

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

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1 PRESENT:

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

9
10 MR. LIONEL TREPANIER
11 MR. JOSEPH LORENZ
12 MR. WES WAGER

13 Appeared Pro Se;

14
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19 (312) 876-6928
20 BY: MR. NORMAN P. JEDDELOH

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

24
25 ADDUCCI, DORF, LEHNER, MITCHELL, &
26 BLANKENSHIP, P.C.
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28 Suite 2130
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30 (312) 781-2200
31 BY: MR. MARSHALL L. BLANKENSHIP

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

34 ALSO PRESENT:

35 Ms. Terry Stroner

36

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1 HEARING OFFICER KNITTLE: We're back on
2 the record. This is May 12th, 1999, a
3 continuation of a hearing in PCB 97-50, which is
4 Lionel Trepanier, Wes Wager, Maureen Minnick,
5 Lorenz Joseph, Maxworks Garden Cooperative, and
6 Avi Pandya vs. Speedway Wrecking Company and the
7 Board of Trustees of the University of Illinois.

8 Present today for the complainants are
9 Lionel Trepanier and Lorenz Joseph. None of the
10 other complainants are present. I also did not
11 note for the record yesterday, but the
12 complainants who were present yesterday were
13 Lionel Trepanier, Lorenz Joseph, and Wes Wager.
14 Yesterday, none of the other complainants aside
15 from those three appeared. Respondents are both
16 present and accounted for.

17 Today we are continuing with the
18 respondents' case. I want to make sure there's no
19 outstanding motions before we get started.

20 Are there any outstanding motions on
21 behalf of the complainants? Seeing none,
22 respondents?

23 MR. BLANKENSHIP: No.

24 HEARING OFFICER KNITTLE: Seeing, none,

1 Mr. Blankenship, you can call your first witness.

2 MR. BLANKENSHIP: I will call Larry

3 Kolko, and we would request that the video be

4 turned off.

5 HEARING OFFICER KNITTLE: Mr. Joseph, can

6 you turn off the videotape, please?

7 MR. JOSEPH: Okay. Could I maybe ask why

8 they don't want --

9 MR. BLANKENSHIP: We've gone through

10 this.

11 HEARING OFFICER KNITTLE: We've gone

12 through this, and they have under the regulations

13 the ability to not be videotaped if the witness so

14 requests.

15 MR. JOSEPH: Right. It's my

16 understanding that if the witness was going to

17 refuse to testify? Is that the rules on it?

18 HEARING OFFICER KNITTLE: I'll pull it

19 out again, if you want.

20 MR. BLANKENSHIP: We've discussed this

21 four or five times.

22 HEARING OFFICER KNITTLE: Understood.

23 MR. JOSEPH: I understand that. I guess

24 my question is I kind of want to hear the witness

1 say that he's going to refuse to testify.

2 HEARING OFFICER KNITTLE: I don't think
3 he has to do that.

4 MR. JOSEPH: So you're saying his
5 attorney can speak for him?

6 HEARING OFFICER KNITTLE: I'm saying his
7 attorney has requested that the videotape be
8 turned off while he is testifying. I'm assuming
9 that's at the witness' request, and I'm asking you
10 to turn off the videotape.

11 MR. JOSEPH: Okay. So you don't want to
12 be taped. That's fine. I'll go along with that.
13 It's off.

14 HEARING OFFICER KNITTLE: You can proceed
15 Mr. Blankenship.

16 MR. BLANKENSHIP: Will you state your
17 full name for the record, please?

18 HEARING OFFICER KNITTLE: Do you want to
19 swear him in?

20 MR. BLANKENSHIP: He was sworn once, but
21 we could swear him again.

22 HEARING OFFICER KNITTLE: Oh. Was he?

23 MR. BLANKENSHIP: He testified before.

24 HEARING OFFICER KNITTLE: That's true.

1 Why don't we swear him in anyway? Can you swear
2 him in, please?

3 (Witness sworn.)

4 WHEREUPON:

5 LARRY KOLKO,

6 called as a witness herein, having been first duly

7 sworn, depose and saith as follows:

8 DIRECT EXAMINATION

9 by Mr. Blankenship

10 Q. Would you state your full name for the
11 record?

12 A. Larry Kolko, K-o-l-k-o.

13 Q. It's not my intent to repeat all of your
14 prior testimony here. So I'm going to try to be
15 very short, Mr. Kolko.

16 Has Speedway ever been cited for
17 violation of a law or ordinance with respect to a
18 demolition which Speedway performed?

19 A. Not to my recollection.

20 MR. BLANKENSHIP: Okay. I'm going to
21 tender to the witness and to everyone some
22 exhibits in that book, and, I apologize, I've
23 removed some to try to speed things up here. So
24 we're only going to look at a couple of the tabs.

1 BY MR. BLANKENSHIP:

2 Q. I will ask the witness to turn to tab
3 number five, please, which I'll identify as
4 Speedway Exhibit 5.

5 (Speedway Exhibit No. 5
6 marked for identification,
7 5-12-99.)

8 BY MR. BLANKENSHIP:

9 Q. Can you identify Speedway Exhibit 5, and
10 I note it consists of two pages.

11 A. Yes.

12 Q. What is Speedway Exhibit 5?

13 A. The first page is a copy of the wrecking
14 permit issued by the City of Chicago to demolish
15 the structure at 1261 South Halsted Street.

16 Q. And the second page?

17 A. The second page is a permit issued to
18 Speedway for the erection of a canopy on the -- in
19 the curb lane of Halsted Street with a 20-foot
20 return on 13th Street.

21 Q. Who issued that second permit?

22 A. The City of Chicago.

23 MR. BLANKENSHIP: I would move to admit
24 Speedway Exhibit 5.

1 HEARING OFFICER KNITTLE: Before we see
2 if there's any objections, do you want this
3 admitted as Speedway Exhibit 5?

4 MR. BLANKENSHIP: Yes. We might as well
5 just make it Speedway 5 just to keep it straight.
6 We'll just have a couple numbers because they've
7 already been marked.

8 HEARING OFFICER KNITTLE: That's fine. I
9 just wanted to make sure.

10 Mr. Trepanier and Mr. Joseph, is there
11 an objection to this exhibit?

12 MR. JOSEPH: Is there an original? I
13 mean, it's just a copy. I don't know.

14 HEARING OFFICER KNITTLE: Is that your
15 objection?

16 MR. JOSEPH: Yes.

17 HEARING OFFICER KNITTLE: Mr. Trepanier,
18 anything?

19 MR. TREPANIER: None.

20 HEARING OFFICER KNITTLE: Okay. I'm
21 going to admit these exhibits over the objection
22 of Mr. Joseph.

23

24

1 (Speedway Exhibit No. 6
2 marked for identification,
3 5-12-99.)

4 BY MR. BLANKENSHIP:

5 Q. Please look at Exhibit 6 under tab six,
6 Speedway 6. Can you identify that document?

7 A. Yes. It's a hand drawing of the
8 building -- of the layout of the property at 1261
9 South Halsted.

10 Q. Was that drawing prepared in conjunction
11 with Speedway's work at 1261?

12 A. I'm sorry.

13 Q. Was Speedway Exhibit 6 prepared in
14 conjunction with Speedway's work at 1261?

15 A. Yes, it was.

16 Q. And does Speedway Exhibit 6 accurately
17 represent the building at 1261 Halsted and its
18 immediate surroundings?

19 A. As it was at the time, yes.

20 Q. Okay. What is -- there's a little
21 L-shaped shaded area reflected on Speedway Exhibit
22 6. What does that represent?

23 A. It says canopy with an arrow pointed to
24 it. So that is the canopy on Halsted and the

1 return, the 20-foot return, on 13th Street.

2 MR. BLANKENSHIP: I'd move to admit

3 Speedway Exhibit 6.

4 MR. TREPANIER: I would have an objection

5 to this exhibit inasmuch as it is purporting to

6 accurately depict the surroundings, and I would

7 draw attention to the -- what would on this page

8 be the left side of 13th Street, no structures are

9 shown there nor are any structures shown on the --

10 on the west side of South Halsted Street, although

11 there are structures in both of those locations as

12 well.

13 As well, the exhibit does not reflect

14 the community gardens which would be within the

15 space on these pages, and it also does not reflect

16 the Reuse It Lumber Yard and the Reuse It

17 Warehouse, which would be at and below the N

18 symbol on this exhibit.

19 HEARING OFFICER KNITTLE: Mr. Joseph, do

20 you have any objection?

21 MR. JOSEPH: It looks like the canopy is

22 on the street here. I mean, maybe we can get that

23 in the questions. It doesn't look like it

24 accurately shows maybe where the canopy was.

1 HEARING OFFICER KNITTLE: Is that your
2 objection?

3 MR. JOSEPH: Yes.

4 HEARING OFFICER KNITTLE: Mr. Blankenship,
5 do you have anything before I rule?

6 MR. BLANKENSHIP: I think the witness
7 testified that this accurately represented it. If
8 they have a question about that, they can
9 certainly cross-examine him on it. It doesn't
10 purport to be the entire Maxwell Street area.
11 This is the building at issue, and that's what
12 we're trying to show with it, and I think there is
13 a building reflected on 13th Street.

14 The map obviously doesn't go to the
15 west side of Halsted Street because it doesn't
16 show the end of Halsted Street, and I think the
17 testimony with respect to the garden that we've
18 heard so far indicates the garden is actually off
19 this page as well.

20 So they can certainly cross-examine the
21 witness on it, but I think he's testified as to
22 the foundation.

23 HEARING OFFICER KNITTLE: Right. I'm
24 going to admit this exhibit over the

1 objections. It meets the Board's evidentiary
2 requirements.

3 (Speedway Exhibit No. 7
4 marked for identification,
5 5-12-99.)

6 BY MR. BLANKENSHIP:

7 Q. Please turn to Speedway Exhibit 7. Can
8 you identify that?

9 A. Yes. That's a page from our logbook of
10 Thursday, September 5th, 1996, which shows all the
11 activity of Speedway at all jobs on that given
12 day.

13 Q. Now, is this a record that's kept in the
14 ordinary course of Speedway's business?

15 A. Yes, it is.

16 Q. Is this a record that Speedway relies
17 upon in the course of its business?

18 A. Yes, it does.

19 MR. BLANKENSHIP: Move to admit Speedway
20 Exhibit 7.

21 HEARING OFFICER KNITTLE: Response?

22 MR. TREPANIER: I have an objection to
23 the admission of Exhibit 7 because this document
24 Speedway kept from the complainants. Even though

1 apparently they intended to introduce this at the
2 trial, the complainants themselves weren't even
3 given notice that such -- this document existed
4 until the second day. We weren't provided this
5 until the second day of trial.

6 MR. BLANKENSHIP: This is the document
7 that I didn't know existed until the second day of
8 trial. We provided it as soon as I got it, and
9 they've had it now for six weeks, and they've
10 asked every witness about -- you know, it's guided
11 their whole case.

12 HEARING OFFICER KNITTLE: Right. Mr. Joseph,
13 did you have anything?

14 MR. JOSEPH: You know, I can't read it.
15 I really can't read it. It's a bad Xerox or
16 original or something. It's very faint. I can't
17 really make anything out on it.

18 HEARING OFFICER KNITTLE: Mr. Trepanier,
19 you were about to say something else?

20 MR. TREPANIER: I want to clarify. I
21 believe the record will show that we -- that we
22 did not ask every witness regarding this, what
23 they're trying to bring in as Exhibit 7. In fact,
24 we haven't offered this as an exhibit, and I think

1 that it would be unfair to allow Speedway to use
2 this document that they had withheld from us even
3 though it would have helped us put on our case in
4 a more coherent fashion. They now try to use it
5 for their own purposes while having prevented us
6 from getting beneficial use of it.

7 HEARING OFFICER KNITTLE: Mr. Blankenship,
8 do you have anything to add before I make a
9 ruling?

10 MR. BLANKENSHIP: No.

11 HEARING OFFICER KNITTLE: I'm going to
12 admit this. Mr. Trepanier, this was provided to
13 you when it was discovered by the respondent,
14 Speedway Wrecking Company, and it is so admitted.

15 BY MR. BLANKENSHIP:

16 Q. Mr. Kolko, I direct your attention to the
17 bottom of Speedway Exhibit 6, and there's a line
18 that begins with number 209. What is that
19 notation about?

20 HEARING OFFICER KNITTLE: Can I
21 interject. Are you referring to Speedway 7?

22 MR. BLANKENSHIP: Seven. I'm sorry.

23 HEARING OFFICER KNITTLE: For the record,
24 I want it to be clear.

1 MR. BLANKENSHIP: Yeah.

2 BY THE WITNESS:

3 A. On the bottom on the far left side it
4 shows 6:45, which depicts the starting time of
5 either a vehicle or a person.

6 BY MR. BLANKENSHIP:

7 Q. And what job is this referring to? You
8 said this covers many jobs.

9 A. The lines indicate 1261 South Halsted.

10 Q. Okay.

11 MR. TREPANIER: Objection. He's saying
12 lines indicate that. I don't know what he's --
13 he's just made a conclusion.

14 HEARING OFFICER KNITTLE: I'm going to
15 overrule, Mr. Trepanier. I think he's referring
16 to the fact that 1261 South Halsted is written on
17 the document.

18 BY MR. BLANKENSHIP:

19 Q. Continue with your explanation, please.

20 A. Okay. It shows the starting time of
21 6:45. In this case, it's a vehicle. The vehicle
22 number was No. 209 in parentheses T5. 209 is a
23 semi-tractor. T5 is a semitrailer. Next to that
24 indication it says tires, comma, hoses, and then

1 to the far right the name Bamberg, B-a-m-b-e-r-g,
2 appears, and next to that is the hours for that
3 day is eight and a quarter.

4 Q. What does that entry mean?

5 A. That means the total time that
6 Mr. Bamberg started at 6:45 and his time for that
7 day was eight and one-quarter hours.

8 Q. What do the entries tires and hoses mean?

9 A. The tires and hoses were --

10 MR. TREPANIER: Objection here. I don't
11 know that we've got a foundation laid that
12 Mr. Kolko either created this document or is any
13 position to, with prior knowledge, interpret what
14 the meaning of this document is.

15 HEARING OFFICER KNITTLE: Mr. Blankenship,
16 do you want to comment?

17 MR. BLANKENSHIP: Well, he's testified
18 it's Speedway's logbook, and he is the head of
19 Speedway on this job. I can ask him if he knows
20 what these things mean, if that will help.

21 HEARING OFFICER KNITTLE: Why don't you
22 do that.

23 BY MR. BLANKENSHIP:

24 Q. Are you familiar with the terms that are

1 used in the logbook at Speedway?

2 A. Yes. The way this logbook is created is
3 from a blackboard that I create every night.

4 Q. Okay. Now, tell me what does tires and
5 hoses mean.

6 A. Tires and hoses means that it was loaded
7 on Mr. Bamberg's truck the night before and then
8 it says iron to general then go to Cleveland. So
9 what this means is that the tires and the hoses
10 were to be dropped off at Halsted Street. He was
11 to then dump his iron, which was also loaded on a
12 truck at General Iron, and then to go to the
13 Cleveland job, which is indicated at the top of
14 the page.

15 Q. Okay. Now, please describe the condition
16 of the property at 1261 Halsted when Speedway
17 completed its work there?

18 A. It was a graded-off lot and topped with
19 earth and graded.

20 Q. Had all the spoils been removed from the
21 demolition?

22 A. Yes.

23 Q. In his questioning to Mr. Henderson,
24 Mr. Trepanier referred to an incident involving a

1 hole in the wall between 1261 and the property
2 adjacent to the north.

3 Was, in fact, a hole in the wall
4 discovered in the course of the demolition?

5 A. Yes.

6 Q. What was that?

7 A. Each building, the building to the -- the
8 building to the north, which I don't know the
9 address, but it shows on our plot plan, they had
10 their own separate walls. When we removed our
11 four-story wall and got down to the bottom, there
12 was apparently an opening in the three-story
13 building that remained.

14 It was like a doorway opening that was
15 there. We wrecked our building, saw this, called
16 attention to the University that there was an
17 opening, and that it probably should be boarded
18 up.

19 Q. How was this -- and then the owner of the
20 adjacent building made some complaint about this
21 opening?

22 A. Yes did he.

23 Q. And how was that resolved?

24 A. I don't believe there was ever any

1 monetary damages or anything that were paid to the
2 owner.

3 MR. BLANKENSHIP: That's all the
4 questions I have.

5 HEARING OFFICER KNITTLE: Mr. Jeddelloh,
6 did you have anything for this witness?

7 MR. JEDDELOH: I do not, sir.

8 HEARING OFFICER KNITTLE: Mr. Trepanier,
9 do you want to start the cross-examination?

10 MR. TREPANIER: Yes, I will. Thank you.

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

12 by Mr. Trepanier

13 Q. Good morning, Mr. Kolko.

14 A. Good morning, sir.

15 Q. I'd like to refer to your Exhibit No. 5,
16 a building permit. Are you aware of what activity
17 this building permit did permit?

18 A. Demolition of the property at 1261 South
19 Halsted Street.

20 Q. Did this building permit include asbestos
21 removal?

22 A. It has nothing to do with asbestos
23 removal.

24 Q. Did this building permit -- was this

1 building permit issued on your application?

2 A. Yes, it was.

3 Q. And did your application disclose whether

4 or not asbestos was present at 1261?

5 A. I can't answer the question. I don't

6 know.

7 Q. Have you brought the documents with you

8 as your application for the permit?

9 A. I don't think I have those, no, sir.

10 Q. I'm just looking through my papers right

11 now. I'm looking through the 34 pages that

12 Speedway turned over to me to see if the

13 application for the permit is here.

14 Now, I want to -- marked as

15 Complainants' Exhibit, I believe, No. 8 a

16 demolition renovation notice of intent. It's has

17 a marking Speedway No. 20, SW 20, and I'm handing

18 that to you, Counsel.

19 Now, is that the application for the

20 building permit, for the demolition permit as your

21 Exhibit No. 5?

22 A. It appears to be.

23 Q. And does that refresh your memory in

24 regards to if you made a statement regarding

1 asbestos in the property when you applied for the
2 permit?

3 A. Not exactly, because I really don't get
4 involved in the billing out of the paperwork in
5 the office.

6 Q. Have you seen this form before?

7 A. Yes, I have.

8 Q. And on that -- and is that form created
9 in the regular course of business of Speedway
10 Wrecking?

11 A. Yes, it is.

12 Q. Whose signature is on the form?

13 A. Beverly Stephens.

14 Q. And who is she?

15 A. Secretary.

16 Q. And does that document -- maybe I'll take
17 a look at it and ask a more sensible question, if
18 I might.

19 Now, directing your attention to a
20 paragraph near the top of the document that's
21 titled removal of asbestos notice, et cetera, is
22 there a line there that is labeled asbestos
23 content?

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

1 him asking him to read the document now. He said
2 he didn't prepare it. If he wants to try to get
3 it in evidence, that's one thing, but he shouldn't
4 be allowed to circumvent that by having Mr. Kolko
5 read a document that he didn't prepare as if
6 that's evidence.

7 HEARING OFFICER KNITTLE: Mr. Trepanier?

8 MR. TREPANIER: This is -- Speedway is
9 attempting to rely on a building permit for which
10 this document I'm trying to bring into evidence is
11 the application there for it. This was --
12 Mr. Kolko has testified that this document was
13 prepared in the regular course of Speedway
14 business, that he recognizes the signature as the
15 proper person at Speedway to have signed that, and
16 he believes that this is the application for the
17 permit that they've entered into evidence.

18 MR. BLANKENSHIP: I guess I'm suggesting
19 you move to admit it.

20 HEARING OFFICER KNITTLE: Are you
21 offering to admit this into evidence, Mr. Trepanier?

22 HEARING OFFICER KNITTLE: Is there an
23 objection?

24 MR. BLANKENSHIP: No.

1 HEARING OFFICER KNITTLE: That will be
2 admitted.

3 MR. BLANKENSHIP: My objection to him
4 testifying as to what the document says still
5 stands, and the document is in evidence now.

6 BY MR. TREPANIER:

7 Q. Now, Mr. Kolko, has this document
8 refreshed your memory regarding whether a
9 statement was made when that permit was applied
10 for regarding asbestos content of the building?

11 A. It doesn't necessarily refresh my memory
12 because I have no knowledge of it.

13 Q. Now, do you know -- is it the -- do you
14 know is standard practice in your demolitions in
15 the City of Chicago that the City of Chicago will
16 give permission to Speedway Wrecking to demolish a
17 building that does have asbestos in it?

18 A. No, that is not my knowledge.

19 Q. Is, in fact, the policy -- is it the
20 policy of the City of Chicago that a demolition --
21 that before a demolition occurs that asbestos must
22 be -- there must be none or all the asbestos
23 removed from a property?

24 A. That is correct.

1 Q. Do you know if there was asbestos in 1261
2 when that demolition began?

3 A. To my knowledge, no.

4 Q. And what's your knowledge based on?

5 A. My knowledge is based on the fact that we
6 were given a letter to -- from the University to
7 proceed, number one, which indicated asbestos had
8 been removed and, number two, my own personal
9 cursory walk through.

10 Q. Now, the letter that you received from
11 the University to proceed, did that letter state
12 that the asbestos had been removed?

13 MR. BLANKENSHIP: I'm going to object. I
14 let him go for a while, but this is way beyond the
15 scope. Mr. Kolko didn't even mention the word
16 asbestos in his direct testimony. You know, we
17 talked about two documents, and none of -- three
18 documents, none of which had anything to do with
19 asbestos. He's already gone through all of this
20 on his own direct of Mr. Kolko.

21 HEARING OFFICER KNITTLE: I'll sustain
22 that, Mr. Trepanier. You know, I'm sure by now,
23 that cross-examination is limited to what was gone
24 over in the direct exam.

1 BY MR. TREPANIER:

2 Q. A building permit, your Exhibit 5, that
3 didn't allow you to demolish a building with
4 asbestos in it, did it?

5 A. No, it did not.

6 Q. Do you know why the City of Chicago
7 required installation of a canopy on this job?

8 MR. BLANKENSHIP: Objection. That's
9 calling for him to speculate as to what the City
10 of Chicago -- is in the City of Chicago's mind
11 when it requires certain things.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. TREPANIER:

14 Q. Was it your idea to install a canopy?

15 A. No, it was not.

16 Q. Whose idea was that that a canopy be
17 installed?

18 A. It's required by this permit from the
19 City of Chicago.

20 Q. Do you know why a permit --

21 MR. BLANKENSHIP: The same objection.

22 BY MR. TREPANIER:

23 Q. -- for the canopy was required?

24 MR. BLANKENSHIP: Same objection, asked

1 and answered.

2 HEARING OFFICER KNITTLE: Sustained.

3 BY MR. TREPANIER:

4 Q. Do you know what the purpose of that
5 canopy was?

6 A. It was a pedestrian walkway.

7 Q. Did anyone walk on the canopy?

8 A. Walk on it did you say? No, walk under
9 it.

10 Q. And was that canopy installed on the
11 street?

12 A. Yes, it was.

13 Q. Why was a canopy -- why is a canopy
14 required over the street?

15 MR. BLANKENSHIP: Same objection. He's
16 asked that three times, and I've objected to it
17 twice, and it's been sustained.

18 HEARING OFFICER KNITTLE: I'm going to
19 overrule this. I think it's different than the
20 other question.

21 BY THE WITNESS:

22 A. Could you repeat your question, please?

23 BY MR. TREPANIER:

24 Q. Why was a canopy required over the

1 street?

2 A. For the protection of passersby,

3 pedestrians.

4 Q. And to protect them from what, sir?

5 A. Falling debris, possible falling debris.

6 Q. Did any debris fall on the canopy?

7 A. It could have.

8 Q. Do you know if debris fell on that

9 canopy?

10 A. Not for a fact, no, but it certainly was

11 possible.

12 Q. And did the canopy have any purpose other

13 than to catch potential falling debris?

14 MR. BLANKENSHIP: Asked and answered in

15 his direct testimony three days ago or nine days

16 ago.

17 HEARING OFFICER KNITTLE: Mr. Trepanier

18 --

19 MR. TREPANIER: I asked questions about

20 the purpose of the canopy, but it wasn't to

21 Mr. Kolko. Mr. Kolko, I think, was my first or

22 second witness, and it was further down when

23 somebody made a claim about other purposes for

24 this canopy other than catching debris falling.

1 MR. BLANKENSHIP: Let me also object on
2 relevance grounds. The only testimony we've heard
3 about any air pollution in this case is the dust
4 that came off the back of the building. There's
5 no claim at all about debris hitting a pedestrian
6 or anything like that. The canopy -- frankly, I'm
7 not sure what the relevance of all this is.

8 HEARING OFFICER KNITTLE: What is the
9 relevance, Mr. Trepanier?

10 MR. TREPANIER: They've entered as an
11 exhibit both a picture purporting to depict the
12 canopy and a permit requiring the installation of
13 the canopy, and I'm asking some questions that's
14 clarifying what was their intent and what was the
15 purpose of this canopy.

16 HEARING OFFICER KNITTLE: And how is that
17 relevant to the case with Section 9A and Section
18 21B allegations in the complaint?

19 MR. TREPANIER: Because there has been a
20 claim that this canopy was a pollution control
21 device.

22 HEARING OFFICER KNITTLE: I'll allow the
23 question to be asked. Overruled.

24

1 BY THE WITNESS:

2 A. One more time, please.

3 BY MR. TREPANIER:

4 Q. Was there any other purpose for this
5 canopy?

6 A. As it was erected, no, but there could
7 have been other purposes.

8 Q. And for my clarity, you're saying for
9 this particular canopy at 1261 there was no other
10 purpose?

11 A. As it was erected, no, but it could have
12 served other purposes.

13 Q. I'm not understanding what -- how you're
14 responding to my question.

15 A. The purpose of the erection of the canopy
16 was not a pollution control, but there were things
17 on the canopy that could have aided in pollution
18 control.

19 Q. And what is that?

20 A. There's a backboard on it.

21 Q. And how does that backboard aid in
22 pollution control?

23 A. I am absolutely certain that we covered
24 this in the direct, but if you'd like it again,

1 the backboard on the top of the canopy could have
2 served from any wind carrying debris too far out.
3 Now, it could have gone over the backboard, but it
4 would have been -- it could have been a help in
5 containing any dust particles.

6 Q. How large is this backboard? How tall is
7 it?

8 MR. BLANKENSHIP: Objection. We went
9 through the backboard in great detail.

10 HEARING OFFICER KNITTLE: This I'm going to
11 sustain, Mr. Trepanier. I do recall we went
12 through this, this part.

13 BY MR. TREPANIER:

14 Q. Now, referring to your Exhibit
15 No. 6, the diagram of 1261, is that something that
16 you prepared?

17 A. I did not.

18 Q. Do you know who prepared this?

19 A. I believe our estimator, Mr. Mergener,
20 probably prepared it.

21 Q. Are you familiar with the surroundings of
22 1261 Halsted?

23 A. Somewhat, yes.

24 Q. And can you tell us what is on Halsted

1 Street west of 1261 Halsted? That would be
2 towards the top on this plan.

3 A. My recollection would be commercial
4 buildings.

5 Q. And what would be to the south or to the
6 left on this map?

7 A. The same, I believe some commercial
8 buildings.

9 Q. And is the same true for north or to the
10 right?

11 A. Well, to the north was a vacant building,
12 a three-story building which remained, and I don't
13 have a specific recollection of what was north of
14 that.

15 Q. Could it be that there was more
16 commercial buildings?

17 A. Yes, it could be.

18 Q. Is that likely that it was commercial
19 buildings?

20 MR. BLANKENSHIP: Objection. He said he
21 doesn't know.

22 HEARING OFFICER KNITTLE: Sustained.

23 BY MR. TREPANIER:

24 Q. I'd like to refer to your Exhibit No. 7.

1 A. Yes, sir.

2 Q. Do you know who prepared this document?

3 A. Yes, I do.

4 Q. And who is that?

5 A. Our secretary, Beverly Stephens.

6 Q. And do you know when she prepared the
7 document?

8 A. Yes, I do.

9 Q. When was that?

10 A. It would be on the morning of September
11 5th, 1996.

12 Q. And do you know why this document wasn't
13 turned over to the complainants earlier in this
14 case?

15 A. Yes, I do.

16 Q. And why is that?

17 A. I was asked for all the documents
18 pertaining to 1261 South Halsted, and this
19 document pertains to all our operations and, quite
20 frankly, it didn't occur to me that this was a
21 part of the file of 1261 South Halsted only.

22 Q. And is there, likewise, additional
23 documents to this one that pertain to all your
24 jobs that would reflect on 1261?

1 A. Not to my knowledge, sir.

2 Q. Now, I'd like to direct your attention to

3 that line which has the number 645 and number

4 209. A word appears on that line, the word

5 tires. What does that refer to?

6 A. There were -- we loaded some old junk

7 truck tires on that truck also to be delivered to

8 1261 South Halsted.

9 Q. And what was the purpose of delivering

10 tires?

11 A. The purpose of that was that the building

12 to the north of 1261 was a three-story as shown on

13 the diagram. Our building was a four-story, and

14 in order to protect their roof from falling

15 debris, we put truck tires and some lumber from

16 the building so that no bricks would damage the

17 adjoining three-story building being that we were

18 one story over it.

19 Q. Did you have permission to do that?

20 A. No, we did not.

21 Q. And who placed the tires on the

22 three-story building?

23 MR. BLANKENSHIP: Objection, relevance.

24 HEARING OFFICER KNITTLE: Sustained.

1 MR. TREPANIER: Well, I'm inquiring into
2 the veracity of this document.

3 HEARING OFFICER KNITTLE: I think he's
4 explained what the tires were for. I don't think
5 anything else is relevant, Mr. Trepanier.

6 BY MR. TREPANIER:

7 Q. Is this the total -- back up.

8 Is this -- Thursday, September 5th, is
9 this the first day on that job?

10 A. I don't recall.

11 Q. Does this document reflect what happened
12 with those hoses?

13 A. No, it does not, other than being
14 delivered to the job.

15 Q. How does this document show that the
16 hoses were delivered to the job?

17 A. Because it says so.

18 Q. And what is it that says that?

19 A. It says number 209 T5, tires and hoses,
20 Bamberg, and then under that, he was loaded with
21 iron going to General Iron and then go to the
22 Cleveland job.

23 Q. Do you know what day the demolition
24 began?

1 A. My recollection was there were some
2 people there -- I don't have an exact. If you
3 told me September 4th, it could be. I don't have
4 an exact recollection, no, sir.

5 Q. How would the tools get to the demolition
6 site if not on this truck?

7 A. Small hand tools would be carried by the
8 foreman.

9 Q. And who made the photocopy of this log
10 that's dated Thursday, September 5th?

11 A. I wasn't there at the time, but I
12 believe -- I have reason to believe that it was
13 Beverly Stephens, our secretary.

14 Q. What reason is that?

15 A. Because it was requested at, I believe,
16 the first day or the second day of hearings here,
17 and I called and told her to make the copies so
18 that I could pick them up in the morning before I
19 came to this hearing room.

20 Q. Did you see hoses loaded onto truck
21 number 209?

22 A. I'm sorry.

23 Q. Did you see hoses loaded onto truck 209?

24 A. I don't believe I did.

1 Q. Do you know what happened to those hoses
2 if they were delivered to 1261 South Halsted?

3 A. Yes, I do.

4 Q. How do you know that?

5 A. Because I was there.

6 Q. Were you present on Thursday, September
7 5th?

8 A. I believe I was in the morning for a
9 short visit.

10 Q. Do you know what then became of those
11 hoses on Thursday, September 5th, after delivery
12 if they were to 1261 South Halsted?

13 A. Yes, I do.

14 Q. What is that?

15 A. They were hooked up to a fire hydrant.

16 Q. And then following their being hooked up
17 to the fire hydrant, were they removed? Do you
18 believe they were removed at the end of the day?

19 MR. BLANKENSHIP: I'm going to object as
20 going beyond the scope. Now, we've purposely
21 stayed away from the activities on the job, and I
22 don't want this to be seen as somehow opening the
23 door to all kinds of testimony on the job and what
24 happened on the job.

1 MR. JEDDELOH: Which, I would add, would
2 be repetition from what they did the first day.

3 HEARING OFFICER KNITTLE: I'll allow this
4 question, but, Mr. Trepanier, we've covered this
5 testimony when you called Mr. Kolko about this
6 specific item. I'm going to allow you to ask the
7 question about the hoses, but I don't want you to
8 go much farther than that. Okay?

9 BY THE WITNESS:

10 A. Mr. Trepanier, would you repeat the
11 question, please?

12 BY MR. TREPANIER:

13 Q. All right. Now, this record establishes
14 that -- do you believe this record establishes
15 that there was a hose? I'll ask a better
16 question.

17 HEARING OFFICER KNITTLE: Mr. Trepanier,
18 I don't mean to interrupt, but there was a
19 question that you had already asked of him that I
20 was allowing you to ask again. Do you want me to
21 have that read back so he can answer it?

22 MR. TREPANIER: Yeah. That's fine.

23 HEARING OFFICER KNITTLE: Why don't you
24 read that last question back so he can answer it.

1 (Record read.)

2 HEARING OFFICER KNITTLE: And the
3 question was again -- the court reporter just read
4 it back to you. It's not on the record.

5 Following their arrival, do you believe they were
6 removed at the end of the day?

7 BY THE WITNESS:

8 A. Yes, I do.

9 BY MR. TREPANIER:

10 Q. Is it possible that the word hoses was
11 added to this page just prior to it being
12 photocopied?

13 A. Absolutely not.

14 Q. And how do you know that?

15 A. I have a recollection of putting it on
16 the board.

17 Q. And did that job continue on Thursday,
18 September 6th?

19 A. This is the log for Thursday -- no.
20 You're saying September 6th?

21 Q. Friday. Excuse me. Friday, September
22 6th?

23 A. I'm sure it did.

24 Q. And on that day, do you have a

1 recollection of putting hoses on the board?

2 A. There would have been no need to. I

3 would not have put them on the board.

4 Q. And whose responsibility -- when that

5 hose was taken away at the end of the day, whose

6 responsibility was that to return it?

7 MR. BLANKENSHIP: Objection. That

8 misstates his testimony. He didn't testify the

9 hose was taken away.

10 HEARING OFFICER KNITTLE: Sustained.

11 BY MR. TREPANIER:

12 Q. I believe that you did testify that

13 the -- that you believe at the end of the day the

14 hose was taken off the hydrant?

15 A. Yes. That's correct.

16 Q. And whose responsibility is that?

17 A. It would be the foreman's responsibility.

18 Q. And do you today have a recollection of

19 where that hose was hooked up?

20 MR. BLANKENSHIP: Objection. We've gone

21 through this ad nauseam with virtually every

22 witness, including Mr. Kolko.

23 HEARING OFFICER KNITTLE: I'm going to

24 sustain because I think it's repetitive,

1 Mr. Trepanier. I do not think this is within the
2 scope of cross-examination.

3 BY MR. TREPANIER:

4 Q. Are you familiar with a list of employees
5 that was -- that worked on the job that was
6 submitted to the complainants?

