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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

ERNESTO LIRA,)
)
 Plaintiff,)
)
 VS.) NO. C 00-0905 SI
)
 MATTHEW CATE, SECRETARY OF THE)
 CDCR, IN HIS OFFICIAL CAPACITY,)
)
 Defendant.) San Francisco, California
 Tuesday, January 13, 2009

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Also Present: ERNESTO LIRA
GREG WALSH
AIDA ALBANO

Reported By: Belle Ball, CSR 8785, RMR, CRR
Official Reporter - US District Court

1 **TUESDAY, FEBRUARY 3, 2009**

2 **8:39 A.M.**

3 **P R O C E E D I N G S**

4 **THE COURT:** Mr. Feudale?

5 **MR. FEUDALE:** Yes, Your Honor. A couple of quick
6 housekeeping matters, before I call my witness, if that's all
7 right.

8 One thing I just wanted to correct for the Court,
9 I -- when we spoke a few days back about what the law is, and
10 what it requires and disputed issues of fact, I realized I
11 misspoke in response to a question Your Honor provided.

12 The question was whether an inmate was required to
13 meet with the IGI before submission of a validation package. I
14 confirmed through research, and this largely comes from the
15 *Madrid* and *Toussaint* cases, the inmate must meet with the IGI
16 before segregation, not before submission of the package.

17 So I know there is a two-year span here between when
18 Mr. Lira was segregated and when he was initially -- the
19 package was compiled, so it may have some bearing on that.

20 **THE COURT:** Say that again.

21 He has to have a meeting with the IGI --

22 **MR. FEUDALE:** -- before segregation, instead of
23 before submission of the validation package to SSU.

24 **THE COURT:** And, in this case, it happened which way?

25 **MR. FEUDALE:** Well, the initial meeting with the IGI,

1 in this case, is unclear whether it happened to the two initial
2 gang investigators, Mr. Covello and Mr. Smith, but it
3 definitely happened by 1998 with Mr. Piland, which would have
4 been after segregation.

5 **THE COURT:** After segregation.

6 **MR. FEUDALE:** After segregation, yes.

7 **THE COURT:** And you are -- you just said he's
8 supposed to meet with them before segregation.

9 **MR. FEUDALE:** Correct. But the discrepancy I want to
10 clear up for the Court is -- is required before the submission
11 of the package. So had Mr. Lira met with the IGI say, at DVI,
12 before he was put in segregation, that would have been
13 sufficient under the law, instead of having to meet with the
14 investigators at Sierra in 1993.

15 So there are a few years in there that wouldn't have
16 been an issue. Not sure if that means anything, I just want to
17 make sure we are clear on the law.

18 **MR. WHITE:** Well, with all respect, I don't believe
19 defense counsel even now is clear on the law. We disagree with
20 this characterization of it. Both *Toussaint*, Roman IV, and the
21 *Madrid* case, and many, many other cases from this District,
22 recognize that the Fourteenth Amendment mandates, as part of
23 the minimal due process, entitlement of an inmate targeted for
24 prison-gang validation and indefinite SHU confinement,
25 potentially for the balance of his sentence, he is entitled at

1 least to an informal hearing before the IGI at the facility
2 where this validation process has been initiated and is
3 ongoing. And that hearing has to take place before the
4 validation is completed. Otherwise, his opportunity to be
5 heard, as we've heard from many, many witnesses here in the
6 course of this trial, turns out to be essentially meaningless.

7 We will be briefing this law in our post-trial
8 briefing, Your Honor, but I just wanted to make clear, again,
9 our view of the governing law here. I think Mr. Feudale isn't
10 correct.

11 **THE COURT:** All right.

12 But I appreciate, if you think you misspoke before,
13 that you've cleared up whatever you have said, and in the end,
14 I'll read everything that you submit to me.

15 **MR. FEUDALE:** Of course.

16 **MR. WHITE:** Thank you.

17 **THE COURT:** So, are you ready?

18 **MR. FEUDALE:** I am, Your Honor.

19 **THE COURT:** Do you have any sense how long this
20 witness will take?

21 **MR. FEUDALE:** I'm hoping to have it wrapped up by
22 noon or 12:30 today, Your Honor, if that's possible.

23 **THE COURT:** Okay. I need to break at 10 after 12:00
24 for lunch.

25 **MR. FEUDALE:** Okay.

1 **THE COURT:** So, if you can be expeditious, we can
2 complete it before then, but if we haven't completed it by
3 then, I need to break at that time.

4 **MR. FEUDALE:** Okay. I'll keep that in mind, Your
5 Honor.

6 **THE COURT:** Okay. So I'll try not to interrupt and
7 you can just Zip right along, how's that?

8 **MR. FEUDALE:** Sounds great.

9 **THE COURT:** Okay.

10 **MR. FEUDALE:** At this time, the Defendant would like
11 to call Robert Marquez to the stand.

12 (Witness placed under oath)

13 **THE CLERK:** Please state your full name for the
14 Record.

15 **THE WITNESS:** Robert Marquez. M-A-R-Q-U-E-Z.

16 **THE CLERK:** Thank you.

17

18 **ROBERT MARQUEZ,**

19 called as a witness for the Defendants herein, having been
20 first duly sworn, was examined and testified as follows:

21 **DIRECT EXAMINATION**

22 **BY MR. FEUDALE:**

23 Q Good morning, Agent Marquez.

24 A Good morning.

25 Q Agent Marquez, you have been retained as an expert in this

1 case by Defendants.

2 Is that correct?

3 A That's correct.

4 Q And what was your task in this case?

5 What were you retained for?

6 A I was asked to review several documents related to
7 Mr. Lira's validation and form an opinion and prepare a report
8 for you.

9 Q And have you formed that opinion?

10 A Yes, I have.

11 Q And we will get into that in a second, but before we do,
12 let me ask you some background information.

13 When did you first begin working for the California
14 Department of Corrections?

15 A September, 1986. I attended the basic officer academy.

16 Q And, did you receive any gang training in the academy?

17 A Yes, I did.

18 Q What types of training did you receive there?

19 A We received training on prison gangs, street gangs, and
20 how they related to what we were doing as correctional
21 officers.

22 Q What was your first position after you graduated from the
23 academy?

24 A October of '86, I reported to the California Correctional
25 Institution, otherwise known as Tehachapi.

1 Q And what did you do at Tehachapi?

2 A I worked at Tehachapi from October of '96 until February
3 of 1991, as a correctional officer.

4 But, specifically as it relates to this case, for two
5 years I was assigned to the security housing unit, or SHU,
6 where we housed inmates who are validated as associates or
7 members of prison gangs, and also those inmates who, due to
8 their behavior, have been placed there.

9 Q Did you gain any particular knowledge working in that
10 capacity with respect to prison gangs?

11 A Yes, I did. Firsthand knowledge.

12 I was assigned as a housing-unit floor officer and dealt
13 with gang members on a regular basis.

14 Q What was the next position you held after working at
15 Tehachapi?

16 A February, '91, I transferred over to Wasco State Prison,
17 which is a reception center. But while I was there, as it
18 relates to this case, I was assigned to the Administrative
19 Segregation Unit for approximately two and a half years.

20 And, although I was an officer and there was a supervisor
21 there in charge of the unit, for all intents and purposes, I
22 basically ran the unit.

23 Q What did you do in that capacity?

24 A Again, Administrative Segregation is utilized to house
25 prison-gang members and associates, those pending validation as

1 such, and those inmates who have issues related to their
2 behavior or their safety concerns.

3 Q What was the next position you held after working at
4 Wasco -- is that what you said?

5 A Correct.

6 I believe it was June of 1997, I promoted to Correctional
7 Sergeant at North Kern State Prison in Delano, and I was
8 assigned to the Administrative Segregation Unit as the
9 supervisor in charge of the unit.

10 Q Were gang members housed in that unit?

11 A Yes, they were.

12 Q And, what were your responsibilities as Sergeant there?

13 A One, I oversaw the supervision of -- I believe about eight
14 to ten officers, but also, overall responsibility for that unit
15 for the safekeeping of the inmates that were housed there.

16 But, more importantly, I did interviews with inmates as
17 they would come in, so that I could attend ICC hearings and
18 have input as to what types of yards and what type of housing
19 would be appropriate for them, based on their gang affiliation
20 or their needs.

21 Q And what was the next position you held after you worked
22 at North Kern?

23 A In June of 2000, I transferred to Pelican Bay State Prison
24 as a Correctional Sergeant. I worked the general population
25 there and also the Administrative Segregation.

1 In March of 2001, I promoted to Correctional Lieutenant.
2 I was in charge of the Administrative Segregation Unit there at
3 Pelican Bay.

4 And then, in June of 2001, I was assigned as the
5 Institutional Gang Investigator/Security Squad Lieutenant.

6 Q Let me focus on your responsibilities as the Institutional
7 Gang Investigator. And when I refer to that as IGI, will you
8 understand what I'm saying?

9 So what were your responsibilities as an IGI?

10 A Well, as the IGI, my primary responsibility was to conduct
11 investigations regarding the gang affiliation of the inmates
12 that were there at Pelican Bay. Also, to facilitate
13 investigations as it related to the inmates there at Pelican
14 Bay, I was the liaison with outside law enforcement.

15 Another priority, or a responsibility, was for training
16 there, locally at the prison and outside of the prison. Some
17 of the examples of the training that I did, I did training for
18 Humboldt State University; Southern Oregon University; College
19 of the Redwoods, in Eureka; Rogue River Community College,
20 Southwest Oregon Community College; to their criminal justice
21 programs.

22 Q Did that involve instruction on gangs, prison gangs?

23 A Yes, it did.

24 Q Now, as part of the -- your responsibilities as the IGI,
25 were you involved in the validation process?

1 A Yes, I was.

2 Q Could you describe for the Court what your role was in the
3 validation process.

4 A Well, basically, as the IGI, you're conducting
5 investigations, you're responsible for those investigations as
6 it relates to the affiliation of the individual inmate.

7 Those investigations are initiated in a number of
8 different ways. One could be through the ICC. An inmate could
9 go to an ICC or a UCC, and information comes out, and that
10 information is then forwarded to the Gang Investigations Unit,
11 where we're informed, "Hey, there's information in the guy's
12 Central File," or there was something said in the
13 classification hearing that warrants you taking a look at it,
14 to determine what his gang affiliation is.

15 One of the things that we did was look at incoming and
16 outgoing mail. An investigation may start based on what we
17 observed in incoming or outgoing mail, as to an inmate's gang
18 affiliation.

19 An investigation may begin with --

20 **THE COURT:** Excuse me.

21 **THE WITNESS:** Bless you, Your Honor.

22 An investigation may begin as a result of information
23 received from a confidential informant.

24 So there's any number of ways that the investigation
25 may begin, but ultimately I'm responsible for those

1 investigations.

2 **BY MR. FEUDALE**

3 Q And, what did the validation process comprise of?

4 What did you have to do as an IGI, once you had undertaken
5 your investigation?

6 A A number of things.

7 One, we are compiling evidence and collecting evidence,
8 whether it be the mail, whether it be the --

9 **THE WITNESS:** Bless you.

10 -- the review and photograph of tattoos on the
11 inmate; looking at visitor lists, who's visiting different
12 people; reviewing audio or videotapes from the visits.

13 We're looking at a number of different criteria.
14 Those, the criteria that we look at are all outlined in the
15 California Code of Regulations, Title 15 -- let me know if I'm
16 talking too fast, will you -- Section 3378, and there's
17 thirteen different criteria that we look at, as far as
18 independent sources of information that we might use in that
19 validation.

20 **BY MR. FEUDALE:**

21 Q And what type of criteria are those, off the top of your
22 head?

23 I won't ask you to name all thirteen.

24 A Okay.

25 One would be a self-admission, where the inmate would tell

1 us that he is, in fact, part of the gang.

2 One would be tattoos and symbols.

3 One would be written material. Written material would
4 consist of, like, constitutions, rules, different -- different
5 things that are specific to the gang that are written,
6 communications, which could be from the phones, from the mail,
7 any way that they communicate, visitors.

8 And when I talk about visitors, sometimes we have visitors
9 that will come to Pelican Bay, visit with an inmate there, and
10 leave and go to other prisons and disseminate the information
11 that they received from Pelican Bay to the other prisons.

12 Legal offenses. We look at stuff like the information
13 contained in the Probation Officer's report, in the abstract of
14 judgment. We are looking at offenses, different things that
15 the inmate may have been found guilty for or have been
16 documented to have done.

17 Informants. Debriefs. Photographs. I think that pretty
18 much covers the -- a good section of that.

19 Q Do you rely on information from agencies outside the
20 Department?

21 A Yes, we do.

22 Q Now, as part of the process, did you interview inmates?

23 A Yes, I did.

24 Q And, approximately how many inmates do you think you
25 interviewed while you were in IGI there at Pelican Bay?

1 A At least a thousand.

2 Q And how many of those interviews did you conduct with gang
3 members or dropouts from the Northern Structure prison gang?

4 A At Pelican Bay, I would say at least a fourth of those,
5 about 250.

6 Q About 250?

7 A Correct.

8 Q Now, have you provided testimony in court as an expert on
9 gangs before?

10 A Yes, I have.

11 Q How many times have you done that?

12 A Twice.

13 I have been qualified in Del Norte County Superior Court,
14 once in Tehama County Superior Court. And, although I didn't
15 go through the voir dire process in Federal Court, it was
16 accepted by the Court here recently, in the Florencia RICO
17 indictment, where I was qualified as an expert.

18 Q Now, I'm going to ask you questions about your current
19 position as Special Agent with the Office of Correctional
20 Safety.

21 When did you start that position?

22 A December of 2004.

23 Q And, before we go into it, what is OCS?

24 What does the Office of Correctional Safety do?

25 A The Office of Correctional Safety is kind of the parent

1 organization, but under that fall the Special Service Unit,
2 which I work for. Also under there are our gang debriefers,
3 our gang intelligence people, and the fugitive apprehension
4 team and our emergency operations people.

5 But basically, the Office of Correctional Safety, we're,
6 for lack of a better term, the police department for the
7 Department of Corrections.

8 Q As part of --

9 **THE COURT:** I didn't understand what that means.

10 What do you mean?

11 **THE WITNESS:** Well, what we do, in relation to what I
12 do as a Special Agent, I'm basically like a police officer on
13 the streets. I don't carry a caseload like a parole agent
14 would carry.

15 I have latitude to work cases that are of interest to
16 the Department, high-notoriety cases, gang cases, going after
17 escapees, and acting as a liaison between the Department of
18 Corrections and outside law enforcement.

19 **THE COURT:** Thank you.

20 **BY MR. FEUDALE**

21 Q Now, Agent Vasquez --

22 A Marquez.

23 Q Oh, I'm sorry, Jeez. Agent Marquez, I apologize for that.

24 As part of your duties with the -- with OCS, do you review
25 gang validations?

1 A Yes, I do.

2 Q Approximately how many gang validations do you review?

3 A Since my assignment as a Special Agent, I've reviewed
4 approximately a thousand validations. Currently, I have under
5 my purview high Desert State Prison; the California
6 Correctional Center, both in Susanville, California; Salinas
7 Valley State Prison in Soledad; and the prison in San Diego.

8 But, for about two and a half years, I reviewed all of the
9 gang validations coming out of Pelican Bay.

10 Q And how many of those validations that you reviewed have
11 been of Northern Structure associates or members?

12 A I would say about 300 of those.

13 Q When was the last time you reviewed a gang validation
14 involving an inmate associated or affiliated with the Northern
15 Structure?

16 A I reviewed three last week.

17 Q Now, in your capacity reviewing validations as an SSU
18 agent, have you ever found one to be insufficient?

19 A Yes.

20 Q How often has that happened?

21 A Hopefully -- you know, it doesn't happen too often.

22 When I first took over reviewing the validations for
23 Pelican Bay, there was a few that, after I left, we had some
24 new people go in, they weren't real familiar with the process,
25 so there were a few that I rejected and sent back to them.

1 And, over the course of the time that I have been doing
2 these, it's my responsibility to train the IGIs that I'm
3 reviewing their validations. So now we've got it to where,
4 very few.

5 But every now and then they still send stuff that, maybe
6 not the whole validation package is rejected, but individual
7 source items are rejected.

8 Q And, let's say that happens. You get a source item or a
9 package which you find is insufficient.

10 What do you do on such occasions?

11 A It depends. In one case, they may have insufficient
12 source items. I'll make a phone call and advise them of such,
13 and ask them, "Is there anything else that you can possibly
14 look at to, you know, conclude your investigation?"

15 If they say there is, I'll hold it, put it off to the side
16 and tell them, "Okay, go further your investigation and let me
17 know what you find out."

18 If there's no information, there's not any further
19 information, I leave it up to them, and I ask them, "Look, do
20 you want me to do a 128-B-2 and codify the source items that
21 you do have, although reject the validation? Or do you just
22 want me to send it back to you, and you guys can maintain the
23 documents and, you know, continue in the process?"

24 So it happens either way.

25 Q And, when was the last time, off the top of your head, you

1 rejected a validation?

2 A Outright rejected one?

3 Q (Nods head)

4 A Probably October or November.

5 Q Of 2007?

6 A No, 2008.

7 Q Of 2008.

8 Now, you mentioned investigations.

9 When was the last time you conducted a investigation
10 involving an inmate affiliate of the Northern Structure?

11 A I'm currently conducting one. There's two of them,
12 actually. I'm working a homicide case and an attempted murder
13 case involving Northern Structure gang members.

14 Q Now, there's been other testimony from gang investigators
15 that they have belonged to task force, throughout the state,
16 gang task force.

17 Do you belong to any such organizations?

18 A Yes, I do. I belong to the Humboldt County Gang Task
19 Force. I no longer participate with them, due to my location.
20 But I participate with the Shasta Anti-Gang Enforcement Unit,
21 or SAGE; I participate with the Tehama Area Regional Gang
22 Enforcement Team; and I'm part of the FBI Safe Streets Task
23 Force for Northern California.

24 Q Now, just a general question for you, Agent Marquez.

25 If you were to, say, take a sabbatical for six months from

1 your job, would you be current on gang activity?

2 Is it knowledge that kind of spans throughout time?

3 A No, it's not. I, personally, would not feel that I would
4 be current. And, the reason being is that -- and we kind of
5 joke around about that -- is that a lot of guys don't want to
6 promote out of the gang units or leave gang units because they
7 know that once they leave for a while, things are going to
8 change and they'll be out of the loop, so to speak.

9 But the methodologies that the gangs use change, their
10 codes change. Memberships, the standing of particular gang
11 individuals change from good to bad, bad to good. So, to be
12 out of a gang unit for a couple of months, you would be out of
13 the loop.

14 Q Let's say you were out of the gang unit for 30 years.

15 Would you say you would be out of the loop in that
16 circumstance?

17 A Absolutely.

18 Q Now, I'm going to ask you a little more direct questions
19 about your opinions on this case.

20 Do you have an opinion as to whether or not Mr. Lira was
21 appropriately validated as a Northern Structure associate?

22 A Yes, I do.

23 Q What's your opinion?

24 A I believe that the validation and the source items that
25 were used were correct. However, my own personal opinion is,

1 is that had I been the IGI, or had I been the SSU agent to have
2 reviewed the gang validation, I would have indicated that he
3 was a member, as opposed to an associate, of the gang.

4 Q Could you explain for the Court the difference between the
5 two?

6 A Well, it's outlined in the Title 15, a member is somebody
7 that has been accepted into the membership of the gang, whereas
8 an associate is somebody who does things for the gang,
9 associates with the gang, but isn't recognized by the
10 individual gang as a member.

11 And, in this case, the documents that I reviewed, the
12 three independent source items, to me, spoke of his membership,
13 based on what -- the information contained in those documents.

