

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE CIVIC ASSOCIATION OF THE DEAF OF :
NEW YORK CITY, INC. (also known as :
the New York City Civic Association :
of the Deaf) and STEVEN G. YOUNGER II, :
on behalf of themselves and all :
others similarly situated, :

Plaintiffs, :

95 Civ. 8591 (RWS)

V. :

RUDOLPH GIULIANI, as Mayor of the :
City of New York, HOWARD SAFIR, as :

Commissioner of the Fire Department :
of the City of New York, CARLOS :
CUEVAS, as City Clerk and Clerk of :
The New York City Council, PETER :
VALLONE, as Speaker and Majority :
Leader of the New York City Council, :
THOMAS OGNIBENE, as minority Leader :
of the New York City Council, and :
the CITY OF NEW YORK, :

Defendants. :

**CORRECTED
DECLARATION OF
ROBERT B. STULBERG
IN SUPPORT OF
PLAINTIFFS'
OPPOSITION TO
DEFENDANTS' MOTION
TO VACATE OR
MODIFY INJUNCTION**

-----X
EXHIBIT 1

JAN 19 2000

JUDGE SWEET CHAMBERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE CIVIC ASSOCIATION OF THE DEAF OF :
NEW YORK CITY, INC. (also known as :
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on behalf of themselves and all :
others similarly situated, :

Plaintiffs, :

95 Civ. 8591 (RWS)

- against - :

JUDGMENT

RUDOLPH GIULIANI, as Mayor of the :
City of New York, HOWARD SAFIR, as :
Commissioner of the Fire Department :
of the City of New York, CARLOS :
CUEVAS, as City Clerk and Clerk of :
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THOMAS OGNIBENE, as Minority Leader :
of the New York City Council, and :
the CITY OF NEW YORK, :

Defendants. :
-----X

This class action, brought pursuant to the Americans with Disabilities Act of 1990 ("the ADA"), 42 U.S.C. §§12101 et seq., (Supp. II 1991) and the regulations thereunder, the Equal Protection Clause of the Fourteenth Amendment, the Fifth Amendment, and the Rehabilitation Act of 1973 ("the Rehabilitation Act"), 29 U.S.C. § 794 (1988), seeking (1) class certification; (2) a declaratory judgment; (3) a permanent

injunction against Defendants Rudolph Giuliani, as Mayor of the City of New York ("Mayor"), Howard Safir, as Commissioner of the Fire Department of the City of New York ("Fire Commissioner"), Carlos Cuevas, as City Clerk and Clerk of the New York City Council, Peter Vallone, as Speaker and Majority Leader of the New York City Council, Thomas Ognibene, as Minority Leader of the New York City Council, and the City of New York (the "City") (collectively, "defendants"), to prevent them from carrying out the removal of emergency alarm boxes located on the streets of the City ("the street alarm boxes") and from replacing those street alarm boxes with notification alternatives which are not accessible to the deaf and the hearing-impaired, and to require them to reconnect those street alarm boxes which had been deactivated or disconnected since September 21, 1995; and (4) attorneys' fees and costs connected with this action pursuant to 29 U.S.C. §794a, 42 U.S.C. §1998 (1988 and Supp. V) and 42 U.S.C. §12205 (Supp. II 1991), came on for trial on December 5, 1995 before the Honorable Robert W. Sweet, sitting without a jury. The allegations and proofs of the parties having been heard and considered, and the Court having rendered and filed an Opinion and Order dated February 9, 1996, 915 F.Supp. 622 (S.D.N.Y. 1996) ("Civic Association I"), and the Court having rendered and filed an Opinion and Order dated July 28, 1997, 970 F.Supp. 352 (S.D.N.Y. 1997) ("Civic Association II"),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Class Certification. A class is hereby certified, pursuant to Rule 23(a), 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure, consisting of persons who are deaf or hearing-impaired and who use a Telecommunications Device for the Deaf ("TDD") to communicate via telephone and who reside, work or are present in the City and use the walks, highways or public places of the City, and this action will proceed as a class action on behalf of that class. Civic Association of the Deaf I, 915 F.Supp. at 634;

2. Declaratory Judgment. For the reasons set forth in the Opinions and Orders in Civic Association I and Civic Association II, and because a Declaratory Judgment will serve a useful purpose in clarifying the legal relations at issue in this action and will terminate and afford relief from uncertainty, the following Declaratory Judgments are rendered:

a) Defendants' removal of or deactivation of the emergency street alarm boxes and their replacement with notification alternatives inaccessible to the deaf or hearing-impaired would violate the ADA, regulations promulgated under the ADA, and the Rehabilitation Act, as set forth in Civic Association of the Deaf I, 915 F.Supp. at 635-36, 638-39;

(b) The notification alternatives to the existing street alarm box system which are described in a two-volume

report of defendant Fire Commissioner entitled "Amended Report to the City Council: Planned Removal of Street Alarm Boxes & Notification Alternatives," dated June 21, 1995, and in a report of defendant Fire Commissioner entitled "Modification to Planned Removal of Street Alarm Boxes & Notification Alternatives, Dated June 21, 1995," dated August 17, 1995 ("the August Plan"), and which were approved by Local Law 73 of 1995, passed by defendant New York City Council on September 6, 1995 and signed by defendant Mayor on September 21, 1995, violate the ADA and regulations promulgated under the ADA, as set forth in Civic Association of the Deaf I, 915 F.Supp. at 628, 635-36, 638;

(c) Defendants' conversion of two-button alarm boxes to one-button alarm boxes in the pilot areas constitutes an "alteration" of the public "facilities" for reporting emergencies from the street which violates the ADA and regulations promulgated under the ADA, as set forth in Civic Association of the Deaf II, 970 F.Supp. at 359-60;

(d) Defendants' operation of one-button alarm boxes in the pilot areas does not provide adequate access for the deaf and hearing-impaired and violates the ADA and regulations promulgated under the ADA, as set forth in Civic Association of the Deaf II, 970 F.Supp. at 359-360.

