

LaMarca v. Turner



PC-FL-007-031

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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

ANTHONY LaMARCA, et al.,)
Plaintiffs,)
VS.) Case No.82-8196
CHESTER LAMBDIN, et cetera.,) Civ- PAINE
Defendant.)
-----x

West Palm Beach, Florida
January 9, 1990
9:00 a.m.

APPEARANCES:

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

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

The above-styled case came on for Trial before
the Hon. James C. Paine, U.S. District Court, at the U.S.
Federal Courthouse, West Palm Beach, Florida, on the 9th
day of January, 1990.

VOLUME 2

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1 THE COURT: All right. Continuation of Dr.
2 Swanson, on cross-examination, please.

3 MR. DAVIS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. DAVIS:

6 Q Dr. Swanson, in the interim between your
7 cross-examination yesterday, and this morning, have you had
8 a chance to review any other items?

9 A Yes, I've spent a fair amount of time reviewing the
10 disciplinary reports that we were provided late Sunday.

11 Q All right. And have you reviewed all of the
12 disciplinary reports?

13 A I reviewed 737. The disciplinary reports that I had
14 covered parts of December '88, and then through November
15 '89. I estimate that covered -- what I had a chance to
16 cover, 737 DR's, that those 737 covered an eight month
17 period in 1989.

18 Q All right. And did you arrive at any conclusions
19 based on that?

20 A Yes, I found that the DR's were a significant
21 corroborating factor in some of the points that I had made
22 in my other testimony. I would also say that in overall
23 judgment, I found more corroboration than anything else
24 from that review.

25 Q All right. Now, what did you find that corroborated

1 your views in the reports?

2 A Just a moment, I have to return to--

3 Q And let me ask you, did you yourself read the
4 reports, or did someone else read the reports, and provide
5 you with summaries?

6 A I read a small sample of those reports to get a feel
7 for what the content was, and what the format of the
8 reports were.

9 Q And what was that small sample number that you read?

10 A 15, 20. My point -- the reason I did that was to
11 develop a categorization system whereby I could
12 characterize the nature of the reports. What I developed
13 was a six category scheme in which six overall categories
14 in which I was interested in determining the number of drug
15 and alcohol DR's, the number of sexually related offense
16 DR's, the disrespect of an officer, verbal abuse of an
17 officer by an inmate.

18 The number of DR's that were weapons related. Number
19 of DR's that were assault, either inmate on inmate, or
20 inmate on a staff, and residual category of other that
21 included such infractions as possession of currency,
22 unauthorized area, obscene act, theft, violating visiting
23 regulations.

24 Within each of my overall six categories, I had
25 subcategories, in terms of drug alcohol related.

1 Just to give you an example, I broke it down into two
2 overall subcategories, one involving drugs, alcohol, in
3 which confiscation contraband, drug or alcohol was
4 involved, and the other part of that in which drugs or
5 alcohol was involved in which there was no confiscation,
6 that kind of offense was typically inebriation being high.

7 In each of the ultimate breakdown was a disposition
8 of the disciplinary report, disciplinary infraction, and I,
9 therefore, coded the number of infractions that resulted in
10 confinement. What other penalty there was which was
11 generally predominantly loss of gain time, and the number
12 of infractions in which the case was dismissed. So, by
13 doing this, I was hoping to characterize not only on those
14 six categories, but the response of the institutional
15 authority to these infractions. I have that broken down.

16 All of this is over an eight month period involving
17 737, I would have done them all, but I finally gave up
18 getting through them at two in the morning.

19 Q And who was it that actually reviewed the 723 that
20 you didn't review?

21 A No, I am sorry. I was involved in the review process
22 from beginning to end. Once the category system was
23 developed, my assistant, one of the attorneys in the case,
24 I taught this system to, and we together in the same room
25 went through these. If there was any question as to

1 categorization, I was there to determine the resolution.

2 Q All right.

3 A And I can't be precise, but I would say I, myself,
4 was involved in about a third of the 737 categorizations.

5 Q All right. And what did you determine on your review
6 of the disciplinary reports?

7 A Of the 737 cases reviewed, 122 were drug and alcohol
8 related. 88 of those or 16 and a half percent of all of
9 these cases were, in fact, drug and alcohol related. 88 of
10 them involved actual confiscation of drug or alcohol
11 contraband, or 12 percent. 4.6 percent of these cases
12 involve no confiscation, which would be inebriation, or
13 being high on a substance.

14 You want me to take them one at a time?

15 Q Yes.

16 A My conclusion here, and based on the content of these
17 drug cases is that drugs are, in fact, quite predominant,
18 quite available. We had confiscations of four and five
19 pounds of marijuana. We had confiscations of not only
20 cocaine, crack cocaine, crack paraphernalia, all of these
21 substances were tested, and positive for crack cocaine or
22 marijuana, and we had up to 16 gallons of buck single
23 event.

24 We are talking about buck in such large quantities to
25 say that this is happening does indicate there is a fair

1 amount of availability.

2 I took that as corroborating the information I had
3 from inmates, that, in fact, drugs and alcohol are a
4 significant problem on compound. The response of the
5 institution to these drugs was such that it does seem that
6 there is some complacency, especially in regard to
7 marijuana.

8 By that I mean, let me take a specific example, an
9 inmate may be caught with and in possession of marijuana
10 fairly sizable quantity, in the same confiscation may have
11 a list of names and dollar amounts by those names in which
12 the inmate will admit this involves people that owe him
13 money for the sale of drugs, and he may get a disposition
14 by the -- by this process of two months, three months, loss
15 of gain time.

16 Now, to try and put that in prospective, an inmate
17 who goes through the cafeteria line and gets a complete
18 meal, and then tries to sneak back in to get an additional
19 pork chop may get 30 days loss of gain time.

20 In that contrast, I think you get an illustration at
21 least to me that the gravity of this offense of trafficking
22 in drugs which is, in fact, the charge is in the same
23 neighborhood which he does not get disciplinary
24 confinement, is not taken off compound, the drugs are
25 confiscated, if there are dollars involved, dollars

1 confiscated, and his gain time is taken away.

2 You contrast this, and forgive him for the nature of
3 this particular offense, someone who is in the exercise
4 yard, he is accused of and found guilty of masterbating in
5 the direction of a tower in which a female officer is
6 housed. This person may get 30 to 90 days, disciplinary
7 confinement, accompanying loss of gain time.

8 Now, that is clearly seen as a major infraction,
9 because I see the combination of disciplinary confinement
10 up to 90 days, could result in loss of gain time as a
11 reaction fairly severe, showing the graph -- perceived
12 gravity of that offense, and yet trafficking doesn't get
13 disciplinary confinement.

14 Q Are you suggesting there is no instances of
15 disciplinary confinement for trafficking in drugs?

16 A Not at all, there are some.

17 Q Are you suggesting there is more than one instance
18 when there were lists of customers found on the -- in the
19 possession of alleged drug dealers?

20 A Only one specific comes to mind.

21 Q So when you use the plural to suggest that that was a
22 customary situation that drug dealers were found with such
23 lists, you were incorrect, there is just one instance where
24 that occurred?

25 A No. When I use the plural, there are a number of

1 repetitions of people being apprehended with drugs, those
2 drugs were tested positive, they were larger amounts than
3 one would have simply for personal use, in which there
4 could be simply loss of gain time, although, let me make
5 sure that I am not misrepresenting.

6 There are those times in which crack cocaine is
7 involved in which there is both loss of gain time, and
8 disciplinary confinement. Let me also talk about what I
9 didn't code as drug related. There are other instances in
10 which an inmate will be found throwing over \$81 and
11 some-odd sense in a envelope across the fence. My
12 inference is that the reason dollars are being thrown over
13 the fence so there later will be drugs thrown back in
14 return.

15 The consequence of that activity is loss of the
16 dollars, or contribution of those dollars to something
17 called inmate welfare.

18 And so, I do see a pattern that comes together as a
19 fabric in that there is a lot of dealing, there is a lot of
20 activity in terms of throwing the things over the fence
21 which at least in my mind indicates a way that drugs are,
22 in fact, being brought in. It also indicates the problems
23 of having currency on the compound because it facilitates
24 the dealing of drugs.

25 Q How many times did you find reports of currency being

1 thrown over the fence?

2 A Let me just answer that a little different way.

3 Q Please answer that question. How many times did you
4 find instances of currency being thrown over the fence?

5 A The only one with the \$81 that come to mind is the
6 one.

7 Q That is the only occasion those disciplinary reports
8 where you found occasion of currency being thrown over the
9 fence?

10 A To my knowledge, yes.

11 Q That doesn't seem to be a wide spread problem if it
12 is detected once in a year?

13 A It is part of a pattern in which there is other
14 indications of currency connected with trafficking.

15 Q Indication of currency trafficking from outside
16 sources?

17 A I am assuming that drugs are always getting in from
18 outside sources.

19 Q That is true. There is no information other than
20 that that you have as to the manner in which they are being
21 paid for, is there?

22 A That is correct.

23 Q For instance, it can be paid for by a relative of the
24 inmate who is on the outside?

25 A That's correct.

1 Q And, as a matter of fact, you had occasion to review
2 the special search reports previously?

3 A Yes.

4 Q A number of occasions showed up where visitors were
5 bringing in money for the inmates. Correct?

6 A Correct.

7 Q Money which was in amounts that was illegal?

8 A Right.

9 Q In excess of \$30.00?

10 A And always procedures which were illegal.

11 Q And also bringing in drugs, correct?

12 A Correct.

13 Q You will agree, will you not, that the fact that
14 there were this number of disciplinary reports and
15 disciplinary actions taken in respect to drugs indicates
16 that the staff does, in fact, attempt to seek out--does, in
17 fact, seek out a substantial amount of drug and alcohol
18 presence on the compound, and does punish them?

19 A Yes, 12 percent of the 737 dispairing reports involve
20 confiscation of drugs.

21 Q And you also noted, did you not, in reviewing at
22 least one third of the reports that you did review there
23 were a number of occasions where it was not easy to
24 establish possession? There was some question of
25 possession?

1 A That's correct. To give you an idea of the 88 cases
2 involving confiscation, 7 were dismissed.

3 Q And there were occasions where because there was some
4 ambiguity in possession, the sentence might be lower?

5 A Or dismissed, that is correct.

6 Q What else did you discover in respect to --

7 A The second category was sexually related offenses
8 between inmates.

9 Q Let's go back to the first category, which is drugs
10 and alcohol.

11 A Fine.

12 Q Did you notice any procedure that existed on the
13 compound to determine inmate influence, drug influence?

14 A You mean under the influence?

15 Q Yes.

16 A Yes. In terms of alcohol, I consider substance abuse
17 as a category. The inmates are tested for level of
18 inebriation.

19 Q A breathalyzer type test device is used, correct?

20 A That is correct.

21 Q All right. Going on to your second category?

22 A I might just say giving you more detail in the
23 alcohol, there are 34 cases in which there is no
24 confiscation. The far overwhelming majority of that was
25 under the influence.

1 Q Were inmates detected to be possibly under the
2 influence, were tested, and found to be positively under
3 the influence, and, therefore, received disciplinary
4 reports?

5 A That is correct. The second category, going on,
6 involves sexually related offenses between inmates. Here I
7 had two categories, consensual, forcible, or sexual
8 assault.

9 We only found three episodes of that in the eight
10 month period, involving, obviously, two people each, or
11 maybe not so obviously, in which all of these people
12 received loss of gain time.

13 Q And which months were those?

14 A I don't have them categorized by months. There were
15 no reports at least within the 737 reports examined
16 involving sexual assault or rape. One might say that this
17 on the face of it contradicts the inmate reports we have in
18 which there is fairly overt sexual behavior.

19 But my conclusion, if you recall, was that there was
20 a fair amount of overt sexual behavior that was seemingly
21 tolerated by the staff.

22 So, I take this in part, perhaps in whole, suggestive
23 of cooperation between the inmate reports, and the staff
24 that this overt sexuality is simply not seen as that big of
25 a problem.

1 Q If the number of reports for that year was
2 substantially greater than the three that you have, was, in
3 fact, more than 10, that would be a substantial difference
4 in magnitude, would it not?

5 A More than 10. If you look at the base line, 1183
6 inmates behaving 24 hours a day, 7 days a week, 10 reports
7 on that base line would not be, I think, a high number.

8 Q Perhaps indicating that there is not, thereby, a
9 level of observable homosexual conduct, correct?

10 A That is the alternative interpretation, yes.

11 Q Based on the evidence you got, you really can't
12 determine which is correct, can you?

13 A No. Except what my conclusion is based on experience
14 in this area.

15 Q And what experience is that?

16 A In terms of having been through a number of
17 institutions addressing these kinds of issues with the
18 staff, and the kind of fiscal plan by which Glades
19 Correctional is forced to operate, open dormitory housing,
20 it strikes me that we are having much more of this behavior
21 than would be accounted for by disciplinary reports.

22 Q You mean you would assume that there would be more
23 such behavior?

24 A I am assuming that if, in fact, there were not some
25 sort of tolerance of this, we would see more DR's.

1 Q What other institutions are you familiar with that
2 you use as your base line for judging this point?

3 A There would be a number of institutions, both jails
4 and prisons. Florida State Prison being one.

5 That is significantly different. As you already
6 pointed out earlier, the housing configuration is quite in
7 contrast to that of Glades. Alachua County Jail, Union
8 Correctional Institution being another. Several
9 institutions in Canyon City, Colorado being another. San
10 Quentin, California being another.

11 Q All right. And how many disciplinary reports were
12 written over a one year period of time at Florida State
13 Prison for consensual sexual activities between inmates?

14 A I don't have that information.

15 Q How many were written over one year period at Alachua
16 County Jail?

17 A Well, if you take the period of 1976, none.

18 Q How many at Union?

19 A I don't know.

20 Q And how many in the various institutions in Colorado?

21 A I don't have that in my head.

22 Q How many at San Quentin?

23 A I don't have that in my head.

24 Q So you really don't know whether the number of
25 disciplinary reports found at Glades Correctional

1 Institution over a period of one year is reflective of a
2 high level of discipline proceedings for this particular
3 type of conduct or not, do you?

4 A I am saying with sole, open dormitory housing, with
5 the inmate reports that I have, with the history that we
6 are aware of from this involvement in LaMarca, this seems
7 to be a low number.

8 Q You agreed yesterday, did you not, that when inmates
9 desire to participate in consensual sexual activities with
10 one another, they don't do it in the mid day Sunday in the
11 middle of the quadrangle, correct?

12 A That is correct.

13 Q They do it where they think that they will not be
14 detected, correct?

15 A That is correct. If you recall, looking through the
16 inmate interviews, we have reports that this is occurring
17 in the dormitories late at night, early in the morning.

18 Q Surely, and it is something which can take place in a
19 matter of a couple of minutes, correct?

20 A I presume.

21 Q And if it is consensual, there is not necessarily any
22 noise that will be attracting any guard's attention, is
23 there?

24 A That is possible.

25 Q And so, consensual sexual activity because of the

1 brevity of time span involved and the nature of the act
2 itself will often go undetected, correct?

3 A I would agree.

4 Q Do you have any evidence that indicates that there
5 was a significant number of detected incidents of
6 homosexual conduct which was not disciplined?

7 A Well, if you compare the incident reports that we
8 examined, no.

9 Q And in addition to the reports involving homosexual
10 activity there were also reports involving other types of
11 sexual activity by the prisoners, correct?

12 A I am sorry, you would have to--

13 Q There were other types of sexual activities, single
14 individual actions, mostly involving masturbation, and sex
15 with female visitors?

16 A Yes.

17 Q Sex also with male visitors?

18 A I did not see those in the ones I reviewed.

19 Q Did you arrive at any other conclusions based on
20 that?

21 A Moving onto the next category is disrespect of an
22 officer, insubordination, those kind of disrespect
23 activities. We had 169 cases. What I would say, that is
24 23 percent of the 737 cases. 17 and a half percent of
25 those resulted in what I call other dispositions which

1 tends to be very high and overwhelmingly loss of gain time.
2 27 of these, or 3.6 percent involve actual confinement for
3 disrespect of an officer. 13 were dismissed.

4 What I would say is there is, correct my observation
5 from yesterday, that there is certainly efforts on the part
6 of the staff there to punish disrespect toward an officer.
7 There does not seem to be simply a tolerance of verbal
8 disrespect. There is action taken. This is somewhat
9 surprising that people are losing gain time, and still
10 involving themselves in disrespect of an officer.

11 Q And receiving confinement?

12 A There is in some of the loss of gain times, 30, 60,
13 90 days.

14 Q You have, Doctor, had occasion, either connected with
15 this case or on other occasions to review inmate files,
16 have you not?

17 A Yes.

18 Q And, in those files --

19 A We really haven't done it in this case.

20 Q At the present time; but you did previously, did you
21 not?

22 A Yes.

23 Q And in those inmate files, there are contained DR's,
24 are there not?

25 A Yes.

1 Q And the overwhelming number of DR's that one
2 typically finds in files are verbal disrespect DR's?

3 A Yes.

4 Q It is probably the most common DR occurrence
5 throughout the prison system?

6 A Let me say it is not uncommon, certainly.

7 Q Okay.

8 A I am just trying to modify my conclusion.

9 Q I understand.

10 A This is an added element that I think was helpful,
11 and so I have done that.

12 Q All right. Any other --

13 THE COURT: Dr. Swanson, let me ask you this,
14 going back to sexually related category for a moment. I
15 must have missed it. I don't recall whether you said how
16 many of the 737 DR's that were examined were sexually
17 related offenses?

18 THE WITNESS: There was only six. That
19 involved three separate occasions. Those separate
20 occasions were consensual. There were no disciplinary
21 reports concerning forcible or sexual assault.

22 THE COURT: I see, thank you.

23 THE WITNESS: That reflects point eight of one
24 percent of the 737 cases.

25 THE COURT: Excuse me, go ahead.

1 BY MR. DAVIS:

2 Q Did you have any other observations on that?

3 A On this area, no, except that there is a fair amount
4 of verbal abuse. There clearly is a fair amount of staff
5 reaction to that abuse in the form of penalties,
6 disciplinary reaction. The next category in my system is
7 weapons related offenses, and let me just be clear on this.

8 I did something that might not ordinarily be done.
9 In weapons related offenses, I included assaults. I was
10 concerned in trying to be sensitive to the availability of
11 weapons, and the use of those weapons, so I separated out
12 from an assaults' category those involving the use of
13 weapons. In the eight month period, or 737 cases, I had 28
14 weapons related cases, or 3.8 percent. 22 of those, or 3
15 percent involved confiscation of one kind or another. 10
16 of the 22 confiscation episodes received confinement.
17 Seven other, which would be in an overwhelming majority of
18 cases, loss of gain time, five were dismissed. There were
19 six cases in which no weapon was confiscated. An
20 altercation may have been perceived by the time officers
21 were able to apprehend the person. The weapon was not to
22 be found. Four of those received confinement. Two were
23 dismissed.

24 In a situation such as Glades or any other
25 institution as we talked about yesterday, in general, there

1 is -- it is not a surprise, and it is not totally
2 unexpected that weapons will be available, homemade
3 weapons, other kinds of weapons, things will be made use of
4 as weapons. To only have 3.8 percent, or some raw total of
5 737 events weapons related does question how vigilant the
6 staff are trying to apprehend and take these weapons.

7 I would say this is corroborative of my assertion
8 that more effort should be expended to confiscate these
9 weapons. It adds weight to my recommendation that overall
10 systematic shakedowns of the entire facility should be
11 attempted.

12 Q Now, you are comparing the total number of weapons'
13 related DR's to the total number of DR's at the
14 institution, correct?

15 A Yes, for a particular period of time.

16 Q Yes, you are comparing apples to oranges when you say
17 there is only three point so percent of total DR's related
18 to weapons possession?

19 A I am not sure I am following the point.

20 Q All right. To determine whether a certain percentage
21 of the total DR's relating to weapons possession is high or
22 low, I assume you would like to see it higher than the
23 three percent. You would need to know what the total
24 number of DR's at the institution are compared to another
25 institution, for instance.

1 To give you an example, some of these categories for
2 DR's may be high in certain areas compared to other
3 institutions, therefore, giving a higher number of DR's,
4 correct?

5 A Yes. I am following your point. I guess my point is
6 part of my rationale is to determine how the staff is
7 expending its time and using its penalty resources to
8 modify behavior in an institution, that is why using this,
9 relatively speaking, this category did this, and this seems
10 to be getting more attention, and the gravity is we get a
11 higher penalty on this case than another kind of case, that
12 is the rationale I am following.

13 Q It is obvious high penalties are delivered in the
14 cases involving weapon possession, correct?

15 A Three percent of our cases involve confiscation of
16 weapons. Of that -- well, three percent there, 10 of the
17 22 cases receiving confinement. So 1.3 or about half of
18 the dispositions are confinement.

19 I would say, yes, when weapons are found and
20 confiscated that is seen as a major infraction.

21 Q Now, when you talk about the amount of time that is
22 being expended, the ratio of actual DR's given for weapons
23 possession to total DR's hardly indicates the amount of
24 staff time spent searching, does it?

25 A One assumes the one more searches, the more objects

1 will be found.

2 Q Okay. How much staff search time is required to
3 determine whether an inmate is guilty of verbal abuse?

4 A Not a great deal.

5 Q Two seconds, the time it takes to make the verbal
6 statement, correct?

7 A Correct. Much more is involved, because this is an
8 elaborate process. Once a charge is made, then it is
9 investigated, then a review team, then the recommendation
10 is made, and the superintendent approves. It is formidable
11 to imagine the intricacies of this process.

12 Q That is true. Once it has been determined that
13 violation of a crime has been committed, it requires very
14 little time --

15 A I agree with that point.

16 Q And that constitutes well over 100 of the DR's,
17 correct?

18 A Yes.

19 Q So, it is not accurate, is it to compare the number
20 of DR's devoted to weapons possession with the total number
21 of DR's to say that this indicates the amount of staff time
22 spent trying to detect weapons, does it?

23 A Well, let me be more specific in terms of cases that
24 comes to mind. Some of these involved cases in which
25 inmates were fighting, and a knife was used. The staff

1 perceived the fight, saw the knife. Others, an inmate
2 would be reaching up over a beam in D dorm. Officer sees
3 him put something down, and investigates, and finds he put
4 a shank under his pillow.

5 The number of these 28 cases involving weapons are
6 the same caliber of apprehension happening as well as the
7 verbal disrespect.

8 Q And some involve search of the inmates' property?

9 A I am not disagreeing with your point in comparing the
10 two. You will have every case of verbal abuse, which is
11 going to be readily apparent, so to speak, in the face of
12 the officer, whereas a fair amount of diligence in some of
13 these cases, but not all, some of these cases, and I would
14 say a significant number of them are of the same magnitude
15 in terms of requiring the time to apprehend that this
16 offense is occurring.

17 Q Now, we spoke yesterday about the general pattern of
18 inmate behavior in respect to the possession and control of
19 weapons at an institution similar to GCI, correct?

20 A Yes.

21 Q And during a large part, certainly during the day
22 time, and sometimes during the night time, those weapons
23 are not on the inmates possession, correct?

24 A Yes, I think what we said is, they are generally
25 nearby.

1 Q They are secreted someplace?

2 A Yes.

3 Q When those weapons are searched out and discovered,
4 you don't expect to see a DR, do you, unless there has been
5 some indication that can attach a particular inmate to that
6 weapon?

7 A That is correct.

8 Q So that a majority, you would expect a majority of
9 the weapons that are discovered upon searches at an
10 institution to be ones where that weapon is not connected
11 to a specific inmate, and, therefore, a DR does not follow?

12 A That is correct. For a DR, you have to have an
13 inmate name. You have to have someone to charge, so to
14 speak.

15 Q If you are trying to assess the amount of time that
16 the staff spends in searching for weapons, determining the
17 number of DR's is hardly relevant, is it?

18 A That is true, but you understand we've already
19 searched and talked about incident reports in which would
20 be the alternative vehicle for writing up.

21 Q Okay.

22 A So a weapon that is found with no one to charge, and
23 I have acknowledged that there have been dormitory
24 shakedowns, there have been small unit shakedowns, and
25 those are productive, don't misunderstand, I think that is

1 appropriate, commendable action, and those are resulting in
2 weapon confiscations.

