

LaMarca v. Turner



PC-FL-007-030

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 SOUTHERN DISTRICT OF FLORIDA
4

5 ANTHONY LaMARCA, et al.,)
6 Plaintiffs,) Case No.82-8196
7 VS.) Civ- PAINE
8 CHESTER LAMBDIN, et cetera.,)
9 Defendant.)
10 -----x

11 West Palm Beach, Florida

12 January 8, 1990

13 9:30 a.m.

14 APPEARANCES:

15 DAVID MICHAEL LIPMAN and WILLIAM ROBERT AMLONG,
16 ESQS., on behalf of the Plaintiffs.

17 MICHAEL B. DAVIS and WALTER M. MEGINNISS,
18 ESQS., on behalf of the Defendants.

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20 The above-styled case came on for Trial before
21 the Hon. James C. Paine, U.S. District Court, at the U.S.
22 Federal Courthouse, West Palm Beach, Florida, on the 8th
23 day of January, 1990.

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RICHARD SWANSON	33	96		

1 THE COURT: This case is LaMarca against
2 Turner, 82-8196. Counsel please state appearances.

3 MR. LIPMAN: David Lipman on behalf of the
4 plaintiffs.

5 MR. AMLONG: William Amlong, co-counsel for the
6 plaintiffs.

7 MR. TUCKER: James Tucker, co-counsel for the
8 plaintiffs.

9 MR. MEGINNISS: Walter Meginniss, Department of
10 Legal Affairs. Michael Davis is on his way with exhibits,
11 Your Honor, I would like to make his appearance through me.

12 THE COURT: All right.

13 MR. MEGINNISS: I would like to state the style
14 of the case is LaMarca against Chester Lambdin, since it
15 has to do with injunctive relief, and Mr. Turner is no
16 longer superintendent of Glades Correctional Institutional.

17 THE COURT: Is there some paper that has been
18 filed to that effect?

19 MR. MEGINNISS: Not that I am aware.

20 THE COURT: I think that would be appropriate.

21 MR. LIPMAN: Yes, we will prepare an order to
22 that effect that it is Mr. Lambdin.

23 THE COURT: All right. We will await that
24 order, and I will sign it without any problem.

25 THE COURT: All right. Now that everyone is

1 aware, we are here as a result of action that was taken
 2 when we had a statues hearing in this case last fall, in
 3 October, 18th, I believe it was, and it was agreed then
 4 that we would give a little time for additional discovery,
 5 and then we have an evidentiary hearing with respect to
 6 whether or not injunctive relief is appropriate, and, if
 7 so, what sort of relief as opposed to the idea that we
 8 would necessarily appoint a committee or committees to try
 9 to make some recommendations in that respect.

10 I think counsel for both sides agree that at least
 11 provisionally or possibly it wouldn't be necessary for
 12 there to be committees, you might be able ~~by discovery~~ to
 13 get together sufficient information and present it to the
 14 court so that a determination could be made on the matter
 15 of injunctive relief in that way as we previously thought
 16 would be the best way to handle it.

17 This case has been appealed, and the appellate court
 18 sent it back saying they don't want to deal with it until
 19 we laid to rest all the issues at the trial level. This
 20 issue as far as injunctive relief is concerned is the main
 21 one, if not the only one that we need to deal with before
 22 the appellate court would review what has been done earlier
 23 in the case.

24 I will call upon the plaintiffs to call such
 25 witnesses as they deem appropriate, and we will ask counsel

1 for the defendant to present their evidence.

2 MR. LIPMAN: Before we commence our
3 presentation of evidence, I thought if I might in just a
4 couple minutes offer the court a brief overview of where we
5 are, and what is behind us.

6 THE COURT: All right. That is fine.

7 MR. LIPMAN: --what the issues are, because I
8 think we can expedite the proceedings this week once I am
9 able to review what we have identified are the problems.

10 THE COURT: All right. I think that is likely
11 to be very helpful.

12 Mr. Meginniss, do you have some input?

13 MR. MEGINNISS: I have a request to make. I
14 would note we have one of the named plaintiffs in
15 attendance by the name of Martin Saunders. I would like to
16 invoke the Rule of sequestration, and point out to the
17 court with the order entered by His Honor, October 12,
18 1984, those members of the class were determined to be
19 persons who will or will be incarcerated at Glades
20 Correctional Institutional, located in Belle Glade,
21 Florida. The court deems as to those individuals who have
22 been in the past incarcerated at Glades but no longer so
23 incarcerated should not be members of the class seeking
24 injunctive relief. Injunctive relief to them would be
25 moot.

1 I would request the rule of sequestration be invoked,
2 and I would request that Martin Saunders not be a member of
3 the proceedings. His damage suit is over, and the problem
4 I am confronted with, I fear he may very well, through
5 other witnesses, contact the other inmates here, and
6 perhaps infringe on their objectivity for their testimony;
7 and I would make that motion at this time, sir.

8 THE COURT: All right. What is the plaintiffs'
9 position in that respect?

10 MR. LIPMAN: Mr. Saunders, as counsel pointed
11 out correctly, is a member -- was one of the several
12 inmates to which monetary damages were awarded, and also
13 based upon the definition of the class, since he no longer
14 resides at Glades Correctional Institution would not be an
15 appropriate representative for purpose of injunctive
16 relief.

17 Since, however, he is affected by the proceedings,
18 specifically in terms of his damage award, and because we
19 thought it would be appropriate to have at least one
20 plaintiffs' member bear witness to the proceedings, we ask
21 that he be able to remain in the courtroom with the
22 provision that I will instruct him not to discuss the
23 proceedings with any of the sequestered witnesses, which I
24 think would be the general rule in any civil litigation.

25 THE COURT: All right. It seems to me that it

1 wouldn't be inappropriate to allow Mr. Saunders to remain
2 in view of the history of this case, but I do think he
3 should be carefully instructed, and I will rely on counsel
4 to do that under the requirements of Rule 615, he is not to
5 relate to the witness what testimony has been with respect
6 to other witnesses who may have offered evidence before the
7 particular witness comes on the stand. You will have to
8 instruct him carefully that he has to keep his
9 communications with people who are going to testify, if he
10 has any at all, to exclude anything that may have happened
11 in this courtroom prior to the time they have taken the
12 stand.

13 That motion is denied, but with the qualification
14 that I have stated.

15 MR. MEGINNISS: Yes.

16 THE COURT: Now, Mr. Lipman, you want to make
17 your opening statement? I will I will call on counsel for
18 the defendants to do that when you are through.

19 MR. LIPMAN: If I may, Your Honor, thank you
20 very much.

21 MR. DAVIS: Your Honor, may I be heard on a
22 matter?

23 THE COURT: Yes, Mr. Davis.

24 MR. DAVIS: We have a motion to produce, Your
25 Honor, which is based on -- it is a motion to compel

7
1 production of documents.

2 MR. LIPMAN: I may be able to short cut this.
3 If it is a motion that was served yesterday, we have
4 determined that the motion is appropriate, and we are in
5 the process right now copying the questionnaires, which is
6 a matter in motion.

7 THE COURT: Are you talking about the same
8 motion?

9 MR. LIPMAN: I think we are.

10 MR. DAVIS: And to the quotes set forth in the
11 motion?

12 MR. LIPMAN: Yes, the questionnaires, and the
13 typed answers.

14 THE COURT: Sounds like that motion is moot,
15 and you will comply as rapidly as you are able to.

16 MR. LIPMAN: They are being copied now, and we
17 should have them now.

18 MR. TUCKER: They were copied quarter to 9,
19 they should be ready within minutes.

20 MR. LIPMAN: We will furnish them to counsel.

21 THE COURT: Okay.

22 MR. LIPMAN: Your Honor, if I may, insofar as
23 an opening presentation I offer the following view, and
24 that is, as I understand the charter for the proceedings
25 beginning this morning, it is to complete the addressing of

1 injunctive relief which may or may not be required
2 presently based upon past and current conditions that exist
3 at GCI as guided by His Honor's findings back in 1987, and
4 given the passage of time, and over the last several months
5 since we were together in October, we have retained the
6 services of Dr. Swanson and Dr. Caddy who were the experts
7 that--the experts the court is familiar with, and who
8 testified in this case. They have completed their
9 assignments. Inmates have been interviewed, documents have
10 been reviewed, and we are ready to announce to the court on
11 a whole host of areas in terms of specific practices and
12 conditions, which should be outlined for His Honor this
13 morning by Dr. Swanson. We belief that compliance has
14 occurred, or conditions have changed in such a manner that
15 as to those conditions and practices, we no longer seek
16 injunctive relief.

17 That is the good news, that a lot of this is now
18 behind us, and we will be able to itemize and outline for
19 His Honor, through our first witness, Dr. Swanson, with
20 some specificity exactly which practices and conditions we
21 believe have been changed over the months, and years, and,
22 therefore, no longer seek injunctive relief.

23 Now, as to those matters that we do continue to seek
24 injunctive relief, I think I can itemize six areas for His
25 Honor for consideration.

1 Again, you will hear testimony from Dr. Swanson, Dr.
2 Caddy, several adverse witnesses, and we hope to minimize
3 and expedite the need for inmate testimony, but may need to
4 call two or three witnesses. Hopefully they will be brief.

5 The six areas which we continue to seek injunctive
6 relief relate to as follows: First, we have a concern that
7 the officers in the dormitories, the open bunk setting, at
8 Glades continue not to patrol the areas in the dorms on a
9 regular basis and remain in the wicket area.

10 Dr. Swanson will address that, and we have a
11 videotape Dr. Swanson has prepared so as to offer His Honor
12 an actual picture tour of the configuration of the physical
13 facilities at Glades so we can point this matter out.

14 As a second issue, since the 1985 proceedings, a new
15 compound has been built at Glades which has been referred
16 to as the cannery. It is new, and increased the
17 population.

18 THE COURT: Referred to as what?

19 MR. LIPMAN: The cannery area. It is a new
20 compound. This is a new addition that has been built to
21 Glades since the fall of '85.

22 Dr. Swanson, through his work has expressed concerns
23 with regard to security insofar as the flow of inmates,
24 ingress and egress of inmates into the cannery, and back
25 into the main compound, which was the previous existing

1 facilities at Glades, and he will be amplifying and
2 discussing that problem, insofar as it needing to be
3 addressed through some type of injunctive relief.

4 A third area which is more familiar to His Honor in
5 terms of where we have been since the fall of 1985 concerns
6 protective confinement. That is, of course, those cells in
7 the confinement area where an inmate typically voluntarily
8 requests to be housed because of a security problem or
9 perceived security problem. The nature of the problems
10 that will be elicited through Dr. Swanson that continue to
11 exist as to protective confinement concern double bunking
12 in certain protective confinement cells, simply that two
13 inmates are housed in these rather small cells at the same
14 time.

15 The failure to provide any substantive mental health
16 services for these inmates who are typically the most
17 vulnerable inmates, and express security and concern that
18 led them to be placed in the protective confinement.
19 Various problems in protective confinement relating to the
20 physical conditions, lighting, sanitation, etc., actually,
21 of the cells, and, finally, the problem relating to the
22 fact that if an inmate voluntarily requested to be placed
23 in protective confinement, because of a perceived security
24 problem, or actual security problem, they have been
25 attacked, or perceive they have been attacked, raped, or

1 assaulted, what have you, they are in a sense punished,
2 because they lose certain facets of good time, and also, I
3 think the term is gain time, and also are ineligible for
4 certain programs that exist to inmates who remain in the
5 dormitory setting.

6 Dr. Swanson will be addressing these series of
7 problems with respect to protective confinement.

8 A fourth area that we continue to seek injunctive
9 relief, and I want to qualify this, it is no longer of the
10 magnitude and terms of the problem that was defined and
11 found in 1985, but the problem, nonetheless, still exists
12 to a lesser degree, concerns the flow of contraband in the
13 prison, and that relates to many of the same issues that
14 were raised in the proceedings in the fall of 1985, and
15 found by Your Honor specifically as to weapons, as to
16 drugs, and as to currency among inmates.

17 A fifth area that we seek injunctive relief relates
18 to general sexual activities and pressures placed on
19 inmates by other inmates, and again, the magnitude of this
20 problem has been decreased since His Honor's findings and
21 the proceedings in the fall of 1985, but there are still
22 some problems that exist that Dr. Swanson will address,
23 particularly in terms of staff condoning and approving
24 overt sexual activity which seems to be permitted among
25 inmates.

1 A final area that Dr. Swanson will briefly touch on,
2 but will be developed through adverse witnesses, and Dr.
3 Caddy relates to a facet of relief that have been explored
4 by the court in terms of a psychological, a committee of
5 psychologists that would be appointed to provide and
6 address a program of theraputic service for those inmates
7 that have been assaulted or raped. It is our position that
8 no program exists at GCI to provide for a support service
9 of proper psychiatric and emotional counseling for those
10 inmates that have experienced sexual assaults.

11 Those are the six areas that we seek injunctive
12 relief. As I stated, they will be developed through the
13 two expert witnesses, Dr. Swanson, to a much more limited
14 degree Dr. Caddy, through adverse witnesses, several
15 documents, and some brief inmate testimony.

16 I do have a final footnote to our presentation. It
17 does not fit within our charter for this week, but I ask
18 the court to consider the following: Mr. Saunders and his
19 family have contacted me and have been in contact with my
20 office virtually on a monthly basis since the January, 1986
21 decision was rendered. The nature of those communications
22 is that Mr. Saunders has maintained that certain
23 retaliatory actions have been taken against him due to his
24 participation in the LaMarca case.

25 As an officer of the court, I can stand and tell you

1 that we have done a thorough investigation and have found
2 no objective evidence of any retaliation, but based upon
3 Mr. Saunders' experiences, he believes he has been
4 retaliated against for his participation, and we would
5 request that Mr. Saunders be permitted to testify very
6 briefly and explain to His Honor the circumstances
7 surrounding retaliation that has occurred based upon his
8 experience.

9 Thank you very much, Your Honor.

10 I do have an exhibit list, and witness list that we
11 had prepared, and I understand the clerk called my office
12 last week.

13 THE COURT: Yes, if you hand those to Margaret,
14 it would be helpful.

15 MR. LIPMAN: Your Honor, implicit in my
16 overview, I don't think we would need the amount of time we
17 suggested in October given the fact that we have returned
18 to the scene, so to speak, and have found many of the
19 conditions to have been rectified. I just say that so Your
20 Honor can plan your cases for the rest of the week. It
21 would surprise me if our presentation would take more than
22 a day and a half.

23 THE COURT: All right. That is good news.

24 Mr. Meginniss or Mr. Davis, would you make such
25 opening statement as you deem appropriate, and comment on

1 the last request whether or not there should be any
2 opportunity for Saunders to state whatever he wants to with
3 respect to the claimed retaliation.

4 And let me know what you think about the time
5 requirements as well, please, sir.

6 MR. DAVIS: Your Honor, to begin with, we have
7 a problem with some of the items which have been indicated
8 that the plaintiff intends to pursue before the court.

9 Particularly those items having to do with alleged
10 psychological or psychiatric deficiencies at Glades
11 Correctional.

12 First, it is not part of the pleadings in this case,
13 and if the court will refer to the third amended complaint,
14 which is the pleading upon which this case is proceeding at
15 this time, there is no allegation under the prayer for
16 general injunctive relief indicating alleged psychological
17 or psychiatric deficiencies, and there is no prayer for
18 such relief.

19 Secondly, this is a matter before the United States
20 District Court for the Middle District of Florida in
21 Costello, and is under that Court's current jurisdiction,
22 and we have a motion to present before this court to
23 suggest that it would be improper for this court to
24 undertake consideration of a matter which another Federal
25 District Court already has jurisdiction of.

1 THE COURT: That is the case that Judge Susan
2 Black has, is that right?

3 MR. DAVIS: Yes. That is under active
4 consideration by the court in that case. They have a
5 committee which has surveyed Glades Correctional, and has
6 taken that matter under consideration.

7 THE COURT: Now, give me the name of that case
8 if you have it handy. I am aware of the case, and can find
9 it.

10 MR. DAVIS: Costello versus Dugger. Case
11 number 72094-Civ, J., 14, and 72102-Civ, J., 134.

12 THE COURT: All right. You are referring to
13 the six area that was mentioned here?

14 MR. DAVIS: And to apportion of what counsel
15 indicated he intended to pursue under the third area,
16 protective confinement, failure to provide mental health
17 services.

18 THE COURT: Yes, did he mention that in that
19 connection

20 All right, I will ask Mr. Lipman to respond to that
21 position of yours with respect to Costello versus Dugger
22 case after you have concluded the rest of your opening
23 remarks.

24 MR. DAVIS: Let me indicate to the court we do
25 not have an outline of what we intend to prove, because,

1 obviously, we are in a position of responding to what the
2 plaintiff is asserting, and we have not until today gotten
3 an outline of exactly what the plaintiff intended to
4 present in the way of issues. We will indicate the
5 evidentiary presentation that we intend putting on.

6 Let me address the Saunders issue. It has not been
7 presented to this court by pleadings. It seems to be a
8 matter of similar type presented to the court previously,
9 by an inmate by the name of Pryor, and it should be handled
10 in a similar matter, that is, by a separate proceeding
11 brought before the court on notice and upon pleading.

12 We have a witness and exhibit list. Does Your Honor
13 want the original to be filed with the clerk?

14 THE COURT: You can file the original, or give
15 it to Margaret, she will file it. Let us have a copy to
16 work with.

17 MR. DAVIS: Your Honor, we listed approximately
18 150 witnesses. We did so, because we did not know what the
19 scope of the plaintiffs' proof was going to be. We can
20 tell the court we have several expert witnesses, an expert
21 by the name of Daniel Lockwood who is an expert in prison,
22 and prisoner behavior. A member of the faculty of Syracuse
23 University, and Fred Frey former federal prison warden, and
24 accreditation committee member for the American Corrections
25 Association.

1 We have also listed an expert psychologist to address
2 the psychological issues because we anticipated in view of
3 some questions that were addressed to GCI personnel on
4 depositions a couple weeks ago that such issues might be
5 raised, but we don't anticipate needing him if the Court's
6 ruling is as we think it should be, which psychological
7 issues are not properly raised before this court, either
8 because the pleadings do not address the issues, or because
9 jurisdiction is properly before United States District
10 Court for the Middle District of Florida.

11 We have various staff members from GCI listed of whom
12 we would anticipate at a minimum calling at least 6 or 7.
13 Members of the Inspector General's staff, members of the
14 Office of the State Attorney, members of the staff of Palm
15 Beach County Sheriff's Department, Leon Peters, a former
16 member of the staff of GCI, members of the Inspector
17 General's staff. I think I mentioned that previously, and
18 individuals from Palm Beach Community College, and Indian
19 River Community College who are training officers for the
20 correctional officer training programs.

21 Our exhibit list is virtually complete, but not
22 complete. We have four, five more items which we intend to
23 add to this, and will present it to the court later today.
24 We did not receive the request for the list and for the
25 marking of exhibits until Friday, I believe. We spent the

1 weekend preparing this. We also have most of the exhibits
2 marked, but there are several groupings of exhibits which
3 are substantial in size. They number in one instance,
4 probably over two thousand pages of documents, and we would
5 hope not to have to utilize all of them, and rather than,
6 marking them all, and presenting them initially at the
7 trial, counsel on the other side has copies of the items
8 from which they are derived in most cases.

9 We would request permission to wait until we begin
10 our presentation before determining precisely how much of
11 those documents would be needed. Those which the
12 plaintiffs do not have, and which are not already in our
13 marked group that we've got, we will have later today or
14 beginning of session in the morning.

15 The issue which I think is particularly critical for
16 the Court's consideration is that proceedings today are
17 governed by the question of the violation of 8th Amendment
18 rights in respect to protection from cruel and unusual
19 punishment, and it is in accordance with the standard of
20 the 8th Amendment all the allegations that the plaintiff
21 seek to raise must be considered.

22 We have also one additional matter for the Court's
23 consideration, and, unfortunately, I have combined the
24 Court's copy and the Clerk's copy together. This is a
25 motion to consider additional evidence. The court will

1 recall this case has been returned upon a finding by the
2 appellate court that there is no final judgment in this
3 cause, that is because until the court has ruled upon the
4 injunctive relief, the determination of the damage issue is
5 not final, and remains pending, nonfinal determination.

6 We have presented to the court initially our concern
7 even before the first trial about a lack of time in order
8 to assemble and present necessary evidence. The court made
9 a number of findings in respect to conditions at GCI which
10 were not based upon direct evidence, but upon inferences
11 drawn from one or two anecdotal accounts by witnesses which
12 the Magistrate, and the court upon acceptance of the
13 Magistrate's order then expanded into an inference of
14 general conditions.

15 There was an absence of direct evidence in the case
16 on those issues, and those were what might be determined
17 sub-issues that have not be put in the pleadings as such.
18 There was a question whether rape kit tests were ever
19 utilized at GCI. There is no allegations of that on the
20 pleadings. It only arose on the last day of the
21 presentation of evidence as any question in that regard.

22 THE COURT: What kind of kits?

23 MR. DAVIS: Rape kit tests. I use that as one
24 example of how a number of sub-issues, which certainly
25 could be considered legitimately flowing from the general

1 allegations of the complaint, nonetheless because of the
2 time constraints, and the raising of them at the time they
3 were with no pretrial indication to us limited our
4 presentation and our ability to present evidence on that
5 point.

6 Subsequently, we have obtained from the stored
7 records of GCI which took considerable search, and from the
8 records of Palm Beach County Sheriff's Department, and from
9 the records of the State's Attorney of Palm Beach County
10 substantial documentary evidence addressing these issues
11 directly.

