

LaMarca v. Turner



PC-FL-007-033

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

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

11 West Palm Beach, Florida

12 January 11, 1990

13 9:00 a.m.

14 APPEARANCES:

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

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

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20 The above-styled case came on for Trial before
21 the Hon. James C. Paine, U.S. District Court, at the U.S.
22 Federal Courthouse, West Palm Beach, Florida, on the 11th
23 day of January, 1990.

24 VOLUME 4

25
Pauline A. Stipes
Official Federal Reporter

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1 THE COURT: Good morning, gentlemen. All
2 right. Where are all here. Who is our next witness?

3 MR. MEGINNISS: May it please the court, our
4 next witness is Sergeant Haller.

5 THE COURT: All right. Ask him to come
6 forward, please.

7 STEVE HALLER, DEFENSE WITNESS SWORN.

8 THE COURT: Please be seated. Tell us your
9 name.

10 THE WITNESS: Steve Haller. S t e v e
11 H a l l e r.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. MEGINNISS:

15 Q Mr. Haller, where are you employed?

16 A Palm Beach County Sheriff's, Belle Glade Substation.

17 Q How long have you been so employed?

18 A With the Palm Beach Sheriff's Office, 1980.

19 Q What duties do you perform?

20 A A sergeant assigned to the Detective Bureau, working
21 agricultural crimes, theft of farm equipment, agricultural
22 equipment.

23 Q Have you served as a detective/sergeant?

24 A Yes.

25 Q In prior years, have you conducted investigations at

1 Glades Correctional Institution?

2 A Yes.

3 Q What areas, what subjects did you investigate?

4 A Any and all complaints received to the Sheriff's
5 Office that I was assigned to do the initial investigation,
6 and/or followup on, sir.

7 Q Prior to your tenure or duties with the Sheriff's
8 Department of Palm Beach County, did you have any other law
9 enforcement experience or employment?

10 A Yes, I became a certified police officer in the State
11 of Florida, 1977, worked for the City of Belle Glade from
12 '77 until '80.

13 Prior to that I was commissioned officer in United
14 States Army assigned to the special weapons command doing
15 investigations in the military.

16 Q Now, turning to the duties at the Glades Correctional
17 Institution, have you had occasion to investigate sexual
18 assaults at Glades Correctional Institution?

19 A Yes, I have.

20 Q Did you participate in an investigation of an inmate
21 by the name of Haveard, Mark White, and another one by the
22 name of Mickie?

23 A Yes, sir, I did.

24 Q Did you write reports on these?

25 A Yes, I did.

1 Q Have you reviewed reports in recent days?

2 A Yes.

3 Q Are they accurate to reflect what your investigation
4 was?

5 A Yes, they are.

6 Q Take Mr. Haveard, would you tell the court what you
7 did with respect to the investigation of Mr. Haveard?

8 A In the case of Mr. Haveard, I was notified on 24
9 September, 1987 that an alleged sexual battery had taken
10 place at Glades Correctional Institution. It was a delayed
11 report.

12 I went to the institution, met with the inmate. He
13 informed me that he had been assigned to Glades
14 Correctional Institutional in January, or February of that
15 year. That shortly upon his arrival he met an inmate by
16 the name -- that he referred to as Golden. He did not know
17 the inmate's name, that Golden had become his friend. He
18 had given him cigarettes, that they had smoked marijuana
19 together, and a short time after that, Golden wanted
20 payment, told him he would not take money, told him he
21 wanted sexual favors from him. Out of fear, he submitted
22 to sexual acts; that this all occurred within the first
23 several weeks he arrived. This is September when he
24 reported it.

25 I asked him why he waited that long, he stated he

1 wanted to stop the rumor on the compound that he was a
2 homosexual. He could not identify the inmate other than
3 anything by the name of Golden, a black male with gold
4 teeth, and further stated the inmate had been reassigned to
5 another institution. He did not know where.

6 I explained to the inmate due to the fact of the
7 delay, no physical evidence, and no identifiable suspect
8 that this case would probably not be prosecuted. I checked
9 with the investigator at the prison, tried to determine who
10 Golden was. We were unable to do so.

11 Due to the fact that we have never been able to
12 identify Golden as a person, this case is still in an
13 inactive status, and in one of my files.

14 Q And with further evidence, it could be further
15 pursued?

16 A If we ever determine who Golden is, and he can be
17 interviewed.

18 Q All right. Next on the agenda, I think I ask you to
19 review the investigation of Mark White, did you investigate
20 Mark White?

21 A Yes, I did.

22 Q Did you bring your report on that one?

23 A Yes, I did.

24 Q Have you reviewed it pursuant to my direction in the
25 past several days?

1 A Yes, I have.

2 Q Please tell the court what procedures were used, and
3 what were the results of the investigation of Mark White
4 beginning with what he was suspected -- or what his
5 complaint was?

6 A I was notified on the 4th of April, 1989 that sexual
7 battery had taken place at Glades Correctional Institution,
8 that the victim was at Glades Correctional Hospital at
9 Belle Glade undergoing a sexual assault exam.

10 I drove to the hospital, was given Mark White's name.
11 He was in one of the rooms with a doctor assigned to Glades
12 General Hospital, by the name of Fuchs.

13 Upon completion of that examination, I spoke with
14 the doctor, and took from him a sexual rape form that the
15 doctors fill out and sign for on a property receipt. The
16 doctor told me after completing the exam, during his exam,
17 he found no trauma, tears, rips, or blood, or any signs of
18 anal intercourse. He stated in his opinion--

19 MR. AMLONG: Objection, hearsay, move to
20 strike.

21 THE COURT: Overruled.

22 BY MR. MEGINNISS:

23 Q Proceed.

24 A He told me the anal opening appeared to be normal.
25 At that time, I took the rape kit into evidence. Mark

1 White was taken back to Glades Correctional, and I went
2 back into the Institution, and interviewed Mr. White. He
3 told me between 1 and 1:30 that morning while locked up in
4 confinement, that the person in confinement with him by the
5 name of Martin had take two razor blades, a part of a
6 ballpoint pen, and informed him that he was going to
7 perform anal sex on him.

8 That he was afraid of Martin, that Martin used baby
9 oil on him, that he performed a sexual act that lasted for
10 approximately 20 minutes. He stated that the inmate did
11 not -- between 3, 3:30, Martin performed anal intercourse,
12 and at that time, he did ejaculate. I asked him if he had
13 a bowel movement, he stated he did. I asked him why he did
14 not notify the guards, and he stated he was afraid for his
15 life, that that afternoon around 3 o'clock in the
16 afternoon, he stated that he had stomach cramps and asked
17 to be taken to the infirmary. Either enroute, or at the
18 infirmary, he stated he had been sexually assaulted.

19 Upon completion of that interview with them, or
20 during that interview, I requested that that cell be
21 secured.

22 After the interview, I went to the confinement area.
23 I searched the cell. I did not find razor blades, nor did
24 I find parts of a ballpoint pen either intact or that had
25 been sharpened. I looked at the sheets, I did not find any

1 stains. I looked at the mattress, mattress cover, again,
2 did not find any stains. I did see a bottle of baby oil
3 that was on the metal shelf that is attached to the wall,
4 in that confinement cell.

5 Q And what was your conclusion from this, and
6 recommendation from this investigation?

7 A At that time, based on lack of evidence, or the
8 doctor's statement at that time, not finding any physical
9 evidence in the cell, I took the rape kit in my possession,
10 turned it over to our evidence custodian who forwarded it
11 to the county lab in West Palm Beach.

12 A short time later I was notified that the anal swabs
13 did not find spermazoid. I got the lab report back, and
14 made an appointment with the State Attorney's Office in
15 Belle Glade, and had an appointment with them, and on the
16 19th of April, Assistant State Attorney Paul D'Amico,
17 informed me this is a nonprosecutable case, and it should
18 be exceptionally clear.

19 Q What is the status of that file today?

20 A That case has been exceptionally cleared due to the
21 State Attorney stating it is a nonprosecutable case.

22 Q Let's look at Mickie. Did you have a case to
23 investigate an alleged sexual assault with Mickie as the
24 victim?

25 A Yes, September 4, 1986, I was informed by Lieutenant

1 Higgenbotham that there was a possible assault that
2 occurred 11/30/86. About 4:30 that afternoon I went to the
3 institution. I met with Lieutenant Bennett who was the
4 acting Institution investigator at that time. He told me
5 that inmate Mickie was the alleged victim, that Mickie had
6 told him that on the night of the 30th of November he had
7 been sexually assaulted by 4 black males; that he had
8 requested permission to go to the dispensary to have his
9 medical records--and indicated that he had been sexually
10 assaulted--in case he wound up with a venereal disease.

11 I then interviewed the inmate, or brought him in to
12 conduct an interview, introduced myself to him, informed
13 him a complaint had been made. At that point, Inmate
14 Mickie informed me he had not reported the crime, and he
15 would not report it in any way, that he would not
16 cooperate, that his constitutional rights would allow him
17 not to cooperate in any form.

18 At that point he turned to the lieutenant in the
19 room, and asked for permission to leave, permission
20 granted, and I exceptionally cleared that case because the
21 alleged victim would not cooperate in the investigation.

22 MR. AMLONG: I am objecting to the testimony of
23 Inmate Mickie on the grounds of relevancy. We have never
24 proposed to the court that Mr. Mickie was raped. He is not
25 one of our witnesses.

1 THE COURT: Why is that relevant? I didn't
2 recall that we heard anything about his case.

3 MR. MEGINNISS: This evidence is being
4 introduced because Mr. Mickie was an incident report
5 provided to the defense, and happened to be one of those
6 investigated by this officer. It does show there is some
7 question, and certainly some matter of doubt as to whether
8 or not when these claims are made they, in fact, exist, and
9 for that purpose, we would like it introduced into
10 evidence.

11 MR. DAVIS: I believe, Your Honor, the
12 plaintiffs did introduce the answers to interrogatories
13 provided by the defendants that listed those names.

14 THE COURT: This case's answer to those. Go
15 ahead, finish up.

16 MR. DAVIS: Unless they wish to withdraw a
17 claim for those of any they didn't put on for testimony
18 that allegedly were assaulted.

19 THE COURT: I will overrule the objection,
20 proceed.

21 BY MR. MEGINNISS:

22 Q Go back to Haveard. Would you tell me when Haveard
23 allegedly said he was assaulted?

24 A In his case, he told me he had been assigned to the
25 Institute late January, early February, 1987.

1 Q When did he report the assault?

2 A On the 24th of September, 1987.

3 Q Some 9 months later?

4 A Yes.

5 Q All right. But he did not report that immediately?

6 A No, sir.

7 Q Now, let's go to Mr. White again. In your report,
8 how many times does it show that he claims he was
9 assaulted?

10 A He informed me he was assaulted that morning.

11 Q Would you please tell the court what methods you use
12 in investigating inmates, how you normally conduct your
13 investigations and interviews?

14 A There are absolutely no differences with the way I
15 conduct investigation with an inmate, or citizen of Palm
16 Beach County. I treat all victims in the same manner.
17 There is no difference.

18 Q Do you normally conduct your investigations of
19 inmates with anyone present?

20 A Under normal circumstances, I conduct those
21 interviews without any correctional officers present.

22 Q Is there any reason for that?

23 A Yes, I found that dealing with inmates, whether they
24 be in the County Jail, or State Institution, they are more
25 free to talk if there is no one from the correctional

1 system there.

2 Q How do you normally address inmates when you are
3 inquiring of them?

4 A I usually ask them, if I know the full name, their
5 full name, Mr., and then ask them, what may I call you,
6 shall we keep this formal, or may I call you by your first
7 name, and depends on that person what I call him.

8 MR. MEGINNISS: Just a moment, please.

9 You may inquire. I would like to introduce these
10 reports into evidence.

11 MR. AMLONG: I object only that they contain
12 hearsay on hearsay.

13 THE COURT: I think they can be received over
14 that objection. What are the numbers?

15 MR. MEGINNISS: Number 39, It is a composite.

16 THE COURT: All right. Defendant's 39 is a
17 composite of the reports with respect to Haveard, White,
18 and Mickie?

19 MR. MEGINNISS: That is right.

20 (Defendant's Ex. 39 received into evidence.)

21 THE COURT: You may proceed, sir.

22 CROSS EXAMINATION

23 BY MR. AMLONG:

24 Q Good morning, Detective Haller, my name is William
25 Amlong. I am one of the lawyers for the plaintiff in this

1 case.

2 On Mr. Haveard's alleged rape, he identified his
3 alleged assailant as a black man who had a gold tooth, and
4 his name was Goldie?

5 A Yes.

6 Q What efforts did you make to find out who Goldie was?

7 A The efforts I made were going through the institution
8 investigator, since Mr. Haveard stated that the inmate was
9 already gone. Therefore, we couldn't take him around the
10 institution to point the gentleman out.

11 Q What did you do?

12 A I asked the prison investigator to try to find out
13 who Golden was. Mr. Haveard did not know where the
14 gentleman had gone to. That is the extent to what I was
15 able to do. I had nothing to do with. I asked the
16 institution to try to come up with a name. They were
17 unable to do so.

18 Q You don't know what efforts the investigator made?

19 A No, sir, I don't.

20 Q Was any attempt made to show Mr. Haveard mug shots?

21 A No, sir.

22 Q You've reviewed prison inmate files in your work,
23 have you not?

24 A Yes, I have.

25 Q And you are familiar with those files in the way they

1 note distinctive physical characteristics, are you not?

2 A On the photo card, yes.

3 Q If somebody has a tatoo, they mark that down; if
4 somebody has a gold tooth, they mark that down?

5 A Yes.

6 Q Did you ask anybody to conduct a search of black
7 inmates with a gold tooth?

8 A No, sir.

9 Q Did you ask Lt. Peters for a list of all the inmates
10 that had been transferred from the date of the alleged rape
11 up to the date of your --

12 A No, sir.

13 Q --investigation?

14 In Mr. White's case, you interviewed Inmate Martin,
15 did you not?

16 A Yes, I did.

17 Q And you read him his rights, and he said he did not
18 want to talk to you?

19 A Yes.

20 Q Did you have a chance to review his inmate file?

21 A I am sure I did. I normally look at inmate files
22 prior to an interview.

23 Q Were you aware he told Mr. Martin -- I am sorry, Mr.
24 Martin told Mr. White that Mr. Martin had recently come
25 from Chattahoochee, the criminally insane hospital?

1 A Yes, I think I did.

2 Q Did you confirm that?

3 A I don't remember.

4 Q Did you confirm whether or not Mr. Martin had ever
5 previously, using the same MO, same modus operandi, had
6 committed another rape?

7 A No, I didn't.

8 Q Well, with your police experience, you have 13 years
9 now, police experience?

10 A Yes.

11 Q Plus before that, you were commissioned officer,
12 investigator in the Army?

13 A Yes.

14 Q And you have had schooling in criminal investigation?

15 A Yes.

16 Q And is it a criminal's method of operating evidence
17 that you generally look for?

18 A Not on initial investigation. If you have a suspect,
19 that is not something you look at initially.

20 Q If you have a suspect, you look at it?

21 A No, sir, if you have a suspect, you don't initially.
22 If you are looking for an unknown, you look for those
23 factors, who does what, and what manner.

24 Q Would it be helpful for you to have found out whether
25 or not Mr. Martin had committed a similar crime before

1 using a similar method?

2 A No, sir, it would not. May I expound on that answer?

3 Q Please?

4 A Due to the fact that we have been able to establish
5 that sexual assault took place at that time, it had to have
6 been done by Mr. Martin who was in the cell. It was not
7 like it would have been done on the compound with whoever
8 out of the population, whatever the population was at that
9 time, so Mr. Martin's background was not of concern to me.
10 If the act had actually been done, it had to be Mr. Martin.
11 They were locked up together.

12 Q You are saying you only looked for MO if you were
13 trying to find out who did it?

14 A Yes, if I am dealing with an unknown.

15 Q Okay. Would you attempt to look for MO to give to
16 the prosecutor in the case so that prosecutor would show
17 that the defendant was acting as he had before?

18 A Yes, once probable cause has been established, an and
19 arrest is made, that is part of the followup in the package
20 that goes in for prosecution, not on the initial
21 investigation.

22 Q Now, you said you only found the baby oil, correct?

23 A Yes.

24 Q Would your opinion as to the truth of Mr. White's
25 claim be influenced if there had been additional physical

1 evidence found in the cell?

2 A If there had been additional physical evidence, we
3 would have possibly been able to establish probable cause.

4 Q Well --

5 A I have not said I did not believe Mr. White's story.
6 I am saying there was no physical evidence to go ahead with
7 prosecution.

8 Q Have you ever investigated a rape case on just an
9 outside woman?

10 A Yes, I have.

11 Q Are you familiar with the fact that in Florida the
12 testimony of the rape victim is sufficient to bring a case
13 to trial?

14 A Yes, sir, I am.

15 Q And it then becomes a question of whom does the jury
16 believe?

17 A I have never known of the rape case to be one in the
18 State of Florida on the testimony of the victim alone.
19 There has to be some substantial evidence.

20 Q If the ink pen had been found in the cell, that would
21 have further corroborated Mr. White's story, would it not?

22 A Yes.

23 Q And weren't incident reports provided to you from the
24 correction officers?

25 A Yes, they were.

1 MR. AMLONG: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 BY MR. AMLONG:

5 Q Detective, I would like to show you an incident
6 report that was written by Officer Freddy R. Garrett, and
7 direct your attention to the highlighted portion. Do you
8 recall reading that report from Mr. Garrett?

9 A Yes, I do.

10 Q Do you recall his saying -- Now that you read this,
11 do you recall the ink pen was found in addition to the baby
12 oil?

13 A I remember reading this that he found an ink pen.
14 Mr. White stated that it was a portion of an ink pen that
15 had been charred.

16 Q When you got to the hospital emergency room, that was
17 at -- you got the call at 1530, that translates into 3:30
18 P.M., correct?

19 A Yes.

20 Q And do you know what time -- Do you know what time
21 Mr. White reported the--reported the rape to Officer
22 Garrett to begin with?

23 A I was led to believe it was approximately 3 o'clock,
24 sir.

25 Q In the afternoon?

1 A Yes.

2 Q And what time did you finally get to the cell?

3 A I'm not sure. I would guess it was probably close to
4 an hour and a half, two hours from the time I was notified
5 until I got to the cell.

6 Q Did you investigate whether or not the sheets had
7 been changed?

8 A Yes, I did. I was told they had not been,

9 Q If you had discovered any motive for Mr. White to
10 have been lying, you would have included that in your
11 report, would you not?

12 A Yes.

13 Q Did you discover any motive for Mr. White to be
14 lying?

15 A No, sir, I didn't.

16 Q Except for the lack of evidence, do you know of any
17 reason to disbelief Mr. White?

18 A I reviewed Mr. White's file, again, before going to
19 the State Attorney's Office, and I found where he had
20 reported a similar incident at another institution.

21 As to whether or not Mr. White was lying to me that
22 day, I don't know. Because it became an unprosecutable
23 case.

24 Q He did not evidence any animosity towards Mr. Martin,
25 did he, except for anger at this event?

1 A Yes, that is the only animosity that he showed
2 against that particular individual.

3 Q Okay.

4 MR. AMLONG: Nothing further, Your Honor.

5 THE COURT: Mr. Meginniss?

6 REDIRECT EXAMINATION

7 BY MR. MEGINNISS:

8 Q Officer Haller, do you make the decision what case
9 should be prosecuted?

10 A No, sir, I don't.

11 Q Who does?

12 A Assistant State Attorney that I go before.

13 Q Whether or not a case is prosecutable is not your
14 decision?

15 A No, sir.

16 Q Okay.

17 MR. MEGINNISS: I have no further questions.

18 THE COURT: Thank you, sir, you may step down.

19 (Thereupon, the witness was excused.).

20 THE COURT: Your next witness.

21 MR. DAVIS: Mr. Fred Frey, F r e y.

22 FRED A. FREY, DEFENSE WITNESS SWORN

23 THE COURT: Please be seated. Tell us your
24 name.

25 THE WITNESS: Fred A. Frey.

1 THE COURT: F r e y?

2 THE WITNESS: Yes.

3 THE COURT: All right. You may proceed.

4 DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q Mr. Frey, could you tell us where you reside?

7 A At the present time, the full address, sir?

8 Q Yes.

9 A 352 Old Branch Road, Southeast, Eaton, E a t o n,
10 Georgia, 30124.

11 Q Are you presently employed?

12 A No, sir, I am on federal retirement, part-time
13 employed as a correctional consultant.

14 Q Before your retirement which you indicated, I suppose
15 was in the federal service, what was your employment?

16 A I was employed by the Federal Bureau of Prisons from
17 approximately 1951 through February 1980.

18 Q Let me show you an item we marked Defendant's Ex. 2,
19 and ask you if you have seen that?

20 A Yes, I have seen it.

21 Q Is that your resume'?

22 A Yes, it is. .

23 Q Is that an accurate resume'?

24 A I believe it is.

25 MR. DAVIS: We offer that into evidence.

1 THE COURT: Do you object?

2 MR. LIPMAN: Is that what I reviewed yesterday?

3 No objection, Your Honor.

4 THE COURT: All right. Defendant's 2 is
5 received without objection.

6 (Defendant's Ex. 2 received into evidence.)

7 BY MR. DAVIS:

8 Q Mr. Frey, would you review what your assignments in
9 the Federal Prison System were over that period of time?

10 A I first started out working as an administrative
11 assistant at the post guardhouse in Ft. Leavenworth, Kansas
12 in 1950, and the following year, '51, I transferred from
13 there over to the federal penitentiary at Leavenworth,
14 Kansas as a parole clerk.

15 Shortly after that, about a year as a parole clerk, I
16 became a correctional officer, and worked in that capacity
17 for approximately one year, and then returned to clerical
18 duties.

19 While working as a clerk, I re-enrolled in college
20 courses, and completed the work for a BA Degree in social
21 sciences in 1960, at which time I was promoted to a
22 classification and parole officer at the Leavenworth Federal
23 Penitentiary.

24 I remained as a classification parole officer until
25 '67, at which time I was transferred to United States

1 Penitentiary, Atlanta, Georgia, as chief of parole,
2 classification officer.

3 I remained there until 1970, at which time I was
4 selected as a correctional program adviser, and detailed to
5 the law enforcement assistance administration in the
6 Atlanta Regional Office at which time I administered as a
7 correctional programs adviser to the correctional
8 institutions, and facilities of the eight southeastern
9 states.

10 Approximately 18 months later, I was promoted and
11 transferred to the position of the associate warden at the
12 federal penitentiary at Marion, Illinois, and remained
13 there in my capacity until my transfer in Texarkana, Texas
14 as warden.

15 In February, 1980, I retired as warden there, and
16 then was part time employed with the American Correctional
17 Association as an auditor for the accreditation process,
18 and since that time, I have participated as a member and
19 also as a chairman of teams auditing approximately 100
20 institutions, and in 18 states within the United States, up
21 to the present time.

22 Q All right, sir.

23 Could you tell the judge something about the American
24 Correctional Association, what its purpose is, and what its
25 activities consist of?

1 A The accreditation process actually began roughly
2 about 20 years ago, and they were in 1970, and they were
3 studied, and developed the standards, and guidelines until
4 about 1978, when they was formalized into a manual of
5 standards consisting of approximately 453 standards, 40 of
6 which were mandatory standards, which the institution had
7 to pass in order to be eligible for accreditation, and the
8 other 413 standards, they had to pass at least 90 percent
9 of those. These standards were developed to act as
10 guidelines for the systematic improvement of correctional
11 programs, and services.

