

1 ILLINOIS POLLUTION CONTROL BOARD

2 LIONEL TREPANIER, WES)
WAGER, MAUREEN COLE,)
3 LORENZ JOSEPH, MAXWORKS)
GARDEN COOPERATIVE, and)
4 AVI PANDYA,)
)
5 Complainants,)
)
6 vs.) PCB 97-50
) (Enforcement-Air, Citizens)
7 SPEEDWAY WRECKING COMPANY)
and THE BOARD OF TRUSTEES)
8 OF THE UNIVERSITY OF)
ILLINOIS,)
9)
Respondents.) VOLUME I

10

11

12 The following is the transcript of a
13 hearing held in the above-entitled matter, taken
14 stenographically by Geanna M. Iaquina, CSR, a
15 notary public within and for the County of Cook and
16 State of Illinois, before John C. Knittle, Hearing
17 Officer, at 100 West Randolph Street, Room 8-031,
18 Chicago, Illinois, on the 23rd day of March, 1999,
19 A.D., commencing at the hour of 9:30 a.m.

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21

22

23

24

1 PRESENT:

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

9
10 MR. LIONEL TREPANIER
11 MR. JOSEPH LORENZ
12 MS. MAUREEN COLE

13 Appeared Pro Se;

14
15 ARNSTEIN & LEHR
16 120 South Riverside Plaza
17 Suite 1200
18 Chicago, Illinois 60606
19 (312) 876-6928
20 BY: MR. NORMAN P. JEDDELOH

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

24
25 ADDUCCI, DORF, LEHNER, MITCHELL, &
26 BLANKENSHIP, P.C.
27 150 North Michigan Avenue
28 Suite 2130
29 Chicago, Illinois 60601
30 (312) 781-2200
31 BY: MR. MARSHALL L. BLANKENSHIP

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

34

35 ALSO PRESENT:

36

37 Ms. Amy Muran-Felton Mr. Nicholas Melas
38 Mr. Richard McGill Ms. Kathleen Hennessy
39 Mr. James Henderson Mr. Donald Brown
40 Ms. Karen Kavanaugh Mr. Thomas Saniat
41 Mr. Larry Kolko Ms. Catherine Glenn

42 L.A. REPORTING (312) 419-9292

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2

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1 HEARING OFFICER KNITTLE: My name is John
2 Knittle. I'm a hearing officer with the Illinois
3 Pollution Control Board. I've been assigned to this
4 matter that we're having a hearing today on, and
5 that matter is Lionel Trepanier, Wes Wager, Maureen
6 Cole, Lorenz Joseph, Maxworks Garden Cooperative,
7 and Avi Pandya versus Speedway Wrecking Company and
8 the Board of Trustees of the University of
9 Illinois. It's PCB No. 97-50.

10 Today's date is March 23rd, 1999. I
11 notice that we have representatives from Speedway
12 Wrecking Company and the Board of Trustees here, but
13 Mr. Trepanier -- ma'am, what's your name?

14 MS. COLE: Maureen.

15 HEARING OFFICER KNITTLE: And it's Maureen
16 Cole.

17 Of the complainants, only Lionel Trepanier
18 and Maureen Cole are present. Wes Wager and Lorenz
19 Joseph, Maxworks Garden Cooperative, and Avi Pandya
20 are not present.

21 We're having this hearing that has been
22 scheduled in accordance with the Illinois
23 Environmental Protection Act and the Board's rules
24 and procedures. There was a board order on October

1 15th, 1998, that granted partial summary judgment to
2 the respondents, and pursuant to that order, we are
3 directed to hearing on Sections 9A and 21B of the
4 Environmental Protection Act regarding 1261 Halsted
5 Street.

6 I'm going to conduct this hearing
7 according to the procedural rules laid out in the
8 Board's rules, specifically at 103, 202, and 203,
9 and I would also note that Mr. Nick Melas, board
10 member of the Illinois Pollution Control Board is
11 present.

12 MR. MELAS: Make it Nicholas.

13 HEARING OFFICER KNITTLE: Nicholas Melas.

14 Pardon me, sir.

15 MR. MELAS: For the record.

16 HEARING OFFICER KNITTLE: For the record, and
17 if you have anything to say at any point, Mr. Melas,
18 please feel free to interject.

19 Do you have anything you wish to say at
20 this point?

21 MR. MELAS: Nothing at this point.

22 HEARING OFFICER KNITTLE: Okay. Thank you,
23 sir.

24 I also note that there are no members of

1 the public present. Maybe I could have the parties
2 identify themselves at this point starting with the
3 complainants.

4 MS. COLE: My name is Maureen Cole.

5 MR. TREPANIER: Lionel Trepanier.

6 MR. BLANKENSHIP: Marshall Blankenship for
7 Speedway Wrecking.

8 MR. KOLKO: Larry Kolko, K-o-l-k-o, Speedway
9 Wrecking.

10 MR. JEDDELOH: Norman Jeddelloh on behalf of the
11 Board of Trustees.

12 HEARING OFFICER KNITTLE: Thank you. And,
13 Mr. Kolko, I take it, are you an attorney, or are
14 you just -- are you a member of Speedway Wrecking
15 Company?

16 MR. KOLKO: I'm a member of Speedway Wrecking.

17 HEARING OFFICER KNITTLE: Okay. Well, that's
18 all I have preliminarily. I'd like to deal with any
19 outstanding motions at this point, and the only
20 outstanding motion that I have knowledge of is
21 something that was filed yesterday, March 22nd,
22 1999. It's called the University's motion for
23 modification of order entered March 5th, 1999.

24 The complainants -- excuse me, the

1 petitioners -- well, it is complainants. The
2 complainants, do you have any response to this? I
3 know you've just read this hear today.

4 MR. TREPANIER: Well, one thing that would help
5 to make this more fuller, like, I see that in
6 paragraph three it's referring to Trepanier's
7 response to a motion to bar testimony attached
8 hereto, but I don't see an attachment to my copy,
9 and I wonder if the respondent might make clear what
10 it is that they're taking issue with with regards to
11 my motion to bar testimony in paragraph three, but
12 overall it seems to me that what we have here is the
13 University rearguing their earlier motion to bar
14 testimony, which was denied.

15 HEARING OFFICER KNITTLE: Excuse me,
16 Mr. Trepanier. Just, for the record, we have a
17 Mr. --

18 MR. JEDDELOH: James Henderson.

19 MR. HENDERSON: -- James Henderson entering the
20 room, and he is, Mr. Jeddelloh?

21 MR. JEDDELOH: I'm sorry. He's the
22 University's institutional representative, and I
23 will say for the record he's late because an
24 accidental misdirection that I gave him, and I'm

1 sure he had to look around the building to find the
2 room. So I apologize to him and to the board.

3 HEARING OFFICER KNITTLE: And we also have
4 entering the room at this point it looks like three
5 members of the Pollution Control Board staff. We
6 have Cathy Glenn. Actually, why don't you identify
7 yourselves for the record.

8 MS. GLENN: I'm Cathy Glenn.

9 MS. MURAN-FELTON: I'm Amy Muran-Felton.

10 HEARING OFFICER KNITTLE: All affiliated with
11 the Pollution Control Board.

12 Okay. Mr. Trepanier, you can continue
13 your objection to the motion.

14 MR. TREPANIER: Thank you.

15 So I think wherein this motion merely
16 reargues their denied motion of our testimony, it
17 should be denied. Where this motion raises an issue
18 that Mr. Gimbel may be unavailable apparently
19 allegedly due to the inadvertence of the counsel for
20 the University, I think that if that's an issue, we
21 should deal with that if and when it arises that the
22 complainants attempt to call Mr. Gimbel.

23 I think it's premature to rule on a motion
24 that apparently asks for a continuance for Mr. Gimbel

1 to appear when the complainant's staff had called
2 him.

3 HEARING OFFICER KNITTLE: Mr. Jeddelloh, do you
4 have anything you wish to suggest?

5 MR. JEDDELOH: Sure, a couple of things. First
6 of all, we're not trying to reargue a motion. We're
7 merely trying to say that due to administrative
8 snafu, Mr. Gimbel is not in town. I filed this
9 motion out of a feeling of caution and to advise the
10 Board as to what I had discovered when I went about
11 the process of preparing witnesses.

12 Mr. Gimbel's name is in play here, not
13 because of anything the University has done or
14 because the University has identified him as a
15 witness, but because the complainants argued
16 vociferously and long that he should be made
17 available, and I'm just indicating that this is, in
18 fact, a problem that we encountered, and I'm just
19 asking the Board's indulgence that we set up special
20 circumstances for taking testimony that they may
21 want to elicit from him.

22 I'm also offering through the affidavit
23 that I've attached I've also tried to, you know,
24 support the contention that probably he has very

1 little, if anything, to offer to this hearing.

2 HEARING OFFICER KNITTLE: Understood.

3 What I'm going to do here, Mr. Trepanier,
4 and, Mr. Jeddelloh, I'm kind of -- Mr. Trepanier, I
5 agree with what you said. I think I'm going to
6 leave this until the end of the hearing and see what
7 happens here, and I appreciate your concerns for
8 filing this motion.

9 What I'd like to do is at the end of the
10 hearing, Mr. Trepanier, if you think you need to
11 hear from Mr. Gimbel, we'll address it at that
12 point, and at that point I'll make a decision on
13 this and also entertain any motions you may have in
14 terms of sanctions or anything for his failure to
15 appear because he was properly noticed pursuant to
16 the Board's rules. So at this point, though, we're
17 going to hold off ruling on this until the end of
18 the hearing.

19 Is that the only outstanding -- that's the
20 only outstanding motion I have before me. Is there
21 anything else from the complainants?

22 MR. TREPANIER: Yeah. I'm going to want a
23 motion that the witnesses for the respondents will
24 be excluded from the hearing.

1 HEARING OFFICER KNITTLE: Pardon me? I don't
2 exactly understand what you mean. The witnesses --
3 are you suggesting that you don't want them here
4 while the other witnesses are testifying?

5 MR. TREPANIER: That I don't want them here
6 while the other witnesses are testifying.

7 HEARING OFFICER KNITTLE: That's fine that's
8 how we run things generally anyway.

9 MR. BLANKENSHIP: Except for the client
10 representative, who, I believe, has a right to sit
11 through on this.

12 HEARING OFFICER KNITTLE: Right. But,
13 Mr. Trepanier, perhaps, they could testify before
14 the other witnesses testify.

15 Would that be a problem?

16 MR. BLANKENSHIP: However he wants to call
17 them. I have no opposition to excluding witnesses,
18 but I believe we're entitled to have the client
19 representative here throughout the hearing.

20 HEARING OFFICER KNITTLE: That is true,
21 Mr. Trepanier.

22 MR. JEDDELOH: And the University would join in
23 that, and we would like to have Mr. Henderson here.

24 HEARING OFFICER KNITTLE: Right. Are they both

1 on -- Mr. Trepanier, are these two people both on
2 your proposed witness list?

3 MR. TREPANIER: Yes, they are.

4 HEARING OFFICER KNITTLE: So if you want them
5 to testify before their testimony can be colored by
6 any other witnesses, you may want to call them
7 initially.

8 MR. TREPANIER: Thank you.

9 HEARING OFFICER KNITTLE: Anything else from
10 respondents?

11 MR. BLANKENSHIP: No.

12 HEARING OFFICER KNITTLE: Okay. Well, let's
13 begin. We're going to start off with opening
14 statements. Mr. Trepanier and Ms. Cole, you have
15 the opportunity to make any opening statements you
16 wish to make at this point in time.

17 MS. COLE: Okay. We've decided that I'll do
18 the opening and --

19 MR. TREPANIER: The first opening.

20 MS. COLE: The first opening.

21 My testimony is to witness that while
22 living at Maxworks Cooperative, having these
23 buildings taken down as I tried to maintain a
24 residence there was something far beyond what I had

1 ever imagined would happen. Not having lived ever
2 within the city as much as this is, I can't say that
3 I've ever been exposed to such large quantities of
4 pollution where I have had resided previously to
5 this, and what I might determined caused some
6 hazardous affects on my health being that during
7 this time I suffered countless episodes --

8 MR. JEDDELOH: I'm going to object for the
9 record. She's testifying, and she's testifying
10 beyond the scope of her expertise.

11 HEARING OFFICER KNITTLE: Let me just say
12 opening statements are generally your theory of the
13 case, and you're not supposed to provide testimony.
14 You can be called as a witness or provide testimony
15 once you're sworn in after opening statements in
16 your case in chief.

17 MS. COLE: Well, might I ask exactly what is it
18 that -- what kind of approach other than testimony
19 am I allowed to give? I mean, could you give me a
20 general idea of what -- could I ask the University,
21 like, am I supposed to tell this in the form of a
22 story?

23 MR. JEDDELOH: I'm going to -- for the
24 University, I'm going to object to providing advice

1 to the complainants as to how they might carry on
2 their case.

3 MS. COLE: Okay.

4 HEARING OFFICER KNITTLE: Ms. Cole, do you have
5 anything else?

6 MS. COLE: Yes. My testimony will show that
7 because of what I perceive as loose dust and dirt
8 from these building wreckings or from these
9 demolished buildings that the wind whipping around
10 in the city made it very difficult. Well, I'll
11 testify that eyes were smarting.

12 MR. JEDDELOH: Same objection.

13 MS. COLE: Throat -- okay.

14 HEARING OFFICER KNITTLE: You know, I'm going
15 to allow you to keep talking, but what I want to do,
16 this is a citizens enforcement complainant, and I'm
17 going to ask -- we don't want you to testify during
18 your opening statement. That's not generally how
19 it's done, but I would ask you that you and
20 Mr. Trepanier are sworn in.

21 Could you swear them in just in case there
22 is in testimony that's elicited? Your objection, of
23 course, will stand to any testimony during opening
24 statements.

1 MR. JEDDELOH: My objection is two. First of
2 all, she's making an opening statement that is
3 testimony as indicated, but the second is that she
4 is also providing testimony that's outside the scope
5 of her knowledge. She cannot, as a nonqualified or
6 unqualified citizen, make a determination as to
7 medical causation.

8 MR. TREPANIER: I think I heard her say
9 stinging eyes. I don't think that's --

10 HEARING OFFICER KNITTLE: Your objection in two
11 parts is, you know, is understood. We're going to
12 swear them in to alleviate any problems with the
13 testimony. Also, you are cautioned that you are not
14 supposed to testify during your opening statement.

15 MS. COLE: Oh. All right. Forgive me.

16 HEARING OFFICER KNITTLE: As to the --

17 MS. COLE: I'm not professional.

18 HEARING OFFICER KNITTLE: No. Understood.

19 As to the fact that she may be branching
20 beyond her scope of testimony that she -- we're
21 going to give her some leeway with her opening
22 statement as is generally done, and she'll have to
23 back that up with appropriate testimony if, in fact,
24 that comes to play during the case in chief.

1 Could you swear them in, please?

2 (Witnesses sworn.)

3 MR. BLANKENSHIP: Before we proceed, I guess

4 I'm a little concerned now. I wasn't objecting

5 because I understood the opening statements. If

6 this is going to be considered testimony, I guess

7 I'd like to know that because then I'll jump in with

8 my objections too.

9 HEARING OFFICER KNITTLE: I am trying to give

10 them some leeway as citizen complainants, and by no

11 means do I want them to do any testifying during

12 opening statements, and any objections, you know,

13 made to that effect will be granted.

14 I'm not going to allow any testimony to

15 come in during the opening statements. I'm trying

16 to prevent that. What I'm trying to ensure is that

17 we have all bases covered.

18 So Ms. Cole, you're allowed to proceed,

19 but please try not to testify during your opening

20 statement.

21 MS. COLE: I'm sorry. Forgive me.

22 Well, I'll say as a citizen that I would

23 hope that the conditions in the city would be a

24 little more considerate of anyone that's shopping or

1 walking down the street and, it can run into
2 terrible problems, and it is the big corporations
3 and universities that have the big spending money to
4 alert us little persons that are just trying to go
5 about our daily lives, and I'm just hoping that this
6 might serve to alter things in the future. I'll --

7 HEARING OFFICER KNITTLE: Ms. --

8 MS. COLE: I'll close with that.

9 HEARING OFFICER KNITTLE: I'm sorry, Ms. Cole.

10 I didn't mean to interrupt you.

11 MS. COLE: I was finished.

12 HEARING OFFICER KNITTLE: Mr. Trepanier, do you
13 have any opening statement? Once again, you're
14 cautioned as well that there is no testimony during
15 opening statements.

16 MR. TREPANIER: Okay. I'd like to thank the
17 Board, their representatives, and the hearing
18 officer, and the respondents also for coming to deal
19 with this matter.

20 I feel like it is a very important matter
21 because the implications of the case are -- I
22 believe that we'll see the implications of the case
23 are very great, that we're dealing with a factual
24 circumstance of a demolition in a neighborhood in a

1 background sea of many demolitions and in a plan on
2 behalf of at least the University respondent to
3 continue with demolitions, and I think that -- I
4 think that it's a good service to the people of
5 Illinois that the Board is providing this forum that
6 people who live in a neighborhood such as myself
7 have an opportunity to raise our concerns regarding
8 this course of action and the amount of pollution
9 that we've complained about and that we are going to
10 complain about, and I believe that the evidence is
11 going to show to the Board and to all of us that
12 there was a lot of pollution, and that the
13 University didn't take reasonable care to oversee
14 what it was that they were asking to be done.

15 That lack of oversight we'll find went so
16 far as to not even to let know the people who were
17 right adjacent and immediately going to be affected
18 by this demolition that the University, in fact,
19 intended to take such an extraordinary use of their
20 building as to demolish the building with no
21 notice.

22 I believe the evidence also is going to
23 show that besides a lack of good neighborliness that
24 there was a lack of compliance with federal

1 standards. The federal standards for demolition and
2 renovation was not met in this case, and that's what
3 the evidence is going to show, and it's going to
4 show that these standards weren't met in a
5 neighborhood that's very crowded, a very crowded
6 space, a dense busy street.

7 What the University I believe is going to
8 present to the Board as they've done to this point
9 is the fact that their action was an innocuous
10 action like dust off of a baseball field, a sneeze
11 in the wind, but I say to you that a sneeze in the
12 wind when it's in somebody's face is unreasonable.

13 The same sneeze that might have passed
14 with no notice in an empty field, when thrown into
15 somebody's face is an assault, and I think that's
16 what the evidence is going to show occurred from the
17 University's demolitions in this neighborhood, and
18 specifically the demolition at 1261 South Halsted.

19 HEARING OFFICER KNITTLE: Is that it,
20 Mr. Trepanier?

21 MR. TREPANIER: No. I'll try to keep moving.

22 So the case that we're putting on, the
23 case that I'm bringing and the others with it is
24 that you must take a precaution when -- the

1 University and Speedway had a duty to take a
2 precaution, and they failed to take those
3 precautions, and that failure to take a precaution
4 deserves that the Board would take notice of it and
5 give them a penalty to get their attention and to
6 get this -- get the University and Speedway onto a
7 correct course for such extraordinary actions.

8 I think that the evidence is going to show
9 that while the demolition went on that no pollution
10 controls were taken, and I think -- I also will tell
11 you that the evidence is going to show that the
12 University was aware that no pollution controls were
13 being used and they failed to report it. In fact,
14 made no notice of it at all, no note, and in there,
15 they violated their duty to protect the innocent,
16 the children, the babes, the complainants in this
17 case, thousands of passersby on Halsted Street. Not
18 one thing did they do to relieve these people of the
19 pollution which they acknowledge they were
20 creating.

21 Also, part of our case is going to bring
22 to you the injuries that were suffered by the
23 complainants specifically and injuries, and we're
24 going to bring testimony to you that will show that

1 while this demolition activity was ongoing, that the
2 neighborhood, the surrounding areas of the area
3 surrounding the demolition of 1261 Halsted were
4 rendered unusable and that this impacted on the
5 complainants and it impacted on the passersby.

6 So in wrapping up my opening, the case
7 that we're bringing is one that charges uncontrolled
8 demolition, that no controls were used, that
9 existing regulations intended to abate a nuisance of
10 a demolition weren't followed, and that in the areas
11 of asbestos removal, specifically the federal
12 standard that this wasn't met in several ways, and
13 we're going to touch on the other criteria that the
14 Board must use which would attempt to touch on as
15 many of the criterias as we're able to. I don't
16 have it in front of me right now, but one I recall
17 is a priority of location. So we'll talk about that
18 to a degree, and so I'm going to close then to say
19 that the case that we're presenting here is going to
20 show that no pollution at times -- at least at
21 times, no pollution controls were being used. We'll
22 prove that beyond a doubt.

23 We're saying that the University was aware
24 of it, failed to do anything about it, and that

1 people were injured. It was just unreasonable, and
2 I don't know why it's taken such a great effort to
3 bring this forward, but I do appreciate the time of
4 the Board and all of you that we are able to look
5 into this matter.

6 HEARING OFFICER KNITTLE: Thank you,
7 Mr. Trepanier.

8 Any opening statements on behalf of the
9 respondents? Mr. Blankenship?

10 MR. BLANKENSHIP: Yes, please.

11 As I indicated, I'm Marshall Blankenship.
12 I represent Speedway Wrecking Company. Seated with
13 me is Larry Kolko, who is a vice-president and
14 co-owner of Speedway. The other owner is Larry's
15 brother, Irv Kolko, who you also be hearing from at
16 some point.

17 Speedway Wrecking is a family business.
18 It was founded in the 1920s by Larry and Irv Kolko's
19 father. It's a relatively small Chicago company.
20 It has ten permanent employees, and it hires more or
21 less depending on its needs on per job basis when
22 jobs warrant.

23 In its long history in the demolition
24 business, Speedway has never been cited for a

1 violation of any rule or regulation. This is the
2 first such incident that Speedway has ever
3 encountered, and, frankly, Speedway is extremely
4 surprised to even be in this position, and we'll
5 hear from Mr. Kolko on that.

6 We're here about only one demolition. The
7 complainants in their openings referred to many
8 demolitions going through the area. The claims
9 related to those demolitions have all been resolved
10 on summary judgment. We're here only on the
11 property at 1261 Halsted, and I want to talk about
12 what I think the evidence will show with respect to
13 that property.

14 In May of 1996, the University was in the
15 midst of an expansion program, and as part of that
16 expansion program, it acquired certain properties in
17 the Maxwell Street area and demolished the buildings
18 on those, and one of those properties was the 1261
19 property, and in May of 1996, the University put
20 that demolition out for bids among the demolition
21 community.

22 In fact, it put out two things for bids.
23 One -- the first bid was for asbestos removal work
24 at the property, and then the second bid was for the

1 pure demolition after the asbestos was removed.
2 MR. TREPANIER: Could I offer an objection?
3 I'm sensing that that Mr. Blankenship is undertaking
4 activity that earlier was found objectionable when
5 Ms. Cole was, as Mr. Blankenship is saying,
6 specifically what the University did and with
7 specificity.

8 MR. BLANKENSHIP: If I may respond, I'm not a
9 witness. I'm just offering what I believe the
10 testimony will show, and I think that's a pretty big
11 difference here. I'm allowed to say what I think
12 the testimony is going to show. That's the purpose
13 of an opening statement.

14 HEARING OFFICER KNITTLE: Mr. Blankenship is
15 going to be allowed to continue his opening
16 statement, and you do have the right to indicate
17 what you think the testimony will show and what you
18 think you're going to prove up during your case.

19 MR. BLANKENSHIP: Speedway did not bid for the
20 asbestos removal portion. Speedway is not in that
21 business. Speedway does not do asbestos removal,
22 and the asbestos removal portion of this project for
23 1261 Halsted was actually awarded by the University
24 to Environmental Hazard Control. They performed the

1 asbestos removal, and there will be no evidence from
2 the complainants, and they have the burden of proof
3 here, that there was any asbestos left in that
4 building at the time of the demolition, no evidence
5 at all of that.

6 Speedway bid on this project, and 1261
7 Halsted is a four-story building that's located on
8 the northeast corner of Halsted Street and 13th
9 Street in the Maxwell Street area. It's two or
10 three blocks west of the expressway.

11 To the north of this property, was an
12 abandoned building. To the east of that property
13 was a junkyard basically where the recycling center,
14 which was further to the east, kept its material to
15 be recycled. Across 13th Street was another
16 three-story building, and then you had Halsted
17 Street on the west side.

18 Speedway bid for the demolition of that
19 property and was a successful bidder. Speedway's
20 bid did not include removal of the asbestos because
21 that was being done by a different contractor.
22 Asbestos is the only particulate that is
23 specifically regulated in the context of a
24 demolition, and since Speedway wasn't doing that,

1 Speedway simply went through the proper procedures
2 for initializing a demolition. They obtained a
3 demolition permit from the city of Chicago. They
4 obtained a permit from the Streets and Sanitations
5 Department.

6 The only conditions put on the demolition
7 by the city were that Speedway had to erect a canopy
8 on the sidewalk on Halsted and 13th Street to
9 protect the passersby. Speedway erected that
10 canopy. Speedway provided the proper notice of the
11 demolition to the Illinois EPA, to the federal EPA,
12 and to the city environmental department. All the
13 notices that were required for this demolition and
14 all the precautions were taken.

15 Before the demolition began, the evidence
16 will show there was dust in this neighborhood. In
17 fact, Mr. Trepanier collected a sample of dust a
18 block north of the demolition site, and he believed
19 that dust was just the ambient dust in the
20 neighborhood. There was dust in this neighborhood.
21 It's an old neighborhood. It's a run-down
22 neighborhood, and it's right near the expressway.
23 There was dust all over the place the evidence will
24 show.

1 The demolition started on September 4th,
2 1996, and ended about a month later on October 8th,
3 1996. It was a relatively straightforward job, but
4 it took a little longer than one might expect
5 because the building, due to the nature of the
6 construction, had to be hand wrecked on the top
7 floors; that is, the workers used hand tools,
8 sledgehammers, crowbars to wreck the top floors, and
9 then for the lower floors a crane with a scoop
10 shovel on the end was brought in to demolish the
11 rest.

12 The spoils of the litigation were all
13 hauled away on an ongoing basis by Speedway and
14 properly disposed of, and I don't think there's any
15 contention that the spoils that were hauled away
16 were properly disposed of. When the job was done,
17 the basement was filled in with dirt as required by
18 the city, and all that was left on this property was
19 a vacant lot.

20 There was some dust that arose as part of
21 the demolition. There always is. Dust is an
22 inherent part of demolitions. When you break
23 things, there is dust. There's no evidence that
24 this dust contained any hazardous substances, any

1 asbestos, any carcinogens, anything that would cause
2 any health problems, and there's no evidence that
3 even if it contained trace elements of those that
4 there was enough of a hazardous substance in that
5 dust to cause an adverse health reaction given the
6 minimal interface that these petitioners had with
7 that dust.

8 In fact, aside from Mr. Tepanier, all of
9 the petitioners lived over a block away from the
10 demolition site, and there was a block of buildings
11 between where they lived and the site, and
12 Mr. Trepanier, he actually lived in Blue Island. He
13 wasn't even in the city.

14 The only interface that these petitioners
15 had with dust from this demolition site occurred
16 when they purposely subjected themselves to that
17 dust. Mr. Trepanier will testify that he purposely
18 walked into what he saw as blowing dust so he could
19 come here today to tell you that he did. The other
20 petitioners were only at the demolition site to
21 gather evidence in their opposition to the
22 University's plans for the neighborhood.

23 The evidence will show that the
24 petitioners are all community activists who have

1 been opposed to the University's plans for the
2 Maxwell Street area, and they've been involved in
3 protests against that. They like their community
4 the way it is, and, of course, that's their right.
5 They want their community to stay. They don't want
6 the University to take down these buildings which
7 they believe have some significance, and I think
8 Mr. Trepanier will testify that this pollution claim
9 was used as a hook to get into court to get before a
10 forum where they could stop these demolitions, and
11 if you look at look at the complaint, the chief
12 relief they're requesting is not to stop pollution,
13 but to stop the demolitions and to require the
14 University to better use the properties at issue
15 here. That's their true motivation here. The
16 pollution came after the fact.

17 In fact, the complaint was filed in this
18 case alleging pollution before the demolition at
19 1261 had even really started in earnest, and
20 Mr. Trepanier signed that complaint before he even
21 saw any dust from this demolition. The purpose in
22 bringing this, I believe the evidence will show, is
23 to cause a lot of frustration, difficulty, and
24 expense for the University and Speedway to dissuade

1 them from their plans for this area to make it so a
2 demolition company will be leery of taking on any
3 job in this area because they know if they do
4 they're going to get hit with a lawsuit and spend
5 more defending that suit than they'll ever make on
6 the job. That's their purpose here, not pollution,
7 I think that's what the evidence is going to show
8 when you look at the timing of the events at issue
9 and what the evidence really is.

10 The actual claims that we're here on are
11 two, but both arising from the same set a facts.
12 They allege a violation of Section 9A of the
13 Environmental Protection Act for air pollution.
14 They don't allege a specific violation of a specific
15 regulation. It's a nuisance theory, and they also
16 allege a violation of Section 21B, dumping on public
17 property. Both of these violations are based on the
18 dust that arose from this site.

19 I submit to you the evidence will show
20 that not all dust is air pollution. Sometimes dust
21 is just dust, and in this case, the minimal dust,
22 the sporadic dust that arose does not rise to the
23 level of air pollution. Speedway took the required
24 actions. They followed the practices of the

1 demolition community in using watering to control
2 the dust. The water came from a fire hydrant
3 through a hose and was sprayed during the demolition
4 on an ongoing basis. This is the common practice.
5 It's been for years. It's the only economical
6 useful way to try to control dust. Even then,
7 watering doesn't stop all the dust. Nothing stops
8 all the dust. There is always dust no matter what
9 you do, and the minimal amount of dust here does not
10 rise to the level of air pollution.

11 Speedway and the University followed --
12 played by all the rules. They went through all the
13 steps. They did everything the government expected
14 of them, and they finished this demolition with
15 minimal intrusion to the neighborhood, and that's
16 simply not a violation of the Environmental
17 Protection Act.

18 Thank you.

19 HEARING OFFICER KNITTLE: Thank you,
20 Mr. Blankenship.

21 Mr. Jeddeloh, do you have an opening
22 statement?

23 MR. JEDDELOH: Yes, Mr. Chairman. The
24 University joins in the opening statement so

1 eloquently made by Mr. Blankenship on behalf of
2 Speedway. We also believe, in addition, the
3 evidence will show as follows.
4 . The demolition of 1261 Halsted was part
5 of the University project, which is larger in
6 nature, and Mr. Blankenship has made reference to
7 it. The University's desire is to redevelop that
8 neighborhood into a higher use involving light
9 commercial, University purposes, and residential.
10 The buildings involved that are wherever the subject
11 matter of this case, and certainly 1261, which is
12 currently the subject matter of this case, fall into
13 the category of being decrepit, sometimes abandoned,
14 sometimes the source of illicit criminal activity,
15 certainly not the kinds of properties that would be
16 easy to develop into other sorts of uses.
17 There were -- it was sometimes abandoned,
18 certainly not a high quality property. The
19 University engaged open discussions with the
20 community and with others about the University's
21 plans to redevelop this neighborhood and solicited a
22 lot of comments. Many of the comments were very
23 favorable towards the University's proposed usage.
24 When it came time to demolish 1261

1 Halsted, as Mr. Blankenship has indicated, the
2 University took steps to remove the only thing that
3 the University could discern was any potential
4 problem in the property, the asbestos, and did
5 retain the services of Environmental Health
6 Control. They removed the asbestos. They're
7 qualified to do so. They did so in accordance with
8 all standards, and after that was completed, they
9 then retained the services of Speedway.

10 They expected Speedway, during the course
11 of this process, to follow all applicable standards
12 in terms of how the demolition was to be done,
13 including standards to control dust and other forms
14 of residual adverse consequences to neighbors.
15 Those standards at the time mainly involved, as
16 Mr. Mr. Blankenship has said, using wetting to
17 control dust, removing debris in a workmanlike
18 fashion, and cleaning up the area afterwards. There
19 was no open burning, and I think that it's conceded
20 that at the end of the process there were no
21 residual debris laying around or in adjoining
22 properties.

23 The University also supervised the work.
24 We will be presenting the testimony of Mr. Henderson

1 who was sitting at my right. He will testify that
2 he frequently visited the site, and that when he
3 went there, he either did not observe any dust
4 emanating or he saw Speedway using appropriate
5 techniques.

6 Finally, we think the evidence will show
7 that for Speedway to have done anything more or for
8 the University to require any more would be
9 unreasonable considering the amount of dust
10 emanating from this project. At most, the dust here
11 is in the light to moderate range. There's no
12 showing of any compelling nature or any probative
13 value that the dust here interfered with any of the
14 surrounding community in an unreasonable fashion,
15 and there's no showing that anything more that the
16 University or Speedway would do would have either
17 been effective or would have been properly
18 economical considering the minimal sort of
19 interference.

20 Frankly, the only other thing that could
21 be done in a case like this is full tenting, which
22 is not the standard in Illinois and Chicago. It has
23 not been done by the University before, and it
24 certainly is something that would be inordinately

1 expensive.

2 Finally, tenting itself would not
3 effectively control dust, and there would be dust
4 even emanating from the tenting process. So we
5 think that any purported interference that the
6 complainants could ever show is trivial, and it
7 would be unreasonable for steps further than were
8 taken here to be required. We believe, as Speedway
9 does, that there has been no violation of the
10 Illinois Pollution Control Act here, and that,
11 frankly, this is a sneeze turned into a lawsuit to
12 refer to Mr. Trepanier's own analogy.

13 HEARING OFFICER KNITTLE: Is that it,
14 Mr. Jeddelloh?

15 MR. JEDDELOH: Yes, sir.

16 HEARING OFFICER KNITTLE: Thank you, sir.

17 Mr. Trepanier, Ms. Cole, it's time for
18 your case in chief. You can call your first
19 witness.

20 MR. TREPANIER: Thank you.

21 HEARING OFFICER KNITTLE: Mr. Trepanier?

22 MR. TREPANIER: Yes.

23 HEARING OFFICER KNITTLE: Do you need a
24 second?

1 MR. TREPANIER: Yeah. I'm going to need a

2 second. Yeah. Maybe a minute or two.

3 HEARING OFFICER KNITTLE: I'm going to go off

4 the record then for a second.

5 (Discussion had

6 off the record.)

7 HEARING OFFICER KNITTLE: Let's also note for

8 the record that in the -- before -- excuse me. In

9 the interim, Karen Kavanaugh from the Pollution

10 Control Board is now attending the hearing as is

11 Richard McGill.

12 Mr. Trepanier, it's your case in chief,

13 and you can begin.

14 MR. TREPANIER: Thank you. I'd call as my

15 first witness James Henderson of the University?

16 MR. JEDDELOH: How do you want to do this?

17 We're running out of seats. Do you want --

18 HEARING OFFICER KNITTLE: No. He can stay over

19 there, Geanna?

20 THE REPORTER: Yes. That's fine.

21 HEARING OFFICER KNITTLE: Okay.

22 MS. COLE: I'm going -- excuse me.

23 HEARING OFFICER KNITTLE: Yes, ma'am.

24 MS. COLE: I'm going to call him also.

1 HEARING OFFICER KNITTLE: You guys can call him
2 jointly. Mr. Henderson, you'll be sworn in by the
3 court reporter. Will you swear him in.

4 (Witness sworn.)

5 WHEREUPON:

6 JAMES HENDERSON,
7 called as a witness herein, having been first duly
8 sworn, deposeeth and saith as follows:

9 DIRECT EXAMINATION

10 by Mr. Trepanier

11 Q. Good morning.

12 A. Good morning.

13 Q. Mr. Henderson, you hired Speedway Wrecking
14 for this job, didn't you?

15 A. The University did. I'm their
16 representative.

17 Q. Okay. And what was that job that you
18 represented the University when you hired Speedway?

19 A. For 1261, to demolish 1261.

20 Q. Okay. And when you were representing the
21 University and hired Speedway, you did that through
22 a third party, didn't you?