12 Attached to the motion is a summary of the
13 documentary evidence relating to specific instances, or
14 incidents. There are approximately 113, as I recall.
15 These are 113 investigations, formal investigations on
16 issues of sexual assault, non-sexual assault, possession of
17 contraband, introduction of contraband, and there was one
18 other -- I forget which, all of those records which were
19 contemporaneous at the time, directly address the issues
20 raised by the court and will demonstrate that the
21 inferences drawn by the magistrate based on one or two
22 instances from which it was asserted that general
23 circumstances could be inferred are simply wrong. That is
24 the direct evidence clearly and unequivocally shows that on
25 approximately 8 or 10, we've listed them in the motion, 8

1 or 10 specific areas which the court rested a major portion
2 of its findings upon.

3 The direct evidence will demonstrate the erroneous
4 findings of the magistrate. We simply ask the court to be
5 able to present that evidence to the court since the issue
6 is not final so the court can indeed consider whether, in
7 fact, those conditions did exist.

8 One of these things the records will show, the court
9 will remember that it found specifically that there was no
10 effort by the superintendent to involve outside
11 investigative agency such as the state and federal
12 investigative agencies. As the summaries indicate, over
13 one hundred out of the 113 investigations, the Sheriff's
14 Department was involved. Again, indicating a clear
15 erroneous finding by the magistrate.

16 The records will also indicate that the State
17 Attorney's Office was involved in the sexual assault
18 investigations of which there were, I think, about 12 or
19 13, as was the Sheriff's Department, that rape kit tests
20 were given, and if the court will recall, the magistrate
21 found there were no alleged rape investigations, and the
22 records will show there were both, by the staff at GCI, by
23 the Sheriff's Department, and to some extent by the
24 prosecutor's office.

25 Let me indicate that I've mentioned to the court we

1 have sheriff's deputies and prosecutors on our witness
2 list. Those are not on the witness list to address these
3 particular issues, although several of those are capable of
4 addressing these issues. They are on the witness list for
5 the temporary issues. They are capable of addressing
6 because of their time span that goes back before 1985 of
7 those earlier issues. So we ask to be able to introduce
8 documentary evidence, and supporting testimonial evidence
9 as necessary to support that documentary evidence.

10 What is particularly critical, if the court would
11 look at the items we have indicated these address, the
12 findings that these particular documents and investigations
13 address, you will find that they are the backbone of the
14 Court's order finding unconstitutional conditions at GCI.
15 More than half of the findings upon which the Court's
16 original order was based are addressed by these issues.
17 Others may be inferentially addressed by these issues.

18 Thank you.

19 THE COURT: All right. Now, I would like there
20 to be response at this time by counsel for the plaintiff to
21 these matters that have been raised here by Mr. Davis,
22 because the rulings on those will affect what we hear here,
23 and the evidence that is put on, and also the questions
24 that are asked to some of these witnesses, some of whom
25 have been identified as persons who may have evidence to

1 offer on things that we clearly have before us, but could
2 also offer evidence on other things.

3 I wonder if I could ask you, Mr. Lipman, to comment
4 on these issues.

5 MR. LIPMAN: I would, and if I may, let me go
6 backwards to address Mr. Davis' second concern first, and
7 first concern second.

8 If I understand correctly, for the first time we are
9 told this morning that irregardless of the Court's order in
10 October, that our charter today was to complete injunctive
11 relief as has been requested by the 11th Circuit. That we
12 are now told this morning that defendants wish to reopen
13 the entire liability stage of this case, and present
14 evidence which they perceive will demonstrate that, in
15 fact, demonstrate the myriad of facts, which this court
16 determined fact by fact, and inch by inch covering
17 approximately seventy pages of the reported decision, now
18 ought to be modified, or overturned, and that as an
19 explanation for the reason why that ought to occur is from
20 what I understand the defendants weren't ready for the Fall
21 1985 proceedings.

22 If that is--if that is one of the reasons I heard to
23 justify reopening evidence, my response is, specifically,
24 His Honor traveled through this issue twice before, and let
25 me refer to page 653 and 654 of Your Honor's decision,

1 reported at Volume 652 F.Supp., your decision in 1987.

2 In that decision, Your Honor reviewed at some length
3 the issue of the continuance, and the defendants assertion
4 that they were not trial ready. My point is simply, this
5 is the third review of this issue. You reviewed it once in
6 an emergency posture. You were in Miami, and you were
7 trying one of the long drug cases, and we came to you the
8 morning before the trial was to commence before Magistrate
9 Nymkoff in November, 1985, and you denied the motion to
10 continue, and that is Docket Entry 114, and 112, and you
11 wrote about it at some length in the June, 1987 decision.

12 Just seems to me, we will get nowhere, ever, if we
13 return back to the battle front and retry liability. If
14 Your Honor was wrong on the continuance, that ought to be
15 raised on appeal. Parenthetically, it was raised on
16 appeal, and the 11th Circuit never got to it because they
17 felt all the work hadn't been completed. But certainly,
18 that request certainly does not dovetail with the 11th
19 Circuit's order in this case, nor with what we understood
20 Your Honor's charter to be when we appeared in October.

21 So much for reopening the 1985 record.

22 The second request relates to the whole element of
23 psychological services that the inmates might be entitled
24 to in terms of some dimensions of equitable and injunctive
25 relief. If I understand correctly, the defendants'

1 argument is two-fold. First, the court does not have
2 jurisdiction under a technical reading of our complaint to
3 provide injunctive relief, that is psychological or
4 psychiatric services; and second, that somehow Costello
5 action, the action before Judge Black preempts, if you
6 will, His Honor's treatment on this issue.

7 Rule 15(b), I think, provides that amendments to
8 complaint to conform to the evidence are permitted. We had
9 two weeks of evidence, Your Honor, relating to the guts of
10 this case which was the testimony involving one plaintiff
11 after another, one witness after another regarding sexual
12 abuse and rapes that occurred. We have evidence from
13 expert witness Dr. Caddy, some testimony from Dr. Swanson.
14 It was fully litigated by defense counsel. It has been
15 other than the monetary issue the single focus of this
16 lawsuit, and always had been.

17 Your Honor, in your June 1987 decision, again, I am
18 reading from the reported decision, page 666, specifically
19 provided that a committee of psychologists or psychiatrists
20 have a charter, and I quote, to prescribe treatment plan to
21 the plaintiffs, and witnesses who remain incarcerated, and
22 develop procedure at GCI to provide support system to rape
23 victims by rape crisis centers.

24 We have litigated the issue. The magistrate ruled on
25 the issue. Your Honor has ruled on the issue. Obviously,

1 the committee was not formed, but my understanding of where
2 we were in October was these proceedings were in a sense to
3 supplement or supplant the committee process.

4 So, pursuant to Rule 15(b), the issue is alive and
5 well. It is the dominant issue in the case. It has been
6 litigated. We are at a phase where liability is behind us,
7 and we enter the next phase of the case, which is what
8 relief, sitting as a chancellor, should Your Honor order in
9 terms of the psychological and psychiatric service
10 programs.

11 In terms of the Costello case, if my memory serves me
12 correct, and, obviously, it has been four years, and two
13 weeks of a trial, and literally hundreds of documents, this
14 issue had been raced once in a matter of pleadings, that is
15 that Costello barred our presentation of this issue. Just
16 seems to me we have traveled past that liability finding.
17 The law of the case based on Your Honor's June 1987
18 decision is that at least at that time some form of
19 injunctive relief is required. We are here now to freshen
20 the record in determining what the injunctive relief is,
21 and if Your Honor's wrong in fashioning that type of
22 liability finding because it was pre-empted by Costello,
23 that ought to be an issue for the 11th Circuit to address
24 on the merits of the case.

25 THE COURT: How about whether or not that was

1 raised in the third amended complaint that Mr. Davis'
2 asserts, based on which we should rule with respect to
3 issues raised in this case?

4 MR. LIPMAN: I don't have the third amended
5 complaint in front of me, but I do recall we asked for
6 general equitable relief in terms of injunctive relief
7 which Your Honor sitting as a chancellor would find
8 appropriate to address the factual findings that it has
9 made.

10 And second, the very nature of this case has always
11 been that plaintiffs, plaintiffs' monetary damages,
12 plaintiffs' injunctive relief has always been structured
13 upon the notion that a lawless prison existed at least
14 through the fall of 1985, and the result of that lawless
15 prison, given the context of the 8th Amendment violations
16 were that inmates were being physically raped and abused.
17 If one were to review the reported decision in this case,
18 virtually every page of the seventy pages addressed those
19 issues. The complaint, I believe, was broad enough to
20 properly raise those issues. More importantly, the
21 evidence presented over those two weeks specifically
22 addressed those issues. If there was any technical
23 pleading deficiency, that would have been cured consistent
24 with Rule 15(b). Everyone has been on notice, each party
25 litigated this issue. We have had experts on each side,

1 and witnesses. All has been said, and done, and ruled
2 upon.

3 THE COURT: All right, sir.

4 MR. LIPMAN: Thank you.

5 MR. DAVIS: Your Honor, may we respond to that
6 issue?

7 THE COURT: All right. I don't want to prolong
8 this thing too much. If you have something new to offer in
9 connection with that. You mean the last issue?

10 MR. DAVIS: Yes, primarily.

11 First of all, I would like to point out, law of the
12 case does not apply. Law of the case would apply only if
13 the the matter had been taken up on appeal. The matter is
14 interlocutory in the court's hands, and the court may rule
15 upon any issue, rerule on any issue which it previously
16 ruled upon if it felt its earlier ruling was in error.

17 More importantly, counsel suggests that the
18 psychological issues which he intends to raise in the case
19 were raised previously. That is not the case. The trial,
20 and the first proceeding here, considered only the damage
21 claims of individual plaintiffs who are not at GCI, who are
22 not seeking relief for injuries they suffered allegedly at
23 GCI. They are not seeking psychological services at GCI
24 for what they claim was done to them at GCI, because they
25 are not at GCI. They are elsewhere. It was the damage

1 claims that were the litigated matter of the first
2 proceeding. Only in respect to two items of testimony was
3 there anything addressing the injunctive aspects of the
4 case. One was the testimony of Dr. Swanson which was that
5 he had noted that there had been in his view changes at GCI
6 in the intervening period, but he was not able to reflect
7 upon the then current conditions at GCI which was the
8 subject matter for the injunctive relief. The other was
9 the testimony of the inmate Brown who claimed he had been
10 assaulted at GCI. He was then subsequently sent from GCI,
11 and I think the record in the case showed that he had
12 received psychological counseling. The issue of whether
13 there should have been counseling provided to him, or
14 anyone else had never been raised at the trial up to that
15 point. It was never considered. There was never any
16 evidence upon which the plaintiff could have amended his
17 pleadings to conform.

18 As far as this Court's prior statement in the order
19 accepting the Magistrate's report and recommendations where
20 the court suggested that it was going to establish two
21 committees, Your Honor will recall in the prior hearing in
22 this cause a couple months ago, we discussed that at
23 length, and because of the indication that had been given
24 to us by the panel of the 11th Circuit which we followed up
25 in researching, it was abundantly clear that was an order

1 that attempted to invest a committee with judicial powers
2 which was, of course, an Article III violation which could
3 not be done.

4 The order to that extent, we suggest, was not a
5 correct order, and the court correctly withdrew from that
6 order several months ago when it determined that it would
7 consider evidence as to current conditions at GCI. Those
8 current conditions would be the current conditions which
9 would apply to the issues raised in the pleadings presented
10 to the court, and those pleadings are the third amended
11 complaint.

12 We, therefore, suggest that there is no basis upon
13 which the plaintiff can amend to conform with the pleadings
14 with the evidence, and there is the further problem of
15 conflict with the jurisdiction assumed in 1972 by the
16 United States District Court for the Middle District of
17 Florida which has committees in operation which committee
18 has, in fact, investigated GCI, and issued a report on GCI.

19 That is not a matter which we feel would be
20 appropriate for this court to take into consideration.

21 THE COURT: With respect to defendants' motion
22 to consider additional evidence, I will deny that motion.
23 If this Court's order was incorrect earlier in that respect
24 in that we denied motions for continuance, and I think
25 there was perhaps more than one of these, why, it seems to

1 me it would be -- that I may not have jurisdiction at this
2 time since an appeal has been taken. Mr. Davis asserts
3 that we still do, and perhaps he is right, but it seems to
4 me it is better to go ahead and stick with that earlier
5 ruling, and let the appellate court review that point as
6 well as this order which I am now making denying the motion
7 to consider additional evidence. That is the posture we
8 will leave that motion now.

9 As to the jurisdiction of providing psychological
10 help to the victims of sexual assault, the sixth area
11 defined by Mr. Lipman here which is the ones on which
12 evidence will be offered in the prayer for injunctive
13 relief I think it may be true there are similar issues that
14 are still under consideration in Costello, but I will hear
15 evidence on that issue, and I will hold that the third
16 amended complaint may be conformed to the evidence, and
17 while similar issues may be before the court in Costello,
18 the issues are not pre-empted from us by that case. That's
19 the disposition of the two issues that have been raised
20 here.

21 MR. DAVIS: Your Honor, we addressed our motion
22 for production of documents. The basis for that, it was
23 essential for us to adequately cross-examine Dr. Swanson,
24 and Caddy. These are documents that they base their
25 opinion on. We would request that we be provided with the

1 documents in advance of cross-examining Dr. Swanson.

2 THE COURT: You said you would have them
3 shortly.

4 MR. LIPMAN: They should be here now, as soon
5 as Mr. Tucker enters the courtroom, if I might, between
6 lunch hour, and another time, if defendants -- if we
7 completed direct examination, and they haven't had
8 sufficient time to digest them, which I think they will be
9 able to, perhaps we could ask Dr. Swanson to remain after
10 cross-examination, and come back later in the day.

11 THE COURT: I think he can handle it. I do
12 think you ought to have time to chew them over, but I think
13 you can work that out.

14 MR. LIPMAN: We call Dr. Swanson.

15 RICHARD M. SWANSON, PLAINTIFF WITNESS SWORN.

16 THE COURT: Be seated, state your name.

17 THE WITNESS: Richard M. Swanson.

18 THE COURT: You may proceed.

19 MR. LIPMAN: Before I begin, I assume from
20 counsel's earlier statement with regard to Mr. Saunders,
21 that the Rule is invoked, and prospective witnesses will
22 remain outside the courtroom?

23 THE COURT: Well, the Rule was only mentioned
24 insofar as one witness is concerned. If you want to invoke
25 the Rule generally.

1 MR. LIPMAN: Please.

2 THE COURT: All right. Rule 615 is invoked,
3 and counsel for both parties are instructed to school their
4 witnesses in the requirements of that Rule.

5 MR. LIPMAN: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. LIPMAN:

8 Q Would you please state your name?

9 A Richard M. Swanson.

10 Q You have a doctorate, Dr. Swanson?

11 A Yes, I have a Ph.D. in psychiatry, and Juris Doctor
12 in law.

13 Q And you previously participated in proceedings in
14 this case, did you not?

15 A Yes, that is correct.

16 Q Would you tell Judge Paine in a brief, overview
17 manner what your role has been in the litigation at least
18 prior to the fall of this year, 1989?

19 A July of '85, or thereabouts, I was first contacted by
20 Mr. Lipman and given a general, rough sketch of the issues
21 in LaMarca, and asked if I would be willing to participate
22 in this case as an expert witness. I obviously accepted,
23 and shortly after that, around September, began reviewing
24 documents that were internal to the operation of Glades
25 Correctional Institutional, visited the institution several

1 times that Fall, put all of the information that I have
2 from documents, plus information that I obtained by an
3 inspection of the physical plant of that facility together
4 with interviews with the plaintiffs in this case, LaMarca,
5 et al, formed a conclusion, indicating in essence that
6 Glades Correctional Institution was operated in a fashion
7 that rendered it to be an unconstitutional institution. I
8 testified to that in this instant case.

9 Q Dr. Swanson, do you have before you your CV which
10 reviews your professional background?

11 A I don't have a copy, but I may be able to recall.

12 MR. LIPMAN: Your Honor, I premarked
13 Plaintiffs' 2, and I have the original for Your Honor to
14 review.

15 THE COURT: Any objection to the receipt of
16 this document, gentlemen?

17 MR. DAVIS: No, your Honor.

18 THE COURT: Plaintiffs' 2 received in evidence
19 without objection.

20 (Plaintiffs' Ex. 2 received into evidence.)

21 BY MR. LIPMAN:

22 Q Could you just again, before I do this, you were
23 tendered, and qualified as an expert witness in this
24 litigation, in the initial proceedings, December, 1985, is
25 that correct?

1 A That is correct.

2 Q Dr. Swanson, without going through detail by detail
3 of the CV, in a overview fashion, could you walk Judge
4 Paine through your professional background as it relates to
5 issues raised in this case?

6 THE COURT: I really don't think that is
7 necessary, to spend our time in that way, gentlemen. I
8 have read this in the past. I will look it over again. I
9 don't remember it in detail now.

10 MR. LIPMAN: All right. I will move on.

11 BY MR. LIPMAN:

12 Q Dr. Swanson, let me bring you up to the future, in
13 the Fall of '89, did I contact you with regard to this
14 case?

15 A Yes, both Mr. Tucker and yourself, I believe, early
16 November '89.

17 Q And what was the understanding of the assignment we
18 had for you for these proceedings?

19 A I was asked if I would be willing to serve as expert
20 in this review of the LaMarca case. I indicated that I
21 would. In your direction to me, you made it extremely
22 clear you wanted an objective overview of the situation in
23 Glades Correctional as it exists today with special
24 attention to those items that were found in the decision in
25 LaMarca. You emphasized for me, if there was improvement,

1 you were very interested in that improvement being
2 recognized. If there were continuing problems, those
3 problems be addressed, and, if possible, recommendations
4 for ameliorations made.

5 Q Would you tell His Honor what you did in terms of
6 performing your assignment over the last months?

7 A I indicated that I would need to review internal
8 documents, outline some documents that I thought would be
9 illustrative of operations there.

10 I went to Glades Correctional November 20th, I
11 believe, '89 to again do a physical inspection of the
12 facility as it existed at that time.

13 During that visit, I had a opportunity to interview
14 inmates that were arbitrarily, randomly selected from the
15 population. I also had an opportunity to interview inmates
16 from the protective confinement area, and I returned to the
17 institution to make a videotape which I understand will be
18 shown this morning, and I took an opportunity to follow up
19 on people we could not get from the sample, meaning inmates
20 from the population. We conducted those interviews -- I am
21 sorry, what we did, we contacted the people that we did not
22 have an opportunity to interview to verify they would be
23 volunteering interviews, subsequently returned for the
24 interview. I had an opportunity to sit in the depositions
25 of some of the staff, Lambdin, chief correctional officer,

1 and Captain Hicks, and reviewed some additional documents
2 from the archives of Glades Correctional.

3 Q Have you now reached any conclusion based upon your
4 professional experience and your involvement over the years
5 in this particular case as to what areas of remedy or
6 relief are appropriate which flow from current conditions
7 that exist at GCI?

8 A Yes, I have reached a conclusion, a series of
9 conclusions, some of which recognize that, in fact,
10 progress has been made. I identified areas I believe
11 continue to be problems and I have attempted to develop
12 recommendations which I believe would help ameliorate the
13 existing problem I see.

14 Q In terms of an order, let me suggest that you first
15 review with His Honor those areas that you perceive as
16 continuing problems for which some type of remedy would be
17 appropriate; and as we do that, suggest to His Honor what
18 type of remedy, or the scope of remedy ought to occur?

19 A I will be happy to.

20 Let me just organize it in this way.

21 I will address seven areas in which I believe there
22 are continuing difficulties. These seven areas are really
23 derived directly from conclusions in the LaMarca decision.

24 The first has to do with free flow of contraband and
25 extortion.

1 As you recall, under the LaMarca decision, there was
2 a finding that contraband including drugs, alcohol, and
3 weapons were free flowing, and extortion activities flowed
4 from this illegal traffic.

5 It was also found within the section that little or
6 no effort was taken to control the illicit activities among
7 the staff, people carried knives, or smoked dope without
8 hiding it from the officers. The staff was illegally
9 involved in the illicite activities.

10 I then looked at that. My findings are that drug,
11 alcohol, and weapons as contraband are still abundant at
12 Glades Correctional Institutional. While the presence of
13 contraband I find to be still high, I do recognize there
14 seems to be a reduction of flow from the times that I
15 reviewed from Turner forward up until December of '85.

16 Weapons and drugs, and alcohol, still are abundant
17 and this may be in part due to the staff are not as active
18 as they might be in reducing these contraband activities.

19 Specifically, I think there are other possible
20 efforts the staff might expend to control weapons and
21 alcohol.

22 Now, I should say I am basing these decision on a
23 variety of sources.

24 Q And could you explain the source of the underlying
25 basis for this specific conclusion?

1 A Yes. I might say in overall strategy on my part, I
2 find more support, and I could be more definitive in my
3 conclusions when I have strongly contrasted sources of
4 information. Let's say that sources of information might
5 include inmates is a population, might include staff, might
6 include documents that are available to me. The more
7 contrasting methods of arriving at the same decision, that
8 support the same decision, the more strength in my
9 conclusions.

10 These particular findings concerning contraband,
11 alcohol, drugs, weapons, were based on incident reports
12 from the institution. I had incident reports available to
13 me for the last four years. In those incident reports --

14 THE COURT: What last four years, back from
15 '89, the three years immediately preceding that year?

16 THE WITNESS: That is correct.

17 THE COURT: Okay.

18 THE WITNESS: In looking at those reports, I
19 will cite 1987, and 1988, since they are more current
20 years.

21 In 1987, out of 50 incident reports available to me,
22 there were nine reports of confiscation of drugs and/or
23 alcohol. Two notable incidents of those are December 16th
24 there was confiscation of two gallons out of the protective
25 confinement area.