12 Q And who devised or developed these particular
13 standards?

14 A There were a number of people involved in the
15 development of these particular standards. They consisted
16 of correctional penalogists, people from all over the
17 United States. People who dealt in engineering,
18 architectural development, all of this was taken into
19 consideration.

20 Every facet of the correctional services was involved
21 in developing the standards, from the correctional on up to
22 the warden.

23 Q Were the standards developed with the assistance of
24 the academic community as well as the professional
25 community?

1 A Very definitely.

2 Q Now, you indicated that as originally established in
3 1978, there were approximately 450 standards, 40 of which
4 you said were mandatory?

5 A Yes.

6 Q And the rest of which were non-mandatory?

7 A Non-mandatory, yes.

8 Q What was the purpose of the distinction between
9 mandatory, and non-mandatory standards?

10 A The mandatory standards dealt primarily with life,
11 health, and safety of the inmate in the institution, and
12 they felt that any institution that was not interested in
13 meeting those 40 standards was not worthy of accreditation.
14 They would grant--on the rest of the standards which were
15 non-mandatory, they would grant leeway up to 10 percent,
16 and still find them in acceptable circumstances.

17 Q When you say 10 percent, do you mean 10 percent of
18 the non-mandatory standards had to be -- no more than 10
19 percent could be in violation?

20 A That is correct, sir.

21 Q So that if 413, it was required that an institution
22 pass at least 370, approximately?

23 A I don't know exactly what the number is. 90 percent
24 of that 413.

25 Q When did you become associated with the ACA in

1 respect to performing audits?

2 A A year prior to my retirement from the federal prison
3 system, Texarkana was selected as the second institution in
4 the Federal Prison System to undergo the accreditation
5 process, and we prepared for the accreditation for
6 approximately one year, and we were accredited, I believe,
7 January, 1980, as a second institution. Retiring, and
8 being involved in that process, I just, more or less,
9 automatically in retirement slipped over into the auditing
10 team, so to speak.

11 Q All right. Explain how the American Correctional
12 Association determines whether an institution is in
13 compliance with the standards or not?

14 A They send a team of generally three people to an
15 institution, and takes approximately three days to review
16 everything in the institution, review all the standards.
17 First they go in--

18 Q Let me ask you, first, does the team do any work
19 before they arrive for the inspection?

20 A Except just to review materials about the
21 institution, the size, number of inmates, number of
22 buildings, a few things like that.

23 Q Generalized information about the institution?

24 A Right.

25 Q Before they arrive there, and then they arrive, tell

1 us what they do?

2 A First they meet with the warden, and his
3 administrative staff. The purpose of the audit is
4 described to them. Immediately after that entrance
5 interview, the team is taken on a complete tour of the
6 institution which involves every facet of the institution,
7 all of the living quarters, food service, chapel, whatever
8 have you, a tour generally takes five, six hours.

9 Q In the course of that tour, who makes the decision as
10 to what you are going to see? Does the team, or does the
11 institutional guide?

12 A Generally, it is left up pretty much to the warden,
13 or whoever is leading the tour to take us around, but we
14 are allowed, and asked to see various areas, ask them to
15 open various doors, closets, whatever have you, food
16 lockers, and we are not denied admission to any part of the
17 institution.

18 Q Before coming to the institution, are there any
19 procedures that the American Correctional Association
20 follows in order to prepare for the receipt of information
21 about the institution?

22 A Prior to the teams arrival at the institution, a
23 notice is posted on the various inmate bulletin boards, and
24 staff bulletin boards throughout the institution advising
25 them of the accreditation process that the institution is

1 undergoing, that the audit team will be arriving on so and
2 so date, that they will accept letters or requests for
3 interview from inmates and/or staff relative to any
4 concerns that they might have about the operation of the
5 institution.

6 Q Let me ask you about that generally. You say you
7 participated in approximately 100 of these audits?

8 A Yes.

9 Q Has it been your experience that there is any type of
10 response, any significant response to these requests that
11 are posted for the inmates, and for the staff to respond
12 with any concerns that they have?

13 A We have received responses, yes. As to what degree,
14 we receive maybe responses from people in about 20 percent
15 of the institutions that I visited.

16 Q Okay. And when you receive those responses, do you
17 seek out the individuals that submit those?

18 A Yes, we do.

19 Q Going back, then, to the team audit, you said you
20 speak with the staff and the warden, or superintendent, you
21 survey the compound?

22 A Yes.

23 Q What else is done?

24 A After making our initial tour of the facility, then
25 we retire to ordinarily a conference room which contains

1 files on each and every standard that it is concerning,
2 which would be 453 files, one file for each standard.

3 Q And where do the files come from?

4 A They are generated by the warden and his staff.

5 Q Is this in response to a request that is made?

6 A Yes, it is part of meeting the documentation portion
7 of the standard. And the team retires to the room, reviews
8 each file relative to the particular standard.

9 In this file must be what we call secondary
10 documentation relative to the reports that must be
11 submitted. The reviews that must be done on policy
12 statements. The various tests that are administered by
13 independent audits of the institution, by maybe an
14 engineering firm or accounting, or whatever, and also
15 relative to your hospital, the various inspections that are
16 done by the local authorities, and things of this nature.

17 We often return, if a particular standard is not
18 clear to us, we will return to the area of the institution
19 to which the standard refers to, and make a secondary
20 inspection of that particular area, to either justify our
21 findings in that particular standard.

22 Q All right. What else is done by the team in the
23 course of the audit?

24 A We try to get back into the institution, and talk
25 with as many inmates and staff as possible relative to the

1 programs offered by the institution, and conditions
2 existing there at the time. If anyone has concerns, and so
3 forth, we encourage them to relate them to us.

4 Q Okay. Is there anything else besides what you just
5 described that takes place in the course of an audit?

6 A At the completion of the audit, we have what we call
7 a close out interview, at which time it is generally
8 conducted with the warden and administrative staff, and any
9 other members of the institutional staff that he would like
10 to have present.

11 It is not uncommon to have 50 or 60 of the staff
12 setting in on the closeout. At that time, we advise them
13 of our findings in the institution, any shortcomings we
14 feel they have uncovered. Any areas that they need
15 improvement in, and any areas we think they needed
16 commended for, and we advise them of our particular totals
17 or findings. We also advise that we are not the final
18 authority in the matter. We advise them a full report and
19 our findings will be submitted to the commission on
20 accreditation, at which time they will review the report,
21 send it back to them for review, at which time they may
22 appeal, ask for waiver, or submit a plan of action to
23 correct the non-compliance standard, and after that has
24 been completed, the whole system then is reviewed by a
25 panel of experts at the American Correctional Association,

1 and a decision is reached whether accreditation will or
2 will not be granted.

3 Q And what does accreditation mean? What does it mean
4 when the American Correctional Association issues
5 accreditation to an institution?

6 A They met an acceptable number of the 453 standards to
7 be accredited as an acceptable operation of correctional
8 facilities.

9 Q Do all correctional facilities or prisons seek to be
10 accredited?

11 A No, not all. A large percentage, there is over 600
12 institutions involved in the process a number of years. It
13 is much higher than that at the present time.

14 Q In the course of your conducting these audits, have
15 you encountered situations where institutions have failed
16 to obtain accreditation?

17 A Very definitely. At least at the initial audit.
18 They failed mainly on mandatory standards. Most of them
19 pass the 90 percent deal, but the mandatory standards, if
20 they flunk one of the mandatory standards, they cannot be
21 accredited.

22 Q All right. What is the approximate percentage of
23 institutions in your experience that have failed the
24 accreditation process?

25 A I would say that the percentage range is somewhere 8

1 to 10 percent.

2 Q Okay.

3 A But you have to remember that they work approximately
4 18 months to prepare for this audit.

5 Q You mean the institution is prepared by attempting to
6 correct deficiencies in advance?

7 A Meet the conditions of the standards. It is not
8 uncommon for an institution to call in what we call a mock
9 audit team prior to the regular audit to go over all of the
10 standards, and see if they do, indeed, or can, indeed, pass
11 the accreditation audit.

12 Q Okay. Now, did you have occasion in the year 1987 to
13 conduct an audit of Glades Correctional Institutional?

14 A Yes, I did.

15 Q Let me show you Defendant's Ex. 9. Can you identify
16 that, please?

17 A Yes, it is the report submitted to the accreditation
18 commission on the audit at the GCI, February, 1987.
19 February 16th through the 18th.

20 Q Okay, thank you.

21 MR. DAVIS: Your Honor, we would offer this
22 into evidence as Defendant's Ex. 9.

23 MR. LIPMAN: No objection.

24 THE COURT: It is received without objection.

25 (Defendant's Ex. 9 received into evidence.)

1 MR. DAVIS: Your Honor, I only have one other
2 one. May I stand by the witness, and question him?

3 THE COURT: No, that is all right. Go ahead.

4 BY MR. DAVIS:

5 Q Let me show you Defendant's Ex. 9. When was the
6 audit conducted on Glades Correctional by the ACA team?

7 A The last audit February 16th through the 18th, 1987.

8 Q Had there been prior audits of Glades Correctional?

9 A Yes, I believe there was an initial audit, I believe
10 in 1981, a second audit in 1984. I don't know the exact
11 dates.

12 Q All right. Now, in conducting this audit, did the
13 team have cause to refer to the prior audit to see what
14 that audit had indicated?

15 A Yes, it did.

16 Q And did you use that as a base for which you then
17 began your current audit?

18 A Yes.

19 Q Okay. Could you tell the court, first of all, who
20 was on the team that conducted this audit?

21 A In addition to myself, as chairman, a Mr. Jack
22 Faumener, deputy director, Nebraska Correctional Services,
23 also, Mr. Glenn Davis, State Warden from South Carolina.

24 Q Who was the chairman?

25 A I was.

1 Q You were the chairman? Okay. When did you arrive at
2 the prison?

3 A February 16th.

4 Q And how long were you at Glades Correctional for the
5 audit?

6 A Through the 18th of February.

7 Q 16th, 17th, and 18th?

8 A Yes.

9 Q Do you know if prior to your arrival at the
10 institution there were notices posted in accordance with
11 the procedure that you previously indicated?

12 A Yes, they were posted when we arrived, and everything
13 was in order.

14 Q When you arrived, were the required items of
15 documentation available to the team?

16 A Yes.

17 Q Tell the court what you did in the course of the
18 audit after you arrived there at Glades Correctional?

19 A Pretty much the same procedures I described before.
20 Initial interview, entrance interview with the warden, and
21 administrative staff, the tour, review of the
22 documentation. The close out interview, referrals, report,
23 and commission, and that is about it, briefly.

24 Q You had occasion, then, to view the compound itself
25 at that time?

1 A Yes, we did.

2 Q Was there any change between the facility as it
3 existed at the time of your audit, and that which was
4 reflected in the prior audit documents at Glades?

5 A There had been considerable improvement in the -- I
6 think it was in the dining food area, also, the cannery,
7 which is what they refer to it as, it was prison industry.
8 I believe prison industries refer to it as pride in Florida
9 to operate a cannery. They converted that into dormitory
10 quarters. I believe it happened sometime in 1985, which is
11 after the second audit. That had been changed. There had
12 been a substantial increase in population and staff.

13 Q Were there any changes noted in staff procedures or
14 staff training?

15 A Prior to that particular audit in '87, the
16 institution had not met their training requirements, and
17 their training standard had been found in non-compliance.
18 When we reviewed it during our audit, all training was up
19 to par at that time.

20 Q Was there anything else that you noticed besides the
21 expansion of the facility, and the other changes that
22 you've indicated between the condition as reflected in the
23 prior audit, and the position that your team took the
24 institution at?

25 A No major changes, no, sir.

1 Q And would you go through the audit and indicate to
2 the court, first of all, what was the result of the audit
3 on the mandatory standard?

4 A They passed 100 percent of the mandatory standard.

5 Q And in respect to the non-mandatory standard, do you
6 know what the degree of compliance of the institution was?

7 A It was about 96.4 percent, roughly. They only had 9
8 standards that was in non-compliance at that time.

9 Q And those were the non-mandatory standards?

10 A Those were the non-mandatory standards, yes, and in
11 the audit in '84, there were 14 non-compliant mandatory
12 standards, and at this time, there were only 9.

13 Q All right. Is it at all in your experience as a
14 member of accreditation or auditing committee to find
15 institutions in non-compliance with the non-mandatory
16 standards? Does that occur?

17 A Restate your question.

18 Q In the course of your auditing work, what is the
19 frequency with which you find that institutions do not meet
20 some of the non-mandatory standards?

21 A Well, there are a number of standards that are,
22 commonly found in non-compliance. One of the main ones is
23 the tenure of the warden that is assigned to the
24 institution. The standard requires that he received more
25 or less due process if he is terminated.

1 Actually, most wardens serve at the descretion, in
2 Florida it would be the descretion of the Secretary, and
3 this is not in keeping with the standard.

4 Other standards that are found to be in
5 non-compliance, most regularly, again, one is the training
6 standard which we mentioned earlier. Standards dealing
7 with the control, and care, and -- of an accountability of
8 toxic substances along with tools. That standard gets into
9 trouble a lot of times in various institutions. Another
10 standard that they have trouble with, a lot of people who
11 are in confinement status, in administrative, protective
12 segregation, protective confinement, administrative
13 segregation, a lot of time institutions do not feed a
14 restricted diet in these particular facilities, and the
15 standard calls for a regular diet, and food should not be
16 used as punishment.

17 Q Are there any such standards in protective
18 confinement that are frequently not complied with?

19 A Generally, the physical layout of the cells, of the
20 segregation standards, a lot of time not complied. They
21 don't have the necessary floor space. The American
22 Correctional Association prefers that confinement cells be
23 limited to one person per cell. Most of your institutions
24 will have two people or more per cell, and that is one
25 standard that is generally found in non-compliance.

1 Q What about having running water available, is that a
2 standard which is often--

3 A Most of them have running water, but a lot of them
4 don't have hot and cold water in their facilities. I
5 believe GCI did have hot and cold water in their
6 confinement cells.

7 They are also required to have, among other things a
8 stool and desk in the confinement area. A lot of them
9 don't have the stool and desk.

10 Q Among the audits that you conducted, how does a
11 compliance rate of approximately 95 percent on the
12 non-mandatory standards range among the institutions that
13 you have audited?

14 A I would say slightly above average.

15 Q What were the standards at GCI, non-mandatory
16 standards, which were found in non-compliance?

17 A You want me to name all 9 of them?

18 Q Yes, if you could?

19 A All right.

20 THE COURT: On this exhibit, it shows 14,
21 number of --

22 THE WITNESS: That was a typographical error.
23 There were only 9 standards found in non-compliance.

24 THE COURT: All right.

25 THE WITNESS: The first standard that was found

1 in non-compliance was-- You want me to give the number of
2 the standard?

3 BY MR. DAVIS:

4 Q Just describe what it had to do with this?

5 A This called for the tenure of the warden, and this
6 was found in non-compliance. He served at the descretion
7 of the Secretary.

8 The second standard found in non-compliance also
9 dealt with the tenure of the warden.

10 The third standard dealt that the standard requires a
11 physical examination for all employees at the time of
12 employment. I think GCI at that time were only requiring
13 that the correctional officers be given a physical
14 examination, and I believe those in the food service.

15 The fourth standard here called for the salaries of
16 correctional personnel be equal to those of similar
17 occupations in the state or region, and they weren't up to
18 par on their salaries.

19 The next standard dealt with the institution maintain
20 a confidential personnel record on each employee, and in
21 the State of Florida, I believe you have what is referred
22 to as the Sunshine Law which says all personnel records are
23 open to review. The next standard dealt with institutions
24 of more than five hundred inmates shall be divided into
25 units of 100 or less.

1 This was not true at GCI, so they failed that
2 particular standard.

3 Q Let me ask you, how many institutions in the country
4 conform with that standard?

5 MR. LIPMAN: Objection, Your Honor, there has
6 been a continuing series of questions about what other
7 institutions meet or don't meet in terms of the audit
8 findings, and I just don't think it is relevant to this
9 case.

10 MR. DAVIS: I think, Your Honor, we are here on
11 an 8th Amendment issue, towards which what is the standard
12 practice in the country is a relevant issue.

13 MR. LIPMAN: Not so. We are under a compliance
14 issue on whether and what scope of injunctive relief this
15 court should render if at all based on past finding that
16 have been made by His Honor.

17 MR. DAVIS: I don't believe that is true. I
18 believe that the proceeding here is to determine whether
19 current conditions are, in fact, unconstitutional under the
20 8th Amendment. There has been no finding of any
21 unconstitutional conditions by this court subsequent to
22 1984.

23 MR. LIPMAN: I beg to differ. That is not how
24 I understand the charter of the proceeding.

25 THE COURT: I will overrule the objection. I

1 am not sure what standard we are governed by. I will try
2 to figure that out before we enter the order. I will hear
3 the evidence, anyway.

4 THE WITNESS: The next standard --

5 THE COURT: You wanted to know -- Go ahead, and
6 restate your question, please.

7 BY MR. DAVIS:

8 Q Currently, today, what is the extent of the
9 compliance with that particular standard by institutions?

10 A Because of the recent over crowding, and so forth, a
11 lot of institutions are in non-compliance with that
12 particular standard, dealing with institutions having more
13 than 500 inmates per unit.

14 THE COURT: What did you say about the other
15 institutions, what porportion, and how many of them?

16 THE WITNESS: A large percentage.

17 THE COURT: All right.

18 THE WITNESS: The next standard deals with
19 dormitories having no more than 50 inmates in them, and
20 they had many more than that. I do not know the exact
21 number, over the 50 number, so they were non-compliance
22 there.

23 The next standard dealt with the housing units in
24 segregation, and the requirements therein, and that he not
25 meet that particular standard, because the standard calls

1 for single occupancy of the cells, and in the GCI facility
2 they had double ceiling.

3 In the confinement area, in addition to poor
4 lighting, the absence of a desk, or a writing table, or
5 writing shelf of some kind, and those areas there, so they
6 were found in non-compliance on the segregation unit.

7 The next audit dealt with the use of dormitories in
8 the planning. The American Correctional Association are
9 not in favor of dormitory type institutions, in maximum,
10 close, or medium security facilities, so it was noted in
11 recent years, the GCI institution had converted the cannery
12 into dormitories, thereby, bringing themselves in
13 non-compliance with that particular standard.

14 BY MR. DAVIS:

15 Q What is the currency of dormitory facilities at
16 correctional institutions with such levels of custody in
17 the United States today?

18 A New constructions mostly in single cells.

19 Q And what about most existing facilities?

20 A A lot of dormitories.

21 The next particular standard that they were in
22 non-compliance with dealt with the amount of day room or
23 leisure time space available. The standard calls for 35
24 square feet of floor space per inmate.

25 Now, this is inside floor space, and their day room

1 space did not equal that amount. They were found in
2 non-compliance with that one.

3 They were found in non-compliance with the standard
4 dealing with control, and use of tools in their particular
5 hobby craft area. It was determined by the team members
6 that there was not sufficient accountability for the tools
7 and equipment used in that particular area, so they were
8 found in non-compliance of that.

9 The next standard dealt with inmates being provided,
10 inmates with the option to refuse to participate in any
11 rehabilitation treatment program except the adult basic
12 education program, but in GCI, the inmate may opt not to
13 attend any education.

14 Q The standard requires the inmates to attend?

15 A The basic classes, it requires them, yes, but there
16 they had the option, whether they would or would not.

17 The next one dealt with confinement of men in
18 segregation status as a sanction for disciplinary report.
19 The standard called that they could not remain in
20 continuous confinement for more than 30 days -- Excuse me,
21 I am wrong on that particular one.

22 It deals that he may not be in segregation for more
23 than 30 days for multiple violations occurring in one
24 incident. The practice at Glades at that time, the policy
25 statement said they could be in for 60 days.

1 Q This is talking about disciplinary confinement as a
2 form of punishment?

3 A As a sanction, yes, disciplinary report.

4 Q And the ACA prefers to have the maximum penalty
5 limited to --

6 A One incident, 30 days, yes.

7 Q And Glades was --

8 A Their policy statement called for, they could go up
9 as high as 60 days. The next standard non-compliance dealt
10 with inmates who should be paid for work as in savings and
11 work programs. In the Florida system inmates are not paid.

12 And that is all the standards of non-compliance.

13 Q Could you, briefly, without going into a lot of
14 detail, but briefly survey with the court the areas that
15 these standards cover, and give him an idea--

16 A All standards?

17 Q Yes, just a survey, just a general area?

18 A They cover every aspect, practically, of the
19 institution. Deal with every department in the
20 institution, whether it be with training, accounting,
21 counseling, religious programs, work programs, segregation
22 programs, housing, staff training.

23 Q Do they include security?

24 A They definitely include security. The observation
25 available from the tours, the various systems used in

1 perimeter security, patrols, number of staff.

2 The accreditation process, if I may volunteer, is
3 heavy into direct written policies governing all of these
4 functions, and these policies reviewed by the
5 administration on an annual basis, and documented that they
6 were reviewed.

7 Q All right. Are the standards currently under review
8 for modification?

9 A I don't know that they are under review for
10 modification, but they are under review for change or
11 whatever. Yes, there will be a new manual out shortly.

12 Q All right. Does one of those areas under
13 consideration for review concern the size of the facility?

14 A Yes. And that is being dictated, I am sure, by the
15 press, and population at the present time.

16 Q What is the consideration being given for a
17 modification of that particular?

18 A I am not positive, but I believe it is 750 instead of
19 500.

20 THE COURT: What do you mean 750?

21 THE WITNESS: They will raise the optimum from
22 500 up to 750.

23 THE COURT: For anyone correctional
24 institution, you mean?

25 THE WITNESS: Yes.

1 THE COURT: Are there any standards that rate
2 these institutions on whether or not they are over-crowded?
3 I notice in your report you say this institution is
4 supposed to have some 600 inmates, and it really has about
5 1100. Does that receive any consideration in the
6 accreditation review?

7 THE WITNESS: Yes, that is a consideration,
8 yes, definitely. There is a standard that relates. I
9 think they failed that particular standard that we reviewed
10 that said they were over-populated. I think they are
11 designed to pass 600 some, and they had way over that
12 amount at the time of the accreditation.

13 BY MR. DAVIS:

14 Q Now, in respect to Glades Correctional, have you had
15 occasion subsequent to the audit that was performed by your
16 committee to again visit Glades?

17 A Yes, I did.

18 Q When was that?

19 A That was, I believe, the 8th of December, 1989.

20 Q Was that at our request?

21 A Yes, that was at your request.

22 Q What did you do while you were there?

23 A First met with the warden, or superintendent there,
24 and then toured the housing facilities. I believe that you
25 and Mr. Meginniss accompanied us on the tour of several of

1 the dormitories.

2 I later toured a larger section of the facility with
3 the chief supervisor of security there, and visited other
4 areas of the facilities, the maintenance area, kitchen
5 area, and things of this nature.

6 I talked to several inmates while I was there. I
7 talked to several staff while I was there relative to
8 existing conditions, reviewed perimeter security, visited
9 the armory.

