

1 37229

2 THE ILLINOIS POLLUTION CONTROL BOARD
3 BEFORE HEARING OFFICER JUNE C. EDVENSON

4 SARA SCARPINO and MARGARET)
5 SCARPINO,)
6 Complainants,)
7 vs.) No. PCB 96-110
8 HENRY PRATT COMPANY,) Enforcement - Noise
9 Respondent.)

10

11 REPORT OF PROCEEDINGS had and testimony taken
12 at the hearing of the above-entitled matter, before
13 Hearing Officer June C. Edvenson, in the Kane County
14 Courthouse, 100 South Third Street, Geneva, Illinois, on
15 the 19th day of July, A.D. 1996, at the hour of 10:03
16 o'clock a.m.

17

18 PRESENT:

19 HOLLEB & COFF, by

20 MR. JAN FELDMAN,
21 MS. ANNE E. VINER,

22 Suite 4100
23 55 East Monroe Street
Chicago, IL 60603
(312) 807-4600

24 appeared on behalf of Respondent.

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1 HEARING OFFICER EDVENSON: So we don't
2 inconvenience all the people that are here, we will
3 proceed with the hearing at this time, even though one of
4 our witnesses has not arrived yet.

5 Are the parties ready to begin?

6 MR. FELDMAN: Yes, your Honor.

7 HEARING OFFICER EDVENSON: Okay. Good morning, and
8 welcome. This is a contested case hearing conducted by
9 the Illinois Pollution Control Board, Case No. PCB
10 96-110, entitled Sara Scarpino and Margaret Scarpino,
11 Complainants, versus Henry Pratt Company, Respondent.

12 This proceeding is in the nature of a citizen's
13 enforcement action related to noise. My name is June
14 Edvenson. I am the Board's Hearing Officer for this
15 case.

16 I will now request that counsel for the parties
17 enter their appearances for the record.

18 Sara, would you state your name.

19 MS. SARA SCARPINO: Yes, Sara Scarpino.

20 MS. MARGARET SCARPINO: Margaret Scarpino.

21 HEARING OFFICER EDVENSON: Thank you.

22 MR. FELDMAN: Jan Feldman and Anne Viner for the
23 defendant -- for the Respondent, Henry Pratt Company.

24 HEARING OFFICER EDVENSON: Okay. Thank you. I

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1 would like to note for the record that we have several
2 persons in attendance at the hearing today. And I'm
3 going to distribute a pad of paper and if you would
4 please place your name on the list if you would like to
5 indicate that you are in attendance today and then pass
6 the list back up to the front.

7 (Indicating.)

8 Okay. Let's go off the record for a moment.

9 (There followed a discussion outside the
10 record.)

11 HEARING OFFICER EDVENSON: All right. Back on the
12 record.

13 Are there any preliminary motions or stipulations?

14 MR. FELDMAN: Yes, your Honor, there are. We have
15 -- we've made an oral motion or we would like to make an
16 oral motion to strike certain portions of the complaint
17 in this matter, and we actually tendered that to you
18 before the beginning of the hearing this morning, a copy
19 of the complaints and a reference to the provisions that
20 we would -- that we believe should be stricken.

21 It occurs in Paragraph 5 of the complaint, which is
22 on Page 2, and there are certain provisions under this
23 list of sections of the Environmental Protection Act
24 which the Complainants believe are being violated that

1 really are not susceptible to being violated. They're
2 either penalty provisions or just statements of
3 legislative intent.

4 Specifically, Section 23 is a statement of
5 legislative intent; and 42 and 44 are just penalty
6 provisions that don't actually --

7 MS. SARA SCARPINO: Excuse me. Are you referring
8 to my November 21, '95, formal complaint?

9 MS. VINER: Yes.

10 MR. FELDMAN: Yes, I am. On Page 2 at Paragraph 5,
11 right there at the bottom.

12 MS. SARA SCARPINO: I see.

13 MR. FELDMAN: And so Section 23 and Section 42 and
14 44 really are not susceptible to being violated. It
15 doesn't -- it's not a motion to dismiss the entire
16 complaint. It's just really a motion to get the
17 pleadings in somewhat better order than they are at the
18 moment.

19 HEARING OFFICER EDVENSON: All right. Ms.
20 Scarpino, do you have any comment on the motion?

21 MS. SARA SCARPINO: I object.

22 HEARING OFFICER EDVENSON: All right. Thank you.
23 Okay. The motion to strike the references to Section 23,
24 42 A and 44 A in Item 5 as referenced which allege

1 violations of the Act is granted.

2 I believe that Respondent's counsel is technically
3 correct, and these are not technically violation sections
4 of the Act. All right.

5 MR. FELDMAN: Excuse me, your Honor. It's a little
6 unclear to me just -- in the -- in this particular
7 paragraph, they have 5/42 and then Section 42 A.

8 Is the order to strike the entire reference to
9 Sections 42 and 44 and 23?

10 I believe that's what it should be, because I don't
11 think anything in any of those sections are susceptible
12 to being violated.

13 HEARING OFFICER EDVENSON: I believe you are
14 correct, Counsel. The strike motion is granted for all
15 of Section 42 and 44.

16 Okay. We also have received in advance of the
17 beginning of the hearing today a motion to continue the
18 hearing at the completion of the Complainants' case.
19 Let's discuss that at the end of our proceedings today.

20 MR. FELDMAN: Very well.

21 HEARING OFFICER EDVENSON: And at this time, I
22 would like to proceed with the order of the hearing, and
23 I would like to ask Complainants to present their case.

24 And I believe, Sara Scarpino, you will be first

1 presenter.

2 MS. SARA SCARPINO: Okay.

3 HEARING OFFICER EDVENSON: And, Sara, you will need
4 to be sworn by the court reporter.

5 MR. FELDMAN: Excuse me, your Honor. I'm sorry to
6 interrupt the proceedings. We actually had another
7 motion that is -- really just arose this morning.

8 As -- as you're aware, we have been attempting over
9 the last week or so to obtain the files of Mr. Gregory
10 Zak, who is the IEPA officer involved in this case. And
11 we finally obtained -- we obtained an order from the
12 Board through yourself to require Mr. Zak to give us his
13 file, basically.

14 In response to that, we got his resume and one piece
15 of paper, which was some notes taken by, I think, Ms.
16 Sara Scarpino. We got that by fax yesterday, which was a
17 day later than the order required him to produce it to
18 us. He also informed us in the morning yesterday --

19 HEARING OFFICER EDVENSON: Correction, Counsel. It
20 was not a day later than the order required him to
21 produce it to you. It was a day later than the order
22 required him to send it to you.

23 MR. FELDMAN: Well, I stand corrected. I thought
24 we'd received it a day later than we were supposed to get

1 it.

2 In any event, what we got was the single piece of
3 paper, which are his notes, and his resume; and nothing
4 else that was in the file. Mr. Zak told us over the
5 telephone yesterday that the file contains some 150 pages
6 of material.

7 We were attempting to discern what exactly is in the
8 file by talking to him and didn't have any luck with
9 that. The solution that we came up with was that he
10 would be here this morning at around 9:00 o'clock so we
11 would have an opportunity to look through his file.

12 It is -- well, it's 10 after 10:00 now, and I
13 haven't seen him. So we would like to make a motion to
14 bar him from testifying at this hearing today for no
15 other reason than we've had absolutely no opportunity to
16 look at his file.

17 He prepared a report -- took some measurements on
18 Wednesday at the Scarpino residence and prepared a report
19 that we received late yesterday afternoon. And we've had
20 no opportunity to look at any of the other notes that
21 might have been generated in connection with that report,
22 so we're really kind of coming into this without adequate
23 preparation for Mr. Zak at all, even the minimal
24 preparation of having an opportunity before the hearing

1 started to look at his file.

2 We were here at about 8:30 hoping he would be here
3 at 9:00, and it hasn't happened.

4 MS. SARA SCARPINO: May I interfere? I do have
5 this file here that he gave me an extra file, and I do
6 have this.

7 (Indicating.)

8 HEARING OFFICER EDVENSON: Okay.

9 MS. VINER: It's our understanding, your Honor, if
10 I may, that Mr. Zak has other things, a computer disk,
11 for instance; his own notes. I don't know if those are
12 contained in Ms. Scarpino's file; any back up for the
13 particular data that he analyzed yesterday for the report
14 that he sent us late afternoon.

15 I'm not so sure that Ms. Sara Scarpino actually has
16 this entire file. And that's why we wanted him to bring
17 his own this morning.

18 HEARING OFFICER EDVENSON: All right. Thank you.
19 My concern is with ensuring that a complete record is
20 made of the proceedings for the Board. I believe that
21 Mr. Zak conducted a noise test which was sent to the
22 Respondent and the Complainant on May 3rd.

23 Counsel, did you receive that from your client? I
24 was told that you did.

1 MR. FELDMAN: Yes, yes, we do that have that,
2 correct. That's the May 3rd. We do have that.

3 HEARING OFFICER EDVENSON: That was the primary
4 evidence on which the Complainants' case was to come
5 forward today, and you have had that since you were hired
6 by the Respondent.

7 MR. FELDMAN: Yes, that's true.

8 HEARING OFFICER EDVENSON: Thank you. I also
9 understand that additional tests were made in the last
10 couple of days. This is very late evidence, and it has
11 not given the Respondent an opportunity to review the
12 test results.

13 I do not expect Respondent to be in a position to
14 fully explore their case with respect to those test
15 results today, regardless of whether Mr. Zak arrives late
16 here this morning or not.

17 However, I will not bar Mr. Zak from testifying
18 today, if he shows up. I would like to remind
19 Respondent's counsel that they may call Mr. Zak as a
20 witness in their own case.

21 All right. So with the absence of our technical
22 witness, we will proceed today with the Complainants'
23 case, which involves the testimony of the Complainants
24 themselves. And I understand that we also have several

1 documents that the Complainants have brought with them,
2 and those will be entered into the record.

3 So the motion for continuance and, I believe,
4 prohibiting Mr. Zak from testifying is denied.

5 MR. FELDMAN: I'm sorry; the motion for continuance
6 is denied?

7 HEARING OFFICER EDVENSON: I'm sorry. Was it a
8 motion for continuance?

9 MS. VINER: No. It was a motion to bar Mr. Zak.

10 HEARING OFFICER EDVENSON: Motion to bar Mr. Zak.
11 The motion to bar Mr. Zak is denied.

12 We will reassess the availability of Mr. Zak at the
13 conclusion of the testimony that we're going to entertain
14 now. We may take a brief recess, but we will not wait
15 around for him today.

16 Are there any other preliminary motions?

17 (No response.)

18 HEARING OFFICER EDVENSON: All right. Then will
19 Sara Scarpino please be sworn.

20 (The witness was thereupon duly sworn.)

21 HEARING OFFICER EDVENSON: All right. Ms.
22 Scarpino, you may now present your case.

23 SARA SCARPINO
24 called as a witness on behalf of the Complainants herein,

TESTIMONY OF SARA SCARPINO

1 having been first duly sworn, testified as follows:

2 DIRECT TESTIMONY

3 BY MS. SARA SCARPINO:

4 I'm Sara Scarpino.

5 HEARING OFFICER EDVENSON: You will have to speak
6 up as much as possible.

7 MS. SARA SCARPINO: I'm Sara Scarpino from Aurora,
8 Complainant against Pratt Company of Aurora.

9 My first complaint was in March, 1991. Since then,
10 it has been a continuing problem with many telephone
11 calls between Mr. Merrill Hermann of Pratt Company and
12 myself and written communication between us. And Pratt's
13 stated adjustments, but the noise pollution continues.

14 The noises are a shrill piercing noise and a loud
15 grinding noise. I wear earplugs every night. Sometimes
16 noises are so loud you have to turn on the radio music to
17 combat the noise. It is never silent even when the
18 factory isn't operating.

19 HEARING OFFICER EDVENSON: Ms. Scarpino, could you
20 please slow down.

21 MS. SARA SCARPINO: In summer, cannot leave windows
22 open because of plant's noise. Plant starts as early as
23 4:00 a.m. and works through 2:00 a.m. the following
24 morning. Monday through Friday, day starts same time,

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1 working through evening.

2 Greg Zak, noise adviser, EPA Springfield, furnished
3 tape recorder on 3/96. I recorded noises from 3/14
4 through 3/28/96; received Greg Zak's EPA noise survey
5 report 5/3/96.

6 On May 17th, '96, I called Mr. Dave of Pratt twice.
7 He never returned my calls. On June 11th, '96, I sent a
8 letter to Mr. Dave of Pratt, copy to A. R. Carlsen,
9 vice-president Pratt, copy to Greg Zak, complained about
10 the noises.

11 On 6/26/96, Mr. Dave visit us unannounced with
12 letter dated June 25 wanting an extension of hearing
13 date. June Edvenson, Hearing Officer, called and
14 discussed this matter. Later in the day, Mr. Dave called
15 about extension, and I have -- I have my logs of
16 telephone calls, letters, communication between Pratt and
17 me.

18 HEARING OFFICER EDVENSON: Can I see those, please.

19 (Indicating.)

20 MS. SARA SCARPINO: This is mine.

21 (Indicating.)

22 All right.

23 HEARING OFFICER EDVENSON: All right. The record
24 of telephone calls and letters --

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TESTIMONY OF SARA SCARPINO

1 MS. SARA SCARPINO: Yes, uh-huh, correspondence.

2 HEARING OFFICER EDVENSON: -- will be made Exhibit
3 No. 1.

4 (The documents were thereupon marked
5 Complainants' Exhibit No. 1 for identification
6 as of July 19th, 1996.)

7 HEARING OFFICER EDVENSON: You may proceed.

8 MR. FELDMAN: May we see a copy or see that?
9 (Indicating.)

10 MS. SARA SCARPINO: I want to present -- now, this
11 would be Exhibit 2 from Mr. Zak, his resume and his --
12 Exhibit No. 3 as data gathering for Mr. Zak.

13 (The document was thereupon marked
14 Complainants' Exhibit No. 2 for identification
15 as of July 19th, 1996.)

16 MS. SARA SCARPINO: And I also have --

17 HEARING OFFICER EDVENSON: Exhibit No. 3 is noise
18 survey report of March 14 to 18, 1996.

19 (The documents were thereupon marked
20 Complainants' Exhibit No. 3 for identification
21 as of July 19th, 1996.)

22 MS. SARA SCARPINO: And this is the recorded noises
23 that I took in my house, my bedroom.

24 HEARING OFFICER EDVENSON: All right. Exhibit No.

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TESTIMONY OF SARA SCARPINO

1 4 is a record of noise recordings by Sara Scarpino.

2 (The document was thereupon marked
3 Complainants' Exhibit No. 4 for identification
4 as of July 19th, 1996.)

5 MS. SARA SCARPINO: Do you have a copy of the noise
6 survey report May 3? Do you have a copy?

7 HEARING OFFICER EDVENSON: Do you wish to present
8 that as part of your case?

9 MS. SARA SCARPINO: Yes.

10 HEARING OFFICER EDVENSON: Okay.

11 MS. SARA SCARPINO: This is the only copy I have.

12 HEARING OFFICER EDVENSON: Exhibit No. 5 will be
13 noise survey report, correspondence from Greg Zak to Sara
14 Scarpino.