1 Just to remind the court, buck in inmate parlance is
2 homemade wine.

3 There is also, June 4, 1987, confiscation of F Dorm,
4 40 \$10 bags of marijuana--I am not sure what a \$10 bag
5 means, but it is a fairly substantial amount of marijuana.

6 There were in that year for confiscation of weapons,
7 1988, out of two incident reports, six concern confiscation
8 of drugs, and alcohol, and four concern confiscation of
9 weapons.

10 In addition to the incident reports, in my interviews
11 with the inmates, both in population and protective
12 confinement, inmates repeatedly and consistently report an
13 abundance of drugs, alcohol, and weapons to them within the
14 compound of Glades Correctional.

15 It is my impression from reading the incident
16 reports, talking with inmates, listening to the depositions
17 of senior staff that comprehensive shakedowns throughout
18 the institution are not frequently or routinely conducted.

19 This problem of contraband is a difficult one. It is
20 pervasive in correctional institutions, however, I believe
21 there are remedial actions that could reduce this. One is
22 a comprehensive shakedown of the entire facility. This
23 would mean going through, and shaking down dorm by dorm the
24 entire facility, and the inmates. Metal detectors in the
25 institution should be regularly maintained, and in good

1 repair. There is several reports within the internal
2 documents including a special review, January, 1986, which
3 indicate metal detectors sometimes go for long periods in
4 disrepair, inmates regularly report metal detector does not
5 work.

6 BY MR. LIPMAN:

7 Q Let me ask this: In terms of inmate reporting, aside
8 from the documentation, did inmates report to you in a more
9 current period of time that the metal detectors were not
10 functioning?

11 A Yes. One gets the feeling in talking with the,
12 inmates, and it is a fairly consistent report that certain
13 kinds of contraband are accepted as unavoidable. One of
14 these is the homemade wine. The other is homemade weapons,
15 shants, within the institution. I believe that staff
16 attitude is unavoidable does help to perpetuate the rampant
17 or availability of these contraband items.

18 I would further recommend eliminating currency from
19 the compound. Under the policy, currency is a legitimate
20 negotiable item. I am talking about dollars. I believe
21 there is less ability of an inmate population to trade in
22 drugs if they do not have dollars. I would recommend
23 taking of the currency, and keeping inmate accounts in
24 which they can draw in a prescribed manner according to the
25 policy of that institution in the form of script. That

1 script can be used to buy canteen items, but it cannot be
2 used to buy illicit drugs.

3 That concludes my assessment in terms of contraband
4 within Glades institution.

5 Q Which is the first of the seven areas you are
6 prepared to discuss?

7 A Yes.

8 Q Could you move sequentially to the second area that
9 you determined merits some form of remedy?

10 A The second area, which, again, is directly derived
11 from the LaMarca court decision, concerns staff being out
12 of control. Staff morale was found by the court to be low.
13 There were insufficient officers to do the job right.
14 Insufficient instructions and guidelines for officers
15 becoming supervisors, high staff turnover, officers worked
16 excessive hours, and double shifts, staff was
17 inexperienced, overworked, under educated, illinformed, and
18 unable to protect inmates.

19 Going from that situation as defined in the court
20 decision to the current situation, it is my belief based on
21 superintendent reports, inmate reports, incident reports,
22 in the 1986 special review report, staff are, in fact, now
23 in better control. There has been an improvement in
24 morale. There is an increased number of officers at the
25 institution.

1 I cannot tell whether or not the officers becoming
2 supervisors are given sufficient guidelines. I just do not
3 have enough data to address that point.

4 There is a reduction in staff turnover, although the
5 turnover as I calculate it was 24.6 percent in '86, 23
6 percent in '87, 30 percent in '88, with an average turnover
7 rate of 25.8 percent.

8 I should indicate that the way I calculate staff
9 turnover is simply to add up percentage of turnover by
10 month as reported in the superintendent's report. There is
11 a more sophisticated way. This is the way I analyzed staff
12 turnover in the original case. It is reduced from time
13 earlier.

14 Also, in the 1986 special review report, there is an
15 indication that there is a reduction of staff turnover from
16 1980 through January of '86. I find that reduction to be
17 consistent in the time forward.

18 I find there is a reduction in excessive hours, and
19 double shifts among correctional officers. In taking the
20 superintendent's report, I will indicate the average
21 monthly overtime paid at Glades Correctional. 995 overtime
22 hours in '86, that is monthly average. 1004 in '87, that
23 is a monthly average. 2,727 in '88. I am not quite sure
24 why you have that jump in the very last year.

25 Even though this may be excessive, one must remember

1 as they increase staff, the average of overtime hours per
2 staff is under a larger denominator. This is, in fact, in
3 my judgment a better situation than it was in the earlier
4 era that we examined and in 1984.

5 Q Are there any problems that continue to exist with
6 regard to this issue, and what are they?

7 A If you are asking correctional officers to work
8 double shifts, work a lot of overtime, their efficiency in
9 the second shift or overtime hours is reduced.

10 Now, clearly there are times which a correctional
11 administrator cannot anticipate. Flu, high number of
12 sicknesses, some special problem in the institution, but in
13 general it is better to have enough staff complement so you
14 don't have to work your staff a great number of overtime
15 hours.

16 Q How would you remedy this problem?

17 A I think in the way that has been done, which is one,
18 add more staff, have better trained staff. In those areas,
19 I believe that there has been that attempt, but we still
20 have these high number of hours. It is my opinion in
21 looking at the current situation that compared to the
22 earlier time, the staff now are better trained, better
23 informed, and better able to protect the inmates than they
24 were.

25 This is in large part validated by the fact there are

1 significantly fewer assaults, at least as reported in the
2 superintendent's report.

3 One concern I have, and I must caution the court is
4 based on only one source of information, that staff are
5 reported to be perhaps too familiar with the inmates. They
6 are known, they have been reported to be horsing around,
7 joking with the inmates to the jeopardy of discipline. To
8 the degree this is occurring, and it was a consistent
9 report from the inmate interviews, you do run the
10 difficulty of maintaining discipline when you are too
11 friendly, or too informal with your inmate wards.

12 Q How would you propose to remedy that?

13 A This is a little more complex, I believe. I think
14 one of the difficulties, and we will address this later,
15 also, is that staff, because of the very limited
16 confinement space they have, are unable to lock inmates up
17 for disciplinary problems. When you have the inability to
18 put someone in administrative confinement either for
19 disrespectful activities, insubordination, and abuse, one
20 way of coping with that is joking them out of a situation.
21 One possible way to ameliorate this is to increase what I
22 talk about later is a very limited confinement space area.

23 The other, I think you can handle a great deal with
24 staff training. While I have indicated, I believe that
25 staff are now more consistently receiving that training,

1 and less consistently working without it, I believe a
2 training program in professionalism with professional
3 officers, the balance of befriending or being able to
4 establish a rapport with an inmate, and getting into
5 unprofessional horseplay with an inmate would be
6 inappropriate. I think addressing this issue with proper
7 professional role with inmates is one; and, two, and
8 perhaps more dramatic, and necessary is significant
9 increase of the confinement area so you can, in fact, lock
10 people up when they have created a disciplinary problem.

11 I admit, with limited confinement space, the
12 correctional officers, and administration of GCI has to be
13 aware that some more minor lack of breaks and discipline
14 just have to be tolerated because you don't have a place to
15 lock people up.

16 Q Does that complete your observations as to the second
17 area in terms of staff?

18 A Yes, it does.

19 Q Could you move to the third area?

20 THE COURT: Let's take a few minutes recess at
21 this time before we get into that.

22 We will be in recess for 10 minutes. You are excused
23 at this time.

24 (Thereupon, a short recess was taken.)

25 BY MR. LIPMAN:

1 Q Dr. Swanson, you were just prior to the break ready
2 to discuss the third area of the order of relief that might
3 be appropriate based on your findings?

4 A Yes, consistent with the first two this is derived
5 from the findings of the LaMarca case decision; and related
6 to the second one, it involved staff. Here we talk about
7 the failure to supervise staff.

8 THE COURT: Okay.

9 THE WITNESS: In the initial case, it was found
10 that officers were not stationed properly. The view from
11 the wicket, which is the guard post in the dormitory
12 setting, the view from the wicket was obscured, sheets,
13 clothes, and personal lockers hanging from the bunks making
14 it impossible to see beyond the bunks. The second level of
15 bunks in the middle row of beds obstructed the view from
16 the wicket. The view in the shower area was even more
17 obscure. Patrol of the dorms did not take place. No
18 action was taken for failure to patrol the dormitories.

19 Comparing what was found in '85 to the present
20 situation, I do believe there is improved supervision of
21 staff. Officers are better stationed. There is as a
22 standard a wicket officer, and patrol officer, and sergeant
23 to check on the officers to insure patrol. The view from
24 the wicket has, in fact, been significantly improved.
25 Sheets, clothes, personal lockers no longer hang from the

1 bunks. The second level of bunks no longer exist in the
2 middle row of bunks, therefore, allowing for a clearer view
3 from the wicket down for a clearer view from either side of
4 the dormitories.

5 However, I do find the view into the shower area
6 could be improved by changing the glass or keeping the
7 glass in the shower area so it can be more visually
8 surveilled. The glass tends to be aged either with grime
9 or simply age, and has the opaque appearance at this time.

10 The patrol of dorms is, in fact, policy at this time.
11 There have arisen questions from the inmates, however,
12 whether this patrol consistently occurs. The sources of
13 this information, these conclusions on my part are
14 observation, physical inspection of the facility. I also
15 took information from the superintendent's deposition,
16 superintendent's report, and interrogatories, inmates'
17 interviews were relied upon. Here I have found significant
18 improvement in terms of single bunking, taking away of
19 sheets and clothes, the policy of patrolling, the stationing
20 of officers.

21 However, with the questions as to whether this patrol
22 consistently occurs, I have one possible recommendation to
23 add what has already been done, and that is to institute
24 the placement of a time clock, much as watchman use at
25 either end of the dormitory so patrolling officers would

1 have a record how often they went down to the dormitories
2 on every shift. In general, except for that one
3 recommendation, I do see substantial improvement in this
4 area of supervising staff.

5 Q Move on to the fourth area?

6 A Fourth area concerned, again, directly derived from
7 the court decision, this involves inmate movement controls.

8 During the Turner administration, inmates had free
9 ingress and egress throughout the compound. Not until '84,
10 was the pass system utilized, pass system was inmate should
11 not be roaming the compound without a place to go and pass
12 indicating where he belongs.

13 Second, due to physical structure of the dormitory,
14 clothing on bunk, and double bunking, it was impossible for
15 the officer in the wicket to see the shower area. This
16 overlaps the previous point, and, again, no policy issued
17 that officer patrol the dormitory.

18 Looking at the current situation involving inmate
19 movement controls, I found that under superintendent
20 Lambdin inmate movement is controlled. Policy restricts
21 inmates to their own dormitory except by pass, and main
22 compound inmate restricted to the main compound except by
23 pass. The one difficulty I think remains is that the north
24 compound inmates are free to enter the main compound. It
25 is necessary that they do so, because support services,

1 cafeteria, etc., are only available on the main compound.

2 Q I use the term, when I was offering an explanation of
3 the presentation of the cannery, the cannery be the same
4 area as you refer to as the north compound?

5 A Yes, and thank you, I should indicate that. Since
6 the last time we visited Glades Correctional, there are now
7 two compounds. The north compound contains what used to be
8 a cannery, and now is renovated into large dormitory areas,
9 plus addition of a new dorm specifically constructed as a
10 dorm.

11 In the previous case, previous time, there was only
12 one dorm in what is now called the north compound, and that
13 was an honor dorm.

14 At this time we now have two separate compounds.
15 Generally speaking, inmates with lesser custody and shorter
16 times are housed in the north compound. The main compound
17 continues to house the same dormitory, same number of
18 inmates. These inmates tend to be longer term, higher
19 security risk, higher custody ratings. By having a mixture
20 of the two compounds, the short timers have to come into
21 the main compound. The short timers are more likely to be
22 victimized by long termers. Short termers have more to
23 gain by not getting into trouble. Long timers have less to
24 gain.

25 Middle bunks remain single, but glass in shower area

1 is so dirty or ld that visual surveillance is difficult or
2 impossible.

3 Policy is in effect for officers to patrol on regular
4 basis. Inmates report this policy is not consistently
5 followed.

6 These findings are based on inmate interviews,
7 interrogatories, physical inspection, and staff
8 depositions.

9 Recommendations, if at all possible separate the
10 north compound from the main compound. That would require
11 the addition of support services, food service, especially,
12 into the north compound area. That would reduce lower
13 custody people having to be mixed with, intermingled with
14 high custody inmates.

15 I would also recommend replacing the glass into the
16 shower area, or maintaining them more clean on a routine
17 basis; the watchman's clock for check in of the officers so
18 we have a routine way of monitoring patrolling of the
19 dormitories.

20 Q The fifth area?

21 A The fifth area, again, follows directly from findings
22 in the court decision, involves the transfers of wolves.
23 Wolves are predatory inmates, perpetrators, victimizing
24 more vulnerable inmates.

25 It was found that aggressive wolves were tolerated

1 rather than transferred under Turner. Jones and Music
2 swapped problem inmates out of GCI.

3 As well as I could tell, this policy of transfers has
4 continued under superintendent Lambdin, negative transfers
5 still occur.

6 I had difficulty documenting this because I couldn't
7 determine routine transfers from negative transfers in the
8 documentation that I had. Under Superintendent Lambdin's
9 deposition, he felt the classification out of the
10 Department of Correction Reception Center was particularly
11 appropriate, and the need for negative transfers was
12 limited.

13 I am not sure, but it is clear to me that those
14 inmates who were victimized are the vulnerable inmates. I
15 would recommend a classification staff should conduct
16 intake interviews with each incoming inmate to verify
17 appropriateness of the classification assignment to Glades
18 Correctional Institutional. That would alleviate problems
19 of people not being identified as inappropriately
20 classified until they become victimized in the institution
21 itself.

22 Q The sixth area?

23 A Again, consistent with the previous areas, this
24 follows directly from the decision in the LaMarca case.

25 Here we are talking about protective confinement.

Utilizations of protective confinement corroborates white plaintiffs' terror on the compound.

What was cited in the conclusion of the court were based on demographics of protective confinement used as an illustration. September 19, 1983, 21 inmates were housed in protective confinement. Of those, 20 were white. The court further found this was amplified, the problem of protective confinement, by the punitive nature of protective confinement in the years '80 to '84. Cells were found to lack adequate ventilation, lighting was poor, two to five inmates placed in cells containing two bunks. Cells were infested with roaches, and vermin. Inmates were taunted from outside the confinement area. Protective inmates were housed with detainees, no exercise was offered. Showering was allowed only three times per week, and inmates in protective confinement lost canteen privileges.

Further, some inmates would remain in protective confinement for months. Shortage of cell space attest to the inmate demand to check in, general wolfing, and cat calls of aggressive black inmates around compound during initial periods of incarceration when new inmates were transferred to GCI would suggest that sexual pressures were severe.

Lastly, overt signs of sexual activity, some

1 consensual, further provided an indication of assaultive
2 rape conduct.

3 Sheets were hung from bunks, inmates heard moaning
4 from bunks at night, and showing of pornographic movies.

5 Q Now, in terms of problems that you determine exist in
6 protective confinement, could you share that with His
7 Honor?

8 A Yes, the present utilizations pattern continues to be
9 similar suggesting white inmates having trouble in
10 compound. Taking the same illustrative statistic, I looked
11 at three points in time of protective confinement in the
12 year 1989.

13 October, 1989, there were 19 people housed in
14 protective confinement; 17 white, one other, one black.
15 December 12, 1989, 11 white, one other, two black, for a
16 total of 14 in protective confinement. November 20th, '89,
17 21--this is the day in which I interviewed protective
18 confinement--21 whites, one black, for a total of 22 in
19 protective confinement.

20 Clearly, there is a much higher sampling of white
21 inmates in protective confinement than black. Looking at
22 the punitive nature of protective confinement, 1989, the
23 cell ventilation has been improved by the addition of fans
24 in the area. Lighting continues similarly as it was, as
25 poor. Two inmates now are -- limit of two inmates placed

1 in cells containing two bunks, protective confinement is
2 double bunks, one bunk for each inmate. I have no
3 information as to the present status of roaches, and
4 vermin.

5 Inmates in protective confinement are no longer
6 taunted by others outside the confinement area. The
7 confinement area was moved from the front to the back. It
8 is physically not convenient or possible for inmates in
9 population to taunt those in protective confinement.

10 I find that protective custody inmates are no longer
11 housed with administrative detainees. Limited exercise is
12 now available, and offered to protective confinement
13 inmates. I might also observe that the exercise privileges
14 seems to be that far above what is minimally required by
15 Department of Corrections rules.

16 Showering, however, continues to be allowed only
17 three times per week.

18 There is a particular -- At this point in time there
19 is another problem with showering only three times a week.
20 The boiler is in disrepair, and the inmates are unable to
21 take hot showers.

22 In terms of canteen privileges, I am unaware of
23 whether they lose canteen privileges or not. I have no
24 information on that.

25 Some inmates do remain in protective confinement for

1 over a month. Apparently, inmates who for long periods of
2 time refuse to go or cannot adjust to population are
3 transferred.

4 Now, there continues to be a shortage of cell space
5 in protective confinement. When this occurs, the overflow
6 of protective confinement goes in the administrative
7 confinement area. Any particular cell-- Inmates are not
8 confined with administrative confinement inmates, within
9 any one cell. There is no mixture.

10 Inmates, in the inmate interviews, report continued
11 wolfing, and cat calls continue during initial periods of
12 incarceration. Overt signs of sexual activity at this time
13 mostly consensual, from my observation, my understanding,
14 continues in part. Sheets, however, are no longer hung
15 from bunks as we have indicated. Inmates still report two
16 men in some bunks at night. Pornographic movies are no
17 longer shown. Inmates describe something called a punk
18 beauty contest that occurred two years ago in which
19 effeminate inmates were competing in a so-called punk
20 beauty contest.

21 The sources of this information come from physical
22 observation, inmate interviews, superintendent deposition,
23 and classification officers' deposition.

24 The recommendations I have in this area:

25 One, I would speed up the transfer of inmates who

1 cannot make it in population. Do not require incarceration
2 in protective confinement for extended lengths of time to
3 prove an inmate cannot make it in population.

4 Second, and I emphatically feel this is appropriate,
5 greatly expand the confinement area, not only protective
6 confinement, but disciplinary confinement, and
7 administrative confinement.

8 In talking with Superintendent Lambdin, and hearing
9 his deposition, this is going to materialize. Money has
10 been allocated, and this is part of the plan. It is an
11 important element to controlling the environment. That is,
12 increase the confinement area.

13 In terms of cat calling, wolfing area, create a
14 separate reception area for incoming inmates. Separate
15 them until complete orientation to GCI can be completed.
16 Once orientation can be completed, an assignment to dorm,
17 one inmate at a time, instead of a line of inmates enter
18 population, might reduce the inmates from wolf calls or
19 wolfing.

20 In terms of increasing opportunities for protective
21 confinement inmates, I suggest the possibility of creating
22 a work crew of protective confinement inmates so they could
23 leave the area and hold jobs in the institution. There are
24 difficulties in creating this, however; if it is done it
25 creates activity for the protective confinement. Does not

1 force them to lose gain time associated with working within
2 the institution.

3 Further, I strongly suggest providing counseling
4 services to protective confinement inmates.

5 Currently, programs and counseling services typically
6 leave protective confinement inmates. They are not
7 eligible to participate in programs. Associated with this,
8 if they are not participating in programs, they are not
9 eligible for gain time, reduction in sentence. Those
10 people in protective confinement should be seen as a
11 priority population to receive counseling. By definition
12 these people are saying they cannot handle themselves in
13 population. Many of these inmates will be those
14 emotionally disturbed, physically weak, uncertain of
15 themselves. Currently, by being in protective confinement,
16 they reduce probability and possibility for participating
17 in programs for which they have, perhaps, more priority, or
18 in more need.

19 Q Dr. Swanson, are you able to itemize the types of
20 programs that exist for the general population that those
21 inmates once incarcerated in protective confinement are not
22 eligible for?

23 A I will give you some examples. A variety of alcohol
24 programs are conducted on the compound for the inmates.
25 Alcoholics Victorious, and Alcoholics Anonymous, and there

1 is Narcotics Anonymous.

2 A number of inmates report they are checking in
3 because they have problems with alcohol and drugs, and in
4 order not to be tempted to go back into the problems they
5 had on the street that brought them to the institution,
6 they are checking in. Those people, in fact, would
7 routinely benefit from participation in those programs.

8 Other programs have to do with individual and group
9 counseling of a variety of natures.

10 In short, besides the fact that they lose gain time
11 by not being allowed to work, lose gain time in not being
12 able to participate in the programs, they are probably more
13 in need of those programs, and more activities to diversify
14 the day.

15 The lighting, as I said, continues to be poor in PC.
16 Improving the lighting would be a recommendation.

17 Further, I would suggest disciplining inmates for
18 open display of homosexual behaviors.

19 Q You complete your review of the sixth area, and you
20 are ready to proceed in the seventh area?

21 A Yes, I was hoping to come to the seventh. This is my
22 last area.

23 Q Could you address the seventh and last area?

24 A Yes, this concerns rape within the correctional
25 compound.

1 The court found that there was no procedure for
2 investigating rapes. There was no standard interview
3 process, no standard polygraph procedure, no standard
4 rectal examination, no standard psychiatric examination, no
5 standard reporting to any law enforcement officer. No
6 rapes were ever reported by GCI authorities in any internal
7 documents available.