14 Q And, in reaching your opinion, what sort of documents did
15 you review?

16 You mentioned the three source items.

17 A I reviewed a debriefing report; I reviewed a 128-B, which
18 detailed the discovery of a drawing which contained Northern
19 Structure gang symbols; and I reviewed a 128-B, which basically
20 restated information from the Merced County Jail. There was a
21 Merced County Jail report --

22 Q How many debriefing reports did you review?

23 A In total, I reviewed two, but as it relates to the initial
24 validation, I reviewed -- there was one.

25 Q All right. Let's talk about those particular items you

1 reviewed. I'm going to turn your attention, if you grab
2 Plaintiff's binder, which is the gray, black binder there,
3 probably --

4 A Volume 1 or 2?

5 **MR. FEUDALE:** May I approach, Your Honor?

6 Probably 1, No. 1.

7 **BY MR. FEUDALE:**

8 Q Let me turn your attention, Agent Marquez, to Exhibit
9 No. 10, first of all.

10 **THE CLERK:** Is it empty? I'm sorry.

11 **THE WITNESS:** I'm ready.

12 **BY MR. FEUDALE**

13 Q Is that the 128-B you mentioned you reviewed?

14 A Correct.

15 Q And, let me turn your attention to Exhibit 6. Just flip
16 back.

17 Is that the outside agency report you referred to?

18 A That's the typed version, correct.

19 Q And, based on your review, what is -- well, is there any
20 gang significance in this document?

21 A Yes, there is.

22 Q What is that?

23 **THE COURT:** Which document? Both of them?

24 **MR. FEUDALE:** Both combined.

25 **BY MR. FEUDALE**

1 Q But let me focus your attention on Exhibit 6, actual typed
2 report.

3 What is the gang significance of that document?

4 A Well, there's a couple of things that I see. Number one,
5 there's a -- an individual named Juan Morales, who's in custody
6 in the Merced County Jail. He is a validated member of the
7 Northern Structure.

8 According to the written report of Officer Romero, there
9 seemed to be a -- some type of an emergency, where there was a
10 need to evacuate the facility and place northern Hispanics and
11 southern Hispanics on the same exercise yard, for their safety
12 from the incident that was happening inside the building.

13 According to the written report, once they're out there,
14 Lira, along with Juan Morales, the validated Northern Structure
15 member, and four other northern Hispanic inmates, approached
16 two southern Hispanic inmates.

17 And, according to the report, what the officer observes
18 warrants, in his mind, based on his experience, that there
19 appears that there's going -- there's possibly going to be a
20 gang-related fight between the northern Hispanic gang members
21 and the southern Hispanic gang members.

22 And that, according to this report, the northern Hispanics
23 surround the southern Hispanics, challenge them about their
24 tattoos and about their gang affiliation, which is consistent
25 with what I know to be gang behavior.

1 Q Why is that?

2 Can you explain to the Court why is that consistent with
3 gang behavior?

4 A Okay. One of the foundations, the foundational principals
5 and the way that gangs operate, they operate through fear and
6 intimidation. And they use fear and intimidation to have
7 influence and to have control over given areas, whether it's on
8 the streets, whether it's in individual jails or prisons.

9 One of the other gang activities that I'm aware of is that
10 gang members will often challenge people that they don't know
11 about their gang tattoos or gang affiliation to determine
12 whether or not they are a threat to them or whether they're an
13 ally.

14 So, in this case, you have six northern Hispanics approach
15 two people that they don't know, but assumed to be southern
16 Hispanic gang members, and challenge them about their status.

17 Again, it's about, you have a far superior number of
18 inmates going to a less superior number, you have the
19 intimidation factor which is, in my mind, the -- one of the
20 foundational characteristics of a gang, that they create fear
21 and intimidation. But then they are challenging them about
22 their gang status to determine whether or not they are a threat
23 or an ally.

24 Q Is there anything else that's significant in this report
25 of gang activity, just looking at it?

1 A In this report, the officer states that, to the officer
2 who wrote the report, makes this unsolicited comment about,
3 "You know, basically, you know what we're doing, we have to do
4 this because once we get to the prison system, basically we're
5 outnumbered, and they're going to do the same to us, the
6 southern Hispanics."

7 Q Who made that statement?

8 A Lira, according to the report.

9 Q And what is the significance of that statement?

10 What does that mean, in your mind, based on your training
11 and experience?

12 A Based on my training and experience, I know that southern
13 Hispanic gang members and northern Hispanic gang members are
14 enemies. And this goes all the way back to how the prison
15 gangs were formed back in the mid-fifties.

16 Would you like me to explain --

17 Q Oh, yes, please do.

18 A Okay. The very first prison gang that started was the
19 Mexican Mafia, in and around 1956, at DVI State Prison.

20 The Mexican Mafia started with the idea that, as a group
21 of Hispanics, they were going to protect Hispanics, promote
22 Hispanics, educate Hispanics, but also, be in the control of
23 the prison system. Because the thinking was, is that if you
24 can control the prison system, you can control the streets.

25 And how that works is that if you're a gang member on the

1 streets, gang members engage in illicit and illegal activities.
2 At some point, there's a high probability a street gang member
3 is going to go to prison. If you can control the prisons, then
4 you can control what the guys do on the streets because, at
5 some point, they are going to come to your backyard, they're
6 going to come to your house.

7 So, if they don't obey the edicts of the prison gang, from
8 prison, while they were on the streets, they are going to be
9 targeted, either on the streets or in prison.

10 When you have this group, the Mexican Mafia, they start,
11 there is no defining line that separates California with
12 northern Hispanics and southern Hispanics. It's about the
13 race. With the formation of this gang, a lot of the original
14 founders of the Mexican Mafia were from Northern California. A
15 lot of the founders of what then became the Nuestra Familia
16 were from Southern California. Because there was no dividing
17 line, there wasn't north and south.

18 So what happens, around 1962-63, the Mexican Mafia now is
19 basically in control of the prisons. They have the white
20 inmate population at bay, the black inmate population at bay,
21 they are controlling the prison system, but they're also
22 beginning to control the streets. Because gang -- gangs are
23 predatory in nature, they begin to prey on their own. And
24 there's a number of documented gang-related assaults where the
25 Mexican Mafia is actually targeting and assaulting the very

1 people that they said they were there to protect and promote
2 and help.

3 Out of that group comes the Nuestra Familia. These -- so
4 you have these members that come out of the Mexico Mafia.
5 There's actually two groups that come out of the Mexican Mafia
6 about the same time, it's the Nuestra Familia and the
7 Maravillosos, all of the Maravilla street-gang members.

8 So these two groups came out of the Mexican Mafia in the
9 early-to-mid-sixties. And their thinking was, is, "We joined
10 the Mexican Mafia to protect, to promote, to better our race,
11 control the prisons, control the streets, but now you've turned
12 on the very people you said you were there to protect."

13 So you have these two groups that come out of there. One
14 of those is the Nuestra Familia.

15 Although this transition is starting in the mid-sixties,
16 it is recognized through their own writings that their
17 birthdate is September 16, 1968. That's when they say they
18 actually became -- they were formed.

19 So, now you have this group that has come out to protect
20 the race. And, although the original leadership was from
21 Southern California, a lot of the original leaders, they now
22 were at war with the Mexican Mafia. They begin to recruit, the
23 recruitment base then becomes a lot of the northern Hispanic
24 population from the rural counties, and that's basically their,
25 where they're drawing their pull from, where the Mexican Mafia

1 is drawing their recruits from Southern California.

2 And it's during this time, this mid-sixties time, there's
3 a lot of documented violence, a lot of homicides, the Nuestra
4 Familia is responsible for killing one of the founders and
5 leaders of the Mexico Mafia. And so there's been this
6 back-and-forth war between these two groups, going all the way
7 back to the mid-sixties, which has never been resolved.

8 And so, when you see southern Hispanics and northern
9 Hispanics, while they may not necessarily be identified as
10 prison-gang people, the roots and the origins of that conflict
11 and that tension goes all the way back to the 1960s, between
12 the Mexican Mafia and the Nuestra Familia.

13 Q Could you explain how the Northern Structure prison gang
14 falls into that context?

15 A It's because of the violence that's taken place in the
16 prison, that prison officials decided the way to control the
17 violence is to segregate these -- this gang population.

18 With the Nuestra Familia segregated, the Mexican Mafia
19 segregated, they lose their influence on the general population
20 yards. So, in order to still maintain that influence, the
21 Nuestro Familia has this idea that, "We will start" -- and to
22 use a baseball analogy, single-A ball clubs in professional
23 baseball are your lowest-rung professional ballplayer, and I
24 would equate those to northern Hispanic street-gang members.
25 Your second rung is your AA baseball players, and those are

1 your guys that are the northern Hispanic gang members that have
2 come into the prison system, are getting educated, that are
3 participating in the gang activity and doing it on a far more
4 frequent and dedicated level. Those would be your AA
5 ballplayers.

6 Now, I would classify the Northern Structure as your AAA
7 ball club. Those are the guys that are right on the cusp of
8 becoming professional ballplayers, i.e., the Nuestra Familia.
9 And you'll see that in professional baseball, there is a lot of
10 interaction between the pro ball club and AAA, people go up, go
11 down, go up, go down, and it's kind of like that. The AAA ball
12 club is where the pro ball club recruits their membership from
13 and the players from, and the same with the NF.

14 They, the Northern Structure, was created for and by the
15 NF. Their inception date is documented to be January the 22nd,
16 1984, at Folsom State Prison. And it's from that group that
17 the NF pulls and draws its resources. But they are subordinate
18 to the NF.

19 Q Thank you, Agent Marquez.

20 Turning back to the report on Exhibit 6, now, you will
21 notice, and there's been testimony in this case, that there was
22 no incident of violence here. There's no blows thrown or
23 anything like that.

24 Does that have any significance to your opinion?

25 A No, it doesn't. Whether there were blows, whether there

1 was a physical altercation or not, doesn't negate the fact that
2 Lira acted in concert with a validated member of the Northern
3 Structure, and, with other northern Hispanics, approached a
4 rival gang for the purpose of intimidating them and challenging
5 them.

6 Q There's also been testimony from Mr. Lira that he was
7 merely a bystander, he was shooting baskets during this
8 altercation.

9 Based on your training and experience, as a gang
10 investigator, is that plausible?

11 A Plausible, no.

12 Could he have been playing basketball, could he have
13 thrown up a couple of shots with a ball?

14 Possibly. But the facts in this case are documented in
15 the report. Again, he, along with a validated member, other
16 northern Hispanics, approached rival gang members.

17 Q Now, I would like you to turn your attention to Exhibit 1.

18 (Request complied with by the Witness)

19 Q Have you seen this report before?

20 A Yes, I have.

21 Q And, does this report describe the same incident that we
22 were just referring to in Exhibit 6?

23 A Yes, it does.

24 Q Now, there's been testimony that this report, you know, if
25 you look at the date, was produced a year earlier than the

1 report under Tab 6.

2 Does that bear any significance, in your opinion?

3 A No.

4 Q Why not?

5 A Well, as far as the gang-related activity, they're the
6 same in the handwritten report and they're the same in the
7 typed report. The only difference being the unsolicited
8 statement, which is documented in the typed report. But the --
9 the same basic activity is documented in the handwritten
10 report.

11 Q Now, if you look on that report, and you look at the line,
12 third line down, it talks about Mr. Lira, and if you go right
13 across from his name towards the right, you will see two -- two
14 words -- two phrases, I suppose: One is "Norte 14"; one is
15 "VPX Planada."

16 Let me ask you, what is VPX Planada?

17 A VPX Planada is a street gang, within -- in Merced County.

18 Q Are they aligned with any prison gangs, to your knowledge?

19 A My understanding of northern Hispanic street gangs is
20 this: That, with the exception of the Fresno Bulldogs, the New
21 Flowers, and the Northern Ryders, every other northern Hispanic
22 street gang is loyal to the Northern Structure and the Nuestra
23 Familia.

24 Q Would that hold true for the -- this other phrase here,
25 Norte 14, is that a street gang?

1 A No, I'm not sure that, in this case, Norte 14 is a street
2 gang. My understanding is this, and I relate it to "Norte"
3 being north; 14, alphanumerically, corresponds to the letter N;
4 and N, or 14, as it relates to the prison-gang culture, is
5 representative of the Nuestra Familia.

6 So, when somebody has Norte 14, they're saying, "I'm from
7 the north, I'm loyal to the N"; "the N" being the NF or the
8 Northern Structure.

9 Q All right. Agent Marquez, can I have you turn your
10 attention to Exhibit No. 8, please.

11 (Request complied with by the Witness)

12 A I'm there.

13 Q Was this one of the documents you reviewed in the course
14 of forming your opinion?

15 A Yes.

16 Q Let me have you turn to No. 9.

17 (Request complied with by the Witness)

18 Q Do you recognize that exhibit?

19 A Yes, I do.

20 Q Was that also an exhibit you reviewed in the course of
21 forming your opinion?

22 A Yes.

23 Q And what conclusion did you reach after reviewing these
24 two exhibits, specifically focusing on Exhibit 9?

25 A After reviewing the document, I found Northern Structure

1 gang-related symbols in the drawing.

2 Q Let me make this easy for you. I'm going to give you the
3 board here. Make sure I give you the right one.

4 **MR. FEUDALE:** Your Honor, I would like to have this
5 marked as Defendants' Demonstrative C -- no marking on this
6 exhibit -- if that's all right.

7 **THE COURT:** It will be marked.

8 (Defendant's Demonstrative Exhibit C marked for
9 identification.)

10 **THE COURT:** So, this makes about the tenth exhibit in
11 this case that's the same picture?

12 **MR. FEUDALE:** It is another identification of that
13 same picture, but it's the same one that's been used
14 throughout.

15 Now, if Your Honor would be amenable, may I have
16 Agent Marquez mark on this exhibit?

17 **THE COURT:** Of course.

18 **BY MR. FEUDALE**

19 Q Agent Marquez, could you mark the gang symbols that you
20 have seen there, and we will talk about them each. If you need
21 a pen, I'll give you one. A highlighter, even better.

22 I'll give you this blue highlighter, here.

23 A Okay.

24 (Request complied with by the Witness)

25 A The first symbols that I saw in the drawing was the No. 14

1 (Indicating) .

2 Q Can you explain the gang significance of that symbol?

3 A Okay. Again, based on my training and my experience, I
4 know that the number 14 corresponds alphanumerically to the
5 letter N, and, as it relates to the gang culture, the letter N
6 represents the Nuestra Familia/the Northern Structure.

7 Okay. Now, the number 14, as it's written, 1-4, the
8 Department of Corrections does not use that as an identifier
9 for Northern Structure. However, and we will probably get to
10 it with some of the other exhibits, I did a position paper on
11 behalf of the Department of Corrections, where the number 14 in
12 the Roman numerals XIV is accepted. Again, it's 14, but it's
13 just in a different variation.

14 I've read numerous debriefs, I've talked to numerous
15 active gang members that have told me that any time a northern
16 Hispanic has the number 14 on them, that it's indicative of the
17 letter N, again, representative of the NF in the Nuestro
18 Familia.

19 So for me, as a gang investigator, when I see the
20 number 14, either on a drawing or tattoos, I mean, it's one of
21 those clues that it's a sign that I need to look further.

22 So, the next thing that I saw was this here (Indicating),
23 which is a partial or half of the -- what is referred to as the
24 Huelga bird. The Huelga bird is an accepted identifier,
25 symbol, tattoo, recognized by the Department of Corrections as

1 being used by the Northern Structure specifically for gang
2 membership.

3 Q Now, Agent Marquez, let me stop you there.

4 There's been testimony that the Huelga bird is really just
5 a symbol of the United Farm Workers movement, and it's not a
6 gang symbol.

7 Could you explain the correlation between the two?

8 A Okay. With the Huelga bird, its origins start with the
9 United Farm Workers, which are documented to have begun around
10 1961, 1962, as a movement to protect farm workers from being
11 oppressed.

12 The correlation, then, to the gang side of it, is you have
13 the Nuestro Familia, back around 1961-62, pulling away from the
14 Mexican Mafia, because of the oppression now being exerted upon
15 them by the Mafia. So you see the correlation, where the
16 United Farm Workers are doing this, organizing to stop the
17 oppression by the farm holders and all that kind of thing, so
18 there's that correlation.

19 Now, the Huelga bird, and I've seen this in numerous
20 writings that have been done by NF members and Northern
21 Structure members, I've talked to numerous informants, I've
22 read numerous debriefs, which all say that the Huelga bird is
23 the symbol utilized by the Northern Structure, that is
24 indicative of their membership.

25 In fact, much of the writings I see today clearly tell

1 northern gang members, "Do not put this symbol on your body as
2 a tattoo, do not draw this symbol, because the Department of
3 Corrections will use that in the identification/validation
4 process."

5 Q Are there any other symbols that you see in that drawing?

6 A The Northern Star (Indicating).

7 Would you like me to explain how --

8 Q Yes, please.

9 A The Northern Star is a symbol that the Department of
10 Corrections recognizes as indicative of membership with the
11 Northern Structure. The idea being that it's said if you stand
12 directly on the North Pole and looked directly above you, you
13 are going to find the Northern Star. So, with that being the
14 case, any place that you are at, if you can locate the Northern
15 Star and travel that direction, you are headed true North.

16 How it correlates to the gang culture, the Northern
17 Structure, according to the writings I have seen by NF members
18 and Northern Structure members, is that this symbol was given
19 to the Northern Structure, as well as the Huelga bird, to the
20 Northern Structure for their identity.

21 Again, if a member has that tattoo on them, other Norteño
22 gang members can see this tattoo and know that, "If I follow
23 this individual, I will go true North, I will go in the path
24 that's been laid out for me by the Nuestra Familia."

25 Q Agent Marquez, have you seen these symbols that you have

1 just mentioned, tattooed on any bodies of inmates that you have
2 debriefed or corresponded with, that are gang members?

3 A Numerous times.

4 Q Is there any exhibit you would like to show the Court
5 which could help supplement that testimony?

6 A Yes. I've provided you with some pictures of tattoos of
7 the Huelga bird, the XIV, the Northern Star, their gang name,
8 that I use when I teach at our gang investigators course, that
9 I use to teach in major conferences when I teach on prison
10 gangs, and, also, active gang members that I'm dealing with on
11 the streets in Northern California.

12 (Off-the-Record discussion)

13 **MR. FEUDALE:** Your Honor, I would like to mark this
14 as Defense Exhibit 344.

15 **THE CLERK:** Sorry.

16 (Defendant's Exhibit 344 marked for identification.)

17 (Witness examines document)

18 **BY MR. FEUDALE**

19 Q Agent Marquez, could you show the Court where these gang
20 symbols are on these pictures that you have?

21 First, let me ask you a foundational question: Did you
22 take these pictures?

23 A Half of them I did. The other ones were provided to me by
24 previous gang investigators.

25 Q Okay. Can you point out where the Huelga bird is on these

1 pictures?

2 A If we're looking at the -- the picture that I'm looking at
3 now is, there's a Huelga bird, it is bordered by red.

4 Q Are you on the second page of this group of exhibit pages?

5 A Yes, yes.

6 Q Okay.

7 A And, at the bottom of the base of that bird, you see the
8 Roman numerals XIV, which correspond to the number 14.

9 Q Is this tattoo, was it taken on -- is this on the body of
10 a Northern Structure associate?

11 A Northern Structure member.

12 Q Member. Okay.

13 Any other Huelga birds in these pictures here?

14 (Witness examines photographs)

15 A The next page is a Huelga bird on the thigh of a Northern
16 Structure -- validated Northern Structure member/Nuestra
17 Familia member. Also, that Huelga bird has the number 14, in
18 the Roman numeral XIV.

19 Q Do you see any other Huelga birds?

20 A Yes. The picture below that is actually taken from a
21 slide that I use in my PowerPoint presentation when I teach on
22 prison gangs. And in that picture --

23 **THE COURT:** Which one, the one on the left or the
24 right?

25 **THE WITNESS:** The bottom picture, Your Honor

1 (Indicating).