15 (The documents were thereupon marked
16 Complainants' Exhibit No. 5 for identification
17 as of July 19th, 1996.)

18 MR. FELDMAN: Your Honor, we have some objections
19 to the introduction of these exhibits into evidence. I
20 don't know if this is the right time to entertain those
21 or not.

22 As to Exhibit 3, Exhibit 3 purports to be a report
23 done by Greg Zak of the Illinois Environmental Protection
24 Agency, and it includes statements that he made about

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TESTIMONY OF SARA SCARPINO

1 things that he did or that Ms. -- what he told Ms.
2 Scarpino to do.

3 It also includes a report of readings that were
4 taken and his analysis of those readings, and then there
5 are charts and graphs reflecting that analysis and that
6 data. Exhibit 3 is hearsay of many orders over. They're
7 clearly out-of-court statements that presumably will be
8 introduced for their truth.

9 In addition, the technical work that was done with
10 respect to Exhibit 3 at this point in the proceeding has
11 absolutely no foundation because its author hasn't been
12 qualified to make these kinds of readings or to -- to
13 analyze the data in the particular way that it's been
14 analyzed, so it -- Exhibit 3 really shouldn't come into
15 evidence both for hearsay reasons and because it lacks
16 any foundation whatsoever.

17 HEARING OFFICER EDVENSON: Is your objection only
18 to the admission of Exhibit 3?

19 MR. FELDMAN: No. I can go through the others if
20 you'd like.

21 HEARING OFFICER EDVENSON: All right. We can take
22 them one at a time.

23 MR. FELDMAN: I guess I would also say that it
24 hasn't been authenticated.

TESTIMONY OF SARA SCARPINO

1 HEARING OFFICER EDVENSON: Is there any objection
2 to Exhibit No. 1?

3 MR. FELDMAN: Only to this extent, there are
4 references in here to conversations, but it -- from my
5 review of it at the moment, it doesn't seem to give the
6 substance of the conversation.

7 To the extent that -- we would just not want to be
8 waiving any objections with respect to the items that are
9 referred to in Exhibit 1. Other than that, we have no
10 objection.

11 HEARING OFFICER EDVENSON: All right. Exhibit No.
12 1 will be entered into evidence.

13 (Complainants' Exhibit No. 1 for identification
14 was thereupon received into evidence.)

15 HEARING OFFICER EDVENSON: Is there any objection
16 to the introduction into evidence of Exhibit 2?

17 MR. FELDMAN: Exhibit 2 seems to be Mr. Zak's
18 resume. It's obviously hearsay. I assume that he will
19 testify to this if and when he arrives here.

20 But until he does and says, "This is my resume," and
21 gives some background for what's in Exhibit 2, it is
22 hearsay and also lacks any foundation on the record as it
23 stands at the moment.

24 HEARING OFFICER EDVENSON: Let's wait for the

TESTIMONY OF SARA SCARPINO

1 admission of Exhibit 2.

2 And I believe you've expressed an objection to
3 Exhibit 3.

4 MR. FELDMAN: Correct. That's the report dated
5 March 14, 1996.

6 MS. SARA SCARPINO: Is that Mr. Zak's, also?

7 MR. FELDMAN: That is Mr. Zak's. And Exhibit 5
8 seems to be the same thing with just a letter on the
9 front.

10 HEARING OFFICER EDVENSON: Ms. Scarpino, do you
11 wish to say anything about the objection that's been made
12 to the introduction of Exhibit 3?

13 MS. SARA SCARPINO: I object, because this is
14 actual.

15 HEARING OFFICER EDVENSON: Exhibit 3 will be
16 entered into evidence over the objection.

17 (Complainants' Exhibit No. 3 for identification
18 was thereupon received into evidence.)

19 HEARING OFFICER EDVENSON: The Board will determine
20 the weight which they will give to the evidence.

21 Exhibit 3 is obviously information related to the
22 issue which is the subject of this complaint.

23 Is there any objection to Exhibit 4?

24 MR. FELDMAN: No.

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1 HEARING OFFICER EDVENSON: Exhibit 4 will be
2 entered into evidence.

3 (Complainants' Exhibit No. 4 for identification
4 was thereupon received into evidence.)

5 HEARING OFFICER EDVENSON: And I believe Exhibit 5
6 is a copy of Exhibit 3 with a cover letter.

7 MR. FELDMAN: And a proof of service. I have the
8 same objection to Exhibit 5 as we had to Exhibit 3, with
9 the addition of an independent objection to the cover
10 letter, which is addressed from Mr. Zak to Ms. Scarpino
11 -- Ms. Sara Scarpino and states -- and I'm quoting -- "It
12 appears the above-referenced company is emitting noise
13 levels in excess of the allowable numeric levels."

14 That is obviously a legal conclusion. It may be
15 relevant to this case. I suspect it is; but at the
16 moment, there's just no basis for it and no foundation
17 for it whatsoever.

18 So we not only have a technical report, we now have
19 a legal conclusion drawn from the technical report, which
20 just exacerbates the foundation problem that affected
21 Exhibit 3.

22 HEARING OFFICER EDVENSON: Ms. Scarpino, do you
23 have anything to say about the objection that's been made
24 to Exhibit 5?

TESTIMONY OF SARA SCARPINO

1 MS. SARA SCARPINO: I object to all his objections.

2 MS. MARGARET SCARPINO: And if I may, I also object
3 to it because this is his job to determine the noise
4 levels, and he has determined the noise levels. And I
5 also have the city inspections on there, and they came up
6 with -- to Mr. Hermann and told Mr. Hermann that the
7 noise level was over and above.

8 HEARING OFFICER EDVENSON: All right. Thank you,
9 Ms. Scarpino.

10 I am going to overrule the objection and admit
11 Exhibit 5. However, it will be admitted for the limited
12 purpose of showing that a letter and report was sent to
13 the Scarpinos.

14 The information which identifies what has been
15 characterized as legal conclusions is not admissible as
16 legal con -- as a statement of the truth of that legal
17 conclusion.

18 (Complainants' Exhibit No. 5 for identification
19 was thereupon received into evidence.)

20 MS. SARA SCARPINO: Your Honor, I have a couple
21 more.

22 HEARING OFFICER EDVENSON: Ms. Scarpino, would you
23 like to continue?

24 MS. SARA SCARPINO: I have a couple more exhibits.

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TESTIMONY OF SARA SCARPINO

1 HEARING OFFICER EDVENSON: Please speak up.

2 MS. SARA SCARPINO: I have a couple more exhibits.

3 HEARING OFFICER EDVENSON: And what are they?

4 MS. SARA SCARPINO: This is a recorded telephone

5 conversation that Mr. Hermann called and left a message,

6 and I -- I took it down, expressly the second to last

7 sentence.

8 HEARING OFFICER EDVENSON: Would you like to read

9 the second to the last sentence.

10 MS. SARA SCARPINO: "To let you know that your

11 stumbling block is not M.H.," which is Merrill Hermann,

12 "who is no longer with the company."

13 And here's another.

14 (Indicating.)

15 HEARING OFFICER EDVENSON: Could you wait just a

16 moment.

17 MS. SARA SCARPINO: Oh, okay. I'm sorry.

18 HEARING OFFICER EDVENSON: Okay. Let the record

19 show that this is a note which was made by a recorded

20 telephone --

21 MS. SARA SCARPINO: Message.

22 HEARING OFFICER EDVENSON: -- message machine.

23 MS. SARA SCARPINO: Uh-huh.

24 HEARING OFFICER EDVENSON: And was this note

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TESTIMONY OF SARA SCARPINO

1 transcribed by you?

2 MS. SARA SCARPINO: Yes.

3 HEARING OFFICER EDVENSON: On May 18th, 1995. And
4 for identification purposes, that will be Exhibit No. 6.

5 (The document was thereupon marked
6 Complainants' Exhibit No. 6 for identification
7 as of July 19th, 1996.)

8 MR. FELDMAN: Is the testimony that this is a
9 direct transcription of the message --

10 MS. SARA SCARPINO: Right.

11 MR. FELDMAN: -- or a summary?

12 MS. SARA SCARPINO: No, direct; verbatim.

13 MR. FELDMAN: No objection.

14 HEARING OFFICER EDVENSON: All right. Exhibit 6
15 will be entered into evidence.

16 (Complainants' Exhibit No. 6 for identification
17 was thereupon received into evidence.)

18 MS. SARA SCARPINO: I have this letter that I gave
19 to -- sent to Mr. Hermann, April, '95, another complaint.

20 HEARING OFFICER EDVENSON: For identification
21 purposes that will be Exhibit 7.

22 (The document was thereupon marked
23 Complainants' Exhibit No. 7 for identification
24 as of July 19th, 1996.)

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TESTIMONY OF SARA SCARPINO

1 MR. FELDMAN: I think this can be admitted to show
2 that such a letter was sent on or about the date that it
3 shows. I would object to the -- to any hearsay, which
4 there's a lot in here.

5 So anything in here which is an out-of-court
6 statement being admitted for its truth should not be
7 admitted, but I think the letter can be admitted to show
8 that it was sent on that date.

9 HEARING OFFICER EDVENSON: Before ruling on the
10 objection, I have a further question I will ask
11 Complainant.

12 Ms. Scarpino, are these references to the dates and
13 the experiences of noise --

14 MS. SARA SCARPINO: Yes.

15 HEARING OFFICER EDVENSON: -- your own personal --

16 MS. SARA SCARPINO: Yes.

17 HEARING OFFICER EDVENSON: -- experiences?

18 MS. SARA SCARPINO: Yes.

19 HEARING OFFICER EDVENSON: And did those occur?

20 MS. SARA SCARPINO: Yes.

21 HEARING OFFICER EDVENSON: All right. Exhibit 7
22 will be entered into evidence over the objection.

23 (Complainants' Exhibit No. 7 for identification
24 was thereupon received into evidence.)

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TESTIMONY OF SARA SCARPINO

1 HEARING OFFICER EDVENSON: Do you have other
2 documents you would like to show us --

3 MS. SARA SCARPINO: No, I don't.

4 HEARING OFFICER EDVENSON: -- or present on the
5 record?

6 MS. MARGARET SCARPINO: No.

7 HEARING OFFICER EDVENSON: Then at this time, did
8 you have any additional comments you wish to make?

9 MS. MARGARET SCARPINO: Just that I hope --

10 HEARING OFFICER EDVENSON: Wait a minute. We're
11 working with Sara Scarpino, not Margaret Scarpino.

12 MS. MARGARET SCARPINO: I'm sorry.

13 MS. SARA SCARPINO: I would like to comment that I
14 would -- don't like this to drag on. I would like the
15 Respondents to do something about it.

16 HEARING OFFICER EDVENSON: Okay. Thank you, Ms.
17 Scarpino.

18 And now at this point in time, I believe that
19 Margaret Scarpino, our other Complainant, indicated that
20 she would like to make a statement on the record.

21 And would it be all right if counsel for Respondents
22 cross examined both at the same time?

23 MS. VINER: That's fine.

24 HEARING OFFICER EDVENSON: All right. Margaret

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TESTIMONY OF MARGARET SCARPINO

1 Scarpino, would you please be sworn.

2 (The witness was thereupon duly sworn.)

3 MARGARET SCARPINO

4 called as a witness on behalf of the Complainants herein,
5 having been first duly sworn, testified as follows:

6 DIRECT TESTIMONY

7 BY MS. MARGARET SCARPINO:

8 I'm Margaret Scarpino. The only thing that I would
9 like to say is that I think after all these years with
10 our conversation with so many of them across the street
11 -- and we have been living in that neighborhood for 70
12 years -- that I would think we as old-time citizens, our
13 wishes should be respected.

14 I feel -- and I was in the business world for years.
15 I feel when a complaint is made, that someone should take
16 care of it and not drag it out the way it's been dragging
17 out. It's caused her to have -- she's a very ill person.
18 I've had bypass surgery, and I can't handle it. And I
19 just wish something would be done. That's all. Thank
20 you.

21 HEARING OFFICER EDVENSON: All right. Thank you
22 very much.

23 Then at this point in time we will have the cross
24 examination of Complainants by Respondent counsel.

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TESTIMONY OF SARA SCARPINO

1 MS. VINER: I'm going to be using a board, and I'm
2 wondering where I should set that, if it's best to set up
3 over there.

4 (Indicating.)

5 HEARING OFFICER EDVENSON: Why don't you lean it
6 against this podium, and I believe we can all see it
7 then. Perhaps we could also add a chair there.

8 MS. VINER: Yes. Maybe you can use like a chair
9 with no handles or something.

10 (Indicating.)

11 Can you see this okay?

12 MS. MARGARET SCARPINO: Uh-huh.

13 HEARING OFFICER EDVENSON: Let the record reflect
14 that Respondents, for the cross examination, have brought
15 a poster paper board with some information here, which I
16 believe they will describe.

17 And may I take that with me?

18 MS. VINER: Yes. Yes, you may.

19 HEARING OFFICER EDVENSON: Thank you.

20 CROSS EXAMINATION

21 OF SARA SCARPINO

22 BY MS. VINER:

23 Q Ms. Scarpino, you've told us this morning about your
24 complaints and how they've started in March of '91; isn't

TESTIMONY OF SARA SCARPINO

1 that correct?

2 A Yes.

3 Q Okay. What I've -- what I have here with me is all
4 of the correspondence from you to the Henry Pratt Company
5 and all their correspondence back to you over the -- the
6 last years starting in March of '91 up to the present.

7 And I'll represent to you that I think these were
8 all of the letters that there are. But as we go along,
9 if you think there are others that I don't have, please
10 let me know.

11 What I'd like to do is simplify this. I've sort of
12 grouped them together by number of letters that sort of
13 occur at the same time period. As we go through them,
14 I'm going to just sort of show them on this time line
15 that I have here so that we get a whole history of the
16 correspondence. Okay? And so I'm going to hand you
17 this.

18 (Indicating.)

19 And this is a group of letters beginning with the
20 first letter you sent them on March 8th of '91, and it
21 goes through correspondence until August 21st --

22 HEARING OFFICER EDVENSON: Counsel, do you have a
23 copy for the Hearing Officer?

24 MS. VINER: Yes, I do.

TESTIMONY OF SARA SCARPINO

1 (Indicating.)

2 BY MS. VINER:

3 Q -- August 21st, '91. And I'm going to ask you to
4 take a look at these and take your time, and will you
5 tell me if these are true and correct copies of letters
6 which you sent to the Pratt Company and which they sent
7 back to you.

8 HEARING OFFICER EDVENSON: Could we ask on each one
9 individually.

10 MS. VINER: You want to ask each one individually?

11 HEARING OFFICER EDVENSON: I think we should. It
12 would clarify the record.

13 BY MS. VINER:

14 Q All right. So the first letter is a March 8th, 1991,
15 letter from you to Mr. Greg Kurkjian of the Henry Pratt
16 Company.