8 There was a lack of investigative procedure which led
9 to an atmosphere inmates could rape other vulnerable
10 inmates without detection or deterrence.

11 My assessment of the current status in this area,
12 there does now exist a procedure for investigation of
13 rapes. There is an interview process that exists and seems
14 to be utilized for interviewing of alleged rape victims.
15 However, following directly from findings, there is no
16 standard polygraph procedure. There is -- Let me say
17 alleged victims do now receive rectal examination at an
18 outside hospital. This seems to occur on a routine basis
19 with alleged rapes. However, there is no standard
20 psychiatric examination. Alleged rapes are reported to law
21 enforcement, reported to the local State's Attorney's
22 Office.

23 In the documents that I have seen since LaMarca,
24 there is only one sexual assault reported in the year
25 since. That was January, 1986.

1 My finding is that the establishment of the
2 investigative procedure may have improved the atmosphere
3 thereby reducing rapes at Glades Correctional.

4 The sources that I relied on to make these
5 conclusions are the incident reports available to me,
6 policy statements, superintendent reports, and inmate
7 interviews.

8 One, one issue in this area continues to concern me.
9 There is no provision of mental health services, support
10 services, or rape crisis services for those alleging to be
11 victims of rape. The present interview procedure, the
12 present procedure for handling alleged rapes seems to be to
13 support the ability of law enforcement to prosecute the
14 allegations of rape. There does not seem to be a
15 tangential or accompanying side of being concerned about
16 people who have alleged themselves to be victim of rape.
17 This, I think, misses the point.

18 If we want people to be encouraged to report rapes,
19 they should perceive themselves to be received by an
20 understanding audience, not a State Attorney, or
21 institutional inspector who is going to question the
22 veracity whether the rape occurred or not.

23 I believe that is an element, and important element
24 in this to allow for prosecution of rape perpetrators,
25 however, rape victims tend to feel they are further

1 victimized by this kind of process. I think this process
2 needs to be supported, perhaps softened with a rape
3 ombudsman. Someone who is concerned about the feeling of a
4 person who is reporting rape, perhaps a rape crisis team.

5 I might comment when a man reports he has been raped,
6 it is probably more difficult to face the embarrassment
7 than what one would find in the more traditional rape of
8 the community. Because of that difficulty, because of the
9 vulnerability, because of the unwillingness to admit not
10 being able to take care of oneself, I think in this
11 atmosphere of the institution, a mental health approach, a
12 rape counseling approach is crucial.

13 Q Does that complete your review of the seven areas for
14 which you have determined conditions that exist presently
15 would require some remedial action?

16 A Yes.

17 Q You had referred to two different documents in your
18 presentation that I would like to call your attention to.

19 I have Plaintiffs' Ex. 4, and 9, which are business
20 records from GCI.

21 MR. LIPMAN: Is there any objection to their
22 being introduced? 4 is the special review of GCI, and Ex.
23 9 is the superintendent monthly reports that Dr. Swanson
24 had referred to dating from January 1986, and September
25 1986, through September 1985.

1 THE COURT: Now, the time period or range of
2 number 4 is what?

3 MR. LIPMAN: Number 4 is special review of
4 Glades Correctional Institutional dated January 20, dash
5 21, 1986, Ex. 4. January '86 which would have followed the
6 decision of the case at the magistrate level, through
7 September '89, through last fall.

8 THE COURT: Any objection to these documents
9 being received?

10 MR. DAVIS: Your Honor, without being able to
11 compare them with my set, I am not sure if all of these are
12 documents which are containing solely the superintendent's
13 monthly reports, there are documents in here which are not
14 superintendent's monthly reports.

15 THE COURT: Suppose you look at them through
16 the noon hour, and I will leave them in limbo before we do
17 that. You may not have any objection. If you do, you can
18 voice it at that time.

19 MR. LIPMAN: I was told that April, 1989
20 superintendent report was missing from what we received.
21 It is not provided.

22 MR. DAVIS: April is missing from my set also.
23 I thought you would have it.

24 MR. LIPMAN: We obtained this through you.

25 MR. LIPMAN: Your Honor, may I proceed?

1 THE COURT: Yes.

2 BY MR. LIPMAN:

3 Q In reference to first Plaintiffs' exhibit, what is
4 identified as Plaintiffs' No. 4, that is January 20, and
5 21, 1986 report entitled "Special Review of Glades
6 Correctional Institutional." What is the gist of that
7 report, and how does that factor into your testimony?

8 A Apparently as a result of the LaMarca case--

9 MR. DAVIS: I would have an objection to his
10 characterizing the report. The report will speak for
11 itself. It is not authored by him. If he wishes to
12 testify how that documented his opinion, that is another
13 matter, we object to it--

14 MR. LIPMAN: My question is how does it factor
15 into his conclusions?

16 I thought Your Honor ought to have an understanding
17 what the report is.

18 THE COURT: I will overrule the objection.
19 Proceed.

20 THE WITNESS: It is my understanding this
21 report was prepared at the request of the Governor's office
22 to review the situation at Glades Correctional.

23 BY MR. LIPMAN:

24 Q How are you aware of that?

25 A In the first paragraph reduction of concern by

1 Governor Graham, GCI, office of the Inspector General
2 directed to visit that facility and report as to current
3 status.

4 Q In terms of temporal period, when does that fit into
5 the evolution of this case, January 20th?

6 A This was almost immediately after the hearing on the
7 initial -- a review of LaMarca. I might say the time
8 period that it covers is really back to 1980, '81. So this
9 is a review of conditions, historically up to the date of
10 the review, which date of the report, which is January
11 20th. I relied on this report to provide a corroboration
12 of improvements that I had seen, and that I had reported on
13 in the case, and, in fact, there are several points in here
14 which directly parallel observation that I had made about
15 improvements and physical plant, cleanliness, sanitation,
16 assaults, and so forth.

17 This report helped me to feel confident about the
18 direction that change was occurring at GCI, seemingly, as a
19 result of the involvement of this case.

20 Q All right. The second series of documents, and I
21 think you specifically refer to the superintendent reports
22 which, I believe, are contained in plaintiffs Ex. 9, again,
23 how did these documents fit into the testimony that you
24 offered?

25 A The superintendent provides a monthly report to the

1 Department of Corrections, a wide variety of the
2 institution. This occurred -- includes matters of staff,
3 turnover, hiring staff, dismissals.

4 It includes inmate discipline, assaults upon inmate,
5 inmate staff assaults.

6 It is a monthly state of the institution report that
7 comes from the superintendent's office. That helped give
8 me a flavor and balance and what I was given from inmates
9 from other sources.

10 Q We completed a portion of your testimony relating to
11 the problems. Are there improvements that have been made
12 since the fall proceedings, fall of '85, that you haven't
13 alluded to that you want to call to His Honor's attention?

14 A Yes, I do think there has been progress, and I feel
15 the administration of GCI should be given credit where
16 credit is due.

17 One contrast, since my first entry on the Glades
18 compound, and that would occur in the recent past, showed
19 significant improvement in terms of physical plant. The
20 housing area is much cleaner. There appear to be less
21 clutter. Paint and maintenance of the facility is
22 obviously much better. There are now screens on windows so
23 that inmates could have the windows open without being
24 infested by insects.

25 This is also alluded to in the '86 report as progress

1 in these areas that has been continued or maintained.

2 The yard area is improved. Landscaping is much more
3 livable. Quality of life is better.

4 The swampy area, where there is sewage drainage, and
5 fowl stench, those have been alleviated. There are only
6 hints of what was dramatic in the past.

7 Institution has improved recreational facilities,
8 handball courts, restrooms in the rec yard. All of that
9 indicates there is an interest in improving the quality of
10 live in GCI, and administration should be so commended.

11 I think security has been improved. More manpower,
12 especially in the dorms where we have standard post,
13 established post for surveillance. Single bunking has been
14 maintained in the middle areas. Clearly, visual
15 surveillance to provide security for inmates is much
16 improved by maintaining of that single bunking.

17 I think the staff seem to be obviously better
18 trained. The lack of incident reports in terms of handguns
19 misfiring, other kinds of things, the absence is quite
20 clear. We are dealing with a better staff, and there is a
21 better pride of service in being affiliated with GCI.
22 Staff ought to be commended for that.

23 Staff turnover has been reduced. Staff should be
24 commended for that. PC, protective confinement, has been
25 much improved. While I object to having two protective

1 confinement inmates per cell, it is too likely -- it is a
2 significant improvement from four to five inmates per cell.

3 The fact that protective confinement wing is now in a
4 location where taunting from inmates no longer occurs, that
5 is clearly an improvement.

6 So, there are a number of areas which improvement has
7 occurred. I believe staff should be complimented on that.
8 I still feel there is further improvement possible.

9 MR. LIPMAN: Your Honor, at this time, I would
10 like to have a videotape of GCI, as Dr. Swanson toured GCI
11 in December, and was able through a technician to have a
12 tape prepared, and I think the observations that he had,
13 and will make on the tape, and physical scene might assist
14 the court in offering a pictural review of some of the
15 contents reviewed.

16 It is about 45 minutes to 50 minutes. If I
17 understand toward the middle or end we might be able to
18 fast forward through portions that may become redundant.

19 THE COURT: Have counsel seen this tape?

20 MR. DAVIS: No, Your Honor, nor do we know
21 whether it is an uncut version. We were present when it
22 was being taped. We don't know if this is an uncut version
23 or not.

24 MR. LIPMAN: Let me represent to His Honor that
25 nothing has been edited, and as both counsel with Dr.

1 Swanson toured the facilities together, in a group, and
2 there was nothing done in the tape outside of that
3 experience. Although counsel hasn't seen the actual tape
4 has participated in its making.

5 MR. DAVIS: If we could have it shown without
6 waiving any objection that we might have.

7 THE COURT: All right. Let's do it that way.
8 Sounds like it would be helpful.

9 MR. DAVIS: It is almost noontime.

10 THE COURT: You said it would take about how
11 long?

12 MR. LIPMAN: 50 minutes. If we fast forwarded
13 some sections, we could reduce it.

14 THE COURT: Why don't we go ahead, unless there
15 is a special reason not to. We could recess it now, and
16 take it up as soon as we got back. I don't care. I would
17 just a soon go ahead and do it now, and take a lunch break
18 later, but I would be glad to consider any reason not to do
19 that.

20 Let's go ahead, then.

21 You have the machine ready? Is is there any audio
22 part of this thing. Unless there is a transcript--
23 (Video tape played.)

24 BY MR. LIPMAN:

25 Q Dr. Swanson, you already told me there was a portion

1 you felt you could fast forward, to give directions that
2 are necessary to move us along, if you need to stop to
3 further comment on anything we see, feel free to do so?

4 A There may be portions, also, the audio goes down
5 because of the distance between me, and the camera.

6 Q Are you able to recall the date?

7 A Early December, if my memory serves, like the 12th.

8 THE COURT: You are talking about this past
9 December?

10 THE WITNESS: Yes.

11 MR. LIPMAN: Last month.

12 THE WITNESS: This is a panorama, where I enter
13 the institution.

14 BY MR. LIPMAN:

15 Q Dr. Swanson, are you able to tell if we have entered
16 the compound?

17 A Entered the compound, and we are in front of
18 dormitory A, one of the larger dormitories. I think we
19 will start the narration right here.

20 "We are entering a dorm in the main compound. As you
21 can see immediately ahead is what is called the wicket.
22 The guard post that serves the central part of the
23 dormitory which extends down either direction from the
24 wicket. We walk up and the guard will preside within the
25 wicket, which is a surveillance post, to observe the dorm

1 area on either side.

2 "As you can see at the end of the dorm area on each
3 side is the shower, and toilet area. The bunks in the
4 central aisles are single bunks, and being single bunks you
5 can provide visual surveillance down to the showers.
6 Second tier of bunks would obstruct that vision.

7 "The dorm areas are asymmetrical so the same is true
8 on the opposite side.

9 "Going outside of the wicket area, you can get a more
10 clear shot. We are here in the morning time in which there
11 is plenty of light, and visual access is easier than the
12 night. And as we exit the wicket, we can see one other
13 area that is difficult to observe from the wicket, and this
14 is the T.V. room, card room, or the recreational area
15 within dorm A.

16 "From the central point visual access is very
17 difficult. We will go ahead and walk into the area. As
18 you can see, this is simply a T.V. viewing area separated
19 so on one side is the T.V. area, and on this side is the
20 card room area, sitting area. If you come back into this
21 area, and look back towards the dorms, you can see how
22 limited the visual access is from the dorm area, or the
23 wicket into the card room.

24 "The dorm area to the shower, as you can see, visual
25 access is improved by not having the double bunks in the

1 center.

2 "I am now in the shower area looking back at the
3 dorm. And as you will see, the distance is an obstacle to
4 good observation, and there are blind spots in this area.

5 "And this is the shower area that we talked about.
6 And if the cameraman can come, we can look back toward the
7 wicket from here. The wicket, we are going to go down the
8 opposite dorm area from the wicket in dorm A.

9 THE WITNESS: We are still in dorm A, this is
10 on the other side.

11 "As you can see, this is a direct asymmetry on the
12 other side, we have the two central aisle, double bunk,
13 which does allow surveillance from the way it used to be,
14 and the shower area is at the end of this dorm area.

15 "Again, on one side, we have the toilet area, and on
16 the other side we have the shower area. One thing to make
17 note of his the visual ability of seeing through this
18 glass. As the glass is here for awhile, it ages, and
19 becomes opaque.

20 "I am going to walk into the shower area so you can
21 see me through the glass. Except for the two bottom
22 outside panes which have been recently put in, visual
23 ability is limited, and this is from immediately outside
24 the shower.

25 "Again, this shower area is identical to the other

1 side, and the cameraman can come in from the shower area,
2 and look back toward the wicket, and you can see the
3 difficulty of seeing through this glass. The lighting in
4 this area as on the other side is very dim, and gives
5 limited access of visual observation. This ends the dorm A
6 orientation.

7 "We are now entering dorm B which is arranged in
8 essentially the same fashion as dorm A. Immediately ahead
9 as you enter is the central guard post or the wicket. As
10 you see, from the wicket, you then observe either end of
11 the dorm which is bunks, and at the end the shower,
12 bathroom area.

13 "The difference between dorm A and dorm B is largely
14 that of size. This is not quite as large as dorm A area we
15 just visited.

16 "As we enter the wicket, you can see we again have
17 the central area single bunk, and the outside bunks double.

18 "We will walk down towards the bathroom as we did in
19 dorm A. As you can tell, this is not as long as the dorm
20 we just visited.

21 "Again we have the bath, toilet area on one side,
22 next to the shower area on the other.

23 "Again, you can note the glass which has become
24 opaque, and as I go behind the glass, visual access is
25 somewhat restricted. And if the cameraman will come back,

1 we can see that again we have blind spots with a partial
2 separation of the shower, and then the opaque nature of the
3 glass.

4 "Looking back towards the wicket, you can see the
5 restriction of visual surveillance. Unlike dorm A, there
6 is no physical separation from one side to the other so we
7 have one clear shot of the total dorm. One bathroom to the
8 other.

9 "I am standing in front of the wicket. From this
10 post in front, again, you have clear visual access if you
11 are at the wicket to either side of dorm B. Directly
12 opposite the wicket is the T.V. room, which is the door
13 closed now, with the diamond shape window in it. You can
14 see from here, visualization into the T.V., card room is
15 again quite restricted. Without moving from the wicket
16 post, adequate surveillance is not possible.

17 "Now going to the door of the T.V. area, and you can
18 see a similar arrangement in dorm B as we saw in dorm A.
19 T.V. area on one side, and adjacent to that, is the game
20 area, card room area.

21 "Looking back into the dorm area, visual surveillance
22 from the dorm area, or wicket, as you can see is highly
23 restricted. Sight, sound surveillance is limited at best.

24 "We are now about to enter C dorm."

25 THE WITNESS: David, I will suggest we fast

1 forward C dorm, if that is reasonable.

2 BY MR. LIPMAN:

3 Q Can you tell the technician, you want to fast forward
4 through C dorm?

5 A I want to go through C. D is worth looking at. As
6 it were, the bunks were pushed in the middle.

7 Q What is the reason you want to fast forward C?

8 A Repetitiveness, A and D are almost identical. B and
9 C are like A and D except shorter, and no physical
10 separation between the two sides. Obviously, if you want
11 to see it all, that is fine. B is very much like C, and A
12 is like D.

13 THE COURT: Do you have any objection?

14 MR. DAVIS: The problem that we would have
15 would be that if there is -- there is obviously dialogue on
16 this tape. We know what was visually picked up, but we
17 don't know what all the dialogue was. As long as a copy
18 will be provided to us so we could view the dialogue to
19 make any objections, I would not have a problem with that.
20 We don't want something going into evidence with dialogue
21 on it that we have not heard and we have an objection to.
22 And let it lurk there in the record of the case.

23 MR. LIPMAN: If it is easier to show the whole
24 thing.

25 MR. DAVIS: It is fine with me to fast forward,

1 as long as you have provided to us a copy that we can
2 review to see if we have any objections and enter them at a
3 subsequent time.

4 MR. LIPMAN: We were going to admit the tape as
5 an exhibit so the court and Court of Appeals will have a
6 copy of it. If I can do that, and release it pending its
7 introduction, furnish it to counsel, and they can view it
8 tonight, or make a copy, that is fine.

9 THE COURT: It will be available. Why don't we
10 leave it up to Mr. Davis to take a look at it if he wants
11 to.

12 MR. DAVIS: Would we have it available to take
13 it from here and look at it?

14 MR. LIPMAN: Dr. Swanson will help you in fast
15 forwarding it to the next section.

16 THE WITNESS: There will be a scene that says D
17 dorm, and then you can bring it back. I want to show a
18 little bit of D dorm to show specific things, and fast
19 forward it again.

20 BY MR. LIPMAN:

21 Q While you are waiting, what would your solution be to
22 the problem of lack of ability to have surveillance of
23 inmates in the T.V. or card room?

24 A When those areas are open, and I am told they are
25 opened like 4 to 11 o'clock during the week, and a later

1 hour during the weekend, you almost need an additional
2 officer, one in the wicket, one patrolling, optimally a
3 third one. Other than that what I am suggesting is to
4 enforce a policy of constant patrol by the second officer.

5 You have a watch clock where he would go into one end of
6 the shower, go into the T.V. room, and all the way down.
7 Now, he is constantly monitoring.

8 Here here we are.

9 (Tape continued.)

10 "We see the repeat of the same design. We have
11 again the central guard post or wicket."

12 BY MR. LIPMAN:

13 Q This is dorm D?

14 THE WITNESS: D. This is long, very much like A
15 dorm.

16 "This dorm is a little larger, and physically
17 separated from one side and the other, A wicket, and solid
18 wall which provides opportunities to separate both sides of
19 the dorm.

20 "Looking down from the wicket to the end, at present
21 you get some approximation of the effect of double bunking
22 in the central aisle. They are cleaning, therefore, the
23 bunks are moved toward the center. We have some double
24 bunking in the central. That does provide an obstacle to
25 visual surveillance. Looking down the opposite side, here

1 we do not have the bunks pulled into the central, and you
2 can see with a single bunking in the central aisle, we do
3 have improved ability.

4 "Again, bathroom, and shower area is at the end of
5 the dorm."

6 THE COURT: This is the opposite side of D
7 dorm?

8 THE WITNESS: Yes. The reason I wanted to show
9 this, since they were cleaning, it approximated the
10 experience of having a double bunk.

11 "We are into the D dorm side where the bunks have
12 been pulled into the middle for cleaning, and you just get
13 some representation of the visual obstacles. I don't
14 intend to communicate this is current practice, this is
15 just this way for cleaning purpose, but you can see the
16 problem of double bunking. We will again walk down to the
17 shower area in D dorm.

18 "As you can see, this is the longer dorm as was A.
19 Again we have the -- the front of the shower area in the D
20 dorm, and I will walk in as I did the other dorm to show we
21 have the toilet side and we have the shower side.

22 "Again, we have the problem of limited visual access.
23 I am now walking into the shower area looking out into the
24 dorm area. And we have half walls, and we have the limited
25 access through the windows. This gives you an

1 approximation of how it used to be."

2 THE WITNESS: I think we can fast forward it to
3 the exit, now.

4 BY MR. LIPMAN:

5 Q Just tell us when you want us to go back.

6 A We will see the canteen area. I will talk about
7 that. When we exit here, I will talk about the canteen.

8 Q Incidentally, the dorms we have seen, are they in the
9 main compound?

10 A A through D are main compound dorms.

11 Q Which is the existing institution as it existed in
12 the fall.

13 THE WITNESS: Now you can stop it.

14 (Tape continued.)

15 "We are standing outside of D dorm. We have just
16 exited, and this is more or less towards the central part
17 of what is called the main compound or the original housing
18 area at Glades Correctional.

19 "I am now standing in front of the canteen. This is
20 where optional items, such as candy, snacks, so forth, can
21 be bought by the inmates. This canteen serves both
22 compounds of Glades Correctional. I am told by the Colonel
23 the population of the inmates today is 1183, and this is
24 referred to as the little Winn-Dixie of Glades
25 Correctional. Inmates are free to buy those items that

1 they want here.

2 "This is kind of a convenient meeting place for all
3 inmates who are in population between the two compounds."

4 THE WITNESS: You can speed this up until we
5 get to the confinement area. This is the other side of the
6 canteen.

7 (Tape continued.)

8 "We are still in the main compound area. We are now
9 going to enter the confinement area. This houses
10 protective custody, administration confinement, and
11 disciplinary confinement.

