

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

IN THE COURT OF COMMON PLEAS

LENA FOSTER,)
)
Plaintiff,)
)
v.) Case No. 252452
)
L.A. LIMITED PARTNERSHIP,)
et al.,)
)
Defendants.)

VOL. II
8
DOC. 314

SCANNED
6/12/02

VOLUME II

Continued 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 Friday, the 20th day of May, 1994, commencing at 9:00 a.m., pursuant to notice and agreement of counsel.



MIZANIN REPORTING SERVICE, INC.
COMPUTERIZED TRANSCRIPTION

DEPOSITIONS • ARBITRATIONS • COURT HEARINGS • CONVENTIONS • MEETINGS

848 TERMINAL TOWER • CLEVELAND, OHIO 44113 • (216) 241-0331 • FAX: (216) 241-8044

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 STIPULATIONS

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

1 A. As I think I noted the other day, along with a
2 requirement that was established by the State
3 with armed guards, it was a responsibility of
4 the security company to comply with all those
5 standards.

6 Q. Anything else?

7 A. Predominantly on the other areas of supervision,
8 that information was principally provided by H.
9 P. Worthington, staff of the facility, and very
10 occasionally by myself.

11 Q. Did H. P. Worthington and the staff of the
12 facility -- Longwood in this case -- report
13 their findings to you, regarding this
14 supervision of Fox security guards on the
15 premises?

16 A. Sometimes they did, yes.

17 Q. Do you recall any of those occasions, what was
18 brought to your attention?

19 MR. LENSON: Objection, hearsay.

20 MR. UTLEY: Go ahead.

21 A. Discussions in meetings that we had.

22 Q. And those would be the meetings that you
23 conducted pursuant to the agreement?

24 A. Yes. Well, it's part of my total consulting
25 responsibility.

1 Q. Do you recall any specifics of findings that
2 were reported to you, as a security consultant
3 for AEC, by H. P. Worthington?

4 A. Principally, as I recall, it was with regard to
5 supervision of the guards.

6 Q. Do you recall any specifics of what findings H.
7 P. apprised you of, as the security consultant?

8 A. He apprised me of the fact that --

9 MR. UTLEY: Excuse me sir, I'll
10 object to the question and ask that the
11 answer be stricken as hearsay.

12 A. He apprised me of the fact that supervision had
13 to be improved.

14 Q. Did he cite any specific instances of conduct by
15 Fox security guards that led to that conclusion?

16 MR. UTLEY: Prior to July 17,
17 1992?

18 Q. (BY MS. GERLACK) For all of my questions,
19 unless I indicate otherwise, I'm referring to
20 1988 through 1992?

21 A. That he found the guards in the administration
22 building.

23 MR. LENSON: Ask that the
24 answer be stricken.

25 Q. (BY MS. GERLACK) When H. P. Worthington would

1 report those incidents, factual incidents to you
2 that he observed pursuant to his employment or
3 relationship with Associated Estates, was that a
4 routine course of communication that you had
5 with him?

6 A. Yes, it was.

7 Q. What is your understanding of H. P.
8 Worthington's role with Associated Estates?

9 MR. LENSON: I'm going to object
10 to the question as to his understanding.
11 That's not relevant.

12 MR. UTLEY: I'll join the
13 objection.

14 Q. (BY MS. GERLACK) I'm sorry. Do you know why H.
15 P. Worthington was working for Associated
16 Estates?

17 A. Yes.

18 Q. Why?

19 A. H. P. had the responsibility of conducting
20 nighttime audits, night season audits, if you
21 will, at a number of AEC properties.

22 Q. Did one of those properties include Longwood?

23 A. One of the properties was Longwood.

24 Q. Did you as the security consultant for
25 Associated Estates rely on H. P. Worthington's

1 reporting to you of his factual observations in
2 the course of his duties?

3 A. It was a function of my job, and that of
4 management.

5 Q. Are there any other specific instances of guard
6 conduct that were reported to you by Mr.
7 Worthington?

8 A. On Longwood?

9 Q. Yes.

10 A. I don't recall at this time.

11 Q. Were there any specific incidents of guard
12 conduct that were brought to your attention by
13 the staff of the Longwood facility?

14 A. Many times when these discussions were
15 conducted, they were always -- in fact I would
16 say the majority of the time they were discussed
17 within the same meeting, management personnel of
18 AEC.

19 Q. As security consultant for Associated Estates,
20 when a complaint regarding guard service or a
21 finding regarding lack of supervision, as you
22 indicated, would come to your attention, what
23 would you do?

24 A. The normal process is that we would normally
25 meet with the owner of the guard company.

1 Q. Who is "we"?

2 A. The director of operations, perhaps H. P., the
3 managers of the respective properties, and
4 myself.

5 Q. Do you know when H. P. Worthington told you that
6 supervision was a problem with the guard force
7 at Longwood?

8 A. No, I don't recall.

9 Q. Do you recall if it was before 1992?

10 MR. UTLEY: I'll object. Go
11 ahead.

12 A. I would presume it was, yes.

13 MR. LENSON: I'll object.

14 MR. UTLEY: I object, move to
15 strike.

16 We're not interested in your
17 presumptions, Mr. Michalski, we're
18 interested in what you can recall and what
19 you observed.

20 Q. (BY MS. GERLACK) When H. P. Worthington told
21 you that there was a concern over the
22 supervision of the guard force at Longwood, did
23 you bring that to the attention of management at
24 Associated Estates?

25 MR. UTLEY: I'll object.

1 A. Yes.

2 Q. On how many occasions?

3 A. I don't recall.

4 Q. Do you recall if you brought that to the
5 attention of management by way of a written
6 memorandum or orally, or both?

7 A. I know it was oral, and I don't recall whether
8 it was in writing or not.

9 Q. Do you recall to whom you reported these
10 findings?

11 A. Ronald -- Ron Walker.

12 Q. Who is Ron Walker?

13 A. He was the Director of Operations at that time,
14 I believe.

15 Q. For Longwood or Associated Estates?

16 A. For Associated Estates.

17 Q. Did you ever report any of these findings to
18 Jerry Spevack?

19 A. All the findings were certainly discussed, on
20 all properties, with Mr. Spevack.

21 Q. Did you have an obligation, under your Letter of
22 Agreement, that if you found a problem or
23 concern regarding security at Longwood, to
24 report it to management?

25 MR. UTLEY: I'll object, the

1 document speaks for itself.

2 Go ahead.

3 A. I felt this was my obligation under my contract.

4 Q. Did you bring -- let me backup for a minute.

5 You indicated that regarding your
6 obligation under the contract to evaluate the
7 selection, training, supervision and
8 administration of guards at an AEC property, you
9 would rely on findings by H. P. Worthington,
10 staff at the particular facility, and sometimes
11 your own observations; is that correct?

12 A. That's correct.

13 Q. What if any observations did you make concerning
14 any of those areas, regarding the guard force at
15 Longwood?

16 MR. UTLEY: I'll object, asked
17 and answered two days ago.

18 Go ahead.

19 A. It's been documented.

20 Q. In the files that you produced?

21 A. In the files.

22 Q. Did you report your findings to management at
23 Associated Estates?

24 A. Yes, that was discussed.

25 Q. And did you also speak to Russell Fox,

1 concerning your findings?

2 A. We had subsequent meetings with Russell Fox.

3 Q. Do you recall during what time period?

4 A. I don't.

5 Q. These were the meetings that we discussed in our
6 last session?

7 A. That's correct.

8 Q. Did you recommend any course of action to AEC,
9 when you learned of problems regarding the
10 supervision of the guard force at Longwood?

11 A. I recommended that we sit down and discuss these
12 problems with Fox Detective Agency.

13 Q. Was that done?

14 A. Yes, it was.

15 Q. On how many occasions?

16 A. I don't recall.

17 MR. UTLEY: Objection.

18 Q. (BY MS. GERLACK) Did the problem correct
19 itself?

20 A. Yes.

21 Q. Did it ever turn into a problem again?

22 MR. UTLEY: Objection.

23 Go ahead.

24 A. Yes.

25 Q. What did you do the next time that it became a

1 problem?

2 A. Met again.

3 Q. And what was determined as a result of that
4 meeting?

5 A. That supervision would be improved.

6 Q. And who was present at that meeting?

7 A. As I recall Mr. Fox.

8 Q. Anyone from management at Associated Estates?

9 A. Yes.

10 Q. Who?

11 A. I don't recall.

12 Q. You were told that security would improve, as a
13 result of that second discussion?

14 MR. UTLEY: I'll object, it's
15 mischaracterization of your questioning and
16 his answers. He's indicated that
17 supervision was the problem.

18 Q. (BY MS. GERLACK) Were there any other problems
19 with Fox guards on the property, other than
20 supervision, that you observed or were brought
21 to your attention?

22 A. The only other problem that I recall was
23 certification.

24 Q. Do you recall any specifics about that
25 particular problem?

1 A. I do not.

2 Q. Do you know when, during what time period, that
3 problem was brought to your attention?

4 A. I do not.

5 Q. Did you document that particular problem?

6 A. I do not recall.

7 Q. On how many occasions did you meet with Russell
8 Fox concerning the supervision problem at
9 Longwood?

10 A. I do not remember how many times.

11 Q. Do you recall if everytime that you had a
12 meeting with him, the resolution of the meeting
13 at that time was that security would improve?

14 MR. LENSON: Objection.

15 MR. UTLEY: I'll join the
16 objection.

17 Go ahead.

18 MR. LENSON: The only issue that
19 was discussed was supervision, not
20 securities.

21 MR. UTLEY: If you recall.

22 Q. (BY MS. GERLACK) The purpose of the meeting was
23 to discuss the supervision problem regarding the
24 guard services, correct?

25 A. That's correct.

1 Q. That's what I mean. Was anything other than
2 supervision will improve discussed?

3 A. Not that I can recall.

4 Q. Did you relate any other courses of action, as a
5 security consultant for Associated Estates, to
6 improve the supervision problem with guards --

7 MR. UTLEY: Ever?

8 Q. (BY MS. GERLACK) -- with Fox's guard service,
9 during the time period in question?

10 MR. UTLEY: '88 to July 17, 1992?

11 A. I don't recall.

12 Let --

13 MR. UTLEY: There is no question.

14 Q. (BY MS. GERLACK) You reviewed the security
15 contracts between Fox and Associated Estates
16 every year; is that correct?

17 A. I reviewed the proposals.

18 Q. And you testified on Tuesday that you would make
19 recommendations concerning the hiring of that
20 particular guard service for the next year; is
21 that correct?

22 A. I made recommendations predicated on the
23 proposals that we received.

24 Q. And did those recommendations relate to the
25 performance of the guards?

1 MR. UTLEY: I'll object.

2 Go ahead.

3 A. Performance of the company, if you will, not
4 individual guards.

5 Q. And during the period of 1988 through 1992, Fox
6 had consecutive contracts with Associated
7 Estates, correct?

8 MR. UTLEY: I'll object.

9 MR. LENSON: What years, Lisa?

10 MS. GERLACK: 1988 through 1992.

11 MR. LENSON: Objection, that's
12 incorrect.

13 MR. UTLEY: That's not true.

14 A. I don't know.

15 Q. You don't know?

16 A. I don't know.

17 Q. When you would review the security proposals
18 that Fox submitted to Associated Estates, did
19 you ever discuss the supervision problem with
20 any management employees at that time?"

21 A. I believe I did.

22 Q. With whom?

23 A. I don't recall the dates of changes in
24 management personnel, Ron Walker was a Director
25 of Operations for a period of time, then Bill

1 Smoot assumed his responsibility. So, for me to
2 be able to identify when, I can't, and with
3 whom, because of those dates.

4 Q. Is Mr. Walker still working as the Director of
5 Operations?

6 A. No.

7 Q. When did he stop working for Associated Estates?

8 A. I don't know.

9 (Plaintiff's Exhibit 8 marked for
10 identification.)

11 Q. (BY MS. GERLACK) You've been handed what's
12 been marked as Plaintiff's Exhibit 8 for
13 identification. Have you ever seen that
14 document before?

15 A. I don't recall seeing this.

16 Q. You've reviewed the contents of that document?

17 A. Yes.

18 Q. Could you identify it just for the sake of the
19 record?

20 MR. UTLEY: Well, I object, he's
21 never seen that document. It speaks for
22 itself.

23 MR. LENSON: The document speaks
24 for itself.

25 Q. (BY MS. GERLACK) You've never seen that before

1 today?

2 A. I don't recall seeing this one.

3 Q. The contents of that document deal with the
4 recommendation by Fox, regarding the provision
5 of additional security for Longwood.

6 Do you recall during the term of '88
7 through '92, when you were acting as security
8 consultant, if this proposal or the contents
9 thereof -- even if you didn't see the
10 document -- were ever brought to your attention?

11 A. I don't remember.

12 Q. If that document had been brought to your
13 attention, would you have put it in your file
14 for Longwood?

15 A. I'm sure I would have.

16 Q. Paragraph 7 of the Letter of Agreement deals
17 with the arrangement of two security seminars
18 during the year. And it indicates that the
19 subject material and the attendees would be
20 established before each program. Did you
21 conduct two security seminars per year?

22 A. Every year.

23 Q. Are you able to tell me -- did you document when
24 you held those seminars?

25 A. I presume that I did, in my training file.

1 Q. Were these security seminars for all Associated
2 Estates' properties?

3 A. Let me clarify this. These security seminars
4 that I held were strictly for Associated
5 Estates' personnel, managers and
6 administration.

7 Q. Did any management employees from Longwood
8 attend?

9 A. Yes, they did.

10 Q. And what materials were discussed in these
11 seminars? Was it a different seminar each time?

12 A. Different seminars. One seminar was on -- as a
13 typical example, and I don't recall all of them,
14 one was on drugs, another one was on gangs,
15 graffiti, et cetera, another was on juvenile
16 delinquency, another one was on security issues
17 of all kinds, with regard to lighting and
18 landscaping and lots and those types of things.

19 Q. And you conducted two seminars every year from
20 1988 through -- 1989 through 1992?

21 A. 1990, that was the first year of my contract.

22 Q. Did you conduct any prior to 1990?

23 A. Not that I recall.

24 Q. In the files, and we will go through those
25 documents, but my review of the materials that

1 you provided to me did not reveal any documents
2 that appeared that they related to any
3 seminars. Do you have any documentation that
4 relates to the topics that were covered and the
5 dates of these seminars?

6 A. I would certainly have some of them in my
7 training file for Associated Estates.

8 Q. I would ask that you conduct a search for those
9 documents and produce them, okay?

10 A. Okay.

11 Q. What was the purpose of these security seminars?

12 A. Keep management abreast of security issues, of
13 problems that exist in our society and current
14 developments in security, law enforcement,
15 criminal justice field, if you will.

16 Q. How long were the seminars?

17 A. Probably didn't exceed two hours.

18 Q. Where were they conducted?

19 A. Gates Mills Towers, Watergate, Crown Center,
20 AEC. We held them at various locations.

21 Q. Who presented the topics at the seminar?

22 A. I did, and/or a guest that I brought in. I
23 developed them.

24 Q. Do you recall any of guest speakers that you had
25 at the seminars?

1 A. Michael Walker.

2 Q. Who is Michael Walker?

3 A. Michael is head of the drug enforcement?

4 Q. You have to answer by your own knowledge.

5 A. I don't know.

6 Q. Any other guest speakers that you can recall?

7 A. Cleveland Police Department, Euclid Police
8 Department.

9 Q. Do you recall the spokespersons from those two
10 entities?

11 A. No, I don't recall.

12 Q. Were there sign-in sheets at the seminar?

13 A. Normally there are.

14 Q. Do you know who would have custody of those
15 sign-in sheets?

16 A. I do not.

17 Q. Did you distribute any materials in connection
18 with these seminars?

19 A. There were some materials distributed.

20 Q. Do you have copies of the materials that were
21 distributed?

22 A. I may.

23 Q. Would you also conduct a search for those
24 documents?

25 A. Yes, I will.

1 Q. Did you make any recommendations to the managers
2 of these various properties at these seminars on
3 how to deal with security issues?

4 MR. UTLEY: I'll object.

5 Go ahead.

6 A. We talked in a general sense about
7 representations, and some specifics.

8 Q. The owners of the guard companies that provided
9 service to Longwood were not invited to attend
10 these seminars?

11 A. We had one seminar, as I recall, at Gates Mills,
12 that all of the owners and managers, if you
13 will, of all the security companies attended
14 that meeting, with all the business managers and
15 managers of Associated Estates.

16 Q. Paragraph 8 of the Letter of Agreement,
17 indicates that you would act as a liaison
18 between Associated Estates and respective
19 municipal police and fire departments?

20 A. That's correct.

21 Q. What did you do in connection with that
22 responsibility?

23 MR. UTLEY: I'll object, it
24 indicates as requested for purposes of
25 clarification.

1 Q. (BY MS. GERLACK) It does say as requested?

2 A. Yes.

3 Q. Were you ever requested to act as a liaison
4 between the fire department and police
5 departments?

6 A. Yes.

7 Q. On how many occasions during that time period?

8 A. I can't recall.

9 Q. How did you go about performing that duty under
10 the agreement?

11 A. Well, there are probably about 35 different
12 public safety forces involved, because of
13 locations of Associated Estates properties.

14 Q. Let me narrow it down. Were you ever requested
15 to act as a liaison with municipal police and
16 fire departments for Longwood?

17 A. Yes, with the Third District.

18 Q. Did you deal with any particular individuals
19 from the Third District in connection with that
20 request?

21 A. Primarily the commander.

22 Q. Who was?

23 A. The current one is Martin Flask.

24 MR. UTLEY: We're speaking
25 between '88, July 17 of '92?

1 A. Then I can't answer that, because I don't know
2 who was commander at that time.

3 Q. Did you document your meetings with the Third
4 District?

5 A. Not that I recall, no.

6 Q. And what would your meetings with the Third
7 District entail?

8 A. Predominantly patrol coverage and response time.

9 Q. Anything else?

10 A. The only other thing that I can recall was drug
11 problems.

12 Q. Were drug problems prevalent on the Longwood
13 premises?

14 MR. UTLEY: Objection.

15 A. There were drug problems.

16 Q. Did you review any crime statistics to apprise
17 yourself of the frequency of drug arrests on the
18 premises?

19 A. I did not.

20 Q. What did you discuss in connection with the drug
21 problems and police reinforcement on the
22 premises?

23 MR. UTLEY: Objection.

24 A. When we, management of the property, became
25 aware of some suspected drug activities, that

1 information was passed along to the Cleveland
2 Police Department.

