

Volume I of II
Doc. 3/4

THE STATE OF OHIO,)
) ss:
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

JENA FOSTER,)
))
Plaintiff,)
))
v.,) Case No. 252452
))
J.A. LIMITED PARTNERSHIP,)
et al.,)
))
Defendants.)

- - -

Deposition of CRAIG MICHALSKI, taken by the
Plaintiff as if upon cross-examination, before Michelle
Peters, a Registered Professional Reporter and Notary
Public within and for the State of Ohio, at One
Cleveland Center, 31st Floor, Cleveland, Ohio, on
Tuesday, the 17th day of May, 1994, commencing at 1:29
p.m., pursuant to notice and agreement of counsel.

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1 APPEARANCES:

2 FRIEDMAN, DOMIANO & SMITH, by:
3 Lisa Gerlack, Esq.,

4 On behalf of the Plaintiff.

5 HOENIGMAN & GOLDSTEIN, by:
6 David Utley, Esq.,

7 On behalf of the Defendant, L.A. Limited
8 Partnership.

9 ULMER & BERNE, by:
10 Murray K. Lenson, Esq.

11 On behalf of the Defendant, Fox Detective
12 Agency.

13 - - -

14 STIPULATIONS

15 It is stipulated by and between counsel
16 for the respective parties that this deposition
17 may be taken in stenotype by Michelle Peters;
18 that her stenotype notes may be subsequently
19 transcribed in the absence of the witness; and
20 that all requirements of the Ohio Rules of Civil
21 Procedure with regard to notice of time and
22 place of taking this deposition are waived.

23 - - -
24
25

1 CRAIG E. MICHALSKI,
2 called by the Plaintiff for the purpose of
3 cross-examination, as provided by the Ohio Rules
4 of Civil Procedure, being by me first duly
5 sworn, as hereinafter certified, deposes and
6 says as follows:

7 CROSS-EXAMINATION

8 BY MS. GERLACK:

9 Q. Will you state your full name and spell your
10 last name for the record.

11 A. Craig E. Michalski, M-i-c-h-a-l-s-k-i.

12 Q. Mr. Michalski, we met earlier today, my name is
13 Lisa Gerlack and I'm one of attorneys who is
14 representing Lena Foster in a lawsuit that she's
15 filed against the owners and operators of
16 Longwood Apartments and Fox Detective Agency.

17 Have you ever had your deposition taken
18 before?

19 A. Yes.

20 Q. In what type of circumstances?

21 A. I've had them taken in a number of different
22 circumstances, the most recent one was in a case
23 that **was** filed on a rape case.

24 Q. Have you ever been deposed in connection with
25 your consulting, acting as a security consultant

1 A. I think it was in '91.

2 Q. Do you have any recollection of the facts
3 involving the other two cases on which you were
4 deposed?

5 A. No, I **do** not.

6 Q. The rape case, do you recall the name of the
7 Plaintiff's lawyer?

8 A, Yes, it's Murray's Associate.

9 MR. LENSON: What?

10 Q. (BY MS. GERLACK) From Ulmer and Berne?

11 MR. LENSON: I didn't hear.

12 THE WITNESS: She asked who the
13 Plaintiff's attorney was.

14 MR. LENSON: No, no, not --

15 THE WITNESS: It was not you.

16 MR. LENSON: NO.

17 Q. (BY MS. GERLACK) Does Kerry Volsky ring a bell?

18 A. No.

19 Q. You don't know?

20 A. I can't recall. I can't recall.

21 Q. What's your date of birth?

22 A. 10-5-33.

23 Q. And your Social Security number?

24 A. 080-26-8992.

25 Q. Since you've been deposed on numerous occasions,

1 I'm sure that you have an understanding as to
2 what a deposition involves?

3 A. Yes, I do.

4 Q. I'm going to be asking you some questions this
5 afternoon concerning your association with the
6 owners and operators of Longwood Apartments, and
7 the security people that worked on the premises
8 during the periods of your consultation with
9 them.

10 A. Okay.

11 Q. If I ask a question of you and you don't
12 understand it, please stop me and let me know so
13 I can rephrase my question so you better
14 understand it.

15 A. I will.

16 Q. I'm not here to trick you, I'm just here to ask
17 you some questions to elicit some information
18 concerning some of the documents you produced.

19 I don't want you to guess about anything,
20 if you don't know or you don't recall, I want
21 you to tell me that, okay?

22 A. Okay.

23 Q. What is the extent of your education?

24 Q. In what?

25 A. Public management.

1 Q. Where did you obtain that?

2 A. Case Western Reserve.

3 Q. And what year did you obtain your Masters?

4 A. 1969.

5 Q. Where did you do your undergraduate?

6 A. Michigan State.

7 Q. And when did you graduate?

8 A. 1959.

9 Q. And what was your degree in?

10 A. Criminal justice.

11 Q. Any other degrees?

12 A. No.

13 Q. Any other education or training?

14 A. Oh, I've attended many, many different police
15 training programs, and I've been an instructor
16 for many years, and so I've taught many courses
17 in management and administration and supervision
18 and --

19 Q. In what context?

20 A. Principally to public police officers, public
21 agencies.

22 Q. And your management, supervision and
23 administration teaching pertains to what?

24 A. Law enforcement agencies,

25 Q. Law enforcement?

1 A. Yes.

2 Q. Do you recall any of the police training
3 programs that you attended?

4 A. No, not off the top of my head. I had to be
5 certified as a peace officer --

6 Q. When were you certified?

7 A. -- within the State of Ohio.

8 1959, I believe.

9 Q. Is your certification valid currently?

10 A. Yes.

11 Q. Do you have to renew that every year?

12 A. The only thing that you're required to renew is
13 your firearms training, and if there is some
14 changes in state law; such as domestic violence
15 they changed the requirements and I had to go
16 back, as all peace officers did in the State,
17 for an additional, I think, eight hours of
18 training.

19 Q. Does your certification include for firearms?

20 A. Yes.

21 Q. Is it currently renewed for firearm?

22 A. Yes, I'm current.

23 Q. Did you take any course work to obtain your
24 licensure?

25 A. I have no license.

1 Q. Your certification as a peace officer, did you
2 go through any training?

3 A. Oh, yes, I took that in 1959. That's the same.

4 Q. Have you had any other type of special training
5 or education in the area of security?

6 A. I think I attended some security seminars. I
7 spoke at some, and so I naturally attended those
8 in the process of --

9 Q. Can you recall when the last security seminar
10 was that you attended?

11 A. No.

12 I was a guest lecturer for the American Bar
13 Association for a number of years, and I
14 traveled throughout the country lecturing for
15 them.

16 Q. On what topics?

17 A. Principally the topic was police security
18 relationships, I believe. In other words, the
19 private security and the public law enforcement
20 agency.

21 Q. Have you published any literature on that topic?

22 A. I have not.

23 Q. Do you recall the years in which you were a
24 lecturer for the ABA?

25 A. I **do** not.

1 Q. Do you recall the last police training seminar
2 you attended?

3 MR. UTLEY: That qualified him to
4 be a police officer?

5 MS. GERLACK: No, I'm just
6 looking for a time frame. When was the
7 last police training program that he would
8 have be attended, in the recent years.

9 MR. UTLEY: The last police
10 seminar he went to?

11 A. I don't recall.

12 Q. Any other education or special training in the
13 area of police security?

14 A. Well, it's been over such a long period of time,
15 that I've -- you know, I went to police -- the
16 National Association of Chief of Police
17 Conference every single year for 25 years, I
18 lectured at the International Police Academy in
19 Washington.

20 Q. On what topic?

21 A. It was all on the topics of administration and
22 management. These were lectures given to
23 national police force gererals and colonels from
24 foreign countries.

25 Q. And it would be how to manage a police force?

-1 A. Uh-huh.

2 Q. Have you ever given any lectures on
3 administration and management of private
4 security guards?

5 A. I don't recall. I've spoken to security
6 associations, but I don't recall my subject --
7 what my subject material was.

8 Q. How many years have you been lecturing, roughly,
9 on this area?

10 A. Probably 30, 31.

11 Q. Have you ever been qualified as an expert in
12 court, litigation, concerning this topic?

13 MR. LENSON: Objection.

14 MR. UTLEY: Which topic?

15 MS. GERLACK: Police security.

16 MR. UTLEY: Objection. Go ahead.

17 A. I've been identified as an expert, but --

18 Q. In what type of a --

19 A. I always qualify that by saying you're never an
20 expert until you're at least 600 miles from
21 home.

22 Q. In what type of litigation was that?

23 A. I don't recall.

24 Q. And you were retained as an expert?

25 A. Yes.

1 Q. And what type of case was that?

2 A. I don't recall.

3 Q. • Sorry.

4 I know you've had, it seems, a rather
5 extensive career since you completed your
6 education, but can you give me a thumbnail
7 sketch of your employment history?

8 A. Sure.

9 I was a private police officer at
10 University Circle.

11 Q. What time frame?

12 A. 1959 to 1960, about 22 months, approximately.

13 MR. LENSON: When you say
14 University Circle, Mr. Michalski?

15 MR. UTLEY: University Circle
16 Police Department?

17 MR. LENSON: Private police?

18 THE WITNESS: Correct.

19 A. I was on the staff at the Cuyahoga County
20 Coroner's Office for four years as a scientific
21 investigator; assistant director of the Center
22 for Criminal Justice, Case Western Reserve, six
23 years; chief of police, University Circle, eight
24 years; vice president of operations University
25 Circle, 18 years.

1 Some of those jobs overlap, I don't want
2 you to think that I was --

3 MR. LENSON: I'm sorry, the last
4 { one was vice president or president?

5 THE WITNESS: Vice president: of
6 operations.

7 Q. (BY MS. GERLACK) Are you currently employed?

8 A. By an outside agency, no.

9 Q. Are you self-employed?

10 A. Yes.

11 Q. How long have you been self-employed?

12 A. Since 1990, four years.

13 Q. Is your business incorporated?

14 A. Yes, Chapter S.

15 Q. What's the name of your business?

16 A. Security Analysis, Incorporated.

17 Q. And what type of business is Security Analysis?

18 A. Strictly consulting, in the criminal justice
19 fields.

20 I neglected to mention one employment
21 there.

22 Q. Sure, go ahead.

23 A. I worked full-time for Associated Estates.

24 Q. In what capacity?

25 A. Well, a number of different capacities, and I

1 ended up the last 10, 11 months of my employment
2 there as corporate director of security.

3 That was from 1988 through '89. The end of
4 '89.

5 Q. What other positions did you hold during that
6 time period?

7 A. Well, special projects, such things as business
8 manager, corporate housing, communications,
9 specialty projects.

10 Q. Did you work at any specific properties?

11 A. No -- during my entire tenure with --

12 Q. Yes. During this '88 to '89 period.

13 A. No, no specific properties.

14 Q. Did you do any work at Longwood?

15 A. During that specific period?

16 Q. Yes.

17 A. Yes.

18 Q. Do you have any recollection of what you did?

19 A. No.

20 Q. Do you have any documents covering your
21 employment during that time period?

22 A. Documents with regard to?

23 Q. Any work that you did during that year that you
24 were employed by Associated Estates and
25 ultimately ended up as the corporate director of

1 security?

2 A. What were the dates of the records subpoenaed
3 that you gave me? Does it cover that period of
4 time, Lisa?

5 (Michalski Deposition Plaintiff's Exhibits
6 1 and 2 marked for identification.)

7 Q. (BY MS. GERLACK) Actually, just so the record
8 is clear, I've already marked Plaintiff's
9 Exhibit 1, which is the March 25, 1994 Records
10 Deposition Notice, and the April 19 Amended
11 Notice as Plaintiff's Exhibit 2.

12 Let me just show them to counsel first.

13 A. Everything that I had within my file, with
14 regard to the subpoena, I provided.

15 Q. Associated Estates produced some letter
16 agreements, that cover a time frame that began
17 in 1989, and I think the latest agreement was
18 through '93.

19 Did you have an employment contract for
20 this period of employment, with Associated
21 Estates?

22 MR. LENSON: Which period are you
23 talking about?

24 Q. (BY MS. GERLACK) '88 through '89?

25 A. Yes. I worked for them from January '88 through

1 December of '89.

2 MR. UTLEY: She's asking did you
3 have a written contract.

4 A. With a written contract, no.

5 Q. If you would just take a look at Plaintiff's
6 Exhibits 1 and 2, which are the deposition
7 notice.

8 Do you recognize Plaintiff's Exhibit 1.
9 That Notice was served upon you?

10 A. Yeah.

11 Q. And you produced all the documents in your
12 possession that were requested in that Notice?

13 A. Absolutely.

14 Q. Take a look at the second one.

15 A. Yes, I remember receiving this and I provided
16 all the documentation that I have.

17 Q. Do you have any other documents in your
18 possession that relate to any work that you did
19 at Longwood Apartments as a security consultant
20 during the period of 1988 through 1992, that you
21 haven't produced?

22 A. None.

23 Q. Now, the period **of** '88 through '89, when you
24 ultimately ended up working as the director of
25 security, you didn't have an employment

1 contract, do you have any documents in your
2 possession that relate to that time period?

3 MR. UTLEY: Other than tax
4 records?

5 MS. GERLACK: Any documents.

6 A. No.

7 Q. So do you know if there are any documents, that
8 were generated in the various --

9 A. That I do not have a copy of, I don't know.

10 Q. And you don't have any specific recollection
11 today as to what type of work you may have done
12 at Longwood during that time period?

13 A. No. I -- it wouldn't have been any different
14 than what I have done since that time -- since I
15 was full-time.

16 Q. What were your job duties as corporate director
17 of security?

18 A. Basically it was to work with management, in
19 analyzing the properties, doing audits of those
20 facilities that had physical security, and
21 likewise those that had no physical security, to
22 make recommendations on any security issues that
23 I felt were important, such as lighting and
24 landscaping and -- met with tenants groups,
25 maintained a liaison with the public safety

1 forces, put on training seminars for management
2 and staff with regard to security issues and
3 concerns.

4 Q. The items that you've just listed appear to be
5 the same ones that are identified in the Letter
6 of Agreement. Would it be fair to say that what
7 you were doing during the period of '88 and '89,
8 was memorialized in a written agreement in the
9 years after, but you were doing basically the
10 same type of things?

11 A. The same type of things on an extended basis,
12 right.

13 Q. Who hired you as the corporate director of
14 security?

15 A. Jerry Spevack.

16 Q. And what is Jerry Spevack's title?

17 A. Executive vice president.

18 Q. Of Associated Estates?

19 A. Correct.

20 Q. Who is your supervisor?

21 A. Today?

22 Q. Who was it during '88, '89, as corporate
23 director of security?

24 A. Jerry Spevack.

25 Q. During the five to six years that you've been

1 working a security consultant, have you had any
2 other supervisors, other than Jerry Spevack?

3 A. I coordinated all my activities through the
4 directors of operations.

5 Q. Are the directors of operations different for
6 each property owned by AEC?

7 A. No.

8 Q. Are you able to tell me the names of the
9 directors of operations?

10 A. Certainly. The property in reference, a
11 gentleman by the name of William Smoot,
12 S-m-o-o-t; there is another gentleman by the
13 name of Lee Cohen, C-o-h-e-n; another one by the
14 name of James Ingersoll, I-n-g-e-r-s-o-l-l; Jim
15 Owens, O-w-e-n-s; and one just resigned, he went
16 with another property management firm, his name
17 was John Lapin, L-a-p-i-n.