7 MR. BLANKENSHIP: Objection. This is
8 beyond the scope now.

9 HEARING OFFICER KNITTLE: Sustained.

10 BY MR. TREPANIER:

11 Q. Mr. Bamberg wasn't on that list, was he?

12 HEARING OFFICER KNITTLE: Mr. Trepanier,
13 I have just sustained the objection to that line
14 of questioning.

15 MR. TREPANIER: Well, Mr. Bamberg's name
16 appears here. He's the one that's charged with
17 delivering that hose. If earlier Speedway
18 reported who their employees were on this job and
19 didn't report Mr. Bamberg, that would -- I think
20 that's proper for me to inquire into that.

21 HEARING OFFICER KNITTLE: It's beyond the
22 scope of what occurred on direct examination.

23 MR. TREPANIER: I think that what his
24 testimony was is that Mr. Bamberg delivered the

1 hose.

2 HEARING OFFICER KNITTLE: Yes, and he's
3 testified to that here again on
4 cross-examination.

5 MR. TREPANIER: So I'm --

6 HEARING OFFICER KNITTLE: You're trying
7 to get into another document that was delivered as
8 to whether or not Mr. Bamberg was on that
9 document, correct? I mean, how does that relate
10 to what happened on direct examination?

11 MR. TREPANIER: That relates to
12 questioning if -- who Mr. Bamberg is. You know,
13 is he an employee of Speedway?

14 HEARING OFFICER KNITTLE: I'm going to
15 let Mr. Blankenship respond to this, if he wants.

16 MR. BLANKENSHIP: I agree. I don't know
17 where he's going with all this. He's had this
18 list for six weeks. I'm not sure if there's an
19 issue here, what he's trying to make of this. I
20 just don't know where it's going.

21 MR. JEDDELOH: And in furtherance of the
22 beyond the scope argument, just because an
23 individual delivered some product to a site does
24 not mean that the individual remained and worked

1 on the site. It's two different issues.

2 HEARING OFFICER KNITTLE: Mr. Trepanier,
3 what are you trying to establish? I'm willing to
4 let you ask it if I think it's not beyond the
5 scope of direct examination and relevant to this
6 case, but you have to tell me why it is.

7 MR. TREPANIER: Well, I'm struggling a
8 little bit because I'm trying to locate that
9 letter that I received from Speedway who
10 identified their employees. So if I might just
11 have a moment, I think I could more sensibly
12 address this.

13 MR. BLANKENSHIP: I'd rather we just keep
14 going. If he's not prepared, he's not prepared.

15 HEARING OFFICER KNITTLE: How long do you
16 think you're going to need, Mr. Trepanier?

17 MR. TREPANIER: I'll either have this or
18 I won't. It will just take me a couple of minutes
19 to look through.

20 MR. JEDDELOH: Well, I don't think he
21 needs to have a document in order to justify his
22 line of questioning, which is what I think,
23 Mr. Knittle, you're asking him to do.

24 HEARING OFFICER KNITTLE: I'm with

1 Mr. Jeddelloh on this one, Mr. Trepanier. I still
2 want you to tell me why you think this is
3 necessary before we go on to search for the
4 document.

5 MR. TREPANIER: Okay. Well, I think that
6 if Speedway, in fact, didn't identify Mr. Bamberg
7 as somebody who worked on this job, then it's
8 improper for them to now be relying on that, that
9 work that he did to establish their case.

10 HEARING OFFICER KNITTLE: Mr. Blankenship?

11 MR. BLANKENSHIP: I believe, and maybe he
12 should ask who Mr. Bamberg is, but he didn't work
13 on the job. He dropped the hoses off on his way
14 to the Cleveland job. That's why he wasn't listed
15 as an employee that worked on the job. To the
16 extent he's curious about Mr. Bamberg, he's had
17 this document for six weeks, and he could have
18 asked who Mr. Bamberg was.

19 HEARING OFFICER KNITTLE: Mr. Trepanier,
20 I don't mind you asking questions about Mr. Bamberg.
21 I just don't want it to get beyond the scope of
22 the direct examination, which it would if you were
23 trying to bring up some past correspondence
24 between Speedway and yourself.

1 MR. TREPANIER: I think that what I'm
2 having to really struggle with here is that I have
3 an objection to the introduction of this document
4 because although as the counsel says I've had this
5 document since the second day of the hearing, but,
6 you know, as we can see that the employees listed
7 under 1261 South Halsted from seven to seven,
8 according to my document, didn't include this line
9 with Mr. Bamberg, and he wasn't listed, and I
10 believe he wasn't disclosed as an employee. I had
11 no notice that that -- that those lines from 645
12 number 209 had referred to activities going on at
13 1261 South Halsted.

14 MR. BLANKENSHIP: He's had, I think, four
15 or five Speedway witnesses since this document was
16 produced on the stand. He could have asked
17 anybody. If he wants to ask right now of
18 Mr. Kolko who is Mr. Bamberg, I think he will get
19 an answer. I suggest he do that and we move on.

20 MR. TREPANIER: I think what really makes
21 this extremely objectionable is the fact that
22 Speedway is using this document in an attempt to
23 convince the Board that they had a hose on site
24 all during this demolition job, and now they're

1 relying on a document that they withheld until the
2 trial was underway and now they're interpreting it
3 in a way that's not even clear on the face of this
4 document.

5 HEARING OFFICER KNITTLE: Mr. Trepanier,
6 you've made that objection when the document was
7 offered, and I overruled and admitted the
8 document. If you have a problem with a discovery
9 response that Speedway made and you think it's
10 impacted the case, you know, you can file a motion
11 for sanctions, but this document has been
12 admitted, and I am admitting it into evidence, and
13 it is in evidence, and you have been in possession
14 of this particular document since the second day
15 of hearing, which occurred over six weeks ago, but
16 I'm not trying to tell you that you don't have
17 options if you think that there's been a discovery
18 problem. I would encourage you to file anything
19 you want with the Board or myself, but this
20 document is in, and that's where we stand right
21 now.

22 Do you have any other questions for
23 this witness?

24

1 BY MR. TREPANIER:

2 Q. You've testified that you know that a
3 hose was dropped off at 1261 South Halsted?

4 A. That's correct.

5 Q. And did you state how it is that you know
6 that?

7 A. I was there.

8 Q. And your being there, how did that afford
9 you the opportunity to know that the hose was
10 there?

11 A. Because I saw it.

12 Q. And where did you see it?

13 MR. BLANKENSHIP: Objection. We've gone
14 through all this before.

15 HEARING OFFICER KNITTLE: This is
16 sustained. This is repetitive, Mr. Trepanier.

17 MR. TREPANIER: I have no further
18 questions.

19 HEARING OFFICER KNITTLE: Mr. Joseph?

20 MR. JOSEPH: Yes, sir.

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

22 by Mr. Joseph

23 Q. Yes, sir. What does the eight and a
24 quarter mean next to Mr. Bamberg?

1 A. I testified earlier that is the hours
2 that he worked during the day.

3 Q. So why is it listed under this job?

4 A. Because that's the first job he started
5 at.

6 Q. Did you bring the original document with
7 you here?

8 A. I did not.

9 Q. Why didn't you bring the original?

10 A. I wasn't asked to.

11 MR. JOSEPH: I have no further
12 questions.

13 HEARING OFFICER KNITTLE: Any redirect?

14 MR. BLANKENSHIP: Just a quick one.

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

16 by Mr. Blankenship

17 Q. Did Mr. Bamberg work on the 1261 Halsted
18 job on September 5th, 1996?

19 A. He did not.

20 Q. Did he work on a job on September 5th?

21 A. He is not assigned to any job. He's a
22 truck driver and his truck would go to whatever
23 jobs would be needing him at the time.

24 Q. With respect to 1261, did he have any

1 duties on September 5th other than dropping off

2 the tires and hoses?

3 A. He did not.

4 MR. BLANKENSHIP: That's all the

5 questions I have.

6 HEARING OFFICER KNITTLE: Mr. Trepanier,

7 any recross?

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

9 by Mr. Trepanier

10 Q. Dropping off tires and hoses, was that

11 superfluous to the demolition at 1261?

12 MR. JEDDELOH: I'm going to object to

13 that question. I think it's vague and imprecise .

14 HEARING OFFICER KNITTLE: Overruled. If

15 you can answer that.

16 BY THE WITNESS:

17 A. I'm not positive I understand what you

18 mean by superfluous to.

19 HEARING OFFICER KNITTLE: Can you

20 explain, Mr. Trepanier?

21 MR. BLANKENSHIP: Let me object. I hope

22 this isn't going to boil down to a semantic

23 question of what we understand work on the job to

24 mean in terms of this discovery issue. Perhaps,

1 Mr. Trepanier had a different understanding of the
2 question.

3 What he provided was a list of the
4 employees that worked on the job, and our
5 understanding of that term was the guys that did
6 the demolition. If his understanding includes
7 other work than that, that's a maybe, but it's a
8 semantic difference, and I don't want him to try
9 to -- you know, he's trying to build some record
10 here that we've committed some discovery
11 violation, and at most I think we might have had a
12 misunderstanding, but, again, he's had the
13 document for six weeks. This line of questioning
14 I think is irrelevant and improper.

15 HEARING OFFICER KNITTLE: Okay. I'm
16 going to overrule your objection and let
17 Mr. Trepanier ask the question if you can rephrase
18 it.

19 BY MR. TREPANIER:

20 Q. Was -- I'm going to remove the word
21 superfluous and rephrase.

22 Was Mr. Bamberg's participation as
23 regards to 1261 Halsted on September 5th
24 insignificant?

1 MR. BLANKENSHIP: Objection to the form
2 of the question.

3 HEARING OFFICER KNITTLE: Overruled.

4 BY THE WITNESS:

5 A. It was significant to the extent that he
6 had to deliver the tires and the hose.

7 BY MR. TREPANIER:

8 Q. Were those important to the demolition at
9 1261?

10 A. Yes, they were.

11 Q. Could the demolition at 1261 have
12 proceeded without Mr. Bamberg's participation on
13 the 5th?

14 A. It could have proceeded, but not in an
15 orderly fashion.

16 Q. And how could it have proceeded?

17 A. His purpose of going to that job was to
18 provide hoses for water protection, for dust
19 protection, and tires to go on to the other roof
20 to protect that roof. That was his sole purpose
21 and then he went to another job.

22 Q. So had Mr. Bamberg not arrived at that
23 job, how could the job have proceeded?

24 MR. BLANKENSHIP: Objection, relevance,

1 beyond the scope. I don't know what he's doing

2 with this.

3 MR. JEDDELOH: It also proposes a

4 hypothetical that's not germane. It's not within

5 the evidence that's been elicited.

6 MR. TREPANIER: This is the same question

7 that I just asked previous which wasn't answered

8 directly. So I'm going to the effort of asking

9 the same question.

10 HEARING OFFICER KNITTLE: I'm going to

11 overrule, but, Mr. Trepanier, be aware that we are

12 on recross-examination here, and the scope is

13 rather limited.

14 BY THE WITNESS:

15 A. Once again, if you don't mind.

16 BY MR. TREPANIER:

17 Q. Without Mr. Bamberg's delivery on the

18 5th, how could the job have proceeded, if at all?

19 A. If it hadn't been Mr. Bamberg, then it

20 would have been somebody else to deliver those

21 materials. I would have insisted that those

22 materials be delivered. They were an integral

23 part of the job.

24 Q. So that job couldn't have proceeded at

1 all without the delivery?

2 A. It wouldn't have proceeded in a method
3 that I would have approved of.

4 Q. Might it have proceeded just the same?

5 MR. BLANKENSHIP: Objection. This is way
6 beyond the scope of redirect now.

7 MR. JEDDELOH: And it's a hypothetical.

8 HEARING OFFICER KNITTLE: Sustained.

9 MR. TREPANIER: Thank you. I have no
10 further questions.

11 HEARING OFFICER KNITTLE: Mr. Joseph?

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

13 by Mr. Joseph

14 Q. So what kind of truck does he drive?

15 MR. BLANKENSHIP: Objection, beyond the
16 scope of redirect.

17 MR. JOSEPH: He just mentioned he drove a
18 truck to the job.

19 MR. BLANKENSHIP: On the recross.

20 MR. JEDDELOH: I'm going to object based
21 on relevancy.

22 HEARING OFFICER KNITTLE: I don't think
23 it's beyond the scope, but I'm going to sustain a
24 relevance objection, Mr. Joseph.

1 BY MR. JOSEPH:

2 Q. What else did he do that day? You said
3 he went to another job?

4 MR. JEDDELOH: Objection, beyond the
5 scope and relevant.

6 HEARING OFFICER KNITTLE: I'm going to
7 sustain the objection because I think this has
8 been asked and answered.

9 BY MR. JOSEPH:

10 Q. Did he deliver the hose every day to that
11 job that the hose was used?

12 MR. BLANKENSHIP: Objection, beyond the
13 scope of redirect.

14 HEARING OFFICER KNITTLE: Overruled.

15 BY THE WITNESS:

16 A. No.

17 BY MR. JOSEPH:

18 Q. So then how would you get the hose on the
19 other days?

20 A. I think I've testified before that it was
21 either left on the roof or it was carried by our
22 foreman.

23 Q. Do you know for a fact what happened?

24 MR. BLANKENSHIP: Objection.

1 HEARING OFFICER KNITTLE: Sustained.

2 MR. JOSEPH: He just said it was either

3 left on the roof or -- .

4 HEARING OFFICER KNITTLE: Right, and I

5 let you ask that question, but I was objecting to

6 your second question, Mr. Joseph, which I think is

7 beyond the scope.

8 Anything else, Mr. Joseph?

9 BY MR. JOSEPH:

10 Q. So you have enough hoses for each job?

11 MR. BLANKENSHIP: Objection.

12 HEARING OFFICER KNITTLE: Sustained.

13 BY MR. JOSEPH:

14 Q. What would you do if you found out they

15 weren't using a hose on a job?

16 MR. BLANKENSHIP: Objection, beyond the

17 scope.

18 HEARING OFFICER KNITTLE: Sustained.

19 BY MR. JOSEPH:

20 Q. Why don't they show hoses being delivered

21 on the other days to this job?

22 MR. BLANKENSHIP: Objection, beyond the

23 scope of redirect.

24 MR. JEDDELOH: Plus asked and answered.

1 HEARING OFFICER KNITTLE: Sustained on
2 both counts. Mr. Joseph, I just want to explain
3 to you that this is a recross of a redirect, and
4 you're limited to what was asked on the redirect,
5 which was not very much. That's why these
6 objections are coming in and that's why I'm
7 sustaining them. So if you have any questions
8 about the redirect examination, those would be
9 allowed.

10 MR. JOSEPH: No. I can't think of
11 anything else. Thanks.

12 HEARING OFFICER KNITTLE: Anything else?

13 MR. BLANKENSHIP: No further questions.

14 HEARING OFFICER KNITTLE: Thank you.
15 Mr. Jeddelloh?

16 MR. JEDDELOH: We may have one more
17 witness. May I have two minutes to talk to Mr.
18 Blankenship?

19 HEARING OFFICER KNITTLE: Yeah.
20 Definitely. Thanks, Mr. Kolko. You can step
21 down, and let's take a -- let's take longer than a
22 two-minute recess. Let's take a five-minute
23 recess.

24 (Break taken.)

1 HEARING OFFICER KNITTLE: I believe we
2 have a final witness for -- actually, I should ask
3 Speedway Wrecking first, do you have any more
4 witnesses?

5 MR. BLANKENSHIP: No.

6 HEARING OFFICER KNITTLE: So Speedway is
7 done. Mr. Jeddelloh, I believe you have a final
8 witness for the University.

9 MR. JEDDELOH: Yes, Mr. Knittle. I'd
10 like to call Frank Ottolino.

11 HEARING OFFICER KNITTLE: Can you swear
12 in the witness, please?

13 (Witness sworn.)

14 WHEREUPON:

15 FRANK OTTOLINO,
16 called as a witness herein, having been first duly
17 sworn, deposeeth and saith as follows:

18 DIRECT EXAMINATION

19 by Mr. Jeddelloh

20 Q. Would you state your name and spell it
21 for the record, sir?

22 A. Sure. Frank Ottolino, O-t-t-o-l-i-n-o.

23 Q. Are you currently employed?

24 A. Yes.

1 Q. By what company or concern?

2 A. EHC Industries.

3 Q. And what is the business of -- what is
4 your position with EHC?

5 A. I'm the president of the company.

6 Q. What is the business of EHC?

7 A. Asbestos removal and lead mitigation.

8 Q. And what background do you have in that
9 particular field of endeavor?

10 A. I started in the company 12 years ago at
11 the inception of the company. I came through the
12 mechanical insulation industry, pipe insulation
13 and so forth.

14 Q. And are you familiar with the premises at
15 1261 South Halsted?

16 A. Yes, I am.

17 Q. How are you familiar with that premises?

18 A. Our company did the abatement on that
19 property.

20 Q. Who were you hired by to do that work?

21 A. The University of Illinois, Circle,
22 Chicago campus.

23 Q. Is there any particular contact person
24 you worked with at the University?

1 A. At the time I believe it was Jim
2 Henderson.

3 Q. And prior to you doing that asbestos
4 removal work, did you inspect the building?

5 A. Yes, we did.

6 Q. And what did you see?

7 A. We saw insulation on the piping and a
8 small boiler. That was about it.

9 Q. Did you see any other evidence of
10 asbestos whatsoever?

11 A. Not at that time.

12 Q. Are you certified or is your company
13 certified by the state of Illinois for doing this
14 work?

15 A. Yes, it is.

16 Q. And are your workers and employees
17 certified for this purpose?

18 A. Yes, they are.

19 Q. As far as you know, is there a licensing
20 or certification program from the state?

21 A. Yes.

22 Q. Just so I'm -- I may have asked you this
23 question, and I apologize, but just to be sure,
24 other than on the boiler and the pipe, did you see

1 any other asbestos?

2 A. There was none else visible.

3 Q. Did you -- did your company then proceed
4 to remove the asbestos?

5 A. Yes, we did.

6 Q. At the conclusion of your company's
7 efforts, was there any further asbestos left in
8 the property?

9 A. Not to our knowledge.

10 Q. I'm going to show you now a document
11 that's been previously marked and entered into the
12 record as University Exhibit No. 1 and ask if you
13 recognize that document, sir?

14 A. Yes, I do.

15 Q. What is that document?

16 A. It's all the closeout documentation from
17 our company back to the University as to what was
18 performed at that job site.

19 Q. Does this relate to 1261 Halsted?

20 A. Yes, it does.

21 Q. I'd like to turn your attention to a
22 document which is entitled waste shipment record.

23 A. Uh-huh.

24 Q. I'll ask you to find that. Have you

1 found that?

2 A. Yeah.

3 Q. Are you familiar with that document, sir?

4 A. Yes, I am.

5 Q. Does this accurately reflect the waste --

6 MR. TREPANIER: Could I have a moment to
7 get on that page?

8 MR. JEDDELOH: It looks like this.

9 Towards the back.

10 MR. TREPANIER: Thank you.

11 BY MR. JEDDELOH:

12 Q. Does this accurately reflect the shipment
13 of waste relating to the removal at 1261 Halsted?

14 A. There's actually two on this waste
15 shipment. We had a dumpster at the UIC steam
16 plant on the west side, and we took the waste from
17 1261 Halsted to the steam plant for disposal
18 there. We put it in the dumpster there.

19 Q. Is that why in section 1A it says UIC
20 steam plant?

21 A. Correct. There's also the same under
22 project number. There's two project numbers
23 there. The one project number would have been
24 that from 1261. The other project was at the

1 steam plant.

2 Q. Incidentally, when it says total quantity
3 in cubic yards, what does that refer to when it
4 says 30 yards?

5 A. That's a full dumpster, a 30-yard
6 dumpster.

7 Q. When it says 42 bags after the numbers
8 9608-273, what does that refer to?

9 A. That refers to how many bags of waste
10 came from that project number, the balance being
11 from the other.

12 Q. Now, I'd like you to turn to the document
13 that's early in the packet of documents that's
14 entitled notification of demolition and
15 renovation, and when you've found that document
16 please, let me know.

17 A. I have it.

18 Q. What is that document, sir?

19 A. It's a courtesy notification that we've
20 put in for the U of I to cover the campus for any
21 activities that we do on campus.

22 Q. What do you mean courtesy notification?

23 A. Well, the campus is comprised of hundreds
24 of buildings, and depending on the building

1 itself, there could be a very small amount of
2 asbestos to be removed from it or a larger
3 amount. This is a notification to the state
4 saying that we will be doing asbestos abatement on
5 campus, and if you look at the total numbers, I
6 mean, the 30,000 lineal feet of height, 20,000
7 surface area, it's to encompass everything that
8 could possibly be removed in the course of a
9 year.

10 Q. You used the term courtesy notification.

11 What did you mean by the term courtesy?

12 A. Well, when you do a small project,
13 hypothetically at 1261 Halsted there, it falls
14 below the notifiable amounts of asbestos that you
15 would have to notify the state for. In essence,
16 we didn't have to give them any notification on
17 that at all for the removal. This just covers it
18 saying, you know what, we're going to be doing
19 work on campus there just to let them know that
20 we're doing work anyway.

21 Q. Now, I'd like you to take a look, again,
22 at the waste shipment record document that I had
23 previously called your attention to and also look
24 at the notification of demolition and renovation.

1 When you have both of those documents in front of
2 you, please let me know.

3 A. I do.

4 Q. I note that on the notification of
5 demolition and renovation document it says the
6 waste transporter was American Disposal and the
7 waste disposal site was Community Land Fill, but
8 on the waste shipment record it says that the
9 waste disposal site was Community Environmental of
10 Livingston and it shows the D & P Construction as
11 the transporter.

12 Can you explain how that came to
13 happen?

14 A. Yeah. We just switched haulers for that
15 particular project. Because it was nonnotifiable,
16 we weren't obligated to really tell the state if
17 we changed it or not. D & P was a licensed -- is
18 a licensed hauler as well, and I know County
19 Environmental is a licensed dump site as well for
20 asbestos, and basically it was probably based on
21 price that we went with the lesser expensive of
22 the two at the time.

23 MR. JEDDELOH: That's all I have,
24 Mr. Knittle.

1 HEARING OFFICER KNITTLE: Mr. Blankenship,
2 did you have anything?

3 MR. BLANKENSHIP: No.

4 HEARING OFFICER KNITTLE: Mr. Trepanier,
5 do you have cross?

6 MR. TREPANIER: Yes.

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

8 by Mr. Trepanier

9 Q. Good morning.

10 A. Morning.

11 Q. This document, the waste shipment record
12 that you've referred to, who prepared that
13 document?

14 A. Scott Freeland, who's our supervisor on
15 site.

16 Q. Was he present at the asbestos removal at
17 1261 Halsted?

18 A. Yes, he was.

19 Q. And who else was present? Do you have a
20 memory of that or do you need to refer to a
21 document?

22 A. I'd be looking in here. Tom Sculley and
23 Bill Sculley. Let's see who else was there.

24 There would have been a gentleman from Kaplan

1 Environmental there as well. I don't know who
2 they would have had out there though.

3 Q. And what document did you refer to get
4 that name, Sculley?

5 A. Right here, the regulated assignment
6 sheet.

7 Q. Do you yourself have a memory of who was
8 on site?

9 A. Not really. We do a lot of work. So
10 it's -- at that point, I mean, I know Scott
11 Freeland was down there at the site. Beyond that,
12 not really. These guys were just the workers
13 there.

14 Q. When was Mr. Freeland on the site?

15 A. He was there for both days during the
16 course of the removal itself.

17 Q. And I'm just going to ask if you can
18 answer my -- if you can answer my questions just
19 from your memory, to do that.

20 A. Sure.

21 Q. And what days did this asbestos removal
22 occur on?

23 A. Without looking at this, I wouldn't be
24 able to tell you.

1 Q. And looking -- if you did look at that
2 document, which document would you look at that
3 would tell you when the asbestos was removed?

4 A. The sign-in sheet, the area sign-in
5 sheet, which is dated 8-15-96. Right there.

6 Q. So this job lasted one day; is that
7 right?

8 A. Yes. I was just looking -- yeah. It was
9 one day.

10 Q. So Mr. Freeland couldn't have been there
11 on two days, could he?

12 A. No. He was there one day.

13 Q. What was Mr. Freeland doing when he was
14 present?

15 A. Probably doing the work as well as
16 supervising the other two guys. He was our job
17 site foreman.

18 Q. But you don't know what he was doing on
19 site, do you?

20 MR. JEDDELOH: I'm going to object. This
21 is beyond the scope and not relevant I might add.
22 This was for a limited purpose of clearing up this
23 document and verifying that the asbestos had been
24 removed, and this -- you know, who was supervising

1 who just is beyond the scope and not relevant.

2 HEARING OFFICER KNITTLE: Mr. Trepanier?

3 MR. TREPANIER: Well, I think that it is

4 relevant. This is the witness that they want to

5 use to prove that the asbestos was removed. If

6 the witness himself is just relying on documents

7 himself to confirm that the asbestos was removed,

8 I think it's quite proper for us to be inquiring

9 into the -- any question I believe that's

10 inquiring into whether or not this asbestos was

11 removed and how it was removed and who did it is

12 proper of this witness.

13 In fact, I've been instructed numerous

14 times that this would be the witness to respond to

15 the questions that I've asked regarding the

16 asbestos removal and now is the time.

17 HEARING OFFICER KNITTLE: I am going to

18 sustain the objection as to what the different

19 workers were doing at the site, though. That is

20 beyond the scope of the direct examination.

21 BY MR. TREPANIER:

22 Q. Did you see Scott Freeland at the site?

23 A. Yes, I did.

24 Q. And how many days did you see him on the

1 site there?

2 A. I was there the first day that we started
3 the job in the morning.

4 Q. I'd like to direct your attention to
5 what's labeled the daily report.

6 A. Uh-huh.

7 Q. Now, that daily report doesn't indicate
8 that you were on the site, does it?

9 A. No, it does not.

10 Q. Why is that?

11 A. Because it wouldn't have been -- it
12 wouldn't have mattered whether I was there or
13 not. It wouldn't have been part of -- it wouldn't
14 have been part of the record. We would not have
15 documented me being there.

16 Q. What time were you there?

17 A. 7:00 a.m.

18 Q. And what were you doing when you were
19 there?

20 A. Just showing them the scope of the work.

21 Q. And how long did that take you?

22 A. Maybe ten minutes.

23 Q. So within that -- was that your first
24 visit to the site?

1 A. No. It was my second visit to the site.

2 The first visit was with Jim Henderson.

3 Q. And how did you show them the scope of
4 the work?

5 A. Took them in there and physically showed
6 them the work. This is the boiler, follow the
7 piping out. This is what has to be removed.

8 Q. Did you use flashlights?

9 A. Yes, and we had a generator on site as
10 well.

11 Q. At 7:00 a.m., the generator was there?

12 A. Yes, it was. We have the generator at
13 UIC at the west powerhouse there in the truck.
14 That's where we got it from.

15 Q. So why would this document, again,
16 referring to the daily report, why would that
17 report that the discussion of safety and the scope
18 of the work occurred after 7:10 when you reported
19 that you finished on site?

20 A. Well, I would have showed Scott Freeland
21 the project. Scott Freeland would have showed --
22 you know, went through the scope of the job with
23 his workers. He's the one that would have the job
24 site safety meeting with his workers, not me

1 having the meeting with -- doing the job site

2 safety meeting. That's not my position.

3 Q. You said I believe as a way of

4 introduction in response to a question that part

5 of your work is lead mitigation?

6 A. Yes.

7 Q. You weren't doing that at 1261, were you?

8 A. No, we were not.

9 MR. JEDDELOH: I'm going to object and

10 ask that that answer be stricken. It's beyond the

11 scope of direct examination, and it's not

12 relevant.

13 MR. TREPANIER: I think that the attorney

14 himself elicited --

15 HEARING OFFICER KNITTLE: I'm going to

16 overrule. It's overruled.

17 BY MR. TREPANIER:

18 Q. Was there leaded paint in 1261 South

19 Halsted?

20 MR. JEDDELOH: Objection beyond the scope

21 and relevant.

22 HEARING OFFICER KNITTLE: That I'll

23 sustain.

24

1 BY MR. TREPANIER:

2 Q. Are you familiar with the federal
3 regulations that require reporting of asbestos
4 removal activities?

5 A. Yes, I am.

6 Q. Is that part of the Code of Federal
7 Regulations?

8 A. I believe it is.

9 Q. And that regulation requires a ten-day
10 notice to the administrator prior to demolition if
11 any asbestos was present, doesn't it?

12 MR. JEDDELOH: Objection. That's asking
13 this witness to provide a legal conclusion, it's
14 beyond the scope, and it's not relevant.

15 HEARING OFFICER KNITTLE: Overruled. I
16 think this witness is able to answer that
17 question.

18 BY THE WITNESS:

19 A. What was the question? I'm sorry.

20 BY MR. TREPANIER:

21 Q. That those -- that federal regulation
22 requires a ten-day notice to the administrator
23 prior to demolition if there's asbestos present;
24 isn't that true?

1 A. It requires notification if the lineal
2 footage is greater than 260 lineal or greater than
3 160 square feet on the asbestos side. As far as
4 it goes for the demolition of a building, I can't
5 answer that. I don't know.

6 Q. You did other asbestos removal work in
7 what's euphemistically referred to as the south
8 campus area, haven't you?

9 MR. JEDDELOH: Objection, beyond the
10 scope, relevance.

11 MR. TREPANIER: This is relevant in that
12 the rules that we've referred to regarding the
13 federal regulation that the witness has addressed
14 with a limitation on reporting for a certain
15 amount of footage applies to a project as a whole,
16 specifically to this University project, and for
17 every asbestos removal that the University does in
18 pursuing their south campus expansion is added
19 together when making a determination is this an
20 activity that has to be reported.

21 MR. BLANKENSHIP: Once again, there is no
22 allegation here of the violation of any asbestos
23 rule. He's so far afield. This is totally
24 irrelevant.

1 MR. JEDDELOH: Right, and I would also
2 add that then he would certainly be calling upon
3 this witness to provide a legal conclusion and
4 interpretation of a federal regulation as to how
5 reporting is to be done.

6 MR. TREPANIER: I haven't asked for an
7 interpretation. I've only asked him what he's
8 done in the project area.

9 HEARING OFFICER KNITTLE: And I'm
10 overruling -- excuse me. I'm sustaining that
11 objection. I do think this is not relevant.

12 BY MR. TREPANIER:

13 Q. Did you give instructions on how the work
14 was to be performed?

15 A. I don't really recall. It was a pretty
16 general project, pretty straightforward. Our
17 workers are all licensed. I mean, it would have
18 been -- in a demolition situation, we work under
19 NESHAPS, no visible emissions. So it would have
20 been primary seals and basically wet the material
21 and bag it and dispose of it properly. So there
22 would have been probably -- I don't remember
23 whether I gave them any further instructions than
24 that.

1 Q. Do you recall giving those instructions?

2 A. No, not really.

3 Q. Who was in charge at the site?

4 A. Scott Freeland.

5 Q. Was there water to the site when you were

6 present?

7 A. No. We brought our own in.

8 Q. And how did you bring water in?

9 A. Fifty-five gallon drum as well as Hudson
10 sprayers.

11 Q. And how did you get the drum into the
12 building?

13 A. We went through the front door.

14 Q. And then what did you do with the drum?

15 MR. JEDDELOH: I'm going to object. This
16 is just --

17 HEARING OFFICER KNITTLE: I'll sustain
18 the objection.

19 BY MR. TREPANIER:

20 Q. This asbestos removal was in the
21 basement, was it not?

22 A. I think the boiler -- if I remember
23 correctly, the boiler was in the basement and the
24 piping ran through the basement up to risers going

1 up to the first floor and insulation basically

2 stopped at the first floor.

3 Q. Did you inspect the stairwell for safety

4 before you used it?

5 MR. BLANKENSHIP: Objection, relevance.

6 HEARING OFFICER KNITTLE: Sustained.

7 BY MR. TREPANIER:

8 Q. How long were the hoses that you had

9 attached to your 55 gallon drum?

10 MR. JEDDELOH: Objection, beyond the

11 scope, relevance.

12 HEARING OFFICER KNITTLE: Sustained.

13 (Whereupon, Mr. McFarland

14 entered the proceedings.)

15 MR. JEDDELOH: Again, I would ask this

16 witness to be excluded if he plans to be a

17 witness.

18 HEARING OFFICER KNITTLE: Mr. Trepanier,

19 is he going to be testifying? Mr. Trepanier?

20 MR. TREPANIER: I believe that this

21 person wants to enter a public comment after the

22 close.

23 HEARING OFFICER KNITTLE: He wants to

24 provide a statement as an interested citizen?

1 MR. TREPANIER: Yes.

2 MR. JEDDELOH: Mr. Knittle, the
3 University would strongly object to that. I think
4 that's pure subterfuge in attempting to avoid your
5 order that witnesses be excluded.

6 MR. BLANKENSHIP: And pure subterfuge and
7 attempt to get around yesterday's ruling when they
8 intended to call him as a witness, but didn't get
9 him here on time. This is a clear attempt to get
10 around the restriction that as a rebuttal witness
11 he'd be limited to the scope of the respondents'
12 case. This is highly outrageous for them to be
13 now asking for him to make a public statement when
14 he was identified as a witness.

15 MR. JEDDELOH: He was identified as a
16 witness.

17 MR. MCFARLAND: Then I'll be a witness.

18 HEARING OFFICER KNITTLE: Hold on.

19 MR. MCFARLAND: I'll take a few minutes
20 of your time and then I'll be on my way.

21 HEARING OFFICER KNITTLE: Mr. Trepanier?

22 MR. TREPANIER: I don't appreciate the
23 counsel saying that what we're doing is subterfuge
24 or getting around anything. We are just following

1 the rules that the Board has laid out. If a
2 person wants to come in and give a public comment,
3 it doesn't even need to involve me.

4 HEARING OFFICER KNITTLE: I understand
5 that and you understand that if he does give a
6 statement as an interested citizen, you will not
7 be involved. He will just say what he wants to
8 say and that will be it. There will be no
9 questioning from you.

10 MR. TREPANIER: My understanding, though,
11 is that a citizen giving a statement is subject to
12 cross and must be available for cross.

13 HEARING OFFICER KNITTLE: Actually, it
14 says statements from interested citizens as
15 authorized by the hearing officer. Do you have
16 something -- some sort of authority that you can
17 point to that says I have to allow
18 cross-examination on that person that overrides
19 103.202(f)?

20 MR. TREPANIER: I'll just refer to the
21 rule myself.

22 HEARING OFFICER KNITTLE: Because in
23 light of the situation here, the fact that he was
24 called as a witness before, I am inclined to at

1 least partially agree with the respondents that I
2 would not want you to be able to ask him questions
3 because it does come close to being subterfuge of
4 what we addressed yesterday in terms of getting
5 your witnesses here on time, Mr. Trepanier.

6 MR. TREPANIER: What was that rule number
7 that you just referred to?

8 HEARING OFFICER KNITTLE: I'm looking at
9 the order of enforcement hearings, Section
10 103.202(f).

11 MR. JEDDELOH: I'm wondering if we could
12 short-circuit this because this individual says
13 that he will be a witness. So, therefore, he's
14 agreeing to be a witness in this proceeding.