3 Q That is true. Now, weapons actually serve a two
4 edged purpose in a prison environment. Do they not?

5 A Tell me the two efforts.

6 Q One is offensive, an inmate may seek to use a weapon
7 offensively against another inmate?

8 A That is correct.

9 Q To commit a crime against him, and they also serve a
10 defensive purpose?

11 A No question about that.

12 Q Many inmates at institutions, and it is a behavioral
13 pattern noted at virtually all institutions, is it not,
14 that inmates often secure weapons so that they will have
15 some means of self defense?

16 A That is correct, and, typically, what I say rule of
17 thumb is that the tougher the institution, the more likely
18 that attitude will be shared by the majority of the people.

19 Q And, so, ironically, the removal of weapons from a
20 compound may actually make some inmates at least perceive
21 themselves to be more vulnerable?

22 A No question about that, but the truth of the matter
23 is, if you could eliminate those weapons, the need for
24 defensive aspect would also be greatly ameliorated.

25 Q True, assuming physical characteristics are equal

1 among all inmates?

2 A That is why I say ameliorated. Weapons are used to
3 fend off gang rapes, or multiple attacks.

4 Q Or larger inmates?

5 A Correct. I don't think you are trying to condone
6 that weapons should be made available so inmates could
7 defend themselves. That is the proper role of correctional
8 officers.

9 Q Surely, but it does illustrate that the removal of
10 weapons from an institution is not necessarily altogether a
11 positive step at protecting inmates from violence?

12 A You may be asking the wrong question. I am not an
13 advocate of open sale of handguns in the community.

14 Q No, but the knowledge that some inmates have that
15 another inmate has a weapon may deter that inmate who is a
16 potential aggressor from an aggressive act?

17 A The research, and social psychology suggests the
18 presence of weapon in a situation much increase the
19 violence of that situation. Simply the presence of a
20 weapon, even with college students increases probability of
21 violent reaction, rather than talking one's way out of a
22 reaction. I strongly disagree as a psychologist.

23 Q How successful is talking one's way out of a
24 situation found to be in studies of prison sexual violence?

25 A I suspect that it is not one hundred percent by any

1 means.

2 Q Are you aware of Lockwood Studies?

3 A No.

4 Q Are you aware of the studies done by Notchi in the
5 Federal Court system in the District of Columbia?

6 A No.

7 Q Are you aware of Davis' studies of the Philadelphia
8 Prison System?

9 A Tell me something about that. Give me the gist.

10 Q Study of 60,000 inmates, and determining the number
11 of sexual assaults occurring in the Philadelphia Prison
12 System in the 1960's?

13 A I am not aware of that.

14 Q Classic study on prison sexual violence?

15 A No, I am not aware of that.

16 Q What else did you derive from your review of the
17 DR's?

18 A Remind me, what is the last one I gave you?

19 Q Weapons?

20 A The next category is assault here, fighting, battery,
21 physical assaults; two categories, inmate on inmate, inmate
22 on staff. There were 95 incidents of assault, or 95 DR's
23 concerning assault. 83 of those were inmate on inmate,
24 disciplinary reports, 12 percent inmate on staff.

25 I am not sure I have anything particularly remarkable

1 to conclude from this figure except that it is predictable,
2 and certainly should not be otherwise that the number of
3 assaults are much higher for inmates on staff. It is a
4 very critical thing that you have inmates that in any way
5 assault a staff. There were 12 of those. 9 of those
6 received confinement. That seems to be appropriate. 66
7 percent of inmate assaults on staff resulted in lock down.
8 18 of the 83 inmate on inmate fightings resulted in
9 confinement. I don't see anything particularly remarkable
10 about this, except fighting occurs in an institution and
11 seems to be penalized.

12 Q And the incident of such events is rather typical,
13 and about average for an institution, is it not?

14 A 12.8 percent assaults, fighting, 1.6 percent inmate
15 on staff. You have to make a judgment call on this, but,
16 as I say, I see nothing remarkable about this particular
17 figure.

18 Q In fact, GCI ranges towards the low/middle of prisons
19 in the State of Florida in inmate on inmate assaults, and
20 inmate on staff assaults?

21 A Based on this figure, I am sure that is a correct
22 statement.

23 Q Did you conclude anything else on your review?

24 A The last category, the sixth category is my last
25 category. It is other, and really residual category,

1 possession of currency, unauthorized area, theft, violation
2 of visiting regulations.

3 There was a significant number, I can't tell you what
4 porportion, the way I coded this, possession of currency.
5 There were 317 others. Of those, 39 received confinement.
6 247 other disposition which in the main part was loss of
7 gain time with a possession of currency, a typical penalty
8 is the donation of that currency to the inmate welfare
9 fund, so that is a more predominant other response in this
10 case. 31 of these were dismissed.

11 Because I have it as a residual category, it is
12 fairly high, except for the possession of currency, and I
13 should say that currency becomes elicited or becomes
14 contraband when it is over a \$5.00 denomination, and if it
15 is over a certain amount, I believe \$30.00 is a cap, that
16 an inmate should have at any one time. We have people that
17 have \$20 bills, \$10 bills. We have people who have \$80,
18 \$100, and the excess is confiscated in that case. To be
19 more precise, donated to the inmate welfare fund.

20 Those are my only observations in this particular
21 category.

22 Q The last point illustrates, does it not, that even if
23 you were to make a category such as currency contraband, it
24 still will get into the compound, will it not?

25 A It--

1 Q I am speaking of the \$20 denominations, \$10
2 denominations, denominations that are not legitimately
3 within the compound?

4 A It is easier to cope with enforcement if it is simply
5 illicit. There is no question that contraband, in general,
6 if you are going to compare drugs to buck, to currency,
7 currency would be the easier of those kinds of contraband
8 to smuggle in, to have in.

9 Q Just as easy to smuggle in as would various types of
10 narcotics, and drugs, such as marijuana?

11 A I think that -- You might want to argue is a small
12 amount of cocaine easier to get in than currency? Currency
13 is relatively easy, I am trying to say.

14 Q Surely, the point being, Doctor, even if you were to
15 in some way eliminate all currency as a legitimate
16 possession within the compound, in order to try to reduce
17 the commerce in drug trafficking, if drugs can get in so
18 can the currency necessary to purchase them?

19 A I guess the answer is yes, but I think it is critical
20 to respond that as a philosophy of management of the
21 correction system, the challenge is to be constantly
22 vigilant, and constantly fresh, and fight off the tendency
23 to becoming jaded, and complaisant.

24 And to say that drugs are going to be getting in, if
25 these things are going to be getting in, it is like saying

1 we have to legalize drugs because we can't stop them.

2 I worry about that, surely you are correct in saying
3 we have very highly motivated population of people who have
4 a great deal of time to design strategies to overcome your
5 policies. That doesn't suggest to me that we ought to
6 tolerate it. It doesn't suggest to me that we, say, well,
7 we have to expect a certain percentage of this, so it is
8 coming in this way. Let's don't try and combat it.

9 Q There is, however, legitimate, and well founded
10 position, is there not, that currency possession by inmates
11 is not something to be barred in prisons. That is, in
12 fact, the predominant philosophy?

13 A If you are speaking nomitively, yes, there is more in
14 institutions, prison nature. That is reversed when you
15 move to detention, jail, or local facilities. They tend to
16 not as a rule, the majority, nomitive case in a local jail
17 facility is reversed.

18 In your instance, yes, it is true, it is simply
19 easier. You have to set up another set of bureaucracy to
20 create a script, and control inmate accounts, and always
21 issue script out of that account, no question, and you are
22 right, the norm is currency, yes.

23 Q Now, we left off yesterday -- Incidentally, did you
24 have occasion to review anything else before you came in
25 today?

1 A No. This took a fair amount of time.

2 Q We left off yesterday with your category F -- I have
3 category F, you used numbers, you use numbers, protective
4 confinement. ~~That is~~ number 6?

5 A Yes.

6 Q You indicated that your review of the records at GCI,
7 which is--and I noted down--I think, were three dates, show
8 that the overwhelming majority of inmates in protective
9 confinement were white, correct?

10 A Yes. I used October, October '89, November '89,
11 December '89.

12 Q Are you aware of the literature on protective
13 confinement conditions generally in this country?

14 A I think I understand them.

15 Q In fact, is it not almost universally the case that
16 the overwhelming majority of inmates in a protective
17 confinement facility in a prison are white?

18 A I would think that's true.

19 Q That is, in fact, the general situation in prisons in
20 this country, correct?

21 A In general, and I think probably especially in the
22 south.

23 Q Particularly in prisons where there -- where a
24 percentage of the inmates are drawn from the urban
25 population, correct?

1 A But that is every institution.

2 Q Well, unless you are in Montana?

3 A Okay.

4 Q So there is really nothing remarkable about GCI that
5 a large number of the inmates, or large percentage of the
6 inmates in protective confinement are white. That is, in
7 fact, typical?

8 A It is not unusual.

9 Q And did you have occasion in preparing to -- for your
10 testimony to review the inmate population sheets for the
11 period from 1986 through the present?

12 A No. As a matter of fact, I wasn't interested in
13 that. The one way I could get ahold of it is through some
14 of the other reports. 1986 special report tracks the
15 breakdown, ethnic breakdown, of the Department of
16 Correction and Glades through '86.

17 Q Okay.

18 A But I had difficulty tracking exactly what I wanted
19 on that.

20 Q Okay.

21 A I might say, comment, if I may, that I included these
22 demographics simply to parallel what was found and reported
23 in the court decision on LaMarca. I was pulling out the
24 current situation to contrast to court findings, and the
25 decision of the case.

1 Q Let me show you what we have marked Defendants' Ex.

2 22--

3 MR. DAVIS: and I am sorry, Your Honor, what is
4 the procedure you would like in offering these? Do they
5 need to be presented to the clerk?

6 THE COURT: Yes, I need them to be presented to
7 the clerk to have the stickers.

8 MR. DAVIS: We have marked it with our own
9 sticker.

10 THE COURT: That is okay. Defendants' No. 22,
11 marked for identification.

12 BY MR. DAVIS:

13 Q Let me show you 22. Does that appear to be the
14 inmate count sheet for the years '86 through '89?

15 A The first one is February 1, '86, the last one,
16 December 1, '89.

17 Q All right. Those are inmate count sheets of every
18 other month from that time period, correct?

19 A I--

20 Q February, April, June --

21 A Yes, that is the case.

22 Q There are all together, approximately, 25 or so
23 inmate count sheets?

24 A I would say, yes.

25 Q And, passing the February count sheet, because that

1 does not have a breakdown of race on protective
2 confinement, does it?

3 A Yes. On April it does have a racial breakdown.

4 Q April does, February does not, correct?

5 A That is correct.

6 Q In April the breakdown is four white, one black,
7 correct?

8 A In protective custody, that is correct.

9 Q That is 80 percent, 20 percent, correct?

10 A Yes.

11 Q Turn to June. Is that 13 and 2, 13 white, 2 black?

12 A Yes, it is.

13 Q 86 percent, 13 percent?

14 A Yes.

15 Q Turn to August. Is that 7 white, 6 black?

16 A Yes.

17 Q 54 percent white, 46 percent black?

18 A Yes.

19 Q October, is that 9, 1, and 1?

20 A Yes. 9 white, 1 black, 1 other.

21 Q 82 percent, 9 percent, and 9 percent?

22 A I take your word for it.

23 Q December, is that 11, 1, and 1?

24 A 11 white, 1 black, and 1 other.

25 Q So there is no mistake, the figures we are giving, in

- 1 fact, are figures for the date on which the sheet was
2 issued, correct?
- 3 A Typically looks like the first of each month.
- 4 Q All right.
- 5 A Yes.
- 6 Q And February 1, '87, was that 16 and two?
- 7 A Yes.
- 8 Q For 88 percent, and 12 percent?
- 9 A That is correct.
- 10 Q April 1st, 12 and 3?
- 11 A 12 whites, 3 blacks, yes.
- 12 Q 80 percent, and 20 percent. June 1st, 14, 4, and
13 one?
- 14 A 14 white, 4 black, one other.
- 15 Q 74 percent white, 21 percent black, five other?
- 16 A Okay.
- 17 Q August 1st, is that nine and two?
- 18 A Nine white, two blacks, yes.
- 19 Q 82 percent, and 18 percent?
- 20 A Yes.
- 21 Q October, 11, one, and three?
- 22 A 11 white, one black, three other.
- 23 Q Or 73 percent white, six black, 21 percent other?
- 24 A Yes.
- 25 Q And December--

- 1 A Yes.
- 2 Q 15, four, and one?
- 3 A Correct.
- 4 Q Or 75 percent white, 20 percent black, five percent
- 5 other?
- 6 A Yes.
- 7 Q And '88, February 1st?
- 8 A Yes.
- 9 Q Eight, two, and one?
- 10 A Yes.
- 11 Q Or 73 percent white, 18 percent black, 9 percent
- 12 other?
- 13 A Yes.
- 14 Q April, is that six white, four black, and three
- 15 other?
- 16 A Yes, it is.
- 17 Q Or 46 percent white, 31 percent black, and 33 percent
- 18 other?
- 19 A Yes.
- 20 Q June, what is the count in June?
- 21 A Two white, five black, one other.
- 22 Q Or 25 percent white, 63 percent black, and 12 percent
- 23 other?
- 24 A Yes.
- 25 Q August, is that two white, and one black?

1 A Yes.

2 Q For protective confinement, or 66 percent white, and
3 33 percent black, or 66 percent white, and 33 percent
4 black?

5 A That is what it is.

6 Q And October 1, is that 11, and two?

7 A Yes, it is.

8 Q 85 percent, and 15 percent?

9 A Yes.

10 Q And December 1st, is that 11, and one?

11 A Yes, 11 white, one black.

12 Q Or 91 percent, and 9 percent?

13 A Yes.

14 Q Like you, Doctor, I also went to bed last night, and
15 so I didn't calculate my percentages after that time. In
16 the year 1989, what is the breakdown?

17 A February 1st, protective custody, 11 white, one
18 black, one other. April '89, 10 white, two black, no
19 other. June '89, 13 white, two black. August '89, 9
20 white, one black. October '89, 17 white, one black, one
21 other. December 1st, 1989, 11 white, two black, and one
22 other.

23 Q Okay. Those percentages range from about 25 percent
24 white to about 90 percent white, is that correct?

25 A Yes.

1 Q Typically, falling in the 75 to 80 percent range?

2 A The general conclusion, always majority white in
3 protective custody. I think there is one exception.

4 Q Two exceptions, are there not, April 1st, and August
5 1, '88?

6 A One of them being more like 50/50.

7 Q 46 percent?

8 A Yes.

9 Q And that is not atypical of protective confinement
10 populations generally in the country, is it?

11 A That is consistent with my experience.

12 Q And that is consistent with the various studies of
13 protective confinement populations over the last 10 years?

14 A Right.

15 Q So that based on protective confinement population,
16 there is nothing atypical about the situation at Glades
17 Correctional Institution compared to prison facilities in
18 the country generally, is there, in that respect?

19 A Well, what one might say one of the reasons for
20 checking in, asking for protective confinement, and
21 typically there are fears of sexual assault, fears of
22 assaults connected with having a bad debt, fears of
23 inability to pay for a gambling debt.

24 Q Those are the fears generally expressed in protective
25 confinement facilities throughout the country?

1 A I would think that is right. What one looks at,
2 rather than-- I think the question to ask is, how many
3 people are seeking confinement?

4 Q Are you aware of the studies of number of inmates in
5 protective confinement in facilities around the country?

6 A Not specifically, no.

7 Q Are you aware, for instance, of the studies showing
8 that as high as 30 percent or more of the inmates in some
9 New York State institutions are in protective confinement?

10 A As institutions are getting crowded, let's say
11 increasing numbers are going to protective confinement. I
12 think that is a correct quage.

13 Q And GCI, actually, the percentage is very low, is it
14 not?

15 A I think that is right. And I think one can look at
16 what I think is a correct policy of transferring people out
17 that are unable to take population, and so we have limited
18 space here, but we have a fairly aggressive transfer out
19 policy.

20 Q Even if you take the total number of inmates seeking
21 protective confinement, the number is rather low at Glades
22 correctional, is it not?

23 A I think so, and again, there is this policy,
24 appropriate policy of transferring people out who are
25 asking for protective confinement, and willing to return to

1 population.

2 Q In respect to inmate assailants, are you aware of any
3 of the sociological studies done on prison sexual violence
4 and the aggressor?

5 A I have read some, yes.

6 Q And aggressors in prison situations typically come
7 from a particular cultural subject group, do they not?

8 A Probably.

9 Q And study after study of that situation throughout
10 the country shows uniformly that the cultural subject group
11 is one composed of young, usually urban, black males,
12 correct?

13 A I think that is true, you depend on the reason, you
14 can also add gang membership especially in the West,
15 California.

16 Q And as a result of that, and, furthermore, that
17 particular subject group forms a significant, though
18 perhaps not by any means a majority, but a significant
19 portion of the black inmate population, does it not?

20 A Yes.

21 Q Obviously, if you wanted to withdraw an element that
22 would be likely to contain the typical aggressor in a
23 prison situation, you would withdraw that particular
24 cultural subject group from a prison, would you not?

25 A I certainly understand the rational, yes.

1 Q And yet that cannot be done, can it, because to do so
2 would result in racial imbalance in the prison systems
3 because of the numbers involved?

4 A Yes. The breakdown of -- typically 51, 49, if that
5 is what you mean.

6 Q And a significant portion of that 51, as you
7 indicated, or slightly more than 51 today would be members
8 of this particular cultural subject group, would they not?

9 A I would say 80 percent, plus, of the inmates coming
10 in through the Department of Corrections, State of Florida,
11 coming from the urban areas.

12 Q And consist of the young male?

13 A Absolutely. The figure as to who is likely to come
14 in is overwhelmingly between the ages of 16 and 28. Once
15 you get over 30, the probability of going to prison comes
16 down.

17 Q Surely. And so, when you discuss taking steps in
18 regard to classification to eliminate potential aggressors
19 from a prison system, you really are severely handicapped,
20 are you not, because the element that you would want to
21 remove under that theory would result in an illegal racial
22 balance in the prison system, would it not?

23 A Let me respond. The answer is yes, but respond to
24 the underlying assumption that I have. One is that Glades
25 is unique in the system in that its only means of housing,

1 except for a very limited confinement area is open
2 dormitory.

3 Two, what I am talking about in terms of
4 classification, and negative transfers are both ends of the
5 distribution,

6 Yes, I am concerned for the aggressive, not concerned
7 for, but concerned about the very aggressive predator
8 inmate. I am very concerned about the weak emotionally
9 unstable developmentally disabled small, frail, inmate.

10 Now, I certainly agree that if we took all of the
11 predators out-- We simply don't have the luxury of taking
12 all the predators out. What I am saying is, we ought to
13 take those that are especially predatory out. We ought to
14 take those that are especially vulnerable out.

15 I am trying to say take out both ends of the
16 continuum. I am saying that this institution is unique in
17 the system because it has such limited confinement space
18 and all of the traditional space is open dormitory. It is
19 really the most difficult, unless you have short term
20 minimum custody inmates, most difficult to manage.

21 Q In respect to the inmate group that you've identified
22 as the weak, frail, vulnerable inmate, did you in the last
23 episode of this case notice whether the group from which
24 the plaintiffs were drawn appeared to be a group of small,
25 frail inmates?

1 A You are talking about four years ago?

2 Q Yes.

3 A No. In fact, one of the things that impressed me is
4 that I was seeing a group of victims that I ordinarily
5 wouldn't expect.

6 Q And you have had occasion to review the sexual
7 assault reports in investigations that were done since
8 1986, have you not?

9 A Yes. These institutional reports?

10 Q Yes. And certainly a number of those, whether
11 putting aside the question of whether the report is a valid
12 one or not, a number of those inmates certainly do not fall
13 in that category, do they?

14 A It is hard to make paper come alive, but my inference
15 from what I read of his is consistent with that statement.

16 Q In fact, there were several instances of black
17 inmates claiming to have been victims of sexual assaults
18 reflected in those investigations, correct?

19 A Not many, but there were some, yes.

20 Q So that the typical profile of the young, frail,
21 white inmate doesn't necessarily apply to all of the ones
22 who at least made claims?

23 A No, and I didn't mean to say so. It is just that
24 those are the ones that we can anticipate and act in a
25 preventive or proactive way.

1 Q Now, you made a remark in passing about -- Let me
2 divert from this for a moment, because a thought occurred
3 to me last night, and I may forget it again.

4 Going back to the videotape that you showed
5 yesterday, do you recall that?

6 A Yes, I do.

7 Q One of the scenes that was fast forwarded, and,
8 therefore, which we did not hear the dialogue on was a
9 panning view of the exercise yard outside of E and F
10 dormitories, was it not?

11 A I recall that.

12 Q And my recollection is that your comment on the tape,
13 and this is my recollection of your comment itself, and not
14 what was heard on the tape since we did not hear that
15 portion of the tape, but it is in the record, was that you
16 saw a deficiency in respect to the security observation at
17 that point of the fenced perimeter because there was no
18 watch tower there. Do you recall that?

19 A Yes, I do.

20 Q You have learned since that time that there is, in
21 fact, a watch station there during the day time, and two
22 watch stations there at night time, did you not?

23 A Yes, in discussing with Superintendent Lambdin,
24 talking about the existence of a perimeter patrol, or
25 stationary post.

1 Q There were, in fact, two stationery posts on the
2 fence perimeter in the nighttime, and one in the daytime?

3 A I believe that is correct.

4 Q Officers with walkie-talkies or radios to communicate
5 with officers on the tours?

6 A That is right.

7 Q All right.

8 A I just want to say it is my way of pointing out as
9 analogous to having blind spots within a dormitory, you
10 have blind spots on your patrol, your perimeter, if you
11 don't have watch tours to cover it.

12 My point, if you don't have that, that one can do it,
13 just has to do it with the introduction of personnel.

14 Q Now, going back to the discussion on protective
15 confinement, you made a mention yesterday that there was
16 showering allowed of inmates in protective confinement
17 three times a week, is that correct?

18 A Yes, that seems to be the Department of Correction
19 standard, and it is also what the inmates report.

20 Q That is a state-wide standard?

21 A Yes.

22 Q In addition to being able to shower three times a
23 week, the inmates have in their cells a sink and basin, is
24 that correct?

25 A A basin and toilet, yes.

1 Q Which they can use for purpose of personal hygiene?

2 A Yes.

3 Q Now, you noted that some inmates remained in PC for
4 over a month, protective confinement?

5 A Correct.

6 Q Some remain in protective confinement for only a few
7 days?

8 A Also correct.

9 Q Some because they are transferred out, and others
10 because they leave on their own free will?

11 A That is correct.

12 Q Particularly, those who are in because of debts owed
13 to other inmates, when the money comes in the mail, they
14 then can leave?

15 A It is hard to track all of that, but I am sure that
16 is true. There are those cases.

17 Q Do you know what the average stay of the inmate in
18 protective confinement is at Glades Correctional?

19 A No, I do not.

20 Q In respect to inmates that are retained in protective
21 confinement for a longer period than a few days or a few
22 weeks, do you know what the circumstances for that happen
23 to be typically, or in any individual instance?

24 A Number one, the inmate is refusing to go back in
25 population for whatever set of reasons.

1 Q Do you know why he is not transferred under those
2 circumstances?

3 A My understanding is that there is the hope that this
4 person will go back and learn how to make it on the
5 compound. He is being encouraged to do that.

6 The other thing I might say, if a person is verified
7 in danger, let's say you have two people who have gone to
8 trial, one turns State's evidence on another, and they both
9 become sentenced; they are separated in the institution;
10 one is transferred into the institution. It will be fairly
11 automatic that he will be transferred out.

12 You have those cases which you have verified danger
13 in which that will, in fact, occur, and it will occur
14 fairly quickly. On those cases that are considered
15 non-vari-fiable, and there is not a named assailant, there
16 is not a charge being made, the institution cannot verify
17 that this person is in danger, there tends to be a longer
18 protracted period in trying to encourage the person to go
19 back out.

20 Q There is also those instances where persons are in
21 confinement, and seeking transfers to other institutions,
22 are there not, other institutions in particular?

23 A There is certainly the feeling of staff, and I have
24 no doubt that this occurs, people will check into PC as a
25 means of forcing a transfer.

1 Q That is not an atypical situation again in protective
2 confinement around the country, is it? That is a
3 phenomenon which has been observed at other institutions,
4 that inmates do check into PC for purpose of obtaining a
5 transfer?

6 A It is very difficult to ascertain this. How do you
7 know that a person is doing that because he wants to go
8 rather than he fears to stay? I have no doubt there are
9 instances. I am saying, you, I, or anybody would have a
10 hard time saying definitively or with any certainty that
11 this is the motivation.

