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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. *910163-TL*

FILED: June 11, 1993

In re: Petition on behalf of CITIZENS)
OF THE STATE OF FLORIDA to initiate)
investigation into integrity of SOUTHERN)
BELL TELEPHONE & TELEGRAPH COMPANY'S)
repair service activities and reports.)

CERTIFIED COPY
Williams & Hahn

Pompano Beach, Florida

June 23, 1993

8:45 o'clock a.m.

* * *

DEPOSITION

OF

MARIO MARTINEZ

* * *

DOCUMENT NUMBER-DATE

09501 SEP-23

RECORDS/REPORTING

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Appearing on behalf of SOUTHERN BELL

HITCHCOCK & CUNNINGHAM
BY: BO HITCHCOCK, ESQUIRE,
Appearing on behalf of MARIO MARTINEZ

I N D E X

WITNESS

MARIO MARTINEZ

DIRECT

5

E-X-H-I-B-I-T-S

PSC

1

Description

Letter directed to Mr. Knowles

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1 Deposition of MARIO MARTINEZ, a witness of
2 lawful age, taken by the OFFICE OF THE PUBLIC COUNSEL, for
3 the purpose of discovery and for use as evidence in the
4 above-entitled matter, In re: Petition on behalf of
5 CITIZENS OF THE STATE OF FLORIDA to initiate investigation
6 into integrity of SOUTHERN BELL TELEPHONE & TELEGRAPH
7 COMPANY'S repair service activities and reports, pending
8 before the FLORIDA PUBLIC SERVICE COMMISSION in and for
9 the State of Florida, pursuant to notice heretofore filed,
10 before CHRISTINE A. AMAN CANNON, a Notary Public in and
11 for the State of Florida at Large, Southern Bell Telephone
12 & Telegraph Company, 1230 North Federal Highway, in the
13 City of Pompano Beach, County of Broward, State of
14 Florida, on the 23nd day of June, 1993, commencing at 8:45
15 o'clock a.m.

16 * * *

17 Thereupon:

18 MARIO MARTINEZ

19 a witness of lawful age, being called as a witness by the
20 Florida Public Service Commission, having been first duly
21 sworn, testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MS. RICHARDSON:

24 Q. Would you please state your name and spell it for
25 the court reporter.

1 A. Mario C. Martinez, M-A-R-I-O Martinez,
2 M-A-R-T-I-N-E-Z.

3 Q. And your address please.

4 A. Home?

5 MR. HITCHCOCK: Business.

6 A. 6451 North Federal Highway, suite 1021 in Fort
7 Lauderdale.

8 Q. Do you have a zip code for that?

9 A. I don't recall it.

10 Q. A phone number.

11 A. 305-492-3530.

12 Q. Do you have an attorney present here with you
13 today?

14 A. Yes, I do.

15 Q. I'll ask him to put his appearance on the record.

16 MR. HITCHCOCK: Bo Hitchcock from Fort
17 Lauderdale.

18 Q. Mr. Martinez, what position do you hold with the
19 company?

20 A. General security manager.

21 Q. How long have you held that position?

22 A. Approximately six years.

23 Q. What did you do before you became a general
24 security manager?

25 A. I was a staff manager security.

1 Q. So this was a promotion then?

2 A. Yes, it was.

3 Q. How long have you been with the company all
4 together?

5 A. Approximately twenty-four years.

6 Q. Can you sort of give me a brief resume of the
7 kinds of positions or activities that you've done for the
8 company during that period of time.

9 A. I worked in the central office for my first seven
10 years and after that I moved into security.

11 Q. When you were in the central office, what kind of
12 work were you doing?

13 A. I started as a frame man, did work on the frames,
14 did repair work on the switches and then became a foreman
15 there for a while.

16 Q. Did any of your work in the central office
17 involve handling or working on customer trouble reports?

18 A. Not at all.

19 Q. When you started with security, what was your
20 first level position in that department?

21 A. I was what was known as the security
22 representative.

23 Q. What was the duties of the security
24 representative?

25 A. Investigating.

1 Q. Investigating what?

2 A. Matters referred to the security department from
3 other departments.

4 Q. Can you give me a brief example.

5 A. Fraud was one, just a multitude of things.

6 Q. While you were in that position as a security
7 representative, were you ever called upon to investigate
8 instances of employees attempting to manipulate the PSC
9 results?

10 A. During which time?

11 Q. While you were a security representative.

12 A. No, I was not.

13 Q. What year did you become a staff manager of
14 security?

15 A. Approximately 1980, could have been a year before
16 or a year after.

17 Q. Between being a security representative and being
18 a staff manager for security, are there any intermediate
19 employment levels that you filled?

20 A. No.

21 Q. Who is your present supervisor?

22 A. Micky Cox.

23 Q. What is his title?

24 A. Director security.

25 Q. Within the corporate organization for Southern

1 Bell, where does the security department fit?

2 A. It's a department reporting to an officer. "

3 Q. So is it independent --

4 A. Yes, it is.

5 Q. -- Of the operations?

6 A. Yes, it is.

7 Q. Can you give me an idea of the procedures that
8 operations would use to get your department involved in an
9 investigation?

10 A. Usually by way of either a telephone call or a
11 written request for an investigation on some matter
12 whatever that maybe.

13 Q. And generally what level would an employee have
14 to be in in the operations department in order to get
15 security involved to be authorized to get security
16 involved?

17 A. At any level any employee can call the security
18 department and refer some allegation of something.

19 Q. Does it normally happen or let me rephrase this.
20 Throughout your tenor in security how many instances are
21 you aware of of craft calling security to get them
22 involved?

23 A. How many?

24 Q. Yes.

25 A. I couldn't answer that.

1 Q. Instead of a specific number can you give me an
2 idea of maybe just a few or a lot?

3 A. Would a lot be a good answer?

4 Q. Yes.

5 A. A lot.

6 Q. How many instances are you aware of and you can
7 be general again of craft getting security involved in an
8 investigation against a direct manager of that craft
9 person?

10 A. A number of times?

11 Q. That happens frequently?

12 A. I don't know what frequently is but it does
13 happen, yes.

14 Q. Are you in anyway involved or connected to the
15 security department involved or connected to the hot line
16 that the company has just installed?

