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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
DAVID AND SUSI SHELTON,)	
)	
PETITIONERS,)	VOLUME I
)	
VS.)	PCB 96-53
)	CITIZENS SUIT
STEVEN AND NANCY CROWN,)	NOISE COMPLAINT
)	
RESPONDENTS.)	

REPORT OF PROCEEDINGS TAKEN IN THE ABOVE-ENTITLED MATTER, TAKEN BEFORE MS. JUNE EDVENSON, HEARING OFFICER FOR THE ILLINOIS POLLUTION CONTROL BOARD, COMMENCING ON THE 1ST DAY OF JULY, A.D., 1996 AT THE OFFICES OF THE ILLINOIS POLLUTION CONTROL BOARD, 100 W. RANDOLPH STREET, CHICAGO, ILLINOIS, AT APPROXIMATELY 10:00 A.M.

1 PRESENT:

2

3 FOR THE PETITIONERS: THE JEFF DIVER GROUP
4 BY: MR. JEFFREY DIVER
5 MR. STEVEN KAISER
6 45 SOUTH PARK BLVD-270
7 GLEN ELLYN, IL 60137

8

9 FOR THE RESPONDENTS: GOULD & RATNER
10 BY:MR. RICHARD ELLEDGE
11 MR. ROBERT CARSON
12 222 N. LASALLE ST.
13 CHICAGO, IL 60601

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1		I N D E X		
2	OPENING STATEMENTS			
3	MR. DIVER		9	
4	ARIE STEVEN CROWN	D 11	C	RED
5	MARJORIE JULIAN	125	143	152
6		EXHIBITS		
7	EXHIBIT NO. 1,50	OFRD	RECD	
	EXHIBIT NO. 51	15	16	
8	EXHIBIT NO. 52A,B	55		
	EXHIBIT NO. 2	58		
9	EXHIBIT NO. 4	59	62	
	EXHIBIT NO. 49	64		
10	EXHIBIT NO. 18	65		
	EXHIBIT NO. 14,15	68	68	
11	EXHIBIT NO. 34	69	70	
	EXHIBIT NO. 53	77		
12	EXHIBIT NO. 5A,B	78		
	EXHIBIT NO. 6	84	85	
13	EXHIBIT NO. 16	88	89	
	EXHIBIT NO. 17	89	90	
14	EXHIBIT NO. 12	91	91	
	EXHIBIT NO. 13	93	93	
15	EXHIBIT NO. 41	105	105	
	EXHIBIT NO. 35	104	104	
16	EXHIBIT NO. 54	110	111	
	EXHIBIT NO. 22	114	114	
17		120	120	
18				
19				
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21				
22				
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24				

1 HEARING OFFICER: GOOD MORNING AND
2 WELCOME. THIS IS A CONTESTED CASE HEARING
3 CONDUCTED BY THE ILLINOIS POLLUTION CONTROL BOARD,
4 CAUSE NO. PCB 96-53, DAVID AND SUSI SHELTON,
5 COMPLAINANTS, VS STEVEN AND NANCY CROWN,
6 RESPONDENTS. THE INSTANT PROCEEDING IS IN THE
7 NATURE OF A CITIZENS ENFORCEMENT RELATED TO NOISE.
8 MY NAME IS JUNE EDVENSON. I AM THE BOARD'S HEARING
9 OFFICER FOR THIS CASE. I WILL NOW REQUEST THAT
10 COUNSEL FOR THE PARTIES ENTER THEIR APPEARANCES
11 FOR THE RECORD.

12 MR. DIVER: FOR THE PETITIONER, MADAM
13 HEARING OFFICER, MYSELF, JEFFREY R. DIVER WITH THE
14 LAW FIRM OF JEFF DIVER GROUP AND STEVEN KAISER
15 WITH ME, ALSO WITH THE JEFF DIVER GROUP.

16 HEARING OFFICER: THANK YOU.

17 MR. ELLEDGE: AND, FOR THE RESPONDENT,
18 RICHARD R. ELLEDGE OF GOULD & RATNER APPEARING FOR
19 THE RESPONDENT, STEVEN AND NANCY CROWN. AND, WITH
20 ME WILL BE MY PARTNER, ROBERT A. CARSON ALSO FROM
21 GOULD & RATNER.

22 HEARING OFFICER: THANK YOU. HAVE ALL
23 COUNSEL FOR THE PARTIES FILED THEIR APPEARANCES
24 WITH THE BOARD IN WRITING?

1 MR. ELLEDGE: I BELIEVE SO, YES.

2 MR. DIVER: YES, I BELIEVE THEY HAVE.

3 HEARING OFFICER: OKAY. LET'S CONFIRM
4 THAT. I THINK THAT EACH INDIVIDUAL HAS TO HAVE A
5 SIGNED APPEARANCE ON FILE.

6 MR. DIVER: IS THAT CORRECT? I BELIEVE
7 THAT MR. KAISER --

8 MR. ELLEDGE: WE FILED A JOINT ONE, I
9 BELIEVE.

10 MR. DIVER: MR. KAISER DID I BELIEVE,
11 FILED AN APPEARANCE INITIALLY FOR HIMSELF AND
12 MYSELF, ALTHOUGH HE WAS THE ONLY INDIVIDUAL WHO
13 SIGNED THE DOCUMENT.

14 HEARING OFFICER: LET THE RECORD SHOW THAT
15 THERE ARE NO OTHER REPRESENTATIVES OF THE PARTIES
16 OR THE PARTIES THEMSELVES IN ATTENDANCE, AND WE
17 HAVE ONE MEMBER OF THE PUBLIC IN ATTENDANCE.

18 ALL RIGHT. I BELIEVE WE HAVE SOME
19 STIPULATIONS OF FACT THAT WILL BE INTRODUCED INTO
20 THE RECORD AT A LATER TIME. WE EXPECT THEIR
21 INTRODUCTION, AND COUNSEL FOR THE PARTIES HAVE
22 INFORMED ME THAT THEY HAVE, AT THIS POINT IN TIME,
23 IDENTIFIED THREE AREAS FOR THE INTRODUCTION OF
24 STIPULATIONS TO FACT. THE FIRST BEING RELATED TO

1 THE COST OF THE HVAC SYSTEM. THE SECOND BEING
2 RELATED TO THE COST OF CORRECTIVE ACTIONS RELATED
3 TO THAT SYSTEM TO DATE. AND THE THIRD BEING A
4 SERIES OF DOCUMENTS, FIVE ROLLS OF PLAN SIZED
5 DOCUMENTS, WHICH INCLUDE DOCUMENTS OF THE LOT
6 LAYOUT, DOCUMENTS OF THE HOUSE ITSELF, DOCUMENTS
7 OF THE HVAC SPECIFICATIONS, AND DOCUMENTS RELATED
8 TO THE ACOUSTICAL PANELS FOR THE ENCLOSURE.

9 DO WE HAVE ANY PRELIMINARY MOTIONS
10 AT THIS TIME?

11 MR. DIVER: I BELIEVE WE HAVE A JOINT
12 MOTION AT THIS TIME, MADAM HEARING OFFICER, TO
13 ADJOURN THIS PROCEEDING AT THIS TIME TO ALLOW
14 COUNSEL THE OPPORTUNITY TO CONVENE THEMSELVES FOR
15 THE PURPOSES OF ADVANCING THESE STIPULATIONS THAT
16 YOU HAVE JUST ANNOUNCED WOULD BE ANTICIPATED BY
17 THE PARTIES, AND THAT IS A JOINT MOTION.

18 MR. ELLEDGE: YES.

19 HEARING OFFICER: AND SO, WE'RE ASKING FOR
20 A RECESS, I BELIEVE, IS THAT CORRECT?

21 MR. ELLEDGE: RECESS, WE'D ASK FOR 1:45.

22 MR. DIVER: WE'D ASK FOR A RECESS UNTIL
23 1:45 P.M. TODAY.

24 HEARING OFFICER: THAT RECESS IS GRANTED.

1 AND THAT 1:45, I BELIEVE, WE WILL BEGIN WITH THE
2 OPENING STATEMENTS AND THE WITNESSES FOR
3 COMPLAINANT'S CASE. THANK YOU.

4 (WHEREUPON, THE HEARING WAS IN
5 RECESS UNTIL 1:45 P.M.)

6 AFTER RECESS.

7 HEARING OFFICER: OKAY. GOOD AFTERNOON. WE
8 ARE REJOINING THE CASE OF DAVID AND SUSI SHELTON
9 VS. STEVEN AND NANCY CROWN. PCB 96-53, A NOISE
10 POLLUTION CITIZENS ENFORCEMENT CASE. MY NAME IS
11 JUNE EDVENSON. I'M THE BOARD'S HEARING OFFICER FOR
12 THIS CASE. AND, COUNSEL FOR THE PARTIES INTRODUCED
13 THEMSELVES THIS MORNING WHEN WE WERE ON THE
14 RECORD, AND WE'LL THEN JUST PROCEED WITH THE CASE
15 AT THIS TIME. I BELIEVE THE FIRST ITEM IN THE
16 ORDER OF HEARING WOULD BE OPENING STATEMENTS BY
17 THE PARTIES. AND, IF THERE ARE NO ADDITIONAL
18 PRELIMINARY MOTIONS OR STATEMENTS RELATED TO
19 STIPULATIONS THAT THE PARTIES WISH TO MAKE AT THIS
20 TIME, THEN YOU COULD GO TO OPENING STATEMENTS.

21 ARE THERE ANY ADDITIONAL PRELIMINARY
22 MOTIONS OR STIPULATIONS TO BE DISCUSSED AT THIS
23 TIME?

24 MR. DIVER: THE COMPLAINANT, YOUR HONOR,

1 IS WILLING, AT THIS POINT, TO STIPULATE TO THAT
2 DOCUMENT CONCERNING ECONOMICS AT THIS POINT.

3 MR. ELLEDGE: WE COULD, I DON'T HAVE IT
4 RETYPED.

5 HEARING OFFICER: ALL RIGHT. THEN, WE CAN
6 INTRODUCE IT LATER.

7 MR. DIVER: I WANTED TO BE ABLE TO
8 INTERROGATE THE WITNESS WITH RESPECT TO THE
9 STIPULATED INFORMATION, HOWEVER.

10 HEARING OFFICER: OKAY. THEN, WE'LL
11 STIPULATE.

12 MR. ELLEDGE: DO YOU HAVE A COPY OF IT?

13 MR. DIVER: NO, YOU DIDN'T PROVIDE ME A
14 COPY.

15 HEARING OFFICER: IS THIS THE DOCUMENT
16 WHICH WE DISCUSSED EARLIER AS STIPULATION NO. 1,
17 COST OF THE HVAC SYSTEM?

18 MR. DIVER: YES, IT IS.

19 MR. ELLEDGE: YES, IT IS.

20 HEARING OFFICER: OKAY.

21 MR. DIVER: OKAY. MR. REECE AND I HAVE
22 BOTH REVIEWED HIS DOCUMENT OF JUNE 30TH, 1996
23 BEING A SINGLE PAGE DOCUMENT. WE HAVE MADE
24 HANDWRITTEN CHANGES TO IT, AND WE'RE BOTH IN SYNC

1 WITH RESPECT TO THOSE HANDWRITTEN CHANGES. AND, I
2 UNDERSTAND, THEREFORE, MR. REECE, THAT WE ARE IN
3 AGREEMENT WITH RESPECT TO THE FACTUAL DATA THAT'S
4 SO STIPULATED IN THIS DOCUMENT.

5 MR. ELLEDGE: THAT'S CORRECT.

6 HEARING OFFICER: OKAY. MR. DIVER AND MR.
7 ELLEDGE HAVING AGREED TO THE STIPULATION DOCUMENT,
8 WHICH WE WILL CALL STIPULATION NO. 1, IS ENTERED
9 INTO EVIDENCE.

10 THEN, AS I UNDERSTAND IT, WE CAN
11 PROCEED AT THIS TIME WITH COMPLAINANT'S OPENING
12 STATEMENT. COMPLAINANT WISHES TO MAKE AN OPENING
13 STATEMENT?

14 MR. DIVER: THAT'S CORRECT, MADAM HEARING
15 OFFICER.

16 OPENING STATEMENT

17 BY MR. DIVER:

18 THE COMPLAINANT'S OPENING STATEMENT IS
19 REALLY TO BE RESTRICTED TO ASSISTING THE HEARING
20 OFFICER IN THE UNDERSTANDING OF THE EVIDENCE THAT
21 IS COMING IN; THAT'S SIMPLY TO STATE THAT THE
22 COMPLAINANTS, THE SHELTONS BEING OWNERS OF
23 RESIDENTIAL PROPERTY IN THE VILLAGE OF WINNETKA,
24 HAVE ASSERTED THAT FOR A PERIOD COMMENCING

1 ESSENTIALLY WITH SEPTEMBER OF 1993 AND CONTINUING
2 THROUGH THE PRESENT, HAVE SUFFERED AND EXPERIENCED
3 NOISE ON THEIR PROPERTY WHICH HAS DISRUPTED THEIR
4 ENJOYMENT OF LIFE AND THE USE OF THEIR PROPERTY,
5 AS WELL THAT THE NOISE THAT HAS BEEN EMITTED FROM
6 THE ADJOINING PROPERTY HAS BEEN IN VIOLATION OF
7 BOTH THE DAYTIME AND NIGHTTIME EMISSION STANDARDS
8 ESTABLISHED BY THE ILLINOIS POLLUTION CONTROL
9 BOARD FOR SOUND EMITTED FROM A CLASS A, B, OR C
10 PROPERTY TO A CLASS A PROPERTY UNDER THE SLUCM
11 CODE. THAT THE NOISE SOURCE THAT IS THE SOURCE OF
12 THE COMPLAINT IS AN AIR CONDITIONING UNIT LOCATED
13 EXTERNAL TO THE CURRENT RESIDENCE OF STEVEN CROWN,
14 THE RESPONDENT. THAT HEREAFTER IN THIS PROCEEDING,
15 WE WILL MAKE EVERY ATTEMPT TO REFER TO THAT UNIT,
16 WHICH CONSISTS OF TWO COMPRESSORS AND THREE FANS,
17 BEING THE PRINCIPAL MOVING PARTS, AS THE CHILLER
18 UNIT. AND, IT IS THAT UNIT WHICH, FOR THE PAST
19 ALMOST FOUR YEARS, HAS BEEN IN VIOLATION OF BOTH
20 THE PROHIBITION AGAINST NOISE POLLUTION IN THE
21 STATE OF ILLINOIS, AS WELL AS THE PROHIBITION
22 AGAINST THE EXCEEDENCE OF DAYTIME AND NIGHTTIME
23 NOISE EMISSION LEVELS EMITTED FROM A, B, OR C
24 PROPERTY TO A PROPERTY IN THE STATE OF ILLINOIS.

1 THAT CONCLUDES OUR OPENING
2 STATEMENT.

3 HEARING OFFICER: THANK YOU, MR. DIVER.
4 WOULD RESPONDENT LIKE TO MAKE AN OPENING
5 STATEMENT?

6 MR. ELLEDGE: WE WILL RESERVE OURS,
7 PLEASE.

8 HEARING OFFICER: THANK YOU, MR. ELLEDGE.
9 WE WILL THEN PROCEED WITH COMPLAINANT'S CASE IN
10 CHIEF. WOULD COMPLAINANT LIKE TO CALL THEIR FIRST
11 WITNESS?

12 MR. DIVER: MADAM HEARING OFFICER, THE
13 COMPLAINANT CALLS AS ITS FIRST WITNESS A. STEVEN
14 CROWN, ONE OF THE TWO RESPONDENTS IN THIS CASE.

15 HEARING OFFICER: THANK YOU. AND, MR.
16 CROWN, WOULD YOU PLEASE BE SWORN?

17 (WITNESS SWORN)

18 A R I E S T E V E N C R O W N ,
19 AFTER HAVING BEEN FIRST DULY SWORN ON OATH,
20 DEPOSES AND TESTIFIES AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. DIVER:

23 Q WOULD YOU STATE YOUR FULL NAME, FOR THE
24 RECORD, PLEASE?

1 A ARIE STEVEN CROWN, A-R-I-E S-T-E-V-E-N
2 C-R-O-W-N.

3 Q MR. CROWN, YOU'RE ONE OF THE OWNERS OF
4 THE PROPERTY KNOWN AS 685 ARDSLEY ROAD IN THE
5 VILLAGE OF WINNETKA, ILLINOIS?

6 A YES, I AM.

7 Q THE OTHER RECORD OWNER OF THAT PROPERTY
8 IS?

9 A NANCY CROWN, MY WIFE.

10 Q MR. CROWN, WHEN DID YOU ACQUIRE THAT
11 PROPERTY?

12 A IN 1991.

13 Q AND, DO YOU RECALL THE MONTH?

14 A I THINK IT WAS JUNE, BUT THAT WOULD BE A
15 GUESS, BETWEEN APRIL AND JUNE SOMETIME.

16 Q AT THE TIME YOU ACQUIRED THE PROPERTY, IT
17 WAS VACANT?

18 A BEG YOU PARDON?

19 Q AT THE TIME YOU ACQUIRED THE PROPERTY, IT
20 WAS VACANT?

21 A NO, SIR.

22 Q THE PRIOR OWNERS WERE STILL LIVING IN IT?

23 A THE PRIOR OWNERS HAD MOVED OUT OF THE
24 PROPERTY, SO I'M NOT SURE WHAT YOU MEANT VACANT.

1 THE DAY WE TOOK TITLE, THEY HAD JUST MOVED OUT.

2 Q WERE THERE PEOPLE LIVING IN IT ON THE DAY
3 THAT YOU TOOK TITLE TO THE PROPERTY?

4 A NO, THEY WERE NOT.

5 Q THAT'S WHAT I'M TALKING ABOUT.

6 A OKAY.

7 Q AT SOME POINT IN TIME, YOU DETERMINED TO
8 ENGAGE IN A RECONSTRUCTION OF THE PROPERTY OR THE
9 PHYSICAL STRUCTURE THAT WAS ON THAT PROPERTY, IS
10 THAT CORRECT?

11 A THAT'S CORRECT.

12 Q WHEN HAD YOU ACTUALLY COME TO THE
13 DECISION TO ENGAGE IN THIS RECONSTRUCTION?

14 A PRIOR TO PURCHASE.

15 Q I'M GOING TO SHOW YOU NOW WHAT HAS BEEN
16 MARKED AS EXHIBIT NO. 1, PURSUANT TO THE
17 STIPULATION CONCERNING AUTHENTICITY, ASK YOU IF
18 YOU RECOGNIZE THAT DOCUMENT.

19 A IT LOOKS LIKE THE COVER SHEET TO THE SET
20 OF PLANS THAT PAUL CONSTANT PUT TOGETHER.

21 Q DOES IT SET FORTH RELATIVELY THE
22 POSITIONING OF THE RESIDENCE THAT WE ARE TALKING
23 ABOUT IN THE VILLAGE OF WINNETKA THAT IS BETWEEN
24 ARDSLEY AND PELHAM ROADS?

1 A ROUGHLY SPEAKING, YES.

2 Q AND, IS THE LINE GOING EAST AND WEST?

3 A POINT TO IT.

4 Q FROM THE RESIDENCE ITSELF, IS THAT THE
5 PELHAM ROAD STREET?

6 A THAT'S OUR PROPERTY, THAT WOULD BE
7 PELHAM.

8 Q THAT WOULD BE PELHAM, OKAY. AT THE TIME
9 YOU ACQUIRED THIS PROPERTY, IT ALREADY HAD A
10 STRUCTURE ON IT, CORRECT?

11 A THERE WAS A HOUSE ON IT, YES, SIR.

12 Q WHEN DID THE PROCESS OF RECONSTRUCTING
13 THAT BUILDING BEGIN?

14 A WHEN YOU SAY PROCESS, WHAT DO YOU --

15 Q THE PROCESS OF ACTUALLY ENTERING UPON THE
16 PROPERTY AND TAKING SOMETHING DOWN, ADDING
17 SOMETHING TO THE PROPERTY AS YOU BOUGHT IT?

18 A IT WOULD HAVE BEEN IN THE FALL, LATE FALL
19 OF THAT SAME YEAR.

20 Q OF 1991?

21 A I BELIEVE SO, YES.

22 Q DID YOU, SHORTLY AFTER THE BEGINNING OF
23 THE RECONSTRUCTION OF THAT PROPERTY, COMMUNICATE
24 WITH YOUR NEIGHBORS AS TO WHAT IT WAS THAT WAS

1 GOING TO HAPPEN, PARTICULARLY DID YOU COMMUNICATE
2 WITH THEM PURSUANT TO A LETTER OF DECEMBER 26TH,
3 1991?

4 A I BELIEVE WE SENT SOMETHING OUT, YES.

5 Q I'M SHOWING YOU NOW WHAT HAS BEEN MARKED
6 AS EXHIBIT 50, PURSUANT TO THE STIPULATION. ASK
7 YOU IF THAT IS A TRUE AND CORRECT COPY OF THE
8 LETTER THAT YOU SENT OUT?

9 A WOULD YOU GIVE ME A MINUTE TO REVIEW IT?

10 Q SURE, PLEASE.

11 A YOUR QUESTION AGAIN?

12 Q MY QUESTION IS, IS THIS A TRUE AND
13 CORRECT COPY OF THE LETTER THAT YOU SENT TO YOUR
14 NEIGHBORS?

15 A IT APPEARS TO BE, YES.

16 Q IS THE SECOND PAGE OF THAT EXHIBIT AND
17 THIRD PAGE OF THAT EXHIBIT A LIST OF THE NEIGHBORS
18 TO WHOM THE LETTER WENT?

19 A I BELIEVE SO, YES.

20 Q AND, THE LAST PAGE, IS THAT A DIAGRAM OF
21 THE NEIGHBORHOOD INDICATING WHERE EACH OF THESE
22 NEIGHBORS ACTUALLY LIVED AT THAT TIME?

23 A IT APPEARS TO BE, YES.

24 MR. DIVER: I WOULD ASK THAT EACH

1 STIPULATED EXHIBITS 1 AND 50, AT THIS TIME, BE
2 ADMITTED INTO EVIDENCE.

3 MR. ELLEDGE: NO OBJECTION.

4 HEARING OFFICER: THERE BEING NO
5 OBJECTION, EXHIBITS NO. 1 AND 50 WILL BE ADMITTED
6 INTO EVIDENCE.

7 BY MR. DIVER:

8 Q MR. CROWN, I'M NOW DIRECTING YOUR
9 ATTENTION TO WHAT HAS BEEN MARKED AS EXHIBIT NO.
10 51, PURSUANT TO THE STIPULATION, AND ASK YOU IF
11 YOU CAN TELL US WHAT THAT EXHIBIT IS?

12 A IT LOOKS LIKE A DRAWING OF THE LOCATION
13 OF OUR EXISTING RESIDENCE, THE PROPOSED NEW
14 ADDITION, AND THE STREETS AND SURROUNDING PROPERTY
15 LINES.

16 Q OKAY. IN THE CENTER OF THE ACTUAL DIAGRAM
17 ON THE RIGHT PORTION OF THE EXHIBIT IS SOMETHING
18 CALLED THE EXISTING RESIDENCE, BASICALLY IN WHITE?

19 A THAT'S WHAT IT SAYS.

20 Q WAS THAT, IN ESSENCE, THE EXTERIOR
21 CONFIGURATION OF THE STRUCTURE THAT YOU BOUGHT IN
22 1991?

23 A NO, SIR, IT WAS LARGER THAN THAT.

24 Q OKAY. IT ACTUALLY EXTENDED OUT TO THE

1 EAST?

2 A CORRECT.

3 Q OKAY. SO, YOU ACTUALLY TOOK DOWN PART OF
4 THAT STRUCTURE AS PART OF THE RECONSTRUCTION, IS
5 THAT CORRECT?

6 A THAT'S CORRECT.

7 Q THE AREA THAT'S SHOWN IN SHADING, WAS
8 THAT ALL AREA THAT WAS TO BE ADDED BY THE
9 RECONSTRUCTION?

10 A I BELIEVE SO, YES.

11 Q DURING THE COURSE OF THIS RECONSTRUCTION,
12 YOU ACTUALLY REMOVED THE EXISTING HEATING AND AIR
13 CONDITIONING SYSTEM IN THIS STRUCTURE, IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q AND, REPLACED IT WITH A NEW SYSTEM?

17 A THAT'S CORRECT.

18 Q AS PART OF THAT NEW SYSTEM, THERE WAS
19 WHAT WE'RE NOW CALLING A CHILLER UNIT, WHICH WAS
20 AN EXTERIOR STRUCTURE, PART OF THE HVAC SYSTEM
21 COMPRISED OF TWO COMPRESSOR UNITS AND THREE FAN
22 UNITS AS ITS PRINCIPAL MOVING PARTS, IS THAT
23 CORRECT?

24 A YES, SIR, I BELIEVE SO.

1 Q I'M HANDING YOU NOW A RED PEN. I'M GOING
2 TO ASK YOU TO MARK ON THIS PARTICULAR EXHIBIT, IT
3 DOESN'T HAVE TO BE TO SCALE, YOU CAN DO IT WITH AN
4 X OR BY A SQUARE, WHERE ON THIS PROPERTY THAT
5 PARTICULAR UNIT ULTIMATELY WAS LOCATED, THAT
6 CHILLER UNIT?

7 A THE CHILLER UNIT?

8 Q YES.

9 A ROUGHLY HERE, MORE LIKE IN HERE.

10 Q LET THE RECORD INDICATE THAT THE WITNESS
11 HAS DRAWN AN AREA CIRCLED IN RED TO THE NORTH PART
12 OF THE PROPERTY, ACTUALLY WHAT APPEARS TO BE JUST
13 NORTH OF THE NORTHERN MOST EXTENSION OF THE
14 BUILDING STRUCTURE ON THE PROPERTY, IS THAT
15 CORRECT? IS THAT CORRECT?

16 A OH, I'M SORRY, YOU WERE TALKING TO ME?

17 Q YES.

18 A YES, THAT'S WHERE IT IS.

19 Q WHO DESIGNED THE HEARING, VENTILLATION
20 AND AIR CONDITIONING SYSTEM THAT REPLACED THE
21 EXISTING SYSTEM IN THAT STRUCTURE?

22 A DESIGNED IT MEANING WHO--

23 Q WHO DECIDED WHAT THE SPECIFICATIONS OF IT
24 WERE GOING TO BE, WHAT THE MECHANICAL EQUIPMENT

1 WAS GOING TO BE, WHERE IT WAS GOING TO BE LOCATED,
2 WHATEVER THE SPECIFICATIONS WERE FOR THE DESIGN AS
3 OPPOSED TO THE ACTUAL INSTALLATION, WHO DID THE
4 DESIGN?

5 A OKAY, TWO ANSWERS TO THAT QUESTION. THE
6 DESIGN SPECIFICATION AS TO THE OPERATIONAL
7 SPECIFICATIONS WERE, I BELIEVE, PUT FORTH BY OUR
8 ARCHITECT IN A SET OF GUIDELINES SAYING IT HAS TO
9 HEAT TO THIS TEMPERATURE, COOL TO THIS
10 TEMPERATURE, AND THE SIZE, DIMENSIONS OF THE BOX,
11 IF YOU WILL, THE HOUSE HAS INTERNALLY. THE ACTUAL
12 SYSTEM DESIGN TO MEET THOSE SPECIFICATIONS WAS
13 DESIGNED BY MID/RES, OUR SUBCONTRACTOR.

14 Q IS IT YOUR UNDERSTANDING THAT MID/RES WAS
15 ENGAGED IN TWO SEPARATE ENGAGEMENTS; ONE, TO
16 DESIGN THE SYSTEM AND THEN SECONDLY, TO ACTUALLY
17 INSTALL THE SYSTEM?

18 A YES, WE ASKED MID/RES TO DO A PRELIMINARY
19 BIT OF WORK FOR US. BOB ABLEY OF MID/RES, WHO IS
20 ONE OF THE SALES REPRESENTATIVES WORKED WITH PAUL
21 CONSTANT TO HELP PUT TOGETHER THE SET OF
22 SPECIFICATIONS AND THE DETERMINATION OF WHAT
23 NEEDED TO BE DONE AS MORE OF AN ADVISORY
24 CONSULTING CAPACITY. THEN MID/RES, IN TURN, WAS

1 ONE OF THE GROUPS THAT BID AND PROVIDED THE FORMAL
2 PRESENTATION OF WHAT WAS PROPOSED TO BE INSTALLED,
3 THE DESIGN, AND SO FORTH BEYOND THAT.

4 Q PAUL CONSTANT WAS THE ARCHITECT, IS THAT
5 CORRECT?

6 A PAUL CONSTANT, RIGHT, WAS THE ARCHITECT.

7 Q WHAT KIND OF COMPANY IS MID/RES?

8 A WHAT IS MID/RES?

9 Q WHAT DOES IT DO? WHAT DOES IT SERVICE?

10 A I THINK THEY'RE A HVAC COMPANY.

11 Q IS THERE ANYBODY IN THAT COMPANY THAT YOU
12 KNEW AT THE TIME YOU RETAINED THEM TO EITHER
13 DESIGN OR INSTALL THIS SYSTEM?

14 A NOT AT THE TIME I RETAINED THEM, NO, SIR.

15 Q WAS THERE SOMEONE IN THE SYSTEM THAT YOU
16 LEARNED ABOUT SUBSEQUENT TO RETENTION?

17 A YES. AFTER WE HAD DECIDED TO RETAIN
18 THEM, I FOUND OUT THAT BRAD MAUTNER WAS THE
19 PRESIDENT OF MID/RES.

20 Q ALL RIGHT. AND, BRAD MAUTNER WAS A
21 FRIEND OF YOURS?

22 A A CHILDHOOD FRIEND, SOMEONE I KNEW FROM
23 YEARS AGO.

24 Q WHEN WAS THE CHILLER UNIT ACTUALLY

1 LOCATED ON THE PROPERTY SHOWN IN EXHIBIT NO. 51?

2 A ACTUALLY LOCATED MEANING BY DESIGN OR BY
3 CONFIGURATION?

4 Q PLACED, PHYSICALLY PLACED --

5 A PHYSICALLY PLACED?

6 Q -- ON THE PROPERTY.

7 A I'M NOT SURE OF THE EXACT DATE, I'M
8 SURE --

9 Q WHAT YEAR?

10 A 1993, MAYBE.

11 Q DO YOU RECALL WHEN THAT CHILLER UNIT
12 FIRST OPERATED; YEAR, MONTH?

13 A I THINK IT WOULD HAVE BEEN THE SAME YEAR
14 IT WAS INSTALLED, I BELIEVE, TOWARDS THE LATTER
15 PART OF THE YEAR.

16 Q THAT WAS IN 1993, THE LATTER PORTION?

17 A I BELIEVE SO. THERE ARE RECORDS TO
18 INDICATE THE DATE IT FIRED UP.

19 Q DO YOU HAVE ANY BETTER RECOLLECTION THAN
20 JUST LATE 1993 AS YOU SIT HERE?

21 A I THINK FALL, SEPTEMBER, OCTOBER,
22 SOMETHING LIKE THAT.

23 Q DURING THIS PERIOD OF TIME, FROM THE TIME
24 THAT CONSTRUCTION OR RECONSTRUCTION HAD BEGUN ON

1 THIS PROPERTY, AND THAT UNIT WAS INSTALLED AND
2 COMMENCED OPERATION IN THE FALL OF 1993, A PERIOD
3 OF SOME TWO YEARS OR SO, THE PROPERTY WAS ACTUALLY
4 BEING OCCUPIED BY TRUCKS, WORK PEOPLE, SERVICE
5 PEOPLE, IS THAT CORRECT?

6 MR. CARSON: OBJECT TO THE FORM OF THE
7 QUESTION AS TO "OCCUPIED BY". I DON'T THINK THAT'S
8 CLEAR.

9 BY MR. DIVER:

10 Q WAS ACTUALLY BEING USED BY CONSTRUCTION
11 PEOPLE, SERVICE AND TRADESPEOPLE, WAS NOT BEING
12 USED BY ANYBODY AS A RESIDENCE, IS THAT CORRECT?

13 A CORRECT, NOBODY WAS LIVING THERE.

14 Q OKAY. ACTUALLY, REFERRING YOU TO PAGE
15 51, YOU WILL SEE THAT IN VARIOUS LOCATIONS, IT
16 SAYS EXISTING CONSTRUCTION LIMIT FENCE, AND IT HAS
17 VARIOUS FENCES THAT WERE AROUND THE PROPERTY.

