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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
IN RE: CV-76-P-775-W
TRANSCRIPT OF PROCEEDINGS
AUGUST 6, 1997
BEFORE THE HONORABLE SAM C. POINTER, JR.
UNITED STATES DISTRICT JUDGE

For the Plaintiffs: EDWARD STILL, ESQ.
 Attorney at Law
 ROBERT E. TOONE, ESQ.
 Southern Center
 for Human Rights
 CARYL PRIVETT, ESQ.
 U.S. Attorney
 MARGO SCHLANGER, ESQ.
 U.S. Department of Justice
For the Defendants: B.J. MCPHERSON, ESQ.
 Attorney at Law
 ELLEN LEONARD, ESQ.
 KIM THOMAS, ESQ.
 Department of Corrections
 TERRY MCELHENY, ESQ.
 Attorney at Law
 CHARLES WAGNER, ESQ.
 Jefferson County

1 August 6, 1997

2 P R O C E E D I N G S

3 (IN OPEN COURT)

4

5 THE COURT: This is the time that's been set
6 for hearing on some motions that have been filed in four
7 cases involving prison conditions relating to injunctions
8 previously entered by this Court in those cases.

9 I think I would first like to take up the issues
10 relating to the Tuscaloosa County Jail. And I am not
11 sure why the motion is filed, frankly, because the Court
12 has previously entered an order in that case essentially
13 vacating and ceasing further relief or matters in that
14 case. So I don't understand the motion.

15 MS. LEONARD: Your Honor, my name is Ellen
16 Leonard with the Department of Corrections. And that
17 obviously would be my oversight, because the records that
18 I had at our office were that we were still under that --

19 THE COURT: That injunction has been
20 essentially vacated or at least terminated, and so that
21 matter is out, as I view it. It's moot. The
22 injunction's already been eliminated.

23 The next one I would like to deal with relates to
24 Blount County. This is a matter that's been transferred
25 to me. It was previously assigned to Judge Propst. And

1 in this particular case, the terms of the injunction were
2 that it would remain in effect essentially for six months
3 after certain things that occurred, unless for some
4 reason they were being continued as a result of some
5 controversy.

6 While there has been no order entered officially
7 affirming that those matters were attended to, it does
8 appear, frankly, that back in 1995 the terms of that
9 order were basically complied with and there was nothing
10 filed over a period of time after that. And I am not
11 sure what the real issue is, although there have been
12 filed motions on behalf of the plaintiffs in that case
13 attacking among other things the constitutionality of the
14 statute and the like. And I would like to find out
15 what's really involved in this matter.

16 MR. TOONE: Your Honor, I am Robert Toone. I
17 represent the plaintiff class in Blount County. This
18 case may well be appropriate for termination under rule
19 60(b). There hasn't been a showing made, and from my
20 reading of the consent decree is what is required for
21 the -- its own termination provision to take place. So
22 that's our problem. That's why we believe it creates --

23 THE COURT: Well, at least as I read the
24 decree, and I recognize I was not involved in the writing
25 of it, it assumed there would be some kind of affirmative

1 action needed in order to continue the matter. And even
2 though there was nothing sort of like filed, ruled upon,
3 saying we have done everything we are supposed to, there
4 appears to be no real controversy about it and if there
5 are to be controversies, they are going to likely relate
6 to the new institution and have to be dealt with as a
7 separate matter.

8 MR. TOONE: I agree to a certain extent, Your
9 Honor. The way I read the decree is that there is a six
10 month period that provides for automatic termination once
11 a showing of substantial compliance is made. That is
12 my --

13 THE COURT: Does it really require a showing of
14 substantial compliance? Or is it sort of like in
15 reverse, that after whatever that event is, then somebody
16 needs to come forward and say why we need to keep it
17 open?

18 MR. TOONE: The event -- I don't think that has
19 ever occurred formally. And this may come down to
20 technicalities, and we would be happy to talk it over
21 with the parties regarding termination under existing
22 principles.

23 THE COURT: Talk it over, because at least my
24 view is this one ought to go off without any prejudice to
25 new actions, whatever it may be. If there is one to be

1 brought.

2 MR. WEBB: Your Honor, my name is Ken Webb. I
3 am here on behalf of Blount County. When we negotiated
4 this consent decree, and I understand there were several
5 attorneys before you took over the case, it was fully
6 incumbent on the plaintiff if they wanted continuing
7 jurisdiction to petition within six months.

8 THE COURT: But six months from what? I think
9 that's really the issue. Six months from essentially
10 substantial compliance -- how do you measure that? Seems
11 to me it's more of a technicality more than anything
12 else. And it seems to me if there are going to be other
13 problems with this case, they are going to have to be
14 dealt with new litigation, not as a result of a prior.

15 And so I will be happy for the parties to go out in
16 the hall and talk about it, but my view is that this one
17 essentially goes off as moot -- it's over -- and whatever
18 comes as a result of a new lawsuit. But I welcome you to
19 go out and talk and see if you really need to tell me
20 anything else on the matter. Incidentally, I liked the
21 brief. And it was --

22 MR. TOONE: -- Thank you. That's something,
23 Your Honor; I guess. Can we talk this over with the
24 state's attorney?

25 THE COURT: Sure.

1 MR. TOONE: Because they are the one that filed
2 the motion.

3 THE COURT: They are filing the motion but at
4 least in this case there is probably a congruity of
5 interest between the state and the county. At least I
6 don't detect much of a difference in the matter. Okay.
7 I am not sure you are involved in Jefferson County except
8 as a friend of the Court, so you are free to go outside.

9 MR. TOONE: All right. Thank you.

10 THE COURT: Now, on Jefferson County, if the
11 two cases originally filed but which were consolidated
12 and which are before the Court at this point and are
13 major problems presented by the various motions and
14 briefs in the case. Again, very interesting, provocative
15 briefs. I gather that there was a matter presented
16 before Judge Guin this morning that much may have some
17 overlapped bearing, and I am not sure if any of the
18 people who are here were there.

19 MS. LEONARD: I was at that one, and Judge
20 Acker had one yesterday.

21 THE COURT: Tell me what Judge Guin and Judge
22 Acker have dealt with in other counties where these
23 matters have been pursued.

24 MS. LEONARD: I will tell you Judge Acker
25 said -- if you had any advice, he would certainly be glad

1 to hear it. But when he was talking about it yesterday,
2 he was interested.

3 THE COURT: What was Judge Acker's county?

4 MS. LEONARD: It was DeKalb.

5 THE COURT: Okay.

6 MS. LEONARD: And Judge Guin's is Lauderdale.

7 What he was interested in, plaintiff's counsel brought to
8 his attention there is a case out of Florida.

9 Right. District court, that's -- I assume it's
10 going to be appealed, or is on --

11 MS. LEONARD: It has been. I called the
12 clerk's office this morning and there has been appeal in
13 that case. He told --

14 THE COURT: Holding unconstitutional the
15 statute?

16 MS. LEONARD: Yes, sir. He talked about maybe
17 if it looked like that one was going on up rather than
18 issuing another opinion, waiting to see what the Eleventh
19 Circuit did with that case.

20 THE COURT: That's fine, except it doesn't deal
21 with the issue of suspension or stay of prospective
22 relief. So --

23 MS. LEONARD: And we are going to, because we
24 had not gotten into whether or not there were actually
25 still violations at the county jail. That has got to be

1 addressed in a brief that I am going to file.

2 THE COURT: Talking about in DeKalb or --

3 MS. LEONARD: DeKalb; yes, sir. Within two
4 weeks, because he wanted to look at that law also.

5 Also, another point of interest, the Eighth
6 Circuit followed the Fourth Circuit, and --

7 THE COURT: Saying it's constitutional?

8 MS. LEONARD: Correct. So now there are two
9 circuits that have held it constitutional, which we did
10 not know yesterday. Judge Guin -- now, this is my person
11 opinion -- I think is leaning toward finding it
12 unconstitutional and is requiring --

13 THE COURT: It's funny how you can say what he
14 is leaning toward --

15 MS. LEONARD: -- No, just from -- it was kind
16 of unusual this morning, because there is no plaintiff's
17 counsel in that case --

18 THE COURT: Okay.

19 MS. LEONARD: -- because legal services
20 represented them and their laws have changed and they
21 can't represent them any more. But he wanted some more
22 stuff briefed on separation of powers and whether they
23 are in violation so that probably even without
24 plaintiff's counsel, I got the feeling that's what he is
25 interested in and that seemed to be where he was going.

1 Judge Acker, to me, did not specify. He was
2 talking about waiting on Florida, but he didn't really go
3 beyond that. He wanted to look at the rest of the briefs
4 on whether or not there were still any constitutional
5 violations there.

6 THE COURT: Okay. So neither of them indicated
7 this is going to be the decision?

8 MS. LEONARD: No, sir.

9 THE COURT: Each, in effect, said "I am
10 considering this, and there are some problems"?

11 MS. LEONARD: Right. The only other case that
12 we have is -- there is one out of the Southern District
13 that affected Holman Correctional Facility.

14 THE COURT: Southern District of Alabama?

15 MS. LEONARD: Yes, sir. And in that case, the
16 Judge granted the motion without a hearing. The
17 plaintiffs filed the motion to reconsider, and I have to
18 file the response to the motion to reconsider by the end
19 of the month. But he first granted now -- he staid until
20 he gets our response. But that pretty much --

21 THE COURT: He staid the ruling on the motion
22 of stay or --

23 MS. LEONARD: It was kind of interesting, yes,
24 sir, but that was what happened. But that's --

25 THE COURT: Okay.

1 MS. LEONARD: Has been the only action taken.

2 THE COURT: Okay. Now, I understand that the
3 parties anticipated in Jefferson County that there might
4 be some evidence that should be presented and there was a
5 request, as I recall it, one side saying "We have got
6 somebody we would like to present testimony from and
7 there is a scheduling problem, and we would like to get
8 that person's testimony on promptly"?

9 MS. LEONARD: For the record, I want to object
10 to any testimony being put on under the law of the PLRA.
11 There is a thing -- paren three under the "termination of
12 relief" --

13 THE COURT: Paren three -- you have got to give
14 me a subdivision?

15 MS. LEONARD: I'm sorry.

16 THE COURT: Must be B, B3?

17 MS. LEONARD: B3.

18 THE COURT: Okay.

19 MS. LEONARD: Under that one, it talks about
20 prospective relief and it not being terminated by the
21 Court, that they have to make a written finding based on
22 the record and there is no provision for putting on
23 supplemental testimony. And I think --

24 THE COURT: Says "based on the record"?

25 MS. LEONARD: Right; as it stands at the time.

1 Not --

2 THE COURT: You would say it's sort of like it
3 has to be going back to something prior?

4 MS. LEONARD: I think it reads that there is no
5 new testimony allowed. And there have been some cases --
6 unfortunately, I didn't know they were putting any --

7 THE COURT: I really think on that it is
8 intended to allow a determination of whether, as it
9 says -- and this is in the present tense -- prospective
10 relief remains necessary. I don't know how you can
11 possibly make that determination without looking at it as
12 of the present time.

13 MS. LEONARD: Your Honor, I still think that
14 it's supposed to be based on the record and is not to
15 allow supplemental testimony. There are several cases
16 where that has been tried, and I have to say -- because I
17 didn't bring it with me today -- some have said "No more
18 testimony" and some have allowed some.