17 A. When you say just installed -- I've been
18 associated with the hot line in the security department,
19 yes.

20 Q. Do those come to your department directly?

21 A. Yes, they do.

22 Q. How are those handled?

23 A. I can't answer that.

24 Q. Do you have procedures for handling them?

25 A. They don't come to me directly.

1 Q. I thought you said they did.

2 A. No. I said they came to the security department.

3 Q. If they come to the security department the hot
4 line calls and you're the general security manager, do you
5 supervise the individuals that cover the hot line calls?

6 A. No, I do not.

7 Q. Who does?

8 A. Micky Cox.

9 Q. Are any of those calls referred to you at all?

10 A. Yes.

11 Q. Who refers them to you?

12 A. Employees that report to Mr. Cox.

13 Q. When would a decision be made to get you
14 involved?

15 A. As soon as I get the call.

16 Q. Can you explain to me -- It sounds as though the
17 security department maybe has different areas of expertise
18 and it's broken up into subdepartments. Can you explain
19 how it's organized within security.

20 MR. BEATTY: Objection to the form of the
21 question. It's ambiguous and counsel is testifying.
22 You can respond to that if you can.

23 A. I don't know that we're divided as you indicate
24 by specialties. We have a security department that
25 handles everything by areas. South Florida would handle

1 all matters of security.

2 Q. Do you have a designated area of expertise or
3 geographically that you cover?

4 A. Geographically.

5 Q. What's your area?

6 A. I have from Key West up to Sebastian on the east
7 coast of Florida.

8 Q. Who handles from Sebastian up through
9 Gainesville?

10 A. A counterpart by the name of Jimmy Preau,
11 P-R-E-A-U.

12 Q. Does Mr. Preau handle the Orlando area also?

13 A. Yes, he does.

14 Q. Is there another person designated to handle the
15 west coast, the Pensacola area?

16 A. No, there isn't.

17 Q. Does Mr. Preau handle that?

18 A. Depends on where Bell South has territory. If we
19 have territory, yes.

20 Q. If a hot line call came into the office and an
21 employee was complaining about someone attempting to
22 manipulate a PSC result in Pensacola, do you know who Mr.
23 Cox would direct that investigation to?

24 A. It would have to be to Mr. Preau.

25 Q. If a hot line call came in in Plantation, Florida

1 about the same type of matter, who would Mr. Cox direct
2 that investigation to?

3 A. He would direct it to me.

4 Q. When the company did its investigation in 1991
5 was security involved?

6 A. I don't know what investigation you are referring
7 to.

8 Q. Are you aware of -- Let me do it this way. I'm
9 going to show you a document marked Southern Bell's
10 response to preliminary order number PSC-93-0263-PCO-TL
11 entered on February 19, 1993. And this was filed in the
12 rate case on April 1, 1993 by the company. Have you had a
13 chance to see this document?

14 A. No.

15 Q. Then what I'll do is go off the record for a
16 moment and let you take a look at it. Take as much time
17 as you need and ask Mr. Hitchcock any questions you may
18 have about it. And then when you're ready, we'll go back
19 on the record.

20 A. Okay.

21 Q. Mr. Martinez, this document has been produced by
22 Southern Bell and indicates in paragraph two on page two
23 that six hundred and fifty people were interviewed during
24 Southern Bell's internal investigation.

25 And it has a bunch of numbers after that for

1 example, backing up clearing time, use of cause codes,
2 etcetera related to the trouble repair process. Are you
3 aware of that particular investigation that Southern Bell
4 did?

5 A. Yes, I am.

6 Q. Can you tell me, did security participate in that
7 investigation?

8 A. Yes, they did.

9 Q. Can you tell me how security participated in that
10 investigation?

11 A. In the form of assistance to the legal
12 department.

13 Q. Do you know how this particular investigation got
14 started?

15 A. I would say yes.

16 Q. Can you tell me the very first instance -- Let me
17 make it a general question. How did it get started?

18 A. I received a written request from the legal
19 department, Mr. Robert Beatty.

20 Q. When was that letter dated?

21 A. I couldn't tell you that. I don't remember.

22 Q. Before you received Mr. Beatty's letter, did you
23 receive any other correspondence from anyone else other
24 than legal in Southern Bell regarding repair problems or
25 problems in the repair area?

1 MR. BEATTY: I'm going to object to the form of
2 the question because it's ambiguous. Is your question
3 related to this investigation?

4 MS. RICHARDSON: Yes.

5 A. Then the answer is no.

6 Q. Prior to receiving Mr. Beatty's letter, did
7 security become involved in any investigations regarding
8 employees mishandling customer trouble reports?

9 MR. BEATTY: Is this question related to this
10 investigation?

11 Q. Let's go back and I'll put a time frame on this.
12 Within the prior year, the year within twelve months
13 before receiving Mr. Beatty's letter, was security
14 involved in investigating any complaints by any employees
15 of mishandling customer trouble reports?

16 A. And not related to this?

17 Q. Not that particular document, no.

18 A. Yes.

19 Q. Would you please tell me about that.

20 A. Yeah. I'm not sure that I can give you dates off
21 the top of my head but prior to that we did work an
22 investigation where there was some -- What's the word you
23 use -- problems or whatever of repair problems in the
24 North Dade IMC.

25 Q. What repair problems were reported to you?

1 A. As I recall it came from a department head, a
2 network indicating that a review that they had done -
3 themselves showed that there maybe some problems with
4 reporting of trouble reports. :

5 Q. Who was the head of that department that
6 contacted you?

7 A. That would have been Linda Eisenhower.

8 Q. Was Ms. Eisenhower's contact over the phone, in
9 writing or --

10 A. I believe it was in writing.

11 Q. Does a copy of that letter still exist?

12 A. I said I believe so. If it's -- If it was in
13 writing, then it would probably still exists.

14 Q. Do you remember the specific problems that Ms.
15 Eisenhower referred to you?

16 A. Not specifically.

17 Q. Do you remember looking at the operational review
18 that the problem was discovered by?

19 A. I'm sure that I did.

20 Q. Do you recall whether or not that problem dealt
21 with test okay reports?

22 A. Yes, it did.

23 Q. Do you remember the names of any individuals who
24 were found to have mishandled trouble reports as a result
25 of your investigation?

1 A. I know the names but I don't recall them right
2 now.

3 Q. Let me go back and see if I can get you to go
4 step by step for me. Ms. Eisenhower contacted you and
5 what did you do?