(e) Defendants have not violated plaintiff's rights to equal protection under the Equal Protection Clause of the Fifth

Amendment, the Fourteenth Amendment or 42 U.S.C. §1983, as set forth in Civic Association I, 615 F. Supp. at 638-639.

3. Permanent Injunction. For the reasons set forth in Civic Association I and Civic Association II, and because plaintiffs have demonstrated the potential for irreparable injury and have succeeded on the merits (Civic Association I, 615 F.Supp. at 639),

(a) Defendants, their employees, agents, and those acting on their behalf are enjoined from carrying out any shutdown, deactivation, removal, elimination, obstruction, or interference with the street alarm box system as it existed on February 9, 1996, and from acting to replace that existing accessible street alarm box system with notification alternatives which are not accessible to the deaf and hearing-impaired. Civic Association of the Deaf I, 915 F.Supp. at 639.

(b) Defendants are enjoined to convert all one-button emergency alarm boxes to two-button boxes and maintain them as same. Civic Association of the Deaf II, 970 F.Supp. at 363;

(c) Defendants may apply at any time to dissolve or modify this injunction by demonstrating that there exists an accessible notification alternative to the existing accessible street alarm box system. Civic Association I, 915 F.Supp. at 639. Among the means by which defendants can meet this burden will be by demonstrating that defendant City's Enhanced 911

System ("E-911") is in operation and effective throughout the City, that a protocol has been developed providing the deaf and hearing-impaired with the ability to use E-911 to report a fire, police or other emergency from the streets and that the fact of such protocol has been disseminated to the deaf and hearing-impaired. Civic Association of the Deaf I, 915 F.Supp. at 638-39 and Civic Association of the Deaf II, 970 F.Supp. at 363;

(d) Defendants are not enjoined to reactivate those street alarm boxes that were deactivated as part of the first phase of the August Plan. Civic Association of the Deaf I, 915 F.Supp. at 639;

(e) IF, within one year of judgment, defendants have not successfully dissolved or modified this injunction by making the showing described in (c) above, a further application may be made by plaintiffs with respect to the scope of this injunction and, in particular, those boxes which have been turned off as part of the first phase of the August Plan. Civic Association of the Deaf I, 915 F.Supp. at 639 and Civic Association of the Deaf II, 970 F.Supp. at 355;

(f) Plaintiffs may apply to this Court for further relief if evidence arises demonstrating that (1) the boxes are not "readily accessible," (2) deaf individuals have not been apprised of the E-911 tapping protocol, or (3) tapping calls made from public telephones do not elicit an appropriate response from

dispatchers. Civic Association of the Deaf II, 970 F.Supp. at 363.

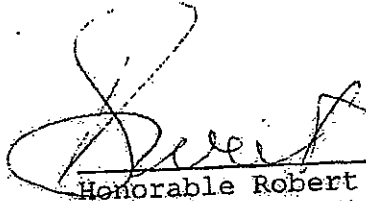
4. Attorneys Fees and Costs.

(a) Plaintiffs, having prevailed in this action, are awarded costs and reasonable attorneys' fees, pursuant to the ADA, 42 U.S.C. §12205, and the Rehabilitation Act, 29 U.S.C. §794a(b). Civic Association of the Deaf I, 915 F.Supp. at 639;

(b) Plaintiffs and defendants having resolved claims for costs and attorneys' fees through July 5, 1997, Plaintiffs shall have through March 10, 2000 to move pursuant to Rule 54(d) (2) (A) of the Federal Rules of Civil Procedure for costs and attorneys' fees arising from proceedings after July 5, 1997.

5. The Court will retain jurisdiction of this action for such other and further orders as may be necessary.

Dated: New York, New York
January 19, 2000



Honorable Robert W. Sweet
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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-----X
EXHIBIT 2

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1 1231civd
2 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
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4 THE CIVIC ASSOCIATION OF THE
4 DEAF OF NEW YORK CITY, INC.
5 (also known as the New York
5 City Civic Association of the
6 Deaf) and STEVEN G. YOUNGER II,
6 on behalf of themselves and all
7 others similarly situated,
7

8 Plaintiffs,

8
9 v.

95-CV-8591 (RWS)

10 RUDOLPH GIULIANI, as Mayor of the
10 City of New York, HOWARD SAFIR, as
11 Commissioner of the Fire Department
11 of the City of New York, CARLOS
12 CUEVAS, as City Clerk and Clerk of
12 The New York City Council, PETER
13 VALLONE, as Speaker and Majority
13 Leader of the New York City Council,
14 THOMAS OGNIBENE, as Minority Leader
14 of the New York City Council, and
15 THE CITY OF NEW YORK,
15

16 Defendants.
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17 -----x

18 Deposition of HENRY DINGMAN, dated
19 February 3, 2011, 10:25 a.m., at the United
20 States District Court, Southern District of
21 New York, 500 Pearl Street, New York, New York,
22 before Khristine D. Sellin, RDR-CRR-CSR and
23 Notary Public of the State of New York.
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25

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stands for Status Entry Panel. After that, back to the working on tour for two to three months, and we bring them back a third time for decision dispatcher training, and that lasts three weeks, and that's basically learning response policies, assignment of units, additional help to scenes.

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Q. The dispatch -- the fire alarm dispatcher -- who I may refer to as dispatchers, if that's understandable to you, and if at any point that causes confusion, please let me know -- do they respond, answer and respond to alarms received via telephone?

15

A. Yes.

16

Q. Does that include cellphones?

17

A. Yes.

18

Q. Does that include pay phones?

19

A. Yes.

20

Q. Does that include alarms received through alarm boxes?

21

A. Yes.

22

Q. Are there any other mechanisms through which alarms can be transmitted to the dispatchers?

23

24

25

A. One of the types of alarms is a class
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3, which is a private alarm. They will call it in to us on a telephone, but it is a separate category of alarm, not considered a telephone alarm. It's in its own classification.