12 Q When an inmate asks for a particular institution that
13 he wants to be transferred to, that would give you some
14 indication, would it not, that he is really interested in
15 going to a specific institution more so than getting out of
16 the institution that he is in?

17 A But he may feel if his problem at Glades Correctional
18 has been at sexual pressure, and he knows that this other
19 institution isn't noted for that, he may want to go there.

20 It is difficult to say whether it is legitimate or
21 not legitimate in wanting to go to a particular place.

22 Q And it may be that his family is there?

23 A Or that his lover is up there, and he wants to be
24 there.

25 Q Sure, not all inmates in protective confinement are

1 there because they checked in?

2 A No. The institution can make determination that a
3 person is in a dangerous situation, and put them in. They
4 may be there against their will if it is determined by the
5 staff that this person is in danger.

6 Q Do you know what percentage of the inmates at Glades
7 Correctional over a stand of time have been checked into PC
8 by the administration, and against their will?

9 A No, I do not.

10 Q Typically, inmates checked in in situations like that
11 would involve informers, would it not, informers that might
12 be in danger? That is a common situation?

13 A That is common.

14 Q You indicated that you saw some indication of cat
15 calling at Glades Correctional?

16 A Well, just to clarify, I didn't see it. I saw it as
17 a theme in inmate interviews.

18 Q There were a small number of inmate interviews that
19 referred to cat calling?

20 A Yes.

21 Q That is, again, not an atypical behavior pattern in
22 prisons, is it?

23 A The answer is no.

24 Q It is, in fact, typical?

25 A Well, I have a hard time with that, but it is not

1 atypical.

2 Let me just say my concern was setting the stage upon
3 arrival in '84 and previous, you had a situation where the
4 bus was arriving, and you had inmates lining up to cheer,
5 and do the cat calls as kind of a welcome to Glades,
6 setting the stage, expectation, and fear and threat from
7 the moment they stepped off the bus.

8 What I am concerned about is systematic, overwhelming
9 orientation to Glades that occurs in that fashion.

10 My recommendations were just trying to overcome that.

11 The truth of the matter is, I am no longer in a
12 teaching role at the University of South Florida, but the
13 University of Florida. I typically in either psychology or
14 corrections class would take my students up to Union
15 Correctional, Florida State prisons, Marion, and I always
16 gave an orientation to my student, this is what you should
17 expect, and certainly part of that was the cat calls, and
18 the sexual innuendos.

19 Q Even you received cat calls, and sexual innuendos?

20 A I don't much anymore.

21 Q And, in fact, the situation involving the bus and
22 inmates lining the fence does not exist at Glades anymore,
23 does it?

24 A I think that is right.

25 Q The bus exists, but inmates do not congregate on the

1 visitor port to welcome inmates?

2 A I must confess, I do not understand the logistics of
3 the current operation just the report that continues. My
4 recommendation is to stop bringing them in as a group so
5 you have, as I do with a class tour, introduce them in a
6 compound in the way you don't have a large number of
7 visible newcomers who are going to be broken in in that
8 fashion.

9 Q Are you aware of what that would involve
10 logistically?

11 A No. I am saying if that can be done. I do know, to
12 have a reception area would take some reworking of the
13 current assignment.

14 Q Or transfer of inmates one by one?

15 A From--

16 Q Would be a substantial logistical problem?

17 A It may or may not. I haven't thought it through.

18 Q In respect to the counseling programs that are
19 available to inmates generally in which inmates in PC are
20 not -- do not find available to them, such as Alcoholics
21 Anonymous, are you aware of how frequently those sessions
22 meet at GCI?

23 A It is my impression that there are groups that meet
24 weekly.

25 Q Or every other week?

1 A And there is a number of alcohol programs. There is
2 Alcohol Victorious, Alcoholics Anonymous, and Narcotics
3 Anonymous, and general counseling sessions. They are not
4 consistent in terms of the repetition of their meetings.

5 Q Many of the inmates in PC are not there long enough
6 to miss a session or at most a couple of sessions, are
7 they?

8 A Assuming that your average or model stay is just a
9 number of days, that would be true. The concern I have is
10 for the inmate who literally is very frightened of this
11 compound. The inmate who has a number of other issues of
12 need. Inmate who is, at best, emotionally unstable. An
13 inmate who, at best, is insecure about survival, an inmate,
14 at best, who has experienced a highly traumatic experience.

15 There is one inmate on PC now who is an avowed
16 homosexual who is HIV positive who is scared to death that
17 he could be killed in population. His two days on compound
18 were such that he was afraid he was going to be the
19 punching bag. His fear is palpable; his depression is
20 real; his contemplation of suicide is real. He has never
21 received counseling for the fact he is HIV positive. He
22 never received counseling in terms of how to reassure
23 himself, and handle himself on the compound. I presume he
24 is still there. To my knowledge, he is.

25 That is the kind of person I am worried about. He

1 ought to be able to have a counselor who has an
2 understanding, who could then react to him, and suggest a
3 transfer. He is not going to talk about it in a confined
4 situation which there are going to be people on either side
5 of him overhearing him.

6 Q And, ideally, the situation to handle inmates such as
7 that would be to transfer them to an institution where they
8 can be in open population, and receive services in a more
9 typical fashion, as other inmates?

10 A I don't disagree with that.

11 Q In fact, psychological services delivered in the
12 confines of a protective confinement setting are rather
13 illdelivered, at best, are they not?

14 A Let me just say that a rape counseling approach
15 probably would be helpful. Just knowing that somebody
16 cares. The knowing that somebody is there to see you more
17 than just to see that you haven't developed a bruise, or
18 bleeding openly. That kind of stuff is very helpful.

19 Q The majority of those for whom there was any evidence
20 of rape, and going back to your inmate interviews, Doctor,
21 am I correct in noting through there that there does not
22 appear to be any pattern of unreported, or any significant
23 unreported rapes occurring at Glades Correctional derived
24 from your interviews?

25 A One of my observations and characterizations of that

1 is that the contrast of four years ago and now in terms of
2 forcible rape is dramatic. And it is along that line.

3 Q And, in fact, the one or two instances where inmates
4 indicated to you that they had some personal knowledge of a
5 possible rape having occurred, they indicated that that
6 inmate had been moved either to PC, or to another facility
7 shortly afterwards, did they not?

8 A That is my recollection, yes.

9 Q Indicating that at least from the sources of
10 information you had, there is no evidence of a large body
11 of unreported sexual--forcible sexual assaults?

12 A That is very difficult to estimate. What I am more
13 comfortable saying is, compared to four years ago, we
14 really have a higher reduction, because there are a number
15 of people that we were aware of that were raped, and we
16 aren't seeing that now.

17 The reason I am hesitating and qualifying, rape, in
18 general, is a under-reported event, and it tends to be even
19 compounded within a correctional environment; so, one would
20 say as a crime there is a lot of hidden rape victims in
21 general, and one expects a lot more within a correctional
22 population.

23 Q Certainly you didn't notice, though, from the reports
24 given you by your interviewees any institutional rapes that
25 are occurring in large numbers and going unreported?

1 A That is correct. I am saying it is remarkable.

2 There has been progress from '84 to now.

3 Q And of the inmates who reported rapes, or alleged
4 rapes, you had occasion to review the investigation
5 reports, did you not?

6 A Yes.

7 Q And it was rather clear from those investigation
8 reports, was it not, that there were some of the reports
9 that were, in fact, false reports?

10 A I do know that was the conclusion of the process.

11 Q And the indication of the basis for those conclusions
12 in many instances seemed palpably correct, did it not?

13 A Certainly were supportable, yes.

14 Q And what was the total number of reported and
15 investigated rapes or alleged rapes at Glades Correctional
16 from January 1st of '86, until the present?

17 A I don't know that. What I do recall is that there
18 was no report of a rape with the exception on a
19 superintendent's monthly report, January '86, in which
20 there is something called assault sexually related. I
21 don't know what that translates to. The number of alleged
22 rapes, I don't have that on the top of my head.

23 Q You are aware of the Department of Correction rules
24 on reporting of rapes or sexual assaults in the monthly
25 report, are you not?

1 A I do know there is a place for them, yes.

2 Q And the regulation requires only those confirmed
3 rapes be reported, and not the unconfirmed ones?

4 A I did understand that, yes. And all I was saying is
5 is that the only statistic I recall is that
6 superintendent's report of '86. I don't have the number of
7 alleged rapes in my head for '86 forward.

8 THE COURT: Mr. Davis, is this an appropriate
9 time for a recess?

10 MR. DAVIS: It might be, Your Honor.

11 THE COURT: All right. Let's do it, it is
12 about time for mid-morning remember session.

13 We will be in recess for 10 minutes. You are
14 excused.

15 (Thereupon, a short recess was taken.)

16 THE COURT: All right. You may proceed.

17 MR. DAVIS: We would like to move into evidence
18 Defendant's Ex. 22, the item that Dr. Swanson was
19 testifying from.

20 MR. LIPMAN: No objection.

21 THE COURT: Received without objection.

22 (Defendant's Ex. 22 received into evidence.)

23 BY MR. DAVIS:

24 Q Dr. Swanson, with respect to the inmates of whom
25 there were reports received of alleged sexual assaults, and

1 for which there were investigations which numbered
2 approximately 15 or 16?

3 A I am not sure, but it doesn't sound off.

4 Q Do you recall the number of those reports which were
5 substantially after the fact?

6 A Yes, I do recall there were some.

7 Q As much as 9 months after the fact?

8 A I do recall.

9 Q Some were reported after the inmate had departed
10 Glades Correctional Institutional and had been gone for
11 quite some period of time?

12 A That is correct.

13 Q And did you note whether any of the inmates who were
14 among those who reported sexual assaults were inmates that
15 were receiving psychological, or psychiatric counseling and
16 services during the time span in which the rape was
17 recorded, both before and after?

18 A I don't recall that. I am not sure how I would have
19 ascertained that.

20 Q And in respect to the inmates that there were
21 investigations done on, and that indicated a strong
22 likelihood that there was, in fact, no sexual assault
23 either because the inmate himself admitted voluntarily
24 engaging in sexual activities or there was independent
25 evidence indicating that, or that there was no act that had

1 occurred, you would agree that psychological counseling
2 would certainly not be called for in those cases, would you
3 not?

4 A Let me say yes, but, my characterization, my
5 understanding of the present procedure, although I see it
6 and welcome it, is that it is the more traditional law
7 enforcement approach when the concern is establishing a
8 case, making sure this case can be prosecuted, making sure
9 that the victim or would-be victim or alleged victim is not
10 making this up, contriving the accusation.

11 While I don't disagree that that is important, you
12 have to understand this in the context of the rape process
13 in which that approach is seen as further victimizations.

14 So, all I am saying is, one can't tell whether
15 dropping the charges in the real case, dropping the charges
16 or saying this didn't occur, is a consequence of the fact
17 that it did not occur, or as seen as a way of stopping this
18 continuing discomfort. So, I don't know.

19 The truth is that I have already answered if, in
20 fact, there is certainty that there hasn't been a rape, and
21 for whatever the motivation, perhaps a person had a bad
22 debt and used this as a means to check into PC, that person
23 wouldn't need rape counseling if that were the case.

24 Although I have to say within the context of an
25 institution, it is a very unusual case that someone who is

1 a gambler or otherwise say I have been a rape victim in
2 order to get into PC.

3 Q You reviewed the situation of Mr. Savino, did you
4 not? He was one of those inmates?

5 A At this point I have gone through so many names.

6 Q Mr. Savino was the name associated with the
7 horticulture department?

8 A Yes.

9 Q And Mr. Savino checked in and claimed he had been
10 raped the day before in the horticulture department by an
11 unnamed, and unknown assailant?

12 A Yes.

13 Q An investigation revealed that the day before he
14 checked in, Mr. Savino had been discovered by a public
15 school teacher who teaches at the institution in engaging
16 in consensual sex with another inmate in the building, and
17 had been informed he was going to be removed from the
18 program as a consequence?

19 A Yes, I don't say that doesn't occur. I am saying
20 that is an unusual case because it is a stigma.

21 Q In that case it was less of a stigma to be considered
22 a rape victim than to be considered a voluntary homosexual?

23 A Yes.

24 Q In fact, that is a theme that comes out from time to
25 time in other reports on these inmates, does it not?

1 A Yes.

2 Q That is, an inmate, that if an inmate is put in a
3 situation where his consensual homosexual activity is
4 discovered, and becomes a matter of public knowledge either
5 to the administration or to other inmates, it is preferable
6 for him to have thought that he was sexually assaulted
7 rather than he was voluntarily giving it up, is that true?

8 A That is true. One of the things I could say, a
9 person can get into ostensibly a voluntary situation, when,
10 in fact, he felt he was coerced, had no alternative. Once
11 that starts, then it continues, so the origin of that
12 within a correctional community such as Glades is difficult
13 to call voluntary in all cases, even though it may appear
14 so.

15 Q There is a continuum of voluntariness or
16 non-voluntariness in the situation?

17 A Correct.

18 Q And you also noticed that a number of the inmates who
19 claim to have been assaulted were transferred out of GCI
20 within a matter of a few weeks after the claim of assault?

21 A I think that is correct.

22 Q In some cases, that is a matter of a few days?

23 A That is right.

24 Q And, certainly, a psychological counseling program
25 for such inmates at GCI would not be productive, would it,

1 a long term counseling program for such inmates who are not
2 going to be at GCI, but who are going to be transferred out
3 of GCI to other institutions?

4 A Well, by definition, but intensive counseling session
5 should be begun at the time of trauma.

6 Q And it has been recognized, has it not, that what you
7 have just referred to as intensive counseling sessions, or
8 aggressive counseling sessions, proactive counseling
9 sessions, once where the counselors seek out the
10 participants, are viewed by those who are sought out as
11 being also a continuation of the rape process in some
12 circumstances?

13 A I think the counselor has to be sensitive to that
14 possibility, and handle it accordingly.

15 Q There are many people involved in a rape situation or
16 a sexual assault situation who prefer not to have the
17 intervention of another person, that prefer to have the
18 privacy of their own self and don't want to talk about it
19 to a counselor, or to anyone else, is that not true?

20 A I am not sure that I am in depth on rape counseling
21 procedures.

22 Q Are you familiar with the prevalence of rape crisis
23 centers at correctional institutions customarily?

24 A I think it is rare, but I think the need is there.

25 Q All right. As a matter of fact, customarily, it does

1 not exist in prisons, is that correct?

2 A That is correct.

3 Q Are you aware of the crisis counseling procedures in
4 the Florida Prison System?

5 A Counseling procedures?

6 Q Yes.

7 A, I think so. Depends on the detail.

8 Q Are you aware of the set up crisis center,
9 psychological crisis center in the Florida Prison System?

10 A Yes, I am also aware of the planned proposed
11 correction medical authority, and I am also working with
12 the Department of Correction to develop mental health
13 training to the institute.

14 Q And the system has psychological crisis centers
15 throughout the State to which inmates who are observed as
16 being in psychological crisis may be referred?

17 A Yes, there is a change in mental health services,
18 psychological services that has begun within the Department
19 of Corrections.

20 The overall note institutions will specialize. There
21 will be some medical at some institutions, and inmates will
22 be classified, and sent to those when seen a need, that is
23 correct.

24 Q There has been a process of implementation, and
25 expected to be completed at the end of the year?

1 A I think that is a time table.

2 Q You indicated that there were not found by you to be
3 any indications of standard polygraph procedures in rape
4 investigations at GCI?

5 A I haven't picked up on anything that I have read.

6 Q And, surely, you are aware of the growing body of
7 authority in the field of polygraph procedures that cast
8 grave doubt on the reliability of polygraph procedures as a
9 means of detecting whether a person is telling the truth or
10 not, are you not?

11 A Certainly. Understand, I was taking--this is what
12 was found in '85, and I was finding whether that was true
13 today. Polygraph procedure is just one element to show
14 that a procedure has been developed, as I understand it.

15 Q There is a substantial body of respectable authority
16 that counsels against the use of polygraph procedure, is
17 there not, on constitutional grounds, and grounds on the
18 effectiveness and the utilitarian value?

19 A I am aware of both grounds. The one point on this
20 issue that I was recommending was the counseling. I don't
21 think I did recommend the polygraph.

22 MR. DAVIS: If I could have just a moment, Your
23 Honor. I have no further questions.

24 THE COURT: Any redirect?

25 MR. LIPMAN: Very brief.

REDIRECT EXAMINATION

1
2 BY MR. LIPMAN:

3 Q Dr. Swanson, two brief areas that I would like to
4 revisit. The disciplinary reports that you reviewed last
5 evening, and had reviewed under your supervision, am I
6 correct in recalling your testimony there were
7 approximately 730, -35?

8 A 737.

9 Q 737? That related to a period of eight months
10 spanning over the past year?

11 A That is correct. I had 11 months to choose from.

12 Q Are you comfortable in drawing conclusions from what
13 is obviously not all the DR's over a period of time, but
14 the number that exist?

15 A I am very comfortable for a couple of reasons. One,
16 just on looking from that high of paper document, over a
17 foot and a half, we took about two-thirds of that. We have
18 a 66 -- approximately 66 percent sample. You worry about
19 sampling error. You take a 10 percent sample of a
20 thousand. You are pretty confident. I took 66 percent
21 sample. I am very confident what I had is representative.

22 I also try to sample so we took from both ends of the
23 year in a way that we wouldn't get particular time of the
24 year problems, and so I am probably missing April, and
25 October, something like that, in terms of the population of

1 disciplinary reports.

2 I am very confident what I have is representative,
3 and, therefore, reliable, and not subject to sampling
4 error.

5 Q Were you able to discern or draw any conclusions from
6 the content of the disciplinary reports that were reviewed?

7 A Yes, and in general, as I have stated on cross, the
8 number -- a number of these items I felt supported some of
9 the recommendations and conclusions I made on initial
10 direct.

11 Q What are they, specifically, and briefly?

12 A Just to recapitulate, I was concerned about the
13 availability of drugs and alcohol, especially marijuana,
14 and buck, homemade wine, that seems to be corroborated.

15 I was concerned about the tolerance of sexual
16 behavior, consensual in this case, and given it had such a
17 remarkable low number of infractions that seems to be
18 substantiated.

19 Within the weapons related, having 28 instances over
20 an eight month period, I am still concerned about. I would
21 expect more confiscation, and I do understand the
22 difficulty about not all confiscations will be in
23 disciplinary reports. We did review incident reports, and
24 make recommendation in light of incident reports.

25 Those are the main elements.

1 I still see a high amount of contraband, drugs,
2 alcohol, available on compound. I am also concerned about
3 what might be seen as tolerance as illustrated by the
4 infractions, the penalties for the infractions that are
5 received. We see loss of gain time. For trafficking in
6 marijuana, the penalty is 60 days. Loss of gain time for
7 stepping in line to get a second pork chop is 30 days loss
8 of gain time. I am concerned about the parallel of that.

9 We do see higher infractions in other cases, higher
10 penalties, but the fact of trafficking with lists, and
11 dollar amounts, and the drug itself, only getting loss of
12 gain time is a concern to me.

13 Q Have you reviewed the disciplinary reports and
14 withdrawn any specific cases which help support the
15 conclusions that you just reached?

16 A It was interesting to me last night going through
17 with two other people that you really get a flavor, and
18 these things come alive to you through the vehicle of
19 disciplinary reports. I did select, I think, sample cases
20 that illustrate or represent different kinds of things.

21 If I can talk about them?

22 Q Yes, share those specific cases.

23 A I have possession of narcotics charge on an inmate by
24 the name of Eric Robinson July 18, 1989. At approximately
25 8:05 P.M. while conducting a routine security search of

1 inmate Robinson and personal property in and about
2 dormitory, I find an envelope filled with white powdery
3 substance, and one match box, four plastic bags of hard
4 white substance that appear to be cocaine. The match box
5 and substance was found inside of inmate Robinson's blue
6 Reebok right tennis shoe, and he was present when I found
7 it. Inmate Robinson stated that the shoes belong to him,
8 envelope found inside of the cap, and he stated that the
9 cap belonged to him.

10 After the search was completed, escorted to the
11 Captain's office along with the substance, where Captain
12 Slater conducted a test. This proved to be a positive
13 cocaine. The evidence was placed in the evidence locker in
14 the Captain's office, and inmate Robinson was involved in
15 an investigation that would ensue.

16 Let me just say here is a example of crack cocaine on
17 the compound. The investigation was made, disciplinary
18 team action was 60 days of disciplinary confinement, and
19 180 days loss of gain time. This was approved by the
20 superintendent.

21 Another is a incident, August 25, '89, inmate Zach
22 Bowman.

23 Q Before you go to the next?

24 A Yes.

25 Q What point do you make? What conclusion do you draw

1 from this?

2 A Clearly, crack cocaine is present. The infraction in
3 this case is 60 days of disciplinary confinement, and 180
4 days of loss of gain time. That is six months. Here we
5 see the crack cocaine is, in fact, taken fairly seriously.
6 60 days in disciplinary confinement as well as six months
7 loss of gain time, I do see as a significant penalty.

8 One question, I was seeing a number of these kinds of
9 cases just was a question as to whether the administration
10 has ever considered filing charges. Certainly the
11 possession of a narcotic is a criminal penalty. Would that
12 alleviate, or would that help control contraband? I have
13 not discussed that with them, but it, in fact, is seen as a
14 problem. You could charge outside charges on that. The
15 conclusion here is crack is available, it is taken
16 seriously, and penalties are given in the institution.

17 Q The second DR?

18 A Inmate Zach Bowman, August 25, while supervising
19 culinary department, I observed Inmate Bowman leaving the
20 building through the diet exit. I called Bowman by name,
21 and he refused to stop. Inmate Bowman did not have
22 permission from any staff member to justify leaving the
23 kitchen. He was charged with unauthorized absence, and
24 given 60 days loss of gain time.

25 The only point there, unauthorized absence gives you

1 60 days gain time, at least in this instance.

2 Another instance, August 1st, 1989, involves Mr.
3 Conner from food service who was escorting Inmate Danny
4 Martin into his office. Mr. Conner told that inmate Martin
5 admitted to him that he was on crack cocaine, and owed a
6 \$45 balance to an unidentified inmate. Inmate Martin
7 admitted to me, Captain Slater, that he was on cocaine,
8 crack, and owed a balance of \$45, and was in fear of his
9 life, because he had been threatened by unidentified
10 inmate.

11 This was investigated, disciplinary team action
12 followed, subject offered staff assistance, declined same;
13 subject plead guilty, subject stated has crack cocaine
14 problem, is trying to deal with it. Taking care of debts,
15 no longer in fear of anyone. Finds inmate guilty, and
16 finds 30 days loss of gain time for the offense.

17 Here you have a person on compound, has a problem of
18 crack cocaine, admits to it. In order to avoid retaliation
19 of people who he owes money for his drug habit, he checks
20 into protective confinement. That does square with some of
21 the inmates who said they would go to protective
22 confinement to avoid drugs on compound. It seems to be
23 available enough that people who have problems on the
24 street have trouble staying off the drug in the institution
25 itself.

1 Here is another one that kind of goes with the one I
2 just read. This occurred August 2nd, 1989. Inmate Sprague
3 came to my office requesting that he be placed in
4 protective custody. Inmate Sprague stated he was on crack
5 cocaine. He further stated he owed him \$45, and he had no
6 way of paying for the cocaine rocks. He was charged with
7 bartering with others, and received 30 days loss of gain
8 time.

9 August 4th, Inmate Brookson was placed in protective
10 custody confinement because he was in fear of his life, and
11 he was placed in cell number 1 with Inmate Sprague. At
12 approximately 2:35 a.m. this date, Inmate Sprague stated he
13 was in fear for his life because he, Sprague, owed Inmate
14 Brookson \$9.00, and that is the reason he checked into
15 protective confinement. Inmate Sprague was advised
16 investigation of this report would be conducted. Inmate
17 Brookson was assigned to another cell in protective custody
18 confinement. Inmate Sprague was found not guilty, and the
19 charge was dismissed. He was charged with bartering
20 because he owed the money to the other inmate.

21 I bring this one up just as illustrative as how
22 complex running the correctional institution can be. When
23 you double bunk protective confinement, you have a number
24 of considerations and problems that can occur.