3 Q. Did you ever ask Russell Fox or any other head
4 of the security company that was providing
5 security services to Longwood, to attend those
6 meetings with you?

7 A. I don't recall.

8 Q. You indicated that if a suspected drug problem
9 was noted on the premises, that you would bring
10 it to the attention of the police departments?

11 A. That's correct.

12 Q. Did you also inform security guards working on
13 the premises of the suspected problems?

14 A. Yes, we did, to my knowledge.

15 Q. How did you do that?

16 MR. LENSON: Objection.

17 You said "we" and I'd like to know who "we"
18 is.

19 THE WITNESS: Management.

20 MR. LENSON: Objection, ask that
21 the answer be stricken.

22 Q. (BY MS. GERLACK) Are you able to give any -- do
23 you know who in management apprised the guard
24 services if there were suspected drug problems
25 on the premises?

1 MR. UTLEY: Lisa, this isn't a
2 case about drugs.

3 Go ahead.

4 A. I don't know.

5 MR. LENSON: Ask that that entire
6 line of questioning and answers be
7 stricken.

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

10 Q. (BY MS. GERLACK) Did you personally advise any
11 guards working on the premises, or Russell Fox,
12 of any suspected drug problems on the premises?

13 MR. LENSON: I'm going to object
14 Lisa, that's two questions.

15 Q. (BY MS. GERLACK) I'll break it down.

16 Did you ever tell any guards working on the
17 premises of suspected drug problems?

18 A. No.

19 Q. Did you ever use any means of information to
20 notify the guard service that there was
21 suspected drug problems on the premises?

22 MR. UTLEY: You personally.

23 A. I don't recall. I don't believe so.

24 Q. Did anyone acting on your behalf ever notify the
25 guard services?

1 MR. LENSON: Objection.

2 You may answer.

3 A. No.

4 Q. Did you yourself ever apprise Russell Fox of any
5 suspected drug problems on the premises?

6 MR. UTLEY: Objection, asked and
7 answered.

8 Go ahead.

9 A. No.

10 Q. Was it ever brought to your attention that
11 management apprised guards working on the
12 premises of any suspected drug problems at
13 Longwood?

14 MR. LENSON: Objection.

15 MR. UTLEY: Go ahead.

16 A. Yes.

17 Q. Do you know when?

18 A. No.

19 Q. Do you know if it was before 1992?

20 A. I do not.

21 Q. What do you recall?

22 MR. UTLEY: Objection.

23 MR. LENSON: Objection.

24 MR. UTLEY: I'll object, go

25 ahead.

1 A. I think my material will identify that when
2 there was suspected drug activity, all we asked
3 from the guard company, as we would in any
4 property, was to give that area special
5 attention.

6 MR. LENSON: Ask that the answer
7 be stricken.

8 Q. (BY MS. GERLACK) Do you know any areas in the
9 Longwood premises where drug problems occurred
10 more frequently?

11 MR. UTLEY: I'll object. Go
12 ahead.

13 A. I do not.

14 MR. LENSON: I don't quite
15 frankly see the relevance of this. I think
16 you're getting off on a tangent now, and I
17 think it's really irrelevant to this case.

18 MS. GERLACK: Well I'm
19 entitled to ask my questions.

20 MR. LENSON: It's not my
21 witness.

22 MS. GERLACK: You can make
23 an objection however you see fit.

24 MR. UTLEY: Let's see where
25 this goes.

1 Q. (BY MS. GERLACK) Paragraph 9 of the Letter of
2 Agreement says you would respond to serious
3 incidents that occurred on the Associated
4 Estates property, which would include
5 burglaries, assaults and rapes, when requested
6 by the operations directors. Did you ever
7 respond to any serious incidents at the Longwood
8 property?

9 MR. UTLEY: Between '88 and July
10 17, 1992.

11 A. As I recall, one.

12 Q. When was that occasion?

13 MR. UTLEY: I'll object. Go
14 ahead.

15 A. That was a shooting that occurred, in the
16 playground/pool area on public city property.

17 MR. UTLEY: I'll object, ask the
18 answer be stricken. It's another
19 property.

20 Q. (BY MS. GERLACK) Who requested you to respond
21 to this incident?

22 A. Management.

23 Q. Do you know who in management?

24 A. I don't recall.

25 Q. And you conducted an investigation into that

1 incident?

2 A. Yes, I did.

3 Q. I believe you have a document in your file
4 related to that?

5 A. I do.

6 Q. We'll get into that later.

7 Were you ever requested by the operations
8 director to respond to the rape of Lena Foster
9 on July 17, 1992?

10 A. I was not.

11 Q. Paragraph 10 relates that you would meet with
12 building residents and resident counsel to
13 discuss security and safety issues when
14 requested. Did you ever do that at Longwood?

15 A. Yes, I did.

16 Q. On how many occasions?

17 A. Perhaps two or three.

18 Q. Do you recall during what time frame?

19 A. I do not.

20 Q. Was there a resident counsel at
21 Longwood?

22 A. I believe that's what they were referred to. I
23 meet with so many building property tenant
24 groups.

25 Q. Do you know who was in charge of the resident

1 counsel at Longwood?

2 A. I don't recall.

3 Q. Do you recall how you would bring these meetings
4 together?

5 A. Management would schedule them.

6 Q. And how would the tenants be notified of the
7 meeting; if you know?

8 MR. UTLEY: If you know.

9 A. There was a circulation of some type of written
10 document.

11 Q. Was management present during these meetings?

12 A. Yes.

13 Q. Who from management?

14 MR. LENSON: You mean at
15 Longwood?

16 MS. GERLACK: At Longwood.

17 A. Director of operations, the manager, as far as
18 Associated Estates is concerned.

19 Q. Was Bill Smoot ever present?

20 A. Yes.

21 Q. Was Russell Fox ever present?

22 A. I don't recall.

23 Q. Was there a sign-in sheet for these meetings?

24 A. I don't know.

25 Q. Did you take any notes during these meetings?

1 A. I did not.

2 Q. Do you know if anyone on behalf of Associated
3 Estates maintained any minutes or any type of
4 documentation concerning any complaints that
5 were raised by residents?

6 MR. UTLEY: Objection, that
7 assumes there were complaints.

8 Go ahead.

9 A. I don't know.

10 Q. Were there complaints about security raised by
11 residents at these meetings?

12 MR. UTLEY: At Longwood?

13 MS. GERLACK: Yes.

14 MR. UTLEY: Objection.

15 Go ahead.

16 MR. LENSON: If you know.

17 A. I don't recall. I don't recall. I just --

18 Q. Do you know how management decided when to have
19 these meetings, or what prompted the calling of
20 the meetings?

21 MR. UTLEY: I'll object.

22 Go ahead.

23 A. I do not.

24 Q. So you had two to three of these meetings and
25 you're not able to tell me any substance of the

1 conversation at these meetings?

2 MR. UTLEY: He already testified
3 he goes to tenant meetings with 90
4 different buildings. I'll object.

5 Go ahead.

6 A. Also present in these meetings --

7 MR. UTLEY: The question was, are
8 you able to tell Ms. Gerlack the content of
9 the meetings?

10 A. Yes, to a degree.

11 Q. Why don't you tell me what you're able to
12 recall?

13 A. At these meetings was the local councilmen.

14 Q. Do you know who that was at the time?

15 A. Yes, Frank Jackson, representative usually from
16 the Safety Director's Office, Third District,
17 and perhaps someone from a specialized bureau
18 such as the Narcotics Bureau.

19 Issues, as I recall, that were discussed in
20 the one meeting was with regard to drugs on the
21 property, and the concerns that the tenants had
22 with regard to their -- that type of activity
23 taking place, and they were mothers of children
24 and et cetera.

25 Q. Was any course of action taken as a result of

1 those concerns?

2 MR. UTLEY: Objection.

3 Go ahead.

4 A. I cannot answer that from the standpoint of a
5 direct response to that. It was certainly a
6 familiarization meeting and an awareness meeting
7 of making those officials that were present
8 aware of the concerns of the tenants.

9 Q. Was any representative on behalf of Fox Security
10 invited to attend that meeting?

11 MR. UTLEY: I'll object.

12 Go ahead.

13 A. I don't recall.

14 Q. Any other security or safety issues that you
15 recall that were discussed at these two to three
16 meetings?

17 A. I do not.

18 Q. Are you able to point me to any documents, where
19 I would find any documents if I wanted to know
20 what was discussed at that meeting?

21 A. Unfortunately, I cannot.

22 Q. Did you have any follow-up meetings with
23 management at Associated Estates concerning the
24 discussions at these resident counsel meetings?

25 MR. UTLEY: Objection.

1 Go ahead.

2 A. Normally not.

3 Q. As a result of the security and safety issues
4 that were discussed at these resident counsel
5 meetings, did you as the security consultant for
6 Associated Estates make any recommendations on
7 how to --

8 MR. UTLEY: Objection.

9 Q. (BY MS. GERLACK) -- deal with the problem?

10 MR. UTLEY: Objection.

11 A. Not that I recall.

12 Q. You don't recall who was in charge of the
13 residential counsel at Longwood?

14 A. I do not.

15 Q. Do you know if there are ones that are still in
16 existence today?

17 A. I don't know.

18 Q. Where were these meetings held?

19 A. In the community room in the main administration
20 building.

21 Q. Did anyone assist you in the execution of your
22 duties under your agreement with Associated
23 Estates?

24 A. No one.

25 Q. And you were paid \$2,500 a month or \$30,000 per

1 year under the agreement?

2 MR. UTLEY: Objection.

3 Go ahead.

4 The document speaks for itself.

5 A. Yes.

6 Q. Did you track the hours that you worked for
7 Associated Estates?

8 A. Yes.

9 Q. With whom did you interact most frequently from
10 Associated Estates with respect to the Longwood
11 property?

12 A. Director of Operations.

13 Q. Who was?

14 A. Either Ron Walker and/or Bill Smoot, not knowing
15 when that administrative change was made.

16 Q. Did you have any dealings with Mr. Benson?

17 A. Yes.

18 Q. In what context?

19 A. As the manager of a property.

20 Q. He's the manager for Longwood?

21 A. He is today.

22 Q. Was he during the time period?

23 A. I don't recall.

24 Q. Are you still working for Associated Estates as
25 a security consultant?

1 A. Yes, I am.

2 Q. Did you ever have any interaction with the
3 custodial staff at Longwood?

4 A. Define "interaction".

5 Q. Any dealings in connection with your duties and
6 responsibilities as the security consultant?

7 A. On occasion.

8 Q. And what would bring about those meetings?

9 A. There wasn't a meeting per se, I might have
10 discussed --

11 MR. UTLEY: I'll object.

12 Q. (BY MS. GERLACK) If you know. If you have any
13 recollection.

14 I don't want you to guess.

15 MR. UTLEY: We're not interested
16 in what you might have done, we're
17 interested in what you can recall doing.

18 A. I don't recall.

19 Q. Do you know what the function of the custodial
20 staff was on the premises? Did they have
21 anything to do with security?

22 A. No.

23 Q. Are there building managers and resident
24 custodians for each building on the Longwood
25 premises?

1 A. No.

2 Q. Do you know how many there were during the
3 relevant time period?

4 A. No.

5 Q. As a security consultant for Associated Estates,
6 did you ever track the transmittal time from
7 when a tenant would make a call to security and
8 the actual response time of security guards?

9 A. No, I did not.

10 Q. Do you know how Associated Estates chose Fox to
11 serve as their security service for Longwood?

12 A. No, I do not.

13 Q. Did you ever inquire about the history of the
14 relationship between Associated Estates and Fox
15 before you began undertaking security consultant
16 duties?

17 A. No.

18 MR. UTLEY: Lisa, can we take a
19 break?

20 (Thereupon, a short recess was had.)

21 Q. (BY MS. GERLACK) Did you ever have any
22 meetings with security guards themselves
23 concerning the supervision problem at the
24 Longwood premises?

25 A. The guards themselves?

1 Q. Yes.

2 A. Would you restate the question, please?

3 Q. Sure.

4 You had indicated that when findings or
5 your observations or things that were brought to
6 your attention by staff or H. P. Worthington,
7 concerning guard problems, specifically
8 supervision, you spoke to management and Russell
9 Fox, and what I wanted to know was in addition
10 to that, did you speak to the guards themselves
11 that were actually working on the premises?

12 A. The only occasions --

13 MR. UTLEY: Well it's a yes or
14 no. Objection.

15 A. Yes.

16 Q. Do you recall when?

17 A. No.

18 Q. Do you recall with whom?

19 A. No.

20 Q. Was it a particular shift or the entire guard
21 force that worked at Longwood?

22 A. Particular shift.

23 Q. Did you document that meeting?

24 A. It wasn't a meeting, it was just comments that I
25 made to the guards.

1 Q. Would this have been on the occasion when you
2 were doing an audit for the property?

3 A. Either an audit or just visiting the property.

4 Q. And you had testified on Tuesday that you only
5 went to the property -- you seldom went to the
6 property; is that correct?

7 MR. UTLEY: I'll object.

8 A. That's correct.

9 Q. During the period of 1988 through 1992, were
10 there any other guard companies working for
11 Associated Estates at Longwood other than Fox?

12 A. I don't recall during those dates.

13 Q. You produced two files to my office, and some
14 additional documents that you produced today in
15 response to my request on Tuesday?

16 A. Correct.

17 Q. These are your complete records, except for the
18 items that we discussed today regarding your
19 work at Longwood?

20 A. Or materials that were after the date of 1992.

21 Q. But these were your complete records regarding
22 your work at Longwood?

23 A. Complete.

24 Q. And everything that you did in connection with
25 your Letter of Agreement is contained in these

1 files, except for what we discussed today?

2 MR. UTLEY: I'll object.

3 There may be things relevant not contained
4 in those files that he may have done, that
5 haven't been memorialized in writing.

6 A. Right.

7 Q. But in terms of items that you documented for
8 your work at Longwood, they're contained in
9 these files?

10 A. To the best of my knowledge.

11 Q. Did you consult with anyone before producing
12 these documents to me?

13 A. Just for clarification, with regard to the date
14 I talked to Mr. --

15 MR. UTLEY: He called me, Lisa,
16 and asked me what it was all about.

17 Q. (BY MS. GERLACK) After your consultation you
18 did not produce any documents?

19 A. Absolutely not.

20 Q. As part of your duties in evaluating security at
21 Longwood, did you review any crime analysis or
22 studies?

23 MR. UTLEY: Objection, asked and
24 answered.

25 MR. LENSON: That was covered

1 Tuesday.

2 Q. (BY MS. GERLACK) Crime statistics were not
3 analyzed and studied?

4 A. No.

5 Q. To your knowledge did Associated Estates conduct
6 any type of study for crime demographics for the
7 Longwood property?

8 MR. UTLEY: I'll object, asked
9 and answered.

10 Go ahead.

11 A. Not to my knowledge.

12 Q. Did you review security incident reports as part
13 of your duties as a security consultant for
14 Longwood?

15 MR. UTLEY: Objection, asked and
16 answered.

17 A. If they were provided to me.

18 Q. Who would provide them to you if they were
19 provided?

20 A. Management.

21 Q. Who specifically in management?

22 A. The manager or the office administrator.

23 Q. What types of incidents were brought to your
24 attention?

25 Would they be contained in your files, the

1 ones that are in your files?

2 A. If they were brought to my attention, they would
3 be in the files.

4 Q. Did you ever make any determination regarding
5 the security needs at Longwood?

6 MR. UTLEY: I'll object.

7 MR. LENSON: I didn't hear the
8 last -- security what?

9 MS. GERLACK: Needs.

10 MR. UTLEY: I'll object.

11 I don't understand the question, Lisa.

12 A. Would you explain to me what you mean by that,
13 "needs"?

14 Q. When you began working for Longwood, there were
15 two guards working the first shift, correct?

16 MR. LENSON: Objection, he
17 doesn't work for Longwood.

18 Q. (BY MS. GERLACK) Excuse me, Associated
19 Estates.

20 There were two guards per eight hour shift
21 working at Longwood; is that correct?

22 A. That's correct, to my knowledge.

23 Q. From that time, when you began working in 1988,
24 did you ever conduct any type of study to
25 determine if two guards was sufficient to meet

1 the needs at Longwood?

2 MR. UTLEY: I'll object. He
3 testified on Tuesday that he recommended they
4 put a swing shift on.

5 MS. GERLACK: He can testify --

6 MR. UTLEY: Lisa, we've already
7 been over it.

8 MR. LENSON: That's my point.
9 There are 100 ways you can go over it, but
10 you've asked these questions already.

11 Q. (BY MS. GERLACK) Do you have an answer?

12 A. One recommendation.

13 Q. And that's the one you testified to on Tuesday?

14 A. That's correct.

15 Q. Do you know what the security budget was for
16 Longwood?

17 A. I do not recall.

18 MR. UTLEY: Lisa, just for
19 purposes of discussion here, we've been
20 over all of this, and I've given you a wide
21 range of latitude and I think you're
22 beginning to harass the witness.

23 I'm going to give you a bit more rope
24 and see where this goes, but if I feel
25 you're harassing this witness, we're going

1 to stop this and talk with the Judge.

2 MS. GERLACK: I'm not
3 harassing the witness, and I'm conducting
4 the deposition.

5 MR. UTLEY: But you
6 can't --

7 MS. GERLACK: And when Mr.
8 Michalski indicates that he answered a
9 question, that's fine. And I'm not trying
10 to belabor this, but I'm trying to conduct
11 this deposition.

12 Mr. Utley, your objection is noted.

13 MR. UTLEY: You're not
14 permitted to be redundant and re-question
15 everything that's been discussed, and the
16 law provides that amounts to harassment.

17 MS. GERLACK: I don't mean
18 to be.

19 Well, when Mr. Michalski indicates
20 that he doesn't understand a question or he
21 answered the question, he can let me know.