18 Q. Did you work in coordination with anyone else in
19 management from Associated Estates?

20 A. Well, with all the managers and business
21 managers of the properties.

22 Q. Who did you work with in management at Longwood?

23 A. At the time that this incident occurred?

24 Q. Yes.

25 A. I don't remember what the manager's name was, to

- 1 be honest with you.

2 Q. Do you recall any of the managers for Longwood,
3 * during the time you've been associated with
4 Associated Estates?

5 A. Yes, of course I -- you know, the managers are
6 moved around to different properties, but the
7 gentleman that is there at the time is a fellow
8 by the name of Willy Benson.

9 Q. Do you know how long Mr. Benson has been at the
10 Longwood property?

11 A. I do not.

12 Q. Prior to beginning your work in 1988 with
13 Associated Estates, had you ever worked at a
14 housing project before, in a security context?

15 A. I had not. I consulted for 28 years, on a
16 part-time basis.

17 Q. Just as an independent contractor?

18 A. Yes.

19 Q. During those 28 years of consulting, what types
20 of properties?

21 A. Industrial, commercial, I don't recall any
22 housing.

23 Q. Do you have any employees who work for you at
24 Security Analysis?

25 A. I do not.

1 Q. In the work that you've done for Associated
2 Estates, since 1988, have you employed anyone to
3 help, or worked with anyone else to help carry
4 out your duties under the Letters of Agreement?

5 A. Under my Letter of Agreement with Associated
6 Estates?

7 Q. Right.

8 A. No, I have not hired anyone.

9 Q. Has anyone assisted you in carrying out your
10 duties?

11 A. Not as part of my agreement.

12 Q. Aside from the agreement, has anyone assisted
13 you in the performance of your duties under the
14 Letters of Agreement?

15 A. Can we qualify that question?

16 Q. Sure.

17 A. Doesn't assist me, but there was a gentleman who
18 worked for Associated Estates.

19 Q. Was that H. P. Worthington?

20 A. H. P. Worthington.

21 Q. And the two of you would work towards the same
22 ends?

23 A. H. P. would conduct audits of the inner city
24 properties during the night season.

25 Q. During the?

1 A. Night season. I could not very well do that.

2 Q. Why is that?

3 A. Because I'm white, and in those neighborhoods,
4 why I kind of stand out. But I would -- in
5 order to qualify that too, Lisa, I would go down
6 to those inner city properties, once or twice a
7 year, during the night season, with H. P., and
8 security, and I'd walk the property.

9 Q. Did you document the occasions that you did that
10 at Longwood?

11 A. Yeah.

12 Q. Would those be contained in the documents that
13 you produced to me?

14 A. Yes, they would be.

15 Q. Have you talked to H. P. Worthington recently?

16 A. I saw H. P. probably about a month ago.

17 Q. Is he in good health?

18 A. No.

19 Q. Is he ill?

20 A. Yes.

21 Q. He is former --

22 A. Prostate cancer.

23 Q. Is he a former police officer?

24 A. No.

25 Q. Does he have any background in security?

1 A. Other than the fact that he was a property
2 manager for Associated Estates for a number of
3 years, very street-wise, his son is a police
4 officer of the City of Cleveland or was, he just
5 retired.

6 Q. So H. P. was the night auditor for how many
7 years, during the years that you worked for
8 Associated Estates?

9 A. All of them, as far as I know. I don't recall
10 an '88 to an '89, to be honest with you.

11 Q. Would H. P. advise you of his findings on his
12 audits?

13 A. He wrote up documents, and I would -- I can't
14 say I always, but I would get copies of those
15 audits.

16 Q. From whom?

17 A. Spevack's office.

18 Q. Did H. P. Worthington ever bring to your
19 attention the fact that he discovered security
20 guards punching in other guards when they
21 weren't actually there to report to duty?

22 MR. UTLEY: I'll object, lack of
23 foundation.

24 MR. LENSON: Objection, hearsay.

25 MR. UTLEY: Go ahead.

1 A. I don't recall that.

2 Q. What, if anything, did you do to prepare for
3 your deposition today?

4 A. Really almost nothing. I did not review my
5 files, Dave and I talked for a while, and I
6 think that's the extent of it.

7 Q. I've been informed by Mr. Utley that you've been
8 retained by Associated Estates to act as a
9 consultant for the purpose of this litigation;
10 is that correct?

11 A. The way my contract reads --

12 MR. UTLEY: Craig, I've retained
13 you.

14 THE WITNESS: Oh, oh.

15 Q. (BY MS. GERLACK) Not as part of your work with
16 Associated Estates, but have you been retained
17 by Mr. Utley's law firm to act as a consultant,
18 a security consultant, expert, for purposes of
19 this litigation?

20 A. That's correct.

21 Q. When were you retained by Associated Estates?

22 MR. UTLEY: I'm going to object,
23 instruct you not to answer that question.

24 MS. GERLACK: The date of
25 retention is not --

1 MR. UTLEY: Lisa, when I retained
2 him is irrelevant for purposes of this
3 litigation.

4 You can ask him --

5 MS GERLACK: No it's not It's
6 going to determine what I can ask him and
7 what I can't

8 MR. UTLEY: It was a month ago.

9 Lisa, three weeks ago

10 (BY MS GERLACK) before you were retained by
11 Mr Utley's law firm to work on this particular
12 case. Did you have any knowledge of the facts or
13 allegations made in this litigation?

14 A Facts or allegations?

15 Q Did you know anything about this lawsuit

16 before --

17 A No I didn't know anything about it until I was
18 contacted by Mr. Utley.

19 Q Are you still doing work for Associated Estates
20 at this time?

21 A Oh, yes

22 Q And that's pursuant to a Letter of Agreement?

23 A That's correct.

24 Q In the same capacity as previous years?

25 A That's correct

1 Q. In July of 1992, did you have any personal
2 knowledge concerning the rape of Lena Foster at
3 Longwood Apartments?

4 A. I did not.

5 Q. Were you ever consulted by anyone at Longwood,
6 management, employees, that discussed this
7 incident with you, the rape?

8 A. Not at that time.

9 Q. Your first knowledge of anything regarding the
10 July '92 incident was when you discussed it with
11 Mr. Utley?

12 A. No.

13 Q. When did you first become aware of it?

14 A. Bill Smoot advised me that there had been a suit
15 filed, gave me the Plaintiff's name, and that
16 was three months ago. I don't know.

17 Q. Am I correct in assuming that as a security
18 consultant for Associated Estates back in July
19 of '92, that you did not conduct any type of
20 investigation into this incident?

21 A. I did not.

22 Q. Since Security Analysis was incorporated in
23 1990, have you done any security consulting work
24 for any other corporations, or properties, other
25 than Associated Estates properties?

1 A. Yes.

2 Q. What properties are those?

3 A. I consult for Cuyahoga Savings, consulted for
4 Gateway, I consult for Southgate Shopping
5 Center, I consulted for Don Schofield's company,
6 what's the name of that corporation? They own
7 75 Office Square.

8 I've done a number of different consulting
9 jobs.

10 Q. Are you able to tell me how much time per year
11 you actually spent at Longwood pursuant to your
12 Letter of Agreement?

13 MR. UTLEY: On the property, or
14 working on the property -- working in
15 connection with the property, or present
16 on the property?

17 MS. GERLACK: On the property.

18 MR. UTLEY: Go ahead.

19 A. I would guesstimate --

20 MR. UTLEY: We don't want you to
21 guess, Craig. If you don't know, tell the
22 young lady you don't know. But I don't
23 want you to guess.

24 A. I don't know.

25 Q. Did you prepare billing statements for the work

1 that you did in connection with Associated
2 Estates?

3 A. Yes. I report to them monthly, and exactly
4 where I spend my time.

5 Q. Would you itemize that per property? Like if
6 you spent four hours doing work for Rainbow, and
7 three hours at Longwood, would your bill
8 indicate that?

9 A. No, My bill might say this, that on a certain
10 day I spent time at Park Village, Lupica,
11 Longwood, Rainbow, and I would give a total
12 number of hours that I spent combined, on all
13 four or five of those properties.

14 Q. So if you had your bills in front of you, you
15 wouldn't be able to tell me how much time you
16 spent working on Longwood Apartments?

17 A. Not specifically.

18 Q. I had requested copies of your billing
19 statements, you don't have copies of them? The
20 billing statements that you submitted for work?

21 A. I misunderstood that. I -- all I do is they pay
22 me per month, and --

23 Q. And that's set forth in the Letter of Agreement?

24 A. That's correct.

25 Q. How did you come to work for Associated Estates?

1 A. I knew Jeff Friedman and Jerry Spevack, from my
2 work at University Circle, and Associated
3 Estates had properties there. And because of
4 the fact that I was involved in operations, when
5 they had problems in operational areas such as
6 parking and busing and things of that kind, I
7 dealt with them on this. That's how he got --
8 and I've known them for many years.

9 Q Were you approached by Mr. Friedman and Mr.
10 Spevack, or did you approach them concerning
11 consulting work?

12 A. I think I approached them.

13 Q. What's your understanding of the reason why your
14 services were retained for Associated Estates?

15 A. Well, I think for insurance purposes, for one
16 thing, that corporations know that -- they're
17 attentive to security issues and problems,
18 tenant satisfaction.

19 Someone is there to discuss and review
20 security issues and problems, communications
21 with tenants, the maintenance of a liaison
22 between the public safety force and managers of
23 properties and the corporation itself, and
24 someone who has some level of expertise in this
25 field, outside of the property managers

1 themselves, who are somewhat naive to these
2 types of issues.

3 Q. When you contacted Mr. Friedman and Mr. Spevack,
4 had you assessed that there was a need for
5 evaluating security at their properties?

6 A. No. Lisa, I was hired initially at Associated
7 Estates to be the assistant to Jerry Spevack, to
8 take over management and administrative duties,
9 because he wanted to devote his time to
10 marketing and development and acquisitions.

11 So I was not hired with any relationship
12 whatsoever to security.

13 Q. So your initial contact came as working -- as
14 the assistant, and that eventually grew into
15 your assuming the title of director of
16 operations?

17 A. Because they didn't want to give **up** the
18 authority, in the management field.

19 MR. UTLEY: I'll object and move
20 to strike as nonresponsive.

21 Just answer the questions, okay.

22 THE WITNESS: Okay. .

23 Q. (BY MS. GERLACK) What properties did you
24 oversee as the security consultant for
25 Associated Estates?

1 A. All of them.

2 Q. Can you name them for me?

3 A. There are 90, I can't.

4 Q. Can you name the ones that are in the inner city
5 area of Cleveland?

6 MR. UTLEY: Now, then?

7 Q. (BY MS. GERLACK) Starting in '88, are you able
8 to do that?

9 MR. UTLEY: I'll object, but go
10 ahead.

11 A, I'll do the best I can,

12 Q. (BY MS. GERLACK) Let me backup for a minute.
13 You indicated that Associated Estates owns 90
14 properties?

15 A. Approximately 90.

16 Q. Where are those properties located?

17 A. Principally in Northeast Ohio.

18 Q. Are they all subsidized housing properties?

19 A. No.

20 Q. How many of the 90 properties are subsidized
21 housing?

22 MR. UTLEY: Objection.

23 Go ahead.

24 A. Thirty? I don't know.

25 MR. UTLEY: Is that a guess,

1 Craig?

2 THE WITNESS: That's a guess.

3 MR. UTLEY: We don't want you to
4 guess. We only want you to tell Miss
5 Gerlack what you know. If you don't know,
6 tell her "I don't know." I'm sure Miss
7 Gerlack doesn't want you to guess either.

8 THE WITNESS: I know, she told me
9 that.

10 Q (BY MS. GERLACK) I have a document that's an
11 audit, with H.P. Worthington, that has some
12 names on it, and I'm just going to run through
13 the names, if you can tell me if it's a HUD.

14 Lupica Towers?

15 A. It's a high-rise.

16 Q. Where is that located?

17 A. Across from Charity Hospital, on Community
18 Boulevard.

19 Q. Do they have security guards at that property?

20 A. Yes.

21 MR. UTLEY: Today? Objection.

22 What period of time are you asking,
23 Lisa, so the record can be clear.

24 MS. GERLACK: During the time
25 that you worked there, '88 through '92.

1

MR. UTLEY: Go ahead.

2

Yes, they do.

3

Q Do you know the name of the security company that they --

4

MR. UMLEY: Objection.

5

Now?

6

Q Now, during the period of '88 through '92?

7

I don't know.

8

Q. St. Andrews?

9

Towers.

10

Q Where is St. Andrews located?

11

A. 52nd and St. Clair, senior citizen building.

12

Q Does St. Andrews have security guards for the property?

13

MR. UMLEY: Objection.

14

A. Yes.

15

Q Do you know what security company worked there during the period of '88 through '92?

16

MR. UMLEY: Objection.

17

A. No.

18

Q. Do you know how many guards worked there per shift?

19

MR. UTLEY: Objection.

20

I don't want you to guess.

21

A. One.

1 Q. Do you know how many guards worked per shift at
2 Lapasa Towers during '88 through '92?

3 MR. UTLEY: Objection.

4 A One.

5 Q (BY MS. GERLACK) Park Village?

6 MR. UTLEY: What about it?

7 Q (BY MS. GERLACK) Is it a subsidized housing
8 project?

9 A Yes.

10 MR. UTLEY: Park Village, I'm
11 sorry?

12 MS. GERLACK: Park Village.

13 Q. (BY MS. GERLACK) Where is that located?

14 A. 92nd and Hough.

15 Q. During '88 through '92, were there security
16 guards employed there?

17 MR. UTLEY: Objection.

18 A Yes.

19 Q Do you recall the name of the security guard
20 company that was employed?

21 MR. UTLEY: Objection.

22 A. No.

23 Q. Do you know how many guards worked per shift at
24 Park Village?

25 MR. UTLEY: Objection.

1 A. No.

2 Q. What is Vanguard?

3 A. That's a group of properties, it's called the
4 Vanguard properties.

5 Q. Where are the Vanguard properties located?

6 A. They're located on about four or five streets,
7 105th, 97th, 101st, Lamont, and there may be
8 another street in there.

9 Q. Are the Vanguard properties subsidized housing
10 projects?

11 MR. UTLEY: Objection.

12 Go ahead.

13 A, Yes.

14 Q. During the period of '88 through '92, was there
15 private security guards?

16 A. Yes.

17 MR. UTLEY: Objection.

18 Q. (BY MS. GERLACK) Do you recall the name of the
19 company that was employed there?

20 MR. UTLEY: Objection.

21 Go ahead.

22 A. Let me qualify my answer on '88 to '92,
23 Associated Estates took over the management of
24 Vanguard properties just recently, within the
25 past year or so. Previous to that, it had been

1 managed by Hallmark Management, and I know the
2 name of the security company but I can't --

3 Q. That's okay.

4 A. They've been there for a number of years, Lisa.

5 Q. Do you know the number of guards that were
6 employed for that property per shift?

7 MR. UTLEY: I'm going to **object**.

8 He's already testified he was not --

9 MS. GERLACK: As management?

10 MR. UTLEY: About a year ago,
11 Lisa.

12 A. About a year ago.

13 Q. Let me make sure the record is clear.

14 During '88 through '92, Associated Estates
15 did not own Vanguard, or manage it?

16 A. They did not manage it.

17 Q. But you don't know if they owned it or not?

18 A. They had a piece of the ownership.

19 Q. But not total ownership?

20 A. Oh, no, no,

21 Q. Park Lane Villa, is that a subsidized housing
22 project?

23 MR. UTLEY: Objection.

24 A. Yes.

25 Q. Where is Park Lane Villa located?

1 A. On Park Lane.

2 Q. During the period of '88 through '92, was there
3 private security employed there?

4 MR. UTLEY: Objection.

5 A. Lisa, Park Lane, Vanguard and if you're going to
6 ask me about University Towers next, they all
7 fell under that same management agreement. **So**
8 they all at that time, Vanguard, University
9 Towers, and Park Lane Villa, all was picked up
10 under management of Associated Estates, I think
11 within the past year.

