

1 ILLINOIS POLLUTION CONTROL BOARD

2 LIONEL TREPANIER, WES )

WAGER, MAUREEN COLE, )

3 LORENZ JOSEPH, MAXWORKS )

GARDEN COOPERATIVE, and )

4 AVI PANDYA, )

)

5 Complainants, )

)

6 vs. ) PCB 97-50

) (Enforcement-Air, Citizens)

7 SPEEDWAY WRECKING COMPANY )

and THE BOARD OF TRUSTEES )

8 OF THE UNIVERSITY OF )

ILLINOIS, )

9 )

Respondents. )

10

11

12 The following is the transcript of a

13 hearing held in the above-entitled matter, taken

14 stenographically by Caryl L. Hardy, CSR, a notary

15 public within and for the County of Cook and State

16 of Illinois, before John C. Knittle, Hearing Officer,

17 at 100 West Randolph Street, Room 8-033, Chicago,

18 Illinois, on the 24th day of March, 1999, A.D.,

19 commencing at the hour of 9:37 a.m.

20

21

22

23

24

1 PRESENT:

2 HEARING TAKEN BEFORE:  
3 ILLINOIS POLLUTION CONTROL BOARD  
4 100 West Randolph Street  
5 Suite 11-500  
6 Chicago, Illinois 60601  
7 (312) 814-3473  
8 BY: MR. JOHN C. KNITTLE

9  
10 MR. LIONEL TREPANIER  
11 MR. JOSEPH LORENZ  
12 MS. MAUREEN MINNICK  
13 MR. WES WAGER

14 Appeared Pro Se;

15  
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20 (312) 876-6928  
21 BY: MR. NORMAN P. JEDDELOH

22 Appeared on behalf of the Respondent,  
23 The Board of Trustees of the  
24 University of Illinois;

25  
26 ADDUCCI, DORF, LEHNER, MITCHELL, &  
27 BLANKENSHIP, P.C.  
28 150 North Michigan Avenue  
29 Suite 2130  
30 Chicago, Illinois 60601  
31 (312) 781-2200  
32 BY: MR. MARSHALL L. BLANKENSHIP

33 Appeared on behalf of the Respondent,  
34 Speedway Wrecking Company.

35 ALSO PRESENT:

36 Ms. Amy Muran-Felton  
37 Mr. James Henderson  
38 Ms. Karen Kavanaugh  
39 Mr. Larry Kolko  
40 Mr. Thomas Saniat

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1 HEARING OFFICER KNITTLE: Let's go on the  
2 record.

3 Hello. My name is John Knittle, hearing  
4 officer for the Pollution Control Board. This is  
5 the second day of hearing of Trepanier, et al., vs.  
6 Speedway Wrecking Company and University of Illinois  
7 Board of Trustees -- I may have reversed that --  
8 97-50 on the Pollution Control Board's docket. It's  
9 approximately 9:40 a.m. Present today are Lionel  
10 Trepanier and Maureen Cole from the Complainants,  
11 and all the respondents are present.

12 We are on the record and entertaining  
13 motions before we get started today.

14 Mr. Trepanier, do you have a motion?

15 MS. MINNICK: Excuse me. May I please have my  
16 name from Cole to Minnick which I'm trying to use my  
17 maiden name?

18 HEARING OFFICER KNITTLE: Are you seeking --  
19 can I take that to be a motion to amend the  
20 caption?

21 MS. MINNICK: Please.

22 HEARING OFFICER KNITTLE: Is there an objection  
23 to that motion to amend the caption?

24 MR. BLANKENSHIP: No.

1 HEARING OFFICER KNITTLE: Hearing no objection,  
2 we will refer to you as Minnick.

3 MS. MINNICK: Correct.

4 HEARING OFFICER KNITTLE: And I will amend the  
5 caption accordingly.

6 MS. MINNICK: Thank you.

7 HEARING OFFICER KNITTLE: Any other outstanding  
8 motions?

9 MR. TREPANIER: Good morning. I'm  
10 Mr. Trepanier, and I'm tendering a verbal motion to  
11 continue.

12 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,  
13 why don't you state your motion?

14 MR. TREPANIER: I'm requesting two weeks to  
15 respond to the records that I received today from  
16 Speedway Wrecking Company. These were records that  
17 I had requested during discovery specifically  
18 implicated by my interrogatory number 15 wherein I  
19 had asked Speedway to identify the time, the  
20 location, and all the general and specific  
21 responsibilities, duties, assignments, and specific  
22 work nature during Speedway's demolition, all of  
23 their personnel who participated in the demolitions  
24 in the area, their time and the location of their

1 work.

2 And also in my interrogatory number 3-C, I  
3 had asked Speedway to -- for each of the persons  
4 that were named in an above interrogatory to specify  
5 and include each document that they used or created  
6 by that person in their role in the Speedway  
7 demolitions in the area, and the above-named persons  
8 would have included Mr. Kolko who disclosed the  
9 existence of these records yesterday.

10 Now, the records would allow myself to --  
11 and they will allow me to identify and I can -- I'm  
12 going to need to look at the record right now. I  
13 think it's right in the front here.

14 This record that I'm looking at which was  
15 turned to me over today, it's a document that's  
16 number 270 and dated Monday, September 9th, 1996,  
17 the same date as the Complainants' evidence video of  
18 the site, and this document identifies that there  
19 were, in fact, not 15 Speedway employees present but  
20 six, and of those six, only three are even current  
21 employees.

22 Now, what -- so I'm going to ask for a  
23 continuance to respond to this information because I  
24 have been prejudiced by not having this information,

1 and the prejudice has stemmed from the fact that  
2 rather than supply me with information that would  
3 have allowed me to identify who was on the job on  
4 the very day that I have the evidence, information  
5 that I vociferously sought to gain from Speedway,  
6 they withheld that information until it was  
7 discovered through testimony. And this information  
8 would allow -- would allow and will allow me to  
9 identify with specificity and within my capabilities  
10 to subpoena a witness to come in to provide  
11 important testimony about what was occurring inside  
12 the building where yesterday's testimony Mr. Kolko  
13 claimed that that -- it was on the interior of the  
14 building that pollution controls were being  
15 effected, and by not turning over this record to me  
16 which identified who was in the building on that  
17 date, I have been prejudiced, and I should have a  
18 right to respond to this information and to bring in  
19 these persons where I couldn't -- I just didn't have  
20 the capacity to subpoena all of their former  
21 employees, but now I've discovered that I needn't  
22 subpoena all the former employees.

23 In fact, only -- there was two former  
24 employees that were working that day -- they were up

1 in the building -- who are no longer working for  
2 Speedway, and it's Mr. Sandoval and Mr. Guzman. So  
3 now, my list of who I can seek to be a witness in  
4 this case has been drastically made easier. In  
5 fact, it's come within my capabilities to bring a  
6 witness into this hearing now. And the only reason  
7 that witness isn't here today is because Speedway  
8 withheld these documents.

9       So I feel like it's an issue of  
10 fundamental fairness that I be allowed some time,  
11 and I'm suggesting two weeks to respond to this  
12 information. And it's fundamental fairness so  
13 important in this case where the Complainant is  
14 asserting his constitutional right to a healthful  
15 environment.

16   HEARING OFFICER KNITTLE: Is that it,  
17 Mr. Trepanier?

18   MR. TREPANIER: Yes. Thank you.

19   HEARING OFFICER KNITTLE: And your response,  
20 Mr. Blankenship?

21   MR. BLANKENSHIP: This is ridiculous. Over a  
22 year ago, we identified every employee on this job  
23 and his position on the job, and that was supplied  
24 by Mr. Trepanier as part of a 201(k) resolution of a

1 discovery dispute.

2       Early this year, I advised Mr. Trepanier  
3 of the employees who were no longer employed by  
4 Speedway, and pursuant to your order, he finally  
5 followed up on that a week before the hearing or two  
6 weeks before the hearing. Pursuant to your order,  
7 then I gave him the last known addresses of those  
8 former employees.

9       As of a week ago, Mr. Trepanier intended  
10 to call all 15 Speedway employees that worked on the  
11 site on this particular project, and I assumed he  
12 had made all the preparations to call all 15  
13 employees. Now he seems to be upset because we've  
14 given him documents which on their face simply show  
15 the people that worked on the project, the very same  
16 names we provided him a year ago. The only  
17 difference is now it specifies the particular dates  
18 these certain employees worked on the site.

19       What I hear Mr. Trepanier saying is he  
20 needs more time because these documents have made  
21 his case much easier. He doesn't need to call all  
22 15 employees. He only needs to call three or four.  
23 Well, that's not a reason to continue the hearing.  
24 He should have had everything in motion to call all

1 these employees weeks ago as he told us he would.  
2 He put us through an awful lot of money challenging  
3 his summons to produce all these employees,  
4 resisting his effort to get the addresses, and now  
5 apparently he never followed through on any of that,  
6 and now he suddenly wants to.

7       It's way too late for that. The  
8 information that he was given today changes nothing  
9 in terms of how he should have handled this case,  
10 planning this case, what this case is about. He's  
11 known who these people are. He's had the  
12 opportunity to notice them, to subpoena them. If he  
13 hasn't done so, that's his own fault. But now  
14 knowing what days these employees worked doesn't  
15 change anything in terms of what he should have done  
16 or what he needed to do to have these witnesses  
17 here.

18       And, again, the Speedway witnesses, the  
19 people still employed by Speedway, are all here  
20 ready to testify if he wants them to. There's  
21 absolutely no prejudice caused by the fact that this  
22 document, which was inadvertently not produced  
23 because it wasn't kept in the same place as all the  
24 other records relating to the job, was not made

1 known until yesterday.

2       The prejudice here of a continuance, to  
3 the contrary, is great. This would be the second  
4 continuance of a hearing. As you know, there are  
5 costs involved always gearing up for a hearing.  
6 Even if you're already prepared, you have to go  
7 through it to some extent to get ready. Mr. Kolko  
8 has now flown into Chicago twice for a hearing and  
9 would be required to come back yet again at a  
10 substantial expense.

11       This is absurd to continue a hearing  
12 because Mr. Trepanier needs less witnesses than he  
13 thought he needed before. This is clearly a ruse.  
14 He is not prepared to go forward, and he's just  
15 trying to buy more time. The motion should be  
16 denied.

17       MR. JEDDELOH: Mr. Knittle, it would seem to  
18 the university that everything can be accommodated  
19 here because it's not likely that the entire case is  
20 going to be completed in the next day and a half,  
21 and so Mr. Trepanier would be able to do what he  
22 wants to do for a continued day of the hearing.

23       I would doubt that we would be able to  
24 schedule another day of hearing before two weeks

1 anyway, so I think that the university would suggest  
2 that we proceed with the case and let Mr. Trepanier  
3 try to do what he wants to do for the next day to  
4 get ready.

5 HEARING OFFICER KNITTLE: Mr. Trepanier, do you  
6 have a reply?

7 MR. TREPANIER: Yes.

8 Regarding the contention of Speedway that  
9 it was only a week ago -- or it was a week ago that  
10 I planned to call the 15, that's just not factually  
11 correct.

12 But I think more importantly Speedway now  
13 is contending that it was a fault of mine that I got  
14 the addresses for six former employees of which only  
15 half were actually working at the time that I'm  
16 interested in, but apparently Speedway's contention  
17 is is that I should have gone ahead and spent the  
18 subpoena fees for all of these even though most of  
19 them would not have been useful witnesses to me and  
20 they had the information which showed that they  
21 weren't useful witnesses to me.

22 But more importantly, as to the timing of  
23 my receiving that letter dated March 15th which gave  
24 me the addresses of the former employees, it was on

1 April 8th of 1998, this is a letter from Speedway  
2 which is attached to a filing of March 11th,  
3 Speedway's memorandum in opposition to Complainant  
4 Trepanier motion to compel production of addresses,  
5 and in that April 8th letter, April 8th, 1998,  
6 Speedway clearly indicates that all 15 of their  
7 employees involved with this job were currently  
8 employees, and --

9 MR. BLANKENSHIP: That's not what it says.  
10 Perhaps he should read the letter into the record if  
11 he's going to characterize it because that's not  
12 what that letter says.

13 MR. TREPANIER: And I've cited the letter --

14 HEARING OFFICER KNITTLE: After he's done,  
15 we'll address it.

16 MR. TREPANIER: -- and where it is, and  
17 specifically, I would address your attention to the  
18 second to last paragraph wherein Mr. Blankenship  
19 wrote the following: It is my understanding that  
20 pursuant to the hearing officer's instruction, you  
21 will not attempt to communicate with these  
22 individuals directly, but rather, any communication  
23 will be conducted through my office, e.g., an  
24 appropriate notice of deposition.

1 Mr. Blankenship very clearly indicated  
2 that these people were employees, that he had a  
3 right to notice if I were to speak to these people,  
4 and that was as of April 8th, 1998, and that was not  
5 updated until I filed my notice asking him to  
6 actually bring these employees to the hearing room  
7 that he informed me that they were not employees.

8 He has not -- he has not said that they  
9 stopped working after April 8th, 1998. And, in  
10 fact, it's statistically unlikely that all six of  
11 these people stopped working after April 8th, 1998,  
12 because the job occurred in September of '96. So  
13 most of the time between the job and this hearing  
14 occurred past prior to Marshall writing the letter  
15 of April 8th, 1998, where he clearly indicates that  
16 all of these people were his employees, and he has  
17 not stated that they were not employees at the time  
18 that he wrote that April 8th, 1998, letter. So I  
19 think that his claiming that the -- my receiving  
20 addresses as late as I did was, in fact, because of  
21 the representations of Speedway.

22 Also, Speedway has mentioned that there's  
23 been -- that this would be the second continuance of  
24 this hearing. Well, the first continuance was at

1 the request of the Respondent.

2 MR. BLANKENSHIP: Not Speedway.

3 MR. JEDDELOH: Well, it was to accommodate  
4 scheduling to handle several matters, including some  
5 things that needed to be decided for you,  
6 Mr. Trepanier.

7 MR. TREPANIER: I haven't completed my  
8 statement, but that was -- the first continuance was  
9 granted at the request of the Respondent, and now a  
10 Complainant has asked for a continuance, and if that  
11 were the only argument, fairness would dictate that  
12 a Complainant also have a continuance.

13 References to a 201(k) conference, I can't  
14 speak to that because that is just a code word to  
15 me, and I see that it is listed on the April 8th,  
16 1998, letter, but as to what it means -- what it  
17 would mean to the board or what it means to Speedway  
18 is unclear to me.

19 And regarding the request from the  
20 University of Illinois, the University of Illinois  
21 themselves has come in and asked for a continuance  
22 in this case, and now they are suggesting that the  
23 actions of the Respondents determined the order of  
24 the Complainants' case, and that's not fair. It's

1 up to the Complainants to determine the order in the  
2 presentation of their case and not to do it at the  
3 convenience only of the Respondents, particularly  
4 when the Respondents are accomplishing that through  
5 withholding information during discovery.

6 HEARING OFFICER KNITTLE: Okay. Mr. Blankenship,  
7 do you have a response?

8 MR. BLANKENSHIP: Yes, a short response.

9 Two points: When that letter was sent  
10 last year, all it says is that these were the  
11 Speedway employees who worked on the job. Those  
12 were the Speedway employees that worked on the job.  
13 All of this discussion, I thought, had been resolved  
14 with your ruling on the motion to compel the  
15 addresses.

16 I wonder if Mr. Trepanier has tried to  
17 contact any of those former employees. I have.  
18 I've not been able to reach any of them. I don't  
19 believe they're still there, still at those  
20 addresses. I think continuing would be a futile  
21 exercise because I think these people are long gone,  
22 but I would like to hear if Mr. Trepanier has even  
23 tried to contact them let alone subpoena them.

24 He knew all the names, and he intended to

1 call them all. He gave us a notice to produce 15  
2 people, and we fought over addresses, and for him to  
3 now come and say this is suddenly new, I want to  
4 subpoena these people is ridiculous. He fully  
5 intended to call them all two weeks ago, and now  
6 knowing a particular day that they worked doesn't  
7 change anything.

8 He wants to elicit testimony as to what  
9 happened on the job site. That's what he always  
10 wanted to do. That's what he always intended to  
11 do. He should have subpoenaed them. Knowing one  
12 particular day in which most of the employees --  
13 many of the employees worked is not a reason to  
14 continue this.

15 We are going now --

16 MS. MINNICK: Can we object to that, to what  
17 he's saying?

18 HEARING OFFICER KNITTLE: Let him finish his  
19 argument.

20 MS. MINNICK: All right.

21 MR. BLANKENSHIP: We've waited two years for  
22 this hearing. We've spent a lot of time and money  
23 fighting this case, preparing for it, and this is  
24 simply not a reasonable justification. It doesn't

1 make any sense that because he has to call less  
2 witnesses we need to continue the hearing for two  
3 weeks. It makes no sense at all.

4 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,  
5 not yet. I have a couple questions.

6 What are the witnesses identified on that  
7 September 9th or what are the employees?

8 MR. TREPANIER: There are just six out of 15,  
9 so it's a small minority.

10 HEARING OFFICER KNITTLE: Well, of the six,  
11 were they on your notice list of witnesses?

12 MR. TREPANIER: Yes, they were.

13 HEARING OFFICER KNITTLE: All six of them  
14 were?

15 MR. TREPANIER: I believe so.

16 HEARING OFFICER KNITTLE: And of the six, how  
17 many are no longer -- are employed by Speedway?

18 MR. TREPANIER: Half of them.

19 HEARING OFFICER KNITTLE: Can you hand me  
20 that? I just want to make sure.

21 (Document tendered.)

22 MR. TREPANIER: This is the September 9th  
23 listing the six. This was the April 8th letter  
24 naming the 15 employees.

1 HEARING OFFICER KNITTLE: Where is the --

2 MR. TREPANIER: This is the list of the

3 nonemployees.

4 HEARING OFFICER KNITTLE: Okay. So we've

5 got --

6 MR. BLANKENSHIP: Mr. Sandoval, who was a

7 laborer, is no longer employed.

8 MR. TREPANIER: As we can see, also the foreman

9 is identified as a laborer.

10 MR. BLANKENSHIP: Mr. Guzman is no longer

11 employed. And Gustano Ortiz is no longer employed.

12 HEARING OFFICER KNITTLE: Is this other Ortiz

13 still employed?

14 MR. BLANKENSHIP: Yes.

15 MR. TREPANIER: But we won't be interested in

16 the one whose brother still works, so that's where

17 it's leaving me, too.

18 MR. BLANKENSHIP: He's got the foreman and two

19 laborers presently employed by Speedway. The other

20 three were laborers who he knew about last March

21 were no longer employed.

22 HEARING OFFICER KNITTLE: Do we know which ones

23 are no longer employed?

24 MR. BLANKENSHIP: It's not reflected there, but

1 that's who's been discussed yesterday, and the other

2 three who were no longer employed laborers, he knew

3 about that back in the early part of this year.

4 HEARING OFFICER KNITTLE: All right. First of

5 all, Mr. Trepanier, you're going to have to file

6 that as a written motion. I was incorrect. If

7 there's a motion for a continuance, we need a

8 written motion before the board and the hearing

9 officer.

10 MR. TREPANIER: I've got that pretty well

11 prepared now.

12 Also, Marshall brought up a couple of

13 questions that need specific address.

14 HEARING OFFICER KNITTLE: I'm going to give

15 Ms. --

16 MS. MINNICK: Minnick.

17 HEARING OFFICER KNITTLE: How do you spell

18 that, Ms. Minnick?

19 MS. MINNICK: M-i-n-n-i-c-k.

20 HEARING OFFICER KNITTLE: I'm sorry.

21 MS. MINNICK: No. It's a good name.

22 HEARING OFFICER KNITTLE: Ms. Minnick, do you

23 have something you wanted to add? You haven't spoke

24 to this yet.

1 MS. MINNICK: Well, yeah. Would I be able to  
2 ask questions? I'm not sure what the format here  
3 is, but I would be wondering, these -- I didn't know  
4 that these employees were no longer employed, so  
5 there were only ten employees that I think he said,  
6 that were doing this job, and six of them aren't  
7 there anymore?

8 HEARING OFFICER KNITTLE: On this specific day  
9 involved --

10 MS. MINNICK: Oh. On the specific day  
11 involved.

12 HEARING OFFICER KNITTLE: -- there were six  
13 employees, I think, involved at the site, and three  
14 of them -- no -- seven, and three of them are no  
15 longer there.

16 MR. TREPANIER: Yeah. There is six.

17 HEARING OFFICER KNITTLE: Six.

18 MS. MINNICK: Okay. And also, the objection I  
19 had was might we object that to come to the  
20 conclusion of what Lionel's intentions are to do --

21 HEARING OFFICER KNITTLE: Well, he can make  
22 arguments as to what he thinks Mr. Trepanier's  
23 intentions are.

24 MS. MINNICK: Is it our responsibility to

1 respond to those immediately or --

2 HEARING OFFICER KNITTLE: Right, but I think

3 Mr. Trepanier has put forth what his intentions are

4 and why he thinks he needs this information and why

5 he thinks he's prejudiced by not receiving it in a

6 more timely fashion.

7 MS. MINNICK: Then that's all I have to say

8 then.

9 HEARING OFFICER KNITTLE: I don't want any more

10 argument on this.

11 Continuances are governed by 103.143 of

12 the board's rules and can be granted by the hearing

13 officer whenever justice may require, which is

14 pretty vague phrased to say the least. What I see

15 here, though, is I want to -- Mr. Trepanier, before

16 I get started, did you, in fact, contact any of the

17 nonemployees?

18 MR. TREPANIER: I'm glad you asked me that

19 because that's something I wanted to respond to.

20 When I was given the disclosure of the

21 nonemployees, which was sometime, I think, in March,

22 I don't have that document right with me, but that

23 date -- these were disclosed as nonemployees without

24 addresses, and I used a computer database at the

1 public library, and I got -- and for these names, I  
2 pulled up several pages with, oh, probably near 50  
3 names per page just for several of the names. Some  
4 of the names, I couldn't put them in a document and  
5 be under the printing requirement at the library  
6 because there were so many of those names. They  
7 were just so common.

8 HEARING OFFICER KNITTLE: Okay. Did you,  
9 though, in fact, contact any of these nonemployees?

10 MR. TREPANIER: Then when I had -- well, I did  
11 it not with a phone number.

12 HEARING OFFICER KNITTLE: Did you send them a  
13 letter?

14 MR. TREPANIER: Then when I received their  
15 addresses --

16 HEARING OFFICER KNITTLE: Hold on,  
17 Mr. Trepanier.

18 MR. TREPANIER: I haven't sent a letter.

19 HEARING OFFICER KNITTLE: Have you tried to  
20 contact them by phone? You said no.

21 MR. TREPANIER: I don't have a phone number for  
22 them, no good phone numbers.

23 HEARING OFFICER KNITTLE: Okay.

24 MR. TREPANIER: But the lack of a letter is

1 merely cause of the date that I learned of their  
2 addresses.

3 HEARING OFFICER KNITTLE: Understood, but my  
4 question was just have you tried to contact them.

5 Well, I'm going to deny the motion to  
6 continue the hearing at this point. I don't think  
7 there's a lot of prejudice here, Mr. Trepanier,  
8 since you did have all the names beforehand and you  
9 did have ample opportunity to contact these people  
10 if you so desired.

11 I am going to give you leave at the end of  
12 the hearing if you want to renew your motion to  
13 continue the hearing and for leave to reopen your  
14 case and call those -- I think it's two specific  
15 witnesses -- three, excuse me, Sandoval, Guzman, and  
16 G. Ortiz. You can renew that motion at the end of  
17 the hearing and see what we say, and if I think that  
18 your case has been prejudiced by not having these  
19 people available, you know, I'll reconsider it. But  
20 as for now, your motion to continue the hearing is  
21 denied. So let's move on.

22 Mr. Trepanier, it's still your case. I  
23 have -- well, let's just move on to the tape here.  
24 I have reviewed the tape which has not been offered

1 as an exhibit yet. I'm assuming, Mr. Trepanier, you  
2 are intending to offer this as an exhibit at some  
3 point.

4 MR. TREPANIER: That's correct.

5 HEARING OFFICER KNITTLE: Why don't you -- just  
6 to keep this procedurally correct, let me mark this  
7 as Complainants' Exhibit Number 2 and assume what  
8 foundation you wanted to lay for this exhibit was  
9 laid yesterday.

10 (Complainants' Exhibit No. 2 marked  
11 for identification, 3-24-99.)

12 MR. TREPANIER: Well, I think that we had -- I  
13 had a witness on the stand, and I want to redirect  
14 him.

15 HEARING OFFICER KNITTLE: Yes, but your witness  
16 is not here, and it is now 10:00 o'clock. The trial  
17 was noticed for 9:30, and I don't see any reason to  
18 continue this for him to appear. He was aware that  
19 we were supposed to be here, and Ms. Minnick --

20 MS. MINNICK: Yes.

21 HEARING OFFICER KNITTLE: -- you stated that he  
22 was trying -- this morning he informed you he was  
23 going to be at the hearing.

24 MS. MINNICK: Yeah.

1 HEARING OFFICER KNITTLE: Mr. Trepanier, this  
2 is where we're at. I'm going to rule on the tape  
3 now.

4 MR. TREPANIER: Could I call another witness?

5 HEARING OFFICER KNITTLE: About the tape? If  
6 this is pertaining to the foundation of the tape,  
7 what witness are you planning on calling?

8 MR. TREPANIER: Myself.

9 HEARING OFFICER KNITTLE: Does it relate to the  
10 videotape?

11 MR. TREPANIER: Yes. I'm going to call myself  
12 as it relates to the videotape.

13 HEARING OFFICER KNITTLE: Okay. I'll allow  
14 that strictly as it relates to the videotape, and I  
15 will caution you to keep it brief.

16 Do you want to swear in Mr. Trepanier for  
17 me, please?

18 MR. JEDDELOH: I think he was sworn.

19 HEARING OFFICER KNITTLE: I would like to  
20 reswear them each day. I know we're kind of  
21 continuing on the hearing. With the exception of  
22 Mr. Joseph, I don't think that would bother  
23 anybody.

24 Mr. Trepanier, could you raise your right

1 hand? Could you swear in the witness, please?

2 (The witness was duly sworn.)

3 HEARING OFFICER KNITTLE: All right.

4 Mr. Trepanier.

5 LIONEL TREPANIER,

6 called as a witness herein, having been first duly

7 sworn, was examined upon oral interrogatories, and

8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TREPANIER:

11 Q All right. I have the -- what has been

12 marked as Complainants' Exhibit 2, the 1261 evidence

13 tape, and this is a videotape I want to introduce

14 because it shows -- it has several very relevant

15 pieces of information on it --

16 MR. JEDDELOH: Well, I'm going to object to him

17 testifying about what the tape shows. We're in now

18 the voir dire on the foundation as it were. I think

19 he can testify if he has any relevant knowledge

20 about how it was prepared and the circumstances

21 behind that, but at this point for him to try to

22 read into the record his views about what the tape

23 shows is highly prejudicial. If the tape is

24 admitted into evidence, it will speak for itself?

1 MR. BLANKENSHIP: Same objection. If he wants  
2 to argue relevance, that's argument, not testimony.

3 HEARING OFFICER KNITTLE: Okay. I'm going to  
4 overrule the objections and give him a little leeway  
5 but just a little bit of leeway here, Mr. Trepanier,  
6 in light of the fact that we had a fair amount of  
7 discussion yesterday about what was on the tape and  
8 what was said on the tape.

9 MR. TREPANIER: Okay.

10 BY MR. TREPANIER:

11 Q The tape shows what yesterday was claimed  
12 to be for the first time that they had pollution  
13 control boards during this demolition. All during  
14 discovery there was no disclosure that they used  
15 boards. After numerous questions, always it was  
16 only water. Yesterday they said boards.

17 Now, the tape shows this -- what I believe  
18 what they're claiming to be a pollution control  
19 device, so that's an important piece that's on this  
20 table.

21 This tape also shows a bobcat up inside of  
22 a building, and the pictures around that bobcat, I  
23 think, call into question -- potentially call into  
24 question yesterday's testimony that the wrecking

1 that was going on in the building was hand  
2 wrecking.

3 Also, this tape shows activity on  
4 September 9th, '96, of dust and demolition debris  
5 being dumped uncontrolled out the rear of the  
6 building, and I saw that tape being made.

7 HEARING OFFICER KNITTLE: Okay. I'm going to  
8 interrupt -- excuse me, Mr. Trepanier. Oh. Go  
9 ahead.

10 BY MR. TREPANIER:

11 Q I saw that tape being made on the 9th of  
12 September, and I know that this accurately depicts  
13 in time lapse fashion what was occurring at that  
14 site and on that date, and I saw the tape be dumped  
15 and that was and -- and nothing was left out that  
16 would have -- that was in a way -- more relevant  
17 than what's on the tape.

18 I think we might find the tape may have  
19 material that some would find objectionable, but yet  
20 at the same time, they argue for more objectionable  
21 material to be given to them, so I think this tape  
22 is going to be very probative and important for the  
23 board to see.

24 HEARING OFFICER KNITTLE: Okay. I'll give you

1 an opportunity to respond to Mr. Trepanier.

2 MR. BLANKENSHIP: I just have one redirect

3 question -- a couple.

4 CROSS EXAMINATION

5 BY MR. BLANKENSHIP:

6 Q Mr. Trepanier, you were only actually

7 observing the demolition on September 9th for one

8 hour, right?

9 A I was -- I was present there on

10 September 9th, and I saw --

11 Q For about one hour, right?

12 A At this time, I'm not recalling if it was

13 one hour.

14 Q Well, did you recall when I asked you that

15 question at your deposition?

16 MR. TREPANIER: I would object to his using the

17 deposition as it doesn't meet the board's rules that

18 a deposition be signed. It's a very specific rule

19 that if a deposition is going to be used at a

20 hearing, it has to be signed by the person.

21 MR. BLANKENSHIP: I'm not seeking to introduce

22 the deposition. I'm going to impeach his

23 testimony.

24 HEARING OFFICER KNITTLE: I'm going to allow

1 him to continue, Mr. Trepanier.

2 BY MR. BLANKENSHIP:

3 Q Mr. Trepanier, you gave a deposition in  
4 this case, did you not?

5 A Yes, I did.

6 Q There were two sessions of that, one on  
7 September 16th and one on April 10th; is that right?

8 A I don't recall the dates specific.

9 Q Okay. And you were under oath at that  
10 deposition?

11 A Yes.

12 Q And it was your endeavor at that  
13 deposition to give truthful testimony?

14 A That's correct.

15 Q Okay. Did you give this answer to this  
16 question at your deposition, it's on page 225: How  
17 long were you observing on the 9th? Answer, it was  
18 pretty short, an hour.

19 Did you give that answer to that question?

20 A If you could show me the deposition, I  
21 could see if I did.

22 (Brief pause.)

23 HEARING OFFICER KNITTLE: Mr. Trepanier?

24

1 BY MR. TREPANIER:

2 A Yeah. I see that question and that answer  
3 reflected there.

4 BY MR. BLANKENSHIP:

5 Q And did you give that answer to that  
6 question at the deposition?

7 A I don't know how to handle when you're  
8 asking me this right now. I can see that it's  
9 there. I don't have an independent memory of giving  
10 that answer.

11 Q Are you contending that the court reporter  
12 was inaccurate?

13 A No. That's not my contention.

14 Q You were given an opportunity to review  
15 this transcript, were you not?

16 A Not a fair opportunity.

17 Q You were told by the court reporter that  
18 you could come and look at the transcript and that  
19 you should review it for errors and make corrections  
20 to it, were you not?

21 A At her convenience.

22 Q Yes. And you didn't do that, did you?

23 A I tried to look at it, and I had only a  
24 short period of time to look at it, and it was about

1 400 pages.

2 Q Having been shown your deposition  
3 testimony that you were only there for about an hour  
4 on the 9th, is it still your contention that you  
5 were there the whole day?

6 A I don't think I did contend even here  
7 today that I was there the whole day.

8 Q Well, the time lapse was of the whole day,  
9 was it not?

10 A I believe that it is.

11 Q And you contended that the time lapse  
12 accurately reflected what you saw on the demolition  
13 on the 9th, did you not?

14 A Yeah, and that's correct.

15 Q And you only saw an hour of the demolition,  
16 so you don't know whether that whole tape actually  
17 reflects what happened or not, do you?

18 A Well, the -- I didn't testify that I saw  
19 everything in that tape. There's multiple days on  
20 that tape.

21 HEARING OFFICER KNITTLE: Mr. Trepanier, try to  
22 answer the question as put to you, please.

23 BY MR. BLANKENSHIP:

24 Q You can't speak to whether that tape

1 accurately reflects the demolition activities for  
2 the entire time period that is on that tape, right?

3 A That's correct.

4 Q You can only testify as to the hour that  
5 you were there?

6 A Is that a question?

7 Q Yes, that's a question.

8 Correct?

9 HEARING OFFICER KNITTLE: That is a question.

10 BY MR. TREPANIER:

11 A Well, I think that you're asking for a  
12 conclusion of law. What I can testify to --

13 BY MR. BLANKENSHIP:

14 Q Well, you're only able to --

15 A I'm not the hearing officer.

16 Q You're only able to offer an opinion as to  
17 the accuracy of that tape for the one hour that you  
18 were actually on the job site, correct?

19 A I can understand that, yes.

20 Q Will you agree with that?

21 A Yes.

22 Q Thank you.

23 HEARING OFFICER KNITTLE: Okay.

24 MR. BLANKENSHIP: I don't think I need to

1 repeat all the arguments that we made.

2 HEARING OFFICER KNITTLE: Did you want to say  
3 anything, Mr. Jeddeloh?

4 MR. JEDDELOH: I think the record, Mr. Knittle,  
5 is very complete at this point on that tape.

6 HEARING OFFICER KNITTLE: Okay. I'm -- here's  
7 what I am going to do with the tape. I reviewed the  
8 tape last night, and of the -- and I don't know how  
9 long it was. I didn't time it. Most of the tape is  
10 not relevant and is inadmissible, and I'm not going  
11 to allow it.

12 What I am going to allow is -- the time  
13 lapse photography that took place on September 9th,  
14 1999, I'm going to allow that to be entered into the  
15 record, and we're going to show that if they want to  
16 show that particular portion of it, but the rest of  
17 the tape -- any other part that is not September  
18 9th, 1999, and is not part and parcel of the time  
19 lapse photography is not being admitted into  
20 evidence.

21 MR. BLANKENSHIP: I would request then that if  
22 they actually submit a physical tape to the record  
23 that it be an edited version that doesn't contain  
24 those portions.

1 HEARING OFFICER KNITTLE: Right, and I  
2 understand your request. I don't know if that's  
3 going to be possible, and I'm not going to require  
4 that to be possible. The board, often times,  
5 receives things that they don't consider and is more  
6 than capable of not considering things directed not  
7 to consider.

8 (Whereupon, Mr. Joseph entered the  
9 hearing room.)

10 HEARING OFFICER KNITTLE: So if that's not  
11 possible, you don't have to do that, but if you do  
12 have the opportunity to do that, I would appreciate  
13 that.

14 Is it your intention now to enter the  
15 exhibit into the record?

16 MR. JEDDELOH: One question, if I could,  
17 please.

18 HEARING OFFICER KNITTLE: The decision on the  
19 tape has been made, but yes.

20 MR. JEDDELOH: In terms of your decision,  
21 Mr. Knittle, would that exclude the commentary that  
22 runs through the tape?

23 HEARING OFFICER KNITTLE: Well, all the  
24 commentary not part of the September 9th, 1999, time

1 lapse photography is excluded as is the rest of it.

2 Now, I don't recall more than a couple

3 words of commentary during the time lapse

4 photography segment of September 9th. Are you

5 suggesting that that should be excluded as well?

6 MR. JEDDELOH: I'm suggesting that all

7 commentary be excluded because clearly by that time

8 it was advocacy, not the collection of evidence, and

9 I don't see any reason in the world why they can't

10 submit a tape which is free and clear of all of this

11 pejorative commentary.

12 MR. TREPANIER: I would like to respond to what

13 he's saying.

14 HEARING OFFICER KNITTLE: I'm making the ruling

15 now.

16 MR. TREPANIER: Without argument?

17 HEARING OFFICER KNITTLE: We've had a lot of

18 argument on this, Mr. Trepanier.

19 MR. TREPANIER: But not about the audio clip

20 during the dumping. I believe that the audio clip

21 during the dumping is useful --

22 HEARING OFFICER KNITTLE: I will give you a

23 45-second response time here.

24 MR. TREPANIER: -- in that you can actually

1 hear the sounds of the material being dumped off the  
2 building. You can hear the sounds of the wind. And  
3 as you notice, there isn't, as the attorney says,  
4 pejorative statements on that tape. So there's good  
5 evidence value, and there is not a prejudicial  
6 element.

7 HEARING OFFICER KNITTLE: I disagree. I'm  
8 going to grant Mr. Jeddelloh's amendment to my  
9 ruling, if that's the correct terminology.

10 The tape will be admitted as I previously  
11 set forth with the exception that none of the audio  
12 will be admitted into evidence, and I'll direct the  
13 board to take the appropriate precautions of making  
14 sure the volume is turned down when they view the  
15 tape.

16 MR. TREPANIER: Can I ask a question of the  
17 hearing officer?

18 HEARING OFFICER KNITTLE: Yes, sir.

19 MR. TREPANIER: You didn't, in your ruling,  
20 respond to the issues that I raised regarding that  
21 this video depicts what Speedway yesterday for the  
22 first time in this case claimed as a pollution  
23 control device, which was--

24 HEARING OFFICER KNITTLE: I don't think --

1 MR. BLANKENSHIP: Let me object. Speedway did  
2 not claim it had a pollution control device. It  
3 came up as a different matter that also had a  
4 secondary effect of controlling some dust, but it  
5 was never claimed to be a pollution control device.

6 HEARING OFFICER KNITTLE: Mr. Trepanier, I  
7 don't think appropriate foundation has been laid for  
8 that part of the tape, and in addition, there's no  
9 time and no date on that part of the tape. I'm not  
10 sure of the propriety of the tape itself at that  
11 particular juncture, and for all those reasons I did  
12 consider that, and I'm still denying the admission  
13 of that part of the tape. Okay?

14 MR. TREPANIER: Well, the --

15 HEARING OFFICER KNITTLE: This is beyond --  
16 this is beyond argument at this point. I've made  
17 the decision, and this is what's going to be entered  
18 into the record.

19 MS. MINNICK: May I ask a question, though,  
20 anyway?

21 HEARING OFFICER KNITTLE: Yes. You can ask a  
22 question.

23 MS. MINNICK: Is noise considered pollution?

24 HEARING OFFICER KNITTLE: Yes. Noise is

1 definitely considered pollution, but that's not an  
2 allegation of this complaint and is not involved in  
3 this particular matter.

4 MS. MINNICK: I see. Thank you.

5 HEARING OFFICER KNITTLE: Not all noise, by the  
6 way.

7 So, Mr. Trepanier, if you want to show  
8 that portion of the tape which was admitted, we have  
9 a facility TV and a VCR that I brought in for you.  
10 I'm accepting that tape into evidence then. Why  
11 don't you officially offer it into evidence?