22 MR. UTLEY: I'm his counsel
23 and I'll advise in this situation. I'll
24 make the determination as to when it's
25 redundancy and harassment, not Mr.

1 Michalski.

2 Q. (BY MS. GERLACK) Do you agree with the
3 statement that with respect to crime, that
4 opportunity can create a motive for the
5 commission of a crime?

6 MR. UTLEY: I'll object, in what
7 context?

8 A. That's such a broad spectrum.

9 Q. Are you able to answer the question?

10 A. Not as posed.

11 Q. Did you rely on any industry standards or
12 guidelines in performing your duties under the
13 agreements with Associated Estates?

14 A. I did not.

15 Q. I'm going to have you turn to the 1992 file that
16 you produced to me, which was the first file
17 which you produced. And I don't believe -- I
18 gave you copies --

19 MR. UTLEY: Lisa, are these just
20 numbered sequentially in the package that
21 you produced?

22 MS. GERLACK: Yes, they should be
23 in the same order.

24 (Thereupon, a discussion was
25 held off the record.)

1 Q. (BY MS. GERLACK) If you would take a look at
2 the first document that's marked as Plaintiff's
3 Exhibit 9?

4 A. Yes.

5 Q. Do you recognize that document?

6 A. I do.

7 Q. You wrote this document?

8 A. I did.

9 Q. And you did this in the course and scope of your
10 duties with Associated Estates?

11 A. I did.

12 Q. What findings did you rely on in making the
13 recommendation that's set forth in this
14 document?

15 A. I think it's self-explanatory.

16 Q. This document is dated February 9, 1993,
17 correct?

18 A. Correct.

19 Q. When did you first note that the guards were
20 incompetent, supervision was lacking, and they
21 were not trained when assigned to the facility?

22 MR. UTLEY: That's three
23 questions there.

24 Q. (BY MS. GERLACK) We can break it down.

25 A. I don't recall the specifics of any of the

1 answers to the three questions.

2 Q. When did you have a meeting with Mr. Smoot and
3 Mr. Benson to reach this conclusion?

4 A. I don't recall.

5 Q. Did Mr. Smoot and Mr. Benson have any
6 discussions with you?

7 A. We've had discussions, correct.

8 Q. Did you have discussions before July of 1992?

9 A. Regarding?

10 Q. Regarding the competency of Fox guards at the
11 property?

12 A. I certainly recall we had discussions with
13 regard to supervision. Competence, training, I
14 don't recall.

15 Q. Are you able to point me to any specific
16 incidents regarding your conclusion that the
17 guards were incompetent?

18 A. Not specific, no.

19 Q. Are there any documents in your file that you
20 relied on in reaching this conclusion?

21 A. Not that I recall.

22 Q. Any specific incidents regarding your conclusion
23 that the guards were not trained properly?

24 A. Specific, no.

25 Q. Do you have any recollection of any specific

1 incidents that led to the writing of this memo?

2 A. Not specific, that I can recall.

3 Q. Do you know when you first began -- wait a
4 minute. As a result of this memo, what
5 happened?

6 A. I presume that --

7 MR. LENSON: Objection. Ask it
8 be stricken.

9 Q. (BY MS. GERLACK) I don't want you to presume.

10 A. Fox Detective Agency was eventually replaced by
11 another agency.

12 Q. Mr. Michalski, I'm not your counsel, but I'm
13 going to tell you you can only answer what you
14 know. If you don't know, you can't presume.

15 You sent this memo to Jerry Spevack, did
16 you have any follow-up discussions with Mr.
17 Spevack concerning this memo?

18 A. I don't recall.

19 Q. During the period of '88 through 1992, what was
20 the average salary for security guards?

21 MR. UTLEY: Objection.

22 Q. (BY MS. GERLACK) If you know?

23 A. I don't know.

24 Q. On what did you base your conclusion that the
25 hiring of another security guard would be more

1 costly than Fox?

2 A. I did a study.

3 Q. What did that study consist of?

4 A. Talking to other security agencies.

5 Q. And what findings did you reach as a result of
6 that study?

7 A. That it would be more costly.

8 Q. Do you have a copy of that study?

9 A. There is some documentation in this recent
10 material that I gave you.

11 Q. If you would turn to Exhibit 10, please.

12 Do you recognize this document?

13 MR. LENSON: I'm going to object
14 to Exhibit 10 because it has nothing to do
15 with Longwood.

16 A. This was a two-page document.

17 Q. If you would, now referring to Exhibit 11 -- and
18 I reproduced these as they were produced to me.

19 A. I understand.

20 Q. Is Exhibit 11 a completed copy of what was
21 produced in Exhibit 10?

22 (Thereupon, a discussion was
23 held off the record.)

24 Q. (BY MS. GERLACK) Do you recognize this
25 document?

1 A. Yes, I do.

2 Q. Would you identify it, please?

3 A. It's a copy of a document that I wrote up, based
4 upon an audit that I conducted with H. P.
5 Worthington.

6 Q. And the date?

7 A. On 12-10-92.

8 Q. And as part of this audit, you went to Longwood?

9 A. That's correct.

10 Q. If you would turn to the page and review the
11 findings in Longwood, under Longwood?

12 MR. UTLEY: I'll object. This
13 is four and a half months after this
14 incident, therefore I'll object.

15 MR. LENSON: I'll object, and ask
16 that any question or answers relating to
17 this document be stricken from the record
18 as being totally irrelevant.

19 Q. (BY MS. GERLACK) On this visit you found
20 guards in the office, instead of patrolling?

21 A. That's correct.

22 Q. Do you know who the guards were that were on
23 duty on that occasion?

24 A. No, I do not.

25 Q. Where are the canopy lights located at Longwood

1 that were out on this occasion?

2 A. The entrance doors --

3 Q. To the --

4 A. -- to the individual buildings.

5 MR. LENSON: Again, ask the
6 document, Exhibit 11, the questions and
7 answers be stricken.

8 MR. UTLEY: Note a continuing
9 objection for all questions concerning this
10 document.

11 Q. (BY MS. GERLACK) Do you know how many audits
12 you conducted of Longwood in 1992?

13 A. I don't recall.

14 Q. If you had conducted another audit in 1992,
15 would that document be contained in this file?

16 A. Yes, it would.

17 Q. To your knowledge, were the canopy lights in
18 existence in July of 1992?

19 A. I don't recall.

20 Q. The canopy lights, where would they be located?
21 On the overhang that's over the doorway?

22 A. That's correct.

23 Q. Just like a light bulb fixture?

24 A. Uh-huh.

25 Q. During 1992, up until July of 1992, were there

1 any other lights on the premises, other than the
2 canopy lights, for the buildings?

3 MR. UTLEY: Any lights on the
4 premises?

5 A. I don't recall.

6 Q. As security consultant, did you ever avail
7 yourself of studying how many lights were on the
8 premises for security purposes?

9 MR. UTLEY: Prior the July 17,
10 1992?

11 MS. GERLACK: No, my question as
12 stated.

13 MR. UTLEY: No, then he can't do
14 that.

15 MR. LENSON: You cannot ask that.

16 MS. GERLACK: It's a discovery
17 deposition.

18 MR. UTLEY: He's here today as a
19 fact witness.

20 MS. GERLACK: That's fine.

21 MR. UTLEY: And you're entitled
22 to inquire the facts.

23 MS. GERLACK: I'm going to ask
24 the questions as I see fit.

25 MR. UTLEY: And I think they're

1 improper. I'll instruct him not to answer
2 that.

3 MS. GERLACK: Fine, you can do
4 that, but I'll ask the questions the way I
5 want to.

6 (Thereupon, the record was read
7 back by the Court Reporter as
8 requested.)

9 MR. UTLEY: I'll object and
10 instruct him not to answer anything with
11 reference to post July 17, 1992 matters.

12 Q. (BY MS. GERLACK) Okay, you can answer the
13 question for up until July 17, 1992, as your
14 counsel has instructed you not to answer --

15 MR. UTLEY: That's correct.

16 A. If I did, it would be documented.

17 Q. If you would turn to the next document, which is
18 Plaintiff's Exhibit 12. If you could just take
19 a look at the next Exhibit 13 as well, because I
20 think they might be the same.

21 MR. LENSON: Again, object and
22 ask that the reference to these exhibits be
23 stricken as they're after the incident.

24 Q. (BY MS. GERLACK) Do you recognize these
25 documents?

1 A. Yes.

2 Q. Are Plaintiff's Exhibits 12 and 13 identical
3 documents?

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

5 Q. What is this document?

6 MR. UTLEY: Objection.

7 Go ahead.

8 A. This is a proposal from Garrison Security, for
9 security unit hours of coverage for Longwood
10 Estates.

11 Q. How did this end up in your security file, was
12 it circulated to you by Mr. Smoot?

13 A. Yes.

14 Q. For what purpose; do you know?

15 MR. UTLEY: Objection.

16 Go ahead.

17 A. Informational.

18 Q. Were you soliciting prospects for other guard
19 companies to work at Longwood?

20 MR. LENSON: You mean him
21 personally?

22 MS. GERLACK: Yes.

23 MR. LENSON: She's asking you
24 personally.

25 A. I don't recall at this time, at this date.

1 Q. At the time, do you know if Associated Estates
2 was seeking other prospects for guard services
3 at the property?

4 MR. UTLEY: Objection.

5 A. I don't recall.

6 Q. Do you know why you have this in your file?

7 MR. UTLEY: I'll object.

8 Go ahead.

9 A. I have a folder at Associated Estates.

10 MR. LENSON: Objection, ask that
11 the answer be stricken.

12 You're not answering the question
13 again?

14 THE WITNESS: I'm trying to.

15 MR. LENSON: Well, you don't
16 have to editorialize. You either know or
17 don't know.

18 A. It was put in my file.

19 Q. Because it was given to you?

20 A. Yes.

21 Q. Did you do anything to follow up on them giving
22 you that document?

23 A. Not that I recall.

24 Q. When you were analyzing other security
25 companies, did you contact Garrison Security

1 Services?

2 MR. UTLEY: Objection.

3 Go ahead.

4 A. I don't recall.

5 MR. LENSON: Any reference to
6 that document and any questions related to
7 the document I ask be stricken from the
8 record.

9 Q. (BY MS. GERLACK) Would you turn to Plaintiff's
10 Exhibit 14, please?

11 Do you recognize that document?

12 A. Yes, I do.

13 Q. Who gave you a copy of this document?

14 A. The property manager.

15 Q. Who was?

16 A. Norris Duncan.

17 Q. And that was the property manager for Longwood
18 Estates. And this relates to -- earlier you had
19 discussed when you were acting as a liaison that
20 you would advise the police department, or vice
21 versa, of problems that were occurring on the
22 premises, is that what this document is?

23 A. Evidently.

24 Q. Did you do anything in response to this letter?

25 A. Not that I recall.

1 Q. Did you have any discussions with anyone about
2 this letter?

3 A. I don't recall.

4 MR. UTLEY: I'll object to the
5 entire document and any questions related
6 to it. Ask the answers be stricken.

7 Q. (BY MS. GERLACK) Exhibit 15?

8 A. Okay.

9 Q. Do you recognize this document?

10 A. Only from looking at it this time.

11 Q. Do you recall if you saw this at or near the
12 time it was written?

13 A. Yes.

14 Q. Who circulated this to you?

15 A. The property put it in my file.

16 Q. And this is an incident report for a shooting
17 incident that occurred on June 25, 1992?

18 MR. UTLEY: Objection, document
19 speaks for itself.

20 A. Yes.

21 Q. Did you do anything in response to receiving
22 this document?

23 A. I did not.

24 Q. Did you have any discussions with any management
25 personnel at Associated Estates regarding this

1 incident?

2 MR. UTLEY: Objection.

3 A. I don't recall.

4 Q. Do you know why this was given to you?

5 MR. UTLEY: Objection.

6 A. Just a copy of an incident report.

7 Q. Would all incident reports be circulated to you?

8 MR. UTLEY: Objection, asked and
9 answered.

10 Go ahead.

11 A. If they're prepared, yes.

12 MR. LENSON: That's not true.

13 Q. (BY MS. GERLACK) Just so we're clear, you had
14 indicated earlier that serious incidents you
15 would be asked to respond to. Do you have any
16 knowledge why you received this incident report?

17 MR. UTLEY: Objection.

18 Go ahead.

19 A. Placed in my file.

20 MR. UTLEY: Just for
21 clarification, Mr. Michalski, you had
22 testified earlier that not all incident
23 reports get to you, now you just testified
24 that all incident reports are sent to you.

25 THE WITNESS: No, I didn't.

1 MR. LENSON: Yes, you did.

2 THE WITNESS: No, because --

3 MR. UTLEY: Do you understand --
4 do all incident reports get sent to you?

5 THE WITNESS: No.

6 Q. (BY MS. GERLACK) Do you know why this incident
7 report, as opposed to other incidents reports,
8 was sent to you?

9 A. I do not.

10 Q. Did you ever ask why it was being sent to you?

11 A. I did not.

12 Q. Did you review this document when you received
13 it?

14 A. Yes.

15 Q. And you didn't do anything, no response to it?

16 MR. UTLEY: Objection.

17 A. No, I didn't.

18 Q. If you would turn to Plaintiff's Exhibit 16 --

19 A. Okay.

20 Q. -- do you recognize that document?

21 A. Yes, I do.

22 Q. What is it?

23 A. It's a document that outlines some special
24 security duties and responsibilities for the
25 security staff at Longwood.

1 Q. Who is the author of this document?

2 A. The manager of the property and myself.

3 Q. You took part in authoring this document?

4 A. Yeah, I did.

5 Q. And who was the manager of the property at the
6 time this document was written?

7 A. I don't recall.

8 Q. What type of information did you rely on in
9 preparing this document?

10 A. Conversation with the manager of the property,
11 as to what he or she specifically wanted done at
12 that property.

13 Q. And these special security duties and
14 responsibilities were to be performed by whom?

15 A. By the security personnel.

16 Q. And would that have been the Fox security guards
17 that were working on the premises?

18 A. Any security company working on the premises.

19 Q. Do you know the date on which this document was
20 prepared?

21 A. I do not.

22 Q. Do you know the year in which this document was
23 prepared?

24 A. I do not.

25 Q. During the period of 1988 through 1992, do you

1 know if Fox security guards were given these
2 duties and responsibilities to follow during
3 that time frame?

4 MR. UTLEY: I'll object.

5 A. I do not know that.

6 Q. This is your 1992 file, and it was contained in
7 there. Were all documents that were prepared in
8 1992 contained in that file?

9 A. The total file is there.

10 Q. You produced two files to me, the first one I
11 requested only 1992 documents.

12 A. This was in the '92 file?

13 Q. Yes.

14 A. I don't know.

15 Q. And these were duties that Associated Estates
16 had prepared for the security guards?

17 A. As a guide.

18 Q. And this would be in addition to those duties
19 that are set forth in the security contract
20 between Fox and Associated Estates for Longwood?

21 A. There may be a duplication here, I --

22 Q. There are a couple of items on here that I
23 wanted to bring to your attention.

24 You have, "While on patrol, check the two
25 storage buildings at the rear of buildings 2550

1 and 2475." Why is that responsibility contained
2 in this document?

3 MR. UTLEY: Objection.

4 A. Because the storage buildings had been broken
5 into.

6 Q. On repeated occasions?

7 MR. UTLEY: Objection.

8 A. I don't know about repeated occasions.

9 Q. What was the reason for stating that they should
10 insure that there are no gatherings of persons
11 on the walkways, hallways, common areas and
12 street corners?

13 A. Because of the concerns that the tenants had
14 about those types of gatherings and what could
15 result from that.

16 Q. What could result from that?

17 MR. UTLEY: Objection.

18 MR. LENSON: Objection,
19 speculation.

20 MR. UTLEY: Go ahead.

21 A. Fights.

22 Q. Why do you have in there that laundry rooms
23 should be secured at designated times?

24 A. Principally because of the disruption that it
25 causes for other tenants if the laundry rooms

1 are used all night long.

2 Q. So like 9 to 5 were the laundry hours?

3 A. 11:00, 10:00.

4 Q. Did Associated Estates required security guards
5 to deliver mail and notices at times?

6 MR. UTLEY: Objection, asked and
7 answered.

8 Go ahead.

9 A. Yes.

10 Q. Why was special attention needed to be directed
11 to mail room areas, during the 1st of the month?

12 A. Because of checks being received.

13 Q. And there was concern that they might be stolen?

14 A. Yes.

15 Q. To whom were the incident reports submitted by
16 security guards at Longwood?

17 A. To management.

18 Q. Who in management?

19 A. The manager.

20 Q. Were the security guards given designated lunch
21 breaks, and breaks during their eight hour
22 shifts?

23 A. Not to my knowledge.

24 Q. Were they supposed to punch out when they were
25 on a lunch break?

1 A. They were not on clocks to my knowledge.

2 Q. You have in here that there is to be no
3 fraternizing with the tenants at the property,
4 either on or off duty. Did you ever observe any
5 occasions when security guards were fraternizing
6 with the tenants while on duty?

7 A. I did not observe that, no.

8 Q. Was it ever brought to your attention that
9 security guards who were assigned to work at the
10 property, Fox security guards, whether on or off
11 duty, were fraternizing with tenants?

12 A. I don't recall.

13 Q. If you would turn to the next document,
14 Plaintiff's Exhibit 17.

15 A. Uh-huh.

16 Q. Do you recognize that document?

17 A. Yes.

18 Q. Would you identify it, please?

19 A. This is an incident report that took place on
20 6-20-92.

21 MR. UTLEY: Lisa, just note a
22 continuing objection to the entire
23 document.

24 Q. (BY MS. GERLACK) Who brought this to your
25 attention, management?

1 A. Correct.

2 Q. The document that's contained on the back, those
3 are the items that were retrieved at the time of
4 the incident?

5 A. I presume that, yes.

6 MR. UTLEY: Objection.

7 Q. Did you do anything in response to receiving
8 this incident report?

9 A. I did not.

10 Q. Did you have any discussions with anyone upon
11 receiving this document?

12 A. Not that I recall.

13 Q. If you would turn to Exhibit 18, do you
14 recognize this document?

15 A. Yes, I do.

16 Q. Would you identify it for the record, please?

17 A. It's a letter from Garrison Security to Mr.
18 Benson, property manager at Longwood.

19 Q. Did Mr. Benson give you a copy of this document?

20 A. Yes, he did.

21 Q. Did you do anything in response to receiving
22 this document?

23 A. Not that I recall.

24 Q. Did you have any discussions with Mr. Benson as
25 to why he was sending you this document?

1 A. Copies of all this material were put in my file.

2 Q. You weren't given any directives to follow-up on
3 it?

4 A. I was not.

5 Q. If you would turn to Exhibit 19 and Exhibit 20.

6 (Thereupon, a discussion was
7 held off the record.)

