

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

GREGORY HOLT, .
A.K.A. ABDUL MAALIK MUHAMMAD, . Docket No. 5:11-CV-00164-BSM
PLAINTIFF, .
VS. . Little Rock, Arkansas
RAY HOBBS, ET AL, . January 4, 2012
DEFENDANTS. . 9:57 A.M.
.

TRANSCRIPT OF
HEARING ON MOTION FOR TEMPORARY INJUNCTION
BEFORE THE HONORABLE JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

ELECTRONIC COURT RECORDER-OPERATOR: Ms. Stacy Williams

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5 For the Defendants:

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I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>PRESIDING OFFICIAL</u>
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WITNESS FOR PLAINTIFF:

Gregory Holt, a.k.a.	7	14			
Abdul Maalik Muhammad					

WITNESSES FOR DEFENSE:

Gaylon Lay	32	45	63	63	61
Grant Harris	64	72	76,80	80	77

EXHIBITS:IDENTIFIEDRECEIVED

Defense Exhibit No. 1	71	71
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P R O C E E D I N G S

(Call to order of the Court.)

THE COURT: Good morning. We are here in the matter of *Gregory Holt also known as Abdul Malik Muhammad v. Ray Hobbs*, director of Arkansas Department of Correction, and others. This is case 5:11-CV-164. And we are here for a hearing on the motion for a temporary injunction filed by -- do you go by Mr. Muhammad?

THE PLAINTIFF: Yes, sir.

THE COURT: All right. Filed by Mr. Muhammad in this case. Initially, I had looked at the motion and looked also at the Eighth Circuit precedent in *Fegans v. Norris*, and I thought that it should be denied. Judge Miller looked at it and sent it back to me. And having a second look at it, I think Judge Miller is right, that it requires an individual and particular analysis on the motion. So I was incorrect, and denied it based on not hearing any other facts than what was pled and comparing it to the case in *Fegans*. So I set it for a hearing, and here we are. And welcome. Thanks to our Arkansas Department of Correction transportation folks always getting everybody here on time, on target, we appreciate it so much.

And I guess it's your motion, Mr. Holt.

Ms. Cryer, will you tell me who is at the table with you? I see Mr. Hobbs, is that --

1 MS. CRYER: Actually, Your Honor, Mr. Hobbs is not
2 here. I have Warden Gaylon Lay from the Cummins Unit.

3 THE COURT: Okay. Warden.

4 MS. CRYER: I have Assistant Director Grant Harris
5 with the Department of Correction. Mr. Hobbs is not here
6 today.

7 THE COURT: And I'm sorry, I thought -- I had
8 recognized Mr. Lay -- or Warden Lay from another hearing a
9 while ago, it's been a while since I've seen you all. But,
10 welcome, thank you.

11 Do you have any witnesses, Ms. Cryer?

12 MS. CRYER: Your Honor, I do have a number of other
13 individuals who are here. I do not know whether they will be
14 called to testify or not. But I can go ahead and identify
15 them for the record if you would like for me to do so.

16 THE COURT: Sure. Why don't you do that, please.

17 MS. CRYER: Okay. We have Deputy Warden Andrea
18 Weekly from the Cummins Unit. I'm sorry, I'm trying to sit
19 down so you can see.

20 THE COURT: Sure. That will be fine. Thank you.

21 MS. CRYER: We have Chaplain Wilson Bates from the
22 Cummins Unit.

23 THE COURT: Chaplain.

24 MS. CRYER: We have Chaplain John Wheeler, who is the
25 head chaplain, am I --

1 MR. WHEELER: Administrative.

2 MS. CRYER: Okay. Administrative for the Department
3 of Correction. And we also have Chaplain Amin, who is the
4 Islamic coordinator for the Department of Correction.

5 THE COURT: All right. Very good.

6 And, Mr. Muhammad, did you have any witnesses at this
7 time or that you plan to present?

8 THE PLAINTIFF: No, sir.

9 THE COURT: All right. Well, very good. I mean, Mr.
10 Muhammad, I've read your pleadings and your motion and, at
11 this point in time, it's your obligation to kind of move
12 forward, if you will, and tell me a little bit about your
13 claim. Give me some facts on your request with the Department
14 of Correction with regard to your exemption and just kind of
15 lay some foundation. Ultimately, it's going to be, I believe,
16 up to the defense to provide a reasonable basis for denying
17 the exemption. But I want you to go ahead and lay out your
18 facts for the record, if you would.

19 THE PLAINTIFF: Do you want me to come to the lectern
20 or just --

21 THE COURT: It's whatever is your pleasure. You have
22 a bunch of documents there. Do you need to refer to your
23 documents?

24 THE PLAINTIFF: I have the ones -- the main ones that
25 I intend to refer to, I've already pulled them out of the file

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1 along with some stuff from the Koran that details to help you
2 get a better understanding of where I'm coming from on this
3 particular motion here.

4 THE COURT: Well, why don't you come forward then,
5 sir. If you want, why don't you come -- you can have a seat
6 here.

7 THE PLAINTIFF: Okay.

8 THE COURT: Since you're going to be a testifying
9 witness, and I'll put you under oath as well.

10 GREGORY HOLT, A.K.A. ABDUL MAALIK MUHAMMAD, PLAINTIFF
11 HEREIN, SWORN.

12 DIRECT EXAMINATION

13 BY THE COURT:

14 Q All right. Mr. Muhammad, tell me how old are you, sir?

15 A 36.

16 Q And where did you grow up?

17 A Little Rock.

18 Q And how long have you been incarcerated?

19 A This time, I've been locked up two years.

20 Q Two years. What kind of sentence are you serving?

21 A Life, plus 40.

22 Q And what was the conviction?

23 A Aggravated residential burglary and domestic battery,
24 first degree.

25 Q Out of Pulaski County?

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1 A Yes, sir.

2 Q All right. And what unit are you presently in?

3 A Cummins Unit.

4 Q And tell me what led to the filing of your complaint and
5 then your motion?

6 A As a -- I'm what's called a Saliba's Muslim. Okay. I
7 believe in following the Sabbath of the Prophet Muhammad,
8 which is the way of the Prophet Sunnah, things of that nature.
9 And one of the areas of the Sunnah that's addressed by the
10 Prophet Muhammad, sallallahu alayhi wa sallam, or peace be
11 upon him, is that one of the characteristics of a Muslim or
12 Al-Fitra is to keep the mustaches short and leave the beard as
13 it is. As I pointed out in my memorandum of law, I believe
14 it's in this -- in the complaint itself, I referred to a
15 Hadith known as Sahih Al-Bukhari. Sahih Al-Bukhari is one of
16 the leading collections of Hadith in the Muslim world. It's
17 recognized as a sound Hadith, which is the sayings or the
18 works or the practices the Prophet Muhammad, how he -- how he
19 did things, and it was narrated by companions who were with
20 him or who were considered legitimate sources of information
21 as it relates to the way the Prophet Muhammad did things. And
22 then Sahih Al-Bukhari, Hadith 7 -- or Volume 7, Hadith No.
23 5893, the Prophet Muhammad there laid out that there are
24 several characteristics of Al-Fitra. Some of those
25 characteristics are you shave the underarm hair, you shave the

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1 pubic hair, you clip the nails, but you also clip mustaches
2 short, leave the beard as it is.

3 When I came to the department of -- Arkansas Department of
4 Correction, I wasn't aware of what their grooming policy was
5 until I came to Diagnostic. When I got to Diagnostic, I found
6 that you could only have a mustache that does not extend past
7 the corners of the mouth. At that point, I informed that --
8 the correctional staff there that as a -- as a devout Muslim,
9 that it was my belief that you should grow your beard out. I
10 was informed that if I didn't comply, I would be given -- and
11 shave, I would be given disciplinaries. I did receive several
12 disciplinaries. And after I saw how the Department of
13 Correction practices their penalties, which is called
14 progressive penalties, which they can come and give one -- one
15 officer can give you an order to shave, and then if you
16 refuse, he'll get you -- write you a disciplinary, another
17 officer can come right behind him, give you an order to shave,
18 and if you refuse to shave, he can write you a disciplinary,
19 and it can go on and on to the point that you're in the hole
20 -- in the hole a year, two years, three years. So, at that
21 point, I saw really there was no way out but to go ahead, as
22 much as I hated to, and to shave and violate my beliefs.

23 I was doing some legal research this past year, in 2011,
24 on some cases from other circuits where the grooming policy
25 had been challenged, and I came across one out of the Ninth

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1 Circuit, the *Mayweathers* case, in which the Muslims in the
2 Department of Correction in California sued over the very same
3 thing that the ADC practices. In fact, the California
4 Department of Correction practices some of the exact same
5 things that the Arkansas Department Correction does. In that
6 particular case, the brothers there argued for a half inch
7 beard. So what I did was, I went ahead and filed through the
8 Administrative Remedy process at Cummins Unit, I filed a
9 grievance asking for that the grooming policy be set aside and
10 that I be given a religious exception exemption to the
11 grooming policy.

12 Warden Lay -- Warden Lay refused. His response was that
13 it was the Department of Correction's policy that the reason
14 that they don't allow you to grow any facial hair other than a
15 mustache is because you could hide contraband or weapons in
16 the facial hair. And my argument to that is that with a half
17 inch beard, you can't hide anything at all in the facial hair.
18 You can hide it more easily in the head hair. As you can you
19 see here, I could easily hide a weapon of some kind in the
20 head hair, but the Department of Correction doesn't require
21 you to shave your head. Their policy on the head hair is that
22 you can only grow the sideburns, they can't go past the middle
23 of the earlobe, and it can't go past the middle of the nape of
24 the neck. Other than that, they don't have a policy as to how
25 thick it can be on the top. In fact, it is a common practice

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1 at the Cummins Unit to transport weapons and contraband in the
2 head hair. I know this for a fact.

3 So after the policy -- after my grievance was denied all
4 the way up to Mr. Larry May, I filed this action basing it on
5 the *Mayweathers* case out of California.

6 The issue is, is whether or not a half inch beard would be
7 able to be -- you'd be able to hide anything in it. I am not
8 pushing for an unrestricted beard growth. I am not
9 challenging the hair -- the head hair policy. All I'm asking
10 is that I be allowed to grow a half inch beard based on my
11 religious beliefs, because it would -- it would contribute to
12 the safety and good order of the institution, it would not be
13 a threat to the institution because I've been walking in the
14 hallways up until recently with a half inch beard on my face
15 and there hasn't been any problems. I don't foresee any -- I
16 don't see how there could be any problems now with allowing me
17 to continue to grow it at this rate, which is getting close to
18 a half inch, and allow me to do that based on my religious
19 beliefs.

20 Q What's the policy now, is it a quarter inch?

21 A They -- the policy still is that they can only grow a
22 mustache that cannot extend past the corners of the mouth.
23 They allow for dermatological reasons, if you have a skin
24 condition, they allow you to grow up to a quarter inch beard
25 and then use the clippers to shave it after it gets -- it gets

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1 to a quarter inch length.

2 Now, my argument on that is, is that if -- if a quarter
3 inch beard does not pose a security threat, I don't understand
4 how a half inch beard could.

5 One is for dermatological reasons. One is for religious
6 reasons. But I don't understand how it could be a security
7 threat, because you cannot hide anything in this, you can see
8 everything on the face.

9 Q You have a beard. What's the current -- how are you able
10 to have a beard right now?

11 A I was allowed to based on the restraining order that -- or
12 the injunction that Judge Miller entered.

13 Q Okay.

14 A I made an agreement with Warner -- Warden Warner and Major
15 Robertson because they asked me how long are you going to let
16 it grow, I said because I had asked for a half inch, I was
17 going to keep at a half inch, and that's what I have strived
18 to do at this point.

19 Q All right. All right. Do you have anything further? I
20 mean, that pretty well lays out what I need to know. Do you
21 have anything further to add?

22 A Well, there is one thing, because I know in the Muslim
23 world, it is not -- not every Muslim believes that it is a
24 requirement that you grow the beard, and some Muslims believe
25 that the Hadiths as it relates to the Prophet are only

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1 advisory or something that you can choose to do if you want
2 to. But I turn your attention in the Koran to Surah 4, Ayah
3 80, and in that particular Ayah, it says [indiscernible], he
4 who obeys the messenger Muhammad, sallallahu alayhi wa sallam,
5 has indeed obeyed Allah, but he who turns away, then we have
6 not sent you Muhammad, sallallahu alayhi wa sallam, as a
7 watcher over them. Which in that statement there, in that
8 particular Ayah, it refers to the fact that something that the
9 Prophet Muhammad did, that Muslims should do, and if the
10 Prophet Muhammad said to do it, if you don't do it, you're
11 disobeying Muhammad and therefore you're disobeying Allah
12 [indiscernible] Allah.

13 THE COURT: And I don't think there is any burden on
14 you to prove under RLUIPA that -- I mean, I don't think you
15 have any burden of proving your religious needs, I don't
16 think. Am I correct on that, Ms. Cryer? I think RLUIPA is
17 pretty wide open, is it not?

18 MS. CRYER: It is, Your Honor, and because there is no
19 mechanism for us to really challenge whether or not his belief
20 is sincerely held, we're not standing here today challenging
21 whether or not he believes, you know, in the various prophets
22 or whether or not he follows the Koran.

23 THE COURT: Okay. And like I said, I don't think the
24 law impedes that on him either. So that's fine, Mr. Muhammad,
25 your point is well taken, but there's no burden on you to

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1 prove that.

2 All right. Now I bet Ms. Cryer has some questions of
3 you and I'll allow her to cross examine you unless you have
4 anything further that you wanted to add.

5 THE PLAINTIFF: I don't at this point.

6 THE COURT: Okay. Thank you, sir.

7 MS. CRYER: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. CRYER:

10 Q Mr. Holt, I may jump around a little bit, and I apologize
11 if I do. And I also apologize for calling you Mr. Holt if I'm
12 to call you Mr. Muhammad. Okay. Let me ask -- and again, I
13 may skip around a little bit, the *Mayweathers* case that you
14 are referring to is out of the Ninth Circuit case and was that
15 a 2004 case?

16 A Yes, ma'am.

17 Q Okay. Now you entered the Department of Correction in
18 July of 2010; is that correct?

19 A Yes, ma'am.

20 Q All right. Had you ever been incarcerated in the
21 department of -- Arkansas Department of Correction before that
22 date?

23 A Not physically incarcerated. I had state time that was
24 run concurrent with fed time.

25 Q All right. But this was your -- July 2010 was your first

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1 time actually entering the facilities of the Arkansas
2 Department of Correction?

3 A Yes, ma'am.

4 Q All right. Now, let me ask, with regard to practicing
5 your religious beliefs, there are other ways that you are
6 entitled and allowed to practice your religion, correct?

7 A At Cummins Unit?

8 Q Yes.

9 A It's very limited.

10 Q Okay. You can pray, correct?

11 A I can pray.

12 Q Okay. You have a Koran, correct?

13 A Yes, ma'am.

14 Q Okay. And, in fact, you've had the Koran since you left
15 the Diagnostic Unit and were transferred to the Cummins Unit
16 in July of 2010, correct?

17 A Yes, ma'am.

18 Q Okay. You are allowed to request books or religious
19 materials from various distributors, correct?

20 A No, ma'am.

21 Q Okay. You're not allowed to request books or materials at
22 all from any type of distributor?

23 A I had to go through a grievance process just to get some
24 books, because the chaplain tried to tell me that they didn't
25 have any Islamic books and I wrote a grievance and a sergeant

Holt a.k.a. Muhammad - Cross

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1 went down there and came back with a big stack of Islamic
2 books.

3 Q Okay. You were provided a mailing address of a
4 distributor in New York by Chaplain Banks earlier this year,
5 correct?

