

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 910163-TL  
FILED: June 16, 1993

920200-TL

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.

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DEPOSITION OF: GEORGE E. NICHOLSON

DATE: June 29, 1993

TIME: Commenced at: 12:00 Noon  
Concluded at: 12:50 p.m.

PLACE: Southern Bell Telephone and Telegraph Co.  
666 Northwest 79th Avenue, Room 674  
Miami, Florida 33126

REPORTED BY: JOHN J. BLUE,  
Registered Professional Reporter,  
Notary Public, State of Florida At Large  
Suite 1014, Ingraham Building  
25 Southeast 2nd Avenue  
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TAKEN BY: The Citizens of Florida, by and through  
Janis Sue Richardson,  
Associate Public Counsel

PURSUANT TO: Florida Rule of Civil Procedure  
1.310 (b) (6)

DOCUMENT NUMBER-DATE

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1100 RECORDS/REGISTRATION

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**I-N-D-E-X**

**WITNESS**

**DIRECT CROSS**

George E. Nicholson

(Ms. Richardson)  
(Mr. Greer)  
(Mr. Pierson)

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**EXHIBITS**

**Identification**

OPC Exhibit No. 1

10

1 THEREUPON:

2 GEORGE E. NICHOLSON,

3 having been first duly sworn, was

4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. RICHARDSON:

7 Q. Mr. Nicholson, would you please state your name and  
8 spell it for the Court Reporter?

9 A. George, initial E, Nicholson, N-i-c-h-o-l-s-o-n.

10 Q. And your address, please?

11 A. Residence or business?

12 Q. Residence.

13 MR. MUNROE: Business, please.

14 A. Business is--

15 Q. (BY MS. RICHARDSON): Business address, then.

16 A. Room 101, 326 Fern Street, West Palm Beach, Florida

17 33401.

18 Q. And your phone number?

19 A. At work is 407-837-9270.

20 Q. Are you represented today by an attorney?

21 A. Yes, ma'am, I am.

22 MS. RICHARDSON: I'll ask him to place his appearance  
23 on the record.

24 MR. MUNROE: Kirk Monroe; Richey, Munroe and  
25 Rodriguez, on behalf of Mr. Nicholson.

1 Q. (BY MS. RICHARDSON): Mr. Nicholson, did you discuss  
2 this deposition here today with anyone other than your attorney  
3 or the attorney for Southern Bell?

4 A. My supervisor knew I was scheduled to come down here;  
5 but as far as more than that, no.

6 Q. Did you discuss with anyone other than your attorney  
7 or the attorney for Southern Bell specific questions or answers  
8 that you might give here today?

9 A. No, ma'am.

10 Q. Were you advised that you would not be disciplined  
11 based upon any answers that you gave us here today?

12 A. Yes, ma'am, I was.

13 Q. Has anyone advised you of the possible criminal  
14 penalties that could apply if you perjure your testimony here  
15 today?

16 A. No, ma'am.

17 Q. If at any time I ask you a question that you don't  
18 understand, that you need clarification for, please just ask me  
19 and I'll be happy to try to add more information to it; or if  
20 at any time you need to go off the record and discuss something  
21 with your attorney, please just let us know, and we'll go off  
22 the record and you'll have time. Is that okay?

23 A. Fine.

24 Q. What is your present position with the company?

25 A. My title is Staff Manager, Security.

1 Q. And how long have you held that position?

2 A. I have been in the Security Department for 12 years,  
3 but the title has fluctuated.

4 Q. And have you been in the-- are you in the Southeast  
5 Florida section?

6 A. Yes, ma'am.

7 Q. Have you worked in any other area of Florida while you  
8 were in Security?

9 A. On temporary assignments; but not full time, no.

10 Q. And where did your temporary assignment take you?

11 A. I have been to Miami. I'm based in West Palm Beach,  
12 so I basically work West Palm Beach north; but I have worked in  
13 Fort Lauderdale and Broward County.

14 MR. BEATTY: At this point I'm going to-- to the  
15 extent that further answering that question might fall  
16 within the purview of privileged information, I'm going to  
17 object and, with the indulgence of Counsel, instruct the  
18 witness that any answer in terms of location that would  
19 fall within the privileges of attorney-client, attorney  
20 work product, with regard to investigations that fall  
21 within those privileges, that you not respond.

22 MR. MUNROE: Yes, sir, it's his privilege.

23 MS. RICHARDSON: Okay. Mr. Nicholson, then I need to  
24 know whether or not you will continue to answer that  
25 question or if you are now refusing to add to that answer,

1 based upon Counsel's objections?