18 A THAT'S WHAT IT SAYS, YES.

19 Q WAS IT YOUR RECOLLECTION THAT DURING THIS
20 PERIOD OF TIME, THE PROPERTY ACTUALLY WAS FENCED
21 TO KEEP THE AREA OF CONSTRUCTION WITHIN FENCING?

22 A WE TRIED TO CONTAIN THE CONSTRUCTION AT
23 ALL COSTS, YES.

24 Q THE TYPE OF CHILLER UNIT THAT WAS

1 INSTALLED ON THIS PROPERTY, DID YOU HAVE A CHOICE
2 OF THE TYPE OF UNIT THAT WOULD ACTUALLY BE
3 INSTALLED?

4 A DID WE HAVE A CHOICE OF THE TYPE OF UNIT?

5 Q DID YOU?

6 A MODEL TYPE, NO, I HAD NO MODEL TYPES.

7 Q NO, I'M TALKING ABOUT DIFFERENT KINDS OF
8 CHILLER UNITS, DIFFERENT NUMBERS OF CHILLER UNITS.

9 A WE WERE GIVEN SOME ALTERNATIVES, YES.

10 Q WHEN YOU SAY "WE", WHO IS THE WE YOU'RE
11 REFERENCING?

12 A PAUL CONSTANT, HOWARD BLAIR, MYSELF, MY
13 WIFE WHEN SHE WAS IN ATTENDANCE, WHICH WAS RARE.

14 Q WHO ACTUALLY MADE THE DECISION WITH
15 RESPECT TO THE TYPE OF CHILLER UNIT THAT WOULD BE
16 LOCATED ON THIS PROPERTY?

17 A MID/RES.

18 Q DID THEY LOOK TO YOU TO MAKE A FINAL
19 DECISION?

20 A I ULTIMATELY PAID THE BILL, SO YES.

21 Q DID YOU MAKE THE FINAL DECISION?

22 A BASED UPON THE OPTIONS AND THE
23 RECOMMENDATIONS, YES.

24 Q WHAT WERE YOUR OTHER OPTIONS?

1 A WE DISCUSSED A MULTIPLE HVAC SYSTEM,
2 MULTIPLE UNITS SCATTERED THROUGHOUT, AND I BELIEVE
3 WE DISCUSSED THIS SYSTEM, THE ONLY TWO I CAN
4 RECALL AT THIS POINT.

5 Q WHO DID YOU DISCUSS THAT WITH?

6 A WITH MID/RES, WITH THE ARCHITECT, WITH
7 OUR, WITH HOWARD BLAIR OF DEVELOPMENT RESOURCES.

8 Q WHO PROPOSED AS AN ALTERNATIVE TO YOU FOR
9 CONSIDERATION A MULTIPLE CHILLER UNIT CONCEPT?

10 A I'M NOT SURE IF IT WAS A MULTIPLE CHILLER
11 UNIT. I DON'T KNOW WHAT THE UNITS WERE. THEY WERE,
12 I DON'T RECALL WHAT THEY WERE. THERE WERE MULTIPLE
13 UNITS VERSUS A SINGLE UNIT, THAT'S ALL I CAN SAY.

14 Q THESE MULTIPLE UNITS WERE ALL TO BE
15 OUTSIDE?

16 A AS I UNDERSTOOD THEM, YES.

17 Q AND, THEY WERE TO PERFORM, AS YOU
18 UNDERSTOOD IT, THE SAME FUNCTION AS THE CHILLER
19 UNIT THAT WAS ULTIMATELY INSTALLED?

20 A THEY WERE TO, THEY WERE SUPPOSED TO
21 PERFORM THE SAME FUNCTION, YES. I'M NOT SURE IF
22 THEY WERE OR THEY WOULD.

23 Q YOU DETERMINED NOT TO GO WITH THE
24 MULTIPLE UNIT INSTALLATION, IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q YOUR UNDERSTANDING, HOWEVER, WAS THAT
3 THAT PARTICULAR TYPE OF SYSTEM WOULD HAVE BEEN, AS
4 RESPECTS THE OUTER PORTIONS, CHEAPER THAN THE
5 SINGLE UNIT?

6 A WOULD YOU REPEAT YOUR QUESTION, PLEASE?

7 Q YES, I WILL. IT WAS YOUR UNDERSTANDING
8 AT THE TIME YOU MADE THE DECISION NOT TO GO WITH
9 THE MULTIPLE UNIT CONCEPT, BUT TO GO WITH THE
10 SINGLE UNIT CONCEPT, THAT THE MULTIPLE UNIT
11 CONCEPT WAS ACTUALLY LESS EXPENSIVE THAN THE
12 SINGLE UNIT, IS THAT CORRECT?

13 A IT MIGHT WELL HAVE BEEN A LITTLE LESS
14 EXPENSIVE, YES.

15 Q DO YOU RECALL HOW MUCH LESS EXPENSIVE IT
16 WAS?

17 A NOT OFFHAND, NO, SIR.

18 Q WAS THERE ANYTHING ABOUT THIS PROPERTY OR
19 THIS RECONSTRUCTION THAT PROHIBITED THE USE OF THE
20 MULTIPLE SYSTEM CONCEPT?

21 A NEITHER OF THE SYSTEMS THAT WERE
22 SUGGESTED WERE PROHIBITED BY THE PROPERTY.

23 Q WHO DETERMINED THE LOCATION OF THE
24 SYSTEM?

1 A WHO DETERMINED THE LOCATION?

2 Q YES.

3 A MID/RES.

4 Q WERE YOU ASKED TO MAKE A DECISION AS TO
5 WHERE THE ACTUAL UNIT WOULD SIT ONCE A
6 DETERMINATION WAS MADE TO HAVE A SINGLE UNIT?

7 A YES.

8 Q AND, COULD YOU HAVE LOCATED THAT UNIT
9 ANYWHERE ON THE PROPERTY?

10 A NO. THEY GAVE US SOME ALTERNATIVE
11 LOCATIONS, BUT THEY SAID ANY ONE OF THE LOCATIONS
12 WOULD BE EQUAL TO THE NEXT. SO, I DON'T KNOW THAT
13 WE COULD HAVE LOCATED IT ANYWHERE ON THE PROPERTY.
14 WE COULD NOT HAVE LOCATED IT HERE, IT WOULD HAVE
15 BEEN INEFFICIENT. WE COULDN'T HAVE LOCATED IT
16 HERE, IT WOULD HAVE BLOCKED CARS COMING IN. SO, I
17 THINK ANYWHERE IS A LITTLE GENERAL.

18 Q BUT, YOU COULD HAVE LOCATED IT ELSEWHERE
19 THAN WHERE IT WAS ULTIMATELY LOCATED?

20 A THERE WERE OTHER ALTERNATE LOCATIONS,
21 YES.

22 Q AND, IT IS YOUR TESTIMONY THAT MID/RES
23 ADVISED YOU THAT THERE WERE ALTERNATE LOCATIONS
24 THAT COULD BE LOCATED?

1 A YES, MID/RES SAID THERE WERE OTHER
2 LOCATIONS, CORRECT.

3 Q AT THE TIME YOU WERE ASKED TO MAKE A
4 DECISION WITH RESPECT TO THE LOCATION OF THE
5 SINGLE CHILLER UNIT, HAD THE SUBJECT OF SOUND
6 EMISSIONS FROM THE UNIT BEEN RAISED WITH YOU?

7 A NO, SIR.

8 Q WHEN WAS THE FIRST TIME THAT THE SUBJECT
9 OF SOUND EMISSIONS FROM THE CHILLER UNIT WAS
10 RAISED WITH YOU?

11 A THE ONLY DISCUSSION THAT SOUND, OR I
12 SHOULD SAY ANY TYPE OF NOISE EMISSION WAS RAISED
13 WHEN WE CITED IT IN ITS PRESENT LOCATION, BRAD
14 RAISED THE ISSUE THAT THE FANS MIGHT BE HEARD IF
15 THE WINDOWS WERE LEFT OPEN FROM THE UPSTAIRS GUEST
16 ROOM. I SAID THAT'S FINE. BUT OTHER THAN THAT,
17 THAT'S THE ONLY TIME IT WAS RAISED DURING THE --

18 Q WHAT I'M ASKING IS WERE YOU GIVEN THE
19 INFORMATION THAT THIS UNIT WOULD GENERATE SOUND
20 AND POTENTIALLY NOISE FOR YOUR GUEST BEDROOM AS
21 ONE OF THE CONSIDERATIONS TO BE TAKEN IN, IN
22 MAKING THE DECISION WHERE TO LOCATE THAT
23 EQUIPMENT?

24 A I WAS TOLD THE FANS COULD BE HEARD IF THE

1 WINDOWS WERE OPEN FROM THE GUEST ROOM.

2 Q WERE YOU TOLD AT THAT TIME THAT YOUR
3 GUESTS MAY EXPERIENCE NOISE?

4 A I WAS TOLD OUR GUESTS WOULD HEAR THE
5 FANS.

6 Q THE WORD "NOISE" WAS NOT USED, IS THAT
7 CORRECT?

8 A NO, THEY JUST SAID THEY'LL HEAR THE FANS
9 IF THE WINDOWS ARE OPEN.

10 Q WHEN YOU WERE ASKED TO CONSIDER THE
11 MULTIPLE UNIT CONCEPT, WERE YOU ADVISED THAT NOISE
12 MAY BE A CONSIDERATION AS TO WHETHER OR NOT THE
13 MULTIPLE UNITS SHOULD BE SELECTED?

14 A NOISE WASN'T AN ISSUE ON EITHER OF THEM.

15 Q WERE YOU ADVISED THAT THE MULTIPLE SYSTEM
16 WOULD BE A NOISIER SYSTEM?

17 A NO, SIR.

18 Q I'M GOING TO DIRECT YOUR ATTENTION TO A
19 DEPOSITION OF YOU THAT WAS TAKEN ON APRIL 10TH,
20 1996. AND, ON PAGE 32, THE FOLLOWING QUESTION WAS
21 ASKED AND THE FOLLOWING ANSWER WAS GIVEN BY YOU.

22 "Q. STEVE, HOW MANY OPTIONS DID
23 YOU HAVE WITH RESPECT TO THE
24 LOCATION OF THE AIR CONDITIONING
 UNITS EXTERIOR TO THE HOUSE
 PROPER?"

1
2 A. THAT'S A HARD QUESTION TO ANSWER.
3 EACH, I DON'T KNOW HOW MANY
4 OPTIONS, PARTICULARLY. WHAT WE
5 REALLY HAD WERE OPTIONS AS TO
6 THE WAY IN WHICH IT BROKE OUT,
7 YOUR QUESTION OF WERE THERE
8 MULTIPLE UNITS OR ONE UNIT.
9 THOSE WERE PRETTY MUCH WHERE
10 WE CENTERED OR FOCUSED IN ON.
11 THE MULTIPLE UNITS, I
12 UNDERSTAND, WOULD HAVE BEEN A
13 LITTLE LESS EFFICIENT, I
14 UNDERSTAND A LITTLE NOISIER."

9 DO YOU RECOLLECT GIVING THAT TESTIMONY ON APRIL
10 10TH, 1996?

11 MR. CARSON: YOUR HONOR, I WANT TO OBJECT
12 TO THIS LINE OF INQUIRY BECAUSE THIS IS NOT
13 IMPEACHING. THERE IS NOTHING IN THE PORTION OF THE
14 TRANSCRIPT THAT COUNSEL HAS JUST READ WHICH IS IN
15 ANY WAY INCONSISTENT WITH WHAT THE WITNESS HAS
16 TESTIFIED HERE TODAY. AS YOU CAN SEE, HE STATES
17 IN THE PRESENT TENSE ON THAT TRANSCRIPT, I
18 UNDERSTAND A LITTLE NOISIER. THE QUESTION THAT HE
19 WAS ASKING A MOMENT AGO WAS WHAT HE WAS TOLD AT
20 THE TIME OF THE SELECTION OF THESE UNITS, AND THAT
21 WASN'T ADDRESSED IN THAT QUESTION OR IN THAT
22 ANSWER. IT'S NOT IMPEACHING.

23 MR. DIVER: THE QUESTION ASKED HIM ABOUT
24 HIS OPTIONS AT THE TIME HE MADE THE DECISION WITH

1 RESPECT TO THE AIR CONDITIONING UNIT.

2 HEARING OFFICER: THE PURPOSE FOR WHICH
3 THE STATEMENT, THE PURPOSE FOR WHICH THE QUESTION
4 IS BEING ASKED IS NOT AN ISSUE. THE QUESTION WAS
5 DID HE RECALL GIVING THAT TESTIMONY. I THINK THAT
6 THE WITNESS COULD ANSWER THE QUESTION WHETHER HE
7 DID RECALL GIVING THAT TESTIMONY. SO, I WILL
8 PERMIT THE WITNESS TO ANSWER THE QUESTION THAT WAS
9 POSED, WHICH WAS WHETHER HE RECALLED GIVING THAT
10 TESTIMONY.

11 A I RECALL GIVING TESTIMONY, YES.

12 HEARING OFFICER: THANK YOU.

13 BY MR. DIVER:

14 Q WHEN WERE YOU FIRST TOLD THAT THE
15 MULTIPLE UNITS WOULD BE A LITTLE NOISIER, AFTER
16 YOU MADE THE DECISION AS TO SELECTION OF THE
17 CENTRAL UNIT?

18 A COULD YOU REPEAT, COULD I ASK THEM TO
19 REPEAT THE QUESTION? ARE YOU SAYING WHEN WAS I
20 TOLD IT WOULD BE OR COULD BE? THERE'S A BIG
21 DIFFERENCE, SIR. BECAUSE I DON'T KNOW THAT I WAS
22 EVER TOLD SOMETHING WOULD BE. MIGHTS AND MAYS ARE
23 A LOT OF WHAT THE CONVERSATION WAS.

24 Q I UNDERSTAND. I'LL PUT AWAY MY FENCING

1 SWORD.

2 A I DON'T BELIEVE I WAS EVER TOLD THINGS
3 WOULD BE, SPECIFICALLY. AND, IF YOU'RE ASKING ME
4 FOR THAT, I DON'T RECALL ANY TIME.

5 Q YOUR UNDERSTANDING WAS THAT THE MULTIPLE
6 UNIT COULD BE NOISIER?

7 A THEY MAY BE, YES.

8 Q WHEN WERE YOU TOLD THAT THOSE UNITS COULD
9 BE NOISIER THAN A SINGLE CENTRAL UNIT?

10 A I WAS TOLD THAT THEY MIGHT BE LESS
11 EFFICIENT AND THEY MAY BE NOISIER, MAYBE NOT WHEN
12 WE HAD THE EARLY DISCUSSIONS BACK IN THE EARLY
13 '90'S.

14 Q SO, YOU WERE TOLD PRIOR TO THE TIME THAT
15 YOU ACTUALLY SELECTED A SINGLE UNIT, YOU HAD BEEN
16 TOLD THAT THE MULTIPLE UNIT MAY BE A LITTLE
17 NOISIER?

18 A I WAS ADVISED THAT THEY MAY BE.

19 HEARING OFFICER: MR. DIVER, I'M GOING TO
20 ASK YOU TO MAINTAIN A QUESTIONING FORMAT TO YOUR
21 QUESTIONS.

22 MR. DIVER: OKAY.

23 BY MR. DIVER:

24 Q AT THE TIME THAT YOU WERE ADVISED OF THE

1 POSSIBILITY OF FAN NOISE OR FAN SOUND BEING
2 TRANSMITTED TO YOUR GUEST BEDROOM, DID YOU ASK
3 WHETHER FAN NOISE COULD BE TRANSMITTED ANYWHERE
4 ELSE ON YOUR PROPERTY OR OTHER PEOPLE'S PROPERTY?

5 A NO, SIR, I DIDN'T.

6 Q WHEN YOU WERE TOLD ABOUT THE FAN SOUND
7 BEING TRANSMITTED, WERE YOU BEING ASKED TO MAKE A
8 DECISION ON THE BASIS OF THAT FAN SOUND AS TO
9 WHETHER OR NOT YOU WANTED TO GO FORWARD WITH
10 HAVING THE UNIT LOCATED WHERE YOU'VE INDICATED ON
11 EXHIBIT 51?

12 A IT WAS ONE OF THE FACTORS THAT THEY FELT
13 WE SHOULD BE AWARE OF.

14 Q UP TO THE TIME THAT YOU SELECTED THE
15 LOCATION FOR THE CHILLER UNIT, WHERE YOU'VE
16 INDICATED WITH THE RED MARK, DID ANY OF YOUR
17 ADVISORS, CONTRACTORS, ARCHITECTS, MECHANICAL
18 ENGINEERS, ADVISE YOU THAT THIS UNIT WAS CAPABLE
19 OF EMITTING SOUND THAT COULD BE DETECTED AS AN
20 ANNOYANCE AT SURROUNDING PROPERTIES?

21 A NO, SIR.

22 Q DID ANY OF THOSE KINDS OF PEOPLE TELL
23 YOU, PRIOR TO THE TIME YOU MADE A SELECTION, THAT
24 THIS UNIT COULD GENERATE SUFFICIENT SOUND AS TO BE

1 AN ACTUAL ANNOYANCE TO PEOPLE ON YOUR PROPERTY?

2 A NO, SIR.

3 Q DID YOU, AT ANY TIME PRIOR TO THE TIME
4 YOU SELECTED THE LOCATION FOR THIS PARTICULAR
5 CHILLER UNIT, ASK ANY OF YOUR ADVISORS, AGENTS,
6 ARCHITECTS, MECHANICAL ENGINEERS, ET CETERA, THAT
7 IS THE PEOPLE WHO WERE INVOLVED IN DESIGNING AND
8 CONSTRUCTING THIS PROPERTY, WHETHER SOUND WOULD BE
9 EMITTED FROM THIS PARTICULAR FACILITY THAT COULD
10 BE AN ANNOYANCE?

11 A NO, SIR.

12 Q WHEN YOU HAD BEEN TOLD, PRIOR TO THE TIME
13 YOU PURCHASED THIS PROPERTY, THAT MULTIPLE UNITS
14 COULD BE OR MIGHT BE A LITTLE NOISIER, TO WHOM DID
15 YOU UNDERSTAND THE NOISE WOULD BE EXPERIENCED?

16 A I DON'T UNDERSTAND THE QUESTION OR TIME
17 FRAME, SIR.

18 MR. CARSON: OBJECT.

19 BY MR. DIVER:

20 Q IT WAS MY UNDERSTANDING THAT YOU
21 TESTIFIED EARLIER THAT YOU WERE ADVISED PRIOR TO
22 THE TIME THAT YOU ACTUALLY PURCHASED THIS
23 PROPERTY, THAT MULTIPLE UNITS WOULD BE OR MIGHT BE
24 A LITTLE NOISIER, AM I INCORRECT?

1 A I BELIEVE SO. IF I SAID THAT, THEN I HAVE
2 MISSTATED THE TIME FRAME.

3 Q WHEN WAS IT, AGAIN, THAT YOU WERE SO TOLD
4 THAT MULTIPLE UNITS MIGHT BE A LITTLE NOISIER?

5 A THIS WAS AFTER WE HAD BEGUN THE
6 CONSTRUCTION PROCESS AND WE WERE IN THE PROCESS OF
7 TALKING WITH MID/RES AS TO THE CONFIGURATION AND
8 THE LOCATION OF THE CHILLER UNIT, WHICH THEY
9 ULTIMATELY SELECTED.

10 Q FINE. AT THE TIME THAT YOU WERE SO
11 ADVISED THAT IT MIGHT BE A LITTLE NOISIER, WHO DID
12 YOU UNDERSTAND IT WOULD BE NOISIER TO?

13 A EXCUSE ME, I NEVER SAID THAT. WHAT ARE
14 YOU TALKING ABOUT?

15 Q WHEN YOU WERE -- STRIKE THAT --

16 A LET ME MAKE IT REAL CLEAR.

17 MR. DIVER: NO, I'LL ASK YOU THE
18 QUESTIONS, MR. CROWN.

19 BY MR. DIVER:

20 Q YOU WERE ADVISED BY SOMEONE THAT A
21 MULTIPLE UNIT SYSTEM MIGHT BE A LITTLE NOISIER, IS
22 THAT CORRECT?

23 A THAT'S CORRECT.

24 Q WHEN YOU HEARD SOMEONE TELL YOU THAT, WHO

1 DID YOU UNDERSTAND WOULD BE THE PERSON OR PERSONS
2 EXPERIENCING THE SOUND THAT WAS CHARACTERIZED AS A
3 LITTLE NOISIER?

4 A I ASSUMED IT WOULD BE US, SINCE IT'S ON
5 OUR PROPERTY.

6 Q DID YOU, AT ANY TIME BEFORE THE CHILLER
7 UNIT WENT INTO OPERATION IN THE FALL OF 1993,
8 YOURSELF, CONSIDER THE POTENTIALITY THAT THIS UNIT
9 WOULD CAUSE A SOUND THAT WOULD BE EXPERIENCED AS
10 NOISE BY NEIGHBORS?

11 A NO, SIR, I DID NOT.

12 Q HOW SOON AFTER THE CHILLER UNIT WENT INTO
13 OPERATION IN THE FALL OF 1993 WERE YOU FIRST
14 ADVISED BY SOMEONE THAT, INDEED, THE SOUND BEING
15 EMITTED FROM THAT SYSTEM WAS BEING EXPERIENCED AS
16 "NOISE"?

17 A I BELIEVE IT WAS A FEW DAYS AFTER IT WENT
18 INTO OPERATION.

19 Q AND, HOW WERE YOU ADVISED?

20 A I RECEIVED A PHONE CALL AT NIGHT BY SUSI
21 SHELTON WHO ADVISED ME THAT SHE HAD JUST CALLED
22 THE POLICE, AND THAT SHE COULDN'T FIND OUR NUMBER,
23 AND THEN SHE WAS ABLE TO FIND OUR NUMBER, AND SHE
24 CONTACTED ME TO SAY THAT THE UNIT WAS KEEPING HER

1 UP.

2 Q AND, WHAT DID YOU DO IN RESPONSE TO THAT?

3 A I APOLOGIZED FOR THE INCONVENIENCE. I
4 TOLD HER THAT I WOULD, I ASKED HER HOW SERIOUS IT
5 WAS. SHE SAID IT'S KEEPING ME UP. SO, I WENT OVER
6 TO THE HOUSE AND I TURNED OFF THE UNIT.

7 Q THE SAME NIGHT YOU WENT OVER AND TURNED
8 IT OFF?

9 A YES, THE SAME NIGHT, SHORTLY THEREAFTER.

10 Q DID YOU, SHORTLY AFTER TURNING OFF THE
11 UNIT THAT NIGHT, HAVE OCCASION TO MEET WITH A
12 REPRESENTATIVE OF MID/RES AT THE CHILLER UNIT
13 ITSELF TO HEAR HOW THAT UNIT SOUNDED?

14 A I MET WITH MID/RES REPRESENTATIVES AND
15 TALKED TO THEM ON A REGULAR BASIS. SO, THE ANSWER
16 WOULD BE YES TO YOUR QUESTION. I'M NOT SURE WHAT
17 THE TIME FRAME WOULD BE.

18 Q I'M ASKING WHETHER, WITHIN 24 HOURS OF
19 THE TIME THAT MS. SHELTON COMMUNICATED HER
20 COMPLAINT TO YOU, WHETHER YOU MET ON SITE AT THE
21 CHILLER UNIT WITH A REPRESENTATIVE OF MID/RES FOR
22 THE EXPRESS PURPOSE OF LISTENING TO THE SOUND THAT
23 THE CHILLER UNIT MADE TO DETERMINE WHETHER YOU
24 CONSIDERED IT TO BE NOISY?

1 A I DON'T RECALL IF I MET WITH THE MID/RES
2 REPRESENTATIVE WITHIN 24 HOURS.

3 Q DO YOU RECALL MEETING WITH A MID/RES
4 REPRESENTATIVE BY THE NAME OF JOHN GAZELLE AT ANY
5 TIME WITHIN A WEEK FOLLOWING THE COMMENCEMENT OF
6 OPERATION OF THE CHILLER UNIT?

7 A THERE WAS A JOHN SOMETHING, HE HAD JOHN
8 WRITTEN ON HIS COAT THAT WORKED ON OUR JOB SITE. I
9 DON'T KNOW WHAT HIS LAST NAME WAS.

10 Q DID YOU EVER MEET WITH HIM WITHIN A WEEK
11 OF THE TIME OF THE COMMENCEMENT OF OPERATION OF
12 THIS UNIT AT THE UNIT WITH THE EXPRESS PURPOSE OF
13 HEARING HOW THAT UNIT SOUNDED?

14 A I DON'T RECALL DOING THAT, NO.

15 Q DID YOU, AT ANY TIME SHORTLY FOLLOWING
16 THE COMMUNICATION FROM MS. SHELTON OF THE NOISE
17 THAT SHE WAS EXPERIENCING, GIVE INSTRUCTIONS TO
18 MID/RES TO FIND OUT WHAT THE PROBLEM WAS?

19 A I CONTACTED MID/RES AND ADVISED THEM OF
20 THE NEIGHBORS COMPLAINT.

21 Q WHO DID YOU CONTACT?

22 A EITHER I CONTACTED OR PETE KELLER, OUR
23 CONTRACTOR CONTACTED GARY ELFRING, JACK DOSHI OR
24 BRAD MAUTNER, ONE OF THE ABOVE, I'M NOT SURE.

1 Q IS IT YOUR TESTIMONY YOU DON'T KNOW
2 WHETHER IT WAS YOU OR SOMEONE ELSE THAT CONTACTED
3 SOMEONE AT MID/RES?

4 A IT'S MY TESTIMONY THAT ONE OF US
5 CONTACTED MID/RES, YES, AND HE ACTED AS MY AGENT
6 TALKING TO MID/RES ON MY INSTRUCTIONS.

7 Q DO YOU RECALL ASKING MR. KELLER, PETER
8 KELLER, AT OR ABOUT THE TIME OF THE COMPLAINT FROM
9 SUSI SHELTON, TO SEE TO IT THAT A DETERMINATION
10 WAS MADE OBJECTIVELY WHETHER OR NOT THE SOUND OF
11 THIS CHILLER UNIT WAS PRODUCING NOISE?

12 A I DON'T UNDERSTAND YOUR QUESTION.

13 Q I'LL REPEAT IT ANOTHER WAY. DID YOU GIVE
14 INSTRUCTIONS TO PETER KELLER WITHIN A MATTER OF
15 DAYS FOLLOWING SUSI SHELTON'S COMPLAINT, INITIAL
16 COMPLAINT TO HAVE A TEST CONDUCTED TO DETERMINE
17 WHETHER OR NOT THE SYSTEM WAS EMITTING NOISE?

18 A I DON'T RECALL ASKING FOR THAT, NO.

19 Q WERE YOU EVER ADVISED AT ANY TIME WITHIN
20 A MONTH OF THE TIME THE UNIT BEGAN OPERATION THAT
21 THE UNIT HAD BEEN TESTED FOR NOISE EMISSIONS BY
22 MR. KELLER AND BY MID/RES?

23 A I'M NOT SURE OF THE TIME FRAMES AND I
24 DON'T KNOW THAT IT WAS DONE A MONTH AFTERWARDS,

1 SIR.

2 Q WERE YOU ADVISED AT ANY TIME IN CALENDAR
3 YEAR 1993 THAT MR. KELLER AND REPRESENTATIVES OF
4 MID/RES HAD CONDUCTED NOISE TESTS AT THE CHILLER
5 UNIT?

6 A THERE WERE NOISE TESTS CONDUCTED OVER THE
7 COURSE OF THE TIME FROM WHEN IT WAS INSTALLED
8 UNTIL PRESENT. THE DATES ARE EASILY TRACKED DOWN.
9 ALL I CAN TELL YOU IS THAT MID/RES WAS ADVISED THE
10 NEIGHBOR HAD EXPRESSED A CONCERN. I REPORTED IT
11 TO MID/RES, EITHER I REPORTED IT OR PETE DID,
12 DEPENDING UPON HOW IT WORKED IN THE MORNING AND
13 THE INSTALLATION WAS INCOMPLETE AT THE TIME THE
14 SYSTEM HAD JUST BEEN TURNED ON. I DON'T EVEN THINK
15 IT HAD BEEN FULLY TWEAKED OR ENCLOSURES THAT WERE
16 SET TO GO UP, WERE PUT IN THERE, WERE MEASUREMENTS
17 MADE AT POINTS IN TIME.

18 Q WE'RE TALKING AT 1993 NOW?

19 A WELL, THE RECORDS WOULD SHOW BETTER THAN
20 MINE.

21 Q ARE YOU SAYING THAT YOU DO NOT RECALL
22 THAT THERE WAS A SET OF TESTS CONDUCTED AT WHICH
23 MR. SHINER WAS NOT PRESENT, AT WHICH THE SHELTONS
24 WERE NOT PRESENT, THAT WAS CONDUCTED SHORTLY AFTER

1 THE COMMUNICATION OF THE COMPLAINT FROM SUSI
2 SHELTON IN WHICH THE PURPOSE OF THE TEST WAS TO
3 DETERMINE WHETHER OR NOT NOISE WAS BEING EMITTED
4 FROM THE CHILLER UNIT AND TO DETERMINE THE
5 POTENTIAL EFFECTS OF VARIOUS SIZES OF WALLS AROUND
6 THAT UNIT TO DETERMINE THE SIZES OF THE WALLS AND
7 THEIR RELATIONSHIP TO ATTENUATION OF NOISE. DOES
8 THAT STRIKE A BELL WITH YOU AT ALL?

9 A THE QUESTION IS RATHER LONG. I'M TRYING
10 TO FOLLOW ALL OF IT.

11 (OFF THE RECORD)

12 HEARING OFFICER: BACK ON THE RECORD.

13 BY MR. DIVER:

14 Q MR. CROWN, ARE YOU AWARE AT ANY TIME
15 AFTER THE TIME THAT THE CHILLER UNIT BEGAN
16 OPERATION IN THE FALL OF 1993, AT ANY TIME FROM
17 THEN TO NOW, OF ANY TEST OF SOUND EMISSIONS FROM
18 THAT EQUIPMENT THAT DID NOT INVOLVE THE PRESENCE
19 OF AL SHINER, THE SHELTONS OR GREG ZACK?

20 A COULD I ASK MY COUNSEL A QUESTION, IF
21 IT'S ALL RIGHT?

22 I DON'T KNOW.

23 MR. ELLEDGE: THERE'S A QUESTION HERE
24 THAT HE'S ASKING ABOUT AND THAT HAS TO DO WITH

1 BOTH ATTORNEY/CLIENT PRIVILEGE AND PREPARATION
2 FOR TRIAL. I HAVE USED A CONSULTANT WHICH MY
3 CLIENT IS AWARE, BUT HE'S NOT AWARE OF ANY DETAILS
4 ON IT AND I DON'T THINK IT'S APPROPRIATE AND
5 PROPER TO ASK QUESTIONS WITH THAT REGARD. I DO NOT
6 BELIEVE MR. DIVER IS ASKING FOR THAT, SO --

7 MR. DIVER: I WILL AMEND MY QUESTION TO
8 ALSO EXCLUDE THAT UNKNOWN CONSULTANT.

9 MR. ELLEDGE: OKAY.

10 A I'M TOLD THAT THERE WERE SOME
11 MEASUREMENTS TAKEN BY MID/RES AT ONE POINT WHICH I
12 BECAME AWARE OF ONLY DURING THE COURSE OF THESE
13 PROCEEDINGS. THOSE, I WAS MADE AWARE OF BY EITHER
14 COUNSEL, YOURSELF, OR SOME SUCH FASHION.