8 Q. (BY MS. GERLACK) Take a look at 19 and 20. Are
9 those the same documents?

10 A. No.

11 Q. Take a look at 19. Do you recognize this
12 document?

13 A. Yes.

14 Q. What is it?

15 A. It's a proposal from All American Detective
16 Agency to Associated Estates --

17 Q. Who gave --

18 A. -- for security at Longwood.

19 Q. Who gave this to you?

20 A. Mr. Smoot put it in my file.

21 Q. Did you do any follow-up in response to
22 receiving this letter?

23 A. There was a meeting that we had, just to discuss
24 the proposal with Mr. Jones.

25 Q. When did that meeting take place?

1 A. I don't know.

2 Q. Was the proposal submitted by All American
3 Detective Agency for the provision of security
4 guard service at Longwood?

5 A. That's correct.

6 Q. Was the proposal accepted by Associated Estates?

7 A. You mean pursued?

8 Q. Yes.

9 A. No.

10 MR. UTLEY: Accepted?

11 A. Well, we received it.

12 Q. No, did you secure All American?

13 A. No.

14 Q. Do you know why All American wasn't secured?

15 MR. UTLEY: I'll object.

16 A. No.

17 Q. Did you make any notations from that meeting or
18 generate any documents as a result of that
19 meeting?

20 A. I did not.

21 Q. Would you identify Exhibit 20, please?

22 Do you recognize this Exhibit 20?

23 A. Yeah.

24 Q. Would you identify it?

25 A. It's an agreement, signed by Mr. Jones of All

1 American Detective Agency.

2 Q. Did you review this proposed contract?

3 A. Yes.

4 Q. Did you disagree with anything contained in this
5 proposal, at the time that you reviewed it?

6 MR. UTLEY: Objection.

7 Go ahead.

8 A. The cost.

9 Q. What do you disagree with about the cost?

10 A. The hourly rate.

11 Q. Too high or too low?

12 A. Too high.

13 Q. What would you consider a reasonable price per
14 hour, or what did you consider a reasonable
15 price per hour at the time?

16 A. I did not consider any reasonable price or
17 unreasonable price.

18 Q. Then what were you relying on when you came to
19 the conclusion that \$12.50 an hour was too high?

20 A. I don't recall.

21 MR. UTLEY: Objection.

22 Q. Did you disagree with anything else contained in
23 this contract proposal?

24 A. I don't recall.

25 Q. Did you have any discussions with Mr. Jones

1 concerning his -- the conclusion in this
2 contract that the job requires five men per
3 shift?

4 A. I don't recall.

5 Q. Did you do anything to follow-up on this
6 document after you reviewed it?

7 A. No, I did not.

8 Q. If you would review exhibit -- 21 is the next
9 one?

10 A. Yes.

11 Q. Exhibits 21 through 25, if you would take a look
12 at those.

13 Would you just identify each of those for
14 the record?

15 A. They're documents that Mr. Jones included with
16 his proposal for security at Longwood.

17 Q. Would you identify them by --

18 A. Certificate of Insurance.

19 Q. And by exhibit number too.

20 MR. UTLEY: I'll object to this
21 whole series of documents.

22 Go ahead.

23 A. Document 21. Document 22 is a Dishonesty Bond,
24 23 is a Workman's Compensation Certificate and
25 24 is a City of Cleveland of Ohio Minority

1 Business Officer Certification.

2 Q. At the time that you received these documents
3 from All American, do you know if Associated
4 Estates was looking to replace Fox as the
5 security service at Longwood?

6 A. No, I did not.

7 Q. Did you ever ask anyone why you were receiving
8 documents from other security companies while
9 you were under contract with Fox?

10 A. Happens all the time.

11 Q. Did you ever ask anyone why you were
12 receiving --

13 A. No.

14 Q. Exhibit 26 --

15 MR. UTLEY: Just note a
16 continuing objection to any questions and
17 responses regarding Exhibit 26.

18 A. Both incidents?

19 Q. Well, just look at it for purposes of
20 recognition.

21 Do you recognize the document?

22 A. Yes.

23 Q. And it consists of four pages?

24 A. Yes.

25 Q. Would you identify it for the record?

1 A. Incident report of April 3, 1992.

2 Q. There are two on there?

3 A. Yes, and an incident report of April, 1992.

4 Q. And these two documents were circulated to you
5 as security consultant for Associated Estates?

6 A. Yes, they were.

7 Q. Did you do anything in response to receiving
8 this document?

9 A. I did not.

10 Q. Did you have any discussions with anyone at
11 Associated Estates, concerning either of these
12 documents?

13 A. Not to my recollection.

14 Q. Do you know why you received these documents?

15 A. It was in a copy of an incident report that was
16 placed in my file.

17 Q. And you never followed up, right?

18 A. I did not.

19 Q. The next exhibit, 27.

20 MR. UTLEY: I object to this
21 document, this document reflects an
22 incident that took place off my client's
23 property.

24 I object to all questions asked
25 and that answers regarding this document be

1 stricken.

2 Q. (BY MS. GERLACK) Mr. Michalski, as a security
3 consultant for Associated Estates, were you only
4 concerned with crimes that occurred on the
5 premises at Longwood?

6 MR. UTLEY: Objection.

7 Go ahead.

8 A. Of course.

9 Q. Would it be any concern to you about crime
10 rates or crime incidents that occurred one
11 street away from the Longwood property?

12 MR. UTLEY: I'll object, was it
13 or would it be?

14 Q. (BY MS. GERLACK) Was it a concern?

15 A. I was not formerly aware of any incidents that
16 occurred --

17 Q. So your answer is --

18 A. -- off the property.

19 Q. So your answer is you were only concerned with
20 incidents on the property?

21 A. That's correct.

22 Q. And crime incidents that happened around the
23 Longwood property were of no concern to you?

24 A. I really don't know what you mean by the word
25 "concern." I mean, a criminal incident is

1 always of concern to me, but if you're asking me
2 how it impacted --

3 Q. Were crime demographics a concern to you as a
4 security consultant for Longwood --

5 MR. UTLEY: Objection. Asked and
6 answered.

7 Q. (BY MS. GERLACK) -- or Associated Estates?

8 A. Yes, it would be.

9 Q. And that would necessarily involve areas that
10 were outside the Longwood boundaries, correct?

11 A. Yes, but I was unaware of those.

12 Q. Do you recognize this document?

13 A. It's another incident report.

14 Q. Who circulated this to you?

15 A. The property manager.

16 Q. Did you have any discussion with anyone in
17 management concerning this incident report?

18 A. I don't recall.

19 Q. Did you conduct any follow-up after reviewing
20 this document?

21 A. I did not. It was in the hands of the Cleveland
22 Police Department's investigation.

23 Q. Did you speak to the security guard, Sergeant
24 Joseph, who wrote the incident report?

25 A. I don't recall.

1 Q. If you would turn to the next document, please,
2 Exhibit 28.

3 A. Okay.

4 Q. Do you recognize that document?

5 A. Yeah, I do.

6 Q. It was circulated to you in the course and scope
7 of your relationship with Associated Estates?

8 A. That's correct.

9 Q. Did you have any discussions with anyone in
10 management concerning this document?

11 A. I don't recall.

12 Q. Did you have any discussions with any one
13 security guard regarding this incident?

14 A. I don't recall.

15 Q. Did you conduct any type of follow-up
16 investigation into this incident?

17 A. I don't believe so, no.

18 Q. Exhibit 29.

19 A. Yes.

20 Q. Do you recognize that document?

21 A. Yes, I do.

22 Q. What is it?

23 A. I believe it's -- I mean it's a document of some
24 notes that I made, but this was in relationship
25 to Rainbow Terrace.

1 Q. This document has nothing to do with Longwood?

2 A. To the best of my knowledge, it does not.

3 MR. LENSON: Ask that the
4 document be stricken.

5 Q. (BY MS. GERLACK) Exhibit 30 is the 1992 Letter
6 of Agreement that we previously identified?

7 A. Yes.

8 Q. With respect to those incident reports that were
9 marked in that group of documents that are from
10 your 1992 file, did you ever conduct any
11 investigation into the adequacy of the security
12 response to those incidents?

13 A. I did not.

14 Q. Now moving into the second file that you
15 produced to me, and we're going to start with
16 Plaintiff's Exhibit 31 --

17 MR. LENSON: Is there a question?

18 Q. (BY MS. GERLACK) Are you taking a look at
19 Exhibit 31?

20 A. Yes.

21 Q. Do you recognize that document?

22 A. I believe so, yes.

23 Q. Would you identify it for the record?

24 A. It's a document that was written by H. P.
25 Worthington to Jerry Spevack.

1 Q. Concerning security at Associated Estates
2 properties?

3 A. With regards to his comments, yes.

4 Q. And this document was circulated to you by whom,
5 Jerry --

6 A. By Jerry Spevack.

7 Q. Did you have any meetings with anyone concerning
8 the findings in this document that relate to
9 Longwood security?

10 A. I don't recall back in '90.

11 Q. If you would have had a discussion or meeting
12 concerning these findings, would you have made
13 any documents to reflect that?

14 A. I'm sure that I would have.

15 Q. Did you have any discussion with H. P.
16 Worthington about this document?

17 A. I don't recall.

18 Q. The document indicates that lights are missing
19 on the property, did you conduct any
20 investigation into that finding?

21 A. I don't remember.

22 Q. Did you make any recommendation in response to
23 that finding?

24 A. I don't recall.

25 Q. The document states, "We are not getting guard

1 service now, what are we paying for?" Was Fox
2 the security guard company employed at Longwood
3 at that time?

4 A. It states here Aetna.

5 Q. I asked you before if there were any other guard
6 services that worked at the Longwood property
7 during the period of 1988 through 1992, and I
8 believe you indicated that there was not.

9 MR. LENSON: No, he testified he
10 couldn't recall.

11 A. No, I said I couldn't recall.

12 Q. Did Aetna provide security to Longwood?

13 A. Yes, they did.

14 Q. Was there a security contract between Associated
15 Estates and Aetna?

16 A. Yes, there was.

17 Q. Did they provide security guard service?

18 A. They did.

19 Q. What were the terms of guard service?

20 A. I don't recall.

21 Q. Did they supplement Fox's security guard
22 services?

23 A. No, they did not.

24 Q. Did they patrol particular areas of the premises?

25 MR. LENSON: Lisa, to make it

1 easy for you, they were the security guards for
2 that particular year.

3 MS. GERLACK: For 1990?

4 MR. LENSON: Yes.

5 Q. (BY MS. GERLACK) Fox was not employed by
6 Associated Estates during 1990?

7 MR. LENSON: On the Longwood --

8 A. I don't know that, because -- I know they were
9 there at one time, but I don't know the dates.

10 Q. The finding "we are not getting guard service
11 now, what are we paying for," to your knowledge,
12 was Aetna the only guard service working at
13 Longwood at that time?

14 A. Yes.

15 Q. Did you do anything in response to being
16 apprised of that finding?

17 A. Yes.

18 Q. What did you do?

19 A. We met with the owners and managers of Aetna.

20 Q. Do you recall their names?

21 A. I do not at this time. I know the owner's name
22 was Hess, and we met with him, but who else from
23 his staff, I don't recall.

24 Q. Was any course of action taken after you had
25 that meeting with Mr. Hess?

1 A. Yes, there was an improvement in security.

2 Q. What improvements were made?

3 A. Better supervision.

4 MR. UTLEY: I'll object.

5 Q. (BY MS. GERLACK) And how was that implemented?

6 A. I don't know.

7 Q. How long did Aetna work at Longwood?

8 A. Without the contracts I don't know.

9 Q. Did you recommend continuation of Aetna's
10 security contract at Longwood?

11 MR. UTLEY: At any time?

12 Q. (BY MS. GERLACK) During 1990, after the
13 completion of 1990?

14 A. After the completion of 1990?

15 Q. Yes.

16 A. I don't recall.

17 Q. There is a finding towards the end of the
18 letter, "there seems to be no supervision on any
19 shift now, and our tenants are the ones that
20 suffer." Did you do anything in response to
21 that, other than having a meeting with the
22 owners of the security company?

23 MR. UTLEY: Objection.

24 A. I don't recall.

25 Q. Was supervision amongst guard services, be it

1 Aetna or Fox's, a continual problem at the
2 Longwood property?

3 A. Yes.

4 Q. Did you do anything else in response to
5 receiving this document?

6 A. I don't recall.

7 Q. Exhibit 32 is a document that was previously
8 marked in your other documents?

9 A. Uh-huh.

10 Q. Exhibit 33, if you would take a look at that
11 document.

12 MR. LENSON: To the extent
13 that the question is being asked relating
14 to Fox, we will object to it as being
15 immaterial, since it does not involve Fox
16 or its security guards.

17 MR. UTLEY: I'll object to
18 the entire document and ask that the
19 questions and the answers be stricken.
20 Just note a continuing objection.

21 Did you read the document?

22 THE WITNESS: I read the
23 first part of it.

24 MR. UTLEY: Do you want him
25 to read the whole thing, Lisa?

1 Q. (BY MS. GERLACK) Just so you're confident with
2 the contents of it. You might as well take a
3 couple of seconds to look it over.

4 A. Okay, I've perused the document.

5 Q. Do you recognize this document as an incident
6 report, July 11, 1990?

7 A. Yes.

8 Q. Do you know why this was circulated to you in
9 the course and scope of your employment and
10 relationship of --

11 A. Copy of an incident report placed in my file.

12 Q. Who gave you a copy of this?

13 A. Management, property management.

14 Q. Did you do anything in response to this
15 document?

16 A. I did not.

17 Q. Did you have any discussions with anyone in
18 management concerning this document?

19 A. Not that I recall.

20 Q. Did you review this document to assess the
21 adequacy of the reporting of the incident?

22 MR. UTLEY: I'll object, one
23 incident takes place outside of our
24 property.

25 A. I did not.

1 Q. Do you know why this incident report was brought
2 to your attention?

3 A. Just as a matter of copying me.

4 Q. If you would turn to the next document, Exhibit
5 34.

6 Do you recognize that document?

7 A. I do.

8 Q. Do you know who authored the document?

9 A. I do not.

10 Q. Do you know when this document was written?

11 A. I do not.

12 Q. Do you know when it was in place?

13 A. I do not.

14 Q. Do you know if the guidelines that are set forth
15 in here are the guidelines that were in
16 existence for guards at Longwood during the
17 period of '88 through '92?

18 A. I don't recall.

19 Q. Why is this in your file?

20 A. Someone copied me.

21 Q. Did you do anything in response to receiving
22 this document?

23 A. I don't recall.

24 Q. Turn to the next document.

25 A. Yes.

1 Q. What is this document?

2 A. This was a document that I wrote up on the use
3 of force and the use of deadly force.

4 Q. To whom was this document circulated?

5 A. It was turned over to management.

6 Q. When did you write it?

7 A. I don't recall.

8 Q. Why did you write it?

9 A. I just -- I felt it was important to have this
10 type of documentation for general security
11 purposes.

12 Q. Did you bring this document to the attention of
13 Russell Fox?

14 A. No.

15 Q. Any of the Fox security guards that were working
16 on the premises?

17 A. No.

18 Q. Did you write this document in response to any
19 of the shooting incidents that were brought to
20 your attention on the Longwood property?

21 A. No.

22 MR. UTLEY: I'll object.

23 Q. (BY MS. GERLACK) While you were acting as a
24 security consultant for Longwood, did a shooting
25 incident involving a security guard shooting

1 another security guard come to your attention?

2 MR. UTLEY: Objection.

3 Go ahead.

4 A. Yes.

5 Q. What do you recall about it?

6 A. Very little.

7 Q. Tell me what you recall. Do you know what
8 security company was working on the premises at
9 that time?

10 A. I do not.

11 Q. Do you know if it was Fox?

12 A. I do not.

13 Q. What do you recall about the incident?

14 A. It's so vague that I -- I really -- I really
15 don't recall.

16 Q. Did you conduct any type of investigation into
17 this incident?

18 A. I did not.

19 Q. Who brought the incident to your attention?

20 A. Either the manager or director of operations.

21 Q. Did you consider the shooting of one security
22 guard by another while on duty to be a serious
23 incident that warranted your attention?

24 MR. UTLEY: I'll object.

25 A. No, that was a matter for the security agency to

1 deal with, and the police.

2 Q. Even if it occurred on Longwood property?

3 MR. UTLEY: I'll object.

4 A. That's correct.

5 Q. Did you consider the shooting of one security
6 guard by another to be an indication of a lack
7 of supervision amongst the guard force?

8 MR. UTLEY: Objection.

9 A. No.

10 Q. If we would -- did you conduct any type of
11 seminar on this topic?

12 A. No.

13 Q. And you circulated it to management, anyone
14 else?

15 A. Just to top management.

16 Q. Did you have any follow-up discussions with
17 anyone concerning this?

18 A. No.

19 Q. Do you know when you authored this?

20 A. I do not.

21 Q. Turn to the next document, please.

22 Do you recognize this document?

23 A. I do.

24 Q. What is it?

25 A. It's some notes that I made --

1 Q. When?

2 A. -- on the document on the left side.

3 I do not know.

4 Q. Do you have --

5 A. These are two pieces of paper put together, two
6 note pads put together.

7 The one on the right deals strictly with a
8 property in Akron.

9 Q. What's the name of the property?

10 A. Hillwood.

11 Q. And the notes on the left-hand side?

12 A. Relate to both the Nate Persky and the Safety
13 Director Office in the Fourth District.

14 Q. Morse Watch Tower System for Bill Smoot is
15 written on the left-hand side of that, correct?

16 A. Correct.

17 Q. What does that notation signify?

18 MR. UTLEY: I'll object.

19 A. I don't recall.

20 MR. UTLEY: I'll move the entire
21 document be stricken.

22 Q. Was Bill Smoot the property manager or director
23 of operations for Longwood?

24 A. He was one or the other.

25 Q. But he did work at the Longwood property, right?

1 A. That's correct.

2 Q. Did you ever make any representations to Bill
3 Smoot, concerning the installation of Morse
4 Watch Tower Systems at the Longwood property?

