. Am I allowed to talk about A
12 weighted levels?

13 Q Well, if you tell us what -- you tell me and
14 we'll ask you to explain anything that is not clear.

15 A The ear -- you have to go into the
16 physiology of the ear. The ear hears different sounds and
17 perceives different sounds to different relative levels of
18 loudness or translate those levels to different perceived
19 loudness levels. When one listens to sound at 31 and a
20 half hertz, one hears a very low frequency sound. When
21 one hears a sound at a thousand hertz, one hears a sound
22 similar to what one hears at 10:30 when they're testing
23 the warning siren. The A waited value, which is strictly
24 a monitoring position o on the sound level meter, looks at

00312

1 the overall spectrum of sound and tries to translate it
2 into a single number which categorizes in a way, the way
3 the ear perceives the sound.

4 So, in other words, it de-emphasizes
5 the low frequencies, it emphasizes the higher frequencies
6 and it gives one a better idea of what the sound sounds
7 like. And when looking at the data that I measured on
8 July 5th, your reading levels in the range of 60 decibels
9 and 58, 57 decibels, my personal opinion is that this is a
10 high level of noise and especially if at night when one is
11 trying to sleep and one has one's window open.

12 Q All right. Now, would you take a look at
13 Exhibit Number 62 and would you make comparable
14 characterization of the measurements you found then?

15 A Okay. Just looking at protocol Number 2A
16 wherein compressors A and B were both on, the Shelton unit
17 was off, the cones were off. So, in other words, I
18 believe it was a condition that the condenser unit is
19 operating in today's mode. Am I correct?

20 Q There's been previous testimony --

21 A Maybe there's been some more modification that
22 I'm not aware of.

23 Q We'll address that next.

24 A Okay. One looks again at the A value and one

00313

1 looks at now the levels is at 48 decibels. One compares
2 the 48 to the 58 and one sees a reduction of about 10db.
3 One says by golly, there's a significant difference and
4 reduction. From a, again, perceived level we're talking
5 on the range of probably halving the level of sound being
6 emitted by the condenser unit.

7 Q Having?

8 A Halving the level.

9 Q Cutting in half?

10 A Cutting in half. Now, whether that's an
11 acceptable level, noise is a noise that annoys. So, to
12 some people, listening to WFMT is noise, other people feel
13 it to be beautiful music. The converse of that is -- and
14 I don't know what the radio station call numbers are -- to
15 them it's music, but to me it might be noise. So, when
16 one asks me, you know, is it noise or is it a nuisance or
17 is it not a nuisance, I think that's where we have the
18 courts.

19 I can't honestly say that it's okay or
20 it's not okay. I can tell you that the procedures that
21 were implemented reduce the level, the emission level by a
22 perception of half.

23 Q Cut it in half?

24 A Cut it in half.

00314

1 Q And would you call that a substantial
2 reduction?

3 A I would say that's a significant reduction.

4 Q Significant reduction. All right. Now, with
5 regard to the protocol, did you have occasion to do any
6 measurements with one compressor and one fan operating?

7 A No, we were not able to do that because the
8 temperature was such that we were not able to have only
9 one compressor running.

10 Q Do you have an opinion as to what the relative
11 effect would have been had you been able to--

12 A Well, the level would certainly have gone down.

13 Q Would it have -- would you expect it to have
14 gone down significantly?

15 MR. DIVER: Objection, speculation.

16 HEARING OFFICER: Objection sustained.

17 MR. ELLEDGE: Don't answer. I have no further
18 questions of this witness. Thank you.

19 HEARING OFFICER: Any redirect?

20 MR. DIVER: Yes, Madam Hearing Officer.

21 REDIRECT EXAMINATION

22 BY MR. DIVER:

23 Q Mr. Shiner, staying with Exhibit 60. You
24 still have that before you?

00315

1 A 60?

2 Q Right.

3 A No, I don't have 60. I have 61, 62, 56.

4 Okay.

5 Q Starting with the 8,000 octave band.

6 A Yes.

7 Q Okay. Comparing the number that you measured

8 for June 19th without the discharge cones on which was the

9 lowest reading that you had, correct?

10 A Correct.

11 Q Indicating a numerical difference of 11?

12 A 9.

13 Q Tell us what the perceived -- what the human

14 ear perceives with respect to --

15 A Excuse me, it's 9, not 11.

16 Q You're right. Thank you. Tell me what the

17 human ear will perceive by that kind of difference, a

18 difference of 9?

19 A If you wish to bring the 34 down to 25, you

20 cut it in half.

21 Q So, again 34 is a hundred percent higher in

22 terms of how the ear perceives it than 25, is that

23 correct?

24 A Yes.

00316

1 Q Okay. Let's compare then at 4,000. We have a
2 number of 37 without the discharge cones on and 25
3 indicating 12 is the difference. Tell me again how the
4 human ear would perceive -- again, is this more than a
5 hundred times louder than the night time standard?

6 A Yes.

7 Q Going to the next number at the 2,000 band, we
8 have the number 38 versus 30. A difference of 8. Again,
9 are we in the general range of a number higher than the
10 standard?

11 A Let me clarify one thing.

12 Q Sure.

13 A Before when I was talking about A weighted, A
14 weighted takes the entire spectrum into consideration and
15 the ten, the perception of loudness relates, the 10db
16 relates more to the overall spectrum than it does to
17 individual frequencies. But, yes, you're correct, that
18 there is a significant difference at the 8,000, at the
19 4,000.

20 Q Is it in the order of magnitude that we were
21 talking about? Does the human ear perceive at the 8,000
22 frequency?

23 A It's to be significantly louder.

24 Q And could we say fairly twice as loud

00317

1 comparing 25 to 37, for example?

2 A You're probably in that ballpark.

3 Q Okay. And, in your reading, did you find that
4 the actual readings that you reached were in excess of the
5 nighttime standard for all except one band, the band that
6 I'm referring you to is 250.

7 A 250. We were at 46 and the standard says 47.

8 Q And with the exception of that every other one
9 is in exceedance of nighttime standards, are we correct?

10 A That's correct.

11 MR. DIVER: Thank you. No further questions
12 of this witness.

13 HEARING OFFICER: Will there be any recross,
14 Mr. Elledge?

15 MR. ELLEDGE: No recross.

16 HEARING OFFICER: Thank you very much, Mr.
17 Shiner.

18 MR. DIVER: Thank you.

19 (A brief recess was taken.)

20 MR. DIVER: We're ready for our next witness.

21 HEARING OFFICER: We'll go back on the record
22 at this point in time. I have before me Exhibit 57 and
23 that was introduced for Identification purposes when Mr.
24 Shiner was on the witness stand. In the interim, while we

00318

1 were off the record, Mr. Diver proffered this exhibit into
2 evidence and Mr. Elledge indicated that the Respondent
3 would have no objection to the introduction of Exhibit 57
4 into evidence. Therefore, Exhibit 57 will be entered into
5 evidence at this time.

6 (Complainant's Exhibit No. 57 was received
7 into evidence .)

8 HEARING OFFICER: We now have before us the
9 next witness and would you please identify the witness,
10 his name and then we'll have the witness sworn.

11 MR. DIVER: The Complainant calls as our next
12 witness, Paul Constantine.

13 (Witness Sworn.)

14 PROCEEDINGS

15 WHEREUPON

16 PAUL CONSTANT,
17 having been duly sworn to tell the truth, the whole truth,
18 and nothing but the truth, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. DIVER:

22 Q Good afternoon, Mr. Constant, would you tell
23 us what your profession is?

24 A I'm an architect.

00319

1 Q Were you the architect in charge of the
2 reconstruction of the property known as the Crown property
3 on Ardsley Road in Winnetka?

4 A Yes, I was.

5 Q From what period of time essentially?

6 A When did we? '91.

7 Q Mid 1991 - '93?

8 A Thereabouts, yes.

9 Q During the course of your -- of performing
10 your services as the architect, were you the person
11 principally responsible for monitoring the progress of the
12 work at the time that you were the architect?

13 A Monitoring the work.

14 Q Seeing to it that the work was designed and
15 then once designed, contracted for?

16 A Between myself and other gentlemen in my
17 office.

18 Q Okay. Among other things, was the budget and
19 the cost of the project one of your responsibilities?

20 A Not really.

21 Q Were you required to monitor the cost of the
22 project as against a budget that had been established
23 between you and Mr. Crown?

24 A Yes.

00320

1 Q And did you perform that service up to the
2 time you left the project?

3 A Yes.

4 Q And at the time you left the project, what was
5 the budgeted cost of the reconstruction of this property?

6 MR. ELLEDGE: I object, your Honor. It's
7 totally irrelevant and we've had prior discussions on
8 this, counsel, and I -- with regard to what real estate
9 prices might be, what remodeling costs might be. I
10 concede to him and will concede to him that he may wish to
11 measure -- may find occasion to measure the cost of the
12 equipment and the cost of repairs made to the equipment,
13 the control made to the equipment, the amount of money and
14 the cost of the remodeling job total are I think
15 completely beyond the scope of this particular proceeding.

16 MR. DIVER: Madam Hearing Officer, our
17 position is that in determining the economic
18 reasonableness of any changes that have to occur that
19 might have occurred originally during the course of this
20 project, but may occur now is to be taken in contrast with
21 the entire cost of this project, not in terms of the
22 cost of the unit itself, and that's an economic
23 reasonableness test that we believe is applicable in this
24 circumstance.

