

00392

1 .he ILLINOIS POLLUTION CONTROL BOARD

2 STATE OF ILLINOIS

3 -----X

4 DAVID & SUSI SHELTON :

5 - against - : No. PCB 96-53

6 ARI STEVEN CROWN & NANCY CROWN, :

7 Defendant. :

8 -----X

VOLUME III

9 REPORT OF PROCEEDINGS, taken in the  
above-entitled cause, taken before JUNE C. EDVENSON,  
10 Hearing Officer for the Illinois Pollution Control Board,  
taken on the 3rd day of July, A.D., at 100 West Randolph,  
11 9th Floor, Chicago, Illinois, at the hour of 9:00 o'clock  
a.m

12

APPEARANCES:

13

JEFFREY R. DIVER, ESQ.

14 STEVEN P. KAISER, ESQ.  
45 S. Park Boulevard  
15 Glen Ellyn, IL 60137  
Appeared on behalf of the Complainants

16

REESE ELLEDGE, ESQ.

17 ROBERT A. CARSON, ESQ.

GOULD & RATNER

18 222 North LaSalle Street

Chicago, IL 60601

19 Appeared on behalf of the Respondents

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21

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VERNITA HALSELL-POWELL

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HALSELL & HALSELL REPORTERS

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00393

1 HEARING OFFICER: Good morning and welcome.

2 We are back on the record in the case of PCB 96-53, the

3 Sheltons v the Crowns and it's July 3rd and we will

4 proceed at this time with Complainant's case in chief.

5 MR. KAISER: Thank you, Ms. Edvenson. Ms.

6 Shelton, I remind you that you're still under oath here.

7 THE WITNESS: Yes.

8 MR. KAISER: And you remember we took a break

9 in your testimony late yesterday afternoon and it's now our

10 opportunity to resume your testimony.

11 SUSIE SHELTON,

having been previously duly sworn, testified as follows:

12

13 FURTHER EXAMINATION

14 BY MR. KAISER:

15 Q Just by way of recapitulation, was it your

16 testimony yesterday that you and your family moved into

17 your home at 707 Ardsley Road in Winnetka, Illinois in the

18 early part of 1990?

19 A Yes.

20 Q And at that time was your home under

21 construction? Were you doing some remodeling?

22 A Yes.

23 Q Can you describe for the Board what projects

24 were underway when you moved into your home in the early

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1 part of 1990?

2 A When we purchased the house, it was a ranch  
3 house and we were in the process of adding a second  
4 floor. We moved in halfway during the completion of that  
5 project. So, the upstairs was being finished. We were  
6 adding a patio in the backyard and very little work on the  
7 first floor.

8 Q How many rooms did you add to the second floor  
9 of your residence?

10 A We added three rooms and two bathrooms  
11 upstairs.

12 Q And what were your hopes at that time as you  
13 moved your family into the home at 707 Ardsley?

14 A We had bought this house as the house we would  
15 live in for the rest of our lives. Where the kids could  
16 be married in the backyard.

17 Q Did Mr. Crown and his wife, as you testified  
18 yesterday, begin construction on the residence located  
19 just to the south of your property in approximately 1991?

20 A Yes, in the fall of 1991.

21 Q And did that construction continue through  
22 1992?

23 A Yes.

24 Q Did the construction continue through 1993?

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1 A Yes.

2 Q Can you describe, for the Board generally what  
3 impact the construction of the Crown residence had on your  
4 use and enjoyment of your property at 707Ardsley?

5 A It seemed to be a rather large and lengthy  
6 construction project immediately next door to us and we  
7 are the closest neighbor to that piece of property. Our  
8 house sits the closest. During the construction day it  
9 was regular construction noise. The times it bothered us  
10 the most was in the early morning. Cars and truckswold  
11 be arriving as early as 6:00 a.m.. It was eventually  
12 changed to come at 6:30. Those type of noises would  
13 awaken us. We could hear the noises very early in the  
14 morning.

15 Q And how long would the construction activity  
16 continue during the day?

17 A Usually itwold end by 3:00 or 3:30 and  
18 everything would be very quiet.

19 Q Did you have certain expectations as to  
20 construction of the Crown property was wrapping up in the  
21 fall of 1993 with respect to your future use and enjoyment  
22 of your property?

23 A Well, we were very anxious for the  
24 construction to end. There was no screening other than a

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1 four foot fence that was on our property so we could  
2 constantly see into the yard. The trucks and the dump  
3 trucks and we could see the activity and actually during  
4 the winter months the foliage was down and the workmen  
5 could come -- we don't have curtains in our houses because  
6 we've never had people walking around looking in. So,  
7 they could actually see into our living room and our  
8 dining room and our kitchen and our family room. And we  
9 were told that a new fence and some trees would be going  
10 up and we were waiting for that screen.

11 Q Do you recall when a new fence and trees were  
12 actually installed along the property line which divided  
13 your property from the Crown property?

14 A I believe the process started sometime in June  
15 of 1994.

16 Q 1994?

17 A Yes. There was other fencing and trees put  
18 around the other site of the property several years before  
19 that, but not between our two properties.

20 Q All right. And as you recall, you testified  
21 -- do you recall your testimony yesterday concerning the  
22 test firing or the Crown air conditioning unit in  
23 September of 1994?

24 A Yes.

00397

1 Q And was it your testimony that the Crown air  
2 conditioning system was turned on in advance of the  
3 Father's Day weekend in June of 1994?

4 A Yes. It started running in early June of 1994  
5 during the day.

6 Q And did it go to a 24 hour cycle of operations  
7 during the Father's Day weekend of June, 1994?

8 MR. CARSON: Your Honor, this is the third  
9 question that has been asked and answered. I understand  
10 re-setting the stage as to where we were yesterday, but  
11 what we're doing is we're repeating testimony. We're  
12 objecting.

13 HEARING OFFICER: I believe we have this  
14 testimony.

15 MR. KAISER: All right. Thank you.

16 Q You testified yesterday concerning one  
17 conversation you had with Mr. Crown at a swim meet. I  
18 believe it was in June of 1994. Do you recall that  
19 testimony?

20 A Yes.

21 Q Did you have another conversation with Mr.  
22 Crown on your property at 707 Ardsley Road in Winnetka,  
23 Illinois in June of 1994?

24 A Yes.

00398

1 Q Where did that conversation take place?

2 A I believe it was the second day the unit was  
3 in operation. It was in early June because the children  
4 were still in school.

5 Q What time of day did that conversation take  
6 place?

7 A It was before the kids went to school, so I  
8 would say sometime around 9:00 in the morning.

9 Q Was Mr. Crown occupying or living in the  
10 residence to the south of you at that time, June of 1994?

11 A No.

12 Q Who was present during that conversation?

13 A He came over and knocked on our door with Mr.  
14 Keller and asked if he could go around and listen to the  
15 air conditioner in the backyard.

16 Q And do you know who Mr. Keller is or was --  
17 what position he occupied in June of 1994?

18 A I believe he was the contractor overseeing  
19 the job.

20 Q What was your response to Mr. Crown's request  
21 to go into your south yard area?

22 A I said of course, you know, and I ended --  
23 they walked around the house and I ended up meeting them  
24 in the back corner of the yard.



00399

1 Q And what, if anything, happened at that time?

2 A He said see the air conditioner is much -- the  
3 noise is reduced. I can't remember the exact words -- he  
4 was applying the noise was less than in 1993.

5 Q Approximately how long did Mr. Crown and Mr.  
6 Keller remain on your property?

7 A Between 4 and 5 minutes.

8 Q What, if anything, did Mr. Crown say to you at  
9 that time?

10 A He really didn't say anything other than he  
11 felt the noise had been reduced and I do remember saying I  
12 still hear noise inside of my house and asked if he wanted  
13 to come in and listen to it and he declined. There was a  
14 lot of construction noise going on at that time from his  
15 property and I do believe it was hot and our air  
16 conditioner units were running, so you did not really get  
17 an accurate feeling for the volume of noise. I'm not sure  
18 how many -- if any, the machine cycled on or off or in what  
19 capacity the conditioner was running.

20 Q During that Father's Day weekend of June,  
21 1994, did you take any over the counter sleeping  
22 to assist you in sleeping?

23 A Yes, I took Excedrin P.M..

24 Q And why did you take Excedrin P.M.?

00400

1 A I could not sleep with the sound of the  
2 compressors and the fans kicking on and kicking off  
3 throughout the night.

4 Q Did you take that on the Saturday night of the  
5 Father's Day weekend, June, 1994?

6 A Yes, you did.

7 Q What effect, if any, did the Excedrin P.M.  
8 have on your ability to sleep on Saturday night in June,  
9 1994?

10 A I was taking one Excedrin P.M. and it would  
11 still cause me to wake up in the middle of the night. The  
12 following --

13 Q And when you say 15, it still caused you to --  
14 what is it you were referring to?

15 A I was still waking up with the sound of the  
16 compressors kicking on and kicking off.

17 Q On the Sunday night of the Father's Day  
18 weekend June, 1994, did you again take an Excedrin P.M.?

19 A I took two Excedrin P.M.s.

20 Q What, if any, effect did they have, the  
21 tablets, on your ability to sleep?

22 A I do remember still waking up at least once.  
23 The other effect it had, it made me very drowsy in the  
24 morning, the two Excedrin P.M.s..

00401

1 Q So, when you awoke on the Monday following the  
2 Father's Day weekend in June, 1994, you experienced  
3 drowsiness, is that your testimony?

4 A Yes.

5 Q On that Sunday of the Father's Day weekend,  
6 what would be Father's day, June, 1994, how would you  
7 describe your physical state?

8 A I was exhausted. I was very upset. There was  
9 no place to escape the noise that was in our house and  
10 outside of our house. It created headaches and tension.  
11 I had pains down my neck, across my shoulders.

12 Q And when you say it created tension and noise,  
13 again, what, to what are you referring?

14 A The chiller unit on the Crown property.

15 Q After the Father's Day weekend, June, 1994,  
16 did you note any changes in the operations of the chiller  
17 unit at the Crown property?

18 A No, I did not.

19 Q Did you continue to -- what, if anything, did  
20 you do to aid your ability to sleep during the latter part  
21 of June, 1994?

22 A I continued with -- the latter part of June,  
23 1994, the air conditioner started running the very end of  
24 June, 1994 at night. When it did not run at night, I did

00402

1 not have to use Excedrin P.M..

2 Q I want to show you what's been marked for  
3 purposes of Identification as Exhibit Number 7 which is a  
4 letter from David R. Shelton to the Winnetka Village  
5 Council dated June 16, 1995 and I want to direct your  
6 attention to an attachment to that letter which appears to  
7 be a petition. I want you to review that and tell me when  
8 you're done reviewing that, please.

9 A I'm done.

10 Q Do you recognize this exhibit?

11 A Yes, I do.

12 Q What do you recognize it to be?

13 A It says this is a request to ask the Village  
14 of Winnetka to take the necessary steps pursuant to the  
15 Village noise ordinance to cause the Crowns to  
16 significantly reduce the noise level of air conditioning  
17 system and it followed by signatures of people in the  
18 neighborhood who had come over to our house.

19 Q May I just stop you? Were you involved in the  
20 preparation of this form, the petition form?

21 A I believe I was somewhat involved. My husband  
22 actually typed the form.

23 Q And whose suggestion was it to create a  
24 petition and obtain signatures?

00403

1     A     Louise Holland was on the Village Council had  
2 come to our house and experienced the noise and it was her  
3 suggestion that we put together a petition and present it  
4 to the Village of Winnetka's board.

5     Q     And was this your effort and the effort of  
6 your husband to follow up on Ms. Holland's suggestion?

7     A     Yes, it was.

8     Q     I note that there are a number of signatures  
9 on here and dates indicating apparently when the signatures  
10 were obtained. Is that, in fact, what happened, did you  
11 have neighbors come or what happened and how did you  
12 obtain the names there shown on this petition?

13           MR. CARSON: Objection to this question as  
14 calling for hearsay. What he's attempting to do is  
15 establish that a certain other people who are not present  
16 at this hearing made certain representations regarding the  
17 noise level and it it's wholly improper. The exhibit, as  
18 I recall, was previously offered and received for a very  
19 limited purpose and what other people may have to say  
20 about this situation in out of court statements by this  
21 writing is not admissible.

22           HEARING OFFICER: I do not show Exhibit No. 7  
23 as being introduced.

24           MR. CARSON: So, okay then I stand corrected.

00404

1 The document is inadmissible hearsay and should not be  
2 permitted and the witness should not be permitted to  
3 testify as to her conclusions from looking at the document  
4 either.

5 HEARING OFFICER: I don't believe that was the  
6 question, although Mr. Kaiser, would you like to respond?

7 MR. KAISER: Yes, it would be hearsay. As the  
8 Hearing Officer well knows, an out of court statement  
9 offered to prove the truth of the matter asserted.  
10 Conduct is never hearsay. To the extent people signed  
11 this petition and that's what I'm asking at this point,  
12 how these signatures were obtained, what was the process  
13 for obtaining the signatures. I'm not trying to back door  
14 hearsay here. I'm just trying to introduce evidence  
15 concerning conduct of various persons, including Ms.  
16 Shelton during what appear to be the early part of July,  
17 1994 and extending through September 24, 1994.

18 HEARING OFFICER: Will the court reporter  
19 please read back the question?

20 (The record was read.)

21 HEARING OFFICER: Objection overruled. The  
22 witness can answer the question.

23 A The neighbors come to our house mostly on an  
24 individual basis. They spent time listening to the

00405

1 compressors on the outside of the house. They came inside  
2 our house to hear the noise. At least half of these  
3 people went up to our second floor to hear the noise in  
4 our son's home.

5           Looking at this first page, I see Marcy Love,  
6 she actually went back into our bedroom to hear the noise  
7 from our bedroom. People waited to hear the cycling on  
8 and the cycling off of the system and experienced the  
9 noise in different parts of our house and then they signed  
10 the petition.

11           MR. CARSON: Objection and move to strike the  
12 last response as hearsay and I would certainly  
13 disagree with counsel's statement that conduct cannot be  
14 hearsay because clearly this conduct is being introduced  
15 for the purpose of establishing what these parties or what  
16 these people perceived. It's an out of court statement  
17 offered for the truth.

18           MR. ELLEDGE: Madam Hearing Officer, could you  
19 tell us what the number of that exhibit is?

20           HEARING OFFICER: Number 7.

21           MR. ELLEDGE: Do you have a spare copy?

22           MR. KAISER: I believe I do and I believe  
23 there was an agreement that this would be offered for the  
24 authenticity, but not obviously for the truth of the

00406

1 matters asserted herein to the extent there's no testimony  
2 elicited to that.

3 MR. CARSON: That's just for the record.  
4 There was never any agreement that this document be  
5 admitted. There wasn't a stipulation as to the  
6 authenticity of the document. That does not -- we never  
7 agreed that this would be admitted into evidence.

8 MR. KAISER : That may be more accurate  
9 statement of the stipulation, Madam Hearing Officer.  
10 However, there was also never a stipulation that we  
11 wouldn't lay a foundation for its admission and offer it  
12 after an appropriate foundation was laid and on the extent  
13 I'm trying to authenticate did people actually sign this  
14 or are these forged signatures, that's the question here.  
15 Did somebody sign this or didn't they? That's not hearsay,  
16 that's conduct and whatever inferences the Board or anyone  
17 else may seek to draw from it are the Board's to make.  
18 But, certainly authenticating the signatures is  
19 appropriate within our case in chief.

20 And I do note that the Board rules  
21 allow for admission of evidence for the type that would  
22 normally guide reasonable people through the conduct of  
23 their business or other serious matters and I believe  
24 that's 103--



00407

1 HEARING OFFICER: Thank you, counsel.

2 MR. KAISER: 103.204, Admissible --

3 HEARING OFFICER: Thank you, counsel. The  
4 Motion to Strike the witness' response to that question is  
5 denied. I believe the conduct that is being asserted is  
6 being asserted as a foundation for the introduction of the  
7 document and as to its authenticity. I do not believe  
8 that the signatures are being submitted for the purpose of  
9 asserting the truth of the issues that are at issue in  
10 this case.

11 You may proceed.

12 MR. KAISER: Thank you.

13 BY MR. KAISER:

14 Q Do you recall whether on or about July 1st,  
15 1994 Katherine Westbrook came over to your home at 707  
16 Ardsley?

17 A Yes.

18 Q And what was the purpose for her visit?

19 A She came over to hear the noise coming from  
20 the Crown's chiller unit on our property and in our house.

21 Q Was the Crown's chiller unit, in fact, on at  
22 the time Katherine Westbrook was at your home on July 1,  
23 1994?

24 A Approximately a half an hour.

00408

1 Q Before leaving your property, did Ms.  
2 Westbrook sign the petition which is attached to Exhibit  
3 7?

4 MR. CARSON: Objection. Calls for hearsay.

5 HEARING OFFICER: Read the question back.

6 (The record was read.)

7 HEARING OFFICER: Objection overruled. You  
8 may answer the question.

9 A Yes.

10 Q Did LeeBaumgartener come to your home on 707  
11 Ardsley on July 1, 1994?

12 A Yes.

13 Q What was the purpose of LeeBaumgartener  
14 coming to your property?

15 A He came on June 3rd -- June 30th while  
16 construction was going on and heard the sound.

17 Q What sound did he hear on June 30th?

18 A He heard the compressors from the Crown's air  
19 conditioning unit and he had offered to help, but did not  
20 think the noise was that intrusive at that point. He came  
21 back on July 1st when the construction had stopped and it  
22 was in the evening and he went through our property and  
23 through our house. He signed the petition and he  
24 immediately wrote, thereafter wrote a letter to Mr.

00409

1 Crown.

2 MR. CARSON: Your Honor, we object to the  
3 previous two questions and answers as to going to matters  
4 beyond the personal knowledge of the witness and also as  
5 to containing hearsay.

6 HEARING OFFICER: The objection as to the last  
7 question is sustained. The objection as to the last  
8 answer is sustained.

9 MR. CARSON: And move to strike the response,  
10 your Honor.

11 HEARING OFFICER: Motion to strike the last  
12 answer is sustained -- is granted rather.

13 BY MR. KAISER:

14 Q As to the drafting of the letter --

15 HEARING OFFICER: Let's strike the last answer  
16 completely and counsel I would like to ask that the  
17 testimony with respect to the list of names that are on  
18 the petition be limited to the purpose of establishing the  
19 authenticity of the document as a petition which was  
20 created with the assistance of the Shelton's neighbors for  
21 the purpose of illustrating that they did attempt, in  
22 fact, to obtain a resolution of this dispute prior to this  
23 hearing today.

24 MR. CARSON: Your Honor, if I may address

00410

1 that, the authenticity of the signature is not in dispute  
2 where we've stipulated to the authenticity of signatures  
3 on the document.

4 HEARING OFFICER: And where is that  
5 stipulation?

6 MR. KAISER: I don't know that it's been  
7 reduced to writing, but that's my -- I'll be happy to  
8 clarify that off the record.

9 HEARING OFFICER: Off the record to give  
10 counsel for the parties the opportunity to discuss the  
11 petition list and whether it will be a stipulation.

12 (A brief off the record discussion was held.)

13 HEARING OFFICER; Back on the record. I  
14 believe we have a stipulation as to one aspect of the  
15 petition which is attached to what has been identified as  
16 Exhibit Number 7.

17 Mr. Carson, would you like to state  
18 that stipulation?

19 MR. CARSON: Yes. As stated earlier, we will  
20 stipulate that the signatures which are contained on what  
21 purports to be a petition attached which is part of  
22 Exhibit Number 7, are authentic signatures and that the  
23 people who purport to have signed it, in fact, did sign it  
24 on or about the date that the purported petition shows.

00411

1 HEARING OFFICER: Thank you.

2 MR. KAISER: Thank you. I may just ask a few  
3 additional questions.

4 HEARING OFFICER: Proceed with your  
5 questioning, counsel?

6 BY MR. KAISER:

7 Q Ms. Shelton, and is it your testimony that you  
8 began this petition process and obtained signatures  
9 pursuant to Ms. Holland's request?

10 A Yes.

11 Q And are you aware that on or about January  
12 16th, 1995 the petition and the signatures which you  
13 obtained between July 1, 1994 and September 24th, 1994  
14 were attached to a letter your husband sent to the  
15 Winnetka Village Council?

16 A Yes.

17 MR. CARSON: Once again, your Honor, for the  
18 record, we do object to the reference to this portion of  
19 the exhibit 7 as a petition, as having been signed by  
20 these individuals being offered as out of court statements  
21 and inadmissible hearsay.

22 HEARING OFFICER: Your objection is noted for  
23 the record.

24 MR. CARSON: Thank you, your Honor.

00412

1 Q And what was the procedure? Can you describe  
2 for the Board what the procedure by which you obtained the  
3 signatures shown on what we're referring to as  
4 the petition, the two pages which are an attachment to  
5 Exhibit 7.

6 A The people who signed the petition came over I  
7 believe on an individual basis, walked around our  
8 property, walked into our house, observed the noise at  
9 least in our living room and our family room, in our  
10 backyard, on the side of our yard and stayed to listen to  
11 a cycle, a compressor cycling on, going off. At least half  
12 of the people went to our upstairs second floor son's  
13 bedroom and listened from there, and several other people  
14 also went into our bedroom to listen to the noise before  
15 signing.

16 Q Thank you. Did the sound from the compressor  
17 system located on the Crown residence abate in July of  
18 1994?

19 A No.

20 Q Can you describe for the Board what the noise  
21 levels were as experienced in and around your home during  
22 July of 1994?

23 A The noise was all encompassing in our  
24 backyard. There were several different sounds. There was

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1 low drones as well as high pitches. There was pulsating  
2 noises. There were cycling on and cycling off of  
3 different component parts of the system and the system  
4 would completely shut down and there would be no noise  
5 for anywhere between five minutes, ten minutes, depending  
6 on the temperature outside and then the system would cycle  
7 back in with the compressors and the fans cycling back in  
8 and it would be a continuation of the cycle on and cycle  
9 off.

10 Q For what length of time?

11 A Until the system was turned off in September  
12 of 1994.

13 Q So, is it your testimony that from July 1,  
14 1994 until the latter part of September, 1994 the Crown  
15 air conditioning system operated continuously?

16 A Yes.

17 Q During July of 1994 were you able to sleep  
18 comfortably and soundly in your home?

19 A No.

20 Q What disturbed your sleep during July of  
21 1994?

22 A The low encompassing noise, the low drones, the  
23 high pitches of -- it sounded like a waterfall and the  
24 cycling on and the cycling off did not allow us to sleep

00414

1 comfortably in our home.

2 Q Would you wake rested after a night's sleep

3 during July of 1994?

4 A No.

5 Q Why not?

6 A I was awakened many times throughout the

7 night. It took a long time to fall asleep. We also had

8 to keep our windows closed, so we had no circulation in

9 our bedroom and our rooms would become stuffy.

10 Q Did you dine outdoors on your patio during

11 July of 1994?

12 A We might have dined outside once. We limited

13 our usage of the outdoor patio to eat on in July.

14 Q How would you describe your mood during the

15 month of July, 1994?

16 A I was exhausted. I felt I was being

17 physically abused. That it was out of my power to turn

18 off the air conditioner, but it was in someone else's

19 control to use a different system or to turn it off at

20 night. I was very upset. I was tense, I was exhausted.

21 Q Throughout July of 1994, did you use over the

22 counter sleep aids?

23 A Yes, yes.

24 Q Did those sleep aids help you fall asleep at



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1 night?

2 A A little bit, but it would not keep me asleep

3 all night.

4 Q Did you experience the sound of the Crown air

5 conditioning unit during July of 1994 when you were in the

6 kitchen of your home?

7 A Yes.

8 Q If you had the dishwasher on and the windows

9 closed during July of 1994, could you still hear the Crown

10 air conditioning unit?

11 A Yes.

12 Q Did that experience of the noise from the

13 Crown air conditioning unit during July of 1994 interfere

14 with your use and enjoyment of the kitchen area of your

15 home?

16 A Yes.

17 Q Is there any area of your home that was

18 unaffected by the sound of the Crown air conditioning

19 unit during July of 1994?

20 A The one area that was unaffected was our den

21 which is onto the east side of the house -- wait a minute.

22 It's on the west side of the house and if we kept that

23 door closed, the windows closed and ran the ceiling fan in

24 there, I did not experience the sound of the air

00416

1 conditioner.

2 Q Who, if anyone, slept in the den on the  
3 western side of the house during July of 1994?

4 A My son, David.

5 Q Did the fact that your son, David, slept in  
6 the den during July of 1994 cause you any interruption of  
7 your use of the den during that period?

8 A Yes, it did. I invest in the stock market and  
9 I use a program called Dow Jones which gives me unlimited  
10 access between 7:00 p.m. and 7:00 a.m. I would typically  
11 put the children to bed at 10:00 and go in and run some  
12 reports and get information off or get up in the morning  
13 at 6:00 and go in and continue my work. I wasn't able to  
14 do that because my son was occupying that room to sleep.

15 Q And are you aware of why your son was unable  
16 to sleep in his bedroom on the second floor of your home  
17 along the south wall?

18 A The noise on the second floor was, to our  
19 ears, much louder than the noise on the first floor. He  
20 could not sleep in his room.

21 Q And what was the source of the noise on the  
22 second floor in July of 1994?

23 A The Crown'schiller.

24 Q I want to show you what's been marked for

00417

1 purposes of identification as Exhibit 6. I'd ask you to  
2 take a look at that document and tell me when you've had a  
3 chance to finish your review.

4 A Yes, I've reviewed it.

5 Q What is that document?

6 A This is a letter sent to Nancy Crown on July  
7 25th, 1994.

8 Q Is that a true and accurate copy of the letter  
9 that you sent Ms. Crown on or about July 25th, 1994?

10 A Yes, it is.

11 Q What prompted you to write to Nancy Crown in  
12 the latter part of July, 1994?

13 A I wanted to make her aware that our family was  
14 having problems sleeping. It was causing stress in our  
15 family. Our son could no longer sleep in his bedroom and  
16 I was begging, pleading, could they please turn it off at  
17 night so we could sleep in our own house.

18 Q I know that the first sentence of the letter  
19 reads, "I'm writing this to you as our telephone calls and  
20 letters have been unanswered the past month." Is it true  
21 that you made telephone calls to the Crowns during the  
22 month of July, 1994?

23 A My husband had.

24 Q And are you aware whether those telephone

00418

1 calls that your husband made were returned?

2 A No, they were not.

3 Q Is it true that you or your husband wrote  
4 letters to the Crowns during July of 1994?

5 A Yes.

6 Q And do you know whether those letters were  
7 answered?

8 A To my knowledge, they were not.

9 Q I note that the first sentence of the second  
10 paragraph reads, "The stress created by the constant noise  
11 is wearing out my family." Was this a true statement when  
12 you made it in July of 1994?

13 A Yes.

14 Q And what was the source of the noise to which  
15 you refer in your letter of July 25th, 1994?

16 A Thechiller unit on their property.

17 Q I note that the first sentence of the third  
18 full paragraph reads: "I do not understand why you  
19 continue to keep this on 24 hours a day when you do not  
20 live there and know how this is affecting another family."