6 A For the purposes of getting a Koran, yes, ma'am.

7 Q Okay. You're able to request a pork free meal, correct?

8 A Yes.

9 Q Okay. You are able to observe the religious holidays that
10 you choose, correct?

11 A That's correct.

12 Q Okay. You're able to participate in Ramadan?

13 A Yes, ma'am.

14 Q All right. You are able to or entitled to have a
15 spiritual advisor, correct?

16 A Yes, but I don't get access to them.

17 Q Okay. You are -- can you correspond with one if you have
18 a spiritual advisor?

19 A I've attempted to. My correspondence is not answered.

20 Q Okay. You were able to seek a name change in the Pulaski
21 County Circuit Court, correct?

22 A Yes, ma'am.

23 Q All right. And you are also in possession or have been in
24 possession of a prayer rug, correct?

25 A Yes, ma'am.

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1 Q Okay. So, would you now agree with me that there are
2 ways, other than observing whether or not you are going to
3 shave your beard, that you are entitled and allowed to
4 participate in various forms of adhering to and participating
5 in your religion?

6 A That's correct, but I want to add -- I want to add that
7 those things alone -- you have to do everything with a
8 totality of the circumstances. If the Prophet Muhammad
9 commanded that a Muslim is to clip his mustache short and
10 leave the beard as it is, it is incumbent upon a Muslim to do
11 that. If he fails to do that, it is my belief, and according
12 to the Koran, that he is disobeying the Prophet Muhammad,
13 sallallahu alayhi wa sallam, and he's also disobeying Allah
14 [indiscernible] Allah.

15 Q Okay. You would agree with me that that is your
16 interpretation, correct?

17 A No, that is not my interpretation. That's Hadith.

18 Q Okay.

19 A That -- that is sound Hadith. That's why I put that in
20 this complaint and keep referring to it is because of the fact
21 that it is sound Hadith. The Hadith is important to follow
22 because we are to emulate the Prophet Muhammad, sallallahu
23 alayhi wa sallam, as much as possible. And if the Prophet
24 Muhammad said to do it, we are to do it. The Hadith says so.
25 The Hadith is sound. And I -- and I try to strive to emulate

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1 the Prophet.

2 Q How long have you been of the Muslim faith?

3 A Nine years, going on ten.

4 Q And when you were charged with the most recent crimes that
5 you entered the Department of Correction for, were you a
6 practicing Muslim?

7 A Yes, ma'am.

8 Q Okay. And I believe in your pleadings that you have
9 acknowledged that the Arkansas Department of Correction has a
10 legitimate penological interest with regard to having a
11 grooming policy, correct?

12 A Yes.

13 Q Okay. You just disagree with whether or not it should
14 apply to you and whether or not you should be limited with the
15 length of your beard, correct?

16 A I'm going to put it like this to you, I want to be
17 protected, too, because I'm an inmate in the Department of
18 Correction. There are other -- there are other ways that
19 people hide weapons on them. The facial hair alone is -- is
20 not where people most of the time are going to hide weapons.

21 Q That's because they're not allowed to grow facial hair,
22 correct?

23 A That's correct.

24 Q Okay.

25 A But they could hide them someplace else. They could hide

Holt a.k.a. Muhammad - Cross

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1 them on the clothes, you know, that type of thing. Having a
2 half inch beard -- having a half inch beard, again the issue
3 is whether a half inch beard is going to cause a security
4 concern in the Department of Correction. I have proven by
5 walking the halls of Cummins Unit for almost three months with
6 a half inch beard that there is no security concern. There
7 has been no -- been no issues, as far as I know, complaints,
8 other than staff not liking the fact that I have a beard.
9 Other than that, there has been nothing on my end for having
10 done anything like that.

11 Q Okay. So your position is that because you have chosen
12 not to hide any -- or attempt to anything in your beard, that
13 is not -- it does not create a security concern?

14 A A half inch beard would not create a security concern.
15 More than one court has ruled on that.

16 Q Where did you come up with the half inch requirement?

17 A From --

18 Q And I ask this because in your memorandum of law you say
19 that your belief is that you should leave the beard as it is.

20 A That's correct.

21 Q So I'm trying to figure out how do you justify now coming
22 up with a half inch beard? Is it because --

23 A As --

24 Q -- of the Ninth Circuit case law?

25 A As -- as the Prophet Muhammad again has stated in the

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1 Hadith that for every travail there is two escapes, if -- if
2 you are in a position -- if a Muslim in a position where the
3 lesser of two evils are involved, it is permissible to go with
4 the lesser of that evil. If the evil requires that you
5 observe -- to a certain extent if you are observing the -- the
6 -- with your intention, which is called your niyyah, to grow
7 the beard, if it is your intention to leave it uncut, then
8 according to the Hadith, the 40 Hadith Qudsi, it states that
9 -- that if you intend to do a good deed, but don't do it, it's
10 still credit to you as a good deed. So if I have -- to a
11 certain point here, have made an effort to comply with the
12 dictates of the Prophet Muhammad, sallallahu alayhi wa sallam,
13 then I have done what I'm supposed to do. And, yes, the half
14 inch beard did -- did come in to play in that Ninth Circuit
15 case.

16 Q Okay. So you arrived at the half inch beard requirement
17 based upon the Ninth Circuit case?

18 A Because it seemed reasonable, yes.

19 Q Okay. And I believe that you also just said that based
20 upon your -- based upon your beliefs, that if you try to do
21 the right thing, but are not allowed to do it, that that's
22 still acceptable, correct?

23 A That's correct.

24 Q Okay. So if you tried to grow a beard of any length, and
25 the Department of Correction said no, as far as your religious

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1 beliefs go you're still okay because you attempted to comply
2 with that, but you were stopped by the laws of the Department
3 of Correction?

4 A If it was under compulsion, to a certain extent, yes.

5 Q Okay. Now when you filed your motion for a temporary
6 restraining order, you filed that in June of this year,
7 correct?

8 A Yes, ma'am.

9 Q Okay. And you had not received a disciplinary for failing
10 to comply with the grooming policy since the previous July,
11 correct?

12 A That's correct.

13 Q All right. And at some point after you received those
14 disciplinaries back in July of 2010, you acknowledged at one
15 of those disciplinary hearings that you had been following
16 other law, but that you acknowledged that you were now
17 incarcerated in the Department of Correction, that you needed
18 to follow the laws of the Department of Correction?

19 A That's what I stated at the time.

20 Q Okay. What changed? Between July of 2010 and June of
21 2011, what changed?

22 A Several things changed.

23 Q Okay.

24 A Do you want me to go into them?

25 Q Please.

Holt a.k.a. Muhammad - Cross

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1 A Given the stuff that's happened in the Muslim world, the
2 -- the occupation of Afghanistan, Iraq, places like that, when
3 I see brothers being murdered in those countries, when I see
4 them dying for this type of stuff, at this point it -- it
5 comes -- it makes me want to continue to try to follow the
6 religion as much as possible, because there's brothers dying
7 for this very thing over there. They're dying for these
8 beliefs. And for me to sit over here because some prison
9 administration thinks that, oh, well, you know, we don't think
10 he should grow a beard because it's a security issue, never
11 mind what his religious beliefs are, we're not going to try to
12 accommodate his religious beliefs at all as it relates to his
13 belief in growing the beard, at that point my -- you know, I'm
14 -- I believe I have every right to challenge that. And that's
15 what I've done.

16 Q You don't have any case law with you or anything showing
17 that the *Fegans* case is no longer good law, do you?

18 A That it's no longer good law?

19 Q In the Eighth Circuit? Yes.

20 A Not that I'm aware of.

21 Q Okay.

22 A My -- but what I would like to point out again is that the
23 problem with the *Fegans* case was that Michael Fegans argued
24 for unrestricted beard and hair growth. I am only arguing for
25 a half inch beard because that right there is -- is still

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1 contributious to the security and good order of the
2 institution. There is no problem with a -- somebody growing a
3 half inch beard. In fact, in some other cases, the courts
4 have ruled that -- that the -- that correction personnel can
5 exercise common sense and visual inspection to determine
6 whether or not there is a -- a weapon or any type of -- any
7 type of contraband there, that they're trained to do this.

8 And also, the issue is, is that since it's been argued
9 that having a beard can help alter your identity should you
10 try to escape, I would be willing to go so far as to say that
11 -- that the Department of Correction can practice what other,
12 like the New York Department of Correction does, when they
13 come in, they -- you take a clean shaven photo, and then they
14 allow the -- they allow them to grow I believe in New York
15 it's a one inch beard, they take another photo of them at that
16 point, and that way they have them for comparison purposes.
17 And, in fact, there -- it's been stated in some of these cases
18 that -- that the issue of the weapons is not something that's
19 that big of an issue as far as putting it in the beards, that
20 they're using -- they can hide them anywhere else on the body.
21 Q They can also hide them -- if allowed to wear a beard,
22 they can also hide them in a beard?

23 A If they allow the beard to grow unrestricted. You cannot
24 hide anything -- again, Ms. Cryer, you cannot hide anything in
25 this beard. You can't stand there and tell me you can hide

Holt a.k.a. Muhammad - Cross

24

1 something there.

2 Q You might not be able to, Mr. Muhammad, but other inmates
3 might be able to if they were allowed to grow a half inch
4 beard?

5 A A half inch beard, this -- this right here is getting
6 close to a half inch beard. You can't even barely hide a
7 razorblade in it, Ms. Cryer.

8 Q Well, actually, let's talk about that for just a little
9 bit. When is the last time that you received a haircut?

10 A When is the last time I received a haircut?

11 Q Yes, sir.

12 A The last time I got in the barber chair was about three
13 weeks ago.

14 Q How did that go?

15 A I went down there to get the beard within compliance of
16 what I said I would wear a half inch beard on, because it was
17 getting a little scraggly, so I was getting in the chair to
18 have it trimmed up, and the barber tried to shave it nearly
19 all the way off.

20 Q What happened then?

21 A After he was told twice not to do it.

22 Q What happened then?

23 A At that point, I informed -- I informed Warden Warner and
24 Major Robertson that -- that I had a problem with the man and
25 that he couldn't come around me anymore.

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25

1 Q What exactly did you say with regard to you have a problem
2 with him?

3 A I said I was at war with him.

4 Q Okay. What does that mean to say that you're at war with
5 him?

6 A I have -- I have an issue with him, but I -- I went on to
7 explain to Captain Tate when he asked me what I meant by that
8 and I wrote down in the witness statement that I did not
9 intend that as a threat, that was not a threat, it was spoken
10 in the heat of anger, I was upset at my beard being shaved off
11 -- nearly all the way off after I told the man three times
12 that I had a court order allowing me to grow a half inch
13 beard, to trim it down to a half inch, and he tried to shave
14 the whole thing off.

15 Q So you don't want to be shaved or cut by that barber
16 again, correct?

17 A That's correct.

18 Q What happens if the next barber tries to cut your beard
19 below where you want it to be, are you going to be at war with
20 that barber as well?

21 A I would be upset with him, but I have to -- I have to -- I
22 have to temper my viewpoints at times because I do hold very
23 stringent beliefs when it comes to the beard situation. When
24 it comes to this religion, I hold it very, very seriously.

25 Q So I guess my question is are you going to threaten the

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1 next barber that cuts your hair or your beard in a way that
2 you're not happy with?

3 A There was no threat there. As I said, I did not intend it
4 as a threat, I did not threaten that man. All I said was I
5 was at war with him. You can take those choice of words to
6 mean how you want to because --

7 Q Did you mean that you thought he was a friendly, swell guy
8 and that that's why you were saying you were at war with him?

9 A All I said was -- and the reason that I had an issue with
10 him was because he tried to cut my beard off after I told him
11 twice not to.

12 Q And again, that -- the barber was an inmate, correct?

13 A Yes, ma'am.

14 Q Not an officer?

15 A Right.

16 Q Okay.

17 A I would point out that the officer that was on duty that
18 day took me down there to the barber chair and told the barber
19 -- told the barber this man needs a shave. And I told him
20 when he started getting the clippers out, I told the man cut
21 my beard down to a half inch length, I have a court order that
22 says I can do so. And instead, he goes and takes nearly the
23 whole thing off.

24 Q Again, the inmate does, not the officer, correct?

25 A That's correct.

1 MS. CRYER: Okay. Your Honor, I don't believe at
2 this time I have any more questions of Mr. Muhammad.

3 THE COURT: All right. Sir, you may stand down.
4 Thank you.

5 THE PLAINTIFF: All right.

6 (Witness stands down.)

7 THE COURT: Sir, did you have any other evidence that
8 you wanted to present at this time? Because now what I
9 believe should happen is I believe that it's the defendants'
10 burden to show that -- well, essentially, answer the question
11 of whether security can be achieved while not substantially
12 burdening your -- is it impossible for them to achieve
13 security without substantially burdening your free exercise of
14 religion, so, I mean --

15 THE PLAINTIFF: There is one other thing, Your Honor,
16 I would like to bring out. I made an effort before we came
17 here today to deal with this issue about whether an injunction
18 was necessary or not. I wrote a letter to Ms. Cryer and
19 informed her that I would be willing to stay in ad seg, to
20 stay in administrative segregation, and as long as I'm allowed
21 to grow that half inch beard, you know, I -- you know, I
22 wouldn't be walking the hallways, I wouldn't be doing anything
23 like that, so, therefore, it wouldn't be an issue out in the
24 population, if that was that their position. I offered to try
25 to negotiate that. But I heard nothing back, so I thought I

1 would let you know that -- that I did try to do that.

2 I would also point out to you that even though there
3 has been a restraining order in place, that I've still been
4 subjected to harassment on the part of ADC staff at various
5 times. In fact, being locked up in ad seg under investigation
6 on the grounds that Major Robertson stated that I had been in
7 the law library and had typed a order up on the law library
8 computer. When I told him that the order was valid, he tried
9 to state that I had forged Judge Miller's signature. Even
10 though I was let out of the segregation several hours later,
11 after it was determined that the order was in fact valid.
12 Going down the hallway -- I even had to go and ask Warden
13 Warner for assistance because I would carry the order in my
14 pocket because certain shifts weren't notified that the order
15 was in effect and that I was allowed to wear the beard, so
16 officers and people in positions of authority would try to
17 harass me and threaten to lock me up for having the beard and
18 would say they didn't care what the order said, they didn't
19 care that -- if it came from a federal judge or not, this was
20 the Department of Correction, this wasn't the feds. So I had
21 to go again to Warden Warner and asked to -- for him to re --
22 to put another memorandum out to tell these people to leave me
23 alone because it's a valid order. I couldn't even go to
24 breakfast in the morning times because I was being harassed by
25 staff in the hallways. So I thought I would -- I was bringing

1 it out to you that -- you know, that an injunction really is
2 needed on this. It really is, because of the fact that, as
3 you can see, this beard right here -- this beard right here,
4 you can't hide anything in it. It is -- it is a -- it is a
5 belief of mine that you should grow it out, the state would
6 not be harmed by -- by you continuing that injunction. If the
7 injunction only applies to me and not the rest of the ADC,
8 again, I don't -- I don't see how there would be a problem in
9 that regard either, because if I'm the only one that's allowed
10 to -- that's allowed to do this, then I don't see that there's
11 going to be 16,000 inmates walking around the ADC with half
12 inch beards on their faces.

13 THE COURT: Well, let's let the defense proceed.
14 You're getting a little bit ahead, you're kind of making your
15 argument in closing. And so, let me hold off on that.

16 And on the ad seg, wasn't that proposed by the *Fegans*
17 -- in that case, was that the -- I thought it was proposed as
18 an alternative in *Fegans* and the Eighth Circuit rejected that
19 as unduly burdensome on the ADC.

20 MS. CRYER: I was going to say, Your Honor, I would
21 like to respond to what Mr. Muhammad said and it also may be
22 necessary that I question him a little bit further based upon
23 what he has just testified to.