15 HEARING OFFICER KNITTLE: Well, he could
16 be a witness in the complainants' case in
17 rebuttal.

18 MR. BLANKENSHIP: We would agree with
19 that.

20 HEARING OFFICER KNITTLE: That would be
21 fine. It's up to you, Mr. Trepanier. I'm telling
22 you I'll allow him to give a statement as an
23 interested citizen, but I'm not going to allow you
24 to ask questions of him at that point. I'm going

1 to let him give a statement and that would be it,
2 but if you want to call him as a witness in your
3 case in rebuttal, you have the opportunity to do
4 that as well.

5 MR. TREPANIER: I would ask that --
6 direct your attention to the rule 103.203.

7 HEARING OFFICER KNITTLE: Yes, and I know
8 what you're going to be speaking to, and I think
9 you're stating that any person not a party and not
10 otherwise a witness for a party may submit a
11 written statement, correct, and than any person
12 submitting such a statement shall be subject to
13 cross-examination by a party.

14 I would note that that's for written
15 statements, not a statement from an interested
16 citizen as stated in 103.202(f).

17 MR. JEDDELOH: I think there's another
18 reason why that shouldn't be allowed, Mr.
19 Knittle. I believe because I saw them conferring
20 that Mr. Trepanier has filled in this witness as
21 to what has gone on in this proceeding to date,
22 and that certainly should be a basis to require
23 him to be subject to cross-examination to find out
24 all that, and, again, it would be a further basis

1 for a claim of subterfuge.

2 MR. JOSEPH: I object to your comment.

3 MR. TREPANIER: The attorney is saying
4 absurdity. The man just walked in the room, and I
5 had no more than ten seconds with the person. To
6 say that I could have filled him in on what's
7 going on in the case is absurdity.

8 MR. BLANKENSHIP: If the witness is going
9 to be allowed to testify under any circumstances,
10 I would like the opportunity to cross-examine him
11 if he's going to be offering even public testimony
12 in favor of the complainants. I think I'm
13 entitled -- I should be entitled to cross-examine
14 him and I would request that right.

15 HEARING OFFICER KNITTLE: Then I think we
16 should have him as a rebuttal witness,
17 Mr. Trepanier.

18 MR. JEDDELOH: I would agree with that.

19 HEARING OFFICER KNITTLE: Why don't you
20 want to do that?

21 MR. TREPANIER: Because the respondents
22 chose to put on such a sparse case that our
23 rebuttal witness is severely limited thereby.

24 MR. JEDDELOH: We have put on a case that

1 has been required by the facts elicited by the
2 complainants on direct examination.

3 HEARING OFFICER KNITTLE: And I can allow
4 him to testify as not a part of your case in chief
5 and allow cross-examination, but then I'm going to
6 allow Mr. Trepanier to ask questions too. Do you
7 see what I'm saying here, Mr. Blankenship?

8 MR. BLANKENSHIP: I guess, but I
9 object -- I would object to Mr. Trepanier
10 questioning this witness at all if it's not as
11 part of a rebuttal case because he intended to
12 make him a witness and to have him as a witness,
13 and that clearly would be subterfuge to now get
14 into -- for him to get into all the areas he
15 wanted to get into, but didn't for whatever
16 reasons this witness was not presented as part of
17 their case.

18 On the other hand, I think our
19 situation is very different. If he's going to
20 come in here and offer testimony against the
21 respondents, I think I should be entitled to test
22 that -- to test that testimony. I'm not the one
23 who intended to call him, and I'm not the one who,
24 for whatever reasons, didn't call him as part of

1 my case. So I think we are different, but, you
2 know, ultimately I think you have a great deal of
3 discretion with respect to citizens.

4 MR. JEDDELOH: I don't think that we can
5 separate this witness from the fact that he was on
6 the witness list prepared by the complainants and
7 served on the respondents. This is their witness,
8 and anything else but presenting him as their
9 witness is going to just clearly violate the
10 purpose and the intent of the orders that you've
11 already made in this proceeding.

12 MR. BLANKENSHIP: This isn't your normal
13 citizen, you know, just coming to speak on an
14 environmental issue. He was identified as their
15 witness, is part of their case, has worked with
16 them, and clearly is, although not named as a
17 complainant, is part of this same group that is
18 prosecuting this action, and if he's going to
19 testify, we should be allowed to cross-examine
20 him, and I think that's a different situation than
21 Mr. Trepanier who has foregone his right to
22 question this witness on a broad range of issues.

23 HEARING OFFICER KNITTLE: Let's --

24 MR. TREPANIER: If I might, just a short

1 sentence.

2 HEARING OFFICER KNITTLE: Yeah.

3 MR. TREPANIER: I think that it's error

4 to equate somebody's name appearing on a witness

5 list with the words in that rule 103.203 referring

6 to a witness for a party. I believe the rule as

7 actually -- just as preventing somebody who

8 testifies who is a witness at the hearing from

9 then entering a public comment, and it's not to

10 exclude a person whose name may have appeared on a

11 witness list.

12 HEARING OFFICER KNITTLE: Mr. Trepanier,

13 even if I allow him as an interested citizen to

14 make a statement, I'm not going to allow -- I'll

15 allow you to cross-examine him, but I'm not going

16 to allow you to ask questions as if on direct

17 exam, but this is something I'm going to consider

18 over lunch. I want him to wait for us, and we'll

19 finish this witness, and then we'll come back from

20 lunch and we'll do whatever we do with -- is it

21 Mr. McFarland, sir?

22 MR. MCFARLAND: Yes.

23 HEARING OFFICER KNITTLE: That's your

24 name, correct?

1 MR. MCFARLAND: Yes, the last I checked.

2 HEARING OFFICER KNITTLE: Until we make a

3 decision -- until I make a decision on this, I'm

4 going to ask you to wait outside. Is that okay?

5 I don't think we have too much longer for this

6 witness.

7 MR. MCFARLAND: I'll wait outside.

8 HEARING OFFICER KNITTLE: Why don't you

9 wait outside in our lobby, and that way I will

10 have an opportunity to think about it.

11 MR. MCFARLAND: Okay.

12 HEARING OFFICER KNITTLE: I'm going to

13 want to think about it over lunch.

14 MR. TREPANIER: Thanks, man.

15 MR. MCFARLAND: You're welcome. Thank

16 you.

17 HEARING OFFICER KNITTLE: We can proceed

18 now with Mr. --

19 THE WITNESS: Frank Ottolino.

20 HEARING OFFICER KNITTLE: Ottolino, I'm

21 sorry.

22 THE WITNESS: That's all right.

23 HEARING OFFICER KNITTLE: Mr. Ottolino's

24 testimony.

1 MR. TREPANIER: Thanks.

2 BY MR. TREPANIER:

3 Q. The document we referred to, the waste
4 shipment record, you didn't prepare that, did you?

5 A. No, I did not.

6 Q. And you stated that County Environmental
7 of Livingston was certified to receive asbestos
8 waste. How do you know that?

9 A. We have a copy of their waste -- their
10 license at our office.

11 Q. And have you brought that with you today?

12 A. No, I have not.

13 Q. On that line that you referred to
14 earlier, it says project number here, still on the
15 waste shipment record, without having prepared
16 this document, how are you able to testify that
17 that 42 bags refers only to the second of those
18 two numbers?

19 MR. JEDDELOH: I don't believe that was
20 his testimony. So I think the question is
21 objectionable.

22 HEARING OFFICER KNITTLE: Overruled.

23 BY THE WITNESS:

24 A. Basically, it would have been written in

1 as 42 bags from job number 9608-273, the balance
2 of the material being on the first one.

3 BY MR. TREPANIER:

4 Q. So this -- but on this page, it doesn't
5 say 42 bags or not from 273, does it?

6 A. No. It just shows that the first number
7 with no bag count next to it, the next number with
8 a bag count next to it.

9 Q. What is that symbol between the two
10 numbers?

11 A. An and sign, a combination of two jobs.

12 Q. And then the word 42 bags follows that
13 immediately?

14 A. Correct.

15 Q. What's the volume of a bag?

16 MR. BLANKENSHIP: Objection to the
17 relevance of this.

18 HEARING OFFICER KNITTLE: Sustained.

19 BY MR. TREPANIER:

20 Q. Do you know how much asbestos was removed
21 from 1261 Halsted?

22 A. I can give probably an estimate.

23 Q. And what would that estimate be based on?

24 A. Visual sighting of it.

1 Q. And what's your estimate?

2 A. Oh, about 40 square feet of material from
3 the boiler, and if I remember correctly, about 90
4 lineal feet of pipe.

5 Q. And what's the -- what's your estimate --
6 what's the cubic measure of that material?

7 A. If I had to take a guess, I'd say
8 somewhere around four cubic yards.

9 Q. You didn't file an asbestos notification
10 for 1261 Halsted, did you?

11 A. No, we did not.

12 Q. Did you notify any of the neighbors that
13 you were going to be removing asbestos at that
14 address?

15 MR. JEDDELOH: Objection, beyond the
16 scope and relevant.

17 MR. TREPANIER: They do have a -- in
18 their closeout document under item number three it
19 says EPA notification and just to elicit testimony
20 that they, in fact, didn't give a notation for
21 this job.

22 HEARING OFFICER KNITTLE: To the EPA, but
23 was your question relating to the neighbors?

24 MR. TREPANIER: To the neighbors.

1 MR. JEDDELOH: Right.

2 HEARING OFFICER KNITTLE: Sustained.

3 BY MR. TREPANIER:

4 Q. Did you notify the City of Chicago that

5 you were going to be removing asbestos?

6 A. No.

7 MR. JEDDELOH: Same objection, beyond the

8 scope, relevant.

9 BY MR. TREPANIER:

10 Q. I know the City of Chicago relies on the

11 EPA for their information?

12 MR. JEDDELOH: Well, that's testimony.

13 He's asking questions now, but it's beyond the

14 scope of what I asked him about, and it's not

15 relevant to this proceeding.

16 MR. TREPANIER: I do think that counsel

17 specifically referred to that item number three,

18 the EPA notification, and asked questions about

19 it.

20 MR. JEDDELOH: So that doesn't mean that

21 the door is open to ask this witness questions

22 about what was done with respect to the neighbors,

23 if anything.

24 HEARING OFFICER KNITTLE: Or the City of

1 Chicago.

2 MR. JEDDELOH: Right.

3 MR. TREPANIER: The City of Chicago,

4 Department of Environment.

5 MR. BLANKENSHIP: Again, there's no

6 allegation --

7 HEARING OFFICER KNITTLE: I'm going to

8 sustain the objection.

9 BY MR. TREPANIER:

10 Q. Are you familiar with the state

11 regulations that affect the procedures for

12 asbestos emissions control?

13 MR. BLANKENSHIP: Objection, relevance.

14 MR. JEDDELOH: I join in that objection.

15 I also think it's beyond the scope of the direct

16 examination.

17 HEARING OFFICER KNITTLE: Sustained.

18 BY MR. TREPANIER:

19 Q. Did you submit a notice to the state

20 under Section 61.145?

21 MR. JEDDELOH: Objection, same objection,

22 and that's enough. It's beyond the scope. It's

23 not relevant.

24 HEARING OFFICER KNITTLE: Sustained.

1 BY MR. TREPANIER:

2 Q. Did you have a permit to remove asbestos
3 from 1261 South Halsted?

4 A. No, no permit was required.

5 Q. What is the basis of your statement that
6 no permit is required?

7 MR. BLANKENSHIP: Objection, relevance.

8 The question is was asbestos removed or not.

9 MR. JEDDELOH: And I further think that
10 if this witness is being asked for a basis for his
11 statement that would clearly require him to give a
12 legal opinion.

13 HEARING OFFICER KNITTLE: Overruled. You
14 can answer, if you know, sir.

15 BY THE WITNESS:

16 A. I'm sorry. What was the question?

17 BY MR. TREPANIER:

18 Q. The basis for your statement that no
19 permit was required.

20 A. It was below notifiable amounts.

21 Q. And what is that notifiable amount?

22 MR. BLANKENSHIP: Asked and answered.

23 HEARING OFFICER KNITTLE: Sustained.

24 MR. TREPANIER: I'm asking about the city

1 permit, what previously was testified to because
2 he said he didn't have to notify the EPA because
3 it was below the amount. I'm asking did he have a
4 permit to do the work and he's saying he doesn't
5 need one.

6 HEARING OFFICER KNITTLE: Is that a
7 different issue, sir?

8 THE WITNESS: There is no permit
9 required, period. There's no way to get a
10 permit. The permit doesn't exist.

11 BY MR. TREPANIER:

12 Q. Take a look at the exhibit --
13 Complainants' Exhibit, I believe it's, No. 8.
14 That was the application for a wrecking permit.

15 HEARING OFFICER KNITTLE: I don't have
16 a -- oh. Your Exhibit No. 8?

17 MR. TREPANIER: Yeah.

18 MR. JEDDELOH: I think there was only one
19 of those actually.

20 HEARING OFFICER KNITTLE: Oh, I see.
21 Here it is. I don't think I've been given this
22 one.

23 MR. JEDDELOH: No. There was only one
24 copy.

1 MR. BLANKENSHIP: Maybe you gave it to
2 me.

3 HEARING OFFICER KNITTLE: I don't have
4 that.

5 MR. JEDDELOH: There was only one copy.

6 HEARING OFFICER KNITTLE: I thought I had
7 them all.

8 MR. TREPANIER: I'm going to ask the
9 witness a question about that.

10 HEARING OFFICER KNITTLE: Can we go off
11 the record?

12 (Discussion had
13 off the record.)

14 HEARING OFFICER KNITTLE: Just for the
15 record, James Henderson from the University of
16 Illinois just walked in, and we've got somebody
17 else as well.

18 MR. MEESIG: Mike Meesig. I'm with the
19 Maxworks Garden Cooperative.

20 HEARING OFFICER KNITTLE: What's your
21 name, sir?

22 MR. MEESIG: Mike Meesig.

23 HEARING OFFICER KNITTLE: Mr. Trepanier,
24 is this gentleman one of your witnesses?

1 MR. TREPANIER: I'm hesitating for a
2 moment. I just had a little blockage. I am
3 interested to elicit some testimony from --

4 HEARING OFFICER KNITTLE: Is this
5 gentleman going to be in the same category as
6 Mr. McFarland?

7 MR. TREPANIER: Well, I think because
8 Mike has come in with the Maxworks Garden
9 Cooperative, that does put him in a different
10 category than Mr. McFarland.

11 MR. JEDDELOH: An organization is
12 represented by an attorney. An individual cannot
13 represent an organization.

14 MR. BLANKENSHIP: There's a prior Board
15 order on that.

16 HEARING OFFICER KNITTLE: Are you an
17 attorney, sir?

18 MR. MEESIG: No, I'm not.

19 HEARING OFFICER KNITTLE: I agree with
20 that, Mr. Trepanier, and this has been gone over
21 before that Maxworks Garden Cooperative needs to
22 be represented by an attorney. I'm not going to
23 let him represent the cooperative. He can
24 represent and offer testimony on his own behalf.

1 MR. MEESIG: I did witness it. I mean, I
2 have experience of it.

3 HEARING OFFICER KNITTLE: So, Mr. Trepanier,
4 are you going to call him as a witness or is he
5 going to be something for us to determine how
6 we're going to view this?

7 MR. TREPANIER: Well, I would suggest if
8 Mr. Meesig is willing that similar with
9 Mr. McFarland that we consider this over our lunch
10 break and then come back after lunch.

11 HEARING OFFICER KNITTLE: But when we're
12 done with this witness, I'm going to want to know
13 whether you're going to call them your rebuttal
14 witnesses. So we're going to have to decide at
15 least part of it at that point. So let's finish
16 this witness, and, sir, could you wait outside
17 until we get to you?

18 MR. MEESIG: Sure.

19 MR. TREPANIER: Thanks, Mike.

20 HEARING OFFICER KNITTLE: And we are now
21 continuing with cross-examination of Mr. Ottolino.

22 BY MR. TREPANIER:

23 Q. Mr. Ottolino, I'm going to show you
24 what's been marked Complainants' Exhibit No. 8,

1 and that's a demolition renovation notice of
2 intent. I'd like to direct your attention to the
3 second section of that document, that section
4 which is titled removal of asbestos and notice
5 thereof.

6 A. Okay.

7 Q. Now, do you know what that document is?

8 MR. JEDDELOH: I'm going to object. This
9 is beyond the scope, not relevant. No foundation
10 has been laid.

11 HEARING OFFICER KNITTLE: Overruled.

12 Answer if you can.

13 BY THE WITNESS:

14 A. No, I've never seen this document
15 before.

16 BY MR. TREPANIER:

17 Q. What about the form of the document?

18 A. No, I have not seen it.

19 Q. So you -- have you never applied to the
20 City of Chicago for a permit in removing asbestos?

21 MR. JEDDELOH: Objection, beyond the
22 scope, not relevant.

23 HEARING OFFICER KNITTLE: Sustained.

24 Let me keep hold of this one.

1 MR. JEDDELOH: Put it in glass.

2 BY MR. TREPANIER:

3 Q. Have you testified today to what the
4 level of asbestos removal would require federal --
5 under the federal regs requires notification?

6 MR. BLANKENSHIP: Objection. It's an
7 improper question, and I think it's been asked and
8 answered.

9 HEARING OFFICER KNITTLE: Sustained.

10 MR. TREPANIER: I have no further
11 questions.

12 HEARING OFFICER KNITTLE: Mr. Joseph?

13 MR. JOSEPH: Yes.

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

15 by Mr. Joseph

16 Q. Good afternoon or morning.

17 How many man-hours were there on this
18 particular job, approximately?

19 A. I'm guessing probably around 24.

20 Q. And do you remember how many men you had
21 there?

22 MR. JEDDELOH: Objection, asked and
23 answered.

24 HEARING OFFICER KNITTLE: Sustained.

1 We've gone over this on Mr. Trepanier's

2 cross-examination.

3 BY MR. JOSEPH:

4 Q. Do you remember how many days you were

5 there on site?

6 MR. JEDDELOH: Objection, asked and

7 answered. We've been through this.

8 HEARING OFFICER KNITTLE: Sustained.

9 BY MR. JOSEPH:

10 Q. Do you remember was the canopy set up

11 when you were there?

12 MR. JEDDELOH: Objection, beyond the

13 scope.

14 HEARING OFFICER KNITTLE: Overruled.

15 BY THE WITNESS:

16 A. I don't remember.

17 BY MR. JOSEPH:

18 Q. Did you enter through the front door?

19 MR. BLANKENSHIP: Objection, asked and

20 answered.

21 HEARING OFFICER KNITTLE: Yes.

22 Sustained.

23 BY MR. JOSEPH:

24 Q. Did you do all of the other jobs in the

1 Maxwell Street area?

2 MR. JEDDELOH: Objection, beyond the
3 scope, relevant.

4 HEARING OFFICER KNITTLE: Sustained.

5 BY MR. JOSEPH:

6 Q. How many trucks did you have there?

7 MR. JEDDELOH: Objection, beyond the
8 scope.

9 HEARING OFFICER KNITTLE: Sustained.

10 MR. JOSEPH: I believe it's relevant
11 because there was testimony that there was not --
12 trucks were not seen.

13 HEARING OFFICER KNITTLE: Right. I was
14 actually sustaining the objection because it was
15 beyond the scope of the direct examination.

16 MR. JOSEPH: Okay. But I still think
17 it's relevant because there was testimony that
18 there was not trucks and this man -- I was going
19 to ask him what his trucks looks like.

20 HEARING OFFICER KNITTLE: I understand
21 where you're coming from, Mr. Joseph. I don't
22 think it's relevant in addition to being beyond
23 the scope of the direct examination. The trucks
24 we were talking about were Speedway Wrecking

1 trucks, and it was a different witness. So not
2 only do I think it's beyond the scope of direct
3 examination, I don't think it's relevant. So I'm
4 sustaining -- I can't remember if it was both
5 objections or not, but I'm sustaining the
6 objection.

7 MR. JOSEPH: I'm trying to clarify that
8 there was testimony that at the demolition -- that
9 this particular company was not seen there, and
10 I'm wondering what their trucks look like to
11 clarify in my mind.

12 MR. JEDDELOH: I'll add the objection of
13 foundation, and chiming in with what Mr. Knittle
14 said, there's no foundation for the fact that
15 there were no trucks there. The trucks that we
16 talked about before related to Speedway.

17 MR. JOSEPH: Right. I'm speaking of my
18 testimony when all the times that I was there I
19 did not see any asbestos trucks.

20 HEARING OFFICER KNITTLE: Mr. Joseph,
21 I've got to sustain these objections. I don't
22 think that's a proper question at this point in
23 time.

24 MR. JOSEPH: Well, then there must be

1 some way to assure me that -- to convince me that
2 besides all these documents that there was some
3 asbestos removed.

4 HEARING OFFICER KNITTLE: Mr. Joseph,
5 we've gone over this witness' testimony. He's
6 testified as to the asbestos that was removed and
7 we have got evidence in terms of these exhibits
8 which have been offered. I can't do anything
9 beyond that nor do we have to assure you that any
10 asbestos was removed. That's for the Board to
11 decide if, in fact, it were an issue in this case,
12 which I've never quite thought that it was. So
13 I'm going to over -- excuse me. I'm going to
14 sustain those objections and ask you to move on to
15 a different question.

16 BY MR. JOSEPH:

17 Q. What do your employees wear?

18 MR. JEDDELOH: Objection, beyond the
19 scope, relevant, and I believe that it was also a
20 question that was asked and objected to before.

21 HEARING OFFICER KNITTLE: That was asked
22 and answered, but I'll allow him to answer it
23 again.

24 BY THE WITNESS:

1 A. They would have been in half-face
2 respirators, Tyvex suits or equivalent suits.
3 Typical, you know, personal protective equipment
4 for doing asbestos removal work.

5 BY MR. JOSEPH:

6 Q. And do they put that on inside or do they
7 put that on outside the truck?

8 MR. BLANKENSHIP: Objection, relevance.

9 HEARING OFFICER KNITTLE: Sustained.

10 BY MR. JOSEPH:

11 Q. What color are they?

12 MR. BLANKENSHIP: Objection, relevance.

13 HEARING OFFICER KNITTLE: I don't know if
14 you mean what color the suits are?

15 MR. JOSEPH: Well, the suits, the
16 outfits. My point is I never saw anybody remove
17 any asbestos. I seen the fire department.

18 HEARING OFFICER KNITTLE: No. I

19 understand. I'm going to sustain the --

20 MR. JOSEPH: Wrecking balls --

21 HEARING OFFICER KNITTLE: I'm going to
22 sustain the objection.

23 MR. JOSEPH: I've never seen an asbestos
24 company. Maybe they did, but --

1 MR. BLANKENSHIP: You were only there
2 five days. This is ridiculous.

3 MR. JEDDELOH: I'm also going to object
4 to Mr. Joseph providing testimony. He can ask
5 questions. He cannot provide more testimony.

6 HEARING OFFICER KNITTLE: And the Board
7 is aware that this is not testimony. I'm taking
8 this in terms of an argument by Mr. Joseph as to
9 why he should be able to ask these questions, but
10 I'm not agreeing with that argument, Mr. Joseph.
11 I don't think these are valid questions. That's
12 why I keep sustaining these objections.

13 MR. JOSEPH: I'm trying to find out what
14 really happened here, and I still think that
15 there's a lot of paperwork here and stuff and
16 there's faxes and stuff about removal and maybe
17 they do it, but --

18 HEARING OFFICER KNITTLE: Mr. Joseph, you
19 know, you'll have an opportunity to issue a
20 closing statement, and at that point in time, you
21 can address all these issues if you wanted to.

22 MR. JOSEPH: I guess that would be the
23 time.

24 HEARING OFFICER KNITTLE: You have a lot

1 more leeway in your closing statement than you
2 would on cross-examination of this witness to say
3 what you want to say.

4 MR. JOSEPH: Right. I don't have any
5 further questions I guess I can really get an
6 answer to.

7 HEARING OFFICER KNITTLE: Thank you,
8 sir. Is there a redirect?

9 MR. JEDDELOH: No redirect from the
10 University.

11 HEARING OFFICER KNITTLE: Thank you. You
12 can step down, sir.

13 MR. JEDDELOH: Thank you, Mr. Ottolino.

14 MR. BLANKENSHIP: Before we get to the
15 big issue, I'd just like to note for the record
16 during the last break Mr. Trepanier found that
17 letter with the Speedway witnesses and Mr. Bamberg
18 was, in fact, identified on the letter as an
19 employee. So I just don't want there to be any
20 confusion on the record.

21 HEARING OFFICER KNITTLE: I appreciate
22 you pointing that out. I want to go off the
23 record for a second.

24 MR. JEDDELOH: Before we go off the

1 record, Mr. Knittle, the University doesn't have

2 any more witnesses, but during --

3 HEARING OFFICER KNITTLE: I'm sorry. I

4 should have probably asked you that, Mr. Jeddelloh.

5 You have no more witnesses you say?

6 MR. JEDDELOH: But before we rest, during

7 the first or second day of the hearing, there was

8 an issue raised about UI 206, UI 207, and UI 208

9 being the letter of transmittal to Dakona of the

10 purchase order and contract for this demolition,

11 and you indicated that you wanted to have copies

12 in the record.

13 I do have copies. I've marked them as

14 University Exhibit No. 3 if that's still your

15 wish. I do look at the record, and Mr. Henderson

16 asked a number of questions about these documents,

17 and it may be well to have it in the record just

18 to help for clarity sake, and I have copies for

19 everyone too.

20 HEARING OFFICER KNITTLE: I recall I did

21 want copies of that just because we talked about

22 it so much at the time. So I will admit that into

23 evidence, and I appreciate you following up on

24 that Mr. Jeddelloh.

1 MR. TREPANIER: If we might clarify what
2 this is for myself? Is this the total of the
3 contract for the demolition of 1261 Halsted?

4 HEARING OFFICER KNITTLE: I don't think
5 so. As I recall, there were three pages that,
6 Mr. Trepanier, you were asking a lot of questions
7 about that were never admitted into evidence
8 because we didn't have sufficient copies, and I
9 had asked Mr. Jeddelloh -- note for the record that
10 Mr. Wager has just entered the room.

11 I asked Mr. Jeddelloh and all of you
12 actually if you could give me these just so I have
13 them on the record since it was the subject of
14 such discussion.

15 MR. TREPANIER: If this is not the
16 entirety of the contract, then I would like the
17 University to designate the entirety of the
18 contract and have all of the contracts admitted in
19 and not just a piece of it.

20 MR. JEDDELOH: I think that if Mr. Trepanier
21 would like to have more documentation besides
22 this, he can get it. The University, at its own
23 expense, turned over copies of hundreds, if not
24 thousands, of pages of documents here relating to

1 the overall Cost Plus contract and Dakona's
2 relationship with the University and so forth,
3 most of which I think would be highly irrelevant
4 and which would clutter the record with tons of
5 stuff, but if Mr. Trepanier would like to try to
6 do that and Mr. Knittle would agree to him doing
7 that, then he can do that. I think that this
8 document was the focus document that was talked
9 about, and that's why I think it should be in.

10 HEARING OFFICER KNITTLE: I understand,
11 Mr. Jeddelloh. Let me just say, Mr. Trepanier, to
12 be perfectly frank I'm not in total recollection
13 of what was going on. I'm going to admit this,
14 but I'm also going to review the transcript of the
15 last hearing. If it turns out that I am mistaken
16 and this is not what I wanted to be admitted, then
17 I'm going to change that in my hearing officer
18 report regarding this hearing.

19 MR. TREPANIER: If I might, can I just
20 state an objection if I haven't already that I
21 believe it's improper for the attorney to attempt
22 to put this in without a witness on the stand.
23 The attorney just closed his case and then
24 submitted an exhibit, and that's improper.

1 HEARING OFFICER KNITTLE: Understood.
2 I'm overruling your objection and here's why,
3 because if this is what I think it is, it was at
4 my request that he got these documents together
5 and submitted them into evidence. This is
6 something I wanted to have in the record for the
7 Board. If, in fact, it turns out not to be the
8 case and I'm having a faulty recollection, like I
9 said, I'm going to go through the transcript and
10 make sure this is what I wanted on the record. If
11 it is, then we're going to keep it in. If not,
12 I'll address it in my hearing officer order.

13 MR. TREPANIER: We do understand that
14 this is not the entire contract?

15 HEARING OFFICER KNITTLE: Yes, we do.

16 MR. TREPANIER: Is that what the
17 University is --

18 HEARING OFFICER KNITTLE: Is that what
19 you understand, Mr. Jeddelloh?

20 MR. JEDDELOH: Well, I'm not in a
21 position to make a representation because I
22 haven't really inspected or really asked the
23 University what all there is. I know we turned
24 over a lot of contract documents that he asked

1 for, and I can't represent beyond the fact that I
2 know that this is -- these documents directly
3 relate to this demolition.

4 HEARING OFFICER KNITTLE: Mr. Trepanier,
5 I'm going to have to take a look at the
6 transcript. I can't answer as to what these are
7 right now. I thought it was agreed to that this
8 was not, but I'm taking this into evidence for the
9 purpose I've already stated, and I'm going to
10 cross-reference the transcript to make sure it's
11 what I want.

12 MR. TREPANIER: I do think it's still --
13 I think it's objectionable.

14 HEARING OFFICER KNITTLE: Your objection
15 has been noted, Mr. Trepanier.

16 MR. TREPANIER: Thank you.

17 MR. BLANKENSHIP: I think at this point
18 the respondents rest.

19 HEARING OFFICER KNITTLE: I was about to
20 see if that was going to happen, which brings to
21 us our rebuttal witnesses section. Mr. Trepanier.
22 I realize that this is an issue of some debate,
23 correct? Did you want to call them as rebuttal
24 witnesses or do you want to try to -- I don't know

1 what you were asking. Do you have any rebuttal?

2 MR. TREPANIER: Are we going to handle
3 this on the record or off the record?

4 HEARING OFFICER KNITTLE: We're going to
5 handle this on the record.

6 MR. TREPANIER: Well, at this point, you
7 know, I feel that what I'd like to do is to -- I
8 want to honor these persons, Mr. Meesig and
9 Mr. McFarland, and the effort that they've done to
10 come out here and to tell the Board what it is
11 that they saw occur and how it affected them in
12 regards to the demolition at 1261 South Halsted,
13 and I am extremely hesitant, given my desire to
14 honor their contribution and their attempt to
15 contribute, by selecting a course of action that
16 might limit their ability to so inform the Board,
17 and in light of that concern, I am not going to
18 call either as a rebuttal witness because of my
19 concern that they would then be shackled and
20 unable to give to the Board the information that
21 could be very helpful to them.

22 HEARING OFFICER KNITTLE: Do you have any
23 other rebuttal witnesses you're planning on
24 calling?

1 MR. TREPANIER: Myself.

2 HEARING OFFICER KNITTLE: Okay. Any of
3 the other complainants have any rebuttal witnesses
4 they're planning on calling? Mr. Wager?

5 MR. WAGER: No plans immediately. That
6 could change, however.

7 HEARING OFFICER KNITTLE: But as of now,
8 you are not planning on calling any rebuttal
9 witnesses? Okay. I'll take that to be a yes.

10 Mr. Trepanier, how long do you think
11 it's going to take for you to be --

12 MR. TREPANIER: I know I'm not as good
13 estimating the time as the respondents are who
14 seem to be right on the button, but for myself, I
15 might think maybe 15 minutes will -- if I have
16 minutes of testimony, will probably be long.

17 HEARING OFFICER KNITTLE: Okay.

18 MR. BLANKENSHIP: Maybe we could do that
19 before lunch.

20 HEARING OFFICER KNITTLE: Right. I'm
21 thinking the same thing. Mr. Trepanier, do you
22 need a break before we get started with your
23 rebuttal testimony or do you want to do it now?

24 MR. TREPANIER: I think that it probably

1 would help me to have a more ordered testimony if

2 I could have a break.

3 HEARING OFFICER KNITTLE: Would five
4 minutes be enough?

5 MR. TREPANIER: Yes.

6 HEARING OFFICER KNITTLE: Let's take a
7 five-minute recess, and then Mr. Trepanier will do
8 his rebuttal testimony. Let's go off the record.

9 (Break taken.)

10 HEARING OFFICER KNITTLE: We are back on
11 the record, and it is time for the complainants'
12 case in rebuttal. Mr. Trepanier, you said you
13 want to call yourself as a rebuttal witness.

14 MR. TREPANIER: Yes. Thank you.

15 HEARING OFFICER KNITTLE: I'd like to
16 swear him again, if we could.

17 (Witness sworn.)

18 HEARING OFFICER KNITTLE: Mr. Trepanier,
19 you're your witness.

20

21

22

23

24

1 WHEREUPON:

2 L I O N E L T R E P A N I E R,

3 called as a witness herein, having been first duly

4 sworn, depose and saith as follows:

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

6 by Mr. Trepanier

7 Q. I want to testify to in rebuttal on

8 several items that I can recall presented in the

9 respondents' case that I want to clarify, and I'll

10 start with in the testimony of Mr. Henderson, he

11 testified that he'd been involved in the

12 demolition of several buildings in the south

13 campus area when, in fact, I have records, these

14 particular notifications of demolition and

15 renovation naming Mr. Henderson's involvement in

16 26 demolitions in the south campus area, and the

17 words several might more applicably apply to

18 Mr. Donovan, who was a witness earlier, who has

19 indicated his involvement in five separate

20 demolitions from the 26 of Mr. Henderson, and

21 these also being in the south campus.

22 MR. BLANKENSHIP: I'd like to object to

23 this testimony and ask that it be stricken. I

24 think, if anything, it's hearsay. He's testifying

1 from some records not in evidence, and it's not
2 really proper for him to be -- he's not
3 testifying. He's arguing with Mr. Henderson's
4 testimony. If he wanted to cross Mr. Henderson,
5 he should have done that yesterday, but simply
6 coming in here now and offering his view of what
7 some records may show is not proper testimony. I
8 don't know what he's actually doing.

9 HEARING OFFICER KNITTLE: Sustained,
10 Mr. Trepanier. I've got a pack that I'd like to
11 a -- a pack of papers, and these are notifications
12 of demolition and renovation from the state EPA,
13 and I'd like to mark these as Exhibit No. 9. This
14 is a group exhibit. This is 26 notifications of
15 demolition and renovation each which name James
16 Henderson as the contact for the facility that's
17 described to be demolished.

18 (Complainants' Exhibit No. 9
19 marked for identification,
20 5-12-99.)

21 MR. JEDDELOH: If it's Mr. Trepanier's
22 intention to put these documents into the record,
23 which I presume it is, first of all, I don't think
24 that he's in a position to do that, but, secondly,

1 I think it would be to further the purpose that
2 you have just disallowed by sustaining Mr.
3 Blankenship's objection. He could have
4 cross-examined Mr. Henderson. He was here
5 yesterday, and now to try to use his own testimony
6 to subvert Mr. Henderson's testimony is just not
7 appropriate.

8 MR. BLANKENSHIP: I would also add that
9 if he's trying to impeach Mr. Henderson's
10 testimony, this is at best impeachment on a
11 collateral issue. It's a waste of time and very
12 confusing to have that stuff in the record. It's
13 totally irrelevant, and whether he was involved in
14 four demolitions or 4,000 demolitions I don't
15 think makes any difference to this case.

