



PC-FL-0007-0039

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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Case No. 90-5909

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ANTHONY LAMARCA, et al.,  
Appellees/Plaintiffs,

- VS -

R. V. TURNER, et al.,  
Appellants/Defendants.

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Appeal from the United States District Court  
for the Southern District of Florida

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RECORD EXCERPTS

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

Anthony LaMarca, et al., v. R. V. Turner, et al.

USCA 11th Circuit No. 90- 5909

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RECORD EXCERPTS

|     |                                                                                                    |          |
|-----|----------------------------------------------------------------------------------------------------|----------|
| 1.  | Docket Sheet                                                                                       | 11-20-87 |
| 2.  | Third Amended Complaint                                                                            | 11-15-85 |
| 3.  | Appeal from Magistrate's Order and<br>Petition for Emergency Hearing                               | 11-27/85 |
| 4.  | Order (denying motions for continuance<br>and jury trial by Magistrate)                            | 11-25-85 |
| 5.  | Answer to Plaintiff's Third A mended<br>Complaint, by Defendants R. V. Turner<br>and Randall Music | 11-29-85 |
| 6.  | Order (affirming Magistrate's Order<br>of 11-25-85)                                                | 12-2-85  |
| 7   | Report and Recommendation                                                                          | 1-8-86   |
| 8.  | Partial Final Judgment                                                                             | 6-4-87   |
| 9.  | Order Affirming Report and<br>Recommendation of Magistrate Nimkoff                                 | 6-4-87   |
| 10. | Order (denying Motion for New Trial)                                                               | 6-4-87   |
| 11. | Findings of Fact and Conclusions of Law                                                            | 4-29-90  |
| 12. | Final Judgment                                                                                     | 4-30-90  |
| 13. | Order Denying New Trial and Granting<br>Attorneys' Fees                                            | 10-8-90  |



CIVIL DOCKET CONTINUATION SHEET

FD-501 (Rev. 7-16-60) 700 0100

PLAINTIFF

DEFENDANT

82-8196-CV-Paine  
DOCKET NO

LAMARCA, ANTHONY

R.V. TURNER

PAGE \_\_\_\_ OF \_\_\_\_ PAGES

DATE

NR.

PROCEEDINGS

ATTORNEY CONTINUATION

JAMES A. TUCKER  
Florida Rural Legal Services, Inc.  
2209 Euclid Ave  
Ft. Meyers, FL 33901  
813/ 334-4554



| DATE<br>1982 | NR.  | PROCEEDINGS                                                                                                                                                                                                         | JSS<br>X-Card |
|--------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| May 14       | (1)  | COMPLAINT. W/Forma Pauperis Affidavit att.<br>(Cy. mld. U.S.Atty., - Miami)                                                                                                                                         |               |
| June 15      | (2)  | NOTICE of Transfer (PJK) Case transferred to Mag. Nimkoff for further<br>proceedings. (EOD-6/22/82-CCAP)                                                                                                            |               |
| Aug. 6       | (3)  | ORDER (PLK) APPROVING forma pauperis & directing service of process.<br>(EOD-8/16/82-CCA)                                                                                                                           |               |
| 17           | (4)  | SUMMONS issued as to R. V. Turner, Supt. Glades Correctional Facility.<br>Copy to file.                                                                                                                             |               |
| Sept. 27     | (5)  | RETD. Summons exec. 8/25/82 ast o R.V. Turner                                                                                                                                                                       |               |
| Oct. 14      | (6)  | RETURN of Document to Joseph Belitzky, Esq., Motion to Dismiss<br>or in alternative for summary judgment                                                                                                            |               |
| 15           | (7)  | RETURN to Order to Show Cause by deft. R.V. Turner                                                                                                                                                                  |               |
| 25           | (8)  | MOTION to Dismiss or in the alternative for a summary judgment                                                                                                                                                      |               |
| 25           | (9)  | MEMO of law in support of defts motion to dismiss or for summary<br>judgment                                                                                                                                        |               |
| Nov. 15      | (10) | MOTION for ext of time for pltf to file reply to Order to Show cause.<br>NR                                                                                                                                         |               |
| 17           | (11) | REPLY on return to order to show cause, by pltf.                                                                                                                                                                    |               |
| 1983         |      |                                                                                                                                                                                                                     |               |
| Jan 13       | (12) | MOTION for summary judgment, by pltf.                                                                                                                                                                               |               |
| Feb 22       | (13) | RESPONSE to motion for S/J, by deft.                                                                                                                                                                                |               |
| 26           | (14) | REPLY to resp to M/SJ, by pltf.                                                                                                                                                                                     |               |
| Apr 07       | (15) | LETTER to Judge Nincoff, from pltf dated ??                                                                                                                                                                         |               |
| July 18      | (16) | WRIT OF HABEAS CORPUS AD TESTIFICANDUM( PLN 7/18/83) as to ANTHONY<br>LA MARCA, to Dist Ct.(EOD 7/21/83 CCAP)                                                                                                       |               |
| 22           | (17) | STATUS ocnf set for 8/25/83, in Miami.                                                                                                                                                                              |               |
| Aug 26       | (18) | RETURN (PARTIAL) on writ/habeas ad/testificandum, exec 8/25/83, as to<br>ANTHONY LAMARCA transp to DADE CORRECTIONAL INST.                                                                                          |               |
| Sept. 09     | (19) | NOTICE of hearing on 9/19/83 @ 10:00 a.m. @ Courtroom V U.S. Dist.<br>Ct., @ Miami, Florida before Magistrate Peter Nimkoff                                                                                         |               |
| 02           | (20) | WRIT of Habeas Corpus Ad Testificandum, Anthony LaMarca, material<br>witness, to be brought before U.S. Dist. Court, Miami, on 9/19/83<br>@ 10:00 a.m. to give testimony at an evidentiary hearing.<br>(9/2/83-PLN) |               |
| 14           | (21) | NOTICE cancelling evid/hrq scheduled on 9/19/83.                                                                                                                                                                    |               |
| 19           | (22) | NOTICE of appr & sub of counsel for defts.                                                                                                                                                                          |               |
| 21           | (23) | AMENDED COMPLT, by pltfs.                                                                                                                                                                                           |               |
| 30           | (24) | MOTION for permission to communicate w/potential classmembers, by pltfs.                                                                                                                                            |               |
| 30           | (25) | PARTIAL RETURN of writ of habeas, by US Marah on 9/19/83.                                                                                                                                                           |               |
| Oct 03       | (26) | MOTION for enlgmt of time to resp to amend/complt, by defts.(GRANTED JCP 10/24/8                                                                                                                                    |               |
| 06           | (27) | NOTICE of tkg dep of ANTHONY LA MARCA, HOMESTEAD, FL FCI.                                                                                                                                                           |               |
| 06           | (28) | NOTICE of tkg dep of MARTIN SAUNDERS, GLADES CI, BELLE GLADES, FL.                                                                                                                                                  |               |
| 06           | (29) | NOTICE of tkg dep of EDWIN JOHNSON, GLADES CI, BELLE GLADES, FL.                                                                                                                                                    |               |
| 06           | (30) | NOTICE of tkg dep of HENRY ROSENBAUM, AVON PARK CO.                                                                                                                                                                 |               |
| 06           | (31) | NOTIOB for leave to tke deps.                                                                                                                                                                                       |               |
| 14           | (32) | MOTION for class certification, by pltfs.                                                                                                                                                                           |               |
| 14           | (33) | MEMO in supp of above motion, by pltfs                                                                                                                                                                              |               |
| 19           | (34) | AMENDED notice of tkg dep of ANTHONY LA MARCA.                                                                                                                                                                      |               |
| 19           | (35) | AMENDED notice of tkg dep of EDWIN JOHNSON & MARTIN SANDERS.                                                                                                                                                        |               |
| 19           | (36) | AMENDED notice of tkg dep of HENRY ROSENBAUM.                                                                                                                                                                       |               |
| 21           | (37) | ORDER(PLN 10/21/83) ordering that pltfs & counsel shall be permitted<br>to communicate w/potential & or actual clas members.(EOD 10/28/83 CCAP)                                                                     |               |
| 31           | (38) | JOINT motion for leave to tke dep of inmates, w/memo, by all ptyes.                                                                                                                                                 |               |
| 12           | (39) | MOTION for leave to tke depos, by defts.                                                                                                                                                                            |               |
| 20           | (40) | MOTION for enlgmt of time to file reply, by defts.                                                                                                                                                                  |               |

CONTINUED

## CIVIL DOCKET CONTINUATION SHEET

FD-500 (Rev. 1-15-80)

PLAINTIFF

DEFENDANT

82-8196-CIV-JCP

DOCKET NO \_\_\_\_\_

PAGE 2 OF \_\_\_\_\_ PAGES

| DATE        | NR.  | PROCEEDINGS                                                                                                                                                                                                                                                    |    |
|-------------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| v 02        | (41) | ANSWER by depts(ALL)                                                                                                                                                                                                                                           |    |
| 03          | (42) | ORDER(PLN 11/2/83) permitting depts of persons confined in prison.(EOD 11/8/83 CCAP)                                                                                                                                                                           |    |
| 23          | (43) | AMENDED notice of tkg dep of ANTHONY LA MARCIA.                                                                                                                                                                                                                |    |
| 23          | (44) | ANSWER to affirm defenses, by pltfs.                                                                                                                                                                                                                           |    |
| 16          | (45) | RESPONSE to motion for class cert, by TURNER, WAINWRIGHT.                                                                                                                                                                                                      |    |
| <u>1984</u> |      |                                                                                                                                                                                                                                                                |    |
| an. 18      | (46) | REPORT & Recommendation (1/16/84-PLN) Cause be certified as a class Action on behalf of all who are, have been or will be incarcerated in the Glades Correctional Institution in Belle Glade, Fla.                                                             |    |
| pr 13       | (47) | ORDER(JCP 4/13/84) declaring the following & declared to be a cert/class for the purposes of the injct relief sought in the instant complt, former inmates no longer so incarcerated should not be members of the class seeking injc relief.(EOD 4/16/84 CCAP) |    |
| 30          | (48) | NOTICE(PLN 4/30/84) setting status conf @ 11:00 AM in MIAMI on 6/8/84 before Mag Nimkoff.                                                                                                                                                                      |    |
| une 18      | (49) | ORDER AT STATUS CONFERENCE(PLN 6/8/84)there appears to be no present pr/tr disput the ptys to notify the ct before 8/8/84 what they jointly or severally believe to be the current pr/tr status of the case.(EOD 6/19/84 CCAP)                                 |    |
| ug 13       | (50) | NOTICE setting cause for 2/status conf on 9/4/84 @ 10:00 AM, before Mag/Nimkoff.(EOD 8/15/84 CCAP)                                                                                                                                                             |    |
| ep 04       | (51) | NOTICE of status conf set for 9:30 AM in Miami, before Mag Nimkoff on 9/21/84.                                                                                                                                                                                 |    |
| 25          | (52) | ORDER(PLN 9/25/84) directing both counsel advise ct re:recusal. (EOD 10/1/84 CCAP)                                                                                                                                                                             |    |
| Oct 15      | (53) | STATUS REPT, by pltfs.                                                                                                                                                                                                                                         |    |
| 15          | (54) | NOTICE of appr of counsel bor pltfs.                                                                                                                                                                                                                           |    |
| Dec 18      | (55) | STIPULATION & ORDER(JCP 12/18/84) approving stip & the terms of stip are incorporated into a protective order, (EOD 12/21/84 CCAP)                                                                                                                             | rd |
| <u>1985</u> |      |                                                                                                                                                                                                                                                                |    |
| May 30      | (56) | MOTION for lv to w/drw as counsel for Henry Rosenbaum.W/drw counsel David M. Lipman & Karen Coolman Amlong.                                                                                                                                                    | b  |
| 30          | (57) | SECOND status rpt by pltfs'.                                                                                                                                                                                                                                   | b  |
| JULY 1      | (58) | ORDER( JCP-6-29-85) Granting mot. to w/draw of attys David Lipman & Laren amlong. (EOD-7-11-85) CCAP                                                                                                                                                           | j  |
| 11          | (59) | PRETRIAL ORDER(JCP-7/8/85) Requiring meeting of couns & pre/trl/stip to be filed 10/8/85. Cal call 10/11/85 at 9:00A.M. in W.P.B.,Fl. Trl to be set before Jdg. Paine on 10/21/85 at 9:30A.M. Place to be announced/ (EOD-7/15/85CCAP).                        | b  |
| 15          | (60) | MOTION to proceed IFP, by petitioner.                                                                                                                                                                                                                          |    |

CIVIL DOCKET CONTINUATION SHEET

EPI-MAR 7 10 06 100 01

|           |           |                                    |
|-----------|-----------|------------------------------------|
| PLAINTIFF | DEFENDANT | DOCKET NO. _____                   |
|           |           | PAGE <u>3</u> OF _____ PAGE: _____ |

| DATE     | NR.  | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| July 15  | (61) | ORDER (PLM-7/15/85) Notice of trl to be set before Mag w/out jury on 11/04/85 at 9:30 A.M. in crtrm V, Miami, Fla. Granting Mr. Lipman's mot for lv to w/drw as couns to Henry Rosenbaum. Deferring Rosenbaum's mot for apptmt of subst couns. His clm is severed from pltf class & is ABATED. Pre/trl stip to be filed by 10/28/85. No sep pre/trl conf will be conducted unless couns not crt bef 10/28/85.(EOD-7/25/85 CCAP). |
| Aug 26   | (62) | MOTION for leave to file sec amend complt, by pltfs.                                                                                                                                                                                                                                                                                                                                                                             |
| 26       | (63) | MEMO in supp of above.                                                                                                                                                                                                                                                                                                                                                                                                           |
| 26       | (64) | NOTICE of appr of WILLIAM R AMLONG as co counsel for pltfs.                                                                                                                                                                                                                                                                                                                                                                      |
| Sept 4   | (65) | NOTICE Of app & subst of couns, Walter M. Meginniss apps as couns for defts in subst for Deborah J. Stephens & Kelly Overstreet Johnson bt W.M.Meginniss.                                                                                                                                                                                                                                                                        |
| 06       | (66) | MOTION for enlgmta o fimt to resp to mot to file sec amend complt, by defts.                                                                                                                                                                                                                                                                                                                                                     |
| 18       | (67) | MEMORANDUM of law in opp to pltfs' mot for lv to file 2nd amend complt, by defts.                                                                                                                                                                                                                                                                                                                                                |
| 23       | (68) | REPLY memo of law in suppt of pltfs' mot for lv to file 2nd amend complt.                                                                                                                                                                                                                                                                                                                                                        |
| *9/20/85 | (69) | ORDER (PLN-9/19/85) Granting pltfs' mot for lv to file 2nd amend complt. & 2nd amend complt be filed nunc pro tunc 8/26/85. Defts shall ans forthwith. (EOD-9/26/85CCAP).                                                                                                                                                                                                                                                        |
| 23       | (70) | NOTICE of app as add couns for defts. The law firm of Davis, Critton, Hoy & Diamond enters its app.                                                                                                                                                                                                                                                                                                                              |
| Oct 01   | (71) | MOTION to shorten time for disc, by pltfs, w/memo. <span style="float: right;">End VOL 1</span>                                                                                                                                                                                                                                                                                                                                  |
| 04       | (72) | RESPONSE to mot for enlgmt of tim & continuance, by pltfs. <span style="float: right;">Beg. VOL 2</span>                                                                                                                                                                                                                                                                                                                         |
| 9/03/85  | (73) | MOTION for enlgmt & contuance to resp to 2-amend complt, by defts.                                                                                                                                                                                                                                                                                                                                                               |
| 08       | (74) | MEMORANDUM in suppt of defts' mot for more def stmt by pltfs.                                                                                                                                                                                                                                                                                                                                                                    |
| 08       | (75) | MOTION of defts for more def stmt by defts.                                                                                                                                                                                                                                                                                                                                                                                      |
| 10       | (76) | MOTION to decertify class by Asst Atty Genrl.                                                                                                                                                                                                                                                                                                                                                                                    |
| Oct 11   | (77) | NOTICE of w/drawal of mot to decertify class                                                                                                                                                                                                                                                                                                                                                                                     |
| *10/1/85 | (78) | ORDER (PLN-10/1/85) Directing that on 7/15/85 Mr. Rosenbaum's clm was severed & abated, no act will be tkm by crt until after trl of class-clm.(EOD-10/23/85CCAP).                                                                                                                                                                                                                                                               |
| 25       | (79) | RESPONSE to defts' mot for more definite statement, by Pltf.                                                                                                                                                                                                                                                                                                                                                                     |
| *16      | (80) | ORDER(JAGPLN10/15/85) Trial is cont to a special setting on 12/2/85 @9:30 before Judge Nimkoff (EOD10/28/85)                                                                                                                                                                                                                                                                                                                     |
| Nov 6    | (81) | PETITION for Habeas Corpus Ad Testificandum, pltfs.                                                                                                                                                                                                                                                                                                                                                                              |
| 6        | (82) | CERTIFICATE of service.                                                                                                                                                                                                                                                                                                                                                                                                          |
| 8        | (83) | DEMAND for jury trial, by defts.                                                                                                                                                                                                                                                                                                                                                                                                 |
| 8        | (84) | NOTICE of taking depo of David Aldred on 11/13/85.                                                                                                                                                                                                                                                                                                                                                                               |
| 13       | (85) | AMENDED notice of taking depo of: Eddie Cobb, Billy Joe Harper & James Kinner on 11/8/85.                                                                                                                                                                                                                                                                                                                                        |
| 13       | (86) | NOTICE of taking depo of Larry Pryor on 11/13/85.                                                                                                                                                                                                                                                                                                                                                                                |
| 13       | (87) | AMENDED notice of taking depo of David Alfred.                                                                                                                                                                                                                                                                                                                                                                                   |
| 13       | (88) | NOTICE of taking depo of Wayne Epprecht.                                                                                                                                                                                                                                                                                                                                                                                         |
| 13       | (89) | NOTICE of taking depo of Steve H. Bronson.                                                                                                                                                                                                                                                                                                                                                                                       |
| 13       | (90) | NOTICE of taking depo of Ron Durrance.                                                                                                                                                                                                                                                                                                                                                                                           |

## CIVIL DOCKET CONTINUATION SHEET

FD-500 (Rev. 10-10-79)

| PLAINTIFF              | DEFENDANT               | DOCKET NO. _____      |
|------------------------|-------------------------|-----------------------|
| ANTHONY LAMARCA, et al | R.V. TURNER, etc, et al | PAGE 4 OF _____ PAGES |

| DATE  | NR.   | PROCEEDINGS                                                                   | 82-8196-CIV-JCP |
|-------|-------|-------------------------------------------------------------------------------|-----------------|
| 185   |       |                                                                               |                 |
| IV 13 | (91)  | MOTION to cont, by defts R.V. Turner & Randall Music. (NR____)                |                 |
| 15    | (92)  | EXPERT witness reports, by Pltfs.                                             |                 |
| 15    | (93)  | MOTION to amend complt in providing for a 3rd amended                         |                 |
|       |       | complt, by Pltfs.w/3rd amended complt attached.                               | dr              |
| 14    | (94)  | NOTICE of tkg dep of Michael Gordon on 11/15/85, by deft.                     | dr              |
| 15    | (95)  | NOTICE of subpoena for documents w/o dep, by Pltfs.                           | dr              |
| 21    | (96)  | AMENDED Notice of tkg dep of Michael Gordon on 11/15/85,                      |                 |
|       |       | by defts.                                                                     | dr              |
| 21    | (97)  | MEMO of points & auth in supp of opp to demand for jury                       |                 |
|       |       | trial, by Pltfs.                                                              | dr              |
| 21    | (98)  | RESPONSE in opp to M/to continue, by Pltfs.                                   | dr              |
| * 14  | (99)  | NOTICE of pending motions on 11/21/85 at 3:00 P.M.                            | 11              |
| 21    | (100) | ORDER(JCP-11/21/85) granting pltf's petition for Habeas Corpus Ad -           |                 |
|       |       | Testificandum. (EOD 11/27/85, CCAP)                                           | 11              |
| 22    | (101) | NOTICE of subp for documents w/o depd issued to John B. Dunkle, by pltfs      | 11              |
| 25    | (102) | MOTION to strike allegations of pltf's second amended complaint, by defts.    |                 |
|       |       | (NR____)                                                                      | 11              |
| 25    | (103) | AMENDMENT to mot of defts for cont, by defts.                                 | 11              |
| 27    | (104) | APPEAL from Mag's order & petition for emergency hearing.                     | 11              |
| * 25  | (105) | ORDER(PLN-11/25/85) granting nunc pro tunc 11/14/85, pltf's mot to file       |                 |
|       |       | third amended complaint; court makes no present ruling regarding              |                 |
|       |       | recoverability of attorney's fees or presence of State of Florida             |                 |
|       |       | as deft for that purpose; denying deft's jury demand; denying deft's          |                 |
|       |       | mot for further cont of trial; reserves ruling on deft's mot to strike.       |                 |
|       |       | (EOD 12/6/85, CCAP)                                                           | 11              |
| 27    | (106) | UNILATERAL Pre- Trial stipulation, by pltf.                                   | 11              |
| 29    | (107) | ANSWER to pltf third amended complaint, by defts R.V. Turner & Randall Music. | 11              |
| 29    | (108) | MOTION for an order to direct the State Court to release sealed records       |                 |
|       |       | to this court for an in camera review, by pltf. (NR____)                      | 11              |
| ec 2  | (109) | RESPONSE to deft's appeal from Mag's order & petition for emergency hearing,  |                 |
|       |       | by pltf.                                                                      | 11              |
| 2     | (110) | SUPPLEMENTAL pretrial stip, by pltfs.                                         | 11              |
| 2     | (111) | NOTICE of filing report of expert witness Alan M. Wagshul, M.D. by pltfs.     | 11              |
| 2     | (112) | ORDER(JCP-12/2/85) denying defts Turner, Music & State of Florida's Appeal    |                 |
|       |       | from Mag's Order & Petition for Emergency Hearing. (EOD 12/12/85, CCAP)       | 11              |
| 4     | (113) | ORDER(PLN-12/4/85) amending & modifying the Court's previous Order of         |                 |
|       |       | 11/21/85 to the extent that the Court directs that inmate Larry Pryor be      |                 |
|       |       | transported to & held at the Dade Correctional Institution (D.C.I.) in        |                 |
|       |       | Dade County, FL; directing officials of D.C.I. to transport Larry Pryor &     |                 |
|       |       | supervise his custody; permitting pltf's counsel to confer with Larry         |                 |
|       |       | Pryor at D.C.I. during his incarceration. (EOD 12/13/85, CCAP)                | 11              |
| 7     | (114) | CJA 21 Voucher No. 953055 (PLN-12/6/85) appointing Steven E.M. Hartz, Jr. as  |                 |
|       |       | counsel for Larry Pryor.                                                      | 11              |
| * 2   | (115) | ORDER (PLN-12/2/85) directing deft through Dept of Correction to transport    |                 |
|       |       | inmates who are either pltfs or witnesses by 9:00 A.M. on 11/28/85 to         |                 |
|       |       | Dade County Jail in Miami, FL; Dade County Jail shall then transport these    |                 |
|       |       | inmates to U.S. District Court at Miami to be available for trial beginning   |                 |
|       |       | 12/2/85 at 12:30 P.M. in Courtroom 8 of the New Courthouse; transport shall   |                 |
|       |       | be made by 12:30 P.M., 12/2/85. (EOD 12/20/85, CCAP)                          | 11              |

CIVIL DOCKET CONTINUATION SHEET

FD-500-2 10-75 500-75

| PLAINTIFF    |       | DEFENDANT                                                                                                                                                                                                                                                                                                                                                                    | DOCKET NO. _____            |
|--------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
|              |       |                                                                                                                                                                                                                                                                                                                                                                              | PAGE <u>5</u> OF _____ PAGE |
| DATE         | NR.   | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                  |                             |
| VOL. 2 CONT. |       |                                                                                                                                                                                                                                                                                                                                                                              |                             |
| 1985         |       |                                                                                                                                                                                                                                                                                                                                                                              |                             |
| Dec 10       | (116) | TRANSCRIPT of Hearing dated 12/3/85 Pgs. 93-173.                                                                                                                                                                                                                                                                                                                             | VOL 8                       |
| 10           | (117) | TRANSCRIPT of Hearing dated 12/3/85, Pgs. 174-263.                                                                                                                                                                                                                                                                                                                           | VOL 9                       |
| 16           | (118) | NOTICE of Final Argument on 12/27/85 at 9:00 A.M. (40 minutes to a side) at Miami, Courtroom V.                                                                                                                                                                                                                                                                              |                             |
| *Dec 12      | (119) | ORDER (PLN 12/12/85) granting M/ to Direct State Court to Release Records to this Court in Camera (EOD 12/27/85 CCAP)                                                                                                                                                                                                                                                        | ct                          |
| Dec. 23      | (120) | PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by defts.                                                                                                                                                                                                                                                                                                                   | End VOL 2                   |
| Dec. 20      | (121) | Proposed Findings of Fact and Conclusions of Law by plaintiffs                                                                                                                                                                                                                                                                                                               | ct                          |
| Dec. 27      | (122) | MOTION for Hearing on compliance with injunctive Order by Larry Pryor                                                                                                                                                                                                                                                                                                        | ct                          |
| 1986         |       |                                                                                                                                                                                                                                                                                                                                                                              |                             |
| Jan 8        | (123) | MOTION TO EXCLUDE DEPO EVID. OF DEFT AND MEMO by pltfs.                                                                                                                                                                                                                                                                                                                      | ct                          |
| 8            | (124) | CERTI. OF SERV. of M/Exclude by pltfs                                                                                                                                                                                                                                                                                                                                        | ct                          |
| 8            | (125) | MOTION FOR SUBSTI. OF PARTY DEFT and MEMO by pltfs                                                                                                                                                                                                                                                                                                                           | ct                          |
| 1985         |       |                                                                                                                                                                                                                                                                                                                                                                              |                             |
| Dec 20       | (126) | NOTICE of filing supplemental material, by pltf.                                                                                                                                                                                                                                                                                                                             |                             |
| 20           | (127) | CJA 20 (PLN 12/19/85) Appointment and authority to pay crt appt'd csl in the amount of 153.75, voucher no. 953055.                                                                                                                                                                                                                                                           |                             |
| 1986         |       |                                                                                                                                                                                                                                                                                                                                                                              |                             |
| Jan 8        | (128) | REPORT (PLN 1/8/86 ) and recommendation. Pltf shall be compensated for injury. Pltf's are entitled to an award of fees and award of atty fees and litigation expenses reimbursement. Pltfs shall file w/in 20 days fee/expense submissions and accompanying memo as to this issue. Deft respond w/in 20 days from pltf's filing. See original R & R for further information. |                             |
| 10           | (129) | ORDER (PLN 1/10/86) Chester Lambdin is subst as a pty deft in the stead of Rar Music. Deft Lambdin is solely in his official capacity for purposes of injunctive and orther equitalbe relief. (EOD 1/27/86-ccap).                                                                                                                                                            |                             |
| 10           | (130) | ORDER (PLN 1/10/86) GRANTING pltf's m/ for exclude depo evidence of defts and being apprised of its permises. This crt recommends that the depo's of the seven deponents taken at the initiative of defts on 12/17/85 should be excuded from consideration in this lawsuit. (EOD 1/27/86-ccap).                                                                              |                             |
| 10           | (131) | ORDER (PLN 1/10/86) GRANTING pltf's m/ to file a third amended complt, Keith previously indicated as a named ptys pltf in this action, is expressly w/drawn as a ligitant to this action. (EOD 1/27/86-ccap).                                                                                                                                                                |                             |
| 14           | (132) | MOTION to cont hearing and to issue writ of habeas corpus and testificandum, Larry Pryor.                                                                                                                                                                                                                                                                                    | End VOL 3                   |
| 15           | (133) | MOTION for enlargement of time, by defts. NR 151                                                                                                                                                                                                                                                                                                                             | beg VOL 4                   |
| 17           | (134) | PETITION for hearing on appeal of Mag's order under ruel 4(a), by defts.                                                                                                                                                                                                                                                                                                     |                             |
| 17           | (135) | RESPONSE to movant, Larry Pryor's m/ to cont hearing and to issure writ of habeas corpus ad testificandum, by pltf.                                                                                                                                                                                                                                                          |                             |
| 17           | (136) | RESPONSE to defts' m/ for enlargement of time, by pltf.                                                                                                                                                                                                                                                                                                                      |                             |
| 17           | (137) | CERTIFICATE of service, by pltf.                                                                                                                                                                                                                                                                                                                                             |                             |
| *** 12       | (138) | NOTICE of hearing on compliance w/ injunctive order set for 1/16/86.                                                                                                                                                                                                                                                                                                         |                             |
| 30           | (139) | NOTICE of filing of Larry Pryor in sup of mot for hearing on comp/inju order.                                                                                                                                                                                                                                                                                                |                             |
| 31           | (140) | MOTION by pltf for award of attny fees & lit expenses (NR _____)                                                                                                                                                                                                                                                                                                             |                             |
| 31           | (141) | REQUEST by pltf's attny for oral arg on pltfs' mot for awrd of attny fees & e                                                                                                                                                                                                                                                                                                |                             |
| 31           | (142) | MEMO in support of pltfs' mot for award of fees' & lit exp.                                                                                                                                                                                                                                                                                                                  |                             |
| 31           | (143) | EXHIBITS filed for pltf in support of mot for award of attny fees' & lit exp.                                                                                                                                                                                                                                                                                                |                             |

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR-2-14-79-SOM-1824

| PLAINTIFF       |  | DEFENDANT    | DOCKET NO 82-8196-CTV |
|-----------------|--|--------------|-----------------------|
| ANTHONY LaMARCA |  | R. V. TURNER | PAGE 6 OF JCP PAGES   |

| DATE   | NR.   | PROCEEDINGS                                                                                                                                                                                            |            |
|--------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 31     | (144) | RESPONSE to def't's petition for hrg on appeal of Mag. Order under Rule 4(a), by pltf.                                                                                                                 | pb         |
| b 11   | (145) | RESPONSE to def't's M/for addt'l enlargement of time to resp to rent & recomm of Mag.. by pltf.                                                                                                        | pb         |
|        | (146) | RESPONSE to def't's M/for enlargement of time to resp to pltf's M/for fees & litigation expenses., by pltf.                                                                                            | pb         |
|        | (147) | NOMINATION of committee member required by rept & recomm, by pltf.                                                                                                                                     | pb         |
| 10     | (148) | REPLY to pltf's response to pet for Hearing on Appeal, by def't.                                                                                                                                       | cf         |
| 10     | (149) | MOTION for Enlargement of time to respond to pltf's mot for fees & Lit expenses. NR                                                                                                                    | cf         |
| 10     | (150) | MOTION for add'l enlargement of time to respond to report & recommendation of U.S. mag. NR 156                                                                                                         | cf         |
| 18     | (151) | ORDER(JCP 2-17-86) granting mot for enlargement of time to def'ts(EOD 2-25-86)                                                                                                                         | cf         |
| ar 7   | (152) | MOTION for add'l enlargement of time to respond to Report & recommendation of U.S.Mag.NR                                                                                                               | cf         |
| 17     | (153) | RESPONSE to Mag's report & recommendation by def'ts et al.                                                                                                                                             | cf         |
| 18     | (154) | NOTICE of filing add'l portions of transcripts, by def'ts.                                                                                                                                             | cf         |
| 18     | (155) | AMENDED RESPONSE of def'ts, including objections to Mag's Report & Recommendation, by def'ts.                                                                                                          | cf         |
| 19     | (156) | ORDER(JCP3-18-86)GRANTING mot for add'l enlargement of time til 3-17-86, to resp to report & recommendation of Mag. (EOD3-24-86-CCAP)                                                                  | VOL 4 CONF |
| 25     | (157) | TRANSCRIPT of hrg before Mag. Nimkoff, 11-25-85 in Miami.                                                                                                                                              | VOL 10     |
| 18     | (158) | TRANSCRIPT of hrg before Judge Nimkoff, 12-2-85, Miami.                                                                                                                                                | VOL 11     |
| 18     | (159) | TRANSCRIPT of trial proceedings, 12-11-85, Miami.                                                                                                                                                      | VOL 12     |
| 18     | (160) | TRANSCRIPT of afternoon session of tr proceedings, 12-11-85.                                                                                                                                           | VOL 13     |
| 18     | (161) | TRANSCRIPT of tr proceedings, 12-12-85, Miami.                                                                                                                                                         | VOL 14     |
| 18     | (162) | TRANSCRIPT of proceedings, 12-12-85, Miami.                                                                                                                                                            | VOL 15     |
| 18     | (163) | TRANSCRIPT of proceedings, 12-13-85, Miami.                                                                                                                                                            | VOL 16     |
| 18     | (164) | TRANSCRIPT of afternoon proceedings, 12-13-85, Miami.                                                                                                                                                  | VOL 17     |
| 25     | (165) | NOTICE of filing of transc of hrg on 11-25-85, by def'ts.                                                                                                                                              | VOL 4 CONF |
| 27     | (166) | MOTION for enlargement of time & supporting Memo, by pltf's.                                                                                                                                           | cf         |
| Apr 18 | (167) | ORDER(JCP4-15-86)GRANTING pltf's mot for enlargement of time thru 4-29-86. (EOD4-22-86)                                                                                                                | cf         |
| 24     | (168) | MOTION for enlargement of time & sup Memo, by pltf's.                                                                                                                                                  | cf         |
| ay 2   | (169) | ORDER(JCP4-28-86) GRANTING mot forenlgmt of time, by pltf's, pltf's have til 5-29-86 to file response to def'ts exception to recommendations of Mag.. (EOD5-8-86-CCAP)                                 | cf         |
| une 2  | (170) | MOTION for leave to file 2 days late their reply Memo to def'ts response & Objection to Mags report, by pltf's. NR 172                                                                                 | cf         |
| May 30 | (171) | ORDER & WRIT OF HABEAS CORPUS AD TERSTIFICANDUM(JCP5-30-86)GRANTING mot to cont hrg, Hrg on Compliance set for 6-24-86 @ 1 PM, Louie Wainwright to del Larry Pryor to Marshal 6-24-86.(EOD6-3-86-CCAP) | cf         |
| une 9  | (172) | ORDER(JCP6-6-86)GRANTING pltf's mot for leave to file 2 days late, their reply memo to def'ts response & obj to Mag's report.(EOD6-10-86-CCAP)                                                         | cf         |
| 24     | (173) | MEMO RE: The Binding of non-parties by Court Inj. order xx as to Larry Pryor.                                                                                                                          | lg         |

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR-2-14-79-80

| PLAINTIFF   |       | DEFENDANT                                                                                                                                                     |  | DOCKET NO. _____          |
|-------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------|
|             |       |                                                                                                                                                               |  | PAGE <u>7</u> OF _____ PA |
| DATE        | NR.   | PROCEEDINGS                                                                                                                                                   |  |                           |
| <u>1986</u> |       |                                                                                                                                                               |  |                           |
| JUNE 26     | (174) | RETURN of svc on order & writ of H/C ad testificandum exec. on 6/24/86                                                                                        |  |                           |
| 27          | (175) | ORDER (JCP 6/25/86) denying relief requested by witness Larry Pryor<br>(EOD 7/9/86 CCAP) <span style="float:right">End Vol</span>                             |  |                           |
| *12-6-85    | (176) | TRANSCRIPT of hrg before Judge Nimkoff on 12-4-85, pgs 338-433 <span style="float:right">VOL 18</span>                                                        |  |                           |
| Oct 14      | (177) | TRANSCRIPT of proceedings before Judge Nimkoff on 12-4-85, pgs 435-606. <span style="float:right">16</span>                                                   |  |                           |
| 14          | (178) | TRANSCRIPT of proceedings before Judge Nimkoff on 12-5-85, pgs 608-705A. <span style="float:right">2</span>                                                   |  |                           |
| 14          | (179) | TRANSCRIPT of proceedings before Judge Nimkoff on 12-5-85, pgs 706-878. <span style="float:right">2</span>                                                    |  |                           |
| 14          | (180) | TRANSCRIPT of hrg before Judge Nimkoff on 12-6-85, pgs 879-1000. <span style="float:right">VOL?</span>                                                        |  |                           |
| 14          | (181) | TRANSCRIPT of hrg before Judge Nimkoff on 12-9-85, pgs 1001-1109. <span style="float:right">VOL 2</span>                                                      |  |                           |
| 14          | (182) | TRANSCRIPT of hrg before Judge Nimkoff on 12-10-85, pgs 1234-1324. <span style="float:right">Vol 2</span>                                                     |  |                           |
| 14          | (183) | TRANSCRIPT of hrg beofre Judge Nimkoff on 12-10-85, pgs 1110-1233. <span style="float:right">Vol 2</span>                                                     |  |                           |
| 14          | (184) | TRANSCRIPT of testimony of David Brierton before Judge Nimkoff on<br>12-12-85, pgs 1-68. <span style="float:right">Vol?</span>                                |  |                           |
| 14          | (185) | TRANSCRIPT of proceedings before Judge Nimkoff on 12-12-85, pgs 71-121. <span style="float:right">3</span>                                                    |  |                           |
| 14          | (186) | TRANSCRIPT of depo of Angelo Palmer before R. Wolinsky on 12-17-85, <span style="float:right">Beq</span><br>pgs 1-8. <span style="float:right">e</span>       |  |                           |
| 14          | (187) | TRANSCRIPT of depo of Alvin Strachan on 12-17-85, pgs 1-17.                                                                                                   |  |                           |
| 14          | (188) | TRANSCRIPT of depo of William Deese on 12-17-85, pgs 1-12.                                                                                                    |  |                           |
| 14          | (189) | TRANSCRIPT of depo of David Wing on 12-17-85, pgs 1-13.                                                                                                       |  |                           |
| 14          | (190) | TRANSCRIPT of depo of Alvin Greenwood on 12-17-85, pgs 1-17.                                                                                                  |  |                           |
| 14          | (191) | TRANSCRIPT of depo of Thomas Vaughn on 12-17-85, pgs 1-23.                                                                                                    |  |                           |
| 14          | (192) | TRANSCRIPT of depo of Emilio Martinez on 12-17-85, pgs 1-24.                                                                                                  |  |                           |
| Nov 18      | (193) | SUPPLEMENTL auth in suppt of our reply memo to defts'<br>resp & obj to Mag's rpt by pltfs'.                                                                   |  |                           |
| 20          | (194) | NOTICE of suppl Author by defts.                                                                                                                              |  |                           |
| 28          | (195) | RESPONSE to pltfs analysis of supplemental authority, by Asst. Attny Gen.                                                                                     |  |                           |
| <u>1987</u> |       |                                                                                                                                                               |  |                           |
| Feb 2       | (196) | AFFIDAVIT of indigency from DAVID Aldred.                                                                                                                     |  |                           |
| May 11      | (197) | TRANSCRIPT of hrg before Judge Nimkoff on 12-2-85, pgs 1-92. <span style="float:right">VOL 2</span>                                                           |  |                           |
| 11          | (198) | TRANSCRIPT of hrg before Judge Nimkoff on 12-3-85, pgs 264-337. <span style="float:right">VOL 2</span>                                                        |  |                           |
| June 4      | (199) | PARTIAL F/J(CLK 6-4-87)ENTERED for PLTF (See file for details)Case remains<br>open as to further injunctive relief, atty fees & expenses.(EOD6-8-87-<br>CCAP) |  |                           |
| 4           | (200) | ORDER(JCP6-4-87)AFFIRMING R&R of Mag PLN (DE #128)See file for details.<br>(EOD6-10-87-CCAP)                                                                  |  |                           |
| 15          | (201) | MOTION for new trl & to amend findings, by defts Turner & Lambdin. <span style="float:right">NR 25</span>                                                     |  |                           |
| 16          | (202) | MOTION for enlargement of time to file add'l grounds for post judgment<br>relief, by defts. <span style="float:right">NR20</span>                             |  |                           |
| 16          | (203) | ORDER(JCP 6-18-87)GRANTING defts mot for enlargement of time.(EOD6-23-87-<br>CCAP)                                                                            |  |                           |
| 18          | (204) | NOMINATIONS to committees & request for enlargement of time for completion<br>of nominations, by defts. <span style="float:right">NR</span>                   |  |                           |
| 18          | (205) | SUPPLEMENTAL MOTION in suppt of mot for award of atty fees & expenses &<br>Memo in suppt, by pltfs. <span style="float:right">NR</span>                       |  |                           |
| 18          | (206) | EXHIBITS in suppt of suppl mot & Memo in suppt of mot for atty fees &<br>expenses, by pltfs.                                                                  |  |                           |

End Vol

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NR

## CIVIL DOCKET CONTINUATION SHEET

|                                 |                               |                                                            |
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| PLAINTIFF<br><br>MARCA, ANTHONY | DEFENDANT<br><br>TURNER, R.V. | 82-8196-CV-JCP<br>DOCKET NO. _____<br>PAGE 8 OF ____ PAGES |
|---------------------------------|-------------------------------|------------------------------------------------------------|

| DATE   | NR.   | PROCEEDINGS                                                                                                                                                |
|--------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 37     |       |                                                                                                                                                            |
| 23     | (207) | MOTION & Memo for enlargement of time for response to mot & suppl mot for atty fees, by defts Turner & Lambdin. NR 212cf                                   |
| 24     | (208) | SUPPLEMENTAL MOTION for new trl & re-hrg w/Memo, by defts. NR 232cf                                                                                        |
| 12/85  | (209) | NOTICE of subp for documts w/out dep by David M. Lipman, Esq. bs                                                                                           |
| 25     | (210) | SUPPLEMENT to nomination to committee by Walter M. Meginniss, Asst Atty Genrl. bs                                                                          |
| 25     | (211) | ORDER (JCP-6/25/87) Granting defts' mot for an elgmt of time in which to file curriculum vitae of Dr. Edward A. Herrera. (EOD-6/30/87CCAP). bs             |
| 29     | (212) | ORDER (JCP-6/29/87) Granting R.V. Turner & Chester Lambdin's mot for enlgmt of time for resp to mot & supplemtl mot for atty's fees. (EOD-6/30/87CCAP). bs |
| y 2    | (213) | NOMINATIONS to Committees, by pltf. cf                                                                                                                     |
| 6      | (214) | RENEWED MOTION for appt of csl & Notice of chg of add, by co-pltf Rosenbalm. NR 242                                                                        |
| 7      | (215) | RESPONSE to defts mot for new trl, by pltf. NR 231cf                                                                                                       |
| 7      | (216) | RESPONSE to pltf's mot for atty fees, by defts. cf                                                                                                         |
| 7      | (217) | MOTION & Memo for ext to file suppt'g affidavits, by defts. NR 221cf                                                                                       |
| 9      | (218) | MOTION for evidentiary hrg & Memo of Law, by pltf. NR 228cf                                                                                                |
| 9      | (219) | SECOND SUPPLEMENTAL MOTION for atty & Litigation fees & Memo of Law in suppt, by pltf. NR 231cf                                                            |
| 10     | (220) | MOTION for leave to file reply Memo upon receipt of suppl submissions of defts, by pltf's. NR 222cf                                                        |
| 17     | (221) | ORDER(JCP 7-17-87)DENYIN, as moot, defts mot for ext to file suppt'g affidavits. (EOD7-17-87-CCAP) cf                                                      |
| 17     | (222) | ORDER(JCP7-17-87)DENYING, as Moot, pltf's mot to file Reply Memo.(EOD7-17-87-CCAP) cf                                                                      |
| 21     | (223) | RESPONSE to pltf's 2nd amended mot for fees, by defts. cf                                                                                                  |
| g 3    | (224) | MOTION for ext of time to reply to defts response to pltf's 2nd amended mot for fees, by pltf's. NR 225cf                                                  |
| 6      | (225) | ORDER(JCP 8-6-87)GRANTING pltf's mot for ext of time: Pltf's have 20 days, til 8-20-87, to file reply.(EOD8-10-87-CCAP) cf                                 |
| 21     | (226) | REPLY to defts response to pltf's second amended mot for fees, by pltf's. cf                                                                               |
| 21     | (227) | CERTIFICATE of service, by pltf's. cf                                                                                                                      |
| ept 11 | (228) | ORDER(JCP 9-11-87)GRANTING pltf's mot for Evidentiary hrg, now set for 10-9-87 @ 1 PM.(EOD9-14-87-CCAP) cf                                                 |
| 1      | (229) | AFFIDAVIT of Indigency, by David Aldred. cf                                                                                                                |
| 17     | (230) | ORDER(JCP 9-17-87)DENYING pltf's request for copies, pltf to contact csl for information he deisres.(EOD9-18-87-CCAP) cf                                   |
| 21     | (231) | ORDER(JCP 9-19-87)DENYING pltf's mot for appt of csl.(EOD9-22-87-CCAP) cf                                                                                  |



CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF   |       | DEFENDANT                                                                                                                                                                                                                              | DOCKET NO. _____          |
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|             |       |                                                                                                                                                                                                                                        | PAGE <u>9</u> OF _____ PA |
| DATE        | NR.   | PROCEEDINGS                                                                                                                                                                                                                            |                           |
| <u>1987</u> |       |                                                                                                                                                                                                                                        |                           |
| Sept 21     | (232) | ORDER(JCP 9-19-87)DENYING defts mot for New trl/Amend Findings VACATING portion of ord entered 6-4-87 which directs St. of to bear cost of committees: ORDERING costs of committee to t born by Supt Chester Lambdin.(EOD9-22-87-CCAP) |                           |
| Oct 5       | (233) | NOTICE OF APPEAL filed by defts Turner & Lambdin from Partial F/Jdgmt & Ord on R&R entered 6-4-87 & Ord entered 9-19-87. (Fee Pd)                                                                                                      |                           |
| 5           | ---   | NOA transmitted to USCA, copies to all interested parties.                                                                                                                                                                             |                           |
| 5           | (234) | THIRD SUPPLEMENTAL MOTION for award of atty fees & expenses, t ptlfs. NR                                                                                                                                                               |                           |
| 5           | (235) | MEMORANDUM of Law in suppt of 3rd suppl mot for atty fees, by ptlfs.                                                                                                                                                                   |                           |
| 8           | (236) | ORDER(JCP 10-8-87)On ptlfs various mots for atty & litigation fees. (See file for details) (EOD10-13-87-CCAP)                                                                                                                          |                           |
| 13          | (237) | MOTION & Memo for leave to file transcripts, by deft. NR                                                                                                                                                                               |                           |
| 15          | ---   | LETTER from USCA dtd 10-7-87 acknowledging receipt of NOA, CA 87-5878.                                                                                                                                                                 |                           |
| *10/13/87   | (238) | ORDER (JCP-10/14/87) Granting defts mot for lv to file transcs. (EOD-10/19/87CCAP).                                                                                                                                                    |                           |
| 19          | (239) | NOTICE of filing transcripts of: Record of Proceedings of 10-8- Depo of Glenn Caddy on 12-4-85, & depo of Richard Swanson on 11-29-85, by defts.                                                                                       |                           |
| 23          | (240) | MEMORANDUM of Law on Litigation Expense by defts                                                                                                                                                                                       |                           |
| 26          | (241) | MEMORANDUM of Law on Disputed Litigated Expenses by ptlfs                                                                                                                                                                              |                           |
| Nov 12      | ---   | LETTER from USCA dtd 11/10/87 requesting ROA. <i>End Vols</i>                                                                                                                                                                          |                           |
| *Oct 19     | (242) | TRANSCRIPT of proceedings before Mag Nimkoff on 10-8-85. <i>via 2 pgs 1-46. NR</i>                                                                                                                                                     |                           |
| Nov 18      | ---   | ROA sent to USCA consisting of 5 vols pldgs & 23 vols transcr <i>SEG VOL. 6</i>                                                                                                                                                        |                           |
| *Oct. 23    | (243) | RESPONSE to deft's. mot. for enlgmnt. of time & cont., by pltf                                                                                                                                                                         |                           |
| Nov 24      | ---   | LETTER from USCA ret'g Vols 24 & 25 of ROA as they are duplica which are incorporated into main vols of transcripts                                                                                                                    |                           |
| <u>1988</u> |       |                                                                                                                                                                                                                                        |                           |
| June 28     | (244) | NOTICE of Vol dism'l, by Henry Rosenbaum.                                                                                                                                                                                              |                           |
| Nov 17      | (245) | MANDATE(USCA11-15-88)DISMISSING appeal. RETURNING case to Dist to complete disposition of case.(EOD11-23-88)(Returned ROA consisting of 26 vols.)                                                                                      |                           |
| <u>1989</u> |       |                                                                                                                                                                                                                                        |                           |
| Jan 30      | (246) | MOTION for SStatus Conf, by ptlf. NR                                                                                                                                                                                                   |                           |
| Mar 20      | (247) | NOTICE of svc of pltf injunctive relief, interrog to defts, by ptlfs.                                                                                                                                                                  |                           |
| Continued   |       |                                                                                                                                                                                                                                        |                           |

CIVIL DOCKET CONTINUATION SHEET

FD-500 (Rev. 1-18-80)

|                                                 |                                             |                                                                               |
|-------------------------------------------------|---------------------------------------------|-------------------------------------------------------------------------------|
| <b>PLAINTIFF</b><br><br><b>LAMARCA, ANTHONY</b> | <b>DEFENDANT</b><br><br><b>TRUNER, R.V.</b> | <b>82-8196-CIV-PAINE</b><br><b>DOCKET NO.</b><br><b>PAGE 10 OF ____ PAGES</b> |
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| DATE    | NR.      | PROCEEDINGS                                                                                                                                                                                                         |
|---------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1989    |          |                                                                                                                                                                                                                     |
| Apr 18  | (248)    | MOTION for ext of time to complete discov, by Lambdin. NR <u>254</u> c                                                                                                                                              |
| une 21  | (249)    | NOTICE of pendency of mot, by ptlf. c                                                                                                                                                                               |
| Sept 18 | (250)    | SECOND NOTICE of pendency of mot, by ptlfs. cf                                                                                                                                                                      |
| Oct 02  | (251)    | ORDER(JCP10/2/89)GRANTING ptlfs mot for status conf. SCHEDULING conf for 10/13/89 @ 11 AM.(EOD10/3/89) cf                                                                                                           |
|         | (252)    | NOTICE of status conf set for 10/18/89 @1 PM. cf                                                                                                                                                                    |
|         | 13 253   | MOTION for re-hrg, by ptlf. NR <u>255</u> cf                                                                                                                                                                        |
|         | 23 (254) | ORDER(JCP10/23/89)SETTING discov to be concluded by 12/11/89, SCHEDULING evidentiary hrg for 1/8/90 @9:30. Crt w/not entertain any mots for cont.(EOD10/31/89) cf                                                   |
| Nov 3   | (255)    | NOTICE of appr of James Tucker for ptlfs. cf                                                                                                                                                                        |
|         | 16 (256) | MOTION for lv to take depo's & for emergency consideration & Memo, by Lambdin. NR <u>258</u> c                                                                                                                      |
|         | 17 (257) | SUPPLEMENT to mot for lv to take depo's, by Lambdin. c                                                                                                                                                              |
| Dec 11  | (258)    | ORDER(JCP12/5/89)GRANTING defts mot to take certain depo's. EXTENDING discov date to 12/15/89.(EOD12/11/89) c                                                                                                       |
|         | 15 (259) | NOTICE of tkg depo of Lambdin, Col Pipta, Capt Hicks, Henry Heatherly, Gary Lane & Medina on 12/15/89. c                                                                                                            |
|         | 22 (260) | PETITION for Writ of H/C Ad Testificandum, by ptlfs (see file for details). NR <u>261</u> vf                                                                                                                        |
|         | 26 (261) | ORDER (JCP 12/16/89) for issuance of Writ of H/C Ad Testificandum, GRANTED (see file for details).(EOD 12/28/89) vf                                                                                                 |
|         | 26 (262) | MOTION for appt of Special Process Server, by ptlfs. NR <u>263</u> vp                                                                                                                                               |
|         | 26 (263) | ORDER (JCP 12/26/89) GRANTING appt of Special Process Server (Albert Lee) to serve Writs of H/C.(EOD 12/28/89) vp                                                                                                   |
|         | 26 (264) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Eduardo Acosta to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody. vf |
|         | 26 (265) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Joseph Haveard to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody. vf |
|         | 26 (266) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver George Jonas to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody. vf   |

CIVIL DOCKET CONTINUATION SHEET

FPI 888-7 16 88 781

| PLAINTIFF        |       | DEFENDANT                                                                                                                                                                                                          |                                               |
|------------------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| LAMARCA, ANTHONY |       | TURNER, R. V.                                                                                                                                                                                                      | 82-8196-CV-JCP<br>DOCKET NO.<br>PAGE 11 OF PA |
| DATE             | NR.   | PROCEEDINGS                                                                                                                                                                                                        |                                               |
| <u>1989</u>      |       |                                                                                                                                                                                                                    |                                               |
| Dec 26           | (267) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver David Marsh to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody.      |                                               |
| 26               | (268) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Shelby Robertson to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody. |                                               |
| 26               | (269) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Martin Saunders to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody.  |                                               |
| 26               | (270) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Mark C. White to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody.    |                                               |
| 26               | (271) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Antonio Yepes to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody.    |                                               |
| 26               | (272) | WRIT of H/C Ad Testificandum (Clk 12/26/89) COMMANDING FL Dept. of Corrections to deliver Arnold Dennis to U.S.D.C. on 1/8/90 @ 9:30 a.m. before Judge Paine in WPB, and to return him to his place of custody.    |                                               |
| <u>1990</u>      |       |                                                                                                                                                                                                                    |                                               |
| Jan 8            | (273) | NOTICE of filing wit & exh lists, by deft Lambdin.                                                                                                                                                                 |                                               |
| 8                | (274) | EXHIBIT LIST, by pltf's.                                                                                                                                                                                           |                                               |
| 8                | (275) | MOTION to consider add'l evidence, by defts.                                                                                                                                                                       |                                               |
| 8                | (276) | WITNESS LIST, by pltf.                                                                                                                                                                                             |                                               |
| 8                | (277) | MOTION to compel prod of doc's, by defts.                                                                                                                                                                          |                                               |
| 8                | (278) | MEMO in suppt of mot for prod of doc's, by defts.                                                                                                                                                                  |                                               |
| 8                | (279) | MINUTES of Evidentiary hrg commenced, cont'd to 1/9/90.                                                                                                                                                            |                                               |
| 9                | (280) | MINUTES of Evidentiary resumed, cont til 1/10/90.                                                                                                                                                                  |                                               |
| 9                | (281) | ORDER(JCP1/9/90)GRANTING defts mot to subst Lambdin for Turner as Supt of GCI, presently serving. (EOD1/11/90)                                                                                                     |                                               |
| 8                | (282) | MOTION to consider add'l evidence, by defts. NR                                                                                                                                                                    |                                               |
| 8                | (283) | LIST of propective witn's, by ptlfs.                                                                                                                                                                               |                                               |
| 8                | (284) | LIST of Exh's, by pltf.                                                                                                                                                                                            |                                               |
| 8                | (285) | NOTICE of filing wit & exh lists, by deft Lambdin.                                                                                                                                                                 |                                               |
| 10               | (286) | MINUTES of evidentiary hrg on 1/10/90 commenced, cont'd to 1/11/90.                                                                                                                                                |                                               |
| 11               | (287) | MINTUES of evidentiary hrg on 1/11/90 resumed, cont til 1/12/90                                                                                                                                                    |                                               |

