

#643

THE STATE OF OHIO,)
) SS: STUART A. FRIEDMAN, J.
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

RENA FOSTER,)
)
 Plaintiff,)
)
 v.) Case No. 252452
)
 J.A. LIMITED PARTNERSHIP,)
 ET AL.,)
)
 Defendants.)

- - -

Continued deposition of CRAIG E. MICHALSKI,
taken by the Plaintiff as if upon cross-examination
before Allison R. Forkapa, a Stenographic Reporter
and Notary Public within and for the State of Ohio,
at the offices of Hoenigman & Goldstein, 31st Floor,
One Cleveland Center, Cleveland, Ohio, on Thursday,
the 2nd day of June, 1994, commencing at 9:15 a.m.,
pursuant to notice and agreement of counsel.

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1 APPEARANCES:

2 Friedman, Domiano & Smith Co., L.P.A.,
3 By: Lisa M. Gerlack, Esq.,

4 On behalf of the Plaintiff.

5 Hoenigman & Goldstein,
6 By: David G. Utley, Esq.,

7 On behalf of Defendant L.A. Limited Partnership,
8 Associated Estates Corporation. and A.E.C.
9 Management Company.

10 Ulmer & Berne
11 By: Murray K. Lenson, Esq.,

12 On behalf of Defendant Fox Detective Agency.

13 - - -

14 STIPULATIONS

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

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I N D E X

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	<u>Page</u>
Continued Cross-Examination by Ms. Gerlack	304
Cross-Examination by Mr. Lenson	373

EXHIBITS:

<u>Plaintiff's</u>	<u>Marked</u>
106 - 120	344
 <u>Defendants'</u>	 <u>Marked</u>
A	378
B	378

OBJECTIONS:

	<u>Page</u>
By Mr. Utley	304, 306-308, 311-312, 315-317, 319-321, 325, 328, 330, 332, 335-336, 338-340, 342, 345-348, 352, 354-356, 360-361, 363-366, 368-378, 381-382, 384, 386
By Mr. Lenson	319, 320, 335, 342, 348, 355, 366, 370

- - -

1 (Witness previously sworn.)

2 MS. GERLACK: We're starting out on
3 Exhibit 69 and we're looking at the end,
4 which is an unannounced audit on November
5 10, 1988. We are looking at the entry of
6 10:50 p.m. That entry relates to two site
7 guards hiding in an apartment suite.

8 CONTINUED CROSS-EXAMINATION

9 BY MS. GERLACK:

10 Q. Did you ever contact any investigation into that?

11 A. The best that I recall to this incident there
12 was --

13 MR. UTLEY: I'll object.

14 A. There was construction going on in that area. We
15 had assigned extra guards to be in that area in
16 order to protect that construction. Other than
17 commenting to the guards about their activities, I
18 reported it to the security agency.

19 Q. (BY MS. GERLACK) And who was the security agency at
20 that time?

21 A. I don't recall.

22 Q. Did you ever find out how the guards obtained a key
23 to get in?

24 A. As I recall, because of the fact that it was under
25 construction, they had keys to those facilities.

1 Q. Were they supposed to be patrolling at that time?

2 A. That's correct.

3 Q. If you could, turn to the next marked tab.

4 A. No. 70.

5 Q. Do you recognize this document?

6 A. No, I do not.

7 Q. Do you know what it is by looking at it?

8 A. It appears to be a daily activity report of the
9 guards working at the site on 1-28-89.

10 Q. Do you know why this was sent to your attention?

11 A. I do not.

12 Q. What's the importance of a daily log sheet?

13 A. To record the activities of the guards while on
14 duty. To identify any problems such as incidents
15 that might occur on the property during that tour of
16 duty, and outline any discrepancies that the guards
17 have found on the property during their tour of
18 duty.

19 Q. During the time period that you worked at Longwood
20 In the capacity as security director and consultant,
21 did you give any guidelines for the guard forces
22 on how these reports should be made?

23 A. Periodically, I would review daily activity reports
24 and make comments relative to their contents or the
25 lack thereof.

1 Q. You don't have any independent recollection of why
2 this is in your file? Why this particular log?

3 A. I don't recall.

4 Q. Under the entry of **10:15** p.m., if you could, read
5 it. It's at the bottom of the page.

6 A. Uh-huh.

7 Q. It states that a female entered the office. After
8 complaint it says no one answered. Isn't that in
9 the dispatch office for security?

10 MR. UTLEY: I'll object. If you know,
11 go ahead.

12 A. I really don't know.

13 Q. (BY MS. GERLACK) In the time you worked at Longwood
14 as a security consult and as a director of security,
15 were you ever privy to any complaints raised by
16 tenants that security calls were not answered?

17 MR. UTLEY: Just so we can remind
18 ourselves, we're discussing between the
19 period '88 to July 17, 1992, correct?

20 MS. GERLACK: Yes.

21 MR. UTLEY: Go ahead.

22 A. I do not recall that calls were not answered.

23 Q. (BY MS. GERLACK) If you can, look at the next
24 marked exhibit.

25 A. 75.

1 Q. Would you identify Exhibit 75 for me?

2 A. This is a document that's in my handwriting that I
3 wrote on July 20, 1989 at approximately 11:13 a.m.

4 MR. UTLEY: Let's go off a second.

5 (Discussion had off the record.)

6 Q. (BY MS. GERLACK) What are your notes in reference
7 to?

8 A. As I best recall, this was with regard to a shooting
9 that took place in the pool area, City of Cleveland
10 property across from the Longwood property.

11 MR. UTLEY: I'll object to the
12 document and any questions referencing it
13 because the incident took place off of my
14 client's property.

15 Q. (BY MS. GERLACK) Was any course of action decided
16 as a result of this meeting?

17 MR. UTLEY: Objection. Go ahead.

18 A. I don't recall any specific course of action.

19 Q. (BY MS. GERLACK) The next marked exhibit I have is
20 Exhibits 88, 89 and 90, which are a series of
21 handwritten notes.

22 A. 88.

23 Q. Do you recognize that document?

24 A. That is a document in my handwriting.

25 Q. Just for continuity, if you could look at the other

1 two exhibits, 89 and 90, are those also handwritten
2 notes by you?

3 A. That's correct.

4 Q. Take a moment to review those three documents.

5 A. All right. I briefly looked at them.

6 Q. Does your review refresh your recollection as to
7 what these documents contain?

8 A. Yes.

9 Q. What do they contain?

10 A. Evidently, I was identifying some various options
11 for security coverage at a property.

12 Q. Do you know which property this pertains to? Was it
13 in your Longwood file?

14 A. I presume because it was in the --

15 MR. UTLEY: We don't want you to
16 presume. We want you to testify what you
17 know.

18 Q. (BY MS. GERLACK) Would you have documents for any
19 other properties in your Longwood files?

20 A. No.

21 Q. Can you tell me -- On this document it states
22 present system 15 officers a day, 120 hours a day.
23 During what period of time did Longwood have five
24 guards working per eight hour shifts?

25 MR. UTLEY: I'll object. That's not

1 what it says.

2 MS. GERLACK: Yes, it does. It says
3 present system is 120 hours a day.

4 MR. UTLEY: How do you get five guards
5 per eight hour shifts?

6 Q. (BY MS. GERLACK') During what time period did
7 Longwood have 15 officers a day?

8 A. During the construction phase.

9 Q. When was that?

10 A. Rehabilitation phase.

11 Q. When was that?

12 MR. UTLEY: He said during the
13 rehabilitation stage.

14 Q. (BY MS. GERLACK) During what years?

15 A. As I best recall, it was in the 1980s.

16 Q. I understand that. And you began working at
17 Longwood in 1988, is that correct, working as Mr.
18 Spevack's assistant?

19 A. That's correct.

20 Q. Were there 15 officers a day working when you
21 started working for A.E.C.?

22 A. I don't recall.

23 Q. Would you be drafting notes that state present
24 system 15 officers a day if that was not in
25 existence at the time?

1 A. I don't believe I would, no.

2 Q. Are you able to tell me at what point Longwood
3 changed the number of guards that had been working
4 per day?

5 A. I am not.

6 Q. Are you able to tell me to what number the guards
7 were changed to?

8 A. No, I'm not.

9 Q. Was it less than 15 per day?

10 A. Yes, it was.

11 Q. Do you know when that took place?

12 A. I do not.

13 Q. Are you able to tell me from the time you began
14 working at Longwood in **1988**, the history of security
15 guard companies that worked at the Longwood
16 property?

17 MR. UTLEY: Independently or in
18 conjunction in review of these records?

19 MS. GERLACK: If it aids your memory
20 in looking at the records -- if you're able
21 to tell me without looking.

22 Q. (BY MS. GERLACK) Do you know who was there when you
23 began -- What company was there when you began in
24 **1988?**

25 MR. UTLEY: What she wants is when you

1 started there, this company was -- and she
2 wants you to take her there from July
3 '92 as to who the guard companies were.

4 A. As I best recall, there were two guard companies
5 employed at Longwood. One, Fox Security. The
6 second, Aetna Security. I can't tell you the dates.

7 Q. (BY MS. GERLACK) This was during the 1988 to 1992
8 time span?

9 A. As I best recall.

10 Q. At any time did those two guard companies provide
11 overlapping guard service for the project?

12 A. Not to my knowledge, no.

13 Q. Do you know why Aetna stopped their security
14 services at Longwood?

15 A. Well, as I best recall, they did not stop their
16 guard services. As I recall, we stopped them.

17 Q. Do you know why?

18 MR. UTLEY: Objection. Go ahead.

19 A. Lack of supervision and performance.

20 Q. (BY MS. GERLACK) The documents that we've reviewed
21 seem to indicate that Aetna had a contract during
22 1990. Does that sound correct?

23 A. That sounds correct.

24 Q. Are you able to tell me if their contract was more
25 than one year?

1 A. I am not able to tell you that.

2 Q. Do you know who made the decision to terminate
3 Aetna's security services at Longwood?

4 A. I do not recall that.

5 Q. Did you have any role in terminating their
6 relationship? . . .

7 A. I'm certain that I did.

8 Q. Did Fox have a security contract with Longwood
9 before Aetna?

10 A. As I recall, they did.

11 Q. What was their reason for terminating the
12 relationship the first time?

13 A. Performance and supervision.

14 Q. Who made that decision?

15 A. I don't recall.

16 Q. Did you have any role in the termination?

17 A. I'm sure I did.

18 Q. Was there a time when Fox advised Associated Estates
19 it would not be able to keep its armed accounts at
20 Longwood because of high premiums, and that was the
21 reason for the termination?

22 MR. UTLEY: I'll object. If you know,
23 go ahead.

24 A. I don't recall.

25 Q. (BY MS. GERLACK) So from what you can recall, it

1 was lack of supervision and performance?

2 A. But it could have been the liability insurance cost
3 as a contributing factor as well.

4 Q. What you recall today is lack of supervision and
5 performance?

6 A. To a degree, ~~yes~~

7 Q. Who made the decision to renegotiate a contract with
8 Fox after Aetna?

9 MR. UTLEY: Negotiate a new one?

10 MS. GERLACK: Yes.

11 A. I don't recall.

12 Q. (BY MS. GERLACK) Did you have any role in bringing
13 Fox back into the picture for security at Longwood?

14 A. Yes. I'm confident that was discussed with me.

15 Q. Do you know what factors led to the decision to
16 re-employ their services at Longwood?

17 A, **As** I recall, one of the mitigating circumstances was
18 the inability to find another security corporation
19 to provide security for Longwood and other
20 properties because of the armed guard requirement.