24 With regard to the ad seg, I mean, Mr. -- first of
25 all, Mr. Muhammad placed himself, requested to be placed in ad

1 seg. It was not a matter of the Department of Correction
2 placing him there. He did send a letter. I did receive it
3 last Friday. Due to the holidays, he has not received a
4 response back for what we consider to be a settlement offer.

5 I think that based upon other cases that have been
6 decided recently in the Eighth Circuit with regard to housing
7 someone in ad seg for an unlimited amount of time, I don't
8 believe the Department of Correction -- that that's something
9 that they could seriously consider doing without facing
10 potential lawsuits of Mr. Muhammad being housed indefinitely
11 in administrative segregation. So I don't think that's a fair
12 --

13 THE COURT: It was proposed in *Fegans*. I know I've
14 read that. It was proposed in *Fegans* and the Eighth Circuit
15 has rejected that because it says:

16 "This option, like the others
17 proposed by *Fegans*, would allow
18 accommodation of religious
19 observances to override other
20 significant state interests, we
21 agree with the district court that
22 AD 98-04 withstands scrutiny under
23 RLUIPA."

24 So, I mean, that was proposed before and the Eighth
25 Circuit, they rejected that over the objection of the defense.

1 But your point is well taken, Mr. Muhammad, and
2 again, I want to -- I think, you know, if we can -- the issue
3 here, you know, really is so closely related to the merits of
4 the case, and that's not why we're here to ultimately have a
5 disposition of the case. But, I mean, to me, and ultimately
6 it boils down to whether or not the -- whether or not we can
7 have the ADC meeting their security objectives without
8 substantially burdening your religious freedom. I mean,
9 that's it in a nutshell. And so it really is incumbent on
10 them -- the way it works, Mr. Muhammad is that they have to
11 ante up now, they have to say we can't do it, we can't allow
12 you to grow this beard because of whatever the reasons are. I
13 know what the reasons were in *Fegans*. I'm interested to hear
14 what the reasons are now. And then we'll just have to, you
15 know, see what happens. I mean, I'm going to hear from them
16 right now. But I want to stay focused on that line of
17 thinking here, because that, to me, is the critical part of
18 this, what are the security concerns that they have. And
19 again, you know, Mr. Muhammad, the law, as you know -- I mean,
20 you've obviously read these cases -- but, you know, in
21 general, the law is very much restrictive on me getting
22 involved in prison administration. Okay. And frankly, I
23 mean, that's -- you know, they don't get involved in the
24 judging business and I don't get involved in the prison
25 administration business. Okay. And there's a reason for

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1 that. You know, I'd be a lousy prison administrator. And
2 they have the experience and the knowledge, and, you know, I'm
3 sure a lot of times you disagree with the way they do things,
4 but the bottom line is they're the ones trained in doing that
5 and I'm not entitled to, under the law, to meddle in prison
6 administration unless it somehow infringes on your
7 constitutional rights. And so, I'm -- what I'm trying to say
8 here is the thrust of this has to be on what are the security
9 concerns, can they achieve concerns and still allow you to
10 grow a half inch beard or not? And so, that's really where
11 I'm focusing. Okay?

12 And I don't know, you know, what the answer is, but
13 we haven't heard from Ms. Cryer and her folks. So let's hear
14 what they have to say. And you'll have every opportunity to
15 cross examine them and build your record. And then we'll see
16 where the chips fall. Okay?

17 THE PLAINTIFF: Okay.

18 MS. CRYER: Thank you, Your Honor. I'd like to call
19 Warden Gaylon Lay.

20 GAYLON LAY, DEFENDANTS' WITNESS, SWORN.

21 DIRECT EXAMINATION

22 BY MS. CRYER:

23 Q Mr. Lay, would you state your full name for the record,
24 please?

25 A Rex Gaylon Lay.

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1 Q And where are you currently employed, Mr. Lay?

2 A Arkansas Department of Correction, Cummins Unit.

3 Q And how long have you been the warden at the Cummins Unit?

4 A Going on nine years.

5 Q And just to make sure, you are aware today that we are
6 here with regard to inmate -- I'm going to call him Gregory
7 Holt, because I believe that that's the pleading that the name
8 was filed under, but he's also going by the name -- last name
9 Muhammad?

10 A Yes.

11 Q That we are here with regard to his request to ask this
12 Court to allow him to be able to grow a one half inch beard;
13 is that your understanding?

14 A Yes, ma'am.

15 Q Okay. Mr. Lay, let me just start off by asking you do you
16 have any problems or concerns with inmate Holt or inmate
17 Muhammad being allowed to grow a one half inch beard?

18 A I do. Yes, ma'am.

19 Q Okay. Would you please explain to the Court what some of
20 your concerns are?

21 A My concerns revolve around security. A person can quickly
22 alter their appearance if they're allowed to grow a beard,
23 they escape while they're out on a court run or from a
24 facility or whatever, and immediately shave. They alter their
25 appearance. There are some differences, for example, if you

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1 look at Mr. Muhammad's beard, his is rather thin on the sides
2 and kind of thick around here, he may or may not be able to
3 hide something as simple as a homemade dart, I'll just use
4 that for an example, we have over the years found some of
5 those at another facility, but other people, individuals, are
6 different, the next guy may have a half inch beard that's full
7 and -- full face. I mean, there are just a large number of
8 variances in different people when it comes to facial hair.

9 Also, you're -- I don't know how you would -- I don't know
10 how you would manage that if people were allowed to grow a
11 half inch beard. Okay. How are you going to measure that on
12 a consistent basis? How are you going to keep down conflict?

13 At the current time, the only person I'm aware of, out of
14 over 15,000 inmates, that has a legal order to grow a beard --
15 now, there are some medicals for a quarter inch beard -- but
16 to grow a half inch beard is inmate Holt. And as you can see
17 from his own correspondence, he's already threatened the
18 barber over the manner that he cut his hair. Can you imagine
19 trying to manage that for 15,000 people?

20 Q Okay. Well, even if we're not talking about other
21 inmates, let's discuss inmate Holt. How often are inmates
22 allowed to go and to get a haircut and a shave?

23 A Weekly, at least.

24 Q Okay. Let's say --

25 A If they're in general population, they are actually issued

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1 a razor. They keep it in their personal property.

2 Q All right. And what about Mr. Holt or Mr. Muhammad who
3 has placed himself in administrative segregation?

4 A Weekly.

5 Q Okay. What if any time during that week, let's say, Mr.
6 Muhammad chooses to go every two weeks or every three weeks to
7 the barber, do you have any concern as to how that shaving
8 process or that is going to go based upon past experience with
9 Mr. Holt and what happened with the barber earlier this --
10 earlier -- or last month, in December?

11 A Well, certainly, I do. I mean, if -- if Mr. Holt sits in
12 a barber chair and says I want a half inch trim, which would
13 be in compliance with the order he currently has, I guess, how
14 is that barber going to determine, okay, you know, this is
15 exactly a half inch, it's a little longer, a little shorter?
16 Even if it's exactly what he ordered, are they going to be in
17 agreement over that? And you've seen the result and the
18 documentation of what occurred that one time.

19 Q And, to your knowledge, what was the documentation and
20 what did occur with Mr. Holt and the barber in December of
21 2011?

22 A According to the inmate barber and the officer that was
23 there, Mr. Holt asked if he could go to the barber chair, as
24 the officer was making his rounds for haircuts, and get a
25 trim. And the officer took him to the barber chair, as he did

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1 everybody else that requested it on the wing. And when the
2 guy -- when he sat down, according to the inmate barber, he
3 never told him anything about a particular length or anything
4 until after he had shaved him with the clippers, and he said
5 then Mr. Holt acted as if he was angry, objected, said, you
6 know, I'm supposed to be able to keep a half inch beard. And
7 the barber said I wouldn't have had a problem with that, or I
8 would have at least asked staff if that was the case, had he
9 mentioned it. But the inmate said he never mentioned that
10 until after the fact.

11 Q When an inmate is receiving a haircut or a shave from an
12 inmate barber, is security staff located inside that area or
13 around that area?

14 A In segregation, yes, the officer escorts him there and
15 stays in the vicinity until he escorts him back to the cell.

16 Q How far -- you just said stays in the vicinity, what is
17 the vicinity?

18 A Within three or four feet.

19 Q Okay. Would you have any concern with security needing to
20 be present or even additional security needing to be present
21 every time inmate Holt goes to the barber chair?

22 A After this particular incident, yes.

23 Q Okay. Any concerns about inmate Holt being around the
24 inmate barber that gave him, for better words, the wrong cut
25 of the beard last month?

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1 A Certainly. I mean, the statements that he made were
2 obviously a threat. We perceived them in that way and have
3 taken precautions not to allow that barber around inmate Holt
4 again.

5 Q Okay. Can you do that every time inmate Holt has a
6 disagreement with a barber, can you just switch barbers out?

7 A No, ma'am, I think eventually I'd run out of barbers if I
8 tried to satisfy what Mr. Holt wants or Mr. Muhammad.

9 Q And again, with regard to the length of the beard that he
10 is requesting, how would you monitor or how could your unit or
11 the department, for that matter, monitor how long exactly his
12 beard is each and every day?

13 A I'm not sure. Someone would have to show me how to do
14 that.

15 Q Okay.

16 A I mean, you could start, I guess, with a particular
17 clipper guard that's a particular length, but depending on the
18 individual, in two, three days, how frequent is he going to
19 have to trim that and how are we going to know that? You see
20 them going down the hallway, but you obviously can't stop and
21 pull a tape measure on everybody's beard, I wouldn't think.

22 Q Let me ask with -- Mr. Holt mentioned something about not
23 being able to hide contraband in his beard. Do you know, have
24 you observed whether or not inmate Holt has attempted to put
25 anything in his beard to see if it would stay or if it would

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1 fall out?

2 A I have not, no, ma'am.

3 Q Are there any forms of contraband that you, as the warden,
4 would be concerned about possibly being placed in a beard that
5 was a half inch long?

6 A Certainly. And again, depending on the individual, some
7 individuals would have more ability to hide something than
8 others, depending on how their facial hair grows, the
9 thickness of it, et cetera, and that sort of thing.

10 Q What types of things?

11 A Anything from razor blades to drugs to homemade darts. I
12 mean, there are a wide variety of things. Those are just what
13 I think of off the cuff. Inmates are pretty creative and they
14 have 24 hours a day to think about things like that.

15 Q Okay. Well, what about Mr. Holt's statement that he can't
16 hide anything in his beard -- I don't know how else to ask
17 this -- but is that good enough for you?

18 A No, ma'am, I don't believe -- I don't believe it would be.

19 Q Does that provide you with comfort knowing that Mr. Holt
20 is not going to hide anything at any time or attempt to hide
21 anything at any time in his beard?

22 A It does not, no.

23 Q And is that opinion based on -- what is that opinion based
24 on?

25 A Based on experiences and -- and experiences in dealing

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1 with inmates over the last 36 years.

2 Q And with regard to an inmate changing his appearance, can
3 an inmate change his appearance other than shaving or growing
4 a beard?

5 A I suppose. I suppose they could shave their head, but
6 that's just one more avenue that you've added to the
7 possibilities.

8 Q And I believe you heard Mr. Holt's testimony that he knows
9 for a fact that inmates hide a lot of contraband in their hair
10 on top of their head?

11 A Yes, ma'am, I heard that.

12 Q Are you concerned as the warden at the Cummins Unit about
13 contraband being passed along from inmate to inmate at your
14 unit?

15 A Certainly, I am. I mean, we spend an astronomical number
16 of hours conducting searches, housing area searches, random
17 individual inmate searches, all sorts of things. And still,
18 occasionally, you're going to find contraband.

19 Q Over the years, and I'm going to use the year 2006, and
20 I'm picking that year because that was the year that Judge
21 Moody issued his ruling in the *Michael Fegans* case, from 2006
22 to the present time, based upon your knowledge and experience,
23 has the amount of contraband that inmates have been caught
24 with or discovered with at the Cummins Unit, has that
25 decreased at all?

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1 A No, ma'am. As a matter of fact, it has increased. The
2 population and the type of inmates we seem to be getting from
3 society now are more violent, they're younger, there are just
4 a gambit of things that make them different than the
5 population we were used to dealing with in the 70s and 80s.

6 Q And what if you -- what if you have an inmate who is
7 allowed to do something special, that he is allowed to do
8 something that other inmates are not allowed to do, such as
9 grow a beard, even if it's a restricted length beard, but is
10 allowed to grow a beard, do you have any security concerns for
11 the safety of that inmate?

12 A It could possibly make him a target of other inmates.
13 Yes, ma'am.

14 Q And, Warden, let me ask, the current policy of the
15 Department of Correction, the Court made reference to the
16 policy 98-04 earlier with regard to the policy that was in the
17 *Michael Fegans* case, to your knowledge, is that the same
18 policy that applies today with regard to the grooming policy?

19 A Yes, ma'am, that's not changed to my knowledge since --

20 Q Does the -- sorry.

21 A -- that time. I'm sorry.

22 Q Does the grooming policy make any allowances for any type
23 of religious exemptions?

24 A No, ma'am.

25 Q Okay. As warden of your unit, have you personally done

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1 anything or have you instructed anyone to prevent inmate
2 Muhammad from having religious articles or materials with him
3 that he feels are important in order to facilitate his
4 religious studies?

5 A No, ma'am. There was one thing that occurred, an
6 individual tried to send him a Koran through the mail, and we
7 searched the inmate's property and -- and discovered that he
8 had three in his possession currently, and it's against policy
9 for it to come from an individual, he would have to order it
10 from a bookstore or a business that provides that type of
11 literature.

12 Q What happened to the Koran that was sent to you from the
13 outside individual?

14 A We mailed it back to the individual that sent it.

15 Q Okay. And was that based upon your desire for inmate Holt
16 or inmate Muhammad not to have a Koran to study with?

17 A No, ma'am. As a matter of fact, that's why we searched
18 him, was to make sure that he did have one before we denied
19 it, and we, of course, would have had the chaplain guide him
20 in the correct way to get one. We still would not have been
21 allowed to let him have the one that came from an individual.

22 Q Why can you not allow him to have something that came from
23 an individual?

24 A People offer them, we get all kinds of things in the mail
25 that shouldn't come in a correctional institution, that are

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1 concealed in mail, books, religious materials, different
2 things.

3 Q Do you allow or does your unit allow inmates to request
4 certain religious materials from distributors that are
5 accepted and approved by the department?

6 A Yes, ma'am, and they can work through the chaplaincy's
7 office and gain access to those addresses and places that are
8 available.

9 Q Okay. And again, with regard to administrative
10 segregation, inmate Holt mentioned that he would be willing to
11 stay in ad seg, do you have any understanding or knowledge as
12 to why inmate Holt is currently in administrative segregation
13 or was in administrative segregation?

14 A He had chosen --

15 THE PLAINTIFF: Objection. I object to that because
16 the person who could testify to that is here. So it would be
17 hearsay from what he's saying.

18 THE COURT: Well, at this type of hearing, I think
19 hearsay is allowable under the Rules, so I'm going to allow
20 it. And then if you want to call the other witness, if
21 there's any -- if there is any question of -- well, let's hear
22 what he has to say. I mean, if there's a question of whether
23 or not it's accurate or not, you can call the witness, because
24 that's your hearsay objection, it's based on accuracy.

25 THE WITNESS: He's in segregation this last time

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1 because he requested to be there in writing.

2 BY MS. CRYER:

3 Q Okay. And Mr. Holt testified a few moments ago that he
4 was being harassed by officials at the Department of
5 Correction with regard to the order saying that he could grow
6 a half inch beard. Mr. Lay, have you done anything to harass
7 inmate Holt with regard to his order not being allowed to --
8 or to allow him to have the half inch beard?