19 THE COURT: I will allow it. I think you have
20 to do that and you have to read this language in the
21 context this statute was drafted, however inartfully, to
22 try to deal with both things that are already occurred
23 and things that will occur in the future. And there is
24 no way you can really read this to deal with the past
25 order and still apply the language unless you allowed for

1 some opportunity to see whether there is some violation
2 continuing to exist. And I don't know how else you could
3 do it. So I hear your objection but I will overrule
4 that.

5 MS. LEONARD: Okay.

6 THE COURT: Okay. Now, what is it, was it the
7 U.S.?

8 MS. PRIVETT: Yes, Your Honor. The United
9 States has an expert witness.

10 THE COURT: I am not sure what your role is
11 here.

12 MS. PRIVETT: Your Honor, first of all, I
13 would like to introduce to the Court Margo Schlanger, who
14 is, as Your Honor would note, the most recent lawyer from
15 the Department of Justice.

16 THE COURT: I don't know about most recent but
17 apparently she has been one of the most vocal and been in
18 constant communication with my law clerk.

19 MS. PRIVETT: But we do have motions pending
20 with regard to intervention on the constitutionality
21 issues where that is raised.

22 THE COURT: There is no problem on intervention
23 as it relates to constitutionality.

24 MS. PRIVETT: Right.

25 THE COURT: There may be more of a problem as

1 to intervention, as it relates to what I might call the
2 merits of the underlying --

3 MS. PRIVETT: Your Honor, I think --

4 THE COURT: You jumped sides?

5 MS. PRIVETT: Yes, sir. And on that one, we
6 are still asking the Court to look at our original amicus
7 position wherein the Court permitted us to pretty much
8 assist the Court in whatever way became appropriate, I
9 think.

10 THE COURT: I will follow to your assistance.

11 MS. PRIVETT: If Your Honor is -- does Your
12 Honor wish to proceed now with the evidence?

13 THE COURT: It seems to me that, given the
14 apparent need to deal with a scheduling conflict, we
15 ought to go ahead and take the witness, find out what
16 that person will say and let's be done with that.

17 MR. STILL: Your Honor, technically, the
18 United States, under your orders --

19 THE COURT: Mr. Still, I believe, is your name?

20 MR. STILL: Yes, sir, Your Honor; I'm sorry.
21 The United States is not allowed to call witnesses under
22 your provision --

23 THE COURT: You may call them, Mr. Still, and I
24 will allow the United States to conduct the original
25 interrogation?

1 MR. STILL: Thank you, Your Honor. We would
2 call Mr. Steve Martin then.

3 MR. STEVE MARTIN

4 (WITNESS SWORN)

5 THE CLERK: Please state your name.

6 THE WITNESS: Steve J. Martin.

7 THE CLERK: Spell your last name?

8 THE WITNESS: M-A-R-T-I-N.

9 THE CLERK: Thank you.

10 MS. SCHLANGER: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. SCHLANGER:

13 Q. Mr. Martin --

14 THE COURT: You may need to pull that
15 microphone around somewhat in front of you so it will
16 pick up your voice better.

17 MS. SCHLANGER: Okay. Thank you, Your Honor.

18 Q. Mr. Martin, could you run through your educational
19 background, please, for the Court?

20 A. I have a Bachelor's degree in Criminology and
21 Corrections from Sam Houston State University in
22 Huntsville, Texas. I have a Master's of Arts in
23 Correctional Administration likewise from the same
24 university, and I have a Juris Doctorate from the
25 University of Tulsa School of Law.

1 Q. And what has been your employment in the area of
2 corrections or corrections-related matters?

3 A. Well, I have been continuously employed for most of
4 my adult life, which is somewhere around a quarter of a
5 century, in some type of correctional-related
6 administration or work, ranging all the way from working
7 as a prison guard to federal probation. And probably --
8 D.A.'s office; legal counsel and general counsel for the
9 prison system; Special Assistant Attorney General; and a
10 consulting role on prison and jail litigation, and a
11 variety of different experiences.

12 Q. Have you worked on any jail conditions lawsuits?

13 A. Quite a number.

14 Q. In what capacities?

15 A. As a consultant, as a testifying expert, and just
16 traditional expert work.

17 Q. Have you ever assisted prisons or jails in coming up
18 with policies and matters having to do with conditions at
19 the jail or prison?

20 A. I have.

21 Q. In what capacities have you done that?

22 A. Again, in -- just retained as a consultant to do
23 that, and in other instances where maybe prior to a case
24 going to trial, the parties agreed to -- through consent
25 decrees -- develop remedial plans of action to address

1 deficiencies in the jail and to be a party to that
2 process.

3 Q. And have -- you have said you have been retained as
4 an expert witness. Have you ever testified as an expert
5 witness?

6 A. I have.

7 Q. In how many cases, about?

8 A. I would say certainly not less than -- in federal
9 courts, not less than 20 nor probably more than 30.

10 Q. And what are the issues that you have testified
11 about?

12 THE COURT: I think you can move on forward.
13 I am prepared to receive testimony under Rule 702
14 relating to the conditions.

15 MS. SCHLANGER: Okay. Thank you, Your Honor.

16 Q. What did you do to prepare for testifying here in
17 this case?

18 A. I reviewed some very -- in a very cursory fashion,
19 some pleadings and documents -- historical documents as I
20 would characterize them -- of the case, prior expert
21 reports, and some proposed -- I believe a proposed
22 consent decree, et cetera. Then made a two-day site
23 visit, site inspection, to the Jefferson County jails in
24 the Birmingham facility and the Bessemer facility.

25 During the course of the site inspection, I met

1 with a number of the -- what I would cite and thought to
2 be higher ranking jail administrators at both facilities.
3 Had what I thought were forthright, candid conversations
4 about the operation of the respective jails.

5 We, during the course of the inspection of the
6 jail, had an opportunity to make document requests in
7 areas, in those areas in which I thought it was relevant
8 to do so and necessary to do so, and that information
9 was, I believe without exception, provided in the
10 document request.

11 After I returned to my office in Austin, I
12 received those documents, and reviewed them as copiously
13 as I could, given the time constraints. And that coupled
14 with the observations of the facilities and consultations
15 and interactions with the jail administrators forms the
16 basis for my observations.

17 Q. Did you speak with any inmates while you were at the
18 jails?

19 A. I did. I spoke with -- as I typically do -- inmates
20 as I go through the housing areas, and there were no
21 restrictions placed on doing that. So I did that quite
22 freely as I thought the need dictated. And then I called
23 out a number of inmates, I believe, at the end of the day
24 for a variety of reasons that I wanted to interview in a
25 more formal setting.

1 Q. And just quickly, if you could, just go over what
2 sorts of documents you looked at.

3 A. I looked at a sampling of incident reports from both
4 facilities in recent months, looked at a number of
5 misconduct reports for several months from both
6 facilities, looked at their housing data runs both by
7 alphabetical listing and by cell assignment. So I could
8 pretty much, as much precision as I could, identify where
9 each and every inmate in that jail on that date was
10 assigned.

11 I looked at staffing documents; again, set out
12 the current staffing complements at both facilities.
13 Looked at quite a bit of population data, both current
14 and historical; looked at the floor plans of schematics
15 for both facilities.

16 I may be leaving -- Oh, and the last thing that
17 immediately comes to mind is recently, under contract for
18 the county, affirmed that the jail needs assessment study
19 or analysis, and I reviewed certain portions of that
20 study. And that's what immediately comes to mind.

21 Q. Are these the types of documents that are ordinarily
22 relied on by experts in corrections?

23 A. For the -- for what I was asked to do, yes.

24 Q. Now, again, just quickly for context of the rest of
25 your testimony, could you just describe the physical

1 layout of the jail?

2 A. The Birmingham jail is what I would call a
3 high-rise, metropolitan, direct-supervision facility,
4 which simply means that it is in the metropolitan part of
5 the community and it is built up rather than out. It is
6 almost exclusively of a cell construction in which there
7 are, I believe, eight floors on which inmates are
8 housed. It is fairly traditional, modern-day design in
9 that they have a fixed security post in the hub of each
10 floor from which the officer in that control station can
11 view the six or seven cell blocks on that floor. Those
12 cell blocks all are, for the most part, are two tiered,
13 two floors, and have six cells down and six cells up.

14 They have full, solid doors with a viewing window
15 so the officer that is stationed in the control center
16 cannot view directly into the cells. You must have an
17 officer that will enter and actually walk up to the cell
18 and view it through the window. They all have adjoining
19 day space with tables and chairs.

20 Each individual cell is approximately 70 square
21 feet. That is, the total square footage unencumbered or
22 the total -- that's not the unencumbered space, it's the
23 total square footage. They have the typical support
24 areas that you would find in a jail of that facility in
25 food service and some classroom space, some outdoor

1 recreation space.

2 The Bessemer facility is a much smaller facility
3 but the cell blocks are relatively the same design, the
4 same size, although the day space adjoining the cell
5 blocks in the Bessemer facility is somewhat smaller than
6 in the Birmingham facility.

7 Q. And in a typical cell block, how many inmates are
8 there in -- let's start with Birmingham?

9 A. Birmingham, the typical cell block would house
10 anywhere from 28 to 29 to 35 or 36.

11 Q. And how many cells were in that cell block?

12 A. Twelve cells.

13 Q. Same question for Bessemer?

14 A. Bessemer would be much the same, maybe slightly
15 lower on the down -- on the low range.

16 Q. And what kind of security provisions are made
17 between the cell blocks and the control room that you
18 described at the hub of the wheel -- I'm sorry, the
19 center of the wheel?

20 A. What do you mean by security provisions?

21 Q. Well, I mean, are there doors --

22 A. There is, of course, the control station is a
23 secure, fixed area in which an officer is stationed. And
24 then you would -- there is a corridor that runs on the
25 outside of that control station. Again, it's like a hub,

1 and the cell blocks run off of that hub, so you have
2 entry doors into each cell block. So you have got two
3 secured doors between the housing area and the control
4 station.

5 Q. And how, in Birmingham, how is a typical floor
6 staffed at a given time?

7 A. There is, of course, one officer in the control
8 station and then one officer that is referred to as a
9 rover to cover the seven cell blocks that run off of the
10 hub.

11 Q. What are the duties of that roving officer? What
12 does he have to do with those inmates?

13 A. He stays very, very busy in that particular jail,
14 because he is charged with, in some instances, on the
15 eighth and ninth floor, in which they are almost totally
16 triple celled. In other words, you have somewhere around
17 35-36 inmates to a cell block, and you have seven cell
18 blocks.

19 You would have in excess of 200 people on a
20 single floor. That rover is charged with providing the
21 on-hand, direct interaction supervision for 200 inmates
22 which will include running in and out, control those main
23 entry doors. In terms of providing visits, in terms of
24 medical transportation, in terms of if they are running
25 classrooms or other types of activities, he is managing

1 that, he is managing the ingress and egress of that
2 entire floor aside from, you know, supporting the food
3 service delivery, commissary delivery.

4 I quite honestly do not know how they do as well
5 as they do on the eighth and ninth floors, because you
6 are looking at a staffing ratio of two officers, one of
7 whom is fixed in a secure post, for 200-plus inmates.

8 Q. I skipped a question. How are the inmates divided
9 through all of those floors? What's special about the
10 eighth and ninth floors?