21 Q. Had you conducted any type of survey to see what
22 companies were available to handle?

23 A. Yes, I did.

24 Q. Armed accounts?

25 A. Yes, I did.

1 Q. Fox was the only entity that offered services for
2 armed accounts?

3 A. It was not the only corporation that offered guard
4 services. It was, as I recall, the only company
5 that was sufficiently large enough staffwise to be
6 able to handle the armed guard accounts of
7 Associated Estates. And that's plural.

8 Q. Recognizing that there were problems with Fox's
9 guard performance and supervision at Longwood prior
10 to the new contracts that were executed for Fox, was
11 anything changed in terms of the services or the
12 agreement for security services?

13 A. I don't recall anything.

14 Q. On Exhibit 89 I'm not able to discern your
15 handwriting. If you could just read what that
16 states.

17 A. "You then have two areas of patrol designated as you
18 have at this time."

19 Q. What does that relate to?

20 A. As I best recall, my suggestion as I reviewed
21 options was to zone the property for patrol
22 purposes.

23 Q. Why did you make that recommendation?

24 A. More visibility in designated areas.

25 Q. Was that recommendation adopted?

1 MR. UTLEY: Objection. Go ahead.

2 A. I don't recall.

3 Q. (BY MS. GERLACK) Isn't it true that there were no
4 designated patrol routes at Longwood?

5 MR. UTLEY: Routes or zones?

6 MS. GERLACK: Routes.

7 A. At the time I wrote this document?

8 Q. (BY MS. GERLACK) Yes.

9 A. I believe there was at one time designated areas of
10 patrolling.

11 Q. Do you know what time period?

12 A. I do not.

13 Q. Do you know why designated patrol routes were
14 terminated?

15 MR. UTLEY: Objection. Assumes they
16 were. He says he knows at one time.

17 A. I don't recall why they were.

18 Q. (BY MS. GERLACK) Were there areas of patrol at
19 Longwood?

20 A. As I recall, there was at one time.

21 Q. What were those areas?

22 A. According to my notes, I had designated zones of
23 what they call community area, another area called
24 the villa area and a third area called the park west
25 area A and B.

1 Q. What was the significance of having two areas of
2 patrol?

3 MR. UTLEY: There were three.

4 A. The primary reason, as I noted before, was
5 visibility of the officers in the areas, separation
6 of personnel, security personnel, and keeping them
7 in designated areas principally. And third would be
8 a quicker response to any needs of the tenants or
9 problems that might arise.

10 Q. (BY MS. GERLACK) In 1992 were there patrol zones in
11 effect at Longwood?

12 A. I do not recall.

13 Q. Do you know if patrol zones were ever abolished at
14 Longwood?

15 MR. UTLEY: I'll object. Go ahead.

16 A. I don't recall.

17 Q. (BY MS. GERLACK) You have outlined on Exhibit 88
18 options. Option A, Option B and Option C. What do
19 those options relate to?

20 A. Patrol coverage.

21 Q. Did you present these options to anyone in
22 management at A.E.C.?

23 A. I don't recall that I did. And the reason I state
24 that is because had I presented these, they would
25 have been in typewritten form.

1 Q. Do you know if any of the options presented in
2 Exhibit 88 were adopted or implemented by
3 Associated Estates at Longwood?

4 MR. UTLEY: Objection. Go ahead.

5 A. I don't recall that they were.

6 Q. (BY MS. GERLACK') Exhibit 90. Just to move along.
7 We had discussed in our previous sessions that there
8 would be a -- that at some point there was a change
9 in the number of guards that were assigned per
10 shift, and an extra guard was assigned to work until
11 2:00 a.m. I'm not sure what 8 to 2 a.m. --

12 A. It wouldn't have been 8 to 2 because this is -- that
13 can't be an eight-hour shift. It might have been 2
14 or 8 p.m. to 6 a.m., overlapping shift.

15 Q. Did you have any role in specifying the times that
16 there would be that extra guard?

17 A. Internally you mean?

18 Q. Yes.

19 A. No.

20 Q. Who made that determination?

21 A. Usually the director of operations.

22 Q. Do you know what resources he relied on in
23 determining what time the extra patrol persons
24 coverage would end?

25 A. I think it was a combination of the security

1 corporations input, managements input and my
2 comments.

3 Q. Did you attend any meetings where that issue was
4 discussed?

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

6 Q. Do you have any independent knowledge of what
7 resources or criteria were considered in choosing
8 the time for shifts?

9 A. I do not.

10 Q. The next exhibit is No. 91.

11 A. I reviewed it.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What, if anything, did you do in response to
15 receiving this memo from Jerry Spevack?

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

17 Q. Who was the security guard working at the complex at
18 this time?

19 MR. UTLEY: The company or the guard?

20 MS. GERLACK: The guard service
21 company.

22 A. According to this memo, it was Fox.

23 Q. (BY MS. GERLACK) Do you agree with me that as of
24 February 13, 1991 there was a problem with the
25 supervision of security guards at Longwood?

1 MR. LENSON: Objection. You used the
2 word problem.

3 MR. UTLEY: Go ahead.

4 A. We had security supervision situations.

5 Q. (BY MS. GERLACK) Would you agree with me that the
6 lack of supervision of the guards -- for Fox's guard
7 forces at Longwood was of consistent concern to you,
8 management, and Associated Estates?

9 MR. LENSON: Objection.

10 MR. UTLEY: In February 7, 1991?

11 MS. GERLACK: Yes.

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

13 A. I would not say consistent. I would say that our
14 concerns about the lack *of* supervision arose on
15 different occasions.

16 Q. (BY MS. GERLACK) You would agree with me, wouldn't
17 you, that prior to 1991 one of the factors that led
18 to the firing of forces previously contracted with
19 Longwood was an -- Associated Estates was lack of
20 supervision, right?

21 A. As I best recall.

22 Q. So before February 13, 1991 there were problems or
23 concerns relating to the lack of supervision of
24 the Fox guard service?

25 A. That's correct.

1 Q. The lack of supervision with the Fox guard forces at
2 Longwood was a situation that arose frequently?

3 MR. LENSON: Objection.

4 MR. UTLEY: Objection. Go ahead.

5 Q. (BY MS. GERLACK) Correct?

6 A. It arose on a number of occasions.

7 Q. You reviewed H.P. Worthington's audits for the
8 property, didn't you?

9 A. Not all of them, no.

10 Q. We've gone through a lot of documents in the last
11 few weeks that your deposition has been going on.
12 Would you agree with me that it was more than a
13 few times a year that the lack of supervision was a
14 problem with Fox security guards?

15 MR. UTLEY: I'll object. Go ahead.

16 A. What do you mean by a few? We had discussions. Let
17 me make one comment.

18 MR. LENSON: Objection.

19 MR. UTLEY: Just answer her question.

20 Q. (BY MS. GERLACK) The lack of supervision was
21 serious enough that it ended a contract between
22 Associate Estates and Fox at least in part, correct?

23 MR. LENSON: Objection.

24 MR. UTLEY: I'll object.

25 A. As part of it, yes.

1 Q. (BY MS. GERLACK) When they resumed their security
2 services at Longwood pursuant to a new contract in
3 1991, the same problem regarding lack of supervision
4 was surfacing again, is that correct?

5 MR. LENSON: Objection.

6 A. Was that with Fox or Aetna you mean?

7 Q. (BY MS. GERLACK) With Fox.

8 A. As I recall, yes.

9 Q. Was lighting or the lack of lighting or lights that
10 were out on the Longwood property a frequent
11 problem?

12 MR. UTLEY: Object to frequent. Go
13 ahead.

14 A. It was a problem.

15 Q. (BY MS. GERLACK) Who had the responsibility to
16 report lighting that was not functioning?

17 A. Security and employees of Longwood.

18 Q. At Longwood do you know which employees were
19 responsible for reporting lights that were out?

20 A. Not specifically, no.

21 Q. And the guards would note that on their patrol, is
22 that correct?

23 A. They should note it on their patrol daily activity
24 report.

25 Q. At what time did the lights come on at Longwood?

1 A. I don't know.

2 Q. Who was responsible for replacing broken or
3 nonfunctioning lights?

4 A. I believe a combination of maintenance, personnel
5 and the lighting company. I don't know if it's Muni
6 or **CEI** because lights are leased.

7 Q. Does the absence of functioning lights in designated
8 areas of the Longwood project -- did it present a
9 security concern to you?

10 A. Yes.

11 Q. Was that one of your security concerns while you
12 were consulting for Associated Estates?

13 A. Lighting is a concern at any property.

14 Q. The next exhibit is No. 92. Let me just back up
15 for a minute. You don't recall what, if anything,
16 you did in response to Exhibit 91?

17 A. Not specifically, no.

18 Q. Exhibit 92 appears to be your submission for the
19 consulting hours for the 1992 year pursuant to your
20 agreement?

21 A. It looks like it's from part **of** the -- for part of
22 the year.

23 Q. January through September?

24 A. Through August.

25 Q. I looked through each of the months that are noted

1 on here, and it appears that April is the only month
2 that you noted any hours for Longwood. Take a
3 moment to look through that.

4 A. Specifically Longwood. That's all I see is two
5 hours under April.

6 Q. Exhibit 93.

7 A. Okay.

8 Q. Do you recognize this document?

9 A. Yes, I do.

10 Q. Was this a memo written by you in response to
11 Exhibit 91, the memo from Jerry Spevack?

12 A. It appears to be.

13 Q. Was this your response to that memo?

14 A. Evidently it was.

15 Q. Who is Carl Green?

16 A. Carl Green was a security guard employed by Fox
17 Security.

18 Q. Was there any extra charge for hiring Carl Green to
19 supervise the guards?

20 A. Not to my knowledge. I don't know.

21 Q. Do you know what Mr. Green's credentials were?

22 A. I had known Carl for some time and he was considered
23 as a good supervisor of security personnel.

24 Q. He had prior supervisory experience?

25 A. To my knowledge, he did even with Fox.

- 1 Q. How long did Mr. Green service in the capacity of --
2 Well, let me back up for a minute. Did Mr. Green
3 supervise security at Longwood?
- 4 A. To my knowledge, he did.
- 5 Q. During what period of time?
- 6 A. I don't recall.' .
- 7 Q. Do you know if Mr. Green was still acting as
8 supervisor at Longwood in July of 1992?
- 9 A. I do not know.
- 10 Q. Do you know who would know that information?
- 11 A. Probably only Fox Security would know.
- 12 Q. You note in your memo, "Brown was a former
13 supervlsor for Fox and really **did** not do a great
14 job." From what do you base that information on?
- 15 A. I don't recall why I made this statement at that
16 time.
- 17 Q. Do you recall if it indicates that H.P. would
18 continue to evaluate his performance? Do you know
19 if his relationship as supervisor of security at
20 Longwood changed in any way?
- 21 A. I do not know.
- 22 Q. Exhibit 95, would you identify it for the record?
- 23 A. These are some special security duties and
24 responsibilities that I typed up and presented to
25 the guard companies at those three properties. This

1 list was compiled of special duties and
2 responsibilities predicated on my review and with
3 the respective property managers.

4 Q. Were the special duties and responsibilities that
5 are outlined in the one for Longwood, which is the
6 third page, were those compiled as a result of
7 problems or some problems or concerns that had
8 arisen?

9 A. No. Not specifically, no.

10 Q. Why did you put in, "No officer is authorized to
11 enter a suite?" Second to last entry.

12 A. We always specifically wanted to make sure that
13 officers never entered a suite unless there was a
14 specific complaint or problem where they were
15 assigned to that suite.

16 Q. You were aware during the time that you worked there
17 that there were -- it was known that security guards
18 would be into apartment suites, didn't you?