9 A No, ma'am, I have not, nor have I instructed anyone else
10 to.

11 Q How did you learn about the order that inmate Holt had
12 that would allow him to have a half inch beard?

13 A I received a call. I was actually off, I think on
14 vacation. I received a call from the duty person. I don't
15 remember if it was Mr. Warner or Major Robertson. But Major
16 Robertson had stopped inmate Holt in the hallway because he
17 was out of compliance with the grooming policy and was going
18 to write him a disciplinary. And inmate Holt presented the
19 order that he had from the court. And, of course, being
20 corrections folks, we were a little bit suspicious about its
21 authentic -- about it being legitimate, because normally
22 anything the court issues, we get, at least, a copy of. And
23 normally, we'd get it before the inmate, I would think,
24 usually. So that seemed extremely unusual. And I think the
25 major did place him on investigation, and then after it was

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1 authenticated, released him from segregation.

2 Q Do you know what time period it was that inmate Holt was
3 kept in segregation or on investigative status?

4 A It was released the same day.

5 Q Okay.

6 A I don't know if it was an hour, two hours, or three hours.

7 Q Okay. Is that how you first became aware that there was
8 an order allowing inmate Holt --

9 A Yes, ma'am, that was the first --

10 Q -- to grow a beard?

11 A -- first I'd heard about it.

12 Q Okay. And I believe Mr. Holt testified earlier about how
13 if he was not in compliance with the grooming policy, that he
14 faced the possibility of being issued a disciplinary for being
15 out of compliance with the grooming policy?

16 A Yes, ma'am, that's correct, as was any other inmate.

17 Q Is being out of compliance with the grooming policy the
18 only infraction or rule violation at the Department of
19 Correction that an inmate can be issued a disciplinary for?

20 A No, ma'am. There are numerous. As a matter of fact, Mr.
21 Holt directly reflects that. I mean, he's had some for
22 threatening folks, I think, and some various things.

23 MS. CRYER: Your Honor, I believe at this time that's
24 all the questions that I have of Warden Lay.

25 THE COURT: Thank you, ma'am.

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1 Mr. Muhammad, you may ask.

2 CROSS EXAMINATION

3 BY MR. HOLT A.K.A. MR. MUHAMMAD:

4 Q Good morning, Warden.

5 A Morning.

6 Q Get back to something that you were saying when you first
7 started out. The reason I'm in ad seg is not because of the
8 fact that I requested it, is it, Warden?

9 A Yes, I believe it is. I believe we have a written
10 statement to that effect.

11 Q In fact, I was assigned by the classification by Warden
12 Warner, was I not, regarding a disciplinary I had received,
13 written by Warden Weekly; is that correct?

14 A Not --

15 Q Were you not aware of that?

16 A Not this time. If I remember correctly, you've been out
17 of segregation and back since that disciplinary. Is that not
18 correct?

19 Q That's correct.

20 A Okay. This time, based on your request.

21 Q And did I also not, two days later after that, ask to be
22 returned back to population and stated the issue that I had
23 had been resolved and I wanted to go back to population; were
24 you aware of that?

25 A After you were placed there this time? Are we speaking of

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1 the time that you're there now?

2 Q After I requested it, yes.

3 A No, I'm not aware of you requesting to go back to
4 population.

5 Q So you're not aware -- you're not aware then that there
6 was an objection to my going back to population by one of the
7 defendants in the case; were you aware of that?

8 A No. No, I was not.

9 Q Okay. Now, on the issue of the barbers, how do you choose
10 who is designated a barber and who works as a barber at
11 Cummins Unit?

12 A Classification Committee selects them. As they come
13 through classification, we try to place people in areas where
14 they have job skills. If a guy comes through and says he's
15 been a barber somewhere, particularly if he's a licensed
16 barber, you don't run across many licensed barbers, but you do
17 run across some people that have cut hair and had experience
18 in that area, then they would be considered for that job.

19 Q Now, would the two barbers that you have come in to ad seg
20 or 14/16 Barracks in the east building, are -- are both of
21 those trained barbers?

22 A I couldn't testify to their training without talking to
23 the individual and looking at their institutional file. I do
24 know that the last barber that was in that area has been
25 promoted to the free line barber and cuts staff hair.

Lay - Cross

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1 Q So the barber that -- that you discussed, that we
2 discussed in here, that I've had the issue with regarding a
3 beard trim, you don't know whether he's a trained barber or
4 just -- just somebody that the classification said, okay, he
5 says I want to be a barber, I want to be a barber?

6 A I think I answered it, but I'll answer it again. I
7 couldn't testify to that without talking to the individual or
8 looking at his institutional file.

9 Q Now I want to ask you about the situation where you stated
10 that you -- you talked to the barber in question, the one who
11 shaved -- nearly shaved my beard all the way off, you talked
12 to him and he told you that I never requested or said anything
13 about a half inch beard until after the fact; is that what
14 you're saying?

15 A That's what he told me, yes, during the interview.

16 Q Now, would you -- would that -- could it be a possibility
17 that based on the situation and based on the information that
18 you had, knowing about this court order, that when this barber
19 was confronted with this -- because there was a grievance
20 written, was there not, by me?

21 A I don't remember -- I don't remember if it was a grievance
22 or just a written complaint, but, yes, that's how I became
23 aware of it, was something that was received from you.

24 Q Now, is it possible the barber lied?

25 A Sure, that's a possibility.

Lay - Cross

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1 Q So just because the barber said I didn't say anything,
2 doesn't mean that I didn't say anything, correct?

3 A Well, the officer, I believe, kind of corroborated what
4 the barber said, and that he didn't hear you say anything
5 about that to the inmate barber. I talked to -- I talked to
6 every individual that was in that area after receiving your
7 mail.

8 Q Did you -- when you talked to the officer, do you remember
9 which officer it was?

10 A I don't remember his name right offhand, no.

11 Q Did he state that -- did he tell you where he was at
12 during this whole -- during this whole episode at all?

13 A He said he was in a close vicinity -- close proximity,
14 three, four, five feet, somewhere in that horseshoe there --
15 or that area where they cut hair, not the horseshoe, but I
16 think it was in one of the day rooms if I remember correctly.

17 Q So if you hear -- let me ask you this. If you hear two
18 inmates into a conflict, especially one in handcuffs and one
19 not, one has got access to sharp weapons, the other one
20 doesn't, if you hear -- that if an officer hears two inmates
21 in a conflict, wouldn't it be the officer's duty to remove --
22 to separate those two inmates so that the conflict is
23 squashed?

24 A Well, I believe that's what occurred. You were taken back
25 to your cell immediately following the incident, were you not?

Lay - Cross

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1 Q Yes. Were you aware of -- or let me ask you this. Were
2 the COs that were back there in the east building, were they
3 made aware at all that there was a court order in place
4 regarding me and that I was not to be bothered regarding the
5 beard at all?

6 A I know the captain and the major knew that. I hope they
7 passed that information on to the correctional staff. I have
8 to believe they did, as no one has written you a disciplinary
9 for being out of compliance with the grooming policy.

10 Q Okay. Now you mentioned about inmate identification as it
11 relates to beards; is that correct?

12 A Yes.

13 Q You're concerned that if inmates were allowed to grow half
14 inch beards in the ADC that they will be able to alter their
15 appearance and -- should they escape or anything like that?

16 A Certainly.

17 Q Wasn't there an escape recently at Cummins Unit, sir?

18 A Yes, a couple of years ago.

19 Q And those inmates that escaped were actually dressed like
20 officers, were actually in compliance, like officers would
21 wear, with their -- with their facial hair neatly trimmed, no
22 beard and that type of stuff, would that be not -- would that
23 not be accurate?

24 A That's correct. Yes, they were dressed as officers.

25 Q So a beard alone is not going to cause somebody to be able

Lay - Cross

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1 to necessarily alter their appearance, the lack of it, or to
2 have one, in the event they want to escape, they can alter it
3 some other way, right?

4 A Well, certainly, there are many ways you can alter your
5 appearance, I guess, but a beard being one of the easiest and
6 quickest.

7 Q Okay. And you mentioned about the -- your concern about
8 weapons being hidden in the facial hair, I believe you
9 mentioned darts, I believe you mentioned razor blades, things
10 of nature; is that correct?

11 A Yes.

12 Q Would it be safe to say that the weapons that you have
13 found during shakedowns in Cummins Unit, the times that you
14 have found them, are either -- or have they ever been on
15 somebody's face at all?

16 A No, because we have a grooming policy. They don't have
17 beards.

18 Q Okay. So -- so the weapons are other places, correct?
19 They're on their clothes, in their rack, wherever, they can
20 hide them any number of places in other than just the beard,
21 correct?

22 A We find contraband various places, yes.

23 Q Okay. So just having a beard alone is not going to -- is
24 not going to cause a great increase in the flow of contraband,
25 is it?

Lay - Cross

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1 A It'd cause a great increase in the number of places to
2 hide it.

3 Q So you would say then that -- that even though there's the
4 clothes, the socks, the shoes, the boots, things of that
5 nature, the coats, any number of clothings that you all issue
6 at Cummins, people hide stuff in there regularly, correct?

7 A They have, yes.

8 Q So, again, a beard is not going to be necessarily the --
9 the preferred choice of hiding things, wouldn't you say?

10 A Well, now, that depends. You know, inmates are pretty
11 creative, as I stated earlier. They watch staff, watch how
12 they monitor things, watch what staff do. And after watching
13 a particular staff person on a post for a period of time,
14 that's how they figure out how to beat that staff person,
15 about what they are checking and what they're not checking,
16 what they may not be comfortable with checking. I don't know
17 how many correctional officers would be comfortable with
18 running their hand through a man's beard. I don't know. You
19 know, but I really don't think that that would benefit the
20 overall goal and mission of corrections to have to do that.

21 Q Now, you have other ways to identify inmates, don't you?

22 A Such as?

23 Q Do you not -- is it not policy -- is it not policy of the
24 Department of Correction to issue inmates IDs that they wear
25 around their neck and also put their name and their ID number

Lay - Cross

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1 on their clothes; is that correct?

2 A Yes, they carry an ID badge. That's correct.

3 Q So, and they also have their name and ADC number on the
4 back of their -- the front and back of their clothes; is that
5 correct?

6 A Yes.

7 Q So you can -- you can identify -- the purpose of that is
8 so that you can more readily identify those inmates in the
9 case of an officer having a contact with them, correct?

10 A We put a name and a number on the clothing hoping that
11 they'll continue to wear the ones that are issued to them and
12 not trade them out, but, no, that's not -- that's not a very
13 good method of identifying anyone, no.

14 Q So what happens if they're caught wearing clothes they're
15 not supposed -- that are not issued to them?

16 A Will get a disciplinary, unless for some legitimate reason
17 their clothes were not back from the laundry or something.

18 Q And you issue -- you issue ID cards; is that correct?

19 A That's correct. Yes.

20 Q And the reason that you issue cards, such as these right
21 here, is so that you can again readily identify inmates in the
22 department -- in your unit, would that be correct?

23 A Well, yes, if we issue the ID badge though of you without
24 a beard, and then three months later you grow a beard, then
25 you've altered your appearance from that ID badge.

Lay - Cross

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1 Q So let me ask you this, how --

2 A And vice-versa.

3 Q -- how many years have you been -- again, did you say
4 you've been a warden?

5 A I've been a warden at the Cummins Unit for nine and at the
6 Delta Regional Unit for five.

7 Q Okay. And you're aware -- are you in contact with other
8 Department of Corrections around the country; do you ever have
9 any contact with them at all?

10 A Yes, occasionally, through training, we do through the
11 American Correctional Association and other avenues.

12 Q So if other prisons, major prisons, such as New York,
13 California, places like that, if they're able to do this very
14 same thing that I'm proposing, why would it be so hard for
15 Cummins Unit to do the same thing?

16 A You know, I suppose maybe that's an individual preference
17 in those states. I can't tell you for what reason they've
18 elected or chosen to go that route. I do know that many, many
19 of those institutions are very different from Cummins and from
20 the mission, and I'll give you one good example, is the
21 majority of those institutions that you're referring to are
22 cell block housing units where everything is one or two man
23 cells practically. The Cummins Unit has a lot of open bay
24 barracks that house up to 35 to 45 individual inmates, it's as
25 high as 50 in some instances. So, yeah, that's just one of

Lay - Cross

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1 many scenarios that are a lot different from our mission and
2 the way we're designed as opposed to maybe somewhere you're
3 talking about in California or -- or New York. I'm not aware
4 of very many states out there, for example, that operate an
5 agricultural program like we do in Arkansas. The Cummins Unit
6 is attached to a 17,000 acre farm. There are a lot of people
7 come and go in and out of the confines of that fence
8 performing that work and those duties. So we're certainly a
9 lot different. So I don't know why, you know, their
10 preference would be to go that route, but, I mean, that's
11 their preference obviously, or maybe law in that particular
12 circuit, I don't know.

13 Q But if they're able to do it without problems and they --
14 they seem to be able to be getting along fine, what would be
15 the problem with the Department of Correction allowing
16 somebody to grow a half inch beard?

17 A The problem would be the reasons that I've stated. And I
18 certainly would like to talk to some of those administrators
19 and see if they didn't voice some of the same concerns even
20 though they do allow that.

21 Q Now, you were saying there's how many -- how many inmates,
22 rough estimate, are in the Department of Correction as we
23 speak right now?

24 A Excess of 15,000. It may be up closer to 17,000
25 currently.

Lay - Cross

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1 Q Now, of those 15,000 inmates, would it be fair to say that
2 not everybody can grow a beard, right?

3 A Right now, no one can except yourself and those that have
4 a medical script.

5 Q The question I'm asking you though is would it be fair to
6 say that in the Department of Correction that should -- should
7 this Court or whoever in the future so find that we should be
8 allowed to grow a half inch beard, that not everybody in the
9 ADC can grow beards; is that correct?

10 A Do you mean physically?

11 Q Physically grow beards.

12 THE COURT: I understand where you're going with
13 that, Mr. Muhammad, but why don't we move on. I understand
14 where you're going with that. I don't think it's very
15 compelling on what you're trying to prove.

16 THE PLAINTIFF: Okay.

17 THE COURT: And equally, I didn't find it very
18 compelling that having to manage 15,000 people with beards is
19 at issue either, so.

20 THE PLAINTIFF: Okay.

21 BY MR. HOLT A.K.A. MR. MUHAMMAD:

22 Q Would it be fair to say again that it would be easy to
23 hide weapons or contraband in the head hair?

24 A Could you repeat the question?

25 Q I said would it be easy -- would it be fair to say that it

Lay - Cross

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1 would be easy to hide contraband in the head hair of an inmate
2 in the Department of Correction?

3 A It would be as easy to hide it there as it is a beard, I
4 suppose.

5 Q Okay. So if somebody has hair my length or a little
6 longer on top, you could hide a razor blade in that, you could
7 hide weapons and stuff up there, couldn't you?

8 A You could, yes.

9 Q Okay. Now, the issue of ID-ing inmates as far as with the
10 beards, what would be the harm, okay, in allowing when
11 somebody comes into the ADC, requiring them to have a clean
12 shaven photo taken, and then when they grow it out to a half
13 inch beard, taking another photo of them for comparison
14 purposes?

15 A The problem is they may never grow a half inch beard until
16 after they escape, just using that for one example, or they
17 may come in with a beard, and if we're not allowed to require
18 them to shave, they may immediately shave it after they
19 escaped, or got in some area they're not supposed to be in, to
20 alter their appearance.

21 Q Have you -- has there been a whole lot of escapes from the
22 Department of Correction because people were wearing beards?

23 A Not as of recent years, thank goodness. I do recall one
24 back in the 70s or 80s where the individual grew a beard and
25 blended in with homeless people in Houston, Texas, and I think

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1 two or three years before they captured him, and that was to
2 alter his appearance. Of course, that went the other way
3 around, I think he left the ADC clean shaven and grew the
4 beard after he got out, and he was eventually apprehended,
5 but.

6 Q So if -- somebody could escape from Cummins then and get
7 out and alter their appearance by growing a beard, right?

8 A Oh, certainly, if we don't apprehend them before they have
9 time to do that.

10 Q Okay.

11 A But if you escape with a beard, and you shave it, then you
12 have immediate means of altering your appearance, like right
13 now.