25 Just a few more examples, if I might.

1 This is a disciplinary report, July 29, '89. At
2 approximately 6:45 P.M., while standing at the front
3 entrance of a dormitory, observed Inmate Ambaum standing
4 next to the green salt tank on the southside of the boiler
5 room, went inside dormitory, and exited out the fire exit,
6 I approached Inmate Ambaum, and asked him to empty his
7 pocket which he complied. Inmate Ambaum removed what
8 appeared to be drug paraphernalia, a clear plastic jar, and
9 a short piece of radio antenna. Sergeant Bush was
10 notified, and items along with Ambaum was escorted to the
11 Captain's office. He was advised of the investigation, a
12 narco ban test was conducted from the residue, and there
13 was confirmed content of cocaine. Based on the finding,
14 inmate subject was guilty, and received 60 days loss of
15 gain time.

16 Just another indication that drug use is, in fact,
17 occurring on the compound.

18 Here is one I think was referred to on cross. Inmate
19 Vargas charged on 29 July, '89. July 29th, approximately
20 3:05 P.M., while clearing all inmates out of the visiting
21 park, I observed Inmate Vargas throw a small plastic item
22 outside of the visiting park fence. I ordered the subject
23 to the Officer's desk, and proceeded directly to the area
24 where the package was thrown. I received the package, and
25 contained 15 five dollar bills, and one dollar bill and 85

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1 cents, for a total of 81.85. Inmate Vargas was told that
2 the investigation would be conducted. Based on the
3 information the officer observed Vargas was found guilty,
4 and received 30 days loss of gain time.

5 Q Does that complete the illustrative DR's of the
6 specific cases?

7 A There is another one, checks into PC because he owes
8 on drugs. Let me do one more.

9 This is inmate Terry Dixon, 15 August, '89, at
10 approximately 9:30 P.M. while conducting a routine search
11 of Inmate Dixon, there was a pair of black Converse
12 sneakers. He said these belong to him. They contained a
13 green leafy substance. Inmate Dixon was -- found eight
14 small packages. Inmate Dixon escorted to the Captain's
15 office along with the packets. They tested the packets.
16 They were found positive for marijuana, and he was given 60
17 days loss of gain time.

18 There are others, and I guess most of the others that
19 I have which I won't bother to read deal with substance
20 abuse, namely marijuana, trafficking, and in most of those
21 cases, the penalty was loss of gain time.

22 MR. LIPMAN: I have no further questions.

23 THE COURT: All right. You may step down,
24 thank you, sir.

25 (Witness excused.)

1 MR. LIPMAN: Dr. Medina.

2 MR. AMLONG: Your Honor, the plaintiffs are
3 calling Dr. Medina as an adverse witness.

4 MR. DAVIS: We would object.

5 THE COURT: Well, he is identified with the
6 institution.

7 MR. DAVIS: That is true, not every employee of
8 the institution is an adverse witness.

9 THE COURT: That is the way the rule reads, if
10 I recall, if he is identified with a party or not, he can
11 be treated as an adverse witness. He is a professional. I
12 don't think he is a person who is apt to be led, should be
13 less so, I would think, than others. I am going to permit
14 it to be done.

15 JORGE MEDINA, PLAINTIFFS' WITNESS SWORN

16 THE COURT: State your name.

17 THE WITNESS: Jorge Medina.

18 DIRECT EXAMINATION

19 BY MR. AMLONG:

20 Q Dr. Medina, tell Judge Paine what you do for a
21 living?

22 A Well, physician, psychiatrist.

23 THE COURT: Speak into that microphone, and
24 speak slowly, and as distinctly as you can.

25 BY MR. AMLONG:

1 Q You are a physician, specialist in psychiatry?

2 A Yes.

3 Q You say you are a specialist in psychiatry, but you
4 are not board certified?

5 A No, I am not board certified.

6 Q And where are you employed?

7 A At Glades Correctional Institution.

8 Q For how long have you been employed at Glades
9 Correctional Institution?

10 A Since September 6, 1974.

11 Q Roughly sixteen years?

12 A Fifteen years.

13 Q Okay. Now, you are the only psychiatrist there, are
14 you not?

15 A Yes.

16 Q And Dr. Medina, your training in psychiatry was three
17 years residency at state hospitals in Maryland and
18 Virginia?

19 A Yes.

20 Q Before that, you were an orthopedic surgeon?

21 A In my country, yes, I was an orthopedic surgeon.

22 Q Doctor, tell Judge Paine what training, if any,
23 you've had in dealing with people who are the victims of
24 rape?

25 A No any special training. Only training I get for in

1 general training for psychiatric.

2 Q Well, as far as dealing with rape victims, you had no
3 training?

4 A What? I have training in psychiatric in general. I
5 can treat anybody in circumstances.

6 Q Have you ever worked in a rape crisis center?

7 A No.

8 Q Have you ever dealt with a patient who has just been
9 raped?

10 A No.

11 Q And in the fifteen plus years that you have been at
12 GCI, you have never been consulted concerning any inmate
13 who has been raped, have you?

14 A No.

15 Q And, indeed, Dr. Medina, you were not aware of any
16 inmate rape that has taken place in the fifteen plus years,
17 are you?

18 A I don't see any case of rape there, no. Myself, no.

19 Q In those fifteen plus years that you have been the
20 staff psychiatrist at Glades Correctional Institution, have
21 you ever seen any inmate adversely affected by sexual
22 advances from other inmates?

23 A No.

24 Q Are you aware what this litigation is about?

25 A Well, now, yes.

1 Q Prior to this, did you ever read the opinion in this
2 case, the ruling?

3 A The opinion? No.

4 Q Since January 1986, has anybody from the prison
5 administration or the Department of Corrections said
6 anything to you about the need to provide psychiatric
7 services to inmates who have been homosexually raped?

8 A No.

9 Q Have you had any conversations whatsoever about
10 homosexual rape with Mr. Lambdin?

11 A No.

12 Q And you also had no conversations about homosexual
13 rape or providing a treatment for rape victims with Mr.
14 Lambdin's predecessor, Mr. Music, is that correct?

15 A No.

16 MR. AMLONG: No further questions at this time,
17 Your Honor.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. DAVIS:

21 Q Dr. Medina, let me show you what is marked as
22 Defendant's Ex. 3, and ask you if you can identify that
23 item?

24 A What?

25 Q Can you review this item, and tell me what this is?

1 MR. AMLONG: Your Honor, I will stipulate this
2 is his curriculum vitae.

3 THE COURT: All right.

4 MR. DAVIS: Your Honor, we offer this into
5 evidence as the Defendant's Ex. No. 3.

6 MR. AMLONG: No objection.

7 THE COURT: All right. It is received.

8 (Defendant's Ex. 3 received into evidence.)

9 BY MR. DAVIS:

10 Q Doctor, the microphone is a little bit -- Could you
11 sit next to the microphone, please?

12 A Okay.

13 Q You indicated on direct examination that you were not
14 board certified, is that correct?

15 A I am not board certified. I am board eligible.

16 Q You were board eligible in psychiatry?

17 A Psychiatric, yes, I applied, I was supposed to take
18 the test, and due to my work in the place, I did not take
19 the test.

20 Q You were eligible for it. You did not take the test?

21 A I am board eligible, yes.

22 Q And have you served as staff psychiatrist at
23 institutions outside the State of Florida?

24 A Yes. In Virginia, State of Maryland.

25 Q Have you in the course of your work at Glades

1 Correctional Institution had occasion to counsel inmates
2 who complained of sexual pressures?

3 A Well, some occasions, some inmate, yes, they say they
4 have been some -- some people are making homosexual
5 advance, depending who they are in confinement, in
6 protective custody, and they want to be transfer, and they
7 come to see mostly, no because of any complaint about that,
8 mostly because after a few days in protective custody, and
9 confinement, they complain no sleeping good. Main
10 complaint, they ask for something to help for sleep, most
11 of these people coming to see me.

12 Q Do you have occasion to receive requests to interview
13 with or counsel with inmates in protective confinement?

14 A Yes, I see many people. They can call me all the
15 time. Some weeks I see two, three, in confinement. They
16 know me. They know how to make the request.

17 Q On some weeks you see two to three inmates on
18 protective confinement?

19 A They come into my office, yes.

20 Q And on those occasions they are brought to you by a
21 staff member, is that the usual procedure?

22 A What?

23 Q Are they, on those occasions, brought to your office
24 by a staff member, by a correctional officer?

25 A They bring to my office by correctional officer, all

1 the time.

2 MR. AMLONG: Judge Paine, my objection to this
3 question is beyond the scope of direct. To save time if
4 Mr. Davis wants to make Dr. Medina his witness, that is
5 fine with me. I don't mind him being taken out of turn. I
6 object to him leading Dr. Medina outside the scope of
7 direct.

8 MR. DAVIS: The scope of direct had to do with
9 counseling services provided to people that had
10 homosexual--

11 THE COURT: I think it did. I will overrule
12 the objection. You may proceed.

13 BY MR. DAVIS:

14 Q And, in the course of your work at GCI, what is the
15 primary function that you serve, Dr. Medina?

16 A I serve psychiatry in general. Some who is manic
17 depressive, taking medication, they come into the
18 institution, I follow all these inmates. I follow them
19 with the medication, and also sometime they come in for
20 consultation, about some problem, family problem, any
21 problem, they ask me question.

22 Q All right.

23 A I--

24 Q So you counsel -- you monitor the psychotropic
25 medication for inmates?

1 A All the time, anyone right there, they send to me
2 automatically. Yes, I follow them all the time.

3 Q And you also indicated that you counsel certain
4 inmates independent of the psychotropic medication?

5 A All the time. I counsel at the same time.

6 Q How many do you see normally, say, in the course of a
7 week to counsel?

8 A Well, sometimes I see eight, sometime 15, sometime
9 12, depend on how many patients.

10 Q Is that per day, or week?

11 A No. A day, eight, 12, 13. Because all these people,
12 sometime you see more, but that is because some of these
13 people come to renew the medication. This happen anywhere
14 you go, sometime they are doing fine. They come in to me
15 to renew the medication, in this case, no take too long. I
16 can see by myself, I renew the medication, these people
17 take a few minutes. Sometimes I see more.

18 Q Okay. And what is the normal procedure to be
19 followed by an inmate who wants to see you for some
20 counseling?

21 A It is very easy, they can call me all the time. They
22 sign a request, and I make the appointment. Sometimes they
23 call me constantly without emergency. They are at the
24 office, they pass, too, and they see me, all the time.

25 Q Do you ever receive referrals of inmates from other

1 staff members, that is from the correctional staff? Do
2 they ever refer inmates to you for counseling?

3 A Yes, sometime they refer to me, any time any officer,
4 in the custodial department, they see an inmate in the
5 compound area, dormitory that might act wrong, strange,
6 they send to me immediately, they call my by phone, or send
7 to me.

8 Q Do you have correctional staff refer inmates to you
9 who have a -- who are exhibiting signs of depression?

10 A Depression?

11 Q Yes.

12 A Yes, sometimes people are depressed from depression.

13 Q And are you referred for consultation inmates who are
14 sent to you by other staff members besides the correctional
15 staff?

16 A I send, I refer practical, all the bureau to the
17 psychology department in order to participate in the group
18 counseling.

19 Q All right. In addition to the referrals by you to
20 the psychology department, in respect to the other
21 departments, classifications, do they ever refer inmates to
22 you for counseling?

23 A They refer to me for consultation, evaluation.

24 MR. DAVIS: No further questions, Your Honor.

25 THE COURT: Redirect?

1 MR. AMLONG: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. AMLONG:

4 Q Dr. Medina, has any staff member, corrections,
5 classification, any department of Glades Correctional
6 Institutional, has any staff member ever referred to you a
7 patient whose problem was he was complaining about being
8 homosexually raped?

9 A No.

10 MR. AMLONG: Nothing further, Your Honor.

11 THE COURT: You may step down, thank you.

12 (Witness excused.)

13 MR. AMLONG: Your Honor, the plaintiff will
14 call Gary Lane. I, likewise, call him as an adverse party.

15 MR. DAVIS: We object, also, Your Honor. We
16 don't believe that either one is an individual at the level
17 that would allow him to be called as an adverse party.

18 THE COURT: I will reserve ruling on that at
19 the moment until we find out more about this gentleman.

20 GARY LANE, PLAINTIFFS' WITNESS SWORN

21 THE COURT: Please be seated. State your name.

22 THE WITNESS: Gary Lane.

23 THE COURT: Spell your last name.

24 THE WITNESS: L a n e.

25

1 DIRECT EXAMINATION

2 BY MR. AMLONG:

3 Q Mr. Lane, what do you do for a living?

4 A Psychological specialist at Glades Correctional
5 Institution.6 Q As of now, you are acting psychologist there?7 A That's correct.

8 Q Supervisor of all psychologic

9 A That is correct.

10 Q How long have you been there?

11 A In the acting psychologist po

12 Q Both?

13 A I have been there since Octob14 a staff psychologist, job title cha15 specialist. As far as acting psych en a16 few months now. That is going back to approximately May or17 June of last year.18 Q You had previously been acting psychologist as well,
19 had you not?20 A No. I had been supervising the department, not as an
21 acting psychologist.22 Q You had been head of the psychological services?23 A I had been doing supervision.

24 Q For how long was that?

25 A From October, 1983, until -- let's see, we are in

1 '90. That would be probably September '88, and again doing
2 it now.

3 Q So, from 1983 through now, except for the period
4 September '88, through May 1989, you have been in charge of
5 the psychological department at Glades Correctional
6 Institution?

7 A Yes.

8 Q Mr. Lane, what is your educational background in
9 psychology?

10 A I have a Master of Science in applied psychology that
11 I got at Nova University. I acquired that in 1980,
12 approximately. Since that period of time, I have gone back
13 to school, working on a Doctorate in psychology, clinical
14 psychology. I am now in my last course of completing that
15 degree.

16 Q From which institution are you seeking your Doctor of
17 Psychology?

18 A Miami Institute of Psychology.

19 Q Is that affiliated with University of Miami?

20 A No.

21 Q What institution is it affiliated with?

22 A Caribbean Center for Advance Studies.

23 Q And that is located where?

24 A Puerto Rico.

25 Q Now, what is the size of the staff that you

1 supervised at GCI?

2 A At this current time, I supervised three people. I
3 supervise one psychological specialist, one rehabilitation
4 therapist, and one clerk typist specialist.

5 Q The psychological specialist is like you, a
6 subdoctorate psychologist?

7 A That is correct.

8 Q Now, what services does your psychological department
9 provide out there?

10 A We have group counseling, individual counseling. We
11 have sponsorship for the AA, and NA programs, and we do
12 psychological testing and evaluation when required to do
13 so.

14 Q How much actual psychotherapy do you perform?

15 A Psychotherapy, if -- my definition of psychotherapy
16 is more of a specific goal-oriented approach. This can be
17 somewhat long term.

18 Q Seeking --

19 A As far as counseling goes, this is more in line with
20 what we do.

21 Q By psychotherapy, you are talking about a one-on-one
22 therapeutic session that is designed to cure, ameliorate,
23 somehow help a specific diagnosis of psychopathology?

24 A It is goal oriented with progress checks. It is
25 specific toward a specific goal. Counseling may be more

1 round about.

2 Q And you don't do very much of that goal oriented
3 psychotherapy at all, do you?

4 A There is not much of that really required under the
5 current conditions.

6 Q And, in fact, on the month that the Costello v.
7 Wainwright team surveyed your institution, there was only
8 one hour and one-on-one psychotherapy project, is that
9 correct?

10 A Is this the report?

11 Q Yes.

12 A The report was for August?

13 Q Yes.

14 A There was only one, when it came to mentally ill
15 inmates.

16 Q Now, you have never had any experience, Mr. Lane,
17 have you, in rape crisis treatment?

18 A No.

19 Q And you've done nothing in either your Master's
20 Degree work or your studying for your Doctorate concerning
21 treatment of someone who has just been raped?

22 A No.

23 Q Or the diagnosis of someone who has been raped?

24 A Diagnosis in general could apply to anyone; however,
25 nothing designed specifically for that purpose, no.

1 Q And independent of the course work that you have done
2 for your Master's Degree, and for your Doctorate, you have
3 never read anything even that you can specifically recall
4 dealing with the diagnosis or treatment of a male rape
5 victim, have you?

6 A There is nothing that I have gotten involved in other
7 than basic reading of information that comes across my
8 desk, or whatever, nothing specific.

9 Q You agree with me, don't you, homosexual rape is a
10 traumatic event?

11 A It could be.

12 Q And you agree with me that counseling services should
13 be available for someone who has had homosexual rape?

14 A I believe the counseling service should be available
15 for any inmate who requires it.

16 Q Are you aware the protocol, or prison system for
17 treating persons who have been subjected to homosexual rape
18 suggests a referral to counseling?

19 A Am I aware of that particular statement?

20 Q Yes.

21 A No.

22 Q Are you aware of any protocols in the Department of
23 Correction for treatment of people complaining of rape?

24 A I am not.

25 Q Now, during the six years that you have been at GCI,

1 most of those as the head of psychology, have you ever
2 heard of an inmate at Glades Correctional Institution who
3 has complained about being raped?

4 A I have had nobody specifically say that to me.

5 Q Do you have any knowledge as to whether any rapes
6 have occurred at Glades Correctional Institution during the
7 six years that you have been there as chief psychologist?

8 A No. I have no direct knowledge of that.

9 Q Has any staff member -- I mean that very broadly,
10 guards, classification people, nurses, have any staff
11 member ever told you during those six years that any inmate
12 has ever been raped?

13 A I have never had any direct.

14 Q Now, have you ever had any discussion with the
15 management of Glades Correctional Institutional, I am
16 talking about Mr. Lambdin, and higher ups at DOC, about
17 this litigation?

18 A Direct conversations about--

19 Q This litigation, this lawsuit?

20 A You have to be just a bit more specific.

21 Q Have you ever had any discussions with Mr. Lambdin or
22 any other higher up about whether or not there should be
23 any rape crisis treatment made available to rape victims?

24 A No.

25 Q In fact, you haven't had any discussions with anybody

1 about rape victims at Glades Correctional Institution, have
2 you?

3 A That is correct.

4 Q Thank you.

5 MR. AMLONG: Nothing further at this time, Your
6 Honor.

7 THE COURT: Mr. Davis. Mr. Lane, keep your
8 seat, if you will.

9 CROSS-EXAMINATION

10 BY MR. DAVIS:

11 Q Mr. Lane, as I understand from your testimony, you
12 are right now the acting director of psychological
13 services, is that correct?

14 A Yes.

15 Q And is there a vacancy in the department for a
16 director of psychological services?

17 A Yes.

18 Q Is that being sought at the present time?

19 A Yes.

20 Q And are there any other vacancies in the department
21 at the present time that are being sought to be filled.

22 A No.

23 Q Now, you indicated that the function which the
24 psychological department serves includes group counseling,
25 individual counseling, psychological testing, and the

1 operation of the various programs, is there a program
2 directed towards inmates who are recently introduced into
3 Glades Correctional?

4 That is, are there any orientation procedures for
5 those inmates in respect to the psychological department
6 and the services?

7 A Yes, all of the inmates upon arrival go through an
8 orientation process, part of that is for one of our staff
9 members, rehabilitation therapist to orient them to the
10 services available in the psychological services.

11 Q And in the course of orientating them to the services
12 available, is there any communication to them of what they
13 may do if they feel any particular need for these services?

14 A Yes, as a matter of fact, the procedure, simply
15 putting a call out into the certain department, and what
16 that department would be titled would be sufficient for,
17 them to be seen.

18 Q All right. Are these inmates informed during the
19 course of the orientation of the particular, general types
20 of needs that they might have satisfied by counseling?

21 A Generally speaking, we will introduce the types of
22 programs that are available, substance abuse being one of
23 them. People who would like to seek counseling for
24 personal problems, that is a general term without being too
25 specific, whatever problem they may have, to seek those

1 services.

2 Q And during the course of those interviews, are you
3 sensitive to the possibility that the interviewee be a
4 person who would be susceptible to sexual pressuring of a
5 prison environment?

6 A During orientation, it is a group orientation, we
7 wouldn't have access to that kind of knowledge.

8 Q Okay. Do you have individual interviews with
9 inmates?

10 A Yes, ever inmate that is coming into the institution
11 gets a screening by the psychology staff within
12 approximately 14 working days of his arrival.

13 Q This is in addition to the orientation procedure, now
14 there is an individual session with each inmate?

15 A That is correct.

16 Q During that session, what is it that you are
17 attempting to convey to the inmate, and attempting to
18 receive from the inmate?

19 A At this point, it is a mental status screening to
20 determine what his mental functioning is, and to advise him
21 further should we feel that he has a problem in substance
22 abuse, or some other area, would advise him what measure we
23 can take at that point.

24 We can pick up things from him that possibly have not
25 been picked up before, and it also gives him an opportunity

1 volunteered service.

2 The majority of the people coming to us for
3 individual or group counseling of any type are self
4 referred.

5 Q All right. Do you have any referrals from staff of
6 inmates exhibiting psychological distress?

7 A Yes, (on an occasion we would get a phone call from a
8 dorm officer, a classification officer might spot
9 something, and bring it to our attention, medical
10 department, psychiatric, as well as general medical
11 department. There are other sources for referral.

12 Q And, in reflecting on the referrals from the staff at
13 GCI, do you find that they are often sensitive to the
14 potential need that inmates may have for those services and
15 refer them to you?

16 A Sometimes more sensitive than the inmate is. Often
17 the inmate does not want the service, but the staff is
18 referring him over. We may get an inmate referred to the
19 office for a specific reason, but the inmate has no desire
20 for particular counseling.

21 Q You indicated in response to a question as to whether
22 an inmate who has been sexually assaulted should have
23 counseling that you felt counseling should be available for
24 any inmate who requires it?

25 A Yes.

1 Q Is psychological counseling available for any inmate
2 at GCI who has been sexually assaulted?

3 A Yes, it is.

4 THE COURT: What is your answer?

5 THE WITNESS: Yes, it is.

6 BY MR. DAVIS:

7 Q And in order to receive those services, it is simply
8 necessary for the inmate to indicate a desire to speak with
9 you, is that correct?

10 A Yes, simply put in a request form to see us, and we
11 will see them as soon as possible.

12 Q And in respect to the the inmates that are in
13 protective confinement, is there a practice by the member
14 of the psychology department to see and interview those
15 inmates on a regular basis?

16 A Yes, we have a procedure wherever 30 days, if an
17 inmate is in confinement, we will see them within a 30-day
18 period of time, and every 30 days thereafter.

19 Q In order to perform that function, what do the
20 members of your staff do?

21 A We have a staff member assigned to that duty. He
22 will be there every Thursday and Friday, or Thursday or
23 Friday, depending on which day he chooses, and he will go
24 into the confinement area, look through all the people's
25 files that are in confinement, and determine how long they

1 have been there, and those that are coming up on 30 days,
2 he is going to automatically see.

3 He gives him a mental status evaluation, and the
4 course of being in confinement, he is available to all
5 other inmates at that time.

6 Q Does he make himself available by moving from cell to
7 cell any inmate who wishes to talk with him at that time?

8 A There will be rounds made where he will go around the
9 entire area. That is part of the responsibility. He is
10 going over there to see specific key people, but he is
11 making himself available to all people that are there.

12 Q Any inmate that wishes to talk with him at that time,
13 to consult with him, is free to do so?

14 A It could be at that time, or may be set up where the
15 therapist will come back when there is more time to spend
16 with him. Depends on the circumstances.

17 Q During the course of your delivery of psychological
18 services at Glades Correctional through individual
19 counseling sessions, have you had occasion to counsel
20 inmates who came to you because they felt they were getting
21 sexually pressured?

22 A There have been -- I can't be specific with who or
23 when, but I do recall people who had some fears of this
24 possibly happening to them, yes.

25 Q And they had no difficult in coming to you and

1 receiving counseling from you on those occasions?

2 A Well, again, to my recollection, this is not the
3 reason that they initially came. It was for other reasons,
4 but during the period of time that that would have been
5 brought out; basically, it takes talking a little while for
6 them to become comfortable enough with us to say things
7 that are personal in nature.

8 Q When you detect people who have that concern, do you
9 respond with the counseling assistance?

10 A Yes, the counseling assistance is available to them
11 at all times.

12 MR. DAVIS: No further questions.

13 THE COURT: Anything else?

14 MR. AMLONG: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. AMLONG:

17 Q You told Mr. Davis that sometimes the staff is more
18 sensitive than the inmate to the fact that the inmate is in
19 need of psychological assistance, correct?

20 A Not probably so much that he is in need of it, but
21 they feel he needs it, and he may not want it. I am not
22 saying he may not feel he needs it, but he may not want it.