6 A. We opened an investigation.

7 Q. When you say opened an investigation, can you
8 explain to me what you did in opening an investigation.

9 A. Sure. We assigned it to one of the security
10 representatives that actually conducts the investigation
11 and that person begins the investigation.

12 Q. Who was that in this case?

13 A. It was Hampton Booker.

14 Q. Then once you assigned it -- Did you personally
15 assign it to Mr. Booker?

16 A. Yes.

17 Q. Once you assigned it to Mr. Booker, what did Mr.
18 Booker do?

19 A. He began doing all the investigative steps that
20 you would normally do whatever that was. I don't have any
21 personal knowledge of what he actually did. He conducted
22 the investigation. I don't oversee every step of the
23 investigation. I just oversee the final product.

24 Q. Did Mr. Booker make any intermediate progress
25 reports to you on this investigation?

1 A. Verbally.

2 Q. What were his communications to you?

3 A. You're asking me something that goes back three
4 years. I don't recall that.

5 Q. Do you remember what his final conclusion was?

6 A. The final conclusion was that a number of reports
7 and I don't recall the number that were marked
8 out-of-service, they were actually test okayed.

9 Q. Was there a conclusion as to whether that was
10 proper or improper?

11 A. It was improper.

12 Q. Was there any recommendation from Mr. Booker made
13 with this conclusion?

14 A. No. Mr. Booker does not make recommendations.
15 He just reports facts.

16 Q. Do you recall any other facts associated with
17 this particular investigation?

18 A. I don't know what you're referring to.

19 Q. Do you have any idea if Mr. Booker made any
20 factual finding as to how widespread this particular
21 problem was?

22 A. No, he did not.

23 Q. Once Mr. Booker completed his investigation, did
24 he make a written report to you?

25 A. It's a written report that is made by Mr. Booker

1 under my supervision to the department head.

2 Q. And who was that report directed to then?

3 A. It would have been Linda Eisenhower and others,
4 whoever the others were. You would have to look at the
5 report.

6 Q. Did you personally become involved in the report
7 to Ms. Eisenhower?

8 A. Yes, I did.

9 Q. Can you explain to me what you did.

10 A. I reviewed the product as it was written and
11 reported by Mr. Booker. And we had discussions as to how
12 to put it together, how to lay it out, how to report it
13 back, who to send it to, those kinds of things.

14 Q. And the discussion on who to send it to, did you
15 make the final determination on who should see that
16 report?

17 A. No. It's a standard procedure an investigation
18 of 'X' type goes to all of these kind of people and it's
19 always the same. It's not a decision making process.

20 Q. You said the report went to the department head
21 Ms. Eisenhower. Would it have gone to anyone above her in
22 the supervisory level?

23 A. Above her, no. She's the department head. I
24 think not.

25 Q. Are you aware of the -- don't know if I'm going

1 to get the title correct but there's a new vice-president
2 for ethics for compliance standard division?

3 A. Today?

4 Q. Yes.

5 A. Mr. O'Neal.

6 Q. Yes. Is there any procedure for sending Mr.
7 O'Neal final results of investigations?

8 A. There is now. As I recall that position did not
9 exist.

10 Q. At that time?

11 A. Back then.

12 Q. But it does now?

13 A. Yes, it does.

14 Q. Which kinds of reports go to Mr. O'Neal?

15 A. I would have to make reference to my practice to
16 be able to answer that. Distribution is a standard
17 procedure and again, it's not a decision making process.

18 Q. Did you make an oral report to Ms. Eisenhower?

19 A. I don't believe so. I don't recall that. We may
20 have talked to her. We talked a lot but I don't recall.

21 Q. Did Ms. Eisenhower call you after she received
22 your written report?

23 A. I would have to answer the same way. I don't
24 recall. We talk at times but specifically I couldn't
25 answer it.

1 Q. Do you know what Ms. Eisenhower did with your
2 report?

3 A. It's hard for me to say what she did. I don't
4 really know what she did specifically.

5 Q. Did Ms. Eisenhower at any point ask you for
6 recommendations based on your report?

7 A. No. She did not ask for any recommendations.

8 Q. Other than the North Dade process, did anyone in
9 management come and ask you to conduct the same type of
10 investigation in other areas in Florida that you just
11 conducted for Ms. Eisenhower?

12 MR. BEATTY: Now, I object. Are you speaking to
13 investigations other than the investigation which is
14 evidenced in the document that you've submitted to Mr.
15 Martinez?

16 MS. RICHARDSON: We can do that first, yes.

17 A. Could you restate the question please.

18 Q. Sure, be glad to. Anytime that I'm not clear on
19 my questions or you need it to be rephrased, go ahead and
20 ask me.

21 A. Okay.

22 Q. And as long as I'm giving instructions if you
23 ever need to go off the record to talk to Mr. Hitchcock,
24 please feel free to go off the record and you have all the
25 time that you need.

1 A. Okay.

2 Q. Did anyone other than the legal department for
3 Southern Bell ask you to conduct a similar investigation
4 that you had just done for Ms. Eisenhower anywhere else in
5 the State of Florida?

6 A. Asked me to conduct a similar investigation not
7 related to this and prior to this matter?

8 Q. Yes.

9 A. The answer would be no.

10 Q. Do you know if this investigation of test okay
11 reports being closed as out-of-service was conducted
12 anywhere else in the State of Florida at any time after
13 Ms. Eisenhower's investigation?

14 A. Again, unrelated to this document?

15 Q. Related to that document or related to the legal
16 department's request or anyone else's request because
17 you've already told me there was none other not related to
18 this document. So I don't want to ask you that question
19 again.

20 MR. BEATTY: If I understand you correctly, I
21 object. The basis of my objection and allow me to
22 speak it because I'm not sure that you're asking the
23 question that I'm focussed upon.

24 I object on the grounds that the information that
25 would be elicited in the answer to your question may

1 go into the investigation about which the document you
2 have placed before Mr. Martinez relates to the extent
3 that that information is privileged and confidential,
4 subject to the attorney client privilege. Therefor, I
5 would object and to the extent again that your
6 question relates to that investigation, I would
7 request through the indulgence of Mr. Martinez'
8 counsel that the witness not respond.