19 MR. UTLEY: Objection.

20 A. Only hearsay.

21 Q. (BY MS. GERLACK) You never conducted any
22 investigation into what you heard?

23 A. Not that I recall.

24 Q. "Do not spend time in the security office. The
25 purpose of your being at the property is to patrol.

1 Only lunches and breaks are the exceptions." Now,
2 did you put that in there because lack of patrolling
3 had been a concern of yours, and based on the
4 information that you received from H.P. and your own
5 observations?

6 A. Active patrolling is always a concern of mine.
7 That's the purpose, They're assigned to any
8 property.

9 Q. I'm talking about Longwood.

10 A. There were comments made in Worthington's audits
11 that guards were found in the office.

12 Q. Was this posted in the security guard office,
13 dispatch office?

14 A. I don't recall.

15 Q. Was it circulated to the guards themselves?

16 A. To my knowledge, it was given to the guard companies
17 for their distribution.

18 Q. Do you know when you wrote these duties and
19 responsibilities?

20 A. I do not.

21 Q. Do you know if you gave these to each new security
22 company that was awarded a contract at Longwood?

23 A. These were given to the managers of the property
24 once it was completed, and it was their
25 responsibility to make sure the proper distribution

1 was taken.

2 Q. Was anyone charged with enforcement of these duties
3 and responsibilities?

4 A. Specifically?

5 Q. Yes.

6 A. Other than the guard company being held accountable
7 for the special duties and responsibilities, not to
8 my knowledge.

9 Q. Did you utilize any of these factors that you have
10 listed on Exhibit 95 in conducting your evaluations
11 of the security guard forces at Longwood?

12 A. No. Other than it **just** being part of a total
13 evaluation plan.

14 Q. And you don't recall when that was written?

15 A. **I do** not.

16 Q. Exhibit **96**. **Do** you recognize this document?

17 A. Yes, **I do**.

18 Q. What is it?

19 A. It was an analysis of the security companies'
20 performance and recommendations of those companies
21 that were performing security for Associated Estates
22 Corporation at that time.

23 Q. When was this written?

24 A. I don't recall.

25 Q. Was this written by you?

1 A. Yes, it was.

2 Q. Under Fox Security you have the statement, "I am
3 told that of the minority security contractors, Fox
4 is probably the best." From where did you obtain
5 that information?

6 MR. UTLEY: Objection.

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

8 Q. (BY MS. GERLACK) Was Fox awarded the contract after
9 this analysis and recommendation?

10 A. I don't recall not knowing when this document was
11 written.

12 Q. It indicates on here on the Guard Security Analysis,
13 Recommendation as the title. Was it your
14 recommendation that Fox be awarded the contract?

15 MR. UTLEY: Objection. Go ahead.

16 A. I don't understand the question.

17 Q. (BY MS. GERLACK) Did you make any recommendations
18 as to which of these eight security guard companies
19 were suited to provide guard services?

20 MR. UTLEY: Objection.

21 Q. (BY MS. GERLACK) Was your statement, I am told
22 that of the minority security contractors, Fox is
23 probably the best recommendation?

24 A. No, it was just a general statement.

25 Q. Exhibit 97.

1 MR. UTLEY: I object to any reference
2 to any properties other than Longwood in
3 connection with Exhibit 97.

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

5 A. Yes.

6 Q. What is it?

7 A. It's an audit of the properties conducted by H.P.
8 Worthington.

9 Q. There's no names mentioned as to which properties.
18 What are the designations S-04 F-08? You can read
11 the rest to yourself. What are those references?

12 MR. UTLEY: Do you know which property
13 it references?

14 THE WITNESS: It's property numbers,
15 but I do not know.

16 MR. UTLEY: Do you know which property
17 is Longwood?

18 THE WITNESS: I can look it up in my
19 briefcase, but I do not know by numbers.

28 MR. UTLEY: L-88 is Longwood.

21 Q. (BY MS. GERLACK) If you would, turn to Page 2 of
22 this document and let me just ask you -- there is
23 some handwriting on this Exhibit 97. Do you
24 recognize whose handwriting that is?

25 A. I do not.

1 Q. If you would, read to yourself the paragraph on Page
2 of this document.

3 A. I've read it.

4 Q. What property does this refer to?

5 A. It looks like F-08.

6 MR. UTLEY: Do you know which one F-08
7 is?

8 A. Not without looking it **up**.

9 MR. UTLEY: **off** the record.

10 (Discussion had **off** the record.)

11 Q. (BY MS. GERLACK) Did you do anything in response to
12 receiving this memo?

13 MR. UTLEY: Objection.

14 A. Not to my recollection.

15 Q. (BY MS. GERLACK) This memo was in the Longwood
16 files that you produced to me. Why was it in there?

17 A. I can't tell you.

18 Q. Exhibit 98.

19 A. All right.

20 MR. UTLEY: Just note an objection to
21 any matters concerning security to other
22 properties. Go ahead.

23 Q. (BY MS. GERLACK) This is a February 5, 1990 letter
24 written to Russell Fox by Ron Walker discussing
25 security changes. Who decided to change the

1 security at Longwood?

2 A. Well, according to the memo it's Ron Walker, who
3 was director of operations at A.E.C. at that time.

4 Q. Did you have any involvement in recommending or
5 proposing security changes for Longwood?

6 A. I believe that I did.

7 Q. Do you know how long this change that came into
8 effect in February of 1990 existed?

9 A. I do not know.

10 Q. Guards were required to punch in, is that correct?

11 A. No.

12 Q. At Longwood?

13 A. To my knowledge, there was no clock that they
14 punched in at.

15 Q. During the course of discovery in this matter,
16 were time cards produced by Fox?

17 MR. UTLEY: If you know.

18 A. I do not know.

19 Q. (BY MS. GERLACK) If there was this guard structure
20 in effect July 17, 1992 -- Well, Strike that. You
21 didn't know that they had to punch in, is that
22 correct?

23 A. I do not know, no.

24 Q. We had talked earlier about the Morse Watch Tower
25 system as a means of noting where guards were on

1 their particular patrol routes, right?

2 A. Uh-huh.

3 Q. Was it ever brought to your attention that there was
4 a problem with guards punching in for guards that
5 didn't show up for work?

6 MR. UTLEY: Objection. Go ahead.

7 A. Not that I recall.

8 Q. (BY MS. GERLACK) Do you know if Joseph Lafortune
9 was ever fired from Fox?

10 A. I don't recognize the name.

11 Q. If guards were punching in for other guards that
12 weren't present during the noted time period, would
13 that have been brought to your attention?

14 A. I don't know.

15 Q. You don't have any independent recollection how this
16 proposed change came about or how long it remained
17 in effect?

18 A. No, I do not.

19 Q. Do you know why the change was recommended?

20 A. I don't recall.

21 Q. Was there a need for more security during the early
22 morning hours?

23 A. We had this overlapping shift from 6 p.m. to 2 a.m.
24 to provide additional security on the property.

25 Q. But you're not able to tell me why that change --

1 A. I'm not, no.

2 Q. Do you know if any type of study was conducted to
3 determine if that proposed change was effective?

4 A. I doubt very much that there was.

5 Q. How were security changes brought about, if you
6 know?

7 A. To a degree, I evaluated security needs predicated
8 on days of the week, days of the month, weather
9 conditions, vacation periods of children and
10 reported incidents. Those were the primary factors.

11 Q. If you would, turn to Exhibit 100. This is a
12 security review prepared by you?

13 A. Uh-huh.

14 Q. Dated 6-29-92.

15 A. Correct.

16 Q. Page 2 references Longwood. Had you personally went
17 to Longwood on June 25, 1992, according to this
18 document?

19 A. Yes.

20 Q. If you would read to yourself Nos. 1 through 6.

21 MR. UTLEY: Let's take a short break.

22 (Short break taken.)

23 Q. (BY MS. GERLACK) Did you have an opportunity to
24 look at Nos. 1 through 6?

25 A. Yes.

1 Q. Those were your observations when you went to the
2 property?

3 A. Not necessarily the observations. They evidently
4 were the comments that were given to me by Willie
5 Benson, the manager of the property.

6 Q. No. 1 states, "Guards **do** not appear to know what to
7 **do.**" Do you have any independent recollection of
8 specific facts concerning that?

9 A. Not specific facts, no.

10 Q. Do you have any recollection about your discussion
11 with Willie Benson on this date?

12 A. **As I** best recall, when guards were assigned to the
13 property, not having been there before, they were
14 unaware of the layout of the property and the
15 responsibilities that they were to perform while
16 they are on duty. Such as, **I** think is supported
17 by --

18 MR. UTLEY: Listen. There's no
19 question.

20 Q. (BY MS. GERLACK) Fox was the security guard company
21 working at Longwood in 1992?

22 A. I don't know.

23 Q. Well, we've already been through the fact that there
24 were two security guard companies.

25 A. Fox Security, right. I see it now.

1 Q. "Guards do nothing about the abandoned autos." Any
2 specifics about that?

3 MR. UTLEY: Objection. Go ahead.

4 A. Guards responsibilities were to ticket abandoned
5 autos with stickers and report those abandoned autos
6 to the management.office. Management office would
7 then direct them to have those vehicles towed off
8 the property at a prescribed time.

9 Q. (BY MS. GERLACK) What was Willie Benson's title at
10 Longwood?

11 A. Manager.

12 Q. Did he live on the property?

13 A. No, he did not.

14 Q. Do you know what his hours were that he worked?

15 A. Not specifically, no.

16 Q. Numbers 4, 5 and 6. Would you agree with these?
17 Those all relate to lack of patrol and lack of
18 response by the guards.

19 MR. LENSON: Objection.

20 A. 4 and 5, lack of patrol. 6, it appears they were
21 out patrolling and performing a function.

22 Q. (BY MS. GERLACK) Was it the function of security
23 guards at Longwood to help rubbish trucks?

24 MR. UTLEY: Objection. Go ahead.

25 A. Not to help rubbish trucks, but perhaps to direct

1 them into certain areas. Say to make sure that
2 rubbish was picked up and disposed of.

3 Q. (BY MS. GERLACK) On the previous memo that we
4 looked at concerning the guard duties and
5 responsibilities, the three-page memo, which is
6 Exhibit 95, can you show me where accompanying
7 rubbish trucks on the property is delineated?

8 A. I believe that would be accompanying service
9 personnel at the property when appropriate.

10 Q. At the time that Fox was working at the property in
11 1992, there were two guards working an eight hour
12 shift, is that correct?

13 A. That's correct.

14 MR. UTLEY: I'll object.

15 Q. (BY MS. GERLACK) So if guards, according to the
16 duties and responsibilities, were delivering mail
17 and accompanying service vehicles, no one would be
18 patrolling the property, is that correct?

19 A. Wrong.

20 Q. Who would be patrolling the property?

21 A. The guards delivering mail and accompanying service
22 personnel.

23 Q. So you're --

24 A. That was one way to insure the guards got throughout
25 the property.

1 Q. But while someone was delivering mail, that involves
2 going inside buildings, does it not?

3 A. That's correct.

4 Q. And accompanying service vehicles means that two
5 guards are going to be with the service vehicle in
6 one place, is that correct?

7 A. Not necessarily. I don't know that both guards were
8 accompanying this vehicle.

9 Q. Do guards always patrol in pairs at Longwood?

10 A. They **do** during the dawn to dusk hours.

11 Q. From dusk until sunrise they don't patrol in pairs
12 or **did** not?

13 A. From **dusk** to sunrise?

14 Q. Yes.

15 A. Yes. Until sunrise they patrol in pairs.

16 Q. Number 6 indicates that, "Guards **do** not know their
17 priorities." And this is in this particular
18 situation. It's noted in your memo the guards were
19 accompanying a rubbish truck on the property and it
20 took security 55 minutes to respond to the woman's
21 complaint of a break-in, is that correct?