12 "This is single cell housing area for people who
13 create problems in the compound, or themselves are being
14 troubled in the compound. We have just entered from the
15 outside into the confinement area. This houses PC, AC, DC.

16 "We will enter into what is PC. This is protective
17 confinement. Inmates who feel they are threatened, or
18 endangered in the compound can request to be put into
19 protective confinement. And here they are placed in cells
20 as we can see.

21 "Typically at Glades you will see PC is two inmates
22 per cell. We are now going to walk down a narrow walkway
23 in the PC confinement area, with individual cells with
24 barred doors, and we can walk down."

25 THE WITNESS: I had to say we had to put in

1 lights so we could see. Lighting has been augmented.

2 (Tape continued.)

3 "As you can see, there are a limited number of cells
4 within this walkway. Each cell is double bunked, and has a
5 traditional bar door in front. And as you could see as you
6 look in, there is a single bunk bed which houses two
7 inmates. In that cell area, there is a single piece
8 toilet, wash basin with a light overhead. The cell we are
9 looking into now is PC-1."

10 MR. LIPMAN: Are all the cells in PC the same
11 size?

12 THE WITNESS: Yes.

13 (Tape continued.)

14 "Down PC-1, P-2, each cell is the identical mate of
15 the other cell. Two beds, or one bunk bed each with a
16 single wash basin, toilet area. This is PC-3, the same
17 situation, two beds, one bunk, and the toilet basin
18 accommodation. Again, one bunk bed, two beds, two
19 inmates, one toilet, and basin.

20 "As you can see in this area, it is quite limited
21 confinement. Inmates are typically kept in their cells,
22 allowed showers three times a week, and have some exercise
23 opportunities every week. The main source of their
24 confinement is in this cell 24 hours a day. They are fed
25 here. They have access to books here.

1 "This is PC-5. As you can see, the same
2 configuration as the PC cell. We are now looking into
3 PC-6. As you can see, it is the same configuration, two
4 beds, limited movement area. Limited light.

5 This is PC-7 which is the same configuration as the
6 previous PC cells, two inmates, two beds, one toilet basin,
7 limited walk area.

8 "We are now facing PC-8, which is the same
9 duplication of previous seven sells. This is the last cell
10 within the PC block. There are eight cells within this
11 block. The very last area is the shower area for which the
12 inmates are given access three times a week.

13 "The last cell is dedicated to a shower, which I will
14 enter as you can see. It is basic rudimentary shower
15 stall. Shower stall, and a limited dressing area in front.
16 We are at the end. From here we can exit PC into another
17 confinement area. I am exiting from the PC block area,
18 into the next confinement area, AC.

19 "If you have the analogy of a prison being a
20 community, AC is a detention area, pretrial detention area,
21 where inmates who have been accused of causing problems,
22 some infraction or even a crime would be brought to AC
23 until the case is disposed of. The first cell which is the
24 last cell is the shower area, which you can see will be the
25 identical counterpart of what we just come from in

1 protective confinement."

2 BY MR. LIPMAN:

3 Q Doctor Swanson, AC is the same as administrative
4 confinement?

5 A Yes, essentially identical.

6 (Tape continued.)

7 "Same shower stall, same dressing area. AC, we have
8 seven cells assigned to the AC area. The cells are the
9 same configuration as PC, single bunk, two beds, a single
10 stainless steel module of toilet, and basin, and we are
11 obviously getting comments from the residents.

12 "If you come down, we will show you the inside of an
13 AC cell. There are two inmates. And the same
14 configuration as PC.

15 "Leaving AC-7, we are at AC-6, and you see the same
16 configuration, PC, and AC the same thing, two beds, basin,
17 toilet. Two inmates per cell.

18 "We are at AC-5. Same configuration, two beds, one
19 bunk, and room for two inmates.

20 "We are at AC-4, same configuration, two beds, one
21 toilet, basin, module, and walkway.

22 "Moving on to AC-3, we have the same configuration,
23 two inmates, two beds, one basin, toilet.

24 "AC-2 is the same configuration as the previous ones.

25 "We are back to AC-1.

1 "I am told when PC fills, they will begin filling AC
2 with PC inmates. If you have an overflow from PC, you will
3 use AC cell for protective confinement inmates.

4 The configuration, AC, PC, are the same. The only
5 difference, the inmates in the block would be those accused
6 of a crime, whereas protective confinement are those who
7 feel threatened on the compound."

8 BY MR. LIPMAN:

9 Q Dr. Swanson -- could we stop a second? There were
10 eight cells in PC with two bunks, correct?

11 A Yes.

12 Q So when you have more than 16 inmates confined in
13 protective confinement. The rest are overflow into
14 administrative confinement?

15 A The policy is to fill AC, so they evacuate the cells
16 as needed to handle the overflow from PC.

17 Q Do you know when you did this on-site visit, or
18 during your recent trips to GCI in the fall of 1989 whether
19 any inmates who were in protective confinement were in
20 overflow cells in administrative confinement?

21 A Yes, my first visit when we were interviewing PC,
22 AC-1 was housing PC inmates. There were 17 inmates that
23 day, and so the 17 was in AC-1.

24 Is there anything else you want to see in the
25 confinement area?

1 You want to see DC?

2 Q Yes.

3 A This is next. This is disciplinary confinement. If
4 you make the analogy a prisoner in the community, this is
5 the sentenced inmate section. The DC cell block area
6 follows the basic design of AC and PC, with two exceptions,
7 you have a solid door front the with limited visual access,
8 and single cell house. One inmate per cell. I am told
9 that because of overflow, there is a PC inmate in the first
10 DC cell, ordinarily DC is for disciplinary inmates. Again,
11 you have limited access, and you have a double bunk, but
12 apparently houses one inmate at a time.

13 (Tape continued.)

14 "We will open, this is DC two. This is disciplinary
15 confinement cell, one upper bunk. Here you have porcelain
16 basin, and toilet. But the design is similar to AC, and
17 PC. Single cell housing here. There are 15 cells designed
18 for this area. I am told, for reasons of fire code, only
19 10 cells are being used for safety reasons.

20 "Again, similar except that the doors are solid. In
21 this case, we have a bar. We have a lower bunk here with a
22 stainless steel basin, lower bunk with single, stainless
23 steel basin.

24 "We are now in an area where some of the cells are
25 not being used. You could look into them and see the size

1 of the space. There would be a bunk here, a walk area here
2 (indicating). These cells are not being used at present."

3 THE WITNESS: I think we have a picture of
4 confinement. You can fast forward it on.

5 BY MR. LIPMAN:

6 Q All right. Just tell the technician when you want to
7 start again.

8 (Tape continued.)

9 "From here we are going to the north compound.
10 We are walking down the area -- E dorm was a honor dorm, as
11 you can see the two compounds are physically separated by
12 high fences, and razor wire.

13 "As we enter the north compound, we are looking over
14 what is called the visiting park, and visitors have contact
15 visits with their inmate friends or relatives on an
16 on-contact basis, inmate has that privilege.

17 "As we approach the north compound, you see we have a
18 cellaport area in which inmates go through the cellaport,
19 and go through a metal detector. The purpose of this is to
20 restrict and control contraband flow from one compound to
21 another.

22 "I am now approaching the cellaport gate, where
23 inmates pass, and as you can see, there is a metal detector
24 here. Within the cellaport area, not only has the gate to
25 control access from one compound to the other, there is an

1 external gate where work crews and delivery vans may enter.

2 This is a security control area. We are now entering the
3 north compound from the cellaport area.

4 "We are going to the housing area that previously
5 housed the cannery. At the time of the original case, the
6 cannery had been converted to dorms F through H."

7 THE WITNESS: North compound and main compound
8 are separatable. Main compound people who tend to be
9 higher security are restricted in terms of their access to
10 north compound. North compound people who are lower in
11 security by necessity do go into main compound because that
12 is where they eat, and get other support services.

13 So it is clear, you have to have commerce from north
14 to main, you could restrict main to north.

15 BY MR. LIPMAN:

16 Q You offered when you were going through your
17 observations as to areas of relief, and you had indicated
18 that the movement of inmates from the north compound and
19 main compound caused you a concern?

20 A It creates a more vulnerable population to victimize
21 higher security risk inmates, one way of minimizing, or
22 ameliorating that is to have support services available in
23 the north compound so you don't have to mix them.

24 THE COURT: The canteen serves both compounds?

25 THE WITNESS: Canteen, the support services,

1 cafeteria, gymnasium in which movies are shown. I guess
2 there are movies in terms of T.V. in the other side, there
3 are a number of things which are not available unless the
4 inmate goes to the main compound. Food services, cafeteria
5 are essentials.

6 (Tape continued.)

7 "As you are walking toward the cannery, you can see
8 we have recreation areas within the compound. There is a
9 basketball court, and something very common within a prison
10 is weight lifting activities.

11 "We are entering H dorm, which is the first dorm
12 within the north compound that we are visiting on this
13 tour.

14 "As you enter H dorm, you can immediately see that
15 the same housing configuration has been followed in the
16 renovations of the cannery. We have open dormitories,
17 again, double bunking across the wall areas with single
18 bunking in the central area. In this dorm we have very
19 high ceilings and this is the way of using the cannery
20 space.

21 "Up the stairs you can see over in the corner is what
22 is called the day room area, or the T.V. area. Again,
23 configuration is such that it is difficult from the guard
24 post, what would be called the wicket on the main compound.
25 There is no surveillance possible from that guard post to

1 the day area. As you walk through, you can see open
2 dormitory housing, and in the corner, far side from the
3 camera is the shower area again.

4 "I am now standing in front of the guard post area in
5 each dorm. From the guard post area, there is fairly easy
6 visual access to the laboratory and toilet area. However,
7 from this post there is difficult of visual -- providing
8 visual surveillance to the shower area. I will walk from
9 the guard post area to the shower.

10 "Again, we have the open dorm area on my right. I am
11 now immediately in front of the shower area. The camera is
12 located immediately in front of the guard post area, what
13 had been called the wicket in the main compound.

14 "As I enter the shower, immediately you see there is
15 a blind spot on one side of the shower. As I walk forward,
16 there are obstacles, and when I get to this side, I have
17 now entered the total blind spot which cannot be observed
18 from the guard post area, only from one part of the housing
19 area itself.

20 "I am back to the guard post area in dorm H, and I
21 will show there is easy surveillance here of the toilet,
22 and urinal area, and without too much trouble the officer
23 can exit a few feet of the guard post area, and see the
24 lavatory area. So here we have part of the dormitory which
25 is easily accessed visually.

1 "The same position in the guard post area. One of
2 the problems is that this wall which provides some privacy
3 for the laboratory area does obstruct visual access into
4 the dorm area itself. So you can't see the beds below me,
5 but I am in the single bunk area of the housing area in
6 walking back to the wall. Now at the end over here, as you
7 can see, there is limited access to lower bunks, and I am
8 over in the far corner, kater-corner from the guard post.

9 "In H dorm I am going up the stairs from the
10 dormitory bunk area into what we call the day room, or the
11 T.V. room serving H dorm. The top of the stairs in H dorm
12 entering had dorms T.V. card room area. As you can see, we
13 have a solid door. Guard post, and housing area is
14 downstairs. So we have no sight or sound capable of being
15 seen from downstairs without a separate officer up here to
16 surveil.

17 "You can see it is a large area with T.V., and game
18 tables.

19 G dorm, also a dorm within the renovated cannery."

20 THE WITNESS: After a couple minutes here, we
21 can fast forward again.

22 (Tape continued.)

23 "E dorm is slightly configured. It is raised and has
24 opportunity to be somewhat higher than the rest of the dorm
25 area.

1 "When you come up here, looking down from the guard
2 post area, which is slightly elevated, you do have a
3 panorama of G dorm. Except with bunks against the wall, we
4 have single bunking here which does not obstruct visual
5 surveillance. To one side we have the shower areas which
6 are configured similarly to H dorm, and I repeat the visual
7 problems with the bathroom, and showers."

8 THE WITNESS: You can fast forward this.

9 The next dorm we look at was constructed recently as an F
10 Dorm. When you see F, we will stop there.

11 (Tape continued.)

12 "This is toilet area. The camera is looking from the
13 guard post. Again, there is a T.V. room upstairs. We are
14 outside in the perimeter beyond the cannery, or the new
15 dorm areas. This is F Dorm.

16 "F Dorm was built to be a dorm. It is not the
17 renovation of the cannery.

18 "As I am entering F Dorm, you see the basic
19 configuration of beds, double bunks against the wall,
20 single bunking in the central area. We also have, although
21 we have a central guard post, however, it is not near the
22 entrance as it was in the main dorm. This guard post has
23 glass; visually surveil three sides of the dormitory you
24 are facing. Directly opposite of the guard post is the
25 shower/toilet area. From the guard post you can see to

1 your right, and to your left, all of the dorm areas. All
2 of the housing, or bed areas.

3 "As I walk forward from the guard post, and the
4 camera goes back to in front of the guard post, I am
5 entering the toilet laboratory area.

6 "As you can see, there is some visual access from the
7 guard post, but as I walk through the central area, there
8 is limited visual access.

9 "Now, I walk to the far side, and I am exiting the
10 shower laboratory area to come back outside to the dorm.
11 Again, we have similar problems with visual surveillance
12 from the guard post area to that of the shower, toilet
13 area. We have reversed positions in F Dorm.

14 "The cameraman is in the shower area looking out to
15 the guard post where I stand, in front of the guard post
16 area. If I move from one side to the other, you can see
17 there is limited visual access.

18 "Again, in order to have adequate surveillance, the
19 officer would have to actually physically go to the shower
20 area. Adjacent to the F Dorm is E dorm, which was E dorm,
21 an honor dorm. It was a dorm four years ago, even though
22 in the north compound, it is still used as a dorm today.

23 "I am entering E dorm. As I said, used to be an
24 honor dorm for trustees. It is similarly configured with
25 the single bunking in the center, and double bunking on the

1 walls, the guard post can adequately surveil the toilet,
2 and shower areas located adjacent to the guard post. This
3 is the first dorm we've seen in which that surveillance is
4 easily possible. In standing in the guard post, you can
5 surveil the dormitory bed areas standing from the guard
6 post.

7 "You can easily surveil the dormitory area itself.
8 There is no double bunking in the central area. You could
9 pretty we will have visual access to the dorm. The guard
10 post not only has glass overlooking the dorm area, but from
11 inside the guard post, from inside the guard post, you are
12 not only next to the shower, and toilet area where you can
13 hear well, you can overlook the activities pretty much in
14 this area. You do have a privacy wall here in which people
15 could get below, but you could easily see people walking in
16 from the guard post area. There are very few blind spots
17 here, and certainly the proximity of this area to the guard
18 post allows for more easily heard auditory surveillance.

19 "Again, this was one of the original dorms from the
20 origination of the LaMarca case which served as an honor
21 dorm which served as reward for good behavior."

22 THE WITNESS: Finished.

23 THE COURT: That is it?

24 MR. LIPMAN: Your Honor, we offer Plaintiffs'
25 Ex. 3 which is the actual video tape in evidence, and we

1 understand that counsel for the defendants will have an
2 opportunity to review it.

3 THE COURT: All right. You have no objection
4 to the video tape, sir; that is, you will reserve your
5 objection, I suppose, until you listen to the audio part of
6 the fast forward?

7 MR. DAVIS: That's correct.

8 THE COURT: All right.

9 MR. LIPMAN: Your Honor, I believe that
10 completes our direct examination, may I have a moment to
11 confer?

12 THE COURT: All right.

13 BY MR. LIPMAN:

14 Q Now that we have had the benefit of having the visual
15 presentation of the tape, let me take you back to two
16 comments you made. You indicated there were problems with
17 the officers patrolling or being able to visually see
18 conduct in the confinement cells, protective confinement
19 cells. Where, as we went down the hallway of the
20 protective confinement cells, where would the officer be
21 stationed?

22 A Officer routinely would be stationed out front in
23 kind of a front control post area. He would have no side
24 observation down PC, and he should be able to hear any kind
25 of screaming, but there is eight cells distance from the

1 beginning of the PC road, is that what you are--

2 Q Yes. One final area. Although the videotape didn't
3 portray this, there may be testimony from an inmate later
4 this afternoon or tomorrow morning relating to a rape that
5 occurred in the library area. Where is the library, and
6 where is that situated in position to the tour that we have
7 just had?

8 A I didn't go into the library this time, and in my
9 memory, I am not sure where it is from where we were.

10 MR. LIPMAN: All right. No further questions.

11 THE COURT: We will be in recess until 2:15.

12 At that time you will have questions on cross-examination?

13 MR. DAVIS: Yes, one problem we've got. We
14 have been supplied with the documents we requested a couple
15 weeks ago. They appear to be about two hundred pages in
16 length.

17 In order to be able to cross-examine the witness, it
18 will take time to review these. I wonder if we could have
19 additional half hour to 45 minutes to be able to review
20 them and be able to cross-examine the witness.

21 THE COURT: All right. We will be in recess
22 until 2:45.

23 (Thereupon, a recess was taken at 1:15 p.m.)

24 (Thereupon, court reconvened at 2:45 p.m.)

25

CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q Dr. Swanson, in your testimony, you addressed seven
4 issues, or seven areas of concern?

5 A That is correct.

6 Q And in each of these areas, you told us that you
7 reviewed certain data and other material input to arrive at
8 your conclusion, correct?

9 A That is correct.

10 Q Did you in reviewing the material also have occasion
11 to review the disciplinary reports for the one year period
12 that were provided to your counsel yesterday?

13 A I had asked for that, I think, a month ago, and got
14 them yesterday, and, frankly, did not have time.

15 Q You did not? They were asked for at your deposition,
16 were they not?

17 A That may be right. Sometime ago, at least.

18 Q Several weeks ago?

19 A Given the time of arrival, I had no ability to absorb
20 them.

21 Q Would you agree that the disciplinary reports would
22 be highly relevant in respect to those opinions that you
23 gave regarding the tolerance by staff of homosexual
24 behavior, tolerance by staff of drugs on the compound, and
25 of weapons?

1 A Certainly that was one of the reasons I asked for the
2 documents. However, based on the information I had, and in
3 this case we are largely depending on inmate interviews,
4 the consistency, the detail that I received from a sample
5 of inmates representing all the housing areas, plus 12 out
6 of 17 inmates in protective confinement, led me to feel
7 that there was an abundance of contraband. There was a
8 tolerance of alcohol and marijuana and a tolerance over
9 homosexuality.

10 Given the consistency, the amount of detail that I
11 was provided, I felt there was justification for coming to
12 that conclusion.

13 There is no question that I would have liked to have
14 seen the disciplinary reports. What I further said, I felt
15 a contributing factor that would help me understand that
16 particular approach in dealing with inmates was limited
17 ability the staff would have to confine inmates in any
18 length of time.

19 As we saw on the tape, we have 15 cells that could be
20 designated disciplinary confinement, only 10 were used for
21 fire code reasons. There was seven cells, I believe, and
22 administrative confinement, double bunking, and that, you
23 have a limit of 14 people you can detain pending
24 disposition of the case.

25 So, all of that together made it not only plausible,

1 but I was getting consistent information.

2 So that is where I base that. I don't disagree with
3 your premise that I would have been in a superior position
4 to understand staff reactions by disciplinary reports.

5 Q In fact, that would be the only direct evidence of
6 how the staff reacts, would it not?

7 A The incident reports also have bearing in terms of
8 the number of reports of contraband being -- if we deal
9 with the issue of contraband, I reported the number of
10 incident reports that alleged -- that dealt with,
11 confiscation of weapons, drugs, alcohol, and that
12 contributed to my feeling. If you have a year that goes
13 by, and there is only 9 cases in which contraband is
14 actually confiscated, it seems consistent with my
15 observation.

16 Q You are assuming, then, that of the incident reports
17 you had occasion to review that those would indicate that,
18 for instance, in 1987, there were only 9 instances when
19 drugs and alcohol were confiscated in the compound?

20 A I was using those reports to get an idea of the
21 availability. They supported that the fact that they were
22 confiscating contraband. No, I suppose they are the other
23 way, and I say the reports would give me a full picture.

24 Q If the disciplinary reports showed approximately 150
25 discipline hearings and dispositions, due to possession of

1 contraband, drugs, alcohol, and weapons, that would present
2 a somewhat different picture than the statistics you cited
3 showing 9 drug and alcohol confiscations, and four weapons
4 confiscations, or one year, six and four?

5 A Yes. In a funny way, it adds to my impression there
6 is an abundance of contraband on the compound.

7 Q I see. So if there is not a report of contraband
8 which is confiscated, that indicates that the prison is not
9 doing its job in searching out the contraband, but if they
10 can document they have been searching it out, and
11 confiscating it, that means there is too much contraband.
12 They are a looser either way, is that true?

13 A I apologize for the catch 22 of that.

14 Let me further explain there is an intervening set of
15 information, and that is that the inmates are so consistent
16 about the prevalence of homemade wine, marijuana, crack
17 cocaine. That however many instance there are, it is
18 fairly apparent by the consistency of that information that
19 those drugs are available on compound.

20 Q Well, the inmates that you interviewed weren't really
21 consistent on that point, were they? In fact, there was
22 quite a bit of disparity whether drugs were more prevalent
23 at GCI than other situations where some of those inmates
24 had experienced?

25 A You are correct in that there was not unanimity. I

1 felt the combined totality of that indicated a high degree
2 of availability.

3 Q Now, the group that you selected among the inmates
4 that you interviewed were selected by you among primarily
5 the white inmates, correct?

6 A That is correct. As I stated in my deposition, the
7 reason I took predominance of white inmates was because of
8 the issues of LaMarca in which the white inmates were the
9 preponderent population being victimized.