23 A. A third party meaning what?

24 Q. Another corporation or another company.

1 A. We went through a Cost Plus contractor.

2 Q. A Cost Plus contractor?

3 A. Right.

4 Q. Could you tell us what is a Cost Plus

5 contractor?

6 MR. JEDDELOH: I'm going to object as to

7 relevancy.

8 HEARING OFFICER KNITTLE: I'm going to allow

9 him to ask some background questions. You can go

10 ahead, Mr. Trepanier. Overruled.

11 Do you want to --

12 BY THE WITNESS:

13 A. The Cost Plus contractor is a vehicle used

14 to hire still going through the board of trustees.

15 The board of trustees approves contractors to take

16 on subs at various times when we need to get certain

17 kinds of work done.

18 BY MR. TREPANIER:

19 Q. And, in this instance, the Board had

20 approved which contractor that you used, the

21 third -- the Cost Plus, who was that?

22 A. I don't know at this particular day.

23 We've had a number of Cost Plus contractors out. I

24 forgot exactly who it was, but I could tell you

1 later.

2 Q. On July 30th of 1996, did you write a
3 letter to that Cost Plus contractor?

4 MR. JEDDELOH: Well, I'm going to object only
5 so far as that Mr. Trepanier has the letter in his
6 possession, and that's asking for a mental needle in
7 the haystack in terms of whether Mr. Henderson could
8 remember that.

9 HEARING OFFICER KNITTLE: Mr. Trepanier?

10 MR. JEDDELOH: All I'm just saying is can we
11 show him the document if he has it?

12 HEARING OFFICER KNITTLE: Mr. Henderson, first,
13 do you remember the letter that he's talking about?

14 THE WITNESS: I don't know. I write so many
15 letters. I've been with the University 34 years. I
16 don't know.

17 HEARING OFFICER KNITTLE: Mr. Trepanier, maybe
18 you could help him out with his recollection a
19 little bit then.

20 MR. TREPANIER: I'm going to be showing
21 Mr. Henderson the University discovery document UI
22 577.

23 BY MR. TREPANIER:

24 Q. Could you identify that?

1 MR. BLANKENSHIP: And I request to be shown the

2 exhibit before we continue to --

3 MR. JEDDELOH: I apologize, Mr. Blankenship.

4 BY THE WITNESS:

5 A. Yeah. That's the Dakona, Incorporated.

6 HEARING OFFICER KNITTLE: Mr. Henderson, could

7 you hold on a second, please, until Mr. Blankenship

8 takes a look at the letter?

9 MR. BLANKENSHIP: Thank you.

10 HEARING OFFICER KNITTLE: Go ahead,

11 Mr. Henderson.

12 Is there a question outstanding,

13 Mr. Trepanier?

14 BY MR. TREPANIER:

15 Q. Now, with that letter, does that refresh

16 your memory as to who the Cost Plus contractor was?

17 A. Yeah. Dakona, yeah.

18 Q. And you did write to them on the 30th of

19 July '96?

20 A. That's my signature.

21 Q. Now, the Cost Plus contractor, Dakona,

22 what service were they -- what service did you

23 expect they were going to provide to you?

24 MR. JEDDELOH: Object as to form, relevancy.

1 BY MR. TREPANIER:

2 Q. What did you ask --

3 HEARING OFFICER KNITTLE: Overruled. Ask the
4 question again.

5 MR. TREPANIER: Could we have that question
6 read back, please?

7 (Record read.)

8 MR. JEDDELOH: Perhaps, we could have a
9 standing objection on this. Mr. Henderson has
10 already testified that he is only an agent of the
11 institution and that when asked a question that way,
12 it suggests that there's a personal motive and a
13 personal involvement in this that doesn't exist.

14 HEARING OFFICER KNITTLE: That's noted.

15 Mr. Henderson, do you realize there's a
16 question outstanding to you?

17 THE WITNESS: No. Ask the question again.

18 HEARING OFFICER KNITTLE: Are we going to --
19 Mr. Trepanier, do you remember, or should we read it
20 back again?

21 MR. TREPANIER: Could we read it?

22 (Record read.)

23 BY THE WITNESS:

24 A. To the University, they were processed to

1 pay the work. We contacted our Cost Plus contractor
2 to obtain the contractor that we selected to do the
3 work, which was Speedway Wrecking. They were
4 responsible for all payments to Speedway Wrecking.

5 BY MR. TREPANIER:

6 Q. Did this Cost Plus contractor indemnify
7 the University or Speedway?

8 MR. JEDDELOH: I'm going to object. I think
9 you're asking this witness for something that would
10 require a legal conclusion, and it's not relevant to
11 this.

12 MR. BLANKENSHIP: I'm also going to object as
13 totally irrelevant, and I think it's way beyond the
14 scope of what we're here to talk about.

15 HEARING OFFICER KNITTLE: Sustained.

16 Ask another question, Mr. Trepanier.

17 BY MR. TREPANIER:

18 Q. Okay. When you contacted your Cost Plus
19 contractor asking them to hire Speedway, had you
20 made a choice for Speedway, a choice among
21 competitors?

22 A. At that time, yes.

23 Q. And what was the grounds for your making
24 that choice?

1 MR. JEDDELOH: Objection, relevancy.

2 HEARING OFFICER KNITTLE: Mr. Trepanier?

3 MR. TREPANIER: I'm inquiring as to the -- I

4 think that this is very relevant because what we're

5 talking about is the person who is doing -- who is

6 the agent of the university Hiring a contractor to

7 do a job, and I'm asking him, you know, what kind of

8 a criteria did you have to select your worker.

9 If he had none, he might answer none. If

10 it was the cheapest one, he might answer that way.

11 HEARING OFFICER KNITTLE: Right. I'm going to

12 allow the question, but I'm going to caution you

13 that we're getting a little bit far afield here from

14 the allegations in the complaint of air pollution

15 and 21B. So you're going to have to move this along

16 pretty soon here towards the actual violations, the

17 alleged violations. So overruled for now, but we'll

18 continue to note that.

19 Go ahead, Mr. Trepanier.

20 BY THE WITNESS:

21 A. In answer to your question, like all

22 competitive bids or proposals, we invite various

23 contractors to give a proposal or bid on this

24 particular property. Speedway Wrecking was the

1 lowest acceptable bid or proposal, and we accepted
2 that. Then we pass it on to our Cost Plus
3 contractor to handle the necessary paperwork.

4 BY MR. TREPANIER:

5 Q. Did you have any trouble with this
6 demolition at 1261 South Halsted?

7 MR. JEDDELOH: Objection, vague.

8 HEARING OFFICER KNITTLE: Mr. Trepanier, try to
9 define what you mean by trouble a little bit.

10 BY MR. TREPANIER:

11 Q. Did the demolition at 1261 Halsted result
12 in a claim against the University?

13 MR. BLANKENSHIP: Objection on relevance
14 grounds again. I don't know what this has to do
15 with air pollution.

16 MR. JEDDELOH: I guess that I'll join in that
17 objection and further object because I guess the
18 question is beyond this claim.

19 HEARING OFFICER KNITTLE: Well, we don't know
20 that until he answers. That's going to be
21 overruled.

22 BY THE WITNESS:

23 A. I don't really understand the claim, what
24 you're referring to as a claim.

1 BY MR. TREPANIER:

2 Q. Did somebody ask the University for money
3 because of the result -- because of the activities
4 that the contractor you hired undertook at 1261
5 Halsted?

6 MR. JEDDELOH: Objection as to foundation, but
7 he can answer within his knowledge.

8 HEARING OFFICER KNITTLE: Answer the question,
9 Mr. Henderson.

10 BY THE WITNESS:

11 A. There was a claim of a person who had an
12 adjoining building saying that Speedway damaged that
13 building, knocked a hole in the building, which, in
14 essence, that was not true. What really took place,
15 I guess, many years ago, there was a passageway
16 between the two buildings, but there was no way of
17 knowing this from either side of the building
18 because it was plastered over.

19 So in the demolition of the building, that
20 opening passageway was there, and, clearly, it was
21 no fault of anyone, especially Speedway Wrecking or
22 the University, who knew that.

23 BY MR. TREPANIER:

24 Q. Didn't the University make a payment on

1 that claim?

2 MR. JEDDELOH: Foundation.

3 MR. BLANKENSHIP: Objection, relevance.

4 HEARING OFFICER KNITTLE: Mr. Trepanier, can

5 you tell us why this is relevant?

6 MR. TREPANIER: Yeah. I'm inquiring into the

7 oversight and responsibility of the Cost Plus

8 contractor to oversee the job, whose responsibility

9 is -- I'm establishing what Mr. Henderson believed

10 was the responsibility of the Dakona, Incorporated

11 in seeing that the pollution standards of Illinois

12 were met during this demolition.

13 HEARING OFFICER KNITTLE: Okay. Objection

14 overruled.

15 Mr. Henderson, you can answer the

16 question, if you can.

17 MR. JEDDELOH: Again, I object to foundation.

18 HEARING OFFICER KNITTLE: What's your objection

19 to foundation?

20 MR. JEDDELOH: Well, it hasn't been established

21 that Mr. Henderson would have necessarily been

22 involved in any negotiating of any settlement with

23 anyone. I mean, I don't mind him testifying from

24 his own knowledge base, but I don't want him to be

1 speculating about things that he might not know
2 about for sure. So I think the question is
3 objectionable until a foundation is established that
4 this individual would be aware necessarily that
5 everything the University might have done with
6 respect to this claim.

7 HEARING OFFICER KNITTLE: What was the --

8 MR. JEDDELOH: I mean, I don't mind him
9 responding to the question.

10 HEARING OFFICER KNITTLE: I understand. I
11 didn't think the question went into that. I thought
12 it was just -- in fact, can you read back that
13 initial question for us, please?

14 (Record read.)

15 HEARING OFFICER KNITTLE: He can answer the
16 question. There's a foundation as to whether or not
17 he knows. If he doesn't know the answer, then,
18 perhaps, you'd have to lay a foundation to show why
19 he should.

20 BY THE WITNESS:

21 A. I don't know.

22 BY MR. TREPANIER:

23 Q. You did testify that you were the person
24 acting as the University's agent that hired the Cost

1 Plus contractor?

2 A. The Cost Plus contractor was already

3 hired. See, that's a little different. The Cost

4 Plus contractor is hired for the University.

5 Q. And then what you did was specify them to

6 employ Speedway by your letter of July 30th; is that

7 correct?

8 A. Yes. I used Speedway -- I mean, Dakona as

9 the Cost Plus contractor.

10 Q. And do you understand that -- Strike that.

11 Isn't it true, also, that when the -- that

12 you gave the okay for that Cost Plus contractor to

13 be paid on the completion of the job?

14 A. Yes. I was the project manager on the

15 job, yes.

16 Q. And you specifically okayed a payment to

17 that contractor?

18 A. Yes. After the job was finished, yes.

19 Q. And then following that -- following that,

20 the University received a claim for damage during

21 the demolition; is that correct?

22 A. No, it's not.

23 Q. You did acknowledge that the University

24 received a claim for damages, didn't you?

1 A. I didn't say a claim. I said there was
2 inquiry about damage to their property. A claim,
3 that's a little different. A letter inquiring
4 saying something was done, that's different from a
5 claim. I don't know if a claim was officially filed
6 with the legal department. I don't know.

7 Q. Did you forward that claim on to the Cost
8 Plus contractor?

9 A. I just got through telling you that I
10 don't know if a claim was filed, a letter.

11 Q. Excuse me.

12 A. Okay.

13 Q. Did you forward what you're referring to
14 as an inquiry of damages to the Cost Plus
15 contractor?

16 A. I sent it to our legal people.

17 Q. And so that's a no to my question?

18 MR. JEDDELOH: Well, I'm sorry. He answered
19 the question, Mr. Chairman. I think that he's --

20 MR. TREPANIER: I asked specifically if he sent
21 that claim, that notice of inquiry of damages to the
22 Cost Plus contractor, and he answered that he sent
23 it to the legal department.

24 MR. JEDDELOH: I'll withdraw my objection.

1 HEARING OFFICER KNITTLE: Mr. Henderson, can

2 you answer that question, please?

3 BY THE WITNESS:

4 A. Did I send it to Dakona? That's what

5 you're referring to?

6 BY MR. TREPANIER:

7 Q. Yes.

8 A. No, I did not send it to Dakona. I sent

9 it to our legal people.

10 Q. You made a contract with Dakona, the Cost

11 Plus contractor, to demolish 1261 Halsted; isn't

12 that right?

13 MR. JEDDELOH: Again, object to the use of the

14 term you.

15 BY MR. TREPANIER:

16 Q. I mean, your signature -- you authorized

17 the contract, didn't you?

18 A. I'm a representative of the University.

19 Q. That contract didn't specify that the

20 demolition needed to be watered, did it?

21 MR. JEDDELOH: Object unless you show him the

22 document and let him take a look at it.

23 HEARING OFFICER KNITTLE: Objection is

24 overruled. Mr. Henderson, if you know the answer,

1 you can answer, but if you don't...

2 BY THE WITNESS:

3 A. No. I don't know. I don't really

4 understand what your mode of questioning is. I

5 don't understand.

6 BY MR. TREPANIER:

7 Q. So today you don't know if the contract

8 you signed for the demolition of 1261 Halsted called

9 for the use of water?

10 A. Specifying water out, just saying water,

11 water, no. All the normal demolition practices

12 should be followed. What is normal, is normal.

13 Q. Okay. If you'd answer the question. I

14 know sometimes my questions aren't clear, and I

15 appreciate that you're able to come up with some

16 answers to them.

17 Did the contract that you authorized to

18 demolish 1261 South Halsted, did that contract

19 specify pollution control?

20 MR. JEDDELOH: Object as to form. I believe

21 he's also asking for a legal conclusion, and the

22 document may speak for itself.

23 HEARING OFFICER KNITTLE: Mr. Trepanier?

24 MR. TREPANIER: I believe that the University

1 has stated in their answers to my interrogatories
2 that all of their contract documentation requires
3 pollution control and the use of water. They've
4 stated that.

5 HEARING OFFICER KNITTLE: Mr. Henderson may or
6 may not know that. If --

7 MR. TREPANIER: Then he could state that. He
8 authorized the contract.

9 HEARING OFFICER KNITTLE: Yes, he could.

10 MR. TREPANIER: And he also answered the
11 interrogatories.

12 HEARING OFFICER KNITTLE: Mr. Henderson, if you
13 know the answer to a question, you know, you can
14 answer it, but if you don't know, you don't have to
15 answer.

16 BY THE WITNESS:

17 A. I don't know. I mean, the University is a
18 big place. There's a lot of paperwork floating
19 around. I mean, I don't know.

20 HEARING OFFICER KNITTLE: Mr. Trepanier, if
21 you're asking him a question about a specific
22 document, you could approach the witness and hand
23 him that document after, of course, giving an
24 opportunity for Speedway Wrecking Company to take a

1 look at it.

2 MR. TREPANIER: Okay. At the moment, I'm just

3 looking at the answers to interrogatories.

4 BY MR. TREPANIER:

5 Q. At the time of the demolition at 1261

6 Halsted, were you aware of the contents of the

7 contract that you had signed for the demolition?

8 A. Meaning what?

9 Q. At this time, you're testifying that the

10 University is a big place, so you don't know if the

11 contract required pollution controls, but at the

12 time of the demolition, did you know?

13 MR. JEDDELOH: Object as to form.

14 HEARING OFFICER KNITTLE: Answer the question

15 if you can, Mr. Henderson.

16 BY THE WITNESS:

17 A. I don't know.

18 MR. TREPANIER: One moment. I'm looking for a

19 specific answer I want to ask Mr. Henderson about

20 the answers to interrogatories.

21 HEARING OFFICER KNITTLE: Mr. Trepanier, how

22 much longer do you have for this witness do you

23 think?

24 MR. TREPANIER: I think this is going to be one

1 of my major witnesses.

2 HEARING OFFICER KNITTLE: So you anticipate a
3 fair amount of time here?

4 MR. TREPANIER: Yeah.

5 HEARING OFFICER KNITTLE: How much time do you
6 think you're going to need to find what you need
7 because I'm thinking of doing a quick recess?

8 MR. TREPANIER: Okay.

9 HEARING OFFICER KNITTLE: That might give you
10 an opportunity to prepare yourself fully for his
11 testimony.

12 MR. TREPANIER: Thank you. I can be better
13 prepared.

14 HEARING OFFICER KNITTLE: Why don't we take ten
15 minutes then. We'll meet back at five to 11:00.

16 (Break taken.)

17 HEARING OFFICER KNITTLE: Mr. Trepanier, have
18 you had an opportunity to gather yourself up a
19 little bit?

20 MR. TREPANIER: Yes. Thank you.

21 HEARING OFFICER KNITTLE: Let's proceed then
22 with your examination of this witness.

23 BY MR. TREPANIER:

24 Q. Mr. Henderson, did you receive any

1 instruction from your attorney during the break?

2 MR. JEDDELOH: He can answer that question with

3 yes or no.

4 BY THE WITNESS:

5 A. No, no instructions.

6 BY MR. TREPANIER:

7 Q. Now, when we left off, we were talking

8 about the contract that you signed with the Cost

9 Plus contractor to demolish 1261 South Halsted, and

10 I believe that you had -- that you were telling us

11 that you can't recall if that contract required the

12 spraying of water or required pollution controls?

13 MR. JEDDELOH: I'm going to object to the form

14 of that question. You can answer it.

15 BY THE WITNESS:

16 A. We didn't have a specific contract where

17 we -- different than -- we just assigned the

18 contractor of our choice to the Cost Plus

19 contractor. It wasn't a different document saying

20 anything different.

21 BY MR. TREPANIER:

22 Q. Now, you answered some interrogatories

23 that I propounded to the University. I believe that

24 you swore those answers on the 17th of April

1 of '98.

2 Do you recall that?

3 A. I mean, you have it in front of you? What

4 did I say? I mean, I can't -- you're reading it.

5 My memory is not that great.

6 Q. You do recall responding to the

7 interrogatories?

8 A. Yes.

9 Q. And you swore that the answers that you

10 gave were true?

11 A. To the best of my knowledge, yes.

12 Q. And do you recall now that -- do you

13 recall that you stated that it is a requirement of

14 contractual documentation when issued in reference

15 to wetting?

16 MR. JEDDELOH: Could we have a citation? If he

17 purports to be reading from the document, I'd like

18 to have a citation.

19 HEARING OFFICER KNITTLE: Yes. Mr. Trepanier,

20 maybe you could identify it.

21 MR. TREPANIER: This is the document which is

22 dated the 17th of April '98 entitled University's

23 objections to petitioners' second interrogatories of

24 the University. They're at page 11, about the

1 center of the page. I'm not sure if there was a

2 question outstanding at this point.

3 HEARING OFFICER KNITTLE: Why don't you ask --

4 ask what you want to ask about that specific

5 document.

6 BY MR. TREPANIER:

7 Q. Do you recall making a statement there in

8 your answers to interrogatories that the use of

9 wetting to control dust is a requirement,

10 contractual documentation when issued?

11 MR. JEDDELOH: Wait, wait. Just one second.

12 I'm going to ask that that be provided to the

13 witness. He's obviously reading from the document.

14 I think it's only fair that this witness be entitled

15 to see what he purports to be reading from.

16 HEARING OFFICER KNITTLE: Mr. Trepanier, can

17 you show him the document?

18 MR. TREPANIER: Well, I don't think that I

19 purported to be reading from it.

20 MR. JEDDELOH: Well, if he's not reading from

21 it, then the question is objectionable because he's

22 trying to cross-examine this witness by asking if he

23 said something that he clearly didn't say.

24 HEARING OFFICER KNITTLE: Mr. Trepanier I think

1 is trying to impeach this witness.

2 MR. JEDDELOH: Right. But I don't think it's

3 fair for him to ask a question as to whether or not

4 he signed a document that says X when he's saying

5 that -- when the document actually says it says Y

6 without showing him the document.

7 HEARING OFFICER KNITTLE: Mr. Trepanier, do you

8 have an extra copy of the document for him?

9 MR. TREPANIER: No. I don't have an extra

10 copy. Let's see if I've got it here. It's without

11 the attachments.

12 HEARING OFFICER KNITTLE: Mr. Jeddeloh, do you

13 have a copy of the document?

14 MR. JEDDELOH: I'd be glad to provide it to the

15 witness if Mr. Trepanier would like for me to do

16 that.

17 MR. TREPANIER: You've got the April 17th

18 file?

19 MR. JEDDELOH: I do.

20 MR. TREPANIER: If you could show the witness

21 page 11.

22 MR. JEDDELOH: And just for the record, I will

23 read it into the record. It says the University

24 supervisory personnel have observed this requirement

1 being followed on frequent occasions, and it is the
2 requirement of contractual documentation when
3 issued. That's what it says. It also says without
4 waiver of said objection, but rather reasserting the
5 same for the subject properties and excluding any
6 testimony as to what others may view as excessive,
7 it wasn't in the University's expectation that it's
8 contractors were using --

9 MR. TREPANIER: Objection to reading the
10 answers --

11 THE REPORTER: I'm sorry.

12 HEARING OFFICER KNITTLE: Hold on. Are you
13 okay?

14 THE REPORTER: Well, not that part, no.

15 HEARING OFFICER KNITTLE: Okay. Your objection
16 is sustained, and you can stop reading that at this
17 point. Okay?

18 MR. JEDDELOH: I've finished.

19 HEARING OFFICER KNITTLE: Are you finished?

20 Mr. Trepanier, do you have a question
21 about that interrogatory response?

22 MR. TREPANIER: Well, I would just point out
23 that the material that the attorney has purported to
24 be reading as consecutive material it just wasn't.

1 He wasn't reading straight through this document.

2 MR. JEDDELOH: Well, I've tendered it to the
3 witness.

4 BY MR. TREPANIER:

5 Q. Now, having seen that answer that you
6 swore to on April 17th, does that refresh your
7 memory regarding the contract that you signed for
8 the demolition of 1261 Halsted?

9 A. Yes. I mean, the contract I signed with
10 whom?

11 Q. That would be the contractual
12 documentation to demolish 1261 South Halsted.

13 A. Yes.

14 Q. So your memory is refreshed. Is that what
15 you're saying?

16 A. To a point, yes. You know, you're asking
17 questions that you're reading from and I don't have
18 anything in front of me.

19 Q. Yeah. I'm just asking you, you know,
20 regarding this answer that you swore to that the
21 University requires their contractors right in the
22 contract to use water.

23 MR. JEDDELOH: Object. The response is what it
24 is, and now he's trying to cross-examine this

1 witness by indicating that it says something else
2 and asking that question. I believe it's an
3 objectionable question. The document speaks for
4 itself.

5 MR. TREPANIER: I wasn't actually asking a
6 question right there. Sorry. I probably should
7 have been asking a question rather than making a
8 statement.

9 MR. BLANKENSHIP: Could I raise a point of
10 clarification? I'm confused if we're talking about
11 the contract between the University and Dakona, the
12 Cost Plus administrator, or the contract between
13 Dakona and Speedway.

14 Can you clarify which one you've been
15 talking about here?

16 MR. TREPANIER: I've been talking about the
17 contract that Mr. Henderson signed with Dakona.

18 MR. BLANKENSHIP: In that case, I just want to
19 interpose an objection to relevance of the contract
20 with Dakona who, as far as I can tell, hasn't been
21 involved in this demolition at all. I think, again,
22 we're really far afield from the pollution if we're
23 talking about the contract administrator instead of
24 focusing on the acts of Speedway or the University

1 itself here with respect to this piece of property.

2 HEARING OFFICER KNITTLE: Mr. Trepanier, do you
3 have a response to that objection to the relevancy
4 of this?

5 MR. TREPANIER: Well, I would say that
6 Mr. Blankenship is arguing that it's not relevant,
7 but I don't know that that's been established that
8 it's not relevant.

9 The University seemed to claim that it was
10 relevant when they -- they felt it was relevant when
11 they made this claim that it's a requirement of
12 contractual documentation when issued, and that's
13 what we've seen which is the contract which I would
14 be willing to enter into evidence that asks for the
15 demolition of 1261 South Halsted to demolish that
16 building. That's what this contract is, and I'm
17 just inquiring into did this contract require
18 pollution control?

19 MR. JEDDELOH: Well, if we can speed things,
20 Mr. Chairman, the University would stipulate without
21 the necessity of a foundation as to UI 206 through
22 208 being entered into the record, and then he can
23 make all the arguments as to what it says and what
24 it does not say. I believe that is the core

1 document relating to the letting of this contract

2 just so we can speed things along.

3 HEARING OFFICER KNITTLE: Okay. I don't know

4 exactly what document we're talking about, but if

5 someone wants to submit that or are you stipulating

6 to the contents of that?

7 MR. JEDDELOH: I would stipulate --

8 HEARING OFFICER KNITTLE: I just don't know

9 what it is you're stipulating to.

10 MR. JEDDELOH: Well, I know. I'm not trying to

11 make his case for him. I don't have an extra copy.

12 HEARING OFFICER KNITTLE: I understand.

13 MR. JEDDELOH: I'm trying to speed things

14 along. We'll stipulate that there are three

15 documents that relate directly to this project.

16 They are what they are, and he can make the

17 arguments rather than try to impeach this witness

18 into saying this much.

19 MR. BLANKENSHIP: Frankly, I guess I'll make a

20 best evidence rule to him questioning about the

21 contents of the document. If he's got the document,

22 he should introduce it into evidence rather than

23 asking the witness what he thinks the document says

24 or doesn't say.

1 HEARING OFFICER KNITTLE: Certainly, Mr. Trepanier,
2 what do you think about the stipulation and the fact
3 that, perhaps, you should be introducing these
4 exhibits into evidence?

5 MR. TREPANIER: Well, as to the stipulation,
6 what I have received from the University during
7 discovery, which was attached to the same
8 interrogatories you were just referring to, is
9 rather a very large document. It's apparently
10 approximately 100 or so pages long, and it's
11 unnumbered.

12 So as to the offer of a stipulation, I
13 can't make sense out of it. As to the request that
14 I offer the contract into evidence, I don't have --
15 you know, I have no problem with doing that.

16 HEARING OFFICER KNITTLE: Go ahead, Mr. Jeddelloh.

17 MR. JEDDELOH: I am not offering a document
18 into evidence. I am stipulating as to its
19 admissibility if he would wish. He has been
20 provided a copy of UI 206 through 208. I didn't
21 come with copies because I don't consider it to be
22 part of my case.

23 MR. TREPANIER: I'm not clear on what position
24 we're in right now.

1 HEARING OFFICER KNITTLE: Okay. Excuse me for
2 a second. I'm trying to gather my thoughts as
3 well.

4 The offer of stipulation isn't going to do
5 us any good unless I know what's being stipulated
6 to. I can't -- I understand what you're saying, Mr.
7 Jeddelloh. You want to speed things along. I'm all
8 for a little expediency here, especially, Mr. Trepanier,
9 as I'm not entirely certain as to the relevancy of
10 some of these questions. He can ask about the
11 documents once they're -- without them being, you
12 know, accepted into evidence, but it would be a good
13 idea for the witness to have an idea of what
14 document you're looking to talk to him about before
15 you start asking the questions. That would at least
16 clear things up a little bit for us, and whether or
17 not you submit them into evidence or not is a
18 different issue entirely.

19 MR. TREPANIER: Well, I did serve upon --

20 HEARING OFFICER KNITTLE: Mr. Jeddelloh?

21 MR. JEDDELOH: The three-page document that I'm
22 referring to is the work order for the demolition of
23 1261 Halsted. It consists of a letter of
24 transmittal, a one-page contract, which contains

1 verbiage to his questioning anyway and another
2 transmittal letter letter signed by Dakona. So
3 those are the documents that directly relate to this
4 project.

5 MR. BLANKENSHIP: Does the Dakona document, but
6 not the Speedway contract?

7 MR. JEDDELOH: No. The transmittal letter is a
8 one-page transmittal letter. It's UI 206-208.

9 HEARING OFFICER KNITTLE: Do you have
10 something, Mr. Blankenship?

11 MR. BLANKENSHIP: No. There's a separate
12 contract between -- that governs Speedway in this
13 case, and, frankly, I think that's the relevant
14 one. I'm not sure why we're wasting time with the
15 contract between the University and Cost Plus
16 administrator, but it's his case.

17 HEARING OFFICER KNITTLE: Mr. Trepanier, could
18 you explain to us why we're, and I hate to use your
19 term wasting time, but could you explain to us why
20 we're analyzing that particular right now?

21 MR. TREPANIER: Well, we're analyzing that
22 contract because it's our theory of the case that
23 the University had a duty to take some reasonable
24 care when they undertook this demolition, and if on

1 our side we show that the University contracted for
2 a demolition without any mention of pollution
3 control, no mention of water, despite their
4 interrogatory answers and they're repeatedly
5 claiming that they did require the spraying of
6 water, then I think that's very relevant to this.

7 HEARING OFFICER KNITTLE: This witness has said
8 he doesn't recall whether the contracts -- excuse me
9 if I'm misstating it. That's my assumption. Do you
10 have the contracts in question?

11 MR. TREPANIER: And I believe I do. They were
12 provided right along with the answer that I was just
13 reading from. In the answer it, was sworn that
14 these contracts require spraying of water, and I'm
15 going to ask the witness to point to that in the
16 contract.

17 HEARING OFFICER KNITTLE: Okay. Do you have a
18 copy of the contract, Mr. Henderson?

19 THE WITNESS: No. I don't know what he's
20 talking about.

21 HEARING OFFICER KNITTLE: If you're going to
22 ask him to point to this in the contract,
23 Mr. Trepanier, you're going to have to actually
24 provide the witness with a copy.

- 1 MS. COLE: May I ask a question?
- 2 HEARING OFFICER KNITTLE: Yes, ma'am.
- 3 MS. COLE: Yes. I'd like to know who on the
4 panel might be able to answer my question as to why
5 the spraying was done in the first place.
- 6 MR. JEDDELOH: Well, I'm going to object. I
7 think I would like to keep this orderly by having
8 one complainant or petitioner asking questions at a
9 time, and when Mr. Trepanier has completed, then we
10 can go on to someone else.
- 11 MR. BLANKENSHIP: I join in that objection, and
12 also that wasn't directed at the witness. That was
13 directed at a panel.
- 14 HEARING OFFICER KNITTLE: Right. And I
15 understand, Ms. Cole, there really is no panel. The
16 only witness that we're concerned with right now is
17 Mr. Henderson who's taken an, you know, oath to tell
18 the truth, the whole truth, and nothing but the
19 truth.
- 20 MS. COLE: I'm sorry. As before, please excuse
21 me and bear with me, but I'm not professional at
22 this, but I do have questions, and I hope to keep in
23 order.
- 24 MR. TREPANIER: The fact that the witness

1 doesn't have a copy of the contract documents
2 despite my tendering to the University's attorney a
3 notice to produce the same originals here at the
4 hearing, I'd like to bring to the Hearing Officer's
5 attention.

6 MR. JEDDELOH: There's been no notice. I
7 received a telephone call. My secretary received a
8 telephone call. She told me that she had received a
9 general telephone call from Mr. Trepanier yesterday
10 asking that originals of unspecified documents be
11 produced.

12 I was not in a position to deal with that
13 request yesterday, and I didn't know what documents
14 he was requesting. There's been nothing in writing.

15 MR. TREPANIER: I did -- as the attorney points
16 out, I did speak with his secretary. I requested
17 from her the attorney's fax number, and I have the
18 receipt for the fax that I did send with the notice
19 to produce at the hearing specifying the unnumbered
20 contract specification documentation for demolition
21 and asbestos removal at 1261 South Halsted.

22 MR. JEDDELOH: This document -- this is hardly
23 a time to do discovery, Mr. Chairman.

24 MR. TREPANIER: This was not a request for

1 discovery. It was just to produce the originals of
2 what was turned over during discovery.

3 MR. JEDDELOH: May I finish? Yesterday I would
4 have been unable with less than 24 hours notice to
5 respond to any properly placed request. I never
6 received the request. Had I received it in a timely
7 fashion with a day or two or three days notice, I
8 could have dealt with it. It was impossible for me
9 to deal with that with less than 24 hours notice.

10 HEARING OFFICER KNITTLE: Mr. Trepanier, can I
11 see what we're talking about? Have you seen a copy
12 of this?

13 MR. JEDDELOH: I have not. Well, in light of
14 the fact -- Mr. Trepanier, I'm not doubting that you
15 sent this. I'm not sure this is appropriate under
16 Section 103.209. You do have the -- this is notice
17 of a party witness. You do have the ability to
18 require production at the hearing of documents, but
19 that's generally done with the notice for them to
20 appear.

21 I'm going to hand this to you,
22 Mr. Jeddeloh, and, Mr. Blankenship, although it's
23 primarily addressed to Mr. Jeddeloh. If you can
24 comply with that tomorrow or the next day, it

1 appears to be under the regulation as valid, and I
2 would ask you to do so. Of course, there's no way
3 for you to have this here today, Mr. Trepanier, and
4 I can't think they can be held accountable for the
5 fact that they don't have that information here
6 today. So I'm not going to -- although, it has been
7 brought to my attention and I do appreciate that, I
8 don't think there's anything I can do about that
9 right now.

10 Yes, sir.

11 MR. JEDDELOH: I would add, Mr. Chairman,
12 without looking at this before that most of the
13 documents that he's asking for originals probably
14 there are no better evidence than what he's already
15 been provided because an original cannot be
16 identified, and these things are photocopied
17 literally hundreds of times within the institution
18 and arrive at a lot of different files, and probably
19 he has the best evidence, and he probably has the
20 documents that are, you know, the final original
21 documents as well as anyone else would have in this
22 case.

23 MR. BLANKENSHIP: As I indicated to
24 Mr. Trepanier yesterday when we talked, I have no

1 objection to him using photocopies, and we're not
2 going to stand on the requirement that originals be
3 produced, and I told him that yesterday. I think
4 Mr. Jeddelloh --

5 MR. JEDDELOH: Absolutely. Absolutely.

6 HEARING OFFICER KNITTLE: Mr. Trepanier, do you
7 have photocopies of the documents in question?

8 MR. TREPANIER: I believe that I do, yeah.

9 HEARING OFFICER KNITTLE: Then I don't think we
10 have an issue here.

11 MR. JEDDELOH: Right.

12 HEARING OFFICER KNITTLE: I want to --
13 Mr. Trepanier, we're going to have to move this
14 along a little bit. I don't recall exactly if
15 there's an outstanding question or what you're
16 trying to get across right now in terms of Mr.
17 Henderson, but I am going to ask you to proceed with
18 your questioning and to try to get to some relevant
19 information because I am willing to give you some
20 leeway in order to prove up your case, but I do want
21 to state that I have some sort of sympathy for
22 Mr. Blankenship's argument that there's not a lot of
23 relevance here. Unless we see some relevance
24 sometime soon, I'm going to ask you to move on.

1 BY MR. TREPANIER:

2 Q. Was the attorney able to provide -- would
3 the attorney be able to provide for the witness,
4 again, the interrogatory answers of the 17th of
5 April 1998, and I'd like to direct your attention to
6 page 11.

7 For that statement we visited earlier, it
8 is a requirement of contractual documentation when
9 issued, and then I would -- if you would, sir, could
10 you point to that requirement in the contractual
11 documentation?