22 A. That's correct.

23 Q. What, if anything, did you do in response to this
24 memo?

25 A. The last sentence says, "I suggested we have a

1 meeting with Russell Fox, to discuss the problems
2 and put him on notice." And I can't recall whether
3 there was a meeting or not.

4 Q. Put him on notice of what?

5 A. Put him on notice with regard to the six items that
6 I had outlined.

7 Q. Do you know if Mr. Green was acting as a supervisor
8 at that time?

9 A. I do not know.

10 Q. Numbers 1 through 6, do you relate those problems
11 that you have noted on Exhibit 100 as relating to
12 lack of supervision and poor performance?

13 MR. UTLEY: Objection. Go ahead.

14 A. I think a combination thereof and proper training.

15 Q. (BY MS. GERLACK) In our previous sessions, you have
16 told me that you had some role in recommending the
17 renewal of security services at Longwood for
18 Associated Estates?

19 A. I'm sure that I participated in those discussions.

20 Q. Back in 1991, Exhibit 91 that we went over, which is
21 the memo from Jerry Spevack concerning the lack of
22 supervision at Longwood, as of the date of this
23 memo in June of '92 you were still looking at the
24 same problems with the guard forces, is that true?

25 MR. UTLEY: Objection. Go ahead.

1 A. To a degree, yes.

2 Q. (BY MS. GERLACK) Yet Fox Security's contract was
3 renewed for 1992, correct?

4 MR. UTLEY: Objection. Go ahead.

5 A. That's correct.

6 Q. (BY MS. GERLACK)' Did you have any discussions with
7 anyone concerning this memo?

8 A. I don't recall.

9 Q. Do you know if any changes were implemented as a
10 result of this memo?

11 A. I don't recall.

12 Q. Exhibit 103. Take a moment to review it.

13 A. All right.

14 Q. Under subsection -- You're familiar with this
15 document?

16 A. Yes.

17 Q. Apparently, these are minutes from a security
18 meeting?

19 A. It must have been.

20 Q. Under subsection 4-A and B, it's requested that an
21 analysis of the guard service and recommendation on
22 a new guard service be conducted. Did you perform
23 those?

24 A. To the best of my recollection, I did.

25 Q. In '89 Fox was the guard service?

1 A. This letter is not specifically about Longwood.

2 This is --

3 MR. UTLEY: She asked you if in '89

4 Fox was the security company at Longwood.

5 A. As I recall, they were.

6 Q. (BY MS. GERLACK) Does any of this memo pertain to
7 Longwood?

8 A. Yes, it does.

9 Q. The last paragraph on page 2 of this document says
10 you are requested as director of security -- it
11 would be appreciated if you would discuss any
12 recommendations so we can cut costs and improve
13 security. Did you do that?

14 A. Yes, I did.

15 Q. How much did you cut costs by?

16 MR. UTLEY: Objection. If you know,
17 go ahead.

18 A. I do not recall.

19 Q. (BY MS. GERLACK) Exhibit 104, if you take a moment
20 to look through that document.

21 A. I recall the document.

22 Q. What is it?

23 A. It was a memo that I prepared for Jerry Spevack
24 based upon my review and study of looking for
25 replacement security for Longwood, Park Village and

1 Rainbow Terrace.

2 Q. Who was responsible for creating the post orders for
3 Longwood?

4 A. Initially, I don't recall.

5 Q. During '88 through '92, do you recall any person who
6 assumed that responsibility?

7 A. The only responsibility that I recall was my own, be
8 it the compilation of the special duties and
9 responsibility for that property.

10 Q. Are those post orders?

11 A. They would become part of the post orders.

12 Q. Did you ever see a post order at Longwood?

13 A. I honestly don't recall.

14 Q. What is the purpose of a post order?

15 A. The basis of post orders are basically to outline
16 the duties and responsibilities of the personnel to
17 perform a specific function at the property. It's
18 like a job description.

19 Q. If you don't know -- Do you know for a fact if the
20 job duties and responsibilities that you wrote up
21 were used at Longwood and posted as post orders?

22 A. As a fact?

23 Q. Yes.

24 A. I do not.

25 Q. Were anything other than duties and responsibilities

1 put into a post order?

2 A. I really don't know.

3 Q. If there was a security issue raised by tenants at a
4 tenant meeting, and it was brought to the attention
5 of management, would that information or that
6 concern be put into a post order?

7 A. Not necessarily. It might be a special order.

8 Q. Did you ever see any special orders for Longwood?

9 A. **As** I recall, there was some documentation with
10 regard to special attention to particular areas.

11 Q. Fox was providing security as of the date of this
12 memo to three Associated Estates properties, is that
13 correct?

14 A. That's correct.

15 Q. Exhibit 105.

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

17 That occurred after the memo was prepared,
18 after the incident.

19 MR. UTLEY: I'll join the objection.

20 **Also**, I object to any reference to
21 properties other than Longwood.

22 Q. (BY MS. GERLACK) Do you recognize the document?

23 A. Yes, **I do**.

24 Q. This is an audit you conducted of various
25 properties, one of which was Longwood, with **H.P.**

1 Worthington?

2 A. That's correct.

3 Q. Are there any buildings by East 33rd Street?

4 A. Yes, there are.

5 Q. Do you know the addresses of those buildings?

6 A. I **do** not.

7 Q. In response to some of our discovery requests we
8 received some additional documents, some of which
9 were prepared by **H.P.** Worthington. I just want
10 you to go through the documents. **I'll** set them here
11 for your review, and set aside any documents that
12 you recall reviewing or discussing.

13 MR. UTLEY: Let's go off the record.

14 (Discussion had off the record.)

15 (Recess taken.)

16 Q. (BY MS. GERLACK) You reviewed the documents that
17 were produced in the second request for production
18 **of** documents for Associated Estates?

19 A. Yes, **I** did.

20 Q. Are you able to tell me which of these documents
21 that you haven't already gone through you recall
22 reviewing in your capacity of the security
23 consultants.

24 A. The majority of them I have not. And I'm making
25 reference specifically to those majority of **H.P.**

1 Worthington's audits.

2 Q. The audits that are in those documents did not come
3 to your attention as a security consultant, unless
4 they were in the file of the documents you produced?

5 A. That's correct. If I had received a copy of them,
6 they would have been in the file that I had
7 presented to you.

8 Q. Are there any documents in there that you recall
9 seeing other than as a security consultant?

10 A. Yes.

11 Q. If you could, just pull those out.

12 A. I wish I had known that when I went through them
13 during the break.

14 (Discussion had off the record.)

15 (Plaintiff's Exhibits 106 through
16 120 marked for identification.)

17 Q. (BY MS. GERLACK) Mr. Michalski recognized from the
18 documents from Associated Estates Exhibit 106, dated
19 April 4, 1990 -- that's already been marked. I'm
20 going to hand you what's been marked as Exhibit 107.
21 Do you recognize that document?

22 A. I recall it, yes.

23 Q. That's from Aetna Security?

24 A. That's correct.

25 Q. Dated what?

1 A. I believe it's July 12, 1990.

2 Q. That's a letter resigning their security services
3 for Longwood?

4 A. Yes. That they will not be able to continue
5 providing services in the future unless the program
6 is upgraded according to --

7 Q. Do you have any recollection of discussing the
8 contents of that letter written by Mr. Hess from
9 Aetna?

10 A. Yes, I do.

11 Q. What do you recall?

12 A. I recall that Mr. Hess, this Mr. Carl Hess, knew
13 little or nothing about security. He was a
14 physicist, as I recall, employed by GE. He was let
15 go because of a cutback and was made executive
16 vice-president by his father of Aetna Security.

17 Q. Aetna served at Longwood during 1990, one year
18 contract?

19 A. I don't know whether it lasted a year or not, but
20 they were servicing the account at this time.

21 Q. What concerns did Mr. Hess have that you were aware
22 of relating to the need to upgrade the security
23 program at Longwood?

24 MR. UTLEY: Objection. Go ahead.

25 A. As I best recall, this proposal was predicated on

1 an isolated shooting that took place on the
2 property.

3 Q. (BY MS. GERLACK) Do you recall anything else?

4 A. No, I do not.

5 Q. Did Aetna voluntarily terminate its relationship
6 with Associated Estates?

7 A. I don't recall.

8 Q. Did the shooting that was involved, that you recall
9 relates to this memo, involve a shooting of an Aetna
10 security guard?

11 MR. UTLEY: Objection.

12 A. I don't recall that it involved a shooting of an
13 Aetna security guard. I recall there was a shooting
14 at the property.

15 Q. (BY MS. GERLACK) Attached to this letter is a
16 security proposal submitted by Aetna. Do you know
17 if this security proposal was adopted or implemented
18 in any way at Longwood?

19 MR. UTLEY: I'll object to proposal.

20 A. I do not.

21 Q. (BY MS. GERLACK) Did you have any discussions with
22 management relating to that proposal?

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

24 Q. Did you have any opinion regarding the contents of
25 the proposal?

1 MR. UTLEY: Objection.

2 A. Again, I don't recall at this time with regard to
3 this proposal.

4 Q. (BY MS. GERLACK) Were any upgrades made to the
5 security program as a result of this proposal?

6 MR. UTLEY: Objection.

7 A. I don't recall.

8 Q. (BY MS. GERLACK) As a result of the memo, were any
9 changes made to the security?

10 A. This memo?

11 MR. UTLEY: Objection.

12 Q. (BY MS. GERLACK) Yes.

13 A. I don't know.

14 Q. Do you know if the guard forces was increased after
15 this memo was written?

16 A. I do not.

17 Q. I'm going to hand you what's been marked as Exhibit
18 108. Do you recognize that?

19 A. Yes, I do.

20 Q. That's a memo regarding a concerned tenant's meeting
21 at Longwood?

22 A. That's correct. Concerned residents.

23 Q. Did you review that as a security consultant for
24 Longwood or Associated Estates?

25 A. As I recall, I did.

1 Q. That memo is dated April 19, 1990. Did you attend
2 the concerned resident's meeting that is referenced
3 in that memo?

4 A. I don't recall. I attended meetings, but whether
5 this one I attended, I really don't recall.

6 Q. Did you do anything in response to -- Did you
7 receive this memo?

8 A. If I did, it would have been in my file, but I
9 recall the concerns of the residents.

10 Q. Did you do anything or make any suggestions to
11 management concerning the concerns that were raised
12 by tenants at Longwood?

13 A. Normally, when I did, that would have been prepared
14 in writing.

15 MR. LENSON: Objection.

16 Q. (BY MS. GERLACK) So if there is nothing in your
17 files, it means you didn't respond?

18 MR. UTLEY: Objection.

19 A. That's correct.

20 Q. (BY MS. GERLACK) Did management, to your knowledge,
21 do anything in response to the concerns that were
22 raised by Longwood residents at this particular
23 meeting?

24 A. I don't know.

25 Q. During 1990 was there a dispatcher on the property

1 less than 24 hours a day?

2 MR. UTLEY: Objection.

3 A. I don't recall.

4 Q. (BY MS. GERLACK) In 1992 do you recall if there was
5 a dispatcher on duty 24 hours a day?

6 A. There was a dispatching function 24 hours a day.

7 Q. Was there a dispatcher on duty 24 hours a day?

8 A. Specifically, that employee of a security company?

9 Q. A dispatcher.

10 A. Yes, there was a dispatcher.

11 Q. Under subsection B it states, "Slow response time
12 or not showing up at all" in regards to security.

13 Did you discuss that concern with anyone?

14 A. I don't recall.

15 Q. Were any specific incidents of guards not showing up
16 to incidents or responding slowly brought to your
17 attention?

18 A. Not that I can recall specifically.

19 Q. C is, "Not knowing the different addresses or their
20 locations." Was that brought to your attention?

21 A. Not that I recall.

22 Q. It was brought to your attention by way of this
23 memo, correct?

24 A. Correct.

25 Q. Did Associated Estates ever implement any kind of

1 training program that would acclimate new security
2 guards to the 31 acres that comprise Longwood?