15 HEARING OFFICER: MR. CROWN, THAT'S
16 SATISFYING THE ANSWER THAT MR. SHIPER, THE
17 SHELTONS AND --

18 MR. DIVER: ZACK WERE NOT PRESENT.

19 HEARING OFFICER: MR. ZACK WERE NOT
20 PRESENT.

21 A THAT'S CORRECT. I BELIEVE THAT WAS THE
22 ONLY TIME I CAN RECALL. I WILL TRY AND HELP US
23 THROUGH THIS, IF I MAY. WE DID PUT UP BIG, I
24 GUESS THEY WOULD BE INSULATION PLANKS OR WHATEVER

1 TO GO AROUND THE CHILLER TO SEE WHAT HAPPENS WHEN
2 YOU PUT A FENCE UP. AND, THAT WAS JUST DONE FOR
3 OUR OWN EDIFICATION? AND, WE STOOD BEHIND A CAR,
4 WE NOTICED THE NOISE REDUCED. I'M NOT SURE IF
5 THAT'S WHAT YOU'RE TALKING ABOUT, BUT IF YOU'RE
6 TALKING ABOUT THAT LEVEL OF SOPHISTICATION, YES,
7 WE WERE THAT SOPHISTICATED, JUST TO PUT UP PLANKS
8 AND BOARDS TO SEE WHAT EFFECT IT MIGHT HAVE. AND,
9 THEY DEADENED THE NOISE SIGNIFICANTLY. BUT, TO
10 THE EXTENT OF ANY FORMAL TESTING, I DON'T RECALL
11 HAVING AUTHORIZED ANY FORMAL TESTING. IF MID/RES
12 MADE ANY FORMAL TESTS, I WORK DOWNTOWN, I REALLY
13 WASN'T THERE FROM THE EARLY MORNING UNTIL THE WORK
14 DAY SUSPENDED. AND, AS I'VE TOLD YOU PREVIOUSLY,
15 THERE WERE SOME TESTS THAT I'VE BECOME AWARE OF
16 AS OF LATE THAT WERE MADE WHICH YOU CAN INCLUDE ME
17 IN THAT LIST OF PEOPLE WHO WEREN'T PRESENT.

18 Q THE TEST THAT YOU'VE JUST DESCRIBED, THAT
19 INVOLVED HOLDING UP VARIOUS PIECES OF WOOD TO SEE
20 WHAT THE IMPACT WOULD BE WAS AN ACTUAL PIECE OF
21 INSTRUMENTATION, NOISE MEASURING, INSTRUMENTATION
22 INVOLVED IN THAT TEST?

23 A I DON'T RECALL IF THERE WAS.

24 Q WHO WERE THE INDIVIDUALS THAT WERE

1 PRESENT IN THAT PARTICULAR TEST?

2 A I WAS THERE, PETE KELLER WAS THERE,
3 PETE'S ASSISTANTS WERE THERE, THEY WERE DOING THE
4 HOLDING. I'M NOT SURE HOW ELSE WAS THERE. I DON'T
5 RECALL.

6 Q WERE MEASUREMENTS OF SOUND EMISSIONS MADE
7 ON PAPER DURING THAT EXAMINATION?

8 A I DON'T RECALL, SIR.

9 Q WHAT WAS YOUR ROLE DURING THAT
10 EXAMINATION?

11 A TO LISTEN.

12 Q DO YOU RECALL DURING THAT EXAMINATION
13 THAT THERE WAS AN ACTUAL MEASUREMENT OF SOUND IN
14 YOUR GUEST BEDROOM OR IN THE WINDOW OF YOUR GUEST
15 BEDROOM?

16 A IF I STATED THAT I DON'T RECALL ANY SOUND
17 MEASUREMENTS BEING MADE, DOES THAT INCLUDE ALL THE
18 ROOMS OF THE HOUSE?

19 Q NO, I'M JUST ASKING ABOUT THE GUEST
20 BEDROOM.

21 A NO, I DON'T RECALL.

22 Q YOU DON'T RECALL?

23 A I DON'T RECALL ANY MEASUREMENTS BEING
24 MADE.

1 Q DO YOU RECALL MEASUREMENTS BEING MADE OF
2 SOUND EMISSIONS AT YOUR LOT LINE BETWEEN YOUR
3 RESIDENCE AND THE SHELTON RESIDENCE?

4 A I DON'T RECALL ANY MEASUREMENTS BEING
5 MADE AT THAT TIME. IN ANY LOCATION ON MY PROPERTY
6 OR WITHIN THE HOUSE?

7 Q HAVE YOU EVER SEEN THE HANDWRITTEN
8 RESULTS OF SOUND LEVEL MEASUREMENTS AT A MEASURING
9 EVENT THAT DIDN'T INVOLVE AL SHINER, GREG ZACK,
10 THE SHELTONS, OR THE CONSULTANT THAT MR. ELLEDGE
11 JUST REFERENCED?

12 A I DON'T RECALL, SIR.

13 Q AT SOME POINT IN THE FALL OF -- STRIKE
14 THAT -- THE FALL OF 1993, DID YOU GIVE
15 INSTRUCTIONS TO MID/RES TO DEVELOP A SOLUTION TO
16 THE SOUND PROBLEM?

17 A I DIDN'T FEEL THERE WAS A SOUND PROBLEM
18 TO BEGIN WITH. I JUST TOLD THERE WAS A COMPLAINT,
19 AND WE HADN'T YET INSTALLED THE SYSTEM IN ITS
20 TOTALITY. AND, THERE WAS STILL WORK TO BE DONE ON
21 PUTTING FENCES AND TREES AND SO FORTH AROUND IT.
22 MID/RES HADN'T FINISHED ITS WORK.

23 Q DID YOU, AFTER RECEIVING MS. SHELTON'S
24 COMPLAINT, GIVE INSTRUCTIONS TO MID/RES TO FIND A

1 SOLUTION TO THE PROBLEM ABOUT WHICH SHE WAS
2 COMPLAINING?

3 A NOT IN THOSE WORDS, NO, SIR, I JUST TOLD
4 THEM THERE HAD BEEN A COMPLAINT REGISTERED.

5 Q BUT, YOU DIDN'T ASK THEM TO DO ANYTHING
6 IN PARTICULAR ABOUT IT, IS THAT CORRECT?

7 A THEY HADN'T FINISHED THE INSTALLATION.

8 Q I UNDERSTAND THAT, BUT YOU DIDN'T ASK
9 THEM TO DO ANYTHING MORE THAN THEY WERE GOING TO
10 DO ALREADY, IS THAT CORRECT?

11 A I DID, NO, I DID NOT KNOW WHAT MORE THEY
12 WERE GOING TO DO AT THAT TIME THEY WERE
13 INSTALLING. I WASN'T THE TECHNICIANS.

14 Q DID YOU ASK THEM WHAT THEY WERE GOING TO
15 DO THAT MIGHT HAVE AN EFFECT ON REDUCING THE SOUND
16 EXPERIENCED BY THE SHELTONS?

17 A NO, SIR, I DID NOT BECAUSE WE WEREN'T
18 COMPLETED WITH THE INSTALLATION, AS I HAD APPRISED
19 THE SHELTONS.

20 Q AT SOME POINT IN TIME, SOME AMENDMENTS
21 WERE MADE TO THE DESIGN OF THE CHILLER UNIT
22 CONSTRUCTION WITH THE INTENTION OF REDUCING THE
23 SOUND FROM THAT UNIT, IS THAT CORRECT?

24 A IF YOU'RE SAYING THINGS WERE DONE TO HELP

1 QUIET THE UNIT DOWN, YES.

2 Q THAT THINGS WERE DESIGNED AS ADD-ONS THAT
3 HAD NOT BEEN PART OF THE ORIGINAL CONSTRUCTION OF
4 THE CHILLER UNIT, CORRECT?

5 A THAT WOULD BE CORRECT, YES.

6 Q AND, HAD YOU GIVEN INSTRUCTIONS FOR THOSE
7 ADD-ONS TO BE MADE?

8 A I HAD GIVEN INSTRUCTIONS THAT BRAD SHOULD
9 DO, WHAT HE COULD DO TO TRY TO QUIET IT DOWN, BUT
10 MID/RES IS THE ONE THAT MADE THE DETERMINATION OF
11 WHAT HAD TO BE DONE. AGAIN, I'M NOT THE TECHNICAL
12 PERSON IN THIS.

13 Q AT THE TIME YOU ASKED BRAD TO DO WHAT
14 COULD BE DONE TO QUIET IT DOWN, WERE YOU AWARE
15 THAT MID/RES DID NOT HAVE ON ITS STAFF ANYONE WITH
16 AN EXPERTISE IN SOUND, NOISE, OR ACOUSTICS?

17 A I WASN'T AWARE OF ANY OF THE PERSONNEL AT
18 MID/RES CAPABILITIES OR TECHNICAL BACKGROUND, NO,
19 SIR, I WAS NOT.

20 HEARING OFFICER: MR. DIVER, COULD YOU
21 IDENTIFY BRAD?

22 MR. DIVER: BRAD MAUTNER, I ASSUMED THE
23 INDIVIDUAL WHOM HE INDICATED EARLIER ON WAS THE
24 PRESIDENT OF MID/RES.

1 HEARING OFFICER: THANK YOU.

2 BY MR. DIVER:

3 Q WAS A MEETING EVER HELD WITH YOU
4 SUBSEQUENT TO THE COMPLAINT OF MRS. SHELTON TO
5 DISCUSS WHAT CHANGES MIGHT BE MADE TO THE CHILLER
6 UNIT TO REDUCE THE SOUND EMISSIONS FROM IT?

7 A WHAT TIME FRAME ARE WE TALKING ABOUT?

8 Q ANY TIME AFTER THE COMPLAINT THAT WAS
9 REGISTERED IN THE LATE FALL OF 1993?

10 A SURE, YES, THERE WERE MEETINGS.

11 Q ALL RIGHT. WERE THERE MEETINGS SHORTLY
12 FOLLOWING?

13 A NO, I DON'T KNOW WHAT SHORTLY MEANS. BUT,
14 THERE WEREN'T MEETINGS IMMEDIATELY FOLLOWING.
15 THERE WERE MEETINGS THAT WERE HELD LATER ON, WHICH
16 DISCUSSED WAYS OF ADDRESSING WHAT COULD BE DONE.

17 Q OKAY. WITH RESPECT TO EXHIBIT NO. 15,
18 IT'S MY UNDERSTANDING THAT THE SHELTON RESIDENCE
19 IS LOCATED IMMEDIATELY TO THE NORTH OF YOUR
20 PROPERTY LINE, IS THAT CORRECT?

21 A THE SHELTON'S LIVE NORTH OF US, YES.

22 Q AND, CAN YOU GIVE ME AN ESTIMATE, AS BEST
23 YOU CAN, OF THE DISTANCE FROM THE NORTHERN FACE OF
24 THE CHILLER UNIT TO THE SOUTHERN WALL OF THE

1 SHELTON RESIDENCE?

2 A NO, I CAN'T GIVE YOU AN ESTIMATE. OTHERS
3 HAVE MADE THE MEASUREMENTS, I HAVE NOT.

4 Q IS IT GREATER THAN A FOOTBALL FIELD?

5 A NO, SIR, IT'S NOT AS SMALL AS A
6 BREADBASKET. I HAVE NO IDEA WHAT THE MEASUREMENT
7 IS.

8 HEARING OFFICER: DO WE HAVE SOME
9 STIPULATION AS TO THE DISTANCE BETWEEN THE TWO
10 HOUSES?

11 MR. DIVER: WE ACTUALLY HAVE AN ADMISSION
12 OF RECORD THAT IT'S APPROXIMATELY 60 FEET BETWEEN
13 THE FACE OF THE CHILLER UNIT TO THE WALL OF THE
14 HOUSE.

15 HEARING OFFICER: I'M ASSUMING YOU'RE
16 INQUIRING FOR PURPOSES OF INTRODUCING THE
17 QUESTION?

18 MR. DIVER: I'M TRYING TO FIND OUT, MADAM
19 HEARING OFFICER, JUST HOW CONVERSANT THIS
20 PARTICULAR WITNESS IS WITH THE LOCATION OF HIS
21 NEIGHBORHOOD.

22 MR. ELLEDGE: THE STATEMENT, THERE'S AN
23 ADMISSION IN THE RECORD, WE HAVE A VERY SHORT
24 RECORD AT THIS POINT. I DON'T RECALL IT COMING UP

1 BETWEEN 1:45 AND NOW. AND SO, I'M NOT, I DON'T
2 KNOW WHAT ADMISSION YOU'RE TALKING ABOUT.

3 MR. DIVER: THE ADMISSION IN THE REQUEST
4 TO ADMIT FACTS.

5 HEARING OFFICER: SO, IT'S NOT AN
6 ADMISSION OF RECORD IN THE TECHNICAL SENSE.

7 MR. DIVER: IT'S IN THE RECORD OF THIS
8 PROCEEDING.

9 HEARING OFFICER: YES. OKAY.

10 BY MR. DIVER:

11 Q YOU'RE AWARE THAT THERE WAS AN ACTUAL
12 MEASUREMENT OF THE SOUND EMITTED FROM THIS CHILLER
13 UNIT ON OR ABOUT JULY 5, 1994?

14 A I CAN'T STIPULATE TO THE DATE, BUT I'M
15 AWARE THAT THERE WERE SOME TESTS TAKEN, YES.

16 Q AROUND THE 4TH OF JULY WEEKEND OF 1994?

17 A AGAIN, I CAN'T STIPULATE TO THE DATES,
18 BUT THERE WERE TESTS TAKEN, YES.

19 Q AND, THESE WERE TESTS TAKEN BY A
20 GENTLEMAN BY THE NAME OF SHINER, AS YOU UNDERSTAND
21 IT?

22 A AS I UNDERSTAND IT, AL SHINER TOOK SOME
23 MEASUREMENTS, YES.

24 Q WHAT I'M NOW ASKING FOR IS INFORMATION

1 RELATED TO CIRCUMSTANCES BEFORE THAT TEST IN THE
2 SUMMER OF 1994. AND, I'M ASKING WHEN, PRIOR TO
3 THAT TEST, YOU FIRST WERE TOLD OF THE DESIGN
4 CHANGES THAT MIGHT BE MADE TO THIS CHILLER UNIT TO
5 REDUCE THE AMOUNT OF SOUND EMITTED FROM IT?

6 A WHEN I WAS FIRST TOLD -- COULD YOU REPEAT
7 YOUR QUESTION, MR. DIVER?

8 MR. DIVER: WOULD YOU PLEASE REPEAT THE
9 QUESTION?

10 (WHEREUPON, THE RECORD WAS READ BY
11 THE COURT REPORTER.)

12 A ONE OF THE EARLY CHANGES THAT WE DID WAS
13 TO ROTATE THE UNIT ON ITS AXIS, PUT SOME, I GUESS,
14 BLANKETS OVER IT AND I GUESS SOME BAFFLES ON IT. I
15 THINK THOSE WERE THE COMPONENTS THAT WERE TO GO
16 INTO IT. I COULD HAVE THE NAMES WRONG, BUT I THINK
17 THAT'S GENERALLY WHAT WAS DONE. I BELIEVE THAT WAS
18 DONE BEFORE THAT TIME PERIOD. THE RECORD WILL SHOW
19 BETTER THAN MY MEMORY, MAYBE, AS TO WHAT THE EXACT
20 DATES WERE.

21 Q IS IT YOUR TESTIMONY YOU DON'T RECALL
22 WHEN, IN THE SEQUENCE OF EVENTS FROM THE SHELTONS
23 COMPLAINT IN THE FALL OF 1993 TO THE TESTING BY
24 MR. SHINER IN THE SUMMER OF 1994, WHEN THIS, THAT

1 SPAN, YOU WERE ADVISED OF THE CHANGES THAT MIGHT
2 BE MADE IN THE SYSTEM TO SILENCE IT?

3 A I DON'T KNOW THE EXACT DATES. I WOULD
4 ASSUME IT WOULD BE OVER THE WINTERTIME, SOMETIME
5 WHEN I TALKED TO BRAD MAUTNER. BUT THEN AGAIN, NO,
6 I DON'T KNOW THE EXACT DATES.

7 Q BUT, YOU RECALL IT WAS AFTER THE COOLING
8 SEASON IN 1993?

9 A NO, I DON'T RECALL THAT, EITHER. IT WAS
10 AFTER MRS. SHELTON HAD CALLED ME, WHICH IS, I
11 GUESS A STARTING POINT. IT WAS SOMETIME, I GUESS
12 BEFORE THE CHANGES WERE MADE.

13 Q PRIOR TO THE SHINER TEST OF THE SUMMER OF
14 1994, WHICH I'M GOING TO ASK YOU TO CONSIDER TO BE
15 THE FIRST SHINER TEST, FOR PURPOSES OF OUR
16 DISCUSSION.

17 A FINE.

18 Q PRIOR TO THAT TIME, HAD YOU EVER ENTERED
19 UPON THE SHELTON PROPERTY WITH OR WITHOUT THEIR
20 PERMISSION, TO EXPERIENCE FOR YOURSELF THE SOUND
21 EMISSIONS COMING FROM THE CHILLER UNIT?

22 A I THINK I WAS ON THEIR PROPERTY ONE TIME.

23 Q I'M ASKING WHETHER THAT TIME WAS PRIOR TO
24 THE FIRST SHINER TEST OF THE SUMMER OF 1994?

1 HEARING OFFICER: YOU WERE ALSO ASKING
2 WHETHER IT WAS FOR THE PURPOSE OF OBSERVING --

3 Q YES, CORRECT, WHETHER THAT ENTRY ON THE
4 PROPERTY WAS MADE FOR THAT PURPOSE, AND IF IT WAS
5 PRIOR TO THE SUMMER OF 1994?

6 A FIRST, IT WAS WITH THEIR PERMISSION, THE
7 ONLY TIME I WOULD HAVE DONE IT. AND, SECONDLY, I
8 BELIEVE IT WAS BEFORE THE SHINER TEST.

9 Q BEFORE THE FIRST SHINER TEST?

10 A I BELIEVE, IF MY RECOLLECTION IS CORRECT,
11 YES.

12 Q AND, WERE YOU WITH ANY OF THE SHELTONS AT
13 THE TIME YOU WERE THERE?

14 A I BELIEVE I WAS WITH DAVID SHELTON, I'M
15 NOT SURE IF SUSI SHELTON WAS THERE.

16 Q AND, WAS IT DURING THE DAY?

17 A I THINK IT WAS THE AFTERNOON, I CAN'T
18 TELL YOU. IT MAY HAVE BEEN THE MORNING. IT WAS
19 DURING THE DAY, DURING DAYLIGHT.

20 Q AND, FOR HOW LONG WERE YOU ON THE
21 PROPERTY?

22 A I DON'T RECALL THE TIME FRAME.

23 Q ARE YOU AWARE OF ANY OTHER INDIVIDUALS
24 WHO HAVE BEEN, AT ANY TIME FROM THE COMPLAINT OF

1 THE FALL OF 1993 TO NOW, ON THE SHELTON PROPERTY
2 AND WHO HAVE GIVEN THE OPINION, TO ANYONE, THAT
3 THE SOUND THAT THEY EXPERIENCED ON THE SHELTON
4 PROPERTY WAS NOT BOTHERSOME?

5 A ARE YOU ASKING ME AM I AWARE OF ANYBODY
6 BEING ON THE SHELTON PROPERTY WHO DID NOT THINK
7 THERE WAS ANY SOUND?

8 Q NO.

9 A YOUR QUESTIONS ARE RATHER LONG, ARE KIND
10 OF HARD TO FOLLOW. MY MEMORY IS SHORTER.

11 Q I UNDERSTAND. LET ME ASK IT SHORTER. ARE
12 YOU AWARE OF ANY OTHER PEOPLE, OTHER THAN YOURSELF
13 AND THE SHELTONS, OBVIOUSLY, WHO HAVE ACTUALLY
14 BEEN ON THE SHELTON PROPERTY AND HAVE EXPERIENCED
15 THE SOUND COMING FROM THE CHILLER UNIT?

16 A THE SHELTONS HAVE HAD PEOPLE OVER TO
17 THEIR HOUSE FROM TIME TO TIME, AND THERE HAVE BEEN
18 A FEW NEIGHBORS THAT HAVE BEEN OVER THERE, I
19 ASSUME.

20 Q OF ANY OF THOSE PEOPLE THAT YOU KNOW WHO
21 HAS BEEN ON THE SHELTON PROPERTY, ARE YOU AWARE OF
22 ANYONE WHO HAS EXPRESSED THE OPINION THAT THE
23 SOUND THAT THAT PERSON EXPERIENCED ON THE SHELTON
24 PROPERTY, COMING FROM THE CHILLER UNIT, WAS NOT

1 BOTHERSOME?

2 MR. CARSON: OBJECTION, YOUR HONOR, HE'S
3 REALLY JUST TRYING TO GET BACKWARDS HEARSAY HERE.
4 HE'S TRYING TO CREATE AN INFERENCE THAT IF THERE
5 WERE PEOPLE THAT WERE THERE, AND THEY DIDN'T SAY
6 IT'S NOT BOTHERSOME, THEREFORE IT'S NOT
7 BOTHERSOME. IT'S A NON-APPROPRIATE QUESTION
8 BECAUSE IT CALLS FOR HEARSAY.

9 MR. DIVER: MADAM HEARING OFFICER, I'M
10 ASKING WHETHER THIS WITNESS IS AWARE OF ANYONE WHO
11 HAS EVEN SAID, WHETHER IT'S TRUE OR NOT, THAT THIS
12 IS A NON-BOTHERSOME SITUATION, OTHER THAN THE
13 WITNESS HIMSELF. HE EVEN SAID IT.

14 HEARING OFFICER: THE OBJECTION IS
15 SUSTAINED.

16 BY MR. DIVER:

17 Q HAS YOUR WIFE EVER BEEN ON THE PROPERTY,
18 THE SHELTON PROPERTY TO LISTEN TO THE SOUND?

19 A I DON'T BELIEVE SO.

20 Q OKAY.

21 HEARING OFFICER: AT THIS POINT, LET'S
22 TAKE A SHORT RECESS. WE HAVE REACHED THE MIDDLE OF
23 THE AFTERNOON. WE'LL TAKE FIVE MINUTES, PERHAPS
24 TEN, AND COME BACK.

1 (WHEREUPON, A BRIEF RECESS WAS
2 TAKEN.)

3 AFTER RECESS

4 HEARING OFFICER: BACK ON THE RECORD.

5 MR. CARSON: YOUR HONOR, BEFORE THE
6 QUESTIONING RESUMES, WE HAD ONE MORE MATTER. WE
7 UNDERSTAND THAT MS. JULIAN IS GOING TO TESTIFY
8 TODAY. SO, WE WOULD ASK THAT SHE BE EXCLUDED FROM
9 THE HEARING ROOM.

10 HEARING OFFICER: OKAY.

11 MR. CARSON: THANK YOU.

12 HEARING OFFICER: WE KNOW WHERE TO REACH
13 YOU?

14 MS. JULIAN: RIGHT OUT IN THE NON-SMOKING
15 AREA.

16 MR. DIVER: IF WE COULD RESUME THE
17 TESTIMONY OF THIS WITNESS?

18 HEARING OFFICER: PLEASE.

19 MR. DIVER: AT THIS POINT, I WOULD MOVE
20 THE ADMISSION OF EXHIBIT 51 INTO EVIDENCE.

21 MR. ELLEDGE: NO OBJECTION.

22 BY MR. DIVER:

23 Q MR. CROWN, IF YOU WOULD, ON EXHIBITS
24 GROUP 52B AND GROUP 52A, WHICH APPEAR TO BE

1 DIAGRAMS OF A HOUSE, WOULD YOU INDICATE FOR US
2 WHETHER OR NOT THAT'S THE HOUSE THAT YOU WERE IN
3 THE PROCESS OF RECONSTRUCTING IN 1991, 1992, 1993?

4 A IT APPEARS TO BE A SET OF PLANS FROM OUR
5 HOUSE, YES. I'M TRYING TO FIGURE OUT WHAT THIS
6 ELEVATION -- OH, OKAY, I KNOW WHICH ELEVATION THIS
7 IS.

8 Q OKAY.

9 A I SEE -- OKAY, YES, THOSE ARE ELEVATIONS
10 FROM THE HOUSE, SOUTHEAST ELEVATION AND NORTH,
11 RIGHT. NOT COMPLETE NORTH, BUT NORTH AND THAT
12 WOULD BE WEST. YES, OKAY, WEST ELEVATION.

13 MR. ELLEDGE: WHICH IS A AND WHICH IS B?

14 MR. DIVER: B IS NORTH AND WEST A IS SOUTH
15 AND EAST.

16 HEARING OFFICER: MR. DIVER, THE EXHIBIT
17 NUMBER, I'M SORRY?

18 MR. DIVER: 52 A AND B.

19 HEARING OFFICER: THANK YOU.

20 BY MR. DIVER:

21 Q MR. CROWN, I'M GOING TO HAND YOU THAT
22 SAME RED PEN, ASK YOU TO GO TO EXHIBIT 52 A AND
23 MARK ON THAT PARTICULAR CHART OR PLAT WHERE, WITH
24 RESPECT TO THE HOUSE, THE CHILLER UNIT WAS

1 ACTUALLY LOCATED.

2 A WE CAN'T DO IT HERE.

3 Q YOU'RE INDICATING YOU CAN'T DO IT FROM
4 THE SHOWING OF THE SOUTH ELEVATION?

5 A I DON'T BELIEVE YOU CAN, THE HOUSE IS IN
6 THE WAY.

7 Q RIGHT.

8 A IN ELEVATION, IT WOULD BE LOCATED OVER
9 THERE.

10 Q YOU'RE SHOWING TO THE FAR RIGHT OF THE
11 EAST ELEVATION JUST TO THE RIGHT OF AN AREA THAT
12 APPEARS TO BE A GARAGE, YOU'VE DRAWN A RED BOX
13 THAT WOULD BE THE APPROXIMATE LOCATION OF THE
14 CHILLER UNIT?

15 A NOT IN, IT'S NORTH OF THE GARAGE IN A TWO
16 DIMENSIONAL DRAWING.

17 Q AND, WOULD YOU SHOW THE SAME THING ON
18 GROUP EXHIBIT NO. 52 B, WHICHEVER OF THE
19 ELEVATIONS IS MOST APPROPRIATE, SHOW US WHERE THE
20 CHILLER UNIT WOULD BE VIS-A-VIS THE HOUSE?

21 A I BELIEVE IT'S THERE AND --

22 Q THAT'S ON THE WEST ELEVATION, YOU'RE
23 SHOWING TO THE FAR LEFT OF THE WEST ELEVATION ON
24 GROUP EXHIBIT NO. 52B.

1 A AND, IT WOULD BE RIGHT THERE.

2 Q AND, JUST TO THE LEFT OF CENTER ON THE
3 NORTH ELEVATION OF CENTER ON THE NORTH ELEVATION
4 OF GROUP EXHIBIT 52?

5 THOSE RED DRAWINGS INDICATE WHERE THE
6 CHILLER UNIT IS ACTUALLY LOCATED, AND HAS BEEN
7 FROM THE TIME IT WAS FIRST LOCATED, CORRECT?

8 A ROUGHLY SPEAKING, YES.

9 MR. DIVER: OKAY. MOVE THE ADMISSION,
10 MADAM HEARING OFFICER, OF GROUP EXHIBIT NO. 52 A
11 AND B.

12 MR. ELLEDGE: NO OBJECTION.

13 BY MR. DIVER:

14 Q GOING TO HOW YOU, WHAT'S PREVIOUSLY BEEN
15 MARKED AS EXHIBIT NO. 2, STIPULATED IN TERMS OF
16 AUTHENTICITY, ASK YOU IF YOU'VE EVER SEEN THAT
17 DIAGRAM BEFORE?

18 A I DON'T RECALL WHAT THIS IS.

19 Q OKAY.

20 A WHAT IS THIS?

21 Q CAN YOU TELL WHAT IT IS?

22 A I CAN ONLY READ WHAT'S ON IT. IT SAYS
23 CROWN HOUSE, AC, IT SAYS WHAT IT SAYS.

24 Q ALL RIGHT. LET ME ASK YOU THE QUESTION.

1 ON THAT EXHIBIT, DOES IT APPEAR THAT THE GENERAL
2 LOCATIONS OF STRUCTURES, FENCES, AIR CONDITIONING
3 UNITS AND THE LIKE ARE ACCURATE, EVEN THOUGH THEY
4 ARE NOT TO SCALE.

5 A I CAN'T STATE OUTSIDE OF THE PROPERTY
6 LINE, BUT WITHIN OUR HOUSE, THAT'S FAIRLY CLOSE TO
7 WHERE THINGS LINE UP, YES.

8 Q OKAY.

9 MR. DIVER: MADAM HEARING OFFICER, I
10 WOULD MOVE THE ADMISSION OF EXHIBIT NO. 2.

11 MR. ELLEDGE: I THINK YOU NEED TO PUT A
12 FOUNDATION IN.

13 MR. DIVER: I BELIEVE THE WITNESS HAS
14 TESTIFIED THAT THIS IS THE GENERAL ARRANGEMENT OF
15 THIS PROPERTY WITH RESPECT TO THESE UNITS ON HIS
16 PROPERTY?

17 MR. ELLEDGE: YOU GOT DIMENSIONS ON IT,
18 YOU GOT STRUCTURES DRAWN INTO IT, I THINK YOU
19 SHOULD HAVE THE PERSON WHO DREW IT AND --

20 HEARING OFFICER: MR. DIVER, CAN YOU
21 PRODUCE SOME INFORMATION RELATED TO THE BACKGROUND
22 FOR THIS DRAWING?

23 MR. DIVER: THE DOCUMENT ITSELF, I
24 BELIEVE, WAS HAND DRAWN BY MR. SHELTON. WHAT I'M

1 ASKING OF THIS WITNESS IS WHETHER THIS PARTICULAR
2 DOCUMENT, WHETHER HE PREPARED IT OR NOT.

3 A WHETHER I PREPARED IT?

4 BY MR. DIVER:

5 Q WHETHER YOU PREPARED IT OR NOT, IT HAS
6 NOTHING TO DO WITH WHETHER YOU PREPARED IT,
7 WHETHER THIS DOCUMENT FAIRLY SETS OUT THE GENERAL
8 LOCATION OF YOUR HOUSE WITH RESPECT TO THE AIR
9 CONDITIONING UNIT WITH RESPECT TO THE SHELTON
10 HOUSE, WITH RESPECT TO THE FENCES, EVEN THOUGH
11 IT'S NOT TO SCALE. DOES IT GENERALLY LAY OUT THE
12 ARRANGEMENTS OF THOSE STRUCTURES?

13 MR. ELLEDGE: COUNSEL, I BELIEVE HE'S
14 ALREADY SAID ONCE THAT HE DOESN'T KNOW ABOUT THE
15 OTHER SIDE OF HIS, OF THE FENCE THERE AND SO THE
16 SHELTON SIDE.

17 MR. DIVER: OKAY. THAT'S FINE. WITH THE
18 EXCEPTION OF THAT PORTION OF THE DRAWING THAT'S
19 SHOWN AS BEING NORTH OF THE FENCE LINE OF THE
20 CROWN HOUSE, I WOULD MOVE THE ADMISSION OF THIS
21 DOCUMENT.

22 MR. ELLEDGE: YOU CAN'T MOVE THE
23 ADMISSION OF A PART OF A DOCUMENT, COUNSEL.

24 MR. DIVER: SURE, I CAN. WHY NOT?

1 MR. ELLEDGE: BECAUSE THE DOCUMENT IS A
2 DOCUMENT, AND EITHER YOU CAN --

3 HEARING OFFICER: OKAY. DO WE HAVE AN
4 OBJECTION?

5 MR. CARSON: YOUR HONOR, WE OBJECT TO THE
6 LACK OF FOUNDATION.

7 MR. ELLEDGE: I OBJECT TO THE ADMISSION,
8 LACK OF FOUNDATION.

9 HEARING OFFICER: OKAY. AND, YOUR
10 RESPONSE TO THE OBJECTION?

11 MR. DIVER: MY RESPONSE IS THAT THE
12 WITNESS HAS TESTIFIED THAT WITH RESPECT TO THAT
13 ASPECT OF THE DRAWING, WHICH SETS FORTH HIS HOUSE,
14 FENCE, LINES, AIR CONDITIONING UNITS, ROADWAY,
15 THAT IT FAIRLY SETS OUT THE GENERAL LOCATION OF
16 THE UNITS THAT ARE DEPICTED FOR THAT PURPOSE.
17 IT'S AN ADMISSIBLE DOCUMENT.

18 MR. CARSON: YOUR HONOR, I WOULD SUGGEST
19 THAT THE PROPER FOUNDATION FOR THE DIAGRAM LIKE
20 THIS WOULD REQUIRE A WITNESS SAY IT TRULY AND
21 ACCURATELY DEPICTS WHAT IT PURPORTS TO DEPICT.
22 AND, I DON'T THINK THAT THAT HAS COME FROM THIS
23 WITNESS. AND, I THINK THIS WITNESS HAS SAID HE
24 CAN'T SAY WHETHER IT TRULY AND ACCURATELY DEPICTS

1 THE AREA THAT IT PURPORTS TO DEPICT.

2 MR. DIVER: THE AREA THAT HE HAS
3 DESCRIBED, THE AREA THAT'S HIS PROPERTY, HE HAS SO
4 TESTIFIED.

5 HEARING OFFICER: I'M GOING TO OVERRULE
6 THE OBJECTION AND PERMIT THE ADMISSION OF THIS
7 EXHIBIT INTO EVIDENCE FOR THE VERY LIMITED PURPOSE
8 DESCRIBED BY MR. DIVER OF IDENTIFYING THE GENERAL
9 LOCATION OF THE ITEMS WITH RESPECT TO THE HOUSE
10 AND ROAD.