23 Q But the staff is sensitive to the fact that the
24 inmate is exhibiting symptoms of psychological stress?

25 A I believe they are.

1 Q Now, with all the sensitivity to psychological
2 stress, during the six years that you have been there, has
3 any staff member ever referred to you anybody who has been
4 homosexually raped?

5 A I cannot recall any instance of that. We haven't had
6 any referrals. For that specific purpose, I cannot
7 remember anything like that.

8 Q The visits that are conducted in protective
9 confinement, are they cell-side visits?

10 A Yes, cell-side.

11 Q He is here, and you are outside the door, and that is
12 how you conduct your visit?

13 A Yes, typically it has to be that way. They are in
14 confinement for a specific purpose.

15 Q And I believe you did say it takes some confidence
16 building, some talking, some rapport before somebody will
17 want to discuss fears of homosexual attack?

18 A That was a general statement I made. Again, it is
19 kind of vague, but I think for some individuals that if
20 they get to know you, like any counseling, they tend to
21 open open up more to you.

22 MR. AMLONG: At this time, I would like to
23 introduce Plaintiffs' No. 7, which is protocols for
24 immediate physician referral to emergency room, Plaintiffs'
25 No. 7. It is a business record of the institution.

1 MR. DAVIS: This is a record of Glades
2 Correctional. If he intends to introduce it for this
3 witness. This document happens to be from the medical
4 department, and has to do with medical testing, and HIV
5 testing. It has nothing to do with psychological
6 counseling.

7 MR. AMLONG: It is an official Government
8 record. I am concerned with page two, which is the nursing
9 protocols that specify a sexual assault victim shall be
10 referred for counseling. And it is a public record. I
11 don't believe we need authentication of it. If they
12 insist, I am sure we could get a certified copy.

13 THE COURT: What is the date of the document?

14 MR. AMLONG: August 21, 1987, it was issued,
15 revised November 23, 1987.

16 THE COURT: Let me have a look at it, please,
17 before I rule.

18 Do you question the authenticity of the document, Mr.
19 Davis?

20 MR. DAVIS: No, Your Honor. If he intends to
21 introduce it through this witness, or for purpose of
22 questioning the witness--

23 MR. AMLONG: I am not going to question the
24 witness.

25 MR. DAVIS: That is not a document which is

1 directed toward this witness. That is directed toward the
2 nursing services.

3 THE COURT: All right. I will receive it over
4 objection of counsel for the defendants. Plaintiffs' No. 7
5 received over that objection.

6 (Plaintiffs' Ex. 7 received into evidence.)

7 MR. AMLONG: Thank you, Your Honor. I have no
8 further questions of Mr. Lane at this time.

9 THE COURT: You may step down, thank you, Mr.
10 Lane.

11 (Witness excused.)

12 MR. LIPMAN: So the court has some orientation
13 what is left, and I don't know what Your Honor's choices
14 are. We have several inmate witnesses. They should be
15 somewhat brief, depending on cross-examination, and then
16 plaintiffs will rest with the exception of the testimony of
17 Dr. Caddy who I understand is enroute from Australia.

18 MR. AMLONG: He called me from San Francisco
19 last night. He was arriving Miami this morning.

20 MR. LIPMAN: We may complete our work prior to
21 5 o'clock without the opportunity to have Dr. Caddy
22 testify. If that is the case, I wonder if we could take
23 him out of order tomorrow morning, and that may be moot
24 depending on how we move this afternoon.

25 THE COURT: Is there any problem with that?

1 MR. DAVIS: I am not sure which aspect we may
2 have a problem?

3 THE COURT: Whether or not you have a witness
4 this afternoon to take up whatever time might be left over
5 if we finish with the inmates, and Caddy isn't available?

6 MR. DAVIS: We may have one witness to put on
7 this afternoon.

8 THE COURT: All right. We are going to take a
9 recess now until 1:30. We have another matter to hear in
10 here at one o'clock. We won't begin until 1:30. Let's see
11 how things go along. If you could have that witness on
12 call, it might be helpful. If we find we have time left
13 over and we have a witness to put into the breach.

14 We will be in recess until 1:30.

15 (Thereupon, a recess was taken at 12:10 p.m.)

16 (Court reconvened at 1:30 p.m.)

17 MR. LIPMAN: Your Honor, I prepared the order
18 yesterday morning regarding substitution.

19 MARK CHARLES WHITE, PLAINTIFFS' WITNESS SWORN

20 THE COURT: State your name, please.

21 THE WITNESS: Mark Charles White.

22 THE COURT: Mark Charles White?

23 THE WITNESS: Yes.

24 THE COURT: Spelled just like it sounds?

25 THE WITNESS: Yes.

1 THE COURT: You may proceed.

2 MR. AMLONG: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MR. AMLONG:

5 Q Mr. White, you are a prisoner in the State Department
6 of Corrections?

7 A Yes.

8 Q Where are you now?

9 A Martin Correctional Institution.

10 Q And were you previously at Glades Correctional
11 Institution?

12 A Yes.

13 Q For how long?

14 A Roughly a year.

15 Q And when was that?

16 A Earlier part of '89, I left there. I was there, I
17 would say, latter part of '88.

18 Q Now, when you were at GCI, did you ever check into
19 protective confinement?

20 A Yes, I did.

21 Q Why did you check in?

22 A Because of the drugs, and house conditions there at
23 GCI.

24 THE COURT: Now, you were at GCI between what
25 dates again, or approximate dates?

1 THE WITNESS: Latter part of '88 until April of
2 1989.

3 THE COURT: So, less than six months?

4 THE WITNESS: Close to a year.

5 THE COURT: Latter part of '88 to April of '89?

6 THE WITNESS: Estimate, I am not sure of the
7 date.

8 THE COURT: All right.

9 BY MR. AMLONG:

10 Q When you say drugs, where are you referring to?

11 A Everywhere you turn, on the compound, the dormitory,
12 like a big drug warehouse.

13 Q Did you use drugs in prison?

14 A I smoked marijuana.

15 Q Why did you check into PC?

16 A Drugs is what got me into prison. I am trying to
17 avoid it, I want out.

18 Q Did you hope by checking in to secure a transfer to
19 another institution?

20 A Yes.

21 Q You checked into PC in other institutions before
22 this, have you not?

23 A Yes, I have.

24 Q Where is that?

25 A Backer, at UCI, Cross City, Hendry, I was placed in

1 administrative confinement.

2 Q Now, did you tell the guards at GCI you wanted to
3 check in because of the drugs?

4 A No, sir.

5 Q What did you tell them?

6 A I told them that somebody was after me. They were
7 after me with a knife, they were going to kill me.

8 Q Is that true?

9 A No, it is not.

10 Q When you got into protective confinement, I want you
11 to tell the judge what the conditions were in protective
12 confinement?

13 A Overall conditions, it was nasty. You very seldom
14 got to clean yourself. One morning, I woke up, slapping my
15 face, there was a cockroach two inches long crossing my
16 face; no type ventilation. They don't give you nothing,
17 they put you in a little cell, and that is it.

18 Q Now, which cell were you in?

19 A Cell 5.

20 Q And could the guards on duty in PC look up from their
21 desk and see you in your cell?

22 A No, sir.

23 MR. DAVIS: Objection. Calls for speculation.

24 THE COURT: Objection overruled.

25 MR. AMLONG: Overruled?

1 THE COURT: Overruled, yes. He answered it, I
2 believe, he said no.

3 BY MR. AMLONG:

4 Q Did the guards patrol frequently up and down the
5 cellblock?

6 A Once in awhile.

7 Q By once in awhile, what do you mean?

8 A You have eight hour shifts, maybe three times out of
9 that eight hour shift. Especially after the four o'clock
10 shift.

11 Q Now, when you first went into protective confinement,
12 were you in a cell by yourself?

13 A Yes, I was.

14 Q And you went in March 6th, correct?

15 A I believe that is correct.

16 Q All right. Did there come a time when they gave you
17 a cellmate?

18 A They gave me a cellmate, and he was transferred, or
19 something, I don't know what happened to him.

20 Q Okay. Did they tell you they were going to give you
21 a cellmate, or ask you if you wanted one?

22 A No.

23 Q Did you have any discussion -- this is Danny Ray
24 Martin?

25 A No. Danny Ray Martin was a second cellmate.

- 1 Q I am sorry. How long did you keep your first
2 cellmate?
- 3 A He was in there maybe two days at the most.
- 4 Q Did they give you another cellmate?
- 5 A Yes.
- 6 Q And who is that?
- 7 A Danny Ray Martin.
- 8 Q Did they tell you in advance they would put Mr.
9 Martin in your cell with you?
- 10 A And the officer come to my cell, and said we need
11 space. You have to double up. Do you want Mr. Martin with
12 you?
- 13 And I say not particular. And he said you have no
14 choice.
- 15 Q Why didn't you want him with you?
- 16 A Because people down the hall said he is crazy. He
17 come from Chattahoochee. I didn't want no problems.
- 18 Q Notwithstanding you are saying you didn't want Danny
19 Ray Martin in your cell, did they put him in there?
- 20 A Yes, they did.
- 21 Q Which day was that?
- 22 A I don't know how long.
- 23 Q How long did you peacefully co-exist with Mr. Martin?
- 24 A 24 hours.
- 25 Q Tell the judge what transpired between you and Mr.

1 Martin?

2 A Earlier that day, I was in the gymnasium working out
3 in recreation, working out with too much weight. I tore
4 the upper part of my chest muscles, and shoulder muscles.
5 I was reading a book, and to quote, he looked, and said
6 "Cracker, you are going to fuck." In prison, they have
7 word games, word of mouth, to create fear upon fear. I
8 didn't know if that is what he was saying. He said,
9 "Cracker, you are going to fuck tonight. I don't care what
10 it takes."

11 He showed me various cuts on his body, and arms, and
12 he had a razor blade in one hand, and ink pen, and he
13 looked at me, and pointed to chest and arms, he said, "If
14 you don't think I will cut you, look what I done to
15 myself." He said it won't mean nothing. They would take
16 him back to Chattahoochee. He proceeded to rape me.

17 Q You say he had an ink pen. Where did he get that?

18 A It was mine.

19 Q And what about the razor blade, tell the judge where
20 Mr. Martin got the razor blade?

21 A Shower nights, they would issue a Bic, disposable
22 razor. You could hit the razor with a shoe, and inside you
23 have a single edge razor, and--

24 Q Was that the kind of razor blade Mr. Martin had?

25 A Yes.

1 Q Now, did you attempt to call out to the guard?

2 A No. Because I was scared. He told me if I called to
3 the guard, or I raise any type of fuss, that is not his
4 words, fuss, if I call for the officer, before the officer
5 can get through the main gate, and come to my cell, and get
6 me out, he would kill me.

7 Q Did you believe him?

8 A Yes.

9 Q How did Mr. Martin use the razor blade and the ink
10 pen?

11 A Razor blade he held up to the left side of my neck,
12 and the pen to the right side. He said if I moved, he
13 would cut my jugger, and move the pen through my neck.

14 Q This is when you were laying in the bunk?

15 A Yes.

16 Q What time of night was this?

17 A After 12 o'clock.

18 Q After he put the razor blade and ink pen in your
19 neck, did he do anything to you?

20 A Yes, he snatched my boxers off.

21 Q You are talking about your underwear?

22 A Yes.

23 Q What, if anything, did he do next?

24 A I felt a liquid substance running down between the
25 crack of my buttocks. Next thing I know, he was inserting

1 his penis in my anus.

2 Q When you say liquid substance, did you know what that
3 was?

4 A Later on I found out it was baby oil.

5 Q Now, after this incident, did --

6 MR. AMLONG: Your Honor, at this point, I would
7 like to introduce as an official record of Department of
8 Corrections a composite Plaintiffs' Ex. No. 10 which is a
9 memo from the institutional inspectors, Peters to Mr.
10 Lambdin, concerning the rape which has appended to it
11 incident reports signed by Officer Freddy Garrett, by
12 Officer Brown, Officer Clark, and Officer Taylor, and which
13 also has as part of this package an emergency room record
14 from the Glades Correctional Institutional, emergency room
15 where Mr. White was eventually taken, and I would note for
16 the record--

17 THE COURT: Do you have any objection, Mr.
18 Davis to this document? Have you seen it?

19 MR. DAVIS: Your Honor, we don't. I think
20 there is a misrepresentation in respect to the Glades
21 Emergency Room record. I don't see one.

22 MR. AMLONG: This is the one I showed Mr.
23 Meginniss.

24 MR. DAVIS: If you look at the top, that is not
25 Glades Emergency Room. That is the prison.

1 THE COURT: You don't have any objection?

2 MR. DAVIS: No.

3 THE COURT: It is received without objection.

4 It speaks for itself.

5 (Plaintiffs' Ex. 10 received into evidence.)

6 MR. AMLONG: You have seen the highlighting I
7 have done, correct.

8 MR. MEGINNIS: Yes.

9 BY MR. AMLONG:

10 Q Mr. White, after this incident, what happened next?

11 A Roughly an hour, 45 minutes later, the rape was
12 repeated again.

13 Q Had a guard patrolled at that time?

14 A No, sir.

15 Q What time was this?

16 A Roughly between 1 and 1:30 in the morning the second
17 time.

18 Q After the second rape, what, if anything, happened?

19 A Yes, it happened again.

20 Q What time was that?

21 A The same amount of time, an hour, hour and a half
22 later.

23 Q Did anything happen after that?

24 A No, sir.

25 Q Did Mr. Martin tell you to do anything?

1 A He told me to lie face down on the bed, if I got up,
2 hollard for the officer, if I was to see the officer, I was
3 not to say nothing, act like I was asleep. If I thought he
4 was playing, if I hollard for the man, he would kill me.

5 Q Did he give you any other instructions?

6 A Yes, after that, he asked me to shit. He said shit,
7 and shit your best. I had diarrhea, I was scared.

8 Q Did you have a bowel movement?

9 A I had various bowel movements.

10 Q Did you attempt at any time to report this to a
11 correctional officer?

12 A Yes, later that morning, roughly about 9 o'clock in
13 the morning, we went to what is called recreation. Danny
14 Ray Martin went out when I did, every time I got near the
15 officer, Danny Martin was standing with a 10 pound dumb
16 bell near me. He told me if I told the police, he would
17 get me before they would.

18 Q When you talk about the police?

19 A The correction officer.

20 Q That is slang for the guards?

21 A Yes.

22 Q Were you able to tell the correctional officer during
23 weight lifting time?

24 A No, sir.

25 Q What happened next?

1 A We went back to the cell, and I started grabbing my
2 stomach, and bending over saying I was getting stomach
3 cramps, finally, I convinced him he was in pain. He
4 hollard for the police, called him down, and Officer
5 Garrett took me out to the infirmary.

6 Q What did they do at the infirmary?

7 A On the way to the infirmary, I told Officer Garrett,
8 told him that I had been raped, and he took me to the head
9 doctor, and the doctor asked me what happened, and told me
10 I was raped. He asked me to strip, and I stripped, and he
11 pulled the cheeks to my buttocks apart, and he said
12 something has happened, schedule him to see the outside
13 doctor immediately.

14 Q Are you a homosexual, Mr. White?

15 A No, I am not.

16 Q Prior to this time with Mr. Martin, did you ever
17 engage in anal sex?

18 A No, sir.

19 Q After the doctor looked at your rectum, what happened
20 next?

21 A He told me to get dressed. I got dressed, and they
22 took me to an outside hospital somewhere in Belle Glade. I
23 don't remember the name of it. The doctor there, we waited
24 about three hours before the doctor showed up. He put
25 latex gloves on, done a finger probe, and stuck a Q-tip in

1 my rectum, and I was brought back to the institution.

2 Q Now, did there come a time that you had a
3 conversation with Lt. Peters?

4 A I had wrote Lt. Peters what they call a kite.

5 Q K i t e?

6 A Yes, k i t e, slang for note, letter, whatever. I
7 told him that I needed to see him immediately. It was
8 extremely important. I gave that to Officer Garrett.
9 Preceding my time talking to him, Officer Garrett told me
10 that he gave it to Mr. Peters. I never seen Mr. Peters
11 after that.

12 Q When you were still in the cell with Mr. Martin, you
13 attempted to get a note to Mr. Peters?

14 A Yes, to tell him what happened.

15 Q Tell the judge who Mr. Peters is.

16 A He is institutional inspector for Glades Correctional
17 Institution.

18 Q Does that mean he is the one who handles the
19 complaints like this?

20 A Any institutional operations.

21 Q After you came back from the hospital, did you have a
22 conversation with Lt. Peters?

23 A Yes, I was pulled across the street, I spoke to him,
24 and some outside detective. I don't remember his name.

25 Q Now, did you tell Lt. Peters, or the outside

1 detective whether or not you wanted to press criminal
2 charges against Danny Ray Martin?

3 A Yes, I did.

4 Q And what was their response to that?

5 A Both of them, their exact words were, there will be
6 no case, because you shit--

7 MR. MEGINNISS: Objection, we have been sitting
8 here long enough listening to this.

9 MR. AMLONG: May I respond?

10 THE COURT: Yes.

11 MR. AMLONG: As far as Lt. Peters goes is the
12 statement of an agent, party opponent within the scope of
13 his agency.

14 THE COURT: All right. What about the other?
15 I will overrule the objection on that ground as to Lt.
16 Peters, and sustain it as to the other.

17 BY MR. AMLONG:

18 Q What did Lt. Peters, not the detective, what did Lt.
19 Peters tell you?

20 A Lt. Peters told me that he would leave all the
21 decision up to the outside detective. He told me he did
22 not think I could pursue the case because I shit all the
23 evidence out.

24 Q Did you direct Lt. Peters to any other evidence?

25 A Yes, I told him on the mattress sheet itself had a

1 stain, I would say roughly six inch diameter circle of baby
2 oil, and sperm.

3 Q Do you know whether or not they found the baby oil in
4 the cell?

5 A The baby oil was found, razor blade was found, and
6 the ink pen was found. Officer Garrett told me that.

7 Q Now, were you upset at this point?

8 A Very.

9 Q Did anybody ever tell you that you could see a
10 psychologist, or see Dr. Medina, the staff psychiatrist?

11 A No, sir, when I was brought back from Mr. Peters
12 office to the inside institution, they was waiting for me,
13 and gave me some type of liquid, told me it was a sedative.
14 That was the last thing they ever gave me, and then I was
15 transferred.

16 Q Did you have any conversation, any therapy with a
17 psychiatrist or psychologist about this incident?

18 A No, sir.

19 Q Do you have any feelings, any experiences now that
20 you did not have prior to the incident with Mr. Martin?

21 A A lot. I still experience up to this date very bad
22 dreams about this. I wake up screaming.

23 Q Tell the judge what you dream?

24 A The recurrence of the rape, grabbing my rectum, and
25 holding it, and screaming.

1 Q Somebody else grabbing your rectum, or you?

2 A I wake up grabbing my rectum, screaming. I dream of
3 him.

4 Q Where did they move you to?

5 A One cell next to him.

6 Q You have been transferred to Martin County?

7 A Yes, Martin Correctional Institution.

8 Q The nightmares continue?

9 A Yes, they do.

10 Q Have you ever seen a psychologist or psychiatrist
11 about those nightmares?

12 A No, I haven't. A week and a half ago, I wrote a
13 request in the psychological department requesting to see
14 someone.

15 Q You do want to see someone?

16 A Yes, I do.

17 Q Would you have wanted to see somebody at Belle Glade
18 that day?

19 A Would I if they offered it?

20 Q Yes.

21 A Yes, I would have.

22 Q For the record, because people can't see you like the
23 judge can, what is your race?

24 A My race, half Mexican, and half White.

25 Q What about Mr. Martin?

1 A He is White.

2 MR. AMLONG: Your Honor, no further questions
3 of Mr. White at this time.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. MEGINNISS:

7 Q Mr. White, the next to the last question asked you by
8 counsel was that you wrote out a request for some sort of
9 psychological counseling or treatment?

10 A That is true.

11 Q And that was within the past two weeks?

12 A Yes, it was.

13 Q This rape occurred, alleged rape, back in April,
14 1989?

15 A Yes.

16 Q So it took you 9 months to write that request?

17 A Yes.

18 Q Is there any reason for that?

19 A For the last 9 months I have been working anywhere
20 from 8 to 16 hours a day.

21 Q What are you doing?

22 A I used to work for housing five, laundry man.

23 Q So, during that period, you didn't have any need for
24 psychological assistance?

25 A By the time I come home, I was too dead tired to do

1 anything but sleep.

2 Q Now, this, according to my records from that which
3 your counsel passed to me which is a report dated April 20,
4 1989, indicates that you were allegedly raped at 3:40 a.m.
5 in the morning, on the 4th of April, 1989. How many times
6 were you raped? What is your claim?

7 A My claim?

8 Q Twice?

9 A Three times.

10 Q Well, your deposition was taken, and you indicated
11 twice. Is that in error? It was three times rather than
12 twice?

13 A It was three times, yes.

14 Q Even though on your deposition you testified it was
15 only twice?

16 A I might have said that.

17 Q All right. And the report that was handed to me
18 indicates that it was done twice. Any reason for that
19 disparity?

20 A I don't know the report you are talking about.

21 Q This is the report handed by your counsel?

22 A The institution is liable to tell you anything.

23 Q You would disagree to the accuracy of this report?

24 A I disagree to a lot of accuracy of Lt. Peters'
25 statements.

1 Q And you indicated in your deposition, and also on
2 your testimony today that drugs were out there, and you
3 used them, and you used them at Glades Correctional?

4 A I stated I used marijuana.

5 Q Well, you did use marijuana at Glades Correctional,
6 did you not?

7 A Yes, I did.

8 Q Did you ever get caught?

9 A I got caught one time. Not using it.

10 Q What happened?

11 A I was issued a disciplinary report for possession of
12 narcotics, an Officer Powell found a sack of marijuana
13 under my bed.

14 Q And that is the only time you were ever caught at it?

15 A I was not caught smoking it.

16 Q You were not caught smoking, you were caught with
17 possession?

18 A No. I was not caught with possession, a small bag of
19 marijuana was found under my bed.

20 Q Would you like to have your memory refreshed? I have
21 the disciplinary report here, and it indicates you plead
22 guilty, would you like to see it?

23 A I know what I plead, I was also removed to 60 days
24 disciplinary confinement.

25 Q So there is--

- 1 A I have a mandamus in my cell at Martin Institution to
2 have that lifted.
- 3 Q You haven't filed it yet, is that what you are
4 saying?
- 5 A That is right.
- 6 Q It has been a pretty good while ago.
7 Now, let me ask you this: You say you were in Cell
8 No. 5 and that your roommate, or your cellmate named Danny
9 Martin, you objected to?
- 10 A Yes, I did.
- 11 Q Did you object to Cell 5 before they put you there in
12 the first place?
- 13 A That was the first cell they put me in.
- 14 Q And that is where you stayed until after the incident
15 you are talking about?
- 16 A Yes.
- 17 Q Now, you indicated that Mr. Martin had you kneel?
- 18 A Had me who?
- 19 Q Kneel, or lie flat?
- 20 A Yes, I was lying on my bed when he made the comments
21 to me.
- 22 Q Then he had a razor blade?
- 23 A Yes.
- 24 Q By putting that up to your neck, you were forced to
25 pull your pants down?

1 A No. He pulled my pants off.

2 Q That takes two hands?

3 A No.

4 Q Are you sure?

5 A No. Positive. They issue boxers very big on people.

6 Q Okay. Let's go one more time. This incident report
7 which has been filed by your counsel indicates there is an
8 affidavit on here signed by a Correctional Officer Brown,
9 and he says he made a complete tour of the confinement area
10 three or four times or more that night, and you did not
11 once talk to him, and did not once try to report it to him,
12 and he passed right by your cell?

13 A That is his word against mine.

14 Q Is there any reason why we should not believe this
15 official record?

16 MR. AMLONG: Objection, argumentative.

17 THE COURT: Objection sustained.

18 BY MR. MEGINNISS:

19 Q Okay. Now, this report also says, and contradictory
20 to what you testified on direct that when they went back to
21 search your cell after you reported that there were razor
22 blades, fountain pen, and what have you, the only thing
23 they could find -- excuse me a moment.

24 That the only thing they could find at the crime
25 scene was the bottle of Johnson baby oil, the linens were

1 not stained, and they found no razor blades or pen?

2 A I told you what Officer Garrett told me. When I came
3 back, my things were moved from 5 to 6. He said Inmate
4 White, I found the razor, the pen, and we got the sheet.