## CIVIL DOCKET CONTINUATION SHEET

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PLAINTIFF

DEFENDANT

82-8196-CV-PAIN  
DOCKET NO

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LAMARCA, ANTHONY  
etal

TURNER, R.V. etal

| DATE    | NR.   | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                           |
|---------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| 1990    |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                           |
| n 12    | (288) | MINUTES of evidentiary hrg on 1/12/90 resumed & concluded.                                                                                                                                                                                                                                                                                                                                                                                                                 | cf                        |
| 10      | (289) | MINUTES of evidentiary hrg on 1/10/90 resumed & cont'd to 1/11/90.                                                                                                                                                                                                                                                                                                                                                                                                         | VOL 6 CONF                |
| b 26    | (290) | TRANSCRIPT of trl before Jdg Paine on 1/8/90, pgs 1-163.                                                                                                                                                                                                                                                                                                                                                                                                                   | VOL 31 cf                 |
| 26      | (291) | TRANSCRIPT of trl before Jdg Paine on 1/9/90, pgs 164-359.                                                                                                                                                                                                                                                                                                                                                                                                                 | VOL 32 cf                 |
| 26      | (292) | TRANSCRIPT of trl before Jdg Paine on 1/10/90, pgs 360-467.                                                                                                                                                                                                                                                                                                                                                                                                                | VOL 33 cf                 |
| 26      | (293) | TRANSCRIPT of trl before Jdg Paine on 1/11/90, pgs 468-654.                                                                                                                                                                                                                                                                                                                                                                                                                | VOL 34 cf                 |
| 26      | (294) | TRANSCRIPT of trl before Jdg Paine on 1/12/90, pgs 655-779.                                                                                                                                                                                                                                                                                                                                                                                                                | VOL 35 cf                 |
| ar 09   | (295) | MOTION for Clarification & enlgmt of time to file submission w/memo, by Lambdin.                                                                                                                                                                                                                                                                                                                                                                                           | VOL 6 c NR ____ cf        |
| 16      | (296) | ORDER(JCP3/13/90)GRANTING defts mot for enlgmt of time til 4/9/90 to submit proposed Findings of Fact & Conclusions of Law & there w/be no add'l ext's.(EOD3/20/90)                                                                                                                                                                                                                                                                                                        | c:                        |
| Apr 09  | (297) | NOTICE of filing proposed ord on pltf's prayer for Class Action Injunctive relief, by Lambdin.                                                                                                                                                                                                                                                                                                                                                                             | cf                        |
| 10      | (298) | CERTIFICATE of svc, by Lipman.                                                                                                                                                                                                                                                                                                                                                                                                                                             | cf                        |
| 29      | (299) | ORDER(JCP4/28/90)GRANTING pltf's request for Injunctive relief, clk to enter F/J in favor of pltf's in accordance w/ord entered 6/4/87 & this ord, clk to close case VACATING portions of 6/4/87 ord which contemplates use of committees, all other aspects remain in full force & incorporated herein, RESERVING ruling on mot for atty fees & costs til fully briefed, pltf's to file affidavits in suppt of atty fees & costs w/in 20 days.(EOD 4/30/90-CCAP-M-5/9/90) | 94 cf                     |
| 30      | (300) | FINAL JUDGMENT(CLK4/30/90)READOPTING & CONTINUING ord entered 6/4/87 except as modified by ord of 4/29/90, ENTERING jdgmt effective 6/4/87 for pltf's agnst Turner, Total compensatory damages in amt of \$178,500.00, int of 7.02% to run from 6/4/87, Jdgmt entered agnst deft for pltf's epprecht & Gordon, pltf's to have nothing, pltf's to submit affidavits in suppt of award of fees & costs w/in 20 days.(See file for further details. (EOD5/1/90-CCAP-M-5/9/90) | c                         |
| May 10  | (301) | MOTION for new trl or to alter jdgmnt, by Lambdin.                                                                                                                                                                                                                                                                                                                                                                                                                         | NR 3/4 c                  |
| 22      | (302) | MOTION for ext of time to file mot for atty fees, by pltf.                                                                                                                                                                                                                                                                                                                                                                                                                 | NR ____ c                 |
| 22      | (303) | MOTION for lv to file memo in excess of 20 pgs, by pltf's.                                                                                                                                                                                                                                                                                                                                                                                                                 | NR ____ c                 |
| 25      | (304) | MOTION for atty fees & litigation expenses w/exh's attached by pltf's.                                                                                                                                                                                                                                                                                                                                                                                                     | END VOL 6, Baq V NR 3/4 c |
| 29      | (305) | RESPONSE to defts mot for new trl or to alter jdgmt, by pltf.                                                                                                                                                                                                                                                                                                                                                                                                              | c                         |
| June 05 | (306) | MOTION for ext of time to resp to request for atty fees, w/memo, by Lambdin.                                                                                                                                                                                                                                                                                                                                                                                               | NR ____ c                 |
| 25      | (307) | MOTION for add'l ext of time to resp to request for atty fees & take discov, by Lambdin.                                                                                                                                                                                                                                                                                                                                                                                   | NR ____ c                 |
| July 09 | (308) | RESPONSE to pltf's mot for atty fees & expenses, by Lambdin.                                                                                                                                                                                                                                                                                                                                                                                                               | c                         |
| 19      | (309) | MOTION for enlgmt of time to resp to defts resp to mot for atty fees & costs, by pltf's.                                                                                                                                                                                                                                                                                                                                                                                   | NR ____                   |

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR-7-14-80 TCM 4

|           |           |                                                                    |
|-----------|-----------|--------------------------------------------------------------------|
| PLAINTIFF | DEFENDANT | 82-8196-CV-PAI<br>DOCKET NO. _____<br>PAGE <u>13</u> OF _____ PAGE |
|-----------|-----------|--------------------------------------------------------------------|

| DATE        | NR.   | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>1990</u> |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| July 30     | (310) | ORDER(JCP7/23/90)GRANTING pltfs mot for ext of time til 7/30/90 to resp to mot for atty fees & lit expenses. (EOD7/31/90-CCAP)                                                                                                                                                                                                                                                                                                                                                                                    |
| 31          | (311) | REPLY MEMO ti resp to mot for atty fees & lit expenses, by pltfs.                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Aug 08      | (312) | REQUEST for evidentiary hrg, by pltfs. <span style="float:right">NR _____</span>                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 13          | (313) | NOTICE of mot pend'g more than 60 days, by pltf.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Sept 04     | (314) | SUPPLEMENTAL NOTICE of Pendency, by pltfs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 11          | (315) | NOTICE OF SUPPLEMENTAL AUTHORITY in resp to pltf's mot for attys fees, by deflt.                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| October 8   | (316) | ORDER (JCP 10/6/90) DENYING deflt mot for new trl or to alter jdmt & GRANTING pltfs' mot for award of atty 's fees (DE 304) AWARDING fees & costs for Stage I of \$143,239.86 @ 7% interest per year from 10/8/87 through payment & for Stage II of \$164,222.95 @ 12% interest per year from date of this order through payment. THIS ORDER IS FINAL in nature as required by 11th Circuit dism of original appeal & accordingly defts have 30 days in which to file an appeal. (EOD 10/15/90-CCAP, M: 10/23/90) |
| 26          | (317) | NOTICE OF APPEAL from F/J dated April 30, 1990 & the Order denying new trl & granting attys' fees dated October 6,1990, by defts. (Fee pd, copies to USCA, Judge, Crt. Rptr., Crt. Rptr. Coord., csl)                                                                                                                                                                                                                                                                                                             |
| 29          | ---   | LETTER OF TRANSMITTAL TO USCA w/cert copy of NOA, docket sheet, F/J & Order appealed from w/ statement re ROA transmittal.                                                                                                                                                                                                                                                                                                                                                                                        |
| Nov 02      | (318) | AMENDED NOTICE OF APPEAL filed from F/J entered 4/30/90, the Order denying new trl & granting attys' fees entered 10/6/90, the partial F/J & Order on R&R entered 6/4/87 and the Order denying defts' mot for new trl & to amend findings entered 9/19/87. (No fee pd, copies to USCA, Judge, Crt. Rptr., Crt. Rptr. Coord., csl)                                                                                                                                                                                 |
| 05          | --    | LETTER OF TRANSMITTAL TO USCA w/cert copy of amended NOA, docket sheet, and F/J's and Orders appealed from. <span style="float:right"><u>End Vol 1</u></span>                                                                                                                                                                                                                                                                                                                                                     |

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

ANTHONY LA MARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf  
of all others similarly  
situated, and DAVID ALDRED,  
STEVE H. BRONSON, JR.,  
EDDIE COBB, RON DURRANCE,  
WAYNE EPPRECHT, MICHAEL  
GORDON, and BILLY JOE HARPER  
individually,

DEPARTMENT OF LEGAL AFFAIRS  
CIVIL DIVISION  
FILE COPY

☒ REC'D ☐ FILED W/ COURT  
DOCKETED BY *ghorne* 11/10/85

Plaintiffs,

vs.

CASE NO. 82-8196-CIV-PAINE

R. V. TURNER, individually and  
in his capacity as Superintendent  
of Glades Correction Institution,  
and RANDALL MUSIC, individually  
and in his official capacity as  
Secretary of the Florida Department  
of Corrections, and the  
STATE OF FLORIDA,

Defendants.

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THIRD AMENDED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND FOR DAMAGES

1. The initial three named plaintiffs, Anthony LaMarca, Martin Saunders, and Edwin Johnson, present or former inmates of Glades Correctional Institution (hereinafter, GCI) located in Belle Glades, Florida, and operated by the Florida Department of Corrections, sue for declaratory and injunctive relief on their behalf and on behalf of others similarly situated who are, have been, or will be incarcerated by GCI. They additionally, joined by the other named plaintiffs, sue

for damages. The suit is based on the negligence, gross negligence and deliberate indifference of the defendants, which has resulted in a violent, lawless atmosphere within GCI, in which the plaintiffs and others have suffered physical attacks, robberies, extortion and homosexual rapes. The only refuge that the plaintiffs have from the violence and lawlessness is a protective confinement situation in which conditions fall so far below standards as to constitute cruel and unusual punishment.

#### JURISDICTION

2. This is a case arising under 42 U.S.C. §§ 1983 and 1988 and the Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331(a) and 1343(3) and (4).

#### CLASS ACTION ALLEGATIONS

3. This action is properly maintainable as a class action for injunctive relief pursuant to Federal Rules of Civil Procedure 23(a)(1)(2)(3) and (4), (b)(1)(B), (b)(2) and (b)(3). An order certifying the class for injunctive relief was entered April 13, 1984.

4. The class for injunctive relief consists of those approximately 800 inmates presently incarcerated in GCI or those inmates within the Florida prison system who may in the future be incarcerated at GCI.

5. The named plaintiffs are representative of the class in that they have suffered attacks, robberies, extortions, and homosexual rapes as a result of the violent atmosphere created

at GCI as a direct, natural and proximate result of the negligence, gross negligence and deliberate indifference of the defendants.

6. The questions of law and fact common to the named plaintiffs and to the other members of the class are:

a. whether the conduct of the defendants constitutes negligence, gross negligence or deliberate indifference to the safety of the plaintiffs and others similarly situated, and

b. whether the conduct of the defendants constitutes negligence, gross negligence or deliberate indifference so as to violate the rights of the plaintiffs under the Eighth and Fourteenth Amendments to the United States Constitution.

7. As to the requirements of Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3):

a. the merits of resolving the claims of the named plaintiffs as a class action outweigh the interest of members of the class in individually controlling the prosecution of separate actions and, in fact, other members and former members of the class now seek to join this suit as co-plaintiffs to resolve similar damage claims;

b. there is no other litigation involving the rights of the members of the class that is advanced as far as this action, which is set for trial in December, 1985;

c. economy of judicial resources will be served by resolving this action before a single forum; and

d. because all of the members of the class are institutionalized, and because all have been given notice,



there are no problems in the management of this action as a class action.

STATEMENT OF DEFENDANTS' WRONGFUL PRACTICES

8. a. Defendants, R. V. TURNER, and now RANDALL MUSIC, have operated GCI negligently, grossly negligently and with deliberate indifference to the safety of the plaintiffs, and of other inmates, in violation of 42 U.S.C. § 1983 and of the Eighth and Fourteenth Amendments to the United States Constitution.

b. The STATE OF FLORIDA is a party to this lawsuit solely for purposes of any potential attorney fee and litigation expenses award pursuant to 42 U.S.C. § 1988, (Civil Rights Attorney's Fees Awards Act of 1976) as provided in Leggett v. Badger, 759 F2d 1556 (11th Cir. 1985). Any other reference to "Defendants", other than matters relating to attorney fees/litigation expenses, in this Complaint expressly does not relate to the STATE OF FLORIDA.

FACTS GENERAL TO THE CLASS

9. GCI is a Florida state prison housing inmates of various custody classifications, from minimum to close custody, which inmates all bunk in common barracks-type areas without any segregation of inmates according to either criminal histories, length of sentences, custody classifications, or known propensities for violence and/or aggressive homosexual behavior.

10. Defendants, at all times material acting under color of state law as superintendants of GCI, have failed, either through negligence, gross negligence or deliberate indifference

to:

- a. adequately staff the barracks with guards to prevent attacks, robberies, homosexual rapes and extortions;
- b. report to superiors within the Florida Department of Corrections the level of attacks, robberies, homosexual rapes and extortions;
- c. punish and or prosecute those engaged in attacks, robberies, homosexual rapes and extortions;
- d. provide adequate protection to inmates in legitimate fear of attacks, robberies, homosexual rapes and extortions;
- e. segregate from other inmates those inmates known to have a propensity to commit attacks, robberies, homosexual rapes and extortions;
- f. keep weapons out of the hands of those inmates with a propensity to commit attacks, robberies, homosexual rapes and extortions;
- g. adequately train correctional officers;
- h. and/or otherwise provide adequate security to those inmates incarcerated at GCI.

FACTS SPECIFIC TO THE NAMED CLASS PLAINTIFFS

11. Plaintiff, Anthony LaMarca, initially arrived at GCI in 1980. Although subsequently released, he has been reincarcerated within the Florida prison system and there is a real and concrete possibility that he will be transferred back to GCI.

12. After his initial arrival at GCI, plaintiff, LaMarca was approached by other inmates who insisted he participate in homosexual acts. When he refused, he was physically attacked. Defendant, Turner, knew or should have known of the plight of plaintiff, Anthony LaMarca, but did nothing to protect him from attacks, robberies, homosexual rapes and extortions. Rather, plaintiff, Anthony LaMarca was forced to defend himself, the defenses being considered fights that resulted in disciplinary confinement and a loss of good-behavior time.

13. Plaintiff, Martin Saunders was an inmate at GCI since February, 1983. He is presently incarcerated at South Florida State Hospital, but there is a real and concrete possibility that he will be transferred back to GCI.

14. After his initial arrival at GCI, plaintiff, Martin Saunders was extorted for protection money by two inmates who attacked him when he refused payment. He additionally was beaten, robbed at knifepoint, stabbed in his face and raped at knifepoint by other inmates.

15. Plaintiff, Edwin Johnson, was an inmate at GCI beginning in February 1983. He is presently incarcerated at Hollywood Community Center, but there is a real and concrete possibility that he will be transferred back to GCI.

16. Upon his initial arrival at GCI, plaintiff, Edwin Johnson, had begun to be solicited by other inmates to engage in a homosexual act with other inmates, which solicitation continued and resulted in plaintiff's being physically attacked and threatened with a knife.

17. When plaintiff, Edwin Johnson, sought protective custody, he was placed with two other inmates in a cell that was six-by-nine feet, was unventilated, insect infested, foul smelling and filthy. During his period of protective custody, plaintiff, Edwin Johnson was not permitted to shower more than three three-minute periods a week, to sleep on a bed, to change his clothing, or to leave his cell for any purpose. Further, he was not permitted to participate in any educational, cultural, religious or rehabilitative activities. He was not permitted to withdraw money from his account, to purchase cigarettes or toilet articles from the canteen, or to exercise. He was so confined and restricted for a protracted period of time.

18. The injuries and deprivations experienced by plaintiffs, Anthony LaMarca, Martin Saunders and Edwin Johnson, and similar injuries and deprivations experienced by others similarly situated, are the direct, natural, foreseeable and proximate result of the actions of defendants, R.V. Turner and Randall Music, as more particularly alleged in Paragraphs 8 and 10, and of the conditions alleged in Paragraph 9.

FACTS SPECIFIC TO THE ADDITIONAL NAMED PLAINTIFFS

19. Plaintiff, David Aldred, was on or about July 21, 1984, hit on the head and raped twice as he took a shower in Dormitory B. A guard, whose identity is presently unknown, could have prevented the attack, but instead remained inside a cage-like device known as a wicket. Plaintiff ALDRED had requested protective custody before the attack. A Lieutenant denied the request.

20. a. This assault resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;
- (viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;
- (ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates
- (x) housing based on inmate need, not work assignment;
- (xi) adequate response to inmates' requests for protective confinement;
- (xii) adequate investigation of inmates' reports of assault or extortion attempts;

(xiii) control of contraband;  
xiv) inmate transfer to alternative housing  
because of threats;

(xv) adequate notification to his superiors  
concerning:

- (a) racial imbalance among the inmate  
population;
- (b) the preponderance of high risk  
inmates in the population;
- (c) aggressive inmates, inappropriate  
to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the incident, the occurrence of which was a direct, natural, proximate and foreseeable result of the actions of defendants alleged with particularity in Paragraphs 8 and 10, and the conditions alleged in Paragraph 9, plaintiff, David Aldred, has been damaged, to wit: he has suffered injuries to his lower back, mental anguish, and psychiatric disturbances that have manifested themselves in his attempted suicide, which injuries are continuing and permanent in nature.

21. Plaintiff, Steve H. Bronson, Jr., also known as Nancy Sue Bronson, in or about June 1982, was held down by a group of inmates in B Dormitory while one, known as "Mack," inserted the handle of a baseball bat in his rectum as punishment for plaintiff, Steve H. Bronson, Jr.'s refusing to work for Mack as a male prostitute. Plaintiff Bronson, a homosexual, required special protection within the prison compound because of his

vulnerability to inmate attacks. Because of the lack of security, he was extorted and ultimately assaulted.

22. a. This assault resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;
- (viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;
- (ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates
- (x) housing based on inmate need, not work assignment;
- (xi) adequate response to inmates' requests for protective confinement;
- (xii) adequate investigation of inmates' reports of assault or extortion attempts;

- (xiii) control of contraband;
- (xiv) inmate transfer to alternative housing because of threats;
- (xv) adequate protests to his superiors concerning:
  - (a) racial imbalance among the inmate population;
  - (b) the preponderance of high risk inmates in the population;
  - (c) aggressive inmates, inappropriate to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the incident alleged in paragraph 21, which incident was the direct, natural proximate and foreseeable result of the conduct by defendant, R. V. TURNER alleged particularly in Paragraphs 8 and 10 and the conditions alleged in Paragraph 9, plaintiff, Steve H. Bronson, Jr., was damaged, to wit: he suffered rectal bleeding and mental anguish, which injuries are continuing and permanent in nature.

23. Plaintiff, Eddie Cobb, was on or about January 27, 1984, stabbed in the arm by inmate Larry Pryor, who, upon information and belief, was acting upon the instructions of a "Lt. Barrett," of whom defendant, R.V. Turner, was the supervisor. No criminal charges were instigated against the inmate, Larry Pryor, notwithstanding the knowledge of his identity by defendant, R.V. Turner. Plaintiff COBB was attacked and stabbed several times with a knife by a known violent prisoner. This incident was investigated; however, Plaintiff COBB was given no opportunity to bring criminal



charges against his assailant. Plaintiff COBB was placed into administrative confinement for several weeks after the attack and was not informed of the reason for his confinement. His assailant was released into the general population.

24. a. This assault and the subsequent confinement without informing the inmate of the reasons for his confinement resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;
- (viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;
- (ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates
- (x) housing based on inmate need, not work assignment;

(xi) adequate response to inmates' requests for protective confinement;

(xii) adequate investigation of inmates' reports of assault or extortion attempts;

(xiii) control of contraband;

(xiv) inmate transfer to alternative housing because of threats;

(xv) adequate protests to his superiors concerning:

(a) racial imbalance among the inmate population;

(b) the preponderance of high risk inmates in the population;

(c) aggressive inmates, inappropriate to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the conduct of inmate Pryor and Lt. Barrett, which conduct was the direct, natural, proximate and foreseeable result of the conduct by defendant, R.V. Turner alleged particularly in Paragraphs 8 and 10, and the conditions alleged in Paragraph 9, plaintiff, Eddie Cobb, has been damaged, to wit: he suffered injuries to his head and right arm, which injuries are continuing and permanent in nature.

25. As a direct, natural, proximate and foreseeable result of the conduct of inmate Pryor and Lt. Barrett, which conduct was the direct, natural, proximate and foreseeable result of the conduct by defendant, R.V. Turner alleged particularly in Paragraphs 8 and 10, and the conditions alleged in Paragraph 9, plaintiff, Eddie Cobb, further has been damaged, to wit: he suffered a deprivation of his rights under the Eighth and

Fourteenth Amendments to the United States Constitution to be free from punishment without due process of law.

26. Plaintiff, Ron Durrance, was in or about March, 1984 raped at knifepoint in the shower of B dormitory by inmates whose identities, upon information and belief, are Willie Dock, Sr., "Bull" Williams, and "Bone." Although the identities of the assailants were reported to prison officials, no punishment or criminal prosecution ensued. After the attack, Plaintiff DURRANCE requested protective confinement from a security staff member. The officer refused to believe that he was attacked and neither investigated Plaintiff DURRANCE'S charges nor granted him protection.

27. a. This assault resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;

(viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;

(ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates

(x) housing based on inmate need, not work assignment;

(xi) adequate response to inmates' requests for protective confinement;

(xii) adequate investigation of inmates' reports of assault or extortion attempts;

(xiii) control of contraband;

(xiv) inmate transfer to alternative housing because of threats;

(xv) adequate protests to his superiors concerning:

(a) racial imbalance among the inmate population;

(b) the preponderance of high risk inmates in the population;

(c) aggressive inmates, inappropriate to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the rape alleged in Paragraph 26, which rape was the direct, natural, proximate and foreseeable result of the conduct by defendant, R.V. Turner alleged particularly in Paragraphs 8 and 10, and the conditions alleged in Paragraph 9, plaintiff, Ron Durrance was damaged, to wit: he has suffered from an aggravation of hemorrhoids and mental anguish, which

injuries are continuing and permanent in nature.

28. Plaintiff, Wayne Epprecht, was in or about February 1982 robbed and beaten with a lead pipe by unknown inmate assailants at GCI. The guard on duty was not present. The inmates who had attacked him were known to be violent as they had assaulted others.

29. a. This assault resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;
- (viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;
- (ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates

(x) housing based on inmate need, not work assignment;

(xi) adequate response to inmates' requests for protective confinement;

(xii) adequate investigation of inmates' reports of assault or extortion attempts;

(xiii) control of contraband;

(xiv) inmate transfer to alternative housing because of threats;

(xv) adequate protests to his superiors concerning:

(a) racial imbalance among the inmate population;

(b) the preponderance of high risk inmates in the population;

(c) aggressive inmates, inappropriate to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the robbery and beating alleged in Paragraph 28, which robbery and beating were the direct, natural, proximate and foreseeable result of the conduct by Defendant, R.V. Turner alleged particularly in Paragraphs 8 and 10, and the conditions alleged in Paragraph 9, plaintiff Wayne Epprecht, has been damaged, to wit: he suffered a broken left cheek bone, which required surgery and still requires further surgery and continues to experience pain and suffering, all of which injuries are continuing and permanent in nature.

30. Plaintiff, Michael Gordon, in or about 1984, was beaten on one occasion; beaten and robbed on another; and set

on fire on another.

31. a. This assault resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;
- (viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;
- (ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates
- (x) housing based on inmate need, not work assignment;
- (xi) adequate response to inmates' requests for protective confinement;
- (xii) adequate investigation of inmates' reports of assault or extortion attempts;

(xiii) control of contraband;

(xiv) inmate transfer to alternative housing  
because of threats;

(xv) adequate protests to his superiors concerning:

(a) racial imbalance among the inmate population;

(b) the preponderance of high risk  
inmates in the population;

(c) aggressive inmates, inappropriate  
to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the incidents alleged in Paragraph 30, which incidents were the direct, natural, proximate and foreseeable result of the conduct by defendant, R.V. TURNER alleged particularly in Paragraphs 8 and 10, and the conditions alleged in Paragraph 9, plaintiff, Michael Gordon, has been damaged, to wit: he suffered pain and suffering, dental fractures, and mental anguish, resulting in hypertension, which injuries are continuing and permanent in nature.

32. Plaintiff BILLY JOE HARPER was an inmate at Glades Correctional Institution in 1982. On the night he was transferred to Glades Correctional Institution on December 31, 1981, Plaintiff HARPER was raped and beaten. During his 12 month incarceration at Glades Correctional Institution he was continually extorted. Because of his age (22) and background, plaintiff HARPER should have been protected by the prison staff during his incarceration.



33. a. Plaintiff HARPER'S assault, subsequent extortion and lack of protection resulted from Defendant TURNER'S failure to provide:

- (i) an adequate number of security staff personnel;
- (ii) adequately trained security staff;
- (iii) a system for staff communication channels, accountability, supervision;
- (iv) sufficient security for inmate safety;
- (v) sufficient constructive activities when in protective custody to avoid the violence and threat of violence rampant in Belle Glades' population;
- (vi) separation of violent and inappropriate inmates from the general population when an incident occurs;
- (vii) protection to inmates who report personal assaults and extortion attempts to staff members;
- (viii) consideration of vulnerable inmates' needs upon transfer to Glades Correctional Institution;
- (ix) correction for classification errors upon transfer to Glades Correctional Institution by providing appropriate housing or arranging the transfer of such inmates
- (x) housing based on inmate need, not work assignment;
- (xi) adequate response to inmates' requests for protective confinement;
- (xii) adequate investigation of inmates' reports of assault or extortion attempts;

- (xiii) control of contraband;
- (xiv) inmate transfer to alternative housing because of threats;
- (xv) adequate protests to his superiors concerning:
  - (a) racial imbalance among the inmate population;
  - (b) the preponderance of high risk inmates in the population;
  - (c) aggressive inmates, inappropriate to Belle Glade

b. As a direct, natural, proximate and foreseeable result of the attack on plaintiff HARPER alleged in Paragraph 32 which attached was the direct natural, proximate and foreseeable result of the conduct of Defendant, R.V. Turner alleged particularly in Paragraphs 8 and 10 and those conditions alleged in Paragraph 8, Plaintiff BILLY JOE HARPER has been damaged, to wit: severe psychiatric and emotional disturbances.

#### CLAIMS FOR RELIEF

34. Defendants' conduct, as more particularly alleged in Paragraphs 8 and 10, and the conditions at GCI, as alleged in Paragraph 9, constitutes cruel and unusual punishment of the named plaintiffs and others similarly situated, and thereby violates the Eighth and Fourteenth Amendments to the United States Constitution.

35. Defendants' conduct irreparably injures plaintiffs and their class and will continue to irreparably injure them unless enjoined by this court. Plaintiffs have no adequate remedy at

law for future violation of their rights under the Eighth and Fourteenth Amendments to the United States Constitution.

36. The individual named plaintiffs have suffered damages that are compensable pursuant to 42 U.S.C. § 1983, which damages are the direct, natural, proximate and foreseeable result of defendant, R.V. Turner's conduct in violation of plaintiff's rights under the Eighth and Fourteenth Amendments to the United States Constitution.

RELIEF

WHEREFORE, plaintiffs pray that this court should:

- a. declare that the manner in which defendant R.V. TURNER had operated and RANDALL MUSIC currently operates GCI has been and continues to be in contravention of the Eighth and Fourteenth Amendments to the United States Constitution;
- b. enjoin defendant, RANDALL MUSIC, to present to this court a plan for reducing the instances of attacks, robberies, homosexual rapes and extortions at GCI;
- c. award damages, including exemplary damages, against defendant, R.V. TURNER, for the named plaintiffs;
- d. award plaintiffs their costs and a reasonable award of attorneys' fees pursuant to the Civil Rights Attorney's Fees Act of 1976, 42 U.S.C. § 1988 et seq. (as amended), and to grant such alternative and additional relief as appears to the court to be equitable and fair.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFFS

DATED: 07 November, 1985

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

ANTHONY LA MARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf  
of all others similarly  
situated, and DAVID ALDRED,  
STEVE H. BRONSON, JR.,  
EDDIE COBB, RON DURRANCE,  
WAYNE EPPRECHT, MICHAEL  
GORDON, and BILLY JOE HARPER,  
individually,

Plaintiffs,

vs.

CASE NO. 82-8196-CIV-PAINE

R. V. TURNER, individually and  
in his capacity as Superintendent  
of Glades Correction Institution,  
and RANDALL MUSIC, individually  
and in his official capacity as  
Secretary of the Florida Department  
of Corrections, and the STATE OF  
FLORIDA,

Defendants.

---

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that Plaintiffs' Third Amended Complaint  
has been mailed to the following counsel of record:

WALTER M. MEGINNISS  
Assistant Attorney General  
Department of Legal Affairs  
Office of the Attorney General  
The Capitol  
Tallahassee, Florida 32301

MICHAEL B. DAVIS  
DAVIS, CRITTON, HOY & DIAMOND  
Post Office Box 3797  
West Palm Beach, Florida 33402

  
\_\_\_\_\_  
DAVID M. LIPMAN  
WILLIAM R. AMLONG  
KAREN COOLMAN AMLONG

DATED: 07 NOVEMBER, 1985  
0086L

ATTORNEYS FOR PLAINTIFFS

116

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

ANTHONY LAMARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf  
of all others similarly  
situated, and DAVID ALDRED,  
STEVE H. BRONSON, JR.,  
EDDIE COBB, RON DURRANCE,  
WAYNE EPPRECHT, MICHAEL  
GORDON, and BILLY JOE  
HARPER,

Plaintiffs

v.

R. V. TURNER, Individually, and  
RANDALL MUSIC, as Superintendent  
of Glades Correctional Institution,

Defendants.

CASE NO. 82-8196-CIV. SPAINE

DEPARTMENT OF LEGAL AFFAIRS  
CIVIL DIVISION  
FILE COPY

☐ REC'D ☒ FILED W/COURT  
11/27/85  
DOCKETED BY *ghorne*

APPEAL FROM MAGISTRATE'S ORDER  
AND PETITION FOR EMERGENCY HEARING

Pursuant to Magistrate Rule 4(a) of the U.S. District Court for the Southern District of Florida, Defendants, R. V. TURNER, RANDALL MUSIC and the State of Florida, by and through undersigned counsel, enter their appeal to the order of Magistrate Peter L. Nimkoff entered after a hearing on Monday, November 25, 1985. The Order is attached as Exhibit A. The portions of the order from which this appeal is taken and through which error was committed are the following:

- 1) The Magistrate erred in denying the demand for jury trial filed by Defendants on November 6, 1985;
- 2) The Magistrate erred in denying Defendants' motion to continue the evidentiary hearing set for December 2, 1985 as the action was not at issue on Plaintiff's Third Amended Complaint.

Defendants therefor petition for a hearing on these issues on an

emergency basis because of the evidentiary hearing now set for December 2, 1985. A memorandum of law containing the grounds and citations of authority supporting Defendants' position follows.

MEMORANDUM OF LAW

DENIAL OF DEMAND FOR TRIAL BY JURY

This action was initiated by ANTHONY LAMARCA, proceeding pro se, against R. V. TURNER, Superintendent of Glades Correctional Institution, on March 14, 1982. After the filing of motions for summary judgment by both sides, a status conference was set in Miami on July 22, 1983. Thereafter, on or about September 22, 1983, an Amended Complaint was filed by counsel on behalf of ANTHONY LAMARCA, MARTIN SAUNDERS, EDWIN JOHNSON and HENRY ROSENBAUM. The Amended Complaint added three new plaintiffs (SAUNDERS, JOHNSON and ROSENBAUM) and one new defendant (LOUIE L. WAINWRIGHT); requested that the action be maintained as a class action for injunctive relief; and demanded compensatory and exemplary damages for the four named Plaintiffs. On April 13, 1984, an Order Certifying Class was entered by this court for purpose of injunctive relief only.

The case remained in this posture until August 26, 1985 when a Motion for Leave to File Second Amended Complaint was served. The Motion was approved by Magistrate Nimkoff in an Order entered September 19, 1985, which directed that it would be effective nunc pro tunc as of August 25, 1985.

The Second Amended Complaint made the following changes:

- 1) Seven (7) new persons were added as named plaintiffs. (DAVID ALDRED, STEVEN H. BRONSON, EDDIE COBB, RON DURRANCE, WAYNE EPPRECHT, MICHAEL GORDON and KEITH HARRIS);



- 2) Each newly named plaintiff claimed compensatory and exemplary damages for distinct and separate incidents which allegedly occurred while incarcerated at Glades Correctional Institution;
- 3) Louie L. Wainwright was dropped as a party defendant;
- 4) RANDALL MUSIC, current Superintendent of Glades Correctional Institution was added as a party defendant for purposes of injunctive relief.

To the Second Amended Complaint a Motion for More Definite Statement was filed on October 7, 1985.

On November 13, 1985, a Third Amended Complaint with accompanying motion was served on behalf of Plaintiffs. This new Complaint added the State of Florida as a defendant for purposes of attorneys fees and substituted BILLY JOE HARPER for Keith Harris as a named plaintiff. In the meantime a Demand for Jury Trial was filed on November 6, 1985 by the Defendants. This matter was opposed by Plaintiffs on November 19, 1985, and on November 25, 1985, at a status conference in Miami, Magistrate Nimkoff denied the Demand. The Order of the Magistrate is appended as Exhibit A.

It is the position of Defendants that with the addition of seven new plaintiffs with their independent claims, they have the absolute right to demand a trial by jury under the Seventh Amendment to the U.S. Constitution. This is not a case of seven plaintiffs seeking damages under a common theory. To the contrary, seven individuals, while seeking monetary relief against the former Superintendent of Glades Correctional Institution under what appears to be a respondent superior theory, have asserted seven distinct claims. Each will require proof of facts as to whether the alleged incidents upon which the claims are based did occur, whether there is a causative nexus between conduct of the defendants and the alleged incidents and whether there are any damages should

liability be established. In effect, there are now seven new law suits which have been lumped together with the class action certified on April 13, 1984.

The general rule with respect to a jury trial on an amended complaint appears to be that when new issues of fact are raised a demand for trial by jury will be honored. In Guajardo v. Estelle, 580 F2d 748, 752-753 (5th Cir. 1978), the court said:

...Plaintiffs commenced this action by asking for both injunctive and declaratory relief. Although they would not have been entitled to a jury trial on equitable issues, they might have demanded a jury trial on factual issues underlying the declaratory judgement action. 5 J. Moore, Federal Practice ¶38.29. If the claim were legal, its jury-generating aspect could not be lost by joinder with claims for equitable relief. Dairy Queen v. Wood, 369 U.S. 469, 82 S.Ct. 894, 8 R.Ed.2d 44 (1962); Beacon Theaters v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959). Assuming that a legal claim existed, the issue is whether the state sought a jury trial within ten days from the last complaint raising it as an issue. A complaint "raises an issue" only once within Rule 38 (b)'s meaning -- when it introduces it for the first time. Amendments not introducing new issues will not give rise to a demand for jury trial. Connecticut General Life Insurance Co. v. Breslin, 332 F2d 928 (5 Cir. 1964) (defendant's amended answer did not raise issues materially different from those presented by the original answer and waiver of jury trial remained effective); Swofford v. B & W, Inc., 34 F.R.D. 15 (S.D. Tex. 1963) (where new jury issues are created by amendment a party may properly demand a jury trial, but an amendment which neither changes the nature of the case nor introduces new issues does not renew that right). The term "new issues" has been interpreted to mean new issues of fact and not new theories of recovery.

See also 5 J. Moore, Federal Practice §38.41. (It is now well settled that where the amendment creates new jury issues, a party upon timely demand therefor is entitled to a jury trial if the amended pleading sets forth new factual issues and not merely a different legal theory).

There can be no doubt that new issues of fact have been raised with the addition of seven (7) new claims for seven (7) new plaintiffs. These jury trial issues, according to the Guajardo standard, has renewed

the right.

The new claims were initiated by Plaintiffs and the danger of the Magistrate's ruling is to deny Defendant Turner of his right to trial by jury for their independent claims. The result is obvious. Under this ruling, any new plaintiff can be added to the present action and Defendant Turner's right under the Seventh Amendment will be ineffective, while, on the otherhand, any of the new plaintiffs proceeding independently could not terminate that right. The certification for the class was for injunctive relief. The original plaintiffs (3 in number before the Second Amended Complaint) sought compensatory and exemplary damages. The liability of R. V. TURNER in damages was never claimed only on behalf of any other member of the class. R. V. TURNER must be permitted to exercise this jury trial right.

Plaintiffs opposed the jury demand and in their memorandum took the position that the demand was untimely since an answer to the Amended Complaint was filed October 31, 1983. They overlook the fact that two new complaints have been filed very recently. The demand of November 6, 1985 was addressed to the newer complaints and does not invoke court discretion provided under Rule 15 (b) Fed.R.Civ.P. The demand was made prior to answer as a motion for more definite statement addressed to the Second Amended Complaint was then pending.

In the Third Amended Complaint at least three issues are presented as to each of the seven new plaintiffs, i.e. a) Did the incident occur, b) was there causation in fact between the conduct of the defendants and the incidents alleged to have occurred with each plaintiff and, c) whether each plaintiff suffered any damages, and, if so, how much.

DENIAL OF MOTION TO CONTINUE

Local Rule 11 of the United States District Court for the Southern District of Florida provides:

A continuance of any trial pretrial conference, or other hearing will be granted only on exceptional circumstances. No such continuance will be granted on stipulation of counsel alone. However, upon written notice served and filed at the earliest practical date prior to the trial, pretrial conference, or other hearing, and supported by affidavit setting forth a full showing of good cause, a continuance may be granted by the Court.

Defendants would respectfully submit that exceptional circumstances to indeed exist in this case to support a continuance of the trial set for December 2, 1985, and removal from the trial docket. Denial of the Motion, it is respectfully submitted, constituted error under the circumstances of this case.

First of all, the action is not at issue. Prior to a status conference before the Hon. Peter L. Nimkoff on October 8, 1985, a Motion for More Definite Statement was served on behalf of Defendants. To this Motion, Defendants were provided supplemental information by Plaintiffs' counsel to assist in the framing of an answer. Integrating the supplemental information with the Second Amended Complaint and formulating an answer on the basis of the two sources proved to be cumbersome and confusing. Plaintiffs' counsel was advised and agreed to serve another complaint which would facilitate an answer and provide pleadings upon which the issues could be presented with clarity for the trial.

A Third Amended Complaint was thereafter received by express mail on November 8, 1985, which only compounded the situation. It was noted that a substitution of named Plaintiffs had been made, i.e. Billy Joe Harper was named rather than Keith Harris and it further appeared that

the allegations as to the newly named Plaintiff were completely different as to time and participants. In addition, Plaintiffs sought to sue the two Defendants, both in their official and individual capacities. As to the Defendant, RANDALL MUSIC, the Third Amended Complaint is devoid of any allegation which would establish liability on his part for damages. His only responsibility, it would appear, is that he will be asked to formulate a plan pertaining to the future operation of Glades Correctional Institution. It is questionable, therefore, that a suit against him individually is appropriate.

Plaintiffs further sought to add the State of Florida as a Defendant for purposes of award of attorneys fees, citing Legett v. Badger, 759 F.2d 1556 (11th Cir. 1985). In light of the U.S. Supreme Court decision in Kentucky d/b/a Bureau of State Police v. Graham, et al., (Case No. 84-849, Decided June 28, 1985), it is questionable that this addition is sound. These and other matters need to be sorted out as well as completion of discovery.

Finally it is to be noted that Local Rule 10E requires that the court be notified by counsel when the action or proceeding becomes at issue. In view of the above, this has not been possible. It is submitted, in view of that rule, that bringing the matter to issue is a prerequisite to setting a trial. Furthermore, when amended pleadings are approved by the Court, Rule 15(a) Fed.R.Civ.P. provides at least 10 days to answer. The leave to proceed under the Third Amended Complaint was granted on November 25, 1985.

#### Discovery

It is respectfully submitted that respective counsel have worked together to resolve the remaining discovery issues as directed by the Order of the Magistrate entered October 15, 1985. Copies of inmate

records (more than 4472 pages) have been provided to Plaintiffs' counsel. More than 500 pages of documentary material were provided by Glades Correctional Institution on November 7, 1985. In addition, arrangements have been made during the past three weeks by Defendants' counsel to permit Plaintiffs' expert, Dr. Richard Swanson, to visit each of the named Plaintiffs, where incarcerated, for purposes of interview and trial preparation. All of these arrangements have been time consuming and adversely affected Defendants' efforts to proceed with discovery required before trial.

Defendants took depositions of the newly named Plaintiffs and two of their witnesses during the three-day period of November 13-15. Four depositions were set for the Starke area on the 13th. The following day, the scene shifted to Lake Correctional Institution, Polk Correctional Institution and Avon Park Correctional Institution for three depositions. Finally, on the 15th, two more depositions were taken in Hollywood and Glades Correctional Institution.

Plaintiffs have now completed depositions of Defendants Turner and Music at Glades Correctional Institution on November 26, 1985. Defendants feel it to be imperative to depose Dr. Swanson and Plaintiffs approve. This is scheduled for November 29th. However, Plaintiffs have submitted two other experts and their depositions must also be taken.

The Second Amended Complaint and now the Third Amended Complaint has added seven (7) new Plaintiffs with separate claims for damages. While these are being investigated diligently, it is becoming more and more apparent that further discovery will be required. Each new claim indicates that the participants in the seven (7) incidents are not the same. The identity of inmates alleged as assailants to the seven (7) new Plaintiffs still have not been established with certainty and,

at this point, can only be ascertained through discovery. This will have to be attempted in the time remaining which, of course, will be interrupted by the Thanksgiving Holiday.

Defendants would submit that denial of the Motion to Continue was prejudicial error. Every endeavor has been made to accommodate discovery demands of Plaintiffs. With the injection of new inmates and their separate claims, time needed to coordinate, conduct pretrial conferences, assemble documents from thousands of pages of records, and prepare a meaningful pretrial stipulation is just not available. A trial date of December 2, 1985, the first day after the Thanksgiving Holiday, does not permit a real opportunity to prepare this case for trial at that time. Defendants are entitled to due process of law and the compressed time for preparation caused by the addition of seven (7) new tort claims will prohibit their opportunity to defend. There has been no showing that a need exists to try this case as early as December 2, 1985. After all, some of the new plaintiffs are presenting claims with respect to incidents occurring three years ago. The denial under these circumstances must be considered as error.

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Respectfully submitted,

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Attorney General

By   
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Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS  
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to David M. Lipman, Esq., LIPMAN & WEISBERG, 5901 S.W. 74 Street, Miami, FL 33143-5186 and William Amlong, Esq., HALL & AMLONG, 524 South Andrews Avenue, Fourth Floor, Fort Lauderdale, FL 33301, by U. S. Mail, this 27th day of November, 1985.

Michael B. Davis, Esquire  
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(305) 478-2400

JIM SMITH  
Attorney General

By   
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

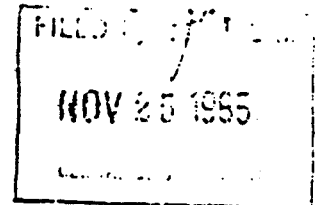
CASE NO. 82-8196-Civ-PAINE

ANTHONY LA MARCA, et al.,

v.

R. V. TURNER, et al.

ORDER



For reasons recited in open Court, it was ORDERED as follows:

1. Plaintiffs' Motion to file a Third Amended Complaint is GRANTED nunc pro tunc November 14, 1985. The Court makes no present ruling, however, regarding the recoverability of attorneys' fees or the presence of the State of Florida as a Defendant for that purpose.

2. Defendants' Jury-Demand is DENIED. The Motion for further Continuance of Trial is DENIED, without prejudice. Upon their Motion to Strike, the Court RESERVES. The parties are cautioned that the Court expects that any expert witness will have been made available for deposition before that expert's testimony is tendered to the Court. If there is any issue upon which Defendants require a brief adjournment after the court has begun the trial next week, their right to adjournment can be further considered at that time.

ORDERED in Miami, Florida, November 25, 1985.

  
PETER L. NIMKOFF  
UNITED STATES MAGISTRATE

Copies:

Walter M. MegInnis, Esq.  
David M. Lipman, Esq.  
William M. Amlong, Esq.  
Michael B. Davis, Esq.

Exhibit A

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

R

ANTHONY LAMARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf  
of all others similarly  
situated, and DAVID ALDRED,  
STEVE H. BRONSON, JR.,  
EDDIE COBB, RON DURRANCE,  
WAYNE EPPRECHT, MICHAEL  
GORDON, and BILLY JOE  
HARPER,

Plaintiffs

CASE NO. 82-8196-CIV-PAINE

v.

R. V. TURNER, Individually, and  
RANDALL MUSIC, as Superintendent  
of Glades Correctional Institution,

Defendants.

DEPARTMENT OF LEGAL AFFAIRS  
CIVIL DIVISION  
FILE COPY

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11/27/85  
DOCKETED BY *ghorn*

ANSWER OF DEFENDANTS, R. V. TURNER  
AND RANDALL MUSIC, TO PLAINTIFF'S  
THIRD AMENDED COMPLAINT

COME NOW the Defendants, R. V. TURNER and RANDALL MUSIC, and in  
answer to the Plaintiffs' Third Amended Complaint, would say:

1. That they admit the following allegations set forth in the  
Third Amended Complaint:

- (3) That an order certifying the class for injunctive  
relief was entered April 13, 1984;
- (9) That GCI is a Florida state prison housing inmates  
of various custody classifications, from minimum to  
close custody;

2. That they deny all remaining allegations set forth in the  
Third Amended Complaint.

Defense II

3. That the Defendants, R. V. TURNER and RANDALL MUSIC, acted

at all times in good faith, believing that their actions were lawful and that such belief was a reasonable one for them to hold.

#### Defense III

4. That the Plaintiffs were each themselves negligent: 1) in that they placed themselves in situations or positions where they might suffer assaults when they knew or could have reasonably foreseen that assaults were likely; 2) in that they failed to seek assistance when threatened with assaults alleged, and 3) in that they failed to report or seek assistance subsequent to the assaults alleged;

#### Defense IV

5. Plaintiffs have failed to state a claim against Defendants TURNER and MUSIC upon which relief may be granted.

#### Defense V

6. Plaintiffs seek to recover against TURNER and MUSIC under a theory of respondeat superior which is not permissible under actions brought under 42 U.S.C. §1983.

#### Defense VI

7. Eighth Amendment protection, cruel and unusual punishment, does not extend to isolated incidents of assault, robbery and rape as alleged by Plaintiffs. In absence of a showing that these Defendants acted in a manner of deliberate indifference to conditions that would shock the conscience of the ordinary person, Plaintiffs cannot recover under the Eighth Amendment.

#### Defense VII

8. Plaintiffs have not alleged nor identified a Fourteenth Amendment violation by Defendants, TURNER and MUSIC, and cannot recover.

WHEREFORE, having answered the Third Amended Complaint of the Plaintiffs, the Defendants, R. V. TURNER and RANDALL MUSIC, deny that they are liable thereto and further demand trial by jury of all issues herein triable as of right by jury.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to David M. Lipman, Esq., LIPMAN & WEISBERG, 5901 S.W. 74 Street, Miami, FL 33143-5186 and William Amlong, Esq., HALL & AMLONG, 524 South Andrews Avenue, Fourth Floor, Fort Lauderdale, FL 33301, by U. S. Mail, this 27th day of November, 1985.

Michael B. Davis, Esquire  
DAVIS CRITTON HOY & DIAMOND  
Post Office Box 3797  
West Palm Beach, FL 33402

JIM SMITH  
Attorney General

By   
WALTER M. MEGINNISS  
Assistant Attorney General

Department of Legal Affairs  
The Capitol - Suite 1502  
Tallahassee, FL 32301  
(904) 488-9935

WHEREFORE, having answered the Third Amended Complaint of the Plaintiffs, the Defendants, R. V. TURNER and RANDALL MUSIC, deny that they are liable thereto and further demand trial by jury of all issues herein triable as of right by jury.

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By   
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Assistant Attorney General

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The Capitol - Suite 1502  
Tallahassee, FL 32301  
(904) 488-9935

☐ REC'D ☐ FILED W/COURT

FILE COPY  
CIVIL DIVISION

DEPARTMENT OF LEGAL AFFAIRS

ANTHONY LA MARCA, et al.,

v.

R. V. TURNER, et al.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 82-8196-Civ-PAINE

|                                  |
|----------------------------------|
| FILED by <i>[Signature]</i> D.C. |
| <b>NOV 25 1985</b>               |
| CLERK, U. S. DIST. CT.           |

ORDER

For reasons recited in open Court, it was ORDERED as follows:

1. Plaintiffs' Motion to file a Third Amended Complaint is GRANTED nunc pro tunc November 14, 1985. The Court makes no present ruling, however, regarding the recoverability of attorneys' fees or the presence of the State of Florida as a Defendant for that purpose.

2. Defendants' Jury-Demand is DENIED. The Motion for further Continuance of Trial is DENIED, without prejudice. Upon their Motion to Strike, the Court RESERVES. The parties are cautioned that the Court expects that any expert witness will have been made available for deposition before that expert's testimony is tendered to the Court. If there is any issue upon which Defendants require a brief adjournment after the court has begun the trial next week, their right to adjournment can be further considered at that time.

ORDERED in Miami, Florida, November 25, 1985.

Copies:

Walter M. MegInnis, Esq.  
David M. Lipman, Esq.  
William M. Amlong, Esq.  
Michael B. Davis, Esq.

*Peter Ninkoff*  
PETER NINKOFF  
DEPARTMENT OF LEGAL AFFAIRS  
UNITED STATES MAGISTRATE  
CIVIL DIVISION

FILE COPY

☒ REC'D ☐ FILED W/COURT

12/20/85

DOCKETED BY *[Signature]*

ANTHONY LAMARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf of  
all others similarly situated,  
and DAVID ALDRED, STEVE H.  
BRONSON, JR., EDDIE COBB, RON  
DURRANCE, WAYNE EPPRECHT, MICHAEL  
GORDON, and BILLY JOE HARPER,

O R D E R

Plaintiffs,

v.

R. V. TURNER, Individually, and  
RANDALL MUSIC, as Superintendent  
of Glades Correctional Institution,

Defendants.

DEPARTMENT OF LEGAL AFFAIRS  
CIVIL DIVISION  
FILE COPY

☒ REC'D ☐ FILED W/COURT

12/5/85  
DOCKETED BY *ghorne*

This cause is before the Court on the Appeal from Magistrate's  
Order and Petition For Emergency Hearing filed by the Defendants  
R. V. TURNER, RANDALL MUSIC and the State of Florida. The Court  
has also received the Plaintiff's Response to Defendants' Appeal  
from Magistrate's Order and Petition for Emergency Hearing.

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

ORDERED and ADJUDGED that the Appeal from Magistrate's Order  
and Petition for Emergency Hearing is DENIED.

DONE and ORDERED this 2nd day of December, 1985, in  
Miami, Florida.

*James C. Paine*  
UNITED STATES DISTRICT JUDGE  
JAMES C. PAINE

cc: All counsel of record

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

ANTHONY LA MARCA, et al.,

Plaintiffs,

vs.

CASE NO. 82-8196-CIV-PAINE

R. V. TURNER, et al.,

REPORT AND RECOMMENDATION

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

"The degree of civilization in a  
society can be judged by  
entering its prison"

Dostoevsky<sup>1</sup>/

FILED by *[Signature]* D.C.

JAN 08 1986

CLERK, U. S. DIST. CT.

DEPARTMENT OF LEGAL AFFAIRS  
CIVIL DIVISION  
FILE COPY

☒ REC'D ☐ FILED W/COURT  
1/10/1986  
DOCKETED BY *[Signature]*

A. PROCEDURAL BACKGROUND

1. GENERAL BACKGROUND

1. On May 14, 1982, over three and one-half years ago,  
Anthony LaMarca, then an inmate at the Glades Correctional  
Institution (hereinafter "GCI") in Belle Glade, Florida, filed

1/ Similarly, our Chief Justice has observed:

"[T]he way a society treats those who  
have transgressed against it is  
evidence of the essential character of  
that society."

Hudson v. Palmer,  
U.S. \_\_\_, 104 S.Ct. 3194,  
3199 (1984) (Burger, C.J.)



a handwritten complaint pro se in this Court under 42 U.S.C. §1983, suing Defendant R.V. Turner, Superintendent of that institution. The Complaint contained, inter alia, allegations that Plaintiff LAMARCA was was being subjected to ongoing physical violence and harassment by other inmates because of his refusal to participate in homosexual activity, and that officials at the institution failed to take any corrective action to alleviate that situation.

2. On June 14, 1982, this case was referred to me for further proceedings.<sup>2/</sup>

3. On September 21, 1983, Plaintiff LaMarca, now represented by counsel and joined by three other former and/or present inmates at GCI, Martin Saunders, Edwin Johnson, and Henry Rosenbaum,<sup>3/</sup> filed an Amended Complaint Class Action on behalf of themselves and other inmates at the Institution, seeking to redress physical and sexual assaults and threats of physical and sexual assaults. In the Amended Complaint

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2/ The case was transferred, pursuant to Local Rule 1(f) (Magistrate Rules of the United States District Court, Southern District of Florida) which provides:

(f) Prisoner Cases Under 42 U.S.C. §1983.