9 MR. HITCHCOCK: I would concur to that.

10 THE WITNESS: Can we have a minute.

11 MR. HITCHCOCK: Sure.

12 (Thereupon, an off the record discussion was
13 held.)

14 Q. We're back on the record and Mr. Beatty had
15 placed an objection and your counsel had concurred with
16 that and now I'm waiting for your response.

17 A. A response to what?

18 Q. Do you know if this particular type of
19 investigation that was conducted for Ms. Eisenhower in
20 terms of test okay reports being closed out as
21 out-of-service was conducted anywhere else in the State
22 regardless of who asked for it?

23 A. Prior and unrelated to this document right here?

24 Q. No, sir. Related to that document or any other
25 request was my question and then Mr. Beatty placed his

1 objection on the record and your counsel concurred as
2 attorney client privilege. And then you left the room and
3 we went off the report.

4 A. As related to this record, it's my understanding
5 that this is privileged attorney client information. So I
6 can't answer that.

7 Q. Do you know if there were any operational reviews
8 conducted throughout the State based upon the security's
9 findings and Ms. Eisenhower's report?

10 MR. BEATTY: Again, allow me -- I don't want to
11 continue to object because I'm not one hundred percent
12 sure of the question so please allow me to interject.

13 MS. RICHARDSON: Sure.

14 MR. BEATTY: Does your question encompass the
15 investigation above which the document is placed
16 before Mr. Martinez?

17 MS. RICHARDSON: This question does not.

18 MR. BEATTY: So your question pertains to
19 operational reviews other than what he may have
20 uncovered or not uncovered in the course of the
21 investigation. Allow me just to name the
22 investigation so we can have it for clarity, repair
23 investigation.

24 MS. RICHARDSON: That works for me, repair
25 investigation.

1 Q. Do you know where we are now?

2 A. No, I don't. If you would, restate the question
3 one more time.

4 Q. Let me see if I can ask it this way. Do you know
5 if your findings in North Broward spurred the operational
6 review group outside of the repair stuff that you did,
7 repair investigation --

8 A. Yes.

9 Q. -- To conduct a similar search throughout
10 Florida?

11 A. May I take one minute? My answer to the last
12 question is yes, I am aware.

13 Q. Can you tell me what your knowledge is regarding
14 that operational review investigation?

15 MR. BEATTY: Objection to the form of the
16 question. It's ambiguous.

17 Q. Do you know what other areas of the State were
18 investigated?

19 A. The entire State.

20 Q. Do you know any of the findings that were made in
21 that investigation?

22 MR. BEATTY: I'm going to object.

23 MS. RICHARDSON: I'm asking him if he knows and
24 we're dealing outside of the repair investigation.

25 MR. BEATTY: Outside of repair?

1 MS. RICHARDSON: Yes. I mean, this is a spin off
2 question to the question about does he know if
3 operational reviews were being done throughout the
4 State and he said yes. And I'm still dealing with
5 those other ones. Does he have some knowledge about
6 that. You didn't want a general question on knowledge
7 so now I'm trying to get specifics.

8 MR. BEATTY: So you're dealing not with
9 investigations but with reviews?

10 MS. RICHARDSON: Yes. And I said the word
11 investigation and that's what threw you off.

12 MR. BEATTY: That's what threw me off.

13 Q. Okay. So do I need to rephrase my question one
14 more time?

15 A. Yes, please. I'm sorry.

16 Q. That's fine. Do you know what conclusions were
17 drawn from these other reviews throughout the State?

18 A. Yes. I saw a final document of that review. I
19 don't have specific knowledge but in answer to your
20 question generally, yes.

21 Q. Do you know if this problem was occurring in
22 other areas in the State, the test okays being closed as
23 out-of-services?

24 A. Yes.

25 Q. Do you know who received within the management

1 area who received that report besides yourself?

2 A. No, I do not.

3 Q. Do you know if anything was changed -- No. Let
4 me rephrase that. Do you know what action was taken as a
5 result of that operation review report?

6 MR. BEATTY: Yes or no at this point.

7 A. Yes.

8 Q. What action was taken based upon that operation
9 review of test okays being closed as out-of-service
10 throughout the State?

11 MR. BEATTY: You're asking this for a generic
12 what happened whether an investigation was or
13 was not conducted or generally?

14 Q. Generally what was done?

15 A. I can only answer as it relates to the security
16 department.

17 Q. Okay.

18 A. What other departments may or may not have done,
19 I have no knowledge of.

20 Q. Okay.

21 A. As it relates to the security department there
22 was a request to do an investigation in another part of
23 the State.

24 Q. Who did that request come from?

25 A. That I'm not sure of.

1 Q. Was that an oral request?

2 A. That I don't know.

3 Q. Did you receive the request directly?

4 A. I did not.

5 Q. Did it come to Mr. Cox?

6 A. I don't know that.

7 Q. How did you become involved?

8 A. I was asked to provide assistance.

9 Q. Who asked you to provide assistance?

10 A. Jimmy Preau.

11 Q. What did you and Mr. Preau do?

12 A. I don't know what Mr. Preau did. I simply
13 provided an assistant for the investigation.

14 Q. Who did you provide?

15 A. Mr. Booker.

16 Q. Mr. Booker. Do you know what Mr. Booker did in
17 terms of his assisting Mr. Preau?

18 A. I do not, not specifically.

19 Q. Do you know if Mr. Booker pulled specific MTAS
20 reports in his assistance with Mr. Preau?

21 A. I don't recall that.

22 Q. Do you know if Mr. Booker looked at any customer
23 records?

24 A. I don't know that.

25 Q. Do you know what Mr. Booker's findings were?

1 A. No, I do not.

2 Q. Did Mr. Booker make a final report to you? "

3 A. No, he did not.

4 Q. Do you know the results -- Excuse me. Do you
5 know of any actions that were taken based upon Mr. Booker
6 and Mr. Preau's results?

7 A. No. I can't say that I do.

8 Q. Do you know who they reported to on their final
9 conclusions?

10 A. I do not.

11 Q. Were you involved at any time with complaints --
12 Excuse me. Let me rephrase it. Were you involved at any
13 time with allegations of misconduct that were given by Mr.
14 Frank Falsetti.