5 Q And Mr. Peters will be here to testify tomorrow
6 saying they found nothing but the baby oil. You disagree
7 with that?

8 A Yes.

9 MR. AMLONG: Objection, Your Honor.

10 THE COURT: Objection sustained. Just ask him
11 questions, don't tell him what Mr. Peters is going to say.

12 THE WITNESS: Your Honor, could I make a
13 statement?

14 THE COURT: No. Just answer the questions as
15 succinctly as you can.

16 BY MR. MEGINNISS:

17 Q Were you ever in protective custody or administrative
18 confinement at Glades Correctional Institute prior to this
19 period when this incident occurred?

20 A No, sir.

21 Q And how long had you been there before then, before
22 you were put in?

23 A Put into protective confinement?

24 Q Yes.

25 A Roughly a year. I am not sure of the exact dates.

1 Q Okay, no further questions.

2 THE COURT: Redirect?

3 MR. AMLONG: No, Your Honor.

4 THE COURT: All right, sir, you are excused.

5 (Thereupon, the witness was excused.)

6 MR. LIPMAN: We have a second inmate, Mr.

7 Dennis. Could you excuse Mr. Saunders during this

8 testimony?

9 THE COURT: All right.

10 (Thereupon, Mr. Saunders left the courtroom.)

11 MR. AMLONG: Your Honor, I need to advise Mr.

12 White about the rule being invoked.

13 THE COURT: You certainly do.

14 Have you advised Saunders about the rule?

15 MR. LIPMAN: Yes, I talked to him.

16 THE COURT: When I said he could be excused. I

17 was referring to Mr. White. You have some reason why he

18 was excused.

19 MR. LIPMAN: The next witness requested that

20 during his testimony that no inmate be in the courtroom.

21 THE COURT: All right.

22 MR. LIPMAN: I agreed to that request.

23 Mr. Dennis.

24 ARNOLD DENNIS, PLAINTIFFS' WITNESS SWORN

25 THE COURT: Please be seated. State your name.

1 THE WITNESS: Arnold Dwane Dennis.

2 MR. LIPMAN: Please keep your voice up.

3 MR. LIPMAN: Mr. Dennis --

4 THE COURT: What was the name again?

5 THE WITNESS: Arnold Dwane Dennis.

6 THE COURT: Go ahead.

7 DIRECT EXAMINATION

8 BY MR. LIPMAN:

9 Q Are you currently incarcerated within the Department
10 of Correction System in the State of Florida?

11 A Yes, sir.

12 Q Sir, where are you incarcerated? What institution
13 are you presently incarcerated at?

14 A Martin Correction.

15 Q And how long have you been incarcerated at Martin?

16 A One week.

17 Q How much longer do you have to serve in the
18 correction system?

19 A Four months.

20 Q And then you will be out?

21 A Yes.

22 Q You have no other pending charges?

23 A No, sir.

24 Q All right. Have you ever been incarcerated at Glades
25 Correctional Institution?

1 A Yes.

2 Q And could you tell His Honor what period of time to
3 the best of your recollection you were incarcerated at GCI?

4 A From approximately beginning of January, 1986, until
5 May or June, possibly July, 1986.

6 Q Did an incident occur to you while you were
7 incarcerated at GCI?

8 A Several.

9 Q And could you explain to His Honor what happened?

10 A Some time around the beginning of February, or end of
11 January, 1986, I was on my way to the bathroom where I went
12 to the bathroom in the dorm I was being housed in, dorm B.
13 It was approximately two o'clock in the morning, and when I
14 went to the bathroom and sat down to use the bathroom, I
15 used the bathroom, and I began to get up, and go back to my
16 bed, and two inmates came into the bathroom area and one of
17 them said something to me to the effect to be quiet, and
18 not to say anything, not to yell, and the other inmate
19 grabbed me around the neck, and then around the waist, and
20 made me bend over, and the other inmate sexually assaulted
21 me.

22 Q What did the other inmate do?

23 A He pulled down my boxer shorts, and raped me.

24 Q Did you try to get free?

25 A At first I did, but I couldn't get loose from him.

1 They were big.

2 Q Do you know the race of the inmate that raped you?

3 A Yes.

4 Q What was his race?

5 A They were both black males.

6 Q For the record, what is your race?

7 A White.

8 Q Were they bigger than you?

9 A Considerably.

10 Q Do you know how long the rape incident took place?

11 A About five or 10 minutes.

12 Q What do you then recall happening after that had been
13 completed?

14 A The inmate who actually assaulted me, actually raped
15 me, he took something from the waistband. I can't remember
16 if he had pants on, or if he just had shorts on, but he had
17 a brush, a pointed brush, plastic, it was either yellow or
18 brown, a light colored brush, and he made sure that I seen
19 it. Like when the other inmate was holding me, I begin to
20 come up, and he didn't let go of me. He took the brush,
21 and he rammed it into me, and told me if I told anybody
22 what was going to happen to me, that I was going to get
23 worse, that he would get me.

24 Q Where did he ram the brush into you, what part of
25 your body?

1 A Into my anus.

2 Q Do you know what then occurred?

3 A Yes. I bled, and it tore me a little bit.

4 Q Did the assailants then leave you in the shower area,
5 toilet area?

6 A Yes.

7 Q And then did you return to your bunk?

8 A Not right away. I sat back down on the toilet
9 because I was bleeding.

10 Q Do you recall how long you sat on the toilet?

11 A Just, I don't know, a few minutes.

12 Q Did you then return to your bed?

13 A Yes.

14 Q While this was occurring while you were raped, do you
15 remember, did you see where the officers were?

16 A No, sir, I didn't see an officer. I assume he was in
17 the wicket.

18 Q Had you ever seen the two inmates that had raped you,
19 the one that raped you, and the other one with him before
20 that evening?

21 A The inmate who actually did this to me had been
22 bothering me for days, and later the next day he attacked
23 me again. The other inmate, I don't know who he was.

24 Q All right. The inmate that actually raped you, how
25 had he been bothering you for days?

1 A He would come to the bunk that I slept at, and he
2 would tell me to be his boy, or whatever, and nobody else
3 would bother me. He would take me up under his wing, all
4 that kind of thing, and tell inmates when they try to scare
5 him.

6 Q What did you tell him?

7 A I asked him to leave me alone, and bother somebody
8 else, to pick on somebody his own size.

9 Q Had you ever had homosexual activities with any other
10 inmate while you have been incarcerated?

11 A Never in my life.

12 Q Did you complain to, or tell any of the officers
13 before you had been raped that this inmate had been
14 bothering you?

15 A I didn't specify to the officer who exactly was
16 bothering me, because he wasn't the only one, but I went to
17 the officer, and told him that several inmates were
18 harassing me, and you know I -- what should I do, or, you
19 know, can I have protective custody so that nothing happens
20 to me. I didn't understand why I was in this type of
21 environment, and he told me nothing could be done until
22 there was some positive proof, something, that, you know,
23 could be seen that I am actually in danger.

24 Q Was that officer assigned to B dorm?

25 A Yes.

1 Q Do you know his name?

2 A No, sir, I don't.

3 Q Now, you said that after the rape occurred there was
4 another incident with the inmate that had assaulted you.
5 Could you explain what happened, and when that happened?

6 A Well, the following day, after this happened, I
7 stayed in my bunk all that day, and that night, he came
8 around my bunk, him, and a couple other guys, and they were
9 saying things to me, and messing with me, so I got up, and
10 I went in the T.V. room to try to ignore them, to try to
11 get away from them, and he came up to me all by himself.
12 There was nobody else with him.

13 He came up to me, and he said come around here. He
14 wanted me to follow him around the wall that separates the
15 television and benches from the table and other benches
16 where you write or play games, and I said no, I said flat
17 out no, I am going nowhere with you, and he stepped away
18 from from me. I continued to watch the television. I
19 wasn't watching around me, and he came up out of nowhere
20 from beside me, and punched me in the face, and cut my face
21 underneath my right eye, and I went to the officer and told
22 him what happened, and he told me to point the guy out and
23 I did, and he said, well, go on in there and fight him, and
24 get it over with, and he won't bother you know more. He
25 said show him you are a man, and fight him, ain't nobody

1 going to get a DR?

2 I said I am trying not to do that. I am trying to
3 get out of prison. I refused to fight him, so he locked me
4 in the wicket until a couple sergeants arrived, and took me
5 to medical.

6 Q Was the officer that told you to go fight the inmate
7 that had raped you the same officer that you had told that
8 that inmate was bothering you?

9 A No, sir.

10 Q Do you know the second officer's name that told you
11 to go fight?

12 A No, sir.

13 Q When you were taken away from the wicket, did you
14 receive medical attention for your eye?

15 A Yes.

16 Q And what was the nature of the medical attention?

17 A I got five stitches underneath my right eye.

18 Q What then happened? Where did you go?

19 A Well, after I identified him positively, because they
20 only took me out, the officer didn't bring him forward or
21 anything. One of the officers took me to the control room,
22 and I identified him from photos, and they put me in
23 protective custody.

24 Q How long did you remain in protective custody?

25 A For the remainder of the time I was there except for

1 about a couple weeks. A lieutenant came to me and told me
2 that he would place me on the medium and minimum side of
3 the institution, because I was medium custody when I
4 arrived. He would put me on the medium and minimum side of
5 the institution, if I would check out, if I would come out
6 of protective custody, but I didn't realize the only thing
7 on the medium and minimum side of the institution was the
8 sleeping area. There was no meals, canteen or medical
9 attention, or anything on that side of the compound.

10 So I tried to hang with it as long as I could until I
11 was, you know, approached again by other inmates, other
12 black inmates, so I wound back in protective custody. I
13 was transferred to Marion Correctional 40 days from my EOS
14 date, and I was attacked again by the same inmate a third
15 time in the van on the way to Marion Correctional. They
16 transported him, transferred him with me in the same van,
17 and he attacked me in the van, before we left Glades
18 Correctional, the main compound. He attacked me in the
19 van, and when I got there, and told them what happened,
20 they locked him up, and put me in protective custody on the
21 spot.

22 Q Did you ever tell any of the officers, or authorities
23 at Glades, or anywhere that you had been raped?

24 A No, sir, I didn't.

25 Q Why is that?

1 A It was just an embarrassing, too upsetting to say
2 anything. I was afraid to say anything about it. I didn't
3 think it would do any good anyway.

4 Q For that time while you were at D dorm at Glades, do
5 you remember whether the officers would patrol the dorm
6 outside the wicket?

7 A Yes, I can't say I never seen them walk around in the
8 dorm, but it wasn't very often at all. If they did, they
9 come out, and the majority of the time they go straight in
10 the T.V. room, but they would walk from one end of the dorm
11 to the other occasionally, you know, but it just wasn't
12 enough to prevent things from happening that happen.

13 Q You are White?

14 A Yes.

15 Q Your race?

16 A Yes.

17 Q All right. I have no other questions.

18 I didn't tell you this when I interviewed you, the
19 rules of the court are, you are not permitted to discuss
20 your testimony when you are finished with any of the other
21 inmate witnesses, or for that matter with anyone else, all
22 right?

23 A Yes.

24 THE COURT: Questions, Mr. Meginniss.

25

CROSS-EXAMINATION

1
2 BY MR. MEGINNIS:

3 Q Mr. Dennis, you were at Glades for about five months,
4 '86, January to May. Now, this one incident you related,
5 you say you did not at any time report that to any of the
6 officers, is that your testimony?

7 A Yes.

8 Q As a matter of fact, have you ever reported it to
9 anybody before being contacted for this trial?

10 A Yes.

11 Q To whom?

12 A To my parents.

13 Q But no one in the Department of Corrections or the
14 State of Florida?

15 A No, sir.

16 Q With respect to the assault, the physical assault,
17 you say it took place in the T.V. room?

18 A Yes.

19 Q Was there an officer in there at that time?

20 A No, sir, he came in right after it happened.

21 Q At that time, you didn't identify your assailant?

22 A Yes.

23 Q Did you know him by name?

24 A Just his nickname, Red.

25 Q And you positively identified him to the officer?

1 A Yes.

2 Q You went to the clinic, or infirmary, and they gave
3 you stitches. You came back. Did you ever see Red again
4 after that?

5 A After I was given stitches, I did not go back. I was
6 taken into protective custody. Yes, I did see Red after
7 that, in the van on the way to Marion Correctional.

8 Q Did you advise anybody in the van driving the van --

9 A Yes, I did.

10 Q Who did you advise?

11 A The officers who were transporting that day.

12 Q Are those officers with Glades?

13 A They were with the Department of Corrections. They
14 worked for Glades Correctional.

15 Q Do you know their names?

16 A No, sir, the day I was transferred, the record will
17 show who the two transporting officers were, and I told
18 them before they close that door that inmate was the reason
19 that I was being transferred, and he was the one who
20 attacked me, and they said, he ain't going to mess with
21 you. He ain't going to bother you, but it was pouring down
22 rain, it was storming, the water was coming down, and all
23 they wanted to do is close the door, and they could not see
24 inside the van.

25 Q And when you got to--where were you going, Marion?

1 A Yes.

2 Q You went into PC at Marion?

3 A Yes.

4 Q Do you know what happened to Red?

5 A No, sir, I don't.

6 Q Do you know if he were ever assigned to Marion while
7 you were there?

8 A I know he was assigned to Marion while I was there.
9 He got ought of the van. All of us that were in the van
10 were transferred to Marion Correctional, and he was one of
11 them.

12 Q Are these the only incidents you had, then, of
13 physical assaults while you have been incarcerated?

14 A Not while I have been incarcerated, no, sir.

15 Q There were others?

16 A Yes.

17 Q Where?

18 A Once at Polk Correctional where I was transferred
19 from to attend this trial.

20 Q Any others?

21 A Not to the best of my knowledge.

22 Q How long were you at Polk before you came here?

23 A Approximately two years.

24 MR. MEGINNIS: No further questions.

25 THE COURT: Redirect?

1 MR. LIPMAN: No, your Honor.

2 THE COURT: All right. You are excused.

3 (Witness excused.)

4 RM. LIPMAN: Saunders can come back in.

5 (Mr. Saunders returned to the courtroom.)

6 JOSEPH JOHN HAVEARD, PLAINTIFFS' WITNESS SWORN

7 THE COURT: State your name.

8 THE WITNESS: John Haveard.

9 MR. TUCKER: Thank you, Your Honor, I am James
10 Tucker, plaintiffs' counsel for plaintiff class.

11 DIRECT EXAMINATION

12 BY MR. TUCKER:

13 Q Are you currently a prisoner in the Florida
14 Department of Corrections?

15 A Yes.

16 Q Where are you currently housed?

17 A Right now?

18 Q Yes.

19 A Martin Correction.

20 Q That's a permanent assignment?

21 A No, sir.

22 Q Where are you permanently housed?

23 A Acry West.

24 Q Where is that?

25 A It is in Sneads, Florida, a correctional institution.

1 Q Have you been previously incarcerated at Glades
2 Institution?

3 A Yes.

4 Q Approximately when were you incarcerated in Glades?

5 A '86.

6 Q Approximately how long were you at Glades?

7 A Four months.

8 Q Do you remember approximately when in '86 you
9 arrived?

10 A Not really, I believe October.

11 Q Okay. When you arrived, what happened when you got
12 there?

13 A Well, I was raped.

14 Q How long after you arrived at Glades were you raped?

15 A About two weeks.

16 Q Can you tell His Honor how the rape occurred?

17 A Yes, this guy Goldie approached, a black guy, he
18 offered me cigarettes, I thought he was nice. A week later
19 he approached me with a knife in his pocket, and told me he
20 wanted to rape me, or he would stab me. He took me to a
21 closet in the library, and that is where it occurred at. I
22 was afraid, I didn't know if he was going to stab me or
23 what.

24 Q Do you know his given name?

25 A No, sir.

1 Q Approximately how long after you arrived at Glades,
2 how much time passed before you met Goldie?

3 A It was the first day.

4 Q What did he say?

5 A He was real nice, how you doing, where you from, and
6 I told him.

7 Q Did actions of that sort continue on the part of
8 Goldie for approximately how long?

9 A About two weeks.

10 Q After two weeks had passed, what happened when you
11 next met Goldie again?

12 A That is when he approached me, and told me he wanted
13 to rape me, or have sex with me, is what he said.

14 Q Did he tell you why?

15 A No, sir.

16 Q Did he say anything to you before he said I am going
17 to rape you?

18 A No, sir.

19 Q Okay. Where were you when you were approached by
20 Goldie?

21 A I was in front of the school house locker.

22 Q Approximately what time of day was it?

23 A Morning time. It was on a Saturday.

24 Q Okay. Were there any guards around?

25 A No, sir.

1 Q And what did Goldie do?

2 A Well, he told me he had a knife in his pocket, and if
3 I didn't -- excuse me, if I didn't agree to it that he was
4 going to stab me right then.

5 Q Did he show you a knife?

6 A He had one in his pocket. You could see the outline.

7 Q Did you see it?

8 A Yes.

9 Q Can you describe the knife?

10 A It was about so long (indicating).

11 Q Approximately how long?

12 A About six inches long.

13 Q Okay. And after he showed you the knife, how did you
14 respond?

15 A I was scared. I was shaking all over. I didn't know
16 if he was going to stab me or what.

17 Q Had you ever been in a Department of Corrections
18 prison prior to your arrival at Glades?

19 A No, sir.

20 Q Approximately what was your age when you arrived at
21 Glades?

22 A I believe I was 25 or -6.

23 Q For the record, what is your race?

24 A White.

25 Q After Goldie showed you the knife, what happened?

1 A Well, he told me there was a place that we could go
2 to that nobody would see us, and he, therefore, led me into
3 the library, and went to a closet, and that is where it
4 happened.

5 Q Were there any guards anywhere on the grounds between
6 the time when you first saw the knife, and when you went
7 into the library closet?

8 A No, sir.

9 Q Were there any guards in the library?

10 A Yes, there is one in the library, but off to the
11 side, you can't see anything unless you go into the
12 library.

13 Q Was there a window?

14 A No, sir.

15 Q Was the door opened or closed?

16 A It was open.

17 Q Now, when you went into the library, did Goldie tell
18 you where to go, or what did he do?

19 A Yes, he told me there was a closet at the end of the
20 hallway, and that is where we were going to go at.

21 Q Did you go into the closet with Goldie?

22 A Yes.

23 Q Why did you go in there with Goldie?

24 A Because he told me that is where he was going to rape
25 me.

1 Q Did you believe his threats?

2 A Yes, I was scared. This is the first time in prison.
3 He was bigger than I was. I didn't want to get stabbed.

4 Q Did you believe he would stab you if you didn't go
5 into the closet?

6 A Very much so, yes.

7 Q What happened after you went into the closet?

8 A He had baby oil with him, or some kind of lubricant.
9 I don't know what it was. It smelled like baby oil. He
10 told me to pull my pants down, and I did, and he pulled his
11 down, and started raping me.

12 Q Where did he rape you?

13 A In my anus.

14 Q Approximately how long were you in the closet with
15 Goldie?

16 A 10 or 15 minutes.

17 Q Was the closet door opened or closed?

18 A It was closed.

19 Q Was there a light in it?

20 A No, sir.

21 Q When the rape actually occurred, did you feel pain?

22 A Yes, very much.

23 Q Could you describe that?

24 A It hurt like nothing that shouldn't happen. It hurt.

25 Q Had you ever felt pain like that before?

1 A No, sir.

2 Q Have you ever participated in any homosexual acts
3 with inmates?

4 A No, sir, none whatsoever.

5 Q Before this time?

6 A No, sir.

7 Q After that time?

8 A No, sir.

9 Q How did you leave the closet, what happened?

10 A Well, when he was through, he left first, and told me
11 to wait a few minutes, and I waited, and started crying. I
12 was still scared. I didn't know if he would be waiting for
13 me outside or what. I waited a few minutes, and I left,
14 and went to the dorm, and I used the bathroom. There was a
15 little blood, and I went to my bunk and stayed there for
16 the rest of the day. I didn't even go eat.

17 Q Why did you go to the dorm and stay in the bunk?

18 A I was scared. I didn't want to go on the compound.

19 Q Did you see Goldie the rest of that day?

20 A No, sir.

21 Q How did you feel when you went to the dorm and laid
22 in the bunk?

23 A I felt like I had been cheated out of part of my
24 life, something had been taken away from me that shouldn't
25 have been.

1 Q Have you ever felt that way before?

2 A No, sir.

3 Q Following the end of the day when the rape occurred,
4 did you check into protective confinement?

5 A No, sir, I stayed maybe two weeks.

6 Q And why did you do that?

7 A Well, I thought maybe it would blow over. This is
8 the last that was going to happen. Word got around, people
9 started whistling at me, and I couldn't handle it. I had
10 nightmares about it. I wanted to go home, and I couldn't
11 handle it anymore, I checked into PC.

12 Q What did you do in order to check into PC?

13 A I told him that I was in fear of my life. I wanted
14 to talk to someone higher up in the ladder before I told
15 them what happened.

16 Q Did you tell anyone?

17 A Yes, Major Pipta. I wrote him a letter while I was
18 in confinement, and he seen me the following day.

19 Q You wrote him a letter after you had been placed in
20 protective confinement?

21 A Yes, I wrote him a letter.

22 Q After you had written the letter to Col. Pipta, was
23 there an investigation of the incident?

24 A When I went to see him, there was an investigator
25 with me, Investigator Peters, or Peterson, and they said

1 that they read the letter, and Goldie had been shipped
2 because he raped someone else, he had been shipped from the
3 camp. They asked his real name, and I told them I didn't
4 know his real name, and we went through the details what
5 happened. After that, I was put back into protective
6 confinement.

7 Q How long did you stay in protective confinement?

8 A About three months.

9 Q Can you describe the conditions of protective
10 confinement?

11 A It is dirty, hot. The conditions are not livable.

12 Q Approximately what time of year was it?

13 A Summertime.

14 Q Now, were you eventually transferred?

15 A Yes.

16 Q How did that come about?

17 A After I talked to Major Pipta, Col. Pipta, they set
18 up a transfer, and I was shipped to Martin Correctional to
19 spend the rest of my time.

20 Q When you checked into protective confinement, were
21 you ever given the opportunity to obtain counseling for the
22 rape you had suffered?

23 A No, sir, none whatsoever.

24 Q During the time when the rape was occurring following
25 the time when Goldie showed you the knife through the time

1 of the actual rape, did you attempt to call out or seek
2 help?

3 A No, sir, I was scared. Like I said, I didn't want to
4 get stabbed.

5 Q How long did you remain scared this way?

6 A Throughout the time. Even when I was in protective
7 confinement, I was still afraid.

8 Q Now, when you think about the incident which occurred
9 at Glades, how do you feel when you think about it?

10 A Upset.

11 Q Why were you upset?

12 A I wish it never happened. It shouldn't have happen.
13 If the camp were run like it should be, I don't think it
14 would happen. I don't think I am less of a man because it
15 happened.

16 Q Did you feel like you were less of a man?

17 A At the time, yes.

18 Q Could you describe that?

19 A It made me feel real low that something had been
20 taken that shouldn't have been taken. It made me wonder if
21 I had done anything out of the way. Looking back on it, I
22 didn't do anything out of the way to bring it on. I was
23 new. I was vulnerable, and like I said, scared.

24 MR. TUCKER: I have no further questions, Your
25 Honor.

CROSS-EXAMINATION

1
2 BY MR. MEGINNISS:

3 Q Mr. Haveard, what time of day was it that this
4 incident, the alleged rape, occurred?

5 A In the morning time.

6 Q About what time?

7 A About -- it is hard to remember, I would have to say
8 around 10 or 11.

9 Q It was not in the dormitory?

10 A No, sir.

11 Q In the closet in the library?

12 A Yes.

13 Q Are there not offices in the library?

14 A One officer, yes.

15 Q Offices?

16 A Yes.

17 Q There were a number of people in there?

18 A Yes.

19 Q You didn't make endeavor to cry out?

20 A When we were walking in the hall, there is nobody in
21 the hall, they were in the library, he was right behind me.

22 Q On the left-hand side, as you go into the building,
23 there is a series of offices, and a classroom, isn't there?

24 A I can't recall.

25 Q Okay. You made no effort to cry out?

1 A No, sir.

2 Q Where did you see the knife the first time?

3 A In front of the library.

4 Q Well, did you see it in the man's pocket?

5 A He pulled it out of his pocket, yes.

6 Q At that time, there was nothing to prevent you from
7 running?

8 A No, sir, except scared. He was bigger than I was.

9 Q It is a short way to the front door?

10 A The library?

11 Q Yes.

12 A Yes.

13 Q Okay. Now, you say you reported this by letter. Do
14 you recall when this letter was written?

15 A I checked in about two weeks after the incident
16 happened, and I wrote the letter about two days later.

17 Q You didn't write that letter until September, did
18 you?

19 A To the best of my knowledge.

20 Q Isn't it true that it was 9 months afterward that the
21 letter was finally forwarded to the authorities at Glades?

22 A No, sir.

23 Q Were you able to identify this person by name?

24 A All I know him by is Goldie.

25 Q Did you make any endeavor to contact the correctional

1 officers to see if they could identify who Goldie was?

