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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-------------------------------------|---|----------------|
| BARBARA STUART and RONALD STUART, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| vs |) | No. PCB 02-164 |
| |) | |
| FRANKLIN FISHER and PHYLLIS FISHER, |) | |
| |) | |
| Respondents. |) | |

The following is a transcript had in
the above-entitled cause before HEARING OFFICER
BRADLEY P. HALLORAN taken stenographically before
TERRY A. BUCHANAN, CSR, a notary public within and
for the County of Will and State of Illinois, at 375
West Briarcliff Road, Bolingbrook, Illinois, on the
9th day of March, A.D., 2004, commencing at 9:00
o'clock a.m.

1 A P P E A R A N C E S :

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-8917
7 BY: MR. BRADLEY P. HALLORAN, HEARING OFFICER

8 LAW OFFICER OF DAVID G. HARDING,
9 100 North LaSalle Street
10 Suite 1107
11 Chicago, Illinois 60602
12 (312) 782-3039
13 BY: MR. DAVID G. HARDING

14 Appeared on behalf of the Respondents,
15 Franklin and Phyllis Fisher.

16 ALSO PRESENT BUT NOT REPRESENTED BY COUNSEL:

17 Barbara and Ronald Stuart, Pro Se

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm
3 the hearing officer with the Illinois
4 Pollution Control Board. I'm also assigned
5 to this matter entitled Barbara and Ronald
6 Fisher (sic) versus Franklin Fisher --
7 excuse me. Let me get the proper heading,
8 entitled Barbara and Ronald Stuart versus
9 Franklin and Phyllis Fisher, PCB No.
10 02-164. Today's date is March 9th. It's
11 approximately 9:00 a.m. This matter has
12 been noticed pursuant to Board regulations
13 and it has been publicly noticed as well.
14 It's going to be conducted in accordance
15 with Section 103, subpart B and Section 101
16 of the Board's procedural rules. This
17 matter is a citizen enforcement matter
18 alleging violation of 900.102 and 901.102
19 and Section 24 of the act regulations.

20 I want to note for the record that
21 I will not be making the ultimate decision
22 in the matter. In fact, it's up to the
23 five members of the Pollution Control
24 Board. What they'll do is take a look at

1 the record, including this transcript and
2 the posthearing briefs and make a decision.
3 My job is to ensure an orderly transcript
4 and to rule on any evidentiary matters that
5 may arise at the hearing and this hearing
6 is also open to the public. I don't see
7 any members of the public in the audience,
8 but if they choose to, they can stand up
9 here and make a public comment or public
10 statement, so if any members of the public
11 are out there, just raise your hand and
12 I'll accommodate you.

13 With that said, I'd like to have
14 the parties introduce themselves starting
15 with Ms. Stuart.

16 MS. STUART: Hi, I'm Barb Stuart and I
17 live in Beecher and this is my husband, Ron
18 Stuart and you are?

19 MR. HARDING: I'm Dave Harding.

20 MS. STUART: Okay.

21 MR. HARDING: And this is Franklin
22 Fisher and his daughter, Julie Barton.

23 MS. STUART: Right, I know Frank and
24 you're Julie? Okay. Hi, Julie.

1 HEARING OFFICER HALLORAN: Thank
2 you. Yesterday we had a brief hearing
3 conference and we discussed a couple of issues,
4 one was Ms. Stuart's motion to incorporate
5 documents into the record. At that time I
6 denied the documents from Knox County
7 chancery case will not to be incorporated.
8 They're not from this Board's docket and I
9 reserved ruling on the transcript in Brill
10 v. Latoria, PCB 00-219, certain sections of
11 the transcript and we're going to make that
12 ruling when the time comes. Mr. Harding
13 expressed concern regarding -- I believe,
14 Mr. Harding, it was Mr. Zak's report that
15 you received on or about March 1st, 2004,
16 is that correct?

17 MR. HARDING: Yes, sir.

18 HEARING OFFICER HALLORAN: You may
19 proceed with the issues or arguments.

20 MR. HARDING: Just very briefly, I
21 believe that Mr. Zak's testimony should be
22 limited to his report produced in
23 discovery. Discovery was issued back in
24 the beginning -- either the end of 2001,

1 beginning of 2002 and after about six or
2 eight months, maybe more, the Stuarts were
3 finally ordered to produce that and --

4 HEARING OFFICER HALLORAN: And they
5 did indeed produce that one report on
6 September 11th, I think, 2003.

7 MR. HARDING: Right. And at that
8 point I don't believe the ten-day rule is
9 any longer in effect assuming that it had
10 any affect at all with the limitations of
11 discovery. Even so, the report which we
12 have now was not produced more than ten
13 days before the hearing and frankly, this
14 is something -- the original report is
15 something that would not have caused me to
16 want to take his deposition. There's
17 really nothing there. There's no opinions
18 or anything. There's just ambient noise
19 measurements. The new report goes into a
20 great deal of detail in other areas and at
21 this point we simply could not possibly
22 prepare for it.

23 HEARING OFFICER HALLORAN: Mrs. Stuart
24 any --

1 MR. STUART: Basically, we're bringing
2 him in as an experienced -- as our expert
3 witness and what he may say, might not say
4 --

5 HEARING OFFICER HALLORAN: You have to
6 keep your voice up.

7 MR. STUART: Okay. We're bringing him
8 in as an expert witness and what I think he
9 has to say about noise and noise pollution
10 in other cases and things like that would
11 apply to this case, you know, regardless of
12 the report. He's worked on a number of
13 other EPA cases that would involve the same
14 exact thing. We're talking oranges and
15 oranges, not apples and oranges.

16 HEARING OFFICER HALLORAN: With all
17 due respect, you really haven't commented
18 on Mr. Harding's objections. I understand
19 Mr. Zak is your witness, but why wasn't
20 this report, and I'm going to reserve
21 comment on it right now, but why wasn't
22 this report turned over back in September
23 of 2003?

24 MS. STUART: Well, Mr. -- Mr. Zak and

1 I had a lot of correspondence, Mr.
2 Halloran, and he really wanted to see where
3 the case was going. As you know, we had,
4 you know, a few tragedies in our house,
5 things were being put on the back burner
6 and he wanted to see if the -- you know,
7 Mr. Fisher was going to, you know, come to
8 a different agreement and not want to have
9 a hearing and I think that that's -- you
10 know, that's primarily why he held off.

11 HEARING OFFICER HALLORAN: We set this
12 hearing -- this latest one, I know we
13 cancelled one at your behest, right now I
14 can't find the docket sheet, but I think we
15 set this hearing sometime probably back in
16 January.

17 MS. STUART: January 13.

18 HEARING OFFICER HALLORAN: Correct.
19 We got Mr. Zak's second report eight days
20 ago and we knew at that point that there
21 wasn't going to be any result.

22 MS. STUART: My question would be for
23 Mr. Harding, specifically what are you --
24 you said that you had no time to prepare?

1 MR. HARDING: Correct.

2 MS. STUART: Okay.

3 HEARING OFFICER HALLORAN: Can I
4 interject something right here? I'm not
5 sure -- I've been getting deluged by
6 documents of all kinds by the complainants.
7 I received this log of cannon sound
8 measurements from Ms. Stuart I believe on
9 March 1st, 2004 along with some
10 photographs. Did Mr. Harding have these in
11 the course of discovery, the log of these
12 measurements you took prior to March 1st,
13 these readings you took?

14 MS. STUART: No. Because they were
15 going to be -- I did try and get them
16 transferred from an eight-millimeter
17 camcorder and wasn't able to
18 appropriately do it so I had everything
19 stored in my computer and went back and
20 took everything off the dates of the sheets
21 that I had done because I was able to use
22 the viewfinder on it and then I would
23 document or write down, you know, what the
24 decibel levels were according to the --

1 which would register -- I bought a meter
2 from Mr. Zak that was calibrated and --

3 HEARING OFFICER HALLORAN: But my
4 question is, the first time I've seen these
5 measurements was on or about March 1st,
6 2004 and correct me if I'm wrong, Mr.
7 Harding, this is the first time you saw Ms.
8 Stuart's sound measurements as well on or
9 about March 1st, 2004?

10 MR. HARDING: Yes.

11 HEARING OFFICER HALLORAN: And these
12 are the sound measurements that Mr. Zak
13 referred to briefly, albeit in his September
14 11, 2004 submission of his report. I'm
15 really concerned that -- I was ready to
16 rule possibly that Mr. Harding was put on
17 notice regarding the second report because
18 reading the September 11, 2003, you can
19 glean what exactly Mr. Zak is going to
20 testify to, however, on his March 1st, 2004
21 report that he received, it goes into
22 greater detail, however -- however, this is
23 the first time Mr. Harding has seen these
24 measurements and granted he's had, you

1 know, eight days, but I don't find that
2 sufficient time and I don't see any reason
3 why these could not have been submitted
4 earlier, I just don't see it, and I think
5 it puts Mr. Harding and his clients at a
6 disadvantage to accept it. So I mean, the
7 only recourse that I have at present is to
8 sustain Mr. Harding's objection and we can
9 proceed with Mr. Zak's testimony under an
10 offer of proof regarding Mr. Zak's
11 testimony. I don't understand why. I'm
12 confused why you --

13 MS. STUART: You know --

14 HEARING OFFICER HALLORAN: You've
15 explained yourself, Ms. Stuart, but this
16 case has been going on for quite sometime.
17 Out of all of these papers you sent me,
18 this one didn't come in until March 1st,
19 2004 and these are your measurements and I
20 understand Mr. Zak, according to his report
21 of March 1st, 2004, I think it was dated
22 February 26, 2004, that he was going to
23 base much of his conclusions on your sound
24 measurement since when he went out there I

1 think in August of 2003 there was just
2 ambient noise so with that said, that's my
3 ruling on Mr. Zak and his report. So when
4 Mr. Zak takes the stand he is under an
5 offer of proof and if the Board, in their
6 infinite wisdom, finds that Mr. Harding did
7 have sufficient time, that he was not
8 ambushed as they like to say, then they can
9 overrule my objections and we'll talk more
10 about objecting to -- or appealing my
11 objections during a break, we'll set a time
12 limit on that, and with that said your
13 motion to incorporate portions of the
14 Brill/Latoria transcript, 00-219 is also
15 denied however, again, because the rules
16 are a little more relaxed before the
17 Pollution Control Board, I will take your
18 motion to incorporate and the attached
19 articles which would be the portions of the
20 transcript itself, 00-219, and portions of
21 the record and the Circuit Court of the
22 Ninth Judicial Circuit, Knox County,
23 Illinois. So with that said, that's my
24 ruling and we can go forward with any other

1 issues if you'd just give me a second.

2 (Brief pause.)

3 HEARING OFFICER HALLORAN: I will mark
4 this as an exhibit at a later date when we
5 do some more housekeeping.

6 MR. HARDING: If it's all right at
7 this point, Mr. Halloran, I have prepared
8 my documentary exhibits, 27 documentary
9 exhibits and one videotape and I was just
10 going to give the Stuarts a copy and tender
11 the originals for your use as we go along.

12 HEARING OFFICER HALLORAN: That would
13 be terrific, Mr. Harding.

14 MR. HARDING: I'm sorry, and the
15 videotape.

16 MS. STUART: Mr. Halloran, may I ask a
17 question, please?

18 HEARING OFFICER HALLORAN: Yes, you
19 may.

20 MS. STUART: Weren't we going to come
21 to a final conclusion on the videotape?

22 HEARING OFFICER HALLORAN: Yes.
23 I haven't addressed that yet. As soon as I
24 get my housekeeping finished here...

1 MS. STUART: Okay.

2 HEARING OFFICER HALLORAN: And I do
3 want to note for the record that I had put
4 out an order on August 21st, 2003 and I'm
5 digressing a bit regarding, and I'm quoting
6 verbatim, the hearing officer has directed
7 the complainants to provide their expert's
8 report to the respondents on or before
9 September 10th, 2003.

10 Okay. The video, we might as well
11 take care of that now. Mr. Harding?

12 MR. HARDING: The video -- actually,
13 this is from television recorded so there's
14 -- it actually -- the salient part starts
15 after the commercial part, it's about four
16 minutes in, and it runs to about 20
17 minutes, 21 minutes on the reader when they
18 make their post statements.

19 We have already stipulated as of
20 yesterday to the authenticity, they have
21 the tape, we have the tape, and I gather
22 there might be some objection as to
23 relevance, we can make those arguments and
24 I guess you can view this in due course

1 because we didn't bring equipment and then
2 rule on whatever arguments are made.

3 HEARING OFFICER HALLORAN: Right,
4 that's what we were talking about
5 yesterday. I could take this back to the
6 office and take a look at it after the
7 arguments on relevance because I think Ms.
8 Stuart had a question or two regarding that
9 and again, we'll set the time table for my
10 ruling on this and the timetable for
11 appealing my ruling, if need be.

12 Ms. Stuart, I think you were
13 concerned about the relevance of this?

14 MR. STUART: Yes, as to relevance.

15 HEARING OFFICER HALLORAN: Okay. I've
16 got to know who's taking over here.

17 MR. STUART: Barb has all the material
18 stuff.

19 HEARING OFFICER HALLORAN: Who's lead?

20 MS. STUART: Well, I'm lead, but he
21 wanted to make a point.

22 HEARING OFFICER HALLORAN: Okay.

23 MR. STUART: As far as the relevance
24 of the thing, this is, like, apples and

1 oranges. It's a case -- a civil case on
2 the death of a dog. The noise is
3 implicated in the case, but it has no
4 relevance on nuisance, it doesn't have any
5 relevance on what we're presenting here
6 today. We're not bringing up the dog.

7 HEARING OFFICER HALLORAN: It's my
8 understanding you brought up the issue of
9 the dog in your complaint. I don't have it
10 with me now, but I was looking at it this
11 morning and one of the counts of your
12 complaint you mention that your dog did
13 pass away, so in my mind at least at this
14 point that makes it an issue. Mr. Harding?

15 MR. HARDING: I tend to agree, plus in
16 the tape -- there's a lot in the tape that
17 you'll see that -- for instance, the
18 Stuarts admitted therein that there had
19 been no negligent use of the propane cannon
20 by Mr. Fisher and Mr. Stuart specifically
21 stated in the tape that the EPA had been
22 out and measured noise that was two
23 decibels under the daytime limits. Both of
24 these are relevant, particularly given the

1 fact that our Illinois statutes do provide
2 that nuisances by farmers doing farm
3 activities are not actionable in the
4 absence of negligence.

5 HEARING OFFICER HALLORAN: Mr. Stuart,
6 anything further?

7 MR. STUART: Well, if it was, per se,
8 regular farmer activity, in other words,
9 farmer activity done up and down the state,
10 I could understand that. It's the only
11 propane cannon located within 25 miles of
12 our house. The other thing is that, per
13 se, that in the statement as far as the
14 decibel levels were concerned, two under
15 the limit, at the time they came out that
16 was a truth, that's why I spoke the truth,
17 but they change from day-to-day. We were
18 talking about it on the way down here.
19 He's got those guns on the other side of
20 his property, okay, and the wind is blowing
21 out of the east, you don't have any
22 problem, it just sounds like a pop, pop,
23 pop, that's not a problem. When he puts
24 them on the other side of his property,

1 which is located closer to our property and
2 the wind is blowing out of the west, it's
3 quite a bit louder. So I don't know if
4 those decibel readings -- it was a one time
5 thing and it was only done from a nuisance
6 complaint and I think it was done by the
7 sheriff's police or somebody to that
8 affect, okay, I might have thought it was
9 the EPA, I have no idea, I'm not around the
10 house that much, but it was done by the
11 sheriff's police and they didn't take the
12 readings from where I think they should
13 have taken them, okay, they didn't take
14 them from -- you know, I don't think they
15 had a clue of how to take those readings.
16 It wasn't like having a sound expert out
17 there.

18 HEARING OFFICER HALLORAN: Anything
19 else before I take it under advisement and
20 rule on a later date? Mr. Harding?

21 MR. HARDING: One other thing,
22 Mr. Stuart points out that that was a
23 nuisance case and I would submit that this
24 is also a nuisance case.

1 MR. STUART: No, I didn't say that.
2 That's not what I said. I didn't say that
3 was a nuisance case. It was a small claims
4 court.

5 HEARING OFFICER HALLORAN: Okay.
6 If that's it, what I'm going to do is, and
7 I'll look at the transcript and look at the
8 video, I'm going to mark it as Hearing
9 Officer Exhibit 1.

10 MR. HARDING: I had marked it Delta 28
11 already, it's on the body of the videotape
12 itself okay.

13 HEARING OFFICER HALLORAN: Well, it's
14 going to be Hearing Officer Exhibit No. 1.

15 MR. HARDING: Okay. And by the way as
16 an aside, I did not have any respondent
17 exhibit tags, I know we're not the
18 defendants, but it's a close enough
19 correlation.

20 HEARING OFFICER HALLORAN: That's
21 fine. I think the Board can figure that
22 out. Thanks.

23 You know, if I may at this point,
24 I don't think I need to right now, but my

1 ruling regarding Mr. Zak's testimony may
2 have to be tailored a bit because I'm
3 looking at his September 8th letter I think
4 that I received September 11th and Mr.
5 Harding received, there's some things in
6 here that Mr. Harding and the respondents
7 were put on notice, not a lot, but we'll
8 cross that bridge when we come to it so
9 just be aware that I may tailor my ruling
10 on Mr. Zak's testimony based on his belated
11 report.

12 With that said, anything else
13 before we proceed either to opening
14 statements or your first witness. Ms.
15 Stuart?

16 MS. STUART: No. I really don't know
17 what the procedure is here. Do I give you
18 my exhibits?

19 HEARING OFFICER HALLORAN: Well, what
20 you do -- I'm sorry.

21 MS. STUART: I thought we were
22 supposed to, like, you know, put tags on
23 all the exhibits that I wanted to submit.

24 HEARING OFFICER HALLORAN: Normally

1 you do that in the case of testimony, lay a
2 foundation or that kind of stuff or if you
3 don't and Mr. Harding objects, I'll listen
4 to his objection and we'll proceed from
5 there, but I don't know if at this point --
6 you know, when you feel an exhibit is
7 relevant during the course of testimony,
8 you can offer it then and we'll see what
9 happens, but at this point I don't know if
10 you want to proceed with your first
11 witness, that's fine.

12 MS. STUART: Okay. I would like to
13 make just a very brief opening statement
14 and that would be that I really want Mr.
15 Fisher to know that this case is not
16 against him as a farmer. It's basically a
17 case against noise and disruption of our
18 lifestyle and our family and the harm it
19 has caused in the past and continues to
20 cause, but it has nothing personally to do
21 with you and I personally feel kind of sad
22 inside that we can't be nice and friendly
23 towards each other and I just want the
24 Board to know that this is all about noise

1 and if it's two decibels under the limit
2 and -- you know, that doesn't make it
3 really right or wrong. You know, there's a
4 lot of factors that come into sound and
5 impulsive sounds and the type of damage
6 that that can do to one's hearing and it's
7 a whole menagerie of problems that exist
8 with impulsive sound and basically that's
9 all that I want to say is that this is
10 about noise and disruptions of our lives.

11 HEARING OFFICER HALLORAN: Thank you,
12 Ms. Stuart. Mr. Harding, anything?

13 MR. HARDING: Just by way of
14 housekeeping. I'm not going to make a
15 traditional opening statement because we're
16 going to do all this in writing, but I did
17 want to point out that our first three
18 exhibits are common record matters. The
19 first exhibit, Exhibit 1, is admissions and
20 responses to admissions -- request for
21 admissions and Exhibit No. 2 is their
22 second set of requests for admissions and
23 responses thereto and Exhibit No. 3 is our
24 interrogatories and the Stuarts' responses

1 thereto. Okay.

2 HEARING OFFICER HALLORAN: I guess
3 we'll cross that bridge when we come to it.

4 MR. HARDING: And then there's one
5 other minor detail. I'm not sure because
6 periodically when dealing with people pro
7 se things happen in different ways. If
8 there is going to be narrative testimony I
9 would like to give notice at this point
10 that I'm probably not going to be able to
11 object until the cow is out of the barn,
12 until the statement -- any objectionable
13 statement is made.

14 HEARING OFFICER HALLORAN: Well, I
15 know at least Ms. Stuart will give
16 narrative testimony if she takes the stand.

17 MR. HARDING: I'm assuming Ms. Stuart
18 and Mr. Stuart, they're both parties.

19 HEARING OFFICER HALLORAN: Correct,
20 correct. And your point is that --

21 MR. HARDING: Just in a normal
22 setting, one objects to the question, then
23 we hash it out, but here there's not going
24 to be a question so the objectionable

1 matter, if any, there may not be any, but
2 any objectionable matter will be out there
3 before an objection.

4 HEARING OFFICER HALLORAN: Well,
5 again, let's see what happens and object
6 and we'll see how we'll move it along and
7 we'll take it from there.

8 Again, I do remind everybody this
9 is a bit more -- proceedings before the
10 Board is a bit more relaxed and that goes
11 to anything from evidentiary rules to
12 protocol. So with that said, Ms. Stuart,
13 your first witness?

14 MS. STUART: Let's see. I think we
15 will call Michael Stuart. Michael? What
16 about this here diagram of the map of the
17 area?

18 MR. HARDING: Could we take a look at
19 it before you set it up?

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

22 (Whereupon, a discussion
23 was had off the record.)

24

1 (Witness sworn in by the
2 reporter.)

3 WHEREUPON:

4 M I C H A E L S T U A R T,
5 called as a witness herein, having been first duly
6 sworn, deposeth and saith as follows:

7 D I R E C T E X A M I N A T I O N
8 by Ms. Stuart

9 Q. Michael, will you state your name and
10 spell it for the -- this lady?

11 A. Michael Stuart -- Michael Donald
12 Stuart, M-i-c-h-a-e-l, D-o-n --

13 HEARING OFFICER HALLORAN: Could you
14 keep your voice up? It may be on. I
15 thought it was on, but I'm having a little
16 trouble hearing you.

17 MS. STUART: No, it's off.

18 MR. HARDING: Actually, if the hand
19 could -- I have the same problem with my
20 daughter, the hand.

21 HEARING OFFICER HALLORAN: Okay. Is
22 it on? Tap it.

23 MS. STUART: I don't think it is.

24 MR. HARDING: Yeah, it's on.

1 HEARING OFFICER HALLORAN: There you

2 go.

3 THE WITNESS: All right.

4 BY MS. STUART:

5 Q. Where do you go to school at?

6 A. Beecher, Illinois.

7 Q. And your address?

8 A. 213 East Corning Road.

9 Q. Okay. What year did you move into
10 your home?

11 A. 1999.

12 Q. Do you remember the month?

13 A. No.

14 Q. The summer?

15 A. Yeah, it was in the summer.

16 Q. Okay. Can you tell me what your life
17 was like and how you liked moving from Oak Forest,
18 Illinois?

19 A. I didn't like the suburbs, it was too
20 noisy. We moved to Beecher because it was quiet and
21 simple and easy.

22 Q. Okay. What type of activities did you
23 do outdoors during the time that you moved in?

24 A. I swimmmed (sic), I played soccer and I

1 even played golf in our backyard.

2 Q. Did you ever do any other type of
3 activities?

4 A. I just basically went outside and did
5 a lot.

6 Q. Did you go out just about every day?

7 A. Yeah, you could say that.

8 Q. Okay.

9 A. Unless it was raining.

10 Q. Okay. Can you tell me -- do you still
11 enjoy being at this house and being outdoors?

12 A. It's really...

13 Q. Can you tell me the year that the
14 cannons began going off?

15 A. Around 2000, 2001.

16 Q. Okay. Do you know the month?

17 A. No. I remember it was in early -- I
18 think it was a spring morning because I remember
19 waking up at 5:00 o'clock in the morning. My dad
20 told me that the dog ran away and go look for it and
21 that's when I went outside to look for the dog and I
22 heard a blast.

23 Q. Okay. Actually, that was in August
24 when I was away, but anyways -- so after -- so how

1 did your life change or your lifestyle from being
2 outdoors, indoors change from August of 2001? How
3 did your life change -- your lifestyle -- how did
4 your lifestyle change after 2001?

5 A. I spent most of the time in my room
6 sleeping.

7 Q. Okay. So do you not go outdoors?

8 A. I don't want to go outdoors.

9 Q. What was your -- why don't you go
10 outdoors?

11 A. I don't like the cannon noises.

12 Q. What kind of affect does the cannon
13 noise have on you?

14 A. It just makes me think of my dog. It
15 was an 11-year-old dog. I had her since I could
16 remember. I couldn't live a day without her, but
17 she ran into a fence, she broke her spine and I had
18 to think of the seizure of how she died.

19 Q. Okay.

20 A. It's pain that no one else should ever
21 have to feel. It was cruel and inhumane.

22 Q. Were you ever diagnosed with a hearing
23 problem?

24 MR. HARDING: Objection, calls for

1 hearsay?

2 HEARING OFFICER HALLORAN: I think I'm
3 going to allow it. I think there's an
4 exception to the rules with medical
5 testimony, diagnosis. You may answer,
6 Michael.

7 THE WITNESS: What was the question?

8 BY MS. STUART:

9 Q. Have you ever been diagnosed with a
10 hearing problem?

11 A. Yes.

12 Q. Okay. Which ear is it?

13 A. It's my left ear.

14 Q. Okay. Do you have special seating at
15 school because of it?

16 A. Uh-huh.

17 Q. Can you tell me what type of an affect
18 the blast of the cannon has upon your ears or is it
19 one ear or two ears?

20 A. It was both my ears. They rang every
21 time it went off and it was like someone aimed a gun
22 at the side of my head and just shot, you know, how
23 -- like a cap gun, but it was like a shotgun noise.

24 Q. Did you explain this to your doctor

1 the last time you saw him?

2 A. Yes.

3 Q. And what was his response?

4 MR. HARDING: Objection, hearsay.

5 HEARING OFFICER HALLORAN: Overruled.

6 You may answer.

7 BY THE WITNESS:

8 A. He said that I should stay away from
9 loud music and I should stay away from loud noises
10 and I should have the cannons stopped.

11 BY MS. STUART:

12 Q. Okay. So what do you do now that's
13 different from 2000 -- prior to 2001, I mean, what
14 are your activities like?

15 A. Staying inside on the computer.

16 Q. All right. Do you invite your friends
17 over?

18 A. Not much. I'm embarrassed.

19 Q. What embarrasses you?

20 A. The noise and everyone is like wow,
21 that's so stupid, I loved that dog, that's just --
22 that guy's a jerk.

23 Q. Do they tease you about the sounds?

24 A. No. They pity me for the sounds.

1 Q. Do they ever make a suggestion to you?

2 A. They say, like, they want to take an
3 axe to it and stuff.

4 Q. Okay. If you could change something,
5 what would you change?

6 A. I don't know. Maybe -- there's not
7 really anything I could have done.

8 Q. Can you tell me how many dogs do you
9 have at your house?

10 A. We have six now.

11 Q. Okay. And can you tell me how many
12 Golden Retrievers you have?

13 A. Four.

14 Q. Of those four Golden Retrievers, which
15 ones -- are any of them upset by the noise of the
16 cannons outside?

17 A. They went to the bathroom in the
18 house.

19 Q. Okay. Which dog is upset by the
20 noise?

21 A. Especially Maggie, the oldest now.

22 Q. Just Maggie?

23 A. All of them. When you let them
24 outside, they rush back in like they're trying to

1 get inside to go to the bathroom.

2 Q. Okay. So are you saying that they do
3 not -- they don't want to be outside?

4 A. They're terrified of the noise.

5 Q. Okay.

6 MR. HARDING: Objection, speculates.

7 HEARING OFFICER HALLORAN: Sustained.

8 BY MS. STUART:

9 Q. What is their behavior like once they
10 get inside the house?

11 A. They're still panting and they follow
12 me and shake and lay by my feet acting like I'm
13 their best friend, but it's not like affection, it's
14 just -- they're just scared, they're looking for
15 someone to comfort them.

16 Q. And how long does that go on?

17 A. Until the cannons are turned off.

18 Q. Do they calm down after that point?

19 A. Apparently.

20 Q. Have they ever soiled in the house
21 because of the cannons?

22 MR. HARDING: Objection, calls for
23 something he couldn't possibly know without
24 speculating.

1 HEARING OFFICER HALLORAN: He couldn't
2 possibly know if they soiled the rug?

3 THE WITNESS: I could smell it.

4 HEARING OFFICER HALLORAN: Sustained
5 -- excuse me, overruled. You may answer.

6 MR. HARDING: No. He may know whether
7 they soiled. He couldn't possibly know why
8 and I would ask the gentleman behind me not
9 to make comments.

10 BY MS. STUART:

11 Q. Okay. Do your dogs soil in the house?

12 HEARING OFFICER HALLORAN: Excuse me.
13 Please, Mr. Stuart, don't make any
14 comments. Thank you.

15 MS. STUART: Sorry.

16 HEARING OFFICER HALLORAN: Okay. You
17 can answer the question whether they've
18 ever soiled in the house.

19 BY THE WITNESS:

20 A. They have never done it before. I
21 mean, they've done it when we haven't let them
22 outside, but we always let them outside. The only
23 time I can imagine they haven't done it is until
24 this cannon problem was just an accident thing when

1 they were puppies.

2 HEARING OFFICER HALLORAN: I'll allow
3 the question and the answer to stand.

4 BY MS. STUART:

5 Q. Do you find -- how are your sleeping
6 patterns during the summer when the cannon are
7 running?

8 A. I've turned up my fan and I just block
9 the noise out by sleeping.

10 Q. So if you don't have your fan on, then
11 you hear the cannons?

12 A. Yes.

13 Q. If the windows are open, do you hear
14 the cannons?

15 A. Even louder than when they're closed.

16 Q. Where would you say around the
17 perimeter of the house the cannon is the loudest --
18 seems to be -- appears to be the loudest?

19 A. By your part of the house, which
20 section is that?

21 Q. Is that close to the house by a
22 bedroom, by the backyard?

23 A. It's in your bedroom.

24 Q. Okay.

1 A. And my bedroom is right next to your
2 room.

3 Q. So that would be the west side of the
4 house?

5 A. Yes.

6 MS. STUART: Okay. I think that's it.

7 No further questions.

8 HEARING OFFICER HALLORAN: Thank you.

9 Mr. Harding?

10 MR. HARDING: Yes. Oh, please don't
11 go away, Mr. Stuart.

12 HEARING OFFICER HALLORAN: Michael,
13 you can stay seated for a minute. Mr.
14 Harding may have some questions for you.

15 C R O S S - E X A M I N A T I O N

16 by Mr. Harding

17 Q. How old are you, Michael?

18 A. Fourteen years old.

19 Q. I'm sorry?

20 A. Fourteen.

21 Q. And what's your birthdate?

22 A. July 28th, 1989.

23 Q. Now, you mentioned that your left ear
24 is affected?

1 A. Yes.

2 Q. And that was diagnosed for the first
3 time in 2000?

4 A. Uh-huh.

5 Q. Now, let's see here, how many animals
6 total do you have on your property?

7 A. We have six dogs and we have three
8 cats.

9 Q. What about chickens?

10 A. The chickens died.

11 Q. When did they die?

12 A. Around 2000.

13 Q. How about horses?

14 A. Yeah, we have two horses.

15 Q. And your parents sell puppies, right?

16 A. Yes. They're full bred Golden
17 Retrievers.

18 Q. And the dog that died I believe her
19 name was Samantha, is that correct?

20 A. (Witness nodded.)

21 Q. How many puppies do you recall that
22 Samantha has had since -- well, I guess you and
23 Samantha are close to the same birthdate, right?

24 A. One --

1 MS. STUART: Can I object?

2 MR. HARDING: Well, okay, I'm sorry.
3 The dog has a whelp date, not a birthdate.

4 MS. STUART: No. That dog never had
5 puppies in the particular house that we
6 live at.

7 HEARING OFFICER HALLORAN: If Michael
8 can answer -- objection, overruled.

9 BY THE WITNESS:

10 A. Well, she basically had -- she had our
11 first generation of dogs. All our dogs are related.

12 BY MR. HARDING:

13 Q. Okay. Do you remember when that was?

14 A. No, I was too young. I remember maybe
15 when I was seven years old Samantha had puppies and
16 then we had Hailey, then she had puppies, then
17 Maggie and then Maggie had puppies and that's when I
18 moved here and that's when it all started and
19 then Taylor had puppies. It was even -- the noise
20 affected her having puppies because she could have
21 lost them from terror.

22 Q. Did she?

23 A. She could have.

24 Q. Did she?

1 A. No.

2 Q. Thank you. Now, how many puppies --

3 HEARING OFFICER HALLORAN: Excuse me.

4 Yes, Ms. Stuart?

5 MS. STUART: How would he possibly
6 know that information? He's 14 years old.

7 He's not the caretaker of the dog.

8 HEARING OFFICER HALLORAN: The record
9 reflects your objection. He answered. We
10 may move on.

11 MS. STUART: Okay.

12 HEARING OFFICER HALLORAN: Thank you.

13 BY MR. HARDING:

14 Q. How many puppies do you recall having
15 been born -- whelped, pardon me, as far back as you
16 can remember?

17 A. I don't know if you're asking for the
18 total of all of our dogs having puppies or what?

19 Q. Yes.

20 A. I can't remember.

21 Q. Can you remember a range? Was it
22 around 100 or 200 or 50?

23 A. I wouldn't know that one.

24 Q. Okay. Now, going back to August 8th,

1 2001, you said your father woke you up at 5:00
2 o'clock in the morning?