12 MR. JEDDELOH: Well, first of all, I object to
13 the form of that. I don't think it's a question.
14 Secondly, he doesn't have any documents in front of
15 him except the answers to his interrogatories. So
16 how can he possibly point to specific items in a
17 specific document?

18 MR. TREPANIER: I would just note that the
19 witness has, as I do, it looks like about at least
20 100-page document that purports to be general
21 requirements, general contractual requirements.

22 MR. JEDDELOH: Mr. Chairman, I want to try to
23 find a way to get around this point if I might. UI
24 document 207, rather than ask Mr. Henderson to go

1 through over 100 pages, UI document 207, may I read
2 it?

3 HEARING OFFICER KNITTLE: Yes.

4 MR. JEDDELOH: It's only a paragraph, one
5 paragraph.

6 MR. TREPANIER: Can he show it to me?

7 MR. JEDDELOH: I only have one copy,
8 Mr. Chairman. I have provided him copies of this
9 before. If he doesn't have it, I apologize, but I
10 can't read it and give him a copy at the same time.

11 HEARING OFFICER KNITTLE: What's the title of
12 the document that you're reading from?

13 MR. JEDDELOH: Contract, building 1261 Halsted
14 Street, contract for contractors' fees for minor
15 building alterations, repair, and something I can't
16 read, Dakona & Company. It's the document that we
17 issued to Dakona for the demolition of this
18 property.

19 HEARING OFFICER KNITTLE: You're going to read
20 that into the record, and that's fine, but if you're
21 going to read from it, I'm gong to want it submitted
22 as an exhibit.

23 MR. JEDDELOH: Then I won't read from it
24 because it's not my job to submit this exhibit. I

1 mean, I'm trying to speed things along.

2 HEARING OFFICER KNITTLE: I understand, but
3 from my perspective, the Pollution Control Board
4 needs a record of what's going on here, and I'm
5 going to want a copy of that.

6 MR. JEDDELOH: I can provide a copy after the
7 fact, again, to speed it along. It was filed with
8 the Board on December 5th, 1997, but I will be glad
9 to provide the Chairman a copy if that will help.

10 HEARING OFFICER KNITTLE: It would help if we
11 had a copy that we could enter into the record
12 afterwards if you're going to read from this
13 document.

14 MR. JEDDELOH: It says labor, materials,
15 services, tools, and equipment provided by Speedway
16 Wrecking Company, not a MAFBE vendor, close paren,
17 subcontractor of Dakona, Inc. to demolish building
18 at 1261 South Halsted Street. Also included is the
19 hauling away of combustible material to an approved
20 landfill and backfill of the basement. This work is
21 being in accord with city requirements, orders, and
22 related specifications.

23 BY MR. TREPANIER:

24 Q. That's the contract you signed, isn't it,

1 Mr. Henderson?

2 A. Yes, it is.

3 Q. And where in that contract does it require

4 the spraying of water?

5 MR. JEDDELOH: Objection. The document can

6 speak for itself. He can make the argument. He is

7 making arguments. He's not eliciting testimony.

8 HEARING OFFICER KNITTLE: Can you rephrase your

9 question, Mr. Trepanier?

10 BY MR. TREPANIER:

11 Q. When you answered in discovery -- when you

12 swore an answer to discovery on the 17th of April

13 that it's a requirement of contractual documentation

14 to require wetting, what were you referring to?

15 MR. JEDDELOH: He didn't read the whole thing.

16 Could I ask that the entire sentence be read,

17 please?

18 HEARING OFFICER KNITTLE: Mr. Trepanier, are

19 you reading the whole sentence?

20 MR. TREPANIER: Well, it's not a complete

21 sentence. It would need three sentences to get the

22 word wetting in with contractual documentation.

23 HEARING OFFICER KNITTLE: Mr. Henderson, are

24 you familiar with what he's talking about here? Can

1 you answer the question?

2 THE WITNESS: Well, he's referring to -- I
3 think he's referring to that we specify wetting in
4 all documents, but we're saying with all practice in
5 the industry, which wetting is past practice when
6 you're demolishing a building.

7 HEARING OFFICER KNITTLE: Mr. Trepanier, does
8 that suffice as an answer to your question?

9 MR. TREPANIER: Well, I want to question
10 Mr. Henderson about that.

11 BY MR. TREPANIER:

12 Q. Now, in your response, you state the
13 University's expectation is that its contractors
14 were to use wetting to control dust in all cases.

15 Did that happen in this instance?

16 A. As far as the industry goes, yes.

17 Q. Could you elaborate on that answer?

18 MR. JEDDELOH: Objection to form. That calls
19 for him to provide a narrative.

20 HEARING OFFICER KNITTLE: Mr. Trepanier, that
21 objection is sustained. Maybe you could rephrase
22 your question.

23 BY MR. TREPANIER:

24 Q. When you say as far as the industry is

1 concerned that wetting was used in all cases, are
2 you limiting your response to say in a way that says
3 that wetting wasn't always used?

4 MR. JEDDELOH: Form. I object as to form.

5 HEARING OFFICER KNITTLE: Overruled.

6 Mr. Henderson, answer if you can.

7 BY THE WITNESS:

8 A. Repeat the question.

9 MR. TREPANIER: Can we read the question back?

10 HEARING OFFICER KNITTLE: Geanna, do you mind?

11 (Record read.)

12 BY THE WITNESS:

13 A. No.

14 BY MR. TREPANIER:

15 Q. So today your testimony is is that wetting
16 was always used at the site?

17 A. Yes. Wetting was always used, yes. Now,
18 every hour, every minute, no.

19 Q. When you were present at the site, was
20 wetting occurring?

21 A. Yes.

22 Q. And that's every occasion you were at the
23 site you saw wetting occurring?

24 A. Yes. At some point before I left the

1 site, wetting was used, yes.

2 Q. And what was the source of water for that
3 wetting?

4 A. A city hydrant.

5 Q. And what was the location of that hydrant?

6 A. On Halsted Street.

7 Q. And relative to the placement of 1261
8 Halsted, was this hydrant on the same side of the
9 street or the opposite side?

10 A. The same side of the street.

11 Q. And was it north or south of the building?

12 A. I don't recall at this point.

13 Q. How often did you view the site?

14 A. About three or four times a day.

15 Q. And every time you viewed the site, there
16 was wetting -- watering going on when you arrived?

17 MR. JEDDELOH: Asked and answered. I object.

18 HEARING OFFICER KNITTLE: I'm going to overrule
19 it because there's a bit of leeway here in his
20 answer.

21 Can you answer that, please?

22 BY THE WITNESS:

23 A. Repeat the question.

24

1 BY MR. TREPANIER:

2 Q. When you visited the site three or four
3 times a day, was watering occurring each time when
4 you arrived?

5 A. No.

6 Q. How many days did you go on like that
7 visiting three or four times a day? How long did
8 that occur?

9 A. I guess the project took about three to
10 five weeks, four or five weeks.

11 Q. What would you say would be -- and out of
12 those four or five weeks, how often would you arrive
13 that watering wasn't going on?

14 A. I don't recall.

15 Q. Was it more than once?

16 A. I don't recall.

17 Q. But you do specifically recall arriving at
18 least -- you do specifically recall arriving at the
19 demolition and watering wasn't occurring?

20 MR. JEDDELOH: Objection, asked and answer.

21 HEARING OFFICER KNITTLE: Sustained.

22 MR. JEDDELOH: I think he's arguing with the
23 witness frankly.

24 HEARING OFFICER KNITTLE: Mr. Trepanier, he's

1 already answered that question.

2 MR. TREPANIER: Thank you.

3 BY MR. TREPANIER:

4 Q. So I believe you testified that there --

5 that on occasion when you arrived at the demolition

6 site and you observed wetting not going on, how did

7 you respond to that, if at all?

8 A. I didn't respond to it at all. I waited

9 to see what they were doing according to what they

10 were doing at the time.

11 Q. So you're saying that when you saw that --

12 when you got to the demolition site and you saw they

13 weren't watering, you observed what was going on?

14 A. Yes. That's part of my job to see that

15 the job is going in an orderly fashion.

16 Q. And how close were you? Where did you

17 observe from?

18 A. From the sidewalk.

19 Q. And that would be sidewalk on Halsted

20 Street?

21 A. Yes.

22 Q. Would you have been right in front of the

23 building or north of the building, south?

24 A. I was in various locations throughout the

1 project.

2 Q. Then on that instant when you -- you
3 testified that you can recall arriving and not
4 seeing water spraying, and then I believe you also
5 testified that by the time you left the site, water
6 was being sprayed; is that correct?

7 A. Yes.

8 Q. And that you observed the demolition while
9 it was between those times; is that correct?

10 A. I observed the process of the building
11 being demolished, yes.

12 Q. And is it also your testimony then that
13 while you were observing -- when you arrived at the
14 demolition and observed watering not occurring, that
15 then watering began during your observation?

16 A. Repeat the question.

17 Q. Is it your testimony that you arrived at
18 the demolition site, you saw watering wasn't going
19 on, you observed the demolition, and watering began?

20 A. I didn't say that.

21 Q. Where is that statement incorrect?

22 MR. JEDDELOH: Object as to form.

23 BY THE WITNESS:

24 A. The way you were saying it, you're saying

1 like when I arrived, the watering wasn't going on,
2 but when I got there, it's according to what process
3 they were in at that time. If they were loading
4 trucks up or doing something like that, you know,
5 they don't wet, you know, they don't put a fire hose
6 on when they're loading the truck up. It's been
7 watered down. You can see the process has already
8 taken place. The material was wet. They were
9 loading it up in the trucks, and sometimes the crane
10 operator is working. They don't wet the crane
11 operator up. It's a process that it goes through.

12 BY MR. TREPANIER:

13 Q. When you say you don't wet the crane
14 operator up, what are you referring to?

15 A. I mean, they got a fire hose putting water
16 on the debris. You know, I mean, this is a process
17 that's common practice in the industry.

18 Q. You made a statement in the negative, they
19 don't water the crane operator up. What did you
20 mean by that?

21 A. I mean, it's a process that someone has
22 got to wet the material up. You have to get out of
23 the way. You've got a big fire hose and that
24 pressure. I mean, it's a process that takes an

1 orderly process in the industry. So one can't go on
2 without the other one being stopped at some point.

3 Q. So if I'm understanding your testimony,
4 you're saying that this hauling of the fire hose in
5 this watering, this is a big operation? This is not
6 a small thing. It's real advisable?

7 MR. JEDDELOH: I'm going to object. That's a
8 statement, not a question. It's also compound.

9 HEARING OFFICER KNITTLE: Mr. Trepanier,
10 rephrase your question please.

11 BY MR. TREPANIER:

12 Q. Is the watering operation, the fire hose,
13 is that visible to the eye?

14 MR. BLANKENSHIP: Well, I'm going to object as
15 to foundation. It obviously may depend on where
16 that watering is going on, and I think we need a
17 little more foundation as to what aspect of the job
18 he's referring to rather than this generic question
19 covering 30 days of demolition.

20 HEARING OFFICER KNITTLE: Sustained.

21 BY MR. TREPANIER:

22 Q. When you referred to industry standard and
23 you found the watering sufficient to meet industry
24 standard, what's your basis? Is there some

1 foundation of knowledge that you have that gives you
2 the ability to interpret what is an industry
3 standard?

4 A. Well, from past practices and watching
5 other buildings go down over the last 30 years in
6 Chicago, 40 years in Chicago, and observing, and
7 asking questions of various contractors.

8 Q. And during that 30 to 40 years that you've
9 watched buildings come down, during that time, were
10 you hiring the contractors?

11 A. No.

12 Q. How long have you selected contractors for
13 demolitions?

14 A. Probably ten to 12 years.

15 Q. Now, you've spoken about times that you
16 described where wetting wouldn't occur by industry
17 standard, and you've also testified that you don't
18 recall if you arrived at this -- that you were at
19 this job three to four times a day for four or five
20 weeks, and you testified that at least -- you
21 testified that you arrived at the site when water
22 wasn't being sprayed, although you don't know if
23 that occurred more than once.

24 Is that still your belief?

1 MR. JEDDELOH: I'm going to object that it's
2 extremely compound.

3 HEARING OFFICER KNITTLE: Yeah. I have to
4 sustain that, Mr. Trepanier. You asked about three
5 questions there, and then you're also rephrasing
6 statements that he's already asked and answered.

7 MS. COLE: May I ask a question?

8 HEARING OFFICER KNITTLE: You guys have an
9 objection?

10 MR. BLANKENSHIP: Yes.

11 MR. JEDDELOH: I would have an objection to
12 team tagging.

13 HEARING OFFICER KNITTLE: And I think I'm going
14 to sustain that. You have every opportunity in the
15 world to ask questions after Mr. Trepanier is
16 finished.

17 MS. COLE: Thank you.

18 BY MR. TREPANIER:

19 Q. When is the watering not necessary during
20 a demolition activity?

21 MR. JEDDELOH: I'll object to the form of that
22 question.

23 BY MR. TREPANIER:

24 Q. Just to make this question more specific,

1 earlier you testified you arrived and watering

2 wasn't going on.

3 What activity was occurring on the site at

4 that time?

5 A. I don't remember.

6 Q. So today you wouldn't have an opinion

7 whether or not industry standard was being met at

8 that time?

9 MR. JEDDELOH: Object as to form.

10 HEARING OFFICER KNITTLE: Answer if you can,

11 Mr. Henderson.

12 BY THE WITNESS:

13 A. I don't remember. I mean, I might have

14 came there at lunchtime, you know, just before

15 lunch. You know, I don't know. I mean, I don't

16 know.

17 BY MR. TREPANIER:

18 Q. Now, when you arrived and the watering

19 wasn't going on and the watering did start, did

20 you -- how is it that you don't recall where the

21 hydrant is located?

22 MR. BLANKENSHIP: Objection.

23 MR. JEDDELOH: I'll join in that objection.

24 HEARING OFFICER KNITTLE: Sustained.

1 BY MR. TREPANIER:

2 Q. When you saw -- when the watering began
3 during your observation, did you see -- where did
4 they get the water from?

5 MR. JEDDELOH: Objection, asked and answered.

6 It's directly the same question as before.

7 HEARING OFFICER KNITTLE: I don't know that --
8 have you answered where they got the water from,
9 Mr. Henderson?

10 THE WITNESS: Yeah. I said from a city fire
11 hydrant.

12 HEARING OFFICER KNITTLE: Then that's sustained.

13 BY MR. TREPANIER:

14 Q. And just to clarify, is it your testimony
15 that you were -- that you visited this site between
16 12 and -- did you visit the site on Saturdays?

17 A. Officially did I visit the site on
18 Saturdays?

19 Q. Yes.

20 A. I passed by there some Saturdays, yes.

21 Q. And was there demolition activity
22 occurring on Saturdays?

23 A. No, not to my knowledge, no.

24 Q. And how about on Sundays? Did you visit

1 the site on Sundays?

2 A. No.

3 Q. And you don't know if demolition

4 activities were occurring or not on Sundays?

5 A. No.

6 Q. Let me get some more specific questions.

7 I understand you're having -- okay. I'll just ask

8 the question and not state something like that.

9 When you -- you did send out bids for this

10 job to several contractors, didn't you?

11 A. Yeah. There were other proposals sent out

12 for contractors to bid on the property.

13 Q. And you offered to look over the site with

14 Speedway Wrecking, didn't you?

15 A. Yes.

16 Q. And did they take you up on that offer?

17 A. Yes. They came out.

18 Q. And did you accompany Speedway to the

19 site?

20 A. Yes, I did.

21 Q. And that was before they put in their bid;

22 is that right?

23 A. They'd have to go there because how are

24 they going to know how to prepare their proposal.

1 Q. Then when you visited the site with
2 Speedway, did you point out any concerns that you
3 had regarding the demolition?

4 A. Yes. If this property is demolished on
5 Halsted Street, it has to be properly secured for
6 pedestrians and the street traffic.

7 Q. And did you have those same concerns for
8 13th Street?

9 MR. JEDDELOH: Objection, relevancy.

10 HEARING OFFICER KNITTLE: Sustained.

11 Mr. Trepanier, we're here strictly on 1261
12 Halsted.

13 MR. TREPANIER: Well, this property is on the
14 corner of Halsted and 13th Street.

15 HEARING OFFICER KNITTLE: Is it the same piece
16 of property?

17 MR. JEDDELOH: Oh. I thought he was referring
18 to another piece of property.

19 MR. BLANKENSHIP: If that's what he's referring
20 to, yeah.

21 HEARING OFFICER KNITTLE: Yeah. So did I.

22 If it's the same property, you can
23 definitely answer the question.

24

1 BY MR. TREPANIER:

2 Q. Did you have the same concern for 13th
3 Street?

4 A. All the properties surrounding are
5 included.

6 Q. So did you -- so what did -- how did you
7 act on your concern for the pedestrians and the
8 vehicle passage on 13th Street?

9 A. How did I act?

10 Q. Yeah. How did you respond to your
11 concern?

12 A. I talked to the contractor that was
13 involved and said that by all means all the
14 pedestrian and street traffic has to be protected.

15 Q. And did you give them -- did you specify
16 to them how they were to do that?

17 A. No, I didn't specify how to do that.

18 Q. How did you think that they would do it
19 given your knowledge of industry standard?

20 A. They would do it in a workmanlike manner.

21 Q. Which means what? I mean, we're talking
22 about this building specifically. What was your
23 expectation?

24 A. That they would secure the property for

1 keeping any pedestrians or traffic from getting

2 harmed in a workmanlike manner.

3 Q. So would that -- is what you're saying

4 that you expect that they were going to block the

5 sidewalk and block the street off?

6 A. I didn't say that.

7 Q. So maybe you could. Maybe you could

8 specifically tell us.

9 A. I didn't give them no specific instruction

10 about you do one through ten. They didn't get any

11 instruction of that sort.

12 Q. I understand you were relying on your

13 knowledge of industry standard; is that correct?

14 A. Not only my knowledge, but the contractor

15 who would be awarded the contract to do it because

16 they're going to follow all the regulatory

17 requirements.

18 Q. Okay. And my question is to you is what

19 did you do expect that meant for 13th Street?

20 A. Thirteenth Street, whatever is involved in

21 the demolition permit that they would have to

22 receive from the city which governs all demolition

23 in the city of Chicago they would have to follow all

24 the regulatory requirements.

1 Q. So you independently don't know what those
2 requirements are; is that correct?

3 A. Me as an individual?

4 Q. As the supervisor of this job, as project
5 manager.

6 A. Meaning what?

7 Q. Is the question not clear?

8 MR. BLANKENSHIP: I guess I'm going to object
9 to lack of foundation. These are questions that
10 should be asked of the people who actually ran the
11 demolition. I'm not sure there's proper foundation
12 for the guy at the University who let the contract
13 be rendering opinions on the adequacy of the
14 precautions and the demolition requirements of the
15 city of Chicago.

16 MR. JEDDELOH: And let me join by saying you
17 are asking this witness -- I believe that he is
18 asking the witness for a legal conclusion, which he
19 wouldn't be qualified to provide.

20 HEARING OFFICER KNITTLE: Mr. Trepanier?

21 MR. TREPANIER: Well, the witness has testified
22 that he's got knowledge of the industry standard,
23 that he contracted for the job based on his
24 knowledge of the industry standard, that he observed

1 the site and at times observed those standards being
2 followed, and now I'm asking him specific
3 information regarding what his expectation was of
4 how the pedestrians on 13th Street would be
5 protected during the demolition.

6 HEARING OFFICER KNITTLE: Is that your specific
7 question of Mr. Henderson?

8 MR. JEDDELOH: That wasn't the question that we
9 objected to.

10 MR. BLANKENSHIP: And, again, I'd object to his
11 expectation is not relevant. What happened is
12 relevant, and then there's a legal conclusion as to
13 whether that was sufficient, but Mr. Henderson's
14 expectation about what would be done I don't think
15 is relevant.

16 MR. TREPANIER: I'm understanding that there
17 was not apparently any written information passed,
18 that the parties relied on their common
19 understanding of an industry standard, and now as I
20 inquire into what the industry standard is, they're
21 finding that objectionable.

22 MR. JEDDELOH: My objection was to a question
23 to this witness as to asking him to enumerate all of
24 the city requirements.

1 MR. BLANKENSHIP: I also think that misstates
2 the testimony. There was testimony that there was a
3 demolition permit which had the city's conditions in
4 it. I believe Mr. Henderson testified to that. So
5 I think Mr. Trepanier has not accurately
6 characterized it.

7 HEARING OFFICER KNITTLE: Mr. Trepanier, what's
8 your specific question for this witness right now?

9 BY MR. TREPANIER:

10 Q. Did the University require protection for
11 the pedestrians and the vehicle traffic on 13th
12 Street during the demolition?

13 MR. JEDDELOH: I'll object as to the relevancy
14 of that. This is not a case about protection to
15 passersby.

16 HEARING OFFICER KNITTLE: Overruled. You can
17 answer that question if you can.

18 BY THE WITNESS:

19 A. The University required the contractors to
20 get a city demolition permit and follow all the city
21 guidelines.

22 BY MR. TREPANIER:

23 Q. And are the city guidelines in -- do the
24 city guidelines require industry standards be

1 followed?

2 MR. JEDDELOH: Objection. That's asking for
3 this witness to find a legal conclusion. The
4 guidelines are what they are.

5 HEARING OFFICER KNITTLE: Based on your
6 knowledge, if you can answer that question.

7 BY THE WITNESS:

8 A. The guidelines are what they are according
9 to -- once you get a city building permit to
10 demolish a building, I think the city has some
11 strenuous rules and regulations involved that's good
12 enough for the University.

13 BY MR. TREPANIER:

14 Q. Does the city require spraying water?

15 MR. JEDDELOH: Objection. Same objection.

16 MR. TREPANIER: He just stated they were very
17 strenuous regulations.

18 HEARING OFFICER KNITTLE: I'm going to overrule
19 the objection. If you know the answer based on your
20 knowledge, you can answer that question.

21 BY THE WITNESS:

22 A. I don't know the definite specific
23 guidelines. I can look it up in the code book. I
24 don't know.

1 BY MR. TREPANIER:

2 Q. What's the basis of your statement that
3 the city had strenuous requirements for demolition?

4 A. Because you can't demolish a building
5 without the city approving or giving you a building
6 permit to demolish the building.

7 Q. So you believe the city would strenuously
8 object to someone demolishing a building without a
9 permit?

10 MR. JEDDELOH: Objection. Now, this question
11 is asking him to speculate.

12 MR. TREPANIER: I'll withdraw that question.

13 HEARING OFFICER KNITTLE: That would be
14 sustained.

15 We have to take a recess for the court
16 reporter.

17 (Break taken.)

18 HEARING OFFICER KNITTLE: I've noticed two
19 gentlemen come in. Are you complainants? Could you
20 identify yourselves, please?

21 MR. SANIAT: My name is Tom Saniat,
22 S-a-n-i-a-t. No, but I'm an interested party. I
23 might be a complainant.

24 HEARING OFFICER KNITTLE: It's too late for you

1 to be complainant, but you can be an interested

2 party.

3 MR. JOSEPH: I am one of the complainants. I'm

4 Lorenz Joseph. I also did the videotape.

5 HEARING OFFICER KNITTLE: Okay.

6 MR. BLANKENSHIP: I would ask that Mr. Saniat

7 be excluded then for the same reason that

8 Mr. Trepanier excluded the other witnesses. If he's

9 going to be a witness here, he should not be allowed

10 to sit here.

11 MR. JEDDELOH: Well, I would also -- frankly, I

12 would object to him being a witness for two

13 reasons. First of all, he wasn't on the witness

14 list, but more importantly he's never been disclosed

15 as a person with relevant knowledge in any of the

16 documents we've received, and so, therefore, we

17 would have been unable to do any further discovery

18 with respect to what information he may have.

19 MR. BLANKENSHIP: Join that objection as well.

20 MR. SANIAT: Would that --

21 HEARING OFFICER KNITTLE: Go ahead, sir.

22 MR. SANIAT: Would that eliminate me from

23 asking questions?

24 HEARING OFFICER KNITTLE: As you probably know

1 from Board rules, even if he doesn't appear as a
2 witness, he can, as an interested party, have some
3 limited role here, and, of course, he'd be allowed
4 to stay here as an interested party.

5 Mr. Trepanier, Ms. Maureen Cole, or
6 Mr. Joseph, are you planning on calling this
7 gentleman as a witness?

8 MR. JOSEPH: I may have a couple questions.

9 HEARING OFFICER KNITTLE: Mr. Trepanier, are
10 you planning on calling this gentleman as a
11 witness?

12 MR. TREPANIER: No. I can't listen to you
13 right now. Wait. Give me a second.

14 HEARING OFFICER KNITTLE: All right.

15 Mr. Trepanier, I'm going to want an answer
16 now. Sir, what's going on?

17 MR. SANIAT: I mean, I just walked in. I'm
18 sorry that we --

19 HEARING OFFICER KNITTLE: I understand. We've
20 been going for a while, though, and we're kind of
21 taking longer --

22 MR. SANIAT: And I know that you got a few more
23 days to catch up to speed.

24 HEARING OFFICER KNITTLE: It's not -- I

1 understand. Mr. Trepanier, are you going to plan on
2 calling him as witness, or are you going to try to
3 call him as a witness because we have an outstanding
4 objection still as well?

5 MR. TREPANIER: I believe that Mr. Saniat may
6 be able to provide some testimony for us on rebuttal
7 having just spoke with him. I didn't talk with him
8 before about testifying, and he's expressing some
9 willingness to so do. So I would like -- I would --
10 since I'm being asked, I would say that there's some
11 possibility that I would seek to call Mr. Saniat.

12 MR. BLANKENSHIP: And then we'll object both to
13 him calling him as an unlisted witness who was not
14 disclosed in discovery, and we'll object to him
15 sitting here for the duration of the hearing until
16 he testifies.

17 HEARING OFFICER KNITTLE: Mr. Joseph, do you
18 have questions you wanted to ask of him too you
19 said?

20 MR. JOSEPH: Well, I had a couple questions I
21 thought of that maybe he hadn't brought up yet.

22 HEARING OFFICER KNITTLE: No, no, no.
23 Questions of Mr. Saniat, Saniat.

24 MR. SANIAT: Saniat, either way.

1 HEARING OFFICER KNITTLE: Saniat.

2 MR. SANIAT: Tom will do.

3 MR. JOSEPH: Not specific, sir, no.

4 HEARING OFFICER KNITTLE: Was he included on
5 any of the proposed witness lists?

6 MR. BLANKENSHIP: Not a thing. We've never
7 seen the name before.

8 HEARING OFFICER KNITTLE: Well, what about
9 discovery because the proposed witness list, as you
10 know, is more courtesy?

11 MR. BLANKENSHIP: And it was never mentioned in
12 discovery or the deposition.

13 HEARING OFFICER KNITTLE: Can you show me a
14 discovery request seeking people with interested --
15 people who might have knowledge of this case?

16 MR. TREPANIER: I think that likely if I call
17 Mr. Saniat it will be in the rebuttal phase.

18 HEARING OFFICER KNITTLE: All right. But,
19 Mr. Trepanier, if he wasn't disclosed as a response
20 to the discovery request asking him -- asking you
21 people that you know of who may have knowledge of
22 this case, you know, he's not going to be allowed to
23 testify.

24 MR. TREPANIER: I don't think I was asked that

1 question if I knew people who had knowledge.

2 MR. JEDDELOH: Well, you were.

3 HEARING OFFICER KNITTLE: Now, he can still --

4 you know, I suggest you take a look at the

5 regulations, as an interested party, he can submit

6 statements, he can ask questions I think too.

7 MR. JOSEPH: I would say also that he's an

8 associate of the garden club, which is one of the

9 issues of the case.

10 HEARING OFFICER KNITTLE: This is in response

11 to --

12 MR. BLANKENSHIP: No. That must be --

13 MR. JEDDELOH: Yeah. I have the response.

14 Actually, there were a couple of rounds of this, but

15 this is the core response.

16 For the record, let me just say that it

17 was a pleading submitted by Mr. Trepanier. It's

18 undated I'm afraid. Let's see if he's got any date

19 on it at all.

20 HEARING OFFICER KNITTLE: Number two or three

21 that it was. I can't remember.

22 MR. JEDDELOH: Well, right. I'm just trying to

23 identify the document for the record, and he doesn't

24 have a date, but it would be responses to

1 interrogatories.

2 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,
3 you note that there's no mention of this gentleman
4 here.

5 MR. TREPANIER: And I'm seeing that the
6 question wasn't repeated here. So you probably need
7 to refer to the document that has the question that
8 was responded to.

9 MR. JEDDELOH: Well, it would have been a
10 question of persons with knowledge of relevant
11 facts.

12 MR. BLANKENSHIP: Number two.

13 MR. TREPANIER: Well, I would respond in part
14 that they asked me the question at the time, and
15 I've just learned what Mr. Saniat's knowledge is
16 even here in the hearing room. Certainly, at that
17 time, I couldn't have put his name forward, and the
18 interrogatory never did ask that I would update if I
19 learned of another person.

20 MR. JEDDELOH: Oh, but it did.

21 HEARING OFFICER KNITTLE: It does, and you're
22 under a continuing obligation to update your
23 discovery responses.

24 I'm going to bar your testimony as a

1 witness.

2 MR. SANIAT: Would it also matter if the
3 University knew of previous matters involving me
4 with demolition of buildings?

5 HEARING OFFICER KNITTLE: I don't think so.
6 This is merely a discovery matter. It should have
7 been brought to the respondents' attention, and
8 Mr. Trepanier is under an obligation to supplement
9 that when he becomes aware or should he become aware
10 of these types of responses.

11 I will note that you're permitted to stay
12 here at the hearing. Any person as an interested
13 party -- not a party and otherwise a witness for a
14 party may submit witness statements relevant to the
15 subject matter of the hearing. Any person
16 submitting such a statement shall be subject to
17 cross-examination by any party. If such person
18 is -- you can submit a written statement according
19 to 103.203. You can also, if I allow it, offer
20 reasonable oral testimony whether a party to the
21 proceedings or not. So I want you to think about
22 that.

23 MR. SANIAT: And also questions?

24 HEARING OFFICER KNITTLE: I'll have to think

1 about whether I'll let you ask questions of

2 witnesses, but as for now --

3 MR. SANIAT: Otherwise, it would take a couple

4 exhibit minutes to explain to him the question that

5 I --

6 HEARING OFFICER KNITTLE: We're going to break

7 for lunch in about a half hour or so.

8 MR. SANIAT: I know. I meant just because I

9 come up to speed that if I hear something in

10 building a list of questions that I couldn't just

11 wait until it was my turn, I would have to relate

12 those questions to him and how they fit so that he

13 could then do it if we would make it work that way.

14 You know, I just want to make it good for our kids'

15 kids, which is the University's --

16 MR. JEDDELOH: I'm going to object to his

17 gratuitous statements thrown in at this point,

18 Mr. Chairman.

19 MR. BLANKENSHIP: As will I.

20 HEARING OFFICER KNITTLE: And your objection is

21 understood. I'm not going to strike anything.

22 We're just trying to figure out whether he can be an

23 interested party, and these are not -- this is not

24 testimony. He has not been sworn in, and he is not

1 a witness.

2 MR. SANIAT: Thank you for understanding,
3 gentlemen.

4 MR. BLANKENSHIP: Mr. Chairman, I just would
5 like to state for the record I understand the need
6 to be lenient to pro se complainants, and we have
7 been for two years. We've been going two hours on
8 the direct case, and I've heard about five minutes
9 of relevant testimony.

10 Is there any way we can get a little more
11 order here on the plaintiffs' side and proceed in a
12 more orderly fashion because this is costing our
13 clients a ton of money to sit here while they try to
14 put their case together in the hearing room, and
15 it's a little ridiculous. They've had notice of the
16 hearing for well over a month.

17 HEARING OFFICER KNITTLE: Mr. Trepanier, how
18 long do you think it's going to -- how much more do
19 you have for Mr. Henderson?

20 MR. TREPANIER: It looks like about the amount
21 of material that I have brought to this point.

22 HEARING OFFICER KNITTLE: Okay. Ms. Cole, are
23 you going to have questions for Mr. Henderson as
24 well?

1 MS. COLE: No. I'd like to direct my questions

2 to Larry -- Mr. Larry, from the University, Kolko.

3 MR. BLANKENSHIP: Speedway.

4 HEARING OFFICER KNITTLE: Oh, Speedway. So

5 then you're --

6 HEARING OFFICER KNITTLE: We'll worry about

7 that later.

8 Mr. Trepanier, I do want to limit this. I

9 want to finish this hearing in two -- three days at

10 the max. We've noticed it up for two and a half,

11 and we kept that extra half day if we needed it. I

12 don't see any reason that we shouldn't be able to do

13 that, but we're not going to be able to do that

14 unless we proceed with some haste here.

15 The testimony offered to this point, I

16 don't know if I can agree with the characterization

17 of five minutes of relevant testimony, but I do

18 think we are on the edge of what would be considered

19 relevant testimony. So I'm going to start moving

20 things along a little bit if we don't get to some

21 relevant testimony that is going to be necessary for

22 the Board to reach their decision in this matter,

23 and keep in mind that the Board is here only on a

24 very limited issue, whether or not there's been a

1 violation of Section 9A and Section 21B of the
2 Environmental Protection Act.

3 BY MR. TREPANIER:

4 Q. Mr. Henderson, did you observe the
5 demolition activities on September 6th, 1996, at
6 1261 Halsted?

7 A. I observed the demolition of 1261 Halsted.

8 Q. And what was occurring on the site on
9 September 6th, if you can recall?

10 A. I don't know.

11 HEARING OFFICER KNITTLE: Mr. Henderson, if you
12 know --

13 MR. JEDDELOH: He said that he doesn't know.

14 HEARING OFFICER KNITTLE: Well, I understand.

15 I'm reacting more to his tone. If you can give -- I

16 want you to think about it and give as reasonable a

17 response as you can.

18 BY THE WITNESS:

19 A. Let me set the record straight here. I'm

20 involved in many University functions during my

21 daily activities. If you specify do I know -- I

22 know the building was being demolished. Now, what

23 they were doing at that particular time when I went

24 there, they were working on demolishing the

1 building.

2 I don't know what phase they were in or
3 what they -- were they loading trucks on that
4 particular day or that particular hour. I would
5 have to answer the question if you asked me what
6 they were doing at that particular time, I don't
7 know.

8 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,
9 your next question, please.

10 BY MR. TREPANIER:

11 Q. Do you know the date that this demolition
12 began?

13 A. I would have to look up and -- you know,
14 I'd have to look up to see actually the day it
15 began. I couldn't recall at this particular time.

16 Q. Do you have a document to refer to?

17 MR. JEDDELOH: He didn't bring any documents
18 with him.

19 BY THE WITNESS:

20 A. I didn't bring any documents with me.

21 BY MR. TREPANIER:

22 Q. Are there any documents that you used to
23 prepare for testimony today?

24 MR. JEDDELOH: Objection as to relevancy.

1 MR. TREPANIER: I think that I have -- if the
2 man has statements, documents that he's used to
3 prepare for his testimony today, I believe I have a
4 right to see those documents and enter those parts
5 of the documents that contradict what he's saying
6 now.

7 MR. JEDDELOH: He has been provided all the
8 documents he's asked for in discovery.

9 HEARING OFFICER KNITTLE: All the documents
10 that he asked for in discovery as well as in the
11 notice?

12 MR. JEDDELOH: No. I'm saying he was provided
13 all the documents he asked for in discovery unless
14 there was an objection as to relevancy or privilege.

15 HEARING OFFICER KNITTLE: Mr. Henderson, were
16 you instructed to bring any documents with you
17 today?

18 THE WITNESS: No.

19 MR. TREPANIER: I believe under Supreme Court
20 Rules, if the witness prepared himself with a
21 statement for testimony, that I have a right to view
22 that statement and enter the parts of it that are
23 contradictory to his testimony.