2 **THE COURT:** Right. But --

3 **BY MR. FEUDALE**

4 Q Of the collage of pictures, which picture are you
5 referring to?

6 A Upper right, middle right, bottom center.

7 Q Okay. Were those three pictures taken on the bodies of
8 Northern Structure members or associates?

9 A Yes, they were.

10 Q Do you see in these pictures the number 14 anywhere?

11 A Yes, I do.

12 Q Where is that?

13 A If we go back to the first set of pictures related to
14 tattoos, there is the number 14 on the ear of a parolee who is
15 a validated Northern Structure gang member, and we're looking
16 at him also as a Nuestra Familia gang member.

17 Q Are there any other 14s in this collage of pictures you
18 have?

19 A Going back to the collage of pictures, bottom left is the
20 number 14. And --

21 Q Was that taken on the body of a Northern Structure or
22 Nuestra Familia member or associate?

23 A Yes, it was. And also, again, within the Huelga bird
24 itself, is the Roman numeral for 14, XIV.

25 Q And, do you see any other 14s on the tattoos that you have

1 illustrated here?

2 A On the last page of the tattoos, you have a 1 and a 4 on
3 the back arms of a validated Northern Structure prison gang
4 member, who I'm also looking at now as a Nuestra Familia gang
5 member.

6 And then, to the lower left, again, you have the Roman
7 numeral designator for the number 14, XIV.

8 Q In this collage of pictures that you have, do you see the
9 Northern Star anywhere?

10 A Yes, I do.

11 Q Where is that?

12 A The Northern Star would be on the collage, lower left,
13 surrounded by the number 14.

14 Q Which page are you on, sir?

15 A That would be the second one. The collage.

16 Q The lower left-hand corner, that picture?

17 A Correct.

18 Q Where the star's in the middle of the 1 and the 4?

19 A Correct.

20 Q Okay.

21 A And then also lower right, next to the word "Nuestra
22 Raza," which is the official name of the Northern Structure.

23 Q Are there pictures of the Northern Star or tattoos of the
24 Northern Star anywhere in these pictures, anywhere else?

25 A On the very first one, on the very bottom, that is on the

1 leg of a validated Northern Structure member. He has four of
2 them.

3 And then also, on the very last page of the pictures,
4 bottom left, there's a Northern Star above XIV. And then on
5 the lower right, there's a Northern Star on the knee of a
6 Northern Structure gang member.

7 Q And the one on the right, was that also a Northern
8 Structure gang member?

9 A Yes.

10 Q Now, in your experience, Agent Marquez, could an inmate
11 unaffiliated with a prison gang be found in possession of such
12 symbols?

13 A He could, but it would be highly unlikely. And, in fact,
14 if a non-member of the gang tattooed those symbols on his body,
15 or was found in possession of a drawing that have -- had their
16 symbols, without the expressed authorization of the gang, he
17 would be targeted for assault.

18 In their culture, in the gang culture, it's a sign of
19 disrespect to the gang to identify yourself as a prison-gang
20 member or to utilize their symbols without being a member. You
21 end up being targeted for assault.

22 Q Could an inmate of a lower rank in the Northern Structure
23 hierarchy be found in possession of such symbols?

24 A If he was a member. Only if he was a member. If he's not
25 a member -- and when I'm talking about "member," if you're

1 looking at somebody that's an associate, an associate is going
2 to do things for the gang, they are going to associate with the
3 gang, but they haven't been accepted into membership of the
4 gang, they won't have these tattoos, the Northern Star, the
5 Huelga bird, the XIV, put on their bodies or possess those
6 drawings because those are -- it would be like a trademark
7 infringement by non-members.

8 Q Now, Agent Marquez, turning back to the large drawing
9 there, do you see any indication that it was created by
10 Mr. Lira, that it was Mr. Lira's authorship?

11 A Yes, I do.

12 Q Could you show the Court where that is?

13 (Witness indicates on Exhibit)

14 Q What is that you just highlighted, sir?

15 A The letters h-i-n, which would be the three middle letters
16 of what I know to be Lira's documented alias of Chino, so
17 C-h-i-n-o. But on the headband of the individual there, you
18 see the h-i-n.

19 Q Based on your experience, do gang members put their names
20 on drawings -- put their names on drawings indicating gang
21 symbols?

22 A Yes, they do. It's similar to artwork. Picasso would
23 have some kind of identifier on his, Van Gogh have some kind of
24 identifier on his drawings, and the same is true, that it's
25 been my experience that when I look at drawings, with very few

1 exceptions, the person who created the artwork puts some kind
2 of signature or some kind of identifier that he did it on the
3 artwork.

4 So, in this case, there were two things that I looked at:
5 One, I saw the partial word, the letters h-i-n, which are part
6 of his known alias of Chino, one; and two, what was documented
7 in the report where it said that Lira had asked -- indicated
8 that it was his artwork and wanted know when he was getting it
9 back.

10 Those two things led me to believe -- and the third thing
11 is, I didn't see anybody else's name on there who may have
12 drawn the thing.

13 So, I mean, there was those three indicators to me that
14 Lira created the artwork.

15 Q Now, there's been testimony in this case that an inmate by
16 the name of Freddie Leyba created the drawing, it was not
17 Mr. Lira's.

18 Is that possible, based on your experience?

19 A It's possible. But based on -- again, on what's in the
20 written report, and based on what I see in the drawing, and
21 based on what has been my -- you know, 23, almost 24, years of
22 experience of dealing with gang members and looking at their
23 drawings, I wouldn't say that that's plausible.

24 Q Agent Marquez, let me have you turn --

25 **MR. FEUDALE:** Before we do that, Your Honor, I would

1 like to move in what's been marked as Exhibit -- 344 into
2 evidence.

3 **THE COURT:** Is there any objection?

4 **MR. WHITE:** Well, the -- Exhibit 344, my copy, at
5 least, includes as the first page something entitled "14 Bonds,
6 Condensed."

7 We haven't heard testimony about that. We were shown
8 this for the first time about an hour ago. We don't object to
9 the introduction of these photographs of the tattoos.

10 **THE COURT:** The last three pages, but we haven't
11 heard about the first page.

12 **MR. FEUDALE:** I can make that a separate exhibit
13 after testimony.

14 So is the last three pages of 344 are in evidence?

15 **THE CLERK:** We will just make that 345, now that we
16 are talking about it.

17 **MR. FEUDALE:** Perfect.

18 **THE CLERK:** Thank you.

19 (Defendants' Exhibit 345 marked for identification.)

20 **THE CLERK:** So, you admit 344, Judge?

21 **THE COURT:** Well, what is it?

22 **THE CLERK:** The photos?

23 **THE COURT:** The photos are 344.

24 **THE CLERK:** Yes, and 345 is the top sheet.

25 **THE COURT:** Then, yeah, 344 is in.

1 **THE CLERK:** Thank you.

2 (Defendants' Exhibit 344 received in evidence.)

3 **BY MR. FEUDALE**

4 Q Agent Marquez, I would like to turn your attention to
5 Exhibit 4. And I caution you, this is a confidential report,
6 so please keep the identity of the informant confidential.
7 And, if we get to a portion of the testimony where you need to
8 get into specifics, let me know and we can speak with the Judge
9 about arrangements for that.

10 Do you recognize this exhibit?

11 A Yes. It was one of the documents that I was provided to
12 review.

13 Q And, did you find this document to be -- have any evidence
14 of gang significance?

15 A Yes, I did.

16 Q And what is that evidence?

17 What is significant about this document?

18 A Well, first of all, this document is a debriefing report,
19 dated September 25, 1992. It is the debriefing of a validated
20 Northern Structure gang member.

21 And, on Page 11 of that report, at the very top of the
22 report, it begins by stating that, "The informant supplied the
23 following list of individuals and their status."

24 And then 12 names down on that list is the name of Lira,
25 Ernesto, his prison number, his alias of Chino, his hometown of

1 Merced. And his status, as known to the informant, was that of
2 a Northern Structure Cat 3, or Category 3 member.

3 Q And what does that mean, based on your training and
4 experience, that -- Mr. Lira's status indicated there?

5 A Okay. Within the Northern Structure and within the
6 Nuestra Familia, they operate off of a category system. And
7 the analogy that I would use is this, Your Honor, is that of
8 the Army; Category 1, being equivalent to a private. Those are
9 the guys that are going to do all of the grunt work, all the
10 dirt work.

11 Your Category 2 would be your platoon sergeants. Those
12 are the people who are responsible for giving direction, for
13 training, for teaching and ensuring that your Category 1 guys,
14 or your privates, are doing what they are supposed to do.

15 Your Category 3 individuals within the Northern Structure
16 are the equivalent of your commanding officers. Those are the
17 ones that have overall authority, that are casting direction,
18 vision. They're responsible for the overall security of the
19 area, and they are the ones that are directly reporting to the
20 Nuestra Familia.

21 Q Now, based on your training and experience, would an
22 inmate who is a Northern Structure Category 3, what association
23 would they have with the Nuestra Familia?

24 A It's been my experience that the guys that are at the top
25 level of the Northern Structure are holding leadership

1 positions, are responsible for overseeing given areas, taking
2 direction directly from Nuestra Familia family members and
3 communicating back to them, things like their -- the number of
4 their members that they have in a given area, the numbers of
5 their enemies, the things that they have going on.

6 So there's going to be, because the NF is the parent
7 organization, the Northern Structure is passing this
8 information up, so that the NF can make decisions about the
9 activities that they are going to conduct in a given prison,
10 given facility, or on the streets.

11 Q Now, did you -- what, in your opinion, makes this
12 particular debriefing report, where -- it names Mr. Lira as a
13 Category 3 associate, what makes this informant reliable, in
14 your mind?

15 A Well, according to the California Code of Regulations,
16 Title 15, Section 3321, there are five criteria that we utilize
17 to determine and deem an informant to be reliable. And in our
18 rules, we only need one of those.

19 But, in this case, this informant met three of those
20 criteria: One, he self-incriminated himself in criminal gang
21 activity; number two, some of the information was corroborated
22 by other confidential sources; and three, some of the
23 information was proved to be reliable or credible through
24 investigation.

25 Q Let me ask you for a little bit of specifics on that.

1 Do you recall from reviewing this report, where -- in
2 general terms, how the informant incriminated himself?

3 A One specifically that I remember reading had to do with
4 the fact that the informant stated that he and another gang
5 member took a knife or a prison-made weapon out to one of the
6 yards to stab an enemy of the Nuestra Familia. So, in that
7 case, he incriminated himself.

8 Q How about corroboration?

9 What did you find in here, what evidence do you see that
10 the information provided by the informant was corroborated?

11 A Well, beginning on Page 11, after the list of individuals
12 and their status as known by the informant, is a list of
13 documentation corroborating the statements made by the
14 informant.

15 **THE COURT:** Corroborating what statements?

16 **THE WITNESS:** The statements in the report, having to
17 do with fights on the yard, stabbing, assaults, possession of
18 weapons. There's a list.

19 **THE COURT:** So it corroborates the actual descriptive
20 discussion.

21 Is there anything in this list that corroborates the
22 names that appear immediately above it?

23 (Witness examines document)

24 **THE WITNESS:** No.

25 **THE COURT:** Thank you.

1 **BY MR. FEUDALE**

2 Q Now, based on your knowledge of the Northern Structure,
3 and your experience, is there anything else which would make
4 this informant's statement -- I am talking about naming
5 Mr. Lira on a list of inmates -- a reliable indicator of
6 Mr. Lira's gang affiliation?

7 A Yes. Based on my experience and my interviews with
8 inmates and reading confidential documents, reading debriefs,
9 one of the things that the Northern Structure and the NF are
10 renowned for is their memorization of information,
11 specifically, rosters of individual gang members that are in
12 good standing with the gang and individuals that are in bad
13 standing with the gang.

14 And, it starts with when an individual comes to either a
15 county jail or a prison, the first thing that's required of a
16 Norteño gang member is that he fill out a new-arrival report.

17 That new-arrival report requests of the individual gang
18 member his complete name, date of birth, prison number, county
19 of commitment, commitment offense, relatives, places that he's
20 been incarcerated, offenses that he's committed.

21 Basically, they're filling out a background questionnaire.
22 Because then, that information is then forwarded to the
23 Northern Structure gang members, and they conduct a background
24 investigation on these individuals. And so --

25 **THE COURT:** Have you seen such applications?

1 **THE WITNESS:** Yes, I have. On numerous occasions.

2 And, one of the things that they do, is they then
3 take that information, and if they don't have a current roster
4 to run his name across, it's -- a lot of this is committed to
5 memory, and they go down the roster and say, "Well, the
6 information that he's provided in his name and where he's been
7 corresponds to a good-news list or a membership roster, and
8 he's in good standing."

9 At that point, that gang member is then told, "You're
10 allowed to function with us."

11 On the other hand, if the information provided turns
12 out that the individual is on a bad-news list or a no-good
13 list, one of two things happen: Either he's immediately
14 assaulted and removed from the area because he's viewed as a
15 threat, or he's placed on freeze.

16 And, "freeze" being a term that is specific to the NF
17 and specific to the Northern Structure, where an individual is
18 told, "Okay, you are on freeze, you are allowed to participate
19 on a certain level, a very minimal level."

20 They are given enough information about enemy status
21 and how to protect themselves and how to protect the given
22 number of gang members there, but they're not given any
23 sensitive information, or any internal information about
24 criminal activities or things that they're involved in. It's
25 just on a -- in a very limited need-to-know basis so that they

1 can protect themselves.

2 **BY MR. FEUDALE:**

3 Q Agent Marquez, that tipped me off to a very important
4 thing that I need to address with the Court.

5 **MR. FEUDALE:** If I could have a sidebar briefly?

6 **THE COURT:** All right.

7 (Sidebar held on the Record, and placed under seal)

8 (The following proceedings were then held in open
9 court:)

10 **BY MR. FEUDALE**

11 Q Agent Marquez, without naming any names, just giving
12 general terms, is there another reason, looking at Exhibit 4,
13 that you found this informant to be reliable?

14 A Yes.

15 Q What is that?

16 A On Page 7 of the debrief report is a roster of names,
17 their prison numbers, aliases, hometowns, and their status.
18 The informant, in this case, was able to provide an accurate
19 listing of not only who was there, but their status this case.

20 In this case, after reviewing this, based on my experience
21 and my knowledge of these individual gang members, there were
22 the leadership of the NF listed.

23 Q And, in particular, with respect to the report, is there
24 anything that the informant says which indicates his basis of
25 knowledge?

1 A Yes. Based on the narrative of the report, the informant
2 in this case was one around the leadership of the NF, and it is
3 documented in the report that it's during this time, in the
4 early eighties, the beginning formation of the Northern
5 Structure.

6 Q Now, without mentioning any names, could you point to a
7 page and paragraph in this report, where the informant mentions
8 he's with a high-ranking leader of the NF.

9 (Witness examines document)

10 A Page 5, bottom paragraph. And the narrative of that is
11 that the informant states that they are the Norteños. And, at
12 this time, the Northern Structure isn't formed yet, but those
13 that are becoming part of the Northern Structure are being told
14 by the NF leadership, what they are to put down is their
15 request for a specific yard so that they can be out there with
16 the NF.

17 Q Are these individuals named in this paragraph you cited
18 to, are these leaders of the Nuestra Familia?

19 A They were.

20 Q Okay.

21 A In fact, one of them was the very first supreme general of
22 the NF.

23 Q Could you, without stating the name, point to the sentence
24 where that individual is named?

25 A It would be that bottom paragraph, five lines from the

1 bottom.

2 Q What word does it start with, the sentence?

3 A "Nuestra."

4 Q Make sure I'm on the same -- we're on Page 5?

5 A Page 5, bottom paragraph, five lines from the very bottom.

6 It starts off "Nuestra Familia," and then gives the name,

7 alias, and CDC number.

8 **MR. FEUDALE:** Your Honor, may I approach the Witness?

9 **THE COURT:** Yes.

10 **MR. FEUDALE:** Let's see if I can see where you are
11 talking about.

12 **THE WITNESS:** I'm sorry, it looked like a 5. It's
13 Page 6.

14 **BY MR. FEUDALE**

15 Q This one right here (Indicating)?

16 A Correct.

17 Q Starts with this sentence, this one (Indicating)?

18 **THE WITNESS:** Sorry for that, Your Honor.

19 **MR. FEUDALE:** Your Honor, so I'm clear for the
20 Record, let me just ask Mr. Marquez a question.

21 **BY MR. FEUDALE**

22 Q You're referring to the sentence that starts with the
23 phrase, "He states that the general of the Nuestra Familia," is
24 that the one you are referring to?

25 A Correct.

1 Q Thank you.

2 Now, I would like to turn your attention to Exhibit 51.

3 Did you review this exhibit in forming your opinion?

4 A Yes, I did.

5 Q And, did you find any gang significance of this particular
6 debriefing report?

7 A Yes, I did.

8 Q And again I caution you, since this is a confidential
9 document, if you feel that we are getting to a discussion which
10 would reveal the identity of the informant, please let me know
11 so I can confer with the Judge and opposing counsel.

12 What, what is the significance of this document?

13 Why did you find it to be significant of gang activity?

14 A To identify the document, it is a confidential memorandum,
15 it is a debrief of a Northern Structure prison gang member, and
16 it's dated April the 1st, 1998.

17 But, as it relates to Mr. Lira, the narrative of the
18 report pertaining to him starts on Page 4, bottom --

19 Q And what does the narrative say on Page 4, concerning
20 Mr. Lira's gang affiliation, if any?

21 A Starting with the third line from the very bottom, it
22 indicates that Mr. Lira received a copy of the bonds which are
23 the rules of the -- followed by the Northern Structure, and he
24 received those from a Nuestra Familia member, with a direction
25 that he was to have everybody learn them.

1 Q Agent Marquez, is there an exhibit or a document that you
2 prepared which would help explain to the Court what the bonds
3 are of the Northern Structure?

4 A Yes, I did.

5 Q And is that the exhibit that has been marked 345?

6 A That's correct.

7 Q Could you explain to the Court what these bonds mean or
8 what they indicate in here?

9 A The Nuestra Familia operates -- their rules and
10 regulations are in what they refer to as their constitution.

11 **THE COURT:** Is that a written document?

12 **THE WITNESS:** Yes, it is.

13 And it's an evolving document, Your Honor.

14 **THE COURT:** A what?

15 **THE WITNESS:** An evolving document. I found the
16 latest version of that in February of 2007, at Pelican Bay.

17 What the Nuestra Familia did for their subordinate
18 gang, the Northern Structure, is they gave them these 14 rules,
19 which were to govern the daily activities and the structure of
20 the Northern Structure.

21 And, in this case, what I prepared for you, and it
22 says "Condensed," this is taken from the PowerPoint
23 presentation that I use to teach all over the state, regarding
24 the Northern Structure.

25 But these are their 14 rules, condensed it down

1 without taking away the meaning or the intent of the rule,
2 itself.

3 **THE COURT:** And is this a written document, these
4 rules? Or --

5 **THE WITNESS:** Yes, Your Honor. We have -- it's
6 written by them, produced by the gang members. And we have
7 copies of those.

8 **THE COURT:** Are any of those going to be in evidence?

9 **MR. FEUDALE:** Not that I'm aware, Your Honor. We
10 haven't -- we haven't seen those.

11 This is just a summary Agent Marquez prepared to
12 assist the Court in his testimony today, but there's certainly
13 been nothing produced or in Mr. Lira's C-File concerning those
14 14 bonds.

15 **BY MR. FEUDALE**

16 Q You can continue.

17 A Going back to the debrief, according to the narrative, an
18 NF member gave to Mr. Lira a copy of the 14 bonds and the
19 instruction that he was to teach and instruct.

20 Although it says "Everyone, the" -- it can be assumed that
21 it specifically related to Northern Structure gang members, and
22 Norteño gang members that they are looking to recruit and bring
23 into the gang.

24 Q Now, with respect to this demonstrative exhibit you made
25 here, are there any bonds that you read here which are -- that

1 you see correlate with the facts surrounding this case?

2 A Yes.

3 Q And what are those?

4 A Well, specifically, it would be Bond No. 1, that the
5 Norteños Soldados, which corresponds to Northern Structure gang
6 members, will strive to better education. So, in this case,
7 going back to this debrief, the Nuestra Familia member is
8 giving these to Lira to teach, and so thereby bettering their
9 education.