10 I spent roughly from 11 o'clock in the morning until
11 roughly 3:30, 4 o'clock in the afternoon, touring the
12 complete facility, and talking to various people.

13 Q Did you have occasion to speak with any of the
14 inmates, also?

15 A I did.

16 Q During either the interview conducted during the
17 course of the audit, or your interviews conducted more
18 recently, did you gain any sense from the inmates of any
19 particular concerns they had at Glades Correctional?

20 A No, I did not. There wasn't any major concerns
21 voiced by either staff or inmates. I found conditions to
22 be very much relaxed at the institution. Inmates conversed
23 openly, and without hesitation. There appeared to be a
24 good staff inmate relationship existing. I found no major
25 problems relative there at that time.

1 Q Have you had occasion to view each of the dormitories
2 at Glades Correctional?

3 A Yes.

4 Q And are you familiar with the staffing arrangements
5 at Glades Correctional, the critical staffing levels which
6 are maintained?

7 A I believe I am generally familiar with it, yes.

8 Q And assuming that in the main compound at the
9 critical staffing levels for the second and third shifts,
10 the ones which will cover night hours include two staff
11 correctional members in the dormitory, and one roaming
12 guard for every two dormitories, one roaming sergeant for
13 every two dormitories, and one in the mid-day shift, inside
14 the dormitories, and again the roaming sergeant, and
15 considering the dormitory facilities in the main unit as
16 you are familiar with them, do you have an opinion as to
17 whether those facilities provide for adequate security for
18 inmates?

19 A I believe that their current staffing pattern which
20 requires two officers in a dormitory on an evening shift
21 which requires one man in what they call the wicket, which
22 is the central area of the dormitory, and the other officer
23 patrolling, in addition to a sergeant of the correctional
24 force being assigned to two dormitory units which he
25 patrols on a regular basis during his shift would provide

1 adequate supervision for the inmates contained therein.

2 Q What about the staffing in the north compound which
3 varies according to the size they are, larger and smaller
4 units, two in the larger units, and one staff member in the
5 smaller units?

6 A I think that is acceptable; yes, that is a medium
7 security area.

8 Q And, again, in respect to the confinement area,
9 considering the layout of the confinement area, and its
10 location, and considering, for instance, the double bunking
11 procedures in protective confinement together with the
12 posted orders requiring the staff to patrol on a regular
13 basis, do you have an opinion as to whether the confinement
14 facility, protective confinement facility, in particular,
15 provides adequate safety for the inmates that are there?

16 A I believe with the staff that they have assigned to
17 the confinement area, and with regular checks made on each
18 inmate with a half hour, or 30 minute schedule, I believe
19 that provides adequate supervision for a confinement area,
20 yes.

21 Q In the -- In respect to the issue of contraband, have
22 you had occasion to review the disciplinary reports for the
23 prior year at Glades, that is, from December '88, through
24 December of 89?

25 A Yes, I have.

1 Q Have you also had occasion to review the special
2 search incident reports from January '86, through 1989?

3 A Yes, I have.

4 Q Do you have an opinion as to what those disciplinary
5 reports and incident reports, search incident reports,
6 reflect about either the level of contraband on the
7 compound, or the efforts and techniques used by the
8 administration to control the contraband on the compound?

9 A Yes, I do. I believe that the institution has
10 exerted considerable effort in their attempts to control
11 the amount of contraband within the institution.

12 They do this by sporadic searches of various work
13 areas, living areas, the library areas, other areas
14 throughout the institution. The grounds, flour beds,
15 whatever have you in the institution.

16 The reports that I reviewed evidence that they do,
17 indeed, conduct the searches on a regular basis only at
18 irregular times so as not to advertise the particular
19 search that is going to be done.

20 While, I believe, it is probably impossible to
21 control 100 percent of the contraband in an institution,
22 that the Glades institution definitely is making all
23 efforts to control as large a portion as they can, and keep
24 it to a minimum.

25 Q During the time that you were a warden in a federal

1 penitentiary, did you ever encounter problems of contraband
2 being introduced, or generated within the compound by the
3 inmates?

4 A Yes.

5 MR. LIPMAN: Objection, relevancy.

6 THE COURT: Objection overruled.

7 THE WITNESS: Yes, I have. Constantly. It is
8 a constant problem.

9 BY MR. DAVIS:

10 Q And it has been indicated in the course of this trial
11 that on occasion, and I believe the reports, special search
12 reports may have indicated that on occasion quantities of
13 buck or inmate brewed wine of several gallons, or even up
14 to 20, or 30 more gallons is found on the compound.

15 Do you have any sense or experience as to how it is
16 possible for inmates to make or conceal quantities in that
17 amount on the compound?

18 A Yes. The making of a brew, so to speak, is a common
19 practice in the institution, about as long as institutions
20 have existed, and as I mentioned earlier, it is a constant
21 problem. The inmates are very ingenious in their ways of
22 producing this toxin brew, and I know on one occasion in
23 Atlanta, Atlanta Federal Penitentiary, in a dormitory
24 setting, in a basement, the officer noticed something
25 highly unusual in the dormitory area, but was really unable

1 to zero in what made him uncomfortable about it. He
2 couldn't figure out why it looked unusual to him, and he
3 discovered there were a number of support pillars down
4 there, a couple feet in diameter.

5 Q You mean columns?

6 A Columns supporting, and he discovered there was an
7 extra one there. On further investigation that it was
8 reaching from the floor to the ceiling, of course, and it
9 was completely full of brew. Containing roughly 50
10 gallons, as I remember.

11 Q This was a false column that the inmates had
12 constructed?

13 A Yes.

14 Q Is that at all an uncommon situation to encounter?

15 A No, sir, very common.

16 Q Are inmates able to do such things despite dilligence
17 on the part of the staff?

18 A Yes, they can make brew in any amount, and they can
19 use practically -- they don't necessarily have to have
20 yeast. Just any kind of fruit which they may purchase in
21 the commissary, or anything else can be used for
22 fermentation purpose to make this brew. I believe it is
23 referred to as buck in the Florida prison.

24 Q Do you have an opinion whether the discovery and
25 confiscation of weapons on the compound consisting

1 primarily or exclusively of inmate homemade knives or
2 pipes, or other such items, but not guns, or externally
3 introduced items, whether the discovery, and confiscation
4 of 10 to 15 or 20 weapons a month is a excessively high
5 number, or low number in an institution the size of Glades?

6 A The number of weapons that are generally uncovered in
7 an institution largely depend on the security involved at
8 the institution, whether it is a maximum, close, or medium
9 facility, and being that Glades handles both close, medium,
10 and I believe minimum, 10 or 15 items a month being
11 uncovered in various hiding places would not be uncommon.

12 Q You served at Marion?

13 A Approximately 7 years, yes.

14 Q And Marion is an institution with single cells?

15 A Yes.

16 Q Does it have a fairly loose, or fairly rigid
17 structure of inmate activities and conduct?

18 A Maximum--

19 MR. LIPMAN: Objection to relevancy.

20 THE COURT: Well, objection overruled.

21 BY MR. DAVIS:

22 Q Okay.

23 A Maximum controlled institution, yes.

24 Q And what was your experience in finding homemade
25 knives and similar type weapons at such an institution as

1 that?

2 A They have definitely existed at Marion. We had at
3 Marion a metal furniture factory, which involved heavy duty
4 metal shears, and weapons were very easily produced at that
5 facility, and there were many of them found in the work
6 area. Once in awhile they were able to slip one out of the
7 work area.

8 Q Would you in the case of an institution such as
9 Glades Correctional and knowing what you know about Glades
10 Correctional based on your audit experience, your view more
11 recently, your review of the incident reports, and
12 disciplinary reports, would you in the event of an
13 institution such as that ever recommend such a thing as a
14 total shakedown of the institution for controlled
15 contraband?

16 A Only under extreme circumstances, because a thorough
17 shakedown as you are referring to of the facility would
18 require a complete lock down of all of your inmates, and
19 expenditure of a large amount of overtime pay for
20 employees, and is very disruptive to the entire program of
21 the institution.

22 Q What is inmate reaction usually to a lock down
23 necessary to conduct an entire shakedown?

24 A They resent it very much.

25 Q Does it ever lead to inmate violence?

1 A It does.

2 Q Has it led to riots in institutions?

3 A Yes, I believe it has. I know it has.

4 MR. DAVIS: If I could have a moment, Your
5 Honor?

6 THE COURT: How much more time do you think you
7 will need?

8 MR. DAVIS: For one question.

9 THE COURT: All right.

10 BY MR. DAVIS:

11 Q Mr. Frey, have you ever given testimony as an expert
12 witness before?

13 A Yes, I have.

14 Q In the field of penalogy, or corrections?

15 A Yes.

16 Q And correctional administration?

17 A Yes.

18 MR. DAVIS: Your Honor, we would offer him as
19 an expert witness in this case.

20 THE COURT: All right. I think he has met
21 basic qualifications, surely.

22 Let's take the morning recess. We will be in recess
23 for 15 minutes. You are excused, and be back in that
24 length of time.

25 (Thereupon, a short recess was taken.)

CROSS-EXAMINATION

2 BY MR. LIPMAN:

3 Q Good morning, Mr. Frey?

4 A Good morning.

5 Q You had indicated that the February 1987, American
6 Correctional Association audit, leading to additional
7 accreditation was not the first audit that had occurred at
8 GCI, is that correct?

9 A That is correct, sir.

10 Q And you are aware, are you not, that in fact GCI was
11 initially accredited in 1980?

12 A I believe that is correct, yes.

13 Q And, as a matter of fact, are you aware at the time
14 GCI, when it was accredited in 1980 was found to have the
15 second highest score in the state system. Are you aware of
16 that?

17 A No, sir, I am not aware of that.

18 Q Subsequent to the GCI's first accreditation in 1980,
19 it again went through an accreditation process in 1984, and
20 was accredited?

21 A Yes.

22 Q You are aware of that accreditation?

23 A Yes.

24 Q Are you also familiar with the findings that were
25 issued in this case both in January of 1986, as well as

1 June of the following year in 1987?

2 A Generally aware of it, yes.

3 Q And would you agree those findings are relatively
4 specific in terms of dates, events, and occurrences that
5 are the topic of those decisions?

6 A I don't believe I understand your question, sir.

7 Q Would you agree with me the findings of January 1986
8 in this case, as well as June 1987 are rather specific --

9 A Relative to what, sir?

10 Q Relative to inmate sexual assaults and rapes, and
11 other abuses that were determined to have occurred?

12 A Findings, specific findings in the opinion, yes.

13 Q Yes. Now, you have been in the correctional
14 profession for almost 40 years?

15 A That is correct.

16 Q And I would assume that based upon findings that you
17 reviewed in those decisions, you would find them
18 unacceptable?

19 A Yes, sir. If all the findings were true, I would
20 find them unacceptable.

21 Q You would find that the practices and conditions at
22 GCI are unacceptable, is that correct?

23 A Yes.

24 Q Sir, you would also agree with me the mere fact an
25 institution is accredited by ACA, American Correctional

1 Association, doesn't necessarily mean that it is operating
2 in an acceptable manner?

3 A At the time it is accredited, we believe it is
4 operating in an acceptable manner, yes.

5 Q In 1984, ACA determined that Glades was operating in
6 an acceptable manner, and in 1987, it determined that it
7 was operating in an acceptable manner, correct?

8 A I believe that is true.

9 Q In January '86, June '87, this court found that the
10 institution was not functioning in an acceptable manner, is
11 that correct?

12 A I believe that is true, yes.

13 Q You had no personal involvement in the 1980 or 1984
14 audits, is that correct?

15 A No, sir, I did not.

16 Q And the charter or mission, if you will, of your
17 February 1987 audit did not involve addressing the findings
18 that had been made in the LaMarca case?

19 A No, sir, they did not.

20 Q In fact, you were aware of the LaMarca decision, but
21 never addressed the specific findings of this case, is that
22 correct?

23 A I believe a copy of it was submitted along with the
24 report to the commission in Washington.

25 Q Do you recall any discussion among your colleagues on

1 the committee, or any officials with the American
2 Correctional Association relative to the findings of the
3 LaMarca decision?

4 A No, sir, I do not.

5 Q Did you ever have a single discussion with any
6 officials at GCI when you conducted your February 1987
7 audit as to the findings and practices found in the LaMarca
8 case?

9 A No, sir.

10 Q Am I to understand that the manner in which you
11 conducted the February 1987 audit of GCI provided advance
12 notice to the institution in terms of the officials, and
13 officers that an audit would take place?

14 A Yes.

15 Q A notice, some form of notice, would also, I believe
16 you indicated, be provided in the institution to the inmate
17 so that inmates might correspond with committee staff?

18 A Yes.

19 Q And I think you indicated that no inmates availed
20 themselves to that process?

21 A That is correct, sir.

22 Q I think you also indicated that that isn't unusual,
23 is that so?

24 A It is not unusual.

25 Q Did the committee make any attempt to interview those

1 inmates identified throughout the LaMarca findings in order
2 to corroborate or gain knowledge as to their experiences?

3 A No, sir, we did not.

4 Q Do you recall ever discussing going about that
5 process with your colleagues on the committee?

6 A No.

7 Q Would it be fair to say that the findings in the
8 LaMarca case provided you with unusual detail as to
9 practices and conditions that were occurring at GCI?

10 A The ones that I just recently reviewed?

11 Q Yes.

12 A Yes, it was contrary to what we found.

13 Q I understand that it was contrary to what you found.
14 My question is, it was atypical, unusual, that you would be
15 provided with such a wealth of information in terms of
16 names, dates, facts, and events in your course of
17 conducting an audit, is that a fair statement?

18 A I am not sure I understand your question.

19 Q Let me phrase it a different way. You indicated that
20 you conducted numerous audits in your career?

21 A Yes.

22 Q I think I understood that you indicated that you have
23 conducted in the area of 100 audits at institutions?

24 A Yes.

25 Q And in conducting those audits, you are furnished

1 certain information prior to arriving at the scene?

2 A Yes.

3 Q And my question is, the findings in LaMarca --

4 A Was not furnished.

5 Q Beg your pardon?

6 A Those findings were not furnished.

7 Q And so you conducted your audit without the benefit
8 of those findings?

9 A That is true. If I may volunteer?

10 Q Please?

11 A If I remember correctly, and it was three years ago.

12 Q Yes.

13 A When we go into an institution to conduct an audit,
14 if there is a court ruling or a case pending concerning an
15 institution, we merely ask for copies of it, and send it
16 back to our commission in Washington, or Baltimore who
17 review it. We don't get into it.

18 If I remember the case at GCI, it was under appeal,
19 or something at the time, which it wasn't resolved, or
20 anything, so, therefore, we did not take any definite
21 action with regard to the court action at that time.

22 Q So, is it American Correctional Association policy
23 that notwithstanding a federal judge's findings, if a case
24 is under appeal, that those findings have no credence?

25 A No, sir, I don't say that. It is just that the

1 auditor is not generally qualified to go into court
2 proceedings, and so forth.

3 Q But you would agree that the particular findings in
4 LaMarca case do offer a great amount of detail in terms of
5 names, and dates, and incidences, and practices?

6 A Yes.

7 Q And you in conducting the audit did attempt to secure
8 information from inmates, did you not?

9 A Not referring to the LaMarca case?

10 Q No, but you sent notices to the institution to be
11 placed, I assume, in the dormitories?

12 A Yes.

13 Q And the purpose of posting those notices were to
14 provide notification to inmates who might wish to share
15 information?

16 A That is correct.

17 Q And I assume that in conducting the audit, in your
18 experience that you keep your eyes and ears open to inmate
19 concerns or issues that they raise with you?

20 A Yes, we do.

21 Q Would you agree that is an important ingredient in
22 the audit process?

23 A Keeping our eyes and ears open, yes.

24 Q Keeping your eyes and ears open, trying to listen to
25 what the inmates complaints were?

1 A Yes, very definitely.

2 Q I think you indicated on your most recent tour when
3 you were accompanied by counsel for defendants that you
4 found the situation to be somewhat relaxed?

5 A Yes.

6 Q In terms of inmate, staff relationship?

7 A Yes, we did.

8 Q In a positive sense?

9 A Yes.

10 Q The audit that had nothing to do -- the audit that
11 occurred in February 1987 had nothing to do with the
12 conditions and practices found by this court in June 1987?

13 A Not directly, no, sir.

14 Q Now, you've itemized in your report which has been
15 introduced as Ex. No. 9 various areas of non-compliance?

16 A Yes.

17 Q Although they are not numbered, do you have the
18 report with you?

19 A Yes, I do.

20 Q Could you refer to the portion relating to the
21 confinement area which I believe is contained on -- I
22 actually don't have the page numbers at the bottom.

23 A Standard 4135.

24 Q Yes, that may be page 3, just for the record,
25 Standard 2-4135. You determined at least in February 1987

1 that conditions in protective confinement were in
2 non-compliance?

3 A That is correct, sir.

4 Q I think more accurately conditions in the segregated
5 housing which would include protective confinement,
6 disciplinary confinement, and administrative confinement
7 were all in non-compliance?

8 A Yes.

9 Q And based upon your 40 years in corrections, would
10 you agree that those conditions are unacceptable?

11 A As far as ACA standards, yes.

12 Q As far as some measuring stick, we use the ACA
13 standard.

14 Are you aware that the conditions of protective
15 confinement that you found in February of 1987 were not new
16 to Glades?

17 A Yes.

18 Q You were aware of that?

19 A Yes.

20 Q You were aware those same conditions existed in 1984?

21 A Yes.

22 Q And you are aware that in terms of the findings of
23 this court that the same conditions, i.e., double bunking,
24 and protective confinement, and features of living
25 conditions were found unacceptable?

1 MR. DAVIS: Objection, that is not true. The
2 court didn't find double bunking. They found bunking where
3 there were no beds is unacceptable.

4 MR. LIPMAN: I beg to differ. I think the
5 court's findings is explicit --

6 THE COURT: Are you talking about the Court's
7 finding in the order of June 4, 1987?

8 MR. LIPMAN: Yes, Your Honor, as relates to
9 Your Honor's review of the January 1986 decision.

10 THE COURT: Yes.

11 MR. LIPMAN: I believe the thrust and gist of
12 that portion of the order found that the multiple housing
13 of inmates in the protective confinement were unacceptable.

14 THE COURT: I will overrule the objection. I
15 have been sort of scanning that order. I haven't run
16 across that as yet. Just how that was treated, I don't
17 remember.

18 BY MR. LIPMAN:

19 Q My point is simply what you found in 1987 was not
20 new?

21 A That is true.

22 Q And, Mr. Frey, you returned approximately two and a
23 half years later, last month, and you found similar
24 conditions?

25 A Yes.

1 Q Which do not meet ACA standards?

2 A True.

3 Q What is the rational, if you know, or policy behind
4 the ACA standard which frowns upon double bunking in
5 protective confinement?

6 A I believe ACA people feel where there is only one
7 person to the cell, that leaves less chance for any assault
8 behavior, or anything of that nature.

9 While they don't -- They realize that many of our
10 institutions are old facilities, and that they have an over
11 crowding problem, they find it acceptable in that they
12 won't deny the accreditation. It is not that serious.

13 They make it a^{man} mandatory standard, but they do make
14 it a standard that the institution should try to comply
15 with in the future.

16 Q Do you agree with that portion of the ACA standard
17 relating to protective confinement?

18 A I believe it would be a much better situation if
19 there were one man per cell, yes.

20 Q Now, there were other areas of protective confinement
21 beyond the housing of multiple inmates that were found to
22 be unacceptable, is that correct? Aside from the double
23 bunking issue?

24 A Yes.

25 Q And one of those areas found to be unacceptable would

1 be in the area of lighting?

2 A Yes.

3 Q Now, in the report that you authored in February,
4 1987, you've indicated in terms of those features of
5 protective confinement that didn't conform to the standard
6 to include double celling, poor lighting, and you have
7 etc.. Do you know what you meant by etc.?

8 A One of the items was a lack of a desk, and/or writing
9 table, or shelf.

10 Q All right. Are you able to offer any opinion to His
11 Honor as to whether ventilation presently exists in
12 protective confinement comports with ACA standards?

13 A A recent report that I reviewed prior to this period,
14 or trial here today, indicated, I believe the Inspector
15 General's Office had conducted an inspection of the unit,
16 and used light meters, and meters to measure the flow of
17 air, and found them to be in excess of the amount required
18 in the various standards.

19 MR. LIPMAN: Your Honor, might I have number 8?

20 THE COURT: I don't have any up here.

21 MR. LIPMAN: I see, they are all organized for
22 us.

23 BY MR. LIPMAN:

24 Q For the record, Mr. Frey, I am going to refer you to
25 Plaintiffs' Ex. 8. The copy is a little light. If you

1 have trouble reading it, I will be happy to share mine with
2 you. It might be easier to take my copy. This is Exhibit
3 8 I am referring you to.

4 For the record, interrogatory, they are not page
5 numbered, 5DII. Could you review the question and answer
6 contained in this exhibit?

7 A You want me to read it?

8 Q Yes, please?

9 A Out loud?

10 Q Yes.

11 A "Was protective custody provided post rape, and if
12 protective custody was provided to several of the inmates
13 who made allegations of sexual rapes following their
14 reporting the matter, see below, was it provided, see
15 below, how many days was it provided?"

16 Q And then there are a list of inmates which are the
17 responses of the defendants which provide the names of
18 inmates who sought protective custody for alleged or real
19 assaults, and rapes with an indication of the duration of
20 time that they remained in protective confinement?

21 A Yes.

22 Q And I sat last evening and calculated that the
23 average stay in protective confinement was approximately 59
24 days, if you added up all the time period?

25 A Yes, I note that there were two of them that was

1 excessively long.

2 Q What were the two excessively long?

3 A James Mickie, four months, and two days, and Eduardo
4 Austa, six months, and 19 days.

5 Q How many others were over a 30 day period?

6 A I believe it to be three.

7 Q Three additional?

8 A Yes.

9 Q Besides the two that you have just indicated?

10 A Yes.

11 Q And the American Correctional Association Standards,
12 if I understood correctly, provide for at least a single
13 offense, an inmate ought not be held in confinement for
14 more than 30 days. Did I understand that?

15 A This is not correct. We are talking about man in
16 protective custody is not there because of a disciplinary
17 report, and there is really know sanction handed down.

18 Q I am mixing apples and oranges?

19 A He is there for what the reason states, protective
20 custody. 1 not for punishment for creating a violation in
21 the compound.

22 Q Let me ask you this: A man who violates a prison
23 institutional rule is adjudicated for an infraction?

24 A That is true.

25 Q Is sent to disciplinary confinement?

1 A Correct.

2 Q And the ACA Standards are that one shouldn't be
3 incarcerated in disciplinary confinement for a sentence
4 exceeding 30 days?

5 A That is correct.

6 Q All right. If the gentleman's whose name is provided
7 in the interrogatory who did nothing wrong, voluntarily
8 requested to be placed in protective confinement, in at
9 least five instances remained in protective confinement for
10 a period of time that exceeded the 30 days, correct?

11 A This is what the report says, yes.

12 Q All right. Would you agree that at least those five
13 individuals, that officials at Glades would have an ample
14 period of time if they choose to provide psychiatric or
15 psychological services to those inmates?

16 A The standard requires that anybody in confinement
17 status over 30 days will receive a visit from a mental
18 health person and a report be prepared at that time.