00321

1 HEARING OFFICER: Thank you. The objection is
2 sustained.

3 ** MR. DIVER: Okay. I would like to make an
4 offer of proof then with respect to that issue, Madam
5 Hearing Officer. I would offer as proof that this witness
6 would testify, if allowed to answer the question that I
7 have asked, that the cost of the remodeling aspect,
8 reconstruction aspect of this company would have been in
9 excess of \$3.5 million at the time he left the project in
10 the middle of 1993.

11 BY MR. DIVER:

12 Q Mr. Constant, as one of your functions during
13 the course of your performance of services as architect,
14 you sought and obtained specifications for theHVAC system
15 at this particular property?

16 A Yes.

17 Q Showing you now what's been marked as Exhibit
18 66, which is also been shown previously as Exhibit Number
19 9 to your deposition, ask you if that exhibit is the set
20 of specifications, 12 page sheet of specifications which
21 you received from Mid/res pursuant to this contract to
22 provide both plans and specs for theHVAC system?

23 A Yes.

24 MR. DIVER: Madam Hearing Officer, I would

00322

1 move the admission of Exhibit 66.

2 MR.ELLEDDGE: No objection.

3 MR. DIVER: Thank you.

4 Q Mr. Constant, I'm now showing you what has
5 been marked as Exhibit 69, asking you to take a second
6 look at it. It's dated February 12, 1992. Asking you if
7 that's a document that you yourself received from Midfes
8 and had occasion to make notations on?

9 A Yes.

10 Q The notations that are shown in the margins
11 and elsewhere are in your hand, is that correct?

12 A That's correct.

13 Q Was this the initial proposal that you
14 received from Mid/Res with respect to a potential contract
15 for the construction and installation of theHVAC system
16 as opposed to the design?

17 A That's correct.

18 MR. DIVER: Madam Hearing Officer, I move the
19 introduction of Exhibit 69.

20 MR.ELLEDDGE: Just a second, counsel.

21 HEARING OFFICER: We are here playing catch up
22 with some exhibits that were introduced earlier, but were
23 not entered into evidence.

24 MR.ELLEDDGE: I have no objection, your Honor.

00323

1 HEARING OFFICER: Then Number 66 and 69 will
2 be entered into evidence.

3 (Complainant's Exhibit Nos. 66 & 69 was
4 received into evidence.)

5 BY MR. DIVER:

6 Q Is it true, Mr. Constant, that with respect to
7 determining the appropriateness of the design of the air
8 conditioning system, particularly the appropriateness of
9 the design of the chiller unit, that their appropriateness
10 to the neighborhood you looked to Mid/res for that
11 determination?

12 A Yes.

13 Q Is this particular project, the Crown project,
14 the first project involving a residential structure that
15 you were involved in that made use of this size of a
16 chiller unit?

17 A Yes.

18 MR. DIVER: No further questions.

19 MR. ELLEDGE: Your Honor, I have no cross
20 examination, but while he's here, I would like to put him
21 on for a few questions of my own as part of the case for
22 the Respondent.

23 HEARING OFFICER: Okay. Will Mr. Constant be
24 called later in your Respondent's case?

00324

1 MR.ELLEDDGE: I'm trying to avoid that for
2 him. I could call him later, but I know what a tight
3 schedule he has.

4 HEARING OFFICER: Would that be all right with
5 you, Mr. Constant?

6 THE WITNESS: I appreciate it, if nothing
7 else.

8 HEARING OFFICER: Would that be all right with
9 counsel for Complainant?

10 MR. DIVER: That's acceptable to Complainant
11 and to counsel.

12 HEARING OFFICER: All right. Then let the
13 record show we have no cross-examination of Mr. Constant
14 as part of Complainant's case in chief and we will have
15 Respondent's case in chief with respect to the testimony
16 of Mr. Constant at this time.

17 MR.ELLEDDGE: May we go off the record for a
18 minute, your Honor.

19 HEARING OFFICER: Yes.

20 (A brief recess was taken.)

21 HEARING OFFICER: Back on the record.

22 PROCEEDINGS

23 WHEREUPON

24 PAUL CONSTANT

00325

1 having been duly sworn to tell the truth, the whole truth,
2 and nothing but the truth, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. ELLEDGE:

6 Q Mr. Constant, I would like to hand you 4
7 photographs which have been marked on the back, R1, R2,
8 R3, and R4. Could you tell us what those are?

9 A Those are photographs from the east end, from
10 the west of the air handler orchiller on the north side
11 of the grounds.

12 Q And who took those footprints?

13 A I did.

14 Q And do they truly and accurately portray that
15 portrait?

16 MR. DIVER: On what date?

17 A Those were taken last night at 7:30.

18 MR. DIVER: So, that's the true and accurate
19 depiction is what they looked like last night.

20 MR. ELLEDGE: That's correct.

21 MR. DIVER: Okay.

22 MR. ELLEDGE: I would now move the
23 introduction of these four photographs, please.

24 MR. DIVER: No objection.

00326

1 MR.ELLEDDGE: May I keep them with him for a
2 minute?

3 HEARING OFFICER: Okay.

4 Q Let me point out photograph No. R1. Could you
5 tell us where is that taken? From what direction is that?

6 A That's taken from the west looking east along
7 the driveway, approximately a third of the way into the
8 property.

9 Q Would you turn around behind you and look at
10 the Exhibit No. 51? Let me give you a blue marker and
11 write Number 1 if that's what it is, and put a circle
12 around it.

13 A R1.

14 Q And that's where the point from which R1 was
15 taken and in what direction is it facing? Put a little
16 arrow. Okay, fine.

17 Now, let me show you photograph Number R2 and
18 would you tell me -- would you mark on Exhibit No. 51
19 where that was taken with the same blue pen? That's R2
20 and would you put an arrow there, too? Right.

21 And with regard to R3 and R4, would you also
22 mark that on Exhibit Number 51? Thank you very much.

23 Now, Mr. Constant, during the course of this
24 construction project -- first of all, when were you first

00327

1 -- when did you become associated with this particular
2 project, the Crown residence?

3 A Well, it was '90 or '91. I think that I first
4 showed and went over to look at the house with Steve and
5 Nancy Crown when it was owned by the previous owners.

6 Q I see. And have you had occasions to be on
7 the property all during the course of the intervening
8 years?

9 A Yes.

10 Q And did you have occasion to be on the
11 property during the fall of 1993?

12 A Yes.

13 Q And did you have occasion to be on the
14 property at a time when the, what people have been
15 referring to as the chiller unit was initially turned on
16 in late 1993?

17 A Yes.

18 MR. DIVER: I'm sorry, I didn't hear the
19 question, counsel.

20 HEARING OFFICER: Read the question back.

21 (Whereupon the record was read by the reporter.)

22 Q Have you had occasion to be on the property
23 after certain sound attenuating devices were incorporated
24 into that chiller unit in late 1993-'94 which you've

00328

1 characterized among other things as cone cylinders?

2 MR. DIVER: Objection, no foundation that he
3 knows at all what the sound attenuating devices are or when
4 they were installed or anything else.

5 MR. ELLEDGE: May I have your Exhibit Number
6 1?

7 MR. KAISER: I believe Madam Hearing officer
8 is keeping track of those.

9 MR. DIVER: 1 is the map.

10 MR. ELLEDGE: Photographs is what I'm looking
11 for.

12 MR. DIVER: 4.

13 MR. ELLEDGE: 4 and 5 is what I'm looking for.

14 Number 4 is a photograph. If I may show it to him,
15 please. Thank you. May I see 5 as well? Thank you.

16 BY MR. ELLEDGE:

17 Q May I show you photographs that have been
18 identified as Exhibit 5a and 5b. Would you look at those
19 for a minute and would you tell us what they represent?

20 A That's the chiller.

21 Q That's the chiller?

22 A Yea.

23 Q And you see silvery cylinders at the top of
24 the chiller?

00329

1 A Yes.

2 Q Do you know what those are?

3 A The bands.

4 Q Okay. Did the equipment come with those

5 particular cylinders on them?

6 A I believe so, yes.

7 Q Okay. Did you have occasion to -- would you

8 look at that photograph and notice the wooden fence there.

9 A Uh-huh.

10 Q Do you know at what point construction in the

11 project that fence and that fence was put around that

12 chiller in terms of sequence?

13 A I don't know precisely, but it was installed

14 right around the same time the landscape was done. Maybe

15 after the arbor Vitae hedge was put in. I think the green

16 arbor Vitae hedge was installed and the fence came in

17 later.

18 MR. DIVER: Can we have a sense of time? I

19 haven't heard a time in the answer.

20 Q What year do you think that was?

21 A 1993.

22 Q Okay, '93. Thank you. To your knowledge, has

23 there been additions made with regard to the enclosure

24 around the chiller unit since those photographs were

00330

1 taken?

2 A Yes, I'm aware of the baffling as well.

3 Q And could you describe briefly for the record
4 what the baffling appeared to be?

5 A It looks from the outside like a louver, but
6 it's a little more sophisticated than a louver. It's
7 actually got a conical section through it and it acts as a
8 baffle.

9 Q And this is part of the acoustical enclosure
10 around the whole unit?

11 A That's correct.

12 Q And do you know when that was installed,
13 approximately?

14 A '94-'95, '95.

15 Q All right, thank you. Now, have you had
16 occasion to be on the property since that installation was
17 made?

18 A Yes.

19 Q And have you had occasion to be on that
20 property within the past week?

21 A Yes.

22 Q Have you had occasion -- did you have occasion
23 to hear the chiller unit operating during the period
24 before the acoustic enclosure was put around it?