3 A. Not to my knowledge.

4 Q. Were the guards given any type of maps to help them
5 find their way around the property and their patrol
6 areas?

7 MR. UTLEY: By my clients?

8 MS. GERLACK: Yes.

9 A. Not that I know of.

10 Q. (BY MS. GERLACK) Do you know if Fox ever gave your
11 security guards any such information?

12 A. I do not.

13 Q. You prepared nothing to that extent, did you?

14 A. Which we presented to the security company?

15 Q. Yes.

16 A. No, not that I know of.

17 Q. During the time, the noted time period that you
18 worked for Associated Estates, two guards were
19 added during the hours of 2 a.m. to 4 a.m. Were
20 there additional guards?

21 MR. UTLEY: It has already been

22 testified that guards have been added to --

23 Q. (BY MS. GERLACK) They were added to 2 a.m., is that
24 correct?

25 A. You said 2 a.m. to 4 a.m.

1 Q. It's my understanding, from other documents we
2 reviewed, there was an overlapping shift until 2
3 a.m. And my question is were there any other
4 additional guards from 2 a.m. to dawn?

5 A. I don't know.

6 Q. More guards were not added to the shift after April
7 of 1990, were they?

8 MR. UTLEY: Which shift, Lisa?

9 MS. GERLACK: Two of the shifts. The
10 eight-hour shifts.

11 MR. UTLEY: Other than the swing shift
12 we already talked about?

13 MS. GERLACK: Right.

14 A. Well, we had an overlapping shift.

15 Q. (BY MS. GERLACK) Was anything else done? Anything
16 other than that?

17 A. Not that I recall.

18 Q. Supervision again is noted as a concern of the
19 residents regarding guards on patrol.

20 A. So it states there.

21 Q. So at least as of 1989 supervision was a problem
22 with security guards, a consistent problem. We've
23 seen memos that date all the way up to 1992, right?

24 A. Correct.

25 Q. Exhibit 109. Do you recognize that document?

1 A. Yes, I do.

2 Q. What is it?

3 A. It's a document that I prepared, I don't know
4 specifically when, about a concept of a combination
5 of both off-duty police officers and private
6 security for coverage at Longwood.

7 Q. Is that in the form of a proposal or recommendation?

8 A. It was in the form of a consideration that I
9 presented to A.E.C management.

10 Q. Do you know to whom in management you presented
11 that?

12 A. To the director of operations, whomever it was at
13 that time, and to Jerry Spevack.

14 Q. Was your consideration adopted or implemented by
15 Associated Estates?

16 A. It was not.

17 Q. Do you know why it was not?

18 MR. UTLEY: Objection.

19 A. Yes, I do.

20 Q. (BY MS. GERLACK) What was the reason?

21 A. I could not find off-duty Cleveland police officers
22 interested in working.

23 Q. And the other suggestions were not taken into
24 consideration either?

25 A. What other suggestions are you making reference to?

1 Q. Annual dispatching costs. Let me back up for a
2 minute. You were suggesting the use of off-duty
3 police officers to supplement the security forces?

4 A. That's correct.

5 Q. Did you contact any off-duty security force
6 officers?

7 A. Yes, I did.

8 Q. How many?

9 A. Initially, I just talked to one.

10 Q. How did you arrive at the conclusion there were no
11 off duty -- or that there were no police officers
12 that would provide their services if you only
13 contacted one?

14 A. He was the president of the Black Shield Associates.

15 Q. What was the name of that person?

16 A. Andre Hanesworth.

17 Q. You didn't keep any documents of your meeting with
18 this Andre Hanesworth, did you?

19 A. No, I did not.

20 Q. Was Cleveland police officers the only police
21 department that you contacted in connection with
22 this?

23 A. That's right.

24 Q. Exhibit 110 has already been marked. It's a
25 proposal for security coverage by Fox.

1 MR. UTLEY: It's already been
2 previously marked, right?

3 MS. GERLACK: Right.

4 Q. (BY MS. GERLACK) Exhibit 111 has already been
5 marked. It's a memo to Craig regarding Longwood
6 Security. Exhibit 112.

7 MR. UTLEY: I believe that has been
8 previously marked.

9 Q. (BY MS. GERLACK) If you would, take a look and
10 identify that document.

11 A. Yes, I recognize the document.

12 Q. What Is Exhibit 112?

13 A. This was a document I had prepared, and it just
14 talked about the philosophies of security, and
15 objectives, and goals and forces, use of forces.

16 Q. Did you write that document at anyone's direction?

17 A. No.

18 Q. For what purpose did you write that document?

19 MR. UTLEY: I'll object. Go ahead.

20 A. I felt it was good for the corporation just to have
21 this as a matter of --

22 Q. (BY MS. GERLACK) At what point did you write and
23 submit that document?

24 A. The date of my cover note was 4-24-90, so I wrote
25 it approximately at that time.

1 Q. To whom **did** you circulate or submit that **document**?

2 A. To the best of my recollection, it only went to
3 Jerry Spevack.

4 Q. **Did** you have any discussions with Mr. Spevack
5 regarding the contents of that document?

6 A. **I** did, but **I** don't recall the contents of the
7 discussion.

8 Q. Upon what resources did you rely in drafting that
9 document?

10 A. Part of it was predicated on my own writing, and I'm
11 sure **I** used other printed materials to support some
12 of my recommendations and comments.

13 Q. Under objectives of security at the time that you
14 wrote that, was it your belief that those items that
15 are listed under that section were the components of
16 what is security?

17 MR. UTLEY: Objection.

18 A. This is one of the objectives, but it is for every
19 law enforcement agency.

20 Q. (BY MS. GERLACK) My question to you is, was it your
21 belief at the time that you wrote this that those
22 were the objectives of security?

23 MR. LENSON: Object to what his belief
24 is.

25 MR. UTLEY: I'll join the objection.

1 A. It's one of them.

2 Q. (BY MS. GERLACK) Under your objectives of security
3 you have listed, "To safeguard the health, welfare,
4 safety and property of each tenant and visitor."

5 A. Correct.

6 Q. At the time that you wrote this, you were in
7 agreement that this is an objective of security,
8 correct?

9 MR. UTLEY: Objection.

10 A. Yes.

11 Q. (BY MS. GERLACK) **Did** you circulate this document
12 to any heads of security companies that worked at
13 Longwood?

14 A. I don't believe I **did**.

15 Q. Was this meant to be a security plan or program of
16 any sort?

17 MR. UTLEY: Objection.

18 A. No, it was not.

19 Q. (BY MS. GERLACK) At least part of this document
20 under special duties and responsibilities were what
21 you had earlier referred to as a post order?

22 A. That's correct.

23 Q. This is what you gave to the head of the security
24 companies?

25 MR. UTLEY: I believe his testimony

1 was he gave it to the building manager.

2 A. Property manager.

3 Q. (BY MS. GERLACK) Okay. So is it fair to say this
4 thing connected to this document, you would have
5 circulated this at or around the same time that this
6 memo was sent out?

7 MR. UTLEY: He would have circulated?

8 A. No. I believe, as I stated, the only one that I
9 recall giving a copy of this document to was Jerry
10 Spevack. And this was just kind --

11 MR. UTLEY: Let's clarify the record.

12 Q. (BY MS. GERLACK) What I'm just asking a question
13 about is -- I understand that this was only
14 submitted to Mr. Spevack. What I want to know is
15 this special security duties and responsibilities,
16 when this was previously identified as an individual
17 exhibit -- it's not dated. I had asked you when it
18 was written. Since it was attached in support of
19 this, **do** you know if this was circulated, the post
20 order, at or around this time?

21 A. I **do** not.

22 Q. Did you create these special security duties and
23 responsibilities, what you had already referred to
24 as a post order, in connection with this security
25 paper that you --

1 A. No, I did not.

2 Q. It's something you did separately?

3 A. Separately with the respective property managers.

4 Q. Exhibit 113 is an April 9, 1993 document, which I'm
5 not going to discuss. No. 114. I'm going to hand
6 you Exhibit 114. Do you recognize that document?

7 A. Yes, I do.

8 Q. That's a memo written by whom?

9 A. H.P. Worthington to Jerry Spevack.

10 Q. How did that come to your attention?

11 A. This evidently is --

12 MR. LENSON: The question is how It
13 came to your attention.

14 A. It came to my attention this morning as you
15 presented these documents to me.

16 Q. (BY MS. GERLACK) I asked you to identify an
17 documents you recall observing pursuant to your job
18 duties with Associated Estates or any documents of
19 which you may have participated in discussions. Did
20 you have any discussions relating to the contents of
21 that document?

22 A. Yes.

23 Q. Do you recall what those discussions involved?

24 A. I don't recall them specifically.

25 Q. This is a memo dated March of 1991?

1 A. That's correct.

2 Q. It deals, again, with the need for a meeting with
3 Fox concerning, among other things, the problem with
4 supervision of the guard force, is that correct?

5 A. That's correct.

6 Q. Did you participate in the meeting that's suggested
7 in that memo?

8 A. I don't recall.

9 Q. What conversations do you recall having that relate
10 to the contents of that document?

11 A. Well, I recall the contents that we had with regard
12 to supervision of the personnel. And as it states
13 here, a more vigorous approach to personnel that
14 service the property, quality wise.

15 Q. Did you do anything in response to being notified of
16 these concerns?

17 A. I don't recall.

18 Q. Three months later another memo was sent to your
19 attention in June of -- I'm sorry. Never mind.
20 Strike that. Had you, in terms of selecting
21 security personnel -- Was it your concern about
22 choosing the individual selection of guards for the
23 company that was working at the property?

24 A. It had nothing to do with the selection of guards.

25 Q. In here it indicates, "A more vigorous approach in

1 choosing personnel that service our property."

2 What's your understanding of that statement?

3 A. My understanding of that is -- is that -- And this
4 is H.P.'s statement.

5 MR. UTLEY: I'll object. Go ahead.

6 MR. LENSON: It's irrelevant what his
7 understanding is.

8 A. It would be an interpretation.

9 Q. (BY MS. GERLACK) Did you have any discussions about
10 choosing personnel that came to your attention?

11 A. Yes.

12 Q. What discussions did you have and what was discussed
13 about choosing personnel?

14 A. Personnel who are intelligent enough to be
15 susceptible to training, motivated,
16 self-disciplined, that type of thing.

17 Q. In discussing the choosing of personnel, were you
18 discussing the individual candidates for security
19 'guardpositions or was it the security companies
20 responsibility in selecting personnel?

21 A. Security companies responsibility of selecting
22 personnel.

23 Q. Did Associated Estates ever submit any guidelines to
24 Russell Fox about what they expected of security
25 guards?

1 A. They did not.

2 Q. Did you ever recommend Associated Estates provide
3 such guidelines?

4 A. Yes, I did.

5 Q. When?

6 A. I don't recall.

7 Q. What were those guidelines?

8 MR. UTLEY: Objection.

9 A. The legal department reviewed my guidelines.

10 MR. UTLEY: This has been gone over
11 last time.

12 Q. (BY MS. GERLACK) It was rejected?

13 A. Yes.

14 MR. UTLEY: Objection.

15 Q. (BY MS. GERLACK) Have you ever had any discussions
16 with Russell Fox about the caliber of security
17 guards that were working at the Longwood property?