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6

Q. Is that -- sorry. Go ahead.

7

8

A. And there are verbal alarms, which a fire department unit reports directly to us.

9

10

11

Q. Is a class 3 -- does the class 3 refer to fire -- an alarm company, or private alarm company?

12

13

A. Private alarm company.

14

15

Q. Okay. You submitted a declaration in this case in support of a motion made by the city; is that your understanding?

16

17

A. Yes.

18

19

Q. Is it your understanding that the motion in connection with which you submitted your declaration is seeking to modify or vacate an injunction that's been issued so that the city can remove alarm boxes?

20

21

22

A. Yes.

23

24

Q. What, if you know, is the alternative means by which the city is proposing in its motion for persons to be able to signal or

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report emergencies from the street?

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MS. GANTZ: Objection.

4

THE WITNESS: Should I answer?

5

Q. You can still answer.

6

A. Sorry. There are different means.

7

Again, all of the items mentioned before, and I have not been a part of coming up with a solution to additional ways, any additional ways, but it's all of the items that we mentioned so far, all of the methods.

8

9

10

11

12

Q. Minus the alarm box.

13

A. Minus the alarm box.

14

Q. Okay. Who, if you know, was part of, as you called it, coming up with a solution?

15

16

A. I don't know --

17

MS. GANTZ: Objection.

18

A. I don't know of anybody who has been working on a solution.

19

20

Q. Okay. When you meant coming up with a solution, what were you referring to?

21

22

A. Additional methods, possibly.

23

Q. Additional -- I'm sorry. And I just want to make sure the record's clear. I'm not -- but additional methods for what?

24

25

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A. Sure. Receipt of alarms.

3

Q. What is the, if you know, the

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alternative means that the city is proposing for
deaf or hearing-impaired persons to be able to
signal or report an emergency from the street?

5

6

7

MS. GANTZ: Objection.

8

A. That I do not know.

9

10

Q. Have you been part of any -- have you
participated in any discussions about any such
proposed alternative?

11

12

A. No, I have not.

13

14

Q. And just to clarify my earlier
question, have you been part of any
communication about any such proposed
alternative for deaf or hearing-impaired
persons?

15

16

17

18

A. No, I have not.

19

20

Q. If you know, how, if you know, are
public pay telephones useable by deaf persons?

21

22

MS. GANTZ: Objection.

23

24

25

A. The only way that I could think of, if
they established a protocol similar to the
tapping that, with ANI/ALI, they would know
where the pay phone was, so similarly to using

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2 the boxes, a pay phone could be used the same
3 way.

4 Q. Is there any such protocol now on
5 public pay phones?

6 A. No, there is not.

7 Q. And by protocol, just to make sure the
8 record is clear, by protocol, what did you mean
9 to refer to?

10 A. It's really just the tapping
11 procedure. That's what I meant by the protocol.

12 Q. And protocol for requesting emergency
13 services.

14 A. Yes.

15 Q. By which deaf people can request
16 emergency services.

17 A. That's correct.

18 Q. Okay. Are you aware, or have you been
19 participating -- strike that. Sorry.

20 Have you participated in any
21 communication about tests or studies done as to
22 whether deaf or hearing-impaired persons can use
23 public pay phones?

24 A. No, I have not.

25 MS. SHULMAN: I'd just like to have
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2 marked as Exhibit A -- or what should we -- we
3 can do -- I'm going to mark it Plaintiff's A.
4 (Plaintiff's Exhibit A marked for
5 identification)

6 MS. SHULMAN: The court reporter is
7 going to give you the copy.

8 THE WITNESS: Okay.

9 MS. SHULMAN: You can take a moment
10 to -- the court reporter's just handed the
11 witness what's been marked as Plaintiff's
12 Exhibit A.

13 Q. And Mr. Dingman, take as long as you
14 need to take a look at that.

15 A. (Witness complies.)

16 Okay.

17 Q. Is this a copy of the declaration that
18 you submitted in this case?

19 A. Yes, it is.

20 Q. If you turn to paragraph -- sorry.
21 Strike that.

22 That's your signature on page 4;
23 right?

24 A. Yes, it is.

25 Q. All right. If you turn to paragraph 4
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2 of your declaration, turning your attention to
3 the second sentence, which states, "Currently
4 there are 4,918 BARS alarm boxes and 10,159 ERS
5 alarm boxes located throughout the city of New
6 York." What is the source for the figures that
7 you state in this paragraph?

8 A. That I got from the director of
9 communications.

10 Q. And what is his name?

11 A. Gerald Neville. I'm sorry. Gerard
12 Neville.

13 Q. What were the circumstances in which
14 you obtained that information from Mr. Neville?

15 A. I verbally questioned him and he got
16 back to me with the answer.

17 Q. Was that in connection with preparing
18 your declaration?

19 A. Yes, it was.

20 Q. The number 4,918 BARS alarm boxes --
21 and BARS refers -- the BARS refers to box alarm
22 readout system; correct?

23 A. Yeah.

24 Q. The pole boxes?

25 A. Mechanical, as we call them, yes.

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2 include boxes that are inoperable?

3 A. That would -- that are temporarily
4 considered inoperable, yes.

5 Q. Okay. Okay. The mechanical -- the
6 BARS, or mechanical alarm boxes, is it correct
7 to say that when a person activates that box, a
8 response from the fire department is
9 automatically -- or is always sent to the
10 location of the box?

11 A. Yes.

12 Q. Okay. Now in turning to paragraph 7
13 in your declaration, you say that -- paragraph 7
14 of your declaration says that at minimum, one
15 engine company and one ladder company -- FDNY
16 responds to a BARS alarm box activation -- I'm
17 paraphrasing -- by sending at a minimum one
18 engine company and one ladder company to the
19 location of the alarm box. How do you know that
20 information?

21 A. That's in our communications manual,
22 which has minimum and maximum responses shown.

23 Q. And that would be -- is the scope of
24 the -- or the number of companies sent to an
25 activated alarm box within the discretion of the

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2 number of units on initial alarms.