00331

1 A Yes.

2 Q And from what distance could you hear it? Did

3 you have occasion to walk all the way around it?

4 A Yes, we had many occasions that we walked and

5 talked around the chiller.

6 Q Walked and talked around the chiller?

7 A Yes.

8 Q Was there a difference in the sound emitted in

9 the driveways and in the front of the Crown house after

10 the enclosure was put around it?

11 A Yes.

12 Q How would you characterize it?

13 A I'd say the difference was substantial.

14 Q Substantial?

15 A Yes.

16 Q And was a substantial what?

17 A Improvement.

18 Q Improvement?

19 A Yes.

20 Q And was it a reduction in sound?

21 A Yes.

22 Q Have you had occasion to be out there since

23 that time?

24 A Yes.

00332

1 Q And when were you last out there?

2 A 5:15 this morning.

3 Q And was the unit operating at that time?

4 A Yes.

5 Q And could you characterize the sound coming
6 from the unit, if any?

7 MR. DIVER: Objection. No foundation. I have
8 no idea where he was standing.

9 HEARING OFFICER: Objection sustained.

10 Q All right. Don't answer the question.

11 When you were out there this morning, where
12 did you go?

13 A I can show you. I parked my car here. I
14 walked here. I walked here. I walked here and I walked
15 back along that fence line.

16 MR. ELLEDGE: Let the record reflect that he
17 was pointing to the top line, the horizontal line on
18 Exhibit 51 at the top of the drawing which is Number 51.

19 MR. CARSON: You're referring to the yellow
20 line.

21 A North side of the property.

22 Q You walked along the north side of the
23 property?

24 A Uh-huh.

00333

1 Q And could you hear the chiller unit

2 A Yes.

3 Q And how did it compare with the previous times
4 you've heard it?

5 A It's, I mean to me it's no noisier than any
6 other compressor that I've heard on the property line.

7 MR. DIVER: Objection, unresponsive.

8 MR. ELLEDGE: Your Honor, he was answering.

9 A I'm trying to describe--

10 MR DIVER: He was saying it sounds no
11 different from any other condenser. The question was how
12 does it compare to this particular unit at a prior time,
13 not how does it compare to some other condenser.

14 MR. ELLEDGE: Your Honor, he's answered what he
15 answered.

16 HEARING OFFICER: If you could answer the
17 question.

18 A Okay. I would say that last night at 10:00
19 o'clock, this morning at 5:00 o'clock. There was -- it
20 was quieter than I've heard it previously.

21 Q Is it substantially quieter?

22 A It's quieter, yes.

23 Q Okay. Now, where do you live? I don't
24 believe we got your address.

00334

1 A 1070 Fisher Lane, Winnetka.

2 Q So, you also live in Winnetka?

3 A Yes.

4 Q Do you have an air conditioning unit in your
5 house?

6 A I do.

7 Q And do your neighbors?

8 A Yes.

9 Q And when you walk out your back door in the
10 evening -- when you walk out the back door before you went
11 over to the Crown house, did you hear air conditioners
12 operating?

13 A Yes, I did.

14 Q And from whence were these air conditioners
15 operating, where were they, the air conditioners?

16 A They're on the south side of my property.
17 They're located I assume just off of the set back line and
18 there are two units, normal, I imagine somewhere between 3
19 and 5 tons and --

20 Q They were operating last night?

21 A They were operating last night.

22 Q They were operating this morning?

23 A Yes, they were.

24 Q Would you compare the sound levels from those

00335

1 compared to what you experienced at the Crown home?

2 A I'm closer. My house is closer to those
3 units, but -- than the Crowns are to where I was standing,
4 but--

5 MR. DIVER: Madam Hearing Officer, I'm going
6 to interject an objection at this point as allowing a
7 totality of completely irrelevant testimony to be admitted
8 into the record. I've gone a long distance in hoping that
9 this would lead someplace that would lead somehow to a
10 relevant piece of testimony, but how the air conditioning
11 unit next to Mr. Constant's house sounds to him is of no
12 relevance in this proceeding.

13 MR. ELLEDGE: Madam Hearing Officer, sound is
14 difficult to describe and sounds are obviously relative.
15 This is a witness who has heard the compressor in this
16 house straight through the whole project and he is
17 comparing it to other sounds and that's completely
18 relevant to this proceeding.

19 HEARING OFFICER: Objection overruled. I'll
20 permit the Respondent to ask the witness to answer this
21 question, which is part of this case in chief.

22 A To my ear, the neighboring compressors on my
23 property are louder than the Crown's compressors.

24 Q And do those compressors interfere with your

00336

1 sleep in your house?

2 A No.

3 Q Do they bother you?

4 A No.

5 Q Okay.

6 MR. DIVER: I'll object to the last two

7 answers, Madam hearing Officer.

8 MR. ELLEDGE: Asked and answered.

9 Q Have you had occasion to hear the sound levels
10 from this compressor from the Shelton property?

11 A Yes.

12 Q When were you last -- have you ever been in
13 the Shelton house?

14 A Yes.

15 Q When were you last in the Shelton house?

16 A I went through with somebody who was
17 interested in the house in, I would say '94.

18 Q In 1994?

19 A Yes.

20 Q Is this in the summer or the winter, if you
21 know?

22 A It was fall I believe or the end of the
23 summer.

24 Q End of the summer?

00337

1 A Yes.

2 Q At that time were the air condition -- the
3 chiller unit at the Crown residence in operation?

4 A I can't recall.

5 Q You cannot recall?

6 A No.

7 Q Okay. Have you had occasion to take clients or
8 prospective clients of yours onto the Crown property to
9 observe the house?

10 A Yes, I have.

11 Q And have you walked with them into the
12 vicinity of the chiller in question?

13 A Stood right by it.

14 Q And could you tell us who that client was?

15 A **DanJavan Putty and I think his name is Jim.

16 Q And what was the purpose of your visit there?

17 A They were interested in doing substantial
18 expansion of their residence and they were interested in
19 seeing the quality of the construction and construction
20 type.

21 Q Did they ask you any questions with regard
22 to the air conditioning?

23 A Yes, we got done just walking around the
24 property and we stopped right outside of it and they said

00338

1 they were aware of the property because of the chiller and

2 I said do you realize we're standing right next to it and

3 --

4 MR. DIVER: Objection. If he has any

5 intention of this witness to complete the sentence by

6 saying how they responded. If that was not his intention,

7 I have no objection.

8 Q Would you repeat what you told them, please,

9 at that point you said as you started before?

10 A We were standing right at the compressors and

11 I explained to them, you know, that they were on and they

12 didn't say anything.

13 MR. DIVER: Objection, your Honor, to the not

14 saying anything is the same as saying something for

15 purposes of its relevance and to the extent it's

16 relevant, it's totally hearsay.

17 HEARING OFFICER: Mr. Constant, just answer

18 the question that has been asked.

19 THE WITNESS: Okay.

20 BY MR. ELLEDGE:

21 Q Thank you. Did you have any difficulty

22 carrying on a conversation at that point with these

23 people?

24 A No, we didn't.

00339

1 Q Was it in a low tone of voice?

2 A Yes.

3 Q Normal tone of voice?

4 A Absolutely.

5 Q And the inquiry to you was -- what was the
6 inquiry that was made of you?

7 A That they were aware of the property. They
8 had heard about the problems with the chiller and the
9 noise from the chiller.

10 Q So, they were asking you about the noise from
11 the chiller?

12 A Yes.

13 Q And at a time when you were standing right
14 next to the chiller?

15 A And then I informed them that we were standing
16 right next to it.

17 Q All right. Have you -- let me direct your
18 attention to Exhibit Number 51 again and I take it that
19 north is up.

20 A Right.

21 Q And so on the right-hand side, could you tell
22 me who owns, currently owns the house that's to the right,
23 to the east of that?

24 A Jeff Neal and Susan Solomon Neal.

00340

1 Q And are they clients of yours?

2 A Yes.

3 Q And have they gone through a reconstruction
4 recently?

5 Q And have you ever had occasion to be on their
6 property during the summertime -- well, have you had an
7 occasion to be on that property?

8 A Yes.

9 Q Were you on their property during the summer of
10 1994?

11 A '94 and '95.

12 Q And '95?

13 A Yes.

14 Q Okay. And how far away from the property line
15 -- let's back up. How many times were you on in 1995,
16 if you know?

17 A A lot.

18 Q Was there a time when you were particularly
19 called to the property by Mr. Neal?

20 A Yes. Jeff called me one night at 10:00, I
21 guess a quarter to 10:00.

22 Q What month was that, approximately?

23 A I believe it was July, last year.

24 Q July of last year?

00341

1 A Yes.

2 Q And did you go over to his house?

3 A Yes.

4 Q And where did you stand?

5 A Where did we stand?

6 Q Where did you stand?

7 A We stood right in his walkway, right up to his
8 front door.

9 Q And what did he ask you, if anything?

10 MR. DIVER: You're Honor, I'm going to object.

11 This entire line of questioning, we're talking about an
12 alleged nuisance at the Shelton property. We're talking
13 about an alleged violation of the Illinois Numerical Noise
14 Limitations on the Shelton property. We're not talking
15 about the status of noise reception or sound on the Neal
16 property or anyplace else.