19 Q Have you discussed any matters regarding this case
20 with Dr. Medina, the Glades psychologist?

21 A No, sir, I have not.

22 Q Are you aware of his activity in treating or not
23 treating inmates who have indicated that they have been
24 sexually assaulted or raped?

25 A No.

1 Q In your view, would inmates who are housed in
2 protective confinement because of a concern or actual
3 physical assault or sexual assault and had remained in
4 protective confinement for any time more than five days
5 with the institution, or should the institution have
6 sufficient time to transfer the inmate?

7 A In five days?

8 Q Yes.

9 A Depends on how long their investigation would take to
10 determine the reason for the man being in protective
11 custody. Ordinarily, they should have the answer in five
12 days.

13 Q You have no knowledge as to whether any efforts were
14 made to transfer the individuals that were --

15 A No, sir, I do not.

16 Q We do know based on this information, if it is
17 accurate, they weren't transferred at least for the period
18 of time they remained in protective custody?

19 A That is true. We don't know the reasons they weren't
20 kept there, though.

21 Q In the course of your February 1987 audit you were
22 also concerned with staff correction officers monitoring
23 the open dormitories?

24 A Yes, we were.

25 Q And you would agree with me, would you not, that in

1 the context of an institution such as Glades where there
2 are open dormitories that continual monitoring of the
3 dormitories is a critical practice of the correction
4 officials?

5 A It should be, yes.

6 Q Are you aware of the findings, at least through June
7 of 1987, as to whether or not officers had, in fact,
8 patrolled the dormitories?

9 A I am aware--

10 MR. DAVIS: Excuse me, Your Honor, counsel uses
11 the term June '87. The report he speaks of, or the order
12 he speaks of is as 1984. Does not talk about conditions
13 subsequent to '86. This Court's order does not address
14 conditions subsequent to 1984.

15 THE COURT: I think that is true.

16 MR. LIPMAN: Yes, but I need a temporal period
17 of time in which those conditions are determined by some
18 authority, and in this case they were determined by His
19 Honor to exist as of that date referring back to evidence
20 occurring before 1986.

21 THE COURT: All right. Just make that plain in
22 your question, if you please.

23 BY MR. LIPMAN:

24 Q You understand the temporal problem. Findings were
25 made on X-day, June, '87, they related to evidence that was

1 presented in Fall '85.

2 A Yes.

3 Q Through December '85, at least, and you are aware of
4 those findings?

5 A Generally aware of them, yes.

6 Q You have no personal knowledge other than your
7 conversations with officials, and your review of the
8 posting of orders as to whether or not on a regular basis
9 officers at Glades patrolled those dormitories?

10 A In our review of the dormitory logs, our review of
11 the staff, their knowledge of their posted orders, so
12 forth, indicated to us that they did their assigned duties.

13 Q And that is the basis of that opinion?

14 A Yes.

15 Q All right. In other words, you didn't witness -- you
16 didn't spend evenings at Glades in the dormitory
17 witnessing?

18 A Yes, we did.

19 Q And you were present?

20 A Yes.

21 Q And they patrolled the dorms while you were present?

22 A Yes, they sure did.

23 Q They were aware you were present?

24 A Yes, they were.

25 Q And they were aware you would be coming?

1 A Probably.

2 Q Any doubt about that? That the institution staff
3 were aware you would be conducting an audit in February,
4 1987?

5 A None whatsoever.

6 Q All right. You have been a warden in institutions,
7 head of the institution? I am not sure if it is warden.

8 A Warden.

9 Q In the federal system?

10 A Yes.

11 Q Let me ask you this: If there were authoritative
12 finding, sir, that there existed a pattern of rapes and
13 physical assaults in terms of names, dates, and incidents,
14 determined, would you take some action to attempt to
15 initiate steps to insure that the physical assaults and
16 rapes no longer occur?

17 A If, in my review of the findings, indicated that they
18 were valid, I would then definitely take steps to prohibit
19 such happening in the future.

20 Q And in attempting to discern whether the findings
21 were valid, if they were issued by a law enforcement
22 agency, would you consider that to be authoritative, and
23 therefore the findings valid?

24 A It would certainly be worth review.

25 Q If they were issued by federal judge, would that lend

1 some credence to the validity of those charges?

2 A Very definitely.

3 Q What specific steps would you take as a prudent
4 administrator to insure that the pattern of rapes and
5 assaults no longer continue?

6 A I believe it would require a review of the complete
7 program in the areas where the rapes allegedly occurred,
8 and that institutional supervisors would be alerted to
9 brief their personnel on the urgency to improve
10 surveillance and review post orders, and make sure that the
11 supervisors were checking on the custodial officers on
12 their individual post to see that their post orders were
13 being carried out. And, of course, anything else that
14 would present itself.

15 Q Are you aware of any actions that Mr. Lambdin took
16 subsequent to the findings of this court as they related to
17 the pattern of rapes, and physical assaults that were
18 found?

19 A No, I am not.

20 MR. LIPMAN: No further questions.

21 THE COURT: Redirect.

22 MR. DAVIS: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q In respect to the last question that counsel asked

1 you about if you were aware of anything that Mr. Lambdin
2 did in response to the order of the court, let me ask you,
3 if one of the findings of the court was that double bunking
4 in the middle of the dormitories in the main compound was
5 not acceptable to the court, did you find on your review in
6 1987 whether that double bunking condition existed or not?
7 Talking about dormitories A,B,C,D, were the bunks in the
8 middle?

9 A You mentioned double bunking. There was multiple
10 bunking.

11 Q Right. Did you find -- Let me ask you to assume that
12 the finding of the court was that in 1984, in dormitories
13 A,B,C,D there were upper and lower bunks for all beds in
14 dormitories A,B,C,D.

15 A All right.

16 Q And the court found that was not an acceptable
17 condition to the court. Did you find that the upper and
18 lower bunking situation existed in A,B,C,D in the middle
19 area?

20 A No. The second, double bunking had been removed to
21 improve visibility from the center of the dormitory to the
22 ends of each dormitory where the shower areas were located.

23 Q In the 1984 accreditation report, I think you
24 indicated that there had been non-compliance found with
25 staff training?

1 A That is correct, sir.

2 Q In 1987, did you find whether there was compliance
3 with staff training?

4 A All training was up to par in February, 1987.

5 Q And I think you also indicated there were several
6 other areas of non-compliance that had also achieved
7 compliance by the time of the 1987 audit?

8 A Yes.

9 Q You were asked what you would do if you were warden,
10 and you were presented with certain findings of a court
11 that certain conditions existed at an institution, what you
12 would do to rectify that?

13 A Yes.

14 Q If you as a warden were presented as an order of the
15 court saying that during a certain period of time there
16 were no criminal investigations performed for alleged
17 sexual rapes, and that outside law enforcement agencies
18 were not involved, and you then investigated that
19 situation, and found indeed the true facts were that there
20 had been substantial investigation by outside law
21 enforcement agencies as evidenced in the records of both
22 law enforcement agencies and the institution, would you
23 then blindly accept the finding of the court being true for
24 the purpose?

25 A Probably not.

1 Q Okay, thank you.

2 Now, the discussion about the limitation of 30 days
3 confinement and disciplinary confinement related, did that
4 relate to 30 days maximum that an inmate could be held in
5 disciplinary confinement, or was it 30 days on each charge?

6 A On each individual charge, yes.

7 Q Does --

8 A Relating to one incident.

9 Q Does the ACA have any limitation on the number of
10 days that an inmate can spend in disciplinary confinement
11 on multiple charges for multiple incidents?

12 A Only the 30-day rule on each incident or incidents
13 relating to that one incident.

14 Q So it is completely acceptable to the ACA if there is
15 incarceration for more than 30 days so long as it is for
16 multiple incidents?

17 A That is correct.

18 Q You were asked about the ACA requirement that an
19 inmate receive -- inmate in protective confinement after
20 the 30 day period receive psychological counseling, is that
21 correct?

22 A Yes.

23 Q Let me ask you to assume that the testimony of Mr.
24 Lane, the staff psychologist, acting psychologist was that
25 on every Thursday and Friday of each week, a psychology

1 department counselor visited confinement for the purpose of
2 checking the records to determine those held for more than
3 30 days, and that the counselor then counseled with and
4 interviewed those inmates that were there for more than 30
5 days, plus made himself available to any inmates in
6 protective confinement, would that meet the requirements of
7 the American Correction Association?

8 A I believe that it would.

9 Q Thank you. In regard to the double bunking, and your
10 experience in the federal system, is double bunking of
11 protective confinement areas prevalent in the federal
12 system?

13 A It is in the older facilities, yes.

14 Q About how many federal prisons use double bunking in
15 confinement?

16 MR. LIPMAN: Objection, relevancy.

17 THE COURT: Objection overruled.

18 THE WITNESS: Probably 25.

19 BY MR. DAVIS:

20 Q What is the ACA requirement for lighting in a
21 confinement cell?

22 A I would have to guess without having the actual
23 standard before me, but I think it is 20 candle power per
24 cubic foot, I believe.

25 Q The standard is 20 candle power for a certain given

1 area?

2 A Yes.

3 Q Okay. In respect to the transfer of inmates who are
4 in protective confinement, does the ACA have a standard
5 requiring transfer of inmates from protective confinement
6 to another institution within a certain period of time?

7 A No. They recommend that it be moved as early as
8 possible when it is determined that he cannot return safely
9 to the inmate population.

10 Q Okay. And does that determination of when he can
11 safely return to the inmate population depend in large
12 measure upon the inmate himself, and what he relates to the
13 staff?

14 A That, and the investigation relating to the
15 particular reasons for his being there.

16 Q Do you have any information regarding the transfer
17 procedures within the Florida Prison System from one
18 institution to another?

19 A Not directly, no, sir.

20 MR. DAVIS: Your Honor, I have no further
21 questions.

22 THE COURT: All right. Thank you. Thank you,
23 Mr. Frey, you may step down.

24 (Thereupon, the witness was excused.)

25 MR. DAVIS: Your Honor, our next witness is

1 going to be a long witness. I wonder if it would be better
2 if we took the recess.

3 THE COURT: We can stop a little early for
4 lunch here. We have another matter between 1 and 1:30 to
5 hear. We will be in recess until 1:30. You have another
6 expert.

7 MR. DAVIS: We have another expert, Mr.
8 Lambdin, Mr. Peters, I think we have two other witnesses
9 whose names I don't recall, one is a staff member, and one
10 is a prisoner.

11 THE COURT: You still have quite a bit to go?

12 MR. DAVIS: Not really, most of those are going
13 to be short. I don't anticipate any except Mr. Lambdin,
14 and the expert to take over half an hour.

15 THE COURT: We will be in recess until 1:30.
16 Please make room on the table for other lawyers who will be
17 in here between 1 and 1:30.

18 We will get started 1:30, and try to do the best you
19 can to get all of your evidence in before the end of the
20 day at 5 o'clock. We have a calendar call 9 o'clock in the
21 morning which will take a half hour, or hour as well.

22 (Thereupon, a recess was taken 11:45 a.m.)

23 (Court reconvened 1:30 p.M.)

24

25

LEON ALEXANDER PETERS, DEFENSE WITNESS SWORN

DIRECT EXAMINATION

BY MR. MEGINNISS:

Q Mr. Peters, where do you currently reside?

THE COURT: Let us have your full name, first.

THE WITNESS: Leon Alexander Peters.

THE COURT: Go ahead.

MR. MEGINNISS: May it please the court, I
apologize.

THE COURT: All right.

BY MR. MEGINNISS:

Q Where do you currently reside?

A West Virginia.

Q Have you ever been employed in the Department of
Corrections of the State of Florida?

A Yes, I have.

Q And where were you so employed?

A Glades Correctional Institutional, Belle Glade.

Q What position did you hold?

A I was internal investigator.

Q Were you internal investigator in January '86?

A Yes, I was.

Q Are you currently the internal investigator?

A No, sir, I am not.

Q When did you cease being the internal inspector?

1 A I retired from the Department of Corrections in May
2 1989.

3 Q Now, please describe to me your procedures for
4 internal inspections with respect to alleged assaults or
5 sexual assaults?

6 A Upon receiving the information that an alleged
7 assault, or alleged sexual assault occurred, my first step
8 was to interview the individual who made the allegation.

9 During the interview, I would try to determine the
10 names and identity of any alleged perpetrator or
11 perpetrators. In the event I was able to elicit the name
12 of alleged perpetrator, or perpetrators, I proceeded to
13 interview that individual, or individuals. And during the
14 interview with the alleged perpetrator, or perpetrators, I
15 attempted to elicit a confession or denial. If I was able
16 to elicit a confession, I immediately forwarded my
17 information to the superintendent.

18 Also, if I was not able to elicit a confession, and
19 got a denial, then I also immediately took the information
20 to the superintendent, and he directed me how to proceed
21 further.

22 Q Was there ever an occasion -- Strike that. I assume
23 when you say superintendent, you are speaking of Chester
24 Lambdin who is present in the courtroom?

25 A Yes, Chester Lambdin.

1 Q Was there ever occasion where any assault or sexual
2 assault was reported to you that you did not so inform the
3 superintendent?

4 A No, sir.

5 Q And that was uniform throughout your service under
6 him?

7 A Yes.

8 Q And was he the superintendent the whole time from '86
9 on?

10 A I believe he was. I don't recall when Mr. Lambdin
11 assumed the position of superintendent.

12 Q All right. You say you sent your reports, or you
13 made your reports to Mr. Lambdin, then what happened?

14 A Mr. Lambdin would make a determination as to whether
15 or not we should involve a law enforcement agency, or
16 whether we should file directly with the State Attorney's
17 Office.

18 Q And depending -- Strike that.

19 This determination--would that have any effect upon a
20 report that you would write?

21 A Yes, I believe it would, I would indicate in my
22 report what Mr. Lambdin's decision had been.

23 Q By the time this decision, or when this decision was
24 made, were your reports necessarily written at that time?

25 A No, I did not write my reports until I had discussed

1 the situation, or made Mr. Lambdin aware of the situation,
2 and circumstances surrounding the alleged incident.

3 Q What was the source of your information with respect
4 to assault or alleged sexual assault?

5 A Information could come from the alleged victim. It
6 could come from staff members. It could come from other
7 inmates in population. It could come from family members.

8 Q Did you ever work in an investigation with the
9 Sheriff's Department?

10 A Yes, I did.

11 Q Did you work with the Sheriff's Department in every
12 case?

13 A No, sir.

14 Q Why is that?

15 A Because it had been -- If Mr. Lambdin made a decision
16 that we were to file directly with the State Attorney's
17 Office, then the Sheriff's Department was not involved.

18 Q Otherwise, you would probably send it to the Sheriff
19 for investigation?

20 A I would first make verbal contact with the Sheriff's
21 Department, and advise of the situation, and when I
22 completed my investigative report, they would get a copy of
23 the report.

24 Q All right, sir. I want to show you that which
25 appears to be investigative reports which the defendants

1 have marked as Ex. 4, and ask you if you recognize these
2 reports?

3 A Yes, I do, sir.

4 Q And is that the type of report that you forwarded
5 after you consulted with Mr. Lambdin?

6 A Yes, it is, sir.

7 Q Are there any Sheriff's reports in there?

8 A Give me a moment. I didn't go through them that
9 carefully.

10 MR. AMLONG: Do you have a copy of that?

11 MR. MEGINNISS: Yes, I do.

12 THE COURT: What he is talking about? What I
13 am looking at now is Plaintiffs' No. 4.

14 MR. MEGINNISS: Yes.

15 THE WITNESS: Yes, there is a copy of the
16 Sheriff's--

17 MR. AMLONG: Is this Defendant's 4, or
18 Plaintiffs' 4?

19 MR. MEGINNISS: Defendant's 4.

20 THE COURT: Defendant's 4. I don't have a
21 Defendant's 4 marked down here. Has it been utilized
22 before?

23 MR. MEGINNISS: No, sir, I am trying to
24 identify through this witness, Your Honor, in order to be
25 proffered for evidence, and introduced into evidence.

1 THE COURT: All right.

2 BY MR. MEGINNISS:

3 Q This would be the representative of the investigative
4 reports that you kept in your files while you were internal
5 investigator?

6 A Yes.

7 MR. MEGINNISS: I offer into evidence
8 Defendant's No. 4, which represents reports of the internal
9 investigator from Glades Correctional Institutional
10 pertaining to alleged sexual assaults.

11 MR. AMLONG: I object to internal hearsay, and
12 also the conclusions made by the report. Under the Piper
13 Aircraft case, I don't believe the conclusions of the
14 reports are admissible.

15 MR. MEGINNISS: Be that as it may, this is a
16 business record. It is used to show that rapes were made
17 by the internal investigator. The determination is not
18 made for the purpose of the truth, but to indicate solely
19 that the people out there were aware of these alleged
20 rapes, and they did something about it.

21 MR. AMLONG: I do not object to this being
22 introduced as a business record. I have not objected to it
23 being introduced to show that the investigation reflected
24 in these reports took place. I object only to the internal
25 hearsay for the truth of the matter asserted, and to the

1 conclusions, if any.

2 THE COURT: All right. I will receive it,
3 because you don't object to it totally, with the
4 qualification that will not be guided by the internal
5 hearsay, if we could determine what that is by reading the
6 reports, nor by the conclusions, and counsel, of course, is
7 not offering them for the truth of those matters, anyway.
8 I don't think we are in any trouble.

9 MR. AMLONG: Thank you, Your Honor.

10 (Defendant's Ex. 4 received into evidence.)

11 THE COURT: What time period does this document
12 cover?

13 MR. MEGINNISS: January 1986 to the present,
14 Your Honor.

15 You may inquire.

16 MR. AMLONG: Your Honor, may I have a moment?
17 I have never been given this before. If I may have a
18 moment to look through it.

19 THE COURT: Okay, go ahead.

20 CROSS-EXAMINATION

21 BY MR. AMLONG:

22 Q Good afternoon, Lt. Peters?

23 A Good afternoon, sir.

24 Q During the time that you were the institutional
25 inspector at Glades Correctional Institution, was there a

1 standard operating procedure that provided that the
2 compound officers should pass along to you allegations of
3 homosexual rape?

4 A You mean was there written documentation?

5 Q Well, was there in a posted order-- Was there any
6 rule promulgated that said Correction Officer Smith, if you
7 hear about the homosexual rape, you are supposed to go to
8 Lt. Peters?

9 A Not to my knowledge.

10 Q And that was the same -- that continued from before
11 the last trial up until you left, correct?

12 A We are speaking about the initial Turner case?

13 Q Yes.

14 A As far as I know, yes.

15 Q That didn't change?

16 A Not to my knowledge.

17 Q Tell Judge Paine what did change about the way you
18 did your job from Turner case -- from LaMarca versus
19 Turner, up until the time you left and went in retirement?

20 A Basically, I don't feel that there was that much
21 significant change. I think the procedure was standard
22 throughout.

23 Q Now, you talked about how if you got a confession
24 from the perpetrator or perpetrators of the rape, you would
25 forward that confession to the superintendent?

1 A Maybe you misunderstood what I was saying, Mr.
2 Amlong. What I meant was, all the information I gathered
3 in speaking with the alleged victim, and the alleged --
4 and/or alleged perpetrator, perpetrators immediately went
5 to the superintendent so he could make a decision
6 immediately as to which way to proceed.

7 Q You did say after you talked to the victim, you
8 talked to the people who were the perpetrators to determine
9 who they were?

10 A In the event I had an identity.

11 Q Okay. And then you told the judge that if you
12 obtained a confession that you would immediately forward
13 that confession to Superintendent Lambdin?

14 A Yes.

15 Q How much such confessions did you forward to
16 Superintendent Lambdin during the time you were at GCI?

17 A I don't know.

18 Q Any?

19 A There may have been some. I couldn't give you a
20 specific number.

21 Q Do you have any specific recollection of ever
22 forwarding to Superintendent Lambdin information that a
23 person had confessed to committing a homosexual rape?

24 A No, I don't think so.

25 Q All right. Now, you testified that after reviewing

1 the results of your investigation with Mr. Lambdin that Mr.
2 Lambdin would then make the decision whether or not to
3 involve a law enforcement agency or to file directly with
4 the State Attorney's Office in the case, correct?

5 A Yes.

6 Q We are talking about the rape cases now?

7 A Yes.

8 Q And you are a law enforcement officer?

9 A No, sir.

10 Q You were?

11 A No, sir.

12 Q You were then?

13 A No, sir.

14 Q Did you have authority to file cases with the State
15 Attorney's Office?

16 A Yes, per rules of the Department of Correction.

17 Q Okay. Did you ever directly file a case with the
18 State Attorney's Office involving a homosexual rape
19 subsequent to the first trial?

20 A I am not sure I understand your question.

21 Q From January 1st, 1986, until you retired in May
22 1989, was there ever a rape case filed by you directly with
23 the State Attorney's Office in Palm Beach County?

24 A No, sir.

25 Q Do you remember the case of Mr. Haveard who said he

1 had been raped by a fellow named Golden or Goldie?

2 MR. MEGINNISS: May it please the court, I
3 would rise to voice an objection in that the only purpose
4 we provided these reports, we did not ask him to take the
5 truth thereof, but if plaintiffs' counsel would want to go
6 into them, we would move them all in evidence.

7 THE COURT: Are you referring to some report
8 now?

9 MR. AMLONG: No.

10 THE COURT: This question doesn't indicate that
11 he is referring to a report.

12 MR. MEGINNISS: He just asked about Mr.
13 Haveard.

14 THE COURT: That is what he did, but he didn't
15 refer to any report. I really don't understand the
16 objection.

17 MR. MEGINNISS: If he is going into the report
18 one by one, I would move for their admission.

19 THE COURT: Are you talking about the reports
20 included in Defendant's No. 4?

21 MR. MEGINNISS: Yes.

22 MR. AMLONG: Frankly, I was looking for the
23 Haveard report, and I didn't find it. I was proceeding
24 without it.

25 THE COURT: Well, I have to overrule the

1 objection. I don't know that there is going to be any
2 reason why he can't utilize these reports to ask questions
3 of Mr. Peters about it about these various things. I will
4 overrule the objection. Go ahead.

5 BY MR. AMLONG:

6 Q Mr. Peters, do you recall the alleged assault by
7 Goldie or Golden on Mr. Haveard?

8 A Yes, to some extent, but I have been away from that
9 area for 7 months or so, and I may need some documentation
10 to refresh my memory.

11 Q Do you recall whether or not you ever showed Mr.
12 Haveard a photo lineup?

13 A No, I didn't.

14 Q Do you recall whether or not Goldie's nickname came
15 from the fact he had a gold tooth?

16 A No, sir, I don't.

17 Q During the time period from January 1st, 1986,
18 through your retirement, did you ever confirm that a
19 homosexual rape had taken place at Glades Correctional
20 Institution?

21 A I don't think so.

22 Q How many years did you work at Glades Correctional
23 Institution?

24 A I came there in 1978, approximately 10 years, 11
25 years.

1 Q During that entire period, did you ever confirm a
2 homosexual rape had ever taken place at Glades Correctional
3 Institution?

4 A I wasn't the internal inspector for the whole time I
5 was there.

6 Q During the time you were internal inspector, did you
7 confirm homosexual rape had taken place?

8 A No, sir.

9 Q The methods that you used prior to January 1st, 1986
10 are the same methods that you continued to use subsequent
11 to January 3, 1986?