24 MR. JEDDELOH: Mr. Trepanier and the other

1 complainants have been provided copies of all the
2 documents they've requested. There have been
3 affidavits signed. They have received copies of
4 those. I don't understand this request.

5 MR. BLANKENSHIP: The question was does he know
6 when the job started. The answer was no, and then
7 the question was is there anything that could
8 refresh your recollection, and I think the answer
9 was he didn't know, and so I'm not sure why he's
10 looking for documents to impeach testimony of a guy
11 that says he doesn't know what the answer is.

12 MR. TREPANIER: My nutshell book said that's a
13 good way to start out testimony is they ask the
14 witness if they used a statement to prepare for
15 their testimony and ask for a copy of that
16 statement.

17 HEARING OFFICER KNITTLE: And did you answer
18 that question, Mr. Henderson?

19 THE WITNESS: Yes. I don't really know what
20 he's talking about, and did I prepare, no, I didn't
21 prepare anything to come down here today.

22 BY MR. TREPANIER:

23 Q. My question is did you use a document to
24 prepare yourself?

1 A. No. What document?

2 Q. That was the question.

3 A. I don't know what he's going to ask me.

4 So I don't know what to prepare for.

5 Q. If I told you that this demolition began

6 in earnest on September 6th of 1996, would that seem

7 reasonable to you?

8 A. I don't know.

9 Q. If I said the demolition occurred sometime

10 in 1996, would that seem reasonable to you?

11 A. I know the building was demolished during

12 September, you know, September sometime. You know,

13 you have in front of you some specific dates that

14 I'm not privy to, and, you know, to try to trip me

15 up with some dates here or there, I can't answer

16 that honestly.

17 Q. I'm not trying to trip you up, sir. I'm

18 just trying to get your recollection so we can have

19 a full record before the Board?

20 HEARING OFFICER KNITTLE: And Mr. Henderson

21 answered that he thinks there was demolition going

22 on in September.

23 So what's your next question,

24 Mr. Trepanier?

1 BY MR. TREPANIER:

2 Q. Did you observe a process that you would
3 refer to as hand wrecking during your observation of
4 1261 Halsted?

5 A. Yes.

6 Q. And to your knowledge, is hand wrecking an
7 industry standard?

8 A. Yes. At some point, yes, hand wrecking is
9 industry standard.

10 Q. And when is hand wrecking used?

11 A. At various times according to how the
12 contractor wanted to do various things. Sometimes
13 contractors do it a little different during various
14 times. It all depends on who's doing what.

15 Q. And is dust control a part of the industry
16 standard of hand wrecking?

17 MR. JEDDELOH: Object as to form.

18 HEARING OFFICER KNITTLE: Overruled.

19 BY THE WITNESS:

20 A. I don't really understand what you're
21 trying to get to, but dust control in demolition of
22 a building is controlled at various steps in the
23 process of demolition.

24

1 BY MR. TREPANIER:

2 Q. Then specifically during hand wrecking,
3 how is that affected, the dust control?

4 A. I couldn't specify any given method, but
5 some is done with dust wings, some of it is done
6 with enclosure according to what the process is at
7 the time. So there's various methods used, but for
8 me to sit here and give you a specific one, I
9 couldn't do that.

10 Q. You did see hand wrecking going on at 1261
11 South Halsted?

12 A. Yes.

13 Q. And did you see any of these methods that
14 you cited being used?

15 A. There were some enclosures, some boards
16 put up on various things. You know, to specify what
17 was being done at that time, I couldn't specify
18 that.

19 Q. Okay. When you observed the hand wrecking
20 going on at 1261 and you saw boards put up, is there
21 any other method of pollution control you saw being
22 used?

23 MR. JEDDELOH: Well, I'm going to object to the
24 form. I think it assumes that the dust emanating

1 from that project was pollution, and I think,
2 therefore, it's an unfair question. It's have you
3 stopped beating your wife yet.

4 HEARING OFFICER KNITTLE: I'm going to
5 overrule. I don't think there was any reference to
6 pollution, but if, in fact, there was pollution
7 control, what was it --

8 MR. JEDDELOH: Substitute dust control for
9 pollution control.

10 HEARING OFFICER KNITTLE: If, in fact, you saw
11 a pollution control measure being in effect. That
12 was the question to you. So if you saw anything,
13 that doesn't assume that there was pollution going
14 on. That's more a term of art.

15 BY THE WITNESS:

16 A. There were some method of controlling the
17 dust going on.

18 BY MR. TREPANIER:

19 Q. And is that what you referred to earlier
20 regarding the boards put up?

21 A. There was some boards put up. There could
22 have been boards put up for protection. There could
23 have been dust control, but normally when you're
24 doing hand wrecking there's a very minimal amount of

1 dust anyway, but, you know, dust is in the eyes of
2 the beholder in how much dust is emanating from --

3 MR. JEDDELOH: There's no question pending.

4 BY MR. TREPANIER:

5 Q. When these boards were put up, where were
6 these boards?

7 A. I don't recall.

8 Q. You do recall that the boards were put up?

9 A. I saw some boards up, yes.

10 Q. Where did you see the boards?

11 MR. JEDDELOH: He just said he didn't recall.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. TREPANIER:

14 Q. How were the boards affecting to control
15 dust?

16 MR. JEDDELOH: Well, I object to the form.

17 MR. TREPANIER: Can I get clarification? When

18 he objects to the form of the question, and then the

19 witness still answers, what's going on form?

20 MR. JEDDELOH: I objected and there was no

21 ruling.

22 HEARING OFFICER KNITTLE: He objected and the

23 witness has answered before I've ruled. There's

24 really nothing going on. I don't understand your

1 question, Mr. Trepanier.

2 MR. TREPANIER: Because previously --

3 HEARING OFFICER KNITTLE: When he's objecting

4 to form --

5 MR. TREPANIER: The attorney said I object to

6 form, you can answer the question to his witness.

7 MR. JEDDELOH: I did that by mistake because

8 I'm used to taking hundreds of depositions, and

9 that's what you normally do in depositions.

10 HEARING OFFICER KNITTLE: Right.

11 MR. JEDDELOH: It came out of my mouth before I

12 had a chance to stop it.

13 HEARING OFFICER KNITTLE: He's objecting to the

14 form of your question in one way or another. If, in

15 fact, I think it's a bad question, I usually ask him

16 to clarify what's wrong with the question. If I'm

17 not saying overruled when I overrule and the witness

18 answers regardless, I am sorry. I should be saying

19 overruled, but if I don't say anything and he

20 answers, you can rest assured that his answer is

21 part of the record.

22 MR. TREPANIER: Thank you, sir. Sir, I think

23 maybe there was a question outstanding.

24 HEARING OFFICER KNITTLE: I'm sure there is,

1 but I have lost track of where we're at here.

2 Do you recall the last question that you

3 asked, or do you want me to ask the lovely court

4 reporter to read it back?

5 MR. TREPANIER: I think we better have it read

6 back.

7 HEARING OFFICER KNITTLE: Could you read that

8 back, please?

9 (Record read.)

10 HEARING OFFICER KNITTLE: Sir, the question was

11 how are the boards affecting to control dust, and

12 maybe Mr. Trepanier, I agree, you can rephrase that

13 question.

14 BY MR. TREPANIER:

15 Q. How do you understand the boards were

16 controlling dust?

17 A. Containing it, making sure it didn't

18 emanate into the air that much. You know, I mean,

19 that's left up to the contractor in a general

20 sense.

21 Q. It is your testimony, isn't it correct,

22 that you don't recall where those boards were?

23 MR. JEDDELOH: Objection, asked and answered.

24 HEARING OFFICER KNITTLE: Sustained.

1 BY MR. TREPANIER:

2 Q. How can you make a statement that the
3 boards were holding dust back if you don't know
4 where the boards were?

5 MR. JEDDELOH: Objection. He's arguing with
6 the witness.

7 HEARING OFFICER KNITTLE: Mr. Henderson, answer
8 the question, please, if you can.

9 BY THE WITNESS:

10 A. Well, you know, when you're going to a job
11 site and you see some boards here and you see they
12 have been put up for various reasons, I don't
13 remember if they were on the right side of the
14 building or left side, in the middle.

15 I know they were there. You know, I'm
16 looking at a whole lot of things when you go to a
17 job site. So to specify that I seen them on the
18 northwest corner or in the middle, that's what I'm
19 referring to.

20 BY MR. TREPANIER:

21 Q. What were you looking for when you visited
22 the job site?

23 A. Seeing the process of the work, seeing
24 whether they're wetting down or whether they're

1 hauling the debris away, where there -- did they
2 have barricades up, did they have proper people
3 controlling the traffic flow if there need to be,
4 those kind of things, were they interfering with the
5 other traffic flow.

6 Q. And did you make a record of your
7 observations when you were inspecting this site?

8 A. No. I didn't take any notes.

9 Q. And is that your common practice, to
10 inspect these sites, but make no record of it?

11 A. If everything is going reasonably well,
12 it's not necessary to make a note. You put down a
13 mental note that you were there at the site or
14 whatever. That's it.

15 Q. Then when you observed the hand wrecking
16 and you have the recollection that there was some
17 boards somewhere near the site or at the site, you
18 didn't observe any wetting occurring, did you?

19 A. I don't recall.

20 MR. TREPANIER: Moving to -- refer to an answer
21 in the interrogatory. I think what I'd like to do
22 with that is maybe over the lunch break locate that
23 interrogatory and return to this line of questioning
24 regarding the witness stating that at this time he

1 doesn't recall if wetting was being used during hand
2 wrecking.

3 HEARING OFFICER KNITTLE: That's fine.

4 BY MR. TREPANIER:

5 Q. And I'd like to continue the talk that we
6 had earlier regarding the inspection that you did
7 with Speedway or the -- when you went out with
8 Speedway to take a look at 1261 before their bid.

9 Do you recall when that occurred?

10 A. No.

11 Q. And what was your duty during that
12 inspection?

13 MR. JEDDELOH: Object as to form and the global
14 nature of that question. It certainly would require
15 a response that would be beyond any relevancy here.

16 MR. BLANKENSHIP: I'll object to relevance,
17 too, if we're going to get into the whole
18 predemolition inspection. I'm not sure where this
19 is going in terms of -- I mean, this is what led to
20 the bidding of the job. That's got nothing to do
21 with the demolition at all.

22 HEARING OFFICER KNITTLE: Mr. Trepanier, do you
23 have a response?

24 MR. TREPANIER: Yeah. I'm inquiring into this

1 area of industry standard and how the arrangement
2 was made between Mr. Henderson and Speedway Wrecking
3 for the demolition of this property, and I'm getting
4 into what agreement did they come to to demolish
5 this property.

6 HEARING OFFICER KNITTLE: Now, how is that
7 relevant to the complaint, the allegations in the
8 complaint?

9 MR. TREPANIER: Well, the allegations in our
10 complaint are that this was an uncontrolled
11 demolition, and I'm establishing how they agreed for
12 this job to go on. I think it goes directly to the
13 nature that the demolition was uncontrolled.

14 HEARING OFFICER KNITTLE: Go ahead.

15 MR. JEDDELOH: I will object then because we've
16 gone through this at least twice.

17 HEARING OFFICER KNITTLE: I think so too.

18 MR. BLANKENSHIP: We'll stipulate the
19 demolition occurred and Speedway did it.

20 HEARING OFFICER KNITTLE: I'm going to sustain
21 the objection and ask you to move on to a
22 different -- another question.

23 BY MR. TREPANIER:

24 Q. When you inspected the building with

1 Speedway, was there asbestos in the building?

2 A. I don't know.

3 Q. And whose responsibility is it to know if
4 there's asbestos in the building?

5 A. We took Speedway there and the other
6 contractors to look at the demolition purposes only,
7 and we hired another company to look at the
8 possibilities of was there any asbestos in the
9 building.

10 Q. And was there asbestos in the building?

11 A. There was some.

12 Q. And how much?

13 A. I don't recall, but we hired a contractor
14 to come in and look at it, and they said that there
15 was some asbestos on the pipe covering of the
16 pipes. So we had it removed.

17 Q. Did they tell you there was asbestos in
18 the pipe covering in a written document or was that
19 a verbal communication?

20 A. I don't recall. I know we hired them.
21 The documents or the document that we -- that you
22 have and we, you know, gave to the attorney. I
23 don't recall was it written, but I know we had it
24 abated. I don't recall was it in writing. I'm

1 quite sure it was in writing in the form of a
2 proposal to remove the asbestos from the building.

3 Q. And did you then and do you now have the
4 knowledge of how much asbestos was in the building?

5 MR. JEDDELOH: Objection, asked and answered.
6 He said he didn't remember.

7 HEARING OFFICER KNITTLE: Sustained. He's
8 already answered that, Mr. Trepanier.

9 MR. TREPANIER: Yeah. I apologize for asking
10 the same question twice. It must come from my
11 nervousness.

12 BY MR. TREPANIER:

13 Q. At the time when you contracted for the
14 removal of the asbestos, did you know how much
15 asbestos was in the building?

16 MR. JEDDELOH: Well, Mr. Chairman, that's
17 basically the same question again.

18 HEARING OFFICER KNITTLE: Yeah. He's already
19 stated he doesn't realize -- he didn't know how much
20 asbestos was in the building at any time.

21 BY MR. TREPANIER:

22 Q. And who, if you haven't already stated,
23 who was the asbestos removal company you contracted
24 with?

1 A. Environmental Hazard, Incorporated.

2 Q. Now, you received several bids for
3 asbestos removal on this job, hadn't you?

4 A. I think it was more than one.

5 Q. And would it be reasonable if you had
6 three?

7 A. I don't know.

8 MR. BLANKENSHIP: I'll object to the form of
9 the question.

10 BY THE WITNESS:

11 A. You have the information in front of you.

12 You tell me.

13 BY MR. TREPANIER:

14 Q. Is it your practice to get more than one
15 bid for asbestos removal jobs?

16 MR. JEDDELOH: Well, Mr. Chairman, I'm going to
17 object as to relevance. First of all, this is kind
18 of on the peripheral of what we talked about
19 before. So it's kind of an area we were already in,
20 and the relevance certainly escapes me by a long
21 shot. We hired a company, they came out, and they
22 did it in accordance with standards, and that's it.

23 HEARING OFFICER KNITTLE: Mr. Trepanier, I fail
24 to see how many people they asked to -- who they

1 sought bids for on the asbestos issue is relevant.

2 So I'm going to sustain the objection.

3 MR. TREPANIER: Well, I'd like to make an offer

4 of proof, and that would be to the point that the

5 University received more than one bid, that the

6 contractors who gave the bids gave greatly, hugely

7 differing opinions as to how much asbestos was in

8 the building by several factors, and that I want to

9 establish that the witness has no knowledge of how

10 much asbestos was removed or if all of the asbestos

11 was removed.

12 HEARING OFFICER KNITTLE: Is that what you are

13 intending -- is that what the testimony -- is that

14 all that the testimony is intending to show? You

15 know, you're making your offer of proof, and I'm

16 going to allow you to make your offer of proof,

17 which I think you just did.

18 Is there anything else that you would

19 intend to elicit with this testimony?

20 MR. TREPANIER: On this question. On the

21 objection to the question.

22 HEARING OFFICER KNITTLE: I want to know

23 anything along the lines of this testimony that

24 you're making the offer of proof on that you're

1 intending to -- that you think will be shown with
2 this witness. That's your offer of proof because
3 I'm going to object to the relevancy of all these
4 questions along this line in terms of the number of
5 contractors and in the -- that they solicited bids
6 for and things like that unless I know why, and
7 you've already tried to tell me why, and you're
8 making an offer of proof.

9 So was that the extent of your offer of
10 proof?

11 MR. TREPANIER: I'll make that more clear.

12 Thank you. I'm sorry.

13 MR. BLANKENSHIP: Having heard that offer of
14 proof, I want to add an objection to hearsay. If
15 he's trying to get this witness to repeat what
16 various asbestos contractors may have said about the
17 content, that's pure hearsay and inadmissible
18 through this witness. He needs to call the
19 contractors if that's what he wants to do. That's
20 my additional objection.

21 MR. TREPANIER: What I'm going to be able to
22 show is three documents sent to Mr. Henderson. I'm
23 going to have him acknowledge that he received these
24 documents, that one was from Brennan's PEB &

1 Associates. It was UI document 507, 508, and in
2 that document, the PEB & Associates report that they
3 gave a bid of \$3,000 for removal of 200 feet of
4 asbestos.

5 HEARING OFFICER KNITTLE: Okay. Did you have
6 something you wanted to say?

7 MR. BLANKENSHIP: No, no, no.

8 HEARING OFFICER KNITTLE: I didn't mean to stop
9 you.

10 MR. BLANKENSHIP: No. I would say those
11 documents were all hearsay.

12 HEARING OFFICER KNITTLE: I understand that.
13 I'm allowing him to make this offer of proof. I'm
14 not going to allow any more testimony on this issue
15 from Mr. Henderson, but he is allowed to make his
16 offer of proof on what he thinks the testimony will
17 show, and the Board can look at that when they rule
18 on my denial of this.

19 Go ahead, Mr. Trepanier.

20 MR. TREPANIER: And I would show the witness UI
21 document number 513, which is a bid addressed to
22 Mr. Henderson from Loose Asbestos Removal Company,
23 and in this document a bid for asbestos removal at
24 1261 South Halsted for \$9,000. It reports the

1 amount of asbestos to be removed as 700 feet of
2 piping at 1261 Halsted, more than three times the
3 first bid for the same job, and, finally, my offer
4 of proof would include the bid also addressed to
5 Mr. James Henderson from Environmental Hazard
6 Control as UI document number 515. It's a discovery
7 document, and in there this bid Mr. Henderson would
8 recognize addressed to him a bid for \$6,000 and no
9 specification as to the amount of asbestos that
10 would be removed under that bid.

11 HEARING OFFICER KNITTLE: And you were hoping
12 to get exactly what information from Mr. Henderson?

13 MR. TREPANIER: And so from Mr. Henderson, I
14 would be getting the information that he did not
15 and -- did not confirm that the asbestos was removed
16 from this building, that he, in fact, when he
17 contracted for the removal of the asbestos, he
18 didn't know how much asbestos he was asking to be
19 removed, and he had -- that in the face of a very
20 divergent report from his contractors as to how much
21 asbestos was on the site, and that he made no
22 inquiry in the face of that very divergent
23 information of how much asbestos was present and
24 continued and just accepted his usual contractor

1 with no questions asked.

2 HEARING OFFICER KNITTLE: I'm sustaining, and
3 I'll let you gentlemen address this if you want, but
4 I'm sustaining the objection as to this testimony on
5 the basis of relevance.

6 MR. BLANKENSHIP: I'll just repeat my hearsay
7 objection as well.

8 HEARING OFFICER KNITTLE: Yes. Mr. Blankenship,
9 I did not mean to forget your continuing hearsay
10 objection to any of that testimony as to regards
11 what those documents said.

12 Mr. Jeddeloh, do you have something?

13 MR. JEDDELOH: Well, right. I wanted to say
14 that there are certain aspects of his offer of proof
15 that the University would not object to. We plan on
16 providing testimony so that it's clear that an
17 asbestos removal contractor was retained, and that
18 that contractor, in fact, removed all the asbestos
19 that could be found.

20 What I don't want to do by getting into
21 this offer of proof situation is being precluded
22 from making our record that we did that in a proper
23 fashion. Mr. Henderson has already testified that
24 he wasn't aware of how much asbestos was in there.

1 That's not his job to know. He's already testified
2 that we hired Environmental Hazard Control, is it?

3 MR. HENDERSON: Right.

4 MR. JEDDELOH: To remove it. He can testify as
5 to those things, and I will plan on asking him to
6 complete the chain as to the outcome of that process
7 so that there's no -- nobody is going to be accusing
8 the University of sitting silent while this offer of
9 proof mechanism occurred.

10 HEARING OFFICER KNITTLE: That's understood,
11 and you'll be able to question him on your
12 direct-examination, and, of course, Mr. Trepanier,
13 if you bring it up on direct, will have the
14 opportunity to cross-examine.

15 MR. JEDDELOH: Absolutely.

16 HEARING OFFICER KNITTLE: Can we move on,
17 Mr. Trepanier?

18 BY MR. TREPANIER:

19 Q. Did anyone accompany you when you did your
20 four or five site visits per day?

21 A. I mean, this person who was working with
22 me at the time, now he's deceased. So there was
23 someone at that time who went with me, but he's now
24 deceased.

1 Q. And who is that person?

2 A. A young man named Charles Orriya.

3 Q. And that person visited the demolition
4 sites?

5 A. At some point in the process, he did.

6 Q. And what was your purpose in having him
7 with you?

8 A. He worked for me, and we would be out
9 inspecting the various other University projects,
10 and he was there.

11 MR. TREPANIER: Now, again, just for
12 efficiency, I'm going to want to bring forward the
13 interrogatory answers from this witness that didn't
14 identify Charles Orriya as being present that
15 day -- at the site at any occasion.

16 BY MR. TREPANIER:

17 Q. Was there any other person besides Charles
18 who accompanied you on visits -- your visits to the
19 demolition?

20 A. Not specifically a visit, no.

21 Q. And is there any other person at the
22 University who has a responsibility, as you did, to
23 oversee the activity of the demolition?

24 A. No.

1 Q. I believe in your interrogatory responses
2 that you've identified Mark Donovan as supervising
3 the demolition projects.

4 Do you recall giving that --

5 A. Mark Donovan is my boss, and,
6 occasionally, you know, as a person who supervised
7 that project, he did not supervise that project.
8 Occasionally, he might have been with me or with him
9 and drive by and see how the process is going. That
10 might be true. That's true, but as a supervisor of
11 that project, he did not supervise that project. I
12 worked for him.

13 Q. Okay. Then I'd like to show the witness
14 his answer in -- his answer No. 18 in response to
15 his April 17th answer to interrogatory 18, and there
16 where the statement -- your statement is that James
17 Henderson and Mark Donovan supervised the demolition
18 projects and ask you what is it that you said then
19 that -- why is it at that point you would say that
20 he did supervise the demolitions, but at this time
21 you're saying that he didn't?

22 MR. JEDDELOH: I'm going to object to that
23 question. He's not saying he didn't supervise the
24 project. The original question was whether there

1 was anyone that supervised the project to the same
2 extent that Mr. Henderson did. He said no, it was
3 me. Then --

4 MR. TREPANIER: I actually asked if somebody
5 accompanied him.

6 HEARING OFFICER KNITTLE: Mr. Trepanier, what
7 is it -- I'm not sure that there's been an
8 inconsistent statement here.

9 MR. BLANKENSHIP: And I'll further object at
10 best we're impeaching on a collateral issue here.
11 This is really far afield again.

12 MR. TREPANIER: This is the sworn statement
13 from the witness.

14 HEARING OFFICER KNITTLE: Yeah, but what did he
15 say now that's different from what he said then?

16 MR. TREPANIER: At this time, he's saying that
17 when he visited the site, he was with Charles
18 Orriya, and at the time when the interrogatory was
19 put to him, he said for the subject property it was
20 James Henderson and Mark Donovan who supervised the
21 demolition projects, and that's -- I think that's a
22 very inconsistent statement that's worked a
23 prejudice to us.

24 Now, in fact, Mr. Orriya has passed, and

1 we have no opportunity to have his testimony, and
2 although we were led to believe that Mark Donovan
3 supervised the demolition project, we're now being
4 told that he had no such role.

5 THE WITNESS: It's not --

6 MR. JEDDELOH: Wait, wait, wait. There's not a
7 question pending.

8 Mr. Chairman, this is bordering on
9 ludicrous, and the University is going to seriously
10 object. You know, he asked some interrogatories.
11 The interrogatory in question was with respect to
12 the University's supervision of the demolition
13 work. Two persons were identified. The third
14 person, even at that time, was probably dead, and
15 all he testified is that Mr. Orriya accompanied him
16 on these site visits, and I don't get the point, but
17 yet we're wasting a great deal of time once again.

18 HEARING OFFICER KNITTLE: Mr. Trepanier, the
19 question seems to be who was supervisor. I don't
20 think he's claiming that Mr. Orriyo was a
21 supervisor, but that he accompanied --

22 MR. TREPANIER: Well, the question was, in
23 fact, supervise or observe any of the University's
24 demolition work in the subject area.

1 HEARING OFFICER KNITTLE: And Mr. Orriya is not
2 named I take it?

3 MR. TREPANIER: That's correct.

4 MR. JEDDELOH: It says with respect to the
5 University's supervision of the demolition work
6 completed for the University in the area, state the
7 identity of all persons who exercised any degree of
8 control or supervision, identify the nature and the
9 specific matter, the date, all specific
10 responsibilities.

11 It seems to me that in terms of
12 identifying a supervisor, to identify the witness
13 and his boss is more than reasonable, and I don't
14 get the point of why we're wasting time. If he's
15 trying to make out Mr. Henderson as a liar, he's
16 failing.

17 MR. TREPANIER: I'd like to --

18 HEARING OFFICER KNITTLE: Mr. Trepanier, what
19 is the --

20 MR. TREPANIER: The attorney just partially
21 read, again, partially read, and this was -- we're
22 looking at number 18, and it does say supervision of
23 demolition work. It went on and specifically asked
24 for people who would observe. So he can contest

1 that this doesn't impeach his witness, but he
2 shouldn't claim that the question asked wasn't
3 asked.

4 MR. JEDDELOH: We were served with a set of
5 interrogatories that in many ways, Mr. Chairman,
6 frankly, didn't make any sense, and we had to try to
7 make the best possible sense out of these things as
8 we could without providing tons and tons of
9 irrelevant information and trying to speculate as to
10 what the question was.

11 I took this question and I think
12 Mr. Henderson took the question as who supervised
13 the work. There were other times when if he would
14 have asked for identification of all persons with
15 relevant knowledge, that might have been different,
16 but he didn't ask that.

17 So, you know, I don't get the point, and
18 it's not as if he can successfully claim
19 Mr. Henderson is a liar based on this anyway.

20 HEARING OFFICER KNITTLE: Mr. Trepanier, I'd
21 note that it is not a complete response. Mr. Orriya
22 was not named. If you feel like that is prejudice
23 to your case or if you want to make a motion to the
24 Board for some sort of sanctions, I don't know what

1 you're looking for as -- because of this.

2 What are you suggesting should be done
3 here? If your intention is merely to point out that
4 Mr. Orriya was not named as a result to that -- as a
5 response to the discovery request and was, in fact,
6 accompanying Mr. Henderson from time to time on some
7 of these inspections, I think that point has been
8 amply made for the record.

9 MR. TREPANIER: I don't see that -- I don't see
10 how else I'm going to move forward with that right
11 now.

12 HEARING OFFICER KNITTLE: I'm just trying to
13 understand what you're trying to get to at this, but
14 I think the point that you seem to be trying to make
15 is on the record. So I would ask that you move on.

16 Actually, I would ask -- let's go off the
17 record now for a lunch break.

18 (Discussion had
19 off the record.)

20 MR. BLANKENSHIP: Mr. Trepanier had asked me to
21 have Mr. Mergener and Mr. Hernandez here this
22 afternoon, and I just want to know if we're still on
23 schedule before I pull them off the worksite. If he
24 can give me some -- if he still wants them here and

1 give me a time when -- I thought he was going to
2 call several University people and, perhaps, someone
3 else before he got to Speedway's witnesses. I just
4 want to know what he wants.

5 HEARING OFFICER KNITTLE: Sure. Mr. Trepanier,
6 do you have more witnesses of the University before
7 we get to Speedway's witnesses?

8 MR. TREPANIER: In the notice, I asked the
9 University to produce two people today, and I think
10 that was Mr. Donovan and Mr. Henderson.

11 HEARING OFFICER KNITTLE: Is Mr. Donovan
12 available?

13 MR. JEDDELOH: Donovan, if you'll recall at our
14 last status conference, I asked for the opportunity
15 to have about an hour's worth of notice to bring
16 these people.

17 HEARING OFFICER KNITTLE: Right.

18 MR. JEDDELOH: And Mr. Donovan is on call. I
19 have a series of telephone numbers to reach him, but
20 I would ask that we not do that until about an hour
21 before it appears that it's going to happen.

22 HEARING OFFICER KNITTLE: That's understood.
23 Mr. Trepanier, do you have an estimate of the time
24 necessary to complete Mr. Henderson's testimony? Of

1 course, we have cross-examination, and we also have
2 Ms. Cole and Mr. Joseph if they choose to do any
3 direct examination themselves.

4 MR. TREPANIER: I think -- I hesitate to
5 venture to say, but I would say maybe 90 minutes.

6 HEARING OFFICER KNITTLE: Okay. We'll see if
7 that's necessary. Ms. Cole -- and so there's no
8 need to call Mr. -- what was his name?

9 MR. JEDDELOH: Donovan.

10 MR. BLANKENSHIP: And is that a no on the
11 Speedway then for this afternoon it sounds like?

12 HEARING OFFICER KNITTLE: Do you have an
13 estimate on Mr. Donovan's testimony, how long you
14 need to testify -- how long you expect the testimony
15 to go?

16 MR. TREPANIER: Well, I feel that there's an
17 urgency to get the testimony from the foreman that
18 Marshall is offering this afternoon because he's got
19 a limited availability.

20 HEARING OFFICER KNITTLE: Let's go off the
21 record for a second.

22 (Discussion had
23 off the record.)

24

1 (Whereupon, further proceedings
2 were adjourned pursuant to the
3 lunch break and reconvened
4 as follows.)

5 HEARING OFFICER KNITTLE: This is John
6 Knittle. We're back on the record after a break for
7 lunch, and it looks like Mr. Joseph -- Lorenz?

8 MR. JOSEPH: Lorenz Joseph.

9 HEARING OFFICER KNITTLE: Lorenz Joseph has set
10 up a videotape recording of the proceedings. I want
11 to hear what the respondents have to say, and I
12 point them to Section 101.221, which is hearing
13 decorum.

14 MR. BLANKENSHIP: I suppose we need to ask the
15 witness if he refuses to testify on video, and if he
16 does, then we'll object.

17 HEARING OFFICER KNITTLE: Right. And I'm not
18 trying to put you on the spot. I just want this on
19 the record.

20 MR. BLANKENSHIP: On behalf of the Speedway
21 witnesses, we will refuse to testify on video.

22 HEARING OFFICER KNITTLE: Do you understand?
23 Do you have a copy of the Board rules?

24 MR. JOSEPH: I know the general procedure for

1 public meetings it's allowed.

2 HEARING OFFICER KNITTLE: Unless one of the
3 witnesses refuses to testify is what it is.

4 So I'm going to ask the witness,
5 Mr. Henderson, are you willing to testify under
6 videotape as set up here in this hearing?

7 MR. HENDERSON: No.

8 HEARING OFFICER KNITTLE: As noted, the witness
9 is refusing to testify. Why are you refusing to
10 testify?

11 MR. HENDERSON: Why am I refusing?

12 HEARING OFFICER KNITTLE: Yeah.

13 MR. JEDDELOH: Well, the University's position
14 on this would be that we have an official record,
15 and that should be more than adequate to provide for
16 all purposes and all continued proceedings, and I
17 would advise any University witness to say the same
18 thing on that basis.

19 MR. BLANKENSHIP: And given the antagonism
20 between the parties here, there are very grave
21 concerns as to what will happen with the videotape
22 when it's made, and there's already a civil
23 litigation unrelated to this.

24 HEARING OFFICER KNITTLE: Is there any response

1 from the other side?

2 MR. JOSEPH: Well, if the witness refuses to
3 testify on the grounds that he or she may be held to
4 testify and it be broadcast or televised or that
5 motion pictures are taken of the witness while the
6 witness is testifying here that's a little bit --
7 okay.

8 So you're going to refuse. Can we get
9 some kind of a statement from the University on that
10 at least for my record?

11 HEARING OFFICER KNITTLE: Well, it's on the
12 record that the witness has refused to testify, and
13 you'll be able to get a transcript of these
14 proceedings.

15 MR. JOSEPH: But I was thinking in terms for my
16 documentary on the neighborhood that the University,
17 which is being --

18 HEARING OFFICER KNITTLE: That is something
19 that I cannot order the University or Speedway to
20 do, and if you want to work it out with Speedway,
21 maybe you could get them some sort of record, but
22 that's not what we're here for today.

23 So for the purposes of this hearing before
24 the Pollution Control Board, this witness has,

1 meaning Mr. James Henderson, refused to testify.

2 I'm going to prohibit the use of the videotape

3 during his deposition -- his testimony. Excuse me.

4 Could I have my rules and regs back?

5 MR. JOSEPH: Yeah. Sure.

6 HEARING OFFICER KNITTLE: Now --

7 MR. JOSEPH: It's off, yeah.

8 HEARING OFFICER KNITTLE: Mr. Lorenz Joseph or

9 Joseph Lorenz?

10 MR. JOSEPH: Lorenz Joseph.

11 HEARING OFFICER KNITTLE: Mr. Joseph, you are

12 telling us right now that the videotape is off.

13 MR. JOSEPH: Right.

14 HEARING OFFICER KNITTLE: Mr. Trepanier, you

15 are, as I recall, still examining Mr. Henderson.

16 MR. TREPANIER: Thank you. Thanks for your

17 patience. I'm trying to convenience us all and be

18 concise with my questions and get to the heart of

19 this.

20 BY MR. TREPANIER:

21 Q. During your observations of the

22 demolition, did you observe the demolition from all

23 the angles that were available? Let me see say from

24 the street -- if you could get alongside demolition

1 on the streets, did you go over and look from those
2 sides?

3 A. I reviewed the demolition process from
4 various angles.

5 Q. And would that be on each of your visits?

6 A. No, not each. Every time I went there, it
7 was from a different perspective of where the trucks
8 were or what part of the demolition they were
9 working on at that time. You know, it varies.

10 Q. When you observed the demolition, was
11 there any time that 13th Street, the street that's
12 immediately south of the building, that that street
13 was closed to traffic?

14 A. The street in question, 13th Street, it
15 could have been closed at some point. It's more
16 like -- it's 13th Street, but it's more like an
17 alley than a street. There is very little traffic
18 that ever goes down that street when I was there.

19 Q. So in your estimation, was it not
20 necessary on that basis? Was it not necessary to
21 close that street to meet industry standard?

22 MR. JEDDELOH: I'm going to object to the form
23 on that. That is really mixing apples and oranges.
24 He's testified as to industry standards of

1 demolition in terms of controlling dust, and now all
2 of a sudden we're getting into traffic control.

3 MR. BLANKENSHIP: I'm also going to object to
4 lack of foundation. I don't think there's a
5 foundation that this witness is an expert on
6 demolitions or the industry standards for the
7 demolitions. He testified as to what he's observed
8 in his years, but I don't think he's been qualified
9 as an expert, and I don't think an adequate
10 foundation has been laid for this gentleman to be an
11 expert on demolitions.

12 HEARING OFFICER KNITTLE: Go ahead,
13 Mr. Trepanier.

14 MR. TREPANIER: I'm not seeking -- maybe I
15 should rephrase my question.

16 HEARING OFFICER KNITTLE: Try rephrasing the
17 question.

18 BY MR. TREPANIER:

19 Q. I don't know that I could understand -- if
20 I understood clearly your answer to my previous
21 question of whether or not 13th Street was closed to
22 traffic during the demolition.

23 MR. JEDDELOH: Object. That's not a question.

24 MR. TREPANIER: That's a statement.

1 BY MR. TREPANIER:

2 Q. Could you -- would you be willing to
3 repeat your answer to that question if 13th Street
4 was closed when you observed it during the
5 demolition?