2 THE WITNESS: Based upon my Counsel's objection, yes.

3 Q. (BY MS. RICHARDSON): Who is your present supervisor,  
4 Mr. Nicholson?

5 A. Mario Martinez.

6 Q. And how long has Mr. Martinez been your supervisor?

7 A. I believe he moved back to Florida in '87, I think  
8 November '87.

9 Q. Who was your supervisor in Security before  
10 Mr. Martinez?

11 A. The-- First of all, the District Manager is what I  
12 would call his title, or Operations Manager.

13 Q. All right.

14 A. The former before him was H. M. Robertson.

15 There's one point I need to make. When Robertson was  
16 here I reported to an intermediary between Robertson and  
17 myself. I also reported to that same person for a while while  
18 Mario was here; and then I was promoted to the same level as  
19 the intermediary, so now I report directly to Mario.

20 Q. And who was the intermediary?

21 A. Mike Fagen.

22 Q. What would your present level be then?

23 A. I'm a pay grade five.

24 Q. Did you participate in the company's internal  
25 investigation into the repair matters that are at issue in this

1 docket?

2 A. Yes, ma'am, I did.

3 Q. What was the nature of your participation?

4 MR. BEATTY: At this point I object. The question  
5 will elicit an answer that is subject to the  
6 attorney-client privilege and the attorney work product  
7 doctrine, which covers that investigation, as Counsel well  
8 knows; and I therefore request that the witness not  
9 respond to that question.

10 MR. MUNROE: And on behalf of Mr. Nicholson, since it  
11 is the privileges of the company and not his personally,  
12 we will certainly honor that.

13 MS. RICHARDSON: All right.

14 Then again I need you to state that you refuse to  
15 answer my question based upon Counsel's advice.

16 THE WITNESS: I will follow the advice of my attorney,  
17 yes.

18 MS. RICHARDSON: Thank you.

19 Q. (BY MS. RICHARDSON): Other than the particular  
20 allegedly privileged investigation--

21 MR. BEATTY: I object to Counsel's reference to  
22 "allegedly privileged."

23 MS. RICHARDSON: Well, until the Court decides whether  
24 or not it's privileged. We're disputing that. You say it  
25 is.

1           So it has not been yet determined by a court of law  
2           that it is privileged, so I think "alleged" is probably  
3           proper.

4           MR. BEATTY: I think not. But you can proceed.

5           Q. (BY MS. RICHARDSON): Other than the investigation  
6           that Mr. Beatty has objected to your providing any further  
7           information on, have you had any occasion during your twelve  
8           years in Security to investigate the improper handling of  
9           customer trouble records?

10          A. I don't recall any particular case like that.

11          Q. During your twelve years, and outside of the  
12          investigation that the company is objecting to on the basis of  
13          privilege, have you ever investigated individual employees for  
14          improper handling of customer trouble records?

15          MR. MUNROE: Well, note my objection on a "have you  
16          ever" question spanning twelve years. I don't think it's  
17          really fair to the witness. I'm not--

18          You can answer the question, within your memory.

19          A. Here again it would be based on 12 years of things. I  
20          do not recall such a matter.

21          Q. (BY MS. RICHARDSON): That's fine.

22          Mr. Nicholson, I'm going to show you a document, and I  
23          ask that this be labeled Exhibit One for the record. It is a  
24          letter directed to Mr. Floyd R. Knowles, with a typed signature  
25          of Mario C. Martinez and a "GEN:rr" underneath that, dated

1 October 8, 1992.

2 (Thereupon the foregoing instrument was marked  
3 OPC Exhibit No. 1 (Nicholson) for Identification, this  
4 date)

5 MS. RICHARDSON: We're off the record.

6 (Discussion off the record, with the agreement  
7 of the witness and all parties present)

8 Q. (BY MS. RICHARDSON): Mr. Nicholson, who wrote this  
9 letter?

10 A. I wrote the letter. The two top sheets.

11 Q. Would you tell me the circumstances surrounding or  
12 working up to the point that you wrote this letter?

13 MR. BEATTY: Objection to the form of the question.

14 It's ambiguous.

15 You can respond.

16 THE WITNESS: The circumstances involving this  
17 investigation?

18 MS. RICHARDSON: Yes.

19 A. It began with the bottom document, page three, which  
20 was transmitted to me. And this document is relating a call to  
21 our employee reporting line about a complaint or accusation  
22 made by Mr. Tartaglio, who is an employee and local Union  
23 President for CWA, which is Communication Workers of America,  
24 in Fort Pierce. And you've probably read this, I'm sure.

25 What it says is that two people in his Union who are

1 service technicians had claimed that they had been told to  
2 close out troubles before the troubles were actually clear.

3 That's what started it.

4 Q. (BY MS. RICHARDSON): All right. And during your  
5 investigation, what steps did you take after receiving this  
6 employee reporting incident report?

7 MR. BEATTY: I'm going to object to this line of  
8 questioning. I think it is not relevant to the docket  
9 about which this deposition is supposed to be focused, and  
10 therefore I think it's irrelevant.

