

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Before: HONORABLE GEORGE B. HARRIS, JUDGE

ROBERT CHARLES JORDAN, JR.,
A-46604,

Petitioner,

vs.

C. J. FITZHARRIS, Warden, et al.,

Respondents.

No. 44309

FILED

AUG 22 1966

ROBERT C. JORDAN, JR.,

Petitioner,

vs.

C. J. FITZHARRIS, Warden, et al.,

Defendants.

JAMES P. WELSH, Clerk

No. 44786

21.

PROCEEDINGS AT TRIAL

REPORTER'S TRANSCRIPT

Tuesday, August 9, 1966

REPORTED BY:

MARY ANN JONES

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and
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MORNING SESSION -- TUESDAY, AUGUST 9, 1966 -- 9:30 A.M.

1 THE COURT: Are you prepared to proceed? You
2 may call your first witness.

3 MR. COHLER: Mr. Esparza.

4 Would it be appropriate to remain seated in view
5 of the circumstances?

6 THE COURT: Yes.

7 ALFONSON HENRY ESPARZA

8 called as a witness on behalf of the plaintiff, having been
9 duly sworn, testified as follows:

10 THE CLERK: State your full name.

11 THE WITNESS: Alfonson Henry Esparza.

12 THE COURT: May I have the spelling of the last
13 name, please.

14 THE WITNESS: E-s-p-a-r-z-a.

15 MR. COHLER: That is the last name, the first name
16 is Alfonson and the middle name is Henry.

17 DIRECT EXAMINATION

18 BY MR. COHLER:

19 Q. Would you please tell the Court how old you are?

20 A. Twenty four, I will be 25, September 20th.

21 Q. Are you presently an inmate at this correctional
22 facility?

23 A. Yes, sir.

24 Q. And how long have you been confined here approximately

25 A. June 17th, 1965.

1 Q. Is there an area in the facility known as isolation?

2 MR. GRANUCCI: Object that it is leading.

3 THE COURT: Overruled.

4 MR. COHLER: You may answer the question.

5 THE WITNESS: Isolation is in 'O' wing.

6 Q. Are there some cells within the isolation area known
7 to you as "strip cells"?

8 MR. GRANUCCI: Object, leading.

9 THE COURT: Overruled.

10 THE WITNESS: The strip cell is in the back side of
11 isolation -- last six cells.

12 Q. And you mentioned the isolation being in 'O' wing.
13 In which floor is it, if you know?

14 A. First floor.

15 Q. Have you ever been confined in a strip cell here?

16 THE WITNESS: There you mean, yeah.

17 Q. Here in the Institution?

18 A. Yes, sir.

19 Q. More than once?

20 A. Yes.

21 Q. Would you tell the Court please when the first time
22 was approximately that you were put in the strip cell within
23 the isolation area?

24 A. I can't recall exactly, it was sometime in August of
25 last year.

1 Q. 1965?

2 A. Yes.

3 Q. Was it near the beginning of August or the end of
4 August, can you recall approximately what part of the month?

5 A. It was a year ago. I mean, I would remember if I
6 looked on my notes but I don't want to look at that.

7 Q. Mr. Esparza, can you tell me how long you were in
8 the strip cell in August of 1965?

9 A. In August of '65 I was there five days -- but they
10 said I was only in there for three days.

11 Q. Did somebody tell -- Mr. Esparza are you looking at
12 a piece of paper?

13 A. Yes. I am looking at a piece of paper.

14 Q. Is this something to aid you in this examination?

15 A. This is to make some points that I want to bring up
16 in this case if I was asked.

17 Q. Will you proceed without the use of the paper until
18 such time you want to refer to it?

19 A. Yes.

20 Q. Mr. Esparza, when you were in the strip cell in
21 August of 1965, will you tell the Court what kind of floor
22 there was.

23 A. The inner part of the strip cell had a steel door with
24 bars and it has a screen over it and then on the outside they
25 have a metal door with the screen on it and it has a flap that

1 closes and opens.

2 Q. You say there is an inner door and outer door?
3 How far apart are they in your judgment?

4 A. More than an arms distance.

5 Q. About how many feet approximately?

6 A. I would say a good four feet, maybe less.

7 Q. And the inner door as you described it is a barred
8 door -- it has a set of bars?

9 A. It is a sliding door that has bars on it and has a
10 screen. You can't reach through. I am not sure on that
11 certain section of the door.