11 MR. DIVER: YOUR HONOR, THANK YOU.

12 BY MR. DIVER:

13 Q MR. CROWN, I'M NOW SHOWING YOU WHAT HAS
14 BEEN MARKED AS EXHIBIT NO. 4, BEING A PHOTOGRAPH
15 AND ASK YOU IF YOU WOULD LOOK AT THAT, PLEASE.

16 WHAT'S THAT A PHOTOGRAPH OF IN TERMS OF
17 THE STRUCTURE THAT'S SHOWN, THE SILVERY STRUCTURE?

18 A THIS? WHAT ARE YOU TALKING ABOUT, THIS?

19 Q YES, THE SILVER STRUCTURE THAT'S AT THE
20 VERY CENTER OF THE PHOTOGRAPH?

21 A THAT LOOKS LIKE THE CHILLER.

22 Q OKAY. THE CHILLER UNIT THAT YOU'VE BEEN
23 TESTIFYING ABOUT TODAY.

24 A IT APPEARS TO BE, YES.

1 Q DOES IT APPEAR TO BE THE GENERAL
2 CONFIGURATION OF THE CHILLER AT THE TIME PRIOR TO
3 THE TIME THAT MR. SHINER TOOK HIS FIRST TEST IN
4 JULY OF 1994?

5 A I DON'T KNOW THE CONFIGURATION. WE MOVED
6 IT 90 DEGREES AT ONE POINT.

7 HEARING OFFICER: MR. DIVER, CAN WE HAVE
8 SOME FOUNDATION FOR THE INTRODUCTION OF THIS
9 DOCUMENT TO THIS WITNESS?
10 BY MR. DIVER:

11 Q THIS WITNESS HAS TESTIFIED THAT THIS IS A
12 PHOTOGRAPH OF THE CHILLER UNIT.

13 A IT APPEARS TO BE A PICTURE OF THE CHILLER
14 UNIT, YES. IT APPEARS TO BE THE CHILLER UNIT, YES.

15 Q IS THERE DOUBT IN YOUR MIND AS TO WHETHER
16 OR NOT THAT'S THE CHILLER UNIT?

17 A NO, THERE'S NO DOUBT, IT'S JUST I SAID IT
18 APPEARS TO BE.

19 Q OKAY. AND, I'M ASKING DOES THIS PICTURE
20 TRULY SHOW THE CONFIGURATION OF THAT CHILLER UNIT
21 PRIOR TO THE TIME OF THE TEST DONE BY MR. SHINER
22 IN THE SUMMER OF 1994?

23 A IT COULD WELL BE.

24 Q ALL RIGHT. IT DOESN'T SHOW SOME THINGS

1 ON THE TOP OF IT THAT WILL BE TESTIFIED TO AT SOME
2 POINT AS CONES, DOES IT?

3 A THERE DON'T APPEAR TO BE ANY CONES ON IT.

4 Q IS THERE AGAIN A QUESTION OF WHETHER OR
5 NOT THERE ARE ANY CONES ON IT?

6 A NO, THERE JUST DON'T APPEAR TO BE ANY.

7 Q OKAY.

8 MR. DIVER: I MOVE THE ADMISSION OF
9 EXHIBIT NO. 4.

10 MR. ELLEDGE: SURE, NO OBJECTION.

11 HEARING OFFICER: I HAVE A QUESTION ABOUT
12 EXHIBIT NO. 4. CAN YOU IDENTIFY THE DATE ON WHICH
13 THE PHOTOGRAPH WAS TAKEN?

14 A IT SAYS 10-15-93 AT THE BOTTOM RIGHT.

15 HEARING OFFICER: ALL RIGHT. THANK YOU.
16 THEN, I'LL TAKE THE EXHIBIT, UNLESS YOU NEED IT TO
17 REFER TO.

18 MR. DIVER: NO, NO, I DON'T.

19 BY MR. DIVER:

20 Q WERE YOU PRESENT FOR THE SHINER TEST IN
21 JULY OF 1994?

22 A IF THAT'S THE TEST THAT DAVID SHELTON AND
23 I AUTHORIZED, I WAS PRESENT FOR THAT TEST, YES.

24 Q PRIOR TO THE TIME OF THAT TEST, HAD YOU

1 RECEIVED A DOCUMENT, BEING A LETTER DATED OCTOBER
2 11, 1993 CONSISTING OF THREE PAGES FROM DAVID
3 SHELTON TO YOURSELF WHICH HAS BEEN MARKED EXHIBIT
4 NO. 49?

5 HAVE YOU HAD AN OPPORTUNITY TO REVIEW
6 THAT, MR. CROWN?

7 A I'M IN THE PROCESS.

8 Q OKAY.

9 A OKAY.

10 Q DO YOU RECALL HAVING RECEIVED THAT
11 LETTER, MR. CROWN?

12 A I RECALL RECEIVING THE LETTER, YES.

13 Q AND, THAT LETTER SETS FORTH THE
14 CONTINUATION OF THE COMPLAINT OF THE SHELTON
15 FAMILY WITH RESPECT TO THE SOUND BEING EMITTED
16 FROM THIS CHILLER UNIT?

17 A IT SETS FORTH A NUMBER OF DIFFERENT
18 COMPLAINTS.

19 Q BUT, AMONG OTHER THINGS, IT DOES SET
20 FORTH THAT COMPLAINT ABOUT THE CHILLER UNIT?

21 A THE CHILLER UNIT IS MENTIONED HERE, YES.

22 MR. DIVER: I MOVE THE ADMISSION OF
23 EXHIBIT NO. 49.

24 MR. ELLEDGE: OBJECT TO THE ADMISSION.

1 THIS IS A LETTER PURPORTED TO BE WRITTEN BY THE
2 COMPLAINANT, DAVID SHELTON. IT CONTAINS A NUMBER
3 OF STATEMENTS OF FACT, WHICH ARE OBVIOUS CLEAR,
4 BLATANT HEARSAY. MR. SHELTON CAN TESTIFY TO THIS.
5 BUT, ON THE BASIS OF THIS, THIS DOCUMENT SHOULD
6 NOT BE INTRODUCED.

7 HEARING OFFICER: LET'S REPHRASE THE
8 QUESTION, MR. DIVER.

9 MR. DIVER: THE DOCUMENT IS BEING OFFERED
10 FOR THE LIMITED PURPOSE OF ESTABLISHING THAT THE
11 WITNESS, THE RESPONDENT RECEIVED THIS COMPLAINT
12 NOT FOR THE TRUTH OF THE MATTERS THAT ARE SET
13 FORTH IN THE DOCUMENT. AGAIN, I WOULD MOVE FOR THE
14 ADMISSION OF THIS DOCUMENT WITH THAT LIMITATION.

15 MR. ELLEDGE: FOR THAT LIMITED PURPOSE.

16 MR. DIVER: YES.

17 MR. ELLEDGE: OKAY. NO OBJECTION.

18 A DO I NEED TO ANSWER AGAIN? I RECEIVED
19 IT.

20 HEARING OFFICER: YOU RESPONDED TO THE
21 QUESTION, MR. CROWN, I BELIEVE.

22 BY MR. DIVER:

23 Q I'M SHOWING YOU NOW, MR. CROWN --

24 MR. CARSON: I'M SORRY, WAS THERE A

1 RULING? WAS IT RECEIVED FOR THE LIMITED PURPOSE OF
2 RECEIPT OF THE COMPLAINT, WAS THAT THE RULING?

3 HEARING OFFICER: BECAUSE THERE WAS NO
4 OBJECTION, I'M PERMITTING THE LETTER TO BE
5 ACCEPTED INTO EVIDENCE. MR. CROWN HAD PREVIOUSLY
6 ANSWERED THE QUESTION THAT HE DID RECEIVE IT.

7 MR. ELLEDGE: FOR THAT LIMITED PURPOSE,
8 AS I UNDERSTOOD IT.

9 HEARING OFFICER: YES, FOR THAT PURPOSE.
10 I BELIEVE THERE MAY HAVE BEEN A PIECE OF A
11 QUESTION STILL OUT THERE. BUT, DID WE, HAVE WE
12 RESOLVED THAT?

13 MR. DIVER: I'M NOT SURE. IF THERE WERE,
14 I WITHDRAW WHATEVER LIMITED QUESTION MAY BE OUT
15 THERE.

16 HEARING OFFICER: ALL RIGHT.

17 BY MR. DIVER:

18 Q I AM NOW HANDING YOU, MR. CROWN, WHAT HAS
19 BEEN PREVIOUSLY MARKED AS EXHIBIT NO. 18 A AND 18
20 B, APPEARING TO BE A HANDWRITTEN AND TYPEWRITTEN
21 LETTER TO YOU OF JUNE, 1994 AND JULY OR JUNE, BOTH
22 OF THEM FROM JUNE, 1994. I ASK YOU IF YOU WILL
23 REVIEW THOSE, PLEASE.

24 HAVE YOU HAD A CHANCE TO REVIEW THOSE,

1 MR. CROWN?

2 A YES, SIR.

3 Q ARE THOSE DOCUMENTS THAT YOU RECEIVED?

4 A YES.

5 Q BEING DOCUMENTS PURPORTEDLY FROM MRS.
6 SHELTON AND FROM HER SON?

7 A FROM SUSI SHELTON AND FROM DAVID SHELTON,
8 YES.

9 MR. DIVER: AGAIN, FOR THE LIMITED PURPOSE
10 OF INDICATING THE WITNESS' RECEIPT OF THE
11 CONTINUING COMPLAINTS WITH RESPECT TO THE NOISE AT
12 THIS PARTICULAR FACILITY IDENTIFIED IN THOSE
13 LETTERS, THIS DOCUMENT IS BEING REQUESTED TO BE
14 ADMITTED.

15 MR. ELLEDGE: FOR THE LIMITED PURPOSES OF
16 INDICATING RECEIPT.

17 MR. DIVER: THAT THE WITNESS RECEIVED
18 THESE TWO DOCUMENTS.

19 MR. ELLEDGE: NOT FOR THE TRUTH OF ANY
20 STATEMENTS MADE.

21 MR. DIVER: NOT FOR THE TRUTH OF THE
22 CONTENTS OF IT, NO.

23 MR. ELLEDGE: I HAVE NO OBJECTION.

24 HEARING OFFICER: OKAY. THE LETTERS ARE

1 ADMITTED AS EXHIBIT NO. 18.

2 BY MR. DIVER:

3 Q MR. CROWN, I'M NOW SHOWING YOU WHAT HAS
4 BEEN MARKED AS EXHIBIT NO. 14 PURPORTING TO BE A
5 LETTER OF JULY 1, 1991 FROM AN INDIVIDUAL BY THE
6 NAME OF BILL DEVERS, D-E-V-E-R-S, ASK YOU TO READ
7 THAT, PLEASE?

8 MR. ELLEDGE: WHY DON'T WE SPEED IT UP AND
9 LET HIM LOOK AT ALL OF THEM FOR THE SAME LIMITED
10 PURPOSE?

11 MR. DIVER: OKAY. WE'LL SHOW YOU AS WELL
12 EXHIBIT NO. 15.

13 MR. ELLEDGE: JUST THE TWO?

14 MR. DIVER: JUST THOSE TWO, FOR THE
15 MOMENT, YES.

16 BY MR. DIVER:

17 Q MR. CROWN, YOU'VE HAD A CHANCE TO REVIEW
18 THOSE DOCUMENTS?

19 A I'VE REVIEWED THEM.

20 Q AND, YOU RECALL YOU HAVE RECEIVED THOSE
21 DOCUMENTS?

22 A I RECEIVED THOSE DOCUMENTS.

23 MR. DIVER: AGAIN, MOVE THAT THEY BE
24 ADMITTED FOR THE LIMITED PURPOSE OF ESTABLISHING

1 THAT THE WITNESS RECEIVED THESE LETTERS OF
2 COMPLAINT?

3 MR. ELLEDGE: I OBJECT ON THE GROUNDS OF
4 RELEVANCE. THESE ARE LETTERS THAT PURPORT TO COME
5 FROM SOMEONE OTHER THAN COMPLAINANT, PEOPLE WHO
6 PRESUMABLY COULD, IF THEY WISH, COULD COME FORTH
7 AND TESTIFY. THEY'RE NOT HERE, THEY'RE NOT PART OF
8 THIS CASE. I THINK THAT THEY'RE IN NO WAY RELEVANT
9 AND, THEREFORE, NOT ADMISSIBLE.

10 MR. DIVER: WELL, MADAM HEARING OFFICER,
11 TO THE EXTENT THAT THESE DOCUMENTS WERE RECEIVED
12 AS PART OF A CONTINUING RECEIPT OF COMPLAINTS WITH
13 RESPECT TO NOISE, WHETHER IT IS INDEED TRUE OR
14 NOT, JUST INDICATING THAT THIS WITNESS RECEIVED
15 THESE DOCUMENTS, PUTTING HIM ON NOTICE THAT
16 SOMEBODY WAS SAYING SOMETHING ABOUT HIS SYSTEM,
17 THAT'S THE LIMITED PURPOSE THAT WE'RE ASKING THAT
18 THEY BE ADMITTED.

19 HEARING OFFICER: THE OBJECTION IS
20 OVERRULED. THE EXHIBITS 14 AND 15 WILL BE
21 ADMITTED INTO EVIDENCE FOR THE LIMITED PURPOSE
22 IDENTIFIED BY MR. DIVER.

23 MR. ELLEDGE: THANK YOU, YOUR HONOR.

24 BY MR. DIVER:

1 Q AT SOME POINT ON OR ABOUT THIS TIME IN
2 JULY, EARLY JULY OF 1994, WERE YOU APPRISED THAT
3 THERE HAD BEEN CONDUCTED A TEST OF THE SOUND
4 MEASUREMENTS OF THE CHILLER UNIT BY MR. SHINER?

5 A WAS I APPRISED BY MR. SHINER?

6 Q BY ANYONE?

7 A AT SOME POINT, THERE WERE SOUND TESTS
8 CONDUCTED.

9 Q RIGHT, AND SOMEONE TOLD YOU THAT THEY HAD
10 BEEN CONDUCTED, CORRECT?

11 A MAY WELL HAVE BEEN, YES.

12 Q WHO TOLD YOU?

13 A I'M NOT SURE, I DON'T RECALL.

14 Q WHAT WERE YOU TOLD THAT THE SOUND
15 MEASUREMENT TESTS SHOWED, IF ANYTHING?

16 A I'M NOT SURE WHAT THEY SHOWED.

17 Q WHAT WERE YOU TOLD THEY SHOWED?

18 A I'M NOT SURE WHO TOLD ME, QUITE HONESTLY.
19 I DON'T RECALL WHO SAID ANYTHING.

20 HEARING OFFICER: THE QUESTION IS WHAT
21 WERE YOU TOLD.

22 A OH, WHAT WAS I TOLD? TO THE BEST OF MY
23 RECOLLECTION, THAT SOME TESTS WERE TAKEN. THAT
24 ALTHOUGH NOT CONCLUSIVE, THAT -- AND NOT

1 NECESSARILY -- NOT CONCLUSIVE, THAT THERE WAS
2 NOISE THAT WAS ABOVE A STANDARD, WHICH IS ABOUT
3 IT.

4 Q IN CONSEQUENCE OF THAT ADVICE BEING GIVEN
5 TO YOU, WHAT ACTION DID YOU TAKE?

6 A IN CONSEQUENCE TO THAT STATEMENT?

7 Q YES. WHAT, IF ANYTHING, DID YOU DO IN
8 REACTION TO THE ADVICE THAT YOU RECEIVED THAT THE
9 CHILLER UNIT WAS BEING ALLEGED BY SOMEONE TO BE
10 EMITTING SOUNDS IN EXCESS OF A PARTICULAR STANDARD
11 IN THE STATE OF ILLINOIS?

12 A I WASN'T SURE THAT THAT NECESSARILY WAS
13 BEING STATED THAT IT WAS EMITTING SOUNDS IN EXCESS
14 OF, ALL I KNOW IS SOMEBODY HAD PERFORMED SOME TEST
15 ON SOME BASIS USING SOME DEVICES WHICH I DON'T
16 NECESSARILY HAVE ANY COMMENT ON.

17 Q DID YOU UNDERSTAND FROM THE WAY, FROM
18 WHAT WAS COMMUNICATED TO YOU, THAT THE BEST
19 MEASUREMENTS THAT WERE TAKEN BY MR. SHINER SHOWED
20 THAT THERE WASN'T ANY PARTICULAR PROBLEM WITH THE
21 CHILLER UNIT?

22 A I COULDN'T COME TO THAT CONCLUSION. I'M
23 NOT TECHNICALLY VERSED.

24 Q WHEN IT WAS COMMUNICATED TO YOU, WAS IT

1 COMMUNICATED -- STRIKE THAT -- AS A RESULT OF
2 COMMUNICATION -- STRIKE THAT -- FOLLOWING THE
3 COMMUNICATION TO YOU OF THE TEST MEASUREMENTS, DID
4 YOU DIRECT MID/RES TO DO ANYTHING ABOUT THE
5 CHILLER UNIT?

6 A THROUGHOUT THE COURSE OF THE COMPLAINTS,
7 WE'VE BEEN TALKING TO MID/RES, ASKING THEM --

8 Q I'M ASKING YOU RIGHT NOW, RIGHT AFTER YOU
9 RECEIVED THIS INFORMATION, I'M ASKING YOU DID YOU
10 COMMUNICATE WITH MID/RES AND SAY HEY, DO SOMETHING
11 ABOUT WHATEVER IT WAS THAT THESE TESTS SHOWED?

12 A NO, I THINK WHAT I DID IS I, IF THESE ARE
13 THE TESTS THAT WERE SENT TO ME BY MR. SHELTON, I
14 BELIEVE I SENT THE INFORMATION TO MID/RES AND SAID
15 HEY, I'VE GOT THIS. I DON'T UNDERSTAND IT. WHAT IS
16 THIS ALL ABOUT?

17 Q AND, WHAT WERE YOU TOLD?

18 A I WAS TOLD THAT THESE WERE, THIS WAS SOME
19 INFORMATION TAKEN FROM TESTING WHICH THEY COULDN'T
20 RESPOND TO. THIS IS WHAT WE'RE TALKING ABOUT.
21 I'M NOT REALLY SURE WHAT TESTS WE'RE TALKING ABOUT
22 AT THIS POINT IN TIME.

23 Q WE'RE TALKING ABOUT THE FIRST SHINER
24 TESTS TAKEN IN THE SUMMER OF 1994.

1 A IS THERE ANY WAY I CAN --

2 Q ARE YOU FAMILIAR WITH THE FACT THAT THERE
3 WAS A FIRST SHINER TEST?

4 A THERE WAS A FIRST SHINER TEST. IF I CAN
5 SEE WHAT WE'RE TALKING TO, IT WOULD BE EASIER TO
6 ANSWER YOUR QUESTION AS OPPOSED TO DANCING ON
7 THIS.

8 Q LET'S NOT DANCE. LET'S TALK ABOUT
9 WHETHER OR NOT FOLLOWING THE INFORMATION YOU
10 RECEIVED, YOU HAD A MEETING WITH MR. MAUTNER AND
11 MR. KELLER AND MR. SHINER TO DISCUSS CHANGES THAT
12 COULD BE MADE TO THE CHILLER UNIT TO REDUCE THE
13 AMOUNT OF SOUND BEING EMITTED FROM IT?

14 A IS THAT A QUESTION OR STATEMENT, SIR?

15 Q THAT'S A QUESTION. DID YOU HAVE SUCH A
16 MEETING SUBSEQUENT TO YOUR BEING ADVISED OF THE
17 RESULTS OF THE SHINER EXAMINATION IN EARLY 1994,
18 IN THE SUMMER OF 1994, DID YOU HAVE A MEETING WITH
19 YOURSELF, MR. MAUTNER, AND MR. KELLER AND MR.
20 SHINER TO DISCUSS CHANGES TO BE MADE TO THE
21 CHILLER UNIT?

22 A THERE WAS A MEETING WITH MR. SHINER, MR.
23 MAUTNER, MR. KELLER, AND MYSELF. I'M NOT SURE IF
24 ANOTHER MEMBER FROM MID/RES WAS PRESENT, YES, AT

1 LEAST THE FOUR OF US WERE PRESENT.

2 Q AND, AS A RESULT OF THAT MEETING, WAS
3 THERE A CONCEPTUAL DESIGN PROPOSED FOR CHANGES TO
4 BE MADE TO THE CHILLER UNIT TO REDUCE THE SOUND
5 BEING EMITTED FROM IT?

6 A THERE WAS A PROPOSAL AS TO HOW WE MIGHT
7 THINK OF ADDRESSING IT, YES.

8 Q OKAY. I'M SHOWING YOU WHAT'S BEEN MARKED
9 AS EXHIBIT NO. 34, ASKING YOU IF YOU COULD
10 IDENTIFY THAT AS BEING COMMUNICATION TO YOU OF THE
11 UPSHOT OF THAT MEETING FOLLOWING THE FIRST SHINER
12 TEST?

13 A YOUR QUESTION IS WHAT, I'M SORRY, I WAS
14 READING.

15 Q I'M ASKING YOU, I'M ASKING FIRST HAVE YOU
16 RECEIVED THIS DOCUMENT.

17 A I WAS CARBONED YES, SIR, I RECEIVED IT.

18 Q DO YOU REMEMBER RECEIVING IT?

19 A YES, I DO.

20 Q DO YOU REMEMBER PARTICIPATING IN THE
21 MEETING THAT WAS DISCUSSED ON IT IN JULY 11TH?

22 A I REMEMBER BEING PRESENT AT THE MEETING,
23 YES.

24 Q DO YOU REMEMBER SEEING AT THAT MEETING OF

1 JULY 11TH OR SHORTLY THEREAFTER THE DIAGRAM THAT'S
2 APPENDED TO THIS EXHIBIT NO. 34?

3 A I REMEMBER SEEING THIS, THE DIAGRAM, YES.

4 Q DOES THAT DIAGRAM SET FORTH WHAT YOU
5 UNDERSTOOD TO BE THE CONCEPT BEING DISCUSSED AT
6 THE MEETING ON JULY 11TH?

7 A I REMEMBER IT BEING A PROPOSAL THAT WAS
8 GOING TO BE LOOKED AT.

9 Q DO YOU RECALL ANY OTHER PROPOSAL BEING
10 PUT ON THE TABLE DURING THAT MEETING ON JULY 11TH?

11 A I DON'T BELIEVE THIS WAS ON THE TABLE AT
12 THE MEETING ON JULY 11TH. I THINK THIS CAME
13 AFTERWARDS.

14 Q I DIRECT YOU TO THE SECOND PARAGRAPH THAT
15 SAYS AT THE CONCLUSION OF THIS MEETING OF JULY
16 11TH, A PLAN WAS DEVELOPED PER THE ATTACHED SKETCH
17 TO ADDRESS THE AIR INTAKE COMPRESSOR AND AIR
18 INTAKE DISCHARGE NOISES, IS THAT YOUR TESTIMONY
19 THAT IT'S AN INCORRECT STATEMENT?

20 A NO, SIR, IT'S CONSISTENT. IT MAY HAVE
21 BEEN ADDRESSED AT THE MEETING, BUT THE SKETCH WAS
22 AFTER THE MEETING. WE MAY HAVE TALKED ABOUT IT
23 CONCEPTUALLY.

24 Q DOES THIS SKETCH, THOUGH, ACCURATELY TO

1 YOU DESCRIBE THE CONCEPT THAT WAS DISCUSSED AT THE
2 JULY 11TH MEETING?

3 A TO THE BEST OF MY RECOLLECTION, IT DOES.

4 Q OKAY.

5 MR. DIVER: MOVE ADMISSION OF EXHIBIT NO.
6 34.

7 MR. ELLEDGE: I HAVE NO OBJECTION.

8 BY MR. DIVER:

9 Q SHOWING YOU NOW WHAT I'VE MARKED AS
10 EXHIBIT NO. 53. COUNSEL, I APOLOGIZE THAT THIS WAS
11 NOT EARLIER PROVIDED.

12 SHOWING YOU NOW WHAT'S BEEN MARKED AS
13 EXHIBIT NO. 53, ASK YOU IF YOU'VE REVIEWED THAT.
14 TELL ME IF YOU RECEIVED IT.

15 A YES, I APPEAR TO HAVE RECEIVED IT.

16 Q AND, THAT'S A TRANSMISSION TO YOU FROM
17 WHOM?

18 A FROM PETE KELLER.

19 Q AND, PETE KELLER WAS ALSO AT THAT MEETING
20 ON JULY 11TH, WAS HE NOT?

21 A YES, SIR, I BELIEVE SO.

22 Q OKAY. AND, AGAIN, THIS TRANSMISSION
23 CONTAINS ESSENTIALLY THE DIAGRAM THAT YOU HAD
24 RECEIVED WITH THE SHINER LETTER, AM I CORRECT?

1 A THERE'S SOME MODIFICATIONS THAT HAVE BEEN
2 MADE TO IT, YES, THERE'S LITTLE DIFFERENCES.

3 Q OKAY. BOTH OF THEM SHOW A ROOFTOP UNIT TO
4 BE PLACED OVER THE CHILLER, AM I CORRECT?

5 A BOTH APPEAR TO HAVE A ROOFTOP, YES, SIR.

6 Q DO YOU RECALL A ROOFTOP UNIT BEING
7 DISCUSSED AT THE JULY 11TH MEETING?

8 A COULD HAVE BEEN.

9 Q YOU DON'T RECALL?

10 A IT MIGHT WELL HAVE BEEN, I'M NOT SAYING
11 IT WAS OR WASN'T.

12 Q I'M JUST ASKING WHAT YOU RECALL.

13 A I THINK A ROOF PROBABLY WAS DISCUSSED,
14 YES.

15 MR. DIVER: MOVE THE ADMISSION OF EXHIBIT
16 NO. 53.

17 MR. ELLEDGE: NO OBJECTION.

18 MR. DIVER: THIS WAS THE DOCUMENT, I'M
19 SORRY, I APOLOGIZE.

20 BY MR. DIVER:

21 Q AM I CORRECT, MR. CROWN, THAT PRIOR TO
22 THIS MEETING ON JULY 11TH, ON OR ABOUT JUNE 29TH,
23 1994, YOU BEGAN OPERATING THIS CHILLER UNIT 24
24 HOURS A DAY?

1 A WE BEGAN OPERATING THE CHILLER UNIT 24
2 HOURS A DAY, I DON'T HAVE THE EXACT DATE.

3 MR. DIVER: COUNSEL, I BELIEVE THERE WAS
4 SOMETHING IN YOUR ANSWERS TO INTERROGATORIES
5 STATING THAT JUNE 28TH WAS THE DATE.

6 A I'M NOT ARGUING IT, I'M JUST SAYING I
7 DON'T RECALL.

8 MR. ELLEDGE: I HAVEN'T REVIEWED THE
9 ANSWERS TO INTERROGATORIES, I DON'T --
10 BY MR. DIVER:

11 Q DO YOU RECALL PRIOR TO THE SHINER TESTS,
12 THAT YOU HAD GIVEN INSTRUCTIONS TO BEGIN OPERATING
13 THE CHILLER UNIT 24 HOURS A DAY?

14 HEARING OFFICER: THAT WAS BEGUN ON JUNE
15 27TH, 1994.

16 A SEE, I DON'T RECALL, AND NEITHER DID YOU.

17 MR. DIVER: NOT, THAT WAS, I BELIEVE THE
18 ORDER WAS GIVEN, BUT I BELIEVE THE ACTUAL
19 COMMENCEMENT WAS JUNE 28TH. BUT, THAT'S NEITHER
20 HERE NOR THERE.

21 HEARING OFFICER: OKAY.

22 BY MR. DIVER:

23 Q WERE YOU LIVING IN THE BUILDING AT THIS
24 TIME, JUNE, 1994?

1 A NO, WE WERE NOT.

2 Q YOU DIDN'T MOVE IN UNTIL MARCH OF 1995,
3 CORRECT?

4 A THAT'S CORRECT.

5 Q AND, DID THIS UNIT, THE CHILLER UNIT FROM
6 THE TIME IT COMMENCED OPERATION ON A 24-HOUR A DAY
7 BASIS IN LATE JUNE, EARLY JULY, 1994, CONTINUE IN
8 THAT STATE THROUGH THE BALANCE OF THE SUMMER OF
9 1994?

10 A I BELIEVE SO, YES.

11 Q WHY?

12 A BECAUSE WE HAD A LOT OF HUMIDITY IN THE
13 HOUSE. IT WAS ONE OF THE HOTTEST SUMMERS THAT I
14 BELIEVE WE'VE EXPERIENCED IN THE AREA FOR YEARS,
15 AND WE HAD MILLWORK AND PLASTER AND THE WHOLE
16 GROUP OF THINGS GOING ON INSIDE THE HOUSE. WE
17 ULTIMATELY HAD TO REPLACE A GOOD PORTION OF IT
18 BECAUSE WE DIDN'T GET STARTED SOON ENOUGH.

19 Q IS THAT THE REASON IT OPERATED 24 HOURS A
20 DAY, BECAUSE YOU WANTED TO PROTECT THE MILLWORK
21 AND GET THE PLASTER OUT FASTER, IS THAT
22 ESSENTIALLY IT?

23 A IN LARGE PART, RIGHT, TO PRESERVE WHAT WE
24 DID SO WE COULD MOVE INTO THE HOUSE SOONER, THAT'S

1 CORRECT.

2 Q WHAT CONSIDERATION DID YOU GIVE TO THE
3 COMPLAINT THAT WAS BEING VOICED ALL THROUGH THIS
4 PERIOD OF TIME FROM YOUR NEIGHBORS, THE SHELTONS,
5 ABOUT THE SOUND FROM THIS EQUIPMENT IN MAKING THAT
6 DECISION WHETHER OR NOT TO CONTINUE TO OPERATE THE
7 MACHINE 24 HOURS A DAY?

8 A THROUGH THE COURSE OF THESE DISCUSSIONS,
9 WE'VE BEEN CONTINUALLY TALKING TO MID/RES AND
10 TRYING TO COME THROUGH A METHODOICAL AND A VERY
11 THOUGHTFUL METHOD, COME TO A PLAN THAT WOULD MAKE
12 SOME SENSE AS OPPOSED TO DOING SOMETHING
13 PRECIPITOUSLY, THAT WOULDN'T BE THE RIGHT ANSWER.

14 Q BUT, FROM THE TIME OF THE SHELTON TEST TO
15 THE TIME YOU BEGAN RUNNING THIS MACHINE 24 HOURS A
16 DAY THROUGH THE END OF THE SUMMER, HAD ANY CHANGES
17 BEEN MADE TO THIS CHILLER UNIT?

18 A I BELIEVE WE HAD ROTATED THE UNIT AND PUT
19 ON SOME CONES AND PUT ON THE BLANKETS UP UNTIL
20 THAT TIME.

21 Q HADN'T YOU DONE THAT PRIOR TO THE SHINER
22 TEST?

23 A WE MIGHT WELL HAVE, YES, SIR.

24 Q WOULD I BE INCORRECT IN SAYING THAT FROM

1 THE SHINER TEST UNTIL THE END OF THE SUMMER, THIS
2 UNIT OPERATED 24 HOURS A DAY AND THERE WERE NO
3 CHANGES WHATSOEVER MADE TO THE CHILLER UNIT TO
4 REDUCE ITS SOUND?

5 A I DON'T THINK THAT'S CORRECT. I THINK WE
6 DID SOME ADJUSTMENTS TO THE TRIGGER SETTINGS AT
7 SOME POINT IN TIME.

8 Q THAT'S MY UNDERSTANDING FROM PREVIOUS
9 TESTIMONY DURING YOUR DEPOSITION, THAT THAT
10 OCCURRED AFTER THE JUNE, 1995 TEST.

11 A 1994, I'M SORRY.

12 Q WERE WE IN 1994?

13 A I'M SORRY, I STAND CORRECTED. YOU'RE
14 RIGHT, I THOUGHT WE WERE IN 1994.

15 Q ARE YOU AWARE THAT DURING THE SUMMER OF
16 1994, THAT -- STRIKE THAT -- WHEN THE SHINER TEST
17 WAS CONDUCTED IN THE SUMMER OF 1994, THERE HAD
18 BEEN SOME CHANGES MADE TO THE CHILLER UNIT TO
19 REDUCE ITS SOUND, IS THAT CORRECT?