11 You can respond.

12 MR. MUNROE: You can respond.

13 THE WITNESS: Respond?

14 Would you state your question again? I'm--

15 MS. RICHARDSON: Certainly.

16 Q. (BY MS. RICHARDSON): After you received that incident  
17 report, what was your next step?

18 A. I'm not sure where the dates fall as far as the 4th,  
19 dated September 4th was the date the incident was called to the  
20 hot line.

21 And I contacted Mr. Tartaglio on September the 8th. I  
22 contacted him in an attempt to-- well, I did make contact with  
23 him to go take a statement from him, since he's the  
24 complainant, I went to him to see what details he could provide  
25 about his complaint.

1 Q. What details did he provide you orally about the  
2 complaint?

3 A. As I recall from my memory, it was basically what he  
4 stated on the first complaint sheet to hot line here, that two  
5 people that he knew from his Union activities had come to him  
6 and said this supervisor, had approached them on  
7 a-- it says here the 1st of September, and asked them to close  
8 out troubles that were not ready to be closed out.

9 Q. All right. And do you know whether or not the alleged  
10 instruction from was proper or improper?

11 A. I have no personal knowledge of that, no.

12 Q. When you investigated and discussed this investigation  
13 with any other party in the company, were you made aware as to  
14 whether or not that alleged instruction from was  
15 proper or improper?

16 MR. MUNROE: Well, objection to the form of the  
17 question in the sense it assumes that an instruction by  
18 was ever given.

19 MS. RICHARDSON: I said "the alleged instruction."  
20 Does that not cover your objection?

21 MR. MUNROE: Well, you're basing an assumption upon an  
22 assumption that the alleged instruction was proper or  
23 improper. I don't know how you get to there.

24 But if you understand the question, you can answer it.

25 THE WITNESS: I'm going to rephrase it before I answer

1 it, if that's okay with you.

2 MS. RICHARDSON: That's fine with me.

3 THE WITNESS: Are you saying if told one of  
4 his people to close the trouble before it was ready to be  
5 closed, would that be an improper instruction?

6 MS. RICHARDSON: That's what I'm asking you, yes.

7 A. My understanding is that would be an improper  
8 instruction.

9 MS. RICHARDSON: All right.

10 A. Based on what these facts are presented here to me.

11 Q. (BY MS. RICHARDSON): What further information were  
12 you able to obtain from Mr. Tartaglio?

13 A. When I went to see him he basically reiterated what he  
14 told the hot line complaint people. I was not able to get  
15 any more from him.

16 I asked him to please approach these people that were  
17 making this statement and see if they would please talk to me,  
18 because I could do nothing more unless they would talk to me.

19 Q. Did you ask Mr. Tartaglio if he knew which specific  
20 customer telephone lines were involved in this report?

21 A. I don't remember if I did or not.

22 Q. Did you ask Mr. Tartaglio if the two service  
23 technicians had indicated that they had received these types of  
24 instructions from in the past?

25 A. I don't recall if I was given that information or not.

1 Q. What other questions did you ask Mr. Tartaglio?

2 A. I'm speaking from memory here again. I have your  
3 letter, which doesn't-- You know.

4 I remember the situation meeting with him, and so on.  
5 I do not recall anything specifically except I was trying to  
6 get him to talk to his people to get them to come talk to me  
7 and provide me specifics.

8 Q. All right. And your letter indicates, I believe, that  
9 he did make that contact. Are you aware that he made that  
10 contact?

11 A. He tells me he did.

12 Q. And from that contact were you able to determine the  
13 identities of those two individuals?

14 A. As I stated in the letter, he, Tartaglio, told me that  
15 he had approached those people, asked them to talk to me, and  
16 they had stated they did not wish to.

17 Q. Did Mr. Tartaglio relate any reason to you as to why  
18 these individuals did not wish to be identified?

19 A. I don't recall at that time when we were talking  
20 October the 7th.

21 I know from previously on the hot line complaint he  
22 had related that they were afraid of getting -- or they were  
23 afraid to call the hot line themselves, I think he says. Were  
24 apprehensive to call the employee reporting line, is what the  
25 hot line complaint says. I do not recall if he restated that

1 or told me anything else like that.

2 Q. Did you ever discover any other reasons as to why they  
3 were apprehensive to call the hot line?

4 A. No, ma'am.

5 Q. Once you closed this investigation, did you receive  
6 any other information as to the identities of these two  
7 individuals?

8 A. No, ma'am.

9 Q. Once you had closed this investigation did you receive  
10 any other information as to the factual allegation made by  
11 these two employees?

12 A. No, ma'am.

13 Q. What other steps did you take to investigate this  
14 incident report?

15 A. As I recall, we've covered them. I mean I went to see  
16 Tartaglio, told him that we had the means to investigate this  
17 if the people would come and talk to me and give me some  
18 specifics.