5 MR. UTLEY: Objection, we went
6 over this Tuesday.

7 Go ahead.

8 A. Not that I recall.

9 Q. Did you bring these notes to anyone's attention?

10 A. I don't recall.

11 Q. Were you at a meeting when you took these
12 notes?

13 A. No, I'm confident I made these on my own.

14 Q. The next document?

15 A. I recognize it.

16 Q. Did you author this document?

17 A. Yes, I did.

18 Q. Those are your notes?

19 A. That they are.

20 Q. Why did you write this?

21 A. I don't recall.

22 Q. What is contained on the document, does that
23 refresh your memory as to why you wrote it?

24 A. No, it doesn't. I've already reviewed that.

25 Q. Were you calculating the cost for guard services

1 for Longwood security?

2 A. It appears to be some of that, I don't know.

3 Q. Review the document. Are you able to tell me
4 what your notations mean?

5 We don't want you to guess.

6 A. The first part of the document is a calculation
7 of hours that we have in security guard
8 coverage.

9 Q. And this was two guards per 24 hours?

10 A. But I -- yes. I broke it down -- well, each day
11 I broke it down. It's consistent across the
12 board.

13 I do not recall.

14 Q. And then you have some calculations, the number
15 of hours that you calculated from the first
16 column, times dollars an hour, and then the
17 police at \$14.00 an hour?

18 A. That's correct.

19 Q. And you come up with a cost of \$185,952?

20 A. Combined.

21 Q. Plus staffing for a total of close -- \$249,132?

22 A. Correct.

23 Q. Were you asked to do this by anyone?

24 A. No.

25 Q. Do you know when you made this .

1 document?

2 A. I do not. It says 9-6, but there is no year
3 after it.

4 Q. The next document -- and if you would look at
5 the one after it, because I think it may be
6 another duplication -- are Exhibits --

7 A. It is a duplicate.

8 Q. -- 38 and 39 the same documents?

9 A. Correct.

10 Q. Do you recognize Exhibit 38?

11 A. Yes.

12 Q. What is it?

13 A. It's a use of Cleveland police officers and
14 private security at Longwood.

15 Q. Was this prepared by you?

16 A. Yes, it was.

17 Q. Do you know when you prepared this document?

18 A. I do not.

19 Q. Do you know what guard service was working for
20 Associated Estates?

21 A. I do not.

22 Q. It indicates at the bottom, "Fox proposed cost."

23 A. I see that, yes.

24 Q. Does that refresh your memory at all?

25 A. I don't recall whether Fox Security was at the

1 property at the time that I prepared this.

2 Q. Referring back to your handwritten notes
3 regarding Longwood security, do those figures
4 correspond with the information that's contained
5 in Exhibit 38?

6 A. I don't know, without running a thorough
7 comparison.

8 Q. Did you submit Exhibit 38 to anyone?

9 A. I'm sure I did.

10 Q. Do you know if you did?

11 A. No.

12 Q. Were you asked to do this by anyone?

13 A. No, this was on my own.

14 Q. Was part of your job as a security consultant
15 for Associated Estates to try to save as much
16 money as possible --

17 MR. UTLEY: Objection.

18 Q. (BY MS. GERLACK) -- in the security area, at
19 AEC properties?

20 A. No, it was not.

21 Q. Was cost cutting a concern, an objective of
22 Associated Estates, in retaining security
23 services?

24 A. No, it was not.

25 Q. The next exhibit, Exhibit 40, do you recognize

1 this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It's a proposal from Tenable Securities, to
5 provide service at Longwood.

6 Q. And the date of the document is October 16,
7 1990?

8 A. That's correct.

9 Q. Did you receive this in the course of your
10 employment with Associated Estates?

11 MR. LENSON: Objection, he's not
12 employed by Associated Estates.

13 Q. (BY MS. GERLACK) In the course of your
14 relationship with Associated Estates as security
15 consultant?

16 A. Yes.

17 Q. What did you do in response to receiving this
18 document?

19 A. Yeah.

20 Q. Did you review the proposed schedule of guards
21 upon receiving this document?

22 A. I don't recall.

23 Q. Did you review the proposed cost analysis set
24 forth in this document?

25 A. I don't recall that either.

1 Q. Do you know why you were given a copy of this
2 document?

3 A. No.

4 Q. Who circulated this document to you?

5 A. Undoubtedly Bill Smoot.

6 Q. Okay, the next exhibit.

7 MR. LENSON: Are we going to go
8 through and identify every exhibit, is that
9 what we're going to do?

10 MS. GERLACK: Yes.

11 MR. LENSON: Are you serious?

12 MR. UTLEY: Why don't we come to
13 some sort of stipulation?

14 MR. LENSON: Why don't we
15 stipulate it's all from his file? Why
16 would you have to do that?

17 MS. GERLACK: I don't know what
18 some of these documents are.

19 MR. LENSON: Then give him a
20 chance to look at it. I've never seen
21 anything like it.

22 MS. GERLACK: If you want to
23 stipulate to the authenticity.

24 MR. LENSON: He can't even
25 testify to that.

1 MS. GERLACK: Then we're going to
2 have to do it the long way.

3 MR. LENSON: Lisa, can I suggest
4 you're wrong. He can't stipulate to
5 authenticity, all he can stipulate to is
6 that they're in his file.

7 MS. GERLACK: And that he
8 received them in the course of and scope of
9 his --

10 MR. LENSON: It's in his file, he
11 can stipulate to that. I don't understand
12 why you have to do that.

13 I've never seen this in my entire
14 career.

15 I'm not going to tell you how to do
16 this, but I've never seen anything like
17 this.

18 He can say to you that all of these
19 documents came from his file and he
20 received them.

21 He can admit that.

22 You're wasting a lot of time asking
23 each document.

24 MS. GERLACK: I don't know what
25 each of these documents are for.

1 MR. LENSON: Take a minute and go
2 through it.

3 MS. GERLACK: I'm entitled to
4 find out what they are.

5 MR. LENSON: You're asking him
6 the same question on each document, he's
7 told you they're in his file and were
8 provided to him.

9 Q. (BY MS. GERLACK) Mr. Michalski, the documents
10 that you produced to me, files, your 1992 file,
11 and the other file that you produced to my
12 office in response to the subpoena, those were
13 contained in your file and are the documents
14 that you generated in your association as a
15 security consultant for Associated Estates,
16 correct?

17 A. That's correct.

18 MR. UTLEY: Lisa, what I suggest
19 is that you ask him if he's reviewed
20 Exhibits 41 through 90, and if those
21 documents are copies of the documents that
22 he produced.

23 A. This is a duplication of another one.
24 (Indicating.)

25 Q. Documents 9 through -- what's the last one have

1 you there?

2 A. Ninety.

3 Q. Nine through ninety are the completed documents
4 that you produced to me from your files relative
5 to your work as a security consultant for
6 Associated Estates?

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

8 Q. And you reviewed and relied in part on these
9 documents in the performance of your duties as a
10 security consultant?

11 MR. UTLEY: Objection.

12 A. To some degree.

13 Q. Take a quick look at 91 through 105.

14 A. Okay.

15 Q. Are Exhibits 91 through 95 also documents that
16 were contained in -- related to Longwood and
17 were in your files for Associated Estates
18 throughout your work as a security consultant?

19 A. Did you say 95? It's 105.

20 Q. Ninety-one through one hundred five?

21 A. Yes.

22 Q. There are a couple of documents in here that I
23 need -- Exhibit 42, what is that document?

24 A. I haven't the faintest idea.

25 Q. Do you know how it ended up in your file?

1 A. I do not.

2 Q. Exhibit 45, do you recognize that document?

3 MR. UTLEY: Let's have him tell
4 us what it is.

5 MR. LENSON: To the extent that
6 the documents are being offered concerning
7 Fox Detective Agency, we'll ask that it be
8 stricken from the record as having no
9 relevance to Fox.

10 A. This appears to be comments, and I don't recall
11 whether I made them or not, about Aetna
12 Security, on 8-6-1990.

13 Q. At Longwood?

14 A. It states Longwood at the top of the page.

15 Q. Is this a security audit?

16 A. It does not appear to be.

17 Q. Did you circulate this document to anyone, or
18 report any of the findings -- did you circulate
19 this document to anyone?

20 A. I don't recall.

21 Q. Did you have any discussions about any of your
22 findings here?

23 A. I don't recall exactly what discussions we had.

24 Q. Did you have any discussions with Officer
25 Goodgame, who's noted in this document?

1 MR. UTLEY: I'll object.

2 A. I don't recall, counselor.

3 Q. You note in here that Goodgame was in uniform in
4 a car, with a "strawberry but not working"

5 MR. UTLEY: Objection.

6 Q. (BY MS. GERLACK) What significance did that
7 finding have to you?

8 A. The significance was the fact that he was on the
9 property.

10 Q. Was Goodgame a security guard?

11 A. Was, and was in uniform.

12 Q. He was a security guard working on the Longwood
13 premises at that time?

14 MR. UTLEY: Objection.

15 A. Not during those hours.

16 Q. He was assigned to work at Longwood though?

17 A. That's correct.

18 Q. Did you do anything in response to that finding?

19 A. Talked to the owners of Aetna.

20 Q. What was done, if anything?

21 A. I don't remember.

22 Q. Did you document your discussions with Aetna?

23 A. I don't recall.

24 Q. Did Mr. Goodgame continue to work at the
25 Longwood property after this?

1 A. I don't recall.

2 Q. Did you have any discussions with management of
3 Associated Estates about any of your findings in
4 this document?

5 MR. UTLEY: Objection.

6 A. I'm sure they were given copies of this.

7 Q. Do you recall any discussions?

8 A. No.

9 MR. UTLEY: We're only
10 interested in what you know.

11 Q. (BY MS. GERLACK) Exhibit 46.

12 MR. UTLEY: We went over this one
13 before.

14 Q. (BY MS. GERLACK) Do you recognize that
15 document?

16 A. Yes.

17 Q. Did you author it?

18 A. Yes.

19 Q. -- I'm sorry, I meant the handwritten notes, 47.

20 A. No.

21 Q. You did not author that?

22 A. That's not my writing.

23 Q. Do you know who wrote this document?

24 A. I do not.

25 Q. Do you know why it was given to you?

1 A. I do not.

2 Q. Did you review it?

3 A. I don't recall.

4 Q. Do you know what this proposed -- Longwood
5 security proposed means, what the notations in
6 here --

7 A. I do not.

8 Q. Is this a cost calculations for security
9 services?

10 MR. UTLEY: Objection.

11 MR. LENSON: He said he doesn't
12 know what it is.

13 Q. (BY MS. GERLACK) You're not able to tell me
14 anything that's contained in this document?

15 A. No, I'm not familiar with it at all.

16 Q. Did you review it at the time that it was given
17 to you?

18 A. I don't recall.

19 Q. Please turn to Exhibit 48.

20 MR. UTLEY: Is that the Fox's
21 proposal?

22 A. Yes.

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. Would you identify it for the record?

1 A. It is a security proposal for coverage at
2 Longwood Apartments, submitted by Fox Detective
3 Agency.

4 Q. When was this submitted to you?

5 A. I don't recall, I don't see a date on it.

6 Q. You reviewed this proposal?

7 A. Yes.

8 Q. Did your review of this proposal result in the
9 hiring of Fox to work at Associated Estates, at
10 Longwood?

11 A. No.

12 Q. Did you ask Fox to prepare a proposal
13 specifically for Longwood?

14 A. No.

15 Q. Did you use any of the contents of this in --
16 were any of the contents of the proposal used in
17 administering Fox's guards at the Longwood
18 property?

19 A. I don't know.

20 Q. In Fox's proposal, on page 2 under, "Security
21 Procedure," they indicate that there would be a
22 mobile unit that will check daily the exterior
23 and the guards. Did Associated Estates ever
24 permit Fox to use a mobile unit at Longwood?

25 MR. UTLEY: Prior to July 17,

1 1992.

2 A. I don't know.

3 Q. Do you know if there was a mobile unit in use at
4 the Longwood property?

5 A. Specifically only for Longwood?

6 Q. Yes.

7 A. No.

8 Q. Was there a mobile unit that was used for
9 Longwood in connection with other properties?

10 A. To my recollection, yes.

11 Q. When was that?

12 A. I don't know. I don't recall.

13 Q. What type of vehicle was it?

14 A. I don't recall.

15 Q. Who would use the vehicle, security guards?

16 A. No, no, one of the supervisors.

17 Q. Who were the supervisors, would they also be
18 security guards?

19 A. Well, they're supervisors of the security
20 personnel.

21 Q. But they would be employees of Fox for instance?

22 A. Employees of Fox.

23 Q. Like a lieutenant or sergeant?

24 A. Correct.

25 MR. LENSON: Objection,

1 speculation.

2 Q. (BY MS. GERLACK) Did you review the log sheets
3 that were completed by Fox while they worked at
4 Longwood?

5 A. Occasionally.

6 Q. Did you rely on this document, this proposal, in
7 your evaluation of Fox's security guard
8 services?

9 A. To some degree.

10 Q. What portions of this proposal did you rely on?

11 A. On this proposal?

12 Q. Yes.

13 A. I don't recall. I serve strictly in an
14 advisory capacity.

15 Q. Did you ever follow-up to see if Fox security
16 guards were attending the in-house training
17 program that's referenced on page 7 of this
18 document?

19 A. I did not.

20 Q. The next document that I'd like you to take a
21 look at is handwritten notes, dated 7-12-90.

22 A. What number is that?

23 Q. I'm not sure, mine aren't numbered.

24 MR. LENSON: What's the exhibit
25 number?

1 THE WITNESS: Fifty-six.

2 Q. (BY MS. GERLACK) Do you recognize this
3 document?

4 A. That's my writing.

5 MR. LENSON: For the record,
6 we'll object to Exhibit 56, as having no
7 relevance to Fox.

8 MR. UTLEY: I'll join the
9 objection, as it appears to have taken
10 place off of Longwood property.

11 Q. (BY MS. GERLACK) Was this document prepared by
12 you?

13 A. This is my writing, correct.

14 Q. And what did you document this incident for?

15 A. I was requested to do so by Associated Estates,
16 but this was an incident that occurred off of
17 Longwood property.

18 MR. UTLEY: I'll object and ask
19 that the document be stricken.

20 Q. And who in Associated Estates' management
21 directed to you investigate this particular
22 incident?

23 A. The director of operations, or manager.

24 Q. And these notes reflect your findings as a
25 result of your investigation?

1 A. Some handwritten notes, yes..

2 Q. Does this -- I'm having trouble reading your
3 writing -- does this incident involve a
4 shooting?

5 A. I was writing as I was walking along.

6 Yes, a shooting at the pool.

7 Q. Does this document correspond with the other
8 incident report that's dated 7-11-90, that we
9 marked earlier?

10 A. I presume that it does.

11 MR. UTLEY: We don't want you to
12 presume. If you don't know, say you don't know.

13 A. I don't know.

14 Q. The next document is Exhibit 57, do you
15 recognize that document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's a document that I wrote to Jerry Spevack
19 and Ron Walker, referencing a shooting incident
20 that occurred at Longwood.

21 Q. Why is the document marked "Confidential?"

22 MR. UTLEY: Objection.

23 If you know.

24 A. I don't know.

25 Q. Did you place that marking on there?

1 A. I did not.

2 Q. Were you asked to conduct an investigation into
3 this shooting incident?

4 A. Yes.

5 Q. By Associated Estates?

6 A. That's correct.

7 Q. Did you conduct any follow-up after you wrote
8 this letter to Jerry Spevack and Ron Walker?

9 A. Not that I recall.

10 Q. Did you as the security consultant advise
11 Associated Estates to post any warnings to
12 tenants, of shooting incidents, as they were
13 reported to you?

14 A. No, I did not.

15 MR. UTLEY: Objection.

16 Q. (BY MS. GERLACK) To your knowledge, did
17 Associated Estates do anything to notify tenants
18 of security problems that they were having on
19 the premises, such as shootings?

20 MR. UTLEY: Objection.

21 A. Not to my knowledge.

22 Q. The next document is Exhibit 58. Would you
23 identify it for the record?

24 MR. UTLEY: Excuse me, Lisa, I'll
25 object to 57 as the incident took place off

1 the property.

2 A. 58, yes.

3 Q. Did you write that document?

4 A. Yes, I did.

5 Q. What is it?

6 A. It's an audit of three different properties,
7 that Associated Estates owns or manages.

8 Q. Did you conduct this audit with anyone?

9 A. Not that I recall.

10 Q. Did you circulate this document to anyone in
11 management at Associated Estates?

12 A. Yes.

13 Q. To whom?

14 A. Present in the audit file, to the director of
15 operations.

16 Q. You noted in your findings for Longwood, "Guard
17 downstairs in administration building." What
18 was the significance of noting that?

19 A. Noting the fact that they were inside the
20 building.

21 Q. Instead of patrolling?

22 A. Correct.

23 Q. What did you talk to Willie Benson about?

24 A. I don't recall.

25 Q. Was Foxs Security Service working at this time?

1 A. I don't recall.

2 Q. Just for the sake of clarification, this is a
3 very poor copy of an Associated Estates purchase
4 order, are you able to identify what that
5 document is?

6 MR. LENSON: Other than it's a
7 purchase order?

8 MS. GERLACK: Yes, just the
9 seller.

10 A. It's a purchase order, I can't identify the
11 date, to -- I can make out it selling Wells
12 Fargo Guard Service, the date on the next page
13 is March 1, '89.