12 MR. TREPANIER: I move the tape into evidence,  
13 Exhibit Number 2.

14 HEARING OFFICER KNITTLE: I'm going to accept  
15 Complainants' Exhibit Number 2, which is a video  
16 taped entitled Aunt Jemima buttermilk biscuits and  
17 Max demo evidence tape. With the exceptions as I've  
18 outlined on the record, this tape is accepted into  
19 evidence.

20 (Complainants' Exhibit No. 2 admitted  
21 into evidence.)

22 MR. JEDDELOH: Could we just have the record  
23 reflect that it's over the objections of the  
24 Respondents?

1 HEARING OFFICER KNITTLE: I will note your  
2 objections, and they are -- were made fully on the  
3 record both yesterday and today.

4 MR. BLANKENSHIP: Thank you.

5 HEARING OFFICER KNITTLE: Can I have a second,  
6 please? Let's take a five-minute recess.

7 (Whereupon, a recess was taken.)

8 HEARING OFFICER KNITTLE: Let's go on record.

9 We're back on record, and we're having a  
10 bit of a discussion off the record. I think it's  
11 better had on the record concerning the use of the  
12 videotape that Mr. Joseph, one of the Complainants,  
13 is attempting to videotape these proceeding.

14 First of all, I think Mr. Jeddeloh had  
15 some objections to this that he wanted to make.

16 MR. JEDDELOH: Right.

17 Right now, the videotape is set up so that  
18 it pans not on Mr. Joseph in taking his testimony  
19 but on a wider scope of activity and not really on  
20 anything -- any testimony that he might give, and it  
21 would seem to me from the appearance of the angle  
22 that it would be in a position to allow them to  
23 record the hearing officer in performing his  
24 function in taking his notes, and I just think it's

1 inappropriate. I think it's well within the power  
2 of the hearing officer in maintaining decorum in  
3 this proceeding to direct them not to do this. This  
4 is obviously a side show. They're trying to turn  
5 this more into a circus than it already is. I just  
6 think it's totally inappropriate.

7 HEARING OFFICER KNITTLE: Okay. Mr. Joseph,  
8 why are you wanting to tape this and why is the  
9 video camera in a different place than it was  
10 yesterday?

11 MR. JOSEPH: Okay. First of all, it is a  
12 different angle, and it is a wide angle of the  
13 entire proceeding. This is not a circus. There's  
14 no panning involved. It is just a straight, wide  
15 angle shot to capture the proceedings.

16 HEARING OFFICER KNITTLE: Could we do that from  
17 another angle?

18 MR. JOSEPH: Sure. I could take another  
19 angle.

20 HEARING OFFICER KNITTLE: Could we do that from  
21 back in that corner there? That might alleviate  
22 some of the Mr. Jeddloh's --

23 MR. JOSEPH: I'm trying to get the monitor in  
24 there so that I have -- with what we're discussing.

1 Believe me, you're not going to be able to read your  
2 notes on an eight-millimeter tape.

3 HEARING OFFICER KNITTLE: Let's leave this as  
4 it is now until the tape is no longer running. Then  
5 I'm going to request that you move it back to where  
6 it was before. How about that?

7 MR. JOSEPH: All right. Fine. There's not  
8 enough detail on an eight-millimeter tape to read  
9 your notes if that's what your concern is.

10 MR. JEDDELOH: Well, I don't need to take that  
11 risk. This is just totally inappropriate.

12 HEARING OFFICER KNITTLE: Right, and I  
13 understand, and I'm relying on --

14 MR. JOSEPH: Excuse me --

15 HEARING OFFICER: Excuse me, Mr. Joseph. Give  
16 me a second here.

17 I'm relying on section 101.221 of hearing  
18 decorum which allows for the taping of the  
19 proceedings by tape, film, or other means. If the  
20 hearing officer determines that the recording is  
21 disruptive or detrimental to the record, I can limit  
22 or prohibit that, and I'm going to have it moved  
23 back to where it was before after the showing of the  
24 tape. But I think he's within his rights to tape

1 himself talking about the videotape that's being  
2 showed, so let's get on with that then.

3       Also, I was just given a memo from our  
4 clerk upstairs relating to a motion to quash that  
5 was sent by the Illinois Environmental Protection  
6 Agency. Apparently, Mr. Trepanier had subpoenaed  
7 one of their witnesses, and that witness in specific  
8 is -- well, this is all goofed up here. That  
9 witness in specific is Ed Bakowski, E-d,  
10 B-a-k-o-w-s-k-i.

11       I'm going to grant the motion to quash in  
12 light of the fact that certified records from the  
13 EPA apparently have been sent up, and I think those  
14 records will prove sufficient. So the motion to  
15 quash is going to be granted, and we will admit the  
16 records subject, of course, to any objections and  
17 arguments that you guys have.

18   MR. BLANKENSHIP: But this is --

19   HEARING OFFICER KNITTLE: I understand. This  
20 is merely -- he wants an answer to his motion to  
21 quash, and I don't blame him. He has to get his  
22 witness up here, if, in fact, he's needed to support  
23 and lay foundation for these records. I'm going to  
24 grant the motion to quash.

1 Mr. Trepanier, if we have trouble with the  
2 certified public records and it proves necessary to  
3 have this witness up here to do that, you can  
4 revisit that at that time.

5 MR. TREPANIER: Thank you.

6 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,  
7 it is your case.

8 MR. JEDDELOH: I believe that Mr. Joseph --

9 HEARING OFFICER KNITTLE: Mr. Joseph is on the  
10 stand. We're going to have him testify.

11 Mr. Joseph?

12 MR. JOSEPH: Yes.

13 HEARING OFFICER KNITTLE: Mr. Joseph?

14 MR. JOSEPH: Well, first of all, I'm going to  
15 set this up.

16 HEARING OFFICER KNITTLE: I'm going to make you  
17 make another affirmation here.

18 MR. JOSEPH: Okay. Do you want me to get this  
19 ready or what?

20 HEARING OFFICER KNITTLE: I want you to sit  
21 down until we do this.

22 I've done some research, and there's an  
23 alternative to the oath that you can take. Do you  
24 solemnly, sincerely, and truly declare and affirm to

1 tell the whole truth and nothing but the truth?

2 MR. JOSEPH: Okay. It's my understanding that

3 the word affirm is just like swearing, and it's

4 against my will to take an oath. It's against my

5 will to swear. It's kind of like -- the way I

6 interpret, it's kind of like playing God and --

7 HEARING OFFICER KNITTLE: So you will not

8 solemnly, sincerely, and truly declare and affirm?

9 MR. JOSEPH: I will solemn --

10 HEARING OFFICER KNITTLE: Are you going to use

11 the words that I have read to you? And this is your

12 decision, mind you.

13 So you're saying that you will not

14 solemnly, sincerely, and truly declare and affirm?

15 MR. JOSEPH: Well, I'm not sure what you mean

16 by affirm. That's like --

17 HEARING OFFICER KNITTLE: Mr. Joseph, I'm just

18 reading the language that I found in the state of

19 Illinois statute, and I'm asking you for the record

20 whether or not you will say those words.

21 MR. JOSEPH: I think that if --

22 HEARING OFFICER KNITTLE: And I'm asking for a

23 yes or no answer. I'll give you a chance to explain

24 after you answer yes or no.

1 MR. JOSEPH: No.

2 HEARING OFFICER KNITTLE: Okay. Now, why not?

3 MR. JOSEPH: Because I believe that to affirm

4 in my interpretation is being absolute, and in the

5 scripture it says that for all men are liars like

6 God be true but your yea be yea and your nay be nay,

7 and that's how I feel, and I want to be sincere.

8 And I think it's important that people start

9 thinking about what they're saying and the rituals

10 they're going through, and I hope you don't take

11 that personally.

12 HEARING OFFICER KNITTLE: Not at all, sir. I

13 just want you to be aware of the risk that's

14 involved here if the Pollution Control Board decides

15 that your testimony is not sufficiently trustworthy

16 because you are required under the board rules to be

17 sworn in as a witness, and then if that is not a

18 possibility, you're required under the Illinois

19 state statute to say the words that I've read to

20 you. Then your testimony may not be considered by

21 the board. I don't know.

22 MR. JEDDELOH: Let me join the issue on behalf

23 of the university in moving to strike everything

24 that Mr. Joseph has already said.

1 HEARING OFFICER KNITTLE: Well, there's already  
2 a continuing objection that you guys made yesterday  
3 to all his testimony.

4 MR. BLANKENSHIP: And I'll join that motion and  
5 say it also applies to the video since he's the  
6 foundation for the video. So if his testimony  
7 falls, I think, at least to this point, the video  
8 falls as well.

9 HEARING OFFICER KNITTLE: Well, and I think  
10 Mr. Trepanier laid some testimony as well, and I  
11 would admit it under Mr. Trepanier's foundation as  
12 well.

13 However, Mr. Joseph, that is a risk, and  
14 the board may not agree with me, and the board is  
15 definitely capable of striking both your testimony  
16 and the videotape in light of the fact that you  
17 won't take an oath. I respect your decision, but  
18 let's move on.

19 Can you give the same oath that you  
20 gave -- excuse me -- the same guarantee that you  
21 gave yesterday that you will tell the truth.

22 MR. JOSEPH: I will testify to the best of my  
23 knowledge as my memory serves me.

24 HEARING OFFICER KNITTLE: Under penalty of

1 perjury?

2 MR. JOSEPH: Under penalty of perjury and to be  
3 as truthful as I can within my capacity.

4 HEARING OFFICER KNITTLE: Okay. I'm going to  
5 allow your testimony understanding, of course, that  
6 you have continuing objections against your  
7 testimony.

8 Okay. Let's proceed.

9 MR. JOSEPH: And I just -- I want to add  
10 something to that.

11 HEARING OFFICER KNITTLE: Is this relating to  
12 the tape?

13 MR. JOSEPH: Well, it's kind of relating to the  
14 tape. Maybe it could wait then. It kind of ties  
15 together with all this because I said some things  
16 about the tape, and if I would have affirmed or  
17 swore --

18 HEARING OFFICER KNITTLE: Well, this issue has  
19 been decided. I understand. Let's move on. We  
20 have a lot of things to go through here, and I want  
21 to get moving as quick as we possibly can.

22 So, Mr. Joseph, you are still on the  
23 stand --

24 MR. JOSEPH: Okay.

1 HEARING OFFICER KNITTLE: -- as your own  
2 witness, and Mr. Trepanier's, but why don't we let  
3 Mr. Trepanier run this right now?

4 MR. TREPANIER: Thank you.

5 HEARING OFFICER KNITTLE: He's your witness,  
6 Mr. Trepanier.

7 MR. JOSEPH: Can maybe I ask a little question,  
8 too? If I was being cross examined or something and  
9 I wanted to object myself, could you give me some  
10 guidelines on that, asking myself questions, those  
11 two issues here? I'm a little concerned.

12 HEARING OFFICER KNITTLE: Well, as your own  
13 attorney, things get a little dicey at times, and  
14 you can object, but I'm going to want you to then  
15 answer the question, if, in fact, I overrule any  
16 objection you make.

17 MR. JOSEPH: That's fine. If something gets  
18 far afield, I might want to, you know...

19 Well, let's try this. All right. In that  
20 case, I'm going to -- I'll call myself as a  
21 witness.

22 MR. JEDDELOH: I'm sorry. I believe that the  
23 current status of the record is that Mr. Trepanier  
24 has called him as a witness.

1 HEARING OFFICER KNITTLE: Right. I think  
2 you're Mr. Trepanier's witness at the moment. Do  
3 you not want to be Mr. Trepanier's witness?

4 MR. JEDDELOH: I think it's more a question of  
5 what --

6 HEARING OFFICER KNITTLE: Well, we're giving  
7 them some leeway here to try to get this done.

8 MR. JEDDELOH: Sorry.

9 MR. JOSEPH: Can we both call myself so that I  
10 can --

11 HEARING OFFICER KNITTLE: Well, you're the  
12 witness.

13 MR. JOSEPH: We're trying to solve a problem.  
14 We're not -- we would like the university to obey  
15 the laws, and they have been graced with --

16 HEARING OFFICER KNITTLE: Hold it.

17 MR. JOSEPH: As my own attorney, I'm saying  
18 that they've been graced with --

19 MR. JEDDELOH: I'm going to object to him  
20 providing pejorative arguments as part of his  
21 testimony.

22 MR. JOSEPH: Well, I'm counsel for myself at  
23 this point now.

24 MR. JEDDELOH: But this is not the time for

1 argumentation.

2 MR. JOSEPH: I'm asking what's your objection

3 because --

4 HEARING OFFICER KNITTLE: Right, but I don't

5 want anyone -- hold it. I don't want anyone to talk

6 for a minute here.

7 I want you to -- I want you to go up to

8 the VCR. We're going to show the VCR. I want to

9 start getting into that. I don't want to be too

10 long on this particular issue.

11 Mr. Trepanier can ask you questions while

12 you're up at the VCR, and if you feel the need to,

13 you can testify on your own.

14 MR. JOSEPH: Okay. There's a lot of things I

15 would like to say, and I don't want to be disruptive,

16 but I really want to get them in because --

17 HEARING OFFICER KNITTLE: You'll have that

18 opportunity.

19 MR. JOSEPH: All right.

20 MR. TREPANIER: Do I understand you want to

21 testify while you're showing the video?

22 MR. JOSEPH: Well, I think that would probably

23 be a good idea to get the full effect.

24 HEARING OFFICER KNITTLE: We're just going to

1 show the video. You can testify about it afterwards,  
2 if you'd like.

3 MR. JOSEPH: Okay.

4 HEARING OFFICER KNITTLE: So why don't we show  
5 the video now?

6 MR. BLANKENSHIP: I'm not sure if Mr. Joseph  
7 was here when you made your ruling as to what parts  
8 were inadmissible.

9 HEARING OFFICER KNITTLE: Mr. Joseph, do you  
10 understand what we can show?

11 MR. JOSEPH: Okay. Let me, first of all, say  
12 that I apologize for being late here this morning.

13 HEARING OFFICER KNITTLE: No. That's okay.  
14 Don't worry about it.

15 MR. JOSEPH: I want to clarify on the record  
16 that I was supposed to get a ride. Then I had to  
17 take a bus. I got here. I came up here. I had the  
18 wrong room, and there was a bunch stuff, and they  
19 had the elevator locked down.

20 HEARING OFFICER KNITTLE: Understood.

21 Let's show the video. Mr. Trepanier, make  
22 sure that he only shows that part of the video that  
23 we have allowed and make sure there's no sound on.  
24 And we only want September 9th, if you recall.

1 MR. BLANKENSHIP: While they're doing that, we  
2 still have not been told what witnesses he's going  
3 to want from us or the university.

4 MR. TREPANIER: I'm ready to address that.

5 HEARING OFFICER KNITTLE: All right. Let's go  
6 off the record.

7 (Whereupon, a discussion was held off  
8 the record.)

9 HEARING OFFICER KNITTLE: Let's go back on the  
10 record. We're back on the record.

11 We are now set to view the tape, that part  
12 of the tape that's been admitted into evidence,  
13 which is the time lapse photography of the  
14 demolition that occurred on September 9th, 1999,  
15 with no audio.

16 Mr. Joseph, can you start the tape,  
17 please?

18 MR. JOSEPH: Sure.

19 (Whereupon, a videotape was presented  
20 to the attendees of the hearing, and  
21 no proceedings were had during  
22 presentation.)

23 MR. JOSEPH: I'm not allowed to ask questions  
24 during the video?

1 HEARING OFFICER KNITTLE: We're going to -- do  
2 you have an objection if they talk during the  
3 videotape showing?

4 MR. JEDDELOH: I would object. I would like to  
5 see this again.

6 HEARING OFFICER KNITTLE: Okay. Let's wait  
7 until afterwards. Then you can testify about it.

8 (Whereupon, a videotape was presented  
9 to the attendees of the hearing, and  
10 no proceedings were had during  
11 presentation.)

12 HEARING OFFICER: This is time lapse photography,  
13 and this part of the tape is not being admitted, so,  
14 Mr. Joseph, could you please turn off the tape?

15 MR. JOSEPH: Sure.

16 MR. TREPANIER: You haven't said on your order  
17 why this shouldn't be admitted. We see a front  
18 louder pushing stuff up to the windows.

19 MR. JEDDELOH: Well, first of all, I'm going to  
20 object. I ask that that statement by Mr. Trepanier  
21 being stricken from the record. He is now  
22 testifying about a piece of evidence that was  
23 specifically excluded from the hearing.

24 HEARING OFFICER KNITTLE: That objection is

1 sustained. I've already ruled on this,

2 Mr. Trepanier. I don't think that a sufficient

3 foundation was laid, I don't think it's relevant,

4 and I don't think it's a clear and accurate

5 depiction of the scene at that point in time.

6 MR. TREPANIER: And as to that evidence, when I

7 prepare a foundation, can I bring it back to you?

8 HEARING OFFICER KNITTLE: I don't think there --

9 I'm not going to revisit this issue on the tape.

10 You always have the opportunity to file a motion

11 appealing my decision with the Illinois Pollution

12 Control Board, and if the tape is -- if you feel

13 strongly about that, I urge you to go ahead and do

14 that.

15 Okay. Mr. Joseph, you are on the stand.

16 MR. JEDDELOH: Well, two things. Could we move

17 that machine back into the corner where you

18 directed?

19 HEARING OFFICER KNITTLE: Yes, sir. Let's go

20 off the record while we move the videotape machine

21 back to its previous position.

22 (Whereupon, a discussion was held off

23 the record.)

24 HEARING OFFICER KNITTLE: We are back on the

1 record.

2 The videotape has been moved to its

3 previous location.

4 MR. JEDDELOH: Mr. Knittle, I thought that you

5 had instructed them to put it in the corner focusing

6 it on them as opposed to focusing it on the

7 Respondents.

8 HEARING OFFICER KNITTLE: I didn't realize I

9 made that clear. What's your objection to that,

10 Mr. Joseph?

11 MR. JOSEPH: Well, I have a right to tape the

12 proceeding. I'm not -- if you're testifying and you

13 refuse, then I can understand the ruling, but I'm

14 not refusing to testify, and I'm on the stand here --

15 MR. JEDDELOH: I think the hearing officer --

16 I'm sorry.

17 MR. JOSEPH: -- and this is how I take notes,

18 so...

19 MR. JEDDELOH: I think the hearing officer has

20 the ability to control the proceedings, and I

21 believe also that it would be appropriate that any

22 tape-recording would be focused on the Complainants

23 and not the Respondents.

24 HEARING OFFICER KNITTLE: Mr. Blankenship, do

1 you have a preference?

2 MR. BLANKENSHIP: Yes. My preference is that I  
3 not be videotaped. I think if -- I don't want our  
4 appearances to be used in whatever propaganda he's  
5 putting together with these videotapes.

6 I think in the interest of decorum if he  
7 wants to videotape his side for his documentaries,  
8 he's welcome to do that, but I think it's an  
9 invasion of our privacy to focus solely on us as  
10 opposed to on the hearing in its entirety.

11 MR. JOSEPH: Well, I would --

12 MR. TREPANIER: I'm going to add to that I  
13 think that the rule is clear, you know, that if --  
14 as long as it's not disrupting the proceeding -- and  
15 I don't think that the Respondents by causing a  
16 disruption should be able to benefit from the  
17 disruption they cause by discontinuing the recording  
18 of the proceeding, and I would just point out for  
19 our information that if the camera were in the other  
20 corner, it would be subject to the door being opened  
21 on it.

22 HEARING OFFICER KNITTLE: Is there a way we  
23 could put the camera right in the middle so it's not  
24 focused on the Respondents --

1 MR. JOSEPH: Well, I --

2 HEARING OFFICER KNITTLE: -- because right now,

3 Mr. Joseph, you're not being videotaped at all.

4 MR. JOSEPH: I am. It's a wide angle. It's

5 everybody.

6 HEARING OFFICER KNITTLE: Well, the back of

7 your head, though, and you are the witness who is

8 testifying.

9 MR. JOSEPH: Well, I'm basically taping the

10 whole proceeding there.

11 HEARING OFFICER KNITTLE: Well, what I'm saying

12 is I don't think you are. I think you're taping the

13 Respondents here.

14 MR. JOSEPH: Well, I mean --

15 HEARING OFFICER KNITTLE: Did you answer my

16 question? Could you put it right there?

17 MR. JOSEPH: I could.

18 HEARING OFFICER KNITTLE: Would that catch

19 sight of all the proceedings?

20 MR. JOSEPH: Well, all right. Let me check

21 that. But for him to say that it's an invasion of

22 his privacy in a public hearing is a little bit out

23 of line. I thought that he was sharper than that.

24 HEARING OFFICER KNITTLE: Well, that's the

1 objection he's making.

2 MR. JOSEPH: There is no privacy in a public  
3 hearing, is there?

4 HEARING OFFICER KNITTLE: Well, he's not  
5 making -- he may be arguing that it's an invasion of  
6 his privacy. That's not the argument that I'm going  
7 with here. I'm deciding that this is becoming  
8 disruptive or detrimental to the hearing, and if it  
9 can be placed in the middle and on the whole  
10 proceeding instead of just the Respondents, I think  
11 that's a fair compromise.

12 MR. JOSEPH: It actually was on us, too.

13 HEARING OFFICER KNITTLE: Try it in the middle  
14 there, Mr. Joseph.

15 MR. BLANKENSHIP: Could I maybe request that  
16 the hearing officer instruct all the parties to  
17 simply either to -- to abide by your wishes. We've  
18 spent half an hour going over this videotape thing  
19 with a lot of discourse going back and forth that I  
20 think was totally unnecessary, and we're not -- we  
21 haven't had any testimony. We're two and a half  
22 hours into today.

23 HEARING OFFICER KNITTLE: I agree. Things are  
24 dragging along here.

1 MR. TREPANIER: Though I did testify today.

2 MR. BLANKENSHIP: Okay. Five minutes of  
3 testimony.

4 HEARING OFFICER KNITTLE: We had some testimony  
5 on the tape, and I'm not going to make a decision or  
6 a comment on whether or not they have been listening  
7 to my rulings, but I would advise all parties to  
8 listen to everything, all the rulings I make, and  
9 you are under obligations to follow the hearing  
10 officer decisions.

11 MR. JEDDELOH: Are we on the record?

12 HEARING OFFICER KNITTLE: We are still on the  
13 record.

14 MR. JEDDELOH: As long as we're on the record,  
15 let me just make one statement. I don't think I  
16 need to ask for a ruling on this, but obviously, I  
17 have a continuing objection to substantive testimony  
18 being offered by any individual except Mr. Trepanier  
19 in this case. That's of record, and it's been ruled  
20 on by the board, but I just want to be sure that out  
21 of an excess of caution that it is clearly of  
22 record.

23 HEARING OFFICER KNITTLE: That is noted.

24 Are we ready to proceed, Mr. Joseph?

1 MR. JOSEPH: Yes.

2 MR. JEDDELOH: Mr. Knittle, may I be permitted

3 to go and check the focus of his camera by looking

4 into lens?

5 HEARING OFFICER KNITTLE: Definitely. You are

6 allowed to do that.

7 Mr. Joseph, you don't have a problem with

8 that?

9 MR. JOSEPH: Well, I really don't want him

10 touching my camera.

11 HEARING OFFICER KNITTLE: Well, I don't think

12 he's going to touch it, but he should be allowed to

13 make sure.

14 Is that sufficient?

15 MR. JEDDELOH: Off the record, it looks like

16 the last supper.

17 HEARING OFFICER KNITTLE: Okay. Let's

18 proceed. Mr. Joseph?

19 MR. JOSEPH: What are the options?

20 HEARING OFFICER KNITTLE: Mr. Joseph, are you

21 done testifying on your own behalf?

22

23

24

1           LORENZ JOSEPH,  
2 called as a witness herein, was examined upon oral  
3 interrogatories, and testified as follows:

4           DIRECT EXAMINATION

5 BY MR. JOSEPH:

6     Q I want to say a couple things. As my  
7 memory serves me and is kind of in line with and I  
8 think it's important to take a minute, when I looked  
9 at the tape last night and reviewed it -- or this  
10 morning I looked at it --

11    MR. JEDDELOH: I'm going to object to  
12 Mr. Trepanier providing coaching to this witness  
13 while he's testifying.

14    HEARING OFFICER KNITTLE: I'll sustain that  
15 objection. Mr. Trepanier, he is testifying on his  
16 own behalf, and you are not representing him in this  
17 cause.

18    MR. BLANKENSHIP: And I'm going to object to  
19 him just making comments on what he viewed on the  
20 tape. We all saw the tape. If he has factual  
21 observations that he wants to tell us, I think  
22 that's appropriate testimony, but I think it's a  
23 waste of time for him just to repeat that he saw  
24 dust blowing on the tape. If he's just going to

1 recount what he saw on the tape, that's

2 unnecessary.

3 MR. JOSEPH: Now you're putting words into my

4 mouth. I wanted to correct what I said yesterday in

5 that --

6 HEARING OFFICER KNITTLE: Hold on, hold on,

7 Mr. Joseph.

8 I'm going to allow him to testify in a

9 limited regard, Mr. Joseph. If, in fact, you have

10 another specific objection to a specific thing he

11 says, let me know.

12 BY MR. JOSEPH:

13 Q Basically what I said yesterday was

14 correct except when I reviewed the tape I saw

15 that -- and it just shows how your memory -- and you

16 don't want to swear to something because your memory

17 is not clear, and this is proven through psychology,

18 and this is a very valuable tool.

19 HEARING OFFICER KNITTLE: Mr. Joseph, I

20 understand, but I want you to keep your testimony

21 limited to the tape and not to the swearing issue

22 and the oath issue

23 MR. JOSEPH: And I wanted to say if I would

24 have sworn --

1 HEARING OFFICER KNITTLE: Hold on. I'm  
2 directing you to not comment anymore on whether or  
3 not an oath or swearing is inappropriate.

4 BY MR. JOSEPH:

5 Q Yesterday I was wrong. The time lapse was  
6 interrupted a couple times as you could see. There  
7 was time lapse at 8:00, 9:00 o'clock, and then at  
8 10:00 o'clock I shut it off, and I took a shot -- an  
9 actual shot. Then I zoomed in to take a shot of the  
10 upper portion of the building, continued the same  
11 time lapse. Then at 11:40, again, I changed the  
12 shot, and then I took a shot and reset the time  
13 lapse.

14 So it wasn't just straight time lapse all  
15 day. There was a couple interruptions, but again, I  
16 want to say that it's an accurate portrayal. I  
17 wasn't -- the machine took what it took, and it  
18 took -- I checked, and it was pretty close -- it was  
19 taken in one-second sequences.

20 HEARING OFFICER KNITTLE: This is understood,  
21 and we have covered this.

22 BY MR. JOSEPH:

23 Q But I want to clarify that is correct, and  
24 so if you multiplied that times 60 times the amount,

1 you would see. And if the dust was coming off the  
2 second, you wouldn't miss. It would keep -- if the  
3 wind was blowing, the next second it would blow  
4 here, and it just keeps blowing, so I want to  
5 clarify that.

6 HEARING OFFICER KNITTLE: Do you have any other  
7 testimony?

8 BY MR. JOSEPH:

9 Q Well, I also want to say that there's  
10 other shots that would show that --

11 MR. JEDDELOH: Well, I'm going to object to him  
12 testifying about what other shots would show.

13 You've already ruled on it.

14 HEARING OFFICER KNITTLE: Are you talking about  
15 other shots that are -- were not admitted into  
16 evidence on the tape?

17 MR. JOSEPH: Right. That you might have missed  
18 that actually showed that there was not a hose --

19 MR. JEDDELOH: I'm going to object again to him  
20 providing more testimony. You've ruled, Mr. Knittle.

21 HEARING OFFICER KNITTLE: I'll sustain the  
22 objection. We can only testify -- I don't want any  
23 testimony about parts of the tape that have not been  
24 admitted into evidence.

1 MR. JOSEPH: Okay. Something new about this?

2 MR. TREPANIER: This is your opportunity to  
3 testify.

4 HEARING OFFICER KNITTLE: Mr. Trepanier, I do  
5 have to caution you once again. I am in agreement  
6 with Mr. Jeddelloh on this, and you cannot coach  
7 Mr. Joseph when he's testifying.

8 MR. JOSEPH: I'm kind of in a position now  
9 where I -- you're making me feel like I'm afraid to  
10 talk because somebody's going to jump on me or I'm  
11 going to offend you, and I want to try to --

12 HEARING OFFICER KNITTLE: Understood.

13 MR. JOSEPH: -- say something that's relevant.

14 HEARING OFFICER KNITTLE: Well, Mr. Trepanier  
15 will have an opportunity to direct examine you, as  
16 will Ms. Minnick, if she wants to.

17 MR. JOSEPH: So you're saying I can only  
18 testify on the film at this point?

19 HEARING OFFICER KNITTLE: No. You can testify  
20 to knowledge and -- or excuse me -- to what you saw  
21 and things that you saw and heard, but it has to be  
22 within your realm of knowledge.

23 BY MR. JOSEPH:

24 Q I remember that day that there was no

1 hose, all right, and that -- the reason I brought  
2 up -- I remember being there and filming, and there  
3 was no hose running from the warehouse because I  
4 walked through the gate. And as you can see in the  
5 film, there are no hoses. You see -- all day you  
6 see dumping. You see the wheelbarrow at one point.  
7 You see nothing happening in another sequence. You  
8 see something dumping. You see --

9 MR. BLANKENSHIP: I'm objecting to him  
10 characterizing the exhibit. We've all seen the  
11 exhibit.

12 BY MR. JOSEPH:

13 Q Well, I'm pointing out that there was no  
14 hose. You saw no hose. There was no hose across  
15 the street. And so that's it. The dust was  
16 blatantly being blown. If the wind was going, it  
17 would blow whichever way it went.

18 HEARING OFFICER KNITTLE: Do you have any  
19 further testimony on your own behalf bearing in mind  
20 that Mr. Trepanier will be able to call you on  
21 direct examination, as well as Ms. Minnick?

22 MR. JOSEPH: So will I have another chance? I  
23 don't want to waste your time. I'd rather --

24 HEARING OFFICER KNITTLE: You'll have an

1 opportunity to make a closing argument, and I think  
2 that would -- aside from other people examining you  
3 as a witness, that is going to be your only other  
4 chance to speak.

5 MR. JOSEPH: I guess that's it then.

6 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,  
7 do you have any questions?

8 MR. TREPANIER: Yes, I do. And just to  
9 clarify, my last statement with Mr. Joseph was just  
10 to instruct him that this was his opportunity to  
11 testify.

12 HEARING OFFICER KNITTLE: I understand. I  
13 don't want comments like that to be made anymore to  
14 any of the Complainants, though, because you cannot  
15 represent them because you're not an attorney.

16 MR. TREPANIER: Right.

17 HEARING OFFICER KNITTLE: You can represent  
18 yourself.

19 MR. TREPANIER: But we're not restricted from  
20 speaking to one another here on Complainants?

21 HEARING OFFICER KNITTLE: Yes, but you are  
22 restricted from offering legal advice.

23 MR. BLANKENSHIP: I would object to him  
24 speaking to a witness when he's on the stand as

1 well.

2 HEARING OFFICER KNITTLE: And that is true, and  
3 when Mr. Joseph is on the stand, you cannot speak  
4 unless -- in your role as a Complainant upon direct  
5 examination.

6 MR. TREPANIER: Thank you for clarifying that.

7 MR. JOSEPH: I am aware he's not an attorney  
8 and not trying to --

9 HEARING OFFICER KNITTLE: Although whether  
10 you're aware of it or not doesn't change the fact  
11 that he's not an attorney and he's offering legal  
12 advice.

13 So, Mr. Trepanier...

14 MR. TREPANIER: Thank you for the  
15 clarification.

16 DIRECT EXAMINATION

17 BY MR. TREPANIER:

18 Q Mr. Joseph --

19 MR. JOSEPH: May I take one minute? I think  
20 that tape ran out. I want to put another tape in.

21 HEARING OFFICER KNITTLE: You have --

22 MR. BLANKENSHIP: I'm going to object. This is  
23 now becoming disruptive. We've been trying to get  
24 testimony for ten minutes, and we've had nothing --

1 hardly anything at all, and now we're changing the  
2 tape again.

3 MR. JOSEPH: This is the first time I've  
4 changed the tape.

5 HEARING OFFICER KNITTLE: Mr. Joseph, just  
6 change the tape. You're skating on thin ground here  
7 with the videotape.

8 All right, Mr. Joseph?

9 MR. JOSEPH: Okay.

10 HEARING OFFICER KNITTLE: All right.

11 Mr. Trepanier, your witness.

12 MR. TREPANIER: Thank you.

13 BY MR. TREPANIER:

14 Q Mr. Joseph, on the date that you created  
15 the videotape that we just viewed on September 9th,  
16 '96, did you have occasion to leave the video --  
17 leave the video machine and --

18 A Oh, yes, I did. That's the wonders of  
19 time lapse.

20 MR. JEDDELOH: Mr. Knittle, why are we going  
21 through this again? I think we've been through it.  
22 You've admitted portions of the tape that you're  
23 going to admit, and why are we doing more voir dire  
24 on the tape?

1 MR. TREPANIER: It's one question. Now he's  
2 objecting. I think that's unreasonable.

3 HEARING OFFICER KNITTLE: I think he's -- I'm  
4 going to overrule. He can ask some questions about  
5 the exhibit that's been admitted, and they can  
6 testify based on that exhibit to a limited degree.

7 MR. TREPANIER: Thank you.

8 BY MR. TREPANIER:

9 Q And when you did leave the location of the  
10 video? And do you have the exhibit that you created  
11 yesterday?

12 A I should have it here. I'll look for that  
13 while --

14 Q Okay. And the place where the video  
15 camera was set up, that's shown how on the exhibit?

16 A Yes, yes.

17 Q How is that --

18 A An X.

19 Q With an X.

20 A I'll make it a brighter X. This is where  
21 the camera was.

22 Q And then when you left that spot marked as  
23 an X --

24 HEARING OFFICER KNITTLE: Let's let the record

1 reflect that Mr. Joseph is marking on a piece of  
2 paper that is a map that he drew yesterday of the  
3 area and is purported to signify where he took the  
4 pictures from that we just saw in Complainants'  
5 Exhibit Number 2.

6 MR. TREPANIER: Thank you.

7 BY MR. TREPANIER:

8 Q Where did you go when you -- how many  
9 times did you leave that, the video machine, do you  
10 recall?

11 A Well, at least two because I -- after  
12 looking at the tape, I could see that it stopped and  
13 started. Like I said, the time lapse stopped. I  
14 changed shots. So two or three times I left it, and  
15 I remember leaving, and it refreshed my memory.

16 Q Did you have -- did you use one or some of  
17 those opportunities to take views of the demolition  
18 from angles that you weren't taping?

19 A Yeah. I walked around and took some shots  
20 with my other camera.

21 Q Why don't you tell me where you walked  
22 that you had a view of the demolition?

23 A Well, I walked -- I -- there's only really  
24 one way out at this point. There's a gate that is

1 here, and I walked out that gate.

2 Q And you've written the word gate on that  
3 exhibit?

4 A Yeah. I wrote gate. On 13th Street,  
5 there's a gate to the yard from the creative reuse  
6 center which is directly -- about 100 feet east of  
7 the demolition site.

8 Q Okay. Now, we see how you exited that  
9 yard, but then where did you walk that you had a  
10 view of the demolition?

11 A Well, I was -- I had walked to Halsted,  
12 and then I walk around to the Maxwell Street, and I  
13 was basically in this area and doing some work that  
14 day and some other things in the neighborhood.

15 Q Now, when you say you walked to Halsted  
16 Street, how did you get to Halsted Street?

17 A Via 13th Street.

18 Q So you walked -- you walked 13th Street  
19 the length of the building that was being  
20 demolished; is that right?

21 A That's true.

22 Q Did you see a hose there?

23 A No. There was no hose. I distinctly  
24 remember it.

1 Q But what about on Halsted Street? Was  
2 there a hose on Halsted? Wait. Let me ask it.

3 When you walked from 13th Street up to  
4 Halsted, did you -- what did you do at that point?

5 A Well, I just walked through, and I was on  
6 Halsted Street to Maxwell Street and around a couple  
7 times that day.

8 Q So you went 13th to Halsted, and then  
9 you're saying you walked south from there?

10 A No. I believe I went this way. I believe  
11 I went this way.

12 HEARING OFFICER KNITTLE: Mr. Joseph, you're  
13 going to have to tell us which way you went.

14 BY MR. JOSEPH:

15 A South. You're correct, south.

16 BY MR. TREPANIER:

17 Q And when you were at -- was 13th Street  
18 open, or did you climb a barricade to get through  
19 there?

20 A No. It was wide open.

21 Q Was there any individuals on the street,  
22 do you recall?

23 A I don't recall any individuals there.

24 There's always a lot of traffic on Halsted Street

1 just -- it's flowing.

2 Q Okay. Did you -- do you recall, did you  
3 observe the front of the building that was being  
4 demolished when you reached Halsted Street?

5 A Well, there was -- you couldn't see it  
6 because they did have the canopy and stuff that was  
7 out on the front of it. On the side there was a --

8 Q Was the sidewalk passable in front of  
9 Halsted Street in front of the --

10 A No, because I remember you had to walk out  
11 around it. It was kind of -- the videotape would  
12 reflect that because there were some shots of that.

13 MR. JEDDELOH: I object and ask that that  
14 reference to a portion of the videotape that has not  
15 been admitted into evidence be stricken from the  
16 record.

17 HEARING OFFICER KNITTLE: I'm sustaining your  
18 objection and granting your motion to strike.

19 Let's move on, Mr. Trepanier.

20 MR. TREPANIER: All right.

21 BY MR. TREPANIER:

22 Q When you're looking at the -- when you  
23 observed the boards in the front -- the front of  
24 1261 Halsted, did you describe a structure? Did you

1 say there was something there? What was that?

2 A They did have some kind of -- I guess they  
3 might call it a canopy or something that they would  
4 use. They did have that there.

5 Q And you noticed --

6 A Better than --

7 Q -- the front of 1261 Halsted I'm  
8 understanding you say.

9 You observed the front of that building?

10 A Yes.

11 Q And there was a canopy there?

12 A Yes.

13 Q Was there a hose?

14 A There was no hose that day at all. In  
15 fact --

16 Q Okay. Thank you. That's -- I've asked my  
17 question. I'll ask another question.

18 In the video we just saw, at times the  
19 trees seemed to be changing color. Do you recall  
20 that?

21 A Yes.

22 Q And can you explain that?

23 A Yes. That's because when you're take --

24 MR. JEDDELOH: Well, I'm going to object to him

1 characterizing the evidence. The evidence is as it  
2 is. He can testify as to what he saw, but I don't  
3 think it's appropriate for him to characterize what  
4 the video is.

5 HEARING OFFICER KNITTLE: I'm going to overrule  
6 that and let him testify about this. Mr. Joseph,  
7 you can testify about the exhibit that's been  
8 entered.