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

3/ The claims of Plaintiff Henry Rosenbaum were severed from this action by Order of this Court of July 15, 1985.

Plaintiffs sought declaratory and injunctive relief to enjoin Defendants from various practices and inaction which resulted in Plaintiffs', and the proposed plaintiff class, being subjected to violence, threats, and sexual abuse by other prisoners. The four named plaintiffs also sought damages on behalf of themselves. In addition, the Amended Complaint Class Action named Louie L. Wainwright, Secretary of the Florida Department of Corrections as a Defendant.<sup>4/</sup> Plaintiffs did not request a trial by jury in their Amended Complaint or in any other related pleading.

4. On November 2, 1983, Defendants' filed their Answer to Plaintiffs' Amended Complaint. Like Plaintiffs, no demand for jury trial was made by Defendants.

5. On April 13, 1984, this Court (Paine, J.) ordered that this case proceed as a class action defined as those persons who are or will be incarcerated at the GCI for purpose of the injunctive relief sought by the named plaintiffs.

6. On August 26, 1985, Plaintiffs filed a Motion for Leave to File a Second Amended Complaint simultaneous with the proposed amended pleading, which was granted by this Court on September 19, 1985, nunc pro tunc August 26, 1985. The Second Amended Complaint virtually mirrored the allegations in Plaintiffs' Amended Class Complaint filed two years earlier alleging that certain practices by Defendant prisoner officials

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4/ Louie Wainwright, Secretary of the Florida Department of Corrections has been subsequently dropped as a party defendant. See, Plaintiffs' Second Amended Complaint (filed August 26, 1985).

resulted in Plaintiffs' being assaulted, battered, and/or homosexually raped. Seven additional plaintiffs<sup>5/</sup>, all present and former inmates at GCI, were added in the Second Amended Complaint, each of whom suffered the same injuries as the named plaintiffs and the class. These seven additional named plaintiffs sought compensatory damages from Defendant R.V. Turner resulting from his alleged unconstitutional action against them.

7. Randall Music, the present Superintendent at GCI, was added to the Second Amended Complaint as a Defendant, solely for the purpose of injunctive relief since he had replaced R.V. Turner as Superintendent. Music is sued only in his official capacity.

8. On October 8, 1985, Defendants filed a Motion for More Definitive Statement in response to Plaintiffs' Second Amended Complaint. On October 25, 1985, in response to the Defendants' Motion, Plaintiffs filed a twelve-page pleading providing Defendants with a factual overview response to the various requests for more information raised in Defendants' Motion.

9. On November 6, 1985, Defendants Turner and Music, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure,

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5/ The seven additional plaintiffs added in the Second Amended Complaint are: (1) David Aldred, (2) Steve H. Bronson, Jr., (3) Eddie Cobb, (4) Ron Durrance, (5) Wayne Epprecht, (6) Michael Gordon, and (7) Keith Harris.

Prior to commencement of trial on December 2, 1985, with a written Order following on December 10, 1985, this Court granted Plaintiff Keith Harris' request to withdraw as a party to this action.

served their "demand for trial by jury on all issues so triable." In their demand for jury trial, Defendants stated "the action is not at issue." Apparently, this was Defendants' view in light of the fact that Defendants' Motion for More Definitive Statement was still pending and no answer had been filed yet to the Second Amended Complaint. Defendants further stated that while their "Demand" would ordinarily be contained in their Answer, they wanted to advise parties and the Court at this time of their intent to request a jury trial.

10. On November 13, 1985, Defendants filed a Motion to Continue the trial scheduled for on December 2, 1985. On November 21, 1985, Plaintiffs filed a Memorandum opposing Defendants' Demands for Jury Trial and in Opposition to Defendants' Motion for Continuance.

11. Subsequently, on November 15, 1985,<sup>6/</sup> Plaintiffs filed a Motion for Leave to File a Third Amended Complaint along with the amended pleading. *delivered during discovery* The Third Amended Complaint provides for the dismissal of all claims relating to Plaintiff Keith Harris; substitutes a new Plaintiff, Billy Joe Harper; cures several typographical errors in the prior pleading; and, according to Plaintiffs, adds the State of Florida as a Defendant solely for the purposes of an attorney fee award. . citing Leggett v. Badger, 759 F.2d 1556 (11th Cir. 1985).

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6/ Although the Third Amended Complaint was not filed with the Court until November 15, 1985, Defendants had received a copy of the pleading one week earlier on November 8, 1985. See, Defendants' Motion for Continuance filed November 13, 1985, p. 3.

12. On November 25, 1985, following a hearing on the pending motions, this Court issued an Order which (a) granted Plaintiffs' Motion to file a Third Amended Complaint, nunc pro tunc November 14, 1985, without ruling on the presence of the State of Florida for purposes of the recoverability of attorneys fees; (b) denied Defendants' jury demand; and (c) denying Defendants' request for further continuance of trial.

13. On November 27, 1985, Defendants, pursuant to Magistrate Rule 4(a) of the Local Rules of this Court, filed an Emergency Appeal from the November 25, 1985 Order of Magistrate Nimkoff to the United States District Court Judge Paine on grounds that the Magistrate erred (1) in denying Defendants' demand for jury trial; and (2) in denying Defendants' request for continuance of trial.

14. On November 29, 1985, Defendants filed their Answer to Plaintiffs' Third Amended Complaint. On December 2, 1985, Judge Paine denied Defendants' Appeal from Magistrate's Order of November 25, 1985.

15. While not stated in the November 25, 1985 Order, this Court's reasoning in denying Defendants' Demand for Jury Trial is set forth herein.

## 2. JURY TRIAL DEMAND

### a. FEDERAL PRINCIPLES REGARDING WAIVER OF RIGHT TO JURY TRIAL

16. The Seventh Amendment to the Constitution preserves the right of trial by jury "in suits of common law." However, the right to a jury trial, although constitutional, is indeed

waived by a failure to demand it in a timely fashion. Fed. R. Civ. P. 38(b);<sup>7/</sup> Cox v. C.H. Masland and Sons, Inc., 607 F.2d 138, 142 (5th Cir. 1979).

17. Specifically, Rule 38(b)<sup>8/</sup> provides that a demand for a jury trial of any issue be served within ten days of the "last pleading directed to such issue."

18. It is further well-settled that if the original pleadings in an action effectively waive trial by jury under Fed. R. Civ. Proc. 38(b) and (c), the right to trial by jury of all matters waived in those pleadings "cannot be later revived by amending the original pleadings." Walton v. Eaton Corp., 563 F.2d 66, 71 (3rd Cir. 1977); Hostrop v. Board of Junior College District No. 515, 523 F.2d 569, 581 (7th Cir. 1975); Trixler Brokerage Co. v. Ralston Purina Co., 505 F.2d 1045, 1049 (9th Cir. 1974); Lanza v. Drexel and Co., 479 F.2d 1277.

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7/ Fed. R. Civ. P. 38(b) states:

The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

8/ Rule 38(b) provides:

(b) DEMAND. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

1310 (2nd Cir. 1973); Williams v. Farmers and Merchants Ins. Co., 457 F.2d 37, 38 (8th Cir. 1972); Connecticut General Life Ins. Co. v. Breslin, 332 F.2d 928, 931 (1964); 9C Wright and Miller, Federal Practice and Procedure §2320: 55. Moore Federal Practice, ¶¶38-39[2].

19. While a jury trial may be demanded for any "new issues" within the meaning of Rule 38 raised by the amended pleadings, the "amendment does not revive a right previously waived to demand jury trial on the issues already framed by the original pleadings." Walton v. Eaton Corp., supra, 563 F.2d at 71-72; Williams v. Farmers and Merchants Ins. Co., supra, 457 F.2d at 36 and cases cited therein.

20. The various Circuit Courts of Appeals generally have reasoned that amended pleadings which concern the "same general issues" do not raise "new issues within the meaning of Rule 38(b) even if they differ from the earlier pleadings in some particulars." See, Walton v. Eaton Corp., supra, 563 F.2d at 72; Hostrop v. Board of Junior College District No. 515, supra, 523 F.2d at 380-81; Trixler Brokerage Co. v. Ralston Purina Co., supra, 505 F.2d at 1049-50; Lanza v. Drexel and Co., supra, 479 F.2d at 1309-11; Moore v. United States, 196 F.2d 906, 908 (5th Cir. 1952).

b. APPLICATION OF PRINCIPLES  
TO THE FACTS IN THIS CASE

21. On September 21, 1983, Plaintiffs filed their Amended Complaint Class Action. On November 2, 1983, Defendants served their Answer. Neither party filed a Request for Jury Trial at

that time. On November 6, 1985, over two years after filing their Answer to Plaintiffs' Amended Complaint Class Action. Defendants served their Demand for Jury Trial.

22. The Court finds that Defendants' failure to comply with Rule 38(b) in not demanding a jury trial within ten days of the filing of their Answer on November 2, 1983, constituted a waiver of their right to a jury trial. U.S. v. 110 Bars of Silver Coins, 508 F.2d 799 (5th Cir. 1975) cert. denied 423 U.S. 861 (1975); McCorstin v. U.S. Dept. of Labor, 630 F.2d 242, 244 (5th Cir. 1980); 9 Wright and Miller, Fed. Practice and Procedure, §2320 at p. 92 (1972) ("[T]he demand for jury trial must be served within ten days after service of the answer.").

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

24. While this Court, under Fed. R. Civ. Proc. 39(b),<sup>9/</sup> may have authority to grant Defendants' demand for jury trial notwithstanding their belated request, none of the factors identified by our Circuit which would justify a tardy request are present here. See, Parrott v. Wilson, 707 F.2d 1262, 1267

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9/ Rule 39(b) states in part:

[N]otwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury on any or all issues.



(11th Cir. 1983) (Trial Court did not abuse its discretion in denying Defendants belated jury request). Factors identified by the Eleventh Circuit in Parrot v. Wilson, supra, 707 F.2d at 1207 to be reviewed by this Court in evaluating whether to grant Defendants' belated request for jury trial include:

(1) whether the case involves issues which are best tried to a jury; (2) whether granting the motion would result in a disruption of the court's schedule or that of the adverse party; (3) the degree of prejudice to the adverse party; (4) the length of the delay in having requested a jury trial; and (5) the reason for the movant's tardiness in requesting a jury trial.

25. Applying these factors to Defendants' untimely jury trial request support the denial of Defendants' belated request. First, the complex issues involved in this litigation regarding the constitutionality of conditions at the Glades Correctional Institution are most typically not subject to jury trials. Second, granting Defendants' motion would certainly prejudice Plaintiffs' trial preparation. Third, this is not a situation where a party makes a belated jury trial request several days, weeks, or even months following their last pleading. Indeed, Defendants' request was made over two years following their answer to Plaintiffs' Amended Complaint Class Action and less than one month prior to the beginning of the December 2, 1985 trial. Finally, Defendants offer no reason for their tardiness and our Circuit and its predecessor has repeatedly rejected "mere inadvertence on the movant part" as a basis to allow a tardy jury trial request. Parrot v. Wilson, supra, 707 F.2d at 1267; Rhodes v. Amarillo Hospital District.

654 F.2d 1148, 1154 (5th Cir. 1981): Mesa Petroleum Co. v. Coniglio, 629 F.2d 1022, 1029 (5th Cir. 1980).

26. Under Rule 38(b), pleading "amendments not introducing new issues will not give rise to a jury trial." Guargando v. Estelle, 580 F.2d 748, 752-753 (5th Cir. 1978). A party's failure to demand a jury trial waives his "right as to all issues relating to the general area of dispute." Walton v. Eaton Corp. supra, 563 F.2d at 66. In rejecting the claim that a new issue had arisen in the amended pleadings which revived the right to request a jury trial, the Walton, supra, 563 F.2d at 73, Court reasoned:

Both "amendments" pleaded facts which had not been alleged in the previous complaints, but neither raised a "new issue," since they did not change the "basic issue" in the case or the "general area of dispute."

27. The only arguable new issues raised by Plaintiffs' Second and Third Amended Complaints would relate to the additional plaintiffs.<sup>10/</sup> However, since evidence pertaining

10/ The Amended Complaint in this action, filed over two years ago, raises claims that inmates at Glades Correctional Institution were being assaulted, battered, and/or homosexually raped because:

2. There is, within this institution, a pervasive risk of harm to inmates. Prisoners are repeatedly threatened, beaten and sexually abused by other prisoners. This occurs with the knowledge of the institution staff and is due to the staff's unwillingness or inability to prevent it.

(Footnote continued to next page)

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original

to the injuries suffered by additional plaintiffs while at GCI would be introduced irrespective of the pleading amendment as support for Plaintiffs' injunctive relief, no new issues are raised. Hostrop v. Board of Junior College District No. 515, supra (All the evidence which might be introduced under amended claims was probative evidence of pre-amended claims this additional count did not introduce a new issue.); Lanza v. Drexel and Co., supra, 479 F.2d at 1310 (Jury trial waived "as to all issues relating to the general area of dispute.").

\* \* \* \* \*

28. Having considered all of the evidence presented over a 10 day trial held in United States District Court for the Southern District of Florida in Miami, Florida on December 2-6, 9-13, 1985; heard testimony of 27 witnesses and reviewed a series of Exhibits and depositions of an additional series of inmate witnesses; requested, received and closely reviewed extensive post trial submissions; and heard oral argument of counsel on December 27, 1985, the Court pursuant to Rule 52(a) F.R.C.P., now issues its Findings of Fact and Conclusions of Law.

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(Footnote continued from previous page)

3. There are no protective measures available to inmates of GCI that do not result in the inmates' confinement under punitive, degrading and inhuman conditions.

Amended Complaint at Pgs. 1-2.

These allegations were denied by Defendants in their Answer filed November 2, 1983. Plaintiffs' Second Amended Complaint, served August 26, 1985, like their Third Amended Complaint, is based on these identical allegations.

## B. GLADES CORRECTIONAL INSTITUTION

### 1. HISTORY

29. Glades Correctional institution is one of thirty major prison facilities in the State of Florida. (Turner) As the second oldest prison in Florida, the development of Glades Correctional Institution reflects the recent history of the State. (Swanson, Pg. 36). The State of Florida acquired the site where the present institution is located through land acquisitions from delinquent tax payers under the Depression Era Murphy Act. (Ibid). Built in 1932, the facility began its operation and was known as State Prison Farm No. 2. (Turner). Located in agricultural western Palm Beach County, the facilities' inmates grew fresh vegetables for the three state institutions: Florida State Prison, Chattahoochee State Hospital, and the Work Farm. (Ibid, Pgs. 36-37).

30. Throughout the first several decades of its existence, GCI was a black segregated facility whose inmates worked in various agricultural endeavors. (Turner). In the early 1950's, the institution moved into the open dormitory buildings at its current location. A federal mandate integrated the all-black prison. (Swanson, Pg. 37).

### 2. OVERVIEW

31. Defendant R. V. Turner held the position of Superintendent of GCI from mid-1976 through his retirement on August 31, 1984. (Turner). Ron Jones was Superintendent in an interim capacity from September 1, 1984, through October 15.

1984. Thereafter, present Superintendent Randall Music served as Superintendent. (Swanson, Pg. 38). Mr. Music's last day as Superintendent coincided with the last day of trial, December 13, 1985. (Music)

32. As of July 29-31, 1985, 875 inmates were incarcerated at GCI. (P.Ex. 7) (Prison Inspector Report). Approximately 60% of these inmates were Black; the remainder were White or Hispanic. (Ibid.)

33. While Superintendent Music estimated the Hispanic population at 7% to 10%, records reflect that during an earlier period germane to this litigation, the Hispanic population was apparently even higher. D.Ex. 7 (Supt. Monthly Report of November, 1981, Pg. 2) ("Potentially serious management problems may develop due to large contingent of Latins in population.")(emphasis added). Because of DOC's general, although not absolute policy of incarcerating inmates as close to their home areas as possible, GCI draws many of its inmates from the South Florida area. (Brierton, Pg. 42) See, also. (Swanson, Pg. 129) ("Superintendent Music said that GCI seemed to have the function of taking care of anything in South Florida that no one else can handle, that it has become the catch-all for the Southern region."). During the Turner administration, 65% to 70% of those incarcerated were "close custody" prisoners. (Turner)

34. Inmates are housed in four open dormitories at GCI. These dormitories are referred to as Dorm A, B, C and D. Dorm A and D are the larger dormitories at any given time housing

approximately 200 to 300 inmates. Dorms B and C are somewhat smaller and have a capacity to house approximately 70 to 80 inmates. (Swanson, Pgs. 112-113) The dormitories are arranged in the same manner insofar as inmate bunk arrangements. In A and D Dorms there were three rows of 20 bunk beds on each of the two wings within a dormitory. In B and C Dorms double bunks are also arranged in three rows. Dorm E is an honor dorm, which is somewhat different from the others.

35. In the front of each dorm there is a doorway. Behind the doorway is a screened area in which an officer is situated. This area is separated from all contact with the inmates by a cage, which is referred to as a "wicket." (Swanson, Pgs. 111-112). There are two dayrooms within the four main dormitories. On one side of the dayroom is a television and on the other side are game tables. (Swanson, Pg. 138). At the end of the dorm on the far side are the showers. In the shower area there are also urinals, washing and bath facilities. The shower areas are obscured from view if an officer is stationed in the "wicket." See. (P.Ex. 40, 41 and 42). (drawings of bunk, shower, dayroom and confinement areas by Dr. Swanson). See also, D.Ex. 1a-3c. (Composite photographs)

### C. THE CONTEXT

36. The individual named Plaintiffs' damage claims can be analyzed only within the context of the general operational policies, practices, conditions and events existing at the general time period in which their claims arise. Disparate

factors - ranging from wholesale manufacture of prison wine and regular screenings of sexually explicit videotapes to a heterosexually starved audience of inmates, to the maintenance of an ill-assorted guard corps whose members the inmates perceived as regularly trafficking in contraband, extortion, and neglect - converge into a tapestry that forms the backdrop for Plaintiffs' claims. A discussion of these contextual realities follows.

## 1. AN INSTITUTION

### a. OFFICIAL DOCUMENTATION

37. Several written documents provide critical evidence as to the general nature and depth of security problems existing at GCI during the relevant time period of Plaintiffs' damage claims. (1980-1984).

#### (1) TURNER'S ACKNOWLEDGEMENTS TO SECRETARY WAINWRIGHT

38. Conditions at GCI were known to Superintendent Turner. On July 16, 1981, Turner wrote to the Secretary of Florida's Department of Corrections Louie L. Wainwright and informed him of the following:

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

(D.Ex. 13, Pg. 2)

39. Similar acknowledgement of severe security problems were provided in an earlier correspondence from Turner to the

Secretary on March 15, 1979. (D.Ex. 14) (Vacancies of 1/3 of total COI's staff is "dangerous to the staff and inmate population. [emphasis in original] Only two officers assigned to 220 inmate dorm for supervision of inmates.") Turner stated:

Currently our count is in the neighborhood of 800. Approximately 400 of these inmates are close custody. I am apprehensive about our ability to control this population under the circumstances. (emphasis added) 11/ (D. Ex. 14)

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11/ It is noteworthy that during this general period when Turner recognized the severity of the problems at GCI, D.Ex. 14 ("I felt that it was necessary to bring you up to date on this critical situation") the institution received its first accreditation in 1980 and subsequently again in 1984 (Mulally). Indeed, at the time of the first accreditation and during that general time period of Turner's acknowledgement to Secretary Wainwright of severe and dangerous security problems, GCI was given the second highest score for an institution in the State. (Ibid.) (Swanson, Pgs. 278-279).

The accreditation process was explained at some length by Ray Mulally, a Department of Corrections (DOC) employee in charge of securing institutional accreditation in Florida. (D.Ex. 6). Plaintiffs' correctional expert, Dr. Richard Swanson, noted that during litigation concerning conditions at the Florida State Penitentiary (FSP) was receiving its accreditation while at the same time the trial court was concluding that conditions and practices were unconstitutional. Further, notwithstanding the serious and long-standing system-wide litigation of Costello v. Wainwright in which the United States District Court for the Middle District of Florida has consistently found practices and conditions which offend the constitution, literally all institutions remain accredited. (Swanson, Pgs. 278-279; 410-412).

For these reasons, the Court finds the GCI accreditation as having virtually no significance to this litigation.



(2) THE 1980 PALM BEACH COUNTY  
GRAND JURY PRESENTMENT AND  
FINAL REPORT OF THE INSPECTION  
GENERAL (1980)

40. In 1980, the Palm Beach County Grand Jury issued a presentment on January 30, 1980. The apparent impetus for the Grand Jury Presentment related to issues involving a audit and inventory relating to shortages of certain food products. However, the presentment also raised serious issues of inmate security germane to this case. Matters relating to the primary issues raised by the Presentment which concerned discrepancies in audit and shortages of meat and food, raised additional general matters concerning a breakdown of proper prison management: shortages were caused, among other reasons, through theft by inmates and staff. (P.Ex. 4, Pg. 3 of Grand Jury Presentment). Additionally, and more germane to the issues raised in this case, is the reporting through various testimony before the Grand Jury of problems relating to "lax security precautions." Testimony of staff and inmates revealed a free flow of contraband "including drugs, alcohol, gambling, theft, confiscation, and payoffs among the inmates and personnel of GCI." (Ibid, at Pg. 6).

41. Approximately eight (8) months later, the Department of Corrections Office of Inspector General conducted its management review of GCI. (P.Ex. 4, Tab B). The Office of Inspector General, under the direction of David Brierton, was established in 1979 (Brierton, Pg. 47) and acts as an independent auditor and investigative arm of DOC (Brierton, Pgs. 6-7).

42. The Inspector General Report observed and corroborated similar issues concerning a breakdown of security as those identified in the Palm Beach County Grand Jury Presentment. The Inspector General found, among other matters, that

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

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

43. Additional reporting of increase "inmate on inmate" and "inmate on staff" assaults reflected an increase over a past six month period (Ibid, Pg. 5). These assault trends, both inmate on inmate and inmate on staff were reflected elsewhere. (Ibid, Pgs. 20-21. ¶ 9.1 "Conclusions and Recommendations").

44. Moreover, the security problems were exacerbated by low morale GCI staff. An employee survey conducted by the Inspector General revealed that staff members did not feel that there were enough people in their unit to perform their duties properly, and when asked the question, "Did you receive instructions or guidelines on the responsibilities and supervisory functions of your job when you became supervisor?." they answered with a "resounding no." (Ibid, ¶ 29.1, Pg. 33).

(3) THE 1983 INSPECTION REPORT OF  
THE OFFICE OF THE INSPECTOR GENERAL

45. Approximately three years later, on September 19-21.

1983, DOC's Office of Inspector General conducted a subsequent investigation at GCI. In that report, the Inspector General noted "we fail to understand and appreciate laxity, in some instances, the disregard for established procedures." (P. Ex. 6, Pg. 2). In reviewing conditions at Belle Glade, the Inspector General offered the following overview: "In conclusion, the team found a need for a great deal of improvement at Glades Correctional Institution." (Ibid.). See also, (Ibid. Pg.9). (Security problems relating to an inmate armed with a homemade knife threatening a correctional officer); (Ibid. Pg. 22)("Inmate personal property is in no way orderly or neat. Homemade lockers are abundant.").

b. MAJOR INCIDENTS

(1) THE BARRETT INCIDENT

46. On April 15, 1984, at approximately 6:30 P.M., a fight broke out in C Dormitory involving several inmates. As a result of the fight, a state of confusion developed at GCI. Lt. James Schrader, the OIC (Officer in Charge) requested that off duty personnel be summoned to the institution. Lt. William Barrett, the acting Chief Correctional Officer; Lt. L. A. Peters, GCI's Internal Inspector; and Sgt. Ricky Hayes, were summoned. Those three individuals, were attending a local festival in Belle Glade known as the "Black Gold Festival". All three officers admitted they had been drinking alcoholic beverages. Barrett and Hayes had their faces made up to resemble clowns for the festival. Lt. Barrett and Sgt. Hayes

arrived immediately and proceeded to the Gate House. Sgt. Barbara Wiesel, the Main Gate Supervisor, advised that there was an uncontrolled situation in C Dorm. Sgt. Wiesel reported at the time, that she noted a strong odor of alcohol, and noted that Lt Barrett appeared to be absolutely unsteady on his feet and constantly leaning against the counter. Lt. Barrett requested that Sgt. Wiesel give him a shotgun and fifteen rounds of ammunition. Lt. Barrett loaded his shotgun. Lt. Barrett approached the C Dormitory. (Swanson, Page 208-210); (P. Ex. 9, Pgs. 1, 6 - The Special Investigation Entry No. 84-37911).

47. At that time, Lt. Barrett responded in slurred speech to Lt. Pipta, that "I want to teach these mother fuckers who runs this place". As Lt. Barrett remained outside, and Lt. Pipta entered C Dormitory and found the inmates sitting on their bunks and the situation otherwise calm. Barrett, while armed with a shotgun began yelling obscenities to the inmates and making threats such as "I'm going to kill you mother fuckers." Lt. Barrett then ordered the inmates brought out of the dorm. Inmates Robert Whidden and William Allen were ordered to lay face down on the sidewalk at which time Lt. Barrett smashed them in the back of the head with the shotgun and continued to "jab them in the back of the neck with the barrel and continued yelling at them." Inmate Allen's head was split open after being struck by the stock of Lt. Barrett's shotgun. A third inmate, Westley Smith, was also struck. Two additional inmates, Jimmy Daniels and Melvin Kraft, were

brought out from the dorm and kicked by Lt. Barrett. Following the incident, Superintendent Turner was made aware of what occurred. Turner did not notify the Prison Inspector because he "did not feel that the situation warranted notification of a Prison Inspector" (Ibid., Pg. 5). The Inspector General, David Brierton, through his office, did conduct a thorough investigation (P.Ex. 9). The Inspector General's office concluded that Lt. Barrett had committed various prison Rule violations. (Ibid, Pg. 6-12)s Additionally, Lt. L. A. Peters, GCI's Internal Prison Investigator, was also found to have committed additional prison infractions. (Ibid., Pg. 10-11).

48. Plaintiffs' correctional expert, Dr. Richard Swanson, corroborated the findings of the Prison Inspector's Office in concluding that senior officer Lt. Barrett had made gross errors in judgment. Dr. Swanson observed that the violations were so gross that immediate action should have been taken to at least suspend Lt. Barrett from the operation of a prison.<sup>12/</sup>

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12/ Although not directly related to Turner's management of the personnel aspects of the Barrett incident, Dr. Swanson referred to a transcript of a tape recorded conversation between Turner and an inmate, William Allen, in which Allen described the situation that led up to the disturbance of that precipitated Barrett's presence.

In it, it's very clear the inmate is talking about the wide use of alcoholic beverages within the institution.

In talking about this, it's clear from the conversation that's recorded in these pages, that it is not a surprise at all to

(Footnote continued to next page)

49. Lt. Barrett remained functioning as a correctional officer for at least a full week following the April 15, 1984, incident. (P.Ex. 9, Exhibit 2)(Last page indicating the signature of William Barrett of April 23, 1984 on Incident Report).

50. Plaintiffs' expert, Dr. Swanson, noted his opinion that Superintendent Turner appeared to unduly delay in suspending Lt. Barrett. This was particularly poor management in the context of the egregious nature of the incident (Swanson, Pg. 329)("His [Turner] initial reaction seemed to be oddly mild."); (Swanson, Pg. 211)("The violation was so gross, that it seems to me that immediate action should have been taken to at least suspend the Lieutenant from the operation. Some action ultimately occurred, but took considerable amounts of time.")<sup>13/</sup>

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(Footnote continued from previous page)

Superintendent Turner that alcohol and drugs are available on a widespread basis in the institution.

(Swanson, Pg. 212)

13/ Indeed, Florida law permits an immediate suspension of a State employee such as Lt. Barrett in an incident such as this. See, Florida Administrative Code § 22A-10.046, which provides as follows:

In extraordinary situations, such as when the retention of a permanent career service employee would result in damage to property, would be detrimental to the best interests of the State, or would result in injury to the employee, a fellow employee, or some other person, such employee may be suspended or dismissed immediately, provided that written notice of

(Footnote continued to next page)

(2) THE ILLEGAL ACTIVITIES OF OFFICER DIXON

51. In mid-1974 the activities of a correctional officer, Clarence Dixon, were investigated by various authorities including the Inspector General's Office of the Department of Corrections and the Palm Beach County State Attorneys Office. Evidence related to Mr. Dixon's trafficking in drug contraband and extortion of inmates and their families. This documented investigation corroborates other inmate allegations of wholesale staff corruption with regard to the extortion of inmates, and the free flow of contraband within GCI.

52. The investigation resulted in Mr. Dixon's being arrested and charged with three counts of bribery. (P.Ex. 10. Tab B. Pg. 5, Special Entry #84-4647). Moreover, the investigation of Officer Dixon further demonstrates the careless manner in which Dixon had been screened for employment. Prior to his employment at GCI, Dixon had been terminated from Paholkee High School following the Broward County school board's obtaining a revocation of Dixon's teaching certificate. While at Pahokee, Dixon had collected \$75 fees from graduating students to introduce them to colleges, had taken them to the campuses, but had failed to make any arrangements for introduction (P.Ex. 10, Tab C. Memo of March 6, 1984): (Swanson, Pgs. 222-224).

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such action is furnished to the employee within twenty four hours.

Superintendent Turner himself was suspended immediately in a similar context for an incident which occurred on May 6, 1971. See. (P.Ex. 1, Tab D) (Letter of May 7, 1971 from Louis L. Wainwright to R. V. Turner).

(3) LARRY PRYOR

53. The assertions of Larry Pryor, while offering less conclusive credibility than the external investigative reports of Lt. Barrett and Officer Dixon, nonetheless reveal additional evidence of wholesale staff corruption. Pryor worked as an informant-enforcer for various correctional officers, who either permitted him or directed him to harass other inmates (Deposition of Pryor. Pg. 35).<sup>14/</sup>

54. Pryor worked with several officers (Ibid. Pg. 35). When Pryor indicated that he was going to do something about inmate Eddie Cobb, Pryor was told by Lt. Barrett that whatever he chose to do should be done on Barrett's shift (Ibid. Pgs. 39-40). Pryor understood that to mean that if he took any action against Cobb on Barrett's shift, he "wouldn't go to jail or get prosecuted for it." (Ibid., Pg. 17). Following a fight with Cobb in which Pryor stabbed him, Pryor was put in a

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14/ At the commencement of his testimony, Pryor indicated that he had been harassed by officials from the Department of Corrections at the Florida State Penitentiary, at Glades Correctional Institution, and at DOC's Dade Correctional Institution over a period of several days prior to being transported to Miami for purposes of offering his testimony. While this Court makes no conclusive findings as to whether Pryor in fact was threatened by DOC officials due to his impending testimony, Pryor's earlier deposition testimony was accepted by this Court pursuant to Rule 32(a)(3)(E) Federal Rules of Civil Procedure.

Following Pryor's accusations that he had been threatened by DOC officials, he was appointed private counsel by this Court and upon counsel's advice Pryor chose at trial under the Fifth Amendment to refuse to answer any self-incriminating questions.



confinement cell until "things blown over." but was never given any disciplinary report (DR) for the incident. (Ibid. Pg. 19).

c. THE FREE FLOW OF CONTRABAND AND EXTORTION

55. A distinct picture of a wide range of free flowing contraband into GCI emerges from independent and corroborative sources of information and record evidence. The contraband includes: drugs, alcohol, weapons and extortion activities flowing from this illegal traffic.

56. Dr. Swanson, Plaintiffs' correctional expert, observed that "little or no effort was taken to control illicit activity" resulting "in readily available contraband" (Swanson, Pgs. 49, 326) including "drugs, alcohol and weapons to inmates apparently upon demand." (Ibid. Pg. 50). The free flow of contraband (Swanson, Pg. 121) seemed to be common knowledge: "people carried knives, people smoke dope without worrying or trying to hide it from officers" and the staff was "actively involved in these illicit activities." (Ibid.) as well as actually promoting the influx of contraband. (Swanson, Pg. 199). Swanson's conclusion, with which the Court agrees and so finds, provides an unmistakable pattern of free flow of contraband, is based upon corroborative evidence including: (i) written documentation<sup>15/</sup>, as well as by inmate testimony<sup>16/</sup>.

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15/ See, e.g., (P.Ex. 4) (Palm Beach Grand Jury Presentment, Pg. 6) ("Testimony of inmates and some correctional personnel

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16/ (Pryor, Dep. Pg. 12) (Selling of marijuana by Pryor); (Ibid. Pg. 33) (access to knives by Pryor - "I have so many

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2. FAILURE TO PROPERLY SUPERVISE  
PERSONNEL AND MANAGE INSTITUTION

a. STAFF TRAINING

(1) WEAPONS

57. One barometer of poor staff training can be gleaned from internal GCI records. GCI incident reports revealed officers (P.Ex. 33) lack of familiarity with weapons. (Swanson, Pg. 135). This opinion of Plaintiffs' expert was also expressed to him by Lt. Peters in an interview and was not rebutted at trial. (Ibid.) Peters also noted that a recently implemented weapon system developed under Superintendent Music "may" solve some of the weapon problem. This system requires officers to first demonstrate some qualification with a weapon prior to obtaining it. (Ibid., Pgs. 135-136).

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(Footnotes continued from previous page)

15...indicate marijuana and other drugs are available to inmates due in a large part from lax security precautions. Alcohol use and its manufacture by the inmates' ingenuity also appears prevalent; Peters' investigation of 20 gallons of "buck" (inmate home-made wine) (Peters); (P.Ex. 4) (Management Review of GCI, "Conclusions and Recommendations; ¶ 10.1 40 disciplinary reports for "Consumption of Intoxicants" during 1-year period); (P.Ex. 10) (Extortion and drug activities discussed in the Dixon matter); (P.Ex. 9) (Swanson, Pg. 212) (inmate access to alcohol discussed in the Barrett incident); (P.Ex. 6, Pg. 9 (Prison Inspector Report) (laxity in security, inmate in possession of homemade knife..).

16...knives."); (Swanson, Pg. 57) (drugs, liquor available); (Swanson, Pg. 71) (joints smoked in front of guards); (Ibid) (inmates "strapped to the max" at GCI with knives); (Swanson, Pg. 77) (availability of dope and wine); (Ibid) (protection rackets involving dope and wine; (Ibid, Pg. 78) (staff afraid of inmates armed with knives and shanks; (LaMarca) (inmates had money from selling reefer, making wine and weapons; (Ibid) (LaMarca given knife by officer to protect himself; (Gordon) (blacks ran drugs in GCI); (Epprecht) (free flow of drugs and alcohol at GCI.

58. Problems with improper training and use of weapons ranged from the Barrett incident to day-to-day incidents of problems with weapons by staff. (P.Ex. 33) (Incident Reports).

(2) STAFF OUT OF CONTROL

59. The Barrett-Dixon incidents underscore the day-to-day operation of GCI with its staff not controlled by Superintendent Turner. Staff morale was low. (P.Ex. 4, Management Review of GCI, ¶ 29.1, Pg. 33) (Employee Questionnaire reflected that staff believed (i) not enough officers in unit to do job right and (ii) insufficient instructions and guidelines given when officers became supervisors). Turnover was high. (D.Ex. 14) (Turner letter to Wainwright) (Critical situation of 1/3 of staff vacancies); (P.Ex. 39) (Summary statistics of turnover rate) (Swanson, Pg. 184-185); (P.Ex. 31) (Superintendent Monthly Reports reflecting turnover). Officers worked excessive hours and often two shifts. (P.Ex. 39) (Swanson, Pgs. 184-188).

60. A direct result of a staff which was inexperienced, over-worked, under-educated, ill-informed, insecure, and otherwise unable to protect inmates under their charge (i.e. reluctance to report rapes) is the general climate of a facility with a high security risk. (Swanson, Pg. 197)

b. FAILURE TO SUPERVISE STAFF

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

62. As Lt. Peters admitted, due to the (i) sheets, clothes and personal lockers hanging from the bunks (Swanson, Pg. 318); (ii) the obstruction of a second level of bunks in the middle row of beds (Ibid), an officer's view from the cage or wicket in which he was stationed was obscured. (Peters) The view from the wicket into the shower area was even more obscured. (Swanson, Pg. 113) Lt. Peters, the Chief Investigative Officer during the Turner administration, admitted the lack of any clear vision to the shower area by an officer stationed in the wicket because of the various obstructions. (Peters)

63. While Peters knew that officers were supposed to be on constant patrol within the dorms, this did not take place. (Peters) Moreover, and even more seriously, Turner could recall no action ever taken against an officer - by reprimanding, suspending, or otherwise disciplining - for failure to patrol the dormitories. (Turner)

c. NO PROCEDURE FOR INVESTIGATING RAPES

64. As discussed in greater detail, infra, ¶82, Lt. Peters, the Chief Internal Investigator at GCI, candidly recognized that no procedure ("standard operating procedure") existed in which to investigate rapes or alleged rapes. No standard interview process, no standard polygraph procedure, no standard rectal examination, no psychiatric examination, and no standard reporting to any law enforcement authority occurred. (Testimony of Peters and Turner). No such policy was ever written. (Ibid)

65. Indeed, Defendants' own witness, Inspector General Brierton, opined that at the very minimum: (i) medical evidence should be secured; (ii) a full statement taken from the alleged victim, and (iii) the matter should always be referred to a local prosecutor. (Brierton, Pgs. 109-111) These steps were not followed. (Peters); (Saunders, Pgs. 556-557); (Aldred, Pgs. 812-813); (Harper, Pg. 746).

66. This lack of any procedure relating to the investigation of rapes resulted in the prosecution of only one rape in the entire Turner administration. Moreover, no rapes were ever reported by GCI authorities in any of the massive amounts of internal documents generated from the institution. (Swanson, Pg. 150).<sup>17/</sup>

67. The Court is convinced that the lack of investigative procedure led to an atmosphere where inmates could rape other vulnerable inmates without concern of being detected or deterred.

(d) THE LAWSUIT

68. During the early stages of this lawsuit in 1982, this Court took testimony from Plaintiff LAMARCA (Swanson, Pg. 258).

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17/ Several of the plaintiffs, who have alleged that they were raped, also reported that they had informed the correctional officers of the violation. See, Aldred, infra, ¶124; Saunders, infra, ¶154; and Harper, infra, ¶164.

Apparently, in the case of Saunders and Aldred that information was never relayed to any higher authority other than the Lieutenant to whom each personally reported his rape. As to Harper, the Court reviews his reporting elsewhere. Infra, ¶164.

LaMarca provided an account of other inmates who had been abused or otherwise violated (Ibid, Pg. 259). Counsel for Defendants, Mr. Belitsky of the Attorney General's Office and Assistant Superintendent Arline, were present during the course of those proceedings (Ibid). The Court was assured by Messrs. Belitsky and Arline that a full investigation of Plaintiff's allegations of additional inmate violations would take place (Ibid, pg. 260).

69. Not only did it become apparent that no investigation occurred when no response was forthcoming from Defendants, but Defendant Turner testified that he was totally unaware that these assurances were made to the Court and that he was completely unaware even of the circumstances of this lawsuit until the recent pre-trial activities (Turner).<sup>18/</sup>

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

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18/ In connection with a Return to Order to Show Cause filed under a certificate of service dated October 12, 1982, Lt. Peters executed an affidavit addressing the issues raised by the initial pro se complaint filed by Anthony LaMarca. Superintendent Turner was a party to the action at that date. The third paragraph of the affidavit reads:

Be it also known that this affiant has prepared this affidavit with full knowledge and sanction of all parties named as Defendants in the above referenced case number.

3. THE LACK OF THE MOST ELEMENTARY  
PROCEDURES TO MINIMIZE THE LIKELIHOOD  
OF RAPINGS AND ASSAULTS

a. KNOWLEDGE: THE INDICES OF RAPE  
THAT A PRUDENT ADMINISTRATOR  
WOULD DISCERN

71. It is clear to this Court that various indices, when considered in combination, should make it readily discernible to any prudent prison administrator that inmate rapes are occurring. The corollary, of course, is that armed with the knowledge that rapes were occurring, the failure to promulgate and adhere to the most rudimentary procedures constitutes a deliberate indifference toward inmate security. While none of the indices alone would reasonably suggest the occurrence of rape, the combination of these indices, as in this case, raises an issue of knowledge or constructive knowledge on behalf of Defendant Turner. The Court now reviews these indices.

72. First, the free flow of contraband, and assaultive inmate-on-inmate and inmate-on-officer behavior previously reviewed, provides a picture of an institution marred by violence and illegal activity. Plaintiffs' experts, Dr. Swanson and Dr. Caddy, as well as Defendant Turner and Inspector Brierton, all agreed that rapes in prison are a manifestation of acts of violence and domination, in contrast to acts of sex. See, infra, ¶117. Thus, homosexual rape is but an additional and inevitable, albeit extreme, discord in the cacophony of inmate assaults, extortions, drunkenness, drug

use, and armament that characterized GCI during the tenure of Defendant Turner.

73. Second, the consistent and disproportionate number of young white inmates who "checked in" to protective confinement further corroborates the white plaintiffs' recollection of terror on the compound. Consider, for example, the following statistical snapshot of the protective custody population in mid-September, 1983:

PROTECTIVE CONFINEMENT POPULATION 19/

| <u>WHITE</u> | <u>BLACK</u> | <u>TOTAL</u> |
|--------------|--------------|--------------|
| 20           | 1            | 21           |

(P.Ex. 6) (Inspection Report  
of September 19-21, 1983)

74. The volume of the warning that such statistics should have signaled was amplified by the punitive nature of protective confinement during the 1980-1984 period. The inmates who checked in were very distressed; otherwise they would not have been checking in (Caddy, Pg. 1265).

75. Moreover, the impact of the statistics is further underscored when considered in the context of the punitive nature of protective confinement, at least during the period of 1980-1984. Conditions in protective confinement were punitive;

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19/ Whites constituted a minority of the prison population (397 of 833 inmates) and those figures considered Hispanics as Whites. (P.Ex. 6)



the cells lacked adequate ventilation (P.Ex. 5. Memo of September 22, 1985)(Prison Inspection Report); the lighting was poor (Ibid); two, three four and five inmates were placed in the cells containing two bunks (Ibid); (Testimony of Eddie Johnson, Greg Zatler); the cells were infested with roaches and vermin (Ibid); inmates in protective confinement were taunted by others outside of the confinement area (Swanson, Pgs. 123. 139); protective confinement inmates often were housed with administrative detainees (Turner); no exercise was offered; showering was allowed only three times per week (Eddie Johnson and Greg Zatler); and inmates in protective confinement lost their canteen privileges. (Ibid.)

76. Notwithstanding the punitive nature of protective confinement, some inmates would remain in the confinement for months. Indeed the shortages of cell space attests to the inmate demand to "check in." (Swanson, Pgs. 203. 316) Plaintiffs' expert psychologist, Dr. Caddy, observed that the inmates who had opted to check into a confinement area as described would clearly manifest a high level of distress in the general dormitory population. (Caddy, Pgs. 1263-1266).

77. Third, the general "wolfing" and cat-calls of aggressive black inmates stationed around the compound during the initial periods of incarceration when new inmates were transferred to GCI (particularly the smaller, younger and at least physically more vulnerable white inmates) would suggest, in combination with other factors, that sexual pressures were severe. The corroborative description of these inmate

experiences to Dr. Swanson when he interviewed the individual Plaintiffs incarcerated in institutions in different parts of the State prior to the trial enhances the credibility of their individual recollections.<sup>20/</sup> The Court finds that the events did take place.

78. Fourth, more overt signs of sexual activities, some consensual, further provide an indication of assaultive rape conduct. Sheets hung from the bunks; inmates moaning in their bunks; the showing of pornographic movies (Swanson, Pgs. 8-9, 375-376) in a trailer in which "cries and moaning" of inmates were heard, apparently are all part of the ritual at GCI.

79. Fifth, some rapes, in fact, were reported; although in the case of Plaintiffs Aldred and Saunders, Defendant Turner apparently was not made aware of these facts. Plaintiff Harper's reporting and subsequent meeting with Turner is discussed elsewhere. See, supra, Pg. 30, n. 17.

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80. Having reviewed the knowledge or constructive knowledge that rapes were occurring, the Court now addresses

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20/ Consider, in addition to the similarities that Dr. Swanson testified to finding in the inmates' account of "wolfing" upon arrival, the similarities in the accounts given by those inmate plaintiffs who testified. Saunders was greeted by a "great multitude" of blacks in February, 1983, and described the scene as being like a "meat market" (Saunders, Pg. 536); LaMarca recalled catcalls from a "line of black inmates" about his being a "fat skinny white boy" (LaMarca, Pg. 948); and Aldred remembers 150 to 200 mostly black inmates pressing up to the fence and arguing about who would get him (Aldred, Pg. 893).

various elementary procedures that could have been utilized to minimize the likelihood of raping and assaults.

b. THE PROCEDURES WHICH  
SHOULD HAVE BEEN EMPLOYED

(1) IMPLEMENTATION OF A  
STANDARD PROCEDURE TO  
INVESTIGATE RAPES

81. As previously detailed, see, supra, ¶64, the Court has reviewed the fact that there existed no procedure known to the highest ranking investigator at GCI - Mr. Peters. (Peters) (No "standard operating procedure.")

82. In sum, no process or procedure was utilized to insure the full investigation of the possibility that a rapes had occurred.<sup>21/</sup> This created an atmosphere where assaultive inmates could continue to prey upon more vulnerable prisoners and never run the risk of detection. Indeed, the Investigator at GCI, Mr. Peters had never talked to two of the Plaintiffs who reported being raped - David Aldred and Martin Saunders. Nor did Defendant Turner talk to these individuals.<sup>22/</sup>

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21/ Among the investigative procedures not used were: polygraphing of alleged victims and assailants; rectal examinations of victims; psychiatric and psychological examinations of the victims; thorough interviews of the victims by trained investigators. (Peters and Turner)

22/ Inspector Brierton made clear that immediate interviews of alleged victims was a critical step in any rape investigation in an attempt to amass as much intelligence as possible. This is what we, of course, would expect in any criminal investigation. (Brierton, Pg. 109)

(2) NO REQUEST FOR INVESTIGATIVE AND  
PROSECUTORIAL ASSISTANCE

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

84. The Court further finds that the atmosphere that existed at GCI during the tenure of Defendant Turner was one in which inmates bent on rapes and other expressions of violence roamed the compound with impunity. It was an atmosphere fostered by the institutional leadership's failure to initiate criminal prosecution against any but one prison rapist. It was an atmosphere nurtured by Defendant Turner's refusal to seek assistance from outside state investigators (prison inspectors, sheriff's deputies, State Attorney's investigators) and prosecutors to deal with such state crimes as sexual battery, aggravated assault, and armed robbery, as well as to seek assistance from federal officials for criminal violations of 18 U.S.C. §1241, et seq., or any other applicable federal statute arising from such activities as those ascribed to Lt. Barrett and Correctional Officer Dixon. While accepting as true the Defendant's testimony that he spoke to legislative committees and civic clubs concerning funding levels for GCI, the Court finds that he absolutely ignored the criminal justice remedies to which he had ready access on behalf of his charges.

85. While the independent Inspector General, offices of David Brierton were called upon in such matters as the Barrett and Dixon investigation, Turner never called upon that office to conduct any investigation into assaultive behavior by inmates or any rapes that occurred. (Turner).

86. Peters conducted investigations at GCI only when directed by Superintendent Turner. (Peters). Turner never requested an investigation of the rapes of David Aldred, Martin Saunders, or Billy Joe Harper. (Turner). Each of the three Plaintiffs had reported to other prison authorities that they were raped (Saunders, Pg. 1563); (Aldred, Pgs. 812-815); (Harper, Pg. 746); however, because there was no discernable process to inform the higher chain of command at GCI, neither Aldred nor Saunders were ever interviewed by Lt. Peters.

87. Beyond the availability of the staff of the Inspector General's Office, Superintendent Turner failed to avail himself to other possible investigative arms of the government. While Turner referred all litigation to the Attorney General's Office, he never requested investigative assistance through the offices of the Attorney General. (Turner) Although there was some testimony that Lt. Peters had sought criminal prosecution from the State Attorney's Office of Palm Beach for various matters, it appears that no request other than the single rape prosecution was ever made for criminal activity involving rape. (Peters) Additionally, there was no evidence that Defendant Turner ever attempted to personally meet with officials of the State Attorney's Office in order to develop a meaningful

protocol of procedure and policy in which to involve the State Attorney Office in various criminal investigations at GCI. Finally, while the Federal Bureau of Investigation investigated at least one matter, its investigative offices were never requested by Superintendent Turner in order to conduct investigations of violations of inmates' civil rights under the various federal criminal statutes.

88. The fact that no investigations of rapes occurred is demonstrated by the conspicuous absence of any reference to rapes in the pages of internal documents analyzed by Dr. Swanson. (Swanson, Pgs. 150-151), P.Ex. 31.

### (3) INMATE MOVEMENT CONTROLS

89. During the Turner administration, inmates had free ingress and egress throughout the compound and dormitories. As stated previously, inmates were able to crawl under the fence fronting the protective confinement cell area and harass or threaten those inmates housed in protective confinement. The Prison Inspector Report of September 19-21, 1983, (P.Ex. 6, Pg. 8), notes that inmate movements from one location to another are not properly controlled nor supervised by staff.

90. The control of inmate movement, particularly in an institution such as GCI with a high number of close custody inmates (65% to 75%) (Turner) and in an open dormitory setting, would make the necessity for some limitation on inmate movement critical.

91. Not until October 15, 1984, when Defendant Music became Superintendent at GCI, was a pass control system

utilized to monitor the movement of inmates (Swanson, Pg. 137), (Music).

(4) STATIONING OF OFFICERS

92. As previously reviewed, due to the physical structure of the dormitory, an officer stationed in the wicket cage did not have a clear view of other areas of the dormitory because of clothing and other personal possessions that inmates kept on their bunks, supra, ¶62. Additionally, during the Turner administration double bunking existed in the middle level of bunks, supra, ¶34. Finally, because of the location of the shower area, it was impossible for an officer to view activities occurring in the shower from the wicket. (Swanson, Pg. 113) ("You cannot see back to the shower area for the obstruction of the bunks and the property piled on top of the bunks.") (Swanson, Pgs. 317-318) (Difficult if not impossible for officer in wicket to see shower area; double bunk in middle row obscures vision from wicket.)).

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

officer properly on patrol would walk into the area of the shower while the rape was in progress.<sup>23/</sup>

94. Following Turner's retirement, Superintendent Music removed the second bunk level in the middle row of the dormitories and restricted the placement of personal property, sheets and lockers on the bunks in the dormitories in order to eliminate the obstruction of the officer in the wicket. (Swanson, Pgs. 128-129).

#### (5) TRANSFER OF THE WOLVES

95. It is instructive to compare Superintendent Turner's practice in managing the transfer of aggressive assailant "wolves" who assaulted, extorted and sometimes raped more vulnerable inmates with that of his successors, Jones and Music.

96. Aggressive wolves appeared to be tolerated rather than transferred out of GCI; these assailants were allowed to recruit and prey on vulnerable inmates. (Swanson, Pgs. 51, 202). Turner articulated his helplessness in removing the wolves from damaging and violating other inmates. (Turner). Attentive review of the facts in considering two areas of evidence reveals Turner's deliberate indifference to his responsibility to protect more vulnerable inmates.

97. First, in his short stay at GCI interim Superintendent Jones (August 1, 1984 - October 15, 1984) shipped out six busloads of problem inmates. (Swanson, Pgs. 134, 202). In each

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23/ Durrance's rape lasted 35 to 40 minutes (Durrance, Pg. 461). Aldred's rape lasted 15 to 20 minutes (Aldred, Pg. 810).



of his first six months as Superintendent Music effectuated monthly five negative transfers (a rejection of an inmate assigned to GCI). (Ibid. Pg. 203). Additional inmates were "swapped" or exchanged by Music. (Ibid. Pg. 130). These efforts were not made by Turner. The unrebutted opinion of Turner's Chief Investigator, Peters, as to this matter is clear and revealing:

When asked how Superintendent Jones could do this [transferring known inmate assailants] when it seemed not to be possible for Superintendent Turner. Lieutenant Peters said perhaps you have to understand Superintendent Turner's background. He did not seem to see this kind of inmate as a problem in the institution.

I then asked if the problems are being understaffed, there was a chronic understaffing. would the high turnover have let Mr. Turner to dismiss problem staff. Lieutenant Peters said if you work with a chain gang for 30 years, you define problems with a different perspective.

.(Swanson. Pg. 134)

98. Second, a more empirical review of three known inmate "wolf-assailants" is equally informative. The first, Larry Pryor, had harassed plaintiff Martin Saunders and raped him in the bathroom in the Classification Building. See, infra. ¶¶151-153. Subsequently, Pryor also stabbed Plaintiff Eddie Cobb. See, infra. ¶177. The following chronology is revealing:

CHRONOLOGY CONCERNING LARRY PRYOR

| <u>DATE</u>      | <u>DOCUMENT</u> | <u>COMMENT</u>                                              |
|------------------|-----------------|-------------------------------------------------------------|
| January 21, 1983 | Parole Report   | Pryor "reflects" a serious pattern of assaultive behavior." |

March 1983

Pryor rapes  
Martin Saunders.  
(infra, ¶153).

November 15, 1983

Classification<sup>24/</sup>  
Team at GCI

"The team recommends transfer of the above mentioned inmate for security reasons. We have received information that inmate Pryor is actively involved in strong arm tactics . . . "[I]nmate Pryor assaulted inmate Kinner while taking these items.

December 29, 1983

Computer message  
from GCI

Cancelling scheduled transfer of Pryor from GCI to UCI.

January 27, 1984

Pryor stabs  
Eddie Cobb (infra, ¶177)

October 15, 1984

Music becomes  
Superintendent

November 10, 1984

Pryor transferred to FSP (incident of November 12, 1984 (less than one month after Music becomes Superintendent)

[Source: P. Ex. 26  
(Pryor Inmate File);  
(Swanson, Pgs. 157-159

99. The second assailant, Willie Dock, was transferred out of GCI on September 6, 1984 (P. Ex. 16, Tab B) (Swanson, Pg. 155), for "management and security reasons." This occurred

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24/ Turner testified that in regard to transfers, "I depended upon the classification team, that was their job." Turner obviously did not adhere to the classification teams' decision in the case of Larry Pryor.

only one month after interim Superintendent Ron Jones replaced R. V. Turner. Just several months earlier in March, 1984, Willie Dock gang-raped Ronald Durrance. See, infra. ¶¶132-133.