12 A To the best of my knowledge, yes.

13 MR. AMLONG: No further questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MEGINNISS:

16 Q With respect to the last few questions that were
17 asked you, do you recall the case of Willie Bogen?

18 A Yes, sir, I do now.

19 Q Wasn't that a confirmed rape?

20 A Yes, you are right.

21 Q And with respect to the question that you were asked
22 about Goldie, were you able even to identify who Goldie
23 was?

24 A No, sir, I wasn't.

25 Q Did Mr. Haveard identify him for you?

1 A No, sir, he didn't.

2 Q So you didn't have a way to get a picture, did you?

3 A No, sir, I didn't.

4 Q Do you know whether or not any conviction was
5 obtained with respect to Willie Bogen?

6 A Yes, it was.

7 MR. AMLONG: Objection, relevance, unless he
8 specifies a time period.

9 THE COURT: The question is whether or not --

10 MR. MEGINNISS: Conviction was obtained with
11 respect to Willie Bogen, and I refresh this witness' memory
12 to a question, was there ever a rape that was prosecuted
13 and convicted, and having reminded him of Willie Bogen, and
14 he said yes.

15 THE COURT: Okay, I would overrule the
16 objection.

17 MR. MEGINNISS: I would like to move all of the
18 investigative reports since he brought it into evidence
19 during the Turner period.

20 THE COURT: What period is this?

21 MR. MEGINNISS: Prior to 1986, Willie Bogen was
22 convicted prior to that time.

23 THE COURT: You have an exhibit number for
24 those?

25 MR. MEGINNISS: I think we have a list of them,

1 and we can supply them. We tried to enter them, or asked
2 the court to present them by motion at the first day of
3 this hearing. We listed all of those, and we could supply
4 them.

5 MR. DAVIS: They are part of our motion which
6 we filed with you for leave to consider additional
7 evidence, in view of the fact counsel asked -- Mr. Amlong
8 just asked the witness whether he ever in his 11 years as
9 an investigator including Turner period conducted
10 investigation that resulted in a finding of rape. That is
11 now put into issue in this case, investigation is done
12 during Turner period, and we move for the right to
13 introduce all of the investigative reports during the
14 Turner period.

15 THE COURT: What is your position?

16 MR. AMLONG: The question was asked to
17 demonstrate that there had been no change whatsoever under
18 the investigative techniques for the investigative results,
19 for the Court's earlier findings. It does not make
20 relevant to this hearing the issues which are whether or
21 not the unconstitutional conditions the judge found through
22 Judge Nimkoff, and then through Your Honor affirming him in
23 '87. The prior rape investigation reports do not bear on
24 whether those conditions continue to exist. They simply
25 are not relevant.

1 MR. DAVIS: Your Honor, it appears--

2 MR. AMLONG: I am being double teemed, too.

3 THE COURT: Well, you are doing all right.

4 Don't worry about it.

5 MR. DAVIS: Counsel has suggested that there is
6 some problem with the manner in which the investigations
7 have continued or not continued to be carried out since the
8 Turner period.

9 What is relevant is, as the witness has indicated,
10 how these investigations were carried out. He is asking
11 specifically in this hearing whether he conducted any
12 investigations during the Turner period which made findings
13 regarding homosexual rape. The witness should be able to
14 establish whether he had any such investigation by having
15 the investigations available to him to present to the
16 court.

17 THE COURT: Well, I am not going to get back
18 into that. I am not going to permit any change in those
19 rulings that have been previously made. I am not going to
20 reopen it for additional evidence.

21 With that ruling, let's go on.

22 MR. AMLONG: Thank you.

23 MR. MEGINNISS: No further questions, Your
24 Honor.

25 THE COURT: You are excused.

1 (Thereupon, the witness was excused.)

2 DANIEL LOCKWOOD, DEFENSE WITNESS SWORN

3 THE COURT: Please state your name.

4 THE WITNESS: Daniel Lockwood.

5 THE COURT: Proceed.

6 DIRECT EXAMINATION

7 BY MR. DAVIS:

8 Q Mr. Lockwood, where do you reside?

9 A I live in Sprakers, New York.

10 Q And what is your occupation or profession?

11 A I am currently Associate Professor at Utica College
12 at Syracuse University.

13 Q And do you teach in a particular field?

14 A Yes, I am a professor in Criminal Justice, and I
15 usually teach courses, such as prisons, or violence, or
16 assessment in treatment of offenders, and research methods.

17 Q All right. Let me hand you this document, and ask
18 you if you recognize it?

19 MR. AMLONG: Your Honor, I stipulate to the
20 introduction of Mr. Lockwood's CV, assuming it is the same
21 one I saw yesterday.

22 BY MR. DAVIS:

23 Q This is your CV?

24 A Yes, it is.

25 THE COURT: All right.

1 BY MR. DAVIS:

2 Q Mr. Lockwood, could you give us, briefly, some of
3 your background, first your educational background?

4 A I have a Ph.D. in Criminal Justice which I got at the
5 State University of New York at Albany. I got the Ph.D. in
6 1977, and I also have a Master's Degree from Stanford
7 University which I got in '73, and Bachelor's Degree from
8 City College of New York in 1969.

9 Q All right. After receiving those degrees, have you
10 had -- or even during the time while you were in the course
11 of receiving those degrees, were you employed in the
12 teaching or academic profession?

13 A Well, during the time I was getting my Ph.D.
14 dissertation -- my Ph.D. Degree, working on my
15 dissertation, at the same time for two years during that
16 period, I was employed by an agency called the Criminal
17 Justice Research Center, Incorporated which worked on
18 federal grants, and my area primarily was to work in the
19 area of prison research.

20 During those two years, my supervisor was a man
21 called Hans Toch, and Hans Toch is, I would say at the time
22 and still is considered to be one of the -- possibly the
23 leading expert in the area of prison violence.

24 THE COURT: Area of prison what?

25 THE WITNESS: Prison violence.

1 THE COURT: Spell his name.

2 THE WITNESS: T o c h.

3 BY MR. DAVIS:

4 Q And what academic positions have you held since that
5 time?

6 A Well, the first academic position I had after that
7 was assistant professor of criminal justice for the State
8 University of New York. I started there 1977, then three
9 years later, I moved on to Temple University in
10 Philadelphia where I was Assistant Professor of Criminal
11 Justice also, and I was there for four years, and I worked
12 at Maris College, briefly, that is in Poughkeepsie, New
13 York, and now I am at Syracuse University.

14 Q Okay. During the time of your study, and the time
15 that you were in the criminal justice field, have you been
16 involved in any research projects in the field of prison
17 behavior, prison violence, prison conditions?

18 A Yes, I would say I have been involved in several
19 major, major projects. My first research assignment in the
20 field was to work on the problem of protection, and I was
21 assigned a job of looking at protection from, let us say, a
22 social psychological point of view, while working on a
23 federal grant called Intervention for Inmate Survival which
24 was very closely tied into an attempt to reduce the
25 incidence of suicide, and self jury in prisons.

1 As a result of that, I wrote an article which is in a
2 book called "Living in Prison." I moved on from working in
3 the protection area to studying the problem of prison
4 sexual violence, and for, I would say, almost a three year
5 period, I was supported primarily by the Federal Government
6 to work on that particular problem, which, by the way, I
7 worked on full time. It was a very indepth effort working
8 on prison sexual violence. I did a few side projects
9 during that period, also, one was interviewing prison
10 staff, especially correctional officers, line officers,
11 sergeants, officers, work supervisors, to find out about
12 how they recognized and managed inmate problems.

13 Q And where were the studies that you have indicated
14 conducted, the primary study that took three years on
15 prison sexual violence?

16 A I started the prison sexual violence study in a
17 prison called Attica, which is in Attica, New York, and I
18 worked there for several months conducting clinical
19 interviews, looking at files, and I also did a research in
20 the prison called Auburn in Auburn, New York, a prison
21 called Greenhaven Correctional Facility, Comstock, New
22 York, and Cokesachi, which is a prison for youthful
23 offenders.

24 Q Have you authored any work in prison conditions,
25 prison sexual violence?

1 A Most of the research efforts I have described have
2 resulted in publications. They have all been written up in
3 standard literature on the field. The work on prison
4 sexual violence in a book called "Prison Sexual Violence"
5 published in 1980, "Living in Prison," 1977, and a series
6 of articles that have appeared in books with titles such as
7 "Problems and Solutions to Prison Sexual Violence,"
8 "Contribution of Prison Sexual Violence To Stress," and
9 "Coping in Confinement." That appeared in a book called
10 "Coping With Confinement," and then I have other articles
11 here and there, one in a book called "Prison Violence," and
12 another chapter called "Dilemmas of Punishment." That is
13 the most recent in the field, 1984.

14 Q You mentioned you are a professor of Criminal
15 Justice, is that an interdisciplinary discipline?

16 A Criminal Justice is an interdisciplinary field, by a
17 greater extent was defined by the graduate school I went
18 to, and involves the study of Criminal Law, Social
19 Psychology of Criminal Behavior, and rigorous study of
20 research methods and computers.

21 Q There are a few issues I would like to discuss with
22 you, substantive issues. One is that of the reporting
23 behavior of people alleging sexual violence.

24 Could you discuss with the court what the reporting
25 behavior problems consist of?

1 A Well, from the research point of view, and I had the
2 great privilege working with Michael Leeland who worked in
3 this area, and that was very helpful. When we are talking
4 about reporting behavior, it is a big problem, because we
5 have to try to find out what the actual rate of
6 victimizations as compared to the known rate, and the known
7 rate comes from reporting behavior. And--

8 Q Could you explain those two terms, actual rate, and
9 known rate?

10 A The known rate of criminal behavior is what we call
11 the reported rate, and these are incidents that are
12 reported to law enforcement officials. In a free world our
13 source for that is the uniform crime reports which would be
14 published in some books, such as the source book of
15 criminal justice statistics, known rate comes from reports
16 to officials.

17 Over the last 10, 15 years, those of us who have done
18 research in victimizations have made major efforts to try
19 to get together methods to learn something about the
20 unknown rate of victimizations, and I call these self
21 reports. And in the national -- on a national level, we
22 have a method of doing that which is national crime survey,
23 NCS.

24 National crime survey, which is a survey of
25 households, very much like census, and a random survey of

1 households taken, and someone knocks on the door, and asks
2 questions about victimizations that might have occurred to
3 members of that household.

4 Q Okay, so the actual rate of victimizations, or actual
5 rate of incidents consist of the known reported rate, plus
6 those that have been unreported?

7 A Yes. When we talk about the problems with the data,
8 and problems with going to field at a certain rate is
9 trustworthy, we have to look carefully, methods for doing
10 that, and the results.

11 Q And are there any studies indicating what the
12 percentage of the actual events are that are reported in
13 the field of sexual violence?

14 A Well, now-a-days, because a lot of attention has to
15 be focused on this issue, I think those of us in the field
16 of victimology has a pretty good understanding that their
17 reported rate is probably about one third to one half less
18 than self-reported rate which would be considered to be the
19 actual rate. People commonly say one third to one half of
20 incidents of forcible rape are reported to law enforcement
21 officials in the free world.

22 Q Have there been any studies done to indicate what the
23 reported or known rate of homosexual assaults are in the
24 prison systems?

25 A The question is studies of the known rate or reported

1 rate.

2 Q Are there any studies indicating the relationship
3 between the actual rate and known rate of homosexual
4 assaults in confinement prison systems?

5 A Yeah, if you follow the subject real closely, you can
6 find studies like that. They are not very common. They
7 are not published statistics, most defendants don't go to
8 the effort of actually compiling known rates, but there are
9 a few studies of those, yes.

10 Q Are there some significant studies in that field?

11 A Yes, I could even mention them, because there are
12 only three or four of them that I know.

13 Now, I did one, of course, Peter Notchi, who is the
14 head of the research department for Federal Bureau of
15 Prisons made a major effort to look at the question in
16 1979, and he came up with a rate of reported incidents, and
17 he also came up with a rate of incidents that were self.
18 There was a pretty good study in North Carolina from 1976,
19 and then, of course, we have a study by Davis which was
20 called "Sexual Assaults" in Philadelphia Prison Service,
21 and he published in '78, but the data came from '65.

22 Q What do the studies indicate as the relationship
23 between the reported rate and the actual rate?

24 MR. AMLONG: Your Honor, I am going to object
25 to this as hearsay.

1 Now, as to any studies that Mr. Lockwood did, that,
2 of course, would be admissible. For him to recite what
3 other people have found is to allow into evidence findings
4 of specific studies without allowing me to cross-examine
5 the proprietor of those studies as to methodology, and how
6 valid those studies are.

7 THE COURT: Well, I think he can rely on just
8 about any data he wants to as an expert to support whatever
9 opinion he is going to come up with. While he could be
10 asked to define what these studies were, and how much he
11 knows about them, I don't think I can prevent him from
12 talking about them, and utilizing them in his opinion.
13 Your objection is overruled.

14 MR. AMLONG: It is not being accepted into
15 evidence for the truth of the matter of those studies?

16 THE COURT: No, I don't think so. Technically
17 not, anyway.

18 MR. AMLONG: Thank you, Your Honor.

19 BY MR. DAVIS:

20 Q Mr. Lockwood, in the practice of your profession as a
21 criminal law specialist, do you rely upon work done by
22 others in the field and published in journals?

23 A Yes.

24 Q Okay. Going back to my question to you, what do the
25 various studies indicate as to the relationship between the

1 known and actual rates of homosexual rapes or sexual
2 batteries in prison systems?

3 A The question is about the relationship between known
4 rates and unknown rates?

5 Q Right.

6 A Maybe I could start out by my study. My study
7 indicated that about 70 percent of the incidence that I
8 looked at were known to staff. Now, 50 percent of those
9 were reported, and the others were known to staff because
10 they were maybe observed, or came out as a result of a
11 disciplinary infraction, something like that.

12 Q When you say known to staff, you mean someplace
13 recorded in the records?

14 A Yes, it would be in the file, yes.

15 Now, what Notchi did in 1979, which really took quite
16 an effort, they went through every inmate file, there were
17 31,000 of them in 1979. They found that about every month
18 there were two incidents of sexual battery known to staff.

19 If you like, there is a better way of saying that so
20 that we can make these comparative, that what you might
21 say, then, is that Notchi found a rate of 6/10's of a
22 percent.

23 Q 6/10's of a percent, what is that the rate of?

24 A 6/10's of the population had been victims of sexual
25 battery in '79. That is a known rate, 6/10's percent.

1 Now, Notchi also did a self report, victimizations
2 survey in 1979, and he did a very careful random sample of
3 330 people, and based on that, he found two victims of
4 sexual battery which would give us a rate of about 1/10's
5 of a percent.

6 Q And the study by Notchi of the 31,000 inmates in the
7 federal prison system?

8 A Yes, that was the federal prison system.

9 Q Showed that the sexual battery rate, or the number of
10 sexual batteries per inmate was 6/10's of one percent?

11 A That was his estimate based on self report
12 victimizations survey that he carried out.

13 Q Okay. What was the rate that he found from his
14 survey of the 31,000?

15 A That was a rate of about 1/10th of a percent.

16 Q Okay.

17 A This is for sexual battery.

18 Q So that from the study of the records, Notchi was
19 looking for the known rate of sexual assault, is that
20 correct?

21 A Yes.

22 Q And, based on his victimizations study, he determined
23 the actual rate, is that correct?

24 A Yes.

25 Q And that showed 6/10's of a percent, is that correct?

1 A Yes.

2 Q Okay. You refer to the North Carolina study.

3 What was the North Carolina study?

4 A North Carolina study was a study using official

5 records, and we would again call that the known rate, or

6 the reported rate, and that is 1976 study of Forbs and

7 Raber, and they found 7/10's of a percent, 1976.

8 Q Is that the actual rate, or the known rate?

9 A That is the known rate.

10 Q What about the Philadelphia study?

11 A Now, Philadelphia study, published in '68, this was

12 what I would call a victimizations survey carried out by

13 the District Attorney's Office using trained investigators,

14 good interviewers, and they found a rate there of 2.9

15 percent. That is a self-reported victimizations survey.

16 Q That was the actual rate, is that correct?

17 A Yes.

18 Q So we are clear, actual rate includes reported and

19 unreported assault, and the known rate includes only the

20 reported assault, is that a fair statement?

21 A Yes.

22 Q Have you had occasion to review the records relating

23 to sexual batteries, alleged sexual batteries at Glades

24 Correctional Institution between January 21, 1986, and the

25 end of 1989?

1 A Yes, I spent a good deal of time going over those.

2 Q Would those reported events which appear in the
3 investigative records constitute the known events, or
4 actual events?

5 A Those would be the known events.

6 Q Okay. Have you computed what the rate of sexual
7 battery has been at Glades Correctional Institution, the
8 known rate of battery from 1986 to the present time?

9 A Yes, I calculated that for the years 1986, '87, '88,
10 and '89.

11 Q Okay. What were those for each year?

12 A 1986, it would be 1/10th of a percent. 1987, 1/5 of
13 a percent. 1988, 1/10th of a percent. 1989, 1/10th of a
14 percent.

15 Q How does that compare -- and this is the known rate
16 of sexual battery?

17 A Yes.

18 Q How does that compare with the known rate of sexual
19 battery found by Notchi in his study?

20 A It is a surprisingly pretty close. It is really
21 pretty close to that. As I said, Notchi found about 1/10th
22 of a percent, and these rates, '86, is actually 1/10th.
23 '87, 1/5, and '88. So, similar for three years.

24 Q And slightly higher on one year?

25 A Right. In absolute numbers, the rates are advertised

1 as higher in '87, absolute numbers, slightly higher since
2 we are dealing with a statistically rare event. We are
3 talking about rates per 100,000. It is not that many.

4 Q And the Notchi study of the federal system, was that
5 located in a particular area, or was that your entire
6 United States Federal System of Prisons?

7 A Notchi being a very good statistician made an attempt
8 of getting a rate from the entire federal system, doing
9 what we call a stratified random sampling from the
10 institution.

11 Q How does the rate compare to the North Carolina study
12 which I believe you indicated was also a known rate?

13 A Yes, that study by Fuller in 1976, that rate was
14 7/10's of a percent, so the rate is considerably higher.

15 Q Higher at North Carolina?

16 A Yes, the rate is considerably higher at North
17 Carolina.

18 Q Now, the Philadelphia rate was an actual rate, is
19 that correct?

20 A Yes, that was a self report victimizations survey.

21 THE COURT: Self-employed what --

22 THE WITNESS: Self report victimizations
23 survey.

24 BY MR. DAVIS:

25 Q Is there any way to translate from an actual rate to

1 a known rate, is that possible to do?

2 A You mean in a prison system?

3 Q Yes.

4 A Very hard to do. In my work, I have always
5 discouraged anybody trying to extrapolate a rate from one
6 place to the other without knowing the institution.

7 Q Okay. You mean to extrapolate an actual, comparing
8 an actual rate of one institution to a known rate of
9 another?

10 A Yes, that is hard to do.

11 Q It is better to compare actual rates to actual rates,
12 and known rates to known rates?

13 A Yes.

14 Q What do the studies indicate as to the frequency of
15 sexual battery, and perceptions of sexual battery?

16 A You mean in prison?

17 Q In prison?

18 A It is a subject we looked at quite carefully.
19 Myself, and other people who have looked at that question,
20 other researchers who have looked at that question
21 generally find that prisoners, and even staff, perceive a
22 rate that is much higher than the actual rate, and the
23 perceptions of the environment are generally not at all
24 accurate gauge of what, in fact, occurs.

25 Q So, if you were to go to a group of inmates, or a

1 group of guards, or whatnot, and ask them their perception
2 as to a rate of sexual battery at an institution, that
3 relation to you would be based, or would likely be based on
4 perceptions?

5 A Yes, it would be based on what I call personal
6 theories, and there are a number of studies on the subject.
7 Randy Atlas did a nice study, published in '83, Prison
8 Journal, actually done in Florida where he questioned a
9 good random section of the environment, and learned about
10 incidents that were occurring in that environment, and he
11 found there were some remarkably dissimilar.

12 Notchi found the same thing in the federal system. I
13 found a similar situation.

14 So it is very common in the field of victimizations
15 to find that perceptions of an environment are not an
16 actual gauge of the actual incidents that occur in that
17 environment.

18 Q Does that make the attempt to rely upon an inmate or
19 a group of inmates perception of their environment in a
20 prison system a risky or inaccurate method of determining
21 the actual situation?

22 MR. AMLONG: Objection, Your Honor, leading.

23 THE COURT: The objection is overruled.

24 THE WITNESS: Most victimologists, most
25 victimologists, would claim that personal opinions of

1 environments cannot be relied on for the actual rate
2 victimizations might be occurring in that environment.

3 BY MR. DAVIS:

4 Q What are the reasons that have been determined in the
5 studies for the misperception by inmates, or by staff of
6 the rate of violence within an institution or any other
7 misperceptions regarding their environment?

8 A Well, what commonly happens in prison environments,
9 since they contain individuals who are predisposed towards
10 violent behavior, people naturally perceive the environment
11 being dangerous because of these people whom they are close
12 to, and they extrapolate that into a belief that there is a
13 high rate of incidence, because of all the questions they
14 are getting from the people around them.

15 Q Does the misperception that exists among inmates in a
16 prison environment extend beyond their perception of
17 violence to their perception of other environmental facts?

18 A Yes. This question also has been looked at, and, in
19 particular, I did it, Notchi did it also in his research,
20 because it is an important question to look at. We
21 frequently find that most members of the prison community--
22 and by the way, I would include superintendents, wardens,
23 right down to newly arriving inmates--generally have a
24 personal theory that the rate of -- the actual rate of
25 homosexuality, eventual homosexuality is far higher than

1 the rate that would be detected by a properly conducted
2 self report study.

3 Also, we find that all members of the prison
4 community commonly have a personal theory about things such
5 as contraband, and all forms of misbehavior, they generally
6 believe that is much higher than it would be detected by a
7 proper investigation, proper research, or doing a good
8 interview in a private area, and really finding out some
9 pretty reliable information.

10 Q You indicated that you have undertaken psychosocial
11 investigations into prison environments.

12 Could you give us your opinion relating to the
13 methods and techniques that are essential in order to
14 conduct a proper investigation of the conditions within a
15 prison environment based upon inmate interviews, as a
16 source?

17 A Yes. Well, there are a number of steps that I would
18 take, or other people who in the area would take. We
19 would, first of all, draw a random sample from the housing
20 list. We would request a superintendent to give us a list
21 of all the names of the people currently of that
22 institution, and depending on the size of the sample which
23 should be above 100, 150 might be good, because you have a
24 refusal rate. You want to get 100. You are going to
25 systematically take, let us say, every twentieth person

1 through the housing list, we call that a systematic random
2 sample which allows us to make statistical inferences about
3 the rate that would occur in the population, and along with
4 those statistical inferences, we can present things that we
5 call confidence levels, and confidence intervals. It is
6 like election holding.

7 After we did that, we would request a private
8 interviewing room. If we had the time, we do the
9 interviews. If we didn't have much money, or much time, we
10 would do a survey. We would get all these people together
11 in various places, and give out a survey. If we had the
12 time, I probably prefer an interview, and it would be in a
13 private room. We establish rapport with the individual,
14 and interview would be tape recorded, tape recorded and
15 transcribed, because following the interview, we have to
16 analyze the content of the interview, and the proper way to
17 analyze an interview is to have two people do it.