20 A I BELIEVE SO, YES.

21 Q AND, THOSE CHANGES HAD INVOLVED THE
22 ESTABLISHMENT OF SOME CONES ON THE TOP OF THE UNIT
23 TO CONTROL FAN NOISE, IS THAT CORRECT?

24 A I THINK THAT'S WHAT THEY WERE CALLED. I

1 THOUGHT I REFERRED TO THEM AS BAFFLING UNITS OR
2 SOMETHING ALONG THOSE LINES.

3 Q WELL, WERE THE BAFFLINGS, ACTUALLY THE
4 INSULATION WAS PUT INSIDE THE CONTAINMENT OF THE
5 UNIT ITSELF TO SOUNDPROOF IT?

6 A COULD WELL HAVE BEEN.

7 Q ALL RIGHT. I'M SHOWING YOU NOW WHAT HAVE
8 BEEN MARKED AS EXHIBITS 5A AND 5B AND ASKING YOU
9 IF YOU CAN IDENTIFY THE STRUCTURE OR THE EQUIPMENT
10 THAT'S SHOWN IN THOSE PHOTOGRAPHS?

11 A IT APPEARS TO BE THE CHILLER UNIT.

12 Q IS IT THE CHILLER UNIT WITH THE CONES
13 ATTACHED?

14 A I DON'T KNOW.

15 Q WELL, LET ME BRING BACK EXHIBIT NO. 4,
16 PHOTOGRAPH, IF I MAY. SEE IF THAT HELPS REFRESH
17 YOUR RECOLLECTION.

18 A 5A IS THIS GUY, GOES THIS WAY, 5B IS THIS
19 ONE, GOES THIS WAY.

20 Q IT LOOKS LIKE SOME CONES HAVE BEEN ADDED
21 OR SOMETHING HAS BEEN ADDED TO INCREASE THE SIZE
22 OF THE FAN. ARE THOSE WHAT YOU REMEMBER TO BE THE
23 CONES, THOSE PROTUBERANCES ON THE TOP OF THE
24 CHILLER?

1 A IT COULD WELL BE, YES.

2 Q DO YOU REMEMBER THAT THAT'S WHAT THE
3 CONES LOOKED LIKE?

4 A I KNOW THEY WERE ROUND, SOLID SILVER
5 THINGS. THAT APPEARS TO BE WHAT THEY ARE, YES.

6 MR. DIVER: OKAY. MY RECOLLECTION IS --
7 MOVE THE ADMISSION OF THE TWO EXHIBITS 5A AND 5B.

8 MR. ELLEDGE: HAVE YOU ESTABLISHED THE
9 DATE OF THESE PHOTOGRAPHS?

10 MR. DIVER: NO, I'M ASKING HIM WHETHER OR
11 NOT THIS IS WHAT THE UNIT LOOKED LIKE WITH THE
12 CONES ATTACHED THAT HE INDICATED HAD BEEN
13 INSTALLED PRIOR TO MR. SHINER'S TEST IN JULY OF
14 1994.

15 A I DON'T KNOW WHEN THOSE WERE PUT ON.

16 MR. DIVER: NO, I'M NOT ASKING YOU
17 WHETHER YOU KNOW WHEN THESE WERE PUT ON, BUT
18 WHETHER THESE WERE ON AT THE TIME OF THE TEST.
19 WERE THEY?

20 A I DON'T KNOW IF THEY WERE ON AT THE TIME
21 OF THE TEST.

22 Q DO YOU KNOW IF THERE WAS ANY KIND OF
23 SOUND ATTENUATING EQUIPMENT ON THE AIR CONDITIONER
24 AT THE TIME OF MR. SHINER'S TEST?

1 A I'M NOT SURE WHAT WAS ON IT AT THE TIME
2 OF MR. SHINER'S TEST, NO, SIR.

3 HEARING OFFICER: WELL, WE HAVE A COUPLE
4 OF QUESTIONS BEFORE US, AND ONE IS WHETHER THIS
5 REPRESENTS CERTAIN --

6 A CONES.

7 HEARING OFFICER: -- CONES. AND, THE
8 PHOTOGRAPHS DO SHOW THESE CONES.

9 A THE CONES, AS I RECALL THEM, WERE ROUND,
10 TALL THINGS. THOSE APPEAR TO BE WHAT THE CONES
11 LOOK LIKE. I'LL SAY THEY APPEAR TO BE WHAT THE
12 CONES ARE. THE CONES WERE ON, THE CONES WERE OFF,
13 I DON'T KNOW WHAT THE TIME FRAME WAS. AND, THAT'S,
14 I GUESS THAT'S THE BEST I CAN HELP YOU OUT WITH.

15 HEARING OFFICER: OKAY. IS THERE AN
16 OBJECTION TO THE ADMISSION OF THESE PHOTOGRAPHS?

17 MR. ELLEDGE: I DON'T THINK SO. NO, YOUR
18 HONOR.

19 HEARING OFFICER: ALL RIGHT, THEN. THESE
20 TWO PHOTOGRAPHS OF THE CHILLER UNIT SHOWING WHAT
21 APPEAR TO BE THE CONES ON TOP ARE ADMITTED INTO
22 EVIDENCE.

23 BY MR. DIVER:

24 Q YOU INDICATED THAT AT PRIOR, AT OR ABOUT

1 THE TIME OF THE SHINER TEST, THERE WERE SOME OTHER
2 ATTENUATING CHANGES THAT WERE BEING MADE, SOUND
3 ATTENUATING CHANGES THAT WERE BEING MADE TO THE
4 CHILLER UNIT. WHAT ELSE, BESIDES THE CONES, WAS
5 BEING DONE, IF ANYTHING?

6 A I BELIEVE THERE WERE BLANKETS, INSULATING
7 BLANKETS.

8 Q BLANKETS PUT OVER THE COMPRESSORS?

9 A I THINK THAT'S PROBABLY RIGHT, YES.

10 Q ANYTHING ELSE?

11 A THE UNIT WAS TURNED 90 DEGREES SO THAT
12 THE AIR FLOW WAS FACING OR COMING IN FROM THE
13 EAST.

14 Q OKAY. YOU HAD INDICATED SOME BAFFLES. DO
15 YOU RECALL THAT THERE WAS SOME ACOUSTICAL MATERIAL
16 ACTUALLY PUT INSIDE THE AIR CONDITIONING UNIT
17 WALLS?

18 A I THOUGHT THERE WAS. I BELIEVE THERE WAS.

19 Q OKAY. AND, IS IT YOUR UNDERSTANDING THAT
20 ANY OF THOSE THREE THINGS, WHAT WE'RE CALLING THE
21 BAFFLES, THE CONES, AND THE BLANKETS ON THE
22 COMPRESSORS, WHETHER ANY OF THOSE THREE THINGS HAD
23 BEEN INSTALLED PRIOR TO THE TIME OF THE SHINER
24 TEST?

1 MR. ELLEDGE: WHICH SHINER TEST?

2 MR. DIVER: THE FIRST ONE. WE'VE NOT EVEN
3 GOTTEN TO ANOTHER ONE, OTHER THAN THE JULY, 1994
4 TEST.

5 A THEY PROBABLY WERE INSTALLED PRIOR TO THE
6 TEST.

7 Q ARE YOU AWARE THAT AFTER THE SHINER TEST
8 WAS CONDUCTED, LATER ON IN THE MONTH OF JULY, THAT
9 MID/RES REMOVED THE BLANKETS FROM THE COMPRESSORS?

10 A THEY DID REMOVE THE BLANKETS, YES.

11 Q AND, IS IT YOUR UNDERSTANDING THAT NO ONE
12 KNOWS WHETHER THEY WERE -- NO ONE FROM MID/RES
13 SEEMS TO KNOW -- STRIKE THAT -- IS IT YOUR
14 UNDERSTANDING THAT MID/RES DOES NOT KNOW WHETHER
15 THOSE BLANKETS WERE EVER REINSTALLED?

16 A IS IT MY, I DON'T UNDERSTAND YOUR
17 QUESTION.

18 Q DO YOU UNDERSTAND THAT MID/RES DOES NOT
19 KNOW WHETHER THOSE BLANKETS, ONCE REMOVED, WERE
20 EVER REPLACED?

21 A I DON'T KNOW WHAT MID/RES DOES OR DOES
22 NOT KNOW ON THAT REGARD.

23 Q DO YOU KNOW WHETHER THE BLANKETS WERE
24 EVER REPLACED?

1 A NO, I DON'T KNOW IF THEY WERE EVER
2 REPLACED.

3 Q SHOWING YOU NOW WHAT HAS BEEN MARKED AS
4 EXHIBIT NO. 6 PURPORTING TO BE A LETTER FROM SUSI
5 SHELTON TO NANCY, ASKING YOU TO LOOK AT THAT AND
6 TEL ME IF YOU RECOLLECT HAVING SEEN THAT, BEEN
7 SHOWN IT BY YOUR WIFE AT OR ABOUT THAT TIME?

8 A YES.

9 Q HAVE YOU HAD A CHANCE TO REVIEW IT?

10 A I HAVE REVIEWED IT, YES.

11 Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

12 A I HAVE SEEN THE DOCUMENT.

13 Q DID YOU SEE IT AT ABOUT THAT POINT IN
14 TIME, JULY?

15 A SOMETIME AFTER IT WAS WRITTEN, YES.

16 Q OKAY. AND, YOU HAD RECEIVED IT FROM YOUR
17 WIFE?

18 A YES.

19 MR. DIVER: MOVE THE ADMISSION AGAIN, FOR
20 THE LIMITED PURPOSE OF INDICATING THE CONTINUING
21 COMPLAINT AND THE KNOWLEDGE OF THIS PARTICULAR
22 WITNESS WITH RESPECT TO THE CONTINUING COMPLAINT
23 CONCERNING THIS FACILITY.

24 MR. ELLEDGE: FOR THAT LIMITED PURPOSE, I

1 HAVE NO OBJECTION.

2 HEARING OFFICER: THE EXHIBIT IS ENTERED
3 FOR ITS LIMITED PURPOSE.

4 BY MR. DIVER:

5 Q MR. CROWN, I'M SHOWING YOU WHAT'S BEEN
6 MARKED AS EXHIBIT NO. 16, BEING A DOCUMENT DATED
7 AUGUST 4TH, OSTENSIBLY TO YOU FROM MARGE AND BOB
8 JULIAN. I'LL ASK BASICALLY THE SAME QUESTION THAT
9 I ASKED BEFORE, WHETHER YOU RECEIVED IT. AND,
10 I'LL MAKE THE SAME MOTION TO HAVE IT ADMITTED AS A
11 CONTINUATION OF THE DEMONSTRATION TO THIS
12 PARTICULAR WITNESS THAT COMPLAINTS WERE BEING MADE
13 WITH RESPECT TO THIS PARTICULAR AIR CONDITIONING
14 UNIT.

15 A YOU ASKING ME DID I RECEIVE THIS?

16 Q YES.

17 A YES, I DID RECEIVE THIS.

18 MR. DIVER: MOVE THAT IT BE ADMITTED FOR
19 THE SAME LIMITED PURPOSE AS WITH RESPECT TO THE
20 OTHER COMMUNICATIONS MADE TO THIS WITNESS.

21 MR. ELLEDGE: WELL, YOUR HONOR, I WOULD
22 AGAIN MAKE MY RELEVANCE OBJECTION TO THIS
23 PARTICULAR DOCUMENT SINCE IT DOES NOT APPEAR TO BE
24 TALKING ABOUT SOUND BEING RECEIVED ON THE SHELTON

1 PROPERTY. IN OTHER WORDS, IT'S NOT RELEVANT
2 BECAUSE IT'S NOT THIS CASE.

3 MR. DIVER: IT IS THESE PEOPLE
4 COMPLAINING OF THE SAME PROBLEM AND THAT IS THE
5 LOUDNESS OF THIS UNIT. GRANTED, THEY ARE NOT
6 COMPLAINANTS IN THIS CASE, BUT THEY ARE PROVIDING
7 INFORMATION TO THIS WITNESS, THE OWNER OF THE
8 UNIT, THAT THIS UNIT CONTINUES TO BE A PROBLEM IN
9 THE NEIGHBORHOOD, AND SHOWS HIS STATE OF KNOWLEDGE
10 WITH RESPECT TO THOSE LEVELS OF COMPLAINTS?

11 HEARING OFFICER: OKAY. THANK YOU. THE
12 OBJECTION IS OVERRULED, AND THIS WILL BE ADMITTED
13 FOR THE LIMITED PURPOSE DISCUSSED WITH RESPECT TO
14 MANY OF THESE LETTERS. I HAVE AN ADDITIONAL
15 QUESTION, HOWEVER. WHAT'S THE LOCATION OF THIS
16 PROPERTY WITH RESPECT TO THE RESPONDENT'S
17 PROPERTY?

18 MR. DIVER: IT'S ACTUALLY LOCATED ONE LOT
19 NORTH OF THE SHELTON PROPERTY. IT'S SHOWN ON, I
20 BELIEVE ONE OF THESE EARLIER EXHIBITS, YES, BEING
21 EXHIBIT NO. 50 SHOWING THE CROWN PROPERTY HERE,
22 SHELTON PROPERTY HERE, JULIAN PROPERTY HERE.

23 HEARING OFFICER: NORTH OF THE SHELTON
24 PROPERTY?

1 MR. DIVER: CORRECT.

2 HEARING OFFICER: THANK YOU.

3 BY MR. DIVER:

4 Q SHOWING YOU NOW WHAT I'D ASK BE MARKED AS
5 EXHIBIT NO. 17 BEING A LETTER TO YOU FROM DAVID
6 SHELTON, AGAIN INDICATING TO YOU IN THE ULTIMATE
7 PARAGRAPH 5 , THIS CONTINUING PROBLEM BEING
8 EXPERIENCED BY THE SHELTONS AND MAKING REQUESTS OF
9 YOU WITH RESPECT TO DIMINISHMENT OF THAT SOUND.

10 MR. CARSON: THE QUESTION WAS SIMPLY CAN
11 HE IDENTIFY THE LETTER, DID HE RECEIVE THE LETTER,
12 NOT AS TO THE CONTENT.

13 A YES, I RECEIVED THE LETTER.

14 MR. DIVER: OKAY. AGAIN, MOVE ITS
15 ADMISSION FOR THE LIMITED PURPOSE PREVIOUSLY
16 INDICATED WITH RESPECT TO THE SHELTON
17 CORRESPONDENCE TO MR. CROWN.

18 MR. ELLEDGE: FOR THAT LIMITED PURPOSE, NO
19 OBJECTION.

20 HEARING OFFICER: THE LETTER IS ADMITTED
21 INTO EVIDENCE.

22 BY MR. DIVER:

23 Q SHOWING YOU NOW WHAT HAS BEEN MARKED AS
24 EXHIBITS 12 AND 13, SAME QUESTION BEING ASKED

1 WHETHER OR NOT YOU RECALL RECEIVING THESE
2 DOCUMENTS AT OR ABOUT THE TIME OF THEIR DATES?

3 MR. ELLEDGE: EXHIBIT NO. 12 WAS THE
4 UNSIGNED COPY?

5 MR. DIVER: YES. YES, THAT SAME DOCUMENT
6 APPEARS AS AN EXHIBIT TO THE WITNESS' DEPOSITION
7 TESTIMONY, WHICH HE ADMITTED THAT HE HAD RECEIVED
8 THE DOCUMENT.

9 BY MR. DIVER:

10 Q AGAIN, DID YOU RECEIVE THAT DOCUMENT?

11 A NO, I RECEIVED A SIGNED COPY OF THE
12 DOCUMENT, NOT THIS DOCUMENT.

13 Q OH, BUT YOU RECEIVED A DOCUMENT WITH
14 EVERYTHING ON THAT PARTICULAR EXHIBIT OTHER THAN
15 THE SIGNATURE?

16 A I RECEIVED THE DOCUMENT THAT WAS SIGNED,
17 YES.

18 HEARING OFFICER: YOU'RE REFERRING TO
19 EXHIBIT NO. 12?

20 MR. DIVER: REFERRING TO EXHIBIT NO. 12.

21 A I DIDN'T GET --

22 MR. DIVER: CORRECT. I'LL POINT COUNSEL
23 TO THE PAGE IN THE DEPOSITION SHOWING THE SAME
24 EXHIBIT.

1 MR. CARSON: YES.

2 MR. DIVER: HE HAD ADMITTED IN THE
3 DEPOSITION THAT HE RECEIVED THAT DOCUMENT.

4 MR. ELLEDGE: LET ME SEE THAT.

5 MR. DIVER: THAT VERY SAME DOCUMENT. NOW,
6 HE'S SAYING HE DOESN'T KNOW IF HE DID.

7 A WHAT I'M SAYING, I RECEIVED A DOCUMENT
8 WITH THE SAME VERBAGE, BUT THAT WAS SIGNED.

9 MR. DIVER: THAT'S WHAT I'M ASKING YOU, IF
10 YOU DID. MOVE ITS ADMISSION BECAUSE THAT'S WHAT
11 I'M LOOKING FOR, IS ESSENTIALLY THAT HE WAS
12 APPRISED OF THE INFORMATION THAT'S BEING SHOWN
13 HERE, NOT THAT IT WAS TRUE, BUT HE WAS APPRISED OF
14 A CONSTANT LEVEL OF COMPLAINT THAT WAS BEING MADE
15 BY THE NEIGHBORHOOD.

16 HEARING OFFICER: IS THERE AN OBJECTION
17 TO THE INTRODUCTION OF EXHIBIT NO. 12?

18 MR. ELLEDGE: FOR THE LIMITED PURPOSE OF
19 SHOWING NOTICE AS TO HIS TESTIMONY, NO NOBJECTION.

20 HEARING OFFICER: THEN, IT WILL BE
21 ADMITTED FOR THAT PURPOSE.

22 BY MR. DIVER:

23 Q MR. CROWN, WERE THERE EVER ANY CHANGES
24 MADE TO THE CHILLER UNIT SUBSEQUENT TO THE FIRST

1 SHINER TEST IN JULY OF 1994 AT ANY TIME FROM THAT
2 DATE TO THE PRESENT?

3 A I BELIEVE THAT THE ACOUSTICAL FENCING OR
4 THE WALL AROUND IT WAS PUT IN AND THAT THE LEVELS,
5 THE OPERATIONAL LEVELS WERE MORE, WERE TUNED IN
6 DIFFERENTLY AS TO WHICH COMPRESSORS GO ON AND OFF.

7 Q OKAY. LET'S FOCUS ON THE FIRST. THE
8 ACOUSTICAL PANELS THAT YOU'VE TALKED ABOUT.

9 A THE ACOUSTICAL PANELS, RIGHT.

10 Q THAT WAS A PEN, IF YOU WILL, THAT WAS
11 ACTUALLY BUILT AROUND THE AIR CONDITIONING UNIT,
12 WAS IT NOT?

13 A THAT'S A DESCRIPTION, IT WAS AN ENCLOSURE
14 AROUND THE UNIT, YES.

15 Q OKAY. BUT, IT WASN'T AN ACOUSTICAL PANEL
16 ADDED TO THE UNIT, IT'S AS HAD BEEN DONE BEFORE.

17 A THAT'S CORRECT.

18 Q AND, WHEN WERE THOSE PANELS INSTALLED?

19 A 1995, MAYBE, I'M NOT SURE OF THE DATE,
20 1994, 1995.

21 Q THE OPERATIONAL CHANGES THAT YOU'VE JUST
22 ALLUDED TO, THAT'S CHANGING THE OPERATIONAL
23 SEQUENCING TO SUCH THAT THE COMPRESSORS OR FANS OR
24 CERTAIN NUMBERS OF THEM GO ON OR OFF LATER IN THE

1 EVENING. WHEN WAS THAT OPERATIONAL CHANGE MADE?

2 A TWO OF THEM MADE, ONE OF THEM WAS -- WHEN
3 WAS IT, I'M NOT SURE THE EXACT DATE, BUT AT ONE
4 TIME THE TRIGGER POINT AS TO WHEN IT WAS TURNED ON
5 OR WHEN IT TURNED ON WAS CHANGED 12 MONTHS AGO,
6 SOMETHING LIKE THAT. AND THEN, MOST RECENTLY,
7 THERE WAS A CHANGE MADE TO ADJUST WHEN COMPRESSORS
8 GO ON AND OFF, AND I THINK THAT WAS WITHIN THE
9 LAST FEW MONTHS.

10 Q MOST RECENTLY WITHIN THE LAST FEW MONTHS,
11 A CHANGE WAS MADE THAT WOULD CALL FOR THE CUTOFF
12 OF ONE COMPRESSOR AND TWO FANS, BEGINNING WITH
13 NIGHTTIME, NIGHT TIME BEING DEFINED AS 10:00 P.M.
14 IS THAT YOUR UNDERSTANDING?

15 A I KNOW THAT SOMETHING WAS DONE TO ADJUST
16 THOSE COMPONENTS, YES, YOU MAY KNOW BETTER THAN I.

17 Q WHY WAS THAT CHANGE MADE IN THE LAST TWO
18 MONTHS?

19 A THE CHANGE WAS MADE BECAUSE THROUGHOUT
20 THE COURSE OF THIS WHOLE PROCEEDING, WE'VE BEEN
21 TRYING TO DO WHAT WAS GOING TO TRY AND SATISFY THE
22 SHELTONS WHICH WE WEREN'T REALLY SURE WHAT WAS
23 GOING TO SATISFY THE SHELTONS, AND AT THE SAME
24 TIME, NOT IMPACT THE OPERATIONAL EFFICIENCY OF THE

1 UNITS ON OUR HOUSE.

2 Q IT WAS MY UNDERSTANDING THAT IN JUNE OF
3 1995, YOU SAID YOU WEREN'T GOING TO DO ANYTHING
4 MORE?

5 A THAT'S CORRECT.

6 Q WHAT CHANGED YOUR MIND?

7 A WE CONTINUED TO TRY. AT THE TIME WE HAD
8 EXHAUSTED ALL THE IDEAS THAT WE HAD AND AS WE
9 CONTINUED TO THINK ABOUT IT, THINGS, PEOPLE KEPT
10 THINKING ABOUT IT.

11 Q WHO CAME UP WITH THE IDEA TO, THE NOVEL
12 IDEA TO TURN THE UNIT OFF, AT LEAST IN PART?

13 A I DON'T BELIEVE IT'S TURNING THE UNIT
14 OFF. I THINK IT'S JUST ADJUSTING THE SEQUENCE OF
15 THE UNITS SO THAT IT HAS DIFFERENT CYCLES OR
16 DIFFERENT TIMES WHEN IT HEATS AND WHEN IT COOLS.
17 AND, WE STILL DO THIS TODAY. DON'T KNOW IF THAT'S
18 GOING TO WORK. WE HAVE NOT HIT THE HOT TIME OF THE
19 SUMMER YET.

20 Q WHEN YOU SAY YOU DON'T KNOW IF IT'S GOING
21 TO WORK, HOW?

22 A TO PROVIDE THE SET OF SPECIFICATIONS THAT
23 WE WORKED OUT IN THE EARLY 1990S.

24 Q TO PROVIDE THE COOLING INSIDE THE HOUSE?

1 A CORRECT.

2 Q SO, IT'S ENTIRELY POSSIBLE THAT EVEN THAT
3 MAY BE CHANGED, THAT IS, THAT IT WILL BE
4 WITHDRAWN, NO LONGER IMPLEMENTED IF YOU MAKE A
5 DETERMINATION THAT IT'S NOT ALLOWING FOR THE
6 COOLING IN THE HOUSE THAT YOU WANT IT?

7 MR. CARSON: OBJECT TO THE FORM OF THE
8 QUESTION AS TO WHAT'S POSSIBLE. ANYTHING IS
9 POSSIBLE.

10 HEARING OFFICER: CAN YOU REPHRASE THE
11 QUESTION, MR. DIVER?

12 MR. DIVER: SURE.

13 BY MR. DIVER:

14 Q IN THE EVENT THAT YOU LEARN SUBSEQUENT TO
15 TODAY THAT THE COOLING IN THE HOUSE THAT YOU
16 EXPECTED BACK AT THE TIME THAT YOU CALLED FOR THE
17 HVAC SYSTEM TO BE CHANGED, IF YOU FIND THAT THAT
18 COOLING IS NOT BEING PROVIDED, WILL YOU INSTRUCT
19 THAT INDEED, THE UNIT WILL BE TURNED ON IN FULL OR
20 TO A GREATER EXTENT AT NIGHT?

21 MR. CARSON: OBJECTION, CALLS FOR
22 SPECULATION.

23 HEARING OFFICER: SUSTAINED.

24 BY MR. DIVER:

1 Q WHAT'S YOUR GAME PLAN, MR. CROWN, WITH
2 RESPECT TO CHANGES TO THIS EQUIPMENT TO REDUCE ITS
3 SOUND IF YOU'RE NOT ABLE TO CONTINUE THE REDUCTION
4 IN THE OPERATING SEQUENCE OF THE COMPRESSORS AND
5 THE FANS AT NIGHT, WHAT'S OUR PLAN?

6 A AS IT HAS BEEN ALL ALONG, WE RELY ON OUR
7 SUBCONTRACTOR, MID/RES, TO PROVIDE US BOTH OPTIONS
8 AND INFORMATION. WHEN WE WROTE THE SHELTONS, WHEN
9 I WROTE THE SHELTONS AND SAID THAT'S ALL WE'RE
10 GOING TO DO, AT THE TIME WE HAD EXHAUSTED WHAT WE
11 THOUGHT WERE ALL OF OUR OPTIONS TO PROVIDE US WITH
12 THE SAME TYPE OF COOLING. IF SOMETHING CHANGES,
13 TECHNOLOGY CHANGES, YOU KNOW, WE'LL TAKE A LOOK AT
14 IT AS WE GO ALONG. BUT, THE GAME PLAN IS TO WAIT
15 AND SEE AT THIS POINT AND WE'LL MAKE ADJUSTMENTS
16 WHEN THE TIME COMES.

17 Q AT THAT POINT IN TIME, YOU HAD A MEETING
18 WITH THE SHELTONS AT THE VILLAGE HALL IN THE
19 VILLAGE OF WINNETKA. DO YOU RECALL THAT MEETING?

20 A MORE THAN JUST THE SHELTONS, YES, THE
21 SHELTONS WERE IN ATTENDANCE.

22 Q WAS THERE MORE THAN ONE SUCH MEETING AT
23 VILLAGE HALL WITH THE SHELTONS?

24 A JUST THE ONE THAT I WAS IN ATTENDANCE.

1 Q AND, DO YOU RECALL DISCUSSIONS OCCURRING
2 AT THAT TIME ABOUT WHAT CHANGES MIGHT HAVE TO BE
3 MADE WITH THE CHILLER UNIT TO ALLOW IT TO BE
4 OPERATED MORE QUIETLY BEGINNING IN THE SPRING AND
5 SUMMER OF 1995?

6 A THERE WERE DISCUSSIONS ABOUT WHAT SOME OF
7 THE CHANGES THAT WERE GOING TO BE MADE, YES.

8 Q DID YOU RECEIVE FROM MR. SHELTON A LETTER
9 SUMMARIZING HIS UNDERSTANDING OF THE AGREEMENTS
10 REACHED IN THAT PARTICULAR MEETING?

11 A RECEIVED A LETTER FROM DAVID SHELTON.

12 Q AND, DID YOU RESPOND TO HIS LETTER?

13 A YES, I DID.

14 Q DO YOU RECALL MR. SHELTON IN HIS LETTER
15 TELLING YOU THAT IT WAS HIS UNDERSTANDING THAT MR.
16 SHINER, WHO IS ALSO AT THE MEETING?

17 A NO, SIR.

18 Q YOU DON'T RECALL ANY OF THE --

19 A HE WAS ON THE PHONE.

20 Q EXCELLENT, YOU'RE QUITE RIGHT. DO YOU
21 RECALL THAT THE LETTER TO YOU FROM MR. SHELTON
22 INDICATED THAT MR. SHINER, WHILE ON THE PHONE INTO
23 THE MEETING, HAD INDICATED THAT WHILE HE HAD HOPED
24 THE CORRECTIVE ACTIONS MIGHT SOLVE THE PROBLEM,

1 THAT IF THEY DIDN'T, THERE WERE ALWAYS MORE THINGS
2 THAT COULD BE DONE?

3 A NO, SIR, I DON'T RECALL MR. SHINER MAKING
4 THAT BROAD A STATEMENT.

5 Q OKAY. I'M GOING TO SHOW YOU NOW WHAT'S
6 BEEN MARKED AS EXHIBIT NO. 35, ASK YOU IF YOU'D
7 RECEIVED THAT DOCUMENT.

8 A I RECEIVED THIS DOCUMENT, YES.

9 Q ALL RIGHT. REFERENCING THE ATTACHMENT AND
10 REFERRING TO ITEM NO. 2, PER AL SHINER, WOULD YOU
11 REVIEW THAT SECTION, PLEASE, AGAIN?

12 A YES.

13 Q IS IT YOUR UNDERSTANDING THAT THAT'S WHAT
14 MR. SHINER SAID ON THE TELEPHONE AT THAT TIME?

15 A HE SAID THAT THERE WERE SOME THINGS THAT
16 WE MIGHT BE ABLE TO DO, YES.

17 Q BEYOND THOSE THINGS THAT WERE BEING
18 DISCUSSED?

19 A RIGHT. HE ALSO SAID THAT HE THOUGHT THAT
20 IT WOULD MEET THE IEPA STANDARDS, BUT THAT IF IT
21 DIDN'T, THERE WOULD BE OTHER THINGS THAT COULD BE
22 DONE.

23 A AND, IF IT HAD, WE WOULDN'T HAVE TO DO
24 OTHER THINGS.

1 Q AND, I'M SHOWING YOU WHAT I'VE MARKED AS
2 EXHIBIT NO. 54. AGAIN, FOR SOME REASON THIS DID
3 NOT GET COPIED IN THE COURSE OF THE STIPULATION.
4 THIS IS A LETTER DATED JANUARY 27, 1995 FROM A
5 STEVEN CROWN RESPONDING TO THE LETTER OF MR.
6 SHELTON.

7 MR. ELLEDGE: NUMBER?

8 MR. DIVER: 54.

9 A YES, THAT'S MY LETTER.

10 BY MR. DIVER:

11 Q OKAY. AND, DID YOU INDICATE ANY
12 DISAGREEMENT IN THAT LETTER WITH WHAT MR. SHELTON
13 HAD PREVIOUSLY STATED CONCERNING MR. SHINER'S
14 REMARKS DURING THE MEETING AT THE VILLAGE HALL?

15 A NO I DID NOT CONTEST IT.

16 Q WERE YOU PRESENT FOR THE SECOND SHINER
17 TEST IN JUNE OF 1995?

18 A PRESENT MEANING WAS I --

19 Q WERE YOU ACTUALLY PHYSICALLY PRESENT WHEN
20 THE EXAMINATION OF THE SOUND WAS BEING CONDUCTED?

21 A YES AND NO I THINK IS THE ANSWER. I WAS
22 PHYSICALLY IN MY HOUSE. I DON'T THINK I WAS
23 PHYSICALLY OUTSIDE WALKING AROUND WITH THEM WHEN
24 THEY DID THE TESTING. I MAY HAVE STEPPED OUT, TO

1 MY RECOLLECTION.

2 Q DID SOMEBODY REPORT TO YOU THE RESULTS OF
3 THAT SOUND MEASUREMENT?

4 A I BELIEVE AL SHINER SENT SOMETHING OUT,
5 IT MAY HAVE BEEN BRAD MAUTNER.

6 Q DID YOU REVIEW THE INFORMATION?

7 A IF I RECEIVED IT, I REVIEWED IT, YES.

8 Q DID YOU UNDERSTAND THE INFORMATION THAT
9 YOU RECEIVED?

10 A I READ WHAT WAS ON THE PAPER, I GUESS I
11 UNDERSTOOD AS BEST I COULD.

12 Q WHAT DID YOU UNDERSTAND WAS BEING
13 COMMUNICATED TO YOU ABOUT THE RESULTS OF THAT
14 MEASUREMENT?

15 A THE NUMBERS THAT WERE WRITTEN, YOU'D
16 HAVE TO REFRESH MY MEMORY WITH THE DOCUMENT. I
17 THINK IT HAD THE LISTING OF STANDARDS I WASN'T
18 SURE WERE APPLICABLE TO ME, AND SOME READINGS
19 WHICH I'M NOT SURE WHETHER OR NOT THE TESTS WERE
20 CONDUCTED IN THE APPROPRIATE FASHION.