19 They did not do that, and this is pretty much the end  
20 of it.

21 Q. Did you make any attempt to have the individual  
22 customer records from the Fort Pierce area for September 1st,  
23 the date in question, pulled to review?

24 A. No, ma'am.

25 Q. Why not?

1           A.    I was expecting these people, if they had a grievance,  
2 to come tell me about it, and then find the records to  
3 substantiate what they were saying.

4           Q.    When you found out that these two employees would not  
5 come forth to be identified, did you give any further  
6 consideration to pulling customer records for the date in  
7 question for Fort Pierce at that time?

8           A.    No, ma'am, I did not.

9           Q.    Why not?

10          A.    At the time, as is the time now, we have a number of  
11 investigations going on. Time is a problem, finding time to do  
12 things like this. I feel these people had an opportunity to  
13 tell me something if they wanted to, and I did not check the  
14 records.

15          Q.    Were you aware that the company had investigated  
16 instances of mishandling of customer records prior to 1992?

17               MR. BEATTY:  Objection.  Object to the form of the  
18 question.  It calls for information that was within the  
19 attorney-client attorney work product protection; and with  
20 the indulgence of Counsel therefore I request the witness  
21 not respond to the extent that his response would disclose  
22 information that is in fact privileged.

23               MR. MUNROE:  If the answer is from information derived  
24 from privileged sources, then you cannot answer.

25               THE WITNESS:  Then I will not answer the question.

1 Q. (BY MS. RICHARDSON): Okay. Have you read in the  
2 newspapers or in any documents that are not privileged that the  
3 company conducted an investigation into its repair activities  
4 in 1991?

5 MR. BEATTY: I object on the grounds of relevance.

6 MR. MUNROE: Plus, if a person is involved in an  
7 internal investigation and happens to read about it in the  
8 newspapers, I don't see how as a practical matter that  
9 eliminates the privileged nature of what he knows.

10 And so on that grounds, I'm assuming you're objecting  
11 on that grounds, I'll instruct him, respectfully, don't  
12 answer the question.

13 MS. RICHARDSON: If he has sources of information  
14 outside of the privileged investigation, I think that is  
15 not privileged information and that he can respond.

16 MR. MUNROE: Well, under the circumstances you've  
17 outlined in your question, you and I happen to disagree on  
18 that.

19 MS. RICHARDSON: Okay.

20 Mr. Nicholson, I need a response from you, or that you  
21 will not respond based upon Counsel's objection.

22 THE WITNESS: I will not respond, based on Counsel's  
23 objection.

24 Q. (BY MS. RICHARDSON): Okay. What is the policy in the  
25 Security Department for determining when an investigation can

1 be closed prior to-- Let's just stop right there.

2 What's the policy on closing investigations in the  
3 department?

4 A. Written policy as far as ironclad type of thing? I  
5 couldn't quote you one.

6 If an investigation has reached a point where you  
7 don't think there's any point in keeping it open, you can close  
8 it.

9 Q. At what point did you reach the decision that this  
10 investigation should be closed?

11 A. At the point that Mr. Tartaglio stated again that he  
12 had asked the people that had made that complaint to come see  
13 me and give me a statement or provide me with the telephone  
14 numbers of the customers involved and that they had decided  
15 they would not do either of those things; at that point, I  
16 decided it was time to close it.

17 Q. Did you discuss this investigation with Mr. Martinez?

18 A. I don't recall at this point.

19 Q. Did you discuss this investigation with Mr. Knowles?

20 A. At the point I was ready to close it, yes, because in  
21 the correspondence I note that I did talk to him, Mr. Knowles,  
22 and relate the complaint to him, and that the persons who made  
23 the complaint were not willing to come talk to me.

24 Q. What other information did you relate to Mr. Knowles?

25 A. I don't recall anything except I told him that this

1 accusation was made, I had interviewed Mr. Tartaglio.

2 He had approached the-- he told me he had approached  
3 the people who had made the complaint to him and they were not  
4 willing to come talk to me.

5 I did tell him the name of the foreman who was the one  
6 accused of this, and said basically if you-- you know, I don't  
7 know what he wanted to do with it. That's up to him,  
8 Mr. Knowles.

9 Q. And what questions did Mr. Knowles ask you?

10 A. I don't recall any questions. I just related what was  
11 accused of happening and the results of what I tried to do. I  
12 don't remember any questions.

13 Q. What did Mr. Knowles tell you in the conversation?

14 A. You're asking memory back then.

15 I don't remember anything specific. I believe he  
16 was -- I don't know. I don't believe he thought something like  
17 this would be said to these people. Whether he was--

18 I'm not sure how he would have said that, but the  
19 impression I had from him was that he did not believe the  
20 allegation would be true.