6 MR. JEDDELOH: I suggest that if he wants to
7 hear the answer again that we have the court
8 reporter read it back.

9 HEARING OFFICER KNITTLE: Do you want to hear
10 the answer again, Mr. Trepanier?

11 MR. TREPANIER: Yeah. I'd like to.

12 (Record read.)

13 BY MR. TREPANIER:

14 Q. Was 13th Street open on occasions when you
15 observed the demolition?

16 A. Yes.

17 Q. And do you have a -- can you recall that
18 the street was closed at a point?

19 A. Yeah. It was blocked off when they were
20 loading trucks up and stuff.

21 Q. So during your observation, cars passed
22 from Halsted Street onto 13th, they would be going
23 east from Halsted onto 13th Street?

24 MR. JEDDELOH: Objection, relevancy.

1 HEARING OFFICER KNITTLE: Sustained.

2 Mr. Trepanier, ask another question.

3 BY MR. TREPANIER:

4 Q. Did you show the asbestos removal company
5 around the property before their bid?

6 A. Yes.

7 Q. And did you observe the work that that
8 company later performed?

9 A. Yes. I observed some of the work.

10 Q. Did you see their activity of removing
11 asbestos?

12 A. I saw some of the results of the activity
13 of them removing asbestos. Was I on the job site
14 every day with them? No, I wasn't. Every minute?
15 No, I wasn't.

16 Q. How long did the asbestos removal go on?

17 A. I don't recall.

18 Q. Was it more than one day?

19 A. I don't recall.

20 Q. And is it your testimony that you
21 personally didn't observe any of the asbestos
22 removal?

23 A. That ain't what I said.

24 Q. You did state that you saw the results of

1 the asbestos removal; is that correct?

2 A. I said I saw some of the removal, but not
3 the whole -- every day, every minute. That's what I
4 said.

5 Q. So you did observe some asbestos removal?

6 A. Yes.

7 Q. And when you observed asbestos removal,
8 was water sprayed?

9 A. I don't recall.

10 Q. What size was the room that the asbestos
11 removal was occurring in?

12 MR. JEDDELOH: Objection as to foundation. It
13 hasn't been established where the asbestos was or
14 whether it was in one room or two rooms or five
15 rooms.

16 HEARING OFFICER KNITTLE: That's sustained.

17 Please rephrase, Mr. Trepanier.

18 BY MR. TREPANIER:

19 Q. Where was the asbestos removal occurring
20 that you observed?

21 A. At 1261.

22 Q. And is that a four-story building?

23 A. Yes, it is.

24 Q. And does it have a basement?

1 A. Yes, it does.

2 Q. And which floor was the asbestos removal
3 occurring on?

4 A. I don't remember.

5 Q. But it is your testimony that you did
6 observe asbestos being removed?

7 A. Yes.

8 MR. JEDDELOH: Objection, asked and answered.

9 HEARING OFFICER KNITTLE: Sustained.

10 BY MR. TREPANIER:

11 Q. Did you take -- in your position as
12 project manager, did you have the responsibility to
13 prepare the building for demolition other than
14 selecting these two contractors?

15 A. Meaning what?

16 Q. Did you arrange to have the electricity
17 shut off?

18 A. I don't know if I did or the contractor
19 did that. I don't recall.

20 Q. Did you arrange to have the water service
21 shut off?

22 A. We called the person, the contact person,
23 with the city to do that.

24 Q. And what was the date of that?

1 A. I don't remember.

2 Q. Relative to these -- the events that we've
3 talked about, the -- your showing the building to
4 EHC, the asbestos removal company, was the water
5 shut off prior or after that?

6 A. I don't remember.

7 MR. JEDDELOH: Again, I'm going to object.
8 Where are we going with this? This is so far afield
9 from dust caused by Speedway it's remarkable.

10 MR. TREPANIER: Well, I think that's -- I find
11 it remarkable that the -- it is remarkable the
12 attorney would so characterize my question when
13 we're talking about asbestos removal and when we're
14 talking about water servicing the building, and
15 we're looking at there's a requirement that this
16 asbestos be watered as it's removed. This is a very
17 legitimate and important line of questioning.

18 MR. JEDDELOH: There's no testimony that water
19 has to be sprayed on asbestos before it's removed,
20 and, frankly, from my understanding of the process,
21 if that was the way it was done, it would have been
22 done wrong.

23 HEARING OFFICER KNITTLE: Mr. Blankenship?

24 MR. BLANKENSHIP: I guess I'd also object.

1 There's no allegation that during the asbestos
2 removal phase of the project there was any emission
3 at all. That's never been part of this case. The
4 dust that's been the basis of this case occurred
5 after that was complete. So I'm not sure why we're
6 spending a lot of time on the actual process. You
7 know, dotting the Is and Ts on removing asbestos.

8 MR. TREPANIER: We've called up this witness
9 who has had a lot of relevant information about that
10 asbestos removal activity.

11 HEARING OFFICER KNITTLE: Mr. Trepanier, is the
12 asbestos removal activity related to this case? Is
13 it alleged?

14 MR. TREPANIER: Yeah.

15 HEARING OFFICER KNITTLE: How so?

16 MR. TREPANIER: We specifically, in our
17 complaint, we address our concern regarding asbestos
18 in the building.

19 HEARING OFFICER KNITTLE: But is it one of the
20 allegations that is subject to this -- to the
21 complaint after the motion for summary judgment?

22 MR. TREPANIER: Oh. I believe --

23 HEARING OFFICER KNITTLE: We've got a 9A
24 violation and a 21B violation, correct?

1 MR. JEDDELOH: Basically, the two things that
2 are left is whether or not there is an unreasonable
3 inference from the dust emanating from the project
4 during demolition, and whether there was open
5 dumping.

6 HEARING OFFICER KNITTLE: Mr. Trepanier, can
7 you explain to me how the asbestos that you're --
8 the information about whether or not the asbestos
9 was properly watered down it relates to the case?

10 MR. TREPANIER: Yeah. First, I think that the
11 attorney's definition of the issues here totally
12 evades the responsibility, and as the Board said in
13 their order, the issue is was water sprayed. So
14 that's very definitely the issue.

15 Now, more directly responding to your
16 question, if the -- if this -- I intend to elicit
17 testimony to show that when that asbestos -- it is
18 the federal requirement under the Clean Air Act that
19 asbestos be wet as it's removed unless it's a
20 special permission granted by the administrator of
21 the agency. To allow asbestos to be --

22 HEARING OFFICER KNITTLE: I'm not contradicting
23 that. I'm saying there's no asbestos allegation in
24 the complaint, though, is there?

1 MR. TREPANIER: Oh, there is. We

2 specifically -- we name asbestos in our --

3 MR. BLANKENSHIP: The concern about asbestos is

4 that there is asbestos in the dust emanated from the

5 building, and that's a far different question from

6 whether there was a violation of some rule regarding

7 wetting asbestos during the removal phase as opposed

8 to whether there was asbestos in the dust from the

9 demolition phase. That's all we're concerned about

10 here.

11 MR. TREPANIER: Very clearly, the reason that

12 the asbestos is wet during its removal is to prevent

13 the emission of dust. Now, if this asbestos removal

14 was not handled properly, then it clearly follows

15 that asbestos dust was spread through the building

16 when the building was demolished.

17 HEARING OFFICER KNITTLE: Let's go off the

18 record.

19 (Discussion had

20 off the record.)

21 HEARING OFFICER KNITTLE: Mr. Trepanier, do you

22 have anything else you want to add?

23 MR. TREPANIER: During the interrogatories and

24 the discovery phase of this case, it's been made

1 very clear to the respondents that our contention is
2 specifically regarding the concern about the toxic
3 elements of the dust that was heaped off during the
4 demolition related to asbestos in the property, and,
5 in fact, the respondent University has responded
6 with extensive documentation to show that they did
7 remove -- in an attempt to show that they did remove
8 asbestos properly, and now we're just continuing
9 along this line to show that, in fact, this asbestos
10 was not removed properly.

11 HEARING OFFICER KNITTLE: One last time,
12 Mr. Jeddelloh and then Mr. Blankenship.

13 MR. JEDDELOH: I would like to ask a question
14 first.

15 We note that there is a tape recorder on
16 the floor over by the complainants. I'd like to
17 find out whether that's operating.

18 HEARING OFFICER KNITTLE: Complainants?

19 MR. JOSEPH: That is not operating.

20 MR. JEDDELOH: It's what?

21 MR. JOSEPH: It's not operating, but would it
22 be -- could we tape record? There should be no
23 objection to that.

24 HEARING OFFICER KNITTLE: I -- no. The same

1 objection would apply that the witness refuses to
2 testify.

3 MR. JOSEPH: I thought it just said television.

4 HEARING OFFICER KNITTLE: No. Actually, it
5 says it should be conducted with fitting dignity and
6 decorum. Any person may record the proceedings by
7 tape, film, or other means, and the exceptions come
8 into play.

9 MR. JEDDELOH: I'll take their statement on its
10 face value, but I just want to let them know for the
11 record if it turns out that that's not a truthful
12 statement, we will seek sanctions.

13 MR. JOSEPH: I'll show you the tape recorder.
14 It's not on.

15 MR. JEDDELOH: Let me just make my response
16 then on this question.

17 The Board through its ruling on the
18 summary judgment left only two issues remaining.
19 The Section 9A claim and the -- I'm sorry. Yes.
20 The 9A claim and the Section 21B claim. They really
21 only determined that there were two issues of fact
22 relating to the 9A claim. One was whether or not
23 the nature and the extent of the dust, and the other
24 issue that they thought was still remaining is

1 whether respondents sprayed water or used other
2 techniques to control dust, and I think that's what
3 the Board thinks that this hearing is about, and
4 that's what I think this hearing is about, and the
5 techniques whether or not there was something used
6 to remove the asbestos here is a secondary issue at
7 this point anyway.

8 HEARING OFFICER KNITTLE: Mr. Blankenship.

9 MR. BLANKENSHIP: Two comments. The
10 allegations that are related to asbestos are an
11 allegation that there was asbestos in the dust.
12 There's no proof of that, and I think the chain of
13 inferences they want to construct from whether there
14 was water applied during the removal of asbestos
15 and, if not, an inference that they somehow inhaled
16 asbestos is way too long a chain for that to be
17 relevant information, they had the dust. They
18 should have tested the dust and found asbestos if
19 there was asbestos to be found.

20 The second objection I have is this isn't
21 the right witness for this, just as it wasn't the
22 right witness for this morning's questions. This is
23 the guy from the University that walked through the
24 job a couple times a day to make sure the job was on

1 track. If they have questions about the asbestos
2 removal, they should call the contractor, the
3 asbestos contractor, and ask him how he did the job,
4 but as far as I can see, he observed asbestos being
5 removed a couple times, and to infer from those
6 momentary observations that this witness can't even
7 recall with any particularity I think is really
8 stretching things, and I think we ought to focus on
9 what the witnesses actually have personal knowledge
10 of and ask questions germane to that rather than
11 asking every question in the world of every
12 witness. We'll be here all week.

13 HEARING OFFICER KNITTLE: Mr. Trepanier, I am
14 going to sustain the objection and ask that you move
15 on to a different line of questions.

16 MR. TREPANIER: He could have just answered,
17 but okay.

18 HEARING OFFICER KNITTLE: And I'd also like to
19 take this opportunity before we resume that I know
20 this is a contentious case, and both sides on this
21 case are contentious at this point. I want to try
22 to keep things as orderly and as businesslike as
23 possible.

24 I do not want to have side comments about

1 what the other witness could have done, and I don't
2 want to have any snickering or laughter on the other
3 side. I want this to be conducted as professionally
4 as it can possibly be. I do agree that this is a
5 serious matter, and we're trying to give it our full
6 attention. In order to do that, I want to make sure
7 that this proceeds in an orderly fashion. So that
8 being said, let's proceed, Mr. Trepanier.

9 MR. TREPANIER: Thank you. If I can just have
10 a minute. I'm going to see if I've completed my
11 questioning.

12 HEARING OFFICER KNITTLE: Sure. Let's go off
13 while he checks.

14 (Break taken.)

15 HEARING OFFICER KNITTLE: We are back on the
16 record.

17 Mr. Trepanier, did you have any other
18 questions for Mr. Henderson.

19 MR. TREPANIER: Yes. Thank you.

20 BY MR. TREPANIER:

21 Q. I know -- I believe earlier you testified
22 that you observed the wetting process during the
23 demolition at 1261. I have a few questions about
24 that, about the wetting process.

1 When did that process start?

2 A. Could you make that a little clearer?

3 When did it start?

4 Q. Yeah.

5 A. The exact moment.

6 Q. Approximately would be fine.

7 A. I don't know.

8 Q. Did the wetting process start after the

9 job began?

10 A. Meaning what?

11 MR. BLANKENSHIP: I object to lack of

12 foundation as to the time when this person was at

13 the site. He's asking questions that assume he was

14 at the site for the entire job, and that's already

15 been established that he wasn't, and there's no

16 foundation that he would know when the wetting

17 process started aside from him being at the site.

18 MR. TREPANIER: He has testified he was there

19 three to five times per day for five weeks.

20 HEARING OFFICER KNITTLE: I'm going to sustain

21 the objection, but to the extent that you can

22 answer, please answer.

23 THE WITNESS: I mean, he's asking me a

24 question, I think, within kind of circumstances is

1 that by me visiting the site three to five times or
2 three or four times a day, I don't know when it
3 started. You know, I don't know when it started. I
4 know they used that process of doing the demolition,
5 wetting the building down. I don't know when it
6 started. No, I can't answer that.

7 BY MR. TREPANIER:

8 Q. Would you describe what you saw when --
9 that is the wetting process? You're saying they
10 wetted the building down. Would you describe that?

11 A. They usually --

12 MR. JEDDELOH: I'm going to object. We've been
13 through this territory already. He testified where
14 it came from, all that. I think we're repeating
15 ourselves.

16 MR. TREPANIER: I think that he didn't --
17 actually, he didn't say where the water came from.
18 He said he couldn't recall where the hydrant was
19 located, but there was -- I didn't ask for a
20 description of how -- what he saw they were doing
21 that was called wetting it down.

22 HEARING OFFICER KNITTLE: Mr. Henderson, answer
23 if you can.

24

1 BY THE WITNESS:

2 A. If my memory serves me right, I told him
3 earlier that they used a fire hose to sprinkle the
4 building down, to wet it down.

5 BY MR. TREPANIER:

6 Q. Were they spraying on the inside of the
7 building?

8 A. They sprayed various areas of the building
9 as the process took place.

10 Q. And when was -- and how often is that
11 wetting process initiated?

12 MR. JEDDELOH: Object as to foundation. We've
13 been through this, Mr. Knittle.

14 HEARING OFFICER KNITTLE: Your objection to --
15 are you saying this has been asked and answered?

16 MR. JEDDELOH: Yeah. We've been through this
17 now a number of times.

18 HEARING OFFICER KNITTLE: I agree. That's
19 sustained. I think this has been gone over before,
20 Mr. Trepanier.

21 MR. TREPANIER: What I have left is I want to
22 bring up an answer to an interrogatory that I think
23 contradicts an answer that I've had today. I've got
24 someone that's bringing over a copy of that

1 interrogatory for me this afternoon. I don't have
2 it right now.

3 Would it be okay if I did ask a question
4 towards impeaching the witness at a latter time when
5 I have that document?

6 HEARING OFFICER KNITTLE: Go ahead.

7 MR. JEDDELOH: Mr. Knittle, the University
8 objects. The orderly process of this hearing is
9 people ask questions until they're done. To allow
10 this interrogator to call this witness back at his
11 pleasure whenever he feels he has another question
12 is just not reasonable.

13 If he can get a document here in time, he
14 can ask a question. Otherwise, we're going to
15 object. I think that's a rule that should apply to
16 everyone, and I think that he should be prepared for
17 the questioning that he intends to elicit.

18 HEARING OFFICER KNITTLE: I'm going to sustain
19 that, Mr. Trepanier. If you have arguments that you
20 think need to be made, legal arguments, you can make
21 them in your closing brief.

22 MR. TREPANIER: What I wanted to bring was that
23 in the answer to interrogatory, Mr. Henderson stated
24 that during hand wrecking at 1261 Halsted he

1 observed no watering going on.

2 MR. TREPANIER: Do you have these

3 interrogatories with you at all?

4 MR. TREPANIER: I got -- through circumstance,

5 it's down the street right now, but it's on its way

6 over here. That was in the University's first

7 response to interrogatories. I believe it was

8 interrogatory number four. I'm not certain.

9 HEARING OFFICER KNITTLE: I don't think you can

10 properly impeach the witness unless you have, you

11 know, his earlier answer and can show to us what it

12 is he said that's inconsistent with what he's saying

13 now, and I don't think that Mr. Henderson should be

14 subjected to being called again later on in this

15 proceeding.

16 MR. TREPANIER: I understand that the

17 University does intend to call Mr. Henderson as a

18 witness, and in that instance, I'd like to, you

19 know, bring this matter back up, you know, bringing

20 it forward to you all because I don't intend just

21 to, you know, take this man's time until my paper

22 comes through the door today.

23 HEARING OFFICER KNITTLE: Right.

24 MR. TREPANIER: But I don't want to lose this

1 opportunity because I think it's a major point that
2 earlier the witness swore that no watering was going
3 on during hand wrecking, and today I believe he
4 stated that watering was going on during hand
5 wrecking. That's a very big discrepancy and
6 important issue.

7 HEARING OFFICER KNITTLE: I'm still going to
8 deny him being recalled, and I don't think -- of
9 course, you can try to bring this up on his
10 cross-examination, but you're going to be limited to
11 the scope of what he testifies to on direct. So do
12 you know what I'm saying? It's cross-examination.
13 It's not your direct examination anymore.

14 MR. TREPANIER: Maybe if I might --

15 HEARING OFFICER KNITTLE: I guess if you're
16 making some sort of motion to recall him at a later
17 point in time, I'm going to deny that.

18 Is there anything else?

19 MR. TREPANIER: Well, I guess I'll just get a
20 clear statement, if I can, from the witness now in
21 response to my question if watering went on during
22 hand wrecking in this building.

23 BY MR. TREPANIER:

24 Q. Did you observe watering going on or did

1 you observe that it wasn't going on?

2 MR. JEDDELOH: Objection, asked and answered by
3 his own statement. This is something we've already
4 gone through.

5 HEARING OFFICER KNITTLE: You have no
6 objection? I'm sorry. It looked like you were
7 about to say something.

8 MR. BLANKENSHIP: No, no.

9 HEARING OFFICER KNITTLE: Yeah. Mr. Trepanier,
10 you've already stated that he's already answered
11 that question, correct?

12 MR. TREPANIER: Well, I've stated it, but I'm
13 not real clear, you know, on what that -- on what
14 that statement was that he said. It wasn't a clear
15 statement.

16 MR. JEDDELOH: If that's true, we've just spent
17 the last ten minutes talking about a proposed
18 process or procedure that you don't even know
19 yourself had been sustained.

20 HEARING OFFICER KNITTLE: I understand your
21 objection. Since I'm not going to allow you to be
22 recalled, you can answer that one question.

23 Is that all you have for Mr. Henderson
24 then?

1 MR. TREPANIER: Yeah.

2 HEARING OFFICER KNITTLE: If that will be the
3 last question, Mr. Henderson. Rephrase it,
4 Mr. Trepanier.

5 MR. TREPANIER: Oh, I've received my document.
6 If I can have just one moment.

7 HEARING OFFICER KNITTLE: Mr. Trepanier, do you
8 have your document?

9 MR. TREPANIER: Yeah. I don't have that
10 document. So I'll just rephrase the question as you
11 offered.

12 HEARING OFFICER KNITTLE: Court. Short and
13 sweet.

14 BY MR. TREPANIER:

15 Q. In your observance of the hand wrecking
16 activities at 1261 South Halsted, was water sprayed?

17 MR. JEDDELOH: Wait. Can I have that question
18 read back, please?

19 (Record read.)

20 HEARING OFFICER KNITTLE: Okay. Mr. Henderson?

21 BY THE WITNESS:

22 A. I didn't observe any spraying of water
23 when I was there.

24 MR. TREPANIER: Okay. Thank you.

1 HEARING OFFICER KNITTLE: Okay. Anything else,
2 Mr. Trepanier?

3 MR. TREPANIER: No. Thank you.

4 HEARING OFFICER KNITTLE: Can we move on to
5 Maureen Cole? This is Maureen Cole. She's one of
6 the complainants, and she will also be conducting
7 direct examination of Mr. Henderson.

8 DIRECT EXAMINATION

9 by Ms. Cole

10 Q. Mr. Henderson, what, if any, knowledge do
11 you have of asbestos or contaminations that might be
12 in old dilapidated buildings?

13 MR. JEDDELOH: I'm going to object. I think
14 that this is beyond 1261 Halsted, and it's beyond
15 asbestos in 1261 Halsted and so, therefore,
16 relevancy is in question. Further, there's no
17 foundation laid as to this individual's knowledge
18 base to such a global question.

19 MS. COLE: Okay. Let me rephrase my question.

20 BY MS. COLE:

21 Q. Did you think anything -- did you feel any
22 alarm in going near this site at 1261 Halsted, any
23 fear for your own safety or health to be near
24 somewhere where you knew asbestos might be or

1 contaminated materials and the dust?

2 MR. JEDDELOH: Objection. That's so far afield
3 from the 9A or 21A claim that it's beyond the pale.

4 MR. BLANKENSHIP: I'll object to the lack of
5 time frame.

6 MS. COLE: Okay. Then may I direct --

7 HEARING OFFICER KNITTLE: What were you going
8 to say, Ms. Cole?

9 MS. COLE: I was going to ask if I might have
10 permission to ask the University representative Mr.,
11 whatever his name is, Jeddelloh.

12 HEARING OFFICER KNITTLE: Ask Mr. Jeddelloh
13 what?

14 MS. COLE: Well, what I'd really like to know
15 from Mr. Jeddelloh is what, if any, consideration was
16 given to the area of 13th Street and Maxworks --

17 HEARING OFFICER KNITTLE: I'm going to
18 interject here because it seems like you're trying
19 to ask Mr. Jeddelloh a substantive question, and he
20 has not been sworn in, and he is not a witness in
21 this matter.

22 If you have questions of Mr. Henderson,
23 you're more than welcome to it, and I never ruled on
24 the previous objections, but, you know, feel free to

1 ask him anything you want. In the future, wait for
2 me to rule on the objections before you withdraw
3 them.

4 MS. COLE: Sorry.

5 HEARING OFFICER KNITTLE: No. Just before you
6 withdraw your questions because I may not always
7 sustain the objections. So if you have any further
8 questions.

9 BY MS. COLE:

10 Q. I'd like to know if you know if the water
11 was used to hold down dusts and dirt to protect the
12 workers from these dusts and dirt, and, if so, I'd
13 like to know when it's safe would you know at what
14 point these workers consider the area no longer
15 needing the spray downs?

16 MR. BLANKENSHIP: Object, compound question, no
17 foundation that this witness is an expert. One
18 question at a time, please.

19 HEARING OFFICER KNITTLE: Yeah. Try to ask one
20 question at a time.

21 MS. COLE: Okay. I'm feeling rushed in some
22 way.

23 HEARING OFFICER KNITTLE: Well, do the best you
24 can, and we'll let you ask some questions here.

1 MS. COLE: Okay. Well, then I'll narrow it
2 down just to the one question.

3 BY MS. COLE:

4 Q. Could you answer why the water is used to
5 spray? Why is the water used? What is the purpose
6 of the wetting?

7 A. The purpose of the wetting is to minimize
8 the amount of dust that comes from the demolition
9 job.

10 Q. And could I ask what determines the dust
11 to move around?

12 MR. BLANKENSHIP: Object to the form of the
13 question.

14 HEARING OFFICER KNITTLE: I'm not sure I
15 understand what you mean, Ms. Cole. Maybe you could
16 rephrase that for Mr. Henderson.

17 BY MS. COLE:

18 Q. Does the wind play any part in moving the
19 dust about to a dangerous degree, would you know?

20 MR. JEDDELOH: Wait a minute. She was doing
21 okay until she said to a dangerous degree.

22 MS. COLE: I'm sorry. I'm sorry. Okay.
23 Right.

24

1 BY MS. COLE:

2 Q. Does the wind play a part in moving the
3 dust?

4 A. Yes.

5 Q. And there's no controlling the wind,
6 correct?

7 HEARING OFFICER KNITTLE: Is that a question or
8 a statement?

9 MS. COLE: It's a question.

10 MR. BLANKENSHIP: Objection, argumentative.

11 MR. JEDDELOH: You know, I respect her right to
12 ask questions, but I don't think she really needs to
13 ask those questions which would be obvious to
14 anyone, including the members of the Board. They're
15 entitled to take judicial notice of obvious facts.

16 MS. COLE: Well, may I say in refute to that is
17 that Mr. Jeddelloh himself said that the dust was
18 minimum to light, and I would like to know how he
19 determines that. At what point in time does he say
20 that he knows that it's minimum to light?

21 HEARING OFFICER KNITTLE: Right. I think
22 Mr. Jeddelloh, and correct me if I'm wrong, this is
23 during his opening statement where he was suggesting
24 that the evidence would show that the dust was

1 minimum to light.

2 Now, he doesn't know that on his own. He
3 has to get that into the Board's record through
4 witnesses and testimony, and, hopefully, the
5 testimony -- well, hopefully for Mr. Jeddelloh the
6 testimony will show that the dust was minimum or
7 light. So I don't think -- he can't make statements
8 of his own like that because he's not a witness.
9 He's an attorney here.

10 MS. COLE: Thank you.

11 HEARING OFFICER KNITTLE: Sure.

12 MS. COLE: Might I make a statement, or does it
13 have to always be in the form of a --

14 HEARING OFFICER KNITTLE: You can make a
15 statement later in closing statements. At the
16 closing statement, you can make a statement about
17 what the testimony has shown and what you think it
18 means.

19 Ms. O'Hara (sic), you do not have to ask
20 questions of the complainant if you don't want to.
21 I don't want you to think that --

22 MS. COLE: Well, I don't want to not have asked
23 something I might have had an opportunity to.

24 HEARING OFFICER KNITTLE: Understood.

1 MR. JOSEPH: Can we go back and forth with
2 questions, or do we have to --

3 HEARING OFFICER KNITTLE: I think we want to do
4 it --

5 MR. JOSEPH: Just to expedite it. I'm just
6 thinking if I ask a couple and then maybe she'll
7 think of something.

8 HEARING OFFICER KNITTLE: No. We want to do
9 one complainant at a time. That was what we decided
10 earlier on. If that proves to be unworkable, we'll
11 think about revisiting that, but so far I think it's
12 okay.

13 MR. JOSEPH: I would just think if I could ask
14 a few and then maybe I'd be done or something.

15 HEARING OFFICER KNITTLE: Well, I don't think
16 Ms. O'Hara (sic) has too much more she wants to
17 discuss. Is that correct, Ms. O'Hara (sic)?

18 MR. BLANKENSHIP: It's Cole.

19 HEARING OFFICER KNITTLE: Cole. I'm sorry.
20 Why do I keep calling you O'Hara?

21 MS. COLE: My mother told me she named me after
22 Maureen O'Hara.

23 HEARING OFFICER KNITTLE: Well, there you go.
24 Ms. Cole. Excuse me. My mistake. Do you have any

1 more questions you want to ask at this point in

2 time?

3 MS. COLE: I think I'll give it up for now.

4 Thank you.

5 HEARING OFFICER KNITTLE: Thank you very much,

6 and we're going to do all the cross-examination at

7 the same time I take it after we do all the

8 complainants. I don't want to do more than one.

9 Okay? Do you see what I mean?

10 MR. BLANKENSHIP: Right.

11 HEARING OFFICER KNITTLE: Just to be clear.

12 Yes, sir.

13 MR. JOSEPH: What do you mean we're going to do

14 our --

15 HEARING OFFICER KNITTLE: Well, this witness

16 has been called, and each one of the complainants is

17 doing a direct examination, and then there's going

18 to be a cross-examination I'm assuming by the

19 respondents.

20 MR. JEDDELOH: I think technically it's a

21 clarification. At the present point, the University

22 wouldn't have any more questions.

23 MR. BLANKENSHIP: Assuming that we're going to

24 have the opportunity to call -- recall the witnesses

1 as part of our case.

2 HEARING OFFICER KNITTLE: You definitely will
3 be able to.

4 MR. BLANKENSHIP: That's fine.

5 HEARING OFFICER KNITTLE: Mr. Joseph, do you
6 have any questions for Mr. Henderson.

7 MR. JOSEPH: Yes.

8 DIRECT EXAMINATION

9 by Mr. Joseph

10 Q. Mr. Henderson, how many days was asbestos
11 removed?

12 A. I don't remember. I don't recall.

13 Q. More than one?

14 MR. JEDDELOH: Well, we've already elicited
15 this testimony, and I hope that they're not planning
16 to go through the same questions again that were
17 asked before because I would object to that.

18 HEARING OFFICER KNITTLE: This is part of the
19 burden that having them go separately entails.
20 We're going to have some overlap. Each complainant
21 can ask what questions he wants. I do not want him
22 to answer questions over and over again myself, but
23 we can allow a couple of introductory questions
24 before we get into the heart of things.

1 Go ahead, Mr. Joseph.

2 BY MR. JOSEPH:

3 Q. But you said you did witness some of the
4 removal?

5 A. Yes.

6 Q. And you said they were using water or they
7 weren't using water?

8 A. I didn't say that.

9 Q. Okay. Do you remember whether they were
10 using water?

11 A. No. I don't remember. Could you read my
12 question back -- my answer back?

13 MR. BLANKENSHIP: I'll object to that. I
14 thought this whole line of questions was ruled
15 irrelevant.

16 HEARING OFFICER KNITTLE: I'm not -- water
17 where? What's the --

18 MR. JOSEPH: Well, it was my understanding that
19 water was required to be used, and he had said
20 earlier that they were not using water.

21 BY THE WITNESS:

22 A. Use water where?

23 BY MR. JOSEPH:

24 Q. Was it required to be used when asbestos

1 is being removed?

2 HEARING OFFICER KNITTLE: We're talking about

3 the asbestos. Right. That has been ruled a line of

4 testimony we're not going to get into right now.

5 The objection is sustained.

6 BY MR. JOSEPH:

7 Q. If you do remember -- do you remember what

8 they were wearing, the people that removed it?

9 MR. JEDDELOH: Same objection.

10 HEARING OFFICER KNITTLE: The objection stands,

11 and I think you were here, Mr. Joseph, when we

12 decided that we're not going to get into the

13 asbestos at the site, the prior asbestos removal at

14 the site.

15 MR. JOSEPH: Okay. Well, my concern is just

16 that it seems like with the conflict in the

17 documents of what was there and the lack of concern

18 on the University's part that there's a good chance

19 that, you know, there could have been asbestos that

20 could have gotten into that building, and that

21 was --

22 MR. JEDDELOH: I'm going to object and ask that

23 that entire statement be stricken from the record.

24 First of all, this witness isn't even sworn. This

1 is a phase of the case where he is entitled to ask
2 questions. He's not entitled to make statements.

3 MR. JOSEPH: I guess I'm trying to lay a
4 foundation why I feel it's important that some
5 testimony --

6 HEARING OFFICER KNITTLE: I understand.

7 MR. JOSEPH: -- is brought out on what really
8 happened during this removal. I mean, this is --

9 HEARING OFFICER KNITTLE: Understood, Mr. Joseph,
10 but we have --

11 MR. JOSEPH: One little particle of asbestos
12 can kill somebody.

13 MR. JEDDELOH: I'm going to ask that that be
14 stricken too.

15 HEARING OFFICER KNITTLE: I'm going to sustain
16 your objection, and I will note that this is not a
17 point in time for you to just make statements about
18 your own personal beliefs about asbestos or how much
19 asbestos there was.

20 There is the part of the hearing where
21 you're supposed to ask questions of Mr. Henderson if
22 you have any, and if you don't have any, we're going
23 to have to move on.

24

1 BY MR. JOSEPH:

2 Q. All right. If they were -- you said that
3 the watering was done from Halsted Street?

4 A. Meaning what?

5 Q. Well, you said that you remembered that
6 you were on the job two or three times a day and
7 that they were watering.

8 So I'm just wondering where were they
9 watering from? Where was the water hookup?

10 MR. JEDDELOH: I'm going to object to the
11 compound nature of that. It also mischaracterizes
12 his previous testimony, and it's been asked and
13 answered.

14 HEARING OFFICER KNITTLE: Could you rephrase
15 the question, Mr. Joseph? Try to keep it to a
16 single question at a time.

17 BY MR. JOSEPH:

18 Q. Where was the hose hooked up to?

19 A. I've answered that already, but it's
20 hooked up to a fire hydrant.

21 Q. Do you remember where the fire hydrant
22 was?

23 A. On Halsted Street.

24 Q. Whereabouts on Halsted Street?

1 A. I don't remember.

2 HEARING OFFICER KNITTLE: This line of
3 testimony has been asked and answered a few times.
4 So, Mr. Joseph, I'm going to ask you to move on to a
5 different line of questions.

6 BY MR. JOSEPH:

7 Q. Was an asbestos notice -- asbestos removal
8 notice filed?

9 MR. JEDDELOH: With what? Object as to the
10 vague nature of the question.

11 BY MR. JOSEPH:

12 Q. Was it filed with the EPA?

13 A. It occurs to me that that could be best
14 asked by the asbestos contractor, Environmental
15 Hazard, but I'm quite sure in the documents you have
16 there was a courtesy notice filed with the EPA.

17 Q. A courtesy notice, what do you mean by
18 that?

19 A. Under certain circumstances, a notice,
20 according to how much asbestos is reported or
21 removed, there's either a full notice or a courtesy
22 notice to the EPA according to our contract.

23 Q. Are you implying it was not required to
24 file a notice?

1 A. I'm not --

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

3 HEARING OFFICER KNITTLE: Sustained.

4 BY MR. JOSEPH:

5 Q. So you're saying a courtesy notice was

6 filed?

7 MR. JEDDELOH: Asked and answered, object.

8 BY THE WITNESS:

9 A. It was.

10 BY MR. JOSEPH:

11 Q. So earlier you said that they were not

12 wetting during hand wrecking?

13 MR. BLANKENSHIP: Objection. He said he didn't

14 observe it.

15 HEARING OFFICER KNITTLE: Right.

16 MR. JEDDELOH: And that's a statement. That's

17 not a question.

18 BY MR. JOSEPH:

19 Q. Well, I'm asking. You said during your

20 prior testimony today that they did not wet during

21 hand wrecking?

22 MR. JEDDELOH: Objection. The record speaks

23 for itself. This is asked and answered. We've been

24 through this at least three or four times.

1 HEARING OFFICER KNITTLE: Sustained.

2 BY MR. JOSEPH:

3 Q. I have in front of me an affidavit signed
4 by you, Mr. Henderson, and on this you say that
5 throughout the course of demolition, Speedway
6 Wrecking wetted the demolition site with water to
7 prevent the release of airborne pollution and dust;
8 is that true?

9 A. Yes.

10 Q. So are you saying that every time you went
11 to the site, they were using water?

12 MR. JEDDELOH: Objection. We've been through
13 this before, Mr. Knittle.

14 HEARING OFFICER KNITTLE: Thank you. Yes.
15 That is sustained. This is asked and answered, and
16 he has already answered that Mr. Joseph.

17 BY MR. JOSEPH:

18 Q. When you didn't see them watering, was
19 there evidence that they had watered?

20 A. Yes. The area was wet.

21 Q. At all times when you were there?

22 A. I don't know.

23 Q. Did you ever see dust drifting away from
24 the site?

1 A. What do you mean by that question?

2 Q. Well, I mean, it's pretty clear. Did you
3 see dust or debris from the building going into the
4 wind toward the east or the west toward Halsted or
5 any other direction?