2 A When I identified them, they said they knew who he
3 was.

4 Q Did they tell you who he was?

5 A They didn't.

6 Q Do you know whether or not Goldie went into
7 protective confinement?

8 A No, sir.

9 Q You were there, and you say you were there about
10 three months?

11 A Yes, three, four months.

12 Q Bottom line is, you did not report this immediately
13 after it happened?

14 A No, sir.

15 Q You are indicating guards on patrol. Is it normal
16 during business hours, 11 o'clock in the morning, you have
17 officers patrolling the library?

18 A Should have. It is 11 o'clock in the morning,
19 nothing to do, people out of work.

20 MR. MEGINNISS: Nothing further.

21 THE COURT: All right. You are excused.

22 MR. TUCKER: If I may speak with him?

23 THE COURT: All right.

24 (Witness excused.)

25 THE COURT: We will take a recess, gentlemen,

1 about 15 minutes.

2 (Thereupon, a short recess was taken.)

3 DAVID MARSH, PLAINTIFFS' WITNESS SWORN

4 THE COURT: State your name, please.

5 THE WITNESS: David Marsh.

6 DIRECT EXAMINATION

7 BY MR. TUCKER:

8 Q Mr. Marsh, speak into the microphone. Are you
9 currently a prisoner in the Department of Prisoners?

10 A Yes.

11 Q Where are you presently housed?

12 A Martin Correctional Institution.

13 Q Is that permanent?

14 A No.

15 Q Where is that?

16 A Polk.

17 Q How long have you been there?

18 A Six months, sir.

19 Q Have you previously been at Glades Correctional
20 Institution?

21 A Yes, I was there for a year from June 21 of 1988,
22 until July or August of '89.

23 Q Okay. Before entering Glades, had you ever been in
24 the Florida Department of Corrections previously?

25 A Yes, I spent 14 years in it before. Back on parole

1 violation, sir.

2 Q And when did you re-enter from the parole violation?

3 A March 9, 1988, sir.

4 Q And when did you first enter the system when you did
5 the first 14 years?

6 A I believe it was in November of 1965, until sometime
7 the first of '79, sir.

8 Q Okay. When you were at Glades Correctional for
9 approximately one year, did you witness any incidence of
10 violence?

11 A Yes, I witnessed quite a few, in fact.

12 Q And were those incidents inmate-on-inmate violence?

13 A Yes.

14 Q Did you witness any incidents inmate-on-staff
15 violence?

16 A No, sir.

17 Q Approximately how many incidents of inmate-on-inmate
18 violence did you see?

19 A I know of at least four, five.

20 Q Can you describe just in general the nature of those
21 four or five incidents?

22 A I seen a couple, what they call armed robberies. I
23 see a man hit in the head with a ball bat, assault, and I
24 seen assault on inmate by four blacks in a shower late at
25 night, and sexually molested.

1 Q With regard to the two armed robberies that you
2 describe in a general way, can you describe the first armed
3 robbery that you observed?

4 A Yes, early in the morning, in the dorm where I sleep
5 at, man, black man come in, had a swetshirt made into a ski
6 mask. He had it rolled up on his head, and got halfway
7 down the aisle, and reached up, and pulled the mask down
8 over his face, and there is a white fellow sleeping about
9 three bunks over in the next aisle from where I was at. A
10 man had something in his hand, and reached down and put it
11 on the man's chest, and reached up and grabbed gold chain
12 and neckless, and took off. The man jumped out of bed, and
13 started screaming, and hollering. The officer in the
14 wicket stood there. The man ran down the length of the
15 dorm, across the dorm, and back out of the dorm.

16 Q Do you recall the name of the person who ran into the
17 dorm?

18 A No, sir.

19 Q Do you recall his race?

20 A He was black.

21 Q And what dorm did this occur in?

22 A D dorm. East side.

23 Q And what was the race of the person who was attacked?

24 A He was white.

25 Q And how did you observe this attack? Where were you

1 at the time?

2 A I was on the bed, sir. I was drinking a cup of
3 coffee.

4 Q Approximately how far away were you?

5 A No further from here to the gentleman seated behind
6 you, sir.

7 Q Would that be approximately 10, 15 feet?

8 A Yes.

9 Q Do you know if the attack was reported to the
10 officers?

11 A Yes, sir, the chain was recovered, but there was
12 nothing done about the incident.

13 Q And how do you know that?

14 A The man who had his neckless stolen from him, checked
15 in, he was afraid because he went to the man about it,
16 nothing was done to the people who took the chain, and the
17 man checked in.

18 Q Where did the victim check in? Where do you mean?

19 A Protective custody.

20 Q Do you recall the name of the victim of this attack?

21 A No. Robbie, that is all I know.

22 Q Do you recall his last name?

23 A No, sir.

24 Q Do you recall the approximate date of that attack?

25 A No.

1 Q Sometime during the time you were at Glades?

2 A Sometimes within the year I was in there.

3 Q And you said you observed two armed robberies. Can
4 you describe the second incident of this sort?

5 A The other one was in the same dorm on the other side
6 of the building, on a weekend, Saturday, or Sunday, I can't
7 recall the date. I was playing cards on the bed with
8 another inmate. Two black inmates come in with a ski mask,
9 they were pulled down their faces, they come into the dorm
10 B approximately 30 feet, and to the first row of bunks,
11 there was an inmate there by the name of Applebaum, or
12 Rosenbaum. I am not sure what his last name was.

13 Q Do you recall his first name?

14 A No, sir.

15 Q What happened?

16 A They pulled knives on the man, cut his pockets,
17 wrestled, and tussled around the floor, and robbed him of
18 his money.

19 Q Did you see the knives?

20 A Yes, I see one of the knives, homemade shanks. What
21 they call homemade shanks.

22 Q Approximately how large was the knives?

23 A Five, six inches long.

24 Q Was there a guard on patrol at the time of this
25 attack?

1 A No, sir, there was an officer in the dorm, but he was
2 clear on the other side of the dorm. The dorm is split
3 with a petition, approximately 120 men in each dorm. He
4 was at the end down by the water fountain. He was talking
5 to some other inmates down there.

6 Q Other than the one officer in the other end of the
7 dorm, were there any other officers in the dorm?

8 A No, sir.

9 Q Did the victim scream or yell for help?

10 A That is the way it was doing he screamed, help, stop,
11 stop, they woke me. 30, 45 seconds, maybe a minute. They
12 toss around on the floor, and finally got his money, and
13 got up, and took off.

14 Q Did the two black persons leave the dorm?

15 A One of them got out, and the inmate on the floor got
16 up, and chased after the other one. I believe they tried
17 to stop him from getting out the door. I went back to
18 playing my cards.

19 Q Who tried to stop him from getting out the door?

20 A Other black inmates.

21 Q Do you know if the second person escaped or not?

22 A I don't know, sir.

23 Q Now, you said you also observed a person hit in the
24 head with a baseball bat, could you describe how that
25 happened?

1 A Yes, this was between some Spanish boys, or Puerto
2 Ricans. I guess previous to this they had been in an
3 argument, and they went out in the yard, in the compound
4 area, behind the kitchen. The kitchen -- the kitchen
5 faced, kitchen here, and some of the dorms over here, they
6 are around, and one was standing there, I guess, talking to
7 his other buddies, the other one took off, and got a ball
8 bat somewhere.

9 Q Approximately how long was he gone?

10 A I guess four, five minutes.

11 Q And then what happened?

12 A He come back up, behind the man, and bust him in the
13 head with a ball bat.

14 Q What happened when he hit him over the head with the
15 ball bat?

16 A Man fell down.

17 Q Was the man pleading?

18 A Busted the head open.

19 Q Were there any guards around when this occurred?

20 A No, sir, there was not.

21 Q When did the attack occur?

22 A Inside the institution, in fact, it was practically
23 in front of one of the dorms.

24 Q Do you recall which dorm?

25 A A dorm.

1 Q And was it outside the dorm on the grounds?

2 A Yes.

3 Q Okay. Approximately what time of day did this occur?

4 A It was either late in the morning, or real early in
5 the afternoon after chow. I am not quite sure, I would say
6 late in the morning.

7 Q Where were you when you observed this attack?

8 A I was sitting on the bench. They have sidewalks, in
9 Belle Glade they have benches. Periodically, I would say
10 they were talking to other inmates.

11 Q Approximately how far away from the scene of the
12 attack would you say you were?

13 A 40, 50 feet, maybe.

14 Q Were you able to have a clear view of the attack?

15 A Yes, I seen what went on. I seen him go up and get
16 the ball bat, and swing, and the man fall.

17 Q After that, did you see any response to the guards?

18 A Yes, the officers came, took four, five minutes for
19 them to get there, approximately.

20 Q Approximately how many arrived at that point?

21 A I see two come, sir.

22 Q Now, you said during the time, approximately a one
23 year period when you were at Glades, you also observed an
24 attack in the shower, can you describe that for the judge?

25 A Yes, where I slept in the dorm, D dorm, I slept near

1 the back. Bed 52. Where I sleep, I could lay there and
2 you could see the shower the shower -- to the inside of the
3 shower, I could see part of it. There is a wall, and there
4 is a retaining wall in front of the shower that separates
5 the sinks from the showers, and there was a white boy in
6 there, and four, five blacks.

7 I seen the white boy, I was sitting in my bed
8 writing, and I heard a commotion, and the boy said
9 something, and one of the black inmates struck the man,
10 knocked him down, and you could hear a muffled sound where
11 they put washrags or hand or something over his mouth, and
12 four, five that was in there, I believe four, black inmates
13 in there at the time, took turns sexually molesting the
14 white boy. His first name was Jeffrey, or Jeff, I am not
15 quite sure what it was.

16 Q Do you recall his last name?

17 A No, sir, I don't.

18 Q Do you recall Jeff's approximate age?

19 A I would say in his early 20's.

20 Q Do you know how long he had been at Glades?

21 A He was there before I got there, sir.

22 Q Okay. Approximately what time of the day did this
23 occur?

24 A 9, 9:30, 10 o'clock at night.

25 Q How many guards were there in the dorm at the time of

1 the attack?

2 A Two officers in the wicket.

3 Q Were either of those officers on patrol?

4 A No, in the wicket, where they stay most of the time.

5 Q Did either of the officers respond in any way to the
6 attack?

7 A I do not even think they was aware it was going on.

8 Q During the time you were at Glades, did you observe
9 any other incidence of violence where there was an inmate
10 attack?

11 A I have seen fights over the television. Fights over
12 card games. I did see one time, I cannot -- I can't say I
13 seen it. There was two blacks, sissy, what we call a
14 sissy, a gay person, and her daddy, which is what they call
15 -- that's how they go in there, the language. They got
16 into the fight in the dorm. They pull knives on each
17 other. There was nothing done. They chase each other
18 around the dorms, and the officers were aware of this.
19 They stayed in the D dorm for quite awhile, and this went
20 on constantly, constantly bickering back and forth.

21 More than one time they pull knives on each other.
22 The sissy, at one time, come up with a broken arm from a
23 fight.

24 Q Did you observe any attacks on any of the inmates who
25 you knew when you were at Glades?

1 A Just by casual. I learned a long time ago, you don't
2 get involved. I am not the type to hang around a lot of
3 people.

4 Q Approximately how many correctional facilities in the
5 State of Florida have you been incarcerated in?

6 A I have been in Raiford. I have been five or six
7 different road camps, Avon Park. I have been to a couple
8 reception centers going through, and being processed,
9 transferring, and coming back into the system, maybe 8, 9,
10 10.

11 Q And since you returned to the system in 1988, how
12 many prisons have you been in?

13 A Belle Glade, Polk, Martin Correctional.

14 Q And during that period of time, how would you compare
15 Glades to the other prisons that you have been in with
16 regard to security of the inmates within the facility?

17 A Please state that again.

18 Q On the issue of inmate safety, how does Glades
19 compare for inmate safety as compared to other prisons in
20 the State?

21 A It is not safe there.

22 Q Why is it not safe?

23 A Too much violence. That is all there is is violence.
24 It is like one big party there. All they do, they drink,
25 use drugs, there is no control. At nighttime, I have a

1 bladder problem, and a liver problem. I get up four, five
2 times a night, to go relieve myself, and sometimes it is
3 hard for me to get back to sleep. I lay awake two, three
4 hours at a time. You never see an officer walk the dorm.
5 They are there. They are in the wicket. They don't patrol
6 the dorms. They can't see into the dorms, can't see into
7 the showers.

8 Q Have you seen the same level of violence in other
9 prisons in the State of Florida?

10 A No, sir.

11 MR. TUCKER: No further questions, Your Honor.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q Mr. Marsh, you told us about four incidents that you
16 say you saw while you were at Glades Correctional?

17 A Yes.

18 Q The first one was, as you described it was the
19 robbery, an inmate, robbery of his gold chain from him by
20 another inmate?

21 A Yes.

22 Q And that was D dorm?

23 A D dorm, yes.

24 Q And you said at the time that happened, the officer
25 was stationed in the wicket?

1 A Yes, he was.

2 Q And the only way to get in D dorm is to go through
3 the door by the wicket?

4 A Yes.

5 Q And do you know whether that officer called in a
6 report on the incident?

7 A No, sir, I do not.

8 Q But you do know as a result of something happening,
9 the chain was recovered?

10 A Yes.

11 Q And returned to the owner?

12 A Yes.

13 Q Certainly, there wouldn't have been a better position
14 for an officer to be in to have prevented such an
15 occurrence if you were able to be in the wicket under those
16 circumstances, would there?

17 MR. TUCKER: Objection, Mr. Marsh can answer a
18 question by Mr. Davis, but that is argumentative.

19 THE COURT: The objection is sustained. It is
20 argumentative.

21 BY MR. DAVIS:

22 Q With respect to the second robbery, you indicated
23 that the officer was at the other end of the dorm, is that
24 correct?

25 A Yes.

1 Q I assume he was patrolling, is that correct?

2 A No, sir, he was talking -- I can't say what he was
3 doing. He was down by the water fountain at the other end
4 of the dorm, at the other end of the building, talking to
5 two, three, other black inmates.

6 Q All right. And in order to get down there, he has to
7 leave the wicket, does he not?

8 A Yes.

9 Q When did that occur? What time of the day?

10 A It was late in the morning, 10, 10:30 in the morning,
11 something like that. It was on the weekend.

12 Q And with respect to the baseball bat incident, that
13 was an incident which occurred very briefly in the morning,
14 is that not true?

15 A Yes.

16 Q And baseball bats are available as atheletic
17 equipment at GCI, are they not?

18 A Yes.

19 Q And in respect to the incident in D dorm, you said
20 that you were in bunk 52, is that correct?

21 A Yes.

22 Q And where is bunk 52 located?

23 A It is in the fourth row, back wall about four bunks
24 from the shower, sir.

25 Q All right. And from that -- and what were you doing

1 at your bunk on that occasion?

2 A I was writing.

3 Q You were sitting on your bunk?

4 A Yes.

5 Q And --

6 A Not sitting on my bunk. I was writing on my bunk. I
7 take a butt can and sit it in the floor, and lie on my
8 bunk, and I write.

9 Q And you observed several blacks in the shower, and a
10 white in the shower?

11 A Yes.

12 Q And, could you see their entire bodies in the shower?

13 A No, sir, all I could see was maybe about here up
14 (indicating).

15 Q From the chest up?

16 A Yes.

17 Q Because of the privacy wall that runs across the
18 shower?

19 A Yes.

20 Q And at some point you saw what appeared to be a
21 scuffle, is that correct?

22 A Yes.

23 Q And then they disappeared from sight?

24 A Yes.

25 Q You don't know whether there was, in fact, a sexual

1 assault or not, do you?

2 A I didn't see it, no, sir.

3 Q Okay.

4 A I was told.

5 Q You said there were two officers on duty, but they
6 were in the wicket?

7 A Yes.

8 Q Do you remember when your deposition was taken
9 December 12, 1989?

10 A I remember someone being there, sir.

11 Q Do you remember giving a statement under oath at that
12 time?

13 A Yes, I gave a statement, yes.

14 Q And at that time, you did not indicate that both
15 officers were in the wicket, did you?

16 MR. TUCKER: Excuse me, Your Honor, Mr. Davis,
17 to what page in the deposition are you referring?

18 THE COURT: What page, please, Mr. Davis?

19 MR. DAVIS: Page 13 to 14.

20 BY MR. DAVIS:

21 Q Sir, you did not indicate that they were both in the
22 wicket, did you?

23 A I don't remember, sir.

24 Q Okay. In fact, your testimony was that one was in
25 the day room, wasn't it?

1 MR. TUCKER: Mr. Davis, would you please have
2 the courtesy to show Mr. Marsh his deposition?

3 THE WITNESS: I don't know.

4 MR. TUCKER: Your Honor--

5 THE COURT: Yes, show him his deposition, if it
6 does --

7 THE WITNESS: Sir, I must have said it, sir.

8 THE COURT: What was the answer?

9 THE WITNESS: I must have said it.

10 THE COURT: All right.

11 BY MR. DAVIS:

12 Q On December 12, 1989, your version was there was an
13 officer in the wicket, and one in the day room, is that
14 correct?

15 A According to that, yes.

16 Q Your version today is there were two officers in the
17 wicket?

18 A Yes, sir, that is what I said.

19 Q Have you yourself ever filed any complaints against
20 Glades Correctional Institutional or to officers?

21 A The only one I file against was an incident on where
22 I fell.

23 Q You had occasion to slip and fall in the dormitory
24 because of what was apparently excessive water being used
25 to clean the dorm?

1 A Excessive water, and soap, yes.

2 Q You are an epileptic?

3 A Yes.

4 Q On falling you had a seizure, is that correct?

5 A I had a seizure and fell.

6 Q You had a seizure and fell?

7 A Yes.

8 Q You generated a substantial amount of paperwork over
9 that incident, did you not?

10 A Yes.

11 Q You were upset over that incident, were you not?

12 A Yes, I was.

13 Q And you certainly wanted to get back at GCI for that
14 incident?

15 A No, sir.

16 MR. TUCKER: Objection, that is argumentative.

17 THE COURT: Overruled.

18 BY MR. DAVIS:

19 Q Did you carry your complaint beyond the institution?

20 A I wrote to a couple lawyers about it.

21 Q Did you write to the court in Costello about it?

22 A Yes, I think so.

23 Q So that you wanted to have some sort of satisfaction
24 about that incident having occurred to you?

25 A Yes.

1 MR. TUCKER: I would make the same objection.

2 THE COURT: Overruled. He can ask him that.

3 THE WITNESS: Yes, I felt what happened to me,
4 the officer knew I was an epileptic. It was hot in the
5 dorm, I was overworked. I try to tell the officer I
6 couldn't do that type of work. I went into a seizure. I
7 fell, I have grand mal seizures. It is dangerous. It was
8 15, 20 minutes after I busted my head, and went into a
9 seizure before I got any medical treatment at all.

10 And I felt this wasn't sufficient, and this is why I
11 filed a complaint. I wasn't about 50 feet from the medical
12 department.

13 BY MR. DAVIS:

14 Q You don't know from your own knowledge how long it
15 took for medical care to get there?

16 A No. From what other witnesses testified, and a
17 couple officers told me, I knew, only from them.

18 Q Whatever the situation was, you certainly felt that
19 you had been wronged?

20 A Yes.

21 Q And you never got satisfaction for that, did you?

22 A I filed a complaint. I talked to the officers about
23 it. I talked to the investigator about it. I was told
24 that it would not happen again, and I am satisfied.

25 MR. DAVIS: No further questions.

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY MR. TUCKER:

4 Q Thank you, Your Honor.

5 Have you testified regarding any of the incidents
6 which you described on my direct questioning in order to
7 get back at Glades today?

8 A No, sir.

9 MR. TUCKER: I have no further questions.

10 THE COURT: All right. You are excused, Mr.
11 Marsh.

12 (Witness excused.)

13 MR. AMLONG: Mr. Jonas.

14 GEORGE JONAS, PLAINTIFFS' WITNESS SWORN

15 THE COURT: Please be seated. State your name.

16 THE WITNESS: George Jonas, J o n a s.

17 DIRECT EXAMINATION

18 BY MR. AMLONG:

19 Q Mr. Jonas, tell the judge where you are presently
20 incarcerated?

21 A Martin Correctional Institution.

22 Q Is that for the purpose of being brought to this
23 trial?

24 A Yes, I was brought there from Hendry Correctional
25 Institution.

- 1 Q And that is where you are permanently assigned?
- 2 A I am assigned to Hendry Correctional Institution.
- 3 Q Mr. Jonas, how old are you?
- 4 A 55.
- 5 Q 55?
- 6 A 55 years old, last November.
- 7 Q Okay. Have you previously been incarcerated at
- 8 Glades Correctional Institution?
- 9 A Several times.
- 10 Q When were those times?
- 11 A First time from February 1978 to April 4, 1980, and I
- 12 returned there in October '84, and remained there until
- 13 about June of 1988.
- 14 Q Okay. During the time from October '84 to June '88,
- 15 where were you housed?
- 16 A When I arrived, I was housed to B dormitory, and then
- 17 went to D.
- 18 Q B as in backer, and D like in dog?
- 19 A David, yes, prior to leaving the institution, I was
- 20 at the E dorm.
- 21 Q You moved from the main compound to the --
- 22 A What they call the north compound.
- 23 Q When was that?
- 24 A I was moved to the north compound November 14, 1985.
- 25 Q And has there come a time that you were moved back to

1 the main compound?

2 A Yes.

3 Q When was that?

4 A That was in end of February of '88.

5 Q All right. Mr. Jonas, were you aware in the vicinity
6 of December 1985 about the litigation of this action,
7 LaMarca versus Turner?

8 A I heard about the case, the institution, through the
9 inmates.

10 Q Were there any changes in the physical condition of
11 Glades Correctional Institutional that took place during
12 the litigation?

13 A Not during litigation, subsequent to the litigation,
14 Belle Glade is all open dorms, an average of 180, 200 men
15 to a dorm, and the bunks that were doubled in the middle
16 area of the dormitory was removed, double bunks, and the
17 double bunks were left in the wall area all around the
18 dormitories.

19 Q What about the kind of movies that were shown there,
20 was there any change in that before and after?

21 A Pornographic movies were shown, they used to have
22 from the canteen area, and that was dismantled out of
23 there. They didn't show any more movies.

24 Q Do you know what they had since then?

25 A Pornographic movies, X-rated.

1 Q Since they dismantled the trailer, what kind of
2 movies have been available?

3 A Regular movies, shown on HBO, whatever movies they
4 watch.

5 Q Now, did these changes eliminate the violence from
6 Glades Correctional Institutional?

7 A Not at all.

8 MR. DAVIS: Objection, calls for a conclusion.

9 THE COURT: Objection overruled.

10 BY MR. AMLONG:

11 Q Do you recall an incident involving an inmate named
12 Mark Brown?

13 A Yes.

14 Q Would you please tell the judge what you recall about
15 that incident including when it happened, or where it
16 happened?

17 A Monk Brown was an inmate who was in B dormitory, the
18 same dormitory I was housed in.

19 Q That is B for baker?

20 A Yes. He had three homosexuals that he controlled, he
21 in some fashion managed, so to speak, and two of them had
22 an altercation one evening, and he stepped in to mediate
23 the altercation, and the homosexuals turned on him, start
24 fighting with him. The officers locked himself in the
25 wicket, and made a phone call, picked up the phone, and

1 called on the phone, and five, six minutes later, Sergeant
2 Groves came to the dormitory, a couple other officers, and
3 the end result was, Sergeant Groves ended up knocked out
4 between two bunks. They couldn't control the situation.