16 MR. JEDDELOH: And several is like
17 beauty, it's in the eyes of the beholder anyway.
18 So this is not even impeachment.

19 HEARING OFFICER KNITTLE: I don't know,
20 Mr. Trepanier, exactly what you're trying to do,
21 but are those the certified public records from
22 the IEPA?

23 MR. TREPANIER: These are not.

24 HEARING OFFICER KNITTLE: They are not?

1 They are not from that batch and they're not
2 supported by an affidavit?

3 MR. TREPANIER: That's correct.

4 HEARING OFFICER KNITTLE: Then I'm going
5 to deny those, but I have to take them into the
6 record. Can you pass those down, please?

7 MR. BLANKENSHIP: What number was this?

8 HEARING OFFICER KNITTLE: This was
9 Complainants' No. 9, and I have them as 26
10 notification and renovation notices. Is that
11 correct, Mr. Trepanier?

12 MR. TREPANIER: Yes.

13 HEARING OFFICER KNITTLE: Complainants'
14 Group Exhibit No. 9.

15 MR. JEDDELOH: I might also add for the
16 record that at least several of these appear to be
17 adulterated in the sense that they have magic
18 marker, some sort of yellow magic marker on them,
19 and I think that would further add weight to there
20 objectionable nature.

21 HEARING OFFICER KNITTLE: Well, I have
22 denied those. They are not in evidence.

23 MR. TREPANIER: And the magic marker is a
24 see through highlighter that often highlights the

1 address effective.

2 HEARING OFFICER KNITTLE: Mr. Trepanier,

3 you can proceed.

4 MR. TREPANIER: Thank you.

5 MR. WAGER: Can I ask a question?

6 HEARING OFFICER KNITTLE: Not at the

7 moment, Mr. Wager. I'll let you --

8 MR. WAGER: I was just curious what the

9 problem was with the marker? I don't understand.

10 HEARING OFFICER KNITTLE: These have not

11 been -- regardless of whether they're marked or

12 not, I'm not admitting them. So it's not an

13 issue. Okay. Mr. Trepanier.

14 BY MR. TREPANIER:

15 Q. I have had a lot of opportunities to view

16 the properties that are in the south campus area,

17 and when I see the properties on a regular basis,

18 I see these buildings, the majority of which are

19 operating businesses right now. These -- and they

20 look good and strong, and a number of the

21 buildings in the neighborhood remaining are near

22 50, and my testimony that they're good and strong

23 applies to most of those properties. In fact, I

24 believe that nearly every building but one or two

1 at this point I could apply my description of good
2 and strong.

3 I have observed the University hire
4 contractors to demolish such buildings.

5 MR. JEDDELOH: I'm going to object in
6 terms of getting into what else the University did
7 to demolish other properties in the south campus
8 area. It's beyond the scope, and it's not
9 relevant.

10 HEARING OFFICER KNITTLE: Sustained.

11 MR. JEDDELOH: I'd ask that that part of
12 his answer that -- his statement that delved into
13 that be stricken from the record.

14 HEARING OFFICER KNITTLE: His last
15 sentence will be stricken, but the remainder of it
16 will stay.

17 BY MR. TREPANIER:

18 Q. When I was observing the demolition at
19 1261 Halsted and I was observing dust leaving the
20 demolition site --

21 MR. JEDDELOH: Objection as to anything
22 relating to dust leaving the site. We've been
23 through that. The respondents both carefully
24 avoided making any reference to dust leaving the

1 site in their case, and I think that if we get
2 into that again, it's clearly beyond the scope.

3 MR. BLANKENSHIP: I'll join the
4 objection. We were extremely careful not to get
5 into these issues that have been thoroughly abated
6 in the prior four days of hearing.

7 MR. JOSEPH: I object. We talked about a
8 canopy that would catch some of the dust that
9 would be leaving that area.

10 MR. BLANKENSHIP: That was only on their
11 questions on cross that that even came up, and I
12 believe that that line of questioning was then
13 discontinued, but we certainly never asserted in
14 our case that that canopy was a dust control
15 method, and we certainly didn't even discuss dust
16 control as part of our case.

17 HEARING OFFICER KNITTLE: I'll sustain
18 the objection.

19 MR. JEDDELOH: Could we ask that the
20 response be stricken insofar as it talks about
21 dust?

22 HEARING OFFICER KNITTLE: No. Overruled.

23 BY MR. TREPANIER:

24 Q. I'm aware that the University has been

1 developing their plan for the south campus area
2 outside of the public purview, and, in fact, I
3 understand that they even -- even to this point,
4 the University doesn't have the approval that they
5 state is necessary to implement their plan.

6 MR. JEDDELOH: Objection. I ask that
7 that response be stricken. It goes beyond the
8 scope, and it's not relevant. Mr. Knittle, on
9 prior examinations, you specifically precluded
10 this witness from cross-examining Mr. Henderson on
11 this very point because it's not relevant.

12 HEARING OFFICER KNITTLE: I'll sustain
13 the objection. Mr. Trepanier, we found this to be
14 not relevant before, correct?

15 MR. TREPANIER: That's not my -- what I'm
16 responding to and it's my recollection that
17 Mr. Henderson testified specifically that they're
18 developing a plan with public input for the south
19 campus area, and I'm -- my testimony will contrive
20 that fact.

21 HEARING OFFICER KNITTLE: Because you've
22 not given any input?

23 MR. TREPANIER: No, because -- because
24 I've made it my business to attend the meetings

1 about the future of the neighborhood.

2 HEARING OFFICER KNITTLE: I'm reversing
3 my decision. I'm going to allow the testimony.

4 MR. BLANKENSHIP: I add a lack of
5 foundation and request that he be required to
6 establish a foundation as to how he can speak to
7 this issue.

8 HEARING OFFICER KNITTLE: That's sustained.

9 MR. TREPANIER: I could offer the same
10 foundation as Mr. Henderson offered, and that's
11 that I've gone to a number of these meetings at
12 different locations and at different times, and
13 plans for the neighborhood, and specific mention
14 of the south campus expansion were the topics.

15 MR. JEDDELOH: I actually objected,
16 Mr. Knittle, to his interjections concerning
17 disapproval of or purported disapproval by the
18 City of Chicago. I didn't object to him simply
19 stating that he attended meetings or complaining
20 about whether or not there was public comment, but
21 what the City of Chicago has or has not done or
22 their reasons for doing it or not doing it is so
23 far beyond the scope of anything relevant, plus
24 beyond the scope of our case, that I think that it

1 would be highly objectionable and improper.

2 HEARING OFFICER KNITTLE: I will sustain
3 any testimony about what the City of Chicago is
4 doing, Mr. Trepanier.

5 MR. TREPANIER: Anything that they're
6 doing?

7 HEARING OFFICER KNITTLE: In regards to
8 the south campus area, anything -- any decisions
9 that they are making I don't think is relevant to
10 this case. Do you have something --

11 MR. TREPANIER: We did have testimony
12 from Mr. Henderson about the results of the
13 meetings that he attended.

14 MR. JEDDELOH: We had no testimony from
15 Mr. Henderson about anything relating to the City
16 of Chicago, period.

17 MR. TREPANIER: If they want to pick and
18 choose who they can report on back from the
19 meetings, if I want to report on a meeting that
20 the City of Chicago was present --

21 MR. JEDDELOH: You know, this --

22 HEARING OFFICER KNITTLE: Hold on.
23 Everybody, time out. I am allowing you to give
24 some limited testimony in this area, Mr. Trepanier.

1 I've overruled two objections on it, and I'm going
2 to allow you to continue to give some limited
3 testimony. I don't think you're capable of
4 discussing what the City of Chicago feels or
5 believes and that's why I was sustaining that.

6 MR. TREPANIER: I understand that.

7 HEARING OFFICER KNITTLE: So let's
8 proceed on from here.

9 BY MR. TREPANIER:

10 Q. And one of the specific meetings
11 regarding the south campus plan was held in the
12 city council chambers, and a very large
13 disapproving crowd attended and was able to offer
14 testimony.

15 MR. JEDDELOH: I'm going to object to the
16 hearsay nature of this and to his characterization
17 of the crowd as disapproving. He can't make that
18 statement. He can testify as to what he saw, but
19 he can't testify as to what others felt or what
20 others said.

21 HEARING OFFICER KNITTLE: Sustained.

22 BY MR. TREPANIER:

23 Q. And at that meeting, which was called a
24 tiff hearing, hasn't resulted in approval of the

1 project.

2 MR. JEDDELOH: I'm going to object, the
3 same basis. He is clearly trying to subvert your
4 ruling on this whole area of inquiry by continuing
5 to come back to it.

6 HEARING OFFICER KNITTLE: I'm going to
7 allow the statement to stand. Overruled. Go
8 ahead, Mr. Trepanier.

9 MR. BLANKENSHIP: Let me just, for the
10 record, object to lack of foundation as to when
11 this meeting even occurred, let alone where -- in
12 whose presence.

13 HEARING OFFICER KNITTLE: I understand.

14 MR. JEDDELOH: And as to the foundation
15 for his knowledge about what was approved and what
16 wasn't approved. He has no foundation for that.

17 HEARING OFFICER KNITTLE: Mr. Trepanier,
18 you can proceed.

19 BY MR. TREPANIER:

20 Q. I observed the activities of the
21 University as they demolished --

22 MR. JEDDELOH: I'm going to object
23 again. Why are we getting into other
24 demolitions? We've gone through this. You've

1 refused to allow them to do it, and he's doing it
2 again.

3 HEARING OFFICER KNITTLE: Sustained.
4 Tell me why you want to get into this, Mr. Trepanier?

5 MR. TREPANIER: Because the attorney
6 himself elicited testimony from the witness that
7 what he was doing was demolishing buildings and
8 maintaining green space, and I'm going to traverse
9 that and say -- and with my testimony say, in
10 fact, when they demolished buildings, they have
11 not installed green space and where there was
12 green space in the neighborhood, they've
13 demolished it.

14 MR. JEDDELOH: We've testified with
15 respect to the 1261 property. We've gone through
16 the 1261 property ad nauseam. We don't need to
17 have more testimony about what the University did
18 at 1261. If he's getting into other demolitions
19 than what the University has done with other
20 properties, than that's beyond the scope. It's
21 irrelevant.

22 MR. TREPANIER: But on cross-examination
23 --

24 HEARING OFFICER KNITTLE: Hold on,

1 Mr. Trepanier, please. I'm going to allow you to
2 testify along the line that you just -- you would
3 testify to if you keep it short and to the point
4 because we did talk about green space and
5 Mr. Jeddeloh did bring up a little about the south
6 campus project. However, I do want to keep it
7 brief because I do think it is not entirely
8 relevant to this case as I've ruled a number of
9 times before.

10 MR. BLANKENSHIP: And going forward,
11 object to lack of specificity. I would like
12 Mr. Trepanier, if he's going to talk about pieces
13 of property, to identify them specifically so that
14 we may, in fact, respond to that. If he just
15 talks generally about spaces, that does not enable
16 us to address, you know, his testimony. If he's
17 got particular spaces in mind, I think he should
18 be required to identify them.

19 MR. TREPANIER: I can keep that in mind.

20 HEARING OFFICER KNITTLE: Okay. Proceed,
21 Mr. Trepanier.

22 BY MR. TREPANIER:

23 Q. In fact, at the site 1261 South Halsted,
24 following the University's demolition of that

1 property, the University has not maintained a
2 green space there, but has -- in fact, what they
3 have done is prevented green material from growing
4 on that site, and they've put a covering on it
5 which is such that green material cannot grow
6 there. Also, I would direct the attention to that
7 site in the south campus expansion area, which is
8 a half of a block on the north side of Liberty
9 Street, where a community group, which includes
10 myself, and over a number of years from 1989 to
11 approximately 1994 constructed a community garden,
12 including about a dozen trees of which had gotten
13 up to be five or six years old, when the
14 University in conjunction with the City of Chicago
15 arranged for that space to be bulldozed and
16 fenced, and since that time, all of the trees that
17 the community had installed there were bulldozed
18 by University contractors, and --

19 MR. JEDDELOH: Again, I'm going to
20 object, if nothing else for the record, beyond the
21 scope. It's not relevant. Just because the
22 University testified that the plan is to have
23 mixed uses, including green space, does not mean
24 that Mr. Trepanier then has the right to come in

1 and talk about the bulldozing of trees and things
2 like that.

3 MR. TREPANIER: Mr. Jeddelloh
4 mischaracterizes the testimony. The testimony was
5 not about that the plan includes green space. The
6 testimony was that that's, in fact, what
7 Mr. Henderson has --

8 HEARING OFFICER KNITTLE: Hold on. I'm
9 going to sustain this objection not because for
10 the exact reason that Mr. Jeddelloh mentioned, but
11 because I don't think it's relevant, and I don't
12 think that the testimony elicited when Mr. Henderson
13 was testifying was all that relevant either, but
14 there was no objection to the relevancy at that
15 point in time. So I don't think it was relevant
16 then, and I don't think it's relevant now. So now
17 I'm saying to move on, Mr. Trepanier.

18 Mr. Trepanier, I want to point out to
19 you that I can still decide it's not relevant
20 now. If they testified to matters that I thought
21 were not relevant and if there was no objection,
22 I'm not going to jump in and say hey, that's not
23 relevant. You know, that was up to you to say it
24 wasn't relevant if you didn't want it brought in

1 to the matter. That doesn't preclude me from now
2 finding something that's not relevant just because
3 it was testified to before.

4 Mr. Wager, do you have a motion to make
5 or something?

6 MR. WAGER: So did I hear you say that
7 Mr. Henderson's testimony is irrelevant?

8 HEARING OFFICER KNITTLE: No, you did
9 not. You heard me say that a specific portion
10 about green space I might have sustained a
11 relevancy objection at that point in time, but
12 there was none made. We'll never know whether I
13 would have sustained a relevancy objection.

14 Mr. Trepanier, please proceed.

15 MR. TREPANIER: That's all I have okay.

16 HEARING OFFICER KNITTLE: Mr. Jeddelloh,
17 did you have redirect?

18 MR. JEDDELOH: Well, I have
19 cross-examination.

20 HEARING OFFICER KNITTLE: Pardon me.
21 Cross-examination.

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

23 by Mr. Jeddelloh

24 Q. Mr. Trepanier, can I see your notes?

1 A. Well, I had a ruling on this previously
2 from the hearing officer, and I want to operate
3 within that. So I don't feel that -- in
4 accordance with that ruling, I understand I
5 needn't turn over all of my notes, but those that
6 I used during my rebuttal testimony that were
7 those notes such as an attorney might have when
8 questioning his own witness.

9 HEARING OFFICER KNITTLE: You are mostly
10 correct, Mr. Trepanier. The rule was that you
11 have to turn over the notes that you were
12 referring to when you were testifying.

13 MR. JEDDELOH: Right. That's all I'm
14 asking for and also the back of that other page
15 that I saw you referring to.

16 MR. TREPANIER: And, for the record,
17 these are the notes that I wrote when Mr. Kolko
18 was testifying and then when Frank was testifying.

19 HEARING OFFICER KNITTLE: Mr. Ottolino?

20 MR. TREPANIER: Yes.

21 BY MR. JEDDELOH:

22 Q. Mr. Trepanier, thank you for that.

23 With respect to your statement that the
24 businesses and the buildings there all look and

1 are strong buildings, do you recall that

2 testimony, sir?

3 A. Yes.

4 Q. That's based on your visual observation

5 only, isn't it?

6 A. For some of the buildings that I have

7 experienced being on the interior of them.

8 Q. And you visually observed the interiors?

9 A. Of those that I was inside of.

10 Q. Right. So you're testifying only from

11 your visual observation; is that right?

12 A. Well, I've got extensive experience in

13 several of the buildings beyond visual.

14 Q. You don't know whether there's any

15 building code violations in any of those

16 buildings, do you?

17 A. Well, for a couple of the buildings, I --

18 in fact, even during the time that this case has

19 been pending, I know that 717 was cleared out of

20 building court.

21 Q. But you don't know if the building

22 code --

23 A. That's 717 Maxwell.

24 Q. You don't know the building code status

1 of each of the buildings in the south campus area,
2 do you?

3 A. Not all of them.

4 Q. And you don't know the status of the
5 state of repair of their electrical systems, do
6 you?

7 A. Again, you're referring to all of the
8 buildings?

9 Q. Right.

10 A. That's true.

11 Q. And you don't know the status of whether
12 or not all of them are free from leaks or other
13 kinds of building code violations, do you?

14 A. Again, you're referring to all of the
15 buildings?

16 Q. I am.

17 A. No, I don't know about all of the
18 buildings.

19 Q. And you have no idea what it would cost
20 in each and every case to cure building code
21 problems on any of the buildings, do you?

22 A. Again, you're asking me specifically if I
23 have that information for every building in the
24 south campus area?

1 Q. That's right.

2 A. I don't.

3 Q. And you don't know for each of those
4 buildings whether there are structural defects
5 which could be latent and not visible to the naked
6 eye, do you?

7 A. Well, I've answered your questions, you
8 know, with yes or no each time, but I really think
9 that this is establishing a record that's
10 misleading. For a number of these buildings, I,
11 in fact, know that they're structurally sound.
12 Some of the buildings it's obvious to me that
13 they're structurally sound, and some buildings I
14 have very little knowledge other than looking at
15 them from the outside.

16 Q. You wouldn't be aware of a latent defect
17 that wouldn't be visible to the naked eye, would
18 you?

19 A. If it were in one the buildings that I
20 only can view from the outside, what you're
21 stating is correct.

22 Q. And even if you could see some of the
23 buildings on the inside, that wouldn't necessarily
24 disclose a latent defect, would it?

1 A. If there was a signature structural
2 defect in the building, I believe that that's
3 visible on an interior inspection.

4 Q. These are all old buildings, aren't they?

5 A. They have various ages, some of them more
6 historic dating back to the 1860s.

7 Q. Do you know whether all of the buildings
8 in that area are free of leaks and other forms of
9 structural defects?

10 A. I know in fact that some of the buildings
11 leak.

12 Q. Now, you're also aware of the fact that
13 there are at least several buildings that have
14 numerous building code violations, aren't you?

15 A. I don't know of any buildings that have
16 been adjudicated -- are currently adjudicated with
17 a violation.

18 Q. That's not what I asked you.

19 A. Maybe you could make your question
20 clearer.

21 MR. JEDDELOH: Could you read it back,
22 please?

23 (Record read.)

24 BY THE WITNESS:

1 A. I am aware of two buildings specifically
2 where the City of Chicago has alleged that there
3 are some building code violations.

4 BY MR. JEDDELOH:

5 Q. And part of the reason why you asked for
6 a continuance in this case had to do with an
7 enforcement action against 717 Maxwell; isn't that
8 right?

9 A. That's correct.

10 Q. In that case, you're familiar with the
11 allegations in that case, are you not?

12 A. To a limited degree I've attempted to
13 familiarize myself with them.

14 Q. And you're familiar with the fact that in
15 the case of the City vs. Max Union Cooperation at
16 least one of the allegations of the City is that
17 there is a defect in a structural member, are you
18 not?

19 A. That was, in fact, the exact -- that was,
20 in fact, the exact allegation that was cleared out
21 of building court in the 1997 case which started
22 and ended while this case has continued. So I
23 understand that they've made an allegation.
24 They've made incredible allegations including the

1 lack of peepholes holes in doors that are not
2 existent. So just the fact that there's an
3 allegation of a building code violation we really
4 felt that the City of Chicago has targeted our
5 buildings on behalf of the University in an
6 attempt to close us down and get our buildings
7 demolished.

8 Q. Well, one of the amended complaints you
9 attached to your motion to continue was in the
10 case of City of Chicago vs. Max Union, 97 M1
11 402947; isn't that true?

12 A. That's, in fact, the case that --

13 Q. Is that true or not true?

14 MR. JOSEPH: I object to the relevance of
15 this.

16 HEARING OFFICER KNITTLE: Mr. Joseph, you
17 can't object right now. Mr. Trepanier has called
18 himself as a rebuttal.

19 MR. JOSEPH: Why don't you object?

20 BY MR. JEDDELOH:

21 Q. Did you or did you not attach as one of
22 the complaints that you are using to justify your
23 motion for a continuance 97 -- the complaint in 97
24 M1 402947.

1 A. Without looking at the document?

2 Q. I'll provide you one.

3 A. I know I attached one, but I can't

4 confirm the case number.

5 Q. That's very fair. I'll show you a copy.

6 A. Yes, I did.

7 Q. And on that -- the first page, which is

8 the only page you've appended, that first

9 amendment -- that first amended complaint states,

10 quote, failure to repair or replace defective

11 structural member, close quote, does it not? I'll

12 show it to you again.

13 A. Yes, it does. So that case was ruled --

14 Q. I'm sorry. There's no question pending,

15 sir. Thank you.

16 A. -- in our favor.

17 MR. JEDDELOH: I ask that that portion of

18 the answer, which is nonresponsive to my question,

19 be stricken.

20 HEARING OFFICER KNITTLE: Granted. Mr.

21 Trepanier, you know, you can only -- you can't

22 provide answers if there's no question pending,

23 especially on cross-examination.

24 MR. TREPANIER: I hadn't finished my

1 answer when the attorney cut me off.

2 HEARING OFFICER KNITTLE: I think it was
3 a yes or no question that he had asked you for, a
4 yes or no question. Mr. Wager, are you trying to
5 say something?

6 MR. WAGER: Well, it seemed to me the
7 question might not have a precise yes or no
8 question.

9 MR. JEDDELOH: I'm sorry. Mr. Wager is
10 not eligible to represent Mr. --

11 HEARING OFFICER KNITTLE: Understood, and
12 that is true, Mr. Wager. You and Mr. Joseph have
13 not called Mr. Trepanier. In fact, you have both
14 stated that you have no rebuttal witnesses. This
15 is Mr. Trepanier's rebuttal witness, and if he has
16 a legal argument to make, he can make it on his
17 own behalf.

18 MR. WAGER: But, I mean, we're still
19 participants in the case and we have an interest
20 here.

21 HEARING OFFICER KNITTLE: Yes. That's
22 true. You are still participants in the case and
23 you do have an interest, but at this point in
24 time, Mr. Trepanier has called himself as a

1 rebuttal witness and only he can ask questions of
2 himself and defend himself on cross-examination.

3 BY MR. JEDDELOH:

4 Q. Mr. Trepanier, there are vacant buildings
5 in the south campus project area; isn't that true?

6 A. It's my understanding that the vacant
7 buildings --

8 Q. You can just answer the question with yes
9 or no.

10 A. -- most, if not all, by the University --

11 MR. JEDDELOH: I'm sorry. May I have an
12 instruction that the witness answer that question
13 with a yes or a no?

14 HEARING OFFICER KNITTLE: Mr. Trepanier,
15 if it's possible to answer these questions with a
16 yes or a no, you have to answer them with a yes or
17 a no. You can attempt to rehabilitate yourself on
18 your redirect.

19 BY THE WITNESS:

20 A. Yes.

21 BY MR. JEDDELOH:

22 Q. And there were vacant buildings in that
23 area when you lived there, weren't there?

24 A. Yes.

1 Q. And, in fact, there were vacant buildings
2 there before the University started its south
3 campus project, were there not?

4 A. I don't know.

5 Q. You testified in your own behalf that
6 there were meetings about the future of the
7 neighborhood, and you testified about one meeting
8 you attended in the city council chambers.

9 Other meetings were held by the
10 University you attended, weren't they? Isn't that
11 true?

12 A. No.

13 Q. Who else held meetings about these
14 projects besides the University or the City?

15 A. I don't know that the University held a
16 meeting for the project.

17 Q. So you don't know whether the University
18 held meetings or not then?

19 A. I know that the University tends to meet
20 with those they want to talk to.

21 MR. JEDDELOH: I ask that that response
22 be stricken as nonresponsive.

23 MR. TREPANIER: I think it was
24 responsive.

1 HEARING OFFICER KNITTLE: Overruled.

2 Mr. Trepanier, you have to answer the
3 question as put to you instead of just providing
4 your own testimony at this point.

5

6 BY MR. JEDDELOH:

7 Q. Do you know as a matter of fact whether
8 or not the University had meetings about the south
9 campus project that were open to the public?

10 A. I don't know.

11 Q. And you said you attended a number of
12 meetings. You testified as to the meeting that
13 was held in the council chambers.

14 Where else did you attend meetings?

15 A. The Marci Newbury Center.

16 Q. What's that?

17 A. It's an area -- I believe it's a
18 recreational enterprise, public service.

19 Q. And who sponsored that meeting?

20 A. My recollection isn't clear on who
21 sponsored the meeting. Likely, though, it was the
22 City of Chicago.

23 Q. Well, is that speculation on your part?

24 A. Well, it was clearly speculation. I said

1 likely.

2 Q. And where else did you attend meetings

3 about the south campus project?

4 A. The Duncan YMCA.

5 Q. And who sponsored that meeting?

6 A. I don't know.

7 Q. Is it possible that it was the

8 University?

9 A. No. It was definitely not the University

10 because they sat in the meeting mute.

11 Q. Where else did you attend the meetings?

12 A. Could you make your question more

13 specific? That's a very broad question.

14 Q. Well, you've mention the city council

15 chamber, you've mentioned the Newbury Center, you

16 mentioned the Duncan YMCA.

17 Where else did you attend meetings?

18 A. I attend meetings all over the city

19 and all over the country.

20 Q. I'm sorry. Concerning the south campus

21 project, if that was your concern.

22 A. I think that I may need to clarify then

23 the answers that I just gave given your question

24 now. The meetings at the Duncan YMCA and the

1 Marci Newbury Center, at that point what the
2 University was publicly saying was not the south
3 campus project. At that point, they were saying
4 we can coexist.

5 Q. I'm sorry. My question to you, sir, is a
6 very simple one. You testified as to meeting at
7 the city council, at the Newbury Center, and at
8 the Duncan YMCA.

9 Did you attend any other meetings about
10 the south campus project anyplace?

11 A. I attended a meeting at UIC.

12 Q. When was that?

13 A. It may have been approximately three to
14 seven months prior to this date.

15 Q. Do you know who held that meeting?

16 A. I don't.

17 Q. Is it possible that that was sponsored by
18 the University?

19 A. I don't know.

20 Q. And various persons spoke at that
21 meeting, I presume?

22 A. Yes.

23 Q. And persons spoke in favor of the
24 project, I presume?

1 A. I think there may have been a few or a
2 couple.

3 MR. JEDDELOH: That's all the questions I
4 have, Mr. Knittle.

5 HEARING OFFICER KNITTLE: Mr. Trepanier?

6 MR. TREPANIER: Is there any more --

7 HEARING OFFICER KNITTLE: Sorry.

8 Mr. Blankenship?

9 MR. BLANKENSHIP: I don't have any
10 questions.

11 HEARING OFFICER KNITTLE: My apologies to
12 Mr. Blankenship. Mr. Trepanier, do you have any
13 redirect?

14 MR. TREPANIER: Yeah.

15 MR. JEDDELOH: I think -- should
16 Mr. Wager and Mr. Joseph be given an opportunity?

17 HEARING OFFICER KNITTLE: Well, they
18 didn't want to call any rebuttal witnesses. How
19 do you feel about that, Mr. Joseph?

20 MR. JOSEPH: Ask questions?

21 HEARING OFFICER KNITTLE: Uh-huh.

22 MR. JOSEPH: Well, you know, honestly, I
23 was going to, but then I felt I was excluded, and
24 it didn't seem fair. So I didn't really write

1 down any questions.

2 HEARING OFFICER KNITTLE: Well, I don't

3 think that -- in the case in chief, you each

4 called, you know, each witness. I asked you both

5 prior to the rebuttal case whether you wanted to

6 call any rebuttal witnesses, and you both said

7 no. So I just assumed you were not calling any

8 rebuttal witnesses, and that includes Mr. Trepanier.

9 That's why you were not asked to give any

10 questions.

11 Do you understand that?

12 MR. JOSEPH: Right.

13 HEARING OFFICER KNITTLE: I was not

14 purposely excluding you. In fact, I did ask you

15 both whether you had any rebuttal witnesses. Go

16 ahead, Mr. Trepanier. I don't mean to cause any

17 confusion. I was --

18 MR. JOSEPH: Well, I was confused because

19 I made an objection and you kind of excluded me

20 from the process.

21 HEARING OFFICER KNITTLE: And that's

22 why. I'm trying to tell you why because --

23 MR. JOSEPH: I don't think a question is

24 different than an objection as far as my status in

1 this as a complainant.

2 HEARING OFFICER KNITTLE: I'm sorry. I
3 don't understand your question, Mr. Joseph.

4 MR. JOSEPH: Well, I was a little
5 confused that I was not allowed to object, but now
6 I'm allowed to ask questions.

7 HEARING OFFICER KNITTLE: Well, see, I
8 don't think you are because you didn't call
9 Mr. Trepanier as a rebuttal witness. Only
10 Mr. Trepanier called a rebuttal witness. That's
11 how I was viewing things. Yes, Mr. Wager.

12 MR. WAGER: I assume if he was called
13 that others can call him as well?

14 HEARING OFFICER KNITTLE: That wasn't my
15 assumptions, and I don't think that's correct.
16 Mr. Trepanier, do you have something you wanted to
17 add?

18 MR. TREPANIER: I would suggest that we
19 follow -- I'm recalling the procedure we've used
20 earlier in that the co-complainants also have an
21 opportunity to cross-examine any of the
22 complainants' witnesses.

23 MR. JEDDELOH: I don't believe it would
24 be cross-examination if they could do that,

1 Mr. Knittle.

2 HEARING OFFICER KNITTLE: What about you,
3 Mr. Blankenship?

4 MR. BLANKENSHIP: I don't think it would
5 be proper cross-examination either.

6 HEARING OFFICER KNITTLE: They were
7 allowed to cross-examine because they all had the
8 opportunity to direct examine because they were
9 the complainants -- they were all the
10 complainants' witnesses. Do you understand the
11 distinction, Mr. Trepanier?

12 MR. TREPANIER: Well, I'm hearing what
13 you're saying, and I think that my recollection
14 isn't that same way. My recollection is is that
15 sometimes we specifically had each complainant say
16 this is my witness and we decided who was going to
17 question the witness first or would the witness
18 speak on his own first. I don't know that we --

19 HEARING OFFICER KNITTLE: That is not a
20 correct recollection. I specifically during the
21 case in chief allowed each complainant -- I gave
22 them the opportunity to conduct a direct exam if
23 they so chose. A lot of times, you know, you
24 didn't like Mr. Wager or most of the complainants

1 aren't here and they didn't, of course, conduct
2 any, you know, direct examination, but they would
3 be able to if, in fact, they had been here, and
4 you've each had an opportunity on each of the
5 complainants' witnesses to do the direct
6 examination because they were each of the
7 complainants' witnesses.

8 MR. TREPANIER: Somehow here we
9 differentiated that when I came up on rebuttal
10 that I was not a rebuttal witness for the other
11 complainants.

12 HEARING OFFICER KNITTLE: Well, that was
13 why I asked if they had a rebuttal witness. I
14 don't want to prohibit you two from asking
15 Mr. Trepanier questions, but I gave you that
16 opportunity, and it doesn't seem like you took
17 it. I'd be inclined to let you ask him some brief
18 questions if it's not repetitive, but, you know,
19 and I'm sure there will be objections from the
20 respondents.

21 MR. WAGER: I believe I didn't say no, I
22 didn't have any. I said I wasn't ready to say at
23 that point.

24 HEARING OFFICER KNITTLE: Well, I

1 understand, and then I asked you again if you were
2 ready to say it. That's the point where you have
3 to say, Mr. Wager, but I'll tell you what I'm
4 going to do, I'll allow you each to ask Mr. Trepanier
5 some direct examination questions. Of course,
6 then -- because I don't want there to be any
7 confusion later on that you weren't given the
8 opportunity, and then, of course, Mr. Trepanier is
9 going to be subject to cross-examination again on
10 those questions. So let's do that. Mr. Joseph,
11 you have questions. Go ahead.

12 MR. WAGER: What is the scope or the
13 limit of these questions as you see it?

14 HEARING OFFICER KNITTLE: The scope of
15 these questions not only as I see it, but as are
16 required by the regulations, is that it's limited
17 to the rebuttal -- it's rebuttal testimony. So
18 it's only what the respondents brought up on their
19 case, and they called three witnesses. They
20 called Mr. Kolko, Mr. Henderson, and Mr. Ottolino,
21 only relating to issues that were brought up at
22 that time. Mr. Joseph, you can go ahead.

23

24

1 DIRECT EXAMINATION

2 by Mr. Joseph

3 Q. Mr. Trepanier, do you remember the
4 compost pile that was on Liberty Street?

5 MR. BLANKENSHIP: Objection. That's
6 beyond the scope of our case.

7 HEARING OFFICER KNITTLE: That is beyond
8 the scope.

9 MR. JOSEPH: He discussed the compost
10 pile. I just wanted to talk about how they --

11 HEARING OFFICER KNITTLE: Who discussed
12 the compost pile?

13 MR. JOSEPH: Or he discussed the action
14 on Liberty Street that was taken by the University
15 and the City.

16 MR. BLANKENSHIP: That was the area of
17 questioning you ruled was irrelevant.

18 HEARING OFFICER KNITTLE: I ruled that
19 that was beyond the scope at that time, too, Mr.
20 Joseph.

21 MR. JOSEPH: Okay.

22 HEARING OFFICER KNITTLE: He brought it
23 up, and I didn't think it was proper then, and I
24 don't think it's proper now.

1 BY MR. JOSEPH:

2 Q. You brought up -- you talked about the
3 trees that were planted. Do you remember about
4 how many there were?

5 MR. BLANKENSHIP: Same objection, same
6 thing.

7 HEARING OFFICER KNITTLE: Sustained.

8 BY MR. JOSEPH:

9 Q. Do you remember the article in one of the
10 University papers about they were requesting,
11 like, \$90 million for maintenance --

12 MR. JEDDELOH: Objection, beyond the
13 scope, irrelevant, foundation.

14 MR. BLANKENSHIP: Hearsay.

15 MR. JEDDELOH: Does that cover the
16 waterfront?

17 HEARING OFFICER KNITTLE: I'll sustain
18 the hearsay objection.

19 MR. JOSEPH: I'm confused now.

20 HEARING OFFICER KNITTLE: Well, he can't
21 really testify to what the newspaper stated was a
22 fact.

23 BY MR. JOSEPH:

24 Q. You've talked about the historical status

1 or the -- let's see. Prior to the current

2 historical group, there was a group that was

3 seeking actual landmark status?

4 MR. BLANKENSHIP: Objection, relevance,
5 form.

6 HEARING OFFICER KNITTLE: I'll let you
7 answer the question. Overruled.

8 BY THE WITNESS:

9 A. Yes. There both is and was such a group
10 seeking landmark status for the buildings
11 remaining in the expansion area.