15 MR. BEATTY: I'm going to object on the ground
16 that an answer to this question gets into the
17 substance or possibly may get into the substance of
18 the repair investigation which is privileged and
19 confidential and subject to the work product privilege
20 and attorney client privilege and therefor, I would
21 object.

22 MS. RICHARDSON: I'd like to make a response to
23 that before he answers.

24 MR. BEATTY: Sure.

25 MS. RICHARDSON: Mr. Falsetti's deposition

1 statement that was taken by another attorney is public
2 record and out there. At this point I think that
3 there is available some general knowledge about that.

4 I'm not sure in what way the company can assert
5 attorney client privilege for one not employed. Mr.
6 Falsetti is no longer employed with the company and
7 any statements he has made are public record.

8 MR. BEATTY: My comments should not be construed
9 to include anything that Falsetti said or did
10 because it does not. Maybe there's a
11 misunderstanding.

12 MS. RICHARDSON: My understanding is that Mr.
13 Falsetti's allegations were received in mid 80 and the
14 repair investigation was conducted in 1991.

15 THE WITNESS: No.

16 MS. RICHARDSON: So that definitely precedes
17 Mr. Falsetti. Anything that you have done, that may
18 or may not be attorney client privilege.

19 MR. BEATTY: The issue is a matter of clarity
20 then.

21 MS. RICHARDSON: Then should I reask that
22 question?

23 MR. BEATTY: If you could reask it and clarify
24 your time frames.

25 Q. Mr. Martinez, were you working in security at the

1 time Mr. Falsetti was making allegations back in the mid
2 80s of misconduct by managers of handling customer
3 records?

4 A. I've been working in security since 1977 until
5 the present.

6 Q. Were you made aware of any of Mr. Falsetti's
7 allegations?

8 A. Are you meaning at the time he made them?

9 Q. Yes.

10 A. No, I was not.

11 Q. Do you know who handled the investigation that
12 Mr. Falsetti attempted to get started?

13 A. Yes, I do.

14 Q. Who was that?

15 A. It was Howard VanGorden under the direction of
16 Jerry Doyle.

17 Q. Have you seen any of Mr. VanGorden's reports on
18 the Falsetti investigation?

19 A. Yes, I did.

20 Q. Do you recall what Mr. VanGorden determined?

21 A. I -- Only limited if I can say that. I don't
22 recall the entire document.

23 Q. What is your limited recollection?

24 A. My recollection of it was that Falsetti had made
25 allegations. And Mr. VanGorden attempted to document

1 those allegations and attempted to obtain evidence of some
2 type from Mr. Falsetti and that was never forthcoming.

3 Q. Do you know if Mr. VanGorden attempted to obtain
4 evidence from anyone else other than Mr. Falsetti himself?

5 A. I did not supervise the investigation so I don't
6 know that.

7 Q. Did you discuss the investigation at all with Mr.
8 VanGorden?

9 A. No.

10 Q. Do you know if that investigation was closed out
11 at that time?

12 A. It was closed out at some time. I don't know
13 when it was.

14 Q. Do you know the reasons that it was closed out?

15 A. No, I could only guess. No. I cannot answer
16 that.

17 Q. In terms of Mr. Falsetti's allegations, does the
18 company's repair investigation or was the company's repair
19 investigation at all spurred by the allegations that Mr.
20 Falsetti made in that 1987 time frame?

21 MR. BEATTY: I object to the form of the
22 question. It causes this witness to speculate about
23 the motives of persons other than himself and I would
24 object. But if you know the answer to that, you can
25 respond.

1 A. I really don't know the answer to that.

2 Q. Can you tell me how many people in the security
3 department were involved in the repair investigation?

4 A. Not a fixed number. I can tell you anywhere from
5 fifteen to twenty-five people.

6 Q. Were you personally involved in the company's
7 repair investigation?

8 A. What was the question please?

9 Q. Were you personally involved in the repair
10 investigation?

11 A. Yes, I was.

12 Q. Can you give me a general idea of your duties as
13 part of your involvement in that investigation.

14 MR. BEATTY: I'm going to object to that on the
15 grounds of attorney client privilege as the question
16 is stated and attorney work product and with counsels
17 indulgence, I would request him not to answer.

18 If you could ask that slightly different,
19 specifically ask him questions about his involvement
20 and I realize this might be a tad difficult not
21 knowing his involvement but the question of duties --

22 MS. RICHARDSON: Let me try this Robert.

23 Q. Were your duties in the repair investigation any
24 different than your normal everyday duties that you
25 perform in the security department now?

1 A. No.

2 Q. So basically then your involvement with the
3 repair investigation, it would be similar to any other
4 investigation that you conduct for the company; is that
5 correct?

6 A. That's a fair assessment question.

7 Q. How did you personally become involved in the
8 repair investigation?

9 A. I received written correspondence from Mr.
10 Beatty.

11 Q. Do you know how many employees were interviewed
12 as a result of the repair investigation?

13 A. I don't have a set number.

14 Q. Can you give me an approximate number.

15 A. More than?

16 Q. Yes.

17 A. More than five hundred.

18 Q. Do you know if any employees were interviewed
19 without security's involvement?

20 A. Without security present, is that what you mean?

21 Q. Yes.

22 A. No.

23 Q. Do you know if any employees were interviewed
24 without an attorney present?

25 A. No.

1 MR. HITCHCOCK: That was no or you don't know or
2 there were none?

3 A. No, there were none. What was the question?

4 Q. Were any employees interviewed without an
5 attorney present?

6 A. Not to my knowledge there were none.

7 Q. Have you seen the company's audits, operational
8 audits LMOS, KSRI, MOOSA, PSC Schedule-11, and the
9 operation review audit that were conducted by the company
10 in 1991 as part of the repair investigation?

11 A. I don't know if you realize how big a question
12 you asked.

13 Q. I did ask a big question.

14 A. Have I seen, probably. Specifically, I couldn't
15 tell you.

16 Q. Were any of your specific employees in security
17 involved in the preparation of those five 1991 audits?

18 A. We're not in the audit department so the answer
19 to to that would be no.

20 Q. Was there any coordination of any nature between
21 your department of security and the auditing department in
22 the conducting of those audits?

23 A. Audits are conducted by the auditing department.
24 We may have provided some assistance, some information.
25 That would be the extent of it.