17 Is this a true and correct copy of that letter that
18 you sent?

19 A Yes.

20 Q Okay. And the second letter is a March 11th, 1991,
21 letter.

22 A Yes.

23 Q It's a copy of a letter you received?

24 A Yes.

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TESTIMONY OF SARA SCARPINO

- 1 Q Okay. And then we have an April 19th, '91, letter;
2 and this is from a Mr. Merrill Hermann --
3 A Yes.
4 Q -- at the Henry Pratt Company to you?
5 A Yes.
6 Q Yes, it's a correct copy?
7 A Yes.
8 Q Next is May 30, '91. It's from you to Mr. Hermann?
9 A Yes.
10 Q Okay. Next is a letter from Mr. Hermann to you, May
11 21st?
12 A Yes.
13 Q Okay. And then we have a letter from you to him on
14 June 25?
15 A Yes.
16 Q And that's a true and correct copy of that letter?
17 A Yes.
18 Q And then July 10th, 1991?
19 A Yes.
20 Q And that's from you to Mr. Kurkjian?
21 A Yes.
22 Q And then July 23rd, 1991, from Mr. Hermann to you; is
23 that a true and correct copy?
24 A Yes.

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TESTIMONY OF SARA SCARPINO

- 1 Q Okay. Next I have August 2nd, '91, from Mr. Hermann
2 to you.
- 3 A Yes.
- 4 Q And August 21st, '91, from you to Mr. Hermann.
- 5 A Yes.
- 6 Q And that's the last one in that group?
- 7 A Yes.
- 8 Q Now, on the first letter in this group --
- 9 A Uh-huh.
- 10 Q -- you were complaining -- this is your very first
11 letter to the Pratt Company, and you're complaining at
12 this time of a sharp droning sound; is that right?
- 13 A Yes.
- 14 Q And three days later, Mr. Kurkjian writes you back --
- 15 A Uh-huh.
- 16 Q -- is that correct? Okay.
- 17 And if you turn to the April 19th, '91, letter, it's
18 the third letter in my group.
- 19 (Indicating.)
- 20 A Okay.
- 21 Q I believe this letter is telling you that the company
22 is hiring an industrial hygienist to study the problem;
23 is that right?
- 24 A Right.

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TESTIMONY OF SARA SCARPINO

1 Q Okay. And if you turn to the June 25th, 1991,
2 problem -- or letter -- I'm sorry -- here you're
3 complaining that you've got a loud blast noise that's
4 also coming in?

5 A Yes.

6 Q And on July 23rd, 1991, Mr. Hermann writes to you --
7 this is July 23rd.

8 (Indicating.)

9 Mr. Hermann is writing to you and says, "It took
10 some time, effort and investment to redesign the
11 equipment associated with the blast you mentioned in your
12 letter of July 10th, '91. However, the changes have been
13 made and have eliminated the problem."

14 So they were taking some actions along the way;
15 correct?

16 A Yes.

17 Q You were aware that they were trying?

18 A They were trying; trying.

19 Q Okay. And then this next letter, this second letter,
20 August 2nd, 1991, he's telling you, "We've modified
21 another exhaust vent trying to find the source of your
22 noise."

23 Isn't that what he's saying in this letter?

24 A Yes, it is. It's laughable, though. Go ahead.

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TESTIMONY OF SARA SCARPINO

1 Q On your August 21st letter, you actually seem to
2 indicate that in the second sentence that the blasts were
3 eliminated?

4 A Yes, yes, that did happen.

5 Q So they were eliminated?

6 A Yes.

7 Q Okay. And that's -- I'm finished with that group.
8 And I'm going to --

9 HEARING OFFICER EDVENSON: Counsel, will you
10 introduce that during your Complainant -- or I'm sorry --
11 during your case in chief or at this time?

12 MS. VINER: I would like to introduce it at this
13 time.

14 HEARING OFFICER EDVENSON: Let's take it at this
15 time.

16 Ms. Scarpino, do you have any objection to the
17 introduction of this -- of this letter group into
18 evidence?

19 MS. SARA SCARPINO: No, I don't.

20 HEARING OFFICER EDVENSON: All right. This will be
21 Respondent's Exhibit No. 1.

22 (The documents were thereupon marked
23 Respondent's Exhibit No. 1 for identification
24 as of July 19th, 1996, and were thereupon

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1 received into evidence.)

2 MS. VINER: And I'm just going to write this --
3 this is from March 8th, 1991, to August 21st, '91, so
4 this is this group, and we'll just mark that "A" and
5 shade it in.

6 (Indicating.)

7 BY MS. VINER:

8 Q Ms. Scarpino, before I show you the second group, it
9 seems to me you're a woman who likes to document
10 important things in your life; is that right?

11 A That's right.

12 Q Is that a fair statement?

13 A That's right.

14 Q And when something is important to you, you write a
15 letter?

16 A Right.

17 Q And when the noise was bothering you and disturbing
18 you, it was important; right?

19 A It's very important --

20 Q Right.

21 A -- particularly when you can't sleep.

22 Q So you wrote a letter to the company?

23 A Yes, yes.

24 MS. VINER: Here's the second exhibit.

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TESTIMONY OF SARA SCARPINO

1 (Indicating.)

2 BY MS. VINER:

3 Q The second group of letters are correspondence
4 between the company and yourself from November 25th, '91,
5 through January 30th, '92, and we're going to go through
6 and do the same thing.

7 And I'm going to ask you if each is a true and
8 correct copy of the letter that you either received or
9 sent, okay?

10 A Uh-huh. Yes.

11 Q Are you ready?

12 The first letter is from Mr. Hermann to you November
13 25th, 1991.

14 A Yes.

15 Q That's a true and correct copy?

16 A Yes.

17 Q The second letter is from you to Mr. Hermann. And
18 it's December 19th, '91; and that's a true and correct
19 copy?

20 A Yes.

21 Q And can I actually, while we are doing this, maybe
22 ask some questions as we go through?

23 The last sentence of that letter -- or the second to
24 last sentence, do you see where you state, "You have

TESTIMONY OF SARA SCARPINO

1 taken quick action upon my complaints to solve the noise
2 problems"?

3 Do you see where it says that?

4 A Yes.

5 Q And so at this time, Henry Pratt was trying to help
6 you; is that correct?

7 A Yes. Yes, they were.

8 Q And they were taking, like you say here, quick
9 action?

10 A Well, not quick enough for me.

11 Q Okay. But at this time, it seemed like they were
12 taking some quick action, so you wrote that in your
13 letter?

14 A Yes, hoping that we would resolve the problem.

15 Q Right. On January 9th, 1992, is the next letter.
16 It's from Merrill Hermann to you.

17 Is that a true and correct copy?

18 A Yes.

19 Q And I believe Mr. Hermann is telling you here that
20 they -- that the plant is going to try to take another
21 sound survey to try to determine the source of the noise;
22 is that correct?

23 A Yes.

24 Q The next letter is a January 23rd, 1992, letter from

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- 1 you to Mr. Hermann.
- 2 Is that a true and correct copy?
- 3 A Yes.
- 4 Q And there on the same day, we have a letter back to
- 5 you from Mr. Hermann.
- 6 And is the letter I have a true and correct copy?
- 7 A Yes, it is.
- 8 Q Okay. And the final letter in this group is January
- 9 30th, 1992; and it's from Mr. Merrill -- or Mr. Hermann
- 10 to you.
- 11 That's a true and correct copy?
- 12 A Yes.
- 13 Q And I believe in this letter he's telling you that
- 14 they think the exhaust fan in the men's room is the
- 15 problem, and they are going to -- they're going to
- 16 replace that fan to try to help.
- 17 Is that what he's saying here?
- 18 A Yes, that's what he --
- 19 Q So you knew about these actions that they were taking
- 20 from these letters?
- 21 A Yes.
- 22 Q Is that true?
- 23 A Yes.
- 24 Q Thank you.

TESTIMONY OF SARA SCARPINO

1 HEARING OFFICER EDVENSON: Is this being offered as
2 Respondent's Exhibit 2?

3 MS. VINER: Yes, it is at this time. Thank you.

4 (The documents were thereupon marked
5 Respondent's Exhibit No. 2 for identification
6 as of July 19th, 1996.)

7 HEARING OFFICER EDVENSON: Ms. Scarpino, do you
8 have any objection to entering these letters into the
9 record?

10 MS. SARA SCARPINO: No, I don't.

11 HEARING OFFICER EDVENSON: Thank you.

12 (Respondent's Exhibit No. 2 for identification
13 was thereupon received into evidence.)

14 MS. VINER: This is from November 25th, '91, to
15 January 30th, '92, so that's this little section here.

16 (Indicating.)

17 Here you go.

18 (Indicating.)

19 BY MS. VINER:

20 Q Okay. This is a smaller group. The first letter in
21 this group is dated July 8th, 1992; and it's from you to
22 Mr. Hermann.

23 Is that a true and correct copy?

24 A Yes.

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TESTIMONY OF SARA SCARPINO

1 Q And the second letter is a letter from Mr. Hermann to
2 you July 20th, 1992; and is that a true and correct copy
3 of the letter you received?

4 A Yes.

5 Q And here Mr. Hermann in the July 20th letter is
6 telling you again that they're making some -- another
7 sound survey to determine the problem and there's been
8 some revisions to some equipment.

9 So they're still working on it; isn't that right?

10 A That's right.

11 MS. VINER: And at this time I'd like to offer
12 those two letters into evidence.

13 HEARING OFFICER EDVENSON: Ms. Scarpino, do you
14 have any objection to entering these into evidence?

15 MS. SARA SCARPINO: No, I don't.

16 HEARING OFFICER EDVENSON: These will be
17 Respondent's Exhibit No. 3.

18 (The documents were thereupon marked
19 Respondent's Exhibit No. 3 for identification
20 as of July 19th, 1996, and were thereupon
21 received into evidence.)

22 MS. VINER: Okay. And --

23 MS. SARA SCARPINO: That's yours.

24 (Indicating.)

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TESTIMONY OF SARA SCARPINO

1 MS. VINER: Next group is a very short group.

2 (Indicating.)

3 BY MS. VINER:

4 Q This is a letter from you to Mr. Hermann, and it's
5 dated May 9th, 1993.

6 Is that a true and correct copy of this letter?

7 A Yes.

8 MS. VINER: And I'd like to offer it into evidence
9 at this time.

10 HEARING OFFICER EDVENSON: Ms. Scarpino, do you
11 have any objection to entering this letter into evidence?

12 MS. SARA SCARPINO: No, I don't.

13 HEARING OFFICER EDVENSON: This will be
14 Respondent's Exhibit No. 4.

15 (The document was thereupon marked Respondent's
16 Exhibit No. 4 for identification as of July
17 19th, 1996, and were thereupon received into
18 evidence.)

19 MS. VINER: This is kind of a big group, so you'll
20 have to bear with me.

21 BY MS. VINER:

22 Q This group of correspondence goes from September
23 20th, 1994, to May 16th, 1995. And we'll go through each
24 letter, okay?

TESTIMONY OF SARA SCARPINO

1 So the first letter is a September 20th -- is a
2 September 20th, 1994, letter from you to Mr. Hermann?

3 A Yes.

4 Q And you state, "In spite of your company making some
5 adjustments to lessen the noise levels, another noise
6 develops."

7 And that's sort of -- do you know why that would be,
8 Ms. Scarpino?

9 A I -- I don't know why. I don't --

10 Q Would that be making an adjustment, and a different
11 noise would then come to your attention?

12 A It's very true, I'm sorry to say.

13 Q And the next letter, September 28th, 1994, and this
14 is from Mr. Hermann to you.

15 Is that a true and correct copy?

16 A Yes.

17 Q And I believe in this letter Mr. Hermann is thanking
18 you for your cooperation that you extended to him and a
19 man named Jeff McCombs of Environmental Services, who I
20 believe is a consultant; is that right?

21 A For Pratt, yes.

22 Q So they came out to meet with you and talk to you
23 about your problems?

24 MS. MARGARET SCARPINO: Yes.

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TESTIMONY OF SARA SCARPINO

- 1 A They did. Okay.
- 2 BY MS. VINER:
- 3 Q The next letter is a November 2nd, 1994, letter from
- 4 Mr. Hermann to you.
- 5 Is that a true and correct copy?
- 6 A Yes.
- 7 Q The next letter is a December 6th, 1994, letter; and
- 8 it's from you to Mr. Hermann, as well.
- 9 Is that a true and correct copy?
- 10 A Yes.
- 11 Q This is a December 13th, 1994, letter from Mr.
- 12 Hermann to you, the same question.
- 13 Is it a true copy?
- 14 A Yes.
- 15 Q February 1st, 1995, this is a letter from you to Mr.
- 16 Hermann?
- 17 A Yes.
- 18 Q Is it a true letter?
- 19 A Yes.
- 20 Q And the next one is February 21st, 1995, from you to
- 21 Mr. Holtgraver.
- 22 MS. MARGARET SCARPINO: This is February 10th --
- 23 oh, okay.
- 24 BY MS. VINER:

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TESTIMONY OF SARA SCARPINO

1 Q Okay. February 21st, 1995, it's a letter to you from
2 Mr. Holtgraver, the president of Henry Pratt Company?

3 A Yes.

4 Q The next letter is also from you to Mr. Holtgraver,
5 and it's dated February 24th, 1995.

6 Is that a true and correct copy?

7 A Yes, yes.

8 Q And here again you say in the second paragraph in
9 this letter, "During the year, some noises were lowered,
10 but then other louder noises surfaced."

11 So, again, that doesn't make too much sense if they
12 were trying to lower the noise.

13 HEARING OFFICER EDVENSON: Counsel, please restrict
14 your comments to questions to the witness.

15 MS. VINER: Sorry. Let's just move on.

16 BY MS. VINER:

17 Q March 6th, 1995, is the next letter, and it's from
18 you to Mr. Hermann.

19 Is that a true and correct copy?

20 A Yes.

21 Q This is an April 24th, 1995, letter; and it's from
22 you to Mr. Hermann.

23 MS. MARGARET SCARPINO: April 24th?

24 MS. VINER: April 24th.

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TESTIMONY OF SARA SCARPINO

1 A Well, that's the one I presented.

2 BY MS. VINER:

3 Q Oh, yes, you did present it.

4 So this is a true and correct copy of that letter?

5 A Yes.

6 Q And then we have May 16th, 1995. And this is also

7 from you to Mr. Hermann; is this correct?

8 A I did a lot of letter writing, didn't I?

9 Q Yes, you did.

10 MS. VINER: So I'd like to offer this group at this

11 time.

12 HEARING OFFICER EDVENSON: Ms. Scarpino, do you

13 have any objection to the introduction of these letters

14 into evidence?

15 MS. SARA SCARPINO: No, I don't.

16 HEARING OFFICER EDVENSON: These will be

17 Respondent's Exhibit No. 5.

18 (The documents were thereupon marked

19 Respondent's Exhibit No. 5 for identification

20 as of July 19th, 1996, and were thereupon

21 received into evidence.)

22 HEARING OFFICER EDVENSON: And, Counsel, can you

23 tell us what you're doing right now.