12 BY MR. JOSEPH:

13 Q. And do you remember what happened
14 downstate when they had the meeting?

15 MR. JEDDELOH: Objection, relevancy,
16 beyond the scope.

17 MR. BLANKENSHIP: Foundation.

18 HEARING OFFICER KNITTLE: I'm going to
19 sustain those, Mr. Joseph. I don't see how that's
20 relevant to this case.

21 BY MR. JOSEPH:

22 Q. You talked about some meetings at the
23 University. Did you receive notification or do
24 you know of any notification that was sent to

1 anyone on Maxwell Street who lived, worked,
2 resided --

3 MR. BLANKENSHIP: Objection, relevance.

4 HEARING OFFICER KNITTLE: Overruled.

5 BY THE WITNESS:

6 A. Well, in fact, it's an issue that I spoke
7 to at that meeting at the University was the fact
8 that there was no notification to property owners
9 that that meeting was being held, and I'm
10 referring to property owners in the expansion
11 area.

12 BY MR. JOSEPH:

13 Q. And this was a so-called public meeting?

14 A. I didn't see them hold anyone away.

15 Q. And what do you remember happened at that
16 meeting?

17 A. I think there was discussion of the
18 University's tax increment financing request to
19 the city council, and there was a lot of hooting
20 and shouting and people saying very eloquent
21 things asking that they --

22 MR. JEDDELOH: Object as to what people
23 might have been saying. That would be hearsay.

24 MR. BLANKENSHIP: Objection to the

1 relevancy.

2 HEARING OFFICER KNITTLE: I'll sustain

3 that. We have to ask some relevant questions,

4 Mr. Joseph. I'm trying to allow you to ask the

5 questions, but we've got to get some that are

6 relevant. I want you to have the opportunity, but

7 you have to work with me and ask some questions

8 that are relevant and proper on rebuttal.

9 MR. JOSEPH: I can't think of anything

10 else. Thanks.

11 HEARING OFFICER KNITTLE: That's fine.

12 Mr. Wager, do you have anything for Mr. Trepanier?

13 MR. WAGER: Then you're saying questions

14 should be limited to his response to their

15 response or what?

16 HEARING OFFICER KNITTLE: I'm saying any

17 questions you have of Mr. Trepanier have to be

18 limited to what the respondents put on when they

19 called their witnesses. It's a pretty narrow area

20 that you can ask questions of.

21 As I told Mr. Joseph before you arrived

22 this morning, you'll have an opportunity to make a

23 closing argument. So if you have things that are

24 not related to what they put on as evidence and

1 their witnesses, you might want to save it for
2 closing argument, but you do have the right to ask
3 Mr. Trepanier some questions.

4 DIRECT EXAMINATION

5 by Mr. Wager

6 Q. Are you familiar with some of the hazards
7 involved with lead paint?

8 MR. BLANKENSHIP: Objection, beyond the
9 scope of our case.

10 HEARING OFFICER KNITTLE: I'll sustain
11 that. That's one of the -- that's been objected
12 to and sustained before. It's beyond the scope
13 and not relevant to this case, Mr. Wager.

14 BY MR. WAGER:

15 Q. Were there any aspects of the previous
16 testimony which you have discussed before which
17 you had a problem with or found that were not
18 absolutely correct?

19 MR. BLANKENSHIP: Objection.

20 MR. JEDDELOH: Objection.

21 HEARING OFFICER KNITTLE: I appreciate
22 the effort, but I'm going to have to sustain those
23 objections. You can't just ask him if there's
24 anything he wants to talk about and let him go,

1 Mr. Wager.

2 MR. WAGER: I was trying to relate it to
3 the previous testimony, some of which I didn't
4 have a chance to hear.

5 HEARING OFFICER KNITTLE: Right. No. I
6 understand, but you had the opportunity to be here
7 on time if you wanted to be. So I can't help you
8 out there. Nothing else, Mr. Wager?

9 MR. WAGER: It's difficult to know how to
10 proceed.

11 HEARING OFFICER KNITTLE: Right. It's a
12 limited area? Do you have anything else? As I
13 said, you'll be able to make a closing argument
14 where you'll have more leeway than you do at this
15 point in time.

16 MR. WAGER: Okay.

17 HEARING OFFICER KNITTLE: Thank you,
18 Mr. Wager. Is there any cross on those two.

19 MR. BLANKENSHIP: No. We're done.

20 HEARING OFFICER KNITTLE: Mr. Trepanier,
21 you can redirect.

22 MR. TREPANIER: Thank you. There's just
23 a couple of areas that I want to redirect on.

24

1 REDIRECT EXAMINATION

2 by Mr. Trepanier

3 Q. One specifically regarding the questions
4 on a building violation case from 1997. As
5 counsel pointed out, I had appended a front page
6 of that to my recent motion to continue, which was
7 denied, and I just want to make clear on the
8 record that that case, wherein I was named as a
9 defendant, was resolved in the defendants' favor
10 and no longer is the City continuing with that
11 allegation, and, in fact, this building at 717
12 Maxwell we went through in minutia with the City
13 and in its entirety was settled in favor of the
14 defendants with no penalty.

15 Also, in another area regarding the
16 vacant buildings in the Roosevelt, Halsted area,
17 it's my knowledge that the vacant buildings nearly
18 to every one that are in the project area are
19 vacant because they're owned by the University of
20 Illinois, and each of these buildings, nearly
21 every one, was occupied with businesses and/or
22 residences up until the time or shortly before
23 their purchase by the University, and, in fact,
24 I've lived in a building that was purchased by the

1 University and then demolished by the University,
2 and my housing was eliminated in that action.

3 I also understand that the University
4 has reported their own buildings to be leaking --

5 MR. JEDDELOH: I'm going to object as to
6 his understanding about what the University may
7 have done about other structures.

8 HEARING OFFICER KNITTLE: Mr. Trepanier?

9 MR. TREPANIER: I'm referring not to
10 buildings in the expansion area, but to the
11 existing campus buildings the University reports
12 to be leaking.

13 MR. JEDDELOH: Well, then I would add an
14 additional objection relating to relevancy,
15 foundation --

16 HEARING OFFICER KNITTLE: Sustained on
17 the relevancy.

18 MR. TREPANIER: The reason that I
19 believed it was relevant was the counsel's --
20 counsel's intent of indicating the structures
21 caused their leaking, and I wanted to balance that
22 and, in fact, say the University themselves in
23 their main campus buildings have leaks.

24 HEARING OFFICER KNITTLE: I understand

1 what you're saying and what you're trying to
2 prove, Mr. Trepanier. I don't think that it's
3 relevant to the 9A and 21B allegations in the
4 complaint.

5 BY MR. TREPANIER:

6 Q. And so finally, it's my testimony that
7 the University has knocked down these buildings,
8 although they were repairable, they had no
9 interest to repair them.

10 MR. JEDDELOH: I'm going to object as to
11 his testimony imputed to the University. He's
12 speculating about what the University might have
13 done. I don't think there's a foundation for that
14 at all.

15 MR. TREPANIER: There's no speculation.
16 This is just my testimony that the University is
17 purchasing good buildings and knocking them down.

18 HEARING OFFICER KNITTLE: That's more
19 along the lines of testimony, Mr. Trepanier. I'll
20 sustain the objection. That's an argument you can
21 make at closing, if you want. If you think the
22 evidence produced here and the last month at the
23 hearing shows that, you can make that argument on
24 closing.

1 MR. TREPANIER: That closes my rebuttal.

2 HEARING OFFICER KNITTLE: Is there any --

3 MR. JEDDELOH: No more.

4 HEARING OFFICER KNITTLE: -- cross?

5 MR. JEDDELOH: No more.

6 HEARING OFFICER KNITTLE: I'm getting a
7 little confused. Anyway, thank you both.

8 Mr. Trepanier, you can step down as a
9 witness.

10 MR. TREPANIER: Thank you.

11 HEARING OFFICER KNITTLE: And as stated
12 before, Mr. Joseph and Mr. Wager, you did not have
13 any rebuttal witnesses you wanted to call,
14 correct, aside from Mr. Trepanier who you've now
15 had the opportunity to question?

16 MR. JOSEPH: (Nodding head.)

17 HEARING OFFICER KNITTLE: Is that
18 correct, Mr. Joseph?

19 MR. JOSEPH: That's correct.

20 HEARING OFFICER KNITTLE: I'm sorry.
21 Nods don't show up on the transcript.

22 MR. JOSEPH: Oh, okay.

23 HEARING OFFICER KNITTLE: Mr. Wager, is
24 that correct?

1 MR. WAGER: I guess so.

2 HEARING OFFICER KNITTLE: Okay. Well,
3 that leads us to the next phase of the case. I
4 have thought about what I want to do about those
5 two witnesses out there or those two, excuse me,
6 persons out there who wish to provide either
7 testimony or statements, and I can do this one of
8 two ways.

9 Mr. Blankenship, I know you had a
10 statement you wanted to make. I'm going to tell
11 you what I think about it first and then you can
12 say what you want to say. There's two ways that I
13 see now after going over this that they can
14 provide comment in this case. The first is a
15 statement from an interested citizen as authorized
16 by the hearing officer. I'm taking that to be a
17 statement and not testimony, and that statement
18 would be along the lines of opinion or argument,
19 and that would not be subject to
20 cross-examination.

21 However, I also can allow any
22 reasonable oral testimony, and if, in fact, they
23 want to testify, I'm going to allow that, but
24 they're going to be subject to cross-examination

1 by the respondents and by you, Mr. Trepanier, but
2 you will not be able to conduct their testimony as
3 if it's a direct examination.

4 They will have to provide their own
5 oral testimony and you can cross-examine and ask
6 any -- when I say Mr. Trepanier, my apologies, I'm
7 meaning all the complainants. They will be
8 subject to cross-examination from all the
9 parties. Those are the two methods of allowing
10 those people to comment that I see here, and I'm
11 going to allow either one, but it depends on what
12 they're wanting to say and how they're wanting to
13 say it. Once again, if it's just a statement or
14 an opinion or argument, they can say it and leave
15 without any cross-examination whatsoever.

16 So I know Mr. Blankenship you have
17 something you want to say.

18 MR. BLANKENSHIP: I understand your
19 ruling. I'd just like to make my objection for
20 the record, and I would object to these
21 individuals being allowed to offer any kind of
22 evidentiary testimony, and these are the reasons.
23 This is an action that was brought by five private
24 citizens, not by the state. We've got some rules

1 here that govern the order of proof and
2 evidentiary rules that actually are modeled after
3 the typical judicial proceeding, rules that have
4 evolved over hundreds of years actually to ensure
5 the veracity of the process and that the process
6 works, and then we've got the section here that
7 allows for statements from interested citizens,
8 and I suppose to some extent you have to figure
9 out what that provision of rule 103.201 actually
10 means, and I would agree with the hearing officer
11 that if these individuals are simply going to
12 comment on the evidence in the record, I think
13 that would be more appropriate and not
14 inconsistent with the order of proof and all the
15 other rules that we find that govern this
16 procedure, and I would have no objection to them
17 simply offering what would essentially be a
18 closing argument, and I think that's actually
19 where it seems to fit in into the order of the
20 case.

21 On the other hand, if they're allowed
22 to give testimony, I think that would essentially
23 totally subvert the hearing process. The
24 respondents have presented their case based on

1 what the complainants put in as evidence. We
2 tailor our case to their specific proof and our
3 response. To now have new people come in, offer
4 testimony, and essentially we would be -- our
5 hands would be tied. We may have evidence that
6 would rebut what these individuals say, but I
7 don't think this order of the hearing allows for
8 us to present that evidence.

9 I think that actually would rise to the
10 level of a due process violation to have evidence
11 be considered against us that we have not had a
12 chance to rebut. Cross-examination doesn't do
13 it. We may need to call other witnesses to rebut
14 that testimony, and I think then we get back to
15 the case of, you know, that there's no order at
16 all to this proceeding where we'd be back to
17 square one.

18 I think it's particularly objectionable
19 here where these witnesses were listed by
20 Mr. Trepanier and the complainants as part of
21 their case as witnesses in their case and for
22 whatever reason they did not call them as part of
23 their case. Again, we relied on that. We relied
24 on the testimony as it is. In making the

1 decisions, they governed our actions here, and I
2 think it's grossly unfair to allow them to give
3 actual substantive testimony notwithstanding the
4 fact that you may let us cross-examine them.

5 So, again, I would say I think properly
6 reading the rule in the context of this case and
7 the context of all the other rules, I think they
8 should only be allowed to give their comments on
9 when the evidence in the record is at this point.
10 I don't think they should be allowed to add new
11 evidence to the record. I think that's grossly
12 unfair, and I think it's a due process violation.

13 MR. JEDDELOH: The University would join
14 in those comments.

15 HEARING OFFICER KNITTLE: Okay. Mr.
16 Trepanier?

17 MR. TREPANIER: I appreciate your
18 attention to this matter, and I can appreciate the
19 concerns you now raised by counsel, but I think
20 that the rules that we're operating under are not
21 being made here, but were laid down and adopted in
22 the regular course, and I think between those two
23 rules, 103.202 and 103.203 I think that it sets
24 out the rule for us that we need follow here very

1 clearly, but I want to correct one matter that
2 counsel stated that we have listed these
3 witnesses -- these persons, these two persons, we
4 know of at this point of the public who want to
5 make a comment. I know that Mr. McFarland was
6 listed on our witness list, and I know that
7 Mr. Meesig was not listed on our witness list.

8 HEARING OFFICER KNITTLE: Thank you,
9 Mr. Trepanier. It's 12:50. Let's meet back here
10 at 1:45.

11 MR. JEDDELOH: Just one housekeeping
12 matter before we do that only to aid Mr. Knittle
13 in his review. Pages 74 and 75 are where you
14 asked for these document to be produced by the
15 University, and that was after a series of
16 questions or series of discussions, I might add,
17 about UI 206-208. So I think it's pretty clear,
18 and I wanted to say that now before I forgot about
19 it.

20 HEARING OFFICER KNITTLE: I'll take a
21 look at those pages. Thank you, Mr. Jeddeloh.
22 Let's take a recess.

23

24

1 (Whereupon, further proceedings
2 were adjourned pursuant to the
3 lunch break and reconvened
4 as follows.)

5 HEARING OFFICER KNITTLE: We're back on
6 the record after a recess for lunch. We have
7 finished with the case in chief, the respondents'
8 case and complainants' case in rebuttal. We
9 talked before lunch about how we were going to
10 handle these persons who wanted to either testify
11 or provide comment.

12 Are there any additional comments on
13 that? I know Marshall -- excuse me, Mr. Blankenship
14 and Mr. Jeddelloh each provided some comment.

15 Mr. Trepanier, is there anything else
16 you want to add?

17 MR. TREPANIER: No.

18 HEARING OFFICER KNITTLE: You guys?

19 MR. BLANKENSHIP: No.

20 HEARING OFFICER KNITTLE: Sir, your name
21 again.

22 MR. MEESIG: Mike Meesig.

23 HEARING OFFICER KNITTLE: Are you
24 intending to testify or do you have comments you

1 want to make? What is it you want to provide here
2 today? I ask that because if you're going to be
3 providing testimony about the demolition that
4 occurred here, we're going to swear you in and
5 you're going to be subject to cross-examination.

6 However, if you're just making a
7 statement or offering an opinion or providing some
8 argument that's not attempting to provide actual
9 evidence or testimony, we will not swear you in
10 and you will not be subject to cross-examination.

11 Do you understand that?

12 MR. MEESIG: No.

13 HEARING OFFICER KNITTLE: Let's try
14 again. What exactly are you planning on
15 testifying about?

16 MR. MEESIG: I just witnessed the event
17 for most of the time.

18 HEARING OFFICER KNITTLE: You saw the
19 demolition that occurred?

20 MR. MEESIG: I work next door.

21 HEARING OFFICER KNITTLE: And you want to
22 tell what you saw?

23 MR. MEESIG: Right.

24 HEARING OFFICER KNITTLE: Then I'm going

1 to ask that you be sworn in, and you're going to
2 be subject to questions from this side and that
3 side after you give your talk. Okay? The
4 questions will be limited to anything that you
5 address, of course, when you're speaking. Will
6 you swear this gentleman in? Do you need his name
7 spelled for you?

8 THE REPORTER: I do, his last name.

9 HEARING OFFICER KNITTLE: Can you spell
10 your last, sir.

11 MR. MEESIG: M-e-e-s-i-g.

12 HEARING OFFICER KNITTLE: Can you swear
13 him in?

14 (Witness sworn.)

15 HEARING OFFICER KNITTLE: Sir, if you
16 have anything you want to say, now is your chance
17 to say it.

18 WHEREUPON:

19 MICHAEL MEESIG,
20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

22 DIRECT EXAMINATION

23 by Mr. Meesig

24 Q. My name is Mike Meesig, and I work with

1 the Creative Reuse Warehouse, which is located on
2 O'Brien, which is -- the lot is adjacent to the
3 alley which is -- where the building was torn
4 down. So for the entire time that they demolished
5 it, the effects of the demolition were receding
6 over the lot that I work in, and I supervised this
7 fenced in lot, which is adjacent, like I said, to
8 the alley which is right there next to the
9 building that was torn down, and throughout the
10 time that the building was being demolished, there
11 was a noticeable amount of air pollution that was
12 created from the demolition, and it hindered my
13 access to that area of the yard.

14 In other words, I had to make a
15 conscientious decision to avoid that area while
16 they were demolishing the building, and, as well,
17 there are customers that frequent our lot looking
18 for used wood and other discarded reused items
19 that we store in the yard, and so these items and
20 these persons were also restricted from free
21 access to the lot because of the effects of the
22 demolition going on next door. So that's
23 basically my comment.

24 HEARING OFFICER KNITTLE: Is that it,

1 Mr. Meesig?

2 MR. MEESIG: Yes.

3 HEARING OFFICER KNITTLE: Thank you very

4 much. I'm now going to allow, starting off with

5 the complainants, to ask you questions about your

6 testimony.

7 MR. JEDDELOH: Just by way of

8 clarification, their questions would be limited to

9 the scope of what he stated in his statement, I

10 presume?

11 HEARING OFFICER KNITTLE: That is

12 correct.

13 MR. BLANKENSHIP: I would object to any

14 leading questions by them since he is not adverse

15 to them.

16 HEARING OFFICER KNITTLE: Okay. I think

17 that's appropriate. Mr. Trepanier, do you

18 understand that?

19 MR. TREPANIER: Well, I'm not certain how

20 the hearing officer has made a determination that

21 this witness is not adverse to us and at the same

22 time apparently Marshall is inferring that the

23 witness is adverse to him, and I don't know that

24 anything from what the witness testified himself

1 would make an indication that he's adverse to
2 either side.

3 HEARING OFFICER KNITTLE: I make that
4 determination because he came in purporting to
5 represent Maxworks Garden Cooperative, a
6 complainant in this case, and we're not allowing
7 him to testify because he's not an attorney. So
8 he can't testify on behalf of Maxworks, but he's
9 testifying on behalf of himself and as someone who
10 is purporting to be affiliated with one of the
11 complainants in this case. I think he qualifies
12 as adverse to the respondents.

13 MR. TREPANIER: It's become very clear to
14 me now that you've stated it.

15 HEARING OFFICER KNITTLE: Thank you.
16 Mr. Trepanier, you can proceed.

17 CROSS - EXAMINATION

18 by Mr. Trepanier

19 Q. Mr. Meesig, thanks for coming forward
20 with your statement. You stated that you work
21 with the Creative Reuse Warehouse.

22 What work is it that you're doing there
23 related to the Creative Reuse Warehouse?

24 (Whereupon, Mr. McFarland

1 entered the room.)

2 MR. JEDDELOH: Mr. Knittle, we've now had
3 another person come. If he's going to be
4 providing testimony, even if he is doing it under
5 the status of a citizen, I would move that he be
6 excluded during the time that another person is
7 providing testimony.

8 MR. TREPANIER: I would object to
9 excluding him.

10 HEARING OFFICER KNITTLE: How so,
11 Mr. Trepanier?

12 MR. TREPANIER: Because the same rules
13 that we're looking towards saying that this is
14 103.203, all hearings under this part shall be
15 public, and then that very one goes on and talks
16 about a person submitting a statement and being
17 subject to cross-examination. They're right in
18 the same paragraph.

19 HEARING OFFICER KNITTLE: I'm not
20 entirely in agreement with you, Mr. Trepanier.
21 They're talking about a written statement that's
22 been submitted. There's been no written statement
23 here by Mr. McFarland: Is that correct, sir?

24 MR. MCFARLAND: My name?

1 HEARING OFFICER KNITTLE: Yes.

2 MR. MCFARLAND: Oh, yeah. It's Merlin
3 McFarland.

4 HEARING OFFICER KNITTLE: Mr. McFarland.

5 And that 103.203(a) is primarily talking about
6 written statements.

7 MR. TREPANIER: Oral testimony is
8 mentioned in the last sentence.

9 HEARING OFFICER KNITTLE: Right. The
10 last sentence does allow me to permit reasonable
11 oral testimony, and that's what I'm doing here,
12 but I do not -- I have a certain amount of
13 sympathy for Mr. Blankenship's arguments
14 previously made about the placement of this oral
15 testimony, and I don't want to further complicate
16 that by having someone who is going to offer oral
17 testimony sitting here and listening to what's
18 going on right now. So I would sustain your
19 objection and ask you to leave until he's done.

20 MR. MCFARLAND: Will you call me when
21 it's time?

22 HEARING OFFICER KNITTLE: I'll send
23 someone out. It will be like ten, 15 minutes.

24 BY THE WITNESS:

1 A. What we do is we accept discarded
2 materials from other places and organizations,
3 universities, and places that are throwing away
4 reusable items, especially wood. So the yard has
5 a -- it's used mainly to store those kind of
6 materials that other persons have donated to us as
7 well as wood.

8 BY MR. TREPANIER:

9 Q. In your -- in the regular course of
10 business there that you're involved with at the
11 Creative Reuse Warehouse, does that involve
12 allowing the public to survey the material that
13 you have?

14 A. Yeah. Usually, that's the idea is to
15 keep the lot in such an order that the public can
16 easily peruse what's available there.

17 Q. You testified that there was a noticeable
18 amount of air pollution. Would you describe that
19 air pollution?

20 A. Yeah. It was -- well, it was sizeable,
21 it was noticeable, and as I stated in my comment
22 that it was advisable to avoid that particular
23 area of the lot during the time that they were
24 demolishing it because of, you know, the amount of

1 dust and whatever was created from the demolition
2 that tended to blow in my direction, which was
3 into the lot.

4 Q. When you say that this dust was
5 noticeable, how did you notice it?

6 A. It was visible, and it was -- I mean, it
7 varied from day to day. Some days it was windier
8 than other days. So it seemed to be worse on some
9 days, but I know that it was -- I just didn't want
10 to go near it. So I stayed at the other end of
11 the yard while they were working. I couldn't
12 quantify exactly how serious it was, but it was
13 enough for me to want to avoid that area or try to
14 avoid, but I don't know to what extent that it
15 persisted into my area. I couldn't say. I
16 figured as long as I stayed as far away as I could
17 that I was safer.

18 Q. And did you advise customers to stay away
19 from that lot.

20 MR. BLANKENSHIP: Objection, leading
21 question.

22 HEARING OFFICER KNITTLE: Overruled. Go
23 ahead, Mr. Trepanier.

24 BY THE WITNESS:

1 A. No, I didn't. I didn't want anyone in
2 there. I just -- I didn't say anything to them.
3 Usually they go in there on their own and subject
4 to their own whatever it is they encounter while
5 they're in there, but I didn't -- I don't remember
6 specifying to any of the visitors to avoid that
7 area.

8 BY MR. TREPANIER:

9 Q. You testified that customers were
10 restricted from full access to the lot. Is that
11 something that you observed?

12 A. Well, they were restricted in that that
13 area was -- it was less accessible just because of
14 the way it was ordered so that there were items
15 stored there that probably weren't as interesting
16 I guess you might say. It was just a certain part
17 of the lot that stores things like windows and
18 some plumbing fixtures. So I don't remember
19 exactly what the customers were doing in that area
20 all the time.

21 Q. What was the time period approximately
22 that you experienced the noticeable amount of air
23 pollution coming over the lot?

24 A. It seemed like about a week for me. It

1 seemed like after a while they did take some
2 adjusting precautions. It's just when they were
3 on the higher levels it seemed like it drifted a
4 lot farther, but once they tore the first couple
5 of layers down, it didn't seem so bad. So I would
6 say at least a week.

7 Q. And did you have -- when the -- did you
8 see -- did you yourself look over and see the work
9 going on at those upper levels?

10 A. Yeah. Like I said, I was there in the
11 lot every day. From the day they started, I was
12 in my lot every day. So I could see exactly, you
13 know, pretty much. I mean, I wasn't paying close
14 attention to what they were doing.

15 Q. Did you see someone spray a hose?

16 A. Not at first, no, but after a period of
17 time I know after a week or so it seemed like they
18 were spraying. I don't know. Like I said, after
19 they got the first couple of floors, you know, the
20 fallout was less intense.

21 Q. And did the drop off and fallout coincide
22 with what you're saying they started to take
23 measures?

24 A. Uh-huh, I would say so.

1 MR. TREPANIER: I have no more
2 questions.

3 HEARING OFFICER KNITTLE: Mr. Joseph.

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

5 by Mr. Joseph

6 Q. Good afternoon, Mike.

7 Did you notice a bobcat on the job
8 site?

9 A. Yeah.

10 Q. Do you remember what that bobcat was
11 doing?

12 A. There were I think two bobcats actually.
13 They were using two at the same time. They had
14 one that was -- it had a hook on it and they were
15 pulling the walls in with it from the top floor,
16 and the other one was taking the debris and just
17 dumping it off the side, and so both of those were
18 creating the dust.

19 Q. And how far do you think this dust went?

20 A. Again, it depended on how windy it was
21 that day and which direction the wind was
22 blowing. So it seemed like a couple -- a few days
23 were worse than the others.

24 Q. And were there other persons immediately

1 in the yard with you that could have been affected
2 by this?

3 A. Yeah. Well, my work associates were in
4 the yard, too, and they noticed, and it was just a
5 natural thing that you don't go near that origin
6 of dust and whatever that was being created. Plus
7 the customers and those persons that were going
8 through the yard, but, again, they traveled at
9 their own risk.

10 Q. And about how far -- it's just across the
11 alley?

12 A. Yes. Yeah. It's -- well, when they were
13 finished, that area was pretty much covered with
14 dust and debris, and, like I said, it was -- it
15 was affected by the demolition. So it was kind of
16 just a good place to avoid when they were tearing
17 the building down.

18 Q. By that area, you mean the area inside
19 the fence?

20 A. Inside the fenced in area, yeah. There
21 were bricks. There was wood and things that were
22 kind of like falling over into the lobby.

23 Q. Inside the fence?

24 A. Yeah.

1 MR. JOSEPH: Okay. I have no further
2 questions.

3 HEARING OFFICER KNITTLE: Mr. Wager?

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

5 by Mr. Wager

6 Q. Did any of the dust touch you or your
7 coworkers' bodies?

8 A. I'm sure I was breathing it at some time,
9 yeah.

10 Q. Did you or they have a reaction to that?

11 MR. JEDDELOH: I know your ruling,
12 Mr. Knittle, but I'm going to object to him making
13 a medical assessment about any medical effects he
14 might have had.

15 MR. WAGER: It's not necessarily
16 medical. It's just his reaction.

17 HEARING OFFICER KNITTLE: I'm going to
18 overrule the objection as to this witness, but not
19 as to any other of his coworkers. You can answer
20 if you had a reaction.

21 BY THE WITNESS:

22 A. Did I have a physical reaction?

23 BY MR. WAGER:

24 Q. Physical or did it affect you mentally?

1 A. Oh, it definitely affected me mentally.

2 Q. Like did it --

3 A. And physically for that matter. I'm
4 always concerned about my health under such
5 circumstances.

6 Q. Did it affect, say, your cleanliness?

7 MR. JEDDELOH: I'm going to object. He's
8 now really leading this witness well beyond what
9 he should be doing.

10 HEARING OFFICER KNITTLE: I'll sustain
11 that. Mr. Wager, you just have to ask him if he
12 was affected and then you can ask him how and he
13 can tell you, but you can't supply answers for
14 him.

15 BY MR. WAGER:

16 Q. Okay. How were you affected?

17 A. Well, physically because of the visible
18 fall off from the situation and mentally because
19 it was -- it didn't seem like a building that
20 should have been torn down to me. I couldn't
21 understand why they were tearing it down. I mean,
22 it was such a solid structure. It's I-beamed and
23 it was not about to fall down.

24 Q. What's this physical affect you're

1 talking about?

2 A. Just breathing that is physically

3 harmful.

4 MR. BLANKENSHIP: I'm going to object to

5 that and move to strike it. There's no foundation

6 at all for that testimony.

7 HEARING OFFICER KNITTLE: I'll sustain

8 that. I don't think that's exactly what he was

9 asking on his question.

10

11 BY MR. WAGER:

12 Q. I understand you're also somewhat

13 affiliated with what is called the Maxworks Garden

14 Cooperative?

15 A. Uh-huh.

16 Q. Did -- through this dust, did you see

17 that any of it reached the garden?

18 MR. JEDDELOH: I'm going to object unless

19 a foundation is laid for his knowledge about that.

20 HEARING OFFICER KNITTLE: I will sustain

21 the objection.

22 MR. WAGER: What is he looking for in

23 terms of foundation? I will, he said he was part

24 of this garden cooperative.

1 MR. JEDDELOH: I would request that the
2 interrogator not be provided advice about how to
3 do his case.

4 HEARING OFFICER KNITTLE: Yeah. I can't
5 tell you that, Mr. Wager. It's not my job.

6 MR. WAGER: I'm puzzled.

7 BY MR. WAGER:

8 Q. So was the dust you observed, did it -- I
9 know you're often in the garden. Did you see the
10 dust reach the garden?

11 MR. JEDDELOH: I'm going to object unless
12 a foundation is laid for his knowledge.

13 MR. BLANKENSHIP: Also as to the leading
14 question.

15 HEARING OFFICER KNITTLE: I'm overruling
16 that. You can answer that one if you know.

17 BY THE WITNESS:

18 A. Yes, I would say it did definitely reach
19 the garden, yeah.

20 BY MR. WAGER:

21 Q. Did it touch any of the plants?

22 A. Yes.

23 Q. Are some of those plants used for human
24 consumption?

1 A. Yes.

2 Q. Did the demolition come in and offer any
3 warning to the individuals in that area?

4 A. Not to my knowledge.

5 MR. WAGER: I guess that's all the
6 questions I have at this point.

7 HEARING OFFICER KNITTLE: This is your
8 only chance for him. So if you have -- there's no
9 other point I should say, Mr. Wager. Anything
10 else?

11 MR. WAGER: Can I think about it for a
12 second?

13 HEARING OFFICER KNITTLE: Not for too
14 long.

15 BY MR. WAGER:

16 Q. Do you sometimes go to the stores on
17 Halsted Street?

18 A. Yes.

19 Q. Did you see any of the dust reach those
20 stores? Did it reach any of those stores?

21 A. Yes.

22 Q. How so?

23 A. Just plumes of smoke. I mean, every time
24 they would drop a bunch off, they would just kind

1 of hover in the surrounding area depending on
2 which way the wind was blowing it. So if you --
3 depending -- I don't know. Like I said, there
4 were some days when it was blowing my direction
5 and other days when it wasn't so severe, but there
6 were days, yeah, when it was blowing on Halsted
7 too.

8 MR. WAGER: I guess that's all.

9 HEARING OFFICER KNITTLE: Thank you,
10 Mr. Wager. Mr. Blankenship or Mr. Jeddelloh,
11 whichever wants to go first.

12 CROSS - EXAMINATION

13 by Mr. Blankenship

14 Q. Mr. Meesig, how old are you?

15 A. I'm 51.

16 Q. Where do you live?

17 A. 716 West Maxwell Street.

18 Q. And you live with Mr. Wager there?

19 A. Yes, I do.

20 Q. And do you live with any other of the
21 complainants in this case, Ms. Minnick?

22 A. No.

23 Q. Do you know Ms. Minnick?

24 A. Yes.

- 1 Q. How do you know her?
- 2 A. She lives across the street.
- 3 Q. How long have you known her?
- 4 A. Eight or ten years.
- 5 Q. How long have you lived with Mr. Wager?
- 6 A. Since about 1985 or '86.
- 7 Q. How long have you known Mr. Joseph?
- 8 A. About the same time.
- 9 Q. Have you ever lived with him?
- 10 A. No.
- 11 Q. How long have you known Mr. Trepanier?
- 12 A. Since about 1986.
- 13 Q. How about Avi Pandya, how long have you
- 14 known him?
- 15 A. Since 1985, '86.
- 16 Q. And do you --
- 17 A. Or around that, eight or ten years.
- 18 Q. Do you live with him too?
- 19 A. No.
- 20 Q. So you live -- where does he live?
- 21 A. I'm not sure. I think it's Hyde Park
- 22 somewhere.
- 23 Q. Aside from your work at the Creative
- 24 Reuse Warehouse, are you presently employed?

- 1 A. I do part-time work as a handy person.
- 2 Q. Where is that?
- 3 A. It just depends where my jobs are.
- 4 Q. Were you doing that in September of 1995?
- 5 A. No.
- 6 Q. '96, September of 1996?
- 7 A. Well, I was on occasion, but not during
- 8 the time that the building was being demolished.
- 9 Q. During the months of 1996, did you have
- 10 any other employment other than the Creative Reuse
- 11 Warehouse?
- 12 A. No.
- 13 Q. And were you at the Creative Warehouse
- 14 from 9:00 to 5:00 throughout the month of
- 15 September 1996?
- 16 A. Uh-huh.
- 17 Q. What's your highest level of education?
- 18 A. Master's in group counseling.
- 19 Q. Where's that from?
- 20 A. National College of Education.
- 21 Q. When did you receive that?
- 22 A. I didn't receive it. I almost finished,
- 23 but I didn't quite finish.
- 24 Q. When did you last work on that?

1 A. '89, '90.

2 Q. You've talked with the complainants about
3 this case, I assume, correct?

4 A. Yes.

5 Q. In fact, you spent most of the lunch hour
6 sitting out in the hall with them, right?

7 A. Yes.

8 Q. And you talked to them about your
9 testimony, didn't you?

10 A. Yes.

11 Q. Okay. And one of the complainants at
12 least told you what they were looking for you to
13 say here today, didn't they?

14 A. No.

15 Q. They told you the topics they wanted you
16 to address, didn't they?

17 A. No, they didn't.

18 Q. What did they tell you?

19 A. They said that I would be cross-examined
20 possibly and that they were taking special
21 precaution not to try and favor my comments in any
22 way because of that.

23 Q. What else did you talk about during the
24 lunch hour?

1 A. Just there was a previous occasion

2 concerning fire hydrants and whether I had any

3 recollection about the fire hydrants.

4 Q. What else did you talk about?

5 A. Just the condition of the circumstances

6 during the demolition.

7 Q. That's all you talked about during this

8 entire hour?

9 A. Yeah.

10 Q. Have you been involved in protesting

11 against the University?

12 A. No.

13 Q. Not one?

14 A. Not one.

15 Q. Do you have any concern, pollution aside,

16 about what the University is doing in the Maxwell

17 Street area?

18 A. Yes, I do.

19 Q. What's your concern?

20 A. My concern is whether I'm going to be

21 allowed to stay there. I care for the

22 neighborhood, and I want to remain there myself.