17 HEARING OFFICER: Objection sustained.

18 MR. ELLEDGE: Your Honor, may I make one
19 response to that, to at least part of that and; that is,
20 he says we're not concerned about any testimony of noise
21 received from any property other than the Shelton's
22 property. I would like at this time to move to strike the
23 entire testimony of Marge Julian yesterday. I'd like to
24 strike it from the record since it spoke only about noise

00342

1 received at some property other than the Shelton property,
2 counsel.

3 MR. DIVER: The property that was involved was
4 on the other side of the Shelton property and in direct
5 line, as she testified, from the noise. I don't know that
6 you're going to be able to establish that the Neal
7 property, directly east of the Crown property is in a
8 direct line with the Shelton property. But, if you can do
9 it, go at it.

10 MR. ELLEDGE: The motion has been for the
11 striking of Julian testimony, your Honor.

12 MR. DIVER: And our response, your Honor, is
13 that that testimony is relevant inasmuch as that
14 particular receptor source is in a direct line between the
15 sound emitter and the sound receiver. The sound receiver,
16 the Shelton house, is directly between.

17 MR. CARSON: Can we have one moment, your
18 Honor. We're looking for the configuration of the
19 neighborhood which is one of the exhibits from yesterday.

20 HEARING OFFICER: Okay. We'll go off the
21 record.

22 (A brief recess was taken.)

23 HEARING OFFICER: Thank you. The motion to
24 strike the testimony of Marjorie Julian is denied. I will

00343

1 not be issuing a separate written ruling on this. The
2 objection is sustained as to Mr. Elledge's last question
3 of Mr. Elledge.

4 MR. ELLEDGE: Thank you.

5 HEARING OFFICER: You may proceed.

6 BY MR. ELLEDGE:

7 Q Mr. Constant, I'd like to show you what's been
8 marked for Identification as Exhibit Number 50 which is an
9 Exhibit that contains four pages and I direct your
10 attention to the fourth page. Would you look at that for
11 a minute? Now, Mr. Constant, does that indicate the
12 location of the Crown lot, the Crown property?

13 A Correct.

14 Q And is it correctly positioned on that plate?

15 A Yes.

16 Q And does it indicate the position of the
17 Shelton property?

18 A Yes.

19 Q And does it show then the Julian property to
20 the north of that?

21 A Yes.

22 Q Okay. Now, moving to the right from the Crown
23 property, what is it's designation of the property that's
24 immediately to the east?

00344

1 A Rycroft.

2 Q And could you tell us what kind of a residence
3 or building on the Rycroft property?

4 A It's a big English Tudor home.

5 Q And who currently owns that house?

6 A Jeff Neal and Susan Solomon Neal.

7 Q And so these are the clients of whom you were
8 testifying earlier?

9 A Correct.

10 Q When you were called out last summer at the
11 time you were talking about, would you take this blue pen
12 and put an X on the spot that you testified where you were
13 standing outside?

14 MR. KAISER: Excuse me, Mr. Elledge, do you
15 want to use the original 50 so the one in the record is
16 marked?

17 MR. ELLEDGE: Thank you.

18 MR. DIVER: And could I ask, Madam Court
19 Reporter, to read me the question that's been asked of this
20 witness?

21 (The record was read.)

22 MR. DIVER: We're talking about in 1995, is
23 that correct?

24 A Correct.

00345

1 MR. DIVER: Okay.

2 Q And where were you

3 MR. DIVER: Excuse me, may I have an
4 opportunity to take a look at this document? Okay.

5 Q Now, were you in direct line when you were
6 standing there? Were you in direct line of sight with the
7 Crown residence at that time?

8 A Yes.

9 Q Would you estimate the distance from the Crown
10 residence you were standing at that time?

11 A You're speaking of from the residence?

12 Q Yes.

13 A Eighty to a hundred feet.

14 Q Eighty to a hundred feet. Could you hear the
15 Crown air conditioner at that time?

16 MR. DIVER: Objection, your Honor, relevance
17 again. The issue here is not the perception of sound on
18 the property to the east of the Crown residence, but the
19 reception of sound on the Shelton property or property
20 that could reasonably be acting as a surrogate. And
21 there's been no foundation establishing any foundation at
22 all that that's the circumstance in this particular
23 hypothetical or this particular question.

24 MR. ELLEDGE: Your Honor, we had testimony

00346

1 yesterday from Marge Julian which we let in which she
2 testified she was hearing sound from the Crown property
3 both a few days ago and in earlier years. She testified
4 that she was standing as I recall, something in excess of
5 a hundred feet. This witness has testified that he was
6 outside at a time I believe he testified when the -- I'm
7 trying to get him to say whether or not the air
8 conditioning was operated in a direct line of it with the
9 house. It's completely comparable to the Julian
10 testimony.

11 HEARING OFFICER: The objection is overruled.

12 MR. ELLEDGE: Thank you, your Honor.

13 Would you repeat the question again,
14 please?

15 (The record was read.)

16 MR. ELLEDGE: Would you answer the question,
17 please?

18 A Barely.

19 Q The answer was barely?

20 A Barely.

21 Q Could you hear other air conditioners?

22 A That was the problem. The house to the east
23 was actually the air conditioning that Mr. Neal was
24 calling about.

00347

1 Q Thank you. When you talk about the house to
2 the east, could you tell us--

3 A TheBardjney residence.

4 Q So, that was an air conditioner which--

5 A Right here.

6 Q Why don't you put a line under the name?

7 So, if I understand your testimony, you were
8 out there last July?

9 A July or August.

10 Q And you were specifically identifying the
11 sound of the air conditioners?

12 A Right.

13 Q And from a distance of approximately 90 feet
14 away from the Crown lot line, another air conditioner
15 which was even further -- well, further east was louder,
16 is that correct?

17 A Yes.

18 MR. DIVER: Madam Hearing officer, again,
19 object to the relevance of this entire line. Now we're
20 talking about sound emissions from an air conditioner that
21 isn't involved here to the east of the Crown residence
22 being allegedly perceived by Mr. Constant on a property to
23 the east of the Crown residence. This has nothing to do
24 with this proceeding other than to confuse it.

00348

1 MR.ELLEDDGE: Your Honor, the whole proceeding
2 has to do with noise of an air conditioner in a
3 residential neighborhood.

4 MR. DIVER: It has with this air conditioner.

5 MR.ELLEDDGE: it's generic air conditioner.

6 MR. DIVER: This is not a generic case.

7 HEARING OFFICER: Please, Mr. Diver. The
8 objection is overruled. I'll permit the witness to answer
9 the question.

10 MR.ELLEDDGE: Let me withdraw the question and
11 ask it again, if I may, and perhaps clarify and satisfy
12 some of Mr. Diver's objections.

13 Q The lot that you've indicated to the east of
14 the Neal property, what is the name again?

15 A Bardjney.

16 Q And when you were standing on the Neal
17 property, how far away were you from the Bardjney house,
18 could you estimate?

19 A Definitely over a hundred feet at that point.

20 Q Okay.

21 A A hundred to a hundred and twenty.

22 Q A hundred to a hundred and twenty feet from
23 the Bardjney house?

24 MR. DIVER: Objection, lack of foundation. It

00349

1 has nothing to do with the source of noise.

2 HEARING OFFICER: Objection overruled.

3 Q Could you tell us again how far you were
4 standing at that point from the Crown residence,
5 approximately?

6 A Eighty to a hundred feet.

7 Q And which air conditioner was louder?

8 A TheBardjney's.

9 Q By a little bit or a lot?

10 A A lot.

11 MR.ELLEDDGE: Thank you. I have no further
12 questions.

13 HEARING OFFICER: We will then have the
14 cross-examination of Mr. Constant by Complainant.

15 MR. DIVER: Excuse me, I have an opportunity
16 to examine this witness?

17 HEARING OFFICER: Yes. We are in Respondent's
18 case in chief on Mr. Constant. It's your opportunity to
19 cross-examine the witness.

20 MR. DIVER: Thank you, Madam Hearing Officer.

21 CROSS EXAMINATION

22 BY MR. DIVER:

23 Q Mr. Constant, are you an acoustics expert?

24 HEARING OFFICER: Could you please speak up?

00350

1 Q Are you an acoustic expert?

2 A No.

3 Q Are you an expert in the measurement of sound?

4 A No.

5 Q Did you terminate your professional
6 relationship with the Crown property at the end of the
7 summer of 1993?

8 A Terminate?

9 Q Yes. Did you end your role as the architect
10 in charge of the reconstruction in the summer of 1993?

11 A Well, we were hired to do the development of
12 the shell package and then the interior people took over.

13 Q I understand, but you ceased to have an
14 operating, day to day responsibility with respect to the
15 site in the end of the summer of 1993?

16 A Well, we completed our obligation, the shell
17 package, the mechanical systems.

18 HEARING OFFICER: You simply need to answer
19 the question to the best of your ability, sir.

20 Q As I understand it, you first heard of this
21 project when you were out running with Steven crown. First
22 heard of the ideas of buying this property and
23 reconstructing it. You were out running with Steven, is
24 that correct?

00351

1 A Well, we talked about the project on the run
2 one time, yes.

3 Q At the various times that you have testified
4 that you or others were experiencing sound coming from the
5 chiller unit at the Crown property, were you aware whether
6 the compressors were all on?