12 Q. To your knowledge, did Associated Estates have
13 any ownership interest in Park Lane Villa and
14 University Towers, during the period of '88
15 through '92?

16 MR. UTLEY: Objection.

17 Go ahead.

18 A. To my knowledge they did.

19 Q. Do you know if they had private security
20 employed at Park Lane Villa?

21 MR. UTLEY: Objection. Lisa,
22 he's already indicated they had no
23 management responsibilities up until about
24 a year ago.

25 MS. GERLACK: They still had an

ownership interest in the property.

MR. UTLEY: So what. They didn't manage the property, they didn't buy the security

MS. GERLACK: It's still

relevant

4 No my knowledge the X did

8 Q Do you know how many guards were employed by shift?

10 A. No, I do not.

11 Q University To us, is that a subsidized housing project?

13 A. Yes.

14 Q. Where is that located?

15 A East Boulevard, across from the VA Hospital

16 Q During the period of 88 through '92, was there private security employed there?

18 MR. UTLEY: Objection.

19 A I presume there was

20 Q I don't want to you presume is you know, you know, if you don't, you don't

22 A I don't

23 Q Forest Hills, is that a subsidized housing project?

25 A. Yes.

1 Q. Where is Forest Hills located?

2 A. Forest Hills is in East Cleveland.

3 Q. Was Associated Estates managing that property
4 during '88 through '92?

5 MR. UTLEY: Objection.

6 A. Yes.

7 Q. To your knowledge, was there a private security
8 company at that property --

9 MR. UTLEY: Objection.

10 Q. (BY MS. GERLACK) -- during that time period?

11 A. No.

12 Q. There were no security guards?

13 A. During one two or three week period.

14 Q. And then they stopped using security guards?

15 A. Correct.

16 Q. Do you know why?

17 A. Yes, I know why.

18 Q. Do you recall the reason?

19 A. Yes.

20 Q. Can you tell me?

21 MR. UTLEY: Objection. Go ahead.

22 A. We developed a guide service program, at the
23 time.

24 Q. What's it called?

25 A. Gyde Service.

1 Q.

?

2 A.

ts.

3 Q.

vice developed?

4

Objection.

5 A.

6 Q.

if somebody wants an escort

7

--

8 A.

visitors come to the door,

9

es to the guides, and who

10

see.

11

erify that information by

12

13 Q.

ame of the security guard

14

worked there before this

15

play?

16

. UTLEY: Objection.

17 A.

three weeks?

18 Q.

19 A.

D.

20 Q.

is that a subsidized housing

21

project?

22

MR. UTLEY: Objection.

23 A

Yes.

24 Q

Where is ⁿrainbow Terrace located?

25 A.

79th and Kinsman.

1 Q. During the period of 1988 through 1992, were
2 there private security guards working on the
3 premises?

4 MR. UTLEY: Objection.

5 A. Yes.

6 Q. Do you recall the name of the security company?

7 MR. UTLEY: Objection.

8 A. I do not.

9 Q. Do you recall how many guards worked per shift?

10 MR. UTLEY: Objection.

11 A. I do not.

12 Q. During the entire time that you worked or had
13 been working for Associated Estates -- I better
14 confine it to '88 through '92 -- while you're
15 doing work at Longwood, was Fox always the
16 security company that had been working there,
17 during '88 through '92?

18 A. No.

19 Q. What other security companies have worked there,
20 while you've been acting as a security
21 consultant?

22 A. I believe it was Aetna. It's called Aetna Total
23 Security, I believe.

24 Q. Do you recall the time frame?

25 A. I do not.

1 Q. Did you have anything to do with choosing Aetna
2 as a security service for the property?

3 A. The proposals for security were submitted to the
4 respective directors of operation. I sat down
5 with those respective directors -- and this
6 could be on any property -- reviewed the
7 proposals, checked out the security companies to
8 the best of my abilities, and made my
9 recommendations.

10 Q. Did you have any role in the renewal of Fox's
11 contracts with Associated Estates?

12 A. I'm sure I probably did and reviewed it.

13 Q. Do you have any recollection today about any
14 recommendations that you may have made or may
15 not have made, concerning Fox's work at
16 Longwood?

17 A. I know I made some recommendations, but I have
18 to refer to my correspondence to --

19 Q. We're going to get to those. But when you were
20 talking about employee proposals, this would be
21 security companies that would want Associated
22 Estates to take a look at what they had to
23 offer, and they would submit a proposal that you
24 would review; is that correct?

25 A. Correct. But each year, Lisa, these proposals

1 are accepted. So when you're talking '88
2 through '92, those are four years that I'd have
3 to be looking over. But they became less and
4 less because fewer guard companies were
5 involved.

6 Q. Did you sit down in '88, '89, '90 and '91 to
7 review the effectiveness of Fox's security
8 guards on Longwood property?

9 MR. UTLEY: I'm going to object,
10 it assumes that he was there those years.

11 Go ahead.

12 A. Certainly I would not have in '88, I can't tell
13 you about '89, to be honest with you.

14 (Thereupon, a discussion was
15 held off the record.)

16 Q. (BY MS. GERLACK) What did you do to check out
17 the security companies, when you would review
18 proposals?

19 A. I would check with some of their present
20 clients, I would meet with the security owners,
21 company owners, at their site, and talk to them
22 about their security philosophies and programs.

23 Q. Fox had a contract during the period of '88
24 through '92, separate contracts per year, that
25 were skewed for you security at Longwood, you're

1 aware of those?

2 A Did you say four years in a row?

3 Q Yes.

4 A Yes.

5 Q While you were working during '88 through '92,
6 did you know that Fox was supplying security
7 guards to work at Longwood?

8 A Yes.

9 Q Did you do anything as a security consultant for
10 Associated Estates, to check out Fox Detective
11 Agency?

12 A Yes.

13 Q What did you do and when?

E4 A I don't recall when, its was undoubtedly prior
15 to renewal of one of the contracts, they had it
16 for four consecutive years.

17 I'm sure I talked with some of **Fox's**
18 clients, and I remember visiting Russell at his
19 office downtown, and discussing with him
20 selection and training and things of that
21 magnitude.

22 Q Did you conduct this inspection or checking up
23 of Fox as a security company on more than one
24 occasion?

25 A No, just once that I recall.

1 Q. When you would make a recommendation to
2 Associated Estates for security proposals,
3 during the period of '88 through '92, what
4 factors would you base your recommendation on?

5 A. Based upon those that I alluded to. I had
6 control over costs, or negotiations as far as
7 the contract was concerned.

8 Q. Did you have any understanding as to any
9 budgeting constraints that Associated Estates --

10 A. Yes

11 Q. What were those, during that time period?

12 A. All I know is that annually, I was made aware of
13 the number of dollars that was allocated for
14 security.

15 Q. Do you have any knowledge the process that
16 Associated would take, if they wanted to
17 increase their budget for security purposes?

18 A. I do not.

19 Q. The only knowledge you had about any money in
20 regards to security was what you would be told,
21 the total amount that was spent per year?

22 A. That was allocated per year, correct..

23 Q. Did you ever participate in any budget meetings
24 at Longwood?

25 A. I **did** not,

Q. Any budget meetings for Associated Estates?

2 A. I did not.

3 Q. Getting back, I have a couple of more
properties, Statesman, is that a subsidized
5 housing project?

6 A. Statesman, I don't know.

7 Q. Do you know where Statesman is located?

A. Yes, it's located on Van Aken Boulevard.

9 Q. During the period of 1988 through 1992, did
10 Statesman have private security on the premises?

11 MR. UTLEY: Objection.

12 A. No.

13 Q. Shaker Park, is that subsidized housing?

14 A. Yes.

15 Q. Where is that located?

16 A. In Warrensville Heights, on -- I don't know if
17 it has a Warrensville Road address or not,
18 but --

19 Q. During the period of 1988 through 1992, was
20 there private security on the premises?

21 MR. UTLEY: Objection.

22 A. No, not to my knowledge.

23 Q. Of these properties that I've just mentioned to
24 you, did your Letters of Agreement with
25 Associated Estates pertain to all of these

1 properties?

2 A. My Letter of Agreement pertains to all
3 properties owned or managed by Associated
4 Estates.

5 Q. So realistically, if they own and operate 90
6 properties, your agreement would encompass all
7 of those 90 properties?

8 A. Yes, ma'am.

9 Q. And you didn't have any employees working for
10 you; is that correct?

11 A. I had none.

12 Q. Can I have you look at what's -- let me backup.

13 Before you began working for Associated
14 Estates, did you review any documents regarding
15 the existing security at the property -- at
16 Longwood?

17 A. Before I started working for Associated Estates?

18 Q. Right, before you actually took over as your job
19 as a consultant?

20 A. You mean while I was working for them full-time?

21 Q. Well --

22 MR. LENSON: He was working full-time
23 until '88.

24 Q (BY MS. GERLACK) I guess for purposes of my
25 question when you were the assistant of Mr.

1 Spavack, your duties didn't really involve
2 security, did they?

3 That's correct

4 Q So for purposes of my questioning, you have told
5 me before when you were Director of security
6 operations, that our duties were virtually the
7 same as they are in the Letters of Agreement
8 So from that point until the end of 1992, '93,
9 did you review any documents to educate yourself
10 about this security at Longwood, and the history
11 of security at Longwood?

12 A And the history of security at Longwood? Not
13 that I recall.

14 (Michalski Deposition Plaintiff's Exhibit 3
15 marked for identification.)

16 Q (BY MS GERLAC) I'm going to hand you what's
17 been marked as Plaintiff's Exhibit 3 And it
18 gave you both a copy

19 Is there something specifically that I am
20 looking at in there, rather than just reading the
21 whole thing?

22 Q. This -- well, first of all, take a look at the
23 document *

24 Have you ever seen this document before
25 today?

1 **A.** I certainly don't recall it.

2 **Q.** I'm going to represent to you that this is a
3 contract between HUDD and Fox, for the
4 employment of security guards at Longwood.

5 Attached to the face of the contract are
6 various descriptions of what the duties and
7 obligations of the guards are at the properties,
8 and the number of guards that were to work at
9 Longwood.

10 MR. UTLEY: Lisa, do we have any
11 indication as to whether the property owned
12 by my client is the same as the property in
13 this contract.

14 MS. GERLACK: It was produced in
15 response to one of my requests, so I assume
16 so.

17 MR. UTLEY: But you don't know
18 whether the property that Fox covered was
19 the same property that my clients had hired
20 Fox for?

21 MS. GERLACK: It was in response
22 to a request, so I don't think I'd be
23 asking --

24 MR. UTLEY: You asked for the
25 contract between Fox and Longwood

1 Properties Incorporated, and that's what's
2 been produced here, but you don't have any
3 information to lead anybody to believe that
4 it's the identical property, is that fair?

5 MS. GERLACK: We asked for the
6 HUDD contract for Longwood and Fox back in
7 1986, before AEC, and that's what was
8 produced.

9 MR. UTLEY: But you don't know if
10 Longwood, as it existed in '86, is the same
11 as Longwood that existed in '88, that's all
12 I'm trying to find out.

13 I mean are we comparing apples and
14 apples, an apple and a half, or --

15 MS. GERLACK: I requested a
16 document and that's what was produced.
17 It's the security history of Longwood and
18 there were five guards, it was the same.
19 security company, and I'm not going to get
20 into --

21 MR. UTLEY: It's the different
22 number of buildings, Lisa.

23 MR. LENSON: Look at the specs.

24 MS. GERLACK: I'm conducting this
25 deposition. So if you want to fight about

1 the contract --

2 MR. UTLEY: I'm not fighting
3 about it. We want a true record.

4 MR. LENSON: Look at page C 1 of
5 your exhibit, and it tells you what the
6 scope of the project is.

7 MR. UTLEY: I'm not trying to
8 give you a hard time, I'm trying to find
9 out if we're comparing the same thing
10 here.

11 MR. LENSON: But you are missing
12 pages.

13 (Thereupon, a discussion was
14 held off the record.)

15 MR. UTLEY: My objection first of
16 all is the document is incomplete.

17 Second of all, you can inquire and
18 attempt to compare the guard ratios, and we
19 don't have any indication that the
20 properties are identical as represented in
21 this document. That's my only question to
22 you.

23 Q. (BY MS. GERLACK) Turning back to Exhibit 3
24 then, did you ever examine any prior security
25 contracts between Associated Estates and a

1 security company for Longwood, before you took
2 over the property?

3 A. No.

4 Q. Had you ever reviewed any contracts between the
5 Department of Housing and Urban Development, and
6 a private security company for the Longwood
7 complex, before you took over?

8 A. No.

9 Q. Were you aware before you took over as the
10 director of security operations for Associated
11 Estates, that at one time prior to the ownership
12 of Associated Estates, at Longwood, that there
13 were more than two security guards working per
14 eight hour shift?

15 A. No.

16 Q. Did you ever have any discussions with any
17 management employees at Associated Estates,
18 concerning the number of security guards needed
19 to patrol a 31 acre complex?

20 A. I don't recall.

21 Q. While you were working as a security consultant
22 for Associated Estate -- and for purposes of my
23 questioning I'm only concerned with Longwood.

24 A, Okay.

25 Q. Did you review any crime statistics, to gain

1 knowl~~edg~~^e about the crime statistics in the
2 complex itself?

3 A Yes, I did

4 Q When did you do this?

5 A I don't recall

6 Q S it on more than one occasion?

7 A As I remember it was only once.

8 Q And where did you obtain those crime statistics?

9 A From the City of Cleveland

10 Q What type of crime statistics did you look at?

11 A It was a computer printout of all reported
12 incidents for a specified period of time.

13 Q Do you recall the time period?

14 A I do not

15 Q Is it before '92?

16 A I don't recall

17 Q Do you have any documents in either of the files
18 that you produced to me, relating to your review
19 of crime statistics?

20 A I don't recall

21 Q Do you recall what you learned, if anything,
22 from your review of those crime statistics?

23 A I don't recall

24 I do it on all the properties, and I just
25 don't --

1 Q Did you make any reports to the management of
2 Associated Estates, concerning your review of
3 the statistics?

4 A I'm sure I did

5 Q You didn't produce a copy of it, did you, with
6 the documents that you gave to me?

7 A If it was within that time framework, Lisa, it's
8 in there. I removed nothing

9 Q And the crime statistics that you reviewed, was
10 that for the Longwood complex by address, or was
11 it for Longwood and surrounding areas?

12 A Longwood address

13 Q Did you ever review any crime statistics for
14 areas surrounding the Longwood complex?

15 A I have not

16 Q What was your purpose in reviewing the crime
17 statistics?

18 A. Allocation of personnel.

19 Q What prompted you to conduct that review?

20 A I do it on all properties, to make sure that
21 we're allocating our personnel properly

22 Q And by "personnel" do you mean security?

23 A Security guards.

24 Q In the --

25 A And likewise, to discuss these particular issues

1 with the local police department, because the
2 responsibility of safety and security at these
3 properties is first and foremost a local law
4 enforcement agency responsibility.