14 Q. Was Wells Fargo Guard Service working at
15 Associated Estates?

16 A. No.

17 Q. Why is this contained in your file for Longwood?
18 Is this a contract for the provision of security
19 guards?

20 A. Yes. We were about to -- Associated Estates had
21 contracted with them, had issued a purchase
22 order for them to provide security services at
23 Associated -- at Longwood, and three days prior
24 to them taking over security, they declined.

25 MR. UTLEY: I'll object and ask

1 that the entire answer be stricken.

2 MR. LENSON: It's not what she
3 asked him.

4 Q. (BY MS GERLACK) Why didn't they complete the
5 term of their contract?

6 MR. UTLEY: Objection,
7 relevance.

8 MR. UTLEY: If you know.

9 A. They decided not to take on any armed guard
10 accounts.

11 Q. And Longwood is an armed guard account?

12 A. Yes, it is.

13 Q. The next document, what is that, 62?

14 A. Sixty-two.

15 Q. Do you recognize that?

16 A. It's from my file.

17 Q. Is that your handwriting?

18 A. Yes, it is.

19 Q. And you authored this document?

20 A. Yes, I did.

21 Q. Is this document reflecting the total weekly
22 cost of guard service for Longwood?

23 A. I don't know.

24 Q. You're not able to tell from any of the figures
25 on there?

1 A. It's some notes that I made.

2 Q. Did Associated Estates direct you to factor out
3 a cost analysis for the guard services at
4 Longwood?

5 MR. UTLEY: I'm sorry, could you
6 repeat the question. There was a brief --
7 (Thereupon, the record was read
8 back by the Court Reporter as
9 requested.)

10 A. No, they did not.

11 Q. Why then did you compute this?

12 A. I just played with some numbers..

13 Q. You sat in on the budget meetings though; isn't
14 that true?

15 MR. UTLEY: Objection.

16 A. I did not.

17 MR. UTLEY: He testified Tuesday
18 he did not.

19 Q. (BY MS. GERLACK) You did not?

20 A. No.

21 Q. What's the -- not that document, the next one,
22 64?

23 A. Yes.

24 Q. Do you recognize this document?

25 A. From my files I do.

1 Q. What is it?

2 A. It's an option A and an option B, on the
3 Longwood security program.

4 Q. Did you author this document?

5 A. I don't recall.

6 Q. Do you know why it was given to you or why it
7 ended up in your file?

8 A. I do not.

9 Q. Do you know the significance of this document?

10 A. No, I don't.

11 Q. Did you ever participate in any conversations or
12 discussions with management of Associated
13 Estates to see how they could get the cheapest
14 guard service on the property?

15 A. No.

16 Q. Was that a goal of Associated Estates, to hire
17 the least expensive --

18 MR. UTLEY: Objection.

19 Q. (BY MS. GERLACK) -- guard services to control
20 the property?

21 MR. UTLEY: Objection, he
22 answered this exact question about an hour
23 and a half ago, and he said no.

24 A. No.

25 Q. The next exhibit, would you identify the exhibit

1 number?

2 A. Sixty-five.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. Could you identify it for the record?

6 A. This is a document that I wrote on February 20,
7 1989, to Ron Walker, who was Director of
8 Operations, documented reference "Cost savings
9 on revised Longwood security program."

10 Q. Did any of the previous documents that you were
11 unable to tell the substance of -- the purpose
12 of the documents relate to this, that dealt with
13 calculations?

14 A. I did not associate that with this.

15 Q. So you did have a role in advising Associated
16 Estates how they could save money with security
17 programs; isn't that true?

18 MR. UTLEY: Objection, this is
19 1989.

20 Go ahead.

21 A. I don't -- it appears from this document, yes.

22 Q. And in fact, the document you indicate that you
23 reduced your security cost for weekday coverage
24 by 26 percent and weekend coverage by 20
25 percent, for an average saving of 24 percent per

1 uniformed officer cost for weekday dispatching
2 cost; is that correct?

3 MR. UTLEY: Objection, document
4 speaks for itself.

5 A. Yes.

6 Q. And your calculations indicate that that was a
7 total cost savings per year of \$90,000; is that
8 true?

9 MR. UTLEY: Is that what that
10 says?

11 A. That's what the document says.

12 Q. What information did you rely on to reach these
13 calculations; if you recall?

14 A. As I best recall --

15 MR. UTLEY: We only want what you
16 recall.

17 A. As I recall, the daily dispatching activities,
18 daily, not -- that's weekday dispatching
19 activities -- was turned over to the office
20 staff, in lieu of having security guards in a
21 security office handling dispatching and
22 communications during the day.

23 The second thing was we used "civilian"
24 dispatchers on the evenings and weekends, in
25 lieu of using an armed guard for that service.

1 Q. Do you have any documentation to show your
2 implementation of that?

3 A. I do not.

4 Q. Were you given a directive by Associated Estates
5 to cut costs for security?

6 A. I was not.

7 Q. Why did you prepare this cost savings document?

8 MR. UTLEY: Objection, asked and
9 answered, he said he played with the
10 figures.

11 A. I felt it was an effective program.

12 Q. The document states, "regarding the changes we
13 instituted in Longwood security," and then you
14 go through the cost savings. So, did you make a
15 recommendation to Associated Estates to cut
16 costs in seven areas to achieve this \$90,000
17 savings, or was that something that was decided
18 by management?

19 MR. UTLEY: Objection.

20 A. I don't recall.

21 Q. Who's Jim Ingersol?

22 A. Jim Ingersol heads up the budgeting for
23 Associated Estates.

24 Q. At the time that you instituted these changes
25 with Associated Estates to achieve this \$90,000

1 a year cost savings, did you conduct any type of
2 study to see if these changes would affect
3 security in any way on the premises?

4 A. These changes that were put into effect had
5 absolutely no affect on the security at the
6 property.

7 Q. What I'm asking you is, did you conduct any type
8 of study to assure that this would have no
9 affect on the security in the property?

10 A. I did not.

11 MR. UTLEY: I'll object.

12 Q. (BY MS. GERLACK) The next exhibit, which is
13 Exhibit 66, appears to be a duplicate copy of
14 Exhibit 65; is that correct?

15 A. That's correct.

16 Q. And there is a notation on the bottom, do you
17 know whose signature that is?

18 A. I don't.

19 Q. This was circulated back to your file, was it
20 not?

21 A. That's correct.

22 Q. And you don't know to whom this was circulated?

23 A. No -- to who it was circulated, the initial
24 document?

25 Q. Yes.

1 A. Sure. It was sent to Jeff Freedman, Jim
2 Ingersol.

3 Q. And you don't know whose handwriting it is that
4 says, "Jeff, Greg and Jim, great job"?

5 A. I don't.

6 (Thereupon, a luncheon recess
7 was taken at 12:00 p.m., with
8 the proceedings to be resumed
9 at 12:30 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

(Time: 12:32 p.m.)

1
2
3 Q. (BY MS. GERLACK) Exhibit 67, this looks like
4 it's incomplete, it's page 2, can you -- I think
5 we went through A and B on another?

6 A. Yes, we did.

7 MR. UTLEY: Exhibit 64, page 2
8 for Exhibit 64.

9 Q. (BY MS. GERLACK) The next exhibit would be 68?

10 A. Yes.

11 Q. Who gave this document to you?

12 A. R. W., Ron Walker.

13 Q. And he was the Director of Operations?

14 A. Director of Operations.

15 Q. At Longwood?

16 A. Yes.

17 Q. Is this handwritten notice for one of the
18 residential counsel meetings that was referenced
19 in your letter?

20 A. It appears to me to be that.

21 Q. What's the Longwood Concern Committee; if you
22 know?

23 A. I don't know.

24 Q. Did you have any discussions with Mr. Walker
25 about the issues that were going to be discussed

1 at this time?

2 A. I'm sure I did but I don't recall them.

3 Q. Listed on this document there are three areas,
4 drug problems, security and tenant screening.

5 MR. UTLEY: I object, there is no
6 date on this document, we don't know
7 whether it was --

8 Q. (BY MS. GERLACK) Do you know when this --

9 A. I do not.

10 Q. Do you recall any security concerns that were
11 raised or brought to your attention concerning
12 tenant screening?

13 MR. UTLEY: Objection.

14 Go ahead.

15 A. I don't recall anything specific regarding that.

16 Q. Do you recall anything in general?

17 MR. UTLEY: Objection.

18 Lisa, we're again '88 to 7-1-92?

19 MS. GERLACK: Yes.

20 A. I really don't know when this document was --

21 Q. My question is, do you know generally what was
22 the concern about tenant screening and why that
23 was chosen to be discussed at this meeting?

24 MR. UTLEY: Do you recall,
25 Craig?

1 A. Yes. Tenants at the property were concerned
2 about whether Associated Estates did a proper
3 screening job of prospective tenants.

4 Q. Did you look into that concern in any way to
5 evaluate the screening process?

6 A. No.

7 MR. UTLEY: It was just
8 discussions that you had?

9 Q. (BY MS. GERLACK) Was there a screening process
10 for tenants at Longwood?

11 A. There is now.

12 Q. During --

13 A. But I don't know when that was incorporated.

14 Q. During the time period of '88 to '92 was there?

15 A. I don't know.

16 Q. Did you have anything at all to do with the
17 selection of tenants that resided at Longwood?

18 A. No.

19 Q. Do you know why the screening was of concern to
20 tenants?

21 MR. UTLEY: Objection.

22 Go ahead.

23 A. As it turned out -- and again I cannot identify
24 the exact time -- it wasn't a matter so much of
25 the screening of the tenants, which is an

1 important factor, it was who moved in with the
2 tenants after --

3 MR. UTLEY: I object, move to
4 strike. The answer is nonresponsive to the
5 question.

6 A. -- the lease.

7 Q. In the time that you worked at Longwood as a
8 security consultant, were you ever apprised of
9 any situations where tenants were complaining
10 about non residents living on the premises?

11 MR. UTLEY: Objection.

12 A. Yes.

13 Q. And on what occasions were you so --

14 A. I don't remember.

15 Q. How were those brought to your attention and by
16 whom?

17 A. By the manager at the property.

18 Q. Who was Mr. Walker?

19 A. No, it was either -- it would have been Duncan
20 or Smoot, or Benson.

21 Q. And what in particular do you recall about what
22 they told you?

23 A. I don't recall any specifics, but complaints
24 were received -- many times anonymously -- at
25 the office.

1 Q. The dispatch office?

2 A. No, at the management office, the administrative
3 office at the property.

4 Q. Where is that located; do you know?

5 A. In the administration building, second floor.

6 Q. Did you ever review any of those complaints?

7 A. No, I did not.

8 Q. Were they phone calls, or something that -- if
9 you know -- Associated Estates reduced the
10 complaints to writing?

11 A. I do not know.

12 Q. Did you conduct any type of investigation into
13 any of the complaints?

14 A. I did not.

15 Q. Did Associated Estates do anything to verify who
16 was living in particular units; to your
17 knowledge?

18 A. They followed-up on it.

19 MR. UTLEY: Objection.

20 Q. (BY MS. GERLACK) What do you mean by that?

21 A. They investigated to determine, to the best of
22 their ability, whether anyone other than the
23 tenant of record, and children, or whomever, was
24 residing in that suite.

25 Q. How did they do that?

1 A. Principally by a suite visit.

2 Q. And how often were those conducted?

3 A. I haven't the faintest idea.

4 Q. So you don't know how many times they did them?

5 A. No, because I don't know how many complaints
6 they had.

7 Q. Did they only do it in response to a complaint?

8 A. Well, that would be the only way in which they
9 would have knowledge that there was perhaps
10 someone else living in the suite.

11 Q. You're not aware if they had any obligations to
12 conduct inspections of the apartments to verify
13 who was living there?

14 A. I don't know.

15 Q. As a security consultant, did the fact that
16 tenants were complaining about non tenants
17 residing on the premises cause any concern for
18 you, in terms of the security on the premises?

19 MR. UTLEY: Objection.

20 Go ahead.

21 A. No.

22 Q. Yet this was an issue that was raised, to
23 discuss security and safety issues by the
24 Longwood Concern Committee, correct?

25 A. I believe so.

- 1 Q. Did you attend this meeting?
- 2 A. I don't know the date of the meeting. I did not
3 attend all of the meetings.
- 4 Q. Why?
- 5 A. I wasn't invited.
- 6 Q. There are two other sets of initials on this
7 document, the meeting notice, it appears JIF and
8 JS, do you know whose initials those are or
9 whose handwriting that is?
- 10 A. I don't know whose handwriting that is, but JIF
11 is Jeffrey Freedman.
- 12 Q. He's the owner of Associated Estates?
- 13 MR. UTLEY: Objection.
- 14 MR. LENSON: I think it's
15 President.
- 16 Q. (BY MS. GERLACK) President?
- 17 A. And JS is --
- 18 Q. Jerry Spevack?
- 19 A. Jerry Spevack.
- 20 Q. If you would turn to Exhibit 69.
21 Do you recognize this document?
- 22 A. Yes, I do.
- 23 Q. What is it?
- 24 A. It was a document that I generated, after an
25 audit at Longwood, on 11-15-88.

1 Q. Did you do anything in response to this audit?

2 A. I don't recall what the audit says.

3 Q. Well, please review.

4 A. I haven't referenced it for years.

5 Q. Take a look at it and review it.

6 A. Yes, okay.

7 Q. Did you author this document?

8 A. Yes, I did.

9 Q. Does your review of the document refresh your
10 recollection about the audit?

11 A. Yes.

12 Q. Who was the guard service assigned to work at
13 Longwood at this time?

14 A. Aetna.

15 Q. This was in 1988?

16 A. 1988.

17 Q. If you would turn to page 2 of the document, it
18 indicates at "12:14 a.m., five guards still in
19 the office."

20 Did the contract between Associated Estates
21 and Aetna, at that time, call for the provisions
22 of five security guards per eight hour shift?

23 MR. UTLEY: Objection.

24 Go ahead.

25 A. I don't recall.

1 Q. But based upon your review of this document,
2 there were five guards working, at least at
3 12:14, according to this document, right?

4 A. That's correct, and one -- yes, with one of them
5 being a dispatcher.

6 Q. The document doesn't say that, but is that your
7 recollection, that there were four guards and a
8 dispatcher?

9 A. No.

10 Q. Only if you know.

11 A. Okay.

12 Q. Who made the decision to use the security guard
13 services at Longwood, from five guards per shift
14 to two guards per shift?

15 MR. UTLEY: I'll object. There
16 is no suggestion it's been done.

17 A. That's right. No suggestion.

18 Q. When Fox worked at Longwood, there were two
19 guards working for an eight hour shift; is that
20 correct?

21 A. Two guards working?

22 Q. Per eight hour shift, plus the dispatcher. Two
23 guards that actively patrol.

24 A. But there was four platoons.

25 Q. My question to you, sir, is, how many guards

1 worked per eight hour shift when Fox was
2 assigned to work at Longwood?

3 MR. UTLEY: Objection.

4 Go ahead.

5 A. Two.

6 Q. Two per eight hour shift?

7 A. Correct.

8 Q. Back in 1988, this document indicates that at
9 12:14 a.m., there were five guards in the
10 office.

11 A. Correct.

12 Q. All night shift personnel, so there were five
13 guards working the night shift in 1988; is that
14 correct?

15 A. No, not necessarily.

16 Q. What does the document state?

17 A. The document states there were five guards in
18 the office.

19 Q. Would you agree with me that there were five
20 guards working the night shift in 1988, and when
21 Fox was working there, there were only two
22 guards working?

23 A. No, I would not.

24 Q. What do you disagree with about that statement?

25 A. I disagree with the fact that there is a fourth

1 platoon.

2 Q. That overlaps?

3 A. That overlaps.

4 Q. And that was one other guard that was provided;
5 is that correct?

6 A. No, two other guards.

7 Q. When was that?

8 A. I don't know.

9 Q. You can't tell me when that fourth platoon was
10 implemented?

11 A. No, I cannot, not by date.

12 Q. Was there ever a time that there were only two
13 security guards working to patrol the ground of
14 Longwood per eight hour shift?

15 MR. UTLEY: Objection.

16 A. Yes.

17 Q. When was that?

18 A. 8 a.m. to 4 p.m., and from 2 a.m. or 3 a.m. to 8
19 a.m.

20 Q. And in that overlapping period, how many guards
21 were working?

22 A. Four.

23 Q. Four security guards?

24 A. Yes, ma'am.

25 Q. Who made the decision to reduce the number of

1 guards from five to two?

2 MR. UTLEY: I'm going to
3 object. Mischaracterization.

4 A. I don't think you're making the proper
5 interpretation from my audit.

6 Q. Sir, the document states five guards in the
7 office all night shift personnel. Does that not
8 indicate that there were five guards working at
9 that time?

10 A. No, it does not.

11 Q. Well, please tell me what I'm not seeing with
12 that sentence.

13 A. Undoubtedly, one of these people was a
14 dispatcher.

15 Q. How do you know that?

16 A. I don't know, I don't recall.

17 Q. Do you know that?

18 A. No.

19 Q. Then you can't say that, can you?

20 A. No. But we only had four on, so it's a
21 reasonable conclusion that the other person was
22 a dispatcher, or a supervisor who had dropped by
23 the property.

24 Q. Back in '88 you had Aetna security, you had four
25 guards working the night shift. Were there four

1 guards patrolling during the daytime hours?

2 A. No.

3 Q. When Fox took over the security for Longwood,
4 was there anytime when there was not a fourth
5 platoon working or there were only two guards
6 patrolling per shift?

7 A. Yes.

8 Q. What time frame was that in?

9 A. I can't tell you the time frame.

10 Q. Now, you've stated that there was a time when
11 there were only two guards patrolling the
12 complex; is that correct?

13 A. That's correct.

14 Q. And back in 1988, from this document you've told
15 me that presumably there were at least four
16 guards patrolling and one was a dispatcher at 12
17 a.m., per this audit?

18 A. That's correct.

19 Q. What I would like to know is, who in Associated
20 Estates made the decision to reduce the number
21 of security guards for patrolling purposes at
22 Longwood; if you know?

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

24 A. I don't know.

25 Q. Did you have anything to do with making that

1 decision?

2 A. No, I did not.

3 MR. UTLEY: Objection.

4 Q. (BY MS. GERLACK) Do you know if your
5 calculations in cost savings for the security
6 program had anything to do with the reduction in
7 security guards at Longwood?