7 A The fans are on.

8 Q No, I'm asking were you aware whether the
9 compressors were all on?

10 A I can't say I could be aware of it, no.

11 Q Okay. Were you aware of whether all the fans
12 were on during those circumstances?

13 A Well--

14 Q It's a simple question.

15 A Yea, but it isn't a simple answer because
16 there are times when the units were totally on and I was
17 there and I'm aware of that. I was thinking particularly
18 when they were installing the millwork.

19 Q And you knew at that time that they were
20 totally on?

21 A Yes.

22 Q How did you know that?

23 A Because we instructed them to run them full
24 board so we could install the -- to dry out the interior.

00352

1 Q You're assuming whoever you instructed did it
2 put them on so that -- how many compressors were in this
3 unit?

4 A In the chiller there are either nine or eleven
5 I had other jobs that's similar, so I'm not sure.

6 MR. DIVER: I have no further questions of
7 this witness.

8 HEARING OFFICER: Then we will have redirect
9 on the witness.

10 MR. ELLEDGE: May I ask one redirect question,
11 please?

12 REDIRECT EXAMINATION

13 BY MR. ELLEDGE:

14 Q Did you understand that last question fully of
15 how many compressors because I didn't hear your complete
16 answer.

17 A I was trying to recall just how many units
18 were in there, how many zones are in the house and I've
19 done too many jobs.

20 Q So, your -- and was your thought nine zones in
21 the house?

22 A Yes.

23 MR. ELLEDGE: Thank you. No further questions.

24 RECROSS EXAMINATION

00353

1 BY MR. DIVER:

2 Q Mr. Constant, your assumption was that there
3 was five compressors for each of the zones, is that
4 correct?

5 A That's correct.

6 MR. DIVER; Thank you. No further questions.

7 HEARING OFFICER: Thank you for coming in, Mr.
8 Constant. Thank you.

9 At this point it would be an
10 appropriate time to take that five minute break that we
11 need to identify the hearing room that we will use
12 tomorrow and then we'll come back in session. I'll also
13 take the exhibits that were introduced at this time.

14 (A brief recess was taken.)

15 HEARING OFFICER: We'll go back on the record.

16 MR. KAISER: Thank you. Complainants would
17 like to call as their next witness, Susi Shelton.

18 HEARING OFFICER: MsShelton, would you
19 please be sworn?

20 (Witness Sworn.)

21 PROCEEDINGS

22 WHEREUPON

23 SUSI SHELTON,

24 having been duly sworn to tell the truth, the whole truth,

00354

1 and nothing but the truth, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. KAISER:

5 Q Mrs. Shelton, could you please state your full
6 name and spell your last name, for the court reporter's
7 benefit?

8 A Susi Barber Shelton, S-h-e-l-t-o-n.

9 Q And may I refer to you as Susi during my
10 interrogation?

11 A Yes. It's S-u-s-i.

12 Q Susi, are you married to David Shelton?

13 A Yes.

14 Q Do you and David have any children?

15 A Yes, we have three.

16 Q And what are their names and what are their
17 ages?

18 A Lisa is 16, David is 14, Mark, 9.

19 Q And do you and David own a home on Ardsley
20 Road in Winnetka, Illinois?

21 A Yes.

22 Q What is the address?

23 A 707 Ardsley Road.

24 Q How long have you lived at that address?

00355

1 A Approximately six years.

2 Q Do you recall when you and David first looked

3 at the home located at 707 Ardsley Road in Winnetka,

4 Illinois?

5 A Yes.

6 Q When was that?

7 A I think we started looking at it in 1989.

8 Q Where were you living at that time?

9 A We were on Forest Glen in Winnetka.

10 Q And what was your motivation for looking to

11 purchase a new home?

12 A We wanted a nice quiet neighborhood and a

13 large backyard. We wanted it within proximity to the

14 junior high and the grade school. We wanted our kids to

15 stay within the neighborhood so they don't have to change

16 schools. We bought our house for the piece of property.

17 It's one of the most gorgeous pieces of property that we

18 saw.

19 Q And is Ardsley Road, is that a private road?

20 A Yes, it's a private road.

21 Q And Pelham Road is also a private road?

22 A Yes.

23 Q Can you turn around and look at that diagram

24 that's been taped to the wall and I believe it bears the

00356

1 Exhibit Number 51.

2 A Yes.

3 Q And on the south end of that site plan, does
4 it show Pelham Road?

5 A Yes, Pelham runs along the south side.

6 Q And is that intersect with Ardsley Road?

7 A Yes.

8 Q And how would you describe the amount of car
9 traffic on either of those two roads?

10 A I believe on all of Ardsley and Pelham here's
11 approximately 22 houses and it's a very large area. Most
12 of the pieces of property are over a half an acre.

13 There's very little traffic.

14 Q And you were hoping that this area would be a
15 quiet area. Did you find when you moved into your home on
16 Ardsley in 1990 that, in fact, it was a quiet area?

17 A Yes, it was.

18 Q Did you take certain pleasure in the quiet of
19 the neighborhood back in 1990?

20 A Yes. We entertained a lot on the patio. We
21 had many family -- all of our family meals during the
22 summertime would be outside on the patio.

23 Q Now, can you describe for the Hearing Officer
24 and by extension for the Board, where your home is

00357

1 situated on the property at 707 Ardsley?

2 A We set back from the street approximately I'd
3 say 60 feet and our home is in the center of the property.
4 The property in the backyard is probably twice in amount
5 the size as in the front yard. It's very wooded. We have
6 an open grass area and then we have an area with trees.

7 Q The patio that you refer to is, what part of
8 the home is that located on?

9 A That's across the east side of the house. It
10 runs from our family room over to our bedroom and across
11 the whole back of the house.

12 Q Can you estimate what the length of the patio
13 is?

14 A I would guess 80 feet.

15 Q And what is the width of the patio?

16 A I think 12 or 15 feet.

17 Q Back in 1990, did you have patio furniture out
18 there during the warm seasons?

19 A Yes, the patio was something that we added to
20 the house.

21 Q Is your house a one or two story home?

22 A Our house is a two story home.

23 Q What rooms are located along the southern wall
24 of your home?

00358

1 A Along the southern wall we have our kitchen,
2 our living room, dining room area, a family room and
3 upstairs we have a bathroom and a bedroom.

4 Q And who uses the bedroom along the south wall?

5 A My son David.

6 Q And where are the other bedrooms located?

7 A Next to David's room is another bedroom which
8 Mark sleeps in and then there are two bedrooms on the
9 first floor on the north end of the house.

10 Q And where is the bedroom that you share with
11 David Shelton?

12 A It's on the northeast corner of the house.

13 Q On the first or second floor?

14 A First floor and my daughter is on the
15 northwest corner of the house.

16 Q On the first floor?

17 A On the first floor.

18 Q Now, within your family do you have a
19 preference for the use of air conditioning or the use of
20 windows to cool your home in the summer?

21 A Being fairly close to the lake, we do not use
22 our air conditioner very often. We prefer to have our
23 windows open, and sometimes we will operate a ceiling fan
24 with windows open in order to generate air.

00359

1 Q Can you estimate the number of nights during
2 the course of an average summer that you would operate the
3 air conditioner unit at that home at 707Ardley?

4 A Maybe seven or eight nights a year and it
5 would be -- wouldn't be for a continual day. We maybe
6 have the unit on during the daytime when it's hot, turning
7 it off at night or vice versa. So, seven days, but it's
8 not a 24 hour period.

9 Q And do you have a central air conditioning
10 unit?

11 A We have two units.

12 Q And am I correct to state that you moved into
13 your home in roughly 1990?

14 A Yes.

15 Q And was it roughly one year later in 1991 that
16 Steven and Nancy Crown began the reconstruction of the
17 residence located just to the south of you?

18 A Yes.

19 Q Now, again, if I may draw your attention to
20 Exhibit 51 there. Can you show on that site plan the
21 approximate location of your home, the southern wall of
22 your home and if you can mark that in the plan?

23 A My guess is it would start here and run all
24 the way down there.

00360

1 Q All right And could you show us perhaps
2 marking with initials where the kitchen is located, where
3 the living room, dining room area is located and where the
4 family room is located?

5 A Okay. This is the garage and back entrance.

6 Q Indicating the far left or westerly most
7 portion?

8 A Yes. Then we have our kitchen and then we
9 have a combined living/dining room and I'm out of scale
10 here and then the back is our family room.

11 Q Now, staying with the kitchen area, are there
12 any windows along the south facing wall?

13 A Yes.

14 Q How many?

15 A There's two windows over the kitchen sink and
16 a window in front of our eating area.

17 Q Could you note then with an arrow and the
18 Arabic numeral 3 that there are three windows on the south
19 facing wall of the kitchen?

20 A Okay. Three windows.

21 Q And in the living room/dining room area, are
22 there any south facing windows?

23 A We have one large picture window on the south
24 side.

00361

1 Q Could you estimate the dimensions of that
2 picture window?

3 A Probably 8 feet by 6 feet.

4 Q Could you note that on the site plan?

5 A These are estimates.

6 Q Are there any south facing windows in the
7 family room?

8 A Our family room is glass for 14 feet.

9 Q And what is the height of that window? If you
10 were to say it has a 14 foot run, can you estimate the
11 height?

12 A Ten feet.

13 Q If you could please note that on the site
14 plan.

15 A Okay.

16 Q You mentioned that your son's bedroom is
17 located on the south wall of the second story?

18 A Yes.

19 Q Is his bedroom above the living room/dining
20 area, the family room area or where would you approximate?

21 A His bedroom is above the living room/dining
22 room area.

23 Q And is there a window along the south wall?

24 A Yes.

00362

1 Q Is there more than one window or is there a
2 single window?

3 A There's a window on the south facing wall and
4 two windows on the east wall.

5 Q Could you note that above the other marks that
6 you've now made?

7 A David's room. David's room, one window south,
8 2 windows east.

9 Q Do you know whether the windows in David's
10 room are storm windows?

11 A They are double paned windows, so they are
12 storm windows. It's a storm window.

13 Q Could you note that as well

14 A Double paned windows.

15 Q Is there any way either by showing or by use
16 of the pen, can you show us just approximately where the
17 patio is located in relation to the family room?