9 BY MR. JOSEPH:

10 A Okay. The reason it looks kind of jumpy  
11 and the brightness changes is because one minute the  
12 sun is under a cloud, and the next minute they're  
13 not.

14 HEARING OFFICER KNITTLE: Although,  
15 Mr. Trepanier, I don't see how this is relevant to  
16 the issue here, so you might want to try to keep  
17 things relevant so we can keep things moving along  
18 here.

19 MR. TREPANIER: I didn't get the answer I  
20 anticipated.

21 HEARING OFFICER KNITTLE: Well...

22 BY MR. TREPANIER:

23 Q Now, did you have an opportunity to be  
24 inside of the building, 1261 Halsted?

1 A Yes, I did, on a couple occasions.

2 Q What did you observe in there?

3 MR. BLANKENSHIP: Objection. Lack of  
4 foundation. I would like some more information as  
5 to when he was there, who else was present.

6 HEARING OFFICER KNITTLE: Sustained. Go ahead,  
7 Mr. Trepanier.

8 BY MR. TREPANIER:

9 Q And when was your first -- did you say you  
10 had more than one opportunity?

11 A Yes.

12 Q And do you recall when, if you can recall,  
13 was that first time that you were in that building,  
14 1261?

15 A Oh. The first time? I couldn't say  
16 exactly. I would say toward the beginning of the  
17 demolition, maybe earlier.

18 Q Okay.

19 A I mean, I've been in the building when  
20 people were living there years ago, too, so...

21 Q Maybe I need to ask a more specific  
22 question.

23 Were you inside of 1261 during the  
24 demolition project?

1 A Yes.

2 Q And more than once or one time?

3 A More than once.

4 Q And do you recall when was that -- that

5 first occurrence that you were in the building

6 during the demolition?

7 A Probably very early stages of the

8 demolition.

9 Q And --

10 A Again, I couldn't give you a date. I

11 probably was videotaping, and there would be

12 possibly a date on the tape. That's kind of how I

13 take notes.

14 Q So it may have been September 9th?

15 MR. JEDDELOH: I'm going to object. That

16 sounds like he's asking him to speculate.

17 BY MR. JOSEPH:

18 A I --

19 MR. JEDDELOH: Let me make my objection.

20 It's asking him to speculate when he said

21 he didn't remember when he was in there.

22 HEARING OFFICER KNITTLE: That's sustained,

23 Mr. Trepanier. Try not to offer testimony for the

24 witness.

1 BY MR. JOSEPH:

2 A Again, I would like to look at the dates,  
3 but I could have likely been in there on September --

4 MR. JEDDELOH: Well, I'm going to object. The  
5 objection was sustained, and now he's going ahead  
6 and answering it.

7 HEARING OFFICER KNITTLE: Yes. Ask a different  
8 question or rephrase that one, Mr. Trepanier.

9 MR. TREPANIER: Okay.

10 BY MR. TREPANIER:

11 Q Now, the second time that you were in 1261  
12 while the demolition was occurring, when was that?

13 A Again, I could only talk about something  
14 that happened, and it's going to be hard for me to  
15 say the exact second time I was there. It would be,  
16 you know -- I mean, I was in the building at least  
17 twice --

18 Q Okay.

19 A -- to be more specific.

20 Q And now, of these two instances that you  
21 were in 1261 while the demolition project was  
22 occurring, on your first instance, what did you see  
23 at that time?

24 MR. BLANKENSHIP: I renew my objection. Lack

1 of foundation. I still don't know when that was.

2 HEARING OFFICER KNITTLE: Overruled.

3 Mr. Joseph, go ahead and answer, if you can.

4 BY MR. JOSEPH:

5 A The first time I was in there? Well, I

6 mean, I seen -- during the demolition the first time

7 I seen, you know, things being torn apart and, you

8 know, paint falling off the walls and things that

9 were parts of the building that were destroyed and a

10 lot of, you know, things turned to crumbling, you

11 know, things being broken down to fine -- very fine

12 particles.

13 BY MR. TREPANIER:

14 Q How many floors is that building?

15 A It was originally -- it was, I believe,

16 four stories.

17 Q And on that first --

18 A And a basement.

19 Q And on that first visit, did you visit all

20 four floors?

21 A Yeah. I think I actually was on the roof

22 as one of the -- at the beginning of the demolition.

23 Q And did you visit the basement?

24 A I was afraid to go in the basement. I saw

1 a -- the asbestos sign, and it was dark, and, you  
2 know, it was scary.

3 Q What do you mean when you say --

4 A Just through caution, I didn't want to  
5 dare go down there and try and, you know, breathe --  
6 get a couple particles of something in my lungs or  
7 something.

8 Q What do you mean when you say you saw the  
9 asbestos sign?

10 A There was a sign on the door that was --  
11 again, that was in tape. It was a sign that said  
12 danger: asbestos, you know, nailed to the door. It  
13 looked like it had been there for --

14 MR. BLANKENSHIP: I'm going to object to him  
15 characterizing what it looked like. If he knows how  
16 long it's been there, that's one thing. If he's  
17 speculating, that's another.

18 BY MR. JOSEPH:

19 A It's an aged sign. It wasn't --

20 MR. JEDDELOH: Can we have a ruling?

21 HEARING OFFICER KNITTLE: That's over --  
22 sustained. You can testify what the sign looked  
23 like and things like that.

24

1 BY MR. JOSEPH:

2 A It looked like it had been there for a  
3 long time, like somebody had discovered asbestos,  
4 and they put a sign on like stay out of basement is  
5 what it looked like.

6 BY MR. TREPANIER:

7 Q Now, you said -- did the sign have any  
8 words on it besides the word --

9 A I have to look at the tape. I thought it  
10 said danger: asbestos, you know. You could see in  
11 the film darkly --

12 MR. JEDDELOH: Again, I'm going to object to  
13 that.

14 BY MR. JOSEPH:

15 A I believe I read it --

16 HEARING OFFICER KNITTLE: Mr. Joseph, give him  
17 a second here.

18 MR. JEDDELOH: I'm going to ask for an  
19 instruction that he be instructed to cease from  
20 testifying about what inadmissible portions of the  
21 tape say.

22 HEARING OFFICER KNITTLE: Okay. Mr. Joseph, I  
23 am going to issue that instruction. You are not to  
24 testify anymore about what the tape says and what is

1 on the tape.

2 BY MR. JOSEPH:

3 A All right. Okay.

4 I could tell what it looked like. It

5 looked like I was in a building where there was

6 asbestos that had probably been neglected, and the

7 university was going to grind up this building and

8 cover this up --

9 MR. BLANKENSHIP: I'm going to object to a

10 total lack of foundation and move to strike that

11 testimony. That's pure speculation.

12 BY MR. JOSEPH:

13 A It's been going on in the neighborhood

14 for --

15 HEARING OFFICER KNITTLE: Mr. Joseph --

16 BY MR. JOSEPH:

17 A -- how many years.

18 HEARING OFFICER KNITTLE: Hold on. I'll

19 sustain your objection.

20 BY MR. JOSEPH:

21 A That's what it looked like. I mean --

22 HEARING OFFICER KNITTLE: Well, but you're not

23 just telling us what it looked like. You're making

24 conclusions about what you saw, and that's not

1 entirely what we're here to do right now. You're  
2 testifying in response to Mr. Trepanier's questions,  
3 and I would ask you to please limit your answers to  
4 what he's asked you.

5 BY MR. TREPANIER:

6 Q So when I ask a question, if you could  
7 concentrate and bring in an answer to the question  
8 that I asked, I think we'll be able to move along  
9 here more swiftly.

10 Now, on your first instance on looking  
11 through the building, I understand you're saying  
12 that you were on each floor, the roof, and didn't  
13 enter the basement; is that correct?

14 A Right. I didn't think it would be wise to  
15 go in the basement.

16 Q Now, when you were on the first floor, did  
17 you look around?

18 A Yes.

19 Q And when you were on the second floor, did  
20 you look around?

21 A Yes.

22 Q And the third and the fourth the same?

23 A Yes.

24 Q And did you look throughout the building?

1 A Yes.

2 Q And did you see a hose?

3 A No.

4 Q On your second visit to the property, was

5 the danger: asbestos sign still present, if you

6 know?

7 A As far as I know, they bulldozed that

8 asbestos sign with everything else. I never saw an

9 asbestos truck ever in the neighborhood.

10 Q No. The question that I asked, though --

11 maybe I need to ask a little more background.

12 Now, when you -- when you visited the

13 building for the second time, was the building still

14 standing?

15 A Yes.

16 Q And how did you enter the building?

17 A There was a big hole they had. Toward the

18 rear near the alley, they had put a big hole in

19 where they could drive their little bobcat in right

20 inside the building, a big hole in the wall. It was

21 wide open, 24 hours.

22 Q Now, is -- and where did you, on your

23 first visit, see the sign danger: asbestos in

24 relation to that big hole?

1 A It was -- toward the front of the  
2 building, there was an entrance to the basement, and  
3 it was on that door.

4 Q Okay. And on your second visit to the  
5 building, did you go up and look at that same door?

6 A I recall seeing it every time I was in  
7 there. It was, you know...

8 Q Okay. And did you look -- did you look  
9 throughout the building on your second visit?

10 A Yes.

11 Q And --

12 A I went in to videotape the -- whatever,  
13 document the strength and whatever in the building.

14 MR. JEDDELOH: I'm sorry. I didn't hear his  
15 response, and I don't know if the court reporter got  
16 down his word.

17 MR. JEDDELOH: Could you say that more loudly?

18 Could I ask that you say that more loudly?

19 BY MR. JOSEPH:

20 A Right. I went in to videotape the --  
21 document what I saw in the building, you know, the  
22 integrity, the strength, the history, and that type  
23 of thing to document it for me, the destruction and  
24 the...

1 BY MR. TREPANIER:

2 Q Now, and -- was -- on either of your  
3 visits to the property, did you observe water --  
4 standing water in the building?

5 MR. BLANKENSHIP: I'm going to object to the  
6 lack of foundation with respect to the second  
7 visits. I haven't even heard when that was in  
8 relation to the overall demolition let alone a date,  
9 so I have an objection to questions about what he  
10 observed on the second visit

11 HEARING OFFICER KNITTLE: Okay. That's  
12 sustained. Mr. Trepanier, will you try to get that  
13 information across before you ask that last question  
14 that you just asked?

15 MR. TREPANIER: Okay.

16 BY MR. TREPANIER:

17 Q Following your first visit to the subject  
18 property, did you have occasion to visit a second  
19 time?

20 A Yes.

21 Q And how long -- how long, if you know,  
22 approximately, if necessary, did that second visit  
23 follow your first?

24 A Again, that's kind of hard. If I had

1 the -- generally if I went in there, I would have  
2 brought the camera, and that's how I take notes.  
3 It's kind of all bundled together, but to look at  
4 the video would refresh my memory, and -- I don't  
5 know. So if you maybe had a general question or  
6 something, I could be -- give you a better answer  
7 because to say the second time --

8 Q So you do -- but you do have a video  
9 record that you do believe you could refresh your  
10 memory with as to when the second visit occurred?

11 A Probably.

12 MR. TREPANIER: May I ask that the witness  
13 refer to his record?

14 MR. JEDDELOH: Inadmissible. It has already  
15 been ruled upon. It's a --

16 MR. TREPANIER: I'm not asking --

17 MR. JEDDELOH: May I finish?

18 It's a nice try, I believe, on  
19 Mr. Trepanier's part to reintroduce the question of  
20 the video, but we've been down the road already.

21 MR. TREPANIER: I'm not asking --

22 HEARING OFFICER KNITTLE: Mr. Blankenship, do  
23 you have a --

24 MR. BLANKENSHIP: I would object to the video

1 being shown to this assembly here if that's what it  
2 takes to refresh his recollection. I think that  
3 would be improper to show it to everybody.

4 MR. TREPANIER: I don't -- I don't feel that  
5 would be improper even if it did get viewed, but  
6 it's not necessary that everyone view it.

7 BY MR. TREPANIER:

8 Q I'll ask the witness, is it possible for  
9 you to refresh your memory as to your second look on  
10 a record other than the evidence tape that's in the  
11 machine? Do you have -- do you have -- do you have  
12 that record with you that you need to refresh your  
13 memory?

14 A That's how I take notes. I mean, that's --

15 Q Do you have the record with you?

16 A Well, there's some shots inside the  
17 building that are on that evidence tape that --

18 MR. JEDDELOH: I'm going to object if he's  
19 about to launch into a discussion of what's on that  
20 tape.

21 MR. TREPANIER: No. I'm not going that way.

22 He was.

23 HEARING OFFICER KNITTLE: That would be  
24 sustained.

1 MR. TREPANIER: I was just attempting to find  
2 out if the witness has a record with him that he can  
3 refresh his memory with other than --

4 BY MR. JOSEPH:

5 A No. No, I have not.

6 HEARING OFFICER KNITTLE: Mr. Joseph, do you  
7 know that looking at the tape would refresh your  
8 memory?

9 MR. JOSEPH: Well, I -- I mean, I'm walking  
10 throughout the building.

11 HEARING OFFICER KNITTLE: Do you know that  
12 would refresh your memory as to what you saw or when  
13 it was?

14 MR. JOSEPH: Well, sure. It's, I mean --

15 HEARING OFFICER KNITTLE: Why?

16 MR. JOSEPH: Well, a picture is a thousand  
17 words. What is a videotape tape, a thousand --

18 HEARING OFFICER KNITTLE: But there's no time  
19 and date on the screen when you're walking in that  
20 building. Would that then refresh your memory? I  
21 know there is not because I read it. I mean, I  
22 looked at it.

23 MR. JOSEPH: I did pull some of the original  
24 tapes. Let me see if I have it.

1 MR. BLANKENSHIP: I'm going to object to this --

2 what would appear to be an effort to refresh

3 recollections taking another half hour before we

4 figure this out.

5 MR. JOSEPH: We're trying to get to the truth.

6 Can't we look at our notes? This is how I take

7 notes. I've got two hours on this, two hours.

8 MR. BLANKENSHIP: Again, I'll object --

9 MR. JOSEPH: That's -- now, wait a minute.

10 HEARING OFFICER KNITTLE: Hold on. Hold on.

11 Wait, wait, wait. I don't want to get this to a

12 contentious level again.

13 MR. JOSEPH: Why are you afraid of

14 videotapes?

15 MR. BLANKENSHIP: I'm not.

16 HEARING OFFICER KNITTLE: Mr. Joseph,

17 Mr. Joseph, you're going to have to be quiet now for

18 a second, okay?

19 MR. BLANKENSHIP: If I may speak...

20 HEARING OFFICER KNITTLE: If you can continue

21 your objection, and, Mr. Joseph, I'll give you an

22 opportunity to -- actually, I'll -- go ahead.

23 MR. BLANKENSHIP: They've had a month to

24 prepare for this hearing, to prepare their

1 testimony, and it seems like they're preparing as we  
2 go along, and it's, again, taking an inordinate  
3 amount of time costing my client a lot of money for  
4 me to sit here while they do the work they should  
5 have done over the last month.

6       This is ridiculous. If they've got  
7 something they can look at quickly to refresh his  
8 recollection, he can do that, but if it's going to  
9 take anything more than 30 seconds, it's ridiculous  
10 that we're spending this time helping them prepare  
11 while the hearing is going on. It's a waste of all  
12 our resources.

13    MS. MINNICK: May I say anything at this  
14 point?

15    HEARING OFFICER KNITTLE: Well, let's see if  
16 Mr. Jeddelloh has anything to add.

17    MR. JEDDELOH: Well, I would just second what  
18 Mr. Blankenship said. I think they've had plenty of  
19 time. If they felt they needed to have this  
20 specificity to proceed, they should have gotten  
21 ready for it.

22    HEARING OFFICER KNITTLE: Mr. Trepanier?

23    MR. TREPANIER: Well, I'm trying to meet the  
24 objections of Mr. Blankenship by having my witness

1 use that particular record to refresh his memory. I  
2 don't know that I've exhausted all other methods. I  
3 mean, maybe what I need to do is try some other  
4 method to see if we can't meet the objection to  
5 foundation for the question regarding was there  
6 water standing in the building on his second visit,  
7 so...

8 HEARING OFFICER KNITTLE: And this is  
9 Mr. Trepanier's witness right now, Ms. Minnick, so I  
10 don't think it's appropriate for you to comment, nor  
11 is it appropriate for you to comment, Mr. Joseph.

12 Mr. Trepanier, I'm going to deny the  
13 request to take a look at the videotape right now to  
14 refresh his recollection. I don't think that  
15 appropriate foundation has been laid, and I don't  
16 think it's necessary at this point. Try to get your  
17 information by asking him the questions.

18 MR. TREPANIER: Thank you.

19 BY MR. TREPANIER:

20 Q Now, on your second visit into the  
21 building, did anyone accompany you?

22 A Well, again, I'm confused first and  
23 second, but I was accompanied on two different  
24 occasions with two different friends.

1 Q So on each of your visits into the  
2 property -- each of your two visits into the  
3 property during the demolition, you had a person  
4 accompany you, but it was a different person?

5 A Correct, I recall. I recall at least  
6 two. There were at least two visits during the  
7 demolition.

8 Q And who were those people?

9 A One of them was -- you know, I don't know  
10 the one person's name. She was staying at the co-op  
11 there, a young woman who's in the videotape. I  
12 honestly don't remember her name --

13 Q And the second?

14 A -- who was there during that.

15 Then there was -- let's see. There was --  
16 Lenore accompanied me there one time.

17 Q When you were -- what -- you said that you  
18 walked in through a hole in the side of the building  
19 when you entered on the second occasion; is that  
20 correct?

21 A I believe so.

22 Q And do you know who put that hole inside  
23 of the building?

24 A Well, it was pretty -- I mean, most likely

1 it was the demolition company.

2 MR. BLANKENSHIP: I'm going to object if he's

3 speculating, which it sounds like he is if he's

4 saying most likely.

5 BY MR. JOSEPH:

6 A Well, the demolition company -- I didn't

7 see them.

8 HEARING OFFICER KNITTLE: Your objection is

9 sustained. Mr. Joseph, answer only to what you know

10 you can testify to.

11 MR. BLANKENSHIP: And I'll renew my foundation --

12 BY MR. JOSEPH:

13 A I can testify that there was a demolition

14 company named Speedway Wrecking that was there, and

15 he would probably admit he put that hole in there.

16 HEARING OFFICER KNITTLE: Mr. Joseph, if you'll

17 reply -- or respond to the questions that

18 Mr. Trepanier has asked you...

19 MR. BLANKENSHIP: If I may have a standing

20 objection to lack of foundation on the second

21 visit. I don't think he has met what I believe are

22 the requirements.

23 HEARING OFFICER KNITTLE: Okay. Your objection

24 is noted. I'm going to allow Mr. Trepanier to

1 proceed.

2 MR. TREPANIER: Thank you.

3 BY MR. TREPANIER:

4 Q Now, was the demolition activity -- was  
5 demolition activity actually occurring at the time  
6 of your second visit?

7 A No.

8 Q But was the building under demolition at  
9 the time of your second visit?

10 A Yes.

11 Q Do you know approximately or exactly, if  
12 you do, when this demolition began?

13 A It was -- I would guess --

14 MR. JEDDELOH: Well, I'm going to ask that the  
15 witness be instructed not to speculate.

16 BY MR. JOSEPH:

17 A No. I'm not going to guess. I'm going to  
18 look at my tape here, and I have --

19 MR. JEDDELOH: May I finish making my statement  
20 before he interrupts?

21 HEARING OFFICER KNITTLE: Go ahead and object,  
22 Mr. Jeddelloh.

23 MR. JEDDELOH: If he a reasonable belief, then  
24 that's fine, but when he starts to say I would

1 guess, I believe that that's beyond what's

2 reasonable.

3 MR. BLANKENSHIP: I'm also going to object to

4 the witness referring to materials while he's

5 testifying without laying the proper foundation to

6 look at materials. He shouldn't have anything in

7 front of him at this point.

8 HEARING OFFICER KNITTLE: Both objections are

9 sustained. It's true, Mr. Joseph, you can't look at

10 that while you're testifying. You have to testify

11 from your memory and things you know.

12 MR. JOSEPH: All right. Well, again, I take

13 notes. I mean, I'm not trying to --

14 HEARING OFFICER KNITTLE: Understood.

15 Mr. Trepanier, ask your question again,

16 please.

17 MR. JOSEPH: I know -- wait. I can answer the

18 question.

19 HEARING OFFICER KNITTLE: Well, I want

20 Mr. Trepanier to ask the question again so we all

21 know what's going on.

22 MR. TREPANIER: Thank you.

23 BY MR. TREPANIER:

24 Q Do you know when approximately the

1 demolition at 1261 began?

2 A Well, it's probably sometime before the  
3 9th because that's when I knew I was taking videos,  
4 the day or two before, and then I knew it stopped at  
5 some point, so again, that's what -- that's how I  
6 take notes.

7 Q You gave me a lot of answer. If you could  
8 just concentrate more on the question and the  
9 answer.

10 A Oh.

11 Q Okay. Now, you said the 9th. What month?

12 A September.

13 Q And the year?

14 A I'm confused. If it's reflect -- is it --

15 Q Do you have a record that would refresh  
16 your memory as to the year?

17 A Yes, yes. I could look at the tape. I've  
18 got the date on the tape. It's the same date that  
19 we've been dealing with.

20 MR. BLANKENSHIP: We'll stipulate it was 1996  
21 if it'll move things along.

22 MR. JOSEPH: Thanks.

23 BY MR. TREPANIER:

24 Q Do you know -- when approximately did the

1 demolition end, or was it completed, when, if you do  
2 you know? Do you know?

3 A Well, it went on for a few days, and then  
4 there was, I guess, this activity, and then they  
5 came in with the big wrecking ball, and it ended  
6 real quick. They said that they were hand wrecking,  
7 and the next thing you know they had a big crane out  
8 there and knocked the whole thing down.

9 Q I just wanted to remind you that I asked  
10 you, you know, if you knew or when it was.

11 A That's all I remember. They were hand  
12 wrecking. We had --

13 Q Do you have a record that could refresh  
14 your memory as to when the demolition was completed?

15 A Only by looking at my videotapes, which  
16 are in chronological order.

17 MR. TREPANIER: Could the witness --

18 HEARING OFFICER KNITTLE: Mr. Trepanier, I  
19 don't understand where this is going. I don't know  
20 what it's trying to do.

21 MR. TREPANIER: What I'm trying to do is get  
22 down a time frame for that second visit. I want to  
23 establish that it was after the first visit and  
24 before the demolition ended, so I'll have it down

1 within a couple of weeks.

2 HEARING OFFICER KNITTLE: I think we're aware

3 that that second visit was after September 9th and

4 before the demolition ended, and in light --

5 notwithstanding Mr. Blankenship's continuing

6 objections, I'm going to let you ask questions about

7 that second visit.

8 MR. TREPANIER: Okay. Thank you.

9 BY MR. TREPANIER:

10 Q Now, on your second visit to the building,

11 was it your testimony earlier that you looked

12 throughout the building?

13 A Yes.

14 MR. JEDDELOH: Objection. Asked and answered.

15 HEARING OFFICER KNITTLE: Overruled. I'm going

16 to let him get through this with the second visit.

17 BY MR. TREPANIER:

18 Q Was the building -- what did you see on

19 the top floor?

20 MR. JEDDELOH: Objection. He has already asked

21 what he saw, and he provided a complete answer, and

22 now we're going back through this again.

23 MR. TREPANIER: No. I think we were on the

24 first --

1 HEARING OFFICER KNITTLE: Yes. Mr. Jeddelloh, I  
2 think that was about the first visit. I'm going to  
3 overrule as long as, Mr. Trepanier, you keep this  
4 short and get to your point.

5 MR. TREPANIER: Okay.

6 BY MR. JOSEPH:

7 A Well, again, without really looking at the  
8 most accurate record, I know there was a time there  
9 was a bobcat on the roof that had been used to push  
10 stuff off, and they may have used that on a  
11 different floor.

12 BY MR. TREPANIER:

13 Q Let me clarify the question.

14 MR. JEDDELOH: I'm going to also object to him  
15 interrupting this witness and providing an answer to  
16 his question.

17 MR. TREPANIER: I don't think he was answering  
18 my question. He was talking about the roof. I  
19 asked about the upper floor.

20 HEARING OFFICER KNITTLE: Your objection is  
21 sustained. Mr. Trepanier, ask your question and  
22 then let the witness answer and then ask another  
23 question.

24 MR. BLANKENSHIP: And I would like to move to

1 strike the part of that testimony that began may

2 have been as speculative and is not observation.

3 HEARING OFFICER KNITTLE: That's granted.

4 Proceed, Mr. Trepanier.

5 MR. TREPANIER: Thank you.

6 BY MR. TREPANIER:

7 Q Did you see any water standing in the

8 building?

9 A I never saw any water in the building,

10 never, ever saw any water in the building.

11 Q Now, on your second visit, did you go to

12 the top of the building?

13 A I think so. Each time I went in there, I

14 just went up the whole thing, and if I had the

15 camera, I was just kind of documenting the building

16 structure.

17 Q Could you see -- was there an area that

18 you could determine that demolition activity was --

19 where the current activity was occurring on your

20 second visit?

21 Is there one area of the building that

22 appeared that the demolition activity was occurring

23 in that area?

24 A Well, again, they started from the top

1 down, and wherever they were working, I would try to  
2 take some shots of that and show the integrity of  
3 the building.

4 MR. JEDDELOH: Again, I'm going to object.

5 We're getting into what the tape shows.

6 HEARING OFFICER KNITTLE: I'm going to overrule

7 that one. Go ahead, Mr. Joseph -- Mr. Trepanier.

8 BY MR. TREPANIER:

9 Q Then when you were observing this location

10 where you believe that the current demolition

11 activity was going on, did you see water standing at

12 that location specifically?

13 A I never saw any water standing anywhere in

14 the building. I never saw any hoses. I can't

15 recall ever seeing any hoses being used on this

16 building.

17 Q Thank you.

18 Now, from the building, what -- what's --

19 what's proximately close to the demolition site?

20 I'm looking for you to identify an --

21 MR. JEDDELOH: I'm going to object. If he's

22 got his question, he can ask his question, but then

23 he can't tell the witness what he's looking for as

24 an answer.

1 HEARING OFFICER KNITTLE: Sustained.

2 MR. TREPANIER: I'll restate the question.

3 BY MR. TREPANIER:

4 Q Are there any other landmarks -- what

5 landmarks are around 1261 South Halsted?

6 MR. BLANKENSHIP: Objection. Relevance of

7 landmarks to this case.

8 HEARING OFFICER KNITTLE: Mr. Trepanier, I

9 don't know what you're trying to elucidate here.

10 MR. TREPANIER: I'm going into the

11 reasonableness of the activity -- the reasonableness

12 of the demolition activity in a commercial district,

13 so I'm wanting to elicit some testimony regarding

14 the nature of the neighborhood immediately around

15 the building as I have this witness who was right

16 inside the building, so I'm going to inquire into

17 his -- what was right around there.

18 HEARING OFFICER KNITTLE: I'll give you a

19 limited amount of time to pursue this line of

20 questioning.

21 MR. TREPANIER: Okay.

22 HEARING OFFICER KNITTLE: A couple questions.

23 BY MR. TREPANIER:

24 Q Did you have an opportunity to -- okay.

1 Hold on.

2 This building fronts on Halsted Street.

3 Could you describe that scene there immediate -- in

4 the immediate surroundings of 1261 Halsted -- 1261

5 Halsted?

6 A Well, Halsted is very busy. It's like a

7 commercial district. It's just alive during the

8 day. It's just really alive with people, you know,

9 people just busy, you know, marketing things and

10 selling things out of the stores and just very

11 alive, you know. All day long there's just people

12 up and down there. It starts early, people --

13 hard-working, you know, lower class type people. I

14 assume you call them lower class. I don't know how

15 to define it. And it's always been that way.

16 Q When you were filming the dust -- when you

17 were creating that video and you walked down

18 13th Street to Halsted, did you have an opportunity

19 to see -- to observe the dust that you were

20 videoing?

21 A Observe the dust that I was videoing?

22 Q Should I clarify the question?

23 A Yes.

24 Q When we saw the video, we -- did you have

1 an opportunity to see the wheelbarrow-dumping

2 activity or the results of that from other

3 locations?

4 A Well, they were doing it systematically,

5 and as I walked around, I remember you'd see it kind

6 of drifting toward 13th Street, and wherever they

7 were working, it would be -- you know, you could

8 just see it kind of -- if you were at a distance,

9 you could see that they're working up there whatever

10 they were doing. It's just threw out dust.

11 Q Now, on the east side of 1261 Halsted,

12 there's another activity. In fact, that's where you

13 had your video camera, isn't it?

14 A The east side of which?

15 Q Of 1261 Halsted.

16 A Right. The creative reuse yard?

17 Q Why don't you tell me what -- how is

18 that -- who uses that yard?

19 A Well, that's an extension of the creative

20 reuse center which purpose is to get stuff donated

21 from different corporations, surplus materials, and

22 it's used by artists and teachers to get their

23 students more involved in reusing things to try to

24 put a stop to some of the consumerism thing we

1 have. And the yard is the same thing, things that  
2 can be kept out in the weather out there, there's a  
3 lot of reuse of wood and windows and metal parts for  
4 sculpture and all kinds of things. So there's  
5 activity out in that yard. Related to that, anybody  
6 that's looking for something used, trying to save a  
7 few bucks, that's what it's about. It's kind of an  
8 extension of what Maxwell Street was.

9 Q Individuals walk in that yard?

10 A Oh, yeah.

11 Q Now, was there a warning sign in that yard  
12 regarding -- did you see a warning sign in that yard  
13 regarding the ongoing demolition?

14 A No, no.

15 Q When you -- when you walked up to Halsted  
16 Street, did you see any warning signs regarding the  
17 ongoing demolition?

18 A No.

19 Q Anywhere did you see a warning sign?

20 A No. Again, I would have to look at the  
21 tapes to see one, but I don't think there was  
22 anything. There were no signs. I don't remember  
23 any signs. At some point, they might have had some  
24 barricades or something, but I don't recall. I'd

1 have to look at the tape.

2 Q All right. Are there any eating  
3 establishments in this area near 1261 Halsted?

4 A There's -- just down the next corner is  
5 the famous hot dog stand, and then there's another  
6 hot dog stand a little closer, so one short block  
7 there is an eating stand, and then there's one a  
8 couple doors down.

9 Q Can people go in --

10 MR. BLANKENSHIP: Let me just object to lack of  
11 foundation before he gets into that. I don't quite  
12 understand where these buildings are. If he could  
13 be more specific...

14 MR. JOSEPH: Oh, okay.

15 HEARING OFFICER KNITTLE: Try to be more  
16 specific.

17 BY MR. JOSEPH:

18 A Maxwell and Halsted, one -- it's a short  
19 block

20 HEARING OFFICER KNITTLE: And I know,  
21 Mr. Joseph, you're still referring to the diagram,  
22 but none of us can see that diagram. So if you  
23 could explain it more...

24

1 BY MR. JOSEPH:

2 A Oh, okay. If you can think of this as  
3 north, which is -- I drew this so that it would look  
4 that way. Here's where the camera was. Here's the  
5 building that was demolished. Here's 13th Street.  
6 Here's the alley. This is where they dump stuff  
7 out. Here's Halsted, the hot dog stand. You know  
8 the hot dog stand, don't you? You never took a look  
9 down there?

10 MR. BLANKENSHIP: I'm not testifying.

11 MR. JOSEPH: Okay.

12 HEARING OFFICER KNITTLE: I know you're  
13 pointing to a location on your map that's about a  
14 block south of the building in question.

15 MR. JOSEPH: Very short block. And then even  
16 less than that there's two hot dog stands in a row  
17 there.

18 HEARING OFFICER KNITTLE: Okay. Is that  
19 sufficient, Mr. Blankenship?

20 MR. BLANKENSHIP: Yes.

21 BY MR. TREPANIER:

22 Q Now, are these --

23 A Probably less than a couple hundred feet.

24 Q A couple hundred feet -- less than a

1 couple hundred feet from where?

2 A From this building.

3 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,

4 what -- I still don't know what you're trying to get

5 to with this. We've got a pretty good idea of the

6 area here, so I'm going to ask you to move it along.

7 MR. TREPANIER: This question might show it.

8 BY MR. TREPANIER:

9 Q Now, are those sit-down restaurants?

10 A No.

11 Q How is the food served at those

12 restaurants?

13 A It's like a fast-food, out of the counter,

14 and people sit in their cars and hang out on the

15 street.

16 Q Do people eat their food there on Halsted

17 Street?

18 A Yeah.

19 MR. BLANKENSHIP: Objection to the relevance of

20 this line of questioning.

21 HEARING OFFICER KNITTLE: Yes. I'm going to

22 sustain that, Mr. Trepanier. I don't see how this

23 is relevant to this case. Maybe you can explain

24 that to me.

1 MR. TREPANIER: Well, it's -- this goes -- this  
2 is on the same issue as regards the reasonableness  
3 of a conduct given its location. It goes to that  
4 criteria regarding priority of location. So if  
5 there's people standing out there with open food and  
6 these -- that's different than demolishing a  
7 building out in the middle of a field.

8 MR. BLANKENSHIP: We're talking about a  
9 restaurant a block away, and there's been no  
10 evidence that there was any dust blowing anywhere  
11 near those restaurants. We're getting really far  
12 afield here when we're talking about restaurants.

13 HEARING OFFICER KNITTLE: Right. I agree. And  
14 we've got on the record that there is a restaurant  
15 there and people do eat outside there, Mr. Trepanier,  
16 but I don't want to proceed any further along that  
17 line.

18 Let's take a recess.

19 (Whereupon, a recess was taken.)

20 HEARING OFFICER KNITTLE: We're back on the  
21 record.

22 I note for the record that Amy Felton is  
23 now leaving the proceedings.

24 MR. TREPANIER: My witness -- I just heard my

1 witness say that he's feeling stressed out and would  
2 like to take a break. Given that circumstance, if  
3 we might break for lunch...

4 HEARING OFFICER KNITTLE: Why are you feeling  
5 stressed out, Mr. Joseph?

6 MR. JOSEPH: Well, it's been a long day, you  
7 know, a long night.

8 HEARING OFFICER KNITTLE: I understand. I'm  
9 going to over -- I'm not going to grant that. I'm  
10 going to want you to continue to the best of your  
11 ability, Mr. Joseph.

12 MR. JOSEPH: Okay.

13 BY MR. TREPANIER:

14 Q Now, you've testified that you --

15 HEARING OFFICER KNITTLE: Excuse me. Can I  
16 help you, sir?

17 MR. BLANKENSHIP: That's Wes Wager. He's one  
18 of the Petitioners.

19 MR. JEDDELOH: He's one of the Complainants.

20 HEARING OFFICER KNITTLE: Oh, okay. We should  
21 note for the record that Complainant Wes Wager is  
22 now in the proceedings and is making his first  
23 appearance at this hearing to this point in time.

24 MR. TREPANIER: Thank you.

1 BY MR. TREPANIER:

2 Q Mr. Joseph, you testified that you  
3 observed the demolition on September 9th and that  
4 you were inside of the building on two occasions  
5 during the demolition. Now, were there any other  
6 days that you had an opportunity to view the  
7 demolition activity?

8 A Oh, yes, periodically, you know. I mean,  
9 I wasn't there every day, but when I was in the  
10 neighborhood, I'd keep -- you know, take a look at  
11 it.

12 Q And what would you do when you -- when you  
13 say take a look at it, what do you mean take a look  
14 at it?

15 A Well, I'd either just take a look at it  
16 with my eyes, or I would take my camera and  
17 videotape something. If they weren't there, maybe I  
18 would go inside.

19 Q Now, when you were taking a look at it  
20 with your eyes, did you see a hose?

21 MR. BLANKENSHIP: Objection. Lack of  
22 foundation. We need specifics here as to when this  
23 was happening.

24 MR. JOSEPH: Well, I could --

1 HEARING OFFICER KNITTLE: Sustained. You're  
2 going to have to rephrase that or lay some  
3 foundation, Mr. Trepanier.

4 BY MR. TREPANIER:

5 Q Can you make an approximation of how many  
6 times you visited the demolition site while there  
7 was -- while this job was -- during the -- how many  
8 times you visited the demolition site at 1261  
9 Halsted?

10 A Well, I mean, a bunch of times during that  
11 one day for this and just during that week maybe ten  
12 times, you know.

13 Q And when you say that week --

14 A A couple times a day. You know, I was  
15 maybe working in the yard here or in the  
16 neighborhood.

17 Q When you're referring to that week, you  
18 mean the week of September 9th?

19 A Right. Again, I'd have to reflect on my --  
20 you know, on my record, which is my videotape.

21 Q Well, we found that that's not going to  
22 work here today.

23 But during that week of September 9th, on  
24 how many days, if you know, approximately if you

1 need to, did you observe the demolition site?

2 A If I need to what?

3 Q If you need to approximate that.

4 A Oh. Approximately? Oh, approximately ten  
5 times. I'm sorry.

6 Q Now, my question was --

7 A That actually --

8 Q Excuse me. I'm asking a question.

9 MR. BLANKENSHIP: Let him finish his answer,  
10 please.

11 HEARING OFFICER KNITTLE: Yes. Finish your  
12 answer if you're still answering the question.

13 BY MR. JOSEPH:

14 A Well, that's a little vague because, I  
15 mean, I might have looked at it ten times in the one  
16 day I was here, so how many times did I look at it,  
17 I don't want to mislead. Maybe ten different  
18 occasions I was there, and maybe -- I'm going to  
19 count this as two or three times -- the time lapse,  
20 let's count that as two or three, and then -- you  
21 know, at least ten times I looked at the building.

22 BY MR. TREPANIER:

23 Q Okay. Now, my question was how many  
24 days. On how many days in the week of September 19th --

1 September 9th did you visit the demolition site?

2 Approximate that if you need.

3 A Probably almost every day. Again, I'd

4 have to look at my notes and see where I was and

5 what other events I was doing and what I shot there

6 which would bring my memory to me of what happened

7 that week.

8 Q And at this time -- is it true that at

9 this time your memory is that of the week of

10 September 9th, the week that you shot that evidence

11 video, that you observed that demolition site every

12 day or nearly every day?

13 A Nearly every day, sure, sure.

14 Q And at that time, on those visits, was the

15 demolition site active?

16 MR. BLANKENSHIP: Object to lack of foundation.

17 And I think he's -- his testimony is that he doesn't

18 really remember what he observed, so I think this is

19 speculative and --

20 MR. JOSEPH: No. I object. That's not true.

21 HEARING OFFICER KNITTLE: You can't object.

22 You're the witness, Mr. Joseph. But I'm going to

23 overrule his objection and allow the question to

24 stand.