12 Q. And the outer door that you described is about four
13 feet away?

14 A. It is an open and close metal door.

15 Q. And is there a window opening on the outer door
16 four feet away?

17 A. The wall goes all the way across -- they have a big
18 window that has a screen and they have a flap on the outside
19 that they close when they want and open when they want to.

0 Q. When the flap is closed, does it completely cover
1 the window opening?

2 A. Yes, that window, but the window on the door -- they
3 have another flap for that one, too.

4 Q. Can the flap on the door in the outer wall be handled
5 by an inmate inside the cell?

1 A. No.

2 Q. Was there a light of any kind inside of the strip
3 cell itself?

4 A. No.

5 Q. Was there a light of any kind inbetween the strip
6 cell door and the outer wall?

7 A. When you say outer wall, do you mean outside the
8 strip cell completely?

9 Q. Let me rephrase the question. Was there a light
10 between the barred door and the solid door which had flaps
11 on it?

12 A. No.

13 Q. Were the flaps on the door and window of the front wall
14 ever closed while you were in the strip cell in August of 1965?

15 A. You mean were they ever opened?

16 Q. Was it ever opened?

17 A. Closed. They were always closed.

18 Q. Was there any light coming into the cell?

19 A. No. There is a little crack but you can't call it
20 light but you can see -- there is just a little light like
21 that (indicating the small space between the bottom of the door
22 and the floor.)

23 Q. And that was the only light when the flaps and doors
24 were closed?

25 A. Yes, at that time in August.

1 Q. How often did you say the windows and doors were
2 closed in August?

3 A. They were always closed, they were never opened.

4 Q. Was there any ventilation opening inside the strip
5 cell in August?

6 A. That's hard to say, they have got a ventilation
7 opening there, but it doesn't make any difference because
8 there was no air coming in because the ventilation wasn't
9 working at that time and they also have it blocked off so
10 the guys in isolation can't holler up to another tier or
11 across the way -- so they blocked it off -- unless the
12 ventilation is working, they are not going to get air.

13 Q. What caused you to notice that the ventilation
14 wasn't working there in August?

15 A. Actually the reason that I found out was because I
16 like to smoke and generally when you go to strip cell they
17 shake you down -- you shake yourself down -- I reached up
18 there and pulled myself up and looked back there and there
19 was no air.

20 Q. You were looking for contraband?

21 A. I was looking for some matches.

22 Q. When you were in the strip cell, Mr. Esparza, how
23 did you go to the bathroom? What facility was there?

24 A. What cell are you talking about?

25 Q. Can you recall which cell you were in in August of

1 1965?

2 A. I don't know because there are six cells, I think
3 I might have been in 21.

4 Q. Were you in one of the two rear cells or other strip
5 cells?

6 A. One of the four other strip cells in August. Can
7 you refresh my memory what numbers were in the last two --
8 I think it is 23 or 24.

9 Q. Perhaps you misunderstood me. I wondered if you
10 were in the two rear strip cells or the other four strip cells?

11 A. I am pretty sure that in August I wasn't in the
12 two rear strip cells I am pretty sure that I was in cell 21.

13 Q. In that cell, what facilities were there to go to
14 the bathroom?

15 A. There was a concrete -- you see there is a commode
16 with concrete around it and it is level and it is just a toilet
17 there, but you can't flush it.

18 Q. How is it flushed, if you know?

19 A. At that time, it was -- it was flushed once a day
20 by either an officer or an inmate who was working on that
21 particular section.

22 Q. You couldn't flush it from within the particular cell;
23 is that correct?

24 A. No, sir.

25 Q. Be careful and tell the Court how often the commodes

1 were flushed while you were there in August.

2 A. One time per day.

3 Q. When you were first put into this strip cell in
4 August 1965, Mr. Esparza, was there any human waste in the
5 cell itself?

6 A. Yes, on the walls and part of the commode where
7 people missed.

8 Q. On all parts of the wall or some parts of the wall?

9 A. In that cell I couldn't give you exact -- all I
10 can tell you is when they brought in the food, they opened
11 the door and light would come in then but, all the other
12 time it was dark and you couldn't see nothing but the air
13 was nauseating and you can smell.