18 A The patio is the same width as the family
19 room. So, I believe its about 14 feet wide and we have an
20 area that comes out where we have a little wall and seating
21 area and it runs all the way to the back of the house by
22 our bedroom window.

23 Q Can you note where you've put that bubble to
24 the right wall and seating area?

00363

1 MR. CARSON: Your Honor, I want to interpose an
2 objection here in that we're dealing with an obviously an
3 architecturally perused drawing that is to scale and now
4 we have a witness that is basically creating another
5 sketch on top of it that's obviously not to scale and I
6 think that given that the distances are not going to be
7 correct, it's going to be misleading. At a minimum can we
8 have the witness just write on there that it's not to
9 scale so it would be obvious to anyone that's--

10 MR. KAISER: I'll stipulate to that.

11 A Not to scale.

12 MR. CARSON: Thank you.

13 Q Do you have knowledge as to the distances
14 between the Crown property line and the wall of your home?

15 A 28 feet.

16 Q And how do you know that it's that distance?

17 A We have hopes to run an addition across the
18 southside of our house and in an ordinance by the Village
19 says we have to be 18 feet from the property line, so our
20 addition would be a ten foot addition across the kitchen
21 and the living room/dining room.

22 Q Did you have an architect prepare those plans?

23 A Yes, we did.

24 Q What year did you have those plans prepared?

00364

1 A 1990.

2 Q Have you subsequently abandoned plans for a
3 build out along the south property line?

4 A Until we know what's happening with the noise
5 next door, we do not feel at all comfortable extending our
6 house closer to the noise source.

7 Q Now, the patio that you and your husband David
8 constructed, why did you build a patio?

9 A The house did not have a patio and the one
10 thing that attracted us to this house was the piece of
11 property. The privacy of the backyard.

12 HEARING OFFICER: MsShelton, you can direct
13 your comments to your counsel.

14 A We enjoy being outside.

15 Q And you mentioned the privacy of your
16 backyard. Can you describe for the Board as you sit or
17 stand on your patio and look to the east, what do you see
18 in that direction?

19 A To the east when the trees are filled in, we
20 really just see trees because the property behind us also
21 has trees.

22 Q And if you were to look just to the north as
23 you stood on the patio, would you see the Julian's home?

24 A We would see a wing of this home, but there's

00365

1 also some large evergreen trees that block part of it.

2 Q Now, to return to our narrative here.

3 Approximately one year after you and your family moved
4 into your residence at 707 Ardsley Road, did Steven and
5 Nancy Crown begin construction on the property to the
6 south of you?

7 A Yes.

8 Q How did you first become aware that this was a
9 construction project underway to the south of you?

10 A I believe I saw construction equipment over
11 there.

12 Q Do you recall whether the construction began
13 in the -- what time of the year in 1991 it began?

14 A I believe it was the fall of 1991.

15 Q And to the best of your knowledge did that
16 construction continue for an additional three years until
17 Steven and Nancy Crown move in?

18 A '92, '93, '94. At least closer to four years.

19 Q Do you know whether Steven and Nancy Crown and
20 heir family were living in the residence located just to
21 the south of you in the summer of 1993?

22 A They were not.

23 Q I want to direct your attention to September
24 of 1993 at which point it's the testimony up until now has

00366

1 demonstrated there have been a certain level of
2 construction and the heating and air conditioning system
3 for the Crown residence had been installed. Do you recall
4 where you were when the Crown air conditioning system was
5 first started up?

6 A Yes. It was a school night. I had arrived
7 home around 9:30 after a junior high meeting and my
8 husband and I were watching the news in our family room
9 and we heard an explosion around 10:00 o'clock at night.

10 Q Now, when you say family room, is that the
11 room on the far right that you showed in the diagram?

12 A Yes.

13 Q And can you describe with more particularity
14 the source of this explosion that you heard at
15 approximately 10:00 p.m.?

16 A It was a rumble and a backfire and it sounded
17 like something had exploded over at the construction site
18 next door.

19 Q What, if anything, did you do on hearing the
20 rumble backfire and explosion?

21 A I called the police to tell them there was an
22 explosion next door.

23 Q Did the police come and investigate?

24 A They did not come to our house to investigate.

00367

1 I don't know if they came to the Crown property to
2 investigate.

3 Q What, if anything, else did you do after you
4 had called the police and alerted them to this explosion?

5 A After I called the police, the sound stopped
6 and then another explosion came on. And at that point I
7 figured out it could have been the air conditioner unit
8 and I tried to call Steven Crown. It took me awhile to
9 find his telephone number, but I was able to call him.

10 Q Did you actually reach Mr. Crown by telephone
11 the night the system was started up?

12 A Yes and I said I had called the police because
13 I heard an explosion and I now think it could be the air
14 conditioner going on and off because by then it had gone
15 on and off more than once.

16 Q What, if anything, did Mr. Crown say?

17 A He apologized and he said he would -- that
18 someone must have accidentally left it on and he would
19 make sure it would be turned off.

20 Q Was the unit turned off that evening?

21 A Yes -- I don't know. We did not hear the
22 noise anymore.

23 Q And did you hear any further explosions that
24 evening?

00368

1 A Not that evening.

2 Q Were you able to sleep without interruption

3 that evening?

4 A Yes.

5 Q When was the next time you became aware that

6 the air conditioning system at the Crown residence was in

7 operation?

8 A Well, throughout the next several days after

9 that it would go on for short periods at a time, being

10 an hour or two hours. It was not a continual operation

11 and there was a lot of construction next door, but I was

12 still able to hear the sound that it was creating.

13 Q Now, when you say 15, you were still able to

14 hear the sound. Does that mean you were able to hear the

15 sound when you were out on your patio?

16 A I was able to hear the sound inside my house.

17 Q I'd like you to be as specific as possible as

18 to where you could hear the sound in September of 1993.

19 If you were in your family room along the south wall of

20 your home, could you see where the sound of the Crown air

21 conditioning system?

22 A Yes or in the kitchen doing the dishes. And I

23 did go when I would drive home into my driveway, I could

24 hear the sound when I'd get out of my car.

00369

1 Q So, your testimony thus far is you could hear
2 it in the family room, in the driveway, in the kitchen.
3 Were there any other rooms where you could hear the Crown
4 air conditioning unit?

5 A Not really. I did not at that point walk
6 around my house listening for an air conditioner, but
7 those rooms I could hear if I was working in the kitchen or
8 I actually work in the family room for business, so I do
9 hear it.

10 Q And so you described that over the next
11 several days you would hear the air conditioner
12 intermittently for periods of one to two hours?

13 A Yes.

14 Q And how long did that pattern of operation
15 continue?

16 A I would say a week, maybe two weeks. I'm not
17 quite sure. During that time I attended several business
18 meetings and I was out of the house.

19 Q So, it's your testimony that for a week or
20 perhaps two it continued during that pattern of operation?

21 A Yes.

22 Q Did you -- were you aware of the operation of
23 the Crown air conditioning unit during October of 1993?

24 A No.

00370

1 Q How about November of 1993?

2 A No.

3 Q Did you personally have any communication with
4 Steven or Nancy Crown during October or November of 1993?

5 A I know my husband corresponded with him and I
6 think I did have correspondence with him in November of
7 1993. Oh, I believe I called the office or I saw him and
8 I asked where the plans were for abating the noise and we
9 were told -- I was told on at least two occasions that we
10 would be receiving some type of their plans for resolving
11 the noise problem.

12 MR. CARSON: Can I just interject an objection
13 to the lack of foundation as to that conversation as to
14 time and who it was.

15 Q Did you form any opinion during October or
16 November of 1993 as to whether your husband, David
17 Shelton, was in communication with Steven Crown concerning
18 the air conditioner and related noise issue?

19 A Yes, my husband was.

20 Q And what was the basis for your opinion that
21 your husband was in communication with Mr. --

22 A I was at his office once when he talked to
23 Mr. Crown. I know he sent a letter to Mr. Crown and I
24 believe it was after that that I talked with Mr. Crown in

00371

1 November.

2 Q Now, that conversation in November of 1993 with
3 Mr. Crown, was that in person or by telephone?

4 A By telephone.

5 Q Who was on the telephone line?

6 A Mr. Crown and myself.

7 Q And what did you say to Mr. Crown?

8 A At this point I was calling because there had
9 been 11 spotlights that shown on our property for six
10 months at night and I was calling to complaint about them.
11 I was told in May they would only be on for six months for
12 security reasons and I waited until that six month time
13 period was up to call and say the spotlights are still
14 shining on our property at night and it was bothering me.
15 Also, on that conversation I said, and Steven we're still
16 waiting for plans to see what you're going to do about the
17 noise from this air conditioning unit.

18 Q What, if anything, did Mr. Crown say in
19 response?

20 A His normal response would be he would be
21 getting back to us and he never did.

22 HEARING OFFICER: the question is as to a
23 specific conversation, so you need to try to answer it as
24 to that specific conversation.