3 A. No. I woke up at 5:00 o'clock in the
4 morning and I saw my father in the kitchen and he
5 said that Sam had ran away and he has to leave for
6 work so that's when I looked for the dog.

7 HEARING OFFICER HALLORAN: Michael,
8 could you speak in the mike. You need to
9 lower it a little. Thanks. That's
10 perfect.

11 BY MR. HARDING:

12 Q. And you didn't actually see Samantha
13 get injured, did you?

14 A. No, but --

15 Q. That's my question.

16 Do you know how your hearing
17 problem with your left ear first came to be?

18 A. Well, the ringing in my ear and that's
19 what happened when I heard every shot out of the
20 cannon.

21 Q. It was diagnosed in 2000, correct?

22 A. Yes, and it worsened.

23 Q. Okay. Was there any trauma is what
24 I'm asking you, was there any direct causation that

1 caused the onset of this problem?

2 A. Loud noises and I cut back
3 tremendously on loud noise.

4 Q. What loud noises?

5 A. Including music and the usual stuff,
6 TV.

7 HEARING OFFICER HALLORAN: Michael,
8 can you move the mike over. If you're
9 going to look at Mr. Harding, I'm sorry,
10 I'm having hearing problems. There you go,
11 just keep your mouth right on that. Ms.
12 Stuart?

13 MS. STUART: I don't know if I should
14 object to this or what, but Michael's not
15 really familiar with the correct dates.
16 The time that we had discovered that he had
17 a hearing loss was in 1999.

18 HEARING OFFICER HALLORAN: You can
19 rehabilitate him on direct.

20 MS. STUART: Oh, I can?

21 HEARING OFFICER HALLORAN: Yes. He's
22 doing well.

23 MS. STUART: Oh, good. Thank you.

24

1 BY MR. HARDING:

2 Q. Did you discuss your testimony and
3 what your testimony would be with anyone before you
4 came here today?

5 A. No.

6 Q. Your mother didn't ask you any
7 questions, your father didn't ask you any questions?

8 A. No.

9 Q. They just told you that you're coming
10 to the hearing?

11 A. They told me that I'm a witness and
12 I'm going to come.

13 Q. And that was that?

14 A. Uh-huh.

15 Q. No discussion about Samantha, no
16 discussion about the cannons?

17 A. No.

18 Q. Okay.

19 HEARING OFFICER HALLORAN: Was that a
20 no?

21 THE WITNESS: No.

22 BY MR. HARDING:

23 Q. About how often do the cannons get
24 discussed in your home?

1 A. When they go off everyone just --
2 everybody's in a bad mood and they talk about it
3 just saying those cannons are just a horrible thing,
4 made to hurt things.

5 Q. Have you been present when the police
6 have been called?

7 A. Yes.

8 Q. How many times?

9 A. I don't know. I was asleep most of
10 the time. I can only remember one time I've seen
11 them there, that's when I woke up.

12 Q. Okay. And the cannons don't run year
13 around, do they?

14 A. They only run when they need to on
15 like when the birds are around and things, but they
16 don't run in the winter and that's about the only
17 break we get.

18 Q. Do you know how many weeks a year the
19 cannons run?

20 A. I wouldn't know that, I'm only 14.

21 Q. Do you know what times of day they
22 run?

23 A. They run from, like, five in the
24 morning until to dusk, dusk to dawn, that's about

1 it, when it's pitch dark, that's when it stops.

2 MR. HARDING: No further questions.

3 HEARING OFFICER HALLORAN: Ms. Stuart?

4 MS. STUART: Yes. I need to ask him a
5 few things. This is redirecting?

6 HEARING OFFICER HALLORAN: Uh-huh.

7 MS. STUART: I have exhibits, is this
8 when I offer them to you?

9 HEARING OFFICER HALLORAN: It depends.

10 MS. STUART: Okay. They are related
11 to all his medical information for every
12 audiogram that he has had, I have signed
13 letters from -- we talked about this about
14 a year ago from Battista from Northwestern
15 University Hospital who diagnosed him as
16 having a sensorial neural hearing loss in
17 the year 2000.

18 MR. HARDING: Objection, this is
19 hearsay.

20 HEARING OFFICER HALLORAN: Let me see
21 the exhibits.

22 MS. STUART: I've got them.

23 HEARING OFFICER HALLORAN: She hasn't
24 offered them yet, but I understand your

1 position, Mr. Harding, she's basically --

2 MR. HARDING: I was speaking of her
3 comments, she was going into evidence.

4 HEARING OFFICER HALLORAN: Correct.

5 MR. HARDING: And I object to the
6 exhibits obviously as hearsay.

7 HEARING OFFICER HALLORAN: She's got a
8 ton of them here so...

9 What's the first exhibit you would
10 like to --

11 MS. STUART: The first one is an
12 audiogram -- I'd like to start with the
13 beginning of the dates of 9/3/99, his first
14 audiogram, which was conducted at --
15 through the Illinois Department of Public
16 Health, her name is Robin Willis and she
17 found that he had --

18 MR. HARDING: Objection, hearsay.

19 HEARING OFFICER HALLORAN: Does
20 Mr. Harding have a copy of that?

21 MS. STUART: Yeah, I sent him this a
22 long, long time ago.

23 HEARING OFFICER HALLORAN:
24 Mr. Harding, are you familiar with this?

1 MR. HARDING: I'm not sure what she's
2 showing you. I've seen some medical
3 related things.

4 MS. STUART: All his medical stuff,
5 you have a ton of it.

6 MR. HARDING: Right, they're marked as
7 exhibits, but as what exhibit?

8 MS. STUART: Well, that's what I asked
9 him before was how do we mark these
10 exhibits.

11 HEARING OFFICER HALLORAN: I'll mark
12 them. Have you seen this, Mr. Harding?

13 MR. HARDING: I've seen them, yes. If
14 I could take a quick look?

15 HEARING OFFICER HALLORAN: Sure. I'm
16 going to mark this Complainants' Exhibit
17 No. 1. You know what, let's go off the
18 record for a minute.

19 (Whereupon, a discussion
20 was had off the record.)

21 HEARING OFFICER HALLORAN: Mr. Harding
22 has taken a look at some of the exhibits.
23 There's quite a number of them. I only
24 marked the first one, but Mr. Harding your

1 summary of her exhibits?

2 HEARING OFFICER HALLORAN: You know
3 what, let's go off the record. I'm going
4 to have to mark these. There's a tone of
5 them here so, take a ten-minute break guys.

6 (Whereupon, after a short
7 break was had, the
8 following proceedings
9 were held accordingly.)

10 HEARING OFFICER HALLORAN: What we
11 have here and what I'm labeling is
12 Complainants' Group Exhibit No. 1 and there
13 are 20 documents that Ms. Stuart would like
14 to introduce and Mr. Harding has taken a
15 look at them. Mr. Harding, your response?

16 MR. HARDING: All of them are hearsay,
17 most of them are hearsay on hearsay and
18 there's actually a couple of letters in
19 there that represent three layers of
20 hearsay, the letters from Dr. Battista I
21 believe describing not only the injury or
22 suffering by Michael, but identifying the
23 cause of that suffering and so on, that's
24 just hearsay on multiple levels.

1 MS. STUART: I'm objecting to this
2 again.

3 HEARING OFFICER HALLORAN: You're not
4 objecting, you're responding to Mr.
5 Harding.

6 MS. STUART: I'm responding to him?
7 Okay. I'm responding to Mr. Harding.
8 First of all, a sensorial neural hearing
9 loss is something which can be caused by
10 many factors, it can be caused by sound,
11 loud sounds, ear damage from, you know,
12 exposure, it can also be caused from
13 tonsillitis, repeated otitis media, which
14 is an ear infection, sinus problems. This
15 kid has been to an ENT doctor since he was
16 four years old. He's had chronic ear
17 infections. This is probably or could be
18 what has brought him to the point where he
19 has a sensorial neural hearing loss. A
20 sensorial neural hearing loss, I do have a
21 medical background, is a hearing loss that
22 is irreversible, it cannot be fixed, and
23 the only thing that you can possibly do for
24 him because it is going to keep -- it is

1 going to continue to progress as years go
2 by is get him a hearing aid when he's about
3 four years old and those run about \$7,000.

4 MR. HARDING: I'm going to object to
5 all of that as hearsay.

6 HEARING OFFICER HALLORAN: You haven't
7 responded to his argument. I'll tell you
8 what I'm going to do. Do you understand
9 hearsay, proper foundation, that kind of
10 stuff?

11 MS. STUART: Yes.

12 HEARING OFFICER HALLORAN: You do?

13 MS. STUART: Okay. But when he's
14 objecting to this to being, you know,
15 hearsay, I mean, those are on record with
16 -- I mean, it is an opinion of a
17 professional person.

18 HEARING OFFICER HALLORAN: Correct,
19 but we don't have that gentleman, Mr.
20 Battista and all these other medical
21 experts in here to lay a proper foundation,
22 business records, hospital records,
23 whatever and what I will do, again I will
24 take it -- take them all as an offer of

1 proof again if the Board in their infinite
2 wisdom can overlook the lack of foundation
3 and the hearsay problems, they might find
4 it relevant that prudent persons in the
5 serious affairs of business would rely on,
6 but at this moment in time I can't do that,
7 but I will take them as an offer of proof
8 and again the Board may reverse me, that's
9 their prerogative. So at this point
10 Complainants' Group Exhibit No. 1, which
11 has 20 documents in it is taken as an offer
12 of proof and I will sustain Mr. Harding's
13 objection and again the group exhibit as
14 the parties explained are various letters,
15 medical diagnosis all relating to Michael's
16 hearing problem. Okay.

17 Got that out of the way, next you
18 want to -- you're finished with Michael for
19 redirect?

20 MS. STUART: No. For redirect, I'd
21 like to ask him one other question. He
22 seems to be -- my kids, if I ever had a
23 liter of puppies never were too involved
24 with them.

1 R E D I R E C T E X A M I N A T I O N

2 by Ms. Stuart

3 Q. But Michael since we've lived in
4 Beecher, can you tell me how many liters of puppies
5 we've had?

6 A. Maybe three -- I think three or four
7 -- two with --

8 Q. It's two.

9 A. Oh, yeah, just one with Maggie.

10 Q. One with Maggie, right?

11 MS. STUART: That's all I wanted to
12 clarify.

13 HEARING OFFICER HALLORAN: Any
14 re-cross, Mr. Harding?

15 MR. HARDING: No, thank you.

16 HEARING OFFICER HALLORAN: Thank you.
17 Michael, you're finished. You did very
18 well. Thanks.

19 MS. STUART: Okay. For my next
20 witness I'd like to call JR Grossman.

21

22

23

24

1 (Whereupon, the reporter swore in
2 the witness.)

3 WHEREUPON:

4 J E R O M E R O B E R T G R O S S M A N,
5 called as a witness herein, having been first duly
6 sworn, depose and saith as follows:

7 D I R E C T E X A M I N A T I O N

8 by Ms. Stuart

9 Q. Okay. Mr. Grossman, would you please
10 state your name and address?

11 A. My name is JR Grossman, 357 East
12 Corning Road, that's my property, and I live at 6819
13 Winston, Tinley Park, Illinois.

14 Q. Okay. You have a small building on
15 your property?

16 A. Two buildings.

17 Q. Okay. Do you work in that one
18 building?

19 A. I do.

20 Q. What type of work do you do?

21 A. Well, professionally I'm a glass
22 artist, I also breed and train German Shepherds for
23 service work, I have beehives and I have a small
24 orchard on the property.

1 Q. Okay. And do you have any type of
2 college degrees or --

3 A. I have one college degree, I have a
4 bachelor's of science from Illinois State
5 University, Normal.

6 Q. Okay. Do you work on your property?

7 A. I do.

8 Q. Okay. And you stated that you are a
9 glass blower?

10 A. Yeah.

11 Q. Okay. How long have you lived at your
12 residence?

13 A. Meaning how long --

14 Q. Like, what year did you live -- move
15 in?

16 A. On the Beecher property?

17 Q. On Corning Road?

18 A. I bought that property in 1993.

19 Q. Okay. Can you give me an idea of what
20 the area was like then?

21 A. It was beautiful, it was quiet,
22 pristine little country road, pretty much away from
23 any kind of urban sprawl situation. It was a
24 beautiful little place.

1 Q. Okay. Could you kind of -- you know
2 all the homes on the whole street of Corning which
3 is about 1.2 miles long and would you say most of
4 those homes -- what would be the average age of
5 those homes that are on that road?

6 A. Average -- the oldest ones could run
7 back to the turn of the century and the newest ones
8 are a couple of years, but for the most part I'd say
9 they were probably built '60s and '70s.

10 Q. Okay. And the newer homes, how many
11 would you say are newer?

12 A. Can you give me some --

13 Q. Like under ten years?

14 A. Under ten years? Maybe four or five.

15 Q. Okay. When did you first notice the
16 cannon sounds?

17 A. The day they started, I couldn't give
18 you that date for sure, but I know it was fairly
19 early summer, not sure of the date but...

20 Q. Okay.

21 A. I heard them the first time they
22 started off.

23 Q. How did you find out that we, Barb and
24 Ron Stuart were on the Judge Mathis show?

1 A. I saw it, I caught a -- I actually
2 caught a part of it, I probably came in half way
3 through the show when flipping channels or whatever
4 and saw -- heard something about Beecher and it
5 caught my attention.

6 Q. Okay. And I think that aired
7 12/12/01. So the cannons, you know --

8 A. They ran all that summer.

9 Q. They ran that summer prior to,
10 correct?

11 Okay. When you saw the -- when
12 you saw the Judge Mathis show on 12/12/01, were you
13 aware of where the cannons were coming from?

14 A. Not really. I never knew the exact
15 area, but it was obvious it was someplace on our
16 block and obvious some place in the fields near
17 Frank's place.

18 Q. Okay. But you didn't know
19 specifically where they were coming from?

20 A. Never could visualize it. I looked
21 for them.

22 Q. Did you contact me, Barb Stuart, by
23 phone?

24 A. Uh-huh.

1 Q. Okay. Is that where we first started
2 to converse with each other about things?

3 A. Yes.

4 Q. Okay. Explain to me what type of an
5 affect the cannons had on you starting in August of
6 2001 to you physically? How do they make you feel
7 when you hear them?

8 A. Anxious, I thought that they were an
9 invasion of our peace and quiet out there. Every
10 time I get up in the morning to start working my
11 dogs at sunrise I cherish the short time before they
12 started going off and just anxiety, something you
13 have to deal with every day that I thought was
14 totally uncalled for.

15 Q. Okay. Why do you feel it's uncalled
16 for?

17 A. Well, my experiences with farming,
18 which -- my beekeeping activities go back to 1966
19 and I've worked on various farms over the years, but
20 my experience is that --

21 MR. HARDING: Objection, not
22 identified as an expert and there's no
23 parody between the kinds of farming we're
24 talking about here.

1 MS. GROSSMAN: Well, I do truck
2 farming.

3 MR. HARDING: No opinions were
4 offered.

5 MR. GROSSMAN: Can I ask for the
6 question to be repeated?

7 HEARING OFFICER HALLORAN: Ms. Stuart
8 -- do you want the question to be repeated?

9 MR. GROSSMAN: I actually can't
10 remember what she asked, so I don't know --

11 MS. STUART: I just asked what type of
12 an affect the cannons had on him physically
13 when he started hearing them.

14 HEARING OFFICER HALLORAN: I don't
15 think that was the question. Terry, could
16 you read back the question?

17 (Whereupon, the requested
18 portion of the record
19 was read accordingly.)

20 HEARING OFFICER HALLORAN: We're back
21 on the record. My problem with -- I think
22 he can give a personal opinion, however,
23 I'm not sure he has the experience. He
24 mentioned his beekeeping activities and

1 other farm experience, but I think in light
2 of the hearing today I think I'll allow him
3 to answer if he's able and we'll leave it
4 from there. So Mr. Harding's objection is
5 overruled.

6 BY MS. STUART:

7 Q. You may answer?

8 A. What was the question?

9 Q. The question is why do you think that
10 the cannons are uncalled for?

11 A. I think they're ineffective, the
12 problems that Frank told me he was having with his
13 crops, he has far better solutions than the cannons
14 to take care of his problems. They're a nuisance.

15 Q. Have you ever spoke to Frank about
16 different alternatives?

17 A. Briefly, but he said he was going to
18 do what he was doing and didn't want to hear
19 anything other than that.

20 Q. Was that date --

21 MR. HARDING: Objection to foundation,
22 but I think we're getting to the foundation
23 here.

24 MS. STUART: Yeah, we are.

1 HEARING OFFICER HALLORAN: Overruled.

2 You may proceed, Ms. Stuart.

3 BY MS. STUART:

4 Q. Okay. Have the sounds of the cannons
5 ever waken you up while you were sleeping or prevent
6 you from sleeping?

7 A. I'd have to say no. I'm usually up
8 before they start.

9 Q. Because you work there?

10 A. Yeah.

11 Q. Okay.

12 MR. HARDING: Objection, leading.

13 He said he's usually up then.

14 HEARING OFFICER HALLORAN: Ms. Stuart,
15 you have to kind of watch the leading
16 portions and so Mr. Harding's objection is
17 sustained.

18 MS. STUART: I understand that I'm not
19 very good at this, but I'm really trying.

20 HEARING OFFICER HALLORAN: Well, no,
21 you're doing fine.

22 MS. STUART: Okay. Thank you.

23 MS. STUART: Okay. Over on that
24 board there, can I do this, can I have him

1 point to where he lives?

2 MR. HARDING: As an exhibit I'm going
3 to object to the part of the board that
4 contains literature. We don't have a
5 problem with the pictures, we don't have a
6 problem with the maps.

7 HEARING OFFICER HALLORAN: Ms. Stuart,
8 do you have any response to his objection
9 regarding the writing on the board?

10 MS. STUART: No, that's fine.

11 HEARING OFFICER HALLORAN: So I'm
12 going to ask the Board to disregard the
13 writing on the board.

14 MS. STUART: Okay.

15 MR. HARDING: The brochure.

16 HEARING OFFICER HALLORAN: The
17 brochure? See, I can't see it.

18 MR. HARDING: Yeah, I don't have a
19 problem -- if we can come over this way, I
20 don't have a problem with the handprinted
21 stuff labeling the pictures because I think
22 that's pretty accurate and then the
23 labeling under the maps, I don't think
24 there's any under the bottom map and I

1 don't have a problem with the -- for Greg
2 Zak, although I don't know what that is,
3 the pictures, but I do have a problem with
4 the literature that's attached to the right
5 panel.

6 Mr. HEARING OFFICER HALLORAN: The
7 whole literature itself?

8 MR. HARDING: Yeah, just the
9 literature.

10 HEARING OFFICER HALLORAN: Ms. Stuart?

11 MS. STUART: That was just to
12 demonstrate what the cannons look like.

13 HEARING OFFICER HALLORAN: You know, I
14 think I'm going to overrule your objection,
15 Mr. Harding. I think it would be helpful
16 for the Board to take a look at that, it
17 might help them come to a conclusion on the
18 matter so we'll allow it as it stands.

19 MS. STUART: So can he mark on the top
20 map on the left which was enlarged by
21 Kinko's for our immediate area as to where
22 he lives?

23 HEARING OFFICER HALLORAN: Can I?

24 MS. STUART: Can he?

1 HEARING OFFICER HALLORAN: Sure, sure.

2 MR. GROSSMAN: Do you want me to point
3 out --

4 MS. STUART: Yeah, just circle where
5 your house is.

6 HEARING OFFICER HALLORAN: Put an X or
7 something that will show the Board --

8 MS. STUART: How about a star?

9 MR. GROSSMAN: How about my initials?

10 MS. STUART: There you go.

11 HEARING OFFICER HALLORAN: That would
12 be fine.

13 MR. GROSSMAN: JRG.

14 BY MS. STUART:

15 Q. When you're inside your building and
16 the cannons are going off, is there any type of
17 disruption to the building that you've noticed?

18 A. There were times when some of my
19 windows in the building would rattle the sound was
20 so loud.

21 Q. Okay. Do you have air conditioning in
22 your --

23 A. Just in an office space.

24 Q. Okay. So do you keep your windows

1 closed to avoid the noise?

2 A. Usually the building is open all the
3 time and just have to put up with it.

4 Q. So you have no way to escape the
5 noise?

6 A. Not really.

7 Q. Okay. How much are you -- can you
8 explain to me why -- how you're bothered by these
9 sounds or did we go over that?

10 MR. HARDING: I believe that's asked
11 and answered.

12 MS. STUART: Yeah.

13 BY MS. STUART:

14 Q. Did you ever report these sounds to
15 the local police?

16 A. I think I called once.

17 Q. Why did you call the police?

18 A. Because I thought that it was a --
19 sound was a nuisance and called them to see if we
20 could get it to stop.

21 Q. How was that resolved?

22 A. An officer came out and said there was
23 nothing the county could do about it.

24 Q. How would you describe that particular

1 cannon sound? What does it remind you of?

2 A. I think the word cannon pretty much
3 describes it, it's a loud, booming, percussive,
4 echoing. It's like large fireworks going off.

5 Q. All right?

6 A. Constantly.

7 Q. Do these sounds interrupt your work?

8 A. They take away from the fact that --
9 take away from any kind of concentration that I
10 have. When I'm out working in the orchard or
11 attending beehives or whatever it's just annoying
12 and something that you start to listen for, which I
13 didn't expect to do out in the middle of nowhere out
14 in Washington Township.

15 Q. Okay. Well, does it interrupt with
16 your glass blowing?

17 A. It breaks the concentration.

18 Q. Okay.

19 A. It's something that can be phased out,
20 but when you do hear it it's just an interruption of
21 the concentration.

22 Q. Okay. How far are you located from
23 the Fisher property measuring from the east end of
24 his property lying to the west end of your property?

1 A. Somewhere between a half and
2 three-quarters of a mile. I couldn't give you
3 anything more exact than that.

4 Q. Okay. Did you ever have a discussion
5 with Mr. Fisher regarding the noise of his cannons?

6 A. Briefly.

7 Q. Who was with you?

8 A. You were.

9 Q. Okay. Can you tell us what entailed
10 or what was involved in that conversation?

11 MR. HARDING: Objection, foundation.

12 I'm not going to try and be tricky here,
13 but we have who was present, but we have
14 where and when we haven't got.

15 HEARING OFFICER HALLORAN: Ms. Stuart?

16 Objection, sustained.

17 MS. STUART: Okay. So do I restate
18 the question?

19 HEARING OFFICER HALLORAN: Where,
20 when, with whom?

21 BY MS. STUART:

22 Q. Where were you at with Ms. Stuart at
23 this time?

24 A. I forget which one of us stopped

1 first, but I was in my van and I had stopped just
2 west of Frank's driveway to actually see if I could
3 see where the cannon was.

4 Q. Okay. What did you and Ms. Stuart
5 talk about?

6 MR. HARDING: Objection, when.

7 BY MS. STUART:

8 Q. What time of the day was it?

9 A. I think it was mid morning.

10 Q. What month was it and what year?

11 A. I can't really be sure. It was
12 probably 2001 and it was probably early to mid
13 summer. The crops were starting to come in.

14 Q. I have a police report here --

15 MR. HARDING: Objection.

16 HEARING OFFICER HALLORAN: Let her
17 finish.

18 MS. STUART: -- with the date on it.
19 Can I use it as an offer of proof?

20 HEARING OFFICER HALLORAN: You know
21 what, are you satisfied --

22 MR. HARDING: If he wants to refer to
23 it for the date, I have a problem.

24 HEARING OFFICER HALLORAN: Okay. Very

1 good.

2 BY MS. STUART:

3 Q. Okay. Can you tell me did Mr. Fisher
4 come out from his property over to your -- to where
5 you were at?

6 HEARING OFFICER HALLORAN: What date?

7 MR. HARDING: What was the date?

8 HEARING OFFICER HALLORAN: What date,
9 Ms. Stuart?

10 MS. STUART: It was July --

11 HEARING OFFICER HALLORAN: You can
12 have Mr. Grossman take a quick look at the
13 police report. Does that refresh your
14 recollection?

15 MR. GROSSMAN: I'm trying to find a
16 date. Where do you see a date? 7/26/01 --
17 '02, that sounds right.

18 HEARING OFFICER HALLORAN: And I
19 believe Mr. Grossman testified to mid
20 summer or thereabouts in 2002, but in any
21 event, what is it July --

22 MS. STUART: July 26th.

23 MR. GROSSMAN: Is that mid summer?

24 HEARING OFFICER HALLORAN: Okay. You

1 may proceed.

2 BY THE WITNESS:

3 A. My recollection of the time, not being
4 exact, was at least there were crops in the field
5 that were fruiting, that's the only way I can go.

6 HEARING OFFICER HALLORAN: All I know
7 is knee high by the Fourth of July.

8 MR. GROSSMAN: Sometimes that works
9 and sometimes it doesn't.

10 HEARING OFFICER HALLORAN: But anyway,
11 proceed.

12 BY MS. STUART:

13 Q. Did Mr. Fisher come out and have a
14 discussion with you and Ms. Stuart?

15 A. Yeah. We had already been talking for
16 a few minutes and he came down his driveway in his
17 truck and stopped on the road and was talking to us
18 through his window.

19 Q. What did he say to you?

20 A. He wanted to know what was going on,
21 and said we were discussing the fact that the
22 cannons were going off and we didn't like it and
23 basically I kind of asked him why he was using the
24 cannons, actually made a suggestion at that time

1 about looking into bird netting, which is more
2 effective and he basically said he was going to do
3 what he wanted, when he wanted and how long he
4 wanted to do it, didn't want to hear any other
5 arguments about or suggestions about how to take
6 care of his crops, that he knew what was best.

7 Q. Did Mr. Fisher direct any remarks to
8 you about you being in the company of Barbara
9 Stuart?

10 A. Again, he made brief comment,
11 something like was I one -- he said that I'm now one
12 of the troublemakers -- said I was in the company of
13 the troublemaker I guess the phrase was, something
14 to that fact.

15 Q. Okay. Did you by any -- on that very
16 same day, did you happen to have -- did you see
17 Mr. Fisher again?

18 A. Yes, I did, about 20 minutes later or
19 so. It was after we spoke, went to the post office
20 and on my way back Mr. Fisher and somebody else in
21 his truck were coming out of my driveway.

22 Q. What did they -- what did Mr. Fisher
23 say to you?

24 A. I stopped him and asked him what he

1 was doing and he pretty much told me he could go
2 anywhere he wanted in the township and go on to
3 anybody's property that he wants to and basically
4 put down my operation, called my operation a rat's
5 nest.

6 Q. Did he appear to be angry?

7 A. I don't know if it was more angry than
8 just trying to get me upset, which he did and I
9 called the police.

10 Q. So you did file a report or you just
11 made a complaint?

12 A. I don't know if any report by the -- I
13 didn't file a complaint. I don't know what type of
14 report the police made other than I called them out,
15 they responded and also went down to his place.

16 Q. Did Mr. Fisher have anyone -- when he
17 came over to your house, did he have anyone
18 accompany him?

19 A. Yes.

20 Q. Do you know who that person was?

21 A. I'm not sure of the exact relation,
22 but I believe he's related to the gentleman. I
23 could describe him, but I see him working on the
24 farm and I see him driving back and forth.

1 Q. Do you, Mr. Grossman, know of other
2 farmers in your area who grow produce?

3 A. Yes, several.

4 Q. Could you tell me the names?

5 A. Let's see, there's Bultima, out on
6 Klemme, I believe, Jerry Vos. Although I don't know
7 him personally, there's several other farms out
8 there that grow pumpkins and melons.

9 Q. Okay. Have you ever heard propane
10 cannons going off on those properties?

11 A. I've been in and around that area
12 since the early '80s, 1980, and I've never seen or
13 heard cannons in that area.

14 Q. Not wanting to go too far of a radius,
15 I'm going to use a 25-mile radius from where you
16 reside. Have you ever heard a propane cannon being
17 used in that area?

18 A. Personally heard it?

19 Q. Yes.

20 A. No.

21 Q. Okay. Going eastward from your
22 property up to Cottage Grove, how many residential
23 homes would you say there are?

24 A. Is Cottage Grove the first street from

1 me? There are somewhere between eight and ten
2 possibly.

3 Q. I believe the answer to that is 14.

4 MR. HARDING: Objection.

5 HEARING OFFICER HALLORAN: Sustained.

6 BY MS. STUART:

7 Q. Okay. Is there a church there with a
8 cemetery?

9 A. Yes. You can see the church from my
10 front door.

11 Q. Okay. Who on Corning Road up to
12 Cottage Grove has horses?

13 A. Corning up to Cottage Grove?

14 Q. On Corning Road -- all of Corning Road
15 from Route One?

16 A. You've got horses, the place across
17 the way has horses. At least two that I can think
18 of.

19 Q. How are your dogs affected by the
20 noise?

21 A. It agitates them, but it actually
22 agitates them because they want to go do their work,
23 which is to serve and protect.

24 MR. HARDING: I'm going to object to

1 the answer, there's absolutely no possible
2 way they could know that.

3 HEARING OFFICER HALLORAN: Sustained.

4 MS. STUART: Okay. I think that's all
5 I have.

6 HEARING OFFICER HALLORAN: Thank you.

7 Mr. Harding. Cross?

8 MR. HARDING: Yes, please. If I could
9 just have a moment.

10 (Brief pause.)

11 C R O S S - E X A M I N A T I O N

12 by Mr. Harding

13 Q. Mr. Grossman, you stated that you live
14 in Tinley Park?

15 A. Correct, I have a residence there.

16 Q. Okay. And then you own a piece of
17 property on Corning Road. What's the address?

18 A. 357 East Corning Road.

19 Q. Now, you are east of the Stuart
20 property, right?

21 A. Correct.

22 Q. Which is in turn east of the railroad,
23 correct?

24 A. There is no railroad.

1 Q. Well, there's an abandoned railroad
2 right of way, is there not?

3 A. There used to be an easement, yes,
4 there still -- there is no abandoned railroad
5 anymore, though.

6 Q. It's now overgrown?

7 A. It's all been reincorporated into
8 other properties.

9 Q. It's all overgrown, is it not?

10 A. For the most part, yeah.

11 Q. Okay. Directly to the west of you is
12 the JDS Corp. property, that's 15 acres, right?

13 A. I believe it's 15 acres.

14 Q. And then there's another ten-acre lot
15 to the west of that and then the Stuarts' ten-acre
16 lot, is that correct?

17 A. I don't know which lot you're talking
18 about between JDS and Stuarts. Are you talking
19 about Canciolossi's?

20 Q. I believe so?

21 A. I don't know what their acreage is
22 there, but probably somewhere between ten and 15.

23 Q. Okay. And then there's another
24 property that looks to have about a four or 500 foot

1 frontage to the west of that before you get to where
2 the railroad was, is that correct, west of the
3 Stuarts?

4 A. I'm trying to think of where this is.
5 Yes. There should be two properties.

6 Q. Right. Then there's another one on
7 the other side of the overgrowth from the abandoned
8 railroad and then the Fisher farm, right?

9 A. Yes. But the Fisher farm runs behind
10 some of those properties.

11 Q. Okay.

12 A. So I don't know how you're telling me
13 how you're getting to the Fisher's property because
14 the Fisher property -- part of it butts up against
15 that abandoned railroad tracks that you're talking
16 about, which is behind two other properties.

17 Q. Okay. Now, you say you made a police
18 report on July 26th, 2002?

19 A. On or around there possibly.

20 Q. Okay. And you work at the Beecher
21 property?

22 A. I work that property.

23 Q. And that's ten acres. Do you store
24 firewood piles on that?

- 1 A. I have firewood on the property.
- 2 Q. How many piles?
- 3 A. There's probably almost a half acre of
- 4 cut wood that I have on my property.
- 5 Q. Okay. And you keep bees?
- 6 A. Yes.
- 7 Q. Do you keep bees strictly indoors?
- 8 A. Actually, I don't own the bees.
- 9 You keep them in hives and the hives are outside.
- 10 Q. So you keep the hives?
- 11 A. Yes.
- 12 Q. And you maintain the hives?
- 13 A. Yes.
- 14 Q. Now, on July 26th or thereabouts when
- 15 you were standing with -- you were standing with Ms.
- 16 Stuart?
- 17 A. I believe we were standing on the
- 18 north side of the road on the easement -- the other
- 19 side of the road from Frank's.
- 20 Q. The other side from his driveway?
- 21 A. And from the road, from Corning Road.
- 22 We were on the north side of Corning Road and
- 23 probably about 25 or 30 feet from his driveway.
- 24 Q. At that point you had seen the Judge

1 Mathis show, is that correct?

2 A. Yes.

3 Q. And at that point you had had
4 discussions with Ms. Stuart so you were aware of her
5 complaints?

6 A. Yes.

7 Q. How far are you from the bridge on
8 Route One?

9 A. Probably about 50 feet less than a
10 mile, so whatever that would be.

11 Q. Okay.

12 A. It's a little less than a mile.

13 Q. Okay. And you mentioned that -- I'm
14 sorry, talking about trains, mine just left the
15 station without me. Just a second.

16 Q. You mentioned that you saw Frank
17 drive down your end of Corning Road in Beecher?

18 A. I said I saw him coming out of my
19 driveway, driving from off of my property.

20 Q. I see. And did you at that point
21 accuse him of stealing your asparagus?

22 A. I accused him of poaching, yes.

23 Q. Did you specifically mention that you
24 were pretty sure that he was the one that was

1 stealing your asparagus?