3 Q. Okay. Thank you. Does the fire
4 department, to your knowledge, conduct any
5 inspections of the BARS boxes?

6 MS. GANTZ: Objection.

7 A. They have done box testing
8 periodically. Well, not a set period. They
9 have used firefighters on light duty or
10 lieutenants on light duty to go out and pull the
11 boxes, testing them. That's the only true way
12 of testing a BARS box is having somebody
13 physically pull it. There's no other way.

14 Q. How frequently is that done?

15 A. It -- there's no set pattern. The
16 last time that I'm aware of is several years
17 ago.

18 Q. Okay. So are you -- is it that
19 several years ago was the last -- to your
20 knowledge, several years ago was the last time
21 the department conducted a test of the BARS
22 boxes?

23 A. Of the BARS boxes, yes.

24 Q. Okay. Do you know how many years
25 "several" is?

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building collapse gets more. There are all different situations, but the normal, everyday responses are the one page in Chapter 5 of the communications manual.

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Q. Okay. Thank you.

7

8

Now we also talked about ERS boxes. And to your knowledge, are any inspections -- does the defendant conduct any inspections of ERS boxes?

9

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A. Those are done daily.

12

13

Q. Okay. And who is in charge of the inspections of the ERS boxes?

14

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A. The tour supervisor. That's -- the first-level supervisor starts the test in the afternoon. It's an automatic test. And basically the way it works is, a signal is sent out to the alarm box and the alarm box should hear a signal back, and that will say whether it's working or not. There can be an audio problem, which means it didn't hear it, or there can be a situation where it could be a shunt, which means that the cir -- that part of the circuit is missing right then, and you can tell when there are problems on a circuit. With ERS

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we call it a loop. And --

3

Q. Okay. So is it -- sorry. Go ahead.

4

A. And that's the daily testing. And they'll have a printout of all the defective alarm boxes.

5

6

Q. Does that printout have a term that it is typically known by?

7

8

A. Just the ERS printout.

9

10

Q. So is it accurate to say that each ERS box is inspected for operability once per day?

11

12

A. Yes.

13

14

Q. Does the department maintain the ERS printouts -- those printouts are generated on a daily basis?

15

16

A. Yes.

17

18

Q. Are those printouts maintained by the department?

19

20

A. Yes, they are kept. I'm not sure what the time frame is. But again, the line crew oversees a lot of that at this point. Again, that's outside plant when I say the line crew.

21

22

Q. Okay. And the tour operator that you mentioned, is that title under your

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jurisdiction?

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and is dispatched to the site of --
automatically recommended for dispatch and then
dispatched to the site of the alarm box.
Q. Is a recommendation to dispatch a unit
when a call has not been answered within ten
seconds ever denied?
A. Normally not, no.
Q. What are the situations in which it
would be?
A. If the box just had somebody respond
to it and they made it a false alarm and it came
right in again, sometimes, during storm
situations, we'll have boxes backed up that we
haven't even gotten to answer it yet, a unit
will get there, make it a false alarm, and it's
still trying to come into us. It's very rare,
but once in a while, during these terrible
storms, that can happen, and we know that they
just made it a false alarm. So we would, as we
call it, NSO, not send it out.
Q. And that's the only situation in which
the recommendation to send a unit out would not
be accepted.
A. That's correct.

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2 state?

3 A. I mean, not verbatim, but basically it
4 says to wait for help. "You must answer to get
5 help." I believe there's something on there to
6 that effect.

7 Q. Does it say you must speak to receive
8 assistance or help?

9 A. I believe it does, but I haven't -- I
10 haven't had to use one.

11 Q. We'll knock on wood for that.

12 Who is -- what department, if any, is
13 responsible for posting or maintaining
14 instructions on the alarm boxes?

15 A. Well, the instructions are just, as
16 far as I know, just stamped into as part of the
17 door of the box -- the face of the box, and
18 instructions are part of that face of the alarm
19 box.

20 Q. Are the same box -- are the same
21 instructions on all ERS boxes?

22 A. Yes.

23 Q. Are there instructions on the BARS
24 boxes as well?

25 A. Yes, on the doors, it does say what to
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2 do.

3 Q. It says pull the lever?

4 A. "Raise handle, pull -- raise spade,
5 pull handle."

6 Q. Okay. Now you mentioned -- strike
7 that.

8 The instructions that you mentioned on
9 the ERS boxes, since when, if you know, have
10 those instructions been posted?

11 A. Day one, when ERS came around, since
12 about 40 years ago now.

13 Q. So it's been -- are you saying it's
14 been the same instructions since implementation
15 of the ERS system?

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

17 Q. Okay. And that would also be true for
18 the BARS boxes.

19 A. Yes.

20 Q. Those instructions are engraved into
21 the box; right?

22 A. Into the door. And it's similar with
23 ERS. It's right on that face plate.

24 Q. Okay. Are there instructions on the
25 ERS boxes for how persons who are deaf or hard

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2 of hearing can use the box?
3 A. No, there are not.
4 Q. Has that always been the case, to your
5 knowledge?
6 A. It has been the case to my knowledge,
7 yes.
8 Q. And that is true for all ERS boxes.
9 A. Yes.
10 Q. If you know, if a deaf person were to
11 activate an ERS box, how would he or she know if
12 a call had been placed?
13 A. I believe they've been instructed to
14 put their hand on the box and they can feel when
15 the tones are there. There will be a stop in
16 the tones, and the vibration of our dispatcher
17 answering it would be the time at which they're
18 to start doing their tapping procedure.
19 Q. Okay.
20 A. And they just, you know, from doing
21 the tapping, have to hope that we did get it
22 and --
23 Q. Okay. So let's turn to -- when you
24 say "tapping procedure," can you explain what
25 the procedure is.

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A. The tapping for the -- to report a fire, a series of two taps. If they need police assistance, it's a series of single taps.

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Q. And calls for police assistance made through the ERS box, do those come to your dispatchers as well?

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A. Not if they press the blue button, but if they do press the red button, which is for fires, we would get it. Sometimes we will get calls for police assistance because they're not picking up and the person just in frustration will press the red button, and we do get calls requesting PD sometimes.