18 A. I'm sure that I did in a general sense.

19 Q. Do you recall any specifics of your discussions?

20 A. I do not.

21 Q. Do you know if H.P. Worthington worked at any other
22 Associated Estates' properties other than Longwood?

23 A. You mean audit other properties?

24 Q. Yes.

25 A. Oh, yes.

1 Q. Did frequency with which you would audit Longwood
2 increase from the time he first began working there?

3 A. I do not know.

4 Q. Did the meeting with Fox that's referenced in this
5 memo take place?

6 A. I don't know.

7 Q. Do you know if you attended any meetings with Fox
8 and H.P. concerning the contents of this memo?

9 A. That specific memo, I do not recall.

10 Q. Exhibit 115. It's dated April 11, 1990. Do you
11 recognize it?

12 A. Yes, I've seen this document.

13 Q. What is it?

14 A. It's a document written by the building manager at
15 Longwood to all of the residents.

16 Q. It involves a change in the means by which a
17 security call is transmitted or communicated?

18 A. Yes.

19 Q. Did you have any involvement in bringing about that
20 change?

21 A. I had discussions with management with regard to
22 this change.

23 Q. What was the system that was in place before this
24 change was brought about?

25 MR. UTLEY: You mean the security

1 company?

2 Q. (BY MS. GERLACK) It indicates that -- Oh, okay. It
3 appears from that document there is a division
4 between a maintenance call and a security call.
5 Before that change was implemented, what system was
6 in place?

7 MR. UTLEY: I'll object. It doesn't
8 indicate there is a change in the system.
9 It's just advising.

10 Q. (BY MS. GERLACK) Was there a change?

11 A. All we did regarding the change was -- is that we
12 put in direct security lines that would be answered
13 by security, and we knew then that by the ringing of
14 the phone it was a security call.

15 Q. Prior to this memo, the system had been one in
16 which if there was a maintenance call and a security
17 call, the phone would ring. You wouldn't know which
18 call it was until you picked up the line?

19 A. That's correct.

20 Q. Why was this change brought about?

21 MR. UTLEY: Objection. Go ahead.

22 A. I really don't recall all the steps that we went
23 into in order to identify this.

24 Q. (BY MS. GERLACK) Exhibit 116. I'm not going to
25 discuss it. It's a memo dated February 25, 1993.

1 Exhibit 117.

2 A. Okay.

3 Q. Would you identify the document for the record?

4 A. Yes, I recognize it. This was a document written by
5 Aetna Security to Associated Estates purchasing
6 department.

7 Q. Was that brought to your attention?

8 A. As I recall, it was.

9 Q. By whom?

10 A. Either the director of operations or Jerry Spevack.

11 Q. That letter requests a \$.50 per hour raise for the
12 guard service?

13 A. It said they had recently requested one, that's
14 correct.

15 Q. Was that requested raise ever put into effect?

16 A. I don't know.

17 Q. Was the rate of pay of guards a factor in high
18 turnover rates for guards working for security
19 companies?

20 MR. UTLEY: Objection. Go ahead, if
21 you know.

22 A. I think it's a factor.

23 MR. UTLEY: We're not interested in
24 what you think. We're interested in what
25 you know.

1 A. It's a factor in turnover.

2 Q. (BY MS. GERLACK) Was there a high turnover rate of
3 security guards that worked at Longwood?

4 A. I don't know.

5 Q. Was that information ever brought to your attention?

6 A. No, it was not.. About turnover?

7 Q. Yes.

8 A. No, it was not.

9 Q. Do you know why this Exhibit 117 was brought to your
10 attention?

11 A. I do not recall.

12 Q. Did you do anything in response to receiving that?

13 A. Not to my recollection.

14 Q. I am going to hand you Exhibit 118. Do you
15 recognize that document?

16 A. Yes, I do.

17 Q. Would you identify it for the record?

18 A. It's a internal memo from the CEO of Aetna Security
19 to the security guards assigned to Longwood.

20 Q. That memo states that Aetna was in no danger of
21 loosing the contract for Longwood?

22 A. Correct.

23 Q. When was it determined that Aetna would not be
24 awarded the contract for the following year?

25 MR. UTLEY: Objection.

1 A. I don't recall.

2 Q. (BY MS. GERLACK) Do you know why that was brought
3 to your attention?

4 A. Yes. It was brought to my attention because of
5 conversations that were taking place among the
6 security guards at the property.

7 Q. Exhibit 119 I'm not going to discuss. It relates
8 to Rainbow Terrace and it's a memo dated April 11,
9 1990. Exhibit 120 is a memo dated April 6, 1990
10 regarding armed guard services to Jeff Friedman
11 from Jerry Spevack.

12 A. Okay.

13 Q. Do you recognize the document?

14 A. Yes, I do.

15 Q. How did that document come to your attention?

16 A. As I recall, it was shown to me by Jerry Spevack.

17 Q. Do you know why?

18 A. Only --

19 MR. LENSON: Objection.

20 MR. UTLEY: Objection.

21 A. -- to communicate the fact to me this document had
22 been written.

23 Q. (BY MS. GERLACK) That's dated April of 1990?

24 A. Correct.

25 Q. It indicates that Aetna was going to do the

1 dispatching through Aetna's main office, is that
2 correct?

3 A. That's correct.

4 Q. Now, before that had the dispatching been through an
5 office at Longwood for Longwood property?

6 A. Yes.

7 Q. Do you know why that change was brought about?

8 A. I don't know that the change was ever brought about
9 to be honest with you.

10 Q. You said that before this memo the dispatching had
11 been done through a Longwood office. And that in
12 this memo it indicates the dispatching was done
13 through Aetna's main office.

14 A. I don't think it was ever implemented.

15 Q. To your knowledge during the noted time period, was
16 the dispatching office ever located off of Longwood
17 premises?

18 A. Not to my recollection.

19 Q. During the time that you acted as consultant for
20 Longwood, was the only change made to the
21 dispatching service separation of maintenance and
22 security calls?

23 A. No.

24 Q. What other changes do you recall?

25 A. The other changes that I recall was we incorporated

1 Rainbow security dispatching into Longwood, and on
2 Monday through Friday, with holidays being excluded,
3 one of the administrative office personnel at
4 Longwood dispatched all security calls from like
5 9 a.m. to 5 p.m.

6 Q. Were the Rainbow security calls dispatched to
7 Longwood to save money?

8 MR. UTLEY: Objection.

9 A. There was a duplication of dispatching services at
10 two properties that are very close to each other.
11 So I recommended that we abolish the dispatching
12 operation at Rainbow and all calls for security
13 services to those telephone numbers be rolled over
14 and answered at the Longwood dispatching operation.

15 Q. (BY MS. GERLACK) And the end result was that it
16 saved money because you didn't need --

17 A. It was much more efficient, yes. One of the -- it
18 saved money, but it was much more efficient. We had
19 one person answering calls, all logged activities.

20 Q. You indicated that Rainbow is close to Longwood?

21 A. That's correct.

22 Q. Did Rainbow have a dispatching office after its
23 calls rolled over to Longwood?

24 A. No.

25 Q. Fox was providing security services to Rainbow, is

1 that correct?

2 MR. UTLEY: I'll object.

3 MR. LENSON: What year?

4 MS. GERLACK: '91 and '92.

5 A. I don't recall whether he was providing the service
6 at the time that we combined the dispatching
7 operation.

8 Q. (BY MS. GERLACK) At the time that there was a
9 combined dispatching office for Longwood and
10 Rainbow, do you know when that occurred?

11 A. No, I do not.

12 Q. Was there a combined guard service? In other words,
13 the guards that were assigned to Longwood, did they
14 also patrol Rainbow?

15 A. No.

16 Q. Rainbow had its own guards?

17 A. Yes.

18 Q. Where would they report to if the dispatching -- Did
19 they have their own office at Rainbow?

20 A. Yes.

21 Q. In 1993 Associated Estates' relationship with Fox
22 terminated, correct?

23 MR. UTLEY: Objection. Go ahead.

24 Q. (BY MS. GERLACK) We went over the memo in one of
25 our previous sessions.

1 A. Yes.

2 Q. Your memo?

3 A. Yes.

4 Q. As of **1989** were you aware of consistent problems
5 with the performance of Fox guards in the lack of
6 supervision on the Longwood property?

7 MR. UTLEY: Objection.

8 MR. LENSON: Objection.

9 A. Reoccurring problems?

10 Q. (BY MS. GERLACK) Right. Do you agree with that?

11 A. That's correct.

12 Q. Why did it take Associated Estates until **1993** to
13 finally terminate the relationship?

14 MR. LENSON: Objection.

15 MR. UTLEY: I'll object. Go ahead.

16 MR. LENSON: If you know.

17 A. Mr. Fox was very cooperative. We would meet to
18 discuss problems. I feel assured that he made every
19 effort to correct those problems, No. 1. No. 2,
20 replacement agencies were extremely difficult to
21 find for two reasons. One is most guard companies
22 were no longer handling armed accounts because of
23 the liability and the insurance costs that they
24 incurred. Secondly, you had to look for agencies
25 that were large enough to be able to accommodate the

1 unit hours of coverage that these properties
2 required.

3 Q. (BY MS. GERLACK) Other than Mr. Fox's assurance
4 that supervision would improve among the guard
5 forces, what other efforts did he make to correct
6 the problems that were continuously noted in the
7 guard service at Longwood?

8 MR. UTLEY: Objection. If you know.

9 A. I don't know.

10 Q. (BY MS. GERLACK) So then your statement that
11 Russell Fox made sincere efforts to correct the
12 problem is based upon the assurance that he gave to
13 you?

14 MR. UTLEY: Objection.

15 A. And the hiring of a guard to supervise a shift and
16 improve some other supervisory positions.

17 Q. (BY MS. GERLACK) At the end of each year when Fox's
18 contract would be up, did you conduct any searches
19 for alternative security services for Longwood?

20 MR. UTLEY: Ever or on a regular
21 basis?

22 MS. GERLACK: At the end of each year.

23 A. No, not on a regular basis.

24 Q. (BY MS. GERLACK) Are you able to tell me during
25 what years you looked for alternative guard services

1 other than at the end of '89 when Aetna replaced
2 Fox?

3 A. I'm not specifically able to tell you that, no.

4 Q. Is that because you didn't do it?

5 MR. UTLEY: Objection.

6 A. I don't recall..

7 Q. (BY MS. GERLACK) You indicated to me in reviewing
8 those documents that you did not review all of
9 H.P.'s audits.

10 A. That's correct.

11 Q. What was your function in serving as a security
12 consultant?

13 MR. UTLEY: Object as to the answer.

14 We've spent a day and a half going over his
15 function.

16 Q. (BY MS. GERLACK) Can you tell me who the chief of
17 police was during the period -- chiefs of police
18 were during the period of '88 through '92?

19 MR. LENSON: Cleveland police?

20 MS. GERLACK: Yes.

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

22 Q. (BY MS. GERLACK) You had indicated during Mr.
23 Lenson's questioning that you had met with Howard
24 Rudolph, is that correct?

25 A. Yes.

1 Q. Are you able to tell me when you met with him?

2 A. No.

3 Q. Did you ever seek any employment from Howard Rudolph
4 prior to working for Associated Estates?

5 A. No.

6 Q. Did you ever investigate a break into a laundry
7 room at 3602 Longwood where the wall was broken?

8 MR. UTLEY: Objection.

9 A. I don't recall my participation in an investigation.

10 Q. (BY MS. GERLACK) It appears from the documents, the
11 large amount of documents that we've gone through,
12 that the majority of the incident reports that were
13 brought to your attention involves security
14 consultant -- involves shootings, is that correct?

15 MR. UTLEY: Objection. Go ahead.

16 A. As I recall, yes.

17 MS. GERLACK: I thank you for your
18 patience and I don't have anything further.

19 MR. UTLEY: Let's take a quick break.

20 (Short break taken.)