2 A. I recognized the way he breaks his
3 asparagus off from past -- when I had met him on the
4 abandoned railroad tracks where we used to pick
5 asparagus and you can recognize how people pick it
6 and how they cut it. Frank's a snapper. We don't
7 like that, plus he has access through his fields and
8 through hedgerows on the back of my property.

9 MR. HARDING: The only question --
10 move to strike. The only question asked
11 was --

12 HEARING OFFICER HALLORAN: Sustained,
13 no question pending.

14 BY MR. HARDING:

15 Q. And you believe that you are between a
16 half and three-quarters of a mile from the eastern
17 border of the Fisher farm?

18 A. Well, I could add it up almost exactly
19 with the frontage if you want me to from using the
20 board up there, but, yeah, somewhere around there.
21 It's less than three-quarters of a mile and more
22 than a mile. I couldn't give you the exact number.

23 Q. Okay. No, that's fine.

24 Was Frank Fisher ever arrested for

1 whatever was complained of on July 26th, 2002?

2 A. Not that I know of.

3 Q. Okay. Did you ever make a police
4 report regarding him stealing your broccoli?

5 A. It was asparagus, but, no.

6 Q. I'm sorry. I went back to my
7 favorite.

8 And, to your knowledge, has Frank
9 ever been arrested?

10 A. I don't know if he was arrested or not
11 for other things. I know there's some public record
12 of a couple of incidents, but I don't know if there
13 was an arrest made.

14 MR. HARDING: Thank you. I have no
15 further questions of this witness.

16 HEARING OFFICER HALLORAN: Thank you.
17 Ms. Stuart, redirect?

18 MS. STUART: We're finished.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Grossman. I appreciate it. Let's take
21 a five, six-minute break.

22 MR. HARDING: Can we make it ten?

23 HEARING OFFICER HALLORAN: Ten.

24 MR. HARDING: Thank you.

1 (Whereupon, after a short
2 break was had, the
3 following proceedings
4 were held accordingly.)

5 HEARING OFFICER HALLORAN: We're back
6 on the record. Ms. Stuart just finished
7 with her second witness. You may proceed
8 in the case in chief.

9 MS. STUART: My husband wants to
10 cross-examine -- question Mr. O'Neil, Jim
11 O'Neil, our next witness because he's
12 really spent more time with him outdoors
13 than I have.

14 HEARING OFFICER HALLORAN: Okay.
15 That's fine.

16 MS. STUART: So, you know, I want to
17 be totally honest about this whole thing.

18 HEARING OFFICER HALLORAN: Mr. O'Neil,
19 you can step up in the hot seat and raise
20 your right hand and Terry will swear you
21 in.

22 (Whereupon, the witness was sworn
23 in by the reporter.)
24

1 WHEREUPON:

2 JAMES O'NEIL,
3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 DIRECT EXAMINATION
6 by Mr. Stuart

7 Q. Jim, basically how many times have you
8 been out to my house?

9 HEARING OFFICER HALLORAN: Do you want
10 to -- his name, that kind -- just
11 preliminary matters?

12 BY MR. STUART:

13 Q. State your name.

14 A. My name is James D. O'Neil and I live
15 at 5911 Stuart Lane in Oak Forest, Illinois 60452.

16 Q. And who was the street named after?
17 How many times have you been out to the Stuart
18 residence?

19 A. A couple dozen times since you've been
20 out there.

21 Q. How long have the Stuarts lived out
22 there?

23 A. How long have you been out there,
24 three or four years, five?

1 MR. HARDING: Could we stay in format?

2 HEARING OFFICER HALLORAN: Can you
3 guys keep it a little more serious?

4 BY MR. STUART:

5 Q. Did you have an opportunity to hear
6 the cannons when you were at the Stuart house?

7 A. Yes.

8 Q. And approximately what date was that?

9 A. Honestly, you'd be pressing me for
10 exact dates.

11 Q. Give me kind of a -- was it spring,
12 summer?

13 A. It was summertime.

14 Q. Summertime. Have you been on occasion
15 out to the Stuarts' house in the early spring?

16 A. Yes.

17 Q. On occasion did you hear the cannons?

18 A. Yes.

19 Q. Okay. Were you on the Stuart property
20 before the Stuarts bought the property planting
21 trees?

22 A. Yes.

23 Q. So you had an opportunity to be out to
24 the Stuart property before we bought it, is that

1 correct?

2 A. Yes.

3 Q. Okay. At that time did you hear any
4 cannons?

5 A. Not to my recollection, no.

6 Q. Okay. What do you remember hearing?

7 A. Peace and quiet.

8 Q. Okay. Jim, can you describe to me
9 what you thought the cannons, the first time you
10 heard them, sounded like?

11 A. I thought there was some hunters out
12 in the field with big guns. It scared me.

13 Q. Do you remember saying anything about
14 it?

15 A. Uh-huh, yes, I can.

16 Q. And what did you say?

17 A. What the hell is that for?

18 Q. Okay. Did they -- did you bring
19 anybody with you?

20 A. Yes. I had my little nephew and
21 another friend of ours.

22 Q. And what do you remember about his
23 reaction to the cannons?

24 A. Startled, scared maybe.

1 Q. What did you think the cannon was when
2 you first heard it?

3 A. Like I said, I thought it was like
4 some hunters out in the field with, you know,
5 shotguns or something.

6 Q. Did your nephew feel the same?

7 A. Yeah, he was scared.

8 MR. STUART: That's about all the
9 questions I have for Jim.

10 HEARING OFFICER HALLORAN: Thank you.
11 Mr. Harding?

12 C R O S S - E X A M I N A T I O N
13 by Mr. Harding

14 Q. Mr. O'Neil, you live where?

15 A. In Oak Forest.

16 Q. And have you ever lived at 9701 South
17 St. Charles in --

18 A. That's been a family home since about
19 1969. I moved out of there about a year ago.

20 Q. Okay. And in discovery it was noted
21 that you witnessed the cannon noise on 7/23/02 and
22 7/25/02, is that fair?

23 A. Like I said, I would be hard pressed
24 to, you know, give you an exact date because I just

1 don't remember, but, you know, it was in that time
2 frame I imagine. It was towards the end of the
3 summer. I was on vacation from work and so me and
4 my nephew were going out swimming at Ron's.

5 Q. Now, your nephew is David Pillotto?

6 A. No.

7 Q. Who is David Pillotto?

8 A. Pillotto is a friend of mine -- a long
9 time friend of mine.

10 Q. Now, did you see where the noise was
11 coming from?

12 A. No.

13 Q. Did you look to see where the noise
14 was coming from?

15 A. Yeah. I looked around and did not see
16 anything.

17 Q. Okay.

18 A. To this day I still don't know where
19 the cannons are located.

20 MR. HARDING: I have no further
21 questions.

22 HEARING OFFICER HALLORAN: Thank you.

23 Any redirect, Mr. Stuart?

24 MR. STUART: No.

1 HEARING OFFICER HALLORAN: Thank you.

2 You may step down, Mr. O'Neil.

3 MR. O'NEIL: Thank you.

4 MS. STUART: I'd like to call a
5 witness, that would be Mr. Fisher.

6 HEARING OFFICER HALLORAN: Okay.
7 Terrific. Raise your right hand and Terry
8 will swear you in.

9 (Whereupon, the witness was
10 sworn in by the reporter.)

11 WHEREUPON:

12 FRANKLIN FISHER,
13 called as a witness herein, having been first duly
14 sworn, deposeth and saith as follows:

15 DIRECT EXAMINATION

16 by Ms. Stuart

17 Q. Mr. Fisher, how long have you lived at
18 25 West Corning Road?

19 A. Well, my grandparents bought the farm
20 in, like, 1925 and I basically lived with them
21 growing up and my folks bought the farm from my
22 grandpa in -- I believe it was 1959 and then I
23 pretty much lived there until I got married and
24 then was gone several years until I divorced and

1 then moved back to the farm and now, of course, I
2 stay with my mom because she's got Alzheimer's and
3 I have to be there so...

4 Q. Yeah, that's very difficult, I
5 understand that.

6 So what year did you move back in
7 with your mom?

8 A. Probably around '71.

9 Q. And you've been the chief farmer then
10 of the area?

11 A. No, not really. I really took over
12 the farm when my dad died 11 years ago, 12 years
13 ago.

14 Q. That's Herman Fisher?

15 A. That's correct, yes.

16 Q. So you've been doing the chief farming
17 for the -- what type of crops do you grow?

18 A. About everything when it comes to
19 produce; peppers of all sorts, pickles of all sorts,
20 sweet corn, tomatoes, watermelon, mush melon,
21 cantaloupe and like I was saying, everything to do
22 with produce we raise on that farm.

23 Q. How long have you been growing
24 produce?

1 A. Probably since '99 when we started.
2 The farm was a produce farm for many, many years and
3 then when -- as grandpa got older, that's the type
4 of thing that is very labor intensive and so then he
5 went to farming corn and beans, you know, which is
6 not so labor intensive and for many years it was
7 just corn and beans until -- I think it was '99 when
8 we started truck farming it again.

9 Q. Okay. So before that it was the
10 typical farming crops like soybean, corn and --

11 A. Wheat, sure.

12 Q. Okay. So in 1999 you did not use a
13 cannon, right?

14 A. That's correct.

15 Q. And how was your -- how were your
16 crops that year if you just started growing produce?

17 A. Well, the difference was we were just
18 getting started in the produce business again and we
19 didn't raise everything the first year we were in it
20 and the second year we went into raising the
21 watermelons and the mush melon and that's the one
22 unique thing with the truck farmers in our area,
23 none of them raise their own watermelon and mush
24 melon, they buy them all for their farm stands and

1 whatever, we raise our own, and that's where the
2 problem comes in with the birds. If it were for the
3 rest of the truck farming you wouldn't have much of
4 a problem, but you do have a problem when you're
5 raising melons.

6 Q. Yeah, because they like the water and
7 the food --

8 A. Yes, they do.

9 Q. -- from the food? Okay.

10 So how was your crop output for
11 '99? Did you have problems with crows?

12 A. We didn't raise melons in '99.

13 Q. Okay. It was 2000?

14 A. 2000 is when we first experienced our
15 problem with the crows and you go out in the field
16 and -- we lost probably half or more of what we
17 planted in terms of the melons because the crows
18 don't sit down and all hone in on one melon and eat
19 it, they take a peck out of every one, you know,
20 and those melons then you can't sell.

21 Q. Okay. So you decided to incorporate a
22 propane cannon?

23 A. That's correct.

24 Q. And you purchased that from whom?

1 A. Vandergreen (phonetic) was his last
2 name who used to be a truck farmer.

3 Q. Where does he live at?

4 A. Now I think he lives back in the
5 Lansing area because he no longer farms and now I
6 believe the farm that he was on is corn, beans and
7 Miami also.

8 Q. Where did he live prior to this?

9 A. He lived on a farm that would be
10 probably three miles east and probably a half mile
11 north.

12 Q. Okay. Would that be County Line Road?

13 A. I'm not sure whether that was County
14 Line --

15 Q. Or State Line Road?

16 A. It's west of State Line Road.

17 Q. Okay. So that could be Klemme or
18 someplace?

19 A. There's a road in between there, but
20 I'm not sure what it is.

21 Q. Okay. So you bought how many cannons
22 from him?

23 A. Two.

24 Q. And you used both cannons?

1 A. The first year we used both cannons
2 and, you know, that was relatively knew to us too
3 and we used them pretty much all the time the first
4 year that we used them. I know after that we
5 basically only used one cannon because we tried
6 putting all the melons in one area of the farm so
7 that one cannon would do the job and the other
8 thing, of course, we learned that, you know, you
9 could use the cannon for two or three days and
10 the crows are very smart and they realize that's
11 going on so then you can get away with a day or two
12 of not using them until you see the crows coming
13 back and when they come back, you fire them up
14 again.

15 Q. Did Mr. Vandergreen ever give you any
16 kind of instructions or anything or talk to you
17 about crows or --

18 A. Oh, sure, but basically when he was
19 using them he did use them full-time, but I'm just
20 saying the more we used them the more we learned
21 about the crows and their habits so...

22 Q. Did you ever bother to look into any
23 other kind of a device like netting or --

24 A. Yes, we did, but, you know, it's

1 relatively difficult. I mean, if you're raising a
2 little garden or something like that, I can see
3 where netting would make sense, but when you're
4 dealing with five acres of melons, to put nets on
5 all them when basically you're in the field all
6 summer long either cultivating them, hoeing them, to
7 remove the nets, to put them back on -- you know,
8 truck farming is very labor intensive and there are
9 some things you would do and there are some things
10 you can't do.

11 Q. Okay. Who works with you on the farm?

12 A. My nephew.

13 Q. Is that the nephew who's not appearing
14 as a witness today?

15 A. That is correct.

16 Q. Okay. Have you ever consulted with
17 the Farming Bureau of Will County as to what other
18 alternatives there would be, if anything is new or
19 up to date?

20 A. There's probably things that are out
21 there newer. The only thing I can say with respect
22 to that is, you know, we tried the scarecrows and
23 the aluminum plates and stuff that you would hang
24 out in the field and basically what ends up

1 happening with that is the crows land on them, they
2 don't -- they're totally ineffective.

3 Q. Okay. So the size of your farm is 80
4 acres?

5 A. That's correct.

6 Q. Do you farm the whole entire 80 acres?

7 A. It's probably 75 acres is probably
8 tillable.

9 Q. Okay. Do you rotate your cannons,
10 like move them from place to place?

11 A. Not usually, not now. Like I'm
12 saying, we pretty much put our melons all in one
13 area so if you put the cannon in the middle of that
14 area, that's all that's required.

15 Q. Do you know that you are supposed to
16 rotate the cannons --

17 MR. HARDING: Objection --

18 BY MS. STUART:

19 Q. -- every three days?

20 HEARING OFFICER HALLORAN: Excuse me.

21 Your objection, Mr. Harding?

22 MR. HARDING: It almost gets into
23 testimony. It's not a question.

24 HEARING OFFICER HALLORAN: That was a

1 little more than leading, Ms. Stuart. Do
2 you want to rephrase the question?

3 MS. STUART: Okay.

4 BY MS. STUART:

5 Q. Okay. Do you ever rotate your
6 cannons?

7 A. No. Because we found out that wasn't
8 necessary. I mean, when you have the cannons on,
9 the crows stay away and they typically stay away
10 all the time when you've got the cannons in
11 operation.

12 Q. Until you turn them off and then they
13 come back?

14 A. Well, basically when we've got a crow
15 problem we leave them run and we start them up at
16 sun. The crows aren't flying around at night so
17 from sunset to sunrise then we use the cannons and
18 that's like for a three-month period.

19 Q. Okay.

20 HEARING OFFICER HALLORAN: I'm sorry.
21 From sunset to sunrise?

22 MR. FISHER: From sunrise to sunset,
23 yes, that's correct.

24 HEARING OFFICER HALLORAN: I thought

1 you said sunset to sunrise?

2 MR. FISHER: I might have.

3 HEARING OFFICER HALLORAN: Thank you.

4 My apologies.

5 BY MS. STUART:

6 Q. So where do you sell your produce at
7 or where do you -- who do you sell your produce to?

8 MR. HARDING: Objection, it's not
9 particularly relevant here.

10 HEARING OFFICER HALLORAN: Ms. Stuart?

11 MS. STUART: I think it is.

12 HEARING OFFICER HALLORAN: And why?

13 MS. STUART: Well, I'll withdraw from
14 that.

15 HEARING OFFICER HALLORAN: Thank you.

16 MS. STUART: I'm not going to get into
17 it.

18 BY MS. STUART:

19 Q. Okay. Do you have any type of records
20 from 2000 to 2003 that indicate you've had a
21 substantial gain or an improvement on your crops
22 since you've incorporated the cannon?

23 A. No. I do not have records of that,
24 but it's -- the proof of the pudding is in the

1 eating thereof and I firmly believe in that and it's
2 -- we know the difference that it has made.

3 Q. Okay. Are you required to keep
4 records for --

5 A. Absolutely not.

6 Q. No? In the year 2000, were there any
7 type of mite problems, mites with like cantaloupe
8 and melons?

9 A. Well, I think that problem exists,
10 mites and beetles and, you know, in truck farming
11 you have that problem all the time, but that's one
12 of the reasons that you control them chemically and
13 we do.

14 Q. Okay. Do you ever put any type of
15 like old fruit in front of your -- like near the
16 front of your property like a feed lot for the
17 crows?

18 A. No. Produce that becomes too old to
19 sell on occasion we'll dump it out in the field,
20 but do we intentionally feed the crows, no.

21 Q. So with your spoiled fruit and
22 produce you never put it in the front of your
23 property?

24 A. Not to my knowledge we ever have.

1 MS. STUART: Can we go off the record?

2 HEARING OFFICER HALLORAN: Why?

3 MS. STUART: Well, because I have
4 photos of his house with the spoiled fruit.
5 So do I make this as a --

6 MR. FISHER: Well, there's a
7 difference. She asked me --

8 MR. HARDING: MR. HARDING: Wait a
9 minute.

10 HEARING OFFICER HALLORAN: Let's go
11 off the record for a minute.

12 (Whereupon, a discussion
13 was had off the record.)

14 HEARING OFFICER HALLORAN: We're back
15 on the record. I think we solved
16 everything we need to solve at this point.

17 BY MS. STUART:

18 Q. Do you have other people living near
19 your house?

20 A. Yes, I do.

21 Q. And that would be?

22 A. My daughter.

23 Q. Okay. And her name is?

24 A. Julie Barton.

1 Q. Okay. You live with your mother you
2 said?

3 A. That's correct.

4 Q. Okay. Does anyone come in and care
5 for your mom?

6 A. My sister comes daily and gives her a
7 bath.

8 Q. Okay. Has the police department ever
9 come to your door, you know, complaining of the --
10 you know, informing you that we were complaining of
11 the noise?

12 A. Oh, yes.

13 Q. Okay. Do you ever remember -- I'm
14 sort of at a brain freeze here. There was one more
15 question I wanted to ask him.

16 Do you have any plans in the
17 future of ever looking into maybe a more quiet
18 method of deterring the crows?

19 A. If something was available that wasn't
20 alter expensive, I would look at it and consider it.
21 The only thing I know is that everything we've tried
22 to date was ineffective with the exception of the
23 cannons and to say there's nothing out there, no, I
24 can't tell you that because I don't know that for a

1 fact.

2 Q. Okay. Do you know of any other
3 produce growers that are in your area?

4 A. Sure, I do.

5 Q. You do. Do you know if they use the
6 propane cannons?

7 A. The answer to that is no and
8 primarily because they do not raise melons.

9 Q. Okay. When you say a melon, does a
10 pumpkin --

11 A. No.

12 Q. Okay.

13 A. Pumpkins are not considered a melon.

14 Q. You do know of other produce growers
15 then?

16 A. Sure, I do.

17 Q. Can you tell me who these growers are?

18 A. I know the ones you mentioned earlier,
19 the one on Indiana Avenue, Vos, I'm very familiar
20 with their operation, the Bultemas, I'm very
21 familiar with their operations and those are the
22 specifics farmers I'm aware of.

23 Q. Okay. But getting back to the other
24 question about you not having any kind of records

1 from 2000 to 2003, you really cannot prove to us or
2 to anyone for that fact that it definitely has been
3 to your advantage to use the cannons?

4 A. It definitely has, however, no, I
5 can't provide documentation. No, I can't provide
6 documentation, but the fact of the matter is it has
7 made a dramatic difference.

8 MR. HARDING: I'm going to object.

9 Mr. Zak is handing suggested questions I
10 believe to Ms. Stuart and that would appear
11 to be the practice of law.

12 HEARING OFFICER HALLORAN: Mr. Zak,
13 are you handing notes to Ms. Stuart?

14 MR. ZAK: Yes, I did.

15 HEARING OFFICER HALLORAN: Regarding
16 your expert testimony?

17 MR. ZAK: Yes.

18 MR. HARDING: Could I see the note,
19 please?

20 MS. STUART: Sure.

21 HEARING OFFICER HALLORAN: Could you
22 hand Mr. Harding the note and I would like
23 to take a look at it?

24 MR. ZAK: This is regarding Section

1 33.

2 MS. BARTON: I believe there's another
3 one underneath her paper also. There's a
4 couple of notes underneath her booklet.

5 MR. HARDING: This one just says,
6 Barb, so far we're doing just fine.
7 Halloran is giving us the latitude we need.

8 HEARING OFFICER HALLORAN: Thank you,
9 I think.

10 MR. HARDING: Can I see the others?

11 MS. STUART: Sure.

12 MR. HARDING: There might be another
13 compliment for someone.

14 MS. STUART: Well, actually, I was
15 going to get to that question.

16 MR. HARDING: What is the income from
17 melons only? If it happens again I'm going
18 to have to make a report to the Attorney
19 General.

20 HEARING OFFICER HALLORAN: You can do
21 that, but with all due respect, those are
22 questions that may come up in the Section
23 33 when the Board considers a remedy to the
24 situation.

1 MR. HARDING: Absolutely, I don't have
2 a problem with that. I have a problem with
3 those questions being suggested by a non
4 attorney.

5 HEARING OFFICER HALLORAN: So noted.

6 So you heard Mr. Harding's course
7 of action and if it happens again, I'm not
8 saying I agree with him, but at this point
9 in time we can go forward, but everything
10 is on the record, correct, Terry?

11 THE REPORTER: Yes.

12 MS. STUART: Well, I was going to ask
13 that question -- that and another question
14 related to crops and income.

15 HEARING OFFICER HALLORAN: Okay. You
16 may proceed, Ms. Stuart.

17 BY MS. STUART:

18 Q. The question was, if you would compare
19 your income in the year -- was it 2000 that you
20 weren't -- no, you started growing produce then?

21 A. Yes.

22 Q. If you were to compare your income in
23 2000 or even in 1999, did you make more money then
24 as compared to when you grew more produce like in

1 2001?

2 A. I can't give you a comparison because
3 -- overall are you talking about? You know, we grow
4 -- every year we have maybe ten or 12 acres of
5 beans, we raise cornstalks for Halloween so you can
6 tie them up in a bundle. You know, every year the
7 overall picture has been a little bit better, but to
8 give you a break down, I can't. I mean, it's not
9 there. We don't keep records of how much we made on
10 peppers and how much we made on pickles, I mean, we
11 just don't do that. It's not required and we don't
12 do it. We do look at our bottom line, which
13 everybody does.

14 Q. Okay. So have you made more money
15 during the last two years with the produce and the
16 melons?

17 A. Yes, we have.

18 Q. Okay. So it's been to your benefit?

19 A. Yes, it has.

20 Q. Okay. About how many people do you
21 have working with you on the farm other than your
22 nephew?

23 A. Myself and my nephew's family are the
24 only people that work on that farm and that

1 basically consists of my niece, my nephew and their
2 two children along with one of the boyfriends of one
3 of their children.

4 Q. Okay. So you probably have a crew of
5 about six?

6 A. I would imagine that's probably
7 correct.

8 Q. Okay. Do you turn the cannons off
9 when they're picking?

10 A. No, no, absolutely not.

11 Q. No. Have they ever complained about
12 the noise, any of them?

13 A. No.

14 Q. And how far away are they from the
15 cannons?

16 A. They could be as close as 20 feet.

17 Q. Are you sure about that?

18 A. Oh, sure, absolutely.

19 Q. And how long are they exposed to that?
20 I mean, are they out picking for hours?

21 A. For that exposure of 20 foot away it
22 probably would be very minimal because, you know, as
23 you go through the field picking, you move right
24 along and now you're 20 foot, now you're 30 and

1 that's the normal.

2 Q. Okay. Do you have any kind of hearing
3 problems?

4 A. No.

5 Q. All right. Do you share your crops
6 with your nephew? Are you, like, in a business
7 together?

8 A. No. I'm basically the farm manager
9 and give them the do's and don'ts, but, no, it's a
10 family thing. The income rewards are basically my
11 niece and nephew.

12 Q. Are you highly taxed on these -- this
13 produce?

14 MR. HARDING: I'm going to object.
15 It's not relevant.

16 HEARING OFFICER HALLORAN: What was
17 the question, are you highly taxed?

18 MS. STUART: Yeah. Does he pay a lot
19 of --

20 HEARING OFFICER HALLORAN: That's
21 sustained. I don't see the relevance.
22 Thank you.

23 MS. STUART: Okay. We'll leave that
24 out. All right. I think I'm finished. I

1 have no further questions.

2 HEARING OFFICER HALLORAN: Thank you,
3 Ms. Stuart. You witness, Mr. Harding.

4 MR. HARDING: I'll reserve for our
5 case in chief, please.

6 HEARING OFFICER HALLORAN: Sure. You
7 may step down. Thank you very much. We
8 call Julie.

9 HEARING OFFICER HALLORAN: Raise your
10 right hand and Terry will swear you in.

11 MS. BARTON: Julie Barton, I live at
12 25 West Corning Road.

13 HEARING OFFICER HALLORAN: She has to
14 swear you in.

15 MS. BARTON: Okay.

16 (Whereupon, the witness was
17 sworn in by the reporter.)

18 WHEREUPON:

19 J U L I E B A R T O N,
20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

22 D I R E C T E X A M I N A T I O N

23 by Ms. Stuart

24 Q. Okay. Julie, you state that you don't

1 -- you don't do any type of farming whatsoever?

2 A. Besides planting flowers, no, I'm not
3 in the field.

4 Q. Okay. Do you have children?

5 A. Uh-huh.

6 Q. And what are their names?

7 A. Michael and Jillian.

8 Q. I know both of them.

9 At any time have your children
10 ever complained of the noise from there?

11 A. No.

12 MR. HARDING: Did we get an answer to
13 that question, I didn't hear it?

14 MS. BARTON: No.

15 MS. STUART: She said no.

16 BY MS. STUART:

17 Q. So is Michael -- you were married --
18 well, that's really none of my business who you were
19 married to.

20 So you're really not -- you're not
21 bothered by the noise whatsoever?

22 A. Not at all.

23 Q. Are you bothered by it when you're
24 outside?

1 A. No.

2 Q. And you're so close to it?

3 A. Yeah, I'm pretty close to it.

4 MS. STUART: Those are all the
5 questions I have.

6 HEARING OFFICER HALLORAN: Mr. Harding?

7 MR. HARDING: Reserve for case in
8 chief.

9 HEARING OFFICER HALLORAN: You may
10 step down, Ms. Barton. Thank you very
11 much.

12 MS. BARTON: You're welcome.

13 MS. STUART: Well, I guess it's
14 Mr. Zak.

15 HEARING OFFICER HALLORAN: It's 11:20.
16 I think what we'll do is take an early
17 lunch. I want to look over some documents
18 and then if we can all meet back here by --

19 MS. STUART: I'm sorry. This is crazy.
20 I can cross-examine my husband, right, and
21 ask him questions and he can ask me?

22 MR. HARDING: May I ask what the
23 contents of the current notes are?

24 MS. STUART: These are the same notes.

1 MR. HARDING: Okay. Thank you.

2 MS. STUART: When we get back can I --

3 HEARING OFFICER HALLORAN: Then we're
4 going to do it now. I thought Mr. Zak was
5 coming up.

6 MS. STUART: Then I call Ron Stuart.

7 HEARING OFFICER HALLORAN: Mr. Stuart,
8 raise your right hand and Terry will swear
9 you in.

10 (Whereupon, the witness was
11 sworn in by the reporter.)

12 WHEREUPON:

13 R O N A L D S T U A R T,
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 D I R E C T E X A M I N A T I O N
17 by Ms. Stuart

18 Q. Ron, what year and date did you move
19 into our house?

20 A. It was in July and I don't remember
21 exactly the year. I can't remember birthdays, but I
22 don't remember an exact year.

23 MS. STUART: Can I intervene?

24 MR. HARDING: Can the record reflect

1 that we're talking about moving into 213
2 East Corning Road?

3 MS. STUART: Yeah, that would be a
4 good idea.

5 HEARING OFFICER HALLORAN: That would
6 be terrific. Thank you.

7 MR. HARDING: Rather than object.

8 BY MS. STUART:

9 Q. Prior to June 24th, 1999 when you
10 purchased your home, did you ever visit with
11 Mr. Larsen, who was the previous owner, to scout the
12 area out to see what it was like?

13 A. Yes, I did. In fact, I planted ten
14 apple trees on the property before I owned it with
15 the permission of Mr. Larsen.

16 Q. And how many visits during the year of
17 1999 did you make a visit there?

18 A. I take -- as a teacher I teach
19 driver's ed and I probably went out there at least
20 once a week.

21 Q. Okay. On the date of August 8th, 2001
22 -- I've got to phrase this right.

23 When Mr. Fisher first began using
24 the propane cannons, do you remember the date?

1 A. Well, I don't actually remember the
2 date, but I remember it was the first day of
3 football practice. I usually get up before first
4 light to take and let the dogs out.

5 Q. Okay. Can you tell me what happened
6 on that very first date?

7 A. I got up to let the dogs out. Usually
8 I stand in the back of the yard, you know, to make
9 sure that they don't go under the fence or go down
10 the street and all of the sudden, you know, it was
11 first light and all of the sudden I thought somebody
12 shot a gun and upon hearing it the dog's ears went
13 up and the second shot, the dog came tearing towards
14 me. She was 15 years old or 12 years old, I don't
15 know what she was, but she was starting to go blind
16 and she took the same path in and out of the house
17 all the time, this time she ran past me and she ran
18 into the gate and then looked as though -- she kind
19 of pushed the gate out. After that, I lost track of
20 her because she was gone. I only found out later
21 that she had made a circle into the sunroom and she
22 was dragging her hind legs behind her.

23 HEARING OFFICER HALLORAN: I'm sorry,
24 Mr. Stuart --

1 BY THE WITNESS:

2 A. She was -- she had made a circle
3 through the garage into the sunroom and was dragging
4 her legs behind her, so there was obviously
5 something wrong with her.

6 BY MS. STUART:

7 Q. What was the end result of that day
8 for the dog's satisfaction?

9 A. The end result of that day was the dog
10 had to put down because she had three broken
11 vertebrae.

12 Q. Okay. Did you know where the cannon
13 sounds were coming from?

14 A. No, I didn't. I still thought that
15 somebody was shooting a gun. We have a few people
16 down the street that every once in a while they'll
17 let go of guns and at that time, I don't think dove
18 season started up yet, but it was getting towards
19 the time that dove season does start and once in a
20 while you'll hear hunters out there, they start up
21 with that, but you just chase them off your
22 property.

23 Q. On that very morning that the cannons
24 were started, did any of your neighbors come to your

1 residence to talk to you?

2 A. Yes. Karen Canciolossi thought my
3 sons were up early in the morning shooting
4 fireworks.

5 Q. And what time was that?

6 MR. HARDING: I'm going to object to
7 this conversation.

8 HEARING OFFICER HALLORAN: I didn't
9 even hear the answer. Can you read the
10 answer back?

11 (Whereupon, the requested
12 portion of the record
13 was read accordingly.)

14 MR. HARDING: I have a problem. We
15 skipped way past foundation. I don't think
16 the fault was in the question. The leap
17 was in the answer.

18 HEARING OFFICER HALLORAN: You know, I
19 think you've got to lay a little bit more
20 of a foundation as to when, where, that
21 kind of stuff because we are kind of
22 skipping around a little.

23 MS. STUART: Well, I'm trying to give
24 you an idea of what that first day was

1 like.

2 HEARING OFFICER HALLORAN: And that
3 first day, I don't even know what that
4 first day was, the first day of football
5 practice.

6 MS. STUART: August 8th.

7 MR. HARDING: If I could make a
8 suggestion?

9 HEARING OFFICER HALLORAN: Yes.

10 MR. HARDING: Just simply the way that
11 I learned it, foundations are required and
12 laid because it's for the benefit of people
13 who will read the transcript as I
14 understand it and, therefore, when you're
15 doing this it's best to put it in such a
16 way that the people who read the transcript
17 can follow it and if we hop into the what
18 happened before we find out where it was
19 and so on, that confuses people at the
20 other end, that why's I ask for foundation.

21 HEARING OFFICER HALLORAN: I couldn't
22 have said it better. I thought that was
23 understood that's why we ask what, when,
24 where and why when you mark certain things

1 so the record will reflect so the Board
2 will take a look at the cold record, the
3 transcript and will know exactly what is
4 going on, so if you could be a little more
5 specific in your questions.

6 MS. STUART: Okay.

7 BY MS. STUART:

8 Q. Did you contact -- how did you find --
9 well, did you contact Mr. Fisher about the cannon
10 noise?

11 A. Yes. I took -- the cannons were still
12 going on after I got back from the vet, this was
13 about 9:00 o'clock at night, it was already dark and
14 I found the house because the cannons were still
15 going and I just starting checking each driveway
16 heading west until I found where the cannons --
17 where the noise was coming from. At that time I
18 didn't know it was the cannon.

19 Q. Did you have a conversation with
20 Mr. Fisher that night?

21 A. I did. And I told him that I'd like
22 to be a gentleman about it and that I'd appreciate
23 if he would take and stop using the cannons at that
24 time.

1 Q. And where was your wife at this time?

2 A. My wife was in Arkansas and she wasn't
3 home at that time.

4 Q. Okay. When did your wife return?

5 A. A little after her father passed away.
6 She went down there a couple of times so the first
7 time she might have been taking care of him and the
8 second time he passed away.