1 Q. Can you tell me what the general procedures are
2 for security for closing an investigation.

3 A. General procedures is an investigation is ready
4 to be closed when all of the facts have been documented
5 and some kind of answer to the allegation has been found.

6 Q. If the individual making the allegation cannot
7 produce documentation, is the investigation closed?

8 MR. BEATTY: I object to the form of the
9 question. It's speculative.

10 A. No, not necessarily.

11 Q. Have the procedures changed for conducting
12 investigations since 1991?

13 MR. BEATTY: I object to the form of the
14 question.

15 A. The answer is basically no.

16 Q. Have any of security's procedures changed as a
17 result of the repair investigation?

18 A. No, they haven't.

19 Q. Can you tell me if -- Are you aware --

20 MR. HITCHCOCK: Excuse me one moment.

21 (Thereupon, an off the record discussion was
22 held.)

23 MS. RICHARDSON: Did you need to respond or add
24 anything before we go any further?

25 MR. HITCHCOCK: No. I don't think so.

1 MS. RICHARDSON: Okay. I didn't know what the
2 huddle was for.

3 THE WITNESS: I just needed to clarify a point.

4 Q. Do you know if any union representatives were
5 present during statements given by employees conducted by
6 your department for the repair investigation?

7 A. Yes.

8 Q. Can you tell me how the CWA became involved?

9 A. How they became involved?

10 MR. BEATTY: If you know.

11 A. It's a very broad question. I can only tell you
12 the standard procedure and I don't know if that was the
13 way it was used in this case.

14 Q. All right.

15 A. Normally an employee would request union
16 representation if they so desired. That's it.

17 Q. For the employees who had a union representative
18 present during the statements taken by security for the
19 repair investigation, did the employee request the CWA
20 presence from security?

21 A. That's just to broad a question. I can't
22 specifically answer that.

23 Q. You gave me the general statement that if an
24 employee wants the union involved, that's how it gets
25 done. Who does the employee ask?

1 MR. BEATTY: It recharacterizes his statement.
2 Counsel is testifying. The record speaks for itself
3 as to what the witness has answered to prior
4 questions.

5 A. The only way I can answer your last question is
6 that I wasn't present at the interviews. So therefor, I
7 could not answer how the employee may or may not have
8 requested union representation.

9 Q. Have you read the statements that were given of
10 these five hundred employees?

11 MR. BEATTY: Objection, relevance.

12 A. Yes.

13 Q. What conclusion did you draw from having read
14 those statements?

15 MR. BEATTY: I object to the question on the
16 grounds that the information that he will disclose in
17 his answer can only be the result of information
18 received from the core of the investigation which is
19 privileged and confidential and subject to the
20 attorney client privilege and accordingly with
21 counsel's indulgence, I would request the witness not
22 to respond.

23 A. I can't respond to that question.

24 Q. Because it's attorney client privilege?

25 A. That's correct --

1 MR. BEATTY: And attorney work document product.

2 A. -- And based upon counsel's objection. I'm "
3 sorry.

4 Q. Did you discuss these findings with anyone else
5 in the company?

6 MR. BEATTY: I object to the form of the
7 question. It's ambiguous.

8 Q. Did you discuss the findings that you were made
9 aware of in the security department during the repair
10 investigation with anyone else in the company?

11 A. Did I discuss the findings, yes.

12 Q. Who did you talk to?

13 A. It would be my immediate supervisor whose name
14 I've given you and the legal department.

15 Q. Did you discuss it with anyone else.

16 A. My subordinates.

17 Q. Did you discuss it with anyone outside of legal
18 or security?

19 A. No, I did not.

20 Q. Do you know if summaries -- Let me ask it a
21 different way. The statements that were taken by
22 security, were those statements taken in writing from the
23 employee? In other words, did the employee write the
24 statement and hand it over to security?

25 A. Say that again.

1 Q. The statements that were taken, did the employee
2 write the statement and hand it over to security?

3 A. No, they did not.

4 Q. Were any transcriptions of oral statements by
5 employees made?

6 A. Yes.

7 Q. Was a court reporter present during the
8 statements?

9 A. No.

10 Q. Did the security employee make the transcription
11 of the employees' oral statements?

12 A. It was more of a duel effort between the security
13 person and the legal representative, the attorney present.

14 Q. Does security have verbatim statements from
15 employees regarding the repair investigation?

16 A. When you say verbatim, what are you referring to?

17 Q. Word for word directly from the employees.

18 A. As in a recording?

19 Q. As in a recording or possibly shorthand taken
20 since a court reporter wasn't there, shorthand verbatim
21 from the employee?

22 A. No.

23 Q. I have passed out what I would like to have
24 labeled Exhibit 1 for Mr. Martinez' deposition, a letter
25 to a Mr. Floyd R. Knowles, dated October 8, 1992 from a

1 Mario C. Martinez, General Security Manager. And this is
2 a three page document letter.

3 (Thereupon, the letter referred to was marked
4 Public Service Commission's Exhibit No. 1 for
5 identification purposes.)

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

8 Q. Mr. Martinez, did you write this letter to Mr.
9 Knowles?

10 A. No, I did not.

11 Q. Mr. Martinez, is that your name on this letter?

12 A. If you're referring to the type written, yes it
13 is.

14 Q. Who wrote this letter?

15 A. It would have been George Nicholson as indicated
16 by the initials at the bottom of the letter.

17 MR. BEATTY: Excuse me, I'm going to have her put
18 a mark on that.

19 MS. RICHARDSON: Yes, I already did. I'm
20 introducing it as an Exhibit and marked it as
21 Exhibit 1.

22 MR. BEATTY: Okay.

23 Q. Did you authorize Mr. Nicholson to write this
24 letter?

25 A. I don't have to authorize him. He's authorized

1 to write final reports.

2 Q. Over your name?

3 A. All correspondence in my office goes out over
4 name, every little piece of it.

5 Q. Did you see this report before it left your
6 office?

7 A. No, I did not.

8 Q. Are you aware of the events that Mr. Nicholson
9 refers to in this letter?

10 A. Yes, I am.

11 Q. Essentially, the letter speaks about Mr.
12 Nicholson's investigation regarding allegations of
13 Fort Pierce. Can you tell me what Mr.
14 Nicholson determined in relation to his investigation of
15 those allegations?