21 Is it true that in July of 1994 neither Steven nor Nancy  
22 Crown lived in their residence onArdsley Road?

23 A They did not live there.

24 Q What, if any, response did you receive from

00419

1 Nancy Crown to your letter of July 25th, 1994?

2 A I did not receive a response from her.

3 Q What, if any, response, did you receive from

4 Steven Crown to your letter of July 25th, 1994?

5 A I received a telephone call from Steven.

6 Q Where did you receive that call?

7 A I think in the kitchen. It came to our

8 house.

9 Q What, if anything, did Mr. Crown say to you?

10 A He asked me not to correspond with his wife

11 and he told me that the new enclosure would be built right

12 after Labor Day.

13 Q Did he propose any plan for noise abatement

14 for the month of August, 1994?

15 A No.

16 Q How long did that telephone conversation

17 between you and Mr. Crown in -- is it fair to say that was

18 the latter part of July, 1994 or early August, 1994?

19 A The latter apt of July. It was a very short

20 conversation. I asked him to please call my husband at

21 the office and explain to him what their plans were with

22 the air conditioner and he said he would not and our

23 conversation was very short.

24 Q Is there anything else about that conversation

00420

1 that you recall?

2 A No.

3 MR. KAISER: Move for admission of Exhibit 6  
4 into evidence to the extent it hasn't already been fully  
5 admitted.

6 HEARING OFFICER: Exhibit 6 has already been  
7 admitted into evidence. I would like to entertain a  
8 motion to introduce into evidence Exhibit 7 which is also  
9 been the subject of discussion.

10 MR. KAISER; I move for 7 into evidence -- for  
11 Exhibit Number 7 with the limitations previously stated on  
12 the record by Mr. Carson.

13 MR. CARSON: Your Honor, Exhibit 7 is  
14 comprised of a letter from David Shelton to the Winnetka  
15 Village Council which is inadmissible hearsay. It's also  
16 comprised of what purports to be a train engineering  
17 bulletin for which there has been no foundation or  
18 authentication and it also purports to include the  
19 so-called petition and we've already stated our objections  
20 to the hearsay nature of the petition. It also includes  
21 inadmissible hearsay relating to a purported report of Al  
22 Shiner who was here yesterday and has markings on it as to  
23 which there is no authentication or foundation and also a  
24 letter from Greg Zak of the EPA for which there's been no

00421

1 foundation or authentication. And for those reasons, we  
2 would oppose the introduction or the acceptance of Exhibit  
3 7 into evidence. It's loaded with hearsay and  
4 conclusions.

5 MR. KAISER: We will introduce testimony  
6 through David Shelton that on or about January 16th, 1995  
7 he drafted Exhibit 7. The letter which is the principle  
8 component of Exhibit 7. This is a true and accurate copy  
9 of a letter he prepared, signed and sent to the Winnetka  
10 Village Council and a copy of which was sent to Mr. Crown.  
11 Mr. Shelton will also testify that the attachments which  
12 Mr. Carson referred are the attachments that were  
13 contained in the letter that he sent to the village  
14 council on or about January 16th, 1995. So, it's a true  
15 and accurate copy of a piece of correspondence which tells  
16 part of this story of this Complainant.

17 HEARING OFFICER: All right. I also believe  
18 that a portion of this exhibit has already been entered  
19 into evidence, but we will wait then for the introduction  
20 of this exhibit into evidence until Complainant's counsel  
21 has completed its foundation for its introduction.

22 MR. KAISER: Thank you.

23 Q Now, in August of 1994, did the noise coming  
24 from the Crown residence air conditioner chiller unit

00424

1

2 abate?

3 A. No.

4 Q. How would you describe the sound coming from  
5 the Crown chiller unit during August of 1994?

6 A. I would describe it as the same as in July of  
7 1994.

8 Q. What effect did the noise from the Crown  
9 chiller unit have on your ability to sleep during August  
10 of 1994?

11 A. It made it extremely difficult to sleep for  
12 myself, my husband, my son. We were exhausted. It  
13 created stress and tension. There's no place to escape  
14 the noise.

15 Q. Now, do you suffer from a certain eye  
16 condition?

17 A. Yes, I do.

18 Q. Do you know the name of that condition?

19 A. It's called Keratakonis.

20 Q. Could you spell that please?

21 A. K-e-r-a-t-a-k-o-n-i-s.

22 MR. CARSON: can we have just a moment to  
23 confer?

24 MR. ELLEDGE: On or off the record. We had an



00425

1 agreement of medical testimony that you would intend to  
2 produce medical testimony, you were going to introduce  
3 doctors so we could depose them.

4 HEARING OFFICER: Off the record for a offer  
5 of proof.

6 (A brief recess was taken.)

7 HEARING OFFICER: Back on the record.

8 By Mr. Kaiser:

9 Q. Ms. Shelton, in June, July and August of  
10 1994, did you wear a corrective contact lens in your left  
11 eye?

12 A. Yes.

13 Q. What, if any, impact did your loss of sleep  
14 that you've testified to during June and July of 1994 have  
15 on your ability to wear the corrective contact lens?

16 A. On nights when I was unable to get adequate  
17 sleep, when I would awaken in the morning my eyes would be  
18 dry from lack of sleep. I have a corrective lens that I  
19 must wear in order to function on a daily basis. There  
20 are many times I could not wear the corrective lens  
21 because my eyes were irritated and dried out from lack of  
22 sleep.

23 Q. Did this occur from June of 1994? Were there  
24 any occasions in June of 1994 when you were unable to wear

00426

1 the corrective lens or were you only able to wear it for a  
2 limited period of time?

3 A. There might have been just one or two days in  
4 June of 1994 where I was only able to wear it for a  
5 limited period of time.

6 Q. And in July of 1994, what, if any, effect did  
7 the lack of sleep have on your ability to wear the  
8 corrective lens?

9 A. Several times a week I would not know the  
10 length of time I would be able to wear the corrective lens  
11 for. I might be able to wear it for one hour or two hours  
12 or certain days when I was experiencing dryness in my eyes  
13 from lack of sleep.

14 Q. And what would be your experience after  
15 having the lens in for one or two hours after a night in  
16 which you got little or no sleep?

17 A. After a short period of time it would hurt my  
18 eye tremendously, the cornea is extremely thin and I would  
19 have to take it out in order to not risk scratching my  
20 cornea.

21 Q. Now, I notice today that you're wearing a  
22 pair of eyeglasses. Are you able to see out of the left  
23 eye as well with eyeglasses as with the corrective lens?

24 A. No, I'm not.

00427

1 Q. Are there certain activities that you can  
2 only perform when you have the corrective lens in place?

3 A. In order to play tennis, in order to drive a  
4 car at night, in order to use a computer, I must be  
5 wearing a contact lens. Without that corrective lens on  
6 my eye, you could be standing two feet away from me, I  
7 could see your shape, but I could not tell the details. I  
8 would not know who you are. It's one big blur.

9 Q. Did the fact that you were unable to wear the  
10 lens for the period of-- prior to June and July of 1994,  
11 due experience any difficulty wearing the corrective lens?

12 A. Usually once a year. It would irritate my I.  
13 I could easily scratch it or irritate it with something,  
14 anything into my eye and I would have to remove the lens  
15 for one or two days in order for the cornea to heal back.

16 Q. If your eye was not irritated, how long could  
17 you keep the corrective lens?

18 A. 16 to 18 hours.

19 Q. And after you began to experience a loss of  
20 sleep in July of 1994, what waste the duration for which  
21 you could keep the corrective lens in your eye?

22 A. It just depended day by day on how much sleep  
23 or how dry my eye was. It was -- I was able to calculate  
24 it by if I had a good night's sleep or not as to how long.

00428

1 Sometimes I could wear it all day if I had a good night's  
2 sleep. Sometimes 6 hours, sometimes two hours. When my  
3 eye was irritated and I knew I had something I had to do  
4 at a certain time, I might keep the contact off until that  
5 time when there was an activity like driving at night. I  
6 might put it on then so I could at least function at night.

7 Q. And did you have those procedures in place  
8 that you just described of keeping the lens out and  
9 putting it in only when necessary, due adapt that behavior  
10 -- when due adapt that behavior?

11 A. July of 1994.

12 Q. What, if any, impact did this uncertainty  
13 concerning how long you could wear the lens have on your  
14 emotional well being?

15 A. It made me dizzy. I had no depth perception.  
16 Simple things like going on a walk, you're just off  
17 balance all the time.

18 MR. CARSON: Your Honor with respect to Mrs.  
19 Shelton's medical condition, we did have an agreement with  
20 counsel that there would not be testimony with respect to  
21 a medical condition and in reliance upon that agreement we  
22 did not conduct any discovery relating to Mrs. Shelton's  
23 physician and we're now getting into an area where she's  
24 describing a medical condition in some detail. Her

00429

1 testimony in this regard, we feel, is contrary to a prior  
2 agreement that we've had with counsel. Given that it's  
3 being introduced, we feel that we're going to need to have  
4 this discovery and we move for a continuance of this  
5 hearing in order to conduct such discovery. Certainly I'm  
6 not saying we quit right now, but it's going to require us  
7 to request that the remainder of the hearing be delayed in  
8 order for us to conduct the discovery necessary to rebut  
9 or to delve into these areas that are being brought out in  
10 this part of the examination.

11 HEARING OFFICER: I believe that we have  
12 already agreed that the hearing will be continued to a  
13 later date as we will not conclude the hearing today.  
14 So, we will discuss this possibility later in the day. The  
15 discovery request has not been received by me and when and  
16 if it is, then I will rule on that or I will refer it to  
17 the Board.

18 MR. CARSON: Thank you, your honor.

19 By Mr. KAISER:

20 Q. So, returning then to August of 1994, was it  
21 your testimony that the noise becoming from the Crown air  
22 conditioning chiller unit was substantially similar to the  
23 noise you experienced during July of 1994?

24 A. It was the same as July, 1994.

00430

1 Q. What, if any, changes has the noise coming  
2 from the Crown air conditioning chiller unit abated, if  
3 anyway in September of 1994?

4 A. The unit was turned over late September 1994.

5 Q. Before it was turned off, did you notice any  
6 reduction in the noise?

7 A. No.

8 Q. During September of 1994, did you have any  
9 problems sleeping during the night?

10 A. Yes.

11 Q. Due continue to take over the counter sleep  
12 aids?

13 A. Yes, as well as prescription drugs from the  
14 doctor.

15 Q. All right.

16 MR. CARSON: If we may go off the record for  
17 one moment here, Madam Hearing Officer.

18 (A brief off the record discussion was held.)

19 HEARING OFFICER: Back on the record. We've  
20 been discussing whether medical testimony is ought of the  
21 realm of the relevance of this hearing and the issue here  
22 which is a noise pollution, alleged, complaint with  
23 respect to Respondent's air conditioning system and I'm  
24 asking that we limit questions on the medical aspects to

00431

1 the witness' testimony of what action she took which were  
2 in direct response in her mind to her need to accommodate  
3 herself with respect to the alleged noise that was  
4 becoming from the Crown's air conditioner.

5                               Counsel, will you proceed with your  
6 questioning?

7                               MR. KAISER: Yes, thank you.

8           Q.           Ms. Shelton in late July or early August of  
9 1994, did you obtain a prescription of sleep medication?

10          A.           Yes, I did.

11          Q.           Why did you do that?

12          A.           I was not able to get a good night's sleep  
13 taking over the counter Excedrin P.M and I was  
14 prescribed a prescription of sleeping pills.

15          Q.           Did you fill that prescription?

16          A.           Yes, I did.

17          Q.           Did you subsequently take the sleeping  
18 pills?

19          A.           Yes, I did?

20          Q.           And what, if any, affect did they have on  
21 you?

22          A.           They enabled me to sleep through the night.

23          Q.           How often did you take those sleeping pills?

24          A.           I believe it was twice a week. I was

00432

1 allowed to take a sleeping pill and on the other night I  
2 would take the Excedrin P.M.. In August now there were  
3 many nights I did not have to take them as we were ought  
4 of town.

5 Q. And is it your testimony that in September  
6 the air conditioning system at the Crown residence  
7 operated until sometime in the latter part of the  
8 September, 194?

9 A. Yes.

10 Q. Between the latter part of September, 1994  
11 and the end of the year, December 31st, 1994, did the  
12 Crown air conditioning system go on again?

13 A The latter part of the October of 1994 at  
14 night.

15 Q. For how long of appeared of time?

16 A. 5 days and 5 nights.

17 Q. Do you recall whether the Crowns were living  
18 in the residence at that time?

19 A. No, they were not.

20 Q. Do you recall what the outdoor air  
21 temperature was during that period in late October of  
22 1994?

23 A. It was -- I don't recall.

24 Q. When the Crown air conditioner chiller unit



00433

1 was turned back on in the latter part of October, 1994,  
2 what, if any, impact did that have on your ability to  
3 sleep?

4 A. It affected my ability to sleep and my son  
5 was not able to sleep.

6 Q. Do you recall for approximately how long your  
7 ability to sleep was impaired because of the noise  
8 becoming from the Crown air conditioning unit?

9 A. Until it was turned off. It started on a  
10 Monday. It was turned off on a Friday evening.

11 Q. In the fall of 1994, did you have any  
12 communications with Steven Crown?

13 A. Yes, I did.

14 Q. Do you recall when those communications took  
15 place?

16 A. In October I saw him at a school function and  
17 I told him that we had some concerns about the new diagram  
18 for the paneling around the air conditioning. We were  
19 concerned it was not enough and I was told that if I had a  
20 problem with the noise, he would deal with us in court.

21 Q. Who was present when you had that  
22 conversation with Mr. Crown in October of 1994?

23 A. Just Steven and myself.

24 Q. Approximately how long did that conversation

00434

1 last?

2 A. One minute.

3 Q. Do you recall when you received copies of  
4 drawings for installation of some kind of paneling system  
5 around the air chiller unit at the Crown residence?

6 A. I believe it was the end of September, 1994.

7 Q. Did you talk with either Steven or Nancy  
8 Crown at any time between late October of 1994, the  
9 conversation you just described and the close of the year  
10 of 1994?

11 A. Yes. When the air conditioner went on at  
12 night in October of 1994, I called their residence because  
13 they were not living next door. I thought maybe they  
14 didn't no the air conditioner was running at night. I had  
15 arrived home from boy scouts, banjo lessons and horseback  
16 riding at 9:30 at night. I was putting my children to bed  
17 and my son, David, could not sleep because of the air  
18 conditioning noise. I called the Crown's residence and  
19 Mrs. Crown answered the phone. I said Nancy, this is Susi  
20 Shelton. I wanted you to know the air conditioner was  
21 running and she broke in with this is a inconvenient time.  
22 She was trying to put her children to bed. If I had a  
23 problem with the noise, she would deal with us in court.

24 Q. And how long was that the entirety of the

00435

1 conversation between you and Nancy Crown in October of  
2 1994?

3 A. Yes.

4 Q. Approximately how long did that conversation  
5 last?

6 A. One minute.

7 Q. Did you talk with Nancy Crown at any time  
8 between the latter part of October, 1994 and the end of  
9 1994?

10 A. I have never spoken with her since.

11 Q. In November of 1994, did you receive any  
12 additional plans from Steven Crown or his agent concerning  
13 noise abatement effort --

14 A. No.

15 Q. December of 1994, did you receive any  
16 additional plans from Steven Crown or his agent pertaining  
17 to noise abatement for the --

18 A. No.

19 Q. Did you see any communication with either  
20 Steven or Nancy Crown in January of 1995?

21 A. In 1995 of January I believe we had a meeting  
22 with Steven Crown, my husband, Marge Julian, Bob Julian,  
23 Pete Cringshank(phonetic), the Village president, Kathy  
24 Jennicott, the Village attorney, Al Shiner, by telephone,

00436

1 possibly Doug Williams, the Village Manager.

2 Q. Where did that meeting take place?

3 A. In the Village Hall.

4 Q. Was that an evening meeting?

5 A. It was a morning meeting.

6 HEARING OFFICER: Counsel, would you mind  
7 if we take our morning break at this time and return to  
8 this testimony at this point, Mr. Kaiser.

9 I'd be happy to thank you off the record.  
10 We'll take ten minutes. We'll come back at approximately  
11 10:30.

12 HEARING OFFICER: Back on the record and  
13 counsel do you want to continue your line of questioning?

14 MR. KAISER: Yes, thank you.  
15 By Mr. Kaiser. We've just returned from break,  
16 approximately a ten minute mid morning break. When we  
17 adjourned your testimony we were talking about a meeting  
18 that occurred in January of 1995 before going on any  
19 further with that. I'd like to backtrack a bit and I'm  
20 showing you a document which is not yet been marked for  
21 purposes of identification and I wonder, Madam Hearing  
22 Officer, if you could help me and tell me where we've left  
23 out. I think we are about at 89 or 90 I guess since I  
24 don't know, our stipulated exhibits.

00437

1 HEARING OFFICER: What is the last pre-marked  
2 exhibits that complainants have offered.

3 MR. KAISER: The last one I show is 77.  
4 What's the last pre-marked Exhibit 7? I frankly don't  
5 know if we have an 88 or 89, so for safety sake I'd like  
6 to call this number 90.

7 HEARING OFFICER: All right, fine.

8 By Mr. Kaiser:

9 Q. I've previously shown this document to  
10 counsel for the Respondent's , I'll show it to them again.  
11 Now its been marked. It's a letter from Susi Shelton to  
12 Steven and Nancy dated August 29th, 1994.

13 I show you what's been marked for purposes of  
14 identification as 90 and ask you do you recognize that?

15 A. Yes, I do.

16 Q. What do you recognize that to be?

17 A. It's a letter addressed to Steven and Nancy  
18 Crown and ask them to please turn off their air  
19 conditioner at night because we were still having problems  
20 sleeping.

21 Q. Did you mail that letter to the Crowns on or  
22 about August 29th, 1994 ?

23 A. Yes, I did.

24 Q. And I note that it does state the second

00438

1 sentence of the first paragraph I'll read the whole first  
2 paragraph. Please turn off your air conditioner at night.  
3 We cannot sleep. With evening temperatures dropping well  
4 into the '50s, the low drones created by the condensers  
5 are intensified. Now I want to take that piece by piece.  
6 Was it true that as of August 29th, 1994 you could not  
7 sleep?

8 A. Yes.

9 MR. CARSON: Can I interrupt for a minute, but  
10 excuse me. We have a witness that just entered the room.  
11 I believe this is Mr. Zak and we previously -- I think  
12 moved to exclude witnesses.

13 MR. KAISER: That's fine. Mr. Zak, good  
14 morning. Mr. Diver actually went around the corner --

15 HEARING OFFICER: Off the record.

16 (A brief off the record discussion was held.)

17 HEARING OFFICER: Back on the record. Let the  
18 record reflect that Mr. Zak, who will be a witness later  
19 today, did enter the room for just approximately one  
20 minute and has now left the room.

21 MR. CARSON: Thank you, your honor.

22 BY MR. KAISER:

23 Q. Returning to your letter dated August 29th,  
24 1994, was it true that on or about August 29th, 1994

00439

1 evening temperatures were dropping well into the 50s?

2 A. Yes.

3 Q. And is that referred to 50 degrees

4 Fahrenheit?

5 A. Yes.

6 Q. And was it also true that on or about August

7 29th, 1994 the low drones created by condensers

8 are intensified?

9 A. They appeared to be louder as the

10 temperatures got cooler outside, to our ears.

11 Q. I note that in the second paragraph you

12 state, "I was awakened this last night, even though we

13 still do not open the windows and we operate both a

14 ceiling and floor fan in the bedroom. Was it true that on

15 the night of August 28th, 1995 you were awakened twice?

16 MR. CARSON: Your Honor, I'm going to object

17 to the leading nature of the question and the cumulative

18 nature of the testimony. We've already heard extensive

19 testimony from this witness as to the conditions in August

20 of 1994. In fact, we went the better part of the morning

21 talking about what it was like in July and August of 1994.

22 HEARING OFFICER: I would agree that we are

23 having repetitive testimony at this point in time as to

24 the effect of the alleged noise pollution, therefore, the

00440

1 objection is sustained.

2 MR. KAISER: May I then in a more summary  
3 fashion verify the accuracy of the statements contained  
4 within Exhibit Number 90?

5 Q. Would you please review that and tell me after  
6 you've completed your review whether there is anything in  
7 that letter which was not true as of the date of its  
8 authorship, August 28th, 1994?

9 A. Everything in telephone letter is true

10 Q. Thank you.

11 MR. KAISER: Thank you. I move for admission  
12 into evidence of Exhibit Number 90.

13 HEARING OFFICER: Is there a objection?

14 MR. CARSON: No objection to the Exhibit 90.

15 HEARING OFFICER: Exhibit 90 will be  
16 entered into evidence.

17 (Complainant's Exhibit No. 90 was entered  
18 into evidence .)

19

20 MR. KAISER: Q. Now, returning to the  
21 meeting that was held in January of 1995 at the village  
22 hall and you listed before the break the people who were  
23 in attendance. Do you remember what, if any, commitments  
24 Mr. Crown made during that meeting?



00441

1           A.           He agreed to have the unit tested for the  
2 Illinois Pollution Standard.

3           Q           What is the testing?

4           A           It is the EPA testing or the Illinois  
5 Pollution Control testing done on the unit in early spring  
6 when the unit was operating.

7           Q.           Did you receive any plans from Steven Crown  
8 or his agents in February of 1995 setting forth additional  
9 steps that would be taken to abate the noise emanating  
10 from his air conditioning unit?

11          A.           I believe -- no.

12          Q.           In March of 1995, did you receive any  
13 additional reports from Mr. Crown or his agents setting  
14 forth additional steps that would be taken to reduce the  
15 noise emanating from his air conditioning unit?

16          A.           No.

17          Q.           In April of 1995, did you receive a report  
18 from Mr. Crown or any of his agents setting forth  
19 additional steps that would be taken to abate the noise  
20 emanating from his air conditioning unit?

21          A.           No.

22          Q.           In April of 1995, did Mr. Crown or one of his  
23 agents cause the air conditioning system to be activated?

24          A.           Yes.

00442

1 Q. Do you recall what part of the month the  
2 Crown air conditioning system was turned on?

3 A. It was the latter part of April.

4 Q. How did you become aware that the air  
5 conditioning unit was activated?

6 A. We could hear it in it in our yard and in our  
7 house.

8 Q. Were you able to discern any difference in  
9 the noise becoming from the air conditioning unit in April  
10 of 1994 as opposed to the levels you had experienced in  
11 July, August and September and October of 1994?

12 A. To our ears there was a modest, a very slight  
13 reduction with the panels, with the new panels that had  
14 gone around the system.

15 Q. Are you able to describe what portion of the  
16 noise spectrum was affected by the installation of the  
17 noise panels?

18 A. We still experienced the on and off cycling.  
19 We still experienced the low drones. I believe the fans  
20 were some what muffled. They were not as harsh as  
21 prior.

22 Q. Did you have any difficulty sleeping during  
23 the latter part of April, 1995?

24 A. Yes, yes. I could not sleep the latter part

00443

1 of the April, 1995.

2 Q. In the latter part of April, 1995 were your  
3 bedroom windows open or closed?

4 A. Our bedroom windows were closed.

5 Q. During the latter part of April, 1995 did you  
6 operate a ceiling fan in your bedroom?

7 A. Yes, we did.

8 Q. During the latter part of April, 1995, did  
9 you operate any other fans in your bedroom?

10 A. We operated a floor fan.

11 Q. Was this combination of fan operation and  
12 closing of the windows sufficient to keep the noise from  
13 the Crown air conditioning out of the bedroom?

14 A. No.

15 Q. Did you experience the noise from the Crown  
16 air conditioning unit in the latter part of April, 1995 in  
17 any other portion of your house?

18 A. Yes, in the kitchen, the living room, dining  
19 room, the family room, the second floor of our house.

20 Q. In the latter part of April, 1995, were you  
21 able to close the windows of your home, turn on music,  
22 inside of your home and in that manner reduce the level of  
23 annoyance caused by the Crown air conditioning system?

24 A. No.

00444

1 Q. In the latter part of April, 1995, were you  
2 able to close the windows, turn the television set and in  
3 that weigh reduce the level of irritation you experienced  
4 as a result of air conditioning unit?

5 A. No.

6 Q. What, if any, other method did you employ to  
7 try to be comfortable and not hear the air conditioning  
8 unit when you were in your home in April, 1995?

9 A. We continued to create additional noise in  
10 our house but it did not alleviate the sound from the air  
11 conditioner next door.

12 Q. Did that sound in your home coming from the  
13 Crown air conditioner in April, 1995 interfere with your  
14 ability to sit inside your house and carry on a relaxed  
15 conversation with your family members?

16 A. It created a stress and tension in our family  
17 members. We could carry on conversations with family  
18 members, but there was a noise that could be heard in our  
19 house and it created stress and tension in our bodies.

20 Q. And I notice that when you say stress and  
21 tension in your body, you just perhaps unconsciously  
22 touched your neck area and shoulders with your two hands.  
23 Is that the area in which you experienced the tension?

24 A. It gave me headaches, it gave me pains down

00445

1 my neck and across my shoulders.

2 Q. Did you experience noise from the Crown air  
3 conditioning unit in May of 1995?

4 A. Yes.

5 Q. Was there any appreciable reduction in the  
6 noise in May of 1995?

7 A. There ways no reduction from when it was  
8 turned on in April of 1995.

9 Q. Did you lose sleep as a result of the noise  
10 becoming from the Crown air conditioning unit during May  
11 of 1995?

12 A. Yes, I did.

13 Q. Did you experience tension in your body  
14 during May of 1995 as a result of Crown air conditioning  
15 unit?

16 A. Yes, I did.

17 Q. Did you make effort during May of 1995 to  
18 close your windows, to use fans in order to sleep  
19 comfortably during May of 1995?

20 A. Yes, we kept storm windows on throughout our  
21 house.

22 Q. Did that reduce your experience of noise  
23 within your home during May of 1995?

24 A. No.

00446

1 Q. During June of 1995, did you describe for the  
2 Board your experience of the noise becoming from the  
3 Crown air conditioning unit?

4 A. The noise was the same as in April and in May  
5 until they did the sound readings on June 19th or 20th,  
6 1995.

7 Q. And were those sound readings by Mr. Alan  
8 Shiner?

9 A. Yes, they were.

10 Q. And what, if any, changes in the sound  
11 emanating from the Crown air conditioning unit did you  
12 experience after the noise measurements were made?

13 A. That night they removed -- I'm not sure if  
14 they're called baffles or cones from the system and to our  
15 ear it reduced some what the noise levels. It sort of  
16 softened the harsh sounds.

17 Q. Do you know whether the baffles or cones, did  
18 they stay off after you stated they were removed on the  
19 night Mr. Shiner performed tests. Do you know whether  
20 they were put back on or kept off?

21 A. It was our understanding they remained off.

22 Q. Now, with the cones off you mentioned or you  
23 stated that the noise was reduced somewhat. Is that your  
24 testimony?

00447

1 A. Yes.

2 Q. With the cones off in the latter part of  
3 June, 1995, how would you describe the sound the noise of  
4 the Crown air conditioner in your home?

5 A. It was reduced, the noise was reduced during  
6 the daytime.

7 Q. What was the impact of the removal of the  
8 cones in your experience of the noise during the night  
9 hours time hours?

10 A. The noise in our house seemed to be reduced  
11 as long as our windows remained closed.

12 Q. Did you ever open your windows and experience  
13 the noise of the air conditioning unit with the windows  
14 open?