00372

1 Q Do you recall what Mr. Crown's response was to
2 you when you were on the telephone with him in November of
3 1993 and you asked him when and whether you would receive
4 a plan for the resolution of the noise issue?

5 A He said that he was not going to respond to my
6 husband's stupid letter and he had no intention at that
7 point of getting back to us.

8 Q Those were Mr. Crown's words, your husband's
9 stupid letter?

10 A As I remember them, those are the words.

11 Q What, if anything, did you say in response?

12 A I had a very short conversation with him. I
13 said we were waiting to see what they were going to do and
14 I think we got off the phone at that point.

15 Q Did you receive any information from Mr. Crown
16 during that telephone conversation in November of 1993
17 concerning when or whether he would cause the 11
18 spotlights located on his property and shining throughout
19 the night to be discontinued?

20 A I think they were discontinued the next day.

21 Q But, is it your testimony that from
22 approximately May of 1993 through November of 1993 11
23 spotlights were located on the Crown property and were
24 kept on throughout the night?

00373

1 A Yes.

2 Q Did you receive a plan from Steven Crown or an
3 agent of Steven Crown in December of 1993 setting forth
4 steps that would be taken in order to alleviate the noise
5 problem because of the air conditioning unit at the Crown
6 property?

7 A No. In December of 1993 Mr. Crown did call
8 and say there would be a meeting with his engineers. I
9 believe it was going to be the second week in January. It
10 was a specific date and a specific time set. That meeting
11 never took place and we were never notified as a reason why
12 that meeting never took place.

13 Q So, as of January of 1994, did you receive a
14 plan from Mr. Crown or one of his agents setting forth
15 steps to be taken to reduce the sound coming from the air
16 conditioning unit?

17 A No, we were never notified.

18 Q In February of 1994, did you receive a plan
19 from Mr. Crown or any of his agents setting forth steps to
20 be taken in the spring and summer of 1994 to reduce sound
21 originating from his air conditioning unit?

22 A No.

23 Q Did you receive such a plan from Mr. Crown or
24 any of his agents in March of 1994?

00374

1 A No.

2 Q Did you receive such a plan from Mr. Crown or
3 anyone of his agents in April of 1994?

4 A No.

5 Q Did you receive such a plan from Mr. Crown or
6 any of his agents in May of 1994?

7 A No.

8 Q In June of 1994, did Mr. Crown or one of his
9 agents cause the air conditioning system at his property
10 on Ardsley Road in Winnetka, Illinois to be turned on?

11 A Yes.

12 Q Do you recall what weekend in June the air
13 conditioning system at the Crown property was turned on?

14 A It ran the weekend of father's day, 24 hours a
15 day. It had run the week prior to that during the
16 daytime.

17 Q And when you say it operated the week prior to
18 Father's Day, sometime in the middle of June, 1994 during
19 the day. What do you mean by daytime hours,
20 approximately? During what period of time did it operate?

21 A Between maybe 6:00 or 6:30 a.m. and until
22 construction ended at 3:00 or 3:30.

23 Q And is it your testimony that then on Father's
24 Day the operation of the Crown air conditioning system

00375

1 went to a 24 hour schedule of operation?

2 A For that weekend it did. It was on for 72

3 hours that weekend.

4 Q Could you hear the Crown air conditioning

5 system during Father's Day weekend, June of 1994 when you

6 were in your home?

7 A Yes.

8 Q Could you hear it when you were in your

9 kitchen?

10 A Yes.

11 Q Could you hear it when you were in your living

12 room/dining room area?

13 A Yes.

14 Q Could you hear it when you were in your family

15 room area?

16 A Yes.

17 Q What, if any, other rooms could you hear the

18 air conditioner?

19 A We could hear it in our bedroom, my son could

20 hear it in his bedroom and he had to sleep somewhere else.

21 Q is that the first time that your son, David,

22 -- well, when you say he had to sleep somewhere else, was

23 there a particular evening where David awoke and talked to

24 you or did you awake one morning and find him sleeping

00376

1 somewhere else or could you give us some facts?

2 A The noise generated on the second floor was
3 louder than the noise on our first floor.

4 Q And when you say noise, you mean noise from
5 the Crown air conditioning system?

6 A Yes, the on/off of the system. The pulsating
7 sound, the high pitches of the fans. The different
8 components coming in. My son could not sleep in his room
9 with his windows closed and with a fan going in his room.
10 It was -- it's too loud. You could not--

11 MR. CARSON: Your Honor, I'm going to move to
12 strike as non responsive. The question was directed
13 particularly --

14 MR. KAISER: Excuse me, counsel. Non
15 responsive is an objection that only the questioning
16 attorney can make. So, that's not a basis for striking
17 the testimony.

18 MR. CARSON: I move to strike as non
19 responsive.

20 HEARING OFFICER: The motion to strike is not
21 granted.

22 BY MR. KAISER:

23 Q Prior to Father's Day weekend of June, 1994,
24 had your son ever had difficulty sleeping in his bedroom?

00377

1 A No.

2 Q Did you ask your son why he was unable to
3 sleep in his bedroom during the Father's Day weekend of
4 June, 1994?

5 A I don't believe I asked him right out with
6 that question, but he was constantly complaining of the
7 noise.

8 Q What, if anything, did he say to you?

9 A He responded with writing a letter to Mr.
10 Crown describing how the sound appeared to him.

11 Q I want to show you what's been marked for
12 purposes of Identification as Exhibit 18B and ask you to
13 take a minute to look at that and when you're done, please
14 let me know.

15 A This is what my son wrote.

16 Q Was that -- is that a true and accurate copy
17 of the letter that your son wrote?

18 A Yes.

19 Q What is the date of that letter?

20 A June 7, 1994.

21 Q Could you please read that letter into the
22 record?

23 MR. CARSON: Your Honor, the letter I believe
24 is in evidence or certainly is about to be offered into

00378

1 evidence. I don't see why it would be necessary for the
2 witness to read it.

3 MR. KAISER: I think it would be helpful to
4 preserve the continuity of her testimony. It would take
5 but a minute for her to read it into the record.

6 HEARING OFFICER: The letter is received as
7 evidence and is as read. We will not need to have the
8 letter re-read at this time.

9 BY MR. KAISER:

10 Q I want to also show you at this time what's
11 previously been marked for purposes of identification as
12 Exhibit 18A and ask you to take a look at that and tell me
13 when you're done reviewing it.

14 A I wrote this.

15 Q When did you write that?

16 A On June 28th, 1994.

17 Q Is that a true and accurate copy of the letter
18 that you wrote?

19 A Yes.

20 Q I note that your letter, 18A, is addressed to
21 Dear Steven and Nancy. To whom were you addressing that
22 note?

23 A To Mr. and Mrs. Crown.

24 Q Did you cause that note and your son's letter

00379

1 to be mailed to Mr. and Mrs. Crown?

2 A I mailed my son's note and this attached

3 letter.

4 Q Thank you. Did you receive a written response

5 from either Steven or Nancy Crown?

6 A No.

7 Q Did you receive a telephone call from either

8 Steve or Nancy Crown in response to your letter dated June

9 28, 1994?

10 A No, none.

11 Q Can you describe for us what your experience

12 was of the noise emanating from the Crown air conditioner

13 during the Father's Day weekend of June, 1994?

14 A The noise was -- it occupied our weekend. It

15 overtook any type of relaxation that we could have. There

16 was cycling on and off of the compressors and the fans.

17 There was loud, high pitches from the cycling of the three

18 fans coming on. At nighttime the noise was far worse. We

19 could hear the noise inside our house with our windows

20 closed, on our patio, in our backyard. It was everywhere.

21 At nighttime we would be awakened and we could sit and

22 count, lie in our bed and count the cycling on and off of

23 the system. At some point it could cycle on and off as

24 much as six or seven times in an hour.

00380

1 Q Did that cycling of the system on and off five
2 or six times during the course of an hour prevent you from
3 sleeping?

4 A It prevented us room sleeping. We were
5 exhausted on that weekend.

6 Q Now, did it go on -- did it, meaning the air
7 conditioning system, go on and begin 24 hour a day
8 operations on Friday night?

9 A Yes, Friday morning of Father's Day weekend it
10 went on and it did not turn off until Monday night when
11 the construction crew left.

12 Q Did you observe within your own person or
13 being a heightened tension at all as a result of this
14 noise?

15 A It created headaches, it created stress and
16 tightness and the shoulders down the arms. It did create
17 a tremendous amount of tension in our family, our children
18 were tired, my husband and I were tired.

19 Q And I want to make it clear at this point, are
20 we talking about just the Father's Day weekend of June of
21 1994?

22 A Just the Father's Day weekend of June, 1994.

23 Q What, if anything, did you do shortly
24 thereafter?

00381

1 A Prior to this we had seen Mr. Crown at a
2 swimming meet where our children were swimming and I went
3 up to him and said, Steven, we really just want to get the
4 air conditioner fixed, and he said it would be fixed
5 within a week or two and asked us to wait until the
6 fencing and the trees were put in before we did anything.
7 So, I waited. We did not, after that weekend, we did not
8 do anything until the fencing and the trees were put in.

9 Q Now, do you recall when the fencing and trees
10 were put in?

11 A I believe it was the end of June, maybe June
12 26th or 27th.

13 Q Of 1994?

14 A 1994.

15 Q I want to show you what's previously been
16 marked for purposes of identification as Exhibit 4, 5a and
17 5b, a series of photographs. I'd like you to take a look
18 at those and tell me if you recognize those?