1 BY MR. TREPANIER:

2 Q Now, you've testified that on the week --

3 HEARING OFFICER KNITTLE: He can answer that  
4 question.

5 MR. TREPANIER: Okay.

6 HEARING OFFICER KNITTLE: Are you restating the  
7 question, Mr. Trepanier?

8 MR. TREPANIER: I was going to, but if he can  
9 still answer --

10 HEARING OFFICER KNITTLE: Do you remember the  
11 question, Mr. Joseph?

12 MR. JOSEPH: No.

13 HEARING OFFICER KNITTLE: Why don't you restate  
14 it, Mr. Trepanier?

15 BY MR. TREPANIER:

16 Q Now, you've stated that on the week of  
17 September 9th you visited the demolition site  
18 every -- or nearly every day of that week. Now, can  
19 you recall if there -- during your visits -- during  
20 any of those visits there was -- other than  
21 September 9th if there was demolition activity  
22 occurring during your visit?

23 A Yes. During that week there was. I mean,  
24 I was -- I was staying in the neighborhood that

1 week, so I know that there was. But there were  
2 other things I was doing away from the neighborhood,  
3 so when I was there, there was demolition going on  
4 there. There was hand -- like I said, hand  
5 wrecking.

6 Q Okay. Now, on your visits to the  
7 demolition site during the week of September 9th,  
8 did you see a -- did you see a hose?

9 A I never saw -- I don't ever recall seeing  
10 a hose being used on that building being demolished  
11 when I was there from any side. I know where the  
12 fire hydrants are. I know very well because I've  
13 worked with the creative reading center. There's a  
14 fire hydrant here.

15 MR. BLANKENSHIP: Objection. Nonresponsive at  
16 this point.

17 HEARING OFFICER KNITTLE: Right. And I'm going  
18 to overrule that, but, Mr. Joseph, you can't just  
19 point to that document. You have to say --

20 BY MR. JOSEPH:

21 A All right. I could say that -- I could --  
22 if it would help, I could plot the fire hydrants  
23 where the hoses would have been.

24 HEARING OFFICER KNITTLE: That won't be

1 necessary.

2 MR. JOSEPH: All right.

3 HEARING OFFICER KNITTLE: Unless Mr. Trepanier  
4 asks you to.

5 BY MR. TREPANIER:

6 Q Now, when you say there wasn't a hose and  
7 you're testify -- and you're interested in  
8 testifying where the hydrants are, did you have an  
9 interest at the time in looking for a hose or a  
10 hydrant? That's during the week of September 9th,  
11 1996.

12 A Well, it would have been nice to see them  
13 squirting it down so that the dust wouldn't be going  
14 all over the neighborhood and the garden, you know.  
15 I mean, it's not just what you see. It goes up in  
16 the air, and you start breathing this stuff, and you  
17 can get pretty plugged up.

18 Q Is it your testimony --

19 MR. JEDDELOH: Objection. I ask that the  
20 you-can-get-pretty-plugged-up part be stricken. I  
21 think that's beyond his expertise to talk about the  
22 effect of dust on his person or on anybody's  
23 person.

24 HEARING OFFICER KNITTLE: I'll overrule it to

1 the extent --

2 MR. JOSEPH: I think I know what --

3 HEARING OFFICER KNITTLE: Hold on, Mr. Joseph.

4 I'm going to overrule it to the extent

5 that Mr. Joseph could have experienced some plugging

6 up on his own.

7 Proceed, Mr. Trepanier.

8 MR. JOSEPH: You know, on something that --

9 HEARING OFFICER KNITTLE: Mr. Joseph, there's

10 no outstanding question right now. Wait for

11 Mr. Trepanier to ask one, please.

12 MR. JOSEPH: Okay.

13 BY MR. TREPANIER:

14 Q So is it your testimony that while you

15 were videotaping on September 9th and in your visits

16 during that week that you were looking for a hose?

17 A I'm not going to say I was looking for it,

18 but I was pretty aware that there was not a hose. I

19 had seen other demolitions where hoses were used,

20 and I don't know really how effective it is, but it

21 was pretty obvious to me that they weren't using a

22 hose.

23 Q And do you know where the hydrants are

24 located that are proximate to 1261 Halsted?

1 A Yes.

2 MR. JEDDELOH: Mr. Knittle, we've been through

3 this before. This is just cumulative. He's

4 testified about three times he never saw a hose.

5 That's on the record.

6 HEARING OFFICER KNITTLE: Right.

7 MR. JEDDELOH: Could I request in light of the

8 fact that we do have a schedule here that we move on

9 to something new?

10 HEARING OFFICER KNITTLE: Yes, you can, and,

11 Mr. Trepanier, I'm going to ask you to speed things

12 along. I'm going to let him answer where the fire

13 hydrants were since we never really had any

14 testimony to that effect, but go ahead, Mr. Joseph.

15 Tell us where you think the fire hydrants were.

16 BY MR. JOSEPH:

17 A I know where the fire hydrants are. I

18 know them very well because they water this huge

19 garden over here.

20 HEARING OFFICER KNITTLE: Just keep it to where

21 the fire hydrants were, please.

22 BY MR. JOSEPH:

23 A Okay. One of the fire hydrants is on

24 13th Street just outside the door of the creative

1 reuse center, which would be just a little bit -- a  
2 little bit east of the building on the north side of  
3 13th Street. I'm marking it with what looks like a  
4 cross here. I guess -- I'll put FH.

5       And the other one, I believe, is right  
6 over here across 13th on Halsted on the north -- or  
7 no, excuse me -- south -- southeast corner of  
8 Halsted, and there was nothing crossing that  
9 street. There was nothing going over the air. I  
10 don't ever recall them using a fire hydrant

11       HEARING OFFICER KNITTLE: Let the record  
12 reflect that he has marked, Mr. Joseph has, on the  
13 Complainants' Exhibit Number 1 and has marked an FH  
14 next to each of the Xs where he thinks there is a  
15 fire hydrant.

16       MR. JOSEPH: Yeah. I drew like a cross. It  
17 looks like it's got a --

18       HEARING OFFICER KNITTLE: It's noted.

19       Mr. Trepanier, your next question here.

20 BY MR. TREPANIER:

21       Q   Given where you've marked those hydrants  
22 on the map, on the Exhibit 1, is it true that when  
23 you -- when you left your video machine and walked  
24 up to Halsted that you passed between both of those

1 hydrants and 1261?

2 A Right. To get there, I had to -- to get  
3 in the gate, I had to cross here around this big  
4 building here. I had to cross right by here.

5 HEARING OFFICER KNITTLE: Once again,  
6 Mr. Joseph, please try to keep your answers more  
7 descriptive. We can't reflect on the transcript  
8 what here means.

9 BY MR. JOSEPH:

10 A All right. I had to walk around the 722  
11 building and pass by the fire hydrant at the  
12 resource center and into the gate here -- into the  
13 gate into the yard to get to the camera, and to  
14 leave I had to go out that gate and pass by  
15 13th Street toward Halsted, and there were no  
16 hoses. In fact, I think that they might have been  
17 watering the garden at that time. They had a hose  
18 hooked up that went --

19 MR. BLANKENSHIP: I'll object to what he thinks  
20 may have been happening. Move to strike that  
21 portion of his testimony.

22 HEARING OFFICER KNITTLE: Sustained.

23 Mr. Trepanier, ask your next question,  
24 please.

1 BY MR. TREPANIER:

2 Q Did you -- when -- during your week of  
3 observations around September 9th, was -- I know  
4 I've asked you regarding September 9th if  
5 13th Street was closed, but on your other visits to  
6 the site, was 13th Street closed?

7 A I don't ever remember it being closed. I  
8 don't think they ever closed it.

9 Q And --

10 A To my recollection, it was never closed.

11 Q And as far as you know, if a fire hose  
12 were to go from the hydrant on Halsted, the  
13 closest -- if a fire hose was to go from the closest  
14 hydrant to 1261, that hose would cross the road?

15 A Unless it went up over the top, but I  
16 don't see how they could -- I mean --

17 Q Did you observe a fire hose going over the  
18 top?

19 A No. I observed no fire hose.

20 Q Did you observe a fire hose connected to  
21 the fire hydrant?

22 MR. BLANKENSHIP: Objection. Asked and  
23 answered. He's established the fire hose point.

24 HEARING OFFICER KNITTLE: Sustained.

1 MR. TREPANIER: Now, I'm going to address the  
2 hearing officer to ask a question now about one of  
3 the criterias, I believe, that has to do with -- it  
4 has to do with the section 9.

5 MR. JEDDELOH: I'm going to object to him  
6 using -- first of all, I think he's asking for an  
7 advisory opinion or about to. And secondly, I would  
8 object to him using this technique to coach the  
9 witness about what kind of information he wants to  
10 elicit.

11 MR. BLANKENSHIP: I'll join in the objection.  
12 If he has a question, he should ask it, of the  
13 witness.

14 HEARING OFFICER KNITTLE: Sustained. Go ahead,  
15 Mr. Trepanier. Ask your question. We'll deal with  
16 it as it comes up.

17 MR. TREPANIER: All right.

18 BY MR. TREPANIER:

19 Q Have you observed this type of pollution  
20 that you -- the type of activity that you documented  
21 on September 9th, have you observed that in this  
22 very neighborhood previously?

23 MR. BLANKENSHIP: I'm going to object to going  
24 beyond the 1261 site. That's already been decided.

1 Those other demolitions are out of the case.

2 MR. TREPANIER: No. What I'm going into --

3 HEARING OFFICER KNITTLE: What are you trying

4 to get to, Mr. Trepanier?

5 MR. TREPANIER: What I'm trying to get to is in

6 section 9, 9A I believe it is, it talks about a

7 pollution source that -- a source that itself or in

8 combination with other pollution sources, and I

9 could look at the proper wording, but it can --

10 what -- one individual activity might not rise to

11 the level of pollution, if it's right in company

12 with similar or dissimilar pollution sources, that

13 may then rise to the level of a violation.

14 HEARING OFFICER KNITTLE: Mr. Trepanier, are

15 you going to try to get testimony about previous

16 demolition sites in the area?

17 MR. TREPANIER: I'm -- what I'm going to --

18 HEARING OFFICER KNITTLE: Or are you trying to

19 get testimony about an alleged pollution source that

20 was going on at the same time as this demolition?

21 MR. TREPANIER: Yes. I'm going to be inquiring

22 into that --

23 HEARING OFFICER KNITTLE: What, though?

24 MR. TREPANIER: Of pollution sources. I was

1 intending to ask the question not that it was at the  
2 same exact time.

3 HEARING OFFICER KNITTLE: Okay. I'm not going  
4 to allow any testimony then about that. We are here  
5 strictly pursuant to board order for a pollution  
6 that occurred allegedly at 1261 Halsted Street. So  
7 I'm going to sustain both objections and ask you to  
8 move on.

9 MR. TREPANIER: Okay. Well, just so that you  
10 understood that I was objecting -- my objection is  
11 that I feel like since there was a series of  
12 demolitions and this being one of them --

13 HEARING OFFICER KNITTLE: Right.

14 MR. TREPANIER: -- that these were a cumulative  
15 effect which made the impacts of the 1261 demolition  
16 much higher, much greater cause of its company.

17 HEARING OFFICER KNITTLE: I think your  
18 objection to my ruling is noted for the record.

19 MR. TREPANIER: Thank you.

20 I have no more questions at this time.

21 HEARING OFFICER KNITTLE: Okay. Ms. Cole, do  
22 you have any questions of Mr. Joseph? I'm sorry.  
23 Ms. Minnick.

24 MS. MINNICK: Yeah. Let's see.

1 None that haven't already been asked.

2 HEARING OFFICER KNITTLE: Okay. Mr. Wager, do  
3 you have any questions you want to ask Mr. Joseph at  
4 this time?

5 DIRECT EXAMINATION

6 BY MR. WAGER:

7 Q Do you think that what you observed was  
8 typical of the university demolitions that you've  
9 seen in the area over the years?

10 MR. BLANKENSHIP: Objection.

11 MR. JEDDELOH: Objection.

12 HEARING OFFICER KNITTLE: I'm going to have to  
13 sustain that. We're here strictly on the 1261  
14 demolition. I don't think that's purely relevant.

15 Any other questions, Mr. Wager?

16 BY MR. WAGER:

17 Q Did you have any physical effects during  
18 your observations from the pollution that you saw?

19 MR. JEDDELOH: I'm going to object to that  
20 question. I believe it would allow the witness to  
21 testify as to the medical consequences of some  
22 exposure to dust if that occurred, and I believe  
23 that that would be inappropriate, beyond the  
24 capacity of this witness, and I think it would be

1 inconsistent with -- I think it would be  
2 inconsistent with the board's ruling on summary  
3 judgment where it was recognized, in theory anyway,  
4 that these witnesses cannot testify about medical  
5 issues.

6 HEARING OFFICER KNITTLE: I'm going to -- it's  
7 not -- you are no longer representing -- I mean, you  
8 are no longer examining this witness. You can't be  
9 involved in this particular objection,  
10 Mr. Trepanier.

11 I'm going to overrule your objection,  
12 though, and let him answer the question to the  
13 extent that you suffered any physical problems.

14 BY MR. JOSEPH:

15 A Okay. Well, I can say that there's a real  
16 concern --

17 MR. JEDDELOH: I'm going to testify as to what --  
18 I'm going to object, I'm sorry, as to what he may  
19 have as concerns.

20 HEARING OFFICER KNITTLE: Right. Mr. Joseph,  
21 the question was did you suffer any physical effects  
22 from the dust. Is that correct, Mr. Wager?

23 MR. WAGER: Yes.

24

1 BY MR. JOSEPH:

2 A Yes. I try to avoid -- when I see a  
3 demolition, I know what it's like because there's  
4 been numerous --

5 HEARING OFFICER KNITTLE: Right, but I'm asking  
6 you to answer the question, did you suffer physical  
7 effects.

8 BY MR. JOSEPH:

9 A Yes. Even by trying to stay upwind, you  
10 get stuff and you get plugged up, and, you know, you  
11 have to get it out of your system. You know, it  
12 plugs up your breathing capacity, and there's a  
13 concern with the cumulative effect of the rubber  
14 coming off the road.

15 MR. JEDDELOH: I'm going to object. May I make  
16 my objection, please?

17 THE WITNESS: This is a real poisoning.

18 HEARING OFFICER KNITTLE: Overruled. Just let  
19 him finish this for a little bit. Mr. Joseph, go  
20 ahead.

21 BY MR. JOSEPH:

22 A And I think that there's a real --

23 HEARING OFFICER KNITTLE: I'll let you object  
24 to what he testifies to.

1 BY MR. JOSEPH:

2 A -- concern and disregard on this

3 university's --

4 HEARING OFFICER KNITTLE: Now, Mr. Joseph, I am

5 going to stop you there. That's not responsive to

6 the question.

7 MR. JOSEPH: Okay. Well, I mean, how do you

8 respond? I'm trying to say is there -- I have felt

9 the effects of breathing in things coming off this

10 building, unknown substances on all these

11 buildings.

12 HEARING OFFICER KNITTLE: That's it.

13 MR. JOSEPH: I tried my best to avoid it.

14 HEARING OFFICER KNITTLE: Hold on. Stop.

15 That's no longer responsive to the question.

16 Now, I'm going to allow Mr. Jeddelloh to

17 make his objection for the record to any testimony

18 about your physical effects.

19 MR. JEDDELOH: First of all, Mr. Chairman, he

20 hasn't testified just about physical effects, and he

21 hasn't really testified about anything that relates

22 to any actual physical manifestation he would have

23 from the dust. I think it's clear that he's

24 testified that he tried to avoid the dust because he

1 was worried about it.

2 All of the testimony that he provided  
3 about rubber from the road and hazardous substances  
4 in the property and that it could plug up breathing,  
5 it's all inappropriate, and anything that would  
6 relate to manifestations of this dust in his own  
7 physical health would be required -- would require  
8 expert testimony they don't have.

9 HEARING OFFICER KNITTLE: Mr. Blankenship?

10 MR. BLANKENSHIP: I'm going to object to the  
11 specific testimony for lack of foundation as to when  
12 these alleged effects occurred. We have no idea.

13 HEARING OFFICER KNITTLE: I'll note both of  
14 your objections.

15 Mr. Wager, do you have any further  
16 questions for this witness?

17 BY MR. WAGER:

18 Q Did any of this airborne material from the  
19 demolitions land on your skin and did you -- how  
20 would you react to that?

21 MR. BLANKENSHIP: I would ask that be broken  
22 into two questions, if it did, and then we can  
23 establish foundation before going on.

24

1 BY MR. JOSEPH:

2 A Well, yes, it probably did because there's  
3 always more dust when there's a demolition. Even if  
4 you think you're downwind, it goes up, and it  
5 filters down everywhere.

6 MR. BLANKENSHIP: I'll object to that, move to  
7 strike it because it was --

8 BY MR. JOSEPH:

9 A Everybody's backyard that's nearby --

10 HEARING OFFICER KNITTLE: Hold on, Mr. Joseph.

11 What was that?

12 MR. BLANKENSHIP: He said it probably did.

13 MR. JOSEPH: Well, it does. It does.

14 MR. BLANKENSHIP: That doesn't sound like  
15 testimony that it did.

16 HEARING OFFICER KNITTLE: Mr. Joseph, the  
17 question was did dust from this demolition site land  
18 on your skin.

19 MR. JOSEPH: Yes.

20 HEARING OFFICER KNITTLE: Okay. Now, what was  
21 the second part of the question, Mr. Wager?

22 BY MR. WAGER:

23 Q And what was your reaction to it?

24 MR. BLANKENSHIP: And I'll object to that for

1 lack of foundation as to when this allegedly  
2 happened and other details before we get to the  
3 effect.

4 MR. WAGER: I believe we're talking about the  
5 day when -- of the videotape.

6 MR. BLANKENSHIP: Well, I'm going to object to  
7 that statement. I don't know what they were talking  
8 about.

9 HEARING OFFICER KNITTLE: I understand. Your  
10 objection is overruled.

11 Mr. Joseph, please tell us if you had any  
12 such effects.

13 MR. JEDDELOH: I'm going to object to that  
14 again just for the record because I think it would  
15 require him -- and this question much more would  
16 require him to provide medical testimony.

17 HEARING OFFICER KNITTLE: Understood, and I'm  
18 overruling because I think any person can testify to  
19 effects that they feel physically.

20 I'm not asking for a medical opinion here,  
21 Mr. Joseph. I'm just asking for effects that you  
22 personally felt from the dust.

23 BY MR. JOSEPH:

24 A Well, again, I tried to avoid it, but

1 there was dust bits everywhere.

2 HEARING OFFICER KNITTLE: This is from landing

3 on your skin in response to Mr. Wager's question.

4 BY MR. JOSEPH:

5 A Well, I can't say there was any serious

6 problem from it landing on my skin. Hopefully, you

7 know, no asbestos filtered through and --

8 MR. JEDDELOH: I ask that the part relating to

9 hopefully no asbestos being filtered through be

10 stricken.

11 HEARING OFFICER KNITTLE: I'm going to let it

12 stand. The board is going to know -- I'm going to

13 want the board to see this and to get some semi-idea

14 of what's going on here, but, Mr. Joseph, I'm going

15 to direct you to just answer the questions as

16 they're presented to you.

17 Mr. Wager, do you have anything else?

18 MR. WAGER: Will there be time -- a chance for

19 further questions later because I wasn't really

20 prepared to ask questions?

21 HEARING OFFICER KNITTLE: No. This is

22 Mr. Joseph's only testimony that he's going to be

23 giving. You will be able to testify later, if you'd

24 like, on your own behalf.

1 BY MR. WAGER:

2 Q Did the -- this dust that you observed,  
3 did it actually affect the quality of your  
4 videotaping any, like the dust landing on the  
5 camera?

6 A Well, yeah. Maybe some got on the lens,  
7 you know.

8 MR. BLANKENSHIP: Objection as to maybes.

9 HEARING OFFICER KNITTLE: I'm going to allow  
10 his answer to stand. Overruled.

11 Next question, Mr. Wager.

12 MR. WAGER: The questions are just relating to  
13 this particular day when he was videotaping?

14 HEARING OFFICER KNITTLE: The questions are  
15 related to 1261 Halsted. I'm not going to allow too  
16 many questions here, Mr. Wager, so make them good.

17 BY MR. WAGER:

18 Q Did you observe -- prior to the  
19 demolition, did you observe the inside of the 1261  
20 building?

21 MR. BLANKENSHIP: Asked and answered.

22 HEARING OFFICER KNITTLE: Yes. The objection  
23 is sustained. He's already answered this question  
24 while you were not here, Mr. Wager.

1 MR. WAGER: I'll leave it at that.

2 HEARING OFFICER KNITTLE: Okay. Thank you.

3 We're going to continue this with cross

4 examination of Mr. Joseph after lunch. We can go

5 off the record.

6 (Whereupon, a discussion was held off

7 the record.)

8 (Whereupon, a lunch recess was taken.)

9 AFTERNOON SESSION

10 HEARING OFFICER KNITTLE: We can go back on the

11 record.

12 We are here. This is the afternoon

13 session of the March 24th, 1999, hearing, 97-50, and

14 currently Mr. Lorenz Joseph is on the stand subject

15 to cross examination by the Respondents. Which one

16 of the Respondents?

17 MR. BLANKENSHIP: I'm going to go.

18 HEARING OFFICER KNITTLE: Mr. Blankenship?

19 MR. BLANKENSHIP: Yes.

20 CROSS EXAMINATION

21 BY MR. BLANKENSHIP:

22 Q Mr. Joseph, how old are you?

23 A Forty-six.

24 Q Are you presently employed?

1 A Is that relevant?

2 HEARING OFFICER KNITTLE: Mr. Joseph, you have

3 to answer the questions, if you can. I think that

4 is relevant. He's doing some background questions.

5 MR. JOSEPH: Oh, okay.

6 BY MR. JOSEPH:

7 A I work for myself.

8 BY MR. BLANKENSHIP:

9 Q What do you do for yourself?

10 A I'm an independent videographer.

11 Q How long have you been an independent

12 videographer?

13 A Most of my life.

14 Q Have you ever held a job other than as a

15 self-employed videographer?

16 A Yes, I have.

17 Q When was that? When was the last time

18 you held a job other than as a self-employed

19 videographer?

20 A Well, I do other free-lance work now, too,

21 because there's not a lot of money in what I'm

22 doing.

23 Q What type of free-lance work do you do?

24 A Wherever I can make the most money.

- 1 Q What's the last free-lance work that you  
2 did?
- 3 A I do part-time work helping somebody move  
4 things around and make adjustments on equipment.
- 5 Q When was that?
- 6 A Periodically.
- 7 Q When was the last time you did that?
- 8 A Oh, I did some work for somebody the other  
9 day.
- 10 Q You got paid for that work?
- 11 A Well, I did a barter.
- 12 Q What's your highest level of education?
- 13 A College --
- 14 Q When did you go to college?
- 15 A -- a couple years of college.  
16 In the '70s.
- 17 Q And you did not graduate?
- 18 A No.
- 19 Q Two years, did you say?
- 20 A Approximately two years.
- 21 Q Okay. What did you study?
- 22 A I studied -- at that time it was  
23 filmmaking mostly, and it was video and engineering.
- 24 Q What was the school you attended?

1 A College of DuPage. I've sat in on classes  
2 all over the country.

3 Q Have you sat in on any classes in the last  
4 five years?

5 A Probably.

6 Q Do you recall any?

7 A I sat in on a couple classes on Columbia.

8 Q What was the nature of those classes?

9 What was the subject?

10 A Related to video business.

11 Q Okay.

12 MR. WAGER: I don't understand. What is the  
13 point of these questions?

14 HEARING OFFICER KNITTLE: It's not quite your  
15 time to object, but, Mr. Blankenship, do you want to  
16 explain what the point of these questions is?

17 MR. WAGER: It's just a question, not  
18 necessarily an --

19 MR. BLANKENSHIP: I'm just trying to get some  
20 background. There has to be a finding of  
21 credibility as to the witnesses, and background is  
22 one factor that influences that finding. I'm done  
23 with the background.

24 HEARING OFFICER KNITTLE: Okay. That's the

1 answer. I'm going to let occasionally some  
2 objections come from all parties since they all did  
3 do a direct.

4 BY MR. BLANKENSHIP:

5 Q At the time of the demolition of 1261  
6 Halsted, you lived at 716 West Maxwell?

7 A No.

8 Q Where did you live?

9 A I was working in the neighborhood. I  
10 really wasn't living anywhere.

11 Q Where did you sleep at night?

12 A Depending on where I was -- what project I  
13 was working on. It could have been in the  
14 neighborhood. It could have been out of the  
15 neighborhood.

16 Q Okay. And when you filed your complaint,  
17 you used the address of 716 West Maxwell to be sent  
18 mail?

19 A Yes, because that's where I was spending a  
20 lot of time working on a documentary at the time.

21 Q Okay. Now, on September 9th, 1996, when  
22 you were making the video, you were shooting that  
23 video from the yard to the east of 1261, right?

24 A I was shooting it from the east looking

1 west.

2 Q And that yard where you were shooting from  
3 is about 100 feet to the east of the actual building  
4 at 1261, right?

5 A Well, the yard starts directly across the  
6 alley, a very narrow alley.

7 Q How far from the back of the building at  
8 1261 did the yard start?

9 A I would say the -- approximately maybe 15  
10 feet.

11 Q How wide is the yard from west to east?

12 A Well, excuse me. I just want to clarify.  
13 The alley is 15 feet. The yard is probably 100  
14 feet.

15 Q Okay. And your camera was positioned at  
16 the east end of the yard, it looked like, on the  
17 video?

18 A Very close to the creative reuse center  
19 building.

20 Q Okay. And that yard is -- just contains  
21 the materials that have been donated to the center,  
22 right?

23 A Basically.

24 Q It's a storage facility?

1 A Basically, yes.

2 Q Okay. And you testified that people  
3 frequently were in the yard; is that right?

4 A Yes.

5 Q I only think I saw one person in the video  
6 that whole day in the yard. Do you recall something  
7 different than was shown on the video?

8 A I think I saw several people in the yard.

9 Q Is there a reason that wouldn't have been  
10 reflected on the video?

11 A Oh, I thought I saw several. I looked at  
12 it this morning, you know, the copy I had.

13 Q Well, however many were shown on that  
14 video is the number of people that were in the yard  
15 on that day?

16 A No, because it was intermittent. It was  
17 time lapsing, so if somebody walked through the yard  
18 in the 59 seconds approximately that it wasn't  
19 capturing, you would have missed them.

20 Q From where the video was positioned, you  
21 couldn't see what was happening on top of the  
22 building, could you?

23 A Only if somebody was within the angle of  
24 the view.

1 Q Okay. Well, if someone was --

2 A The camera was about ten feet up, and the  
3 fourth story was the four stories up.

4 Q So you're on the top of the building on  
5 the Halsted side. You couldn't see what was  
6 happening up there, could you?

7 A No.

8 Q And if watering was going on up there, you  
9 couldn't see that from where you were viewing?

10 A I didn't -- I -- not when I -- when I  
11 walked around, there was no watering going on on  
12 that side.

13 Q Well, you couldn't see from where you were  
14 shooting the video whether there was water or not,  
15 right?

16 A No. You can't see. The building blocks  
17 the Halsted side.

18 Q Right.

19 A The building is between Halsted.

20 Q So your video doesn't help answer the  
21 question of whether there was watering going on on  
22 the property or not, does it?

23 A Well, it shows everything on the -- it  
24 shows everything on the east side of the building.

1 Q But if watering was going on on the west  
2 side of the building, the video wouldn't show it,  
3 right?

4 A It --

5 Q That's a yes or no question.

6 A Not unless it was coming down off the  
7 top. You would see it if it was spraying over the  
8 top.

9 Q Okay. But if they were just spraying on  
10 the west side of the building out of the view of the  
11 camera, it wouldn't be seen, right?

12 A No. Not if they were spraying in the  
13 front end, no.

14 Q And obviously, you couldn't see what was  
15 going on inside the building either, right?

16 A No.

17 Q Now, the dumping that you observed was  
18 coming off the east side of the back of the  
19 building, right?

20 A Correct.

21 Q Into the east space between the building  
22 and the yard?

23 A Alley.

24 Q The alley, okay.

1        You didn't see any dumping off the front

2 side on Halsted, did you?

3     A    No, I didn't.

4     Q    Okay. And you didn't see dumping off the

5 side onto 13th Street, did you?

6     A    I don't think so.

7     Q    Okay. And as I saw the videotape, it

8 looked like the bulk of the debris was actually

9 falling fairly straight down, wasn't it?

10    A    If the wind wasn't blowing, it would

11 basically -- you know, what doesn't lift up is going

12 to -- from what you can see, basically if the wind

13 is not blowing, it's going to go somewhat down.

14    Q    When the wind was blowing, it drifted but

15 it still went down? It just may have drifted a few

16 feet to the south before it actually came down,

17 right?

18    A    Well, four stories, if the wind is

19 blowing, it's going to go -- it could go a lot

20 farther than that and just keep going.

21    Q    Well, it looked to me, and tell me if you

22 disagree, that the material was coming down as it's

23 blowing sideways?

24    MR. TREPANIER: I have an objection that the

1 video that he's referring to went for a whole day.

2 Now, is there a certain episode that the attorney is

3 asking a question about, or is he wanting the

4 witness to respond if he saw any dust blow away at

5 any time?

6 MR. BLANKENSHIP: I'll rephrase the question.

7 HEARING OFFICER KNITTLE: Do you mind?

8 MR. WAGER: It seems to me like these are very

9 leading questions.

10 HEARING OFFICER KNITTLE: He can lead on cross

11 examination. That's allowed. I'll sustain your

12 objection if you'll rephrase the question.

13 BY MR. BLANKENSHIP:

14 Q When you saw debris being dumped off the

15 building on September 9th and saw it blowing to the

16 south, was that dust falling at the same time it was

17 going in the southward direction?

18 A Yes, gravity.

19 Q Okay. And the building on 13th Street,

20 how tall is that building to the south of 1261? Is

21 it a four-story building?

22 A South?

23 Q Yes. To the south of 1261 at the

24 southeast corner of Halsted and 13th Street, how

1 tall is that building?

2 A You mean across the street?

3 Q Yes.

4 A 13th Street?

5 Q Yes.

6 A Approximately the same height.

7 Q Same height?

8 HEARING OFFICER KNITTLE: I want to let the

9 record reflect that whenever Mr. Blankenship asks a

10 question relating to the geography of the area,

11 Mr. Joseph is referring to that Complainants'

12 Exhibit Number 1, the map, before he answers. I

13 want to make that --

14 MR. JOSEPH: Is that okay? I mean, I don't

15 want to jeopardize anything.

16 HEARING OFFICER KNITTLE: You're supposed to

17 testify from memory, but if you're going to do that

18 and there has not been an objection, I want it to be

19 noted for the record that you are continually

20 looking down at that piece of paper before you

21 answer just so the board members know.

22 MR. JOSEPH: Well, should I not look at that

23 or turn it over? I thought it would help.

24 HEARING OFFICER KNITTLE: Is there an objection

1 to him looking at that?

2 MR. BLANKENSHIP: That's fine.

3 HEARING OFFICER KNITTLE: Yes. I don't have a

4 problem with it. I just wanted it noted for the

5 record so they have a good idea of what's going on.

6 BY MR. BLANKENSHIP:

7 Q So the building across 13th Street from

8 1261 is the same height roughly?

9 A Approximately.

10 Q So if the dust that was coming off the

11 back --

12 A Was --

13 Q The dust that was coming off the back of

14 1261, if it was falling downward as it's blowing

15 south, the furthest it could have got is when it ran

16 into the building on the southeast corner of

17 13th Street and Halsted, right?

18 A No. It could have gone between the

19 buildings. There's -- the alley kind of continues.

20 Q Well, the building on the southeast corner

21 actually goes further east than the building at

22 1261, didn't it?

23 A A little bit, a little bit maybe, yeah.

24 Q Okay.

1 A Or it could have blown around the corner  
2 into 13th.

3 Q But you don't know. You didn't see the  
4 dust blow around the corner, did you?

5 A Well, I did see it blowing around the  
6 corner. Yeah, I did see it when I was walking  
7 around.

8 Q How much dust did you see blow around the  
9 corner?

10 MR. TREPANIER: Objection. Can he clarify as  
11 to what time period that he's asking this question  
12 in as to when he saw dust blow around?

13 MR. BLANKENSHIP: The time period is the time  
14 he just testified that he saw dust blow around the  
15 corner.

16 HEARING OFFICER KNITTLE: Overruled. You can  
17 answer the question, Mr. Joseph.

18 BY MR. JOSEPH:

19 A Okay. Could you repeat the question?

20 BY MR. BLANKENSHIP:

21 Q When you saw the dust blow around the  
22 corner on 13th Street, how much dust did you see  
23 blow around the corner?

24 A Well, whatever they dump off. If there's

1 rocks, they're going to pretty much fall. If

2 there's wind, the stuff is going to carry.

3 Q Well, how much dust did you see? Was it a

4 handful of dust?

5 A They were dumping -- you know, when they

6 dumped, they dumped a wheelbarrow full. How much

7 does a wheelbarrow hold, a quarter yard?

8 Q Did you see a whole wheelbarrow full of

9 dust blow around the corner? That's my question.

10 A Well, whatever was not heavy enough to

11 fall, if the wind was blowing, it would blow

12 whichever way the wind is blowing.

13 Q And I'm trying to understand what that was

14 because now you told me that the heavy portion of it

15 went to the ground, the heavy portion of this

16 wheelbarrow full went to the ground and a portion

17 didn't --

18 A By weight, by volume, what do you mean?

19 Q However you can describe it.

20 A All I can say is that I saw them dump

21 wheelbarrows, and some of them blew around. If the

22 wind was blowing good, it's going to keep going

23 whichever way the wind is going.

24 Q And you can't quantify how much you saw

1 blow around the corner?

2 A Maybe a quarter wheelbarrow.

3 Q Okay. How far did it go?

4 A To be -- you know, being conservative.

5 Q After that dust rounded the corner, how  
6 far did it go?

7 A Well, as it blows, it thins out, you  
8 know. It's still going. It's just spreading out.

9 Q And falling, too, right, because of  
10 gravity?

11 A Pollution is not the solution. I mean, is  
12 it going into the sewers?

13 Q I'm trying to get an idea, sir, of how far  
14 this dust that you say came off the building, how  
15 far it went, and what I'm hearing so far is that --

16 A As far as I can see, you can see it until  
17 it gets to the point where it thins out so bad, and  
18 then it's just everywhere with people breathing it.  
19 It's to Halsted Street. It's going to just keep  
20 blowing.

21 Q How far from 1261 did the dust blow before  
22 you couldn't see it anymore, before it thinned out  
23 enough to not see it?

24 A I would say after maybe 50 or 100 feet, it

1 just kind of blends in.

2 Q You saw a cloud of dust blowing 100 feet  
3 from 1261? Is that your testimony?

4 A It's hard to guess. Maybe 50 feet, yeah.

5 Q Now, you mentioned two visits inside the  
6 building at 1261. You never visited inside the  
7 building while work was going on, did you?

8 A No, I didn't.

9 Q Both of your visits were after the  
10 Speedway crew had left the site?

11 A Yes. Well, let's say maybe there were  
12 more buildings, too, but I --

13 Q Well, the ones you went inside the  
14 building, inside the building?

15 A No. I wasn't in there when they were  
16 working.

17 Q Okay. And we talked about the first visit  
18 yesterday, but I want to make clear, the second  
19 visit, you also didn't have permission from the  
20 owner of the property to go inside that building,  
21 right?

22 A I didn't know I was required to have  
23 permission.

24 Q But you didn't have permission, right?

1 A No. I didn't have any permission from  
2 anybody to go in the building.

3 Q Okay. And when you were in the basement  
4 and you saw the asbestos --

5 A I was not in the basement.

6 Q I'm sorry. When you were at the door to  
7 the basement, is that where you saw the asbestos  
8 sign?

9 A Right.

10 Q Sir, that sign, in fact, was left from  
11 when they were taking the asbestos out of the  
12 building, wasn't it?

13 A No. That sign had been there when the  
14 building was occupied. That was in there.

15 Q How do you know that?

16 A Well, it looked like it hadn't -- it  
17 looked like it had been there. It wasn't just a  
18 little cardboard sign. It was like mounted --

19 Q Well --

20 A -- securely, and it was aged.

21 Q Couldn't that have been an old sign of the  
22 demolition company that they brought and put up  
23 there to warn people that they were in the process  
24 of removing asbestos?

1 A Well, the sign looked a lot older than the  
2 dates on the alleged demolition -- or the alleged  
3 removal of asbestos.

4 Q At the time you were in the --

5 A It's an old sign.

6 Q At the time you were in the building, you  
7 don't know whether there was asbestos in the  
8 basement or not, do you?

9 A I only saw the sign.

10 Q So you don't know whether there was  
11 asbestos in the basement or not, right?

12 A I can only assume there was at some point.

13 Q My question is, sir, at the time you saw  
14 the sign at the time you were in the building --

15 A No, I don't know, correct. That is  
16 correct.

17 Q Okay. Thank you.

18 Now, in the ten or so occasions you  
19 testified that you went by and observed the  
20 demolition site, were you in the area just to be  
21 observing the site?

22 A No. I was in the area because I was doing  
23 a documentary in the area.

24 Q And why were you in this particular

1 position in the area at the demolition at 1216, as  
2 part of your making a documentary of the demolition?

3 A No. I was doing other documentaries of  
4 the neighborhood, and this happened to become a part  
5 of the story of the neighborhood.

6 Q So you were trying to document the  
7 demolition of the building?

8 A That's why I set time lapse up because I  
9 knew they were --

10 Q Well, how about on the nine other times  
11 that you were in the area observing the building  
12 that you testified to, why were you in the area  
13 then?

14 A To document the different things in the  
15 neighborhood.

16 Q Were you living in the area at that time?

17 A Well, I was working in the neighborhood on  
18 my documentary.

19 Q Now, you said that some dust landed on  
20 your skin, but there was no serious problem caused  
21 by the dust. In fact, you had no reaction at all to  
22 the dust on your skin, right?

23 A Not specifically.

24 Q You just brushed the dust off and went on

1 your way?

2 A Right.

3 Q Is that a yes?

4 A Yeah. I didn't break out with anything.

5 Q And you never saw any medical doctor or

6 any health care professional with regard to any

7 exposure to the dust, did you?

8 A No, I didn't.

9 Q So whatever your reaction was, it wasn't

10 serious enough for you to go see a doctor or a nurse

11 or a professional?

12 A Well, I didn't really have the money to go

13 a physician either, so that's kind of -- be a major

14 factor in trying to take care of myself.

15 Q Well, did you try to go to a clinic or any

16 other -- obtain any other kind of assistance?

17 A No, I didn't.

18 Q Did it even occur to you to do that; that

19 you might need to go see someone?

20 A My experience with the clinics was -- have

21 been that it's really not really worthwhile.

22 Q So whatever health problem you believe you

23 sustained as a result of the dust, it disappeared

24 obviously very quickly, right, because you weren't

1 incapacitated for any period of time?

2 A Other than just irritating, breathing in  
3 and getting plugged up a little bit and irritating  
4 your eyes or something, it's -- I tried to avoid it.