23 Q. Do you think what the University is doing

24 in the Maxwell Street area is bad?

1 A. I can't say that for certain because I
2 don't know for certain what the eventual outcome
3 of it will be.

4 Q. Do you think what they've done so far is
5 bad?

6 A. I think as far as tearing down that
7 building was a mistake.

8 Q. Pollution aside, do you think it was a
9 mistake to tear down that building?

10 A. Yes, I do.

11 Q. Why is that?

12 A. It was a solid structure.

13 Q. Does that upset you that they tore down
14 this building?

15 A. Yes, it does.

16 Q. It upset you enough to bring you down
17 here today, right?

18 A. Right.

19 Q. Now, the lot at the Creative Reuse
20 Warehouse that we've been talking about, you
21 identified it as a storage yard, right?

22 A. Yes.

23 Q. I think you said that the west end of the
24 storage yard is used for kind of the odd storage

1 things and people don't normally go there, right?

2 A. I try and keep the lot in such order that
3 it's accessible throughout the lot, but because of
4 the way the debris and that was being -- I must
5 admit that at some point there was hardwood
6 flooring in the building, and so I had made an
7 agreement with some of the workers if they by
8 chance had time or if they cared to they would
9 toss some of the wood aside and that we would
10 reuse it at some later date.

11 Q. So Speedway gave you wood from the
12 building for the Creative Reuse Yard?

13 A. Some, yes, but the way they did it was
14 they just tossed it over the fence, and it just
15 created kind of this nuisance on that area. So,
16 obviously, it wasn't conducive for the public to
17 peruse that particular area --

18 Q. Before the demolition --

19 A. -- when the demolition goes on?

20 Q. Before the demolition even started, that
21 portion of the yard was used for the more odd
22 features and was less frequented by your
23 customers, right?

24 A. It's off the beaten path, yes.

1 Q. How wide is that yard going from east to
2 west?

3 A. I don't know. I would say -- I really
4 don't know the exact dimensions of it.

5 Q. A few hundred feet?

6 A. A couple hundred feet maybe, 150.

7 Q. You talked about people in the yard.
8 There's not a constant stream of people in the
9 yard, is there, sir?

10 A. No.

11 Q. It's just a handful in the course of a
12 day?

13 MR. TREPANIER: Objection. Is he making
14 a statement or a question?

15 MR. BLANKENSHIP: Question.

16 BY MR. BLANKENSHIP:

17 Q. Correct?

18 MR. WAGER: Leading question.

19 HEARING OFFICER KNITTLE: Overruled. He
20 can ask leading questions on cross.

21 BY MR. BLANKENSHIP:

22 Q. It was just a handful of people in that
23 yard in the course of a day, correct?

24 A. Sometimes more, sometimes less.

1 Q. Well, how about the first -- the week of
2 September 15th, do you know how many people were
3 in the yard that week, 1996?

4 A. No, I don't.

5 Q. Do you know when the demolition occurred
6 that we're talking about?

7 A. It was in September '96.

8 Q. Do you have a recollection?

9 A. I know it was roughly that time.

10 Q. Do you know how long the demolition
11 lasted from start to finish?

12 A. Not exactly.

13 Q. Can you approximate?

14 A. I would say about a month.

15 Q. Okay. I think you testified originally
16 that the entire time of the demolition the effects
17 of the demolition were receding over the lot, and
18 then I think you testified later on Mr. Trepanier's
19 questions that the effects were really only
20 lasting about a week. I'm just trying to get a
21 better understanding.

22 Is it a week? Is that your testimony?

23 A. No. It was the entire time it took for
24 them to tear it down.

1 Q. Well, then what was your testimony about
2 a week? What was that?

3 A. The most intense was that first week, but
4 then they seemed to introduce hoses. I mean,
5 there was a while that I don't think they were
6 using any hoses.

7 Q. You don't know for a fact whether they
8 were using hoses or not, do you?

9 A. At some point, they did have a hose
10 there. Yeah, I remember.

11 Q. For the dust to blow into your yard, the
12 dust would have to be coming from the west, right?

13 A. Right.

14 Q. And is it your testimony that for the
15 entire period of this demolition the dust was
16 going from west to east?

17 A. Correct.

18 Q. What days was it blowing from west to
19 east?

20 A. I don't know exactly.

21 Q. To the extent the building was up and
22 standing, wouldn't that block wind blowing from
23 west to east?

24 A. No. There's no buildings east of that

1 building. In other words, the wind would blow
2 from that building east onto my lot.

3 Q. How does the wind get through the
4 building?

5 A. West of that.

6 Q. I understand. The wind is coming from
7 the west, and then it reaches the building. How
8 does it get through that building to blow dust
9 into your yard?

10 A. It goes off the top and over it, outside
11 and over.

12 Q. If I understood your testimony correctly,
13 you did not have a physical reaction to the dust;
14 is that correct?

15 MR. TREPANIER: Objection. He's
16 misstating the witness' testimony. The witness,
17 in fact, he stated he had a physical reaction.

18 HEARING OFFICER KNITTLE: Did you answer
19 that question?

20 MR. MEESIG: Yes.

21 HEARING OFFICER KNITTLE: And how did you
22 answer the question?

23 MR. MEESIG: I did have a physical
24 reaction.

1 BY MR. BLANKENSHIP:

2 Q. What was your physical reaction?

3 HEARING OFFICER KNITTLE: One second.

4 You have to say yes or no so the transcript can

5 pick it up, and, Mr. Trepanier, I'll sustain the

6 objection, but it's moot now since he's asked a

7 different question.

8 BY THE WITNESS:

9 A. Myself and my assistants, we each

10 experienced physically the effects of the dust.

11 BY MR. BLANKENSHIP:

12 Q. What was your experience?

13 MR. JEDDELOH: I'm sorry. Let me

14 interpose. I object to him testifying as to what

15 other people might have experienced in line with

16 your previous ruling, and I don't believe that

17 that part of the answer would be responsive, and I

18 would ask that it be stricken as a result.

19 HEARING OFFICER KNITTLE: Sustained.

20 BY THE WITNESS:

21 A. I can't speak for others. I can only

22 speak for myself.

23 BY MR. BLANKENSHIP:

24 Q. With respect to you, what was your

1 physical reaction to the dust?

2 A. I'm still here. So I can't say. I don't

3 know what the exact physical effects of the dust

4 were.

5 Q. You can't describe in any way the

6 physical reaction you had to the dust?

7 A. Just one of avoidance.

8 Q. Okay.

9 A. Try and stay as far away from it as I

10 could.

11 Q. You said the dust reached the garden.

12 When did that happen?

13 A. The garden -- well, okay. The building

14 is on the corner of Halsted --

15 Q. I'm just asking when it happened.

16 A. Well, it happened when the wind was

17 blowing out of the west.

18 Q. Can you give me a date?

19 A. The first week, there were several days.

20 I would say the first three days especially.

21 Q. The first three days?

22 A. Uh-huh.

23 Q. This garden is located south of 13th

24 Street, right?

1 A. South and east, yes.

2 Q. So the wind wasn't just blowing from west
3 to east. It had to be blowing southeast, right?

4 A. Well, the wind blows -- there's a couple
5 tall buildings. So the way the dust and that gets
6 projected is probably past the buildings and then
7 kind of gets dispersed out into the open air,
8 which is where the garden is.

9 Q. Did you follow the dust from the building
10 over to the garden?

11 A. You could see it, yeah.

12 Q. Did you follow the dust from the building
13 to the garden?

14 A. Did I personally?

15 Q. Yeah, personally.

16 A. Visibly you could see where it was going.

17 Q. Did you follow the dust personally from
18 the building to the garden?

19 MR. TREPANIER: I have an objection.

20 He's arguing with the witness. The witness has
21 responded to the question. He said he followed it
22 visually.

23 MR. BLANKENSHIP: I don't think he said
24 that.

1 HEARING OFFICER KNITTLE: I'm going to
2 overrule the objection. He's not answered the
3 question, though, as put to him. If you can
4 answer the question, you have to answer the
5 question. Do you understand what he means by did
6 you follow the dust? I could have Mr. Blankenship
7 explain what he means if you don't understand it.

8 BY MR. BLANKENSHIP:

9 Q. Did you watch dust move a block? Did you
10 follow with your eyes a block from the building
11 into the garden?

12 A. Yes.

13 Q. Where were you standing when you did
14 that?

15 A. In the wood lot.

16 Q. Where in the wood lot?

17 A. On the east side of the wood lot.

18 Q. And how far east -- on the east side of
19 the lot?

20 A. Uh-huh.

21 Q. And how far north or south?

22 A. You just look up in the air, look where
23 the demolition --

24 Q. I'm asking where you were standing, sir.

- 1 A. -- and watch the stuff fly --
- 2 Q. How far north or south of the lot were
- 3 you when you followed the dust with your eyes from
- 4 the building to the garden?
- 5 A. Anywhere from 50 to 100 to 150 feet.
- 6 Q. You don't know?
- 7 A. At least, depending on where I was in the
- 8 lot.
- 9 Q. That neighborhood has dust in it, doesn't
- 10 it, sir, aside from the building at 1261?
- 11 A. Yes, it does.
- 12 Q. Ever watch other dust gather in the
- 13 garden?
- 14 A. Not to that degree.
- 15 Q. What degree? What degree did you see
- 16 dust in the garden, sir?
- 17 A. Have you ever been around a building when
- 18 they're tearing it down, a four-story building?
- 19 Q. Answer the question, please.
- 20 A. Yes.
- 21 Q. What was the degree of dust you saw in
- 22 the garden?
- 23 A. It was substantial.
- 24 Q. What does that mean? Quantify it.

1 A. It was noticeably, visibly noticeable.

2 Q. Tell me what that means. I don't know

3 what that means.

4 A. That means --

5 Q. Is there a centimeter of dust on the

6 vegetables in the garden?

7 A. There could well have been.

8 Q. A centimeter of dust on particular

9 vegetables from this demolition a block away?

10 That's your testimony?

11 A. That's not for me to necessarily quantify

12 the exact amount of dust.

13 Q. You're coming in here and testifying that

14 you saw dust go into this garden, and I'm trying

15 to understand how much dust you saw go into the

16 garden. Can you or can you not quantify for me

17 the amount of dust that reached this garden?

18 A. I can only give my testimony to what I

19 witnessed, which was a substantial amount of it.

20 Q. I understand it's substantial. I want to

21 know what that means because substantial means

22 different things to different people. Can you

23 quantify that in any way?

24 A. I tried quantifying it by saying that I

1 was trying to avoid it at the same time, that it
2 was enough to want to avoid having contact with.
3 Now, was it enough to wear a mask? I would say
4 yes.

5 Q. Did you go into the garden?

6 A. Yes.

7 Q. After you followed the dust with your
8 eyes, did you walk over to the garden?

9 A. Yes.

10 Q. And what did you see?

11 A. During the day, I was not in the garden.

12 I was usually in the lot, but after they would
13 work, you know, after they were through working,
14 that's when I would go in the garden myself.

15 Q. How could you tell the dust from the
16 demolition from the dirt that's in the garden?

17 A. It's hard to distinguish between.

18 Q. So you don't know for sure whether you
19 were looking at dust from the demolition or dust
20 from the ambient environment or dust from the
21 expressway or dirt from the garden?

22 A. I know I was looking -- I was looking at
23 dust from the demolition. I do know that much.

24 Q. How do you know that?

1 A. Because I saw it with my own eyes.

2 Q. But you didn't walk to the garden until
3 after you finished work for the day?

4 A. It's not so much a question of the garden
5 as much as it was how it was affecting me while I
6 was in the lot right next door to it.

7 Q. I'm not arguing with you about that, but
8 that's a different issue, how it affected you
9 versus how it affected the garden, and right now I
10 want to explore the effect on the garden, and I
11 guess you're telling me that you can't address
12 that question.

13 MR. TREPANIER: I have an objection.

14 BY THE WITNESS:

15 A. I'm trying to address that question.

16 HEARING OFFICER KNITTLE: What's your
17 objection, Mr. Trepanier?

18 MR. TREPANIER: My objection is that
19 counsel is spending a lot of time on this point of
20 the garden when that wasn't part of the direct
21 testimony.

22 HEARING OFFICER KNITTLE: I'm going to
23 overrule. I think that was part of his direct
24 testimony.

1 MR. JEDDELOH: My notes would indicate
2 that it was part of the direct testimony.

3 MR. TREPANIER: I think the first mention
4 of the garden was from a question from Mr. Joseph.

5 MR. BLANKENSHIP: Even if it wasn't, I
6 think I'm entitled to follow up.

7 MR. JEDDELOH: Wait a minute. If it's
8 from Mr. Joseph, then it's part of the direct
9 examination because there's a line --

10 HEARING OFFICER KNITTLE: Regardless, I'm
11 going to overrule the objection and allow him to
12 ask questions about the garden.

13 BY MR. BLANKENSHIP:

14 Q. The garden is about a block away from
15 1261, right?

16 A. Right, half a block. It's between half a
17 block and a block. It takes the other half from
18 13th to Union, between Union and Halsted I would
19 say.

20 Q. Do you eat vegetables from that garden?

21 A. Yes, I do.

22 Q. Do you wash them off before you eat them?

23 A. Not always, no.

24 Q. You don't have a concern for the

1 pollutants that come from the Dan Ryan getting on
2 those vegetables?

3 A. Yes, I do.

4 Q. And do you wash those off or do you just
5 eat the vegetables even though they have those
6 pollutants on them?

7 A. That's right.

8 Q. You just eat them?

9 A. Uh-huh.

10 Q. So you don't care about the pollutants?

11 A. I do care about them.

12 Q. But you eat them anyway?

13 A. I care about the pollutants in the water
14 too.

15 MR. TREPANIER: I'm objecting. This
16 attorney seems to be harassing the witness.

17 HEARING OFFICER KNITTLE: This is not
18 your witness, Mr. Trepanier. I'm allowing
19 testimony --

20 MR. TREPANIER: The witness does need an
21 advocate, though.

22 HEARING OFFICER KNITTLE: No, he
23 doesn't.

24 MR. TREPANIER: He's the attorney. If

1 he's harassing --

2 HEARING OFFICER KNITTLE: Hold on, Mr.
3 Trepanier. Hold on. He is providing oral
4 testimony. He's not your witness. He's not their
5 witness. I'm allowing them to question him as an
6 adverse witness because he's affiliated with
7 Maxworks Garden Cooperative, but, otherwise, he is
8 not your witness. You have not called him, and
9 they have not called him. He's providing oral
10 testimony on his own accord.

11 MR. TREPANIER: The only point I raise is
12 I'm not saying that I called him as a witness, but
13 I'm saying that this member of the public who
14 comes in who is not representing Maxworks, but
15 he's coming in to give some testimony, he
16 shouldn't be harassed, and that's why I was
17 interposing. I feel like this attorney is saying
18 well, you're eating pollution anyway.

19 HEARING OFFICER KNITTLE: I'm going to
20 overrule your objection. I haven't seen anything
21 out of the bounds of cross-examination yet, and I
22 don't agree with your statement that he needs an
23 advocate, and I definitely wouldn't think that
24 that advocate should be you since you're the

1 complainant in this case, and I might add,

2 Mr. Trepanier, you're not an attorney.

3 You can represent yourself as we've

4 talked about, but you cannot represent this

5 person.

6 MR. TREPANIER: I just feel like, as you

7 were saying, if there were, if my interests were

8 being implicated by the questioning that the

9 attorney is doing, I have an interest to see that

10 the attorney doesn't elicit information that's --

11 HEARING OFFICER KNITTLE: I would agree.

12 MR. TREPANIER: -- unreliable because of

13 the type of questioning.

14 HEARING OFFICER KNITTLE: Mr. Trepanier,

15 I would agree with you if this was a witness you

16 had called in your case in chief or your case in

17 rebuttal. However, this is a citizen, an

18 interested citizen, who has come here to provide

19 testimony about this particular case, and he is

20 not your witness. I do think he's affiliated with

21 one of the complainants, but he can't, of course,

22 represent that complainant because he's not an

23 attorney for the same reason you can't represent

24 him because you're not an attorney.

1 I've allowed some objections, but,
2 frankly, I don't know that they're -- they're not
3 well placed for the reasons that I've outlined.

4 Mr. Blankenship.

5 BY MR. BLANKENSHIP:

6 Q. Does it make you uneasy to eat vegetables
7 from the garden that have air pollution from the
8 expressway on them?

9 A. Yes.

10 Q. But you do it anyways without washing the
11 vegetables off; is that right?

12 A. Yes. I don't make a habit of washing
13 vegetables anyway. So it's just unfortunate that
14 this -- that kind of philosophy that I have to
15 maintain in a city like that because of some much
16 pollution around me.

17 Q. Have you ever had the dirt in the garden
18 tested to determine whether the dirt contains any
19 harmful constituents?

20 A. No.

21 Q. Does that concern you, that the dirt --

22 A. Sure, it does.

23 Q. But you never had it tested?

24 A. A lot of the dirt is brought in compost.

1 So I'm not exactly sure what the procedure is and
2 how they make it.

3 Q. Does that make you uneasy?

4 A. No.

5 Q. You never analyzed the dust that came
6 from 1261 Halsted, did you?

7 A. No.

8 Q. You don't know if that dust had any
9 constituents which were in any way different than
10 the constituents found in the soil of the garden
11 already, do you?

12 A. No.

13 Q. I think you testified that you did not
14 advise your customers who were going to go into
15 the yard about the demolition in progress; is that
16 right?

17 A. That's right.

18 Q. You didn't consider the risks of the dust
19 serious enough to advise the customers; is that
20 right?

21 A. That's not right, no.

22 Q. You considered it serious and worth
23 advising them about, but then you didn't advise
24 them; is that right?

1 A. That's right.

2 MR. BLANKENSHIP: I have no other
3 questions.

4 MR. JEDDELOH: Just a couple questions.

5 HEARING OFFICER KNITTLE: Mr. Jeddelloh.

6 MR. JEDDELOH: I'm sorry.

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

8 by Mr. Jeddelloh

9 Q. Sir, my name is Norman Jeddelloh. I
10 represent the University of Illinois. You
11 testified about the fact that during the first
12 week or so they were just demolishing the upper
13 stories of the building.

14 Do you remember that testimony?

15 A. Uh-huh.

16 Q. You have to say yes because the court
17 reporter doesn't know for sure when you say
18 uh-huh.

19 A. Yes.

20 Q. Okay. And you observed solely from your
21 perspective in your own property; is that right?

22 A. Right.

23 Q. You wouldn't have been in a position to
24 see everything that was going on on the roof of

1 the property, the 1261 property, at that point,

2 would you?

3 A. Not everything, but I had a pretty good

4 view.

5 Q. And part of your view of the roof

6 activities would have been blocked by the building

7 itself; isn't that right?

8 A. I can't say. I mean, I could see the

9 bobcats up there, and I could see them working up

10 there. I don't know. I could see a lot.

11 Q. But not everything?

12 A. Not everything.

13 Q. And you didn't go over to see whether or

14 not there was a hose run up the interior part of

15 the building to the part of the roof you couldn't

16 see, did you?

17 A. I didn't see any hose on the roof.

18 Q. Can you answer my question?

19 A. I didn't see a hose on the roof.

20 Q. Do you want my question read back?

21 A. Sure.

22 MR. JEDDELOH: Could you read it

23 back, please?

24 (Record read.)

1 (Brief pause.)

2 HEARING OFFICER KNITTLE: Do you remember
3 the question that we read back to you, sir?

4 MR. MEESIG: Yes.

5 HEARING OFFICER KNITTLE: Okay. Can you
6 answer that, please?

7 BY THE WITNESS:

8 A. No, I didn't see a hose leading up to the
9 roof.

10 HEARING OFFICER KNITTLE: Mr. Jeddelloh?

11 MR. JEDDELOH: May I have an instruction
12 that he respond to my question?

13 HEARING OFFICER KNITTLE: I don't
14 think -- maybe you don't understand the question,
15 but that's not the question that he's asking.

16 He's asking if you walked over to see if a hose
17 was running up on the inside of the building to
18 the part of the roof that you could not see.

19 BY THE WITNESS:

20 A. No, I didn't.

21 MR. JEDDELOH: That's all I have.

22 HEARING OFFICER KNITTLE: Thank you.
23 You're excused, sir.

24 MR. TREPANIER: I've got a couple of

1 questions on redirect, particularly on this
2 question about a hose running up the interior of
3 the building. I want to ask the witness if he had
4 an opportunity to observe the sides of the
5 building, the exterior of the building, at that
6 same time period and was a hose entering the
7 building.

8 MR. JEDDELOH: The University will
9 object. Of course, the University objects to this
10 entire proceeding, but it's clear that this is
11 really complainants' witness that they are trying
12 to turn into a public comment witness, and this is
13 just another example of the process.

14 HEARING OFFICER KNITTLE: Mr. Blankenship,
15 do you have anything?

16 MR. BLANKENSHIP: I agree. We've each
17 had our turn with this witness.

18 HEARING OFFICER KNITTLE: I'm not going
19 to allow any further questions, Mr. Trepanier.

20 MR. TREPANIER: I really feel like you
21 should consider that last question as an example
22 can create -- the way the question was phrased and
23 put to the witness can create a misleading
24 inference that this witness did not look around

1 the building to see if a hose was entering it when
2 he may well have done that.

3 HEARING OFFICER KNITTLE: Mr. Trepanier,
4 you can address that in your post hearing brief if
5 you think there's other options as to what could
6 have happened, but he is an interested party.
7 I've allowed each of the parties to ask questions
8 of this party after he provided testimony, and
9 that's all that I'm going to do. You're excused,
10 sir. You can step down. Thank you for your
11 time.

12 MR. MEESIG: Thank you.

13 HEARING OFFICER KNITTLE: Mr. Meesig,
14 could you send Mr. McFarland in?

15 MR. MEESIG: Sure.

16 MR. TREPANIER: I understand what you've
17 ruled, but can you consider that now with that
18 ruling it's very important who asks -- who
19 questions first and who questions last because if
20 we have to question the next witness first, the
21 other side gets an opportunity to redirect, but
22 we're denied that.

23 MR. JEDDELOH: Well, if --

24 HEARING OFFICER KNITTLE: You're going to

1 be able to question this next witness as you
2 cross-examine him just as they cross-examined
3 him. The only reason that I was asking you not to
4 ask leading questions was because he was
5 affiliated with a party to the case.

6 MR. BLANKENSHIP: I think Mr. McFarland
7 may be as well.

8 HEARING OFFICER KNITTLE: We'll find out,
9 but, you know, he was trying to represent that
10 party, and he was trying to represent Maxworks
11 Garden Cooperative as a party. He wanted to be a
12 party. The only reason he didn't is because I
13 didn't allow that because he's not an attorney and
14 shouldn't represent that case. In essence, he's
15 one of you guys. He's a complainant. So that's
16 why I didn't allow you to ask leading questions as
17 if on cross-examination, but in this particular
18 case, you will be able to ask leading questions on
19 cross-examination, if, in fact, he's not also
20 affiliated or trying to represent Maxworks Garden.

21 MR. TREPANIER: In the instance of this
22 upcoming witness, could we --

23 HEARING OFFICER KNITTLE: Hold on. This
24 is not a witness. This is an interested party

1 making -- providing testimony, and that's why,
2 Mr. Trepanier, I'm not allowing you to redirect
3 because there is no redirect. You never had a
4 direct, per se. You understand that, don't you?
5 This is a different situation than when you call a
6 witness as you had the opportunity to call that
7 witness on rebuttal and this witness on rebuttal
8 or in your case in chief had you gotten him here
9 on time and ready to go.

10 MR. TREPANIER: After Mr. McFarland does
11 make his statement, I would ask if my questions to
12 Mr. McFarland would follow the University's
13 questions so that it might address the issue that
14 I felt arose after Mr. Meesig testified so that
15 I'll have an opportunity to clarify the leading
16 questions.

17 HEARING OFFICER KNITTLE: I'm going to
18 let the respondents respond in a second, but
19 first, Mr. McFarland?

20 MR. MCFARLAND: Yes.

21 HEARING OFFICER KNITTLE: What do you
22 plan on doing here today?

23 MR. MCFARLAND: Basically just issuing a
24 statement of what I saw, how I could see some

1 improvements, improvements by a comparison of
2 how -- I've witnessed a lot of demolitions, not
3 just in the Maxwell Street area.

4 HEARING OFFICER KNITTLE: I don't want to
5 get into the nuts and bolts of it yet, but are you
6 planning on offering then testimony about the
7 demolition, or are you just making a statement
8 because if you're just making a statement, like an
9 opinion or an argument, you will not have to be
10 subject to cross-examination.

11 However, if you're offering testimony
12 as to what you saw, what happened with the
13 building when it was being torn down, and whether
14 you think there was air pollution or you saw dust
15 or anything like that, you're going to be subject
16 to cross-examination from the complainants and the
17 respondents. So I want to know how to view you
18 before we get started.

19 MR. MCFARLAND: It can't be anything
20 worse than my ex-wife gave me.

21 HEARING OFFICER: You know what, I
22 understand.

23 MR. MCFARLAND: I know what you mean. I
24 would -- I don't mind if people want to ask me

1 questions, they could ask me questions.

2 HEARING OFFICER KNITTLE: So you're
3 providing testimony?

4 MR. MCFARLAND: It could be both. Both,
5 opinions, testimony, whatever. Can I do that?

6 HEARING OFFICER KNITTLE: Mr.
7 Blankenship?

8 MR. BLANKENSHIP: I guess in addition to
9 my objection to the whole process here, it sounds
10 like he's intending to offer expert testimony on
11 demolition standards --

12 MR. MCFARLAND: No, no, no, nothing
13 expert.

14 HEARING OFFICER KNITTLE: Hold on.

15 MR. BLANKENSHIP: -- and opinion
16 testimony, which I think is, you know, under the
17 Illinois rules is treated the same as expert
18 testimony, and I would have in addition to the
19 objection I raised earlier a very strong objection
20 to an undisclosed expert now coming in at the 11th
21 hour and providing opinion testimony. I think
22 that's extremely prejudicial at this time.

23 MR. JEDDELOH: And, further, I don't
24 think that he should be allowed to do both because

1 it would -- first of all, it would be impossible
2 to decide what is what and it would otherwise
3 completely confuse the record.

4 HEARING OFFICER KNITTLE: I agree with
5 that. You have an option of either providing
6 statements, you know, just as an interested party
7 making a statement about why you -- a statement is
8 a lot more liberal than the testimony. He can
9 talk about things as long as you're not providing
10 testimony about --

11 MR. MCFARLAND: About what I saw or
12 something, is that what you're saying?

13 HEARING OFFICER KNITTLE: Well, I mean,
14 if you're going to try to provide testimony about
15 what you saw when this demolition was going on,
16 that's testimony, that's evidence, and you're
17 going to have to be subject to cross-examination.

18 MR. BLANKENSHIP: As I understood the
19 options as you outlined them, a statement would be
20 limited to the evidence that's in the record, and
21 if he's going to go outside the record, that
22 becomes -- that is testimony.

23 HEARING OFFICER KNITTLE: He doesn't know
24 what the evidence in the record is, and I never

1 agreed with yours and Mr. Jeddelloh's
2 characterization of what that statement would
3 contain.

4 MR. BLANKENSHIP: Well, I guess then I'm
5 confused because if he's making a statement that
6 goes outside the record, to me that's testimony,
7 and then I should have the right to cross-examine
8 him.

9 HEARING OFFICER KNITTLE: I understand
10 what you're saying. I'm just saying that if he's
11 going to provide evidence and testimony, you are
12 going to have the right to cross-examine him, but
13 if he's just making a statement, an opinion, I
14 think this is right, I think this is wrong, this
15 shouldn't be happening, the University is mistaken
16 or the University is great, you know, I'm going to
17 allow that, and that's not going to be
18 cross-examined, but it sounds like you're going to
19 want to offer evidence about what you saw,
20 correct? Is that what you're trying to do?

21 MR. MCFARLAND: Well, I had -- yeah.
22 Just a few -- you know, just a few things, you
23 know, that I had observed, and I'm thinking of one
24 particular day --

1 HEARING OFFICER KNITTLE: We're going to
2 swear you in then and let you offer testimony.

3 MR. JEDDELOH: If I could clarify, is he
4 going to be allowed to provide both opinion
5 testimony or opinions on the whole process as well
6 as facts?

7 HEARING OFFICER KNITTLE: I don't know
8 what he's going to attempt to do. He's not -- I
9 can't say until we actually hear what's going to
10 happen. I'm not going to make a -- let's go off
11 the record.

12 (Discussion had
13 off the record.)

14 HEARING OFFICER KNITTLE: We're going to
15 call this witness as a -- actually, we're not
16 calling him. You're going to offer testimony, and
17 we're going to have you sworn in, sir, but I think
18 before we start, there's the issue of who gets to
19 cross-examine first and last, and, Mr. Blankenship,
20 you had something to say.

21 MR. BLANKENSHIP: I would object to
22 Mr. Trepanier going last. We've already thrown
23 traditional orders of proof out the window, in my
24 opinion, but I think we would be doing it even

1 more if we reversed the order of questioning from
2 complainants to respondents as is always done.

3 HEARING OFFICER KNITTLE: Mr. Trepanier,
4 I've heard your arguments on this issue before,
5 and I agree with Mr. Blankenship. I'll let the
6 complainants go first and let the respondents go,
7 and then we're going to do closing arguments. So,
8 sir, can you raise your right hand, please? Can
9 you swear in the witness?

10 (Witness sworn.)

11 HEARING OFFICER KNITTLE: You can begin,
12 sir.

13 WHEREUPON:

14 MERLIN MCFARLAND,
15 called as a witness herein, having been first duly
16 sworn, deposeth and saith as follows:

17 DIRECT EXAMINATION

18 by Mr. McFarland

19 Q. I'll give you my name. It's Merlin E.
20 McFarland. I stay at 716 West Maxwell Street.
21 I've been in the Maxwell Street area since 1989,
22 the summer of '89. Fate brought me there, I
23 guess, and as far as my work is concerned, what I
24 do, I do maintenance work. I have a store

1 Breyers. It's a clothing store. It used to be on
2 Halsted Street, but he's at -- on Jefferson in
3 Jeffrow Plaza there, and I do maintenance work,
4 painting, whatever needs to be done in the store,
5 you know, in the way of maintenance stuff I do,
6 and as far as the neighborhood is concerned, there
7 are some stores I'll throw out, like, their
8 garbage. If they have pest problems, a rodent or
9 a mouse gets in the building, I take care of stuff
10 like that, odds and ends.

11 I make sure that they comply with
12 streets and san ordinances, that their dumpsters
13 are chained up, everything is clean, no fly
14 dumping. I won't even allow a storekeeper to
15 throw a bag of garbage in a wire basket, and I'll
16 go straight into their face about it, you know,
17 because the City could take the basket.

18 Then also I put in a lot of volunteer
19 work in the neighborhood. That's why people call
20 me the mayor of Maxwell Street, one of reasons.
21 There I'll do a lot of cleaning in what I call
22 orphaned areas. There are no storekeepers, for
23 instance, areas, for instance, where UIC can't
24 possibly clean. We just don't have the manpower.

1 You can't be out there every day like in the Rush
2 Street area with the guy with a broom sweeping.
3 It's impossible.

4 So I try on a daily basis to empty out
5 about nine garbage cans that I have that I've
6 provided, chain them to the UIC fence, you know,
7 wherever I can affix a garbage can to help keep
8 things clean. I clean around the UIC fences and
9 along the curb in trying just to keep things
10 halfway decent.

11 If there's a problem, for instance,
12 maybe a broken sidewalk or something that might be
13 a liability for either the City or even for UIC,
14 I'll bring it to their attention because I know
15 some of their council. So I'm not afraid to call
16 grounds or whatever, and I'm not prejudiced
17 against them. They're my neighbor, you know, what
18 I mean, and I like to work with people. So that
19 kind of expresses an attitude.

20 I'm also -- as far as the time, if you
21 had to put a money value on it, I probably put in
22 between two and sometimes up to \$300 a week of my
23 time. That's money that I could be earning if I
24 put more hours in on my regular job. That's how

1 long it takes just to keep the garbage and stuff
2 under control. So I'm a neighborhood activist you
3 might say and also will be a CAPS rep soon, and I
4 have a good relationship with streets and san.
5 The second ward, so-so. Downtown, I call up and I
6 get what I want like that. The next day it's
7 done, just that fast. So those people know me
8 real well.

9 Now, regarding this -- the building
10 which the address is 1261 South Halsted, I do
11 remember -- I can't remember the time, the day. I
12 just remember it was summertime, and I remember
13 the reason for the demolition was that there was a
14 fire on the first floor rear I believe of that
15 particular building, and for one reason or another
16 the building was knocked down, and on this
17 particular summer day, I was walking on the west
18 side of Halsted Street walking north, and when I
19 came to the intersection of 13th where 13th would
20 be perpendicular to Halsted, I noticed there was a
21 lot of dust. That dust was caused by the debris
22 being dropped from the top of the building.

23 As I remember, they didn't have like a
24 shoot. The comparison is, is that I've seen

1 buildings in other areas, you know, biking around,
2 for instance. They would have shoots, you know.
3 They have it like in a window and the debris goes
4 down the shoot into a dumpster, and it seems to
5 contain dust and debris from flying around. I
6 don't recall seeing a shoot.

7 As far as water is concerned, I
8 remember there being hoses and stuff out in the
9 street, but I don't think it was quite enough, in
10 other words, to try and have a hose like on the
11 top of the building and then hosing -- you know,
12 the guy standing there with the little hose trying
13 to keep the dust down, that's like when you
14 implode a big building and you're out there with a
15 garden hose. That isn't going to cut it.
16 Sometimes you just need more water or heavier
17 hoses or, perhaps, more than one hose, you know.

18 MR. BLANKENSHIP: At this point, I just
19 want to object to him offering what appears to be
20 opinion expert testimony on demolitions. I don't
21 think it's appropriate.

22 MR. JEDDELOH: Join.

23 HEARING OFFICER KNITTLE: Overruled. Go
24 ahead.

1 BY MR. MCFARLAND:

2 Q. So then, anyway, as I was walking, I had
3 to, you know, just cover my nose and mouth with my
4 hand, you know, because I didn't want to breathe
5 in a lot of that. What I did breathe in, I just
6 sneezed out anyway because I'm sensitive to dust
7 and things like that anyway. So I went into a
8 store. I forget which one, and it was owned by
9 some Pakistanis. I remember that. I went in
10 there and I noticed that on the counters there was
11 a lot of dust, and I went into the store just for
12 that reason because I saw the dust billowing
13 around and going up and down the street, not just
14 because of the wind. There was an easterly wind I
15 remember, but because you have buses and cars and
16 trucks, you know, zooming along, and, of course,
17 that's going to stir up a hell of a lot of -- you
18 know, the dust is going to travel. It's going
19 down by the hot dog stands, but it's diminished as
20 it goes farther away from the structure, you know,
21 it thins out, but as far as the store was
22 concerned, there, I mean, you could take your
23 hands and you wouldn't even need a white glove
24 like in the military where they go like this and

1 check for dust, but you go like that, and it was
2 an appreciable amount of dust on the counters and
3 the -- you know, like the cellophane wrappers they
4 have shirts in and stuff, they had some dust, and
5 that was close to the entrance of the store. I
6 didn't go all the way to rear of the store and
7 check the whole place, but it was just a quick
8 observation.