14 Q So if -- if other -- other, again, I refer back to other
15 institutions or other prison systems that allow this to
16 happen, allow people to grow beards, and they're not seeming
17 to have a problem with escapes, what would, again, the -- you
18 have -- you still would have a problem with people wearing a
19 half inch beard in the Department of Correction?

20 A Yes.

21 Q Regardless of other prison administrations doing the same
22 thing and allowing it?

23 A I can't testify to the fact that they aren't having
24 problems because of that, because I don't know what goes on
25 nationally across the country. Again, I would like to talk to

Lay - Cross

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1 some of those administrators and see what kind of problems
2 that they have experienced because they for whatever reason
3 have chosen to go that route. But, yes, that would concern me
4 greatly.

5 Q How long -- how long -- I know what the policy is
6 regarding the head hair in the ADC. As far as the length on
7 the top of the head hair, is there a specific length they can
8 grow it to as long as it doesn't extend past the earlobe and
9 the nape of the neck?

10 A There is. I believe that's outlined in the policy. I
11 don't remember exactly what it is. I just know that it has to
12 be off the collar and above the ears.

13 Q So if somebody has hair on top of their head, they could
14 -- they -- you know, that they could hide something in there,
15 right?

16 A Well, you could hide something in hair the length of yours
17 or mine, but that's not excessive according to the policy.

18 Q So if it could be -- my question then is, if that's the
19 case, then why is the facial hair a target and the head hair
20 is not?

21 A The facial hair just gives another avenue, just adds
22 another place to hide contraband.

23 Q Okay. But you admit you could hide contraband pretty much
24 anywhere though, right?

25 A They do hide it in a lot of different places, yes. I'm

Lay - Cross

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1 sure you're familiar with that.

2 Q Okay. Let me see here. Would a half inch beard -- would
3 a half inch beard, for officers being able to identify the
4 length of it, would it be fair to say that you can tell when a
5 beard is getting past a half inch?

6 A Well, I believe that would change from individual to
7 individual. What you might think just at a glance is a half
8 inch, I may not think is a half inch, or the next person may
9 not think is a half inch. Anyway, how are you going to gauge
10 that?

11 Q So you wouldn't -- so you're telling me that you couldn't
12 -- your officers wouldn't be able to look at somebody and be
13 able to tell whether their beard is a half inch or longer and
14 be able to tell them you need to go trim that down because
15 it's getting past regulation?

16 A You could give an -- you could give an approximate look at
17 someone's appearance and say maybe that person is out of
18 compliance, maybe they're beyond the half inch, but then that
19 person is in disagreement, says, well, I'm a half inch or
20 less, and they file a grievance, and then you go through all
21 those steps to handle that. I mean, do you actually call the
22 person in and measure the beard or, you know, how are you
23 going to deal with that on a regular basis?

24 Q Okay. As far as the Koran that you said was sent in by
25 the individual, in fact that individual was an attorney,

Lay - Cross

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1 wasn't it?

2 A That's correct.

3 Q Okay.

4 A Our policy mandates that it come from a bookstore or a
5 supplier, not from an attorney, an individual.

6 Q Okay. And you also stated that the first time you heard
7 about the order was when Major Robertson or somebody had
8 called you and told you that I had this court order; is that
9 right?

10 A Yes, I don't remember if it was Major Robertson or Mr.
11 Warner, but one of the two.

12 Q And you don't remember -- you don't remember admonishing
13 Major Robertson and telling him that the order -- that if it
14 was a valid order, he needed to -- he needed to let me out
15 immediately, do you remember saying that?

16 A Well, that's a possibility. I do remember telling the
17 major that that would be highly unusual for an inmate to have
18 an injunction of some sort that we didn't have a copy of or
19 hadn't been informed of through the courts or through legal
20 counsel or somehow.

21 THE PLAINTIFF: Okay. I think that's all I have.

22 THE COURT: Thank you, sir.

23 Do you have any follow up questions of the warden?

24 MS. CRYER: I don't think I do, Your Honor.

25 THE COURT: I have a couple. Can you tell me, how do

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1 you manage the folks that have the medical script quarter inch
2 beard?

3 THE WITNESS: We stop them in the hallway, Your
4 Honor, and ask them to present a script if they're not in
5 compliance with the grooming policy, and if it appears to be
6 outside the quarter inch -- a quarter inch is pretty much
7 close to what you get using a clipper without a guard, if you
8 just -- I don't know -- if you just try to shave with a
9 clipper, for example, rather than a razor, that's pretty much
10 what you get. They're pretty close.

11 THE COURT: Do you know about what percentage of the
12 population has that?

13 THE WITNESS: No, sir, it's not a very high
14 percentage, you don't run into it with every other inmate, you
15 know, when you're in the hallway, but you do see it.

16 THE COURT: And with regard to the hair length, Ms.
17 Cryer, do you know -- does somebody know, can somebody speak,
18 is there actually a -- I know you said you didn't have -- you
19 thought it was in the policy, but you didn't know for sure,
20 I'd like to know what the policy actually is, is there a
21 length per se or is just to the collar, like you said, I mean?

22 MS. CRYER: If you will give me just a minute, I'll
23 look for the policy, because I think I brought a copy.

24

25

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1 THE COURT: Okay. And you don't have to look that up
2 right now, I mean, I -- if somebody could speak to that, I'd
3 like to know what the actual policy is, because my next
4 question then is, have you actually had people hiding
5 contraband in their hair?

6 THE WITNESS: I can recall one coming into
7 segregation back when I was a uniformed officer with a
8 marijuana joint in his hair, yes, sir.

9 THE COURT: Okay. But anything recent?

10 THE WITNESS: Not recently, no, sir.

11 THE COURT: All right. And then that also brought me
12 to another question is you've obviously been a warden for 14
13 -- 13 years or going on 14?

14 THE WITNESS: Yes, sir.

15 THE COURT: And how long have you been in the prison
16 business?

17 THE WITNESS: 36 years and some odd months.

18 THE COURT: And you started out as a CO?

19 THE WITNESS: Yes, sir, at Cummins.

20 THE COURT: At Cummins. Last question, the Ninth
21 Circuit case, it appears that they have a grooming policy and
22 then the Ninth Circuit allowed this beard, half inch beard,
23 have you had any sort of correspondence, any training, or
24 anything based on that, that the California officials have
25 mentioned anything or come and spoken at any conference or

Lay - Redirect/Recross

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1 anything, have they talked about what the impact has been in
2 their prison system?

3 THE WITNESS: No, sir, I haven't had an opportunity
4 to visit with anyone about that. As a matter of fact, I
5 wasn't aware of that case until this came up.

6 THE COURT: Got you. Okay. Thank you.

7 MS. CRYER: Your Honor, I think I have just one
8 question.

9 REDIRECT EXAMINATION

10 BY MS. CRYER:

11 Q Mr. Lay, are you responsible for creating the ADC policies
12 with regard to grooming?

13 A No, ma'am. That would come from the Board of Corrections.

14 THE COURT: Any follow up?

15 THE PLAINTIFF: I have one.

16 THE COURT: Yes, sir.

17 RECROSS EXAMINATION

18 BY MR. HOLT A.K.A. MR. MUHAMMAD:

19 Q But you are responsible for enforcing it, correct?

20 A That's correct.

21 THE PLAINTIFF: Okay.

22 THE COURT: Warden, you may stand down. Thank you,
23 sir.

24 THE WITNESS: Yes, sir.

25 (Witness stands down.)

Harris - Direct

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1 THE COURT: Your next witness?

2 MS. CRYER: Thank you, Your Honor. I know I'm going
3 to have one more. That's going to be Grant Harris.

4 THE COURT: All right.

5 GRANT HARRIS, DEFENDANTS' WITNESS, SWORN.

6 DIRECT EXAMINATION

7 BY MS. CRYER:

8 Q Mr. Harris, would you state your full name for the record,
9 please?

10 A My name is Grant Edward Harris.

11 Q And, Mr. Harris, where are you currently employed?

12 A I'm currently employed with the Arkansas Department of
13 Correction. I am an Assistant Director of Institutions.

14 Q And prior to being the Assistant Director of Institutions,
15 what was your position with the Department of Correction?

16 A I was the warden of the Varner Unit, which encompassed the
17 ad seg Supermax, for a little over six years.

18 Q Prior to being the assistant director, how long in total
19 were you a warden for the Department of Correction?

20 A Approximately 18 years.

21 Q And when did you first begin working at the department?

22 A I began my career at Tucker Unit in 1979, and at that
23 point there were only three facilities within the state of
24 Arkansas.

25 Q Okay. Mr. Harris, you've been present in the courtroom

Harris - Direct

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1 for the testimony of both inmate Muhammad, as well as Warden
2 Lay; is that correct?

3 A Yes, ma'am, that is correct.

4 Q Okay. And did you hear Warden Lay's comments or concerns
5 with regard to contraband?

6 A I did.

7 Q Okay. Let me just ask this, and we can kind of circumvent
8 some of my questions, was there anything with regard to Warden
9 Lay's testimony that you disagreed with?

10 A No, ma'am, there's nothing that I would disagree with. In
11 fact, I would like to really amplify on one point, if I may.

12 Q Sure.

13 A If it please the Court? You know, certainly weapons are a
14 concern when it comes to facial hair, but I think one thing
15 that we really need to touch on this morning is what we've
16 been experiencing as an agency within the last few years, and
17 that's the introduction of cell phones which are coming into
18 our institutions. Last year alone, we probably confiscated in
19 excess of a thousand cell phones at all institutions. What's
20 unique about a contraband cell phone is that our phone system
21 records conversations and this is how we gain intelligence,
22 with the exception of legal or attorney calls, those calls are
23 not recorded. So we use the recorded calls as a means of
24 gaining intelligence to see who is trying to smuggle in what
25 within the different institutions or who is dropping something

Harris - Direct

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1 off.

2 When I was the warden at Supermax, I guess what was
3 amazing to me is just as we had closed one avenue of receiving
4 contraband and weapons and drugs within the institution,
5 another one would open up. The cell phone was the means of
6 making that avenue happen. I remember one particular
7 situation, we never identified the visitor, but due to the
8 shape of the package, the visitor would go into the restroom,
9 it was in a body cavity, would actually flush the marijuana,
10 the rock cocaine, black tar heroin, down the commode, it was
11 tightly wrapped in cellophane and duct tape. The trusty, who
12 was outside the fence, who was working the sewer pond, who
13 was, you know scraping, getting everything up, was actually
14 fishing that out, he was carrying it back to maintenance, he
15 was breaking it down, he was bringing it in the back door of
16 our kitchen. And believe it or not, the inmates in the main
17 kitchen were working it, again repackaged, in the food, taking
18 it down the hall to Supermax to ad seg. What was amazing
19 about this is they may not necessarily try to move a whole
20 cell phone or a large amount at one time, they moved maybe it
21 was something that was just a piece of that object, and
22 actually put it together. So when you get to the dining
23 facility in the Supermax, you've got another group of inmates
24 that are on the serving line, and they know maybe that
25 Sergeant Stanley, who works Cell Block 6 all the time, starts

Harris - Direct

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1 out on Tier 3, and he feeds from left to right. Well, he's
2 actually counting the number of cells and counting the number
3 of trays, and he's concealing that contraband or that weapon
4 in that particular tray to get to that inmate. And from
5 there, it can exchange hands. I just took the liberty of
6 bringing one small thing that you may not consider to be a
7 weapon, but certainly it is given the gravity of what can be
8 introduced into the institutions. It's something as small as
9 a SIMS card. And this is it. And certainly, this can be
10 concealed just about anywhere, as well as a beard. And this
11 is what makes the whole thing magic, this is what makes it
12 work. And I have seen phones altered in so many different
13 ways without battery packs, where they've taken AA batteries
14 and wrapped them up to charge and work the phone, pieces of
15 phones that have been walked down the hall in flip flops that
16 have been put together later on in an ad seg, in general
17 population. It's amazing how creative you could get.
18 Something this simple can be responsible for the introduction
19 of drugs or weapons into any institution. And I just felt
20 like I needed to miss -- miss that point, because at this
21 point I don't know that we've really addressed that.

22 Q Okay. Let me -- let's get back to the concern that -- or
23 the request that inmate Muhammad has, and that's the request
24 to have a one half inch beard.

25 A Sure.

Harris - Direct

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1 Q Do you have any concerns now as a former warden, current
2 assistant director of the Department of Correction, that
3 something such as the SIMS card that you brought with you
4 today could be confiscated -- or could be hidden in a beard?

5 A That could be the piece of the phone that makes it all
6 work. Certainly. As well as the needle off of a syringe and
7 the diabetic inmate that's in ad seg that acts like he's
8 putting the cartridge or the base of the syringe in the sharps
9 container, pulls it back out, that maybe the syringe got broke
10 off before it was placed in the sharps container, well, he
11 passes that to the guy that's got the needle in the next cell.
12 I mean -- I mean, the possibilities are flammable, really.

13 Q And again, there has been testimony today with regard to
14 all the various different places that you -- that an inmate
15 can hide or conceal contraband. Do you disagree with any of
16 the testimony today with regard to the different various
17 places that inmates can conceal contraband?

18 A No, ma'am.

19 Q Does that alleviate your concern with regard to an inmate
20 who is requesting to grow a half inch beard?

21 A I'm very concerned about a half inch beard.

22 Q Okay. Are you responsible for preparing or for changing
23 any of the Arkansas Department of Correction policies?

24 A I'm a member of the policy committee itself. There's a
25 number of members, including our lead staff attorney, who is

Harris - Direct

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1 actually the chair of the committee, so I do have direct input
2 into the policy and change, yes, ma'am.

3 Q Okay. The Court inquired earlier with regard to the
4 department's policy on grooming. Did you actually bring a
5 copy of the grooming policy with you?

6 A I did. I have that in front of me.

7 Q Okay. What is the policy number?

8 A The actual policy is a -- it's an Administrative
9 Directive, and the number is 98-04, and it deals with the
10 reference to the Administrative Regulation of personal
11 cleanliness and grooming for inmates.

12 Q And in looking at the policy, would you please refer to
13 the part that makes reference to the length of hair that an
14 inmate may have?

15 A It's probably the closest thing to that, it states:

16 "Inmate's hair must be worn loose,
17 clean, and neatly combed, no
18 extreme styles are permitted,
19 including but not limited to corn
20 rows, braids, dread locks,
21 mohawks, et cetera. The hair of a
22 male inmate must be cut so as to
23 be above the ear, with sideburns
24 no lower than the middle of the
25 earlobe, and no longer in the back

Harris - Direct

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1 than the middle of the nape of the
2 neck."

3 It also talks about the aspect of the medical script for a
4 dermatological problem as well.

5 Q I asked Warden Lay earlier if he had any concerns, not
6 even just with regard to inmate Muhammad, but any inmate that
7 is allowed to do something that other inmates are not allowed
8 to do.

9 A That's the last thing that you would want to happen in an
10 institution. As Warden Lay pointed out earlier, you know,
11 certainly it can make them a target with some of the inmates
12 in the population, but it could also try to -- it could also
13 elevate his status and make him even possibly even more sought
14 after by other inmates who are looking for a leader and who
15 want to follow.

16 Q Does that cause any concerns to you as a member of the
17 security staff or security team with the department?

18 A Certainly, it does. If you're in the business of
19 recruiting or anything like that, it all -- that all has a
20 bearing on that.

21 Q And again, I know that Warden Lay was able to testify with
22 regard to his concerns at the Cummins Unit where he is
23 currently the warden. Do you have any concerns department-
24 wide with regard to whether or not an inmate or possibly other
25 inmates were allowed to wear the half inch beard?

Harris - Direct

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1 A I have that concern for us as an entire department, at
2 every institution.