10 No. 3, is important in this case, is that all Northern
11 Structure members will strive for mainline status. That's
12 important in this case, because if you read that, I think it's
13 easy to connect the dots between A and B; A and B being, if you
14 are a Northern Structure gang member, you are going to be in
15 segregated housing once it's found out and you're validated.

16 So then it's incumbent upon the Northern Structure gang
17 member to do everything possible, absent debriefing or
18 cooperating with law enforcement, everything possible to get
19 out from under that validation and get back out to the
20 mainline.

21 Q Do you see evidence of that here?

22 A I believe that's what this case is really all about, is to
23 get out from under this validation, so that it's no longer
24 hanging over his head, whether he's on the streets or in
25 prison. And I hope that he never goes back, but if he ever

1 went back, he wouldn't have that hanging over his head.

2 Q Is there any other bond in here that correlates to the
3 facts of this case?

4 (Witness examines document)

5 A Well, No. 7.

6 Previous, I believe previous testimony has indicated that
7 Mr. Lira has, on numerous occasions, attended classification
8 committees. And, during all classification committees,
9 Mr. Lira has been advised of the appropriate methods to
10 disassociate himself from the gang, one being six years
11 inactive status, or debriefing.

12 I'm, to this point, not aware, in any way, shape, or form,
13 that Mr. Lira has ever debriefed. So, therefore, he is, in a
14 sense, complying with Bond No. 7, where at no point is a
15 Northern Structure gang member to cooperate -- and in this
16 case, it says "the K9s," and that's the word that they use,
17 "the K9s" refer to staff -- they're not to cooperate with staff
18 in any way, shape, or form, because to do so is an act of
19 treason.

20 And in the federal system, if an individual is found
21 guilty of treason, it warrants the death penalty. And that's
22 how they see it, is if an individual debriefs or cooperates or
23 facilitates a law enforcement investigation, and it's found
24 out, the individual is targeted for death. They've committed
25 an act of treason.

1 **THE COURT:** So you're saying that the -- the fact
2 that Mr. Lira has not ever accepted the gang validation is
3 proof of the gang validation, because if he were a member of
4 the gang he would never admit to it.

5 Isn't there a certain catch-22 involved in that
6 analysis?

7 **THE WITNESS:** Yes and no. If you were to take any
8 gang member that's active, prison gang member, and put them on
9 the stand and advise them that they're not to perjure themselves,
10 I would say 99.9 percent of them are going to tell you that the
11 gang does not exist.

12 **THE COURT:** So it doesn't tell you anything, it seems
13 to me. You can't -- I don't see how you can say the fact that
14 he's not confessing means he is in the gang, any more than it
15 means he isn't in the gang. It's just neutral.

16 **THE WITNESS:** Except for that I would look at the
17 totality of the evidence that's already been presented, that
18 says that he is, and the fact that he's silent about it, to me,
19 is indicative that, "I can't say that I am, but I'm going to
20 fight this to the fullest."

21 Because if he admits that he's a gang member, he's
22 crossed that line.

23 **THE COURT:** Right. And wanting to get out of the SHU
24 to the mainline, that's proof that he's a gang member also.

25 **THE WITNESS:** If you look at the totality of the

1 evidence.

2 **BY MR. FEUDALE**

3 Q Now, let me refer you, Agent Marquez, back to this report.

4 Is there anything else that is significant of gang
5 activity, that's memorialized in the report?

6 A We would go to Page 5.

7 Q And, before we talk about that event on Page 5, is there a
8 concern that discussing that event would reveal the identity of
9 this informant?

10 A Yes.

11 **MR. FEUDALE:** Your Honor, can I have a sidebar again
12 at this time?

13 **THE COURT:** I'll tell you what, let's do this: We
14 will take our morning recess and --

15 I guess, 15 minutes you need, Belle?

16 **THE REPORTER:** (Nods head)

17 **THE COURT:** We will take a 15-minute recess. Then,
18 when we start up, we will start up in a closed session, and we
19 will finish whatever we need to do with that, and then we will
20 proceed.

21 Okay?

22 **MR. FEUDALE:** Yes, Your Honor.

23 (Recess taken from 10:06 to 10:37 a.m.)

24 **THE COURT:** Are you ready?

25 **MR. FEUDALE:** Yes, Your Honor.

1 **THE COURT:** Okay. You may proceed.

2 **MR. FEUDALE:** Your Honor, at this time we would like
3 to request that the courtroom be sealed.

4 **THE COURT:** All right.

5 (Whereupon the courtroom was closed, and proceedings
6 were held and then sealed)

7 (Recess taken from 11:08 a.m. to 11:13 a.m.)

8 (The following proceedings were held on the Record,
9 in open court:)

10 **BY MR. FEUDALE**

11 Q A few last questions for you, Agent Marquez.

12 Agent Marquez, there's been some testimony in this case
13 that Mr. Lira did not have any history of gang-related
14 activity, no criminal convictions for gang-related activity.

15 Would that affect your opinion concerning his status as a
16 validated gang member?

17 A No, it would not.

18 Q Why not?

19 A It's been my experience, I've known quite a few gang
20 members, prison-gang members, that had absolutely no
21 street-gang activity, membership, or convictions.

22 Q Do you have any examples of that, sir?

23 A Yes. They're confidential informants, though, now, so --

24 Q Could you speak in general terms or would it reveal their
25 identities?

1 A It might reveal their identities.

2 MR. FEUDALE: We don't need to go into that at this
3 time, Your Honor.

4 THE COURT: All right.

5 BY MR. FEUDALE

6 Q How about, there's been testimony that Mr. Lira had no
7 criminal convictions for crimes of violence.

8 Would that affect your opinion regarding his gang status?

9 A No, it would not.

10 Q Why is that?

11 A While he may not have had any convictions on the streets,
12 when people are in prison and when they're associated with the
13 prison gangs, sometimes there is that carryover.

14 But, I mean, I would have looked at it and said, "Well, he
15 doesn't have a conviction on the street, but based on the
16 totality of the evidence that I reviewed, it would make that a
17 moot point for me."

18 Q In your experience as a gang investigator, both as an IGI
19 and with the SSU, have you ever come across an inmate who
20 didn't have any history of violence but was validated as a gang
21 member?

22 A Yes.

23 Q How many times, do you think?

24 A I couldn't give you a ballpark figure. I know that
25 recently, one of the things that we have looked at as an agency

1 is the behaviors of these gang members. And, when -- in the
2 cases that we have looked at, we've seen volume after volume
3 after volume of information that they're involved in, that
4 they're doing things, but they haven't been issued rules
5 violation reports.

6 So, their disciplinary report history is very skinny; the
7 information that's provided by informants or through
8 investigation is quite extensive.

9 Q And that follows on my next question.

10 Have you seen incidents where inmates do not have a lot of
11 prison disciplinary reports for gang violence or for violence
12 or for gang activity, but are still -- there's still evidence
13 that they are gang members?

14 A Yes. And that's especially true -- I mean, once we
15 segregate them, the intention is, is that we keep them from
16 engaging in violent behaviors.

17 So, there have been people that have been validated as
18 prison-gang people who are then segregated, and because of that
19 segregation, they are not able to engage in any violent
20 behavior.

21 Q You have also heard testimony in this case, and I know we
22 touched upon this briefly, so I don't need to go into too much
23 detail now, but that the Huelga bird is just a United Farm
24 Workers symbol, it's not related to the Northern Structure.

25 What is the correlation between the two?

1 A Well, first off, I would disagree with that opinion.

2 Q And why is that?

3 A One, based on the hundreds of debriefs that I've read,
4 where validated and self-admitted Northern Structure and NF
5 gang members have said that the Huelga bird is the symbol of
6 the Northern Structure.

7 Two, the number of tattoos that I've seen of the Huelga
8 bird on gang members.

9 And, three, as I testified earlier, the formation of the
10 NF in prison corresponded to what was happening on the streets
11 with the United Farm Workers.

12 And so, at that same time in the early sixties, while you
13 have the formation of the United Farm Workers, their cause was
14 against the oppression of the farm workers and their being
15 taken advantage of.

16 And so, the corresponding action is, in the prisons at
17 that time, is you had the NF, who did not like the oppression
18 that was being applied to them or the taking advantage of the
19 people in the race that later became the NF.

20 One of the things with the symbols, although it is not an
21 original symbol, I mean, obviously the symbol originated with
22 the United Farm Workers. The -- you know, for an example, the
23 swastika and the lightning bolts did not originate with white
24 supremacists, it originated with Hitler and his regime, but
25 it's used, and they have adopted that symbol.

1 So the Mexican Mafia, they use the black hand. That is
2 not original to them, they took that from the Sicilian Mafia.

3 So these different gangs will utilize these symbols and
4 have not necessarily came up with them on their own, but they
5 use them for their purposes.

6 Q Agent Marquez, there's been testimony that the Code of
7 Regulations require the symbols be unique to the gang.

8 A Correct.

9 Q Based on your, you know, experience as a gang
10 investigator, what does that mean exactly, that phrase, to your
11 understanding?

12 A That it's unique to the gang? That other gangs aren't
13 using that.

14 And, to back up a little bit, one of the reasons that we
15 don't use, by itself, the number 14, the 1 and the 4, in
16 validating Northern Structure is that there are street-gang
17 members that use that. So it's not necessarily specific to the
18 Northern Structure.

19 The southern Hispanics use the number 13. Because -- we
20 have Mafia members that use the number 13, but so do
21 street-gang members. So it is not unique or specific to the
22 gang.

23 The Huelga bird, the Northern Star, are specific to the
24 Northern Structure. We don't see street-gang members putting
25 the Huelga bird on them if they're not part of the Northern

1 Structure. Without there being some -- either they're a member
2 or they're going to be targeted for assault.

3 Q Now, you've testified that the Huelga bird is not unique
4 to the Northern Structure, in the sense that United Farm
5 Workers uses it?

6 A Correct.

7 Q So can you explain the discrepancy there?

8 A It's just that this gang, as -- utilizes that symbol.
9 It's in their writings. I've read numerous -- we refer to
10 them, Your Honor, as kites. They are little strips of paper
11 done in very, very small writing, and they are passed along
12 from prison to prison, from gang member to gang member.

13 And in their own writings, they say that the Huelga bird
14 and the Northern Star and the numbers XIV were specifically
15 given to the Northern Structure by the NF prison gang for their
16 use and for their use only.

17 Q And correct me if I don't understand your testimony
18 correctly.

19 Are you saying that your interpretation of the regs is
20 that the symbols must be unique to the prison gang, as opposed
21 to other gangs, street gangs and prison gangs --

22 A Correct.

23 Q -- versus, as distinct to the prison gang, as opposed to
24 the entire universe, the entire world?

25 A Correct.

1 **THE COURT:** Now, that interpretation is derived from
2 what?

3 I mean, what do you base that on?

4 **THE WITNESS:** The number of debriefs that I've
5 read --

6 **THE COURT:** No, no, no, no, to say "unique" doesn't
7 mean unique, what do you base that on?

8 **THE WITNESS:** Well, it's unique to the gang. We
9 don't see Aryan Brotherhood putting Huelga birds on them. We
10 don't see Black Gorilla Family putting Huelga birds on them.
11 The only gang that puts the Huelga bird on them is the Northern
12 Structure and the NF. So it's specific to them.

13 **THE COURT:** Well -- okay.

14 **BY MR. FEUDALE**

15 Q Agent Marquez, there's been testimony that Mr. Lira didn't
16 draw the drawing. We talked about this earlier, and I won't
17 get into that again. But let's assume, just for the sake of
18 argument, that Lira did not draw this drawing, that another
19 inmate did.

20 Would that change your opinion as to whether this is
21 significant of gang activity?

22 A No.

23 Q Why is that?

24 A One, based on the symbols that are in the drawing.

25 Two, it's documented in the report that Lira -- it was

1 found in the possession of Lira.

2 And there's a statement attributed to Lira that he asked
3 for his drawing back.

4 Q There's also been testimony that there was a -- a bit of a
5 delay between, if you look at Exhibit 10 -- no, I'm sorry,
6 Exhibit 8.

7 If you will notice, that event occurred on, looks like
8 December 11, 1992. However, the date on the chrono there at
9 the bottom is May 10, 1993, some six months later.

10 Does that affect your opinion as to the significance of
11 these gang symbols you have spoken about?

12 A No. And that would be based on my own personal experience
13 as a gang investigator. One of the things that ends up
14 happening besides -- gang investigators are not only assigned
15 to do investigations with gangs. Like, in my case, I also
16 oversaw the security of the institution. I was also given
17 other assignments by the Warden relative to appeals and other
18 investigations.

19 So, it's been my own personal experience that we have gone
20 and searched the personal property of gang members. When we
21 take the property out of the cell, we label it with the name,
22 the number, and the cell, the date of -- where we are taking it
23 from and who we're taking it from. We take it back to our
24 office, we search it. The things that we are looking at for
25 gang activity, we put those into what I would term a working

1 file. We return the rest of the property. I may or may not
2 have the opportunity to document that right away.

3 And, in this case, that may have been the -- I know
4 personally what I've done is, I've had these working files, as
5 I got a chance, I came back and fully documented everything
6 that was in that file.

7 Q Agent Marquez, I would like to turn your attention to
8 Exhibit 49. If you could just read that for a second and let
9 me know when you're done.

10 (Witness examines document)

11 A Okay.

12 Q There's been testimony that this exhibit may possibly
13 refute Exhibit 6, Romero's original incident report.

14 Would you concur with that assessment?

15 A No.

16 Q Why not?

17 A My assessment would be as, irrespective of the gang status
18 validation by law enforcement at that time, doesn't mitigate
19 that fact that Lira, in concert with a validated member and
20 other northern Hispanics, engaged in a gang behavior on that
21 day. So whether he was validated at that time or not is
22 irrelevant.

23 Q You've also heard testimony -- and this is referring to
24 Exhibit 4, the first debriefing report -- that the Department
25 has discontinued the use of the list, such as on Page 11, where

1 Mr. Lira was named.

2 Are you aware of that?

3 A Yes.

4 Q Does that in any way affect your opinion as to whether or
5 not this particular exhibit is reliable evidence of gang
6 activity?

7 A No.

8 Q Why is that?

9 A Two reasons: One, if you go back to the original date of
10 the document, right above that list, the informant attributes
11 the names, monikers, and the status as known to him on the date
12 that he give the list, one.

13 Number two, prior to September, 2004, and the
14 implementation of the *Castillo* settlement, the use of what has
15 been termed "the laundry list" was an entirely acceptable
16 practice for use in gang validations.

17 Q Why was that?

18 Do you know?

19 A No, I do not.

20 Q Now, there's also been testimony that Mr. Lira should have
21 been provided what's been called a 1030, or confidential
22 disclosure form, when the -- this is Exhibit 51. When this
23 exhibit was first drafted in, looks like April 1st of 1998, you
24 were a gang investigator at Pelican Bay, of course.

25 Does that comport with your knowledge of how these

1 confidential disclosure forms are distributed?

2 A Yes and no.

3 Q Okay. Can you explain?

4 A One of the things that I -- I can tell you what I did.

5 Upon completing my investigation, I never notified the
6 inmate ahead of time that I was looking into his activities
7 because that would have compromised an ongoing investigation.

8 If he knew I was looking at him, he would have -- could
9 have -- could have diminished what he was doing on the phones,
10 through the mail, his associations. He could have destroyed
11 evidence in the cell. So we don't go out and tell inmates,
12 parolees, that we're investigating them regarding their gang
13 status.

14 Now, what I did prior to *Castillo*, the *Castillo*
15 settlement, after I compiled my investigation, I would go to
16 the inmate, I would serve him with the non-confidential
17 documents, serve him with the 1030s, the confidential
18 disclosure forms, and advise him that I was submitting that to
19 SSU for their review and advise him of his appeal rights.

20 But also letting him know he really couldn't -- had
21 nothing to appeal at that point because no action had been
22 taken against him. But once SSU codified the validation in the
23 form of a 128-B-2, then, yes, action was going to be taken
24 against him.

25 Q And, based on your training and experience, when were

1 those forms, as Departmental policy, given, provided to the
2 inmate, these confidential disclosure forms?

3 A The only time that I have seen confidential information
4 disclosure forms, the 1030s, issued to inmates is when there
5 was going to be a negative impact upon the inmate, whether it's
6 his classification, his housing, whatever?

7 You know, I know that there's an argument out there
8 against the Department that any time an informant provides
9 information, we should turn right around and issue
10 people 1030s. But it's been the departmental practice that we
11 only issue those when there is going to be an adverse or
12 negative affect upon the individual that the information is
13 being disclosed to.

14 Q Agent Marquez, after reviewing all this information, what
15 is your conclusion concerning the evidence used to support
16 Mr. Lira's validation?

17 A My opinion is, is that he was appropriately validated.
18 However, as I testified earlier, based on the totality of the
19 evidence, had I submitted it or had I reviewed it, I would have
20 indicated that he was a member of the Northern Structure.

21 However, that does not diminish the fact that he was
22 validated as an associate.

23 **MR. FEUDALE:** Thank you, Agent Marquez.

24 No further questions, Your Honor.

25 **THE COURT:** Thank you.

1 Mr. White?

2 MR. WHITE: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. WHITE

5 Q Good morning, Mr. Marquez.

6 A Good morning, sir.

7 Q We've never met.

8 A No, sir.

9 Q Following up on that last point before we lose track of
10 it, Mr. Marquez, you were testifying that, according to
11 Departmental policy and practice, an inmate is to receive
12 a 1030 disclosure form about an inmate briefing report at least
13 as of the time that the report is used to support some adverse
14 action against the inmate.

15 Is that right?

16 A Correct.

17 Q And, certainly validating the inmate as a Northern
18 Structure associate would constitute adverse action for these
19 purposes?

20 A Yes, sir.

21 Q Well, that Departmental policy and practice wasn't
22 followed in Mr. Lira's case, was it?

23 A It doesn't appear that he was issued a 1030 at the time of
24 the submission of the documents, that's correct.

25 Q Or indeed, for years later. Let's take a look. The --

1 the September, 1992, debriefing report, you've testified about,
2 Exhibit 4 --

3 A I'm there.

4 Q -- bears a date of September 25, 1992?

5 A That's correct.

6 Q Turn to Exhibit 41.

7 (Request complied with by the Witness)

8 Q Do you have that?

9 A Yes, sir.

10 Q It's a 1030 form, isn't it?

11 A Yes.

12 Q It's a 1030 form to Mr. Lira, regarding this same
13 September 1992 debriefing report?

14 A That's correct.

15 Q This is dated October 18, 1996?

16 A That's correct.

17 Q More than four years later?

18 A Yes, sir.

19 Q Mr. Lira, by this point, was at Pelican Bay SHU.

20 A I'm -- I would have to look at the housing records.

21 Q He arrived there in September, September 24th, I believe,
22 1996.

23 Are you familiar with that?

24 A If you showed me the housing records. But I'll agree with
25 you, yes, sir.

1 Q So he was already at Pelican Bay SHU four years after this
2 report.

3 That's the first time, through this 1030 form, that he
4 even learned of the existence of this debriefing report as one
5 of the validating items against him, true?

6 A Correct.

7 Q Now, let's talk about these evidence items. And we can --
8 well, we can stay with this debriefing report a bit.

9 A Item No. 4?

10 Q Yes, we are still on 4.

11 It's the classic laundry-list debriefing identification of
12 Mr. Lira, isn't it?

13 A No.

14 Q Well, you referred to it as a laundry list debriefing
15 report and identification of Mr. Lira in your Rule 26 report,
16 didn't you, on Page 3?

17 I'll quote for the Record (As read): "Lira is identified
18 as an NS/NR member by the informant. This identification is in
19 what is commonly referred to as a laundry list."

20 A Okay.

21 Q Recall that?

22 A Yes.

23 Q Is that term familiar to you?

24 A Yes, it is. And the discrepancy in what I was about to
25 tell you is that the current format that we use is different in

1 that, in this case right here, it says that the informant
2 supplied the following list of individuals and their status.