21 Q YOU SAID YOU WERE NOT SURE WHETHER THE
22 TESTS WERE CONDUCTED IN THE APPROPRIATE FASHION.

23 A I'M NOT SURE. I'M NOT SURE WHETHER TESTS
24 WERE TAKEN. I WASN'T PRESENT FOR ALL THE TESTING.

1 Q DID YOU HAVE A REPRESENTATIVE PRESENT?

2 A DID I HAVE A REPRESENTATIVE PRESENT?

3 Q YES.

4 A BRAD MAUTNER WAS REPRESENTED AT THE
5 TESTING, I BELIEVE. I DON'T KNOW, THAT'S MY
6 REPRESENTATIVE. MY SUBCONTRACTOR DIDN'T HAVE
7 COUNSEL PRESENT.

8 Q NO, BUT DID YOU CONSIDER HIM TO BE
9 REPRESENTING YOU AT THAT TEST?

10 A I THINK HE WAS REPRESENTING HIMSELF AND
11 HIS COMPANY.

12 Q HAD YOU ASKED HIM TO GO TO THE TEST?

13 A I THINK HE WAS PART OF THE DISCUSSION
14 WHEN WE WERE MAKING THE DECISION TO HAVE THE TEST,
15 HE WANTED TO BE PRESENT.

16 Q HAD YOU ASKED HIM TO GO TO THE TEST?

17 A I MIGHT HAVE ASKED HIM, HE MIGHT HAVE
18 SAID HE WANTED TO GO, I DON'T RECALL HOW HE GOT
19 THERE. HE WAS THERE.

20 Q AS A SEQUENCE OR FOLLOWING THE TEST IN
21 JUNE OF 1995 BY MR. SHINER, DID YOU RECEIVE WHAT
22 I'VE JUST HANDED YOU AS EXHIBIT NO. 41 BEING A
23 LETTER DATED JUNE 26TH, 1995 FROM MR. SHELTON?

24 A I BELIEVE I RECEIVED THIS, YES.

1 Q AND, AGAIN, THAT INDICATED THE PROBLEMS
2 THAT MR. SHELTON WAS HAVING WITH THE CHILLER UNIT
3 FOLLOWING THE TESTS?

4 A NO, SIR, IT INDICATES A SET OF NUMBERS
5 AND A SET OF HANDWRITTEN NUMBERS. I DON'T KNOW
6 WHAT THE PROBLEMS, IT DOESN'T SAY PROBLEMS HERE.

7 Q I'M SORRY, I THOUGHT THERE WAS AN EXHIBIT
8 ENTITLED OTHER ISSUES.

9 A OKAY. I THOUGHT YOU WERE TALKING ABOUT
10 THE TEST RESULTS. YOUR QUESTION, SIR?

11 Q DID THIS LETTER CONTINUE AGAIN TO
12 INDICATE THE COMPLAINTS OF THE SHELTONS WITH
13 RESPECT TO THIS CHILLER UNIT?

14 A YES, IT CONTINUED TO, YES.

15 MR. DIVER: AGAIN, MOVE THE ADMISSION OF
16 THIS DOCUMENT FOR THE PURPOSE OF ESTABLISHING THAT
17 THE WITNESS HAD RECEIVED IT AND CONTINUATION OF
18 THE NOISE COMPLAINT STILL AFTER THE JUNE, 1995
19 TEST EVENT.

20 MR. ELLEDGE: FOR THAT LIMITED PURPOSE, NO
21 OBJECTION.

22 HEARING OFFICER: IT WILL BE ADMITTED FOR
23 THAT LIMITED PURPOSE. AND, WHILE WE'RE AT A POINT
24 OF ADMITTING EXHIBITS, LET'S GO BACK AND CATCH UP

1 HERE. I HAD BEFORE ME A LETTER, EXHIBIT NO. 13
2 FROM A --

3 MR. DIVER: HOKURA JUTAKA.

4 HEARING OFFICER: HOKURA JUTAKA. DO WE
5 HAVE A MOTION TO ADMIT THIS INTO EVIDENCE?

6 MR. ELLEDGE: I DON'T THINK IT WAS MOVED.

7 MR. DIVER: I UNDERSTOOD THAT THAT WAS A
8 DOCUMENT THAT WAS PROVIDED TO THE WITNESS WITH
9 ANOTHER DOCUMENT AT THE SAME TIME, AND WE MOVED
10 FOR THE ADMISSION OF BOTH DOCUMENTS.

11 MR. ELLEDGE: YOU MOVED FOR 12.

12 MR. DIVER: SO, I JUST MOVED FOR 12. I
13 MOVE FOR 13 ON THE SAME GROUNDS FOR THE LIMITED
14 PURPOSE --

15 HEARING OFFICER: OKAY. THEN, IT WILL BE
16 ADMITTED FOR THAT PURPOSE, AND I HAVE BEFORE ME AN
17 EXHIBIT NO. 35 WHICH HAS NOT BEEN MOVED INTO
18 EVIDENCE.

19 MR. DIVER: YES, I MOVE THE INTRODUCTION
20 INTO EVIDENCE OF EXHIBIT NO. 35 AS BEING EVIDENCE
21 OF THE DISCUSSIONS THAT WERE HELD WITH MR. CROWN
22 AT THE VILLAGE HALL ON THE DATE OF THAT DOCUMENT.

23 MR. ELLEDGE: FOR THE PURPOSE OF
24 ESTABLISHING THAT WAS THE SUBJECT MATTER ON THAT

1 DATE MR. CROWN HAS RECEIVED IN WRITING SAYING THE
2 ONLY THING HE DISAGREES WITH IS ITEM NO. 4 A.
3 CONSEQUENTLY, WE WOULD ASK THAT THIS DOCUMENT BE
4 ADMITTED FOR THE PURPOSE OF ESTABLISHING THE
5 ACTUAL CONTENTS OF THE DISCUSSIONS AT THAT VILLAGE
6 HALL MEETING.

7 MR. CARSON: WE OBJECT TO EXHIBIT NO. 35
8 AS HEARSAY.

9 MR. DIVER: THIS WITNESS WAS PRESENT AT
10 THAT MEETING. THIS WAS NOT A HEARSAY DOCUMENT.

11 MR. CARSON: THIS IS A DOCUMENT THAT'S
12 PURPORTING TO DESCRIBE WHAT HAPPENED AT A MEETING.

13 MR. DIVER: THAT THIS WITNESS WAS AT AND
14 TESTIFIED TO. THIS IS NOT A DOCUMENT THAT'S BEING
15 ADMITTED.

16 HEARING OFFICER: I BELIEVE THE WITNESS
17 TESTIFIED TO ITEM NO. 2 AND THAT ITEM NO. 2 DID
18 OCCUR AT THE MEETING. ITEM NO. 2 ON PAGE 2 OF
19 EXHIBIT 35, I WOULD ENTERTAIN THE INTRODUCTION OF
20 THIS EXHIBIT FOR THE PURPOSE OF ILLUSTRATING THAT
21 A MEETING DID OCCUR AND THAT MR. CROWN DID RECEIVE
22 A COPY OF THIS, CORRECT?

23 MR. DIVER: MADAM HEARING OFFICER, I
24 THINK MAYBE I'LL GO BACK TO THIS WITNESS WITH THIS

1 DOCUMENT, IF THAT'S ACCEPTABLE, BECAUSE I BELIEVE
2 THIS WITNESS WILL TESTIFY TO THE REST OF THE
3 DOCUMENT AS WELL.

4 HEARING OFFICER: THEN, LET'S WAIT ON THE
5 ADMISSIBILITY OF EXHIBIT NO. 35 INTO EVIDENCE AND
6 THEN I ALSO HAVE A NOTE HERE RELATED TO EXHIBIT
7 NO. 54. EXHIBIT NO. 54 HAS BEEN DISCUSSED, BUT I
8 HAVE NOT RECEIVED A COP OF IT YET. AND, THERE HAS
9 NOT BEEN --

10 MR. DIVER: THERE'S ONLY ONE COPY OF
11 THAT, MADAM HEARING OFFICER.

12 HEARING OFFICER: DO YOU WISH TO PROCEED
13 TO INTRODUCE THIS INTO EVIDENCE AT THIS TIME, OR
14 DO YOU WISH TO WAIT?

15 MR. DIVER: ITEM NO. 54 B.

16 MR. ELLEDGE: MAY I READ 54, PLEASE?

17 MR. DIVER: YES, YOU CERTAINLY MAY.

18 BY MR. DIVER:

19 Q MR. CROWN, AGAIN, I WOULD ASK YOU TO LOOK
20 AT EXHIBIT NO. 35 AND EXHIBIT NO. 54 AND TELL ME,
21 WITH THE EXCEPTION OF ITEM 4A IN MR. SHELTON'S
22 SUMMARIZATION OF THE DISCUSSIONS AT THAT MEETING,
23 WHETHER OR NOT YOU AGREE WITH HIS RESCITATION OF
24 THOSE PROCEEDINGS?

1 A THE PURPOSE OF MY JANUARY 27TH LETTER WAS
2 TO SHOW WHERE HE WAS BLATANTLY OFF THE MARK AND
3 INCONSISTENT IN TOTAL AS TO MY RECOLLECTION OF THE
4 MEETING. THESE ARE HIS NOTES. AS FAR AS WHAT HIS
5 NOTES ARE, I NEVER ANTICIPATED US GOING INTO A
6 PROCEEDING OF THIS SORT. THIS WAS MORE OF A
7 RESPONSE THAT THIS WAS THE ONE AREA WHERE HE WAS
8 GROSSLY MISTAKEN AS TO THE UNDERSTANDING.

9 Q MR. CROWN, WOULD YOU READ THE LAST
10 SENTENCE OF EXHIBIT NO. 54, PLEASE?

11 A I BELIEVE IT BASICALLY REPRESENTS THE
12 ESSENCE OF OUR CONVERSATION LAST WEEK.

13 Q IS IT YOUR TESTIMONY TODAY THAT THE
14 DOCUMENT, DOCUMENT 35, WITH THE EXCEPTION OF 4A,
15 DOES NOT ANY LONGER BASICALLY REPRESENT WHAT
16 HAPPENED AT THAT MEETING?

17 A NO, IT BASICALLY REPRESENTS THE ESSENCE
18 OF WHAT WE TALKED ABOUT. IT ISN'T THE FACTUAL
19 STATEMENT OF WHAT ACTUALLY OCCURRED, IT'S HIS
20 UNDERSTANDING, IT'S THE ESSENCE. WE TALKED ABOUT
21 THE ISSUES AS DISCUSSED IN THE LETTER. HIS
22 UNDERSTANDINGS AND HIS RECOLLECTIONS ARE HIS
23 UNDERSTANDINGS AND HIS RECOLLECTIONS.

24 Q WOULD YOU REVIEW THE LETTER NOW, 35 AND

1 TELL US WHERE, IN ADDITION TO ITEM 4A, MR. SHELTON
2 WAS INCORRECT IN HIS RESCITATION OF HIS
3 DESCRIPTION OF THE PROCEEDINGS AT THE VILLAGE
4 HALL?

5 HEARING OFFICER: I BELIEVE THIS CALLS
6 FOR A NARRATIVE ANSWER, SO JUST FEEL FREE TO
7 PROCEED AS YOU CAN.

8 A 3C, I'M NOT SURE I FULLY RECALL IS THE
9 BASIS FOR TESTING. THE UNIT SHOULD BE TESTED FOR
10 ILLINOIS POLLUTION CONTROL BOARD METHODS. I'M NOT
11 SURE I KNEW WHAT THOSE METHODS WERE.

12 Q UNDERSTANDING YOU DIDN'T KNOW WHAT THE
13 METHODS WERE, DO YOU RECALL THAT THE AGREEMENT WAS
14 THE TESTING WAS GOING TO BE PURSUANT TO ILLINOIS
15 EPA METHODS?

16 A NO, I UNDERSTOOD THEY WERE GOING TO DO
17 SOME TESTING, THAT WAS THE EXTENT OF IT.

18 HEARING OFFICER: THE STATEMENT IS THAT
19 THE UNIT SHOULD BE TESTED, NOT THAT AN AGREEMENT
20 WAS MADE.

21 Q DID YOU AGREE THAT AT THAT MEETING, IT
22 WAS AGREED THAT THE UNIT SHOULD BE TESTED.

23 HEARING OFFICER: THE STATEMENT IS PER
24 DAVID SHELTON AND AL SHINER, NOT PER MR. CROWN.

1 A MY POINT IS THERE ARE STATEMENTS HERE
2 THAT ARE MADE BY DIFFERENT PARTIES, AND THESE ARE
3 HIS UNDERSTANDINGS AND RECOLLECTIONS OF THE
4 PROCEEDINGS.

5 Q OKAY.

6 A THE ONE THAT I WAS OBJECTING TO WAS PER
7 STEVE CROWN, WHICH IS NOT A STATEMENT THAT I MADE,
8 AND I WAS JUST CORRECTING WHAT HE SAID. I SAID
9 SPECIFICALLY TO MAKE SURE I WAS ON THE RECORD AS
10 HAVING NOT SAID IT, THOSE THINGS THAT WERE PER
11 PETE CRUIKSHANK, THEY MAY OR MAY NOT HAVE BEEN
12 SAID THAT WAY. IT CERTAINLY WAS HIS UNDERSTANDING.

13 MR. DIVER: MADAM HEARING OFFICER, I'LL
14 MOVE THE ADMISSION OF THIS DOCUMENT FOR THE
15 LIMITED PURPOSE THAT MADAM HEARING OFFICER HAD
16 INDICATED EARLIER ON, THAT IS, THAT THIS DOCUMENT
17 IS BEING ADMITTED FOR THE PURPOSE OF INDICATING
18 THIS WITNESS HAD RECEIVED THIS PARTICULAR
19 DOCUMENT. AND, SECONDLY, WITH RESPECT TO
20 ATTESTATION WITH RESPECT TO ITEM NO. 2, THAT IS
21 WHAT MR. SHINER HAD TO SAY DURING THAT TELEPHONE
22 CONVERSATION.

23 MR. ELLEDGE: WITH THOSE LIMITATIONS, WE
24 HAVE NO OBJECTION.

1 HEARING OFFICER: OKAY. EXHIBIT NO. 35 IS
2 ENTERED INTO EVIDENCE.

3 BY MR. DIVER:

4 Q IN GOING BACK TO EXHIBIT NO. 54,
5 THAT IS YOUR LETTER OF RESPONSE OF JANUARY 27TH,
6 WOULD YOU READ THAT PORTION OF YOUR LETTER THAT
7 INDICATES WHAT YOU DID AGREE TO OTHER THAN 4A?

8 A I DID NOT COMMIT TO POINT 4A OF YOUR
9 MEMORANDUM, BUT SUGGESTED THAT WE WAIT UNTIL THE
10 RESULTS OF ENCLOSED UNIT ARE DETERMINED AND NOT
11 ESTABLISH ANY SPECIFIC SET OF REQUIREMENTS UNTIL
12 GUIDELINES ARE DEVELOPED FOR PERMITTED SOUND
13 EMISSION FOR THE VILLAGE OF WINNETKA. SHOULD I
14 CONTINUE READING?

15 Q NO, THAT'S PLENTY. WERE SOUND EMISSION
16 GUIDELINES ULTIMATELY ESTABLISHED BY THE VILLAGE
17 OF WINNETKA?

18 A NO, SIR, NOT TO MY UNDERSTANDING.

19 Q ARE YOU AWARE OF AN ORDINANCE THAT WAS
20 BEING CONSIDERED AT ABOUT THIS TIME CONCERNING
21 EMISSIONS OF SOUND FROM AIR CONDITIONING UNITS?

22 A THERE WAS DISCUSSION OF AN ORDINANCE
23 BEING CONSIDERED, YES.

24 Q YOU'RE NOT AWARE THAT AN ORDINANCE WAS

1 PASSED IN THE VILLAGE OF WINNETKA?

2 A I'M AWARE THAT THERE WAS A SIZE
3 DETERMINATION AS TO THE SIZE OF UNITS. AS TO AN
4 ORDINANCE EMISSION, I DON'T KNOW THAT THERE WAS.
5 WHAT WAS THE ORDINANCE?

6 Q WELL, PARTICULARLY YOU DON'T KNOW THAT
7 THERE WAS AN ORDINANCE PASSED IN THE VILLAGE OF
8 WINNETKA THAT PROVIDED FOR UNITS OF 8 TONS OR
9 GREATER IN SIZE BEING ESTABLISHED -- I'M JUST
10 ASKING WHETHER HE UNDERSTANDS THIS ORDINANCE.

11 MR. CARSON: WE OBJECT TO THE RELEVANCE
12 OF THIS INQUIRY. THERE'S NO CLAIM OR ALLEGATION
13 THAT THERE'S BEEN A VIOLATION OF THIS ORDINANCE.

14 HEARING OFFICER: SUSTAINED.
15 BY MR. DIVER:

16 Q ALL RIGHT. MR. CROWN, WHAT VILLAGE OF
17 WINNETKA ORDINANCE WERE YOU HAVING REFERENCE TO IN
18 THIS PARTICULAR LETTER?

19 A THE FACT THAT THERE WASN'T AN ORDINANCE
20 IN PLACE AT THE TIME, SO, I'M NOT SURE I CAN
21 ANSWER YOUR QUESTION. I WASN'T REFERRING TO ANY
22 ORDINANCE. THERE WASN'T AN ORDINANCE, AS I
23 UNDERSTOOD IT.

24 Q SO, WHAT YOU'RE SAYING IS THAT YOUR

1 INTENTION WAS TO TELL MR. SHELTON THAT THERE
2 WASN'T ANY VILLAGE OF WINNETKA ORDINANCE, AND
3 UNTIL THERE WAS ONE, YOU WANTED TO PUT OFF THE
4 QUESTION OF WHAT STANDARDS HAD TO BE MET FOR YOUR
5 CHILLER UNIT, IS THAT WHAT I UNDERSTAND THIS
6 LETTER THEN TO BE?

7 A THE LETTER SAYS WHAT IT SAYS, MR. DIVER.

8 Q I'M ASKING YOU IF WHAT I SAID IS WHAT YOU
9 WERE SAYING.

10 A WHAT I SAID, AND I'LL READ THE LETTER
11 BACK IF YOU WISH. BUT, I THINK I'VE ALREADY DONE
12 THAT. IT SAYS THAT IT SHOULD BE NOTED, HOWEVER,
13 THAT I DID NOT COMMIT TO YOUR POINT 4A OF YOUR
14 MEMORANDUM, BUT SUGGESTED THAT WE WAIT UNTIL THE
15 RESULTS OF THE ENCLOSURE UNIT ARE DETERMINED AND
16 NOT ESTABLISH ANY SPECIFIC SET OF REQUIREMENTS.
17 MEANING, WE NOT ESTABLISH THEM UNTIL GUIDELINES
18 ARE DEVELOPED FOR PERMITTED SOUND EMISSIONS FOR
19 THE VILLAGE OF WINNETKA SO THAT OTHERS WOULD
20 ESTABLISH IT SO WE KNEW WHAT THE GUIDELINES WERE.
21 UP UNTIL NOW, EVERYTHING HAD BEEN SUBJECTIVE.

22 HEARING OFFICER: DO YOU HAVE A MOTION
23 FOR THE INTRODUCTION OF EXHIBIT NO. 54 INTO
24 EVIDENCE?

1 MR. DIVER: YES, I SO MOVE.

2 HEARING OFFICER: IS THERE ANY OBJECTION
3 TO IT?

4 MR. ELLEDGE: NO OBJECTION.

5 HEARING OFFICER: THANK YOU.

6 BY MR. DIVER:

7 Q MR. CROWN, AM I CORRECT IN SAYING THAT
8 YOU HAVE TOLD A NUMBER OF PEOPLE, INCLUDING YOUR
9 NEIGHBORS AND THE VILLAGE TRUSTEES OF WINNETKA
10 THAT YOU HAVE SPENT A LOT OF MONEY TO ADDRESS THE
11 NOISE PROBLEM AT THIS CHILLER UNIT?

12 A I BELIEVE I'VE TOLD PEOPLE WE'VE SPENT
13 MONEY TO ADDRESS THE PROBLEM, YES.

14 Q DO YOU BELIEVE YOU TOLD THEM THAT YOU
15 SPENT A LOT OF MONEY?

16 A MIGHT WELL HAVE, YES, SIR.

17 Q DO YOU KNOW HOW MUCH MONEY YOU HAVE
18 SPENT?

19 A NOT IN TOTAL, NO, SIR.

20 Q DO YOU KNOW THAT IT'S BEEN STIPULATED
21 THAT THE AMOUNT OF MONEY THAT HAS BEEN SPENT IS
22 LESS THAN \$10,000?

23 A I KNOW THAT THERE HAVE BEEN, IS THAT THE
24 STIPULATION? I KNOW WHAT IT SAYS HERE, YES, SIR.

1 Q AND, THAT THE ACTUAL COST TO THE HVAC
2 SYSTEM WAS IN EXCESS OF \$300,000?

3 A SOMETHING IN THE NEIGHBORHOOD, YES, SIR.

4 Q DO YOU HAVE A STANDING INSTRUCTION NOW TO
5 ANYONE TO CONTINUE TO PROPOSE ADDITIONAL MEASURES
6 WITH RESPECT TO THIS CHILLER UNIT TO REDUCE ITS
7 SOUND?

8 A I'M NOT SURE THERE'S STANDING ORDERS WITH
9 ANYBODY. BUT, AS YOU CAN SEE FROM OUR LAST
10 LETTER, WHICH WE SAID ENOUGH IS ENOUGH, WE WEREN'T
11 GOOD BY IT. WE STILL TRIED TO IMPROVE UPON THE
12 SITUATION. AS IDEAS COME TO MIND, I'M SURE PEOPLE
13 WILL BRING THEM TO THE FOREFRONT AND WE'LL TAKE A
14 LOOK AT THEM AND MAKE DECISIONS ACCORDINGLY.

15 Q MY QUESTION IS WHETHER OR NOT YOU HAVE
16 DIRECTED PEOPLE TO DO THAT RATHER THAN JUST
17 WAITING FOR THINGS TO HAPPEN?

18 A I BELIEVE I MENTIONED IF ANYTHING COMES
19 TO MIND OR IF YOU CAN THINK OF ANYTHING THAT WE
20 HAVEN'T THOUGHT ABOUT, LET'S TALK ABOUT IT. YES.

21 Q HAVE YOU MADE ANY KIND OF A CLAIM AGAINST
22 MID/RES WITH RESPECT TO THEIR OBLIGATIONS
23 CONCERNING A SOLUTION TO THE SOUND EMISSION
24 PROBLEM FROM THIS CHILLER UNIT?

1 A NO.

2 MR. CARSON: OBJECT TO THE RELEVANCE OF
3 THIS INQUIRY. IF THERE'S ANY CLAIM TO BE MADE
4 AGAINST MID/RES, THAT'S NOT THE SUBJECT OF WHAT'S
5 OCCURRING HERE.

6 MR. DIVER: THE SUBJECT OF THIS PROCEEDING
7 IS WHETHER THIS PARTICULAR PERSON, USING THE
8 RESOURCES OF INDEPENDENT CONTRACTORS, HAS
9 EXERCISED THE POWER THAT HE HAS TO DIRECT THOSE
10 CONTRACTORS TO FIND A SOLUTION TO THE PROBLEM HERE
11 RATHER THAN JUST WAITING FOR SOMEBODY TO COME UP
12 WITH ONE, THAT'S THE PURPOSE OF THIS LINE OF
13 QUESTIONING.

14 MR. CARSON: I DON'T THINK THAT'S WHAT
15 THE QUESTION WAS.

16 HEARING OFFICER: THE OBJECTION IS
17 SUSTAINED. THE WITNESS ANSWERED THE SIMILAR
18 RELATED QUESTION JUST PREVIOUSLY.

19 BY MR. DIVER:

20 Q WHEN THE ACOUSTICAL PANELS WERE INSTALLED
21 IN THIS UNIT BETWEEN THE JULY, 1994 SHINER TEST
22 AND THE JUNE, 1995 SHINER TEST, WHAT WAS STEVEN
23 CROWN'S GOAL TO ACCOMPLISH BY PUTTING THOSE
24 ACOUSTICAL PANELS IN?

1 A TO TRY AND MAKE THE SHELTONS HAPPY.

2 Q HAD THE SHELTONS BEEN MADE HAPPY?

3 A APPARENTLY NOT.

4 Q DO YOU INTEND TO PURSUE THAT GOAL ANY
5 FURTHER?

6 A I'M NOT SURE HOW TO, AT THIS STAGE. WE'VE
7 TRIED AND IT SEEMS DIFFICULT TO COME UP WITH A
8 SOLUTION THAT WILL BE SATISFACTORY. WE THINK WE
9 HAVE ADDRESSED AND EVEN WITH THIS LAST ADJUSTMENT,
10 WE THINK WE'VE MADE SOME SIGNIFICANT STRIDES, EVEN
11 FROM THE POINT WHERE WE THOUGHT WE WERE
12 SATISFACTORY AT ONE POINT. I'M NOT SURE HOW MUCH
13 IS ENOUGH, AT THIS POINT.

14 Q WHY DON'T YOU MOVE THE UNIT?

15 A WHY DON'T I WHAT?

16 Q WHY DON'T YOU CAUSE THE UNIT TO BE MOVED
17 TO ANOTHER LOCATION?

18 A BECAUSE ALL THE PIPING AND EVERYTHING IS
19 IN PLACE, AND IT COULD BE COST PROHIBITIVE TO DO
20 THAT. AND, I DON'T KNOW ABOUT THE EFFICIENCY.

21 Q WHEN YOU SAY IT COULD BE COST
22 PROHIBITIVE, WHAT DO YOU MEAN BY COST PROHIBITIVE?

23 A IT MAY BE IMPROBABLE TO MOVE IT AT THIS
24 POINT BECAUSE THE LINES AND EVERYTHING HAVE BEEN

1 LAID OUT. EVERYTHING HAS BEEN ADJUSTED IN THE
2 HOUSE TO ADDRESS ITS PRESENT LOCATION, BOTH THE
3 POWER AND THE ROUTINGS. WE WOULD HAVE TO DO SOME
4 MAJOR CHANGES WITHIN THE HOUSE.

5 Q WHEN YOU SAY THIS MAY BE, IS THIS
6 SOMETHING THAT YOU'VE DETERMINED FOR YOURSELF?

7 A I'VE DISCUSSED IT GENERALLY WITH MID/RES,
8 YES.

9 Q HAVE YOU ASKED MID/RES WHETHER THIS UNIT
10 COULD BE MOVED TO ANOTHER --

11 A ANYTHING COULD BE DONE. IT WOULD BE AN
12 EXHORBITANT COST.

13 Q TELL ME WHAT THE COST WOULD BE?

14 A WE DID NOT COME UP WITH A NUMBER. THEY
15 SAID IT WOULD BE VERY EXPENSIVE.

16 Q HOW DID YOU DETERMINE THAT IT WOULD BE
17 EXHORBITANT IF YOU DON'T KNOW HOW MUCH IT WOULD
18 BE?

19 A I'LL WITHDRAW THE WORD "EXHORBITANT".
20 THEY SAID IT WOULD BE VERY COSTLY.

21 Q DID YOU ASK THEM HOW COSTLY IT WOULD BE?

22 A NO, I DID NOT.

23 Q DO I UNDERSTAND, THEN, THAT AT LEAST AS
24 YOU SIT HERE RIGHT NOW, YOU DON'T KNOW HOW MUCH IT

1 WOULD COST TO MOVE THAT UNIT TO ANOTHER LOCATION
2 ON YOUR PROPERTY?

3 A I DO NOT KNOW, AT THIS TIME, WHAT IT
4 WOULD COST TO MOVE IT, PLUS ALL THE ANCILLARY
5 COSTS, THE REPLACEMENT OF WALLS OR REPLACEMENT OF
6 FLOORS, THE REPLACEMENT OF ELECTRICAL MOVEMENT OF
7 ALL THE THINGS IN THE HOUSE, NO, SIR, I DON'T HAVE
8 A COMPLETE ASSESSMENT OF ALL THE COSTS INHERENT IN
9 THAT TYPE OF A MOVE.

10 Q HAVE YOU EVER ASKED MID/RES TO PROVIDE
11 YOU IN WRITING WITH AN ASSESSMENT OF ALL THE
12 THINGS THAT WOULD HAVE TO OCCUR AND THE COSTS THAT
13 WOULD BE ATTENDANT TO THEM TO MOVE THIS UNIT TO
14 ANOTHER LOCATION ON YOUR PROPERTY?

15 A NO, SIR, I HAVE NOT.

16 MR. DIVER: I WOULD ASK FOR A BRIEF
17 RECESS, MADAM HEARING OFFICER, TO DISCUSS WITH MY
18 CLIENT WHETHER THERE ARE OTHER AREAS THAT HE WOULD
19 LIKE ME TO INQUIRE INTO.

20 HEARING OFFICER: OKAY. LET'S TAKE ABOUT
21 A FIVE MINUTE RECESS.

22 (WHEREUPON, A SHORT RECESS WAS
23 TAKEN.)

24

1 AFTER RECESS

2 BY MR. DIVER:

3 Q SHOWING YOU NOW WHAT'S BEEN MARKED AS
4 EXHIBIT NO. 22, MADAM HEARING OFFICER, PURPORTING
5 TO BE A LETTER FROM THE SHELTONS TO YOU SEPTEMBER
6 OF 1995?

7 A YES, I RECEIVED IT.

8 MR. DIVER: AGAIN, MOVE THE ADMISSION OF
9 THAT DOCUMENT, MADAM HEARING OFFICER, AS BEING A
10 CONTINUATION OF THE COMPLAINTS OF THE SHELTONS
11 WITH RESPECT TO THE NOISE EMISSIONS FROM THIS
12 PARTICULAR PIECE OF EQUIPMENT.

13 MR. ELLEDGE: FOR THAT LIMITED PURPOSE,
14 NO OBJECTION.

15 HEARING OFFICER: IT'S ACCEPTED INTO
16 EVIDENCE FOR THAT PURPOSE.

17 BY MR. DIVER:

18 Q MR. CROWN, AT SOME POINT IN TIME DURING
19 THE HISTORY OF THE SOUND PROBLEM FROM SEPTEMBER OR
20 THEREABOUTS OF 1993 TO THE PRESENT, WERE YOU
21 ADVISED THAT SOMEONE WAS ASSERTING THAT THE
22 MANUFACTURER OF THE EQUIPMENT ITSELF, TRANE
23 COMPANY IN PARTICULAR, HAD ISSUED DOCUMENTS
24 INDICATING THAT THIS PARTICULAR UNIT SHOULD NOT BE

1 APPLIED IN A RESIDENTIAL SETTING?

2 A MY ONLY RECOLLECTION IS THERE WAS A
3 LETTER FROM DAVID SHELTON TO ME SOMETIME WAY BACK
4 THAT HE MADE THE STATEMENT. BUT, I HAVE YET TO SEE
5 THAT.

6 Q DID HE APPEND TO THAT DOCUMENT, DOCUMENTS
7 PURPORTEDLY FROM TRANE?

8 A HE MAY WELL HAVE.

9 Q DO YOU RECALL RECEIVING SUCH DOCUMENTS
10 THAT SUGGESTED THAT SOMEONE AT LEAST WAS ASSERTING
11 THAT THIS UNIT WAS INAPPROPRIATELY PLACED ON A
12 RESIDENTIAL PROPERTY?

13 A I RECALL DAVID SHELTON WRITING ME A
14 LETTER SAYING THAT THERE WAS SOMETHING FROM TRANE.
15 THAT'S THE BEST OF MY RECOLLECTION.

16 Q DO YOU RECALL WHEN, IN THE SEQUENCE OF
17 EVENTS THAT OCCURRED, WHETHER IT WAS CLOSER TO
18 1993, CLOSER TO 1996?

19 A NO, SIR. THE DOCUMENTS ARE PROBABLY IN
20 EVIDENCE SOMEWHERE. I'M SURE YOU'LL FIND THEM.

21 Q I'M GOING TO SHOW YOU A DOCUMENT UNMARKED
22 AT THIS POINT, DATED JULY 21 AND ASK YOU TO LOOK A
23 THAT AND SEE IF THAT REFRESHES YOUR RECOLLECTION
24 AS TO THE TIMING OF YOUR RECEIPT OF THE

1 INFORMATION THAT TRANE WAS OR SOMEONE WAS CLAIMING
2 THAT TRANE WAS SAYING THAT THIS TYPE OF EQUIPMENT
3 OUGHT NOT TO BE USED ON RESIDENTIAL PREMISES?