5 Anything guard wise, either physical types
6 of security, mechanical types of security or
7 whatever, is strictly an ancillary function to
8 the local police department.

9 Q. What was your understanding as to why Longwood
10 had security -- why Associated Estates had Fox
11 security guards working on the premises?

12 A. I don't know. I don't know if was just
13 historical, if it was just an assumption of
14 those personnel when they took it over, I really
15 don't know what they based it on.

16 MR. LENSON: Is your question to
17 Mr. Michalski why Fox was working there or
18 why any security was working there?

19 Q. (BY MS. GERLACK) Why Fox was working there.

20 A. Only Fox?

21 Q. Only Fox.

22 A. I don't know.

23 Q. I'll broaden the question, do you have any
24 understanding as a security consultant for
25 Associated Estates, why Associated Estates had

1 security at the complex?

2 A. I do not.

3 Q. You never asked that question?

4 A. No.

5 Q. But yet you would make recommendations to
6 determine who would win the contract for
7 security services at particular properties,
8 including Longwood?

9 MR. UTLEY: I'll object to the
10 term "win," but go ahead.

11 THE WITNESS: Would you
12 rephrase that, please.

13 Q. (BY MS. GERLACK) Sure. Even though you had no
14 idea why there was security on the complex, you
15 still went through looking over proposals, and
16 making recommendations as to what security
17 companies would be there?

18 A. That's correct.

19 Q. How much of your time as a security consultant
20 was spent interacting with the security guards
21 on the premises at Longwood?

22 A. Very limited.

23 Q. Can you give me -- is that once a week, once a
24 month?

25 A. Three times a year.

1 Q. And what would that consist of, the night audits
2 that you took with Mr. Worthington?

3 A. Yes. It may have been a meeting with the
4 security guards, observing the dispatching
5 operation and listening to all radio calls,
6 monitoring in that fashion.

7 Q. Was a function of your job as security
8 consultant for Associated Estates to concern
9 yourself with the deployment of security guards
10 within the Longwood complex?

11 A. Yes.

12 Q. And how would you go about doing that?

13 A. By an analysis of the problems, comments by
14 management, maintenance personnel, other factors
15 are days of the month, days of the week, seasons
16 of the year, vacation periods of children, and
17 there are a number of factors.

18 Q. For Longwood, do you have any recollection of
19 the deployment recommendations that you made for
20 the Fox security guards?

21 A. I do not. ,

22 Q. Did you make any? .

23 A. I don't recall.

24 Q. Do you know how large the Longwood complex is?

25 A. About 31 acres, 30 acres, something like that.

1 Q Do you believe that the employment of two
2 security guards per eight hour shift was
3 adequate to constantly patrol 31 acres?

4 MR. UTLEY: When?

5 Q During 1983 through 1992?

6 MR. LESSON: I'm going to object
7 to anything before July 27, '92

8 MR. UTLEY: I'll join the
9 objection.

10 Go ahead, Craig

11 A It's not a matter of numbers of personnel
12 It's a matter of quality, of performance.

13 Q Is your answer then that you -- it's your
14 opinion that two guards is adequate to patrol 31
15 acres?

16 MR. UTLEY: He gave you his
17 answer.

18 A Could very well be

19 Q Did you have an opinion, one way or the other,
20 while you were acting as the security consultant
21 for Associated Estates, pertaining to Longwood?

22 A As I recall, my recommendation was during the
23 summer months, to add two -- in other words a
24 fourth platoon, if you will, of guards, two
25 additional guards

1 I believe the time was between 6 p.m. and 2
2 a.m., overlapping two shifts.

3 Q. To whom did you make that recommendation?

4 A. Probably to the director of operations.

5 Q. Do you recall when you made that recommendation?

6 A. I do not.

7 Q. Do you know if your recommendation was
8 considered by Associated Estates?

9 A. Yes, I do.

10 Q. Did you partake in any discussion concerning
11 your representation?

12 A. Yes, and as far as I know, if I recall, they
13 implemented on it.

14 Q. And this would have been during the period of
15 1988 through 1992?

16 A. I don't know when I made the recommendation, so
17 I don't know for what years they implemented --
18 I know it wasn't '92, because I had nothing to
19 do with it.

20 Q. What facts led you to make that recommendation
21 concerning --

22 A. Warm weather principally, people being outside.

23 Q. Did you ever receive any recommendations
24 concerning improvements to security from Russell
25 Fox, during your employment?

1 A. As I recall, he made recommendations to add
2 personnel.

3 Q. Would he direct those recommendations to your
4 attention?

5 A. No, they would go to the director of operations.

6 Q. Do you recall any recommendation in particular
7 that was made by Fox?

8 A. No, I do not recall.

9 Q. Did you ever have any discussions with Mr. Fox
10 concerning why he thought there was a need to
11 have more guards?

12 A. I don't recall that.

13 Q. Do you know if any of Mr. Fox's recommendations
14 concerning additional security personnel were
15 adopted or implemented by Associated Estates,
16 for Longwood?

17 A. I don't recall that they were,

18 Q. When you would make a securities recommendation,
19 such as the hiring of additional guards to work
20 overlapping shifts, what -- well, you don't know
21 when that occurred.

22 MR. UTLEY: He said it occurred
23 before '92, Lisa.

24 Q. (BY MS. GERLACK) Was that with Fox security
25 guards?

1 A. If Fox was there from '88 to '92, yes, it was.

2 Q. And do you think it was before 1992?

3 A. I don't recall.

4 Q. And you stated that warm weather was one of the
5 primary factors leading you to this
6 recommendation?.

7 A. And children.

8 Q. Had you worked other warm months, before you
9 made this recommendation?

10 A. Had secured guards been assigned do you mean?

11 Q. Had you been working for Associated Estates
12 during other warm months, before you made this
13 recommendation?

14 A. I don't recall. I certainly had worked warm
15 months, but I don't remember -- I don't recall
16 when I made the recommendation.

17 Q. Had you been working for Associated Estates for
18 a couple of years before you made this
19 recommendation?

20 A. I don't recall.

21 Q. Any other factors that led you to that
22 recommendation?

23 A. None that I know of.

24 Q. When I had asked you if you, in your opinion as
25 a security consultant for Associated Estates --

1 and this is concerning the Longwood
2 properties -- if two security guards per shift
3 was adequate for a 31 acre complex, you
4 indicated that it wasn't a matter of numbers, it
5 was a matter of quality of performance.

6 MR. UTLEY: Quality and
7 performance.

8 Q. (BY MS. GERLACK) Quality of performance. I'm
9 not talking -- is that fair?

10 A. That's fair.

11 Q. What did you mean by that?

12 MR. LENSON: You're asking his
13 opinion?

14 MS. GERLACK: Yes.

15 MR. LENSON: I'm going to
16 object.

17 Go ahead.

18 A. I predicate that statement on active patrolling,
19 motivation to get around the property, know the
20 tenants, actively getting the local law
21 enforcement agency involved, properly trained,
22 properly supervised.

23 Q. During the period of 1988 through 1992, in your
24 opinion were Fox security guards actively
25 patrolling the Longwood complex to your

1 satisfaction?

2 MR. LENSON: Objection.

3 MR. UTLEY: Go ahead.

4 A. No.

5 Q. And what do you base that on?

6 A. Poor selection of personnel.

7 Q. Can you be more specific?

8 A. Poor training. Many of the guards weren't
9 certified -- some of the guards were not
10 certified.

11 Q. Do you know any names in particular?

12 A. No.

13 MR. LENSON: I ask that the
14 answer be stricken.

15 Q. (BY MS. GERLACK) How did that, the fact that
16 certain guards weren't certified, come to your
17 attention?

18 A. I don't recall whether I checked for their green
19 cards, or whether H. P. did, supervision was
20 poor.

21 Q. Was there supervision of security guards per
22 shift to your knowledge?

23 A. Well, they would usually have one designated
24 person in charge.

25 Q. What types of findings did you make or came to

1 your attention, to lead you to the conclusion
2 that supervision of Fox's guards was poor?

3 A. Well, there were a number of factors. Just the
4 overall lack of performance, poorly written
5 guard daily activity reports, double shifts, and
6 just other hearsay information.

7 MR. LENSON: Well, objection.

8 Q. (BY MS. GERLACK) When you say double shifts,
9 were there guards that were working more than
10 one eight hour shift per day?

11 A. Sixteen hours.

12 Q. How did that fact come to your attention?

13 A. A review of the daily shift reports.

14 Q. When did the double shifts first come to your
15 attention?

16 A. I don't recall.

17 Q. Did you in turn, as the security consultant,
18 bring that to anyone's attention?

19 A. I'm sure I did.

20 Q. Do you have any recollection if you did today?

21 A. I do not, whether I had documented anything or
22 whether it was strictly a verbal report.

23 Q. You indicated that there were poor daily
24 activity reports, what do you mean by that? Can
25 you be any more specific?

1 A. Patrolled the property, all is well, patrolled
2 the property, **all** is secure, patrolled the
3 property all is secure.

4 Q. Did it ever come to your attention that guards
5 were not patrolling constantly per eight hour
6 shift?

7 A. Yes.

8 Q. Did it ever come to your attention that guards
9 were going into tenants' apartments instead of
10 patrolling the complex?

11 A. I was told that.

12 Q. Who told you that?

13 A. I think it was **H. P.**

14 MR. LENSON: Objection, ask it be
15 stricken, hearsay.

16 A. I never physically witnessed it.

17 Q. As night auditor for Associated Estates, would
18 H. P. typically report his findings to you as
19 the security consultant?

20 A. No. He reported that to Spevack's office.

21 Q. And would Spevack's office in turn notify you of
22 any of his findings?

23 A. I sometimes received -- but most of the time
24 that went directly to the management of the
25 property.

1 Q. So you didn't always know what H. P. Worthington
2 was finding or not finding on his audits; is
3 that correct?

4 A. That's correct.

5 Q. Did you ever participate in any meetings with
6 management and H. P. Worthington, concerning the
7 poor supervision of Fox guards on the Longwood
8 premises?

9 MR. LENSON: Objection, the way
10 the answer question is asked, I ask that
11 the question be stricken and the answer so
12 stricken.

13 Counsel is baiting the question,
14 assuming facts that are not in issue.

15 Q. (BY MS. GERLACK) You can go ahead and answer
16 the question.

17 A. Yes, I did.

18 Q. When did those meetings take place?

19 A. I don't recall.

20 Q. Do you recall who was in attendance at those
21 meetings?

22 A. As I recall the director of operations, the
23 manager of the property, H. P., and myself.

24 Q. Were any minutes taken of that meeting?

25 A. No.

1 Q. Was it an informal type meeting?

2 A. es.

3 Q. O you know if any photocopies were generated as a
4 result of the meeting?

5 A. Doubt that there were.

6 Q. What was the topic of the meeting?

7 A. An overall evaluation of H. P.'s audits, at a
8 number of properties

9 Q. Do you have any recollection of what his
10 evaluation was for Longwood, at that time?

11 A. I do not

12 MR. SENSON: objection.

13 MR. UTLEY: I'll object.

14 Q. (BY MS GERLACK) Do you have any recollection
15 today as to what was discussed at that meeting?

16 A. We discussed performance levels of guards, but
17 it was for a number of properties, and I don't
18 recall specifically comments made about
19 Longwood

20 Q. Did you ever review the personnel files for the
21 security guards that were Fox's security guards
22 that were working at Longwood?

23 A. No.

24 Q. Did you review the annual security contracts
25 Apartment Association Estates and Fox's?

1 A. To my recollection, it was only a purchase
2 order. That probably spells out certain things,
3 but I don't recall ever seeing a contract.

4 (Michalski Deposition Exhibits 4 through 7
5 marked for identification.)

6 Q. (BY MS. GERLACR) . I'm going to hand you what's
7 been marked as Plaintiff's Exhibits 4, 5, 6 and
8 7, which are the 1989, '90, '92 and '93 Letters
9 of Agreement.

10 A. Okay.

11 Q. Just take a look, a moment to review those.

12 A. These are my agreements.

13 Q. Those are all the agreements you have had with
14 Associated Estates?

15 A. I have another one now for '94.

16 Q. But looking at those documents, has the contents
17 of your duties changed at all, for any of those
18 documents?

19 A. No.

20 Q. So your duties for each year were the same?

21 A. Were the same, yes.

22 Q. Who drafted the Letters of Agreement?

23 A. Jerry Spevack and myself.

24 Q. Who determined the contents, insofar as your
25 duties per contract?

1 A Jerry and I

2 Q And what sources did you rely on to determine
3 the scope of your duties and responsibilities
4 under the Letter of Agreement?

5 A What do you say sources?

6 Q Did you rely on your own personal experience,
7 your education, or did you consult any sources,
8 outside sources to --

9 A No, strictly on my own.

10 Q Did you review any documents pertaining to
11 security at Longwood, before delineating what
12 your duties were under those Letters of
13 Agreement?

14 A No.

15 Q Had you reviewed any crime statistics, before
16 determining your duties under the contract?

17 A No.

18 Q Have you done anything at all to advise
19 yourself of what the security needs were for
20 Associated Estates properties?

21 MR. UTLEY: I'm going to object,
22 other than what we've already walked about

23 Q (BY MS GERLACK) including Longwood

24 this is before these were executed?

25 A In 1989, the management staff, which included

1 the president and the executive vice president
2 and the vice president of finance and
3 operations, et cetera, et cetera, asked me to **do**
4 an overall preview of security at Associated
5 Estates properties -- not a specific property --
6 and to come up .with a proposal, a management
7 proposal, as to how the corporation should
8 approach an analysis and an implementation, if
9 you will, for all of the how ever many there
10 were at that particular time.

11 I did that, and I presented it as a
12 proposal to management.

13 Q. This was a security analysis?

14 A. As to how a corporation should look at security,
15 for all of their properties, as far as the
16 corporation was concerned. It had nothing to do
17 with any specific property.

18 Q. Did you produce that to management?

19 A. Yes.

20 Q. And this was in 1989?

21 A. I believe it was 1989.

22 Q. Did you produce a copy **of** that?

23 A. I don't know whether I have a copy, to **be** honest
24 with you.

25 Q. Did the document have a particular title?

1 A. I don't recall.

2 Q. And based on this management proposal, what?

3 A. That's how we finally developed these Letters of
4 Agreement, as to what my duties,
5 responsibilities might be. Because that was the
6 initiation of the creation, if you will, of this
7 corporate director security.

8 Q. What types of things did you do to come up with
9 this management proposal? What types of things
10 did you do?

11 A. Basically, what I did was I just talked to the
12 directors of operation and the managers of
13 properties, to get their feel for, you know,
14 really what needed to be done, as far as an
15 overall security preview was concerned.

16 Q. For each year that you worked at Longwood, did
17 you conduct three unannounced audits at the
18 property?

19 A. I don't believe so.

20 Q. And that's set forth in your Letters of
21 Agreement; is it not? ,

22 A. That's correct.

23 Q. Is there any reason why you didn't complete the
24 required number?

25 A. Yes.

1 Q. What?

2 A. I ran out of hours.

3 Q. Was there a specific number of hours -- let me
4 just have you take a look at --

5 A. Yes, out of the 480 hours, 350 hours were
6 designated for that type of activity.

7 Q. And the purpose of the audits was to evaluate
8 guard performance reports, appearance and
9 supervision?

10 A. Part of it.

11 Q. During the period of 1989 through 1992, can you
12 tell me how many audits you did for Longwood?

13 A. I do not know.

14 Q. Would the documents from any of the audits that
15 you performed pursuant to those Letters of
16 Agreement be contained in the documents that you
17 produced to me?