3 Q Right?

4 A And what we refer to as laundry lists now, they are
5 formatted differently, and they're -- we sometimes -- or don't
6 have that little caveat there that identifies this is what --
7 this is how the informant knew them to be.

8 Q All right. So this is a laundry list from back in the
9 day, I guess.

10 A Correct. A little different from what I'm used to today.
11 That's the difference.

12 Q Well, let's see if we can't locate some commonalities
13 here.

14 Laundry lists, including this one, since the amendment to
15 Section 3378 in the regulations, is no longer been acceptable
16 as a validation evidence item, isn't that true?

17 A Since September of 2004. Since the *Castillo* settlement.

18 Q The *Castillo* settlement was what produced that change in
19 the regulations by amendment at that time, isn't it true?

20 A On a prospective basis, from that date forward, we were no
21 longer allowed to use laundry lists, but it did not negate the
22 use of the laundry list prior to that, and it did not,
23 according to the settlement, affect any of the validations
24 prior.

25 Q Yes. But that change was made following the *Castillo*

1 litigation in recognition of the inherent unreliability of
2 laundry-list debriefing-report identifications, isn't that
3 true?

4 **MR. FEUDALE:** Objection; argumentative, lacks
5 foundation.

6 **THE COURT:** Sustained.

7 It was ordered. It was part of the settlement,
8 right?

9 **MR. WHITE:** There was no order.

10 **THE COURT:** So it was a settlement.

11 **MR. WHITE:** There was an agreement.

12 **THE COURT:** Yes.

13 **MR. WHITE:** There was an agreement.

14 **BY MR. WHITE:**

15 Q And the Department -- and the Department, from its end of
16 the agreement, agreed to the amendment of the regulation, based
17 on the acknowledgment that laundry-list debriefing
18 identifications were inherently unreliable, isn't that true?

19 **MR. FEUDALE:** Objection; argumentative, lacks
20 foundation, and actually assumes facts not in evidence.

21 **THE COURT:** Was there some acknowledgment of that
22 sort?

23 Because if there was, you can bring that in.

24 **BY MR. WHITE:**

25 Q Well, there was -- there was testimony developed in the

1 course of the *Castillo* litigation, itself, about the inherent
2 unreliability of laundry-list debriefing reports, isn't that
3 true?

4 A Could you redo the question for me? I'm sorry.

5 Q Isn't it true that the *Castillo* litigation developed
6 evidence, including sworn testimony from CDCR personnel, that
7 laundry-list debriefing-report identifications were unreliable?

8 **MR. FEUDALE:** Objection; lacks foundation.

9 The Witness hasn't testified he knows anything about
10 the details of what occurred during the *Castillo* settlement.

11 Also assumes facts not in evidence.

12 **THE COURT:** I don't know about the facts not in
13 evidence, but I agree with the foundation part.

14 If you are going to ask him specific questions like
15 that, you had better find out what he does know about the
16 testimony in that case.

17 **BY MR. WHITE:**

18 Q Do you know anything about the *Castillo* litigation or the
19 evidence developed in that litigation that may have led to this
20 agreement that laundry-list debriefing reports would no longer
21 be used?

22 A I wasn't party to any of the court testimony, depositions.
23 I only know what has been provided to us by the Department as
24 the written form of the settlement and what we can and can't
25 do.

1 I do, however, personally know and have had lengthy
2 discussions with Mr. Steve Castillo regarding this settlement,
3 wherein he has related to me that the only thing he was ever
4 after was due-process issues and had nothing to do with
5 whatever the Department conceded to.

6 Q I'm unclear on what you're telling us. But, but, are you
7 saying, Mr. Marquez, that you have never learned at any point
8 from any source what motivated the Department of Corrections to
9 agree, as an element of the *Castillo* litigation settlement, to
10 formally revise the Department's regulations to no longer
11 permit laundry-list debriefing reports to serve as validation
12 evidence items?

13 A In the context of what you're asking me, whether it's
14 reliable or unreliable, I don't know. I wasn't party to any of
15 that. I can only tell you that we have, as an agency, been
16 provided the stipulations of the settlement and given training
17 on how we are to implement those stipulations.

18 But what was agreed to or not agreed to, I wasn't party to
19 that, so I can't effectively speak to that.

20 Q Well, Mr. Marquez, if, indeed, that regulation amendment
21 was based on the Departmental recognition of laundry-list
22 debriefing reports as inherently unreliable, there wouldn't be
23 anything merely prospective in force or application to that
24 reality, would there?

25 **MR. FEUDALE:** Objection; argumentative.

1 **THE COURT:** Overruled.

2 You can answer that.

3 **THE WITNESS:** My understanding of the settlement is
4 that from the date of its implementation, we won't use laundry
5 lists. But it did not affect or impact any validation prior to
6 the agreement.

7 **BY MR. WHITE:**

8 Q Mr. Marquez, this particular laundry-list identification
9 of Mr. Lira, I think we've all agreed, is nowhere substantiated
10 anywhere else in the report in terms of supporting or
11 corroborating information. True?

12 A Correct.

13 Q You're of the opinion, if I understand your earlier
14 testimony, that the likely -- nobody knows, but in your
15 opinion, the likely source of information such as this
16 (Indicating), in laundry lists such as this, would come from
17 inmates memorizing lists of names?

18 Is that right?

19 A Memorizing lists of names, having lists of names. If I
20 could give you an analogy to explain how I would get there.

21 Q You don't need to do that, and we heard your earlier
22 testimony. But that, in your view, is most probably where
23 these laundry-list identifications we can read in this report
24 came from; some inmate at some point memorized some list of
25 names. True?

1 **THE WITNESS:** In order for me to answer that, Your
2 Honor, I might have to give up some information about the
3 informant, which might be detrimental to him in the future.

4 **BY MR. WHITE:**

5 Q Can't you just answer the question yes or no?

6 A Not really. I mean, if you're -- how might this informant
7 know Mr. Lira would go -- would disclose, I think -- it might
8 give him some clue as to who the informant might be.

9 Q Well, it sounds like it would only be a speculative clue,
10 since we don't know.

11 My question keys to your earlier testimony. I thought
12 there was some point made of this in your direct examination.
13 It is talked about in your report as well, your Rule 26 report.

14 It's your view that the likely source of this information,
15 this laundry-list identification of Mr. Lira in this report,
16 came from some list, right, some memorized list of inmate
17 names?

18 A That's one potential way that he may have known him.

19 Q Let's turn to the yard-incident report. It's Exhibit 6.

20 (Request complied with by the Witness)

21 A I'm there.

22 Q We've noted earlier that this typed version of the
23 yard-incident report was prepared a full year after the
24 incident?

25 A Correct.

1 Q As a trained investigator, Mr. Marquez, does that
2 circumstance by itself raise any questions in your mind about
3 the accuracy or reliability of the information in this typed
4 version?

5 A No.

6 Q None at all?

7 A No.

8 Q Well, let's compare it to the more contemporaneous version
9 of the same incident. This is Exhibit 1.

10 A Okay, I'm there.

11 Q This was apparently written the same day or the day after.

12 A Correct.

13 Q Wouldn't you suppose that this would be the more accurate
14 and reliable version of what occurred?

15 A You could assume that.

16 Q I do assume that.

17 Would you assume that?

18 A Yes.

19 Q All right. Now, you said earlier in your direct
20 examination that the only difference of any significance you
21 noted between the two versions was that the quoted remark of
22 Mr. Lira appears in the year-later typed version?

23 A Correct.

24 Q But it's nowhere to be found in the original,
25 contemporaneous, handwritten version.

1 True?

2 A Correct.

3 Q Doesn't that circumstance alone raise any questions in
4 your mind about the accuracy and reliability of the typed
5 version, at least as regard to this quoted remark from
6 Mr. Lira?

7 A No. And the reason I would say that is because the
8 important facts, the gang-related activity is that -- and I've
9 stated this before -- Mr. Lira acted in concert with a
10 validated gang member, that's in both the handwritten and the
11 typed version.

12 There was an incident that precipitated them being placed
13 out on the yard. That's in both versions.

14 Lira acted in concert with a validated member. That's in
15 both versions.

16 They approached the Sureño gang members, that's in both
17 versions.

18 They challenge them, that's in both versions.

19 The officer believes that there's going to be a
20 gang-related fight. That is in both versions.

21 Q And I appreciate that testimony, Mr. Marquez, but you're
22 describing the doughnut here, and I'm trying to focus on the
23 hole.

24 This quoted remark, which I gather from your earlier
25 testimony you regard as having very special gang significance

1 as relates to Mr. Lira here, in the incident as described,
2 true?

3 A I wouldn't say "special," but yes, it has gang
4 significance, yes.

5 Q Well, don't you think that Sergeant Romero, when he made
6 the original handwritten report the day of the incident itself,
7 or the following morning, meant to put down in that report
8 everything significant? Everything gang-significant regarding
9 this encounter?

10 **MR. FEUDALE:** Objection; calls for speculation.

11 **MR. WHITE:** I'm simply asking him as a trained
12 investigator.

13 **THE COURT:** You may answer, sir.

14 **THE WITNESS:** I would look at it, and yeah, I would
15 wonder why he wouldn't put that, but it didn't change for me --
16 looking at the document from the standpoint of reviewing it for
17 a gang validation, the things that I've testified to were in
18 both reports.

19 This extra comment, while it might seem odd, doesn't
20 negate the other facts of the thing. And, to my knowledge,
21 there has -- there is no information that Officer or Sergeant
22 Romero, in any way, shape, or form, falsified or perjured
23 himself in preparing the documents.

24 **BY MR. WHITE:**

25 Q I didn't mean to suggest anything of the sort with my

1 questions. But we had some later input from Officer Romero on
2 the subject we will turn to in a few minutes.

3 But first, Mr. Marquez, staying with this point for just a
4 moment longer, isn't the quoted remark from Mr. Lira, imputed
5 to him in the later typewritten report, conspicuous in it's
6 been absence from the original handwritten version?

7 A Yes.

8 Q You said you would wonder about that difference a moment
9 ago.

10 If you were the assistant IGI in charge of this validation
11 investigation, wouldn't you have investigated that discrepancy,
12 looked into it?

13 A I don't know.

14 Q I'm sorry?

15 A I don't know that I would have because, again, I guess I
16 default back to the consistencies of the actions.

17 Q Well, let's talk about that for a moment.

18 You noted only one difference thus far between the two
19 reports, which is this quoted remark, but take a look at
20 something else, if you would.

21 Do you see how, in the original handwritten report, in the
22 text, there are two inmates identified as instigators or
23 leaders here. And it's Inmate Morales and Inmate Hernandez.

24 Do you see that?

25 **MR. FEUDALE:** Objection, Your Honor, mischaracterize

1 the evidence. This report does not say that neither of them
2 were instigators, leaders. It merely says they tied their
3 shoes.

4 **MR. WHITE:** Well, but --

5 **THE COURT:** Overruled.

6 You can ask a question, the Witness can explain.

7 **MR. WHITE:** Thank you.

8 **THE COURT:** But don't characterize, if you can avoid
9 that, please.

10 **MR. WHITE:** I was just asking if the Witness,
11 himself, would so characterize this information.

12 **BY MR. WHITE:**

13 Q The report, the report describes this tying of the shoes
14 as having special significance in the context of the incident,
15 itself. Right?

16 A Correct.

17 Q It says, I'll quote (As read): "Hernandez and Morales
18 started to tie their shoes. That's when I knew something was
19 going to go down."

20 Isn't that what it says?

21 A Yes.

22 Q There's no mention at all of Mr. Lira doing anything in
23 the text of this report, true?

24 A That's -- in that specific sentence, correct.

25 Q Well, anywhere else in the text. Take your time and look.

1 Is he mentioned anywhere, is any activity, any conduct,
2 any associational effort anywhere described for Mr. Lira in the
3 text of this report?

4 A Are you including the list of the names as part of the
5 text?

6 Q No. We will get to the list in a moment. That's at the
7 top. I'm talking about the narrative description of what
8 happened.

9 A I will say that he's identified under the heading of
10 "Norteños."

11 Q Thank you.

12 Now, if you turn over to the typewritten version,
13 Exhibit 6, you'll see that version also describes two inmates
14 who were leaders or instigators here, but instead of Morales
15 and Hernandez, it's now Morales and Lira.

16 Do you see that?

17 A Along with Hernandez. Hernandez is later identified.

18 Correct.

19 Q No, but I'll quote again (As read): "The two main inmates
20 that were doing the most questioning and intimidating were
21 Morales and Lira."

22 A Which is a different activity than tying your shoes.

23 Q Well, do you see that anywhere in the original handwritten
24 report?

25 A That Lira and Morales are questioning? No.

1 Q Yeah, that those two --

2 A Right.

3 Q That those two now are suddenly leading this thing,
4 Morales and Lira, instead of Morales and Hernandez.

5 Did you note that difference when you reviewed and
6 compared these two reports as a part of your evaluation here?

7 A Yes, I noted it.

8 Q Did you regard it as significant at all?

9 A No.

10 Q Did it cause you in any way to question the accuracy or
11 reliability of this year-later typewritten report?

12 A No.

13 Q Turn to Exhibit 49.

14 We looked at this earlier?

15 A Correct.

16 Q This is a letter from Officer Romero, dated 3-8-98. It is
17 addressed, "To Whom it May Concern."

18 Are you familiar with this?

19 A Yes, I've seen it.

20 Q Do you know the circumstances of this letter?

21 Are you familiar with any of the testimony in the course
22 of this trial about that?

23 A No, I'm not.

24 Q You don't know -- you don't know how this was secured or
25 prepared by Officer Romero?

1 You don't know anything about the context of this?

2 A I know about the context.

3 You asked me if I'm aware of any testimony regarding this.

4 I'm not aware of any testimony, no.

5 Q Well, you're aware, I gather, but tell me if I'm wrong --

6 A Of the context, correct.

7 Q You are aware, in terms of context, that Mr. Lira rotated
8 back out of Pelican Bay to Merced County Jail for a
9 resentencing in March of 1998, had a chance to speak with
10 Officer Romero at that point, true?

11 (Witness examines document)

12 A I don't -- I don't know if he spoke to him. I don't -- I
13 don't remember seeing any reports about any conversation they
14 had.

15 Q Wasn't that how he secured the letter? Back in March --

16 **MR. FEUDALE:** Objection; calls for speculation.

17 **THE COURT:** Well, maybe you should find out what he
18 does know, because if he's reviewed all these matters and there
19 are things he doesn't know about them, it might affect the
20 reliability of his opinion. I don't know.

21 So don't assume he does, if Counsel is right, don't
22 assume that he does. But I think it is important to explore
23 what he doesn't know.

24 **MR. WHITE:** And I had just been trying to do this.

25 We were talking in generalities about circumstances and

1 context. I was just trying to find out in much more specific
2 and concrete terms what Mr. Marquez's understanding was about
3 that.

4 **BY MR. WHITE:**

5 Q Do you know whether or not, do you know whether or not
6 Mr. Lira secured this letter from Officer Romero in March
7 of 1998, when he rotated back to the Merced County Jail for
8 resentencing, had a chance to speak to Officer Romero at that
9 point, explained the situation he was in, Pelican Bay SHU,
10 based in part on the original yard-incident report, and Officer
11 Romero, in response, offered to Mr. Lira to write this letter
12 (Indicating).

13 Are you aware of that?

14 A I'm not aware of that. The context of which I'm aware
15 that this exists has to do with Lira allegedly, there's -- in
16 the typed version of the report, there's some -- there's an
17 identification of Lira, slash, and then there's an
18 identification of him possibly as a Northern Structure gang
19 member.

20 That's the context of which I understand this (Indicating)
21 to exist. That --

22 Q I'm sorry, this letter, you are referring to the letter?

23 A Right.

24 That he may have inadvertently been identified by the
25 Merced County Jail, by Officer Romero as being a Northern

1 Structure gang member.

2 That's the context of which I understand this (Indicating)
3 to exist, to clarify that they do not have in their database or
4 in their records any information that indicated he was Northern
5 Structure.

6 Q Well, let's -- let's set your context aside for the
7 moment, and stick with mine.

8 A Okay.

9 Q If you accept what I've represented to you as factual,
10 would that affect your opinion at all about this letter
11 (Indicating) and its significance or, indeed, the original
12 typed yard-incident report and its significance?

13 A It would affect my opinion if there was more than just the
14 information that's contained in this letter. If Romero had, in
15 fact, stated, "I misidentified you, you weren't one of those
16 guys that was involved," or any of a number of statements that
17 he could have.

18 But the context of what I understand this letter to be,
19 that I'm accepting that Romero provided to Lira, it just talks
20 about the gang validation status at the time of the incident.

21 Q Well, Mr. Marquez, isn't this letter a written
22 communication from Mr. Romero to CDCR, trying to explain that,
23 according to Merced County Jail -- and they've had Mr. Lira in
24 confinement there over a number of occasions -- he is not known
25 to that jail to be gang-affiliated.

1 Isn't that what --

2 **MR. FEUDALE:** Objection; mischaracterizes the
3 evidence. It does not say that in this exhibit, Your Honor.

4 **THE COURT:** Do you --

5 **BY MR. WHITE:**

6 Q My question is, isn't it your -- isn't it your opinion,
7 wouldn't you acknowledge that that's what Officer Romero, in
8 context, was trying to communicate here?

9 **MR. FEUDALE:** Your Honor, I object again. That calls
10 for speculation and it's mischaracterizing the evidence. It
11 clearly does not say here. It just says there's no gang
12 validation, not "gang affiliation."

13 **THE COURT:** Well, I'll sustain the objection because
14 I think we're getting argumentative here. He said what he
15 said. So -- I'll sustain it.

16 **BY MR. WHITE:**

17 Q Mr. Marquez, take a look at 53.

18 (Request complied with by the Witness)

19 Q Do you recognize this?

20 A Yes.

21 Q Do you consider this as a part of the set of materials you
22 were asked to evaluate?

23 A Yes.

24 Q By the way, this is a transmittal of the Romero letter to
25 SSU, for some sort of guidance, by Sergeant Piland.

1 This was also back in '98, July of '98, true?

2 A Correct.

3 Q And here in the middle of this fax transmittal sheet it
4 states, I'll quote for the Record (As read): "One of the
5 sources reviewed for validation has been rescinded by the
6 author."

7 Do you see that?

8 A Yes, sir.

9 Q Do you take or understand that to be a reference to the
10 original typed yard-incident report and Sergeant Romero's
11 subsequent March, 1998, letter that we have just discussed?

12 A My understanding of that is the rescinding of the
13 handwritten one, that is now replaced by the typed version.

14 Q That's what you believe this signifies?

15 A Yeah, because it doesn't show what was faxed.

16 Q All right, let's move on. Exhibit 108.

17 A I'm there.

18 Q Have you seen this before?

19 A No, I have not.

20 Q It wasn't included in the set of materials you were
21 provided by defense counsel to review and evaluate as part of
22 your assignment?

23 **MR. FEUDALE:** Your Honor, I object.

24 If you clearly look at this date, and you look at
25 Officer Marquez's report, Agent Marquez's report, his report

1 came out two months prior to when this report, or when this
2 declaration was signed, and, indeed, three or four months
3 before it was produced to our office. And I have the report,
4 if you would like to see that, as well.

5 **THE COURT:** Well, but it's two years ago.

6 **MR. FEUDALE:** Right. But the question was, if he --
7 if he reviewed this document --

8 **THE COURT:** Provided a copy of this by you.

9 That's right. The question was, did he ever see it
10 and did you ever give him a copy of it.

11 **MR. FEUDALE:** In preparation for preparing his
12 report, was the question.

13 **MR. WHITE:** I'll amend the question.