19 A Yes.

20 Q What do you recognize those to be -- well,
21 let's do them one at a time. 4, what do you recognize
22 that to be?

23 A Well, this is the chiller unit in the fall of
24 1939.

00382

1 Q And is that you standing in front of it?

2 A That's me standing in front of it.

3 Q What would you estimate to be the height of
4 the chiller unit?

5 A It was a little bit taller than myself, I
6 believe.

7 Q And what is your height?

8 A 5'4".

9 Q So, the height of the unit is in excess of 5
10 foot 4 inches?

11 A Yes.

12 Q And in that photo, I note it doesn't seem to
13 have those cones on the top that are indicated in 5a and
14 5b.

15 A Right.

16 Q Do those add to the height of the unit?

17 A They add, yes. They add to the height of the
18 unit.

19 Q And I want to again turn your attention to
20 Exhibit 51. You'll note, if you will, behind you here
21 that Mr. Crown during his testimony had indicated with red
22 pen an area oneh north of his residence where these
23 chiller units are located. Do you see that red circle?

24 A Yes.

00383

1 Q Is that accurate, is that in fact where these
2 chiller units are located?

3 A Yes.

4 Q And were these photographs 4, 5a and 5b were
5 taken?

6 A Yes.

7 Q Can you estimate the distance -- strike that
8 -- so, do these photographs; 4, 5a and 5b truly and
9 accurately represent the location and the appearance of
10 the chiller compressor unit on the Crown property before
11 the shrubs were put in, shrubs and fence?

12 A One or those pictures has the fencing and I
13 believe the shrubs put in.

14 Q I see, yes, I stand corrected. Thank you.

15 I'd like to show you, if I may,

16 paragraphs that Mr.

17 Constant introduced into evidence; R1, 2, 3 and 4. Do you
18 recognize what's depicted in those photographs?

19 A Well, those are the shrubs surrounding the
20 chiller unit.

21 Q So, is it your testimony that when you saw Mr.
22 Crown at a swim meet in June of 1994, he asked you to wait
23 until the fence and shrubs were put in place before you
24 took any further action?

00384

1 A Yes.

2 Q And when these shrubs and fence were put into
3 place sometime toward the latter part of June, 1994, did
4 you notice any reduction in the noise coming from the
5 Crown Air Conditioning unit?

6 A No noise reduction was noticed.

7 Q And is that to say that when you were outside
8 you could hear the air conditioning unit, there was no
9 reduction in the noise?

10 A There was no reduction in the noise to my
11 ears.

12 Q After the placement of the fence and
13 the arbor Vitae hedge around the chiller unit on the Crown
14 property in June, 1994, could you still hear the Crown air
15 conditioning system when you were in your home?

16 A Yes.

17 Q Did you ever close all of the windows along
18 your south wall of your home in June of 1994?

19 A Yes.

20 Q Were you able to hear the Crown air
21 conditioning unit in your home with the windows closed?

22 A Yes.

23 Q Were you able to hear the Crown air
24 conditioning unit in your home with the windows closed on

00385

1 the first floor?

2 A Yes.

3 Q Were you able to hear the Crown air
4 conditioning unit in your home with the windows closed in
5 the latter part of June, 1994 on the second floor of your
6 home?

7 A Yes.

8 Q Are you aware of whether your husband, David
9 Shelton, sent a letter to A. Steven Crown on or about July
10 6th, 1994, a letter concerning the sound issue?

11 A Yes, I am.

12 Q Did you receive a plan from Steven Crown or
13 anyone of his agents during July of 1994 setting forth
14 steps to be taken to reduce the sound coming from the air
15 conditioning unit at his house?

16 A Yes. I believe the end of July we received a
17 sketch from Al Shiner or BradMautner, I'm not sure from
18 who, a diagram of what was to go in place. Mr. Crown
19 called me the end of July and told me construction on that
20 would go into effect immediately after Labor Day, 1994.

21 Q Throughout July of 1994, are you aware of
22 whether the air conditioning unit on the Crown property was
23 in operation?

24 A It was in operation 24 hours a day.

00386

1 Q Were you able to hear the sound in the Crown
2 air conditioning unit while you were in your home in July
3 of 1994?

4 A Yes.

5 Q In which rooms of your house could you hear the
6 Crown air conditioning unit in July of 1994?

7 A Again, all of our rooms we could hear the
8 noise. There were two rooms where it was not as loud.

9 Q Which rooms were those?

10 A There are two rooms on the west side of our
11 house, the den and my daughter's bedroom.

12 Q In all other homes you could hear--

13 A Yes.

14 Q The Crown air conditioning unit?

15 A Yes.

16 Q Now, did the source of the Crown air
17 conditioning unit interfere with your ability to use and
18 enjoy your home during July of 1994?

19 A Yes. I would try to leave during the day in
20 July of 1994. I did not want to be in my home. I did not
21 want to entertain in my home. I did not want to be
22 outside on the patio.

23 Q Did you find that the level of use of the
24 patio in July of 1994 was less than it had been in the

00387

1 summer of 1993, summer of 1992 and the summer of 1991?

2 A Definitely.

3 Q What do you attribute that lack of use of the
4 patio in 1994, July of 1994 to?

5 A The sound of the chiller unit. The on/off,
6 the cycling on and off. The loud bangs. The two constant
7 drones.

8 Q Did you and your family continue to take your
9 meals out of doors during July of 1994?

10 A No.

11 Q Why did you discontinue the practice of eating
12 your meals out of doors during July of 1994?

13 A It created a lot of tension to sit in an area
14 that was once very peaceful and to have this noise
15 everywhere outside while we're eating.

16 Q Did you find that in July of 1994 you were
17 able to escape the sound of the Crown air conditioning
18 unit by going indoors, closing the windows and turning on
19 the television?

20 A No, I was not able to escape turning on the
21 television, going indoors.

22 Q Were you able to escape the sounds of the
23 Crown air conditioning unit during July of 1994 by going
24 into your house, closing the windows and turning on music?

00388

1 A No, I was not. I would do those things, but I
2 could still hear the compressors cycling on and off.

3 Q Did your son, David BShelton -- did you
4 observe him having any difficulty sleeping in his bedroom
5 during July of 1994?

6 A To the best of my knowledge, he did not sleep
7 in his bedroom during July of 1994.

8 Q Where did he sleep during July of 1994?

9 A To the best of my knowledge, he did not sleep
10 in his bedroom during July of 1994.

11 Q Where did he sleep during July of 1994.

12 A He slept in the Department on a pull out
13 couch.

14 Q Are you aware of the reason why he did not
15 sleep in his bedroom during the month of July, 1994, but
16 instead slept on a pull out couch in the den?

17 A The noise in his bedroom on the second floor
18 was one of the loudest areas in the house. The noise
19 from the air conditioner was loudest there.

20 Did you or your wife ever purchase a so-called
21 sound machine or white noise machine for your son's use in
22 his bedroom on the south side of your home?

23 A Yes.

24 Q When did you purchase that sound machine or

00389

1 white noise machine?

2 A Father's Day weekend.

3 Q Of 1994?

4 A Yes.

5 Q And can you describe for the Board just what a
6 sound machine or a white noise machine is?

7 A It's a small, I describe it as a radio and you
8 could set it on three settings, one would be a constant
9 white out noise. Another would be the tide coming in and
10 going out. And the third one would be rain falling. And
11 you would use this to create noise in your room so you
12 wouldn't hear noise elsewhere.

13 Q And what was the effect of using that sound
14 machine or white noise machine in your son's room in July
15 of 1994?

16 A The white out noise had a higher pitch than
17 the noise from the compressors. So, there would be a
18 constant white out noise, but you would now have the
19 compressors in a lower drone kicking in and kicking out.
20 So, it did not cover up that sound.

21 HEARING OFFICER: At this point we have come
22 to the time that we have agreed we will conclude our
23 proceedings for today.

24 Will it be all right with counsel if we

00390

1 stop at this point?

2 MR. KAISER: Yes, this would be fine.

3 HEARING OFFICER: Thank you, MsShelton and I

4 understand that you will be continuing your testimony

5 tomorrow.

6 THE WITNESS: Yes.

7 MR. KAISER: May we begin at 9:00 a.m.?

8 HEARING OFFICER: Off the record.

9 (A brief off the record discussion was held.)

10 (Whereupon the trial proceedings were

11 adjourned for the day.)

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1 CERTIFICATE

2

3 We, VERNETTA MC CREE & VERNITA HALSELL-POWELL,
4 the undersigned Notary Public in and for the State of
5 Illinois, do hereby certify:

6 That the annexed and foregoing testimony of the
7 witness named herein was taken stenographically before me
8 and reduced to typewriting under my direction;

9 I further certify that I am not a relative or
10 employee or attorney or counsel of any of the parties to
11 said action, or a relative or employee of any such attorney
12 or counsel, and that I am not financially interested in the
13 said action or the outcome thereof;

14 I further certify that the proceedings, as
15 transcribed, comprise an accurate transcript of the
16 testimony, including questions and answers, and all
17 objections, motions, and exceptions of counsel.

18 IN WITNESS WHEREOF, I have hereunto set my and
19 affixed my official seal this 16th day of July. 1996.

20

21 _____

22 VERNETTA MC CREE CSR #

23 -----

24 VERNITA HALSELL-POWELL CSR#