18 A. Yes, ma'am.

19 Q. What criteria would you use to evaluate guard
20 performances, on one of your audits?

21 A. In my opinion, there is two ways¹ in which to
22 evaluate performance. One is that you
23 physically be there, and you observe all of the
24 activities that that person or persons
25 performs. The other way is to review all the

1 written documentation of those persons involved.

2 Q. Which method did you utilize?

3 A. Predominantly, at the Longwood property, I would
4 use the review of the reports, and the
5 documentation.

6 Q. And what would --

7 A. Because of my limited time I spent at the
8 property.

9 Q. What would the written documentation tell you
10 about guard performance? What types of things
11 would you be looking for?

12 A. Listing of discrepancies that are found at the
13 property, complete written documentation of any
14 types of reports that had to be made on any
15 types of incidents that occurred, completeness,
16 thoroughness, a list of patrol activities, and
17 everything that was performed on those rounds.

18 Q. Did you review the written documentation by
19 security guards at Longwood to evaluate the
20 guard performance?

21 A. On a number of occasions. }

22 Q. Do you have any recollection as to what your
23 evaluation was, concerning the written
24 documentation?

25 A. Poor.

1 Q And what do you base that on?

2 A Total lack of information.

3 Q Can you give me specific documents to which
4 you're referring?

5 A. To my specific documents? Just daily activity
6 reports, the guard's daily activity reports,
7 incident reports

8 Q Was there anyone employed by Associated States
9 to supervise -- or was there an employee or
10 Associated States that supervised Fox security
11 guards at Longwood?

12 A No.

13 Q Did you ever recommend having an in-house person
14 oversee the security guards that were
15 working on the premises?

16 A For Longwood?

17 Q. Yes.

18 A. No.

19 Q. Do you feel that such a method would have helped
20 the supervision problem that you detected?

21 MR. UMLEY: Objection.

22 A. No.

23 Q Did you ever make any recommendations as to how
24 to cure what you thought was poor supervision of
25 the security guards?

1 A And what do you have that on?

2 A Total lack of information

3 Q Can you give me specific documents to which
4 you're referring?

5 A. To my specific documents? Just daily activity
6 reports, the guard's daily activity reports,
7 incident reports

8 A s there anyone employed by Associated Estates
9 to supervise -- or was there an employee of
10 Associated Estates that supervised Fox security
11 guards at Longwood?

12 A No.

13 Q Did you ever recommend having an in-house person
14 oversee the outside security guards that were
15 working on the premises?

16 A For Longwood?

17 Q Yes

18 A No

19 Q Do you feel that such a method would have helped
20 the supervision problem that you detected?

21 MR. UMLEY: Objection.

22 A

23 Q Did you ever make any recommendations as to how
24 to cure what you thought was poor supervision of
25 the security guards?

1 A. Uh-huh.

2 Q. What were those recommendations?

3 A. Well, I met with Fox, as I recall, and I met
4 with management, and Fox, and talked to them
5 about their level of supervision, and/or the
6 lack thereof. . .

7 Q. Who was present at that meeting?

8 A. Well, Russell Fox was, and Bill Smoot was, and
9 on a couple of occasions one of Russell's
10 assistants, that I don't remember the name.

11 Q. Was any course of action decided after those
12 meetings, to improve?

13 A. Well, we were told that it would improve.

14 Q. By what, doing what?

15 A. By more frequent mobile supervision.

16 Q. Who was going to be undertaking the supervision?

17 A. Fox.

18 Q. To your knowledge?

19 A. It's not Associate Estates's responsibility to
20 supervise any vendor's services.

21 MR. LENSON: Objection, ask that
22 that be stricken.

23 That's your opinion, sir?

24 THE WITNESS: That's my
25 opinion.

1 MR. LENSON: I ask it be
2 stricken.

3 Q. (BY MS. GERLACK) So in response to -- was it
4 your suggestion to call these meetings?

5 A. I don't recall, but I was certainly a supporter
6 of it.

7 Q. And am I correct in assuming that there was no
8 specific course of action decided in how to
9 improve the supervision, you just left the
10 meeting with the understanding steps would be
11 taken to increase the supervision?

12 A. That's correct.

13 Q. Did you meet three times a year for each year
14 that you had a Letter of Agreement with
15 Associated Estates property manager for
16 Longwood, to discuss the security problems and
17 needs?

18 A. I don't recall, but I presume that I **did**.

19 Q. Would you have any -- let me ask you this, just
20 in blanket, for each of the duties that are set
21 forth in this letter, each Letter of
22 Agreement -- and there are ten per letter of
23 agreement -- would you generate documents to
24 show that you complied with each of the duties
25 and responsibilities set forth in there?

1 A When I did them, but I didn't always comply with
2 all of the items listed

3 Q So, did you -- even if you didn't have three
4 audits, if you had one audit, you would have
5 documentation in the files pertaining to
6 Longwood?

7 A That's correct

8 Q And the same would hold true if you had a
9 meeting with Associated Estates Properties
10 managers, to discuss security problems and
11 needs, you would have documented it?

12 A. Yes.

13 Q. And you're not able to tell me if you had any
14 with the Longwood property managers?

15 A I did, but please understand, that many, many
16 times, meetings were not one on one. In other
17 words, I might have a meeting to discuss a
18 security issue at the same time with a manager
19 at Rainbow, Park Village, Longwood, Lucica, St
20 Andrews, and those conversations, issues, were
21 not always by any means written up.

22 (Thereupon, a recess was had)

23 Q (BY MS GERLACK) Who determined the amount of
24 hours that you would spend, the 480 hours under
25 the Letter of Agreement?

1 A. Who determined the hours?

2 Q. Right.

3 A. Jerry Spevack.

4 Q. Do you know what factors he considered in coming
5 up with that number?

6 A. No.

7 Q. Did he discuss it with you at all?

8 A. No.

9 Q. Did that 480 hours include all properties owned
10 by Associated Estates?

11 A. Uh-huh.

12 Q. Getting back to these meetings with property
13 managers for Longwood, you indicated that if you
14 had a meeting it might be with several property
15 managers from different properties, and you have
16 no specific recollection if you had these
17 meetings with Longwood property managers; is
18 that correct?

19 A, It was a combination of both. It could have
20 been a one on one, or a combination of a number
21 of managers, that we talked about security
24 issues.

23 Q. When you conducted these security meetings that
24 are set forth in paragraph 3 of the Letter of
25 Agreement, would you have created any

1 documentation to show the dates of the meetings,
2 who was present, what was discussed?

3 A. No, no.

4 Q. Would you report your discussions with property
5 managers to anyone in management at Associated
6 Estates?

7 A. It depended, it depended whether the director of
8 operations was present at those meetings. If
9 not, then I usually would sit down and have
10 discussions with the director of operations, and
11 sometimes Jerry Spevack, with regards to our
12 discussions. But it was not always documented.

13 Q. Did you have set times of the year when you
14 would have the three meetings that are called
15 for in this contract?

16 A. No, not set times. Usually one was around
17 April, another, dependent upon vacation
18 schedules of those who would attend the
19 meetings, sometime late summer, early fall, and
20 then another one at the later part of the year,
21 early December.

22 Q. Do you recall discussing any security problems
23 and needs for Longwood?

24 A. Specifically?

25 Q. Yes.

1 A. No.

2 Q. Do you know of any documents that would refresh
3 your memory if that **was** discussed at all?

4 A. At one of these three meetings?

5 Q. Yes.

6 A. I need a document. to refresh my memory, yes.

7 Q. There might be a document that would refresh
8 your memory?

9 A. The only thing that was usually discussed at
10 these meetings, was relative to the audits that
11 I conducted at the properties since the last
12 meeting.

13 Q. That would be if you would conduct an audit of a
14 property, correct?

15 A. Correct.

16 Q. So if you didn't do one for Longwood, then you
17 might not have a meeting with the property
18 manager to discuss --

19 A. I'm confused.

20 Q. You told me that --

21 A. We had three meetings a year with the directors,
22 are those the meetings you're talking about?

23 Q. Yes, and they're in paragraph 3 of the Letter of
24 agreement?

25 A. Correct.

1 Q. And you total me that these are informal
2 meetings?

3 A. Correct.

4 Q. And that you don't have any documentation to
5 show when you had these meetings, right?

6 A. Correct.

7 Q. And what I wanted to know is do you have any
8 independent recollection today, if you discussed
9 any security problems or needs for Longwood, at
10 the three meetings that are called for in your
11 Letters of Agreement?

12 A. No. I have no recollection, and no, I'm
13 confident we did not discuss specifically any
14 property. And the reason being is because you
15 had the directors who had responsibility for all
16 the properties, and they certainly did not want
17 to have to sit and listen to security
18 discussions about one property that they had.
19 nothing to do with.

20 These meetings used to last maybe an hour
21 to an hour and a half.

22 Q. But in the Letter of Agreement, it specifically
23 states that the meetings were held to discuss
24 security problems and needs; isn't that true?

25 A. Of those audited properties, that I had

conduct?

Q. That's not what the agreement states though?

A. Well, if that's the interpretation you're making, okay.

Q. I'd like you to take a look, if you would, at paragraph 3 of any of the Letters of Agreement, and read it, and tell me if it refers to an audit?

A. I'm sorry. I thought you were talking about the --

Q. Number 4.

A. Yeah, that's what I thought you were talking about.

Q. I'm on number 3.

4 I'm sorry.

Q. That's okay.

Do you have any specific recollection of discussing security problems and needs at the Longwood property?

A. At one of these meetings?

Q. Yes.

A. No, not specifically. But I did have the meetings.

Q. And you don't have any documentation that would show who these meetings were held?

1 A. No.

2 Q. And no documents to show what was discussed at
3 these meetings?

4 A. Normally not.

5 Q. Would you have an obligation as security
6 consultant for Associated Estates to report the
7 discussions that took place in these meetings
8 with anyone in Associated Estates management?

9 A. Only to the director of operations, if he was
10 not present.

11 Q. And did the meetings that you conducted lead to
12 designing a complete guard service program for
13 Associated Estates property?

14 A, No.

15 Q. To your knowledge, did any of these three
16 meetings that you said you conducted per year
17 result in any changes for the guard service
18 program that was being utilized at Longwood?.

19 A. Yes.

20 Q. Do you recall what those changes were?

21 A. I think one, which I alluded to before, of
22 adding the overlapping shifts, another -- and I
23 don't recall when this was -- is that we reduced
24 the security from 7:00 to 3:00, or from 8:00 to
25 4:00 -- it's a.m. to p.m., 7:00 a.m. to 3:00

1 p.m. or 8:00 a.m. to 4:00 p.m. -- and added the
2 additional coverage during the evening hours.

3 The reason that I made that recommendation
4 was because I felt that security was getting
5 involved in maintenance issues and some other
6 management issues, that could have been handled
7 by staff personnel.

8 Q. Did any other factors consider into that change?

9 A. No.

10 Q. Just the fact that --

11 A. This was daytime hours.

12 Q. So it was strictly to have staff handling
13 maintenance matters and not the security guards?

14 A. Yes. They were -- security was delivering
15 eviction letters to suites, they were opening up
16 lockouts, because the people forgot to take
17 their keys, that type of thing.

18 Q. At whose direction were the guards delivering
19 eviction letters to tenants?

20 A. Management. The concept isn't all bad, because
21 what you do is --

22 MR. UTLEY: Craig, there is not a
23 question to you.

24 THE WITNESS: Okay.

25 Q. (BY MS. GERLACK) Were you aware of any security

1 problems or concerns at Longwood, **as a** result of
2 any of these meetings that were conducted with
3 property managers at Longwood?

4 MR. UTLEY: You mean did he

5 learn of any new problems at the meetings?

6 Q. (BY MS. GERLACK) Did you learn of any security
7 problems or concerns from Longwood property
8 managers as a result of going to these meetings?

9 A. One of the primary things I learned was that the
10 guards were spending too much time in the
11 administration building,

12 MR. LENSON: Objection, ask that

13 it be stricken.

14 Q. (BY MS. GERLACK) From whom did you learn that?

15 A. Manager and the assistant manager.

16 MR. LENSON: Would you identify

17 those, so we have it on the record.

18 THE WITNESS: Well, I'm not sure

19 I recall. I can't think of the manager's
20 name that preceded Willy Benson, he's left
21 the company.

22 MR. LENSON: Ask that the answer

23 be stricken.

24 Q. (BY MS. GERLACK) Willy Benson's predecessor?

25 A. Yes.

1 Q. And it was in these meetings that you learned of
2 that?

3 A. Yes.

4 Q. The security guard office, or the dispatch
5 office at Longwood, is that -- if a tenant were
6 to call up with a maintenance problem, would
7 their call be directed to the same office?

8 A. Uh-huh.

9 MR. LENSON: You have to answer
10 yes.

11 A. Yes.

12 Q. Is there any other staff from Associated -- is
13 there any Associated Estates staff in the
14 dispatch office?

15 A. No.

16 Q. Just the security guards?

17 A. Uh-huh. There is a maintenance man on call.

18 Q. So if a -- how many phones are there in the
19 dispatch office?

20 MR. UTLEY: Now?

21 Q. (BY MS. GERLACK) During the '88, '92 period?

22 A, I think only one phone.

23 Q. Did it have more than one line?

24 A, Yes.

25 Q. Do you know how many lines it had?

1 A. I do not.

2 Q. So if a tenant were to call with a security
3 problem, they would call the --

4 A. Special number.

5 Q. A special number. And do you know how the
6 tenants became -- how they were notified of what
7 that number was?

8 A. I don't recall, because we've done it at a
9 number of properties and I don't specifically
10 recall how we did it.

11 Q. But there was a special number that they would
12 call.

13 If they were to call maintenance, was that
14 the same number as security or a different
15 number, if you know?

16 A. I don't know, but I believe there is a special
17 number.

18 Q. Do you know if tenants at Longwood were given
19 directories with a series of numbers to call,
20 that listed security?

21 A. I don't know. Many tenants don't have
22 phones.

23 Q. Did you make any other changes to security, the
24 security at Longwood, as a result of these
25 meetings that you conducted pursuant to

1 paragraph 3 of the Letters of Agreement?

2 A. Not that I recall.

3 Q. By how much was the reduction of security,
4 during the daytime hours; do you recall?

5 A. Eight hours.

6 Q. I don't --

7 A. Let me qualify that. I -- we did not reduce the
8 overall security hours at the property. All I
9 did was adjust it.

10 Q. And did you adjust it by reducing the number of
11 guards that worked the 7:00 or 8:00 a.m. shift?

12 A. Reduced it from two to one, coming in at that
13 time. And then the second guard would come in
14 some days at 2:00 p.m., perhaps some days at
15 noon, 3:00, whatever, and work that eight hours
16 overlapping the other times.

17 Q. Do you recall when this was implemented?

18 A. I do not. It might have very well been after
19 '92.

20 Q. When there were changes to the security services
21 that were requested and purchased from Fox,
22 would there be an addendum to the contract?

23 A. Not always.

24 Q. Would you have to get Russell Fox's approval
25 before you implemented a change in the duties of

1 his security guards?

2 A. No.

3 Q. Do you know how many guards were working an
4 eight hour shift at Longwood, during the period
5 of 1988 through 1992?