14 **BY MR. WHITE:**

15 Q Did defense counsel ever furnish you with a copy of this?

16 A No, I haven't seen this report. This is the first time
17 I've seen it.

18 Q Well, are you able to recognize it as a declaration under
19 oath from Sergeant Romero?

20 (Witness examines document)

21 A Yes.

22 Q It discusses, among other things, this yard incident and
23 the two versions of the yard-incident report?

24 (Witness examines document)

25 A Would you give me a minute to review the --

1 Q Please, no. If this is your first time, go ahead. Take
2 your time. I don't want to rush you.

3 (Witness examines document)

4 A Okay.

5 Q Mr. Romero, in this declaration describing the incident,
6 the yard incident, states among other things, I'm looking at
7 Paragraph 15, and I'll quote (As read): "There was no
8 difficulty in avoiding any trouble and no fight started."

9 Do you see that?

10 A Correct.

11 Q Paragraph 16, "There was nothing I saw Lira do that
12 indicated that he was trying to instigate a fight."

13 Do you see that?

14 A Correct.

15 Q 18 (As read): "I couldn't say that Lira was trying to
16 start trouble. I can't say that Lira was a problem-maker at
17 that incident."

18 Do you see that?

19 A Correct.

20 Q Paragraph 19 (As read): "Afterwards, Lira told me he was
21 just playing."

22 Do you see that?

23 A Correct.

24 Q Do any of these statements under oath by Sergeant Romero
25 in this declaration affect your opinion or evaluation of this

1 yard incident or either version of the yard-incident report?

2 A Of the ones that you just read to me, no. But you skipped
3 over 17.

4 Q I didn't mean to. If you find that significant (As read):
5 "Lira was more like asking questions of the other inmates."

6 Do you find that significant?

7 A Significant in that it correlates back to the original
8 report, where he says that, along with the validated Northern
9 Structure gang member, was questioning and talking to these
10 other inmates.

11 Q Take a look at the next page, on Paragraph 28. Officer
12 Romero is here addressing this March 1998 letter.

13 I'll quote again (As read): "I didn't think Lira was a
14 gangbanger. That's why I agreed to write my March 8, 1998,
15 letter."

16 A I see that.

17 Q Does that affect your opinion or evaluation at all of this
18 yard incident, or these yard-incident reports, either version?

19 A No.

20 Q None at all?

21 A No.

22 Q All right. Let's talk about the drawing. And just to
23 remind you, it's Exhibit 9, Tab 9.

24 **THE WITNESS:** Okay.

25 **THE COURT:** We have about five minutes to go before

1 we need to take a break, Mr. White.

2 **MR. WHITE:** All right. Thank you, Your Honor.

3 **THE WITNESS:** I'm prepared.

4 **BY MR. WHITE:**

5 Q And the related chrono is Exhibit 8.

6 A Okay.

7 Q You noted earlier in your testimony that, according to the
8 chrono, Mr. Lira -- I'll quote again -- "freely admitted that
9 he created this drawing."

10 Do you see that?

11 A Yes, I do.

12 Q Did you regard that as significant when you first reviewed
13 this chrono as part of your evaluation?

14 A It was important. I wouldn't characterize it necessarily
15 as any more important than his possession of the drawing.

16 Q Well, it's noted as a point of special significance here
17 in the chrono, isn't it?

18 A It's documented.

19 Q Now, take a look at Exhibit 113.

20 (Request complied with by the Witness)

21 Q 113.

22 A I'm prepared. Sorry.

23 Q Do you have that before you?

24 A Yes.

25 Q I couldn't tell from here.

1 Have you ever seen this before?

2 A Yes, I have.

3 Q And this is Mr. Leyba's declaration.

4 A Yes.

5 Q In which he relates under oath that he made the drawing.

6 A Correct.

7 Q Mr. Leyba testified as a witness at this trial.

8 Are you aware of that?

9 A No, I'm not.

10 Q Has anyone informed you as to his trial testimony here?

11 A No, they have not.

12 Q From this same witness stand?

13 A No, they have not.

14 Q Mr. Leyba, also in this declaration, I'll read from
15 Paragraph 5 (As read): "I did not intend to put any
16 prison-gang symbols in the drawing and don't believe I did" --
17 "and don't believe I did so."

18 Do you see that?

19 A Correct.

20 Q Is that significant at all to your evaluation?

21 A No.

22 Q Do you credit that statement?

23 A Do I believe it's true?

24 Q All right.

25 A No.

1 Q In Paragraph 7 of the declaration, it's on the second
2 page, I'll quote again, "The drawing was made before I first
3 knew Ernesto Lira."

4 Do you see that?

5 A Yes.

6 Q If that were so, Mr. Marquez, would you agree with me that
7 the reference you shaded earlier this morning in your
8 testimony, over to the left-hand side of this blown-up
9 demonstrative version of the drawing, which you told us was
10 only some word fragment there, but you told us that reads
11 "Chino," is that right?

12 A Well, h-i-n, which I believe to be the middle three
13 letters of the alias "Chino," correct.

14 Q And on that basis, you ascribed or imputed the drawing to
15 Mr. Lira.

16 A Along with what's documented in the report.

17 Q The chrono we just looked at.

18 A Chrono, correct.

19 Q Right. The one that talks about how Mr. Lira freely
20 admitted drawing the thing?

21 A Correct.

22 Q Well, would you agree with me that if Mr. Leyba made the
23 drawing, and if Mr. Leyba made the drawing before he ever met
24 Mr. Lira, whether that headband says "Chino" or not, couldn't
25 refer to Mr. Lira, could it?

1 A That's possible, yes.

2 Q Well, does that affect your evaluation of this drawing,
3 this further statement under oath of Mr. Leyba here in this
4 declaration?

5 A No.

6 Q And is that because you don't believe what he says here?

7 A I know that Mr. Leyba was a validated Northern Structure
8 gang member. I know that the Huelga bird and the Northern Star
9 are symbols of the Northern Structure.

10 And based -- you know, unless there's some evidence that
11 would indicate that the document, the chrono, referencing the
12 picture, unless there's some evidence to indicate that the
13 signer or the author of that document perjured themselves, I
14 would have to take it at face value, that it's correct and it's
15 true that Mr. Lira freely admitted that he drew it, and it has
16 gang symbols, as I've testified.

17 Q Well, if you would have received information in the course
18 of processing this validation yourself, if you had had that
19 role, if you had received information possibly from Mr. Lira,
20 himself, maybe in the course of an informal hearing before the
21 IGI that he never received, that he didn't make that drawing,
22 that it was made by Mr. Leyba, himself, a different inmate,
23 would you have investigated that?

24 A No. And the reason being is, if it was taken out of the
25 personal property of Mr. Lira, it was in his possession, it

1 belonged to him.

2 For me, as a gang investigator, him possessing it, him
3 having that drawing, having those symbols on it, who drew it,
4 at that point, would become -- I mean, not -- it would be a
5 moot point for me.

6 Q Certainly not worth bothering to investigate?

7 A No. And, again, because of the possession and because of
8 the symbols.

9 MR. WHITE: Perhaps this is a convenient place to
10 stop, Your Honor.

11 THE COURT: All right, thank you.

12 I'm sorry to say, but we will have to come back after
13 lunch, sir.

14 THE WITNESS: All right.

15 THE COURT: How much more do you think you have of
16 this witness?

17 MR. WHITE: Not a lot. I'm hoping 20 minutes at
18 most.

19 THE COURT: How about you, Mr. Feudale?

20 MR. FEUDALE: Maybe ten on redirect.

21 THE COURT: So if we come back at 1:00, do you think
22 that is safe, we will be finished?

23 MR. WHITE: By the end of today, yes.

24 MR. FEUDALE: Definitely.

25 THE COURT: All right, then, come back at 1:00.

1 **THE WITNESS:** Thank you, Your Honor.

2 (Recess taken from 12:12 to 1:15 p.m.)

3 **THE COURT:** You may be seated. And, you may proceed,
4 Mr. White.

5 And you're still under oath from this morning, sir.

6 **THE WITNESS:** Yes, Your Honor.

7 **MR. WHITE:** Thank you, Your Honor.

8 **BY MR. WHITE**

9 Q And I believe, Mr. Marquez, just before our lunch break,
10 we were talking about this drawing with the hidden gang symbols
11 (Indicating), and its authorship.

12 We had talked about Mr. Leyba, do you recall that?

13 A Correct.

14 Q You mentioned at one point in your testimony, your belief
15 that Mr. Leyba was validated at some point, himself, as a
16 prison gang member, true?

17 A That's correct.

18 Q Back in 1992, at the Sierra Conservation Center, Mr. Leyba
19 hadn't been validated as a prison gang member or affiliate,
20 true?

21 A That's correct.

22 Q Let's talk about another drawing that I don't believe was
23 discussed in your direct examination, but it's discussed in
24 your Rule 26 report.

25 Do you have a copy of the report with you?

1 A No, I don't.

2 Q Do you recall discussing on Page 4 of your report, a
3 second drawing that involves a woman wearing a sombrero hat?

4 A Yes, I do.

5 Q Turn to Exhibit 120, if you would, Plaintiff's 120. And
6 before you look through that binder before you, I need to tell
7 you it's a different binder. It's off to your right.

8 And it should say "Plaintiff's Trial Exhibits, Volume 2."
9 I think you'll find 120 there.

10 (Request complied with by the Witness)

11 Q If you turn to the second page of this exhibit, is that
12 the drawing?

13 A Yes, sir.

14 Q And this was part of the materials you were sent by
15 defense counsel to evaluate?

16 A Correct. And I don't remember if they sent it to me or
17 this was something that was maintained in the file in Rancho
18 Cordova, but I reviewed this document. This drawing.

19 Q All right. And from your Rule 26 report, we understand
20 correctly that you determined that this -- this drawing
21 represents evidence that Mr. Lira was affiliated with the
22 Northern Structure?

23 A Yes, if this is in fact attributed to him.

24 Q And not just affiliated as an associate of that gang, but
25 as a member of that gang. Wasn't that your further opinion?

1 A Correct.

2 Q Take a look, if you turn back one page in this same
3 Exhibit, 120, this is a page with a single handwritten notation
4 at the top?

5 A Correct.

6 Q Have you ever seen that before?

7 A No, I have not.

8 Q It wasn't included in the materials you were sent by
9 defense counsel?

10 A No.

11 Q It's a little hard to read, but I'll quote for the Record
12 (As read), "This is a copy of a drawing that was confiscated
13 from" -- I think that's "Morales, Juan property during a cell
14 search" -- I think that's "12-6-91." Do you see that?

15 A Correct.

16 Q And then it seems to be signed by -- it's a familiar
17 signature to us at this point, that's Sergeant Romero?

18 A Correct.

19 Q Do you know whether or not this notation on this page has
20 any reference to this sombrero hat lady drawing?

21 A No.

22 Q Well, assume with me for the moment, Mr. Marquez, that
23 this is a notation from Sergeant Romero referencing the
24 drawing. All right?

25 A Okay.

1 Q As a drawing that was confiscated not from Mr. Lira, but
2 from a different inmate, this Inmate Morales. All right?

3 A Okay.

4 Q Would that affect your opinion or evaluation of the
5 drawing, itself, as evidence of Mr. Lira's gang affiliation?

6 A In totality, no.

7 Q Why not?

8 **THE COURT:** Did you say that you thought this
9 drawing, Exhibit 120, was significant in demonstrating
10 Mr. Lira's gang affiliation?

11 **THE WITNESS:** I -- I believe it is, in the context of
12 the totality of the evidence. Morales is validated as a
13 Northern Structure member. If in fact we attribute this
14 drawing to Mr. Morales, it's further evidence that he is in
15 fact a member of the Northern Structure.

16 The totality of the evidence going back to the Romero
17 report is that you have Mr. Lira associating with Mr. Morales,
18 in this confrontation on the jailyard.

19 **THE COURT:** This picture shows that Mr. Morales is a
20 gang member.

21 **THE WITNESS:** Correct.

22 **THE COURT:** And Mr. Lira was with him on the
23 courtyard. So that's the logic.

24 **THE WITNESS:** That's correct, Your Honor.

25 **BY MR. WHITE**

1 Q But it wouldn't be any evidence of Mr. Lira's gang
2 affiliation as something that was ever found in his possession.
3 True?

4 A This drawing, correct.

5 Q So this wouldn't be evidence, by itself, that Mr. Lira was
6 affiliated with any prison gang, true?

7 A By itself, correct.

8 Q Now, can we --

9 **THE COURT:** Is that -- is the -- is the report in
10 evidence? The Rule 26 report?

11 **MR. WHITE:** I haven't put it into evidence.

12 **MR. FEUDALE:** We can, Your Honor. We --

13 **THE COURT:** What did he say in that report about this
14 drawing?

15 **MR. WHITE:** He -- he said -- I can quote for the
16 Record, he says (As read), "The drawing identified" -- this is
17 from Page 4 -- "The drawing identified by me as a woman wearing
18 a sombrero contains a Huelga bird, and more importantly, the
19 name of the gang 'Nuestra Raza.' My professional opinion,
20 based upon my training, experience and numerous personal
21 interviews with active, inactive and dropout gang members is
22 that only members of the gang are allowed to possess the
23 symbols/tattoos of the gang without suffering repercussion."

24 He goes on to make further comments at the top of
25 Page 5, based on the aforementioned documents, "My professional

1 opinion is that Lira should have been identified and validated
2 as a member of the gang rather than an associate, based on the
3 totality of the information contained in the documents and my
4 personal training and experience."

5 **BY MR. WHITE**

6 Q Mr. Marquez, could we turn back to Exhibit 51. This
7 April, 1998 debriefing report.

8 (Request complied with by the Witness)

9 A Okay.

10 Q And you've told us, you've read this report. You're
11 familiar with its contents.

12 A That's correct.

13 Q If you look at the top of Page 3 of this report, --

14 **MR. FEUDALE:** I apologize for interrupting, Counsel.
15 What exhibit are you on?

16 **MR. WHITE:** 51.

17 **MR. FEUDALE:** Thank you.

18 **BY MR. WHITE**

19 Q At the top of Page 3 at the beginning of that first
20 paragraph, doesn't this debriefing inmate relate that he,
21 himself, was originally wrongly validated as a prison gang
22 member?

23 (Witness examines document)

24 A Can I -- can I look at the previous page just so I can
25 understand the context? Because it --

1 Q Oh, sure.

2 (Witness examines document)

3 A Okay. What was the question, again?

4 Q My question, sir, was, doesn't this debriefing inmate
5 relate at the top of Page 3 of this report that he, himself,
6 originally was wrongly validated as a Northern Structure
7 member?

8 A No, unless -- unless I'm totally misreading this, it
9 almost sounds like the inmate went to the Classification
10 Committee, and the Classification Committee -- it almost, the
11 way I'm reading it, is used a ruse to try to elicit some kind
12 of response from him about his gang membership. Unless I'm
13 totally misconstruing the way this is reading.

14 Because it says when he went to the Classification
15 Committee, he was told he was being validated as a gang member,
16 which at that time was not true.

17 But it doesn't say that the informant said that "I'm not a
18 gang member, that's not true." It's not real clear, the way
19 that this reads, whether the -- whether the inmate/informant is
20 saying "That's not true," or was it a ruse by the committee to
21 try to elicit some type of response from him. Unless I'm
22 misreading this.

23 Q You think this is unclear in its meaning?

24 A I feel it is.

25 Q All right.

1 A Unless I'm just missing something here.

2 Q All right. Well, let's go to Page 5, then. We can pass
3 that point.

4 This is the -- this is the account here, in the second
5 paragraph, about this gang-directed assault by Mr. Lira on a
6 new cellmate?

7 A Correct.

8 Q And that apparently was something he was directed to do
9 because he had refused to --

10 **MR. FEUDALE:** Your Honor, before we go further into
11 here, can I have a sidebar, please?

12 **THE COURT:** Can you what?

13 **MR. FEUDALE:** Can we have a sidebar on this report?

14 **THE COURT:** Okay.

15 **MR. FEUDALE:** Thank you.

16 (Sidebar discussion and further proceedings held on
17 the Record and sealed)

18 (The following proceedings were then held on the
19 Record, in open court:)

20 **BY MR. WHITE**

21 Q Mr. Marquez, you -- you were testifying earlier today
22 about -- about gang insignia.

23 A Correct.

24 Q And tattoos.

25 A Correct.

1 Q Symbols of the gang. And, we have now, I think it's
2 Defense Exhibit 344, these photos (Indicating). Is that right?
3 Of all these gang tattoos?

4 A Correct.

5 Q And they include a number of examples of a tattooed Huelga
6 bird.

7 A That's correct.

8 Q On these different inmates.

9 A And parolees, correct.

10 Q Often with the number or the Roman numeral XIV on them?

11 A Correct.

12 Q Does Mr. Lira have a Huelga bird tattoo with the number 14
13 on it?

14 A I do not know if he has any tattoos.

15 Q Do you know if he has a tattoo of any sort?

16 A I have no idea.

17 Q Does he have any Northern Star tattoo?

18 A I'm not aware of him having any tattoos. I've never
19 conducted an investigation as to what tattoos he may or may not
20 have.

21 Q Is the number 14, with or without a Huelga bird, tattooed
22 anywhere on Mr. Lira?

23 A I have no idea.

24 Q Well, take a look at Exhibit -- it's Defense Exhibit 298.

25 (Witness examines document)

1 Q Do you recognize this?

2 A Correct.

3 Q It's, it's a form that's filled out, it is entitled "Gang
4 Validation Worksheet"?

5 A That's correct.

6 Q And, you are familiar with this, aren't you?

7 A Yes, I am.

8 Q It was part of the materials you were sent by defense
9 counsel that you reviewed and evaluated here. Isn't it?

10 A That's correct.

11 Q And, do you see on this form, it's on the first page, a
12 little below the middle of the page, it's part of the
13 preprinted form. It says, I'll quote, "Tattoos, scars and
14 marks." Do you see that?

15 A Yes, I do.

16 Q And somebody's checked the box that says, "None."

17 A That's correct.

18 Q You credit that, don't you?

19 A I credit it. Do I -- telling the truth --

20 Q Well, you were telling me just a moment ago that you don't
21 know if Mr. Lira has any tattoos of any sort on his body.
22 Don't you credit this record, documentation from CDCR files,
23 reflecting that he has none at all?

24 **MR. FEUDALE:** Your Honor, I would object to this line
25 of questioning. It mischaracterizes the evidence. This report

1 or validation worksheet, as you can see, was submitted in 1993.
2 We are now in 2009. Mr. Lira could have acquired some tattoos
3 between now and then.

4 I don't think it is a fair lining of questioning for
5 the witness.

6 **THE COURT:** I think it is a fair line of questioning,
7 but you may need to reframe your question, because it's written
8 in '93.

9 **BY MR. WHITE**

10 Q Are we at least agreed at this point, Mr. Marquez, that as
11 of 1993, the year that Mr. Lira was validated by CDCR as
12 gang-affiliated, he had no tattoos of any sort on his body.
13 True?

14 A As of May 18, 1993, that's correct.

15 Q Including any gang tattoos?

16 A That's correct.

17 Q Do you regard that as significant?

18 A Yes and no.

19 Q Why don't you give me the "yes" part first.

20 A Yes, because I know that one of the things that gang
21 members do do is put tattoos on their bodies.

22 Q It's a common thing, isn't it?

23 A Common.

24 Q And there's nothing particularly hidden about the gang
25 symbols when they do so.

1 A Correct.

2 Q All right. Do you want to give us the "no" part now?

3 A The "no" part. The gangs, per their own writings, which I
4 have read on numerous occasions and have talked to numerous
5 debriefing inmates, the gangs, themselves, have issued an edict
6 to their members not to tattoo themselves with gang-related
7 tattoos because we going to use them in the identification and
8 validation process.

9 Q Apparently none of these gang members got that bulletin
10 (Indicating).

11 A Correct.

12 Q When did that issue?

13 When did that issue?

14 A I believe that that was issued around 1998, is when it
15 first came out.

16 Q All right. Well, we came to an understanding about this
17 tattoo question, at least up through May of 1993. Do you have
18 any reason to believe that Mr. Lira has gotten any tattoos on
19 his body, including any gang tattoos, since then?