11 A. Those floors house, under their rather rudimentary
12 classification scheme, as violent offenders. So you have
13 a situation in which those offenders that maybe represent
14 the most management difficulties are in the most
15 spatially dense housing areas and hence require the
16 greatest supervision.

17 Q. The description that you have just given, is it very
18 different in Bessemer? Are things different in
19 Bessemer?

20 A. Well, they are, to the extent you don't have 1,400
21 inmates at Bessemer. To the extent of the actual
22 individual housing areas, they are very similar. In
23 fact, as I think I said earlier, that Bessemer police
24 stations are smaller so they are even more spatially
25 dense than Birmingham.

1 Q. And the staffing situation, is it -- are they
2 staffed basically same, Bessemer and Birmingham?

3 A. Very similar fashion.

4 Q. Now, on the date that you visited, what was the jail
5 population, say, first Birmingham then Bessemer?

6 A. I believe Birmingham was somewhere around 1,220,
7 maybe 1,223; and I believe Bessemer was in excess of just
8 slightly of 200, maybe 202, -3, -4; I don't recall the
9 precise number.

10 Q. And you said you looked at some population data.
11 Was this typical population for recent times in those two
12 jails?

13 A. Yes.

14 Q. So what was the original design capacity for the two
15 jails?

16 A. Well, the Birmingham facility, I believe, had a
17 design capacity of 620, which I believe to be really not
18 entirely accurate in the sense that not all 620 cells
19 would be available to house an inmate every day, 365 days
20 a year. So when you back out what we would call the
21 "special management" or special used cells, such as
22 disciplinary segregation in which you can't house -- if
23 there is twelve cells, you can't count on housing twelve
24 inmates 365 days. When you back those out, it's actually
25 somewhere around 580 beds available for general

1 population inmates.

2 The Bessemer facility was designed, I believe,
3 for 110, which is a single-cell arrangement.

4 Q. So how did the jails accommodate all these people?

5 A. In the Birmingham facility, a number of cells have
6 had a second bunk added. In those instances, you have
7 two inmates in a bunk, one inmate on the floor. And the
8 instances in which only one bed or bunk is in the cell,
9 then you have one up, two down.

10 Because the majority of people in the Birmingham
11 facility are presently, as of the day of the site,
12 triple-celled there, 800-plus inmates are triple-celled.
13 So you have, at the very least, you have a third of that
14 800 sleeping on the floor. And I think the number is
15 higher, certainly.

16 In the Bessemer facility, pretty much the same
17 holds true in the sense that you have some cells that --
18 most cells equipped with the second bunk, so you have two
19 up, one down.

20 Q. So in a typical cell in Birmingham or Bessemer where
21 there are three people in there, how much unencumbered
22 space is there for the three inmates to live in?

23 A. Each cell has 70 square feet. I attempted to
24 calculate with not -- I would not represent to the Court,
25 I did not take a tape measure. I have been in probably a

1 thousand-plus facilities over 25 years, certainly have
2 some idea of square footages.

3 I took rough measurements and I calculated the
4 unencumbered space; that is, free, open, unencumbered
5 space per inmate of around seven square feet on a
6 triple-celled situation. That's taking out, backing out
7 the bed, the combination of sink and toilet, the desk
8 top. I believe that's backing that square footage out
9 and dividing what's remaining by three.

10 Q. And do you have any information on the old jail in
11 Birmingham?

12 A. I reviewed some documents that gave me some square
13 footages of those typical cells, yes.

14 Q. How did the square footages compare to similar cells
15 in the old jail?

16 A. I think the least could be said that the current
17 square footages in the triple-celled situations are
18 similar if not worse because the -- I will tell you why.
19 Might need just a bit of explanation. You can maximize
20 unencumbered space with optimal configuration.

21 In other words, I think some of the cells in the
22 old jail were four person cells. But if you have four
23 bunks all up on the wall, that gives you, of course, more
24 open space on the floor. When you go to putting a
25 mattress on the floor, you are really taking away from

1 that unencumbered space.

2 So you could actually -- I think the cells in the
3 old jail, some of them were four person cells, 88 square
4 feet. So if you had 22 square feet per inmate and then
5 somewhere maybe around 10 or 12 or less, somewhere,
6 unencumbered space because they were all off the floor.
7 Whereas here, you have three and 70 square feet, but one
8 of whom is on the floor, so you get down to the seven
9 square feet.

10 I expect actually it may be -- I, of course, was
11 never in the old facility; I am relying purely on what I
12 read in the document. But if it's accurate, you may very
13 well be in a worse situation now in those triple cells
14 than you were whatever the date of that document was that
15 I read.

16 Q. Is anybody single-celled in the Bessemer or
17 Birmingham jails?

18 A. On the day of the site inspection, I believe there
19 were thirteen inmates that had designated single cells;
20 six of whom were designated as protective custody
21 inmates, seven of whom were designated as maximum
22 security inmates.

23 Q. How does that number seem to you?

24 A. Exceedingly low for a metropolitan population in
25 which you have gang activity and serious offenders and

1 vulnerable offenders and special offenders you would
2 expect to find in the Birmingham area, metropolitan area
3 the size of -- potentially tough prison population. If
4 you designated 13 of 1,400 inmates, that is less than one
5 percent where you -- it's not unusual at all to find in
6 metropolitan jails confinement settings, 5, 10, 15 and 20
7 percent of the population with single-cell designations.
8 So it's exceedingly low as a frame, just based on my
9 experience at what other systems do. And I think based
10 on my limited observation in this jail that it is very,
11 very low.

12 Q. Why would it be that an inmate would be
13 single-celled in a jail that had enough single cells?

14 A. Well, because range, you know, if you have 1,400
15 inmates, you have got those that are on the extreme,
16 those that work toward the middle and those on the
17 extreme represent typically management problems, either
18 highly predatorial security risks for whatever reason.
19 And then at the other end, you have those that are
20 extremely vulnerable because they may be mentally
21 retarded or mentally impaired or small in statute.

22 Just a whole range of things that make them
23 vulnerable in a general population setting. Those people
24 need to be culled out, separated out and managed
25 accordingly. In any given environment, there is going to

1 be a healthy percentage of those people, healthy being 5,
2 10, 15 percent of those on either end of the spectrum.
3 It just stands to reason. I mean, you've got people that
4 require specific management. Some of that is
5 accomplished through a single cell block setting.

6 Q. Again, just very roughly, how does an inmate at
7 either one of these jails spend his day typically?

8 A. With a lot of other inmates in a small, dense space
9 in which he has few opportunities to, of his own
10 volition, to manage himself away from those inmates.

11 In other words, a lot of people packed in, up to
12 36 people, in a very spatially dense setting for extended
13 periods of time, hours on end. They rack them out early
14 in the day, they stay out for some period until after
15 lunch, then I think they are locked up for a short
16 period, then let back out for the remainder of the
17 afternoon till 8:00 in the evening.

18 And the thing that's unusual in this that I think
19 makes this an especially potentially volatile, dangerous
20 situation, and I quite understand the rationale of the
21 administrator, they locked out all 36 inmates for their
22 day room time. There is no -- in a lot of prisons and
23 jails, they call -- they run in and out, they rack open
24 the doors and leave them open for 5 minutes and you have
25 a choice to remain in your cell or come out in the day

1 space. They have all the people in that housing area in
2 the day space. They do it here because they have limited
3 staff and don't have good viewing into the individual
4 cells, so they make everybody come out.

5 So everybody in that cell block is out in that
6 day space for that extended period of time, so you are
7 either out there with 35 other inmates or you are in the
8 cell with two other inmates.

9 Q. So where do the inmates eat?

10 A. They eat at the tables in the day space.

11 Q. Are there enough tables to go around?

12 A. Not for the -- what they're currently operating
13 with, no.

14 Q. And where do the inmates shower?

15 A. They have typically a shower that's located in the
16 day space.

17 Q. From the design of the facility, how many people
18 were intended to be in the day space at any given time?

19 A. Twelve. So on the shower, where it was built with a
20 staff shower ratio of 1 to 12, which is within the
21 standards, you're operating at 1 to 36.

22 Q. How would you describe the levels of population at
23 the jails, I mean, if you had to characterize it?

24 A. Well, it's extremely spatially dense and socially
25 dense. It is a high tension setting with a lot of people

1 packed -- a lot of inmates with far ranging behaviors and
2 problems and circumstances that are packed fairly tightly
3 together for a 24 hour -- you know, on a 24-hour day.

4 Q. You talked about the showers. What other kind --
5 what kind of effect on the physical plant does this level
6 of population have?

7 A. Well, it accelerates the life of the institution
8 significantly. And probably one of the more eliminating
9 sessions or meetings I have is with that person charged
10 with the maintenance of the facility. And he described
11 for me what I would characterize as a crisis or near
12 crisis situation relative to the maintenance of that
13 physical plant that is entirely predictable and within my
14 experience of what happens when you stress physical plant
15 with respect to such things as -- one example I thought
16 was particularly illustrative was he said for years when
17 the population was down, we would typically -- shower
18 valves, change them out around 50 every three months.
19 They are doing 250 a month now because instead of having
20 twelve people shower in a 24 hour cycle, you have 36,
21 which obviously stresses out, wears out.

22 The same can be held applicable to the locking
23 mechanisms. Those door locking mechanisms were not
24 designed to handle the traffic that currently they are
25 asked to handle. So the locking mechanisms require where

1 you would have a preventive scheduled maintenance, that
2 is being shelved. They can't do preventive maintenance,
3 they are doing crisis reactive maintenance, and they are
4 doing it around the clock.

5 Their communications gear which is essential for
6 the operation of a large facility like this -- I mean
7 literally is directly related to maintenance of your
8 security operation -- is failing, is going down and
9 requiring active maintenance.

10 Food service, where they were designed, what, to
11 produce 1,500 meals a day, they are producing 4,400
12 plus. They are running, where they should have hundred
13 gallon pots sitting there, with 40 gallons pots, so
14 running those 24 hours a day, the kitchen operation. So
15 they are right at the -- I mean, I truly believe, after
16 talking with maintenance person in some detail about
17 these things, they are right on the edge of starting to
18 have extended physical deficiencies in their physical
19 plant that are necessary to preserve health and safety
20 and security of the inmate populate.

21 If you are not showering your population and you
22 have got 36 people packed in tightly in a day room, and
23 they're sleeping three to a cell, it's not too -- it's
24 not rocket science to figure out that there is a volatile
25 situation there. Combined with maybe some compromised

1 food service operations and combined with not getting the
2 sick call as quickly as you would, all those things
3 accumulatively affected, that can make it fairly -- at
4 the very least -- strained operation, if not dangerous.

5 Q. Are there ever any inmates in the central corridor
6 that you describe that goes around the control room?

7 A. Certainly. Any time you have escorting requirements
8 from the housing area for visiting, medical, work
9 assignments, whatever, you have got traffic from those
10 wing doors, so it's individual housing, cell blocks as
11 they are called, out. So, yes, it's routine traffic,
12 certainly during the day shifts, the afternoon shift.

13 MS. SCHLANGER: Your Honor, I have a few
14 exhibits which might be helpful to the Court in
15 understanding the remainder little bit of Mr. Martin's
16 testimony. I don't need to put them in. I didn't attach
17 them to my brief, but I think they might be helpful.
18 They are jail documents where he goes through how some of
19 this plays out and its impact.