21 Q. Did he indicate any reason why these two employees  
22 might bring a false allegation against Mr. Morgan?

23 A. That never came up. We don't know their identity, I  
24 don't know their identity. So I don't know.

25 Q. Did you substantiate that these were two members of

1 group?

2 A. Only thing I have is from what Tartaglio told me.

3 Q. Did Mr. Knowles indicate that he might conduct an  
4 investigation of his own?

5 A. Not to me, no, ma'am.

6 Q. Did Mr. Knowles indicate that he might question  
7

8 A. I do not recall him saying that, no.

9 Q. Did Mr. Knowles indicate at all that he would look  
10 into the trouble reports for that particular day?

11 A. I don't recall him saying that either.

12 Q. Did you have any further discussions with Mr. Knowles  
13 regarding this investigation?

14 A. I have seen him frequently on other matters. I'm up  
15 there a lot. I do not recall anything like that.

16 That's not to say we couldn't have had a sentence or  
17 two someplace.

18 Q. Did this investigation occur over the telephone?

19 A. Not--

20 Q. I'm sorry. This conversation with Mr. Knowles. Did  
21 it occur over the telephone?

22 A. Yes, it did.

23 Q. Did you have any occasion to discuss this  
24 investigation with him privately in his office or just  
25 face-to-face?

1 A. No.

2 Q. Did Mr. Martinez approve your closing this  
3 investigation?

4 A. I don't know if he did or not. It doesn't appear that  
5 he signed it.

6 The typing of such correspondence is done in the  
7 office in Fort Lauderdale. In Mario's absence, Mike Fagen  
8 would sign for him; and this appears to be Mike Fagen's  
9 initials on the letter.

10 I have no clerical support where I am. Rather than  
11 ship typing back up to me for me to sign, it's signed down  
12 there. So I don't know if Mario saw this or not.

13 Q. Are all security correspondence letters regarding  
14 investigations sent out over Mr. Martinez's name as General  
15 Security Manager?

16 A. To my understanding, yes. Here again, I work in a  
17 one-person office. My correspondence goes out over his  
18 signature. No one below his level in our office has  
19 letterheads, has a letterhead; it's all his letterhead, so it  
20 goes out over his title.

21 Q. Did you discuss this investigation with Mr. Fagen?

22 A. I believe so, yes.

23 Q. What do you recall about that discussion?

24 A. I'm not-- I believe the original fax copy of the  
25 complaint was sent to Mr. Martinez, based on the time stamp

1 from the fax machine that says "to Miami Martinez."

2 How it was sent to me I can't state positively, but  
3 usually it's faxed to me or they will telephone me if I'm in  
4 the field and say "Look, we've had this complaint."

5 This may have come directly from Mario in Miami; it  
6 may have been received in Miami when he was elsewhere and faxed  
7 to me. But I believe I talked to Mr. Fagen about it at at  
8 least one point, as far as I was not getting a response from  
9 Tartaglio trying to identify the people that made the  
10 complaint.

11 Q. Did you tell him that you had talked to Mr. Knowles?

12 A. I don't recall whether I did that or not.

13 Q. Did Mr. Fagen approve your closing of this report?

14 A. We're the same level.

15 Q. Okay.

16 A. Now, he did sign the letter for Mario. And if he  
17 finds typographical errors or things he thinks I should have  
18 done differently, he has called them to my attention.

19 But we work together. We're not adversaries. If he  
20 thinks of something I should do, I'll usually consider what he  
21 says.

22 So since his initials are on here, I would assume that  
23 in this case he had no problem with the letter leaving.

24 Q. Do you have authority on your own to close  
25 investigations without someone in the supervisory level above

1 you approving or disapproving the closing of an investigation?

2 A. Since I'm by myself and nobody types in my office, all  
3 of these things go through Fort Lauderdale. They are  
4 proofread, reviewed, spell checked, that kind of thing.  
5 A lot of people see them.

6 I don't have the means to get a letter out without  
7 somebody else seeing it. Whether that implies they are  
8 approving it or not, depends. I have listened to the  
9 complaints or suggestions they made about certain phraseology  
10 or whatever, and, you know, I listen to what they say and try  
11 to correct it.

12 It would be easy to make the case that my letters are  
13 approved by somebody else before they leave the Security group.

14 Q. But other than checking for typographical type errors,  
15 the decision to close an investigation itself, not the  
16 correspondence that goes out, do you have the sole authority to  
17 close your own investigation?

18 A. I would say no, based on what I've told you about  
19 suggestions.

20 Like I said, Mr. Fagen and I are the same level, but  
21 in Mario's absence he represents Mario, so he's-- in that case  
22 he's a little-- he signs for Mario, he's representing Mario, so  
23 he has some supervisory responsibility in that kind of  
24 position.

25 So if he sees there's something I should have done

1 that I have not done, and I tend to agree with him, I will  
2 probably take his advice and do what he suggested. If I  
3 disagree with him, I can always go to Mario and say "Look, this  
4 is what he says, this is what I did. What do you tell me to  
5 do?" That kind of thing.

6 Q. Your decision to close the investigation at this point  
7 without further looking into whatever you might have looked  
8 into was based upon not receiving the names and then your  
9 conversation with Mr. Knowles, is that correct?

10 MR. BEATTY: Object to the form of the question.

11 Counsel is seeking to restate and by virtue of that  
12 recharacterize the testimony; and the record speaks for  
13 itself.

14 I object to the question; it's leading and it's  
15 improper, because Counsel is testifying.

16 MR. MUNROE: Note my objection also, as to the form,  
17 because it assumes as far as Mr. Nicholson is concerned  
18 there was something else left to be done, which I don't  
19 believe that's his testimony.

20 THE WITNESS: Ask me the question again, please.

21 Q. (BY MS. RICHARDSON): Okay. The component of your  
22 decision to close was based upon not receiving the two names  
23 and your conversation with Mr. Knowles, is that correct?

24 A. When I contacted Mr. Knowles I was informing him of my  
25 decision to close it. I was not asking for his opinion or

1 concurrence.

2 Q. I believe you stated at one point that he indicated  
3 that he did not believe that would make that  
4 instruction or give that instruction--

5 A. I recall giving that impression--

6 MR. BEATTY: Excuse me, excuse me, excuse me. There's  
7 no question pending.

8 MS. RICHARDSON: -- that you recall?

9 MR. BEATTY: Also, Counsel is musing or doing  
10 something that has nothing to do with this record, and  
11 there is no question pending.

12 Q. (BY MS. RICHARDSON): But you recall giving that  
13 instruction, or--

14 THE WITNESS: Will you ask me what you-- what we're  
15 talking about again, and the question?

16 MS. RICHARDSON: Yes.

17 Q. (BY MS. RICHARDSON): I believe you said that you  
18 recalled getting that impression from Mr. Knowles, that he  
19 believed that would not have given that instruction;  
20 is that correct?

21 MR. BEATTY: I object to the form of the question.  
22 Counsel is being argumentative.

23 This witness has indicated what he based his decision  
24 upon and what he did not base his decision upon.  
25 Counsel's subsequent question is an argumentative one, and

1 I object to the form of the question.

2 MS. RICHARDSON: You can still respond, Mr. Nicholson.

3 MR. MUNROE: If you can answer the question the way  
4 it's phrased, answer it.

5 A. I believe I stated earlier that when I called  
6 Mr. Knowles to say that I was closing this investigation and  
7 related what the facts or the complaint was, I believe the  
8 impression he conveyed to me was that he did not believe that  
9 I would have instructed people to do something like  
10 this. That's my recollection, the feeling I had.

11 Q. (BY MS. RICHARDSON): Did that impression that you  
12 formed color your decision to close this investigation at that  
13 time?

14 A. No, ma'am. Because as I said, I was calling  
15 Mr. Knowles to inform him I was closing it. So this was at the  
16 end.

17 Q. Have you received any instructions to reopen this  
18 investigation?

19 A. No, ma'am, I have not.

20 Q. If you were to receive the names of the employees at  
21 this point in time, would you make a decision as to whether or  
22 not to reopen this investigation?

23 MR. BEATTY: Objection to form, calls for speculation.

24 A. I would discuss this --

25 I'm assuming this is like you're speculating what's

1 going to happen.

2 My plan would be to discuss this with my supervisor,  
3 Mario. If he felt it was something that should be reopened,  
4 then it would be reopened. Whether he assigned it to me to  
5 investigate would be up to him.

6 Q. (BY MS. RICHARDSON): Have you ever, in your twelve  
7 years, received an employee incident report where employees  
8 were complaining that they were receiving instructions for  
9 handling trouble reports that they felt were improper, other  
10 than the one we have just discussed?

11 MR. BEATTY: Objection to the form of the question.

12 This question again gets into the area of matters that  
13 are privileged and confidential, subject to the  
14 attorney-client privilege and the attorney work product  
15 doctrine. Accordingly, with Counsel's indulgence, I would  
16 request the witness not respond to the extent that his  
17 response would disclose such privileged information.

18 MR. MUNROE: If your response will involve information  
19 which is privileged as a result of your investigation, you  
20 must accede to the objections of the attorney for Southern  
21 Bell and not answer.

22 THE WITNESS: I will not answer, based on your  
23 objection.

24 Q. (BY MS. RICHARDSON): Going back to this Fort Pierce  
25 investigation, under the incident report there's another name

1 that appears as a supervisor, Frank-- and I'm going to say  
2 "Perniciano," because I'm not sure how to pronounce this.

3 Did you discuss this report at all with this  
4 gentleman?

5 A. I don't-- I'm pretty sure I did not. I don't remember  
6 at all. It's "Pernichero" (phonetic).

7 Q. Thank you. All right. Do you know if Mr. Tartaglio  
8 discussed this incident with him?

9 A. I do not know.

10 Q. Mr. Nicholson, do you know if incidents of this  
11 nature, mishandled trouble reports, are reported to the Public  
12 Service Commission?

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

14 First of all, it calls for speculation.

15 Secondly, it's ambiguous, "reports of this nature."

16 Thirdly, to the extent that the question would elicit  
17 information that is privileged and confidential, subject  
18 to attorney-client and attorney work product privileges  
19 pertaining to the investigations of which Mr. Nicholson  
20 may or may not have been a part, I would object and  
21 request, with Counsel's indulgence, that the witness not  
22 respond to the question.

23 MR. MUNROE: You understand? In other words, if the  
24 answer to your question is a result of privileged  
25 information, then you should abide by that request by

1 Southern Bell to maintain its privilege.

2 THE WITNESS: I will refuse to answer, on that basis.

3 Q. (BY MS. RICHARDSON): Do you know a Robert Corriveau?

4 A. Yes, I do.

5 Q. Have you ever had occasion to investigate any  
6 statement given by Mr. Corriveau in the past?

7 MR. BEATTY: Again, it's my belief that the question  
8 asked would elicit an answer that falls within the  
9 attorney-client work product privileges pertaining to the  
10 investigation or the repair investigation; and  
11 accordingly, with Counsel's indulgence, I would request  
12 the witness not respond.

13 (Discussion off the record, with the agreement  
14 of the witness and all parties present)

15 THE WITNESS: Would you restate it, please?

16 MR. MUNROE: Yes; it's an easy answer.

17 We would abide by the wishes; and the answer would  
18 impact on privileged information. Accordingly, we  
19 respectfully decline to answer the question.

20 THE WITNESS: I will follow my attorney's advice and  
21 refuse to answer.

22 Q. (BY MS. RICHARDSON): Are you familiar with the  
23 computerized trouble reporting process that the company uses to  
24 handle trouble reports?

25 A. To--

1 MR. BEATTY: Yes or no, please.

2 A. Yes.

3 Q. (BY MS. RICHARDSON): Are you familiar with the  
4 BellSouth procedures that govern the trouble reporting process?

5 A. No, ma'am.

6 Q. Do you know of any individual who has falsified a  
7 customer trouble record?

8 MR. BEATTY: At this point again I object.

9 As Counsel well knows, the information that would be  
10 provided in response to that question is clearly within  
11 the privileges of the attorney-client and the attorney  
12 work product privileges that arise by virtue of the repair  
13 investigation.

14 Accordingly, with Counsel's indulgence, I would  
15 request that the witness not respond to that question.

16 MR. MUNROE: Respectfully decline to answer the  
17 question on the grounds that it's privileged and that the  
18 holder of the privilege has requested that it be honored.

19 THE WITNESS: I will refuse to answer, based on that.

20 Q. (BY MS. RICHARDSON): Do you have any knowledge  
21 outside of the company's investigation of any individual  
22 placing false information on a customer trouble record?

23 MR. MUNROE: Outside of his employment with Southern  
24 Bell?

25 MS. RICHARDSON: Outside of the privileged

1 investigation, the company's investigation that they're  
2 claiming is privileged.

3 MR. BEATTY: Or any other investigation under the  
4 attorney-client or work product privilege.

5 (Discussion off the record, with the agreement  
6 of the witness and all parties present)

7 MR. BEATTY: I would also object to the form of the  
8 question. It's been asked and answered. That was one of  
9 the very first questions that was asked of this witness.

10 MR. MUNROE: Will you ask the question again? I don't  
11 quite understand it.

12 Q. (BY MS. RICHARDSON): I asked if he had any knowledge  
13 of any individual placing false information on customer records  
14 that is derived from a source other than the information that  
15 is claimed to be privileged by the company?

16 MR. MUNROE: And your objection?

17 MR. BEATTY: I object on the grounds that it was asked  
18 and answered.

19 And I also instructed the witness that his answer not  
20 include any other investigation that is subject to an  
21 attorney-client privilege and the attorney work product  
22 privilege.

23 (Discussion off the record, with the agreement  
24 of the witness and all parties present)

25 A. I don't recall anything else other than that that's

1 covered.

2 Q. (BY MS. RICHARDSON): Are we speaking of more than one  
3 investigation when you say you don't recall? Because  
4 Mr. Beatty is making two different claims of privilege, and so  
5 I need to know if we're speaking of just one investigation or  
6 if there's others that you're also refusing to answer on.

7 MR. BEATTY: The witness has responded to the  
8 question. My comments go to the witness and to his  
9 lawyer.

10 Q. (BY MS. RICHARDSON): Were there any other  
11 investigations that you conducted for the company for which  
12 there has been a claim of privilege?