10 Q And you interviewed how many?

11 A Sixty-four, if my recollection is correct.

12 Q How many were willing to interview with you?

13 A Let me answer this way, thirty-one interviewed.

14 Q The others refused to interview with you?

15 A That is correct.

16 Q Do you think the method of collection would suggest
17 that you were selecting inmates that were more willing to
18 sound out complaints than other inmates? Grippers, in other
19 words?

20 A The higher porportion that you lose by attrition,
21 either not showing up, or refuse to be interviewed, the
22 higher porportion of attrition, the more you have to worry
23 about bias.

24 There is very little way to evaluate the direction of
25 that bias, however.

1 Q And you had almost 50 percent refuse to interview?

2 A Yes.

3 Q And as I understand it, you checked with the inmates
4 who refused to interview to make sure it was their own
5 choice to choose not to interview with you?

6 A It was my methodology to verify refusal, yes.

7 Q And those inmates knew what your position was in this
8 litigation, that you had been retained to come and search
9 out the conditions at GCI for the plaintiffs in this
10 lawsuit?

11 A Whether they knew or not, I explained to them that I
12 was an expert. I was here to determine what the conditions
13 were.

14 I would hope that I portrayed myself in the same way
15 I portray myself here. I am an independent expert. I
16 testify as to what is objectively true, to the best of my
17 ability.

18 Q In your review of what the inmates told you, did you
19 not find a number of direct contradictions in specific
20 items of relation to you?

21 A There certainly were. Without being more specific, I
22 would say in general you would find contradictions within
23 that body of interviews.

24 Q For instance, to take an example which is less
25 directly on the point we have been discussing, but which I

1 think is illustrative of the general situation, you had two
2 inmate interviewers discuss a correctional officer by the
3 name of Gray, did you not?

4 A Two interviewees.

5 Q Interviewees?

6 A Because I was the consistent interviewer.

7 Q I am sorry. One of those told you that Gray never
8 patrolled his post?

9 A Yes.

10 Q And the other one told you not only did he patrol his
11 post, but he felt safe at night when Gray was on duty?

12 A You are correct in making that observation. What I
13 don't know if there is two officers Gray, or referring to
14 the same officer.

15 Q If they are referring to the same officer, that would
16 indicate that either the perception of the inmates as a
17 group may not be wholly accurate in respect to the events
18 that they are reporting, or they may for one reason or
19 another be reporting from a position of bias, correct?

20 A That is correct. What I remind counsel is, I take as
21 a basic assumption with these interviews that any single
22 source is unreliable. I don't believe I testified to any
23 one way or the other about officer Gray, simply because
24 that was not something I would take with any degree of
25 assurance, confidence.

1 Q That is right. But that is illustrative of the
2 problem you have with the inmate interviewees?

3 A It is also illustrative why I come up with that rule
4 of interpretation.

5 Q When you ask, going to the question of the various
6 types of contraband on the compound, weapons on the one
7 hand, and drugs and alcohol on the other, when you ask an
8 inmate or any other person in a position such as the inmate
9 as to whether there is a prevalence of that item on the
10 compound or not, you are not receiving an imperical answer,
11 are you?

12 A Let me answer this way. I am getting their
13 perception, or subjective answer.

14 Q Are you aware of studies that have been done
15 regarding reliability of inmate perception as to conditions
16 in prison?

17 A I don't know of any particular study you may be
18 referring to. I will say, in general, inmates who are held
19 involuntarily in any institution, whether it be a prison,
20 mental hospital, or, I suppose, boarding school, military
21 school, tend not to see their situation in the best light.

22 Q They also have tendencies to exaggerate in reporting
23 matters, do they not?

24 A Some, yes; some, no. It is difficult to say
25 consistently with any particular case.

1 Q For instance, the inmate that reported that fire
2 hoses, or water hoses were dragged through the food before
3 it was served to them?

4 A Yes, I recall that.

5 Q That would not be upon all the information you have
6 apparently a reliable statement, would it?

7 A It is a single case cited out of all of the
8 interviews. All I can say, in general there were a number
9 of inmates that complained about the quality of food, and
10 the sanitation in which it was delivered.

11 As you know, that has not been part of the focus of
12 what I have been looking at.

13 Q Right, again, I raise it because that illustrates
14 that there is a potential problem with the reliability of
15 what the interviewees that you spoke with reported to you?

16 A Again, yes.

17 Q And you found among those interviewees a number that
18 indicated to you that dope and alcohol or marijuana and
19 alcohol or other drugs and alcohol, while present at GCI,
20 was no worse than that which they had found at other
21 institutions, did you not?

22 A That is correct. Another thing I might say is -- It
23 is kind of central to what I have been trying to do. I am
24 taking this set of information in the context of the set of
25 information I had before. The findings of the court, and

1 looking at it now compared to then.

2 Q And, however, I am not talking about the description
3 between prior conditions, and present, but between
4 institutions. You had a number of inmates, some said that
5 drugs and alcohol were more prevalent than other
6 institutions they had been at, and others said they were no
7 more prevalent, and even one, I believe less prevalent than
8 X institution which is some code you interpreted in your
9 notes that he had been at?

10 A That's correct. Just to make it clear, the situation
11 that I was in, given that every -- not every, most inmates
12 tend to be somewhat paranoid, I indicated I would not be
13 reporting the information by their identity.

14 When I transcribed my interviews into notes for your
15 purpose, I took out that information that might allow for
16 their identification, simply because I was honoring promise
17 of confidentiality I made to them. I wouldn't withhold
18 that from you, except that was the conditions upon which I
19 set up the interviews.

20 Q Right. Now, when you asked an individual in the
21 position of these inmates how he perceives the prevalence
22 of any of these items, you are assuming unless you
23 ascertain in advance that the standard by which he is going
24 to judge the prevalence or non-prevalence and thereby give
25 you some sort of report of his perceptions is similar to

1 your own, are you not?

2 A Well, I try to allow for that. When you are talking
3 about which institution -- I, as a matter of routine with
4 them ask them how long they have been incarcerated, have
5 they been incarcerated in any other institutions, if so,
6 which, how long, so I could get some impression of what
7 their base line would be.

8 I was trying to provide, elicit from them information
9 that they would say something to me about their frame of
10 reference, but I didn't attribute my own frame of reference
11 to them. As a matter of fact, I have probably seen more
12 institutions than any one of them.

13 Q In order to be able to judge properly the answers
14 that they give you, you really know the frame of reference
15 that each one is working with, do you not?

16 A I think that would be a correct description, yes.

17 Q I did not notice in any of the notes which you
18 prepared from the interviews that you had specifically
19 determined that particular inmate's frame of reference,
20 except on occasion, there was an indication of a comparison
21 between GCI, and some other institutions. Other than that,
22 there did not appear in the notes any effort on your part
23 to determine the individual inmate's frame of reference
24 upon which he was giving his opinion to you, is that
25 correct?

1 A Well, no, I am not sure how the notes read that gave
2 you that impression. The background I elicited, clearly I
3 was seeing their race, their age, their size.

4 I was asking them how long they had been at GCI, give
5 me a feeling of what incidence they were going to be
6 referring to, and what institutions they had been at. How
7 would they rate this institution, and that was in the
8 context of their exposure to other institutions, and that
9 was fairly systematically done, and it was systematically
10 done. They either were not responsive to that, or I did
11 not code it that particular way.

12 Q Did they give you any concrete terms to support what
13 they might have meant by their description of any of these
14 items as being prevalent or not prevalent on the compound?

15 Did they, for instance, indicate how many instances
16 that they thought that buck, for instance, which is
17 alcohol, was manufactured on the compound?

18 A No.

19 Q Or any concrete reference to the number of weapons
20 that they felt were possessed on the compound?

21 A Only in the sense that fairly consistently people
22 indicated that if you want a weapon, you could get one
23 within minutes. If you want buck, it is available. If you
24 want drugs, it is available.

25 Q Actually, in respect to the last question I asked

1 you, there were some who did specify, there are some who
2 said they had never seen a weapon on the compound, several
3 of those. There were several who said they had seen one or
4 two weapons on the compound, thereby giving a firm figure
5 of some sort?

6 A I think that is correct.

7 Q The others, though, left it in terms of vague
8 generalities, did they not?

9 A That is probably correct.

10 Q Let's go through in respect to buck or prison wine,
11 alcohol, that is a substance which is easily manufactured
12 by an inmate possessing only sugar or fruit juice, yet, and
13 water, correct?

14 A That is correct.

15 Q And, certainly, sugar is available in any institution
16 that serves food, is it not?

17 A That is correct.

18 Q Water is available, we would hope, at any institution
19 that houses inmates?

20 A Yes.

21 Q And yet is a fairly small item which it is easily
22 concealed, is it not?

23 A That is correct.

24 Q Are you aware of any prison in the country that does
25 not have a problem with buck?

1 A Let's just say it is not an uncommon feature within a
2 correctional environment, jail, prison, for buck to be one
3 of the contraband items.

4 Q And there is always, at virtually all prisons, a
5 competition between the prisoners, and staff on the one
6 hand, the prisoners making the buck, and concealing it, and
7 the staff continually searching it out, finding it, and
8 removing it?

9 A That is essentially a good description of almost
10 every dimension of correction environment. Escaping,
11 keeping them from escaping, and getting rid of the buck,
12 that is accurate.

13 Q The prisoners who have twenty-four hours a day to
14 plot, plan, and carry out whatever they wish to do, while
15 the staff are there in eight-hour shifts, correct?

16 A That is correct.

17 Q And the inmates in the twenty-four hours often have
18 very little to do other than plot, plan, and carry out
19 their designs unless they happen to be on a work crew?

20 A I have heard it say, the inmates have a full time
21 job. The other people have 40 hour a week job. You
22 generally have the staff work there with no inmates, or few
23 inmates, because the inmates will find out the defects of
24 an institution much quicker than the staff. I agree with
25 your point.

1 Q They will find where it is possible to conceal items,
2 where it is possible to carry out activities outside the
3 view or presence of the staff, and carry on whatever other
4 activities they may wish to do?

5 A I think that characterizes as well with a challenge
6 and need for professionals in the field, that is correct,
7 it is a challenge.

8 Q With respect to buck, since buck is a given at any
9 long term prison facility, and at many short term jails,
10 and since it is an item that exists in some substantial
11 degree at most prisons, in order to know whether it is more
12 or less prevalent at a particular institution, you would
13 need to have some basis for measurement, would you not?

14 A As far as that goes, yes, that is correct.

15 Q Do you regard subjective evaluations by the inmates
16 as being highly reliable in evaluating on an imperical
17 basis the presence of buck at an institution?

18 A It certainly isn't ideal. In the area of
19 criminology, corrections, those areas in which we are
20 talking about illicit activities in large part, we are
21 always dealing with problems of motivated misinformation.
22 All I can say is that I have been studying, researching or
23 otherwise working within correctional institutions and
24 environments, and it is with that frame of reference from
25 1967 to the present that I rendered my opinion about this

1 being on the high side availability of buck, homemade wine,
2 drugs.

3 Q Based on essentially the inmate interviews--

4 A It is certainly a very significant part.

5 Q Did you review in preparation for rendering your
6 opinion the procedures which are undertaken at Glades
7 Correctional at the present time in respect to controlling
8 buck?

9 A I wouldn't just limit it to buck. There is a fair
10 amount of attention of controlling contraband of buck, and
11 illegal substances.

12 Q Did you review specific efforts that are taken?

13 A Well, I am not sure to what you are referring.

14 Q Did you in any of your undertaking in preparation for
15 your opinion on this issue review whether there was any
16 pattern with respect to the manufacture or the storing of
17 buck by the prisoners on the compound?

18 A Well, we are getting into areas which I am not
19 confident. I have some information in terms of how that is
20 done, but I am not confident in that. I am not sure what
21 you are referring to.

22 Q Did you determine the -- From any of the inmate
23 interviewers, did you determine from them concrete
24 instances of the manufacture and concealment of buck to
25 learn whether what was being done by those inmates was

1 something which was calculated to avoid diligent search
2 procedures by the staff, or whether it was efforts by the
3 inmates of such nature that any diligent search would
4 likely uncover it?

5 A Let me just say when you--when you deal with
6 information, you are dealing with inmate responding. You
7 are talking about specifics of introduction of contraband
8 into the correctional environment. The information you get
9 is increasingly unreliable. Specifics of that get into
10 things they have a vested interest in. So, I don't take
11 much of that seriously, and it has to become overwhelmingly
12 consistent.

13 If that were the case, in something as serious as
14 introduction of contraband, I would share that with the
15 authorities.

16 Saying that, what I would say that impressed me were
17 the statements that indicated that the transport of
18 alcohol, one dorm to another, or across the compound seemed
19 to be relatively successful in ways that I would think
20 questioned the diligence of the staff.

21 Q All right. You are talking, for instance, about the
22 relationship of several of the inmates who said one could
23 carry a certain quantity of it across the compound without
24 being challenged?

25 A There was one such, yes.

1 Q Do you know in what fashion the buck was transported
2 that he related to you?

3 A If it is the same case that is coming to mind, it was
4 in a bucket.

5 Q Do you know what that bucket was being purportedly
6 used for?

7 A I presume something ostensibly legitimate.

8 Q For instance, it would be possible, would it not, to
9 transport items from one dorm to another in a laundry cart
10 with laundry?

11 A Yes.

12 Q Or if an inmate were on a construction detail, or
13 some other type of particular detail, work detail, he might
14 be able to conceal a certain quantity of some contraband in
15 the work materials that he has, would he not?

16 A No question.

17 Q So you would really need to know whether you are
18 talking about an inmate walking across the compound
19 carrying a fifth of Jack Daniels in a bottle saying such,
20 or whether you are talking about him carrying it hidden,
21 concealed in what would ostensibly appear to be a
22 legitimate pursuit by him?

23 A That is correct.

24 Q Was there any indication that when such items were
25 transported, they were transported in any open and easily

1 detectable manner?

2 A I can't be specific nor certain of the means of
3 transporting.

4 Q You have had some contact with Florida State Prison,
5 have you not?

6 A That is correct.

7 Q Florida State Prison is a single cell prison?

8 A That is what is unique about it. In the system, it
9 is the maximum, I suppose, the heavy maximum institution of
10 the State.

11 Q Where the prisoners are locked down in single cells,
12 and have limited access to an outdoor compound, outside of
13 a structure?

14 A Well, I think it is incorrect to say all the inmates
15 are locked down.

16 Q I don't use the term locked down in a technical
17 sense. Where they lack the freedom to come and go from the
18 facility that they are assigned to?

19 A Well, that institution has the capacity to lock
20 everybody down, and has the capacity to control movement
21 more so than the other institutions.

22 THE COURT: Capacity to control what?

23 THE WITNESS: Movement. 1100 cells, each cell
24 is individual. A high porportion of Florida State Prison
25 are kept locked in.

1 BY MR. DAVIS:

2 Q And yet, even at Florida State Prison, there is an
3 abundance of buck, is there not?

4 A Well, it has been a number of years, I have visited
5 Florida State Prison on a variety of occasions in a variety
6 of roles. I would say that is true.

7 Q You would agree it is much more highly structured
8 facility?

9 A I would agree to that. Although, if I may, the time
10 in which I was aware that Florida State Prison had very
11 large amount of buck, had a large amount of violence, it
12 was under State Court suit in which I was chairman of a
13 commission to review that. That institution at that time
14 was found also to be unconstitutional. Through a variety
15 of actions recommended by the court and instituted, I felt
16 the institution had become remarkably improved in which
17 those situations were much diminished.

18 Q And yet still present. Even with the institution of
19 all the additional procedures, buck was still quite present
20 at the institution?

21 A I would say when you are dealing with long term
22 inmates, even if I couldn't find it, I would probably hold
23 that assumption.

24 Q In respect to drugs, particularly marijuana, and
25 crack cocaine -- incidentally, the reports you had

1 indicated that while -- that among drugs, the drug of
2 prevalence was marijuana rather than cocaine, did they not?

3 A Yes, I think that is correct.

4 Q We are talking about GCI?

5 A Yes.

6 Q We are talking about your inmate interviews?

7 A Yes.

8 Q Both marijuana and crack cocaine, or even powdered
9 cocaine are utilized in such quantities as are easily
10 concealable, correct?

11 A Yes, and I think I further your point by saying if
12 anything, cocaine and crack is more easily consumed.

13 Q Right. And once again in an institution such as GCI
14 which allows inmates to have visitors from the outside, and
15 which has work crews from the outside, and which has three,
16 11 acre compounds with perimeter fences around them, over
17 which items can be thrown, it is certainly not possible to
18 completely exclude the introduction of such items as
19 marijuana or cocaine, correct?

20 A Only in the sense that nothing is impossible. Let me
21 say that we are talking about an institution that was built
22 in '32, open dormitory housing, a large fenced in area, a
23 crew that goes out and works. All of those things operate
24 against having the kind of control one would desire.

25 Q Now, you are aware of the procedures that are

1 followed by Glades Correctional to prevent the introduction
2 of such contraband, are you not?

3 A I believe so.

4 Q For instance, when an inmate has a visitor, that
5 inmate is strip searched each time before he is allowed to
6 get into the compound, correct, from the visitor park?

7 A I don't believe that is correct.

8 Q You don't believe that is so?

9 A Let me say at least from the incident reports that
10 I've read. There is a high number of inmate visitors who
11 are asked to submit to strip search, and there are a number
12 of visitors who are strip searched, but if I have the sense
13 of it, my impression is that those visitors are not -- the
14 visitors in general are not routinely stripped. If they
15 were, that would be very dramatic.

16 What, instead, happens is, when there is information
17 that this particular inmate may be involved in drug
18 dealing, or this particular visitor from a snitch or from
19 some other source of information may be providing it, that
20 those visitors are, in fact, the ones that are apt to
21 subject to being strip searched. I don't think it is
22 correct to say all visitors are strip searched.

23 Q I was referring to all inmates being strip searched
24 before going back into the compound?

25 A I didn't hear it that way.

1 Q Are you -- Do you agree that the inmates are strip
2 searched before they go back into the compound?

3 A Yes.

4 Q Relating to the answer that you thought was
5 responsive to my question, but, in fact, was responsive to
6 the next question I have, in fact, the institution also has
7 a program of attempting to identify likely visitor
8 introduction of contraband onto the compound, is that
9 correct?

10 A Yes, and that seems to be validated by the incident
11 reports I have had access to.

12 Q And those procedures include the use of hand metal
13 detectors, the use of a walk through metal detector, the
14 use of informants, and I believe if you reviewed, as you
15 indicated, the incident reports, you probably notice that a
16 number of those incident reports indicated searches called
17 for because of information received from confidential
18 informants, correct?

19 A Or just information received, yes. I saw that a
20 number of times.

21 Q Indicating a fairly good intelligence system at the
22 prison, would you not agree?

23 A There is a number of false positives. Whether you
24 want to grade it down in terms of being a good intelligence
25 source, I am not sure.

1 Q When a visitor refuses to submit to a strip search,
2 if that visitor is one who has been identified as being a
3 potential introducer of contraband into the compound, that
4 visitor is not allowed to complete the visit, is that
5 correct?

6 A That is right, and there have been a number of
7 incident reports where that person has declined, gone away,
8 returned a half hour or so later, and I think correctly so
9 is denied the visit.

10 Q The clear implication being the person did, in fact,
11 have contraband, deposited it elsewhere, and came back?

12 A Certainly the inference is there.

13 Q And there are, are there not, perimeter patrols at
14 Glades Correctional Institutional?

15 A That is my understanding, yes, I've seen them.

16 Q And while you were at Glades, did you have occasion
17 to observe the work crews reporting back in with their
18 vehicles?

19 A Not with vehicles, no, I don't think I saw that.

20 Q Are you aware of the search procedures on inmates
21 reporting back in from work crews, search procedures for
22 the vehicle?

23 A No.

24 Q I assume you have no opinion, then, whether those are
25 adequate or not?

1 A The problem is that I am of the opinion that there is
2 a fair amount of drugs on the compound so that what I would
3 say is that to the degree those methods are adequate, there
4 is some other means of introduction yet to be found.

5 Q In respect to the searches that are made within the
6 dormitory, are you familiar with the search procedure
7 there?

8 A What you might call spot searches, or shakedowns
9 within a smaller area, yes, I do know those occur.

10 Q And it is policy, is it not, that in every dorm a
11 certain number from 20 to 25, or thereabouts, foot lockers,
12 and bunks are searched each day on a random selected basis
13 by the guards?

14 A I don't know the detail of that, but I assume that is
15 true. I wouldn't argue with it.

16 Q And, in addition, there are, are there not,
17 occasional dormitory wide shakedowns?

18 A Yes.

19 Q In addition, there are two correctional officers who
20 function in the position of compound police officers, are
21 there not?

22 A I think that would be reasonable, yes.

23 Q Officers who had years of experience at detecting and
24 locating contraband?

25 A I don't know, but, fine.

1 Q If one was Frank Nappi, would that strike a note of
2 recognition with you?

3 A He was referred to in a very positive light by some
4 of the inmates.

5 THE COURT: I didn't understand.

6 THE WITNESS: The name means something in the
7 sense he had received compliments from some of the inmate
8 interviewees in terms of being a very thorough officer.

9 BY MR. DAVIS:

10 Q In respect to weapons, the vast majority of weapons
11 that exist on the compound are some type of shank, are they
12 not?

13 A That is correct.

14 Q Or a pipe of some sort?

15 A That is correct.

16 Q And a shank is any type of pointed or edged
17 implement, is it not?

18 A I would agree with that. Essentially, it is a
19 homemade knife that can be made out of any number of
20 things, screwdrivers, tools, metal chair legs, anything
21 that can be fashioned into a weapon.