20 THE COURT: Say that again?

21 MS. SCHLANGER: They are jail documents which
22 might help the Court understand how some of the
23 phenomenon that Mr. Martin's been talking about plays out
24 in day-to-day operations of the jail.

25 THE COURT: What kind of documents?

1 MS. SCHLANGER: They are incident reports and
2 disciplinary reports, those kinds of documents.

3 THE COURT: I am not sure if the other parties
4 have had access to any of this information.

5 MS. LEONARD: No, sir. I haven't seen any of
6 this. And I don't even think it would be fair at this
7 point, we haven't had a chance to go review other things.
8 This may not be all they have at the jail, and I really
9 think this is not a fair way to try to even defend at
10 this point. But, no, sir, I have not seen any documents.

11 THE COURT: Well, I think I will ask that the
12 documents be disclosed to the State of Alabama to at
13 least do a preliminary review to see what the problems
14 are. Let me say this. As I understand the context of
15 this litigation, these two cases consolidated, the State
16 of Alabama is seeking essentially to vacate this order,
17 and more particularly that part of the order that
18 requires the state to receive, in the state custody,
19 prisoners within seven days after they have become
20 transferable to the state.

21 MS. LEONARD: Yes, sir.

22 THE COURT: Everybody else in the litigation
23 opposes the request by the state for this modification,
24 at least as I understand it, on different grounds. But
25 everybody else, talking about the plaintiffs, the United

1 States, the Jefferson County Sheriff, Jefferson County
2 Commission, everybody else opposes it. And yet what the
3 Attorney General is asking for is not even something
4 premised in federal law in and of itself but at least, as
5 I understand it, requiring the State of Alabama to comply
6 with the laws of the State of Alabama.

7 Maybe I misunderstood it. But I think that's the
8 situation in which the State of Alabama is complaining
9 about being required to comply with state laws. Am I
10 mistaken?

11 MS. LEONARD: Your Honor, I think it goes
12 further in that it is a state problem that should be
13 rectified in the state court system and by the state
14 legislature and not one --

15 THE COURT: The state legislature's already
16 ruled, hasn't it? We have obligations that are imposed
17 upon the prison system to receive the people, so it's not
18 a matter of the state legislature.

19 MS. LEONARD: I do think it is involved
20 because I think there is also appropriation of money that
21 comes into effect which causes part of the problem in the
22 case. So I do think they are involved.

23 THE COURT: But isn't it a situation in which
24 only the State of Alabama and the Corrections Department
25 is complaining about something, and what they are

1 complaining about is being required to comply with state
2 law. Isn't that right?

3 MS. LEONARD: In part, yes, sir; I agree with
4 that.

5 THE COURT: What is it beyond that?

6 MS. LEONARD: Part of it is saying the
7 overcrowding is a constitutional violation.

8 THE COURT: You object to begin required,
9 though, to follow the state law because you think that
10 the state, that the federal court or whatever it is, the
11 state court, basically shouldn't be requiring the state
12 agencies to follow state law?

13 MS. LEONARD: The seven day rule is not part of
14 the state law.

15 THE COURT: You would be required to presumably
16 even before that. I thought it was more like a grace
17 period?

18 MS. LEONARD: Well, that's not been typically
19 the practice.

20 THE COURT: The practice is not because -- the
21 practice has been to violate state law on a consistent
22 basis until the Court started requiring it, isn't that
23 right?

24 MS. LEONARD: Your Honor, I think under the law
25 it cannot -- it is not narrowly tailored to only the part

1 that affects you in the consent decree.

2 THE COURT: I am going to take a recess because
3 I have to go and do something for about 30 minutes. This
4 will give you a chance to look at the materials, the
5 intervenor friend of the Court, whatever you want to call
6 them, has to present through this witness. I will be
7 back in about 30 minutes.

8 I do suggest this is a peculiar situation, a lot
9 of funny, unusual, hard and challenging issues. But I
10 suggest the state is in a very, very peculiar position in
11 this case of seeking something which is relief against,
12 from state law, and everybody else is saying "follow the
13 state law." And we don't ask for the relief. I just
14 suggest you look at that situation as a practical
15 matter. Do you really want to pursue this kind of
16 request in that context?

17 I am going to be gone for about 30 minutes but
18 will give you a chance to look at the materials.

19 (Brief Recess taken.)

20 THE CLERK: Remain seated and come to order,
21 please.

22 THE COURT: All right. Has the state had an
23 opportunity to look through the materials that the
24 Department of Justice --

25 MS. LEONARD: Yes, sir. I have no objection

1 to A or B. C through I, I say, are hearsay. And in
2 particular, I have an objection to the grievance filed by
3 an inmate without having the right to cross examine him.
4 I have a objection to allow his three or four page
5 statement where he makes allegations that cannot be cross
6 examined.

7 THE COURT: There is a particular grievance? I
8 am not --

9 MS. LEONARD: Yes, sir. It's part of D. By
10 Ronald --

11 THE COURT: Let me look at that.

12 MS. SCHLANGER: Your Honor, if you would like
13 the whole packet.

14 THE COURT: This, you say, was a part of D?

15 MS. LEONARD: Yes, sir.

16 THE COURT: Okay. I sustain the objection to
17 D. Something else?

18 MS. LEONARD: I think the rest of them, I do
19 think they're hearsay but I am not going to -- they are
20 incident reports from the Jefferson County jail. That
21 was the one I had the most problem with.

22 THE COURT: I sustain the objection to D, but
23 the remainder will be received for whatever value it adds
24 to the nature of this particular proceeding.

25 MS. SCHLANGER: Your Honor, the first two

1 pages of D are like the other ones, jail reports rather
2 than grievance, and I would ask that those two pages come
3 in. They are the --

4 THE COURT: Well, I sustain the objection as to
5 the entirety. I think that the first two pages can only
6 be understood in the context of the addition.

7 MS. SCHLANGER: Well, the first two pages have
8 to do with the disciplinary action and the others are a
9 grievance.

10 THE COURT: And as to the disciplinary action,
11 I am not sure it's even very relevant.

12 MS. SCHLANGER: Thank you, Your Honor.
13 Your Honor, I understand from the attorneys for Blount
14 County that they want to --

15 MR. MCPHERSON: May we approach the bench?

16 THE COURT: If you could do it from the
17 lectern it might be of more use.

18 MR. WEBB: Your Honor, the attorneys for
19 Blount County and also the attorneys for the plaintiffs
20 have reached an agreement. Basically, while we do
21 disagree as to the terms of when jurisdiction is zoned
22 under the consent decree, we agree Blount County will
23 file with the Court a motion to terminate the consent
24 decree and which court's jurisdiction under the grounds
25 that it's been fully complied with and is no longer

1 needed, not on the grounds that the Prison Litigation
2 Reform Act, and the plaintiffs do not oppose that
3 motion.

4 THE COURT: And there may be further litigation
5 that will be done on essentially a separate basis if and
6 when that occurs.

7 MR. TOONE: That's correct.

8 THE COURT: Thank you very much.

9 MR. TOONE: Thank you.

10 MR. MCPHERSON: Thank you, Judge. May we have
11 leave?

12 THE COURT: You have leave to leave. Okay.

13 DIRECT EXAMINATION (CONTINUED)

14 BY MS. SCHLANGER:

15 Q. Mr. Martin, do you have any information on how many
16 state inmates are currently housed or were housed on the
17 day of your visit at the Jefferson County jail?

18 A. It was in the neighborhood of 180.

19 Q. And how many of those when the jail -- I'm sorry.
20 When the state takes those inmates and moves them over to
21 state facilities, how many of them are transferred in a
22 given week?

23 A. It's my understanding that the average weekly
24 grouping or average number is somewhere around 28 per
25 week that are transported from the jails to state custody

1 or facilities, state facilities.

2 Q. We have been talking in general terms about
3 overcrowding and understaffing. And I -- what I want to
4 ask you is how does that play out in an actual day-to-day
5 life at the jails in terms of safety for the inmates?

6 A. Well, it's typically -- not typically -- I think
7 typically and in this instance manifested through
8 probably, more than anything else, misbehaviors and
9 misconducts, altercations, assaults, extortion,
10 bulldogging, those types of events, and gang activity is
11 heightened, would be just the very obvious.

12 Q. What do you mean by "bulldogging"?

13 A. Well, if you have three or four inmates that have
14 some type of alliance, whether gang affiliation or
15 whatever, and they have an inmate that is not a part of
16 that alliance and they want to take his food tray, or
17 they are having a particularly good meal, you know, they
18 can bulldog him for that meal or bulldog him for his
19 commissary or take things from him typically under a
20 threat of force.

21 Q. Did you see any -- did anything in your examination
22 of the jails lead you to believe that there was tension
23 or assaults that were related to overcrowding in
24 individual cells?

25 A. Well, there were certainly incidents reports or

1 misconduct reports that I believe were in part related if
2 not wholly in terms of -- I mean, there was one incident
3 where an inmate was brushing his teeth and was accused by
4 another inmate of when he was washing out his mouth and
5 spitting, that some of it got on the inmate's clothes or
6 the inmate, and they got into an altercation. Another
7 instance where an inmate attempted to sit down at a space
8 in the table when there was no more space left, and he
9 felt by virtue of his seniority that that was his space
10 and an altercation ensued. You have constant tension
11 over use of telephones, over use of showers, everything
12 becomes a scarce commodity in that environment. I mean,
13 literally, things that we -- inmates might otherwise take
14 for granted become scarce, and if they become scarce,
15 there is a premium. If there is a premium, there is
16 extortion. If there is extortion, there is fights. If
17 there is fights, there is disturbances. If there is
18 disturbances, you have potential loss of -- it's
19 escalating type of, you know, series of events that are
20 just more likely to happen certainly with sheer numbers.

21 MS. SCHLANGER: Your Honor, I point you to
22 Exhibit C, which is the spitting incident Mr. Martin was
23 just talking about.

24 Q. Did you see any evidence of group assaults at the
25 jail?

1 A. Quite a lot. You see that both in terms of the
2 incident reports and the disciplinary reports. But also
3 speaking with the jail personnel and inmates alike that
4 there is a common term that is used -- I had not heard it
5 before, and it may be peculiar to Jefferson County, or it
6 may be peculiar to this part of the country -- but a
7 phenomenon referred to as "cludging," where that is --
8 that term, as I understand it, it was explained to me
9 both by the staff and inmates and even referenced in
10 incident reports, means ganging up on others either.

11 Again, through a gang affiliation, as a gang
12 member with other gang members, you gang up to assault
13 others or extort others. And it's a fairly common
14 practice in this particular jail because certainly on the
15 upper floors -- eighth, ninth floors -- they, to some
16 extent, are stratified or inmates are housed by gang
17 affiliation. But you, of course, cannot do that
18 realistically. So at any given time you are going to
19 have certain people in cell blocks that are not part of
20 that gang, the predominant gang, and that's a description
21 for problems in terms of extortion and bulldogging.

22 Q. Let me point you to exhibit G. Is this typical of
23 the documents that you saw that showed evidence of gang
24 fights?

25 A. Yeah. That was an incident that in a single cell

1 block where I think in excess of twelve or fifteen
2 inmates were basically in a gang fight right there in the
3 cell block, which -- I don't know how the jail
4 administrator would characterize that, but that in some
5 confined settings would be characterized as a major
6 disturbance where you have twelve-fifteen inmates going
7 at one another. And it quickly, those types of events,
8 experience tells us can escalate into very serious events
9 that can, you know, worse case scenarios can develop into
10 loss of control on a floor or area of the jail.