6 MR. JEDDELOH: Well, I'm going to object to
7 that. He's added dust and debris, and I think those
8 are two --

9 BY MR. JOSEPH:

10 Q. All right. Did you see anything that was
11 being demolished of this structure that you could
12 see leaving the building site?

13 A. Meaning what?

14 Q. Did you see any dust or any debris or any
15 substance drifting away from this building?

16 A. I think the question is too vague. I
17 mean, can you be more specific?

18 HEARING OFFICER KNITTLE: Mr. Henderson, if you
19 can answer, it's your obligation to answer.

20 THE WITNESS: But he said did I see the dust or
21 debris. I mean, what does he mean debris?

22 BY MR. JOSEPH:

23 Q. Anything that was part of that building as
24 it was wrecked, did you see it leave that structure?

1 A. I observed some dust.

2 Q. Which direction did that dust go?

3 A. I have no idea. It was just dust. It was
4 just -- I don't know which way it went.

5 Q. And how often did you see dust leaving the
6 building?

7 A. There was some dust every time I visited
8 the building. There was some minimum dust.

9 Q. Do you know what was in that dust?

10 A. No.

11 Q. What do you think it was?

12 MR. JEDDELOH: Objection.

13 MR. BLANKENSHIP: Objection. He said he
14 doesn't know.

15 HEARING OFFICER KNITTLE: Sustained. He
16 doesn't know the answer to that question,
17 Mr. Joseph.

18 Any other questions, Mr. Joseph?

19 BY MR. JOSEPH:

20 Q. So when they were hand wrecking, there
21 could have been dust -- you observed dust leaving
22 the building or a substance of the building?

23 A. That was -- in demolishing an old
24 building, you're always going to have dust. Dust is

1 inherent to demolition.

2 Q. But did you see -- so you did -- you did

3 see dust or part of the building leaving into the

4 wind?

5 MR. JEDDELOH: Wait a minute. The compound

6 nature of that question is objectionable, and the

7 question about the dust he's already answered the

8 question at least twice.

9 HEARING OFFICER KNITTLE: That's sustained.

10 Move on, Mr. Joseph.

11 BY MR. JOSEPH:

12 Q. So when they were -- you did see something

13 leaving the building when they were hand wrecking?

14 MR. JEDDELOH: Mr. Knittle, can we have an

15 instruction that we either take up a new topic or he

16 doesn't ask these questions anymore.

17 HEARING OFFICER KNITTLE: I think that question

18 has been asked and answered, Mr. Joseph.

19 MR. JOSEPH: So which specific topic are you

20 objecting to?

21 HEARING OFFICER KNITTLE: As I recall --

22 MR. JOSEPH: Dust or what? I'm not sure.

23 HEARING OFFICER KNITTLE: As I recall,

24 Mr. Henderson has testified that he has seen dust

1 leaving the building, and that has been asked and
2 answered a number of times.

3 So I would instruct you to move on to a
4 new line of questions or at least a question other
5 than the one that's been asked and answered.

6 BY MR. JOSEPH:

7 Q. Did you say water is a requirement?

8 MR. JEDDELOH: I'm going to object to that
9 question. It's unclear whether he's asking this
10 witness to recount his previous testimony, to offer
11 some expert testimony on a legal subject, or
12 something else. It's far too vague. It lacks
13 foundation.

14 HEARING OFFICER KNITTLE: Please restate the
15 question, Mr. Joseph.

16 BY MR. JOSEPH:

17 Q. Are you required to see that they are
18 using water?

19 MR. JEDDELOH: Same objection.

20 MR. JOSEPH: What is your objection?

21 MR. BLANKENSHIP: I'll object as to using water
22 when, under what circumstances. It's a totally
23 open-ended question that has no basis.

24

1 BY MR. JOSEPH:

2 Q. Are you required as an employee of the
3 University to see that they're using water during
4 wrecking?

5 MR. JEDDELOH: Same objection.

6 HEARING OFFICER KNITTLE: Mr. Henderson, if you
7 can answer the question, please do.

8 BY THE WITNESS:

9 A. Will you restate the question?

10 BY MR. JOSEPH:

11 Q. Does the University require that you make
12 certain that they're using water when they're
13 demolishing?

14 MR. JEDDELOH: Same objection, Mr. Knittle.
15 This is far too vague. It covers too many things.
16 We've already come up with two separate contents in
17 which the use of water and wetting has arisen in
18 this hearing alone, let alone other possibilities.
19 So I think that the question may not be properly
20 answered in its current form.

21 HEARING OFFICER KNITTLE: That's sustained. I
22 agree, Mr. Joseph. Move on and ask another
23 question, please.

24

1 BY MR. JOSEPH:

2 Q. What was your purpose to go to this job
3 site?

4 A. To observe the demolition and as a
5 representative of the University.

6 Q. And what were you supposed to observe?

7 A. Seeing the demolition process and monitor
8 the time frame of the work.

9 Q. And was there any other purpose for you to
10 be there?

11 A. To safeguard the University's interests.

12 Q. And what are those interests?

13 MR. BLANKENSHIP: Objection, relevance.

14 HEARING OFFICER KNITTLE: Answer the question,
15 if you can, Mr. Henderson.

16 BY THE WITNESS:

17 A. To see if the time frame was being
18 followed and see if some of the work was being done
19 in a workmanlike manner.

20 BY MR. JOSEPH:

21 Q. And what would be a workmanlike manner?

22 MR. JEDDELOH: Mr. Knittle, that calls for a
23 narrative. It also gets us right back into the same
24 series of questions that we've gone through before.

1 HEARING OFFICER KNITTLE: Yeah. This has been
2 asked and answered under Mr. Trepanier's direct
3 examination, Mr. Joseph.

4 BY MR. JOSEPH:

5 Q. Is a permit required from the city to use
6 the city's water?

7 MR. JEDDELOH: Well, I'm going to object.
8 We've been through this before. To a certain
9 extent, it calls for a legal conclusion.

10 HEARING OFFICER KNITTLE: I'm going to
11 overrule, and answer if you can to the extent of
12 your knowledge.

13 BY THE WITNESS:

14 A. I don't know.

15 BY MR. JOSEPH:

16 Q. So is that -- so that's not the University
17 that you're saying that you -- are you implying that
18 that would be Speedway's obligation to get
19 permission to turn on the fire hydrant?

20 A. That is the contractor's responsibility to
21 require all permits and documentation in their
22 function of demolishing said property.

23 HEARING OFFICER KNITTLE: We're taking a quick
24 recess.

1 (Brief pause.)

2 HEARING OFFICER KNITTLE: Mr. Joseph, do you

3 have any more questions?

4 MR. JOSEPH: Let's see. One second here.

5 BY MR. JOSEPH:

6 Q. Do you remember how long the hand wrecking

7 went on?

8 A. No, I don't.

9 MR. JOSEPH: I have no further questions.

10 HEARING OFFICER KNITTLE: Okay. Do the

11 respondents have anything they want to deal with

12 with this witness? Do you want to --

13 MR. JEDDELOH: Reserving my right to call

14 Mr. Henderson as part of the University's case. We

15 have nothing by way of clarification, Mr. Knittle.

16 MR. BLANKENSHIP: The same for me.

17 HEARING OFFICER KNITTLE: You are dismissed.

18 MR. JEDDELOH: But he's our representative. So

19 he can stay?

20 HEARING OFFICER KNITTLE: Yes. You can stay,

21 but you are no longer a witness in this case.

22 MR. TREPANIER: I don't want to interrupt you.

23 HEARING OFFICER KNITTLE: Yes, sir.

24 MR. TREPANIER: But I'm going to ask if I can

1 get a couple of minutes for a bathroom break.

2 HEARING OFFICER KNITTLE: Yeah. Let's take a

3 recess now. It's 2:30. We'll be back in ten

4 minutes. We are now going off the record.

5 (Break taken.)

6 HEARING OFFICER KNITTLE: We are back on the

7 record.

8 Mr. Trepanier, it is still your case.

9 MR. TREPANIER: Thank you. I'd like to call

10 Mr. Kolko as a witness, Larry Kolko.

11 (Witness sworn.)

12 WHEREUPON:

13 L A R R Y K O L K O,

14 called as a witness herein, having been first duly

15 sworn, deposeeth and saith as follows:

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

17 by Mr. Trepanier

18 Q. Good afternoon. I appreciate your

19 patience.

20 Earlier in this matter, do you recall

21 filing what was called an answer or a response to

22 the original complaint, which would have been on

23 September 18th, '96?

24 A. I can't quantify the date, but I do recall

1 filing a response, yes.

2 Q. And at that time, you had reported that
3 you were hand wrecking the building at 1261 Halsted
4 at that time; isn't that correct?

5 A. I don't recall, but it was only partially
6 hand wrecking.

7 Q. When you say partially hand wrecking, is
8 that -- was the hand wrecking activities
9 interspersed throughout the demolition?

10 A. No, they were not. In some cases, they
11 were, but for the most part, the hand wrecking
12 preceded the equipment wrecking.

13 Q. And do you spray water during your hand
14 wrecking operation?

15 A. Yes, we do.

16 Q. And where do you -- and in this instance,
17 where did you get that water from?

18 A. Fire hydrant, city of Chicago fire
19 hydrant.

20 Q. And what was the location of that hydrant?

21 A. I'm not exactly certain. I can tell you
22 one of two locations, but I'm not certain. It was
23 either on the southeast corner of 13th and Halsted,
24 or it was on the northeast corner. I just don't

1 recall off the top of my head.

2 Q. Was that -- when you're on the job, is
3 that one of your responsibilities to see that that
4 hose is hooked up?

5 A. Yes, it is, amongst others.

6 Q. Okay. And which was the first date that
7 you saw to that, that the hose was hooked up?

8 A. Whatever the start date was, in
9 sometime -- I believe it was September 8th, but I'm
10 not certain of the date.

11 Q. And did you personally put the hose up?

12 A. No, I did not.

13 Q. Who did?

14 A. The laborers who were on the job.

15 Q. And do you recall who that was?

16 A. No, I do not.

17 Q. And did you order somebody to hook the
18 hose up?

19 A. It's standard operating procedure. I
20 didn't have to.

21 Q. Who supplies the hose?

22 A. I do, my company does.

23 Q. But you don't have any certain person to
24 be in charge of that?

1 A. No.

2 Q. How often were you -- how long did the job
3 go?

4 A. My recollection is about I think five
5 weeks, maybe a little longer, maybe a little
6 shorter. I'm not exactly certain.

7 Q. And out of that five weeks, were you on
8 site on each day of activity?

9 A. Every day.

10 Q. What time did you arrive?

11 A. It varied every day.

12 Q. Did you always arrive in the a.m.?

13 A. The word always would bother me, but
14 generally, yes.

15 Q. So just to be clear, every day that there
16 was demolition activity, you were on the site?

17 A. To the best of my recollection, that's
18 true.

19 Q. And is that a requirement for your group?

20 A. It's a requirement of me.

21 Q. So you would be -- you would have been
22 present on the site on September 9th?

23 A. In all probability, yes.

24 Q. And what was occurring there? You say

1 that it's likely to have started on the 6th. What
2 was occurring on the 9th?

3 A. I can't state with certainty exactly on
4 that date, but if that was the beginning of the job,
5 which was certainly around that time, we would have
6 laborers up on the top of the roof taking parapet
7 off of the top, parapet walls off the top.

8 MR. BLANKENSHIP: Let me just ask a question.
9 If this witness is being recorded, we do have an
10 objection to that. I didn't know that they had
11 turned on a camera.

12 HEARING OFFICER KNITTLE: Mr. Trepanier, has --
13 actually, Mr. Joseph, has the camera been turned
14 on?

15 MR. JOSEPH: No.

16 HEARING OFFICER KNITTLE: Has the tape been
17 turned on?

18 MR. JOSEPH: No.

19 HEARING OFFICER KNITTLE: No. To the best of
20 my knowledge, there has been no request to tape
21 record him.

22 Please proceed, Mr. Trepanier.

23 MR. TREPANIER: I have to kind of collect my
24 thought back again.

1 MR. JOSEPH: Could I go and ask a couple so we
2 keep moving because otherwise it's going to get real
3 confusing. If we can just kind of be a team, it
4 might be a little harder, but it's going to get done
5 faster.

6 HEARING OFFICER KNITTLE: Same objection?

7 MR. BLANKENSHIP: Yeah. We object to any
8 tag-team questioning. I'm sure they don't want us
9 to do that to them, and I think it's very unfair to
10 have three people directing questions to one
11 witness.

12 HEARING OFFICER KNITTLE: Mr. Jeddelloh?

13 MR. JEDDELOH: Well, I have the same objection.

14 HEARING OFFICER KNITTLE: What about
15 Mr. Trepanier and Ms. Cole, how do you feel about
16 it?

17 MR. TREPANIER: I'm willing to go along with
18 Mr. Joseph's request.

19 HEARING OFFICER KNITTLE: Ms. Cole?

20 MS. COLE: I agree that I don't need to
21 participate in any questioning at this time.

22 HEARING OFFICER KNITTLE: Now, Mr. Joseph, you
23 know, I've been thinking about it. I brought it up
24 beforehand, but I do think we'll keep going the way

1 things are and have Mr. Trepanier ask his questions

2 first, and you can ask your questions and then

3 Ms. Cole can ask hers or vice-versa.

4 BY MR. TREPANIER:

5 Q. Did the spraying of water occur every day

6 that you were on the site?

7 A. Yes, it did.

8 Q. And do you know who was spraying the

9 water?

10 A. No. I couldn't answer the question. It

11 could have been any one of a number of people that a

12 foreman would have assigned to do it.

13 Q. And what's the foreman's name?

14 A. Gregoreo Hernandez, H-e-r-n-a-n-d-e-z.

15 Q. Did you look through the building before

16 the demolition got underway?

17 A. Yes, I did.

18 Q. And did you make any determinations of

19 whether the building contained leaded paint?

20 A. I did not.

21 Q. Was there any demolition activity that

22 occurred on Saturdays?

23 A. Not to my recollection.

24 Q. And Sundays?

1 A. That I would say no.

2 Q. Would you agree that extra care must be
3 taken to contain dust in busy areas?

4 MR. JEDDELOH: I'm going to object to that
5 question. It's a very general global question. It
6 doesn't relate to this proceeding. It calls to
7 elicit expert testimony from this individual without
8 laying a foundation.

9 MR. BLANKENSHIP: I'll second the objection.
10 He can ask about this specific job, but I think it's
11 unfair to go beyond that.

12 HEARING OFFICER KNITTLE: I'm going to overrule
13 the objection, but I will note that sufficient
14 foundation for your expertise has not been laid.
15 Mr. Trepanier, if you can lay sufficient foundation,
16 you can ask that question.

17 BY MR. TREPANIER:

18 Q. What's your position with Speedway?

19 A. I'm a vice-president.

20 Q. And as vice-president, do you feel that
21 you're aware of what is industry standard for your
22 field?

23 A. I do.

24 Q. So I submit that he's ready to answer my

1 question.

2 Would you say then that it is industry
3 standard that extra care be taken to contain dust in
4 busy areas?

5 A. The word extra sort of bothers me because
6 we try and take care of dust control in all areas.

7 Q. So would you then disagree with that same
8 statement?

9 A. Yes, I would.

10 Q. And when you are taking care of -- for
11 dust controls, could you tell me what you used at
12 1261 for dust control?

13 A. Water.

14 Q. And anything else beyond water?

15 A. No.

16 Q. Did you at any time use boards for dust
17 control?

18 A. There was a backslash on top of our
19 canopy that was erected on Halsted and returned on
20 13th Street that could have acted as a partial
21 barrier to dust.

22 Q. And what was that item?

23 A. A backslash.

24 Q. Backslash. And is that -- is a

1 backsplash designed to retain bricks from coming on

2 to the street?

3 A. That could be one of the uses, yes.

4 Q. And is it designed for another use beyond

5 that?

6 A. It could be used to contain dust too. It

7 has the effect of containing some dust.

8 Q. Were the -- if the backsplash contains

9 dust, where does that dust then settle?

10 A. It goes on the top of the canopy.

11 Q. And what was -- how was that dust handled

12 from the top of the canopy?

13 A. We hosed it. The water would hit it and

14 neutralize the dust to some extent.

15 Q. And that hose was sprayed from where?

16 A. At the beginning during the hand wrecking,

17 it was sprayed up on top of the building. A hose

18 was run from the fire hydrant to the top of the

19 building while the hand wrecking was in progress.

20 Q. But you don't recall which hydrant that

21 came from?

22 A. I told you before it's one of the two. I

23 can't recall exactly.

24 Q. How long did the hand wrecking continue?

1 A. My best recollection would be about three
2 weeks.

3 Q. Three weeks?

4 A. About three weeks.

5 Q. And what tools are used? What tools do
6 you use during a hand wrecking?

7 A. Sledgehammer, bar, wrecking bar, pick,
8 shovel, saws, wheelbarrows, shovels, unless I said
9 it. Basically, there might be some more that I'm
10 missing, but off the top of my head, that's about
11 it.

12 Q. And during hand wrecking, do you use the
13 wheelbarrows to dump the debris off the building?

14 A. Yes.

15 Q. And which side of the building did you
16 dump the debris off from this building?

17 A. East.

18 Q. And where did that debris fall?

19 A. On to the ground on the east, vacant side
20 of the building on the east side.

21 Q. And do you know was that the property of
22 1261 Halsted where that debris fell?

23 A. I do not know that.

24 Q. Is it possible that that was an alley?

1 MR. JEDDELOH: Well, I'm going to object. The
2 question asks for this witness to speculate. He
3 said he doesn't know.

4 HEARING OFFICER KNITTLE: Sustained.

5 Mr. Trepanier, could you rephrase that?

6 BY MR. TREPANIER:

7 Q. Could you describe that area where the
8 debris was dumped on the east side of the building?

9 A. It was an empty area, oh, maybe about, and
10 this is by recollection, probably about maybe
11 ten-feet wide, maybe eight feet wide, something in
12 that area.

13 Q. And in the other direction, what was
14 the -- what was there?

15 A. I don't know how far it ran. I can't tell
16 you the footage of how far it ran the other way. It
17 stopped at 13th Street.

18 Q. 13th Street and proceeded north from
19 there?

20 A. Yes.

21 Q. And that same ten-foot space was also
22 existent behind the adjacent properties north of
23 1261 Halsted?

24 A. It could have. I can't state that for

1 sure. It could have.

2 Q. And was that ten-foot space, was that open
3 to 13th Street?

4 A. Yes.

5 Q. When the debris -- when the wheelbarrow
6 was used to dump debris from the building, where was
7 the debris coming from? Was that from the roof,
8 third floor, both of those?

9 A. Both of them.

10 Q. And was there a method of dust control
11 that you used at the time?

12 A. Wetting it down.

13 Q. And how was that done?

14 A. With the same fire hose that we talked
15 about.

16 Q. Would you testify then when the debris was
17 being dumped from the wheelbarrows that the hose was
18 spraying on that?

19 A. No. I would not say that at all times,
20 no, because if it was sufficiently wet, there would
21 be no need to do it.

22 Q. And how could you determine if it was
23 sufficiently wet?

24 A. See whether there was any dust or how much

1 dust it was making when they did dump it, and that
2 would be up to the foreman at the top of the
3 building.

4 Q. Okay. That was Mr. Hernandez?

5 A. Yes.

6 Q. Was he the foreman throughout the job?

7 A. Yes, he was.

8 Q. Now, if Mr. Hernandez observed dust during
9 that dumping procedure, how would you expect him to
10 respond to that?

11 A. Turn on the hose.

12 Q. So the hose isn't on at all times?

13 A. Not while the hand wrecking is going on,
14 no, because you can't spray the water on people that
15 are working. You spray on the work, and then
16 they'll go do their work. If you find more dust
17 that you need to put the hose on in order to control
18 it, that's what you do.

19 Q. How many employees were involved with that
20 hand wrecking on the 9th of September?

21 A. I don't have the records in front of me,
22 six to eight.

23 Q. But you do have records that show who was
24 present on the site on which days?

1 A. Yes, I do.

2 Q. But those weren't records that you turned
3 over during discovery?

4 A. I have no idea what he has. I believe he
5 asked us for the names, and we gave him the names
6 off of the record book is what I believe what
7 happened, but maybe we gave him the record book. I
8 don't know.

9 Q. When you do a visual inspection of the
10 building prior to demolition, what are you looking
11 for?

12 A. The first thing I'm looking for is someone
13 who is sleeping in the building. Other than that, I
14 do a general visual inspection to see if there's
15 anything obvious that's there such as asbestos,
16 which we do not do. We have nothing to do with
17 asbestos, and I do make a visual inspection to see
18 if I see anything that looks like it could be
19 asbestos.

20 Q. Is there anything else you look for during
21 the visual inspection?

22 A. Well, just the general working conditions
23 that we're going to be working under so I know what
24 type of equipment and what type of people to put

1 there.

2 Q. Do you have some training on asbestos
3 recognition?

4 A. Just my experience.

5 Q. Have you discovered asbestos during some
6 of your jobs, demolition jobs?

7 A. Prior to starting, yes.

8 Q. And have you ever discovered asbestos
9 during a demolition?

10 A. Yes, I have.

11 Q. And did you do that at -- did you discover
12 asbestos at 1261?

13 A. Not to the best of my recollection.

14 Q. You named several tools used during hand
15 wrecking. Is a -- are you familiar with a piece of
16 equipment called a bobcat?

17 A. Certainly.

18 Q. Is a bobcat used during hand wrecking?

19 A. Where it can be.

20 Q. And was a bobcat used in hand wrecking at
21 1261?

22 A. On that job, I believe starting at the
23 fourth floor it was used.

24 Q. And how was the bobcat used?

1 A. It was used as a mechanized wheelbarrow.

2 Q. And who operated the bobcat?

3 A. One of the laborers on the job.

4 Q. And would your records show that, who that
5 was?

6 A. No. It would not show which one, and it
7 could have been -- several of our people are
8 qualified. It could have been any one of the crew
9 that was up there at any given time.

10 Q. Given a date, you could inform on which
11 employees were on site on that date?

12 A. Yes, I could.

13 MR. TREPANIER: I'd like to ask for information
14 to be produced on two dates of who was on site
15 September 6th and September 9th. Would that be
16 possible? I'd be really surprised to learn that
17 these records exist because I did receive some
18 responses from Speedway in interrogatories, and I
19 thought I was led to believe that these records
20 didn't exist to say who was on site on which days.

21 HEARING OFFICER KNITTLE: Mr. Trepanier, can
22 you hold on one moment?

23 (Brief pause.)

24 HEARING OFFICER KNITTLE: Mr. Trepanier, you

1 were saying?

2 MR. TREPANIER: I apologize. I don't know, you
3 know, the proper format, if this is even the proper
4 time to bring it forward, but in one of my discovery
5 interrogatories, I had asked that each document used
6 or created by persons who were -- participated in
7 certain designated activities, which would have
8 included Mr. Kolko, that the records that they
9 created in that role be provided to me, and the
10 records now that have just come to light weren't
11 provided.

12 HEARING OFFICER KNITTLE: Mr. Blankenship, do
13 you have a response?

14 MR. BLANKENSHIP: Frankly, I had thought we had
15 produced all the documents. We've produced the
16 whole job file, and I've just been advised that
17 these records reflect the personnel under a
18 different place, and apparently that's where there
19 was a miscommunication. We will get them the names
20 of the people on the job on those two days. If you
21 want, we can do that.

22 HEARING OFFICER KNITTLE: Is that sufficient,
23 Mr. Trepanier, or are you seeking additional
24 relief?

1 MR. JOSEPH: Yeah. When are we going to get
2 them?

3 MR. BLANKENSHIP: We can get that stuff today.

4 MR. JOSEPH: How about right now so we can
5 question him about it?

6 HEARING OFFICER KNITTLE: Mr. Kolko, are you
7 going to be here tomorrow?

8 THE WITNESS: Yes, I am.

9 HEARING OFFICER KNITTLE: You're going to be
10 here for the duration of the hearing?

11 THE WITNESS: Yes, I am.

12 HEARING OFFICER KNITTLE: Mr. Trepanier and
13 Mr. Joseph, do you have a problem if this
14 documentation is provided -- you said when could you
15 get it to him?

16 MR. BLANKENSHIP: We'll pick it up today when
17 he gets back to the office.

18 HEARING OFFICER KNITTLE: They can have it to
19 you tomorrow morning.

20 THE WITNESS: If I can get out of here, yes.

21 MR. JOSEPH: Can we have some time to go over
22 it and then maybe ask some questions about it?

23 HEARING OFFICER KNITTLE: Well, I was going to
24 say if we get it tomorrow, yes. You'll be able

1 to --

2 MR. BLANKENSHIP: That's fine.

3 HEARING OFFICER KNITTLE: You'll be afforded

4 the opportunity to take a look at it and ask any

5 questions you want.

6 MR. TREPANIER: We dealt with the issue quite a

7 bit in this hearing for us to try to lower the

8 number of witnesses we need called, and this

9 information would have been very helpful for us to

10 identify, you know, particularly which persons we

11 were seeking.

12 MR. BLANKENSHIP: We gave them all the names

13 and all the positions, which, as I recall, is how

14 the discovery dispute long ago ended up being

15 resolved, and then, frankly, I thought that issue

16 was resolved, but, you know, like I say, if they

17 want the sheets showing who was there on what day,

18 we can give them that. If that expedites things, by

19 all means we'll do it.

20 HEARING OFFICER KNITTLE: Mr. Trepanier, we're

21 going to get -- excuse me. They're going to get you

22 that information tomorrow morning. If you have any

23 additional relief you want to seek in terms of

24 sanctions, you know, you always have the opportunity

1 to file something either with the Board or me, the
2 Hearing Officer.

3 MR. TREPANIER: Then I'll continue with my
4 questioning at this time.

5 HEARING OFFICER KNITTLE: Okay. Mr. Trepanier,
6 you can proceed with your questions.

7 MR. BLANKENSHIP: He just wants the 6th and the
8 9th or -- I'm sorry. What were the dates again?

9 MR. TREPANIER: Well, I'll be happy just to see
10 the records.

11 MR. BLANKENSHIP: For the whole month?

12 THE WITNESS: The whole month of September?

13 MR. BLANKENSHIP: The whole job?

14 MR. TREPANIER: Yeah, the job.

15 MR. BLANKENSHIP: Is that pretty voluminous?

16 MR. JOSEPH: Is there any other records?

17 THE WITNESS: It's going to take some time. I
18 mean, you know, depending on what time we get out of
19 here tonight.

20 HEARING OFFICER KNITTLE: Let's go off the
21 record for a second.

22 (Discussion had
23 off the record.)

24 HEARING OFFICER KNITTLE: Mr. Trepanier, do you

1 have any other questions regarding this issue?

2 MR. TREPANIER: On the issue?

3 HEARING OFFICER KNITTLE: Just on the --

4 MR. TREPANIER: For the witness?

5 HEARING OFFICER KNITTLE: -- new records that

6 we were talking about earlier?

7 BY MR. TREPANIER:

8 Q. Well, I would just inquire if there were

9 other records that you kept. I mean, are there

10 other records that are kept in files separate from

11 what Marshall has provided?

12 A. The job file is what we supplied, and the

13 only other records would be the daily people that

14 were on the job site.

15 Q. Okay. Thank you. No more questions on

16 that issue?

17 HEARING OFFICER KNITTLE: Do you have more

18 questions for Mr. Kolko?

19 MR. TREPANIER: Yes, I do.

20 BY MR. TREPANIER:

21 Q. Was there any times during the demolition

22 of 1261 that you made the determination that

23 excessive dust was leaving a demolition site?

24 A. I can't remember an instance. There could

1 have been. I can't say for sure, but I don't

2 remember a specific instance.

3 Q. Was that -- Strike that.

4 Was there any other person on the site

5 whose responsibility it was to make that

6 determination if the dust level was becoming

7 excessive?

8 A. My foreman, Gregoreo Hernandez.

9 Q. And did he inform you of any -- did he

10 report to you of any such occurrences?

11 A. There would have been no need to because

12 he would have alleviated it right then and there.

13 Q. And how would he alleviate that?

14 A. Turning on the water.

15 Q. And how would the water be turned on?

16 A. From the fire hydrant.

17 Q. Did you see Mr. Hernandez turn on the

18 hydrant?

19 A. I don't remember any specific time that I

20 would have seen it, but I know the water was on.

21 Q. Do you have a memory of seeing anyone turn

22 the hydrant on?

23 A. Not a specific memory of any individual

24 turning it on that I could name.

1 Q. But do you have a specific memory of a
2 person turning on the hydrant?

3 A. Yes, I do.

4 Q. And where was that hydrant located?

5 A. I had just told you I don't recall which
6 side of the street it was on.

7 Q. And when you say which side of the street,
8 are you referring to 13th Street?

9 A. Yes.

10 Q. And you described that -- you described a
11 hydrant being at the southeast corner of 13th and
12 Halsted, I believe?

13 MR. BLANKENSHIP: Objection, asked and
14 answered. We've been through the location of the
15 hydrant. This is the third time now.

16 BY MR. TREPANIER:

17 Q. And which was the second location that you
18 said?

19 A. Across the street. I wasn't sure --
20 across 13th Street, but I wasn't sure where the
21 hydrant is to be honest with you. I'd have to go
22 back there and look.

23 Q. If the hydrant was across the street,
24 would that be directly in front of the property

1 being demolished?

2 A. No, it would not.

3 Q. Where would it be?

4 A. If it was across the street, it would have
5 been south of the building being demolished. If it
6 was on Halsted and 13th south of the building, it
7 would have been across the street of the building
8 being demolished.

9 Q. I think maybe that I kind of understand --
10 I think maybe I'll be able to understand what you're
11 saying if I understand that you're saying that there
12 was a hydrant on Halsted?

13 A. Yes.

14 Q. Or there was a hydrant on 13th?

15 A. No, I'm not saying that. It was on
16 Halsted either on the south side of 13th or the
17 north side of 13th, both being on the east side of
18 the street, and I'm not sure which.

19 Q. Okay. Now, you testified that you brought
20 the water up to the roof with a fire hose from that
21 hydrant?

22 A. Yes.

23 Q. Do you know how long your hoses are?

24 A. It depends on which hose I use. Some I

1 have made at 50-foot lengths, and some I have made
2 at 100-foot lengths.

3 Q. And how many -- who brought the hose out
4 for this job?

5 A. My shop would have brought it out in a
6 pickup truck.

7 Q. You say the shop would have brought it
8 out?

9 A. Right, somebody from my shop.

10 Q. And who -- how would that person from the
11 shop know what size to bring?

12 A. There is only one size that we use.

13 Q. And what size is that?

14 A. Inch and a half.

15 Q. Inch and a half.

16 And how much water does that pass?

17 A. Gallonage, I don't know, but you wouldn't
18 want to stand in front of it.

19 Q. And what's on the end of that fire hose --

20 A. A nozzle.

21 Q. -- the end that the water is coming out?

22 A. A nozzle.

23 Q. And can you describe that nozzle or its
24 function?

1 A. There are several different kinds, but
2 basically it could either be plastic or it could be
3 brass with a shut-off mechanism on it.

4 Q. Does the plastic nozzle have a shut-off
5 mechanism?

6 A. Yes, it does.

7 Q. And the brass also?

8 A. Yes.

9 Q. Now, you did testify that when -- you
10 believe that when excessive dust was occurring, the
11 hydrant -- the hose would be turned on at the
12 hydrant?

13 MR. JEDDELOH: I'm going to object to that.
14 That mischaracterizes his testimony. He never
15 testified that there was excessive dust leaving the
16 site.

17 HEARING OFFICER KNITTLE: That's sustained.

18 Mr. Trepanier, can you please rephrase
19 your question?

20 BY MR. TREPANIER:

21 Q. Why would somebody on your team -- on your
22 company turn the water on at the hydrant if they
23 have a shut-off valve at the end of the hose?

24 A. Mr. Trepanier, I don't know how else you

1 would get water out of the end of the hose if you
2 didn't turn it on at the hydrant.

3 Q. And is that just once a day you turn it on
4 at the hydrant?

5 A. Generally, you turn it on first thing in
6 the morning when you hook up, put your hose up on
7 the top, turn it on, and then use your nozzle to
8 control water if you're going to put it on or for
9 how long you're going to put it on, and reverse it,
10 turn the nozzle off when you don't want the water.

11 Q. Is the hose designed to sustain traffic
12 over it?

13 A. Some is and some isn't.

14 Q. And the hose on this job, was it designed
15 to sustained traffic?

16 A. If we had to cross the street, it would be
17 designed to sustain traffic, yes.

18 Q. Did you arrange to have the electric
19 service shut off on this building before the
20 demolition?

21 A. I personally, no.

22 Q. Speedway Wrecking Company?

23 A. Anytime we start a wrecking job, that's
24 part of a procedure that we call all utilities to

1 remove their services. That is part of our
2 procedure before proceeding. That includes
3 electric, gas, water, anything like that.

4 Q. But you yourself didn't do that for this
5 job?

6 A. I do not do that, no.

7 Q. Who does that?

8 A. A secretary in the office.

9 Q. Does she create a record when she does
10 that?

11 A. She'll generally write down the date that
12 she called the various departments.

13 Q. That's not a record that we received in
14 discovery.

15 A. I'm not sure we would still have that.
16 It's not something after the job that you would
17 normally keep.

18 Q. Are you aware that histoplasmosis can
19 result from exposure to dust of bird and bat
20 droppings?

21 MR. BLANKENSHIP: I'll object to the lack of
22 foundation on that one.

23 MR. JEDDELOH: And I believe it's calling for
24 expertise for which a foundation has not been laid.

1 HEARING OFFICER KNITTLE: Sustained.

2 MR. TREPANIER: I think I just have several
3 more questions.

4 BY MR. TREPANIER:

5 Q. I believe that today you've testified that
6 the hand wrecking at 1261 included the use of a
7 bobcat?

8 A. That's correct.

9 Q. Now, in your response to our
10 interrogatories, your description of hand wrecking
11 didn't include a bobcat. Why is that?

12 A. Well, because of what I told you before.
13 In this case, I regarded a bobcat as nothing more
14 than a mechanized wheelbarrow.

15 Q. And with that bobcat, did you push the
16 material out of the building into -- out of the east
17 side of the building?

18 A. Yes, we did as a mechanized wheelbarrow.

19 Q. And did you use the shoot to gather that
20 debris to carry to the ground?

21 A. No, we did not.

22 Q. Are you aware of the use of shoots to
23 carry debris to the ground?

24 A. In downtown buildings, yes. In tall

1 skyscrapers, yes.

2 Q. And do you know the purpose of those
3 shoots?

4 A. To prevent debris from falling to injure
5 people.

6 Q. Did you close 13th Street south of the
7 your demolition?

8 A. At times, yes.

9 Q. And when did you do that?

10 A. Generally, after the hand wrecking was
11 done and the crane was brought in and we would have
12 to close it while we're working on the street side
13 to prevent cars from getting too close to the
14 building where debris might fall out once the crane
15 was moved in after the hand wrecking. That's my
16 recollection.

17 Q. Was there something about this property at
18 1261 Halsted that prevented you from installing a
19 shoot?

20 A. No.

21 Q. Have you ever installed a shoot on your
22 demolition jobs?

23 A. Only in downtown skyscrapers.

24 Q. And how, most recently, have you installed

1 a shoot on a demolition?

2 A. I can't answer the question. It's been

3 many years.

4 Q. Many years?

5 A. When I say many, probably more than five.

6 Q. And what was the shortest building that

7 you installed the shoot on to carry debris to the

8 ground?