9 Q. Okay. So you did have a conversation
10 with Mr. Fisher?

11 A. Yes, I did.

12 Q. And was it just that one time or did
13 you go back the following day?

14 A. Well, he showed some concern that the
15 dog side, he said he was sorry about that that he
16 couldn't, you know, do anything about that, which I
17 can agree, damage was done and that is one thing I
18 claimed as far as negligence, there was no
19 negligence there. He had no idea he was going to do
20 that to the dog so that wasn't a big problem with
21 me. However, I did go back there probably a week
22 later and I asked him once again as a gentleman if
23 he could take and turn them on after first light so
24 I can get my dogs out because they had been

1 urinating on the rug and, you know, I had to clean
2 up after them. Normally you let these dogs out,
3 they're highly trained and they've gone to the best
4 schools, you know, we brought them to a lot of
5 training and they're not the kind of dogs that come
6 in and mess up on your carpet.

7 Q. Prior to the use of the cannons how
8 did -- did you enjoy your property?

9 A. Yes, I did.

10 Q. More or the same?

11 A. I still enjoy my property. I don't
12 enjoy the noise. I'm hard of hearing so it makes it
13 easier for me than it would the rest of my family,
14 but I don't enjoy the noise.

15 Q. Do you have any livestock on the
16 property?

17 A. Yes, I do.

18 Q. Which is?

19 A. Well, it depends, are you talking
20 about like, for instance, when the cannons first
21 started?

22 Q. Yes.

23 A. When the cannons first started I had
24 chickens. When the cannons started, probably at

1 least a week later the chickens stopped laying eggs,
2 that was it and the coyotes and the foxes just took
3 them out. I have horses on the property. One of
4 them was an ex-racehorse so she's kind of high
5 spirited and the other one is a quarter horse, the
6 other one is a standard bred and once in a while,
7 you know, when they first come on they'll get
8 startled, you know, it's a pretty big animal to
9 startle and then the dogs and the cats.

10 Q. Getting back to the dogs, what is
11 their behavior like when they first go outdoors when
12 the cannons are operating?

13 A. Three of them will go out, turn around
14 and come back and the other one won't even come out
15 of the house.

16 Q. Which one is that?

17 A. That's Maggie.

18 Q. Okay. What are the dogs' behavior?
19 How does the dogs' behavior affect you when the dogs
20 are inside?

21 A. Well --

22 Q. Explain their behavior.

23 A. Their behavior when the cannons are
24 going off is similar to the behavior that they have

1 when they -- when a storm is coming in and that's
2 where they start nuzzling you and waking you up, you
3 know, trying to be close to you, but, yeah, they get
4 a little haywire.

5 Q. Okay. So what is it like for you when
6 you have people and you're entertaining outside?

7 A. It's sort of embarrassing, but I kind
8 of blow that off. I don't have a problem with what
9 people think other than the fact there's some noise
10 there and it's irritating.

11 Q. Do many of your friends make comments
12 to you about, you know, this type of noise?

13 A. Yeah, they make --

14 MR. HARDING: Objection.

15 HEARING OFFICER HALLORAN: Grounds?

16 MR. HARDING: Foundation. When,
17 where.

18 BY MS. STUART:

19 Q. Have any of your friends --

20 HEARING OFFICER HALLORAN: Sustained.

21 Do you want to rephrase?

22 MS. STUART: Rephrase?

23 MR. HARDING: To have anybody make
24 comments I don't really have a problem with

1 it, but he answered it, but then he started
2 into the -- what they were going to say.

3 HEARING OFFICER HALLORAN: I
4 understand. I think Ms. Stuart understands
5 now too.

6 MS. STUART: Uh-huh.

7 HEARING OFFICER HALLORAN: You may
8 proceed.

9 MS. STUART: Okay.

10 BY MS. STUART:

11 Q. How have the cannons affected your
12 children?

13 A. Well, Michael has already been up here
14 and stated how it affects him.

15 HEARING OFFICER HALLORAN: I can't --

16 BY THE WITNESS:

17 A. Michael already came up here and
18 stated how it affected him. Kevin doesn't like the
19 cannons. I know the two older boys don't like it.
20 That's about all I can say about that other than the
21 fact that it could -- you know, I worry about their
22 hearing, you know.

23 Q. Do any of your older boys entertain
24 outside?

1 A. Yes. They're in college and they
2 entertain a lot outside.

3 Q. Do any of your boys complain about the
4 cannon sounds?

5 A. Yes, David did.

6 Q. Okay. What time of the day does David
7 work?

8 A. David has to get up very early in the
9 morning because he's a roofer and he goes to college
10 during the winter so it's not a problem.

11 Q. Does he have a part-time job?

12 A. Yes. He works as a bartender also.

13 Q. And what are those hours?

14 A. They can vary. Sometimes he'll work
15 until 1:00 in the morning, sometimes he'll work
16 until 3:00 in the morning. It depends.

17 Q. Does he lose sleep?

18 A. He related to us that he did.

19 MR. HARDING: Objection.

20 HEARING OFFICER HALLORAN: I'm sorry.

21 I didn't hear the question.

22 MS. STUART: Does David ever lose
23 sleep because of the cannon?

24 HEARING OFFICER HALLORAN: And,

1 Mr. Harding, your objection?

2 MR. HARDING: Hearsay.

3 HEARING OFFICER HALLORAN: I'll allow
4 it. I think he answered yes.

5 MR. STUART: Yes.

6 MS. STUART: Okay. I think we're
7 finished.

8 HEARING OFFICER HALLORAN: Mr. Harding?

9 C R O S S - E X A M I N A T I O N

10 by Mr. Harding

11 Q. You say you're a driver's ed teacher?

12 A. Yes.

13 Q. Where do you teach?

14 A. Hillcrest.

15 Q. Hillcrest?

16 A. Hillcrest High School.

17 Q. Where is Hillcrest High School?

18 A. 175th and Crawford or Pulaski.

19 HEARING OFFICER HALLORAN: Mr. Stuart,
20 I'm going to have to ask you to --

21 MR. STUART: 175th and Crawford or
22 Pulaski.

23 BY MR. HARDING:

24 Q. A lot of this is just base tagging.

1 I'd like to show you your answers
2 to admissions -- answers to request to admissions
3 and the request to admission attached. Are those
4 your answers, that's Exhibit 1, and actually it will
5 be easier if you give me those and we work from your
6 pile. You have them all.

7 A. That's it, yes, I imagine.

8 Q. Okay. Going on to Exhibit 2.

9 A. Do you want this one?

10 Q. No. If you flip them over, they'll
11 stay in order.

12 A. Like this?

13 Q. Yeah. That way we'll all be
14 organized. Okay.

15 And Defendants' Exhibit 2, do you
16 recognize that as being your responses to our second
17 set of request for admissions?

18 A. Yeah.

19 Q. That was a yes?

20 A. Yeah.

21 Q. And Exhibit 3, do you recognize that
22 as being your responses -- interrogatories and
23 requests for production and the interrogatories and
24 requests for production that were answered? You can

1 take a look at them.

2 A. None of these are signed by me?

3 Q. I beg your pardon?

4 A. None of them are signed by me.

5 HEARING OFFICER HALLORAN: Are we
6 looking at Exhibit No. 3?

7 MR. HARDING: Yeah.

8 BY MR. HARDING:

9 Q. Get back about that far in, Mr.
10 Stuart?

11 A. Okay. Yes.

12 Q. Those are your answers to
13 interrogatories and requests for production?

14 A. Yes.

15 Q. And the original requests attached,
16 the very last page, my signature? Yes?

17 A. Yes.

18 Q. Okay. I'd like to show you
19 Defendants' Exhibit 4. Do you recognize that letter
20 and did you have any participation in preparing it?

21 A. No.

22 Q. Okay. Respondents' Exhibit 5, it's
23 marked Defendants' Exhibit 5, do you recognize that
24 letter?

1 A. Yes.

2 Q. And did you have any participation in
3 preparing and sending that letter?

4 A. No.

5 Q. Okay. Is your signature on the second
6 page of it?

7 A. Yes.

8 Q. And I'd like to show you Respondents'
9 Exhibit 6 marked Defendants' Exhibit 6. Do you
10 recognize that document?

11 A. Yes.

12 Q. Did you sign that document?

13 A. Yes.

14 Q. A facsimile of that document?

15 A. Yes.

16 Q. And that is the arbitration agreement
17 with the Judge Mathis show?

18 A. Right.

19 Q. And just so we get this in the
20 context, you and your wife, Barbara Stuart, filed a
21 civil lawsuit, small claims court, in Will County
22 against Frank Fisher, is that correct?

23 MS. STUART: Correct.

24 MR. HARDING: Please don't answer the

1 questions, Ms. Stuart.

2 BY MR. HARDING:

3 Q. Is that correct?

4 A. Yes.

5 Q. And that was picked up by the Judge
6 Mathis television show?

7 A. Yes.

8 Q. And the Judge Mathis show -- it was
9 for the death of Samantha?

10 A. Yes.

11 Q. And you were claiming damages for
12 that?

13 A. Yes.

14 Q. All right. And that particular
15 dispute was picked up by the Mathis show and
16 you agreed to have it arbitrated on the Mathis show
17 and to appear on the show, is that correct?

18 A. Yes.

19 Q. And that came to some sort of a
20 conclusion, correct?

21 A. Yes.

22 Q. And Hearing Officer Exhibit 1 is the
23 tape of that show?

24 A. Yes.

1 Q. Okay. Now, Defendants' Exhibit 7 is
2 the appearance agreement. Do you recall signing
3 that in form with your name filled in and
4 everything?

5 A. Yes.

6 Q. Same with six, it was filled in when
7 you signed it, right?

8 A. Yes.

9 Q. Okay. Have you ever seen Defendants'
10 Exhibit 8 before -- Respondents' Exhibit 8?

11 MR. HARDING: I'm just going to call
12 these Defendants' exhibit because that's
13 what they say on them.

14 HEARING OFFICER HALLORAN: You know,
15 and I'll have the record reflect which I
16 can do it at this point that instead of
17 remarking them, defendants' exhibits are
18 actually respondents' exhibits, so let the
19 record reflect that's the case.

20 MR. HARDING: Thank you.

21 BY THE WITNESS:

22 A. I have seen this, but I don't know
23 where it came from.

24

1 BY MR. HARDING:

2 Q. When did you first see it, Exhibit 8?
3 When did you first see that?

4 A. When did I see that?

5 Q. Yeah. And if you can't remember when,
6 can you remember a context?

7 A. A context?

8 Q. Yeah. A situation in which you first
9 saw it.

10 A. No. I think I saw it because I
11 thought it was presented to us in discovery or
12 something.

13 Q. Okay.

14 A. I thought that was one of the things
15 that was sent to us.

16 Q. Okay.

17 A. I didn't see it when it was written.

18 Q. But you hadn't seen it prior to that?

19 A. No, I never saw it before discovery.

20 Q. And I'd like to show you Defendants'
21 Exhibit 9. Do you recognize that document? It
22 bears your signature, does it not?

23 A. Yes. I'm just reading it.

24 Q. Okay. Sorry.

1 A. Yes.

2 Q. And that is something that you filed
3 with the Pollution Control Board in this case,
4 Exhibit 9?

5 A. I guess so.

6 Q. Okay. And I show you Defendants'
7 Exhibit 10. Do you recognize that document? I gave
8 up. We're just working with my set now.

9 A. Yes.

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. And did you have any participation in
13 the preparation or sending of that document?

14 A. No.

15 Q. Okay. But were you aware of it before
16 it was sent?

17 A. No. I read it in the newspaper.

18 HEARING OFFICER HALLORAN: My
19 Respondents' No. 10 has various, it looks
20 like, numbers on it. That's no problem, I
21 would just ask the Board to disregard --

22 MR. HARDING: I think that's fair
23 because I don't believe the original
24 document did carry those phone numbers and

1 such on it.

2 HEARING OFFICER HALLORAN: It looks
3 like it went through the grinder, but it's
4 still --

5 MR. HARDING: Oh, yeah, you have the
6 original.

7 HEARING OFFICER HALLORAN: Anyway,
8 proceed. Thank you.

9 MR. HARDING: Okay.

10 BY MR. HARDING:

11 Q. To skip ahead a little bit, have you
12 noticed any changes in the cannon sound since the
13 cannons first started being used in 2001?

14 A. Yes, I have.

15 Q. What have you noticed?

16 A. Well, I noticed that they don't go on
17 as long as was originally suggested by Frank. Frank
18 had -- you know, you got the Judge Mathis show here.
19 He had suggested that, and it's on that tape, that
20 he was going to run them six months a year, 12 hours
21 a day, every minute of the day, that's what I was
22 told and that's what he did, that's how it started
23 off, it started off every minute of the day and then
24 when he went to two cannons, it was every 30

1 seconds. I don't know if you can imagine that every
2 30 seconds, 12 hours a day, six months of the year
3 and then last year -- I should say this summer he
4 would turn them on, he would leave them go as long,
5 they would go as often and then he'd shut it down
6 for a couple of days and you get relieved. You just
7 start getting to where you say oh, that's pretty
8 nice and then all of the sudden they would start up
9 again. So as far as being annoying, there was no
10 change. As far as how many times he used them, it
11 was much better this year.

12 Q. Okay. Have you ever measured the
13 distance from your lot line to the nearest cannon?

14 A. First of all, I would have to go on
15 Frank's property to do that. I'm not going to
16 trespass on another man's property.

17 Q. Okay. Did you ever ask him for
18 permission to do so?

19 A. No, I didn't, that's his business.

20 Q. How is your brother doing, Donald?

21 A. He's dead.

22 Q. He's dead. When did he pass away?

23 A. December 2nd.

24 Q. I'm sorry to hear that.

1 MR. HARDING: Now, I don't know how I
2 managed to do this. Mr. Halloran, I
3 believe I tendered to you duplicate -- no,
4 I'm sorry.

5 BY MR. HARDING:

6 Q. I'd like to show you Defendants'
7 Exhibit 21. Did you receive that cover letter or a
8 facsimile of that cover letter?

9 A. Yes, I did.

10 Q. And that came with the contracts that
11 you signed?

12 A. Yes.

13 Q. One of the contracts is attached,
14 right?

15 A. (Witness nodded.)

16 Q. Did anyone else -- well, let me ask
17 you this first: Did you see what happened to
18 Samantha?

19 A. Yes, I did.

20 Q. Well, I'm asking because your
21 description of it was she ran around the house and
22 then she ran into the sunroom dragging her legs?

23 A. My description was the same as it
24 always has been, she ran through the gate, okay, and

1 then she disappeared around the corner and the next
2 time I saw her she was coming through the sunroom,
3 she made a loop, she was dragging her hind legs.

4 Q. Okay.

5 A. She had broke her back going through
6 the fence.

7 Q. Now, people hunt on your property, you
8 chase them off, right?

9 A. That occurred the first couple of
10 months I was in the house. I think it was dove
11 season and it was -- I think it was September or
12 October and three guys showed up at the back of my
13 property and started hunting the back of my
14 property. I chased them off. I called the wildlife
15 people over in Peotone and they said there was no
16 problem (inaudible) and that they should be called
17 out if it ever happened again. It's never happened
18 again.

19 Q. But people hunt on the railroad
20 property, don't they, the abandoned railroad?

21 A. I don't know.

22 Q. Do you ever hear gun shots?

23 A. No.

24 Q. You've never heard any other gun

1 shots in the neighborhood?

2 A. Yes, I have. There's an officer down
3 the street I think that once in a while comes out
4 and shoots his gun and it lasts for about 15, 20
5 minutes and then he's done.

6 Q. Okay. And did the vet come to your
7 property when Samantha was hurt or did you take
8 Samantha to the vet?

9 A. I took Samantha to the vet, yes.

10 Q. And when you or your wife take Michael
11 for treatment, do you take him to see
12 Dr. Battaglia (sic) or does -- it's Battaglia, isn't
13 it?

14 A. Right.

15 Q. Or does Dr. Battaglia come to your
16 home?

17 A. We go to their place.

18 Q. Okay.

19 MR. HARDING: I beg your pardon? Oh,
20 Battista.

21 BY MR. HARDING:

22 Q. You indicated at the end of the Judge
23 Mathis show on the tape that that was not the end of
24 it and you were going to get some satisfaction for

1 Samantha's death?

2 A. I believe what I said was it wasn't
3 the end of it and I was going to appeal to -- not
4 appeal in the circuit process because, you know,
5 when you sign that paper you already say, hey,
6 that's it, but I was going to take and bring it to a
7 different level.

8 Q. Okay.

9 A. I don't think I mentioned Samantha's
10 sake there, though.

11 Q. Is this the different level that we're
12 talking about?

13 A. Well, I thought that I had to rethink
14 on that quite a bit after it was done. I don't
15 think I started this case on that particular thing.
16 I don't understand why there's so much on Judge
17 Mathis here, it's a completely different case.
18 I thought, you know, if the gun shots would have
19 went away, then I probably wouldn't have pursued
20 this, but it wasn't going away, it was still making
21 my life very difficult. It wasn't only losing a
22 dog, that's not why I'm here. I'm here because it's
23 a constant nuisance.

24 Q. Do you have a plan, a next step should

1 the Board not see this your way?

2 A. No, I don't.

3 MS. STUART: Can I object to this?

4 HEARING OFFICER HALLORAN: Yes, you
5 may.

6 MS. STUART: This is something that I
7 don't see how Ron can answer that question
8 because he doesn't know. I mean, that's a
9 futuristic question and he hasn't even
10 thought about what he would do. I mean,
11 we're taking this day by day.

12 MR. HARDING: Ms. Stuart asked
13 Mr. Fisher regarding his plans for the
14 future should no other methods of repelling
15 crows come out. I thought we were in fair
16 territory with plans for the future.

17 HEARING OFFICER HALLORAN: I'll allow
18 the answer to stand. Objection, overruled.
19 I believe Mr. Stuart did answer.

20 BY MR. HARDING:

21 Q. The coyotes and I didn't catch the
22 other animal?

23 A. Foxes.

24 Q. Foxes and coyotes killed your

1 chickens?

2 A. Yeah.

3 Q. And how many people live in your home?

4 A. It depends on what time of the year it

5 is.

6 Q. Right now and then we'll work from

7 there.

8 A. Five.

9 Q. Okay. And who are those people?

10 A. I have my nephew I'm taking care of.

11 Q. Your nephew's name?

12 A. Joe Wencil (phonetic).

13 Q. How old is he?

14 A. He's 13.

15 Q. And your son Michael is 14 and your

16 wife, Barbara, I'm not going to ask her age.

17 A. And Kevin who is 16.

18 Q. Kevin, older son?

19 A. Yes, he's an older son.

20 Q. Okay. And does he go to school?

21 A. Yes. He attends Beecher High School.

22 Q. Okay. And you have two other sons

23 also, is that correct?

24 A. They're both in college.

1 Q. Okay. That's Southern Illinois?

2 A. Southern Illinois. Not particularly
3 for any reason, but excellent school, great dog
4 mascot, my alma mater.

5 Q. Now, who more -- what different
6 occupation of your home is there at other times?

7 A. During the summer the boys are home
8 from college, that's about it.

9 Q. Now, the propane cannons in terms of
10 time of year stopped around October 15th of 2001,
11 did they not?

12 A. I couldn't answer that. I wouldn't be
13 able to tell you when they stopped.

14 Q. Can you tell me when they stopped in
15 terms of time of year, not time of day, but time of
16 year in 2003?

17 A. Probably after the harvest. I don't
18 know when that was.

19 Q. Was July 26th the first time that they
20 were on in 2002?

21 A. July 26th?

22 Q. Yes. That was the date that your wife
23 met Mr. Grossman at the end of the driveway?

24 A. They were still on that day.

1 Q. Okay. Had they been on previously in
2 2002?

3 A. Yes.

4 Q. About how long had they been on for?

5 A. I don't know.

6 Q. Do you know when they ended in 2002?

7 A. No. Like I tried to explain to you
8 before, first of all, I'm real hard of hearing and
9 secondly I've coached wrestling and football for 31
10 years so, you know, I'm not -- I go with the seasons
11 as far as days go. I'm not a farmer. I don't know
12 when they grow and when they don't grow. I just --
13 you know, it's wrestling season or it's football
14 season and that's about it.

15 Q. Okay. Do you know where the crows
16 roost -- where they actually make their home?

17 A. In front of Frank's house.

18 Q. In front of Frank's house?

19 A. Yeah. You can see them many times up
20 on the wires and stuff like that. Basically -- you
21 know, I'll just answer your question.

22 Q. Okay. Do you know where they nest is
23 what I'm asking?

24 A. I have no idea.

1 Q. Okay. Roost, nest, sorry.

2 Have you ever called the Will
3 County Sheriff's Office in regard to Frank Fisher
4 and the noise?

5 A. My wife did.

6 Q. How many times?

7 A. Twice that I can remember.

8 Q. Do you remember the dates?

9 A. No.

10 Q. And was any action taken against Frank
11 Fisher?

12 A. They went down and talked to him both
13 times.

14 Q. Did the -- give me just a second. I
15 think we may be close to done here.

16 To the south of you there is quite
17 a large property used as a farm, isn't there?

18 A. Yes.

19 Q. One hundred and forty-six acres or
20 thereabouts?

21 A. Yeah. But actually, you know, when
22 you go to the south part of my property we're
23 actually closer to Frank. I mean, you can see his
24 house from that part of the property.

1 Q. And then there's the overgrown
2 abandoned rail line between you and Frank, right?

3 A. I believe that's a partial land owned
4 by -- well, the guy who just bought the house next
5 door bought all that property in between Frank and
6 I.

7 Q. The house next door to the west?

8 A. Yes.

9 Q. From you?

10 A. Yes.

11 Q. And then past that there's another
12 24-acre lot it looks like on the other side of the
13 overgrowth from the train, is that right?

14 A. I don't know.

15 Q. But there's something in between you
16 and Frank?

17 A. Not from the south end of our
18 property.

19 Q. I'm talking about from the north end.

20 A. You mean is there trees and stuff,
21 sure.

22 Q. Yeah. And then at the north end --
23 because at the south end it appears you've got the
24 146-acre farm behind you, 147-acre farm, and then

1 another 40-acre farm to the west of that before you
2 get to Fishers, is that right?

3 A. I wouldn't know.

4 Q. Okay. Well, how wide is your
5 frontage?

6 A. Three hundred feet.

7 Q. Three hundred even?

8 A. I think so -- not precisely, but...

9 MS. STUART: 305.

10 MR. HARDING: 330 would fit with an
11 acreage break.

12 MS. STUART: It's 305 feet.

13 MR. HARDING: Is it?

14 BY MR. HARDING:

15 Q. Perhaps you can come over here and
16 help me with this, please.

17 MR. HARDING: And, please, holler at
18 us if we're not loud enough. I generally
19 don't get criticized for being not loud
20 enough.

21 (Whereupon, Mr. Harding and
22 Mr. Stuart approached the
23 diagram at the front of the
24 room.)

1 BY MR. HARDING:

2 Q. Where are you on this exhibit? Is it
3 marked?

4 HEARING OFFICER HALLORAN: I think we
5 marked it Exhibit 2.

6 BY MR. HARDING:

7 Q. Okay. You're up here on the top left
8 of the middle panel and then Hayes rents home and
9 then there's a farm to the west here?

10 THE REPORTER: I can't hear
11 Mr. Stuart.

12 BY THE WITNESS:

13 A. I see the home there, but I don't know
14 -- there's a property that's behind him, that's not
15 40 acres.

16 BY MR. HARDING:

17 Q. Okay. So you're indicating the
18 property directly east of the Fisher farm, the Hayes
19 rent the home only and then what's south of there
20 you don't know?

21 A. Yeah, I don't know.

22 Q. And then from there there's the Genis?

23 A. It might be Millers because she got a
24 driveway and I heard she bought some --

1 Q. Bought this abandoned railway?

2 A. The whole strip.

3 Q. Okay. So there's a driveway that runs
4 along here in addition --

5 THE REPORTER: I'm sorry, I can't hear
6 anything.

7 HEARING OFFICER HALLORAN: Mr. Stuart,
8 you're going to have to speak up, please.

9 BY THE WITNESS:

10 A. There's a driveway that runs right
11 along the railroad tracks.

12 BY MR. HARDING:

13 Q. And then at the railroad tracks that's
14 all overgrown, right?

15 A. Yeah.

16 Q. Then you have moving east from the
17 Hayes where they rent the home only in that unknown
18 whatever 40 acres or so underneath, then you have
19 Genis moving east, then Colina (phonetic)?

20 A. Colina is not there anymore. He sold.

21 Q. And then the Stuart's property?

22 A. Uh-huh. In fact, Colina sold and the
23 guy who picked up Colina's property now owns this
24 property here.

1 Q. Now owns what, the northwest corner of
2 what's marked Miller farm?

3 A. Yeah. It's a little horseshoe type
4 thing.

5 Q. And then Mr. Grossman is down here
6 yet to the east of you where it's marked Grossman?

7 A. (Indicating.)

8 Q. And where does this fit on the big
9 map, the Washington Township map? Can you make this
10 kind of detail on that lower map? So it's -- what
11 would you think, somewhere between 20 and 30 degrees
12 off of dead south from the middle of the map maybe
13 four inches as a description?

14 A. It would be.

15 Q. It might be closer to 40 degrees
16 actually? That's half an inch right there, right?

17 HEARING OFFICER HALLORAN: You can
18 mark it with an X.

19 MR. HARDING: It's green and I think
20 we can just kind of leave it that it's
21 green and it says Phyllis Fisher and it has
22 an 80.

23 HEARING OFFICER HALLORAN: Okay.
24 Thank you.

1 BY MR. HARDING:

2 Q. Are you acquainted with J. Phillip
3 Novak?

4 A. No.

5 Q. Who was the legislature that you made
6 reference to at the end of the Judge Mathis show?

7 A. I don't remember that.

8 Q. You don't recall what legislature you
9 made reference to?

10 A. No.

11 Q. And are you acquainted with W. Lee
12 Deutsche?

13 A. I know Lee Deutsche.

14 Q. And how do you know him?

15 A. He's a farmer in town. He's on the
16 STAND committee. I think he is. I'm not sure.
17 I've only met him once.

18 Q. Okay. Is your wife more familiar with
19 him than you are?

20 A. Yes.

21 Q. And how so?

22 A. She's met him through STAND and she's
23 met him, you know, in town.

24 Q. And what is STAND?

1 A. It's saving farmland, you know, from
2 the airport. I think it stands for shut this
3 airport nightmare down.

4 Q. And your wife and Mr. Deutsche are on
5 this together or in this together?

6 A. Well, I don't know that for sure
7 because I don't go to the meetings. I just know
8 that that's where they met. I don't know if he's
9 there or he's part of it or --

10 Q. I understand.

11 MR. HARDING: I have no further
12 questions of this witness.

13 HEARING OFFICER HALLORAN: Thank you.
14 Mr. Stuart, redirect?

15 MS. STUART: Yes, I have a couple.

16 R E D I R E C T E X A M I N A T I O N

17 by Ms. Stuart

18 Q. Mr. Harding had mentioned the Colina
19 family that doesn't live there anymore. Did they
20 ever complain to you about the cannon noise?

21 MR. HARDING: Objection, hearsay and
22 foundation.

23 HEARING OFFICER HALLORAN: Ms. Stuart?

24 MR. HARDING: When, where, who

1 present, any instrumentality used, please
2 and my objection will go away.

3 MS. STUART: I wouldn't know when.

4 MR. HARDING: Ask please. I'm sorry.

5 HEARING OFFICER HALLORAN: Ms. Stuart,
6 I think is capable.

7 MS. STUART: Well, I didn't have much
8 sleep last night or the night before or the
9 night before.

10 BY MS. STUART:

11 Q. When the cannons first began on August
12 8th, 2001, did you ever speak to the Colina family
13 next door?

14 A. Yes, I did.

15 Q. Did they complain about the noise to
16 you?

17 A. I didn't talk to Carl about it, but I
18 talked to his wife.

19 Q. What is her name?

20 A. I don't remember.

21 Q. Kathy.

22 Okay. Did Kathy Colina, his wife,
23 ever express concern about what the cannons were
24 doing to any of the members of her family?

1 MR. HARDING: Objection, hearsay.

2 HEARING OFFICER HALLORAN: I'll allow
3 it. If you can answer, you may do so.

4 BY THE WITNESS:

5 A. Yes.

6 MR. HARDING: Well, there's hearsay on
7 top of hearsay also.

8 HEARING OFFICER HALLORAN: I've
9 already made my ruling.

10 MR. HARDING: Okay. I'm done.

11 BY THE WITNESS:

12 A. Yes. I talked to Kathy about the
13 cannons and she was very concerned about her
14 daughter, Danielle. Danielle was only about two or
15 three years old at the time and it terrified her.
16 She had to take and put Danielle in the house.
17 The other girls thought somebody was shooting. They
18 basically had the first impressions that I did, you
19 know, they thought it was a gun.

20 Q. Did Danielle go outside?

21 A. Her mother kept her in.

22 Q. What did Kathy say was going through
23 Danielle's mind? What was she afraid of?

24 A. She was afraid somebody had a gun

1 and that's about the extent of that.

2 Q. Okay. When did they sell their home?

3 A. We've had two neighbors in there in
4 the last two years. I can't be exactly sure on when
5 they sold their home. I know it was during the
6 summer. I helped him move out a couple of years
7 ago.

8 Q. Would 2002 sound correct?

9 A. Yes.

10 Q. The month of August?

11 A. Yes. It sounds right around there.

12 Q. After the Colina's left, there was a
13 new owner, am I correct?

14 A. Yes.

15 Q. What was the name of the new owner?

16 A. Jerry and don't ask me his last name
17 because I can't remember.

18 Q. And he was married?

19 A. Yes. He had a wife and her name was
20 Debbie.

21 Q. Okay. How did Jerry adapt to the
22 cannon noise? Did he ever complain to you?

23 A. Jerry was worried about his horse.

24 MR. HARDING: I'm going to object to

1 again foundation.

2 HEARING OFFICER HALLORAN: I'm sorry.

3 Read back the question, Terry, please.

4 (Whereupon, the requested
5 portion of the record
6 was read accordingly.)

7 MR. HARDING: That's a yes or no
8 question. Now we're into content.

9 HEARING OFFICER HALLORAN: It is a yes
10 or no question.

11 BY THE WITNESS:

12 A. Yes.

13 BY MS. STUART:

14 Q. Okay. When did Jerry move into that
15 home?

16 A. I'm real bad with dates.

17 MR. HARDING: It was asked and
18 answered -- or actually led and answered.
19 It was August of 2002.

20 HEARING OFFICER HALLORAN: Overruled.
21 He may answer again if he's able.

22 BY THE WITNESS:

23 A. It was August of 2002.

24

1 BY MS. STUART:

2 Q. Okay. What type of horse did Jerry
3 have that he was concerned about?

4 A. He had a racehorse and it's a stallion
5 and stallions are pretty unpredictable.

6 Q. It's a beautiful horse. How long did
7 he live in that house?

8 A. About a year.

9 Q. Do you know where he moved to?

10 A. Monticello.

11 Q. Okay. As far as the distance between
12 your home and the Fisher property, did you ever use
13 an odometer on your car to measure the distance
14 between the east end of the Fisher property line and
15 the west end of your property line?

16 A. Yes.

17 Q. Can you tell me what distance you
18 calculated it to be?

19 MR. HARDING: I'm going to object as
20 not relevant, but I don't expect it to
21 stand.

22 HEARING OFFICER HALLORAN: Where is
23 this going, Ms. Stuart?

24 MS. STUART: Just to find out what the

1 distance is between, you know, his property
2 and our property.

3 HEARING OFFICER HALLORAN: Between?

4 MS. STUART: To see how close the
5 cannon noise would project over to us, you
6 know, that was --

7 HEARING OFFICER HALLORAN: He may
8 answer if he's able.

9 BY THE WITNESS:

10 A. I think the map answers it. Basically
11 I wouldn't be -- when I think I did that I think it
12 was like four-tenths of a mile, but I can't be sure
13 on that.

14 MS. STUART: Okay. I have no further
15 questions.

16 HEARING OFFICER HALLORAN: Recross,
17 Mr. Harding?

18 MR. HARDING: Just a moment if I may.

19 (Brief pause.)

20 HEARING OFFICER HALLORAN: Sure.

21 MR. HARDING: I have no further
22 questions.

23 HEARING OFFICER HALLORAN: Thank you.
24 That is all, Mr. Stuart. Thank you again.

1 MR. STUART: Thank you.

2 HEARING OFFICER HALLORAN: Before I
3 forget, I do want to mark the chart
4 containing the photographs, maps, diagrams
5 and the propane cannon literature which Mr.
6 Harding objected to the literature itself,
7 however, I'm going to overrule it and I
8 believe Ms. Stuart is going to offer it
9 into evidence and I'll take it with me and
10 that will be marked as Complainants' No. 2.

11 Secondly, Ms. Stuart, I didn't
12 see, and just a little housekeeping, the
13 Fisher or Mr. Fisher and Ms. Barton's name
14 on the witness list. Was I missing
15 something there or -- because when I asked
16 you earlier you only had so many witnesses
17 and they were over and above. I mean, do
18 we have anymore surprise witnesses?

19 MS. STUART: No. We're done.

20 HEARING OFFICER HALLORAN: Do you see
21 where I'm coming from?

22 MS. STUART: Yeah.

23 HEARING OFFICER HALLORAN: Thank you.
24 Anything else in your case in chief? Did

1 you want to make a narrative or do you want
2 Mr. Stuart to direct you or --

3 MS. STUART: Do you want to ask any
4 questions?

5 HEARING OFFICER HALLORAN: About how
6 long do you think it will take?

7 MS. STUART: I don't think it will
8 take long.

9 MR. HARDING: I would not have a
10 problem with Ms. Stuart telling her story
11 under the -- as a narrative under the
12 reservation that any objections I make I'm
13 going to have to probably come in after the
14 objectionable material is in.