11 Q. Looking at exhibit F, do you recall these documents?

12 A. Yes, I do.

13 Q. What was it that you learned from these documents?

14 A. Well, in just reviewing the documents, I highlighted
15 that one and thought it was particularly relevant because
16 it was a disciplinary report, I believe, in which two
17 inmates had fought. And the explanation to the
18 disciplinary review panel, one inmate alleged that the
19 reason that he fought the inmate or assaulted the inmate
20 in his cell is because he did not want that inmate
21 cludged. In other words, he could have fought him in the
22 day space where a lot of fights are occurring, but
23 apparently he had a standard or is alleging that he had a
24 standard by which he did not want others jumping on that
25 inmate, he would do it himself, so he waited until he had

1 the inmate in the cell. And I just took that to mean if
2 it's so -- if it's that common that an inmate would say,
3 "hey, I am going to fight over here because I don't want
4 any" -- you know, coupled with other incident reports and
5 what I learn from jail personnel and the inmates
6 themselves that it's a fairly common experience or
7 occurrence in this particular facility.

8 Q. Did you see any evidence that sometimes these things
9 happen more than one place at a time or in the same day?

10 A. Well, again, I was just reviewing and reading each
11 report, I believe the incident report for the month of
12 June '97, and I ran across two reports that I thought it
13 was the same fight, same altercation, because they were
14 so close in time. They occurred within, I believe,
15 minutes of one another, maybe an hour. They were on the
16 same date, same floor, so I thought it was two different
17 reports on the same event. I looked at it very closely
18 and they had two almost simultaneous fights on the same
19 floor within minutes of one another. And then looking on
20 in that type of document, I discovered there was a self
21 mutilation within a few hours of the two almost
22 simultaneous fights. Which is, you know, I don't know
23 what -- certainly nothing scientifically can be drawn
24 from that, but it tells me if your triple celling almost
25 all your cell blocks on a particular floor, you are

1 running at 300 percent of capacity with some difficult to
2 manage inmates, it's not surprising that you would have
3 two fights break out at the same time on the same floor
4 in two different cell blocks and self mutilation within
5 hours of that. I don't find that anonymous in that,
6 given that setting.

7 Q. What is -- if that happens --

8 MS. SCHLANGER: I'm sorry, Your Honor. These
9 incidents are described in exhibit G.

10 THE COURT: All right.

11 MS. SCHLANGER: I'm sorry, Exhibit H.

12 Q. If that happens, what kind of a -- does that pose a
13 problem in terms of the staffing levels on that
14 particular floor?

15 A. Certainly does, because any time you have the single
16 rover that is diverted or is attending, you know, to a
17 matter in a single cell block, that means the remaining
18 six cell blocks, save the control station officers, do
19 not have any immediate supervision. And so if something
20 occurs in one of those other six cell blocks, then you
21 have got to -- you're vulnerable.

22 Q. Did you see any evidence that there had been any
23 serious breaches in security that had something to do
24 with overcrowding?

25 A. Well, I saw, you know, most -- probably the most

1 serious was one of those gang fights or altercations in
2 which multiple people were involved in which it spilled
3 out, I think, over into the hallway, into that simple
4 corridor. And once some inmates -- that door was opened,
5 they held it, it's a slider door, and they held that door
6 open, that's a security breach, obviously, when you are
7 holding half the wing door, main entry to the cell block
8 open and inmates can have free access to a central
9 corridor, secure area. And if an officer is again being
10 diverted or is maybe back in the day room trying to
11 intervene in a fight, you have got inmates spilling out
12 into a secure area with no coverage.

13 Q. And what are the risks posed by that kind of
14 situation?

15 A. They can take over your jail is the obvious risk.

16 MS. SCHLANGER: Your Honor, this incident is
17 described in the documents in Exhibit I.

18 Q. Now, how is this predatory behavior or cludging
19 related to overcrowding?

20 A. Again, I think I have answered that. When you have
21 scarce space, scarce commodities and you have got too
22 many people for too little space and you are not maybe
23 classifying as effectively as you would be if you had
24 less numbers, you are going to have more misbehaviors.
25 You are going to have more opportunities for those

1 inmates that live their life through predatory behavior,
2 you are giving them more opportunities to engage in that
3 because you're putting them in situations where there is
4 a limited supply of goods, there is limited out of cell
5 time, so they are packed in there together for extended
6 periods of time. Space literally becomes a
7 scarce commodity of where I sit, how long I talk on the
8 telephone, how long I stay in a shower, all those things
9 are amplified and made more important than they otherwise
10 would be if there were fewer people.

11 Q. In your opinion, what would be likely to happen
12 using your expertise and your knowledge of this jail if
13 the population of the jails were increased by, say, 100
14 or 150 more inmates?

15 A. Two ways I would answer that. The first I think is
16 rather obvious, that you are further aggravating the
17 already aggravating situation, and it now goes to my --
18 you have got a big old stack of cord wood and, you know,
19 at some point in time, that next piece of wood is going
20 to collapse your stack. They are, at some point, going
21 to reach a point with another 50, 100 or 150 -- I can't
22 tell you, won't presume to tell you what that number is.
23 But they will reach that number at some point in time
24 where that system really starts to break down either,
25 three, of the physical plant or combination of the

1 physical plant and adequate staff. They are living very
2 dangerously in operating that thing day-to-day.

3 Q. Would an increase like that pose an increase in risk
4 to the safety of the inmates?

5 A. Certainly.

6 Q. As well as to the security?

7 A. Certainly it would.

8 MS. SCHLANGER: Nothing further, Your Honor.

9 CROSS EXAMINATION

10 BY MR. STILL:

11 Q. Mr. Martin, I have just a few questions for you. I
12 believe you testified that the eighth and ninth floors
13 contained the more violent prisoners?

14 A. Yes.

15 Q. And this is under a classification system that the
16 jails use?

17 A. It is.

18 Q. And that's in the Birmingham jail. What about in
19 the Bessemer jail, is there a segregation of the more
20 violent prisoners there?

21 A. They have some segregation cells. If memory serves
22 me, I think it's four in number.

23 Q. But in terms of trying to make a classification -- I
24 should have used that word instead of segregation -- a
25 classification of prisoners, is there an effort in the

1 Bessemer division jail to put more violent prisoners in
2 one wing on that floor?

3 A. Yes, sir. They have a division -- their divisions,
4 basically, have two ends of the building, one is north, I
5 think, north side, and the other the south side. They
6 try to keep the violent inmates at one end, I believe
7 the -- I can't recall. One end of the building they have
8 violent, at the other end non-violent.

9 Q. Let's talk about, go back to the Birmingham division
10 jail for a moment. In Birmingham, is the eighth and
11 ninth floors or are the eighth and ninth floors more
12 overcrowded than other floors are?

13 A. Yes.

14 Q. There is more triple bunking or triple sleeping in
15 the eighth and ninth floors?

16 A. Both of those on the day of the site inspection were
17 right at 200 population count each, which almost is
18 maximum triple celling. There were very -- in other
19 words, there were very few cells on those two floors in
20 which there were not three inmates. The other floors
21 ranged more in the 150, 160, 170 population.

22 Q. Now, if you put more violent people in more crowded
23 circumstances than you do other prisoners, does that
24 increase the risk on those two floors?

25 A. Certainly.

1 Q. You have talked about the amount of unencumbered
2 floor space in the cells. What about in the day room?
3 What is the size of the day room or the dimensions of the
4 day room, do you remember?

5 A. I was given that and I, quite frankly, questioned
6 that figure and cannot therefore give you what I would
7 be -- an answer I would warrant as --

8 Q. Basically, let's -- isn't the day room a triangular
9 shape, basically sort of a wedge shape of some sort?

10 A. That would be, yeah, a rough characterization.

11 Q. And is it arranged so that the person in the
12 central, the glassed-in enclosure in the central areas --
13 I can't remember what that's called now, command post or
14 space --
15 can see along each one of the walls as a line of sight?

16 A. It is.

17 Q. Can that person see into the shower?

18 A. No. And there are even blind spots into the common
19 or day space area. Certainly the Bessemer jail -- I
20 recall looking at an area from the control station and I
21 commented to the control officers, I said "You can't even
22 see that corner." And she automatically replied, "Yeah,
23 that's where they fight." It's naturally where they
24 would fight and it's out of the view of the control
25 officer.

1 Q. We have been using the male pronoun to refer to the
2 corrections officers and the jail deputies. There are a
3 large number of female officers who work in these jails,
4 aren't they?

5 A. Yes.

6 Q. Given that there are some blind spots that you have
7 described in the area that the officers can see, let's
8 talk about the Birmingham jail for a moment. This is
9 pretty much the wedge-shaped room that we are talking
10 about. Where are the jail cells themselves, the solid or
11 now triple-manned cells that were on back walls, side
12 walls, or what?

13 A. Back wall.

14 Q. You say there is a second level also?

15 A. Yes.

16 Q. So is there a staircase up one side?

17 A. Correct.

18 Q. Now, once the prisoners are in the day space for
19 about twelve hours during the day, what do they
20 physically have to do in that space?

21 A. Not --

22 Q. Are there places for them to sit?

23 A. Yes.

24 Q. Are there movable chairs?

25 A. Some are, some aren't. Most, I think, aren't.

- 1 Q. They are bolted to the floor?
- 2 A. I don't know whether they are bolted.
- 3 Q. Non-movable?
- 4 A. Difficult to move, if not bolted. There are certain
5 tables that are, but they have brought in additional
6 seating. That's what I am not sure about, whether that
7 additional seating, picnic like tables, I don't think
8 they were bolted. Maybe I'm wrong. I don't know.
- 9 Q. Is there a television set in there?
- 10 A. There is.
- 11 Q. How do the inmates decide what's going to be
12 watched?
- 13 A. Sometimes they fight about it.
- 14 Q. Are there telephones in there?
- 15 A. Yes.
- 16 Q. Are the telephones fixed so that there is no money
17 used any more?
- 18 A. That's correct.
- 19 Q. Has Major Moore taken all the money out of the jail?
- 20 A. Yes.
- 21 Q. Has Major Moore also -- and Major Moore is the
22 officer in charge of the two jails; is that correct?
- 23 A. Yes.
- 24 Q. But how many telephones are there?
- 25 A. I think there are three to a typical cell block,

1 maybe two.

2 Q. Do inmates get in fights over those telephones?

3 A. They do. But there have been some real improvements
4 made in the operation, very prudent management moves to
5 try to minimize that, and I think they have done probably
6 about as much as they can. But they still, they still
7 have fight over the telephone usage.

8 Q. If an inmate doesn't want to sit with everybody else
9 and isn't in the shower or at the toilet, where else is
10 he going to be in that day space?

11 A. He is going to sit on one of the chairs would be a
12 place to sit or the stairs or on the floor in the day
13 space. That's about it.

14 MR. STILL: That's all the questions I
15 have got. Thank you.

16 CROSS EXAMINATION

17 BY MS. LEONARD:

18 Q. Mr. Martin, I am an attorney with the Alabama
19 Department of Corrections. I want to start you off -- I
20 have been looking through your resume. As I understand
21 it, the last time you worked at a correctional facility
22 was like 1973?