20 A I have no idea.

21 Q All right. By the way, Mr. Lira's name turned up on one
22 or more no-good lists, did it not, while he was at Pelican Bay
23 SHU?

24 A I've heard that. I haven't actually seen the documents
25 that list him as being in bad standing with the gang.

1 Q Well, let's take a look at a couple of them. Exhibit 77.

2 A Is that the binder that you --

3 Q I'm sorry. I hid it on you. It's the one behind you.

4 A Okay. I'm at 77.

5 Q Have you ever seen that before?

6 A This 1030? No.

7 Q Well, take a look at it.

8 (Request complied with by the Witness)

9 Q It's a disclosure to Mr. Lira, is it not, it's dated
10 February 21, 2003, advising him that his name has turned up on
11 a prison gang no-good list.

12 A That's correct.

13 Q That list is Exhibit 110, isn't it?

14 (Witness examines document)

15 **MR. FEUDALE:** Your Honor, I would have to object.

16 Well, hold on one second.

17 Withdraw my objection.

18 **BY MR. WHITE**

19 Q Correct, Mr. Marquez?

20 A Correct.

21 Q Take a look at the next exhibit in order, 111.

22 (Request complied with by the Witness)

23 Q Another no-good list, isn't it? With Mr. Lira's name on
24 it? This one dating from January, 2004?

25 A Correct.

1 Q Those no-good lists signify that Mr. Lira was at that time
2 targeted for retaliatory attack or violence by the gang. Isn't
3 that true?

4 A Some time around, at -- at least, 2002.

5 Q All right. And, and you were telling us earlier that at
6 least the Northern Structure prison gang controls not just the
7 prison gang structure within the system, but extends its
8 influence and authority out on to the streets as well?

9 A That's correct.

10 Q Including efforts -- retaliatory or reprisal efforts
11 against inmates deemed no good by the gang?

12 A That's correct.

13 Q All right. One other question. Do you know whether
14 Mr. Lira was ever reviewed for inactive gang status?

15 A I believe he was.

16 Q In 2000?

17 A That's correct.

18 Q Would he have been checked for prison gang tattoos at that
19 time?

20 A He should have been. That's part of the process.

21 Q And any prison gang tattoos found, you would presume,
22 would have been noted in the inactive gang review report?

23 A That's true.

24 **MR. WHITE:** Nothing further.

25 **THE COURT:** Mr. Feudale?

1 **MR. FEUDALE:** Yes, Your Honor.

2 **REDIRECT EXAMINATION**

3 **BY MR. FEUDALE**

4 Q Good afternoon, Agent Marquez.

5 A Good afternoon.

6 Q Earlier in your cross-examination with Mr. White, there
7 were some discussion regarding a confidential disclosure form.
8 I want to turn your attention to Exhibit 208 in Defendant's
9 blue binder.

10 Actually, hold on. You got Exhibit 208?

11 A Yes.

12 Q What is that exhibit?

13 A It's a confidential information disclosure form, CDC
14 Form 1030.

15 Q What is the date of that exhibit?

16 A 9-19-96.

17 Q And, let me turn your attention to Exhibit 36 in the other
18 binder.

19 A That was 36?

20 Q Yes.

21 (Request complied with by the Witness)

22 A Okay.

23 Q Now, I want to direct your attention to the sentence
24 beginning with the word "Based," it's in the middle of the
25 paragraph.

1 "based on the" --

2 A Okay.

3 Q I'll read it for the Record. Says (As read), "Based on
4 the CDC 128-B-2, ICC elects to impose an indeterminate SHU term
5 for membership in the Northern Structure prison gang, and
6 requests CSR approval of the indeterminate SHU term."

7 What is the date of this exhibit?

8 A 9-19-96.

9 Q And, correct me if I'm wrong, is that the same date that
10 this confidential disclosure form was provided to Mr. Lira?

11 A Yes, it is.

12 Q Now, earlier, Mr. White was speaking to you about the use
13 of what's been colorfully termed laundry lists. Lists of
14 inmates that are known to a debriefer as active members or
15 associates of a prison gang.

16 And, you were about to provide an analogy. I'm wondering
17 if you would like to do that at this time.

18 A Well, in the context of the way the question was presented
19 to me, is how do these inmates know who these people are. And
20 there's a number of ways.

21 One, from good-news lists, bad-news lists, no-good lists.
22 One is through their observations, gang members know who these
23 other gang members are.

24 And the analogy is, is I go to church every Sunday. And
25 when I go to church, I see people in there that I may not know

1 the specifics of what they do while they're at home, but I see
2 them there Sunday after Sunday after Sunday, I see them
3 worshiping, I see them reading their Bible. And so it's safe
4 for me to assume that we have some commonality, because Sunday
5 after Sunday, they're there with me. But I may not know the
6 specifics of what they do away from there.

7 And I guess the analogy would then be to the gang members,
8 is they see these people, they know who they are, but they may
9 not know the specifics of what type of criminal activity that
10 they're engaged in, although there is some level of
11 commonality, whether it's the tattoos, whether it's
12 association, whether it's -- you know, name recognition by
13 going through these lists. However that may be.

14 Q Agent Marquez, when you were speaking to Mr. White, you
15 said that in addition to these -- the fact that inmates
16 memorize the extensive lists if they are part of the Northern
17 Structure, you also found in part this information to be
18 reliable as well for another reason, which wasn't covered.

19 Do you recall what I'm speaking about?

20 A No. Could you --

21 Q Sure. Is there another reason that you haven't discussed
22 that you find this particular debriefing informant -- and this
23 would be in Exhibit No. 4 -- to be reliable with respect to the
24 information he provided concerning Mr. Lira?

25 A Correct. That's correct.

1 Q Yes.

2 A And the reason that -- in reading the list, reading the
3 debrief, this individual happened to be at DVI at the same time
4 Mr. Lira was. And so there's --

5 Q How do you know that?

6 A Well, one, the report, itself, says that it was documented
7 and done by the staff there at DVI. Two, I referenced the
8 housing records of the individual that did the debriefing.

9 And, also, I'm aware of housing records that place
10 Mr. Lira at DVI during the same time frame.

11 Q And I would like you to turn to Exhibit 201 in Defendant's
12 binder.

13 (Request complied with by the Witness)

14 A Okay.

15 Q See at the bottom of the first page there, is that what
16 you are referring to, concerning the records that Mr. Lira was
17 at DVI at the same time as this informant?

18 A Correct.

19 Q Can you show the Court where exactly it indicates Mr. Lira
20 was at DVI at that time period?

21 A Well, according to the document -- we're looking at the
22 chronological history?

23 Q Yes, sir.

24 A The very first entry says "6-18-92, received, DVI." He's
25 still there on 7-2 of '92, during which time they did an audit,

1 and he's there up until August -- could be the 12th, because he
2 could have transferred and been received on the 13th at Sierra,
3 or he could have been there all the way up to the 13th and the
4 transport happened the same day.

5 But essentially, he's there from June until August of
6 1992.

7 Q And what is the date of the debriefing report we're
8 referring to, Exhibit 20 -- Exhibit 4?

9 A September of '92.

10 Q I want to turn your attention to Exhibit No. 1 in
11 Plaintiff's binder. The handwritten report from Officer
12 Romero, do you see that?

13 A Correct.

14 Q Now, Mr. White was showing you what he believed to be some
15 discrepancies between that report and the Exhibit 6 concerning
16 Mr. Lira's conduct. Do you remember that?

17 A Correct.

18 Q Now, I want you to focus on the word -- and this is in the
19 body of the report, first of all, in the list of names, do you
20 see Mr. Lira named on there?

21 A Yes, I do.

22 Q Okay. Now, referring to the body of the report --

23 **MR. WHITE:** Which exhibit?

24 **MR. FEUDALE:** This is Exhibit 1.

25 **BY MR. FEUDALE**

1 Q You see the sentence that begins, three lines down, it
2 says "The larger group of Norteños gathered on the east side of
3 the yard," do you see that?

4 A Correct.

5 Q When reading that report yourself, what do you feel -- who
6 do you feel Officer Romero is referring to?

7 **MR. WHITE:** Well, Your Honor, that -- and I know he's
8 an expert, but -- but this request for a Vulcan mind meld
9 between the witness and Officer Romero, I just think that's
10 beyond the pale.

11 That's just speculative, to ask him to relate to us
12 what Officer Romero thought or felt or was wanting to do in
13 recording this. I just think that's beyond the pale.

14 **THE COURT:** Sustained. We've got this, we've got the
15 typed-up one, we had Romero testify. I don't see any reason to
16 speculate.

17 **MR. FEUDALE:** Okay.

18 **BY MR. FEUDALE**

19 Q Let me turn your attention, Agent Marquez, to Plaintiff's
20 Exhibit 108. And I would like you to turn to the last page of
21 that exhibit.

22 A Which would be Page No. 3?

23 Q Yes. Says RDEC-3.

24 A Okay.

25 Q You see Paragraph 27 there?

1 A Yes, I do.

2 Q Where it says "Except for the April 24, 1992 incident, we
3 had no evidence of Lira acting together with members or
4 associates of a prison gang."

5 A That's correct.

6 Q And, you see Paragraph 29? After it talks about where the
7 Norteños lived or exercise, it says, quote (As read), "The only
8 acts by Lira that would raise an eyebrow about his possible
9 association was the yard incident" -- "was the incident in the
10 jailyard on April 24th, 1992."

11 A That's correct.

12 Q Now, after reading those two paragraphs, does that change
13 or support your opinion in any way concerning whether or not
14 this incident report, Exhibit 6, is indicative of gang
15 activity?

16 A It supports my contention that it is gang-related
17 activity.

18 Q And why does it support your contention?

19 A In Line 27, per Romero's own deposition, he said, "Outside
20 of that incident," meaning on that incident, there was an
21 indication that he was acting in concert with members or
22 associates of the prison gang.

23 Which is documented in his report, that he acted in
24 concert with -- I believe his name was Juan Morales, a
25 validated Northern Structure member.

1 Q Now, Mr. White had you turn your attention to Paragraph 28
2 where Romero stated, quote, "I didn't think Lira was a
3 gangbanger." Do you see that?

4 A Correct.

5 Q And you said that didn't affect your opinion. Do you
6 remember saying that?

7 A Right.

8 Q Can you explain why?

9 A Well, one, I think if you -- you could read it and infer
10 he didn't think he was, but now he understands that he is,
11 based on the incident.

12 Or you can look at it and go -- and I've known this to
13 happen, I've had officers that have worked for me that have
14 worked around inmates and not known that they were the level or
15 to the extent that they were involved in the gang activity
16 until after we completed our investigation.

17 We've had officers actually come to me and go, "Wow, the
18 guy's a porter, he does good, he doesn't cause any problems,
19 he's real quiet." And yet, the gang unit is actually removing
20 him from the unit because he's a gang member.

21 So, that -- reading that does not dissuade my opinion that
22 the totality of the evidence indicates to me that Lira is a
23 Northern Structure gang member.

24 Q Now, let me turn your attention -- Mr. White discussed
25 this with you earlier, and I did as well. And this would be

1 Exhibit 49.

2 (Request complied with by the Witness)

3 A That would be the Merced County clarification document?

4 Q Right. Let's assume -- and I know you mentioned, you
5 know, you weren't sure exactly which Exhibit 1 or Exhibit 6
6 that particular document referred to.

7 Let's assume for the sake of argument that it does refer
8 to Exhibit 6, the typed version of Romero's report.

9 Does that in any way change or alter your opinion
10 concerning the significance of Exhibit 6?

11 A No.

12 Q And why is that?

13 A Just because Merced County doesn't have any record of him
14 being validated as a gang member doesn't negate the activity
15 that happened on April 24, 1992. He acted in concert with a
16 validated gang member.

17 So, whether Merced County or the Department of Corrections
18 or anybody else had any validation paperwork on Mr. Lira, I
19 think the report speaks for itself, that he acted in concert
20 with a validated gang member.

21 Q Let me turn your attention to Exhibit 120, which was the
22 drawing of the lady with the sombrero.

23 (Witness examines document)

24 A Okay.

25 Q Now let's say for the sake of argument that this first

1 page really does refer to the drawing, that this particular
2 drawing was not Lira's; was an inmate by the name of Juan
3 Morales.

4 Does that in any way affect your opinion concerning
5 whether or not Mr. Lira should have been validated as a member
6 rather than an associate of the prison gang?

7 A No.

8 Q Why is that?

9 A As I believe I previously testified, it just reaffirms in
10 my mind that Juan Morales wasn't appropriately identified. He
11 wouldn't -- if in fact this was in the possession of Morales,
12 it's clearly gang-related, clearly has the name that the gang
13 refers to as itself. It has the gang symbol, the Huelga bird.

14 To me, it reaffirms Morales's validation, who he is, what
15 he's about. And then if you take that in context with the
16 report, Lira -- the original Merced County report, the -- you
17 have Lira acting in concert with this individual.

18 Q Now, does that affect your opinion concerning Exhibit 9,
19 and its symbols associated there?

20 A Exhibit 9 would be the drawing here (Indicating)?

21 Q The drawing there, which is Defendant's Demonstrative C.

22 A No. It doesn't affect my opinion at all.

23 Q Why is that?

24 A Again, as I previously testified, it is attributed to
25 Mr. Lira, that this was found in his possession. It clearly

1 has Northern Structure gang symbols on it.

2 And according to the report, Lira identifies to the
3 officer that it's his drawing. And he wanted -- he wanted to
4 know when he was getting it back.

5 Q Now, let me have you look at Exhibit 45. You spoke to
6 Mr. White about that. The rules violation report.

7 **MR. WHITE:** Which exhibit? 45?

8 **THE WITNESS:** Okay.

9 **BY MR. FEUDALE**

10 Q If you can turn to the last page, which is the hearing
11 officer's findings.

12 (Request complied with by the Witness)

13 A Okay.

14 Q Now, a couple of the findings the hearing officer found in
15 support of his opinion that Mr. Lira was not guilty of this
16 charge was that there was no physical contact by either inmate,
17 and two, that there was no argument or sign of hostility
18 between Mr. Lira and Mr. Ramirez.

19 My question to you is, in your duties as a gang
20 investigator, is it plausible, based on your experience, that a
21 gang assault could have occurred, even if a 115
22 memorializing -- or even if there was no physical contact, or
23 even if there was no sign of hostility (Indicating quotation
24 marks) between inmates?

25 A Yes. And, I would like to point out that in the findings,

1 No. 1, identified as Finding No. 1, the hearing officer states
2 that Officer Rodriguez stated he observed Lira take a swing at
3 him. That wasn't diminished or somehow excused away.

4 I think the hearing officer concurs that that did happen,
5 based on what was written in the report. However, it has been
6 my experience that a couple of things are at play here, when we
7 are dealing with these gang members.

8 And, if we go back to the 1998 debrief, information is
9 provided that Mr. Lira knows this individual that he's going to
10 cell with. And it -- he's given an inmate-manufactured weapon
11 to utilize on this individual. And Lira doesn't want to do
12 that --

13 Q Hold on, Mr. Marquez. Before we get into any particular
14 details, let me caution you not -- not to get any further into
15 the report.

16 If we need to close to courtroom, we can do so. Do you
17 feel that's necessary at this time?

18 A I believe that could be true.

19 **MR. FEUDALE:** And, Your Honor, I actually have some
20 other questions I would like to ask Agent Marquez concerning
21 the details of Mr. Leyba's drawing, we may need to talk about.

22 **THE COURT:** It seems to me we have plowed this ground
23 before. But, if you think it's necessary, why, we'll go ahead
24 and do that. So, do you want to do that now?

25 **MR. FEUDALE:** Yes, Your Honor.

1 **THE COURT:** And, how much more do you think you have?

2 **MR. FEUDALE:** Five more minutes, and that's it.

3 We'll be done.

4 **THE COURT:** Sorry, we've got to lock up again.

5 (The courtroom is closed, and proceedings are held on
6 the Record and sealed)

7 (The following proceedings were then held on the
8 Record, in open court:)

9 **RECROSS EXAMINATION**

10 **BY MR. WHITE**

11 Q I wanted to ask you about one thing, Mister -- excuse me.
12 Exhibit 201.

13 Let's start there, since that's the binder before you.

14 A Correct.

15 Q And this is the confinement chronology, if you will, for
16 Mr. Lira?

17 A That's correct.

18 Q And you noted for us earlier that the first several
19 entries of this show that Mr. Lira was at DVI, as you read
20 this, from June until August of 1992?

21 A That's correct.

22 Q And, he was in intake at DVI, was he not, returning to the
23 system? That's why in August of 1992, the third entry, he was
24 processed out to the Sierra Conservation Center? True?

25 A Correct.

1 Q Now, then, the debriefing informant that is the subject of
2 Exhibit 4, the September 25, 1992 debriefing report, that
3 informant inmate would have been in Ad Seg at DVI, isn't that
4 right?

5 A That's correct.

6 Q Because he was a validated Northern Structure member.

7 A That's correct.

8 Q He would have been in solitary confinement there?

9 A That's correct.

10 Q He wouldn't have had any direct contact with anybody on
11 the mainline, just coming through the facility as a reception
12 center, would he?

13 A I'm not familiar with the physical plant design of DVI.
14 There are times when we are taking people out of Administrative
15 Segregation, taking them to Medical or to Dental or different
16 parts of the prison.

17 So, for me to say that absolutely not, no, I can't say
18 that. There -- there is a possibility. But, is there anything
19 in the written record to show that? No.

20 Q Well, when people get taken out of Ad Seg to places like
21 the infirmary, they're taken in shackles, are they not?

22 A That's correct.

23 Q And in the immediate presence of guards?

24 A That's correct.

25 Q Thank you.

1 **MR. WHITE:** Nothing further, Your Honor.

2 **THE COURT:** Thank you.

3 Anything further, Mr. Feudale?

4 **MR. FEUDALE:** Nothing further, Your Honor.

5 **THE COURT:** Thank you very much, sir. You are
6 excused.

7 **THE WITNESS:** Thank you, Your Honor.

8 (Witness excused)

9 **THE COURT:** Does the Defendant rest?

10 **MR. FEUDALE:** Defendant rests.

11 Your Honor, at this time, I would like to -- there's
12 a couple of housekeeping things. But before I go there, I
13 would like to renew our Rule 52(c) motion, on the grounds that,
14 now that all of the evidence is produced, Plaintiff has not
15 sufficiently shown that there has been some evidence in this
16 case -- or there has not been some evidence in this case to
17 validate Mr. Lira as a prison gang associate, and support his
18 retention in segregated housing, and that he was not afforded
19 procedural protections, namely notice and an opportunity to
20 present his views concerning his gang validation and his
21 placement in segregated housing.

22 **THE COURT:** All right, thank you. That will be
23 denied at this time.

24 Now, what about -- where do we go from here?

25 **MR. WHITE:** We go to at least one other housekeeping

1 matter.

2 **THE COURT:** Okay.

3 **MR. WHITE:** Which is what I believe may be our
4 still-pending request for judicial notice.

5 **THE COURT:** Of the Huelga bird?

6 **MR. WHITE:** Yes.

7 **THE COURT:** I no longer have it before me. I think
8 it went both to the United Farm Workers and the Aztecs, did it
9 not?

10 **MR. WHITE:** The Aztec eagle and the Huelga bird, Your
11 Honor. Here's a copy.

12 **THE COURT:** There's been evidence in the Record in
13 abundance about the United Farm Workers. I haven't heard too
14 much about the Aztecs yet.

15 **MR. WHITE:** It's in the judicial notice request
16 (Indicating).

17 **MR. FEUDALE:** Your Honor, if I may be heard?

18 **THE COURT:** Sure.

19 **MR. FEUDALE:** I e-filed, and I think the chambers
20 copy was delivered, our opposition to that motion. And I don't
21 have it on me now, but I certainly can provide the Court
22 another copy, if you would like.

23 In fact, Mr. White is providing me a copy, so I do
24 have one if the Court would like to look at it.

25 **MR. WHITE:** Do you want your declaration, too

1 (Indicating)?