100. The third assailant, Levi Fisher, was involved in homosexual activities with young white males. (Peters). Lt. Peters testified that Fisher had assaulted other inmates as well and knew Fisher to be a wolf.<sup>25/</sup> Nonetheless, Fisher was left in the D-Dorm and raped Billie Joe Harper. See, infra. ¶162.

#### (6) THE PORNOGRAPHIC MOVIES

101. Hard-core pornographic video moves showing explicit acts of intercourse and anal penetration were shown on a regular basis at GCI. (Swanson, Pgs. 375-376) The movies were a trap. They were unsupervised. (Swanson, Pgs. 88-90). Sounds of inmates screaming and crying could be heard from the trailer. (Swanson, Pgs. 107-108). Plaintiff Bronson was forced to masturbate an assailant at knife point in the movie trailer. (Swanson, Pg. 77). (Bronson). See, infra. ¶144.

102. This Court has no hesitation in agreeing with Plaintiffs' experts that the showing of unsupervised pornographic movies at GCI is absolutely inappropriate and indeed would only serve to "maximize the possibility of

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25/ Peters also acknowledged that he knew that Dock and Bone, who raped Ronald Durrance, were wolves.

sexual and other violence." (Caddy, Pg. 1267).<sup>26/</sup>

4. WITHIN THE CONTROL OF TURNER:  
THE LIMITED FINANCE ISSUE

103. Defendant Turner has presented evidence which focuses upon the inherent limitations within which he performed his duties as Superintendent at GCI. These limitations relate to the fiscal realities in attempting to comply with various constitutional norms. Turner articulated these limitations in describing two overriding problems during his administration. (1) the lack of staff. and (2) the physical plant. The Court is sensitive to the inherent financial problems incurred by Turner, or for that matter any higher level correctional official occupying the position of Superintendent at GCI. Limited financial resources however is not dispositive of

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26/ While Defendants witness Inspector Brierton was apparently non-committal as to whether he would permit video pornographic movies to be viewed which show explicit scenes of vaginal and anal penetration (Brierton, Pgs. 101-103), he did not hesitate in opining that he would investigate a movie event if inmates were heard moaning, crying or screaming. (Brierton, Pgs. 103-104).

Finally, it is noteworthy that Defendants did not offer a scintilla of evidence refuting that both the pornographic movies occurred and also that certain inmates were trapped into the setting and apparently victimized in the movie trailer. See, Devitt and Blackmar, Federal Jury Practice & Instructions, 3rd Ed., Vol. 2, §72.17 (1977) ("If a party fails to produce evidence which is under his control and reasonably available to him and not reasonably available to the adverse party, then you may infer that the evidence is unfavorable to the party who could have produced it and did not.").

Turner's potential liability in this case. Rather, the issue to be considered is whether "full compliance [of constitutional norms] is beyond the control of a particular individual and that individual can demonstrate that he accomplished what could be accomplished within the limits of his authority". Williams v. Bennett, 689 F.2d. 1370, 1387-88 (11th Cir. 1982).

104. The Court has made inquiry into this issue and is convinced that events were not beyond the control of Mr. Turner and that even in light of the financial limitations and realities in which he operated, his conduct fell short of accepted and prudent correctional practices.

105. In support of this conclusion, the Court lists the following specific evidence which reflects practices which would cost little or no monies: which were either ignored or intentionally rejected by Turner, which were well within his administrative control, and which, when considered separately and in combination - the Court is convinced - would have minimized or eliminated the likelihood of rape and assaults of the various Plaintiffs at GCI.

- (i) Turner's failure, at no cost, to reprimand, discipline, or suspend staff officers who failed to carry out the most elementary assignments such as regularly patrolling the dormitories, particularly in the evening hours, which would have minimized the opportunity for rapes and assaults to have occurred. See, supra, ¶63.
- (ii) Turner's overall laxity, with his staff insofar as evidence of minimal or no control through reprimands, discipline or suspension which allowed correctional officers to function with impunity in the face of wholesale extortions.

free flow of contraband including weapons, drugs, and alcohol; and permitting sexual activities such as the pornographic video movies to occur thus creating a general lawless climate from which the natural and foreseeable consequences were wholesale inmate assaults and rapes. See, supra, ¶¶61, 101

- (iii) Turner's failure, at no cost, to control and direct his staff and inmate population to remove sheets, personal property, lockers draped on inmate bunks in order to provide a clear unobstructed view for staff to monitor prisoner activities within the dormitories. This failure led to an officers' obstructive view of the dormitory and showers where rapes of Plaintiffs occurred. See, supra, ¶61.
- (iv) Turner's rather shocking failure, at no cost, to promulgate and adhere to any meaningful process to investigate allegations of rapes and inmate assaults. This failure led directly to staff not reporting allegations of rape through the chain of command, supra, ¶63 (Aldred and Saunders); led to rapes never reported by line correctional officers; and further resulted in rapes not investigated with low cost procedures such as: (i) rectal examinations; (ii) polygraphic tests; (iii) psychiatric evaluations; and (iv) in depth interviews. See, supra, ¶82.

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

- (v) Turner's failure, at no cost, to enlist the investigative and prosecutorial assistance of other branches of government to at least minimally make an effort to investigate and prosecute rapists and assaultive inmates. Available investigative resources never properly utilized include the ((i)) Palm Beach County State Attorney; ((ii)) Office of the Inspector General of Florida; ((iii)) the Attorney General; ((iv)) the Federal Bureau of Investigation.<sup>27/</sup>

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27/ No attempt was even made to enlist the assistance of any federal investigative or prosecutorial body to address whether

(vi) Turner's failure unlike his successors to impose inmate controls, at no cost, on prisoner movement throughout the compound and dormitories. See, supra, ¶89.

(vii) Turner's failure, at no cost, to transfer known assailants out of GCI through requests to DOC; through informal "swaps" or by merely adhering to classification decisions. See, supra, ¶96. This failure allowed Larry Pryor to remain at GCI at the times that he raped Saunders and stabbed Cobb, see, supra, ¶98, and allowed Willie Dock to remain at GCI at the time he and others raped Durrance, see, supra, ¶99.

#### D. RAPE

##### 1. OVERVIEW

106. In an effort to appreciate and address general principles concerning the issue of rape in prisons and most specifically, the dynamics of rape which is in part the subject matter of this lawsuit, the Court will review and make general findings on this subject. These findings, in turn, will affect and further define other previous factual findings provided in this decision.

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(Footnote continued from previous page)

a federal investigation or prosecution could occur with regard to rapes and assaults against prison inmates at GCI. Title 18 U.S.C. §241 makes it a federal crime for "two or more persons to conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."

## 2. FINDINGS

### a. CORROBORATION: DID THE RAPES OCCUR?

107. The obvious fundamental issue which necessarily must be resolved is whether the rapes of Plaintiffs and other inmate witnesses occurred.

108. Beyond the Plaintiff-inmate testimony, which this Court has intentionally reviewed with great care and factual precision, two additional corroborative avenues support the inmate testimony. This corroboration comes in the form of extensive expert testimony of Plaintiffs' experts. First, Dr. Richard Swanson, a correctional expert trained in both psychology and law (P.Ex. 34)(Curriculum Vitae),(Swanson, Pg. 3-18), utilized a multi-variate approach (Ibid, Pg. 21) in drawing from essentially five independent sources of data to analyze Plaintiffs claims.<sup>28/</sup>

109. Second, Dr. Glenn R. Caddy, a clinical psychologist, (P.Ex. 35), (Caddy, Pg 1115-1128), with personal experience in treating rape victims and general research devoted to the issue of rape (Caddy, Pg. 1125), and also experienced with treating and investigating matters concerning prisoners. (Ibid, Pgs. 1125-1126), additionally corroborated the fact that in his

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28/ This data, reviewed at great length, (Swanson, Pgs. 21-244) provided: (1) internal archival documents generated from GCI (Ibid, Pgs. 21-29); (2) external documents generated from independent sources outside of GCI (Ibid, Pgs. 29-31); (3) interviews of Plaintiffs and inmate witnesses (Ibid, Pgs. 32-35); (4) interviews of correctional staff including Defendant Music (Ibid, Pgs. 35-36); and (5) a general tour of GCI. (Ibid).



opinion the Plaintiff rapes had indeed occurred.<sup>29/</sup> (Caddy, Pgs. 1241-1246) This conclusion was based upon: (1) the integrity of each of Plaintiffs' separate emotional responses in recounting the specific incidents of their rape experience. (Ibid, Pg. 1242)("Those men who have been raped present essentially classic profiles of the consequences of rape.") Dr. Caddy observed that in his professional opinion it would be unlikely, Ibid, ("I have no reason to believe") that the plaintiffs-witnesses could artificially construct the emotional state that he observed<sup>30/</sup>; (2) the inference of integrity from the commonality of the reporting of rapes to him which provided internal consistency to the varied circumstances supporting the conclusion that rapes occurred. (Ibid, Pgs. 1242-43); and (3) generally, see infra ¶198, that in the context of the accepted frequency of not reporting ("underreporting") of rape, coupled with the normal inmate disinclination to report.

110. Based upon these reasons, as well as the totality of facts discerned, not only from the Plaintiff-inmate testimony, infra, ¶¶122-195, but the other findings, this Court concludes

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29/ Dr. Caddy's investigation in this case included; (1) interviewing of the Plaintiffs and inmate witnesses (Caddy, Pg. 1130); (2) administering an analysis of specific psychological tests (Ibid); (3) reviewing various internal GCI - DOC documents relating to the various Plaintiffs and Inmates (Ibid, Pg. 1131); and (4) reviewing of related professional literature in the field of rape. (Ibid)

30/ The general symptomology, discussed in greater detail as to each inmate reflects a post traumatic anxiety disorder consistent with rape syndrome (Caddy, Pg. 1244).

that the rapes and assaults alleged by the various Plaintiffs and inmate witnesses indeed occurred.

b. UNDERREPORTING

111. Both of Plaintiffs' experts confirmed the generally accepted principal that rapes typically are underreported.<sup>31/</sup> (Swanson, Pgs. 150-154); (Caddy, Pg. 1243) (As much as 50% of female rape in the non-institutional context are not reported. Concludes that underreporting would be even higher within a prison.)

112. Dr. Caddy's view of even greater underreporting of rape within a prison is based upon the inmate disinclination to report because they not only have to deal with the degrading and humiliating consequences of reporting as do citizens in the outside world but also may "dramatically increase rather than

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31/ In the instant case, three of the five sexual assaults upon the plaintiffs were reported by the victims, but simply were not followed through on by the correctional officials. The two inmates who did not report their assaults, the raped Durrance and the abused Bronson, testified credibly as to their reasons for not reporting. The first, Durrance, acted out of fear and lack of confidence that it would serve any purpose (Durrance, Pgs. 465-471); the sentence completion test administered to Durrance reflected a fear of telling people what happened to him because of the great embarrassment and discomfort of it (Caddy, Pg. 1224). Bronson did not tell because he had been warned not to, which warning he took to heart (Bronson, Pg. 700); additionally, he was aware of illicit dealings between his assailants and guards (Ibid. Pgs. 692 and 701).

Non-party witness Larry Brown testified that he did not tell a guard immediately after the rape because his assailants remained awake watching him from adjacent bunks (Brown, Pg. 845), but did tell a black guard the next day (Ibid. Pg. 847), and four days after the incident confirmed to Lt. Minor the lieutenant's assertion that Brown had "had a line as long as the dorm." (Ibid. Pg. 851).

decrease the risks that they will be seen to be vulnerable people to be raped again." (Ibid. Pg. 1243) Simply, the terror often survives the initial assault - once an inmate is raped, he is marked as a victim for repeated sexual assaults for the remainder of his imprisonment.

113. In accepting these findings of underreporting of rape at GCI, this Court is not alone.<sup>32/</sup>

c. THE DEGRADATION OF RAPE

114. At the risk of finding the obvious, the Court deems it necessary, particularly in light of the requested damage award for the individual Plaintiffs and also in the context of Plaintiffs' request for general injunctive relief, to make findings as to the general nature of the violation of rape.

115. Defendants' own witness, Inspector Brierton expressed it plainly and with clarity (Brierton, Pg. 89). ("You have to look at rape as an assault"); Defendant Turner's opinion is

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32/ Courts have recognized the underreporting of rapes and sexual assaults within our prisons. See, e.g., United States v. Bailey, 444 U.S. 394, 426 n. 6 (1980)(Blackmun, J. dissenting) (If a kid who is raped tells the guards, "his life isn't worth a nickel"); Martin v. White, 742 F.2d 469, 473 (8th Cir. 1984)(Statistics on inmate assaults reflect "merely the tip of the iceberg as many violent assaults never find their way into the record books."); Doe v. District of Columbia, 701 F.2d 948, 966 (D.C. Cir. 1983)(Edwards, J., separate statement); State v. Green, 470 S.W. 2d 565, 569 (Mo. 1971)(dissenting opinion) cert. denied 405 U.S. 1073 (1972) (Life of inmate of Missouri Training Center for Men who reports a rape not worth "a plugged nickel".)

equally forceful: "Short of being killed I could think of nothing worse happening in prison." (Turner).

116. The Court accepts these opinions and shares its view that rape is one of the most degrading events, short of death, that can occur in prison. It follows that any institutional practices that can minimize its occurrence must be faithfully and consciously followed and observed by all prudent prison administrators. The Court finds that terror stemming from fear of sexual assault cannot be reconciled with the penological philosophy of the American prison system, which "emphasizes a balanced combination of deterrence, incapacitation, rehabilitation, and retribution."<sup>33/</sup> Society must not permit prisoners to inflict the sort of punishment on other prisoners that law and common decency forbid the State.

d. THE NATURE AND CONSEQUENCES  
OF RAPE ENDURED BY PLAINTIFFS  
AND INMATE WITNESSES

(1) AN ACT OF VIOLENCE

117. The proof reflected, and the Court so finds, that the universal opinion of all witnesses - of both parties - is that rapes in a prison setting such as GCI are acts of violence, as

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33/ Federal Prison System, U.S. Department of Justice, Long Range Plan 1981-1985 (1981), in Bureau of Persons and the U.S. Parole Commission.: Oversight Hearing Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice, 97th Cong. 1st Sess. 45 (1981)(quotation refers to the Federal Prison System.

opposed to sexual conduct.<sup>34/</sup> (Brierton, Pg. 89) ("An issue of dominance.") ("So the difficulty is when you begin to talk about homosexual rape, you have to look at the rape as an assault."); (Turner) ("An act of violence.") ("An act of violence even if victim has prior consensual relations with other inmates).

118. It follows and the Court finds that due to its very nature as acts of violence, the rapes that occurred are not isolated incidents of sexual conduct, but rather flow directly from the lawless prison conditions at GCI. Acts of inmate assault on inmates; inmate assaults by and upon correctional officers; an environment of free-flowing illegal activity involving extortion, possession of weapons, drugs, alcohol, and staff corruption; and the corollary failure to punish or prosecute inmate-staff violators so that such assailants' and aggressors' conduct was not deterred by the rule of law and threat of punishment, all form the background and climate which in turn, provide a background and climate that preordained homosexual rapes and other inmate assault occurred.

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34/ Literature and research in the field support these conclusions that rape, at least in this context, is an assaultive and violent act rather than an event emanating from sexual gratification. See, e.g., D. Lockwood, Prison Sexual Violence at 105-6 (1980); A. Scacco, Rape in Prison at 47 (1975); A. Groth, Men Who Rape - The Psychology of the Offender, 126-41 (1981) ("In this study of men who rape men, we found their dynamics to be similar to those of men who rape women. What is immediately apparent about the sexual assailants is that none of them had to rape for sexual gratification.").

(2) RACE

119. As described in detail, the named plaintiffs in this lawsuit, with the exception of Eddie Cobb, were all whites victimized by black assailants. See, supra. ¶¶122-190. See also, (Swanson, Pg. 287) (High percentages of blacks reported by Plaintiffs were the perpetrators.). Indeed there was no evidence presented by either party of any assaults by whites upon blacks; the pattern (other than Eddie Cobb) was consistently of black assailants assaulting whites (Swanson, Pg. 291).<sup>35/</sup>

120. While one writer has concluded that there are definite "socioracial overtones" in the act of sexual victimization, noting that black aggressors who make whites submit to their sexual advances often comment "now it is their [the blacks] turn,"<sup>36/</sup>; scholars, however, take pains to point out that "it is not black culture that is behind prison sexual aggression; rather, it is a criminal, male, youthful black subculture of violence." D. Lockwood, Prison Sexual Violence, at 105. Whatever the motive, the Court finds that any prisoner, especially one who is white and/or slightly-built, may find

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35/ See also, (Swanson, Pg. 59) ("Glades is hard time for white inmates"); (Ibid) ("He [Pryor] describes the pressure of white inmates. In order to pressure white inmates, blacks will sexually assault a white or threaten such assaults. Thereby they can gain money for protection."); (Ibid) ("Pryor reports sexual assaults were always black upon white. Never white upon black."); (Ibid, Pg. 63) ("He [Eddie Cobb] reported that Glades was easy time for blacks. He reported that the blacks were the aggressors and the whites were pursued.").

36/ A. Scacco, Rape in Prison. at 48

himself threatened or raped even during the first day of confinement at GCI.<sup>37/</sup>

(3) THE METHOD AND CIRCUMSTANCES  
OF PLAINTIFFS' RAPES

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

a. Anal as opposed to vaginal rape has the "potential in some respects to do more physiological damage than vaginal rape largely because the anal sphincter isn't able to expand in the same way the vagina is able to expand." (Caddy, Pg. 1254). Hence, the necessity, on a routine basis, for rectal examinations obviously is a standard process utilized in investigating anal rapes. This did not occur at GCI even though the clinic was equipped with rape kits by the Palm Beach County Sheriff's Office. (Peters and Turner).

b. The use of a weapon by the assailant with the attending threat of possible death if submission does not occur tends to increase the psychological trauma manifested from the rape.<sup>38/</sup> (Caddy, Pg. 1253-54)

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37/ Witness Larry Brown was raped the first evening he was transferred to GCI. See, infra. ¶190. David Aldred was raped the second day at GCI See, infra. ¶123.

38/ Each of the following Plaintiffs were raped at knife point: Saunders, infra. ¶153; Durrance, infra. ¶133; Aldred, infra. ¶123; and Harper, infra. ¶162.

c. Multiple or gang rapes by numerous assailants elevates the "overall sense of total lack of control" and "almost inevitably will escalate the level of trauma experienced." (Caddy, Pg. 1256).<sup>39/</sup>

d. Cross racial rape (i.e., black assailant - white victim), at least as to the research relating to women, tends to cause more trauma and violation than if the victim and assailant is one of the identical race. (Ibid., Pg. 1258).

e. Rape occurring in an institution such as GCI provides less positive support services than if the rape had occurred outside of an institution. (Caddy, Pg. 1259-61). This is exacerbated by the negative rather than positive consequences of the reporting of rape within a prison. (Swanson, Pg. 151) ("Admitting of a rape puts at risk the inmate being labeled as involved in homosexual activity which may in fact put him in more jeopardy of the reoccurrence of that event.").

#### E. THE INDIVIDUAL PLAINTIFF'S CASES

##### 1. DAVID ALDRED

122. David Aldred, 25, was found by Dr. Caddy to be suffering from post traumatic stress disorder as a result of

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39/ Each of the following Plaintiffs were gang raped: Saunders, infra, ¶153; Durrance, infra, ¶133; and Aldred, infra, ¶123.



his being raped by black inmates at GCI<sup>40/</sup> (Caddy, Pgs. 1185-1186). Aldred arrived at GCI July 20, 1984. Immediately upon leaving the van, he saw 150 to 200 mostly black inmates pressing up to the fence and arguing with each other: "He's mine." "No, Nigger, I saw him first." "No, he's mine." (Aldred, Pg. 893). Aldred received no orientation at GCI other than an assignment to B-Dorm (Ibid., Pg. 894).

123. The jeering at the fence presaged Aldred's being raped the second night he was at GCI. As he began to shower by himself, placing the washcloth to his face, he was hit aside the head, fell against the wall, and was thrown to the floor, face down. His arms were stretched out on either side. Someone grabbed Aldred by the hair and raised his head up to stick a knife beneath his throat, and told him in a voice that he recognized as belonging to a black: "If you open your mouth or holler, you will die." Aldred's legs were then spread and he was entered anally by either two or three inmates while the knife was held to his throat (Ibid., Pgs. 808-809). The episode

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40/ As with the other plaintiffs who were raped, Aldred was raped by blacks. Dr. Caddy testified that because these were cross-race rapes, they are even more substantial issues because they bear on the propensity of the victims to then come to believe that profound racism is entirely acceptable, which tends to carry with the victims for years afterwards, perhaps never to dissipate. Whatever problems that might create in an everyday world, it may be an even more difficult problem in prison (Caddy, Pg. 1246).

Significantly, Aldred described his arrival at GCI as being greeted by "a tidal wave of niggers fighting over who would have me" (Swanson, Pgs. 70-71). He characterized the camp in an interview as being "a black camp run by black inmates" and as being 80 per cent nigger."

took 15 to 20 minutes (Ibid. Pg. 810). Aldred experienced a burning, excruciating pain. He felt like he was being torn apart (Ibid. Pg. 816). When his attackers had finished with him, they told him not to say anything (Ibid. Pg. 810). Aldred was bleeding from the rectum (Ibid. Pg. 816). For a week, a sensation reminiscent of the rape returned each time Aldred had a bowel movement.<sup>41/</sup> (Ibid. Pg. 817).

124. After borrowing two knives and making an unsuccessful 45 minute foray throughout the dormitory looking and listening for any assailant who might be bragging about what had just happened, Aldred went to the dormitory officer and told him he had been raped (Ibid. Pg. 813). The dormitory officer told Aldred to return to his bunk, that the officer would take care of it. Although Aldred said he had been raped, the officer did not arrange for him to receive a medical or rectal examination (Ibid. Pgs. 812-813). After the shift changed at midnight, Aldred asked a new dormitory officer what was happening about Aldred's reported rape: the officer responded that he did not know what Aldred was talking about (Ibid. Pg. 814). The next day he reported his rape to a lieutenant. He said he did not know the identities of his assailants. He asked for protective custody. The lieutenant refused Aldred protective

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41/ Aldred's personality profile contains an elevated hypochondriasis scale. Dr. Caddy testified that this index is at least in part a reflection of the continued reporting that he experiences physical discomfort quite routinely in the rectal area if he has to strain to go to the bathroom, and even when he does not (Caddy, Pgs. 1173-1174).

confinement. He told Aldred words to the effect of, "You got to start being a man sometimes." (Ibid. Pg. 815).

125. Although there is no Superintendent's Monthly Report to Regional Director for July 1984 included among Defendants' Exhibit 14, the one of the preceding month reflect an end-of-June population of 851 inmates and showed that 219 of the 235 authorized and established positions were filled. Superintendent Turner reported: "Inmate and staff morale continues to be good." See, D.Ex. 14. It is unknown whether Aldred's rape was reported as a sex assault on the July report, although it appears unlikely. The Court has been furnished with no written report of the rape by either the Plaintiffs, whose counsel represented that all pertinent documents concerning Aldred were contained in Exhibit 13, nor Defendants.

126. Aldred was transferred to the Reception and Medical Center (RMC) for previously scheduled dental surgery (Ibid. Pg. 817). After the surgery was complete, Aldred said he spoke with a psychologist and told him the best that Aldred could what had happened at GCI, told him that Aldred needed help, and got the response that there was nothing the psychologist could do (Ibid. Pg. 819).<sup>42/</sup>

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42/ See also, P.Ex. 13, Section C (A medical chart, the second page of which contains an entry dated 7-25-84 that appears to read: "Patient feel (sic) afraid to [illegible] Glades C.I. He came for appointment with Dental Dpt. He request medication for his [illegible]..." Another entry of the same date reads: "Subject reported to the OPC attempting to elicit help in changing institutional assignment. He was referred to the Class. Dept.").

127. Informed he would have to return to Glades, Aldred slashed his wrist with a razor blade. Dr. Caddy, while discounting it as a suicidal gesture that was probably an attempt largely to get attention, characterized it nonetheless as indicating clearly a grave state of distress (Ibid. Pg. 1171).

128. Upon arrival back at GCI, Aldred immediately checked into protective confinement until he was transferred nine days later (Ibid. Pg. 820).

129. As a result of the violent sexual attack that Aldred experienced at Glades, and the general flavor of his emotional state at the time, Aldred reported to Dr. Caddy that today he really doesn't trust anybody. He engages in almost a hyper-vigilant activity much of the time, and there is both a paranoid and phobic quality to his responding with respect to black males. He is very, very angry and continues to carry that anger hardly below the surface today. He goes everywhere that he possibly can with a weapon, which he reports never having done before the rape (Caddy. Pg. 1172). Aldred's sense is one of shame, being violated, almost uncontrolled anger and rage, and it seems to be distributed somewhat generally to black males, not simply specifically to the people who raped him. He classically demonstrates the profile of a rape victim, without any opportunity to engage in a therapeutic process (Ibid. Pg. 1173).

## 2. RONALD LEE DURRANCE

130. Ronald Lee Durrance, a 27 year old father of two, had assumed by March, 1984, a role that Dr. Caddy characterized as "somewhat of a social worker" who informed transient inmates who passed through his dormitory at GCI of dangers of theft that they faced (Caddy, Pg. 1221). Durrance's adopted role at GCI appears especially benign when viewed against the backdrop of his earlier years in prison: he became a member of a gang, "The Omens," at DeSoto Correctional Institution in 1977 (Durrance, Pg. 518); he vended marijuana cigarettes at Florida State Prison in 1977, and was caught with 17 of them (Ibid, Pg. 519); he was disciplined at one work release program in 1981 for drinking and at another for lying to a staff member about his paychecks; he was convicted in 1983 of a burglary committed while on work release (D.Ex. 23). Notwithstanding such a past, however, Durrance is a strongly built man whose reporting to Dr. Caddy, as well as his prison file, revealed no difficulties at GCI prior to the incident of March 17, 1984 (Ibid). (Caddy, Pg. 1221).

131. Durrance reported to Caddy that he felt that the officers at Glades Correctional Institution seemed to have no control over the inmates or chose to exert none (Ibid). The institution at the time had filled 230 of its 235 authorized staff positions (D.Ex. 14, Superintendent's Monthly Reports to regional Director, Report for March, 1984). Defendant R.V. Turner had noted that: "Staff and inmate morale is good. No major problems to report." (Ibid).

132. On the night of March 17, 1984 (Durrance, Pg. 444), two black inmates known to Durrance as Willie Dock and Bull told him to cease warning the transients (Ibid. Pg. 446). Later that night another black inmate, J.R., said he wanted to speak with Durrance. Durrance walked with J.R. to his bunk, the passageway next to which was obscured by having a blanket hung down from the top bunk. When Durrance stepped between the bunks to talk, Bull grabbed him by the neck (Ibid. Pg. 451). Willie Dock was there, too, with a knife. So was another inmate called Bone, also with a knife, and a fifth inmate, Bean (Ibid. Pg. 452). Willie Dock said, "Pussy cracker, if you holler, I'll cut you." He placed the knife to Durrance's neck and Durrance was dragged from between the bunks and into the shower (Ibid. Pg. 453).

133. In the shower, Durrance was thrown to the floor. As Bean knelt on Durrance's left shoulder and J.R. held a knife so that Durrance could see it, the others snatched off Durrance's blue prison pants and his underwear (Ibid. Pg. 456). They wrapped Durrance's pants around his neck and face (Ibid. Pg. 458). The first of the inmates to rape Durrance entered him forcefully through the rectum. Durrance wanted to scream, both because of the pain and because he could not believe what was happening (Ibid. Pg. 459). He was penetrated three times (Ibid. Pg. at 460). The ordeal lasted 35 to 40 minutes. When the rape was over, J.R. told Durrance, "Don't go to the wicket, pussy cracker. If you go to the wicket, you're through." (Ibid. Pg. 461). Durrance put his underwear back on, though

not his pants, stood in the shower and cried (Ibid. Pg. 462). Although he flirted with the idea of revenge, Durrance calculated that he could not fight all of his attackers: he climbed back into his bunk, crying (Ibid. Pg. at 464). He was afraid to tell the dormitory officer about the rape because he felt that the dormitory officer would not do anything and that the other inmates would have heard Durrance complaining about which inmates had raped him. He felt that he would have to name names to get into protective custody because of what he supposed was the "good cause" requirement (Ibid. Pg. 465). He lay awake all night (Ibid. Pg. 467). He watched his attackers lay awake on their bunks, smoking marijuana and drinking a prison-made wine called "buck" (Ibid. Pg. 468).

134. When the shift change came, Officer Dixon came on at midnight (Ibid. Pg. 478). Durrance was afraid to tell Dixon because he had seen money passed between inmates and Dixon and had seen Officer Dixon deliver a pint of whiskey to an inmate (Ibid. Pg. 471).

135. In the morning, Durrance went to his job at the auto paint and body shop. His rectum was in pain, a burning sensation. He did not have a bowel movement until the next day. Notwithstanding the pain, Durrance was too embarrassed to seek medical attention (Ibid. Pg. at 472).<sup>43/</sup>

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43/ Heightened embarrassment about the rape still showed through in a sentence completion test administered by Dr. Caddy (Caddy, Pg. 1224).

The pain, which Durrance described to Dr. Caddy as lasting several weeks, also continues in the form of lower stomach discomfort (Ibid, Pg. 1224).

136. Durrance did not return to work that afternoon. Instead, he went to see a lieutenant, but still could not bring himself to admit he had been raped. He was afraid that if he told, other inmates would find out (Ibid, Pg. 475). When he sought protective custody without saying why, a Lt. Slater told him, "The Confinement is full. I'm not putting you in confinement, and, look, go out, be a man; go out and learn to be a man." (Ibid, Pg. 476). Durrance ceased reporting to his job assignment because he knew that if he did not go to work, eventually he would be locked up in confinement and thereby be off the compound (Ibid, Pg. 477).

137. One of Durrance's attackers, Bone, he thinks, approached Durrance several days later and told him that he would either have to choose to be someone's sexual partner or to pay Bone protection money to avoid being raped again. Durrance stalled, continuing to fail to report for his work assignment (Ibid, Pg. 478). The unexplained refusal to work resulted in Durrance's receiving a disciplinary report and being locked up in administrative confinement (Ibid, Pg. 479). Although it was Durrance's first disciplinary report for refusing to work, the official who reviewed it did not want to hear any explanations (Ibid, Pg. 480). At the expiration of his 15 day confinement sentence (Ibid, Pg. 481), Durrance was assigned to a bunk in D. dormitory, about which he had heard



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that there was a lot of pressure there to engage in homosexual acts; he refused to go and was placed back in confinement (Ibid, Pg. 482).<sup>44/</sup>

138. While awaiting a hearing on his refusal to go to D dorm, Durrance told acting Major Barrett that he had a problem about owing another inmate money and needed to be locked up in protective confinement. Barrett told him to write out a statement, which he did (Ibid, Pg. 484). Notwithstanding the explanation, Durrance lost 45 days gain time for refusing to go to D-Dorm. See, D.Ex. 23 (Disciplinary Report reflecting hearing April 13, 1984).<sup>45/</sup>

139. Durrance testified that he entered a statement that "I owed out a great deal of money, and I also entered the names of Willie Dock and Bull as the two people I owed, in hopes that maybe by me saying that I owed them, and it was felt that I was in danger, that they may be reprimanded somehow by me doing that."<sup>46/</sup>

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44/ This behavior is consistent with Dr. Caddy's finding that, other than the fear that his son will find out about the rape, Durrance's greatest fear is being raped again (Caddy, Pg. 1225).

45/ Durrance additionally lost 20 more days gain time that he would have acquired if protective custody inmates were allowed to work (Durrance, Pg. 486).

46/ Among the documents submitted from plaintiff, Durrance's file as part of Defendants' Composite Exhibit 23, was a handwritten statement dated 4/16/84 and purportedly signed by Ronald Durrance, which read:

(Footnote continued to next page)

140. Durrance never was raped prior to this incident, nor afterward. Nor has he engaged in any homosexual activity before or since (Ibid. Pg. 487). Nonetheless, and notwithstanding his initial concealment of the rape from prison officials, word of the rape circulated among prisoners and followed him to Polk Correction Institution, to which he was

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(Footnote continued from previous page)

Dear Sir:

I'm requesting protective custody because I owe out \$60.00 that I have no way of paying. I would rather not give out names, but I have no other choice (sic). Gator in [illegible] dorm Mark in C-dorm and a guy called Willie in B-Dorm. My life [illegible] in danger.

Thank you.

Also in the file submitted by the Defendants is a Report of Administrative Confinement addressing the initial refusal to go to work. Under the section on Classification Team Review and Action, the report reads as follows:

Team #1 review (sic) inmate at approximately 7:00 a.m. on 4/3/84. Inmate Durrance advises that he owed inmate Stump some money while at U.C.I. three or more years ago and was transferred without paying. When Durrance arrived at G.C.I. he was met by Stump demanding payment. Durrance did not have the money (\$40.00). Stump was released and transferred money to Willie Docks. (Sic) Durrance borrowed money from Mark to pay Dock. Inmate is now threatening (sic) to collect with interest. Durrance expects to get an I.R.S. return to pay debt but want (sic) to go to Polk C.I.

Team #1 does not feel this inmate is in fear but rather is engaging in manipulation to get a transfer. Team concurs (sic) with action taken: inmate is to remain in confinement for refusing to work until case is resolved.

transferred in July, 1984 (Ibid). An inmate known as "Black" approached Durrance (Ibid Pg. 488) and told him that Durrance would either pay protection money to Black or Black was told to tell other inmates at Polk that Durrance was a "fuck boy" at GCI (Ibid, Pg. 489). On November 1, 1984, Durrance checked back into protective confinement at Polk, once again citing money owed as the reason (Ibid, Pgs. 490-491).

141. Durrance was transferred to Hendry Correctional Institution where, three weeks after his arrival, Bone, one of the assailants, approached Durrance and told Durrance that he was either going to have to pay Bone money or be somebody's "boy." Once again, Durrance checked into protective confinement (Ibid, Pg. 501). He said there was a contract on his life that had been let at Florida State Prison (Ibid, Pg. 502).

142. September 27, 1985, Durrance was transferred - back to Glades Correction Institution (Ibid). He immediately requested protective custody, which he did not get until being required to go to the mess hall for lunch (Ibid, Pg. 503). At this point, he finally told a correction officer at GCI, Lt. Minor, that he previously had been raped (Ibid, Pg. 505). Lt. Minor memorialized the complaint in a Report of Administrative Confinement dated September 27, 1985 (D.Ex. 23). He remained in protective custody at GCI until being transferred in November to Dade Correctional Institution (Durrance, Pg. 505).

143. The residue of the rape for Durrance, in addition to the gain time he has lost, created an adjustment disorder with

mixed emotional features (Caddy, Pg 1225). Emotionally , he reports being essentially closed and more reserved than before. He no longer seeks out people to be friendly, as he did before. He watches everybody and trusts no one. His greatest reported fear is telling his son about the rape (Ibid. Pg. 1225).

### 3. STEVE HERMAN BRONSON, JR.

144. Steve Bronson, a white, bisexual transvestite, who answers also to "Nancy Sue," arrived at GCI in November, 1981 (Bronson, Pg. 689) with a Department of Corrections file rife with reference to his sexual preference and affectation. See, Plaintiffs' Post Trial Submission of Excerpts from Plaintiffs' Records. Subsequent to his arrival, he encountered a black inmate gang leader named Mack, who trafficked in drugs, protection, gambling, alcohol, and homosexual prostitution. He met Mack while the two of them were in a trailer with others watching a video cassette recording that depicted vaginal and anal intercourse. The movies were shown on weekends as part of the prison recreation program (Bronson, Pg. 691). Mack pushed a knife in Bronson's side and forced him to masturbate Mack (Ibid., Pg. 692). Despite Bronson's previous consensual relations with other males, he objected to being forced to masturbate Mack (Ibid., Pg. 694). Mack initially demanded that Bronson be one of his "girls," but settled for Bronson's agreement to pay him protection money and serve as a lookout during both card games and sexual encounters between the two other "girls" and guards (Ibid., Pg. 692). Bronson thrice

observed guards being fellated by the homosexual prostitutes, once in the movie trailer, once in a dorm and once in the equipment shack on the recreation field (Ibid, Pg. 693). Another of Bronson's task for Mack was to masturbate inmates who paid Mack (Ibid, Pg. 696). To accentuate his femininity for this assignment, Bronson would dress in a tee-shirt rolled up above his midriff, shorts, and sandals (Ibid, Pg. 697). The only time he was required to wear his regulation uniform was to go to either the visiting park or the chapel (Ibid, Pg. 697) notwithstanding that he had once sued while incarcerated at another Florida prison to set aside a policy against his wearing women's clothes (Ibid, Pg. 721).

145. In late June, 1982, one of Mack's two male homosexual prostitutes was transferred out and Mack demanded that Bronson take his place. After Bronson refused, he was waylaid by two men in Mack's company as he was walking across the recreation field at 9 a.m. or so on a sunny Saturday morning. A rag was stuffed in his mouth, his shorts and underwear were removed and the handle of a baseball bat was shoved up his rectum, pushed a couple of times and pulled out. Bronson felt as if his rectum was being torn. When the bat was pulled out it was very painful. Bronson tried to scream, but could not. Mack told Bronson that the baseball bat was only a sample of what he would do if Bronson did not become one of his prostitutes. The rectal bleeding continued for three days (Ibid, Pgs. 698-699).

146. Bronson did not go to the clinic. He had been warned that he could be killed if he reported the incident to

anybody. He believed that threat whole heartedly (Ibid. Pg. 700). He had witnessed guards giving money to inmates, Mack's buying alcohol from guards and Mack's buying drugs from guards (Ibid. Pg. 701). The drugs sold to Mack by the guards included marijuana, which Bronson recognized by seeing it as it was packaged for resale (Ibid. Pg. 702) and a white, granular substance with lumps that Mack said was cocaine and that Mack sold to other inmates when they asked for cocaine (Ibid. Pg. 703). Bronson told Dr. Swanson that black inmates ran GCI, (Swanson, Pg. 77). He also told Swanson that the guards seemed scared of inmates (Ibid. Pg. 78). He told Swanson he was scared to ask for protective confinement (Ibid. Pg. 79). He did not have the sense that there was anybody that he could go to (Caddy, Pg. 1191). When he finally did check in, he told Swanson he found it to be extremely punitive (Swanson, Pg. 81).

147. Bronson remained quiet about the incident. To avoid either a repeat or the alternative of forced prostitution, he checked into protective confinement immediately after a July 4, 1982 visit from his wife and daughter. Rather than inform on Mack, he used the ruse of family problems instilling in him an urge to escape (Ibid. Pg. 710). He found his one-bed protective custody cell with two other inmates already there (Ibid. Pg. 711). The electric light was not working. The only times he was allowed outside was for three, three to five minute showers a week. There was no access to the law library. There were no canteen privileges. There was no smoking. The food was cold and in smaller portions than given

to the inmates in population. The screens were either non-existent or had holes (Ibid, Pg. 712). Mack would come by the windows and tell Bronson to come out or he would send somebody in to harm Bronson (Ibid, Pg. 714). Superintendent Turner, however, never came back to the confinement area during the period that Bronson was there, from July 4, 1982 through August 25, 1982 (Ibid, Pg. 715).

148. Bronson was one of 80 persons who entered administrative confinement in July, 1982: the administrative confinement area had 34 inmates at the beginning of the month, 24 at the end. In June, when the baseball bat incident occurred, it appears as if 241 of the 270 authorized and established staff positions were filled.<sup>47/</sup>

149. The psychological experiences that Bronson had at GCI simply represented a further extension of his increased sensitivity, his feelings of nervousness and his feelings of powerlessness (Caddy, Pg. 1190). But while Dr. Caddy acknowledged that it would have been equally quite inappropriate to try to tease out the specific elements that relate solely to the incidents surrounding the events at GCI, he did feel it important to observe that at GCI Bronson felt far more vulnerable than at several of the other prisons in

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47/ The monthly report for June appears to have a typographical error in its recitation of "231" jobs being filled: this becomes obvious when the figures for May (243) and July (247) are viewed against the minor turnover during the three-month period. In May, Turner had reported that the "high vacancy rate is down." (D.Ex. 14).

which he had been placed, largely because he perceived the facility to be somewhat more lawless (Ibid. Pg. 1191). Dr. Caddy's diagnosis of Bronson was as suffering an adjustment disorder with mixed emotional features, together with an atypical personality disorder and a sexual identification disorder; he could not attribute specifically what part of the disorder is a direct function of the incident at Glades (Ibid. Pg. 1193).

#### 4. MARTIN SAUNDERS

150. Martin Saunders was convicted of sexual battery, for which he got a 35 year sentence; possession of marijuana, for which he got a concurrent 5 year sentence; and aggravated assault, for which he received a consecutive 5 years, for a total of 40 years (Saunders, Pg. 533). He is 5 feet, 7 inches tall and has an obese buttocks, a physiognomy that both he and Plaintiff Anthony LaMarca, who shares it, say is attractive to imprisoned homosexuals (Ibid. Pg. 537). (LaMarca, Pgs. 948-949). How attractive Saunders was to the black inmates at GCI became uncomfortably clear to him as he witnessed a "great multitude" queue up near the area where the prison van unloaded him at GCI in February, 1983; he recalls feeling like being in a meat market (Saunders, Pg. 536). Although he earlier had been derided as a homosexual by one inmate shortly after having arrived at DeSoto Correctional Institution, he attacked that inmate to rid himself of that label (Ibid. Pg. 534).

151. Although he received no orientation from the prison administration at GCI (Ibid. Pg. 539), he received an



aggressive orientation the evening of his arrival in A-Dormitory; blacks approached this young white inmate offering friendship that he felt, based on the time he had spent in prison already, was a prelude to a homosexual advance (Ibid, Pg. 540). Two in particular, James Roper and Larry Pryor, were persistent in their advances and struck Saunders wherein he rebuffed them (Ibid, Pg. 541). Once, following a visit with his family, Saunders returned to the dorm where Pryor, armed with a knife, demanded that Saunders give Pryor the \$5.00 his parents had just given him during the visit. Saunders complied then, as well as on a second occasion when Pryor demanded money (Ibid, Pgs. 546-547). On another occasion, Pryor and Roper "creeped" up behind Saunders as he watched television and each punched him on a side of his head (Ibid, Pgs. 549-550). They took his property and threw it in the shower (Ibid). He knew it was Roper and Pryor because he spotted a towel of his hanging from one of their bunks (Ibid, Pg. 551).

152. Saunders complained to a number of correctional officials. The officers took the approach that Saunders should be a man, should deal with his problems and should hit Pryor and Roper so that would leave him alone (Ibid, Pg. 548). According to Saunders' unrebutted testimony, one official, William Knight, Saunders' classification officer, took the opportunity of Saunders' first visit to press himself against Saunders from behind and to run his hands down Saunders' arms. Saunders interpreted this as a homosexual advance (Ibid, Pg. 544).

153. On or about March, 1983, Saunders was using a small bathroom in the classification building. He was sitting on the commode with his trousers down when Roper and Pryor entered the room (Ibid, Pg. 551). The two told Saunders to keep his pants down (Ibid, Pgs. 551-552), and that they were going to "get theirs." It is a very narrow bathroom and Saunders was directed to stand over the commode, facing the wall.<sup>48/</sup> As Roper lubricated his penis with Vaseline, Saunders attempted to to bolt from the room, but was stopped and told that he would be killed if he tried again to escape (Ibid, Pg. 552). Roper entered Saunders. Saunders could tell that Roper ejaculated because of the groans he made. When Roper finished, Pryor followed (Ibid, Pg. 553). Pryor also ejaculated inside Saunders. The incident took about 25 minutes to a half hour. The two of them left the bathroom laughing about how, "That's some good pussy." (Ibid, Pg. 554).

154. After sitting on the recreation field and crying alone for about an hour, Saunders angrily went in search of his

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48/ Lt. Leo Peters, the institutional investigator, testified that the room in which Saunders said he was raped was so small that Peters bumped his head against the opposite wall one day recently while sitting on the commode. Dr. Caddy noted that when Saunders talked about being raped, he did not talk about being thrown to the floor, as had the others (Caddy, Pgs. 1311-1312). Saunders described his position during the penetration as "looking over the toilet, my hands on the wall," (Saunders, Pg. 553). The rapists, then, could have stood facing the commode much as a man would stand in front of it while urinating. In short, there is nothing in any of the testimony that is inconsistent with the conclusion that Martin Saunders was anally raped in the bathroom.

rapists. When he found Pryor he began a fight. After the fight was broken up, Saunders, according to his unrebutted testimony, told Lt. Pipta, that Pryor and Roper had raped Saunders (Ibid. Pg. 556). Saunders got the impression that Lt. Pipta did not believe him. Although Lt. Pipta had Saunders taken to the clinic for an examination concerning the fight, there was no rectal examination done (Ibid. Pg. 557). The officer who was escorting Saunders said, "that's not what we're here for." Saunders was put into administrative confinement. In neither Saunders' file, pertinent excerpts of which are include in P.Ex. 29, nor in Pryor's file, pertinent excerpts of which are included in P.Ex. 26, is there any record of either the report of the rape, of the fight, of the physical examination of Saunders, or of Saunders' subsequent confinement. Saunders' unrebutted testimony is that Pryor and Roper were not confined concerning the rape. There were no disciplinary reports concerning the fight (Ibid. Pg. 561). Lt. Leo Peters, the institutional investigator, testified that no one informed him of the alleged rape nor instructed him to investigate it.

155. Saunders, who reported experiencing a "very mushy" stool during his first bowel movement after the rape (Ibid. Pg. 559), was jailed as the third person in a two person cell. The cell was roach infested and there was a thick mildew on the walls. Saunders was there for three to four days (Ibid. Pg. 561).

156. Upon his release from confinement, Saunders acquired a transfer to C-Dorm by giving up a prestigious inmate job as a

steward in the staff dining room (Ibid., Pg. 564) and taking a job cutting sugar cane (Ibid., Pg. 565). In C-Dorm, however, he encountered an inmate known as Charles Street, who harassed Saunders sexually and kicked him in the groin. See, P.Ex. 29, Section B. Street slept next to Saunders and told Saunders that he was going to "get" him one night. Saunders was fearful that Street would succeed in any attack because his bunk was obscured from the view of the dormitory officer (Ibid., Pg. 569) by towels that would be draped from the top bunk to form a sort of tent (Ibid., Pg. 570). Saunders felt someone who was thinking about killing him at night would feel that they could get away with it and, therefore, would be further motivated to harm him (Ibid., Pg. 570). The only way Saunders could see the guard was to hang his head over the bed perimeter (Ibid., Pg. 571). If Saunders were in his bed, the guard could not see him (Ibid., Pg. 572).

157. Saunders' fear of death upsets him greatly (Caddy, Pg. 1207), and he testified that his nightmares about death always involve a stabbing (Saunders, Pg. 577). Notwithstanding Saunders' being characterized by the Plaintiffs' own expert, Dr. Glenn R. Caddy, Ph.D., as being not only one of the most intelligent, but also most manipulative of the Plaintiffs (Caddy, Pg. 1198), Caddy testified that Saunders reports some of the common experiences of people who have experienced rape: an immediate sense of worthlessness but with extreme anger; a fear that in some respects he was trash for having allowed this to happen (Ibid., Pg. 1199). Dr. Caddy, whose experience in

dealing with manipulative personalities include numerous clinical encounters with alcoholics and drug users, nonetheless placed credence in Saunders' testimony that he had been raped and felt that Saunders would have been unable to consciously mimic the affect of a rape victim (Ibid. Pg. 1313). Dr. Caddy's diagnosis of Saunders is that of post traumatic stress disorder (Ibid. Pg. 1207).

158. During his imprisonment at GCI, Saunders told his mother repeatedly that he was in fear of his life (Sally Saunders, Pg. 658). Mrs. Saunders attempted numerous times during Saunders' incarceration at GCI to telephone Superintendent Turner. See, P.Ex. 12, Section A. She was only able to get through to him about three time, however (Sally Saunders, Pg. 669). During one of those conversations, subsequent to Saunders having joined as a Plaintiff in this action, Turner laughed and said to Mrs. Saunders, "Do you know how many people have tried to sue me?" (Ibid. Pg. 660).

159. Saunders checked back into protective confinement November 10, 1983. See, P.Ex. 29, Section B. At the time, 220 of the 233 authorized and established staff positions at GCI were filled; Superintendent Turner wrote that "[s]taff & inmate moral (sic) appears high. Gov. Graham's visit was an important occasion. With overall unemployment down we are beginning to again experience significant staff vacancies." Saunders was one of 76 persons who went into either administrative or protective confinement during the month. His assault by Street, however, does not appear to have been

reported as either an Unarmed Assault Where Person Assaulted is Injured, or as an Assault to Commit a Sex Act, no incidents having been reported in either category on the Superintendent's Monthly Report to Regional Director. See, D.Ex. 14.

160. Saunders found the conditions the same when he checked into protective confinement as those that existed when he was in confinement following the fight with Pryor (Saunders, Pg. 574). Notwithstanding the strictures of §33-3.082(4), Florida Administrative Code, and GCI's Institutional Operating Procedure 83-40, which require that treatment of inmates in Protective Confinement be "as near that of the general population as assignment to protective confinement as the housing area will permit" (P.Ex. 3, Flap F 2), there was no literature, no canteen; in short, no privileges (Saunders, Pg. 574). Saunders never saw Superintendent Turner during Saunders' stay in protective confinement (Ibid, Pg. 576). That stay ended when Saunders' was transferred to Avon Park Correctional Institution - at the order of a prison inspector (Ibid, Pg. 576).

##### 5. BILLY JOE HARPER

161. Billy Joe Harper is an unusually boyish-appearing 25 year-old inmate serving a 15-year sentence for a sexual battery committed in 1985 following an earlier conviction for armed robbery (Harper, Pg. 732). His incarceration within the Department of Corrections has been characterized by incidents in which contemporaneous reports reflect that he had complained of sexual assaults and/or harassment and had requested

protective confinement for those and other reasons.<sup>49/</sup> The other assaults of which he is quoted as complaining all occurred prior to Harper's arrival at GCI on December 31, 1981.

162. About two weeks after his arrival, Harper was raped at Knifepoint in his top bunk in D-Dormitory about 2:00 a.m. by a man whom he identified as inmate Levy Fisher (Harper, Pg. 736). Fisher held a knife to Harper's throat and told him that if he made a sound, Fisher would cut Harper's throat (Ibid, Pg. 738). Fisher pulled off Harper's underwear and lifted Harper's leg so he could enter him anally (Ibid, Pg. 739). Harper could not see the correctional officer who was supposed to be on duty (Ibid). After Fisher was finished, he told Harper that if Harper told anyone, Fisher would kill him (Ibid, Pg. 740).

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49/ According to documents contained within D.Ex. 15, Harper sought an obtained protective custody at Brevard Correctional Institution January 12, 1980 because of the presence there of a jail rapist against whom he claimed to have testified in Leon County, Florida, Circuit Court. He told a correctional official at Avon Park Correctional Institutional March 1, 1981, that three black inmates raped him in the shower there February 28, 1981. Harper now does not remember making this allegation (Harper, Pg. 752). There is a notation on a "Page 8" of what appears to be a document from Baker Correctional Institution in which Harper is quoted under the "comments" section as having complained of being raped in the Alachua County Jail in Gainesville by someone who was then at Baker. Harper testified that he never made that statement (Harper, Pg. 750). Page 3 of what appears to be a document from Tomoka Correctional Institution prepared sometime subsequent to his arrival date there of September 13, 1984 alludes to a "prior statement" in which harper acknowledged "sexually molesting" his own sister. A psychiatric report dated January 31, 1981 at Reception and Medical Center Hospital also noted that, "[a]ccording to his records, the patient practiced incest with his half sisters."

Other documents within Defendants' Exhibit 15 also recite that Harper has sought protective custody on several other occasions on the grounds of owing money and having been identified as a witness against other inmates.

163. Harper testified that he checked into protective custody the morning after the rape, telling officials that he wished to do so. He said two other inmates checked in with him. One of the inmates was Larry Turly. Larry Turley told the officers that they were checking in to get away from Fisher (Ibid. Pg. 741).

164. About three days after the three inmates checked in, Superintendent Turner called them to the office of the confinement area (Ibid. Pg. 745). Former inmate Greg Zatler also was called to the meeting (Ibid. Pg. 746). Zatler testified that "Superintendent Turner asked us why we were in confinement, and we told them because of Fisher." Turner replied, according to Zatler, "No, you couldn't be in here because of this inmate. This is one of our best inmates." (Zatler, Pg. 795). Harper recalls telling Turner that Fisher had raped him, to which Turner replied that Harper was lying and could rot in his cell (Harper, Pg. 746). Harper could not understand why Turner "wasn't there to get on Levy Fisher, he was there to get on us." (Ibid. Pg. 747).

165. No documentary evidence has been introduced to establish that either Harper or Zatler was in protective confinement in January 1982. However, corroborative of their joint testimony that they were concurrently in protective custody are letters written February 21 and 26, Zatler to Carl Kirkland, a prison inspector, concerning property that he had lost upon checking into protective custody February 11, 1982 (P.Ex. 5). Among the papers submitted by Defendants as



Composite Exhibit 14 (Page 34) is a Department of Corrections Daily Record of Segregation showing that Billy Joe Harper was in "P.C." March 1, 1982 through March 8, 1982. Page 34 of Defendants' Exhibit 14, is a Disciplinary Committee Visit sheet that reflects a visit to Harper March 2, 1985 by a committee that included "Floyd, Turner, Arline" and resulted in a notation: "Continue A/C -- Attitude poor."

166. Harper remained in protective custody until another inmate, Andrew Jackson, enticed him back on the compound with the proposition, voiced through a window of the confinement area, that Jackson would protect Harper on the compound for \$10 a week (Ibid, Pg. 744). Lt. Leo Peters testified that he later in 1982 sought out Harper as a witness against Jackson in a criminal prosecution for extortion. See also, P.Ex. 20. Section B.