23 A. In what?

24 Q. As a correctional officer in a security position?

25 A. Yes.

1 Q. So the last time you worked in security was 1973?

2 A. Yes.

3 Q. Okay. And then after 19 -- that was only for a
4 year?

5 A. Yes.

6 Q. And you never worked in anything above being just a
7 correctional officer like being a warden who had to make
8 decisions on where to post officers?

9 A. I was chief of staff of the entire system in which I
10 did --

11 Q. That's when you were an attorney, though, right?

12 A. Had nothing to do with me being an attorney. It was
13 chief of staff, it was an operations position.

14 Q. When was that?

15 A. 1984-'85.

16 Q. So that was for one year?

17 A. It actually ran probably from the latter part of '83
18 through '85.

19 Q. Okay. So during that time for like a year and a
20 half, you might have had some decision-making authority
21 over where security posts would be?

22 A. I had a good deal in certain instances.

23 Q. Could you explain that to me?

24 A. Well, I was on a committee that set the staffing
25 plan for the entire system.

1 Q. You weren't the person at the prison who had 10
2 officers that day and had to decide what post needed to
3 be filled?

4 A. That's in essence what the staffing study did for
5 the entire system.

6 Q. I understand the staffing study. Staffing study is
7 where you say "Here's how many we would like to have"?

8 A. No. A staffing study, the type I am talking about,
9 was set posts, will identify the post that you are --

10 Q. Right.

11 A. -- going to staff, and that ultimately determines in
12 general the number of staff you need.

13 Q. Okay. Let's just take a day, for instance. So you
14 have four officers call in sick, so you only have 10 that
15 day. You weren't the person sitting there that day
16 saying --

17 A. Quite correct.

18 Q. You have got four people sick, "I have got to
19 decide what are the most important posts," right?

20 A. Well, I did not decide -- make that decision. But
21 we, in the staffing analysis post assignment, we
22 identified those posts that had to be manned that could
23 not be vacated, those that were called pull posts. Where
24 certain posts you did -- those were made at the executive
25 level for the entire sum.

1 Q. As you and I both know, the actual decision is made
2 at the prison itself on that day?

3 A. In accordance with --

4 Q. Sure.

5 A. -- staffing, yes.

6 Q. And you never made those decisions on a day-to-day
7 basis?

8 A. No.

9 Q. At the time you worked at the prison, what was the
10 population in the Texas prison system? Was that where
11 you were?

12 A. Uh-huh; yes.

13 Q. What was the number of inmates in the prison system,
14 approximately?

15 A. At which time? I did two different stints.

16 Q. Let's say 1972?

17 A. I believe the population was somewhere in the
18 neighborhood of 17,000.

19 Q. Okay. Do you know approximately how many inmates
20 there are in the Texas state prison system today?

21 A. I do.

22 Q. How many?

23 A. 135,000.

24 Q. Amazingly different, correct?

25 A. I will let you draw what conclusions you will.

1 Q. I mean, you are an expert in that area. That's a
2 big difference between 17- and 135,000?

3 A. Certainly; certainly.

4 Q. Lot of different problems?

5 A. Well, I don't know to what you are referring "a lot
6 of different problems."

7 Q. Well, I mean security, numbers.

8 A. Certain numbers --

9 Q. Don't you think?

10 A. Security is security.

11 Q. You still have the same security problems no matter
12 what the numbers?

13 A. You are going to staff a prison in basically the
14 same way. What changes is how many prisons you have.

15 Q. I was looking at your resume. Looks like presently
16 you are an expert in 10 prison condition cases, if I
17 counted right?

18 A. I would trust your --

19 Q. I want to know out of those 10, how many are on the
20 plaintiff's side and how many are on the defendant's?

21 A. I would have to --

22 Q. I will be glad to show it to you.

23 A. This -- are you reading from the representative
24 professional activities?

25 Q. Uh-huh, where it says "from a certain date until

1 present."

2 A. Okay.

3 Q. Did I mis-read --

4 A. No, I'm just trying to identify --

5 Q. I figured if you said "present" on that, that means
6 you were still working on that case?

7 A. That was at of the date of the C.V. which was 1/97,
8 which is why I was wanting to --

9 Q. Oh, okay.

10 A. All of those are plaintiff.

11 Q. So all 10 that you are presently working in are
12 plaintiff?

13 A. Yes.

14 Q. Isn't it true that one of those is where you are
15 working with the Justice Department in three different
16 states; is that right?

17 A. I believe that's correct.

18 Q. Okay. When was the last time you came in as an
19 expert for the defense?

20 A. I think I have got some right now. That was done as
21 of January. I would just have to look at.

22 Q. You don't know?

23 A. I would -- I handle a lots of cases, counselor, and
24 without having that information before me -- I routinely
25 do and have throughout my work, have done defendant's

1 work.

2 Q. Also noticed on your resume that you were on a panel
3 about the Prison Reform Litigation Act. Was that right
4 or did I mis-read that?

5 A. I testified before the United States Senate --

6 Q. Okay.

7 A. -- as a member of a panel.

8 Q. And what was your position in the testimony
9 concerning the Prison Reform Litigation Act?

10 A. I testified to various provisions that I thought
11 were problematical.

12 Q. So you didn't -- were you testifying you didn't
13 think it should pass?

14 A. I don't know that I -- I certainly think if you
15 heard my statement or read the written statements that
16 you could conclude that I was against passage of the
17 PLRA. I think that would be a fair inference if I did
18 not say that, but I -- if I recall, I oriented my remarks
19 more to specific provisions and what I -- the problems I
20 had with those specific provisions.

21 Q. To be quite frank, in what you do for a living, it
22 is going to affect your income if parts of the PLRA come
23 to pass, won't it?

24 A. No, I don't -- I don't think that's necessarily
25 true.

1 Q. Mr. Martin, you are an attorney. If you look at
2 this, it is going to narrow the need for experts in
3 prison condition cases. Is that not a fair statement?

4 A. I don't think that's a fair statement at all,
5 counselor. All I can tell you is that I have been busier
6 since the passage of the PLRA than at any time in my
7 career. Now, if that continues, I am hardly going to
8 agree with the statement that you just made and have no
9 basis on which to agree with such a statement.

10 Q. Okay. You stated you went to the Jefferson County
11 jail. How long did you spend at the Jefferson County
12 jail?

13 A. I think we actually entered the facility somewhere
14 in the neighborhood of 9:30 or 10:00 a.m. I think we
15 departed mid-afternoon to go through Bessemer and we
16 returned in the late afternoon, and I believe we left
17 somewhere around 8:00, 8:30 p.m.

18 Q. Give me an approximation of how long you spent at
19 the Jefferson County jail?

20 A. I would guess somewhere in the neighborhood of six
21 hours.

22 Q. Okay. How long did you spend at the Bessemer county
23 jail?

24 A. Maybe two hours.

25 Q. One more thing before these other, just so I have

1 got this straight. As far as working in corrections,
2 total in security is two and a half years?

3 A. Is that as an assigned security officer? Yes, sir,
4 (sic) correct -- yes, ma'am.

5 Q. Not as an attorney or work -- for the Attorney
6 General's office or working in private practice?

7 A. I understand your question. That's correct.

8 Q. Is that correct?

9 A. Yes, ma'am.

10 Q. Okay. You have made statements that the jails were
11 both overcrowded. Were you basing this on the design
12 capacity of the two jails?

13 A. I certainly use that as a frame of reference to set
14 a bench mark of what the facility was intended to hold.
15 But, no, I have seen facilities that operate quite
16 satisfactorily above their design, considerably above
17 their design capacity.

18 Q. Quite frankly, do you feel comfortable making that
19 kind of conclusion on just six hours of looking at --

20 A. I can do it on less hours if it's aggravated enough,
21 counselor. If you are triple celling, if you are
22 operating at 300 percent of capacity and credible jail
23 officials express a series of problems that they are
24 confronted with and your staffing numbers are low and the
25 incident reports that you are looking through, if all

1 that is very consistent, I am quite comfortable and have
2 done that in the past and will probably do it in the
3 future.

4 Q. How many times have you done that?

5 A. I don't know.

6 Q. Just an approximation?

7 A. I don't know, counselor. I honestly don't know.

8 Q. 10?

9 A. My answer is "I don't know." I could calculate it
10 if you are talking about how many times I have gone into
11 a jail and drawn conclusions from a six hour visit. I
12 don't know.

13 Q. But you can't say whether it's more than 10?

14 A. I cannot.

15 Q. What did you think about the fire safety at the
16 Jefferson County jail?

17 A. Did not look at it.

18 Q. What about the training of the security staff there
19 in how to handle problems?

20 A. I was very Impressed with the training that they are
21 doing, to the extent that it was explained to me. I did
22 not look at their curricula or any detail, but they
23 devote quite a number of hours both pre-service and
24 in-service to training.

25 Q. Did the people at the prison seem to be pretty

1 knowledgeable about security?

2 A. Yes.

3 Q. Did you feel comfortable that they were trained well
4 enough to make decisions in crisis situations?

5 A. Yes.

6 Q. Did any of them appear to be what I would call
7 either lackadaisical about security or lazy?

8 A. I did not see -- certainly none of the mid-level
9 supervisors. They appeared quite the opposite.

10 Q. Very concerned about it?

11 A. Yes.

12 Q. Took it very serious?

13 A. Correct.

14 Q. And felt it was a very important duty?

15 A. Indeed.

16 Q. Did you review the standard operating procedures of
17 the county jail?

18 A. I did not do a review of their policy and procedures
19 manual. Is that what you are --

20 Q. Yeah. Like where it sets out what they are
21 supposed to do if a certain kind of incident occurs?

22 A. No.

23 Q. Where the officers are supposed to be posted?

24 A. I did that, yes.

25 Q. What about like key control and cubicle control, how

1 all that operates?

2 A. I observed that.

3 Q. Okay. Did you review the documents on it?

4 A. No.

5 Q. What about your observations of what you saw? Did
6 you see, were they able to control the doors?

7 A. You mean were the doors operable?

8 Q. Uh-huh. And were they open at correct times?

9 A. Yes.

10 Q. So your concern about design capacity, the fact that
11 just, if there is three bunks in a cell, according to
12 you, that's overcrowded?

13 A. No, I don't think I said that, counselor. If you
14 will refresh my memory, I will be -- it obviously needs
15 more explanation. I have not said three inmates to a
16 cell is, per se, overcrowded.

17 Q. Okay. When we were talking about design capacity,
18 you said one of the problems you had with it was the fact
19 they were triple bunking?

20 A. That is.

21 Q. And maybe I jumped to a conclusion, which I tend to
22 sometimes do, and I apologize. So what you are saying is
23 the fact that it's triple bunked doesn't necessarily mean
24 it's overcrowded?

25 A. Well, let's -- we may need to define the term. How

1 are you using "overcrowded"? Are you using that in a
2 legal, constitutional sense or are you talking about
3 spatial density or social density or what?

4 Q. I would probably prefer we do the constitutional
5 floor?

6 A. That's -- I am not going to tell you that three
7 inmates to a cell is, per se, constitutes
8 unconstitutional overcrowding. That is not my
9 testimony. So we would go from there.

10 Q. You stated that the number of maximum cells at the
11 Jefferson County jail was too few or maybe it was single
12 cells?

13 A. Single cells, yes.

14 Q. Trying to read my writing, and I apologize for
15 that.

16 Q. You stated for a metropolitan type jail that they
17 should have more than this, right?

18 A. Yes.

19 Q. Okay. I want to know what other metropolitan jails
20 you are referring to that are analogous to the Jefferson
21 County jail?