6 A. I do not.

7 Q. Did you ever learn how many guards that were
8 employed by Fox were assigned to work at
9 Longwood?

10 MR. UTLEY: What **do** you mean?

11 MR. LENSON: Total number of
12 guards?

13 Q. (BY MS, GERLACK) Like if Fox had 50 security
14 guards that it employed, do you know how many **of**
15 those guards were employed to work at Longwood?

16 A. No, I do not.

17 Q. Did you have any say over who would be selected
18 to work at Longwood from Fox's?

19 A. Who would be selected, no.

20 Q. As a security consultant, do you know if
21 Associated Estates found a security guard
22 employed by **Fox's** doing something that wasn't
23 furthering the interest of the property, such as
24 not patrolling as they should be, would
25 Associated Estates have the ability to terminate

1 that person's employment?

2 A. From that property?

3 Q. Yes.

4 A. Yes.

5 Q. To your knowledge, was that ever done during the
6 period of '88 through '92?

7 A. I'm sure it was.

8 MR. LENSON: Well, objection.

9 Q. (BY MS. GERLACK) Do you have any personal
10 knowledge?

11 MR. UTLEY: Just testify as to
12 what you observed, Craig.

13 A. I don't recall.

14 Q. If that did occur, would it come to your
15 attention as a security consultant for the
16 property?

17 A. No.

18 Q. To whose attention would it come to, if you
19 know?

20 A. The manager and the director of operations.
21 They would make that request. '

22 Q. Paragraph 4 of the Letter of Agreement, did you
23 meet three times a year with the director of
24 operations and Jerry Spevack, to review security
25 discussions and the audits?

1 A. Most of the time.

2 Q. Did you generate any documents to reflect that
3 you in fact conducted these meetings three times
4 a year?

5 A. No, the documentation came from the audits that
6 I presented at those meetings.

7 Q. So in the documents that you've produced to me,
8 if I would find three audits, one for '90, one
9 for '91 and one for '92, would that mean that
10 you had one meeting per each year pertaining to
11 Longwood?

12 A, No, we would have -- if we had three meetings
13 that year, then the documentation of my audits
14 would have been presented at one of those
15 meetings.

16 Q. Other than your audit, would there be any other
17 documentation to reflect what was discussed at
18 these meetings, what was done at these meetings,
19 what course of action was decided as a result of
20 the meetings?

21 A. In those meetings that we held three times a
22 year?

23 Q. Yes.

24 A. No.

25 Q. Do you have any independent recollection of any

1 of these meetings that relate to Longwood
2 Apartments?

3 A. No, we discussed a number of properties,

4 Q. Do you know if Associated Estates, whenever it
5 had meetings, concerning any of its properties,
6 would take minutes of meetings that were
7 conducted?

8 A. I don't believe so.

9 Q. To your knowledge, are there any documents that
10 reflect that these meetings took place?

11 A. Not to my knowledge.

12 MR. UTLEY: Unless referenced in
13 your file.

14 THE WITNESS: Unless in my file.

15 Q. (BY MS. GERLACK) We'll get to that.

16 A. Okay.

17 Q. And the director of operations would be who?
18 Would that be per property?

19 A. No. There are like 5 for all 90 properties.

20 Q. Would anyone else be in attendance at those
21 meetings?

22 A. Yes, sometimes the director of purchasing.

23 Q. Do you have any recollection today, about making
24 any security recommendations as a result of your
25 audit of Longwood Apartments?

1 A. I don't recall. If I did it would have been in
2 writing, I think, and contained in those -- that
3 file.

4 Q. Do you have any independent recollection, other
5 than what's in your files -- and we'll get to
6 that -- concerning your review -- did you
7 conduct a review of the guard service at
8 Longwood?

9 A. Yes.

10 Q. Did you make any suggestions concerning
11 improvements or betterment to the security,
12 after you conducted the review?

13 A. When I evaluated the guard services, in other
14 words a company that may have provided security
15 services at a number *of* properties, if there
16 were recommendations that I made, I documented
17 them and they are in my file.

18 Q. Paragraph 4 of the Letters of Agreement states
19 that you will also rate the business manager and
20 resident manager for their involvement in
21 building security and their response to
22 suggestions and recommendations. Did you do
23 that for Longwood?

24 A' No.

25 Q. Why?

1 A. Because -- and this is not only true of Longwood
2 -- that I did not feel, nor did I agree to that
3 in the agreement, that this was part of my
4 responsibility, to evaluate managers.

5 Q. Okay.

6 A, But, we had training seminars, which are also in
7 there.

8 Q. My question is -- I believe your answer was you
9 did not rate the business manager and resident
10 manager as far as their involvement in building
11 security at Longwood?

12 A. Correct.

13 Q. And you stated that you did not believe that
14 this was one of your responsibilities?

15 A. To evaluate the managers and resident managers.

16 Q. But that's set forth in the Letters of
17 Agreement, that you signed for consecutive
18 years, up until the present?

19 A. That's correct.

20 Q. Did you do any evaluations of building security
21 at Longwood?

22 A. No.

23 Q. Why? Is there any reason why?

24 A. Because the security that we had at the facility
25 was designated to be for the common areas, not

1 internal security.

2 Q. Did you consider it to be proper building
3 security to have a common entrance freely
4 accessible?

5 MR. UTLEY: Objection.

6 A. Yes, you know, .at certain properties.

7 Q. Pertaining to Longwood?

8 A. Yeah.

9 Q. You didn't believe that posed any type of
10 security threat?

11 A. No.

12 Q. Did you ever look at and study the architecture
a3 of the buildings at Longwood?

14 A. No.

15 Q. To your knowledge did anyone, on behalf of
16 Associated Estates, ever evaluate the
17 architecture of the buildings that comprised
18 Longwood, for purposes of security?

19 A. I don't know.

20 Q. Did any information to that effect ever come to
21 your attention, while you served as a security
22 consultant for that property?

23 A. Never did, never did.

24 Q. Paragraph 4 of the Letter of Agreement provides
25 that after these meetings with the director of

1 operations, and Jerry Spevack, to discuss
2 security with managers and security audits, that
3 you would submit a formalized written report to
4 the directors and Jerry Spevack. Did you do
5 that?

6 A. Yes, I did.

7 Q. Did you do that for each of the years that you
8 had a Letter of Agreement?

9 A. Yes, I did.

10 Q. And that would be contained in the documents
11 that you produced to me?

12 A. Yes, ma'am.

13 Q. What would your report indicate?

14 A. It would indicate my findings and
15 recommendations for that property,

16 Q. Paragraph 5 -- I'm sorry, let me backup.

17 After you submitted your formalized written
18 report pursuant to paragraph 4 of the Letter of
19 Agreement, would you make any follow-up with any
20 of the management of Associated Estates to see
21 if your suggestions or recommendations were
22 implemented?

23 A. Sometimes not until the next audit.

24 Q. And what would your follow-up consist of?

25 A. A review of my previous audit, and a check to

1 see if those recommendations had been
2 implemented, or discrepancies that I found.

3 Q. Did you ever make any recommendations for change
4 concerning the security at Longwood?

5 MR. UTLEY: Other than what
6 we've already discussed?

7 Q. (BY MS. GERLACK) Yes, other than what we've
8 already discussed?

9 A. No, not that I recall.

10 Q. Did you ever make a suggestion regarding
11 security to Longwood that was not adopted or
12 implemented by Associated Estates?

13 MR. UTLEY: Prior to this
14 incident?

15 Q. (BY MS, GERLACK) During '88 to '92.

16 MR. UTLEY: I'll object to
17 anything after this incident, but go ahead.

18 A. Not that I recall.

19 Q. And your recommendations would be based upon
20 your findings that were set forth in your
21 audits?

22 A. Yes.

23 Q. Any other facts that you would rely on, other
24 than your findings from the audits, when you
25 would write these reports?

1 A. If a property made me aware that there were
2 problems that existed, I would certainly look
3 into that, and might very well come up with some
4 additional recommendations. I do not recall
5 that happening.

6 MR. UTLEY: It may have?

7 THE WITNESS: It may have.

8 MR. UTLEY: You just don't
9 recall.

10 Q. (BY MS. GERLACK) Paragraph 5 indicates
11 "Evaluate the application and/or installation
12 and benefits of the Morse Watch Tour system"?

13 A. Yes.

14 Q. What is that?

15 A. It's an electronic, like a detect system, The
16 guard carries a recorder, an electronic
17 recorder, and he goes to stations, but instead
18 of having the old key that you turn in the
19 clock, he puts this recorder on the station and
20 it beeps.

21 He makes his rounds, or she makes her
22 rounds during their tour of duty, and then
23 someone from management downloads that recorder
24 every morning, and we know specifically then
25 where the guard was, and what time.

1 Q. During the period of 1988 to 1992, did you ever
2 recommend use of Morse Watch Tour systems at
3 Longwood?

4 A. I don't recall.

5 Q. If you had recommended it, would it be contained
6 in the file that you produced to me?

7 A. Yes, it would.

8 Q. What is the cost of Morse Watch Tour system?

9 MR. UTLEY: I'll object. Today?

10 MS. GERLACK: Yes.

11 A. Depends upon how many stations. \$2,500,
12 approximately.

13 Q. For a 31 acre complex, do you have any idea how
14 many stations would be needed?

15 MR. UTLEY: I'll object. I'm not
16 going to allow the gentleman to issue an
17 opinion.

18 You can ask him if he formed an
19 opinion at the time as to the number of
20 stations, about he's not going to give --

21 MS. GERLACK: I'h not asking him
22 his opinion, I'm asking him do you know how
23 many stations will be required to use Morse
24 Watch Tour systems for a 31 acre complex.

25 MR. UTLEY: If your answer does

1 not involve an opinion, go ahead.

2 A. I don't know.

3 Q. What's the purpose of implementing Morse Watch
4 Tour systems?

5 MR. UTLEY: I'm going to object.

6 That involves an opinion, Lisa, and
7 he's not permitted to give an opinion.

8 You can ask whether he developed an
9 opinion at that time.

10 MS. GERLACK: He's a non
11 testifying consultant, I can ask him
12 anything.

13 MR. UTLEY: No you cannot.

14 MS. GERLACK: Yes, I can, as long
15 as it's not privileged. I'm asking him
16 factual information.

17 MR. UTLEY: No you're not, you're
18 asking him an opinion.

19 Q. (BY MS. GERLACK) Do you have an understanding
20 based upon your experiences as a security
21 consultant, and your education In the last 31
22 years, as the purpose of Morse Watch systems
23 that's set forth in the Letters of Agreement
24 that you had with Associated Estates?

25 MR. UTLEY: I'm going to object.

1 Go ahead.

2 A. It's a good management tool.

3 Q. In what way?

4 A. It makes sure, it insures, let's say, that the
5 guards are patrolling.

6 Q. How long has Morse Watch Tour systems been in
7 the security industry, how --

8 A. I don't know.

9 Q. Was it available in the industry at the time you
10 began working as a security consultant for
11 Associated Estates?

12 A, Either then or shortly thereafter.

13 Q. When you discovered that the guard service at
14 Longwood was poorly supervised and not
15 patrolling adequately, working double shifts --
16 and I think I have lack of performance down --
17 in general, those things that you discussed
18 earlier, did you ever recommend to management
19 the use of Morse Watch Tour systems at Longwood?

20 MR. LENSON: Before you answer,
21 I'm going to object on the premise of the
22 question. Since the question does not
23 relate to the answer that's going to be
24 provided, I'll ask that the question be
25 stricken, for the record.

1 MR. UTLEY: Go ahead.

2 A, I don't recall whether I recommended it or not.

3 Q. Based upon your experience as a security
4 consultant, if there were guards that were -- a
5 guard service that was poorly performing on the
6 premises, would you -- would Morse Watch Tour
7 systems -- strike that.

8 You don't know if you ever recommended it?

9 A. I do not.

10 Q. Did you ever have any discussion with Russell
11 Fox about Morse Watch Tour systems at Longwood?

12 A. I don't believe so.

13 Q. Do you know of any other properties, during the
14 period of 1988 through 1992, that were using
15 Morse Watch Tour systems?

16 A. At Associated Estates?

17 Q. Yes.

18 A. Yes.

19 Q. What properties were those?

20 MR. UTLEY: I'm going to object.

21 A. Americana, College Towers. ,

22 MR. UTLEY: That's in Kent?

23 A. Yes. Helly Park, in Kent, Abington Arms --

24 MR. UTLEY: University Circle?

25 A. Yes, the Triangle, University Circle Place,

1 Euclid Villa, Winchester, Portage Towers. Those
2 are a few.

3 Q. Was the Morse Watch Tour systems at those
4 properties implemented at your recommendation?

5 A. Yes.

6 Q. At all of those properties or only some of them?

7 A. I believe all of them.

8 Q. Do you recall when you made those
9 recommendations?

10 A. No, I do not.

11 Q. What was your purpose in recommending those
12 systems to those specific properties?

13 A. The assurance of constant patrolling.

14 Q. Did you conduct any type of studies to assess
15 the needs for the system at those specific
16 properties?

17 A. No.

18 Q. How did you select those properties as opposed
19 to other properties that were owned and operated
20 by Associated Estates?

21 A. I think it was -- predominantly, it was a one man
22 patrol operation.

23 Q. Are you familiar with the size of the 90
24 properties that are owned by Associated Estates?

25 A. I've been to all of them.

1 Q. Is Longwood one of the largest complexes that's
2 owned by, operated by Associated Estates?

3 MR. UTLEY: I'll object.

4 Go ahead.

5 A, Acreage-wise you're speaking?

6 Q. Yes.

7 A. Yes.

8 Q. In terms of the number of building, do you know
9 how many bu'ldings are on the Longwood property?

10 A, Seventy-eight, I'm guessing.

11 Q. It's in that vicinity,

12 A. Okay.

13 Q. I believe it's 78 buildings.

14 Are there any comparable properties with
15 that number of buildings, that's owned and
16 operated by Associated Estates?

17 MR. UTLEY: Number of buildings
18 only, Lisa?

19 MS. GERLACK: Yes,

20 A. No.

21 Q. Do you know how many apartment units are at
22 Longwood apartments?

23 A. 850.

24 Q. It's close, 821 is the documents that I've seen.

25 A. Okay.

1 **a.** Are there any comparable properties that have
2 that number of units?

3 A. Oh, yes.

4 **Q.** And would they be in more or less than one
5 building?

6 A. More.

7 **Q.** More or less than 50 buildings?

8 A. Of the 90?

9 **Q.** Well, I guess I'm not phrasing this very well.

10 MR. UTLEY: Just note a
11 continuing objection.

12 **Q.** (BY MS. GERLACK) Are there any other properties
13 owned and operated by Associated Estates, that
14 have 78 buildings and 821 apartment units?

15 A. No.

16 **Q.** To your knowledge, is Longwood the largest
17 complex that's owned and operated by Associated
18 Estates?

19 MR. UTLEY: Size wise?

20 **Q.** (BY MS. GERLACK) Yes.

21 A. You're speaking land?

22 **Q.** Yes.

23 A. Yes. But not number of suites.

24 **Q.** What property has the largest number of suites?

25 MR. UTLEY: Lisa, note a

1 continuing objection.