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Q. Okay. Let's turn to Exhibit A of your deposition -- I mean, excuse me, your declaration. And you've seen this before; correct?

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A. Yes.

20

Q. Okay. And what is this document?

21

A. It's Dispatchers Directive 97-18, and it explains the procedures for ERS activations by hearing- or speech-impaired persons.

22

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24

Q. Okay. And that's the tapping -- the tapping procedure using double tapping or single

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A. It's just that somehow or other the fire department at the time contacted these groups and worked with them. And again, that's hearsay.

Q. Oh, I see, okay. And that's hearsay. You don't remember which source it was from.

A. No, not at all.

Q. Okay. Do you remember which groups were contacted?

MS. GANTZ: Objection.

A. Not -- not at all. I had nothing to do with it.

Q. Oh, okay.

A. Was not anything to do with fire dispatch operations.

Q. I see. Who, if you know, is responsible -- well, who was, if you know, responsible at the time or in charge of that outreach?

MS. GANTZ: Objection.

A. Do not know.

Q. What, if you know, department or section of the fire department would be -- would have been, in the normal course of business,

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responsible for that outreach?

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MS. GANTZ: Objection.

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A. They have the fire safety education unit. Did they exist under that title at the time? I don't know.

5

6

Q. Okay. Are you aware of any outreach efforts that the fire department has made since in or around 1997 to support groups that you mentioned before regarding the tapping procedure that you mentioned?

7

8

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MS. GANTZ: Objection.

13

A. No, I'm not.

14

Q. To your knowledge would that -- is that -- is the outreach something that would --
(Proceedings interrupted)
(Discussion off the record)

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18

Q. Are those outreach efforts -- are outreach efforts something that would today fall under the jurisdiction of the fire safety education department?

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A. Yes.

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MS. GANTZ: Objection.

Q. Other than the hearsay that you've mentioned, are you aware of any other efforts to

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advise hearing- and speech-impaired persons
about the tapping procedure that you've
discussed?

MS. GANTZ: Objection.

A. No, I'm not.

Q. This directive, number 97-18 that's
been attached as Exhibit A, is that still in
effect?

A. Yes, it is.

Q. It has not been superseded; correct?

A. That's correct.

Q. Okay. And this directive, is it
accurate to say that this directive applies to
ERS activations only?

A. Yes.

Q. Okay. Doesn't apply to BARS
activations.

A. That's correct.

Q. Okay. And it doesn't apply to
requests for emergency assistance by hearing- or
speech-impaired persons through other
mechanisms.

A. That's correct.

Q. Okay. To your knowledge are there any
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2 policies or procedures regarding requests or
3 calls by deaf or hard-of-hearing persons made
4 by -- made via pay phone, or phone?

5 A. There are no procedures in place for
6 that.

7 Q. Just turning your attention again
8 to -- and this is just so we make -- so the
9 record is clear -- paragraph number 1 of 97-18,
10 it says, "The Standardized Procedure that has
11 been disseminated for reporting a Fire is as
12 follows." What, if any, dissemination efforts
13 are you aware of, efforts to disseminate the
14 standardized procedure that is referenced here
15 have been made by the fire department?

16 A. None whatsoever.

17 Q. I just want to turn back now to your
18 declaration. If you could please turn to
19 paragraph 8. If you need a second, or a minute
20 to read it, that's fine.

21 A. (Witness complies.)

22 Okay.

23 Q. First sentence says, "Due to the high
24 rate of malicious false alarm transmissions via
25 street alarm boxes, activating the red button of
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2 only silence on the other end?

3 A. No.

4 Q. Okay. Would it include a situation
5 where a dis -- where an ERS box is activated and
6 the dispatcher hears ambient street noise but no
7 other form of response?

8 A. It's not classified as a malicious
9 false alarm.

10 Q. What would that be classified as?

11 A. "ERS closed for fallback," where, as I
12 mentioned fallback before, we're automatically
13 in what we call fallback step 1 from 8 in the
14 morning till 11 at night.

15 Q. Okay.

16 A. That it corresponds with this, and
17 that's where, if we don't get any response from
18 a person at the box and we answer it within the
19 ten seconds, no unit is dispatched. It doesn't
20 say, "False alarm." Doesn't get classified that
21 way. It simply says, "Closed due to fallback."

22 Q. Okay. And what would the situation
23 where an ERS box is activated and the dispatcher
24 hears silence on the other end -- how would that
25 be classified?

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A. That's what we call an ERS audio problem, and we would dispatch a unit to the location and then they would give us a report, which could be a malicious false alarm or it could be a situation -- a fire or an emergency.

Q. Okay. Are there different types of malicious false alarms?

A. No.

Q. Is there such a thing as a nonmedical malicious false alarm?

A. It's the same. It's still a false alarm, malicious false alarm.

Q. So -- okay. And in this first sentence of paragraph 8, where you say, the term malicious false alarms, that includes only situations where -- strike that.

What were you including in that term, as you used it in paragraph 8?

A. That's where there's no obvious need for a response, not even an accidental type thing. For instance, if it turned out that it was steam coming from the roof of a building, it's not a false alarm; it's an unnecessary alarm. There are unnecessary alarms. Those

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Have you reviewed any documents or data showing the rate of malicious false alarms as of let's say 2010 compared to any previous years?

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A. I haven't looked specifically at the numbers, but I know the numbers have gone down.

7

8

9

Q. Okay. So since when have they gone down, if you know?

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A. I'm not sure. Probably around the mid to late '90s.

12

13

Q. Is when the numbers of malicious false alarms transmitted via ERS boxes went down.

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A. Started declining. Part of it was with the alarm box removals that occurred when the city first proposed to take them out. Boxes were no longer there so that decreased it. And even though some were restored, it's almost appeared like -- this is again my opinion -- that maybe the kids -- it was no longer a thrill, because they hadn't done it and they just didn't resume the activity.