15 HEARING OFFICER HALLORAN: That's what
16 we discussed earlier?

17 MR. HARDING: Yeah. But I mean, it
18 might be cumbersome if Mr. Stuart isn't
19 familiar with the examination process.

20 HEARING OFFICER HALLORAN: We'll do it
21 that way and see how that works out. Ms.
22 Stuart can give her narrative of her
23 testimony.

24 MS. STUART: Okay.

1 HEARING OFFICER HALLORAN: So if you
2 just want to move over into the witness
3 chair and, you know, I'm not trying to push
4 you, it probably won't take long, it's 12:20
5 now so if it does take too long, we'll just
6 have to take a lunch in between. So raise
7 your right hand and Terry will swear you
8 in.

9 (Whereupon, the witness was sworn
10 in by the reporter.)

11 MS. STUART: As I stated with my
12 opening statement that this whole suit --
13 or not this suit, but hearing is all about
14 -- it's about noise. You know, it's not
15 about -- and it's about being a good
16 neighbor and I have worked diligently over
17 the last two years with trying to -- with
18 trying to put this together and find
19 solutions and answers and there have been
20 even two instances where I've, you know,
21 sent you a copy of the letter that I tried
22 to work things out with Mr. Fisher and
23 invite some type of a -- try to come to
24 some kind of resolution rather than coming

1 to this point at a hearing. You know, this
2 has been a great deal -- amount of work,
3 you know, and I've done everything, you
4 know -- I've gone through everything with a
5 fine-tooth comb and, you know, I just -- if
6 I calculate miles or distance or footage or
7 whatever, I make sure that it's absolutely
8 correct, I verify it with, you know, the
9 department of zoning with their maps, but
10 basically what this has come to is it's not
11 an angry situation that -- you know, we
12 didn't, you know, went into Judge Mathis
13 court or whatever and it's not about the
14 death of my dog, it's about my future and
15 my children's future and the investment
16 that I've made in my property. I want to
17 be able to go back outside and garden again
18 and enjoy my guests that come over and not
19 be waken up every morning at 5:30, you
20 know, to the sounds of cannons and have to
21 lose two hours of sleep every day. I want
22 to see my children, especially Michael, not
23 be at risk for, you know, a further hearing
24 loss, which will occur with our without the

1 cannons, but the cannons will add to the
2 loss, you know, and also, you know, you
3 would never understand it unless you lived
4 it or unless you walked in another man's
5 shoes and if anyone ever knew what these
6 sounds do to our pets -- our pets' behavior
7 affects us, you know, and it's not like you
8 can just take your pets and just get rid of
9 them, so that really deeply concerns me.
10 I feel that there's just far too many
11 residents in our area who are affected by
12 this type of noise. It's of no fault of
13 Mr. Fisher's, you know, but the zoning was
14 very poorly done, which I hope that Bobby
15 Petrunagaoro, you know, the state's attorney
16 office takes this into consideration and
17 makes some changes or something because
18 there are far too many residential homes
19 without farmers actually on this one mile
20 -- 1.2 mile stretch of road. To date, I
21 have counted three -- three working farmers
22 who actually live on their property, one
23 being Mr. Fisher and there's probably about
24 24 homes altogether and I -- that's very,

1 very easy to prove.

2 The affects of the cannons on me
3 are -- it's kind of like you have to
4 envision -- certain noises have very
5 negative impacts. Like, say, for instance,
6 if someone would drop a glass outside or
7 some place, you know, the first thing that
8 goes is oh my, God, did someone get cut,
9 you know, or a dripping faucet, you know,
10 that's not high in decibels, but it's still
11 very annoying, you know, and that's what
12 I'm trying to present before the Board
13 today is what is fair, you know, what is
14 fair to people and we really, you know,
15 need to focus on the noise issue and just
16 to try and move forward and just have a
17 more pleasing and pleasurable area in
18 which to live and that's what I would like
19 to see accomplished here, you know, and I
20 don't think that's asking much because a
21 lot of communities in the state of Illinois
22 have stopped the use of propane cannons.
23 Our area is really changing and it's
24 changing rapidly. We have a subdivision

1 that's like less than two miles away from
2 us and if you can look at all those little
3 red spots, you know, those all indicate
4 homes and those are people living on their
5 property and that's been the development
6 and the Washington Township planning
7 committee expects a case of sprawl
8 basically and we're fortunate enough to
9 live on ten acres in the country, which is
10 why we bought -- we purchased the home
11 because we love it, we absolutely love it,
12 it's like a little piece of heaven and, you
13 know, his twin brother died just a few
14 months ago and you have to savor every
15 minute there is in life, it goes by so
16 fast, you know, and then to be just
17 threatened by like these negative sounds is
18 just -- it just -- it just plays havoc on
19 you and basically that's just about all I
20 wanted to say and that the distance between
21 Mr. Fisher's property and my property comes
22 out to be a little bit less than two-tenths
23 of a mile or like 1,140 feet and I want to
24 see my kids enjoy their house, you know, I

1 want to see David, my son, not have to go
2 down to sleep in the basement. He's
3 written up testimony with an affidavit and
4 he's been very honest about everything.
5 One of the things that I pride in my family
6 with all my kids and I really try to
7 instill this is to be an honest person,
8 tell the truth because whenever you lie
9 you're going to get caught up and tangled
10 in that lie and I know that Ron's memory
11 doesn't appear to be that tactful, but I
12 will honestly say and I'll swear on a stack
13 of Bibles if I have to that -- and you can
14 ask him -- I mean, I have literally put my
15 family aside to do an enormous amount of
16 work and I've researched things to help Mr.
17 Fisher not to harm him, but -- like I drew
18 up this piece of -- this new equipment that
19 AFIS (phonetic) has come up with for really
20 getting the crows out of the roost, you
21 know, and there's another program that's
22 called --

23 HEARING OFFICER HALLORAN: If I can
24 interrupt? Is a roost the same thing as a

1 nest?

2 MS. STUART: Yes. It's their home is
3 what it is and that's where they spend
4 their nighttime. I think Mr. Fisher had
5 said that, right? You know, and that's
6 where the little culprits start. This new
7 device is a laser device and the neat thing
8 about is that you use it at nighttime
9 because it's only effective at night and it
10 just zaps them right out of there and they
11 -- the USDA has been very, very pleased
12 with the program, you know, and this new
13 device. So what I have done is not to
14 eradicate -- you know, not to take away his
15 right to farm or not to -- because I know
16 he has to protect his crops and he has to
17 make money, that's his livelihood, and so
18 I'm really, really trying to be a good
19 neighbor and to find solutions for him, you
20 know, but at the same time I want to get
21 rid of the noise pollution, you know, and I
22 think that at one point we all have to
23 learn to compromise and come to some kind
24 of a realistic approach to this problem

1 because it does not just affect -- you
2 know, it affected two neighbors next door,
3 they sold their houses, Mr. Genis, he's got
4 a testimony, he's at work, Ms. Cansiolossi,
5 her horses get, you know, a little crazy.

6 MR. HARDING: Objection.

7 MS. STUART: I know it's hearsay.

8 MR. HARDING: That's hearsay.

9 HEARING OFFICER HALLORAN: Sustained.

10 MS. STUART: And, you know, it's just
11 that in this day and age let's be practical
12 and let's respect one another, you know. I
13 mean, had I known, you know, that this area
14 was going to be used with propane cannons,
15 I wouldn't have bought the house, it's that
16 simple, you know, and then what I can't
17 understand is why, you know, one person
18 uses a cannon whereas nobody else does, you
19 know, and I read more and more articles,
20 that's why you got such a barrage of
21 stuff about -- you know, that they're not
22 -- they're not 100 percent effective unless
23 you move them, you know, and unless you use
24 it in combination with another device and

1 this is documented stuff, you know, from
2 just about everybody who sells the product,
3 including Reed Johnson (phonetic), you
4 know, over there, they'll tell you the same
5 thing.

6 HEARING OFFICER HALLORAN: Reed
7 Johnson, you mean the literature you have
8 on Exhibit 2?

9 MS. STUART: On the Scare-away III
10 cannon.

11 So basically that's what I've
12 done, Mr. Halloran. You know, I've tried
13 to do my homework and I've tried to be
14 helpful. You know, maybe I'm not doing
15 everything right going pro se, but at least
16 I've attempted to make a really -- I gave
17 it 120 percent.

18 HEARING OFFICER HALLORAN: I'm sure
19 the record will reflect that. Thank you.

20 MS. STUART: And that's all I can say.

21 HEARING OFFICER HALLORAN: Thank you.
22 Mr. Harding?

23 MR. HARDING: Yes, thank you.

24

1 C R O S S - E X A M I N A T I O N

2 by Mr. Harding

3 Q. I don't have a lot for you,
4 Ms. Stuart. I would like to do some exhibit
5 authentication while we're here and I've done one
6 through three, five, six, seven, nine and 21 through
7 Mr. Stuart and I realize it's early to be offering
8 them for admission, it's not our case in chief, but
9 if the hearing officer is satisfied with the
10 foundation on those, then I'm not going to bother
11 with them right now. I'll just deal with Ms. Stuart
12 on the other exhibits.

13 HEARING OFFICER HALLORAN: Which ones
14 did we go there with Mr. Stuart?

15 MR. HARDING: One, two, three, five,
16 six, seven, nine, 21 and the videotape.

17 MR. HARDING: Okay. Just to save time
18 I'm going to set them aside. I don't think
19 we need to talk about them twice.

20 BY MR. HARDING:

21 Q. Do you recognize Defendants' Exhibit
22 4?

23 A. Yes, I do.

24 Q. And did you write that?

1 A. Yes, and when I wrote this I was very
2 angry.

3 Q. Did you write it to Franklin Fisher?

4 A. Yes.

5 Q. Did you write it to him on the date
6 that is on there?

7 A. Yes, I did.

8 Q. And that date is August 15th, 2001?

9 A. Uh-huh.

10 Q. I believe?

11 A. Yes.

12 Q. Is that yes?

13 A. Yes.

14 Q. By the way, one of the tricks to
15 working with a transcript, Ms. Stuart, so you know
16 is they can only take down words.

17 A. Okay.

18 Q. I'd like to show you Defendants'
19 Exhibit 8. Do you recognize that?

20 A. No.

21 Q. You have never seen it before?

22 A. Never.

23 Q. Okay. It did, in fact, come attached
24 to one of our requests for admission, did it not?

1 A. No -- no, it did. You sent it to me
2 asking if I had -- if I had authored it or --

3 Q. Do you know who did this?

4 A. I don't have a clue because I'll tell
5 you something, this is probably off the record
6 because it's not a yes or no, if I were going to
7 send a letter to Mr. Fisher, and I said this to you
8 before, it would not -- it would be a thank you
9 letter if he just didn't use it.

10 Q. Okay.

11 A. I have a good memory.

12 Q. Just you indicated that you were
13 looking for some sort of a resolution here or some
14 sort of an agreement and that you had asked Mr.
15 Fisher about that, some sort of agreed way of
16 handling it?

17 A. I sent you two letters.

18 Q. I'm asking you a question.

19 A. Yes, I did.

20 Q. Okay. What would your idea of an
21 acceptable solution be?

22 A. Not to use the cannons and try
23 something different.

24 Q. So the cannons cannot be part of any

1 acceptable solution, is that correct?

2 A. I would have to think about what the
3 solution was or what the offer was.

4 Q. Okay. I'd like to show you
5 Defendants' Exhibit 10. Without the phone numbers
6 that appear on it, is that something that you wrote?

7 A. Yes, it is.

8 Q. And you circulated it to your
9 neighbors?

10 A. A couple.

11 Q. Who?

12 A. Probably nobody more than just a
13 couple down the street and another few down the
14 street and this is -- I have a right to do this.

15 Q. I'm not asking if you have a right.
16 I'm asking you who all you gave it to.

17 A. I don't know who I gave it to.
18 I just went up and down and just dropped it in a
19 couple -- on the sides of a couple of mailboxes.
20 I don't know specifically who I gave it to.

21 Q. And you actually have called the
22 police on Frank Fisher in excess of ten times, have
23 you not?

24 A. No.

1 Q. A series of days, three days separated
2 two days apart in 2002?

3 A. I have records of it, but it was never
4 over ten.

5 Q. How many times?

6 A. Maybe seven.

7 Q. And was Mr. Fisher ever arrested or
8 prosecuted?

9 A. No.

10 Q. Why did you keep calling?

11 A. Why did I keep calling?

12 Q. Why did you keep calling the police?

13 The police advised you that there was no crime being
14 committed, did they not?

15 A. Well, you know, that's kind of an
16 interesting thing because Mr. Turngren (phonetic) on
17 8/27/01, who is an officer of the Will County
18 Sheriff's Department, had -- was very concerned
19 about this -- about the situation with the cannons.

20 Q. You mean initiating on his own without
21 anyone calling him, he decided to become concerned?

22 A. No. He came over and he talked to me
23 and he said this is crazy.

24 Q. Did you ask him to come over?

1 A. No. I called him complaining of the
2 noise.

3 Q. I see.

4 A. If I don't complain about the noise
5 then obviously I'm not upset by the noise.

6 Q. I see. I'd like to show you
7 Defendants' Exhibit 11. Do you recognize that
8 document? It's a letter you sent to me and
9 Mr. Halloran, is it not?

10 A. Yeah, that's my signature, but there
11 was a situation that was going on. I think I was
12 having surgery.

13 Q. Okay. We originally had a hearing
14 scheduled for January 23rd of 2003, did we not, for
15 this case?

16 A. Uh-huh.

17 Q. And you requested that that be
18 continued, did you not?

19 A. Uh-huh.

20 Q. And I'd like to show you Defendants'
21 Exhibit 12. Do you recognize that document?

22 A. Yes, I do.

23 Q. Okay. And did anyone inform you that
24 my contact with Mr. Zak was an ethical violation?

1 A. No.

2 Q. And did you read the statute that you
3 referenced in that letter?

4 A. I referenced the ex-parte
5 communication part.

6 Q. Did you read the statute?

7 A. Yes, I did.

8 Q. Is Mr. Zak a board employee, to your
9 knowledge?

10 A. No.

11 Q. I'd like to show you -- oh, you did
12 write 12, right?

13 A. Uh-huh.

14 Q. Okay. And you sent that to myself and
15 Mr. Halloran, correct?

16 A. And it was approved.

17 Q. By?

18 A. By Mr. Halloran.

19 HEARING OFFICER HALLORAN: I approved
20 what?

21 MS. STUART: For an extension of time.

22 BY MR. HARDING:

23 Q. Okay. Eleven is the extension of
24 time, right?

1 MR. STUART: There's two extensions.

2 BY THE WITNESS:

3 A. There were a couple of extensions.

4 BY MR. HARDING:

5 Q. Okay. I'd like to show you Exhibit 13
6 -- Defendants' Exhibit 13. Do you recognize that?

7 A. Uh-huh.

8 Q. And did you write that letter?

9 A. Yes, I did.

10 Q. And did you send that to myself and
11 Mr. Halloran or to Mr. Halloran?

12 A. Yes.

13 Q. Oh, you sent it to Mr. Halloran, cc to
14 me?

15 A. Yes.

16 Q. Yes?

17 A. Uh-huh.

18 Q. And I'd like to show you Defendants'
19 Exhibit 14. Did you write that letter?

20 A. Yes, I did. It was after we lost a
21 friend.

22 Q. And I'd like to show you Defendants'
23 Exhibit 15. Did you write that letter?

24 A. Uh-huh.

1 Q. And all of these letters were written
2 at the date shown on them, is that correct --
3 written and sent roughly at those dates?

4 A. Yeah, roughly.

5 Q. The same way with 14, 13, 12 and so
6 on, each one has a date on it, they were sent on the
7 dates?

8 A. This one doesn't quite seem like it's
9 the right date, though.

10 Q. Let me see what we've got.

11 A. Because that was right after Dave
12 Casiono (phonetic) committed suicide.

13 Q. Right. When I had to leave at the end
14 of April to bring my sons back after the suicide
15 death of their friend, it's in this letter?

16 A. Uh-huh.

17 Q. So roughly at its date?

18 A. Uh-huh.

19 Q. Okay. And Defendants' Exhibit 16, did
20 you write that letter?

21 A. Uh-huh.

22 Q. And you sent it to me on September
23 3rd, 2003?

24 A. Right, cc'd it to Mr. Halloran.

1 Q. Did you?

2 A. Yes.

3 Q. I'm sorry. I didn't see that.

4 HEARING OFFICER HALLORAN: It states
5 at the bottom of Respondents' Exhibit No.
6 16, cc Bradley Hardy (sic) slash hearing
7 officer, Pollution Control Board.

8 MR. HARDING: Now you know what you
9 get when you cross a hearing officer and a
10 lawyer -- private practice lawyer.

11 BY MR. HARDING:

12 Q. I'd like to show you Defendants'
13 Exhibit 17. Did you write that letter?

14 A. Yes.

15 Q. Did you send it roughly at its date,
16 September 20th, to the recipients indicated?

17 A. Uh-huh.

18 Q. And pardon me?

19 A. And I found those documents.

20 Q. And I'd like to show you Defendants'
21 Exhibit 18. Did you write that letter?

22 A. Uh-huh.

23 Q. And you indicate in there that Frank
24 had not used the cannons so often in 2003?

1 A. He did not.

2 Q. Okay. And there's also a handwritten
3 line at the bottom. Mr. Harding, please keep this
4 letter in your files for this case. What is the
5 purpose of that?

6 A. I want it to be part of the record.

7 Q. You do know that I'm not the keeper of
8 the record in this case?

9 A. Yes, I do know that.

10 Q. And you did send that letter around
11 October 10th?

12 A. Uh-huh.

13 Q. To me and then a copy to Mr. Halloran
14 and a copy to Frank Fisher?

15 A. Yes. I wanted to make sure that
16 Mr. Fisher knew I was making an attempt.

17 HEARING OFFICER HALLORAN: I want to
18 interject here. When you said you wanted it
19 in the record, I think you just sent it to
20 me, you did not send it to Dorothy Gunn as
21 with most of these letters, if not all.
22 That does not get in the record as the rule
23 states if you just send it to me. You have
24 to file --

1 MS. STUART: Right.

2 HEARING OFFICER HALLORAN: File with
3 the clerk and then you send me a copy as
4 well. So I just wanted to clear that up.
5 When you said in the record, that kind of
6 alarms me. I know we talked about this
7 before and it is in the rules.

8 MS. STUART: And I finally got it.

9 HEARING OFFICER HALLORAN: Anyway, you
10 may proceed. Thank you.

11 BY MR. HARDING:

12 Q. Okay. Defendants' Exhibit 19, did you
13 also compose and send that letter?

14 A. Yes, I did.

15 Q. It appears to be to Mr. Halloran?

16 A. Uh-huh, because Mr. Halloran I talked
17 about my brother-in-law dying.

18 Q. Did you blind copy me on this because
19 I don't recall receiving any letters from
20 Mr. Halloran so I'm assuming that you blind copied
21 me?

22 HEARING OFFICER HALLORAN: Well, I
23 think we discussed that Mr. Harding when I
24 called you and I think we had a

1 conversation and either -- I think Ms.
2 Stuart was supposed to forward you a copy.

3 MR. HARDING: I may have gotten it
4 before.

5 MS. STUART: I think I did.

6 HEARING OFFICER HALLORAN: Because I
7 remember distinctly when you said -- I
8 asked you if you had an objection to
9 continue -- was this to continue the
10 hearing?

11 MR. HARDING: Right.

12 HEARING OFFICER HALLORAN: You said
13 basically what can I object to? Whether
14 you received the letter or not, but
15 somebody was supposed to forward it to you and I
16 thought Ms. Stuart was going to.

17 MS. STUART: I did because I didn't
18 cc it on the bottom.

19 MR. HARDING: Evidence here, though,
20 that I did get it.

21 BY MR. HARDING:

22 Q. I'd like to show you Defendants'
23 Exhibit 20. Do you recognize this story,
24 opportunistic crows take a liking to city suburbs?

1 A. No.

2 Q. Did you not send me this letter -- or
3 newspaper clipping?

4 A. No.

5 Q. August 5th, 2002?

6 A. Never. I've never even seen that.

7 Q. You did not?

8 A. Huh-huh. What is that dated?

9 Q. August 5th 2002.

10 A. I don't remember ever seeing this.

11 HEARING OFFICER HALLORAN: We're
12 looking at Exhibit 20?

13 MR. HARDING: Yeah, Exhibit 20 -- is
14 it 20?

15 BY THE WITNESS:

16 A. No. I've never even read this
17 article.

18 BY MR. HARDING:

19 Q. Okay.

20 A. Somebody else must have sent you that.

21 Q. You may find this difficult to
22 believe, but I don't have a lot of people sending me
23 articles.

24 I'd like to show you -- oh, we did

1 talk about 19 ad nauseam.

2 Defendants' Exhibit 24, do you
3 recognize that?

4 A. Uh-huh.

5 Q. Did you write that letter to the
6 editor?

7 A. Yes, I did.

8 Q. Do you recall when it appeared?

9 A. Oh, this had to be around Christmas
10 because Mr. Einhorn got really mad at me.

11 Q. Who is Mr. Einhorn?

12 A. He's the supervisor of Crete Township.

13 Q. You wrote it and it was published in
14 the local paper?

15 A. Yeah, but I really can't give you a
16 date.

17 Q. Okay. And Defendants' Exhibit 25,
18 did you write that letter to the editor?

19 A. Uh-huh. I write this stuff for STAND.

20 Q. S-T-A-N-D?

21 A. Uh-huh, because I'm against the
22 airport.

23 Q. Defendants' Exhibit 26, do you
24 recognize that?

1 A. This is the one that Einhorn got mad
2 about. Yes, I wrote this.

3 MR. HARDING: I'm sorry. Did you get
4 that comment?

5 HEARING OFFICER HALLORAN: Yes, I did.

6 BY MR. HARDING:

7 Q. You wrote Defendants' Exhibit 26?

8 A. Uh-huh.

9 Q. And it appeared in your newspaper?
10 Do you recall when that appeared?

11 A. I don't know. I can't give you a
12 specific date, but I would say it was in 2002.

13 Q. Okay.

14 A. Yeah. It would have to be because
15 Don's death was 2003.

16 Q. And --

17 HEARING OFFICER HALLORAN: It has to
18 be after December 4th, 2002?

19 MS. STUART: Yeah, it was right around
20 Christmas.

21 MR. HARDING: Absolutely no question
22 about that.

23 BY MR. HARDING:

24 Q. I'd like to show you Defendants'

1 Exhibit 27. Do you recognize that?

2 A. Uh-huh.

3 Q. You wrote that letter to the editor?

4 A. Uh-huh.

5 Q. Okay. These are in addition --

6 HEARING OFFICER HALLORAN: Is that a

7 yes? I'm sorry.

8 MS. STUART: Yes.

9 HEARING OFFICER HALLORAN: Thank you.

10 BY MR. HARDING:

11 Q. This one makes reference to an event

12 of the 2nd of October and that's the only other

13 date. Do you remember when this could have been?

14 A. If you have copies of these, why don't

15 you have the dates on them?

16 Q. I asked you a question, ma'am. Do you

17 remember when it is?

18 A. I really don't remember.

19 Q. Now, you live in Beecher, Illinois?

20 A. Beecher.

21 Q. 213 East Corning Road?

22 A. East Corning.

23 Q. How long have you lived there?

24 A. Five years.

1 Q. Since '99?

2 A. Right. June 24th will be five years.

3 Q. And where did you move from?

4 A. Oak Forest, Illinois, 15630 Sierra
5 Drive, Oak Forest, Illinois 60452, past phone number
6 -- do you want that?

7 Q. No, it's not necessary.

8 Where is Oak Forest?

9 A. Oak Forest is right near the Tinley
10 Park area, which is considered to be a south suburb
11 and it's Cook County.

12 Q. Is Beecher considered to be a south
13 suburb?

14 A. Is Beecher considered to be a south
15 suburb? Well, Beecher has a town, it's a
16 municipality so it's really kind of -- it's
17 incorporated and unincorporated.

18 Q. Parts of it incorporated, parts of it
19 unincorporated?

20 A. Uh-huh.

21 Q. Oak Forest is a south suburb, right?
22 How far is Beecher from Oak Forest?

23 A. Thirty-five miles.

24 Q. And are we talking about -- what

1 direction is Beecher from Oak Forest?

2 A. South.

3 Q. South. Is it 35 miles farther south
4 than Oak Forest?

5 A. No. Oak Forest is 35 miles north of
6 Beecher.

7 Q. I'm going to leave that alone.

8 When we were looking at this --
9 I actually had this -- appears to be a part --

10 A. It is part of that map.

11 Q. -- of this map. It appears to be the
12 center section, but for reference, can we go over to
13 the big map because it's an exhibit and if you make
14 reference to things that aren't exhibits it gets
15 confusing?

16 (Whereupon, Mr. Harding and Ms.
17 Stuart went up to the diagram in
18 the front of the room.)

19 BY MR. HARDING:

20 Q. Let's just look at the little map,
21 upper left, middle section, do you see Indiana
22 Avenue -- where it's written Indiana Avenue --
23 Indiana Ave, do you see that? What's up there?

24 A. What's up there?

1 Q. Yeah.

2 HEARING OFFICER HALLORAN: Ms. Stuart,
3 you have to speak up, please.

4 BY THE WITNESS:

5 A. This particular area here -- okay. We
6 are here.

7 BY MR. HARDING:

8 Q. Is the purple on the upper right --
9 the purple border indicating that that is the area
10 covered by the --

11 A. This area here is within this box.

12 Q. Okay. It's cut out from the upper
13 right?

14 A. Right. So this area -- this
15 particular area here would be considered -- the
16 white part would be -- that is rural residential.

17 Q. Okay. Let's not strain all of this.
18 On the bottom map in the center you have -- it looks
19 like something is outlined in yellow?

20 A. This is the town of Beecher.

21 Q. Is that the incorporated town of
22 Beecher?

23 A. Yes, it is.

24 Q. The yellow shaded area?

1 A. Yes, it is.

2 Q. And everything outside of that is
3 unincorporated?

4 A. Well, this isn't.

5 Q. Which isn't?

6 A. Which is a subdivision.

7 Q. We're talking about the upper left in
8 square six?

9 A. Over here?

10 Q. Yes.

11 A. Streamwood Estates.

12 Q. Let's just look at the map.

13 A. I don't know. I'm not a zoning
14 person.

15 Q. Let's look at the map for a second so
16 we're not pointing to something and having people
17 say later what the heck were they talking about.

18 We're on the bottom map, right,
19 and you're pointing to square six, which is in the
20 upper left corner of that bottom map.

21 MR. STUART: Objection. He's asking
22 her questions that she cannot possibly
23 answer because she doesn't do the taxes for
24 this particular area.

1 HEARING OFFICER HALLORAN: If she can
2 answer -- I'll overrule your objection and
3 we'll see how far she goes. She can answer
4 to the best of her ability. Mr. Harding
5 can ask one more time and we'll see where
6 we are.

7 MR. STUART: Okay.

8 BY THE WITNESS:

9 A. Okay. What is your question again,
10 Mr. Harding?

11 BY MR. HARDING:

12 Q. What is in the upper left-hand corner
13 there, that number six?

14 A. There are small tract homes, which is
15 anything under five acres and then this is a
16 subdivision. See all these little yellow areas?

17 Q. You've got to make reference, they're
18 never going to be able to follow. You have to say
19 where you are in words, point -- do with your mouth
20 what you're doing with your finger, point with
21 words.

22 A. I think my husband is right, I'm not a
23 tax assessor. I mean, I wouldn't be giving you an
24 honest answer because I don't know the answer so

1 therefore I can't answer it.

2 HEARING OFFICER HALLORAN: I think the
3 record will affect to the best of her
4 ability she has answered your question
5 so --

6 MR. HARDING: I believe so.

7 HEARING OFFICER HALLORAN: -- if we
8 can please move on. Thank you.

9 BY MR. HARDING:

10 Q. Now, each of those larger areas in
11 white have no tract housing on them, right? You've
12 examined neighborhoods, you had things to say about
13 it, but when you look at the white spaces, the red
14 spaces were multi-family or tract housing, right?

15 MR. STUART: Objection. We've already
16 established she's not an expert on this so
17 why is there still questions on it?

18 HEARING OFFICER HALLORAN: Yeah, I
19 agree. I thought we were finished with the
20 map, now we're going back to it again.

21 MR. HARDING: Well, we're not finished
22 with the map entirely. We're finished with
23 the what is incorporated, what isn't
24 incorporated.

1 HEARING OFFICER HALLORAN: I think she
2 was having trouble trying to answer your
3 questions all along here regarding tracts,
4 multi-family, that kind of thing.

5 Can you answer that, Ms. Stuart?
6 We backed away from the map. I thought
7 everything was finished. I'm not sure
8 where you're going with this, Mr. Harding,
9 but, Ms. Stuart, if you can answer, please
10 do so.

11 I do remind Mr. Harding that he
12 said he had a few questions, but it's been
13 35 minutes now, but you may proceed.

14 BY THE WITNESS:

15 A. What I can tell you that I know for a
16 fact is that anything that is in the red on the
17 large map are areas where there are homes. Even
18 though it's on a small tract, it could be -- you
19 know, I don't know what it is or how it's zoned
20 because we've got the strangest zoning system.

21 HEARING OFFICER HALLORAN: There's
22 your answer, Mr. Harding.

23 BY MR. HARDING:

24 Q. You mentioned there was 1,140 feet

1 between your property and the Fisher property?

2 A. Somewhere around there.

3 Q. Is that from your west lot line to his
4 east lot line?

5 A. Yes. That's taking in the easements
6 that are there, the railroad tracks, which have no
7 type of metal rails to them, it's just overgrown,
8 it's -- I don't know what it is, Helen bought it,
9 Helen Miller, and I have calculated everything to
10 the best of my knowledge and if you really look at
11 the map and you measure from the Fisher line to the
12 end of Cottage Grove, that is exactly -- exactly one
13 mile from the east side of his property because I
14 did do that with the odometer and then I went back
15 and I measured all the other homes to see how many
16 tenths per mile that there was and all the numbers
17 added up.

18 Q. So it's about a mile -- it's a mile
19 from --

20 A. It's one mile precisely.

21 Q. -- from him to Cottage Grove?

22 A. On the east --

23 Q. And 1,140 feet from his east lot line
24 to your west lot line?

1 A. Absolutely.

2 Q. Okay.

3 A. Approximately.

4 MR. HARDING: I have no further
5 questions of Ms. Stuart.

6 HEARING OFFICER HALLORAN: We'll, I
7 guess, discuss these exhibits during your
8 case in chief.

9 MR. HARDING: Well, I'll move them
10 then. I'm not going to move them now.

11 HEARING OFFICER HALLORAN: That's
12 great. Well, we're going to have to take a
13 lunch now. I want everybody to be back
14 here promptly at 1:45 so we can get Mr.
15 Zak's testimony in. I'm not sure how long
16 his will last, but we only have this room
17 until approximately 5:30. This is taking a
18 little longer than I expected. I didn't
19 expect the two others witnesses that Ms.
20 Stuart called, but in any event, 12:45,
21 12:46, 45 minutes, have a great lunch.
22 Thank you.

23

24

1 (Whereupon, after a short
2 lunch break was had, the
3 following proceedings
4 were held accordingly.)

5 HEARING OFFICER HALLORAN: We're back
6 on the record from a lunch break, it's
7 closer to 2:00, and we're still in the
8 complainants' case in chief and I believe
9 she was going to call Mr. Zak to the stand,
10 but before that, I told everyone that I was
11 going to take another look at Greg Zak's
12 proposed testimony and tailor my earlier
13 ruling and because Ms. Stuart -- the
14 discovery cutoff was October 2003. On
15 March 1st -- I believe on or about March
16 1st, 2004, eight dates ago, I received, and
17 it has not been filed, a log of cannon
18 sound measurements dated July 28th, July
19 31st, 2002, August 4th, 2002, August 15th,
20 2002 and August 25th, 2002 and I believe
21 that's about it, but here is my ruling
22 regarding Greg Zak's testimony: He may
23 testify to anything that does not impinge
24 upon Ms. Stuart's sound measurements. With

1 that said, anything that is said, and Mr.
2 Harding can remind the record and the board
3 and myself if he feels the need to be,
4 anything that Mr. Zak talks about
5 Ms. Stuart's sound measurements, I'm not
6 going to allow, but I will take it in the
7 record as an offer of proof and that's not
8 to say that the submission of Mr. Zak's
9 proposed testimony, testimony outline dated
10 February 26th and received by me and I
11 believe Mr. Harding on or about March 1st,
12 2004 was not -- I don't think -- I think it
13 was a belated filing or submission. I
14 think we had plenty of time before that to
15 turn this over and I am a little concerned
16 about that, but with that said, I think the
17 respondents were put on notice pretty much
18 to everything based on Mr. Zak's report
19 dated -- I think I received it September
20 11, 2003. So with that said and there's no
21 other issues, we can proceed.

22 MS. STUART: Okay.

23 MR. STUART: There was one issue as
24 far as the tape was concerned.

1 HEARING OFFICER HALLORAN: You have to
2 stand up to the mike, sir.

3 MR. STUART: I'm sorry. There was one
4 issue concerning the tape.

5 HEARING OFFICER HALLORAN: Okay.
6 We haven't gotten to that yet. Mr. Harding
7 will do it in his case in chief, as I
8 recall.