21 CROSS-EXAMINATION

22 BY MR. LENSON:

23 Q. Before I begin, I just want to touch base with you
24 on an issue that was brought up regarding Fox
25 Security during the year 1990. You indicated that

1 several situations may have occurred as to the
2 reason why Aetna's security replaced Fox. One is,
3 you believe that Fox's contract was not renewed
4 based upon the problems that you have been
5 experiencing prior to. You also selected it may
6 have been because of insurance?

7 A. That's correct.

8 Q. As we sit here today, do you know the reason?

9 A. No, not exactly.

10 Q. So if I were to tell you that the reason that Fox
11 did not provide security at Longwood in 1990 was
12 because it was unable to obtain liability insurance
13 for that particular property, you would have no
14 reason to dispute that, is that correct?

15 A. I read that document this morning.

16 Q. And in fact, Fox was rehired for the following two
17 years, correct?

18 A. That's correct.

19 Q. Beside Longwood, how many other apartments owned by
20 Associated Estates or these other defendants
21 required armed security guards?

22 MR. UTLEY: Objection. Go ahead.

23 A. None.

24 Q. (BY MR. LENSON) So Longwood apartments were the
25 only apartments that required armed security guards?

- 1 A. No, that's not correct. I misunderstood the
2 question.
- 3 Q. How many other apartment complexes or properties
4 required armed security guards?
- 5 MR. UTLEY: Objection. Go ahead.
- 6 A. Park Village and Rainbow Terrace.
- 7 Q. (BY MR. LENSON) And Longwood apartments?
- 8 A. And Longwood.
- 9 Q. So three out of the 90 such projects?
- 10 A. Three of which have physical security at the
11 property.
- 12 Q. But the other places did not require armed security
13 guards?
- 14 A. Not security guards.
- 15 Q. Well, I want to make sure we understand each other.
16 Independent security companies which provided armed
17 security guards, how many properties?
- 18 A. Three.
- 19 Q. That would be Longwood?
- 20 A. That's correct.
- 21 Q. The other two?
- 22 A. Park Village and Rainbow Terrace.
- 23 Q. Rainbow Terrace is located near Longwood?
- 24 A. Yes, it is.
- 25 Q. What about Park?

1 A. A distance away.

2 Q. So these were the only three that required armed
3 security guards, is that correct?

4 MR. UTLEY: Objection.

5 A. That's correct.

6 Q. (BY MR. LENSON) And why did it require armed
7 security guards?

8 MR. UTLEY: Objection. Go ahead.

9 A. It was felt by management, according to what they
10 told me, that in order for Associated Estates to be
11 able to hire security personnel at those properties,
12 that they would have to be armed.

13 Q. (BY MR. LENSON) In other words, for the protection
14 of the security guards?

15 A. Certainly that would be a consideration.

16 Q. Did Associated Estates during your association with
17 them ever have its own security forces?

18 A. It has not.

19 Q. So it always retained independent outside security
20 guards?

21 A. They have never had a proprietary force.

22 Q. And therefore, over the years Associated Estates has
23 been associated with a number of independent
24 securities, is that correct?

25 A. That's correct.

1 Q. From time to time even before you became associated
2 with Associated Estates, there were people in charge
3 of retaining security companies, is that correct?

4 A. Yes, there were.

5 Q. There is a roster of security companies out there in
6 the industry from whom the choice could be made, is
7 that correct?

8 A. That's correct.

9 Q. With respect to supervision, when Associated Estates
10 receives a bid for a particular project, I
11 understand by reviewing all the documents that it is
12 per hour per guard, is that correct?

13 A. By that you mean per unit hour of coverage of rate?

14 Q. That's correct.

15 A. That's correct.

16 Q. So that if hypothetically, you have two guards at
17 \$7.50 an hour, that's \$15 per hour, correct?

18 A. That's correct.

19 Q. There is nothing in that per-hour charge that
20 relates to supervision, is that correct?

21 A. That's correct. Spelled out, right.

22 Q. So that supervision is an additional service, which
23 may or may not be provided by the security company,
24 is that correct?

25 MR. UTLEY: Objection. Go ahead.

1 A. I would not agree with that.

2 Q. (BY MR. LENSON) Well, it's not billed into the
3 \$7.50 an hour, is it?

4 A. Well, it certainly should be.

5 Q. Well, is it?

6 MR. UTLEY: Was it '88 to '92?

7 A. I don't know.

8 Q. (BY MR. LENSON) But that is a problem that
9 Associated Estates experienced with all the security
10 companies, in the fact that the providing of a
11 supervisor was beyond the hourly rate charged per
12 security guard, isn't that correct?

13 A. No. I can't agree with that. I'd have to clarify
14 my answer to that.

15 (Defendants' Exhibits A and B
16 marked for identification.)

17 Q. I'm going to hand you what's been marked for
18 identification purposes as Defendants' Exhibit B.

19 MR. UTLEY: I will object to any
20 references other than the companies or
21 properties.

22 Q. (BY MR. LENSON) I'm going to limit my questions to
23 you to the paragraph starting with be that as it
24 may.

25 A. Okay.

1 Q. I would like you to review that memo, please.

2 MR. UTLEY: Do you want him to review
3 the entire memo or start at be that as it
4 may?

5 MR. LENSON: I'm only asking him -- Be
6 that as it may. So whatever he wants to do.

7 MR. UTLEY: Whatever you want.

8 A. Okay. I've reviewed it.

9 Q. (BY MR. LENSON) What's the date of the memo?

10 A. It's dated May 9, 1991.

11 Q. Who prepared it?

12 A. I prepared this.

13 Q. To whom was it sent?

14 A. To Jerry Spevack.

15 Q. And the reason?

16 A. The reason was in relationship to a company that
17 walked off and cancelled their security services at
18 four Associated Estates properties within a very few
19 days.

20 Q. But there was a broader concept demonstrated by you
21 in that report, isn't that correct? The whole idea
22 of upgrading the payment made to security companies,
23 correct?

24 A. Correct.

25 Q. The fact that security companies had increases in

1 the cost of doing business, is that correct?

2 A. That's correct.

3 Q. And also, the fact that supervisory personnel is
4 something that is provided by the security
5 companies, which is not within the hourly rate?

6 A. No. I did not say that.

7 Q. Let me have the memo, if I might. Turning your
8 attention to Exhibit B, the fourth paragraph as it
9 reads, this is your words of course, "When you total
10 the cost increases the companies have been
11 confronted with, a charge of \$7.00 per hour is not
12 profitable. Where they hedge then, is the area of
13 supervision, since they cannot afford it." Do you
14 remember writing that?

15 A. Yes, I do.

16 Q. How did you determine that position that you took in
17 this memo?

18 A. I determined that on the basis of when a security
19 company presented a bid proposal, I absolutely
20 considered that proposal to encompass all costs. Be
21 it man hours, rates that they paid to the guard,
22 benefits, administrative costs, supervision costs,
23 to be provided at a sufficient level.

24 Q. Let me make sure I understand. When you talk about
25 supervision, are you talking about on-site

1 supervision?

2 A. That's correct.

3 Q. So that in other words, if your situation requires
4 two security guards to patrol, for instance at
5 Longwood, are you indicating to us then that you
6 also would believe that a third guard would be there
7 in the form of a supervisor?

8 MR. UTLEY: Objection.

9 A. No.

10 Q. (BY MR. LENSON) Then what do you mean by that?

11 A. What I consider is those two guards while on site
12 have to be sufficiently supervised to make sure they
13 are performing in accordance with their duties and
14 responsibilities.

15 Q. By whom is that supervision provided?

16 A. Should be provided by the security company.

17 Q. By another person being on the site?

18 A. Absolutely.

19 Q. So in other words then, my little hypothetical would
20 be that when you talk about two security guards on
21 duty, there then requires a third entity, a
22 supervisor to be on duty?

23 MR. UTLEY: Objection.

24 A. Not continuously.

25 Q. (BY MR. LENSON) When you say not continuously, did

1 you have in mind any particular time?

2 A. No.

3 Q. In other words, if a supervisor was there for 10
4 minutes out of the 24 hours, is that adequate
5 supervision?

6 MR. UTLEY: Objection.

7 A. It may be.

8 Q. (BY MR. LENSON) So you're not suggesting then that
9 a supervisor has to be at the premises the entire
10 three shifts?

11 A. Not the entire three shifts.

12 Q. You're not even suggesting a particular time?

13 A. I'm not suggesting a particular time.

14 Q. But you recognized a significant problem that was
15 common to the security providers related to
16 supervision, is that correct?

17 A. You're talking about this property? You're talking
18 about the industry?

19 Q. The industry, that's correct.

20 MR. UTLEY: Objection.

21 A. That's correct.

22 Q. (BY MR. LENSON) But yet throughout your time that
23 you had been an associate with Associated Estates,
24 it has been your duty or part of your responsibility
25 to keep costs down, correct?

1 MR. UTLEY: Objection. Go ahead.

2 A. Not as a designated responsibility, no.

3 Q. (BY MR. LENSON) But as part of your overall
4 assignment was to perhaps maintain security, but at
5 the same time maintain expenses, correct?

6 A. I evaluate the efficiencies and property at that
7 location of security as it's relative to cost, but
8 cost is not the primary factor by my means I look
9 at.

10 Q. It is not?

11 A. It is not.

12 Q. Take a look at Exhibit A. It's a memo from you to
13 Ron Walker dated February 20, 1989, is that correct?

14 A. That's correct.

15 Q. "Regarding the changes we Instituted in the Longwood
16 security program on Sunday February 5, 1989, we
17 reduced our security costs for weekend coverage by
18 26%."

19 MR. UTLEY: Weekday coverage.

20 Q. (BY MR. LENSON) I'm sorry weekday coverage by 26
21 percent. "And weekend coverage by 20% for an
22 average savings of 24% for uniformed officers' costs
23 and weekday dispatching costs. In addition, we
24 instituted an additional cost savings of
25 approximately \$10,500 a year, but substituting

1 civilian dispatching personnel in the security
2 office replacing, replacing security uniformed
3 personnel." This effects savings of approximately
4 \$90,000 a year predicated on \$7.50 per hourly rate,
5 is that correct?

6 A. That's correct.

7 Q. I notice at the bottom someone has written great
8 job, and I don't know whose initials those are, but
9 somebody did a great job, correct?

10 A. Uh-huh.

11 Q. For saving \$90,000 by reducing security at Longwood
12 Apartments, is that correct?

13 MR. UTLEY: Objection.

14 A. It doesn't say that.

15 Q. (BY MR. LENSON) It doesn't say you've reduced
16 Longwood security?

17 A. No, it does not.

18 Q. How do you reduce by \$90,000 a year at \$7.50 per
19 hour without reducing security?

20 MR. UTLEY: Objection.

21 Q. (BY MR. LENSON) Tell me how you did it.

22 A. This says the security program -- it does not say
23 reduced security.

24 Q. Tell me how you did it.

25 A. It did it in a combination of ways. One, is we

1 eliminated that daytime dispatcher --

2 Q. That's fine.

3 A. -- five days a week. We replaced some armed
4 security guards in the dispatch office with unarmed
5 personnel, if you will, and subsequently reduced the
6 hourly rate.

7 Q. So in other words, all you -- I'm sorry.

8 A. And we combined a dispatching operation at Rainbow
9 and Longwood, as I recall.

10 Q. Where does it say that?

11 A. It didn't say that.

12 MR. UTLEY: You asked him and he's
13 telling you.

14 MR. LENSON: I want to know where it
15 says that in the memo.

16 A. It doesn't.

17 Q. (BY MR. LENSON) You don't know that to be a fact,
18 do you?

19 MR. UTLEY: He's testifying to it,
20 Murray. Let him finish his answer.

21 MR. LENSON: Just relax a second.

22 Q. (BY MR. LENSON) Does it say anywhere in this memo
23 that you released a dispatcher at Rainbow anywhere?

24 A. No, it does not.

25 Q. You don't even know if it relates today, as we sit

1 here today?