167. Dr. Caddy found Harper to be significantly depressed and exceedingly angry (Caddy, Pg. 1229). He diagnosed him as suffering from an adjustment disorder with mixed emotional features (Ibid). Knowledge of the earlier purported sexual relations would not have changed the basic diagnosis as to Harper. While such knowledge would influence Dr. Caddy's judgment about the possible apportionment, it would additionally raise the question of preexistent elements that were exacerbated at Glades rather than provoked solely at Glades. Harper's additional, non-rape history did not bear on the legitimacy or veracity that Harper offered with respect to the matter of rape, according to Dr. Caddy. However, it did or

could bear on the issue of the extent to which Harper now - in retrospect - seeks to focus much of his experiences in protective custody on the question of rape as opposed to other dynamics that also may have been operating within the man (Ibid. Pg. 1291).

168. As to the possibility of Harper's having been raped before Glades, assuming that rape is a statistically remote occurrence, the issue presented by the second rape is not simply an additive probability, but potentially represents even a more substantial issue because of the credibility question that many others would attribute to the individual, as well as the very special problems that the individual, himself, would have faced in the everyday world. Dr. Caddy's view is that a person who has been raped elsewhere, and then is raped at Glades, is in more need of assistance than he would have been if he had been raped on one occasion (Ibid. Pgs. 1301-1302).

#### 6. EDWIN JOHNSON

169. Edwin Johnson arrived at GCI in February 1983 (Johnson, Pg. 1068). About the fourth week after arriving, Johnson received a visit from his mother. Sensing a large crowd of black inmates who he feared might attempt to rob him since there was only one guard patrolling the compound (Ibid. Pg. 1070) Johnson took a detour back to his dormitory, but was accosted 15 feet from the door by a black inmate with a knife who told him that he, Johnson, had one week to either "find you a daddy" or go into protective confinement (Ibid. Pg. 1078).

170. When Johnson told his classification officer about the ultimatum, he was told to either go into protective confinement

or get a pipe or a knife and fight back. Johnson did not want to fight back because he was nearing parole and was attempting to overcome an earlier eight-year extension he had earned (Ibid, Pg. 1079). Johnson chose to check into protective confinement (Ibid, Pg. 1084). He shared a one-man protective custody cell with two other men (Ibid, Pg. 1085). There were no privileges for inmates in protective custody (Ibid, Pg. 1088). During this time there was no gymnasium access for protective confinement inmates (Ibid, Pg. 1089). There were no programs, such as education, that could have assisted Johnson toward obtaining a parole (Ibid, Pg. 1088). Thus, on the advice of the lawyer representing him in connection with the parole, he checked out of confinement after two and one-half months (Ibid).

171. Johnson stayed out of confinement for about two weeks until he was bloodied in a fight with inmates who stole some of his property; the fight occasioned his being taken to be interviewed by Lt. Lawson (Ibid, Pg. 1094). Johnson declined to name his attackers because he was afraid to be a "snitch" (Ibid, Pg. 1095). The next day, one of his attackers, who stood at about 6 feet, one inch tall, and weighed 225 pounds again attacked Johnson, who is 5 feet 11 inches tall and weighs 140 (Ibid, Pg. 1096). After that fight, Johnson sought a dormitory change from Lt. Lawson, but was denied it. He then checked back into protective confinement for three days (Ibid, Pg. 1097).

171a. By this point, Johnson had acquired a reputation as a weakling because he had twice checked into protective confinement (Ibid, Pg. 1099). Five inmates in the dormitory to which he was assigned put a blanket over him and beat him. Johnson checked back into protective confinement the next day (Ibid, Pg. 1100). The conditions and lack of privileges were the same, except that the confinement inmates were allowed to go to the gym (Ibid, Pg. 1101). The gymnasium party was composed of both administrative and protective confinement inmates (Ibid, Pg. 1102). As they returned to the confinement area, one of the administrative confinement inmates hit Johnson in the head with a metal stool (Ibid, Pg. 881).<sup>50/</sup> Johnson received five stitches and was hospitalized for two weeks. He returned to the protective confinement cells where he waited until the prison inspector ordered Johnson and Plaintiff Saunders transferred.

172. The exact dates of Johnson's presence in protective confinement or within the hospital are impossible to pinpoint. No incident reports concerning his alleged injuries, no administrative confinement reports and no medical records have been presented to the Court, notwithstanding Plaintiffs' counsels' having subpoenaed all of Johnson's records and representing to the Court that they had furnished all relevant

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50/ The court reporter transposed volumes of the transcript. The volume beginning with a cover sheet numbered 879 follows that volume beginning with a cover sheet numbered 1001. The citations are to the pages as they appear.

records. Neither has the Defendants' counsel offered any records that conflict with Johnson's testimony.

7. WAYNE JOHN EPPRECHT

173. Wayne Epprecht, who is presently serving a sentence of life plus 130 years at Avon Park Correctional Institution, previously was incarcerated at GCI under an earlier commitment (Epprecht, Pg. 627). In February 1981, after having been visited by his sisters and having received \$25.00 in cash from them, he returned to his dormitory, paying off various debts along the way. By the time he arrived, he had paid out all but 26 cents. This paucity angered two black inmates who were waiting in the dorm to rob him (Ibid. Pgs. 628-629). One of them hit him in the face with a pipe. Epprecht did not see any correctional officers in the wicket at the time of the assault (Ibid. Pg. 629).

174. Epprecht went to a mirror and saw that the left side of his face was stoved in and blood was running out of his nose (Ibid. Pg. 630. He encountered an officer outside of the dorm. The officer took him to the prison hospital, where a nurse said Epprecht needed to go to Glades General Hospital (Ibid. Pg. 631). After several days at Glades General, Epprecht was transferred in a van with other prisoners to the Reception and Medical Center at Lake Butler. During the eight to ten hour trip he was in pain and given nothing to drink in connection with his liquid diet (Ibid. Pgs. 634-635). After surgery, Epprecht was returned to GCI (Ibid. Pg. 638), where he

saw the two inmates who attached him (Ibid, Pg. 650). They told him they would leave him alone if he would not say anything (Ibid).

175. Epprecht was asked several times what had happened to him (Ibid, Pg. 633), but he never had identified his assailants to officials because he felt it was safer not to "snitch" (Ibid, Pgs. 630-631). Superintendent Turner, however, was not one of those officials who inquired of Epprecht. While at GCI, Epprecht feared for his safety in a different manner than he had while serving time in other Florida prisons (Ibid, Pg. 645). At the other prisons, it seemed to Epprecht that an inmate could get help more quickly than at Belle Glade (Ibid, Pgs. 645-646).

176. In February, 1981, the time at which Epprecht was attacked, 222 of the 266 established and authorized staff positions were filled. Superintendent Turner reported, "we are currently holding 35 positions vacant at this institution to attempt to keep our salary allocation in good shape." (D.Ex. 7). The prison population ranged from 801 at the beginning of the month to 787 at the end. Superintendent Turner noted that "[t]he increasing number of inmates demanding protective confinement takes up most of the available space." (Ibid).

177. Epprecht's psychological scarring was less than some of the other plaintiffs. Dr. Caddy diagnosed him as suffering from an adjustment disorder that was rather moderate in nature, was not severe, with some mixed emotional features (Caddy, Pgs. 1148-1149). However, according to Alan M. Wagshul, M.D., a

Board certified neurologist, after examining Epprecht and reviewing his medical charts, Dr. Wagshul reports that Epprecht is suffering both reparable and irreparable injuries. The history of left facial trauma, with a fracture of the zygomatic arch and residual palpable deformity, is consistent with the sensory deficit in the area of the facial trauma. In layman's terms, Epprecht suffers from a numbness that forever will be exacerbated by prolonged chewing or changes in the weather and, while it can be alleviated by non-addictive drugs, cannot be eliminated. Additionally, Epprecht suffers from probably a temporomandibular joint dysfunction that is consistent with his subjective complaints of headaches and pain upon chewing. While Epprecht has complained of suffering these symptoms since the incident, February 14, 1981, they could be eliminated by an office visit to a dentist for a realignment of his bite (Wagshul).

#### 8. EDDIE COBB

178. Eddie Cobb, the only black among the named plaintiffs, is a 24 year-old former inmate (Cobb, Pg. 764) who was stabbed in the head and arm (Ibid., Pg. 767). January 27, 1984 by fellow inmate Larry Pryor (Ibid., Pg. 765). Cobb received 18 stitches in his head and 12 in his arm at the prison hospital (Ibid., Pg. 768). His arm carries a visible scar, which the Court saw (Ibid., Pg. 767), and there is scar tissue on his head (Ibid., Pg. 768). Since the incident, Cobb experiences pounding, migraine headaches and dizziness, sensations about which he complained to prison health officials at Union Correctional Institution (Ibid., Pgs. 769-770).

179. Although Cobb had a number of fights at Glades in which he arguably could be cast as the aggressor. Pryor was the attacker in this instance (Deposition of Larry Pryor, Pg. 18). (Testimony of Lt. Peters). Pryor, however, was operating with the protection of Lt. William Barrett (Deposition of Larry Pryor). And after Cobb left the hospital, he was taken to administrative confinement (Cobb, Pg. 769), where he remained until he was transferred to Union Correctional Institution March 15, 1984. See, P.Ex. 15, Section C (Department of Correction Daily Records of Segregation for Eddie Cobb from Feb. 6, 1984 to March 15, 1984). Pryor was released before Cobb was transferred (Cobb, Pg. 769), notwithstanding the fact that Lt. Peters' investigation revealed Pryor to have been the aggressor (Testimony of Peters).

180. A review of inmate Pryor's prison file reveals repeated documentation of his assaultive nature. A January 21, 1983 memorandum from the Florida Probation and Parole Commission discusses Pryor's "serious pattern of assaultive-violent behavior." An in-house classification team at GCI November 15, 1983 recommended "transfer of the above-mentioned inmate [Pryor] for security reasons." Although a transfer of Pryor to Union Correctional Institution was sought, the transfer request was withdrawn January 29, 1985. See, supra, ¶198.

#### 9. MICHAEL GORDON

181. Michael Gordon arrived at GCI in late 1983 or early 1984 (Gordon, Pg. 897). He arrived there the least



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pre-institutionalized of the named plaintiffs. This was the first permanent assignment within the Florida prison system for Gordon. At the time, Gordon, a 41-year-old jeweler who lived in Plantation, had been sentenced to 25 years in prison for credit card fraud. See, P.Ex. 19, Section A. This conviction was subsequently overturned because of incompetence of defense counsel. Gordon v. State, 469 So.2d 795(4th DCA, Fla. 1985). Gordon suffered physically at GCI, perhaps less than any of the other named plaintiffs. He was knocked unconscious once while standing in front of the canteen. (Gordon, Pg. 907). According to x-rays taken three days later, there was no fracture from this injury (Ibid, Pg. 908) His buttocks were burned when inmates who had been drinking "buck" set his polyester underwear on fire (Ibid, Pg. 909); he was hit in the head with a pipe in a robbery in which his mock Rolex watch was stolen (Ibid, Pg. 910).

182. Notwithstanding the fact that Gordon's complaints pale next to those of his co-plaintiff rape victims, Gordon's reaction to life at GCI was such that he lost 100 to 150 pounds (Gordon, Pgs. 916-917). (Caddy, Pg. 1159), and reports that it was the only time in his life when he seriously considered suicide (Caddy, Pg. 1163).

183. While at GCI, Gordon overheard the screams of a homosexual rape (Gordon, Pg. 900), found himself in an environment where blacks controlled a camp where the recreation centered on drug use, drinking and homosexuality (Ibid, Pg. 901), and was was extorted by a guard who one day appeared at

the prison with a photograph of Gordon's wife and children (Ibid, Pg. 902). Gordon perceived the entire environment as anarchistic and without any constraints (Caddy, Pg. 1163). His wife reports that he talks in his sleep and yells, that he clearly experiences night terror that awakens him, and that he reports to be dreaming about incarceration at Belle Glade and being attacked and feeling vulnerable (Ibid, Pg. 1164). Gordon is suffering from an adjustment disorder with mixed emotional features, some anxiety, and some depression (Ibid).

#### 10. ANTHONY LA MARCA

184. Although Anthony LaMarca was never homosexually raped or seriously injured in an assault while he was incarcerated at GCI starting in late 1980 or 1981, his complaints concern the lengths to which he had to go and the conditions he had to endure to avoid such a fate (LaMarca, Pg. 947).

185. First, he escaped on April 13, 1981. According to the Escape and Recapture Report, the reason stated for LaMarca's escape was that he was unable to pay money owed on the compound. LaMarca was threatened by an inmate skilled in the martial arts black belt the morning of his escape that if he didn't begin paying the black belt \$25.00 per week beginning that same day, LaMarca "would see St. Peter that afternoon when I come in from work." (Ibid, Pgs. 955-966). An additional six months in the Palm Beach County Jail was added to LaMarca's sentence for the escape (Ibid, Pg. 957).

186. Homosexual solicitation and harassment began upon LaMarca's arrival at GCI in the form of catcalls from a line of

black inmates. LaMarca being referred to as a "fat skinny white boy." This term meant that he was a frail youth (150 pounds) with a large posterior, which was sexually attractive (Ibid. Pgs. 948-949). One inmate in particular, Kenneth Storys, informed LaMarca on LaMarca's third day of incarceration at GCI that LaMarca should pick either Storys or someone like him as a "daddy" or he would be unable to live on the compound (Ibid. Pgs. 950-951). LaMarca did not seek protective custody for about a year after his arrival because he was embarrassed to be in this vulnerable position (Ibid. Pg. 994). When he did seek help and identified three inmates who were harassing him, these three inmates were not locked up for investigation. Indeed, following his meeting with officials, the three inmates came to the back door of the canteen and threatened LaMarca by telling him, "We know you snitched, cracker." (Ibid. Pgs. 961-962). Three days later one of the three inmates swung a bat at LaMarca. He complained to Lt. Barrett about the situation. Lt. Barrett responded by giving LaMarca a pocket knife. When the inmate attempted to steal some marijuana that LaMarca was "breaking down" on the dormitory floor, LaMarca stabbed the inmate in the hand (Ibid. Pgs. 964-966).

187. At 2:30 a.m., after LaMarca stabbed the inmate, this same inmate along with two other inmates, came to his bunk demanding sex. They inmates carried a bush axe (Ibid. Pgs. 969-971). LaMarca ran to the wicket and sat in front of it all night, clad only in his underwear. No conversation transpired with the guard (Ibid. Pg. 972). The next morning, when LaMarca

was found bringing a fiberglass sledgehammer into the dormitory for protection. he was given a disciplinary report (Ibid. Pg. 973).

188. In July, 1981. LaMarca checked into protective custody (Ibid. Pg. 974). Three men occupied a two-man cell. LaMarca had no privileges. When he complained to an officer, he was told to go back to the compound (Ibid. Pg. 975). Four months later LaMarca transferred out of protective custody rather than be transferred to Union Correctional Institution (Ibid. Pg. 976).

F. THE LARRY BROWN INCIDENT:  
BEYOND TURNER

1. THE RAPE OF LARRY BROWN - THE  
CONTINUED LACK OF AN  
ADEQUATE INVESTIGATION

189. Larry Brown is somewhat of an eleventh Plaintiff in this 10-plaintiff case. The only plaintiffs' witness who presently is incarcerated at GCI, and therefore a member of the class seeking declaratory and injunctive relief, he is the only inmate who testified for Plaintiffs who was not himself seeking damages.

190. Brown arrived at GCI in June, 1985, was assigned to A-Dorm without any orientation (Brown, Pg. 839), and by 2:30 a.m. the next day (Ibid. Pg. 840) was ordered at knifepoint by three blacks to get out of his bunk and into one beneath it. He was told to lay down and not to scream (Ibid. Pg. 841). As one inmate held a knife to his throat, another removed his blue prison-issue pants and his undershorts, and penetrated him

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(Ibid. Pg. 842). He was anally raped five times, a knife at his throat throughout (Ibid. Pg. 843). When it was over, he went to the bathroom, with three of his assailants following him. They told him to say nothing about the rape or they would kill him (Ibid. Pg. 844). He returned to his bunk, as did they - one on each side of him and one beneath (Ibid. Pg. 845). The three rapists talked, smoked marijuana, and chatted all night long. Brown remained awake (Ibid. Pg. 846). Brown told a correctional officer the next morning that he had been raped (Ibid. Pg. 847), but the correction officer appeared disinterested (Ibid. Pg. 847). For the next few days, one, two, or three of the inmates followed Brown about (Ibid. Pg. 848). On the fourth day, Brown was taken to Lt. Minor's office (Ibid. Pg. 850) where Minor said, "I heard you had a line as long as a dorm." Brown told him what had happened (Ibid. Pg. 851). Minor told him he would put him in protective confinement if Brown would give a written statement, which he did<sup>51/</sup> (Ibid. Pg. 852).

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51/ Brown testified he arrived at GCI June 10, 1985 (Brown, Pg. 839), was raped during the predawn of the following day (Ibid. Pg. 840), and four days later was taken to see Lt. Minor (Ibid. Pg. 850). The earliest-dated record of any confinement, however, is the handwritten notation in the Classification Team Review and Action section of a Department of Corrections Report of Protective Confinement Form dated June 25, 1985, stating: "Inmate Brown was placed on A/C status 6-24-85 for bartering. I released him to population, but he wouldn't go. I recommend P/C status for investigation of his story." (D.Ex. 27, Flap B). Brown testified on cross examination that he had been in protective confinement before June 25 (Brown, Pg. 1018). The page in the exhibit immediately preceding the report quoted.

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191. Brown attempted repeatedly to bring the matter to the attention of Superintendent Randall Music. His first communication, dated June 24, 1985, noted: "I would like to speak to you about the reason that I'm in protective confinement, which I'm sure you're well aware of at this particular reason." (Ibid. Pg. 859). Two days later, Brown wrote to Music a note that read as follows:

I am sure that you're aware of what led me into protective custody. I would like to speak to you about this matter. I do not think it's fair for these inmates to escape this kind of incident. I have already tried to contact Classification<sup>52/</sup> with no results. I hope that we can get together about this matter. This is my second request about this matter. The first was 6-24-85. (Ibid. Pg. 861).

A third and final writing addressed to Music was dated July 1, 1985, and read as follows:

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supra, is a Transfer Order approving the shipment of Brown from the Reception and Medical Center to GCI. The Transfer Order is dated June 19, 1985. The credibility of his recollection of the rape incident, if not its precise day, is enhanced by the demeanor reported by Dr. Caddy during his interview of Brown. "Mr. Brown presented almost all of the testimony surrounding the sexual attack, and his subsequent feelings, both in tears and with such a level of emotional distress that virtually his entire body was constantly shaking for, and in fact continued to do so for a substantial period after the interview was completed." (Caddy, Pg. 1181).

52/ The June 21, 1985 request to Classification reads as follows:

I'm sure that you're aware of the incident that took place in A Dorm. I would like to have the information on how to file a grievance in this incident. I also need the proper forms to do this. I thank you for assistance in this matter.

Good day. I would again like to request your time in a personal interview in your office as soon as possible. I know you're a very busy man and do not have time to spare, but this will only take a little of your time. also, please be aware that I have been trying to get in contact with the Classification Department without any results. Could you please look into this matter for me. I would like to know why there it is so hard to get to these people to talk to them. Please take action on this as soon as possible. Thank you. (Ibid. Pg. 863).

192. Brown received no response to any of these requests (Ibid. Pg. 864). The only response he has had to his rape is a one-hour meeting with a psychologist at GCI. This is the only psychological counseling this inmate has received subsequent to the rape<sup>53/</sup> (Ibid. Pg. 864).

193. No investigation by Lt. Peters was made initially of Brown's alleged rape (Peters), despite documentary evidence that the allegation was known to prison officials. A June 28, 1985 notation in the "Remarks Disposition" section of his disciplinary Committee Visit form that reads as follows:  
"Reviewed Status -- Subject forced to commit sex acts and is

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53/ Although Brown is not a damage plaintiff in this action, Dr. Caddy, the Plaintiffs' expert clinical psychologist, nonetheless examined him and found him to have been terribly emotionally disordered as a result of the experience that he suffered at Glades, describing Brown's condition as one that Dr. Caddy feels Brown is going to have a great deal of trouble ultimately overcoming or resolving, especially in his present environment. His diagnosis of Brown was that Brown, as a result of the rape incident at Glades, suffers from post traumatic stress disorder (Caddy, Pg. 1183).

unable to cope with pressures on the compound. Will rec.  
transfer and expedite. Continue P/C status. It is essential."  
(D.Ex. 22).

194. Brown was transferred to Hendry Correctional Institution July 12, 1985 (Ibid). Within about 30 days, other inmates who had been transferred from GCI had passed the word that Brown was "good pussy" (Brown, Pg. 866). Brown requested and received protective custody at Hendry August 9, 1985, after telling a guard lieutenant there that "I see (sic) that my life is in danger, because I have been approached by several black inmates about having sex with them, and I feel that if I don't they will attack me." (D.Ex. 22, Department of Corrections Report of Administrative Confinement dated August 9, 1985). Brown remained in protective confinement until September 27, 1985, when he was transferred back to GCI (Ibid, Pg. 868). Upon arrival, he immediately checked back into protective confinement. According to a Department of Corrections Report of Protective Confinement form dated September 27, 1985, and included among the papers in Defendants' Exhibit 22, Brown stated to Lt. E.L. Minor:

[H]e fears for his life here, at Glades Correction. Inmate Brown stated he was sexually molested here a few months ago and was transferred to Hendry where he was also to be put into Protective Confinement due to being sexually harassed by inmates who were housed here and knew about his past... (Ibid)

On November 7, 1985, the Protective Confinement Review Team directed a memorandum to Superintendent Music, which memorandum



is also included in Defendants' Exhibit 22, that read as follows:

Inmate Brown, Larry W/M #477709 was interviewed by the team on 11-1-85 with reference to his protective confinement status which began 9-27-85. He reports that he was sexually assaulted by an undetermined number of black inmates over the course of a week's time. He did not report it because he was afraid, and everywhere he went one of them followed and watched. He sought protective confinement, was traded to Hendry C.I., threatened there and checked in, and finally traded again back to Glades C.I. He states that one of the inmates who assaulted him was Johnny Jones of "A" Dorm. He claims he doesn't know any other names.

We believe his protective confinement should continue, pending investigation of his allegations and possible transfer to another facility. (Ibid).

195. Lt. Peters has still not investigated Brown's allegations (Peters). The only transfer that has occurred concerning this inmate was his transfer from GCI to the Dade County Jail immediately before Thanksgiving pursuant to a Writ of Habeas Corpus ad Testificandum issued by this Court. Music's sole reaction to the missives directed to him by Brown was to observe that he wondered how thick Brown's file of copies would grow over the span of this 40 year sentence.

G. A FINAL WORD: THE FACTUAL  
INTEGRITY OF PLAINTIFFS' CASE

196. While the Court is not unmindful of the Plaintiffs' self interest in testifying, the credibility of Plaintiffs' testimony is evident from various independent reasons. First, the integrity of the plaintiffs' evidence is compelled by the dynamics of the way in which this case has developed.

197. These were not plaintiffs who came as a group to attorneys, seeking out counsel to prosecute a lawsuit. Rather, these were individuals who came forward after reading a class action notice posted throughout the prison system by Department of Corrections employees. Scattered throughout Florida's prison system, without the opportunity to converse with each other about their separate, individual experiences at GCI,<sup>54/</sup>

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54/ Dr. Richard Swanson, the Plaintiffs' first expert, testified that he had interviewed all of the plaintiffs, as well as Larry Brown, in preparation for the trial.

I was also impressed by the heterogeneity of the inmates I found.

Recalling how the inmates were constituted into a plaintiff class, as I understand the sequence of events, once the complaint had been filed by the original plaintiff, LaMarca, the class was notified through a notice sent throughout the system.

These people were then found by the attorney rather than them coming together and agreeing to file suit.

These inmates, in no way that I am aware, had talked about this case one among the other, so I was impressed that this was independent information that had not been checked one with the other inmates.

Most of these inmates did not know each other, and if they did, they had had (sic) not seen each other in a significant amount of time.

(Swanson, Pg. 120)

Dr. Glenn R. Caddy, a clinical psychologist called by Plaintiffs as an expert, testified similarly:

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these inmate plaintiffs did not come together prior to the trial in this action.

198. Secondly, while aware of the natural self-interest of any plaintiff in a suit for money damages, the Court is aware of various disincentives for these plaintiffs to have testified as they did, especially for the rape victims. Not only has their demeanor on the witness stand reflected an obvious discomfort in publicly discussing their anal rapes, but the first of the plaintiffs' two psychological expert witnesses testified that the men were in similar, if not more pronounced, states of turmoil during the times that he interviewed them,<sup>55/</sup> while the second characterized their interview

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Secondly, there is an integrity that comes from a commonality of reporting of incidents where essentially ten people, none of whom either knew each other prior to going to Glades nor who knew each other in Glades, are in a position to provide information about common experiences that provide an internal consistency to the general arguments of the circumstances surrounding the locations of the rape and the nature and the incidence of the rape.

(Caddy, Pgs. 1242-1243)

55/ Dr. Swanson testified:

In several occasions, and all of these occasions involved inmates who had reported being raped at GCI, there was obvious emotional tension, anxiety, tearful problems in the inmate reporting the incident.

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behavior and verbalizations as consistent with their having been raped.<sup>56/</sup>

199. In sum, this Court is convinced, by a combination of its having been able to view the witnesses and judge their credibility, and of its having heard from the plaintiffs' experts about the integrity that they separately found during their investigations, that the plaintiffs told the truth when they testified about events which occurred while they were incarcerated at GCI.

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I was moved by how difficult it was for many of the inmates to talk about the rape process itself.

(Swanson, Pg. 119)

56/ Dr. Caddy testified:

These men were raped...

Those men that have reported being raped present essentially classic profiles of the consequence of rape.

I have no reason to believe that any of them have anywhere near the sophistication in my discipline to be able to, a priori, construct for themselves the sort of emotional state that would be necessary to maintain the integrity of that argument under circumstances where a person who has had a fair degree of training in this area is confronting them in a relatively confronting interview set about the circumstances of these incidents.

(Caddy, Pg. 1242)

## II. CONCLUSIONS OF LAW

### A. THE DAMAGE CLAIMS

#### 1. OVERVIEW

##### (a) SCOPE OF FEDERAL JUDICIAL INVOLVEMENT

200. At the outset, this Court recognizes that "[t]raditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration." Procunier v. Martinez, 426 U.S. 396 (1974). These problems are "complex and intractable...they are not readily susceptible of resolution by [judicial] decree. Most [prisons] require expertise comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." Id at 405.

201. However, this court is also mindful that "[c]ourts certainly have a responsibility to scrutinize claims of cruel and unusual confinement...When conditions of confinement amount to cruel and unusual punishment, 'federal courts will discharge their duty to protect constitutional rights.'" Rhodes v. Chapman, 452 U.S. 337, 352 (1981) (citing Procunier 426 U.S. at 405-06); Hudson v. Palmer, \_\_\_ U.S. \_\_\_, 104 S.Ct. 3194, 3198; 82 L.Ed.2d 393 (1984) (The Court has "repeatedly held that prisons are not beyond the reach of the Constitution."), Id., ("[W]e have insisted that prisoners be accorded those rights not

fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration.").

(b) EIGHTH AMENDMENT PROHIBITIONS

202. The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishment"<sup>57/</sup>. The former Fifth Circuit (en banc) has explicitly ruled that:

Confinement in a prison where terror reigns is cruel and unusual punishment. A prisoner has a right to be protected from the constant threat of violence and from sexual assault. Jones v. Diamond, 636 F.2d 1364, 1373 (5th Cir. 1981) (en banc), citing Withers v. Levine, 615 F.2d 158 (4th Cir. 1980); Gates v. Collier, 502 F.2d 1291 (5th Cir. 1974); Woodhous v. Virginia, 487 F.2d 889 (4th Cir. 1973).

203. When prison officials have failed to control or segregate prisoners who endanger the physical safety of other prisoners and the level of violence becomes so high...it constitutes cruel and unusual punishment." Jones v. Diamond, supra, 636 F.2d at 1374 citing McCray v. Sullivan, 509 F.2d 1332 (5th Cir.) cert. denied 423 U.S. 859 (1975).

204. Indeed, in order to comply with the eighth amendment prohibition against cruel and unusual punishment, prison punishment must comport with "the evolving standards of decency that mark the progress of a maturing society. Estelle v. Gamble, 429 U.S. 97, 102 (1976) (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958)). Moreover, such punishment must not

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57/ The Eighth Amendment's ban on cruel and unusual punishment was first made applicable to the states by virtue of the Fourteenth Amendment in Robinson v. California, 370 U.S. 660 (1962).

"involve the unnecessary and wanton infliction of pain." Rhodes v. Chapman, supra, 452 U.S. at 346 (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976) (joint opinion)), which includes those punishments that are "totally without penological justification." Id. (quoting Gregg v. Georgia, supra, 428 U.S. at 183).

205. The various Circuit Courts of Appeal have uniformly ruled that "[s]ubjecting prisoners to violent attacks or sexual assaults, or constant fear of such violence, shocks modern sensibilities and serves no legitimate penological purpose." See, e.g., Martin v. White, 742 F.2d 469, 474 (8th Cir. 1984).

(c) GENERAL STANDARDS OF LIABILITY

206. In order for prison officials to be liable under a §1983 action based on a constitutional deprivation resulting from cruel and unusual punishment, there must be a showing that the prison officials' conduct constitutes a reckless or callous indifference to the rights and safety of the prisoners in his charge. Williams v. Bennett, 689 F.2d 1370, 1380 (11th Cir. 1982) cert. denied, \_\_\_ U.S. \_\_\_ (1983) (Must allege "a conscious or callous indifference to prisoners' rights"); Miller v. Salem, 728 F.2d 1020, 1024 (8th Cir. 1984) (Reckless disregard of inmates' right to be free from violent attacks by fellow inmates); Wade v. Haynes, 663 F.2d 778 (8th Cir. 1981) (Reckless disregard, gross negligence, callous indifference). aff'd on other grounds sub nom Smith v. Wade, 462 U.S. 30 (1983) ("Reckless or callous indifference by prison officials

sufficient to award of punitive damages."); Stokes v. Delcambre, 710 F.2d 1120, 1124 (5th Cir. 1983) (Virtual indifference to the safety of prisoners.)

## 2. APPLICATION OF THE STANDARDS

207. At the outset, the Court recognizes that in determining whether or not Defendant Turner's conduct rises to a level of "conscious or deliberate indifference to [plaintiffs' need] for reasonable protection from violence," Williams v. Bennett, supra, 689 F.2d 1380, a variety of §1983 liability elements interplay. While those elements or factors overlap to some extent and are otherwise difficult to disentangle, the Court nonetheless will review them for purposes of analysis in isolation. Nonetheless it is the sum of these factors when ultimately considered in totality which convinces this Court that Defendant Turner acted with deliberate indifference to Plaintiffs' needs for reasonable protection from violence. Williams v. Bennett, supra.

### (a) ELEMENTS OF LIABILITY

#### (1) TURNER'S KNOWLEDGE OF A PERVASIVE RISK OF HARM

208. Somewhat intertwined and perhaps subsumed into the "callous or deliberate indifference standard" of §1983 prisoner damage liability is the basic notion that the perpetrator (Defendant) knew or should have known of a pervasive risk of harm resulting in victim's (Plaintiffs) injury. See, e.g., Roberts v. Williams, 456 F.2d 819, 827 (5th Cir. 1971) cert



denied 404 U.S. 866 (1972) (§1983 liability premised upon a "callous indifference to [inmate suffering] at the management level, in the sustained knowing maintenance of bad practices and customs."); Patterson v. MacDougall, 506 F.2d 1, 3-4 (5th Cir. 1975) (Personal liability of Director of Corrections both because of his direct involvement and because of his failure to act when improper prison conditions were brought to his attention."); Wright v. McMann, 460 F.2d 120, 134-5 (2nd Cir. 1972) (Warden held liable financially for damages to inmate where he failed to take corrective action in light of history of previous similar episodes.).

209. The Court has previously found that Defendant Turner in some instances knew and in other instances should have known of widespread illegal activities in general and risks of harm to inmates' security in particular.

210. Turner knew of general inmate security problems through: (1) official documentation, including (i) Turner's acknowledgement to DOC Secretary Wainwright that GCI was "out of control," supra, ¶38, and that staffing problems created a danger to the "staff and inmate population" (emphasis in original), (ii) the 1980 Palm Beach County Grand Jury presentment which recited "lax security precautions" and referred to a free flow of contraband at GCI including drugs, alcohol, gambling, theft, contraband, and extortion among inmates and personnel, supra, ¶40, (iii) the 1980 Inspector General Management report evidencing continuing security issues including unattended supervision of dormitories, supra, ¶42.

(iv) the 1983 Inspector General Report evidencing continuing "disregard for established procedures," supra, ¶45; (2) major incidents of staff corruption including (i) the Lt. Barrett incident, supra, ¶¶46-50, and (ii) the illegal activities of Officer Dixon, supra, ¶¶51-52; and (3) knowledge of the free flow of contraband as evidenced by the reports of the official documents previously discussed; the activities of Lt. Barrett and Officer Dixon; and the general common reporting in other internal documents of inmates' possession of weapons, drugs, alcohol, and extortion activities.

211. It is less clear to distinguish between what Turner actually knew from what he should have known. The Court is convinced that a prudent administrator should have known - assuming Turner did not actually know - of: (1) widespread extortion activities of inmates such as Larry Pryor working in complicity with staff officers, supra, ¶53; (2) widespread rape and physical assaults on inmates given various objective and discernable indices such as (i) the general free flow of contraband, assaults, extortions and violence that permeated GCI prisoner life between 1980-1984, supra, ¶56, (ii) the consistent and disproportionate number of white inmates who "checked into" protective confinement which itself, due to its punitive conditions, should have - assuming that it did not - constituted a direct signal of inmate violence, supra, ¶¶73-74., (iii) the general wolfing and cat-calls of aggressive black inmates who were vocally signalling vulnerable whites for future sexual attack, supra, ¶77, (iv) overt signs of sexual

conduct evidenced by hung sheets, inmates groaning in their bunks, and pornographic movies where inmate crying and moaning could be readily heard, supra, ¶78. (v) direct reporting of rape by certain Plaintiffs (Aldred, Sanders, and Harper) which either were known or should have been known through a normal chain of command to Turner, supra, ¶79.

(2) CONDITIONS WERE WITHIN  
TURNER'S FINANCIAL AND  
ADMINISTRATIVE CONTROL

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

213. The element of "control" in Williams v. Bennett, supra, is measured both from inherent and financial limitations, Ibid. at 1387, "One such limitation may have been the funding available to comply with the constitutional norms" as well as more generally matters within an individual's administrative control.

214. The principle of proper management structure employed to reduce the likelihood of the tragedies that have occurred in

this case have been aptly described by the Chief Judge of the former Fifth Circuit:

One of the critical elements is that the official demonstrate that he has employed efficient management principles so as to minimize the chance of error and maximize the likelihood of full satisfaction of constitutional and statutory obligations. Bryan v. Jones, 530 F.2d 1210 at 1216 (5th Cir. 1976) (en banc) (Brown, C.J.) (concurring)

215. The Court has identified a series of administrative areas within Turner's managerial control which also impose no fiscal limitations as evidenced in part by corrective measures taken by Turner's successors. These include: (1) improper and inadequate staff training evidenced by gross problems with 'officers' handling of weapons carried to the extreme in the Barrett incident, supra, ¶46; (2) a staff out of control who did not report rapes, assaults, and illegal activities up through the chain of command, supra, ¶66; (3) the failure to supervise staff and administer measures which would "minimize the chance of error and maximize the full satisfaction of constitutional protection," Bryan v. Jones, supra, in (i) not stationing officers to patrol throughout the dormitories, particularly at night, and leave the wicket cage, and in (ii) permitting the obscuring of vision of the officers in the wicket by allowing inmates to hang sheets, blankets, their personal property, lockers and other materials resulting in the impossibility for officers to maximize the protection of inmates in the dormitory; (4) a shocking failure to employ any standard procedure to investigate incidents of alleged rapes.

supra, ¶82; (5) the failure to request outside investigative or presecutorial assistance to otherwise make some even minimal attempt to deter rapings and assaults, supra, ¶84; (6) the failure to provide inmate movement controls thus reducing the casual egress and ingress of aggressive assailant wolves within the open dormitories, supra, ¶89; and (7) the failure to transfer known assailants or inmates who should have been known to be assailants out of GCI, supra, ¶86.

(3) NOT A SERIES OF ISOLATED INCIDENTS

216. By the nature of the Court's previous findings and conclusions, supra, ¶¶208-211 ("Turner's knowledge of a pervasive risk of harm") and ¶¶212-215 ("Conditions Were Within Turner's Financial and Administrative Control") the Court by implication already has addressed the matter, consistently urged by Defendants throughout trial<sup>58/</sup>, that Plaintiffs' claims for damages are merely ten separate isolated incidents. To the contrary, the Court already has discussed in detail the

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58/ Additionally, Defendants in their Pre-Trial Stipulation maintain as an issue of law which remains for determination by the Court:

5. Whether Eighth Amendment protection, cruel and unusual punishment, extends to isolated incidents of assault, robbery and rape as alleged by Plaintiffs. In absence of a showing that these Defendants acted in a manner of deliberate indifference to conditions that would shock the conscience of the ordinary person, Plaintiffs cannot recover under the Eighth Amendment. (emphasis added).

(Pg. 13. ¶5)

broad "pervasive risk of harm" and "conditions which were within Turner's financial and administrative control."

217. Plaintiffs' claims stem from these far reaching and serious failures of Defendant Turner to properly manage and administer Glades Correctional Institution. See, Bryan v. Jones, supra 530 F.2d at 1216; Donaldson v. O'Lane, 752 F.2d 817, 828 (3d Cir. 1984)(en banc)("When officials with a responsibility to prevent harm, such as prison officials, fail to establish or execute appropriate procedures for preventing serious malfunctions in the administration of justice, such failure would support a claim under § 1983), citing, Murray v. City of Chicago, 634 F.2d 365 (7th Cir. 1980), cert. dismissed sub nom. Finley v. Murray, 456 U.S. 604 (1982).

218. In sum, Plaintiffs' claims are not isolated incidents. They stem from a far ranging and serious failure of Defendant Turner to properly manager GCI.<sup>59/</sup>

#### (4) BREACH OF A DUTY IMPOSED BY STATE LAW

219. A "supervisory defendant is subject to §1983 liability when he breaches a duty imposed by state...law, and this breach causes plaintiff constitutional injury." Williams v. Bennett.

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59/ Having found that Plaintiffs' claims do not represent ten isolated separate incidents, it is unnecessary to decide whether in Smith v. Wade, 461 U.S. 30 (1983) the Supreme Court, in affirming an Eighth Amendment violation relating to a single isolated incident has thus, sub silentio, repudiated the principle that an "isolated incident," by its very nature could never rise to the level of "callous indifference" rendering a prison official liable for acts that offend the constitution.

supra, 689 F.2d at 1381; Sims v. Adams, 537 F.2d 829, 831 (5th Cir. 1976); Beverly v. Morris, 470 F.2d 1356 (5th Cir. 1972); Hesselgesser v. Reilly, 440 F.2d 901 (9th Cir. 1971); Scott v. Vandiver, 476 F.2d 238, 241-42 (4th Cir. 1973); McDaniel v. Carroll, 456 F.2d 968, 969 (6th Cir. 1972; see generally Roberts v. Williams, 457 F.2d 819 (5th Cir.), cert. denied, 404 U.S. 866 (1971).

220. Under Florida law, as Superintendent at GCI, Defendant Turner was required to protect "the offender from victimization within the institution" and to develop "a system of due process and internal legality in the institution." 20.315(1)(c), Florida Statutes (1983) (emphasis added).<sup>60/</sup>

221. The Florida statutory requirement contained in Section 20.315 provides Plaintiffs with "a clear legal right to be confined in an institution where they are free from victimization by other inmates" and places upon Defendant

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60/ Section 20.315(1)(c) provides as follows:

20.315. Department of Corrections

There is created a Department of Corrections.

(1) Purpose - The purpose of the Department of Corrections is to integrate the delivery of all offender rehabilitation and incarceration services that are deemed necessary for the rehabilitation of offenders and the protection of society. The goals of the department shall be:

(c) To provide an environment for incarcerated persons in which rehabilitation is possible. This should include the protection of the offender from victimization within the institution and the development of a system of due process and internal legality in institutions. (emphasis added)

Turner "an equally clear legal duty to [have provided Plaintiffs] with such incarceration." Graham v. Vann, 394 So.2d 180, 183 (Fla. 1st D.C.A. 1981) (Mandamus issued to compel the Department of Corrections to comply with legal duty to confine inmates in an institution where they are not victimized by other inmates).

222. As detailed herein, Defendant Turner breached his statutory duty under Florida law which caused Plaintiffs' constitutional injury.

(b) CAUSATION

(1) GENERAL STANDARDS

223. Our Circuit has clarified the principle that in prison damage actions of this nature, a "[C]ritical causation issue [here] must be whether each individual defendant was in a position to take steps that could avert the stabbing incident at Holman; but, through callous indifference, failed to do so." Williams v. Bennett, supra, 689 F.2d at 1384.

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



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

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

(2) PERSONAL INVOLVEMENT

227. It is now settled that in § 1983 actions public officials cannot be held vicariously liable for the wrongdoing of others. Monell v. N.Y. City Dept. of Social Services, 436 U.S. 658, 692, (1978). Thus Defendants are correct when they assert that misconduct by subordinates or third parties cannot be imputed under § 1983 to an official who played no role in causing a deprivation of constitutional rights.<sup>61/</sup>

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61/ Defendants' position is set forth in their Pre-Trial Stipulation as an issue of law which remains for determination by the Court:

4. Whether Plaintiffs are entitled to recovery against Turner and Music under a theory of respondent superior which is not permissible under actions brought under 42 U.S.C. §1983.

228. However, this principle cannot be extended in an attempt to insulate public officials from § 1983 liability by requiring that in order to hold a public official responsible for a constitutional deprivation that official must have participated literally and directly, or must have been present at any of the Plaintiffs' rapes/assaults. According to this reasoning, § 1983 would preclude recovery against public officials where those officials directly contribute or cause a deprivation of constitution rights - although not present or directly participating in causing the injury - by merely exercising "callous indifference" in maintaining policies and practices which lead to that designation.

229. Such a proposition is in error; § 1983 only requires that there be a causal connection between the officials' conduct and the constitutional tort. It does not require direct personal contact or direct conduct by the Constitutional violation. Monroe v. Pape, 365 U.S. 167, 187 (1961)(42 U.S.C. § 1983 constitutionally based claims "should be read against the background of tort liability that makes a man responsible for the natural consequences of his act."); Williams v. Bennett, supra, 689 F.2d at 1383 ("[S]ection 1983 plainly requires, a causal connection between the Constitutional deprivation and the defendant's acts or omissions "); Sims v. Adams, 537 F2d 829, 831 ("§ 1983 requires a degree of causation as an element of individual liability, but it does not specifically require personal participation").

230. In sum, all that must be shown based upon these principles is that Defendant's conduct was a proximate cause of the Plaintiffs' injury. Plaintiffs have proved such causation in this lawsuit.

3. DEFENDANT TURNER'S GOOD FAITH  
DEFENSE AND QUALIFIED IMMUNITY

(a) THE STANDARDS

231. Even when prison administrators violate an individual's constitutional rights, they may enjoy a good faith immunity defense to §1983 lawsuits when sued in their individual capacity for damages. Scheuer v. Rhodes, supra, 416 U.S. at 247-8 (1974); Procunier v. Navarette, 434 U.S. 555, 561-62 (1978) (Qualified immunity applicable to protect prison officials); Williams v. Bennett, supra, 689 F.2d at 1385-86 (11th Cir. 1982).

232. The parameters of this defense were clarified by the Supreme Court in Harlow v. Fitzgerald, 73 L.Ed.2d 396 (1982). There, the Court, while reviewing its previous qualified immunity decisions, recognized that the "good faith" defense has both objective, Harlow v. Fitzgerald, supra, 73 L.Ed.2d at 408 ("The objective element involves a presumptive knowledge of and respect for "basic, unquestionable constitutional rights," citing Wood v. Strickland, 420 U.S. 308 (1975)), and a subjective aspect. Id. ("The subjective component refers to 'permissive intentions.'"). In refining these concepts, the Court concluded that government officials are shielded from

liability for civil damages "[I]nsofar as their constitutional rights of which a reasonable person would have known (emphasis added) (citations omitted). Harlow v. Fitzgerald, supra, 73. L.Ed.2d at 410.

233. Harlow v. Fitzgerald, supra, thus refines the qualified immunity defense to a consideration based upon objective factors. Our Circuit, in accord, has interpreted Harlow in such a manner. Williams v. Bennett, supra, 689 F.2d at 1385 ("Thus, objective criteria now govern the evaluation of a good faith defense.").

(b) BURDEN OF PROOF

234. Determinations as to the availability of the qualified immunity defense almost always will turn on an appreciation and analysis of the facts. Imber v. Pachtman, 424 U.S. 409, 419, n. 3; Scheuer v. Rhodes, supra, 416 U.S. at 238-9; and Wood v. Strickland, supra, 420 U.S. at 320-22. As an affirmative defense, the burden in proving the "qualified immunity" defense rests with the Defendant. Gomez v. Toledo, 446 U.S. 635, 640-41 (1980).

(c) APPLICATION OF THE  
QUALIFIED IMMUNITY DEFENSE

235. There is "no serious question but at the time" these sexual assaults occurred, it was well-settled that a prisoner had a "clearly established" Eighth Amendment right to be protected from constant threats of violence. Stokes v. Delcambre, 710 F.2d 1120, 1125 (5th Cir. 1983); Jones v. Diamond, supra, 636 F.2d at 1374; Gulatte v. Potts, 654 F.2d

1007, 1012 (5th Cir. 1981) (Unit B); Withers v. Levine, 615 F.2d 158 (4th Cir.) cert. denied, 449 U.S. 849 (1980); Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974); Woodhous v. Virginia, 487 F.2d 889 (4th Cir. 1973); McCray v. Sullivan, 509 F.2d 1332 (5th Cir.) cert. denied, 423 U.S. 859 (1975).

236. To the extent that good faith is defined essentially in objective terms, if Defendant Turner knew or should have known that his failure to take reasonable steps to prevent Plaintiffs from being sexually assaulted by other inmates violated Plaintiffs' rights under the Eighth and Fourteenth Amendments, then good faith will be defeated. The Court concludes that the law which requires a prison official with knowledge of a pervasive risk of harm to inmates under his charge to take reasonable steps to prevent that harm was "clearly established."

237. Thus, in the context of this case, the Court finds that Defendant Turner cannot claim that he did not know the constitutional standard since it was a "clearly outlined" right at all times relevant to this action and Defendant Turner's "qualified immunity" defense must fail.

#### 4. DAMAGES

##### (a) OVERVIEW

238. Plaintiffs proceed against Defendant Turner in his individual and official capacity and seek monetary damages against this Defendant. Plaintiffs proceed against Defendant Music solely in his official capacity and seek only injunctive relief against this Defendant.

239. Plaintiffs' suit for damages under § 1983 against Defendant Turner in his individual capacity is not barred by the Eleventh Amendment to the United States Constitution.<sup>62/</sup> Scheuer v. Rhodes, 416 U.S. 232 (1974) (Suit under § 1983 against state officials in their individual capacity not barred by the Eleventh Amendment, but the State official is entitled to defense of qualified immunity; Ruiz v. Estelle, 679 F.2d 1115, 1157 (5th Cir. 1982) cert. denied, 460 U.S. 1042 (1983)).

240. The Court is mindful that the judgment against Defendant Turner in his individual capacity for his actions as Superintendent of GCI will be paid by the State of Florida; in 1979 the Florida legislature enacted a statute in which the State agreed to pay for the full amount of a judgment against an employee of the State in "civil rights actions arising under 42 U.S.C. § 1983, or under similar federal statutes...unless the officer, employee, or agent has been determined . . . to have caused the harm intentionally" Section 111.071(9), Florida Statutes (1983)<sup>63/</sup>. Shinholster v. Graham, 527 F.Supp 1318, 1336-1338 (N.D. Fla. 1981).

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62/ The Eleventh Amendment provides:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state.

U.S. Const. amend. XI

63/ Section 111.071, Florida Statutes (1983) provides as follows:

(Footnote continued to next page)

241. However, this statutory provision which provides for the state to pay judgments against state employees arising out

(Footnote continued from previous page)

111.071 Payment of judgments or settlements against certain public officers or employees

(1) Any county, municipality, political subdivision, or agency of the state which has been excluded from participation in the Insurance Risk Management Trust Fund is authorized to expend available fund to pay:

(a) Any final judgment including damages, costs, and attorney's fees, arising from a complaint for damages or injury suffered as a result of any act or omission of action of any officer, employee, or agent in a civil or civil rights lawsuit described in s. 111.07. If the civil action arises under s. 768.28 as a tort claim, the limitations and provisions of s. 768.28 governing payment shall apply. If the action is a civil rights action arising under 42 U.S.C. s. 1983, or similar federal statutes, payments for the full amount of the judgment may be made unless the officer, employee, or agent has been determined in the final judgment to have caused the harm intentionally.

(b) Any compromise or settlement of any claim or litigation as described in paragraph (a), subject to the limitations set forth in that paragraph.

(c) Any reimbursement required under s. 111.07 for court costs and reasonable attorney's fees when the county, municipality, political subdivision, or agency of the state has failed to provide an attorney and the defendant prevails.

(2) For Purposes of this section, a "final judgment" means a judgment upon completion of any appellate proceedings.

(3) "Agency of the state" or "state agency." as used in this section, includes an executive

(Footnote continued on next page)

of civil rights actions does not constitute a waiver of the State's Eleventh Amendment remedy and thus damages can only be assessed against Defendant Turner in his individual capacity. See, Williams v. Bennett, supra, 689 at 1376-1378 (11th Cir. 1982) (Similar proviso in Alabama law which indemnifies employees for judgment does not constitute a waiver of Eleventh Amendment Immunity).

242. Accordingly, this Court in assessing whether monetary damages should be awarded to Plaintiffs will limit its consideration to whether damages should be awarded against Defendant Turner in his individual capacity.

(b) THE STANDARDS

243. The "policies underlying §1983 include compensation of persons injured by deprivation of federal rights and prevention of abuses of power by those acting under color of state law." Robertson v. Wegmann, 436 U.S. 584, 591 (1978) citing Carey v. Phipus, 435 U.S. 247, 254 (1977); Mitchum v. Foster, 407 U.S. 225, 238-242 (1972); Monroe v. Pape, 365 U.S. 167, 172-187 (1961). Section 1983 was intended to create "a species of tort liability" in favor of persons deprived of federally secured rights. Carey v. Phipus, supra, 435 U.S. at 253.

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(Footnote continued from previous page)

department, a constitutional officer, the Legislature, and the judicial branch.

(4) This section is not intended to be a waiver of sovereign immunity or a waiver of any other defense or immunity to such lawsuits.



244. Under Carey v. Piphus, supra, 435 U.S. at 263-264, compensable damage may not be presumed but must be proven. However, the "injury in civil rights cases may be intangible" and need not be financial or physical but may include damages for humiliation and emotional distress." Stallworth v. Shuler, \_\_\_F.2d\_\_\_, \_\_\_ (Slip. Op. 1064, 1069) (11th Cir. December 11, 1985) citing Carey v. Piphus, supra, 435 U.S. at 263, 64 and n. 20.

245. The Supreme Court has recently recognized that "once liability is found...the [court]...is required to award compensatory damages in an amount appropriate to compensate plaintiff for his loss." Smith v. Wade, 461 U.S. 30, 52 (1983) (§1983 action by inmate against prison guard for damages sustained from beatings and sexual assaults by other inmates).

246. Notwithstanding the fact that all of Plaintiffs' damages are not quantifiable with precision," their injuries nonetheless give rise to actual consequential damages. Cortiz v. Naranjo, 667 F.2d 892, 898 (10th Cir. 1981) (§1983 damage award against law enforcement officials). Additionally, "real injury could be inferred from the facts" of each plaintiff's case. Baskin v. Parker, 602 F.2d 1205, 1210 (5th Cir. 1979) (damages for humiliation and emotional distress appropriate in §1983 action).

247. Other federal courts have consistently awarded damages to Plaintiff inmates whose Eighth Amendment rights had been violated. See, e.g., Wade v. Haynes, 663 F.2d 778 (8th Cir. 1981) (plaintiff awarded \$25,000 in compensatory damages and

\$5,000 in punitive damages against correctional officer for damages sustained in beatings and sexual assaults by other inmates), aff'd Smith v. Wade, 461 U.S. 30 (1983); Thomas v. Booker, 762 F.2d 654 (8th Cir. 1985) (plaintiff entitled to compensatory and punitive damages from defendant jail officials because of defendants' reckless disregard of plaintiff's right to be free from violent attacks by fellow inmates); Matzker v. Herr, 748 F.2d 1142 (7th Cir. 1982) (plaintiff stated a claim for compensatory and punitive damages from defendant jail officials because of their failure to reasonably protect him from violent attacks by fellow inmates); Martin v. White, 742 F.2d 469 (8th Cir. 1984) (Prison officials were liable for compensatory and punitive damages where they acted in reckless disregard of inmates' right to be safe from assaults by other inmates); Stokes v. Delcambre, 710 F.2d 1120, 1124 (5th Cir. 1983) (plaintiff awarded \$70,000 in compensatory damages and \$310,000 in punitive damages against jail officials for damages stemming from a violation of his Eighth Amendment right to be reasonably protected from physical assault by other inmates); Davis v. Hazen, 582 F.Supp. 938 (C.D. Il. 1983) (mentally ill inmate's estate held entitled to compensatory and punitive damages from jail officials whose actions led to the decedent being beaten to death by a fellow inmate).

(c) DAMAGES FOR EACH PLAINTIFF

248. Five of the damages plaintiffs are victims of rape. Two of those, David Aldred and Martin Saunders, were diagnosed by Dr. Caddy as suffering from post traumatic stress

disorder<sup>64/</sup> (Caddy, Pgs. 1185-1186 and 1207). Ronald Durrance, in addition to the gain time he has lost, has suffered an adjustment disorder with mixed emotional features<sup>65/</sup> (Caddy, Pg. 1225), as was Harper (Ibid. Pg. 1229). Bronson, who was penetrated with a baseball bat

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64/ In the category diagnosed as post traumatic stress disorder, which is one of the profound anxiety disorder categories of the Diagnostic and Statistical Manual of Mental Diseases. Vol. 3. the essential feature is the development of characteristic symptoms following a psychologically traumatic event that is generally outside the range of usual human experience. The characteristic symptoms involve re-experiencing the traumatic event, often a numbing of responsiveness to it or an excessive responding to it; a reduced involvement with the external world; and a variety of what is known as autonomic reactions, physiologic reactions, dysphoric mood and cognitive symptoms (e.g., reactions of rage, reactions of humiliation, reactions oriented towards aggression against the perpetrator of a violent act like rape) (Caddy, Pgs. 1238-1239).