18 We call that two independent coders, one person would
19 do it, and would analyze it or tabulate it in certain
20 categories finding the incidence of this or that, and
21 making judgments, and then holding that information aside,
22 another person would analyze the same information. We call
23 that content analysis, and the aim of doing that is to try
24 to get a measure of reliability for analyzing the
25 information.

1 Q In your opinion, would it be valid methodology in a
2 prison where the inmate population consists of
3 approximately 55, 54, to 55 percent black inmates, and 46
4 percent to 44 percent white or Latin inmates to draw a
5 sample, not systematically, but arbitrarily from the group
6 consisting of 54 inmates, four of whom are black, and 50 of
7 whom are white in order to determine the views and
8 perceptions of the inmates relating to conditions within
9 their environment?

10 A No.

11 Q That would not be a proper methodology?

12 A No.

13 Q What is wrong with it?

14 A Well, the first thing that would be wrong with it is
15 that we could not scientifically or statistically infer a
16 rate for the population based on the sample, so we just
17 would not be able to get any rate for the population that
18 would stand any kind of scrutiny from our colleagues, and
19 the second thing that would be wrong with it, the content
20 of the interviews would be coming from a very bias sample.
21 You would want a representative or random sample.

22 Q How, in view of what you previously told us about the
23 phenomenon of misperception of inmates of their
24 enviornmental surroundings, and situation, how must an
25 interviewer conduct interviews in order to overcome the

1 problem of misperception. What techniques are used, what
2 is used to determine the true underlying conditions?

3 A Well, the technique that I used myself, and I have
4 been trained to use, and I think the standard in the field
5 of victimology is to ask about specific incidents that
6 individuals have been involved in, and to get the
7 characteristics of those specific incidents, time, place,
8 who the participants were, not the names, but how many,
9 things like that, and then we would also want to know
10 something about the thoughts and feelings surrounding the
11 incident so we could get some psychological content, and
12 following that, we would tabulate the information which I
13 would call incident based firsthand information, and on
14 myself, and my work, I discount opinions or perceptions
15 about what goes on. I am only interested in the incidents
16 that individuals have been involved in, or not involved in.
17 It is just as important to know a person has not been
18 involved in an incident, and following that interview, I go
19 to the files, and tabulate the background of the character
20 of the individual from the files.

21 Q So the inmates are not relating what everybody knows,
22 quote, on the compound, but what they, themselves, directly
23 experienced?

24 A Yes.

25 Q Is there any scientific value or validity in a study

1 which consists of interviews drawn in the manner I
2 indicated, 54 inmates, 51 of whom are white, and four black
3 at an institution of 54 to 56 percent black, is there any
4 scientific value or validity in such a study which is used
5 in order for the researcher to draw general impressions of
6 the conditions at a facility based upon such interviews?

7 A Well, I think most victimologists would have trouble
8 with that method.

9 Q Have you had occasion to review Mr. -- Dr. Swanson's
10 notes on his interviews with the inmates in this particular
11 study?

12 A Yes.

13 Q In your view, does that particular study meet the
14 necessary scientific standards for validity and value?

15 A No, I would say it doesn't, because the sample was
16 not a random sample. It does not allow for statistical
17 inference as to any sort of rate in the population. I
18 would also say the data analysis method, relying as it did
19 on notes, allows for no liability check, and commonly in
20 this field, we have to have independent coders working on
21 some data base, and the best sort of data base in this
22 situation would be a tape recorded and transcribed
23 interviews that two independent coders would look at, and
24 that wasn't done either. I see problems with the data
25 collection, with the sample, as well as the data analysis.

1 Q Have you done work in the field of inmate feelings
2 and perceptions relating to their safety within the
3 compound?

4 A Say that again.

5 Q Have you done work relating to inmates' safety within
6 the compound, and their feelings of safety within the
7 compound?

8 A Studies in prison?

9 Q Yes.

10 A Yes.

11 Q What work have you done in that field?

12 A In the area of fear, you mean?

13 Q Yes.

14 A Well, the article that I wrote about protection in a
15 book called "Living in Protection" was a study of fear in
16 confinement, and then much of my book, I would say, is a
17 study of fear in prison. The book of prison sexual
18 violence, and since then I also wrote several articles that
19 have been published in books about inmates' reaction to
20 fear, inmates way of coping with fear, things of that kind.

21 Q Do suicide rates in prison bear any relationship to
22 inmate safety or apprehension of safety within a prison
23 environment?

24 A Yes. And, primarily, that is why the Justice
25 Department was interested in funding this research effort,

1 because there is a close relationship between fear and
2 suicide, or self injury in prisons, and fear-related crisis
3 are one of the major causes of suicide, or self injury in a
4 jail or prison.

5 Q Let me ask you to assume that since 1986 Glades
6 Correctional Institutional, which is an institution of
7 approximately 1200 inmates today, and for the past two
8 years, and previously an institution of about 900 inmates,
9 has had no suicides, does that tell you anything about the
10 perceptions of safety of the inmates within the
11 institution, or their perception of protection within the
12 institution?

13 A Well, sure, it is a pretty important piece of
14 information because if we were to go -- if I were to go to
15 a system that did have a number of suicides, I would ask to
16 look at the psychological autopsy, and I could probably
17 predict that some of them would be fear related. I think
18 it is an important piece of information, yes.

19 Q How does the rate of suicide or suicide attempts work
20 into the inmates' fear of their safety within the compound?
21 What is the connective link between those?

22 A Well, inmate crisis fall into various categories.
23 The category that I suppose I have contributed the most to,
24 in my work is what I like to call fear avoidance.

25 Fear avoidance crisis works something like this: A

1 prisoner is very afraid that someone is going to get him,
2 and once that person experiences that fear, they look out
3 in the environment, and they try to find some way to cope
4 with that fear, and if they can't readily cope with the
5 fear, then they develop the feeling that their faith is
6 inevitable, and they are going to be a victim very shortly
7 in the future, then what will go through their mind so as
8 to avoid that certain faith of being victimized, they will
9 then make an attempt on their lives because they feel that
10 they are going to be a victim anyway.

11 One prisoner said after he cut his wrist, and he
12 explained what was going on, he said I felt I was going to
13 be a goner, and when I explained this in presentations or
14 classes I give, I often say we have a couple common
15 examples, such as Jonestown massacre, recently, typical
16 faith avoidance crisis, fairly common correctional
17 institutions when you break inmate crisis down into
18 categories.

19 Q So that a low suicide rate or suicide attempt rate
20 within prison would be indicative of what?

21 A It would be indicative not of a lack of fear. It
22 would be indicative of an environment that either formally
23 or informally allows individuals an opportunity to cope
24 with the crisis, to do something about the situation, do
25 something other than suicide, have something else to turn

1 to.

2 Q Speaking of several other information of perception
3 in the prison environment, is there a perception among
4 inmates in respect to dormitory type facilities as opposed
5 to single cell facilities?

6 A Yes. And this perception is reported in a couple of
7 different studies. The results of the study, Notchi,
8 reported that perception, and Randy Atlas, in his '83
9 article, prison journal, also reported that perception,

10 Q And what is the misperception that inmates have of
11 the characteristic of danger as between dormitory
12 facilities, and single cell facilities?

13 A Prisoners generally perceive dormitories as being
14 unsafe environments.

15 THE COURT: Being what, sir?

16 THE WITNESS: Unsafe environment. You ask the
17 prisoners how they perceive the environment, and you have
18 prisoners with single cells and double cells. When you
19 compare the fear related concerns, or perceptions of people
20 in dormitories versus cells, people who live in
21 dormitories, perceive the environment as being more
22 dangerous than people who live in cells.

23 However, when you look at the actual rate of
24 incidents, you find that the incidents, surprisingly, the
25 incidents in dormitories is not necessarily all that much

1 higher than the rate of incidents in cells.

2 BY MR. DAVIS:

3 Q Do you have an opinion as to whether population
4 density in a facility has a tendency to increase violent
5 behavior within the institution?

6 A Oh, sure, I have an opinion on that, because for many
7 years I taught a course on violence, and that is one of the
8 things we look at. It is real interesting for the students
9 because they come into the class believing that population
10 density, or what we might call crowding is contributor to
11 violence, being most of the research on the field shows
12 that population density, per se, or crowding, per se, has
13 very little correlation with violence, and, of course, I
14 have looked at it specifically in the area of prison
15 violence, and one of the most surprising things to people
16 who don't spend a lot of time with the subject is that
17 prison crowding, population density, per se, is not
18 necessarily correlated with prison violence. Highest
19 population density in United States, New Jersey, pretty low
20 violent; Alaska, very high one, low population density.

21 Q You have had occasion to observe the facility at
22 Glades Correctional Institution?

23 A Yes.

24 Q And when was that?

25 A January 2nd.

1 Q Okay. And you have also had occasion to observe the
2 -- to review a range of documentation?

3 A Yes.

4 Q And what was that?

5 A You mean January 2nd, or since then.

6 Q Altogether with respect to this case?

7 A Well, let's see, I went over the incident reports
8 looking very carefully at 15 of them, and then I read
9 various depositions. I read over notes that Dr. Swanson
10 took during the course of his interviews while at Glades.
11 I looked at one representative inmate file to get a sense
12 of how the system forms, and what the system had, and I
13 looked at protection reports, and disciplinary reports.

14 MR. DAVIS: I have no further questions at this
15 time, Your Honor.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. AMLONG:

19 Q Good afternoon, Dr. Lockwood.

20 A Hello.

21 Q I presume that your review of the disciplinary
22 reports, the incident reports, and depositions, and Dr.
23 Swanson's notes all took place subsequent to the time that
24 I deposed you last night?

25 A Yes -- before that. You mean I looked at them before

1 we spoke last night.

2 Q And then you looked at them afterwards, right?

3 A A little bit.

4 Q Because you had not reviewed them before?

5 A Yes, I reviewed them before. We spoke last night

6 until 8 o'clock. There hasn't been much time.

7 Q Are you familiar with -- You toured Glades

8 Correctional Institutional?

9 A Yes.

10 Q And you went to the dormitories, and the minimum

11 security side, and dormitories in the maximum security

12 side?

13 A Yes.

14 Q Now, are you familiar with federal prisons? Have you

15 ever visited federal prisons?

16 A Yes.

17 Q How about North Carolina prisons, have you ever

18 visited North Carolina prisons?

19 A No.

20 Q What about the Philadelphia prisons-- Or, Temple

21 University is in Philadelphia?

22 A Yes.

23 Q Are you familiar with the prison there, and prison

24 there?

25 A I ran a project in the prison system there.

1 Q Is there anything about Glades Correctional
2 Institutional that impresses you as making it likely that
3 they would have -- that Glades Correctional Institutional
4 would have lower actual rates of rape than either the
5 federal prison system, North Carolina Prison System, or the
6 Philadelphia Prison System?

7 A We are talking about differences in time?

8 Q Well, are the studies about the federal prison
9 system, North Carolina Prison System, and the Philadelphia
10 Prison System relevant to the situation at Glades
11 Correctional Institution?

12 A Yes.

13 Q All right. Is there anything about Glades
14 Correctional Institutional that you observed that makes it
15 likely that there should be a lower rate of homosexual rape
16 there than was documented in the Notchi study, North
17 Carolina study, and the Philadelphia study?

18 A Well, let's see now. Notchi study was pretty close.
19 When you say lower, it is about the same, really. Now, the
20 federal prison system, 1979 did a pretty good job of trying
21 to make inmates safe. They were pretty much on top of
22 things, and sent out patrols, and training, and everything
23 else.

24 Maybe you think about as soon as you had minimal,
25 minimal acceptable standards for inmate safety that that is

1 the kind of rate that is going to prevail no matter what
2 you do.

3 As far as the Philadelphia system, that is
4 extraordinarily high rate. 2.5 percent, they are very high
5 rate. It was a scandal at the time, 1965, that primarily
6 prevailed because inmates were not protected.

7 Q What did the federal system do to protect its prison
8 inmates from rape?

9 A Well, the federal prison system is made up with
10 prisons with cells, and prisons with dormitories, and their
11 procedures would be to have the architectural setting --
12 set up so that the places where people sleep are generally
13 in view, and officers patrol around, so it is a combination
14 of architecture, and custody.

15 Q It is pretty important that officers patrol the
16 dorms, is it not?

17 A Yes.

18 Q And the architecture of the prison has a lot to do
19 with the safety, correct?

20 A Yes.

21 Q And when you went to Glades Correctional
22 Institutional, you walked through those dormitories, and
23 you walked back to the shower, correct?

24 A Yes.

25 Q And, the vantage point -- an officer who sits in the

1 wicket can't see into that shower area now, can he?

2 A That is correct, he can't.

3 Q In fact, he can't see into the shower area unless he
4 is standing about 15 feet from the shower area, is that
5 correct?

6 A Yes, as I remember it, you can get different angles
7 on different sides.

8 Q But he has got to be within a 15 foot radius of the
9 opening of the showerarea?

10 A Yes, as much as I remember. I don't have a diagram
11 or any pictures to really--

12 Q And the recreation room, when I say that, T.V. room,
13 and game room combined?

14 A As you look down that room to the left.

15 Q And in each dorm it is a little bit different, but
16 that is the room where they have the T.V., and game table.
17 You are familiar with that room?

18 A Yes.

19 Q I believe your assessment of that was that that room
20 was not observable, not policible to a guard unless that
21 guard was actually standing in the doorway, is that
22 correct?

23 A Yes, as much as I remember.

24 Q Now, and you also toured the protective confinement
25 area, did you not?

1 A Yes.

2 Q And you found that the protective confinement area
3 would be observable if there were one inmate per cell, and
4 a guard who would walk down there every half hour, correct?

5 A Say that again.

6 Q You found that the inmates in the protective
7 confinement area would be protectable, would be policable
8 if there were one inmate per cell, and if the guard were to
9 patrol down there every half hour, correct?

10 A I am sorry, that is a double barrel question. Would
11 you mind saying one at a time?

12 Q Sure, can the guard see -- can the guard in the
13 confinement area see into the individual cells in the
14 confinement area? I am talking about protective
15 confinement.

16 A Yes.

17 Q From his desk?

18 A No.

19 Q He has to walk down and look into the cells to be
20 able to see what is going on, correct?

21 A Yes.

22 Q And as long as there is one inmate per cell, that is
23 an okay way of doing it, right?

24 A Well, I don't understand.

25 Q If you have two inmates per cell, can the guard

1 sitting at the confinement area guard station adequately
2 view what is going on in those cells?

3 A You mean standing at the end?

4 Q Yes.

5 A No, he can't see what is going on.

6 Q And that is not protectable space, then, is it? An
7 inmate is not safe there if he is locked up in a cell with
8 another inmate?

9 A Well, all prison systems that are based on cells do
10 not allow for the--generally do not allow for officers to
11 look into the cells. The officer has to be, usually,
12 walking down and standing directly in front of the cell to
13 look into it. Regardless of whether it is one or two
14 around.

15 Q In protective confinement, the norm they are single
16 person cells, as opposed to two person cells, correct?

17 A Well, I don't know if you would say it is the norm,
18 some do, and some don't.

19 Q Well, you found that to be a failing of the Glades
20 Correctional Institutional system, did you not?

21 A Well, the ACA Standard recommends single cells for
22 protection.

23 Q During deposition, you told me that would be a
24 negative?

25 MR. DAVIS: Could counsel allow the witness to

1 finish?

2 MR. AMLONG: I thought he had.

3 THE COURT: Finish up if you haven't, please.

4 THE WITNESS: Where are we again?

5 BY MR. AMLONG:

6 Q Did you have anything more that you wanted to say? I
7 did not mean to cut you off.

8 A Let's see. Protection, single cell versus double
9 sell?

10 Q Yes.

11 A What we talked about last night?

12 Q Yes. You found it to be a negative that they were
13 double bunking in the protective confinement cells?

14 A Yes. I was confused by the use of the word norm.
15 Norm, I would have to do a majority.

16 Q Okay. Within your discipline there is a higher
17 probability that some rape occurs -- involuntary homosexual
18 rape occurs in a prison setting than that no rape occurs,
19 is that correct?

20 A Could you ask that again?

21 Q All right. Is it probable that some rape occurs in
22 the prison setting?

23 A That is a question?

24 Q Yes.

25 A Yes.

1 Q So --

2 A Well, depends on the State now. It is different
3 state-by-state. Vermont, for example, if you ask me a
4 question about Vermont. I would say not too--

5 Q Is there anything about Glades Correctional that
6 would make you think it is improbable that any rape would
7 occur there?

8 A Is it improbable that sexual battery would occur
9 there?

10 Q Yes.

11 A No, no, it is not.

12 Q The flip side of that then is that it is probable
13 that some level of sexual battery would be occurring at
14 Glades Correctional Institution?

15 A Yes, I would say because of the region. It is -- the
16 area that it is in. It is warm.

17 Q And also the predominant black population has a lot
18 to do with it, too, does it not?

19 A Yes.

20 Q Because most targets of sexual aggression is white,
21 and most aggressors are black, is that correct?

22 A Yes, the study that I have done shows that.

23 Q And whites are chosen as targets because the
24 aggressors see them as weak and attractive, is that
25 correct?

1 A Yes, sounds familiar.

2 THE COURT: You said? I didn't hear you.

3 MR. AMLONG: He said sounds familiar.

4 THE COURT: All right.

5 BY MR. AMLONG:

6 Q And blacks are the aggressors because black prisoners
7 tend to be offenders from subcultures and aggressive while
8 they are incarcerated, is that correct?

9 A Yes.

10 Q And the environment of a prison place a significant
11 part in encouraging sexual aggression?

12 A Yes, the environment is very important.

13 Q And whatever the perceptions or misperceptions that
14 you discussed, dormitories, cottages, and similar, quote,
15 indefensible, unquote, spaces are among the factors found
16 to contribute to prison rape, is that correct, doctor?

17 A Now, I would say that I had that opinion when I wrote
18 the book. Since writing the book--that was 1980. Since
19 writing the book, I've read Notchi's study. I read Randy
20 Atlas' study. These are about dormitory situations, and I
21 would say that just based on looking at the facts and their
22 studies, my opinion on that has changed.

23 Q Well, that is studies other persons have done?

24 A Pardon?

25 Q That is from studies that other persons have done,

1 correct?

2 A You mean that has caused me to change my opinion on
3 that?

4 Q Yes.

5 A Yes. Because--

6 Q The only investigation that you did found that
7 prisons with single cells, about 25 percent of the men had
8 been targets of broader sexually victimizing incidents, but
9 only one out of the random sample of 76 had been raped, is
10 that correct?

11 A Yes.

12 Q Now, when you talk about the perception of prisons as
13 being worse than they are, you don't mean to suggest that
14 an inmate would misperceive a homosexual rape that he
15 actually witnessed, do you?

16 A Well, what do you mean by actually witnessed?

17 Q Well, if an inmate were to testify, I saw people come
18 to a bunk and take somebody out of a bunk, and take him
19 into the washroom, and bend him over the shower and rape
20 him, that is not the kind of thing that is misperceiving,
21 is it?

22 A If you are asking me am I likely to believe an
23 informant or respondent, I would have to answer the
24 question by saying that I would have to talk to that
25 individual myself, preferably in a private room. I have to

1 have the opportunity to see demeanor, to ask some probing
2 questions to try to get at not only if the person was not
3 telling the truth, but whether the person actually saw what
4 he was reporting, yes. Otherwise, I could not make the
5 judgment, I am sorry.

6 Q Now, in your comments about the absence of suicide at
7 Glades Correctional Institution, indeed that is the case,
8 an absence of suicide does not measure the absence of fear
9 among the inmates, does it?

10 A No.

11 Q An absence of suicide does not measure the likelihood
12 or unlikelihood of homosexual rape, does it?

13 A No.

14 Q Doctor, how many times before have you testified as
15 an expert witness?

16 A Once before.

17 Q And where was that, and what was the subject matter
18 of your testimony?

19 A That was Texas case, and the subject matter of the
20 testimony had to do with the effect of explicit homosexual
21 literature on prisoner violence.

22 Q And you testified that the -- that providing male
23 prisoners with explicit homosexual pornography increased
24 violence?

25 A No. I only testified about the content of my book to

1 try to map a general picture of prison sexual aggression in
2 a typical prison in the United States.

3 Q There has been no research done of which you are
4 aware on whether or not male sexual aggression is heightened
5 and provoked by the exposure of prison inmates to boy/girl
6 pornography, has there?

7 A You are talking about any research done with a prison
8 population?

9 Q Yes.

10 A Any experimental, prison population about the effect
11 of pornography on prisons?

12 Q Male, female?

13 A To my knowledge, no. I am not really an expert in
14 this area. As I told you, I did take a course on that
15 once.

16 Q Yet you have found --

17 A I really don't think so. No, I don't think you could
18 do it.

19 Q Okay. But you have found that male prisoners who
20 rape other male prisoners see themselves, portray
21 themselves, the rapist, as being heterosexual men who are
22 having sex with some other inmate whom they have
23 effeminated, who they consider to be a woman, is that
24 correct?

25 A That is correct?

1 Q Is that correct?

2 A That is correct.

3 Q Now, when you visited Glades Correctional
4 Institutional, one of the things you asked Mr. Lambdin
5 about was about how people got into protective confinement,
6 correct?

7 A Yes.

8 Q Because access to protective confinement is an escape
9 valve for fear, correct?

10 A Yes.

11 Q And it is important that protective confinement not
12 be punitive, correct?

13 A Well, to a degree. I don't know, really, if it is in
14 the best interest of everyone involved to make protective
15 confinement perfect in all respects.

16 Q Well, you told me last night, did you not, that
17 causing prisoners to lose gain time, to lose good time
18 while they were in protective confinement, is not good, you
19 remember that?

20 A Yes.

21 Q Is it fair to say one reason for the difference
22 between the actual rate of homosexual rape, and the known
23 rate would be that significant disincentives exist for an
24 inmate to report that he has been homosexually raped?

25 A What do you mean by disincentive.

1 Q Negative things that happen to an inmate if he
2 reports he has been homosexually raped?

3 A Yes.

4 THE COURT: Some time long about now we ought
5 to take a mid-afternoon recess. I don't know whether this
6 is a good time or not. What do you think?

7 MR. AMLONG: We could take one now, Your Honor.
8 Probably better to take one now.

9 THE COURT: Let's take 10 or 15 minutes here.

10 (Thereupon, a short recess was taken.)

11 THE COURT: All right. Mr. Amlong.

12 BY MR. AMLONG:

13 Q Doctor Lockwood, many men in prison believe that the
14 victim of a sexual assault becomes a homosexual through
15 that event, don't they?

16 A Yes.

17 Q Are you familiar with what is called the rape trauma
18 syndrome?

19 A Yes.

20 Q And that was first documented by the nurse and
21 sociologist name Burgess and Holstrom in '74, and they
22 wrote a book called "Rape Victims of Crisis"?

23 A Yes.

24 Q The sytoms of the rape trauma syndrome which occurs
25 immediately after the events those symptoms include

1 physical pain, and changing in sleeping, and eating
2 patterns, correct?

3 A Yes.

4 Q And following the acute stage, rape victims report
5 long term changes in their lifestyle, is that correct?

6 A I am not sure about the long term. I don't know.

7 Q Well --

8 A You are asking me, do they say that there are long
9 term changes?

10 Q Yes.

11 A I would say from my reading of the book that the
12 reaction differs quite a bit among the people who they
13 looked at.