8 A. It did not.

9 Q. The Fox Security proposal that we already
10 reviewed, did that -- well, wait a minute.

11 You have in here under notes on your
12 audit, under subsection D of page 2, "evaluate
13 clock stations"?

14 A. Yes.

15 Q. What did you mean by that?

16 A. As the old detect clock system, where the guard
17 carries a clock and walks around and puts the
18 key in and logs it, that was what I meant.

19 Q. Was that in place at Longwood?

20 A. No, it was not.

21 Q. So you were making a notation to have AEC
22 consider the use of that clock station?

23 A. It was a thought that I had when I drafted this
24 up, and I always try to put down my thoughts,
25 and this was to evaluate putting in such a

1 system.

2 Q. Was that clock station suggestion ever
3 considered by Associated Estates?

4 A. Not to my knowledge, no.

5 Q. Do you know why?

6 A. I do not.

7 Q. Do you know what the cost of the clock station
8 would --

9 MR. UTLEY: Objection.

10 A. I don't know.

11 Q. What purpose does a clock station serve?

12 Does it just show where a guard is at a
13 particular time?

14 A. Yes, ma'am.

15 Q. At the time that you made this suggestion, was
16 it your understanding that the implementation of
17 clock stations would improve supervision of
18 security guards on the premises?

19 MR. UTLEY: Objection.

20 A. No, not from the standpoint of the company.

21 Q. What was your purpose in suggesting it?

22 MR. UTLEY: Objection.

23 A. It would indicate to management where the guards
24 were at what time.

25 Q. And why would that be important?

1 A. Insurance purposes.

2 Q. Anything else?

3 A. Make sure they're moving, patrolling.

4 Q. Instead of sitting in the office?

5 A. Whatever.

6 Q. Under subsection B, if you could read that to
7 yourself and let me know when you've finished.

8 A. Okay.

9 Q. According to that paragraph, there were five
10 officers working a shift three times a day; is
11 that correct?

12 That's what it says, right?

13 A. That's correct.

14 Q. Did you have any discussion with Bill -- would
15 you identify who Bill is for the record?

16 A. Bill Smoot, Willie Benson and Ron Walker.

17 Q. Did you discuss with them the need in the
18 distribution of security officers over a 24 hour
19 period?

20 A. I'm sure I did.

21 Q. Do you have any recollection as to what was
22 discussed?

23 A. I do not.

24 Q. Why did you make a note to evaluate the need and
25 distribution of security guards?

1 A. I hadn't really studied the need per say, but
2 the utilization of personnel is based upon need,
3 to sum it all up into one word.

4 Q. Had you ever done anything to assess the need
5 for security personnel, at Longwood, at any
6 point during your work there?

7 A. Not to my recollection.

8 Q. Did you do anything or make any security
9 recommendations to Associated Estates, after you
10 completed this audit?

11 A. Other than the recommendation that we sit down
12 and review everything with the security company,
13 I cannot recall anything else.

14 Q. Did you in fact review your findings of this
15 audit with the security company?

16 A. Yes.

17 MS. GERLACK: At this point, Mr.
18 Lenson has asked that I take a break in my
19 questioning, so that he can ask you some
20 questions, and I'm going to do that.

21 I'm still not finished with my
22 questioning of you, and I'd like to
23 reschedule another convenient date for us
24 to conclude the questions; is that okay?

25 THE WITNESS: That's fine.

1 MS. GERLACK: Thank you.

2 MR. LENSON: Are you making the
3 exhibits part of the deposition transcript?

4 MS. GERLACK: Yes.

5 So we'll adjourn, and we'll pick a
6 date and time to meet before we end today.

7 MR. LENSON: Just so the record
8 is clear, the deponent has indicated he
9 wished to be out of here by 2:00, and in
10 deference to that we're going to obviously
11 not complete my portion of the
12 cross-examination either, but I felt that
13 after being questioned by the same lawyer
14 for about 9 hours, that somebody else
15 should have a turn.

16 So here I am.

17 CROSS-EXAMINATION

18 BY MR. LENSON:

19 Q. Mr. Michalski, what I want you to do is listen
20 to everything I ask you and only respond to the
21 question that you know the answer to. I don't
22 want you to speculate, I don't mean for you to
23 assume, I just want you to give me your best
24 knowledge, either based upon observations or
25 something you read, okay?

1 A. Okay, no problem.

2 Q. After sitting here for a number of hours, I get
3 the impression that over the period of years,
4 you have developed not only an expertise, but
5 perhaps even an interest in security; is that
6 correct?

7 A. To some degree, yes.

8 Q. And would you agree with me that security is
9 more than just keeping the bad guys out; is that
10 correct?

11 A. That's correct.

12 Q. Security involves a whole gamut of procedures
13 and even instrumentalities, to protect people
14 under these circumstances, who are tenants of
15 your clients; is that accurate?

16 A. That's accurate.

17 Q. And that would involve such things as fire
18 prevention, evacuation, things of that nature?

19 A. Exactly.

20 Q. So that your involvement on behalf of Associated
21 Estates as a consultant involves more than just
22 security personnel, and I'm using the phrase
23 "keeping the bad guy out;" is that accurate?

24 A. Yes. It's public safety, correct.

25 Q. And those are the things that you are retained

1 to do, to provide information to Associated
2 Estates on an annual basis, correct?

3 A. That's correct.

4 Q. Now, prior to your becoming an independent
5 consultant, who was charged with that
6 responsibility in providing Associated Estates
7 or these other entities with the same
8 information which you provided them on an annual
9 basis?

10 A. I don't believe they had any, to my knowledge.

11 Q. So until 1988, this company had nobody who
12 provided the independent evaluations, et cetera;
13 is that correct?

14 A. And I'd like to clarify the 199 -- 1988.

15 Q. Sure.

16 A. I started with Associated Estates in January of
17 1988, but I had absolutely nothing to do with
18 their security -- I shouldn't say that, I had
19 limited, very limited exposure to their security
20 during that entire calendar year. I don't think
21 I got involved in any type of security with
22 Associated Estates until '89.

23 Q. You said you started with Associated Estates in
24 '88?

25 A. That's correct.

1 Q. I thought you had been employed there for some
2 time?

3 A. No. I started with them in January of 1988.

4 Q. Where were you in the 1980's?

5 A. I was at University Circle.

6 Q. I apparently wrote down the wrong information
7 here. So in other words, you were an employee
8 of Associated Estates for about a year?

9 A. Two years.

10 Q. Two years?

11 A. Almost two years, '88 and '89.

12 I retired from University Circle in
13 December of 1987.

14 Q. Isn't that something, because I had you at
15 Associated Estates after '78.

16 A. No.

17 Q. So you were only there for two years?

18 A. Yes.

19 Q. And during that two year period, you really were
20 not involved in security?

21 A. For one year.

22 Q. For one year, and then the second year you got
23 involved in security?

24 A. Then I got involved.

25 Q. And you would agree with me that security for a

1 particular -- we're limiting it now to
2 residential apartment buildings.

3 A. Uh-huh.

4 Q. Security for residential buildings and the needs
5 and the procedures for the same, would differ
6 based upon the location of the building,
7 correct?

8 A. Absolutely.

9 Q. And it would also differ with respect to the
10 type of building we're dealing with?

11 For instance, Gates Mills Towers is a high
12 rise apartment building, right?

13 A. Correct.

14 Q. And therefore, through the procedures that are
15 established at Gates Mills Towers -- and I'm
16 using that for an example -- the person
17 attempting to enter the apartment building --
18 and I know there are several, but let's take an
19 example of a person trying to enter the
20 building -- it's my understanding there were
21 only two ways to enter it. One you have a key,
22 and you put it in the door and you open the door
23 and walk in, correct?

24 A. That's correct.

25 Q. Or, if you don't have a key, you have to buzz

1 somebody and assume that they'll buzz you in; is
2 that correct?

3 A. That's correct.

4 Q. And those are the two acceptable ways of
5 entering, plus the garage?

6 A. Two acceptable ways.

7 MR. UTLEY: At Gates Mills.

8 Q. (BY MR. LENSON) That's what I said, and I'm
9 limiting it to Gates Mills.

10 A. I understand.

11 Q. And there is a third way of entering through the
12 garage?

13 A. With a key.

14 Q. With a key or some other device, to get into the
15 garage; is that correct?

16 A. That's correct.

17 Q. So that in and of itself constitutes a security
18 procedure, correct?

19 A. Absolutely.

20 Q. So that under those circumstances, if you have a
21 high rise apartment building with limited
22 methods of ingress or egress, that constitutes a
23 security procedure and a security system; is
24 that correct?

25 A. Yes, it does.

1 Q. And therefore, when we deal with high rise
2 apartment buildings, obviously depending where
3 they're located, but those in and of itself
4 present a different situation than an apartment
5 complex such as Longwood, correct?

6 A. Yes, it does.

7 Q. And notwithstanding that, you as a security
8 consultant for the Associated Estates were still
9 required to make an annual survey of security
10 situations existing at a place, for example,
11 such as Gates Mills Towers, correct?

12 A. Yes, I was.

13 Q. Now, you made a distinction when we first
14 started on Tuesday, when you talked about the
15 number of properties Associated Estates and its
16 subsidiaries or sister corporations own, I think
17 you said 90?

18 A. About 90.

19 Q. Of those 90 I believe you said 30 would be what
20 we would call federally subsidized housing; is
21 that approximately?

22 A. No, I think I identified the 30 as having
23 security.

24 Q. Okay, having on --

25 A. On-site security.

1 Q. Security. So we can get rid of 60, because 60
2 of those buildings, for one reason or another,
3 do not have on-site security people, correct?

4 A. That's correct.

5 Q. Of the 30, give me your best explanation as to
6 how many of those are high rises?

7 Your best explanation is all I'm asking
8 for?

9 A. Fifteen or Twenty.

10 Q. And that in itself would present a different
11 situation concerning security because they're
12 high rises, assuming they have that type of
13 entry that we discussed at Gates Mills?

14 A. Same type of entry.

15 Q. So in reality, those situations are completely
16 different than what we're dealing with in
17 connection with Longwood Apartments, correct?

18 A. That's correct.

19 Q. And just for the sake of discussion, Longwood
20 Apartments as opposed to being high rise are low
21 rise, correct?

22 A. Correct.

23 Q. And an important distinction involving Longwood
24 Apartments -- and there are several, but we'll
25 get to a few of them -- is that there is no

1 limited access to getting inside an apartment
2 building, correct?

3 A. Correct.

4 Q. So that in these other buildings that we're
5 talking about, whether they're the inner city or
6 not, in order for somebody to get into that
7 building, theoretically, they should have a key
8 or be buzzed in; is that correct?

9 A. That's correct.

10 Q. That is not true at Longwood Apartments?

11 A. It is not true.

12 Q. As I understand it, and correct me if I'm wrong,
13 but there are 78 buildings at Longwood?

14 A. I believe there are 78.

15 Q. Covering 31 acres of property?

16 A. About 31 acres.

17 Q. So that in and of itself is also distinct from
18 most of the apartment buildings owned by your
19 client; is that correct?

20 A. I don't understand that question.

21 Q. Let me rephrase it.

22 A. I'm sorry.

23 Q. That's fair.

24 Longwood Apartments, being different
25 because it's a low rise, also the fact is that

1 there are 78 buildings spread over 31 acres.

2 A. Uh-huh.

3 Q. That in itself distinguishes it from most, if
4 not all the other properties owned by Associated
5 Estates?

6 A. That's correct.

7 Q. You also talked about the fact that a number
8 of -- I shouldn't say a number -- several of
9 these properties for which you have consulted
10 are federally subsidized, low income housing,
11 correct?

12 A. That's correct.

13 Q. And you further distinguished it by saying some
14 of them are located in what we call "inner
15 city"?

16 A. Correct.

17 Q. And I would have to believe, based upon what
18 you've testified thus far, that in planning
19 security procedures, et cetera, for the inner
20 city properties, that would differ significantly
21 from planning security procedures, for instance,
22 from Gates Mills Towers, fair statement?

23 A. It would.

24 Q. By virtue of the fact of where the building is
25 located?

1 A. By location.

2 Q. And I think you even made the comment that in
3 performing audits, the fact that this was
4 located in predominantly a black area, that you
5 felt for your own safety, and perhaps for the
6 safety of others, you had to retain Mr.
7 Worthington to do the audits. I presume he's
8 black?

9 A. Associated Estates did, and he is black.

10 Q. So that's another situation, right?

11 A. Right.

12 Q. Which all plays into the strategy and procedures
13 regarding security, correct?

14 A. That's correct.

15 Q. Now, other than yourself, since 1989, has anyone
16 else, to your knowledge, who has a security
17 background, been involved with Associated
18 Estates and its subsidiaries in performing
19 audits or evaluating the needs for security at
20 the inner city property?

21 MR. UTLEY: We'll object to the
22 term "subsidiaries." We'll permit you to
23 use it, but --

24 MR. LENSON: I don't know how
25 else you want me to refer to it.

1 MR. UTLEY: For the purposes of
2 this deposition, that's fine.

3 A. Yes, there was.

4 Q. Who was that?

5 A. That was a corporation called Top Watch.

6 Q. And Top Watch is a security consultant?

7 A. They were.

8 Q. And do you know when they stopped providing the
9 security consulting work?

10 A. I do not.

11 Q. Now, would you agree with me that Mr.
12 Worthington is not a security consultant,
13 correct?

14 A. Not a consultant, correct.

15 Q. And he was a property manager, correct?

16 A. Had been.

17 Q. Do you know of any security training that he's
18 had?

19 A. I do not.

20 Q. So, whatever he did, in auditing, was merely
21 observing, correct?

22 A. That's correct.

23 Q. I think you mentioned that his son was a police
24 officer?

25 A. That's correct.

1 Q. But that doesn't necessarily mean by osmosis he
2 has any type of training as a police officer?

3 A. It does not.

4 Q. So as far as security consultants, it would be
5 Top Watch, yourself and nobody else?

6 A. That's correct.

7 Q. And Mr. Worthington, whatever he did or did not
8 do, was as a lay person?

9 A. That's correct.

10 Q. By the way, where is Mr. Worthington today?

11 A. At home.

12 Q. What's his condition?

13 A. Not very good.

14 Q. Is he on his death bed?

15 A. Well, he's up and around. I saw him about three
16 weeks ago or so, he was out with his wife and he
17 blew the horn, and I stopped and chatted with
18 him for a few moments. He's fairly ill.

19 Q. Now your background is in criminal justice from
20 Michigan State University. Did you take a lot
21 of sociology courses?

22 A. No.

23 Q. Do you review and attend seminars -- strike
24 that.

25 When you attend seminars, do you get into

1 the sociological aspects of criminology? In
2 other words, who are the criminals?

3 A. No.

4 Q. Do you get into the understanding that poverty
5 or low income will have a higher rate of
6 criminal conduct than perhaps a wealthier area?

7 A. Yes.

8 Q. So that's a given?

9 A. Yes.

10 Q. And that's accepted and recognized by you who
11 consider themselves criminal justice experts; is
12 that correct?

13 A. Yes.

14 MR. UTLEY: Objection.

15 Q. (BY MR. LENSON) And would you agree with me
16 that Longwood Apartments would be considered a
17 low income or poverty level area?

18 A. Yes.

19 Q. And it would follow therefore that it's not to
20 be unexpected that criminal conduct would occur,
21 perhaps more frequently per capita then it would
22 somewhere else?

23 MR. UTLEY: Objection.

24 Go ahead.

25 A. Yes.

1 Q. And that's based upon what you fellows have
2 reviewed and done surveys and strategies,
3 correct?

4 A. Right.

5 Q. So in effect, you don't need to look at these
6 statistics, you don't have to take these
7 statistics that Chief Rudolph has talked about,
8 and this other fellow that the Plaintiffs have
9 hired, to come up with a determination that by
10 virtue of putting 78 buildings in an area of 31
11 acres, where people of low income or poverty
12 level are residing, there is going to be
13 criminal conduct?

14 MS. GERLACK: Objection to the
15 question, ask that the question and answer
16 be stricken.

17 MR. UTLEY: Go ahead.

18 A. Statistics are an aid, but a proper
19 interpretation of those statistics is extremely
20 important.

21 Q. Granted. But the fact is that if you don't have
22 one statistic regarding criminal conduct, at or
23 about Longwood Apartments, based upon your
24 experience and education and attending seminars,
25 the fact that this complex was geared for

1 poverty level or low income people, you knew as
2 well as anybody else in your profession, that
3 you're going to have a more significant amount
4 of criminal conduct than you would somewhere
5 else?

6 MR. UTLEY: Objection.

7 MS. GERLACK: Objection.

8 Q. (BY MR. LENSON) That's a fair statement?

9 A. It's a reasonable presumption.

10 Q. Now, when you take in consideration the
11 environment, of what we have here, and you add
12 into that the sociological recognition that
13 Rudolph talks about, that this other fellow, I
14 don't know, talks about, that drugs are becoming
15 unfortunately an intricate part of the community
16 in that area -- and it is also recognized, is it
17 not, that drugs lead to other crimes; is that
18 correct?

19 MS. GERLACK: I'm going to object
20 to this question and ask that the question
21 and answer be stricken.

22 A. It's not only in --

23 MR. LENSON: Just so the record
24 is clear, counsel has opened this entire
25 line of questioning.

1 MS. GERLACK: You are asking him
2 questions of findings of Howard Rudolph,
3 he's never been mentioned at all.

4 I've asked about crime statistics.

5 MR. LENSON: You opened all of
6 this up, we objected about drugs and
7 everything, you kept going.

8 MS. GERLACK: I did not open the
9 door to Howard Rudolph or any expert. He
10 has never been asked one question about how
11 Howard Rudolph, his findings or
12 conclusions. So on that basis I'm making a
13 continuing objection.

14 MR. LENSON: I want you to know
15 that you opened it up. I'm sure he's read
16 Rudolph's report, he doesn't have to be
17 asked a question by you about Rudolph's
18 report.

19 And frankly my next question is going
20 to be if he knows Howard Rudolph.

21 MS. GERLACK: I'm going to move
22 this entire line of questions and answers
23 be stricken.

24 Proceed.

25 THE WITNESS: What was the

1 question?