24 MS. VINER: Oh, I'm just -- I'm indicating the

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1 months in which the correspondence occurred, and I'll

2 actually put the --

3 (Indicating.)

4 HEARING OFFICER EDVENSON: Please don't use those

5 alpha letters. Please use the numbers related to the

6 exhibits.

7 MS. VINER: Okay. So that we see when the groups

8 of correspondence occurred. Okay.

9 (Indicating.)

10 BY MS. VINER:

11 Q And this is a final group.

12 (Indicating.)

13 The first letter in this group is an October 10th,

14 1995, letter. It's from you to Mr. Alan Carlsen, who's

15 now president Henry Pratt Company.

16 Is that a true and correct copy?

17 A He's vice-president.

18 Q Your letter says "president," so --

19 A Well, it was before I knew what his actual title was.

20 Q Oh, okay. So Mr. Alan Carlsen --

21 A As a matter of fact, I have his name misspelled.

22 Q Okay. Is this a true and correct copy of this

23 letter?

24 A Yes.

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TESTIMONY OF SARA SCARPINO

- 1 Q The second letter is dated November 13th, 1995, and
2 it's from you to Mr. Dave. Is this --
- 3 A Raj Dave.
- 4 MS. MARGARET SCARPINO: November 13th or November
5 -- oh, wait a minute.
- 6 MS. VINER: November 13th of 1995. Do you have it?
- 7 MS. MARGARET SCARPINO: No.
- 8 BY MS. VINER:
- 9 Q Do you recall receiving this letter from Mr. Dave?
- 10 A This is to him.
- 11 Q Oh, I'm sorry to him.
- 12 Do you recall sending it to him?
- 13 A I'm sure I did.
- 14 Q Well, can I ask you: This is your signature, isn't
15 it, Mrs. Scarpino?
- 16 (Indicating.)
- 17 A Yes, yes.
- 18 Q So it is likely this is a letter you sent to him?
- 19 A Yes, yes.
- 20 Q Okay. And then the next letter in the group is
21 November 17th, 1995.
- 22 A Yes.
- 23 Q And it's from Mr. Dave to you?
- 24 A Yes.

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TESTIMONY OF SARA SCARPINO

- 1 Q It's a copy of a letter you received from him?
- 2 A Yes.
- 3 Q And then we have a letter to you from Mr. Dave at
- 4 June 11th, '96?
- 5 A Yes.
- 6 Q This is a true copy?
- 7 A Yes.
- 8 Q And then, finally, we have a June 25th, 1996, letter
- 9 from Mr. Dave to you?
- 10 A Yes.
- 11 Q And you received that?
- 12 A Yes, yes.
- 13 MS. VINER: Okay. Thank you.
- 14 And this group -- at this time, I'd like to offer
- 15 these into evidence.
- 16 HEARING OFFICER EDVENSON: Do you have any
- 17 objection, Ms. Scarpino? Do you have any objections?
- 18 MS. SARA SCARPINO: No.
- 19 MS. MARGARET SCARPINO: No, but I have a question.
- 20 MS. VINER: I'll continue.
- 21 BY MS. VINER:
- 22 Q This goes from October 10th --
- 23 HEARING OFFICER EDVENSON: Margaret, if you have a
- 24 question, we'll give you an opportunity to ask it after

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TESTIMONY OF SARA SCARPINO

1 counsel completes her cross examination.

2 This will be Respondent's Exhibit 6, then.

3 (The documents were thereupon marked
4 Respondent's Exhibit No. 6 for identification
5 as of July 19th, 1996, and were thereupon
6 received into evidence.)

7 MS. VINER: This is No. 6.

8 (Indicating.)

9 BY MS. VINER:

10 Q Now, are there any other letters that I may have
11 missed?

12 A No.

13 Q No, okay.

14 MS. VINER: Just a moment.

15 BY MS. VINER:

16 Q Now, Ms. Scarpino, I'd like to ask you a few
17 questions.

18 You know Mr. Greg Zak from --

19 A Yes, I do.

20 Q Yes, you do. And he works for Illinois Environmental
21 Protection Agency?

22 A Yes.

23 Q And when did you first speak to Mr. Zak?

24 A When I started this matter, I -- let's see. I have

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TESTIMONY OF SARA SCARPINO

- 1 a --
- 2 Q Well --
- 3 A It must have been around '91 when I presented the
- 4 case.
- 5 Q That's fine. The general time frame --
- 6 A Yes, uh-huh.
- 7 Q -- is fine.
- 8 And you've continued to talk to Mr. Zak since '91?
- 9 A Yes.
- 10 Q And, in fact, you sent him copies of the letters that
- 11 we just went through?
- 12 A Yes.
- 13 Q And it's my understanding -- and I think you stated
- 14 this in your testimony -- that Mr. Zak has advised you
- 15 and assisted you in the preparation of this case?
- 16 A Yes.
- 17 Q And, in fact, he came to your house and set up some
- 18 recording equipment?
- 19 A Yes.
- 20 Q And you operated that equipment?
- 21 A Yes.
- 22 Q And Mr. -- did Mr. Zak give you instructions?
- 23 A Yes.
- 24 Q And what did he tell you on how to operate that

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1 machine?

2 A How to -- how to take the noise -- noises and record
3 it with time and how the -- what type of noise and if
4 there's any noise in the background.

5 Q Okay. And did he tell you that you should turn the
6 machine on and record when the noise was the loudest?

7 A No. When I heard -- when I heard the loud noise to
8 turn it on.

9 Q Okay. So when it was disturbing you and when it was
10 loud?

11 A Well, it's disturbing me most of the time, but mainly
12 when the noise was very loud.

13 Q Okay. And that's when you turned the machine on?

14 A Before that, too.

15 Q Okay. And then --

16 A Before and after.

17 Q Okay. And then did you turn -- how long did you
18 record the noises, then?

19 A I have -- I have the -- it's in writing.

20 Q Your -- just for a few minute periods?

21 A Yeah.

22 HEARING OFFICER EDVENSON: Counsel, what portion of
23 Complainant's testimony are we referring to in this
24 portion of the cross examination?

TESTIMONY OF SARA SCARPINO

1 MS. VINER: She stated in a portion of her
2 testimony that she made recordings for Mr. Zak and that
3 he made his noise survey.

4 HEARING OFFICER EDVENSON: Are the recordings that
5 Ms. Scarpino made a part of the Complainants' case?
6 Where are those documents? What number are those
7 documents?

8 MR. FELDMAN: They're exhibits -- it's part of
9 Exhibit 3, and it's Exhibit 4.
10 A (Continuing.) The minutes varied.

11 HEARING OFFICER EDVENSON: Okay. Let the record
12 reflect that the questions that are being asked are with
13 reference to Exhibit 3, Page 6 and Exhibit 4.

14 MS. VINER: Thanks.

15 HEARING OFFICER EDVENSON: Thank you.

16 BY MS. VINER:

17 Q Yes. And I see on these exhibits that the minutes do
18 vary, that's right.

19 A Yes, do vary.

20 Q You never left the recorder on for an entire hour,
21 did you?

22 A No.

23 Q Did Mr. Zak ever tell you to leave it on for an
24 entire hour?

TESTIMONY OF SARA SCARPINO

- 1 A No.
- 2 Q No, he never told you that?
- 3 A No.
- 4 Q Did Mr. Zak ever tell you what state standards
- 5 applied to the Henry Pratt Company?
- 6 Do you understand my question?
- 7 A No, I don't.
- 8 Q Did he ever tell you that the state has standards for
- 9 how loud noises can be at night and that -- and that
- 10 those standards apply to the Henry Pratt Company?
- 11 A Well, he gave me material to read on it, and he
- 12 explained it to me, yes.
- 13 Q Okay. Did you -- did he ever tell you that the plant
- 14 was violating state standards in some way?
- 15 A I don't recall.
- 16 Q Don't recall.
- 17 Did anyone else ever tell you that?
- 18 A If the Pratt was violating?
- 19 Q Yes.
- 20 A No.
- 21 Q Okay.
- 22 A Oh, excuse me -- well, I can't -- I have to enter
- 23 that as --
- 24 Q Well, I think you can answer the question, if someone

TESTIMONY OF SARA SCARPINO

- 1 else told you that we were violating state standards.
- 2 A Well, we have a correspondence from --
- 3 MS. SARA SCARPINO: Is this the one, Margaret?
- 4 MS. MARGARET SCARPINO: Uh-huh.
- 5 MS. SARA SCARPINO: Oh, that's to Mark Anderson.
- 6 MS. MARGARET SCARPINO: Uh-huh.
- 7 MS. SARA SCARPINO: But that isn't from Mark
- 8 Anderson.
- 9 BY MS. VINER:
- 10 Q No? Your answer is no?
- 11 A No. Verbal; verbal, but no --
- 12 Q Did you ever get any correspondence telling you that
- 13 they were violating some state standard?
- 14 A No.
- 15 Q No, okay.
- 16 Did Mr. Zak ever tell you that the noises you're
- 17 hearing from Pratt Company are noise pollution?
- 18 A Yes.
- 19 Q And when did he first tell you that?
- 20 A Well, when -- I think when we -- the first time he
- 21 came to do the testing.
- 22 Q So that was in March of '95?
- 23 A No.
- 24 Q Was it March of '96?

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TESTIMONY OF SARA SCARPINO

- 1 A Yes, March, '96.
- 2 Q Did he ever tell you that noise could be construed as
- 3 a nuisance? Did he ever tell you that word?
- 4 A I don't recall.
- 5 Q How long have you lived in your house?
- 6 MS. MARGARET SCARPINO: 70 years.
- 7 MS. VINER: I'm sorry; it's a question directed to
- 8 Sara.
- 9 A Well, about 70 years, a little less.
- 10 BY MS. VINER:
- 11 Q So on my time line here, I have about five and -- I
- 12 guess five and a half years.
- 13 So really the time line really goes much beyond
- 14 that. I mean, if you start 70 years back, this is a very
- 15 long time line; yes?
- 16 A This is not the first time that we've had problems
- 17 with Pratt. In 1977, '78, they had a noise problem. But
- 18 at that time, EPA was handling it. And --
- 19 Q So -- I'm sorry; continue.
- 20 A And they did some correction then. But --
- 21 Q But in 1991, that was when you sent your first
- 22 letter?
- 23 A Yes.
- 24 Q Did anything happen sort of otherwise in your life in

TESTIMONY OF SARA SCARPINO

- 1 1991 that would be significant to why in '91 --
- 2 A No, no.
- 3 Q Did you ever --
- 4 A Definitely not.
- 5 Q Nothing you can think of?
- 6 A No.
- 7 Q Did you ever see a doctor about possible other
- 8 physical reasons for sleep problems?
- 9 A No.
- 10 Q No, you have --
- 11 A I never had problems, sleep problems, until Pratt
- 12 started making noise.
- 13 Q Ms. Scarpino, I believe you said in your -- just hold
- 14 on just a second -- when do you think the plant started
- 15 making noise?
- 16 A Well, when I first put it in writing, prior to that
- 17 time.
- 18 Q Okay.
- 19 A So it was prior to March of '91.
- 20 Q Can you tell me how much prior?
- 21 A Several months. I'm guessing several months.
- 22 Q Okay. In your statement today, you said that it's
- 23 never silent, even when the plant is not operating.
- 24 A True.

TESTIMONY OF SARA SCARPINO

1 Q True. So --

2 MS. VINER: All right. Those are all the questions
3 I have for Sara. Thank you.

4 MS. SARA SCARPINO: You're welcome.

5 HEARING OFFICER EDVENSON: Counsel, are you
6 finished with your cross examination?

7 MS. VINER: I am finished with my cross examination
8 for --

9 HEARING OFFICER EDVENSON: All right. Then at this
10 point I want to ask --

11 MS. VINER: Oh, I do have something for Margaret.
12 I'm sorry; I thought you were asking about Sara.

13 HEARING OFFICER EDVENSON: Would you like to
14 proceed with that before we -- okay, all right.

15 MS. VINER: Yes, ma'am.

16 CROSS EXAMINATION
17 OF MARGARET SCARPINO

18 BY MS. VINER:

19 Q Now, Margaret, you've seen me go through all the
20 letters with your sister?

21 A Uh-huh.

22 Q And you didn't sign any of those letters?

23 A Uh-uh.

24 Q Did you did you ever write a letter on your own to

TESTIMONY OF MARGARET SCARPINO

1 the Henry Pratt Company --

2 A No.

3 Q -- which you signed?

4 A No.

5 Q No.

6 HEARING OFFICER EDVENSON: Counsel, could you stand

7 out of the view of the court reporter.

8 MS. VINER: Oh, I'm sorry. I'm sorry.

9 BY MS. VINER:

10 Q And you're named in the formal complaint --

11 A Uh-huh

12 Q -- as a Complainant in this case; is that right?

13 A Uh-huh.

14 HEARING OFFICER EDVENSON: And, Margaret, can you

15 please say "yes" or "no."

16 A (Continuing.) Yes. Sorry.

17 BY MS. VINER:

18 Q And did you sign the complaint in this -- in this

19 matter?

20 A I may have. I don't remember.

21 (Indicating.)

22 Q I don't --

23 A No, I did not sign anything.

24 Q Okay.

TESTIMONY OF MARGARET SCARPINO

- 1 A I called on a few occasions.
- 2 Q And this is your Exhibit No. 5, which is the letter
- 3 from Greg Zak to your sister Sara.
- 4 That letter isn't addressed to you, is it?
- 5 A No, it's not.
- 6 Q And he took -- he analyzed data that your sister
- 7 recorded from her bedroom --
- 8 A Yes.
- 9 Q -- isn't that right?
- 10 Did you ever record any noises from your bedroom?
- 11 A No, I did not.
- 12 Q And Mr. Zak never took any readings in your bedroom?
- 13 A My bedroom is on the first floor. Hers is on the
- 14 second floor facing Pratt.
- 15 Q And your bedroom is not facing Pratt?
- 16 A No, ma'am.
- 17 MS. VINER: Those are all the questions I have for
- 18 you. Thank you. I'm complete.
- 19 HEARING OFFICER EDVENSON: Okay. Then at this
- 20 time, I would like to give the Scarpinos an opportunity
- 21 to make any further statements they would like to make
- 22 regarding the questions and answers that Respondent's
- 23 counsel have asked you and the statements that you have
- 24 made in response.

TESTIMONY OF MARGARET SCARPINO

1 MS. MARGARET SCARPINO: Excuse me; would you speak
2 up a little bit, please.

3 HEARING OFFICER EDVENSON: At this point, I'm going
4 to give you the opportunity to say anything -- please
5 leave it.

6 MR. FELDMAN: Oh, I'm sorry.

7 HEARING OFFICER EDVENSON: At this point, I'm going
8 to give you the opportunity to say anything further that
9 you wish to say that's related to the questions and
10 answers that Respondent's counsel have asked you here.