2 **MR. FEUDALE:** But essentially, my argument is that,
3 you know, Plaintiff's Counsel is going beyond -- judicial
4 notice is limited to matters which are, you know, one, to
5 things generally known in the district, such as the location of
6 a courthouse.

7 And two, matters which are capable of ready and
8 accurate determination by sources who cannot be questioned.
9 That's explicit in Rule 201.

10 Here, we don't have that. Mr. White's engaging in
11 argument. He's essentially not -- he's not saying, you know,
12 the Huelga bird is a UFW symbol, United Farm Workers Movement
13 symbol. He's saying it's a cultural icon, it's taught in
14 schools, it's a symbol of Mexican-American heritage. I mean,
15 this goes far and beyond something which is the scope of
16 judicial notice.

17 And the sources he cites to are not just, you know,
18 encyclopedias or something which is capable of writing an
19 accurate determination. He cites to websites.

20 And as a Judge in the Central District pointed out,
21 websites are capable of dispute. They're not capable of
22 rendering an accurate determination. You don't know who
23 designed the Uniform Resources Locator, who created the
24 website. So, there's some ambiguity there as to whether or not
25 they are authentic exhibits, and whether or not they should be

1 judicially noticed.

2 So that is essentially part and parcel of our
3 argument as to why this particular matter should not be
4 judicially noticed here.

5 **MR. WHITE:** If Your Honor needs to hear further from
6 me, the websites that we accessed began with the United Farm
7 Workers' own official website. The Huelga bird, as their
8 official logo, is prominent on their home page. And we've
9 included a copy of that. And I would have thought that that
10 would be a reliable, if not authoritative, source of
11 information or insight on that point.

12 I mean, we accessed as well, the official website of
13 the California Department of Education, and excerpted again for
14 the Court's benefit, the officially-approved curriculum -- I
15 think it comes from the seventh grade -- in which the approved
16 course materials regarding the Huelga bird and its cultural
17 provenance, the Aztec eagle, is discussed in some detail.

18 The other two sites that we accessed, one was the
19 online Merriam-Webster dictionary definition of "Huelga," which
20 turns out to be Spanish for "strike."

21 And then, the fourth item was a website, I think it's
22 City College of San Francisco, or maybe it's UCSF -- it's one
23 of the local colleges, that had a website that included a
24 section on the Huelga bird, and included a number of
25 photographs that we also copied, photographs of all manner of

1 people, I think, including -- Little Ms. Sunshine is our final
2 photo in that series, displaying or brandishing Huelga bird
3 insignia on flags and such like.

4 So, I'm not a -- I am not adept at Internet surfing,
5 put that disclaimer on the Record. But I think, and we've
6 cited a number of cases in which courts in the past have
7 accepted or taken judicial notice of information or evidence
8 from website sources. I think this is another appropriate
9 occasion for that.

10 **MR. FEUDALE:** Well, Your Honor, if you look in
11 Mr. White's motion, the types of things cited to are, you know,
12 for example, the court took judicial notice in one case that
13 there are a lot of adult websites or something out on the web.

14 I mean, that's something that's easily capable of
15 ready and accurate interpretation. Just type in the word, a
16 lot of sites come up. Here, Mr. White --

17 **THE COURT:** Not on my computer, it doesn't.

18 **MR. WHITE:** Speak for yourself, Counsel.

19 **MR. FEUDALE:** Of course, Your Honor. And I don't
20 mean to offend the Court.

21 **THE COURT:** We can't even go there.

22 **MR. FEUDALE:** Of course. I don't mean to offend the
23 Court, and I apologize if we did. But --

24 **THE COURT:** I'm actually really tired of this whole
25 discussion, so I'll allow you to go on as long as you must, but

1 I'm tired of hearing about this.

2 **MR. FEUDALE:** Okay, and I'll make it brief, Your
3 Honor.

4 The only other thing I would like to touch upon,
5 other than the arguments I've made, has to do with, really, the
6 relevancy.

7 **THE COURT:** What I don't understand is why you guys,
8 either of you, are fighting so hard about this. Because I'll
9 tell you what I actually plan to do, if you want to know the
10 answer to the question.

11 I'm not going to take judicial notice in the way that
12 I'm being requested to, in the motion. I will, however, if I
13 feel it's important, be willing to go to the web. And then I
14 would be able to say, "I can find this thing all over the web
15 in a lot of different contexts." That would be a fact I could
16 just decide.

17 Whether -- why they're using it, I don't really care.
18 The point would be that it's out there, all over the place.

19 Whether it really derives from the Aztec -- and I
20 don't know, either, and maybe I'll look that up in a World Book
21 Encyclopedia at some point -- one way or the other, I think
22 I'll satisfy myself about the provenance of the Huelga bird to
23 the extent necessary.

24 But, I'm not going to grant the request for judicial
25 notice.

1 **MR. FEUDALE:** Okay, Your Honor. And that's
2 essentially my argument. My argument isn't so much that the
3 existence of the Huelga bird -- its origins aren't capable of
4 ready and accurate determination.

5 Just, what Mr. White has provided the Court is not
6 appropriate for those things, is really my argument.

7 **THE COURT:** All right. What else? What
8 other housekeeping matters?

9 **MR. WHITE:** None other from me, Your Honor.

10 **MR. FEUDALE:** Your Honor, we would just like to
11 introduce some exhibits into evidence at this time.

12 **THE COURT:** All right. Have you talked to Counsel
13 about that?

14 **MR. FEUDALE:** We sent them an e-mail yesterday.
15 Maybe I'll have Mr. Huynh touch upon this.

16 **MR. CHAPMAN:** We have agreed to almost everything.

17 **MR. FEUDALE:** Before we go into that, let me just add
18 two exhibits that weren't discussed. And those were the
19 exhibits that I attempted to introduce, or marked for
20 identification today.

21 One is that drawing right there (Indicating), it
22 would be Defendant's Demonstrative C, I would like to introduce
23 into evidence. And the other would be Exhibit 45, which were
24 the 14 Bonds Agent Marquez discussed with the Court.

25 **MR. WHITE:** That would be 345.

1 **MR. FEUDALE:** I'm sorry, Exhibit 345, the 14 Bonds;
2 and Defendant's Demonstrative C would be the two I would like
3 to seek admission on at this time.

4 **MR. WHITE:** What about 344? Did that come in?

5 **MR. FEUDALE:** I believe that's already in evidence.

6 **MR. WHITE:** All right.

7 **THE COURT:** I don't know if it is or isn't. I don't
8 recall anybody offering anything, so --

9 **MR. FEUDALE:** Maybe we should confer with Tracy,
10 then. Is 344 in evidence?

11 **THE CLERK:** No.

12 **MR. FEUDALE:** Then I would also seek to admit 344
13 into evidence, which are the pictures of the tattoos on the
14 various inmates.

15 **THE COURT:** Any objection?

16 **MR. WHITE:** No.

17 **THE COURT:** It would be received.

18 (Defendant's Exhibit 344 previously received in
19 evidence.)

20 **THE CLERK:** 344 is in.

21 **THE COURT:** How about the Bonds?

22 **MR. WHITE:** No objection, Your Honor.

23 **THE COURT:** That will be admitted too.

24 **THE CLERK:** And that is 345, okay.

25 (Defendant's Exhibit 345 received in evidence.)

1 **MR. FEUDALE:** And then, lastly, Demonstrative C.

2 **THE COURT:** Well, I'll tell you. I'm hesitant about
3 that. I'm hesitant about all these big demonstratives. They
4 have been helpful to me to be able to see things.

5 But, are you planning that we would ship all of these
6 things up to the Court of Appeal, in their large format? We
7 have now got however many of them, of the same thing, over and
8 over again.

9 **MR. FEUDALE:** Sure, Your Honor. I can understand the
10 desire not do that. I think in this particular case, because
11 Agent Marquez more than any other witness had so much gang
12 knowledge --

13 **THE COURT:** He was able to do it without having it
14 premarked. I noticed that.

15 **MR. FEUDALE:** Certainly. And I think, you know, this
16 would probably be the most relevant document to -- not
17 "relevant," but would definitely be a document we would like to
18 have into evidence.

19 I think it -- it explains his testimony. It would be
20 hard for, say, the Court of Appeals to follow if they don't
21 have the exhibit where he's marking and explaining where --

22 **THE COURT:** That will be admitted.

23 (Defendant's Exhibit C received in evidence.)

24 **MR. FEUDALE:** And there were the two other documents
25 that I believe Plaintiff objects to, so I would like to hit

1 those first, and then Mr. Chapman and Mr. Huynh can talk about
2 the numerous exhibits we've agreed to.

3 One is Exhibit 201 --

4 **THE COURT:** Yeah.

5 **MR. FEUDALE:** -- which is the cell chronology Agent
6 Marquez was talking about.

7 **THE COURT:** What's the objection?

8 **MR. CHAPMAN:** Well, my objection is that it's about
9 85 percent completely prejudicial. Notations about fines and
10 parole and this and that.

11 I spoke to Mr. Huynh, and suggested, on his
12 representation of what they wanted it for was to show in and
13 out of various institutions, prisons. And, agreed that that
14 would be fine if they would redact it. And apparently, they
15 don't want to do that.

16 **MR. FEUDALE:** Well, Your Honor, I think especially in
17 this case, parole dates are necessary. Explains when Mr. Lira
18 was out on parole, when he came back to DVI, when certain
19 events took place.

20 This kind of orients the Court about those facts, and
21 certainly supports Agent Marquez's testimony earlier,
22 concerning that informant and Mr. Lira.

23 **THE COURT:** Well, the only thing I remember this
24 having been used for was the first three lines on the first
25 page. Is that --

1 **MR. WHITE:** Yes.

2 **THE COURT:** -- about it?

3 **MR. FEUDALE:** That's correct.

4 **MR. HUYNH:** And then Mr. Tristan talked about it, and
5 how he calculated it that Mr. Lira was in Ad Seg at DVI for 23
6 days from the period when he was placed in Ad Seg on December
7 28, 1995, to when he was transferred to Pelican Bay on, I
8 believe, September 24, 1996.

9 **MR. WHITE:** Yeah. Frankly, that testimony is an apt
10 illustration of how confusing or misleading or subject to
11 misinterpretation this document could be. The notion that
12 Mr. Lira, during his ten months -- almost ten months at DVI
13 actually only spent 23 days in Ad Seg lockup there doesn't
14 compute for us.

15 But in any event, if -- if -- if the document were
16 being admitted only for the limited purpose of substantiating
17 Mr. Lira's whereabouts from June through mid-August, 1996, we
18 wouldn't, of course, have any objection. That was dealt with
19 through Mr. Marquez's testimony.

20 **THE COURT:** It will be admitted just for that
21 purpose. Not for the truth of the offense conduct, if there is
22 any such.

23 **MR. HUYNH:** For the limited purpose of what, Your
24 Honor?

25 **THE COURT:** Where he was, when.

1 (Defendant's Exhibit 201 received in evidence.)

2 **MR. FEUDALE:** And then, one final exhibit which may
3 draw an objection, that is Exhibit 329, Defense Exhibit.

4 **THE COURT:** I'm sorry, what, 329?

5 **THE CLERK:** Yes.

6 **MR. FEUDALE:** These are excerpts from a witness,
7 Diana Crandall. You may remember, Mr. White introduced some
8 excerpts from her testimony earlier.

9 **THE COURT:** I actually don't. Is she one of the
10 three witnesses --

11 **MR. WHITE:** Yes.

12 **THE COURT:** Okay.

13 **MR. FEUDALE:** These are further excerpts from there.
14 And I plan on, during -- in our trial brief, and of course, in
15 closing argument, pointing out exactly what lines and page
16 numbers the Court needs to focus on, so that, of course, Your
17 Honor wouldn't have to read through this massive transcript.

18 But there is a lot of pertinent information about the
19 reliability of the '98 debriefing informant, and the procedures
20 that Ms. Crandall would go through to assess an informant's
21 reliability.

22 **MR. WHITE:** Well, actually, that sort of
23 page-and-line guidance would have been helpful to us while we
24 were trying to wade through these otherwise undifferentiated
25 pages and pages from the transcript.

1 But this is mostly testimony I adduced or we adduced
2 at deposition. Some of it overlaps what we adduced. It's a
3 bench trial. We basically don't object, although we certainly
4 reserve our right to talk critically about Ms. Crandall's
5 testimony in these excerpts in our post-trial brief.

6 **MR. FEUDALE:** And other than that --

7 **THE REPORTER:** Excuse me. So, that's admitted?

8 **THE COURT:** Okay. Well, I guess it's admitted, in --
9 yeah, it's admitted.

10 (Defendant's Exhibit 329 received in evidence.)

11 **THE REPORTER:** Thank you.

12 **MR. FEUDALE:** And other than that, I'll have my trial
13 partner Mr. Huynh and Mr. Chapman confer, speak to the Court
14 about stipulated exhibits.

15 **THE COURT:** Okay.

16 **MR. HUYNH:** Your Honor, the parties stipulate --

17 **THE CLERK:** Wait, wait, I'm sorry. What did we do to
18 329?

19 **THE COURT:** It's in.

20 **THE CLERK:** Okay, I'm sorry.

21 (Off-the-Record discussion)

22 **MR. HUYNH:** Your Honor, the parties stipulate to the
23 admission of the following exhibits: Defense 209. Defense
24 211, 212. Defense 217, 218. Defense 221, 224, 225, 226, 227,
25 229, 232, 233, 239, 240, 241, 244, 245, 252, 253, 257, 261,

1 263, 268, 269, 278, 279, 280, 286, 298, 304 through 310.

2 Lastly, for defense, 316.

3 And then for Plaintiff, 85.

4 **THE COURT:** And --

5 **MR. HUYNH:** Oops, one more. Sorry. Defense Exhibit
6 331, if not already.

7 **THE COURT:** Mr. Chapman, you agree to all those?

8 **MR. CHAPMAN:** I do. The 331 had a reference that
9 needed to be redacted, so it's a redacted copy of it.

10 **MR. HUYNH:** That's correct.

11 **THE CLERK:** And we have that?

12 **MR. HUYNH:** That's correct.

13 **MR. CHAPMAN:** Yes.

14 **THE CLERK:** We do.

15 **MR. CHAPMAN:** I don't know.

16 **THE COURT:** Okay. They will all be received.

17 (Defendant's Exhibits 209, 211, 212, 217, 218, 221,
18 224, 225, 226, 227, 229, 232, 233, 239, 240, 241,
19 244, 245, 252, 253, 257, 261, 263, 268, 269, 278,
20 279, 280, 286, 298, 304, 305, 306, 307, 308, 309,
21 310, 316, and 331 received in evidence.)

22 (Plaintiff's Exhibit 85 received in evidence.)

23 **MR. FEUDALE:** Do you have a redacted copy?

24 **MR. HUYNH:** The Court does, yes. I gave the 331.

25 **THE CLERK:** Okay.

1 **MR. CHAPMAN:** If your patience will allow one last
2 thing, Your Honor, the Plaintiff would move to strike two small
3 pieces of Mr. Tristan's testimony. And I'll give you
4 transcript page and line references in a minute.

5 The second one is the more important. But both the
6 first two-and-a-half-page reference and the second
7 two-and-a-half-page -- three-page reference are places where
8 Mr. Tristan described his going back into the C-File, I think
9 within the last couple of days, and finding documents that he
10 then speculated were reasons that decision-makers whom he had
11 never talked to might have used to do things in 1993 or 1994.

12 The first instance, he was talking about various
13 parole records. And the reference in the transcript is 1547,
14 Line 20, to 1549, Line 5. And Exhibit 342, which isn't in
15 evidence, I can't remember whether he described anything about
16 it in his testimony or not.

17 The second reference is at Pages 1717, Line 3, to
18 1720, Line 8, where Mr. Tristan speculated again about pre-1993
19 things that happened at other prisons to Mr. Lira, he thought,
20 from documents that we'd never seen -- though Mr. Huynh said
21 they were in the C-File someplace -- that Mr. Tristan had dug
22 out overnight.

23 The basis for the motion is that the subject matter,
24 the testimony, itself, and in the case of the exhibit 342, are
25 all beyond the scope of his Rule -- way beyond the scope of his

1 Rule 26 report, beyond the scope of his deposition, beyond the
2 scope of his assignment which he described; that he has no
3 personal knowledge of any of these things, that he's
4 speculating without any foundation. And that old favorite,
5 Evidence Code 403.

6 But basically, these are things which are so far
7 outside the scope of what he was asked to do, and so -- so much
8 of recent origin, that we move to strike as --

9 **THE COURT:** Tell me again what pages and lines you
10 are talking about.

11 **MR. CHAPMAN:** Sure. The first one, the least
12 important, is 1547, Line 20 to 1549, Line 5.

13 (The Court examines document)

14 **THE COURT:** And then the other one is --

15 **MR. CHAPMAN:** And the --

16 **MR. FEUDALE:** Can I borrow this for a second?

17 **MR. CHAPMAN:** Sure.

18 And the second, the more important is 1717, Line 3 to
19 1720, Line 8.

20 (The Court examines document)

21 **THE COURT:** You realize you are cutting out the
22 Court's question.

23 **MR. CHAPMAN:** I know. I know. When I saw you start
24 to smile, I knew I was skating rapidly on thin ice.

25 **THE COURT:** Whoa. Well, I take it you disagree with

1 what he just said?

2 **MR. HUYNH:** I do wish that Mr. Chapman had conferred
3 with me about this particular issue.

4 **THE COURT:** Oh, you can both agree that the Court's
5 question goes? Is that what you're going to say?

6 **MR. HUYNH:** And so, I don't know what -- the exact
7 pages and what they reference, so I would need to look at them.
8 But certainly Mr. Chapman's objection are very belated, at this
9 point.

10 **THE COURT:** Well, I'll tell you what we can do. I'll
11 give you an opportunity to think about it, and get back to me.
12 I think you can crank this into your papers.

13 And if it's -- that's something that can be included
14 in your papers, is that you want me to strike these passages,
15 and I'll take a look at it.

16 **MR. CHAPMAN:** It will be a very short footnote.

17 **THE COURT:** Okay.

18 **MR. HUYNH:** Okay. We can do that, then.

19 Thank you, Your Honor.

20 **THE COURT:** Speaking of papers and coming back, when
21 are we doing that?

22 **MR. WHITE:** It's the 10th for post-trial --

23 **THE CLERK:** It's actually February 12th at 10:00.

24 **MR. WHITE:** That's the hearing.

25 **THE CLERK:** That's for closings.

1 **MR. WHITE:** Right, the closing arguments, a week from
2 Thursday at 10:00. A week from today, next Tuesday, by close
3 of business is the deadline for submission of post-trial
4 briefs.

5 **THE CLERK:** Oh.

6 **THE COURT:** That's 2-10.

7 **MR. WHITE:** Yes.

8 **THE COURT:** Okay.

9 **MR. FEUDALE:** If I understood Your Honor correctly,
10 you also would like revised findings of fact and conclusions of
11 law on that date also?

12 **THE COURT:** That would be helpful to me.

13 **MR. WHITE:** Yes, that's on our list, too.

14 **THE COURT:** Okay. Then, we'll see you then. Thank
15 you.

16 **MR. FEUDALE:** Thank you.

17 **MR. WHITE:** Thank you.

18 **THE PLAINTIFF:** Thank you for your patience, Your
19 Honor.

20 **THE CLERK:** So what I want to do on the 12th is -- on
21 the 12th, I want Counsel to review the binders, you know, after
22 arguments. I'm going to e-file, hopefully, my list before
23 then. So you can download them and compare what I have, so
24 that on the 12th we will finish all the exhibit work.

25 **MR. WHITE:** That'll be great.

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MR. FEUDALE: Okay.

MR. HUYNH: Thank you, Tracy.

MR. FEUDALE: Thank you, Your Honor.

(Conclusion of Proceedings at 3:10 p.m.)

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ROBERT MARQUEZ

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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C 00-0905 SI, Lira v. Cate, were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

_____/S/ Belle Ball____

Belle Ball, CSR 8785, CRR, RMR

Tuesday, February 3, 2009