16 MR. BEATTY: I object to the form of the question
17 to the extent that Mr. Martinez' knowledge is based
18 upon the document and the document speaks for itself
19 to the extent obviously that Mr. Martinez' knowledge
20 relates or is gathered from information obtained from
21 Mr. Nicholson. I have no objection.

22 A. I did not see this letter go out. I did not see
23 the supporting documentation that would go with this
24 letter so I really cannot respond as to what he did or did
25 not do.

1 Q. The document indicates that Mr. Nicholson
2 interviewed a [REDACTED] who is the president of one of
3 the local unions.

4 A. Yes, it does.

5 Q. The document indicates, just so we can get to my
6 next question, that Mr. Nicholson was unable to determine
7 the two employees who had reported falsification or
8 employee falsification by [REDACTED]. The names were not
9 forthcoming.

10 MR. BEATTY: There's no question pending.

11 A. That's correct.

12 Q. Now, going back to security procedures. Mr.
13 Nicholson, according to this letter, closed this
14 investigation out because the names of the employees
15 alleging the misconduct were not available. Is that
16 standard procedure to close this kind of allegation out at
17 that point?

18 A. There is no standard procedure per say as to the
19 form of your question. The investigator is authorized by
20 means of practices and procedures to identify what he does
21 or does not have. And based on his knowledge, his
22 experience, and all of that to know whether he's at a
23 point where he can close an investigation.

24 Q. Did Mr. Nicholson speak to you about this event
25 before he closed the investigation?

1 A. We speak on all cases, on over a thousand cases a
2 year in the southeast area alone. So we speak of all of
3 them and I'm sure that we spoke of this one as well.

4 Q. Did Mr. Nicholson discuss with you the reasons
5 for terminating the investigation at the point that he
6 indicates in this letter?

7 A. I don't have any specific recollection of that.

8 Q. Do you remember any conversations that you had
9 with Mr. Nicholson regarding this investigation and
10 activities?

11 A. The only thing I remember is when we received the
12 employee reporting line that it was brought to my
13 attention and that I referred it to Nicholson for
14 investigation.

15 Q. This is going to be -- Let me see if I can make
16 it without a hypothetical. In your opinion in terms of
17 your experience and your position and your supervision of
18 the employees, was it proper for Mr. Nicholson to close
19 this investigation without speaking to anyone other than
20

21 A. That's a very broad question. Although, I know
22 you tried to define it. Without the benefit of the entire
23 case, I don't know what he did or did not do. And I don't
24 know if that was his only criteria that he would close it
25 based on not being able to speak to those people.

1 There may have been other criteria that he
2 utilized to come up with that decision but I don't know
3 what that criteria was. Obviously, the best source of any
4 information is the alleging party. So that is always
5 critical to any investigation.

6 Q. On page two of this letter paragraphs -- Well,
7 actually all three paragraphs. The first paragraph
8 indicates that (refuses to identify the two
9 STs involved. The second paragraph indicates at that time
10 stated that he had relayed Mr. Nicholson's
11 comments to both of the STs that they should come forward
12 to be interviewed. And then the third paragraph indicates
13 that he is closing the investigation.

14 A. Uh-huh.

15 Q. The two employees were not named. And this maybe
16 a repeat question. If this is, just tell me if you've
17 already answered it. Do you know if Mr. Nicholson took
18 any further action than discussing this with
19 and attempting to get the names of those two employees?

20 A. I do not.

21 Q. According to your experience, would it be proper
22 to take any further action in this type of matter before
23 closing the report?

24 MR. BEATTY: I object to the form of the
25 question. Asked and answered. The witness has

1 already indicated what the record will reflect and I
2 object. Having said that Mario, you can certainly
3 respond again.

4 A. Again, without the supporting documentation that
5 goes along with making the decision, I cannot answer that
6 question.

7 Q. When security receives reports related to
8 managers manipulating customer records in order to meet
9 company or PSC indexes, does the security department pull
10 actual customer records to investigate the records
11 themselves?

12 A. Yes, they do. If there's an availability of
13 those records, yes they do.

14 Q. Mr. Nicholson indicates that this event occurred
15 on a date certain September 1, 1992. If you were
16 personally conducting or supervising this investigation,
17 would you have required that customer records for that
18 particular date be pulled before an investigation was
19 concluded?

20 MR. BEATTY: I object to the form of the
21 question. Speculative. Calls for this witness to
22 speculate as to what he might do in the future. I
23 think it's an inappropriate question and I object.

24 A. I would answer that and a general answer would be
25 yes but not necessarily. It would depend on the

1 particulars of the case.

2 Q. On the employee reporting line incident report
3 that is attached to the letter, it indicates that the
4 service technicians and I'm quoting, "The service
5 technicians were apprehensive to call the employee
6 reporting line." Did you discuss with Mr. Nicholson or
7 anyone else as to why these employees refused to identify
8 themselves?

9 A. I don't recall that.

10 Q. In any past investigations that you have
11 conducted, have any of them been closed simply because the
12 employee making the allegation refused to identify
13 themselves?

14 MR. BEATTY: I object on the grounds of
15 relevancy.

16 A. I have no specifics as to what you just asked
17 simply because it's not qualified for me in working a
18 case. There's a lot of different things that go into
19 making those kinds of decisions. There's nothing simple
20 about it.

21 Q. Give me some examples of the kinds of things that
22 go into making the decision to close an investigation.

23 A. If the only source of information is a person
24 making an allegation and there is no access to that person
25 to clarify the allegation or provide some direction as to

1 where else you might be able to look, then you wouldn't be
2 able to physically do anything else. So under those
3 conditions you would close the investigation.

4 Q. If the person making the allegation had made it
5 against another employee, would an attempt be made to
6 interview that other employee?

7 A. I think you're generalizing. It's a case by case
8 basis. I really cannot answer that.

9 Q. In your tenor at security has any investigation
10 been closed on the advise of a operations manager?

11 A. On the advise --

12 MR. BEATTY: Objection, relevance.

13 A. No.

14 Q. Again, in your tenor in security has any
15 investigation been closed when a general manager has
16 stated that there was no foundation for the allegations?

17 MR. BEATTY: Objection, relevance.

18 A. No, they have not.

19 Q. Do you know if Ms. Eisenhower received results
20 from Mr. VanGorden's investigation into Mr. Falsetti's
21 allegations?