5 Q What time of night was this?

6 A 8, 8:30 in the evening.

7 Q How many officers were in B dormitory when the
8 altercation began?

9 A Just one.

10 Q He was locked in the wicket?

11 A He locked himself in the wicket when the fight
12 started, yes.

13 Q Was it common there would only be one officer in the
14 dormitory?

15 A There is never more than one officer in the
16 dormitory.

17 Q Now, you said that Monk, M o n k?

18 A Monk Brown.

19 Q Monk Brown you say had several homosexuals. What did
20 he do with his homosexuals?

21 A Have sexual relations with them.

22 Q Is there much open homosexual activity in the dorms
23 at GCI?

24 A I don't know now, but there was when I was there.

25 Q We are talking now through, I believe you said, May

1 of 1989?

2 A I left there in '88.

3 Q '88. During that time there was homosexual activity?

4 A Yes.

5 Q All right. Now, after you moved back to the main
6 complex, when was that again?

7 A That was after I was injured, around February, '88.

8 Q How did you get injured?

9 A I changed the channel on the T.V. station. They had
10 a program called 60 Minutes on, and I was the only one
11 sitting there. I changed the station and another inmate
12 came and was upset because I changed the station on the
13 television.

14 Another inmate came, and started arguing with him
15 about putting the T.V. back where it was originally, that
16 he said he wanted to watch 60 Minutes, also. They started
17 arguing back and forth. The officer came over, and shut
18 the T.V. off. One of the inmates put the T.V. on, and told
19 the officer not to touch the T.V. again, that was the
20 inmates' T.V., he had no authority to touch it. The
21 officer through his arms up in the air, and walked away.
22 One inmate put the T.V. back on 60 Minutes. When they
23 started, the best thing to do is walk away. I started
24 walking away, and there is a little day room off the T.V.
25 area that had a checker board made out of one inch plywood.

1 Q Made out of what?

2 A One inch plywood, as I walk away, the inmate come
3 behind me, and hit me over the head with the checker board,
4 and I walk to my bunk. The man kept hitting me with the
5 board. I reached my bunk, and I had been trying to fix a
6 small Walkman radio I had. I had been trying to attach an
7 antenna to it, and I picked up the antenna, and tried to
8 use it as a small whip to get him off me, and he backed me
9 up to the T.V. room again, and hit me. I slipped from
10 water, the water fountain was leaking water. I was wearing
11 the rubber shower slides. He picked me up, and picked me
12 over his shoulder, and I fell against the table, and broke
13 three ribs.

14 Q Where was the dormitory guard at this time?

15 A After he came, and shut the T.V. off, he put his arms
16 up, he was up in the office, a dormitory is about as big as
17 the courtroom here. He was maybe 40 feet away. When I hit
18 the table, and broke three ribs, the guy kept beating me on
19 the floor, and finally he walked over, and said okay, he
20 had enough, get off him, leave him alone.

21 Q He saw you being beaten?

22 A He couldn't help but see me.

23 Q How long did this process take?

24 A What do you mean?

25 Q Well, you say he finally came over to you?

1 A Five, six, seven minutes.

2 Q How many officers were on duty, and this is E for
3 Edward dorm?

4 A Yes.

5 Q How many officers were on duty in this dorm when this
6 was happening?

7 A One.

8 Q Now, you got a DR for that, didn't you?

9 A They gave me a DR, and then dismissed it.

10 Q How many DR's have you had since you have been in the
11 Florida Prison System?

12 A I have been issued DR's twice, and then dismissed.

13 Q After that you moved back --

14 A I was in the hospital for three weeks, and after I
15 come out of the hospital, they put me back in B dormitory.

16 Q Do you know whether or not there was any discipline
17 imposed on the person who attacked you?

18 A Not to my knowledge.

19 Q When you were back at B dorm, did you have occasion
20 in early 1988 to witness any sexual assaults?

21 A Yes.

22 Q How many times did you witness that during 1988?

23 A Twice.

24 Q Okay. Tell Judge Paine about the first one, and then
25 we will move to the second.

1 A One took place, a guy just came in from another
2 institution, South Florida reception Center, and he was
3 assigned to B dormitory, and I believe it was Saturday or
4 Sunday. I can't recall exactly which one, three inmates
5 went to his bunk, around 2, 3 o'clock in the morning,
6 weekends they stay up late, two o'clock in the morning.
7 The lights are out after 11. They shut the lights out, and
8 they took the inmate to the shower area, and I couldn't see
9 exactly what they were doing, but I could hear the moaning
10 going on behind the wall, a retainer wall about six feet
11 high. You can't see behind it.

12 Q When you say they took the inmate to the shower area,
13 how did they take him?

14 A By force.

15 Q Did they have anything with him?

16 A One had a knife.

17 Q After the lights are out, are inmates supposed to be
18 in bed?

19 A On the weekend lights go out at 11 o'clock, and
20 television stays on until two o'clock. You are supposed to
21 be in your bunk, or T.V. room. No other area.

22 Q Would the guards enforce this?

23 A I never see him enforce it. He would stay in the
24 wicket,

25 Q What happened to that inmate who you saw taken to the

1 shower room?

2 A Nothing. I mean, as far as you know what was done to
3 him?

4 Q Well, do you know what became of him?

5 A Five, six days later, I saw his bunk was empty. I
6 don't know where he went.

7 Q You don't know what his name was?

8 A No.

9 Q Why didn't you get involved? Why didn't you help
10 him?

11 A You don't get involved. I don't want to go to sleep,
12 and end up with a knife in my back in the morning.

13 Q A guard wouldn't protect you?

14 A Who is going to protect me? He wouldn't protect me
15 when I got smashed up.

16 Q What about the second incident, can you tell the
17 judge about that?

18 A A man that got involved, he was a homosexual.

19 Q The person who got raped?

20 A Yes, he was a homosexual. He didn't go willingly.
21 He was a friend of some other inmate, and they may have
22 been moved out of that dorm to another dorm. They had an
23 argument, or something like that. They moved them,
24 separated them.

25 Q How was he -- Where did he go that night?

1 A His friend got moved out of the dormitory. He was
2 left in the same dormitory. The one that happened, he is
3 free.

4 Q You remember an incident involving Mr. Thurston?

5 A Yes.

6 Q Tell the judge about that?

7 A Inmate Thurston went to his bunk. He went to the
8 shower area, and a homosexual, he was leaning over a wash
9 basin, washing his face, and brushing teeth, and held a
10 knife to his side, and had sexual relation.

11 Q Where is your bunk from the shower area?

12 A From here, to that chair, 18, 20 feet.

13 Q Did you see Inmate Thurston having sexual relations
14 with the other inmate?

15 A Couldn't help but see him.

16 Q What time of night?

17 A Late night, two, three o'clock in the morning.

18 Q Had any guard been patrolling the office area?

19 A The officer was there, but he was not patrolling.

20 Q Mr. Jonas, which other prisons have you been in?

21 A In Florida?

22 Q Well, Florida, and wherever else?

23 A I served two years in federal prison, five to 10
24 years in Massachusetts, and six here in Florida.

25 Q Which federal prison?

1 A Louisburg.

2 Q And which prison in Massachusetts?

3 A Norfolk.

4 Q And which prisons in Florida?

5 A Martin, Belle Glade, Dade Correctional, Hendry
6 County.

7 Q Do you have an opinion as to how inmate discipline at
8 Glades Correctional Institution compares with inmate
9 discipline in all of the other prisons you have been in?

10 A Well, Belle Glade is what I call a concrete and steel
11 jungle.

12 Q I am sorry?

13 A Belle Glade is what I call concrete, and steel
14 jungle. There are animals in there. No prison is a haven,
15 no one is. I am in Hendry, I don't have to worry about
16 going to the canteen with a dollar and buy a soda, and have
17 somebody take it out of my hand. I don't have to worry
18 about going to bed at night, and have somebody hurt me over
19 there. I don't have to worry about nobody stealing what I
20 own over there, because that institution, if you get caught
21 with a knife, you are history. You break the rules over
22 there, and you are going to know that you are not in
23 heaven.

24 They run the place. They do not allow violations of
25 the rules, period. When you talk to an officer, it is yes,

1 no, sir, I am sorry sir, I apologize sir.

2 In Belle Glade, the officers call the inmates nigger,
3 and the inmates call the officer nigger. There is no
4 respect. And that is not to say they don't have good
5 officers over there. You have Major Lawson, one of the
6 best, most honest man I ever known. Captain Dean Bennett.
7 These are good officers that do not get any cooperation
8 from the rest of the people. Everybody does what they want
9 to do.

10 Q How about drug use, how would you compare drug use at
11 GCI with drug use in the other prisons where you have been?

12 A It is unstopable over there. Inmate Joe Garcia, one
13 day, Lt. Wilson pulled a drawer under his bunk, and had a
14 pound of marijuana.

15 Q A pound?

16 A Yes, a pound. That is a matter of record. They
17 smoke stuff they call crack over there, in soda cans. They
18 make wine by 55 gallon drums full. Anything you want is
19 there.

20 Q Now, this is similar to the testimony--

21 MR. DAVIS: Objection.

22 BY MR. AMLONG:

23 Q Is what you are describing now, the drug use, and the
24 mass production of wine, is that from 1986 and before, or
25 is that from 1986 and after?

1 A That is from the time I first arrived there in 1978,
2 I never saw any change.

3 Q So that has continued through 1988, at least when you
4 transferred out?

5 A Happened to the time I left, still going on the time
6 I left, still going on.

7 Q Did you have a job assignment while you were at GCI?

8 A I was a barber.

9 Q What did that entail?

10 A I cut everybody's hair from the superintendent, his
11 wife, family, their children, mother's, aunts, everybody.

12 Q So you had a chance to be in contact with the prison
13 management?

14 A I knew everybody intimately, even the children. I
15 fixed some of the ladies hair that went and got married. I
16 did the hair for the wedding. I gave some of the children
17 the first hair cut.

18 Q Did you ever have a chance to discuss with Mr.
19 Lambdin -- I don't see him here, you know Mr. Lambdin,
20 superintendent?

21 A Yes.

22 Q Did you ever have a chance to discuss with him your
23 concerns about inmate safety within the compound?

24 A After I was released from the hospital, and put back
25 in B dormitory, I wrote a letter to Mr. Lambdin, and I told

1 him that I would appreciate if he would transfer me out of,
2 there. I didn't feel safe in that institution.

3 He called me to the classification the following day,
4 and he said he couldn't do anything. Transfers were not up
5 to him, transfers had to be recommended from Tallahassee.

6 I went back to my dormitory, and I sat down and wrote
7 a letter to His Honor, Judge Paine, and the reason I did
8 that was because His Honor's name was the only one I could
9 think of at that moment associated with the suit that the
10 inmates filed, and I asked the judge for assistance helping
11 me get out of there, and I sent a copy to Mr. Lambdin. The
12 following day Mr. Lambdin called me back into
13 classification, and he said go pack your stuff. We will
14 get you out of here in 24 hours, and they sent me to Dade
15 Correction Institution.

16 Q Do you know whether or not Mr. Lambdin did anything
17 to -- aside from transferring you out, do you know whether
18 or not Mr. Lambdin did anything to address the underlying
19 problems of violence?

20 A In my discussion with Mr. Lambdin, I told him that I
21 felt that the institution was too violent. It was in my
22 best interest to get out of there, and he said he was
23 trying to deal with the problem and my response was, he
24 might be trying to deal with the problem, but I didn't see
25 any measure of success.

1 Q Mr. Jonas, thank you.

2 MR. AMLONG: I have no further questions of Mr.
3 Jonas at this time.

4 THE COURT: Cross-examination, please.

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q So, during the entire time you were at Glades
8 Correctional, Mr. Jones, it was a terribly violent place,
9 is that correct?

10 A Yes, it is.

11 Q Full of drugs, weapons, not a good place to be?

12 A That is right.

13 Q And I guess that you were very happy to get away from
14 there?

15 A That is correct.

16 Q You were married, were you not?

17 A I am still married.

18 Q Your wife lives in Miami?

19 A Miami.

20 Q For years your wife asked you to transfer down to
21 Dade Correctional where you would be closer to home, did
22 she not?

23 A Yes, and I could be closer to home right now, too.

24 Q For years you refused to transfer because you
25 preferred to be at Glades Correctional?

1 A Not so.

2 Q Do you recall that on March 29, 1988 you wrote a
3 letter to Willie Floyd, assistant superintendent, at Glades
4 Correctional?

5 A I might have written one, yes.

6 Q You might have. Let me show you this document, and
7 ask you if you recognize that?

8 A Yes, that is my letter.

9 Q Now, would you describe yourself, Mr. Jonas, as a
10 proud and sensitive man?

11 A I believe I am, yes.

12 Q And when you arrived at Glades shortly thereafter,
13 you were given a job that you regarded as being a privilege
14 job, correct?

15 A I don't consider it a privilege job. It is a job
16 like anybody else. They give me the job because I have the
17 skill to handle the job.

18 Q And you regarded being put in a position where you
19 could cut the hair of the staff, and of their families, and
20 what not, as an honor that was given to you, a privilege
21 that they entrusted you with this position?

22 A Like I said before, they gave me that job because I
23 was the only one that had the skill to handle that job in
24 that institution.

25 Q And when you received -- when the incident occurred

1 in February, 1988, it occurred February 14th, did it not,
2 the fight, is that correct?

3 A Yes.

4 Q You, who you saw as being in a position that you were
5 on familiar terms with the superintendent and upper
6 eschelon of the staff of GCI, received a disciplinary
7 report as a result of that incident, is that not true?

8 A I believe I was issued a disciplinary report, yes.

9 Q And that hurt you, didn't it?

10 A I don't know in what way.

11 Q You felt a great deal of resentment because they
12 didn't take your part as you saw it at that time?

13 A No, no resentment because they didn't take my part.

14 No resentment because they gave me the disciplinary report.

15 I felt resentment because I was injured, through no fault
16 of my own, and that was never recognized.

17 Q Well, now, in your letter of March 29, 1988 to Willie
18 Floyd, you were not complaining about any violence at GCI,
19 were you?

20 A You don't complain about such things in a penal
21 institution where you have to live with one thousand men.

22 Anyone can kill you. That is what is called a snitch. You
23 don't do that.

24 Q Well, you just told Mr. Amlong on direct you wrote a
25 letter complaining to the superintendent about violence?

1 A That is direct communication to him.

2 Q Your direct communication to Mr. Floyd who is
3 assistant superintendent?

4 A That's right.

5 Q You voiced no concern about violence at GCI, did you?

6 A I wanted to get transferred out of there. I didn't
7 particularly complain about violence, no.

8 Q What was the reason you gave for wanting to be
9 transferred out?

10 A I didn't want to get killed.

11 Q Wasn't it you felt that Col. Pipta had it in for you,
12 and he was responsible for giving you the DR?

13 A You want me to give you my honest opinion about Col.
14 Pipta, or you want me to give you another description?

15 Q I want you to tell us what you said in the letter to
16 the superintendent?

17 A At that time, Major Pipta confiscated property I had.
18 Mr. Randall Music was the superintendent at that time. I
19 wrote a letter to Mr. Music, and explained to him the
20 circumstances of the property having been taken. It turned
21 out that the property after it had been taken was lost, and
22 that was the essence of my complaint to Mr. Music. Mr.
23 Music called Mr. Tanick, who was the property officer, and
24 wanted to know where my property was. Here showed up Mr.
25 Pipta with my property, and Mr. Music told him to return

1 the property to me.

2 That was the cause of friction. Also, when the staff
3 barber shop was opened, I bought a coffee pot, a coffee
4 maker in order to invite officers that came to get a hair
5 cut for a cup of coffee. He confiscated that also. Mr.
6 Music made him give that back to me, and he resented that,
7 and that was the source of the friction between me and Mr.
8 Pipta.

9 Mr. Pipta did everything that he possibly could to
10 catch me doing something wrong, and give me a disciplinary
11 report. All the time I was there, all the years I spent
12 there, he couldn't give me a consultation for correction
13 advice, much less a disciplinary report, and that is what
14 the problem was with Mr. Pipta.

15 Q And that occurred in Mr. Music's administration?

16 A 1985.

17 Q Or sometime while Mr. Music was the superintendent,
18 you had this conflict with Major Pipta?

19 A Yes.

20 Q Do you recognize the second letter which is in the
21 group that you looked at?

22 A You mean about Mr. Music sticking his neck out?

23 Q Do you recognize the letter?

24 A Yes, that is my letter.

25 Q December 4, 1985?

1 A Yes.

2 Q That was five days before Mr. Music left as
3 superintendent of GCI?

4 A Yes.

5 Q And did you not say -- this is directed to major
6 Pipta?

7 A Yes.

8 Q Did you not say as of yourself, I consider you a
9 friend, and have great respect for you as a man. I also
10 give you my word?

11 A I had nothing against the man. His problem was his.
12 I had no problem with him.

13 Q In 1985, you regarded Major Piota as a friend of
14 yours, one whose friendship you valued but then after some
15 period of time passed, you decided that Major Piota was
16 your enemy, and in the letter of 1988, you describe him as
17 always during the time you were at GCI wanting to get at
18 you, is that correct?

19 MR. AMLONG: Objection, argumentative.

20 THE COURT: Overruled.

21 THE WITNESS: As I said before, I was never
22 resentful. If you want me to go into detail, I will give
23 you all the details. They are all right there in the
24 letter. You want me to go through it?

25 BY MR. DAVIS:

1 Q We will put the letter into evidence.

2 A Okay.

3 Q And one of the other complaints that you voiced to
4 the assistant superintendent in the letter to him had to do
5 with the fact that Mr. Lambdin never allowed you to cut his
6 hair, is that not correct?

7 A I cut his hair three or four times.

8 Q And did you not say in your letter to him, as for my
9 feelings for the man, speaking of Mr. Lambdin, it always
10 hurt the hell out of me that he very rarely came to me for
11 a hair cut?

12 A Yes, it did hurt my feelings.

13 Q It hurt your feelings because you are a proud and
14 sensitive man?

15 A I was good at what I was doing, and I didn't think in
16 the City of Belle Glade there was anybody better than I am,
17 period.

18 Q And you encountered as what was a slight or insult,
19 or act of injustice, you get mad, angry, and hurt?

20 A I didn't get angry about him not coming. My feelings
21 were hurt, that was all.

22 Q Now, you indicated that you were in the hospital for
23 three weeks?

24 A In fact -- Yes.

25 Q It was 10 days, was it not?

1 A It was three weeks.

2 Q The incident occurred on the 14th of February, is
3 that correct?

4 A That is correct.

5 Q You were released from the hospital on the 23rd of
6 February?

7 A That is correct. Then I was put back in the hospital
8 again.

9 Q That is 10 days?

10 A I was put back into the hospital again. I went into
11 the dormitory, and I couldn't get out of the bunk. I had
12 to be helped to go to the bathroom.

13 Q Now, you don't know whether Mr. Joe DeShields who was
14 the inmate that was involved in the altercation with you
15 received disciplinary treatment or not, do you?

16 A I don't know.

17 Q For all you know, Mr. DeShields may well have been
18 disciplined?

19 A Quite possible.

20 Q Now, you said that in D dorm during the time that you
21 were there, you never saw more than one officer assigned to
22 that dorm?

23 A There is always one officer assigned to each dorm.

24 Q Only one?

25 A Only one.

1 Q Never have you seen more than one?

2 A Sometimes when they conduct a count, two officers in
3 the dorm.

4 Q You mean the sergeant will come there?

5 A They will count, and the count is included.

6 Q And the whole time you were there, you never saw more
7 than one officer assigned to the dorm itself?

8 A No.

9 Q All right.

10 MR. DAVIS: Your Honor, I would like to offer
11 as the defendant's exhibit, and I only have one copy of
12 this, if we could have a copy made.

13 THE COURT: Are you referring to one or the
14 other of these two letters?

15 MR. DAVIS: The two letters are attached as
16 proposed exhibit 35.

17 THE COURT: All right. Defendant's 38 is
18 marked for identification, two letters from Mr. Jonas, one
19 to Mr. Pipta, and the other to Willie Floyd.

20 MR. DAVIS: That is right.

21 THE COURT: Any objection?

22 MR. AMLONG: Your Honor, no.

23 THE COURT: All right. That exhibit is
24 received without objection.

25 MR. DAVIS: Let me change it from 35 to 38.

1 (Defendant's Ex. 38 received into evidence.)

2 MR. DAVIS: No further questions.

3 THE COURT: Any redirect?

4 MR. AMLONG: Your Honor, may review my notes?

5 THE COURT: Sure.

6 MR. AMLONG: I have no redirect.

7 THE COURT: All right. You may step down.

8 (Witness excused.)

9 THE COURT: All right. You have another
10 witness. You may step down.

11 MR. LIPMAN: I have exhibit 5, 6, and 8,

12 THE COURT: Are there any objections to these,
13 gentlemen?

14 MR. DAVIS: No, your Honor.

15 MR. LIPMAN: Your Honor, I want to kind of
16 clear up our evidence. There was provisional objection or
17 concern with regard to the video deposition. Has that been
18 satisfied? You reviewed it, and that is no longer a
19 problem?

20 MR. DAVIS: I received a copy at lunchtime. I
21 don't have a video machine here.

22 MR. LIPMAN: We will leave that pending. We
23 have Dr. Caddy for tomorrow morning.

24 THE COURT: Is he the only witness you have
25 left?

1 MR. LIPMAN: With time remaining I would like
2 to raise again the opportunity to have Mr. Saunders
3 testify, and again, as I represented to His Honor yesterday
4 morning, it doesn't fit within the four square corners of
5 our mission this week as far as the October order.

6 As I said, represented to His Honor, I have been
7 contacted literally every month for several years since the
8 December 1985 proceedings in this case, and been informed
9 by Mr. Saunders he believes certain retaliatory actions
10 have been taken against him due to his participation in the
11 case, and would request that he have an opportunity to
12 testify.

13 THE COURT: I was looking at my notes. I
14 thought we ruled on that, perhaps I haven't.

15 MR. LIPMAN: If you had, I missed it.

16 THE COURT: What is your position, Mr. Davis,
17 Mr. Meginniss?

18 MR. MEGINNIS: We are opposed to this. It is
19 beyond the scope of what our mission is here. If he does
20 have some type of complaint, he can plead it in some
21 fashion, and we can entertain it. At this time, without
22 any opportunity for adversarial response, I think it is
23 highly inappropriate. We have been through this once
24 before with another person.

25 MR. LIPMAN: In response, I think counsel will

1 recall that I did raise this specific matter with them when
2 we were together in mid-December at GCI, and informed them.

3 MR. DAVIS: It was raised on December 15th. It
4 was indicated--

5 MR. MEGINNISS: We still have no ground rules
6 or framework within which to operate.

7 THE COURT: Yes, I am afraid so. I have to
8 sustain that objection. I do so for the record, if I
9 haven't done it previously. You did mention it. I have a
10 note on it in the beginning. The objection is sustained.

11 MR. LIPMAN: That being the case, and I
12 understand the Court's ruling, with the exception, then, as
13 we indicated earlier today of Dr. Caddy's testimony, and
14 the matter--or any matter concerning the video deposition,
15 plaintiffs would rest.

16 THE COURT: All right.

17 MR. LIPMAN: I don't know if we have time now.

18 THE COURT: Let me be sure the record is clear.
19 On the three last exhibits, 5, 6, 8, is there no objection
20 to these?

21 MR. MEGINNIS: That is correct.

22 THE COURT: Okay, they are received without
23 objection.

24 (Plaintiffs' Exs. 5, 6, 8 received into evidence.)

25 MR. DAVIS: May I ask counsel, my memory as I

1 get older fails me, are the attachments to the answers to
2 interrogatories solely the answers that were provided?

3 MR. LIPMAN: Yes.

4 MR. DAVIS: We have no objection.

5 THE COURT: Okay. Since it is so close to 5,
6 we will recess for the day. Now, let me tell you, there is
7 a judges' meeting tomorrow afternoon. We will only have
8 half a day. We will go until 12, or shortly thereafter, if
9 we can break at a time which is convenient to finish up
10 with a witness. I imagine Dr. Caddy will take a while.

11 MR. AMLONG: I think Dr. Caddy will take
12 between a half hour, and an hour and 15 minutes on direct.
13 I am not sure how long on cross.

14 THE COURT: All right. We will simply do what
15 we can. If you will be ready to follow after Caddy is
16 through tomorrow morning with whatever witnesses you have,
17 and take whatever time up to around noon, and we will
18 proceed on Thursday beginning 9 o'clock. That will be the
19 schedule. We are in recess until tomorrow morning at 9.

20 (Thereupon, a recess was taken at 4:50 p.m.)
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