9 If they had white shirts or anything
10 like that, it would probably get, obviously, a
11 little soot on it, and they'd probably sell it
12 anyway and somebody would buy it in that
13 neighborhood, but, anyway, that's the extent of
14 the dust. I, you know, just felt like it was just
15 a little too much because I've seen, like I say,
16 other areas where you could have less dust.

17 MR. JEDDELOH: Object as to what might
18 have gone on in other areas.

19 HEARING OFFICER KNITTLE: Go ahead. I'm
20 sustaining that.

21 BY MR. MCFARLAND:

22 Q. Then what else? So that's kind of what I
23 have observed. I can't speak to, you know, like
24 the amount of dust, say, like how far it blew

1 north or south on Halsted, but I know there was
2 some dust around. It's always dusty around there
3 anyway, you know, but you just have just that much
4 more dust. So that's kind of what I -- I made a
5 few notes. I hope you don't mind. That's kind of
6 what I observed. A few other things -- so, I
7 mean, the shoots and all that. That's something
8 that I observed wasn't there and maybe should be
9 there. Anyway, as far as some of the other
10 buildings, there was --

11 MR. BLANKENSHIP: At this point, I'm
12 going to object if he's going on to other
13 buildings.

14 MR. MCFARLAND: No. This has nothing to
15 do with demolition. This has something to do with
16 like UIC and the neighborhood.

17 HEARING OFFICER KNITTLE: I'm going to
18 have to agree. If you're providing testimony --

19 MR. MCFARLAND: That's the testimony as
20 far as, like, the building, but as far as like the
21 neighborhood or a few other things that maybe I
22 could add on.

23 HEARING OFFICER KNITTLE: I'm going to
24 sustain his objection. We'll try to keep

1 things -- had you just wanted to give a statement
2 about what was going, I would have allowed more,
3 but we're here and you're providing testimony
4 about this building in this particular time.

5 Yes, sir.

6 MR. TREPANIER: May I reflect that the
7 University elicited testimony from Mr. Henderson
8 regarding -- his testimony was that all of the
9 buildings were run down and had code violations.
10 Here's a citizen who comes forward and says he's
11 very familiar with the buildings and it looks like
12 he's got photographs.

13 HEARING OFFICER KNITTLE: Mr. Trepanier,
14 I've explained this to you before. I'm not so
15 sure that I wouldn't have granted a relevancy
16 objection at that time, but no one made one. That
17 doesn't prohibit me from finding this information
18 not to be relevant if they have an objection
19 saying that it's not relevant testimony. I don't
20 think it's relevant testimony. So I'm sustaining
21 Mr. Blankenship's objection.

22 That's the same ruling we've been
23 having here these last two days. So, sir, you
24 know, I don't want you to be talking about the

1 other buildings. We're just trying to keep it
2 limited to this building at 1261.

3 MR. MCFARLAND: So we went off on a
4 tangent then?

5 HEARING OFFICER KNITTLE: Yeah, yeah, a
6 little bit. That's okay. We all do it from time
7 to time.

8 Do you have anything else pertaining to
9 this particular site?

10

11 BY MR. MCFARLAND:

12 Q. Let's see. One positive thing I will
13 say, and I do have something positive to say about
14 the demolition, is that a lot of the wood and
15 stuff that -- and items that could have been just
16 totally discarded because there was a lot of
17 usable wood that Tyner, for instance, was able to
18 get, they were able to put it in the wood lot and
19 it was salvageable and was reusable. So in that
20 sense, you know, that helps the environment a
21 lot. You know, you're saving a hell of a lot of
22 trees, you know, by doing that, and it was very
23 good of the supervisor or whoever was on the job
24 and for the owners to at least allow -- at least

1 allow that because they could have said screw
2 everybody, all this stuff goes in the dumpster and
3 to hell with you guys, but they at least had some
4 of the wood set aside, and one other thing, and
5 I'm not sure how relevant this is, but prior to
6 the demolition, I went into the building. As a
7 matter of fact, there was an opening in the back,
8 and I went in and went towards the front to where
9 the down stairs would be, opened the door, and on
10 the inside of the door there was a sign that said
11 danger asbestos hazard. So I looked at that, and
12 I figured asbestos hazard. So I went down the
13 basement, and, you know, I had a friend, and we
14 shined the light around the whole basement because
15 this might be relevant maybe for the future
16 possibly if you start building a new building
17 there and you're going to dig stuff up just to
18 cover your own self, just in case now, but the
19 whole thing was filled with, like, clothing racks
20 and mannequins and all kinds of stuff, and I
21 shined the light around, and I wasn't exactly
22 sure, you know, how much asbestos was in there if
23 any asbestos was removed, but I remember -- I
24 don't know how the hell this happened, but I may

1 have made a call downtown to environment or
2 somebody and talked about the asbestos saying
3 well, I don't know if it was properly removed only
4 because I never saw a company saying asbestos
5 removal and guys running around with Tyvex suits
6 and all that kind of thing because I've seen
7 asbestos removal, but I never saw that. So this
8 guy, whoever he was, phones me and read me the
9 riot
10 act --

11 MR. JEDDELOH: I'm going to object to his
12 testimony as to what other people outside the
13 hearing might have said.

14 BY MR. MCFARLAND:

15 Q. But just to be careful --

16 HEARING OFFICER KNITTLE: Sustained.

17 BY MR. MCFARLAND:

18 Q. -- asbestos in the building, you've got

19 to be careful of that --

20 MR. JEDDELOH: May I have an instruction
21 that he not do that?

22 HEARING OFFICER KNITTLE: Well, he
23 stopped doing that. Is that it?

24 BY MR. MCFARLAND:

1 A. That's about it on the building. So
2 something positive and something to be careful
3 of.

4 HEARING OFFICER KNITTLE: Well, thank you
5 very much, sir. You're going to be subject to
6 some cross-examination starting with one of the
7 complainants.

8 CROSS - EXAMINATION

9 by Mr. Joseph

10 Q. You just said something about the racks
11 were down there you and looked up for asbestos and
12 then what?

13 A. And then I shined the light around on
14 pipes and things. It's difficult for me to say
15 whether something has asbestos or not because they
16 have that insulating material on pipes, you know,
17 on like hot water pipes, boilers. So, I mean, I
18 probably wouldn't know these if it was asbestos or
19 not.

20 Q. So was there something wrapped on the
21 pipes at that time?

22 A. I think so. I remember there was stuff
23 all over. It was dark as hell. I mean, there was
24 no light in the basement.

1 Q. So the pipes were wrapped at that time?

2 A. I believe so.

3 Q. Do you remember what that date was?

4 A. No, no. I can't remember what I did

5 three days ago.

6 Q. Was that before the demolition started?

7 A. Huh.

8 Q. Was that before the demolition started?

9 A. I think -- well, I was able to get into

10 the building. I'm thinking I went into the

11 building once through the back and maybe I went

12 through the front in that instance. I think it

13 was before they really got on to some serious

14 demolition I'm pretty sure because they would have

15 to remove the asbestos first. You know, that

16 would have -- technically, that's usually the way

17 it is.

18 Q. Was the canopy up yet?

19 A. A canopy? I don't remember seeing any

20 canopies. What do you mean, like a plastic canopy

21 or something?

22 Q. Right.

23 A. I didn't see anything. The only thing I

24 saw was that sign, but I didn't see anything that

1 would indicate that there was any asbestos removed
2 at that particular time.

3 Q. So was this before or after any
4 demolition started?

5 A. Let's see. I think at that time -- I
6 think it was before they got into really serious
7 demolition. It may have started the demolition.
8 I remember there being an opening in the back of
9 the building, but to be honest with you, I can't
10 remember if I went through the back of the
11 building.

12 Q. You mean in back in the hole in the
13 wall?

14 A. Yeah, in back or if I went through the
15 front door because I think that was open. I may
16 have gone in through the front door. So it may
17 have been before the demolition, you know.

18 Q. But if there was a big hole in the
19 building, wouldn't that have been after the
20 demolition?

21 A. When the demolition was started --

22 MR. JEDDELOH: I'm going to object. I
23 think that we've been through this.

24 HEARING OFFICER KNITTLE: Hold on. When

1 there's an objection, you've got to hold off for a
2 second and let him make it.

3 MR. JEDDELOH: I'm objecting. He said he
4 doesn't know, and we've been through this over and
5 over --

6 HEARING OFFICER KNITTLE: I'll sustain
7 that. He said he's not sure, Mr. Joseph.

8 MR. BLANKENSHIP: I'm also wondering if
9 we can ask Mr. McFarland if he's affiliated with
10 Maxworks so we can decide if they should be
11 allowed to lead or not.

12 HEARING OFFICER KNITTLE: Yeah. I can
13 ask him that. Are you affiliated with Maxworks
14 Garden Cooperative?

15 MR. MCFARLAND: Not the garden. If
16 anything, I would say I'm supportive in some
17 things. You know, like the recycling aspect, but
18 I don't get my hands dirty in the garden or
19 anything.

20 HEARING OFFICER KNITTLE: That's fine.
21 I'm going to let him proceed as they are. I think
22 we're almost -- this is our last person. Go ahead
23 Mr. Joseph.

24 BY MR. JOSEPH:

1 Q. But you distinctly remember --

2 HEARING OFFICER KNITTLE: Mr. Joseph.

3 Oh. Go ahead. I'm sorry. You're asking a

4 different question.

5 BY MR. JOSEPH:

6 Q. It had some coloring on them?

7 MR. JEDDELOH: Objection, asked and

8 answered.

9 HEARING OFFICER KNITTLE: That's sustained.

10 You've asked that and he's answered that.

11 BY MR. JOSEPH:

12 Q. Do you remember what color the covering

13 was?

14 A. It was white.

15 Q. And do you remember -- can you describe

16 where it went?

17 A. It went all over wherever there were

18 pipes. Now, some pipes would have covers -- had

19 that covering. Not all pipes would have that

20 cover. Obviously, pipes where you had to have hot

21 water, for instance, hot water pipes or something

22 or over a boiler, for instance, you know would be

23 there, but, you know, you'd see the stuff on hot

24 water pipes mainly. Cold water, no; electrical,

1 no.

2 Q. So do you remember a boiler or anything?

3 A. That I don't remember. I don't remember.

4 Q. Do you remember where the boiler started
5 from?

6 A. Huh?

7 Q. Where the pipes started from?

8 A. I remember when I went down -- let's
9 see. I went down the stairs just shining my light
10 around. I didn't wander around too much in the
11 basement.

12 Q. Did this covering, did it appear to be
13 broken up or was it -- did it seem like it was
14 pretty solid, undisturbed?

15 A. Some areas you could see where it was,
16 you know, maybe kind of loose and whatever, but
17 some of it was pretty much intact. You know, as
18 long as it doesn't get dinged up and people
19 bumping it and knocking it.

20 Q. Did you go in with somebody else?

21 A. Yeah, I did.

22 Q. Who was that?

23 A. It was Wes.

24 Q. It was Wes?

1 A. Yeah. Wes the cabdriver. So we were
2 just curious. We were wandering around, that's
3 all, to see what was going on.

4 HEARING OFFICER KNITTLE: Anything else,
5 Mr. Joseph?

6 MR. JOSEPH: No. I can't think of
7 anything right now.

8 HEARING OFFICER KNITTLE: Mr. Trepanier.

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

10 by Mr. Trepanier

11 Q. Thanks for coming out today,
12 Mr. McFarland.

13 A. You're welcome.

14 Q. The mayor of Maxwell Street.

15 You testified that on a certain day
16 while a demolition was ongoing at 1261 South
17 Halsted that you were walking north on Halsted and
18 you were holding your nose?

19 A. Uh-huh.

20 Q. Is that your common practice when walking
21 north on Halsted to hold your nose?

22 A. No, uhn-uhn, unless I want to look
23 ridiculous walking around.

24 Q. Why were you holding your nose on that

1 day?

2 A. Because there was too much dust around,
3 and I'm sensitive to that. It would make me
4 sneeze and cough and carry on, you know.

5 Q. And what was the source of that dust?

6 A. It was dust from the building, the debris
7 falling down hitting the dumpster plus when it was
8 coming off the roof, you catch a certain amount in
9 the air.

10 Q. You didn't see anyone spraying a hose
11 when you were holding your nose, did you?

12 A. I think -- I remember there -- that's
13 confusing as hell, but I remember -- I remember
14 seeing hoses out there. I remember there were
15 times when I had to step over a hose, I remember
16 that, and walking along 13th and the side of the
17 building and all that kind of thing. I remember
18 seeing -- see, what's confusing to me -- I can't
19 remember if it was specifically on that day that
20 the guy was standing with the hose holding or if
21 it was on another day or what. I'm not 100
22 percent sure, but in either case, it was dusty,
23 and even if he had the hose going, it was still
24 dusty because there was just no way in hell that

1 the amount of volume of water going out was
2 adequate enough to, you know, adequately suppress
3 the amount of dust blowing around.

4 MR. JEDDELOH: I'm going to object
5 insofar as he's providing an expert opinion. He
6 hasn't been qualified or disclosed --

7 HEARING OFFICER KNITTLE: Overruled. Go
8 ahead.

9 BY MR. TREPANIER:

10 Q. On the day that you do recall somebody
11 standing holding a hose, where was that person
12 standing?

13 A. Out on -- I remember different -- seeing
14 him in different positions, but I remember -- I
15 remember on Halsted Street. So like if this
16 were -- say this were Halsted and this were, say,
17 the building, you know, he'd be, say, right in
18 this area (indicating). You know, he'd be like
19 off to the side obviously when he'd be spraying.
20 He couldn't obviously spray the top of the
21 building. There's no way he could reach that,
22 but, you know, like spraying below.

23 So there was some spraying. It wasn't
24 like nobody had a hose out there. I'm sure that

1 there was some spraying.

2 Q. What you saw was the dumping was
3 happening from the top and you saw a hose at the
4 bottom?

5 A. If I remember -- if I remember, right,
6 sure. That's how that -- how that went. I can't
7 remember -- you know, I'm not sure if they had a
8 hose like on top of the building, you know, or
9 not, you know. If I had all this stuff written
10 down, it would be no problem, but I honestly can't
11 remember all the little details, you know, because
12 they hoisted a hose all the way up to the top and
13 some guy -- I remember somehow someway they got a
14 bobcat at the top of the building. That seemed
15 pretty amazing to me. How they got a bobcat up
16 there was amazing as hell. I still can't figure
17 that out.

18 Q. Did you see that bobcat operate?

19 A. Yeah. There was a guy running it, sure.
20 They were actually able to take it and move it
21 around and use it inside (indicating).

22 Q. You're making a motion with your hand.
23 What's that?

24 A. Well, that's the, you know, with the

1 shovel part or scoop part. It can knock stuff
2 with it and knock things over and picks things up
3 and throw it over, and so they had a bobcat. I
4 remember that. I'm sure they had a bobcat on the
5 roof.

6 Q. And that you saw the bobcat throwing
7 stuff over?

8 A. Yeah, if I remember, yeah. It was a hell
9 of a lot of debris. It wasn't like he had a
10 couple of guys with shovels, you know, doing this
11 (indicating). That would have made hardly no
12 dust, but, I mean, the volume of the dust or the
13 volume of the debris was pretty substantial.
14 There could have been a couple of guys with
15 shovels doing that.

16 MR. BLANKENSHIP: Let me just object for
17 the record to the characterization of what the
18 shovels would have done in that sounds like expert
19 testimony of demolitions.

20 HEARING OFFICER KNITTLE: I'll note your
21 objection for the record. Anything else,
22 Mr. Trepanier?

23 MR. TREPANIER: Yes.

24 BY MR. TREPANIER:

1 Q. You stated that that down by the hot dog
2 stands the dust was reaching down by the hot dog
3 stands?

4 A. Uh-huh.

5 Q. People eat food outside the hot dog
6 stands, don't they?

7 A. All the time.

8 Q. Would that dust be coming on to their
9 food.

10 MR. JEDDELOH: I'm going to object. I'm
11 sorry. There's no foundation laid for that.

12 HEARING OFFICER KNITTLE: Overruled.

13 MR. JEDDELOH: The foundation being that
14 there's no foundation that he was there to observe
15 people eating food when there was dust on the
16 food.

17 MR. BLANKENSHIP: In fact, he just
18 testified only possibly.

19 HEARING OFFICER KNITTLE: What did you
20 say?

21 MR. MCFARLAND: Well, I did use the word
22 possibly. Well, in other words, I can't say, you
23 know, like, for instance, if you went there like
24 me, I keep my food covered. I don't try to eat

1 outside all the time, but that's me. Other people
2 stand right out. You know, they don't care, you
3 know, if buckets of crap are falling out of the
4 sky.

5 HEARING OFFICER KNITTLE: I'll sustain
6 the objection, Mr. Trepanier. You can reask some
7 questions to get there.

8 BY MR. TREPANIER:

9 Q. On the day that you were walking north on
10 Halsted Street holding your nose, did you have an
11 opportunity to see the hot dog stands?

12 A. Well, yeah. I had to walk right --
13 sure. What I did was I'd be walking west on
14 Maxwell and cross over, you know, to the west side
15 of Halsted Street and then walk north and cross
16 right at the intersection, in other words.

17 Q. As you walked north on the west side of
18 Halsted Street, the dust from the demolition was
19 so heavy you felt you needed to stop breathing?

20 A. Well, once I got close enough, once I got
21 closer to the building. In other words, it wasn't
22 like where I was at Maxwell and then immediately
23 covered up. To be honest with you, I got fairly
24 close to that intersection, you know, and then

1 once I was like close to and then right at that
2 intersection then, you know, I had to cover myself
3 up.

4 Q. And you were still on the west side of
5 Halsted Street?

6 A. Oh, yeah. No. You couldn't go on the
7 east side anyway because they had the sawhorses
8 there, you see, blocking pedestrian traffic and
9 you demolishing buildings. So there was
10 definitely sawhorses around. You couldn't go by
11 the building.

12 Q. You testified that when you went inside
13 of the store that day there was dust in the store
14 near the entrance. Was that unusual?

15 A. Well, there's always going to be some
16 dust around, I mean, in any store anyplace
17 really. As long as you're opening and closing
18 doors, there's always going to be dust, but where
19 you have a lot of dust and, in this case, I
20 remember the wind wasn't -- it seemed to be an
21 easterly wind because it just seemed to, like,
22 billow in a westerly direction, you know.

23 Q. And that's the demolition dust you're
24 saying was billowing in a westerly direction?

- 1 A. Yeah. That's why I went into the store.
- 2 I mean, normally I wouldn't -- you know, I don't
- 3 really care about those stores and what they
- 4 have. You know, who cares, but, I mean, that's
- 5 their business, but I just wandered in there just
- 6 to see on my own, just to see how much of the --
- 7 if there was any disturbance at all, you know, I
- 8 mean as far as dust or debris or whatever inside.
- 9 Q. Was there a disturbance?
- 10 A. Dust, yeah. Sure, there was dust.
- 11 Q. And you encountered dust?
- 12 A. Oh, yeah, more dust than usual, yeah.
- 13 Sure, more dust than usual. This is, you know, an
- 14 isolated case because here you have a building
- 15 directly across the street and you have kind of
- 16 extreme conditions, but in normal circumstances I
- 17 mean you walk in any one of those stores and
- 18 you're going to find some dust around, you know,
- 19 always. Even in the store I work, you know, they
- 20 have all kinds of filtration systems and
- 21 everything, and there's still some dust around.
- 22 Q. When you say -- excuse me. Sorry.
- 23 A. Go ahead.
- 24 Q. When you say it was an extreme condition,

1 what are you referring to?

2 A. Well, the idea of the amount of debris
3 and dust that was in the air in general from the
4 building, you know, from things falling. When
5 something hits the dumpster solidly like that, you
6 know, it's going to go up, you know.

7 Q. And you observed that occurring?

8 A. Oh, yeah. It's a common thing, you know,
9 when something hits that hard.

10 MR. TREPANIER: Thank you. I have no
11 further questions.

12 HEARING OFFICER KNITTLE: Mr. Wager.

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

14 by Mr. Wager

15 Q. This dust that you saw in the store, did
16 some of it get on some of the merchandise?

17 A. There was -- if the -- yeah. Merchandise
18 that was not, you know, like when you have this
19 kind of a plastic, you know, clear plastic
20 covering or, you know, packaging, in other words,
21 that would have dust on it, but you wipe the
22 package off. If it was just a garment that was
23 hanging on a rack, a jacket or something, you
24 know, or shirts or whatever, T-shirts, half these

1 stores sell T-shirts and so on, well then you get
2 a little -- there's going to be some dust on them,
3 yeah, and -- but as to whether or not that would
4 damage the clothing enough, I can't say. It's up
5 to the storekeeper really to decide something like
6 that, you know, but, yeah, sure, there was dust
7 all over.

8 Q. So did this affect the way the business
9 people were able to not conduct their business?

10 MR. JEDDELOH: Objection as to
11 foundation.

12 HEARING OFFICER KNITTLE: Sustained. You
13 can't answer.

14 MR. MCFARLAND: Oh. When you say
15 sustained, that means I don't answer?

16 HEARING OFFICER KNITTLE: Yeah. I've
17 agreed with their objection.

18 MR. MCFARLAND: Oh, okay. I had to stop
19 for a second and think.

20 BY MR. WAGER:

21 Q. I thought I had heard you say before that
22 the merchants complained that their merchandise
23 had been damaged?

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

1 That's not a question, and I think it's now
2 leading him into hearsay, which would be
3 absolutely impermissible.

4 HEARING OFFICER KNITTLE: I'll sustain
5 that objection as well. Mr. Wager, you have to
6 ask a proper question.

7 BY MR. WAGER:

8 Q. I guess the dust did touch your skin and
9 from what you're saying your nose as well?

10 A. Yeah. In fact, I breathed in some, and I
11 don't have a solid cover up. So I couldn't breath
12 at all. You know, I couldn't breathe. You know,
13 I wouldn't be able to breathe. So naturally I'm
14 just going to try and prevent excessive amounts of
15 dust, you know, from getting into my nose, and
16 that's just me. I don't know about what other
17 people do, but, you know, I wouldn't allow myself
18 to be breathing in an excessive amount of dust.

19 Q. Was there these barrels of dust being
20 thrown off the building?

21 MR. JEDDELOH: I'm going to object to
22 that question. I don't know that even Mr. Wager
23 would want that question to go forward. I believe
24 it was observed barrels of dust being thrown off,

1 and I don't think there's anything in the record

2 to indicate that that was ever the case.

3 HEARING OFFICER KNITTLE: Sustained. You

4 could rephrase that question, though, Mr. Wager.

5 BY MR. WAGER:

6 Q. Did you see clouds of dust coming from

7 stuff being thrown off the building?

8 A. Oh, yeah. You could see dust, you know,

9 pretty much all the way down. You know, as things

10 go off the top of the building, you know, bricks

11 or whatever, you know, plaster, whatever kind of

12 things it is going off the building just that

13 going into the air as it goes down where there's

14 going to be dust from that, and then when it hits

15 the dumpster and crashes down, you know, the dust

16 is going to billow out. It's just a natural

17 thing, you know.

18 Q. You've been in that building, I believe.

19 Did you at some point see animal or bird droppings

20 in the building, perhaps, from the top floor?

21 A. That I don't -- I'm not sure. I remember

22 going into the apartment on the very top floor,

23 yeah, in the upper floor there was a real -- it

24 was beautiful. It was a real big apartment, like

1 a giant loft apartment, and that was in real nice

2 shape. That was pretty decent. It wasn't -- it

3 was nice. It was a big room with a view. It was

4 nice. It's a beautiful building.

5 Q. A large skylight?

6 A. Yeah, especially when the roof was gone.

7 HEARING OFFICER KNITTLE: Anything else,

8 Mr. Wager?

9 MR. WAGER: No.

10 HEARING OFFICER KNITTLE: Thank you. Do

11 you have cross-examination?

12 MR. BLANKENSHIP: Just a few questions.

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

14 by Mr. Blankenship

15 Q. Good afternoon, Mr. McFarland, Mr. Mayor.

16 A. Uh-huh.

17 Q. There's always dust in this area, right?

18 A. Yeah. There's dust all over.

19 Q. And this particular area, it's an old

20 neighborhood, right?

21 A. Oh, yeah. It's real old.

22 Q. It's a little run-down in places?

23 A. Some areas, sure.

24 Q. And it's just generally dirty. That's

1 why you work so hard to keep it clean, right?

2 A. Yeah, just from litter and stuff that

3 goes all over the place.

4 Q. A lot of trucks on Halsted Street?

5 A. Yes. Actually, it's a regular highway.

6 It's Route Six or something, I think.

7 Q. And that creates a lot of dust, just the

8 trucks going by?

9 A. Trucks.

10 Q. That creates a lot of dust, right?

11 A. (Nodding head.)

12 Q. You've got to answer out loud.

13 HEARING OFFICER KNITTLE: You've got to

14 answer out loud, sir. She can't pick up a nod.

15 MR. MCFARLAND: Oh, I see.

16 HEARING OFFICER KNITTLE: So just say yes

17 instead of nodding if you don't mind.

18 MR. MCFARLAND: Oh, okay.

19 HEARING OFFICER KNITTLE: That's okay.

20 BY THE WITNESS:

21 A. Yes.

22 BY MR. BLANKENSHIP:

23 Q. Then you've got the highway a couple

24 blocks to the east, right?

1 A. Dan Ryan, uh-huh.

2 Q. That's a pretty busy highway?

3 A. Yes.

4 Q. Now, let's talk about, I think you called

5 it, the isolated case of the store across the

6 street, right?

7 A. Yeah, because that's what we're talking

8 about.

9 Q. Was the door open or closed at that store

10 when you went in?

11 A. I had to open it to go in. So it was

12 closed.

13 Q. So it was closed.

14 Is it a busy store?

15 A. Yeah. These stores get pretty busy.

16 Q. Have you been in this store? When was

17 the last time you were in the store before this

18 day in question?

19 A. Well, I don't really go into these stores

20 very often. There's some storekeepers that I'm

21 friends with that I'll stop in and chitchat with.

22 Other storekeepers if I have to go in and talk to

23 them about, you know, keeping the front of their

24 store or the gutter or whatever tidy or debris in

1 the rear of their building or overfilled dumpsters
2 or whatever, that's about the only times I'll go
3 in.

4 Q. So it had been a while since you'd been
5 in this store?

6 A. Yeah. I'm not particularly friends with
7 these people.

8 Q. So you don't know what level of dust
9 might have been in that door before the day in
10 question?

11 A. No.

12 Q. So --

13 A. I mean, I don't know their housekeeping
14 habits is what you're asking me. No, I don't
15 know.

16 Q. So you don't really know --

17 MR. JEDDELOH: Can I just have a
18 clarification? Was that a no? I didn't --

19 HEARING OFFICER KNITTLE: Yeah. He said
20 no. I'll state for the record that he did say
21 no.

22 MR. JEDDELOH: Thank you.

23 BY MR. BLANKENSHIP:

24 Q. So you don't really know how much of the

1 dust on the counter or on the shirts and the
2 wrappers actually came from the demolition versus
3 from some other place. It was just there for
4 months due to bad housekeeping?

5 A. Well, I can't honestly say -- well, let's
6 put it this way. All the stores have a certain
7 level of housekeeping. You know, they don't want
8 it to look too schlocky, I don't know if you can
9 spell that, but too messy. So you don't want it
10 too messy. So they're going to try and keep
11 things reasonably clean even in some of the stores
12 I've been into where I had to talk to them about
13 them taking and sweeping the debris from the
14 sidewalk to the curb, which is totally stupid,
15 plus it's a \$250 fine, I might add, but that's
16 what streets and san charges. That's the ticket.

17 So -- but it would be -- there would be
18 some dust here and there, but I know the
19 difference between an excessive amount of dust and
20 what would be, like, normal dust because I work in
21 a store too.

22 Q. I understand, but you don't really know
23 what the level of dust was before the demolition
24 even started?

1 A. No.

2 Q. So you can't really compare sitting here
3 today?

4 A. And I might add on this particular day,
5 you know, as -- see, I don't know -- I can't
6 really remember how much work was being done on
7 the building. Let's suppose -- just for an
8 example. Okay. Let's suppose the demolition was
9 going on three days and I walked in the building
10 or walked in the place, you know -- you know, if
11 the guy has never cleaned anything up, they're
12 going to have a lot of debris in there. You know
13 what I'm saying? I can't speak to the exact
14 amount --

15 Q. So you can't tell us --

16 A. -- or measure it.

17 Q. -- sitting here today how much of the
18 dust was old dust and how much was new dust from
19 the demolition? You're just not in a position to
20 tell us that, right?

21 A. The only thing I could honestly say is
22 that it seemed more an excessive amount of dust.
23 It was really noticeable. It would be like if
24 your wife didn't clean house, you know, for six

1 weeks.

2 Q. I understand.

3 A. You're on a business trip and you come
4 back.

5 Q. I understand your testimony, but my
6 question is a little different.

7 You just can't tell us for sure what
8 the source of that dust was?

9 A. The heavy dust came from the building.
10 The lighter dust would just be from the streets.

11 Q. You don't really know that since you
12 don't really go in that store frequently? You
13 just popped in there this one day?

14 A. Well, I could make a comparison because
15 there's like MJ Sports, for instance, next door,
16 and they sell like shoes and stuff, and you have
17 MJ and a couple of other stores, you know, along
18 there, and I'm friends with the people. I mean,
19 I'd go in their stores, you know, and I could --

20 Q. But you didn't do that with this store?

21 A. Not this particular store. I wouldn't go
22 in, like, every day. Once in a while I may have
23 to go in there.

24 Q. What was the name of that store?

1 A. Let's see. If I remember right, some of
2 these people change the names of the stores for
3 some reason. I want to say Fresh Start. I want
4 to Fresh Start, but I could be mistaken.

5 Q. Do you know what the address was?

6 A. Well, it would -- let's see. It would
7 intersect 13th Street.

8 Q. It was --

9 A. It was either at the intersection or it
10 was before or it was a little after. I'm not 100
11 percent sure on that. I don't want to be nailed
12 down because I want somebody to say, you know
13 what, the guy lied. If I'm not sure, I'm not
14 sure.

15 Q. How about the hot dog stand that you
16 talked about, where was that located?

17 A. That's right on the corner of Maxwell and
18 Halsted.

19 Q. That's a block away? That's a block
20 south of 1261?

21 A. Yeah, just short distance. It's not like
22 a full city block.

23 Q. It's the next street over from 13th
24 Street?

- 1 A. Yeah, Maxwell is the next street down.
- 2 Q. What side of the street is that on?
- 3 A. That's on the west side.
- 4 Q. And it was just going business as usual
- 5 the day you went?
- 6 A. Yeah.
- 7 Q. People were eating hot dogs out on the
- 8 little counters, right?
- 9 A. Sure. Yeah. People were around their
- 10 cars and outside walking. It's a summer day. So
- 11 everybody is out there.
- 12 Q. A busy place?
- 13 A. Oh, yeah, and the other hot dog stand is
- 14 busy and so on.
- 15 Q. Okay. Now, let's just talk briefly about
- 16 the building at 1261. You can't say for certain
- 17 whether your visit inside the building was before
- 18 or after the demolition that started by Speedway,
- 19 right?
- 20 A. I think when I -- I remember kind of
- 21 exploring, going in the building, okay, before
- 22 heavy demolition started. Okay. Like, I remember
- 23 going through the front door of the building,
- 24 okay, and I remember, as a matter of fact, I was

1 looking at the front doors and thinking how nice
2 it would be to take the front doors out to salvage
3 them, you know, because you throw away whole door
4 frames, and that's expensive. You know, that's
5 worth a hell of a lot of money.

6 Q. So that was sometime before Speedway
7 actually started its work there?

8 A. Yeah. The store was vacant. I mean,
9 everybody was gone I remember. Everything was
10 empty. The first floor was empty, and that's
11 where I entered, and I remember visiting the upper
12 floors where the apartments were. I remember
13 that, and I believe that -- I think that was done
14 before Speedway really got into it.

15 Q. Okay.

16 A. I'm pretty sure.

17 Q. And you haven't really had any training
18 on recognizing asbestos, have you?

19 A. No, not really. If I -- I mean, hell if
20 you had a bucket of it sitting there, I might be
21 suspicious, here's a bucket of some suspicious
22 looking stuff. I won't eat it. I'll ask somebody
23 what it is.

24 Q. If I told you that a contractor came in

1 and removed all the asbestos before the
2 demolition, you wouldn't be in a position to agree
3 or disagree with that?

4 A. I really couldn't honestly tell you
5 because I really didn't see anybody there doing
6 it.

7 Q. Fair enough. Last question.

8 I think you mentioned that there had
9 been a fire in this building and that was the
10 reason for the demolition?

11 A. That's my guess.

12 Q. You knew there had been a fire in the
13 building, though?

14 A. Yeah, and I think it was like the second
15 floor, second floor rear, I think, or first floor,
16 somewhere in the back of the building, I
17 remember. It wasn't like real high up. It was
18 the lower level of the building there.

19 MR. BLANKENSHIP: No other questions.

20 Thank you for coming.

21 MR. JEDDELOH: No questions.

22 HEARING OFFICER KNITTLE: Mr. McFarland,
23 thanks very much. I appreciate you coming down.

24 You are down from the stand. Okay. No longer

1 under an obligation to tell the whole truth and
2 nothing but the truth so help you God. Let's take
3 a quick recess for about five minutes. We're
4 going to have to talk about closing arguments and
5 post hearing briefs, and I want to think about
6 that for a little bit off the record. Let's go
7 off.

8 (Discussion had
9 off the record.)

10 (Break taken.)

11 HEARING OFFICER KNITTLE: We're on the
12 record now. That's fine. I will make a
13 credibility finding before the end of the
14 hearing. I usually wait until after closing
15 arguments, which usually there are not, but in
16 this particular case there are. So we're going to
17 start off with closing arguments. The way this
18 works, Lionel, you'll be happy to hear you guys
19 get to go first. So you can make a closing
20 argument, then you have a closing argument, and
21 then you have a reply closing argument.
22 So we want -- I'm sorry. I forgot
23 Mr. Jeddelloh's motion about timing these. Let's
24 got off again.

1 (Discussion had

2 off the record.)

3 HEARING OFFICER KNITTLE: We're back on

4 the record. My apologies. We had talked about

5 limiting the closing arguments in terms of time.

6 I think that's a good idea. We've decided to

7 limit them to no more than 15 minutes. I do not

8 expect all these closing arguments to take 15

9 minutes. I'm hopeful that they will not because

10 we do have the opportunity to address anything you

11 want to in your post hearing brief. Once again,

12 these are arguments. They are your closing

13 arguments. They are not testimony. They're based

14 on the testimony that was adduced and has been put

15 into evidence and what you think that shows. So

16 with that said, who from complainants wants to go

17 first?

18 MR. TREPANIER: I will.

19 HEARING OFFICER KNITTLE: Mr. Trepanier,

20 you're up. You're on the clock.