2 (Thereupon, the record was read
3 back by the Court Reporter as
4 requested.)

5 Q. (BY MR. LENSON) There has been discussion and
6 Plaintiff's counsel has asked you about the
7 statistics, okay. What I wanted to know from
8 you, sir, based upon your knowledge of the
9 sociological criminal conduct, sociological
10 economic environment --

11 MR. UTLEY: Between '88 and '92?

12 MR. LENSON: Right, I'm limiting
13 it to that.

14 Q. (BY MR. LENSON) It's your understanding that
15 when you have low income housing, low income or
16 poverty level people in a confined area, of 78
17 buildings in 31 acres, that you don't need any
18 statistics to tell you there is going to be
19 crime in that area, correct?

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

22 Are you asking him whether he needed
23 them at the time, or are you asking whether
24 he needs them today?

25 MR. LENSON: Of course I'm

1 talking about at the time.

2 MS. GERLACK: Objection.

3 MR. UTLEY: He's asking if
4 you needed them then.

5 THE WITNESS: I know that
6 crime will occur in that area.

7 Q. (BY MR. LENSON) And you also know by reading
8 whatever you've done and by going to seminars,
9 and that because of that very fact scenario that
10 I gave you, that there is going to be drug
11 trafficking in that limited area, correct?

12 A. There is throughout our entire society.

13 Q. And unfortunately, it is more prevalent, as I
14 understand it, the street type drugs, in that
15 type area?

16 A. It's more known about.

17 Q. It's more known about, right, I'll agree with
18 you.

19 And you don't have to be in your field to
20 realize that drug trafficking and the
21 involvement with drugs leads to other crimes,
22 correct?

23 MS. GERLACK: Objection.

24 A. Definitely.

25 Q. It doesn't necessarily lead to rape though, does

1 it?

2 MS. GERLACK: Objection.

3 A. Not necessarily.

4 MS. GERLACK: I'm just going to
5 object.

6 You know, David, you and I had a
7 discussion about questions and opinion
8 testimony, and I do not think that that
9 has --

10 MR. UTLEY: He's limiting it to
11 what his understanding was in 1992.

12 MR. LENSON: 1988 to 1992.

13 MR. UTLEY: Murray just
14 indicated that's what he's limiting his
15 questions to.

16 MS. GERLACK: Just note an
17 objection to that question and answer.

18 MR. LENSON: Again, counsel,
19 remember you opened all of this up.

20 MS. GERLACK: I'm just standing
21 by my objections.

22 Q. (BY MR. LENSON) Now, in respect to Longwood
23 Apartments, you have a situation where you have,
24 as I understand it -- I've never been there, you
25 have -- most, if not all of the residents who

1 reside there, unfortunately, are either poverty
2 level or low income, correct?

3 A. To my knowledge.

4 Q. And as I understand it, based upon what you
5 testified in response to Plaintiff's attorney,
6 that apparently some type of a screening
7 procedure was inserted into the complex.

8 In other words, people had to meet certain
9 criteria in order to become a tenant at that
10 complex; is that correct?

11 A. That's correct.

12 Q. And you were asked a bunch of questions about
13 people residing there who were not listed as a
14 tenant, correct?

15 A. Of record, correct.

16 Q. Now, in connection with security, bearing in
17 mind the little example I just gave you, the
18 philosophy and theory of security from the
19 standpoint of keeping the bad guys out, you are
20 behind the eight ball, so to speak, when the bad
21 guys are already there; is that correct?

22 A. That's correct.

23 Q. So that if you have the situation where the "bad
24 guy" criminal mind is already on the premises,
25 that causes significant problems for the

1 providing of security on behalf of tenants?

2 A. It does.

3 Q. But you would not suggest as a security
4 consultant that we would go to a Scarlet Letter
5 theory. In other words, a visitor comes to
6 Longwood Apartments, has to wear a scarlet V, to
7 indicate he is or she is a visitor, correct?
8 You wouldn't indicate that?

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

10 MS. GERLACK: Likewise note an
11 objection.

12 A. You couldn't control it.

13 Q. So that no matter how many security guards you
14 had on the complex, it would not prevent a bad
15 guy who is already inside the building, having
16 resided there, from committing a crime; is that
17 correct?

18 MS. GERLACK: Objection.

19 A. In my opinion, that's correct.

20 Q. I haven't asked you your opinion.

21 MR. UTLEY: Your observations.

22 A. Observation.

23 Q. And we're limiting our questioning to your
24 observations between 1988 and 7-17-92.

25 MR. LENSON: Right.

1 MS. GERLACK: Well, just so the
2 record is clear, if that's not an opinion,
3 what is your observation, if you're only at
4 Longwood for --

5 MR. LENSON: You can do that on
6 your recross when you wish.

7 MS. GERLACK: Well, you're making
8 an inaccurate record.

9 MR. LENSON: I'm making an
10 inaccurate record?

11 MS. GERLACK: That is clearly an
12 opinion question. There has been no
13 foundation for a factual --

14 MR. UTLEY: He's asking what his
15 understanding and observations were at that
16 time. He's not asking what they are
17 today. He conducted --

18 MS. GERLACK: Can you read back
19 the question.

20 (Thereupon, the record was read back
21 by the Court Reporter as requested.)

22 A. That's correct.

23 Q. I believe your testimony also, and correct me
24 if I'm wrong, was that it's your understanding
25 that the duty of the security guards were

1 limited to the common areas; is that correct?

2 A. That's correct.

3 Q. So that the security guards would have nothing
4 to do with the private apartment suites of the
5 residents, correct?

6 A. That's correct.

7 Q. And based upon your particular knowledge of
8 Longwood Apartments, do you recall whether or
9 not there were a number of domestic situations
10 which would require police involvement or
11 security involvement?

12 A. There were a number.

13 Q. And that, based upon your knowledge, would
14 become part of the crime statistics; is that
15 correct?

16 A. Probably the most --

17 MR. UTLEY: There is no question
18 to you.

19 Q. (BY MR. LENSON) And whether or not the domestic
20 situation that took place related to drug or
21 non-drug activity, it would still go down as a
22 crime statistic for Longwood Apartments,
23 correct?

24 A. Yes, sir.

25 Q. Now, before I was asking you -- I didn't really

1 ask you a specific question about Howard
2 Rudolph, but I assume you're acquainted with
3 Chief Rudolph?

4 A. Yes, I am.

5 Q. And were you acquainted with him during the
6 period of time when you were acting as a
7 consultant for your client?

8 A. Yes, I was.

9 Q. And based upon your testimony before, as being a
10 liaison between the client and the community,
11 did you meet with Chief Rudolph concerning
12 Longwood Estates?

13 A. Yes, we did.

14 Q. And can you tell me how many times you met with
15 him?

16 A. Two, I believe.

17 Q. Have you had the opportunity to see Chief
18 Rudolph's report in this case?

19 A. Yes, I briefly looked it over the other day.

20 Q. Before we convene again, I'd like you to look
21 over it one more time. Not briefly, I want you
22 to study it.

23 A. I didn't have a copy. I don't have a copy of
24 it, I just perused it.

25 Q. Chief Rudolph, when he would talk to you

1 concerning Longwood Apartments, would you tell
2 us what you would tell him?

3 MS. GERLACK: Objection.

4 A. In the two meetings that Jerry Spevack and
5 myself met with Howard and Bobby Bulton -- who
6 was a spokesman for the Cleveland Police
7 Department, as Captain Hermann is today -- and
8 really in essence we talked about police
9 cooperation and responses to all of the
10 properties that Associated Estates owns or
11 manages, within the City of Cleveland, or under
12 the pervuew of the Cleveland Police Department.

13 Q. Was this prompted by the fact that it was your
14 understanding, or information had come to you,
15 that they were not responding properly?

16 A. No.

17 Q. Okay.

18 A. I happen to know both of those gentlemen, Jerry
19 Spevack did not, and it's always nice to know
20 the face to whom you are talking. And so I had
21 suggested, as I do with all of the other police
22 chiefs and fire chiefs of the other communities,
23 sit down and meet with them, with the manager or
24 the business manager, or the property manager,
25 whoever it might be, and just to meet and talk.

1 Q. Well, you made a statement before, during the
2 cross-examination, that it was your
3 understanding that even when you have security,
4 the first line of the defense is really the
5 police department?

6 A. It certainly is.

7 Q. So that security then is what, the second line?

8 A. It's an ancillary function, if you will.

9 Q. In other words, the people living at Longwood
10 are entitled to the same police protection as
11 anyone else living in any other part of the
12 city, correct?

13 A. Absolutely the same.

14 Q. And the security is provided by the owners or
15 managers of the building as extra precaution?

16 A. Physical presence.

17 Q. But the primary source of protection is still
18 the police?

19 A. Definitely.

20 Q. Based upon your audits or surveys, did you ever
21 find that the police were not providing enough
22 police protection in this area of Longwood
23 Apartments?

24 A. On my audits, no.

25 Q. There has been a lot of discussion about the

1 number of security guards, and you are aware
2 that between 1988 and 1992, the number of
3 security guards did change from time to time at
4 Longwood, correct?

5 A. That's correct.

6 Q. And you will agree with me that whoever the
7 security guard company was, whether it be Aetna,
8 whether it be Fox Detective Agency, they were
9 hired to provide security guards and that's it;
10 is that correct?

11 A. That's correct.

12 Q. They were not hired to provide security
13 procedures, correct?

14 A. No, not security procedures.

15 Q. They were not hired to provide security advice,
16 correct?

17 A. Correct.

18 Q. They were hired solely to produce -- and forgive
19 me for using a gender -- manpower?

20 A. Correct.

21 Q. Now, we have talked also at great length the
22 last number of hours about procedures for the
23 security guards to follow, and we understand
24 that two guards were to patrol the area,
25 correct?

1 A. Correct.

2 Q. Did you ever patrol the entire 31 acres?

3 A. Did I?

4 Q. Yes.

5 A. Yes.

6 Q. How long would it take? How long did it take
7 you to patrol the entire 31 acres?

8 A. I never timed it, because I was not only
9 patrolling, I was taking notes, looking at
10 lighting, and many other factors as far as
11 security is concerned.

12 Q. Would you have an estimate?

13 MR. UTLEY: Objection.

14 Go ahead.

15 MS. GERLACK: Objection.

16 A. In excess of an hour, and depending upon how you
17 patrolled it.

18 Q. That's fair. So two security guards,
19 presumably walking at a normal pace and not
20 interrupted by a call or anything else, could
21 make a complete circle of this apartment complex
22 in approximately an hour, give or take?

23 A. That's reasonable.

24 Q. If you had other security guards, in other
25 words another team or a squad, whatever you want

1 to call them, that would mean that you would --
2 you wouldn't reduce the time it would take to
3 complete a circle, but you might have different
4 locations being patrolled at a given time?

5 A. That's correct.

6 Q. And it is also, we can agree with the following
7 procedure, that if a security guard is contacted
8 that he or she should investigate an incident,
9 that both security guards would report to the
10 incident; is that correct?

11 A. Yes, that's correct.

12 Q. So, that it is recognized that if you have two
13 security guards on patrol, that there will be
14 occasions when, because they're responding to an
15 incident, there will no longer be any security
16 guards on patrol --

17 A. They always walked in a two person team.

18 Q. -- correct?

19 A. And so subsequently they would both respond to
20 that dispatch.

21 Q. So while they're responding to the dispatch,
22 there is no patrol going on?

23 A. Correct.

24 Q. Now, assuming however that you had another
25 squad, they would continue patrolling, while the

1 two partners would be out investigating an
2 incident?

3 A. But sometimes if two incidents occurred both
4 teams would be tied up.

5 Q. I agree. So that the number of security guards
6 really relates to the continuous patrol and or
7 investigating incidents, correct?

8 A. By all means.

9 Q. You know, because like Lena Foster's
10 situation -- I don't know if you have ever
11 reviewed any records concerning Lena Foster?

12 A. I have not.

13 Q. She was apparently assaulted sometime between 5
14 a.m. and 7 a.m. in the morning, okay. Based
15 upon the information that you have reviewed, you
16 don't know where the security guards were when
17 she was being assaulted, correct?

18 A. I do not.

19 Q. And if they were out patrolling at the time of
20 this alleged incident, they could have been on
21 the other side of the project, correct?

22 A. Absolutely.

23 Q. I want you to go through the exhibits that are
24 before you. I'd like you to go through those
25 exhibits, and tell me, show me, any document

1 that you have in those exhibits, which relates
2 to an analysis of Fox detective Agency, during
3 the period of time when it served as security
4 personnel at Longwood?

5 (Thereupon, a discussion was
6 held off the record.)

7 MR. UTLEY: He said didn't
8 recall any, okay.

9 MR. LENSON: The ones that I
10 have.

11 MR. UTLEY: Just for the record,
12 he didn't go through all the documents.

13 MR. LENSON: Excuse me?

14 MR. UTLEY: He didn't go through
15 all the documents when you asked him to
16 right now.

17 MR. LENSON: That's correct.

18 That is correct.

19 Q. (BY MR. LENSON) Again, there is an audit dated
20 August 13, 1990, and I'm sorry I don't have the
21 exhibit numbers, it's to Jerry Spevack from H.
22 P. Worthington, Ray Security, and it talks about
23 Longwood. I'm going to show you that, and I
24 don't remember the exhibit number.

25 MS. GERLACK: Exhibit 31.

1 Q. (BY MR. LENSON) Exhibit 31. You look at
2 Worthington, this is dated August 13, 1990 to
3 Spevack, Ray Security and it relates to
4 Longwood, but what is identified as the security
5 personnel?

6 A. It's not identified here.

7 Q. Well, it is identified --

8 A. Oh, I'm sorry, I missed that first sentence,
9 Aetna.

10 Q. You indicated that you had some criticism about
11 Fox which related to supervision, correct?

12 A. That's correct.

13 Q. The fact that some of the patrolmen were not
14 following procedures, correct?

15 A. Correct.

16 Q. And the fact that you thought there may have
17 been a credence problem with some of the
18 security people?

19 A. Correct.

20 Q. Is that memorialized anywhere?

21 A. I don't recall.

22 Q. I want to be fair with you, could it be fair
23 that you're getting confused between Fox and
24 Aetna?

25 MR. UTLEY: Objection.

1 A. To the best of my recollection, Aetna was very,
2 very cautious --

3 Q. Well, that's contrary to what's stated in this
4 memo?

5 A. -- on their certification.

6 Let me clarify this point, as long as
7 we're under discussion, sometimes new guards
8 could become certified by the State of Ohio --
9 and this is not unique with Fox -- and are
10 assigned to properties without weapons.

11 Q. I understand?

12 A. Until that certification comes through.

13 Q. Comes through?

14 A. And that was a point.

15 Q. But, you see my question to you is, and I've had
16 the opportunity of going through these documents
17 and studying them, and I find nothing in the
18 documents which would suggest that you had any
19 criticism concerning their supervision, et
20 cetera, et cetera, until we come to Exhibit 9,
21 in 1993.

22 MS. GERLACK: Objection.

23 Q. (BY MR. LENSON) Do you recall anything else?

24 A. In writing?

25 Q. Yes.

1 A. No. If it's not in here, then I don't recall.

2 Q. That's what I'm asking.

3 But you would disagree that the entities
4 that took on the responsibility of providing
5 security were your clients, correct?

6 A. Associated Estates?

7 Q. Associated Estates.

8 A. Correct.

9 Q. Were the ones that undertook security, to
10 provide security for the tenants, correct?

11 A. That's correct.

12 Q. And you were consulting with them, in providing
13 the information and/or recommendations
14 regarding security, correct?

15 A. Correct.

16 Q. You weren't consulting on behalf of Fox or any
17 other security company?

18 A. Not at all.

19 Q. So all of this period of time, you were acting
20 on behalf of the people who had allegedly
21 contracted with the tenants to provide security?

22 A. Who had contracted, not with the tenants.

23 Q. Well, my understanding is that the Plaintiff's
24 claim is that she contracted with your clients,
25 on the basis that there was going to be security

1 provided.

2 MR. UTLEY: We'll object.

3 MR. LENSON: That's the

4 allegation.

5 MR. UTLEY: We understand that's

6 the allegation.

7 MR. LENSON: I can ask that.

8 A. No, I wouldn't say that at all.

9 Q. Let's make sure we understand.

10 A. Okay.

11 Q. The Plaintiff in this case, Lena Foster, did not
12 contract with Fox, correct?

13 A. That's correct.

14 Q. She entered into a landlord/tenant arrangement
15 with Associated Estates or one of those parties;
16 is that correct?

17 A. Correct.

18 Q. Associated Estates is the one who provided
19 security for the benefit of the tenants,
20 correct?

21 A. Correct.

22 Q. Your consultation work is on behalf of
23 Associated Estates?

24 A. Correct.

25 Q. So if you had problems concerning your

1 evaluation of the security guards, this was
2 passed on directly to what you were calling
3 management?

4 A. Exactly.

5 Q. And that would include, at the local level, the
6 individuals who were the managers and operations
7 people at Longwood Apartments, correct?

8 A. That included them, correct.

9 Q. And you even suggested before that you told
10 these individuals, that in addition to yourself
11 and Worthington, these individuals should look
12 out to observe the security personnel, correct?

13 A. The management people?

14 Q. Yes.

15 A. Correct.

16 Q. In other words, you gave them seminars?

17 A. Uh-huh.

18 Q. You provided them with seminars. So I assume
19 you expected them also to be evaluators of
20 security?

21 A. That's correct.

22 Q. So in addition to yourself as an outside
23 consultant, you had Willie Benson, you had Smoot
24 and these other individuals, who were inclined
25 to be evaluating the security, correct?

1 A. Correct.

2 MR. LENSON: I'm going to stop
3 here, because I need to go over these
4 documents.

5 (Thereupon the proceedings were
6 concluded at 1:38 p.m.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 I have read the foregoing transcript of my
3 deposition taken on Friday, May 20, 1994, from
4 page 130 to page 300 and note the following
5 corrections:
6

7 PAGE: LINE: CORRECTION: REASON:
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE STATE OF OHIO,)
2) SS: CERTIFICATE
COUNTY OF CUYAHOGA.)

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 14th
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.