15 A. Yes.

16 Q. What was your experience of the noise in your  
17 home in June of 1995 with the windows opened?

18 A. It was noisy. It was obtrusive. It still --  
19 at night time with -- we just couldn't have a window open.  
20 We couldn't have a window open to sleep.

21 Q. So, you had experimented opening the window  
22 and listening to the sounds of the air conditioning unit  
23 in June of 1995?

24 A. Yes.

00448

1 Q. And after listening to the air conditioning  
2 unit with the windows open during the evening hours of  
3 June, 1995, what if anything, did you do with the windows?

4 A. We couldn't sleep with the windows open. We could  
5 still hear it, hear the low drones, the high pitches, the  
6 on and off cycle of the unit going. The noise was still  
7 much louder on our second floor.

8 Q. Were you able to hear the done of the air  
9 conditioning unit in your kitchen during the latter part  
10 of June, 1995?

11 A. With the windows closed and I could not hear  
12 it.

13 Q. And what if the windows -- did you open the  
14 windows in the kitchen in June of 1995?

15 A. Yes.

16 Q. What was your experience of the noise from  
17 the Crown air conditioning in the kitchen during June of  
18 1995 with the windows open?

19 A. I could hear the air conditioner.

20 Q. Did the sounds or the noise coming from the  
21 Crown air conditioner with the windows closed during June  
22 of 1995 interfere with your ability to use and enjoy your  
23 kitchen?

24 A. It did not interfere with my ability to use



00449

1 the kitchen. I did not like sitting in the kitchen with a  
2 window open eating to hear the noise. I would enclose the  
3 window.

4 Q. Do the windows of your family room open or is  
5 that a solid pane of glass?

6 A. They have screens and they have storms.  
7 Typically before the air conditioner went in we would use  
8 a lot of screens to create cross ventilation in our family  
9 room. In the summer of 1995 we kept the storm windows on.

10 Q. Throughout the entire summer of 1995?

11 A Yes.

12 Q. Are you speaking only of your  
13 family room at this time, you kept the storm windows  
14 on the family room or did you keep the storm windows on  
15 all the windows of your house?

16 A. The storm windows were on our -- we have  
17 double pane windows upstairs and we kept the windows  
18 closed in David's room. We kept the storm windows on the  
19 east side of our bedroom. We were able to put a screen  
20 window on the north side of our bedroom.

21 Q. And that configuration with the storm windows  
22 remained up on certain windows of your house that was the  
23 way you maintained your home in the summer of 1990?

24 A. No.

00450

1 Q. Is that the way you maintained your home in  
2 the summer of 1991?

3 A. No.

4 Q. Is that the way you maintained your home in  
5 the summer of 1992?

6 A. No.

7 Q. Is that the way you maintained your home in  
8 the summer of 1990?

9 A. No.

10 Q. Why did you adapt that configuration of storm  
11 windows and screens in the summer of 1995?

12 A. The noise was still too loud in the middle of  
13 the night to enable us to sleep. The noise was too loud  
14 in our family room for us to sit comfortably and relax.

15 Q. Now your family room, how many -- you  
16 mentioned that you had -- that you were able to create  
17 cross drafts. The east facing wall, how many windows are  
18 on the east facing wall?

19 A. I believe there's 3 panels of glass.

20 Q. And on the north facing wall, how many  
21 windows are there?

22 A. Three panels of glass, may be 4, 3 or 4.

23 Q. If you were to characterize the relationship  
24 between your family room and the condenser unit again and

00451

1 you may want to make reference to the exhibit on the wall  
2 behind you, is that direct, indirect path. How would  
3 characterize that?

4 A. I believe its in a fairly direct path of the  
5 condensing unit.

6 Q. In July of 1995, what was your experience of  
7 the noise becoming from the Crown air conditioning system?

8 A. Could you repeat the question?

9 MR. KAISER: Madam court reporter, could  
10 you read the last question back?

11 (The record was read)

12 MR. CARSON: Your honor can I interject here  
13 with an objection? The testimony yesterday established  
14 that there were some modifications made in April, '95.  
15 There's nothing in the records and I don't believe the  
16 evidence will show that there were further modification  
17 between June and July of 1995 and rather than listen to  
18 the same litany of questions as to what the situation was  
19 in July of 1995. Perhaps you know there would be some way  
20 to shorten it up, so we won't have to listen to the same  
21 thing over and over again when it's very likely to be any  
22 difference from June to July of 1995 unless I'm  
23 misunderstanding the situation. I would expect the  
24 answers to be the same.

00452

1                   MR. KAISER: I would find it highly ironic  
2 that Respondent now wants to condense and not listen to  
3 the testimony describing the nuisance that they had to  
4 experience and were unable to cut short or curtail for two  
5 and a half years. They've now had to listen to testimony  
6 for maybe 4 hours and are already growing tired of it  
7 apparently. And the client, the complainant, have had to  
8 listen to it for in excess of two and a a half years. Did  
9 they want to stipulate that Susi Shelton, David Shelton  
10 David B. Shelton and the other Shelton children were  
11 unable to sleep in there bed rooms or in their homes  
12 comfortably for July of 1995, August of 1995 and September  
13 of 1995 because of the noise emanating from the Crown air  
14 conditioning system. If they want to stipulate that  
15 windows had to remain closed at the Shelton residence  
16 during July, August, September of 1990. If they want to  
17 stipulate that the Sheltons were unable to take meals  
18 comfortably out of doors on their patio during July,  
19 August and receipts of 1995. If they want to stipulate  
20 that Susan Shelton experienced headaches, physical  
21 discomfort as a result of the noise and deprivation of  
22 sleep during July, August and September of 1995 as a  
23 result of the Crown air conditioning unit. I would  
24 entertain such a stipulation. Absent that, I would go

00453

1 forward with the testimony of Ms. Shelton.

2 MR. CARSON: May I respond?

3 HEARING OFFICER: Yes.

4 MR. CARSON: If the goal is to make the  
5 respondent uncomfortable, perhaps we should do it day by  
6 day rather than month by month. I don't think that's the  
7 goal of the proceeding and I think it's a blatantly  
8 improper use of this Hearing Officer's time. However,  
9 we're not willing to stipulate in the manner proposed.

10 MR. KAISER: I can go hour by hour.

11 HEARING OFFICER: Thank you counsel. The  
12 objection is sustained. I'm going to agree with counsel  
13 for respondents at this point that we are receiving  
14 somewhat repetitive testimony and also we are hearing many  
15 leading questions; however, I also believe that  
16 complainants has a right to make the case with respect to  
17 the entire span of time during which they perceived a  
18 violation or a nuisance;. Therefore, I'm asking  
19 Complainant's counsel to reduce or summarize these effects  
20 in a more efficient manner for purposes of our hearing. I  
21 believe that it is therefore appropriate to identify each  
22 point many times during which certain, actions were taken  
23 by complainant and then I believe it also appropriate to  
24 identify when changes occurred. I don't think that we

00454

1 need to have the repetitive testimony over the course of  
2 specific days and specific months when changes did not  
3 occur repeatedly.

4 MR. KAISER: Thank you. I'll conduct my  
5 examination in accordance with those recommendations.

6 HEARING OFFICER: Thank you.

7 BY MR. KAISER:

8 Q. Ms. Shelton, did you receive any  
9 communication from Steven Crown in the latter part of June  
10 or early part of July, 1995?

11 A. Yes.

12 Q. Were those communications oral or written?

13 A. Written.

14 Q. Was the communication from Mr. Crown created  
15 after noise measurements were taken by Mr. Shiner?

16 A. Yes, they were.

17 Q. Do you recall what the essence of the  
18 communication, the written communication from Mr. Crown in  
19 the latter part of June or early part of July, 1995 was?

20 MR. CARSON: objection, best evidence. If  
21 there's a written communication, that written  
22 communication would be did best evidence of what did the  
23 essence of it was.

24 HEARING OFFICER: Sustained.

00455

1 Q. Do you recall what your emotional response  
2 was to Mr. Crown's letter that you had received in the  
3 latter part of July, 1995?

4 A. I was devastated. There was still a problem in  
5 our house on our property with the noise and Mr. Crown had  
6 stipulated that he has done all he's going to do.

7 HEARING OFFICER: Excuse me. Was this in  
8 written-- writing and has this exhibits been introduced?

9 MR. KAISER: It hasn't to date, but I believe  
10 I may be in a position. It's a letter from Mr. Crown to  
11 Mr. Shelton dated June 30th, 1995.

12 HEARING OFFICER: Can we have the introduction  
13 of that exhibit at this point in time?

14 MR. KAISER: Yes, I believe it's previously  
15 been marked for purposes of identification as Exhibit  
16 Number 40.

17 Mr. Elledge, I have to apologize. I don't  
18 have my stack of documents that we'd reviewed the other  
19 morning. Do you have a copy of number 40?

20 MR. ELLEDGE: I may.

21 MR. KAISER: May I just use this and enter  
22 this copy into the record?

23 MR. CARSON: Yes.

24 BY MR. KAISER:

00456

1 Q. I show you what's been marked for purposes of  
2 identification as Exhibit Number 40. I want you to take a  
3 look at it and tell me when you're done reviewing it. Is  
4 that a letter from Mr. Crown to your husband, David  
5 Shelton, dated June 30th, 1995?

6 A. Yes, it is.

7 Q. Is this the letter to which you were alluding  
8 in your testimony moments ago?

9 A. Yes, it is.

10 Q. And did you receive this letter sometime  
11 shortly after June 30th, 1995?

12 A. Yes, we did.

13 Q. Did you read this letter?

14 A. Yes, I did.

15 Q. And is it your testimony that upon reading  
16 this letter your emotional response was a sense of  
17 devastation?

18 A. Yes, it was.

19 Q. Is this a true and accurate copy of the  
20 letter that you received sometime after June 30th, 1995?

21 A. Yes, it was.

22 MR. KAISER: I move for admission into  
23 evidence of Exhibit 40.

24 MR. CARSON: No objection.



00457

1                   HEARING OFFICER: Exhibit 40 will be entered  
2 into evidence.

3                   (Complainant's Exhibit No. 40 received  
4                   into evidence.)

5 Q.           Was there any particular statement in the letter  
6 that caused you to experience in a sense of devastation?

7 A.           It says we have no intention to go any further.  
8 In short, we have done and we are done and do not plan on  
9 spending any more time or money on this. We are sorry if  
10 this is still a inconvenience to you.

11 Q.           And is it your testimony that you received  
12 that letter sometime in early July of 1995?

13 A.           Yes.

14 Q.           And at that time in July of 1995 were you  
15 still experiencing the noise in the air conditioning unit  
16 in the manner that you testified?

17 A.           Yes.

18                   MR. CARSON: Objection, leading.

19 Q.           All right. How due experience the noise from  
20 the air conditioning unit in July of 1995?

21 A.           This waste in July of 1995. It was still  
22 hard to sleep in our bedroom. We still will to keep our  
23 window closed, create noise. My son could not sleep in  
24 his room and we were tired.

00458

1                   MR. KAISER:        Would you like to take a  
2 minute Mrs. Shelton?

3                   HEARING OFFICER:  We'll take a brief recess at  
4 this point.

5                               (A brief recess was taken)

6                   MR. KAISER:  Again, back on the record after  
7 approximately ten minute break here.

8           Q.        You'll recall Mrs. Shelton, that we were  
9 talking about your experience of the noise from the Crown  
10 air conditioning unit.  In July of 1995, was it your  
11 testimony that in July of 1995 though there was some  
12 modest reduction because of the removal of the cones, you  
13 were still unable to sleep in your home during July of  
14 1995?

15          A.        Yes.

16          Q.        And how long, how would you compare your  
17 experience of the noise in your home during July of 1995  
18 with your experience of the noise from the air  
19 conditioning unit as you experienced it in your home in  
20 June of 1995?

21          A.        Sometime in July and an adjustment was made  
22 that kept the system going so that the cycling on and the  
23 cycling off no longer occurred.  It made it easier for me  
24 to sleep on the first floor, but I still had to have the

00459

1 windows closed, the overhead fan going, a floor fan, going  
2 and use a sleeping additive.

3 Q. And what was your experience of the noise  
4 from the Crown air conditioning system in your home during  
5 August of 199 ?

6 A. The same.

7 Q. What was your experience of noise from the  
8 Crown air conditioning system in your yard area during  
9 July of 1995?

10 A. It was very loud and it was particularly  
11 bothersome in the early evening and late evening hours and  
12 in the early morning hours when he's in other sounds  
13 around it would just engulf the whole backyard.

14 Q. There was no place to get away from the sound  
15 in the backyard.

16 A. In the front yard it was less intrusive.

17 Q. Despite the noise from the air conditioning  
18 unit in the yard area during July of 1995, were you able  
19 to enjoy your yard area during that time?

20 A. No.

21 Q. Why not?

22 A. There was always this presence of a low drone  
23 and high pitches that just continued to go 24 hours a day  
24 in our yard.

00460

1 Q. What was your experience of the sounds from  
2 the Crown air conditioning system in your yard during  
3 August of 1995?

4 A. It was the same as in July. It encompassed  
5 our backyard and our side yard.

6 Q. In September of 1995, how did you experience  
7 the noise from the Crown air conditioning unit in your  
8 home?

9 A. It was]still hard to sleep. We still slept  
10 with storm windows on our bedroom. We still kept a storm  
11 window on our family room. Our upstairs bedroom had  
12 considerable noise.

13 Q. During June, July and August of 1995,  
14 Were you able to wear your corrective contact lenses  
15 without problems?

16 A. No.

17 Q. What problems did you experience wearing your  
18 corrective contact lenses during June of 1995?

19 A. I could only wear my lens for anywhere  
20 between two to six hours a day. Some days I couldn't wear  
21 it at all.

22 Q. Did you have similar restrictions on your use  
23 of the corrective lens during July and August of 1995?

24 A. Yes.

00461

1 Q. Why were you unable to use the lens or why  
2 did you have to use the lens in that restricted manner  
3 during June, July and August of 1995?

4 A. When my eyes were dried out, my eyes became  
5 more sensitive to the contact lens.

6 Q. Were your eyes dried out during June, July  
7 and August of 1995?

8 A. Yes.

9 Q. Yes?

10 A. They would dry out because of lack of sleep.

11 Q. In September of 1995, did you have surgery on  
12 your eye?

13 A. Yes, I did.

14 Q. Where did you sleep the night of your  
15 surgery?

16 A. I slept at my parent's house the night of my  
17 surgery.

18 Q. Where is your parent's home located?

19 A. In Highland Park.

20 Q. Why did you sleep at your parent's home on  
21 the night your eye surgery?

22 A. The morning I left for surgery, the air  
23 conditioner unit was still operating and I just felt I  
24 needed to get a good night's sleep after surgery and

00462

1 didn't want to have to come back into our house where it  
2 creates a uneasy, uncomfortable feeling for me.

3 Q. How many nights did you sleep at your  
4 parent's home following your eye surgery?

5 A. Two nights.

6 Q. When you returned to your home on the 3rd  
7 night, was the air conditioning system in operation?

8 A. I don't know.

9 Q. Do you recall how late into the fall of 1995  
10 the Crown air conditioning system operated?

11 A. I don't recall.

12 Q. Do you recall what the approximate date of  
13 your eye surgery was?

14 A. September 22nd.

15 Q. Is your husband president of a company located  
16 in the State of Ohio?

17 A. Yes, he is.

18 Q. How long has he held that position?

19 A. He's been working with this business for  
20 seven years. He has acted as president since I believe  
21 October of 1995.

22 Q. Do his responsibilities with this company  
23 located in the State of Ohio require him to frequently be  
24 in the State of Ohio?

00463

1 A. Yes.

2 Q. During the year of 1995, can you estimate the  
3 number of days during which your husband was in Ohio on  
4 business?

5 A. During 1995 prior to his stepping in as full  
6 time president, he was probably about-- he would probably  
7 be there 3 times a month.

8 Q. And once he became full time president, how  
9 often was he in the State of Ohio?

10 A. He was there on a weekly basis.

11 Q. Did you and your husband discuss in the  
12 latter part of 1995 and early January of 1996 re-locating  
13 your family to the State of Ohio on a temporary basis?

14 A. Yes, we did.

15 Q. What role -- and did you decide, in fact, to  
16 relocate your family to the State of Ohio on a temporary  
17 basis?

18 MR. CARSON: Objection, leading.

19 HEARING OFFICER: Can you rephrase the  
20 question, counsel?

21 Q. Did you and your husband decide to relocate  
22 your family to the State of Ohio?

23 A. Yes,

24 Q. Was this re-location to be temporary or

00464

1 permanent?

2 A. It's a temporary re-location.

3 Q. Do you still own your home at 707 Ardsley?

4 A. Yes, we do.

5 Q. Is there presently someone occupying your  
6 home?

7 A. Yes, there is.

8 Q. Is that pursuant to a lease arrangement?

9 A. Yes, it is.

10 Crown air conditioning unit play in your decision to  
11 relocate your family to the State of Ohio?

12 A. It was one of our major considerations. My  
13 husband was going to run the company on a daily basis and  
14 he needed to be there for-- now for at least 3 or 4 days a  
15 week for a year and a half and he could continue commuting  
16 as he has always done or we decided this was a good time  
17 for us to go with him to get away from this -- from the  
18 situation in our house. There was a lot of anxiety,  
19 stress, tension and we decided to file the claim with the  
20 Pollution Control Board.

21 Q. If I may stop you there. When did you decide  
22 to file the complaint against Steven and Nancy Crown  
23 alleging violations of the noise regulations?

24 A. We began our discussions on this in July of



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1 1995 and August of 1995.

2 Q. What roll, if any, did Exhibit 40 play in  
3 your decision to file a complaint before the Pollution  
4 Control Board?

5 MR. CARSON: Objection, relevance. Decision  
6 to file the complaint is not a material to this  
7 proceedings.

8 HEARING OFFICER: I'll permit the witness to  
9 answer the question. Objection is overruled.

10 A. The last paragraph of the letter stated that  
11 they planned to spend no more time. They weren't going to  
12 do anything else with their air conditioner, which put us  
13 in a situation where we felt we could no longer live in  
14 our house knowing nothing else was going to be done. We  
15 could not sell our house without disclosing this. We  
16 needed to take a additional step to abate the noise.

17 MR. CARSON: Your Honor, objection to the  
18 reference to could not sell the house without disclosing.  
19 It's conclusory and the competence of this witness is a  
20 statement of opinion, a legal, opinion. The -- let the  
21 record reflect that that statement reflects the witness'  
22 opinion. Motion to strike.

23 HEARING OFFICER: The motion to strike is  
24 denied.

00466

1 BY MR. KAISER:

2 Q Did you ever lists your home with a realtor?

3 A. Yes, we did.

4 Q. What was the name of the individual  
5 realtor?

6 A. Ann Montgomery.

7 Q. Do you know what realty company she's  
8 associated with?

9 A Kahn, K-a-h-n.

10 Q. What, if any, conditions did Kahn Realty  
11 place upon the listing of your home?

12 A. We met with their in house attorney and  
13 equipped us to have a paragraph stating the noise that was  
14 being created from the unit next door. It was first  
15 stated--

16 MR. CARSON: Objection as to what was stated.

17 HEARING OFFICER: Objection sustained.

18 Q. Without going into the precise language, were  
19 there any conditions placed upon the listing of your home  
20 by Kahn Realty because of the noise complaint you had  
21 made?

22 A. Yes.

23 Q. And did you subsequently fill a complaint  
24 against Steven and Nancy Crown before the Pollution

00467

1 Control Board? Autumn of 1995?

2 A. Yes.

3 Q. What are your intentions with respect to  
4 returning to your home at 707 Ardsley Road?

5 A. We expect to return June 15th, 1977.

6 Q. Are you aware that Steven Crown through his  
7 contractors Mid/Res, Inc. has implemented certain changes  
8 in the operation instructions for the air conditioning  
9 system?

10 A. Yes.

11 Q. Do you -- what do you understand those  
12 changes to consist of?

13 MR. CARSON: Excuse me can we get a time  
14 frame on that?

15 MR. KAISER: Yes as of last May, April,  
16 June and even in to early July of 1996.

17 MR. CARSON: Thank you.

18 A. It's my understanding that the system will  
19 run with one ten compressor unit and only one fan between  
20 10:00 p.m. and 6:00 a.m.. I'm not sure if that's correct.

21 Q. But that's your understanding of the change?

22 A. That's my understanding.

23 Q. And what is your understanding as to how the  
24 system had operated between 6:00 a.m. and 10:00 p.m.?

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1 A On weekdays with the full system in operation.

2 Q. Do you have a opinion as to whether or not  
3 that would constitute an acceptable solution to the noise  
4 problem that you've been experiencing since September of  
5 1990?

6 MR. CARSON: Objection to the form as to the  
7 word acceptable. It's argumentative, I think, and it's  
8 vague.

9 HEARING OFFICER: Sustained.

10 Q. Do you have an opinion as to whether the  
11 proposed operating instructions that was just described  
12 running the one ten compressor unit and only one fan unit  
13 between the hours of 10:00 p.m. and 6:00 a.m. would abate  
14 the nuisance?

15 MR. CARSON: Same objection and also as to  
16 foundation as to whether the witness has had the  
17 opportunity to even hear the unit under these conditions.

18 HEARING OFFICER: Sustained.

19 MR. KAISER: If I may be heard on that  
20 objection. It may not be necessary for the witness to  
21 have heard the unit to form an opinion, and I believe I'll  
22 represent it's as a matter of proof, she has not heard the  
23 unit and yet I believe if I'm allowed to adduce testimony  
24 that has a very well reasoned basis for rejecting those

00469

1 operational changes as a solution or as a means of  
2 abatement and I'd like to offer the testimony on that  
3 point.

4 HEARING OFFICER: I'll entertain testimony on  
5 her opinion of what the changes had resulted in with  
6 respect to the effects on her and her family, but I would  
7 like to avoid the leading questions.

8 MR. KAISER: All right.

9 BY MR. KAISER:

10 Q. Do you have an opinion as to what the effects of  
11 operating the Crown air conditioning system consistent  
12 with these new operation instructions will have on you?

13 MR. CARSON: Objection, no foundation and  
14 again objection, just so we're clear, say that there's  
15 been no testimony from this witness that she has heard  
16 this unit operating with these modifications.

17 MR. KAISER: These modifications only affect  
18 operations between the hours of 10:00 p.m. and 6:00 a.m..  
19 So, to the extent she has, and she clearly has had  
20 experience hearing the system in operation and it  
21 operating throughout 1995 and as it will continue under  
22 these new operational procedures to operate through the  
23 remainder of 1996 and into the future. She's capable of  
24 testifying as to whether operations during the hours of

00470

1 6:00 a.m. to 10:00 p.m. at full capacity will still have  
2 an impact on her and her family. And that's the testimony  
3 I'd like to elicit.

4 HEARING OFFICER: Overruled. You may answer  
5 the question.

6 A. Between 6:00 a.m. and 10:00 p.m. I'll no  
7 longer have enjoyment in my yard or in my house and I  
8 think it will affect each member of my family every time  
9 they're in our yard or in our house. I do not believe  
10 it's fair for a child to be taken from his bedroom until  
11 10:0 p.m. at night because maybe then it will be reduced  
12 of noise so he can read a book or open a window or sleep  
13 in his bedroom. I believe that the announcement and the  
14 nuisance will still continue.

15 MR. KAISER: Thank you. No further questions  
16 of this witness at this time.

17 HEARING OFFICER: Okay. We'll take lunch  
18 recess and be back at 12:30.

19 (A luncheon recess was taken.)

20 HEARING OFFICER: We're back on the record  
21 with the cross-examination of Mrs. Shelton by Mr. Carson.

22 CROSS EXAMINATION

23 BY MR. CARSON:

24 Q. Ms. Shelton, I understand correctly that you

00471

1 have not heard the Crown chiller unit since the fall of  
2 1995?

3 A. That's correct.

4 Q. Had your house in Winnetka is presently  
5 occupied by tenants?

6 A. Yes.

7 Q. And what are the names of those tenants,  
8 please?

9 A. Carl Theis, T-h-e-i-s and Carl K-a-r-l  
10 T-r-a-u-t.

11 Q. And those persons occupy the house pursuant  
12 to a lease?

13 A. Yes.

14 Q. And that lease commenced when?

15 A. February 1st, 1996.

16 Q. And is it true that you vacated the home in  
17 January of 1996?

18 A. Yes.

19 Q. The terms of the lease is what?

20 A. Until June 15th, 1997.

21 Q. Is it correct that you and your husband had  
22 listed your home for sale?

23 A. Yes, it was.

24 Q. And that was with a broker, I think you said

00472

1 her name was Ann Montgomery.

2 A. Yes.

3 Q. Is Ms. Montgomery any relation to your  
4 husband's partner?

5 A. Yes, his wife.

6 Q. Now, you testified that there was some  
7 restriction placed by Ms. Montgomery's firm on the listing  
8 of the house for sale?

9 A. Yes, there was.

10 Q. And by the way, when was it that you listed  
11 the house for sale, please?

12 A. I believe it was February, the beginning of  
13 February, 1995.

14 Q. That was not February 1st, that was not the  
15 first time that you and your husband tried to sell your  
16 house though, was it?

17 A. I believe it was.

18 Q. Are you aware that your husband asked Mr.  
19 Crown if he was interested in buying the house?

20 A. Yes.

21 Q. And, in fact, Mr. Shelton, your husband asked  
22 Mr. Crown if he wanted to buy the house?

23 A. Yes.

24 Q. Long before the air conditioner ever was



00473

1 started up, isn't that true?

2 A. Yes, yes.

3 Q. So, it isn't quite true that you were  
4 planning to stay in the house indefinitely, even before  
5 the air conditioner started, isn't that correct, isn't  
6 that correct?

7 MR. KAISER: Objection, argumentative.

8 HEARING OFFICER: Sustained.

9 MR. CARSON: Sustained in that this is  
10 cross-examination. Is it that it was too leading? I'm  
11 sorry, I don't understand the nature of the --

12 HEARING OFFICER: The objection was that it  
13 was argumentative. The objection is sustained. Do you  
14 wish to rephrase your question, Mr. Carson?

15 MR. CARSON: I'll try, thank you.

16 Q. It would be incorrect then to state that you  
17 had no intention of selling your house during the time  
18 period before the air conditioner started up in the fall  
19 of 1990?

20 A. That's true.

21 Q. Now, with respect to your dealing with the  
22 listing broker and this restriction that was placed on the  
23 listing of the house for sale, would it be fair to say  
24 that you and your husband were the ones that called Ms.

00474

1 Montgomery's attention to the situation with the air  
2 conditioner?

3 A. I think she had previously known. I think I  
4 don't believe we called her attention to it, no.

5 Q. In fact, you and your husband were quite  
6 public about this situation, weren't you?

7 MR. KAISER: Objection, form of the question.

8 HEARING OFFICER: Could you rephrase your  
9 question?

10 MR. CARSON: Yes.

11 Q. You DIDN'T make any effort to keep this  
12 situation strictly between you and Crown, did you?

13 A. We were trying to be as quiet as possible.  
14 We refused to talk to any press that called us. We did  
15 not discuss this.

16 Q. You're quite sure that your husband refused  
17 to talk to the press?

18 A. Yes.

19 Q. Are you aware that there were press  
20 statements attributed to your husband concerning your  
21 condition and concerning the Crown air conditioner?