2 A. Gates Mills Towers, maybe, 1100.

4 Q. Where is that located?

4 A. Mayfield Heights.

5 Q. Is there a guard service there, private guard
6 service?

7 A, Yes.

8 Q. Do you know how many guards work per shift at
9 that location?

10 A. One.

11 Q. Paragraph 6 of your Letter of Agreement states
12 that you will maintain continuous contact with
13 guard companies, providing service to Associated
14 Estates, and a continuing evaluation, to ensure
15 the selection, training, supervision and
16 administration of the guards are meeting
17 standards established by Associated Estates?

18 A. Uh-huh.

19 Q. What standards were established by Associated
20 Estates concerning the selection, training,
21 supervision and administration of guards at
22 Longwood?

23 A. I had -- in honesty to your answer, I had made
24 recommendations as to a regular selection
25 process, and the legal department of Associated

1 Estates declined to allow me.

2 MR. UTLEY: I'll object, move to
3 strike as non-responsive.

4 MR. LENSON: He's going to answer
5 the question, he started answering it. He
6 has to answer.

7 Do you want to finish your answer?

8 MR. UTLEY: Go ahead.

9 A. The declined to allow me to implement it.

10 Q. When did you make that recommendation?

11 A. I don't know.

12 Q. Do you recall what your recommendation was in
13 terms of hiring?

14 A. No, I'd have to look at it, to recall.

15 Q. Is it in the documentation that you provided to
16 me?

17 A. It wasn't specifically made for Longwood, it was
18 made in general.

19 Q. Now, my question that I asked you is what
20 standards established by Associated Estates,
21 what standards were there **by** Associated Estates
22 relating to the selection, training, supervision
23 and administration of guards, that's set forth
24 in paragraph 6 of your Letter of Agreement?

25 A. We were not involved in selection.

1 MR. LENSON: Who is "we" now,
2 sir?

3 THE WITNESS: Associated Estates
4 is not involved in the selection of guards.

5 MR. LENSON: Oh, you're not
6 talking about the security company?

7 THE WITNESS: No, no, guards.
8 Not involved in the selection of guards.

9 We were involved -- we're not -- let
10 me clarify this. Guards, in order to carry
11 weapons, must be certified by the state.
12 We required -- Associated Estates required
13 armed guards at Longwood, So the
14 certification -- in other words, the
15 training has to come from the state, and
16 the recertification each year.

17 Q. Any other standard relating to or established by
18 Associated Estates relating to selection,
19 training, supervision and administration of
20 guards?

21 A. Well, certainly Associated Estates demanded
22 competent consistent supervision, and competent
23 consistent administration of the program.

24 Q. Were the standards referred to in paragraph 6 of
25 the Letter of Agreement, that were established

1 by Associated Estates, in writing?

2 A. I don't recall what the purchase order, that's
3 what their contract is, identifies.

4 Q. So the standards that are referred to in
5 paragraph 6 would be set forth in the purchase
6 agreement between --

7 MR. UTLEY: He said he didn't
8 recall.

9 A. Not necessarily. And the reason -- just let me
10 clarify that -- is because if you carry a
11 weapon, you have to be certified. That's a
12 state requirement, not an Associated Estates
13 requirement.

14 Q. Are there any other standards that you can
15 recall that related to selection, training
16 supervision and administration of guards?

17 A, That Associated Estates established?

18 Q. Yes.

19 A. No.

20 Q. So competent administration, competent
21 supervision and armed certified guards --

22 A. Uh-huh.

23 Q. -- were the only standards that pertained to
24 paragraph 6?

25 A. You know, I expect the guards to make sure

1 they're properly uniformed, review the daily
2 activity reports to make sure they're
3 identifying any discrepancies.

4 All of those types of things are things
5 that I look for in my audits.

6 Q. Did you conduct a continuation evaluation of the
7 guard services of Fox at Longwood?

8 A. Yes, I think I did with all the other agencies.

9 Q. This lawsuit occurred, the incident occurred at
10 Longwood, so I am concerned with what you did at
11 Longwood, if anything.

12 A. I wrote up reports on my evaluations of all
13 guard services, by any contractor,

14 MR. LENSON: Before we go any
15 further, do you have those reports? I
16 didn't find any reports.

17 MS. GERLACK: No, I mean, I'm
18 going to go through this --

19 MR. LENSON: But do you have any
20 reports?

21 MS. GERLACK: I just have the
22 incident reports.

23 MR. LENSON: No, no, his
24 evaluation reports. I have found no
25 reports in these documents.

1 MS. GERLACK: You know what --

2 THE WITNESS: See --

3 MR. UTLEY: There is not a
4 question to you, Craig.

5 MS. GERLACK: Let me -- we'll get
6 to the documents.

7 MR. LENSON: No, no. Mr.
8 Michalski is answering questions about
9 reports, and he wrote up evaluation reports
10 on security guards, companies, and I find
11 no reports.

12 MS. GERLACK: All right. Why
13 don't --

14 MR. UTLEY: Your question to Lisa
15 is if she has them?

16 MS. GERLACK: I don't know,
17 because I don't know what these documents
18 are.

19 MR. LENSON: You haven't gone
20 through them?

21 MS. GERLACK: No} no. I've gone
22 through them, but I wanted him to tell me
23 what they are.

24 MR. LENSON: I understand that,
25 but is there anything you can identify as

1 an evaluation report, because I've not
2 found them.

3 I've found reports in here, but only
4 of incidents.

5 Q. (BY MS. GERLACK) We're going to get to the
6 documents, Mr. Michalski, if you could just take
7 a look at the two files that you provided to me,
8 and if you are able to identify any written
9 evaluation reports that you submitted pursuant
10 to your Letter of Agreement --

11 (Thereupon, a recess was had.)

12 Q. (BY MS. GERLACK) Mr. Michalski, during our
13 break you looked in the two files of documents
14 that you produced to me in response to my
15 subpoenas, and you pulled out a February 9, 1993
16 memo, from yourself to Jerry Spevack, regarding
17 the Longwood security, and then an August, 1990
18 memo to Jerry Spevack, from H. P. Worthington,
19 regarding security at various properties
20 including Longwood.

21 You've indicated that those are evaluations
22 of security, but they're not your own; is that
23 correct, except for the February 9 one?

24 A. That's correct. The February 9 document is
25 mine.

1 Q. And you've also indicated that the evaluations
2 that you would do pursuant to your Letters of
3 Agreement, would pertain to various other
4 Associated Estates properties, in that they
5 might not have been in the Longwood files?

6 A. That's correct,.

7 Q. We are going to be concluding and adjourning
8 your deposition for today and reconvening on
9 Friday. I would ask if you're able to, to take
10 a look at your files, and pull out the
11 situations that pertain to Longwood, during the
12 period of '88 through '92, because there may be
13 things pertaining to other properties. You can
14 do what you like with it in terms of having it
15 reviewed by counsel, but I would ask that you
16 bring the evaluations and anything else that's
17 responsive to the Letters of Agreement, that may
18 be in other files that you haven't produced,.
19 okay?

20 A. Okay.

21 Q. We were talking about the standards established
22 by Associated Estates for evaluating. the
23 selection, training, supervision and
24 administration of guards, is there anything else
25 that you -- any other standards established by

1 Associated Estates, other than what you've
2 mentioned?

3 A. Not that I can recall.

4 Q. To your knowledge, were those standards put in
5 writing?

6 A. I think certain standards are implied, and I
7 don't recall without looking at the purchase
8 order agreement what may have been documented
9 there.

10 Q. Other than the purchase order, are you aware of
11 any other documents that set forth standards
12 established by Associated Estates for security
13 personnel, at its properties?

14 A. I am not.

15 Q. And the only indication you've given me is that
16 the purchase order might possibly set forth what
17 the responsibilities are of the guards?

18 A. Yes. The only other document, counselor, that I
19 had written up, was with the property manager,
20 which outlines some specific duties and
21 responsibilities at that particular property.
22 But it's aside from standards.

23 Q. During the time that you conducted the
24 continuing evaluation of facts, security
25 services at Longwood, if you had noted something

1 that wasn't meeting up to the Associated Estates
2 standards, what would you as the security
3 consultant do, if anything?

4 A. I would discuss that with the manager, the
5 director of operation, and undoubtedly Jerry
6 Spevack.

7 Q. Would you reduce your observations or findings
8 to writing?

9 A. They may or may not have been.

10 Q. Would you do anything else, other than to report
11 it to those individuals?

12 A. I have had discussions with the security
13 companies, with regard to those types of things.

14 Q. Did you have any such conversations with anyone
15 from Fox Detective Agency?

16 A. Yes, I did.

17 Q. Do you recall when you had those discussions?

18 A. No, I do not.

19 Q. Sometime during the period of '88 through '92?

20 A. Yes.

21 Q. Did you keep any documents relating to any
22 meetings you would have had with Fox,
23 representatives of Fox?

24 A. No, unless they're contained within these files.

25 Q. Do you have any recollection of what you

1 discussed, in those meetings with Fox
2 representatives?

3 A. As I recall, it was with regard to certifying of
4 guards, their performance, and supervision.

5 Q. Was there a problem with certification of guards
6 on more than one occasion?

7 A. As I recall, there was.

8 Q. Do you recall any specifics about that issue?

9 A. I do not.

10 Q. Do you recall any specifics about the
11 performance issue that you discussed with a
12 representative of Fox?

13 A. Predominantly, it was with regard to patrol
14 activities.

15 Q. Can you be more specific?

16 A. The specific was I did not want them in the
17 administration building where the dispatching
18 service was, I wanted them out on the property
19 patrolling.

20 Q. Were there any occasions where you observed
21 guards not patrolling the complex, but sitting
22 in the dispatch office?

23 A. Yes.

24 Q. On more than one occasion?

25 A. Yes.

1 Q. Are you able to tell me how many occasions?

2 A. I cannot.

3 Q. More than ten?

4 A. I'm not sure I was at the property that many
5 times.

6 Q. Did anyone else make any complaints to you about
7 that aspects of guard performance at Longwood?

8 A. H. P.

9 MR. LENSON: Object to anything

10 Mr. Worthington said.

11 Q. (BY MS. GERLACK) And how would he make that
12 communication to you?

13 A. Verbally.

14 Q. On how many occasions?

15 MR. UTLEY: At any time from '88
16 to '92?

17 MS. GERLACK: Yes.

18 A. I don't recall.

19 Q. Do you know when performance regarding patrol
20 activities of guards at Longwood first came to
21 your attention, as being a concern?

22 A. No, I do not.

23 Q. Can you point me to any documents that would
24 reveal when that first came to your attention?

25 A. I doubt it very much.

1 Q. What types of incidents led you to discuss
2 supervision with a representative of Fox's?

3 A. Patrol activities, inadequacy of reports, lack
4 of definition of discrepancies.

5 MR. LENSON: Lack of definition
6 of discrepancies?

7 THE WITNESS: Lights being out as
8 a typical example.

9 Q. (BY MS. GERLACK) You mean they wouldn't state
10 an address where the lights were out, they would
11 just say lights out?

12 A. No, they wouldn't say that.

13 Q. What do you mean by that, lack of definition?

14 A. When I go to a property, to do an audit, I never
15 have first contact with the guard, I go out and
16 conduct my own independent audit.

17 Each property is different, so subsequently
18 each audit is different.

19 When I complete the audit, depending on the
20 property, I may sit and watch the guards'
21 activities for a period of time'. But then I
22 always say to the guard, "Let me see your daily
23 activity report. I want to see what you've been
24 doing and I want to see the discrepancies that
25 you've listed."

1 At that point I've already conducted my
2 audit and I compare what I've done and the
3 things that I found, that should be attended to,
4 and I compare that with the guard's daily
5 report. And that tells me basically everything.

6 Q. Were there occasions when you did that at
7 Longwood?

8 A. Yes.

9 Q. Is that what led you to you bringing it to the
10 attention of Fox?

11 A. Yes.

12 Q. When you had those discussions about security
13 issues or concerns that were came to your
14 attention as security consultant, with whom did
15 you speak at Fox?

16 A. Usually Russell, on a couple of occasions he was
17 I think out of the country and I spoke to his --
18 we had meetings with a gal by the name of Peggy.

19 MR. EENSON: Henderson?

20 THE WITNESS: Henderson.

21 Q. (BY MS. GERLACK) Paragraph 6, getting back to
22 the standards, you said that for selection, you
23 referred me to the fact that Associated Estates
24 required armed guards certified by the state of
25 Ohio, right?

1 A (Witnesses nowing heard.)

2 Q Anything else in ter of standards establish'd
3 by AEC, co cerning guard selection?

4 MR. UTLEY: Other than what he
5 already told us, uniform, daily activity
6 reports?

7 Q. (BY MS. GERLACK) Anything else?

8 A No.

9 Q Any standards relating -- establish'd by AEC
10 relating to training of security guards?

11 A No but the state requires the training, for
12 certification.

13 Q So the standards would mirror what the state
14 requires?

15 A Absolutely

16 Q. Supervision?

17 A Constant supervision.

18 Q Did you do anything to ensure that guards were
19 being supervised properly at Longwood?

20 MR. UTLEY: At any time between
21 '88 and '92?

22 MS. GERLACK: Yes. .

23 A Other than those that I've already identified.
24 and talk'd to the security company about
25 providing more supervision. This is a problem

1 with all security agencies.

2 Q. Did you make any --

3 MR. LENSON: What was the last
4 statement?

5 A. This is a problem with all security agencies.

6 MR. UTLEY: I'll object and move
7 to strike as nonresponsive.

8 Q. (BY MS. GERLACK) Did you make any more trips
9 out to the Longwood property, to insure yourself
10 that your instructions were being followed?

11 MR. UTLEY: You mean after he had
12 a meeting, did he follow up that particular
13 comment with a visit?

14 MS. GERLACK: Right.

15 A, No, I did not. No, not immediately.

16 Q. Did you delegate that responsibility to anyone?

17 A. Well, that was part of H. P.'s responsibility.

18 Q. I just want to -- you had told me earlier about
19 meetings that you would have to discuss the lack
20 of supervision with Fox's guards, and that you
21 had discussion with Russell Fox¹ about this, and
22 Jerry Spevack?

23 A. Uh-huh.

24 Q. And others, correct?

25 A. Correct.

1 Q And that as a result of those meetings, you were
2 told that improvements would be made; is that
3 fair?

4 A. That's right, correct.

5 Q Did you direct anyone to follow up, to see if
6 the assurances that were given to you that there
7 would be improvements, were being done?

8 A My conversations then, after that meeting, were
9 with H P Worthington, and many times with the
10 superintendent of the property, whose
11 maintenance person was there. And I asked them
12 to be observant of that type of activity

13 Q Did the --

14 A And likewise asked that the supervisor, who had
15 come to the properties, sign the guard's daily
16 activity chart to show proof of his appearance

17 Was that done at Longwood?

18 Yes, to my knowledge

19 Q After what point in time?

20 A I don't know.

21 Q Did your concerns and the problems relating to
22 lack of supervision and performance improve.

23 stay the same, or get worse, after your meetings
24 with Russell Fox?

25 A It improved for about two weeks

1 Q. And then what happened?

2 A. Fell right back to what it was.

3 Q. What if anything did you do when you noted that
4 nothing was being done?

5 A. Discussed it with management.

6 Q. Did you implement anything else?

7 A. No.

8 Q. Did you delegate any further follow-ups?

9 A. I have no authority whatsoever in Associated
10 Estates.

11 Q. But you're the security consultant, right?

12 A. Correct.

13 Q. So if you note that there are security concerns,
14 needs or problems, under these Letters of
15 Agreement, you're to bring it to the attention
16 of management?