65/ The essential features of the adjustment disorder class, according to the Diagnostic and Statistical Manual of Mental Disorders. Vol. 3. is a maladaptive reaction to an identified psychological stressor that occurs within three months after the onset of the stressor. The maladaptive nature of the reaction is indicated by the impairment in social or occupational functioning or symptoms that are in excess of a normal and expected reaction to the stressor. The disturbance is not merely one instance of a pattern of overreaction, or an exacerbation of an already existent disorder. It is assumed that the disturbance will eventually remit after the stressor ceases or if the stressor persists, when a new level of adaptation is achieved. The new level is classically to be achieved only as a result of a natural remission that sometimes occurs in individuals, or alternatively as a result of a remission or reversal that occurs as a result of therapeutic intervention.

handle,<sup>66/</sup> is suffering an adjustment disorder with mixed emotional features, together with an atypical personality disorder and a sexual identification disorder, although it is impossible to discern specifically what part of the disorder is a direct function of the incident at Glades (Ibid, Pg. 1193). Were the five rape victims, as well as the other plaintiffs that Dr. Caddy interviewed, to be treated outside of prison for the emotional distress resulting from the rapes, each would require an estimated \$10,000 to \$20,000 in therapy (Caddy, Pg. 1271). Four additionally testified as to the intense physical pain each felt upon being anally penetrated and for some time thereafter (Aldred, Pgs. 816-817). (Saunders, Pgs. 558-559), (Durrance, Pgs. 459 and 472). (Bronson, Pgs. 698-699). That each was experiencing extreme emotional distress can be inferred from their decision to check into, and to remain, in protective confinement where conditions can only be described as punitive (Caddy, Pg. 1265). Considering these factors, including that psychiatric and/or psychological services can and should be provided by the Department of Corrections, the Court hereby awards to each of the sexually assaulted plaintiffs a sum of Thirty Thousand Dollars (\$30,000) in compensatory damages.

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66/ §794.011(1)(f), Florida Statutes (1983) provides as follows:

"Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery shall not include acts done for bona fide medical purposes.

249. A second grouping of plaintiffs were not raped, but suffered physical injuries as a result of assaults. The most severely injured of these is Wayne Epprecht, whose cheek bone was fractured when he was struck with a lead pipe during a robbery. Epprecht, even following surgery, suffers from a probable temporomandibular joint dysfunction, or misalignment of the jaw, which is consistent with the headaches and pain upon chewing of which Epprecht complains (Wagshull). The jaw problem can be remedied by an office procedure, but has caused Epprecht pain for nearly 5 years - some 1,700 days. Additionally, Epprecht suffers from a permanent sensory deficit in the left cheek that will forever produce sensations of numbness and, upon elongated bouts of chewing, pain (Wagshull). And lastly, Epprecht was diagnosed by Dr. Caddy as suffering from a moderate adjustment disorder with mixed emotional features. Considering all of these factors, and overlaying the permanency of Epprecht's facial injury on the life expectancy of this 33 year old plaintiff, the Court awards Epprecht Seventeen Thousand Dollars (\$17,000.00) in compensatory damages.

250. Two other of the plaintiffs, Eddie Cobb and Edwin Johnson, both suffered injuries that appear to have been serious, but less substantial than Epprecht. Cobb was stabbed, requiring 18 stitches in his scalp and 12 on his right arm (Cobb, Pg. 768), has a permanent scar on his right arm (Ibid. Pg. 767), and complains of pounding headaches and dizziness that he previously had not experienced. Johnson was hit in the head with a stool and was hospitalized for two weeks after

receiving five stitches in his scalp (Ibid. Pg. 883). Johnson additionally was diagnosed by Dr. Caddy as suffering from an adjustment disorder with mixed emotional features (Caddy, Pg. 1216). In addition to both their physical, and in the case of Johnson, psychological injuries, Cobb and Johnson were both confined for lengthy periods of time. Cobb was locked in administrative confinement from February 6 through March 15, 1985, notwithstanding the fact that he was the victim, not the aggressor in the fight that preceded his confinement (Peters). See, P.Ex. 15, Section C (Department of Correction Daily Records of Segregation for Eddie Cobb from Feb. 6, 1984 to March 15, 1984). Johnson stayed in protective confinement for his own safety. Considering these factors, the Court awards Six Thousand, Five Hundred Dollars (\$6,500.00) in compensatory damages to Cobb and Thirteen Thousand Dollars (\$13,000.00) to Johnson.

251. Two plaintiffs were not seriously physically injured. Michael Gordon, however, was injured psychologically, suffering an adjustment disorder with mixed emotional features (Caddy, Pg. 1164) growing out of a period of incarceration that included two incidents of robbery in which he was hit in the face or head (Gordon, Pgs. 907 and 910), one incident in which his buttocks were singed when a drunken inmate lit Gordon's polyester underwear on fire (Ibid. Pg. 909), and one incident in which he was extorted by a guard (Ibid. Pg. 902). Mr. Gordon is no longer in prison and cannot avail himself of institutional mental health services. [Dr. Caddy testified that some of the inmates could need as much as 80 therapeutic visits

(Caddy, Pg. 1271), the cost of which ranges up to as much as \$125 an hour (Ibid., Pg. 1272)]. Gordon deserves to be compensated for his emotional distress and the experience he suffered; the Court awards Gordon Six Thousand Dollars (\$6,000.00) in compensatory damages.

252. LaMarca suffered neither physical injury nor any especially severe psychological damage. He did, however, endure four months in protective confinement and an additional six months in a county jail for escape, an escape this Court interprets as being prompted by the conditions put at issue by this action, an action initiated pro se by LaMarca. Those 10 months total some 300 days which, if valued for the loss of privileges that Mr. LaMarca endured while in protective confinement (120 days) and for the loss of what would otherwise have been complete freedom (180 days), provide a basis for an award to LaMarca. The Court awards LaMarca Nine Thousand Dollars (\$9,000.00) in compensatory damages.

253. In summary, the Court finds that each Plaintiff is entitled to the following award of compensatory damages for injuries suffered by each Plaintiff as the consequence and direct result of Defendant Turner's violation of each plaintiff's constitutional rights:

|                           |          |
|---------------------------|----------|
| (i) Anthony LaMarca       | \$ 9,000 |
| (ii) Martin Saunders      | 30,000   |
| (iii) Edwin Johnson       | 13,000   |
| (iv) David Aldred         | 30,000   |
| (v) Steve H. Bronson, Jr. | 30,000   |

|                       |        |
|-----------------------|--------|
| (vi) Eddie Cobb       | 6.500  |
| (vii) Ron Durrance    | 30.000 |
| (viii) Wayne Epprecht | 17.000 |
| (ix) Michael Gordon   | 6.000  |
| (x) Billy Joe Harper  | 30.000 |

## B. THE INJUNCTIVE CASE

### 1. STANDARDS

254. This Court is aware that with respect to several of the allegedly unconstitutional practices of confinement at GCI, the Defendants have instituted changes or improvements. "It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform when there is possibility of resumption." United States v. Oregon State Medical Society, 343 U.S. 326, 333 (1952). As a general proposition, the "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot...The defendant is free to return to his old ways." United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953) (footnote omitted). Although Defendants' efforts to ameliorate or correct the alleged deficiencies at GCI are commendable, they do not deprive this Court of the power to order injunctive and/or declaratory relief, where otherwise proper, unless: "(1) it can be said with assurance that 'there is no reasonable expectation' that the alleged violation[s] will recur, and (2) interim relief or events have completely and irrevocably



eradicated the effects of the alleged violation." County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979) (quoting United States v. W.T. Grant Co., supra, 345 U.S. at 633). Defendants bear a "heavy" burden of showing that both of these conditions have been satisfied in order to render moot any allegedly deficient conditions or practices of confinement. County of Los Angeles v. Davis, supra, 440 U.S. at 631.

255. This Court is concerned that the Superintendent of GCI during the trial, Defendant Music, left that position December 13, 1985. Thus, there is no assurance that improvements made by Defendant Music during his tenure at GCI will be continued. Additionally, the Court is of the view that improvements made by Defendant Music did not completely eradicate the unconstitutional conditions of confinement.

## 2. INJUNCTIVE RELIEF

256. There have been beneficial changes at GCI since the retirement of Defendant Turner as superintendent - e.g., expeditious transferring of known "wolves," the barbed-wiring beneath the fence surrounding the confinement area, and the removal from dormitory bunks of such obstructions as towels and lockers. What happened to witness Larry Brown as recently as June, 1985 - and, equally to the point, what has not happened to any of his assailants, despite this Court's having found Brown to be forthcoming witness - makes patent the need for systemic changes.

257. The Court orders that two committees be established, one of penologists and the other of psychologists or

psychiatrists, to advise the Court in the formulation of specific injunctive relief.

258. The charter of the committee of penologists shall be to review and develop relevant procedures at GCI. One goal of this committee shall be remedial: to ferret out other rape victims<sup>67/</sup> who have not been identified through this litigation, so that they may be provided whatever therapeutic assistance is needed. A second, more far reaching goal will be prospective: to prevent a recurrence of the assaults, extortions, and homosexual rapes that unfortunately - but not inevitably - have characterized life on the compound at Glades Correctional Institution.

259. The charter of the committee of psychiatrists/psychologists shall also be two-pronged. The first mission shall be to prescribe a treatment plan for the plaintiffs and witnesses in this action who remain incarcerated. The second will be to develop an internal mechanism within the prison for providing the male rape victims of Glades Correctional Institution the same kind of support that female rape victims on the outside receive from rape crisis centers.

260. The parties shall nominate one member of each committee, submitting the nominees' names to the District Judge within 30 days of the date of this Order. The Court shall name the

---

67/ For the reasons discussed, supra, in the section on the underreporting of rapes, the Court is of the mind, although it is unnecessary here to so hold, that a number of additional homosexual rapes did occur at GCI.

third member, who shall be chairman. The committees shall report to the Court within 60 days with an outline of the therapeutic services needed for the instant plaintiffs and witnesses, and with a preliminary plan for the remaining tasks.

C. A LOOSE END:  
IDENTIFICATION OF THE CLASS

261. On April 15, 1984, this Court (Paine, J.) ordered that a class be certified consisting of those persons who are or will be incarcerated at GCI, for purposes of injunctive relief. Defendants have moved this Court to decertify this class on the grounds that none of the named plaintiffs are presently at GCI. Defendants' request is denied.

262. While Defendants are correct that none of the named plaintiffs are presently incarcerated at the GCI, that fact does justify the relief sought by Defendants.

263. It is well settled that where the claim on the merits is "capable of repetition yet evading review," the named plaintiff may continue to litigate the action despite the plaintiff's loss of personal stake in the outcome. Gerstein v. Pugh, 420 U.S. 103, 110, n. 11 (1975). Since seven of the named Plaintiffs continue to be incarcerated within the Florida State prison system, there exists a distinct possibility that they will again be incarcerated at GCI since inmates are subject to reassignment to various institution within the system.

264. The "capable of repetition, yet evading review" doctrine is clearly applicable "where the named plaintiff does have a personal stake at the outset of the lawsuit, and where the claim may arise again with respect to that plaintiff." U.S. Parole Commission v. Geraghty, 445 U.S. 388, 398 (1980) citing Weinstein v. Bradford, 423 U.S. 147, 148 (1975); Roe v. Wade, 410 U.S. 113, 123-125 (1973). The Geraghty Court reasoned that "[s]ince the litigant faces some likelihood of being involved in the same controversy in the future, vigorous advocacy can be expected to continue." Id.

265. However, notwithstanding this Court's conclusion that the Plaintiffs may continue to prosecute this class action, even though they are no longer incarcerated at GCI, the Court is still required to examine the ability of the named representative "to fairly and adequately represent the interest of the class." Fed. Rule Civ. Proc. 23(a); Sosna v. Iowa, 419 U.S. 400, 403 (1975); United States Parole Commission v. Geraghty, supra, 445 U.S. at 406-407.

266. In this action, the named Plaintiffs have and continue to adequately represent the interests of the class. It is unlikely that the named Plaintiffs would have interests in conflict with the class and the interest of the class have been competently represented throughout all these proceedings, the trial and during the post-trial activity. Sosna v. Iowa, supra, 419 U.S. at 403.

267. Finally, prior to decertifying the class on the basis that the named Plaintiffs are no longer class members, this Court would be obliged to provide class members with notice of what has occurred and provide them with an opportunity to come forward as a named Plaintiff class representative. See, U.S. Parole Commission v. Geraghty, supra, 445 U.S. at 407. In view of the Court's finding that the named Plaintiffs are presently adequately representing the class, the Court need not provide any such notice to class members at this time.

### III. CONCLUSION

268. In summary, for the reasons detailed in this decision, this Court concludes that GCI was run in a manner that violated Plaintiffs' constitutional rights to not be subjected to "cruel and unusual punishment" and that as a consequence of Defendant Turner's indifference to Plaintiffs' rights, each plaintiff suffered injuries for which he shall be compensated.

269. Additionally, in order to avoid any recurrence of the way GCI was operated by Defendant Turner, and to ensure that additional improvements will be implemented to address victims of the unconstitutional practices, the Court has ordered the injunctive relief described herein.

270. Finally, as the prevailing party in this action, Plaintiffs are entitled, pursuant to the Civil Rights Attorney Fees Awards Act of 1976, 42 U.S.C. §1988, to an award of attorney fees and litigation expense reimbursement.

271. Plaintiffs shall file with the District Judge within twenty (20) days from issuance of this Order appropriate fee/expense submissions and accompanying memoranda as to this issue. Defendants shall respond within twenty (20) days from Plaintiffs' filing. The District Judge may then enter an appropriate Order granting Plaintiffs' attorney fees and litigation expenses consistent with the parties' submissions.

Pursuant to statute, the parties may file and serve, with the District Judge in West Palm Beach, and within ten (10) days of the entry of this Order, their written objections to any portion of these Findings of Fact or Conclusions of Law..

DONE AND ENTERED this 8<sup>th</sup> day of January, 1986.

Peter Nimkoff  
UNITED STATES MAGISTRATE

Copies furnished to:

Counsel of Record

ANTHONY LA MARCA, et al.,  
Plaintiffs,

FILED by

D.C.

CIVIL ACTION  
DOCKET NO.

82-8196-Civ-PAINE

v.

JUN 11 1987

PARTIAL FINAL  
JUDGMENT

R. V. TURNER, et al.,  
Defendants.

ROBERT M. MARCH  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - FL

This action came on before the court on the report and recommendation of the  
Magistrate (DE 128),

and a decision having been duly rendered by the Honorable James C. Paine in an order  
entered on June 4, 1987 it is

ORDERED AND ADJUDGED that judgment be and hereby is entered for  
plaintiffs LaMarca, Saunders, Johnson, Aldred, Bronson, Cobb, Durrance,  
and Harper and against defendant Turner in accordance with the following  
award of compensatory damages:

Certified to be a true and  
correct copy of the original.

Robert M. March, Clerk  
District Court  
Southern District of Florida

*Robert M. March*  
6/4/87 Deputy Clerk  
its

|                       |          |
|-----------------------|----------|
| Anthony LaMarca       | \$ 9,000 |
| Martin Saunders       | \$30,000 |
| Edwin Johnson         | \$13,000 |
| David Aldred          | \$30,000 |
| Steve H. Bronson, Jr. | \$30,000 |
| Eddie Cobb            | \$ 6,500 |
| Ron Durrance          | \$30,000 |
| Billy Joe Harper      | \$30,000 |

Interest on this judgment shall run from the date of judgment until paid,  
at the rate of 7.02 percent. It is further

ORDERED AND ADJUDGED that, with respect to the claims of plaintiffs  
Wayne Epprecht and Michael Gordon, judgment shall be entered for defendant  
and against plaintiffs, the plaintiffs to take nothing. It is further

ORDERED AND ADJUDGED that two committees shall be established to  
advise the court in the formulation of injunctive relief, in accordance  
with the court's specific directives set out at pages 45-46 of its order  
entered on June 4, 1987. This case remains open as to the questions of  
further injunctive relief and attorneys fees and expenses.

Dated at: West Palm Beach, Florida



Date: June 4, 1987

• ROBERT M. MARCH, Clerk,

by: *Robert M. March*  
Deputy Clerk

1  
2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 82-8196-Civ-PAINE

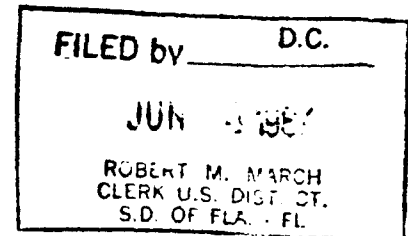
4 ANTHONY LA MARCA, MARTIN )  
5 SAUNDERS, and EDWIN JOHNSON, )  
6 individually and on behalf )  
7 of all others similarly )  
8 situated, and DAVID ALDRED, )  
STEVE H. BRONSON, JR., )  
9 EDDIE COBB, RON DURRANCE, )  
WAYNE EPPRECHT, MICHAEL )  
10 GORDON, and BILLY JOE HARPER, )  
11 individually, )

12 Plaintiffs, )

13 v. )

14 R. V. TURNER, individually in )  
15 his former official capacity )  
16 as Superintendent of Glades )  
17 Correctional Institution, )  
18 CHESTER LAMBDIN, in his offi- )  
19 cial capacity as Superinten- )  
20 dent of Glades Correctional )  
21 Institution, and the STATE OF )  
22 FLORIDA, )

23 Defendants. )



24 ORDER ON REPORT AND RECOMMENDATION OF MAGISTRATE

25 This cause comes before the court on the report and  
26 recommendation of the Magistrate (DE 128), defendants' amended  
27 response and objections (DE 155), and plaintiffs' reply (DE 170).  
28 The court has studied these submissions and has reviewed the  
29 voluminous transcripts, exhibits, and other materials in the case  
30 file as well as the relevant authorities. Now being fully  
31 advised, the court renders the following memorandum and order.



I.

BACKGROUND

This class action for damages and injunctive relief was brought by inmates who claim that their federal constitutional rights were violated when they were gang raped or otherwise assaulted while incarcerated at the Glades Correctional Institution (GCI), a state prison in Belle Glade, Florida. The procedural history of the case is set out at length by the Magistrate. Briefly, this litigation was commenced on May 14, 1982 with the handwritten pro se complaint of Anthony LaMarca, who alleged that he was subjected to ongoing physical violence and harassment by other GCI inmates because he refused to participate in homosexual activity and that prison officials failed to act to alleviate the situation (DE 1). As the lawsuit continued, counsel was obtained and the complaint was amended several times (DE 23, 62, 93, 129, 131). On April 13, 1984, the undersigned district judge ordered that for purposes of injunctive relief the case proceed as a class action defined as those persons within the Florida prison system who are or will be incarcerated at GCI (DE 47).

The third amended complaint contains claims for damages by ten inmates. Named plaintiffs LaMarca, Saunders and Johnson also seek equitable remedies on behalf of the class. Defendant Turner is sued in his individual capacity as former superintendent of GCI. Defendant Lambdin, the current

1 superintendent, is sued solely in his official capacity for  
2 purposes of injunctive and equitable relief (DE 129). The State  
3 of Florida is a defendant for purposes of attorneys' fees and  
4 expenses.

5 The district court referred the case to United States  
6 Magistrate Peter Nimkoff for a report and recommendation pursuant  
7 to Magistrate Rule 1(f) of the Local Rules of the Southern  
8 District of Florida. The Magistrate conducted two weeks of  
9 evidentiary hearings, reviewed deposition testimony and numerous  
10 exhibits, and heard oral argument. The Magistrate then filed a  
11 135-page report and recommendation containing findings of fact  
12 and conclusions of law (DE 128) which found Turner liable to the  
13 ten named plaintiffs in the aggregate amount of \$201,500 and  
14 recommended the creation of two committees to assist the court in  
15 formulating specific injunctive relief.

16 Defendants filed extensive objections to the Magistrate's  
17 report in accordance with Local Magistrate Rule 4(b) (DE 155).  
18 Defendants dispute the Magistrate's failure to grant a  
19 continuance, to grant a jury trial, and to recuse himself from  
20 the proceedings, and also lodge numerous objections to specific  
21 findings of fact and conclusions of law. Plaintiffs submitted an  
22 equally extensive reply (DE 170).

## II.

### STANDARD OF REVIEW

The court's review of the Magistrate's findings and recommendations is governed by a de novo standard:

A District Judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate. The District Judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the Magistrate, making his own determination on the basis of that record. The District Judge may also receive further evidence, recall witnesses, or recommit the matter to the Magistrate with instructions.

Magistrate Rule 4(b), Local Rules of the Southern District of Florida; accord 28 U.S.C. § 636(b)(1) (1982).

The Supreme Court has held that, in providing for a de novo "determination" rather than a de novo hearing, "Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a Magistrate's proposed findings and recommendations." United States v. Raddatz, 447 U.S. 678, 676 (1980). The former Fifth Circuit has held that, in situations involving the constitutional rights of a criminal defendant, a district court should not enter an order inconsistent with the Magistrate's credibility determinations without personally hearing the live testimony of the witnesses whose testimony is determinative. Louis v.

1 Blackburn, 630 F.2d 1105, 1109 (5th Cir. 1980).<sup>1</sup> Although the  
2 Louis court expressly limited its holding to criminal cases, see  
3 id. n.3, the exercise of sound judicial discretion compels this  
4 court to extend substantial deference to the Magistrate's  
5 credibility choices absent countervailing considerations. In a  
6 criminal case which preceded Louis, the Fifth Circuit stated:

7 In our view it would be a rare case in  
8 which a district judge could resolve  
9 credibility choices contrary to the  
10 recommendations of the magistrate with-  
11 out himself having had an opportunity  
12 to see and hear the witnesses testify.  
13 Certainly, in such a rare case there  
14 should be found in the transcript an  
15 articulable basis for rejecting the  
16 magistrate's original resolution of  
17 credibility and that basis should be  
18 articulated by the district judge.

19 United States v. Marshall, 609 F.2d 152, 155 (5th Cir. 1980).

### 20 III.

#### 21 FAILURE TO GRANT JURY TRIAL

22 Defendants first object to the Magistrate's failure to  
23 grant a jury trial. The Magistrate found that defendants waived  
24 that right by failing to make a demand within ten days of  
25 November 2, 1983, when they filed an answer to the first amended  
26 complaint (DE 23, 41). Defendants first demanded a jury trial on  
November 8, 1985, over two years later, in response to the second

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27 <sup>1</sup>Decisions of the former Fifth Circuit filed prior to October 1,  
28 1981 constitute binding precedent in the Eleventh Circuit.  
29 Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir.  
30 1981)(en banc).

1 amended complaint (DE 62, 69, 83). Following the Magistrate's  
2 denial of a jury trial (DE 105), defendants filed an emergency  
3 appeal with the district court (DE 104), which the undersigned  
4 denied (DE 112).

5 Defendants again argue that the second and third amended  
6 complaints introduced new issues into the lawsuit which merited a  
7 jury trial and that therefore their demand was timely. As the  
8 Magistrate correctly concluded, the right to jury trial is waived  
9 by a failure to make a demand within ten days of the "last  
10 pleading directed to such issue." Fed. R. Civ. P. 38(b). If the  
11 original pleadings effectively waive jury trial, the right cannot  
12 be revived by amending the original pleadings. Walton v. Eaton  
13 Corp., 563 F.2d 66, 71 (3d Cir. 1977). A jury trial may be  
14 demanded, however, for any "new issues" in the amended pleadings.  
15 Amendments not introducing new issues do not give rise to a  
16 demand for jury trial. Guajardo v. Estelle, 580 F.2d 748, 753  
17 (5th Cir. 1978).<sup>2</sup>

18 What constitutes a "new issue" is the bone of contention.  
19 The court's review of the law on this subject has yielded less  
20 than clear results. The former Fifth Circuit has said that  
21 "[t]he term 'new issues' has been interpreted to mean new issues

---

22  
23 <sup>2</sup>Although Fed. R. Civ. P. 39(b) permits a court in its discretion  
24 to grant a jury trial after the period for a timely demand has  
25 run, defendants insist that they were entitled to a jury trial as  
26 of right and that therefore a Rule 39(b) analysis is  
inappropriate (DE 155, at 5).

1 of fact and not new theories of recovery." Id. at 753.

2 Notwithstanding, not every new fact question has been held to  
3 give rise to a jury trial. For example, in Lanza v. Drexel &  
4 Co., 479 F.2d 1277 (2d Cir. 1973)(en banc), a securities case,  
5 the court held that a claim for punitive damages and an  
6 allegation of willfulness were not new issues within the meaning  
7 of Rule 38:

8 The willfulness and falsity as of a  
9 particular date merely clarified "the  
10 same general issues" raised in the  
11 original complaint. Moore v. United  
12 States, 196 F.2d 906, 908 (5th Cir.  
13 1952). Kircher had been put on notice  
14 of the underlying facts and basic  
15 legal theory--fraud--upon which plaintiffs  
16 sought relief, and the character of the  
17 suit was in no way changed by the  
18 amendments.

19 Id. at 1310 (emphasis added). One district court has articulated  
20 the following standard:

21 The test to be employed by a court  
22 in ruling on a motion to strike a  
23 jury demand is whether the "new  
24 issues" alleged in the amendments  
25 "touch ... the same general issues"  
26 raised by the original pleadings,  
Roth v. Hyer, 142 F.2d 227, 228  
(5th Cir. 1944), or whether the  
issues contained in the amended  
complaints "were in any material  
way different from those presented  
by the original [complaint]."  
Connecticut General Life Insurance  
Co. v. Breslin, 332 F.2d 928, 931  
(5th Cir. 1964).

27 Reading & Bates Construction Co. v. Baker Energy Resources Corp.,  
28 96 F.R.D. 564, 565 (S.D. Tex. 1983)(emphasis added).

1 In this case, the second and third amended complaints  
2 introduced claims for damages by seven new plaintiffs. As  
3 defendants contend, each of these claims requires proof as to  
4 whether the alleged incidents occurred, whether the evidence  
5 establishes a causal connection with defendants' conduct, and  
6 whether damages have been sustained. All of these questions  
7 raise "new" factual issues in the plainest sense of the word.

8 The peculiar circumstances of this case, however, suggest  
9 a contrary result. First, the record of the evidentiary hearings  
10 conducted by the Magistrate provides the court with 20/20  
11 hindsight on the nature and materiality of the new factual issues.  
12 Second, a class action posture requires that the plaintiffs raise  
13 common questions of fact. See Fed. R. Civ. P. 23(a). Of  
14 particular relevance is the testimony of the named plaintiffs and  
15 of Dr. Richard M. Swanson, plaintiffs' expert witness in the  
16 field of correctional psychology. Considered as a whole, this  
17 evidence shows that plaintiffs' claims possess a factual  
18 congruity of sickening proportion. Their stories are strikingly  
19 similar, reflecting common experiences of harassment, threats,  
20 attack, official indifference, and resulting damage. The  
21 similarity of the factual questions is particularly apparent in  
22 the court's analysis of the causal connection between Turner's  
23 acts or omissions and plaintiffs' claims. See infra at 39-42.

24 Thus, the issues raised by the seven new plaintiffs in the  
25 second amended complaint "touch ... the same general issues"  
26

1 raised in the first amended complaint, Roth v. Hyer, 142 F.2d  
2 227, 228 (5th Cir. 1944), and are not materially different from  
3 the original issues, see Connecticut General Life Insurance Co.  
4 v. Breslin, 332 F.2d 928, 931 (5th Cir. 1964); see also Reading  
5 & Bates, 96 F.R.D. at 565. The first amended complaint put  
6 defendants "on notice of the underlying facts and basic legal  
7 theory ... upon which plaintiffs sought relief, and the character  
8 of the suit was in no way changed by the amendments." Lanza, 479  
9 F.2d at 1310. Having failed timely to demand a jury trial in  
10 response to the first amended complaint, defendants effectively  
11 waived their right to such a trial, and their objection is  
12 overruled.

#### 13 IV.

#### 14 FAILURE TO GRANT CONTINUANCE

15 Defendants next object to the Magistrate's failure to  
16 grant a continuance of the evidentiary hearings. This court has  
17 previously denied defendants' emergency appeal of the  
18 Magistrate's ruling (DE 104, 112).

19 Orders concerning the conduct of a trial, such as  
20 continuances, "are peculiarly within the jurisdiction of the  
21 trial court" and "will not be disturbed except upon a showing of  
22 abuse of discretion, and then only upon a showing that such abuse  
23 of discretion resulted in substantial harm to the parties seeking  
24 relief." Edward Leasing Corp. v. Uhlig & Associates, Inc., 785  
25 F.2d 877, 881-82 (11th Cir. 1986).  
26



1 Defendants principally assert that they were not prepared  
2 to defend against the damage claims because circumstances forced  
3 them to depose the seven new plaintiffs as well as plaintiffs'  
4 expert witnesses at the last minute. Further, defendants contend  
5 that these depositions revealed the names of new witnesses with  
6 knowledge of plaintiffs' claims but defendants had no opportunity  
7 to depose them.

8 The court is not persuaded that these circumstances  
9 justified a continuance. Defendants had already been granted one  
10 continuance from November 4, 1985 to a special setting on  
11 December 2, 1985. In that order the Magistrate pointed out that  
12 defendants had had notice of the claims of the seven new  
13 plaintiffs at least since September 1 (DE 80). While it is true  
14 that discovery continued after the evidentiary hearings had  
15 begun, such a schedule does not appear to have dampened the  
16 energy and enthusiasm of competent counsel for both sides.  
17 Defendants were able to depose the seven new plaintiffs on  
18 November 13-15. Defendants do not explain, however, why this  
19 accelerated discovery schedule precluded them from deposing the  
20 newly-revealed witnesses before or after the commencement of  
21 trial on December 2, particularly considering that these new  
22 witnesses appear to be prisoners in defendants' custody.  
23 Defendants' assertion that they were unprepared to try this case,  
24 moreover, is belied by their effective cross-examination of  
25 plaintiffs' witnesses. Most important, defendants have  
26

1 demonstrated no actual prejudice. Accordingly, defendants'  
2 objection to the Magistrate's failure to continue the trial is  
3 overruled.

4 V.

5 FAILURE OF MAGISTRATE TO ENTER RECUSAL

6 During the testimony of Dr. Swanson, defendants first  
7 became aware that the Magistrate had visited GCI in the early  
8 stages of this litigation. Judge Nimkoff told counsel that in  
9 1982 he had conducted an informal hearing of LaMarca's claim, as  
10 was often his custom in prisoner cases. Also present at that  
11 unrecorded proceeding were Joe Belitsky of the Attorney General's  
12 Office, representing the State, and GCI Assistant Superintendent  
13 Arline. LaMarca related to the court his concern for other  
14 inmates who had been abused. Belitsky and Arline assured the  
15 Magistrate that a full investigation would take place. No such  
16 inquiry ever occurred, and Turner testified that he was unaware  
17 that these assurances were made to the court (DE 128, at 30-31).  
18 At trial defendants requested Judge Nimkoff to recuse himself,  
19 but the Magistrate denied that he would become a witness in the  
20 suit and accordingly refused the request.

21 A judicial officer is required to disqualify himself in a  
22 proceeding in which he has personal knowledge of disputed  
23 evidentiary facts concerning the proceeding. ABA Code of  
24 Judicial Conduct Canon 3(C)(1)(a) and (d)(iv); 28 U.S.C. § 455  
25 (1982). Defendants argue that the Magistrate relied upon these  
26

1 events as evidence establishing either Turner's knowledge of  
2 alleged conditions at GCI or his failure to act on those  
3 conditions after he he was put on notice.  
4

5 As defendants point out, the 1982 proceedings conducted at  
6 GCI were nonrecord, and no witness testified concerning the  
7 Magistrate's recollection of the events. Notwithstanding,  
8 knowledge acquired by a judge while he performs judicial duties  
9 does not constitute grounds for disqualification. United States  
10 v. Grinnell Corp., 384 U.S. 563, 583 (1966). Where it is alleged  
11 that a judge has personal knowledge of disputed evidentiary facts  
12 concerning a proceeding such that he should recuse himself  
13 pursuant to 28 U.S.C. § 455, the information or knowledge must  
14 stem from an extrajudicial source to warrant disqualification.  
15 United States v. Coven, 662 F.2d 162, 168 (2d Cir. 1981), cert.  
16 denied, 456 U.S. 916 (1982). Judge Nimkoff's 1982 visit to GCI  
17 was undisputedly conducted as part of the instant proceeding and  
18 occurred in the presence of counsel for the State. See United  
19 States v. State of Washington, 459 F. Supp. 1020, 1093-97 (W.D.  
20 Wash. 1978), aff'd, 645 F.2d 749 (9th Cir. 1981). Defendants,  
21 moreover, conceivably could have called Belitsky or Arline to  
22 testify to their memory of the proceeding.

23 Defendants finally argue that the Magistrate was inclined  
24 to rely on the 1982 hearing as evidence tending to establish  
25 notice to Turner or Turner's failure to act. The transcripts  
26 disclose that the Magistrate asked questions of several witnesses

1 regarding that hearing. In his report and recommendation,  
2 however, the Magistrate states that those events serve "merely to  
3 underscore Plaintiffs' position that GCI, under the Turner  
4 administration, was an institution not under the control of that  
5 Defendant" (DE 128, at 31). Thus, the Magistrate did not accord  
6 those events with dispositive weight. Cf. State of Washington,  
7 459 F. Supp. at 1095. In any event, disregarding the account of  
8 the 1982 hearing, the record contains more than enough evidence  
9 to support the Magistrate's findings and conclusions regarding  
10 Turner's control of GCI. The objection is overruled.

11 VI.

12 OBJECTIONS TO FINDINGS OF FACT

13 The court next will address in turn each of defendants'  
14 objections to the Magistrate's findings of fact and will analyze  
15 their significance to the overall disposition of the case. The  
16 numbers preceding each paragraph correspond to the paragraph  
17 numbering in the report and recommendation.

18 ¶31. As plaintiffs concede, defendants' objection should  
19 be sustained. Turner was superintendent of GCI from mid-1976 to  
20 his retirement on July 31, 1984.

21 ¶32. The racial breakdown of the GCI inmate population in  
22 1985 is somewhat relevant to the issue of injunctive relief. The  
23 Magistrate's finding that approximately sixty percent of the  
24 population was Black and the remainder White or Hispanic is  
25 generally supported by the evidence which concededly was not the  
26

1 most competent proof. Although the documentary evidence contains  
2 no support for the conclusion that the figure for Whites included  
3 Hispanics, there was testimony to that effect. Objection  
4 overruled.

5 ¶33. Although defendants are correct that Music  
6 estimated the Hispanic population at seven percent (Music, DE  
7 160, at 133), the evidence supports the inference that that  
8 percentage may have been higher at times. Defendants also  
9 contest the definition of "close custody" prisoners; however, the  
10 Magistrate did not define the term. Objection sustained in part  
11 and overruled in part; the Magistrate's finding is modified  
12 accordingly.

13 ¶36. Defendants protest the Magistrate's overall  
14 characterization of factors present at GCI such as "wholesale  
15 manufacture of prison wine," "regular screenings of sexually  
16 explicit videotapes," and "maintenance of an ill-assorted guard  
17 corps whose members the inmates perceived as regularly  
18 trafficking in contraband, extortion and neglect." Defendants  
19 admit that instances of these factors appear in the record but  
20 far less frequently than the Magistrate implied. The record  
21 supports findings that prison wine was prevalent at GCI, that  
22 sexually-explicit films were shown, and that many of the guards  
23 were perceived as corrupt or at least neglectful. Although the  
24 Magistrate's language is somewhat hyperbolic, the objection is  
25 overruled.  
26

1            ¶38-39. Defendants argue that the Magistrate implied that  
2 Turner was aware of all of the conditions at GCI relating to  
3 plaintiffs' claims and that two letters Turner wrote to Louie L.  
4 Wainwright, secretary of the Florida Department of Corrections  
5 (DOC), constitute admissions of GCI's unsafeness. It is apparent  
6 from the letters in evidence, however, that Turner's comments  
7 must be viewed in the context of his reporting a staffing  
8 shortage to his superior. Objection overruled.

9            Defendants make much of the relevance to this litigation  
10 of the accreditation of prisons and GCI in particular by the  
11 American Correctional Association. The Magistrate found that the  
12 GCI accreditation had "virtually no significance" to this lawsuit  
13 because accredited prisons have been found unconstitutional by  
14 courts. Having considered the GCI accreditation along with the  
15 remainder of the evidence, the undersigned district court finds  
16 it of marginal relevance in this case. Objection overruled.

17            ¶40. On January 30, 1980, the Palm Beach County Grand  
18 Jury issued a presentment regarding conditions at GCI (pltf. ex.  
19 4). Although the investigation was apparently provoked by  
20 shortages in meat supply, other security issues were addressed.  
21 Defendants' objection to the report's admissibility in evidence  
22 on the ground of hearsay is overruled pursuant to Fed. R. Evid.  
23 803(8)(C) and is also overruled on the basis of relevance because  
24 the report is germane at least to the question of notice to  
25 Turner.  
26

1 Defendants again complain about the Magistrate's use of  
2 the phrase "a free flow of contraband." The grand jury heard  
3 testimony of lax security at GCI as well as "many allegations and  
4 accusations of drugs, alcohol, and other contraband, gambling,  
5 theft, confiscation, and payoffs among the inmates and personnel  
6 of GCI." The report stated that alcohol use and its manufacture  
7 was apparently "prevalent." Pltf. ex. 4, at 6. That such  
8 contraband was freely flowing at GCI is a reasonable construction  
9 of the grand jury's findings, and the objection is overruled.

10 ¶42. On August 26-29, 1980, the DOC Office of the  
11 Inspector General issued a report on its management review of GCI  
12 (pltf. ex. 4). Among other things, the report noted a serious  
13 lack of supervision on the compound due to staffing shortages.  
14 The Magistrate simply cited this portion of the report and did  
15 not seem to hold Turner personally responsible for staff  
16 shortages. Accordingly, the objection is overruled.

17 ¶44. Defendants dispute the Magistrate's finding of low  
18 morale among GCI staff. The district court believes the record  
19 contains sufficient evidence to support this finding. This  
20 evidence includes an employee questionnaire which reflected that  
21 staff members felt that on-job training and the number of  
22 available staff were inadequate as well as the various witnesses'  
23 perception of staff apathy. Objection overruled.

24 ¶45. The Office of the Inspection General issued a second  
25 GCI management report approximately three years later, on  
26

1 September 19-21, 1983 (pltf. ex. 6). The management report  
2 supports the Magistrate's finding of some laxity in security,  
3 which included improper control and supervision of inmate  
4 movement from one location to another and inadequate staffing of  
5 the perimeter posts (id. at 8-9). Objection overruled.

6 ¶¶46-50. The Magistrate found that the use of excessive  
7 force by Lieutenant William Barrett when he was acting chief  
8 correctional officer at GCI was relevant to Turner's management  
9 of GCI. In brief, Barrett was summoned from a local festival in  
10 Belle Glade to the prison after a fight broke out in a dormitory.  
11 Barrett was accompanied by Sergeant Rickey Hayes and Lieutenant  
12 L.A. Peters, GCI's internal inspector. All three had been  
13 drinking. Barrett and Hayes had their faces made up like clowns.  
14 Although the incident had been largely quelled, Barrett took a  
15 loaded shotgun into the compound and used it to beat several  
16 inmates in the back of the head.

17 As plaintiffs emphasize, the Barrett incident is relevant  
18 not as a showing of improper use of force but as an illustration  
19 of Turner's reaction to the situation. The incident report of  
20 the Office of the Inspector General states that on the night of  
21 the incident Turner advised Barrett to go home and rest and that  
22 Turner did not feel the situation warranted notification of a  
23 prison inspector (pltf. ex. 9, at 5). Defendants are correct to  
24 add that Turner eventually notified the inspector general, who  
25 sent a team to GCI within three days of the incident (Swanson, DE  
26



1 117, at 213-14). Swanson criticized Turner for not immediately  
2 suspending Barrett and taking away his gun and badge rather than  
3 merely telling him to go home and rest. Significantly,  
4 defendants do not object to the Magistrate's finding at ¶49 that  
5 Barrett remained functioning as a correctional officer for at  
6 least a full week after the incident. It is clear that the  
7 Magistrate did not attribute undue weight to the Barrett incident.  
8 Objection overruled.

9 The Magistrate also related Swanson's testimony concerning  
10 the transcript of Turner's interview with one of Barrett's  
11 victims (pltf. ex. 9, subex. 13). The Magistrate quoted  
12 Swanson's testimony that the inmate's reporting of wine-drinking  
13 among the prisoners did not appear to surprise Turner. Contrary  
14 to defendants' assertion, the district court does not believe  
15 that the Magistrate found that Turner "failed to register  
16 appropriate outrage" at this revelation. The Magistrate simply  
17 quoted Swanson's opinion in a footnote and did not comment on it  
18 in any way. Objection overruled.

19 ¶¶51-52. Defendants also challenge as irrelevant the  
20 Magistrate's findings regarding the investigation<sup>3</sup> and  
21 eventual dismissal and arrest of GCI correctional officer  
22 Clarence Dixon. As defendants note, Turner did testify that,  
23 although the investigation was hindered by several obstacles, he

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24  
25 <sup>3</sup>The investigation occurred in mid-1984 rather than 1974, a  
26 probable typographical error in the report and recommendation.

1 ordered it to continue. Turner's persistence, however, does not  
2 negate the Magistrate's finding that if Dixon's employment  
3 application had been properly screened he probably would not have  
4 been hired at all. Objection overruled.

5 ¶53. Defendants again protest the Magistrate's use of the  
6 phrase "wholesale staff corruption." The Barrett and Dixon  
7 reports and the testimony of alleged inmate-enforcer Larry Pryor  
8 obviously do not in themselves impugn the integrity of the entire  
9 GCI security staff. Barrett, however, was one of GCI's  
10 top-ranked security officers. Further, the testimony of the  
11 inmate-witnesses discloses the perception of extensive staff  
12 corruption. Objection overruled.

13 ¶56. The Magistrate agreed with Swanson's conclusion that  
14 the GCI staff or administration took little or no effort to  
15 control the extensive contraband at the prison. Defendants  
16 complain that the Magistrate ignored their evidence of  
17 substantial measures to control the flow of contraband during  
18 Turner's regime. Both sides have done a heroic job of providing  
19 citations to the evidence supporting their respective positions.  
20 The district court has considered all the evidence as well as the  
21 possible biases of the witnesses. The record as a whole supports  
22 the Magistrate's conclusion that little or no effort was taken to  
23 control illicit activity at GCI, resulting in readily-available  
24 contraband. Objection overruled.  
25  
26

¶157-58. The Magistrate found that evidence of several incidents involving use of firearms tended to show inadequate staff training. Defendants claim that the Magistrate exaggerated the significance of these occurrences and that the GCI staff was in fact well-trained. The district court finds that the firearms incidents bear somewhat on the issue of staff training.

Objection overruled.

¶59. Defendants' objection to the finding of low morale among staff is overruled for the reasons stated in supra ¶44.

The district court agrees with defendants' assertion that Turner is not solely to blame for high staff turnover and vacancies. As plaintiffs and defendants note, the staff turnover and vacancy rates declined in 1982 and continued to decline through 1984. The relevancy of these observations, however, is not critical to the resolution of this case, because six of the ten individual plaintiffs were raped or assaulted after the turnover and vacancy rates had declined in 1983 and 1984. The Magistrate's findings are modified in accordance with the district court's observations in this paragraph.

¶61. Defendants take issue with the finding that the individual plaintiffs' claims are directly related to the lack of staff supervision due to Turner's failure to station the officers properly. The objection is overruled for the reasons stated in infra ¶¶62 and 63.

1 ¶62. During the Turner administration, GCI inmates were  
2 in the habit of hanging sheets, towels, clothes, and personal  
3 lockers from the bunk beds. These obstructions obscured activity  
4 in the bunks from the view of the officer stationed in the cage  
5 or "wicket" at the front of each dorm. The showers at the back  
6 of the dormitories were obscured from the officers' view by these  
7 obstructions and also by double-bunking the middle row of beds.  
8 Defendants point to testimony that an officer stationed in the  
9 wicket could not see into parts of the shower even if these  
10 obstacles were removed. This does not change the fact that  
11 visibility was greatly improved with the removal of these  
12 obstructions in one of the dormitories under one of Turner's  
13 successors, Superintendent Randall Music. Objection overruled.

14 ¶63. Although the officers were supposed to be on  
15 constant patrol of the dorms, the Magistrate found that this did  
16 not occur. The Magistrate's finding that routine patrol did not  
17 in fact take place is supported by the weight of the evidence,  
18 particularly the testimony that gang rapes in the showers or beds  
19 endured for fifteen to forty minutes. Objection overruled.

20 The Magistrate also found that Turner could recall no  
21 action taken against an officer for failure to patrol the  
22 dormitories. Turner actually testified that such action may have  
23  
24  
25  
26

1 been taken but that he could not recall a specific instance.<sup>4</sup>  
2 Objection overruled.

3 ¶64. Defendants take issue with the Magistrate's finding  
4 that GCI's chief investigator, Lieutenant Peters, testified that  
5 GCI had no standard operating procedure for investigating rapes  
6 (Peters, DE 162, at 444). Peters later testified to a procedure  
7 he had used to investigate a rape (id. at 464-65). From this  
8 testimony defendants allege that the Magistrate misrepresented  
9 the evidence. The court disagrees. Peters stated that no formal  
10 procedure in fact existed and later recounted his own methodology.  
11 Peters testified, as defendants note, that no procedure existed  
12 for line officers to report rapes directly to him, the prison  
13 investigator, but that line officers were supposed to pass on the  
14 information to their superiors. The individual plaintiffs'

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15  
16 <sup>4</sup>Mr. Lipman: During your tenure,  
17 Mr. Turner, were any officers ever  
18 suspended or disciplined for  
19 failure to walk the areas of the  
20 dormitory outside of their wicket  
21 during their duty hours?

22 Mr. Turner: I'm less sure of  
23 that one, Mr. Lipman. There  
24 probably could have been some  
25 disciplinary action taken  
26 concerning officers not properly  
performing those types of duties.

There certainly could have been,  
yes, sir.

Mr. Lipman: Can you recite one  
specific instance where that  
occurred, sir?

Mr. Turner: No, sir, I cannot.

Turner, DE 164 at 732-22.

1 stories, which the Magistrate found credible, demonstrate that  
2 the passing of rape reports to superior officers did not produce  
3 competent or thorough investigations of those reports. Objection  
4 overruled.

5 ¶65. DOC Inspector General Brierton testified that, in a  
6 prison rape investigation, at a minimum, (1) medical evidence  
7 should be secured, (2) a full victim statement should be taken,  
8 and (3) the matter should be referred to a local prosecutor.  
9 These steps were not followed at GCI with respect to the  
10 individual plaintiffs. Defendants question whether the  
11 individual plaintiffs were actually raped and, if they were,  
12 whether the rapes were reported. Again, the Magistrate found  
13 credible plaintiffs' accounts of their rapes and the ensuing  
14 events. The district court sees no reason to doubt this finding,  
15 and the objection is overruled.

16 ¶66. Both Turner and Peters specifically testified to  
17 only one prosecution for a rape at GCI. Peters remembered that  
18 it occurred in 1984. Although it is true that internal GCI  
19 statistical reports note five sexual assaults from 1980-84 (pltf.  
20 ex. 31), no incident reports regarding these attacks were  
21 introduced. The Magistrate's finding is so modified.

22 ¶71. The Magistrate found that various factors,  
23 considered in combination, should have made it apparent to a  
24 prudent administrator that rapes were occurring, and that,  
25 considering this knowledge, the failure to promulgate and adhere  
26

1 to the most rudimentary investigative and preventative procedures  
2 constitutes a deliberate indifference toward inmate security.  
3 The objection is overruled for the reasons stated in infra ¶¶72  
4 and 73 and elsewhere in this memorandum and order.

5 ¶72. The Magistrate found that the background of  
6 contraband, violence, and other illegal activity at GCI was  
7 compatible with the existence of violent sexual assaults.  
8 Defendants' objection that contraband was not free-flowing is  
9 overruled for reasons stated previously. Defendants' further  
10 objection that there is no connection between contraband and rape  
11 is belied by the plaintiffs' testimony evidencing the presence of  
12 weapons, drugs, and alcohol when they were raped. Objection  
13 overruled.

14 ¶73. The Magistrate found that the disproportionate  
15 numbers of White inmates who received protective confinement  
16 should have put Turner on notice that these inmates felt in  
17 danger in the population. As defendants note, inmates may  
18 request protective confinement for reasons unrelated to fears for  
19 their safety. The district court makes two observations. First,  
20 if protective confinement houses twenty Whites to one Black in a  
21 population where Blacks outnumber Whites (pltf. ex. 6), a prudent  
22 administrator should at least have inquired why this was the case.  
23 Second, the evidence as a whole supports the inference that  
24 Whites who requested protective confinement did so out of fear of  
25  
26

1 sexual or other assault. Again, a prudent administrator would  
2 have investigated. Objection overruled.

3 ¶75. Defendants criticize the Magistrate's finding that  
4 conditions in protective confinement were "punitive" because  
5 certain physical problems such as lighting, ventilation, and  
6 overcrowding were out of Turner's fiscal control. Those  
7 conditions, however, comprised only part of the reason that  
8 protective confinement was punitive. For example, the cells were  
9 infested with waste and vermin, inmates were harassed by inmates  
10 in nearby disciplinary confinement and the compound, no exercise  
11 was afforded, only three brief showers a week were allowed, and  
12 canteen and often library privileges were lost. Objection  
13 overruled.

14 ¶76. The fact that some inmates elected to remain in  
15 protective confinement for months was found to be evidence that  
16 those inmates experienced high anxiety in the compound.  
17 Overcrowded conditions in confinement supports an inference of a  
18 high inmate demand for protection. Defendants state only that  
19 other reasons could have contributed to the overcrowding, such as  
20 increase in inmate population, the nationwide rise in number of  
21 inmates in protective confinement, and inclusion of disciplinary  
22 and administrative confinement detainees. The Magistrate's  
23 finding is modified accordingly.  
24  
25  
26



1           ¶77. An experience repeated over and over in the  
2 testimony is the "wolfing"<sup>5</sup> and cat-calling by Black inmates  
3 to White inmates upon the arrival of the latter group at GCI.  
4 Contrary to defendants' assertion, the Magistrate found only that  
5 Swanson testified that the corroboration of this experience by  
6 inmates unknown to each other and presently incarcerated in  
7 different institutions enhances the probability of its occurrence.  
8 Objection overruled.

9           ¶78. The Magistrate found other indicia of sexual  
10 activity at GCI such as sheets hung from bunk beds, inmates  
11 moaning in their beds, and the showing of pornographic movies in  
12 a trailer where cries and moans were heard. Defendants object  
13 that reasons other than sexual activity existed for these  
14 occurrences and that there was no evidence that Turner knew of  
15 these phenomena. Such reasoning does not comport with the  
16 totality of the evidence including the inmate testimony that  
17 cries, moans, and screams were frequently heard emanating from  
18 the showers and from bunks concealed by sheets.

19           Further, defendants' protest that "a superintendent with  
20 all of his other responsibilities cannot screen each movie shown  
21 in prison" is almost disingenuous. Uncontradicted evidence  
22 shows that sexually-explicit videotapes - with graphic depictions  
23 of intercourse - were regularly shown in a trailer on the

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24  
25 <sup>5</sup>"Wolf" is a slang term for a violent, coercive homosexual or for  
26 a particularly assaultive inmate.

1 compound, that these movies were unsupervised, and that sounds  
2 consistent with human sexual activity could be heard from the  
3 trailer. Several witnesses provided more lurid accounts of the  
4 scene inside the trailer itself. Plaintiffs' expert witnesses  
5 rendered their opinion that such films are inappropriate for a  
6 prison audience. Defense witness Brierton acknowledged that a  
7 different school of thought exists which holds that adult movies  
8 may be appropriate for adult prison audiences. Brierton,  
9 however, was adamant that group events such as movies should  
10 always be supervised.

11 Defendants also point to the lack of evidence that Turner  
12 saw the hanging sheets, heard the cries, moans, and screams  
13 suggestive of sexual activity, or saw or selected the videotapes.  
14 A prudent administrator, however, should have been aware of these  
15 occurrences,<sup>6</sup> which the evidence shows to have been a  
16 prevalent and unmistakable part of life at GCI. Objection  
17 overruled.

18 ¶79. The Magistrate found that some rapes were reported  
19 and that this should have signalled a problem to a prudent  
20 administrator. There is no reason to question the finding that  
21 rapes were reported to GCI officers. That these reports never

---

22  
23 <sup>6</sup>A former superintendent, Brierton testified that, although he did  
24 not personally select the movies, he discovered that  
25 inappropriate films were being shown when he stopped by the  
26 prison one night to see what the movie was (Brierton, DE 185, at  
103).

1 made their way to Turner or to the prison investigator,  
2 considering the totality of the evidence, shows not Turner's  
3 exculpatory ignorance but rather his liability. Objection  
4 overruled.

5 ¶81. Objection overruled for the reasons stated in supra  
6 ¶64.

7 ¶82. The record contains no evidence that the rapes,  
8 which the Magistrate found to have occurred, were even minimally  
9 investigated. Defendants' objection is overruled for the reasons  
10 set forth in supra ¶¶64 and 79.

11 ¶83. The objection regarding rape prosecutions is  
12 overruled for the reasons stated in supra ¶66. The objection  
13 regarding weapons prosecutions is sustained as follows: the last  
14 sentence of the Magistrate's finding is deleted and replaced with  
15 the following: "There was no evidence that during Turner's  
16 administration a State prosecution was initiated for any weapons  
17 possessed by any inmate at GCI (Peters)."