22 A. No.

23 Q. You're not aware of that?

24 A. No, I'm not.

00475

1 Q. You had invited neighbors over to listen to  
2 the unit, right?

3 A. Yes.

4 Q. And do you consider that to be an effort to  
5 keep it quiet?

6 A. It was an effort to-- on our part to reduce  
7 the noise from the chiller unit next to us. We did  
8 nothing out of our way to seek names. We were told we  
9 should get hundreds of names and we chose not to.

10 Q. Do you think that your bringing other parties  
11 over to listen to the situation may have had any impact  
12 upon potential offers to purchase your home?

13 A No.

14 MR. KAISER: Objection, calls for  
15 speculation.

16 HEARING OFFICER: Asked and answered.

17 Q. The home in Winnetka that you have listed?

18 A. Yes.

19 Q. That's equipped with air conditioning isn't  
20 it? A. Yes.

21 Q. When you do run the air conditioning in that  
22 home, when you do run the air conditioning in that home,  
23 when you were residing there, you would close the windows  
24 I take it?

00476

1 A. Yes.

2 Q. Do you recall the temperature in the summer  
3 of 1995 generally speaking?

4 A. It was quite warm.

5 Q. Do you remember when Mrs. Julian was here?

6 A. Yes.

7 Q. I guess day before yesterday. You were here  
8 when she testified weren't you?

9 A. Yes.

10 Q. And I think she testified that it was really  
11 a oppressively hot summer?

12 A. Yes.

13 Q. And that no one would be out of doors during  
14 that summer.

15 MR. KAISER: Objection, mischaracterizes her  
16 testimony.

17 Q. Words to that effect. Do you remember that  
18 testimony, Ma'am?

19 A. I believe so.

20 Q. Do you disagree with that?

21 A. Yes.

22 Q. You don't believe that it was an oppressively  
23 hot summer?

24 A. It was a hot summer. It did not preclude me

00477

1 from being outdoors or my windows being open with the  
2 temperatures in the 90s.

3 Q. Okay. With temperatures in the 90s, record  
4 heat that summer, 1995.

5 MR. KAISER: Objection, assumes facts not in  
6 evidence.

7 MR. CARSON: Respectfully, I would ask  
8 that I be allowed to complete my question before the  
9 objections are posed.

10 HEARING OFFICER: Proceed to complete your  
11 question.

12 MR. CARSON: I'll withdraw it and restate  
13 it.

14 Q With record temperatures in the mid and high  
15 90s as we had in summer of 1995, were you running your air  
16 conditioner?

17 A. Yes.

18 Q. And then you, while running the air  
19 conditioning, you would have had the windows  
20 closed, correct?

21 A. Yes.

22 Q. Were there other construction projects going  
23 on in your neighborhood that summer of 1995 aside from --  
24 well in '95 were there any construction projects in your

00478

1 neighborhood?

2 A. Yes.

3 Q. Did the Neal home which is next door to  
4 yours, undergo construction that summer? Wasn't it?

5 A. No, it's not next door.

6 Q. Where does it stand in relation to your home?

7 A. It stands to the east of the Crown house.

8 We're to the north of the Crown house.

9 Q. So it would be kitty corner from your lot?

10 A. Yes.

11 Q. And that house was under construction the  
12 summer of '95?

13 A. Yes.

14 Q. Did that construction create noise?

15 A. Yes.

16 Q. Do you know where the Lutz's house is?

17 A. Yes.

18 Q. Across the street from you?

19 A. Yes.

20 Q. There was construction in that house?

21 MR. KAISER: Objection. I'm sorry, I'll let  
22 counsel finish his question.

23 Q. Was there construction at that house in 1991  
24 and thereafter?

00479

1 MR. KAISER: Objection, relevance.

2 A. I actually don't know.

3 Q. You're not aware of any construction?

4 HEARING OFFICER: Please wait for the  
5 objection or ruling before answering.

6 BY MR. CARSON:

7 Q. You're not aware one way or another as to  
8 whether there's been any construction at the Lutz's house.

9 HEARING OFFICER: Mr. Carson, what was your  
10 response to the objection?

11 MR. CARSON: I beg your pardon. I thought you  
12 were directing your comments to the witness.

13 HEARING OFFICER: I was, but we were in the  
14 process of processing a objection.

15 MR. CARSON: This goes to the reasons why the  
16 windows were closed during the periods she testified that  
17 her windows were closed.

18 HEARING OFFICER: Overruled. The witness can  
19 answer the question. Can we have the question read back,  
20 please.

21 HEARING OFFICER: I believe the question that  
22 was objected to has been answered.

23 (The record was read)

24 Q. So, you're not aware one way or the other as

00480

1 to whether there was any construction at the Lutz's house  
2 across the street from your Winnetka house, right?

3 A. Your original question said in 1991 and I  
4 answered I don't know.

5 Q. Okay. And now I've asked you another question.

6 A. Could you repeat it, please?

7 Q. Yes. Are you aware of any construction at the  
8 Lutz house in the year 1991 or any year thereafter?

9 A. Yes, I'm aware they had some construction.

10 Q. Which year?

11 A. I'm not sure, maybe 1990. I honestly don't  
12 remember.

13 Q. That construction did create noise though,  
14 didn't it?

15 A. I never heard any noise from the Lutz's  
16 construction.

17 Q. I'm sorry. Would it be fair to say that you're  
18 rather sensitive to construction noise?

19 A. I don't believe so.

20 Q. With respect to the construction of the Crown  
21 home, would it be fair to say that you were extremely  
22 annoyed by the construction noise?

23 A. I think that's unfair to say.

24 Q. Were you annoyed by the arrival of the trucks at



00481

1 the Crown home?

2 A. At 6:00 a.m. in the morning, yes.

3 Q. Were you annoyed by back up beepers?

4 A. A 6:00 a.m. in the morning, yes.

5 Q. Was it only at 6:00 a.m. that you found these  
6 back up beepers annoying?

7 A. No, sir. I-- mostly when they woke me up in the  
8 morning. I found that annoying.

9 Q. You were, in fact annoyed that the workers were  
10 arriving at the Crown residence earlier than you thought  
11 they should happen?

12 A. Yes.

13 Q. And you complained about that in 1992, was it?

14 A. I don't remember.

15 Q. You do recall approaching Pete Keller?

16 A. Yes.

17 Q. And complaining to him about the time that the  
18 workers were arriving?

19 A. Yes.

20 Q. And you recall that action was taken and the  
21 workers arrived later?

22 A. There was no action taken until many months  
23 later.

24 Q. There was actually action taken and the workers

00482

1 arrived later after you complained, isn't that true?

2 MR. KAISER: Objection, asked and answered.

3 A After I talked with the --

4 MR. KAISER: Hold on. And argumentative --

5 MR. CARSON: I'm simple asking for a  
6 response to my question. I got an evasive response.

7 HEARING OFFICER: Overruled. The witness can  
8 answer. Can we have the reading of the question?

9 (The record was read)

10 A. -- after I complained to Pete Keller, there was  
11 nothing was done.

12 Q. So, it's your testimony then that there was no  
13 action taken?

14 A. There was no action taken.

15 Q. With respect to the arrival of the workmen?

16 A. Aftter I spoke with both Keller, yes.

17 Q. At any time after you spoke to  
18 Peter Keller?

19 A. In October of or September, my husband  
20 wrote Steve and mentioned to him that I had spoken with  
21 Pete Keller and after that time the workers began to  
22 arrive at 6:30, that action was taken.

23 Q. Was the arrival of the workmen in the morning  
24 awakening you?

00483

1       A.     Sometimes, maybe once a week trucks would be  
2 rolling in at 6:00 in the morning or backing in,. And  
3 during the summer, of course, we have our windows open, it  
4 would awaken me.

5       Q.     So the answer to my question then would be yes  
6 that the arrival of the trucks and the workers in the  
7 morning would awaken you?

8       A.     On some occasions, yes.

9       Q.     Did you also find the spotlights on the Crown  
10 construction project to be an annoyance?

11      A.     Yes.

12      Q.     And I think you testified on direct examination  
13 that there were 11 spotlights?

14      A.     Yes.

15      Q.     And you felt that they were affecting your son's  
16 sleeping, is that right?

17      A.     Somewhat. The spotlight shined -- they lit up  
18 our backyard -- lit up our backyard at night. When  
19 there's no light on in the house you could walk through  
20 our house and you could see because the spotlights came  
21 into our house all night long.

22      Q.     And I assume that all 11 of the spotlights were  
23 trained on your house?

24      A.     On our property, yes.

00484

1 Q. And all 11 of the spotlights were trained on  
2 your property?

3 A. The spotlights creates a lot of light in the  
4 middle of the night.

5 Q. And you found that to be unreasonable?

6 A. Yes.

7 HEARING OFFICER: Mrs. Shelton, if the  
8 question calls for a yes or no answer, you can give a yes  
9 or no answer.

10 A. Okay.

11 Q. Did you also find issues regarding back up of  
12 sewage that you attributed to the Crown project to be an  
13 annoyance?

14 MR. KAISER: Objection relevance.

15 MR. CARSON: It all goes to bias. This all  
16 happened before the air conditioner started.

17 HEARING OFFICER: Overruled. You may answer  
18 the question.

19 A. I felt irritated in the smell of the sewage on  
20 our property and the back up.

21 Q. And you held the Crowns responsible for that,  
22 didn't you?

23 A. No.

24 Q. You don't feel that it had anything to do with

00485

1 the Crown construction project?

2 A. It was a truck used in their construction.

3 Q. And was there a time when they were -- there  
4 were jackhammers operating on the project that had an  
5 effect on your ability to use your home?

6 A. Yes.

7 Q. And all of these things that were annoying you  
8 and all of these things that were annoying to you; the  
9 trucks, the back up beepers, the workers arriving early,  
10 the spotlights, the sewage issue, the jackhammers.  
11 These all occurred prior to September of 1993, is that  
12 true?

13 A. I don't think the jackhammers, I don't think  
14 that occurred -- no.

15 Q. That may have occurred -- of those that I  
16 listed, the jackhammer would have occurred later?

17 A. Yes.

18 Q. These other issues occurred prior to September  
19 of '90?

20 A. I really don't know.

21 Q. There was testimony about a name plate on the  
22 chiller unit itself. Have you personally observed this  
23 name plate?

24 A. Yes.

00486

1 Q. Did you observe it prior to September, 1993 when  
2 the chiller was first operated?

3 A. I don't recall.

4 Q. You saw this chiller unit when it was  
5 installed, but before it was operated, is that true?

6 A. I may have noticed it. I don't recall.

7 Q. Did you have concern that the chiller unit might  
8 create an unreasonable noise even before you heard it?

9 A. No.

10 Q. You testified, I believe it was yesterday  
11 afternoon that in September of '93 you heard a explosion?

12 A. Yes.

13 Q. And you called the police?

14 A. Yes.

15 Q. You didn't really describe the explosion any  
16 more than just to say it was a explosion. What did it  
17 sound like?

18 A. I was watching television and I heard several  
19 loud bangs like a backfire from a truck or a large  
20 motorcycle vehicle backfire, bang and bang. And there was  
21 several. There could have been two or three, I don't  
22 know, but it startled me. It sounded like a large  
23 backfiring. It sounded like something inside the house  
24 could have exploded. I don't -- it was very loud, deep.

00487

1 It was not high-pitched. It was, the best I can describe  
2 it is a low bang, backfire from a truck only there were  
3 several.

4 Q. And you immediately phoned the police?

5 A. Yes.

6 Q. Was that you who phoned the police or was it  
7 your husband?

8 A. I believe I telephoned the police.

9 Q. Did you use the word explosion when you spoke to  
10 the police?

11 A. I don't know.

12 Q. And I think you testified on direct examination  
13 that in a matter of about 15 minutes you were able to  
14 determine that the sound was coming from the air  
15 conditioner. Did I get that right?

16 A. Well the sounds stopped and then we heard  
17 something come back on again. After about 15 maybe 20  
18 minutes, we were able to determine that it was becoming  
19 from the unit over there.

20 Q. How did you determine that it was coming from  
21 the unit over there?

22 A. We just assumed. We could look out. We went  
23 out to to yard to see if we saw -- we were in the yard.  
24 We looked to see if we saw flames. We heard a explosion,

00488

1 I called the police. I thought there was a fire or  
2 something going on. It was very loud. There were --  
3 were you expecting this unit to be loud even before it was  
4 turned on?

5 I don't even know if I knew what that unit  
6 was or even took notice of it. I don't -- no.

7 Q. But in any event, you made the determination  
8 that it was the unit which was causing the explosion was  
9 in a matter of about 15 minutes after you called the  
10 police?

11 A. We went outside. That seemed to be where the  
12 source of the noise was becoming from.

13 Q. And then you telephoned MR. Crown after locating  
14 his phone number?

15 A. Yes.

16 Q. And did you use the words explosion in talking  
17 to Mr. Crown to describe the sounds?

18 A. I believe so.

19 Q. Are you familiar with the term, self-fulfilling  
20 prophecy?

21 MR. KAISER: Objection, relevance.

22 MR. CARSON: It's foundational.

23 HEARING OFFICER: Overruled. You may answer  
24 the question. Answer yes or no?



00489

1 A. No.

2 Q. You never heard the term?

3 A. Yes.

4 Q. And but you're not familiar with it?

5 A. Its not something I've used.

6 Q. If I suggest to you that it is used to describe  
7 a situation where one predicts an outcome and then their  
8 perception actually matches their prediction. Would that  
9 met with your understanding of how the term is used?

10 A. Some what.

11 Q. After you and your husband heard the explosion,  
12 did you come concerned that this unit would be an  
13 inappropriate intrusion in your lives?

14 MR. KAISER: May we have a time frame, your  
15 Honor?

16 A. No.

17 Q. My question had a time frame, after the  
18 explosion.

19 MR. KAISER: That's about a 3 and a half  
20 year period.

21 Q. Shortly after?

22 A. That night, no.

23 Q. Did you develop such a concern?

24 A. Yes.

00490

1 Q. This is after. When did you develop the  
2 concern?

3 A. Within the following week.

4 Q. Did you and your husband discuss the possibility  
5 that there might be methods used to reduce the sounds  
6 emitted by the unit?

7 A. Yes.

8 Q. Did you discuss a concern that there was nothing  
9 that would be likely to work?

10 A. Well, we talked with our architect. We talked  
11 with heating and air conditioning people. We were  
12 concerned about the location of the unit.

13 Q. I'd like to focus your attention on the period  
14 in the -- let's say 4 weeks after the unit was first  
15 started?

16 A. Yes.

17 Q. During a time frame did you and your husband  
18 discuss a concern that no sound attenuation would work?

19 A. No.

20 Q. Did you and your husband discuss a concern that  
21 only a re-location of the unit would satisfy?

22 A. No.

23 Q. I'd like to show you exhibit number 49, if I  
24 may. Madam Hearing Officer, my notes are not clear as to

00491

1 whether this is already in evidence.

2 HEARING OFFICER: Yes, it is.

3 Q. I thought it was, thank you. In Exhibit Number  
4 49 has already been entered in to evidence as a letter  
5 that was received by Mr. Crown written by your husband and  
6 in fact you can identify your husband's signature on this  
7 letter, can you not?

8 A. Yes.

9 Q. Did you assist him in the drafting of this  
10 letter?

11 A. I drafted it. I read it. I might have edited  
12 it.

13 Q. You did have a hand in?

14 A. Yes, probably.

15 Q. In the preparation of the letter, and you'll  
16 notice in the secretary paragraph it seems to us that the  
17 only viable solution is re-location?

18 A. The second paragraph on which page?

19 Q. On the first page Madam?

20 A. Okay.

21 Q. It states in the last sentence on the second  
22 paragraph on the first page, it seems to us that the only  
23 viable solution is re-location, did I read that correctly?

24 A. Yes, you did.

00492

1 Q. Did you or do you agree today that that was the  
2 viewpoint that you and your husband shared as of October,  
3 1990?

4 A. That was our viewpoint on October in 1990. It  
5 was one of our viewpoints.

6 Q. And if you look on the second page in the middle  
7 of the page, it states sound reduction is not likely to be  
8 effective. We know that you plan various steps to reduce  
9 the noise. Did I read that correctly?

10 A. We know that you plan -- yes.

11 Q. Did you, in fact, know that Mr. Crown planned  
12 various steps to reduce the noise?

13 A. Mr. Crown told us help was going to take steps,  
14 several steps to reduce the noise. He was going to meet  
15 with his engineers to look at the step top reduce the  
16 noise.

17 Q. Okay. It states here that sound reduction is  
18 not likely to be effective. Now, is that an opinion that  
19 you already formed as of October 11th, 1993 before any of  
20 those steps were implemented?

21 A. Well, after listening to the unit during the day  
22 in September of 1990, we realized how loud it was in our  
23 house. As a concerned neighbor we talked to architects,  
24 we talked to heating and air conditioning people and

00493

1 professional people and it was relayed to us that this  
2 source would be very hard to -- the sound power would be  
3 hard to reduce.

4 Q. I understand everything that you just said, but  
5 I'm not sure that you really answered my question, so if  
6 it's okay, I'm going to ask the court reporter to read it  
7 back. Listen carefully, see if you can answer yes or no.

8 HEARING OFFICER: Okay. Read the question  
9 back.

10 (The record was read.)

11 A. Okay. We felt sound reduction was not likely to  
12 be effective. We did not say it could not be effective.

13 Q. Well, you went on to say in the same letter  
14 going down a little bit further in the same paragraph, we  
15 are likely to have a noise problem regardless of what  
16 steps that you take. Was that an opinion that you had  
17 after that-- that you had and that you and your husband  
18 both held?

19 A. Yes.

20 Q. In October of 1993?

21 A. Yes.

22 Q. And this was before any sound attenuation was  
23 implemented, right?

24 A. Yes.

00494

1 Q. And you testified during the direct examination  
2 that in 1994 April went by and you didn't get any plan for  
3 solving -- I'm sorry, April, 1994, you didn't get any plan  
4 for how the sound was going to be reduced?

5 A. Correct.

6 Q. And in May you didn't receive any plan and in  
7 June you didn't receive any plan. In July you didn't  
8 receive any plan? Do you remember that testimony?

9 A. Yes.

10 Q. You're aware though, are you not, today that a  
11 number of steps have been taken to reduce the sound on  
12 that unit?

13 A. There have been some steps taken to reduce the  
14 sounds on the unit.

15 Q. You're aware that in March of 1994 the unit was  
16 rotated by 50 degrees?

17 A. No, I was not aware in March of 1994.

18 Q. You're aware of that today though, aren't you?

19 A. I believe -- I don't know.

20 Q. So you're not aware of that?

21 A. No.

22 Q. Are you aware that the compressors were covered  
23 with a blanket in or about March of 1994, a blanket-like  
24 device?

00495

1 A. No.

2 Q. You're not aware of that. You don't know?

3 A. No.

4 Q. Are you aware that cones or baffles were  
5 installed on the fans in or about March of 1994?

6 A. Not in April. About March of '94 at some point,  
7 I'm not aware of when the cones were installed.

8 Q. What about the other things. Do you know they  
9 were done, you're not sure about the dates?

10 A. No, I don't know if they were done.

11 , I don't know if they were done or not?

12 A. No.

13 Q. And are you aware that a closer, an acoustically  
14 designed enclosure was constructed around this unit prior  
15 to starting it up in 1995?

16 A. My opinion is panels were placed around, but to  
17 me an enclosure would encompass the whole thing. So, no,  
18 note all enclosure.

19 Q. So you would find fault with nomenclature, it's  
20 not an enclosure to you?

21 A. There's been paneling, acoustical panels placed  
22 around it.

23 Q. Okay. And I think you said on direct  
24 examination that you do -- you detected a slight

00496

1 difference in the noise of the unit after those panels  
2 were installed?

3 A. Yes.

4 Q. Have you ever stated that this was no perceptible  
5 difference after those acoustical panels were installed?

6 A. No.

7 Q. Do you remember giving a deposition in this  
8 case?

9 A. Could you repeat the question?

10 Q. Do you remember giving a deposition in this  
11 case?

12 A. Yes, I do.

13 Q. And that deposition was given on March 18th,  
14 1996?

15 A. Uh-huh.

16 Q. And Mr. Elledge was there?

17 A. Yes.

18 Q. And he was asking you questions under oath,  
19 right?

20 A. Yes.

21 Q. And you were there represented by counsel?

22 A. Yes.

23 Q. And Ms. Monica Smith from Mr. Diver's office was  
24 with you, is that right?



00497

1 A. Yes.

2 Q. And at that deposition were you asked these  
3 questions and did you give these answer and I'm reading  
4 from page 67, counsel.

5 "Q. When did the unit next operate  
After that first week in November, 1994  
6 to the best of your recollection?

A. April 28th, 1995.

7 Q. Tell me about that, please?

A. To our ears there was no noticeable  
8 improvement ON our first floor or our  
Second floor."

9

10 Did you give those answers?

11 A. Yes, I did. It was not a noticeable  
12 improvement.

13 Q. So, when you said slightly in response to. Mr.  
14 Kaiser's questions, you meant not even noticeable?

15 MR. KAISER: Objection, argumentative.

16 HEARING OFFICER: Sustained.

17 Q. Do you have any reason to doubt the  
18 qualifications of Alan Shiner as an acoustical expert?

19 A. No.

20 Q. Do you have any reason to feel that your  
21 qualifications as an acoustical engineer expert are  
22 greater than yours?

23 A. No.

24 Q. Were you here when Mr. Shiner testified as a

00498

1 result of the installation of the acoustical enclosure the  
2 perceptible sound emitted from the unit was cut by one  
3 hundred percent?

4 MR. DIVER: Madam Hearing Officer, I have to  
5 object. That testimony relates to June 19th and he's  
6 asking this witness about April. The testimony is the  
7 same time unless counsel is saying that all of those  
8 pieces of equipment were installed and counsel knows very  
9 well that there are documents in his own file from his  
10 experts that this system was not created until sometime in  
11 May or June. This is perfectly an inappropriate question  
12 to be asked of this witness.

13 MR. CARSON: I don't believe that's the  
14 case, your Honor. I believe that the acoustical enclosure  
15 was installed prior to.

16 MR. DIVER: I'll show you Exhibit 84.

17 HEARING OFFICER: Let's identify whether it's  
18 appropriate whether it's an appropriate question with  
19 respect to the time frame and the record.

20 Let's go off the record.

21 (A brief off the record discussion was held.)

22 HEARING OFFICER: We're back on the record and  
23 there's a question as to the time frame of the question  
24 that has been asked by Mr. Carson of Mr. Shelton and we

00499

1 have a standing objection and I have asked the court  
2 reporter to read back the question to identify whether a  
3 clarification should be made in the question as a response  
4 to the objection.

5 (The record was read) (. )

6 HEARING OFFICER: All right. The question  
7 having been read back. There has been-- no element of the  
8 question that referred to a time frame of Mr. Shiner's  
9 test. Mr. Shiner conducted two tests and his testimony is  
10 already of record. I'll permit the witness to answer the  
11 question as it was asked.

12 MR. DIVER: Madam Hearing Officer, I'll raise  
13 one more objection. With respect to the testimony my  
14 recollection and I'll ask the Hearing Officer's indulgence  
15 that the testimony was the sound reduction affected by all  
16 of the controls set measured in June of 1995 was 50  
17 percent and not one hundred percent. That's

18 MR. KAISER: A hundred percent reduction would  
19 of course mean there's no more sound.

20 MR. CARSON: What I'm doing is I'll withdraw  
21 the question and come back to it and try to straighten out  
22 these issues.

23 HEARING OFFICER: Thank you.

24 Q. Ms. Shelton, you testified this morning that

00500

1 there was just a very slight difference in the perception  
2 -- in your perception to your ears of the sound between  
3 the 1994 and 1995, is that correct?

4 A. Yes.

5 Q. And that includes all the modifications that  
6 you're aware of that occurred between 1994 and the cooling  
7 season of 1995, right?

8 A. Can I say something.

9 Q. I would prefer that you answer my question, yes  
10 or no, if you can?

11 A. I can't answer your question.

12 HEARING OFFICER: You can answer the question  
13 to the best of your ability if you're unable to answer the  
14 question you can say that you don't know?

15 A. I'm unable -- I don't understand the question.  
16 I don't think I said that.

17 Q. Okay. Well, we no that -- when -- well what do  
18 you think you said on that issue? Comparison of the  
19 sounds as perceived by you by this Crown unit between  
20 1994, comparing 1994 to 1995?

21 A. When from 1995?

22 Q. We know that in early 1995 that an acoustical  
23 enclosure or panels as you've described was constructed  
24 around the unit, is that correct?

00501

1 A. Yes.

2 Q. And we also know that the cones were removed  
3 after?

4 A. Yes.

5 Q. And after those changes were made?

6 A. Yes.

7 Q. Was it a very slight improvement in the sound as  
8 compared to 1994?

9 A. It was a modest improvement in the sound. It  
10 was a muffled improvement in the sound on the first floor.

11 Q. On the first floor?

12 A. Yes.

13 Q. And what about in the backyard?

14 A. It was a muffled, a very modest improvement in  
15 the backyard.

16 Q. Now, do you recall Mr. Shiner's testimony in  
17 this case in this room when you were present when he said  
18 that comparing these measurements from before those  
19 improvements to after the improvements, the sounds  
20 emission as perceived by the listener was reduced by 50  
21 percent?

22 A. I don't remember him saying that.

23 Q. Would you disagree with that statement if that's  
24 what he said?

00502

1                   MR. KAISWER:  Objection, calls for  
2 speculation.

3           A.     I have no idea.

4                   HEARING OFFICER:  Objection sustained.

5           Q.     Would you disagree with the statement that the  
6 sound emissions as perceived by the listener in your back  
7 yard comparing the '4 pre-improvement sound to the '95  
8 post improvement sound was reduced by 50 percent?

9           A.     No.

10          Q.     You would not disagree with it?

11                   MR. KAISER:  Objection, irrelevant.  If it  
12 was -- what Mr. Shiner said what would you do?  I mean its  
13 speculation and irrelevant speculation at that and  
14 argumentative.

15                   HEARING OFFICER:  Sustained.

16 BY MR. CARSON:

17          Q.     I'd like to ask you a few questions about this  
18 move to Ohio.  You resided Ohio at the present time?

19          A.     Yes.

20          Q.     And if I understood your testimony this morning,  
21 your husband's work to your knowledge requires him to be  
22 present in Ohio at least 3 or 4 days a week?

23          A.     Yes.

24          Q.     And if I understood you correctly and if I

00503

1 understood your testimony this morning correctly your  
2 husband's work required him to be in Ohio in 1995 perhaps  
3 4, 3 times per month. Did I understand that testimony  
4 correctly?

5 A. Yes. Shortage of time, you know, 3, 4 days, yes.

6 Q. And if I understood your testimony this morning  
7 correctly, your husband's work required him to be in Ohio  
8 in 1995 perhaps three times per month. Did I understand  
9 that correctly?

10 A. Yes shortage of time, you know, 3, 4 days.

11 Q. And yet you considered it a, but for this air  
12 conditioner situation, you considered his commuting to  
13 Ohio to be a viable alternative, even if he had to be  
14 there 3 to 4 times per week during 1996?