9 MR. HARDING: Well, I'm going to
10 tender it. The foundation is lain and
11 we've --

12 HEARING OFFICER HALLORAN: And then
13 I'm going to take it under advisement and
14 make my ruling, whether it's relevant or
15 not because I don't think there's a
16 question as to authenticity, just to
17 relevance to this matter.

18 MR. STUART: Well, there is --

19 HEARING OFFICER HALLORAN: Sir, you're
20 going to have to -- I'm sorry.

21 MR. STUART: There is kind of a
22 question of authenticity and it's mainly
23 because Barbara forgot. That tape has been
24 edited. That wasn't the original case. It

1 was edited for TV so the tape --

2 HEARING OFFICER HALLORAN: This is --
3 we talked about it yesterday, Mr. Stuart,
4 and we talked about it this morning,
5 there's no problem with it and now we're
6 flip-flopping around regarding authenticity
7 and I'm getting a little dizzy.

8 MS. STUART: He just came back from
9 Ohio yesterday.

10 HEARING OFFICER HALLORAN: Well, I
11 appreciate that. So now you're objecting
12 to authenticity?

13 MR. STUART: Basically yes because
14 it's not the original taping of the show,
15 it's the edited version, but I'm not
16 opposed to admitting the tape.

17 HEARING OFFICER HALLORAN: Based on
18 authenticity?

19 MR. STUART: I want to note it's not
20 authentic because it's been edited, but,
21 you know, I'd like to get that on the
22 record.

23 MR. HARDING: Can I possibly offer an
24 olive branch here?

1 HEARING OFFICER HALLORAN: Sure. That
2 would be great. I'm confused.

3 MR. HARDING: I know nothing about
4 television other than what I see and so we
5 can assume that my mind is completely
6 erotic because I have seen television, but
7 I gather that they do edit for
8 publication. They film something and they
9 don't show everything that they film and
10 they cut out parts and I think that's what
11 Mr. Stuart is referring to here and we
12 would be willing to stipulate that this is
13 edited for television, if you will, and
14 submit it strictly for the purpose of
15 demonstrating that each of the people who
16 said things on it actually said the things
17 that they appear to say.

18 HEARING OFFICER HALLORAN: I thought
19 that was understood either at our prior
20 conference or this morning.

21 MR. STUART: Yeah. The only problem
22 we had with the tape, and I didn't want to
23 interrupt you, but the only problem we have
24 with the tape is we would appreciate if the

1 Board saw the whole tape, not just sections
2 of the tape.

3 HEARING OFFICER HALLORAN: Okay. The
4 record will so note. I can't direct
5 them to watch the whole tape, but they'll
6 look at -- I assume they will and after
7 reading your concerns I'm certain they will
8 review the whole tape.

9 MR. STUART: Okay. Thank you.

10 MR. HARDING: And I would reiterate at
11 this point that the tape of the actual
12 show, because it has commercials, the gist
13 of it starts about four minutes into the
14 tape and ends about 20 or 21 minutes into
15 the tape.

16 HEARING OFFICER HALLORAN: Okay. All
17 right. So right now we're fine based on
18 the stipulation to the authenticity, the
19 edited version for TV, but what's hanging
20 out there still is the relevancy, which I
21 will rule on after I take a look at it, but
22 in any event -- all right. We got that out
23 of the way. Ms. Stuart?

24 MS. STUART: Okay. I'm going to call

1 Greg Zak as my next witness as being a
2 sound expert.

3 HEARING OFFICER HALLORAN: Raise your
4 right hand and Terry will swear you in,
5 please.

6 (Whereupon, the witness was
7 sworn by the reporter.)

8 WHEREUPON:

9 G R E G Z A K,
10 called as a witness herein, having been first duly
11 sworn, deposeeth and saith as follows:

12 D I R E C T E X A M I N A T I O N
13 by Ms. Stuart

14 Q. Mr. Zak, were you employed by Ron and
15 Barb Stuart as a noise sound expert?

16 A. Yes, I was.

17 Q. Okay. Can you describe your education
18 for us?

19 A. My education began in the area that
20 I'm specialized in in the United States Marine Corp.

21 HEARING OFFICER HALLORAN: I'm sorry,
22 Mr. Zak. Ms. Stuart, you sent me something
23 on March 1st and among other things said
24 you enclosed a resume of Mr. Zak and it was

1 not enclosed. Do you have an extra
2 resume --

3 MS. STUART: I think I do.

4 HEARING OFFICER HALLORAN: -- of
5 Mr. Zak?

6 MR. HARDING: Under normal
7 circumstances, I would have a problem with
8 the qualifications since they weren't
9 revealed in discovery, but Mr. Zak's
10 qualifications before the Pollution Control
11 Board are probably as well known to the
12 Board as 35 Illinois Administrative Code so
13 I'm not sure that we couldn't do this by
14 stipulation or whatever --

15 HEARING OFFICER HALLORAN: That would
16 be fine with me.

17 MR. HARDING: -- that he's a highly
18 qualified sound expert.

19 HEARING OFFICER HALLORAN: And, in
20 fact -- well, in any event, that would be
21 fine with me. So it's stipulated that
22 you're a qualified sound expert so we can
23 skip the preliminary --

24

1 BY MS. STUART:

2 Q. Okay. Mr. Zak, you came out to my
3 residence at 213 East Corning Road on August 2nd?

4 MR. HARDING: Objection, leading.

5 BY MS. STUART:

6 Q. Did you come out to my home at 213
7 East Corning Road on August 2nd, 2002?

8 A. Yes.

9 Q. What was the purpose?

10 A. The purpose was to examine the area
11 and take ambient measurements of the sound present
12 in the area on that day. I was given a tour of the
13 area by yourself, walked your property, observed the
14 area in general, drove up and down your road that
15 runs east and west. The extreme eastern end I drove
16 to was a white church and then the extreme western
17 end would have been Dixie Highway, I believe it's
18 Route One and I observed the various homes in the
19 area, farms in the area, the general nature of the
20 area. From what I could see it consisted of an area
21 of --

22 MR. HARDING: I'm going to object.

23 We're getting into a narrative. It's way
24 past the question.

1 HEARING OFFICER HALLORAN: You know
2 what, I am going to allow a little more
3 narrative than usual, but every once in a
4 while, Ms. Stuart, please interject and ask
5 another question.

6 MS. STUART: Okay.

7 HEARING OFFICER HALLORAN: Thanks.

8 BY THE WITNESS:

9 A. Again, I observed home sites of three
10 to five acres and also farm fields in the area.
11 The character of the area was one of what I would
12 classify as a very rural residential type of area,
13 one that appeared to be gradually going through a
14 transition from what was at one time probably
15 largely a farm area to now developing into a
16 residential area of large lots.

17 BY MS. STUART:

18 Q. Okay. Did you find the -- did you
19 find there to be a lot of traffic on the road?

20 A. The time we were there I observed
21 virtually no traffic on the road. If I had to
22 characterize the traffic and I didn't make an
23 attempt to accurately count it, but on the order of
24 a vehicle every 15 or 20 minutes and the vehicle

1 would typically be either a car or a pick-up truck.

2 Q. Okay. I have here a report from you
3 that was done on September the 8th, 2003, which was
4 mailed to me. Do you recognize this?

5 A. Yes, I do.

6 Q. Okay. Being a non sound expert, could
7 you explain the figures that you came up with on the
8 bottom as far as the sound levels?

9 A. Yes --

10 MR. HARDING: Just for reference, are
11 we talking about the middle of the second
12 page?

13 MS. STUART: Yes, we are.

14 MR. HARDING: Okay. Thank you.

15 BY THE WITNESS:

16 A. Yes. While we were at your residence
17 we used our realtime analyzer to take measurements
18 to determine what the ambient in your area would be.
19 On the second page of the reference letter dated
20 September 8th of 2003 describing our August 2nd of
21 2002 visit, you have a table that describes our
22 ambient measurements both in terms of octave band
23 and then the last square there is marked dBa and
24 it gives us an aweighted measurement of 43.5 over

1 the time we were there and I believe it describes in
2 the letter that the measurement we had there
3 represents wind more than anything else, that in my
4 opinion, the level would probably be at least ten
5 decibels lower than that had we not had to take the
6 measurements in a 20-mile an hour wind.

7 Q. So what is the average decibels for
8 all those readings?

9 A. Well, again, I think the way we'd
10 characterize it would be to look at the dBa and
11 note the dBa was 43.5 and -- that that would
12 characterize the area as being a very quiet area,
13 it's a fairly low ambient, but, again, in my
14 opinion, the ambient would probably under conditions
15 of say low or no wind have produced a level of
16 somewhere around 33 to 35 dBa so what we're reading
17 there in essence is wind because of the fact we were
18 taking the measurement in a 20-mile an hour wind.
19 The Board requires a wind of not more than 12 miles
20 per hour, but due to the fact we were there that day
21 I thought it was important to take a measurement
22 even though the wind was high and then we would --
23 produced an ambient measurement that would be above
24 that what we would normally record, but still

1 demonstrate that the area is a very, very quiet
2 area.

3 Q. Okay. Did you hear any traffic from
4 Route One, which is about --

5 MR. HARDING: Objection. If we get
6 into which is about she's going to be
7 testifying rather than asking a question.

8 HEARING OFFICER HALLORAN: Sustained.
9 Just rephrase the question. Thanks, Ms.
10 Stuart.

11 BY MS. STUART:

12 Q. Did you hear any traffic coming from
13 Route One?

14 A. No, I did not.

15 Q. Did you hear any other outside noise,
16 like background noise?

17 A. The background that we could hear when
18 we were there was in essence the wind noise. It's
19 an open area, we really noticed no dogs barking or
20 any kind of machinery running, the vehicles on your
21 street there were so infrequent -- there might have
22 been just a few vehicles go by, and I didn't really
23 notice them when they did -- they did go by so again
24 characterizing the area is one of a very, very, very

1 quiet rural area where there was -- probably the
2 only sounds that we could hear was the occasional
3 bird singing and a little bit of insect noise in
4 addition to the wind so the only sounds that would
5 have been present when we were there taking the
6 ambient measurements would have been nature sounds
7 and wind.

8 Q. Okay. Have you in the past ever done
9 or been involved in a propane cannon case in a rural
10 area?

11 A. Yes, I have.

12 Q. And where was that at?

13 A. That occurred in Knox County, Illinois
14 in 1979. I was the regional manager for the
15 division of noise pollution, central southern region
16 and I got a phone call from an attorney who had a
17 client that had noise problems and the attorney
18 described the problems as being caused by what he
19 called propane cannons and up to that point in time
20 I had no experience with that. My staff was in the
21 field so I proceeded myself to go out and
22 investigate the situation.

23 MR. HARDING: I'm going to object at
24 this point. We're a little bit out there

1 on the narrative, but more importantly,
2 there's a relevance issue here.

3 HEARING OFFICER HALLORAN: Ms. Stuart
4 on the relevance issue?

5 MS. STUART: What is relevance?

6 HEARING OFFICER HALLORAN: That's what
7 he's asking. Do you want to explain your
8 relevance.

9 MS. STUART: How is this relevant?

10 MR. HARDING: How does it relate to
11 this case?

12 MS. STUART: Well, because it's a very
13 similar case, it's a rural setting, it has
14 to do with propane cannons on someone
15 else's property emitted onto another
16 person's property and there was information
17 provided in a report as to what the amount
18 of decibels were from the propane cannon so
19 it does have -- it does have some -- it has
20 actually quite a bit of significance to
21 this.

22 MR. HARDING: Well, first of all, it's
23 not the same propane cannon, I think we're
24 pretty sure about that, and secondly, we

1 have no idea what the measurements are,
2 what the measurements were here, so on and
3 so forth. If we're going to stay with
4 apples and apples or oranges and oranges, I
5 think we're way out of field here. This
6 could be apples and oranges and there's no
7 way to determine it.

8 HEARING OFFICER HALLORAN: I don't
9 know what your reference to apples and
10 apples and apples to oranges are, but, you
11 know, I do find it relevant to the matter
12 at hand and again, Mr. Harding, we do have
13 a little more relaxed rules of evidence
14 here. I think it is material, relevant and
15 something that a reasonable person would
16 rely on in the serious nature of affairs.

17 Mr. Zak stated in his testimony
18 that he was involved in a situation. You
19 can cross-examine him regarding the type of
20 propane cannon, et cetera. I do feel it is
21 relevant. So objection overruled. You may
22 continue. Thank you.

23 BY MS. STUART:

24 Q. So this particular case was in Knox

1 County and is this your report that you used or that
2 you actually authored for the case that was
3 submitted to you?

4 HEARING OFFICER HALLORAN: What are we
5 looking at, Ms. Stuart, I'm sorry?

6 MS. STUART: This here is the letter
7 that he wrote regarding this case.

8 MR. HARDING: Is there an exhibit
9 number on here?

10 HEARING OFFICER HALLORAN: Which
11 letter are we talking about?

12 MS. STUART: Well, this is the report
13 that he had made for the EPA about the case
14 that he's talking about.

15 HEARING OFFICER HALLORAN: Okay. Is
16 there an exhibit number or something or do
17 you want to give it to me and I'll put an
18 exhibit number on it, please?

19 MS. STUART: Sure.

20 HEARING OFFICER HALLORAN: This is
21 Complainants' Exhibit -- I think we're at
22 three. You don't have an extra copy for
23 me, do you?

24 MS. STUART: I sure do.

1 HEARING OFFICER HALLORAN: Thank you.

2 MS. STUART: Do you just need one or
3 do you want two?

4 HEARING OFFICER HALLORAN: I just need
5 one. Thank you.

6 MS. STUART: Mr. Harding, do you need
7 one?

8 MR. HARDING: Actually, Mr. Zak has
9 just given me one.

10 MS. STUART: Okay. Good.

11 BY MS. STUART:

12 Q. Mr. Zak, how did you come to the
13 conclusion of these decibel sounds on the Coffman
14 front yard?

15 A. Well, in order to explain it perhaps
16 we want to go to the background of the letter we're
17 looking at as an exhibit. As I said, I was
18 contacted by an attorney -- Mr. Coffman's attorney
19 contacted me and asked the Agency to become involved
20 in a case of a propane cannon. I went out to the
21 area where the cannon was located, talked to the
22 operator who was a Mr. McCaw, it's outlined in the
23 letter here, and basically what I'll try and do is
24 explain some of the language in the letter as to why

1 -- why it came to be and how it came to be.

2 I explained the complaint to
3 Mr. McCaw to see if we could work out some type of a
4 solution to the problem. He was cooperative. We
5 took measurements on two different propane cannons
6 he had there and the letter describes one as a
7 Thunderbird scare-away and another one was called a
8 Zon (phonetic). Measurements were taken with
9 precision instrumentation at a distance of 30 feet
10 and that's documented in the letter there that the
11 sound levels were 105 to 106 dBa to compare it to a
12 12-gauge shotgun, which is the largest shotgun
13 normally used for hunting in Illinois and target
14 practice. Mr. McCaw fired the 12-gauge shotgun so
15 we could compare that to the propane cannons and
16 then measured 100 dBa or to put it in terms of sound
17 energy, about one-quarter of the sound energy of the
18 106 dBa for the propane powered gun. After taking
19 the measurements I went then to the residence that
20 was located approximately a quarter of a mile away
21 and took measurements there while the propane guns
22 were fired, and those are documented on page two of
23 the exhibit and the numbers we had there run from 53
24 through a series of numbers to 59. Anything over 56

1 at that point in time would have been considered
2 over the state limit for impulsive noise and that is
3 really -- the essence of the letter is informing
4 Mr. McCaw that his operation there, firing the guns,
5 was in excess of the regulation. The letter I
6 believe was addressed to a Ms. Gehring who was the
7 property owner. The letter continues on basically
8 describing what the penalties would be under the
9 Environmental Protection Act and the regulations and
10 it asks for a response from Ms. Gehring, again the
11 property owner.

12 The experience I had in preparing
13 that letter was one that gave me a bit of an
14 education as far as the use of propane power guns
15 and the sound levels generated by that type of gun
16 and also being able to observe and listen to the
17 firing of the gun. The gun was fired -- or the
18 guns, there was actually two guns, they were fired
19 many, many times while I was out there. The
20 readings indicate a small number of firings. They
21 were fired considerably more than that. I could
22 compare and contrast the propane guns to the
23 12-gauge shotgun and as I said before, there was
24 considerably more energy in the propane blast than

1 there was in the 12-gauge blast. Also, the tone of
2 the propane guns was one of much more of a thump
3 type sound and I realize the reporter has to
4 interpret there, but I would describe the word as
5 thump, whereas the 12-gauge shotgun was more of a
6 cracking sound and as an acoustics person what that
7 tells me is that the spectral characteristic of the
8 propane gun is more of a low frequency sound as
9 compared to the higher frequency sound of the
10 12-gauge shotgun and that is to some consequence
11 when one looks at to what degree the sound of the
12 propane gun can penetrate a house. In this case
13 here back in 1979 the complainant was complaining
14 that he felt his house was not usable when the guns
15 were being fired and he had to stay in the basement
16 in an attempt to reduce the impact of the guns and
17 in most cases him and his wife had to leave the
18 house when the guns were being fired in order to
19 sleep and in this situation here in '79 the one
20 difference we do have is that these guns were
21 primarily operated at night. They would -- he would
22 start to fire his guns at dusk and would operate the
23 guns until sometime past dawn the next day so there
24 would be a little bit of a carryover as far as

1 timewise between the 1979 case and this case that
2 we're dealing with here today.

3 Q. Okay. You stated that this is one
4 quarter of a mile?

5 A. That's correct. For the case in '79
6 the distance we were dealing with there was a
7 quarter of a mile.

8 Q. Which is 1,320 feet?

9 MR. HARDING: So stipulated.

10 BY THE WITNESS:

11 A. Yes, I agree with that.

12 BY MS. STUART:

13 Q. Okay.

14 A. And again, I think some of the
15 relevance here from an acoustics standpoint is that
16 we're dealing with again propane guns that both the
17 case in '79 and the case today we're looking at
18 distances of approximately a quarter of a mile and
19 we had one witness today that described the problem
20 at three-quarters of a mile.

21 Q. Okay. I'm going to give you a sheet
22 of -- is this considered to be an impulsive sound,
23 this type of sound?

24 A. Yes. This is an impulsive sound.

1 Q. Okay. Can you explain to us -- to me
2 what an impulsive sound means?

3 A. An impulsive sound is a sound of very
4 short duration. Typically, we would describe it in
5 terms of -- the most common term for it would be
6 described as a gun shot, a hammer blow, any type of
7 sound that is a very short duration typically
8 lasting less than one second. Occasionally a quarry
9 and coal mine blasting also falls under the category
10 of an impulsive sound, although with coal mine
11 blasting and quarry blasting the Board does regulate
12 it in a little bit different manner than they do
13 this type of impulsive noise we're describing here,
14 but, again, I think for the average person to
15 characterize it to think of it in terms of, say, a
16 backfire from a vehicle, a blowout from a tire,
17 hammer blows, banging on a wall or gun fire would be
18 considered examples of impulsive sound.

19 Q. Okay. Would this be considered to be
20 one of the lesser more harmful types of sounds to
21 the human ear?

22 A. As far as the impact on the human ear,
23 I'm going to have to back off on that one because
24 I'm not an expert in the area of hearing damage.

1 I do consider myself very well versed in
2 environmental noise. Environmental noise, typically
3 we're looking at a situation where you have sound
4 that is about one one-thousandth the power of sound
5 that can cause hearing damage, but typically where
6 hearing damage would be looked at when sound exceeds
7 90 decibels. Environmental noise we're looking at
8 sounds that are typically in the area of anywhere
9 from say 40 to 60 decibels so it takes a lot less
10 sound to cause the annoyance than it does to cause
11 hearing damage.

12 Q. My next question is one of interest,
13 which is if there were, like, tall buildings around,
14 would that lessen the amount of sound?

15 MR. HARDING: Objection, relevance.

16 HEARING OFFICER HALLORAN: It may be
17 relevant. You may answer.

18 BY THE WITNESS:

19 A. Yes. I could even characterize that
20 by an experience I had of that nature. Sometime
21 back there was a complaint against propane guns in
22 Waukegan and the fellow who was complaining about it
23 lived a little over a mile away and he was in a
24 densely populated area that was comprised of homes

1 of one to two stories and some office buildings.
2 The presence of the buildings in the mile distance
3 between where the guns were being fired and
4 the receiver who was complaining about it tended to
5 greatly attenuate the sound, which I found out when
6 I visited the man's home at the conclusion of his
7 case before the Board and I could hear the propane
8 cannons, but, again, they were muted quite a bit.
9 I think largely to the fact that we were getting a
10 barrier effect from so many homes and buildings
11 between where the guns were being fired and where
12 the individual lived.

13 Q. Okay. Did you see any type of -- when
14 you were out visiting my home on that -- in August
15 of 2002, did you see any tall buildings nearby?

16 A. From an acoustic standpoint there were
17 no buildings in your area there that would impact
18 the sound as far as lessening it or increasing it.
19 It's a very scarcely built up area, very, very open
20 and so you would not really have any building affect
21 there.

22 Q. So it would not -- am I correct to say
23 that it would not lessen the amount of the -- it
24 would not -- in other words, what I'm trying to say

1 is you would get the full impact of the decibels
2 that the device was igniting?

3 A. If I understand the question as far as
4 sound impact is concerned, yes, you would get the
5 full impact much as I saw in the -- what I would
6 call the Coffman case that I alluded to earlier and
7 we have an exhibit on record now regarding that
8 case. I would say your situation is very, very
9 similar in nature to that case and not at all
10 similar to the one that I was involved in in
11 Waukegan about five years ago.

12 Q. Okay. Does a hilliness area have
13 anything to do with making a sound even louder?

14 A. It could. It can actually go either
15 way. It could either have no affect, it could have
16 a slight affect of amplification or a slight affect
17 of reducing it. Probably the most common thing you
18 see in a hilly area, though, is what I would call
19 the echo effect where the sound will tend to --
20 under the right conditions, echo from hill to hill.

21 Q. Okay. I have on that wonderful board
22 over here that everybody loves --

23 HEARING OFFICER HALLORAN: Exhibit
24 No. 2, I believe.

1 MR. HARDING: Two.

2 BY MS. STUART:

3 Q. Right directly in front of my home,
4 okay, I call it an echo chamber, don't ask me why,
5 but my kids did a science project on this and if you
6 stand wherever I took the pictures, which is in the
7 driveway, from the very front of the house actually
8 closer back towards the gate where the dogs are at
9 and you stand there and walk up to a certain point
10 almost at the end of the driveway by the street and
11 if you just like yell, Dave, which is what we were
12 doing the other day, you will always get a loud
13 echo. Now, what is that?

14 A. Well, what causes an echo is the sound
15 wave will strike an object and bounce back and you
16 might think of it as you're standing there as an
17 observer, the sound wave passes by and you hear the
18 sound and the sound travels out, strikes the object
19 and comes back and you hear it a second time. Now,
20 what you're describing there is where you're
21 actually shouting and the way I would describe that
22 is when you shout you would hear your shout at the
23 time and anybody standing close to you would also
24 hear your shout, in this case a person's name, and

1 then the object that the sound is bouncing off of
2 would reflect the wave back and you would hear it a
3 second time then.

4 Q. Could that make the cannons sound
5 louder to us?

6 A. Yes, it could add up to three dBa to
7 the sound level if you had a virtually perfect echo.

8 Q. Now, my next question is when I was
9 taking the meter readings I had found that the
10 closer I was to the house the louder the sound was.

11 MR. HARDING: I'm going to object.

12 It's inadmissible based on a prior ruling
13 and she's testifying.

14 HEARING OFFICER HALLORAN: You've got
15 to watch the leading questions, number one,
16 Ms. Stuart; number two, I stated earlier
17 that anything regarding your reading is
18 taken only as an offer of proof so it can't
19 be -- but I don't know if Mr. Harding
20 wanted anything more --

21 MR. HARDING: No. If it's being taken
22 only as an offer of proof over ruling, I
23 don't have a problem with it.

24 HEARING OFFICER HALLORAN: And that's

1 what I stated, I think, at the beginning of
2 Mr. Zak's testimony and I also said feel
3 free to remind me, the Board, the reporter,
4 the transcript of that.

5 MR. HARDING: I'm reminding myself.

6 HEARING OFFICER HALLORAN: Thank you.

7 BY MS. STUART:

8 Q. What would be your professional
9 suggestion in order to correct this problem?

10 HEARING OFFICER HALLORAN: Ms. Stuart,
11 you can talk about your readings, but all
12 I'm saying is they're in the record as an
13 offer of proof, the Board may overrule me
14 and I don't want to cut off your
15 questioning because of the fact that they
16 find I'm wrong, then I want the testimony
17 in the record.

18 MS. STUART: Okay. That's very fair.
19 So rephrase my question?

20 HEARING OFFICER HALLORAN: Sure. It
21 was a bit leading.

22 BY MS. STUART:

23 Q. Can you tell me why I would get louder
24 readings closer to the house than closer -- as

1 compared to the 25 feet from the property line I
2 would get louder readings?

3 A. Well, again, it could be to some
4 extent due to the echo effect. As far as the
5 loudness is concerned, again, looking at the case
6 alluded to regarding Coffman versus Gehring, my
7 measurements there were in the high 50s to 60 dBa
8 and I note from your measurements that you also got
9 very similar readings and, again, that's part of the
10 reason why I would compare the two cases, but,
11 again, in trying to address your question
12 specifically as far as the echo is concerned, the
13 echo would -- could increase your measurement that
14 you're measuring, but, of course, that would also
15 indicate what your ears are actually hearing and,
16 again, the effect could be as high as three dBa. If
17 I was doing that kind of measurement as a
18 professional noise control engineer, what I would
19 typically do would be to move a little further away
20 from the structure to the point where I could
21 demonstrate that there was no echo effect and take
22 my measurement at that point and again, my results
23 could be as low as three decibels lower than what
24 you obtained.

1 MS. STUART: Well, can I just say
2 something for the record?

3 HEARING OFFICER HALLORAN: Sure.

4 MS. STUART: Any of the decibels that
5 I did take off the meter were never taken
6 by the echo chamber -- or by that echo
7 area. I always went farther back out where
8 I wouldn't get the echo, so I wasn't trying
9 to -- you know, to (inaudible), you know,
10 to say more or less and make them appear
11 higher because I knew that the echo
12 wouldn't be an accurate reading so I stayed
13 farther south of the property.

14 HEARING OFFICER HALLORAN: Okay.

15 The record will reflect that. Thank you.

16 MS. STUART: Okay.

17 HEARING OFFICER HALLORAN: And again,
18 all the readings are admitted as an offer of proof.

19 MS. STUART: Okay.

20 BY MS. STUART:

21 Q. What would you, as a professional, do
22 to remedy the situation?

23 A. As far as a remedy is concerned, the
24 remedy in 1979 and 1980 in the case we've been

1 discussing was to -- for the individual to cease
2 using the propane guns and the Court so ordered him
3 to do so.

4 In this case, that is one option
5 would be to stop using the propane guns. That then
6 leaves the question open as to what the impact of
7 the crows on the watermelon and cantaloupes would be
8 and we're talking about approximately five acres of
9 cantaloupes and watermelons and as I testified
10 previously, I do -- I am a farmer also besides being
11 a noise control engineer.

12 MR. HARDING: At this point I object
13 because we are beyond the field of
14 expertise that was revealed in discovery.

15 HEARING OFFICER HALLORAN: Ms. Stuart,
16 anything to add?

17 MS. STUART: Well, I think that if we
18 -- if I ask Mr. Zak if he's ever done any
19 farming, he would be able to, you know,
20 relate information as to what possibly
21 could be done to solve the problem.

22 HEARING OFFICER HALLORAN: Mr. Harding?

23 MR. HARDING: I have a real problem
24 with it because if he starts giving an

1 opinion as far as what farming is about,
2 the results of farming and so on and so
3 forth -- this is something that is even
4 more of a surprise than the late breaking
5 news from last Tuesday.

6 HEARING OFFICER HALLORAN: I agree.
7 I'm going to sustain your objection. Mr.
8 Zak, you may answer, but only as an offer
9 of proof. This is the first time I've
10 known you were a farmer.

11 MR. ZAK: I believe it's in my resume
12 on the last page that I began as a tree
13 farmer in 1987.

14 MR. HARDING: I'm sorry, was that
15 tree?

16 MR. ZAK: Yes, tree farmer.

17 MR. HARDING: Thank you.

18 BY THE WITNESS:

19 A. Continuing with the possible solution
20 to the problem. Again, one solution would be to not
21 use the propane cannons, which would then leave the
22 melon crop open to predation by the crows to a
23 greater extent than any predation is taking place at
24 the present time. There are other methods of

1 protecting the crop other than the propane gun.
2 For example, what was done by the city of Waukegan
3 in 1999 when they began using propane guns, got
4 complaints and then they decided to -- they switched
5 from propane guns to dogs. They used a bird dog
6 that would chase seagulls away and they used the dog
7 to control the birds as opposed to the propane guns.

8 In this particular case, I think
9 that one possible solution might -- would be use of
10 a dog and we're talking an area of approximately
11 five acres according to the testimony and the use
12 of a dog could be done for -- the purchase of the
13 dog would probably be a few hundred dollars, for
14 example, either from an animal shelter or a pure
15 bred dog would be more expensive, but any type of
16 dog that has some bird dog in him would suffice.

17 As far as containing the dog with
18 the five acres what could be done there is the use
19 of an electric fence. I've had experiences with
20 electric fences and typically in the area of five
21 acres, which would be 43,000 square feet to the
22 acre, we're looking at about, say, 215,000 square
23 feet. An area of that size could be bounded with an
24 electric fence of let's say anywhere from a quarter

1 to half a mile in total length to enclose the area.
2 The electric fence cost would probably be on the
3 order of -- for the fence itself would be around
4 \$75, the posts are two dollars a piece, the
5 insulators run a dollar and we're looking at a total
6 cost much less than \$1,000 for the fence to contain
7 the dog in the five acres or another alternative to
8 contain the dog would be the use of a -- what's
9 called an invisible fence and it's a very common
10 method of keeping dogs within a specified area and
11 again, the cost on that is a few hundred dollars.
12 So the dog would be one possible way of controlling
13 the problem. Another methodology brought up was the
14 use of netting. Netting for covering five acres I
15 think is a possibility and the reason I say that is
16 apparently from testimony I've heard so far there's
17 six individuals working the farm and a lot of the
18 work on that type of farm is hand work so I do think
19 that netting would be a possibility there. Other
20 than those two suggestions, I really haven't worked
21 out any other potential solutions to the problem.

22 Q. Well, with your experience as being a
23 farmer, though, the farming bureau, do they not
24 provide information and help to farmers?

1 A. Yes, they do.

2 Q. Okay. So it might be to Mr. Fisher's
3 best interest to contact either the USDA or the NRCS
4 or AFIS or one of those departments for maybe some
5 suggestions or maybe some type of help?

6 A. Yes. I think that this situation can
7 be looked into much more deeply and the reason I say
8 that is we have a situation where the use of a
9 propane gun is somewhat unique, it's just -- you
10 don't see it very often and we do have a very
11 significant noise source and we're dealing with
12 something which the nature of it is to make noise
13 whereas most devices that we deal with in noise
14 control engineering -- noise is a by-product, not
15 the main product of a mechanical device. This
16 particular device here is one that the sole purpose
17 is to just make noise and we see a conflict here
18 with the neighborhood and a device that is designed
19 to simply make noise.

20 Q. Okay. What are the normal readings
21 from a Class B land area, which would be
22 Mr. Fisher's property being a farm emitted to a
23 Class A land, which would be my home and most of the
24 residents in the area?

1 MR. HARDING: Objection. The
2 determination of what class of properties
3 we're dealing with is for the Board to
4 make, but according to my understanding of
5 the SLUCM codes were both Class C and I
6 think this is something -- if it's a
7 written thing and it is actually appended
8 to the Board's rules regarding noise, then
9 when the Board determines what classes
10 these are, then the Board can then
11 determine what is applicable and I don't
12 think this is the right setting for that.

13 HEARING OFFICER HALLORAN: And you
14 said both sites are Class C.

15 MR. HARDING: Yes. She's a dog
16 breeder and keeps horses.

17 MS. STUART: No, I am not a dog
18 breeder. I do this strictly for one reason
19 only and that is because it's like a hobby
20 or an animal husbandry and not only that,
21 my purpose of doing this and I've only had
22 two litters, like, in the last five or six
23 maybe seven years is to better the breed of
24 the Golden Retriever because they have

1 been mutilated by bad breeding.

2 HEARING OFFICER HALLORAN: The luxury
3 that I have is I can accept it as an offer
4 of proof because I don't and I'm sure you
5 all don't want to come back here in case
6 the Board wants to hear what Mr. Zak has to
7 the answer to your question so with that
8 said, I will sustain Mr. Harding's objection
9 and I'm not sure if Mr. Zak knows the
10 answer to your question. Were you finished
11 with your question at the time whether it
12 was a Class A or B?

13 MS. STUART: Well, I was going to add
14 that I looked up all those people in one of
15 the books that I have for --

16 HEARING OFFICER HALLORAN: I don't
17 want you to testify. You can finish asking
18 Mr. Zak the question or I can have Terry
19 read it back.