5 Q And when your nose got plugged up, you  
6 blew your nose and went on your way, right?

7 A Probably.

8 Q Okay. Now, when the demolition was done  
9 and over, the site was left with the basement filled  
10 in, and it was just a vacant lot, right?

11 A It had a little rubble left. They put a  
12 fence up. It's still sitting there.

13 Q And on Halsted Street, there was a canopy  
14 protecting the passersby on the west side of 1261?

15 A As I remember, the canopy was on part of  
16 13th Street, and at the front was just more or less  
17 blocked off. You had to walk out into the street,  
18 but I'd have to look at the video to be sure because  
19 I do remember being in front by the windows, and it  
20 was -- actually, there was no canopy as I remember.  
21 There may have been way out toward the street, but  
22 it was -- the front was pretty much blockaded out  
23 past the windows. I would have to look at the  
24 video.

1 Q And was that to stop people from getting  
2 too close to the demolition site? Was that the  
3 effect that that blockage had?

4 A I would say so, yeah.

5 Q Okay. So in your mind, was it pretty  
6 clear that Speedway was trying to protect the  
7 passersby as they were walking by the site on  
8 Halsted?

9 MR. TREPANIER: I'm going to object to him  
10 asking this witness what Speedway was intending to  
11 do.

12 HEARING OFFICER KNITTLE: Sustained.

13 MR. BLANKENSHIP: I don't have any other  
14 questions.

15 MR. JEDDELOH: Nor do I.

16 HEARING OFFICER KNITTLE: Mr. Trepanier, is  
17 there any redirect?

18 MR. TREPANIER: Yeah.

19 BY MR. TREPANIER:

20 Q On --

21 MR. JEDDELOH: Can I ask how long this is going  
22 to take because I've got a witness sitting out  
23 there?

24 HEARING OFFICER KNITTLE: Yes. Do you have an

1 idea how long?

2 MR. TREPANIER: It's two pieces, probably three

3 or four questions.

4 HEARING OFFICER KNITTLE: You're aware that any

5 redirect you have has to be coming from the cross

6 examination, correct?

7 MR. TREPANIER: Right.

8 HEARING OFFICER KNITTLE: Okay.

9 REDIRECT EXAMINATION

10 BY MR. TREPANIER:

11 Q You've just testified regarding the yard

12 next to the resource center, and I'm going to ask

13 you a question about that.

14 You've testified about the gate on the

15 south side of that yard that you yourself used in

16 and out. Are there any other gates on that yard?

17 A Yeah. There are some gates on the other

18 end, but they're basically kept locked all the

19 time. At that time, they were pretty much all the

20 time locked out.

21 Q And is there any other entrances to the

22 yard?

23 A Yeah. There's an entrance through --

24 there's a door -- like a sliding door into the

1 resource center right next to where -- just to  
2 the -- directly south of where the camera was, and  
3 that was probably open, too.

4 Q And --

5 A It was opened up during the day.

6 HEARING OFFICER KNITTLE: Are you marking on  
7 the map --

8 MR. JOSEPH: I could.

9 HEARING OFFICER KNITTLE: -- on Complainants'  
10 Exhibit Number 1.

11 MR. JOSEPH: What are we going to call this,  
12 roll-up door to the resource center?

13 HEARING OFFICER KNITTLE: Let the record  
14 reflect that Mr. Joseph is writing roll-up door to  
15 the resource center at some point on the map which  
16 is labeled Complainants' Exhibit Number 1.

17 BY MR. TREPANIER:

18 Q And you're saying that door was available  
19 at the time that you made the video September 9th?

20 A As I recall, it was open.

21 Q Now, when a person is exiting that door  
22 and walking into the yard and then, say, proceeding  
23 out the gate, would they necessarily walk in view of  
24 the camera?

1 MR. BLANKENSHIP: Let me object to this. This  
2 is speculation. If somebody did that, he can  
3 testify to that, but he shouldn't be allowed to  
4 speculate as to that.

5 MR. TREPANIER: Well, I'm trying to clarify the  
6 fact --

7 MR. JOSEPH: No. I --

8 MR. TREPANIER: Excuse me. I'm trying to  
9 clarify the fact that on cross, I believe he's  
10 bringing out the fact that it shows --

11 HEARING OFFICER KNITTLE: I'll allow the  
12 question. Overruled. You can testify as to whether  
13 or not someone would have come -- some hypothetical  
14 person would have come in the view of your camera.

15 BY MR. JOSEPH:

16 A Well, I'm sure there were people going in  
17 and out of there, but the camera was mounted up  
18 high. I put it -- it was -- this here that I drew  
19 was -- remember, this was a semitrailer.

20 BY MR. TREPANIER:

21 Q Is that labeled?

22 A Yeah. Let's label that. Semitrailer.

23 And I put it inside there just -- it was  
24 cloudy -- just in case it would rain, and so it

1 would be kind of out of the way so nobody would  
2 steal my camera because there's people walking  
3 through there and stuff, and it was -- the  
4 semitrailer sits about -- the bed sits -- so when  
5 you back up and unload it, it sits about this high.

6 The semitrailer is about four feet, right.

7 HEARING OFFICER KNITTLE: Let the record  
8 reflect that Mr. Joseph is indicating a height at  
9 about his waist level.

10 BY MR. JOSEPH:

11 A Yeah. I think it's about four foot, a  
12 semitrailer bed. So it was -- and it was on the  
13 tripod -- was it on the tripod -- inside there -- on  
14 the shelf inside there, so the camera was up this  
15 high, so anybody walking out of there could have  
16 walked through here and underneath it into the yard,  
17 and they wouldn't have been seen.

18 HEARING OFFICER KNITTLE: Mr. Wager, do you  
19 have something to say?

20 MR. WAGER: I have a couple of questions

21 HEARING OFFICER KNITTLE: You'll have that  
22 opportunity when Mr. Trepanier is done.

23 MR. JOSEPH: You really would have only seen  
24 people that were in this corner of the yard in --

1 you know, you're restricted by the angle of view  
2 here. So anybody could have walked in and out of  
3 this gate and into there -- into the roll-up door  
4 and not been seen.

5 HEARING OFFICER KNITTLE: Yes. Mr. Joseph, I  
6 don't want you to point to that map.

7 MR. JOSEPH: Well, likely --

8 HEARING OFFICER KNITTLE: Because we can't see,  
9 and the people who are going to be reading the  
10 transcript won't be able to see that as well.

11 MR. JOSEPH: Yeah. In the summertime, there's  
12 people in that yard all the time.

13 BY MR. TREPANIER:

14 Q The other area I wanted to ask you a  
15 question about was you were just asked some  
16 questions regarding whether or not you saw a  
17 spraying of a hose on the video. Did you see hand  
18 wrecking activities, as you understand that, to be  
19 occurring on that video?

20 MR. JEDDELOH: Well, I'm going to object. The  
21 video can speak for itself. The question was not  
22 has Mr. Trepanier has represented it but whether  
23 there was -- it would have been possible to see all  
24 activities and see all aspects of what was going on

1 on that floor. Now, I don't think that the question

2 is really -- is really relevant actually.

3 HEARING OFFICER KNITTLE: Okay. Overruled.

4 Mr. Trepanier, ask your question.

5 MR. TREPANIER: Okay. I'm sorry. It slipped

6 out of my mind for a moment.

7 HEARING OFFICER KNITTLE: Hand wrecking.

8 BY MR. TREPANIER:

9 Q Did you observe -- in the video, can you

10 see hand wrecking activity occurring? Did you see

11 that?

12 A You can only really see the dumping of

13 the -- you can't see the hand wrecking unless

14 they're right on -- I don't recall. It's -- unless

15 they're right on the edge, no. You really can't.

16 It's out of view.

17 MR. TREPANIER: I would like to refresh his

18 memory with that piece of the video that shows

19 somebody swinging a sledgehammer.

20 MR. BLANKENSHIP: Objection. He didn't say his

21 memory was faulty. He's testified as to what he

22 saw. There's no need to refresh a recollection that

23 is there.

24 HEARING OFFICER KNITTLE: It's sustained.

1 MR. TREPANIER: Can we show that video and  
2 recross him on that and say, you know, what is this  
3 right here?

4 MR. JEDDELOH: First of all, we've gone through  
5 this. It goes beyond the scope of the cross  
6 examination.

7 MR. TREPANIER: No, it doesn't.

8 MR. JEDDELOH: We have another witness  
9 sitting --

10 MR. TREPANIER: We talked about hand wrecking  
11 activity, whether or not it was visible.

12 MR. JEDDELOH: May I finish my statement,  
13 please?

14 We have a witness who was scheduled for  
15 1:00 o'clock who's sitting out there. He's got  
16 other commitments for the university later in the  
17 day, and I would like to try to move us along to  
18 that portion of the testimony that's really  
19 relevant.

20 HEARING OFFICER KNITTLE: That's understood.

21 Mr. Trepanier, this is getting a little  
22 bit beyond the scope of redirect. I don't see -- I  
23 was willing to give you some leeway to get into this  
24 hand wrecking, but I don't see how it's relating to

1 the fact that wetting could have been occurring

2 beyond the point of view of the camera.

3 MR. TREPANIER: Well, it does in the fact

4 that -- you tell me -- that the hand wrecking

5 activity is occurring in view of the camera but no

6 hose is visible.

7 MR. JEDDELOH: That's his testimony about what

8 is on the tape. The tape speaks for itself.

9 MR. BLANKENSHIP: They'll see the tape.

10 HEARING OFFICER KNITTLE: If, in fact, that's

11 what the tape shows, that will be on the tape, and

12 the board will take note of that.

13 MR. TREPANIER: Okay. Then no further

14 questions.

15 HEARING OFFICER KNITTLE: Ms. Minnick, did you

16 have any redirect? I know you never directed, but

17 you had the opportunity, so if you have any

18 redirect, I'll allow it.

19 MS. MINNICK: Is that to Lorenz?

20 HEARING OFFICER KNITTLE: Yes. Bear in mind we

21 don't want you to ask any questions that

22 Mr. Trepanier has already covered.

23 MS. MINNICK: Already has asked.

24 HEARING OFFICER KNITTLE: Right.

1 MS. MINNICK: Well, I'll decline.

2 HEARING OFFICER KNITTLE: Thank you very much,

3 Ms. Minnick.

4 Do you have anything else Mr. Wager?

5 REDIRECT EXAMINATION

6 BY MR. WAGER:

7 Q Is it not true that every day there are

8 persons working in that yard and mostly they would

9 not be in the line of fire of the camera?

10 MR. BLANKENSHIP: Asked and answered.

11 MR. JEDDELOH: We've gone through that.

12 HEARING OFFICER KNITTLE: Yes. I'm going to

13 sustain that. I think Mr. Joseph and Mr. Trepanier

14 have covered that pretty well.

15 MR. WAGER: That's all.

16 HEARING OFFICER KNITTLE: Okay. Mr. Joseph, do

17 you have anything on your own behalf relating to the

18 cross examination?

19 REDIRECT EXAMINATION

20 BY MR. JOSEPH:

21 Q Yeah. I would just like to say that

22 they're implying there's nobody in the yard. The

23 angle of view is probably less than -- really it's

24 going to sound outrageous -- but two percent of that

1 yard because of the upward angle because you're not  
2 seeing anything here. You're not seeing anything --  
3 the yard goes the full block and the angle looking  
4 down, so that's...

5 HEARING OFFICER KNITTLE: Mr. Blankenship?

6 MR. BLANKENSHIP: Asked and answered. We've  
7 gone through this. The point has been made.

8 MR. JOSEPH: You know, two percent, five  
9 percent.

10 HEARING OFFICER KNITTLE: No. I'm going to  
11 sustain his objection. You and Mr. Trepanier have  
12 covered this adequately.

13 MR. JOSEPH: Okay. All right. I just wanted  
14 to make that clear.

15 HEARING OFFICER KNITTLE: Understood.

16 Well, then, Mr. Joseph, you can step  
17 down.

18 MR. JOSEPH: Thank you.

19 HEARING OFFICER KNITTLE: Thank you for your  
20 testimony.

21 MR. JOSEPH: Sure.

22 HEARING OFFICER KNITTLE: Let's call -- I'm  
23 sorry. I forgot his name.

24 MR. JEDDELOH: Donovan.

1 HEARING OFFICER KNITTLE: Mr. Donovan.

2 And, Mr. Joseph -- never mind. I'll wait

3 until the request is made that I see forthcoming.

4 MR. JOSEPH: I think it's his decision. I

5 would like --

6 HEARING OFFICER KNITTLE: It is his decision

7 and he has -- we will ask him whether he wants the

8 camera to be rolling.

9 MR. JOSEPH: Thank you.

10 (Whereupon, a discussion was held off

11 the record.)

12 HEARING OFFICER KNITTLE: Let's go back on the

13 record. We're on the record.

14 MR. JEDDELOH: We would like to raise the

15 subject matter of the video camera. I would like to

16 ask Mr. Donovan if he's willing to allow himself to

17 be videotaped for his testimony.

18 MR. DONOVAN: No.

19 MR. JOSEPH: Could I ask why?

20 HEARING OFFICER KNITTLE: Sure. We can ask

21 Mr. Donovan why. Mr. Donovan?

22 MR. JEDDELOH: Again, this is an issue relating

23 to the -- I can speak for Mr. Donovan. He's my

24 client.

1 This is an issue relating to his own  
2 personal privacy and the fact that the university  
3 doesn't, to the extent possible, want to participate  
4 in any further documentary rendition of this hearing  
5 except for the official court reporter record.

6 HEARING OFFICER KNITTLE: Okay. I'm going to  
7 ask then, Mr. Joseph, for you to turn off your  
8 videotape.

9 MR. JOSEPH: I will do that, but I don't know  
10 what it has to do with privacy. It has to do with  
11 whether or not he'll testify.

12 MR. BLANKENSHIP: He doesn't need to give a  
13 reason for his reason.

14 MR. JOSEPH: There is no privacy in a public  
15 hearing.

16 HEARING OFFICER KNITTLE: Right. Nonetheless,  
17 Mr. Joseph, we're going to ask you to turn off the  
18 videotape.

19 MR. JOSEPH: Sure.

20 HEARING OFFICER KNITTLE: Is the videotape off,  
21 Mr. Joseph?

22 MR. JOSEPH: Yes.

23 HEARING OFFICER KNITTLE: Mr. Jeddeloh, would  
24 you like to check the camera, or will you take it on

1 face value?

2 MR. JEDDELOH: Well, I'm going to take him on

3 the face value, but if it ever turns out that the

4 videotape wasn't off, I would be seeking appropriate

5 sanctions.

6 HEARING OFFICER KNITTLE: Very good, sir.

7 MR. WAGER: I thought it was a public meeting

8 here.

9 HEARING OFFICER KNITTLE: Mr. Wager, we have

10 covered this while you were not here during the

11 first day and a half of testimony, so if you want an

12 explanation of this, I suggest you talk to one of

13 your co-Complainants.

14 Mr. Jeddeloh, it's your witness. I'm

15 sorry. You called the witness, Mr. Trepanier. I'm

16 sorry. I'm all confused. My mistake.

17 Mr. Trepanier, Mr. Donovan is your witness.

18 MR. TREPANIER: Thank you.

19 HEARING OFFICER KNITTLE: Could you swear in

20 the witness, please?

21 (The witness was duly sworn.)

22 MR. JOSEPH: Can we all ask questions?

23 HEARING OFFICER KNITTLE: Do we have an

24 objection to all of them asking questions at the

1 same time?

2 MR. JEDDELOH: We most certainly have an  
3 objection. Team questioning is inappropriate and  
4 unfair. It allows one person the opportunity to  
5 think of a question while the other one is working  
6 on the first question, and I think it just -- it's  
7 just inherently prejudicial.

8 MR. JOSEPH: How is it prejudicial?

9 HEARING OFFICER KNITTLE: Do you have a  
10 response to that, anybody over there on  
11 Complainants' side?

12 MR. TREPANIER: Well, I would just urge that  
13 you do consider it.

14 MR. WAGER: I think that to be able to get to  
15 the truth of the matter that that would involve as  
16 much questioning as possible.

17 HEARING OFFICER KNITTLE: I'm going to prohibit,  
18 as we've done in the past, the panel examination and  
19 allow each Complainant to have an opportunity to ask  
20 any questions he or she wants. I think, Mr. Wager,  
21 we do want to have, you know, fairness, but we also  
22 want to make sure things move in an orderly  
23 fashion.

24 You can proceed, Mr. Trepanier. Do you

1 want to go first?

2 MARK DONOVAN,

3 called as an adverse witness herein, having been

4 first duly sworn, was examined upon oral

5 interrogatories, and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TREPANIER:

8 Q Thank you, Mr. Donovan.

9 What's your position with the university?

10 A My current position, I'm the associate

11 vice-chancellor for facilities management.

12 Q And how long have you had that position?

13 A I've been in my current position

14 approximately a year, maybe a little more.

15 Q And were you employed by the university in

16 September of 1996?

17 A Yes, I was.

18 Q And what was your position at that time?

19 A I believe at that time I was the director

20 of operation and maintenance.

21 Q And did you supervise any employees in

22 that position?

23 A Yes, I did.

24 Q And are any of those employees present

1 here in the hearing room?

2 A Yes, they are.

3 Q And could you identify that person?

4 A Mr. James Henderson.

5 Q And are you aware that Mr. Henderson also

6 supervised an employee?

7 A Yes.

8 Q And who was that?

9 A I don't -- I mean, he supervised hundreds

10 of employees. I can't answer that. I don't...

11 Q And what -- scratch that question.

12 In your supervision of Mr. Henderson,

13 would you -- what work of Mr. Henderson's did you

14 review particularly as regards demolition activity?

15 A I'm not sure really I understand the

16 question. I'm sorry.

17 HEARING OFFICER KNITTLE: Could you try to

18 rephrase that, Mr. Trepanier, so he can understand

19 the question?

20 MR. TREPANIER: Okay.

21 BY MR. TREPANIER:

22 Q Did you review the work of Mr. Henderson?

23 A Yes. I reviewed his work performance.

24 Q And when you talk about perform -- when

1 you say you reviewed his work performance, what does  
2 that -- what are you referring to when you review  
3 his performance?

4 A Well, as a supervisor, I'm responsible for  
5 the job that Mr. Henderson does in all facets of his  
6 employment at the university.

7 Q Do you give consideration to contracts  
8 that Mr. Henderson signs?

9 MR. JEDDELOH: I'm going to object as to  
10 foundation. It's not established that Mr. Henderson  
11 signs contracts on behalf of the university.

12 Secondly, I think the question is vague and  
13 impossible to figure out what he's really asking.

14 HEARING OFFICER KNITTLE: I'm going to  
15 overrule, and, Mr. Donovan, you can answer the  
16 question.

17 BY THE WITNESS:

18 A Can you repeat the question for me,  
19 please?

20 MR. TREPANIER: Could we have that read back?

21 HEARING OFFICER KNITTLE: Could you read that  
22 back, please?

23 (Whereupon, the record was read by  
24 the court reporter.)

1 MR. JEDDELOH: Same objection.

2 HEARING OFFICER KNITTLE: Can you answer that,

3 or should I have Mr. Trepanier rephrase that?

4 THE WITNESS: If he could rephrase that.

5 HEARING OFFICER KNITTLE: Can you rephrase

6 that, Mr. Trepanier?

7 BY MR. TREPANIER:

8 Q Maybe I didn't state it clearly. Do you

9 review the contracts that James Henderson approves,

10 signs, or authorizes?

11 A On occasion. Not as a normal course of

12 business, no.

13 Q And what occasions do you take to review

14 his -- the contracts that he signs?

15 A It depends on what the situation is. I

16 mean, we do hundreds of transactions on a daily

17 basis. There may be some that I'm monitoring for

18 any type of reasons or I'm involved in because it's

19 a high profile issue. Others I may not see at all.

20 Q Are the demolitions on Maxwell Street such

21 a high profile issue?

22 A There was an interest on my level just

23 because of the project that the university was

24 doing.

1 Q And how did you act on your interest?

2 A I on occasion would take a ride with  
3 Mr. Henderson just to see how the demolition was  
4 going or when we were putting up the fences during  
5 the process of the change over from when the city  
6 was vacating the property to us for the south campus  
7 project.

8 Q And how often did that occur during the  
9 demolition -- strike that.

10 Did you take such a ride with  
11 Mr. Henderson during the demolition of 1261 South  
12 Halsted?

13 A I believe I did.

14 Q On how many occasions?

15 A Once, maybe twice.

16 Q Did you have -- did you supervise that  
17 demolition at 1261 Halsted?

18 A No.

19 Q Did you review the answers to  
20 interrogatories that Mr. Henderson swore for this  
21 case?

22 A Yes.

23 Q And were you aware that that interrogatory  
24 stated that you and he supervised the demolition?

1 A I would have to review the document. I  
2 don't know what it says offhand.

3 MR. TREPANIER: I'm directing the witness to  
4 the university's response to interrogatories of 17th  
5 of April, '98. They are for the response to  
6 question 18.

7 MR. JEDDELOH: Well, Mr. Knittle, I'm going to  
8 raise an objection at this point.

9 HEARING OFFICER KNITTLE: What's that,  
10 Mr. Jeddelloh?

11 MR. JEDDELOH: You know, I don't mind giving  
12 this witness -- or this question a reasonable amount  
13 of latitude, but I fail to see how this relates to  
14 the 9A or 21B violations that we have going on  
15 here. This is a whole long line of questions about  
16 whether or not Mr. Donovan was involved in the  
17 supervision and to what extent, and that doesn't get  
18 to the questions raised by this complaint.

19 HEARING OFFICER KNITTLE: Mr. Blankenship?

20 MR. BLANKENSHIP: I'll object to him using  
21 interrogatory answers not signed by this witness in  
22 an attempt to impeach the witness. That's not  
23 proper impeachment.

24 MR. TREPANIER: Well, the witness said he did

1 review them.

2 MR. BLANKENSHIP: If he didn't sign them under  
3 oath, it's not impeaching.

4 HEARING OFFICER KNITTLE: That is true. You  
5 can answer the question if you can. I'm going to  
6 overrule the objection, but I will let it stand for  
7 the board to decide on the fact that he did not  
8 actually answer these interrogatories and this isn't  
9 your sworn interrogatory.

10 BY THE WITNESS:

11 A Well, Mr. Trepanier asked me if I  
12 supervised. In my area of work, supervising means  
13 stay on the job site nearly continually observing  
14 what was going on. My role was to come by, and I  
15 observed it to see that the demolition was happening  
16 so I could report back to whomever I had to report  
17 back to, so I guess we're splitting hairs for, you  
18 know, what supervision means to me as opposed to  
19 what it may mean to someone else. I mean, I was  
20 more in the line of observing what was happening  
21 rather than supervising under my definition.

22 BY MR. TREPANIER:

23 Q Now, my question to you, when you reviewed  
24 these interrogatories and it said that you

1 supervised this demolition, did that raise a concern  
2 for you?

3 MR. JEDDELOH: Well, I'm going to object to  
4 that. This is well beyond the scope of anything  
5 that's relevant in this litigation, and whether  
6 Mr. Donovan had some concern about some statements  
7 that are in interrogatories is just not relevant.

8 HEARING OFFICER KNITTLE: Mr. Trepanier, why  
9 are you trying to show this?

10 MR. TREPANIER: I'm trying to show what  
11 handicap I struggle under given the false  
12 information that I was given by the university.  
13 They didn't identify the person that actually  
14 accompanied Mr. Henderson, but they identified  
15 another person who didn't accompany him. So I may  
16 be struggling a little bit, but I think that besides  
17 highlighting that, it's reflecting -- it is  
18 reflecting on the credibility of the witness that he  
19 allowed this document to be filed without his  
20 objection.

21 MR. JEDDELOH: Mr. Trepanier is struggling a  
22 little but stretching a lot. It's just not  
23 relevant, and I would ask that we move on to  
24 something else.

1 HEARING OFFICER KNITTLE: Okay. I'm going to  
2 allow you to answer that last question. Then,  
3 Mr. Trepanier, we are going to move on to something  
4 else. The question pertained to whether you were  
5 concerned whether or not -- Mr. Trepanier, do you  
6 want to rephrase that question you had about whether  
7 he was concerned about the interrogatory response?

8 MR. TREPANIER: Yes.

9 BY MR. TREPANIER:

10 Q When you reviewed these interrogatories  
11 and saw yourself reported as the supervisor and your  
12 understanding of -- what you just stated as your  
13 understanding of what a supervisor does, did that  
14 raise some concerns for you and how did you act on  
15 that?

16 MR. JEDDELOH: I'm going to object. I think  
17 that's a compound question. It misstates what the  
18 interrogatory answer says. And I think on those  
19 bases it's objectionable.

20 HEARING OFFICER KNITTLE: Your objections or  
21 noted but overruled. Mr. Donovan, will you please  
22 answer the question as put to you?

23 BY THE WITNESS:

24 A I reviewed the interrogatories. Did I

1 study line for line and word for word and there's a  
2 lot of terminology in there that's fairly common, so  
3 did I raise an objection, no, but did I -- I was  
4 never requested or felt a need to examine it on that  
5 level.

6 HEARING OFFICER KNITTLE: Thank you, sir.

7 Mr. Trepanier, can you move on to a new  
8 question, please?

9 MR. TREPANIER: Yes.

10 BY MR. TREPANIER:

11 Q Did you have an occasion to look at a  
12 contract for demolitions of buildings in the south  
13 campus expansion area?

14 MR. BLANKENSHIP: I'll object to relevance. We  
15 should be talking about 1261 here.

16 MR. TREPANIER: I'm going to get there. The  
17 1261 is in the south campus expansion.

18 HEARING OFFICER KNITTLE: Perhaps you could  
19 rephrase your question to specifically include 1261,  
20 Mr. Trepanier. Objection sustained.

21 BY MR. TREPANIER:

22 Q Did you review contracts for the  
23 demolition of university buildings in the south  
24 campus area including 1261 Halsted?

1 MR. BLANKENSHIP: Same objection.

2 MR. JEDDELOH: Yes.

3 MR. TREPANIER: I think that if this is the

4 only contract the man says he didn't review, I

5 should be able to inquire into that.

6 HEARING OFFICER KNITTLE: I'm going to let you

7 ask the question. Go ahead.

8 BY THE WITNESS:

9 A Well, I don't mean to be difficult. If

10 review in this case -- based on this last line of

11 questions, if review means was I involved in

12 processing the paperwork for the demolition, yes, I

13 was. If review means did I examine and make sure

14 every I was dotted and T was crossed, no, sir, I did

15 not. But yes, I did process the contract. I

16 believe I was involved with the processing of the

17 contract for 1261 South Halsted.

18 BY MR. TREPANIER:

19 Q And what was your responsibility when

20 reviewing that contract?

21 MR. JEDDELOH: I'm going to object. He just

22 stated that he didn't review the contract.

23 HEARING OFFICER KNITTLE: Sustained.

24

1 BY MR. TREPANIER:

2 Q What did you do with the contract from  
3 1261 South Halsted when you received it?

4 A I processed it.

5 Q And what does that involve?

6 A It usually means that my signature is  
7 required because of the amount of the expenditure or  
8 that we had agreed that this was something that we  
9 were going to do. So I would process the paperwork  
10 as it came through.

11 Q Are you concerned that the contract meet  
12 the specifications of the university?

13 MR. JEDDELOH: I'm going to object to that.  
14 It's a global question. It certainly is beyond the  
15 scope of relevancy of this case, and it's vague and  
16 imprecise, so I object as to form as well.

17 MR. TREPANIER: I would point to in the  
18 interrogatories the university's claim that every  
19 contract specifies spraying water. So now I'm  
20 inquiring as to who -- who knows whether or not this  
21 contract did, who said that. My recollection is  
22 yesterday Mr. Henderson had no idea if this contract  
23 required spraying water, so now we're talking to his  
24 supervisor who processed that paperwork did he look

1 to see if the contract required spraying water.

2 MR. JEDDELOH: I think the question is

3 objectionable, and I renew my objection.

4 HEARING OFFICER KNITTLE: Can you rephrase the

5 question, Mr. Trepanier?

6 BY MR. TREPANIER:

7 Q When you processed the contract for

8 1261 Halsted, did you review that contract to see if

9 it required spraying water during demolition?

10 A No, I did not.

11 Q Is it the university policy to require

12 spraying water during demolitions?

13 A I don't -- you know, it's -- I guess my

14 answer is that we -- when I process these, when we

15 process it and we ask them to follow the customary

16 and accepted standards for doing whatever type of

17 work it is, and that specific thing I don't --

18 they've done it on all the sites, and I assumed that

19 that was a routine thing to do.

20 MR. TREPANIER: I'm going to ask that his

21 answer be stricken where he claims that it was done

22 on all the sites. That wasn't responsive to my

23 question regarding did the university -- is the

24 university policy to require watering. I didn't get

1 an answer to my question, but he volunteered some  
2 information

3 MR. JEDDELOH: I think he reasonably and fairly  
4 tried to respond, and he said basically that he  
5 understood that Speedway and the other contractors  
6 always used standard practices and so he didn't --  
7 wasn't concerned about it.

8 HEARING OFFICER KNITTLE: I'm going to overrule  
9 the objection. Try to answer the question to the  
10 best of your ability that's asked to you. And,  
11 Mr. Trepanier, I think he did do that, so I think he  
12 was just trying to give you an explanation, but I  
13 will direct him to answer the questions as put to  
14 him.

15 THE WITNESS: Thank you. I apologize.

16 BY MR. TREPANIER:

17 Q You state that the university always  
18 sprays water on these jobs. What's your basis or  
19 knowledge for that?

20 MR. JEDDELOH: Well, I'm going to object. He  
21 didn't say the university always sprays water. It's  
22 just not what he just said.

23 MR. TREPANIER: What did the attorney hear him  
24 say?

1 MS. MINNICK: Well, he assumed.

2 HEARING OFFICER KNITTLE: Mr. Trepanier, do you  
3 have a response?

4 MR. TREPANIER: I guess I'll rephrase the  
5 question if it's objectionable.

6 HEARING OFFICER KNITTLE: Well, if that's not  
7 what he said, I'm going to sustain the objection.

8 Why don't you rephrase the question?

9 BY MR. TREPANIER:

10 Q Do you have any knowledge of whether or  
11 not the university contractors spray water during  
12 demolitions in the south campus area?

13 A Yes.

14 Q And how do you know that?

15 A I've observed them.

16 Q Now, did you -- you did state, didn't you,  
17 that you visited the demolition with Mr. Henderson  
18 on one occasion?

19 A At least one, yeah.

20 Q And on these other demolitions where you  
21 observed spraying of water, did you likewise visit  
22 those one time?

23 A Usually one. Sometimes a second time.

24 Q And is it your testimony that every time

1 you visited a demolition site you saw water being  
2 sprayed?

3 A I couldn't say that every time I drove by  
4 a site that there was water being sprayed. Every  
5 time that I went by there wasn't -- they might have  
6 just been stacking bricks, so I can't say that every  
7 time I visited a site they were spraying water.

8 Q But you -- but you believe that you can  
9 say that they -- that the university sprays water at  
10 all of their demolitions?

11 A The university doesn't spray any water.

12 Q And -- okay.

13 So did you find the contract for 1261 --  
14 the demolition at 1261 to be satisfactory?

15 A I believe so.

16 Q And what -- was there any criteria that  
17 you used to make that determination?

18 A It was that we were following the  
19 university procedure and processing the contract.

20 Q Now, when you say you were following  
21 university procedure, do you mean that Mr. Henderson  
22 followed university procedure?

23 A I believe he did.

24 Q And what procedure -- and did the

1 procedures -- and do you know what those procedures  
2 are that Mr. Henderson is to follow?

3 MR. BLANKENSHIP: I'm just going to object to  
4 relevance on this whole line of questions. This has  
5 nothing to do with the demolition or what happened  
6 or whether air pollution --

7 MR. TREPANIER: We're still on the spraying of  
8 water and whether or not the university requires  
9 that.

10 MR. JEDDELOH: That's not the question. The  
11 question is, I suppose, whether we follow the  
12 purchasing act and our own internal processes and  
13 procedures, and that's just not relevant to this  
14 proceeding.

15 HEARING OFFICER KNITTLE: Mr. Trepanier, why is  
16 this relevant?

17 MR. TREPANIER: This is -- this goes to the  
18 university's defense that they always require their  
19 contractors to spray water and that it's a part of  
20 their contractual documentation. That's the  
21 responses that they've been giving both in their  
22 motions to dismiss this case and in the  
23 interrogatories.

24 HEARING OFFICER KNITTLE: And what was your

1 last question?

2 MR. TREPANIER: It was if Mr. Donovan knows  
3 what procedures Mr. Henderson goes through when  
4 making up the contract since Mr. Donovan found it to  
5 meet the criteria.

6 HEARING OFFICER KNITTLE: Do you know what  
7 procedures he goes through, Mr. Donovan? If you can  
8 answer the question, go ahead and answer it. I'm  
9 going to overrule the objection.

10 BY THE WITNESS:

11 A My -- okay. I believe that Mr. Henderson  
12 follows all the rules and regulations that are  
13 outlined under the purchasing act and the policy and  
14 rules and everything else that the university is to  
15 follow to have a legal and binding agreement.

16 BY MR. TREPANIER:

17 Q And do any of those policies directly  
18 address demolition?

19 A I mean, I'm not sure what the question  
20 is.

21 HEARING OFFICER KNITTLE: Mr. Trepanier, try to  
22 rephrase it for him. If you don't know an answer,  
23 sir, you don't have to answer. Just try to answer  
24 the question to the best of your abilities. I don't

1 want you to make anything up. We just want to get

2 to the bottom of things.

3 THE WITNESS: Okay.

4 HEARING OFFICER KNITTLE: Mr. Trepanier,

5 perhaps you could try again.

6 MR. TREPANIER: Okay.

7 BY MR. TREPANIER:

8 Q As part of your supervisory duties of

9 overseeing the work of Mr. Henderson and when you're

10 making a determination if the contract was proper

11 and you reflect on the procedures that Mr. Henderson

12 must follow to create a proper contract, do any of

13 those procedures directly address demolition?

14 MR. JEDDELOH: I'm going to object to the

15 compound nature of that question.

16 HEARING OFFICER KNITTLE: Just answer the

17 question if you can. Objection overruled.

18 BY THE WITNESS:

19 A I don't know.

20 HEARING OFFICER KNITTLE: Okay.

21 BY MR. TREPANIER:

22 Q So you don't know if the contract for the

23 demolition at 1261 Halsted required spraying water

24 or not?

1 A No, I don't know.

2 Q But you did find that contract was

3 approvable even without that knowledge?

4 MR. JEDDELOH: Objection asked and answered. I

5 don't understand what we're going through this for.

6 HEARING OFFICER KNITTLE: Sustained. He has

7 already answered that question, Mr. Trepanier.

8 BY MR. TREPANIER:

9 Q Does the university have a plan for

10 that -- for 1261 Halsted now?

11 A I don't know.

12 Q Are you familiar with Mr. Gimpel of the

13 university?

14 A Yes.

15 Q And do you believe that he would have

16 information whether the university has plans for

17 1261 South Halsted?

18 A I don't know.

19 Q What area of the university does

20 Mr. Gimpel work in?

21 A Currently, Mr. Gimpel is assisting on the

22 south campus development project.

23 Q And does the south campus development

24 project include that 1261 South Halsted?

1 A I believe it falls within the boundaries

2 as defined in most public documents.

3 Q Were you aware that on some of the site

4 visits to the demolition at 1261 South Halsted by

5 Mr. Henderson that he had someone accompanying him?

6 A I wouldn't know. If I wasn't there, I

7 wouldn't know about that.

8 Q But Mr. Henderson never reported that to

9 you?

10 A Not that I could recall.

11 Q Did Mr. Henderson report about this --

12 about the activities occurring at that demolition at

13 any point?

14 A I'm sure he reported when the project was

15 completed as he always does.

16 Q Do you have a specific memory of him

17 reporting after that project completed?

18 A I couldn't give you a date, time, or place

19 when he would have done that, no.

20 Q Do you recall a -- do you recall that he

21 made some report to you when the demolition at 1261

22 was completed?

23 A Yeah. It was pretty standard that

24 whenever a facility -- or any project that he worked

1 on was completed he reported that it was completed.

2 Q And was that the extent of the report that

3 was completed, or did --

4 HEARING OFFICER KNITTLE: Excuse me. I want to

5 interrupt.

6 Mr. Wager, are you leaving the

7 proceedings?

8 MR. WAGER: Yes. I have to check on my

9 vehicle.

10 HEARING OFFICER KNITTLE: Okay. Just let the

11 record know that Complainant Wager is leaving the

12 hearing.

13 I'm sorry, Mr. Trepanier.

14 MR. TREPANIER: I think there was a question

15 outstanding.

16 HEARING OFFICER KNITTLE: Do you want us to --

17 MR. TREPANIER: Could it be read back?

18 HEARING OFFICER KNITTLE: Do you want to read

19 back the last question?

20 (Whereupon, the record was read by

21 the court reporter.)

22 MR. TREPANIER: Strike that.

23 HEARING OFFICER KNITTLE: So the question is...

24

1 BY MR. TREPANIER:

2 Q The question is, was the extent -- as you  
3 recall, was the extent of Mr. Henderson's report to  
4 you that the demolition was completed?

5 A I believe so, I guess.

6 Q Was there any other information in the  
7 report that you can recall?

8 A I can't recall anything at this time.

9 Q Were you aware that there was asbestos in  
10 the building at 1261 South Halsted?

11 A I don't recall if I specifically knew that  
12 at any time.

13 Q Did you -- was it ever reported to you  
14 that asbestos was removed from the building at  
15 1261 South Halsted?

16 A I can't recall.

17 Q Is it the policy of the university, as far  
18 as you know, to notify adjacent property owners and  
19 people in the area when a demolition is going to  
20 occur?

21 A I don't know. We don't -- I don't do it.

22 I don't know. I don't know.

23 Q Do you ask Mr. Henderson to do that?

24 A No.

1 Q Do you expect him to do that?

2 A No.

3 Q Do you think that would be a good policy?

4 MR. JEDDELOH: I'm going to object. That's

5 well beyond the scope of this witness' --

6 HEARING OFFICER KNITTLE: Sustained.

7 BY MR. TREPANIER:

8 Q How many demolitions have you viewed in

9 the south campus area?

10 MR. BLANKENSHIP: Objection. Relevance.

11 HEARING OFFICER KNITTLE: Sustained.

12 BY MR. TREPANIER:

13 Q How many times did you see the

14 university's contractor spray water at a demolition

15 in the south campus area?

16 MR. BLANKENSHIP: Objection. Relevance.

17 MR. JEDDELOH: And asked and answered.

18 HEARING OFFICER KNITTLE: I'll sustain both of

19 those, Mr. Trepanier.

20 MR. TREPANIER: Okay. It looks like I'm about

21 at the end here.

22 HEARING OFFICER KNITTLE: Any further

23 questions?

24 MR. TREPANIER: None. Thank you.

1 HEARING OFFICER KNITTLE: Mr. Joseph, do you  
2 have any questions.

3 MR. JOSEPH: Yes. I have a couple.

4 DIRECT EXAMINATION

5 BY MR. JOSEPH:

6 Q Mr. Donovan, you said you were the -- at  
7 the time of this demolition you were the director of  
8 operation maintenance?