15 A. 3 or 4 days a week.

16 Q. Yes, Ma'am?

17 A. His commuting as an alternative, yes.

18 Q. What you said was I think he could have commuted  
19 to Ohio as he had before?

20 A. Yes.

21 Q. But it wouldn't quite be as he had before, would  
22 it?

23 A. No, he's required to be there for longer  
24 duration.

00504

1 Q. Have you had any dispute with your neighbors in  
2 Ohio?

3 A. No, not that I know of.

4 Q. Do you know the names of your neighbors in Ohio?

5 MR. KAISER: Objection, relevance.

6 MR. CARSON: Your honor what this hearing is  
7 intended to do is determine whether the interference with  
8 the usage, enjoyment of the Shelton's property in Winnetka  
9 that's been unreasonable and I think the unreasonableness  
10 of the Sheltons is clearly one of the issues here.

11 MR. KAISER: And the question, despite I  
12 don't object to, but now does she know names or addresses  
13 or birthdate? I mean, how far does this go?

14 MR. CARSON: It does on the claim.

15 HEARING OFFICER: Was this point of discussion  
16 discussed during discovery?

17 MR. DIVER: No.

18 HEARING OFFICER: I'm going to sustain the  
19 objection.

20 MR. CARSON: Your Honor, if we determine  
21 what Ms. Shelton has just testified to by conducting an  
22 independent investigation on our own, we would need this  
23 information.

24 MR. DIVER: I believe it's a little late for



00505

1 a independent investigation of the neighborhood in Ohio.

2 MR. CARSON: I'm not aware of any restriction.

3 MR. ELLEDGE: Madam hearing Officer, we have  
4 already discussed further depositions which is going to be  
5 taken. There's an unspoken--

6 MR. DIVER: A continuation which began and  
7 had to be ended shortly because the witness had to be  
8 excused.

9 HEARING OFFICER: I believe counsel for the  
10 parties have discussed the possibility that they had to  
11 seek additional discovery. Not that I had noted that  
12 anything had been conducted. If the parties wish to seek  
13 additional discovery during the continuance period of the  
14 hearing, then they will need to do so pursuant to Board's  
15 procedural rules.

16 You may proceed with your questioning.

17 MR. CARSON: I would respectfully ask for a re  
18 consideration of your ruling with respect to this  
19 information which is merely calculated to assist in  
20 determination of relevant issues here.

21 HEARING OFFICER: All right. I'll take it  
22 under re-consideration. We'll take a five minute recess,  
23 okay?

24 (A brief recess was take)

00506

1                   HEARING OFFICER: Mr. Carson, you may  
2 proceed.

3 BY MR. CARSON:

4       Q.     One point of clarification, Ms. Shelton. The  
5 testimony, I believe, yesterday concerning your -- the  
6 testimony yesterday I believe concerning your selection of  
7 the home in Winnetka and your enjoyment of the home in  
8 Winnetka, you made reference to being close to the lake?

9       A.     Yesterday, I did?

10      Q.     I believe it was yesterday. It could have been  
11 this morning. But I believe it was this morning.

12      A.     We're not.

13      Q.     Did you state today, excuse me maybe you didn't  
14 testify yesterday. You testified today, but let me  
15 withdraw that and ask you. You did, I believe, make a  
16 statement earlier in this proceeding to the effect that  
17 you liked to have the windows open because we're  
18 relatively close to the lake. Do you recall that  
19 testimony?

20      A.     No.

21      Q.     You're not, in fact, close to the lake at all,  
22 are you?

23      A.     No, we're not close to the lake.

24      Q.     Okay. I guess-- I just wanted to clear that up.

00507

1 And also with respect to the amount of time that you've  
2 resided in Winnetka you testified during this proceeding  
3 earlier that you had resided at the home in Winnetka  
4 approximately 6 years but that's not really accurate, is  
5 it?

6 A. I think it's approximately 6 years.

7 Q. I think if you could just help me with the  
8 arithmetic please. You testified that you acquired the  
9 house in 1990, right?

10 A. We acquired the house in 1989.

11 Q. In 1990, in 1989. You moved in in 1990?

12 A. Yes.

13 Q. And had you vacated the house in January of  
14 1996?

15 A. Yes.

16 Q. So, I guess if we count the zero maybe it does  
17 add up to 6?

18 A. Yes, '90, '91 '92 '93, 94, 95.

19 MR. DIVER: Are we straight on that now?

20 Q. And you testified in direct examination that it  
21 is your intention to move back to the house in Winnetka,  
22 right?

23 A. Yes.

24 Q. And would it be fair to say that whether you

00508

1 move back or don't move back is dependent upon the  
2 requirements of your husband's employment?

3 A. No.

4 Q. So, if he's required to continue in Ohio, you'll  
5 move back anyway?

6 A. Probably.

7 MR. CARSON: That's all the  
8 cross-examination.

9 HEARING OFFICER: All right, at this point  
10 I'll state, for the record, that when we went in to recess  
11 I was going to reconsider my decision sustaining an  
12 objection as to the questions posed by Mr. Carson on  
13 cross-examination of Ms. Shelton, as to the identity of  
14 the new neighbors in Ohio. During the recess counsel for  
15 Complainants and counsel for Respondents discussed this  
16 issue and counsel for Complainants agreed to provide the  
17 Respondent with names of the Shelton's neighbors should  
18 they wish to have that information that can be provided  
19 outside of the hearing transcript.

20 MR. DIVER: So stipulated.

21 MR. CARSON: In sufficient time to allow its  
22 use in the continued session of this proceeding.

23 MR. DIVER: Absolutely. We'll give you the  
24 names of people we know, I know, and if you like us to

00509

1 look up the names of the others --

2 MR. CARSON: Thank you very much.

3 MR. DIVER: I appreciate it.

4 HEARING OFFICER: Thank you very much.

5 MR. KAISER: Brief redirect?

6 HEARING OFFICER: Yes. Mrs. Shelton, at this  
7 point we will have the redirect of your counsel and  
8 following that we will give the Respondent's counsel an  
9 opportunity to recross.

10 REDIRECT EXAMINATION

11 BY MR. KAISER:

12 Q. Ms. Edvenson, if you could direct me to the  
13 folders that has the exhibits that have been admitted into  
14 evidence? I'm looking for Exhibit 1 or 2. Thank you  
15 that's the one I'm looking for.

16 Mrs. Shelton, I'm showing you what's  
17 previously been marked for purposes of the hearing as  
18 Exhibit 1. Do you recognize that?

19 A. Yes.

20 Q. What do you recognize that to be?

21 A. It seems to be a map of Winnetka.

22 Q. Do you see an area that's shaded in the  
23 approximate center of this one page diagram which is  
24 indicated as the site.

00510

1 A. Yes.

2 Q. Can you locate that by reference to the streets  
3 indicated on that document and do you have an opinion as  
4 to what is represented by that shaded area noted as the  
5 site?

6 A. I believe that's the Crown property.

7 Q. And the companies that-- and does that diagram  
8 truly and accurately represent the location of the Crown  
9 property extension, your home at 707 Ardsley in relation  
10 to Greenbay Road, Sheridan Road and then Lake Michigan?

11 A. Yes, it does.

12 Q. I want to show you what's been marked for this  
13 hearing as Exhibit Number 39 and I'd like to read to you  
14 from the bottom of page two of that exhibit where it says,  
15 "Pete says that your unit can be located anywhere around  
16 the house. Who does that Pete refer to?

17 This says at the bottom of the page two of the  
18 letters from David Shelton to Steven Crown dated October  
19 11, 1990.?

20 A. Peter Keller.

21 Q. And do you know what Mr. Keller's position was  
22 in October of 1993?

23 A. He was in charge of the construction on the  
24 Crown property.

00511

1 Q. And the reference of your unit, what does that  
2 refer to?

3 A. The chiller unit.

4 Q. And is that the chiller unit on the Crown  
5 property?

6 A. Yes.

7 Q. And did Pete Keller ever tell you or your  
8 husband in the fall of 1990 that the chiller unit at the  
9 Crown property could be relocated?

10 A. Yes.

11 MR. CARSON: Objection, calls for hearsay.

12 MR. KAISER: Not for the truth of the matter  
13 asserted. It's merely whether it was stated.

14 HEARING OFFICER: Sustained.

15 Q. Did you have conversations with Mr. Keller  
16 concerning the re-location of the Chiller unit?

17 A. Yes.

18 Q. On the basis of one conversation, did you form a  
19 opinion in October of 1993 as to whether the chiller unit  
20 at the Crown property could be relocated?

21 A. Yes.

22 MR. CARSON: Objection, calls for hearsay.

23 A. No, it doesn't. It doesn't call for hearsay.  
24 It's been testimony, the basis of the testimony may be

00512

1 hearsay and it may be therefore going to the weight of her  
2 opinion, but it does not go to the admissibility of her  
3 opinion.

4 MR. CARSON: The way the question is phrased,  
5 your Honor, is pure and simple, a way to bring out what  
6 Pete Keller purportedly said.

7 HEARING OFFICER: The objection is sustained  
8 and I'm going to ask you to rephrase the question if you  
9 wish to pursue is this line of questioning. If you're  
10 seeking her opinion, ask for her opinion.

11 Q. Did you have a opinion as of October 11, 1990  
12 concerning whether the chiller unit at the Crown property  
13 could be relocated?

14 A. Yes.

15 Q. Was your opinion concerning whether the chiller  
16 unite at the Crown property could be relocated and the  
17 time frame here being October of 1993?

18 A. It was my opinion that the chiller could be  
19 relocated.

20 Q. During the time -- during the summer of 1995,  
21 what, if any influence did the construction at the Crown  
22 -- at the Neal property have with respect to your decision  
23 to keep your windows closed?

24 A. I didn't-- I did not keep my windows closed



00513

1 because of the construction at the Neal property.

2 Q. Now, was it your opinion as of October of 1993  
3 that sound reduction efforts wear not likely to be  
4 effective at the Crown property?

5 A. Would you please restate that.

6 Q. In October of 1990 as set forth in the letter to  
7 Mr. Crown dated October 11th, 1993, did you and your  
8 husband conclude there on page two that sound reduction is  
9 not likely to be effective?

10 A. Yes.

11 Q. And you're aware that certain efforts in sound  
12 reduction were undertaken in 1994 and again in 1995?

13 A. Yes.

14 Q. Is it your opinion as you testified here this  
15 afternoon -- do you have an opinion as to whether the  
16 effort at sound reduction made in 1994 and 1995 have been  
17 effective?

18 A. They have not been effective? Reducing the  
19 noise that causes a nuisance on our property.

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

22 HEARING OFFICER: Is there any recross?

23 MR. CARSON: Just a little bit of follow up  
24 with recross.

00514

1

RECROSS EXAMINATION

2

BY MR. CARSON:

3

Q. With respect to your opinion about re-locating  
4 the chiller unit, Ma'am?

5

A. Yes.

6

Q. Can you tell whether you have any mechanical  
7 experience, do you have a mechanical degree or any degree?

8

A. I do.

9

Q. What is your educational background, please?

10

A. Business.

11

Q. Have you ever had any training in the area of  
12 heat and ventilation, air conditioning?

13

A. No.

14

Q. And do you have any experience at all in that  
15 field in terms of work experience?

16

A. No.

17

MR. CARSON: No more questions, thank you.

18

HEARING OFFICER: Thank you, Mrs. Shelton.

19

THE WITNESS: Thank you.

20

MR. KAISER: If it isn't, I'd move for  
21 admission into evidence-- into the record at this time of  
22 Exhibit 49.

23

MR. KAISER: That's already in.

24

HEARING OFFICER: Exhibit 49 has been entered



00516

1 mother in the hearing room this afternoon?

2 A Yes, I do.

3 Q And your mother is Susi Shelton?

4 A Yes.

5 Q And is your father also here today?

6 A Yes.

7 Q Is your father David Shelton?

8 A Yes.

9 Q Are you aware that they've brought a complaint  
10 against your neighbor, Mr. Crown, who is also here this  
11 afternoon?

12 A Yes.

13 Q And are you generally aware of the subject  
14 matter of that complaint?

15 A Yes.

16 Q What is your age?

17 A I'm 14 and I'll be 15 on the 10th.

18 Q What year of school will you be beginning in  
19 the fall?

20 A I will be in my Freshman year.

21 Q And that will be high school?

22 A Yes.

23 Q Do you have a brother?

24 A Yes, I do.

00517

1 Q What is his name?`

2 A Mark Shelton.

3 Q And do you have a sister?

4 A Yes.

5 Q And what is her name?

6 A Lisa Shelton.

7 Q Until you moved with your mother and father to  
8 Ohio in January of 1996, where did you live?

9 A We lived 707 Ardsley Road in Winnetka.

10 Q And did you move there with your parents in  
11 1990?

12 A Yes.

13 Q Do you have a bedroom in your house there at  
14 707 Ardsley?

15 A Yes.

16 Q Where is your bedroom located?

17 A I'm not sure of which direction, but it's in  
18 the corner of our house, facing the Crown house on the  
19 second floor.

20 Q If I could, I'd direct your attention to her  
21 -- to what we've posted on the wall and labeled as Exhibit  
22 51. I'd ask you to take a look at that. Do you recognize  
23 what's shown in the center of that diagram, Exhibit 51?

24 A Right there.

00518

1 Q Yes.

2 A Yes.

3 Q What do you recognize that to be?

4 A That's the Crown's house.

5 Q And in relation to the Crown's house, where is  
6 your house located?

7 A Up over there.

8 Q And I represent that the area you've placed  
9 your hand on in the upper third of the diagram is penned  
10 in rough outline that your mother placed on the diagram  
11 yesterday. Do you see where there are handwritten  
12 notations along that horizontal line that was placed in  
13 pen and it indicates garage, kitchen, living/dining room,  
14 family room?

15 A Yes.

16 Q Does that accurately reflect the rooms that  
17 are located along the southern wall of your house at 707  
18 Ardsley?

19 A Yes.

20 Q And where in relation to those rooms shown  
21 there is your bedroom located?

22 A My bedroom would be located on the second  
23 floor above the dining room and next to the family room.

24 Q Do you have any windows on the south wall of

00519

1 your bedroom facing the Crown residence?

2 A Yes, I do. I have one window.

3 Q And could you state, for the record, the  
4 approximate size of a window?

5 A Maybe about two feet, by three feet.

6 Q Thank you. When you're looking out that  
7 window -- put yourself back now, if you would, in time  
8 frame of October, 1993. Can you put yourself back in that  
9 time, October of 1993?

10 A Yes.

11 Q If you looked out your window or when you  
12 looked out your window in October of 1993, what, if  
13 anything, could you see on the north end of the Crown  
14 residence?

15 A In 1993 I think that it was late in 1993 that  
16 they had the air conditioner installed, but I could see a  
17 whole from my room, I could see the whole side of the  
18 house.

19 Q Is that the north side of the Crown residence  
20 that you just indicated?

21 A Yes, the whole north side.

22 Q I want to show you a photograph that's  
23 previously been marked for purposes of identification as  
24 Exhibit 4, a photograph taken on or appears to have been

00520

1 taken on October 15th, 1993. I ask you do you recognize  
2 what's depicted in that photograph?

3 A Yes.

4 Q What do you recognize that to be?

5 A That's a big air conditioner located o on the  
6 north side of the Crown house.

7 Q And who is the person shown in that  
8 photograph?

9 A That's my mom.

10 Q And is it your testimony that in October, 1993  
11 when you were in your bedroom on the second floor, you  
12 could look out your window and see the air conditioning  
13 unit?

14 A Yes, I do.

15 Q I want to show you some photographs that have  
16 been marked for purposes of identification as Exhibit 5a  
17 and 5b. I ask you if you recognize what is depicted in  
18 photographs 5a and 5b. That's the air conditioners with  
19 the fence and trees around it.

20 Q And do you recall whether the fence and trees  
21 were put up at the same time?

22 A I think that they were put up very close to  
23 each other. I think maybe the fence was put up right  
24 before the trees.



00521

1 Q Do you have any recollection of whether when  
2 the fence along was in place, you could still see the  
3 chiller unit from your bedroom window?

4 A Yes, I could.

5 Q You do have a recollection and what is your  
6 recollection?

7 A From the window in my room it's on the second  
8 floor, so I can look down and see the top of the chiller  
9 unit.

10 Q And is it your testimony that you could see  
11 the top of the chiller unit even when the fence  
12 shown in Exhibit 5a and 5b was in place?

13 A Yes.

14 Q Are you aware that arbor Vitae hedges was  
15 planted around the chiller unit?

16 A Yes.

17 Q Did that obstruct your view from your bedroom  
18 window of the chiller unit?

19 A Yes, it obstructed my view, but I would still  
20 hear it.

21 Q Well, I want you now to put yourself back in  
22 time to Father's Day weekend?

23 A Yes.

24 Q Why do you recall that weekend?

00522

1           A           Because the air conditioner was turned on.

2           Q           And now do you mean -- which air conditioner  
3 are you referring to?

4           A           The one located on the Crown property.

5           Q           And the one that we've just looked at in the  
6 photographs, 4 and 5a and 5b.

7           A           Yes.

8           Q           And what about the air conditioner going on --  
9 why do you remember that?

10          A           I was very surprised. I couldn't believe how  
11 loud it was and I was just amazed that there was suddenly  
12 a noise coming from the side of the house and I was  
13 wondering if it was ever going to be turned off. And I  
14 just couldn't believe that it was there.

15          Q           And how would you describe the force or  
16 intensity of that noise in June of 1994?

17          A           It's very loud. It's an annoying sound. It  
18 has a strong, low pitch roar, almost and then a combined  
19 with a little bit of a high pitch noise and I can hear  
20 part of it click on and off and that's when it was really  
21 loud.

22          Q           Do you recall whether you had any difficulty  
23 sleeping during the Father's Day weekend of June, 1994?

24          A           Yes. I had a lot of difficulty sleeping.

00523

1 Q. And what do you have -- do you have an opinion  
2 as to what caused you to have difficulty sleeping?

3 A. It was too noisy. The air conditioner on the  
4 Crown's property was making a lot of noise and especially  
5 when part of it clicked on and off. I couldn't fall  
6 asleep.

7 Q. Do you recall whether your window was opened or  
8 closed during the Father's Day weekend of June, 1994?

9 A. I started out with it open, but I closed it  
10 because of the noise. But it didn't help very much.

11 Q. Did your parents provide you with a white noise  
12 or sound machine during the Father's Day weekend of June,  
13 1994?

14 A. Yes.

15 Q. Did you plug in the sound machine?

16 A. Yes, we plugged it in and tried it.

17 Q. When you say you plugged it in and tried it,  
18 where did you locate the sound machine?

19 A. We put it in my room, on my bed.

20 Q. And what kind of sound, can you describe for the  
21 Board the type of sound that this machine makes?

22 A. It makes noises that are supposed to sound like  
23 waves coming in the shore.

24 Q. Was the noise machine effective at muffling or

00524

1 in some way reducing the noise or the experience of noise  
2 from the Crown air conditioning unit in your bedroom  
3 during the Father's Day weekend of the June, 1994?

4 A. The noise machine didn't work because in between  
5 the waves I could hear the air conditioner and it was just  
6 as noisy.

7 Q. Were you able to finally fall asleep in your  
8 bedroom during the Father's Day weekend of June, 1994?

9 A. Yes, I was, but I didn't sleep very well.

10 Q. Do you have an opinion as to why you did not  
11 sleep well during the Father's Day weekend of June, 1994?

12 A. Because of the noise caused by the air  
13 conditioner coming across the property.

14 Q. I want to show you what's been marked for  
15 purposes of identification as Exhibit 18d. Please take a  
16 look at that document. Tell me if you recognize that?

17 A. I recognize it. I wrote it.

18 Q. When did you write that?

19 A. It was shortly after the air conditioner was  
20 turned on for the first time.

21 Q. Would that have been in June, 1994?

22 A. I think somewhere around there.

23 Q. All right. I note that in the upper right-hand  
24 corner there appears to be a date. Is that your

00525

1 handwriting?

2 A. Yes.

3 Q. And what does that date indicate?

4 A. June 17th, 1994.

5 Q. Does that refresh your recollection as to when  
6 you wrote this letter?

7 A. Yes.

8 Q. I note that the first sentence of the letter  
9 starts out, something is bothering me. Is that true that  
10 as of June 17th, 1994 something was bothering you?

11 A. Yes.

12 Q. And what was it that was bothering you?

13 A. The air conditioner, the noise from the air  
14 conditioner.

15 Q. And when you say the air conditioner, are you  
16 referring to the air conditioner on the Crown's property?

17 A. Yes.

18 Q. I want to direct your attention to the 3rd  
19 paragraph which reads as follows: "This new house was  
20 great. It had everything, even it's own woods. We heard  
21 no loud noises which, waste one of the best feelings that  
22 I have ever felt. Is that true that prior to June of 1994  
23 you felt that your new house at 707 Adsley was great?

24 A. Yes, we moved from a house on the corner of

00526

1 Forest Glen and Tower Road and we heard a lot of traffic.

2 Q. When you were in the house at Forest Glen and  
3 Tower Road, is Tower Road a busy street?

4 A. Yes.

5 Q. And you were right on the corner of Forest Glen  
6 and Tower?

7 A. Yes.

8 Q. And was it your experience living at that  
9 location how did you feel about traffic noise?

10 A. It was very pleasant and it didn't bother me  
11 very much because my room wasn't exposed. It wasn't right  
12 next to the street, but it was still a bit of a pain.

13 Q. And your statement that we heard no loud noises  
14 which was one of the best feelings that I've ever felt.  
15 Is that true, in truth how you felt when you were in your  
16 backyard at 707 Ardsley prior to June of 1994?

17 A. Yes, it was a very quiet area and I liked it  
18 there.

19 Q. What sort of things would you do in the back  
20 yard at 707 Ardsley?

21 A. I camped out a lot and we had a tree swing and  
22 hammock seat up and it was fun to go out there and read or  
23 camp out.

24 Q. And when you say camp out, do you mean actually

00527

1 sleep out overnight?

2 A. Yes.

3 Q. And approximately how often during the summer  
4 months would you sleep out overnight in your back yard at  
5 707 Ardsley prior to June-- the summer of 1994?

6 A. Maybe I'd camp out every other week.

7 Q. After you became award of the Crown air  
8 conditioning unit in June, 1994, did you continue to sleep  
9 out of doors?

10 A. Only one or two times.

11 Q. Why did you discontinue the practice of sleeping  
12 out of doors after June of 1994?

13 A. Because the noise from the air conditioner  
14 located on the Crown's property made it difficult to sleep  
15 comfortably.

16 Q. Did you try coming out in different parts of  
17 your yard and area at 707 Ardsley in order to escape the  
18 noise of the Crown air conditioning unit?

19 A. Yes. I slept out in one or two different  
20 places.

21 Q. What locations were those?

22 A. I'll show you on the picture. I tried sleeping  
23 out in the woods. We had a little piece of woods out in  
24 the back yard away from the Crown's house up on the north

00528

1 side and then in the front yard in the hammock. We  
2 had trees out by our driveway.

3 Q. Could you draw in here with this pen the area in  
4 which you slept prior to the summer of 1994 and can you  
5 note that? Can you put sleep out area by those actions?

6 A. Okay.

7 Q. Now which area did you sleep in prior to  
8 June of 1994?

9 A. Everywhere, all over our yard and in the woods.

10 Q. And after June of 1994 where did you try to  
11 sleep out?

12 A. Just these three places.

13 Q. And in the places that you've indicated with a X  
14 in the lower right-hand X, what, if any, noise did you  
15 hear from the Crown air conditioner at that location after  
16 June of 1994?

17 A. I was able to sleep. The air conditioner just  
18 the fan function which is a constant noise and I could  
19 hear parts clicking on and off.

20 Q. Were you able to sleep without interruption at  
21 that location out of doors after June of 1994?

22 A. No, I couldn't fall asleep.

23 Q. What about the location that you've shown on the  
24 upper portion of Exhibit 51 and marked with an X. What



00529

1 was your experience sleeping out at that location?

2 A. I still couldn't fall asleep.

3 Q. Do you have a opinion as to why you could not  
4 fall asleep?

5 A. The noise from the air conditioner on the Crown  
6 property.

7 Q. What was your experience while camping out in  
8 the front yard at the area indicated with an X toward  
9 Ardsley road?

10 A. Well, that time I was sleeping out in the  
11 hammock with two other friends and neither of us fell  
12 asleep and both of my friends were complaining about the  
13 noise, too.

14 Q. I notice that on your letter of June 1994 it  
15 states, it says, now we don't enjoy the meals that we once  
16 did on the patio. Now I can't fall asleep because of the  
17 vibrations in the walls, and the death fell hum that  
18 steals the cricket's song. Due notice any difference in  
19 the frequency with which you and your family would eat out  
20 of doors on the patio after June of 1994?

21 A. Yes. We used to before the air conditioner on  
22 the Crown's property was turned on. We would eat dinner  
23 on our patio a lot because we have a really nice patio,  
24 but after the air conditioner on the Crown's property was

00530

1 turned on, we stopped eating outside other than every once  
2 in awhile.

3 Q. And you refer to vibrations in the walls. What  
4 do you mean by vibrations in the walls?

5 A. Well, when I'm -- when a part of the air  
6 conditioner clicks on and I really-- and it's really noisy  
7 for a few seconds. I can feel vibrations and if I put my  
8 hand on the window or a wall.

9 Q. Can you feel a vibration on the window or the  
10 wall?

11 A. Yes.

12 Q. And do you have a opinion ace top what the  
13 source or because of that vibration on your window or the  
14 wall was?

15 MR. CARSON: I'm going to object to this  
16 because it calls for a conclusion.

17 Q. Did the sound that you experienced and that you  
18 just also described--

19 HEARING OFFICER: Excuse me we have an  
20 objection. Did you wish to respond?

21 MR. KAISER: I withdraw the question.

22 HEARING OFFICER: Okay.

23 MR. KAISER: Actually can I do this? I  
24 would like to make a response to that. We're not asking

00531

1 for any type of expert opinion. We're just asking for  
2 this young man's obviously intelligent young man of 14  
3 years of age, his opinion as to what the source was. I  
4 think he's mature enough and competent to offer a opinion  
5 as to what the source of the vibration was.

6 HEARING OFFICER: Overruled. You can answer  
7 the question. All right. My opinion is that the source  
8 waste coming from the Crown's air conditioner.

9 HEARING OFFICER: Thank you. During the  
10 summer of 1994, did you ever sleep in areas of the house  
11 other than your bedroom on the second floor of your  
12 residence at 707 Ardsley?

13 A Yes.

14 What other area did you sleep in during the summer of  
15 1994?

16 A. I slept downstairs on a fold out couch in our  
17 living-- little office room.

18 Q. Is that also called the den? Do you still refer  
19 to that area as the Ten?

20 A. Yes.

21 Q. What part of the house is the den located in?

22 A. It's located on the first floor. The northwest  
23 side of the house.

24 Q. And why did you choose to sleep during the

00532

1 summer of 1994 in the den rather than in your bedroom?

2 A. Because it was quiet there.

3 Q. Cue estimate the number of nights in July of  
4 1994 that had you slept in the den rather than your  
5 bedroom?

6 A. In the summer of 1994 I slept downstairs almost  
7 every tonight. Does that include almost every night in  
8 the month of August?

9 A. Yes.

10 Q. Does that also include every night or almost  
11 every night in the first part of the September of 1994?

12 A. Yes.

13 Q. And do you have a opinion as to why did you  
14 sleep in the den location? You mentioned it was quiet?  
15 Was it not quiet in your room during that time frame?