22 MR. HITCHCOCK: I'm sorry. I missed that
23 question.

24 Q. Do you know if Ms. Eisenhower received Mr.
25 VanGorden's report on Mr. Falsetti's investigation?

1 A. I don't have any personal knowledge of that.

2 Q. Do you know of any instances of managers
3 attempting to manipulate Public Service Commission
4 indexes?

5 MR. BEATTY: I object to the form of the
6 question.

7 Q. Let me rephrase it. Do you know of any instances
8 of managers attempting to manipulate results in order to
9 meet PSC requirements?

10 MR. BEATTY: I object to the form of the
11 question to the extent that the question encompasses
12 anything that Mr. Martinez may have learned through
13 the course of conducting the repair investigation.

14 I object on the grounds that it is privileged and
15 confidential and subject to the attorney client
16 privilege and work product. And with that I would
17 with counsel's indulgence instruct the witness not to
18 respond.

19 A. I cannot respond to that question.

20 Q. Do you know of any instances of managers
21 attempting to manipulate results to meet PSC
22 out-of-service over twenty-four hour index other than what
23 you may have learned through the repair investigation?

24 MR. BEATTY: I would -- Same objection to the
25 extent that -- and I direct this to the witness -- to

1 the extent that the witness's response might include
2 any other investigation which is simply privileged.
3 So please respond to that question excluding
4 privileged investigations.:

5 A. I can only specifically respond to what we've
6 already discussed which is the North Dade investigation
7 and I guess the Gainesville investigation which you
8 mentioned earlier.

9 Q. Were you involved in the sales investigation that
10 was conducted by the company?

11 MR. BEATTY: I object to the form of the
12 question. Ambiguous. You can respond if you can.

13 A. Partially involved. That's about the best I can
14 do.

15 Q. Based upon your involvement in that
16 investigation, what conclusions did you draw regarding the
17 results of that investigation?

18 A. When you say that investigation, are you
19 referring to something --

20 Q. To the sales.

21 A. -- Larger than what I got involved with. So my
22 responses are restricted to that which I participated in.

23 Q. Well, let's go back to that. Explain to me what
24 your participation was in that sales investigation.

25 A. I was just the supervision of a portion of that

1 investigation.

2 Q. And what portion did you supervise?

3 A. The areas within my area of responsibility and
4 that would be Key West to Sebastian.

5 Q. And in conducting that part of the investigation
6 from Key West to Sebastian, were you or the people under
7 you involved in taking statements from the employees?

8 A. Yes, we were.

9 Q. Was that particular sales investigation -- Who
10 initiated that sales investigation?

11 A. I received written correspondence from Mr. Robert
12 Beatty to do so.

13 Q. What conclusions did you draw from your
14 participation in that investigation in terms of South
15 Florida?

16 MR. BEATTY: Objection to the form of the
17 question. It's ambiguous so if you can respond to
18 that --

19 A. Well, I have my own question to that if I may.

20 (Thereupon, an off the record discussion was
21 held.)

22 A. In answer to your question of those areas where I
23 have responsibility there was some evidence where
24 employees of the company had added services to customers
25 or added features to customer services for which they were

1 paying for without their knowledge.

2 Q. Without the customer's knowledge?

3 A. That's right.

4 Q. Do you know what action was taken regarding this
5 investigation?

6 A. I don't participate in -- Are you referring to
7 discipline?

8 Q. Whatever action was taken by the company in
9 regards to your findings.

10 A. Again, and I think I answered this earlier. We
11 simply collect the facts and report them to the
12 departments. And what actions they take is not
13 necessarily reported back to us.

14 Q. Who did you report to on this particular sales
15 investigation?

16 A. Again, it would have been the line of management
17 within those departments. And I believe at that time it
18 would have been Mr. Paul Singer and possibly Mr.
19 Crittenden, C-R-I-T-T-E-N-D-E N.

20 Just for a clarification on the way it was
21 reported and I don't have a specific recollection as to
22 how the report actually went out but the request for
23 investigation came from Mr. Beatty from the legal
24 department.

25 So I would assume that our final report would

1 have gone to the legal department. And these folks that I
2 mentioned earlier would have received in some kind of
3 formal fashion that information but the distribution of
4 the report itself probably would have been to the legal
5 department.

6 Q. This is probably a repeat but I want to make sure
7 I'm accurate. When security as a general manager includes
8 a report, a fact finding report, it takes that finding and
9 reports it back directly to the manager who supervises the
10 individuals involved; is that correct?

11 A. What the formal distribution is a standard
12 process. And that is there are specific titles or
13 positions within the company that receive this report at
14 distribution.

15 When a request comes from the legal department,
16 that form of distribution is not utilized. It is sent to
17 the legal department who then would decide who's going to
18 have the benefit of reading that report.

19 Q. Is there any other independent group within the
20 procedure that might receive the report to insure that
21 some action was taken that the findings were not just
22 covered up?

23 MR. BEATTY: I going to object to the form of the
24 question. I don't know if counsel intended to use the
25 phrase cover up but the implication of that

1 in this record are unfounded, unjustified.
2 There's no basis for that on the report. And I can
3 only assume counsel mistakenly used that phrase.

4 MS. RICHARDSON: Let's say then instead of
5 covered up, not acted upon.

6 MR. BEATTY: Can we have the question read back
7 please.

8 Q. Let's see if we can do this differently. Is
9 there anyone outside of the particular investigative group
10 from the lowest employee up to general manager within that
11 direct line that would receive a finding for whatever
12 investigation was conducted by security?

13 A. Yes. With regards to cases not having been
14 requested under the privilege from the legal department.

15 Q. Mr. Martinez, I want to thank you for your time
16 and your presence here today. And I appreciate your
17 coming. And there maybe some further questions from
18 people around the table before you go.

19 MR. VINSON: Nothing.

20 MR. GREER: Nothing.

21 MR. PIERSON: Nothing.

22 MS. RICHARDSON: All right. That's it.

23 (Whereupon, the deposition was
24 concluded at 10:20 o'clock a.m.)

25 AND FURTHER DEPONENT SAITH NOT.

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STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

Witness

SWORN to and SUBSCRIBED before me this
_____ day of _____, 1993, in the
City of Fort Lauderdale, County of
Broward, State of Florida.

Notary Public,
State of Florida at Large

My Commission Expires:

