

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

ANTHONY LA MARCA, et al.,

Plaintiffs,

vs.

CASE NO. 82-8196-CIV-PAINE

R. V. TURNER, et al.,

Defendants.

PLAINTIFFS' REPLY MEMORANDUM
TO DEFENDANTS' RESPONSE AND
OBJECTION TO MAGISTRATE'S REPORT

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DATED: 2 June, 1986

LaMarca v. Turner



PC-FL-0007-0028

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I. OVERVIEW OF THE MAGISTRATE'S
REPORT AND RECOMMENDATIONS

During a two week trial held in the United States District Court for the Southern District of Florida in Miami, Florida on December 2-6, 9-13, 1985, Magistrate Peter Nimkoff, pursuant to Local Rule 1(f) (Magistrate Rules of the United States District Court, Southern District of Florida), heard testimony of 27 witnesses; reviewed a series of exhibits of deposition testimony of additional inmate-witnesses; requested, received and closely reviewed extensive post trial submissions; and heard oral argument of counsel on December 7, 1985. The Court, pursuant to Rule 52(a) F.R.C.P. and Local Rule(1)(f), supra, then issued, on January 8, 1986, an extensive 135 page Report and Recommendation which found Defendant R.V. Turner liable for monetary relief to ten (10) former inmates of the Glades Correctional Institution (herein "GCI"); and ordered corollary injunctive relief in the form of the convening of two committees, one of penologists and the other of psychologists/psychiatrists, to assist and "advise the Court in the formulation of specific injunctive relief."^{1/} (§257, Report and Recommendation of January 8, 1986) [herein "§____, Findings" or "§____"].

^{1/} The goal of the committee of penologists, as envisioned by the Magistrate is two-fold. The Committee is to identify other rape victims at GCI, not previously identified by this litigation, "so that they may be provided whatever therapeutic assistance" (§258, Findings) as needed and also, as a "more far reaching goal...to prevent a recurrence of the assaults, extortions, and homosexual rapes" at GCI. Ibid.

A. THE FACTUAL FINDINGS

The Magistrate's Report and Recommendation, consistent with Rule 52(a) F.R.C.P., is divided into Findings of Fact (§§ 29-300), and Conclusions of Law^{2/} (§§ 200-267). In the Findings of Fact, the Magistrate:

First, offers a history (§§ 29-30) and general overview (§§ 31-35) of GCI;

Second, outlines a general context (§§ 36-105) for consideration of Plaintiffs' claims. (§36) ("The individual named Plaintiffs' damage claims can be analyzed only within the context of the general operational policies, practices, conditions and events existing at the general time period in which their claims arise.") This context related to the:

(Footnote 1/ continued from previous page.)

The second committee of psychiatrists/psychologists also was given a two-fold mission. The committee was not only to prescribe a "treatment plan" (§259) for the Plaintiffs and witnesses who remain incarcerated but to additionally "develop an internal mechanism within the prison for providing the male rape victims of Glades Correctional Institution the same kind of support that female rape victims on the outside receive from rape crisis centers." Ibid.

As directed by the Magistrate (§260), Plaintiffs filed their nomination for one member of each committee within 30 days of the Reported Recommendation. Notwithstanding that Defendants have never sought a stay or otherwise obtained relief from the Magistrate's Report, Defendants have not filed any nominations for the committees.

2/ The Magistrate additionally set forth the procedural background of this litigation, dating back to its initiation more than four (4) years ago through the filing of a hand written pro se complaint by Anthony La Marca, (§§ 1-15) and also addressed the matter of the denial of Defendants' jury demand, (§§ 16-27), a denial which was affirmed by this Court prior to the commencement of trial on December 2, 1985. See, infra, Pg. 9 n.6.

(a) general knowledge of Defendant Turner as to the nature and depth of security problems existing at GCI during the relevant time period of Plaintiffs' damage claims (1980-1984) (§137) as evidenced by official documentation and other evidence reflecting gross security problems (§§ 38-56); (b) Defendant Turner's failure to properly supervise personnel and manage GCI (§§ 57-70) insofar as his (i) failure to train staff (§§ 57-58); (ii) failure to control the staff (§§ 59-60); (iii) failure to supervise staff (§§ 61-63); (iv) lack of procedures for investigating rapes (§§ 64-67) and (v) failure to investigate or even be aware of this lawsuit, notwithstanding staff involvement and commitment to investigate certain inmate allegations in the context of earlier judicial proceedings in this case. (§§ 68-70); (c) Defendant Turner's failure to promulgate even the most elementary procedures to minimize the likelihood of rapes and assaults (§§ 71-102). (i) This failure occurred, notwithstanding various indicia which a prudent administrator would discern as a clear indication that inmate rapes were occurring, (§§ 71-79). (ii) Standard procedures could have been, but were not, implemented to investigate the rapes (§§ 81-82) nor did the Defendant request invaluable investigative or prosecutorial assistance to reduce the rapes and assaults that were occurring. (§§ 83 -88). (iii) Inmates were allowed free ingress and egress within the GCI compound and dormitories throughout the Turner administration, but inmate movement was later controlled by Turner's successor (§ 89-91); and (iv) the improper stationing of officers, which

increased inmate security risks (§§ 92-94); (v) the Defendant's failure to transfer "wolves" who "assaulted, extorted and sometimes raped more vulnerable inmates" (§ 95), (§§ 95-100); (vi) the showing on a "regular basis" at GCI (§ 101) of "[h]ardcore pornographic video movies showing explicit acts of intercourse and anal penetration" (Ibid.) which "only served to maximize the possibility of sexual and other violence" (§ 102); (§§ 101-102), and finally, (d) the consideration and resolution that the activities at GCI were "not beyond the control of Mr. Turner and that even in light of the financial limitations and realities in which he operated, his conduct fell short of accepted and prudent correctional practices." (§ 104), (§§103-105);

Third, the Magistrate extensively reviewed the facts surrounding the rapes of the Plaintiffs, (§§ 106-121) including (i) a review of Plaintiffs' expert corroborative psychological testimony, (§§ 107-110); and (ii) general principles and considerations of rape which provided additional corroboration and amplification of Plaintiffs' claims. (§§ 111-121).

Fourth, the Magistrate traced in detail the experience of each Plaintiff and witness in exploring the circumstances surrounding their rape and/or assault victimization. (§§122-195).^{3/}

^{3/} In a final section of the Findings, (§§ 196-199), the Magistrate reviewed additional reasons which it felt corroborated the credibility of the Plaintiffs' allegations of rape and assault.

B. CONCLUSIONS OF LAW

First, the Magistrate reviewed the general legal standards applicable to prisoner damage cases of this nature, (§§200-207), concluding that Plaintiffs bore the burden of proving that "[t]he prison official's conduct constitutes a careless or callous indifference to the rights and safety of the prisoners in his charge" (emphasis added), Williams v. Bennett, 689 F.2d 1370, 1380 (11th Cir. 1982), cert. denied, __ U.S.__, (1985) (§206). [other citations omitted].

Second, in applying the "conscious or callous indifference" standard, the court further analyzed a series of factors which "interplay" with §1983 liability actions of this nature. (§207) (1) The Magistrate considered Turner's knowledge of a pervasive risk of harm to the inmates (§§208-211), and concluded that, based upon a variety of reasons, Turner knew (§210) or should have known of "widespread illegal activities [at GCI] in general and risks of harm to inmates' security in particular." (§209) (2) Next, the Magistrate addressed whether the conditions at GCI were within Turner's financial and administrative control, (§§ 212-215). The Magistrate identified "a series of administrative areas within Turner's managerial control which also impose no fiscal limitations as evidenced in part by corrective measures taken by Turner's successors" (§215), and concluded that conditions which were casually related to the Plaintiffs' injuries were within the Defendants' control. (3) The Magistrate additionally rejected the Defendants' argument that the various abuses perpetuated

upon Plaintiffs were merely isolated incidents, (§§216-218).

(4) Finally, the Magistrate considered breach of State Law as a source for Defendant Turner's liability. (§§219-222).

Third, the Magistrate reviewed the elements of causation, (§§223-230), concluding that "Defendants' conduct was a proximate cause of the Plaintiffs' injuries."

Fourth, having determined that constitutional violations had occurred, the Magistrate addressed the issue of qualified immunity and determined that Turner enjoyed no good faith defense predicated on an immunity basis. (§§231-237).

Fifth, the Magistrate addressed in detailed fashion the standards and application of those standards to the issue of damages, (§§238-253), resolving that the named Plaintiffs be awarded damages in an aggregate of \$201,500. (§253).

Sixth, the Magistrate reviewed the legal standards for the issuance of injunctive relief, (§§254-260), concluding by the implementation of the two committees previously discussed.^{4/}

II. INITIAL LEGAL ISSUES

A. THE STANDARD OF REVIEW

1. BACKGROUND

Pursuant to Local Magistrate Rule 1(f) of the United States District Court for the Southern District of Florida (Prisoner

^{4/} As a final matter, the Magistrate considered and resolved the issue of the adequacy of the named Plaintiffs' representation of their class. (§§261-267).

Cases Under 42 USC §1983)^{5/} this case was transferred by Order of August 6, 1982 to Magistrate Peter Nimkoff for "further proceedings".

2. A "DE NOVO DETERMINATION"

a. ADOPTION OF THE MAGISTRATE'S FINDINGS DOES NOT REQUIRE FURTHER EVIDENTIARY PROCEEDINGS

Under the Federal Magistrates Act, 28 U.S.C. §636(b)(1) and Local Magistrate Rule 4(b), this Court, following the Magistrate's Report and Recommendations issued January 8, 1986, is to make a "de novo determination" of the portions of the Magistrate's report to which objection is made. 28 U.S.C.

§ 636(b)(1). The district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate. The judge may also receive further evidence or recommit the matter to the Magistrate with instructions." Id.

The Supreme Court has recognized that the statute, 28 U.S.C. § 636(b)(1), does not require the district court to rehear the testimony on which the magistrate based his findings and recommendations in order to make an independent evaluation of the credibility of the various witnesses whose testimony

5/ Local Magistrate Rule 1(f) provides:

A Magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a District Judge a report containing proposed findings of fact and recommendation for the disposition of petitions filed by prisoners challenging the conditions of their confinement.

formed the evidentiary record below. United States v. Raddatz, 447 U.S. 667, 674 (1980); Louis v. Blackburn, 630 F.2d 1105, 1108 (5th Cir. 1980).

b. REJECTION OF THE MAGISTRATE'S
FINDINGS REQUIRES FURTHER
EVIDENTIARY PROCEEDINGS

Our Circuit has held that, when considering the multitude of factual credibility determinations such as those made by the Magistrate in this case, a "[D]istrict judge should not enter an order inconsistent with the credibility choices made by the magistrate without personally hearing the live testimony of the witnesses whose testimony is determinative." (Emphasis added) Louis v. Blackburn, supra, 630 F.2d at 1109; Id. at 1110 ("In order to adequately determine the credibility of a witness as to such constitutional issues, the fact finder must observe the witness. This may be accomplished either by the district judge accepting the determination of the Magistrate after reading the record, or by rejecting the Magistrate's decision and coming to an independent decision after hearing the testimony and viewing the witnesses.") (Emphasis added); Wofford v. Wainwright 748 F.2d 1505, 1507 (11th Cir. 1984).

Thus, while the Magistrate's findings here were a product of credibility determination from a host of witness-testimonial evidence and are not shielded by the "clearly erroneous" standard of Rule 52(a) F.R.C.P. due to the "de novo" nature of review under 28 U.S.C. § 636(b)(1), they nonetheless are a product of a detailed and comprehensive factual presentation

involving 27 live witnesses; various deposition-witnesses; literally reams of documentary evidence; extensive written submissions and oral presentation of counsel.

In short, the findings represent a careful and studious review of the record evidence of this lawsuit and should be afforded attentive review by this Court. See, United States v. Whitmire 595 F.2d 1303, 1305 (5th Cir. 1979) ("[I]ndeed, the fact finding process [through an initial determination by a magistrate] may be improved by the referral practice in making a final determination, the district court has the benefit of a carefully developed record, a Magistrate's thoughtful consideration of the issues, and argument of counsel regarding specifics not agreeable to the parties.")

Should this Court set aside the detailed findings of the Magistrate, a new subsequent evidentiary hearing must take place.

B. THE JURY DEMAND

Previously on December 2, 1985, at the start of the trial of this case, this Court denied the Defendants' Appeal in which they sought emergency relief from the Magistrate's November 25, 1985, Order denying Defendants' Demand for Jury Trial.^{6/}

^{6/} In its December 2, 1985 Order, this Court ruled:

The Court has read and considered these submissions of counsel with respect to the ruling made by Magistrate Nimkoff on November 25, 1985. It appears that the ruling is not clearly erroneous. The Magistrate adequately considered the issues and his ruling is therefore AFFIRMED.

For the third time in this litigation, Defendants again raise the jury issue.

1. THE LEGAL STANDARD REGARDING
WAIVER OF RIGHT TO JURY TRIAL

The Magistrate set forth the various competing legal principles, apparently not specifically challenged now by Defendants, relating to the jury issue. (§§16-20, Findings.) Those principles in sum are: (i) the Seventh Amendment right to a jury trial may be waived by a failure to demand it in timely fashion, Rule 38(b) F.R.C.P., Cox v. City Masland and Sons, Inc. 607 F.2d 138, 142 (5th Cir. 1979); (ii) the demand for a jury trial is to be served within ten days of the "last pleading directed to the issue" Rule 38(b) F.R.C.P.; (iii) if waiver of a jury trial has occurred through submission of the original pleadings, the waiver "cannot be later revived by amending the original pleadings" See, e.g., Walton v. Eaton Corp., 503 F.2d 66,71 (3rd Cir. 1977) and cases cited at §18, Findings; (iv) while a jury trial may be demanded for any "new issues" within the meaning of Rule 38 raised by the amended pleadings, the "amendment does not revive a right previously waived to demand a jury trial on the issues already framed by the original pleadings." Walton v. Eaton Corp., supra, 563 F.2d at 71-72 and (v) an amended pleading which concerns the "same general issues" does not raise "new issues within the meaning of Rule 38(b) even if they differ from the earlier pleadings in some particulars." Walton v. Eaton Corp., supra, 503 F.2d at 72 and cases cited at §20, Findings.

2. THE MAGISTRATE'S FINDINGS ON
THE JURY ISSUE ARE CORRECT

In denying Defendants' request for a Jury Trial, the Magistrate set forth his analysis in the Findings. Essentially the Magistrate determined the following: (1) Defendants waived their right to jury trial by failing to make a timely request under Rule 38 within ten days of filing their Answer to Plaintiffs' Amended Class Complaint on October 31, 1983.^{7/}

^{7/} On September 21, 1983, Plaintiffs filed an Amended Complaint. On November 2, 1983, Defendants served their Answer. Neither party filed a jury request. (¶21, Findings). In the Amended Complaint, Plaintiffs sought declaratory and injunctive relief to enjoin various practices of prison officials relating to allegations that the inmates had been subjected to violence, threats, and sexual abuse by other prisoners. The named Plaintiffs additionally sought damages on behalf of themselves.

Almost two years later on August 26, 1985, Plaintiffs filed a Motion for Leave to File a Second Amended Complaint with a proposed amended pleading which was granted by the Magistrate on September 19, 1985, nunc pro tunc August 26, 1985. The Second Amended Complaint virtually mirrored the allegations in Plaintiffs' Amended Class Complaint filed two years earlier alleging that certain practices by Defendant prison officials resulted in Plaintiffs being assaulted, battered, and/or homosexually raped. Additionally, the Second Amended Complaint added seven additional plaintiffs, (1) David Aldred, (2) Steve H. Bronson, Jr., (3) Eddie Cobb, (4) Ron Durrance, (5) Wayne Epprecht, (6) Michael Gordon, and (7) Keith Harris, all present or former inmates at GCI who suffered injuries consistent with the named Plaintiffs and the class. These seven additional named Plaintiffs sought compensatory damages against Defendant R.V. Turner resulting from the Defendants' unconstitutional action.

Additionally, the Second Amended Complaint also added Randall Music, present Superintendent at GCI, as a Defendant for purposes relating solely to injunctive relief since he had replaced R.V. Turner as Superintendent.

On October 7, 1985, Defendants filed a Motion for More Definitive Statement in response to Plaintiffs' Second Amended

(Footnote continued on next page)

The Magistrate observed "On November 6, 1985, over two years after filing their Answer to Plaintiffs' Amended Complaint Class Action, Defendants served their Demand for Jury Trial." (§21, Findings).^{8/}

The Magistrate concluded that, pursuant to Rule 38(b) F.R.C.P., the Defendants had waived their jury right by "not demanding a jury trial within ten days of the filing of their Answer on November 2, 1983," (§22, Findings). The Court, under

(Footnote 7/ continued from previous page)

Complaint. Plaintiffs, in response to the Defendants' Motion, filed a twelve-page pleading providing Defendants with an intensive factual analysis of the various requests for more information raised in their Motion. Plaintiffs' Response was filed on October 23, 1985.

Subsequently, following communication between counsel (see, Defendants Demand for Jury Trial, p. 2), Plaintiffs filed a Motion for Leave to File a Third Amended Complaint along with the amended pleading on November 11, 1985. The Third Amended Complaint provided for the dismissal of all claims related to Plaintiff Keith Harris; substituted a new Plaintiff, Billy Joe Harper; cured several typographical errors in the prior pleading; and added the State of Florida as a Defendant solely for the purpose of an attorney fee award as required by Leggett v. Badger, 759 F.2d 1556 (11th Cir. 1985).

Subsequently, on November 6, 1985, Defendants Turner and Music, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, served their "demand for trial by jury on all issues so triable."

^{8/} The Magistrate noted:

Indeed, in their November 6 1985, Jury Trial Demand, Defendants state no reason why they did not timely request a jury trial following their November 2, 1983, Answer, but merely identify issues pertaining to Plaintiffs' Second Amended Complaint filed September 21, 1985. (emphasis in the original) (§23, Findings.)

its inherent discretionary authority.^{9/} also considered Defendants' jury request under Rule 39(b) F.R.C.P. The Magistrate then considered, under Rule 38(b) F.R.C.P., whether Plaintiffs' Second and Third Amended Complaints introduced any new issues which would give rise to a jury trial. (§§26-27, Findings).^{10/} Contrary to Defendants' arguments, the Magistrate considered whether "new issues" were raised in the Amended Complaints or whether the amendments "did not change the 'basic issue' in the case or the general area of dispute." (§26, Findings), (citing Walton v. Eaton Corp., supra, 563 F.2d at 73). On this matter the Court reasoned that the "only arguable new issues" raised in the Amended Complaints would "relate to the additional Plaintiffs" (Id.), but that all of the evidence introduced concerning the new Plaintiffs would have

^{9/} Contrary to Defendants' assertions advanced in their Objections, Pgs. 5-6, [herein Pg. ___, Def. Obj.] consideration of Rule 39(b) discretionary authority and the various factors outlined by our Circuit, Panatt v. Wilson, 707 F.2d 1262, 1267, See, §§24-25, Findings, was indeed an appropriate inquiry after the Magistrate first concluded that Defendants had waived their right under the 10 day provision of Rule 38(b) F.R.C.P.

^{10/} Defendants erroneously condemn the Magistrate for failing to analyze the Second and Third Amended Complaints to determine if "new issues" were raised which would entitle them to a jury. See, Pg. 5, Def. Obj. ("No attempt to analyze Plaintiffs' Second Amended Complaint was made.")

been introduced anyhow, "irrespective of the pleading amendment as support for Plaintiffs' injunctive relief." (§27, Findings)

The core of Plaintiffs' case, as recognized by the Magistrate, remained identical throughout the modifications of the September 21, 1983 Amended Complaint which are reflected in the Second and Third Amended Complaints filed in the Fall of 1985. That factual and legal core raised claims that inmates at GCI were being "assaulted, battered, and/or homosexually raped" due to Defendants' "unwillingness or inability to prevent" such violence. (§27, n.10, Findings). The same "assaults, battery and/or homosexual rapes" remained the core issues of the Second and Third Amended Complaints.^{11/}

The Magistrate, we submit, correctly resolved this issue as

^{11/} The Magistrate's reliance upon Hostrop v. Board of Junior College District No. 515, 523 F.2d 569, 580-81 (7th Cir. 1975) (All the evidence which might be introduced under amended claims was probative evidence of pre-amended claims and therefore the additional amendment did not introduce a new issue); and Lanza v. Drexel and Co., 479 F.2d 1277, 1310 (2nd Cir. 1973) (Jury trial waived "as to all issues relating to the general area of dispute.") appropriately supports the decision that the Second and Third Amended Complaints raised no new issue. See also, Pennsylvania ex. rel. Feiling v. Sincavage 439 F.2d 1133 (3rd Cir. 1971) (Amendment to Complaint adding new Plaintiff did not revive previously waived right to jury trial.)

did this Court pursuant to its December 2, 1985 Order.^{12/}

C. THE CONTINUANCE

1. THE LEGAL STANDARD

Matters relating to the conduct of a trial "are peculiarly within the jurisdiction of the trial court" Edward Leasing Corp. v. Uhlig and Associates, Inc., 785 F.2d 877, 881-82 (11th Cir. 1986) and will not be disturbed "except upon a showing of abuse of discretion, and then only upon a showing that such abuse of discretion resulted in substantial harm to the parties seeking relief." Id., citing Britt v. Corporation Peruana de Vapores, 506 F.2d 927 (5th Cir. 1975); Huff v. N.D. Cass Co. of Alabama, 468 F.2d 172 (5th Cir. 1972); Bell v. Shift & Co., 283 F.2d 407 (5th Cir. 1960).

^{12/} We observe that Defendants' challenge on this issue underlies one of their essential defenses in this case. Simply, they have viewed, and continue to view, Plaintiffs' claims as discrete, separate and isolated tort actions brought by the several Plaintiffs. See, (¶216, Findings) (Magistrate observes that Defendants urged throughout the trial "[t]hat Plaintiffs' claims for damages are merely ten separate, isolated incidents."). See also, ¶5, Pg. 13 of Def. Pre-Trial Stipulation. This notion is additionally expressed in their treatment of the jury issue as they perceive the Second and Third Amended Complaints as a mechanism to add new parties and new issues into the case.

For the reasons expressed in the Magistrate's Findings as well as throughout this Memorandum, we submit that the Magistrate was absolutely correct in viewing Plaintiffs' challenge as a case not involving ten discrete and isolated incidents but rather, as a single action flowing directly from Defendants' failure to properly manage and administer the correctional facility.

2. THE FACTUAL CONTEXT

Defendants refer to various discovery activities that occurred at a period in time in close proximity to the commencement of Trial on December 2, 1986, as grounds for the Magistrate as well as this Court's error^{13/} in refusing to continue the Trial, (Pg. 8-9, Def. Obj.) Defendants' position is that discovery was still ongoing and therefore the commencement of trial was premature. Several significant events, however, were omitted from Defendants' recitation. We submit these their events are dispositive of the continuance and underlie the correctness of this Court's previous Order of December, 1985 rejecting Defendants' Emergency Continuance Request. First, and fundamentally, Defendants, in derogation of the controlling legal standard, cite no "substantial harm," Edmund Leasing Corp., supra, 785 F.2d at 881 (requiring showing of "substantial harm" to the party seeking reversal of denial of continuance) which would demonstrate an abuse of discretion in the denial of the continuance. Second, Defendants fail to reveal that indeed they had already been granted a first continuance in Fall, 1985 in order to prepare for the upcoming trial.^{14/} Third, contrary to the suggestion

^{13/} On December 2, 1985, prior to the commencement of trial this Court denied Defendants' Emergency Request for a Trial Continuance in the same Order denying their jury request. See, supra, Pg. 9, n.6.

^{14/} On September 27, 1985, Defendants filed their first Continuance seeking to delay for a 90 day period the scheduled November 4, 1985, trial. By Order of October 15, 1985, the Magistrate granted Defendants' Continuance Request and reset the

of the Defendants, by virtue of the Magistrate's Order of October 15, 1985, which granted their first Continuance Request, Defendants had been placed on notice of a Special Setting for Trial commencing on December 2, 1985.^{15/} Fourth, while Defendants did depose Plaintiffs' expert, Dr. Swanson, immediately prior to trial (November 29, 1985), counsel had been aware of his involvement in the lawsuit and Dr. Swanson had been made available for deposition discovery during the entire Fall.^{16/} It was the decision of Defendants' counsel to delay the taking of Dr. Swanson's deposition until late November. Fifth, Defendants suggest that they "did not

(Footnote 14/ continued from previous page)

trial for December 2, 1985. Thus, Defendants received 65 of the 90 day continuance that they requested on September 27, 1985.

^{15/} In their Objections, Pg. 8, Defendants appear to suggest that the trial date was "sprung" on them with only one week notice. Id., ("On November 25, 1985, the Third Amended Complaint was approved and Trial set to begin one week later.")

^{16/} Defendants also took Dr. Caddy's deposition, Plaintiffs' second expert witness, on December 5, 1986, during the trial. However, counsel for Plaintiffs had informed Defendants that Dr. Caddy's preparation could only be completed after he had extensively interviewed and performed psychological testing upon all of the Plaintiff-inmates. This scheduling was raised and addressed in open Court weeks prior to the Trial. See, Pgs. 23-26 (Transcript of Oct. 8, 1985 Proceedings); Pgs. 39-51 (Transcript of Nov. 25, 1985 Proceedings).

The schedule was necessary solely due to the fact that the various Plaintiffs were deposed throughout the entire Department of Correction prison system within the State of Florida. At any rate, Defendants did have the opportunity to depose Dr. Caddy. Due to Defendants' failure to comply with the Court's Pre-Trial Stipulation Schedule, See, infra, Pg. 19, n.18 Plaintiff did not even have a reciprocal opportunity to have knowledge of -- let alone depose -- Defendants' expert, Inspector Brierton. Plaintiffs' counsel was afforded an opportunity to interview Mr. Brierton 10 minutes prior to his testimony during the second week of trial.
(Dec. 12, 1985, Pg. 240).

have a valid opportunity to prepare their case" (Pg. 9, Def. Obj.), referring to the taking of depositions of the Plaintiffs during the period of November 13-15, 1985, that they were unable to take the deposition of witnesses identified in those depositions; and that they were involved in burdensome discovery demands in providing various documents. (Id.) The Defendants, though, omit calling to this Court's attention that they were aware of the additional named Plaintiffs as early as August 29, 1985--the time of the filing of Plaintiffs' Second Amended Complaint, See, Order of October 15, 1985 (Granting Defendants' First Continuance) ("Defendants have had notice of these additional allegations [additional plaintiffs] since at least September 1st, and have known since September 25th that they must be addressed in this case. Nevertheless I am persuaded that some adjournment is fairly required.") (Emphasis in original) and additionally, that Plaintiffs' document request had been filed in a prompt manner on September 17, 1985 See, Order of October 15, 1985.^{17/} Sixth, Defendants' assertion that Plaintiffs also were not ready for trial is just plain wrong. Plaintiffs did not present full blown evidence as to some of the injunctive issues in the case simply due to the fact that many recent physical improvements

^{17/} With all deference, the real reason that Defendants expedited Fall discovery activities was due simply to the fact that both of Defendants' trial counsel entered this case in its final stages. Mr. Meginnis filed his Notice of Appearance on August 30, 1985; Mr. Davis on September 20, 1985. While by its very nature such late entry caused counsel to have to condense their trial preparation, it is hardly a reason to determine that the Magistrate and later this Court "abused its discretion" in failing to grant a Second Continuance.

had been made at GCI thereby mooting those claims.^{18/}
Plaintiffs' position, as reflected in the record, is not at all as characterized by Defendants--that we "were unprepared to present evidence on the injunction relief claims." (Pg. 9, Def. Obj.) Our position to the Court envisioned a bifurcated process, traditionally adhered to in institutional litigation of this nature:

MR. LIPMAN: Our present position, outside of the exchange of the expert witness testimony, Your Honor, is that we would request first the court to determine the nature and extent of the institutional violations that have existed, and then -- that currently exist, and then given that, that we have further remedial hearings to attempt to address and tailor make relief and remedy to illuminate those violations.

(Dec. 3, 1985, Pg. 247)

Consistent with this position, the Court's injunctive relief (§§254-260, Findings) was limited to the formation of two committees whose assignment is to address future remedial concerns consistent with the constitutional violations found by the Magistrate. (§258-259, Findings) Moreover, the scope of the committees' charter is expressly limited to the matters

^{18/} Indeed, it was Plaintiffs, not Defendants, who were prejudiced by Defendants' expedited pre-trial activities: As an example, notwithstanding the Court's clear admonition that "Counsel are cautioned that their complete Pre-Trial Stipulation is due on or before Monday, November 25, 1985," (Order of October 15, 1985) Defendants did not file their Pre-Trial Stipulation until the day Trial began, December 2, 1986. Thus, Plaintiffs' counsel was not afforded a similar opportunity as Defendants' counsel to review opposition's Pre-Trial Stipulation prior to trial (Plaintiffs' Pre-Trial Stipulation was filed on November 25, 1985).

concerning the rapes/assaults of the Plaintiffs and class members. (Ibid.)

D. RECUSAL

1. DEFENDANTS' POSITION

Without referring to any legal authority other than merely citing Canon 3C of the Code of Judicial Conduct of the ABA and 28 U.S.C. §455, Defendants contend that the Magistrate's failure to recuse himself during the course of the trial was in "contravention of the mandate" of Canon 3C and thus, the Magistrate's Report "must be rejected". (Pg. 10, Def. Obj.)

Defendants' recusal request stems from events that occurred at the initial stages of this lawsuit some 4 years ago in 1982 when Magistrate Nimkoff took testimony in the form of a hearing (December 4, 1985, Pg. 420) of Plaintiff, ANTHONY LA MARCA, in the presence of counsel for the Defendant, Belitskey, at GCI (Id., at Pg. 423, 426-27, 429). Following the hearing, the Magistrate requested that counsel for Defendant, Mr. Belitskey, "inquire, investigate whether or not any of the things reported in his presence to [Magistrate Nimkoff], by Mr. LAMARCA, ostensibly for the benefit of persons other than LAMARCA, were true, and if true, whether they warranted the attention of the Attorney General of the State of Florida." (December 4, 1985, Pg. 422). Counsel for Defendant gave assurance to the Magistrate that this would be done. However, no investigation

ever took place. (Dec. 3, 1985, Pg. 260)^{19/}

Based upon the foregoing, the Defendants during the trial sought and were denied recusal during the trial. (December 4, 1985, Pg. 606). Defendants argue now that recusal was warranted because "as a judicial officer" (Pg. 10, Def. Obj.), the Magistrate was "required to disqualify himself in a proceeding where he has personal knowledge of evidentiary facts concerning the proceeding and where he is likely to be a material witness in the proceeding". Id., ("[A]sked to recuse for having inserted himself and his claimed knowledge into the lawsuit.")^{20/}

^{19/} From these events the Magistrate drew the following conclusion:

Not only did it become apparent that no investigation occurred when no response was forthcoming from Defendants, but Defendant Turner testified that he was totally unaware that these assurances were made to the Court and that he was completely unaware even of the circumstances of this lawsuit until the recent pre-trial activities (Turner).

Simply, the point is that this lawsuit, unquestionably raising matters of grave concern involving allegations of the most degrading violations to Plaintiffs, somehow got lost between the rather large "cracks" of Defendant Turner's management system. This account serves merely to underscore Plaintiffs' position that GCI, under the Turner administration, was an institution not under the control of that Defendant. (§69-70, Findings)

^{20/} Inexplicably, Defendants appear to contend that the Magistrate should have appeared as a witness to further explain these events because "[T]he sole source of information on this subject was the Magistrate's own statements" (Pg. 10, Def. Obj.) and "there was no record of any proceedings" and thus, "nothing other than the Magistrate's own relation of the events [which] set the context for what allegedly transpired." Id.

(Footnote continued to next page)

2. RECUSAL WAS PROPERLY DENIED

Two statutes govern recusal of members of the federal judiciary, including federal Magistrates: 28 U.S.C. §144, and 28 U.S.C. §455.^{21/} Only the latter comes into consideration in this case since no affidavit was filed by any of the Defendants as contemplated by §144.

Under either statute, the alleged bias must be "personal", as distinguished from judicial, in nature. Phillips v. Joint

(Footnote 20/ continued from previous page)

We know of no authority, nor do Defendants refer to any, which would demand recusal due to the necessity of calling a Judge to testify about evidence elicited in a prior hearing. At the risk of oversimplification, these situations are typically handled by counsel requesting a transcription of an earlier proceeding. Alternatively, Defendants were free to call upon Mr. LaMarca or, for that matter, Messrs. Belitskey or Arline (all present during the proceedings) to offer their recollection of those events.

21/ Section 144 provides in part:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Section 455 provides:

a. Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

b. He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. (Emphasis added)

Legislative Committee, 637 F.2d 1014, 1020, (5th Cir. 1981).

The point of the distinction is that the bias "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case". Phillips, supra, citing United States v. Clark, 605 F.2d 939, 942. (5th Cir. 1979); See also, United States v. Meinster, 488 F. Supp. 1342, 1345-46 (S.D. Fla. 1980) (King, J.) (Ex parte conference between Court and Government Strike Force attorneys did not constitute "personal, extrajudicial bias" under recusal standard of 28 U.S.C. §455) aff'd sub nom. United States v. Phillips, 664 F.2d 971 (5th Cir. 1981) (Unit B), cert. denied, 457 U.S. 1136 (1982). Thus, a motion for disqualification ordinarily may neither be predicated on the judge's rulings in the instant case or in related cases, nor on a demonstrated tendency to rule any particular way, nor on a particular judicial leaning or attitude derived from his experience on the bench. United States v. Grinnel Corp., 384 U.S. 563, 583, (1966). Since the events surrounding Defendants' recusal request stem from the Magistrate's activities in this case--the hearing he conducted in 1982 in his judicial capacity in contrast to any extrajudicial source. United States v. Meester, 762 F.2d 867, 884 (11th Cir. 1985) (The alleged bias "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case"), recusal in this case was not warranted, nor have Defendants made even a colorable claim

of its appropriateness.^{22/}

Finally, Defendants' reference to Canon 3C of the ABA Code of Judicial Conduct adds no additional authority to their argument. Canon 3C was adopted in 1972 and has been interpreted to apply the identical "extrajudicial" test as do 28 U.S.C. §144 and §455. United States v. Coven, 662 F.2d 162, 168 (2nd Cir. 1981). See also, H.R. Rep. No. 93-1453, 93 Cong. 2d Sess. (1974) reprinted in [1974] U.S. Code Cong. & Ad. News 6351 (Amendments to §455 intended to make the statutory standards for judicial behavior consistent with those set forth in Canon 3C of the ABA Code of Judicial Conduct.)

III. DEFENDANTS' OBJECTIONS TO THE FACTUAL STATEMENTS

A. Introduction

In this Section, we respond to Defendants' various Objections to the Magistrate's Findings. For the convenience of the Court, and so that these issues can be reviewed in a single document, we summarize both the Defendants' Objections as well as the Magistrate's Findings. We then offer our analysis of how the record evidence is supportive of the various subsidiary facts contained in the Magistrate's decision.

^{22/} Perhaps even more succinctly, when questioned by counsel for Defendants about his prior knowledge of the events in question, the Magistrate indicated:

Certainly. I was the judge presiding over it then. I am now. (Dec. 4, 1985, Pg. 432)

While Rule 4(b) of the Local Magistrate Rule requires the objecting litigant to identify specific findings of a Magistrate recommendations, it is our position that, in weighing the overall soundness of the Magistrate's request, each of the particular findings should not be considered in total isolation from the record as a whole. Such piecemeal review should be rejected for it is essential that each part of the record be viewed in its total context and that the Magistrate's Findings not be approached "as if they were [many] completely separate and unrelated lawsuits." Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 689-99 (1962). What the Supreme Court said there bears repeating here:

In cases such as this, plaintiffs should be given full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each...[T]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. United States v. Patten, 226 U.S. 525, 544...and in a case like the one before us, the duty of the [court] was to look at the whole picture and not merely at the individual figures in it. (citations omitted). (Id. at 644)

Accord, Keyes v. School Dist. No. 1, 413 U.S. 189 at 200, 203, 207-08 (1973).

We only seek, in the context of these standards, that the "whole picture" presented by the entire factual record be considered in assessing the correctness of the Magistrate's Findings of Fact in this case.

B. ANALYSIS OF DEFENDANTS' OBJECTIONS 23/

1. ¶31

MAGISTRATE'S FINDINGS

R.V. Turner held the position of Superintendent of GCI from mid-1976 through his retirement on August 31, 1984.

DEFENDANTS' OBJECTIONS

R.V. Turner was Superintendent only until July 31, 1984.

ANALYSIS

31. Defendants' objection is correct: Turner retired July 31, 1984.

2. ¶32

MAGISTRATE'S FINDINGS

As of July 29-31, 875 inmates were incarcerated at GCI. Approximately 60% of these were Black; the remainder white or Hispanic.

DEFENDANTS' OBJECTIONS

Inmate population statistics July, 1985 are irrelevant because Turner had retired. Statement that GCI was 60% Black is inaccurate. Inmate population range of 760-893 is more accurate.

ANALYSIS

32. First, the racial breakdown of the inmate population at GCI in 1985 is relevant to the Magistrate's concern with injunctive relief.

Second, Defendants' contention that non-Latin whites at GCI are seriously outnumbered by blacks is not supported by the evidence. To assume that the 10 "other" inmates noted on the September 1983 prison census, (P.Ex. 7, Pg. 3) refers to Hispanics is just incorrect. The 10 "other" inmates clearly

23/ This Analysis begins with ¶ 31 of the Magistrate's Report, the first of the Findings which give rise to objections by Defendants.

refers to those inmates categorized as "transient," not inmates that do not fit into the "W/M" or "B/M" categories.

Plaintiffs do not contest the Defendant's recapitulation of the population statistics from Plaintiffs' Exhibit 31.

3. ¶133

MAGISTRATE'S FINDINGS

Superintendent Music estimated Hispanic population at 7% to 10%. Earlier Hispanic populations were higher creating potentially serious management problems. During the Turner administration 65%-70% of those incarcerated were close custody.

DEFENDANTS' OBJECTIONS

Current Hispanic population was not 7% to 10%. Record does not support conclusion that it was ever higher than 7%. Any increase in Hispanic population was only temporary. Close custody does not necessarily imply violent but refers to potential escape risks requiring armed guards outside defense perimeters.

ANALYSIS

33. During his testimony, Defendant TURNER did not contradict the inference that the Magistrate drew from TURNER's own written report that there was a "large contingent" of Latins. Further, the Defendants' contention that "the increase in Latin population on that date was apparently temporary," is belied by the testimony of Defendant MUSIC:

Q. Does GCI, based on your experience, have the largest proportion of Hispanics or Cuban inmates of any of the other institutions that you're familiar with?

A. With any of them that I'm familiar with, yes.

(Music, Dec. 11, Pg. 133)

The characterization of "close custody" offered by Defendants is derived from the testimony upon which the characterization is based.^{24/} Additionally, any inference that the Magistrate might draw as to the propensity of the GCI inmates for violence need not rest solely on the "close custody" classification, but also upon the testimony of the Plaintiffs and the inmate files of such identified assailants as Willie Dock, Sr. (P.Ex. 16) (assault with intent to commit grand larceny); Andrew Jackson (P.Ex. 21) (armed robbery); Michael Lane (P.Ex. 25) (robbery with a firearm); Larry Pryor (P.Ex. 26) (first degree murder); James Roper (P.Ex. 28) (robbery), and from the testimony of the inmate witnesses offered by the Defendants. See, e.g., Ronald Johnson was convicted of robbery (Johnson, Dec. 12, Pg. 226) and Raymond Taylor was convicted of murder (Taylor, Dec. 11, Pg. 196).

4. ¶134

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

34. No objection.

No objection.

5. ¶135

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

35. No objection.

No objection.

24/ Defendant TURNER testified:

Close custody generally means that if an inmate who is assigned into the institution known as close custody, if he exists that institution, the secure perimeter for any reason whatsoever, he must be under armed guard.

(Turner, Pg. 562)

MAGISTRATE'S FINDINGS

The individual named Plaintiffs' damage claims can be analyzed only within the context of the general operational policies, practices, conditions and events existing at the general time period in which their claims arise. Disparate factors-ranging from wholesale manufacture of prison wine and regular screenings of sexually explicit videotapes to a heterosexually starved audience of inmates, to the maintenance of an ill-assorted guard corps whose members the inmates perceived as regularly trafficking in contraband, extortion, and neglect--converge into a tapestry that forms the backdrop for Plaintiffs' claims.

DEFENDANTS' OBJECTIONS

Admits wine production, viewing of sexually explicit films and improper conduct by correctional officers but far less frequently than implied by Magistrate's findings.

ANALYSIS

36. Defendants offer no citation to the record to rebut what they characterize as "sweeping statements" concerning incidents of rampant lawlessness inside the prison - incidents that are described in detail elsewhere in the record. As to the "wholesale manufacture of prison wine," Lt. Leo Peters, the Institutional Investigator, noted the discovery by two correctional sergeants of 20 gallons of "buck" fermenting beneath a trailer. (Peters, Dec. 12, Pg. 366, 472) See, also, P.Ex 4(A) (Palm Beach County Grand Jury Presentment, Pg. 6) ("Alcohol use and its manufacture by the inmates' ingenuity also appears prevalent.") (Emphasis added). The "regular screenings of sexually explicit videotapes" is discussed at ¶¶101- 102 of the Magistrate's Findings. The "maintenance of

an ill- assorted guard corp whose members the inmates perceived as trafficking in contraband, extortion and neglect" is discussed at ¶¶46-56, Ibid., with extensive citations to the record.

Defendants offer no citation or other authority for their proposition that the improprieties occurred "far less frequently" then found by the Magistrate.

7. ¶37

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

37. No objection.

No objection.

8. ¶38 - ¶39

MAGISTRATE'S FINDINGS

DEFENDANTS OBJECTIONS

Conditions at GCI were known to Turner. Turner admitted:

"On an almost daily basis I feel that our security staff is simply being tolerated by the inmate population rather than potential being in control of the operation of the institution." (Emphasis added).

Turner acknowledged security problems. Staff vacancies were "dangerous to staff and inmate population". Cited example of two officers to monitor 220 inmates. Turner was "apprehensive about our ability to control this population under the circumstances." The Court found that American Correctional Association (ACA) accreditation of GCI was of virtually no significance because Florida's prison supervisors received ACA accreditation while

Turner did not know that all conditions claimed by Plaintiffs existed. Turner's quote referred to a manpower shortage for which he was not responsible that inmates merely tolerated staff referred to potential rather than actual problem.

Dr. Swanson's testimony, which Magistrate uses to support conclusion that ACA accreditation was of no significance, is not credible. A review of the reported decisions in Graham v. Vann and Constello v. Wainwright reveals Swanson's testimony to be false. Moreover, Swanson testified that he used standards identical to ACA. However, ACA reports should be given greater weight than Swanson

U.S. District Court consistently found practices unconstitutional and Florida State penitentiary was accredited at the same time those Courts found conditions there unconstitutional.

because they are independent and the inspections were conducted during the relevant time period, not after.

ANALYSIS

38-39. The findings of both Paragraphs 38 and 39 appear to be addressed jointly by Defendants, and thus Plaintiffs will respond likewise to the objection.

The Magistrate found in these paragraphs only the following:

a. Defendant TURNER was aware of the dangerous conditions at GCI as early as 1979, and wrote to Secretary Wainwright about them on March 15, 1979 and July 16, 1981. His letters are self-explanatory.^{25/}

b. That the institutional accreditation of GCI as insignificant to this litigation.^{26/}

^{25/} As to the suggestion that the problem was only a "potential" one, rather than an actuality, the testimony of Defendant TURNER contradicts the characterization of his counsel:

Well, at this time, my contention, particularly, was in connection with the serious lack of security staff, that we had control of an institution, based primarily on supervision and surveillance, and we simply did not have at that time enough officers to properly supervise and survey the institution, and I felt that there was a substantial lack of control.

(Turner, Dec. 13, Pg. 735)

^{26/} Not only are there substantive reasons for discounting the ACA report, but evidentiary ones as well: the contents of the report were never properly before the Court. The Report was admitted into evidence not for its truthfulness, but merely to show that an ACA Committee had conducted an investigation. (Dec. 13, Pg. 512-514)

As to the question of Defendant TURNER's notice, the letters from which the Magistrate drew his inference speak for themselves. There is neither testimony cited by Defendants to support the gloss that they would give the letters, nor was any such testimony adduced by Defendant TURNER.

Defendants simply misstate when they argue that "[t]he Magistrate suggests that because of the shortage of staff during 1979-1981, the accreditation by the American Correctional Association was invalid." No such suggestion was made.

Defendants further mischaracterize the testimony of Plaintiffs' expert, Dr. Richard Swanson, who testified as to the weight he would give to an ACA report based on his knowledge of the accreditation process. He conducted concurrent investigations of Florida State Prison with the ACA and found that the Florida prison system was accredited in spite of the recent judicial findings of inadequacy concern the Reception and Medical Center at Lake Butler. (Swanson, Dec. 4, Pg. 410-412).

Even more disingenuous is the Defendants' suggestion that "there are still a number of prisons in Florida which are not accredited." (Pg. 15, Def. Obj.) What the Defendants omit is the fact that, out of the five institutions that are not accredited, four are still under construction and the fifth, Union Correctional Institution, had been accredited until the Department of Corrections decided, for budgetary reasons, not to spend the money necessary to spend to bring the main housing

unit (which is now closed pursuant to court order) into line with fire-safety standards. (Malally, Dec. 13, Pgs. 507-08)

9. ¶40

MAGISTRATE'S FINDINGS

A Palm Beach County Grand Jury issued a presentment in 1980. The impetus for the presentment related to shortages of certain food products. The presentment also raised serious issues of inmate security. Testimony revealed "lax security precautions" and a free flow of contraband. The presentment also indicated a breakdown of proper prison management.

DEFENDANTS' OBJECTIONS

The Grand Jury report was admitted over objection. It is hearsay and irrelevant. The Magistrate's Report and Recommendation give the Grand Jury report greater weight than he earlier indicated. The Grand Jury Report does not indicate a "free flow" of contraband but only indicates drugs were available.

ANALYSIS

40. Defendants raise issues of hearsay, relevance and weight concerning the January 30, 1980 presentment of the Palm Beach County Grand Jury. Addressing the issues seriatim:

HEARSAY: The grand jury report is not hearsay, but rather a public document under Federal Rule of Evidence, Rule 803(8)(c). (Public Records and Reports "made pursuant to authority granted by law.") See, Wilson v. Attaway, 757 F.2d 1227, 1244-45 (11th Cir. 1985) ("The discretion of the trial court concerning admissibility of evidence applies to determination of admissibility under Rule 803(8)(c) [citations omitted]").

RELEVANCY: The Magistrate resolved the relevancy issue by focusing on how the issues covered by the grand jury report telescoped into the issues in this action, and how the grand jury

report put the Defendants on notice of serious management (Dec. 11, Pg. 16-21).

WEIGHT: The Defendants have taken the words of the Magistrate out of context. They improperly suggest that "it is noteworthy that the Magistrate stated, ...it carries very little weight.'" What the Magistrate actually stated was "...what I may find in this litigation is that it carries very little weight," See, Ibid., Pg. 21, (emphasis added).

10. ¶41

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

41. No objection.

No objection

11. ¶42

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

The Inspector General's Report observed and corroborated similar issues concerning a breakdown of security as those identified in the Palm Beach County Grand Jury Presentment.

The Inspector General's Report did not find a "breakdown in security" but did note a shortage of manpower, which TURNER could not control at the time. Magistrate overlooks the report's findings that all appropriate recommendations made by the Grand Jury in its 1980 Report had been put into effect by TURNER.

ANALYSIS

42. The portion of the executive summary quoted by the Magistrate speaks for itself as to the similarity to the issues addressed by the Inspector General's office and those addressed by the findings of the grand jury:

INSPECTOR GENERAL REPORT

Supervision in all three general areas of the compound must be described as serious, due to the lack of security personnel. Vacancies continue to be a serious problem. The dormitory situation is critical as there have been occasions when one dormitory officer is responsible for supervising more than one dorm at the same time.

(P.Ex. 4, Tab B, Page 4 of "Executive Summary")

GRAND JURY REPORT

The Grand Jury heard testimony concerning laxity of personnel in the following security regulations at the institution. The Grand Jury finds that thorough searches of personnel, inmates, and visitors must be routinely conducted without exception. While the Grand Jury did not personally see evidence of it, testimony of inmates and some correctional personnel indicate marijuana and other drugs are available to inmates due in a large part from lax security precautions. Alcohol use and its manufacture by the inmates; ingenuity also appears prevalent.

The Grand Jury having heard many allegations and accusations of drugs, alcohol, and other contraband, gambling, theft, confiscation, and payoffs among the inmates and personnel of GCI, find that cash money is the common element in many of these problems and recommends as follows:

(1) That all inmates be prohibited from possessing any cash money.

(2) That the inmate bank account be upgraded to a type of checking account.

(3) That inmate checks be honored at the canteen for the exact amount of purchase only and that no other method of transferring funds be allowed.

(P.Ex. 4, Flap A, Pg. 6)

Defendants assert that the Inspector General's review team had found that "all appropriate recommendations made by the

Grand Jury in its 1980 report had been put into effect by TURNER." (Pg. 16, Def. Obj.) This is not correct. None of the three recommendations for taking cash out of circulation within GCI were followed, although the review team said it shared TURNER's view that those recommendations were "inappropriate."

Further, what the Defendants characterize as a "massive effort at self-review and improvement during the preceding months" (Pg. 17, Def. Obj.) was found by the Inspector General's office was to be due, actually, to "the massive effort to obtain accreditation (sic) by the Glades Correctional Institution during the past year, [during which] performance standards have been used to measure almost every aspect of the institution's operation." (P.Ex. 4 (B), Pg. 24).

And finally, there is conspicuously no testimony or other evidence cited by Defendants for their assertion that Defendant "TURNER...did all he could to make the budgetary needs known to his superiors and to the Legislature and who lobbied tirelessly (and, ultimately with some success) for the increased funding." (Pg. 17, Def. Obj.)

12. ¶43

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

13. ¶44

MAGISTRATE'S FINDINGS

Security problems were exacerbated by low morale of GCI staff.

DEFENDANTS' OBJECTIONS

The Report did not find low morale. Staffing problems do not

Employees did not feel that there were enough people to perform duties properly and supervisors did not feel they were given adequate instructions or guidelines.

equate to low morale and were substantially alleviated in 1982.

ANALYSIS

44. The Magistrate appropriately drew an inference of low staff morale from the negative answers given on the employee questionnaire. (P.Ex. 4, ¶ 29.1, Pg. 33).

Plaintiffs agree that staff vacancies and turnovers ceased being such an acute problem in 1982. The relevancy of this observation to the instant case, however, is questionable since six of the 10 Plaintiffs suffered their rapes/assaults in 1983 or 1984.^{27/}

^{27/} (1) David Aldred was raped July, 1984, (¶¶ 120-122, Findings), when 219 of the 235 staff vacancies were filled, (Ibid., ¶125);

(2) Ronald Durrance was raped March, 1984, (Ibid., ¶¶ 130-133), when 230 of the 235 authorized positions were filled, (Ibid., ¶131);

(3) Steve Bronson was raped with a baseball bat in June 1984, (Ibid., ¶145), when 241 of the 270 positions were filled (Ibid., ¶148);

(4) Martin Saunders was raped in or about March, 1983, (Ibid., ¶153), when 232 of 265 positions were filled (P.Ex. 31) (Superintendent's Monthly Reports from January 1980 through November 1984), and checked back into protective confinement November 10, 1983 when 220 of the 233 positions were filled, (¶ Ibid., 159);

(5) Billy Joe Harper was raped in January, 1982, (Ibid. ¶162), when 239 of 270 positions were filled (P.Ex. 31);

(Footnote continued to next page)

MAGISTRATE'S FINDINGS

In 1983, the Inspector General investigated GCI. The Inspector General reported "disregard for established procedures" and "a need for a great deal of improvement" at GCI. Specific problems with security and inmate property were noted.

DEFENDANTS' OBJECTIONS

The Inspector General did not find laxity in security. The Magistrate did not note positive findings of the Inspector General's Report.

ANALYSIS

45. Defendants suggestions that the 1983 Inspector General's review teams finding of laxity did not refer to to security issues is wrong. Of 22 security questions on Pages 8 and 9 of the report (P.Ex. 6), seven were answered "No," including the following:

(Footnote 27/ continued from previous page)

- (6) Edwin Johnson was attacked in protective confinement, (Ibid., ¶ 171(a)), sometime after his arrival at GCI in February, 1983, (Ibid., ¶169);
- (7) Wayne Epprecht was attacked and robbed in February, 1981, (Ibid., ¶173), when 222 out of 266 positions were filled, (Ibid., ¶175), and Defendant TURNER was holding open 35 positions, (Ibid.);
- (8) Eddie Cobb was stabbed January 27, 1984, (Ibid., ¶178), when 218 out of 235 positions were filled (P.Ex. 31);
- (9) Michael Gordon was assaulted and robbed thrice during his time at GCI, which began in late 1983 or early 1984, (Ibid., ¶'s 181-183); and
- (10) Anthony LaMarca escaped in April, 1981 because of inmate harrassment, (Ibid., ¶185), when 218 of 266 positions were filled, and checked into protective confinement in July, 1981, (Ibid., ¶187), when 215 of 266 positions were filled (P.Ex. 31), with the 35 positions presumably still being held vacant by Defendant TURNER.

1. Are perimeter posts sufficient to provide adequate security?

3. Is inmate movement from one location to another properly controlled and supervised by staff?

Additionally, it is significant that among the criticisms that Defendants would classify as being of "housekeeping," one was that "Homemade lockers are abundant." (P.Ex.6, Pg. 22). The abundance of these "homemade lockers" obstructed the view of the guards who monitor the dormitories at night from inside their wicket when some of the various rapes/assaults occurred. See, e.g., ¶92, Findings.

15. ¶46 - ¶47

MAGISTRATE'S FINDINGS

¶¶46-47. On April 15, 1984, a fight broke out at a dormitory, GCI off-duty personnel, including Lt. William Barrett, were called. Barrett was obviously intoxicated. Nevertheless, Barrett was given a shotgun, ammunition and was permitted to approach a dormitory. Turner did not notify Prison Inspector. The Inspector General did conduct an investigation and concluded that Lt. Barrett and Lt. Peters had committed prison rules infractions.

DEFENDANTS' OBJECTIONS

¶46-47 The Barrett incident has no relevance to the issues in the present case. Turner was not present and none of the Plaintiffs were involved. The Barrett incident was the only incident of excessive force in a five year period.

The Inspector General's office was contacted by TURNER three days after the incident. The only infraction committed by Peters was that he returned to the compound intoxicated. There was no adverse finding regarding TURNER in the Barrett report.

ANALYSIS

46-47. The Barrett incident is relevant not as a showing of improper use of force, but rather as a clear illustration of Turner's management by indifference; an indifference marked by inhumane callousness.

Lt. Peters, to whom Defendant TURNER assigned the investigation, was himself found guilty of having violated the prohibition against "report[ing] for duty or exercis[ing] supervision or control over any person while under the influence of a narcotic, barbiturate, hallucinogenic drug, central nervous system stimulant or an intoxicant." (P.Ex. 9, Pg. 10-11).

16. ¶48

MAGISTRATE'S FINDINGS

Accordingly, to Dr. Swanson, the transcripts of a tape recorded hearing between TURNER and inmate Allen revealed that TURNER was not surprised that alcohol and drugs were available to inmates on a widespread basis.

DEFENDANTS' OBJECTIONS

A person's emotions cannot be determined from a transcript. TURNER was an investigator and did not express all his opinions; TURNER was intent on discovering all the facts and advised Allen of his legal rights.

ANALYSIS

48. Defendants, significantly, do not take issue with Dr. Swanson's observation that Defendant TURNER should have taken immediate action to suspend Lt. Barrett. Rather, Defendants concentrated on what they characterize as "[t]he Magistrate's finding that TURNER, in interviewing an inmate (Allen) in the course of the Barrett investigation, failed to register appropriate outrage on the Transcript in learning that some of

the inmates had been drinking buck..." Dr. Swanson's observation was not that Defendant TURNER failed to register outrage, but that Turner appeared to be accepting as routine the widespread use of alcoholic beverages within the institution. (§48, n.12) ("[N]ot a surprise at all to Superintendent TURNER that alcohol and drugs are available on a widespread basis in the institution.")

17. §49

MAGISTRATE'S FINDINGS

No. objection.

DEFENDANTS' OBJECTIONS

No objection.

18. §50

MAGISTRATE'S FINDINGS

Dr. Swanson opined that TURNER unduly delayed suspending Barrett under the circumstances.

DEFENDANTS' OBJECTIONS

On cross examination Swanson admitted that all TURNER should have done was remove Barrett from the compound that night, which TURNER did.

ANALYSIS

50. To characterize Dr. Swanson's testimony on cross examination as saying that all that should have been done immediately to Lt. Barrett was that he should have been sent home that evening, (Swanson, Dec. 3, Pg. 330) is to urge that the court to ignore the other evidence in the record that Lt. Barrett remained on duty and in a position of authority for some time subsequent to the shotgun-incident.

Indeed, Lt. Leo Peters identified Lt. Barrett's signature as approving on April 23--more than a full week after the incident--a written report by the prison's arsenal officer

about the very incident. (Peters, Dec. 12, Pg. 499) Peters acknowledged that the logical inference would be that Lt. Barrett was still on duty and operating within the institution. Ibid.

19. ¶51

MAGISTRATE'S FINDINGS

Dixon investigation corroborates allegations of wholesale staff corruption with regard to extortion of inmates and free flow of contraband.

DEFENDANTS' OBJECTIONS

Dixon investigation is irrelevant. Dixon was investigated several times at TURNER'S instigation. TURNER'S investigation failed to substantiate charges against Dixon.

ANALYSIS

51. Significantly, while Defendants characterize the misconduct of Officer Clarence Dixon as irrelevant to this action, they do not deny the particulars of either the findings contained in this paragraph or the succeeding one. Instead, they note that Defendant TURNER had ordered that investigations be made into Officer Dixon's activities -- investigations that, in all likelihood, would have been unnecessary had TURNER either done the proper background investigation to begin with or had acted in a timely manner upon the information provided him March 6, 1984, (e.g., Officer Dixon had been terminated from a teaching position for what can only be described as extortion activities.) See, (P ex. 10, Tab. C, Memo of March 6, 1984); (Swanson, Dec. 3, Pgs. 222-224).

20. ¶52

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

21. ¶53

MAGISTRATE'S FINDINGS

While his testimony offers less conclusive credibility than the external investigative reports of Barrett and Dixon, the assertions of Pryor nonetheless reveal additional evidence of wholesale corruption.

DEFENDANTS' OBJECTIONS

Findings that the Barrett and Dixon reports revealed "wholesale staff corruption" is totally lacking in credibility. The testimony of Pryor, as acknowledged by the Magistrate is of questionable credibility.

22. ¶54

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

ANALYSIS

54. Defendants simply have mischaracterized the Findings of the Magistrate. The Court found that Larry Pryor's deposition testimony offered evidence of "less conclusive credibility" than the reports of the Inspector General's office--not that Pryor's deposition was "of questionable credibility." The Magistrate provided that Pryor's deposition revealed "additional evidence of wholesale staff corruption"--not that the Barrett and Dixon investigations revealed it. The Magistrate determined that Pryor had "worked as an informant-enforcer for various correctional officers" (emphasis supplied)--not only for "one individual."

23. ¶155

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

24. ¶156

MAGISTRATE'S FINDINGS

Dr. Swanson observed that "little or no effort was taken to control illicit activity" resulting "in readily available contraband" including "drugs, alcohol and weapons to inmates apparently on demand." Swanson's conclusion is based upon corroborative evidence including written documentation as well as inmate testimony.

DEFENDANTS' OBJECTIONS

The record is replete with evidence showing a substantial effort at reducing and limiting contraband during TURNER'S administration. Swanson ignored information indicating significant enforcement procedures at GCI at limiting contraband.

ANALYSIS

56. Defendants appear to suggest that any efforts on the part of the correctional officers to make GCI into a model penal institution, no matter how ineffective, should absolve the prison management of any blame for the free flow of contraband. The many instances cited by the Magistrate establish ample evidence upon which to base the finding. (See, ¶ 56, n.15 and n.16, Findings) The testimony by Lt. Peters concerning the discovery of a 20 gallon reservoir of buck (wine) buried beneath a trailer in the middle of the compound, (Peters, Dec. 17, P. 366, 472), attests more to the temerity

of the inmates than to the effectiveness of any deterrent.^{28/}

Nor was Lt. Peters able to recite the number of outside felony prosecutions that had been initiated against inmates. (Peters, Dec. 12, Pg. 457). He has never taken any case to the State Attorney's office which involved an inmate found with a weapon. (Ibid., Pg. 459). He only recalls one incident in which Defendant TURNER told him to institute a criminal prosecution of an inmate found with a weapon. (Ibid., Pg. 460). An incident in which two pistols were found on the compound was investigated not by him, but by a regional prison inspector. (Ibid., Pg. 463). Lt. Peters did not know whether it was a crime to possess buck in prison, (Ibid., Pg. 469), nor was he aware of any prosecutions for it. (Ibid., Pg. 470).

25. ¶57

MAGISTRATE'S FINDING

GCI officers lacked familiarity with weapons, according to GCI incident reports and statements of Lt. Peters. Music implemented weapon system that may solve some problems.

DEFENDANTS' OBJECTION

Conclusion that staff at GCI were poorly trained flies in the face of substantial contrary evidence. Swanson admitted on cross-examination that TURNER implemented the new weapons system.

^{28/} Additionally, Defendants appear to be attempting to get "double credit" for 13 or 14 prosecutions that Lt. Peters testified had been made over the past several years in connection with contraband. Defendants quote Peters as testifying that he made 13 concerning correctional officers or visitors attempting to introduce contraband onto the compound. (Peters, Dec. 12, Pg. 370-71).

They then assert that, "[i]n addition fourteen criminal prosecutions were brought against various staff members for introduction of contraband." (Pg. 23, Def. Obj.) However, it is apparent from the testimony that the fourteen cases to which he alludes is merely a count of the case files that he referred to in his previous answer. (Ibid., Pg. 373-374.) None of the investigative files were further identified or placed into evidence.

ANALYSIS

57. Defendants would downplay the firearm misadventures of the GCI staff that the Magistrate chose to use as "one barometer of poor staff training." In general, the import of these incidents are self evident. However, in the instance of the shotgun that discharged because of a previously reported defect in the weapon, there is the additional question raised of why such a defect had not been repaired. Additionally, there are the incidents involving Lt. Barrett (drunken officer issued shotgun and 15 rounds of ammunition to go into compound) and the inspection report that noted: "Shotguns (perimeter patrol) were found rusty and in need of cleaning/maintenance." (P.Ex.6, Summary of Inspection).

26. ¶158

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

27. ¶159

MAGISTRATE'S FINDINGS

The Barrett-Dixon incidents underscore the day-to-day operation of GCI with its staff not controlled by Superintendent TURNER. Staff morale was low. Turnover was high.

DEFENDANTS' OBJECTIONS

Magistrate's sweeping conclusions in regard to staff morale is not supported but is contrary to evidence. Magistrate's reference to staffing shortages, turnover and high overtime reflect fundamental errors in analysis. Manpower and staffing improved considerably during TURNER's administration. High turnover and staff vacancy rates could not be attributed to TURNER.

ANALYSIS

59. The basis for the Magistrate's conclusion that morale was low is addressed supra in the analysis of the analysis to ¶44, as is the relevancy--or indeed more specifically, irrelevancy, of the Defendants' assertions concerning the staffing patterns.

28. ¶60

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

29. ¶61

MAGISTRATE'S FINDINGS

Directly related to the individual raping and assaults of the named Plaintiffs was the lack of proper staff supervision due to Defendant TURNER's failure to station the officers properly.

DEFENDANTS' OBJECTIONS

The conclusion that the individual Plaintiffs' claims arose out of the failure of TURNER to station officers properly is not supported by citation to the record. There was not an iota of support for this conclusion.

ANALYSIS

61. The logic of this transitional paragraph is underscored by citations throughout the Findings of Fact and Conclusions of Law. Specific details are contained in the paragraphs that follow.

21. ¶62

MAGISTRATE'S FINDINGS

As Lt. Peters admitted, due to the sheets, clothes and personal lockers hanging from the bunks and the further the obstruction of a second level of bunks in the middle row of beds, an officer's view from the cage or wicket in

DEFENDANTS' OBJECTIONS

The entire issue of upper bunk sheets obscuring the view of the showers is a false one. Even if there were no bunks at all in the dorms, a guard in the wicket could not see into the showers.

which he was stationed was obscured. The view from the wicket into the shower area was even more obscured.

ANALYSIS

62. For the Defendants to assert that a guard's inability to see through the walls of the shower area--regardless of the presense of tent-like contraptions on the bunks -- is sophistry. Indeed, Turner's successor, Superintendent Randall Music, acknowledged during trial that he had ordered the tenting removed at least in part because of these very security reasons. (Music, Dec. 11, Pg. 143).

31. ¶63

MAGISTRATE'S FINDINGS

While Peters knew that officers were supposed to be on constant patrol within the dorms, this did not take place. Turner could recall no action ever taken against an officer for failure to patrol the dormitories.

DEFENDANTS' OBJECTIONS

The Magistrate mischaracterized Peters' and Turner's testimony. Peters stated that officers were supposed to patrol dorms. He did not say they did not patrol. Turner actually testified that there may have been disciplinary action taken against an officer for failure to patrol, he just couldn't recite specific instances.

ANALYSIS

63. Lt. Peters testified that the correctional officers are supposed to patrol the dormitories constantly at night, (Peters, Dec. 12, Pg. 453), and that it should take no longer than seven minutes to make a round, from shower-to-shower in the large dorms and in the two smaller dorms, four minutes,

(Ibid., Pg. 454). From that testimony, overlayed upon the testimony by the rape victims about how long their assaults in the showers or in their beds lasted, See, (¶123, Findings) (Aldred raped for 15 to 20 minutes in shower); (Ibid., Pg. 133) (Durrance raped for 35 to 40 minutes in shower), (Ibid., Pg. 162) (Harper, while being raped in his bed, could not see the correctional officer who was supposed to be on duty), the Magistrate concluded that there were no constant patrols.

As to the "dramatic testimony by an inmate that patrolling did take place," the incident is alleged to have occurred in late 1980 (Taylor, Dec. 11, Pg. 181) (Five or six months after entering Lake Butler Reception and Medical Center in June 1980) or early 1981 (Ibid., Pg. 200) (March or April), quite possibly prior to any incident complained of in this action. (See, chronology of incidents in discussion of analysis to ¶ 44, supra.) The testimony as to the practices of patrolling by the guards was offered by an inmate who spent three or four days in general population (Taylor, Dec. 11, Pg. 200) and whose credibility the Magistrate could have doubted because the witness, who is serving a mandatory 25-year sentence (Ibid., Pg. 196) was approached to testify by the Attorney General's office, (Ibid., Pg. 197) and who "figured" that his testifying would be entered on his prison record (Ibid., Pg. 200).

32. ¶164

MAGISTRATE'S FINDINGS

Peters recognized that no standard operating procedure

DEFENDANTS' OBJECTIONS

Peters testified to exactly the opposite and described in

existed to investigate rapes or
alleged rapes. No such policy
was ever written.

detail the procedures for
investigating rapes.

ANALYSIS

64. Except perhaps in some aspirational sense, no standard operating procedure existed at GCI for dealing with homosexual rape.

Q. Is there a standard operating procedure at Glades Correctional Institution, Mr. Peters, that provides that the compound officers shall pass on to you allegations of homosexual rape?

A. No. I don't believe there is, sir.

(Peters, Dec. 12, Pg. 444)

Lt. Peters described procedure that he had used to investigate an alleged rape:

Well, the first thing I do is insure that the inmate was taken to the medical department for a rape examination. Then I would speak to the inmate with the inmate and see if he would or could identify who the perpetrators were. Then we would--we would pick up the perpetrators, if they were identified, or the alleged perpetrators, conduct interviews with them. And depending on what kind of information was revealed, at that point the Palm Beach County Sheriff's Office would be involved, and from then on the investigation would be under their jurisdiction and, of course, the State Attorney's Office.

(Ibid., Pg. 464-465).

However, Peters testified that he could only remember investigating one rape complaint, (Ibid.), or two, (Ibid., Pg. 467). Although Peters testified that Defendant TURNER generally had told him what to do whenever a rape occurred, (Peters, Dec. 13, Pg. 485), he could not recall any specific

conversation (Ibid., Pg. 484). Of the two rapes he can recall investigating, one occurred in 1985, which is after Defendant TURNER retired. Peters, who is in charge of all criminal investigations at GCI, (Peters, Dec. 12, Pg. 362) had no familiarity with the administration of rectal examinations of rape victims beyond the name of the kit used to conduct them, (Peters, Dec. 13, Pg. 490).

Defendant TURNER did not remember any rectal examinations being conducted of the four Plaintiffs--Alfred, Harpers, Saunders and Durrance--who were homosexually raped. (Turner, Dec. 13, Pg. 718).

Nor was any policy in writing, according to the testimony of TURNER. (Ibid., Pg. 711-12).

The Magistrate's conclusion that there was no standard operating procedure was correct.

33. ¶65

MAGISTRATE'S FINDINGS

Indeed, Defendants' own witness, Inspector General Brierton, opined that at the very minimum: (i) medical evidence should be secured; (ii) a full statement taken from the alleged victim, and (iii) the matter should always be referred to a local prosecutor. These steps were not followed.

DEFENDANTS' OBJECTIONS

Defendants agree procedures were not followed for Saunders, Aldred or Harper. There is total absence of evidence that Turner or Peters were ever advised of these rapes. At most, the evidence shows only a line officer or his immediate superior failed to report the assault. There is serious doubt that the incidents were ever reported.

ANALYSIS

65. Defendants do not dispute what should have been done. In the light of the Magistrate's factual findings that the rapes

of Aldred, Saunders and Harper did occur as the Plaintiffs indicated, see, ¶199, Findings, the consistent failure to follow the procedure bespeaks either a total failure on the part of one line officer after another to follow procedure--or, as found by the Magistrate, (¶ 64, Findings) the absence of any standard operating procedure for reporting rapes.

34. ¶66

MAGISTRATE'S FINDINGS

This lack of any procedure relating to the investigation of rapes resulted in the prosecution of only one rape in the entire Turner administration. Moreover, no rapes were ever reported by GCI authorities in any of the massive amounts of internal documents generated from the institution.

DEFENDANTS' OBJECTIONS

The reference to rape prosecution is apparently derived from Peters' testimony. Peters actually said he recalled only one case successfully prosecuted in 1984. He could not remember, without reference to records, what prosecution occurred in 1983 or prior years. In regard to reporting of rapes in the documents, the Superintendent's reports listed 5 reported sexual assaults from 1980-84.

ANALYSIS

Defendant TURNER himself referred on cross-examination to "the one [rape] where we found that we had everything that we needed to prosecute." (Emphasis added) (Turner, Dec. 13, Pg. 713). The testimony supported that of Lt. Peters the day before.

As to the absence of reports of rapes, the category on the Superintendent's Monthly Report in which five incidents were reported was "Assault to Commit a Sex Act." (P.Ex. 31) There were no incident reports underlying any of the five such assaults noted on the monthly reports.

35. ¶167

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

36. ¶168

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

37. ¶169

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

38. ¶170

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

39. ¶171 - ¶172

MAGISTRATE'S FINDINGS

¶171. Armed with the knowledge that rapes were occurring, the failure to promulgate and adhere the most rudimentary procedures constitutes a deliberate indifference toward inmate security.

¶172. The free flow of contraband assaultive behavior provides a picture of GCI as an institution marred by violence and illegal activity.

DEFENDANTS' OBJECTIONS

¶171. The finding that rapes occurred at GCI established nothing. The question is to one of frequency and Turner's knowledge. The records reveal five reports of rape. Turner can be held to have knowledge of only those reported.

¶172. While there was and contraband at GCI, it was by GCI, it was by no means free flowing. There was no opinion evidence that drew a conclusion that the existence of contraband implied prevalence of rape.

ANALYSIS

71-72. The Defendants' exceptions to the Magistrate's findings at Paragraph 71-72 are devoid of any references to contradictory facts, and is merely "lawyer" argument.

40. ¶73

MAGISTRATE'S FINDINGS

The consistent and disproportionate number of young white inmates who "checked in" to protective confinement further corroborates the white Plaintiffs' recollection of terror on the compound. (White inmates constituted a minority of the prison population (397 of 833) and those figures considered Hispanics as Whites).

DEFENDANTS' OBJECTIONS

There is nothing in the record which reflects the age of the white inmates in protective custody. It is not accurate to suggest that raw data as to the number of protective custody inmates necessarily reflects fear of sexual assault. The population figure for whites does not include Hispanics.

ANALYSIS

73. While the prison inspector's report underlying the "statistical snapshot" relied upon by the Magistrate -- a headcount of those in protective confinement on a random day -- does not contain any reference to the age of those 20 white inmates, it is the numbers, not the age that is important. For "[t]hat does seem to also verify the notion that we got, that it's assaults of white inmates by black inmates--20 are checking in from the white population, and one from the black." (Emphasis added). (Brierton, Dec. 13 Pg. 243). Inferences about the youth of the protective-confinement population can be drawn from the relative youth of the Plaintiffs and witness Larry Brown, as well as from the testimony of defense witness, Lt. Leo Peters, who characterized

one prison "wolf" as preying upon "young white inmates." (Emphasis added) (Peters, Dec. 12, Pg. 396). The Defendants contention that Hispanics are not included among "whites" is discussed supra, in the analysis of ¶32 of the Magistrate's Findings.

41. ¶74

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

42. ¶75

MAGISTRATE'S FINDINGS

Conditions in protective custody were punitive. The cells lacked adequate ventilation; lighting was poor; up to five inmates were placed in cells containing two bunks; the cells were infested with waste and vermin; inmates in protective confinement were taunted and were housed with administrative detainees; no exercise was offered; showering was allowed only three times per week; inmates in PC lost canteen privileges.

DEFENDANTS' OBJECTIONS

Ventilation and lighting problems were a temporary condition due to construction. While overcrowding did occur for a short period of time, it is not proper to ascribe that to Turner who had no authority to incur construction on his own.

ANALYSIS

75. The Defendants dispute the Magistrate's assessment of the conditions in Protective Confinement as being "punitive" based on an October 6, 1982 Memorandum suggesting that some of the physical problems (i.e., poor lighting and lack of ventilation) were temporary. The reference to those problems, however, was only a minor part of the evidence on which the Magistrate based his assessment of the conditions in the confinement area.

Indeed, at the invitation of Defendant TURNER, the Magistrate had physically inspected the confinement area while holding a hearing in this action at the prison. The Magistrate noted during the hearing that "[I] saw the confinement cells, and I formed certain vivid impressions of them..." (Dec. 3, Pg. 227).

43. ¶176

MAGISTRATE'S FINDINGS

Notwithstanding the punitive nature of protective confinement, some inmates would remain in confinement for months. Indeed, the shortage of cell space attests to the inmate demand to "check in" which "clearly manifest a high degree of distress in the general dormitory population."

DEFENDANTS' OBJECTIONS

Shortages in cell space were due to a number of factors: increase in inmate population; nationwide rise in number of inmates in PC; confinement facilities housed three classifications: disciplinary, administrative, protective. Compared to some states, the percentage of PC inmates at GCI was extraordinarily low.

ANALYSIS

76. The Defendants attempt in their exceptions to offer reasons why the protective confinement area was overcrowded, but do not address the thrust of the Magistrate's Findings: that regardless of the reasons for the "punitive" conditions in protective confinement, inmates were willing to endure those conditions to escape from the general population.^{29/}

^{29/} Defendants quote witness Brierton as suggesting that the percentage of GCI inmates in protective confinement was low as compared to the 20 percent of the population in "some states." The cited reference, (Brierton, Dec. 12, Pg. 320), was not responsive to any question, but was an observation that Brierton made in passing concerning the dynamics of prison life.

Earlier in his testimony, Brierton noted that there was

(Footnote continued on next page)

MAGISTRATE'S FINDINGS

Third, the general "wolfing" and cat-calls of aggressive black inmates stationed around the compound during the initial periods of incarceration when new inmates were transferred to GCI (particularly the smaller, younger and at least physically more vulnerable white inmates) would suggest, in combination with other factors, that sexual pressures were severe. The corroborative description of these inmate experiences to Dr. Swanson when he interviewed the individual Plaintiffs incarcerated in institutions in different parts of the State prior to the trial enhances the credibility of their individual recollections. The Court found that the events did take place.

DEFENDANTS' OBJECTIONS

The Magistrate's reliance upon Swanson's testimony as confirming that certain specific incidents occurred is ill-founded. Swanson specifically disclaimed any intention of confirming the inmate Plaintiffs' specific complaints.

ANALYSIS

77. The Defendants have taken out of context the answers given by Dr. Swanson on cross-examination. The Magistrate in this finding merely noted that the offering by the inmates of similar, separate recollections of conditions at GCI enhanced the credibility of those recommendations. This bolstering of the credibility of the Plaintiffs' case is discussed at length in ¶197 of the Magistrate's Report.

(Footnote 29/ continued from previous page)

nothing in one inspection report about GCI "to indicate to me that it was any worse than the majority of the prisons in the country." (Brierton, Dec. 12, Pg. 253). Counsel for the Plaintiff moved to strike the remark because of the absence of any foundation as regards Brierton's familiarity with other prisons. The court denied the motion, but noted that it had "some reservation about the probative thrust of the comparative statement." (Ibid)

45. ¶178

MAGISTRATE'S FINDINGS

Fourth, more overt signs of sexual activities, some consensual, further provide an indication of assaultive rape conduct. Sheets hung from the bunks; inmates moaning in their bunks; the showing of pornographic movies in a trailer in which "cries and moaning" of inmates were heard, apparently are all part of the ritual at GCI.

DEFENDANTS' OBJECTIONS

The suggestion that the hanging of sheets or towels is a definite sign of sexual activities ignores the many non-sexually related reasons that an inmate might have for screening his bunk. Moaning by an inmate in his bunk might be indicative of a number of things besides homosexual activity--from indigestion to self abuse. Most importantly, there was no evidence that TURNER ever heard or had occasion to hear such moaning. Nor did he see sheets or towels hung on beds. The movies were selected not by TURNER but by the Athletic Director.

ANALYSIS

78. The Defendants' exceptions are argumentative, not factual. Defendants' suggestion that it was the Athletic Director of GCI and not TURNER who selected the pornographic movies is equally argumentative.

46. ¶179

MAGISTRATE'S FINDINGS

Fifth, some rapes, in fact, were reported; although in the case of Plaintiffs Aldred and Saunders, Defendant Turner apparently was not made aware of these facts. Plaintiff Harper's reporting and subsequent meeting with Turner is discussed elsewhere.

DEFENDANTS' OBJECTIONS

The Plaintiffs adduced no evidence that any of their alleged assaults were reported to TURNER except for the case of Harper, whose testimony is unreliable.

ANALYSIS

79. That Defendant TURNER oversaw a system in which none of the rapes reported to his subordinates were then reported to him -- notwithstanding the indica that such rapes were occurring -- is precisely one of the foundational underpinnings of liability. The Defendants' exception is not exculpatory. The reliability of Plaintiff Harper was such that Lt. Peters chose to use him as a witness in a subsequent criminal prosecution. (Peters, Dec. 12, Pg. 411-12)

47. ¶180

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

48. ¶181

MAGISTRATE'S FINDINGS

See ¶64, Analysis, supra.

DEFENDANTS' OBJECTIONS

Se ¶64, supra.

49. ¶182

MAGISTRATE'S FINDINGS

No process or procedure was utilized to insure the full investigation of the possibility that rape had occurred. (Investigative procedures not used were: polygraphs of victims and assailants; rectal exams; psychiatric/psychological exams of victims; thorough interviews with victims by trained investigators.) Neither Peters nor Turner ever talked with two of the Plaintiffs who reported being raped.

DEFENDANTS' OBJECTIONS

No evidence that the rapes of Aldred and Saunders were reported to Peters or Turner. All procedures mentioned by Plaintiffs, except polygraphs were utilized.

ANALYSIS

82. See discussion supra, Analysis, ¶64, 79. It is noteworthy that there is no citation to the record for the statements attributed to Lt. Peters concerning what procedures "were used."

50. ¶83

MAGISTRATE'S FINDINGS

As previously noted during the entire Turner administration, Defendant Turner and Lt. Peters could recall only one rape incident ever prosecuted. Other areas of criminal activity within the prison met with a similar fate. During Turner's administration no State prosecution was ever initiated for any weapons possession by any inmate at GCI.

DEFENDANTS' OBJECTIONS

Peters testified that he could recall only one successful prosecution in 1984 and was unable to say whether there were prosecutions in prior years or not. Even if there were only one prosecution, this would not establish anything against Turner since only 5 alleged incidents were reported. Nothing in respect to these 5 reports was put into evidence. Peters recalled at least one weapon possession prosecution and inmates were frequently charged with such offenses in the internal disciplinary process.

ANALYSIS

83. See discussion supra, Analysis, ¶55, 66.

51. ¶84

MAGISTRATE'S FINDINGS

The Court finds that the atmosphere that existed at GCI during the tenure of Defendant Turner was one in which inmates bent on rapes and other expressions of violence roamed the compound with impunity. It was an atmosphere fostered by Turner's refusal to seek assistance from outside federal and state prose-

DEFENDANTS' OBJECTIONS

The statements that inmates roamed GCI bent on rape and violence and that Turner did not seek assistance from State investigators are without support.

cutor and investigators (e.g., prison inspectors, sheriff's deputies, State Attorney's investigators, federal officials empowered to enforce 18 U.S.C §241, etc.).

ANALYSIS

84. As to whether the inmates at GCI "roamed" the compound, the pass procedure for inmates was instituted by Defendant Music, who replaced Defendant Turner. (Music, Dec. 11, Pg. 145) Prior to that, inmate movements from one area to another were found by the prison inspector's office to be not properly controlled and supervised by staff. (P.Ex. 6, Pg. 8) As to whether they did so with impunity, see, supra, Analysis, ¶56. The citation to the statute imposing criminal penalties for violations of one's civil rights was miscited because of a typographical error: the correct citation is 18 U.S.C. 241, et. seq., not 18 U.S.C. § 1241, et. seq.

52. ¶85

MAGISTRATE'S FINDINGS

Peters conducted investigations at GCI only when directed by Superintendent Turner. Turner never requested an investigation of the rapes of David Aldred, Martin Saunders, or Billy Joe Harper. Each of the three Plaintiffs had reported to other prison authorities that they were raped; however, because there was no discernable process to inform the higher chain of command at GCI, neither Aldred nor Saunders were ever interviewed by Lt. Peters.

DEFENDANTS' OBJECTIONS

The reason that TURNER never ordered an investigation of the claims of Harper, Aldred and Saunders is that these claims were never reported to him - if they were reported to anyone.

ANALYSIS

86. See discussion supra, Analysis, ¶79.

53. ¶87

MAGISTRATE'S FINDINGS

Beyond the availability of the staff of the Inspector General's office, Superintendent Turner failed to avail himself to other possible investigative arms of the government. (e.g., Attorney General, State's Attorney, F.B.I.)

DEFENDANTS' OBJECTIONS

The listing of outside investigation sources is not supported by any indication in the record that any of these agencies even had jurisdiction to investigate inmate assaults. There was no evidence that GCI inspectors were not able to adequately investigate any matter brought to their attention. Outside of the Barrett incident there is no evidence of any need to investigate possible federal law violations.

ANALYSIS

87. The several points raised by the exceptions to this paragraph are discussed seriatim:

1. As to the ability of the office of the Attorney General to investigate matters within state government, the District Court is asked to take judicial notice of the Magistrate's having served previously as an Assistant Attorney General for the State of Florida. The District Court is further requested to take judicial notice of Article IV, 4(c), Florida Constitution, as revised in 1968 and subsequently amended ("The Attorney General shall be the chief state legal officer"), §944.52, Fla. Stat. ("The Department of Legal Affairs shall be

the legal adviser of the Department of Corrections") and §16.08, Fla. Stat. (1985) (attorney general superintend and directs several state attorneys).

2. As to the policy of the State Attorney's Office, the Defendants' synopsis of Lt. Peters testimony goes beyond what was allowed into evidence over objection, which was as follows:

They [the State Attorney's Office] required in order for them to file a case that we have at least one staff witness.

If we had a situation which was termed one on one, in other words, one inmate gets assaulted and said inmate A did it and inmate A says, no, I didn't do it, the State Attorney's Office almost always declined to file a case.

(Peters, Dec. 12, Pg. 380)

Although the Defendants attempted to elicit from Lt. Peters testimony about what prosecution policy had been articulated to him by the State Attorney's Office, such testimony was disallowed as hearsay. (Ibid., Pg. 387-90).

3. As to the ability of Lt. Peters to investigate homosexual rapes within the prison, the issue is not that he did not do so adequately--but that he did not do so at all, as regards either the named Plaintiffs who were raped or witness Larry Brown. (Ibid., Pg. 445-47). Indeed, Lt. Peters did not even know of the rapes. See, also, discussion, supra, Analysis, ¶ 64.

54. ¶188

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

55. ¶189

MAGISTRATE'S FINDINGS

During the Turner administration, inmates had free ingress and egress throughout the compound and dormitories. The Prison Inspector report of 1/19-21/83 notes that inmate movement from one location to another is not properly controlled or supervised.

DEFENDANTS' OBJECTIONS

The statement that inmates had free access over the compound is absolutely contrary to the Plaintiff's own documentary evidence. In one year there were 114 incidents of inmates prosecuted for being in "off limits" areas. From this there is no doubt that the administration did limit free access to the compound by inmates and they actively punished violators.

ANALYSIS

89. See, discussion, supra, Analysis, ¶184.

56. ¶190

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

57. ¶191

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

58. ¶192

MAGISTRATE'S FINDINGS

Objections previously addressed.

DEFENDANTS' OBJECTIONS

Objections previously addressed.

ANALYSIS

92. The fact that Defendant Music ordered the sheets and other obstructions removed from the bunks "for observation and

security", (Music, Dec. 11, Pg. 145) and that it did not require any money to do so, (Ibid.), illustrates the efficacy and facility of the change, as well as the ability of the superintendent to effect the change.

59. ¶193

MAGISTRATE'S FINDINGS

Notwithstanding these obstacles, Defendant Turner never initiated any administrative policy requiring officers to patrol the dormitory on a regular basis. Turner testified that he could not recall disciplining; suspending; or ever reprimanding an officer for failing to patrol the dormitory area. Lt. Peters recognized that it would take an officer approximately ten minutes to walk throughout the dorm and agreed that if a rape took more than ten minutes in the shower area, then an officer properly on patrol would walk into the area of the shower while the rape was in progress.

DEFENDANTS' OBJECTIONS

As discussed above, Turner specifically testified that the post orders required officers to patrol. Turner stated that he may well have disciplined guards for failure to patrol, but was not then able to mention specific instances.

ANALYSIS

93. While a post order might require a guard to patrol, the evidence indicates that the guards did not: Defendant Turner's inability to recall any disciplinary action being taken against guards for their failure to follow those orders supports inference that no guards were so disciplined. (Turner, Dec. 13, Pg. 732).

60. ¶194

MAGISTRATE'S FINDINGS

Following Turner's retirement, Superintendent, Music removed the

DEFENDANTS' OBJECTIONS

It should be noted that Music was only able to eliminate the

second bunk level in the middle row of the dormitories and restricted the placement of personal property, sheets and lockers on the bunks in the dormitories in order to eliminate the obstruction of the officer in the wicket.

middle row of double bunking in one dorm - D; contrary to the testimony of Swanson and implication in the Magistrate's Report, this modification required the allocation of substantial funding - \$7,000 in D dorm alone.

ANALYSIS

94. The \$7,000 expenditure was specifically for the purchase of new lockers, not for the rearrangement of the bunks. (Music, Dec. 11, Pg. 142).

61. ¶95

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

MAGISTRATE'S FINDINGS

Aggressive "wolves" appeared to be tolerated rather than transferred out of GCI; these assailants were allowed to recruit and prey on vulnerable inmates. Attentive review of the facts in considering two areas of evidence reveals Turner's deliberate indifference to his responsibility to protect vulnerable inmates.

DEFENDANTS' OBJECTIONS

Turner testified, and Swanson concurred, that during most of the time period at issue, the Florida prison system was at capacity; this severely limited the ability of superintendents to have transfers of inmates approved.

The documentary evidence more is replete with instances of swaps used to get rid of particular problems and transfer of others when those could be arranged. On cross-examination, Swanson admitted that his opinion as to the transfer of inmates was derived from the files of two inmates. As a consequence, he depended on a sample of two inmates out of thousands who were at GCI during this time period--a sample which he conceded had no validity. (Swanson, Dec. 3, P. 301-304).

Swanson was forced to retract his prior testimony and admit that swaps of problem inmates and transfer of "wolves" clearly did occur during Turner's administration.

ANALYSIS

96. Defendants would characterize counsel's cross-examination of Plaintiffs' expert, Dr. Richard Swanson, as a concession by the expert that either Defendant Turner did all that he could do to transfer out "wolves" and/or that Dr. Swanson had no basis for his testimony that Defendant Turner was not aggressive enough in transferring them out. An examination of Swanson's cited testimony, reveals techniques used in one aspect of Swanson's investigation (Swanson, Pg. 301-304). Among those techniques was an interview with Lt. Peters, the institutional investigator whom Dr. Swanson quoted as offering that Defendant Turner "did not seem to see this kind of inmate as a problem in the institution." (Ibid., Pg. 134). See, ¶97, Findings. This comment was neither denied nor rebuked by Peters.

62. ¶97

MAGISTRATE'S FINDINGS

In his short stay at GCI, Jones shipped out six busloads of problem inmates. In each of his first six months as Superintendent, Music effectuated-monthly-five negative transfers (a rejection of an inmate to GCI.) These efforts were not made by Turner. Peters opined that Turner did not

DEFENDANTS' OBJECTIONS

The six busloads of problem inmates shipped out by Jones actually totaled about 40-45 altogether. "Problem inmates included both "wolves" and those seeking protective confinement (e.g., "sheep".) The statement that a negative transfer is a rejection of an inmate is

see inmate assailants to be problems.

false. As Music testified, he, to, had difficulties transferring out of GCI. The "opinion" of Peters was the second-hand relation of Swanson his recollection of a conversatioin with Peters.

ANALYSIS

97. Except for the initial contention that the six busloads of problem inmates transferred out of GCI by Acting Superintendent Jones totalled about 40 to 45 inmates, with which the Plaintiffs have no disagreement, the remaining portions of the exceptions to this Finding either are not supported by the cited sections of the record or are quoted out of context.

For example, Dr. Swanson, the Plaintiffs' expert, is quoted as saying that "'[p]roblem inmates include both 'wolves' and those seeking protective confinement or 'sheep.'" The portion of the transcript to which the Defendants refer includes this exchange:

Q. And in fact, if an institution has a wolf that it wants to get rid of, it has first got to find another institution that wants to take it, if there is going to be a swap?

A. That's correct.

Q. And you suggested that GCI should not accept wolves or sheep?

A. Wolves and sheep.

(Swanson, Der. 4, Pg. 374)

Whether the seeking of a negative transfer constitutes the "rejection" of an inmate by the superintendent is nothing more than a semantic quibble. The six-page segment of

Superintendent Music's testimony cited as support for the proposition that a superintendent "can only subsequently seek a transfer with the approval of Tallahassee," simply does not say that: what it does say is that a superintendent may recommend a transfer. (Music, Dec. 11, Pg. 82) that recommendation must then have approval from the central office. (Ibid., Pg. 83). When an inmate is accused of having done something wrong, the superintendent tries to move him to another prison but the inmate can be moved only if a bed is available at the prison to which he is to be transferred. (Ibid., Pg. 83-84).

Superintendents sometimes use what they call a "swap-off"-a trade they arrange between themselves which must then be approved in Tallahassee. (Ibid., Pg. 86). There have been occasions, although no number was specified, when Tallahassee did not approve such a swap. (Ibid.)

As to Music's success in arranging transfers, he admitted being "less successful" now than he had been initially. (Ibid., Pg. 162). There is, however, no testimony within the cited portions of the record in which Music either acknowledged the "same problems" as Defendant Turner, or said that he "has inmates whom he has been waiting for months to have their transfers approved due to lack of space in other institutions." (Pg. 40, Def. Obj.)

Plaintiffs do not disagree with the Defendants' assertion that Music, upon his arrival on the scene, transferred out both "wolves" and "sheep". If anything, however, such a transfer underscores Defendant Turner's failure to relocate persons who

had been so victimized at GCI that they could only exist in protective confinement. For example, it was not until after they joined as named Plaintiffs in the instant lawsuit that Plaintiffs Martin Saunders and Edwin Johnson were ordered transferred--by a prison inspector rather than upon the recommendation of Defendant Turner. (Saunders, Dec. 4, Pg. 576), (Johnson, Dec. 6, Pg. 884).

Defendants suggest that Lt. Peter's testimony "indicated several instances where problem inmates had been transferred under Turner," (Pg. 40, Def. Obj.) and that such testimony ameliorated the frankly uncomplimentary characterization that Peters expressed to Dr. Swanson--which is classically admissible and credible testimony under F.R.E. 801(d) (2)(D) (Admission against interest of an agent of a party-appointment). The cited portions of the record show that Lt. Peters recalled that one "wolf" had been transferred to Florida State Prison during Defendant Turner's entire eight year reign as Superintendent of GCI. (Peters, Dec. 6, Pg. 398) The testimony cited at Page 467 of Peters has nothing to do with transfers.

63. ¶198

MAGISTRATE'S FINDINGS

A more empirical review of three known inmate "wolf-assailants" is equally informative.

The Magistrate then reviewed the failure of Turner to adhere to his classification committee's decision to transfer Larry Pryor.

DEFENDANTS' OBJECTIONS

Authorization to keep Pryor was given by Raymond Snell, classification officer, not Turner. Music did not transfer Pryor because he was a "wolf" but because he assaulted a staff member.

ANALYSIS

98. Refer, infra, Analysis ¶ 100.

64. ¶199

MAGISTRATE'S FINDINGS

The second assailant, Willie Dock, was transferred out of GCI on September 6, 1984 for "management and security reasons." This occurred only one month after interim Superintendent Ron Jones replaced R.V. Turner. Just several months earlier in March, 1984, Willie Dock participated in the gang-rape of Ronald Durrance.

DEFENDANTS' OBJECTIONS

In respect to Willie Dock, whom Durrance claims to have been raped by on March 17, 1984, the Plaintiffs' own exhibit reveals that Dock was in administrative confinement from March 14, 1984, until March 20, 1984.

ANALYSIS

99. Refer, infra, ¶ 100.

65. ¶100

MAGISTRATE'S FINDINGS

The third assailant, Levi Fisher, was involved in homosexual activities with young white males. Lt. Peters testified that Fisher had assaulted other inmates as well and knew Fisher to be a wolf. Nonetheless, Fisher was left in the D-Dorm and raped Billie Joe Harper. (Peters also acknowledged that he knew that Dock and Bone, who raped Ronald Durrance, were wolves).

DEFENDANTS' OBJECTIONS

Peters actually testified that Fisher assaulted only one inmate and as a result was transferred by Turner to FSP. There was no evidence that Fisher was left in D-dorm to further rape Harper, Peters never described Dock as a wolf. Dock's record shows he was not a serious problem for Turner. Moreover, the fact that the administration learned an inmate was a wolf does not mean the fact was known through his stay at GCI.

ANALYSIS

100. Defendants appear to have combined their exceptions to ¶98, ¶99 and ¶100. Plaintiffs will respond in that order.

In addressing the issues of Turner's culpability vis-a-vis the Failure to transfer out Larry Pryor, Defendants ascribe responsibility to the classification team officer who authorized the teletype which cancelled the transfer request. Plaintiffs submit that it defies logic to suggest that subordinates at GCI would have unilaterally cancelled a transfer approved by Defendant Turner. (P.Ex. 6, Flap B.) Motivation for the summary transfer of Pryor by Defendant Music is established by the fact Pryor was a wolf, etched into the record by Defendants' witness, Lt. Peters (Q. "Well, is Larry Pryor a wolf?") - (A. "I would say so.") (Peters, Dec. 12, Pg. 413).

As to Willie Dock, it is significant that the Defendants do not challenge any of the Magistrate's Findings concerning the timing of his transfer, but insist instead that one of the Plaintiffs' exhibits shows that Willie Dock was in administrative confinement on March 17, 1984 and therefore could not have raped Plaintiff Ronald Durrance that night. Durrance, who identified March 17, 1984 as the night of his rape (Durrance, Dec. 4, Pg. 444) most probably was mistaken about the exact date. For the District Court may take judicial notice that March 17, 1984 was a Saturday. Durrance testified that he went to work in the auto body and paint shop the morning after the rape (Ibid., Pg. 470), and remained working throughout the forenoon, (Ibid., Pg. 473), then failed to report to the utility squad work detail that afternoon.

(Ibid., Pg. 474). Such activities would have been unlikely for a Sunday morning, March 18, 1984.

As to ¶100, the Magistrate based his finding that inmate-wolf Levi Fisher had been involved in homosexual activities with young white males upon, among other evidence, testimony of the Defendants' witness, Lt. Peters, that "Mr. Fisher was engaged in homosexual activities with young white inmates . . ." (Peters, Pg. 396). The Defendants are correct that Lt. Peters only identified one of the men who raped Plaintiff Durrance, as a known "wolf" ("Bone"); Peters said he did not know anything about Willie Dock.

66. ¶101

MAGISTRATE'S FINDINGS

Hard-core pornographic video movies showing explicit acts of intercourse and anal penetration were shown on a regular basis at GCI. The movies were a trap. They were unsupervised. Sounds of inmates screaming and crying could be heard from the trailer. Plaintiff Bronson was forced to masturbate an assailant at knife point in the movie trailer.

DEFENDANTS' OBJECTIONS

Swanson, while he initially referred to the movies as X-rated (he later admitted he had no expertise in movie ratings) never described them as "hard-core" and he most certainly never stated that they depicted anal penetration. It is noteworthy that none of the inmate Plaintiffs were sexually assaulted in the trailer where the movies were shown.

ANALYSIS

101. Dr. Swanson testified that the movies shown at GCI had been described to him as "involving depiction of the act of intercourse, penetration, et cetera." (Swanson, Dec. 4, Pg. 376). Graphic depictions of the movies also appear in the testimony of Plaintiffs Michael Gordon, (Gordon, Dec. 6, Pg.

905) ("triple-X . . . guys having sex with one another"); and Steve H. Bronson (Bronson, Dec. 5, Pg. 691) ("It was a pornographic movie, and I say it was pornographic because it's very explicit sexual scenes of anal, vaginal and oral sex being shown.")

Defendants contend that Plaintiffs have made a "transparent effort at trying to connect the movies to the lawsuit." No such "transparent" effort is required: Plaintiffs' expert, Dr. Glenn Caddy, testified that "under no circumstances would [screening movies depicting anal and/or vaginal penetration] do anything other than maximize the possibility of sexual and other violence." (Caddy, Dec. 10, Pg. 1267).

67. ¶102

MAGISTRATE'S FINDINGS

While Defendants' witness, Inspector Brierton, was apparently non-committal as to whether he would permit video pornographic movies to be viewed which show explicit scenes of vaginal and anal penetration, he did not hesitate in stating that he would investigate a movie event if inmates were heard moaning, crying or screaming.

DEFENDANTS' OBJECTIONS

Brierton's testimony is incomplete. While Brierton did state that he had no clear opinion on the subject, he acknowledged that there were two respectable schools of thought in respect to the screening of movies of sexual content. One school regards such screening negatively; the other regards them as harmless when viewed by adults.

ANALYSIS

102. Defendants apparently did not challenge the testimony of their own witness, cited by the Magistrate, would not hesitate to investigate a movie event if inmates were heard moaning, crying or screaming. (Brierton, Dec. 12, Pgs. 339-40).

68. ¶103

MAGISTRATE'S FINDINGS

Limited financial resources however are not dispositive of Turner's potential liability in this case. Rather, the issue to be considered is whether "full compliance [of constitutional norms] is beyond the control of a particular individual and that individual can demonstrate that he accomplished what could be accomplished within the limits of his authority". Williams v. Bennett, 689 F.2d 1370, 1387-88 (11th Cir. 1982).

DEFENDANTS' OBJECTIONS

The law requires that the superintendent not, by intentional act or by reckless indifference to the rights of inmates, deprive those inmates of their rights. Cite, Estelle v. Gamble and Davidson v. Cannon.

ANALYSIS

103. A discussion of the application of Williams v. Bennett, 689 F.2d 1370, 1387-88 (11th Cir. 1982) in setting forth the legal standards for liability in this action is discussed at, infra, Conclusions of Law (Pgs. 95-101).

69. ¶104

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

70. ¶105

MAGISTRATE'S FINDINGS

(1) Turner failed to reprimand, discipline, or suspend staff officers who failed to carry out assignments such as regularly patrolling the dormitories, which would have minimized the opportunity for rapes and assaults at no cost.

DEFENDANTS' OBJECTIONS

(1) There was no evidence that Turner did fail to discipline staff for failure to patrol the dorms, and there was no proof either that guards on a regular basis failed to patrol or that Turner was made aware of any such failure.

(ii) Turner's overall laxity with his staff insofar as evidence of minimal or no control through reprimands, discipline or suspension allowed correctional officers to function with impunity in the face of wholesale extortions, free flow of contraband including weapons, drugs and alcohol, and permitted sexual activities such as the pornographic movies, thus creating a general lawless climate from which the natural and foreseeable consequences were wholesale inmate assaults and rapes.

(iii) Turner failed to control and direct his staff and inmate population to remove sheets, personal property, and lockers draped on inmates bunks in order to provide a clear unobstructed view for staff to monitor prisoner activities within the dormitories, at no cost. This failure led to an officers' obstructed view by the officers of the dormitory and showers where rapes of Plaintiffs occurred.

(iv) Turner's rather shocking failure, to promulgate and adhere at no cost, to any meaningful process to investigate allegations of rapes and inmate assaults led directly to staff not reporting allegations of rape through the chain of command; led to rapes never reported by line correctional officers; and further resulted in rapes not investigated with low cost procedures such as: (1) rectal examinations; (2) polygraphic tests; (3) psychiatric evaluations; and (4) in depth interviews.

(ii) There was no evidence of wholesale extortions committed by correctional officers, and no evidence that Turner was aware of any such extortions which he failed to investigate. Turner was aggressive in his duties in the relevant 5 years; he had criminal charges brought against 14 officers for introducing contraband, and against 12 visitors for the same offense. Swanson specifically found that when staff violated the rules, they were reprimanded.

(iii) Turner did direct his staff through post orders to forbid the draping of sheets in the dorm; there was no evidence that Turner was ever made aware on any occasion that the orders were not being carried out, and there is no evidence that he failed to discipline any officer for not carrying out the order.

(iv) The evidence actually showed that there was an established procedure for reporting and investigation sexual assault cases. There was not a preponderance of evidence that a single rape was uninvestigated by Turner through established procedure.

The consequences of these failures were that rapes remained uninvestigated and not prosecuted thus insuring a climate where an inmate assailant could sexually violate more vulnerable inmates with absolute impunity.

(v) Turner's failure, at no cost; to enlist the investigative and prosecutorial assistance of other branches of government to at least make a minimal effort to investigate and prosecute rapists and assaultive inmates. Available investigative resources never properly utilized include the ((i)) Palm Beach County State Attorney; ((ii)) Office of the Inspector General; ((iii)) the Attorney General; ((iv)) the Federal Bureau of Investigation.

(vi) Turner failure-unlike his successors--to impose inmate controls, at no cost, on prisoner movement throughout the compound and dormitories.

(vii) Turner's failure, at no cost, to transfer known assailants out of GCI through requests to DOC or through informal "swaps" or by merely adhering to classification decisions allowed Larry Pryor, for example, to remain at GCI at the times that he raped Saunders and stabbed Cobb, and also allowed Willie Dock to remain at GCI at the time he and others raped Durrance.

(v) There was no evidence that the State Attorney was not consulted on rapes. There was no evidence that the Inspector General had jurisdiction to investigate assaults, or the staffing to do so. There was no evidence that the rapes involved facts that would warrant prosecution under 18 U.S.C. Section 241. There was no showing that the institution inadequately investigated inmate assaults.

(vi) The evidence shows dozens of inmate prosecutions through disciplinary proceedings for violating the limitations on movements in the compound.

(vii) This conclusion also flies in the face of the uncontradicted evidence of a number of transfers and swaps which took place during Turner's administration and which involved problem prisoners. Further, Dock was in administrative confinement during the time that Durrance claimed to be raped. Pryor was given a second chance by the Classification Board; there is no specific evidence that Turner participated in the decision to give him this second chance.

ANALYSIS

105.

(1) See, discussions supra, Analysis, ¶83.

(ii) See, discussions supra, Analysis, ¶53. (The number of prosecutions of staff members), and ¶61 and ¶101, (The stationing of staff members and the showing of the sexually explicit films to inmates.)

(iii) There is no citation to any prior paragraph in which "as discussed above," Defendant Turner is shown to have instructed his staff members to keep sheets from being used as curtains between the bunks. Nor is Plaintiffs' counsel aware of any such testimony in the record.

(iv) The exception to this subparagraph is purely argumentative and devoid of any facts contradictory to the Magistrate's Findings. See. discussion, supra, Analysis, ¶s 64, 79 and 82.

(v) The exception to this subparagraph is purely argumentative and devoid of any facts contradictory to the Magistrate's Findings. See, discussions supra, Analysis, ¶37, concerning the contact with the state attorney's office and the failure of the institutional investigator to adequately investigate inmate assaults, supra, Analysis, ¶ 66, concerning the absence from the files of any incident reports concerning the five sexually related incidents revealed on the superintendent's monthly report.

(vi) See discussion, supra, Analysis, ¶ 84.

(vii) See discussion, supra, Analysis, ¶¶96-100.

71. ¶106

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

No objection.

No objection.

72. ¶ 107

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

No objection.

No objection.

73. ¶ 108

MAGISTRATE'S FINDINGS

DEFENDANTS' OBJECTIONS

Magistrate finds that allegations of Plaintiffs' rapes are true based upon not only Plaintiffs' testimony but also upon Plaintiffs' expert Dr. Swanson's multi-variate approach drawing upon essentially five independent sources of data including: 1) internal archival documents generated at GCI; 2) external documents generated from independent sources outside of GCI; 3) interviews of Plaintiffs and inmate witnesses; 4) interviews of correctional staff including Mr. Music, and 5) a general tour of GCI.

Contrary to the statement by the Magistrate, Swanson did not utilize his "multi-variate" approach to corroborate the inmate's individual claims of their assaults with the possible exception of Gordon and Johnson, where he found that their files contained incident reports on non-sexual assaults.

ANALYSIS

108. Dr. Swanson testified that he used a "multi-variable approach in terms of evaluating the institution." (Swanson, Dec. 2, Pg. 21) The Magistrate listed the sources that Dr.

Swanson reviewed. See, Pg. 49, n.28, Findings. The Defendants offer no citation to the record for their statement in exception to the Magistrate's Findings.

74. ¶109

MAGISTRATE'S FINDINGS

Dr. Caddy, with extensive experience in treating both rape victims and prisoners, corroborated Dr. Swanson's determination that Plaintiffs' rapes had occurred. Dr. Caddy: (1) interviewed Plaintiffs and inmate witnesses; (2) administered psychological tests; (3) reviewed DOC/GCI documents; (4) reviewed professional literature. His conclusions were based on Plaintiffs' separate emotional responses which reflected post-rape anxiety disorder. These responses could not artificially be constructed by Plaintiffs. Other factors considered were commonality and internal consistency of facts reported to him and normal inmate disinclination to report rape.

DEFENDANTS' OBJECTIONS

Caddy only interviewed Plaintiffs briefly the weekend before trial and had an associate administer tests. Caddy admitted his opinion was Dependent on the honesty of the inmates, who were less than candid. He was not able to address the issue of Harper's veracity and admitted some doubt as to Saunders credibility. Virtually all of the Plaintiffs had an underlying conduct disorder.

ANALYSIS

109. The Defendants' exceptions indicate nothing more than that the Magistrate accepted the testimony of Dr. Caddy, the Plaintiffs' expert, for what it was: the opinion of a forensic clinical psychologist who, based on rather extensive testing and interviewing of the Plaintiffs, offered his professional opinion and the factual grounds for that opinion. The Defendants offer no facts to contradict the Magistrate's Findings, but, essentially, challenge the inferences drawn from

and the weight assigned to Dr. Caddy's testimony by the Magistrate as the trier of fact.

75. ¶110

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

76. ¶111

MAGISTRATE'S FINDINGS

In the instant case, three of the five sexual assaults upon the Plaintiffs were reported by the victims, but simply were not investigated by the correctional officials. The two inmates who did not report their assaults--the raped Durrance and the abused Bronson--testified credibly as to their reasons for not reporting.

DEFENDANTS' OBJECTIONS

The Magistrate properly notes that both Durrance and Bronson failed to report a rape to any prison official. His conclusion that the other three--Harper, Aldred and Saunders--reported that they were assaulted is based only on their testimony.

ANALYSIS

111. Defendants' exception to the Magistrate's Findings are purely argumentative. Additionally, Plaintiffs Martin Saunders, David Aldred and Billy Joe Harper testified that they did report their rapes is un rebutted and, in the case of Harper, corroborated by former inmate, Gregory Zatler. (Zatler, Dec. 5, Pg. 799-95).

77. ¶112

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

78. ¶1113

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

79. ¶1114

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

80. ¶1115

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

81. ¶1116

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

82. ¶1117

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

83. ¶1118

MAGISTRATE'S FINDINGS

Due to the very nature of a person act of violence, the rapes that occurred are not isolated incidents of sexual conduct, but rather flow directly from the lawless prison conditions at GCI including Acts of inmate assaults by and upon correctional officers and an environment of free-flowing illegal activity.

DEFENDANTS' OBJECTIONS

In respect to the assaults upon inmates by officers, it has previously been noted that there was only one improper use of force over the relevant 5-year period. In respect to inmate assaults on officers, the Plaintiffs offered no comparative evaluation which might indicate that the number of such incidents at GCI was unusually high.

ANALYSIS

118. Defendants' exception to the Magistrate's Findings are purely argumentative and are not supported by citations to the record.

84. ¶119

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection

85. ¶120

MAGISTRATE'S FINDINGS

No objection.

DEFENDANTS' OBJECTIONS

No objection.

86. ¶121

MAGISTRATE'S FINDINGS

121. Additional factors underscore the injury and violation of the Plaintiffs' rapes.

a. Anal--as opposed to vaginal rape--has the "potential in some respects to do more physiological damage than vaginal rape."
(Caddy, Dec. 10, Pg. 1254)
Hence, the necessity, for rectal examinations is a standard process utilized in investigating anal rapes. This did not occur at GCI even though the clinic was equipped with rape kits by the Palm Beach County Sheriff's Office.

121b-e. No objection.

DEFENDANTS' OBJECTIONS

121a. This paragraph reasserts the now refuted contention that rectal exams were not used at GCI.

121b-e. No objection.

ANALYSIS

121. See, discussion supra, Analysis, ¶64. Additionally, there is no citation to the record for the notion that two rape

reports were "retracted following medical examinations of the complaints.^{30/}

87. ¶122 - ¶129

MAGISTRATE'S FINDING

Plaintiff Aldred was found by Dr. Caddy to be suffering from post-traumatic stress disorder as a result of his rape by black inmates at GCI. When he arrived at GCI he received no orientation but instead was jeered at by 150-200 mostly black inmates, apparently claiming him for a sex partner. He was raped his second night at GCI.

While showering, Aldred was thrown face first to the floor, a knife held to his throat and raped for 15-20 minutes by several inmates. He could not see them but recognized his assailant's voice as belonging to a black.

Aldred reported his rape to the dorm officer and was told to return to his bunk. No aid was offered. At shift change he reported it again, and again received no assistance.

DEFENDANTS' OBJECTION

It is significant that although Aldred claimed to have told two dorm officers and a lieutenant that he had been raped, he could not remember the names of any of them.

Aldred did claim that he told the psychologist at Lake Butler a few weeks later "exactly what had happened" at GCI--meaning, that he had been raped (Aldred, Dec. 5, Pg. 827-828). Significantly, his medical records while containing a report from the psychologist at Lake Butler, make no mention of a report of rape.

Aldred had a long history of confinement in mental hospitals in his youth (Caddy, Dec. 9, Pg. 1167). Far from fitting the Magistrate's category of a weak, young white male, Aldred was a weight lifter who could easily handle 250-275 pounds (Aldred, Dec. 5, Pg. 826). He was serving a sentence for first degree murder and perjury--the

^{30/} The closest the record comes to supporting such a statement is in the testimony of a witness for Defendants, Lt. Lawson:

[I] would say approximately two have been reported to me, that would turn out later not to be rapes.

Q. And what was done when those rapes were reported to you?

A. These inmates were escorted to the medical department for examination.

The institution investigated, was notified, and he would notify other people, administrative and what not.

(Lawson, Dec. 13, Pg. 546).

The next day he reported the rape to a Lieutenant, again to no avail. Protective custody was refused by the Lieutenant. No written report of the rape was made by GCI.

latter crime having been committed against a police officer (Ibid., 823-824).

Aldred was later transferred to the Reception and Medical Center for dental surgery. He reported the rape to a psychologist who said nothing could be done. When he was informed that he would return to GCI, he slashed his wrist.

Upon arrival at GCI, he checked into PC and was transferred nine days later.

ANALYSIS

122-129. The Defendants' exceptions contain no facts, no citations to the record that call into question the Magistrate's Findings. Rather, the exceptions are argumentative and suggest that the Magistrate, as the trier of fact, misgauged the credibility of the Plaintiff as a witness. The Magistrate's Findings are painstakingly supported by the record which are reviewed in depth in his Findings.

88. ¶130 - ¶143

MAGISTRATE'S FINDING

Durrance, a strongly built man, revealed no difficulties at GCI prior to his rape. On March 17, 1984, Durrance was approached by a black inmate J.R., who wanted to speak with him. They went to J.R.'s bunk which was obscured from view by a blanket. When he stepped between the bunk, he was accosted by three inmates - Bull,

DEFENDANTS' OBJECTION

Durrance claimed he was raped on March 17, 1984, by several inmate including Willie Dock. Dock had been placed in adm'nistrative confinement on March 14, 1984, and released from administrative confinement on March 20, 1984.

It should also be noted that Durrance, like Aldred, did not fit

Dock and Bean, two of whom had knives. He was ordered to remain silent.

Durrance was taken to a shower area and raped repeatedly. He was reluctant to report the rape to Officer Dixon because he had between Dixon and inmates.

Durrance was too embarrassed to seek medical attention but sought protective custody without saying why. He was told it was full.

He refused to go to his assigned work in an attempt to be placed in confinement. He was eventually successful. After 15 days he was told he was assigned to D-Dorm, where there was a lot of pressure to engage in homosexual acts. He refused to go and was returned to confinement. While awaiting a hearing on his refusal to go to D-Dorm, Durrance told acting Major Barrett that he had a problem owing an inmate money, which was reduced to writing.

Notwithstanding his attempts to hide his rape, word followed him to Polk Correctional Institution where he again checked into protective confinement on the pretence of owing money.

At Hendry Correctional, one of his original assailants again threatened him and again he requested protective confinement.

Later, he was returned to GCI where he finally admitted being raped and was granted protective custody. He remained there until his transfer to Dade Correctional.

the Magistrate's profile of the victim group at GCI -- Durrance was physically strong and, in his nine years in the prison system, had, and, collected 25 disciplinary report in addition, he had belonged to an inmate gang at another prison. seen money and alcohol exchanged

Durrance's excuses for not reporting the alleged assault do not wash. In respect to his claim that he was fearful of blacks learning that he had been raped and thereby viewing him as vulnerable, it might be noted that if he were gang raped by a large group of blacks in a dormitory, he would certainly have expected that the fact would become known among the other prisoners. In respect to his claim that he was too embarrassed to report to the medical department for fear of being publicly viewed as a homosexual, it is perhaps sufficient to note that he has not been reluctant to broadcast his claim through the vehicle of this lawsuit to a substantial portion of the population of this State, including its prison population. If he felt any real embarrassment over a sexual assault, it is highly unlikely that he would have joined this suit.

It is apparent that Durrance, who apparently had financial problems with Dock and others, and who sought protective confinement on that basis, has after-the-fact attempted to convert that situation into an alleged sexual assault for the benefits accruing in this suit.

ANALYSIS

130-143. See, supra, Analysis of ¶¶ 122-129; See, also, supra, Analysis, ¶¶ 98, 99 and 100, concerning the date of Plaintiff Durrance's rape.

89. ¶144 - ¶149

MAGISTRATE'S FINDING

Steve Bronson, a white, bisexual transvestite arrived at GCI in November, 1981. Subsequent to his arrival he met a black gang leader named Mack who trafficked in protection, gambling, alcohol and homosexual prostitution. He met Mack while the two of them were in a trailer with others watching a videocassette recording that depicted vaginal and anal intercourse. Mack pushed a knife in Bronson's side and forced him to masturbate Mack.

In June, 1982, Mack demanded Bronson become one of his prostitutes. After he refused, he was waylaid by two men in Mack's company; a rag was stuffed in his mouth and the handle of a baseball bat was shoved up his rectum.

Bronson was warned that he would be killed if he reported the incident. He believed the threats. He had witnessed guards giving money to inmates, inmates fellating guards, Mack's buying drugs and alcohol from guards.

Bronson was scared to ask for protective confinement but finally did so by using the ruse that family problems instilled in him an urge to escape.

DEFENDANTS' OBJECTION

Bronson, an admitted homosexual prostitute who voluntarily sold his favors at other institutions, claimed that he was compelled to do so at GCI only by force. Like Durrance, he admitted that he never made any report of sexual assaults or harrasement while he was at GCI or for three years thereafter. During the intervening period, however, he was no stranger to litigation against the State, the DOC and its employees. It is therefore remarkable at the least that, if he had suffered the incidents of which he complains in this suit, that he remained silent for so many years.

ANALYSIS

144-149. See, supra, Analysis of ¶s 122-129..

90. ¶150-160

MAGISTRATE'S FINDINGS

On or about March, 1983, Saunders was using a small bathroom in the classification building. He was sitting on the commode with his trousers down when Roper and Pryor entered the room. The two told Saunders to keep his pants down, and that they were going to "get theirs." It is a very narrow bathroom and Saunders was directed to stand over the commode, facing the wall. As Roper lubricated his penis with Vaseline, Saunders attempted to bolt from the room, but was stopped and told that he would be killed if he tried again to escape. Roper entered Saunders. When Roper finished, Pryor followed.^{31/}

Lt. Peters, the institutional investigator, testified that the room was so small that Peters bumped his head against the opposite wall one way recently while sitting on the commode. Saunders described his position during the penetration as "looking over the toilet, my hands on the wall." The rapists, then, could have stood facing the commode much as a man would stand in

DEFENDANTS' OBJECTION

The Magistrate noted Peters' testimony that the bathroom in the classification building where Saunders claimed that both Pryor and Roper raped him was so narrow that person sitting on the toilet would hit his head against the wall if he leaned forward. The Magistrate went on to find that despite the narrowness of the room, the alleged assault could have occurred in it. This ignores the detailed description given by Music who measured the room and found it to be just over 4 feet square (51" x 54")--barely more than a broom closet--containing both a standard sink and toilet and having an inward opening door (Music, p. 113). In a room of that character, three people could not physically fit in, much less could two people force their way their way into such a confined space, close the door and undertake the alleged sexual assault as described by Saunders.

^{31/} Defendants' objections to ¶150-160 were limited to findings in ¶153 and footnote 48 thereto; the summary of findings is likewise limited.

front of it while urinating. In short, there is nothing in any of the testimony that is inconsistent with the conclusion that Martin Saunders was anally raped in the bathroom.

ANALYSIS

150-160. See, supra, Analysis, ¶¶ 122-129.

91. ¶¶161-168

MAGISTRATE'S FINDINGS

Department of Corrections reports show that Billy Joe Harper complained on several occasions of sexual assaults and had requested protective confinement for those and other reasons.

About two weeks after his arrival Harper was raped at knifepoint by inmate Fisher. Harper testified that he checked into protective confinement the morning after the rape with two other inmates, including Larry Turley. Turley told officers they were checking in to get away from Fisher.

About three days after checking in, Turner called them to the office. Former inmate Zatler, also at the meeting, testified he told Turner they were there because of Fisher. Harper told Turner that Fisher payed him. Turner said they were lying.

No documents show Harper or Zatler in protective custody in January 1982. However, records reflect that they were there together in February and March, 1982.

According to Dr. Caddy, who diagnosed Harper as suffering from an adjustment disorder, stated that his non-rape history

DEFENDANTS' OBJECTIONS

It is particularly significant in respect to his claim that he informed Turner that he had been raped by Levi Fisher to note that both Harper and the former inmate-witness, Zatler, claimed to be present at the time. Zatler, however, does not concur with Harper in what was told to Turner. Zatler states only that when he, Harper, and the others were asked by Turner why they were in confinement "...we told him, because of Fisher."

Nor is this the only inconsistency in Harper's testimony in the record. As even the Magistrate's Report concedes, Harper's story that he was raped two weeks after arrival at GCI and went into confinement the next day is not supported by his inmate record which shows that he did not seek confinement until almost two months after the time he claims to have been raped. Harper told Dr. Caddy that he went to Turner to tell him he had been raped; his testimony at trial, noted in the Report, was that Turner came to him while he was in PC. Harper's record contains several documents--noted in the Report--indicating that Harper on several occasions made reports that he was raped at other institutions; he now denies the reports. The reasons given by Harper for

did not bear on the legitimacy or veracity that Harper offered with respect to the matter of rape. Dr. Caddy stated that a person raped elsewhere and raped again at GCI would be in even more need of assistance.

seeking PC following transfer from GCI is also inconsistent.

Finally, contrary to the testimony of Swanson and finding of the Magistrate that inmates had difficulty gaining protective custody at GCI, Harper had no such difficulty.

ANALYSIS

161-168. See, supra, Analysis of ¶s 122-129.

92. ¶169 - ¶172

MAGISTRATE'S FINDINGS

Shortly after Johnson's arrival at GCI he was accosted and warned to "find you a daddy" or go into protective confinement.

Johnson informed his classification officer who advised him to fight or check into protective confinement. He chose confinement. He found conditions punitive and checked-out after two and one half months.

Shortly after checking out of protective custody, Johnson was assaulted twice. Because he was refused a dorm change, he checked back into protective custody for three days. He was again beaten and again returned to protective confinement.

Conditions in protective custody remained punitive, except inmates were allowed to go to the gym. During one gym trip he was hit on the head with a metal stool by an inmate in administrative confinement. He required five stitches and was hospitalized for two weeks.

DEFENDANTS' OBJECTIONS

Defendants did produce the report of the physical assault in which Johnson was injured. It indicates that Johnson started the fight and that Johnson's claim did not arise out of any climate of fear.

ANALYSIS

169-172. See, supra, Analysis, ¶¶ 122-129. As to the description of the incident given in the Disciplinary Report, (P.Ex. 25, Flap C), the Magistrate's having overlooked the disciplinary report is harmless error since it substantiates the version testified to by Plaintiff Johnson (i.e., that Johnson was hit over the head with a metal stool by Michael Lane.) Furthermore, the explanation for the fight attributed to Michael Lane, the assailant, irrelevant to the issues of this cause.^{32/}

93. ¶173 - ¶177

MAGISTRATE'S FINDINGS

In February, 1981, Epprecht was assaulted by two black inmates who wished to rob him. They hit him in the left side of his face with a pipe.

Epprecht did not identify his assailants to officials because he felt it was safer not to "snitch". Superintendent Turner, however, was not one of the officials who inquired of Epprecht. Epprecht felt that inmates at other Florida prisons he had been at could get help more quickly than at GCI.

At the time of the attack, Turner reported, "we are currently holding 35 positions vacant at this institution to attempt to keep our salary allocation in good shape."

DEFENDANTS' OBJECTIONS

Plaintiff Epprecht admitted that he never reported his alleged assault. Turner had no reason to investigate because no assault was reported. Staff vacancies occurred because of budget limitations.

^{32/} Additionally, it is hearsay within hearsay and inadmissible to prove the truth of the matter asserted despite the admissibility, as a public record, of the disciplinary report: no such exception is suggested by Defendants for the "testimony" of Lane, who, it should be noted, is within the custody of the Department of Corrections and, therefore, was available for testimony had the Defendants chosen to call him.

ANALYSIS

173-177. See, supra, Analysis, ¶¶ 122-129.

94. ¶178 - ¶180

MAGISTRATE'S FINDINGS

Cobb, a black inmate, was stabbed in the head and the arm by inmate Larry Pryor. Pryor was operating under the protection of Lt. William Barrett. Pryor's prison file reveals repeated documentation of his assaultive nature. An in-house classification team recommended his transfer for security reasons months before his assault on Cobb.

DEFENDANTS' OBJECTIONS

The Report ignores the cause of the fight between Cobb and Pryor. Cobb--whose assaultive conduct far exceeded that of Pryor--was actively harrassing Pryor's prison mate.

ANALYSIS

178-180. See, supra, Analysis, ¶¶ 122-129.

95. ¶181 - ¶183

MAGISTRATE'S FINDINGS

Gordon was assaulted three times at GCI. He was knocked unconscious once. His buttocks were burned by inmates who set his underwear on fire. He was hit on the head with a pipe.

Gordon's reaction to life at GCI was such that he lost 100-150 pounds there and it was the only time during his life that he seriously contemplated suicide

Gordon overheard screams of homosexual rape, found himself in an environment where blacks controlled a camp where recreation centered on drugs,

DEFENDANTS' OBJECTIONS

While Gordon reported all three assaults he refused to reveal his assailants making resolution by the administration impossible. While Gordon denied it, another inmate testified he attended pornographic movies with his sex partner. Gordon's weight loss must be seen in context--he weighed 355 pounds prior to incarceration.

drinking and homosexuality.
The environment was anarchistic
and without constraints.

ANALYSIS

181-183. See, supra, Analysis, ¶¶ 122-129.

96. ¶184 - ¶188

MAGISTRATE'S FINDINGS

While La Marca was never raped or seriously injured, his complaints concern the lengths to which he had to go and conditions he had to endure to avoid such a fate.

He escaped and had six months added to his sentence to avoid death threats.

Homosexual solicitation and harassment occurred from the start of his confinement at GCI. When he reported the inmates to officials nothing was done. To the contrary, officials apparently reported to the inmates that La Marca was "snitching" on them.

La Marca was forced to use weapons to defend himself from homosexual attack.

La Marca finally checked into protective custody but found conditions there punitive.

DEFENDANTS' OBJECTIONS

La Marca never claimed to have been assaulted at GCI.

ANALYSIS

184-188. See, supra, Analysis, ¶¶ 122-129.

97. ¶189 - ¶195

MAGISTRATE'S FINDINGS

Larry Brown is the only witness currently at GCI. He does not seek damages, only declaratory and injunctive relief.

The day following his arrival he was raped at knifepoint five times. He reported the rape, despite warnings not to report it, but the officer seemed disinterested.

Four days later he was brought to Lt. Minor and requested protective confinement. It was granted after he gave a written statement.

Brown wrote repeatedly to Superintendent Music about the rape but received no response.

Brown received only a one-hour meeting with a GCI psychologist in response to his rape.

Lt. Peters made no initial investigation of the rape despite evidence that it was known to prison officials.

DEFENDANTS' OBJECTIONS

Brown's incident occurred well after the Turner administration. His claim that he was raped and reported it to Lt. Minor was refuted by inmate records and the testimony of Music. Brown did not seek PC but was given it because he was selling sexual favors to a large group of inmates. Brown concocted the rape as a cover for his activities.

ANALYSIS

189-195. See, supra, Analysis, ¶¶ 122-129.

99. ¶196 - ¶199

MAGISTRATE'S FINDINGS

Plaintiffs' credibility is enhanced because they did not come forward as a group. Rather, they were scattered

DEFENDANTS' OBJECTIONS

Plaintiffs' credibility was not enhanced because this did not initiate individual legal claims. To the contrary they were more likely

throughout Florida's prison system without the opportunities to converse with each other about their separate, individual experiences at GCI.

Moreover, there is a disincentive for rape victims to testify. Their demeanor on the witness stand reflected an obvious discomfort in publicly discussing their rapes. This discomfort was corroborated by the testimony of Plaintiffs' expert.

to fabricate a story by joining an already alleged claim by others who have set the scene. Concurrence by several inmates on several general topics was not unusual because they had been advised in advance of existing claims by Plaintiffs' counsels' investigator.

ANALYSIS

196. The Defendants' exception is argumentative and contains no citation to any evidence that would refute the Magistrate's Finding.

IV. CONCLUSIONS OF LAW

Plaintiffs discern, for the most part, Defendants' Objections to the Magistrate's 33-page "Conclusions of Law" to be a disagreement as to whether the record evidence supports the findings of facts which are in turn applied to and measured against the various legal standards in concluding liability, in contrast to a general disagreement with the Magistrate's articulation of the proper legal standards themselves.

Mindful that both parties have extensively reviewed the factual evidence in the submission to this Court, we find it unnecessary -- having already done so -- to once again explore the correctness of the Magistrate's factual findings as

supported by the record evidence. Our discussion of Defendants' perceived errors of the Magistrate's Conclusions of Law follows.

1. First, Defendants argue that Plaintiffs failed to prove and that the Magistrate overlooked the "affirmative link" required by the Eleventh Circuit in Williams v. Bennett, 689 F.2d 1370, 1383-84 (11th Cir. 1982). Essentially, Defendants maintain that the Magistrate incorrectly determined that "the conditions at GCI, whatever they might have been, caused the injuries to the particular Plaintiffs at the particular times of each occurrence." (Pg. 56, Def. Obj.)

Defendants do not quarrel with the Magistrate's application of the controlling authority of Williams v. Bennett, supra, as to this proposition.^{33/}

The record evidence is clear, indeed we submit overwhelming, that "the exacting causation link required by Williams v. Bennett, has been amply proven and documented." ¶226, Findings. Here, in summary format, the Magistrate relied

^{33/} The Magistrate's extensive application of the "affirmative link" or "causation" principle as articulated by our Circuit in William v. Bennett, supra, 689 F.2d 1383-84 are recited at ¶¶ 113-116, of the Magistrates Decision. As stated, Defendants do not disagree that these legal standards control.

upon a history of factual findings previously made.^{34/}

2. Second, the Defendants suggest that the Magistrate erred in failing to consider the fiscal limitations of Defendant Turner. (Pg. 57, Def. Obj.) (Failure to cite a full passage of Williams v. Bennett, as "incomplete and misleading").

Defendants then criticized the Magistrate for identifying various practices and omissions of Turner which the Court was "convinced would have minimized or eliminated the likelihood of rape and assaults of the various Plaintiffs at GCI", which Defendants argue "do not demonstrate any malicious intention." (Emphasis in original) (Pgs. 57-58, Def. Obj.)

The Magistrate's review of the facts indicating that conditions were within Turner's financial and administrative control are

34/ The Magistrate concluded:

234. [sic][¶224, Pg. 113] Of necessity, the Court in detail has reviewed the context of the general operational policies, practices, conditions and events existing at the general time Plaintiffs' claims arose, supra, ¶¶36-105; traced Defendant Turner's knowledge of these matters which the Court has concluded reflect a "pervasive risk of harm," supra, ¶¶208-211; and reviewed these conditions demonstrating that they were all within a prudent administrator's administrative and financial control.

225. Having faithfully adhered to our Circuit's guideline of resolving the causation issue which "necessarily entails a very individualized approach, taking into account the duties, discretion, and means of each Defendant," Williams v. Bennett, supra, this court in addition has traced the factual details of each Plaintiff which led to their respective injury.

226. Turner's failure to properly and prudently manage GCI matters within his administrative and financial control is a direct cause of Plaintiffs' injuries. The exacting causation link required by Williams v. Bennett has been amply proven and documented.

extensive, and, we submit, persuasive.^{35/}

The Magistrate then identified a "series of administrative areas within Turner's managerial control which also impose no fiscal limitations as evidenced in part by corrective measures taken by Turner's successors." (§215, Findings).^{36/} The question is not--as Defendants advance--whether these "administrative areas within Turner's management control" are to be considered individually and in isolation in order to suggest a degree of

^{35/} As to this principle, once again the Magistrate adhered to our Circuit's assessment of the proper legal standard as recognized in Williams v. Bennett, supra, 689 F.2d at 1381-88. The Magistrate guided its analysis of the proper legal standards as follows at §212:

If full compliance with accepted constitutional practices "is beyond the control of a particular individual and that individual can demonstrate that he accomplished what could be accomplished within the limits of his authority, then he cannot be said to have acted with callous indifference." Williams v. Bennett, supra, 689 F.2d at 1387-1388 (emphasis added) citing Scheuer v. Rhodes, 416 U.S. 232, 247 (1974); Slavin v. Gurry, 574 F.2d 1256, 1262 (5th Cir. 1978). See also, e.g., Chestnut v. City of Quincy, 513 F.2d 91 (5th Cir. 1975); Madison v. Gerstein, 440 F.2d 338 (5th Cir. 1971).

^{36/} The Magistrate found at §215:

The Court has identified a series of administrative areas within Turner's managerial control which also impose no fiscal limitations as evidenced in part by corrective measures taken by Turners successors. These includes: (1) improper and inadequate staff training evidenced by gross problems with officers' handling of weapons, carried to the extreme in the Barrett incident, supra, §46; (2) a staff out of control who did not report rapes,

(Footnote continued on next page.)

"malicious intention."

Rather, we submit the proper inquiry is, whether the administrative areas, when considered collectively and in the context of their causal relation to the abuses found to be perpetrated upon Plaintiffs, are within the "control" of Turner so as to invoke constitutional liability. The Magistrate has concluded in the affirmative. Bennett, and its progeny support such a finding.

3. Third, to the extent that Defendants argue, that many of the cases relied upon by the Magistrate are based upon mere negligence, (Pg. 58, Def. Obj.), which was just recently repudiated as a basis for constitutional liability by the

(Footnote 36/ continued from previous page.)

assaults, and illegal activities up through the chain of command, supra, ¶66; (3) the failure to supervise staff and administer measures which would "minimize the chance of error and maximize the full satisfaction of constitutional protection," Bryan v. Jones, supra, in (i) not stationing officers to patrol throughout the dormitories, particularly at night, and in (ii) permitting the obscuring of vision of officers in the wicket by allowing inmates to hang sheets, blankets, their personal property, lockers and other materials resulting in the impossibility for officers to maximize the protection of inmates in the dormitory; (4) a shocking failure to employ any standard procedure to investigate incidents of alleged rapes, supra, ¶82; (5) the failure to request outside investigative or prosecutorial assistance to otherwise make some even minimal attempt to deter rapings and assaults, supra, ¶84; (6) the failure to provide inmate movement controls; thus, reducing the casual egress and ingress of aggressive assailant wolves within the open dormitories, supra, ¶89; and (7) the failure to transfer known assailants or inmates who should have been known to be assailants out of GCI, supra, ¶86.

Supreme Court, Daniels v. Williams, ___ U.S. ___, 88 L.Ed 2d 602 (January 21, 1986); Davidson v. Cannon, ___ U.S. ___, 88 L. Ed. 2d 677 (January 21, 1986), or otherwise quarrel with the Magistrate's reliance upon other cases which are factually "readily distinguishable," (Pg. 59, Def. Obj.); (Id., Pg. 59-63), a simple and fair reading of the Magistrate's Conclusions of Law reflect that these conclusions are not only premised upon the general standard of "reckless or callous indifference"--not mere negligence, See cases cited at ¶s 206-07, Findings--but specifically founded upon our Circuit's controlling decision in Williams v. Bennett, supra. See ¶s 206-07, 212-13, 219, 223-26, 227-30.^{37/}

37/ Post-Bennett decisions of our Circuit continue to apply the same "Bennett" principles. See, e.g., Wilson v. Attaway, 757 F.2d 1227, 1241 (11th Cir. 1985) holding that "personal participation is not required for liability for a Civil Rights deprivation" [citation omitted] but requiring "some causal correction between the actions of the supervisory official and the alleged deprivation." [citation omitted]; and Grandison v. Smith, 779 F.2d 637, 643 (11th Cir. 1980) ("Nonfeasance as well as misfeasance will support a Section 1983 claim" [citation omitted]).

Finally, of interest, although Defendants have concluded that Roberts v. Williams, 450 F.2d 819 (5th Cir. 1972) "is of dubious precedential value", (Pg. 58, Def. Obj.) the Eleventh Circuit apparently disagrees. In Wilson v. Attaway, supra, 757 F.2d at 1227 our Circuit has continued to rely upon Roberts. It stated:

[p]ersonal participation is not required for liability for a civil rights deprivation. Henzel v. Gerstein, 608 F.2d. 654, 658 (5th Cir. 1979); Sims v. Adams, 537 F.2d. 829, 831 (5th Cir. 1976). But see McLaughlin v. City of LaGrange, 662, F.2d. 1385,

(Footnote continued on next page.)

Additionally, while Defendants may quibble with the notion that other cases relied upon by the Magistrate are factually dissimilar to this lawsuit, they extract no legal principle from those cases which they contend erroneously influenced the findings of the Court.

4. Fourth, Defendants' more general objections as to: (1) Turner's Knowledge of Pervasive Risk of Harm; (2) Series of Isolated Incidents; (3) Injunctive Relief; and (4) Breach of Duty Imposed By State Law (Pg. 63-66, Def. Obj.) are all essentially disagreements of fact which have been previously reviewed extensively and are each set forth in detail in the Magistrate's Findings: See, (1) Turner's Knowledge of Pervasive Risk of Harm, (¶s 208-211, Findings), (2) Not a Series of Isolated Incidents, Ibid., (¶s 216-217); (3) Injunctive Relief, (Ibid., ¶256-260); and (4) Breach of Duty Imposed by State Law, (Ibid., ¶s 219-222).^{38/}

(Footnote 37/ continued from previous page.)

1388 (11th Cir. 1981) ("personal involvement," custom, or policy required), cert. denied, 456 U.S. 979, (1982). Rather there must be some causal connection between the actions of the supervisory official and the alleged deprivation. Henzel, 608 F.2d at 658; Sims, 537 F.2d at 831; Roberts v. Williams, 456 F.2d 819, 831 (5th Cir. 1972), cert. denied, 404 U.S. 866, (1971). The causal connection may be established where a history of widespread prior abuse puts the official on notice of the need for improved training or supervision. Bowen v. Watkins, 669 F.2d 979, 988 (5th Cir. 1982); Henzel, 608 F.2d at 658 n. 5; cf. Sims, 537 F.2d at 831-32; Roberts, 456 F.2d at 831.

38/ Defendants are correct in their objection to the imposition of any constitutional liability for a breach of duty imposed by the State Law pursuant to 20.315(1)(c) Fla. Stat. (1983) since that statute expressly applies, at least by its literal language, only to the Department of Corrections and not to the individual superintendents.

Deletion of this single element of liability does not, of course, undo the other legal conclusions expressed in the Magistrate's extensive Conclusions of Law nor does it alter Turner's overall liability for damages.

V. CONCLUSION

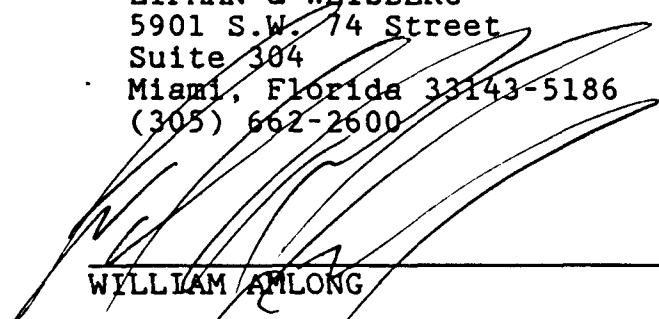
For the reasons stated, Defendants Objections to the Magistrate's Decision should be denied. This Court should enter an appropriate Order adopting the Magistrate's Report and Recommendations and schedule an additional hearing to effectuate the relief outlined in the Magistrate's Findings.

Respectfully submitted,



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DATED: 30 May, 1986
0226L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

ANTHONY LA MARCA, et al.,

Plaintiffs,

vs.

CASE NO. 82-8196-CIV-PAINE

R. V. TURNER, et al.,

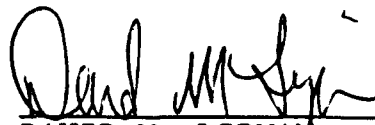
Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of
Plaintiffs' Reply Memorandum to Defendants' Response and
Objection to Magistrate's Report has been mailed to the
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DATED: 2 June, 1986
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