3 Q Are you aware of what other states are doing, how they run
4 their facilities, or what types of rules that they have?

5 A No, ma'am, not specifically. I'm really not.

6 MS. CRYER: Your Honor, I think that's all the
7 questions that I have of Mr. Harris.

8 THE COURT: Do you want to make the grooming policy a
9 part of the record?

10 MS. CRYER: I would, Your Honor.

11 THE COURT: All right. Any objection? I don't know
12 that it would be a viable objection, but you can make an
13 objection for the record.

14 THE PLAINTIFF: No objection.

15 THE COURT: Okay. Why don't we make that -- if you
16 need that back, we can make a copy and give that --

17 THE WITNESS: That's fine, Your Honor.

18 THE COURT: Okay.

19 MS. CRYER: And if I'm not mistaken, Your Honor, I
20 believe Mr. Muhammad may have attached a copy of the policy,
21 the 98-04, to one of his pleadings. I'm not positive that he
22 has, but for some reason I was thinking that he had
23 previously.

24 THE COURT: Okay. Well, I'll make it a part of the
25 record here, we'll call it Defense Exhibit 1.

Harris - Cross

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1 MS. CRYER: Thank you, Your Honor.

2 (Defense Exhibit No. 1 identified and received.)

3 THE COURT: Do you have questions of the director
4 here?

5 THE PLAINTIFF: Just a few.

6 CROSS EXAMINATION

7 BY MR. HOLT A.K.A. MR. MUHAMMAD:

8 Q I just have a few questions for you.

9 A Sure.

10 Q You made the statement about the -- the AD 98-04, correct,
11 regarding the policy for the head hair?

12 A Yes, I did.

13 Q In that policy, it doesn't state any type -- any
14 particular length on the head, does it?

15 A No, it does not.

16 Q Okay. And also, in this case, this particular case we're
17 talking about now, have you been made aware of any -- any
18 attempts at targeting me, because I was walking around in the
19 halls at Cummins Unit with a beard, by other inmates?

20 A No, I have not.

21 Q And you haven't been made aware of any other -- of any
22 information come to your attention about anybody trying to
23 seek me out as a leader because I had a half inch beard on my
24 face, or have you been made aware of anything like that?

25 A No, I have not.

Harris - Cross

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1 Q Okay. Again, you brought out the thing about the SIMS --
2 the SIM card, I believe. It's -- again, there's more ways to
3 move contraband in a prison, I reiterate in a prison, than
4 just the facial hair, correct?

5 A Yes, that's correct.

6 Q And you are also aware that in any given institution, that
7 there are officers that will move contraband for inmates and
8 routinely do so?

9 A I don't know about routinely, but we have dirty staff as
10 well as dirty inmates.

11 Q So if an inmate wanted contraband or weapons moved,
12 instead of putting it in facial hair, they could give it to a
13 CO that they paid some money to, or they'd have a homeboy on
14 the street that they could use that to get it -- to move it
15 around and get it within the institution, correct?

16 A That would be a possibility.

17 Q And, in fact, officers do that, right?

18 A There are some staff.

19 Q Okay. I believe -- let's see here.

20 THE PLAINTIFF: Can I have just a minute, Your Honor?

21 THE COURT: You may.

22 BY MR. HOLT A.K.A. MR. MUHAMMAD:

23 Q Now, as far as the issue of inmates wearing beards in the
24 Department of Corrections, would it be, again, I ask you, fair
25 to say that not every inmate in the Department of Correction

Harris - Cross

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1 is going to grow a beard -- is going to grow a beard?

2 A I really don't know. I don't think I can answer that.

3 Q Or whether they can or not, you don't -- you don't have an
4 answer one way or the other?

5 A I really don't.

6 Q Okay. As far as prisoner identification goes with respect
7 to -- because I know that's an issue -- again, you all have ID
8 cards that are issued to inmates to readily identify them by
9 staff, correct?

10 A That's correct.

11 Q Okay. So if a -- if someone, let's say, for example,
12 should the grooming policy be changed to allow a half inch
13 beard, would -- would it be a problem to require inmates
14 coming into the Department of Correction to be clean shaven
15 with their first photo taken, and after a half inch beard has
16 grown, retake another photo for comparison purposes?

17 A Well, I think Warden Lay answered that when you asked him
18 that same question earlier. But again, what you have to
19 consider is the aspect of that beard being used to conceal
20 weapon -- weapons or contraband, to have that contraband
21 introduced into a facility.

22 Q Now you've mentioned about a quarter inch beard, some
23 stuff has been made about that, about the quarter inch beard.
24 Is it not a fact that some people grow a quarter inch beard
25 thicker than others do?

Harris - Cross

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1 A You know, again, I -- I'm not really sure how to respond
2 to that. Everybody -- everybody's facial hair is different in
3 that regard.

4 Q But the ADC specifically has a policy governing a quarter
5 inch beard for dermatological or skin condition, correct?

6 A Yes, that's correct.

7 Q So I ask you, sir, how then is a quarter inch beard for
8 dermatological reasons not a security threat given -- again,
9 given that it's been stated that people can grow different --
10 a half inch beard can be one way on one person, different on
11 another, where a quarter inch beard would be the same way,
12 explain to me how that is not a security threat, but a half
13 inch beard is?

14 A A half inch is longer than a quarter inch.

15 Q But again, the question is how is one if -- if the Court
16 -- if your policy is to stop the moving of contraband and
17 weapons in the facility, and your main objection is that the
18 facial hair is the conduit to do so, to move it around the
19 facility or whatever, then explain to me how a quarter inch
20 beard is going to be any different than a half inch beard.

21 A The last time I probably walked one of my institutions was
22 before the holidays. The quarter inch beards, you know,
23 primarily, you can still see the skin.

24 Q And you're saying a half inch beard, you wouldn't be able
25 to do that?

Harris - Cross/Redirect

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1 A I don't think so, no.

2 Q But again, a quarter inch beard, again people can grow at
3 different lengths, right?

4 A Sure, everybody's hair is different.

5 Q And a quarter inch beard can have -- one person can have a
6 quarter inch beard that's thick, the next person can be one
7 that sees the skin; would that be an accurate statement?

8 A I didn't hear the last part. I'm sorry.

9 Q I said a quarter inch beard, someone growing -- one person
10 growing a quarter inch beard might grow it thicker than
11 somebody else, where you can see the skin on him, but you
12 can't see it on the other person. Would that --

13 A I suppose that's possible, sure.

14 Q So they could hide contraband in that, too, right?

15 A That's a possibility. But again, the quarter inch is --
16 beards that I've seen, the skin is showing.

17 THE PLAINTIFF: Okay. That's all I have.

18 THE COURT: Redirect?

19 MS. CRYER: I think I just have one.

20 REDIRECT EXAMINATION

21 BY MS. CRYER:

22 Q So, Mr. Harris, if you have inmates throughout the
23 department that are allowed to grow one half inch beards, and
24 presumably some can grow thicker beards than the other, how --
25 how, as part of the department, do you monitor the thickness

Harris - Redirect

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1 or what could possibly be in some of the beards, but not in
2 other beards?

3 A That's almost an impossible task, you know, when you're
4 dealing with that large of a population. And again, it's just
5 another avenue for contraband and weapons.

6 Q Is it your --

7 A I don't -- I don't know how you would do that.

8 Q Okay. Is it your testimony today that inmates who could
9 possibly grow half inch beards, that's the only way that they
10 would be able to carry or pass contraband to one another?

11 A Through the half inch beard?

12 Q Yes.

13 A There's many ways, ma'am.

14 Q Okay. The half inch beard is not just the only one?

15 A No, ma'am, it is not, not by a long shot.

16 MS. CRYER: Okay. That's all I have, Your Honor.

17 THE COURT: Mr. Harris, you heard the questions I
18 asked of the warden. Do you remember those?

19 THE WITNESS: I do. Probably the last one, if I
20 could go in that order, Your Honor, I haven't heard anything,
21 any consequences or -- or feedback on since what happened in
22 California, and I'm trying to recall anything negative or
23 positive about their grooming change, but I don't know that I
24 can recall the first question, Your Honor.

25 THE COURT: Well, and you've answered it with the

Harris - Presiding Official

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1 policy here. You know, the other line of question was kind of
2 were you aware of any -- in your experience, aware of any
3 contraband being hidden in hair?

4 THE WITNESS: Oh, yes, sir.

5 THE COURT: You are?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. Anything recent?

8 THE WITNESS: No, sir, not recent, not in the two
9 years since I've made the transition to assistant director.

10 THE COURT: All right. And how long have you been in
11 the prison business?

12 THE WITNESS: 32 years last November.

13 THE COURT: And did you also start out in the CO --
14 as a CO or --

15 THE WITNESS: Yes, sir, I actually worked my way up
16 through the ladder. Corrections is my life. It's the only
17 job I've ever held.

18 THE COURT: I asked my lawyer to get me a ruler. You
19 held the SIM card up, and I thought for record purposes --

20 THE WITNESS: Oh, sure.

21 THE COURT: -- can I see it and --

22 THE WITNESS: You can.

23 THE COURT: -- let me get some dimensions on the SIM
24 card.

25 THE WITNESS: Yes, sir.

Harris - Presiding Official

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1 THE COURT: It looks like it's an AT&T SIM card here.
2 And it is -- it looks like it's 3/8ths inch long ways and just
3 under 3/8ths of an inch width ways, so it's a pretty small
4 device. I don't know if anybody has any questions that the
5 SIM card I hold up, do you -- I mean, those are the
6 measurements I made. I think they're pretty accurate. It
7 would be 7/16ths width -- I'm sorry, that can't be right.
8 That would be 9/32nds.

9 MS. CRYER: Your Honor, I don't know if it would be
10 helpful to make a copy, to place the SIM card on a photocopier
11 and make a copy of it --

12 THE COURT: We can do that if you would like to.

13 MS. CRYER: -- for the record. I think I would, if
14 that would be acceptable.

15 THE COURT: Okay. Sure. It's 9/32nds width. Looks
16 like 13/32nds length. But we'll do that at a break, if you
17 don't mind for us to borrow this?

18 THE WITNESS: No, sir.

19 THE COURT: We'll photocopy it on the -- with the
20 ruler.

21 MS. CRYER: Thank you.

22 THE COURT: All right. Any other follow up?

23 MS. CRYER: I do.

24 THE COURT: You may. Feel free to.

25 MS. CRYER: I have actually just a couple. And I

Harris - Further Redirect

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1 apologize, Your Honor, because I know I said that I did not --

2 THE COURT: It's not a problem at all.

3 MS. CRYER: -- have any additional ones for him.

4 FURTHER REDIRECT EXAMINATION

5 BY MS. CRYER:

6 Q Mr. Harris, let me ask, do you have any concern with
7 regard to the safety of the officers who might be required to
8 check what's inside an inmate's beard?

9 A Well, certainly, you do. I mean, from the standpoint of
10 syringe needles, the safety razors that are issued, you know,
11 they break up -- some break up better than others, even a
12 small -- the smallest piece of a razor and getting -- getting
13 a wound from that, getting a cut, those are all concerns.

14 Q And again, do you have the same concern with regard to the
15 safety of officers if they are checking for contraband inside
16 an inmate's hair?

17 A Certainly, I do.

18 Q Does the concern amplify or increase if the officer now
19 has multiple places on the head that they are to search, not
20 just one?

21 A Yes, that's a concern, certainly.

22 MS. CRYER: Okay. Your Honor, that's all I have.

23 THE COURT: Any follow up?

24 THE PLAINTIFF: Yes, I do. I've got a couple.

25 RECROSS EXAMINATION

Harris - Recross

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1 BY MR. HOLT A.K.A. MR. MUHAMMAD:

2 Q You allow inmates in the Department of Correction to grow
3 a mustache, right?

4 A Yes, that's correct, as long as it doesn't drop below the
5 corners of the mouth, as it's outlined in the policy.

6 Q Is it not a fact that some people grow thicker mustaches
7 than others?

8 A Probably so, yes.

9 Q Could you not hide that SIM card right there in a mustache
10 just as easily as you could a beard?

11 A It's possible, sure.

12 Q So, and then, let me ask you about this here, the -- about
13 officers reaching in the beard of being exposed to sharp
14 objects or things of that nature, you're worried about
15 security issues regarding that, correct?

16 A I'm worried about the safety of the staff as well as the
17 inmate population.

18 Q But an inmate -- an inmate in population could actually --
19 would be -- could actually conceal weapons on their person, be
20 more of a threat than somebody having something in their
21 beard, wouldn't you say?

22 A No.

23 Q Be more likely to conceal on their person instead of their
24 facial hair, right?

25 A Not necessarily, no.

Harris - Recross

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1 Q You don't believe that?

2 A No.

3 Q So other institutions that do this, that these officers
4 are doing this at other institutions, especially the one in
5 California, these officers are actually doing that, what do
6 you say to that?

7 A I'd say I've never been impressed with the California
8 system.

9 Q But if they're able to do it, then you -- the Department
10 of Correction could do it just as easily, right?

11 A No, I wouldn't agree with that. You know, again, from the
12 standpoint -- and I want to make sure that I key in on this --
13 is that you're talking about the safety and the security of
14 the institution, and what our primary mission is, and what
15 we're trying to prevent from coming into our institutions, and
16 that's weapons, that's guns, that's meth, that's crack, and it
17 goes on and on.

18 Q But a lot of that stuff is brought in via your officers,
19 aren't they, sir?

20 A And so much of that is also brought in by inmate visitors.

21 Q That's correct, too, I would agree with you on that. But
22 there's many different ways for it to come in, other than just
23 put it in the facial hair?

24 A Yes, we've addressed that question already.

25 Q And the -- really, the issue about the facial hair is not

Harris - Recross

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1 really about security, is it?

2 A Certainly, it's about security.

3 Q So would you have your -- the officers at these
4 institutions that are -- that are harassing inmates going down
5 the hallway for some stubble on their face, the stubble does
6 not represent a security threat, does it, sir?

7 A I don't know about your allegation of harassment.

8 THE PLAINTIFF: Okay. That's all I have.

9 THE COURT: Anything further?

10 MS. CRYER: No, Your Honor.

11 THE COURT: You may stand down, sir. Thank you.

12 THE WITNESS: Thank you.

13 (Witness stands down.)

14 THE COURT: Do you have anything further, Ms. Cryer?

15 MS. CRYER: Your Honor, I don't believe so. I have
16 several witnesses that would be here that could testify with
17 regard to the Islamic religion and what is required and not
18 required, and I really don't think that that is a central
19 focus of the hearing today. And I do have Deputy Warden
20 Weekly that is here. She is in security, although she was
21 really brought here just with regard to a disciplinary that
22 inmate Holt was issued and was complaining about or had raised
23 in one of his motions. But because he really hasn't gone into
24 that today, I don't think there's really any need to put her
25 on the stand. And I think her security concerns would just

1 overlap what Mr. Lay and Mr. Harris's concerns have been.

2 So, a long way to say, no, sir, I don't believe I
3 have any other witnesses.

4 THE COURT: All right. Thank you, ma'am.

5 Do you have anything further, Mr. Muhammad, that you
6 wanted to present?

7 THE PLAINTIFF: No, sir.

8 THE COURT: What I'd like to do is I'd like to take a
9 brief recess and put my thoughts together. And, you know,
10 I'll have a written ruling, but I'd like to make a preliminary
11 finding, just that's how I try to do my business, I try to let
12 people know when they walk out of the courtroom kind of what
13 I'm thinking, so later I don't issue a written ruling and pull
14 the rug out from under you.

15 Ms. Cryer?

16 MS. CRYER: I was just going to ask for permission,
17 Your Honor, to make a brief closing argument, if I may?

18 THE COURT: You may. You may. And so may you, Mr.
19 Muhammad.

20 MS. CRYER: Do you want to let Mr. --

21 THE COURT: Well, you know, it's kind of your burden,
22 Ms. Cryer, I think, so if you want to go first. Well, there
23 again, yeah, it makes no difference, but I'll let you all
24 speak, and if at the end of each turn if there is something
25 burning on your mind, I'll let you have a rebuttal. How about

1 that?