18 ¶84. The Magistrate found that during Turner's  
19 administration inmates bent on violence "roamed the compound with  
20 impunity." This finding is supported by the evidence that during  
21 Turner's reign inmates were free to wander the compound and  
22 dormitories other than the one to which they were assigned. The  
23 procedure whereby inmates need passes to move about the compound  
24 was instituted by a successor superintendent, Randall Music  
25 (Music, DE 160, at 146). Objection overruled.  
26

1           The Magistrate further found that Turner refused to seek  
2 assistance from federal and state prosecutors and investigators  
3 to cope with the crimes committed on the compound. The record,  
4 however, contains some evidence of outside prosecutions initiated  
5 by Turner. The evidence does fairly show that outside state and  
6 federal criminal justice remedies were grossly underutilized  
7 during Turner's administration considering the crime-ridden  
8 atmosphere at GCI. The Magistrate's finding is modified  
9 accordingly.

10           ¶86. The Magistrate found that the rapes of plaintiffs  
11 Aldred, Saunders, and Harper were reported to prison authorities,  
12 and the record contains no articulable reason for the district  
13 court to disregard this credibility determination. This finding  
14 supports an inference that the rapes were never investigated at  
15 least partially due to the lack of an established procedure for  
16 reporting rapes to the prison investigator. Objection overruled.

17           ¶87. The Magistrate found that Turner also failed to  
18 avail himself of or underutilized other possible investigative  
19 arms of the government such as the State Attorney General's  
20 Office, State Attorney's Office, and the Federal Bureau of  
21 Investigation. Whether or not these agencies could have assisted  
22 in improving the conditions at GCI, the record does not show that  
23 Turner requested assistance from other agencies, on a consistent  
24 or persistent basis, in order to alleviate GCI's problems.  
25 Defendants also note that there was no evidence that GCI's  
26

1 internal inspectors were unwilling or unable to investigate  
2 matters brought to their attention. These assertions ring hollow  
3 considering that, because of inadequate reporting procedures,  
4 many grave matters were never brought to their attention.

5 Objection overruled.

6 ¶89. The district court does not doubt the evidence cited  
7 by defendants that sometimes inmates were disciplined for being  
8 in an area in which they were not authorized to be. This proof,  
9 however, does little to mitigate the testimony which shows that  
10 inmate movement about the prison was inadequately controlled.

11 See, e.g., supra ¶84. Objection overruled.

12 ¶92. The objections are overruled for reasons previously  
13 addressed.

14 ¶93. The Magistrate found that, even though parts of the  
15 dormitories were concealed from the view of an officer stationed  
16 in the wicket, "Turner never initiated any administrative policy  
17 that officers patrol the dormitory on a regular basis" (DE 128,  
18 at 45). As defendants note, Turner did testify that posted  
19 orders required officers to patrol (Turner, DE 164, at 643). The  
20 weight of the evidence, notwithstanding, shows that the guards  
21 did not regularly patrol. The Magistrate's finding is so  
22 modified.

23 ¶94. Succeeding superintendent Music was able to increase  
24 visibility by single-bunking the middle row of beds in one of the  
25 dormitories. Defendants argue that this modification was not  
26

1 cost-free, because \$7,000 was expended for new lockers (Music, DE  
2 160, at 141-42). The district court is unable to determine from  
3 the record whether new lockers were an essential element of the  
4 single-bunking or simply an added security measure for inmate  
5 property. Even if the \$7,000 was a necessary expenditure, there  
6 is no significant evidence that Turner possessed or tried to  
7 obtain funds for that purpose. Objection overruled.

8 ¶96-97. The Magistrate compared Turner's practice in  
9 managing the transfer out of GCI of problem inmates with that of  
10 successors Jones and Music. "Problem inmates" includes both  
11 aggressive inmate "wolves" and especially vulnerable inmates.  
12 There was evidence that Turner often achieved the difficult goal  
13 of transferring problem inmates out of GCI. Successor  
14 superintendent Jones transferred out forty to forty-five inmates  
15 in less than three months. Music transferred five a month over a  
16 six-month period. Defendants point to instances where Turner  
17 moved seven inmates on one occasion and twelve on another,  
18 although his monthly average of such transfers is not in evidence.  
19 There is other compelling proof, however, that Turner was not  
20 zealous enough in transferring problem inmates: for example,  
21 Peters' admission, found credible by the Magistrate, that Turner  
22 did not view "wolves" as problem inmates; the chronicles  
23 concerning "wolves" Larry Pryor, Willie Dock, and Levi Fisher (DE  
24 128, at 42-44); and the length of time the vulnerable plaintiffs  
25 were effectively forced to endure protective confinement before  
26

1 transfers took place. In the district court's view, the record  
2 shows that Turner could have exercised much more diligence in  
3 attempting to transfer problem inmates from GCI and that this  
4 failure constitutes evidence of deliberate or callous  
5 indifference to inmate safety. Objections overruled.

6 ¶¶98-100. Defendants challenge the Magistrate's findings  
7 regarding inmate-wolves Pryor, Dock, and Fisher with minor  
8 discrepancies in the evidence. The Magistrate's findings are  
9 ultimately grounded in credibility determinations which the  
10 district court sees no reason to disturb. Objection overruled.

11 ¶101. The objections are overruled for the reasons set  
12 forth at length in supra ¶78.

13 ¶103. The Magistrate's analysis of the relationship  
14 between financial feasibility and the constitutional obligations  
15 of a prison superintendent comports with the prevailing law in  
16 the Eleventh Circuit (see infra at 38-39). Objection overruled.

17 ¶105. The Magistrate detailed specific measures which  
18 were inexpensive or cost-free, which were ignored or rejected by  
19 Turner, which were within his control, and which would have  
20 minimized or eliminated the likelihood of rapes and other  
21 assaults at GCI.

22 (i) Defendants claim that there was no evidence that  
23 Turner failed to discipline staff for failure to patrol the  
24 dorms, that staff in fact failed to patrol, or that Turner was  
25 made aware of any such failure. To the contrary, the district  
26

1 court can discern no significant evidence that the staff did  
2 patrol the dorms or that Turner disciplined staff for not  
3 patrolling. Further, there is no evidence explaining why Turner  
4 was not aware of this failure. Objection overruled.

5 (ii) The record reflects extensive contraband at GCI  
6 which was often provided or at least tolerated by Turner's staff,  
7 prevalent extortion activities by inmates which were not  
8 redressed by officers who were made aware of it, several  
9 instances of extortion activities by staff, and the tolerance of  
10 obvious consensual and nonconsensual sexual activity by inmates.  
11 Each of these matters is addressed elsewhere in this memorandum  
12 and order and in the report and recommendation. Turner's overall  
13 laxity in managing and controlling his staff can be inferred from  
14 the prevalence and apparent obviousness of these conditions and  
15 from the absence of substantial evidence of disciplinary action  
16 directed to staff. Objection overruled.

17 (iii) The weight of the evidence supports the finding  
18 that during the Turner administration it was common practice for  
19 inmates to hang sheets and other objects from their bunks,  
20 thereby obstructing visibility in the dormitories. The inference  
21 is inescapable that a prudent administrator would have been aware  
22 of this problem. Objection overruled.

23 (iv) The district court has previously addressed the lack  
24 of adequate procedures for the reporting and investigation of  
25 rapes (supra ¶¶64-66). Objection overruled.  
26



1 (v) Defendants' arguments have been rejected elsewhere  
2 (supra ¶¶37, 66), and the objections are overruled.

3 (vi) These assertions also have been rejected previously  
4 (supra ¶84). The objection is overruled.

5 (vii) The court has already addressed Turner's lack of  
6 zeal at transferring problem inmates (supra ¶¶96-100). Objection  
7 overruled.

8 ¶108. Swanson utilized various methodologies to evaluate  
9 plaintiffs' accounts of their rapes. Defendants' objection  
10 appears to be a semantical one and is overruled.

11 ¶109. The Magistrate found the expert opinion testimony  
12 of Dr. Caddy to be credible, and the district court does not  
13 question this finding. Objection overruled.

14 ¶111. The Magistrate's credibility finding will not be  
15 overturned. Objection overruled.

16 ¶118. The Magistrate's essential finding that the  
17 atmosphere of undeterred violence at GCI was conducive to acts of  
18 rape is supported by the weight of the evidence. Objection  
19 overruled.

20 ¶121. The record does not support defendants' assertion  
21 that rectal examinations were actually used at GCI upon the  
22 reporting of a rape. Objection overruled.

23 ¶¶122-195. The gravamen of defendants' objections turn on  
24 credibility determinations which the district court finds no  
25 reason to disturb. The objections are overruled.  
26

1            ¶¶196-199. The district court finds persuasive and  
2 supported by the evidence the Magistrate's observations on the  
3 overall integrity of plaintiffs' case. Objection overruled.

4            VII.

5            OBJECTIONS TO CONCLUSIONS OF LAW

6            Defendants' objections to the Magistrate's conclusions of  
7 law reflect a general agreement with the prevailing legal  
8 standards but dispute the application of the facts to those  
9 standards. In particular, defendants argue with the Magistrate's  
10 conclusion that plaintiffs have put forth sufficient proof of  
11 violation of their civil rights.

12            As the Magistrate concluded, the following legal standards  
13 apply. A prisoner has a right to be protected from the constant  
14 threat of violence and from sexual assault. When prison  
15 officials have failed to control or segregate prisoners who  
16 endanger the physical safety of other prisoners, resulting in a  
17 high level of violence, it constitutes cruel and unusual  
18 punishment. Jones v. Diamond, 636 F.2d 1364, 1373-74 (5th Cir.)  
19 (en banc), cert. dismissed, 461 U.S. 432 (1981); see also  
20 Robinson v. California, 370 U.S. 660 (1962) (eighth amendment ban  
21 on cruel and unusual punishment made applicable to states by  
22 fourteenth amendment due process clause).

23            To hold a prison official liable in a civil rights action  
24 under 42 U.S.C. § 1983 (1982) based on cruel and unusual  
25 punishment, plaintiffs must show that the official's conduct  
26

1 constitutes an intentional or callous indifference to the  
2 prisoner's right to reasonable protection from violence.  
3 Williams v. Bennett, 689 F.2d 1370, 1380-81 (11th Cir. 1982),  
4 cert. denied, 464 U.S. 932 (1983). Plaintiffs must prove  
5 deliberate indifference on the part of the defendant official  
6 rather than simple negligence. Section 1983 further requires  
7 "proof of an affirmative causal connection between the actions  
8 taken by a particular person 'under color of state law' and the  
9 constitutional deprivation." Id. at 1380. Where the defendants  
10 hold supervisory positions, vicarious liability will not suffice.  
11 See Monell v. Department of Social Services, 436 U.S. 658  
12 (1978) (municipality not vicariously liable for acts of employees  
13 absent proof that execution of official policy inflicts injury).  
14 Supervisory defendants may be held liable if they have direct  
15 responsibility for the actions of the employees who engage in  
16 misconduct. Rizzo v. Goode, 423 U.S. 362, 375-76 (1976). The  
17 Eleventh Circuit has stated that "the inquiry into causation must  
18 be a directed one, focusing on the duties and responsibilities of  
19 each of the individual defendants whose acts or omissions are  
20 alleged to have resulted in a constitutional deprivation."  
21 Williams, 689 F.2d at 1381.

22 The district court first examines whether Turner's conduct  
23 rose to a level of intentional or callous indifference to the  
24 plaintiffs' right to "reasonable protection from violence." Id.  
25 at 1380. The former Fifth Circuit elaborated on the elements of  
26

31

1 this requirement of intent in Gullatte v. Potts, 654 F.2d 1007,  
2 1012 (5th Cir. 1981). A section 1983 plaintiff seeking to sue  
3 prison officials must prove either that "the official knew or  
4 should have known that his action infringed a clearly established  
5 constitutional right of the plaintiff," Douthit v. Jones, 619  
6 F.2d 527, 534 (5th Cir. 1980), regardless of the officials'  
7 subjective intent, Bogard v. Cook, 586 F.2d 399, 411 (5th Cir.  
8 1978), cert. denied, 444 U.S. 883 (1979), or that the "official  
9 either actually intended to do harm to the plaintiff, or took an  
10 action which, although not intended to do harm, was so likely to  
11 produce injury that the harm can be characterized as  
12 substantially certain to result," id. at 412.

13 The Magistrate found that Turner knew or should have known  
14 that his acts or omissions infringed plaintiffs' constitutional  
15 right to reasonable safety. Evidence that Turner knew of serious  
16 security problems included official documents such as Turner's  
17 letters to Wainwright, the 1980 grand jury presentment, the  
18 management reports of the DOC inspector general, the Barrett and  
19 Dixon incidents of staff corruption, and knowledge from various  
20 sources of the prevalence of contraband. The Magistrate further  
21 found that a prudent administrator should have known of  
22 widespread extortion activities by inmates often in collusion  
23 with officers and widespread rape and physical assaults by  
24 inmates on inmates (see supra ¶¶77-78). The extensive findings  
25 of fact cited by the Magistrate provide adequate support for his  
26

1 conclusion that Turner's conduct constituted callous indifference  
2 to plaintiffs' right to reasonable protection from violence.  
3 Thus, plaintiffs have satisfied the objective test of Bogard,  
4 that Turner knew or should have known that his actions violated a  
5 clearly defined constitutional right, as well as Bogard's  
6 subjective test, that Turner took an action which was so likely  
7 to produce injury that the harm can be characterized as  
8 substantially certain to result.

9 A defendant cannot have the requisite intent for callous  
10 indifference if full compliance with constitutional norms is  
11 beyond his control and if he can show that he accomplished what  
12 could be accomplished within the limits of his authority.  
13 Williams, 689 F.2d at 1388. Over defendants' persistent protest  
14 that Turner's means were limited, the Magistrate identified  
15 administrative measures within Turner's control which imposed  
16 little or no financial limitation. These include measures Turner  
17 could have taken to identify and remedy his staff's failings at  
18 weapons training, the reporting of rapes, assaults, and other  
19 illegal activities through the chain of command, patrolling of  
20 the dormitories, and ensuring maximum visibility in the  
21 dormitories. Turner also could have implemented a standard  
22 operating procedure for investigation of rapes and assaults,  
23 availed himself of outside agencies in that regard, established  
24 inmate movement controls, and intensified his efforts to transfer  
25 particularly aggressive or vulnerable inmates from GCI. The fact  
26

1 that succeeding superintendents Jones and Music were able to  
2 achieve or at least take preliminary steps toward these goals  
3 attests to their feasibility. Thus, the district court is  
4 convinced that the means to satisfy constitutional minimums were  
5 within Turner's control. Accordingly, the court overrules the  
6 objection to the Magistrate's conclusion that plaintiffs failed  
7 to prove callous indifference.<sup>7</sup>

8 Defendants more strenuously object to the Magistrate's  
9 conclusion that Turner's actions constituted a legal cause of  
10 plaintiffs' constitutional deprivation. The critical causation  
11 inquiry is whether Turner "was in a position to take steps that  
12 could have averted" the attacks on plaintiffs "but, through  
13 callous indifference, failed to do so. Resolution of this issue  
14 necessarily entails a very individualized approach, taking into  
15 account the duties, discretion, and means" of the defendant. Id.  
16 at 1384. Defendants essentially maintain that the Magistrate  
17 painted with such broad strokes that he failed to analyze whether  
18 the conditions at GCI which were under Turner's control  
19

---

20  
21 <sup>7</sup>The Magistrate alternatively found section 1983 liability based  
22 on Turner's breach of a duty imposed by state law which caused  
23 plaintiffs' constitutional injury. See Williams, 689 F.2d at  
24 1381. The parties agree, however, that Turner could not have  
25 breached a duty imposed by Fla. Stat. Ann. § 20.315(1)(c) (West  
26 1987 Supp.), the statute relied on by the Magistrate, because  
that statute on its face applies only to the DOC and not to  
individual superintendents. The objection is sustained, and  
Magistrate's conclusion in this regard (DE 128, at 111-13) is  
rejected.

1 proximately caused the injuries to the particular plaintiffs at  
2 the particular times of each occurrence.

3 The district court is not persuaded. The following  
4 conditions which were under Turner's control provide direct  
5 causal links to plaintiffs' injuries. First, every plaintiff was  
6 attacked or threatened with a weapon, typically a knife. The  
7 evidence establishes the prevalence of such weapons and Turner's  
8 failure to take reasonable measures designed to control such  
9 contraband. Second, the long duration of several of the attacks,  
10 the places in which they occurred, and possibly the fact that  
11 they occurred in the first place, are functions of Turner's  
12 failure to take even minimal steps to ensure that GCI was  
13 adequately patrolled (Aldred raped in shower for fifteen to  
14 twenty minutes; Durrance led away at knifepoint from place  
15 between bunks which was concealed by hanging blanket; Bronson  
16 raped with baseball bat on recreation field in broad daylight;  
17 Saunders raped in bathroom for twenty-five to thirty minutes;  
18 Harper raped in top bunk; Cobb stabbed in front of canteen in  
19 fight lasting ten to twelve minutes). Third, Turner's failure to  
20 implement adequate reporting procedures for rapes and assaults  
21 was a legal cause of plaintiffs' psychological and possibly  
22 physical damage (Aldred reported rape to several officers with no  
23 results; Aldred not given protective confinement; Durrance and  
24 Bronson did not report out of fear of consequences; Saunders  
25 raped by two inmates who previously had attacked him; Saunders  
26

1 reported rape and received inadequate treatment and no  
2 investigation; inmates identified as assailants by LaMarca were  
3 not confined for investigation and continued to assault him;  
4 classification officer told Johnson to take protective  
5 confinement or to get a weapon and fight back). Fourth, Turner's  
6 callous indifference to the obvious and rampant indicia of  
7 homosexual activity was the proximate cause of rapes, attacks, or  
8 repeated harassment (Aldred, Durrance, Bronson, Saunders, and  
9 Harper raped; Bronson forced to commit nonconsensual sexual act  
10 in movie trailer; Johnson sexually harassed and later attacked  
11 four times; constant threats and sexual solicitation caused  
12 LaMarca to escape, take protective confinement, and receive  
13 disciplinary reports; Cobb injured in fight over homosexual).  
14 Fifth, Turner's failure adequately to supervise correctional  
15 officers up to the lieutenant level resulted in corruption and  
16 incompetence among the officers and a lack of reasonable  
17 protection of inmates (Cobb's assailant worked as an "enforcer"  
18 with GCI staff and was protected by them; LaMarca complained to  
19 Barrett about threats and assaults and was given a knife by  
20 Barrett; Bronson afraid to report rape because he had witnessed  
21 inmates exchanging money and drugs with guards). The  
22 Magistrate's findings, supported by the record, contain more  
23 examples of how Turner's callous indifference proximately caused  
24 the injuries to Aldred, Durrance, Bronson, Saunders, Harper,  
25 Johnson, Cobb, and LaMarca.  
26



1           The district court is not satisfied, however, that the  
2           requisite causal connection has been established with respect to  
3           the claims of Epprecht and Gordon. When Epprecht was assaulted  
4           with a pipe in the dormitory, he could see no guard in the wicket.  
5           Because there is no other evidence regarding the attack, such as  
6           its length, the district court is unable to determine whether the  
7           lapse in supervision was merely accidental or whether it flowed  
8           from Turner's actions. The fact that the attack was provoked  
9           because Epprecht possessed cash money also does not establish  
10          causation because a cash money system in prison does not in  
11          itself prove callous indifference. Similarly, with respect to  
12          Gordon, the evidence shows only that he was assaulted three times  
13          at GCI. He was knocked unconscious once in front of the canteen,  
14          his buttocks were burned when inmates who had been drinking  
15          prison-made wine set his polyester underwear on fire, and he was  
16          hit in the head with a pipe in a robbery. The eighth amendment  
17          entitles a prisoner only to reasonable protection from violence.  
18          Williams, 689 F.2d at 1380. The district court fears that, were  
19          it to find Turner liable for the damage sustained by Epprecht and  
20          Gordon, Turner might become an insurer for every attack on an  
21          inmate which occurred during his tenure. The recommended \$17,000  
22          award of compensatory damages to Epprecht and the \$6,000 to  
23          Gordon must therefore be rejected.

24                 In summary, the facts and the law support the Magistrate's  
25                 conclusions that certain of defendant Turner's actions and  
26

1 inactions in running GCI constituted callous indifference to  
2 plaintiffs' eighth amendment right to reasonable protection from  
3 violence. The evidence further establishes that, with respect to  
4 all of the plaintiffs except Epprecht and Gordon, Turner was in a  
5 position to take steps that could have averted the attacks on  
6 these plaintiffs but, through his callous indifference, failed to  
7 do so. The record finally establishes that these constitutional  
8 deprivations were a legal cause of plaintiffs' damages. Under  
9 the prevailing law in this circuit, see id. at 1381, plaintiffs  
10 Aldred, Durrance, Bronson, Saunders, Harper, Johnson, Cobb, and  
11 LaMarca should prevail against defendant Turner under 42 U.S.C.  
12 § 1983.

#### 13 VIII.

#### 14 OBJECTIONS TO INJUNCTIVE RELIEF

15 The Magistrate found that, although defendants had  
16 instituted improvements of unconstitutional conditions at GCI,  
17 there was a reasonable expectation that the violations would  
18 recur. Accordingly, the Magistrate held that defendants' efforts  
19 at correcting deficiencies at GCI did not deprive the court of  
20 the power to order injunctive relief. See County of Los Angeles  
21 v. Davis, 440 U.S. 625, 631 (1979). He recommended the creation  
22 of two committees, one of penologists and the other of  
23 psychologists or psychiatrists, to advise the court in the  
24 formulation of specific injunctive relief. The charter of the  
25 committee of penologists is to ferret out other rape victims at  
26

1 GCI who were not identified through this litigation so that they  
2 might be provided with therapeutic assistance and to review and  
3 develop procedures at GCI to minimize future assaults,  
4 extortions, and rapes. The charter of the committee of  
5 psychologists or psychiatrists is to prescribe a treatment plan  
6 for the plaintiffs and witnesses in this action who remain  
7 incarcerated and to develop procedures at GCI to provide rape  
8 victims with support similar to that received by unincarcerated  
9 rape victims from rape crisis centers.

10 Defendants argue that the establishment of the committees  
11 was premature because the Magistrate adjourned the class action  
12 aspect of the case before defendants had an opportunity to  
13 present evidence countering plaintiffs' claims regarding current  
14 conditions at GCI. Although it is true that the parties  
15 presented incomplete proof on the issue of injunctive relief, the  
16 district court is not persuaded that at this juncture further  
17 evidentiary hearings are appropriate. In particular, the  
18 district court recognizes its lack of expertise in resolving the  
19 "complex and intractable" problems of prison administration.  
20 Procunier v. Martinez, 416 U.S. 396, 404-05 (1974). The  
21 committees recommended by the Magistrate would provide valuable  
22 expert testimony to the court on the persistence of  
23 unconstitutional conditions at GCI and recommended equitable  
24 remedies.  
25  
26

1           The injunctive relief recommended by the Magistrate is  
2     adopted with the following modifications. Two committees shall  
3     be established, one of penologists and the other of psychologists  
4     and psychiatrists. Each committee will be comprised of three  
5     members. Each party will nominate one member of each committee.  
6     The third member of each committee will chair the committee and  
7     will be selected by the district court. The parties will submit  
8     names of persons they recommend for the position of chairman,  
9     including a curriculum vitae for each nominee, and the district  
10    court will consider these recommendations in appointing the third  
11    member of each committee. The charter of the committees will be  
12    that recommended by the Magistrate, with the additional task of  
13    reporting to the court on the status of current conditions at GCI  
14    and the necessity for further injunctive relief. The work of the  
15    committees will not end with this original report, as their  
16    expertise may be needed from time to time to assist in monitoring  
17    conditions at GCI. The cost of establishing and maintaining the  
18    committees shall be borne by the State of Florida.

19           The parties shall file their nominations of committee  
20    members with the district court by June 17, 1987. Thereafter,  
21    the district court will issue an order setting forth its  
22    selection of the chairman of each committee and establishing a  
23    date by which the committees shall file a written report with the  
24    court in accordance with the terms of this order. After the  
25    committees have filed their reports, the parties will have ten  
26

1 days in which to file a motion if they desire to present  
2 additional evidence regarding current conditions at GCI and the  
3 necessity of further injunctive relief. Such motions shall be  
4 accompanied by an offer of proof which shall include a list of  
5 witnesses and the substance of their proffered testimony. The  
6 parties will have five days to respond to each other's motions.  
7 After it has the reports of the committees and these submissions  
8 of the parties, the court will determine whether additional  
9 hearings are necessary to formulate specific injunctive relief.

## IX.

## CONCLUSION

10  
11 In accordance with the terms of this memorandum and order,  
12 it is  
13

14 ORDERED and ADJUDGED that the report and recommendation of  
15 the Magistrate filed January 8, 1986 (DE 128) is affirmed and  
16 adopted as the order of this court except as modified or rejected  
17 by this order. It is further

18 ORDERED and ADJUDGED that judgment shall be entered for  
19 plaintiffs LaMarca, Saunders, Johnson, Aldred, Bronson, Cobb,  
20 Durrance, and Harper and against defendant Turner in accordance  
21 with the following award of compensatory damages for Turner's  
22 violation of plaintiffs' constitutional rights:

|                    |          |
|--------------------|----------|
| 23 Anthony LaMarca | \$9,000  |
| 24 Martin Saunders | \$30,000 |
| 25 Edwin Johnson   | \$13,000 |

26

|   |                       |          |
|---|-----------------------|----------|
| 1 | David Aldred          | \$30,000 |
| 2 | Steve H. Bronson, Jr. | \$30,000 |
| 3 | Eddie Cobb            | \$6,500  |
| 4 | Ron Durrance          | \$30,000 |
| 5 | Billy Joe Harper      | \$30,000 |

6 Interest on this judgment shall run from the date of judgment  
7 until paid, at the rate of 7.02 percent. It is further

8 ORDERED and ADJUDGED that on the claims of plaintiffs  
9 Epprecht and Gordon judgment shall be entered for defendants and  
10 against plaintiffs, the plaintiffs to take nothing. It is  
11 further

12 ORDERED and ADJUDGED that two committees shall be  
13 established to advise the court in the formulation of injunctive  
14 relief, in accordance with the court's specific directives set  
15 out at pages 45-46 of this memorandum and order. It is further

16 ORDERED and ADJUDGED that defendants' motion filed  
17 February 10, 1986 for an enlargement of time to respond to  
18 plaintiffs' motion for attorneys' fees and expenses (DE 149) is  
19 granted as follows: Defendants shall have twenty days from the  
20 date of this order to file their response. It is further

21 ORDERED and ADJUDGED that the court will defer ruling on  
22 plaintiffs' motion filed January 31, 1986 for oral argument on  
23 their motion for fees and expenses (DE 141).

24  
25  
26

James C. Paine  
James C. Paine  
United States District Judge

Walter M. Meginniss, Assistant Attorney General,  
Tallahassee, Florida, and Michael B. Davis, of Davis, Critton,  
Hoy & Diamond, West Palm Beach, Florida, for defendants.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 82-8196-CIV-PAINE

ANTHONY LA MARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf  
of all others similarly  
situated, and DAVID ALDRED,  
STEVE H. BRONSON, JR., EDDIE  
COBB, RON DURRANCE,  
WAYNE EPPRECHT, MICHEAL  
GORDON, and BILLY JOE HARPER,  
individually,

Plaintiffs,

vs.

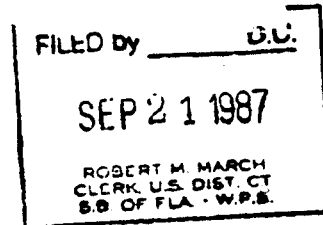
ORDER

R.V.TURNER, individually in his  
former official capacity  
as Superintendent of Glades  
Correctional Institution,  
CHESTER LAMBDIN, in his official  
capacity as Superintendent of  
Glades Correctional Institution,  
and the STATE OF FLORIDA,

Defendants.

This cause came to be heard on Defendants' Motion for a New  
Trial and to Amend Findings (DE201), filed June 15, 1987; Defendants'  
Supplemental Motion (DE208), filed June 24, 1987; and Plaintiffs'  
Response (DE215), filed June 7, 1987. Four points were raised:  
1) failure to grant continuance; 2) appropriateness of injunctive  
relief; 3) exclusion of depositions; and 4) recusal of the Magistrate.  
Each will be addressed in sequence.

First, Defendants' request for a continuance was addressed  
in this Court's order dated June 4, 1987. (see page 9) The prior  
decision on this issue will not be disturbed.





1 Second, the equitable relief provided by this Court does not  
2 ignore Defendants' position. Breadth and flexibility are inherent  
3 in equitable redress of past wrongs. Dowdell v. City of Apopka,  
4 698 F.2d 1181, 1186 (11th Cir. 1983). Defendants shall be afforded  
5 their day in court after the submission of the committees' reports.

6 Upon reconsideration, this Court vacates the portion of its  
7 previous order making the State of Florida responsible for the cost  
8 of the committees (see June 4, 1987 Order, page 45). The proper  
9 party to bear this cost is the current Superintendent, Chester  
10 Lambdin, in his official capacity as Superintendent of Glades  
11 Correctional Institution.

12 Third, on balance, the additional testimony is of little  
13 assistance given the entire record in evidence and the strength of  
14 the plaintiffs' case. The objection to the exclusion of the  
15 deposition testimony of witnesses is overruled.

16 Fourth, Defendants are unable to support a claim for recusal  
17 of Magistrate Nimkoff. The standard is whether he is "capable  
18 of judging a particular controversy fairly on the basis of its  
19 own circumstances." Horton Joint School District No. 1 v. Hortonville  
20 Education Association, 426 U.S. 493(1976). See Southern Pacific  
21 Communications v. AT&T, 740 F.2d 980,990 (D.C. 1984). This Court is  
22 not persuaded that Magistrate Nimkoff demonstrated bias in  
23 handling this case.

24 Therefore it is

5 ORDERED and ADJUDGED  
26

1. Defendants' Motion for a New Trial/Amend Findings is DENIED.

2. The portion of this Court's June 4, 1987 Order directing the State of Florida to bear the cost of the committees is VACATED.

3. The cost of establishing and maintaining the committees shall be borne by the current Superintendent, Chester Lambdin, in his official capacity as Superintendent of Glades Correctional Institution.

DONE and ORDERED in chambers in West Palm Beach, Florida, this 19<sup>th</sup> day of September, 1987.

  
JAMES C. PAINE  
UNITED STATES DISTRICT JUDGE

cc: David M. Lipman  
William Amlong  
Walter M. Meginniss  
Michael B. Davis

1  
2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

3 CASE NO.82-8196-CIV-PAINE

4 ANTHONY LaMARCA, MARTIN  
5 SAUNDERS, and EDWIN JOHNSON,  
6 individually and on behalf of  
7 all others similarly situated,  
8 and DAVID ALDRED, STEVE H. BRONSON, JR.,  
9 EDDIE COBB, RON DURRANCE, WAYNE EPPRECHT,  
10 MICHAEL GORDON, and BILLY JOE HARPER,  
11 individually,

12 Plaintiffs,

13 vs.

14 R.V. TURNER, individually in his  
15 former capacity as Superintendent of Glades  
16 Correctional Institution, CHESTER LAMBDIN, in  
17 his official capacity as Superintendent of  
18 Glades Correctional Institution,

19 Defendants.  
20 \_\_\_\_\_/

FILED BY D.C.

APR 29 1990

ROBERT M. MARCH  
CLERK U.S. DIST. CT.  
S.D. OF FLA. W.F.B.

21 FINDINGS OF FACT AND CONCLUSIONS OF LAW

22 This matter comes before the court upon an evidentiary  
23 hearing held January, 8-12, 1990.

24 The hearing was held as a result of an October 18, 1988  
25 order from the Eleventh Circuit Court of Appeals in which the  
26 appellate court dismissed without prejudice the appeal of the  
prior order entered by this court. The appeal was dismissed  
"for want of a final judgment adjudicating all of the claims  
against all of the parties in this case." Finally, the  
appellate court directed this court to complete its work and

enter final judgment regarding the requested injunctive relief.

Accordingly, having reviewed the proposed findings of fact and conclusions of law submitted by each party, the court enters the following order.

#### PROCEDURAL BACKGROUND

In light of the fact that the present case has been remanded by the Eleventh Circuit Court of Appeals and that this lawsuit spans almost eight years, the court has determined that a brief review of the procedural background of the case is in order.

On March 14, 1982, Anthony Lamarca filed a hand-written, pro se complaint in the United States District Court pursuant to 42 U.S.C. § 1983. The named defendant was R.V. Turner, the then-Superintendent of Glades Correctional Institution (GCI). The complaint contained, inter alia, allegations that Lamarca was being subjected to ongoing physical violence and harassment by other inmates because of his refusal to participate in homosexual activity. Additionally, the Plaintiff alleged that GCI officials failed to take any corrective action to alleviate that situation. Pursuant to the Southern District of Florida Local Magistrate Rule 1(f), this case was transferred Magistrate Peter L. Nimkoff.

On September 21, 1983, Lamarca, now represented by counsel and joined by three other former and/or current prison inmates at GCI, Martin Saunders, Eswin Johnson, and Harry

1 Rosenbaum, filed an amended class action complaint on behalf  
2 of themselves and other inmates at the institution. The First  
3 Amended Complaint purported to redress physical and sexual  
4 assaults and threats of physical and sexual assaults. In the  
5 first amended complaint, Plaintiffs sought monetary damages  
6 as well as declaratory and injunctive relief to enjoin the  
7 Defendants from various practices and inaction which  
8 perpetuated the violence, threats, and sexual abuse by  
9 prisoners at GCI.

10 On November 2, 1983, the Defendants filed their answer  
11 to Plaintiff's First Amended Complaint. The Defendants did  
12 not demand a jury trial at that time.

13 The injunctive relief aspect of the lawsuit was certified  
14 as a class action on April 13, 1984. The court defined the  
15 class as all persons who were, or would be, incarcerated at  
16 GCI.

17 On September 20, 1985, the court granted the Plaintiffs  
18 leave to file a Second Amended Complaint, the effect of which  
19 was to include damage claims of additional Plaintiffs.  
20 Additionally, regarding the injunctive relief, the Second  
21 Amended Complaint named Defendant Turner's successor at GCI,  
22 Randall Music, in his official capacity. Thereafter, the  
23 Defendants made a demand for jury trial.

24 Finally, on November 15, 1985, Plaintiffs moved for leave  
25 to file a third amended complaint, which would substitute  
26 certain plaintiffs. The Magistrate granted the Plaintiff's

1 motion to file a Third Amended Complaint and, in the same  
2 order, denied the Defendant's jury demand as well as a second  
3 request for a continuance.

4 Magistrate Nimkoff held an evidentiary hearing in  
5 December, 1985. During the pendency of the hearing, the  
6 Defendants raised the matter of recusal of the Magistrate.  
7 The motion for recusal was denied. On January 8, 1986, the  
8 Magistrate entered his Report and Recommendation. Despite the  
9 Defendants objections to the Magistrate's Report and  
10 Recommendation, this court affirmed same as to most of the  
11 issues. That order is reported at Lamarca v. Turner, 662 F.  
12 Supp. 647 (1987).

13 The Defendants filed a timely appeal which, as discussed  
14 above, was dismissed without prejudice.

15 On October 18, 1989, this court conducted a status  
16 conference in the present case. Thereafter, on October 23,  
17 1989, the court issued an order setting forth a discovery  
18 schedule and scheduling an evidentiary hearing for January,  
19 1990. In that order the court noted that "neither party  
20 strongly advocated the alternative of appointing committees  
21 to evaluate the prison conditions." Therefore, upon agreement  
22 of counsel for both sides, the court determined that the idea  
23 of implementing committees should be abandoned. In this  
24 regard, the court impliedly vacated that part of the June 4,  
25 1987 order which contemplated the utilization of committees  
26

to recommend injunctive relief.<sup>1</sup>

#### PURPOSE AND SCOPE OF THIS ORDER

The purpose of this order is to determine what, if any, injunctive relief should be granted in this 42 U.S.C. § 1983 class action.

At the commencement of the evidentiary hearing, the court granted the Defendants' Motion to substitute Chester Lambdin in his official capacity as Superintendent of GCI. The court denied the Defendants' request to consider additional evidence relating to the "liability" evidence which was presented four years earlier during the December, 1985 proceedings.

Finally, the court denied Defendants' motion challenging its jurisdiction to provide psychological and psychiatric relief for abused inmates because of a the possible overlap of these issues raised in the ongoing 18-year-old statewide prison condition lawsuits styled Costello and Celestineo v. Dugger, Case No. 72-094-Civ-J-14; Case No. 72-109-Civ-J-14 (Jacksonville Division) (Black J.).

By denying the Defendants' Motions prior to the hearing, the court limited the scope of the January, 1990 evidentiary hearing in two distinct ways. First, the hearing was to

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<sup>1</sup> Regarding the appointment of committees to address the injunctive relief, the court expresses some concern that such an appointment might result in an impermissible delegation of judicial responsibility. However, in the present case, since all of the parties agreed that the appointment of committees would be cumbersome and unduly expensive, the court need not address the legality of such a delegation of judicial authority.

1 address only the injunctive relief aspect of the Lamarca case.  
2 In so ruling, the court refused to disturb its prior ruling.  
3 Consequently, the June 4, 1987 order, published at Lamarca v.  
4 Turner, 662 F. Supp. 647 (1987), is incorporated herein by  
5 reference and hereby made a part of this court's imminent  
6 final judgment in this case.

7 Second, the court limited the scope of this case so as  
8 not to impose upon the pending jurisdiction of the Costello  
9 and Celestineo cases. Accordingly, the court does not intend  
10 that these findings be interpreted to address issues of  
11 overcrowding, food service, nor health care, as those issues  
12 are being addressed in the pending Middle District class  
13 actions.

14 Finally, before the proceedings began, the Plaintiffs  
15 moved the court to consider the claim of Martin Saunders,  
16 former party plaintiff.<sup>2</sup> Mr. Saunders has allegedly suffered  
17 retaliation at the hands of correctional personnel because of  
18 his participation in this case. The Defendants objected to the  
19 court's entertaining any argument or hearing any evidence on  
20 Mr. Saunder's retaliation case. The court sustained the  
21 Defendants' objection. It is the opinion of this court that  
22 such allegations of retaliation are questions of fact which  
23 are outside the scope of this litigation.

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24 <sup>2</sup> Although Mr. Saunders is still a Plaintiff in the  
25 liability and damages aspect of the case, he is no longer an  
26 inmate at GCI. Therefore, he is not a member of the class  
action for the purposes of injunctive relief.



### FINDINGS OF FACT

1. The court finds that since January 1, 1986, the date to which this court's order of June 4, 1987 related, the conditions at GCI have changed so that much of the injunctive relief previously requested is no longer necessary.

2. The court was impressed with the testimony of Chester Lambdin, the present Superintendent of GCI. He appears to be a dedicated public servant who is trying very hard to make GCI an efficient and effective correctional institution. However, despite his apparent dedication, there is ample room for improvement in the conditions at GCI.

3. The court viewed a videotape of the prison compound. The video depicted the physical conditions at GCI to be generally satisfactory.

4. However, despite the interim improvements, there are still problems at GCI which require this court's attention. Specifically, there are six areas that must be addressed:

a) Security staff patrol in the dormitory areas;

b) Control of movement of inmates from the North Compound to the Main Compound;

c) Conditions in protective confinement;

d) Control of contraband within the prison;

e) Homosexual Rape and the acceptance by staff of overt homosexual activity among inmates;

f) Lack of psychological counseling for inmates who have been sexually assaulted;

1           5. Security staff patrol in the dormitory areas:

2           a) Overall, GCI staff is better trained and less prone  
3 to turnover than in the pre-1985 period. In general,  
4 supervision of staff has been improved since 1985. During  
5 each shift, there is a wicket officer, a patrol officer, and  
6 a sergeant to check on the officers in order to ensure that  
7 patrols are made.

8           b) In the February, 1987 audit by the American  
9 Correctional Association, GCI was found to be in compliance  
10 with regard to staff training standards.

11           c) However, the court notes that there still remain  
12 opaque glass panes in the shower which impede the view of the  
13 wicket officer. Additionally, the court is concerned that  
14 there are inherent problems with surveillance of inmates in  
15 the recreation room which is separated from the dormitory by  
16 a small hallway. The court finds that these areas of  
17 obstructed view cannot be properly controlled without a roving  
18 patrol.

19           d) In this regard, even Superintendent Lambdin  
20 acknowledges that, without a roving patrol, an officer located  
21 in the wicket may not be able to maintain adequate visual  
22 control over the dormitory.

23           e) Finally, the court finds that while patrol of the  
24 dorms is mandated by a written policy, there is some factual  
25 dispute as to whether actual practice conforms with written  
26

1 policy. The court finds that the guards do not patrol as  
2 frequently as is needed to protect all inmates in the  
3 dormitory--whether they be in the lavatory, the shower. the  
4 recreation room, or their own bunks.

5 f) This failure to routinely tour  
6 result in a lack of protection for inmates  
7 of the dormitory. Failure to properly supervise  
8 to enforce written policies constitutes deliberate  
9 indifference on the part of GCI officials.

*Not deliberate  
indifference  
as a matter of  
fact*

10 6. Control of movement of inmates from the North Compound to  
11 the Main Compound:

12 a) Since 1985, a new compound has been built. There  
13 are no support services, such as food service provisions in  
14 the North Compound. Therefore, while Main Compound inmates are  
15 restricted in terms of access to the new North Compound, North  
16 Compound inmates are required to enter the Main Compound  
17 because that is where they eat and get other support services.

18 b) Generally, inmates with lower custody ratings and  
19 shorter periods of time until release are housed in the north  
20 compound, while those on the main compound have higher custody  
21 ratings and longer periods of time until release.

22 c) The flow of traffic between the North and Main  
23 Compounds subjects vulnerable North Compound inmates to  
24 potential victimization by high custody inmates on  
25 the Main Compound. This mingling of inmates increases  
26 the risk of victimization.

*But there  
was no  
evidence of  
actual bad intent*

lower risk inmates will be subjected to unwanted pressure.

1 d) Additionally, the metal detector, which is intended  
2 to detect and prevent the flow of homemade weapons from one  
3 compound to another, is often broken. Superintendent Lambdin  
4 testified that, since it is located outside.  
5 detector is subject to condensation.

6 e) The court finds that, based on the  
7 at GCI if not the ongoing problems,<sup>3</sup> the a  
8 aware that there is a strong likelihood, ratl were  
9 possibility that the safety of less violent inmates is  
10 threatened by the co-mingling with more violent inmates.

11 **7. Conditions in protective confinement:**

12 a) While white inmates comprise cent  
13 of the inmate population at GCI, the at  
14 any given time there is a much higher. as  
15 in protective confinement that black i. example,  
16 in October, 1989, there were 19 people used in protective  
17 confinement ; 17 white, one black, one other. On November 20,  
18 1989, there were 22 people housed in protective confinement,

19 <sup>3</sup> The court acknowledges the testimony of Dr. Jorge  
20 Medina and Gary Lane, psychiatrist and psychologist at GCI,  
21 respectively, that they are unaware of sexual pressure and the  
22 occurrence of rape at GCI. Dr. Medina has been at GCI for 15  
23 years, well before this court's prior finding that, in fact,  
24 homosexual's rapes have occurred at GCI. Mr. Lane has been  
25 there for six years. The court does not find either Dr. Medina  
26 nor Mr. Lane to be a credible witness. In light of the prior  
findings of this court, the court must conclude that these  
witness were either not testifying truthfully or have been  
intentionally "looking the other way" when it comes to sexual  
pressure and homosexual rape at GCI.

1 21 white, one black. On December 12, 1989, there were 14  
2 people housed in protective confinement; 11 white, 2 black,  
3 one other.

4 b) There is a shortage of cell space in protective  
5 confinement. Although the addition of the North Compound  
6 permitted the GCI population to increase from 886 to 1217,  
7 there has been no additional protective confinement space  
8 created at GCI. Due to the lack of protective confinement  
9 space at GCI, there presently exists the practice of double-  
10 bunking protective confinement inmates.

11 c) The court finds that Mark White was an inmate in a  
12 double-bunked protective confinement cell when he was raped  
13 by his cell-mate.

14 d) The ACA standard regarding confinement space requires  
15 that there be single cells in confinement because such a  
16 configuration decreases the chances of assaultive behavior.  
17 Both of Defendants experts, Mr. Fred A. Frey and Dr. Lockwood,  
18 testified that single cells are preferable in protective  
19 confinement and that double-bunking is not appropriate.

20 e) An officer is routinely stationed in front of the  
21 confinement area at a control post from which visual  
22 observation of all protective confinement cells is impossible.  
23 Again, while the official policy requires officers to make  
24 timely patrols, there is a question of fact as to whether the  
25 actual practice mirrors the official policy. The court is not  
26 satisfied that the official policy regarding patrols is being

carried out by the guards.

1 f) The court was pleased to learn that there is  
2 presently a plan underway which would more than double the  
3 capacity of confinement at GCI.<sup>4</sup> However, Superintendent  
4 Lambdin testified that even with the additional confinement  
5 space, the current practice of double-bunking in protective  
6 confinement will continue.

7 g) In 1987, an ACA review committee found GCI to be in  
8 violation of the ACA standards on the subject of lighting and  
9 the provision of writing space in protective confinement.

10 h) Finally, the court finds that many inmates who  
11 request to be put in protective confinement due to fear for  
12 their safety in the general population simply stay in  
13 confinement too long. Of the ten inmates who complained of  
14 a sexual assault and who were placed in protective confinement  
15 at GCI, six inmates stayed in protective confinement for more  
16 than 40 days. In fact, one person remained there for six  
17 months and 19 days. However, the record shows that  
18 Superintendent Lambdin has, on other occasions, accomplished  
19 the transfer of confined inmates within a day or two.<sup>5</sup>

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20 <sup>4</sup> Lambdin reported to the court that the expected date  
21 of completion of the additional confinement area is June,  
1990.

22 <sup>5</sup> In this regard, the court is compelled to note that  
23 the Superintendent cannot be afforded the luxury of  
24 "averaging" the amounts of time each prisoner spent in  
25 protective confinement before transfer, in an attempt to slant  
26 the facts. If one inmate remains in confinement for six  
months, the fact that another remained only 2 days has no  
impact upon the possible violation of the first inmate's

1 i) ACA standards regarding transfer of inmates from  
2 Protective Confinement to another institution require that an  
3 inmate should be transferred as early as possible after it is  
4 determined that the inmate cannot return safely to the general  
5 inmate population.

6 **8. Control of contraband within the prison:**

7 a) The court finds that the flow of contraband, such as  
8 drugs, alcohol, and weapons, has decreased as compared to the  
9 pre-December, 1985 period. However, despite the reduction in  
10 availability, the court finds that there is still a high  
11 availability of drugs such as homemade wine, marijuana, and  
12 crack cocaine on the Compound. Additionally, both the  
13 Plaintiff and the Defendant presented evidence that weapons  
14 are homemade weapons are present/

15 b) Dr. Swanson, the Plaintiffs' Corrections expert  
16 reported to the court that after his research he concluded  
17 that the supervisors at GCI appear to be somewhat complacent  
18 regarding certain drugs, especially marijuana. To support  
19 this finding, Dr. Swanson compared the disciplinary reports  
20 of an inmate who had sneaked into the cafeteria line with that  
21 of an inmate who was found to possess drugs for sale along  
22 with a list of names and dollar amounts which the inmate  
23 admitted were drug debts. The two inmates received similar

24 constitutional protection against cruel and unusual treatment  
25 in prison.

26 Additionally, the fact that transfer of an inmate has  
been effected in such a short time period supports the fact  
that expeditious transfer of inmates is feasible.

disciplinary actions.

1       c) The court finds, in light of all of the testimony,  
2 that there is an attitude on the part of the staff that  
3 certain kinds of contraband, such as home-made wine and  
4 weapons, are unavoidable, and that lackadaisical attitude  
5 contributes to the availability of contraband on the Compound.

6       d) The court also finds that the disciplinary reports  
7 reviewed by Dr. Swanson indicated that only 3.8 percent of all  
8 disciplinary problems were weapon-related. Dr. Swanson's  
9 offered credible testimony that these statistics establish a  
10 very low level of weapons confiscations and, therefore, raise  
11 a question regarding the vigilance of the staff in trying to  
12 confiscate these weapons.

13       e) Superintendent Lambdin himself testified that there  
14 remains a problem of contraband entering the compound via non  
15 inmates throwing same over the fence.

16       f) Finally, there was testimony that the metal detectors,  
17 both between the North and Main Compound, and between the  
18 prison and the outside world, are often in disrepair.

19       9. Homosexual Rape and the acceptance by staff of overt  
20 homosexual activity among inmates:

21       a) Despite the improvement in the conditions at GCI  
22 since 1986, the court finds that homosexual rape is still  
23 occurring at the institution. Mark White, Arnold Dennis, and  
24 John Haveard each testified that they were raped while serving  
25  
26



time at GCI.<sup>6</sup>

1       b) Dr. Caddy, the Plaintiffs' psychological expert,  
2 testified that his interviews with inmates left him with the  
3 impression that the report of homosexual rape was not taken  
4 with the seriousness it warrants. He testified that the  
5 inmates at GCI indicated to him that the staff at GCI  
6 communicated an attitude that inmates who had been raped  
7 should have done something to solve their own problem and to  
8 be a real man.

9       c) Mark White's complaint about being raped was received  
10 with cynicism. Despite the fact that the medical report from  
11 Glades General Hospital indicated conditions consistent with  
12 a finding of sexual assault, the investigation of the rape was  
13 limited. Due to a lack of evidence, there was no internal  
14 reprimand nor state prosecution of the alleged rapist.

15       d) Arnold Dennis testified that he was raped in the  
16 bathroom of Dormitory B in the middle of the night. The next  
17 day, after further harassment and physical attack from his  
18 assailant, Dennis told an officer that he had been  
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21       <sup>6</sup> While the court acknowledges that the Defendants made  
22 certain inroads on cross-examination regarding the credibility  
23 of these witnesses and the verity of their accounts of rape,  
24 the court finds these witnesses to be credible. In view of  
25 the psychological impact and the stigma attached to male rape  
26 victims, it is difficult for the court to conclude that these  
prisoners would come into court and complain of rape had it  
not actual occurred.

1 assaulted.<sup>7</sup> The officer told him to fight his rapist so that  
2 he would not bother him anymore. Dennis refused to do this.  
3 After identifying his rapist from photos, he was placed in  
4 protective custody. He was eventually transferred to another  
5 institution.

6 Despite his objections, Dennis was transferred in a van  
7 along with his rapist. During the transfer, he was attacked  
8 again.

9 e) John Haveard was raped in a closet by an inmate who  
10 had made sexual advances to him soon after Haveard arrived at  
11 GCI. Thereafter, he was transferred into protective  
12 confinement. Detective Haller, who investigated the rape of  
13 John Haveard, testified that no mugshots were ever shown to  
14 the victim and no search was conducted to find the rapist.

15 d) It is clear from the entire record in this case that  
16 the GCI officials are aware that there is presently a "strong  
17 likelihood, rather than a mere possibility," that a callous  
18 attitude regarding prison rape will surely result in the  
19 underreporting of same. Accordingly, the court finds that,  
20 failure to provide mandatory training for prison guards, those  
21 charged with the initial responsibility of handling a victim,  
22 constitutes deliberate indifference.

23 e) Although the inmates testified that there is staff  
24 toleration of overt sexual activity, there was not enough  
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26 <sup>7</sup> Dennis admitted that he did not tell the officers  
about the rape because he found it too embarrassing and he  
didn't believe it would do any good.

evidence presented for the court to conclude that this is the cause of inmate assaults.

f) In fact, during the year preceding this trial, there were 20 disciplinary reports and proceedings instituted against inmates at GCI who had been involved in 13 incidents of voluntary sexual activity. The Court notes that charges were brought in each case by different officers, indicating that more than just a handful of officers are reprimanding inmates for overt sexual conduct.<sup>8</sup>

**10. Lack of psychological counseling for inmates who have been sexually assaulted:**

a) None of the inmates who testified to having been raped at GCI was offered the opportunity to receive psychiatric counseling for rape victims.

b) There is presently no provision for mental health services, support services, or rape crisis management for GCI prisoners who have been raped.

c) The staff psychiatrist, Dr. Medina, has never, in the fifteen years he has been at GCI, been consulted regarding a single inmate who had been raped. The court finds that even had he been consulted, it is unlikely that he could have provided the needed rape counseling as he has had no special training for dealing with victims of rape.

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<sup>8</sup> This perceived "acceptance" might be rooted in the lack of adequate patrolling and supervision of the inmates by the officers, as discussed supra. If the officers don't see the activity, they will not report it and their failure to do so might be perceived as "acceptance."

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d) Gary Lane, staff psychologist at GCI, has no experience in rape crisis treatment.

e) Dr. Caddy testified that when a person is raped in what appears to be a life-threatening circumstance, such a person is more vulnerable to the perceived threat and thus more likely to have a far greater degree of psychological maladjustment. For some men who have been raped, there is the sense that they have lost their manhood. They often suffer nightmares. The court finds that these symptoms are consistent with those reported by the raped inmates who testified.

d) Finally, the court finds Dr. Caddy to be most credible when he admits that, although these symptoms do not always require the intervention of a psychologist, they do require the attention of a person who has expertise in the treatment of patients who have been sexually abused. No such person presently exists at GCI.

e) In light of the past and present circumstances at GCI, and the findings of psychological problems accompanied by homosexual assault in a prison setting, the court finds that the GCI officials have a duty to protect the health of rape victims within their compound. The failure to do so will surely result in the unnecessary and wanton infliction of pain.

### CONCLUSIONS OF LAW

1 1. Title 42 U.S.C. § 1983 establishes the right of a person  
2 to pursue a civil action based upon the deprivation of  
3 federally protected rights. To recover, the plaintiffs must  
4 prove two elements: (1) the conduct complained of must have  
5 been committed by a person acting under the color of state  
6 law; and (2) the conduct must have deprived the plaintiff of  
7 rights, privileges, or immunities secured by the constitution  
8 or laws of the United States. Paratt v. Taylor, 451 U.S. 527,  
9 535 (1981).

10 2. The language of the Eighth Amendment, "excessive bail  
11 shall not be required, nor excessive fines imposed, nor cruel  
12 and unusual punishments inflicted," manifests "an intention  
13 to limit the power of those entrusted with the criminal-law  
14 function of government." Whitley v. Albers, 475 U.S. 310, 318  
15 (1986), citing Ingraham v. Wright, 430 U.S. 651, 664 (1977).

16 3. The Eighth Amendment embodies "broad and idealistic  
17 concepts of dignity, civilized standards, humanity, and  
18 decency...", Estelle v. Gamble, at 102, quoting Jackson v.  
19 Bishop, 404 F.2d 571, 579 (8th Cir. 1968).