11 Do you have anything further to say that is related
12 to those questions or answers, Sara or Margaret?

13 MS. SARA SCARPINO: Do you have some?

14 MS. MARGARET SCARPINO: I do.

15 HEARING OFFICER EDVENSON: Then proceed.

16 REDIRECT TESTIMONY

17 BY MS. MARGARET SCARPINO:

18 Doesn't it seem odd, though, that when we -- she
19 would write her letters of complaint about the noise that
20 they would make an effort to try to correct it and then
21 another noise would pop up? And Sara would write again.

22 I even got our inspections people in on it. And I
23 talked to Mr. Anderson, who is director of inspections,
24 and he made it known that they were -- they had the noise

TESTIMONY OF MARGARET SCARPINO

1 level down there.

2 And here is a letter that I think should be
3 submitted for the record from Mr. Hermann to Mr. Anderson
4 telling them they were going to take care of the noise by
5 mid September. This is '95.

6 HEARING OFFICER EDVENSON: Ms. Scarpino, why didn't
7 you present it to us earlier when I asked you for your
8 letters?

9 MS. MARGARET SCARPINO: I just spotted it. I found
10 it. I'm sorry; I've just found it.

11 HEARING OFFICER EDVENSON: All right. Do you have
12 anything further that you would like to say at this point
13 in time that is related to the questions and answers that
14 you just had?

15 MS. MARGARET SCARPINO: She asked me about -- if I
16 heard the noise from my bedroom. I sleep on the first
17 floor. Well, you --

18 MS. VINER: I think my question was: Where is your
19 bedroom, and did he record noise in your bedroom; not if
20 you heard noise in your bedroom.

21 MS. MARGARET SCARPINO: My bedroom is on the second
22 floor -- on the first floor. And Sara took my bedroom
23 over before we had the recorder up for the noise level,
24 because she could not sleep upstairs. And I would leave

TESTIMONY OF SARA SCARPINO

1 the radio on when -- a lot of times if I left the window
2 open in my bedroom, I can hear it. Our neighbor can hear
3 the noise.

4 And on Sundays, I have called over there for the
5 night watchman to please get ahold of someone to turn one
6 of the machines off, whatever is running. So they have a
7 serious problem, and we're being crucified for it.

8 HEARING OFFICER EDVENSON: And is there anything
9 else that you would like to say related to the questions
10 and answers?

11 REDIRECT TESTIMONY

12 BY MS. SARA SCARPINO:

13 Well, I feel that I'm justified for this complaint
14 because there is a noise problem. I don't have
15 witnesses, neighbors, because they would not testify, but
16 they hear the noise.

17 And I have people coming over to our house. As soon
18 as they step out of the car, they hear the noise. When
19 the words, "Where is that noise coming from" --

20 MR. FELDMAN: We would object to statements made by
21 other persons outside the courtroom.

22 HEARING OFFICER EDVENSON: Sustained.

23 Ms. Scarpino, you'll have to not make statements as
24 to what other people said.

TESTIMONY OF SARA SCARPINO

1 MS. SARA SCARPINO: Okay, okay. Well, I feel
2 justified in this complaint, and I hope, sincerely hope,
3 that there will be some resolve.

4 HEARING OFFICER EDVENSON: All right. We have now
5 been given what Complainants' would like to introduce as
6 a late exhibit, a letter dated June 5th, 1995, from
7 Merrill Hermann, safety and compliance administrator at
8 the Pratt Company, to the City of Aurora, Inspection
9 Department. And I'm going to show that to Respondent's
10 counsel.

11 (Indicating.)

12 MR. FELDMAN: We have no objection.

13 HEARING OFFICER EDVENSON: All right. Then that
14 will be Complainants' Exhibit No. 8, I believe.

15 (The document was thereupon marked
16 Complainants' Exhibit No. 8 for identification
17 as of July 19th, 1996, and was thereupon
18 received into evidence.)

19 HEARING OFFICER EDVENSON: Counsel, do you have any
20 follow-up questions of the --

21 MS. VINER: No, I don't.

22 HEARING OFFICER EDVENSON: -- as a recourse?

23 MS. VINER: No, I do not.

24 HEARING OFFICER EDVENSON: Then at this point in

1 time, we will take a brief recess.

2 We have with us now Mr. Greg Zak, and I would like
3 for Mr. Zak to meet with Respondent's counsel during the
4 recess, and then we'll come back into session in a few
5 minutes. Thank you very much.

6 Off the record.

7 (Witnesses excused.)

8 (Whereupon, a recess was had, after which the
9 hearing was resumed as follows:)

10 (The document was thereupon marked Respondent's
11 Exhibit No. 7 for identification as of July
12 19th, 1996.)

13 HEARING OFFICER EDVENSON: All right. We'll go
14 back on the record at this time.

15 Let the record reflect that we took a 20-minute
16 break during which time Mr. Zak, having arrived, he was
17 able to discuss with Respondent's counsel some of the
18 materials that were ordered for production based on
19 Respondent's motion for discovery.

20 And at this time, we have one additional
21 Respondent's exhibit, which was part of the cross
22 examination testimony of the Scarpinos. Counsel?

23 MS. VINER: Yes. I'd like to offer into the
24 evidence the time line that we created by going through

1 the correspondence history with Ms. Sara Scarpino.

2 HEARING OFFICER EDVENSON: Is there any objection
3 to the introduction of this exhibit into evidence?

4 MS. SARA SCARPINO: No.

5 HEARING OFFICER EDVENSON: All right. The
6 newsprint scale of periods of correspondence will be
7 entered into evidence as Respondent's Exhibit No. 7.

8 (Respondent's Exhibit No. 7 for identification
9 was thereupon received into evidence.)

10 HEARING OFFICER EDVENSON: At this point in time,
11 Complainants have with them a witness, and Ms. Scarpino
12 would you like to have your witness testify?

13 MS. SARA SCARPINO: Yes.

14 HEARING OFFICER EDVENSON: All right. Then let's
15 have Mr. Zak sworn.

16 (The witness was thereupon duly sworn.)

17 HEARING OFFICER EDVENSON: All right. You may
18 proceed however you see fit.

19 MS. SARA SCARPINO: I have already presented
20 your --

21 HEARING OFFICER EDVENSON: Could you speak up.

22 MS. SARA SCARPINO: I already presented Mr. Zak's
23 resume as an exhibit and his data as an exhibit. It's
24 already presented.

1 HEARING OFFICER EDVENSON: All right. Mr. Zak,
2 would you make any comments you would like to make about
3 your resume since we did not admit that into evidence
4 yet.

5 THE WITNESS: Madam Hearing Officer, would it be
6 possible for me to look at the exhibit?

7 HEARING OFFICER EDVENSON: Yes.

8 (Indicating.)

9 GREG ZAK
10 called as a witness on behalf of the Complainants'
11 herein, having been first duly sworn, testified as
12 follows:

13 DIRECT TESTIMONY

14 BY MR. ZAK:

15 Yes. Exhibit 2 I prepared yesterday for today's
16 hearing. I signed it and dated it, and there are 11
17 pages to the exhibit, which is my resume.

18 HEARING OFFICER EDVENSON: All right. Is there any
19 further objection to the introduction of Exhibit 2 into
20 evidence?

21 MR. FELDMAN: No.

22 HEARING OFFICER EDVENSON: All right. Exhibit 2
23 will be entered into evidence. Thank you.

24 (Complainants' Exhibit No. 2 for identification

TESTIMONY OF GREG ZAK

1 was thereupon received into evidence.)

2 HEARING OFFICER EDVENSON: Mr. Zak, Complainants
3 introduced Exhibit No. 3, which is a noise survey report,
4 which was prepared based on a survey that you conducted,
5 according to the report, March 14 to 18, 1996.

6 Could you tell us something about the results that
7 you obtained in that -- that are included in that report.

8 MR. FELDMAN: Excuse me, your Honor, I don't -- I
9 don't think the testimony was that he took those results.
10 I think the testimony was that they were taken by Ms.
11 Scarpino.

12 HEARING OFFICER EDVENSON: All right. Then let's
13 begin by having you tell us something about who took
14 these measurements and when the measurements were taken,
15 what the equipment was that was used and what procedures
16 were used in taking the measurements. And let's start
17 with who took the measurements.

18 THE WITNESS: Madam Hearing Officer, starting with
19 who took the measurements, to possibly clarify that a
20 little bit, Mrs. Scarpino tape recorded the sound present
21 outside of her second floor bedroom window.

22 I had arrived there on March 14th, 1996, at her home
23 with a precision tape recorder. I had the tape recorder
24 basically modified somewhat so that the only control

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1 accessible was the on-off switch. All the other controls
2 were not accessible on the recorder. They were sealed.

3 I described in detail to Sara Scarpino how to place
4 the microphone properly in the window of her bedroom and
5 when she felt the sound was disturbing, to turn the tape
6 recorder on and run the machine during those times she
7 found the noise from -- in this case, the Pratt Company
8 or any other noise -- but, in essence, the Pratt Company
9 to be a problem to her to turn the tape recorder on.

10 I explained to her that she had about two hours of
11 recording tape on there and that -- to restrict her
12 taping to those times that she was disturbed -- or most
13 disturbed by noise emissions from the Pratt Company.

14 Mrs. Scarpino recorded the full two hours of tape in
15 a period of approximately two weeks. She called me and
16 explained to me on the phone that she had used up the
17 tape. At that point, I went back to her residence,
18 looked the machine over, looked the microphone over, all
19 the equipment over -- everything was in good order --
20 discussed her technique with her again to be sure that
21 she had followed my instructions. And she did, as far as
22 microphone placement and turning the machine on and off.

23 I retrieved the machine, took the machine back to
24 Springfield and then began the data analysis. The data

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1 analysis consists of checking the calibration on the
2 machine, both before and after, and then analyzing any
3 data on the machine.

4 The way that's done is to play the tape back, listen
5 to the tape and compare that to any handwritten notes
6 Mrs. Scarpino may have taken. I had some notes that were
7 on the report for March 14th to the 18th and attached to
8 that report, the last page of that exhibit, are the notes
9 taken by Sara Scarpino.

10 There are some areas that are blacked out, which is
11 inadvertant on my part. I had highlighted those areas as
12 I was listening to the tape. They were nighttime periods
13 of time. And because they were nighttime and she was
14 complaining to a large extent about sleep disturbance, I
15 especially concentrated on those areas.

16 The highlighter after it was photocopied blacked out
17 the times. However, I do have a corrected copy available
18 here, and I have faxed a copy to Holleb & Coff for their
19 records.

20 Continuing on with the technique, I would look at
21 those portions of the tape that pertained to Mrs.
22 Scarpino's notes. Listening to the tape, I would run the
23 tape into a real time analyzer that would give me both
24 the frequency and decibel level breakdown of the

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1 information on the tape.

2 In her notes she mentions, for example, on the first
3 notes here on March 14th for 12 minutes she heard a train
4 and a car. I verified that, yes, there was a train and a
5 car in the background, and that portion of tape was not
6 analyzed.

7 As I analyzed the tape, I would listen for any
8 extraneous sound and pause the analyzer so as not to
9 record -- or not to analyze any extraneous sounds that
10 would then appear in the data. The analyzer itself is a
11 precision real time analyzer state-of-the-art 1996
12 vintage that Illinois EPA uses for analyzing most of our
13 sound level data.

14 HEARING OFFICER EDVENSON: Can you identify the
15 machine name.

16 THE WITNESS: Yes. It's a Larson Davis 3200 real
17 time analyzer, and what the number we designate is as
18 0178.

19 HEARING OFFICER EDVENSON: As long as we're
20 speaking about equipment, Mr. Zak, could you also
21 identify the equipment that you described as a precision
22 tape recorder.

23 THE WITNESS: Yes. The precision tape recorder is
24 a Nagra 4SJ. It beats the applicable SAE standards for a

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1 data-gathering device and would be classed as accurate
2 as, for example, a precision sound level meter or a
3 precision analyzer.

4 In addition, I might just go through briefly the
5 other equipment present. There was a wind screen -- a
6 foam wind screen on the microphone. The microphone was a
7 Bruel & Kjaer -- and that's spelled B-r-u-e-l, and Kjaer
8 is spelled K-j-a-e-r -- Model 4165 microphone. The
9 preamplifier was a Nagra preamplifier that fed the signal
10 into the Nagra recorder.

11 The recorder, again, was calibrated before and after
12 taking these measurements, and both calibrations
13 correlated extremely well.

14 Getting back to the actual data analysis itself,
15 that was performed in the Springfield lab. The
16 information was played into the analyzer; extraneous
17 sounds were excluded.

18 On Page 2 of 5 of my survey report on the extreme
19 left-hand side, I had various dates written down. These
20 dates represent the Complainant's dates where she was
21 disturbed by the sound emanating from the Pratt Company.

22 On the extreme right-hand side, I've got elapsed
23 time. And these elapsed times will also correspond to
24 the notes that she provided me as to when she obtained

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1 the recordings.

2 For example, the first line is March the 14th of
3 1996, and the elapsed time was from 10:05 p.m. to 10:17
4 p.m., which would be nighttime per the Board regulations.

5 HEARING OFFICER EDVENSON: And can you tell us
6 something about the measurements that you identified as
7 being recorded at that period of time. And could you
8 also tell us something about the classification of the
9 sound and characterize the classification levels at which
10 you're identifying a reading.

11 THE WITNESS: If I'm -- if I understand the
12 question correctly, I was basically comparing the -- the
13 data to regulatory limit for an industrial facility
14 abutting a residential area.

15 HEARING OFFICER EDVENSON: Mr. Zak, would you
16 please not make reference to the regulations or the laws,
17 if you could just tell us something about the octave band
18 sound pressure levels that were measured at and tell us
19 something about your readings at those levels.

20 And what I'm trying to avoid here is testimony of a
21 legal nature. What I would like to obtain is detailed
22 testimony of a factual nature related to the results that
23 you measured.

24 THE WITNESS: Well, I understand your instructions

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1 correctly. For example, on March 18th of 1996 for the
2 time period 6:40 to 6:45 a.m., if we look at the sound
3 pressure reading at 250 hertz, with a reading of the 58,
4 that would represent a level that has been found to be
5 disturbing to a significant portion of the population.

6 If we look at the level at 500 hertz --

7 MR. FELDMAN: Your Honor, I'm going to object to
8 that characterization.

9 HEARING OFFICER EDVENSON: Okay. Could you tell us
10 something additional about that characterization.

11 What is the type of sound that is measured at 250?

12 THE WITNESS: Madam Hearing Officer, I can give you
13 examples. In this specific instance, I really can't tell
14 you specific to the Henry Pratt Company what was
15 generating the 250 hertz sound.

16 Would you want me to give an example?

17 HEARING OFFICER EDVENSON: Yes.

18 THE WITNESS: In the 250 hertz range, one common
19 example that we would run across would be a -- a
20 medium-sized fan running would commonly generate a lot of
21 its sound in the 250 hertz octave band.

22 Moving to the 500 hertz octave band, again, a common
23 example for 500 hertz would be a somewhat smaller more
24 high rpm fan. At 1,000 hertz in the level of 48 dB,

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1 we're getting into sounds that are somewhat high pitched.
2 It could be a very small high rpm device that would be
3 generating a sound in that area.