Q. Okay. How do you know that it had anything to do with the removal of boxes?

A. It -- just putting two and two
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2 together. It's only my opinion.

3 Q. I see. Okay.

4 A. It's not that it was based on factual
5 analysis by myself.

6 Q. Okay. Have you reviewed any data
7 showing that the rate of malicious false alarms
8 transmitted via street alarm boxes have
9 continued to decline since the late '90s?

10 MS. GANTZ: Objection.

11 A. I haven't looked at the exact numbers,
12 but I know that used to be we could set our
13 alarm -- our watches for 3:00 when school got
14 out --

15 Q. Oh, I see.

16 A. -- and the problem is not as prevalent
17 anymore.

18 Q. Okay. Are there documents that would
19 show -- to your knowledge, are there documents
20 that would show changes in the rate of malicious
21 false alarms transmissions via alarm boxes over
22 several years?

23 A. They would be available, yes.

24 Q. Okay. What type of documents would
25 that be?

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2 A. Yes, it is.

3 MS. GANTZ: Objection. If the witness
4 hasn't seen this document, I don't see why he
5 would be able to testify to it.

6 MS. SHULMAN: I'm not asking him about
7 the document; I'm asking him about the
8 information in it.

9 Q. It says, "43 percent of MFAs are from
10 alarm boxes and 57 percent of MFAs are from the
11 other sources (phone, verbal, links, etc.)." Do
12 you have any knowledge of the percentage of
13 malicious false alarms transmitted via alarm
14 boxes versus malicious false alarms via --
15 transmitted via other sources?

16 A. Not really, no.

17 Q. Okay. Are you aware of any testing
18 that has been done by the fire department of the
19 tapping protocol that we've discussed today?

20 A. Yes.

21 Q. What tests are you aware of?

22 A. There were two tests to see how the
23 dispatchers would react, and the first one was
24 performed in the year 2000 and the second one
25 was somewhere around 2004.

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The first one was March 16th of

2000.

Q. How do you know that those tests were done?

A. I was part of them.

Q. Okay. And on what type of machine -- were those tests performed on a particular type of apparatus?

A. It was done from an ERS street box.

Q. Okay. And what did the tests -- the test done in 2000, I think you said March 16th, 2000, what was done as part of that test?

A. The box was activated, the tapping was done, and it was evaluated. We had a deputy director at the time. I was the chief dispatcher, so I was out in the street. The deputy director was in the office to make sure that the alarm wasn't transmitted by accident.

Q. Was a unit or company dispatched to the box?

A. No. We made sure nobody was dispatched.

Q. Okay. Okay. What, if anything, was

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your participation in the test?

A. Tapping on the box.

Q. Okay. And was that done one time?

A. It was done twice on that day.

Q. I see. Okay. Both times at the same location?

A. No. Once -- one location was Brooklyn, the other one was Queens.

Q. Okay. And what happened -- strike that.

What was the result of the first test done on that day?

A. The first test, the one in Brooklyn, the first time it was done, the person didn't react to the tapping. The second time the person -- it was a different person who got it and just put, "Unknown condition at box." Heard the tapping, didn't put the M in. You put a letter M next to ERS if it was believed to be a hearing-impaired person. He didn't do that, but at least he assigned -- put it so units would respond.

Q. Okay. And the first -- for the first test, no units were assigned.

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A. No units were assigned, right.

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Q. Or no units were called to be

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assigned.

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A. Right.

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Q. Even if they ultimately would never

7

be --

8

A. "Closed due to fallback," because the person just did a normal release, which the computer will say, no dispatch for this.

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Q. Okay. I just want to make sure. I understand --

12

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A. The call sender hits the release button. It does not go to the decision dispatcher because it was fallback time.

14

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Q. Okay. I just want to make sure I understand. By "release," what does "release" mean?

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A. It's actually -- they have an alarm screen. The screen would be a location at the box with the address description, recommended response. If they hit the release button, that clears that screen from their -- clears that field from their screen, and if it's something we're dispatching on, it goes to the decision

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dispatcher. If it's an ERS during those hours, it gets closed due to fallback.

Q. And "closed due to fallback" would mean essentially that it's been canceled?

A. In a sense canceled, no response required because of the 1100 to 2300 criteria.

Q. Okay.

A. Fits right in.

Q. Okay. And what happened -- were there any tests that happened -- protocol done between March 16, 2000, and 2004?

A. In 2004 we did it again.

Q. Okay. And how many tests were conducted in 2004?

A. One test, and I believe they reacted properly, but we cannot find the documentation on it. I tested the box, the other deputy director was in the office, and paperwork on it, we could not find the incident without a more exact date.

Q. Okay.

A. I knew I was in the Bronx, roughly St. Ann's and 132nd. I don't know the Bronx very well. And it was in that vicinity, but we

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2 cannot find an alarm box in that time frame --
3 Q. Okay.
4 A. -- that we could say this was the
5 test.
6 Q. I see. Okay. And what was your -- in
7 the 2004 test, what was your involvement?
8 A. I tested -- I tapped on the box.
9 Q. Okay. Who, if anyone, is in charge of
10 testing the tapping protocol?
11 A. It's no set thing. It was just done
12 as a matter of, you know, self-testing, and we
13 just never did it after 2004.
14 Q. Okay. So is there any policy on
15 conducting tests of the tapping protocol?
16 A. No, there is not.
17 Q. Okay. And to make sure I'm being as
18 thorough as possible, is there any protocol or
19 procedure on conducting the tests of the tapping
20 protocol?
21 A. No.
22 Q. Okay. To your knowledge have there
23 been tests of the tapping protocol on public pay
24 phones?
25 A. No.

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Q. Okay.

A. My thing was, take care of items 2 and 9.

Q. Okay. Okay. And the second paragraph was, "Regarding Item #9, No formal records exist for the tapping protocol tests performed on 3/16/00 except for Incident Histories of the test at Brooklyn Box 0433 and at Queens Box 2118 (See the attachments both of which can be opened with Adobe." Does that sentence -- are the tests referenced in that sentence the tests you were referring to a few moments ago?

A. Yes, they are.

Q. Okay. So other than the tests that you testified about and the tests in 2004 that you testified about, to your knowledge were there any other tests of the tapping protocol?