9 A I believe that's what the title was at  
10 that time, yes.

11 Q Okay. How long were you the director of  
12 operation maintenance?

13 A A couple years.

14 Q What did you do before that?

15 A I was assistant to the director of  
16 operations and maintenance.

17 Q And how about before that?

18 A I was the director of operations and  
19 maintenance and the associate director in axillary  
20 services, a different department of the university.

21 Q So you said on occasion you went to the  
22 site and you -- to observe. What was your purpose  
23 to observe?

24 A See that the project was in progress.

1 Q Nothing else?

2 HEARING OFFICER KNITTLE: Mr. Donovan, you have  
3 to give an audible response.

4 BY THE WITNESS:

5 A Yeah. I'm just -- yeah. We go and  
6 observe and see how it was progressing.

7 BY MR. JOSEPH:

8 Q You said something about the city vacating  
9 the property.

10 A I don't believe I said anything about the  
11 city vacating the property.

12 HEARING OFFICER KNITTLE: Could you rephrase  
13 your question, Mr. Joseph?

14 BY MR. JOSEPH:

15 Q Or the city vacating properties?

16 MR. JEDDELOH: Objection. Relevancy, form.

17 HEARING OFFICER KNITTLE: Yes. I think I'm  
18 going to have to sustain that unless you can be more  
19 specific.

20 BY MR. JOSEPH:

21 Q Was this property purchased from the city?

22 MR. JEDDELOH: Objection. Relevancy.

23 HEARING OFFICER KNITTLE: Sustained.

24

1 BY MR. JOSEPH:

2 Q You said something that we agreed --  
3 something about this demolition project that we  
4 agreed to do. Is that correct, or was that the  
5 statement you made? What did you mean when you said  
6 we agreed?

7 MR. JEDDELOH: I'm going to object. I think  
8 that's far too vague for him to provide a meaningful  
9 response.

10 HEARING OFFICER KNITTLE: Yes. Mr. Joseph,  
11 we're not trying to prevent you from asking  
12 questions, but we need a question that the witness  
13 can answer with some degree of reason.

14 MR. JOSEPH: Well, it was his statement that  
15 there was an agreement that something was happening  
16 here in this demolition in the way it was going on,  
17 so I was just wondering who was in agreement because  
18 we weren't able to find out about this policy, and I  
19 was wondering...

20 HEARING OFFICER KNITTLE: Yes. I'm going to  
21 have to sustain the objection. I don't understand  
22 what the question is. If the witness understands,  
23 he can answer.

24

1 BY THE WITNESS:

2 A No, sir. I don't understand.

3 HEARING OFFICER KNITTLE: Okay. If you can  
4 rephrase, I'd be happy to have you ask that  
5 question.

6 MR. JOSEPH: Okay.

7 BY MR. JOSEPH:

8 Q Well, you made a statement that we agreed  
9 you were there because -- this was happening because  
10 we agreed, and I was wondering who was in agreement  
11 to demolish this building.

12 MR. JEDDELOH: Same question. Same objection.

13 HEARING OFFICER KNITTLE: Yes. I'll sustain.  
14 Unless the witness can answer, Mr. Joseph, I'm going  
15 to ask you to move on to a different question.

16 BY THE WITNESS:

17 A No, sir.

18 HEARING OFFICER KNITTLE: Okay.

19 BY MR. JOSEPH:

20 Q You said you believe that you followed  
21 these rules that Mr. Jeddelloh had talked about. Do  
22 you know what those rules are?

23 MR. JEDDELOH: Again, Mr. Knittle, these  
24 questions are extremely vague. It's impossible to

1 figure out what you're talking about. Are we  
2 talking about the purchasing act now, because if  
3 that's the question, then it's clearly irrelevant.

4 HEARING OFFICER KNITTLE: Yes. I'll have to  
5 sustain the objection, Mr. Joseph. Once again, I'm  
6 not trying to be difficult. We just have to have  
7 questions that are fair for the witness to answer.

8 MR. JOSEPH: Okay.

9 HEARING OFFICER KNITTLE: He needs to know what  
10 the question relates to.

11 If you don't have any further questions, I  
12 can move on to Ms. Minnick.

13 MR. JOSEPH: Well, I'm trying to make a  
14 question out of this because he made a statement,  
15 and I was wondering who was responsible for --

16 HEARING OFFICER KNITTLE: Right, but I'm not  
17 going to give you much more leeway here. We're  
18 trying to keep things moving, and I'm going to move  
19 on to Ms. Minnick unless you have a different  
20 question.

21 MR. JOSEPH: Right, right.

22 (Brief pause.)

23 HEARING OFFICER KNITTLE: Okay. Let's move  
24 on.

1 MR. JOSEPH: Yes. Let's move on.

2 HEARING OFFICER KNITTLE: Thank you,

3 Mr. Joseph.

4 Ms. Minnick, do you have any questions?

5 And, sir, your name is?

6 THE WITNESS: Donovan.

7 HEARING OFFICER KNITTLE: Okay. Donovan. I

8 thought I was right.

9 Do you have any questions for Mr. Donovan?

10 MS. MINNICK: Yes, I do.

11 DIRECT EXAMINATION

12 BY MS. MINNICK:

13 Q Thank you, Mr. Donovan, for being here and

14 participating.

15 My first question is on the day that you

16 visited the demolition, did you see any dust leaving

17 the building?

18 A Not that I can recall.

19 Q Okay. And also, do you know of any other

20 buildings that are being considered for demolition

21 in the Maxwell Street area?

22 MR. JEDDELOH: Objection.

23 MR. BLANKENSHIP: Objection. Relevance.

24 HEARING OFFICER KNITTLE: I'll sustain that on

1 relevancy. That's not relevant to this case,

2 Ms. Minnick.

3 MS. MINNICK: Okay. That's all then. Thank

4 you.

5 HEARING OFFICER KNITTLE: Thank you very much.

6 Do we have any questions for Mr. Donovan?

7 MR. BLANKENSHIP: Not from Speedway.

8 MR. JEDDELOH: I have a couple on clarification.

9 CROSS EXAMINATION

10 BY MR. JEDDELOH:

11 Q Mr. Donovan, did you notice when you went

12 by whether or not Speedway was using water to

13 control dust?

14 A Yes.

15 Q And what stage of demolition did you

16 personally observe?

17 A It was very early on. They had the -- you

18 know, knocking down the bricks with the heavy

19 equipment.

20 Q Is the term hand wrecking a term that's

21 familiar to you?

22 A Uh-huh.

23 Q You have to say yes.

24 A Yes. I'm sorry. I apologize.

1 Q Was this during the hand wrecking phase of  
2 the operation that you actually visited the site?

3 A I don't believe so.

4 Q So it was at a later stage?

5 A Later stage.

6 Q Do you recall where the water was coming  
7 from that they were using to water the site?

8 A I believe from the fire hydrant.

9 Q And do you recall the location of the fire  
10 hydrant?

11 A No, I don't.

12 MR. JEDDELOH: That's all the questions I  
13 have.

14 HEARING OFFICER KNITTLE: Okay.

15 Mr. Blankenship, you didn't have any.

16 MR. BLANKENSHIP: No.

17 HEARING OFFICER KNITTLE: Anything from this  
18 side?

19 MR. TREPANIER: Yes.

20 HEARING OFFICER KNITTLE: Do you realize you're  
21 limited --

22 MR. TREPANIER: To redirect, right.

23

24

1 REDIRECT EXAMINATION

2 BY MR. TREPANIER:

3 Q Do you have any knowledge whether water  
4 was sprayed during the hand wrecking at 1261 South  
5 Halsted?

6 MR. JEDDELOH: Foundation.

7 HEARING OFFICER KNITTLE: I'm going to overrule  
8 the objection, but he has already answered this  
9 question on direct, but go ahead and answer again,  
10 Mr. Donovan.

11 BY THE WITNESS:

12 A I wasn't -- I didn't observe during the  
13 hand wrecking phrase.

14 BY MR. TREPANIER:

15 Q And did you receive any advice regarding  
16 your testimony today?

17 MR. JEDDELOH: I'm going to object. I think  
18 that that is clearly invading the attorney-client  
19 privilege. He's entitled to ask --

20 HEARING OFFICER KNITTLE: He can ask the  
21 question, but he doesn't have to -- as I understand,  
22 and correct me if I'm wrong, he can ask the  
23 question, but he doesn't have to get into any of the  
24 discussion that was had.

1 MR. JEDDELOH: I believe he can ask whether or  
2 not he met with his attorney.

3 HEARING OFFICER KNITTLE: Okay. Why don't you  
4 rephrase your question along that line?

5 BY MR. TREPANIER:

6 Q Mr. Donovan, did you meet with your  
7 attorney to prepare for your testimony today?

8 A Yes, I did.

9 Q And when you saw water being used at  
10 1261 Halsted, where were you observing from?

11 A Halsted Street.

12 MR. TREPANIER: I would like to show the  
13 witness the Exhibit Number 1, and I'm going to point  
14 to that box that's marked 1261 and then point to  
15 Halsted Street, that spot marked Halsted Street.

16 BY MR. TREPANIER:

17 Q Could you point to a spot on this map  
18 where you observed from?

19 A I would have been on the southbound side  
20 of Halsted Street somewhere in this vicinity a  
21 little bit to the south, you know. This was in --  
22 pretty much the driveway of --

23 MR. JOSEPH: This place is --

24 MR. JEDDELOH: Let him finish.

1 BY THE WITNESS:

2 A If this is southbound Halsted Street,

3 which I believe it is --

4 MR. JOSEPH: Yes.

5 BY THE WITNESS:

6 A -- the observation was in a vehicle pulled

7 along the curb here and --

8 HEARING OFFICER KNITTLE: Okay. Let the record

9 reflect that he is indicating Halsted Street nearby

10 the intersection of 13th Street on the southbound

11 side, you said, sir?

12 BY THE WITNESS:

13 A Southbound.

14 BY MR. TREPANIER:

15 Q Thank you.

16 And did you exit your car?

17 A I don't recall.

18 Q When -- well, when you visit demolition

19 sites, was it your practice to exit your car?

20 A Sometimes it is. Sometimes it isn't.

21 Q And was it -- when you say -- and when you

22 showed where you had your observation from on

23 southbound Halsted, is that when you claim to have

24 seen the watering being done?

1 A Yes.

2 Q And where was the hose being sprayed?

3 A I don't think I understand the question.

4 Q When you saw watering, where was the  
5 watering occurring?

6 A On the con -- on the demolition side.

7 Q But specifically when you saw the  
8 watering, where was it occurring?

9 MR. JEDDELOH: Objection. Asked and answered.

10 HEARING OFFICER KNITTLE: Overruled. Maybe you  
11 could rephrase, though, if you're asking for a  
12 specific location or something.

13 MR. TREPANIER: Yeah.

14 BY MR. TREPANIER:

15 Q I'm asking for a specific location that  
16 you saw the watering occurring.

17 A 1261 South Halsted.

18 Q Do you have any recollection if it was at  
19 the back of the building or the front of the  
20 building, the side?

21 A I -- I can't recall.

22 Q What do you recall about the watering?

23 What is your recollection about that watering that  
24 was going on?

1 A There was a hose. There was water. It  
2 was, you know, off of a fire hydrant.

3 Q And you don't recall where that fire  
4 hydrant was?

5 A Not exactly, no.

6 Q Was the hose in the street?

7 A I don't -- I don't know.

8 Q Was the hose in front of the building?

9 A Yes.

10 Q Did the hose enter the building?

11 A I believe so.

12 Q And what else was occurring at the time  
13 that that hose was inside the building? What was  
14 going on in the demolition site?

15 MR. JEDDELOH: Well, I'm going to object.

16 That's beyond the scope of my clarification.

17 MR. TREPANIER: I think he listed testimony  
18 that the man saw watering on, and I'm just inquiring  
19 into what he saw.

20 HEARING OFFICER KNITTLE: I'll overrule, but

21 you're going to have to be -- that's a little bit

22 vague, I think, for him to answer. Why don't you

23 try to tighten that up a little bit?

24 MR. TREPANIER: Okay.

1 BY MR. TREPANIER:

2 Q I think that you testified that there was  
3 heavy equipment in operation when you visited the  
4 site, the demolition on 1261 Halsted; is that  
5 correct?

6 A Yes.

7 Q Was the heavy equipment in operation?

8 A Yes, it was.

9 Q And what piece of equipment was that? Can  
10 you name it or describe it?

11 A It was a large front end loader type  
12 vehicle, I believe it was.

13 Q And how was that front loader being used?

14 A To demolish the building.

15 Q And did you have a clear view of the front  
16 loader?

17 A I saw it.

18 Q And did you have a clear view of the  
19 building it was demolishing?

20 A It was -- yes. I guess, yes.

21 Q And did you see any water being sprayed?

22 A Yes.

23 Q And where was that water being sprayed?

24 A From a hose, you know, on the site.

1 Q In relation to the piece of heavy  
2 equipment, where was the water being sprayed?

3 A I can't recall.

4 MR. TREPANIER: I think that's it. No more  
5 questions.

6 HEARING OFFICER KNITTLE: Okay. Do we have any  
7 questions from Mr. Joseph or Ms. Minnick?

8 MS. MINNICK: No.

9 HEARING OFFICER KNITTLE: Mr. Joseph?

10 REDIRECT EXAMINATION

11 BY MR. JOSEPH:

12 Q Do you remember how long the hose was?

13 A No, sir.

14 Q Do you remember, were they firing it up or  
15 just into the -- up into the top floor?

16 A Most of the building was down. With this  
17 recollection, it was on top of the rubble pile as  
18 they were moving it around.

19 MR. JOSEPH: Okay. No further questions.

20 MR. TREPANIER: Can I ask just to clarify the  
21 answers I got?

22 HEARING OFFICER KNITTLE: No. You've had your  
23 opportunity to do your redirect.

24 HEARING OFFICER KNITTLE: Ms. Minnick, did you

1 have anything?

2 MS. MINNICK: No. Thank you.

3 HEARING OFFICER KNITTLE: Okay.

4 MR. TREPANIER: If I could, if in this instance

5 the witness on the redirect gave information that

6 conflicted with what I just elicited on redirect,

7 can I clarify that?

8 HEARING OFFICER KNITTLE: I'm not going to

9 allow any more clarification unless it's done by the

10 Respondents. It's their turn to clarify, if they

11 want --

12 MR. JEDDELOH: I have nothing more.

13 HEARING OFFICER KNITTLE: -- kind of a

14 reclarification.

15 Then no. You've had your opportunity to

16 redirect. You can be excused. Thank you very much

17 for your time.

18 MR. JEDDELOH: Thank you, Mr. Donovan.

19 THE WITNESS: Thank you.

20 MR. BLANKENSHIP: We have Phil Mergener here.

21 HEARING OFFICER KNITTLE: Are you ready for

22 Phil Mergener, or do you need a little break,

23 Mr. Trepanier?

24 MR. TREPANIER: A short break would be good for

1 me.

2 HEARING OFFICER KNITTLE: Let's call a

3 ten-minute recess.

4 (Whereupon, a recess was taken.)

5 HEARING OFFICER KNITTLE: We are back on the

6 record. We have a new witness.

7 MR. BLANKENSHIP: Yes. I would like to ask,

8 before we start, the videotape question of the

9 witness.

10 HEARING OFFICER KNITTLE: Yes. You can start.

11 Let's swear him in before we get started. Can you

12 swear him in, please?

13 Could you identify yourself, too?

14 THE WITNESS: My name is Phil Mergener,

15 M-e-r-g-e-n-e-r.

16 HEARING OFFICER KNITTLE: Okay. Now if you'll

17 swear him in, please.

18 (The witness was duly sworn.)

19 MR. BLANKENSHIP: Mr. Mergener, did you have an

20 objection to having your testimony here videotaped

21 today?

22 THE WITNESS: I do not want it videotaped.

23 MR. BLANKENSHIP: And I'll go on record as

24 saying Speedway does not want to participate in the

1 making of any documentary or any propaganda that can  
2 be used against the university.

3 HEARING OFFICER KNITTLE: Understood.

4 Mr. Joseph, I'm going to ask you to turn off the  
5 videotape.

6 MR. JOSEPH: It's off. It's off.

7 HEARING OFFICER KNITTLE: Okay. Then the  
8 Complainants' witness is Mr. Mergener.

9 Mr. Trepanier, are you going to start off  
10 again?

11 MR. TREPANIER: Yes, I will.

12 During this witness' testimony, we're  
13 going to ask him to interpret some piece of the time  
14 lapse video.

15 HEARING OFFICER KNITTLE: Do you have that set  
16 up and ready to go?

17 MR. TREPANIER: I was seeking the tape, but I  
18 hadn't located it yet.

19 HEARING OFFICER KNITTLE: I took the tape during  
20 the break.

21 Let's go off the record.

22 (Whereupon, a discussion was held off  
23 the record.)

24 HEARING OFFICER KNITTLE: Let's go back on the

1 record.

2 Mr. Trepanier, I understand your request.

3 If, in fact, it comes to the point where we need the

4 videotape, I'll go upstairs and get it for you.

5 MR. TREPANIER: Thank you.

6 PHIL MERGENER,

7 called as an adverse witness herein, having been

8 first duly sworn, was examined upon oral

9 interrogatories, and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. TREPANIER:

12 Q Good day, Mr. Mergener. Thank you for

13 participating here today.

14 What function do you perform for Speedway

15 Wrecking?

16 A I'm an estimator.

17 Q Are you a manager?

18 A I'm an estimator.

19 Q Would that be a no to my question?

20 A That's my title, estimator.

21 Q Did you assist in the preparation of

22 Speedway Wrecking Company's answers to Petitioners'

23 interrogatories?

24 A I don't know anything about it.

1 Q Did you have principal responsibility for  
2 the demolition of the Halsted property, 1261?

3 A I figured the number of loads of wood that  
4 were leaving the property and helped put together a  
5 price.

6 Q Does it surprise you that the Speedway's  
7 interrogatories stated that you were the principal --  
8 you were one of two principal -- Speedway's  
9 principal employees responsible for the demolition  
10 of the Halsted property?

11 A I put together the number of loads in the  
12 estimate for the project. We submitted a price to  
13 the university. That was my only involvement.

14 Q So you helped prepare the bid for the  
15 property?

16 A Yes, I did.

17 Q Did you spray water at 1261 South Halsted?

18 A Me personally, no.

19 Q Did you see someone else spray water at  
20 1261 South Halsted?

21 A I drove by the job a couple times because  
22 it's between our office and downtown, and I saw them  
23 using a hose to control the dust.

24 Q I'm going to show you an exhibit. This is

1 the Complainants' Exhibit 1. On this exhibit, this  
2 box is marked 1261, and that's the building that was  
3 to be demolished. Here, this is the end showing  
4 north.

5 Now, this is to represent Halsted Street  
6 where it says Halsted. Could you point on the  
7 exhibit the location that you were when you made  
8 your observation?

9 MR. BLANKENSHIP: Well, objection. On which  
10 date? He said he drove by a couple times and so...

11 BY THE WITNESS:

12 A I was on Halsted Street.

13 HEARING OFFICER KNITTLE: Your objection would  
14 be sustained. Would you like to clarify that a  
15 little bit, Mr. Trepanier?

16 MR. TREPANIER: Okay.

17 HEARING OFFICER KNITTLE: Unless that's the  
18 extent of his answer.

19 THE WITNESS: That's my answer.

20 HEARING OFFICER KNITTLE: Okay.

21 BY MR. TREPANIER:

22 Q And did you pull your vehicle over?

23 A No.

24 Q So your observation was from a moving

1 vehicle?

2 A That's correct.

3 Q And did you recognize the person you saw  
4 using a hose?

5 A I didn't look that closely.

6 Q Where were they spraying the hose?

7 A On the rear of the building, I think.

8 Q Do you know which day that was that you  
9 observed spraying on the rear of the building?

10 A No.

11 Q Now, again, looking at the exhibit, when  
12 you were on Halsted Street, what was -- what was  
13 happening there at the rear of the building besides  
14 spraying water?

15 A They were demolishing the building.

16 HEARING OFFICER KNITTLE: I want to ask a point  
17 of clarification.

18 What, Mr. Trepanier, are you indicating to  
19 be the rear of the building on that map? I'm asking  
20 you, Mr. Trepanier. You're asking the question in  
21 the rear of the building. And actually, he referred  
22 to the rear of the building, too, if you could both  
23 show me. The witness first.

24 THE WITNESS: This is north.

1 HEARING OFFICER KNITTLE: Right.

2 THE WITNESS: The building was on the east side  
3 of Halsted Street.

4 HEARING OFFICER KNITTLE: And you are referring --

5 THE WITNESS: And I would say that the east  
6 side of the building would be the rear because the  
7 store front was on Halsted Street.

8 HEARING OFFICER KNITTLE: So when we're  
9 referring to the rear of the building, we're  
10 referring to the east side of the building.

11 MR. TREPANIER: Thank you.

12 BY MR. TREPANIER:

13 Q How many floors remained of the building?

14 A I don't remember. It was a casual thing.

15 Q Was there walls up?

16 A I think so.

17 Q What phase of demolition were they in?

18 A I don't remember.

19 HEARING OFFICER KNITTLE: And, Mr. Joseph, I  
20 want to caution you as I cautioned Mr. Trepanier  
21 before you that when he's doing direct examination,  
22 I don't want you two conferencing back and forth.

23 MR. JOSEPH: It's just going to be real

24 difficult to get back into something that they're

1 right on, the path.

2 HEARING OFFICER KNITTLE: I understand, but

3 that's how it's got to be, so if you have a

4 question, write down what you want to ask when it's

5 your turn to ask, and we'll get back to that. Thank

6 you.

7 Mr. Trepanier...

8 BY MR. TREPANIER:

9 Q Did you recognize the person spraying the

10 hose?

11 MR. BLANKENSHIP: Asked and answered.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. TREPANIER:

14 Q And what was the source of water?

15 A We used the Chicago hydrants.

16 Q Now, when you say we, did you have some

17 involvement with the demolition -- with using water

18 at 1261?

19 A I say we because it's a typical practice

20 to get a permit to use the hydrant.

21 Q And was there such a permit?

22 A I think so.

23 Q Did you --

24 A It's part of the demolition process.

1 Q Did you see the permit?

2 A No. It comes after the permit for  
3 demolition.

4 Q Did anyone tell you there was a permit for  
5 a hydrant?

6 A No.

7 Q So you don't actually have any knowledge  
8 whether or not there was a hydrant permit, do you?

9 A I do know that you cannot get a demolition  
10 permit unless you pay for using the hydrant.

11 Q Is the hydrant permit issued for the  
12 entire length of the demolition?

13 A It's issued for the number of days that  
14 the water department thinks you're going to use it.

15 Q And what does the water department base  
16 their belief on, if you know?

17 A I don't know.

18 Q But you testified that the -- it is your  
19 understanding that in a regular demolition process,  
20 the water department forecasts how long a demolition  
21 is going to take and then issues a permit for a  
22 period?

23 MR. BLANKENSHIP: Objection. That misstates  
24 his testimony.

1 HEARING OFFICER KNITTLE: Sustained.

2 Mr. Trepanier, could you rephrase that?

3 BY MR. TREPANIER:

4 Q Is it -- do you believe that the water

5 department makes a projection on how long a

6 demolition is going to last?

7 A I think that they give you a permit for a

8 week or two weeks depending upon the size of the

9 building from the pictures that they see. It's not

10 very scientific. There is no scale. There is no

11 rule of thumb.

12 Q And does that permit -- is that permit

13 required to use a hydrant?

14 A You need to pay the city for the use of

15 the water.

16 Q And if you had a permit for one week and

17 your demolition took five weeks, is that permit

18 still valid?

19 MR. BLANKENSHIP: Objection. Speculation and

20 foundation.

21 MR. JEDDELOH: Relevance.

22 MR. BLANKENSHIP: And relevance.

23 HEARING OFFICER KNITTLE: Sustained.

24

1 BY MR. TREPANIER:

2 Q I believe you said that you drove by on a  
3 couple of occasions. Did you observe -- did you  
4 take -- did you take the time to observe 1261 on  
5 both of the times that you went by?

6 A No. I drove by, took a glance at it, and  
7 saw we were working there.

8 Q And was that on more than one occasion or  
9 just the one that you described?

10 A I think I already said it was a couple of  
11 occasions.

12 Q And then on the occasions other than the  
13 one you described, what did you see?

14 A I drove by. It was a glance. You can't  
15 stop and stare. Traffic won't permit it on Halsted.

16 Q So it's your --

17 A There's no room to pull off the side of  
18 the road and watch what's going on.

19 Q So you say it's not even -- it's not  
20 physically possible to get an observation from that  
21 place in a car?

22 A When you're driving by, you can see the  
23 people are working there or they're not working  
24 there, but that's all.

1 Q Okay. And on the occasions that you went  
2 by and glanced other than the one you described, did  
3 you see people working?

4 A This is the same question, isn't it?

5 HEARING OFFICER KNITTLE: I'm going to ask you  
6 to answer the question unless one of your attorneys  
7 objects on your behalf.

8 BY THE WITNESS:

9 A We were working there on the two occasions  
10 that I drove by.

11 BY MR. TREPANIER:

12 Q Did you observe -- did you observe work  
13 going on when you went by on that second occasion?

14 A Observe and see people working? I saw  
15 people working.

16 Q And what were they doing?

17 A Knocking the building down.

18 Q And was that in the hand wrecking phase?

19 A I honestly would say that it was probably  
20 once. Maybe I noticed it in the beginning of the  
21 job, which would be the hand portion, and once  
22 towards the end of the job when it was -- I think  
23 they had a piece of heavy equipment there.

24 Q And which of those did you describe

1 earlier? Was that at the beginning of the job, or

2 was that the --

3 A I don't remember. This was a long time

4 ago.

5 Q But you did testify -- you did testify

6 that you observed a hose being sprayed at the rear

7 of 1261 South Halsted?

8 A I know we had a hose on the job. I don't

9 know when I drove by as far as what floor they were

10 on if they were doing all the work by hand or if

11 they had the equipment by.

12 Q How do you know there was a hose on the

13 job?

14 A I think 13th Place or 13th Street was

15 closed.

16 Q And is that related to the hose?

17 A No. I think it was related to the fact

18 that while we were working, the street was closed or

19 there wasn't anybody using it or -- I don't

20 remember. I'm trying to remember, but I don't

21 remember.

22 Q Okay. Now, I know you've just had a quick

23 look, you testified your vehicle was moving, but did

24 you see any physical barriers on 13th Street closing

1 that street that you recall?

2 A I think we had a canopy up, but again,  
3 we've done a lot of jobs, and as I say, I'm the  
4 estimator. Once the jobs get started, we turn it  
5 over to somebody else. And I know that in this  
6 area, this part of the city in particular, that it's  
7 highly regulated. Any street closures or sidewalks  
8 being closed, there's a reason for it. You have a  
9 permit for it. You have to follow what the street  
10 departments call for.

11 Q When you say this area is highly  
12 regulated, is that because of the nature of the  
13 district?

14 MR. BLANKENSHIP: Objection. Speculation as to  
15 what it is.

16 HEARING OFFICER KNITTLE: Overruled. If you  
17 know the answer, you can answer.

18 BY THE WITNESS:

19 A Whenever you have a lot of people in a  
20 part of the city such as Halsted and Roosevelt, it  
21 seems like you have more people from the street  
22 department or city inspectors patrolling the area.

23 BY MR. TREPANIER:

24 Q And was there a lot of people on the

1 street when you went by?

2 A Halsted is always crowded in the middle of  
3 the day.

4 Q Well, is there -- did you have -- is there  
5 anything that -- is there anything that you can rely  
6 on that indicated to you that there was a hose on  
7 the job?

8 MR. JEDDELOH: I'm sorry. Could I have that  
9 question read back, please?

10 (Whereupon, the record was read by  
11 the court reporter.)

12 MR. BLANKENSHIP: I'm going to object. We've  
13 pretty much exhausted the area of the watering. He  
14 drove by twice and had glanced at the building, and  
15 this is asked and answered ad nauseam.

16 MR. TREPANIER: I would respond that we did  
17 talk about the hose for a while, and I asked a very  
18 similar question and -- but at that time, we went  
19 into the fact that 13th Street may have been closed,  
20 and we didn't address this.

21 HEARING OFFICER KNITTLE: I'm going to overrule  
22 it. Answer that question.

23 THE WITNESS: What's the question again?

24

1 (Whereupon, the record was read by  
2 the court reporter.)

3 BY THE WITNESS:

4 A You have to excuse me. I'm not an  
5 attorney, so I don't know what all the words imply  
6 or mean. We always have a hose on our jobs.

7 BY MR. TREPANIER:

8 Q And was there anything else that would  
9 have -- that you observed that would have indicated  
10 that there was a hose on the job?

11 A My recollection is seeing a hose on the  
12 job the couple of times that I drove by, but I'm  
13 sorry, I didn't take a picture.

14 Q Are you saying that you saw a hose on both  
15 times you drove by?

16 MR. BLANKENSHIP: Objection. Asked and  
17 answered.

18 HEARING OFFICER KNITTLE: I'll sustain that  
19 one.

20 MR. TREPANIER: But this was just a different  
21 answer. The first time it was that there was a hose  
22 one time, and now he just stated he saw hoses both  
23 times. I just ask the witness to clarify.

24 HEARING OFFICER KNITTLE: Can you clarify,

1 sir?

2 BY THE WITNESS:

3 A Part of our job is to control the dust,  
4 and the only way we've got to do that is with a  
5 water hose, so it's part of what we do.

6 HEARING OFFICER KNITTLE: Is that sufficient,  
7 Mr. Trepanier, or do you --

8 MR. TREPANIER: Well, I'm really not getting a  
9 clear answer to the question that I'm asking. I  
10 know -- maybe if I ask the question and use  
11 different words, it might be --

12 HEARING OFFICER KNITTLE: Well, ask the  
13 question one last time.

14 MR. TREPANIER: Okay.

15 BY MR. TREPANIER:

16 Q When you went by the demolition twice, did  
17 you -- do you have a specific recollection of seeing  
18 a hose there on both occasions?

19 A I can say that I went by it at least  
20 twice, and I can say I know we used water on the  
21 job. Whether it was being used at that very moment  
22 I can't say.

23 Q Okay. And your knowledge of the fact that  
24 you used water on the job is based on your

1 experience working with Speedway; is that correct?

2 A We have to use water.

3 Q And your belief that water was being used

4 here is based on that knowledge that that's the

5 practice and not based on actually having seen the

6 water being used; isn't that correct?

7 A I know we had a hose on the job.

8 HEARING OFFICER KNITTLE: I'm going to ask you

9 to answer the question if you saw a hose being used

10 or not.

11 THE WITNESS: I've answered it many times.

12 HEARING OFFICER KNITTLE: I'm asking you right

13 now to answer the question.

14 BY THE WITNESS:

15 A We had a hose on the job.

16 HEARING OFFICER KNITTLE: But did you see a

17 hose?

18 THE WITNESS: I saw a hose on the job, and I

19 saw it squirting up in the air.

20 HEARING OFFICER KNITTLE: Is that sufficient,

21 Mr. Trepanier?

22 BY MR. TREPANIER:

23 Q Was that on both occasions or on one

24 occasion?

1 A At least one occasion.

2 Q And that's the one you described earlier

3 at the rear of 1261?

4 A You're asking me to remember something

5 that was over two, three, four -- how long ago was

6 this?

7 Q I just asked if you could, you know,

8 clarify my understanding. I really -- I do

9 appreciate that you also are struggling to answer

10 the questions, and I just want to go into this a

11 little bit further because this -- as you

12 understand, the use of the hose is very important.

13 I appreciate that.

14 Was there a crane on the site when you saw

15 the hose being sprayed at the rear of 1261 South

16 Halsted?

17 A I don't remember.

18 Q And do you know how tall the building was

19 at 1261 South Halsted?

20 A I think it was four stories.

21 Q And when you were on Halsted Street, how

22 is it that you observed a hose at the rear of 1261

23 South Halsted?

24 A What would be the rear?

1 Q Where you indicated earlier.

2 A From where to where?

3 Q It would be --

4 A Half the building?

5 Q Just right on the east end of the building

6 where you earlier indicated the rear.

7 A If I remember, what I saw was activity on

8 this side of the building towards the rear.

9 HEARING OFFICER KNITTLE: Let the record

10 reflect that the witness is now pointing to the

11 south side of the building.

12 BY MR. TREPANIER:

13 Q And that's 13th Street; is that right?

14 A I get confused. I don't know if that's

15 13th Street, 13th Place.

16 Q Okay.

17 A I don't have a map.

18 Q Okay. And isn't that the street that you

19 saw that may have been closed?

20 A Well, is this the street or an alley?

21 Q That's what you're pointing to, 13th Street

22 there on the map.

23 A I think at the time there was a barricade

24 in front of it, not closed.

1 Q Not closed.

2 A There's always some traffic to the east.

3 Q Okay. And that barricade extended into  
4 13th Street, do you know?

5 A If it was a barricade, it would have been  
6 out here towards Halsted Street.

7 Q And that barricade was between you and the  
8 side of the building on 13th Street; isn't that  
9 right?

10 A We used flashing horses, flashers we call  
11 them, barricades that are folding. They're about  
12 three feet high.

13 Q And the barricades were there in addition  
14 to the -- I don't know if -- did you earlier refer  
15 to an awning?

16 A Right.

17 Q Did you observe -- when you went by, did  
18 you see any kind of a structure in front of 1261?

19 A We usually put a fence up, and then if the  
20 city requires a canopy, we put the canopy up.

21 Q Was there a canopy up there?

22 A I don't remember.

23 Q Now, the canopy, if it were in -- the  
24 front of that building was quite a bit closer to you

1 on Halsted Street than the rear of the building,

2 wasn't it?

3 A I don't understand.

4 Q I'm just trying to figure out how it is

5 that you saw down 13th Street to the rear of the

6 building to a hose spraying but can't recall whether

7 a canopy was in front of the building.

8 A I know you're familiar with the street. A

9 lot of times the traffic stops because people were

10 double parked. It's not easy to drive quickly down

11 Halsted Street. If, you know, you're working or if

12 your company is working on, let's say, this building

13 and you're driving down Halsted, it's quite easy to

14 look over a moveable barricade with one of those

15 flashing lights on it and see if your guys are

16 working on a four-story building. That casual

17 observation is enough, too, to say we're working

18 there in my mind, and it's also enough to say

19 there's a hose spraying.

20 Q And that's because you saw that hose; is

21 that right?

22 MR. BLANKENSHIP: Asked and answered --

23 HEARING OFFICER KNITTLE: Sustained.

24 MR. BLANKENSHIP: -- five times.

1 BY MR. TREPANIER:

2 Q Now, you've indicated the location of the  
3 hose spraying at two places along that building.  
4 Was it being sprayed from one place to another, or  
5 were you incorrect earlier when you indicated the  
6 east side of the building?

7 A If I remember correctly, there was very  
8 little room in the east side of the building because  
9 that was the alley. And I never indicated the east  
10 side of the building. All of our activity was  
11 staged on the south side of the building towards the  
12 rear. That was the only access we had to the job.

13 Q So if I understand, you're testifying that  
14 Speedway did not use the alley behind 1261 South  
15 Halsted?

16 MR. BLANKENSHIP: I'm going to object. He says  
17 he drove by twice. He was the estimator for the  
18 job. This is not the right witness to be asking for  
19 chapter and verse on the demolition. This is  
20 ridiculous.

21 HEARING OFFICER KNITTLE: I'm going to sustain,  
22 Mr. Trepanier. I think -- I don't think he quite  
23 knows, but if you want to rephrase your question,  
24 you can. But actually, we're getting kind of far

1 afield here from what this witness knows, so if you  
2 have anything else for him...

3 BY MR. TREPANIER:

4 Q How much wood was removed at 1261?

5 A I don't remember.

6 Q And where was that wood taken?

7 A To a landfill.

8 Q Are you familiar with the use of debris or  
9 demolition shoots?

10 A Yes, I am.

11 (Whereupon, Mr. Wager entered the  
12 hearing room.)

13 BY MR. TREPANIER:

14 Q Would a piece of wood pass through a  
15 demolition shoot?

16 MR. BLANKENSHIP: Objection. Piece of wood,  
17 what is -- can he be more specific as to what he  
18 means by a piece of wood?

19 BY MR. TREPANIER:

20 Q Would a two-by-four pass through a shoot?

21 A What kind of shoot?

22 Q A demolition or debris shoot.

23 A A short piece, yes.

24 Q And what restricts that wood? What

1 restricts it to being a short piece of wood?

2 A I don't understand what you mean by

3 restricts.

4 Q Why wouldn't a large -- say, a full-size

5 two-by-four fit through the shoot?

6 MR. BLANKENSHIP: What is full size, eight

7 feet, ten feet, six feet?

8 MR. TREPANIER: Excuse me. Let me be more

9 specific.

10 BY MR. TREPANIER:

11 Q Let's say an eight-foot two-by-four, what

12 would prevent that --

13 A Large pieces of wood get stuck in the

14 shoot.

15 Q And are you familiar with the ability of a

16 shoot to pass, say, gravel, bricks, dust?

17 A I don't understand.

18 Q The -- would, say, the gravel, bricks, or

19 dust have that same difficulty as a big two-by-four

20 in getting stuck in a shoot?

21 A Granular material would pass easily

22 through a shoot.

23 Q And would it -- would that granular

24 material be contained in the shoot all the way to

1 the ground?

2 A It depends on the application.

3 Q When you say it depends on the application,

4 what is -- I'm showing my inexperience with your

5 expertise. What applications might there be?

6 A I don't know what you're talking about.

7 What do you want me to say?

8 Q I'm just -- I'm trying to learn from you

9 that -- in your experience, you know, what

10 applications are these shoots put to.

11 A We use them to move rubbish.

12 Q And that's from -- is that to move rubbish

13 from upper floors down to the ground?

14 A Yeah. You're using gravity, so if you're

15 moving from one floor to another or -- roofers use

16 them on the outside of buildings.

17 Q And have you personally experienced the

18 use with a shoot?

19 A Yes.

20 Q And what did you use a shoot for?

21 A I think you use shoots for different

22 natures. Sometimes we use an enclosed elevator

23 shaft.

24 Q And that could be considered a shoot?

1 A In our business, yes.

2 Q Okay. And how about a shoot on the  
3 exterior of a building, have you had any experience  
4 with an exterior shoot?

5 A We've used them.

6 Q And what -- how were those used?

7 A We did some demolition work on a 20-story  
8 building. We used it on the outside because it was  
9 the only way to get the material out.

10 Q I'm just going to look over my notes here  
11 for a moment.

12 MR. TREPANIER: I have no more questions.

13 Thank you.

14 HEARING OFFICER KNITTLE: Mr. Joseph, do you  
15 have any questions of Mr. Mergener?

16 MR. JOSEPH: Yes, I do.

17 DIRECT EXAMINATION

18 BY MR. JOSEPH:

19 Q Do you know, does the city have stricter  
20 regulations for a busy street like Maxwell Street?

21 MR. JEDDELOH: I'm going to object. I think  
22 he's asking for testimony for which a foundation  
23 hasn't been laid, and I think it would require this  
24 witness to testify as to legal matters.