4 In the 2,000 hertz octave band, we would be looking
5 at a -- what I'd call a squeaky type noise. And 2,000
6 hertz is also peculiar to bird -- bird peeps, birds
7 peeping. 4,000 hertz is generally your insect noise; if
8 it's an industrial source, air-handling equipment. The
9 rush of the air tends to generate some sound in the 4,000
10 hertz band.

11 8,000 hertz is -- also tends to be air release
12 sounds, a more high-pressure type nature. And that would
13 generally characterize examples of sound from 250 hertz
14 through 8,000.

15 MR. FELDMAN: I would make an objection to one
16 aspect of Mr. Zak's testimony here and ask that it be
17 stricken.

18 When he was giving examples at the 1,000 hertz
19 level, he said at 48 dB. And my understanding of what he
20 was doing in these other examples was just giving common
21 examples of something with that frequency, not at a
22 particular decibel level.

23 And since he doesn't give us anything about distance
24 or anything else, I don't see how he could give a

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1 characterization of dB in any event. So I would just ask
2 to strike that with respect to the 1,000 hertz example.

3 HEARING OFFICER EDVENSON: Ms. Scarpino, do you
4 have any comment on the objection?

5 MS. SARA SCARPINO: No, I don't understand. I
6 object to his objection. I think Mr. Zak knows what he's
7 doing.

8 HEARING OFFICER EDVENSON: The objection is
9 overruled. I will permit the testimony to be entered
10 into evidence.

11 Mr. Zak, could you characterize the readings that
12 you identified from this noise test with respect to the
13 experience that you've had as to whether they are or are
14 not normally problematic for individuals who are exposed
15 to them?

16 THE WITNESS: Yes. It's been -- based on my
17 experience, there are a number of frequencies of sound
18 here, along with the decibel levels, that are commonly
19 complained about as far as sleep disturbance is
20 concerned. And I would --

21 HEARING OFFICER EDVENSON: Which ones on this table
22 would you characterize in that manner? And please
23 discuss each one then.

24 THE WITNESS: The -- I'd like to begin, if I could,

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1 at 250 hertz. And looking at March the 18th, 1996, in
2 other words, the last line of data, at 250 hertz, a level
3 of 58 is getting into an area where a number of people
4 would be begin to complain about sleep disturbance.
5 Typically, in most areas, that level is fairly high if
6 one is attempting to sleep.

7 As one goes up in frequency, for example, at 500
8 hertz in the level of 53 dB -- at 500 hertz -- the human
9 ear is more sensitive to 500 hertz than it is to 250
10 hertz. The level at 53 would tend to wake up a
11 significant portion of the population.

12 We get to 1,000 hertz octave band at the level of
13 48. We have a situation there where that -- that level
14 would be very disturbing. And as far as the human ear is
15 concerned, the human ear is very -- can very acutely hear
16 the 1,000 hertz octave band.

17 At 2,000 hertz, looking -- let's say at a level of
18 45 dB that we have here, again, that would be quite
19 disturbing. The ear is, if anything, slightly more
20 sensitive at 2,000 hertz than it is at 1,000 hertz.

21 When we look at a level of, say, 36 at 4,000 hertz,
22 that would be slightly disturbing. And a level of 29 at
23 8,000 hertz would, in the vast majority of cases, not be
24 -- not be a problem or disturbing.

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1 MR. FELDMAN: Your Honor, I would object to this
2 whole characterization of frequencies and dB levels as
3 "very disturbing," "somewhat disturbing," "significant
4 amount of the population." I'm not aware of any
5 qualifications of Mr. Zak -- and certainly none has been
6 put into evidence -- that give him the expertise to make
7 those kinds of statements.

8 Even if they were made in, I think, proper form,
9 "very disturbing," "sort of disturbing to significant
10 level of the population" are very vague and, I think,
11 improper characterizations and don't advance the issues
12 in this case at all.

13 So I would move to strike that entire testimony of
14 Mr. Zak relating to what people might think or would
15 think about these various levels.

16 HEARING OFFICER EDVENSON: Do the Complainants'
17 have any response?

18 MS. SARA SCARPINO: I object to his objection.

19 HEARING OFFICER EDVENSON: The objection is
20 overruled, and the motion to strike is denied.

21 Is there any further testimony on the noise survey
22 report which Complainants' would like to give?

23 Mr. Zak, do you have anything further to say about
24 this?

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1 THE WITNESS: Yes, Madam Hearing Officer, if I
2 could.

3 On Page 3 of 5 of that report, I graphed out the
4 various measurements I had taken. It presents a visual
5 -- visualization of the readings that were analyzed.

6 On the next page, which would be Page 4 of 5, I have
7 a hand drawn map of the general area showing the compass
8 directions, the location of the Henry Pratt Company and
9 the location of the Scarpino residence in relation to
10 Cleveland Avenue. The word "driveway" labeled on the
11 diagram is the Scarpino driveway.

12 HEARING OFFICER EDVENSON: And on the right here
13 where it says "Henry Pratt company parking lot," is that
14 the parking lot or is that the company's building,
15 facility?

16 THE WITNESS: Madam Hearing Officer, that is the
17 parking lot. The actual facility lies a little further
18 east than is shown on the diagram.

19 HEARING OFFICER EDVENSON: And is this diagram to
20 scale?

21 THE WITNESS: No, it's not.

22 HEARING OFFICER EDVENSON: All right.

23 THE WITNESS: Page 5 of 5 is a map of the area
24 taken from the phone book in order to demonstrate the

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1 location of the Complainants' residence and the Pratt
2 Company, neither of which is marked on this particular
3 photocopy.

4 And then finally there's one additional page which
5 I've referred to before, which is Mrs. Scarpino's notes.
6 And again for the record, I've got a clarified -- a more
7 clear copy available than the one that's here on the
8 exhibit.

9 HEARING OFFICER EDVENSON: Why don't you plan to
10 give that to me for the Board's files.

11 THE WITNESS: Yes, I will.

12 HEARING OFFICER EDVENSON: All right. I understand
13 that you also did an additional test. Could we move to
14 the introduction of that information.

15 Was this previously submitted to us this morning?

16 MS. SARA SCARPINO: No.

17 HEARING OFFICER EDVENSON: Has Respondent's counsel
18 received a copy of this now?

19 MR. FELDMAN: This is what we received yesterday.

20 HEARING OFFICER EDVENSON: Okay. Since Mr. Zak was
21 able to join us here in Kane County this morning, I would
22 like to give him the opportunity to discuss the test
23 results in this very recent test today while he is here.

24 Mr. Zak, would you tell us something about this

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1 particular test. And let's start, as we did before, with
2 who conducted it, when, the procedures that were used and
3 the equipment that was used.

4 THE WITNESS: Yes, Madam Hearing Officer.

5 This test was conducted July 17th by myself in and
6 around the Scarpino residence. I have in my hand a noise
7 survey report, the first page of which is labeled,
8 "General Information Survey Data," Page 1 of 5, which I
9 have signed, and --

10 HEARING OFFICER EDVENSON: For identification
11 purposes, that will be Petitioner's Exhibit 7, I believe.

12 MR. FELDMAN: I think it's 8.

13 HEARING OFFICER EDVENSON: Off the record.

14 (There followed a discussion outside the
15 record.)

16 HEARING OFFICER EDVENSON: Okay. Back on the
17 record.

18 To correct our record, the noise survey report dated
19 July 17th, 1996, will be identified as petitioners'
20 Exhibit No. 9.

21 (The documents were thereupon marked
22 Complainants' Exhibit No. 9 for identification
23 as of July 19th, 1996.)

24 HEARING OFFICER EDVENSON: You may proceed, Mr.

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1 Zak.

2 THE WITNESS: Picking up where I left off, I'm on
3 Page 1 of 5, and I arrived at the Scarpino residence at
4 approximately 9:30 a.m. on the 17th of July. The purpose
5 of taking these measurements was to establish what the
6 ambient levels were in the vicinity as required by the
7 Pollution Control Board.

8 HEARING OFFICER EDVENSON: And who took those
9 measurements?

10 THE WITNESS: I did. I was the-- the only person
11 present for these measurements.

12 HEARING OFFICER EDVENSON: Where were the
13 measurements taken, Mr. Zak?

14 THE WITNESS: They were taken in the backyard of
15 the Scarpino residence. If we could turn to Page 5 of 5.

16 HEARING OFFICER EDVENSON: Is there an extra copy?

17 THE WITNESS: Yes, ma'am.

18 (Indicating.)

19 HEARING OFFICER EDVENSON: Thank you.

20 THE WITNESS: Did you get one?

21 MR. FELDMAN: That's the fax cover page it came
22 with, but underneath it should be the document.

23 THE WITNESS: I entered the alleged violation as a
24 -- under the regulation Section 900.102 as the complaint

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1 was generated by -- it's a citizen complaint. 900.102
2 would be a nuisance provision. Under the SLUCM code, the
3 code that seemed to best fit the plant was 3499, and the
4 receiver would be 1100, which is residential.

5 The equipment used was Kit No. 0178, which is a
6 Larson Davis 3200 real time analyzer. The microphone
7 used was a B&K 4165. Microphone orientation was zero
8 degree angle of incidence with a height of four feet
9 above the ground.

10 The weather was cloudy. I've got the temperatures.
11 I've got the various weather information recorded there.

12 I would like to note near the bottom of the page
13 that the instrumentation was calibrated before and after
14 measurements were taken, and both calibrations are
15 exactly the same number, 114.0 dB.

16 If I could then turn to Page 2, I have an
17 investigation report dated July 17th, 1996, for the Henry
18 Pratt Company. The complaint number PCB 96-110. I,
19 again, document my time of arrival, reasons for taking
20 the measurements.

21 Upon my arrival, I walked up and down Cleveland
22 Avenue to determine what sound sources were present and
23 their general locations. The predominant noise source
24 was the Pratt Company.

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1 I did walk a distance down Cleveland Avenue both
2 south and north to ensure exactly where the predominant
3 sounds were coming from. Again, all the predominant
4 sounds were coming from the location of the Pratt plant.
5 Traveling up and down Cleveland Avenue allows me to get a
6 direction of the sound and to help ensure that the sound
7 is, in this case, all coming from the Pratt Company.

8 In addition, I drove down Highland Avenue and noted
9 that, again, the main sound source or noise source in the
10 area was the Pratt Company.

11 At that point, I chose a location on the Scarpino
12 property to take what we call an ambient measurement.
13 The way I would do that would be to walk around on the
14 property. I noted that the only significant sound source
15 at that time was the Pratt Company.

16 So, therefore, the ambient or background noise would
17 be Pratt, which makes the ambient correction difficult,
18 actually makes it virtually -- from the standpoint of an
19 ambient, it makes it somewhat meaningless, except that we
20 can demonstrate what the sound levels are in an area that
21 is somewhat shielded from the Pratt Company.

22 I referred to a diagram on Page 5 of 5, which is a
23 drawing of the general area around the Scarpino home.
24 The distances are all approximate. At the top of the

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1 diagram, we have Cleveland Avenue. And from the previous
2 diagram, we know that the Pratt Company would lie east of
3 Cleveland Avenue.

4 The purpose of the diagram was basically to show
5 where measurements had been taken on the Scarpino
6 property. Near the top we have Site 1, which would be
7 the arrow pointing to an X at the top of the diagram
8 labeled Scarpino home, which would be on the east side of
9 the house. That is the location on the second floor
10 where Mrs. Scarpino tape recorded sound emissions from
11 the Pratt Company.

12 If we then look down the diagram further --

13 HEARING OFFICER EDVENSON: Mr. Zak, were you inside
14 or outside of the home at Site No. 1?

15 THE WITNESS: Both. I -- let me, if I could,
16 explain that "both." The microphone used for tape
17 recording was located right at the window when
18 Mrs. Scarpino obtained her recordings.

19 However, I also used a microphone boom on the day --
20 on July the 17th to check for reflection and echo at that
21 location. And when I did that, I was outside the house
22 holding a boom with a microphone mounted on it just
23 directly outside Mrs. Scarpino's window.

24 HEARING OFFICER EDVENSON: Thank you.

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1 THE WITNESS: As we look at the diagram, we'll note
2 that there's a neighbor on the left and a neighbor on the
3 right. The lots in this area tend to be -- right around
4 the Scarpino home -- long and narrow.

5 The neighbor on the north side has a low chain link
6 fence separating his property from the Scarpino property.
7 This extends back to a -- an approximately eight-foot
8 high chain-link fence at the extreme end of the Scarpino
9 property.

10 The neighbor on the south where I indicate a
11 property line, there's not a fence there, per se; but I
12 wanted to indicate the narrowness of the lots in that
13 particular area. There are some important points to note
14 in the diagram from an acoustic standpoint.

15 At the very bottom of the diagram, we have a large
16 long brick building. The brick walls on this building
17 are solid, approximately 20 feet high. The building
18 length is such that it extends past her neighbors on both
19 sides.

20 This tends to act as a sounding board or acoustic
21 type of band shell. We're getting a lot of reflection of
22 sound from the Pratt Company off of this brick wall.

23 When I obtained my measurements at Site No. 2, what
24 I basically did was look for the point on the Scarpino

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1 property where the Pratt noise was at a minimum. And,
2 again, the background noise or ambient is the Pratt
3 Company. Site No. 2 is located approximately 33 feet to
4 the east of the chain-link fence and approximately 10
5 feet north of the Scarpino garage.

6 I will now go back to Page 2. I noted in my data
7 gathering that Site 1 is the second floor window where
8 Mrs. Scarpino gathered her data, which I think I've
9 already mentioned. In addition, as I said before -- and
10 I document here -- a microphone boom was used at Site 1
11 to verify that the measurements taken were not affected
12 by reflection, per Board requirements, for taking these
13 types of measurement.

14 In addition, to demonstrate even further the
15 validity of this measurement technique, there's a memo
16 attached that I had Mr. Doug Tolan prepare for me
17 verifying the correlation between in-window measurements
18 with in-yard measurements at another site with very
19 similar conditions.

20 The other site in the memo -- and I'll refer to the
21 memo at this point. It's a brief part of this report.
22 This memo was prepared per field work performed by myself
23 and Mr. Tolan for another Pollution Control Board case.
24 We had a complaint in this particular case to exactly the

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1 same thing that Mrs. Scarpino did, as far as her tape
2 recording procedure.

3 At the same time, another consultant in the area
4 hired by the company was taking data outdoors using a
5 tripod with a 40-foot elevation while we were gathering
6 data from the bedroom window of the complainant.

7 On the second page of the memo, we compared data
8 gathered per the -- what I would call the outdoor method
9 with a tripod versus the indoor method with a tripod but
10 using the window as a portal and to avoid reflection for
11 any influence of room acoustics, and the data correlates
12 extremely well.

13 HEARING OFFICER EDVENSON: Can you tell us what
14 "EDI" stands for.

15 THE WITNESS: It stands for Engineering Dynamics
16 International. They are an acoustic consulting company
17 headquartered in St. Louis.

18 HEARING OFFICER EDVENSON: And can you describe the
19 comparison -- the meaning of the comparison here.

20 THE WITNESS: Yes. If we look at -- we have three
21 columns. I'm on Page 2 of the memo to Greg Zak dated
22 October 14th, 1995.