21 C L O S I N G S T A T E M E N T

22 by Mr. Trepanier

23 Q. I appreciate the opportunity that was

24 given to the complainants to put on our case, and

1 while the evidence rulings didn't go in our favor
2 and, in fact, I still feel that we have a
3 continuing objection to some of the rulings, but
4 even in the face of those, I want to express my
5 appreciation to all the participants that we were
6 able to, to the degree that we did, address the
7 complaint that was brought forward.

8 In my opening statement, I had said
9 that our case was going to show that the
10 University didn't take reasonable care, they
11 didn't require the oversight, they didn't perform
12 an oversight function that was necessary, and I
13 believe that the evidence and the testimony has,
14 in fact, buttressed argument on this point, and,
15 in fact, the evidence had shown that what
16 oversight the University did provide, that person
17 in the oversight position never did make a note of
18 what he was overseeing, and, in fact, his memory
19 was extremely poor as to what it was that he had
20 seen in his oversight position.

21 Although, Mr. Henderson's claim that
22 every time he was at the site that he saw
23 watering, while never having -- while having no
24 memory ever of where he saw that watering was not

1 a reasonable suppositon. The evidence also
2 supported the point that was made by myself in the
3 opening statement that the University didn't
4 exercise proper owner's responsibility to use due
5 care and they didn't exercise due care in the use
6 of their property if a demolition of a property
7 could even be considered a use of that property,
8 the lack of notice to each of the witnesses who
9 testified that they were in a position that
10 reasonably they should have known by the owner of
11 the University that they were going to take such
12 an extraordinary use of their property, a use
13 totally a surprise to use this piece of property
14 to create what was shown out to be such an
15 interference for the nearby neighbors and
16 passersby.

17 I think the testimony has -- was
18 adduced from quite a few witnesses that this site
19 where this demolition occurred on Halsted Street
20 was a very busy district. Numerous of the
21 witnesses, both from the -- numerous of the
22 witnesses with testimony, these witnesses coming
23 both from the side of the respondents and from the
24 complainants, so testified that this was a busy

1 area, and, in fact, some of the witnesses from
2 Speedway testified to the need to take special
3 precautions in circumstances where there's a
4 special concern for the neighbors, and here at
5 1261 South Halsted the evidence shows was just
6 such a location where special care needed to be
7 taken to protect the nearby persons and their
8 health and that those -- and that special measures
9 were not taken.

10 The best testimony that was adduced for
11 the respondents was that they had a hose and they,
12 although there was only one person who ever could
13 testify in this case where the water came from for
14 that hose, there was -- it was not a -- there was
15 well evidence that there was not the proper -- a
16 proper level of concern to control the dust
17 emissions from the demolition at 1261 South
18 Halsted, and, in fact, the testimony again and
19 again from individuals told of the emission of
20 demolition dusts that was occurring while they
21 could observe no precaution being taken to control
22 the dust, and, in fact, the demolition at times as
23 was shown in that evidence video, the demolition
24 proceeded in such a manner that was assuring a

1 huge impact would be -- would be wrought upon the
2 surrounding community.

3 In this instance, even in the view of
4 the evidence most favorable to the respondents
5 could only show that they took the minimalist
6 measures to control this dust, and as I drew the
7 comparison in my opening statement a sneeze in a
8 crowded space without holding their face. A
9 sneeze may be okay if you were in a field alone,
10 but when you're face to face, you must take a
11 precaution.

12 The University failed to take that
13 precaution and despite their claims that they
14 required the use of water as was shown in the
15 testimony, nowhere in the contractual
16 documentation was the spraying of water even
17 required by the University. Here where the
18 University claims such an extraordinary need to
19 demolish this building, they adduced no testimony
20 to show an extraordinary need to demolish this
21 building.

22 Mr. Henderson testified that he thought
23 that someone made a determination that the
24 building was unrepairable, that he testified that

1 when this building was given over to his
2 supervision he was instructed to demolish the
3 building. So Mr. Henderson's testimony that this
4 building was unrepairable, ripe with building code
5 violations, I believe was self-serving
6 justification for an action that he was ordered to
7 take.

8 The proper duty of the University was
9 to protect the innocence, the standersby, the
10 children, the babes, the complainants in this
11 case, the thousands of passersby. They gave not
12 the consideration as would be expected of someone
13 operating in the environment that they were
14 operating in, and, in fact, a majority of the
15 evidence shows that the University and Speedway
16 Wrecking did not one thing to control the
17 emissions of the dust that they acknowledge
18 occurred, dust that they knew would result from
19 the demolition.

20 We heard testimony that there were
21 alternative methods to handle the elimination of
22 the debris of this hand wrecking activity that
23 occurred on the upper floors at 1261 Halsted. I
24 believe it was Mr. Mergener who testified that his

1 knowledge about the ability to use an interior
2 stairwell of a building to transport demolition
3 debris to the ground. Although, Mr. Mergener did
4 note there was some demolition debris in the
5 stairwell, as we saw from the evidence video, and
6 this -- in this instance the course of action
7 chosen by the respondents was to dump the dust off
8 the four-story building with no controls.

9 This lack of care has impacted the
10 community. The community has suffered at the
11 hands of the University, and the University's
12 claimed need to eliminate the buildings in this
13 area to supplant that with their south campus
14 project, but no need of the University should be
15 filled at the cost of the innocent, the existing
16 community. No. The University must be brought to
17 bear the costs of their expansion. The very
18 purposes of the Environmental Protection Act to
19 see that the environmental costs of a person's
20 activities are borne by the responsible party
21 could be upheld in this instance. In fact, the
22 University is intending to continue to demolish
23 buildings and they need a good word. They need a
24 good word to say that you cannot just sneeze in

1 somebody's face in Chicago. You must take a
2 precaution. You must take what reasonable
3 measures are easily available, measures that are
4 commonly used, measures that will reduce the
5 impact on the surrounding community.

6 We heard testimony today of an adjacent
7 property user who felt that his own property was
8 diminished because of the ongoing emissions from
9 the demolition. We heard testimony from the
10 reputed mayor of Maxwell Street, Mr. McFarland,
11 who found that Halsted Street itself was becoming
12 unusable in the condition that the University was
13 rendering it by having this demolition debris
14 heaved into the air, an activity that was not
15 short in duration, lasting more than a month, an
16 activity, I believe, that the testimony -- some of
17 the testimony supported an activity that was
18 itself unnecessary.

19 The University is choosing to knock
20 down these buildings for their own purposes to
21 forward their own plan, building an empire and
22 driving out the poor in the very dust of their
23 destruction, and I'm going to close my argument
24 with that.

1 HEARING OFFICER KNITTLE: Thank you,

2 Mr. Trepanier. A minute and a half to spare.

3 Mr. Joseph, you're up.

4 CLOSING STATEMENT

5 by Mr. Joseph

6 Q. Okay. All right. I want to thank

7 everybody for their consideration and listening to

8 us and their patience with us because this is a

9 very difficult process, and I did want to point

10 out that there was -- things were pointed out that

11 we were trying to prep our witnesses. We really

12 did very little to struggle with Merlin with his

13 agenda and what the people are doing here. This

14 has really been a real challenge. I guess

15 basically we're trying to make some changes here

16 and raise the consciousness of the University.

17 I think what they're doing in this

18 Maxwell Street area is setting a very bad example

19 for these young minds that are going to the school

20 and they walk out of the school and they see this

21 and they read about it in the paper and it must be

22 kind of overwhelming to them. There's a point

23 that we started discussing about the dust and any

24 pollution that is unnecessary is excessive, and I

1 think that's true no matter how you bend it. You
2 know, to tear down a building is going to create
3 pollution. There's no doubt, and it's no doubt
4 that it was proved that there was pollution here.
5 No matter how you cover, there's pollution with
6 trucks. If you tear down a building, you've got
7 to build a new building, and there's going to be
8 more pollution.

9 It's obvious that this building was
10 being used. There were people living in it.
11 There were businesses in it. The University
12 refused to renew leases, yet they cried for money.
13 The same time you read about the leaks in their
14 own buildings. Mr. Henderson talked that there
15 were violations and this and that, and I remember
16 reading and trying to get some evidence in and I
17 was having a hard time trying to put it in that
18 they needed -- it was close to a hundred million
19 dollars just to repair their own building, which
20 is less than 20 years old.

21 MR. JEDDELOH: I'm going to object.

22 That's beyond the record.

23 HEARING OFFICER KNITTLE: I'm
24 overruling. This is closing. I'm going to give

1 him some leeway here.

2 BY MR. JOSEPH:

3 Q. Mr. Henderson when asked why he ordered

4 the demolition, he really didn't know. He was

5 just told and this is pretty much a problem here.

6 We have people just doing what they're told, not

7 really thinking about what they're doing, you

8 know, just to make money, and it gets into the

9 situation of greed here. Being the assistant

10 director of the plan 35 years, it's kind of

11 disappointing, very disappointing, that UIC would

12 be crying for money and taking money from the

13 people of Illinois, and yet they're refusing rent

14 for years and years here, and there's evidence to

15 prove that.

16 Another point was the video. I'm

17 hoping that maybe the Board could actually look at

18 the rest of that video and see that, in fact, in

19 so many instances it would reinforce that there

20 was greater pollution than just what was in the

21 time lapse. In fact, I toured that building

22 panning every bit of it, every corner, and as I

23 went up, and I believe there was no holes on that

24 roof as, you know, suddenly at the last minute

1 here we've got a document showing that or after
2 trial started we get a document that a hose was
3 apparently delivered or allegedly delivered, and
4 that's really just in writing.

5 Another point that was talked about,
6 the gardening was a major effort by a bunch of
7 people 15, 20 years ago that started to try and do
8 something with this neighborhood, work with this
9 great market that had been here for close to 150
10 years and try to do something a little more
11 natural, a little more -- a little less stress on
12 the Earth, work with used items, work in this
13 market. They planted 50-some trees that were
14 donated by Morton Arboretum and other sources, and
15 I think practically every single one of those
16 trees has been bulldozed to this date.

17 There was a women named Lori Grove who
18 worked with Hill House and was refused by the city
19 locally, but eventually was granted full landmark
20 status for every building -- I think it was some
21 80-some buildings in this neighborhood about
22 approximately ten years ago, and they went
23 downstate and unanimously every member of the
24 National Landmark Commission in Illinois voted to

1 nominate all of these buildings to keep these
2 buildings, and the only one objecting was the
3 University in the back objecting like --

4 MR. JEDDELOH: Mr. Knittle, I anticipate
5 your ruling, but for the record I object to this
6 excessive amount of testimony in the form of
7 closing in excess of the scope of the record.

8 HEARING OFFICER KNITTLE: I'm going to
9 overrule, but I am going to caution you,
10 Mr. Joseph. You know, we're getting kind of far
11 afield here. I'm going to give you a significant
12 amount of latitude because it is your closing
13 argument, but try to keep it about the complaint
14 and what's going on here with 1261 Halsted.

15 MR. JOSEPH: Well, it's really all kind
16 of tied together. I mean, the big picture is kind
17 of what the problem and when --

18 HEARING OFFICER KNITTLE: I know that's
19 the argument you've been making, but that's not
20 what we've been ruling so far here at this
21 hearing. I'm so just giving you a note of caution
22 to try to get it closer to the actual facility
23 we're involved with.

24 BY MR. JOSEPH:

1 Q. What was was I talking about?

2 So technically this building, which was
3 bulldozed, was supposed to get landmark status,
4 and apparently the University bought it off the
5 keeper of the records and --

6 MR. JEDDELOH: I'm going to object to
7 that and ask that that be stricken. Not only is
8 that beyond the scope of the record, but it's also
9 highly prejudicial and, frankly, insulting.

10 MR. JOSEPH: It's also a fact.

11 HEARING OFFICER KNITTLE: That's an
12 objectionable statement.

13 MR. JOSEPH: It's also a fact.

14 HEARING OFFICER KNITTLE: Mr. Joseph --
15 don't worry, Mr. Jeddelloh. I agree with you on
16 this one, and I'm going to sustain that objection.

17 Mr. Joseph, this is probably the first
18 time I've ever sustained an objection in closing
19 argument. However, you can't make statements like
20 that. That is an objectionable statement, and
21 it's not proper here. This is still, while not a
22 court of law, an administrative hearing, and I
23 want to keep things as on the up and up as we
24 possibly can.

1 BY MR. JOSEPH:

2 Q. I don't really have too much else to
3 say. We talked about the meeting and the points
4 were brought out that there was this public
5 meeting, and it's clear that the local persons
6 were not notified, and I just feel that the
7 University's plan was to respect the community
8 boundaries, and I think they'd have to get an F
9 for what they've done there, and it's totally
10 setting a bad example for our children. There
11 must be some way to remedy this.

12 You know, this is one angle we chose,
13 and I think that there needs to be some way to
14 make our public servants serve us and not just use
15 us and become a parasite on the people of this
16 state and these neighborhoods, and I'll just leave
17 it at that, and I hope that maybe I jarred some
18 consciousness and maybe Mr. Jeddelloh working with
19 the University can talk to the chancellor or
20 something who moved downstate and is kind of
21 unaccessible and some of these things could --
22 maybe they really could work with the community
23 and see that, you know, in this day and age we now
24 have a Pollution Control Board which because we're

1 being choked by the massive amount of development,
2 and, you know, the air is getting precious and the
3 ground, and that compost pile that they stole, you
4 know, we need the resources we have. We don't
5 need to just -- I can't see our public bodies
6 turning into private individuals playing
7 Monopoly. It's just really unfair, and it has to
8 stop. It's not working.

9 HEARING OFFICER KNITTLE: Thank you,
10 Mr. Joseph. Was that it?

11 MR. JOSEPH: Yeah.

12 BY MR. JOSEPH:

13 Q. I remember when I was in the room here, I
14 walked in and Mr. Jeddeloh was talking about
15 the -- I caught him during the break talking about
16 the problems with these kids and the shooting in
17 the school, and this is the result of the greed
18 that's rooted in the very institutions that we
19 have, and if you could just think about that, I'm
20 speaking as trying to be your friend to try to
21 think about it, and, you know, what we're doing
22 with our resources and what we get and what we do
23 with it, and there's -- I'll just end it with a
24 little bit of somewhere in the scripture I read

1 that to -- word for word, too much -- to those
2 that are given much, much more is expected. So
3 I'll leave it at that.

4 HEARING OFFICER KNITTLE: Thank you,
5 Mr. Joseph. Mr. Wager, you're up and on the
6 clock.

7 CLOSING STATEMENT

8 by Mr. Wager

9 Q. I think the video is incontrovertible
10 evidence for all of us to see of the pollution. I
11 don't see how you can argue. We heard from the
12 victims, how they were -- how their lives were
13 affected. I think this was a pretty clear case,
14 and I hope the Pollution Control Board, you know,
15 is able to do its duty and hold those responsible
16 and even, perhaps, look at some of the evidence
17 that seemingly almost arbitrarily they were told
18 not to look at. So I'm hopeful for -- that there
19 will be a good resolution of this.

20 HEARING OFFICER KNITTLE: Is that it,
21 Mr. Wager?

22 BY MR. WAGER:

23 Q. I'm hopeful that they will see their duty
24 and there will be a good resolution of this.

1 HEARING OFFICER KNITTLE: Is that it?

2 MR. WAGER: That's it.

3 HEARING OFFICER KNITTLE: Thank you very

4 much. We're on to the respondents. Which one

5 wants to begin? Mr. Blankenship.

6 CLOSING STATEMENT

7 by Mr. Blankenship

8 MR. BLANKENSHIP: I, too, thank

9 everyone.

10 HEARING OFFICER KNITTLE: I'm sorry.

11 Were you saying something? Did you have an

12 objection?

13 MR. TREPANIER: No. I was just asking

14 Wes to take some notes on this.

15 HEARING OFFICER KNITTLE: You will have a

16 chance for rebuttal closing. It will be strictly

17 based on what he says, and I'm going to limit it

18 to five minutes apiece.

19 MR. BLANKENSHIP: I, too, want to thank

20 everyone. I'm sure you've sensed in the testimony

21 of the folks at Speedway their frustration with

22 this case and with the complainants, and after

23 five days of hearing, I hope you can understand

24 the basis for that frustration.

1 The demolition at 1261 was done by the
2 book. The asbestos was removed before the
3 demolition began. There's no evidence to the
4 contrary, and the evidence strongly supports that,
5 and that's the only item that is specifically
6 required and mandated in a demolition context.
7 Speedway filed its notice of the demolition with
8 the EPA, Complainants' Exhibit 7. Speedway
9 obtained a demolition permit from the City and a
10 streets permit from the City. Speedway complied
11 with all regulations that apply to this
12 demolition, and Speedway performed the demolition
13 like it has hundreds of demolitions in its
14 history, but this is the only time, the only time
15 when someone has accused Speedway of air pollution
16 and open dumping, and all these facts suggest to
17 me that this cause isn't about pollution at all.

18 I think the evidence has borne that
19 out. This case has been about some community
20 activists who have tried to use the pollution laws
21 to advance their political agenda of stopping the
22 redevelopment of Maxwell Street, and I think
23 Mr. Joseph's closing was probably the most
24 eloquent example of that. It had nothing to do

1 with pollution. It had everything to do with the
2 University's plans for the area. In fact, in this
3 case, Mr. Trepanier, who I think is the prime
4 mover behind this case, lived many miles from the
5 demolition site and filed this complaint before he
6 even saw dust from the site, and I don't think you
7 need to go further than that to figure out what
8 this case is all about.

9 The complainants have called 13
10 witnesses to present their case, and what have
11 they proved, that there was dust from the
12 demolition, a fact I admitted in my opening
13 statement, but they're required to prove a lot
14 more than that to prevail, a lot more than dust.
15 They have to prove an unreasonable interference
16 with life, health, or property, and they haven't
17 come close to meeting that burden.

18 At best, they've shown such a fleeting
19 and minimal interference, like the dust on
20 Mr. Joseph's arm, that to call it air pollution
21 makes a mockery of the serious concerns that come
22 before this Board. Sometimes dust is just dust.
23 I went into the garage at Grant Park the other day
24 to get my car and there was a layer of dust on the

1 car from the renovations going on there, but I
2 didn't sue anybody about it. I got in my car and
3 drove away.

4 There are two elements which the
5 complainants must prove here, that there was an
6 interference with life, health, or property, and
7 then that interference was unreasonable. The
8 Board must distinguish between trifling
9 inconvenience, a petty noise, or a minor
10 discomfort which is not pollution under the Wells
11 case and a substantial interference in the
12 enjoyment of life and property, and there's no
13 evidence whatsoever of a substantial
14 interference.

15 The videotape, which Mr. Trepanier has
16 called the single most probative piece of evidence
17 in the case, shows some dust on one day of the
18 demolition when work was being done on the roof,
19 and I think this video is extremely important as
20 well because I think it puts all this claim, all
21 the testimony of this claim into context. The
22 video shows debris being dumped off the back of
23 the building to the space below where it was
24 cleaned up. It's a substantial distance from the

1 recycling center. It's a building away from
2 Halsted. The building comes between Halsted
3 Street and where the debris was.

4 Most of the debris that we saw in the
5 video fell straight down as you would expect due
6 to gravity. Occasionally, some wind gusted from
7 the north and blew the dust southward as it fell,
8 but it still fell and it didn't go far.

9 Thirteenth Street, like an alley according to
10 Mr. Henderson, some dust went into there. It
11 didn't go any further than that because there was
12 a building there. Dust didn't blow east. We saw
13 it on the video, and it couldn't blow east because
14 the building would act as a windbreak as the wind
15 blew from the west. More importantly on the
16 video, we don't see anybody getting hit with dust
17 at all. We see a handful of people clearly
18 unaffected going out about their business in the
19 yard while the demolition proceeds in the
20 background. This video shows that the dust was
21 not interfering in any substantial way with
22 anyone's life.

23 The best evidence that there was no
24 substantial interference is that we haven't heard

1 from the hot dog stand owner. We haven't heard
2 from the guy that owns the building across the
3 street from this site. What haven't heard from
4 the people that lived and worked with this
5 demolition next to it for a month. That's because
6 there was no interference. This was just a
7 demolition, and there's always dust in a
8 demolition.

9 The complainants' evidence on
10 interference I think falls real short. Each of
11 them testified. We had Ms. Minnick, who I think
12 was probably the most credible of the
13 complainants, but she lived a block away from the
14 site. She did not see any dust coming from the
15 site. She only observed the demolition when she
16 rode a bus down Halsted after work after the
17 demolition was done, and she admitted she filed a
18 complaint alleging pollution even though she
19 hadn't seen any dust from the demolition.
20 Certainly, there was no interference with her
21 life.

22 We have Mr. Joseph. He refused to take
23 the oath. He refused to even affirm he was
24 telling the truth. He was not living in the area

1 at the time of the demolition, and he's got a
2 clear political agenda. You've heard it many
3 times from his own mouth, but even taking his
4 evidence -- his testimony at face value, he hasn't
5 shown any interference with his life. He was in
6 the area filming a documentary. He was trying to
7 document the demolition of a building and he got
8 some dust on his arm. That's the injury he
9 sustained. He got some dust on his arm and he
10 brushed it off and he breathed some dust so he
11 blew his nose. That's the extent of his
12 interference. So accepting his testimony at face
13 value, he put himself purposely into the area of a
14 demolition so he could document it, and now he's
15 complaining that he got some dust on his arm.
16 It's outrageous.

17 Mr. Trepanier also testified, clearly
18 the mastermind behind the case, and I give him a
19 lot of credit for coming in here and trying to
20 abide by the rules of evidence, trying to present
21 a case like a lawyer would, but I don't give him
22 credit for filing this case because I don't think
23 he did it for a proper purpose. He's a
24 self-admitted community activist. He's a

1 professional agitator, and he's been actively
2 involved in protests involving the Maxwell Street
3 demolition, civil disobedience. He's very candid
4 in his description of himself, but this isn't the
5 Robbins Incinerator, this isn't the Clark Oil
6 Refinery, this is dust. He didn't even live in
7 this area at the time of the demolition, and the
8 only exposure he had to the dust was when he
9 purposely walked into the dust to gather evidence
10 for this case. That's not substantial
11 interference. Mr. Pandya, another complainant,
12 didn't even bother to show up for the hearing. So
13 he doesn't count. Mr. Wager, he wouldn't answer
14 the questions on cross. So his testimony was
15 stricken. That leaves Mr. Meesig and
16 Mr. McFarland, who I don't think the Board should
17 even consider, but we have Mr. Meesig who I submit
18 to you was not credible.

19 At any rate, he testified that he had
20 no physical effect from the dust, and I question
21 the guy that believes this is a serious hazard,
22 but then won't warn people going into the yard
23 that there is a serious hazard and is convinced
24 that there's air pollution from the expressway on

1 his vegetables, but, nonetheless, eats the
2 vegetables without washing them. I don't think
3 his testimony really shows any type of substantial
4 interference.

5 Finally, Mr. McFarland is the mayor of
6 Maxwell Street. That's clear. He's an outgoing
7 guy, and what did he tell us, he covered his mouth
8 quickly while he walked by some blowing dust.
9 That's not substantial interference. There's no
10 evidence that the dust contained any harmful
11 constituents, no real evidence of lead, of
12 asbestos, of bird feces. It's just dust, like the
13 dust Mr. Trepanier sampled a block away from the
14 site that he admits does not come from the
15 demolition.

16 I submit to you that even if there was
17 a substantial interference, which there was not,
18 the steps Speedway took were reasonable under the
19 circumstances, complied with all permits and
20 notifications, and erected the canopy. The
21 asbestos was removed. Traditional methods were
22 followed, and I know there's controversy about the
23 wetting, but I hope Mr. McFarland put that to rest
24 because he admitted there was wetting going on.

1 We've seen -- we've heard every Speedway witness
2 testify about the watering. We've seen the
3 Speedway records showing the hose, and we've heard
4 from Mr. McFarland and Mr. Meesig actually that
5 water was used. So that's the common practice in
6 the industry. It controls dust, but it doesn't
7 eliminate it, and more importantly, the dust --
8 the debris was going off the back of the building
9 into an unpopulated area. The building acted as a
10 shield between people and the debris. Speedway
11 stopped the traffic -- stopped the dumping when
12 pedestrians or traffic were present, and there
13 wasn't much of it because it's an alley, nothing
14 going into the yard. The precautions were
15 reasonable under the circumstances as best
16 evidenced by the fact that there really wasn't any
17 real harm to anyone.

18 There's been no real evidence as to the
19 cost of any alternative arrangements to control
20 dust, and that was the complainants' burden to put
21 that in if they felt there was other more
22 practical ways to control dust. They didn't meet
23 that burden.

24 In conclusion, I would only say that

1 demolitions occur in the city every day. Big
2 buildings on street corners like Randolph and
3 State, huge buildings like the old Chicago Stadium
4 which get imploded on TV, small buildings like
5 1261. There's dust from every demolition and
6 thousands of people go by these demolitions every
7 day and they don't complain, let alone file a
8 complaint with the Illinois Pollution Control
9 Board. That's because people recognize that dust
10 is part of progress and part of the life of a
11 city. There's dust from construction, dust from
12 sledgehammers on the street, dust from
13 demolitions, and we accept it because it's
14 temporary, it's minimally obtrusive, and it's a
15 necessary part of life.

16 The neighbors at 1261 understood this,
17 and that's why you didn't hear them in here. You
18 didn't hear the hot dog stand vendor in here
19 complaining because he knows that demolition is
20 part of life. We've got a handful of activists
21 here who didn't live or work near 1261 and have
22 taken advantage of the Board to advance their
23 agenda. To some extent, they've succeeded because
24 they've cost the respondents to spend thousands of

1 dollars, tens of thousands of dollars to defend
2 this frivolous action, which may well serve to
3 deter future demolitions. A finding of a
4 violation in these facts would go much further.
5 It would threaten any further development anywhere
6 in the state. If the dust at issue in this case
7 is air pollution, so is every dust from every
8 construction site from a softball field, from any
9 source whatsoever. A finding of a violation here
10 would turn the notions of air pollution and open
11 dumping on their heads. Accordingly, I would ask
12 that you enter a finding against the complainants
13 and in favor of Speedway and the University on the
14 remaining claims. Thank you.

15 HEARING OFFICER KNITTLE: Thank you,
16 Mr. Blankenship. Mr. Jeddelloh.

17 C L O S I N G S T A T E M E N T

18 by Mr. Jeddelloh

19 Q. Just a couple comments, Mr. Knittle, and
20 I do thank everyone, and I do compliment
21 Mr. Trepanier and the others for their valiant
22 efforts. I join with the Speedway Wrecking
23 attorney, Mr. Blankenship, in his statements with
24 respect to the trivial nature of this

1 inconvenience.

2 We don't even have any evidence
3 whatsoever, for instance, that there's anything
4 hazardous in this dust whatsoever. It's common
5 dust. What we do have a lot of evidence about,
6 however, is the venom which the complainants hold
7 against the University here, and what is clear and
8 what is clear from their closing statements is
9 that that venom is held for only one reason, not
10 because they're worried really seriously about the
11 children of the state or worried about anything
12 else, but one thing, that the University's plans
13 for development, the University's plans to expand
14 so that it can become a more vital -- more vibrant
15 institution will displace them from their homes
16 and from the nice little lifestyle that they have
17 developed there over the years. That's the price
18 of progress. That's not air pollution.

19 I join with Speedway in its contention
20 that this case is a political agenda. It has
21 nothing to do in reality with pollution. It has
22 everything to do with the complainants' irritation
23 over the University's actions. What the
24 University, in fact, did is well spread upon the

1 record. The University expected Speedway to
2 engage in standard practices to control dust. As
3 far as the University knows, they did that.
4 Whenever the University went over there to
5 inspect, these measures were being used to control
6 dust and there was control of dust mainly through
7 wetting. There's no evidence in this record that
8 would refute those contentions. The University,
9 in fact, did properly supervise this project and
10 properly inspected the applicable standards from
11 Speedway. It's important to note that there's no
12 claim from any governmental regulatory body here
13 that anything wrong was done, not the EPA, not the
14 City of Chicago, not any federal body whatsoever.
15 This is purely a complainants' case, which as I
16 said on my opening statement, is, in fact, a
17 sneeze, but the case is a sneeze. It's trivial
18 and it should be regarded as such. Therefore, the
19 University, with Speedway, would ask for judgment
20 in its favor and against the complainants.

21 HEARING OFFICER KNITTLE: Thank you,
22 Mr. Jeddelloh. We have a rebuttal closing
23 argument, if you will, that is limited strictly to
24 what their closing arguments discussed and will be

1 limited to five minutes apiece. How about the
2 same order? Mr. Joseph, you went first last
3 time.

4 MR. BLANKENSHIP: Trepanier.

5 HEARING OFFICER KNITTLE: I'm sorry.

6 You're right. Trepanier.

7 REBUTTAL CLOSING STATEMENT

8 by Mr. Trepanier

9 Q. I just want to acknowledge what the other
10 side has said and look forward to putting my --
11 putting together the briefs. Thank you.

12 HEARING OFFICER KNITTLE: Thank you,
13 Mr. Trepanier. Mr. Joseph, do you have anything
14 else?

15 REBUTTAL CLOSING STATEMENT

16 by Mr. Joseph

17 Q. I just want to say a few things. They
18 talked about the health and the property, and I
19 really feel that there was a lot of people that
20 attempted to do something really back to the earth
21 here, and they were driven off. So their health
22 and their property and their interests were
23 damaged by this process, which is not -- just
24 Speedway just happened to be the person that was

1 in line here when we decided to take this action,
2 but it's the same thing. It's the same
3 mentality. Mr. Jeddelloh talked about common
4 dust. Well, I don't know if it's really that
5 common when somebody dumps off -- dumps a
6 wheelbarrow or pushes a load of or dumps a load of
7 whatever is in the building, whether it's lead
8 paint, and there's a real, real, real, real good
9 chance it was lead paint and just dumps it into
10 the air. They could have used a shoot. They
11 could have rehabbed the building. It's definitely
12 excessive, and that's part of the problem. You
13 start calling it common or acceptable practice,
14 and it's getting to the point where, you know,
15 we're going to start calling them common bombs
16 over on the other side of the world and we don't
17 think about it because we're too busy doing what
18 we're doing for whatever reason we're doing it,
19 and you mentioned the word standards, well, this
20 is why there has to be a change sometimes because
21 the standards are not quite up to what is really
22 safe for our children. You start thinking about
23 our children's children and what's going to be
24 left, and we have to start thinking about what

1 we're really doing, and that's why, you know, the
2 people left this neighborhood, and that's why
3 their property and their health and their safety
4 when they felt terrorized by the bulldozers that
5 were starting to rip up the neighborhoods when the
6 University said they had no interest in one side
7 of Halsted and they came anyway, and the health
8 and the mental health of the people who felt
9 terrorized because the University lied to them and
10 maybe conspired with the City --

11 MR. BLANKENSHIP: I feel a need to
12 object.

13 MR. JEDDELOH: I'm going to object, lying
14 and conspiring.

15 HEARING OFFICER KNITTLE: I have to
16 sustain that one as well, Mr. Joseph. We
17 cautioned you last time about keeping things above
18 board.

19 BY MR. JOSEPH:

20 Q. When you speak of the health and the
21 safety and you just start rattling off these
22 words --

23 MR. JEDDELOH: Could I ask that --

24 HEARING OFFICER KNITTLE: Hold on.

1 MR. JEDDELOH: He's getting back into
2 it.

3 HEARING OFFICER KNITTLE: If there had
4 been evidence adduced here about the fact that
5 they conspired or lied, I would allow that, but I
6 don't think there has been any evidence, and just
7 to say that now is inappropriate. So I am going
8 to --

9 BY MR. JOSEPH:

10 Q. But I'm going on about the standards when
11 you almost talk about pathologically that it's
12 okay and it's the common way to do it. When do we
13 change? Do people have to start falling over?
14 Does it have to get like Tokyo when people have to
15 start wearing masks on their face just because
16 we're doing business as usual?

17 HEARING OFFICER KNITTLE: Is that it,
18 Mr. Joseph?

19 MR. JOSEPH: Yes.

20 HEARING OFFICER KNITTLE: Thank you very
21 much. Mr. Wager, you have a five-minute
22 rebuttal.

23

24

1 REBUTTAL CLOSING STATEMENT

2 by Mr. Wager

3 Q. I don't really believe this is trivial.

4 I think one thing you supposedly learned at an

5 institution like a university, one could expect a

6 little higher standards in terms of the

7 environment. I doubt that there's any

8 environmental regulation that says it's fine to

9 just dump wheelbarrows full of dust off the top of

10 a building near a busy street on a windy day. I

11 hope the Pollution Control Board will take

12 appropriate action.

13 HEARING OFFICER KNITTLE: Thank you very

14 much, sir. That wraps us this hearing for the

15 most part. First of all, I want to note for the

16 record that pursuant to a discussion off the

17 record, we have set a briefing schedule. The

18 briefing schedule is as follows.

19 We will have -- the complainants will

20 have 28 days from the receipt of the complete

21 transcript in the Board's offices to file their

22 post hearing brief. The respondents will have 28

23 days from the end of that period to file their

24 response brief, and the complainants will have a

1 21-day period after the end of the response period
2 to file their reply brief. I will be putting out
3 a hearing officer order which specifically sets
4 those dates once I get the transcript in the
5 Board's offices.

6 I'm also required to issue a
7 credibility statement at the end of every hearing
8 based on my legal judgment and experience, and
9 based on my legal judgment and experience, I find
10 that credibility is an issue in this case in two
11 instances. First, Mr. Lorenz Joseph, he wouldn't
12 take an oath, he wouldn't make an affirmation as
13 required by the Illinois statute in the
14 alternative. I find credibility to be an issue in
15 that case.

16 Second, Mr. Wes Wager, he would not
17 respond to questions that were put to him on
18 cross-examination by Mr. Blankenship, and he would
19 not respond when directed to repeatedly by the
20 hearing officer. I find that to be a credibility
21 issue as well. The remainder of the witnesses I
22 found no credibility issues existed.

23 That is it for this hearing, and I will
24 put out an order as soon as possible.

1 MR. WAGER: So what's the implication of
2 your credibility ruling?

3 HEARING OFFICER KNITTLE: The implication
4 is that I am to make a credibility statement to
5 say if the witnesses were credible, and it goes to
6 the Board, and they use that when weighing the
7 evidence in addition to their own expertise.

8 MR. WAGER: So they could make their own
9 decision about credibility?

10 HEARING OFFICER KNITTLE: Yes, they can.
11 Thank you, all.

12 (Whereupon, these were all the
13 proceedings held in the
14 above-entitled matter.)

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1 STATE OF ILLINOIS)

2) SS.

3 COUNTY OF C O O K)

4

5 I, GEANNA M. IAQUINTA, CSR, do

6 hereby state that I am a court reporter doing

7 business in the City of Chicago, County of Cook,

8 and State of Illinois; that I reported by means of

9 machine shorthand the proceedings held in the

10 foregoing cause, and that the foregoing is a true

11 and correct transcript of my shorthand notes so

12 taken as aforesaid.

13

14

15 _____
Geanna M. Iaquina, CSR
Notary Public, Cook County, IL
16 Illinois License No. 084-004096

17

18 SUBSCRIBED AND SWORN TO

before me this ____ day
19 of _____, A.D., 1999.

20 _____
Notary Public

21

22

23

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