22 A. Well, probably any that I have been in where I have
23 seen comparable figures. I mean, when I talk about a
24 metropolitan jail, a jail that holds more than 100 or 200
25 inmates on a routine basis. That --

1 Q. I will let you pick which one you can think of with
2 the best -- give me an example of one you have been in
3 and how many you are talking about?

4 A. The Detroit jail; Wayne County, Michigan. I spent a
5 lot of time working for defendants, incidentally, in that
6 case, consulting with their jail administrators. And we
7 did a classification scheme for that system, so we had a
8 very precise profile of that population.

9 Q. How long ago was that?

10 A. I think that last bit of work I did with them may
11 have been '91-'92.

12 Q. About 5 years, would that be fair?

13 A. That would be fair.

14 Q. Okay.

15 A. And I believe we had something on order of maybe as
16 much as fifteen percent of the inmate population was
17 designated for single celling on just the maximum
18 security -- I mean, on the predatory side.

19 Q. How many inmates were in that jail?

20 A. Well, it was a series of jails. There was three
21 different facilities.

22 Q. So you are dealing with three facilities rather
23 than one, right?

24 A. Yes.

25 Q. Okay.

1 A. The main facility was close in size to Birmingham,
2 as a matter of fact. Now, as a design -- certainly
3 design capacities are similar.

4 Q. What was the number approximately?

5 A. I believe somewhere in excess of 800 at the main
6 downtown facility.

7 Q. But they also had the luxury of two other facilities
8 they could move them between?

9 A. Had one right across the street and one some
10 distance away.

11 Q. Which would make it different than Jefferson County?

12 A. No, because Jefferson County has two facilities. In
13 fact, very analogous since their facility up there was
14 not even complete. It's a new facility. So at one point
15 they were very similar to Bessemer in that they had two
16 facilities, one newer than the other, one smaller than
17 the other, as you do in Jefferson County.

18 Q. But you are only dealing with how many inmates are
19 in the other two facilities there?

20 A. I believe the facilities -- just close proximity to
21 the main jail was right around 400, little bit larger
22 than Bessemer. And then the other facility, that was a
23 brand new facility. I believe it was capacity of 500.

24 Q. So they had almost a capacity of 1,700?

25 A. Yes.

1 Q. By your five year --

2 A. Yes.

3 Q. When you talked to this maintenance man, he was
4 talking about problems he thought that might just get
5 worse and worse, right?

6 A. I think that's fair.

7 Q. Okay. And was he saying that he was going to quit
8 trying to fix them?

9 A. No.

10 Q. In fact, he was going to work hard to try to keep it
11 up. Would that be a fair statement?

12 A. That would be a fair statement.

13 Q. Did you find -- you made a statement or said he had
14 said something about it was getting harder to serve
15 meals. Are you aware of any inmate not receiving a meal?

16 A. No.

17 Q. So they received their meals?

18 A. Yes.

19 Q. And you thought it was a strange situation that
20 could become dangerous?

21 A. I think, in my view, that is a currently dangerous
22 operation, the jail at Birmingham.

23 Q. And you base that on what?

24 A. I base that on the level of staffing that I think is
25 inadequate for the numbers of inmates; the levels of the

1 present violence and assaultive behavior that is
2 reflected in their incident report; and disciplinary
3 reports and other number of incidents that have escalated
4 beyond that that have -- they have been on the edge of
5 some major disturbances, inmates or problems.

6 Q. Did you put the worst ones in as exhibits?

7 A. No, I did not. I put -- I selected those that I
8 thought were particularly illustrative of what I saw.

9 Q. You decided not to put the worst ones in?

10 A. I don't look at it that way, counselor. I explained
11 how I selected those that I thought were most
12 illustrative for purposes of my testimony. I can find a
13 whole lot more in number and probably a significant
14 number that are -- in fact, I know I can find a
15 significant number that are more serious than what's in
16 that document.

17 Q. When you worked as a correctional officer, didn't
18 altercations occur between inmates?

19 A. Yes, ma'am.

20 Q. Happened all the time, didn't it?

21 A. I don't know how you are using "all the time." They
22 were frequent and common.

23 Q. And that was, did you say, in 1972? It wasn't
24 overcrowded in the Texas prison where you worked?

25 A. It was overcrowded.

1 Q. It was overcrowded. You have those instances?

2 A. Yes.

3 Q. You stated there have been quite a few group
4 assaults at Jefferson County. How many are we talking
5 about?

6 A. I calculated the total number of assaults for a
7 particular month for June of being in excess of 30. And
8 of those 30, I did not calculate -- I did not create a
9 category for how many of them involved more than two
10 inmates, so I couldn't give you a precise figure. But it
11 was not uncommon for altercations to involve more than
12 two inmates.

13 Q. Isn't that true when you were a correctional officer
14 in Texas?

15 A. No. No, it's not true at all. In fact, it's been
16 my experience in reviewing literally thousands and
17 thousands of disciplinary reports and incident reports
18 it's not the rule that more than two inmates -- when
19 inmates fight, that more than two inmates are in the
20 fight.

21 Q. You haven't reviewed any in the Alabama prison
22 system incident reports, have you?

23 A. Have not.

24 Q. Are you aware of the number of assaults that occur,
25 let's say, at Donaldson Correctional Facility?

1 A. Couldn't even tell you what that correctional
2 facility is or where it is.

3 Q. It's in Jefferson County. But I am well aware it's
4 well over 30 assaults a month. So you are saying if it's
5 30 assaults it's too many?

6 A. No, I did not say that, counselor.

7 Q. Okay. At what point, did you decide that Jefferson
8 County had too many assaults?

9 A. I haven't said that. I haven't testified to that
10 and I wouldn't say that.

11 Q. Okay.

12 A. I don't know what too many would be on the
13 limited -- without doing a statistical analysis, looking
14 at whether there has been changes in their disciplinary
15 policies or procedures. You can have disciplinary
16 incidents that actually increase and by a system appear
17 to be quite the opposite of decreasing simply because you
18 changed your reporting requirements.

19 Q. You had stated that it was common practice for
20 cludging to occur in the Jefferson County jail?

21 A. Yes.

22 Q. What is that based on?

23 A. Reports, inmate interviews, staff interviews.

24 Q. How many incident reports did you see where cludging
25 was used?

1 A. Well, as I understand the term to mean that any time
2 you have got people ganging up on others --

3 Q. Okay.

4 A. I would consider that to be cludging, whether the
5 term was used or not.

6 Q. Okay. How many of those did you see?

7 A. Again, based on my review of the June incident where
8 I actually counted the number -- beyond that, I don't
9 know.

10 Q. What was that number?

11 A. I have already testified, counselor, I don't know.

12 Q. So you don't know how many --

13 A. It was a common occurrence. It's a common
14 occurrence, it's more common than I have experienced in
15 like reviews of incidents involving more than two
16 inmates. If that's common in your Alabama state system,
17 that's fine. I am just telling you over prisons in 25
18 states across the country, it's not as common in those
19 prisons and jails as I found it to be in Jefferson
20 County.

21 Q. You had stated that exhibit G was a major
22 disturbance.

23 A. Yes, involving the 10 or 12 inmates.

24 Q. Right.

25 A. I said it could be fairly characterized by some

1 administrators --

2 Q. As a major --

3 A. -- as a major disturbance.

4 Q. How would you characterize it?

5 A. I would characterize it as a major event, major
6 disturbance.

7 Q. A major disturbance?

8 A. Because any time -- again, I don't find it common
9 that you, in American prisons and jails, that you have
10 10-12 inmates fighting. That is not to say it doesn't
11 happen, and it's not to say that it doesn't happen with
12 some degree of frequency. But common, to me, means all
13 the time. And in a well-running facility, that is not
14 going to happen all the time. In fact, it should be an
15 unusual occurrence where you have 10 or 12 inmates with
16 weapons, bars of soap and razors going after one
17 another.

18 Q. Wouldn't you agree that most inmates have some form
19 of weapon in prison?

20 A. No, I would not agree with that, counselor. I would
21 certainly not agree with that. I don't know what
22 operation you are used to, what you are basing that on,
23 but I do not agree with that at all.

24 Q. Well, I find that quite interesting.

25 A. Well, good.

1 Q. My thing on this, there were only three people that
2 received any injuries, correct?

3 A. I wouldn't state only three people that received
4 injuries. I would state that three people received
5 injuries. Is that a -- that implies it's a few number.
6 It's not to me, when you have 10 or 12 people and you
7 have 3 people injured with weapons. I don't classify
8 that as only three people being hurt.

9 Q. Okay. But correctly, only three people were injured
10 in that incident?

11 A. I have given my answer.

12 MS. LEONARD: May I have one moment? That's
13 all I have, Your Honor.

14 THE COURT: Anything from Jefferson County?

15 MR. MCELHENY: If it please the Court.

16 CROSS EXAMINATION

17 BY MR. MCELHENY:

18 Q. I am Terry McElheny, I represent the Sheriff of
19 Jefferson County, Jim Woodward, in this proceeding. I
20 want to clear up a couple of things in your testimony
21 just to make sure the court record is clear.

22 You indicated that in several of the cells where
23 they had been double bunked there was also an inmate
24 sleeping, in your words, "on the floor." I think you
25 later cleared that up by saying on a mattress on the

1 floor, but I want to make sure that the Court
2 understands?

3 A. Absolutely.

4 Q. No prisoner actually sleeps on the concrete floor of
5 the Jefferson County jail?

6 A. I saw no instance of that.

7 Q. Thank you, sir. You testified on the eighth and
8 ninth floor of the Jefferson County jail where the most
9 violent inmates are currently housed, your testimony was
10 something to the effect that "I don't know quite honestly
11 how they do as well as they do on those floors." Is that
12 correct?

13 A. I recall that testimony; yes.

14 Q. Is your testimony the same regarding the staff on
15 the other floors of the Jefferson County jail?

16 A. Yes.

17 Q. In both Birmingham and Bessemer?

18 A. Yes. Just especially on eighth and ninth.

19 Q. Thank you. You indicated that some very prudent
20 management decisions had been made regarding the use of
21 the telephone by inmates, and I would like for you to
22 explain to the Court what those management decisions are.

23 A. Well, as I understand it, at one point if you got on
24 a telephone, you could buy -- might keep on that
25 telephone as long as you could hold it. And I believe

1 the jail administrator basically had those phones
2 configured in a way that they cut off after fifteen
3 minutes so everybody gets -- it's a way to make the phone
4 service available in an equitable way that cuts down on
5 fights.

6 Q. With an automatic disconnect timer system?

7 A. Exactly.

8 Q. Based on the investigation you conducted and on your
9 education, training and experience, recognizing the
10 overcrowding and understaffing situation that you have
11 already testified to, other than that, do you have an
12 opinion as to the job of the Jefferson County Sheriff's
13 Department is doing in the Jefferson County jails in
14 Birmingham and Bessemer?

15 A. Well, again, the limited -- my limited focus and
16 given the limited at of time that I was there, I was
17 impressed with the manner in which they were attempting
18 and were, to some extent in other areas, maintaining that
19 facility as they are under the circumstances. I am
20 impressed with their level of professionalism and the
21 interaction I had with their mid-level supervisors and
22 jail administrator himself.