14 Q When you wrote your chapter on the contribution of
15 sexual harassment to stress, and coping, and confinement,
16 you quoted Burgess and Holstrom saying following acute
17 stage, rape victims report long term changes in lifestyle,
18 did you not?

19 A Yes, but it doesn't mean that all have reported that
20 according to their book.

21 Q Well, those rape victims describe dream content in
22 which recurring themes are being victimized, and those
23 themes are accompanying by dreams of committing acts of
24 violence on others, is that true?

25 A I would say again by reading the book which describes

1 the experiences of a number of victims of heterosexual rape
2 in the free world, experiences varied among them.

3 Q And you do feel that referring a prison rape victim
4 to the mental health unit for some psychological evaluation
5 would be a pretty good idea, don't you?

6 A Yes, it is a pretty good idea.

7 Q Okay.

8 MR. AMLONG: Nothing further, Your Honor.

9 THE COURT: Any redirect?

10 MR. DAVIS: A few questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q Doctor Lockwood, counsel asked you if men in prison
14 believed that rape altered their sexuality?

15 A Yes.

16 Q What is the reality?

17 A The reality is that in my research, I have not
18 encountered a single case where sexual identity was changed
19 as a result of sexual battery. Other studies, such as
20 Notchi, I find the same thing.

21 Q Is that another one of the myths or misconceptions
22 which is current among prison population?

23 A Yes, it is a common myth among the prison community.

24 Q What are the long term effects that have been found
25 and identified in prison homosexual rape victims, that is

1 actual long term effects, not perceived long term effects?

2 A What do you mean by long term? How long?

3 Q Why don't you define the term, and tell us?

4 A Okay. I would say research I have done shows that
5 the effect of the experience begins to diminish as time
6 goes on. Time is the best cure for it. As time goes on,
7 the effect diminishes, and, in my opinion, after a period
8 of three to five months, provided the person is living in a
9 protective environment, fear is not a current concern, that
10 psychological equilibrium, equilibrium is essentially
11 restored after a period of three to five months.

12 Now, there is a variation on it, and for some people
13 it can be less than that. There is a lot of variation on
14 it.

15 Q Okay. Now, counsel also alluded to the factors that
16 may effect the incidents of rapes in a particular
17 institution. Is a mixture of cultures a factor which plays
18 a role in the incidents of rapes?

19 A Yes, my work shows that, and other work does, also.

20 Q So that institutions which have populations that
21 evidence cultural heterogeneity would be expected to show
22 higher rates of sexual battery absent other influencing
23 factors than those institutions with cultural homogeneity?

24 A Yes.

25 Q And what do we mean by cultural heterogeneity?

1 A By cultural heterogeneity, I would say we are
2 considering a prison environment that has people from small
3 town rural areas, and other people from big cities, and a
4 prison also that has blacks, whites, hispanics, people from
5 different backgrounds, different cultures, different
6 attitudes towards violence.

7 Q There was also a question asked you about the non-
8 report of rape, and the reasons for non-report of rape.
9 Have there been studies done on what reasons exist for the
10 non-report of rape by sexual assault victims, or sexual
11 battery victims?

12 A You mean in the free world or prison?

13 Q Either.

14 A In the free world, we have pretty good data for that.

15 MR. AMLONG: Your Honor, I object to the
16 relevance of this.

17 THE COURT: I don't think it is irrelevant.
18 The objection is overruled.

19 THE WITNESS: In the free world, we have real
20 good data on that. It comes from the National Crime
21 Survey, which I described earlier. That is self report,
22 victimizations survey where women in households were asked
23 if they were a victim of a forcible rape, if they reported
24 it. If they didn't report it, they were asked why, and the
25 reasons that typically emerge about 10, 12 percent of the

1 women said that they didn't report it because they did not
2 trust law enforcement officials. They felt they were
3 ineffective, and did not trust them.

4 About 20 percent of the women through the National
5 Crime Survey say that they did not report it because they
6 feared retaliation. Fear of retaliation was a major
7 factor, and then about 13 percent according to the NCS,
8 National Crime Survey, said they did not report it because
9 it was a private matter. They said it was a private
10 matter, and would deal with it themselves.

11 Q Counsel also asked you an opinion about double
12 bunking, and his first question addressed the question of
13 whether double bunking in a confinement, protective
14 confinement facility violated the norm, and was it your
15 testimony that in respect to the norm that that does not
16 violate the norm?

17 A When I heard the word norm I started to think is it
18 normal, or abnormal. It is my understanding that there are
19 quite a few correctional systems that do have protection as
20 double bunking, and many others that don't.

21 So, if norm means it is abnormal, it is certainly not
22 abnormal.

23 Q Okay. Though it was your opinion that it was
24 contrary to the recommendations of the ACA?

25 A Yes, as far as I know.

1 Q But not contrary to the norm?

2 A Right. Correct.

3 Q In your tour of the dormitory facilities at Glades
4 Correctional, did you arrive at any perceptions as to the
5 adequacy of the safety, as it might be perceived by inmates
6 in the dormitory facility, with the open bunking situation
7 as it exists today at Glades Correctional with patrolling
8 officers in the dormitory?

9 A Now, I was only there during the daytime.

10 Q Right.

11 A You want me to answer the question what I saw during
12 the daytime?

13 Q Right.

14 A When I was there during the daytime, I observed that
15 most of the area was visible. There weren't a lot of
16 clothes lines running across the room, and that, also,
17 inmates, apparently at least at that time, were not allowed
18 to create private areas for themselves, using improvised
19 materials, such as a blanket, or something like that.

20 Q When you say there weren't a lot of clothes lines,
21 you mean there weren't any clothes lines?

22 A I didn't see any clothes lines, anything like that,
23 so sight lines were complete.

24 MR. DAVIS: I have no further questions. Thank
25 you.

1 THE COURT: Thank you, Dr. Lockwood, you may
2 step down.

3 (Witness excused.)

4 THE COURT: Another witness?

5 MR. DAVIS: Yes, Chester Lambdin.

6 CHESTER LAMBDIN, DEFENSE WITNESS SWORN

7 THE COURT: State your name.

8 THE WITNESS: Chester Lambdin.

9 DIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q Mr. Lambdin, could you tell us where you reside?

12 A 500 Orange Avenue Circle, Belle Glade, Florida.

13 Q By whom are you employed?

14 A Florida Department of Corrections.

15 Q What is your position?

16 A Superintendent at Glades Correctional Institution.

17 Q Could you give the court a brief resume' of your
18 background?

19 A Yes, I started in 1965 with the department as a
20 Correctional Officer 1 at Glades Correctional Institution.

21 Q What is a Correctional Officer 1?

22 A Entry level officer.

23 Q Is that kind of a private in the rankings?

24 A That would be similar to a private, yes.

25 Q If it were a military institution?

1 A Yes. I worked all areas at Glades that a
2 correctional officer would normally work. I work
3 dormitories, patrol the tours, compound, whatever I was
4 called upon to do. I was promoted, 1967 to sergeant, and
5 worked 7 years as a sergeant at Glades.

6 THE COURT: As a what?

7 THE WITNESS: Sergeant.

8 THE COURT: All right.

9 THE WITNESS: I worked normal duties of a
10 sergeant. I supervised dormitories, patrolling, any other
11 duties that would be part of the sergeant's duties at that
12 institution. I was promoted as lieutenant, and served as a
13 shift supervisor at Glades for two years, and '76, January,
14 '76, I transferred to Brevard Correctional Institution in
15 Starks, Florida, and I worked six, seven months, and I was
16 promoted to chief correctional at Hillsboro, Tampa. I was
17 chief for five years, and '81, was promoted to assistant
18 superintendent at Polk Correctional Institution, Polk City,
19 Florida, served for approximately two years as assistant at
20 Polk, promoted to superintendent at Dasota Correctional
21 Institution in Arcadia in '84, and in December 16, 1985, I
22 was appointed superintendent at Glades, and I have been at
23 Glades since.

24 BY MR. DAVIS:

25 Q What is your educational background?

1 A I have an Associate Degree in corrections, Bachelor
2 of Arts in -- and Master of Arts in adult education, two
3 year public manager certification from Florida State
4 University.

5 Q And you became superintendent of Glades what date?

6 A December 16th, I was officially appointed. I didn't
7 get involved. It was over the holidays, and I didn't
8 arrive until January, officially. I was appointed December
9 16, '85.

10 Q And since the time that you were appointed
11 superintendent, did you make an effort to survey the prison
12 which was your assignment?

13 A Yes, I did.

14 Q And what did you do in the course of that
15 familiarization?

16 A The first thing I did is take a complete tour of the
17 institution on the same day that I was appointed. Arrived
18 at the institution just to look around, and tour the
19 facility, to meet the employees, and inmates, and generally
20 try to commence familiarization process of the institution.

21 Q Who was your immediate predecessor?

22 A Randall Music.

23 Q And what subsequently did you do after taking your
24 position as superintendent in respect to the management of
25 Glades Correctional?

1 A Well, of course, I reviewed all of the institutional
2 operating procedures. All the department directives. I
3 was fairly familiar with the department directives already,
4 but I reviewed all the institutional operating procedures
5 to determine to the best of my ability what we did, how we
6 did it, what needed to be done, what I needed to do to get
7 started.

8 I had to first familiarize myself, because I had been
9 gone for 11 years.

10 Q Okay. How is Glades Correctional organized
11 structurally for the staff?

12 A We have an assistant superintendent for programs that
13 is over the education, all of the program areas. We have
14 assistant superintendent for operations who is in charge of
15 the security department, maintenance, and things that deal
16 with the operation of the institution, and then I supervise
17 the personnel and business functions, and I jointly -- I
18 don't -- I don't supervise the medical department, per se,
19 because they are supervised by the Department of Health
20 Services in Tallahassee. I have input into their
21 operation.

22 THE COURT: What was your last comment about --
23 I didn't hear you there. You say you don't supervise the
24 medical facility, that is done out of Tallahassee?

25 THE WITNESS: I supervise operational

1 decisions. I am not authorized to make medical decision.

2 A medical decision arises, and the chief health officer
3 would consult with the regional director, and the chief
4 officer in the regional office. On an operational scale,
5 non-medically, I supervise.

6 THE COURT: All right.

7 BY MR. DAVIS:

8 Q You indicated that there are two areas of operations
9 that are under your direction. Is the administration of
10 Glades Correctional broken down into departments?

11 A Yes, it is.

12 Q What are those departments?

13 A Those departments consist of the security department.
14 That is the largest department.

15 Q Who is that headed by?

16 A Col. Edward Pipta.

17 Q Okay.

18 A We have, of course, business department head,
19 personnel manager who is a department head. Maintenance
20 supervisor that is in charge of all the maintenance at the
21 institution, education program manager who is in charge of
22 the academic, vocational programs, and they contract with
23 the board of education for Palm Beach County to provide
24 areas, academic programs for the institution.

25 We have a recreation therapy director that is in

1 charge of all the recreational activities at the
2 institution, and, of course, medical department headed by
3 the chief health officer and he has a staff physician under
4 him, and various other nurses, about 37 people altogether
5 in the medical department and medical unit, psychiatric,
6 psychology.

7 Q With the exception of finance and personnel which are
8 under your direct control, is that correct?

9 A That is correct. They are all indirectly under my
10 control.

11 Q Those two report --

12 A Those two report directly to me, and also the
13 institutional inspector reports directly to me.

14 Q The other departments report through the assistant
15 superintendents?

16 A Yes.

17 Q Who are they?

18 A Assistant superintendent for operations Willie Floyd.
19 Assistant superintendent for programs is John Townsend.

20 Q All right. And approximately how many correctional
21 staff are there? When we speak of correctional staff, we
22 are speaking of the security department, is that correct?

23 A Correction staff would involve any employee. I would
24 refer to it as correctional, security staff.

25 Q Security staff. How many security staff are there at

1 Glades Correctional?

2 A 237.

3 Q 237 at the present time?

4 A Yes.

5 Q What is the authorized compliment for Glades?

6 A The authorized compliment is 237, and I haven't
7 checked this week. I have been busy, simply not been
8 there, but we have been within one or two of the maximum
9 level for sometime.

10 Q So that the Glades Correctional is currently, today
11 fully staffed?

12 A They are fully staffed with the exception someone may
13 have transferred recently. We are essentially at full
14 staff, and have been for a considerable period of time.

15 Q When you took over Glades Correctional, do you know
16 how many inmates were housed there?

17 A The maximum capacity was 886.

18 Q And --

19 A That is maximum capacity authorized by the Federal
20 Court.

21 Q And you are speaking of the court in Costello?

22 A Yes. They outlined precisely how many inmates we are
23 able to house as well as all other institutions in the
24 State of Florida, depending on the square footage, and a
25 lot of complicated measurements which I am not totally

1 familiar, but they authorize 886.

2 Q And do their authorizations which you must abide by
3 pertain to each dormitory at Glades Correctional?

4 A They tell you precisely how many inmates you can have
5 in each and every dormitory in the State of Florida.

6 Q Does that pertain to the number of inmates you are
7 allowed to have in the confinement areas as well?

8 A Yes.

9 Q Do they control the capacity of the protective
10 confinement area?

11 A Yes.

12 Q And is that under the direction and control of the
13 court in Costello?

14 A Yes, it is. They authorize ex-number of inmates for
15 every cell, and every square inch of dormitory housing,
16 cellblock housing in the State of Florida.

17 Q And what is that authorization with respect to
18 protective confinement?

19 A We have 16 beds in protective confinement.

20 Q How many cells?

21 A Eight. We have two beds per cell.

22 Q And that arrangement is the arrangement authorized by
23 the Federal Court?

24 A Yes, it is.

25 Q Now, in addition to the security staff, what is the

1 other staffing at Glades Correctional? You have indicated
2 237?

3 A We have about 350.

4 THE COURT: You mean beside 237 security
5 people?

6 THE WITNESS: No, sir, the total number is
7 approximately 350 which 237 would be security.

8 THE COURT: Okay.

9 BY MR. DAVIS:

10 Q When you took over at Glades Correctional, do you
11 recall what the training requirements were for correctional
12 officers at Glades?

13 A Correctional officers must attend a 40 hour trainer
14 program when they are initially hired.

15 Q Was this in effect when you took over?

16 A Yes.

17 Q And --

18 A In addition to that, they have to complete a
19 Correction Standards Academy the contents of which,
20 curriculum is governed by the State of Florida Division of
21 Criminal Justice Standards and Training.

22 Q Where is that held?

23 A At Palm Beach Community College, Glades--

24 Q Does that academy have faculty that teach?

25 A They have some of their faculty, some outside

1 faculty, some prison people, and some variety of people
2 that teach the courses. They all have to be certified
3 through the Criminal Justice Training Standards, and meet
4 the Community College Standards for instructors.

5 Q And what was the training requirement in hours when
6 you took over. After the basic unit of 40 hours?

7 A It is constantly changing somewhat. I believe it was
8 in excess of 400 hours. To be precise to the hour, I am
9 not certain. It is in excess of 400.

10 Q Has it increased since the time you took over?

11 A Yes.

12 Q Do you know what the current number of hours is
13 prescribed for the course?

14 A I believe 481. I am pretty sure that is within the
15 hour or two.

16 Q Do you know what the required number of hours within
17 the State of Florida is?

18 A In order to be certified?

19 Q Yes.

20 A It is considerably less than that. I think it is in
21 the neighborhood of the 420 that you have, Palm Beach
22 Community College, and UCI have about 480.

23 Q In addition to the basic, or initial of 40 hour
24 training program, and then -- the initial training program
25 of 40 hours, and the basic training program of 480 hours,

1 what other training is given to the correctional staff at
2 Glades Correctional?

3 A We have a comprehensive inservice training program.
4 Staff members receive 40 hours of training annually. About
5 20 to 25 of those hours are mandatory type classes. We
6 have a lot of medical related training that the court says
7 that all correction people in Florida must do. We have
8 training in suicide prevention and awareness and use of
9 force, stress related classes, and runs the whole gamut of
10 training.

11 Q Does the training include courses in interpersonal
12 relationships?

13 A Yes, it does.

14 Q And in addition to the required courses, are there
15 any self-improvement type courses that are available to the
16 correctional staff?

17 A Yes, there are. They are called career development
18 courses, and they are generally taught at the Palm Beach
19 Community College, just enables correctional officer to
20 what like it sounds like, career development.

21 Q Since the time you took over the population has
22 increased at Glades Correctional?

23 A Yes, it has.

24 Q What is the current population?

25 A We are currently authorized by the court to have 1217

1 inmates.

2 Q All right. Do you know what today's population is at
3 GCI?

4 A No, I don't. It is in the neighborhood of 1200, give
5 or take 5 or 10. We lose 20, 25 a week, and gain 20, 25 a
6 week. In the neighborhood of 1200.

7 Q Okay. In order to accommodate those inmates, what
8 provisions have you made?

9 A We constructed one dormitory, and converted a canning
10 plant into two additional dormitories.

11 Q This is in what is referred to as the north compound?

12 A Yes.

13 Q The north compound has a certain security
14 designation?

15 A We house minimum, medium, custody inmates on the
16 north compound.

17 Q What about the main compound, the older?

18 A Minimum, medium, and close.

19 Q What is meant by the categories of custody, minimum,
20 medium, close, and, also, maximum custody? Explain what
21 those mean to the court?

22 A I will start with maximum, then, that is the highest
23 level of custody in the system. Florida State Prison, for
24 example, is a maximum custody institution. Broward
25 Correctional Institution for females is also maximum

1 security institution. All other institutions to my
2 knowledge, we have about 40, 42, I believe, are close
3 custody, from close, down.

4 Q What about Martin, does Martin have maximum security?

5 A Yes, Martin I believe they have some. I think they
6 have a combination. I have never been to Martin. I think
7 they have a combination.

8 Q What does maximum security mean?

9 A Maximum security means that you, literally, it is
10 almost a lock down situation all the time.

11 Q And what is the next custody classification of close
12 custody?

13 A Close custody simply means if you take an inmate
14 outside the perimeter fence at any institution, if he is in
15 close custody, he must have armed supervision.

16 THE COURT: Armed what?

17 THE WITNESS: Armed supervision.

18 BY MR. DAVIS:

19 Q What is medium?

20 A Medium custody inmates can be taken outside the
21 perimeter fence under supervision of an officer. He does
22 not have to be armed. He simply accompanies the inmate,
23 and the inmate remains within sight and sound of that
24 officer.

25 Q What about minimum?

1 A Minimum custody inmates may be checked out, and
2 assigned to work details, unsupervised for short period of
3 time. They are the lowest custody in terms of the
4 propensity to escape, and that is really what custody is
5 all about.

6 Q You refer to custody as concerning propensity to
7 escape. Does it have anything to do with the propensity or
8 likelihood that a particular inmate in a particular
9 category will commit acts of violence?

10 A Not particularly.

11 Q Does it have any reference to the crime that the
12 inmate may have committed that got him into prison?

13 A Custody is determined -- inmates' propensity to
14 escape is determined by length of sentence, time served on
15 the sentence, how much time he has left to serve. The type
16 of crime that he committed is an element in it.

17 Basically, how much time has he served, and how much
18 time does he have left, and are there any factors such as a
19 domestic problem at home, or something that would cause an
20 inmates' custody to be raised.

21 If an inmates' wife, for example called, or talked to
22 him, and told him that she was divorcing him, and he would
23 never see her again, then that inmate, even though he might
24 have 30 days to serve becomes close custody, because he
25 wants to go home.

1 Q And in respect to the custody classification, if an
2 inmate has committed a nonviolent crime, for instance, such
3 as possession of narcotics, and has just arrived at the
4 institution, just arrived in the prison system, what would
5 his custody classification be?

6 A Custody classification will normally be close. If he
7 arrives, often times, in a less than close custody status,
8 we would raise the custody after reviewing the background
9 of the inmate to closely observe him for a period of time
10 to insure that he really deserves to be in a reduced
11 custody status, and we simply reduce him back, if he
12 deserves to be reduced.

13 Q Why is it that the north compound is restricted to
14 medium and minimum security inmates?

15 A It is restricted to medium and minimum security for
16 one reason, and one reason only. The security systems we
17 have on the north compound, they are not, in my opinion,
18 and I am the person who has to answer if somebody escapes,
19 in my opinion security arrangements are not quite as strong
20 on the north compound as they are on the main.

21 The principal reason is it is not quite as strong has
22 to do with the dormitories. We don't have bars on the
23 windows, for example, and an inmate can get out of the dorm
24 and leave more quickly than he could on the main compound,
25 and the perimeter fence. The way the razor wire, and

1 electronic devices in the fence, it is just not quite as
2 secure in terms of keeping the inmate inside the fence as
3 the main.

4 Q When you speak of the security measures not being as
5 stringent as those on the main compound, are you speaking
6 of the security measures to prevent the inmate from
7 escaping, or security measures to prevent inmates from
8 doing that which they are forbidden to do?

9 A It has nothing to do with what inmates are forbidden
10 or not to do. Simply at the time we designated it as a
11 medium, minimum custody, it was simply because the inmate
12 was more likely to make a successful escape from the north
13 compound than the main.

14 Q And do you recall if at the time that you became
15 superintendent at Glades Correctional all of the
16 correctional staff positions were filled?

17 A I don't know the percentage that weren't, but I know
18 they were not all filled, a considerable number of them
19 were not filled.

20 Q All right. And in addition, have there been changes
21 in the pay scales of correctional officers since you
22 arrived at Glades Correctional?

23 A Yes.

24 Q Is there a base pay scale which all officers receive
25 in the State of Florida at particular positions?

1 A Yes, there is.

2 Q Has that increased since you came to Glades?

3 A The base has increased, and in addition to that,
4 correctional officers in South Florida in Dade, Broward,
5 Palm Beach counties, in particular, there are two other
6 counties, Dade, Broward, Monroe, I believe, and then Martin
7 County, they receive \$5,000 annually more than correctional
8 staff in other parts of the State.

9 Q \$5,000 supplement?

10 A Yes, so the competitive area, differential based on
11 the cost of living in South Florida versus the cost of
12 living in North Florida.

13 Q Have the increases in the salary of the correctional
14 staff occurred since 1987 when the American Correctional
15 Association audit was taken at Glades Correctional?

16 A The bulk of the increases have been after '87. I
17 think we had a small increase, and then incremental
18 increases. I couldn't tell you the month the raise
19 occurred, but the bulk of the raise has been since '87.

20 Q And what has that done in respect to the
21 competitiveness of Glades and its ability to attract
22 correctional officers of competence and good character in
23 competition with the other correctional or police agencies
24 in the relevant area?

25 A Well, first of all, before I answer that, I would

1 like to say I think it needs to be said that Glades has
2 very competent, very professional, very sensitive staff. A
3 lot of them have been there for many, many years, and have
4 done an excellent job over a long period of time under
5 difficult circumstances.

6 Q Would Sergeant Nappi be an example?

7 A Sergeant Nappi would be an example, and we have many
8 people there 30 years down, and do an excellent job, and
9 should be commended for that job; however, any time you pay
10 more salary, I think salary is one of the variables that
11 enable you to higher better people in competition with
12 other law enforcement agencies, and we are competitive with
13 the law enforcement agencies in Palm Beach County.

14 Q There was discussion by Mr. Frey this morning about a
15 situation in '87 where the salaries being paid were not at
16 that time regarded being competitive with the other law
17 enforcement agencies. Are you familiar with the comparison
18 between the other law enforcement agencies in the relevant
19 area, and Glades Correctional?