9 A. I'm afraid I can't answer your question.

10 I just don't have any recollection of that. I doubt

11 that it would have been on a four-story building,

12 but I can't answer it with any certainty.

13 Q. A five-story building?

14 A. I can't answer with any certainty.

15 Q. What circumstance do you understand calls

16 for the installation of a shoot? I know you've

17 mentioned downtown.

18 Is there any other circumstance other than

19 the proximate location to the Loop?

20 A. I think I answered that when I said to

21 protect falling debris from injuring passersby, the

22 public.

23 Q. So if a site has -- if there's passersby

24 at a site, the more likely you'll need a shoot?

1 A. Depending on the location of where your
2 debris is going, depending on whether it poses a
3 threat to them.

4 Q. Does the shoot also contain dust?

5 A. To an extent.

6 Q. And how does the shoot fail to contain
7 dust? Where does the shoot fail to contain dust?

8 A. It's open on two ends. It's open at the
9 top, and it's open at the bottom.

10 Q. And when you used a shoot, what did you
11 put at the bottom of the shoot? Did it empty onto
12 the street?

13 A. It could have emptied on to the street.
14 It could have emptied into a truck. It would depend
15 on the circumstance of a job.

16 Q. And what's the cost for you -- what cost
17 would you estimate for the installation of a shoot
18 at that Halsted property?

19 A. I couldn't even hazard a guess. I don't
20 know. It would have increased, obviously, the
21 building of the shoot, but the way the building was
22 done also. The method of disposal would have had to
23 be different. The cost would have been higher. How
24 much higher, I can't answer the question. I don't

1 know. That would take an estimator to figure.

2 Q. When you say the method of removal of the
3 debris would have to have been different, what do
4 you mean by that?

5 A. Well, you might have had to put a truck
6 under it. You might have had to put a roll-off box
7 under it. You could have -- you wouldn't have --
8 well, depending on the size of the shoot, you would
9 be constrained as to the size of material you could
10 drop.

11 For example, a two-by-four, a long
12 two-by-four, you can't drop it. It gets clogged up
13 in a shoot. That has to be thrown over. Otherwise,
14 you're going to have to break this material up small
15 enough so it's going to fit in the shoot so it
16 doesn't clog.

17 Q. And you did have access on three sides of
18 this building?

19 A. No, I wouldn't make that statement,
20 access, no. If you'll rephrase it. I'm not sure
21 what you mean by access.

22 Q. There was an adjacent property on one
23 side?

24 A. Correct.

1 Q. And there was streets on two sides?

2 A. Correct.

3 Q. And then there was this ten-foot wide
4 passage on the third?

5 A. Exactly.

6 MR. TREPANIER: May I have just a moment to see
7 if I've finished up my questioning?

8 HEARING OFFICER KNITTLE: Sure.

9 BY MR. TREPANIER:

10 Q. Was anyone else on your team besides you
11 and your foreman, Mr. Hernandez, who would make
12 determinations that -- who could make a
13 determination that the dust levels have become
14 excessive?

15 A. Yes.

16 Q. And who would that be?

17 A. My brother, Irv.

18 Q. And when was he on site?

19 A. At varying times, the same way as I would
20 be at varying times. Sometimes, although rarely,
21 together, but he would make his visits, and I would
22 make mine.

23 Q. You said that you two are partners with
24 this?

1 A. We are.

2 Q. And your activity on this demolition, also
3 you both shared the responsibility that you have?

4 A. Yes, that's correct.

5 Q. Did you provide any training for the
6 foreman, Mr. Hernandez?

7 A. As to what?

8 Q. Particularly, any formalized training in
9 the standard practices?

10 A. He has been OSHA-trained.

11 Q. And what did that training cover?

12 A. Safety practices.

13 Q. And does OSHA training for safety
14 practices include methods to control dust leaving a
15 site?

16 A. Having not gone through it, I can't answer
17 the question. I can surmise it probably doesn't,
18 but possibly it does. I didn't go through it.

19 Q. How long has Mr. Hernandez worked for your
20 company, if you know?

21 A. This is by recollection, probably ten
22 years, maybe a little less possibly.

23 Q. Have you had discussions with Mr. Hernandez
24 where you've discussed what is an excessive level of

1 dust leaving a demolition?

2 A. The word excessive, again, I have problems
3 with because I don't know what excessive means to
4 you. It might mean something different to me than
5 it does to you. So I can't define what excessive
6 means. He's aware that if he sees what he thinks is
7 an unreasonable amount of dust to make sure it gets
8 wetted down.

9 Q. And have you had a discussion with
10 Mr. Hernandez regarding what is an unreasonable
11 amount of dust leaving the demolition?

12 A. No. I believe for the most part, I've
13 left that to his discretion for the most part.

14 Q. At 1261 Halsted, there wasn't any times
15 when you yourself saw -- you don't recall you making
16 a determination that there was an unreasonable
17 amount of dust?

18 A. I think I've said that before, yes.

19 Q. And do you know if your -- do you know if
20 your brother and partner, Irv Kolko, has had a
21 discussion with Mr. Hernandez regarding what's an
22 unreasonable amount of dust?

23 A. I cannot answer the question, no.

24 Q. And yourself, how do you determine what's

1 an unreasonable level?

2 A. Oh, I think that you use the rational man
3 theory. I think that anyone of us that looked and
4 saw a big pile of dust would know what's
5 unreasonable and what's not I would think.

6 Q. And if you make that determination that
7 it's unreasonable, I understand you would order the
8 hose to be turned on?

9 A. That is correct.

10 Q. Any other measures?

11 A. No.

12 Q. Would you consider discontinuing the
13 activity that's creating the dust?

14 A. Not unless there was an alternative.

15 Q. And at 1261 Halsted, there was no
16 alternative, was there?

17 A. I didn't see that there was excessive
18 dust.

19 Q. Had you seen excessive dust that hosing
20 didn't control, was there an alternative?

21 MR. BLANKENSHIP: Objection, speculation.

22 HEARING OFFICER KNITTLE: Sustained.

23 You could rephrase the question if you
24 want, Mr. Trepanier.

1 BY MR. TREPANIER:

2 Q. Do you know of an alternative dust control
3 method other than spraying a hose?

4 A. As it applies to demolition, are you
5 referring to?

6 Q. Yes.

7 A. Off the top of my head, I don't.

8 Q. So it's very important for your business
9 that there not be unreasonable amounts of dust
10 leaving a demolition, would you agree?

11 MR. JEDDELOH: I'm going to object to that
12 question as to what is important in his business.

13 MR. BLANKENSHIP: And I'll also object to the
14 vagueness of unreasonable amount of dust.

15 HEARING OFFICER KNITTLE: Answer the question,
16 if you could, Mr. Kolko.

17 BY THE WITNESS:

18 A. Yes.

19 BY MR. TREPANIER:

20 Q. In fact, if there was an unreasonable
21 amount of dust leaving a demolition site while
22 watering is going on, you can't think of another
23 method to control that dust, can you?

24 A. If I thought that there was something

1 unreasonable, I'd want to study the situation to see
2 what could be done, or if my foreman thought it was
3 unreasonable and didn't have an answer, then he
4 would confer with me, which was not done.

5 Q. How long have you been in this business?

6 A. Give or take, 40 years.

7 Q. And in those 40 years, did the
8 circumstance ever appear to you where -- that you're
9 saying didn't occur at 1261 where there was
10 unreasonable levels of dust leaving a demolition
11 during watering?

12 A. Well, I would say in those 40 years,
13 probably.

14 Q. And what activity was occurring when there
15 was excessive dust leaving a demolition during
16 watering?

17 MR. BLANKENSHIP: Objection, relevance.

18 HEARING OFFICER KNITTLE: Sustained, Mr. Trepanier.

19 MR. TREPANIER: You acknowledge that there have
20 been -- that you've seen a demolition where watering
21 was occurring and you thought that an unreasonable
22 amount of dust was leaving a demolition?

23 A. I believe I said that has probably
24 occurred. I can't think of a specific instance at

1 this point, but it probably in my 40-some-odd years
2 has occurred, at which time I would have seen what,
3 if any, alternatives were available to alleviate it.

4 MR. TREPANIER: Thank you. I don't have any
5 further questions.

6 HEARING OFFICER KNITTLE: Mr. Joseph, do you
7 have questions for Mr. Kolko?

8 MR. JOSEPH: Yes.

9 DIRECT EXAMINATION

10 by Mr. Joseph

11 Q. Mr. Kolko, you said you've been doing this
12 40 years. Is that with Speedway?

13 A. With Speedway, yes, sir.

14 Q. So you'd consider yourself an expert on
15 demolition?

16 A. I have a problem with the word expert.

17 Q. You know what you're doing by now?

18 A. I hope so.

19 Q. How old was this building on Halsted
20 approximately?

21 A. I don't have an exact, but I'm going to
22 say it probably would have been in the range of
23 80-plus years, I would say.

24 Q. Is it not likely that there was lead paint

1 in this building?

2 MR. BLANKENSHIP: Objection, lack of
3 foundation. He's an expert on demolitions, but
4 that's a different question he's asking here.

5 MR. JEDDELOH: I'll join in the foundation --
6 in the objection for the record.

7 HEARING OFFICER KNITTLE: The objection is
8 sustained. You can --

9 MR. JOSEPH: Right, right. I'm thinking here.
10 Let's see.

11 BY MR. JOSEPH:

12 Q. So do you look for lead paint when you go
13 through these buildings prior to the demolition?

14 A. Sir, I wouldn't know lead paint from any
15 other type of paint. I'm not an expert in that
16 field.

17 Q. So there could have been lead paint?

18 MR. JEDDELOH: Well, I'm going to object. It
19 calls for this witness to speculate.

20 HEARING OFFICER KNITTLE: Overruled.

21 BY THE WITNESS:

22 A. It's possible.

23 BY MR. JOSEPH:

24 Q. If there was lead paint, what would you

1 do?

2 MR. BLANKENSHIP: Objection, calls for
3 speculation.

4 MR. JEDDELOH: Join.

5 MR. BLANKENSHIP: There's no basis on the
6 record that there was lead paint.

7 HEARING OFFICER KNITTLE: I'm going to
8 overrule. Mr. Kolko, you can answer to the extent
9 that if you've come up with lead paint in the past
10 if you have procedures that you follow or anything
11 like that.

12 BY THE WITNESS:

13 A. We have never -- as far as my knowledge is
14 concerned, there are no regulations presently
15 governing lead paint presently.

16 BY MR. JOSEPH:

17 Q. So would there be a regulation requiring
18 water to be sprayed on lead paint?

19 MR. JEDDELOH: I'm going to object. That calls
20 for this witness to provide a legal conclusion.

21 HEARING OFFICER KNITTLE: That's sustained, and
22 he's already testified that he doesn't know if there
23 are -- he's testified that there are no regulations
24 to this point.

1 BY MR. JOSEPH:

2 Q. So you wouldn't even really -- if you
3 don't know what lead paint looks like, you would
4 demolish a building it wouldn't -- that's not the
5 criteria whether you're going to demolish the
6 building or not if there's lead paint?

7 MR. JEDDELOH: I'm going to object. It would
8 be speculative. He's testified he wouldn't know
9 about the lead paint. He knows about no
10 regulations. I don't understand the question. I
11 think it's vague, confusing, and compound.

12 MR. BLANKENSHIP: Argumentative.

13 HEARING OFFICER KNITTLE: I'm going to overrule
14 both of those. Answer that if you can, Mr. Kolko.

15 BY THE WITNESS:

16 A. I'm sorry. Would you give it to me again,
17 please?

18 MR. JOSEPH: Could you read it again, or should
19 I try to rephrase it?

20 HEARING OFFICER KNITTLE: Can you read it back,
21 please?

22 (Record read.)

23 BY THE WITNESS:

24 A. It is not the criteria, no.

1 MR. JOSEPH: So do you want me to rephrase it?

2 HEARING OFFICER KNITTLE: He's already answered

3 it.

4 BY MR. JOSEPH:

5 Q. So what was your answer? Sorry.

6 A. It was not the criteria, no.

7 Q. So you just demolish buildings. You don't

8 look for lead paint. You just would be demolishing?

9 MR. JEDDELOH: Objection.

10 MR. BLANKENSHIP: Asked and answered.

11 BY MR. JOSEPH:

12 Q. Lead paint or not?

13 HEARING OFFICER KNITTLE: That is sustained.

14 He's already answered that question, Mr. Joseph.

15 MR. JOSEPH: Okay. Fine.

16 BY MR. JOSEPH:

17 Q. So when they were dumping the wheelbarrows

18 off the building, if there was dust or whatever was

19 being dumped, what would it have been -- what were

20 they dumping off the wheelbarrows if the wind took

21 it?

22 MR. BLANKENSHIP: Objection. I don't

23 understand the question. I don't know what he's

24 referring to when he talks abstractly about

1 wheelbarrows and dust.

2 BY MR. JOSEPH:

3 Q. Did you see the videotape?

4 A. I did.

5 Q. Okay. Did you see something leaving the

6 wheelbarrow and going into the wind?

7 A. Yes, I did.

8 Q. Okay. What was that?

9 A. It was probably dust.

10 Q. Okay. What is dust?

11 MR. BLANKENSHIP: Objection.

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

13 that. I mean, what is he looking for, a narrative?

14 Is he looking for a chemical analysis? Is he

15 looking for something about this dust? I mean, I

16 think that falls into the category of being

17 something that everyone understands. It's in the

18 dictionary.

19 HEARING OFFICER KNITTLE: Mr. Kolko, do you

20 understand the question? Do you think you can

21 answer that?

22 BY THE WITNESS:

23 A. I have a hard time with the question what

24 is dust. I mean, I think every layman has an idea

1 of what dust is. My own idea is something foreign

2 in the air. I mean, I can't say it any other way.

3 HEARING OFFICER KNITTLE: Does that answer your

4 question, Mr. Joseph?

5 BY MR. JOSEPH:

6 Q. Okay. Do you think it was part of the

7 building?

8 MR. JEDDELOH: I think that's -- I object. I

9 believe that's argumentation. How could it be

10 anything else but part of the building? What's the

11 point?

12 MR. BLANKENSHIP: Object to lack of foundation

13 for him knowing, you know, what is in the dust.

14 HEARING OFFICER KNITTLE: I'm going to sustain

15 those. Rephrase your questions, please, Mr. Joseph.

16 BY MR. JOSEPH:

17 Q. Did you see any bird dung in the building

18 when you toured it prior to --

19 A. I don't recall.

20 Q. Did you see any peeling paint?

21 A. Yes.

22 Q. Okay. So if -- do you think that that was

23 excessive when the dust or whatever was going into

24 the wind?

1 A. I think I've already stated if I thought
2 it was excessive, we would have taken matters to
3 make it not excessive.

4 Q. Did you ever think about where that dust
5 was going that was being taken into the wind?

6 A. I assume it was going into the air and
7 down to the ground.

8 Q. And in whose backyard?

9 A. Well, I didn't --

10 MR. BLANKENSHIP: Objection. He didn't say
11 anything about a backyard.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. JOSEPH:

14 Q. Are you aware there was a garden
15 approximately a half a block away?

16 A. Yes.

17 Q. Are you aware that that's a huge garden?

18 A. A what garden?

19 Q. Huge.

20 MR. BLANKENSHIP: Object to the form.

21 BY MR. JOSEPH:

22 Q. It's approximately a half of a city
23 block. Are you aware that there was a garden at the
24 time of the demolition of this building?

1 A. I'm aware there was a garden. As far as
2 your characterization of huge, I don't know that I
3 would necessarily agree with that.

4 Q. Well, for a city garden, I would say it's
5 pretty big. It's like there is a garden --

6 MR. JEDDELOH: Mr. Chairman, can we move on?

7 HEARING OFFICER KNITTLE: Yes. Please call me
8 Mr. Knittle.

9 MR. JEDDELOH: Mr. Knittle.

10 HEARING OFFICER KNITTLE: I don't want the
11 chairman getting mad at me.

12 Mr. Joseph, could you proceed with another
13 line of questions, perhaps, or something aside from
14 the size of the garden?

15 BY MR. JOSEPH:

16 Q. Were you present during the wheelbarrow
17 dumping?

18 A. At times.

19 Q. At times. So you saw the wheelbarrow
20 dumping whatever it was being dumped?

21 A. At times.

22 Q. And it was, in fact, going into the air?

23 MR. BLANKENSHIP: Well, I'm going to object --

24

1 BY MR. JOSEPH:

2 Q. Some of it may be blowing off the
3 property?

4 A. I suspect it's possible.

5 HEARING OFFICER KNITTLE: Do you have any
6 further questions, Mr. Joseph?

7 MR. JOSEPH: Yeah.

8 BY MR. JOSEPH:

9 Q. How did you get the hose on the roof?

10 A. Put a rope around it and two or three guys
11 picked it up from the roof.

12 Q. Did you take it home every day?

13 A. It was either left on the top floor pulled
14 up, or my foreman carried it in his pickup truck,
15 one or the other.

16 Q. So would that hose have gone across the
17 road, 13th, or would it --

18 MR. BLANKENSHIP: Objection, asked and
19 answered.

20 HEARING OFFICER KNITTLE: Yeah. We've covered
21 this in Mr. Trepanier's direct examination, Mr. Joseph.

22 BY MR. JOSEPH:

23 Q. Okay. So people could have driven over it
24 then? I mean, is that likely that --

1 MR. BLANKENSHIP: Same objection.

2 HEARING OFFICER KNITTLE: That's sustained.

3 The hose and the type of hose that would be needed

4 if, in fact, it were going across the road was

5 discussed previously.

6 Any further questions, Mr. Joseph?

7 MR. JOSEPH: I have no further questions.

8 HEARING OFFICER KNITTLE: Ms. Cole, do you have

9 any questions for this witness, Mr. Kolko?

10 MS. COLE: Yes.

11 DIRECT EXAMINATION

12 by Ms. Cole

13 Q. Mr. Kolko, have you ever had any female

14 employees?

15 MR. BLANKENSHIP: Objection, relevance.

16 HEARING OFFICER KNITTLE: Can you explain to us

17 the relevance of that question?

18 MS. COLE: Yeah. I was wondering if there

19 would be any concern for the health of a woman over

20 a man's health working there.

21 HEARING OFFICER KNITTLE: I can't see the

22 relevance of that. I'm going to have to sustain the

23 objection.

24 MR. JOSEPH: I have one more question.

1 HEARING OFFICER KNITTLE: One more question,
2 Mr. Joseph?

3 MR. JOSEPH: Right.

4 HEARING OFFICER KNITTLE: Because your case has
5 been closed, but for one question, we'll allow you
6 to open it up.

7 MR. JEDDELOH: Are we done with --

8 HEARING OFFICER KNITTLE: No. I'm going to let
9 Mr. Joseph ask his one question.

10 MR. JEDDELOH: So we're going back and forth
11 then?

12 HEARING OFFICER KNITTLE: We're going back and
13 forth once.

14 MR. JEDDELOH: I'd object to that, but go
15 ahead.

16 HEARING OFFICER KNITTLE: Objection is noted.

17 Mr. Joseph, go ahead.

18 DIRECT EXAMINATION

19 by Mr. Joseph

20 Q. Mr. Kolko, were you aware that there were
21 persons working directly across the alley in the
22 creative reuse warehouse parking lot during the
23 demolition?

24 A. I'm not sure which alley, and I'm not

1 familiar with the property you're describing.

2 Q. Okay. There's only one alley behind the
3 building that you were demolishing.

4 A. I don't believe I'd characterize that as
5 an alley.

6 Q. Okay. Then you're confusing it. There's
7 a street which crosses Halsted, and there's an alley
8 parallel to Halsted directly behind where you were
9 dumping the wheelbarrow into.

10 MR. BLANKENSHIP: I'm sorry. Objection. That
11 doesn't sound like a question to me. He's already
12 given you his testimony by way of the --

13 MR. JOSEPH: I'm defining the alley. I don't
14 want him to be confused with the street.

15 BY MR. JOSEPH:

16 Q. I'm talking about the alley where you were
17 dumping, in fact, the same place where I shot the
18 video time lapse from, there's an alley.

19 HEARING OFFICER KNITTLE: Is there a question
20 here, Mr. Joseph?

21 MR. JOSEPH: Yes, yes.

22 HEARING OFFICER KNITTLE: What is that?

23 BY MR. JOSEPH:

24 Q. Are you aware that directly east of the

1 building across from the very small alley there was
2 a fenced in lot where people were working at the
3 time of the demolition?

4 A. To be honest, I don't know if I was aware
5 of it or not aware of it. I can't answer the
6 question.

7 HEARING OFFICER KNITTLE: Okay. That's it,
8 Mr. Joseph.

9 MR. JOSEPH: All right.

10 HEARING OFFICER KNITTLE: Ms. Cole, did you
11 have anything else?

12 MS. COLE: No, not at this time.

13 HEARING OFFICER KNITTLE: Do you have any
14 questions?

15 MR. BLANKENSHIP: None with the proviso that I
16 can ask on my direct examination.

17 HEARING OFFICER KNITTLE: On your direct exam.

18 Mr. Jeddoloh?

19 MR. JEDDELOH: The same.

20 HEARING OFFICER KNITTLE: Mr. Kolko, that's it
21 then. Thank you very much for your time. Of
22 course, you're going to stay here as you're the
23 representative.

24 MR. KOLKO: Of course I am.

1 HEARING OFFICER KNITTLE: Let's go off the
2 record for a second.

3 (Discussion had
4 off the record.)

5 (Break taken.)

6 HEARING OFFICER KNITTLE: We're back on the
7 record, and Mr. Lorenz Joseph is going to call
8 himself to testify.

9 MR. JOSEPH: Right.

10 HEARING OFFICER KNITTLE: Mr. Joseph, will you
11 raise your hand, please?

12 MR. JOSEPH: Okay.

13 HEARING OFFICER KNITTLE: You have to raise
14 your hand and be sworn in by the court reporter.

15 MR. JOSEPH: All right. Let me explain. I'll
16 testify under penalty of perjury, but it's against
17 my will to take oaths. All else can -- please don't
18 be offended, but scripturally, I believe it's evil
19 to take an oath.

20 HEARING OFFICER KNITTLE: Do you guys have an
21 objection to that?

22 MR. JEDDELOH: Well, the University has a very
23 serious objection. His testimony has to be under
24 oath in order for it to be admissible evidence in

1 this proceeding.

2 If he chooses not to go under oath, then
3 he cannot testify. He doesn't have to say so help
4 me God, but it does require -- I believe the rules
5 do require that his testimony has to be under oath.

6 HEARING OFFICER KNITTLE: Where do the rules
7 require that?

8 MR. JEDDELOH: I don't know.

9 HEARING OFFICER KNITTLE: Can you point that
10 out to me? I'm not doubting you. I want to see it,
11 though, before I make a ruling.

12 MR. JEDDELOH: I believe that that would be the
13 law in state actually.

14 HEARING OFFICER KNITTLE: Once again, if you
15 have something to that effect, please point it out
16 to me.

17 MR. JOSEPH: I've testified in numerous court
18 cases, and if I volunteer to testify under penalty
19 of perjury, that's been enough. I never had a
20 problem with that.

21 MR. JEDDELOH: Well, it says in Section
22 103.203(b) all witnesses shall be sworn.

23 HEARING OFFICER KNITTLE: That's a very good
24 point there, Mr. Jeddeloh.

1 MR. JOSEPH: Shall be sworn. Well --

2 HEARING OFFICER KNITTLE: Mr. Joseph, do you

3 have a problem with -- do you have a problem with

4 a -- as long as you say -- don't say so help me

5 God? What in particular is your problem here?

6 MR. JOSEPH: It's kind of like if I'm offering

7 to testify under penalty of perjury, why -- I mean,

8 I'm not going to swear. In the scripture, it says

9 not to take oath specifically. It says not to

10 swear. So it's pretty simple. I mean, I'm

11 testifying under penalty of perjury.

12 HEARING OFFICER KNITTLE: Okay. Are you --

13 you're going to have a standing objection to any

14 testimony if he does not take an oath?

15 MR. JEDDELOH: I will.

16 HEARING OFFICER KNITTLE: Mr. Joseph, you're

17 going to -- Mr. Joseph, will you state -- will you

18 affirm that you give us an affirmation that you will

19 tell the whole truth and nothing but the truth? We

20 need an oath or an affirmation from you, one of the

21 two.

22 MR. JOSEPH: Well, that's really the same

23 thing.

24 HEARING OFFICER KNITTLE: What are you prepared

1 to say?

2 MR. JOSEPH: There is no absolute. I can tell

3 you I will testify as my memory serves me to the

4 best of my knowledge under penalty of perjury.

5 MR. JEDDELOH: But you won't agree to tell the

6 truth?

7 HEARING OFFICER KNITTLE: Do you understand

8 that you have a --

9 MR. JEDDELOH: Agreed to tell the truth.

10 HEARING OFFICER KNITTLE: Hold on. Hold on.

11 Do you understand that you have a duty to

12 tell the truth to the best of your ability here at

13 this proceeding?

14 MR. JOSEPH: Yes. Oh, absolutely.

15 HEARING OFFICER KNITTLE: Do you have any --

16 you appreciate the fact that you have a moral duty

17 to tell the truth?

18 MR. JOSEPH: Oh, absolutely. That's why I'm

19 here.

20 HEARING OFFICER KNITTLE: And you're going to

21 give us an affirmation as you have that you will --

22 MR. JOSEPH: That word affirmation is like

23 saying -- that's like playing God. I can't -- I

24 cannot --

1 HEARING OFFICER KNITTLE: You are telling us --

2 MR. JOSEPH: I can tell you as my memory serves

3 me that I will do the best I can as I remember and

4 under penalty of perjury. If you can prove that I

5 made something up --

6 HEARING OFFICER KNITTLE: And you do have an

7 understanding that here and in all areas of your

8 life you have a moral duty to tell the truth?

9 MR. JOSEPH: Absolutely.

10 HEARING OFFICER KNITTLE: I'm going to allow

11 his testimony. Your objections can be standing to

12 the Board, if you'd like.

13 MR. JEDDELOH: I'll join in the objection.

14 HEARING OFFICER KNITTLE: Mr. Joseph, in light

15 of that, why don't you proceed.

16 DIRECT EXAMINATION

17 by Mr. Joseph

18 Q. Okay. My name is Lorenz Joseph. I've

19 been doing a documentary on the Maxwell Street

20 neighborhood for over ten years, 15 years, about 15

21 years, and I ended up taking some videos of this

22 demolition. As a matter of fact, I took numerous

23 demolitions in this neighborhood and was very

24 disappointed to see the -- what the University was

1 doing to this neighborhood.

2 Their lack of concern, their deception --

3 MR. JEDDELOH: Well, I'm going to object and

4 ask that that last statement be stricken. We're

5 straying from the videotape and from 1261 by a great

6 deal, plus now we're getting into a lot of

7 pejorative argument rather than testimony about

8 facts.

9 HEARING OFFICER KNITTLE: Mr. Joseph, try to

10 keep your testimony strictly relating to 1261

11 Halsted Street.

12 MR. JOSEPH: Okay. All right. Well, 1261 is a

13 building that is across the alley from the Creative

14 Reuse Center, a half a block away from a huge garden

15 program, which has probably got 100 people that

16 garden from around the city, and it's directly on

17 Halsted Street where there are hundreds of people

18 that pass every day.

19 It's a very busy, what do you want to call

20 it, business district for lower income people, and

21 they tore this building down, and what I brought

22 with me today was some of the original tapes, and I

23 guess it's my understanding that there is some

24 objection. They had said in the pretrial that they

1 had thought that this thing was heavily edited, and

2 that's why I went and dug out the originals.

3 I've been shooting for the last eight

4 years or so on eight millimeter tape. They're

5 two-hour tapes, and I'm not going to just sit there

6 and shoot two hours of a demolition. It would be a

7 little bit too depressing. I shoot different

8 subjects.

9 So basically things are in chronological

10 order, and so that's why that's the only editing

11 there was on this tape. I would edit from subject.

12 I would drive by and maybe shoot a little while, go

13 do something else, catch another subject.

14 I'm a very active documentary filmmaker on

15 all kinds of different subjects, and basically what

16 we did was we just took out the parts that were

17 related to the demolition that we could find in the

18 search through hundreds of hours of tape, and so I

19 brought some of those originals today of this

20 building to show the adjoining shots and to see that

21 it's not heavily edited, and it gives an accurate

22 portrayal of what happened.

23 HEARING OFFICER KNITTLE: Mr. Joseph, is

24 that -- what are you planning on submitting to the

1 Board as evidence in this case? Is there a

2 videotape?

3 MR. JOSEPH: Yeah. We have previously -- we

4 have a video that we -- which we cut out parts, and

5 basically we just took everything that we had on the

6 demolitions that we thought was relevant. I

7 remember one time one thing we cut off, and that was

8 there was a shot of Mr. Kolko. I was talking to

9 him --

10 MR. KOLKO: Not me.

11 MR. JOSEPH: Your brother, Irv Kolko, and the

12 camera was just running, and it went on. So I think

13 we cut that off, but basically it's not heavily

14 edited, and that was their argument that they were

15 trying to argue for the use of these tapes.

16 So that's the first thing we want to do.

17 We want to make sure because I think that the

18 pictures can be very powerful, and we want to, you

19 know, use that as evidence to show -- to show the

20 pollution.

21 HEARING OFFICER KNITTLE: How -- I'm sorry.

22 MR. JOSEPH: Go ahead.

23 HEARING OFFICER KNITTLE: How long is the tape

24 that you're intending to show?

1 MR. JOSEPH: How long is it?

2 MR. TREPANIER: And how much of it do you want

3 to enter? It's about 18 minutes total, and there's

4 probably six minutes that's --

5 MR. JOSEPH: Right. We originally -- this is

6 the copy, the exact copy, of what we originally

7 submitted them, which is cuts of this, and this will

8 prove that it's not heavily edited. If we want to

9 get into the, you know, the original master eight

10 millimeter tapes, and there was also another tape

11 that I did, which was a time lapse, which is on

12 here, which was shot with another bigger camera I

13 had at the time that basically -- I don't know if

14 you're familiar with time lapse, but it's basically

15 it does like an accurate time study.

16 You set the camera up. It takes an

17 interval like a half second every -- and then you

18 set it at a -- it takes a sequence, excuse me, half

19 second sequence, at its set interval, approximately

20 every minute, and, of course, it's going to be -- it

21 may get stretched out a little longer than a minute,

22 but it's going to be the same every time.

23 So it gives an accurate time study of what

24 happened, and that's part of what we're using as a

1 time lapse of this building from the Creative Reuse
2 Warehouse parking -- yard that show the demolition
3 and the pouring of the wheelbarrows, and that's
4 basically it. So I want to know if there's still an
5 objection to admitting this tape or parts of this
6 tape as evidence.

7 MR. BLANKENSHIP: Yes. There's still an
8 objection.

9 HEARING OFFICER KNITTLE: Mr. Blankenship, what
10 is your objection?

11 MR. BLANKENSHIP: Well, A, I don't think that
12 was adequate foundation for a videotape. B, if
13 they're trying to admit the whole video that we've
14 seen, about five minutes of that has absolutely
15 nothing to do with this building. It's a tour of
16 Maxwell Street with a narration that is a very
17 one-sided attempt to, I guess, portray the
18 historical significance of the area.

19 It's pure political commentary, including
20 the phrase we're at war here with UIC. About three
21 minutes of the video shows some unidentified
22 children somewhere discussing a birthday and a
23 playground incident that has absolutely nothing to
24 do with 1261, but I guess it is there to try to

1 conjure some kind of sympathy for the plaintiffs.

2 About five minutes of the video shows the
3 videographer, I guess, trespassing inside the
4 building after working hours saying things like
5 asbestos danger, lung disease hazard, it's the eve
6 of destruction, that's what it is. These comments
7 are pure political commentary designed to advance
8 their agenda, and I don't think it's at all
9 appropriate for the Board to be seeing this
10 one-sided view.

11 With respect to the editing, we've not
12 seen the original tapes. Those were requested, you
13 know, a year and a half ago. All tapes were to be
14 given to us. We don't know what's on those tapes,
15 and it's I think way too late in the game to be
16 giving us the original tapes so we can see what
17 editing has gone on.

18 With respect to the time lapse, I think
19 that to me constitutes editing. It is in no way a
20 fair picture of the demolition going on that day.
21 It is a snap, a minute, or whatever it is. I'm not
22 exactly sure, but it is not an accurate portrayal of
23 the demolition. It's certainly not an accurate
24 portrayal of 30 days of demolition.

1 They picked, you know, one hour or two
2 hours of the demolition on one given day and then
3 are going to attempt to convince the Board that what
4 they observed during these, you know, one or two
5 hours was going on continuously for a month, and
6 there's absolutely no basis for that type of
7 conclusion here, but that's the inference they want
8 you to draw. So those are a summary of my
9 objections here.

10 HEARING OFFICER KNITTLE: Let Mr. Jeddelloh --
11 do you have objections?

12 MR. JEDDELOH: I have the same objection. I'll
13 just join with Mr. Blankenship.

14 HEARING OFFICER KNITTLE: Mr. Joseph, did you
15 have something?

16 MR. JOSEPH: Okay. You said a real lot of
17 things there, and I don't know -- I couldn't even
18 take notes fast enough, but I would say that the
19 children were right down the street, and that
20 reminds me that's one of the things we did edit out,
21 part of the children, because they were saying who
22 their names were, and we felt that there could have
23 been a problem with identifying children without
24 their parent's permission.

1 So that was one of the parts that was cut,
2 and as far as the editing, you're wrong. It was not
3 heavily edited like you're saying. I'm not going to
4 give you the original. That doesn't -- there's no
5 logic to me giving you the original. You've got an
6 exact copy of what's on the original except for what
7 I just -- those two parts are two that I can think
8 of that were cut out of this demolition.

9 MR. JEDDELOH: I think, Mr. Knittle, by his
10 very testimony he has already testified that there
11 was editing going on. He selected the times that he
12 was going to turn on the TV camera, and I echo what
13 Mr. Blankenship says. This is not an accurate
14 portrayal of 30 days or even a longer period of
15 demolition. This complaining witness making a
16 videotape has selected a few instances where he put
17 them on videotape, and that's inherently
18 prejudicial.

19 HEARING OFFICER KNITTLE: Mr. Trepanier, you
20 had wanted to say something.

21 MR. TREPANIER: Yeah. I'm concerned that --
22 you know, this is a very important issue to me, and
23 I'm concerned about the way that it's being
24 addressed here because I think that this video is

1 the single most probative piece of evidence in this
2 case, and so what I would propose is that I also
3 have -- I'm interested to see this video be entered
4 into evidence. So I would propose that I also have
5 an opportunity to ask Mr. Joseph some questions to
6 establish the foundation for the videotape.

7 HEARING OFFICER KNITTLE: I don't have a
8 problem with that. Is there an objection?

9 MR. BLANKENSHIP: No, but I guess I want the
10 opportunity to cross-examine him on the foundation.

11 HEARING OFFICER KNITTLE: Naturally.

12 MR. JOSEPH: I guess I want to say just a
13 couple things. I don't believe anybody has claimed
14 that that's an accurate thing of what happened every
15 day. You know, you don't work on Sundays. Some
16 days maybe there wasn't any work being done during
17 the five-week period.

18 Of all the things you said, I would like
19 to know if there's anything that bothers you that I
20 could respond to rather than go through all those
21 things because I think you're kind of -- I don't
22 have the right legal words, but you're just kind of
23 like lawyerizing with just anything you can say, and
24 it's not -- the video is going to stand by itself.

1 HEARING OFFICER KNITTLE: Okay.

2 MR. JOSEPH: It's not a cartoon. It does show

3 the demolition of the building and the dust leaving

4 the building. It's not --

5 HEARING OFFICER KNITTLE: Maybe some of the

6 issues I have will be addressed by Mr. Trepanier.