13 MR. BEATTY: Objection, relevance.

14 You can respond to that.

15 A. I believe there might have been.

16 Q. (BY MS. RICHARDSON): Let me make it more specific  
17 then.

18 Were there any other investigations that you were  
19 involved in regarding the trouble reporting process for which  
20 the company has a claim of privilege?

21 MR. MUNROE: I don't know if he's in a position as a  
22 nonlawyer to know what work is covered by the privilege or  
23 not. Certainly lawyers, as you've demonstrated here this  
24 morning, debate that issue frequently; so having a  
25 nonlawyer figure out that "yes, this investigation was

1 covered, this investigation was not covered."

2 I don't know; even lawyers can't agree on what's  
3 covered and what's no covered, so.

4 Q. (BY MS. RICHARDSON): Mr. Nicholson, how do you become  
5 aware of whether or not one of your investigations has a claim  
6 of attorney-client privilege on it?

7 MR. MUNROE: How does he become aware?

8 MS. RICHARDSON: Yes.

9 Q. (BY MS. RICHARDSON): How do you become aware whether  
10 or not a privilege, an attorney-client privilege, has been made  
11 for one of the investigations that you participated in?

12 MR. MUNROE: Ah, but that's different. One's been  
13 made. But whether one is privileged or not is a separate  
14 question. Whether he's been aware--

15 MS. RICHARDSON: I'll rephrase--

16 MR. MUNROE: -- that a claim has been made.

17 MS. RICHARDSON: I'll rephrase the question one more  
18 time, see if we can get to it more clearly.

19 Q. (BY MS. RICHARDSON): On documents that are handled in  
20 the Security Department, is there any indication on the  
21 document itself as to whether or not a privilege claim is being  
22 made?

23 MR. BEATTY: I'm going to --

24 Give me a minute to think. Just a minute.

25 (Discussion off the record, with the agreement

1 of the witness and all parties present)

2 MR. BEATTY: I withdraw my objection.

3 THE WITNESS: Would you restate it for me, please?

4 MS. RICHARDSON: Sure.

5 Q. (BY MS. RICHARDSON): On any of the documents that you  
6 handle in terms of investigations that you are involved in, is  
7 there any indication on those documents as to whether or not a  
8 claim of privilege is being made?

9 A. You mean when it leaves my department? As it's -- in  
10 my department, or what?

11 Q. When it's in your department or when it leaves your  
12 department, at any point.

13 MR. BEATTY: Allow me to reassert my objection.

14 But the witness can respond.

15 THE WITNESS: I have seen documents that had stamps on  
16 them or verbiage at the bottom saying something like that.

17 Q. (BY MS. RICHARDSON): You mean "attorney-client  
18 privilege"--

19 A. Yes.

20 Q. -- was typed on the bottom of the statement?

21 A. (Nods yes)

22 Q. Have you ever received from any of your supervisors a  
23 statement that a particular investigation is being covered  
24 under the attorney-client privilege?

25 A. Maybe not in so many words; but yes, that kind of

1 thing, yes.

2 Q. Are you, as a policy within your Security Department,  
3 made aware of whether or not a particular investigation that  
4 you are on is privileged or not privileged?

5 A. If they feel I should know and it is privileged, they  
6 will tell me.

7 If that's the answer you want, that's what I know.

8 Q. Okay. Now, outside of any investigations that you  
9 have been on in terms of the trouble reporting process, outside  
10 of those for which you were made aware that there was an  
11 attorney-client privilege claim, do you know of any instances  
12 that you've investigated of falsification of customer trouble  
13 records?

14 A. I can't recall any, no, ma'am.

15 MS. RICHARDSON: Thank you.

16 Mr. Nicholson, I think that's all the questions I have  
17 for you at this time. There may be some from the end of  
18 the table.

19 MR. GREER: I've got a couple.

20 BY MR. GREER:

21 Q. On the Mario Martinez letter, dealing with that  
22 instance, did you ever question

23 A. No, sir, I did not.

24 Q. Did you question any of STs?

25 A. No, sir, I did not.

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MR. GREER: That's all I have.

BY MR. PIERSON:

Q. Why not?

A. Well, the allegation had been made by a third party, who told me he was gonna go back to the origin and get those people, at least offer them a chance to come talk to me.

They declined; and I did not then.

Q. As for why didn't you seek to talk to him?

A. Without any facts or details or specifics, I didn't do it. I didn't see any reason to do it.

MR. PIERSON: Thank you.

MR. BEATTY: That's it.

(Thereupon the deposition was concluded at 12:50 p.m.)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
George Nicholson

Sworn to and subscribed before me this \_\_\_\_\_ day of

\_\_\_\_\_, 1993.

\_\_\_\_\_  
Notary Public  
State of Florida At Large

My Notary Commission Expires:





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