A. No, there were not.

Q. Okay. So that any -- the tests referenced in this e-mail are the tests you've testified about today.

A. Yes, they are.

Q. Okay. If you look at the third line up from the bottom of the second paragraph, it

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and F are all the same documents.

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A. Oh, I'm sorry. D, E, and F. Yes, they are.

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Q. Okay. So let's just focus on D.

5

A. Okay. I'm not going to muck it up.
(Discussion off the record)

6

7

Q. Okay. So we've marked as Exhibit D

8

and you have before you what's the document bearing Bates numbers NYC 7616 to 7617. Have you ever seen this document before?

9

10

A. Yes, I have.

11

12

Q. What is this document?

13

14

A. This is a record of the two activations for the hearing-impaired test.

15

16

Q. This is a -- this is a record of both active tests done on March 16th, 2000?

17

18

A. In Brooklyn, yes.

19

20

Q. Okay. And just so the record is clear, if you -- could you please look at the second line, the right side column of the second line, where it says, Initial -- Alarm Level, Initial Alarm. What does that mean?

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A. That's just that it was received, the very first activity regarding the alarm.

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2 Q. Okay. And --

3 A. It didn't escalate at all.

4 Q. Okay. Thank you. And again, on the
5 left side is a phrase that says -- of the next
6 line, says, "ERS No Contact." What does that
7 mean?

8 A. They did not hear any -- they heard
9 street noise and no other reason for
10 dispatching.

11 Q. Okay. The next line says, "ERS
12 Fallback." What does that mean?

13 A. That refers to the 0800 to 2300 no
14 contact, no response for ERS boxes.

15 Q. In other words, because there was no
16 contact, there was no response.

17 A. Correct.

18 Q. Okay. And then the last line of that
19 box says, "Fallback Close." What does that
20 mean?

21 A. The alarm closed out at 14:22:01 and
22 the reason was fallback, which is that policy,
23 if no contact, no go.

24 Q. Okay. And then please turn to the
25 next page. The fourth line down says, "Not Sent
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2 Out." What does that mean?

3 A. It means we did not dispatch any units
4 to it.

5 Q. And then the last one of that box
6 says, "Not Sent Out Close." What does that
7 mean?

8 A. The reason for closing it was, it was
9 not sent out and it was closed, and that's
10 explained on the bottom line, "Closed for NSO
11 Incident Number UNKNOWN." If we put an X on the
12 bottom line, that closes the incident out, not
13 saying it was the same as something else. If we
14 get called for incidents that it's multiple
15 calls for the same thing, that might show as
16 closed out for box number 431, let's say, or you
17 would put the box number on that bottom line
18 that you're closing it to. This -- in this
19 case, because it was a test, the decision
20 dispatcher was told, close it out, make it NSO,
21 and that was accomplished with the X on the
22 bottom line.

23 Q. Okay. Where it says -- what, if
24 anything, on this sheet notes that the
25 dispatcher heard the tapping?

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A. Not specifically the tapping, but on the line at 14:28 -- the fourth one that says 14:24 and 18 seconds, the -- it says, "Caller Description," and this was actually typed by the dispatcher, "UNKNOWN TYPE OF CONDITION." He heard the tapping, he wasn't sure that it was that, but being that he heard something going on, he felt somebody should be assigned to check it out.

Q. So he followed procedure to have somebody assigned.

A. Yes.

Q. Okay. And just where it says -- the line that says 14:24:42, "Dispatch Reason 1ST ALARM - ERS (STRUCT)," what does that mean?

A. Structural -- a structural response means we're giving them the box. We're treating it like it's a fire reported in a building.

Q. I see. Okay.

A. Which is the two engine, one ladder, one chief minimum; two, two, and one normal, if available.

Q. Okay. Okay. On the first page of the document, what, if anything, on here shows how

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the dispatcher responded to the tapping procedure used?

A. The dispatcher didn't realize it was the tapping procedure, just thought it was normal street noises, and just said there's nothing there and released it without recommending any assignment of units.

Q. Okay. Who, if you know, generated this document?

A. I did.

Q. Oh, okay. And was that -- did you generate it from a data source?

A. Data warehouse.

Q. Okay. What's that?

A. It's where all the records of responses are kept.

Q. Okay. So is there an incident history report for every call made through ERS?

A. Every one, yes.

Q. Okay. And for how far back do those records go?

A. We can go back to '96 easily. Prior to '96 they have to get somebody else get it off an old computer.

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March 16th, 2000, 14:21:48.
A. Right.
Q. And then the next page says March 16,
2000, 14:23:15.
A. Right.
Q. So were there two tests done in
Brooklyn?
A. Yes.
Q. Okay. On March 16th, 2000.
A. Right.
Q. And were there two tests also done in
Queens?
A. Yes.
Q. Okay. So there were really four tests
done on March 16th?
A. It was four different activations.
Q. Activations, but essentially two
tests -- but tests on two different boxes?
A. Two different locations.
Q. Essentially at the same time.
A. Simultaneously.
Q. Okay. Thank you. Now I understand.
Okay. So what, if any, involvement
did you have in the test that's shown -- that's
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2 referenced on Exhibit G?

3 A. I didn't have any involvement. I was
4 doing the Brooklyn one. It was two other people
5 doing the Queens one.

6 Q. Okay. And from this document can you
7 tell what the dispatcher's response to the
8 tapping test was?

9 A. They considered it just to be
10 background street noises and no dispatch was
11 recommended.

12 Q. So no response was sent out.

13 A. That's correct; not even recommended
14 to the decision dispatcher.

15 Q. Okay.

16 A. One of the things that did occur with
17 Queens that's slightly different from Brooklyn
18 is, the same person -- or no, actually,
19 Brooklyn, it was the same person both times, but
20 Queens, it was the same person getting it and he
21 or she didn't react to it, where at least in
22 Brooklyn, the guy getting it the second time
23 said, "Well, let me see. I'm hearing something,
24 some noises, and I got the box again within a
25 minute or two." That's where he put, "Unknown,"

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2 "Check out unknown condition."