1 HEARING OFFICER KNITTLE: I'm going to overrule  
2 to the extent that you know and to the extent that  
3 Mr. Trepanier covered some of this on his direct.  
4 If you can answer that question, sir, please do.

5 BY THE WITNESS:

6 A I don't know.

7 BY MR. JOSEPH:

8 Q Okay. As an estimator -- let me start  
9 over.

10 Do you do anything besides estimating?

11 A It's not a very large company. I answer  
12 the phone.

13 Q Okay. So you don't get into the hand  
14 wrecking and all that?

15 HEARING OFFICER KNITTLE: Also, sir, you have  
16 to say yes or no. Otherwise, the court reporter  
17 can't pick it up.

18 THE WITNESS: I'm sorry.

19 BY THE WITNESS:

20 A No.

21 BY MR. JOSEPH:

22 Q But you would figure a job differently  
23 that was on Halsted than a job that was on a side  
24 street?

1 MR. BLANKENSHIP: Objection. Speculation.

2 HEARING OFFICER KNITTLE: Yes. I'll sustain

3 that. You could rephrase that where it would be an

4 answerable question, Mr. Joseph.

5 BY MR. JOSEPH:

6 Q Would you figure a job differently on a

7 busy street like Halsted?

8 A If the job is a building that's out in the

9 open, you figure it one way. If the building is

10 surrounded by people and other buildings, you figure

11 it yet a different way.

12 Q So are you aware of any regulations that

13 the city would have on a street like Halsted that

14 would affect your estimating?

15 MR. JEDDELOH: I'm going to object. I believe

16 he said he doesn't know about the regulations.

17 HEARING OFFICER KNITTLE: Sustained. I think

18 that's been asked previously, Mr. Joseph

19 MR. JOSEPH: All right.

20 BY MR. JOSEPH:

21 Q How about a job with like the university,

22 is there any different regulations for estimating

23 state jobs?

24 A Any government job requires prevailing

1 wage. Is that what you mean?

2 Q Is there anything else?

3 A Demolition instructions are different for  
4 different customers. Besides prevailing wage,  
5 that's all I know.

6 Q Do you have any guidelines like water  
7 spraying or anything else that state jobs require?

8 A All jobs require water.

9 Q And who requires that?

10 A Illinois EPA, city of Chicago, federal  
11 government, Cook County.

12 Q So whose job is it to check to see that  
13 Speedway is doing that?

14 MR. BLANKENSHIP: Well, objection. Speculation.

15 Again, he's an estimator. He's not a superintendent.

16 He is not involved in the demolition process.

17 MR. TREPANIER: If I might address that,

18 Mr. Blankenship prepared the interrogatories and

19 said that he was the manager.

20 MR. JEDDELOH: I'm going to object. I believe

21 Mr. Trepanier is now representing this other

22 interrogator.

23 HEARING OFFICER KNITTLE: That's sustained.

24 Mr. Trepanier, it's Mr. Joseph's direct examination

1 right now.

2 Mr. Joseph, do you have a question

3 prepared?

4 MR. JOSEPH: Yes. Okay.

5 BY MR. JOSEPH:

6 Q So -- let's see. Where were we?

7 MR. JOSEPH: So he can't answer that question?

8 HEARING OFFICER KNITTLE: Do you know the

9 question? I'll overrule it.

10 MR. JOSEPH: I was kind of interrupted here,

11 and I kind of forgot what my question was. If we

12 could repeat it...

13 HEARING OFFICER KNITTLE: Can you repeat that?

14 I was going to allow him to answer that question.

15 (Whereupon, the record was read by

16 the court reporter.)

17 HEARING OFFICER KNITTLE: You can answer that

18 question to the extent that you know.

19 BY THE WITNESS:

20 A My boss, Larry Kolko, was one of the

21 owners. He is directly responsible for the field

22 operations on most instances.

23 BY MR. JOSEPH:

24 Q So what if he's not there?

1 MR. BLANKENSHIP: Same objection.

2 HEARING OFFICER KNITTLE: Overruled.

3 BY THE WITNESS:

4 A I don't understand the question.

5 BY MR. JOSEPH:

6 Q Well, he's not on the job site, so who

7 would be in charge if he's not there?

8 A The foreman.

9 Q Do you know who the foreman was on this  
10 job?

11 A I think it was Greg Hernandez.

12 Q You said you thought 13th Street was  
13 closed?

14 A I thought I saw a barricade, like one of  
15 those folding horse barricades with the flashing  
16 light on it, across the entrance to the street. I'm  
17 not sure if that's 13th Street or 13th Place.

18 Q Was this during the hand wrecking phase?

19 MR. BLANKENSHIP: Asked and answered. We've  
20 gone through this in laborious detail.

21 HEARING OFFICER KNITTLE: Right. I'll sustain  
22 that objection. Mr. Joseph, that's already been  
23 covered.

24

1 BY MR. JOSEPH:

2 Q How much would it cost to put a shoot on  
3 this job?

4 A I don't understand.

5 Q Well, just like a rough estimate. I mean,  
6 would it be \$1,000 more, 10,000?

7 MR. BLANKENSHIP: I'm going to object. It  
8 calls him for to speculate about a job three years  
9 ago that he barely remembers without more  
10 information.

11 MR. JOSEPH: An average --

12 MR. BLANKENSHIP: Let me finish my objection.  
13 He's asking him now to render an expert  
14 opinion on what the cost of a shoot would be without  
15 giving him all the facts. He shouldn't be -- have  
16 to give a spur-of-the-moment opinion on something he  
17 barely remembers without getting all of the  
18 information an estimator would consider for a job  
19 like this. It's an unfair question. They had an  
20 opportunity to get an expert witness on this point,  
21 and they chose not to do it.

22 MR. JOSEPH: Okay. He said he's an estimator.

23 Can I --

24 HEARING OFFICER KNITTLE: I'll overrule. You

1 can ask him for his best estimate.

2 BY MR. JOSEPH:

3 Q Right. So go ahead.

4 A I never considered a shoot for the job

5 because it wasn't that tall a building. What it

6 would cost to put it up, I would probably go to a

7 subcontractor and ask for a price. I don't know.

8 Q So you would sub something like that out?

9 A Correct. We could do it down the elevator

10 shaft. We've done it down stairwells. We've done

11 it down mechanical shafts. A formal shoot typically

12 isn't part of a demolition project.

13 Q So have you ever done a shoot estimate?

14 A I answered that question.

15 MR. BLANKENSHIP: Asked and answered.

16 BY MR. JOSEPH:

17 Q And do you remember roughly what the cost

18 is?

19 A No, I don't.

20 HEARING OFFICER KNITTLE: He's answered your

21 question.

22 BY MR. JOSEPH:

23 Q How do they -- when they're hand wrecking,

24 do how they use the water hose? Explain how that

1 works.

2 MR. BLANKENSHIP: Objection. No foundation.

3 He was not involved in the demolition. He drove by

4 on two occasions and took a glance at the building.

5 MR. JOSEPH: All right. But wait a minute

6 now. In previous testimony, he was talking about

7 that they were using water at all phases and they

8 used water at all phases. That's what he said.

9 MR. BLANKENSHIP: That's not what he

10 testified.

11 MR. JOSEPH: He said his company uses water at

12 all times. They're required to use water by the

13 city, by the county, by the state. I'm asking him

14 how they use water when they're doing it. If he

15 estimates it, he's got to estimate that they've got

16 to get water permits. He's estimated -- they get

17 water permits. That has to be paid for the water.

18 Now I'm asking how they do water on the -- on four

19 floors.

20 HEARING OFFICER KNITTLE: I'm going to overrule

21 and let him answer. And I understand he drove by

22 twice, but if you know from your experience with

23 Speedway, you can answer the question.

24

1 BY THE WITNESS:

2 A Could you be more specific?

3 BY MR. JOSEPH:

4 Q Yes. When they're watering -- assuming on  
5 the job there's a few guys working, they're just  
6 doing hand wrecking, how do they use a water hose up  
7 on the upper floors?

8 A This was a wood building, if I remember  
9 correctly, and when they're taking up the hardwood  
10 floor, they don't need to use a water hose.

11 Q So you're saying they did not use water?

12 MR. BLANKENSHIP: Objection. This is the  
13 problem with asking someone who doesn't -- hasn't  
14 done the job. He doesn't recall.

15 HEARING OFFICER KNITTLE: Sustained.

16 BY MR. JOSEPH:

17 Q By hardwood building, what do you mean?

18 A I didn't say a hardwood building.

19 Hardwood floors.

20 Q Hardwood floors.

21 A I don't understand what the question is

22 now.

23 Q Now -- so you're saying that you don't  
24 use -- don't use water when there's hardwood floors?

1 A I know that if a guy has got a crowbar and  
2 he's taking up the hardwood flooring which is on top  
3 of the subflooring which is on top of the floor  
4 joists, it doesn't create a lot of dust, and you're  
5 inside the building, and you don't normally use  
6 water at that time.

7 Q So then you don't use water at all times?

8 MR. BLANKENSHIP: Objection. That's  
9 argumentative.

10 HEARING OFFICER KNITTLE: Sustained.

11 BY MR. JOSEPH:

12 Q So how would they use a hose on the upper  
13 floors of a building?

14 MR. BLANKENSHIP: Same objection. He's got the  
15 foreman coming in in five minutes. This guy is not  
16 involved in the demolition. It's way beyond any  
17 reasonable foundation.

18 MR. JOSEPH: But he said that water is used.

19 It's required to get a permit. He is the  
20 estimator. He factors these things. And that --

21 HEARING OFFICER KNITTLE: I'll sustain the  
22 objection. Just because he knows that water is used  
23 doesn't mean that he knows how it's used or how the  
24 company uses it. I don't think there's been

1 sufficient foundation laid. Can you move on,  
2 please?

3 MR. TREPANIER: I would like to raise an issue,  
4 and that is that's --

5 HEARING OFFICER KNITTLE: Mr. Trepanier, is  
6 this pertaining to Mr. Joseph's testimony -- or  
7 questioning of this witness?

8 MR. TREPANIER: Well, it has more to do with  
9 Speedway's answers to our interrogatories that  
10 they're now -- they're now -- the man is saying he  
11 drove by twice whereas in interrogatories he said he  
12 was one of two people in charge of this job.

13 HEARING OFFICER KNITTLE: Well, how about  
14 this? Let's finish with direct examination, and  
15 then we can address that issue when Mr. Joseph and  
16 Ms. Minnick and Mr. Wager are done with their direct  
17 examinations.

18 BY MR. JOSEPH:

19 Q So how is it that you are in charge of  
20 this job if you only drove by twice?

21 MR. BLANKENSHIP: Objection. He didn't say he  
22 was in charge of the job. There's no foundation.

23 HEARING OFFICER KNITTLE: Sustained.

24 MR. JOSEPH: In the interrogatories --

1 HEARING OFFICER KNITTLE: Mr. Joseph, this is  
2 the same issue Mr. Trepanier is raising, and you're  
3 raising it because he just said it, I think. We're  
4 going to address that issue when we're finished with  
5 the direct examination.

6 BY MR. JOSEPH:

7 Q What is rubbish?

8 A What is rubbish?

9 MR. BLANKENSHIP: Objection to the relevance of  
10 this.

11 HEARING OFFICER KNITTLE: Sustained.

12 MR. JOSEPH: Now, wait a minute. He said that  
13 they put rubbish in the shoot, and I'm just  
14 wondering what he meant.

15 MR. BLANKENSHIP: Are we talking about the  
16 shoot on a 15-story skyscraper that they put the  
17 shoot? I don't understand the foundational  
18 relevance of this question at all.

19 HEARING OFFICER KNITTLE: Why is this relevant,  
20 Mr. Joseph? If you can explain it to me, I'll let  
21 you ask it.

22 BY MR. BLANKENSHIP:

23 Q All right. Was there any rubbish on that  
24 job?

1 MR. BLANKENSHIP: Objection. I don't know what  
2 rubbish means. I don't know what the relevance is.  
3 He drove by twice and saw the property. If he's  
4 asking if there was rubbish -- if he glanced at  
5 rubbish on the two occasions he drove by, I suppose  
6 it's a proper question, but if he's asking a general  
7 question about rubbish on the job, it's totally  
8 improper.

9 HEARING OFFICER KNITTLE: Sustained.

10 BY MR. JOSEPH:

11 Q So how long have you been an estimator for  
12 this company?

13 A Over ten years.

14 Q Did you do something else before that with  
15 this company, participate in a wrecking process?

16 A I have been with the company over ten  
17 years. What do you mean?

18 Q Well, I mean, did you start out estimating  
19 with this company?

20 A Yes.

21 Q Did you do hands-on demolition work before  
22 that?

23 A With other companies, yes.

24 Q Okay.

1 HEARING OFFICER KNITTLE: Do you have any  
2 further questions, Mr. Joseph?

3 MR. JOSEPH: No. I can't think of anything  
4 right now.

5 HEARING OFFICER KNITTLE: Ms. Minnick, any  
6 questions?

7 MS. MINNICK: Yes, please.

8 DIRECT EXAMINATION

9 BY MS. MINNICK:

10 Q Hello, Mr. Mergener. Thank you for being  
11 here.

12 My first question is the water from the --  
13 the water that's used during the demolition for the  
14 dusts, does that water go into the sewers, do you  
15 know?

16 MR. BLANKENSHIP: Objection. No foundation.

17 MR. JEDDELOH: Plus that as to relevancy.  
18 There's no allegation here that survives relating to  
19 any form of pollution except the dust emanating from  
20 the project.

21 HEARING OFFICER KNITTLE: I'll sustain that. I  
22 can't see how that's relevant.

23 MS. MINNICK: Okay.

24

1 BY MS. MINNICK:

2 Q The two times that you drove by the  
3 location, did you see any emissions of dust?

4 A I don't recall seeing clouds of dust  
5 covering Halsted Street, no.

6 Q Okay. And could you possibly give us some  
7 insight to the contamination of the wood or the  
8 condition of the wood that was removed from the  
9 building?

10 MR. BLANKENSHIP: I object to the form of the  
11 question. Lack of foundation.

12 MR. JEDDELOH: And relevancy. The wood is not  
13 an issue in this case.

14 HEARING OFFICER KNITTLE: Sustained. Can you  
15 rephrase that at all?

16 MS. MINNICK: Yes.

17 BY MS. MINNICK:

18 Q Is it within the realm of possibility that  
19 the wood would have rust on it?

20 MR. BLANKENSHIP: Objection.

21 HEARING OFFICER KNITTLE: Yes. Sustained. I  
22 don't know where you're trying to go here,  
23 Ms. Minnick.

24 MS. MINNICK: I was just wondering why the wood

1 couldn't be recycled, why it was taken to a  
2 landfill.

3 MR. BLANKENSHIP: Objection to the relevancy of  
4 that.

5 HEARING OFFICER KNITTLE: Yes. Although I'm  
6 all for recycling, I don't know that that's relevant  
7 to this case.

8 BY MS. MINNICK:

9 Q Okay. I have one more question.

10 You say that water is the only way that  
11 you have of controlling the dust. Has vacuuming  
12 ever been used to control dust?

13 A On a demolition job?

14 Q Yes.

15 A Not that I know of.

16 MS. MINNICK: Okay. Thank you.

17 HEARING OFFICER KNITTLE: Thanks, Ms. Minnick.

18 Mr. Wager, do you have any questions for

19 Mr. Mergener?

20 DIRECT EXAMINATION

21 BY MR. WAGER:

22 Q Are there various health precautions that  
23 the workers need to take when they participate in  
24 these dusty activities or special equipment?

1 MR. BLANKENSHIP: Objection. Lack of foundation.

2 MR. JEDDELOH: Relevance.

3 HEARING OFFICER KNITTLE: Maybe you can

4 rephrase that. I'll sustain the lack of foundation

5 objection.

6 BY MR. WAGER:

7 Q Is there special safety equipment that the

8 workers for these dusty situations are required to

9 wear, or does this affect your health insurance

10 rates?

11 MR. BLANKENSHIP: Compound question. Same

12 objection on foundation.

13 HEARING OFFICER KNITTLE: Okay. Mr. Wager, you

14 have to ask one question at a time. You can't ask

15 two questions at the same time.

16 MR. WAGER: Okay.

17 BY MR. WAGER:

18 Q Is there special safety equipment for the

19 workers who participate?

20 HEARING OFFICER KNITTLE: I'm going to allow

21 him to ask that question. I realize and I note your

22 objection for the record.

23 MR. BLANKENSHIP: Okay.

24 HEARING OFFICER KNITTLE: If you can answer

1 that question, please do.

2 BY THE WITNESS:

3 A We wear hardhats, safety glasses, gloves,

4 heavy leather boots.

5 BY MR. WAGER:

6 Q Nothing to protect the nose?

7 A If the -- on occasions, we've used dust

8 masks.

9 Q The occasions where you used the water to

10 control the dust, does -- does that water -- does it

11 go into the ground table, or does it go in the

12 Chicago water system?

13 MR. JEDDELOH: Objection. Asked and answered

14 and relevancy.

15 HEARING OFFICER KNITTLE: I'll sustain that.

16 We don't know that that's relevant to this case,

17 what happens to the water.

18 MR. WAGER: Well, we're dealing with the dust,

19 and if the dust was not properly cared for and went

20 into the water system, I would think that would be a

21 concern.

22 HEARING OFFICER KNITTLE: I don't disagree that

23 it's a concern in some matters, but in this case,

24 we're dealing with a section 9A violation and a

1 section 21B violation of the Environmental  
2 Protection Act, and I don't think that's relevant to  
3 either one of those alleged violations, so I have to  
4 sustain the objection.

5 Do you have any other questions, Mr. Wager?

6 MR. WAGER: No. I'll pass.

7 HEARING OFFICER KNITTLE: Okay. Are there any  
8 clarifying questions?

9 MR. BLANKENSHIP: No.

10 HEARING OFFICER KNITTLE: Mr. Jeddeloh?

11 MR. JEDDELOH: No, sir.

12 HEARING OFFICER KNITTLE: Okay. Sir, you can  
13 step down. Thank you for your time.

14 THE WITNESS: Thank you.

15 MR. TREPANIER: Thank you.

16 MR. BLANKENSHIP: Mr. Hernandez is outside.

17 HEARING OFFICER KNITTLE: Let's go off the  
18 record.

19 (Whereupon, a recess was taken.)

20 HEARING OFFICER KNITTLE: Let's go back on the  
21 record.

22 We're waiting for the next witness who  
23 is -- Mr. Blankenship, what is his name?

24 MR. BLANKENSHIP: I believe it's Gregoreo

1 Hernandez.

2 HEARING OFFICER KNITTLE: Okay. And while we  
3 wait for that, Mr. Trepanier, you had something you  
4 wanted to bring up?

5 MR. TREPANIER: Yes. Thank you.

6 What I wanted to bring up is that I served  
7 a subpoena on the EPA. This was the person that the  
8 EPA had identified as head of the asbestos section.

9 I've since then learned that from --  
10 Dennis Brown informs me that the person that I had  
11 named in the subpoena, which -- which was Ed  
12 Bakowski, that apparently Ed Bakowski is the  
13 supervisor of the person who Mr. Brown apparently  
14 believes -- the more hands-on person the supervisor  
15 of the unit, Dale Helfort.

16 What I asked of Mr. Bakowski is that he  
17 come on in to the hearing and bring with him a  
18 list -- I gave him a list of addresses, and I asked  
19 him to bring all of the notifications of demolition  
20 and renovation and asbestos removal for a list of  
21 addresses I gave him, including 1261 South Halsted  
22 and several other properties that either were  
23 demolished by the university with an asbestos  
24 removal notice or notices that further properties

1 filed by Speedway where they attached an asbestos  
2 removal notice onto their notice, and what I  
3 received back was a few items. One is the --

4 MR. JEDDELOH: Well, I'm going to interrupt, if  
5 I could, for one minute.

6 I did not receive notice of that subpoena,  
7 and if I had received notice of such a subpoena, I  
8 would have moved to quash it, and so I'm going to  
9 object to any effort to introduce into the record of  
10 this proceeding references to documents that he may  
11 have obtained outside of notice. I have never seen  
12 these documents before. They're obviously not  
13 relevant.

14 The only relevant document that I can  
15 imagine is a copy of the notice relating to 1261,  
16 and that's been provided by the university to  
17 Mr. Trepanier and the other Complainants a long time  
18 ago.

19 MR. BLANKENSHIP: Speaking for Speedway, I  
20 don't know what these documents are, so I can't even  
21 begin -- and I'm not sure they're being offered. I  
22 don't know what we're really trying to accomplish  
23 here.

24 HEARING OFFICER KNITTLE: Yes. I'm not sure

1 yet either. Why don't we see what Mr. Trepanier

2 wants to do before we rule on those objections?

3 MR. BLANKENSHIP: But I would object to him

4 reciting what these documents are into the record at

5 this point because --

6 MR. JEDDELOH: Well, that was my point. He

7 can't accomplish that -- he can't accomplish that

8 way what he couldn't accomplish during --

9 HEARING OFFICER KNITTLE: Understood.

10 Mr. Trepanier, is that what you're trying

11 to do, read the documents into the --

12 MR. TREPANIER: No, I wasn't. I can stop

13 describing them now.

14 HEARING OFFICER KNITTLE: Sure. What are you

15 trying to do?

16 MR. TREPANIER: Why I'm interested in doing --

17 HEARING OFFICER KNITTLE: Are you seeking to

18 admit them?

19 MR. TREPANIER: Yes. I'm seeking that we would

20 submit these records as the response to the

21 subpoena, and that's what I want to do. I intend

22 to, in the future, rely on one or more of the

23 documents.

24 MR. BLANKENSHIP: Is he moving to admit them?

1 HEARING OFFICER KNITTLE: Are you moving to

2 admit them?

3 MR. TREPANIER: At this moment?

4 HEARING OFFICER KNITTLE: Yes.

5 MR. TREPANIER: No.

6 HEARING OFFICER KNITTLE: I guess not.

7 MR. TREPANIER: We're going to get to a point

8 where they're necessary and --

9 HEARING OFFICER KNITTLE: Right.

10 MR. TREPANIER: -- at that point, I don't want

11 to -- I just thought -- I mean, I'm willing to go

12 that route, but I just thought --

13 HEARING OFFICER KNITTLE: You were trying to --

14 MR. TREPANIER: -- for efficiency and

15 expediency --

16 HEARING OFFICER KNITTLE: -- determine what the

17 proper procedure is, I take it.

18 MR. BLANKENSHIP: Then I would suggest in the

19 interest of efficiency that if he provide us with

20 copies of the documents before you're going to

21 introduce them, then we can look at them and decide

22 if we have an objection or not, and then when you go

23 to introduce them, if an objection is appropriate,

24 we'll make it, and it will be ruled on.

1 MR. JEDDELOH: Well, I would just like to say  
2 that so far we have seen from the Petitioners -- or  
3 the Complainants a hypertechnical application of the  
4 rules relating to discovery. I never received any  
5 notice of any subpoena here, nor have I received the  
6 fruits of it, and in the meantime, Mr. Trepanier is  
7 indicating his wish to enter these documents into  
8 the record, which is just well beyond any form of  
9 reason.

10 HEARING OFFICER KNITTLE: Okay. Let's -- we've  
11 had a little argument on this. I'm going to go off  
12 the record since we're not going to reach a decision  
13 here at this point.

14 Let's go off.

15 (Whereupon, a discussion was held off  
16 the record.)

17 HEARING OFFICER KNITTLE: We're back on the  
18 record.

19 MR. JEDDELOH: I would like to say that I not  
20 only am asking for, I am insisting that I receive  
21 not only copies of the records but a copy of the  
22 subpoena.

23 HEARING OFFICER KNITTLE: Right. I'm not sure  
24 and you're going to have to point out to me,

1 Mr. Jeddeloh, why you are -- so far as I could tell  
2 under board rules, I don't know that you have to  
3 be --

4 MR. JEDDELOH: It's the rules of practice. The  
5 Supreme Court Rules require notice.

6 HEARING OFFICER KNITTLE: Well, I understand,  
7 but we generally go with the board rules, and I  
8 don't think you have to be served with a subpoena of  
9 Mr. Trepanier's witness. And I could be wrong, and  
10 I'm willing to have you point that out to me if you  
11 can.

12 MR. JEDDELOH: All I'm told is that there was a  
13 subpoena issued.

14 HEARING OFFICER KNITTLE: Right, and the  
15 subpoena has already been quashed. I have granted  
16 the EPA's motion to quash that subpoena earlier  
17 today.

18 MR. JEDDELOH: It is fundamental prevailing  
19 practice that notice is provided of trial  
20 subpoenas. And I have been involved in situations  
21 where I have been chastised for not notifying  
22 opposing counsel before the subpoena issues of my  
23 intent to issue a subpoena, and so therefore, I  
24 think it is fundamental that I should receive notice

1 of any subpoenas that are issued by any party.

2 HEARING OFFICER KNITTLE: Okay. That is  
3 understood. You show me a provision to that effect  
4 in the board rules or the Supreme Court Rules, if  
5 you want, and I'll entertain that.

6 MR. JEDDELOH: I don't have the Supreme Court  
7 Rules with me.

8 HEARING OFFICER KNITTLE: Understood. You show  
9 them to me, and that I'll entertain it. Either way,  
10 the subpoena been quashed. I think it's a moot  
11 point.

12 MR. JEDDELOH: It is, but I would like to see a  
13 copy of it because I think I'm entitled to know what  
14 efforts Mr. Trepanier is making, and I'm entitled to  
15 see the fruits of that effort in the form of the  
16 documents that he's now received.

17 HEARING OFFICER KNITTLE: Right. He did not  
18 receive the documents as a result of that subpoena,  
19 however.

20 MR. JEDDELOH: How did he receive the  
21 documents?

22 HEARING OFFICER KNITTLE: I think the documents  
23 were given to Mr. Trepanier, so far as I know, is --  
24 instead of having the person come with the

1 documents, they were given as more of a courtesy.

2 At least that's the understanding I had from the

3 university -- from the Illinois Environmental

4 Protection Agency attorney who was handling this.

5 MR. TREPANIER: Maybe you would like to pass

6 that over so the others could take a look at it.

7 MR. BLANKENSHIP: I guess I have a separate

8 problem then as to why those weren't produced to us

9 in response to our document request if they were

10 documents Mr. Trepanier had in his possession.

11 MR. TREPANIER: I was handed them in the

12 hearing room this morning.

13 MR. BLANKENSHIP: Okay. That's fine.

14 HEARING OFFICER KNITTLE: I'll tell you what I

15 know on the record, too. This came -- I got this

16 memo today from someone in our office saying that

17 these records were sent to the Maywood office of the

18 IEPA. I haven't really been fully apprised entirely

19 of what's going on either, but I don't think these

20 records were made available to anybody until today,

21 so...

22 MR. BLANKENSHIP: Well, again, I would suggest

23 that he give us the records and we look at them, and

24 then if there's a problem, we can address that.

1 HEARING OFFICER KNITTLE: I think that's a good  
2 idea, and if there's any objections, I'll entertain  
3 them at that point in time.

4 Are we still needing to be on the record?

5 MR. TREPANIER: I don't think so. I've got  
6 more I want to talk about on this, but I don't know  
7 that we need to be on the record.

8 HEARING OFFICER KNITTLE: Let's go off the  
9 record.

10 (Whereupon, a discussion was held off  
11 the record.)

12 HEARING OFFICER KNITTLE: Can we go on the  
13 record?

14 Would you please swear the witness?

15 (The witness was duly sworn.)

16 HEARING OFFICER KNITTLE: Mr. Blankenship, did  
17 you have --

18 MR. BLANKENSHIP: Would you state your name and  
19 spell your name for the record?

20 THE WITNESS: My name is Gregoreo Hernandez.

21 MR. BLANKENSHIP: Do you have an objection to  
22 being videotaped today?

23 THE WITNESS: Yes.

24 MR. BLANKENSHIP: Okay. I would request the

1 videotape camera be turned off.

2 HEARING OFFICER KNITTLE: Okay. Mr. Joseph,

3 can you turn --

4 MR. JOSEPH: Can I ask him why?

5 HEARING OFFICER KNITTLE: We've heard why time

6 and time again from the two Respondents. I imagine

7 the attorneys would answer and that the results

8 would be the same.

9 MR. BLANKENSHIP: Yes.

10 HEARING OFFICER KNITTLE: The videotape is

11 off?

12 MR. JOSEPH: Yes, sir.

13 HEARING OFFICER KNITTLE: Mr. Trepanier?

14 Excuse me. Can I help you, sir?

15 MR. SANIAT: Yes. I'm going to sit down. I

16 apologize.

17 HEARING OFFICER KNITTLE: Okay. Can you state

18 your name for the record again? I know you were

19 here yesterday, too.

20 MR. SANIAT: Thomas Saniat, S-a-n-i-a-t.

21 HEARING OFFICER KNITTLE: Mr. Trepanier, are

22 you going to start with the examination?

23 MR. TREPANIER: Yes.

24 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,

1 it's your witness.

2 GREGOREO HERNANDEZ,

3 called as an adverse witness herein, having been

4 first duly sworn, was examined upon oral

5 interrogatories, and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TREPANIER:

8 Q Good afternoon, Greg. Thanks for coming

9 in.

10 I understand that you work for Speedway

11 Wrecking. What's your position at Speedway?

12 A Foreman.

13 Q And what's your job as foreman?

14 A Just do the job, you know, watch the

15 people.

16 Q Okay. And is there anything else you're

17 watching out for besides the people?

18 A Everything, the job, do the job. Do the

19 job, the whole job. I'm the foreman. I do the

20 job. They're independent now. I take care of the

21 people.

22 MR. BLANKENSHIP: I wonder if we should move

23 the witness to make it easier.

24 HEARING OFFICER KNITTLE: Off the record.

1 (Whereupon, a discussion was held off  
2 the record.)

3 BY MR. TREPANIER:

4 Q What's the first part of tearing down the  
5 building, the first step?

6 MR. BLANKENSHIP: Objection. This is very  
7 vague and general. Are we talking about the  
8 specific property here?

9 MR. TREPANIER: Oh, okay. My mistake.

10 BY MR. TREPANIER:

11 Q Were you involved with the demolition at  
12 1261 South Halsted?

13 A Yes, I do.

14 Q And were you foreman on that job?

15 A Yeah.

16 Q Okay. How long have you been foreman with  
17 Speedway?

18 A I'm don't know exactly, but eight years  
19 now. It's about eight years.

20 Q About eight years. Okay.

21 Did you work at another demolition company  
22 before Speedway?

23 A No.

24 Q And how long -- and of the eight years,

1 how long have you been in the foreman position?

2 A About five, four or five, something.

3 Q Most of the time you have been the foreman

4 when you were at Speedway?

5 A No. Start as a laborer.

6 Q You started as a laborer.

7 And then about three years as a laborer?

8 A Some.

9 Q When you went from -- when you moved --

10 when you were promoted to foreman, did that involve

11 some schooling?

12 A No.

13 Q Did they send you out for a course like

14 over to the -- for a program?

15 A No.

16 Q Who trained you to be foreman?

17 A In the job, you know, other -- the other

18 foremans like train you. My boss, Larry, they train

19 me how to do the job.

20 Q I bet you're doing that job well now with

21 your experience.

22 A Right.

23 Q What do -- when you went to your training,

24 what did they tell you was the -- let me stop. I

1 think I was going to ask for a huge answer. I'll

2 ask smaller questions.

3 Now, what's the first -- what's the first

4 part of -- what was the first step when you were

5 demolishing 1261 South Halsted?

6 A I don't understand your question.

7 Q Like first step, like what did you do

8 initially, like the first part of the job?

9 MR. BLANKENSHIP: I guess I'll object to the

10 vagueness. Are you talking about a phase or the

11 very first act he did when he stepped on the

12 property?

13 MR. TREPANIER: I can make the question more

14 specific.

15 MR. BLANKENSHIP: Okay.

16 BY MR. TREPANIER:

17 Q Did you start that demolition on

18 September 4th, '96?

19 A I don't remember what day.

20 Q Okay.

21 A I know we do the job. I don't know what

22 day.

23 Q Does your brother also work with Speedway

24 Wrecking?

1 A Yes.

2 Q And did he work with you on the first day  
3 on the job?

4 A I don't remember. I think he was in  
5 another job, and then he come, but I'm not sure.

6 Q Well, on that first day, what was that  
7 day's activity?

8 A It has to be, you know, just go and see  
9 how is the building, check, just look, how is the  
10 building. That's it.

11 Q And what were you looking for?

12 A Nothing. You have to recognize the  
13 building first.

14 Q Then on the next day you had a team out  
15 with you, didn't you? On the second day, did you  
16 have the workers also?

17 A Yeah, I guess, yeah. I don't know. I  
18 don't know. We started hiring the people.

19 Q So on that next day, the job was still  
20 kind of coming together, the crew?

21 A Right.

22 Q And did the demolition begin on that  
23 second day?

24 A Yeah, I think so, yeah.

1 Q And what did they -- what was started  
2 with? What was the first -- what did they do on  
3 that day once the crew got on?

4 A Start on the roof. Start on the roof, put  
5 the tools together, whatever we need.

6 Q Okay. So you got all your tools up there  
7 with you on that first day?

8 A Tools, whatever we need.

9 Q And what tools were you using there on  
10 that day?

11 A Large hammer, wrecking bar.

12 Q Okay. And this is something that's  
13 important to me. I wonder if you can remember any  
14 other tools that you were using on that first day,  
15 the first day of the work.

16 A I can't remember. I know we had -- use  
17 hand tools, large hammer, wrecking bar, and stuff.

18 Q Okay. And I'm referring to some records  
19 that I have received.

20 Now, your crew stayed the same over -- at  
21 least the first few days of the job, did you have  
22 the same crew day after day?

23 A Yeah. I think so, yeah.

24 Q Now, would these people select their own

1 jobs, or did you assign the jobs to the individuals?

2 A I assigned the jobs, what they're going to  
3 do.

4 Q And would you tell me to which job you  
5 assigned your brother?

6 A He did too many things. You know, one day  
7 we do this. It's different, different.

8 MR. TREPANIER: I think at this time I would  
9 like to show -- I would like to show the witness a  
10 video and then ask him a few questions. I've got a  
11 video that we made one day. It was the 9th of  
12 September of the -- from one side of the building at  
13 1261 Halsted, and we see some activities, and I'd  
14 like you to watch the video, and then I'll ask you a  
15 few questions so I can learn about what was going  
16 on.

17 HEARING OFFICER KNITTLE: Any objection?

18 MR. BLANKENSHIP: No objection to him showing  
19 the video.

20 MR. JEDDELOH: Well, I assume we're talking  
21 about the admitted portions of the video, right?

22 HEARING OFFICER KNITTLE: Right, the admitted  
23 portions with the sound turned off, correct.

24 MR. TREPANIER: That is correct.

- 1 Is that correct, Mr. Joseph? Is that  
2 what's queued up?
- 3 MR. JOSEPH: It should be.
- 4 MR. TREPANIER: Would you check to make sure  
5 the sound is down?
- 6 MR. JOSEPH: Yes. The sound has been down.
- 7 MR. TREPANIER: If you have difficulty seeing  
8 that, let me know so we can bring it so you can see  
9 it clearly.
- 10 THE WITNESS: All right.
- 11 (Whereupon, a videotape was presented  
12 to the attendees of the hearing and  
13 no proceedings were had during  
14 presentation.)
- 15 MR. TREPANIER: What we're viewing here is a  
16 time lapse. It's one second every minute.
- 17 MR. BLANKENSHIP: I would suggest if there's  
18 questions on specific scenes as we go that you ask  
19 him now rather than wait until the end to ask them  
20 if you have specific questions.
- 21 MR. TREPANIER: I've was planning to stop the  
22 video at a point and ask him questions.
- 23 HEARING OFFICER KNITTLE: That would be good.  
24 Just pause it when you're ready to ask him a

1 question about something.

2 (Whereupon, a videotape was presented  
3 to the attendees of the hearing and  
4 no proceedings were had during  
5 presentation.)

6 MR. TREPANIER: Why don't you pause it there,  
7 Lorenz?

8 BY MR. TREPANIER:

9 Q Now, on that video, I saw two people, and  
10 I'm going to ask you what those two people were  
11 doing.

12 A They doing wrecking the little house -- on  
13 top of the roof, it was like a stairway or  
14 something. They was wrecking that one.

15 Q And --

16 MR. TREPANIER: Okay. Let's go forward then.

17 (Whereupon, a videotape was presented  
18 to the attendees of the hearing and  
19 no proceedings were had during  
20 presentation.)

21 BY MR. TREPANIER:

22 Q Now, do you know the person -- I know it's  
23 very difficult to see over on the right side of the  
24 building somebody standing up there. It seems like

1 a lot to ask if you could identify them.

2 A No.

3 Q Okay. And the person that comes up with  
4 the wheelbarrow, do you know who that is?

5 A Nope.

6 Q What are they doing?

7 A They are -- whatever material that we make  
8 from the place that we're wrecking, the wheelbarrow --  
9 the man with the wheelbarrow is bringing it down.

10 Q Is he transporting the material that the  
11 fellow on the right-hand side is -- he's using a  
12 sledgehammer there, isn't he, on the right hand?

13 A Uh-huh.

14 Q The fellow with the wheelbarrow, he is  
15 carrying the debris from that -- from what the guy  
16 is wrecking there?

17 A Right, right.

18 MR. WAGER: It must be hard to really view it  
19 from there.

20 HEARING OFFICER KNITTLE: Do you need to be  
21 closer, sir?

22 THE WITNESS: No. I can see whatever, but it's  
23 impossible. I cannot recognize the guy.

24 MR. TREPANIER: Now, thank you for pausing

1 that.

2 BY MR. TREPANIER:

3 Q Now, that material, he stopped it right in  
4 midstream there. Is that the material that was that  
5 stairwell cover?

6 A Right. That's the material for that,  
7 yeah.

8 MR. TREPANIER: You can go ahead.

9 (Whereupon, a videotape was presented  
10 to the attendees of the hearing and  
11 no proceedings were had during  
12 presentation.)

13 BY MR. TREPANIER:

14 Q I have another question.

15 The fellow who's using the sledgehammer,  
16 is he working with somebody also? Is there more  
17 than one person?

18 A Yeah, those two guys. Just those two guys  
19 working together, yeah. One direct. The other one  
20 get the debris off. And I got somebody watching in  
21 the alley so nobody pass and one with water, water  
22 hose.

23 Q Okay. And where is the person with the  
24 water hose?

1 A That should be in the bottom. You can't  
2 see it. You see the fence down there. There was a  
3 big fence.

4 Q Okay.

5 A So I have a guy in the corner in the alley  
6 and one with the water on there.

7 Q So the fellow with the -- there's somebody  
8 down in the alley, you're saying, with the hose?

9 A Yes, yes, so nobody come because people  
10 walk through. So we have to be one guy in the  
11 bottom with water to put the dust down.