23 HEARING OFFICER EDVENSON: Excuse me; October 24th,
24 1995.

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1 THE WITNESS: Thank you; October 24th, 1995.
2 Looking under the column labeled "EDI," we see the first
3 number is 64 dB, "dB" standing for "decibels." To the
4 right of that we have 31.5 Hz, which is short for
5 "hertz." And then under a column labeled "IEPA," we have
6 a level of 64 decibels.

7 And "EDI" would stand for "Engineering Dynamics
8 International." The middle column are the octave bands
9 recognized by ANSI and the Board. And the column labeled
10 "IEPA" would stand for "Illinois Environmental Protection
11 Agency."

12 HEARING OFFICER EDVENSON: Could you remind us
13 again why you have attached this memorandum to your
14 results in the case that we are here to discuss today.

15 THE WITNESS: I did it for convenience of the
16 Board. As far as the case itself -- the Board may
17 question the in-window measurements, and I attached that
18 for an explanation to the Board so that they would be
19 aware of the present set as far as taking -- taking these
20 types of measurements and the demonstration of validity
21 of this measurement methodology.

22 HEARING OFFICER EDVENSON: Thank you.

23 THE WITNESS: To continue on Page 2 of 5, and I'm
24 on the July 17th investigation report under "data

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1 analysis," the ambient data was retrieved from the memory
2 of the real time analyzer and is listed as data from Site
3 No. 2.

4 On Page 3 of 5, I have compared what is, in essence,
5 Pratt data to Pratt data. If we look at the legend,
6 we've got a triangle symbol with a date of March 18th for
7 Site 1 graphed on the chart. We also have a symbol with
8 circles at each end dated July 17th for 9:00 a.m. ambient
9 and listed as Site No. 2.

10 The graph demonstrates from 125 hertz up to 4,000
11 hertz -- well, actually let me correct that -- to 2,000
12 hertz, that the sound emissions from Pratt are
13 considerably above the ambient that they create
14 themselves in the morning.

15 Now, the Board requires an ambient to be used, as
16 does ANSI, to be compared to the sound level
17 measurements. The rationale behind that is to ensure
18 that sound emissions coming from a sound source actually
19 belong to that source and a source is not being, in
20 effect, charged with a -- an alleged violation and it is
21 not, in fact, their noise that's creating the problem.

22 This is a standard procedure called for both in the
23 ANSI standards and also the Pollution Control Board
24 regulations.

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1 HEARING OFFICER EDVENSON: And by "ANSI," you are
2 referring to?

3 THE WITNESS: The American National Standards
4 Institute.

5 HEARING OFFICER EDVENSON: Thank you.

6 THE WITNESS: And specifically what I'm referring
7 to here would be under ANSI S12.9, Part 3, 1993.

8 Continuing on, on Page 4 of 5, we see again a
9 comparison of the levels measured both at Survey Site 1
10 and Survey Site 2, which have been previously identified.

11 Page 5 of 5 --

12 HEARING OFFICER EDVENSON: Mr. Zak?

13 THE WITNESS: I'm sorry.

14 HEARING OFFICER EDVENSON: On Page 4 of 5, with
15 respect to the numbers that are identified at Survey Site
16 No. 1, are those the measurements that you took on the
17 17th at that location?

18 THE WITNESS: No. Those would be the measurements
19 taken by Mrs. Scarpino. And I had somewhat indicated,
20 not as clearly as I should have, I think, on the elapsed
21 time for the measurements. So for Survey Site No. 1, I
22 have the time from 6:40 to 6:45 a.m.

23 HEARING OFFICER EDVENSON: So that is a repetition
24 of the numbers that we looked at in your original noise

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1 survey report?

2 THE WITNESS: Yes, it is.

3 HEARING OFFICER EDVENSON: Okay. And then the
4 numbers that are identified as being associated with
5 Survey Site No. 2, can you tell us something about those
6 numbers.

7 Are these numbers that you measured on the 17th?

8 THE WITNESS: Yes, they are. And these are the
9 ambient or background measurements starting -- starting
10 at 125 hertz. Again, the -- these numbers represent
11 sound emissions that were coming from the Pratt Company
12 into the Scarpino backyard.

13 The 125 hertz would be representative of -- an
14 example of 125 hertz would be exhaust noise from an
15 internal combustion engine, and we'd see actually
16 relatively low levels at 125 hertz.

17 At 250 hertz and the level 48, which would be,
18 again, representative of a larger fan, levels again are
19 relatively low. At 500 hertz, a level of 43 would be
20 representative of medium-sized ventilation fan; and,
21 again, the levels are low.

22 At 1,000 hertz, a higher speed ventilation fan,
23 level 41 is relatively low. At 2,000 hertz, a
24 measurement of 40 is -- for daytime is no real problem.

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1 At nighttime, that could be a little bit disturbing. At
2 4,000 hertz, a measurement of 37 daytime is no problem;
3 nighttime, that could be a little bit disturbing.

4 And then at 8,000 hertz, a level of 28 really
5 shouldn't be a problem either daytime or nighttime.

6 HEARING OFFICER EDVENSON: Thank you.

7 MR. FELDMAN: Your Honor, can the record just show
8 my continuing objection to this witness testifying as to
9 what's a problem in any particular frequency level.

10 HEARING OFFICER EDVENSON: And the record will
11 reflect your continuing objection.

12 MS. SARA SCARPINO: Can I -- can I object to his
13 objection?

14 HEARING OFFICER EDVENSON: Yes. The record will
15 reflect your objection to his objection.

16 Mr. Zak, is there anything further you would like to
17 say about the survey report that you conducted on July
18 17th?

19 THE WITNESS: Yes, I would.

20 If I could elaborate somewhat, going back to Page 2
21 and mentioning the fact that I used a microphone boom at
22 Site No. 1 in order to verify the window measurements,
23 they were not affected by reflection.

24 I would at this time like to also refer to an

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1 American National Standards Institute document,
2 specifically S12.9, Part 3, 1993, which I have a copy of
3 here.

4 HEARING OFFICER EDVENSON: May I see that?

5 (Indicating.)

6 Is this a copy that I may have?

7 THE WITNESS: Yes, you may have that.

8 HEARING OFFICER EDVENSON: For identification
9 purposes, this will be Exhibit No. 10.

10 (The document was thereupon marked
11 Complainants' Exhibit No. 10 for
12 identification as of July 19th, 1996.)

13 THE WITNESS: And, specifically, I do have a
14 request on the part of the Pollution Control Board as far
15 as this document is concerned. One of the requirements
16 of ANSI documents is they not be -- be released.

17 I did provide one photocopy for the hearing, but
18 ANSI does request that these documents are not
19 photocopied in bulk and released without -- in violation
20 of copyright of the document.

21 The specific area I'd like to draw attention to,
22 which I provided to the Respondent's attorneys, is on
23 Page 4, the instruments set up under 8.2 mentions the
24 microphone height shall be between one and two meters

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1 above ground.

2 There is an exception, however; and that's for
3 measurements outside an upper level window, which shall
4 be noted in the data collection; and which in this case,
5 I have noted in the data collection that that was the
6 methodology used.

7 HEARING OFFICER EDVENSON: Did you have any further
8 comments you wish to make concerning the noise survey
9 report of July 17th?

10 THE WITNESS: No, I do not.

11 HEARING OFFICER EDVENSON: All right. Thank you.

12 MR. FELDMAN: Your Honor, if I could request a very
13 short break, then I think we will --

14 HEARING OFFICER EDVENSON: Okay. Let's take a
15 five-minute recess.

16 (Whereupon, a recess was had, after which
17 the hearing was resumed as follows:)

18 HEARING OFFICER EDVENSON: We'll go back on the
19 record at this point in time.

20 And we had some discussion during the testimony of
21 Mr. Zak concerning what has been labeled as Exhibit No. 9
22 and Exhibit No. 10, and I would like to have those
23 introduced into evidence at this time.

24 Is there any objection to the introduction of

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1 Exhibit No. 9?

2 MR. FELDMAN: No. 9 is the second report?

3 HEARING OFFICER EDVENSON: Yes.

4 MR. FELDMAN: We object based on the lack of
5 foundation for conclusions relating to what's perceived
6 generally to be disturbing. That was the testimony that
7 related to that document.

8 And I also think there's a lack of foundation on
9 many of the methods that Mr. Zak used to generate his
10 data, as well as the October 24, 1995, memo that's
11 attached to it. I don't think there's been any
12 sufficient showing of the relevance of that memorandum to
13 the analysis that's done in the rest of the report.

14 HEARING OFFICER EDVENSON: Thank you. And is there
15 a response to the objection?

16 MS. SARA SCARPINO: I object to his objection
17 because Mr. Zak knows his job.

18 HEARING OFFICER EDVENSON: All right. Exhibit No.
19 9 will be accepted into evidence over the objection.

20 (Complainants' Exhibit No. 9 for identification
21 was thereupon received into evidence.)

22 HEARING OFFICER EDVENSON: And then we have Exhibit
23 No. 10, which is entitled, "American National Standard
24 Quantities and Procedures for Description and Measurement

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1 of Environmental Sound, Part 3: Short Term Measurements
2 with an Observer Present."

3 Is there any objection to the introduction of this
4 into evidence?

5 MR. FELDMAN: None.

6 HEARING OFFICER EDVENSON: Then Exhibit 10 will be
7 entered into evidence with the caveat that Mr. Zak
8 informed us of that the American Standards committee
9 would prefer that this not be photocopied for
10 distribution.

11 (Complainants' Exhibit No. 10 for
12 identification was thereupon received into
13 evidence.)

14 HEARING OFFICER EDVENSON: Then at this point in
15 time, we would in the normal course of order of hearing
16 proceed with the cross examination of Mr. Zak by
17 Respondent's counsel.

18 MR. FELDMAN: Your Honor, as we discussed off the
19 record, we have -- have not really had an opportunity to
20 work through Mr. Zak's file. Much of it we've just
21 received today, and some other major portions of it,
22 including the second report, we just received late
23 yesterday.

24 What I would like to do with your permission is to

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1 question Mr. Zak on certain things that he said that were
2 confusing at least to me. And if I can get him to
3 clarify that, we'll then have the information hopefully
4 we need to properly prepare for his cross examination at
5 a later date on the assumption that the Court grants our
6 motion for an extension. But at this time, we don't feel
7 that we can adequately cross examine Mr. Zak because we
8 just haven't had the adequate opportunity to prepare for
9 his cross examination.

10 HEARING OFFICER EDVENSON: All right. Let's
11 proceed, then, with your questioning with the
12 understanding we will be continuing this hearing when you
13 have concluded your questioning today and that we will be
14 continuing it to the point at which the cross examination
15 of Mr. Zak as Complainants' witness will continue.

16 MR. FELDMAN: Thank you.

17 CROSS EXAMINATION

18 BY MR. FELDMAN:

19 Q Mr. Zak, looking at your July -- do you have the
20 exhibits that have been entered in the Complainants'
21 case?

22 Looking at what's been marked as Complainants'
23 Exhibit No. 9, you included in that exhibit a memorandum
24 from Doug Tolan to you dated October 24, 1995; is that

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1 correct?

2 A That's correct.

3 Q In the second paragraph of that memorandum, it says,
4 "Upon reviewing the data, the one hour" -- and then it
5 looks like "LEQ" -- "one-third octave band," and then it
6 goes on.

7 What does "one hour LEQ" mean?

8 A One hour LEQ is the time period the Pollution Control
9 Board has mandated for measuring sound in section -- in
10 the 901 section of the regulations.

11 Q I'm not sure what that means.

12 What does that mean, how a sample is taken?

13 A In 1987, the Pollution Control Board changed the
14 measurement procedures for measuring sound from using --
15 they used to be called fast meter response and slow meter
16 response to an LEQ, which means equivalent level.

17 In essence, an LEQ is an averaging process that will
18 render a single number that is an energy average of all
19 the sound taking place over a given period of time. The
20 Board decided that they would pick one hour as being the
21 period of time over which to run the measurement average.

22 Q And is that Board mandate, as you've referred to it,
23 applicable in the measurements that were taken here from
24 the Scarpino home?

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1 A No.

2 Q Why is that?

3 A Because it's my understanding that the Scarpinos have
4 alleged a nuisance violation, which would be under the
5 900 section, as opposed to the 901 section. And
6 historically, the Pollution Control Board, for example,
7 in their case of Madison versus World Music Theater,
8 accepted a five-minute LEQ as evidence in a case of
9 nuisance, which was -- the allegation in that case was a
10 900.102 violation.

11 Q If you're trying to determine whether the sound
12 levels from a particular sound source violate the numeric
13 levels of 901 of the Pollution Control Board, then you
14 would have to use the one hour LEQ; is that correct?

15 A That's correct.

16 Q In your -- in that same report, Exhibit 9, I notice
17 at -- on Page 4 that you have something called 901.102
18 B/C arrow A limits.

19 What is that?

20 A I have illustrated what the nighttime limits are
21 under the Board numeric regulations for a C to A source.
22 Now, by "C" I mean industrial, and "A" would stand for
23 residential.

24 So we're looking at a portion of numeric regulations

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1 that gives us limits for nighttime -- a nighttime
2 situation with -- for an industrial source and nighttime
3 being 10:00 p.m. until 7:00 a.m.

4 Q Okay. There are other limits that apply for the
5 daytime; is that correct?

6 A That's correct.

7 Q And are those at 901.102 A?

8 A Correct.

9 Q How would you compare the levels in 901.102 A for
10 daytime with the levels for nighttime in 102 B?

11 A Briefly, to sum it up, there's a -- approximately a
12 10 decibel difference across the spectrum comparing
13 daytime to nighttime.

14 Q So you can be noisier during the day than you can at
15 night?

16 A Right. And the reason being because in the daytime,
17 people normally are not trying to sleep. At night, we
18 want it quieter -- the Pollution Control Board wants it
19 quieter so that people can sleep through the night.

20 Q Now, you've put in a -- you haven't given the daytime
21 standards on those; right?

22 A That's correct. This is just nighttime.

23 Q And on your -- in the graph on the previous page,
24 Page 3 of 5, you've got a line in there, I take it, that

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- 1 represents the nighttime standards?
- 2 A That's correct.
- 3 Q You didn't put in the daytime standards on there,
- 4 either?
- 5 A No, I did not.
- 6 Q Do you know whether the sounds in -- measured in
- 7 Exhibit 9 violate the daytime standards?
- 8 A Well, I would use "alleged violation," as opposed to
- 9 "violation"; and I would normally state that would be
- 10 "exceeds the limit," rather than a violation.
- 11 Q I'll take your rephrasing; that's fine.
- 12 A But in answer to your question, I don't believe that
- 13 the levels measured would exceed the daytime limits.
- 14 Q Why didn't you put in the daytime limits in your --
- 15 either report, really?
- 16 A The data analyzed was nighttime data. It was taken
- 17 during the nighttime hours. And since it was nighttime
- 18 data, I then compared it against the nighttime numerical
- 19 standard.
- 20 Q Some companies are permitted to comply only with the
- 21 daytime data even at night; isn't that true?
- 22 A That's true.
- 23 Q There are exemptions from the nighttime restrictions;
- 24 is that fair?