20 4. Accordingly, the Eighth Amendment prohibits punishments  
21 which, although not physically barbarous, "involve the  
22 unnecessary and wanton infliction of pain," Greg v. Georgia,  
23 428 U.S. 153, 173 (1976), or are grossly disproportionate to  
24 the severity of the crime. Coker v. Georgia, 433 U.S. 584, 592

(1977) (plurality opinion); Rhodes v. Chapman, at 346.

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5. Harsh "conditions of confinement" may constitute cruel and unusual punishment unless such conditions "are part of the penalty that criminal offenders pay for their offenses against society." Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

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6. "No static 'test' can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment 'must draw its meaning from evolving standards of decency that mark the progress of a maturing society.'" Rhodes v. Chapman, at 346, quoting, Trop v. Dulles, 356 U.S. 86 (1958) (plurality opinion); see also, Estelle v. Gamble, 429 U.S. 97, 102 (1976). Conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional." Rhodes v. Chapman, at 347.

7. For a prisoner attempting to prove a violation of the Eighth Amendment, "[a]n express intent to inflict unnecessary pain is not required," Whitley v. Albers, at 318, citing Estelle v. Gamble, at 104. Rather, the "unnecessary and wanton" infliction of pain on prisoners constitutes cruel and unusual punishment prohibited by the Eighth Amendment, even in the absence of intent to harm. Id., citing Ingraham v. Wright, at 670; Gregg v. Georgia at 173.

8. When officials become aware of a threat to an inmate's health and safety, the Eighth Amendment's proscription against cruel and unusual punishment imposes a duty to provide reasonable protection. Brown v. Hughes, 894 F.2d 1533, 1537

1 (11th Cir. 1990), citing Hopkins v. Britton, 742 F.2d 1308,  
2 1310 (11th Cir. 1984); Gullate v. Potts, 654 F.2d 1007, 1012  
3 (5th Cir. Unit B 1981).

4 9. Merely negligent failure to protect an inmate from attack  
5 does not justify liability under §1983. Brown, supra, citing  
6 Davidson v. Cannon, 474 U.S. 344, 347-48 (1986). However,  
7 where the known risk of injury is a "strong likelihood, rather  
8 than a mere possibility," an official's failure to act can  
9 constitute deliberate indifference. Id., citing Edwards v.  
10 Gilbert, 867 F.2d 1271, 1276 (11th Cir. 1989).

11 10. Upon a finding of constitutional violation, a federal  
12 court should enter injunctive relief that is "tailored to cure  
13 the 'condition that offends the constitution.'" Milliken v.  
14 Bradley, 433 U.S. 267, 282 (1977), quoting, Milliken v.  
15 Bradley, 418 U.S. 717, 738 (1974).

16 11. District judges possess substantial discretion in  
17 formulating injunctive remedies appropriate to the scope of  
18 the constitutional violations found. Milliken, 433 at 288;  
19 Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1,  
20 15 (1971).

21 12. Regarding the possible mootness of the request for  
22 injunctive relief due to post-litigation improvements, the  
23 Supreme has stated:

24 The test for mootness in cases such as this is  
25 a stringent one. Mere voluntary cessation of  
26 allegedly illegal conduct does not moot a  
case; if it did, the courts would be compelled  
to leave "the defendant...free to return to  
his old ways." A case might become moot if

subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.

United States v. Concentrated Phosphate Export Ass'n, 393 U.S. 199, 203 (1968)(citations omitted).

13. Additionally, the former Fifth Circuit has specifically applied this doctrine regarding the mootness of injunctive relief to the prison setting. In Jones v. Diamond, 638 F.2d 1364, 1375 (5th Cir. 1981) (en banc), cert dismissed, 453 U.S. 950 (1981), the appellate court refused to vacate an injunction in a prison conditions case even though former conditions had improved. The court said:

[Changes made by defendants after a suit is filed do not remove the necessity of injunctive relief, for practices may be reinstated as swiftly as they were suspended. The burden is on the Defendants to prove that the wrongs of the past could not reasonably be expected to recur.

Jones, at 1374-75. That court concluded that the improvements in prison conditions after over five years of litigation, did not eliminate the need for an injunction.

#### INJUNCTIVE RELIEF

It must be noted that, for practical reasons, it is not within the jurisdiction nor power of this court to enjoin homosexual rape, assaults, smuggling, or the use of contraband within the prison. The court may, however, enjoin certain procedures or require others, in an attempt to decrease the likelihood of the occurrence of these social ills within the



1 confinement of the prison and to satisfy the requirements of  
2 the eighth amendment. Having determined that certain  
3 conditions exist within GCI which presently violate the eighth  
4 amendment prohibition against cruel and unusual punishment,  
5 the court must award injunctive relief in favor of the  
6 Plaintiffs.

7 Cognizant of both the financial constraints placed upon  
8 the Defendant and the awesome nature of his task, the Court  
9 must yet exercise its equitable authority, and remedy the  
10 practices and conditions that currently exist at GCI in  
11 violation of the eighth amendment.

12 Accordingly, the Defendant Chester Lambdin,  
13 Superintendent of GCI, is affirmatively enjoined to carry out  
14 the following required courses of action:

15 Regarding the Security staff patrol in the dormitory areas:

16 1. Any opaque glass panes in the shower area which impede  
17 visibility of the wicket officer must be replaced with clear  
18 glass. These panes are to be cleaned and maintained clear;  
19 when same again become opaque from grime, they must be  
20 promptly replaced.

21 2. An official policy regarding the frequency of the roving  
22 patrols must be promulgated and enforced. Guards should be  
23 warned that the failure to patrol will result in some sort of  
24 disciplinary action against them; repeated failure to comply  
25 with the roving patrol policy could result in the termination  
26 of the guard.

1 Regarding the control of movement of inmates from the North  
2 Compound to the Main Compound:

3 1. The metal detector located between the North and Main  
4 Compound must be kept operative and in good repair. Frequent  
5 inspections of same should be conducted to assure it is  
6 operating correctly.

7 Regarding Conditions in protective confinement:

8 1. There shall be no double-bunking in protective  
9 confinement.

10 2. There shall be no prolonged stays in protective  
11 confinement; any stay in excess of 30 days is a prolonged  
12 stay.

13 3. There shall be swift transfer of any inmate who is in  
14 protective confinement and for whom it has been determined  
15 that return to the general prison population would be unsafe.

16 4. The lighting in protective confinement must meet the ACA  
17 requirement.

18 5. The roving patrol by the officer guarding protective  
19 confinement must be enforced. Any violation should be  
20 sanctioned in the same manner as noted above, that is,  
21 disciplinary action and/or termination for repeated failure  
22 to patrol.

1 Regarding Control of contraband within the prison:

2 1. The Superintendant must promulgate and publish to all  
3 guards and inmates an official policy on the handling and  
4 severity of a violation involving all contraband, including  
5 drugs, alcohol, weapons.

6 2. Additionally, he must institute a consistently harsh,  
7 standard penalty for those prisoners found in possession of  
8 contraband.

9 3. The staff must perform regular "shake-downs" of the  
10 dormitories to detect the presence of contraband.  
11 Additionally, the guards must be warned that the repeated  
12 discovery of contraband in the area for which they are  
13 responsible will result in disciplinary action against them.  
14 Continuous discovery of same could result in termination.

15 4. The staff must conduct thorough searches for contraband  
16 of all those entering the compound, including the guards  
17 reporting for work each day.

18 5. The metal detector at the entrance to the compound must  
19 be operative at all times; regular inspections must be  
20 conducted to assure same.

21 Regarding Homosexual Rape and the acceptance by staff of overt  
22 homosexual activity among inmates:

23 1. The Superintendant must institute an official procedure  
24 for the prompt investigation of all alleged sexual assaults;  
25

he must see that same is enforced.

2. He must see that all alleged cases of sexual assault are referred to the state attorneys office for possible prosecution.

Regarding the lack of psychological counseling for inmates who have been sexually assaulted:

1. The Superintendant must provide training for all prison guards in the handling of rape complaints. This should include education regarding the seriousness of a homosexual assault in prison.

2. The Superintendant must require the staff psychiatrist and the staff psychologist to acquire special training in the form of a course or seminar on rape crisis management.

3. He must promulgate an official referral procedure of all rape victims to the resident psychiatrist or psychologist for evaluation.

SUGGESTED REMEDIES

In addition to the above required injunctive relief, the court hereby strongly suggests, although does not require, that the Defendant Chester Lambdin adopt the following procedures:

1. Installation of a time clock at various check-in areas to monitor and enforce the roving patrol of all prison guards.

2. Construction of food service facilities and support facilities at the North Compound so that North Compound inmates need not co-mingle with the Main Compound inmates.

3. Expeditious completion of the additional confinement areas to cure the lack of available space therein.
4. Employment of trained dogs to detect the presence of marijuana and cocaine in the dormitories.
5. Investigation and consideration of the possibility of installing higher fences to prevent the passing of contraband over the fence.
6. Creation of an on-site rape crisis center, manned by an expert in the field of rape crisis management.
7. Improvement of work programs for inmates. The Superintendant should consider the implementation of an educational program in horticulture. A tree farm and/or nursery might be put into operation whereby the skills of landscape, maintenance, nursery work, and vegetable production might be taught.

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In view all of the foregoing, it is

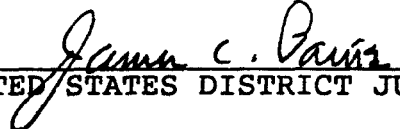
ORDERED and ADJUDGED that Plaintiff's Request for injunctive relief is GRANTED. The Clerk of the court is hereby instructed to enter final judgment in favor of the Plaintiffs and against the Defendants in accordance with the provisions of this order and the June 4, 1987 order of this court. Thereafter, the clerk is instructed to close this case as all remaining issues, save for the award of attorneys

fees, have now been addressed and resolved. Additionally, it is

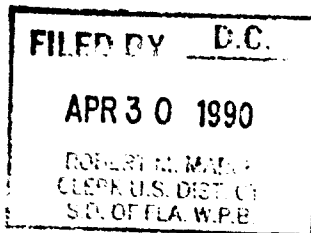
ORDERED and ADJUDGED that that part of the June 4, 1987 order which contemplates the use of committees to address the injunctive relief is hereby VACATED. However, in all other respects, that order, which addresses liability and damages, remains in full force and effect and is incorporated herein by reference. Finally, it is

ORDERED and ADJUDGED that ruling on the outstanding motion for attorneys fees and costs is hereby reserved until the previously pending motion is again fully briefed and supplemented with supporting affidavits reflecting the total amount of fees and costs incurred. Accordingly, the Plaintiffs, the prevailing parties, are ordered to submit revised affidavits in support of fees within 20 days of the date of this order. Thereafter, the Defendant shall have ten days in which to respond to same.

DONE and ORDERED at West Palm Beach, Florida, this 28<sup>th</sup> day of April, 1990.

  
UNITED STATES DISTRICT JUDGE

cc:  
David M. Lipman, Esq.  
James A. Tucker, Esq.  
William R. Amlong, Esq.  
Michael Davis, Esq.  
Walter Meginniss, Esq.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.82-8196-CIV-PAINE

ANTHONY LaMARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf of  
all others similarly situated,  
and DAVID ALDRED, STEVE H. BRONSON, JR.,  
EDDIE COBB, RON DURRANCE, WAYNE EPPRECHT,  
MICHAEL GORDON, and BILLY JOE HARPER,  
individually,

Plaintiffs,

vs.

R.V. TURNER, individually in his  
former capacity as Superintendent of Glades  
Correctional Institution, CHESTER LAMBDIN, in  
his official capacity as Superintendent of  
Glades Correctional Institution,

Defendants.

FINAL JUDGMENT

This action came on before the Honorable James C. Paine,  
United States District Judge, presiding. On this day the  
Court has entered its Findings of Fact and Conclusions of Law  
regarding injunctive relief in favor of the Plaintiffs and  
against the Defendant. Therefore, in accordance with this  
court's previous Order on Report and Recommendation of  
Magistrate reprinted in Lamarca v. Turner, 662 F. Supp. 647,  
650-667, and the Order of April 29, 1990, it is hereby

ORDERED and ADJUDGED that the Court's previous judgment  
entered on June 4, 1987, Lamarca, supra, 662 F. Supp. at 666-

1 67 is readopted and in continuing effect except as modified  
2 or rejected by the court's Order of June 4, 1987, Lamarca,  
3 supra, 662 F. Supp. 650-666 and the April 29, 1990 order.  
4 Additionally, it is

5 ORDERED and ADJUDGED that judgment shall be entered  
6 effective on June 4, 1987 for Plaintiffs Lamarca, Saunders,  
7 Johnson, Aldred, Bronson, Cobb, Durrance, and Harper and  
8 against Defendant Turner in accordance with the following  
9 award of compensatory damages for Turner's violation of  
10 Plaintiff's constitutional rights:

|                              |             |
|------------------------------|-------------|
| 11 (1) ANTHONY LAMARCA       | \$9,000.00  |
| 12 (2) MARTIN SAUNDERS       | \$30,000.00 |
| 13 (3) EDWIN JOHNSON         | \$13,000.00 |
| 14 (4) DAVID ALDRED          | \$30,000.00 |
| 15 (5) STEVE H. BRONSON, JR. | \$30,000.00 |
| 16 (6) EDDIE COBB            | \$6,500.00  |
| 17 (7) RON DURRANCE          | \$30,000.00 |
| 18 (8) BILLY JOE HARPER      | \$30,000.00 |

19 Interest on the Judgment shall run from the date of the first  
20 Judgment of June 4, 1987 until paid, at the rate of 7.02  
21 percent. Further, it is

22 ORDERED and ADJUDGED that regarding the claims of  
23 Plaintiffs Epprecht and Gordon, judgment is entered against  
24 for Defendants and against Plaintiffs, the Plaintiffs to have  
25 nothing. Finally, regarding the claim for injunctive relief,  
26 it is



1 ORDERED and ADJUDGED that the Defendant Chester Lambdin,  
2 Superintendent of GCI, is affirmatively enjoined to carry out  
3 the following required courses of action:

4 Regarding the Security staff patrol in the dormitory areas:

5 1. Any opaque glass panes in the shower area which impede  
6 visibility of the wicket officer must be replaced with clear  
7 glass. These panes are to be cleaned and maintained clear;  
8 when same again become opaque from grime, they must be  
9 promptly replaced.

10 2. An official policy regarding the frequency of the roving  
11 patrols must be promulgated and enforced. Guards should be  
12 warned that the failure to patrol will result in some sort of  
13 disciplinary action against them; repeated failure to comply  
14 with the roving patrol policy could result in the termination  
15 of the guard.

16 Regarding the control of movement of inmates from the North  
17 Compound to the Main Compound:

18 1. The metal detector located between the North and Main  
19 Compound must be kept operative and in good repair. Frequent  
20 inspections of same should be conducted to assure it is  
21 operating correctly.

22 Regarding Conditions in protective confinement:

23 1. There shall be no double-bunking in protective  
24 confinement.

25 2. There shall be no prolonged stays in protective  
26 confinement; any stay in excess of 30 days is a prolonged

stay.

3. There shall be swift transfer of any inmate who is in protective confinement and for whom it has been determined that return to the general prison population would be unsafe.

4. The lighting in protective confinement must meet the ACA requirement.

5. The roving patrol by the officer guarding protective confinement must be enforced. Any violation should be sanctioned in the same manner as noted above, that is, disciplinary action and/or termination for repeated failure to patrol.

Regarding Control of contraband within the prison:

1. The Superintendent must promulgate and publish to all guards and inmates an official policy on the handling and severity of a violation involving all contraband, including drugs, alcohol, weapons.

2. Additionally, he must institute a consistently harsh, standard penalty for those prisoners found in possession of contraband.

3. The staff must perform regular "shake-downs" of the dormitories to detect the presence of contraband. Additionally, the guards must be warned that the repeated discovery of contraband in the area for which they are responsible will result in disciplinary action against them. Continuous discovery of same could result in termination.

4. The staff must conduct thorough searches for contraband

of all those entering the compound, including the guards reporting for work each day.

5. The metal detector at the entrance to the compound must be operative at all times; regular inspections must be conducted to assure same.

Regarding Homosexual Rape and the acceptance by staff of overt homosexual activity among inmates:

1. The Superintendent must institute an official procedure for the prompt investigation of all alleged sexual assaults; he must see that same is enforced.

2. He must see that all alleged cases of sexual assault are referred to the state attorneys office for possible prosecution.

Regarding the lack of psychological counseling for inmates who have been sexually assaulted:

1. The Superintendent must provide training for all prison guards in the handling of rape complaints. This should include education regarding the seriousness of a homosexual assault in prison.

2. The Superintendent must require the staff psychiatrist and the staff psychologist to acquire special training in the form of a course or seminar on rape crisis management.

3. He must promulgate an official referral procedure of all rape victims to the resident psychiatrist or psychologist for evaluation. Finally, it is

ORDERED and ADJUDGED that the Plaintiffs, as prevailing

1 parties, are required to submit affidavits in support of an  
2 award of fees and costs within 20 days of the date of the  
3 court's final order; the Defendant shall have 10 days  
4 thereafter to respond to same. The court will then enter a  
5 post-judgment order regarding the award of attorneys fees and  
6 costs.

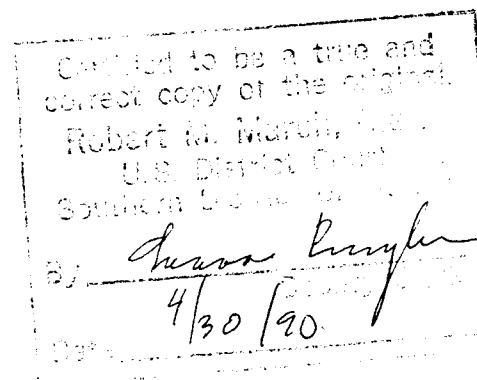
7 Dated at West Palm Beach, Florida on this 30<sup>th</sup> day of  
8 April, 1990.

9 ROBERT M. MARCH, CLERK

10 By: *Swava Ringheim*  
11 Swava Ringheim, Deputy Clerk

12 CC:

13 David M. Lipman, Esq.  
14 James A. Tucker, Esq.  
15 William R. Amlong, Esq.  
16 Michael Davis, Esq.  
17 Walter Meginnis, Esq.

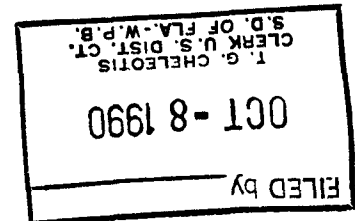


*File  
La Marca*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.82-8196-CIV-PAINE

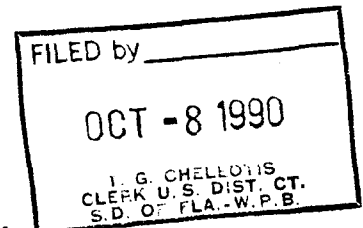
ANTHONY LaMARCA, MARTIN  
SAUNDERS, and EDWIN JOHNSON,  
individually and on behalf of  
all others similarly situated,  
and DAVID ALDRED, STEVE H. BRONSON, JR.,  
EDDIE COBB, RON DURRANCE, WAYNE EPPRECHT,  
MICHAEL GORDON, and BILLY JOE HARPER,  
individually,



Plaintiffs,

vs.

R.V. TURNER, individually in his  
former capacity as Superintendent of Glades  
Correctional Institution, CHESTER LAMBDIN, in  
his official capacity as Superintendent of  
Glades Correctional Institution,



Defendants.

ORDER DENYING NEW TRIAL AND GRANTING ATTORNEYS' FEES

This action is before the Court upon the Defendant's  
Motion for New Trial or to Alter Judgment (DE 303) and the  
Plaintiffs' Motion for an Award of Attorney Fees and  
Litigation Expenses (DE 304). Having reviewed the file and  
the relevant authorities, the court enters the following  
order.

PROCEDURAL BACKGROUND

In light of the fact that the present case has been  
remanded by the Eleventh Circuit Court of Appeals and that

1 this lawsuit spans eight years, the court has determined that  
2 a brief review of the procedural background of the case is  
3 necessary.

4 On March 14, 1982, Anthony Lamarca filed a hand-written,  
5 pro se complaint in the United States District Court pursuant  
6 to 42 U.S.C. § 1983. The named defendant was R.V. Turner, the  
7 then-Superintendent of Glades Correctional Institution (GCI).  
8 The complaint contained, inter alia, allegations that Lamarca  
9 was being subjected to ongoing physical violence and  
10 harassment by other inmates because of his refusal to  
11 participate in homosexual activity. Additionally, the  
12 Plaintiff alleged that GCI officials failed to take any  
13 corrective action to alleviate that situation. Pursuant to the  
14 Southern District of Florida Local Magistrate Rule 1(f), this  
15 case was transferred to Magistrate Peter L. Ninkoff.

16 On September 21, 1983, Lamarca, now represented by  
17 counsel and joined by three other former and/or current prison  
18 inmates at GCI, Martin Saunders, Eswin Johnson, and Harry  
19 Rosenbaum, filed an amended class action complaint on behalf  
20 of themselves and other inmates at the institution. The First  
21 Amended Complaint purported to redress physical and sexual  
22 assaults and threats of physical and sexual assaults. In the  
23 first amended complaint, Plaintiffs sought monetary damages  
24 as well as declaratory and injunctive relief to enjoin the  
25 Defendants from various practices and inaction which  
26 perpetuated the violence, threats, and sexual abuse by

prisoners at GCI.

1 On November 2, 1983, the Defendants filed their answer  
2 to Plaintiff's First Amended Complaint. The Defendants did  
3 not demand a jury trial at that time.

4 The injunctive relief aspect of the lawsuit was certified  
5 as a class action on April 13, 1984. The court defined the  
6 class as all persons who were, or would be, incarcerated at  
7 GCI.

8 On September 20, 1985, the court granted the Plaintiffs  
9 leave to file a Second Amended Complaint, the effect of which  
10 was to include damage claims of additional Plaintiffs.  
11 Additionally, regarding the injunctive relief, the Second  
12 Amended Complaint named Defendant Turner's successor at GCI,  
13 Randall Music, in his official capacity. Thereafter, the  
14 Defendants made a demand for jury trial.

15 Finally, on November 15, 1985, Plaintiffs moved for leave  
16 to file a third amended complaint, which would substitute  
17 certain plaintiffs. The Magistrate granted the Plaintiff's  
18 motion to file a Third Amended Complaint and, in the same  
19 order, denied the Defendant's jury demand as well as a second  
20 request for a continuance.

21 Magistrate Nimkoff held an evidentiary hearing in  
22 December, 1985. During the pendency of the hearing, the  
23 Defendants raised the matter of recusal of the Magistrate.  
24 The motion for recusal was denied. On January 8, 1986, the  
25 Magistrate entered his Report and Recommendation. Despite the  
26

Defendants objections to the Magistrate's Report and Recommendation, this court affirmed same as to most of the issues. That order is reported at Lamarca v. Turner, 662 F. Supp. 647 (1987).

The Defendants filed a timely appeal which, as discussed above, was dismissed without prejudice.

On October 18, 1989, this court conducted a status conference in the present case. Thereafter, on October 23, 1989, the court issued an order setting forth a discovery schedule and scheduling an evidentiary hearing before the court for January, 1990. The evidentiary hearing was intended to supplant the original plan involving the appointment of committees to determine the need for injunctive relief.

Regarding the appointment of committees to address the injunctive relief, the court expressed some concern that such an appointment might result in an impermissible delegation of judicial responsibility. Accordingly, the court vacated that part of the June 4, 1987 order which contemplated the utilization of committees to recommend injunctive relief.

On January, 1990, the court held the scheduled evidentiary hearing to determine what, if any, injunctive relief should be granted in this 42 U.S.C. § 1983 class action. Thereafter, when the parties had presented the court with proposed findings of fact and conclusions of law, the court entered an order granting injunctive relief. Specifically, the court found that, despite interim



improvements, there were still problems at GCI which required the attention of the court and the Superintendent. Specifically, the court found that the following six areas warranted attention:

- a) Security staff patrol in the dormitory areas;
- b) Control of movement of inmates from the North Compound to the Main Compound;
- c) Conditions in protective confinement;
- d) Control of contraband within the prison;
- e) Homosexual Rape and the acceptance by staff of overt homosexual activity among inmates;
- f) Lack of psychological counseling for inmates who have been sexually assaulted;

In view of these findings, the court ordered the Defendants to carry out certain itemized procedures and to make various changes in the way the prison was run.

On May 29, 1990, the Defendant filed a motion for new trial or to alter judgment. The court will address this motion first.

#### Motion for New Trial Or to Alter Judgment

The Defendant specifically challenges that part of this court's order granting injunctive relief which requires the GCI staff to conduct "thorough searches for contraband of all those entering the compound, including the guards reporting for work each day." The Defendant contends that such a directive necessarily anticipates that all persons entering the prison compound be strip searched.

1 As a basis for this contention, the Defendant argues that  
2 "the undisputed evidence in this cause has established that  
3 all persons are presently subject to electronic and/or pat  
4 down searches; that the only other technique of search that  
5 would be more thorough than those presently in use would be  
6 the universal use of strip searches."

7 The Plaintiffs have filed opposition to the Motion for  
8 New Trial or to Alter judgment, claiming that the Defendant  
9 has concluded that the final judgment requires that which it  
10 plainly does not say. The court agrees.

11 For reasons supported more fully herein, the court finds  
12 that the Defendant has made an unwarranted leap in  
13 interpretation when he concludes that when the court said  
14 "thorough searches," it meant "universal strip searches of  
15 all persons going in and out of the compound."

16 In the findings of fact, the court expressly found that  
17 the metal detector, which is intended to detect and prevent  
18 the flow of contraband from one compound to another, is often  
19 broken. This conclusion was supported by Superintendent  
20 Lambdin's own testimony that, since it is located outside, the  
21 metal detector is subject to condensation.

22 Further, the court specifically found that there remained  
23 a high availability of drugs such as marijuana and crack  
24 cocaine on the Compound. Dr. Swanson, the Plaintiffs'  
25 Corrections expert reported to the court that after his  
26 research he concluded that the supervisors at GCI appeared to

1 be somewhat complacent regarding the presence of certain  
2 drugs, especially marijuana. The court found Dr. Swanson to  
3 be a credible witness.

4 Due to the court's finding of the presence of contraband  
5 such as marijuana and cocaine, items not manufactured within  
6 the prison confines, the court impliedly concluded that the  
7 source of same was the outside world. Indeed, Superintendent  
8 Lambdin himself testified that there remains a problem of  
9 contraband entering the compound via non inmates throwing same  
10 over the fence. Finally, as stated heretofore, the court heard  
11 testimony that the metal detectors, located both between the  
12 North and Main Compound, and between the prison and the  
13 outside world, are often in disrepair.

14 The undisputed evidence in this cause has established  
15 that outside contraband is present in the prison compound.  
16 The presence of such contraband which necessarily entered the  
17 prison compound from the outside world, led the court to  
18 conclude that both the electronic and pat down searches which  
19 were conducted by the staff were not thorough. Therefore,  
20 when the court ordered that "thorough searches for contraband  
21 of all those entering the compound, including the guards  
22 reporting for work each day" be conducted, the court meant  
23 that efficient, effective and diligent searches should be  
24 conducted. It was clear to the court that while the theory  
25 of electronic and pat down searches was "thorough," the  
26 practice was less than efficient and, therefore, not thorough.

civil action based upon the deprivation of federally protected rights.

When Congress passed the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. §1988, it expressed its clear intent to provide for the award of a reasonable attorney's fee to the prevailing party as part of the taxable costs in a suit brought under any of several specified civil rights statutes. The applicable statute states in pertinent part that:

In any action or proceeding to enforce a provision of section 1981, 1982, 1983, 1985, and 1986 of this title, title IX of public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. §1988 (1981).

This court necessarily commences this analysis with the proposition that a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Hensley v. Eckerhart, 461 U.S. 424, 430 (1983), quoting S. Rep. No. 94-1011, 1976 U.S. Code Cong. & Admin. News, p. 5912) and Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968); see also Dowdell v. City of Apopka, Florida, 698 F.2d 1181, 1189 (11th Cir. 1983). The court is not aware of the existence of any 'special circumstances' which would dictate against an award of attorney's fees in the present case. In fact, the Defendants have not argued that any such special

circumstances exist.

Accordingly, the court finds that the Plaintiffs in this case, as the prevailing parties, are entitled to an award of attorneys fees. It is important to note that the Defendant substantially agrees, with only a slight exception,<sup>1</sup> discussed infra, that the Plaintiff is, as a matter of law, entitled to an award of fees. Therefore, the only question which remains to be answered is: what amount of fees constitutes an appropriate award?

In offering a suggested answer to this question, the Plaintiffs have raised several legal and factual questions regarding the proper amount of fees to be awarded. First, regarding Stage I of the litigation, the Plaintiffs request an enhancement for "delay in payment." Second, the Plaintiffs have proposed an hourly rate of \$225 for Mr. Lipman, \$200 for Mr. Amlong, and \$125 for Mr. Tucker.<sup>2</sup> Finally, the Plaintiffs urge the court to exercise an enhancement of the total lodestar for Stage II of the litigation.

In contrast, the Defendant contends that, first, the issue of attorneys fees for Stage I has been laid to rest and should not be disturbed upon review. Second, that the rate

---

<sup>1</sup> Specifically, the Defendants challenge the stature of the Plaintiffs as "prevailing parties" on the single issue of the ill-fated appeal to the Eleventh Circuit.

<sup>2</sup> The Defendant has not challenged the reasonableness of Mr. Tucker's hourly rate.

per hour and the number of hours expended by each attorney are unreasonably high and unnecessarily duplicative, respectively. Finally, regarding the enhancement of the Stage II lodestar, the Defendants argue that the Plaintiffs have failed to establish a right to same.

#### CALCULATION OF ATTORNEY'S FEES: STAGE I

On October 8, 1987, this court entered an Order awarding attorneys fees and certain litigation expenses<sup>3</sup>. That order, which was entered pursuant to a consent decree which was submitted by the parties, provided for the following award of fees and costs:

##### 1. Attorneys Fees

|                                  |              |
|----------------------------------|--------------|
| a. Lipman & Weisberg             | \$96,815.25  |
| b. William R. Amlong             | \$29,956.50  |
| <u>Total Attorney Fee Award:</u> | \$126,771.75 |

##### 2. Litigation Expenses (resolved)

|                                                     |             |
|-----------------------------------------------------|-------------|
| a. Reimbursement to law firm of Lipman and Weisberg | \$16,468.11 |
|-----------------------------------------------------|-------------|

##### 3. Interest

a. interest was awarded at 7.8% per annum from October 8, 1987 until the date of payment on both the attorney fee award of \$126, 771.75 and the litigation expenses of \$16,468.11

---

<sup>3</sup> At that time, the court reserved ruling on the additional expenses of \$13,925.65. These unresolved expenses include certain expert witness fees and miscellaneous expenses. These matters will be discussed, infra, when the court addresses the Plaintiffs' entitlement to litigation expenses.

### Enhancement for Delay in Payment

1           The Plaintiffs now urge the court to revisit the former  
2           award of attorneys fees for Stage I litigation on the basis  
3           that the delay in payment is sufficient cause for an  
4           adjustment. The court agrees that, generally, it is well  
5           settled that an adjustment for delay in payment is  
6           appropriate in civil rights cases which span long periods of  
7           time. See Missouri v. Jenkins, 109 S. Ct., 2463, 2469 (1989);  
8           Norman v. Housing Authority of Montgomery, supra, 836 F. 2d  
9           at 1302.

10           In Jenkins, the Supreme Court acknowledged that an  
11           enhancement of lodestar was appropriate in civil rights cases  
12           when it said:

13           Clearly, compensation received several years  
14           after the services were rendered--as it  
15           frequently is in complex civil rights  
16           litigation--is not equivalent to the same  
17           dollar amount received reasonably promptly as  
18           the legal services are performed, as would  
19           normally be the case with private billings.  
20           We agree, therefore, that an appropriate  
21           adjustment for delay in payment--whether by  
22           the application of current rather than  
23           historic hourly rates or otherwise--is within  
24           the contemplation of the statute.

25           Missouri v. Jenkins at 2469. [footnote omitted] [emphasis  
26           added]. Additionally, prior to the Supreme Court's assertion  
in Jenkins, the Eleventh Circuit also recognized delay in the  
receipt of payment as a basis for enhancing an award of  
attorneys fees.

          However, the court finds that the situations presented

in this line of cases differs from the facts of the instant case in the following material ways.

First, unlike in Jenkins and Norman, the court in the present case has already calculated and awarded a sum of attorneys fees for the Stage I litigation. In the cases relied upon by the Plaintiffs, the span of litigation was considered to include the time from initiation of the lawsuit until the time the award of fees was calculated. The court finds this procedural distinction to be relevant. For Stage I, the time span of the litigation concluded on October 8, 1987, when the court issued an award of fees for same.

Second, when the court issued an award of fees on October 8, 1987, all of the parties and the court were well aware that the Plaintiffs would experience a delay in receipt of moneys due. For that reason, the court included a provision for interest to accrue on the money from the date of the award until the time of payment.

While the subsequent litigation has, admittedly, lasted longer than even the court anticipated at that time, the court is satisfied that the interest provision adequately compensates the Plaintiffs' counsel for the loss of the use of the money during the delay in payment. In this regard, the court is compelled to point out that had Plaintiffs' counsel taken exception to the delay in payment, they could have petitioned the court for interim attorneys fees. See Missouri v. Jenkins, supra, 109 S. Ct. at 2469 n.6, citing, Texas State



Teachers Assn. v. Garland Independent School District, 109 S. Ct. 1486 (1989).<sup>4</sup>

1 Finally, the court finds that the present case is an  
2 exception to the general authority authorizing enhancement for  
3 delay in payment, because the original 1987 award was granted  
4 as a result of a consent decree. The parties had agreed at  
5 that time that the award, coupled with the interest provision,  
6 was adequate. In the stipulation entered by the parties, the  
7 Plaintiffs merely reserved the right to request additional  
8 fees for work subsequent to the time covered by that Order.  
9 When the subsequent appeal was dismissed, noting that the  
10 injunctive relief portion of the case was not yet final, the  
11 Plaintiffs counsel could have and probably should have  
12 petitioned for interim fees.<sup>5</sup> The court finds that to permit  
13 the Plaintiffs to now withdraw from an agreement to which they  
14 willingly stipulated would be patently unfair to the  
15

---

16 <sup>4</sup> The Supreme Court has recognized the "availability  
17 of interim attorneys fee awards under §1988 when a litigant  
18 becomes a prevailing party on one issue in the course of the  
19 litigation." Id. The case at bar clearly falls within this  
20 category of cases. While the Plaintiffs had prevailed on the  
21 issue of money damages, the issue of injunctive relief was not  
22 resolved until three years later. The Plaintiffs never  
23 petitioned the court for interim fees.

24 <sup>5</sup> The court does not intend to say that an award for  
25 interim attorneys fees would have necessarily been granted at  
26 that time. Nor does the court wish to convey that it is now  
inclined to award interim attorneys fees. The award of same  
requires an analysis of the facts of each case. Additionally,  
the present stature of the case differs from the time after  
the appeal was dismissed as the district court's work is now  
complete.

Defendant.

Accordingly, it is the opinion of this court that the original calculation of attorneys fees, awarded on October 8, 1987, must stand, unmodified.

**CALCULATION OF ATTORNEYS FEES: STAGE II**

**GENERAL STANDARD OF REVIEW: REASONABLENESS**

The determination of reasonable attorney's fees is clearly within the sound discretion of the trial judge. Dowdell, 698 F.2d at 1187. There has been much activity recently in both the Supreme Court and the Eleventh Circuit addressing the appropriate standards for determining reasonable attorney's fees. In Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988), this circuit recognized that its decisions have "mirrored the evolving standards of the Supreme Court." The Norman decision provides the most recent framework, in this circuit, within which to analyze the reasonableness of an award of attorney's fees.

Prior to Norman, the Eleventh Circuit had relied largely upon the twelve factors articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) in determining the appropriateness of an attorney's fee award. The twelve Johnson factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly;

1 (4) the preclusion of other employment by the attorney due to  
2 acceptance of the case; (5) the customary fee; (6) whether the  
3 fee is fixed or contingent; (7) time limitations imposed by  
4 the client or the circumstances; (8) the amount involved and  
5 the results obtained; (9) the experience, reputation, and  
6 ability of the attorneys; (10) the "undesirability" of the  
7 case; (11) the nature and length of the professional  
8 relationship with the client; and (12) awards in similar  
9 cases. Johnson, 488 F.2d at 717-19.

10 The Norman court began its analysis by determining the  
11 reasonable rate. "A reasonable hourly rate is the prevailing  
12 market rate in the relevant legal community for similar  
13 services by lawyers of reasonably comparable skills,  
14 experience, and reputation." Norman, 836 F.2d at 1299 (citing  
15 Blum v. Stenson, 465 U.S. 886, 895-96 n. 11, 104 S. Ct. 1541,  
16 1547 (1984)). The Eleventh Circuit also made it clear that  
17 "the applicant bears the burden of producing satisfactory  
18 evidence that the requested rate is in line with the  
19 prevailing market rates." Norman at 1299 (citing N.A.A.C.P. v.  
20 City of Evergreen, 812 F.2d 1332 (11th Cir. 1987)).

21 Finally, the Norman court offered several factors and  
22 items of evidence which may be considered by the district  
23 court when determining the appropriateness of attorney rates.  
24 These factors are (1) direct evidence of charges by lawyers  
25 under similar circumstances; (2) opinion evidence; and (3)  
26 the considerations outlined in Johnson, 488 F.2d 714 (5th Cir.

1974).

Therefore, this court finds that the general determination of the reasonableness of fees in the instant case is guided by the Eleventh Circuit's teachings in both the Norman and the Johnson cases.

#### ANALYSIS

The Plaintiffs have proposed the following Lodestar calculation for attorneys fees for Stage II of this case:

##### a. Attorneys Fees

|                 |                      |                    |
|-----------------|----------------------|--------------------|
| David M. Lipman | 434.50 hours @ \$225 | total: \$97,762.50 |
| William Amlong  | 116.3 hours @ \$200  | total: \$23,260.00 |
| James Tucker    | 209.25 hours @ \$125 | total: \$26,156.25 |

Total Lodestar Request.....\$147,178.75

b. Plus Enhancement at %100.....\$147,178.75

Total Attorney Fee Request.....\$294, 357.50

In support of this request, the Plaintiffs, have provided the court with affidavits of all three counsel for the Plaintiffs, as well as, inter alia, affidavits and supplemental affidavits of Professor Bruce Rogow and Ms. Elizabeth du Fresne. Although neither Professor Rogow nor Ms. du Fresne stated that they are presently practicing in West Palm Beach, Florida, both of these attorneys currently practice in the general geographical region of the Southern District of Florida.

### Reasonableness of Hourly Rate

1           The Defendant has challenged the reasonableness of the  
2 hourly rate requested by Mr. Lipman and Mr. Amlong. In support  
3 of this position, the Defendant has filed an affidavit of  
4 William Price, an attorney who practices in West Palm Beach.  
5 He reported to the court that it is his professional opinion  
6 that the standard quoted hourly rate by trial lawyers in Palm  
7 Beach County and with the experience of Plaintiff's counsel  
8 ranges from \$150-\$200 per hour on similar litigation.

9           Professor Rogow stated in his supplemental affidavit that  
10 it is his opinion that the range of reasonable hourly rate for  
11 Mr. Lipman is \$200-\$300 per hour and the reasonable range for  
12 Mr. Amlong is \$175-\$200 per hour. Ms. du Fresne stated that  
13 she believed that a reasonable hourly rate for Mr. Lipman is  
14 between \$200-\$300 per hour and for Mr. Amlong is between  
15 \$175-\$225 per hour. Both affidavits state that the affiant  
16 has arrived at these ranges only after having considered the  
17 reasonable hourly rate within the Southern District of Florida  
18 for similar services for an attorney with comparable skills,  
19 experience and reputation as Mr. Lipman and Mr. Amlong. Such  
20 a consideration is required by the relevant case law.

21           The court has also considered the factors addressed in  
22 the affidavits and in the case-law offering guidance on this  
23 issue. More specifically, the court notes that as recently  
24 as March, 1990, this court was called upon to determine a  
25

reasonable hourly rate for Mr. Amlong in order to grant an award of fees. See Greenberg v. Cohen, Case No. 88-6639. In that case, the court specifically found that

having considered all of the evidence submitted on the issue of hourly rates...\$150/hour is a reasonable rate for Mr. Amlong's work.

Greenberg v. Cohen, Case No. 88-6639, Final Judgment, entered March. 1990.

The court again finds that a fair reading of all of the submissions and evidence regarding the appropriate hourly rate for Mr. Amlong is \$150 per hour. Additionally, a reasonable hourly rate for Mr. Lipman, an attorney with more years of experience, is \$175 per hour. This reasonable rate is based upon the court's finding that these rates fall within the reasonable range charged for attorneys in West Palm Beach, Florida performing similar services and possessing comparable skills, experience and reputation as Mr. Lipman and Mr. Amlong.

#### Reasonableness of Requested Hours

The next step in the computation of the lodestar is the ascertainment of reasonable hours. Norman at 1301. The Supreme Court requires fee applicants to exercise "billing judgment." Hensley, 461 U.S. at 434, 103 S. Ct. at 1941. In this regard, the district court is given the discretion to exclude excessive or unnecessary work. Id.

Defendants have raised certain objections to the Plaintiffs' calculation of reasonable hours expended.

Specifically, the Defendants object to those hours expended on the initial appeal taken to the Eleventh Circuit and those hours which represent unnecessary duplication of work by more than one attorney.

#### Appellate Work

As stated above, 42 U.S.C. §1988 provides for an award of fees only to the prevailing party. The court agrees with the Defendant that the Plaintiffs were not the "prevailing party" on the Eleventh Circuit Appeal.

Accordingly, the court will not include Mr. Lipman's 212.75 hours allegedly expended on the preparation of the brief and the preparation for oral argument at the Eleventh Circuit.<sup>6</sup> Specifically, these hours are those claimed from February 9, 1988 through October 3, 1988. Additionally, Mr. Amlonghas claimed 9 hours in February and March, 1988 for appellate work and these will not be included in the lodestar calculation. Upon resolution of the appeal, the appropriate fees and costs of the appeal will, perhaps, be determined and properly assessed against the defeated party.

#### Unnecessary Duplication

Upon review of the remaining hours as stated in the

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<sup>6</sup> It is also interesting to note here that even if the court were inclined to award fees for preparation of the appeal, this number of hours appears to be excessive. Even the Plaintiffs expert, Professor Bruce Rogow, questions the need for so much time to prepare a brief. However, as the court is not granting an award for appellate preparation, this issue need not be addressed in its entirety at this stage of the litigation.

1 affidavits of all three attorneys, the court concludes that  
2 there has been no unnecessary duplication of work. As this  
3 Circuit has stated, "There is nothing inherently unreasonable  
4 about a client having multiple attorneys, and they may all be  
5 compensated if they are not unreasonably doing the same work  
6 and are being compensated for the distinct contribution of  
7 each lawyer." Norman, supra, 836 F.2d at 1302, citing, Johnson  
8 v. University College of Alabama in Birmingham, 706 F. 2d  
9 1205, 1208 (11th Cir. 1983).

#### 10 Actual Calculation of Lodestar

11 As stated above, the lodestar is determined by  
12 multiplication of a reasonable hourly rate times the number  
13 of hours reasonably expended Norman at 1302. Accordingly,  
14 based upon the foregoing findings, the lodestar is as follows:

##### 15 a. Attorneys Fees

|                                    |                      |                    |
|------------------------------------|----------------------|--------------------|
| 16 David M. Lipman                 | 221.75 hours @ \$175 | total: \$38,806.25 |
| 17 William Amlong                  | 107.3 hours @ \$150  | total: \$16,095.00 |
| 18 James Tucker                    | 209.25 hours @ \$125 | total: \$26,156.25 |
|                                    |                      | -----              |
| 19 Total Lodestar Calculation..... |                      | \$81,057.50        |

#### 20 Enhancement of the Lodestar

21 After the lodestar is determined by multiplication of a  
22 reasonable hourly rate times the number of hours reasonably  
23 expended, the court must next consider the necessity of an  
24 adjustment for results obtained. Norman at 1302. "If the  
25 result was excellent, then the court should compensate for all  
26 hours reasonably expended". Norman at 1302 (citing Popham v.  
City of Kennesaw, 820 F.2d 1570, 1578 (11th Cir. 1987). " If



1 the result was partial or limited success, then the lodestar  
2 must be reduced to an amount that is not excessive." Id.  
3 (citing Hensley, 461 U.S. at 436-37, 103 S. Ct. at 1941).  
4 The Norman court concluded that "if the results obtained were  
5 exceptional, then an enhancement of the lodestar might be  
6 called for." Norman, supra. (citing Pennsylvania v. Delaware  
7 Valley Citizens' Council, 478 U.S. 546, 106 S. Ct. 3088, 3098  
8 (1986) (Delaware Valley Citizens' Council I)). The Norman went  
9 on to define "exceptional results" as "results that are out  
10 of the ordinary, unusual or rare." Norman, supra.

11 Further, enhancement is permissible where the applicant  
12 has shown by specific evidence that "the quality of  
13 representation was superior to that which one could reasonably  
14 expect in light of the rates claimed." Norman, supra. (citing  
15 Blum v. Stenson, 465 U.S. 886, 899, 104 S. Ct. 1541, 1549  
16 (1984)).

17 In the case at bar, the court finds that an enhancement  
18 of 50% appropriately reflects the time, effort, skill and risk  
19 involved in undertaking this type of a lawsuit. Accordingly,  
20 the court finds that the attorneys' fee award in this case  
21  
22  
23  
24  
25  
26

will be as follows:

**a. Attorneys' Fees**

|                 |                      |                    |
|-----------------|----------------------|--------------------|
| David M. Lipman | 221.75 hours @ \$175 | total: \$38,806.25 |
| William Amlong  | 107.3 hours @ \$150  | total: \$16,095.00 |
| James Tucker    | 209.25 hours @ \$125 | total: \$26,156.25 |

**Total Lodestar Calculation.....\$81,057.50**

**b. Plus Enhancement at \$50.....\$40,528.75**

**Total Attorney Fee Award.....\$121,586.25**

**Award of Litigation Expenses**

The expenses incurred in litigation of this nature are intertwined with a reasonable attorney fee. Missouri v. Jenkins, supra. As this Circuit recognized in Dowdell v. City of Apopka, 698 F. 2d 1181, 1190 (11th Cir. 1983), "Reasonable attorneys fees...must include reasonable expenses because attorneys fees and expenses are inseparably intertwined as equally vital components of the costs of litigation." Accordingly, it is the law of this Circuit that all reasonable expenses incurred during litigation, with the exception of routine office overhead, are recoverable as litigation expenses. Id. at 1192 [emphasis added].

The Defendants have raised objections to several expenses due to the lack of documentation supporting same. The Plaintiffs have, in response to this objection, filed additional support providing further itemization of these expenses. See Affidavit of Peter Helwig, Exhibit 4 and Affidavit of David M. Lipman, Exhibit 5. Having reviewed these affidavits as well as the previously filed affidavits,

the court is satisfied that all litigation expenses have been properly documented.

#### Travel Expenses

Additionally, regarding the Travel Expenses of James A. Tucker and the Florida Rural Legal Services investigator, the court finds that the Defendant's objections to same are not well-founded. In Ramos v. Lamm, 713 F.2d 546, 559 (10th Cir. 1983), the court approved expenses for travel occurring between the city in which the litigation was conducted and the city in which the prison was located.

The court finds that the instant travel expenses constitute non-overhead, "reasonable expenses incurred in case preparation" as was anticipated by Dowdell, supra, at 1192. Accordingly, these expenses must be reimbursed under the Civil Rights Attorneys Fees Awards Act, 42 U.S.C. §1988.

#### Paralegal Fees

The Supreme Court has recently held that paralegals can either be billed at cost to the attorney or at the prevailing market rate, depending on the practice in the relevant market. Missouri v. Jenkins By Agyei, 109 S. Ct. 2463, 2471 (1989). The Plaintiffs in the present case seek reimbursement for the actual fee paid to each paralegal. See generally Affidavit of David Lipman, Exhibit 5. This is an appropriate method of seeking reimbursement under Missouri.

1 The Plaintiffs have provided an itemized list of dates,  
2 services performed and time expended by paralegals during the  
3 course of Stage II of this litigation. The court is satisfied  
4 that these expenses are both a recoverable expense and  
5 adequately documented. Accordingly, the Defendant's objections  
6 to compensation for these services are overruled.

#### 7 Expert Witness Fees

8 The Plaintiffs seek an award for compensation for the  
9 actual expert witness fees incurred by them during the course  
10 of this litigation. As discussed, supra, the matter of expert  
11 witness fees was left unresolved in Stage I of the litigation.

12 The Defendant argues that the witness fee limitation  
13 contained in 28 U.S.C. §1821 limits the fee to be awarded to  
14 a witness to \$30 per day. Said statute states that a "witness  
15 shall be paid an attendance fee of \$30 per day for each day's  
16 attendance."

17 The Supreme Court was called upon to address the issue  
18 of limitations upon expert witness fees in Crawford Fitting  
19 Co. v. J. T. Gibbons, Inc., 482 U.S. 437 (1987). The parties  
20 in Crawford relied upon Fed. R. Civ. P. 54(d) as a basis for  
21 recovering expert witness fees and not upon any other statute.  
22 The Court determined that Fed. R. Civ. P. 54(d) did not  
23 authorize the district court to grant an award of attorneys  
24 fees in excess of the statutory limitation set forth in 28  
25 U.S.C. §1821.

26 The issue with which this court is presently faced is

distinguished from Crawford in that the basis upon which the Plaintiffs are seeking compensation for expert witness fees is 42 U.S.C. §1988. While the Crawford Court expressly held that Fed. R. Civ. P. 54(d) did not authorize an award in excess of the statutory limit, the Court was not called upon to, and therefore did not address, the potential conflict between 42 U.S.C. §1988 and 28 U.S.C. §1821.

The issue before this court then is one which has not yet been visited by a controlling court: Whether expert fees are recoverable under Section 1988, a statute which was passed to insure that prevailing civil rights plaintiffs would receive a "fully compensatory fee?" See Missouri v. Jenkins, supra. The court finds that, in light of Congress' clearly expressed intent in 42 U.S.C. §1988, this issue must be answered in the affirmative.

First, the court finds that the experts which were utilized in this case contributed significantly to a just adjudication. As the Seventh Circuit held in Friedrich v. City of Chicago, 888 F.2d 511, 514-15 (7th Cir. 1989), the work of experts contributes as significantly to the work product of lawyers in civil rights litigation as the activities enumerated in Missouri v. Jenkins, supra.

In view of the foregoing, the court finds that the expert witness fees for both Stage I and Stage II of the litigation, are "reasonable expenses incurred in case preparation" as was anticipated by the Dowdell court, supra, at 1192 (11th Cir.

1983). Accordingly, the court finds that these expenses must be reimbursed under the Civil Rights Attorneys Fees Awards Act, 42 U.S.C. §1988.

Miscellaneous Expenses

Finally, the court has reviewed the remaining miscellaneous expenses such as printing, photocopying, telephone calls, courier fees etc. for both Stage I and Stage II of this litigation. The court is satisfied that these particular items are not general overhead, but rather, reasonable costs incurred in the attorneys work-product of this case. As such, they are fully compensable pursuant to 42 U.S.C. §1988 and same shall be awarded to the Plaintiff, the prevailing party in this case.

In view of all of the foregoing, it is

ORDERED and ADJUDGED that the Plaintiffs, as prevailing parties in this litigation, are hereby awarded the following attorneys fees and expenses:

PREVIOUS AWARD for STAGE I

1. Attorneys Fees

|                                  |              |
|----------------------------------|--------------|
| a. Lipman & Weisberg             | \$96,815.25  |
| b. William R. Amlong             | \$29,956.50  |
| <u>Total Attorney Fee Award:</u> | \$126,771.75 |

2. Litigation Expenses (resolved)

|                                                     |             |
|-----------------------------------------------------|-------------|
| a. Reimbursement to law firm of Lipman and Weisberg | \$16,468.11 |
|-----------------------------------------------------|-------------|

3. Interest

a. interest at 7.8% per annum from October 8, 1987 until the date of payment on both the attorney fee award of \$126,771.75 and the litigation expenses of \$16,468.11

AWARD for STAGE II

1. Attorneys' Fees

|                 |                      |                    |
|-----------------|----------------------|--------------------|
| David M. Lipman | 221.75 hours @ \$175 | total: \$38,806.25 |
| William Amlong  | 107.3 hours @ \$150  | total: \$16,095.00 |
| James Tucker    | 209.25 hours @ \$125 | total: \$26,156.25 |

Total Lodestar Calculation.....\$81,057.50

Plus Enhancement at %50.....\$40,528.75

Total Attorney Fee Award.....\$121,586.25

2. Litigation Expenses

|                                                                                |             |
|--------------------------------------------------------------------------------|-------------|
| a. Itemized Stage II (paralegal fees, experts, travel expenses, miscellaneous) | \$39,356.91 |
| b. Unresolved Stage I Expenses                                                 | \$3,279.79  |

Total Litigation Expenses Award.....\$42,636.70

3. Interest

a. Post-judgment interest at 12% per annum from the date of this order until payment.

Final Summary of Award for Fees and Costs

a. Stage I: \$143,239.86 @ 7% interest per annum from 10/8/87 through payment.

b. Stage II: \$164,222.95 @ 12% interest per annum from the date of this order through payment.

Finally, it is

1 ORDERED and ADJUDGED that all pending matters in this  
2 case have now been addressed and resolved. This order is final  
3 in nature, as was required by the Eleventh Circuit Dismissal  
4 of the original Appeal. Accordingly, the Defendants are  
5 reminded that they have thirty (30) days from the date of this  
6 order as of right, pursuant to Rule 4(a) of the Rules of  
7 Appellate Procedure, in which to file an appeal if they  
8 determine same is appropriate.

9 DONE and ORDERED at West Palm Beach, Florida, this 6th  
10 day of October, 1990.

11 Samuel C. Tamm  
12 UNITED STATES DISTRICT JUDGE  
13 ✓

14 cc:

15 David Lipman, Esq.  
16 William R. Amlong, Esq.  
17 James A. Tucker, Esq.  
18 Michael B. Davis, Esq.  
19 Walter M. McGinnis, Esq.  
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