16 A. It was very loud in my room because of the air  
17 conditioner on the Crown property.

18 Q. Do you recall the Crown air conditioner being  
19 turned on in late April of 1995?

20 A. Yes.

21 Q. Were you able to sleep in your bedroom on the  
22 second floor of the south end of your house during that  
23 late April of 1995?

24 A. I slept in my room about half of the time.

00533

1 Q. Where did you sleep the other half of the time?

2 A. Downstairs on the fold out couch.

3 Q. Why did you snort sleep in your bedroom half of  
4 the night in the latter part of of April, 1995?

5 A. Because of the noise becoming from the air  
6 conditioner on the Crown property.

7 Q. The nights that you stayed in your room and  
8 slept in your room, how would you describe the quality of  
9 sleep?

10 A. I had a lot of trouble falling asleep and then I  
11 didn't get very much sleep because every time a part  
12 clicked on or off, it would wake me up.

13 Q. When you would awaken the next morning after  
14 having spent a night in your a bedroom in late April of  
15 1995, how would you feel?

16 A. Tired, cranky, lazy.

17 Q. Were you in school at that time?

18 A. Yes.

19 Q. What grade were you in in April of 1995?

20 A. I was in seventh grade or yea, 7th.

21 Q. Seventh grade?

22 A. Uh-huh.

23 Q. Did you notice any difference in your ability to  
24 concentrate at school in late April of 1995?

00534

1       A.     Yes, it was very hard to concentrate because I  
2 was coming to school sometimes with little sleep and I was  
3 just trying to stay awake. A lot of times and teachers  
4 expect all of the kids to be concentrating and thinking  
5 hard.

6       Q.     Did you ever have occasion where a teacher asked  
7 you why you -- did a teacher ever inquire as to -- did you  
8 experience a change in your ability to perform in school  
9 in late April and May of 1995?

10      A.     Yes.

11      Q.     Did a teacher ever talk with you about your  
12 ability to perform in school during late April and May of  
13 1995?

14      A.     Yes?

15      Q.     Do you recall which teacher that was?

16      A.     Well all of treachery would tell me things such  
17 as to stay alert and then I had several treachers call my  
18 home to ask what was happening.

19      Q.     And do you have a opinion as to what waste  
20 causing you problems staying alert in late April and May  
21 of 1995?

22      A.     It was the fact that I wasn't getting enough  
23 sleep.

24      Q.     And why were you not getting enough sleep in

00535

1 late April and May of 1995?

2 A. Because of the noise becoming from the air  
3 conditioner on the Crown property.

4 Q. Throughout the summer of 1995, did you sleep in  
5 your bedroom by summer I mean April of 1995, I mean June,  
6 July, August and early September of 1995?

7 A. I slept in my bedroom about half the time.

8 Q. And where did you sleep the other half?

9 A. On the fold out couch in the den.

10 Q. Why did you sleep in the fold out couch in the  
11 den during the summer of 1995?

12 A. Because the noise from the Crown air conditioner  
13 was too loud in my bedroom.

14 Q. Did you attempt to camp out or sleep out in your  
15 yard during the summer of 1995?

16 A. Maybe one or two times, just 3 at these that I  
17 marked on the picture. And did you have the experiences  
18 that you described when you were -- when you went over  
19 those marks?

20 A. Yes.

21 Q. Did you and your family take any of your meals  
22 out on the patio during the summer of 1995?

23 A. No.

24 Q. Do you have a opinion as to why you didn't take

00536

1 meals out on the patio during the summer of 1995?

2 A. Because it was hard to have a nice, joyful,  
3 quiet meal on the patio because of the noise becoming  
4 from. The Crown's air conditioner.

5 Q.

6 HEARING OFFICER: Counsel wasn't that a  
7 repetitive question? I thought we had testimony on that  
8 issue, I'm sure, from this witness.

9 MR. KAISER: I'm just  
10 corroborating other testimony

11 Q. Prior to the air conditioner being turned on  
12 in 1994, what types of activities did you like to do in  
13 your bedroom?

14 A. I enjoyed reading and building radio control  
15 cars, boats, planes.

16 Q And would you read and build these things,  
17 boats, and planes in your bedroom prior to June of 1994?

18 A Yes. After June of 1976, did you continue to  
19 read and use your room for building airplanes and the  
20 like?0

21 A. A little bite but I tried to do my reading down  
22 stairs and in other areas.

23 Q. Do you have an opinion as to why you changed the  
24 areas of the house in which you read after June of 1994?



00537

1           A.     Because my room was too loud because of the  
2 noise from the Crown air conditioner.

3           Q.     Are you aware that the Crowns have proposed new  
4 operating instructions for their air conditioning unit  
5 which would cause the unit to be operating with only one  
6 ten ton compressor and one blower fan between the hours of  
7 1000 p.m. and 6:00 a.m.?

8           A.     Yes.

9                   MR. CARSON:  Objection.  Object to the form of  
10 the question.  The proposal I'm not sure what proposal  
11 he's talking about.  There action has been taken and  
12 implemented.

13          Q.     I'm sorry, I'll make that correction.  Are  
14 system of operating instructions for there condenser unit  
15 so that between the hours of 10:00 p.m. and 6:00 a.m. only  
16 one ten ton compressor and one fan unit operates?

17          A.     Yes.

18          Q.     Have you actually heard that system in  
19 operation?

20          A.     No, not yet.

21          Q.     Do you have a opinion as to whether the  
22 operation of the system with 37 fans and both the ten ton  
23 and the 15 ton compressor unit between the hours of 6 a.m.  
24 and 10 p.m. ,  what effect would that operation have upon

00538

1 your usage and enjoyment of your bedroom area of the  
2 house?

3 MR. CARSON: Objection, foundation.

4 MR. KAISER: If I may.

5 HEARING OFFICER: Can you rephrase that?

6 MR. KAISER: Yes, I can put the foundation.  
7 Obviously it's been operating that way since July of 1995.  
8 The only modifications have occurred to the operating  
9 system between the hours of ten p.m. and 6 a.m.. So.

10 HEARING OFFICER: Can you respond to the  
11 objection?

12 MR. KAISER: Yes, I will. It was foundation.  
13 I think that was his objection. Or was it form of the  
14 question?

15 MR. CARSON: I objected to the foundation  
16 cause he hasn't heard it as modified.

17 MR. KAISER: But the point is nobody is  
18 saying he did. It's been modified between 6 a.m. and 10  
19 p.m. unless I'm mistaken. Certainly not between 6 a.m.  
20 and 9 p.m.

21 HEARING OFFICER: Overruled. I'll permit the  
22 witness to answer to best of his knowledge.

23 MR. KAISER: Madam Court Reporter could you  
24 read the question back?

00539

1 (the record was read)

2 A. All right. Well I still don't think that that  
3 would workout very well for me because then it would be  
4 hard to enjoy doing things in my room until after 10 a.m.  
5 and--

6 HEARING OFFICER: Do you mean 10 p.m.?

7 A. Yeah, so I'm sorry. And then even after.  
8 That I'm sure that it would be much better, but I haven't  
9 heard it yet but I'm still worried that it might wake me  
10 up in the middle of the night if something clicks on or  
11 off.

12 Q. Are you typically fully aawake at 6 a.m. in the  
13 morning?

14 A. No.

15 Q. As it's been your experience that the sick will  
16 go on and off of the fan generates enough noise to awaken  
17 you?

18 A. Yes.

19 MR. KAISER: Thank you Mr. Shelton. I have no  
20 further questions for you.

21 HEARING OFFICER: Counsel for Mr. Crown may.  
22 cross-examine.

23 CROSS EXAMINATION

24

00540

1 By Mr. Carson:

2 Q. You're going to be starting high school in the  
3 fall?

4 A. Yes.

5 Q. What's the name of the school you're going to be  
6 attending?

7 A. Greenville High School.

8 Q. That's in Greenville, Ohio?

9 A. Ye2s.

10 MR. CARSON: That's all the questions I have  
11 thank you.

12 MR. KAISER: Thank you, no redirect.

13 HEARING OFFICER: Okay, thank you Mr. Shelton.

14 MR. KAISER: It's the Board's preference or  
15 Madam Hearing Officer, we would have Mr. Zak available to  
16 testify. We expect his testimony will take the remainder  
17 of the afternoon.

18 HEARING OFFICER: Do you wish to take a break  
19 at this point in time or shall we proceed?

20 MR. CARSON: I could use five minutes.

21 MR. KAISER: Five minutes.

22 HEARING OFFICER: We'll take a 5 minute break.  
23 We'll come back very shortly and continue with Mr. Zak.

24 (A brief recess was taken)

00541

1 HEARING OFFICER: Back on the record.

2 At this time Complainants will be  
3 calling its next witness. Mr. Diver?

4 MR. DIVER: Madam Hearing Officer, I would  
5 ask to, on the record -- strike that -- the Complainants  
6 call as their next witness, Greg Zak.

7 HEARING OFFICER: Mr. Zak, will you be  
8 sworn?

9 (Witness Sworn.)

10 PROCEEDINGS

11 WHEREUPON

12 GREGORY T. ZAK,  
13 having been duly sworn to tell the truth, the whole truth,  
14 and nothing but the truth, was examined and testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. DIVER:

18 Q. Would you state your full name please, sir?

19 A. My name is Gregory T. as in Tom Zak, Z-a-k.

20 Q. Mr. Zak, for whom are you employed?

21 A. The State of Illinois, Environmental Protection  
22 Agency.

23 Q. And for how long have you been any employee of  
24 what I will call IEPA?

00542

1 A. Over 24 years.

2 Q. And what is your current position with the  
3 Illinois EPA?

4 A. My current position is Noise Advisor for the  
5 Illinois EPA.

6 Q. And you've had that is position for  
7 approximately 9 years?

8 A. 9 that's correct.

9 Q. Would you describe what the Noice Advisory  
10 position is in Illinois EPA now and if it was different 9  
11 years go, Tell us about that, but generally what that  
12 position has been?

13 A. The position has been one of overseeing a noise  
14 program that servies one to two thousand employees-- noise  
15 complaints per year. I advise citizens on how to deal  
16 with their noise complaints through a self help program.  
17 In addition, I take frequent noise measuerments of various  
18 facilities for the Illinois EPA and other state agencies,  
19 analyze the data. I also do indepth noise controlling  
20 engineering work for Illinois EPA, other state agencies,  
21 federal agencies and villaves and cities.

22 Q. At the time you came to Illinois EPA and correct  
23 me if if I'm wrong, I EPA would create around 1970, at the  
24 time of came to I EPA was there a noise pollution control

00543

1 program in existence?

2 A. Yes, there was.

3 Q. Is there still a noise pollution control program  
4 in the State of Illinois?

5 A. There still is a program and I makeup the entire  
6 program.

7 Q. And has that been for the last 9 years?

8 A. Yes, it has.

9 Q. Madam Hearing Officer, I have spoken with  
10 counsel prior to the commencement of the testimony of this  
11 witness as to whether or not I could obtain a stipulation  
12 from counsel with respect to this witnesses' ability to  
13 state opinions with respect to measurements of sounds,  
14 with respect to the impact of sounds on people, with  
15 respect to a control methodology or controlling reducing  
16 or eliminating sounds from sound emitting sources and with  
17 respect to the Illinois Pollution Control Board noise  
18 pollution control regulatory programs. Now that we --  
19 I'll renew that request on the record; that's a request  
20 that it be stipulated that this witness does have the  
21 qualifications necessary without my having to go into all  
22 the background that otherwise you would, does have the  
23 qualifications necessary to express an expert opinion with  
24 respect to those to picks.

00544

1                   MR. ELLEDGE: I would stipulate that Mr. Zak  
2 does have expert qualifications to express opinions in the  
3 nature of measurements of sounds, and on control  
4 methodology. I would not stipulate that he should be --  
5 that it would be appropriate for him under any  
6 circumstances to give opinions as to the law of the  
7 United States or the opinions of the Pollution Control  
8 Board. This is a Pollution Control Board proceeding. The  
9 board is perfectly capable of making -- reaching its own  
10 conclusions based on the transcript. With regard to his  
11 expert ability to describe the impact of noise on people,  
12 I think you'd better try to lay a foundation on that.  
13 That's pretty slippery. We've already had certain  
14 discussion on with regard to your objections with regard  
15 to opinions attempted to be elicited from Mr. Shiner.

16                   MR. DIVER: Correct. And I object on the  
17 basis that there had not been a foundation laid and I was  
18 overruled with respect to that objection. Let me correct,  
19 for the purposes of record the fact that I'm not asking  
20 this witness to testify as to his opinion as to what  
21 Pollution Control Board decisions have to say, nor with  
22 respect to interpretations of the regulations I understand  
23 that that's a area of expertise generally reserved  
24 to lawyers, however, with respect to the existence of the



00545

1 Illinois program and what it is that that program requires  
2 with respect to levels of comply answer, I would expect  
3 him to be able to -- I would expect to be able to ask this  
4 witness questions and have his opinions treated as though  
5 they were expert opinions and ask again whether to that  
6 limited extent on that particular issue Mr. Elledge will  
7 agree to this witness' qualification.

8 MR. ELLEDGE: The simply answer is no because  
9 you're asking what the program would require, i.e. what  
10 the law requires, which is an expression of a opinion with  
11 regard to the impact interpretation of the law.

12 HEARING OFFICER: Thank you counsel.

13 MR. DIVER: I will accept the two stipulations  
14 with respect to the qualification of this witness on the  
15 measurement of sound and with respect to the development  
16 measure to control the emission of sounds and I will  
17 pursue a level of background with respect to this witness  
18 on the subject of the impact of sound emissions on human  
19 beings.

20 BY MR. DIVER:

21 Q. Mr. Zak, during that period that you have been  
22 employed with the Illinois EPA and with a whole in the  
23 noise program, during that period of time have you had  
24 responsibilities with respect to regular citizen,

00546

1 investigating citizen complaints of noise emissions?

2 A. Yes, I have.

3 Q. Over the period of time that you've been with  
4 Illinois EPA, give us an approximation of the number of  
5 citizen noise complaints that you've had occasion to  
6 investigate?

7 A. I would say between 1,000 to 3,000 .

8 Q. And of those 1,000 to 3,000 complaint  
9 circumstances, approximately how many individuals,  
10 individual human beings were did you -- did you actually  
11 talk to with respect to the impact that they experienced  
12 with respect to the noise that you were having on --  
13 investigating.

14 A. I had to give you a very broad range on that  
15 but I think I would be somewhat safe in saying it would be  
16 a minimum of two thousand to a maximum of maybe ten  
17 thousand?

18 Q. Human beings?

19 A. Human beings, yes.

20 Q. Over what period of time would that work have  
21 been performed by you, Mr. Zak?

22 A. A little over 24 years.

23 Q. For the last 9 years have you been, to your  
24 knowledge, the only human being in the Illinois government

00547

1 charged with the responsibility to investigate citizen  
2 complaints of noise emissions?

3 A. To a large extent I've had assistance from one  
4 other employee who is now on medical leave. He worked  
5 directly for me and he did investigate a few complaints,  
6 however, all the other complaints I investigated  
7 personally.

8 Q. In addition to your direct experience in the  
9 investigation of complaints in the questioning of people  
10 about their own experience of noise, have you had any  
11 training with respect to the  
12 humane body's reaction to to the experience of noise?

13 A. No formal training as such. I would classify it  
14 more as on the job experience and fairly extensive reading  
15 on the subject over a period of over 20 years.

16 Q. The reading that you're talking about is reading  
17 textbooks with respect to how human beings respond to  
18 noise?

19 A. Yes, there would be textbooks, and in addition  
20 periodicals related to the effect of noise on people.

21 Q. You're questioning of people with respect to  
22 there experience of noise as it related to both their  
23 physical reactions as well as

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3 physical reaction as well as their psychological reactions  
4 to noise?

5 A. Yes and to clarify that to some extent most of  
6 the information that I would receive would be of a  
7 voluntary nature. I would just simply ask what, if any,  
8 impact the noise was having on the individual and then the  
9 individual would go into detail. Some would go into great  
10 detail and some would give me virtually no detail at all  
11 because of the large number of people that I have dealt  
12 with over the years.

13 Q. Have you been able, as a result of our  
14 questioning of human beings with regard to their  
15 experience of sound or noise, when correlated with your  
16 actual measurement of noise, been able to form opinions  
17 with respect to the impact of levels of noise and types of  
18 noise on human beings?

19 A. Yes, I have. As a matter of fact one of the  
20 very useful tools I found over the years is to ask the  
21 person not so much to describe the noise impact on  
22 themselves, but to try and describe the noise itself and  
23 then you will use that information to pinpoint the noise  
24 source and obtain information that will assist me in

00549

1 crafting a solution to the problem.

2 Q. In your investigation of these complaints and  
3 your talking with citizen complainants, you've had an  
4 opportunity to observe those citizens with respect to the  
5 complaints that are obvious and open?

6 A. Yes.

7 Q. My recollection is and Mr. Elledge, correct me  
8 if I'm wrong, that in Illinois we have a regulatory  
9 program that prohibit the emission of noise as noise  
10 pollution and that that noise pollution relates to whether  
11 or not there has been an unreasonable interference with  
12 life.

13 MR. ELLEDGE: Madam Hearing Officer, I object  
14 to the question. It calls for a conclusion of law.

15 MR. DIVER: I'm asking Mr. Elledge whether he  
16 will stipulate that that was the provision of law  
17 provided.

18 MR. ELLEDGE: It's appropriate to deal with  
19 that in the briefs in this case. I don't think there's  
20 any reason why this should be a stipulation as to the law  
21 at this point in the proceedings. Let's move forward.

22 MR. DIVER: All right.

23 Q. Have you, during the course of your of these  
24 last 9 years in particular had to focus on individual

00550

1 citizen's experience of the interruption of there lives  
2 caused by noise?

3 A. Yes, I have.

4 Q. And you've done that through questioning of  
5 them?

6 A. Yes.

7 Q. And as well as by their actually relating to you  
8 even though not questions, the complaints that they have?

9 A. Yes.

10 MR. DIVER: Madam Hearing Officer, I would  
11 re- tender this witness as an expert with respect to the  
12 ability to testify concerning human response to emissions  
13 of sound. Mr. Elledge, your Honor, I will object on the  
14 grounds that it would seem to me to give opinions on the  
15 effect of physiological and medical effects. If that's  
16 what he's being asked, would require more than the  
17 observation of people and the reading of material. I  
18 think it would require a certain amount of medical  
19 background and with regard to the nature of the human  
20 physiology. To the extent we're dealing with simply will  
21 it make me or would it not make me I would not have a  
22 problem. It's dependant upon the nature of the question  
23 asked, but as presented, I believe that the tender is too  
24 broad.

00551

1                   MR. DIVER: I'll be a little more specific,  
2 Madam Hearing Officer. I was just going to provide a  
3 limitation because it will suit my purposes and that's his  
4 testimony related to specific feelings; I'm unable to  
5 sleep, tension, tightness of muscles and headaches.

6                   HEARING OFFICER: First I have one question.  
7 Have we not already had testimony concerning the impact of  
8 sound on humans as being a part of the methodology that's  
9 rolled into the measurement of sound perception that Mr.  
10 Shiner provided?

11                   MR. DIVER: I certainly must admit as he was  
12 allowed to testify with respect to his understanding of  
13 the relationship.

14                   MR. ELLEDGE: Madam Hearing Officer, you're  
15 absolutely right, perception.

16                   HEARING OFFICER: Is a scientific ability,  
17 highly measureable.

18                   MR. ELLEDGE: A perception of sound probably  
19 can be testified to on the basis of experience and  
20 observation surely can. When we get into the more  
21 difficult questions of causation, particularly medical  
22 causation, medically related causation as to symptomatic  
23 conditions, I think we've gone beyond what we've asked of  
24 Mr. Shiner or what we should appropriately ask of Mr. Zak.

00552

1                   HEARING OFFICER: Okay. Four areas of  
2 testimony have been discussed here. The measurement of  
3 sound itself and any information on that I believe is  
4 admissible and relevant to this proceeding on the impact  
5 of sound on humans, I think that if the Complainant wishes  
6 to introduce testimony with respect to human physiology or  
7 tests on the effect of sound on human physiology, then we  
8 get-- we need to see those reports and we need to see  
9 those documents. We need to see those studies. Studies  
10 of that nature are admissible evidence in a proceeding of  
11 this nature before the Board. I would like to permit Mr.  
12 Zak to testify to his experience related to the impact of  
13 sound on humans and to his general opinions related to the  
14 impact of sound on humans as it does not have to do with  
15 such studies. The 3rd item was control methodologies and  
16 I believe that would also include a control equipment,  
17 control configurations and I think that Mr. Zak is  
18 qualified to discuss these. And the 4th item discussed was  
19 Pollution Control Board and IEPA regulations and any other  
20 laws that have to do with noise and either a statement  
21 related to those laws or a interpretation of those laws  
22 and that will not be permitted.

23                   MR. DIVER: Accepted, Madam Hearing Officer .

24                   MR. ELLEDGE: Thank you.



00553

1 MR. DIVER: If I may continue?

2 Q. Mr. Zak at a point in time were you contacted by  
3 David Shelton, one of the Complainants in this proceeding?

4 A. Yes, I was.

5 Q. I'm showing you now what I've marked as Exhibit  
6 '91 being a letter dated July 11, 1994 and ask you if you  
7 have a opportunity to review that, please?

8 A. Yes,.

9 Q. Fine, when Mr. Shelton contacted you, it was  
10 approximately when in relation to this letter?

11 A. It would have been prior to June 30th of 1994.  
12 The reason I say that is simply because on the first  
13 sentence of the letter I refer to Mr. Shelton's contacting  
14 Mr. and Mrs. Crown on June 30th, 1994.

15 Q. Do you recall what Mr. Shelton's complaint was  
16 to you in the time that he contacted you?

17 A. Yes, the complaint centered around noise  
18 emissions from Mr. Crown's 25 ton air conditioner.

19 Q. Okay and did you prepare any written  
20 instructions to Mr. Crown as to how you and he would have  
21 to inteface with respect to his complaints and the agency .

22 MR. ELLEDGE: Can we ask for clarification?  
23 Did you mean to say Mr. Crown?

24 Q. I'm sorry,, Mr. Shelton. Mr. Shelton, how you

00554

1 would interface with Mr. Shelton concerning the submission  
2 of his complaints?

3 A. Yes, I did.

4 Q. And is that written communication contained in  
5 the Exhibit '91 before you?

6 MR. DIVER: Madam Hearing Officer, I move the  
7 admission of Exhibit '91.

8 MR. ELLEDGE: Pardon me?

9 MR.DIVER: Move the admission of Exhibit 91.

10 MR. ELLEDGE: No objection,.

11 HEARING OFFICER: Exhibit 91 will be received  
12 into evidence.

13 (Complainant's Exhibit No. 91 was received  
14 into evidence.)

15 Q. At a point in time around this communication,did  
16 you receive a document shown to you now as Exhibit 63  
17 being a letter of July 5, 1994 from Alan H. Shiner P.E.?

18 A. Yes, I did.

19 MR.DIVER: Madam Hearing Officer, let me  
20 address for purposes of the record that this is the same  
21 document which has previously been identified as an  
22 exhibit, but because that document, 56 had been accepted  
23 for a limited purpose, I want to keep it separate as much  
24 as I can from this particular witness.

00555

1 Q. Mr. Zak, what I'm going to -- Mr. Zak I'm going  
2 to ask you to assume for purposes of this next bit of  
3 testimony that the sound measurements that are reflected  
4 in that document were truly and correctly made and entered  
5 by the person who it suggested was the author of the  
6 letter, being Mr. Shiner, okay?

7 A. Okay?

8 Q. With that assumption and reviewing that data and  
9 Assume further that that data was measuring sound emitted  
10 during a daytime hours from the Crown chiller unit and  
11 assuming further that that unit was generating sound  
12 levels such as those recorded in this particular exhibit  
13 and that those sound levels were being generated on the  
14 order of 24 hours per day for 3 months and the Sheltons,  
15 residing approximately 60 Feet from that noise source  
16 emitting that level of sound, experienced such sound, and  
17 further assuming that the Shelton family in particular the  
18 two parents and their 14 year old son complained of the  
19 inability to sleep, irritability, tension, tightness of  
20 the back and neck muscles, fatigue, a drained feeling and  
21 headaches, would you be able to form an opinion as to  
22 whether those sound emitted for that period of time would  
23 would be capable of causing those symptoms in human  
24 beings.

00556

1                   MR. ELLEDGE:    Madam Hearing Officer, I object  
2 to thhe form of the question and to the contents of the  
3 question.  First of all, although it purports to be in the  
4 form of a hypothetical, it's almost incomprehensible, and  
5 complex and that's too many elements in it that I think  
6 can -- that we can expect anyone to answer under oath.

7                    Certainly it calls for a conclusion of  
8 a ultimate fact, which is the ultimate fact before him,  
9 Mr. Zak.  Mr. Zak is not the fact finder in this case.  
10 He's a witness in the case.  I think that the question has  
11 to be broken down into at least 6 or 7 different  
12 components so that we can address them one at a time.  I  
13 don't think its in a manageable hypothetical.  I don't  
14 think its an appropriate hypothetical.

15                   HEARING OFFICER:  I'm going to sustain the  
16 objection.

17                   MR. ELLEDGE:    Thank you.

18                   HEARING OFFICER:  Could you rephrase your  
19 question?

20                   MR. DIVER:    Certainly, Madam Hearing  
21 Officer, although I would indicate that most hypotheticals  
22 are by the very nature lengthy because they have to assume  
23 so many facts being in the record of the trial.  I'll try  
24 it one more time however.

00557

1 Q. Mr. Zak, it would be easier obviously if we had  
2 a stipulation to this data, but since we don't. Assuming  
3 Mr. Zak, a 25 ton air conditioner unit being operated 60  
4 feet south of a residence or property being occupied as a  
5 residence by human beings, children and adults, and  
6 further assuming that that 25 ton chiller unit were  
7 emitting sound as that recorded in the exhibit that you  
8 hold in your hands, and that that sound was being emitted  
9 continuously on a 24 hour a day basis for a continual  
10 three month period and experienced by the residents of  
11 that dwelling unit during that periods of time and further  
12 assuming that those residents have complained of  
13 headaches, tension, tightness, in the neck and back,  
14 irritability, inability to sleep, fatigue and drained  
15 feelings, would you be able to form an opinion on the  
16 basis of the sound and the particular fact that I've asked  
17 you to assume as to whether that 25 ton air chiller unit  
18 emitting that sound for that period of time was sufficient  
19 to generate noise -- strike that -- was generating noise  
20 sufficient to cause the complaints that I've just advised  
21 you of?

22 MR. ELLEDGE: I object, your Honor. Much the  
23 same grounds, but let me focus this a little bit more. He  
24 has again asked and is asking really for a diagnosis, a

00558

1 medical diagnosis and he's going into medical causation,  
2 psychologically causation. I would also say with regard  
3 to his reference to the report because the report itself  
4 does not describe where measurements were made and under  
5 what conditions they were made. This is none of the  
6 things that would permit a expert to say and where the  
7 microphone placements would be and so what the  
8 configuration of the surrounding interests are, any of the  
9 things that would permit an expert to testify as to levels  
10 of sound. It still has elements of asking, mixing in  
11 levels of sound, hours of operation, assumptions as to the  
12 testimony in the record which are not necessary for the  
13 kind of complaint -- answered is entirely proper and I  
14 think this witness can give that. If he's leaping right  
15 to the ultimate conclusion of fact -- Mr. Zak is not the  
16 finder fact in this case and he cannot be asked  
17 improperly.