17 A. That's correct.

18 Q. And when you noted after the two week time
19 period that the old problems were recurring, you
20 brought it to the attention of management?

21 A. That's correct.

22 Q. Did you document the fact that you had made a
23 follow-up and that the problems that were noted
24 were not being worked at?

25 A. I do not believe I did, other than a verbal

1 report.

2 (Thereupon the proceedings were
3 adjourned at 4:54 p.m.)
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2 I have read the foregoing transcript of my
3 deposition taken on Tuesday, May 17, 1994, from
4 page 1 to page 126 and note the following
5 corrections:
6

7 PAGE: LINE: CORRECTION: REASON:

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13 Craig Michalski
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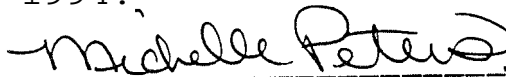
1 THE STATE OF OHIO,)
2 COUNTY OF CUYAHOGA.)

SS:

CERTIFICATE

3 I, Michelle Peters, a notary public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that CRAIG
6 MICHALSKI was by me, before the giving of his
7 deposition, first duly sworn to testify the
8 truth, the whole truth and nothing but the
9 truth; that the deposition as above set forth
10 was reduced to writing by me by means of
11 Stenotype and was subsequently transcribed into
12 typewriting by means of computer-aided
13 transcription under my direction; that said
14 deposition was taken at the time and place
15 aforesaid pursuant to notice and agreement of
16 counsel; and that I am not a relative or
17 attorney of either party or otherwise interested
18 in the event of this action.

19 IN WITNESS WHEREOF, I hereunto set my hand
20 and seal of office at Cleveland, Ohio, this 2nd
21 day of June, 1994.

22 

23 Michelle Peters, RPR, Notary Public
24 Within and for the State of Ohio
848 Terminal Tower
Cleveland, Ohio 44113

25 My commission Expires: March 23, 1998.

June 1, 1994

Craig A. Michalski
31649 Pine Tree Road
Pepper Pike, OH 44124

In re: Lena Foster vs. L.A. Limited Partnership,
et al.,
Cuyahoga Court Common Pleas Court; Case No.
252452

.Dear Mr. Michalski:

The transcript of your deposition taken on 4-25-94 has been prepared and is available for your reading and signing at our office.

Under the Ohio Rules of Civil Procedure, if said deposition is not signed by you within seven days after receipt of notification by you, the same may be used in court and signature shall be deemed waived.

Please call Mizanin Reporting Service at (216) 241-0331 to arrange for a time for the reading of your transcript.

If you choose to read your attorney's copy, please make any changes or corrections on page 125 thereof and sign page 125 before a Notary Public. I would appreciate your returning the original page 125 to my office at the address below. Copies of page 125 will then be distributed among all attorneys.

Very truly yours,

Michelle Peters, RPR, CSR

cc: Lisa Gerlack, Esq.
David Utley, Esq.
Murray Lenson, Esq.

DEPOSITION SUMMARY OF CRAIG MICHALSKI
FOSTER v. L.A. LIMITED PARTNERSHIP
MAY 17, 1994

Vol I of
re: DOC. 314

PAGE	SUBSTANCE
1	Introduction
2	Stipulations
3	Craig Michalski has had his deposition taken before.
4	The other case he was deposed for is a rape case currently pending. The rape took place at Watergate Apartments, which is owned and operated by Associated Estates.
5	Cannot recall the name of the Plaintiff's lawyer in the rape case.
6	Preliminary questions
7	Masters in public management from Case and B.A. in criminal justice from Michigan St. and has taught to police officers and law enforcement agencies.
8	Has been certified as a police officer since 1959 and is certified to carry a firearm.
9	Lectured for the ABA for a number of years.
10	Lectures mainly focus on the topics of administration and management.
11	Has been lecturing in this area for roughly 30 years. Is considered an expert in security.
12	Worked as a private police officer for University Circle Police Department. Cuyahoga County's Coroners Office for 4 years. Assistant Director of the Center for Criminal Justice at Case for 6 years. Chief of Police for University Circle for 8 years. Vice President of operations University Circle for 18 years.
13	Is now self employed. Has consulting business called Security Analysis, Inc.
14	Worked full time for Associated Estates from '88 through '89 as the corporate director of

security.

- 15 **Exhibit 1** id the March 25, 1994 Records
Deposition Notice. **Exhibit 2** is the April 19,
1994 Amended Notice.
- 16 Did not have a written contract. Produced all
of the documents requested in the Notice.
- 17-18 Was hired by Jerry Spevack as corporate
director of security. His job description is
memorialized in the written agreement.
- 19 The names of the directors of operation which
Michalski worked with are William Smoot, Lee
Cohen, James Ingersall, Jim Owens and John
Lapin.
- 20 The manager of Longwood Estates at the time of
the incident was Willy Benson. Has no
previous experience with security at a housing
project.
- 21 Has not hired anyone to assist him in carrying
out his duties pursuant to the letters of
agreement with Longwood Estates. H.P.
Worthington worked for Associated Estates.
- 22 Michalski used Worthington at night because he
is black and would not stand out. Worthington
currently has prostate cancer.
- 23 Worthington was the manager for Associated
Estates for a number of years. Worthington
would write up reports for Spevack's office
who would give them to Michalski. Doesn't
recall anything about security guards punching
other security guards timecards.
- 24 Has been retained by Mr. Utley's law firm to
act as an expert witness for this case.
- 25 Was retained as an expert 3 weeks prior to the
deposition. Was not aware of any facts of
this case until contacted by Mr. Utley. Is
still working for Associated Estates.
- 26 Michalski's first awareness of that Lena
Foster had been raped was when Bill Smoot
advised him that a suit had been filed.
- 27 Has also consulted for Cuyahoga Savings,
Gateway, Southgate Shopping Center and Don
Schofield's co.

28 His billing statements are not itemized as to
how much time he spends at each property.

29 Michalski contacted Jeff Friedman and Jerry
Spevack about doing consulting work for
Associated Estates. He had known the two from
his work at University Circle.

30 Was hired initially at Associated Estates as
the assistant to Jerry Spevack.

31 Was the security consultant for all 90 of
Associated Estates properties. Most of which
are in northeast Ohio. 30 or so are guessed
to be subsidized.

32 Lupica Towers is a high rise located on
Community Blvd. across from Charity Hospital,
which has security guards on the premises.

33 St. Andrews is a tower located at 52nd and St.
Clair and has security on the premises: 1
guard per shift.

34 Lupica Towers also had 1 security guard per
shift. Park Village is a subsidized housing
project located at 92nd and Hough.

35 The Vanguard properties are located on 97th,
101st, 105th and Lamont and is a subsidized
housing project.

36 Associated Estates did not own Vanguard
Properties until recently. Park Lane Villa is
a subsidized housing project located on Park
Lane.

37 Associated Estates did have ownership interest
in Park Lane Villa and University Towers from
'88 to '92, but did not have management
responsibilities.

38 University Towers is a subsidized housing
project located on East Blvd. across from the
VA Hospital.

39 Forest Hills is a subsidized housing project
in East Cleveland managed by Associated
Estates during '88 to '92. Stopped using
security guards for a guide service program.

40 The guide program is that when a guest comes
in they have to identify themselves to the
guide who verify's that information by phone.

41 Rainbow Terrace is a subsidized housing project located on 79th and Kinsman with security guards on the premises from '88 to '92. Besides Fox, Aetna Total Security worked as security at Longwood Estates.

42 Security companies submitted proposals which Michalski and the directors of operation reviewed.

43 Would meet with each security company about their proposals and check each's references.

44 Fox Detective Agency was supplying security for Longwood Estates from '88 to '92.

45 Also took into account costs when choosing a security company.

46 Statesman is located on Van Aken Blvd. Shaker Park is a subsidized housing project in Warrensville Heights that did not have security on the premises.

47 Michalski's agreement pertains to all properties owned or operated by Associated Estates.

48 Did not review any documents to discover the security history at Longwood Estates. Plaintiff's Exhibit 3 marked.

49 Plaintiff's Exhibit 3 is a contract between HUD and **Fox** for the employment of security guards at Longwood Estates.

49-51 Argument as to whether the contract between Longwood and Fox produced in the RPD's is identical to what is being discussed hereafter. The contract is incomplete.

52 Was not aware that at the time prior to Associated Estates' ownership of Longwood that there were more than two security guards on duty per 8 hour shift.

53 Did review crime statistics for the area obtained from the City of Cleveland.

54 Only reviewed the crime statistics for the Longwood address and not for the surrounding area. Did this for the allocation of personnel.

- 55 Fox was the security company when Associated Estates purchased Longwood and continued as the security there.
- 56 Interacted with the security guards on the premises 3 times per year.
- 57 This interaction consisted of monitoring the dispatching operation and the radio calls. Deployment of the security guards took into account comments by the management, maintenance personnel, and day of the week and time of the year.
- 58 When asked if 2 guards were enough to patrol the 31 acres, replied "it's not a matter of numbers of personnel. It's a matter of quality of performance." Michalski recommended that 2 additional guards were needed during the summer months between 6 p.m. and 2 a.m.
- 59 Believes that the recommendation for additional security was implemented, but does not know when.
- 60 Russell Fox also made suggestions to add additional security personnel.
- 61 Does not recall when he made the recommendation to add additional security guards during the warm months.
- 62 Michalski's opinion on what "quality of performance" means per 2 man shift.
- 63 **The security guards on Longwood Estates were not patrolling the grounds to Michalski's satisfaction. Believes the guards were poorly selected and trained. Some of the guards were not certified. Supervision was poor.**
- 64 Factors leading to his lack of satisfaction were overall lack of performance, poorly written activity reports and guard working double/ 16 hour shifts.
- 65 Learned that guards were going into tenants apartments instead of patrolling the complex.
- 66 Had meetings with management and H.P. Worthington about the poor supervision of Fox security guards.

- 67 Does not remember the substance of the meeting. Had never reviewed the personnel files of the security guards.
- 68 Michalski Deposition Exhibits 4-7, which are the '89, '90, '92 and '93 Letters of Agreement, respectively. The duties under each letter of agreement were the same. The letters of agreement were drafted by Spevack and Michalski.
- 69 In drafting the letters of agreement Michalski relied only upon his own experience. Did not consult any outside sources.
- 70 In 1989 upper management met to analyze security for all of their property. Does not know if there is a copy of the report.
- 71 The security meeting resulted in Michalski's letters of agreement as to what his duties are.
- 72 Did not complete the three yearly unannounced audits because he ran out of hours.
- 73 Evaluating a security guards performance was done by shadowing the guard or reviewing his written reports. At Longwood, Michalski would normally just review the written reports. He would look for discrepancies between incidents that occurred and the guards reports, thoroughness and a list of patrol activities. **Michalski believed the guards written evaluations were poor.**
- 74 The guards daily activity reports were poor.
- 75 Meet with Russell Fox and Bill Smoot regarding the poor security guard performance and general lack of supervision of the guards and they guaranteed that performance would improve and there would be more frequent mobile supervision by Fox.
- 76 There was no specific course of action decided to improve security they just left it that security would improve.
- 77 Did document the audits of the security guards.
- 78 Jerry Spevack determined how the 480 hours were spent. The 480 hours covered all of the

properties.

- 79 There were no minutes kept of any of these meetings. Does not recall discussing any security needs specifically for Longwood.
- 80 The three meetings usually concerned his security audits.
- 81 Does not recall having security meetings to discuss any specific property.
- 82 Does not recall specifically discussing Longwood Estates at any of the security meetings.
- 83 The meetings did result in changes, one being shift changes: reduced personnel from 7:00 am to **3:00** pm and increased personnel at night.
- 84 The guards were delivering eviction letters and opening **up** lockouts during the day which could be handled by staff personnel.
- 85 From these meetings learned from the Manager and Assistant manager that the guards were spending too much time in the administration building.
- 86 The security guard office or dispatch office had one phone with multiple lines. The maintenance man on call also shared the office.
- 87 There was a special number to call for security. Does not know if or how the tenants had that number.
- 88 Reduced the number of daytime guards to 1 and added a third guard during evening hours.
- 89 Does not know how many guards worked at Longwood Estates.
- 90 Associated Estates had the authority to terminate a Fox security guard who was not performing in a satisfactory manner. Does not know if this was ever done.
- 91 There would be no other documentation other than the audits to verify that a security meeting occurred.
- 92 The directors of operations would be at these

meetings.

- 93 Any recommendations made about security of Longwood is in the file. Did not rate the business manager and the resident manager for their involvement in security as per paragraph 4 of the letters of agreement.
- 94 Did not believe that rating managers was part of his agreement. Did not perform any building security evaluations for Longwood, because the security was designed for the common areas and not for internal security.
- 95 Michalski does not believe it to be a security threat to have the building entrances freely accessible. Nobody ever examined the architecture of the buildings for security purposes.
- 96 Did turn in a formalized written report to the directors and Jerry Spevack every year as per the letters of agreement. This is in the documents produced.
- 97 At the next audit would sometimes follow up to see if his suggestions had been implemented. Does not recall making any suggestions about security at Longwood Estates prior to the incident.
- 98 Discussion of the Morse Watch Tour System.
- 99 Does not recall recommending the Morse Watch Tower System.
- 100-101 The purpose of the Morse Watch Tower System was to manage the guards to make sure they are patrolling.
- 102 Does not know if he ever recommended the Tower Watch system. Other Associated Estates properties were using the Morse Tower Watch System: Americana College Towers and Helly Park in Kent, Abbington Arms in University Circle and Euclid Villa, Winchester and Portage Towers are some.
- 103 Michalski recommended the use of the Tower system at those properties to ensure constant patrolling. Recommended the towers be used because those properties were only one person patrols.

- 104 Longwood Estates is one of the largest properties acreage wise owned by Associated Estates. There are roughly 78 buildings and 821 apartment units.
- 105 Longwood Estates is the largest apartment complex owned by Associated Estates acreage wise, but not unit wise.
- 106 Gates Mills Towers in Mayfield Hts. is the largest unit wise with approximately 1100 units. This property only has one guard per shift.
- 106-107 Suggested a guard selection process, but Associated Estates legal department did not let him implement it. Associated Estates was not involved in the selection of guards.
- 108 Associated Estates required armed guards at Longwood. To be an armed guard the certification and training came from the state and they had to be recertified every year.
- 109 No additional standards that Associated Estates required for the guards.
- 110 Also required the guards to be uniformed and make competent reports.
- 111 Discussion of documents
- 112 A Feb. 9, 1993 memo from Michalski to Jerry Spevack and an Aug. 1990 memo to Jerry Spevack from H.P. Worthington.
- 113 Michalski asked to pull all of the evaluations pursuant to Longwood for the next meeting.
- 114 Any standards established by Associated Estates are implied or might be expressed in the purchase order.
- 115 Did not keep any documents relating to any meetings with Fox.
- 116 Michalski's discussions with Fox were about the certification of security guards and patrol activities. One more than one occasion Michalski observed the guards sitting in the guard house and not patrolling.
- 117 Does not know how many times he observed this.

118 The discussions were about inadequate reports
and discrepancies in the reports.

119 Usually met with Russell, but occasionally met
with Peggy.

120 The standards were that of the state in terms
of certification and constant supervision.

121 Did not make any trips out to Longwood Estates
to make sure his instructions were being
followed. Delegated that authority to H.P.

122-123 After the meetings with Fox security improved
for about two weeks and then returned back to
what it was before. Michalski reported this
to Associated Estates. this report was a
verbal report.

124 Deposition adjourned.