14 Q. There was an odor, a smell?

15 A. Definitely.

16 Q. What kind of odor was there, Mr. Esparza?

17 A. I mean a nauseating odor -- repuking odor, a
18 bad smell.

19 Q. How often was food brought to you in the strip cell
20 in August 1965?

21 A. Twice a day.

22 Q. How was it brought in? Was it brought on a tray
23 or what?

24 A. In August '65, it was brought on a tray but later
25 they changed the policy.

1 Q. Let's stick to August of '65, if you don't mind.

2 Did you have anything to wash to your hands before you ate?

3 A. No. You see there is no running water inside the
4 strip cell at that time.

5 THE COURT: Was there a basin in the vicinity
6 at all?

7 MR. COHLER: The Court would like you to tell
8 whether there was a basin or any running water in the strip
9 cell?

10 A. Your Honor, at this time in August -- we are referring
11 to August, a year ago, there was nothing of that order, when
12 you know -- when I think that from the beginning of March
13 when Jordon's petition --

14 MR. GRANUCCI: Objection.

15 THE WITNESS: I am trying to answer, I don't know.
16 He asked me a question and I'm answering it the best I can.
17 What I am trying to say is that after Jordon got his petition
18 they changed it.

19 MR. GRANUCCI: Objection, move to strike.

20 THE WITNESS: Do you understand what I am trying to
21 tell you, it was changed afterwards?

22 THE COURT: Let's take the period of time before any
23 change was made. Was there any running water?

24 THE WITNESS: No running water whatsoever in none
25 of the strip cells.

1 THE COURT: Was there a basin or anything like that
2 at all?

3 THE WITNESS: Nothing in that order.

4 MR. COHLER: Was there a water pitcher at that time?

5 A. No water pitcher that contained water, there was a
6 small plastic cup sizeable to a ten cent cup of coffee that
7 you can buy in a vending machine.

8 Q. How often were you brought water to put in the cup
9 in August 1965?

10 A. Once at breakfast and once in the evening.

11 Q. Were you given more water if you drank the cup and
12 asked for more?

13 A. No.

14 Q. Just one cup twice a day?

15 A. Yes.

16 Q. Was soap in the cell at that time?

17 A. No.

18 Q. Was there a towel in the cell at that time?

19 A. No.

20 Q. A toothbrush?

21 A. No.

22 Q. Mr. Esparza, what is your best judgment of the
23 temperature in the strip cell in August of '65, was it hot
24 cold or what, if you have a judgment or if you can recall?

25 A. At this time in August it hasn't yet got too cold

1 I would say it was -- you'd didn't have no temperature
2 thermometer but it would be more on the cold side because
3 it was beginning to creep into the cold months.

4 Q. When you were put in the strip cell in August '65,
5 what were you permitted to wear?

6 A. I wasn't permitted to wear nothing at that time.

7 Q. You mean absolutely nothing?

8 A. Nothing.

9 Q. The whole time you were in the strip cell in
10 August you didn't wear anything all of those days?

11 A. All of them.

12 Q. What were you given to sleep on in the strip cell
13 in August 1965?

14 A. At that time I wasn't given anything because I came
15 in there because I supposed to have burnt my mattress in 'E'
16 wing and this was the reason they didn't -- they said I
17 couldn't have --

18 MR. GRANUCCI: Objection. It is hearsay.

19 THE COURT: Overruled.

20 MR. COHLER: Q. Answer the question please. Were
21 you given anything to sleep on after you had been in the cell
22 for a day or two in August?

23 A. I was in there for five days and they put me in the
24 front section of isolation but when I was back in the strip
25 cell, I didn't have nothing.

1 Q. Do you know and would you recognize Institution
2 personnel referred to as M.T.A. or known as medical technical
3 assistants?

4 A. Yes.

5 Q. Would you recognize an M.T.A. because they wear
6 something distinctive?

7 A. They wear white smocks.

8 Q. Did you ever see an M.T.A.?

9 A. At that time I can't say I did because I was asleep
10 in the morning. They come creeping in about 7 o'clock in
11 the morning and open the door and peek in and they say some-
12 thing like, "how are you feeling." But you are still asleep
13 and when you go to say something they're gone, do you know
14 what I mean?

15 Q. Did you ever talk to an M.T.A. in the strip cell?

16 A. Not in August.

17 Q. Did you talk to anybody whom you thought to be a
18 medical personnel in August?

19 A. No.

20 Q. Mr. Esparza, when was the next time you were in
21 isolation area, not the strip cell area?

22 A. Right after I did the five days, they said three,
23 but it was five. They put me in the front section and I
24 went back to 'E' wing and after that I came in back again
25 in August -- I mean in October. I am pretty sure I might

1 have been there before. I didn't remember because I didn't
2 stay there too long. The next time I came to isolation, I
3 believe it was October 26th or 27th of 1965.

4 Q. Mr. Esparza, backing there for a moment, you said
5 you believed that you were in the strip cell in August for
6 five days; is this something you were told or did you keep
7 track of the time or how did you arrive at that determination?