20 A Yes, I am. We draw the staff, generally speaking,
21 from the City of Pahokee, City of Belle Glade, cities of
22 South Bay, and Clewiston. Some in Hendry County, but those
23 four cities generally are the area that we draw the staff
24 from.

25 We pay more than Hendry County. We pay more than the

1 South Bay Police Department, more than Belle Glade,
2 slightly, more than Pahokee Police Department, and we are
3 slightly behind the Palm Beach County Sheriff's Office.

4 But in addition to the salary, a lot of staff at
5 Glades also get housing, bachelors stay in bachelor
6 quarters for \$10 a month. We have 14 housing units that
7 supplement salary, so we are very competitive, and would
8 pass the standards.

9 Q Are you familiar with the educational background of
10 the staff at Glades Correctional at the present time?

11 A Yes, I am. We did -- Personnel did a survey on
12 educational backgrounds, and I don't have it in front of
13 me, but I have it there.

14 Q Let me show you this, and ask if that is the survey
15 that you refer to?

16 A Yes.

17 MR. TUCKER: Mr. Davis, may I see a copy of
18 that document, please. Your Honor?

19 THE COURT: Yes, of course.

20 MR. TUCKER: Thank you.

21 THE COURT: Have you got an extra copy for
22 them?

23 MR. DAVIS: I have one extra copy which we need
24 two copies.

25 THE COURT: We can make one for him here pretty

1 quick if they need it right now.

2 BY MR. DAVIS:

3 Q Let me ask you if that survey applies only to the
4 correctional officers, or if it applies to the entire
5 staff?

6 A It applies to the correctional officers only.

7 Q And that survey is as of what date?

8 A It was taken just a few weeks ago, and there is no
9 date on it, so I couldn't be precise when they did it, but
10 it was done in December.

11 Q And out of the 237 staff in the correctional
12 department, does it indicate how many are holders of
13 college degrees?

14 A Yes, it does.

15 Q And what is that?

16 A We have 13 that have BA, or BS Degrees in the
17 security department, one post graduate. Five officers that
18 have had three years. 37 officers that have A.S. Degree,
19 and we have 41 that have anywhere from zero to two years of
20 college.

21 Q And are all of the members of the staff required to
22 be at least high school graduates?

23 A Yes.

24 Q I notice on the survey that it indicates career
25 development courses, 10,560. What does that refer to?

1 A That means out of the 237 correctional officers a
2 total of 10,560 hours of career development work for an
3 average of 45 hours per officer.

4 Q Is that additional criminal justice training over and
5 above the required training for the officers?

6 A Yes, that is correct.

7 Q And survey also indicates prior work experience.
8 What was that?

9 A We have 78 officers that have -- are graduates of the
10 military. They served a term in the military.

11 MR. TUCKER: Your Honor, if counsel is going to
12 introduce this document into evidence, I believe that it
13 speaks very clearly for itself. It is quite readily
14 ascertainable as to what information is contained in this
15 document.

16 MR. DAVIS: I think it will take one second to
17 go over it.

18 THE COURT: You can run over it. I suppose you
19 are going to offer it.

20 MR. DAVIS: Yes, Your Honor.

21 BY MR. DAVIS:

22 Q And it also indicates prior state employment?

23 A Yes, 54.

24 Q Is that normally other law enforcement agencies, and
25 the like?

1 A Yes.

2 Q And then the second page refers to the longevity of
3 the correctional staff?

4 A Yes.

5 Q And you've broken it down into various class titles.
6 What is the first one there?

7 A The first one is the colonel, and he is the chief of
8 security.

9 Q Is that Col. Pipta?

10 A Yes.

11 Q How long has he been in service?

12 A Fifteen years.

13 Q And then there is an indication of two majors. What
14 is the position of major?

15 A Colonel is the Chief Correctional Officer 2, and
16 major is Chief Correctional Officer 1. We have a major
17 that is in charge of the north compound, and we have
18 another major that will soon be in charge of a work camp
19 about a mile away from the institution.

20 Q Okay. Does the colonel have direct jurisdiction over
21 the main compound?

22 A He has direct jurisdiction over all of them.

23 Q All right. Perhaps I should say, does he have the
24 supervision over the main compound that the major has over
25 the north compound as well as his duties of supervising the

1 entire--

2 A Yes.

3 Q And the average years in service for the majors?

4 A Sixteen.

5 Q Of the captains, what is the number, and average
6 years of service?

7 A Five captains, average 11 years of service.

8 Q And the lieutenants?

9 A Seven lieutenants, with average of fifteen years of
10 service.

11 Q Position of sergeant, which is, I suppose, the line
12 supervisory officer, basic supervisory officer?

13 A Yes, it is. We have 47 with an average of nine years
14 in service.

15 Q And the Correctional Officer 1?

16 A 175 with four years of service.

17 MR. DAVIS: Your Honor, we offer this as an
18 exhibit which would be Ex. No. 40.

19 THE COURT: Any objection?

20 MR. TUCKER: This document is based on hearsay.
21 It is based on a compilation of documents that exist
22 outside what is stated in the courtroom today.

23 THE COURT: Well, I think you might qualify
24 this under the business records rules if you care to, sir.

25 BY MR. DAVIS:

1 Q Do you maintain custodian supervision of the
2 personnel records of Glades Correctional?

3 A Yes.

4 Q And they are under your ultimate custody, and
5 supervision?

6 A Yes, they are.

7 Q They are recorded in the normal affairs of Glades
8 Institution?

9 A Yes.

10 Q They are maintained in the normal course of business
11 at Glades?

12 A Yes.

13 Q Were the figures taken from those personnel records?

14 A Yes.

15 Q Was this prepared --

16 MR. TUCKER: Objection, Your Honor. I also
17 would point out pursuant to Rule 1006, summaries, in
18 Federal Rules of Evidence, originals or duplicates of
19 writings, recordings, which form the basis for a summary
20 shall be made available for examination, and have not been
21 made so available to us, and that this court may order that
22 they be produced in court.

23 MR. DAVIS: Your Honor, if they want all the
24 personnel records to determine these are the correct number
25 of years, we can provide them.

1 THE COURT: All right. I will require you to
2 do that if counsel wishes to have it done. With that
3 qualification, we will receive this in evidence. Let him
4 have those things in time for him to do something about it
5 before we get through this hearing. I am hoping to wind
6 this up tomorrow.

7 (Defendant's Ex. 40 received in evidence.)

8 MR. DAVIS: Your Honor, we would also request
9 that the expense of producing them be ordered by the court
10 under the rule. Which provides that the court should order
11 the expense for production of such documents to be borne by
12 the party seeking them.

13 THE COURT: Well, now, this summary, or study
14 that was perform in December ought to have all of these in
15 some fairly small packet of papers, isn't that right? It
16 isn't going to take an inspection of a lot of different
17 sources of information to get this together?

18 THE WITNESS: They had to literally take each
19 personnel file from every officer, and go through it piece
20 by piece.

21 THE COURT: To get the statistical data up?

22 THE WITNESS: Yes. Took us about four days.

23 THE COURT: Well, I am going to require that
24 these personnel records be made available. If you want to
25 go out there and look at them, you could do that.

1 MR. TUCKER: We have two points, Your Honor.
2 Within the specific rule itself, there is not a provision
3 as to costing. On that basis, I don't think we should be
4 taxed cost.

5 THE COURT: I am not taxing cost. I am
6 requiring you to look at them yourself, and not make copies
7 of them, and bring them in here.

8 MR. TUCKER: We also note it would be possible
9 that the clerk or the person who performed the compilation
10 could be made available with regard to this matter.

11 THE COURT: That is probably a good way to go
12 about it. If you could talk to him out there, I don't see
13 any reason why they would have objection to that. You can
14 handle it that way, and maybe it will have to be done after
15 we finish with the hearing. I can't require you to run out
16 there while we are receiving evidence here. I think you
17 are entitled to check these things, and see that they are
18 on the up and up, but I am not inclined to require either
19 side to do a lot of copy work. I think it can be done in a
20 simpler way. I will require you lawyers to cooperate, and
21 get the figures verified in a reasonable fashion.

22 MR. TUCKER: Thank you.

23 BY MR. DAVIS:

24 Q Incidentally, when you arrived at Glades, did you
25 review the various post orders, and various standard

1 operating procedures or internal operating procedures,
2 IOP's, I guess they are called?

3 A Yes, I reviewed all of it.

4 Q And did you, in your opinion, find those to be
5 adequate and sufficient for the operation of a correctional
6 institution?

7 A They were adequate.

8 Q And at Glades Correctional, are there any types of
9 structural meetings or structured meetings which the
10 administration has for the dissemination of information,
11 and instructions to its staff on correctional matters?

12 A Yes. I have a weekly meeting with key staff that
13 would include the chief of security of both assistant
14 superintendents, weekend duty officer that is in charge of
15 the institution on the weekend, food service director, each
16 Monday morning, and we review the weekends' events, and
17 talk about things that would have to do for the remainder
18 of that particular week.

19 And then we have department head meetings, as needed,
20 and we write memorandums, and verbally talk to people and
21 tell them what needs to be done.

22 Q Is there also something called a lieutenant's
23 meeting?

24 A Yes.

25 Q What is that?

1 A The lieutenants have a meeting on a monthly basis,
2 and they talk about with the colonel about the various
3 security matters.

4 Q What is the function or what is the nitch that the
5 lieutenants fit into in the security operation?

6 A A lieutenant -- well, I have to start from the top.
7 The colonel is in charge of the entire compound. The major
8 is in charge of the north compound. We have a captain that
9 is the shift supervisor on the main compound, and a
10 lieutenant who is his assistant. On the north compound we
11 have a lieutenant as shift supervisor.

12 When we talk about lieutenants meeting, we talk about
13 lieutenants and captains.

14 Q Previously at Glades Correctional, was the officer in
15 charge on a shift a lieutenant?

16 A Yes.

17 Q It had subsequently been elevated to the rank of
18 captain?

19 A Yes.

20 Q Okay. And did you utilize the medium of these
21 meetings in order to instruct your staff on the manner in
22 which you wanted to see the procedures carried out?

23 A Yes.

24 Q How did you do that?

25 A Simply as chairman of any department head meeting, I

1 called the meeting, and controlled the agenda, and we would
2 go over the things that needed to be done.

3 In the lieutenants' meeting, the colonel holds the
4 meeting, typically one or both of the assistant
5 superintendents will attend, and myself.

6 MR. DAVIS: Your Honor, at this time, pursuant
7 to the agreement we had last night, we would offer the
8 Inspector General's report into evidence.

9 THE COURT: What number?

10 MR. DAVIS: Exhibit 5, 6, 7, 8.

11 MR. TUCKER: Your Honor, we would object to the
12 inclusion of any -- to the acceptance into evidence of the
13 conclusions in any of those documents, once again under the
14 Piper case which we discussed earlier in this day. We
15 would also make for the record a hearsay objection.

16 THE COURT: This is -- these are -- We are
17 talking about Defendant's 5, 6, 7, 8, all constitutes
18 Inspector General's report?

19 MR. DAVIS: We are offering these as official
20 business records, and we have an agreement it would not be
21 necessary to bring the Inspector General down to
22 authenticate them as official business records.

23 MR. TUCKER: We do have that agreement.

24 MR. DAVIS: As official business record, we
25 offer them for the content. There is no double hearsay,

1 the only hearsay is the document itself, which the business
2 record exception overcomes.

3 MR. AMLONG: Your Honor, if I may be heard for
4 a moment.

5 Piper aircraft, I believe the other party is Raney.
6 That is a case in which Judge Scott when he was a lawyer
7 got the district judge in Pensacola to accept the
8 conclusions of a Navy Crash Inspection Team as to the
9 reasons for the crash. The 11th Circuit said, yes, that
10 could come in as an official investigation under that
11 exception, and the Supreme Court, I believe it was last
12 year, held that while the -- the facts found by the
13 investigator may come in, as part of an official business
14 record. The conclusions of the official investigation may
15 not come in.

16 THE COURT: All right. We will have to make --
17 we will have to distinguish between what are facts, and
18 what are conclusions, and what may be hearsay.

19 The ruling also says you can't allow hearsay in under
20 the business exception part of it, is that part of your
21 position?

22 MR. AMLONG: No, your Honor.

23 THE COURT: Mr. Tucker you said you wanted
24 excluded the conclusions and hearsay?

25 MR. TUCKER: Yes.

1 THE COURT: Even though it is hearsay, if it
2 false within the business exception to the hearsay rule in
3 Federal Rule of Evidence 803, it comes in. It is a general
4 exception to the prohibition of hearsay.

5 MR. TUCKER: We recognize certain validity to
6 the exceptions. We do not want the conclusions accepted by
7 the court.

8 THE COURT: I am assuming the conclusions are
9 fairly easy to identify. We will receive it with the
10 promise we won't consider the conclusions but we will
11 consider the factual statements as well as hearsay.

12 MR. DAVIS: We would ask them to identify any
13 conclusion they find in here. I don't find any conclusion.
14 It is all primary data.

15 MR. TUCKER: Your Honor, when we are provided
16 with copies of that document, we will be happy to provide
17 that information for the court.

18 THE COURT: You don't have copies?

19 MR. DAVIS: They were provided in discovery.
20 They have had them for six months.

21 THE COURT: I will ask you gentlemen, and I
22 might as well ask you now, to give us proposed findings of
23 fact and conclusions of law to make as a result of this
24 hearing, and I suspect that you would cover it then, that
25 is to point out both of you which parts of this report you

1 are talking about that you think constitute conclusions,
2 Mr. Tucker, and you can argue that they don't, Mr. Davis.

3 They are received with the qualification that the
4 record has reflected a moment ago. Do you have any more
5 questions?

6 MR. DAVIS: Yes, Your Honor.

7 (Defendant's Exs. 5,6,7,8 received in evidence.)

8 BY MR. DAVIS:

9 Q Let me show you what is marked Defendant's Ex. 32.

10 Can you identify what those documents are?

11 A Yes, you want in general? Security post order for
12 the Correction Officer Chief 2.

13 Q Is that Col. Pipta?

14 A That is Col. Pipta.

15 Q And what does that set forth?

16 A That sets forth the duties and responsibilities of
17 Chief Correctional Officer 2.

18 Q Okay. Is that the current post order for that
19 position?

20 A Yes. And we have the Correctional Officer Chief 1
21 that measures post orders. We have the shift supervisor,
22 main, and north compound post order.

23 Q Are these the current post orders?

24 A Yes.

25 THE COURT: Are all of these post orders, do

1 they describe the qualifications for the particular
2 position? Is that what they do?

3 THE WITNESS: They describe particular duties,
4 and responsibilities of that position.

5 And we have daily roster, main compound,
6 institutional operating procedure, number 38, which is the
7 control -- use and control of arsonal, equipment, and we
8 have the institutional operating procedure 86-44, entitled
9 Use of Force Procedures.

10 THE COURT: Use of Force Procedures?

11 THE WITNESS: Yes.

12 BY MR. DAVIS:

13 Q The internal operating procedures, are those
14 attachments to the supervisor's post orders?

15 A Yes. And we have the post orders for the dormitory
16 supervisor on the main compound.

17 Q What rank is that?

18 A Sergeant. And we have the dormitory officer post
19 orders for dorms A, B, C, and dorm D.

20 Q That is the main compound?

21 A Yes. And we have--that appears to be it.

22 MR. DAVIS: Your Honor, we would offer these
23 into evidence as Defendant's Ex. No. 32.

24 MR. TUCKER: No objection, Your Honor.

25 THE COURT: Okay, number 32--

1 MR. DAVIS: I am sorry, we have a problem with
2 the list and the numbers after 24. It is 30.

3 THE COURT: The number of this exhibit is 32.

4 MR. DAVIS: It is number 32, but number 30 on
5 the list.

6 THE COURT: We are making a new list as we go
7 along here.

8 (Defendant's Ex. 32 received in evidence.)

9 BY MR. DAVIS:

10 Q Let me show you what has been marked as Defendant's
11 Ex. No. 20?

12 A This is a fixed capital outlay budget request for
13 fiscal 1987, 1989.

14 Q For what institution?

15 A Glades Correctional Institution, and other
16 institutions in this particular region, South Florida.

17 Q All right.

18 MR. DAVIS: Your Honor, we offer it only with
19 respect to Glades Correctional. Does this include the
20 current --

21 BY MR. DAVIS:

22 Q What is the fixed capital outlay budget address?

23 A It addresses major renovations, building, research,
24 roads, major outlays of expenditure.

25 THE COURT: This is for 1987?

1 THE WITNESS: '87 through '89.

2 THE COURT: All right.

3 BY MR. DAVIS:

4 Q Is there a subsequent one to this, or is it in the
5 process of being developed?

6 A In the process of being developed.

7 MR. DAVIS: We offer Ex. 20 into evidence.

8 THE COURT: Any objection to that?

9 MR. TUCKER: No objection, Your Honor.

10 THE COURT: All right. It is received without
11 objection.

12 (Defendant's Ex. 20 received into evidence.)

13 BY MR. DAVIS:

14 Q Let me show you Ex. 21, and ask you if you recognize
15 that?

16 A Yes, this is a legislative budget request, 1985, '87,
17 it is what we term as a mini budget presentation. And it
18 covers the same institutions, and region in South Florida
19 including Glades.

20 THE COURT: What did you say you termed it?

21 THE WITNESS: Mini budget, Legislative budget
22 request. There is also mini budget for '87, '89.

23 THE COURT: Is that part of 21?

24 MR. DAVIS: Yes, Your Honor. We offer these,
25 Your Honor, into evidence as a composite exhibit of the

1 mini budgets from 1985 through '89.

2 THE COURT: Any objection?

3 MR. TUCKER: In thumbing through the document,
4 it appears all the information is relevant to GCI, and with
5 the stipulation that that is so, or that the document will
6 be accepted only for that purpose, we have no objection.

7 THE COURT: All right.

8 MR. TUCKER: Will you stipulate to that,
9 counsel?

10 THE COURT: You agree to that, I suppose, don't
11 you?

12 MR. DAVIS: I am not sure I understand it. It
13 only applies to GCI.

14 MR. TUCKER: I am trying to make certain of
15 that.

16 MR. DAVIS: We don't offer it for any other
17 purpose other than for its application for GCI.

18 THE COURT: It is received with that
19 understanding.

20 MR. DAVIS: There is no ticking bomb in that
21 budget.

22 THE COURT: Okay.

23 (Defendant's Ex. 21 received in evidence.)

24 BY MR. DAVIS:

25 Q Let me show you Ex. 19, which is also a composite?

1 A Inmate welfare trust fund budget request for '89,
2 '90.

3 Q '89 and '90, does it include other years as well?

4 A I was thumbing through it.

5 Q I have a copy of the original, may be easier to look
6 at?

7 A Yes, it includes also fiscal year '88, '89.

8 THE COURT: Inmate welfare fund budget request?

9 MR. DAVIS: Inmate welfare trust fund budget
10 request.

11 THE COURT: Where does the money come from to
12 fund that kind of thing?

13 THE WITNESS: We have several inmate canteen
14 operations on the institution, and we put the profit from
15 those sales back into the inmate budget to purchase
16 recreational and various other equipment for the inmates.

17 THE COURT: Is this the money into which --
18 this is the fund into which the money is recovered from
19 inmates when they are attempting to traffic in contraband
20 goes?

21 THE WITNESS: Yes, Your Honor.

22 MR. DAVIS: Is that a major portion of the
23 funds?

24 THE WITNESS: No.

25 THE COURT: I dare say it is minor.

1 THE WITNESS: We have the fiscal year '87, '88
2 inmate welfare budget.

3 MR. TUCKER: Your Honor, at this point it
4 appears that these documents are getting far away from the
5 issues that have been the subject of our business here this
6 week. We object both based on materiality, and relevance.

7 THE COURT: I will overrule that objection. I
8 don't know if they are a great deal of help, but seems to
9 me under 401, they are probably admissible. I will receive
10 number 19 over objection of counsel for the defendant as
11 stated in the record.

12 (Defendant's Ex. 19 received in evidence.)

13 MR. DAVIS: All right, Your Honor, thank you.

14 THE COURT: Is that it?

15 MR. DAVIS: Your Honor, that is it for the
16 documents which I have here.

17 THE COURT: Will you have any other questions?

18 MR. DAVIS: I have a few other questions which
19 are connected with other documents which I do not have
20 here, which will probably not take more than 15 minutes to
21 cover.

22 THE COURT: Do you have any other witnesses
23 after that?

24 MR. DAVIS: After this, Your Honor, all of our
25 witnesses are short witnesses. We anticipate calling

1 tomorrow Doctor Rodriguez, and he should be very short. He
2 is on one issue only, one point only. And we anticipate
3 calling a number of the instructional staff at GCI. His
4 name is Mr. White. He will be very brief, I think. We
5 anticipate calling a public -- an employee of Palm Beach
6 County School Board who teaches at GCI, he should be very
7 brief also, Mr. Daniels. We will call either Captain Hicks
8 or Col. Pipta briefly, and we have an inmate Your Honor,
9 whose name I don't recall who again is rather brief. His
10 name is Bryant, Your Honor. We may have the current prison
11 inspector.

12 I don't anticipate direct examination on any of these
13 individuals to take more than 20 minutes, and probably
14 almost all the cases will take less than 10 minutes.
15 Cross-examination may take a bit of time. I doubt any of
16 them will take more than 20 minutes all together.

17 THE COURT: All right. We can't get started
18 until 9:30. We have a calendar call 9 o'clock. Let's plan
19 to be back 9:30. You have about a half dozen witnesses.
20 It looks like we will be lucky if we get through them all
21 before lunch anyway, maybe we will.

22 I don't suppose either of you have proposed findings
23 for us at this time, do you.

24 MR. DAVIS: No, Your Honor. I am on a trial
25 docket that started in November in front of Judge Zlock,

1 and there is no telling when we will be called. I am
2 constantly in preparation for that. I am supposed to start
3 a major trial January 23 in Circuit Court, and I am
4 supposed to prepare a brief in respect to a 40 some page
5 appellant's brief in the next 10 days. I have been
6 juggling things.

7 THE COURT: Okay. Well, as soon as you can get
8 those things together. Sounds like you have a full plate
9 to take care of.

10 MR. DAVIS: Many days during the past two
11 weeks, I have not seen the exterior of my house in
12 daylight.

13 THE COURT: Probably not.

14 MR. LIPMAN: Your Honor, if we were to submit
15 findings of fact and conclusions of law we would want the
16 transcript. She is smiling or groaning?

17 I just have the feeling the case is bound towards
18 Atlanta.

19 THE COURT: Well, it is really already on
20 appeal. They knocked it back down here to tell us to get
21 the injunction thing wrapped up.

22 MR. LIPMAN: If we could have 20 days or 30
23 days after receipt of the transcript.

24 THE COURT: I guess we will have to live with
25 that. The problem with me, I forget everything.

1 MR. LIPMAN: We will remind you what you have
2 heard.

3 MR. DAVIS: 30 days is fine. That is
4 disciplinary confinement that the court reporter feels she
5 is in.

6 THE COURT: All right. We will work this out
7 for the time you need, and Pauline needs. We will be in
8 recess until 9:30.

9 (Thereupon, a recess was taken 5:15 p.m.)

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