23 I am impressed with the amount of training,
24 number of hours they devote to both in-service and
25 pre-service training and that it's ongoing in the

1 facility. I was impressed with the overall demeanor of
2 their line staff, that they carried themselves well, that
3 they seemed to be operating at their post in an
4 acceptable fashion. So I would say that I would give
5 them certainly good marks in those categories.

6 Q. I think you are aware that we are here today on a
7 motion filed by the State of Alabama to have the Court
8 dissolve an order that requires the state to remove
9 state-ready inmates from the Jefferson County jails
10 within seven days after those inmates become ready to
11 move to the state facility. Is that your understanding?

12 A. It's my understanding.

13 Q. In your opinion, based on your admittedly limited
14 study of this situation but also recognizing your
15 education, training and experience, do you have an
16 opinion as to what will happen to the already difficult
17 overcrowd situation if the state's requested relief will
18 happen?

19 A. It will worsen, without question.

20 MR. MCELHENY: That's all.

21 THE COURT: Jefferson County?

22 MR. WAGNER: Nothing, Your Honor.

23 THE COURT: Anything further of this witness?

24 MS. SCHLANGER: Just one or two questions,

25 Your Honor. It might be three. Thank you.

REDIRECT EXAMINATION

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BY MS. SCHLANGER:

Q. Did the staff, when you talked to the staff at the jails, did they seem to feel the stresses that you have been describing?

MR. WAGNER: Judge, I am going to object to that. I don't know how he could reach a conclusion about that.

THE COURT: The question is whether the staff felt what?

MS. SCHLANGER: Whether they seemed to him to feel stressed by the overcrowding situation that we have talked about.

THE COURT: Overrule the objection.

THE WITNESS: The lieutenant with whom I spent most my time, the day shift lieutenant, certainly articulated difficulties and problems in the day-to-day management of the facility that I would characterize as beleaguered.

Q. How about at Bessemer?

A. Probably more so with their sergeant and their lieutenant.

Q. When you calculated the number of assaults in June, when you counted them up, do you have any reason to know whether that was the actual number of assaults that

1 actually occurred in the facility?

2 A. No. In fact, I would suspect it captures only a
3 part. Because if you don't have adequate staff, you are
4 not capturing probably all the activity that is actually
5 occurring in those cell blocks, so it's under-reported.

6 Q. And you talked about the classification system that
7 you helped develop in Detroit when you worked there for
8 the Wayne County jail system. If Detroit had been as
9 overcrowded as the Jefferson County system is, would
10 there have been an ability to classify fifteen percent of
11 the population in single cells?

12 A. No.

13 Q. So if you have a classification system that is
14 designed to capture that population, what does -- and you
15 end up with overcrowding, what's the result?

16 A. Well, quite clearly you have compromised your
17 classification plan. You were not housing inmates in
18 accord with what your policies and procedures say you
19 should be. And if you assume that as a valid
20 classification plan and in a lot of incidences does
21 capture what is intended to capture -- in other words, a
22 predatory inmate -- they are then you are allowing that
23 predatory inmate more opportunities than he should have
24 if you are putting him in a double or triple cell
25 situation.

1 Q. So in your opinion just to summarize that point, in
2 your opinion, in the Jefferson County jail, does it seem
3 likely to you that they could decrease the violence in
4 their facility if they had space to single cell more
5 inmates?

6 A. Yes. That's assuming they have got an instrument
7 that is valid.

8 MS. SCHLANGER: That's all the questions.

9 THE COURT: Anything else?

10 MS. LEONARD: Nothing, Your Honor.

11 THE COURT: All right. Thank you, you may
12 step down. You are excused from further attendance. It
13 would be appropriate, I think, to take about a 10 minutes
14 recess. Then I will find out what additional items of
15 evidence the parties desire to put on.

16 (Brief recess taken.)

17 THE CLERK: Remain seated and come to order,
18 please.

19 THE COURT: Is there additional evidence to
20 be presented on behalf of the -- I guess call it the
21 plaintiffs or the United States?

22 MR. STILL: None for the plaintiffs, Your
23 Honor.

24 MS. SCHLANGER: And we don't have any either
25 Your Honor.

1 THE COURT: On behalf of the defendant?

2 MS. LEONARD: Only thing I would like to
3 address is some of the concerns the Court was talking
4 about earlier.

5 First I would like to say --

6 THE COURT: Let me just find out, does it
7 relate to the presentation of evidence or is it more just
8 a --

9 MS. LEONARD: It's just going to be to try to
10 answer some of the questions.

11 THE COURT: Let me see if there is additional
12 evidence to be presented

13 MR. MCELHENY: Your Honor, not additional
14 evidence only to point out we have had -- in the form of
15 pleadings, affidavit of Major Moore, the chief
16 correctional officer, and Lieutenant Frank Fitts,
17 administrative lieutenant regarding statistics.

18 THE COURT: All right. Okay. Those will be
19 received.

20 MR. MCELHENY: Thank you.

21 MS. LEONARD: Your Honor, number one, I guess
22 the first thing is the Department of Corrections, as far
23 as getting state inmates out of the county jails, the
24 fact that the consent decree is dissolved is not going to
25 stop that responsibility. And I am not coming here to

1 you today saying, you know, we are not going to try to
2 comply with state law because it's not true. And I do
3 think that the federal courts, because it is based on
4 this law, something that they should give states a
5 chance to do -- and clearly we are going to make every
6 effort, we are trying to open Brent, to comply and keep
7 state inmates because that is a job for the Department of
8 Corrections.

9 Furthermore, the attorney general who
10 personally -- the lawyer in his office working on this
11 is out of state, but he also has the right to come in
12 under the fact as an intervenor because he is one of the
13 state's chief law enforcement. And there is a provision
14 for intervenor under this law.

15 Also, in some instances, sheriffs are considered
16 state actors which was set out by Walter McMillan V.
17 Monroe County, and there is the state law that says the
18 attorney general in any action that affects the state
19 shall be involved in the case. And I think based on
20 those, clearly the Attorney General has the right under
21 this law to attack the whole consent order.

22 THE COURT: Okay. Thank you. I don't need to
23 hear further from the parties, and I am going to announce
24 certain findings at this point.

25 Number one, the Attorney General of the State of

1 Alabama and, more particularly, as a representative of
2 the Department of Corrections, has standing to bring and
3 pursue this motion under this act. The Department of
4 Corrections, although not initially named as defendants
5 in this litigation, was added with individuals being
6 named in their capacity and including their successors as
7 parties to the injunctive relief. They are parties in
8 the litigation. There are major issues in this
9 case regarding constitutionality of the statute under
10 which this motion is to be brought. The federal court,
11 however, does not address issues of constitutionality if,
12 for other reasons, the constitutional issues do not need
13 to be addressed. In this particular case, the Court does
14 not need to address the constitutionality of the
15 statute.

16 Under the statute, the provisions of section
17 3626 (b) (3) provide that prospective relief shall not
18 terminate if the Court makes written findings based on
19 the record that the prospective relief remains necessary
20 to correct a current or ongoing violation of the federal
21 right extends no further than necessary to correct the
22 violation of federal right, and that the perspective
23 relief is narrowly drawn and the least intrusive means to
24 correct the violation. I evaluate those standards in the
25 light of the motion that's before me, which is

1 essentially to eliminate the requirement that within
2 seven days after a person is due to be transferred into
3 state custody, the Department of Corrections shall take
4 appropriate action to do that.

5 The record is clear at this point, and I do not
6 need to ignore or forget the evidence previously
7 presented but can take the previous record in the light
8 of the additional evidence now being presented. It
9 establishes very clearly that it is necessary to prevent
10 and correct current and ongoing violations of federal
11 rights arising out of overcrowded conditions that this
12 Court maintain an injunction with prospective relief
13 relating to the number of persons housed in the
14 Birmingham and Bessemer divisions of the Courthouse. The
15 evidence is very clear that this remains a continuing and
16 ongoing problem with an implicating violation of federal
17 constitutional rights that justifies and makes necessary
18 actions to prevent the overcrowding conditions.

19 The particular relief to which this particular
20 motion is addressed is very narrowly drawn. It is
21 necessary; it's the least intrusive means that corrects
22 that aspect of the problem presented by the housing of
23 state inmates in the county institution in Jefferson
24 County. That is just hard to argue with. The question
25 as to whether other aspects of this injunction might or

1 might not be subject to being vacated in some way is
2 really not before me and I do not need to address that.

3 Concluding that the defendant's motion is due to
4 be denied on the basis of the statute itself, I do not
5 need to address whether the statute might be
6 unconstitutional in its application or any other
7 circumstances. Now, it is true that the injunction
8 speaks in terms of enjoining the defendants from
9 continuing to hold any prisoner in the jails unless
10 certain conditions are met. That's a preface to the
11 particular items of relief. That may be construed as an
12 injunction to release prisoners which would implicate
13 other aspects of the statute.

14 But at this point, at least, I am viewing it
15 merely as simply enjoining as it relates to remove the
16 state prisoners within the seven days. And that is not
17 an order directing the release of prisoners. It might be
18 subject to other aspects of the statute, but that the
19 state defendant should remain subject to that particular
20 injunctive prospective relief.

21 It is interesting that the particular injunctive
22 relief that's at issue on this motion is not something
23 that is contrary to state law or would cause the
24 defendants -- the moving defendants to violate state law,
25 but indeed is really a mandate that they follow state

1 law. That doesn't appear to be addressed in the statute,
2 but it is interesting that it's that unusual twist.

3 The motion by the defendant for relief is denied
4 on the basis of these findings which through dictation
5 into the record to the court reporter become written
6 findings satisfying the statute. There was apparently
7 for the last four days a suspension of that obligation
8 when the thirty day period ran out before this final
9 order on the motion is now being entered. The clerk will
10 indicate on the minutes of the Court the denial of the
11 defendant's motion.

12 As I say, there are many interesting issues,
13 fascinating issues, but in the context of this particular
14 motion and the facts of this case, I perhaps fortunately
15 don't have to resolve those. That's the ruling of the
16 Court.

17 Let me find out if counsel understand what I have
18 said and, without agreeing or disagreeing, have a
19 question that maybe I need to address while certainly
20 this evidence and the arguments are fresh in my mind.

21 MR. STILL: I have no questions, Your Honor.

22 MS. SCHLANGER: I have no questions, Your
23 Honor, except to ask that we formally be allowed to
24 intervene in the case.

25 THE COURT: You are allowed to intervene as a

1 result primarily of what I would call the cross motions
2 and requests by the plaintiffs that were ascertaining the
3 unconstitutionality of the statute. You are allowed to
4 intervene for that purpose, and being a party for that
5 purpose you are entitled to be heard on the other issues
6 in the case.

7 MS. SCHLANGER: Thank you, Your Honor.

8 MS. LEONARD: I don't have any questions, Your
9 Honor.

10 MR. MCELHENY: No questions on behalf of the
11 sheriff.

12 MR. WAGNER: No questions on behalf of the
13 county.

14 THE COURT: I do not view the way in which the
15 statute is worded as authorizing attorneys fees against a
16 movant, at least in the absence of the kind of
17 authorization that would allow a prevailing defendant in
18 these cases to obtain attorney's fees, and that clearly
19 would not be authorized. It is a legitimate dispute and
20 disagreement about meaning and application of these
21 matters. So no attorneys fees will be awarded in the
22
23 case. Okay. Thank you.

24 (End of Proceedings)

25