18                   MR. DIVER: Madam Hearing Officer, we are not  
19 asking him the ultimate findings of fact, we are asking  
20 him whether the noise that was testified to by Mr. Shiner  
21 yesterday is sufficient to cause a complaint that the  
22 Sheltons have testified to yesterday and today and that's  
23 not the ultimate question. The ultimate question here is  
24 whether this particular piece of equipment has; one

00559

1 emitted sound in a residence occupied by human beings,  
2 sound such as to unreasonably interfere with the enjoyment  
3 of the living of life at the Shelton's. If counsel is  
4 stipulating --

5 HEARING OFFICER: Okay, the objection is  
6 sustained. I would like you to ask this witness a  
7 question of this nature and that question is: Whether at  
8 the location of the test, which was 20 feet -- within 20  
9 feet of the south property line, whether at that location  
10 he would expect to receive complaints from someone who was  
11 exposed to these specific measurements of sound as shown  
12 on proposed Exhibit Number 63; and if so, what complaints  
13 would he expect to receive?

14 MR. DIVER: Thank you, Madam Hearing Officer .

15 HEARING OFFICER: Can we have that question  
16 answered by the witness?

17 MR. DIVER: Yes I'll attempt to ask it of him  
18 now.

19 HEARING OFFICER: May we have it posed as of  
20 my asking?

21 MR.DIVER: Yes, we may.

22 A. I'M confused, Madam Hearing Officer. Do you  
23 want me to answer your question, is that what you're  
24 asking?

00560

1 HEARING OFFICER: Could you, Mr. Zak?

2 A. Yes.

3 HEARING OFFICER: The complainant agrees that  
4 that question may be asked of you.

5 A. In that I'd like to ask if I could ask the court  
6 reporter to read the question back.

7 (The record was read).

8 A. In answer to the question, yes I would expect to  
9 receive complaints regarding these types of sound levels  
10 on Exhibits 63. It so happens that in this particular  
11 case we're looking at a 25 ton air conditioner. The sound  
12 levels themselves, whether they came from a 25 ton air  
13 conditioner however, or another mechanical device, the  
14 expected impact on the complainant's based on having  
15 interviewed those of people who have complained about  
16 similar sound levels somehow were actually considerably  
17 lower, some higher, but the levels we're looking at here  
18 are reasonably typical of the average complaint. The  
19 people usually would describe lack of sleep, in general,  
20 lack of sleep, difficulty watching television, difficulty  
21 using the phone, caring on a conversation. Its not  
22 unusual for them to then elaborate and say that due to the  
23 aggravation they experienced from the sound that it would  
24 cause headaches or muscle strain, stiffness, type of



00561

1 reactions to it. These are not unusual complaints that I  
2 typically received from people in general who would be  
3 reacting to these types of sound levels.

4 HEARING OFFICER: Thank you Mr. Zak.

5 MR. DIVER: Thank you Mr. Zak. Thank you  
6 Madam Hearing Officer.

7 Q. I'm now showing you what has previously been  
8 admitted as Exhibit 60 and I'm asking you, one, have you  
9 seen this document before?

10 A. Yes, I have.

11 Q. Okay, I'm going to focus your attention on first  
12 that line of data under the heading June 19, 1995 that  
13 says with the 25 ton Trane air conditioner operating with  
14 discharge cones on. Do you see the particular line of  
15 data that I'm referring to?

16 A. Yes, I do.

17 Q. Okay, okay. Looking at that data with respect  
18 to each of those octave bands reported by Mr. Shiner, what  
19 types of and understanding that that particular piece of  
20 equipment was located approximately 15 or 20 feet north of  
21 the Crown property line, what types of complaints would  
22 you expect from the residents of that house?

23 MR. ELLEDGE: I have to object because you've  
24 snuck in there 15 or 20 feet for the of the property.

00562

1 That's not supported by the evidence in the record at this  
2 point.

3 HEARING OFFICER: Can you rephrase the  
4 question?

5 MR. DIVER: Well, I'd like to response to  
6 the objection as it was made. The testimony, Madam  
7 Hearing Officer as I recollect was that the test location  
8 Mr. Shiner had for the first test of July 5 was at a  
9 location 15 feet north of the Crown's property.

10 MR. ELLEDGE: If that's your question?

11 MR. DIVER: That's what I'm asking. I'm  
12 asking if we have, assuming that the sound was being  
13 measured at a location Madam Hearing Officer said 20, I  
14 believe the witness said 15, 20. I was thinking 20 as a  
15 compromise, but if its 15 feet, I have no problem. If the  
16 witness would then understand that the question related to  
17 a location 15 feet north of the Crown property line in the  
18 direction of the Shelton property, those numbers in that  
19 column the red that's showing the results of the emissions  
20 with the cones on what would the types of complaints about  
21 that you would expect from the Sheltons as the receiving  
22 property?

23 A. In answer to your question, I would like to also  
24 add that whether the distance was 15 feet or 20 feet would

00563

1 not be significant factor as far as sound impact is  
2 concerned. Looking at the numbers in question, I would  
3 expect from the average complainant to complain about  
4 night time sleeping problems, daytime difficulty in  
5 watching television, tension to muscle, caring on a  
6 conversation. And in addition to that, it's quite  
7 regularly adds to it a degree of your survival, with the  
8 enjoyment of their home.

9 Q. Okay, now drawing your attention to the next  
10 line down which references the scenario without the  
11 discharge cones and again looking at the measurement  
12 readings that were prepared by Mr. Shiner, looking at that  
13 data, I would ask you again the same question assuming  
14 that the data was obtained at the same location,, 15 feet  
15 north of the Crown property line, would your testimony be  
16 any different with respect to the symptoms or complaints  
17 that you would expect to hear from persons experiencing  
18 those sound?

19 MR. CARSON: Can we have just a moment before  
20 the witness answers.

21 HEARING OFFICER: Sure. Mr. Carson.

22 MR. CARSON: Thank you.

23 Q. Mr. Zak.

24 A. These numbers are somewhat lower with discharge

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1 cones off as compared to discharge cones on. The average  
2 difference appears to be in the order of anywhere between  
3 two to 5 decibel difference. The level is to a different  
4 decibel lower without the discharge cones. However, with  
5 an explanation here for any time these levels would still  
6 be ones we would still apply ones. We would typically get  
7 complaints on. Daytime we would expect some complaints,  
8 but not quite -- not the same extent as they would at  
9 night.

10 Q. Very good, thank you. At a point in time --  
11 strike that -- I'm now showing you what has been  
12 previously marked as Exhibit 40 admitted for  
13 identification and ask you to look at that and advise us  
14 after looking at it whether it was a document that you  
15 received during the course of your work on the Shelton  
16 complaint?

17 A. Yes, I recognize the letter.

18 Q. Now, showing you what I've previously marked as  
19 Exhibit 39 after you've had a chance to look at it I'll  
20 ask you if that was your written response to the letter of  
21 June 30th that you were supplying at --

22 A. Yes, it is.

23 Q. And did you mail that response to Mr. Crown?

24 A. Yes, I did personally.

00565

1 MR. DIVER: Move admission of Exhibit 39.

2 MR. ELLEDGE: I would object to the  
3 introduction of this document at this time because it  
4 contains statements which have not been referred to or  
5 addressed in his examination. In particular in paragraph  
6 3 it characterizes Board limits and computations as to  
7 relationship to Board limits and there's no testimony in  
8 the record at this point to support that, so I don't feel  
9 that it is can be admitted at this time, your honor. It's  
10 based on hearsay.

11 MR. DIVER: I'm going to refer you to Exhibit  
12 60 which you had just exhibited and again looking at the  
13 center column being that showing without discharge cones.  
14 Ask you if you would identify in the 4,000 octave band  
15 level what the reading is on the Shiner report --

16 A. You've got a reading of 37 without the discharge  
17 cones?

18 Q. -- right and the comparable Illinois standard is  
19 25?

20 A. Yes.

21 MR. CARSON: Objection as to what Illinois  
22 standards are?

23 Q. Comparable Illinois Pollution Control Board  
24 standards.

00566

1 MR. CARSON: Applicable to who?

2 HEARING OFFICER: Objection is sustained.

3 We've decided that Mr. Zak will not testify to any aspect  
4 of the law in this case.

5 MR. DIVER: Correct. I'll withdraw the  
6 question.

7 HEARING OFFICER: The objection on the  
8 admission of Exhibit 39 as to the Item 3, comments is  
9 sustained. My concern, however with EXhibit 39a that it  
10 not be entered for the truth of the legal aspects on which  
11 it refers and I would entertain entering this exhibit into  
12 evidence upon proper foundation and testimony for the  
13 purpose of showing that Mr. Zak did write to Mr. Crown  
14 about the case.

15 In other words, for a limited purpose.

16 MR. DIVER: Oh, yes and I would introduce it  
17 for the limited purpose of indicating a response to Steven  
18 Crown from Mr. Zak responsive to the exhibit shown as  
19 Exhibit 30, June 30th and not with respect to the truth of  
20 what is any Board standard or as to the truth of whether  
21 the Board could or could not do a particular thing.

22 MR. CARSON: We would just restate our  
23 objection as to the hearsay nature of the letter itself  
24 and in particular even if its limited to the purpose of

00567

1 showing Mr. Crown was communicated with on this subject  
2 the subject of the communication, the actual content of  
3 the communication is prejudicial. It's a matter of law  
4 and its a matter that the Board is being asked to address  
5 and I think to put it before the Board in this context  
6 would be inappropriate.

7 MR. DIVER: If we would stipulate for  
8 purposes of the record that it is not admissiblie with  
9 respect to establishing what the Board rules are or not  
10 but responding to the letter, the letter dated -- stated  
11 on its face a principle of law and even if Mr. Zak's  
12 response is 180 degrees wrong, even if it is completely  
13 untrue and we're stipulating that it is not being admitted  
14 for purposes of its voracity, but if it comes in the-- if  
15 it completely untrue, it really has to issue that enjoined  
16 the issue with Mr. Crown on the issue of it or not -- not  
17 that he was correct, but just that Mr. Crown was aware as  
18 of July 24th, 1995 that the world might not be seen in the  
19 same light as he sees it and that's what we're trying to  
20 establish through this document that Mr. Crown if you take  
21 his remarks had not just been passed by and accepted by  
22 the rest of the world.

23 MR. CARSON: May I suggest that the witness'  
24 testimony to the effect that he notified Mr. Crown in

00568

1 writing that this would be sufficient, that this would  
2 suffice. We don't need to have the letter itself entered  
3 into evidence. I think it would be inappropriate even in  
4 the purpose is limited.

5 HEARING OFFICER: The objection is overruled  
6 and in consideration of the objection, however, the  
7 Exhibit 39 will be admitted into evidence for the limited  
8 purpose of showing that Mr. Zak did communicate to Mr.  
9 Crown concerning the subject of this case. For that  
10 purpose alone is what its admitted into evidence for.

11 MR. DIVER: Thank you Madam Hearing Officer.

12 BY MR. DIVER:

13 Q. Have you ever been to the Crown property to  
14 observe the chiller unit that was reported in the Shiner  
15 document?

16 A. Yes, I have on two occasions.

17 Q. First occasion was sometime in March of this  
18 year?

19 A. That's correct

20 Q. And another occasion within the last seven days  
21 or so?

22 A. Yes.

23 Q. On the first occasion -- strike that -- showing  
24 you now what the second page of that last -- on the first



00569

1 occasion -- strike that -- showing you now what is the  
2 second page of what has been previously admitted as  
3 Exhibit 34. I ask you if you've ever seen that drawing  
4 before?

5 A. Yes, I have.

6 Q. Had that been provided to you by Mr. Shelton?

7 A. Yes, it has.

8 Q. That drawing shows a particular design or  
9 configuration of the chiller unit at the Crown property?

10 A. Yes.

11 Q. When you observed the chiller unit at the Crown  
12 property in March of 1996, did the chiller unit have  
13 anything remotely like the rooftop design shown on the  
14 right of that diagram?

15 A. No, it did not.

16 Q. Did it have anything in the way of a control  
17 device over the top of the air conditioner unit?

18 A. No, it did not.

19 Q. You returned again then on June 27th, 1996?

20 A. Yes.

21 Q. Would you explain the circumstances of your  
22 return to the Crown property in the night time hours of  
23 that day?

24 A. Mr. Elledge asked if we would take some

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1 measurements on the Crown property and in hopes of helping  
2 to resolve the matter. I agreed to visit the property and  
3 that measurements after any measurements that he might  
4 desire at the time.

5 Q. During the course of your being on the property  
6 that evening, did you also take any measurements that Mr.  
7 Elledge did not particularly direct you to take?

8 A. Yes, I did

9 Q. I'm going to show you now what has been marked  
10 as Plaintiff's Exhibit '92. I apologize to The hearing  
11 Officer because this document was faxed to us this  
12 morning, so we don't have a copy. It was faxed to Mr.  
13 Elledge and myself at the same time. Mr. Elledge, am I  
14 correct in that assertion that you received this document  
15 as well?

16 MR. ELLEDGE: Correct.

17 MR. DIVER: I'm not including his cover sheet,  
18 this document, I'm including all the rest of it.

19 Q. Showing you again that document previously  
20 marked as Exhibit '92, ask you if that's the report that  
21 you prepared for Mr. Elledge and miss concerning the  
22 investigation that you conducted on the evidence?

23 A. Of June 27th, 1996, yes, I did.

24 Q. More particularly, what time of night did you

00571

1 conduct this investigation at the site?

2 A. I obtained some measurements at the Shelton  
3 residence just before 9:30 p.m. and I did agree with Mr.  
4 Elledge to met him at the Crown residence at 9:30 and I  
5 arrived at the property, at the Crown residence shortly  
6 after 9:30 to take any measurements that he wanted me to  
7 take that evening.

8 Q You brought with you noise measuring  
9 equipment?

10 A. Yes, I brought with me sound dually infrared--

11 Q. That's what's in --

12 A. Yes, I brought with me virtually everything  
13 I've got in my inventory that's 1996 vintage. My real  
14 time analyzer, my precision sound level meter and my  
15 digital tape recorder.

16 Q. Is this all instrumentation identified in the  
17 Illinois Pollution Control Board regulations and  
18 instrumentation to be used for measurement of sound?

19 A. Yes, its actually exceeded most of the standard  
20 promulgated by the Board.

21 Q. Okay. When you arrived on the Crown property  
22 can you identify, where did you go and how were you  
23 directed to go?

24 A. I went directly for the air conditioning unit

00572

1 and at the direction of Mr. Elledge and we discussed where  
2 to take the measurements. He desired to take some  
3 measurements right at the stockaid fence. The problem we  
4 ran into there were bushes. There were bushes there that  
5 were growing directly against the fence. I was concerend  
6 about two things; about taking measurements very very  
7 close to the fence. One would be reflection. Reflection  
8 would be very bad. In addition, the vegetation, if it  
9 brushed against the microphone would give us an unusually  
10 high measurement. I suggested then moving out from the  
11 fence so that we could clear the vegetation and he agreed  
12 to that. That's a-- I set the tripod up with microphone  
13 calibrating instrumentation and began taking measurements.

14 Q. You used the Board reflection measurement.  
15 Now, can you tell me what you mean by sound reflection?

16 A. Yes. What I might do if I could would be to go  
17 to the last page of this report which I've a diagram and I  
18 apologize that the diagram is not clearer, I was in a  
19 hurry to get the diagram out for this hearing today. But  
20 what the diagram demonstrates the Shelton home is at the  
21 top of the diagram to the north. The Crown home is to the  
22 south and the stockaid fence lies almost directly between  
23 the two residences. And as far as a foundation -- as far  
24 as a sound field or acoustical field is concerned, we have

00573

1 a lot of surfaces that are running in parallel or in a way  
2 I would call -- let me just put it this way, we have a  
3 number of surfaces running parallel to each other. What  
4 tends to happen is the sound will reflect off of one flat  
5 surface to another and then reflect off back to an  
6 additional surface. We've got a number of large flat  
7 surfaces in that particular, what I would call own field  
8 which is going to give us a very complex echolic effect  
9 making virtually all measurements in the area difficult  
10 because of the echos involved. The normal rules of thumb  
11 such as of decibel change per double of distance, and oh  
12 predictors used for increase or decrease of our sources due  
13 to distance are not really applicable. So like I say,  
14 what we do have is a very complex sound field that would  
15 -- if one wanted to really understand it, it would be  
16 necessary in my opinion, to take many,many measurements of  
17 area to map out the complexity of that sound field.

18 Q. But at any particular place in that sound field  
19 when a measurement is made, assuming of course its done in  
20 compliance with the methodology established in regulations  
21 that particular measurements for that particular place is  
22 accurate. You're trying to find out whether you're saying  
23 if this complex field there were an actual measurement  
24 made at a particular location whether the data at that

00574

1 particular location would directly -- would indicate what  
2 the experienced sound was right there.

3 A. Yes, it would. At any point in time the  
4 measurement at that particular point would be accurate,  
5 but what I find to -- but what I begin to notice with  
6 both Shiner's data and my data in observing the area the  
7 echolic effect bothered me considerably because I made the  
8 prediction in use of the data, I think some what  
9 questionable as from a noise control engineering  
10 standpoint. So what I did waste to cite one.

11 Q. Which is the Shelton cite is cite one, the  
12 Shelton cite?

13 A. Yes that's the Sheltons's is it.

14 Q. Thank you.

15 A. I used a microphone boom and raised the  
16 microphone 11 feet off the grounds to get above the effect  
17 from the stockaid fence and also the echo from the Shelton  
18 home. By doing that one eliminates the complexities of  
19 the sound field and you're able to get a measurement that  
20 standpoints. In other words, you're seeing what is what  
21 would normally be measured in a more typical sound field  
22 rather than a highly complex one like this. That's  
23 important because then we can look back at the air  
24 conditioner given that data and have a fairly good feel

00575

1 for what additional work needs to be done in order to  
2 bring that unit down noise wise to be in compliance with  
3 either.

4 MR. CARSON: If I may object. He's starting  
5 to testify again as to the lane,.

6 HEARING OFFICER: Okay sustained.

7 Q. Let me ask you another question Mr. Zak. I'm --  
8 let's go back to this complexity of the acoustic field and  
9 the echoic effect. As I understand it, you mean that  
10 because the air conditioning unit off the chiller unit is  
11 located immediately to the north of a reflective field  
12 surface being part of the Crown building. That sound  
13 generated from the chiller unit will affect-- will  
14 actually bounce going to the south, bounce over the  
15 building and then go north again. Is that what we're  
16 talking about is a echoic effect.

17 HEARING OFFICER: Thank you.

18 A. That's part of the echo effect, yes.

19 Q. And then that sound that are generate in that  
20 vicinity of the air conditioner, they reflect different or  
21 direct in turning forward and hitting the stockaid fence  
22 and once again?

23 A. That's correct.

24 Q. And similarly that they can go up and look --

00576

1 and hit the Shelton house and bounce again back towards  
2 the Crown property.

3 A That's correct.

4 Q. So that is-- so that essentially we have sound  
5 bouncing between stockaid fences, Crown, property wall,  
6 Shelton property walls creating this complex acoustic  
7 field. You're talking about ?

8 A. That's correct.

9 Q. But you indicated that you obtained one data  
10 set that you felt was clear and expressed what the sound  
11 actually was without there complexity, is that correct?

12 MR. CARSON: Objection. He's leading the  
13 witness.

14 HEARING OFFICER: Can you rephrase your  
15 question?

16 MR. DIVER: Yes.

17 Q. During the course of your measurement on that  
18 flight, did you obtain any data indicating what the noise  
19 or sound would be without the echolic complexity ?

20 A. I obtained data in an elevation of approximately  
21 11 feet that minimizes the echoic effect. That data would  
22 still contain sound that would be traveling from the Crown  
23 air conditioner to home-- to the side of the Crown house  
24 and bouncing off. THat particular sound wave or echo



00577

1 effect is not easy to eliminate , but the other effects by  
2 raising the like microphone that then I was able to  
3 eliminate the effects of the Shelton house and the  
4 stockaid fence and greatly simplify the acoustic problem?

5 Q. Can you identify for us on this group exhibit  
6 that data that you're just described?

7 A. On page 2 of 6 of the Exhibit labeled as your  
8 survey cite number one that represents the date that you  
9 obtained from the microphone that was at an elevation of  
10 11 feet.

11 Q. Okay. And the data that you reported there that  
12 data if experienced by a person at the location of your  
13 microphone, what complaints would you expect from a  
14 person, experiencing such sound at that location?

15 MR. CARSON: Objection only to the extent that  
16 it calls for testimony in the nature of medical  
17 psychological nature.

18 HEARING OFFICER: Sustained2.

19 Q. Okay. Assuming -- well you indicated that your  
20 microphone was probably 11 feet off the ground?

21 A. That's correct.

22 Q. At approximately what level, relative point  
23 north or south of the grown property line were you  
24 standing at that time you so held your microphone?

00578

1       A.     It would have been approximately 28 feet north  
2 of the Crown property line.

3       Q.     Just about at the facade of the Shelton house?

4       A.     What you know call -- what I call it the roof  
5 line be the facade. Do you mean roof line?

6       Q.     No, I'm talking about the actual flat surface of  
7 their home actually sought then surface -- perhaps we need  
8 to clarify that a little bit. The microphone was actually  
9 A foot or two above that point to avoid any reflection  
10 from the Shelton house if it had been lower I would have  
11 gotten Shelton house reflection. In addition I think this  
12 is important to explain on the record that the microphone  
13 was moved from side to side and rotated slightly to see if  
14 it was in a reflective field and it was not.

15      Q.     Okay?

16      A.     Okay. I think the question is we're talking  
17 about instead of the height of the microphone with respect  
18 to the roof line where you were standing in a horizontal  
19 measurement against the Crown property line for the  
20 property line and the Shelton house. How close to the  
21 Shelton house were you standing at the time you took this  
22 measurement?

23      A.     3 or 4 feet.

24      Q.     Okay. 3 or 4 feet to the south of it?

00579

1 A. Yes?

2 Q. And with a microphone held at about 11 feet?

3 A. Yes. And you then obtained sound measurements  
4 using the protocols that are identified.

5 Q. The board regulations?

6 A. Yes and in accordance with the American National  
7 Standards.

8 Q. And in conducting those tests at that  
9 location, you found this data at the various decibels or  
10 various octave bands?

11 A. That's correct.

12 Q. Looking at that data on that line identified as  
13 line 1 what would be the nature of the complaints that you  
14 would expect to receive from a citizen at that  
15 location?

16 A. Given that citizen's receiving sound at those  
17 levels.

18 MR. CARSON: Objection to the extent that it  
19 is requesting information of a medical or physiological  
20 nature as beyond the scope of the witness' knowledge  
21 beyond the scope of the witness' expertise.

22 MR. DIVER: If I need to limit the question to  
23 the same types of complaints that we're talking about  
24 before in terms of irritability, inability to sleep and

00580

1 the like I will so limit it.

2 HEARING OFFICER: I'm not looking for -- I  
3 would prefer that you produce the complaints themselves to  
4 to the witness and in your question you did not ask  
5 another question. That is overruled. I'll permit the  
6 witness to answer the question.

7 A. These sound levels were measured -- what I was  
8 told the outside of a bedroom area.

9 Based on my experience, I would expect  
10 these types of sound levels to result in complaints of  
11 sleep disturbance. "

12 Q. Given your experience in the field and the  
13 number of opportunities you've had to investigate  
14 complaints both using your instrumentation as well as your  
15 observation skills, how would you characterize the  
16 sound,-- the sound experience by these people given that  
17 it's loudness or intensity or whatever.

18 A. I hate to be repetitive, but the general nature  
19 of the source levels are such that date of night I would  
20 expect complaints of difficulty sleeping.

21 Q. Okay. What I was looking for was rather than a  
22 complaint, an actual characterization by the receiver as  
23 to -- receiver of the sound as to how they were  
24 experiencing it with respect to the -- particularly with

00581

1 respect to its loudness.

2 HEARING OFFICER: If I may Mr. Zak, I would  
3 also like to know your characterization of sound and if  
4 you can have views for us that line one and tell us  
5 something about the different entries that are entered on  
6 the line one and what each of these characteristics  
7 measurements areas would be tell you be the type of sound  
8 you would be measuring in that document.

9 A. Yes.

10 Q. And Madam Hearing Officer, for example,  
11 starting with the first entry which would be at that's a  
12 DBA measurement or what we would be normally called an A  
13 weighted measurement?

14 A. It duplicates the with the human ear responds to  
15 the 9 octave bands to the right. Its a filtered  
16 measurement that where the meter or instrumentation  
17 filters the sound in such a way so that the number it  
18 represents the response of the average human ear. If we  
19 were to take the night time level which are directly above  
20 average which is 44 we're looking at a situation where the  
21 13 decibels above the 44. As far as sound impact from the  
22 13 decibels above were looking at a impact that would be  
23 perceived above than between as low as the Board's night  
24 time limit. It would and in terms of sound power be on

00582

1 the order of 2 times the -- in terms of sound power be on  
2 the order of 20 times the 44 level.

3 HEARING OFFICER: Let the record reflect that  
4 what Mr. Zak is characterized as the Board's night time  
5 limits does not necessarily apply to this case.