2 MS. CRYER: Okay. Thank you, Your Honor. I will be
3 brief.

4 Your Honor, the current grooming policy of the
5 Arkansas Department of Correction is Administrative Directive
6 98-04. It is the same policy that was valid and in place in
7 the *Michael Fegans* case that was decided by Judge Moody back
8 in 2006 and affirmed by the Eighth Circuit in 2008. There is
9 not anything that has changed since the findings in *Fegans*.
10 The grooming policy has not been found to be unconstitutional.
11 If I'm not mistaken, I don't even believe that Mr. Holt is
12 arguing that the policy itself is unconstitutional. He just
13 says that there should be an exception made to him because he
14 wants to be able to grow a half inch beard.

15 I find that Mr. Holt or Mr. Muhammad's testimony is
16 in a way contradictory in and of itself. In his pleading, he
17 indicates that it is his religious belief that he not be
18 required to trim his beard at all. And yet based upon a 2004
19 Ninth Circuit decision, Mr. Holt therefore says, well, I'm
20 willing then to consider it and to compromise.

21 Well, if his position is that he shouldn't have to
22 cut it, then that should be his position, he doesn't have to
23 cut it. What he's doing is saying that I'm agreeing to cut it
24 half an inch, that the -- that the entity that he prays to
25 will see that he has tried to follow the laws, has done the

1 best that he can, and even if he was being restricted from
2 doing so, it's still going to be okay.

3 The defendants' position would be that the same
4 applies for even if he is required to comply with the
5 Department of Correction's grooming policy and to completely
6 shave his beard.

7 And the law that he cites to is a 2004 decision. The
8 counsel for inmate *Fegans* in 2006 argued Ninth Circuit, as
9 well. And while their religious beliefs were different,
10 Michael Fegans was a follower of the House of Yahweh, Mr. Holt
11 is a follower of the Islamic faith, essentially, Your Honor,
12 not to compare the two religions, but essentially it's the
13 same argument, take the religious nature out of the name of
14 what you're going to call the religion and it's the same
15 religion, it's the same argument. Nothing has happened
16 between the 2006 decision in *Fegans* continuing forward to 2012
17 today.

18 The testimony that was offered by both Mr. Lay and
19 Mr. Harris was that the carrying of contraband and the issue
20 and concerns of contraband has increased from 2006 forward
21 through today. So it's not a matter of the department is not
22 concerned or no longer concerned about -- about the security
23 and the contraband, they simply see the -- making the
24 allowance for a half inch beard is yet one more avenue in
25 which an inmate, whether it's Mr. Holt or whether any other

1 inmate in the Department of Correction, could possibly carry
2 in contraband.

3 They seemed -- or they -- it appears that Mr. Holt
4 has offered to say or is implying that he won't try to hide
5 contraband in his beard. And unfortunately, an inmate making
6 that statement, who is serving a life sentence, who really
7 doesn't -- plus 40 years, who really doesn't have anything to
8 lose, Your Honor, just isn't good enough. If the
9 administration could take the word of every inmate, again, no
10 particular disrespect to Mr. Holt, but that just can't happen.
11 And the question becomes where do you stop? There has been an
12 increase in the introduction of various other forms of
13 contraband, and clearly, the department's concern is valid
14 based upon those security reasons.

15 The testimony, Your Honor, has also been that inmate
16 Holt has a number of other options and avenues and ways of
17 exercising his religious beliefs. He's able to pray. He's
18 able to possess a Koran. He's able to get a spiritual
19 advisor. He's able to have a religious diet. He's able to
20 acknowledge all of the religious holidays that he wants to.
21 He's able to have a prayer rug. He could do all of these
22 different things in practice of his religion. But to say that
23 by not being allowed to have a half inch beard or else he
24 can't -- he can't practice his religion, falls flat on the
25 other arguments that he's made, Your Honor.

1 And I would respectfully say that the grooming policy
2 has not been found unconstitutional. The *Fegans* case has not
3 been overturned. We follow Eighth Circuit law. We are in the
4 Eighth Circuit.

5 While Mr. Holt may try to bring in Ninth Circuit case
6 law, essentially, Your Honor, been there, done that, nothing
7 has changed. And, if anything, the evidence presented shows
8 that there is more security concern in 2012 than there was in
9 2006. So we respectfully ask that the order that is currently
10 in place with regard to the temporary restraining order be
11 removed or lifted and that Mr. Holt be required to comply with
12 the grooming policy.

13 Thank you.

14 THE COURT: Thank you, ma'am.

15 Mr. Muhammad?

16 THE PLAINTIFF: The issue here is about whether or
17 not the Department of Correction's policy is the least
18 restrictive means of allowing me to practice my religious
19 beliefs.

20 While the Ninth Circuit -- while the defendants here
21 may knock the idea of bringing in Ninth Circuit law, it's
22 still considered persuasive law in this case. The facts are
23 the same. The policies are the same. The institutions there
24 instituted these changes. Whether they've had problems or
25 not, the defendants haven't been able to say one way or the

1 other.

2 We've heard that you can get contraband in the
3 facility in any number of ways. In fact, they stated that
4 from 2006 to 2012, that the increase in contra -- they feel
5 contraband has increased. Well, I would submit to Your Honor
6 during 2006 to 2012, you were required to shave your beards.
7 So that -- that would -- that falls.

8 And then the fact that if -- if they're worrying
9 about the grooming policy causing the flow of contraband into
10 the prison, then what -- what has been the issue for the past
11 six years when there was a grooming policy that said you had
12 to shave your beards?

13 In the *Mayweathers* case, and in others in the Ninth
14 Circuit, as well as in New York, the same argument was made
15 that the defendants have made here today. In each of those
16 cases, the courts have ruled that that's not enough, that
17 having a concern about a beard altering identity, hiding
18 weapons, things of that nature, the courts have rejected it.
19 It's even been appealed to the U.S. Supreme Court. The U.S.
20 Supreme Court rejected review. And I believe that you, Your
21 Honor, should take that seriously into consideration. And
22 it's a recent case. It might be seven -- six, seven years
23 old, but it's still a persuasive law case.

24 On top of everything else, again, I reiterate *Michael*
25 *Fegans* argued unrestricted hair growth, unrestricted beard

1 growth. I am not arguing that -- that having unrestricted
2 hair, unrestricted beard does not present a security threat,
3 because it does. What I am arguing is, is that a half inch
4 beard -- we can get all day into about SIM cards being hid,
5 but we heard -- we heard Mr. Harris say that you could hide
6 one in a mustache. And there is people walking around there
7 you see with thick mustaches that you could hide stuff in.

8 The bottom line is that should you allow this
9 injunction to continue it would not affect the other inmates
10 in the Department of Correction. It only affects me at this
11 point, just like it has been. It's been established that even
12 if other inmates were allowed to grow beards, they couldn't
13 state with a degree of certainty whether or not that people
14 would grow beards or not. Some people can't grow beards. I'm
15 sure you're aware of this. Some people physically can't grow
16 beards. Some don't want to because of -- because it itches
17 their face and things of this nature. So they're not going to
18 have to worry about 15 to 16 thousand inmates walking around
19 with beards on their faces.

20 The issue here is whether this is a least restrictive
21 means to practice my religion.

22 Regardless of whether I have a Koran, regardless of
23 whether I have Sujud, the prayer rug, whether I have access to
24 religious advisers, which is very rare at Cummins Unit, it
25 still doesn't answer the question of whether or not imposing

1 the punitive sanctions on somebody at the risk of forcing
2 somebody.

3 In the *Warsoldier v. Woodford* case, the court there
4 rules that these type of restrictions, these type of punitive
5 sanctions cause somebody to have to -- to choose between
6 following what the state says they should do and following
7 what the dictation of their religions say they should do and
8 having to decide what they're going to do in that situation.

9 In fact, it was even argued in the *Mayweathers* case
10 that it's either a issue of following Allah and the Sunnah or
11 following what the state says. And the Ninth Circuit found,
12 and so did the U.S. Supreme Court when they denied review,
13 they found that -- that this issue here, that having all of
14 that was still was burdensome, that having -- that forcing
15 Muslims to shave their beards or whatever is -- was burdensome
16 on the practice of their religion. And the state has not --
17 the state has not -- has not held with that, has not answered
18 it.

19 Whether or not people bring -- bringing in weapons,
20 contraband, or whatever, they're going to do that. They're
21 going to do that. And I submit to you that a half inch beard
22 is not going to cause any significant increase in the flow of
23 weapons, or what have you, into the facility. It's been
24 established that corrections officers bring it in, it's
25 brought in through visitation. And at this point in time, at

1 visitation, you have to shave. So they're not transporting it
2 in a beard to get it out of the visitation room, they're
3 transporting it in there clothes or secreting it on their
4 person in a body cavity somewhere. So I believe that argument
5 shouldn't hold water either, because if you're going to hide a
6 weapon on you, the facial hair, if it's long, maybe, but
7 again, a half inch beard, I mean, come on, Your Honor, I mean,
8 it's -- it's preposterous, you know, to say that you have to
9 -- you have to cut this, but this up here, well, we don't
10 really have a policy about that, about the length of it, it
11 just has to be loose and neatly combed. You understand what
12 I'm saying?

13 So I'm asking you take all this into consideration
14 and look at it for what it really is, for what this policy
15 really is about. And I would ask you to continue the
16 injunction as it applies to me, as it applies to me at this
17 point, allow me to continue to grow a half inch beard. And
18 whether I'm an inmate or not, I'm still a man, I'm still a
19 Muslim, and these people have not shown that I've been
20 deceptive in any way, and when I give my word as a Muslim, I
21 fear Allah that much to tell you that I'm not going to do
22 stuff like this. I may have a life sentence, but I do have
23 something to lose. I do have something to lose because all of
24 my appeals, Your Honor, haven't run out yet. I could still
25 face freedom. You understand what I'm saying? And I'm not

1 trying to jeopardize that with some -- with some foolishness
2 such as this. I'm doing this for my religious beliefs.

3 And the fact is nobody disputes that they're sincere.
4 That's something else you must weigh, the sincerity of that
5 belief. And I've given you -- I've given you Sunnah, I've
6 given you Hadith, there is no question that a Muslim is to
7 trim the mustaches short and leave the beard as it is.

8 Now, Ms. Cryer over here made reference to the fact,
9 well, I said that I would -- that I believe that the beard
10 should remain uncut. As I pointed out to you once before when
11 I was on the stand, the Hadith says that if you intend to do a
12 good deed and you don't do it, it's still credit to you as a
13 good deed. The fact of the matter is, is that I have made an
14 effort to comply with certain tenets of the religion as it
15 relates to the beard, and to do so, and to do that, I've been
16 willing to compromise. I've been willing to compromise as far
17 as the length goes. You understand what I'm saying? But I'm
18 still following the Sunnah of the Prophet Muhammad, sallallahu
19 alayhi wa sallam, and it stands uncontroverted because the
20 defendants have not chosen to answer it.

21 And I ask that you allow the injunction to remain in
22 place.

23 THE COURT: Thank you, sir.
24 Rebuttal?

25 MS. CRYER: I do, Your Honor. I'm going to start

1 with the last one. Inmate Holt says that he has stated for
2 us, and that it is cited throughout his religion, that if you
3 intend to do a good deed, but that you're not able to, that
4 it's okay. That's exactly the argument that we have made
5 today, Your Honor.

6 Mr. Holt says that he intends to do the good deed by
7 trying to let his beard grow. The Department of Correction
8 says no, he should not be allowed to do it. According to his
9 own reasoning that he just got finished explaining to this
10 Court, that should be okay, according to his religion and
11 according to everything that he's stated today, according to
12 him, that should be okay.

13 Mr. Holt said that the growing the half inch beard
14 only applies to him and if the Court is allow -- to allow the
15 temporary restraining order to continue with the order, that
16 it would only apply to him. I refer the Court to docket entry
17 number 44, which was filed on November 17th, 2011 by inmate
18 Holt, in which it is his second motion for leave to amend, in
19 which he is seeking to add a number of other inmates into --
20 into the case. So, clearly, he's not seeking for this order
21 or for anything in this case to simply involve just him.

22 He makes reference, Your Honor, and argues the
23 *Mayweathers* case out of the Ninth Circuit. Your Honor, in
24 looking at page six of 11 of that case, it states that:

25 "Defendants assert that the

1 grooming regulations are necessary
2 to identify inmates for the
3 purpose of preventing escapes and
4 controlling movement within the
5 prison. Defendants also submit
6 that the beard of any length
7 changes the appearance of a
8 prisoner and compromises the
9 process of identifying inmates or
10 escapes and that officers need to
11 quickly identify inmates to
12 prevent assaults, riots, or
13 disturbances."

14 I don't believe, Your Honor, that the *Mayweathers*
15 case addressed anything with regard to contraband and the
16 possible carrying and continuing on of contraband being passed
17 from one inmate to another, from it being passed down the
18 hall, as well as the security concerns, even the health
19 concerns with regard to the officers who may have to check it.
20 There is absolutely no dispute that unfortunately contraband
21 does exist within any prison setting.

22 I do think that it's reasonable for the defendants to
23 at some point have to say -- or for the department to say at
24 some point we have to stop here, we have to limit what can be
25 done. Inmate Holt wants a half inch beard. What's next?

1 Another inmate comes in and says I need a one inch beard.

2 Another one comes in and says that I need a half and a -- a
3 one and a half inch beard.

4 And, Your Honor, I know that inmate Holt has made
5 reference to a violation of the policy and that he could catch
6 a disciplinary for not complying with the policy. That's
7 correct, Your Honor, he can, but that's also true for any rule
8 violation within the Department of Correction. It is not
9 simply restricted to the grooming policy.

10 And lastly, inmate Holt made reference, too, that he
11 is not deceptive, that he has not tried to deceive anyone.
12 Well, Your Honor, he may not as of this point -- in his one
13 and a half years within the department, he may not have tried
14 to or have deceived anyone that we're aware of. However, Mr.
15 Holt's own behavior with regard to just recently the behavior
16 that he exhibited towards the inmate barber who cut the hair,
17 according to him, too short, which inmate Holt said that they
18 were then at war, and yet he said that can be interpreted in
19 many different ways, I'm not sure how else to determine or
20 decipher the phrase "at war." So while he may not be
21 deceptive, he clearly is showing tendencies, for a better
22 phrase, not being able to get along with others. That does
23 create security concerns throughout the department and it will
24 continue to create security concerns throughout his
25 incarceration with the Department of Correction.

1 THE COURT: Response, Mr. Muhammad?

2 THE PLAINTIFF: Again, I refer back to the decision
3 in *Mayweathers* that the defendants just finished referring to.
4 They may not have -- we don't exactly know all the reasons the
5 California Department of Correction had for having the
6 grooming policy. The main one here that was addressed was
7 about altering your appearance in the event of an escape.

8 And if you look at page six of that particular
9 decision, under the compelling interest, least restrictive --
10 least restrictive means, the district court in that case, and
11 they cited some other cases that dealt with it out of
12 different circuits, the Second Circuit, District of Arizona,
13 and things of that nature, they were arguing in this case, and
14 in fact the defendants have argued here today about altering
15 appearances. They have gotten up here and said that, that
16 they were concerned about this type of thing. So I go back to
17 this, and which if I may, Your Honor, read -- read here what
18 was said in this -- in this order handed down by the Ninth
19 Circuit, and it says that:

20 "Defendants' rationale that an
21 inmate with a beard can more
22 easily alter his appearance after
23 he escapes is not persuasive.
24 Common sense and experience
25 recognizes that a prisoner may not

1 only shave, but alter his
2 appearance in any number of ways
3 to evade authorities after escape.
4 Moreover, while it is plausible
5 that altering a six inch beard or
6 cutting very long hair may assist
7 an escapee to elude capture, I
8 must agree with Judge Strand that
9 shaving a half inch beard likely
10 cannot."