3 Q. Okay. So the first -- the first test
4 in Brooklyn was treated as no -- there was no
5 response at all treated --

6 A. Initially, and then the second time
7 they tried it again to see if they did the right
8 thing, and it was there he recommended a
9 response.

10 Q. Okay. So did you have -- before
11 looking at this document did you know what the
12 results of the Queens test was?

13 A. I knew at the time, right.

14 Q. Okay. Okay.

15 A. We spoke when we got back. I mean, I
16 went back into headquarters and the other people
17 came back from Queens, and that's when we knew
18 Queens failed.

19 Q. Okay. Okay. So according to the page
20 marked NYC 7612, the dispatcher received the --
21 is it accurate to say that the dispatcher
22 received the call and didn't recommend any
23 response?

24 A. That's correct.

25 Q. Didn't essentially recognize the
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2 tapping protocol.

3 A. Yes.

4 Q. Okay. The second page of this
5 document reflects a subsequent test performed
6 about two minutes or a minute and a half later.
7 And what was the result of that test, according
8 to this document?

9 A. Same thing. No recommendation for
10 dispatch of any units.

11 Q. Okay. What, if anything, was done in
12 connection with these tests after they were
13 conducted?

14 A. All of the chief dispatchers were told
15 to reinforce with their people the tapping
16 protocol. Even though it wasn't one of the
17 normal months for the drill, they were all put
18 on notice that they should review it as well.

19 Q. Was that -- that was the case in 2000?

20 A. 2000.

21 Q. Okay. Did that also happen in 2004?

22 A. Yes.

23 Q. Okay.

24 A. Well, actually, 2004 worked correctly,
25 although I can't find the records, but --

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2 A. Mm-hmm.

3 Q. -- "The letter 'M' is placed in the
4 ERS field over the letter 'x' on the alarm
5 screen, when an ERS alarm is received from a
6 hearing and/or speech impaired person," what
7 does the "M" refer to?

8 A. The "M" is simply the letter that we
9 put there to generate that Starfire, the
10 computer system, will put on the description
11 line, "Deaf mute at box."

12 Q. I see. Okay. So -- and that's the --

13 A. That will cause -- you don't have to
14 do a free text. That will populate the field --

15 Q. Okay. I see.

16 A. -- automatically.

17 Q. And that's the code that the
18 dispatcher would enter upon hearing the tapping
19 code --

20 A. Yes.

21 Q. -- tapping protocol.

22 Okay. And then it says, in 3.1, "For
23 Hearing and Speech impaired incidents - the box
24 shall be transmitted." What does that mean?

25 A. That means that structural response of
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2 the minimum of two engines, one ladder, and a
3 chief; two engines, two ladders and a chief if
4 available.

5 Q. Okay. And then it says, "During
6 Fallback Procedures --" strike that.

7 Is that response only during the hours
8 of 11 p.m. and 8 a.m.?

9 A. No. That would happen any time. What
10 they're referring to is determined by the
11 fallback step. That other thing I was saying
12 with fallback, we have what we call step 3. In
13 step 3 what happens is, on a report of a
14 structural fire, it's a minimum of one engine,
15 one ladder, or it's one engine, one ladder, and
16 one chief on a single source.

17 Q. Okay.

18 A. So that's why they say, if you're in
19 fallback, it would only be the one, one, and
20 one, the same if they said there's a fire at 500
21 Pearl Street in the building.

22 Q. Okay. Okay.

23 A. Same guidelines.

24 Q. Okay. So whenever tapping is heard, a
25 response for a structural fire is transmitted.

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Q. Okay. Do you have any knowledge of what the codes -- what the term "Radio Run" means?

3

4

5

A. No, I do not.

6

7

Q. Okay. You can put that aside.

8

MS. SHULMAN: Let me just see if I have anything else.

9

(Pause)

10

MS. SHULMAN: I don't have anything else.

11

12

MS. GANTZ: I'd like to actually take a brief break.

13

14

MS. SHULMAN: Sure.

15

16

(Recess from 12:45 p.m. to 1:00 p.m.)

17

EXAMINATION

18

BY MS. GANTZ:

19

Q. If someone used the tapping protocol on a pay phone, who would receive that call in the first instance?

20

21

MS. SHULMAN: Objection.

22

A. It would depend on what number they dialed. If they dialed 911, the police would get it. If they dialed one of our fire phones, we would receive it -- one of our seven 10-digit

23

24

25

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2 numbers with the area code.

3 Q. Okay.

4 A. One of the things -- I'm not even
5 sure, with the ANI/ALI, if we get the location
6 for a pay phone. I'm not even positive at that.
7 But we have no procedures in there for receiving
8 tapping over a telephone. ANI-ALI.

9 Q. So is it correct that if someone calls
10 911, that goes to police and not fire?

11 A. That's correct.

12 Q. Okay. And if someone calls 911 and it
13 goes to police, would it get to fire at some
14 point?

15 MS. SHULMAN: Objection. Sorry.

16 THE WITNESS: That's okay.

17 A. The police should notify us if they
18 got it with their procedures.

19 Q. Okay. And are you responsible for
20 training on any tapping protocol for use on
21 telephones -- pay phones? Excuse me.

22 MS. SHULMAN: Objection.

23 A. No. If we implemented a procedure,
24 then I would be, but we don't have any procedure
25 for the phones yet.

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Q. You testified that to your knowledge there has been no testing of tapping protocol on pay phones. Did you mean that there has been no testing or that you do not know whether there has been testing?

MS. SHULMAN: Objection.

A. Within the fire department, there has been no testing. It could have been done by police. I couldn't speak for the PD.

MS. GANTZ: Okay. Those are all my questions.

MS. SHULMAN: Okay. I don't have anything further. Thank you so much for coming.

THE WITNESS: Okay. No problem.
(Proceedings adjourned at 1:02 p.m.)

o0o

HENRY DINGMAN

Subscribed and sworn to
before me this day
of , 20__.

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