20 MS. STUART: No. I thought we were
21 talking about the Class A and Class C.

22 HEARING OFFICER HALLORAN: Class A or
23 Class B, yours was a Class A and something.

24 MS. STUART: Does taxing these homes

1 have anything to do with -- because we're
2 taxed residential and all my neighbors are.

3 HEARING OFFICER HALLORAN: Does taxing
4 have anything to do with what?

5 MS. STUART: With someone being
6 considered a resident.

7 MR. HARDING: We're talking about
8 under the state tax code and under the
9 state tax code any property in which a
10 homeowner resides on is considered
11 residential property, is taxed at the 16
12 percent tax rate and is eligible for the
13 homeowner's exemption, but that's a
14 completely different subject from what
15 we've got here. We're talking about actual
16 use here. SLUCM codes are based on actual
17 use and aren't dependent on any other
18 statute.

19 HEARING OFFICER HALLORAN: Ms. Stuart,
20 where are you going with this?

21 MS. STUART: Where I'm going with it
22 is just that, you know, I looked at it as
23 -- even though we're zoned agriculture, all
24 right, the whole block is, we have such a

1 hodgepodge of people, you know, like we
2 have one little tiny industrial area in
3 back of a house, which has never been --
4 which never should have been approved,
5 we've got a -- churches are fine, we have a
6 stable down the street, which is zoned
7 commercial, you know, but yet they're in an
8 agricultural area and my point that I'm
9 trying to make, though, is the people that
10 live in these homes, they have jobs outside
11 of the home, you know, and it's a question
12 of -- you know, so you put a label on them,
13 you know...

14 MR. HARDING: Excuse me. I'm sorry.
15 Are we done with the questioning of
16 Mr. Zak?

17 HEARING OFFICER HALLORAN: She's still
18 explaining and I'm still taking it as an
19 offer of proof. Before I was interrupted,
20 Mr. Zak was going to try to answer your
21 question. So if anything, I don't find it
22 relevant, and I could be mistaken, I don't
23 know. I may go back and look at the
24 transcript, but I am taking everything you

1 have said thus far because it was part
2 testimony and part argument as an offer of
3 proof and whatever Mr. Zak states in his
4 answer as an offer of proof to your
5 question.

6 MS. STUART: Okay.

7 HEARING OFFICER HALLORAN: Back where
8 we were five minutes ago, I think you were
9 going to ask Mr. Zak again regarding the
10 classes of the particular land, yours and
11 Mr. Fisher's, I think that's where we left
12 it before Mr. Harding objected.

13 MS. STUART: Okay.

14 HEARING OFFICER HALLORAN: So you were
15 asking Mr. Zak regarding the class type?

16 MS. STUART: Right.

17 BY MS. STUART:

18 Q. I just wanted to know what the decibel
19 limit was from a Class C to a Class A land for
20 daytime and nighttime?

21 A. Well, I think I could help everybody
22 here with this land classification business because
23 the first question that was asked alluded to class
24 -- farming is Class B land and that's not incorrect.

1 Farming is Class C and residential is Class A.
2 During my 29 years with the Illinois EPA I had to
3 make hundreds of decisions regarding land use
4 classification. I'm very familiar with doing that
5 and the situation we have at hand here in my
6 opinion, Ms. Stuart lives -- has a house that is
7 Class A land because she lives there, her family
8 lives there and they sleep there. If they have any
9 type of commercial operation there, the commercial
10 operation itself would fall under a Class B
11 classification, but that still would in no way take
12 away from the Class A classification that her house
13 will deserve because of the fact that it's used as a
14 residential.

15 At Mr. Fisher's farm, his farm
16 would be considered Class C property -- have an
17 industrial type of category, however, his residence
18 would be considered Class A. So we have a number of
19 possibilities here, especially regarding if there's
20 any type of let's say commercial kennel or a
21 commercial operation of breeding animals would
22 probably fall under Class B. Farm animals would
23 fall under Class C. Again, without having more
24 specifics as to what's going on, I can only give it

1 in those generalities, but I hope I clarified the
2 land classifications here as far as what's what.
3 Ms. Stuart would be living in a Class A residence
4 and any noise that would be coming from Mr. Fisher
5 and impacting the Stuarts would be going from Class
6 C property to Class A property.

7 HEARING OFFICER HALLORAN: Thank you
8 for clarifying that, Mr. Zak, and with all
9 due respect I didn't understand the
10 question, but I'm still, for the sake of
11 everything, I am still going to accept it
12 as an offer of proof, but it is in the
13 record and we're going to take a look at
14 it. So with that said, Ms. Stuart, you may
15 continue.

16 MS. STUART: Okay. So getting back
17 since this is like an offer of proof
18 thing --

19 HEARING OFFICER HALLORAN: Well, it
20 may or may not be.

21 MS. STUART: Okay.

22 HEARING OFFICER HALLORAN: Ask the
23 question.

24 BY MS. STUART:

1 Q. I just want to know what is the
2 decibel limit from a Class C to a Class A land,
3 that's all I want to know?

4 MR. HARDING: Objection, not relevant,
5 but...

6 HEARING OFFICER HALLORAN: I'll take
7 it as an offer of proof. You may proceed.

8 BY THE WITNESS:

9 A. Under Section 901.104 going from Class
10 C to Class A, the daytime limit would be 56 dBa and
11 the nighttime would be 46 dBa.

12 BY MS. STUART:

13 Q. Okay. Has that increased or decreased
14 since 1979?

15 A. No. The numbers have stayed the same.

16 Q. They have remained the same?

17 A. Yes.

18 Q. So there is some similarity in the
19 Knox County case with Coffman?

20 A. Yes. In my opinion, the cases are
21 very, very similar.

22 Q. Have you ever been an expert sound
23 specialist witness for any other similar cases that
24 are so closely related to this rural situation?

1 HEARING OFFICER HALLORAN: Okay.

2 We're out of the offer of proof, I just
3 want to let the Board know.

4 BY THE WITNESS:

5 A. To answer your question, again, if I
6 could read into that, that you're talking about
7 propane cannons, no, I have not had anything as
8 similar and I've really only dealt with three
9 propane cannon cases in my career, the one in 1979,
10 the one in 1999 in Waukegan and your case and again,
11 your case and the case in '79 are -- I would
12 classify as being very, very similar cases.

13 BY MS. STUART:

14 Q. The Waukegan case, did that involve
15 gulls?

16 A. That's correct, it involved seagulls.

17 Q. So that would be somewhat different
18 because these are crows?

19 A. Well, from a noise standpoint I don't
20 think it makes a difference at all, but from the
21 standpoint of the nature of the area where the
22 problem is occurring, again, I would say your
23 situation and the one in '79 are very similar. The
24 Waukegan one was entirely different because it

1 happened in a very urban type setting as opposed to
2 a rural setting. As I described before, the
3 acoustics there were entirely different.

4 Q. Is OMC the name of the corporation
5 that was involved with the seagull?

6 A. Yes. It was actually -- in that
7 particular case the man's name, who was the
8 complainant, was Sweda, S-w-e-d-a, and his case was
9 against OMC Corporation and the city of Waukegan.

10 MR. HARDING: Just for clarification,
11 I believe that's Outdoor Marine.

12 HEARING OFFICER HALLORAN: I was
13 trying to figure it out. I knew the
14 acronym. Thank you.

15 BY MS. STUART:

16 Q. Okay. My next question does OMC or
17 Outdoor Marine, are they still operating there?

18 MR. HARDING: Objection, relevance.

19 BY THE WITNESS:

20 A. I really don't know.

21 HEARING OFFICER HALLORAN: Overruled.
22 He answered. It can stand.

23 MS. STUART: All right. I think I've
24 asked just what I need to ask.

1 HEARING OFFICER HALLORAN: Okay.

2 Mr. Harding?

3 C R O S S - E X A M I N A T I O N

4 by Mr. Harding

5 Q. Mr. Zak, I'm going to use you to test
6 my knowledge of sound measurement just a little bit.

7 We were looking at what I think
8 has become Exhibit 3 -- Complainants' Exhibit 3.

9 HEARING OFFICER HALLORAN: Is that the
10 one yeah, I don't have -- I think.

11 MR. HARDING: Noise solutions by Greg
12 Zak. Does that look right as Exhibit 3?

13 MS. STUART: Exhibit 3 I have here is
14 --

15 MR. HARDING: This could be two then.
16 It has the ambient measurements. It's the
17 letter from September.

18 HEARING OFFICER HALLORAN:
19 Complainants' Exhibit No. 2 is the
20 diagram.

21 MR. HARDING: Okay. What do we got?
22 Actually, this is the first attachment to
23 the Respondents' Exhibit 3, so it works
24 out, we all know what we're talking about.

1 BY MR. HARDING:

2 Q. It has your ambient noise?

3 A. Yes. That's my September 8th, 2003
4 letter.

5 Q. Now, when you measure the dBa and
6 we're looking at page two here, the overall dBa is
7 the aweighted decibels, right?

8 A. That's correct.

9 Q. Now, in point of fact you get an
10 individual decibel reading on each of the
11 frequencies, right, but then they're weighed and
12 combined for the overall dBa?

13 A. You could characterize that, yes.

14 Q. From a laymen's point of view?

15 A. Yes.

16 Q. I don't claim your level of expertise,
17 but basically that's a combination of all those
18 frequencies weighted together and then drawn out as
19 a simple solution, if you will?

20 A. Yes. And basically each one is taken
21 and they're added up, but each one is given a
22 certain amount of weight and then all nine octave
23 bands are added up and the result giving aweighting
24 will give you an aweighted number and that's what we

1 see on the report there.

2 Q. Okay. And that aweighting was 43.5, I
3 believe?

4 A. That's correct.

5 Q. Now, we're talking about a good deal
6 of open space here in the Stuarts and Fishers area,
7 right?

8 A. That's correct.

9 Q. You observed the area?

10 A. Yes, it's very open.

11 Q. Okay. And so prevailing winds would
12 tend to be more unobstructed in such an area, would
13 they not?

14 A. That's correct, yes.

15 Q. Okay. Now, you indicated that in 1979
16 in the Gehring versus -- or Gehring and McCaw case,
17 you took measurements of the sound cannons and you
18 took -- the propane cannons and you took measurement
19 of a 12-gauge shotgun?

20 A. That's correct.

21 Q. Each at 30 feet?

22 A. That's right.

23 Q. And the propane cannon came in 105 to
24 106 dBa?

1 A. Correct.

2 Q. And the 12-gauge shotgun came in at
3 100 dBa?

4 A. That's correct.

5 Q. Now, without going into any great
6 detail about sound principles, which I don't claim
7 to understand in the first place, if you took the --
8 given those two readings, if you took the propane
9 cannon reading at 100 -- pardon me, at 60 feet
10 doubling the distance, then it is predictable that
11 you would have a reading of between 99 and 100 dBa
12 at that distance?

13 A. That's correct, yes.

14 Q. Okay. So that would then quarter the
15 sound energy?

16 A. Yes, due to the inverse-square law.

17 Q. Right. Because light and sound both
18 carry energy equivalent to the inverse of the square
19 of the distance, is that correct?

20 A. That's correct.

21 Q. Now, on August 2nd of 2002 -- oh, one
22 other thing about the Gehring case. You indicated
23 that there was an order to cease issued by the
24 circuit court in that case?

1 A. Yes.

2 Q. But there was more than that to the
3 order, wasn't there? It wasn't just a cease order,
4 was it?

5 A. Not being an attorney and I don't
6 pretend to be, I read the order as one of -- that
7 the individual could no longer fire the cannons and
8 there was another part to that where they were
9 looking for the EPA to work with the individual to
10 see if we could cut down the noise from the gun
11 sufficiently to meet the regulation yet still have
12 the gun loud enough to in this case frighten the
13 coyotes away.

14 Q. Or cut down on the timing or whatever,
15 but there was a -- I believe it was paragraph B of
16 the rendering portion of the order that provided
17 that there should be further study?

18 A. That's correct.

19 Q. Within the frame work of that case?

20 A. That's correct.

21 Q. Okay. Now, Gehring was a quarter of a
22 mile -- or McCaw, I'm not sure, I didn't get the
23 names right.

24 A. Gehring and McCaw were together.

1 Gehring was the property owner and McCaw was the
2 operator of the farm and the complainant was
3 Mr. Coffman.

4 Q. Mr. McCaw against Mr. Gehring?

5 A. Yes.

6 Q. Okay. And Gehring's noise source was
7 three-quarters of a mile -- pardon me, a quarter of
8 a mile or 1,320 feet from the source?

9 A. Approximately we would be looking at
10 say in the range of say 1,200 to 1,400 feet, but for
11 acoustical purposes saying it's a quarter of a mile
12 works fine. We don't have to get it down to the
13 last foot.

14 Q. Okay. Now, when you were there on
15 August 2nd at the Stuarts, did you hear any noise
16 from the propane cannons at all?

17 A. No.

18 Q. And this was August 2nd of 2002?

19 A. Correct. I did not hear the propane
20 cannons.

21 Q. It's been about a year and a half?

22 A. Yes.

23 Q. What time of the day were you there?

24 A. I believe it was around noon.

1 Q. Okay. Now, we have, if you will, in
2 the state of Illinois a prejudice as to how we view
3 sound and I don't say it in a pejorative sense, but
4 we have a prejudice in terms of nighttime sounds/
5 daytime sounds. We prejudge that nighttime sounds
6 should be lower, do we not?

7 A. That's the Board's call on that, yes.

8 Q. I mean, it's a premade call, nighttime
9 sounds should be lower than daytime sounds, right?

10 A. Yes, to protect sleeping.

11 Q. Right. Okay. And the Waukegan case
12 that you made reference to Sweda and Outdoor Marine,
13 OMC, that actually came before the Board for
14 hearing, did it not?

15 A. Yes, it did.

16 Q. And it actually resulted in the
17 finding of no pollution, did it not?

18 A. That's correct.

19 Q. Okay. And would it be fair, in your
20 experience, to compare seagulls and crows? I
21 personally have heard crows referred to as land
22 bound seagulls and seagulls as gray and white crows.
23 Is that a fair analysis? Are they both scavengers,
24 for instance?

1 A. Having a degree in biology I would
2 tend to agree that there's a lot of similarities in
3 habits between crows and seagulls, yes.

4 Q. Okay. Finally, although I'm sure
5 everybody knows this and it's not a big deal, you
6 are being paid to be here today, right?

7 A. That's correct.

8 Q. And you have been paid for the
9 services rendered to Ms. Stuart?

10 A. Yes, I have.

11 MR. HARDING: Thank you, sir. I have
12 no further questions.

13 HEARING OFFICER HALLORAN: Thank you.
14 Ms. Stuart?

15 MS. STUART: I do have a couple --
16 there's one last thing that I would like to
17 talk to -- or question Mr. Zak on and
18 that's the meter that I used. I can do
19 that?

20 HEARING OFFICER HALLORAN: Well, it's
21 a little outside your direct. You did
22 briefly touch on it. Mr. Harding, do you
23 have any problem with that?

24 MR. HARDING: I have a tremendous

1 objection to it. This is the stuff that
2 wasn't revealed.

3 HEARING OFFICER HALLORAN: Okay. This
4 is in the offer of proof.

5 MR. HARDING: Yeah.

6 HEARING OFFICER HALLORAN: Normally
7 you would do that --

8 MS. STUART: But if the offer of proof
9 is considered and we don't have the
10 testimony about the meter, then how is the
11 offer --

12 MR. HARDING: I'm just maintaining my
13 objection. I expect that this is going to
14 be done.

15 HEARING OFFICER HALLORAN: I guess I'm
16 not -- your objection is sustained. This
17 is coming in as an offer as proof. All I'm
18 telling Ms. Stuart, and I'm not getting
19 angry, is that while you were on direct
20 that was the time to ask just for protocol,
21 but in any event, you may proceed under an
22 offer of proof regarding your sound level,
23 decibel levels. Thank you. And also,
24 don't let me forget, you have to discuss

1 your exhibit, and I'm not sure what I marked
2 it because you have it, I think it's
3 Complainants' Exhibit No. 3 whether you're
4 going to offer it into evidence.

5 MS. STUART: We marked it No. 3,
6 didn't we?

7 HEARING OFFICER HALLORAN: Right. And
8 you have to offer it into evidence.

9 MS. STUART: I have to offer it to
10 Mr. Harding?

11 HEARING OFFICER HALLORAN: You have to
12 offer it into evidence and ask Mr. Harding
13 is there any objection to Complainants'
14 Exhibit No. 3.

15 MS. STUART: Do you have an objection?

16 MR. HARDING: I have a relevance
17 objection, that's all.

18 HEARING OFFICER HALLORAN: I think I'm
19 going to overrule you and I will take
20 Complainants' Exhibit 3, it may help the
21 Board to discern Mr. Zak's testimony. So
22 Complainants' No. 3 is admitted. The
23 record will reflect Mr. Harding's
24 objection.

1 R E D I R E C T E X A M I N A T I O N

2 by Ms. Stuart

3 Q. My question for Mr. Zak is about a
4 Radio Shack meter that I purchased from him, which
5 was July of 2002.

6 MR. HARDING: We're back under the
7 sustaining objection.

8 HEARING OFFICER HALLORAN: This is in
9 the offer of proof, Mr. Harding.

10 MR. HARDING: Yes. Okay.

11 BY MS. STUART:

12 Q. The question is is this a qualified
13 piece of equipment to use for measuring sound for
14 the laymen?

15 A. Yes. I would -- I would characterize
16 it that way. Basically what you purchased was a
17 Radio Shack meter that I personally calibrated to
18 ensure that it was accurate and reading properly.

19 Q. Okay. Did you give me instructions on
20 how to use this meter?

21 A. Yes. I gave you detailed instructions
22 as far as the use of the meter for the layman and
23 taking measurement that would present sound levels
24 to the Board so the Board has some idea of what type

1 of sound levels we're talking about here at hearing.

2 Q. Okay. Are these very reliable?

3 A. The meters are highly reliable. I
4 have had very good experience with that particular
5 model of meter. It's one that can get banged around
6 quite a bit and still maintain its accuracy and
7 they also maintain calibration extremely well.
8 They virtually never drift so they're very reliable.

9 Q. Okay. How many readings -- how long
10 are the -- how long are the readings with the meter
11 supposed to last for, like how many minutes, like
12 five minutes, ten minutes?

13 A. Well, if I understand your question
14 and if I don't, just stop me, but I think the nature
15 of the question is if one was taking a measurement
16 to see if there was compliance with the Board
17 numeric relations, in this case it would be 901.104
18 for impulsive noise --

19 MR. HARDING: Okay. If I may object
20 at this point. These are a matter of law
21 and there's no such thing as an expert on
22 the subject of law. I mean, all we have is
23 the Board and the hearing officer --

24 HEARING OFFICER HALLORAN: As you

1 know, Mr. Harding, cases -- there are
2 different cases out there and they somewhat
3 conflict and so based on the Board's
4 procedures, if there's a good faith
5 argument as far as substantive law, I'm to
6 let it in. So objection noted, but
7 overruled. Thank you.

8 BY THE WITNESS:

9 A. As I was saying about 901.104, the
10 requirement there for the measurement is a one hour
11 LEQ, so we're looking at taking the measurement for
12 a one hour period of time. The amateur when they
13 take a measurement is going to take it for a much
14 shorter duration, but, again, it still presents to
15 the Board an idea of what the sound level is and
16 in the case of the Radio Shack meter, it does give a
17 very good rendition of what the Board's measurement
18 procedures were prior to 1987.

19 Q. Okay. So would readings that last for
20 ten to 15 minutes with this particular meter, would
21 that be appropriate by a layperson?

22 A. Again, it would, I think, aid the
23 Board in having an understanding of what type of
24 sound levels we're talking about here, but I don't

1 think that it would satisfy the Board as far as
2 finding a violation of 901.104.

3 MS. STUART: I think I covered it all.

4 HEARING OFFICER HALLORAN: Thank you.
5 And believe me, Mr. Harding, the Board will
6 come to its own conclusion. I just want to
7 make that clear.

8 MR. HARDING: Even when I think I'm
9 right the Board comes to its own
10 conclusion.

11 If I could, though, I just have a
12 couple of quick questions to follow-up to
13 that, if I may.

14 R E C R O S S E X A M I N A T I O N
15 by Mr. Harding

16 Q. This was a Radio Shack meter?

17 A. That's correct.

18 Q. Is this the same -- just to bring in
19 to my area of knowledge, is this the same meter that
20 you recommended to Michael Polowski (phonetic) about
21 five years ago?

22 A. It probably is and I apologize, I
23 remember the case to some extent, but my
24 conversation with him -- if I recommended a meter

1 that he purchased, it was a Radio Shack meter.

2 Q. Okay. They actually make more than
3 one, but this is the one that you recommend?

4 A. Actually there's two models. I think
5 the older model has been dropped out of it. They
6 give you the same reading. The older model used a
7 needle and the newer model uses a digital display,
8 but the electronics and the microphones are all
9 exactly the same. So you get the same result either
10 way. It's easier to read the digital model and I
11 believe the digital model now is the only one they
12 offer.

13 Q. Okay. And I saw somewhere, and I
14 don't remember where it was, but you -- and correct
15 me if I'm wrong, I seem to recall you saying that
16 these Radio Shack models stay fairly accurate unless
17 you drop them on the ground, get them wet or
18 something else?

19 A. Yes. They're much more rugged than a
20 precision meter and, of course, one big advantage is
21 they're inexpensive also. We're looking at a cost
22 there of approximately \$60 for the meter and in this
23 case \$40 for calibration so we're looking at a \$100
24 item versus -- for a non-precision instrument versus

1 a two to \$5,000 for a precision meter.

2 Q. And you calibrated this meter going
3 out, right?

4 A. Yes, I did.

5 Q. And as I recall, and again stop me,
6 but you had an agreement that you would sell it with
7 the calibration service for \$100 and then buy it
8 back for \$50?

9 A. That's correct, yes.

10 Q. Have you bought it back?

11 A. No, I have not yet.

12 Q. So it has never returned to your
13 possession?

14 A. No.

15 Q. And were you present for any of the
16 measurements that were taken with that meter?

17 A. No, I was not.

18 Q. Okay. And you have not seen it since
19 it first parted from your possession?

20 A. No, I have not.

21 MR. HARDING: Thank you. I have no
22 further questions, sir.

23 HEARING OFFICER HALLORAN: Thank you.

24 Ms. Stuart?

1 MS. STUART: I'm finished.

2 HEARING OFFICER HALLORAN: Do you want
3 to -- were you going to again under an
4 offer of proof were you going to offer this
5 log of cannon sound measurements that you
6 mailed to me and I think I got that March
7 1st, 2004 comprising of one, two, three,
8 four, five, six, seven pages? I'm not sure
9 what the seventh page is, something total
10 amount due \$99.30. Were you going to --

11 MS. STUART: What that is is the
12 agreement between Mr. Zak and I for
13 purchasing the meter and how he calibrated
14 it. There should be some notes on that.

15 HEARING OFFICER HALLORAN: I think Mr.
16 Harding has the same one. Right now what
17 I'm going to do is mark it as Complainants'
18 Exhibit No. 4 and I want to hear from Mr.
19 Harding. Mr. Harding?

20 MR. HARDING: Well, we have the
21 surprise issue, we also have the relevance
22 issue and we have no foundation as far as
23 what occurred in terms of the numbers going
24 into there. That kind of completes my list

1 of objections.

2 HEARING OFFICER HALLORAN: I think the
3 document kind of speaks for itself. It
4 gives the daytime weather and I think Mr.
5 Zak talked about it briefly and I think Ms.
6 Stuart talked about it briefly regarding
7 the foundation of it anyway. I am going to
8 take it as an offer of proof based on my
9 prior ruling and let the Board decide in
10 their infinite wisdom again. So
11 Complainants' No. 4 is taken with the case
12 -- excuse me, Complainants' Exhibit No. 4
13 is taken with the case as an offer of
14 proof. Mr. Zak -- is he finished? Are you
15 finished with Mr. Zak?

16 MS. STUART: Yeah.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Zak. I appreciate it.

19 MS. STUART: Thank you.

20 HEARING OFFICER HALLORAN: Do you have
21 any other witnesses, Ms. Stuart?

22 MS. STUART: You know, can I recall a
23 witness?

24 HEARING OFFICER HALLORAN: Mr. Harding?

1 MS. STUART: It's just for one
2 question.

3 MR. HARDING: Who?

4 MS. STUART: My husband.

5 MR. HARDING: You know, I'm wasting
6 more time sitting here thinking about it
7 than I would if I just said go do it.

8 HEARING OFFICER HALLORAN: To remind
9 you, you are still under oath, Mr. Stuart.
10 Ms. Stuart, you may proceed.

11 BY MS. STUART:

12 Q. Ron, since I purchased a meter from
13 Mr. Zak, which was in July of 2002, did you ever
14 have the opportunity to watch me use the meter?

15 A. Yes, I did.

16 Q. Did I use --

17 MR. HARDING: Objection. She asked
18 to recall him for a question?

19 HEARING OFFICER HALLORAN: I'm sorry?

20 MR. HARDING: She asked to recall him
21 for one question.

22 HEARING OFFICER HALLORAN: Correct.
23 Did you not say one question or one line of
24 questioning?

1 MS. STUART: Well, it was actually one
2 subject, but it's not going to be long.

3 HEARING OFFICER HALLORAN: I'll give
4 you a little latitude and I'll let Mr.
5 Harding object again. You may proceed.

6 BY MS. STUART:

7 Q. Okay. Did I use a camcorder to record
8 the meter?

9 A. Yes, you did.

10 Q. Did I document the numbers on a pad of
11 paper?

12 A. Yes, you did.

13 Q. Did I put the numbers into the
14 computer?

15 A. Yes, you did.

16 Q. Did I back up the disk with the
17 numbers?

18 A. Yes, you did.

19 MR. HARDING: Okay. I have to object
20 to this. There is a quicker and easier way
21 for her to get into the record what it is
22 that she did. If she wanted to recall a
23 witness, this is not the prime witness to
24 do this with.

1 HEARING OFFICER HALLORAN: Ms. Stuart?

2 MS. STUART: There was no one else
3 that ever saw me do it except for him.

4 MR. HARDING: My point.

5 HEARING OFFICER HALLORAN: Mr. Harding?

6 MR. HARDING: My point is that
7 Ms. Stuart hasn't said she did it.

8 HEARING OFFICER HALLORAN: I was
9 waiting for you, Ms. Stuart, on your direct
10 narrative to mention something about this
11 log, but for the purposes of this hearing
12 if Mr. Stuart can answer, he may do so,
13 but, again, I was under the impression it
14 was one question, but your objection is
15 noted, Mr. Harding. You may proceed, Ms.
16 Stuart.

17 BY MR. STUART:

18 A. I can make it simple for you.
19 I observed her taking the measurements at the time,
20 recording them, putting them in the computer. I
21 observed the process.

22 HEARING OFFICER HALLORAN: Mr. Harding?

23 MR. HARDING: My objection to the
24 reading stands and I am not going to cross

1 him based on that.

2 HEARING OFFICER HALLORAN: You may
3 step down -- sit there, pretend you're off
4 the stand. Anymore witnesses, Ms. Stuart?

5 MS. STUART: Huh-huh.

6 HEARING OFFICER HALLORAN: A couple of
7 things and at this point since you have no
8 more witnesses basically this is the time
9 you're going to close in your case in
10 chief, however, I want to address a few
11 things that are hanging out there that have
12 not been brought to my attention that you
13 mentioned yesterday at the prehearing
14 conference and again today numerous times
15 regarding written testimony.

16 MS. STUART: Yes. I have written
17 testimony because there were two people who
18 had to work, they were going to be
19 witnesses, but they were unable to take off
20 of work and then the one person is my son,
21 David, who had to go back to school, so I
22 have their testimony and then I have a
23 signed and notarized affidavit.

24 HEARING OFFICER HALLORAN: Has

1 Mr. Harding seen -- how many are there,
2 four or three?

3 MS. STUART: Well, there's three
4 people and I just got all this because it
5 was like a last minute thing so I had to
6 have them do an affidavit, which really
7 kind of upset me because, you know, last
8 night I'm running out just trying to do
9 everything.

10 HEARING OFFICER HALLORAN: It probably
11 could have saved you some time if you went
12 and looked at Section 101.628, it's written
13 testimony. Now, depending on what the
14 respondent says or the other party it can
15 be admitted, but the person has to be here
16 and subject to cross-examination. I can
17 take it as public comment. Mr. Harding, do
18 you have any thoughts on the matter?

19 MR. HARDING: I have a problem with
20 the right to confront and I would object to
21 it being used on that basis. On the other
22 hand, I don't know how serious -- and this
23 is after several Illinois Pollution Control
24 Board hearings, I don't know how serious to

1 get about such an objection given the fact
2 that anyone can make public comment, so
3 there you go.

4 HEARING OFFICER HALLORAN: That's what
5 I ruled.

6 MR. HARDING: Right. I don't know how
7 serious to be about the objection, though,
8 but I don't think public comment is
9 necessarily a vehicle for factual
10 submission.

11 HEARING OFFICER HALLORAN: Well, I
12 don't want to get into the dynamics, but it
13 is public comment and I will accept it as
14 such. It will be considered public
15 comment.

16 MR. HARDING: Could I possibly get a
17 copy?

18 MS. STUART: You sure can.

19 HEARING OFFICER HALLORAN: I'm not
20 sure where we are on public comments.

21 MR. HARDING: Three will be the next
22 one.

23 HEARING OFFICER HALLORAN: Three
24 because we have one from --

1 MR. HARDING: One from each of the
2 politicians.

3 HEARING OFFICER HALLORAN: Okay. So
4 this will be -- Wayne, is it Genis?

5 MS. STUART: Wayne Genis.

6 MR. HARDING: Could I get copies,
7 please, because I can't possibly --

8 MS. STUART: I'm trying to get them to
9 you.

10 MR. HARDING: Well, we're now
11 numbering them. I've got Pilotto with one
12 L.

13 MS. STUART: I don't think I have an
14 extra copy of David Stuart.

15 HEARING OFFICER HALLORAN: Okay. What
16 I'll do, I will look at the record and
17 remind me, I'll send Mr. Harding a copy.
18 I'll have the clerk copy it and send him
19 one copy of each.

20 MR. HARDING: Okay. If I could make a
21 suggestion rather than do that? Normally
22 public comments get swapped into ADOBE and
23 end up on the web site. If we could give
24 it a week, I'll take a look and see and then

1 I'll give you a call if I don't have them.

2 HEARING OFFICER HALLORAN: That's
3 fine, but see, the problem is with that is
4 -- because the transcript will take a
5 minimum of eight days and normally under
6 the hearing report I have to make this
7 ruling and I don't do the hearing report
8 until a week or two after I get the
9 transcript, I don't turn the exhibits over
10 to the clerk, that's what I'm saying, but
11 in this instance I think just to cut it
12 short, tomorrow or whenever I go back in
13 the office I'll give these to the clerk and
14 he'll send them out to you.

15 MR. HARDING: Okay. Thank you.

16 HEARING OFFICER HALLORAN: Wayne
17 Genis' affidavit and testimony will be
18 marked public comment No. 3.

19 MS. STUART: Didn't we already have a
20 three?

21 HEARING OFFICER HALLORAN: I stopped
22 when you were looking --

23 MS. STUART: I'm sorry. You're right.
24 It's No. 3.

1 HEARING OFFICER HALLORAN: Public
2 comment No. 4 is David Pilotto's affidavit
3 and testimony and last, but not least, Mr.
4 David Stuart's affidavit and testimony will
5 be taken as public comment No. 5.

6 MS. STUART: I do have one last thing,
7 I swear it's the last thing. I had a
8 petition that I brought around the
9 neighborhood at the time and had people
10 sign, which I think should be submitted,
11 you know, for the Board to review and I
12 have attached to it a signed affidavit
13 along with a map which indicates who signed
14 it. I thought it would be for the
15 convenience of the Board.

16 MR. HARDING: Where is this?

17 MS. STUART: Right here.

18 MR. HARDING: Please, I'd appreciate
19 if you wouldn't take the tone.

20 HEARING OFFICER HALLORAN: Normally
21 you need copies for everyone to take a look
22 at. I understand you were under the gun,
23 but it does help if you do have a copy of
24 -- I don't have a copy.

1 MS. STUART: I've got five copies.

2 HEARING OFFICER HALLORAN: I know, but
3 I could be looking at things as you do it.
4 This case has been out there for two years
5 and it seems like everything is happening
6 at the 11th hour.

7 MR. HARDING: Affidavit dated
8 yesterday? I object.

9 MS. STUART: Well, you know, you've
10 had that petition in your hands for the
11 last two years because I sent it to you.

12 MR. HARDING: The petition, yes, not
13 the March 8th, 2004 affidavit.

14 HEARING OFFICER HALLORAN: I'm going
15 to mark it as public comment No. 6. I
16 can't take it any other way than public
17 comment No. 6.

18 MS. STUART: Thank you, Mr. Halloran.

19 HEARING OFFICER HALLORAN: Thank you,
20 Ms. Stuart.

21 You know, there is one other thing
22 hanging out there among the number of
23 things you mailed to me and not filed with
24 the Board were I think on February 13th,

1 2004 you sent me a bunch of exhibits. What
2 do you want me to do with those?

3 MS. STUART: Well, I thought that
4 those exhibits show -- give information
5 about, you know, hearing problems and
6 they're well documented by physicians and
7 that a lot of the studies have been done by
8 university extension programs and I thought
9 it would supply some information and some
10 knowledge to the Board.