11 And then it cites *Luckette v. Lewis*, and which it
12 said:

13 "Prison officials do not meet
14 their burden of demonstrating a
15 compelling interest for not
16 allowing a short, kempt beard."

17 In *Fromer v. Scully*, they also cite this case, as
18 well:

19 "It is certainly not irrational to
20 believe that a full beard, which
21 may well extend for significant
22 lengths sideways from the cheeks
23 as well as downwards from the
24 chin, may impede identification
25 more than a one inch beard."

1 And as Magistrate Judge Moulds concluded:

2 "When it comes to changing ones
3 appearance through the growth or
4 removal of hair, this court finds
5 that not all beards are equal."

6 You understand what I'm saying? And this here, he
7 specifically addresses some of their concerns that they got up
8 on that stand and told you today, altering appearances. It's
9 -- I don't want to be in any way disrespectful to these men,
10 but at times it sounds like they're changing horses in
11 midstream because, at first, their first argument was,
12 throughout the Administrative Remedy process, that hiding
13 weapons or contraband in the facial hair is the reason -- the
14 reason that inmates are not allowed to grow their beards in
15 the Department of Correction. Now we're hearing stuff about
16 altering appearances. Now we're hearing --

17 THE COURT: Well, Mr. Muhammad, I didn't perceive
18 that. I perceived that to be a two pronged approach on what
19 they said it was. It was both of those reasons, which, I
20 mean, it frankly is a problem for you, Mr. Muhammad, because
21 that's what the *Fegans* court analyzed. I mean, I understand
22 the Ninth Circuit rejects the alteration of appearance point,
23 but, you know, *Fegans* partially hangs its hat on that issue.
24 So, I mean, I don't -- I've got to study up on it a little bit
25 more here in a minute, but it seems to me that *Fegans* says

1 it's -- it's the risk of contraband and it's the risk of being
2 able to alter your appearance should you escape. I mean, like
3 I say, I understand that's what the California court in the
4 Ninth Circuit have held, but, you know, that's in
5 contradiction to what the Eighth Circuit has held. The Eighth
6 Circuit is more persuasive in this court.

7 THE PLAINTIFF: I understand that. What I'm saying
8 is this, when it's all said and done, the fact that requiring
9 people to cut their beards is not going to dramatically alter
10 the flow of contraband into the prison. It's not going to.
11 They even said the past six years it's been coming in an
12 increase in it. Having a beard is not going to cause that
13 increase any more than what it already is.

14 And you heard testimony that a quarter inch beard can
15 be grown the same way, it can be some on one -- one, on one
16 person, and different on another. The same for a half inch
17 beard. If one can be, they both can be.

18 You heard testimony that a thick mustache could hide
19 some contraband in it, but they're not required to shave the
20 mustache off. What I'm saying is, if -- if we're going -- for
21 consistency's sake here, I mean, let's look at it for -- for
22 what it is.

23 THE COURT: This is supposed to be rebuttal, I want
24 you to stick to -- if you've got anything else, you've made an
25 argument already and you're kind of going back to making

1 another argument. It's --

2 THE PLAINTIFF: I understand, Your Honor.

3 THE COURT: Okay. I hear your points, Mr. Muhammad,
4 and they're good ones. And so I've got to go and get my
5 thoughts together and let you know where I'm coming from.

6 THE PLAINTIFF: There is one other argument I want to
7 address that Ms. Cryer made. She made the comment regarding
8 the fact that about the -- the injunction applying just to me
9 at this point. First off, the Court hasn't ruled on class
10 certification. It had --

11 THE COURT: Let me speak to that right now, Mr.
12 Muhammad, because it seems to me that these are individual --
13 and again, that was a mistake I made, was, you know, these are
14 individual cases, and I think the court in *Fegans* requires me
15 to individually look at the cases. I mean, the testimony may
16 be exactly the same, but it may not be. And so, my reading of
17 *Fegans* and my preparation for coming out here today leads me
18 to conclude that, you know, it would be improper to let
19 defendants [sic] add on to your case. Your case is a
20 particular case and I think the analysis has to be on each
21 particular claim. So I think that those defendants [sic] are
22 going to have to file their own cases. And I understand that,
23 you know, some of them may be similarly situated, some of them
24 may not be. I think that was the argument in response, was
25 that they may not be. But I think that they're going to have

1 to file them independently.

2 Yes, ma'am?

3 MS. CRYER: You just said defendants. I wanted to
4 make sure --

5 THE COURT: I'm sorry. Plaintiffs.

6 MS. CRYER: -- we're talking about --

7 THE COURT: I'm sorry. Yes, ma'am.

8 MS. CRYER: I just wanted to make sure. Thank you.

9 THE COURT: Plaintiffs.

10 MS. CRYER: Thank you.

11 THE COURT: So I'm pretty sure I'm going to have to
12 deny your request for these additional defendants [sic] to
13 come in, because I think they're going to have to plead their
14 own cases and we're going to have to look at them
15 individually, because that's -- that's how I read *Fegans*, and
16 the law, you know, the RLUIPA is a case by case analysis, and
17 it's -- again, it kicks the burden back to the defense to say
18 here are our legitimate penological aims here, and then, you
19 know, again, as you point out, is that the least restrictive
20 means to the ends that they're trying to achieve.

21 THE PLAINTIFF: I would say then that the only -- the
22 major difference between myself and *Fegans* is, again, I'm not
23 arguing an unrestricted hair growth, unrestricted beard
24 growth. I can understand where the state would have a
25 security concern with that. I agree with that.

1 We're talking about a half inch beard. And that's --
2 that's what I --

3 THE COURT: And I hear your point loud and clear and
4 it's a good one.

5 THE PLAINTIFF: Thank you, sir.

6 THE COURT: All right. Well, if you all will give me
7 just a few minutes and I will come back with just some
8 preliminary findings. And then, obviously, you know, the way
9 it works is whatever ruling I make, it goes to Judge Miller
10 for his adoption or rejection, and then you all would have a
11 chance to, you know, respond to my ruling, and then he
12 ultimately gets the say so, and then you would have a right to
13 appeal his ruling.

14 Yes, sir?

15 THE PLAINTIFF: Can I ask you one question?

16 THE COURT: You may. You all be seated, please.
17 Please have a seat.

18 THE PLAINTIFF: Depending on how you rule, if this is
19 -- if this is a recommendation to send to Judge Miller,
20 correct, what would be the binding ramifications of it at this
21 -- at this point in time, if it's up to Judge Miller to accept
22 or reject, and he would have the ultimate say, what would be
23 the binding, at this point in time, between now and when he
24 makes a ruling on it, where would that stand? That's all I'm
25 asking.

1 THE COURT: Well, I'll address that, Mr. Muhammad.
2 I'll address that. All right?

3 THE PLAINTIFF: Okay. Okay.

4 THE COURT: All right. You all rest easy, please,
5 I'll be back in a few minutes.

6 (Recess.)

7 AFTER RECESS

8 THE COURT: All right. We're back on the record.

9 And Mr. Muhammad, Ms. Cryer, you know I did a lot of
10 research before coming out here because I think this is a
11 pretty -- pretty close call in this case and I think the case
12 law right now as it stands is, you know, somewhat in a state
13 of flux with specific regard to beards, with what happened in
14 the Ninth Circuit and then this Eighth Circuit case with the
15 dissent from Judge Melloy makes it pretty interesting.

16 But for today, I'm to consider four factors. One,
17 the threat of irreparable harm to you, Mr. Muhammad, if I
18 don't grant your request for an injunction. The state of
19 balance between the harm and the injury that granting
20 injunction will inflict on the other party litigants. The
21 probability that you will succeed on your merits. And the
22 public interest. So those are the four factors for the
23 immediate issue.

24 You know, Mr. Muhammad, I don't think it would be
25 irreparable harm to you if you were forced to comply with the

1 grooming procedure until you were ultimately to win, if you're
2 able to do so, so I think that probably favors the defense.
3 Although I do understand -- you know, your religious
4 principles are not lost on me, and the issues that you've
5 raised; however, as you stated yourself, and you admit that,
6 you know, the fact that you're willing to try to do right by
7 your religious principles, you still get credit for that. And
8 certainly, you have done a lot. You've been very effective in
9 this case. And today, you know, your arguments are right on
10 point and, you know, you have -- you have done great things in
11 order to achieve your ends on being able to grow your facial
12 hair. So you should, obviously, get big credit for that in
13 your religion, because you have done a good job.

14 In the state of harm and the injury in granting what,
15 in granting it -- what granting injunction could inflict on
16 the other party litigants, and then I think that also goes
17 with the probability of succeeding on the merits, and that's
18 where I really think the -- the issue lies, or the most
19 important part of this case is, are those two factors. And it
20 ultimately has to do with the concepts of safety, security,
21 good order and discipline. The fact that I am obligated to,
22 by Supreme Court law, and the other precedent out there, to
23 give deference to prison officials in running prisons, and the
24 fact that the *Fegans* case is from the Eighth Circuit and is
25 very, very closely on point, and you've done a good job, Mr.

1 Muhammad, of distinguishing the fact that you want the half
2 inch, that *Fegans* was arguing for a more -- more freedom in
3 growing his beard, but the principles are still the same. The
4 principles are, as I said, deference to the prison officials
5 if they're able to state legitimate penological needs. And I
6 think they have done so. And I think they've done so, and I
7 think that when you look at *Fegans* with the facts in this
8 case, and ultimately, the analysis that the Eighth Circuit,
9 the majority, used in order to come to the conclusion that
10 they did, it's really -- I'm really constricted by that -- by
11 that holding. Okay. Mr. Muhammad, and the holding is that
12 they're able to come in, they're able to articulate reasonable
13 security issues. You know, albeit looking at you and your
14 beard, and as your Ninth Circuit case says that not all beards
15 are alike, or maybe that was a district court case, you know,
16 I look at your particular circumstance and I say, you know,
17 it's almost preposterous to think that you could hide
18 contraband in your beard, but there's a bigger picture here,
19 and I think that the law is that they get deference, and if
20 they're able to articulate that there is a concern, and even
21 the *Fegans* case says it doesn't have to be that the concern
22 has actually materialized. Okay? It's a -- it's a concern
23 based on their experience and their knowledge, which is pretty
24 particular, and in this case here we've got more than 60 years
25 of prison experience, starting from the ground, all the way to

1 the top.

2 And so, I do give -- I do give credit to their
3 testimony. I was impressed by Mr. Harris with the SIM card
4 and I do -- I'm very aware of the issue of cell phones and the
5 fact that the SIM card is a very important piece of the puzzle
6 when talking about smuggling in cell phones and SIM cards into
7 prison. And it's a very -- a very well made point that I
8 think I have to consider strongly in their favor.

9 The good order and discipline. You know, again, I'm
10 not in the prison administration business. They've
11 articulated legitimate reasons to state that it is actually
12 necessary to have this grooming policy.

13 And also, Mr. Muhammad, you know, you bring up the
14 point, and it's a good one, that is it the least restrictive
15 means. And *Fegans* squarely addresses the -- it's the exact
16 same testimony, it's the exact same analysis, and so while you
17 make a really good argument, Mr. Muhammad, I -- I am very much
18 constrained by the holding in *Fegans*. I think that I would
19 be, you know, not doing my job if I didn't apply *Fegans* as
20 persuasive authority that tells me exactly what I have to do
21 in this case. And I could look to the Ninth Circuit case
22 because, you know, the Ninth Circuit case goes your way, and
23 it comes up with a very different conclusion, but that's not
24 my job; my job is I've got to hold with the Eighth Circuit.
25 And until they say otherwise, I'm constricted by that holding.

1 All right.

2 And again, I mean, not that I -- I'm not trying to
3 say here that I am in disagreement with the holding in *Fegans*,
4 because I do believe, again, as I came out here straight out
5 and said that, you know, I find myself in a very difficult
6 position in a case like this because, you know, it is not my
7 expertise and I am not in a good -- I'm not a good person to
8 be asked to get involved in prison administration, and so I do
9 agree that the defense here has brought up legitimate points,
10 they are well taken.

11 And let me also say that one of the other points on
12 *Fegans* was the -- the being able to alter your appearance
13 should you escape. And that's why I asked you, Mr. Muhammad,
14 I felt like what they said was that it's not just the one
15 point, the smuggling contraband, it's both points. And I
16 think that is an important point. While the court in
17 California rejected that, I disagree with that. I think that
18 that is a very legitimate concern and it's been well
19 articulated by the defense.

20 And so, I'm going to find that based on those two
21 factors in *Fegans* that the likelihood that you could win this
22 case on its merits, given that precedent, it's unlikely, and,
23 therefore, I should deny your motion for injunctive relief at
24 this time.

25 Now, you asked a point, Mr. Muhammad, and I want to

1 address it, you know, where does that -- basically, where does
2 that leave you today? What I will order is that nothing
3 change from what's already occurred. What I will do is I
4 will, as quickly as possible, enter a written order saying
5 what I've just said. And it will go up to Judge Miller. You
6 will have an opportunity, Mr. Muhammad, to object to anything
7 I say in writing. And we'll give you instructions -- you know
8 how it works. And, Ms. Cryer, you can also object or
9 supplement or whatever you want to do. And then Judge Miller
10 will have the ultimate say so in how he wants to proceed,
11 because ultimately he has this case, and as it proceeds, you
12 know, and he may reject my conclusions and you may be in good
13 business -- in good stead with your injunction for the future.
14 But those are my findings, Mr. Muhammad, and I will enter a
15 written order saying so. All right.

16 Yes, sir?

17 THE PLAINTIFF: There's one thing I wanted to
18 address. As part of that injunction, it stated that in my
19 petition -- because this is something that's become a real
20 issue with me there at the penitentiary, at Cummins Unit, that
21 -- that the defendants be banned or barred from transferring
22 me to another institution in retaliation for this litigation.
23 It's a common tactic ADC uses to disrupt litigation. You
24 understand what I'm saying? And I'm asking that that be
25 entered -- that that be -- that that part still be specified

1 in the order, because that was part of Judge Miller's --

2 THE COURT: I'm going to just say whatever Judge
3 Miller has ordered remains in effect and will remain in effect
4 because he has the ultimate say so, so I don't know what's in
5 that order. But, Ms. Cryer, do you want to speak to that? I
6 mean --

7 MS. CRYER: Your Honor, I was just going to say, I
8 mean, we will -- we will comply with whatever the order says.
9 My understanding is the order refers to the department, not
10 just to the Cummins Unit. I don't think there's -- I'm not
11 aware of any talk or anything about transferring Mr. Holt to
12 another institution. I don't see how that helps us to do
13 that. The case doesn't go away if he's transferred and
14 currently there is a pending -- there's an order still in
15 effect, so. And I -- yeah.

16 THE COURT: Yeah. Like I said, whatever Judge Miller
17 previously ordered remains in effect. I'll enter my order,
18 like I said, as quickly as possible to get this thing resolved
19 for some finality, at least for now. All right. Any other
20 points, Mr. Muhammad?

21 THE PLAINTIFF: No, sir.

22 THE COURT: All right. Ms. Cryer, anything?

23 MS. CRYER: No, Your Honor.

24 THE COURT: All right. Well, we'll be adjourned.

25 Thank you all.

1 THE PLAINTIFF: Thank you.

2 MS. CRYER: Thank you.

3 (Adjournment at 12:46 p.m.)

4 ELECTRONIC SOUND RECORDING CERTIFICATION:

5 I, court approved transcriber, certify that the foregoing is a
6 correct transcript from the official electronic sound
7 recording of the proceedings in the above-entitled matter.

8

9 /s/Robin Warbritton November 25, 2013
Signature of Approved Transcriber Date

10

Robin Warbritton
11 Typed or Printed Name

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