2 A. I do not.

3 Q. So whatever you just said is speculative, correct?

4 MR. UTLEY: Objection.

5 A. I'm sorry.

6 Q. (BY MR. LENSON) Whatever you said in connection
7 with Rainbow about this memo is purely speculative?

8 A. It could be.

9 MR. UTLEY: Were you done with your
10 answer?

11 Q. (BY MR. LENSON) If you have not finished your
12 answer, please, feel free to answer.

13 A. I just don't recall everything.

14 Q. But the fact is you got laudits from Ron Walker
15 maybe and others by saving \$90,000 a year of
16 security costs at Longwood, is that correct?

17 A. A security program cost,

18 Q. By \$90,000?

19 MR. UTLEY: Objection.

20 A. It must be distinguished what you're alluding to as
21 far as patrol activities on the property vis-a-vis
22 total security program costs.

23 Q. (BY MR. LENSON) Mr. Michalski, did you ever figure
24 out if you're using \$7.50 an hour, the savings of
25 \$90,000 --

1 MR. UTLEY: Objection.

2 MR. LENSON: David, let me just finish
3 the question, then you can object.

4 Q. (BY MR. LENSON) Is that how you made the
5 determination by dividing \$7.50 into \$90,000?

6 A. I don't recall.

7 MR. LENSON: I have no further
8 questions. Thank you.

9 MR. UTLEY: Anything further, Lisa?
10 We'll not waive signature. I would like
11 to get stipulations as to the time to the
12 reading of the transcript. Fourteen days,
13 if you please?

14 MS. GERLACK: That's fine.

15 - - -

16 (Deposition concluded at 12:20 p.m.)

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I have read the foregoing transcript of my deposition
taken on Thursday, June 2, 1994 from page 1 to page 387
and note the following corrections:

PAGE : LINE : CORRECTION: REASON:

CRAIG E. MICHALSKI

1 THE STATE OF OHIO,)
2 COUNTY OF CUYAHOGA.) SS: CERTIFICATE

3 I, Allison R. Forkapa, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that CRAIG E. MICHALSKI
6 was before the giving of his deposition, first duly
7 sworn to testify the truth, the whole truth and
8 nothing but the truth; that the deposition as above
9 set forth was reduced to writing by means of
10 Stenotype and was subsequently transcribed into
11 typewriting by means of computer-aided transcription
12 under my direction; that said deposition was taken
13 at the time and place aforesaid pursuant to notice
14 and agreement of counsel; and that I am not a
15 relative or attorney of either party or otherwise
16 interested in the event of this action.

17 IN WITNESS WHEREOF, I hereunto set my hand and
18 seal of office at Cleveland, Ohio, this 21st day of
19 June, 1994.

20 

21 Allison R. Forkapa, Notary Public
22 Within and for the State of Ohio
23 848 Terminal Tower
Cleveland, Ohio 44113

24 My Commission Expires: January 15, 1996

25

#643

DEPOSITION SUMMARY OF CRAIG MICHALSKI
FOSTER v. L.A. LIMITED PARTNERSHIP
JUNE 2, 1994

PAGE	SUBSTANCE
302	Stipulations.
303	Index.
304	CONTINUED CROSS-EXAMINATION BY LISA GERLACK Exhibit 69 relates to an unannounced audit uncovering 2 guards hiding in an apartment when they were supposed to be patrolling.
305	Exhibit 70 is a daily activity report sheet from 1/28/89.
306	Person complained that she called security and nobody came.
307	Exhibit 75 is a document Michalski wrote on July 20, 1989 regarding a shooting that took place in the pool area across the street from Longwood.
308	Exhibits 88, 89 and 90 are Michalski's hand written notes identifying various options for security coverage.
309	Longwood had 15 officers a day during the rehabilitation phase in the 1980's.
310	Does not know when Longwood switched to less than 15 guards per day.
311	The only two companies to provide security for Longwood were Aetna in 1990 and Fox the other years.
312	Michalski most likely played a role in the termination of Aetna's contract through poor evaluations.
313	Michalski played a role in getting Fox back, because he could not find anyone else to provide armed security guards.
314	Fox was the only company large enough to handle the Associated Estates account. Exhibit 89 is about Michalski's suggestion to zone the property for patrol purposes.

315 At one time there were zones for patrolling at Longwood: the community area, the villa area and the park west area A and B.

316 Does not know if the patrol zones where in effect in 1992.

317 The director of operations made the final decision to implement the overlapping shifts so there would be extra guards.

318 Fox provided security when Exhibit 91 was written.

319 There was a supervision problem in 1991. And supervision problems lead to the firing of the last company.

320 The lack of supervision of the guards was a part of the termination of Fox's contract.

321 When Fox resumed providing security the same supervision problems surfaced. Lighting was also a frequent problem at Longwood. The guards should note down lights on their daily activity reports,

322 Maintenance and the lighting company are responsible for replacing lights. Lighting was a security concern for Michalski. Did nothing in response to Exhibit 91.

323 Exhibit 92 is a partial listing of Michalski's hours only 2 hours were devoted to Longwood and that was in April. Exhibit 93 is a memo Michalski wrote to Jerry Spevack in response to Exhibit 91. Carl Green was a security guard hired by Fox to supervise the guards.

324 Does not know when Carl Green worked supervised the guards. Exhibit 95 are a list of special guard duties and responsibilities Michalski prepared.

325 Never conducted any investigations when he heard guards were entering suites.

326 The guard duties and responsibilities list was given to the Fox for distribution to the guards.

327 Exhibit 96 is a performance analysis of the companies providing security for AEC.

- 328 Michalski did not recommend that Fox be awarded the security contract for Longwood.
- 329-330 Exhibit 97 was in the Longwood file but does not pertain to Longwood.
- 331 Michalski faced resistance in trying to implement change in Longwood security. Guards were not required to punch in.
- 332 Does not recall if there was a problem with guards punching in other guards. Does not know who Josphe Lafortune is.
- 333 Michalski evaluated security on days of the week, days of the month, weather conditions, vacation periods of children and reported incidents. Exhibit 100 is a security review of Longwood dated 6/29/92.
- 334 Exhibits 1-6 are comments made by Willie Benson the property manager; comments such as "guards do not appear to know what to do."
- 335 Problem with abandoned autos at Longwood. Benson did not live at Longwood.
- 336 Exhibit 95 states the guards should accompany service personnel when appropriate. If the guards followed the mailman etc, this assured that they were patrolling.
- 337 Guards only patrol in pairs from dusk to sunrise. Number 6 states that guards took 55 minutes to respond to a reported break-in because they were escorting the garbage truck.
- 338 In response to this Michalski suggested to have a meeting with Russell Fox. Exhibit 91 is a memo from Jerry Spevack concerning the lack of supervision at Longwood.
- 339 Exhibit 103 are the recorded minutes from a security meeting. Under subsection 4-A and B Michalski did perform an analysis of the guard service.
- 340 In Exhibit 103 they direct Michalski to cut security costs. Does not know how much he cut costs by. Exhibit 014 is a memo Michalski prepared for Jerry Spevack about replacing security for Longwood, Park Village and Rainbow Terrace.

- 341 Michalski is the only person he knows of to create post orders from '88 to '92. Post orders basically outline the duties and responsibilities of the personnel: job descriptions.
- 342 Tenant concerns might be put into a special order, but not a post order. Exhibit 105 is an audit done with H.P. Worthington of various properties including Longwood.
- 343 Has not reviewed the majority of documents produced in the second request.
- 344 Exhibit 107 is a memo from Aetna Security.
- 345 Exhibit 107 is a letter from Aetna resigning their services. Carl Hess was a physicist who was laid off and made executive vice-president of Aetna by his father.
- 345-346 Resigned because their suggestion to implement more security was turned down. Proposal made after a shooting that took place at Longwood.
- 347 Exhibit 108 is a memo regarding a concerned residents meeting at Longwood.
- 348 Does not recall the meeting which is the subject of the memo dated April 19, 1990. If he responded to the concerns voiced at the meeting it would have been in writing.
- 349 There was a dispatcher on duty 24 hours a day. Subsection B states there was a slow response time for guards. Subsection C states that guards did not know the addresses of the buildings.
- 350 The guards were not given maps of the complex. AEC gave Fox the maps.
- 351 There was also overlapping coverage from 2 to 4 a.m.
- 352 Exhibit 109 is a proposal made by Michalski about the use of both off duty police officers and private security for Longwood. Proposal wasn't adopted because Michalski could not find off duty police officers interested in working.
- 353 Michalski contacted Andre Hanesworth who is the president of the black shield association.

354 Exhibit 112 is a document Michalski wrote on 4/24/90 about the philosophies of security.

355 Exhibit 112 only went to Jerry Spevack.

356 The objective of security is to safeguard the health, welfare, safety and property of each tenant and visitor.

357 Does not know if the memo was circulated.

358 Exhibit 114 is a memo written by Jerry Spevack to H.P. Worthington.

359 Exhibit 114 is from March of '91 and deals with the need for a meeting with Fox to discuss supervision of the guards.

360 One thing discussed with Fox was the criteria for selecting security personnel.

361 AEC's legal department rejected Michalski's guidelines for selecting security personnel. H.P. Worthington audited other properties besides Longwood.

362 Exhibit 115 involves a change in the dispatching procedure.

363 The change was a differentiation between security and maintenance calls.

364 Exhibit 117 is a letter from Aetna to AEC requesting a \$.50/hour raise for guard service.

365 Exhibit 118 is a memo from CEO of Aetna to the security guards at Longwood stating Aetna was in no danger of losing Longwood account.

366-367 Exhibit 120 is a memo dated 4/6/90 from Jerry Spevack to Jeff Friedman regarding changing the location of the dispatching to Aetna's main office instead of an office at Longwood. Does not believe the plan was implemented.

368 The only change in dispatching was making the administrative personnel dispatch security calls between 9 and 5.

369 At one time Longwood and Rainbow Terrace shared a dispatching service. They, however, had separate guards.

370 As of 1989 Michalski was aware of recurring guard problems at Longwood. AEC stuck with Fox for so long despite the problems, because of the difficulty in finding a replacement company: most guard companies did not handle armed accounts due to the high insurance costs and the company needed to be large enough to handle the unit hours of coverage Longwood required.

371 Did not conduct yearly searches for new guard services.

372 Does not know who the Chief of Police was from '88 to '92.

373 The majority of the incident reports involve shootings at Longwood.

MR. LENSON TAKES OVER THE CROSS-EXAMINATION

374 Does not know the exact reason why Aetna's contract was not renewed.

375 Park Village and Rainbow Terrace also required armed security guards.

376 The guards had to be armed for their own protection. AEC never had its own guards always contracted out.

377 The coverage rate is broken down to an hourly charge per guard. This fee does not include supervision.

378 Supervision should be billed into the hourly guard charge.

379 Defendant's Exhibit B dated May 9, 1991 was a memo from Michalski to Spevack.

380 Memo concerned raising contract amount to the security companies due to increased costs on their end. Because of the increased costs the security companies hedged on supervision.

381 There should be a supervisor that makes certain the guards are performing all of their duties satisfactorily.

382 The security advisor does not have to be on the premises any particular amount of time he simply has to make sure the guards are doing their jobs.

383 Exhibit A is a memo for Michalski to Ron
Walker dated 2/20/89 regarding cutting
security costs for weekday coverage by 26% and
weekend coverage by 20% for \$10,500/year.

384 And by changing the dispatcher to a civilian
lead to a total savings of \$90,000/year.

385 Also combined the dispatching facility between
Rainbow Terrace and Longwood.

386 Was lauded for saving \$90,000/year on security
costs.

387 Conclusion