22 Q Any piece of metal, for instance, a small metal bar
23 of some sort. Flat metal bar can be taken, rubbed against
24 concrete someplace to give it a reasonably sharp edge and
25 made into a knife of homemade fashion?

1 A That is right. I have seen remarkable ingenuity in
2 fashioning things out of such.

3 Q A piece of stiff wire?

4 A Yes.

5 Q Heavy guage wire?

6 A Yes.

7 Q A piece of radio antenna can be used?

8 A Well, the radio antenna useage I have seen is
9 cardboard and cylinder to convert the cardboard into a zip
10 gun.

11 Q Well, it can be broken off into a short stack
12 instrument, correct?

13 A It is going to have to be pretty rigid wire. And
14 also such items as the pieces of metal slat from windows
15 and window frames can be used, correct?

16 A Yes, I think the simplest answer is most things made
17 of metal can be converted into weapons.

18 Q And some also consist of ball point pens that have
19 nails placed in them instead of the cartridge, and melted
20 into a stack instrument?

21 A I have also seen toothbrushes.

22 Q Toothbrushes? In other words, when it comes to
23 weapons, contraband is usually self generated on the
24 compound, correct?

25 A It is another one of these issues, to quote you, is a

1 constant challenge between the staff to stay ahead of the
2 inmates, and the inmates are quite ingenious, and they tend
3 to be there seven days a week, 24 hours a day.

4 Q If you removed -- I am sorry.

5 A If I may. One of the things that is also true is as
6 a compound becomes threatening, the motivation is more
7 increased. So, if you have a threatening environment, you
8 get the motive for the inmates to construct these weapons.

9 Q And if you were to remove the weapons from an
10 institution, do you have any doubt one day there would not
11 be new weapons from the institution?

12 A Well, it is a matter of degree. If you have a
13 general shakedown, and remove them, I suspect you couldn't
14 get all the weapons, but you could remove a significant
15 number. You could reduce the availability by repeating
16 such action. I don't know how long it would take.

17 You are certainly correct in that the procedure is
18 inmates make them, and staff take them away. It is a
19 matter if inmates are making them faster, staff is taking
20 them away faster.

21 Q And in giving your opinion as to the availability,
22 again, weapons, as with buck, you are going to find weapons
23 on any prison compound, are you not?

24 A I think that is correct.

25 Q And one would assume that in most prisons, such as

1 GCI, there would be procedures from removing those from the
2 compound, from identifying them and removing them, correct?

3 A That is correct.

4 Q In order to know whether those measures are
5 effective, you really need some imperical data, do you not?

6 A Of course.

7 Q Because you take it as a given there will be weapons
8 present on the compound, therefore, the presence of weapons
9 on the compound doesn't prove one way or the other that the
10 methods used to identify them and remove them are
11 effective, correct, the presence of weapons, per se?

12 A Well, it is very difficult to respond because there
13 is that magnitude dilemma, when is this within the realm of
14 -- when is this an effectively run institution? When is
15 this above, when is this below?

16 I think my point was in terms of the testimony this
17 morning that it was my impression that weapons had been
18 reduced in number from four years ago, were still
19 relatively available. I was still concerned, and I am
20 certain Superintendent Lambdin is concerned about their
21 availability.

22 Q You say relatively available. What are you comparing
23 the availability?

24 A Let me take relative out. Available.

25 Q You would recognize that weapons are available at any

1 institution?

2 A That is correct.

3 Q Now, are you familiar, did you learn on the basis of
4 your interviews, or on the basis of any other research, are
5 you aware of the method and the procedures of concealment
6 of weapons at GCI, and of any patterns concerning that?

7 A Concealment by inmates?

8 Q Yes.

9 A Again, those kind of specifics, I tend to take as
10 uncertain and unreliable, but I will tell you the most
11 common cases are that inmates will have them buried
12 somewhere on the compound, under trash cans.

13 Typically, they will have a weapon or food that they
14 can find in different locations.

15 Q They don't keep them by their bunk or on their person
16 except at specific times except when they feel the need to
17 protect themselves for a potential threat, or the need to
18 utilize them for some other purpose?

19 A That is correct. In Glades it is more common than
20 not that an inmate will -- especially four years ago, an
21 inmate would have one readily available during sleep time.

22 THE COURT: During what?

23 THE WITNESS: From sleep time, to protect
24 oneself from assault. You don't want to have one that is
25 attributed to you if it is carried on you. You won't carry

1 one, but have one at places where you might need it.

2 BY MR. DAVIS:

3 Q The reason you don't want to have it on you, because
4 then you will receive a disciplinary report, or maybe even
5 a criminal charge, depending upon the degree of the
6 certainty of the proof of possession?

7 A That is correct.

8 Q And in regard to other weapons, did you determine
9 whether there was any indication of a prevalence of any
10 weapons other than homemade shanks on the compound?

11 A There is some indication that ammunition is getting
12 in, in terms of commercial guns, and you read, there is
13 some isolated reports that people have heard of a gun being
14 in there, that is relatively -- that is quite unreliable.
15 I would be surprised, it could be. The other thing besides
16 ammunition and shanks, there were toy guns.

17 Q Okay.

18 A Facsimile guns.

19 Q Now, in respect-- Made out of a piece of wood?

20 A Or in plastic.

21 Q Now, with respect to the gun that you refer to, that
22 was an inmate saying that he had heard from some other
23 inmate that there was a gun?

24 A Right.

25 Q There was no firsthand information of the

1 availability of any manufacture of weapons on the compound,
2 was there?

3 A That is right, and I haven't reported so.

4 Q One of the sources for shanks on a prison compound
5 are the eating utensils, are they not?

6 A Yes.

7 Q For instance, inmates may take forks or spoons? They
8 are not given knives, are they?

9 A That is not uncommon, or if the knives, they are
10 given plastic ones. I honestly don't know the situation.
11 Spoons and forks, if there are knives, are frequently
12 converted to weapons.

13 Q By sharpening them?

14 A Yes.

15 Q And if the Glades procedure was to have available
16 only plastic implements, you would agree that certainly is
17 a significant step to reducing the availability of easily
18 obtained shanks?

19 A Yes, that would be the reason for it, and that would
20 help, yes.

21 Q Now, you indicated that you thought that in order to
22 correct the contraband situation, you conceived as existing
23 at Glades, that one of the corrective steps was to effect
24 staff attitudes, is that correct?

25 A Yes.

1 Q Do you have any basis for your determination of what
2 staff attitudes were other than what was related to you by
3 some of the inmate interviewees?

4 A No.

5 Q Okay. In respect to the elimination of currency, it
6 is true, is it not, that only one facility in Florida has
7 ever tried to eliminate currency on the compound?

8 A I believe that is correct.

9 Q And, again, among institutions throughout the
10 country, it is the rear institution which has eliminated
11 currency on the compound, is it not?

12 A I would say it is not the norm. However, it is in
13 response to trying to reduce violence, extortion
14 activities, and contraband.

15 Q And like almost every procedure that is utilized,
16 prisoners find a way around it?

17 A Yes, that is right. That does not suggest you
18 shouldn't try to stay ahead of them.

19 Q Just in respect to the elimination of metal spoons
20 and forks may eliminate one source of metal that inmates
21 might use to make shanks with, inmates will find
22 alternative sources, maybe a little more difficult, but
23 with their ingenuity, not all that difficult, would you
24 agree?

25 A I think there is no question, it is much like a chest

1 game, you make a move, they make a counter move, you come
2 up with another move. That is the nature of the challenge.

3 Q Just as for instance the famous fence outside the
4 confinement area?

5 A The wood slat fence?

6 Q Yes. Which was put up originally to reduce
7 communications between the inmates inside and inmates
8 outside. The response was, inmates tried to crawl
9 underneath?

10 A Yes, inmates secreting themselves, and taunting the
11 inmates--

12 Q And razor wire was placed on the fence to keep them
13 from climbing up under the fence?

14 A I am not sure.

15 Q Isn't that your testimony that Mr. Music placed razor
16 wire behind the fence?

17 A That may be. We are talking about four, five years
18 ago.

19 Q And the response to which was the inmates went over
20 the roof to try to get around that fence, never ending
21 battle, correct?

22 A I think it is an interesting profession.

23 Q And if you were to freeze the moment at any time, you
24 would fined the action on the part of the prison
25 restricting inmate activity such as that, and the inmate's

1 response which might be different a few moments further
2 down the line?

3 A If you have a prison administration aesthetic, there
4 is no question the prisoners would find a way around it.
5 It has to be dynamic.

6 Q Even dynamic, there is a change that is counter?

7 A Some of the changes that occurred from '84 to now
8 have been for the good, and have lasted for the good.

9 Q Now, you indicated that your method of determining,
10 turning to point B, determining that the turnover rate was
11 to add up the monthly percentages, and to take the sum of
12 the monthly percentages, is that correct?

13 A That is right.

14 Q That is not the method which the Department of
15 Corrections uses which it utilizes on a comparative basis
16 to determine turnover rates among its institutions, is it?

17 A I am aware of that. I selected that method. That is
18 the method I used the last time I was here.

19 Q Okay. If you want, again, I would assume that you
20 would agree that any institution of size such as this, you
21 would expect to have turnover, it is a given?

22 A I think that is correct.

23 Q So, in order to determine if there is a problem with
24 a turnover rate, you need to have some standard to measure
25 the turnover rate at this institution against, correct?

1 A That is correct. Let me--

2 Q That is turnover, per se, is not an indicia of
3 something wrong at a prison. It would be an excessive
4 turnover rate?

5 A Of course. Let me just say that under my way of
6 calculating, comparing today's turnover with that of five,
7 six, seven years ago, there has been a decline in turnover.

8 Q In fact, the turnover rate at Glades Correctional, at
9 the current time, and going back over the prior year, is
10 the lowest in South Florida, is it not?

11 A I don't know that figure, but it is not a bad
12 turnover rate. I was trying to say in my testimony that
13 the turnover rate had been reduced.

14 Q Now, you indicated that you had found on some
15 occasions-- Looking, again, I gather you drew these
16 figures from the monthly reports from the superintendent?

17 A Are we still talking about turnover?

18 Q We are talking about Category B of your opinion?

19 A But there are several items in that.

20 Q Yes. I am talking specifically of the overtime
21 hours?

22 A That came from the superintendent's monthly report.

23 Q Do you know what the reason for the overtime useage
24 was?

25 A Which year?

1 Q Any year?

2 A Variety of sources of that. Sickness, one of the
3 things that does occur at GCI is when you have people going
4 to the private hospital. You have to escort or you have to
5 worry about providing security, that would be another
6 source of overtime.

7 Q One of the sources of overtime, GCI for a period up
8 until this past year was maintaining a unit at a local
9 hospital which required staffing, was it not?

10 A That would certainly be--

11 Q And I believe Mr. Lambdin indicated that that
12 particular useage was the major cause for the increase from
13 the 900 hours to 2,000 hours level had ceased, did he not?

14 A I don't recall. That may very well be true.

15 Q Okay. Let's even take that 2,000 hours which was
16 back in 1988. Do you recall what the total number of staff
17 is at Glades Correctional?

18 A I don't. I can look it up.

19 Q Approximately 230, 240, is that correct?

20 A I think that is in the ballpark.

21 Q So this would indicate about seven or eight hours of
22 overtime per month per man, correct?

23 A Yes, and I think I did indicate in my testimony this
24 morning that we had an expanding base. So, if we take the
25 1984 figure, and compare it to 1989 figure, we have a

1 larger denominator.

2 Q Now, if the typical correctional officer works eight
3 hours overtime a month, he is working less than two hours a
4 week overtime, is that correct?

5 A If it works out that way, that would be correct.

6 Q Surely you don't mean to suggest to the court that if
7 an officer were to work 42 hours rather than 40 hours in a
8 particular week that his ability to maintain his job at an
9 appropriate level would be in any way seriously diminished?

10 A Not at all. It is the double shifting that would be
11 a problem.

12 Q Now, in respect to the training procedures at Glades
13 Correctional, and for the training procedures for the
14 personnel, the correctional officers, staff at Glades
15 Correctional, do you have any firsthand knowledge of what
16 those training procedures are?

17 A Only in the sense that the Community College is under
18 the Florida Department of Law Enforcement, provide a
19 curriculum for correctional officers. That standardized
20 curriculum would be standardized for any other institution.

21 Q And that provides for a certain number of hours for
22 initial training?

23 A Yes.

24 Q Do you know how many hours?

25 A It has gone up recently. It is an impressive amount.

1 I think 300.

2 Q Is it over 500?

3 A It may be. It has been increasing.

4 Q And, in addition, there is a requirement for a
5 certain number of hours, each year, continuing education,
6 correct?

7 A That is correct.

8 Q Are you familiar with any of the curriculum in either
9 the basic program, or the continuing program?

10 A Not in recent times, but I am aware of the curriculum
11 from times past, and it has a number of things ranging from
12 very applied things like marksmanship to human development,
13 human relations, that kind of thing.

14 Q Are you familiar with the educational background of
15 the correctional officers at Glades Correctional
16 Institutiona?

17 A No.

18 Q Do you know how many of the officers have college
19 degrees?

20 A No, I do not.

21 Q How many have Associates Degrees?

22 A I am not aware. I presume they all have high school
23 education, or higher. At least a high school.

24 Q Now, you indicated that you thought that at least
25 drawn from your single source, which was inmate interviews,

1 you identified it, that you thought there was some
2 indication that the staff occasionally engaged in horseplay
3 with the inmates?

4 A That is correct.

5 Q And you suggested that this was due to what you
6 described as a shortage of disciplinary confinement. That
7 was your hypothesis?

8 A If you put it that way, yes, that is exactly.

9 Q You drew that as a hypothesis without any direct
10 indication that that was, in fact, the case?

11 A Well, except that the confinement areas do tend to be
12 extensively used. With that large a population, 1183, if
13 you have 10 disciplinary cells, seven that you can double
14 bunk, you are limited to that number. If you overflow PC
15 into AC, you are cutting down from administrative
16 confinement ability.

17 Q Now, one of the items which was requested by you, and
18 which was delivered yesterday was the population sheet.
19 Have you had a chance to look at the population sheets?

20 A If it was in yesterday's material, no.

21 Q If those sheets showed that for the past four years
22 the capacity for the various confinement areas, the
23 protective confinement, administrative confinement, and
24 disciplinary confinement seldom reach their ceiling, or
25 anywhere near their ceiling, would that have an impact upon

1 your opinions?

2 A Not necessarily. Let me just say why. Let's forget
3 about Glades for a moment. Let's say we as a society now
4 have a problem with prison beds being at a premium because
5 of Drug Enforcement, drug abuse problem in the community.

6 If I took that class of offenses and said as some
7 people are espousing, we will handle this problem by making
8 drugs legal, or decriminalize drug use. We would free up
9 any number of cells that we have in the State of Florida as
10 well as most states in the union, federal system also.

11 If, however, the following year we decided that was
12 unwise, we were ruining peoples' lives who were being
13 subjected to a loss of morality, whatever is attendant to
14 drug use, we would completely overflow the prison system
15 once again.

16 By that analogy, what I am saying, if I have a class
17 of offense that I am tolerating now because I have limited
18 confinement space, even though I have a few spaces
19 available because of the frequency with which that offense
20 occurs, I know I cannot control it by the use of prison
21 beds. I am not going to start locking people up for verbal
22 abuse or insubordination simply because I know if I lock
23 this one up for that, I better take 10 more with him.

24 So, the fact there are four, five, there is always a
25 space available in DC, when I have got a fairly flagrantly

1 violated rule does not mean that is the reason.

2 Q It does not prove that that is a factor in causing
3 any type of such conduct?

4 A That is correct.

5 Q And in respect to the question of whether the staff
6 tolerates improper procedures, or improper conduct on the
7 part of the inmates or not, you really need to look at a
8 broader set of statistics than the number of inmates placed
9 in the detention, correct?

10 A Yes. I mean, I would agree with that. I am
11 searching for how one gets a better handle on this short of
12 moving into the institution.

13 Q Such as a review of the disciplinary reports?

14 A Which I wanted. That is correct.

15 Q There are other forms of discipline in a correction
16 institution than confinement and the disciplinary
17 confinement, are there not?

18 A One would hope so, yes.

19 Q Loss of gain time?

20 A Absolutely.

21 Q That is a very powerful tool, is it not?

22 A For most people. There are some exceptions we don't
23 need to go into, because they are exceptions to the Rule, I
24 agree with that.

25 Q And you would agree, would you not, that for such

1 forms of misconduct by the inmates as verbal disrespect
2 confinement, disciplinary confinement may be a rather
3 harsh, perhaps legally too harsh penalty?

4 A It is difficult to know without understanding the
5 kind of verbal disregard you are talking about.

6 Q You certainly wouldn't advocate on a wholesale sweep
7 that verbal disrespect by inmates be penalized by
8 confinement, disciplinary confinement?

9 A No. It is probably more appropriate to talk about
10 the sentencing guidelines the State of Florida has. Each
11 time this offense is repeated, you gain points. After a
12 certain repetition of this offense, you can go into
13 confinement.

14 No, I would agree, you start off with a minor -- if
15 it is verbal abuse, you have minor penalty. If that minor
16 penalty does not reduce the chronicity of that offense, you
17 have the recourse to the other. In terms of wholesale,
18 this is the universal solution, no.

19 Q And as far as the toleration by the staff of
20 voluntary homosexual activities--

21 And, in fact, let me ask you if I can digress from
22 the question I was about to ask you a moment ago.

23 In reviewing the inmate interviews that you had,
24 would it be fair to say that the vast majority of those
25 inmates indicated that they had never witnessed or

1 experienced any type of forcible sexual assault?

2 A Vast majority?

3 Q Yes, with the exception of three or four?

4 A Did you say forcible?

5 Q Yes.

6 A Yes, that is correct.

7 Q A number of them indicated they had observed
8 voluntary sexual activity of some sort or another, is that
9 correct?

10 A Yes. One of the interesting things there is that it
11 is in sharp contrast to what we experienced and observed
12 and heard in 1984. There it was more likely than not
13 people had witnessed or knew about or had firsthand
14 knowledge, or had experienced forcible rape.

15 Today's situation is more likely that any one person
16 knows of voluntary consensual sexual activity, however
17 gotten there.

18 Q And, again, if a review of the disciplinary records
19 indicated that on a number of occasions, perhaps as many as
20 20 in the course of the year, inmates received discipline,
21 and suffered loss of gain time or other penalties for
22 having been found engaged in consensual sexual activity,
23 if, for instance, a review of the disciplinary reports
24 indicated that on a number of occasions inmates received
25 disciplinary reports, and received loss of gain time or

1 other penalties for having been caught engaged in
2 consensual sexual activities, that would indicate something
3 less than wide toleration of that conduct on the compound,
4 would it not?

5 A Absolutely, and that is what I was looking for.
6 Failing to find it, and having inmates report that this
7 behavior was common led to my conclusion.

8 Q Okay. You would, I assume, agree that an inmate who
9 wants to engage in consensual homosexual activity with
10 another inmate will generally not do it in the middle of
11 the compound in full view of all the other prisoners and
12 the correctional staff?

13 A In general, that is true.

14 Q They would, as a general rule, if they were going to
15 participate in such conduct do it in some form of concealed
16 fashion in someplace where they might not be observed by
17 staff or other inmates?

18 A Stands to reason. But you do understand what I was
19 referring to was a pattern in which inmates at night,
20 especially after the midnight hour would be engaged fairly
21 openly within the dormitory setting within their own or
22 someone else's bed. That was the concern I had.

23 Now, it may very well be there is a systematic
24 attempt to control that that wasn't available to me because
25 I didn't have the disciplinary reports to have shown that.

1 THE COURT: I didn't have what?

2 THE WITNESS: Disciplinary reports, one set of
3 documents I asked for that didn't come until late
4 yesterday.

5 THE COURT: Yes.

6 BY MR. DAVIS:

7 Q And, essentially, what you had were anecdotal
8 comments by some of the inmate interviewees. Correct?

9 A Anecdotal? I am not sure how you are using that
10 word. They were reporting being aware of it.

11 Q In some fashion, either they heard about it, or
12 claimed to have observed it?

13 A That is correct.

14 Q That is what they were reporting could be firsthand
15 hearsay, secondhand hearsay, or direct knowledge?

16 A I tend-- In terms of hearsay, not firsthand, I
17 tended not to note that.

18 Q Now, in respect to your category C, what was the
19 title which you gave that particular category, Doctor? I
20 have down here failure to supervise, is that correct?

21 A Yes.

22 Q Now, you indicated that the view from the wicket was
23 significantly improved today?

24 A That is correct.

25 Q You indicated in some places the glass panes in the

1 shower areas tends to age with time. Is that correct?

2 A And grime.

3 Q Not only that, but I think it was observable on one
4 of the instances where the video showed when showers have
5 recently taken place, water vapor covers those panes, does
6 it not?

7 A There were certainly drops of water on the panes in
8 the videotape.

9 Q What you call steam, as it were, using the term
10 loosely?

11 A Yes. But one of the things -- and I think I took the
12 time to point it out, there was an instance in which new
13 panes had come in, and you could see the contrast of what
14 had been virtually true the prior visit I had, the new
15 panes were in sharp contrast. You could see much better
16 through those than the ones that were opaque, as I
17 described it.

18 Q Now, you indicated that you find that today the
19 patrol of the dorms is policy?

20 A Yes, everything I have heard from staff, and
21 everything I have seen in documentation, there is a
22 patrolling officer, wicket officer, and a sergeant to check
23 on them. That seems to be the standard which I think I was
24 commending.