6 MR. DIVER: So stipulated.

7 HEARING OFFICER: You may continue, Mr. Zak.  
8 The 31.A is the lowest of the octave bands. We normally  
9 measure it. It could be characterized as a very louder  
10 rumble type of sound. The level of 60 measured in this  
11 case is a fairly tolerable level. I would be surprised--  
12 you have had complaints at that level, but it's unusual.  
13 60 is a very tolerable level mainly because at that  
14 particular frequency the human ear perceives it as 40  
15 decibels which is quieter than the instrumentation does.  
16 So, the human ear would perceive that particular frequency  
17 as being at a level of around 20 decibel, barely  
18 perceptible. The next octave band is 63 hertz. We have a  
19 level of 64 decibels. That particular frequency is a  
20 little bit of a problem as far as human perception is  
21 concerned and the reason being is we have to look back at  
22 the 60 decibel and the 31 and a half hertz octave bands  
23 and all the decibels in the next higher octave bands of  
24 125 hertz. The 647 tends to stand up above the two

00583

1 adjacent frequencies when a situation like that occurs, we  
2 have a discrete tone. There's a tonal nature at that  
3 frequency. What it would sound like would be allow hum  
4 with some rumble to it. I would expect to have that  
5 described by the complainant as a rumble sound and it is  
6 potentially quite annoying. The next frequency is 125  
7 hertz we have a level of 58. The 58 level would be I  
8 think to most complainants very mildly irritated, almost  
9 to the point where I would tend to disregard it but it  
10 would be a very, very small factor in overall noise  
11 complaints. An example of 125 hertz would be the hum that  
12 one would typically hear from a transformer. Anyone  
13 that's been near a transformer sub station and you've  
14 heard the hum there, that's 125 hertz. 250 hertz is next  
15 frequency. The level measured with a 5. At 55 decibels  
16 at 250 hertz, the human ear is getting quite capable of  
17 hearing that frequency. The typical amount of natural  
18 opinion built attenuation of the ear is around 9 decibels.  
19 So the humane ear would first receive that 55 as being a  
20 46. But again at that level we would expect to see  
21 complaints of some sleep disturbance. I really can't  
22 think of anything comes to -- that really comes to mind  
23 to describe the 250 hertz sound as a example. It would be  
24 just a transformer humming twist as fast as it normally

00584

1 would. The next frequency is 500 hertz. We measured  
2 perhaps I shouldn't say we, I measured 54 and 17. Human  
3 ear at that point is hearing a 54 and the human ear at  
4 that point is hearing almost as 54. Its going to be quite  
5 disburbing, especially at night with most people are quite  
6 sensitive to 500 hertz and above at that levels of say 54  
7 actually at levels anything above the usually the low 40s.  
8 Again what I'm describing here, and I describe the  
9 reaction. I'm not talking about a very sensitive person,  
10 I'm talking about more of a average person. I'm, on all  
11 my examples, I'm not picking out a person who is very  
12 highly sensitive or highly sensitive, but more of a  
13 average reaction. The next frequency say thousand hertz.  
14 The level measured was 54. Here the human ear is very  
15 tuned, so a thousand hertz we're getting into a area where  
16 a lot of human speech occurs at a thousand hertz. Most  
17 people's ears hear a thousand hertz better than any other  
18 frequency. A example would be many of your police sirens  
19 are running at around a thousand hertz. It tends to be a  
20 very clearly heard, very audible frequency. The next  
21 measured frequency is 2,000 hertz. We have a level of  
22 47.2. Two thousand hertz is what I typically myself call  
23 the bird frequency. A lot of birds chirp at two thousand  
24 hertz or very enclose to it. I think a level of 47 is



00585

1 almost like a thousand hertz. It picked up by the human  
2 ear and as a matter of fact the correction for measuring  
3 at two thousand hertz and predicting human response based  
4 on an assigned standard would be adding a couple of  
5 decibels to the level so it would actually be using a  
6 level of around 48, 49 to describe two thousand hertz and  
7 again a common example would be bird chirps. Next  
8 frequency we've got is 4 thousand hertz. This level  
9 measured with a 44. This I refer to as the insect  
10 frequency cause crickets chirp at 4 thousand hertz and  
11 sequatas (phonetic) buzz a 4 thousand ]hertz. Its a  
12 frequency that many people find very very aggravating,  
13 especially if they've got a cricket in the bedroom at  
14 night and they're trying to find him. They find it very,  
15 very irritating. A level of 44 is one that again would be  
16 a very irritating level, either today or night, but The  
17 last frequency is 8,000 would tend to be the sound of high  
18 pressure escaping. For example when one is filing a  
19 automobile tire with air and the work from the high  
20 pressure air being used to inflate either a car tire or  
21 bicycle tire at a gas station would contain a lot of 8  
22 thousand hertz energy and the ear is quite sensitive in  
23 that area, although not as sensitive as it would be at say  
24 1 to two thousand hertz. But still sensitive to 8

00586

1 thousand and against a level of 34 to most people,  
2 especially at night mbut even the daytime especially at  
3 night would be very irritating,

4 HEARING OFFICER: Thank you, Mr. Zak but  
5 unless I'm mistaken, I think you forgot to refer to the  
6 level of measurement when you discussed the 1 thousand  
7 hertz. One thousand hertz level. Could you discuss the  
8 rules that you measured at the one thousand hertz level?

9 A. Yes, I a apologize for the oversight. At 1  
10 thousand hertz you -- I believe I've already stated that  
11 its the center frequency where human hearing tends to be  
12 centered at a level of 54 is as far as an annoyance is  
13 concerned is either daytime or night time. In the day  
14 time the average person would be quite irritated by a  
15 level of 54 and at night time the typical person is about  
16 twist as much annoyed and as you would expect and as you  
17 would experience in the daytime.

18 HEARING OFFICER: Thank you very much.

19 BY MR. DIVER:

20 Q. Mr. Zak, when did you determine the effect of an  
21 increase in the amount of decibels between point a and  
22 point b? How many decibels increase from point a to point  
23 b are necessary for the human ear to discern or perceive  
24 that there has been a double of the sound at point a?

00587

1 A. Ten decibels increase.

2 Q. Okay. So, roughly if there's an increase of ten  
3 decibels the ear perceives that as roughly a double of  
4 number that it began with?

5 A. Yes, on the average.

6 Q. All right. After reviewing the data -- strike  
7 that -- Madam Hearing Officer, I move for the introduction  
8 of the data in Exhibit 92.

9 MR. ELLEDGE: No objection.

10 HEARING OFFICER: Then exhibit 92 will be  
11 entered into evidence.

12 (Complainant's Exhibit No. 92 was entered  
13 into evidence.)

14 Q. Mr. Zak, after reviewing the data that you  
15 gathered yourself and giving consideration to the data  
16 that was generated on or about June 19th by Dr Shiner,  
17 which was shown in Exhibit 60 earlier, we talked about, do  
18 you still have that exhibit before you?

19 A. No.

20 Q. Okay. Looking at those two documents in  
21 particular and applying your experience, your experience  
22 in this area, is there a sound noise problem that needs to  
23 be addressed here?

24 MR. ELLEDGE; Objection to the form of the

00588

1 question?

2 HEARING OFFICER: Sustained?

3 Q. Is there something that can be done with the  
4 situation that exists currently at the 25 ton chiller unit  
5 in terms of source of sound emissions being generated from  
6 it to reduce the amount of sound being emitted from that  
7 equipment so as to allow persons at all distances of the  
8 Sheltons from that equipment to perceive it as not  
9 irritating or annoying?

10 A. In Michigan opinion, there is,

11 Q. All right would you give us one, two or three  
12 examples of things that you believe might be done to  
13 resolve that problem if you -- to diminish that sound?

14 A. There are a number of possibilities, scenarios  
15 that I think would result in a considerable decrease in  
16 sound levels from the unit. I won't list them necessarily  
17 in procedure, in the most desirable order, I'll just list  
18 them as they come to me. One potential solution would be  
19 to box in the present unit and I would describe that.  
20 Currently there are 4 sides industrial acoustic contractor  
21 calendar around the unit?

22 In addition to what is there, what  
23 could be done would be to place the same type of material  
24 on over the top in effect totally sealing the unit except

00589

1 for louvers on the one side. The side with the louvers  
2 also should be replaced with solid panels. What I've  
3 described at this point and what I've described at this  
4 point and I'm by no means done is a metal box that's air  
5 tight. It sound tight. The problem is the air  
6 conditioner will not work that way. In order to not  
7 hamper the operation of the unit and yet attack the problem  
8 and hopefully solve the noise problem, what I would  
9 suggest after the unit is boxed in would be to make 3  
10 holes on top of the metal box and place a high quality  
11 cylinder in each of those 3 holes. At the side of the  
12 unit where the louvers have been replaced was solid  
13 panels, a hole would be made at that point, a intake  
14 cylinder quality design would be placed. The 3 fans  
15 present isn't presently out underneath would not, in my  
16 opinion, be able to pull sufficient air through the  
17 configuration I described. In order to move enough air  
18 through the unit to allow us to judge properly and not  
19 over strain the existing 37 fans on top of the unit. I  
20 would suggest adding a booster fan inside the metal box by  
21 air intake silencer. What we would then have is  
22 a sufficient air flow through careful engineering design to  
23 supply the air flow need of the unit, yet the 3 exhaust  
24 silencers and one or more intake silencer if they are

00590

1 fully designed will filter out escaping noise. So that  
2 we'll have sufficient air going through the unit. But the  
3 noise would be prevented from escaping from the unit.  
4 That's one possible scenario.

5 Q. Given that would be presuming leaving the  
6 equipment right where it is, but just putting a different  
7 kind of box around it.

8 A. That's right.

9 Q. Please go on?

10 A. The next scenario would be to relocate the unit  
11 based on my many experiences with air conditioning units,  
12 that's what the solution is probably the 95 percent of the  
13 time. The unit is simply relocated to an area where it  
14 will not bother any of the neighbors. For example, at  
15 Illinois EPA we had complaint at our headquarters office  
16 on our air conditioner and we looked into enclosing them,  
17 we looked in to moving them and we had to move them  
18 several hundred feet, but the cost difference was \$50,000  
19 for encapsulating versus \$18,000 to move them. We moved  
20 them. We solved our problem.

21 A Third possibility that admittedly I  
22 haven't had a chance to research to my satisfaction was  
23 call what I called liquid system and rather than moving  
24 air through the compressors, secondly to carry away the

00591

1 the heat from the unit, what is done is piping is burried  
2 under ground in such a manner to cause very little  
3 disturbance of the grounds where the pipe is laid. The  
4 pipe is typically about a inch in diameter. Several  
5 hundred feet of pipe is laid in a loop. The pipe is  
6 filled with a solution that is very similar to the coolant  
7 in your car. The pipe comes together at the compressor  
8 unit where the fans and the current heat exchanger are  
9 replaced with a metal coil was emersed in a solution.  
10 There's a small bump. That bump pulls the coolant through  
11 the pipe that's in the ground and that has been used in  
12 central Illinois many times and is used both for the heat  
13 bump formally for winter heating and summer cooling. But,  
14 from a noise standpoint we're reducing it down to just the  
15 compressor and potentially a small bump which are easy to  
16 cover and are not subject to heating up in normal  
17 operation. So that we can just cover them with a small  
18 box and eliminated the noise problems in that manner.  
19 Those are the 3 solutions that's frequently come to mind  
20 for this situation.

21 Q. Okay. During the course of your first visit to  
22 this site sometime in March, 1996 were you able to observe  
23 whether the unit was in complete operation which all the  
24 fans were operating the compressor were operating when you

00592

1 ordered it?

2 A. No.

3 Q. Now that was in March.

4 Q. The first time you came to your deposition as I  
5 recall and I think you took a visit to the property is was  
6 that in the bar?

7 A. Yes, I don't that the unit was operating at the  
8 time I believe the weather was too cold.

9 Q. I think you're right.

10 When you were there on June 27th last week or so  
11 was all of the unit operating?

12 A. I believe that only a portion of the unit was  
13 operating.

14 Q. It just maybe one of the fans?

15 A. One of the fans and I was told the ten ton  
16 compressor was operating.

17 Q. Okay. But the 15 ton was not?

18 A. That's what I was told.

19 Q. Okay. On the basis of your operation and your  
20 measurements on that night, did you determine whether any  
21 particular part -- the moving part of this chiller unit  
22 was causing the greatest sound problem?

23 A. Yes.

24 Q. In my opinion, the fan and the top of the unit



00593

1 was the biggest culprits as far as the sound was  
2 concerned.

3 Q. And is there any control on that sound source  
4 right now?

5 A. No, currently there's not.

6 (The question and answer back were read back.)

7 MR. DIVER: I have no further questions of  
8 this witness.

9 HEARING OFFICER: At this point we'll take a  
10 five minute brake because we'' have to proceed with this  
11 witness and then we'll come back for cross-examination.

12 (A brief recess was taken)

13 HEARING OFFICER: Well a piece of housekeeping  
14 here and counsel for Complainants, Mr. Diver?

15 MR. DIVER: Yes, Madam Hearing Officer. It  
16 appears from a review of the evidence that was admitted  
17 yesterday that indeed exhibit 56 had been ultimately  
18 admitted through its author, Mr. Shiner, without  
19 restriction as an exhibit in evidence in this matter. The  
20 document which the witness has just previously been  
21 interrogated with respect to being Exhibit 63 is indicated  
22 to also. We having been confused about whether 56 had  
23 earlier been admitted into evidence. So I would ask for a  
24 stipulation of counsel now that the document that the

00594

1 witness was testifying from to the extent he testified  
2 concerning Exhibit 63 is already admitted as Exhibit 56.

3 MR. CARSON: We'll stand by the record and  
4 the Hearing Officer has told us that 56 went in before but  
5 certainly if you want to re number 56 to-- re number 63  
6 56, if that's the point of this --

7 HEARING OFFICER: Well, we can leave it or not  
8 I can show it as being the same exhibit and it got  
9 numbered in the record and then we won't have to worry  
10 about what number we referring to it as.

11 MR. DIVER: And as long as it was shown on  
12 the record that the witness was actually being shown a  
13 document that was previously and 56--

14 HEARING OFFICER: And for the record, the  
15 first time exhibit 56 was introduced it was through Mr.  
16 for the limited purpose of showing that it had been  
17 received by Mr. Mautner. Its an item, a noise result by  
18 Mr. Shiner and it was admitted into evidence during Mr.  
19 Shiner's testimony yesterday afternoon.

20 Okay mat this point we'll turn to the  
21 cross-examination of Mr. Zak.

22 CROSS EXAMINATION

23 BY MR. ELLEDGE

24 Q. Thank you Madam Hearing Officer.

00595

1                   Mr. Zak, first of all I'd like to ask you  
2 about the existing acoustic enclosure that's around the  
3 chiller unit we've been talking about. How would you  
4 characterize the quality of that enclosure?

5       A.     I would characterize it as a high quality  
6 enclosure. The material I believe is manufactured by  
7 Industrial Acoustics Corporation, and the nature of the  
8 material is I think quality. It was assembled very  
9 carefully. It was what we call a high 2transmission here.  
10 In other words, its very resistant to sound traveling  
11 sound absorptive due to the perfect rating nature of the  
12 incident. Its basically a box like structure with an open  
13 top around the chiller unit.

14       Q.     Thank you. If I may direct your attention to --  
15 if I may have again number 60, please? Is that in front  
16 of you?

17                   MR. DIVER: The witness has it before him.

18       Q.     If you'll look at it please and what I would  
19 like you to identify like to direct your attention to the  
20 line which talks about, it says July 5, 1994 discharge  
21 cones off. Would you look at that top line of figures  
22 running across to the right?

23       A.     Yes,, I'm looking at them.

24       Q.     Okay, and have you done so?

00596

1 A. Oh, yes, I thought I answered that, yes.

2 Q. I would like you to compare them if you would  
3 briefly with line figures that are under the June 19th  
4 without discharge cones running those across. So I'm sure  
5 we're talking about the same two lines. I'm looking at  
6 the lines above without discharge cones and then the line  
7 below, with the discharge cones on.

8 A. That's correct.

9 Q. Those are two lines would you agree that  
10 those reflect a a reduction in sound levels roughly at the  
11 half?

12 A. Yes.

13 Q. And so would you do that-- would you to that  
14 extent say that would it be your opinion then that the  
15 enclosure as constructed was effective?

16 MR. DIVER: I'll object without definition of.  
17 If he can testify, effective in reducing it 50 percent, if  
18 that's the question I don't have a problem with it, but  
19 just to use generally words effective, a big problem.  
20 Can you restate your problem particularly in reducing the  
21 the sound by a level of half -- I will finish the question  
22 then.

23 HEARING OFFICER: Okay?

24 A. Yes.

00597

1 Q. Okay, thank you. So its a high quality  
2 enclosure that defines a reduction in sound levels by half  
3 according to these measurement, is that correct?

4 A. Yes.

5 Q. Now referring to your testimony about the set up  
6 of measurement, you took last week would you agree that  
7 the microphone as set up in the driveway was  
8 approximately 8 feet sought of the Crown/ Shelton property  
9 line?

10 A. Yes?

11 Q. And would that take-- and would that make it  
12 --would that not tend to increase the level of readings  
13 taken from that point as compared to readings taken say 20  
14 feet north of that same property line or 15 feet north of  
15 that property line or?

16 A. To be honest with you, I really can't answer.  
17 The problem I have there is the high complexity of sound  
18 field. It makes it very unpredictable as far as what to  
19 expect at various points unless those point are actually  
20 measured.

21 Q. Okay. Then with regards to your testimony  
22 about the measurements you took, is the measurements you  
23 took 11 feet? I believe it was on the book?

24 A. Yes.

00598

1 Q. There continued to be certainly difference in  
2 the analysis using measurements taken even in that spot,  
3 is that note true?

4 A. I would say very minor difficulties. I would be  
5 a little bit by way to really say that there was a  
6 difficulty with the measurement.

7 Q. All right?

8 A. Could you tell us from those measurements what  
9 sound levels might be within the bedroom that was near  
10 where your boom was?

11 MR. DIVER: Speculative?

12 MR. ELLEDGE: I'm asking him if can use it as a  
13 basis of analysis.

14 HEARING OFFICER: Overruled. You may answer.  
15 Not without actually measuring it in the bedroom no.

16 Q Now, would you have-- If you wish to know, to  
17 obtain measurements with regard to the sound levels being  
18 experienced within that bedroom on the second floor,  
19 either day time or night time, would not the best way to  
20 do that measurement is to actually pursue it inside that  
21 beds room?

22 A. Yes.

23 Q. And did you ask on the night in question if you  
24 could measure inside?

00599

1 A. Yes.

2 Q. And you were denied?

3 A. Yes.

4 Q. Thank you. With regard to the 3 alternatives  
5 that you discussed earlier of possible further changes to  
6 be made in this system controlling. Did you intend that  
7 list to be exhaustive ?

8 A. No.

9 Q. You did note. So there could have been a more  
10 appropriate way to go as well, is that correct??

11 A. Yes.

12 Q. Now, with respect to the liquid system you,  
13 mentioned I believe you said that you had hoped to do or  
14 wished to do more back grounds work on that, is that  
15 correct?

16 A. That's correct.

17 Q. So, you did not say at this point with a degree  
18 of certainty that that if that system would -- to be used  
19 and could be effectively used in connection with this  
20 engineering, tell me, is that correct?

21 A. Correct, hat's correct .

22 Q. Thank you. Now on the night in question, the  
23 night in question is the night of his back went up and  
24 conducting -- observing up making measurements. Do you

00600

1 recall commenting on how quiet the night was out there?

2 A. Yes.

3 Q. And did you observe that we wound up talking  
4 almost in whispers during the course of that?

5 A. That is not entirely unusual when taking sound  
6 levels. That sound level data there is seems to be a  
7 natural tendency for everybody involved to tend to whisper  
8 to minimize any effect on the measuring, even when the  
9 measurement is not in progress. When there's still the  
10 tendency therefore everybody to talk in a very low voice  
11 just because sound devices are going to be running.  
12 You had noticed that, too? Did you have any problem with  
13 hearing hearing me whispering to you or did you think --  
14 did you have to repeat yourself talking to other  
15 people?

16 MR. DIVER: What distance are we talking  
17 about? No foundation.

18 Q. Any time during the course of our grouping  
19 around the point where you took measurements  
20 from.

21 MR. DIVER: I object. I don't think there's  
22 any testimony in the record that Mr. Elledge was  
23 whispering to this witness at any point in time.

24 HEARING OFFICER: The first objection was as



00601

1 to the distance and I think what you might do is be--  
2 might do is indicate through testimony here where you were  
3 standing and show how close you were standing to one  
4 another?

5 MR. ELLEDGE:. Thank you then I'll withdraw  
6 the question thank you.

7 Q. Did you engage in conversation on the night you  
8 were out there with Mr. Kaiser and with me and others  
9 while we were all standing within two or three feet of the  
10 microphone location?

11 A. Yes.

12 Q. Did you have any trouble being understood or  
13 understanding the conversation?

14 A. No.

15 Q. So both the fan and the compressor, as you under  
16 stand, were on and operating at that time?

17 A. Yes.

18 Q. So, at that point it was not interfering with  
19 conversation and would not have interfered with the  
20 conversation because it was conversations for instance or  
21 the like I would qualify that to some extent two  
22 statements here one we talk in a hushed tone. I truly  
23 wouldn't -- I don't know, I believe a whisper. I didn't  
24 try to make a mental note of exactly how we were

00602

1 conversing, but I know it wasn't -- it was in a hushed  
2 tone. As far as interfering with the telephone, if the  
3 person on the other end of the phone was talking very,  
4 very quietly, yes it could be a problem if the person was  
5 talking in a hushed tone on the other end of the phone.  
6 On the other hand if the person on the other end of the  
7 phone was talking in say a normal tone of voice, I would  
8 not -- no it wouldn't have interfered then.

9 Q. Okay. So irregardless of what the numbers  
10 show of the other levels I think that occasions not such  
11 as would interfere with conversations conducted in a  
12 hushed tone, is that correct?

13 MR. DIVER: Objection as to what those  
14 conversations do, what those conversations would do. If  
15 they're asking what this particular conversation did,  
16 that's fine.

17 MR. ELLEDGE: I'll accept the correction.

18 HEARING OFFICER: Okay.

19 A. Could you repeat the question, please?

20 (The record was read)

21 Q. I would like to correct that to mean did not  
22 interfere in?

23 A. That's correct?

24 Q. Thank you. Now during the course of those

00603

1 measurements did you take ambient sound measurements?

2 A. Yes, I did.

3 Q. And is that reflected on the second page out of  
4 of an Exhibit.

5 A. Two or 3 on page 27 of 66.

6 Q. And what line was that-- was reflected the two?

7 A. That would be the 3rd line down label on the  
8 extreme left-hand side, 2a?

9 Q. Did you observe what was the dominant sound by  
10 measured?

11 A. Yes the dominant sound was the Shelton air  
12 conditioning.

13 Q. And so the figures that I read here going across  
14 the 2A really reflect the level of sound being emitted by  
15 Shelton air conditioner with the Crown air conditioner  
16 off, is that correct?

17 A. That's correct.

18 MR. ELLEDGE: I have no further questions .

19 MR. DIVER: Just two questions.

20 THE COURT: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. DIVER:

23 Q. Just two areas. First concerning the last  
24 subject of inquiry and that's concerning the 2s condition?

00604

1 A. Yes.

2 Q. Now, you show in the very first column under the  
3 DBA a number and what is that number?

4 A. The 2a condition. The number in the 2a  
5 condition is 45.

6 Q. And you also show on that a number from the IPCB  
7 night time standard. Although I'll stipulate you're not  
8 deciding whether that's applicable but how do those two  
9 numbers relate to one another.

10 A They were within one decibel of each other.

11 Q Understood. How does the humane perception  
12 of that increase from 44 to 45?

13 A. The same standard to determine a one decibel  
14 change because a one decibel change is so slight is for a  
15 person to listen to a pure tone and then have an operator  
16 either increase or decrease the only one decibel.

17 THE average person can just barely perceive a  
18 change in there. Some kids can, some people can't. If a  
19 person were to -- if a-- if I myself were to walk out of  
20 the room and there was a one decibel change and I walked  
21 back in the room, with my experience, I couldn't tell you  
22 if I went up by one decibel or it went down by one  
23 decibel.

24 Q. Okay, thank you. You have talked about the

00605

1 evening of June 27th and the fact that a number of  
2 individuals were walking around in the vicinity of the  
3 chiller unit and were able to converse. Can you give us  
4 some explanation why that circumstance might prevail at  
5 the same time that the sound source or the noise source  
6 was actually causing a noise from us 20 to 30 or 40 feet  
7 away?

8 A. I would say my person that is that we were  
9 located is in what we would call in the acoustical field  
10 what we would call the shadow zone. We were getting a  
11 lot of sound reduction from the walls of the very well  
12 constructed sound containers that's around the unit. Once  
13 you get some distance away and especially once you get up  
14 in the air where the effects of the, if I would call it  
15 the metal box, is virtually anything legible. Then you'd  
16 begin to get the interference.

17 Q. AND that is that relates to the fact that the  
18 dominant noise sound here is the fans that are  
19 uncontrolled at the top of the unit?

20 A. That's correct.

21 MR. DIVER: No further questions.

22 HEARING OFFICER: Is there any recross?

23 MR. ELLEDGE: Yes, there is some recross.

24 RE-CROSS EXAMINATION

00606

1 BY MR. ELLEDGE:

2 Q. If you would go to the letter that's the 2a and  
3 move over to the 8,000 hertz line. I believe is what you  
4 know characterized as being high pressure air escaping?

5 A. Yes.

6 Q. All right?

7 A. Yes.

8 Q. And a level of 33, how would you characterize  
9 that in terms of the Respondents on the human ear?

10 A. I would characterize it as being somewhat  
11 disturbing as far as sleep is concerned. Daytime I would  
12 say is virtually no effect. But as far as sleeping at  
13 night, it it would have some effect. It could have an  
14 impact on sleep.

15 Q. All right. Would you look at the 4 thousand  
16 hertz.

17 A. Yes.

18 Q. And what -- how would you on line 2s I believe  
19 the frequency that's for Sakada's, just for a thumbnail?

20 A. Yes, that's what I would call the bug  
21 frequency and where we would see crickets and Sakadas  
22 things like that. And a level of 34 again would be  
23 something of a nice improvement, but not really a  
24 significant time problem.

00607

1 Q. Now moving down to the two thousand frequency  
2 on line 2a in that and that's the birds frequency, I  
3 believe?

4 A. Yes.

5 Q. And how would you characterize the reading you  
6 have there?

7 A. I would characterize it as being tolerable  
8 daytime. Virtually no effect on a person during the  
9 day time. You take a lot of daytime effect on a person  
10 during the daytime.

11 At night it would be a minor hit. It  
12 could be a minor noise and at night.

13 Q. Now the 1,000 one and that's your characterize  
14 the setting here as very, very attuned to that frequency,  
15 I believe?

16 A. Yes.

17 Q. Would you characterize the reading you received  
18 as reported open line 2a.

19 A. In this situation daytime, no. Probably night  
20 time a potentially minor problem.

21 Q. Would it be enough to interfere with sleep?

22 A. With a sensitive individual, yes.

23 MR. ELLEDGE: No further questions. Thank  
24 you, Mr. Zak.

00608

1 HEARING OFFICER: All right, thank you.

2 MR. DIVER: Madam Hearing Officer, may I be  
3 allowed an opportunity?

4 HEARING OFFICER: That was the recess.

5 MR. DIVER: Okay.

6 HEARING OFFICER: We'll go off the record for  
7 just a moment and talk about housekeeping.

8 (A brief off the record discussion was held)

9 HEARING OFFICER: Back on the record. We've  
10 heard from 8 witnesses in the last 3 days and for the  
11 record I have identified no issues of witness credibility  
12 in this case to date and we are at a point now where the  
13 parties have agreed to a hearing conclusion to a date  
14 certain and the date that has been agreed to is Friday,  
15 July 12th and if necessary we'll continue following that  
16 at the date temporarily set forth Tuesday, July 16th. So,  
17 at this time we'll recess and we'll continue this hearing  
18 on Friday afternoon. On Friday July 12th, at 9:00 a.m. in  
19 this building and the room location will be determined  
20 prior to that and I'll make counsel aware of the room well  
21 before this. Thank you very much for your attendance and  
22 cooperation in this process. We'll see you on the 12th at  
23 9:00 a.m.)

24 (The hearing was recessed for the evening at 5:00 p.m.)



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C E R T I F I C A T E

I, VERNITA HALSELL-POWELL, the undersigned  
Notary Public in and for the State of Illinois, do hereby  
certify:

That the annexed and foregoing testimony of the  
witness named herein was taken stenographically before me  
and reduced to typewriting under my direction;

I further certify that I am not a relative or  
employee or attorney or counsel of any of the parties to  
said action, or a relative or employee of any such attorney  
or counsel, and that I am not financially interested in the  
said action or the outcome thereof;

I further certify that the proceedings, as  
transcribed, comprise an accurate transcript of the  
testimony, including questions and answers, and all  
objections, motions, and exceptions of counsel.

IN WITNESS WHEREOF, I have hereunto set my and  
affixed my official seal this 16 day of July. 1996.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Illinois.  
CSR No. 084-001831