4 A I'M SORRY, WHAT WAS YOUR QUESTION?

5 Q DOES THAT REFRESH YOUR RECOLLECTION THAT
6 IT WAS IN 1994, JULY OF 1994 THAT YOU RECEIVED
7 THAT INFORMATION FROM DAVID SHELTON?

8 A I RECEIVED A COPY OF A LETTER TO AL
9 SHINER. IT DOESN'T SAY I GOT ENCLOSURES WITH IT,
10 SO I ASSUME I JUST GOT THE COVER RIGHT NOW.

11 MR. ELLEDGE: IS THAT MARKED?

12 MR. DIVER: I WAS JUST USING IT TO
13 REFRESH HIS RECOLLECTION. I'M NOT GOING TO ADMIT
14 IT. I RENEW THE QUESTION, DOES THAT REFRESH YOUR
15 RECOLLECTION AS TO WHEN YOU WERE FIRST ADVISED OR
16 HEARD OF THIS CLAIM THAT TRANE MAY HAVE BELIEVED
17 THIS UNIT WAS INAPPROPRIATE FOR SUE ON RESIDENTIAL
18 PROPERTY?

19 A ALL I CAN GO BACK TO IS MY ORIGINAL
20 TESTIMONY THAT SAID THAT YOU ASKED ME WHETHER, WHO
21 MIGHT HAVE APPRISED ME OF THIS SITUATION. I SAID I
22 THOUGHT IT WAS DAVID SHELTON, APPARENTLY I WAS
23 CORRECT.

24 Q AND, I'M ASKING, DOES THIS DOCUMENT

1 REFRESH YOUR RECOLLECTION AS TO THE TIMING OF THIS
2 ADVICE?

3 A IT SAYS JULY 21, 1994. HE MAY HAVE MADE
4 REFERENCE TO IT EARLY, HE MAY HAVE MADE IT
5 AFTERWARDS. THIS WOULD BE THE EARLIEST, OBVIOUSLY.

6 Q YOUR RECOLLECTION WAS IT WAS AT LEAST JULY
7 OF 1994 THAT YOU WERE APPRISED OF THAT CLAIM BY
8 TRANE?

9 A AT LEAST BY 1994, I RECEIVED A COPY OF A
10 LETTER TO AL SHINER FROM DAVID SHELTON REFERENCING
11 SOME TRANE DOCUMENTS I DON'T REMEMBER SEEING.

12 Q THANK YOU. HOW DID YOU EXPECT THAT THE
13 SHELTON FAMILY WAS GOING TO SLEEP DURING THE
14 SUMMER OF 1994 WHEN THE AIR CONDITIONING UNIT WAS
15 BEING OPERATED 24 HOURS A DAY?

16 A BEG YOUR PARDON?

17 Q HOW DID YOU EXPECT THAT THE SHELTON
18 FAMILY WAS GOING TO SLEEP AT NIGHT DURING 1994
19 WHEN THE AIR CONDITIONING SYSTEM WAS OPERATING 24
20 HOURS A DAY?

21 A I'M NOT SURE HOW TO ANSWER THAT QUESTION.

22 Q HAD THEY BEEN COMPLAINING ABOUT THE
23 INABILITY TO SLEEP AT NIGHT BECAUSE OF THE LOUD
24 SOUNDS FROM THAT EQUIPMENT?

1 A THAT'S WHAT SOME OF THEIR LETTERS HAVE
2 SAID, YES.

3 Q AND THEN, THE EQUIPMENT WENT ON 24 HOURS
4 A DAY TO MAKE SURE IT WAS GOING ALL NIGHT LONG?

5 HEARING OFFICER: YOU CAN ANSWER THE
6 QUESTION TO THE BEST OF YOUR ABILITY.

7 A TO THE BEST OF MY ABILITY, I HOPED THEY
8 WOULD SLEEP SOUNDLY. I'M NOT SURE HOW TO ANSWER
9 THAT.

10 MR. DIVER: NO FURTHER QUESTIONS OF THIS
11 WITNESS.

12 MR. CARSON: WE'RE PLANNING TO CALL MR.
13 CROWN AS PART OF THE RESPONDENT'S CASE, AND WE
14 HAVE NO QUESTIONS BY THE NATURE OF REHABILITATION
15 AT THIS TIME.

16 HEARING OFFICER: OKAY. THEN, I WANT TO
17 THANK YOU FOR COMING, MR. CROWN.

18 THE WITNESS: I THINK I'LL SEE A LOT OF
19 YOU, MA'AM.

20 HEARING OFFICER: YOU'LL BE BACK.

21 THE WITNESS: YES.

22 HEARING OFFICER: THANKS VERY MUCH.

23 MR. DIVER: THANK YOU, MR. CROWN.

24 HEARING OFFICER: AT THIS ITME, I BELIEVE

1 WE'LL BE CALLING COMPLAINANT'S SECOND WITNESS
2 BEFORE WE CONCLUDE TODAY. SO, WE'LL DO THAT.

3 MR. DIVER: COMPLAINANTS CALL AS THEIR
4 SECOND WITNESS MS. JULIAN.

5 HEARING OFFICER: IS THIS MARJORIE
6 JULIAN?

7 MR. DIVER: YES.

8 (OFF THE RECORD)

9 HEARING OFFICER: WE'LL GO BACK ON THE
10 RECORD AND WE NOW HAVE BEFORE US THE COMPLAINANT'S
11 SECOND WITNESS IN THEIR CASE IN CHIEF, AND THE
12 WITNESS' NAME?

13 MR. KAISER: MS. MARGE JULIAN.

14 HEARING OFFICER: MARGE JULIAN. MS.
15 JULIAN, WOULD YOU BE SWORN?

16 (WITNESS SWORN)

17 M A R J O R I E M O O R E J U L I A N,
18 AFTER HAVING BEEN FIRST DULY SWORN ON OATH,
19 DEPOSES AND TESTIFIES AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. KAISER:

22 Q GOOD AFTERNOON, MS. JULIAN. MS. JULIAN,
23 COULD YOU PLEASE STATE YOUR FULL NAME AND SPELL
24 YOUR LAST NAME, FOR THE COURT REPORTER'S BENEFIT?

1 A YES, MARJORIE MOORE JULIAN, J-U-L-I-A-N.
2 Q MS. JULIAN, ARE YOU MARRIED?
3 A YES.
4 Q TO WHOM?
5 A MY HUSBAND, BOB, KNOWN AS ROBERT.
6 Q AND, DO YOU AND MR. JULIAN HAVE A HOME ON
7 ARDSLEY ROAD IN WINNETKA, ILLINOIS.
8 A YES, WE DO.
9 Q IS YOUR ADDRESS 727 ARDSLEY ROAD?
10 A YES, IT IS.
11 Q HOW LONG HAVE YOU LIVED AT THAT ADDRESS?
12 A SINCE APPROXIMATELY MARCH, 1990. SO, THAT
13 WOULD BE FIVE YEARS, SIX YEARS AND THREE MONTHS.
14 Q AND, ARE YOUR NEIGHBORS, DAVID AND SUSAN
15 SHELTON?
16 A YES, THEY ARE.
17 Q AND, THEY'RE YOUR NEIGHBORS TO THE SOUTH?
18 A THAT'S CORRECT.
19 Q I WANT TO SHOW YOU WHAT'S BEEN MARKED FOR
20 PURPOSES OF IDENTIFICATION AS EXHIBIT NO. 50. I'M
21 NOT CERTAIN AT THIS POINT WHETHER IT'S BEEN
22 ADMITTED INTO EVIDENCE, BUT FOR PURPOSES OF
23 IDENTIFICATION, IT'S EXHIBIT NO. 50. I WANT TO
24 SHOW YOU THE LAST PAGE OF THAT EXHIBIT AND ASK YOU

1 TO TAKE A LOOK AT THAT. AND, WHEN YOU'RE DONE
2 REVIEWING IT, PLEASE LET ME KNOW.

3 A I SHOULD KNOW THIS DOCUMENT VERY WELL, I
4 PREPARED IT AS A MAP FOR THE FIRST TIME WE HAD THE
5 ARDSLEY-PELHAM ASSOCIATION ADDRESS LIST PREPARED.
6 YES, I KNOW THIS WELL.

7 Q AND, IS IT YOUR TESTIMONY THAT YOU
8 PREPARED THAT MAP?

9 A YES, IT IS.

10 Q AND, DOES THAT MAP INDICATE THE LOCATION
11 OF YOUR HOME?

12 A YES, IT DOES.

13 Q AND, DOES IT ALSO INDICATE THE RELATIVE
14 LOCATION OF THE SHELTON RESIDENCE?

15 A RELATIVELY AS I NOTED AT THE BOTTOM, IT'S
16 NOT TO SCALE, BELIEVE ME.

17 Q ALL RIGHT. BUT, IT'S ACCURATE IN OTHER
18 RESPECTS IN THAT IT INDICATES THAT YOUR PROPERTY
19 IS LOCATED IMMEDIATELY NORTH OF THE SHELTON
20 PROPERTY?

21 A YES, THAT'S CORRECT.

22 Q AND, DOES THAT MAP THERE IN EXHIBIT NO.
23 50 ALSO INDICATE THE LOCATION OF THE CROWN
24 PROPERTY?

1 A YES, IT DOES.

2 Q AND, IS THAT AN ACCURATE DEPICTION THAT
3 THE CROWN PROPERTY IS IMMEDIATELY TO THE SOUTH OF
4 THE SHELTON PROPERTY?

5 A THAT'S CORRECT.

6 Q SO, IS IT FAIR TO STATE THAT BETWEEN THE
7 NORTH PROPERTY BOUNDARY OF THE CROWN PROPERTY AND
8 THE, AND YOUR SOUTH PROPERTY BOUNDARY, THE LAND IN
9 BETWEEN IS OWNED BY THE SHELTONS?

10 A THAT'S CORRECT.

11 Q DO YOU RECALL WHEN YOU FIRST BECAME AWARE
12 THAT MR. CROWN AND HIS WIFE WERE INTENDING TO
13 BEGIN CONSTRUCTION ON THEIR RESIDENCE WHICH ALSO
14 HAS AN ADDRESS ON ARDSLEY ROAD?

15 A YES, NOT LONG, MAYBE PROBABLY SIX MONTHS
16 OR SO AFTER WE MOVED IN, THE FAMILY WHO HAD
17 OCCUPIED THE RESIDENCE THAT NOW IS THE CROWNS, WE
18 HAD HEARD RUMOR THAT THEY WERE MOVING.

19 Q AND, DID YOU KNOW, DID YOU HAVE REASON TO
20 KNOW OR BE ACQUAINTED WITH STEVEN CROWN, ONE OF
21 THE RESPONDENTS IN THIS ACTION, BEFORE YOU BECAME
22 NEIGHBORS ON ARDSLEY ROAD IN WINNETKA, ILLINOIS?

23 A YES, HIS WIFE NANCY AND I WERE ON THE
24 HOSPITAL AUXILLIARY BOARD OF THE EVANSTON

1 HOSPITAL.

2 Q AND, THROUGH SERVICE ON THAT BOARD, DID
3 YOU HAVE OCCASION TO BECOME ACQUAINTED WITH MR.
4 CROWN?

5 A I BELIEVE SO.

6 Q AND, YOU RECOGNIZE MR. CROWN --

7 A YES.

8 Q -- IN THE HEARING ROOM TODAY. I WANT TO
9 DIRECT YOUR ATTENTION TO THE SUMMER OF 1994.
10 YOU'LL RECALL THAT DURING THE SUMMER OF 1994, YOUR
11 HUSBAND ROBERT WAS RECEIVING TREATMENT FOR
12 LUKEMIA?

13 A THAT'S CORRECT.

14 Q AND, DID THAT REQUIRE HIM AND YOU TO
15 ACCOMPANY HIM FOR TREATMENT IN SOUTHERN CALIFORNIA
16 DURING THE EARLY SUMMER OF 1994?

17 A THAT'S CORRECT.

18 MR. CARSON: AT THIS POINT, I WANT TO
19 OBJECT TO THE LEADING NATURE OF THE QUESTION. IT'S
20 ONE THING FOR FOUNDATIONAL THINGS LEADING UP TO
21 THIS, BUT NOW, REALLY COUNSEL IS TESTIFYING.

22 HEARING OFFICER: CAN YOU REPHRASE YOUR
23 QUESTION?

24 MR. KAISER: YES.

1 BY MR. KAISER:

2 Q WHERE, IF ANYWHERE, DID YOU AND YOUR
3 HUSBAND TRAVEL IN THE EARLY SUMMER OF 1994?

4 A TO SCRIPPS CLINIC LOCATED IN LAJOYA,
5 CALIFORNIA FOR TREATMENT OF HIS LEUKEMIA
6 CONDITION.

7 Q DO YOU RECALL WHAT MONTH IT WAS THAT YOU
8 TRAVELED TO CALIFORNIA?

9 A YES, WE LEFT IN THE LAST WEEK OF JUNE,
10 RETURNING APPROXIMATELY THE MIDDLE OF THE SECOND
11 AND THIRD WEEK OF JULY OF THAT SAME YEAR.

12 Q AND, THAT YEAR BEING 1994?

13 A YES, THAT'S CORRECT.

14 Q AND, WHEN YOU RETURNED, WHAT, IF
15 ANYTHING, DID YOU NOTICE ABOUT SOUND OR NOISE IN
16 YOUR NEIGHBORHOOD?

17 A THAT, IN KEEPING OUR BEDROOM DOOR OPEN,
18 THE SOUND OF EITHER A TRANSFORMER OR CONDITIONER,
19 I'M NOT, OR CONDENSER, I'M NOT REALLY SURE OF THE
20 TECHNICALITY OF HOW AN AIR CONDITIONER OPERATES OR
21 WHATEVER THE MACHINE WAS, WAS SO LOUD THAT IT
22 CONTINUED FOR AS LONG AS WE KEPT THE DOOR, WHICH
23 IS IN OUR BEDROOM FACING THE CROWN PROPERTY
24 THROUGH THE SHELTON'S, OPEN. I COULD COUNT THE

1 NUMBER OF TIMES DURING THE NIGHT THAT THE,
2 WHICHEVER PIECE OF MACHINERY WENT ON AND OFF, ON
3 AND OFF. AND, AT ONE POINT, I GOT UP OUT OF BED
4 AND I WENT OVER AND I SAID BECAUSE SUSI AND DAVID
5 HAD MENTIONED THAT THEY WERE EXPERIENCING SOME
6 PROBLEMS, I PUT MY HAND ON THE FLOOR IN FRONT OF
7 THE DOOR TO OUR OUTSIDE FACING SOUTH, AND I COULD
8 FEEL THE VIBRATION EVERY TIME THE MACHINE WENT ON
9 AND OFF. AND, THE REASON I WAS SO WAKEFUL IS MY
10 HUSBAND WAS TREATED FOR THE SECOND TIME FOR
11 LEUKEMIA AND I WAS EXTREMELY, SHALL WE SAY, IN A
12 STATE OF IRRITATION OR AGITATION BECAUSE WE DIDN'T
13 KNOW IF IT WAS GOING TO TAKE THAT TIME OR NOT.

14 Q ALL RIGHT. NOW, IF I CAN JUST BACK
15 UP A BIT AND FILL IN SOME OF THESE DETAILS, YOUR
16 BEDROOM IS LOCATED, AT WHAT END OF THE HOUSE IS
17 YOUR BEDROOM LOCATED ON?

18 A OUR BEDROOM IS LOCATED IN THE SOUTHEAST
19 CORNER OF OUR HOUSE.

20 Q IS IT LOCATED ON THE FIRST OR SECOND
21 FLOOR OF YOUR HOUSE?

22 A IT'S LOCATED ON THE FIRST FLOOR.

23 Q ARE THERE ANY WINDOWS OR DOORS FACING
24 SOUTH?

1 A YES, A DOOR.

2 Q ANY WINDOWS?

3 A NO, NO, JUST THE DOOR ON THE BEDROOM.

4 Q AND, DID YOU HAVE OCCASION, DURING JULY
5 OF 1994, TO HAVE YOUR BEDROM DOOR, THE SOUTH
6 FACING DOOR, OPEN DURING THE EVENING HOURS?

7 A IF YOU COULD UNDERSTAND THAT WE HAD BEEN
8 IN CALIFORNIA FOR TREATMENTS FOR MY HUSBAND AND
9 THE HOUSE WAS, WE WERE IN CLOSED UP RESIDENCES
10 BECAUSE HE WAS EXTREMELY SUSCEPTIBLE AT THE TIME,
11 THAT THE ONE THING I WANTED TO GET BACK TO
12 WINNETKA WAS OPEN THE DOORS AND WINDOWS, JUST HAVE
13 THE BIRDS SINGING AND WHATEVER I COULD HEAR OR NOT
14 HEAR AS A PART OF BEING BACK IN MY OWN COMMUNITY.

15 Q SO, WHEN YOU RETURNED TO WINNETKA IN JULY
16 OF 1994, IS IT YOUR TESTIMONY THAT YOU DID OPEN
17 THE SOUTH FACING DOOR OF YOUR BEDROOM DURING THE
18 EVENING HOURS IN ORDER TO EXPERIENCE THE FRESH
19 AIR?

20 A YES.

21 Q AND WHAT, IF ANYTHING, DID YOU HEAR
22 THROUGH, WHAT NOISES DID YOU HEAR?

23 A ONCE AGAIN, AS I SAID, I'M NOT QUALIFIED
24 TO SAY HOW AN AIR CONDITIONING UNIT GOES, BUT IT

1 GOES ON AND OFF AND ON AND OFF THROUGHOUT THE
2 NIGHT. AND, I COULD COUNT MANY TIMES THAT IT DID,
3 ON SEVERAL NIGHTS AND FINALLY WE ENDED UP CLOSING
4 UP THE HOUSE AND TURNING ON THE AIR CONDITIONING,
5 EVEN THOUGH THAT WAS NOT MY DESIRE TO DO SO.

6 Q WERE YOU ABLE TO DETERMINE OR FORM A
7 BELIEF OF YOUR OWN AS TO WHAT THE SOURCE OF THE
8 NOISE WAS?

9 A YES.

10 Q AND, WHAT DID YOU CONCLUDE WAS THE SOURCE
11 OF THE NOISE THAT YOU HEARD IN YOUR BEDROOM DURING
12 JULY OF 1994?

13 A IT WAS THE CROWN AIR CONDITIONING UNIT OR
14 WHATEVER IT'S CALLED.

15 Q HOW WERE YOU ABLE TO MAKE THAT
16 DETERMINATION THAT IT WAS THE CROWN AIR
17 CONDITIONING UNIT?

18 A IT'S VERY LOUD, IT WAS VERY NOISY AND YOU
19 CAN JUST TELL IT'S THAT. IT'S LIKE IF YOU SAT NEXT
20 TO A CAR IDLING AND YOU SIT NEXT TO A MAC TRUCK
21 IDLING, YOU KNOW WHAT YOU'RE NEXT TO. IT WAS JUST
22 VERY BIG AND VERY NOISY. AND, I CAN'T SAY THAT I
23 KNEW FOR SURE, IT WAS HIS AIR CONDITIONER, BUT
24 THERE WAS NO OTHER AIR CONDITIONER WITH OURS ON

1 THAT I COULD HEAR, EVEN WITH OUR OWN ON, IT
2 OVERWHELMED.

3 Q PRIOR TO THE SUMMER OF 1994, NOW, YOU'VE
4 JUST DESCRIBED TO US A SOUND THAT YOU EXPERIENCED
5 IN JULY OF 1994 WHILE AWAKE IN YOUR BEDROOM DURING
6 THE EVENING HOURS. HAD YOU EVER HEARD THAT SOUND
7 PRIOR TO THE SUMMER OF 1994?

8 A NOT THAT I CAN RECALL.

9 Q IF YOU HAD HEARD THAT SOUND, DO YOU THINK
10 YOU WOULD RECALL IT?

11 A YES, I WOULD.

12 Q CAN YOU GIVE THE HEARING OFFICER AND BY
13 EXTENSION, THE BOARD A SENSE OF THE SIZE OR POWER
14 OR IMPACT OF THAT SOUND AS YOU EXPERIENCE IT IN
15 YOUR BEDROOM OR AS YOU EXPERIENCED IT IN YOUR
16 BEDROOM IN JULY OF 1994?

17 A THE BEST THING I CAN SAY, IT JUST TOTALLY
18 INTERRUPTED MY SLEEP. WHEN IT WOULD GO ON AND OFF
19 AS DAYTIME NOISES TEND TO MASK EVERYTHING, PLANES
20 GOING OVERHEAD, LAWN MOWERS, WHATEVER. BUT, AT
21 NIGHT, THAT NOISE REALLY COMES THROUGH, AND IT
22 REALLY CAME THROUGH, AND IT WAS VERY, VERY
23 DISRUPTIVE. HOW COULD I IDENTIFY IT? IT WAS A
24 NEW NOISE IN THE BLOCK, I GUESS.

1 Q AND, IS IT YOUR TESTIMONY THAT IT
2 DISTURBED YOUR SLEEP ON MORE THAN ONE OCCASION IN
3 JULY AND EARLY AUGUST OF 1994?

4 A YES.

5 Q CAN YOU ESTIMATE ON HOW MANY OCCASIONS
6 THE SOUND OF THIS AIR CONDITIONING UNIT OR CHILLER
7 UNIT DISTURBED YOUR SLEEP DURING JULY OR EARLY
8 AUGUST OF 1994?

9 A ENOUGH -- WELL, YOU'D LIKE THE NUMBER, I
10 WOULD SAY PERHAPS A HALF A DOZEN TIMES OR MORE. IT
11 REALLY DIDN'T DEPEND ON THE TEMPERATURE OUTSIDE
12 WHERE THE UNIT SEEMED TO GO CONSTANTLY. IT WAS NO
13 LET UP.

14 Q DO YOU RECALL WHETHER IT WAS AN
15 OPPRESSIVELY HOT SUMMER IN JULY AND AUGUST OF
16 1994?

17 A NO, I DON'T FEEL THAT IT WAS OPPRESSIVELY
18 NOT.

19 Q HOW DO YOU MAKE THAT DETERMINATION?

20 A BECAUSE THE SUMMER OF 1995 WAS
21 OPPRESSIVELY HOT, WE KEPT THE DOOR CLOSED THE
22 ENTIRE SUMMER BECAUSE IT WAS, WE RAN OUR OWN AIR
23 CONDITIONING UNITS.

24 Q AND, DURING THE SUMMER OF 1995, WHICH WAS

1 OPPRESSIVELY HOT, DID YOU HAVE OCCASION TO HEAR
2 THE AIR CONDITIONER AND THE NOISE EMINATING FROM
3 THE CROWN RESIDENCE?

4 A THINKING SPECIFICALLY OF DIFFERENT
5 LOCATIONS WHEN WE WERE OUTSIDE AT NIGHT, WHEN IT
6 WAS OPPRESSIVELY HOT, WE DIDN'T GO OUT AT NIGHT,
7 THE BUGS WERE TOO BAG.

8 Q BUT, IN 1995, WHERE IT WAS MILDER AND THE
9 DOORS WERE OPEN, YOU HEARD THIS AIR CONDITIONING
10 UNIT?

11 A THAT'S CORRECT.

12 Q DID YOU, IN YOUR OWN MIND, GO THROUGH A
13 PROCESS OF ELIMINATION IN ORDER TO DETERMINE
14 WHETHER THIS SOUND THAT WAS DISTURBING YOUR SLEEP
15 CAME FROM THE CROWN PROPERTY AS OPPOSED TO THE
16 SHELTON PROPERTY, OR ANY OF THE PROPERTY OF ANY OF
17 YOUR OTHER NEIGHBORS?

18 A I'D HAVE TO BE TRUTHFUL. NO, I DID NOT.
19 BUT, THE SHELTONS HAD BEEN IN RESIDENCE THE YEAR
20 BEFORE, AND I NEVER NOTICED ANY SOUND AT ALL.
21 BUT, THIS HAD BECOME A PERVASIVE SOUND AND I
22 FIGURED IF THEY HADN'T, THEIR AIR CONDITIONERS
23 WERE WORKING, IF THEY WERE WORKING, I HADN'T HEARD
24 THEM.

1 Q DO YOU HAVE ANY DOUBT, AS YOU SIT HERE
2 TODAY, THAT THE SOURCE OF THE SOUND THAT DISTURBED
3 YOUR SLEEP IN JULY AND AUGUST OF 1994 WAS ANYTHING
4 OTHER THAN THE AIR CONDITIONING UNIT ON THE CROWN
5 RESIDENCE

6 A I HAVE ABSOLUTELY NO -- NO, I'M TOTALLY
7 ASSURED OF THAT.

8 Q I WANT TO SHOW YOU WHAT'S PREVIOUSLY BEEN
9 MARKED FOR PURPOSES OF IDENTIFICATION AS EXHIBIT
10 NO. 16. I WANT YOU TO TAKE A LOOK AT THAT AND TELL
11 ME WHEN YOU'VE FINISHED YOUR REVIEW.

12 A YES, I'M FAMILIAR WITH THE LETTER. MY
13 HUSBAND AND I WROTE IT.

14 Q WHAT PROMPTED YOU TO WRITE THE LETTER?

15 A THE NOSIE FROM THE AIR CONDITIONER GOING
16 ON AND OFF AND I BELIEVE AT THAT TIME IT WAS
17 WRITTEN TO THEIR RESIDENTS ON LINDEN, AT 35 LINDEN
18 IN WILMETTE BECAUSE THEY WERE NOT RESIDING IN THE
19 HOUSE AT THE TIME.

20 Q HOW WAS IT THAT YOU HAD THE ADDRESS OF
21 THE CROWNS AT 35 LINDEN?

22 A I WAS CHAIR OF THE ARDSLEY-PELHAM ROAD
23 ASSOCIATION AND I PREPARED THE DOCUMENT WHICH WAS
24 GIVEN TO ME WHICH IS EXHIBIT NO. 50, A LIST OF THE

1 NEIGHBORHOOD ASSOCIATIONS IN 1991 AND THIS WAS AN
2 UPDATED LIST THAT I HAD SENT TO THE CROWNS AFTER
3 THEIR PURCHASE OF THE PROPERTY SO THAT THEY WOULD
4 BE UP TO DATE WITH THE PEOPLE WHO LIVED IN THE
5 NEIGHBORHOOD.

6 Q HAD YOU HAD THE EXPERIENCE OF MAILING
7 THINGS TO THE CROWN RESIDENCE ON LINDEN AND HAVING
8 THEM RECEIVED?

9 A YES, I MAILED THIS, I BELIEVE I MAILED
10 THIS UPDATE TO THEM FOLLOWING, THIS WAS 1991, I
11 HAD ONE IN 1992 OR 1993, EXCUSE ME, AND I ALSO
12 HAD, I SOLICITED A DONATION BECAUSE WE HAVE TO
13 PROVIDE OUR OWN STORM SEWERS ON ARDSLEY-PELHAM,
14 IT'S A PRIVATE ROAD, AND WE HAVE TO DO THIS, PAY
15 FOR IT OURSELVES.

16 Q SO, YOU HAD REASON TO BELIEVE THAT THAT
17 WAS AN ADDRESS WHERE MR. CROWN AND HIS WIFE COULD
18 RECEIVE MAIL?

19 A UH HUH.

20 Q I NOTE IN THE THIRD PARAGRAPH YOU STATE
21 WE SEEM TO BE DIRECTLY IN ITS SOUND PATH AND ARE
22 CRITICALLY AWARE OF THE FAN AND/OR COMPRESSOR
23 ON-OFF ACTIVITY BETWEEN 3:00 A.M. AND 5:00 A.M.
24 WHAT WAS THE BASIS FOR YOUR CRITICAL AWARENESS OF

1 THE FAN AND/OR COMPRESSOR ON-OFF ACTIVITY BETWEEN
2 3:00 A.M. AND 5:00 A.M.

3 A THE BASIS WAS THAT I WAS FORCED, I WAS
4 AWAKENED BY IT AND THEREFORE, VERY RESTLESS AFTER
5 THAT TIME BECAUSE I WOULD JUST GET TO SLEEP AND
6 I'D HEAR IT CLICK ON AGAIN OR CLICK OFF AGAIN,
7 WHATEVER CYCLE IT WAS IN, IT WAS ON-OFF LOTS OF
8 TIMES.

9 Q DID YOU EVER MAKE ANY OBSERVATIONS AS TO
10 WHETHER YOUR HUSBAND'S SLEEP WAS DISTURBED DURING
11 THIS PERIOD OF JULY, 1994 AND EARLY AUGUST OF
12 1994?

13 A I HAVE TO SAY VERY HONESTLY I DON'T
14 BELIEVE HIS SLEEP WAS AT ALL DISTURBED. HE WAS IN
15 A WEAKENED CONDITION FOLLOWING CHEMO AND HE REALLY
16 PROBABLY SLEPT FAIRLY WELL AT THAT TIME, WHEN HE
17 WAS SLEEPING.

18 Q WERE THERE OCCASIONS WHEN HE WAS AWAKENED
19 DURING THE NIGHT?

20 A ONLY BY MY SAYING I WISH THAT THING WOULD
21 SHUT OFF.

22 Q AND, WHEN YOU'RE REFERRING TO THE THING,
23 WHAT'S IT THAT YOU'RE REFERRING TO?

24 A THE AIR CONDITIONING UNIT, I'M SORRY I

1 WASN'T SPECIFIC.

2 Q HAVE YOU HAD OCCASION MORE RECENTLY TO
3 STEP OUTSIDE OF YOUR HOME AND STAND IN THE NIGHT
4 AIR AND MAKE ANY OBSERVATIONS AS TO NOISE ON YOUR
5 PROPERTY?

6 A NOTHING. I WAS GOING TO BE COMING DOWN
7 TODAY AT 11:00 O'CLOCK, 11:00 P.M. LAST NIGHT. I
8 STEPPED OUTSIDE AND WE HAD BOTH OF OUR UNITS
9 RUNNING AT THE TIME AND I JUST WANTED TO DETERMINE
10 IF THE NOISE WAS, HAD BEEN ABATED AT ALL. I DID
11 NOT HEAR ANY COMPRESSORS OR WHATEVER IT IS THAT
12 GOES ON AND OFF. I JUST HEARD A VERY LOUD NOISE, A
13 LOUDER NOISE THAN OUR TWO AIR CONDITIONING UNITS
14 WHICH WERE AROUND THE CORNER FROM WHERE I WAS
15 STANDING ON OUR PATIO AT THE BACKSIDE OF THE
16 HOUSE.

17 Q YOUR HOME IS CENTRALLY AIR CONDITIONED?

18 A YES, IT IS.

19 Q AND, YOU HAVE TWO CHILLER UNITS ON THE
20 NORTH SIDE OF YOUR HOUSE?

21 A WE DO.

22 Q AND, IS IT YOUR TESTIMONY THAT THE SOUND
23 OF THE CROWN AIR CONDITIONER, AS YOU EXPERIENCED
24 IT LAST NIGHT ON JUNE 30TH, 1996, WAS SO LOUD AS

1 TO DROWN OUT THE SOUND OF YOUR OWN AIR
2 CONDITIONING UNITS?

3 A IT'S TWO DIFFERENT SOUNDS. THE SOUND OF
4 THE CROWN UNIT IS VERY LARGE. I DON'T KNOW HOW YOU
5 CAN DESCRIBE A VOLUME OF SOUND, BUT IT'S VERY
6 LARGE. IT'S LIKE, AS I SAID, HAVING A MAC TRUCK OR
7 A LARGE TRUCK AS OPPOSED TO A VEHICLE, STANDARD
8 VEHICLE NEXT DOOR. I DID GET UP THIS MORNING, I'M
9 AN EARLY RISER SO I WAS UP AT 5:30, WENT OUTSIDE
10 AND HEARD THE SAME AMOUNT OF NOISE COMING FROM IT,
11 BUT NO CHANGE IN THE PITCH AS I HAD EXPERIENCED IN
12 1994.