12 Q Okay. We don't see the water here,  
13 though, do we?

14 A No. You cannot see from here because  
15 you're shooting on top. You shoot on the bottom  
16 with the fence -- there's a big fence that you --  
17 the building, there's an alley, and the fence.  
18 You're shooting just the top. You're shooting the  
19 bottom.

20 Q Okay. The fellow dumping his wheelbarrow  
21 load, he can see the guy down there with the hose?

22 A Yes, yes. That guy there with the  
23 wheelbarrow, we keep him seeing -- if somebody pass,  
24 we stop the guy. Somebody stop him, don't dump.

1 Q Now, is there -- those two guys working  
2 together up on the roof, is there anybody else up  
3 there with them?

4 A Has to be -- a couple more in front, in  
5 front of the building.

6 Q Okay. What would they -- what are they  
7 doing up in the front?

8 A Get the roof, take the roof off.

9 Q Take the roof off?

10 A We start wrecking the building.

11 MR. TREPANIER: Okay. You could proceed now.

12 (Whereupon, a videotape was presented  
13 to the attendees of the hearing and  
14 no proceedings were had during  
15 presentation.)

16 BY MR. TREPANIER:

17 Q The fellow in the alley, he's -- besides  
18 doing that hose, he's watching for people coming by?

19 A Yes.

20 (Whereupon, a videotape was presented  
21 to the attendees of the hearing and  
22 no proceedings were had during  
23 presentation.)

24

1 BY MR. TREPANIER:

2 Q Now, when we saw him dump that wheelbarrow  
3 load, a lot of the dust -- a lot of material went  
4 off in the wind there, didn't it?

5 A Uh-huh.

6 Q And the hose didn't reach that material?

7 A We have in bottom. The hose is in the  
8 bottom, okay, so we shoot the water as far as we  
9 can. That's all we can do.

10 Q Okay. Could you get that hose up to the  
11 roof?

12 A Yes. On the front, we put some hoses, wet  
13 the material first before we dump it. We have one  
14 hose in the bottom, too.

15 Q What are they doing with that material?  
16 That's the roof -- those guys taking off the roof.

17 A Some of it we dump it just to the next  
18 level. We wreck the roof, we just dump it to the  
19 next level.

20 Q What happened -- when they dumped that  
21 wheelbarrow and that material came out into the  
22 wind, why would that happen?

23 MR. JEDDELOH: I object to form and its vague  
24 nature.

1 HEARING OFFICER KNITTLE: Sustained. Can you  
2 rephrase that, Mr. Trepanier?

3 MR. TREPANIER: Yes.

4 Why don't you hold that video for a  
5 moment?

6 BY MR. TREPANIER:

7 Q You explained earlier, I believe, that you  
8 said that there was a hose in front and there was a  
9 hose in the alley. Now --

10 MR. BLANKENSHIP: On top.

11 BY MR. TREPANIER:

12 Q You said the hose was in the front on top?

13 A Right. We put water. First we put water  
14 on top, put water -- put water, wet all the  
15 material.

16 Q Who did that?

17 A Huh?

18 Q Who did that?

19 A One of the guys has to do it. I don't  
20 remember who did it. But that's how I require.  
21 Every time I do the job is how I tell the guys to do  
22 it.

23 Q And who installed the hose?

24 A A laborer, whatever I -- that's in my

1 hand, you know, whoever I see first.

2 MR. TREPANIER: Could you run the video a  
3 little further?

4 (Whereupon, a videotape was presented  
5 to the attendees of the hearing and  
6 no proceedings were had during  
7 presentation.)

8 HEARING OFFICER KNITTLE: Mr. Trepanier, do we  
9 want the video stopped here?

10 MR. TREPANIER: Would you continue the video at  
11 this time?

12 (Whereupon, a videotape was presented  
13 to the attendees of the hearing and  
14 no proceedings were had during  
15 presentation.)

16 BY MR. TREPANIER:

17 Q This is showing this September 9th now, it  
18 looks like around 1:15 p m. Where would you be at  
19 this time? You were on site?

20 A I don't know. I cannot -- I don't  
21 remember where exactly. I know I was somewhere in  
22 there. I don't remember where I was at.

23 Q What would you have been doing there in  
24 that early afternoon time, if you can recall?

1 A Keep the building down, keep coming with  
2 the building. That's all I can say.

3 MR. TREPANIER: With the hearing officer's  
4 permission, I would encourage the other Complainants  
5 if they have a question, while this video is playing  
6 for efficiency, to ask their questions also.

7 HEARING OFFICER KNITTLE: Yes. I'll allow  
8 that.

9 MR. BLANKENSHIP: I would not object to that.

10 MR. JEDDELOH: But if it's only related to the  
11 video, of course.

12 HEARING OFFICER KNITTLE: Right.

13 DIRECT EXAMINATION

14 BY MR. JOSEPH:

15 Q I have a question.

16 If you watered it, how come it's blowing  
17 away from the building?

18 A We tried -- we put water on top and the  
19 bottom. There's no way that we can stop. You know,  
20 you're not going to stop 100 percent dust. You put  
21 water --

22 MR. TREPANIER: Can you cut that off? Thank  
23 you.

24

1 BY THE WITNESS:

2 A You put water. That's all you can do.

3 BY MR. TREPANIER:

4 Q Okay. So you --

5 HEARING OFFICER KNITTLE: Let's resume with

6 Mr. Trepanier's direct testimony then.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. TREPANIER:

9 Q I appreciate your taking time to be here

10 today and helping me understand more what was

11 occurring in that video.

12 So you took what measures that you knew

13 how to control the dust on this job?

14 A Do my best. That's all.

15 Q And did your -- did Speedway -- say,

16 Mr. Kolko or somebody else at Speedway give you

17 instructions --

18 HEARING OFFICER KNITTLE: Excuse me, Mr. Trepanier.

19 You guys, if you want to continue your

20 conversation, you'd be more than welcome to do so,

21 but please do it outside. I'm having trouble

22 hearing Mr. Trepanier.

23 MR. TREPANIER: Thank you.

24 HEARING OFFICER KNITTLE: Resume.

1 MR. TREPANIER: Thank you.

2 BY MR. TREPANIER:

3 Q Did you get instructions about -- to have  
4 somebody with a hose in the alley and to put water  
5 on the roof?

6 A Yes.

7 Q And who gave you that instruction?

8 A Mr. Kolko told me in every job we do, we  
9 have the water. Wrecking job requires water.

10 Q And do you know, where did the water come  
11 from?

12 A Hydrant.

13 Q And --

14 A Closest one.

15 Q And where was the location of that  
16 hydrant?

17 A It was on the east side of Halsted, yes.

18 Q And did you make the connection there  
19 with -- for the hose? Did you hook up the hose?

20 A Sometimes I do. Sometimes one of the  
21 laborers.

22 Q So at 1261 Halsted, did you hook up the  
23 hose?

24 A Sure, yeah.

1 Q And was that hydrant north or south of the  
2 building?

3 A South, I think. I'm not sure.

4 Q And did you have -- now, during the  
5 morning activities when we saw in the video somebody  
6 hand wrecking and the other fellow operating the  
7 wheelbarrow, how many -- did you say two other  
8 persons were on the roof?

9 A Yes. I'm not recalling where exactly, but  
10 the two guys I saw, one was wrecking the stairway at  
11 the top. Other one dumping the material.

12 Q Right.

13 A The other ones have to do something up  
14 front.

15 Q Okay.

16 A Tearing the roof off.

17 Q Tearing the roof off.

18 And did they work at tearing the roof off

19 all day?

20 A Yes.

21 Q And why do they tear the roof off?

22 A We have to wreck the roof first before we  
23 start the wall.

24 Q So there was -- the structure that was

1 being hand wrecked you say was the top of a  
2 stairwell. Did that stairwell go through the  
3 building? Did that go down to the ground floor?

4 A Yeah, the stairway.

5 Q Have you ever used a stairway for -- as a  
6 shoot to dump the debris down there?

7 A No.

8 Q And did Larry Kolko ever talk to you about  
9 the possibility of using a stairwell as a debris  
10 shoot?

11 A No.

12 Q And did Mr. Kolko or somebody at Speedway  
13 ever talk with you about the possibility of  
14 installing a shoot on the outside of a building to  
15 carry the debris down?

16 A In a big building that's 10, 20-story  
17 building, big ones. Little ones, no.

18 Q Are you familiar with using a shoot on the  
19 outside of a building?

20 A Yes.

21 Q And how about using a shoot on the inside  
22 of a building?

23 A No.

24 Q An elevator shaft, have you ever used an

1 elevator shaft before?

2 A We're using one right here at this job.

3 Q Right now you're demolishing a building

4 using the elevator shaft to dump the debris?

5 A Uh-huh.

6 Q And how tall is that building?

7 A Sixteen stories.

8 Q It's how tall?

9 A Sixteen.

10 Q Six, zero?

11 A Sixteen, one, six.

12 Q Sixteen. Thank you.

13 Did the workers on this job at 1261 Halsted

14 have any breathing -- any protection for their nose?

15 A We use them sometimes, yep.

16 Q And they did use those at 1261 Halsted?

17 A Dust mask we use.

18 Q And why do they use those dust masks?

19 A To protect us from the dust.

20 Q Was there a bobcat used in the demolition

21 at 1261?

22 A Yes.

23 Q And how was that bobcat used?

24 A To wreck the -- to wreck some of the

1 floors.

2 Q What does that mean? How do they use a  
3 bobcat to wreck the floors?

4 A We use it to wreck the walls, the roof,  
5 whatever we can reach.

6 Q And was there a bobcat on the upper floors  
7 of the building?

8 A Not on the roof.

9 Q How about on the --

10 A It was in the -- in the second -- in the  
11 second floor was clay tile, hard floor. The other  
12 ones were wood. It cannot handle that, bobcat.

13 Q So you say the bobcat never got above the  
14 second floor?

15 A I'm not sure what floor we used it, but,  
16 you know, second or third.

17 Q So the bobcat may have been used on the  
18 third floor?

19 A Might have.

20 Q And who was the bobcat operator?

21 A The one that we use, about two, three--  
22 two guys different, two different guys.

23 Q And who are they?

24 A One is my brother.

1 Q Do you recall who the other bobcat  
2 operator was?

3 A I think Ortiz -- I think Ortiz.

4 Q Was there two -- were there two brothers  
5 named Ortiz on the job working for Speedway?

6 A I don't remember. I think so, yeah.

7 Q Did you say you thought so?

8 A Yeah.

9 Q And which Ortiz was the bobcat operator?

10 A I think Artemio Ortiz.

11 Q And the other Ortiz is Gustano?

12 A Right.

13 Q Are they also brothers?

14 A Cousin.

15 Q Cousin.

16 How was the -- the hose that was down

17 there in the alley, at the end of every day, what

18 would you do with that hose?

19 A Sometimes for safety we leave it on top,

20 you know, on the building. Now I take them with

21 me.

22 Q And how long were the hoses?

23 A Well, every link is about 50, 100 feet,

24 but depend how many we use.

1 Q And how much water comes out of that hose  
2 when you've got it turned on?

3 A It's an inch-and-a-half hose.

4 Q And if you had -- if you had sprayed --  
5 say you sprayed with the hose and you want to stop  
6 spraying, how would you do that?

7 A Nozzle. We have a nozzle that close.

8 Q Okay.

9 A When you need water, just open it. It  
10 shoot water.

11 Q Okay. So is that what occurred in the  
12 morning after -- say, after you wet it down up on  
13 top, did they turn the hose off?

14 A We go on the bottom.

15 Q Oh. Then the hose went to the bottom?

16 A Right.

17 Q Down to the alley?

18 A Right.

19 Q And then did you bring that hose back from  
20 the alley back up to the roof at the end of the day?

21 A We wet it first. Then the hose stay in  
22 the alley wetting the material that come down.

23 Q And then at the end of the day, you either  
24 brought the hose home with you or put it on the

1 roof?

2 A Right, right.

3 Q And then on the next day, would you go  
4 through that same operation again?

5 A Same thing. Every day the same thing.

6 Q So the first thing you would -- well, you  
7 would have somebody else hook up that hose?

8 A Get my hose, put it on the hydrant, and  
9 start work.

10 Q And then you would wet down up on top  
11 again?

12 A Uh-huh.

13 Q And then you take the hose down to the  
14 alley?

15 A Right, right.

16 Q Did anybody ask you to -- I mean, I'm  
17 speaking in particular about Mr. Kolko or at  
18 Speedway. Did anybody ask you to watch the dust?

19 A I don't understand.

20 Q Keep an eye out for the dust.

21 A Yes, yes. That's my job to do, keep the  
22 dust down.

23 Q Okay. And what instructions did you get  
24 about that, about the dust?

1 A Put water. That's all we can do, put  
2 water.

3 Q So was that -- was having the hose down in  
4 the alley the most effective place to use the hose?

5 A Yes. When we start dumping, yes.

6 Q Would you water -- did you water the debris  
7 that hit the ground?

8 A Uh-huh.

9 Q And then that would --

10 A When it coming, you just put water.  
11 Whatever has come down, you put water. That's all  
12 we can do.

13 Q Now, was the hose used at other places --  
14 other than up on the roof in the morning and then  
15 down in the alley -- I guess I want to talk about  
16 more what time I'm going to ask you about, so I'm  
17 going to talk more about the time of the entire  
18 demolition.

19 So over the whole demolition, was there  
20 other places that you used the hose than -- places  
21 other than up on the roof and what you described  
22 down in the alley?

23 A Yes.

24 MR. BLANKENSHIP: Let me object because the

1 roof changes places as the demolition -- I mean, the  
2 roof disappears, so I'm not sure I understand the  
3 question of what you're really trying to get at  
4 here.

5 HEARING OFFICER KNITTLE: Sustained, but I  
6 think you can just restate this --

7 MR. BLANKENSHIP: Yes.

8 HEARING OFFICER KNITTLE: -- and be able to ask  
9 your question.

10 MR. TREPANIER: Okay.

11 BY MR. TREPANIER:

12 Q Other than the two locations that you  
13 already described where you used those, is there any  
14 other places?

15 A Yeah. As soon as we finish the roof, we  
16 come to the next level, put water, do the same thing  
17 we did on the roof, come down.

18 Q Now, I know you were spraying -- you had  
19 sprayed water in the alley because they were putting  
20 that material over that way.

21 A Right.

22 Q Now, were they ever putting material over  
23 the other side? I've got a little diagram maybe I  
24 could show you so I wouldn't have to describe it as

1 much. You tell me if this is helpful to you.

2 This square is the building that we were  
3 just watching. The video camera is shown by that X,  
4 so that was how it was shown, and this is Halsted  
5 Street, and then this is 13th Street.

6 Now, was demolition debris ever put off  
7 the building onto 13th Street?

8 A No.

9 Q No.

10 A Not right here.

11 Q Just right there.

12 HEARING OFFICER KNITTLE: I want the record to  
13 reflect that the witness has pointed to what has  
14 previously been determined as the east side of the  
15 building.

16 THE WITNESS: Right, the east side of the  
17 building.

18 HEARING OFFICER KNITTLE: Right.

19 BY MR. TREPANIER:

20 Q When they were putting the debris down  
21 there on what we're calling the east side of the  
22 building, did they -- every day did they bring the  
23 hose down there and cover that?

24 A Yes, yes.

1 Q Was there any other uses for the hose? I  
2 know now you said that you did the roof, but then as  
3 the building came down, wherever the top was, you  
4 would wet and then take the hose up, get the debris  
5 that they were dumping. Was the hose used in any  
6 other way?

7 A No, just water. When you wreck the  
8 building -- when you start, you know, demo, you put  
9 water on there, and when you start dumping to the  
10 alley, you bring the hose, put water onto the alley  
11 when you dump.

12 Q And if you -- you weren't dumping debris  
13 over here on 13th, but I'm just wanting to make sure  
14 that I understand that was -- did you come over here  
15 and use the hose over here anyway on 13th Street  
16 during that job?

17 A When we done dumping material, we not use  
18 water in there.

19 Q You just shut the hose down?

20 A We just shot the nozzle. When we start  
21 dumping, then we put water. We start dumping, then  
22 we put water.

23 Q Do you know -- just a few more questions  
24 to things that I haven't been able to learn yet.

1 Maybe you can help, if you would.

2       Who operated the front loader, do you  
3 know, the real big piece of equipment? Maybe I need  
4 to -- I should ask another question first.

5       Was there a front loader used on the job?

6   A   Yes.

7   Q   Okay. Do you know who operated that?

8   A   Pete.

9   Q   Do you have a second name for him?

10   A   No. That's the name I know for him, Pete.

11   Q   How often was -- how often was Pete on the  
12 job?

13   A   I think he was in the end of the -- almost  
14 on the end of the job was when we started bringing  
15 the -- when we had enough material for the truck,  
16 then he started. I don't know how long.

17   Q   So Pete was loading the trucks with debris?

18   A   Yes.

19   MR. TREPANIER: I'm just going to take a minute  
20 and look over my notes here and see if I've asked  
21 what I need to find.

22       (Brief pause.)

23 BY MR. TREPANIER:

24   Q   Was there hardwood floors in this

1 building?

2 A Hardwood? What do you mean?

3 Q Hardwood floors.

4 A Wood?

5 Q Yes, wood.

6 A Wood, yeah.

7 Q And how were those -- how were the wooden  
8 floors demolished?

9 A I don't understand your question.

10 Q How -- I'm probably not asking it well,  
11 but on the wood floors, was that -- was it the third  
12 and the fourth floors that were the wood floors?

13 A Actually, the whole floor was wood on  
14 top. I think the third and second floor was clay  
15 tile, clay tile, and wood on top. The other ones I  
16 think at the top, they were just wood.

17 Q Just wood.

18 A No clay tile.

19 Q Okay. So how would the wood floor, the  
20 one up on top, how was that broken? When you want  
21 to demolish that, how do you do that?

22 A Sledgehammer, bar, pop the floor.

23 Q Pop the floor up.

24 And then how about the tile floors, how

1 were those -- how were those demolished?

2 A Same thing, just use wrecking bar, pop it.

3 Q Would the bobcat be used to break the  
4 floors?

5 A Some, yeah. You can use the bobcat. If  
6 you have bobcat, you use it.

7 Q For -- the bobcat had a lot of uses?

8 A Sure. You could wreck whatever you want  
9 with bobcat, floors, walls.

10 Q And that occurred on this job?

11 A Yeah. I think we break some of the --  
12 whenever we use the bobcat, we break some with the  
13 bobcat.

14 MR. TREPANIER: Thank you. Thank you very  
15 much.

16 HEARING OFFICER KNITTLE: Is that all your  
17 questions, Mr. Trepanier?

18 MR. TREPANIER: Yes.

19 HEARING OFFICER KNITTLE: Mr. Joseph, do you  
20 have any questions for this witness?

21 MR. JOSEPH: Yes, I do.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. JOSEPH:

24 Q Mr. Hernandez, why did you not want me to

1 videotape you here today?

2 MR. BLANKENSHIP: Objection. Relevance.

3 HEARING OFFICER KNITTLE: Yes. I'll sustain

4 that, and the attorneys for Speedway -- well, the

5 attorney for Speedway has already stated on the

6 record why he doesn't want videotaping done on

7 behalf of his witnesses.

8 MR. JOSEPH: Well, isn't that the witness'

9 choice? I'm just wondering why he -- I mean --

10 HEARING OFFICER KNITTLE: I'm --

11 MR. JOSEPH: He already talked about it.

12 HEARING OFFICER KNITTLE: I've already

13 sustained the objection.

14 MR. JOSEPH: Okay.

15 BY MR. JOSEPH:

16 Q Did you mind me videotaping you on the

17 site here?

18 MR. BLANKENSHIP: Objection. Relevance.

19 HEARING OFFICER KNITTLE: Sustained. I can't

20 see why that's relevant, Mr. Joseph.

21 MR. JOSEPH: Okay.

22 BY MR. JOSEPH:

23 Q Were there any other materials besides

24 bricks that you were recycling on this job?

1 MR. BLANKENSHIP: Objection. Relevance.

2 BY MR. JOSEPH:

3 Q Reusing.

4 HEARING OFFICER KNITTLE: Overruled.

5 What was -- what was your question again?

6 BY MR. JOSEPH:

7 Q Were there any other materials besides

8 bricks that are being reused or recycled on this

9 job?

10 A Yes.

11 Q Which ones?

12 A Iron.

13 Q Iron?

14 A Pipe, whatever pipe. We separate the

15 pipe.

16 Q So all the metals?

17 A Sure.

18 Q Anything else?

19 A I think that's it.

20 Q Okay. Did you ever run into asbestos?

21 MR. JEDDELOH: I'm going to object. If the

22 question is if he ran into asbestos --

23 MR. JOSEPH: On this job.

24 MR. JEDDELOH: -- on this property, then I

1 would want the foundation laid for this individual's  
2 ability in all instances to recognize asbestos.  
3 It's not established he would be able to recognize  
4 it if he saw it.

5 BY MR. JOSEPH:

6 A Do you know what asbestos is?

7 HEARING OFFICER KNITTLE: I'll sustain your  
8 objection.

9 BY THE WITNESS:

10 A Yes. I know what asbestos is.

11 BY MR. JOSEPH:

12 Q Did you see any on this job?

13 A No.

14 Q What do you do when you run into it?

15 MR. JEDDELOH: Well, if he didn't see any, it's  
16 not relevant.

17 HEARING OFFICER KNITTLE: I'm going to overrule  
18 it. You can answer the question.

19 BY THE WITNESS:

20 A When I find some asbestos, I call the  
21 office. Mr. Kolko send somebody to pick it up, you  
22 know, licensed people.

23 BY MR. JOSEPH:

24 Q Okay. How long does that take usually?

1 MR. BLANKENSHIP: Objection. Relevance.

2 HEARING OFFICER KNITTLE: Okay. That one I'll

3 sustain. Mr. Joseph, you understand there was no --

4 he's testified that there was no asbestos he saw on

5 the site, so what he does is getting kind of far

6 afield.

7 MR. JOSEPH: Okay.

8 BY MR. JOSEPH:

9 Q What would happen if -- or do you remember

10 which side of 13th Street that -- the street -- do

11 you know where 13th Street is?

12 A Yes.

13 Q Do you remember where the fire hydrant was

14 in relation to 13th Street?

15 MR. JEDDELOH: Objection. That question was

16 asked directly, and he said he didn't know.

17 HEARING OFFICER KNITTLE: I can't recall

18 whether that question was asked. Can you answer

19 that again, sir?

20 BY THE WITNESS:

21 A Yeah. I'm not sure what I told. I'm not

22 sure, but I think it's on the east side.

23 HEARING OFFICER KNITTLE: Okay. My apologies,

24 Mr. Jeddelloh. I'm just not always entirely sure

1 whether it's been asked.

2 MR. JEDDELOH: I understand.

3 BY MR. JOSEPH:

4 Q So if the hose had to cross the street,

5 would you have to block the street off, too?

6 MR. JEDDELOH: Objection. He doesn't remember

7 where the hose was. Therefore, that question

8 assumes facts not in evidence.

9 HEARING OFFICER KNITTLE: I'm going to overrule

10 that. You can answer that question. Do you

11 understand the question, sir?

12 BY THE WITNESS:

13 A Can you say it again, please?

14 BY MR. JOSEPH:

15 Q If the hose had to cross the street, would

16 you have to block the street off, too?

17 A No.

18 Q Why not?

19 A Because we use heavy duty hoses. The

20 trucks can pass on top the hose, no problem.

21 Q Do you think that you had a hose crossing

22 the street here?

23 MR. JEDDELOH: Objection. That's another form

24 of the same question.

1 HEARING OFFICER KNITTLE: I'll sustain that  
2 one.

3 MR. JOSEPH: Okay. All right.

4 BY MR. JOSEPH:

5 Q So did you see any lead paint in this  
6 building?

7 MR. JEDDELOH: Objection. Foundation.

8 MR. BLANKENSHIP: Same objection here.

9 HEARING OFFICER KNITTLE: I'll overrule that.  
10 You can answer that question.

11 BY THE WITNESS:

12 A No. I don't know.

13 BY MR. JOSEPH:

14 Q Do you know what lead paint is?

15 A No.

16 Q You don't know what it is?

17 A No.

18 Q Okay. Do you know what was in the cloud  
19 of material that was in the video that was leaving  
20 the building, what kind of materials?

21 A The one we dump it?

22 Q Yes.

23 A Brick.

24 Q Bricks?

1 A Bricks, yeah.

2 Q What was -- the bricks -- what was the  
3 wind -- if you dump the brick, would not a brick go  
4 straight down?

5 A Yeah, brick straight down. The tars, you  
6 know, the cement, whatever they put on the brick,  
7 that's what the wind blow.

8 Q Okay. And what else could have been in  
9 there?

10 MR. BLANKENSHIP: Objection to what could have  
11 been.

12 BY MR. JOSEPH:

13 Q What else was in there?

14 HEARING OFFICER KNITTLE: The objection is  
15 sustained. You can ask him -- well, the question is  
16 along those lines, but please rephrase it.

17 BY MR. JOSEPH:

18 Q What else were you pouring with the  
19 bricks?

20 A That's all, bricks, you know, whatever  
21 brick, the walls.

22 Q Okay. What about the roof? Did you pour  
23 the roof off, too?

24 A Yeah. We put it to the next level, to the

1 next level. You know, the roof material, we keep it  
2 with the wood, all the wood together -- the roof and  
3 wood goes together, garbage. We collect it all  
4 together, and then we dump it, too.

5 Q What about the walls?

6 A Separate. We separate.

7 Q You separate those?

8 A Yes. The brick with wood, this is garbage.

9 We separate the brick with the wood. Iron separate,  
10 too.

11 Q So what do you do with the walls?

12 A We -- as soon as we finish, you know,  
13 clean the roof, get the walls, and dump it. We have  
14 enough material, garbage, you know, the wood, we  
15 dump that, too.

16 HEARING OFFICER KNITTLE: I'm going to --  
17 excuse me a minute.

18 What's your last name again, sir?

19 MR. SANIAT: Saniat.

20 HEARING OFFICER KNITTLE: Mr. Saniat, I want  
21 you to please refrain from whispering questions to  
22 Mr. Joseph to ask while he is on his direct  
23 examination, okay?

24 MR. SANIAT: Okay.

1 BY MR. JOSEPH:

2 Q So you would just dump everything  
3 that's -- everything that was in the building would  
4 be dumped off the side?

5 MR. JEDDELOH: Objection. That's exactly  
6 contrary to his testimony. Therefore, it's a  
7 question that's unfair.

8 MR. JOSEPH: All right. Excuse me.

9 HEARING OFFICER KNITTLE: He didn't say that,  
10 Mr. Joseph.

11 BY MR. JOSEPH:

12 Q You separate the metal, and you separate  
13 the bricks ultimately. You recycle the bricks, but  
14 everything else you throw away?

15 MR. JEDDELOH: That's still not his testimony  
16 just given here, Mr. Knittle.

17 HEARING OFFICER KNITTLE: I'm going to sustain  
18 this. You have to ask him questions instead of  
19 providing for him answers to agree with.

20 MR. JOSEPH: All right. Okay.

21 BY MR. JOSEPH:

22 Q So what did you do with everything else  
23 besides the metal and the bricks?

24 MR. JEDDELOH: Objection. Asked and answered.

1 MR. JOSEPH: Pardon?

2 HEARING OFFICER KNITTLE: Overruled. You can  
3 answer that, if you can.

4 BY THE WITNESS:

5 A I don't understand when he says what I  
6 do.

7 HEARING OFFICER KNITTLE: Mr. Joseph, I think  
8 he has explained what he has done with all the  
9 materials, but I'm going to allow you to ask another  
10 question.

11 MR. JOSEPH: Well, what I'm trying to do is  
12 clarify that everything else was -- you know, that  
13 everything else that was in the building was either  
14 thrown over the side or taken to a landfill or  
15 whatever.

16 HEARING OFFICER KNITTLE: He can only testify  
17 to what he testified to. I'll allow you one more  
18 time to ask the question. If he understands it,  
19 then he can answer, but then we're going to have to  
20 move on.

21 MR. JOSEPH: Okay. Thank you.

22 BY MR. JOSEPH:

23 Q Other than the bricks which you separated  
24 and the metal, everything else was pushed off the

1 side of the building?

2 MR. JEDDELOH: Same objection.

3 HEARING OFFICER KNITTLE: Overruled.

4 BY THE WITNESS:

5 A No. I don't understand what he try to

6 say, you know, what he's asking me. I don't know.

7 HEARING OFFICER KNITTLE: I don't think the

8 witness is being difficult. I just don't think he

9 understands what the question is.

10 MR. JOSEPH: Right, right.

11 HEARING OFFICER KNITTLE: Why don't we move on

12 to another line of questions? I do think we've

13 answered this question already, but I'm not --

14 MR. JOSEPH: I think that's probably it.

15 HEARING OFFICER KNITTLE: Okay. Ms. Minnick --

16 MR. JOSEPH: Thank you.

17 HEARING OFFICER KNITTLE: I'm sorry, Mr. Joseph.

18 Are you finished?

19 MR. JOSEPH: I think so, yeah.

20 HEARING OFFICER KNITTLE: Ms. Minnick, do you

21 have any questions you want to ask this witness?

22 MS. MINNICK: Yes, please.

23

24

1 DIRECT EXAMINATION

2 BY MS. MINNICK:

3 Q Hello, Mr. Hernandez. I only have one  
4 question.

5 What do you do with the fluorescent tubing  
6 if you find that in the building?

7 MR. JEDDELOH: Well, I'm going to object  
8 insofar as it hasn't been established that there was  
9 any fluorescent tubing that was in contention here.

10 MS. MINNICK: May I ask if there is?

11 HEARING OFFICER KNITTLE: Sure. Objection  
12 sustained. Please rephrase your question.

13 BY MS. MINNICK:

14 Q Have you -- do you find fluorescent  
15 tubings or light bulbs in the building?

16 A No.

17 MR. JEDDELOH: Well, I'm going to object and  
18 ask that the answer be stricken insofar as it  
19 relates to other buildings besides 1216.

20 HEARING OFFICER KNITTLE: Right. I'm going to  
21 overrule it. I think you were referring solely to  
22 the building at 1216, Ms. Minnick? That was my  
23 understanding of the question.

24 MS. MINNICK: Yes.

1 MR. JEDDELOH: Okay.

2 HEARING OFFICER KNITTLE: You can answer based

3 on just 1261.

4 BY THE WITNESS:

5 A No. I don't see any down there.

6 BY MS. MINNICK:

7 Q Nothing?

8 A Nothing.

9 MS. MINNICK: Okay. That was the only

10 question. Thank you.

11 HEARING OFFICER KNITTLE: Thank you,

12 Ms. Minnick.

13 Mr. Wager?

14 DIRECT EXAMINATION

15 BY MR. WAGER:

16 Q Looking at the video from my own memory,

17 it seemed like it was pretty breezy that day. Do

18 you recall the direction or the velocity of the

19 breeze that day?

20 A No.

21 HEARING OFFICER KNITTLE: Did you hear him? I

22 think he said no.

23 MR. WAGER: Yeah.

24 MR. JOSEPH: I'm going to object to his

1 attorney nodding his head when he looked over.

2 MR. BLANKENSHIP: I didn't do anything.

3 MR. JOSEPH: You did. You went like that, and

4 I think that that's unfair. It's leading the

5 witness, and it's totally uncalled for.

6 MR. BLANKENSHIP: I didn't do anything.

7 HEARING OFFICER KNITTLE: I didn't see

8 Mr. Blankenship do anything, but, if, in fact --

9 Mr. Blankenship is well aware, but I'll issue a

10 general precautionary statement that there will be

11 no coaching of any witnesses.

12 MR. BLANKENSHIP: I certainly know that, and I

13 did not coach the witness.

14 HEARING OFFICER KNITTLE: I'm not suggesting

15 that you did. I'm just responding to Mr. Joseph's

16 statement.

17 If, in fact, something happens again, we

18 can -- happens or happens again, we can address it

19 at that time, okay, Mr. Joseph?

20 MR. JOSEPH: Thank you. Thank you, yes.

21 HEARING OFFICER KNITTLE: Mr. Wager, do you

22 have any further questions?

23 BY MR. WAGER:

24 Q In the materials in the building, did you

1 see rodent or bird droppings?

2 A I don't -- excuse me. I don't understand

3 what you say.

4 Q In the building, did you see rodent or

5 bird shit?

6 HEARING OFFICER KNITTLE: Do you understand the

7 question?

8 THE WITNESS: No.

9 HEARING OFFICER KNITTLE: He wants to know --

10 and I'm going to rephrase it just for timeliness

11 here.

12 In the building, when you demolished the

13 building, did you see any rodent droppings or bird

14 droppings in the building?

15 THE WITNESS: No, no. I didn't see any.

16 HEARING OFFICER KNITTLE: No. The answer is

17 no.

18 Anything else, Mr. Wager?

19 BY MR. WAGER:

20 Q Did you see any birds fly over the building?

21 A No.

22 Q So you would deny any information about

23 the disposal of such if there were such?

24 MR. JEDDELOH: Objection to form. Asked and

1 answered.

2 HEARING OFFICER KNITTLE: Yes. I don't

3 understand the question anyway. The objection is

4 sustained.

5 Mr. Wager, do you have any further

6 questions?

7 MR. WAGER: No.

8 HEARING OFFICER KNITTLE: Okay. Thank you very

9 much.

10 Are there any questions on the Respondents'

11 side?

12 MR. BLANKENSHIP: Not from Speedway.

13 MR. JEDDELOH: The university doesn't have any

14 questions.

15 HEARING OFFICER KNITTLE: Okay. I think that's

16 all we have for you, Mr. Hernandez. Thank you very

17 much for your time.

18 THE WITNESS: Thank you.

19 (Whereupon, a recess was taken.)

20 HEARING OFFICER KNITTLE: Back on the record.

21 We've finished up witnesses for today. I

22 don't think there's anything else except to say that

23 we will report back here at 9:30 tomorrow.

24 MR. BLANKENSHIP: He's going to tell me who he

1 wants tomorrow, if anybody.

2 HEARING OFFICER KNITTLE: Yes.

3 Off the record.

4 (Whereupon, a discussion was held off

5 the record.)

6 HEARING OFFICER KNITTLE: Let's go back on.

7 We're back on the record. A member of the

8 public -- and can I ask you to spell your name for

9 the court reporter?

10 MR. SANIAT: My name is Saniat, S-a-n-i-a-t,

11 first name Thomas.

12 HEARING OFFICER KNITTLE: Mr. Saniat, what is

13 it that you wish to bring up at this point in time?

14 MR. SANIAT: As an interested party, in

15 yesterday's conversation, you said that I might have

16 leave to make a statement but not cross examine the

17 witness as not being a defendant or to examine the

18 witnesses.

19 HEARING OFFICER KNITTLE: Right. I'm not sure

20 that's exactly what I said, but you do -- let's

21 see. I think you are able to make a statement at

22 some point. When are you looking to do that? Now I

23 think we're pretty much wrapped up for the day.

24 Are you going to be able to come back

1 tomorrow?

2 MR. SANIAT: I thought that -- yes. That would  
3 even be better for me.

4 What time do you plan on finishing  
5 tomorrow?

6 HEARING OFFICER KNITTLE: Well, that's  
7 something that we're going to have to address  
8 tomorrow. That depends on the number of witnesses.  
9 You could make any statement you want to make.

10 MR. SANIAT: I would do that after all the  
11 witnesses and everything, correct, at the end?

12 HEARING OFFICER KNITTLE: Well, I'm not sure  
13 that we're going to finish this up tomorrow.  
14 There's two outstanding motions to continue, and we  
15 may have to revisit this at a later point in time.  
16 If you're going to be here tomorrow, I'd rather  
17 address it tomorrow.

18 MR. JEDDELOH: Also, this was only scheduled  
19 until noon tomorrow.

20 HEARING OFFICER KNITTLE: It was scheduled for  
21 two and a half days with the half day being open if  
22 we needed it, as I recall. If you're not going to  
23 be able to participate tomorrow afternoon,  
24 Mr. Jeddelloh --

1 MR. JEDDELOH: I did schedule things because it  
2 was my understanding that it was until noon on --

3 HEARING OFFICER KNITTLE: Well, we'll have to  
4 talk about that, and I would rather do scheduling  
5 matters like that off the record, if at all  
6 possible.

7 MR. JEDDELOH: Sure.

8 MR. SANIAT: Could I possibly then make  
9 arrangements to either page you in the afternoon to  
10 set it to my schedule because if you're still tied  
11 up, then I could do it, if it was going to be  
12 another day, on -- which would be Friday?

13 HEARING OFFICER KNITTLE: Well, we would be  
14 continuing this to a day not on Friday but to a day  
15 farther off in the future. If that would be okay...

16 MR. SANIAT: Anything for the convenience of  
17 the hearing.

18 HEARING OFFICER KNITTLE: I will give you my  
19 word as a hearing officer that we will at least give  
20 you the opportunity to make any statement you wish  
21 to make when this is over.

22 MR. SANIAT: Thank you.

23 MR. JEDDELOH: Mr. Knittle, the university  
24 would object to this individual being present for

1 the hearing and then offering testimony by way of a  
2 statement. That would --

3 HEARING OFFICER KNITTLE: I will take your  
4 objection -- go ahead.

5 MR. BLANKENSHIP: And I'm taking a quick look  
6 at the rules, and I don't see anything that allows  
7 him to come in and just make a public comment. I  
8 see rule 103.267.

9 HEARING OFFICER KNITTLE: Right. He's got to  
10 make a written statement, and then he could be cross  
11 examined on that statement as I recall, right?

12 MR. BLANKENSHIP: Any person including the  
13 USEPA may comment on the partial draft permit or  
14 stipulated draft remedy within 45 days after it has  
15 been filed with the board.

16 HEARING OFFICER KNITTLE: Oh, no. There's a  
17 different provision.

18 Let's go off the record for a second.

19 (Whereupon, a discussion was held off  
20 the record.)

21 HEARING OFFICER KNITTLE: We're back on the  
22 record for the limited purpose of insuring that we  
23 noted that the hearing tomorrow will resume at  
24 9:30 a.m. in room 833, and that will be March 25th.

1 Thank you very much.

2 (Whereupon, the proceedings were

3 concluded at 4:50 p.m.)

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1 STATE OF ILLINOIS )  
                                  ) SS.  
2 COUNTY OF COOK    )

3

4     I, CARYL L. HARDY, a Certified Shorthand  
5 Reporter doing business in the County of Cook and  
6 State of Illinois, do hereby certify that I reported  
7 in machine shorthand the proceedings at the hearing  
8 of the above-entitled cause.

9           I further certify that the foregoing is a  
10 true and correct transcript of said proceedings as  
11 appears from the stenographic notes so taken and  
12 transcribed by me.

13

14

15

16

17                           CSR No. 084-003896

18

19

20 SUBSCRIBED AND SWORN TO  
   before me this \_\_\_\_ day  
21 of \_\_\_\_\_, A.D., 1999.

22 \_\_\_\_\_  
   Notary Public

23

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