11 HEARING OFFICER HALLORAN: But you
12 didn't file it with the Board. You sent it
13 to me and I just happened to bring it
14 along. I'm looking through --

15 MS. STUART: I thought that you asked
16 me just to send them to you and Mr.
17 Harding?

18 HEARING OFFICER HALLORAN: Well, I
19 said if you think there would be any kind
20 of issue with it, yeah. I don't know that
21 -- you haven't talked about it here today.
22 In order to get -- attempt to get it in the
23 record, you have to talk about it now
24 because I don't want you going home and

1 saying oh, shoot, I forgot about these
2 things, but there's a ton of stuff and I'm
3 looking for -- one of them is a note from
4 Dr. Battista.

5 MR. HARDING: These were all proposed
6 exhibits for which no foundation was laid.
7 I would object to the admission.

8 HEARING OFFICER HALLORAN: There's
9 been nothing --

10 MS. STUART: That's fine.

11 HEARING OFFICER HALLORAN: I will take
12 it with the case as an offer of proof, but
13 I was just wondering how you were going to
14 address these. I mean, you understand you
15 just can't go ahead and say hey, look at
16 this. You do have to have some kind of
17 foundation and, you know, I know the rules
18 are a little relaxed and we can take some
19 treatises and stuff, but there has to be
20 some foundation.

21 MS. STUART: That's what I thought I
22 was doing. I thought the foundation was
23 relevance because it concerned a lot of the
24 issues at hand with propane cannons and,

1 you know, the distress that I'm under.
2 I've been so overwhelmed by everything that
3 I ended up quitting my job over everything
4 that's been going on.

5 MR. HARDING: Objection.

6 HEARING OFFICER HALLORAN: Overruled.
7 I'm going to mark -- let me count how many
8 you've got in here. For the record, this
9 is a letter -- January 11th, 2004 is the
10 date on the top from Ms. and Mr. Stuart and
11 it's regarding a lot of exhibits, some
12 medical and rehabilitation exhibits.
13 There's also interspersed in here a letter
14 from -- it looks like Dr. Battista to the
15 Will County State's Attorney's Office, you
16 might have that in somewhere as an offer of
17 proof.

18 MS. STUART: Yeah, it is an offer of
19 proof because we were going to clump them
20 altogether remember?

21 HEARING OFFICER HALLORAN: Yeah.
22 That's in the offer of proof too. Uniform
23 residential appraisal report --

24 MR. HARDING: So that I understand,

1 were objections sustained on all of this
2 stuff, but it's coming in under offer of
3 proof?

4 HEARING OFFICER HALLORAN: Hold on,
5 Mr. Harding. I already said that and I'll
6 say it again, correct. There appears to be
7 28 documents anywhere from doctors' notes
8 to diagrams to maps, m-a-p-s, to articles
9 on the hearing and so forth. I'm going to
10 mark it as Group Exhibit -- Complainants'
11 Group Exhibit No. 5 and I'm going to take
12 it with the case as an offer of proof. I
13 think we're on No. 5, is that correct?

14 MR. HARDING: I believe so.

15 HEARING OFFICER HALLORAN: Have you
16 rested now, Ms. Stuart, your case in chief?

17 MS. STUART: Yes.

18 HEARING OFFICER HALLORAN: Terrific.
19 Let's take a ten-minute break and get back
20 here. Thank you.

21 (Whereupon, after a short
22 break was had, the
23 following proceedings
24 were held accordingly.)

1 HEARING OFFICER HALLORAN: We are
2 back on the record. Ms. Stuart has rested
3 in her case in chief and Mr. Harding is on.

4 MR. HARDING: All right. At this
5 point before I do any witness presentations
6 I would like to move admission of
7 Respondents' Exhibits 1 through 19, 21 and
8 24 through 27 for which foundations were
9 all laid during the Complainants' case in
10 chief.

11 HEARING OFFICER HALLORAN: If you bear
12 with me. I had them kind of out of order.

13 MR. HARDING: And I have recently
14 discovered that there are 29 lines on a
15 letter size legal pad, it didn't quite run
16 through.

17 HEARING OFFICER HALLORAN: What are
18 your thoughts on the matter, Ms. Stuart,
19 Mr. Stuart, regarding Respondents' Exhibits
20 1 through 19, 21 and then 24 and 27?

21 MS. STUART: Well, which ones are
22 they?

23 MR. HARDING: I numbered them and I
24 gave them to you.

1 MS. STUART: Oh, okay.

2 MR. HARDING: If I can have just a
3 minute with Mr. Fisher while she's looking
4 for those.

5 HEARING OFFICER HALLORAN: We can go
6 off the record a second.

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

9 HEARING OFFICER HALLORAN: Back on the
10 record. Mr. and Ms. Stuart has looked
11 through respondents' exhibits which are
12 actually marked Defendants', but
13 Respondents' Exhibit 1 through 19, 21, 24
14 and 27. Do you have any objection to those
15 exhibits being admitted into evidence?

16 MR. STUART: The only thing I have an
17 objection to is the relevancy of these
18 letters, Exhibit C and Exhibit B.

19 HEARING OFFICER HALLORAN: Exhibit C.

20 MR. HARDING: Those are Exhibit C and
21 D to Defendants' 1. I believe it's one,
22 isn't it?

23 MR. STUART: Yes, Defendants' 1.

24 MR. HARDING: That's Defendants' 2,

1 the requests for admission. Our point here
2 is that those are the actual request for
3 admission and the actual answers to the
4 requests to admission.

5 HEARING OFFICER HALLORAN: These same
6 exhibits are Exhibits 24, 25, 26, and 27, I
7 think, these are letters to the editor?

8 MR. HARDING: Well, there are many
9 letters to the editor, some of them are
10 independent, some of them are included in
11 the requests to admit.

12 HEARING OFFICER HALLORAN: That's your
13 objection to Respondents' Exhibit No. 2.

14 MR. STUART: Yes.

15 HEARING OFFICER HALLORAN: Overruled.
16 Anything else?

17 MR. STUART: No.

18 MR. HARDING: Twenty-five -- actually
19 it was 24 through 27 I think we've already
20 laid the foundation for so that includes 25
21 and 26.

22 HEARING OFFICER HALLORAN:
23 Twenty-four, 25, 26 and 27, but you're
24 comfortable with all the other Respondents'

1 Exhibits, one through 19, 21, 24, 27 with
2 the exception of Exhibit C -- or is it B, C
3 and D?

4 MR. STUART: Yeah, it's B, C and D.

5 MS. STUART: This one here. Yeah,
6 because I really object to this one.

7 MR. HARDING: Which one?

8 MR. STUART: Exhibit C.

9 MR. HARDING: Exhibit C to No. 2.

10 MR. STUART: One.

11 MS. STUART: You know, on Exhibit C,
12 you know, Mr. Fisher's name was never
13 mentioned in this, so I don't see how this
14 could be relevant.

15 HEARING OFFICER HALLORAN: Well, it
16 was attached -- did you not attach it to
17 the response for requests to admit?

18 MR. HARDING: It was attached to the
19 requests to admit as an item admission of
20 which was requested and it was C to No. 2,
21 is that what we're talking about?

22 HEARING OFFICER HALLORAN: Correct.
23 Bear with me for a second.

24 (Brief pause).

1 HEARING OFFICER HALLORAN: I would
2 have to agree, Mr. Harding, with the
3 Stuarts that it is irrelevant. I'm looking
4 at page two of the response for request
5 admission No. 5, they argue there that
6 it is irrelevant. She did write the
7 letter, but it is irrelevant, but I think
8 what we'll do without further ado, unless
9 you have any other thing to say is -- and
10 they have no objection to any other
11 exhibits so I will accept Respondents'
12 Exhibits 1 through 19, Respondents' Exhibit
13 No. 21, Respondents' Exhibits No. 24
14 through 27 with the exception of -- in
15 Respondents' Exhibit No. 2 which we've been
16 talking about, Exhibit C, I'll take that
17 with the case as an offer of proof. I will
18 say no more about that because I'm not
19 going to take a proactive role in this
20 case. Where does that leave us, Mr.
21 Harding?

22 MR. HARDING: That leaves us with a
23 couple of questions for Michael Stuart and
24 then Ms. Barton and Mr. Fisher.

1 HEARING OFFICER HALLORAN: We can go
2 off the record for a second.

3 (Whereupon, after a short
4 break was had, the
5 following proceedings
6 were held accordingly.)

7 HEARING OFFICER HALLORAN: We're back
8 on the record. Michael, you're reminded
9 that you're still under oath. Mr. Harding
10 would like to ask you a couple of
11 questions. You may proceed, Mr. Harding.

12 BY MR. HARDING:

13 Q. May I ask what you were doing out in
14 the hallway?

15 A. I was fixing my guitar.

16 Q. And that is an electric guitar?

17 A. Uh-huh.

18 MR. HARDING: Thank you. I have no
19 further questions.

20 HEARING OFFICER HALLORAN: Thank you.
21 Ms. Stuart, Mr. Stuart, any questions?

22 MR. STUART: No.

23 HEARING OFFICER HALLORAN: Thank you.
24 You may step down.

1 MR. HARDING: Franklin Fisher, please.

2 HEARING OFFICER HALLORAN: You're
3 reminded you're under oath. You may
4 proceed, Mr. Harding. Thanks.

5 D I R E C T E X A M I N A T I O N
6 by Mr. Harding

7 Q. Now, just to get us off on the right
8 foot I'd like to show you Defendants' Exhibits -- or
9 Respondents' Exhibit 22 and 23. Can you tell me
10 what is depicted in Defendants' Exhibits 22 and
11 23?

12 HEARING OFFICER HALLORAN: Do you have
13 copies of these?

14 MS. STUART: No.

15 MR. HARDING: Yes.

16 MS. STUART: No, I don't.

17 MR. HARDING: They were tendered.
18 They're at the very bottom of the stack.

19 MS. STUART: The ghost must have
20 gotten them.

21 BY MR. HARDING:

22 Q. And do you recognize these two
23 pictures?

24 A. Yes, I do.

1 Q. And what are those pictures of?

2 A. These are showing the melons that the
3 crows have eaten.

4 Q. Are these all the melons that the
5 crows have eaten?

6 A. My goodness, no. I mean, we weren't
7 going to pick all the melons to show, but we just
8 picked a sampling.

9 Q. Does this show how the crows attack
10 the melons?

11 A. Yes, it does.

12 Q. And they basically take a chunk out of
13 each melon?

14 A. That's exactly right.

15 Q. And then move on?

16 A. Yeah.

17 Q. And is it a fair and accurate
18 depiction of what the crows do?

19 A. Yes, it is.

20 MR. HARDING: Okay. I move to admit
21 Defendants' Exhibits 22 and 23 at this
22 time.

23 HEARING OFFICER HALLORAN: Any
24 objection from the complainants?

1 MS. STUART: Absolutely.

2 MR. STUART: The objection is that
3 there's no proof here as far as whether the
4 crows did this.

5 HEARING OFFICER HALLORAN: I'm sorry?

6 MR. STUART: There's no proof on
7 whether a crow did that or whether another
8 animal could have done that.

9 MS. STUART: Because I thought
10 Mr. Fisher had said that a bunch of, like,
11 little pecks all over the place.

12 HEARING OFFICER HALLORAN: You can
13 cross-examine when the time comes.

14 MS. STUART: Okay.

15 HEARING OFFICER HALLORAN: We'll hold
16 off on that right now, Exhibits 22 and 23.

17 BY MR. HARDING:

18 Q. Now, what is the closest that either
19 of your propane cannons have ever been to the Stuart
20 lot line?

21 A. I believe when we measured it it was
22 about 1,900 foot.

23 Q. Okay. Roughly two-fifths of a mile?

24 A. That is correct.

1 Q. And do you ever use the cannons at
2 night?

3 A. No.

4 Q. And in 2001 when did you use the
5 cannons, let's start with dates?

6 A. I don't have exact dates, but I can
7 assure you it wasn't before July 15th.

8 Q. Well, I believe the Stuarts testified
9 that that first day was August 8th of 2001?

10 A. That's probably right.

11 Q. Do you recall when the last day was?

12 A. I don't believe we've ever operated
13 them after November end. Typically around Halloween
14 it's over.

15 Q. Okay. Now, how do you determine when
16 to start using them during a season? What
17 relationship is there to ripeness?

18 A. Typically when the melons start to
19 turn ripe is when the crows will start eating them
20 and that's usually a week or two prior to being able
21 to sell the melon.

22 Q. And then just to clarify this for
23 those of us who have not farmed before. Fruit is
24 not like socks and underwear and suits and cars,

1 they don't all come off the assembly line together,
2 right?

3 A. No, they don't. Typically you don't
4 want them to either.

5 Q. Even if you plant them at the same
6 time, they tend to ripen in stages?

7 A. Exactly right.

8 Q. So you basically have -- is what
9 you're telling me that you have your melons ripening
10 from a period -- being ready to pick from a period
11 say the early part of August through Halloween?

12 MR. STUART: Objection. He's leading
13 the witness.

14 HEARING OFFICER HALLORAN: I agree,
15 but, you know what, I let Ms. Stuart a
16 little latitude on leading so I think in
17 all fairness I'll allow Mr. Harding to
18 proceed.

19 BY MR. HARDING:

20 Q. Is that a fair statement of when
21 they're ripening?

22 A. Yes, yes. But we have some melons
23 that ripen like a little bit prior to -- to that
24 date, sometime in July. That's why I'm saying

1 there's occasion where you would probably start your
2 cannon mid July, late July.

3 Q. Okay. Because no two growing seasons
4 are alike either?

5 A. Absolutely not.

6 Q. You've covered a lot of this with
7 Ms. Stuart and I'm not going to belabor it, but your
8 property, the 80 acres that we were looking at over
9 there on the Complainants' Exhibit 2, you're
10 separated by another small farm and something else
11 from the Stuarts, is that correct? Can you tell me
12 what it is that separates your land from the
13 Stuarts?

14 A. Well, there's a 24-acre parcel that is
15 right next to ours between the -- what used to be
16 the railroad tracks and our property.

17 Q. And then the railroad tracks or what
18 used to be the railroad tracks because I gather the
19 tracks are all taken out?

20 A. That's right, yes.

21 Q. That's all overgrown with trees and --

22 A. With trees and shrubs and -- right.

23 Q. Okay. And that lies between you and
24 the Stuarts?

1 A. Yes.

2 Q. Now, your property, just to be clear,
3 is essentially two 40-acre squares north to south,
4 40 acres north, 40 acres south, right?

5 A. That's correct, yes.

6 Q. So it forms a rectangle with sides
7 twice as long as the -- two sides twice as long as
8 the other two sides, is that correct?

9 A. Yes, that would be right.

10 Q. Okay. And no part of this actually
11 extends behind the Stuarts property?

12 A. None whatsoever, not even close.

13 Q. Have you -- I want to get the name
14 right here -- have you ever been onto Mr. Grossman's
15 property?

16 A. Never in my life.

17 Q. Have you ever turned into his
18 driveway?

19 A. Never in my life.

20 Q. And at the risk of getting slapped
21 here, how do you pick asparagus?

22 A. That's a real pet peeve of mine
23 because I've hunted asparagus since I was this high
24 (indicating) and --

1 MR. HARDING: Can we indicate that he
2 held his hand up about two-and-a-half feet?

3 HEARING OFFICER HALLORAN: So
4 indicated.

5 BY THE WITNESS:

6 A. And I get very aggravated, I have
7 with my own kids when -- we used to go asparagus
8 hunting and they would break it off. All summer
9 long I run around with a knife in my pick-up truck
10 because I do hunt along the road and a quick or --
11 I love to do it for exercise, for enjoyment, but
12 never have I ever broken off asparagus. I mean,
13 I get very aggravated when I see it done so...

14 BY MR. HARDING:

15 Q. Why?

16 A. Well, because typically what happens
17 to asparagus is -- you're supposed to cut asparagus
18 just below the surface of the ground, that way the
19 stalk doesn't dry out and go down to the root and
20 dry out the root and that's normal procedure. We've
21 raised asparagus for a lot of years.

22 Q. Okay. Do you grow asparagus on your
23 property?

24 A. Yes, we do.

1 Q. And were you growing asparagus on your
2 property in 2002?

3 A. Yes, sir, we were.

4 Q. About how much asparagus were you
5 growing?

6 A. I would say my asparagus patch would
7 be half the width of this room and the length.

8 Q. Is that enough asparagus for you or do
9 you sell it?

10 A. No. It's strictly for the family.
11 I certainly can't eat all the asparagus that comes
12 out of that patch, but just about all the members of
13 the family like it and we take turns in terms of who
14 gets it so...

15 Q. And before people started moving into
16 residential type homes in your area, did you have
17 crows?

18 A. Crows have been around since the
19 beginning of time, but certainly not as many crows
20 as we have now.

21 Q. What attracts the crows, if you know?

22 A. Well, I know for a fact garbage
23 attracts crows and dead animals. Crows eat anything
24 that's dead they pick on and --

1 Q. What about lights at night?

2 A. I'm not really familiar with lights at
3 night other than -- I know it does attract some
4 crows, but crows don't have much movement at night,
5 to my knowledge.

6 Q. About how many times has the sheriff
7 of Will County come to see you about the sound of
8 your propane cannons?

9 A. The first year, 2001, I believe it was
10 several times. It was very often and, you know, I
11 don't have proof that every complaint was from the
12 Stuarts, but I know that county was in eight or ten
13 times I would suggest.

14 MR. STUART: Can I note that that's
15 hearsay?

16 HEARING OFFICER HALLORAN: I'm sorry.
17 Do you have an objection?

18 MR. STUART: I object as hearsay.

19 HEARING OFFICER HALLORAN: Could you
20 read the question back, Terry? I'm sorry.

21 (Whereupon, the requested
22 portion of the record
23 was read accordingly.)

24 HEARING OFFICER HALLORAN: Overruled.

1 He may answer if he's able.

2 MR. HARDING: I think he's already.

3 MR. FISHER: I did.

4 BY THE WITNESS:

5 A. You know, eight to ten times and
6 that probably includes the animal protection group
7 and then some other agency was there, but I'm going
8 to say a total of about ten times with all of the
9 people that came with respect to the cannons.

10 BY MR. HARDING:

11 Q. Was that in 2001?

12 A. I believe it was 2001. I believe so.

13 Q. Did you get any visits from the Will
14 County sheriff in 2002?

15 A. I think probably only on one occasion
16 and -- you know, I really don't know whether I did
17 or not.

18 Q. Okay. Now, the first growing season
19 was 2001 that you used the cannons?

20 A. Yes.

21 Q. And then you used them again in 2002?

22 A. Yes, that's correct.

23 Q. And again in 2003?

24 A. Yes, sir.

1 Q. Now, did you use them in the same way
2 in 2002 as you had in 2001?

3 A. No, we did not.

4 Q. How did you use them in 2001?

5 A. Well, in 2000 (sic) we used them on a
6 regular basis from dusk -- from dawn until dusk and
7 in 2002 we used them sporadically. As I said, we
8 found that you don't have to have them on full-time
9 to keep the crows away. If the crows recognize that
10 the guns are there and you have them on for three or
11 four days in a row, they just expect the next day
12 you're going to have them on so you can get away
13 with not using the guns for a day or two. Let me
14 also point out that through this whole process we
15 always did have respect for the church that is down
16 the street and 99.9 percent of the time we didn't
17 use the guns during the church service part.

18 Q. Okay. And that was in 2001, right?
19 You got past my question a little bit because you
20 got into 2002, right?

21 A. Uh-huh.

22 Q. Okay. How did you use them in 2003?

23 A. Pretty much the same way.

24 Q. The same way as what?

1 A. We used them sporadically.

2 Q. Like 2002?

3 A. Yes, yes, but even less, I believe.
4 Very rarely did we have them on on Sundays at all
5 and I think we probably went three or four days
6 without them on occasion so...

7 Q. What about your use during any one
8 day? How did that -- what was the pattern of use
9 during any one day? Did you just leave them on?

10 A. We left them on, yes.

11 Q. In 2003?

12 A. Yes.

13 Q. Was that every time you used them you
14 left them on all day?

15 A. Pretty much, pretty much we did, yes.
16 I think we turned them off a lot earlier in the
17 evening in 2003 than we had prior, but...

18 Q. I'd like to show you an article from
19 the Chicago Tribune, I believe it's dated August
20 5th, 2002. Have you seen that article before?

21 A. Yes, I have.

22 Q. Does it match what you know about
23 crows and what attracts crows?

24 A. Sure.

1 MR. HARDING: At this point I would
2 move to admit Defendants' Exhibit 20.

3 HEARING OFFICER HALLORAN: Mr. or
4 Ms. Stuart, any objection --

5 MR. STUART: I have no problem.

6 HEARING OFFICER HALLORAN: -- with
7 admitting Respondents' Exhibit No. 20?

8 MR. STUART: No.

9 HEARING OFFICER HALLORAN: Okay.
10 Respondents' Exhibit No. 20 is admitted.

11 MR. HARDING: No further questions of
12 this witness.

13 HEARING OFFICER HALLORAN: Okay.
14 Who's going to be the lucky party to
15 cross-examine?

16 C R O S S - E X A M I N A T I O N
17 by Mr. Stuart

18 Q. Frank, you had said that you never
19 operated these cannons at night. On our first
20 encounter it was nightfall when I found you. Is it
21 true that when I found you the first night it was
22 already dark and the cannons were still on?

23 HEARING OFFICER HALLORAN: Mr. Stuart,
24 you're going to have to speak up. I'm

1 sorry.

2 BY MR. STUART:

3 Q. It was nightfall when I first found
4 out where the cannons were. Is it not true that I
5 came up to you and that's the way I found your house
6 and you said you had forgotten to turn the cannon
7 off?

8 A. I don't remember that conversation and
9 I don't remember you ever coming up there after
10 dark.

11 Q. Okay. Did you not state in the Judge
12 Mathis case that you ran the cannons up to six
13 months a year, 12 hours a day?

14 A. I'm sure I didn't say six months a
15 year, I might have, but if I did, I said it wrong
16 because I don't think we've ever had those cannons
17 on more than -- three-and-a-half months would be
18 stretching it.

19 Q. What is the frontage of that 24-acre
20 parcel that you're talking about? My concern is
21 that -- we're talking about a 24-acre parcel. What
22 is frontage on Corning Avenue of that property?

23 A. A guess -- I don't know that, but I'm
24 sure you could get it off of a map. I would venture

1 to say it's five or 600 feet, but I'm not sure of
2 that.

3 Q. I think you're probably right on that.

4 A. I think that's got to be close.

5 Q. So that means that that particular
6 parcel of land, 24 acres, sounds like a lot of land,
7 that particular parcel of land is long and thin like
8 a bowling alley?

9 A. That is correct, yes.

10 Q. Have you ever heard of the West Nile
11 Virus?

12 A. Oh, absolutely.

13 Q. Do you know their affects on crows?

14 A. I know that it's life-threatening.

15 Q. Yes. Do you know that -- the crow
16 population is 63 percent down because of that?

17 MR. HARDING: Objection. That's not
18 even a question, that's testimony. I
19 object. It's not a question. It's
20 testimony.

21 HEARING OFFICER HALLORAN: Mr. Stuart,
22 could you rephrase the question and we'll
23 see what happens from there?

24 BY MR. STUART:

1 Q. Are you aware of the percentages of
2 crows that have been killed by the West Nile Virus?

3 A. I'm aware that in some areas of the
4 country this is true, however, I find it very
5 difficult to believe any population was checked in
6 our area because I can assure you we haven't got a
7 lack of crows.

8 Q. According to the pictures that we
9 received, could any other animal be responsible for
10 those holes in the watermelon?

11 HEARING OFFICER HALLORAN: What
12 pictures are we talking about?

13 MR. HARDING: I believe 22 and
14 23.

15 HEARING OFFICER HALLORAN: If I could
16 have those back when you get a chance so I
17 don't forget them. I'm sorry to interrupt,
18 Mr. Stuart.

19 MR. STUART: That's okay.

20 HEARING OFFICER HALLORAN: Do you
21 remember the question?

22 MR. FISHER: Yes, I do.

23 BY THE WITNESS:

24 A. And no, I can assure you those are

1 crows bites.

2 BY MR. STUART:

3 Q. Are you aware that they're going to
4 put a school and a church across the street from
5 your house?

6 A. I'm aware they are going to put a
7 church across the street from our property and
8 I did not take the opportunity to challenge it when
9 they wanted to change that from agriculture to --

10 Q. It's not just going to be a church,
11 it's going to be a school.

12 A. Well, that's wasn't my understanding.

13 MR. HARDING: Again, objection. He's
14 testifying.

15 HEARING OFFICER HALLORAN: Objection
16 sustained.

17 BY MR. STUART:

18 Q. Do you attend the church that's on
19 Corning Avenue?

20 A. No, I don't.

21 Q. Okay. According to the article, crows
22 are moving to the city, do you agree with that?

23 A. A lot of them have, yes.

24 Q. Would that reduce the number of crows

1 in your area?

2 A. Not particularly because we've had a
3 lot of homes spring up in our area. All them homes
4 that are in the area used to be the Dickie farm and
5 all that ground was farm ground and since the
6 buildings came in, the crows have increased.

7 Q. But the question was do you believe
8 the crows are going to the city and the answer was
9 yes?

10 A. Some are, yes.

11 MS. STUART: Can I interject here? I
12 do believe that I -- somewhere amongst the
13 pile of the stuff that I sent you on those
14 articles and things there is an article in
15 there about the crow population being
16 greatly affected in northern Illinois.

17 HEARING OFFICER HALLORAN: Okay. The
18 record will so reflect. That was taken as
19 an offer of proof as Complainants' Group
20 Exhibit --

21 MS. STUART: It tells the whole story.

22 MR. FISHER: We're not northern, we're
23 central. Northern, that's true.

24 MS. STUART: No, central is

1 Springfield.

2 MR. HARDING: I'm going to have to
3 object to the tag team.

4 BY MR. STUART:

5 Q. This is the last question, if you were
6 to take and be told by the hearing board here that
7 you could not use the cannons anymore, what would be
8 your steps? What steps would you take to protect
9 your crops?

10 MR. HARDING: I'm going to object to
11 the question. We're not there yet. If
12 it's something we have to deal with, we'll
13 deal with it, but I imagine he's going to
14 get all kinds of help in between.

15 HEARING OFFICER HALLORAN: I think
16 there was an objection of the same nature
17 when -- I think Mr. Harding was asking
18 Mr. Stuart and I can't remember my ruling,
19 however, I think I sustained it because it
20 is speculative and we'll wait and see, so
21 objection sustained.

22 MR. STUART: Okay.

23 HEARING OFFICER HALLORAN: Redirect,
24 Mr. Harding?

1 MR. HARDING: No. I have no further
2 questions of Mr. Fisher.

3 HEARING OFFICER HALLORAN: Thank you.
4 Before we -- what about Respondents'
5 Exhibit Nos. 22 and 23? Do you want to
6 offer that into evidence?

7 MR. HARDING: Yes, please.

8 HEARING OFFICER HALLORAN: The
9 Stuarts, your response?

10 MR. STUART: Well, I have no proof
11 that that was a crow, you know. It could
12 have been any animal. We've got foxes like
13 they said before. We've got foxes, we've
14 got raccoons.

15 MR. FISHER: Foxes don't eat --

16 MR. HARDING: Wait --

17 HEARING OFFICER HALLORAN: The record
18 will so note both --

19 MS. STUART: A possum will.

20 HEARING OFFICER HALLORAN: The record
21 will so note both the Stuarts' objections,
22 however, I'm going to admit them into
23 evidence, Respondents' Exhibits Nos. 22 and
24 23, two photos showing a picture of melons.

1 MR. HARDING: And I believe we're in
2 with 20 as well?

3 HEARING OFFICER HALLORAN: I'm sorry?

4 MR. HARDING: We had moved 20, the
5 Tribune article.

6 HEARING OFFICER HALLORAN: Yeah. I
7 think I admitted that already. There was
8 no objection earlier.

9 I think you were formally sworn as
10 well, Ms. Barton, so I will remind you
11 you're still under oath.

12 MS. BARTON: Okay.

13 D I R E C T E X A M I N A T I O N

14 by Mr. Harding

15 Q. Julie Barton, did you have occasion on
16 or about July 4th, 2002 to be passing by the Stuarts
17 residence on the road in front of it?

18 A. Yes.

19 Q. That's on -- what's the name of that
20 road?

21 A. Corning Road.

22 Q. That's the road you live on too,
23 right?

24 A. Yes.

- 1 Q. And at that time did you observe any
2 children in the front yard?
- 3 A. Yes, I did.
- 4 Q. And did those children include one of
5 the Stuarts' sons?
- 6 A. Yes, it did.
- 7 Q. And what were those children doing?
- 8 A. Blowing off fireworks.
- 9 Q. Were those explosive fireworks?
- 10 A. Fireworks that shoot up in the air and
11 bang.
- 12 Q. Thank you. You, by the way, live
13 substantially closer than the Stuarts to the propane
14 cannons?
- 15 A. Yes.
- 16 Q. And have they ever bothered you?
- 17 A. No.
- 18 Q. Do they keep you from doing anything?
- 19 A. No.
- 20 Q. You live at 25 West Corning Road,
21 right?
- 22 A. Correct.
- 23 Q. And there's no tree line or anything
24 like that between you and the noise cannons?

1 A. No.

2 MR. HARDING: I have no further
3 questions.

4 BY THE WITNESS:

5 A. We also have animals, I don't know if
6 you want to know that.

7 BY MR. HARDING:

8 Q. No, that's okay.

9 A. That doesn't matter?

10 Q. That's okay?

11 HEARING OFFICER HALLORAN: Any cross?

12 MR. STUART: I have no questions.

13 HEARING OFFICER HALLORAN: You may
14 step aside, Ms. Barton. Thank you very
15 much.

16 MS. BARTON: You're welcome.

17 MR. HARDING: Well, I've examined
18 everyone I intend to examine. I've moved
19 admission for everything I intend to admit.
20 I can't think of another thing that I need
21 to be doing here.

22 HEARING OFFICER HALLORAN: Okay.

23 I think everything has been ruled upon, all
24 your exhibits. Mr. Harding appears to rest

1 in his case in chief. Now it's up to the
2 Stuarts. Do you have any rebuttal in this
3 matter?

4 MR. STUART: We rest.

5 HEARING OFFICER HALLORAN: You rest as
6 well?

7 MR. STUART: Yes.

8 HEARING OFFICER HALLORAN: Okay. Now,
9 we talked a little about closing arguments.
10 Ms. Stuart, Mr. Stuart are you going to
11 make a closing argument or are you going to
12 reserve it for the posthearing brief? It's
13 entirely up to you.

14 MR. STUART: Can you just tell me what
15 the posthearing brief would be?

16 HEARING OFFICER HALLORAN: I'm sorry?

17 MR. STUART: What is the posthearing
18 brief?

19 HEARING OFFICER HALLORAN: We're going
20 to discuss that off the record in a moment.

21 MR. HARDING: If it will influence
22 anyone's decision on this subject I should
23 say that I am not going to make a closing
24 argument, I'm going to save it for my

1 posthearing brief.

2 MR. STUART: I'll probably do so.

3 HEARING OFFICER HALLORAN: Okay.

4 Before I forget, I'm supposed to make a
5 credibility determination regarding the
6 witnesses that testified here today and
7 based on my observations, legal experience,
8 I find that there are no issues of
9 credibility with any of the witnesses who
10 testified here today. With that said,
11 we'll go off the record for a few minutes
12 and discuss a posthearing briefing
13 schedule. Thank you.

14 (Whereupon, a discussion
15 was had off the record.)

16 HEARING OFFICER HALLORAN: We're back
17 on the record. We talked about a briefing
18 schedule and we've come up to an agreed one
19 and that is we decided that the transcript
20 will be ready March 19th. It probably
21 won't be ready and on the web site until
22 March 22nd, I believe that's a Monday, and
23 I will have my ruling sent out by March
24 25th, my ruling on the video, and I think

1 that's Hearing Officer Exhibit No. 1, I
2 believe I marked it as. I've given the
3 parties -- if they wish to appeal any of my
4 rulings that I made here today and/or wish
5 to appeal my ruling on the admissibility of
6 the video, those are due April 16th. We
7 set May 3rd as the Complainants' brief is
8 due to be filed on or before. We also set
9 the amicus brief -- curiae brief of Will
10 County if they so desire and I just quickly
11 mention that they were given -- it looks
12 like they were given leave to file on
13 January 23rd, 2003, Board order. The
14 Respondents' brief is due on or before June
15 15th. The reply of the Stuarts, if any, is
16 due on or before July 15th. Public comment
17 is due on or before April 23rd.

18 I guess with that said I do want
19 to thank everyone for their professionalism
20 and their civility today. I think we all
21 did well and have a safe trip home. Thank
22 you very much.

23 MS. STUART: Thank you, Mr. Halloran.

24 MR. HARDING: Thank you.

1 (Whereupon, no further
2 proceedings were had in the
3 above-entitled cause.)
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF W I L L)

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6 I, TERRY A. BUCHANAN, CSR, do
7 hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook, and
9 State of Illinois; that I reported by means of
10 machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a true
12 and correct transcript of my shorthand notes so
13 taken as aforesaid.

14
15

16 _____
17 Terry A. Buchanan, CSR
18 Notary Public, Will County, Illinois

19

20 SUBSCRIBED AND SWORN TO
21 before me this ___ day
22 of _____, A.D., 2004.

22

23 _____
24 Notary Public