7 So, Mr. Trepanier, if you have questions for

8 Mr. Joseph regarding the videotape, now is the time

9 to ask them.

10 MR. TREPANIER: Mr. Hearing Officer, would it

11 be proper to ask questions of the witness while he's

12 viewing the tape to establish its foundation?

13 HEARING OFFICER KNITTLE: No. Foundation ought

14 to be laid before the tape is actually shown.

15 MR. JOSEPH: I would just like to add one other

16 thing. I would say that the time lapse is an

17 accurate portrayal of the demolition on that day

18 times approximately 60. Okay. If you count the

19 number of wheelbarrows, I didn't turn that camera

20 off and on. That camera is automated. It missed a

21 lot. It took one frame at approximately every

22 minute, and that's what happened, and, you know,

23 that's going to stand on its own if you understand

24 the concept of time lapse.

1 I'm not claiming that that's what happened
2 the day before. I'm claiming that's what happened
3 that day, and that film will speak for itself.

4 HEARING OFFICER KNITTLE: Mr. Trepanier --
5 Ms. Cole, you'll have an opportunity to question Mr.
6 Joseph if you want to, but, Mr. Trepanier, you're
7 up.

8 MR. TREPANIER: Thank you.

9 DIRECT EXAMINATION

10 by Mr. Trepanier

11 Q. Lorenz, you testified that you made a
12 video. In fact, I think you testified on more than
13 one day of the demolition at 1261 Halsted; is that
14 correct?

15 A. Yes. That is true.

16 Q. Now, I think you also testified that you
17 used more than one camera to create the video?

18 A. Yes, I did. Yes, I did.

19 Q. And why did you use more than one camera?

20 A. Well, I basically used two cameras. One
21 camera I like is the twin lens camera because it's
22 good at -- it has one wide angle. It has two
23 lenses. It has one wide angle. In fact, it is that
24 camera right over there that's running right now,

1 and it has -- on the bottom is a wide angle, which
2 takes a wide angle, and then it has a -- the lens on
3 top is a zoom so that you can establish a location
4 and then you can cut or dissolve to the other lens.

5 So it's kind of like -- it really portrays
6 better, and it's a fun camera to work with, and I
7 use that for my normal documentary work. Then I
8 also do time lapse photography, and that's done with
9 a camera that is set up to automatically take a
10 sequence at a set interval, and that's what was used
11 for the time lapse of this camera, and it got what
12 it got. It got -- so in other words, if it took one
13 second every 60 seconds, that means you've pretty
14 close to it if it got -- if there were ten or 20
15 wheelbarrows dumped in that day in that time period,
16 it's pretty much 60 times that is what happened. I
17 mean, that's a pretty good -- that would be a pretty
18 accurate speculation, and anyway --

19 Q. I appreciate you wanting to give full
20 answers. I'll ask some more questions.

21 Now, the camera that you used for a time
22 lapse, did -- where did you use that camera
23 specifically when you were producing a video
24 regarding the demolition of is 1261 Halsted? Where

1 were you when you shot that time lapse?

2 A. Okay. Let's see. I was directly east --

3 Q. I would just caution you that if you want

4 to use an exhibit you make it nice.

5 A. Okay. Let's call this an exhibit. Here's

6 Halsted. This will be north.

7 HEARING OFFICER KNITTLE: Let's let the record

8 reflect that Mr. Joseph is marking on a piece of

9 paper and it purports -- he looks to be drawing some

10 sort of a map.

11 Are you going to want to submit this as --

12 THE WITNESS: Yeah. We could.

13 HEARING OFFICER KNITTLE: -- a complainants'

14 exhibit.

15 THE WITNESS: We could. It's going to be real

16 simple. I'm just going to give you -- I guess since

17 this is an important piece of evidence, I want you

18 to know exactly where it was.

19 BY THE WITNESS:

20 A. This is Halsted, and this is the

21 building. This is where the building was that was

22 demolished (indicating).

23 BY MR. TREPANIER:

24 Q. Will you mark that with something? That's

1 1261?

2 A. Yeah. This is 1261. This is another
3 building. This would be, what, 12 -- what's this
4 called, 1259? I hope I'm right. This is, in fact,
5 the alley I was speaking of earlier.

6 Q. Would you mark that with the word alley?

7 HEARING OFFICER KNITTLE: Yeah. Why don't you
8 write alley in there?

9 BY THE WITNESS:

10 A. This is the alley. This is, what, 13th,
11 13th Street. I hope I'm right, 13th, and then
12 Maxwell is over here, and the camera was, in fact,
13 set up inside. Let's see. It would be about --
14 it's a little out of perspective here. Well, it was
15 inside Creative Reuse -- Creative Reuse Center, and
16 here's the parking lot. It was set up inside the
17 back of the trailer that was here. It was just a
18 good place to get it up high enough over the yard.

19 Okay. The time lapse camera was set up
20 for the full day, most of the full day, and from
21 this point approximately it had to be about 100
22 feet. Sorry. I didn't walk that off or something,
23 but it was looking this way (indicating).

24 HEARING OFFICER KNITTLE: Which point on your

1 map are you referring to?

2 THE WITNESS: Right here (indicating).

3 BY THE WITNESS:

4 A. This X here, I'll put time lapse here,

5 time lapse camera. So it was about 100. It was up

6 sitting in the truck so it wouldn't get rained on

7 and up high enough, maybe eight feet up, and it was

8 looking directly toward the building, directly

9 toward the east end of the building. So it was kind

10 of like this kind of an angle.

11 HEARING OFFICER KNITTLE: I believe we have an

12 idea where the camera was.

13 Mr. Trepanier?

14 BY MR. TREPANIER:

15 Q. Would you show me your exhibit?

16 A. Sure.

17 HEARING OFFICER KNITTLE: If you're going to

18 use that as an exhibit, I would mark that as

19 Complainants' Exhibit No. 1. Okay? And then you're

20 going to want to show the respondents as well.

21 BY MR. TREPANIER:

22 Q. Would you mark in the street for Maxwell

23 there? I see you've got the name up there?

24 A. This is a little out of scale, but,

1 anyway, Maxwell Street is up here somewhere

2 (indicating).

3 Q. Then would you mark -- I could mark

4 Exhibit 1 or you could mark Exhibit 1 on there.

5 A. Okay. You want me to call it Exhibit No.

6 1?

7 Q. And then it's going to be shown to the --

8 A. Plaintiffs' Exhibit 1?

9 Q. -- the attorneys?

10 HEARING OFFICER KNITTLE: Complainants.

11 (Complainants' Exhibit No. 1

12 marked for identification, 3-23-99.)

13 BY THE WITNESS:

14 A. So, anyway, that's where it was

15 initially.

16 HEARING OFFICER KNITTLE: Do you have further

17 questions, Mr. Trepanier?

18 MR. TREPANIER: Yes.

19 BY MR. TREPANIER:

20 Q. Referring to Exhibit 1, at approximately

21 what time did you -- what day do you recall did you

22 create the time lapse?

23 A. Well, you know, the date is on the tape.

24 I would have to look. I don't have the date. Was

1 it the 9th maybe? One of the first days of the -- I
2 don't know exactly the first date, but it will be on
3 the camera and the time was, to the best of my
4 knowledge, you know, within a minute.

5 Q. So it's your testimony that -- let me --

6 A. It could be the 9th. It could be 9th.

7 Q. So you believe you created the tape on the
8 9th of September?

9 A. The time lapse tape, I believe so. I'd
10 have to check. I set it up in the morning and just,
11 you know, stopped by a couple of times. I believe I
12 hooked it up on AC so it would run by itself and
13 went about my business.

14 Q. You said the date that you made the video
15 appears on the tape?

16 A. Yes.

17 Q. Is that your practice when doing
18 documentaries to have the date?

19 A. Well, generally. A lot of times you want
20 to have the date and the time. It's helpful to, you
21 know, keep things in order for later use to give an
22 accurate -- an accurate time.

23 Q. And the date that appears on this
24 videotape during that section, which is the time

1 lapse, that's the correct date?

2 A. That would be the date. I mean,, I doubt
3 if the camera was more than -- it was probably
4 within the minute. I try to keep them set exactly,
5 you know. I'll set it with the day.

6 Q. So the time also appears on it?

7 A. The time is on there too.

8 Q. Okay.

9 A. That's just standard. You know, like any
10 camera, you set them. It's got a memory battery,
11 and it will, you know, until the memory battery goes
12 dead, it keeps the time.

13 Q. If you could just answer my questions, I
14 might be able to do this better.

15 When you set up the video camera then on
16 the 9th of September and did a time lapse and
17 created that tape, did you then put that video in
18 its entirety onto the -- onto what's been labeled
19 the evidence tape for 1261?

20 A. The time lapse part, I believe so, yes. I
21 mean, whatever -- it may have -- as I remember when
22 we cut it, maybe I picked the camera up at 6:00
23 o'clock and I left for -- we might have cut off, you
24 know, just a bit just so there wouldn't be a big gap

1 on the tape or something. We were trying to limit
2 our -- but there was no editing. What was time
3 lapsed -- what was captured that day is what's on
4 that tape on the time lapse.

5 Q. So if I'm understanding what you're saying
6 is that when you set up that -- you set up the
7 camera in the morning; is that correct?

8 A. Sometime in the morning. Whatever time is
9 on there, that's when I set it up.

10 Q. And then that camera operated continuously
11 through that day on the 9th of September?

12 MR. JEDDELOH: Well, I'm going to object.
13 That's excessively leading at this point.

14 HEARING OFFICER KNITTLE: Mr. Trepanier, that's
15 sustained. Try to rephrase your question.

16 BY MR. TREPANIER:

17 Q. Once you -- when you turned that camera on
18 in the morning, when do you recall turning that
19 camera off, if at all?

20 A. When I picked it up at the end of the
21 day. It was -- I may have checked on it to make
22 sure that, you know, somebody didn't bump the power
23 or something, and just it was running. They could
24 have pulled the plug. There's a lot of people in

1 the resource center. It was -- you know, it's

2 automated. Nobody else messed with it.

3 Q. When you say nobody else messed with it,

4 that's what you determined?

5 A. Well, that's why I put it in the truck

6 because it -- so it would be up out of the way

7 because there's activity, and it would be above the

8 activities in the yard. There's all kinds of

9 activities of people that work in the yard.

10 Q. And on occasion, people are shown in the

11 yard, aren't they?

12 A. Right.

13 MR. JEDDELOH: Object. Again, excessively

14 leading.

15 MR. JOSEPH: Pardon me?

16 HEARING OFFICER KNITTLE: Sustained.

17 MR. TREPANIER: I'll try to be more careful.

18 HEARING OFFICER KNITTLE: Try to be more

19 careful, Mr. Trepanier.

20 BY MR. TREPANIER:

21 Q. Does the -- have you viewed that time

22 lapse since you've created it?

23 A. A couple times, yes.

24 Q. And does it accurately reflect what was

1 occurring at the time when you created the tape?

2 A. Right. Like I said, it speaks for
3 itself. It takes a sequence at an interval and
4 that's it.

5 Q. I see. You're clarifying what I was
6 saying. So you're making clear that, in fact, what
7 shows on that tape isn't a real-time -- a depiction
8 of the day?

9 A. No. Absolutely not.

10 MR. JEDDELOH: Well, I'm going to object to the
11 question and ask that the answer be stricken.

12 Again, it's excessively leading, and it's repetitive
13 of where we've been already in this hearing.

14 HEARING OFFICER KNITTLE: Yeah. I think we've
15 covered that, Mr. Trepanier. You can rephrase the
16 question if you'd like.

17 BY MR. TREPANIER:

18 Q. Was there any other days during the length
19 of the demolition at 1261 Halsted that you created a
20 time lapse tape of the demolition?

21 A. You know, I think I only did it the one
22 day.

23 Q. And is it your contention that what is
24 shown in the time lapse video of September 9th, '96,

1 that that represents what occurred at this
2 demolition site during the entire length of the
3 demolition?

4 A. Well, I would say it's a good average of
5 that type of work of the hand wrecking part. It's
6 not -- I mean, they came in with a crane another day
7 and, I believe, we knocked it all down. You know,
8 it's accurate as to that day.

9 Like, how do I explain it? If somebody
10 dumped a wheelbarrow between sequences, it would not
11 be on there. Only what's going to be on there is
12 the sequence, the one second sequence every 60
13 seconds. So if you multiply that times 60, that's
14 basically what happened that day.

15 Q. Why did you set up a time lapse on this
16 building, 1261, on September 9th, '96?

17 A. Well, I wanted to time lapse the
18 demolition. I didn't know what they were going to
19 do. I mean, we seen them wrecking, and we didn't
20 know -- I just wanted to have a record of it being
21 demolished. I do a lot of time lapse photography,
22 and it seemed like it would be interesting, and
23 there was a lot of concern over, you know, the
24 buildings being torn down in the neighborhood.

1 HEARING OFFICER KNITTLE: Anything else,
2 Mr. Trepanier?

3 MR. TREPANIER: Yeah. I apologize. I'm
4 struggling with this, but it is something that's new
5 for me, but I'll continue.

6 BY MR. TREPANIER:

7 Q. I just want to bring -- make sure we have
8 a lot of clarity on this concern that apparently
9 from what you've testified today there was some time
10 at -- on the 9th of September that you time
11 lapsed -- that's not in the evidence tape, and I
12 believe you said at the end --

13 A. We may have cut -- if I picked -- I don't
14 remember exactly. I could have picked the camera
15 up. I mean, I don't know when they leave. I mean,
16 these guys, construction workers, don't always leave
17 at the same time. If we ran until 6:00 o'clock,
18 maybe we cut that off. I haven't looked at that
19 tape lately.

20 Q. When is the last time you did view it, do
21 you recall, the evidence tape?

22 A. It's been a while. I haven't looked at it
23 in a while actually.

24 Q. And that means months?

1 A. Actually, we looked at it -- we all looked
2 at it that one day, didn't we? Was that a month ago
3 or something we looked at did.

4 Q. I want to ask something about the shots of
5 the demolition that you shot with what you called
6 your twin lens camera.

7 Now, is that the remainder of what's on
8 the evidence videotape besides the time lapse that
9 was shot on September 9th, was that created with
10 your twin lens camera?

11 A. I believe so. I believe everything else
12 is probably with the twin lens.

13 Q. Is that camera operational? Does it work?

14 A. It works fine and keeps on running.

15 Q. Okay.

16 MR. TREPANIER: If I can have a moment. I'm
17 just reviewing my mind.

18 MS. COLE: May I ask Lorenz a question?

19 HEARING OFFICER KNITTLE: Mr. Trepanier, are
20 you finished?

21 MR. TREPANIER: I am not. I'm just trying
22 to -- I'm just concentrating for a second to see if
23 I've done what I can.

24 HEARING OFFICER KNITTLE: Why don't we hold off

1 then, Ms. Cole. Is your question related to the
2 videotape?

3 MS. COLE: Yes.

4 HEARING OFFICER KNITTLE: Give Mr. Trepanier a
5 second to finish and then ask your question.

6 BY MR. TREPANIER:

7 Q. Now, I believe I asked you something about
8 what's shown in the video, what the video depicts.

9 Do you have a recollection? Particularly,
10 I'm going to ask you about the time lapse segment.

11 A. Okay. What's in it?

12 Q. I'm going to ask you some questions about
13 that, and I believe you said that the video shows
14 the rear of the building at 1261 Halsted?

15 MR. JEDDELOH: Mr. Knittle, we've been over
16 this.

17 HEARING OFFICER KNITTLE: Yeah. Mr. Trepanier,
18 do you have anything else that you're trying to --

19 MR. TREPANIER: Yeah. I'm going to try to get
20 him to testify to what's shown in the video, you
21 know, about the fact that wheelbarrows --

22 HEARING OFFICER KNITTLE: Okay.

23 MR. BLANKENSHIP: I'll object to that as being
24 hearsay if he's just going to repeat what the

1 contents of the video is as some kind of substantive
2 evidence.

3 HEARING OFFICER KNITTLE: Mr. Jeddelloh?

4 MR. JEDDELOH: Same objection.

5 HEARING OFFICER KNITTLE: Yeah. Until we get
6 the videotape in and if, in fact, we do get the
7 videotape in, we'll play it, and we'll take a look
8 at what's on there, but that's not part of the
9 foundational requirements.

10 THE WITNESS: Do you want me to answer that
11 question?

12 HEARING OFFICER KNITTLE: No, I don't want you
13 to answer that question.

14 Do you have another question,
15 Mr. Trepanier?

16 MR. TREPANIER: Is there some requirement that
17 the material be relevant or that's not the basis of
18 the objection?

19 HEARING OFFICER KNITTLE: Well, all evidence
20 has to, you know, be relevant under the Board
21 standards. I don't think -- have you objected to
22 relevance at this point?

23 MR. BLANKENSHIP: Well, two portions of it.
24 The portion of -- the time lapse portion, we don't

1 have a relevance objection to that videotape.

2 HEARING OFFICER KNITTLE: But portions of the
3 video --

4 BY MR. BLANKENSHIP: Of the video, other
5 portions of the video we do.

6 HEARING OFFICER KNITTLE: -- you see are
7 relevant.

8 And those were the portions, I think, with
9 the small children.

10 MR. BLANKENSHIP: And the comments and the tour
11 of the Maxwell Street area.

12 HEARING OFFICER KNITTLE: Right.

13 MR. JOSEPH: Can I ask myself a question?

14 MR. TREPANIER: One second. I'm still getting
15 clarification.

16 Is there an outstanding objection to that
17 section of the videotape which is the time lapse?

18 MR. BLANKENSHIP: There's an objection to the
19 videotape as it's been presented to us.

20 HEARING OFFICER KNITTLE: It's a separate
21 objection, though, as I understand it. It's not an
22 objection to relevance. It's just an objection --

23 MR. BLANKENSHIP: Well, I can't parcel the
24 videotape because I've only seen one video, a

1 15-minute videotape, which has five minutes related
2 to the demolition. My objection is to the entire --
3 the exhibit in its entirety.

4 HEARING OFFICER KNITTLE: I don't want to allow
5 that question about let him testify substantively
6 what's on the videotape at this point. We have a
7 pretty good idea what it entails and what's on
8 there, and we can judge for ourselves -- I can judge
9 for myself whether it's relevant or not.

10 So if you have any other questions
11 regarding the foundation of the tape, you can ask
12 them, but, otherwise, I'd move on.

13 BY MR. TREPANIER:

14 Q. Now, the material on the videotape that's
15 not from the time lapse, did you shoot -- did you
16 also make those portions of the tape?

17 A. Pardon me?

18 Q. Did you create those portions of the tape
19 that aren't the time lapse?

20 A. I believe I shot everything on there.

21 Q. And is there any -- scratch that.

22 And is it possible that we could view the
23 time lapse portion of that videotape separate from
24 the other segments, that which was shot with the

1 time lapse? Can that be viewed without viewing the
2 twin lens camera?

3 A. Sure.

4 HEARING OFFICER KNITTLE: Is that it,
5 Mr. Trepanier?

6 MR. TREPANIER: Yeah.

7 HEARING OFFICER KNITTLE: Ms. Cole, did you
8 have a quick question about the -- actually, you can
9 take as long as you want. I'm sorry.

10 Do you have any questions at all on the
11 videotape?

12 MS. COLE: Yeah.

13 DIRECT EXAMINATION

14 by Ms. Cole

15 Q. I was just going to ask Lorenz if
16 everything that was shot on the tape was authentic
17 as it happened and nothing such as was suggested is
18 done to promote any sympathy or politics?

19 MR. BLANKENSHIP: I'll object to the compound
20 question. The first part was okay. The second
21 part, I have a problem with.

22 HEARING OFFICER KNITTLE: Answer the first part
23 then if you can, Mr. Joseph.

24

1 BY THE WITNESS:

2 A. I can say that what was filmed that's on
3 that is all within the very close vicinity of that
4 building, whether it's children in a garden a half a
5 block away. At the time, there were a lot of people
6 in town. There was a convention. There was
7 hundreds of people passing through that area, and
8 there are people that were there nearby. The person
9 that just walked out of this room found an old
10 painting.

11 MR. JEDDELOH: I'm going to object and ask that
12 that be stricken.

13 HEARING OFFICER KNITTLE: I'll sustain that.

14 Do you have any more questions about the
15 videotape?

16 MS. COLE: Only one more question.

17 HEARING OFFICER KNITTLE: Okay.

18 BY MS. COLE:

19 Q. Was everything on that videotape shot
20 during the demolition?

21 A. As far as I know, everything was shot
22 during the days of it. There was some shots inside
23 the building when they weren't working.

24 MS. COLE: Thank you.

1 HEARING OFFICER KNITTLE: Thank you, Mr. Joseph.

2 Why don't you give me your objections?

3 MR. BLANKENSHIP: Can I examine the witness?

4 HEARING OFFICER KNITTLE: Oh, I'm sorry. We

5 haven't done that yet, have we?

6 MR. BLANKENSHIP: No.

7 HEARING OFFICER KNITTLE: Why don't you go

8 ahead, Mr. Blankenship.

9 MR. BLANKENSHIP: Okay

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

11 by Mr. Blankenship

12 Q. Mr. Joseph, the exhibit you're tendering

13 here is film that you shot as part of a documentary

14 that you're making on the Maxwell Street area,

15 right?

16 A. Correct. It's rough footage for numerous

17 documentaries.

18 Q. And you're unhappy with what the

19 university is doing to the Maxwell Street

20 neighborhood, right?

21 A. Yes, I am.

22 Q. And the documentaries you're making are

23 designed to appeal to the viewer of those

24 documentaries about what the university is doing to

1 the neighborhood?

2 A. I think I'm more trying to appeal to maybe
3 find a solution to work with the University. I'm
4 not just anti-university.

5 Q. But you're trying to convince people with
6 this documentary that what the University is doing
7 is wrong to Maxwell Street?

8 A. I'm trying to show what's happening to the
9 neighborhood and to the buildings.

10 Q. And you think that's wrong, what's
11 happening to the neighborhood?

12 A. I think there is a lot of wrong being
13 done.

14 Q. And you're trying to convince your viewer
15 that there's a lot of wrong being done?

16 A. I'm trying to show the viewer what is
17 happening. I think the viewer can decide for
18 himself.

19 Q. The first five minutes of this video or so
20 show a number of people driving around in a car
21 around the Maxwell Street area, right?

22 A. Driving -- I believe the shot that you're
23 talking about is approaching this building orienting
24 the building. It would probably show the street

1 signs and their related buildings to clarify that
2 specific building.

3 Q. Well, there's driving around in a car,
4 right? There's some driving around in a car?

5 A. There's some shots driving up to it.

6 Q. And then there's a shot of a group of
7 people and someone with something that was pulled
8 from some building, and then you're talking with a
9 German person about that icon?

10 A. There is a person who was in the
11 neighborhood that summer who was working in that
12 garden who had to walk by that street as they went
13 to catch a bus on Halsted who walked by this
14 demolition site who was analyzing specifically a
15 painting that was taken -- I believe it was a -- it
16 was a birth certificate that was taken out of that
17 building.

18 Q. And by including that shot in this video,
19 you're trying to show the viewer that the University
20 is destroying buildings of historical significance,
21 right?

22 A. No. That's not what I'm trying to do.

23 Q. What are you trying to do by including
24 that shot?

1 A. I'm trying to show that there was a --
2 there was a -- it's -- a document was taken out of
3 that building, and it got in this film because at
4 the last minute we through this thing together, you
5 know.

6 Q. Does somebody in that first five minutes
7 make the comment we're at war here with UIC?

8 A. I don't recall specifically that.

9 Q. Have you ever made that comment when
10 you're videotaping around this area?

11 A. You know, sometimes it seems that way.
12 You wake up, and they're tearing down a building
13 next to you that, you know, they said that they had
14 no interest in this side of street, and then you
15 wake up and you hear you're building shaking.

16 HEARING OFFICER KNITTLE: Mr. Joseph, try to
17 answer the question, though. I think he asked you
18 if you've ever made that comment when you were
19 videotaping.

20 BY THE WITNESS:

21 A. I could have made that comment. I'm not
22 specific?

23 BY MR. BLANKENSHIP:

24 Q. Do you believe you're at war with UIC?

1 A. What do you mean by war?

2 Q. Well, you refer to it seems like sometimes

3 you wake up and you're at war with UIC?

4 Do you believe you're at war with UIC?

5 A. Well, what do you mean by war?

6 Q. What do you mean by war?

7 MS. COLE: No. He already said, though, that

8 he didn't feel at war, that he wanted to work with

9 the University. So I think that he already answered

10 that.

11 BY THE WITNESS:

12 A. I believe that the University has been

13 very deceptive in their approach and honesty in how

14 they're -- in their community and what they call

15 their respecting their community boundaries.

16 BY MR. BLANKENSHIP:

17 Q. And you have a dispute with UIC about

18 that, right?

19 A. What do you mean by dispute? We have a

20 dispute with the building they tore down here.

21 Q. Well, have you been involved in protests

22 against the University's activities in the Maxwell

23 Street area?

24 A. I have been involved in documenting

1 protests.

2 Q. How many?

3 MR. TREPANIER: I'd like to raise an objection

4 that the questions that he's asking here don't seem

5 to reflect on the admissibility of the tape, but

6 rather the personal feelings of Mr. Joseph.

7 MR. BLANKENSHIP: The videographer here has a

8 definite biased agenda against the University, and

9 the tape reflects that, and he may deny the comment

10 we're at war here with UIC, but it's on the tape.

11 THE WITNESS: No. I have a biased agenda

12 against, you know, buildings being demolished.

13 HEARING OFFICER KNITTLE: Your objection is

14 overruled. He's allowed to ask those questions.

15 BY THE WITNESS:

16 A. I have an objection to buildings being

17 torn down without properly dealing with substances

18 falling off those buildings.

19 BY MR. BLANKENSHIP:

20 Q. Well, putting aside the substances falling

21 off the buildings, do you have an objection to

22 Maxwell Street being torn down?

23 A. Buildings being half torn down, left open.

24 Q. Listen to my question, please.

1 A. Go ahead.

2 Q. Putting questions of substances or
3 pollution aside, do you have an objection to the
4 University taking down buildings in the Maxwell
5 Street area?

6 A. Well, I have a personal objection maybe.

7 Q. Okay. And you don't know who says we're
8 at war here with UIC on this tape?

9 MR. TREPANIER: I object. There's no
10 evidence. He's assuming that somebody does say
11 that, and I don't think --

12 BY THE WITNESS:

13 A. I'm not sure -- I don't recall that. You
14 know, I mean, maybe somebody could have said that.
15 I mean, that's not really the issue here. The issue
16 is that there's -- it shows the pollution.

17 BY MR. BLANKENSHIP:

18 Q. Are there comments on the tape? Is there
19 narration on this tape?

20 A. This is a video camera that does have
21 sound.

22 Q. And is there narration on the exhibit
23 you're trying to --

24 A. We didn't bother to edit out the sound.

1 We could probably turn the sound on a couple parts

2 if it irritates somebody.

3 HEARING OFFICER KNITTLE: Could you answer the

4 question, though, Mr. Joseph?

5 BY MR. BLANKENSHIP:

6 Q. Is there narration on the tape you're

7 attempting to submit into evidence?

8 A. There is audio. There is sound. If

9 there's demolition, you're going to hear whatever

10 sound is present.

11 Q. About five minutes of that videotape is

12 you going inside the building at 1261, right?

13 A. That could be.

14 Q. You don't know?

15 A. Well, I don't know if it's exactly five

16 minutes. I'm sure there's a shot of me going in the

17 building. I did inspect the inside of the building

18 a couple times.

19 Q. Did you have permission to do that?

20 A. From who?

21 Q. From the owner of the building.

22 A. The building was wide open when I walked

23 in.

24 Q. Did you have permission from the owner of

1 the building to go into the building?

2 A. The building was wide open.

3 Q. Answer my question, please.

4 Did you have permission from the owner of

5 the building to go in and make a videotape of the

6 building?

7 A. I didn't think I needed -- I didn't --

8 HEARING OFFICER KNITTLE: Mr. Joseph, you are

9 going to have to make an effort to answer the

10 questions.

11 BY THE WITNESS:

12 A. Okay. I didn't feel I needed permission

13 from anybody. The building was wide open.

14 BY MR. BLANKENSHIP:

15 Q. Did you have permission?

16 A. From whom?

17 Q. From the owner of the building.

18 A. Who was the owner of the building?

19 Q. Any owner of the building.

20 Did you have permission from -- let me ask

21 it this way. Did you have permission from anyone to

22 go into the building at 1261 and make a video?

23 A. Specifically, I don't remember.

24 HEARING OFFICER KNITTLE: Mr. Joseph, I know

1 you didn't take an oath, but it's a pretty simple

2 question.

3 BY THE WITNESS:

4 A. No. Honestly, I don't remember. There's

5 University people driving around all the time. Some

6 of them are friendly. They say, you know, you can

7 do what you want around here. We try to work with

8 you, and then some of them, you know, they're afraid

9 of you. It's like sometimes they don't even want to

10 talk to you.

11 So specifically, I don't remember talking

12 to anybody. All I know is there was a building,

13 there was a big hole in the side of it, and I walked

14 in it.

15 BY MR. BLANKENSHIP:

16 Q. In the segment of the film when you're

17 walking in the building, do you or does someone say

18 the words asbestos danger?

19 A. I think you're talking about my reading

20 the sign that goes to the basement. There was a

21 sign that said asbestos danger. It's in that film.

22 Q. Those words appear vocally on the tape,

23 right?

24 A. And they appear on the sign. I was

1 reading a sign inside the building.

2 HEARING OFFICER KNITTLE: Mr. Blankenship,

3 we're getting to the point where it's the end of the

4 day.

5 Do you have an idea how long it's going to

6 take?

7 MR. BLANKENSHIP: Five minutes.

8 HEARING OFFICER KNITTLE: Okay. Because we'll

9 do this, and then I think we're going to have to

10 do --

11 MR. JEDDELOH: Two questions.

12 HEARING OFFICER KNITTLE: Okay. So we'll be

13 okay on that. Okay. Just try to keep in mind that

14 it's quarter to 5:00.

15 MR. BLANKENSHIP: Sure.

16 BY MR. BLANKENSHIP:

17 Q. How about the words lung disease hazard,

18 are those words audible on the videotape?

19 A. I don't recall if I read that sign. If

20 that's what was on the sign, that's probably what I

21 read.

22 Q. You don't know if those words are on the

23 tape?

24 A. I don't recall.

1 Q. How about the words it's the eve of
2 destruction, that's what it is, do those words
3 appear on the tape?

4 A. I don't recall.

5 Q. Now, you said this tape was accurate for
6 the day it was shot. It wasn't your intention with
7 this videotape to encapsulate the entire 30-day plus
8 demolition of the 1261 property, was it?

9 A. Well, to be honest with you, I didn't have
10 the security to secure the equipment. Otherwise, I
11 might have done that.

12 Q. With this exhibit, is it your intention to
13 depict the entire demolition of the 1261 property?

14 A. No. I explained that earlier, that the
15 time lapse is an accurate portrayal of that day.

16 Q. Okay. And that day may or may not be
17 indicative of what was happening on all the days of
18 the demolition?

19 A. No, because I told you they came in with a
20 big huge wrecking ball and knocked the whole thing
21 down a couple days later. So how -- you know, I
22 mean, I'm not trying to -- nobody here is trying to
23 say that that's what happened every day. That's
24 what happened that day, and it's similar to any of

1 the other days they were doing the hand wrecking.

2 Q. Well, that's my question.

3 So the nature of the building changed as

4 it was being demolished, didn't it?

5 A. Of course.

6 Q. And the weather changed from day to day,

7 too, didn't it?

8 A. That's true.

9 Q. The wind shifted from day to day or

10 sometimes there was no wind at all?

11 A. Absolutely.

12 Q. Okay. You're not a statistician by trade

13 or education, are you?

14 A. Well, I've been doing time lapse for most

15 of the -- 30 years.

16 Q. Are you a statistician by trade or

17 education?

18 A. No.

19 MR. BLANKENSHIP: That's all the questions I

20 have.

21 HEARING OFFICER KNITTLE: Mr. Jeddeloh, you

22 have a couple?

23 MR. JEDDELOH: Yeah, just a couple.

24

1 CROSS - EXAMINATION

2 by Mr. Jeddelloh

3 Q. Mr. Joseph, you're aware of the fact that
4 the complaint in this case was filed on September
5 9th, 1995, are you not?

6 A. I'd have to look at the date. It's about
7 right.

8 Q. But you wouldn't argue with me, would you,
9 if I said that was the case?

10 A. Well, you know, I mean, I'd have to see
11 it. I'm not going to argue with you.

12 Q. And you signed that --

13 A. Before I would --

14 Q. You signed the complaint, did you not?

15 A. I did sign the complaint.

16 Q. And you knew it was going to be filed
17 before it was filed, did you not?

18 A. Well, sure. I mean, if I signed it before
19 it was filed, I would have had to have known.

20 Q. And you testified before that you made
21 this tape on September 9th, 1995; isn't that true?

22 A. I said I thought that was the date. The
23 day would be reflected on there.

24 Q. You knew you were going --

1 A. The different dates, if I had it on.

2 Q. You knew you were going to or had already
3 signed the complaint when you made this tape, didn't
4 you?

5 A. You know, I honestly don't remember.

6 Q. And you had it in your mind --

7 A. I don't see the relevance.

8 Q. You had it in your mind when you made this
9 tape that this tape might be useful in evidence at a
10 hearing like this, did you not?

11 A. That was a possibility.

12 Q. You were trying to prove a point when you
13 made this tape, weren't you?

14 A. I was trying to time lapse the building.
15 I didn't know what was going to happen. You know, I
16 maybe seen a couple of people on the roof.

17 MR. JEDDELOH: That's all the questions I have.

18 MR. TREPANIER: A couple on redirect, if I
19 might.

20 HEARING OFFICER KNITTLE: Actually, I'm going
21 to call a halt to all questions on the videotape.
22 I'm going to want to take a look at it tonight.

23 Does anyone object if I take an in camera
24 viewing of this?

1 MR. BLANKENSHIP: No.

2 HEARING OFFICER KNITTLE: Any objections?

3 Okay.

4 We're going to save this decision for
5 tomorrow morning. At that time, I hope there will
6 be a video just in case, but I'm not making a
7 decision right now. We're going to meet back here
8 at 9:30.

9 Is there anything we have to do before we
10 go off?

11 MR. BLANKENSHIP: I guess I would request -- I
12 know we want Mr. Hernandez here at 3:30 tomorrow. I
13 don't know if Mr. Trepanier intends to call any
14 other Speedway witnesses. If he does, I'd like to
15 know so I can make arrangements to have them here.

16 HEARING OFFICER KNITTLE: Let's go off the
17 record and set that up.

18 (Discussion had
19 off the record.)
20 (Whereupon, these were
21 all the proceedings
22 held in the above
23 entitled matter.)

24

1 STATE OF ILLINOIS)

2) SS.

3 COUNTY OF C O O K)

4

5

6

7 I, GEANNA M. IAQUINTA, CSR, do hereby

8 state that I am a court reporter doing business in

9 the City of Chicago, County of Cook, and State of

10 Illinois; that I reported by means of machine

11 shorthand the proceedings held in the foregoing

12 cause, and that the foregoing is a true and correct

13 transcript of my shorthand notes so taken as

14 aforesaid.

15

16

17 _____
Geanna M. Iaquina, CSR
Notary Public, Cook County, IL
18 Illinois License No. 084-004096

19

20 SUBSCRIBED AND SWORN TO

before me this ____ day

21 of _____, A.D., 1999.

22 _____
Notary Public

23

24