25 Q In respect to the activities of the dormitory

1 officers, in dormitories A, B, C, D, those dormitories are
2 broken up into two pairs, are they not? Each one under a
3 separate CO, or sergeant, supervisor, and each one
4 containing each pair broken up into, broken up under the
5 supervision of a CO, and each dormitory containing certain
6 staffing of certain hours?

7 A That is correct.

8 Q And night time hours, that staffing is a minimum of
9 two dormitory guards in each of the dormitories?

10 A That is right.

11 Q So that in two dormitories, you've got four guards
12 minimum, plus a sergeant who goes from one dorm to the
13 other, back and forth?

14 A I believe that is correct. The point that I was
15 illustrating is that with the configuration of the dorms,
16 especially D dorm, on the main compound, with the exception
17 of E on the north compound, in order to provide adequate
18 control, you must have active patrolling officers to
19 supplement a passive observing wicket officer.

20 Q In fact, you could have two patrolling officers, can
21 you not?

22 A With a configuration of a separate T.V., card room,
23 the length of the dorm, the difficulty of the distance from
24 the wicket, that is exactly what should be ideal.

25 Q It is not necessary, nor is it called for in the post

1 orders, that one officer be in the wicket at all times?

2 A That's correct.

3 Q In fact, the policy calls for both officers to patrol
4 when it is not necessary for one of them, for one
5 particular reason or another to be in the wicket?

6 A That is right. And I think that is, in fact,
7 necessary. My point is that not having that roving
8 aggressive patrol, creates a real distinct problem that I
9 think we saw in '84, and previous.

10 With the addition and policy of having the roving
11 officer with the single bunking, we have a much improved
12 situation.

13 My point is that given the nature of human frailty,
14 and given some reports from inmates that is inconsistent in
15 terms of the actual patrol being a patrol, one possibility
16 to guarantee or insure confidence in the roving patrol is
17 that watchman's check-in point.

18 Q Another guarantee you got is there is a CO, a
19 sergeant, who is assigned to two of the dormitories, and
20 moves from one dorm to the other?

21 A That is clearly the rationale that the administration
22 has, and I understand it, and I think it is a good idea.

23 Q He is going to be in one or the other of the dorms in
24 any given moment?

25 A That's the nature of the policy, the reason for it.

1 Q And if a dormitory officer is not patrolling, he is
2 going to be found by that CO when he comes to that
3 dormitory?

4 A That is reasonable.

5 Q You would agree, would you not, that it would be
6 rather difficult for the dormitory officer in a particular
7 dorm not to patrol with the CO moving back one dormitory to
8 the other, and having only two dormitories to supervise?

9 A Yes, I see the logic to the whole plan.

10 Q And there is another check on the dormitory officers
11 patrolling the dormitories, is there not?

12 A I am not sure--

13 Q There is a dormitory log, is there not?

14 A There is supposed to be an hourly count in which they
15 log the count, yes.

16 Q The hourly count is a count which is called in to the
17 central security, is it not?

18 A Yes.

19 Q And it is also recorded on the dormitory log?

20 A That is correct.

21 Q There is also required to be an intermediate entry on
22 the dormitory log for each half hour increment inbetween,
23 is there not?

24 A I am not aware of the half hour increment.

25 Q And there is also to be entry in every dormitory log

1 of anything unusual or usual if it involves inmate movement
2 in or out of the dormitory?

3 A Yes, that is fine, and that is true. My difficulty
4 with logs, and hourly counts, and half hour entries is
5 there is no assurance, if I were a dorm officer, and for
6 whatever set of reasons motivated me that night, rather
7 than walking down, I am fairly positive nobody left because
8 there I am in the wicket locked in, they can't move out of
9 that dormitory without me being aware of it. Why go down
10 and count?

11 I am just trying to say, how does one get over the
12 ability of a negligent staff member to enter a log without
13 going through the proper form to fill that log?

14 Q If you were to have a negligent staff officer, he
15 might walk down, push a button on your clock, and walk
16 back, would he not, rather than patrol?

17 A But one would assume even that cavalier officer would
18 hear or see something being forced to go down to the end
19 that he might not otherwise see even if he weren't actively
20 searching.

21 Q And would you have him do that on a set time basis?

22 A No. That would have to be the creative part of that.
23 If the inmates perceive a routine, you became predictable,
24 and you do your activity in the space allowed.

25 One prison which I won't name has a policy before

1 breakfast, they would pull dorm officers out in the
2 corridor in order to have a flow, lo and behold, rapes
3 occur at that time. When you are pulling back patrols, the
4 inmates, as you pointed out, will figure out, that is the
5 time to conduct this activity.

6 So the rules would have to be, you have to go down in
7 an intermittent, variable time so that one hour is twice,
8 and the other hour is once. You would have to randomize
9 the patrol.

10 Q You would agree, would you not, that if there is a
11 supervising officer who has only two dormitories to
12 supervise, and who will be in one dorm or the other at any
13 given time, that that in itself provides a rather full
14 check on whether an officer is going to be patrolling or
15 not?

16 A Oh, I understand, and as I said, I tried to commend
17 both the policy and the post. The only thing I have seen
18 that could be added to what is done is this time clock.

19 THE COURT: Mr. Davis, try to find a convenient
20 place to stop, or short recess.

21 MR. DAVIS: I am at the end of C, Your Honor,
22 this would be convenient.

23 THE COURT: All right. We will be in recess
24 for 10 minutes.

25 You are excused.

1 (Thereupon, a short recess was taken.)

2 THE COURT: Okay, Mr. Davis.

3 BY MR. DAVIS:

4 Q Doctor, during the break, I was going through the
5 notes which you generated from your interviews?

6 A Yes.

7 Q Do you have those notes with you?

8 A I think I do.

9 THE COURT: Interviews of inmates, or staff.

10 MR. DAVIS: These are the inmate interviews
11 that have been discussed before.

12 BY MR. DAVIS:

13 Q Looking at these not from the truth of what the
14 inmate has asserted here, but merely from the standpoint
15 that you did of detecting any patterns, in respect to the
16 prevalence of contraband on the compound, since I have
17 gotten through the first 25, let's briefly go through
18 these.

19 Inmate number one indicated to you, did he not, that
20 there was dope and alcohol here, same as any place, dope
21 was also in county jail?

22 A That is correct.

23 Q There was nothing in that relation that indicated any
24 degree of prevalence, was there?

25 A Just that it is there.

1 Q I found nothing on number two. On number three, the
2 inmate indicated that when guards find alcohol, they take
3 it out and give the inmate a DRR, and he has seen a guy
4 busted for drugs?

5 A That is number three, yes.

6 Q Number four, the inmate indicated that drugs and
7 alcohol were not as free as used to be. They closed down a
8 lot of it, but it is still available if you have money,
9 drugs and alcohol are much tighter now, is that correct?

10 A They've closed down a lot of it, but it is still
11 available if you have money, that is right. You
12 understand, my observation was the availability of
13 contraband has been reduced from four years ago.

14 Q That is correct. His comparison is a temporal
15 comparison at the same institution, and contrast it with
16 others comparing it with others from the other institution?

17 A Yes, he has been there over five and a half years.

18 Q Inmate number five says, initially, drugs were much
19 better controlled at GCI than they were on the streets,
20 correct?

21 A Drugs are probably better controlled than on the
22 streets?

23 Q Right. Later he says there is still a problem, not
24 as loose as it was, but buck is still there, and plentiful,
25 crack?

1 A That is right. This is also -- this is a person who
2 has been at GCI for an amount of time, too. He does, if
3 you take this in general talk about improvements over his
4 tenure at the institution.

5 Q There seems to be some apparent inconsistency, on the
6 one hand indicating better control than on the streets, on
7 the other hand indicating that there is still availability?

8 A And the guards tolerate dope.

9 Q And then number six indicated that drugs and alcohol
10 were easy to get?

11 A Large amount getting in. That is right.

12 Q Number seven, indicated that drugs were available and
13 rampant?

14 A Prison worse drugs is available. Rampant. Drugs
15 everywhere, guards ask that you don't do it in front of
16 them.

17 Q Number eight said drugs and alcohol, while available,
18 were not as bad as expected of a prison?

19 A Yes, he has been there less than a month on main --
20 he has been there less than four months, and it is hard to
21 know what his frame of reference is. He doesn't have a
22 previous prison background. He, therefore, has got
23 whatever you have by incidental learning what you see on
24 the T.V., so forth.

25 Q Number nine did not give a comparison, but indicated

1 there was one dorm in which wine could be found?

2 A Yes.

3 Q Number 11, the first one to indicate anything about

4 weapons says that he has seen one knife on the compound.

5 He has been there six months, but he has seen a lot of iron
6 laying around, is that correct?

7 A Yes, and he also says he knows there is marijuana on
8 the compound.

9 Q He knows it is on the compound, but gives no
10 indication of how prevalent?

11 A That is correct.

12 Q Number 12 indicates a lot of dope comes over the
13 fence, but gives no other indication about prevalence?

14 A Drugs, you can get anything you want, you can get
15 from visitors, and inmate traffic. That is 12 on mine.

16 Q Yes.

17 A The violence is not as much as it used to be, but
18 still robbery, and drinking, people make a lot of money
19 from selling buck.

20 Q 13 is no indication of the prevalence of drugs?

21 A He is attributing fights that he has seen four times
22 probably over sex or drugs. That is an indirect reference.

23 Q He says probably, indicating an assumption on his
24 part not based on any knowledge?

25 A That is hard to tell.

1 Q He wouldn't use the term probably if he knew?

2 A Well, to me I would infer that sex or drugs are the
3 issue for which a fight may occur.

4 Q Number 14 indicated this camp previously had a crack
5 cocaine problem. They are trying to contain grass, buck,
6 and gambling?

7 A Correct.

8 Q Weapons about the same at GCI than any prison?

9 A Yes, I see it, yes, correct.

10 Q Number 15, has seen plenty of crack and marijuana,
11 only seen one weapon in the dorm, been there six months?

12 A This is a fairly long one.

13 Q Second page near the bottom, I believe?

14 A Yes, he has seen plenty of crack, marijuana, smokes
15 pot when he needs to get high.

16 Q Number 16, plenty of buck, and drugs getting in all
17 different ways?

18 A Yes.

19 Q There is all sorts of tools that can be used for
20 weapons, but he doesn't indicate whether he has observed
21 any actual weapons, does he?

22 A That is correct.

23 Q Number 17, inmate has been there for one month, and
24 not seen any weapons at GCI, second paragraph from the
25 bottom. Is that correct?

1 A Yes, he has heard drugs are available, yes.

2 Q But not seen any, apparently, correct?

3 A Yes.

4 Q Number 18, buck, he says, is easy to get. He has
5 seen a few shanks and lead pipes. Is that correct?

6 A He has heard drugs are coming in through the front
7 gate. He tries to stay away from buck, he is an alcoholic.

8 Q Number 19, hasn't seen any weapons yet. He has seen
9 some buck in his dorm?

10 A And gambling.

11 Q Gambling?

12 Number 20, says he has seen plenty of weapons, and
13 that drugs and buck were available about the same as any
14 prison, correct?

15 A And the metal detector does not work, that is
16 correct.

17 Q I saw nothing on 21, nothing on 21?

18 A 21, drugs are adequate here, especially crack
19 cocaine.

20 Q 22, indicates there are plenty of drugs. He knows
21 inmates -- that some inmates have weapons, but he does not
22 have a weapon?

23 A Plenty of drugs, crack, pot, buck is predominant, and
24 the weapons, yes.

25 Q 23 has seen a couple weapons, a couple knives, pipes,

1 and he has seen crack, grass, coke, and LSD?

2 A Not sure how drugs gets in, but thinks from the
3 visitors, outside people.

4 Q 24 said that there is homemade weapons there, and
5 drugs are available, reefer, crack, homemade wine?

6 A Correct.

7 Q And then 25, he has heard individuals who pass drugs
8 in the park, and then brought into the compound. He has
9 seen one knife, one shank, and he has heard about a gun,
10 correct?

11 A Is this 25?

12 Q 25.

13 A He has seen drugs and offered drugs at GCI, crack,
14 coke, grass, officers do tolerate drugs just to keep the
15 inmates happy. Drugs come in through visitors' park,
16 individuals pass drugs through the park, and the drugs are
17 brought into the compound.

18 Q Of those inmates --

19 A One more thing, the inmates here only smoke
20 marijuana.

21 Q Of those inmates, the vast majority had never seen a
22 weapon on the compound?

23 A I was paying more attention to the drug pattern on
24 this go through.

25 Q And very few have seen more than one or two weapons

1 on the compound, correct?

2 A I am just not sure, I was tracking the drug theme at
3 this time.

4 Q And a number of those who indicated some degree of
5 comparison, in fact, a majority who indicated a degree of
6 comparison of drugs between institutions indicated it was
7 about the same at GCI as other institutions, only one or
8 two indicated it was worse at GCI than other institutions
9 in respect to the drugs and marijuana?

10 A What I would say is, and how it is characterized is
11 that drugs are available on compound. I think that is how
12 I characterized my comment in testimony.

13 Q So, actually from the inmate interviews, there really
14 is not a clear pattern that indicates any greater degree of
15 prevalence of drugs at GCI than at what one would
16 anticipate the typical prison to have?

17 A That is a very hard judgment call to make.

18 Q Certainly in respect to weapons, there is very little
19 indicating from those inmates, only one or two indicated
20 that weapons were prevalent. Those who had seen weapons,
21 the few who had seen weapons indicated one on or two or
22 three weapons on the compound, and the majority have never
23 seen any weapons on the compound, though some had heard of
24 weapons, correct?

25 A What I would again say, my conclusion is -- I am

1 sorry, weapons, weapons are, in fact, available. And that
2 weapons, and the same on drugs, are reduced in availability
3 from four years ago.

4 My recommendation how to further ameliorate this
5 problem, I don't think any administrator wants drugs,
6 alcohol, and weapons on his compound.

7 Q Though none has ever devised a method of removing
8 them completely?

9 A You simply have to try and invent new ways of
10 controlling it.

11 Q In respect to D, which was inmate movement controls--

12 A We are completed with these?

13 Q Yes. On inmate movement controls?

14 A Yes.

15 Q You indicated that you felt there was some problem
16 with inmates moving from the north compound to the main
17 compound, is that correct?

18 A I noted concern. Given your lower custody inmates,
19 shorter term inmates on the north compound, having to come
20 into the main compound longer term, higher custody risk
21 inmates, yes.

22 Q All right. Now, we are talking about custody here,
23 are we not?

24 A Yes.

25 Q That is, the north compound has medium custody, and

1 minimum custody inmates?

2 A That is correct.

3 Q The main compound has close custody, medium custody,
4 and even medium custody inmates?

5 A That is correct.

6 Q When we talk about custody, we are not talking about
7 the potential for violence of an inmate, are we, per his
8 custody classification?

9 A You are talking about security risk. Custody largely
10 depends on escape potential. One of the factors that
11 contributes heavily to one's custody is the length of time
12 served. It is a very sensible notion. If you have six

13 months to serve, you are less likely to try to escape and
14 incur a 15 year penalty than if you had 40 years to serve.

15 Q We are not talking about, and I am sure you didn't
16 intend to give any impression that the inmates in the north
17 compound are segregated from the inmates in the main
18 compound because they happen to be inmates that have
19 determined to be less prone to violence than the inmates on
20 the main compound?

21 A May elaborate a little bit?

22 Q Sure.

23 A I tend to sound like a professor at times, sorry. My
24 rule of thumb as a psychologist, if you are dealing with
25 human behavior, and you want to control that behavior, the

1 best situation you can be in to manage the behavior is the
2 person you want to manage has a great deal to lose.

3 The worst situation is to get somebody down to the
4 point where they have very little to lose. A person who
5 has a significant amount of time yet to serve, or is under
6 a minimum mandatory sentence, or is by the nature of the
7 sentence ineligible for gain time, administrative release
8 time, those people have relatively little to lose.

9 It may not be the most magnanimous judge of human
10 nature, but people who don't have things to lose tend to
11 behalf in a self-serving way, perhaps malicious way. By
12 definition I am saying people on main compound tend to be
13 those people who with very, very long sentences, they tend
14 to be people who have less to lose.

15 The person who has six months or less than a year to
16 serve, especially under an incentive system operating in
17 the State of Florida with incentive gain time, he needs to
18 keep is nose clean. He could lose his gain time; and gain
19 time, administrative gain time is very significant at this
20 point.

21 So, I am just saying that having those two
22 populations side by side, you will in fact reduce
23 possibility of the people who have incentive to behave, and
24 reduce the probability for those people to be victimized.

25 It would seem to me prudent management to try and

1 segregate them. You are correct in that the population in
2 main compound includes minimum, medium, and maximum,
3 however, the close custody--change terminology--close
4 custody people, as I understand it, are not eligible to
5 main compound.

6 I think that is very wise -- north compound, I think
7 you have a quieter north compound for that reason. I
8 believe that is why. I am saying further wisdom if it can
9 be done is to keep it so they don't have to come into main
10 compound.

11 Q To clarify your answer, you did not mean that there
12 are any maximum security prisoners at Glades Correctional?

13 A I misspoke, close custody.

14 Q And you did not mean that the prisoners with close
15 custody -- I am sorry, the prisoner is limited to minimum
16 and medium security are in the main compound?

17 A Main--

18 Q Those -- the compound for which there is that
19 limitation is the north compound, while the main compound
20 has all three?

21 A If I misspoke, I am sorry, main compound includes, as
22 I understand policy all three custody levels, close custody
23 is restricted off of north compound.

24 Q Now, the prisoners who have close custody are by no
25 means only those prisoners who have long terms, are they?

1 A No.

2 Q For instance, if you were to be incarcerated at GCI,
3 and you had just arrived in the Florida prison system, you
4 had just been convicted and sent to prison, you would be a
5 close custody prisoner even if you had a one year sentence,
6 would you not?

7 A To determine base line behavior, yes, that is
8 correct.

9 Q And there is a period of time before you are eligible
10 for a consideration of your classification?

11 A That is correct.

12 Q If you are there on a five year sentence, again, you
13 may be in close custody even though your sentence is not
14 very long?

15 A Correct.

16 Q There really is not a precise comparison between the
17 likelihood of violence by prisoners under close custody,
18 that is, violence committed by one prisoner against
19 another, and the custody that he has, is there?

20 A I believe you include a category of people in close
21 custody for which that would be expected behavior. The
22 probability of violence increases. It is a category that
23 includes those people, but because you are in that category
24 doesn't mean you are necessarily one of those. To that, we
25 agree.

1 Q And you may have prisoners that are in the medium
2 custody or even minimum custody who may commit violent acts
3 toward other prisoners?

4 A Oh, sure.

5 Q And it is not uncommon for prisoners who are medium
6 security to be reclassified as close custody, and those who
7 are classified as minimum to be classified as medium or
8 close custody subsequently, is there?

9 A That is true.

10 Q So, custody is a classification which may go up or
11 down on a prisoner, is that correct?

12 A That is correct.

13 Q Based on a number of factors which classification
14 officer takes into account, not only the length of the
15 sentence, but the number -- the period of time which he has
16 been a prisoner, the likelihood that he may present an
17 escape potential, for instance, concern with what may be
18 going on with his family in the outside world is a
19 consideration that may cause an inmate to be classified up
20 from medium security to close custody?

21 A That is correct.

22 Q Did you in any of the inmate interviews find any
23 indication that inmates that were moving from the north
24 compound were being assaulted or subject to assault by
25 inmates in the main compound?

1 A Assaulted, I didn't see a predominance of that. What
2 I was picking up on was more pressure.

3 THE COURT: Mr. Davis, we are going to have to
4 recess at 5. We are almost there.

5 MR. DAVIS: I am finished with D, Your Honor.
6 May I ask a few questions on E? I think we can cover that.
7 There was very little of substance on E.

8 THE COURT: All right.

9 BY MR. DAVIS:

10 Q Your recommendation on E was that the classification
11 staff conduct interviews with incoming inmates to determine
12 if they belonged at GCI, is that correct?

13 A That is correct.

14 Q Are you aware of the new inmate interview policy at
15 GCI?

16 A I am aware of an orientation policy. I am not sure
17 if that is what you are talking about.

18 Q And that orientation policy consists of interviews
19 with the classification department, specific classification
20 officer, with the psychology department, and various other
21 department or organization representatives, does it not?

22 A I don't know. This, I am unaware of. If that is
23 occurring, that is along the lines I recommend.

24 Q Okay.

25 MR. DAVIS: No further questions on that point,

1 Your Honor.

2 THE COURT: All right. How much more do you
3 have in terms of cross-examination on Mr. Swanson?

4 MR. DAVIS: F and G, and general questions,
5 probably an hour.

6 THE COURT: All right. We will be in recess
7 until 9 A.M. tomorrow morning. Come back at that time, and
8 we will move right ahead with the remainder of that
9 evidence. Thank you, we will see you in the morning.

10 Good night.

11 (Thereupon, a recess was taken at 5:00 p.m.)
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TRANSCRIPTS OF DECEMBER 1985 HEARING

<u>VOLUME</u>	<u>WITNESS</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
R8					
R9	Swanson	3			
R10	Swanson	95			
R11	Swanson	176			
R12	Swanson		264		
R13	Swanson		348	409	419
R14	Durrance	436	507	532	
	Saunders	532	580		
R15	Saunders		612		
	Epprecht	625	647		
	S.Saunders	657	679		
	Bronson	687			
R16	Bronson	707	715		
	Harper	731	748		
	Cobb	764	770		
	Zatler	784	799		
	Aldred	802	820		
	Brown	835			
R17	Johnson	881	884		
	Gordon	895	917		
	Pryor	928			
	LaMarca	946	978	997	
R18	Brown		1010		
	Pryor	1043			
	Johnson	1066			

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