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1 A If the company is sufficiently old enough, yes.

2 Q Did you make any effort to determine whether the
3 company, Henry Pratt Company, is old enough to qualify
4 for that exemption?

5 A No, I did not.

6 Q If it is old enough to qualify for that exemption,
7 then really all the numbers in both of the reports would
8 be within applicable limits; isn't that true?

9 A For the numerical standards.

10 Q That's what I'm asking you. For the numeric
11 standards, assuming that the daytime limits apply, the
12 company is within those limits; isn't that true?

13 A That's true.

14 Q You didn't say that in either report, though?

15 A No.

16 Q I had another question about the -- your attempt to
17 get an ambient level in the second -- second set of tests
18 just this week.

19 HEARING OFFICER EDVENSON: For the record, I'll
20 note that I had asked Mr. Zak not to make references to
21 the legal requirements and limitations.

22 MR. FELDMAN: Yes, your Honor, I understand that.
23 The only reason I thought it was important to bring it up
24 is because that is in this document and the earlier

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1 report, and both are into evidence at this point.

2 BY MR. FELDMAN:

3 Q Mr. Zak, why is it important to get an ambient
4 reading?

5 A It's important to establish an ambient to ensure that
6 the sound measured from the suspected noise source is
7 truly the sound coming from the alleged noise source.

8 What we attempt to do, if we can, is wait until the
9 suspected source is not operating and then take a
10 background of all the other sounds in the area in order
11 to establish what other sound or noise is in the area
12 that is not related to the alleged noise source.

13 Q And is that requirement of getting an ambient level
14 -- does that appear in any regulations?

15 A Yes. It appear -- well, it appears in -- the Board
16 requires it in their measurement procedures, and it's
17 also required in the ANSI standard that's been entered
18 into evidence.

19 Q So it -- in your opinion, it applies to the
20 determinations that are being made in this case?

21 A Yes.

22 Q Could you -- you don't happen to know the regulation
23 offhand, do you?

24 A Which one?

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1 Q The one that requires an ambient level to be taken.

2 A I believe it's 900.103 B.

3 Q You're pretty familiar with these regulations, aren't
4 you?

5 A Yes. I helped write them.

6 Q I guess the other question I had about this Exhibit 9
7 relates to the map.

8 Have you walked through the Scarpino home?

9 A Yes, I have.

10 Q There -- there's more than one bedroom in the home?

11 A When I walked through the house, I went through the
12 living room, the kitchen area. I went upstairs to Sara's
13 bedroom and demonstrated to her how the equipment is set
14 up and how to operate the equipment.

15 Q This was back in March?

16 A Back in March. And then when I went to retrieve it
17 about two weeks later, again, I went the same way through
18 the house.

19 I don't remember seeing another bedroom; but if I
20 can make the assumption since Margaret has testified that
21 she has a bedroom there, I'm sure she does, but I just
22 didn't happen to notice where it was located.

23 Q Okay. So the only bedroom you've been in is Sara's
24 bedroom; is that right?

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- 1 A That's correct.
- 2 Q And that's on the second floor?
- 3 A That's correct.
- 4 Q And which way does it face?
- 5 A It faces toward the east.
- 6 Q Is that towards Cleveland?
- 7 A Yes.
- 8 Q And that's towards the Pratt --
- 9 A Toward the Pratt Company, uh-huh.
- 10 Q Okay. How many windows are in that bedroom?
- 11 A I just noticed the one -- well, I would -- there --
- 12 let's see. There's kind of a double window at the end
- 13 that faces the Pratt Company, so I would describe it as a
- 14 double window. Whether that would be one window or two
- 15 windows, I don't know how you would characterize it. But
- 16 it's more of a double window there.
- 17 Q And is it just the one window on the east side or is
- 18 there a -- is this bedroom in a corner and there are
- 19 windows on the other side?
- 20 A I didn't notice any other windows.
- 21 HEARING OFFICER EDVENSON: Counsel, if you would
- 22 like additional information on the windows in the
- 23 bedroom, I think that we could arrange for you to obtain
- 24 that from the Complainants.

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1 MR. FELDMAN: That would be probably the best way
2 to do it, your Honor.

3 If I can have just a moment.

4 BY MR. FELDMAN:

5 Q Are there any other documents or file materials of
6 any kind relating to this October 24, 1995, memo that's
7 attached to Exhibit 9, such as -- documents that would
8 give us a layout of the particular residence involved
9 here?

10 A Yes, there are.

11 Q Are those available that if we asked you for them, we
12 could get them from you?

13 A Yes. They're also part of the Pollution Control
14 Board record for that specific case number.

15 Q In your -- in your direct testimony, you referred to
16 people's disturbance or things that would -- noises or
17 sounds, sound levels that would be likely to disturb
18 people.

19 Do you remember that testimony?

20 A Yes.

21 Q Are there any studies that you're aware of that
22 discuss sound levels at different frequencies and
23 correlate that with disturbance?

24 A Yes, quite a few. There -- by "quite a few," I would

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1 say there are perhaps 50 to 100 studies of that nature.

2 Q And have you reviewed all 50 to 100 studies?

3 A No, I have not.

4 Q Are you familiar with any of them?

5 A Yes, I am. Most of the studies are from many, many

6 years ago. The typical ones are, oh, 20 to 25 years old.

7 A lot of them are out of print. There have been

8 occasional studies done also recently, too, mainly

9 published in like Noise Control Engineering and Sound And

10 Vibration.

11 Q Are those publications in this industry?

12 A Those are the kind of publications that people in

13 noise control engineering and acoustics generally refer

14 to.

15 Q Can you, as you sit here today, cite any particular

16 study that you're aware of that if I wanted to go to it

17 and verify your statements as to what might cause a

18 disturbance at these various frequencies, I could go to

19 that study, and it would give me that information?

20 A There's a book written by Harris. I think the title

21 of it is "Noise Control." And there's also another text

22 written by Per Bruel -- and that's Per, P-e-r, is his

23 first name, and the last name B-r-u-e-l. But right now,

24 the name of the book escapes me.

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1 But both the Harris book and the Bruel book are
2 relatively extensive. They're -- if I remember
3 correctly, each book is over 1,000 pages, basically a
4 reference type of book.

5 Q In your review or investigation and work on this
6 case, did you -- did you have any opportunity to talk to
7 any other neighbors in the vicinity of Pratt?

8 A No, I did not.

9 Q Is there any particular reason -- well, strike that.
10 If you wanted to get an ambient level at the time
11 that Ms. Scarpino had your Nagra tape recorder, could she
12 have turned it on when the plant was shut down between
13 shifts, for example.

14 A She could have.

15 Q Would that have given her a true ambient level?

16 A Without my being there, it's a little hard to say if
17 it would or not.

18 In order to obtain an ambient, there's -- to some
19 extent, it's a judgment call and based on experience of
20 the person taking the measurement. In this situation,
21 the noise source, the Pratt Company, is a rather
22 complicated noise source.

23 And due to its complicated nature, it would be a
24 somewhat of a difficult call for anybody that doesn't

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1 regularly take sound level measurements to know if that
2 would be a good ambient or not.

3 Q Well, now I'm totally confused. Ambient is an
4 attempt to get to the background sound that's there when
5 the target source, if you will, isn't -- isn't present.

6 Isn't that kind of a lay person's definition?

7 A Yes. That's -- that's a fairly good way to put it.

8 Q So if the plant is shut down and you turn your high
9 precision tape recorder on at that particular time in the
10 same location, don't you get the ambient sound, namely,
11 the sound that's there without regard to Pratt?

12 A Well, with one -- one caveat there; and that is, on
13 the previous testimony, Mrs. Scarpino said the noise
14 virtually never stops.

15 If we really had the plant -- everything in the
16 plant turned off, as opposed to saying just the plant not
17 operating, but with still some noise sources going on in
18 the plant -- if we had a situation where the plant -- for
19 example, if there was a power failure in the plant so
20 that the plant just went out for a brief period of time,
21 at that point in time, then we could get a true ambient
22 for the area because there would be no sound emanating at
23 all from Pratt facility.

24 Q Have you ever been inside the Pratt Company?

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1 A No.

2 Q Before you came in today, did you have any awareness
3 of any noise reduction efforts that were undertaken by
4 the Pratt Company?

5 A From correspondence in the record over the years, I
6 am aware of correspondence from the company to
7 Mrs. Scarpino indicating that they were making efforts at
8 noise reduction.

9 Q So is it fair to say that your entire understanding
10 of any efforts that have been undertaken by the Pratt
11 Company over the years to reduce the sound into the
12 Scarpino home is from the correspondence that you've
13 read?

14 A From the correspondence and also from statements by
15 Mrs. Scarpino.

16 Q I want to ask you a couple of questions about your
17 file, just so I've -- I'm sure I got it right and we've
18 got it on the record.

19 Today you produced to us, oh, about -- would you say
20 an inch and a half of documents?

21 (Indicating.)

22 A Yes, probably about 120 pages.

23 Q Okay. And I've marked a couple of letters here that
24 I just want to ask you very quickly about. One is a May

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1 9, 1995, letter which I'll represent to you is the first
2 time I've seen this is today.

3 And I'll just ask you if that is a letter that you,
4 in fact, sent to Sara Scarpino on May 9, 1995.

5 (Indicating.)

6 A Yes, it is.

7 Q And the same question for a letter dated February 16,
8 1995, which is also in your file; and it goes on for four
9 pages.

10 (Indicating.)

11 Is that a letter you sent to Mrs. Scarpino -- or Ms.
12 Scarpino on February 16, 1995?

13 A Yes.

14 Q I also have in my hand here some -- it looks like a
15 computer disk and it says, "Zak noise PCB 96-110, comma,
16 7/1996, two files, colon, Scarpino, period, LDL and
17 Scarpino1, period, LDL."

18 Is that what's on this disk?

19 A Yes.

20 Q Can you tell us what's on this disk?

21 A That is a data file from the analyzer for all the
22 data taken at the Scarpino residence for both the March
23 surveys and the July surveys.

24 HEARING OFFICER EDVENSON: Is that a copy of that

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1 file, Mr. Zak?

2 THE WITNESS: It's a copy of the analyzer's file.

3 HEARING OFFICER EDVENSON: Thank you. It's not the
4 only one in existence?

5 THE WITNESS: No. That's taken -- I have a backup
6 disk in the analyzer, and the analyzer also has an
7 electronic memory, so actually there's several copies of
8 that particular file.

9 HEARING OFFICER EDVENSON: Thank you.

10 BY MR. FELDMAN:

11 Q If I wanted to read this, what would I need to do?

12 A You would need a Larson Davis 3200 real time analyzer
13 with a version at least up to 4. -- 4.27 software.
14 Actually, Larson Davis calls it "firmware" as opposed to
15 "software." And that's what you would need to read that
16 disk.

17 Q Now, you say this contains all the data in this case.
18 When I listen to you describing how the data was
19 transferred from the Nagra tape machine to the analyzer,
20 you said that you pressed the pause button from time to
21 time to get rid of extraneous noises like cars or
22 something like that, didn't you?

23 A Yes.

24 Q Would those deletions be reflected in here? Would we

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- 1 have the data that -- is this the complete file or is it
2 the file less the deletions?
- 3 A That would be the file less the deletions.
- 4 Q If I wanted to hear the complete file, where would I
5 go?
- 6 A Excuse me?
- 7 Q All the data, the entire recording, everything that
8 was done, the raw data?
- 9 A There is no raw data.
- 10 Q Where is the tape?
- 11 A It's been recorded over.
- 12 Q What -- is it a cassette that you use?
- 13 A No, it's a reel-to-reel. And due to budgetary
14 constraint, I don't -- I don't archive away tape. In
15 other words, once a tape is used, it goes right back in
16 the machine again, is used on the next case.
- 17 Q How much does a reel-to-reel tape cost?
- 18 A I tried to locate some a while back and had a real
19 hard time locating tape.
- 20 Q What would you say, \$10, \$15?
- 21 A It seems to me we had to buy the tape by a large
22 quantity at one time. I had tried to locate it in
23 Springfield and did not have much luck locating it. So
24 I'm down to basically a reel or two of that tape.

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1 Q You didn't ask anyone at Henry Pratt whether they'd
2 be willing to pop for the cost of a new tape so that we
3 could keep the original data?

4 A I've never gotten any --

5 Q Just a "yes" or "no," Mr. Zak.

6 Did you ask anyone at Pratt whether they'd be
7 willing to pay for a new tape so we could keep the
8 original data?

9 A No.

10 Q It's your practice to just record over the original
11 data in every case?

12 A Yes.

13 Q And you know for a fact that in -- this particular
14 tape has been recorded over?

15 A Yes.

16 MR. FELDMAN: Your Honor, I think that's all I
17 have. And I appreciate the opportunity to clarify some
18 issues so that we can hopefully get this done next time.

19 HEARING OFFICER EDVENSON: All right. Then at this
20 point in time, I will entertain the Respondent's motion
21 to continue the hearing, and I have received from
22 Respondent's counsel a filing for the Board which is this
23 motion.

24 For the record here today, I will mention that it

1 requests that the motion be granted to continue the
2 hearing to a date 60 days after July 19th, 1996, or
3 September 17th, 1996, and that it be allowed to present
4 its case including its opening statement at that time.

5 In my related order, I indicated that I would
6 entertain such a motion at the hearing today and that I
7 would entertain that motion to a date certain which was
8 between 30 and 60 days from the date of this hearing.

9 The motion that I have here complies with those
10 requirements; and I ask:

11 Does the Complainant have any response to the motion
12 at this time?

13 And, Sara, did you say, no, you don't?

14 MS. SARA SCARPINO: Will you repeat that, please.

15 HEARING OFFICER EDVENSON: Does the Complainant
16 have any response to this motion at this time?

17 MS. SARA SCARPINO: No, I don't.

18 HEARING OFFICER EDVENSON: All right. I will grant
19 the motion, and this hearing will be continued on
20 September 17th, 1996, at a time that we can determine
21 when I make a room arrangement. And I will share the
22 time and the room arrangement with counsel for Respondent
23 and with the Complainants shortly.

24 At that time, we will continue with the cross

1 examination of Mr. Zak as part of Complainants' case in
2 chief.

3 THE WITNESS: Your Honor, I hate to interrupt, but
4 I'm not available at that time.

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

7 (There followed a discussion outside the
8 record.)

9 HEARING OFFICER EDVENSON: We'll go back on the
10 record.

11 And we've discovered that our witness for cross
12 examination will not be available on the 17th, so we have
13 agreed amongst ourselves that we will be able to go to
14 September 27th for the continuation of this hearing, and
15 I will grant that motion to September 27th.

16 Thank you for your cooperation. Thank you for your
17 attendance today, and this hearing is now in continuance.

18 (Whereupon, the hearing was concluded at 1:35
19 p.m. and continued to Friday, September 27th,
20 1996.)

21
22
23
24