13 Q I'M SORRY, CHANGE IN PITCH, WHAT DID YOU
14 OBSERVE?

15 A IN THE PITCH, MEANING THINGS CLICKING ON,
16 CLICKING OFF, IT'S JUST A CONSTANT NOISE NOW.

17 Q AND, WHAT TIME WERE YOU UP THIS MORNING?

18 A 5:30, APPROXIMATELY.

19 Q THAT'S JULY 1ST, 1996?

20 A YES.

21 Q AND, IT'S YOUR TESTIMONY THAT AT THAT
22 HOUR, YOU COULD HEAR NOISE FROM THE CROWN AIR
23 CONDITIONING UNIT?

24 A YES, I COULD.

1 Q WERE YOU ABLE TO DISTINGUISH THE NOISE
2 THAT YOU HEARD, WAS IT A UNIFORM NOISE OR DID IT
3 VARY IN PITCH?

4 A IT WAS UNIFORM, BUT THERE'S A HIGH
5 PITCHED ELEMENT TO IT THAT SEPARATES IT FROM JUST
6 ABOUT ANY OTHER AIR CONDITIONER I'VE EVER HEARD.
7 IT JUST, IT'S A DOUBLE LAYER NOISE. I KNOW NOTHING
8 ABOUT THE DYNAMICS OF THE OPERATION.

9 Q BUT, IT'S YOUR TESTIMONY TODAY THAT YOU
10 HEARD AND EXPERIENCED THE CROWNS' AIR CONDITIONER
11 AS CAUSING A NOISE THAT'S DISCERNIBLE AT TWO
12 DIFFERENT PITCHES OR FREQUENCIES?

13 A YES, SIR, I DO.

14 Q AND, JUST TO MAKE SURE I UNDERSTAND YOUR
15 ANALOGY, YOU WERE SAYING THAT THE CROWN AIR
16 CONDITIONER COMPARING THE CROWN AIR CONDITIONER
17 WITH, FOR INSTANCE, THE AIR CONDITIONERS ON THE
18 NORTH END OF YOUR HOUSE IS LIKE COMPARING A CAR
19 WITH A MAC TRUCK. IN THAT ANALOGY, WHOSE AIR
20 CONDITIONING UNIT IS REPRESENTED BY THE MAC TRUCK?

21 A THE CROWN. A VOLUME OF NOISE, I DON'T KOW
22 THAT THAT'S THE RIGHT WORD. I JUST AM TRYING TO
23 DESCRIBE IT, ITS PRESENCE IS JUST ALL PRESENT ALL
24 THE TIME.

1 Q DIRECTING YOUR ATTENTION ONCE AGAIN TO
2 EXHIBIT NO. 16, A LETTER THAT YOU AND YOUR HUSBAND
3 WROTE TO NANCY AND STEVEN CROWN DATED AUGUST 4,
4 1994, DID YOU EVER RECEIVE A WRITTEN RESPONSE FROM
5 EITHER NANCY OR STEVEN CROWN?

6 A NO, WE GOT NO RESPONSE AT ALL.

7 MR. KAISER: THANK YOU. I HAVE NO FURTHER
8 QUESTIONS.

9 MR. CARSON: I HAVE JUST A FEW QUESTIONS,
10 MS. JULIAN. MY NAME IS BOB CARSON. I REPRESENT
11 NANCY AND STEVEN CROWN IN THIS CASE.

12 CROSS EXAMINATION

13 BY MR. CARSON:

14 Q IF I UNDERSTAND YOUR TESTIMONY, THE MAIN
15 PROBLEM THAT YOU'VE DESCRIBED AS FAR AS WAKING UP
16 AT NIGHT WAS AT THE END OF JULY AND PERHAPS PART
17 OF THE BEGINNING OF AUGUST OF 1994, IS THAT
18 CORRECT?

19 A I THINK THAT'S CORRECT, YES.

20 Q AND, HAVE YOU NOTED THAT AN ENCLOSURE WAS
21 CONSTRUCTED AROUND THE AIR CONDITIONING UNIT AT
22 SOME POINT IN TIME?

23 A OF WHICH AIR CONDITIONING UNIT?

24 Q THE CROWN AIR CONDITIONING UNIT, MA'AM.

1 A WELL, I HAVE TO SAY UPON STEVEN'S REQUEST
2 WHEN I WAS ARDSLEY-PELHAM ASSOCIATION, HE SAID HIS
3 INSURANCE IS NOT LIKELY TO COVER MY GOING ON HIS
4 PROPERTY. SO, I HAVE NOT BEEN THERE TO SEE ANY
5 KIND OF AN ENCLOSURE.

6 Q I SEE. SO, IF I WERE TO TELL YOU THAT
7 THIS EXPERIENCE THAT YOU HAD IN JULY OF 1994
8 PREDATED THE CONSTRUCTION OF AN ENCLOSURE AROUND
9 THE AIR CONDITIONING UNIT, YOU WOULDN'T BE ABLE TO
10 SAY ONE WAY OR ANOTHER?

11 A I CERTAINLY WOULD NOT.

12 Q AND, THIS INCIDENT THAT YOU'RE
13 DESCRIBING, THIS WAS A SITUATION WHERE MR. CROWN
14 SPECIFICALLY ASKED YOU TO NOT COME ONTO THE
15 PROPERTY?

16 A THAT WAS AS HEAD OF THE ASSOCIATION
17 BECAUSE I WAS SPEAKING WITH HIS BUILDING
18 SUPERINTENDENT, PETE KELLER, ABOUT A, THERE WAS A
19 REPAIR SPOT IN THE ROAD THAT NEEDED TO BE REDONE.
20 I CAME AND I SPOKE TO PETE AND I UNDERSTAND THE
21 LIABILITY, STEVE DID SAY THAT. BUT, OF COURSE,
22 THIS WAS SOMETHING NEW AND I FELT THAT I SHOULD,
23 NO REASON TO GO TRESSPASSING.

24 Q WHEN THIS SITUATION THAT YOU CAME TO TALK

1 TO PETE KELLER, THAT WAS WHILE THE HOUSE WAS SITLL
2 UNDER CONSTRUCTION?

3 A YES, YES.

4 Q AND, THAT THE CROWN FAMILY WAS NOT YET
5 RESIDING THERE?

6 A THAT'S CORRECT, THAT'S CORRECT.

7 Q AND, YOU WERE ASKED TO NOT TO COME ONTO
8 THE PROPERTY?

9 A FOR INSURANCE PURPOSES, STEVE WAS VERY
10 CLEAR ABOUT IT, AND HE SAID HIS INSURANCE WOULD
11 NOT BE ABLE TO TAKE CARE OF ME IF I CAME ON THE
12 PROPERTY AND ANYTHING HAPPENED.

13 Q AND, GETTING BACK TO THE CHRONOLOGY,
14 THEN, OF THE SOUND THAT YOU HEARD, YOU SAID THAT
15 IT WAS WAKING YOU IN 1994, BUT IF I UNDERSTAND
16 YOUR TESTIMONY CORRECTLY, IN 1995 IT REALLY DIDN'T
17 BECOME AN ISSUE AS FAR AS YOU WERE CONCERNED.

18 A COULD I ASK YOU A QUESTION? WHEN THE
19 TEMPERATURE IS AS HOT AS THEY WERE, WOULD YOU KEEP
20 YOUR DOORS AND WINDOWS OPEN?

21 Q I WOULD PREFER IF YOU WOULD ANSWER MY
22 QUESTION, MA'AM.

23 A IT DID NOT BOTHER BECAUSE WE HAD
24 EVERYTHING CLOSED UP. WE WERE RUNNING OUR AIR

1 CONDITIONING UNIT WITH OUR DOORS AND WINDOWS
2 CLOSED.

3 Q AND, AS FAR AS DISTURBING YOUR SLEEP, HAS
4 IT BEEN A PROBLEM AS FAR AS DISTURBING YOUR SLEEP
5 THIS COOLING SEASON IN 1996?

6 A NO, IT HAS NOT BECAUSE WE ARRIVED HOME
7 FROM ARIZONA THE 6TH OF JUNE, AND IT'S BEEN
8 RELATIVELY COLD. SO, WE HAVEN'T BEEN OPERATING OUR
9 UNIT AS A RESULT UNTIL THE LAST THREE DAYS.

10 HEARING OFFICER: MS. JULIAN, YOU CAN
11 LIMIT YOUR ANSWER TO THE QUESTION.

12 A YES OR NO.

13 BY MR. CARSON:

14 Q NOW, IN THIS PERIOD OF JULY OF 1994 WHEN
15 YOU HAD JUST COME BACK FROM CALIFORNIA, DID YOU
16 HAPPEN TO NOTE ONE WAY OR THE OTHER WHETHER THE
17 SHELTON'S AIR CONDITIONER WAS OPERATING?

18 A NO, I DID NOT. I COULD NOT HEAR IF THEY
19 HAD IT ON. I COULDN'T HEAR IT.

20 MR. DIVER: HAS 38 BEEN TENDERED AT THIS
21 POINT?

22 MR. CARSON: MAY I ASK YOU, MRS. JULIAN,
23 TO TAKE A LOOK AT EXHIBIT NO. 38 A AND I DON'T
24 KNOW IF MADAM HEARING OFFICER, IF YOU HAVE EXHIBIT

1 38. EXHIBIT 38A IS A PART OF THAT GROUP.

2 HEARING OFFICER: I HAVE NOT RECEIVED
3 THAT YET.

4 MR. KAISER: I'M GOING TO OBJECT AS
5 BEYOND THE SCOPE, MADAM HEARING OFFICER,
6 ATTEMPTING TO INTRODUCE A LETTER DATED JULY 27TH,
7 1994 WHICH CLEARLY WAS NOT GENERATED IN RESPONSE
8 TO THE AUGUST 4TH, 1994 --

9 MR. CARSON: THE WITNESS WAS QUESTIONED
10 ABOUT HER COMMUNICATIONS WITH MR. CROWN ON THIS
11 SUBJECT. AND THIS LETTER, IN FACT, EXHIBIT NO. 38
12 A COVERS THE SAME SUBJECT MATTER AND, IN FACT,
13 IT'S DATED WITHIN A WEEK OF EXHIBIT NO. 16. IT'S
14 CLEARLY NOT BEYOND THE SCOPE.

15 HEARING OFFICER: I'LL GO OFF THE RECORD
16 TO DISCUSS THE PURPOSE FOR WHICH THE LETTER IS
17 BEING INTRODUCED.

18 (WHEREUPON, AN OFF-THE-RECORD
19 DISCUSSION WAS HELD.)

20 HEARING OFFICER: MS. JULIAN HAS
21 TESTIFIED WITH RESPECT TO EXHIBIT NO. 16 THAT SHE
22 SENT CORRESPONDENCE TO MR. CROWN AND NANCY CROWN
23 IN AUGUST OF 1994. AND, THE OBJECTION IS OVERRULED
24 WITH RESPECT TO EXHIBIT 38A INTRODUCED ON CROSS

1 WITH RESPECT TO THE TIME FRAME OF TESTIMONY.

2 MR. CARSON: THANK YOU, YOUR HONOR.

3 BY MR. CARSON:

4 Q MS. JULIAN, PLEASE TAKE A MOMENT AND
5 EXAMINE EXHIBIT NO. 38A. MS. JULIAN, CAN YOU
6 IDENTIFY EXHIBIT NO. 38A AS A LETTER THAT YOU
7 RECEIVED FROM STEVEN CROWN ON OR SHORTLY AFTER
8 JULY 27, 1994?

9 A I BELIEVE I RECALL IT.

10 Q THAT'S A LETTER YOU RECEIVED?

11 A I RECALL IT AT SOMETIME, I DID NOT BRING
12 MY FILE WITH ME, TO SEE IF THIS LETTER IS INCLUDED
13 IN IT. BUT, I DO REMEMBER THE MILLWORK, WOOD
14 FLOORING, AND ALLOWING PLASTER TO DRY.

15 Q HAD YOU RECEIVED THAT LETTER, EXHIBIT NO.
16 38 A BEFORE YOU SENT THE LETTER, WHICH IS EXHIBIT
17 NO. 16.

18 A. YOU KNOW, THIS IS THE FUNNY THING, I
19 THINK I REMEMBER RECEIVING THIS LETTER LONG AFTER.
20 THERE SEEMED TO BE A TREMENDOUS TIME DIFFERENCE
21 BECAUSE WE WROTE SOMETHING, AND THEN WE RECEIVED A
22 LETTER, I BELIEVE TO BE PREDATED TO THE LETTER
23 THAT WE SENT. I CAN ONLY REMEMBER IT WAS REALLY,
24 IT DIDN'T SEEM TO JIVE WITH OUR LETTER. EITHER IT

1 CAME A LOT BEFORE OR IT CAME A LOT AFTER. I DON'T
2 DISPUTE THE DATE, THERE WAS JUST SOMETHING THAT I
3 DON'T RECALL THAT WAS EXACTLY SITTING RIGHT ABOUT
4 THE DATE WITH THE LETTER THAT WE WROTE.

5 Q SO, YOU CAN'T SAY WHEN IT WAS THAT YOU
6 RECEIVED IT?

7 A NO, I DON'T, HONESTLY.

8 Q IN YOUR DIRECT TESTIMONY, I THINK THAT
9 MR. KAISER ASKED YOU WHETHER YOUR NEIGHBORS TO THE
10 SOUTH SIDE ARE THE SHELTONS AND I THINK YOU SAID
11 THEY ARE.

12 A YES.

13 Q IN FACT, THE SHELTONS DON'T LIVE TO THE
14 SOUTH OF YOUR HOME ANYMORE, DO THEY?

15 MR. KAISER: OBJECTION, ARGUMENTATIVE.

16 A I BELIEVE THEY OWN THE PROPERTY. IF
17 YOU'RE ASKING ME IF THEY LIVE THERE, THEY OWN THE
18 PROPERTY.

19 Q THAT'S NOT WHAT I'M ASKING YOU, MA'AM.

20 HEARING OFFICER: WE HAVE AN OBJECTION.

21 DO WE HAVE A RESPONSE TO THE OBJECTION?

22 MR. CARSON: THIS IS CROSS-EXAMINATION.

23 MR. KAISER: IT'S STRICTLY ARGUMENTATIVE.

24 IT'S THE SORT OF THING IF IT WASN'T A HEARING

1 OFFICER, IT WOULD BE PLAYING TO THE JUDGE OR JURY,
2 AND IT HAS NO PLACE, AS YOU EXPLAINED, IN
3 DEVELOPING A DRY RECORD HERE TO FEED THIS WITNESS
4 ARGUMENTATIVE QUESTIONS LIKE THAT. THE RECORD IS
5 CLEAR AS TO WHO OCCUPIES THE HOME AND WHO OWNS THE
6 HOME AND THAT SORT OF VERBAGE, YOU KNOW, MAY MAKE
7 POINTS WITH MR. CARSON'S CLIENTS, BUT HAS NO PLACE
8 IN THIS RECORD, AT LEAST NOT IN THAT FORM.

9 MR. CARSON: IT'S CROSS-EXAMINATION, YOUR
10 HONOR. THE ONLY THING THAT'S IN THE RECORD THUS
11 FAR THAT I'VE HEARD TODAY IS THAT THE SHELTONS ARE
12 THE NEIGHBORS OF MRS. JULIANS AND I WANT TO
13 CLARIFY THAT POINT BECAUSE I THINK IT'S A LITTLE
14 BIT MISLEADING.

15 HEARING OFFICER: OBJECTION OVERRULED.
16 YOU CAN ANSWER THE QUESTION, MRS. JULIAN.

17 A ARE THE SHELTONS NEIGHBORS OF OURS, IS
18 THAT YOUR QUESTION?

19 BY MR. CARSON:

20 Q NO, MA'AM, THAT'S NOT MY QUESTION. MY
21 QUESTION IS, IN FACT, THE JULIANS OR RATHER THE
22 SHELTONS DO NOT LIVE IN THE HOME TO THE SOUTH OF
23 YOURS?

24 HEARING OFFICER: IS THAT CORRECT.

1 Q IS THAT TRUE?

2 A IS THAT CORRECT?

3 MR. KAISER: TIME FRAME HERE, COUNSEL?

4 A YOU KNOW, I HONESTLY DON'T KNOW. I
5 HAVEN'T SEEN ANYBODY NEXT DOOR.

6 Q SO, YOU DON'T KNOW IF THE SHELTONS
7 CONTINUE TO LIVE IN THAT HOME OR IF THEY'VE MOVED?

8 A I KNOW I HAVE A NEW ADDRESS FOR THEM IN
9 MY ADDRESS BOOK, BUT THEY COULD BE VISITING THERE
10 ON THE WEEKENDS, FOR ALL I KNOW.

11 Q THE ADDRESS THAT YOU HAVE IN THE ADDRESS
12 BOOK, IS THAT AN ADDRESS IN OHIO?

13 A YES, IT IS.

14 Q SO, IT'S YOUR UNDERSTANDING THAT THEY ARE
15 ACTUALLY RESIDENTS OF OHIO AT THE TIME?

16 MR. KAISER: OBJECTION, CALLS FOR A LEGAL
17 CONCLUSION.

18 A I CANNOT STATE WITH ANY HONESTY THAT
19 THEY'RE RESIDENTS OF OHIO, IF THAT'S THEIR LEGAL
20 RESIDENCE.

21 Q HAVE YOU CORRESPONDED WITH THE SHELTONS
22 IN OHIO?

23 A YES -- NO, I HAVEN'T. AS A MATTER OF
24 FACT, I SENT THEIR CHRISTMAS CARD TO WINNETKA.

1 Q SO, YOU HAVE THE OHIO ADDRESS, BUT YOU
2 HAVEN'T HAD OCCASION TO USE IT YET?

3 MR. KAISER: OBJECTION, RELEVANCE.

4 A I HAVEN'T HAD A CHANCE TO -- WHEN YOU SAY
5 USE IT, HOW DO YOU MEAN THAT?

6 Q CORRESPOND WITH THEM.

7 A I HAVE NOT.

8 MR. CARSON: THAT'S ALL THE
9 CROSS-EXAMINATION.

10 MR. KAISER: MAY I HAVE A FEW QUESTIONS ON
11 REDIRECT?

12 HEARING OFFICER: WE'LL NOW HAVE
13 REDIRECT.

14 MR. KAISER: THANK YOU.

15 REDIRECT EXAMINATION

16 BY MR. KAISER:

17 Q MRS. JULIAN, WE'VE SPENT SOME TIME
18 TALKING ABOUT THE NOISE PROBLEM THAT YOU OBSERVED
19 IN JULY AND EARLY AUGUST OF 1994. IS IT YOUR
20 TESTIMONY THAT THE NOISE PROBLEM WAS RESOLVED IN
21 AUGUST OF 1994 OR IS THERE ANOTHER REASON WHY YOUR
22 COMPLAINT ENDED IN ROUGHLY THE EARLY PART OF
23 AUGUST, 1994?

24 A WE DID NOT PURSUE ANY FARTHER WITH

1 COMPLAINING. I THINK, AT THAT POINT, THE SHELTONS
2 HAD TRIED AND WE ALSO HAD GONE THROUGH, TRIED
3 THROUGH THE VILLAGE OF WINNETKA, MEETING WITH THE
4 VILLAGE PRESIDENT, THE VILLAGE ATTORNEY TO SEE IF
5 THERE WAS ANY RECOURSE FOR US ON THE NOISE WHICH
6 DID NOT SUBSIDE INASMUCH AS WE COULD OBSERVE. BUT,
7 AS IT WAS GETTING COOLER AND INTO THE FALL, WE
8 DIDN'T OPEN OUR DOORS AT NIGHT. I WOULD SAY WE
9 MORE OR LESS LET, THEN, DAVID SHELTON ASSUME THE
10 ROLE OF PURSUING SOME KIND OF A SOLUTION TO THE
11 PROBLEM, SUSAN AND DAVID. BOB DID CO-SIGN LETTERS
12 BECAUSE IT DID AFFECT US. AND THE NOISE AT THAT
13 POINT, IF WE COULD SAY DID THE CLICKING ON AND
14 CLICKING OFF STILL CONTINUE, I WOULD ASSUME IT
15 PROBABLY DID SINCE I DIDN'T GET UP AT 3:00 A.M. TO
16 OBSERVE IT.

17 Q MRS. JULIAN, DID YOU AND YOUR HUSBAND
18 TRAVEL TO COLORADO AND/OR ARIZONA DURING THE
19 SUMMER OF 1994?

20 A YES, WE DID.

21 Q DO YOU RECALL DURING WHAT MONTHS?

22 A THE LATTER PART OF AUGUST.

23 Q NOW, I WANT TO REVIEW WITH YOU WHAT'S
24 BEEN MARKED FOR PURPOSES OF IDENTIFICATION. DO YOU

1 HAVE THAT, 38, 38A, A LETTER FROM MR. CROWN TO MR.
2 AND MRS. ROBERT JULIAN DATED JULY 27TH, 1994. AND,
3 I WANT YOU TO HAVE THAT IN FRONT OF YOU. I NOTE
4 THAT THE FIRST SENTENCE OF THIS SECOND FULL
5 PARAGRAPH STATES, "WE ARE, AND HAVE BEEN FOR OVER
6 THE PAST 10 MONTHS, MAKING EVERY EFFORT TO INSURE
7 THAT THE AIR CONDITIONING UNIT DOES NOT DISTURB
8 THE NEIGHBORHOOD PEACE IN ANY MANNER." IS IT YOUR
9 TESTIMONY THAT AS OF JULY 27TH, 1994, THE AIR
10 CONDITIONING UNIT WAS, IN FACT, DISTURBING THE
11 NEIGHBORHOOD PEACE IN THE MANNER THAT YOU'VE
12 DESCRIBED IN YOUR TESTIMONY THIS AFTERNOON.

13 MR. CARSON: OBJECTION TO THE QUESTION
14 ABOUT THE NEIGHBORHOOD PEACE. THE ONLY ISSUE IN
15 THIS HEARING IS THE EXTENT TO WHICH THE SHELTONS'
16 USE AND ENJOYMENT OF THEIR PROPERTY HAS BEEN
17 DISTURBED.

18 MR. KAISER: WE'RE TALKING ABOUT THE
19 CREDIBILITY OF THIS LETTER. WE'RE ALSO TALKING
20 ABOUT CONTEMPORANEOUS COMPLAINTS OF A NEIGHBOR WHO
21 IS IN, AS WE EXPECT HER TO TESTIFY, IN THE DIRECT
22 SOUND PATH OF THE CROWN AIR CONDITIONER.

23 HEARING OFFICER: THE OBJECTION IS
24 OVERRULED.

1 MR. KAISER: THANK YOU.

2 BY MR. KAISER:

3 Q AND ON THAT ISSUE, MS. JULIAN, HAVE YOU
4 MADE AN ESTIMATE AS TO WHAT THE DISTANCE IS FROM
5 THE CROWN PROPERTY LINE TO THE SOUTHERN WALL OF
6 YOUR HOME? DO YOU HAVE AN ESTIMATE OF THE
7 APPROXIMATE DISTANCE IN FEET?

8 A IF THE SHELTON'S PROPERTY WIDTH, THAT'S
9 GOING ALONG ARDSLEY IS 100 FEET, ROUGHLY, MAYBE
10 MORE, MORE, OKAY, PLUS 20 FEET FROM OUR PROPERTY
11 LINE TO OUR, THE DOOR IN OUR BEDROOM. SO WHATEVER
12 THAT DISTANCE IS, 125. SO, IT'S 145 BETWEEN 120
13 AND 145 FEET. AND THEN, I DON'T KNOW HOW FAR SOUTH
14 OF THE PROPERTY LINE THE AIR CONDITIONING UNIT
15 SITS.

16 Q BUT, IT'S YOUR TESTIMONY THIS AFTERNOON
17 THAT THE DISTANCE FROM THE CROWN PROPERTY LINE TO
18 THE SOUTH WALL OF, WHICH IS ESSENTIALLY YOUR
19 BEDROOM WALL, IS AT LEAST 120 FEET?

20 A THAT'S CORRECT.

21 Q NOW, I WANT TO RETURN YOUR ATTENTION TO
22 THE JULY 27TH, 1994 LETTER AND DIRECT YOUR
23 ATTENTION TO THE LAST SENTENCE OF THE THIRD
24 PARAGRAPH, WHICH READS AS FOLLOWS: "BECAUSE THE

1 SAME NEIGHBOR CONTINUED TO HAVE COMPLAINTS ABOUT
2 THE NOISE, WE HAVE ALSO NOW INSTALLED A NEW FENCE
3 ALONG THE NORTHERN PROPERTY LINE AND PLANTED TALL
4 ARBOR VITAE AROUND THE PERIMETER OF THE FENCE
5 SURROUNDING THE UNIT. DID YOU NOTICE WHETHER THE
6 INSTALLATION OF A NEW FENCE ALONG THE NORTHERN
7 PROPERTY LINE OF THE CROWN PROPERTY REDUCED THE
8 SOUND AS YOU EXPERIENCED IT, THE SOUND OF THE AIR
9 CONDITIONING UNIT AS YOU EXPERIENCED IT IN AND
10 AROUND YOUR BEDROOM IN JULY AND AUGUST OF 1994?

11 A I DON'T BELIEVE IT DID BECAUSE I WOULD
12 NOT HAVE WRITTEN THE LETTER AUGUST, 1994, IF IT
13 HAD APPRECIABLY REDUCED THE NOISE.

14 Q DO YOU HAVE AN OPINION AS TO WHETHER OR
15 NOT THE PLANTING OF TALL ARBOR VITAE AROUND THE
16 PERIMETER OF THE FENCE SURROUNDING THE CHILLER
17 UNIT REDUCED THE NOISE FROM THE CROWN AIR
18 CONDITIONER AS YOU EXPERIENCED IT IN AND AROUND
19 YOUR BEDROOM IN JULY AND AUGUST OF 1994?

20 MR. CARSON: OBJECTION, CALLS FOR A
21 CONCLUSION.

22 MR. KAISER: ONE WHICH THIS WITNESS IS
23 PERFECTLY CAPABLE OF MAKING.

24 MR. CARSON: THE QUESTION ASKED FOR AN

1 OPINION.

2 HEARING OFFICER: THE OBJECTION IS
3 OVERRULED. THE WITNESS CAN ANSWER THE QUESTION TO
4 THE BEST OF HER ABILITY.

5 A IT WOULD BE THE SAME AS THE PREVIOUS
6 ANSWER. IT DIDN'T AFFECT THE NOISE AT ALL. IT WAS
7 STILL AS STRONG AS I STATED IN THE LETTER OF
8 AUGUST 4TH, 1994.

9 Q DO YOU HAVE AN OPINION AS TO WHETHER IT'S
10 MORE IMPORTANT FOR SOMEONE TO GET A GOOD NIGHT'S
11 SLEEP AND EXPERIENCE PEACE AND QUIET, OR WHETHER
12 IT'S MORE IMPORTANT TO PROTECT MILLWORK, WOOD
13 FLOORING AND ALLOW PLASTER TO DRY?

14 MR. CARSON: OBJECTION, YOUR HONOR, CALLS
15 FOR A CONCLUSION.

16 MR. KAISER: IT'S A BALANCE THAT THE
17 BOARD IS GOING TO MAKE, AND I THINK IT'S
18 APPROPRIATE FOR THIS CITIZEN TO MAKE AND OFFER.

19 HEARING OFFICER: THE OBJECTION IS
20 SUSTAINED.

21 BY MR. KAISER:

22 Q I WANT TO DIRECT YOUR ATTENTION TO THE
23 SECOND SENTENCE IN THE LAST FULL PARAGRAPH, WHICH
24 READS AS FOLLOWS: "YET, ALTHOUGH THE UNIT WAS IN

1 OPERATION FOR JUST A SHORT TIME, IT APPEARS THAT
2 IN THAT SHORT TIME, OUR NEIGHBOR HAS WORKED TO
3 CREATE A CERTAIN FRENZY IN THE NEIGHBORHOOD,
4 CULMINATING IN A VILLAGE MEETING OF WHICH WE HAD
5 NO NOTICE AND OUR NEIGHBORS CONTACTING THE
6 WINNETKA POLICE IN ORDER TO SHUT DOWN THE UNIT.
7 CAN YOU, DO YOU HAVE AN OPINION AS TO WHETHER THE
8 SHELTONS WORKED TO CREATE A CERTAIN FRENZY IN THE
9 NEIGHBORHOOD DURING THE SUMMER OF 1994 IN
10 CONNECTION WITH THE ISSUES SURROUNDING THE
11 INSTALLATION AND OPERATION OF THE CROWN AIR
12 CONDITIONING UNIT?

13 MR. CARSON: OBJECTION, CALLS FOR A
14 CONCLUSION.

15 MR. KAISER: WELL, IF I MAY MAKE UP AND
16 ASK SOME QUESTIONS, MADAM HEARING OFFICER.

17 HEARING OFFICER: THE OBJECTION IS
18 SUSTAINED.

19 BY MR. KAISER:

20 Q MRS. JULIAN, DID YOU HAVE OCCASION TO
21 TALK WITH DAVID SHELTON DURING JULY AND AUGUST OF
22 1994 IN CONNECTION WITH THE ISSUES PERTAINING TO
23 THE CROWN AIR CONDITIONING UNIT?

24 A YES, I DID.

1 Q DO YOU RECALL HOW MANY TIMES YOU TALKED
2 WITH DAVID SHELTON DURING THAT TIME FRAME, JULY
3 AND AUGUST OF 1994?

4 A I SPOKE WITH BOTH SUSI AND DAVID. HOW
5 MANY TIMES, WHEN WE WOULD SEE THEM IN THE
6 NEIGHBORHOOD.

7 Q DID YOU, YOURSELF, EXPERIENCE THOSE
8 CONVERSATIONS AND DISCUSSIONS AS AN EFFORT ON
9 BEHALF OF THE SHELTONS TO CREATE IN YOU A CERTAIN
10 "FRENZY" SURROUNDING THE ISSUES PERTAINING TO THE
11 CROWN AIR CONDITIONING UNIT?

12 A NO, I DON'T BELIEVE THERE WAS A FRENZY.
13 I THINK THE SLEEP THAT WAS BEING LOST IN HIS
14 HOUSEHOLD WAS CERTAINLY REASON ENOUGH TO BE
15 ANXIOUS. BUT, THE SLEEP LOST IN MY HOUSEHOLD WAS A
16 VERY GOOD REASON FOR US TO BECOME INVOLVED. AND,
17 UNTIL THAT TIME, I THINK YOU WILL FIND THAT IF YOU
18 HAVE THE LETTERS THAT WERE SIGNED, BASICALLY WE
19 GOT INVOLVED AFTER I HAD WRITTEN A LETTER TO STEVE
20 AND NANCY CONCERNING THE NOISE THAT WE WERE
21 EXPERIENCING AND THAT WAS DEFINITELY CAUSING SLEEP
22 DISTRESS ON MY PART.

23 Q SO, IS IT YOUR TESTIMONY THAT YOUR
24 EFFORTS WERE A DIRECT RESULT OF YOUR EXPERIENCE OF

1 THE NOISE AND NOT THE RESULT OF ANY EFFORTS ON
2 BEHALF OF THE SHELTONS TO CREATE A CERTAIN FRENZY?

3 A THAT'S CORRECT. IF I JUST MAY ADD THAT
4 TIME THAT I WOKE UP AND FELT THE FLOOR VIBRATING,
5 I THOUGHT THIS IS RIDICULOUS, THE PITCH OF THIS
6 SHOULD CAUSE MY FLOOR, OUR FLOOR TO VIBRATE. I
7 DON'T KNOW SPECIFICALLY ANY STRUCTURAL EFFECT ON
8 THE SHELTONS, BUT CERTAINLY IT WAS AFFECTING US.

9 MR. KAISER: THANK YOU, MRS. JULIAN. I
10 HAVE NO FURTHER QUESTIONS.

11 HEARING OFFICER: WILL THERE BE ANY
12 RE-CROSS?

13 MR. CARSON: NOTHING FURTHER.

14 HEARING OFFICER: ALL RIGHT. I BELIEVE
15 THAT CONCLUDES OUR HEARING FOR TODAY, AND WE'LL BE
16 CONTINUING THE HEARING TOMORROW MORNING AT 9:00
17 A.M. AT THIS LOCATION. THANK YOU VERY MUCH.

18 (WHEREUPON, THE HEARING WAS RECESSED
19 UNTIL 9:00 A.M. ON JULY 2, 1996.)

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CERTIFICATION

I, VERNETTA MCCREE, A CERTIFIED SHORTHAND
REPORTER DOING BUSINESS IN THE STATE OF ILLINOIS,
CERTIFY THAT I REPORTED IN SHORTHAND THE TESTIMONY
TAKEN IN THE ABOVE-ENTITLED MATTER, AND THAT THIS
CONSTITUTES A TRUE AND ACCURATE TRANSCRIPTION OF
MY SHORTHAND NOTES SO TAKEN AS AFORESAID.

NOTARY PUBLIC, COOK COUNTY, IL
CSR# 083-001830