8 A. I kept track of the time. I wasn't familiar with
9 the procedure -- with what they do to you and I kept track
10 of days. I am not that forgetful, you know.

11 Q. Turning now to October 1965, how long were you in
12 isolation, not necessarily a strip cell, but isolation
13 approximately?

14 A. A strip cell would be considered isolation, too.
15 Right?

16 Q. How long were you in isolation, whether strip cell
17 or the forward part of isolation?

18 A. Approximately 58 to 60 days.

19 Q. How much of that time were you in the rear strip
20 cell?

21 A. I would say roughly figuring 54 days.

22 Q. Was there a particular incident that occurred around
23 Thanksgiving of that year?

24 A. Yes. But, I wanted to say something to you, if I
25 may (addressing the Court). At that time and getting back to

1 what you was asking about, you remember you asked about the
2 bases and trays and all this and that. Well, at that time --
3 well later when the policy was changed, they changed the
4 policy where they fed you on paper plates and gave you plastic
5 spoon and cut down your food to a minimum, you see the point
6 I was trying to express to you, they had no facilities to
7 wash the spoon. The spoon was a plastic spoon and when
8 you eat something with grease on it -- I don't care if you
9 rub it with paper, you are not going to get all the grease
10 off of it, do you understand what I'm trying to say? You
11 had to keep that particular spoon in the cell until you got
12 out of the strip cell. I want to make that point.

13 MR. GRANUCCI: Move to strike the previous portion
14 of the testimony, it is beyond the issues.

15 THE WITNESS: What do you mean beyond the issue?

16 THE COURT: It may go out.

17 MR. GRANUCCI: Thank you.

18 THE COURT: Counsel, will you address yourself to
19 the 54 days in the strip cell with respect to the food; water,
20 if any provided and any other of the ordinary facilities that
21 are provided.

22 MR. COHLER: Mr. Esparza, during the time of Fall of
23 1965, the approximately 54 days in the strip cell about how
24 often during that time were you provided with water?

25 THE COURT: Let us take the ordinary day.

1 THE WITNESS: The average day?

2 THE COURT: Would you tell the Court, the food, if any,
3 that was provided and water?

4 THE WITNESS: When I first went in there -- can I tell
5 you in my own way when I first went in there?

6 THE COURT: (Nodding) Yes.

7 THE WITNESS: It was the same thing then, all the flaps
8 were closed and then I went in there for creating a disturbance
9 and anyway I am back there -- back there and all the flaps
10 are closed and me and another friend of mine, we were messing
11 up and at this time I was writing to people, you can't write
12 in there because the flaps are closed. I started to mess up
13 and I told them to "stick it" and all that and the Priest
14 was coming back there and I told him to write to my people
15 because they were writing letters, talking about what is the
16 matter why you don't write and you couldn't write
17 and tell them that you couldn't write because I couldn't
18 see. So one particular time I went to the committee room
19 and I told them, "You know, what I want to be able to do is
20 to write." Well they took my advice and so on and so
21 forth and they said we ain't got no objection to you
22 writing and I said the flaps are closed all the time,
23 how are we going to write when you bring the food in, close
24 the door and it's dark in there. They says, we have no
25 objection to you writing. I believe it was Mr. Kiepura.

1 He said I would be able to write. So in the meantime, they
2 changed the policy --

3 MR. GRANUCCI: Your Honor, could this be limited
4 to time and place and persons present? We have a great deal
5 of hearsay.

6 THE WITNESS: You can check the records when I went
7 to the committee room, Mr. Kiepura knows what I am talking
8 about.

9 THE COURT: You may proceed.

10 THE WITNESS: They gradually changed the procedure
11 about these flaps. They would only close them -- they
12 would open them for an hour so that we could write in the
13 night time but it was so dark -- it was a strain on the eyes
14 where you couldn't see. Before that you couldn't see at
15 all, but there is such a bad strain on the eyes, but they
16 said if there is no noise in here we'll keep the flaps open
17 all the time. We got to write letters then.

18 After that, when you get in to speaking of the day,
19 the routine, it was generally the same thing, just that we
20 had more light within the house from outside. So even then
21 we had to get them to close the flaps because there was no
22 windows and there was no windows in none of the cells and
23 it was pretty cold, like I said, as the months crept on,
24 it got really cold. It was pretty cold and so sometimes
25 we have to have them closed and the bedding we had was a

1 mattress made out of canvass, like a straw mattress, it has
2 a blanket sewed in it. This is all you got with coveralls
3 and they didn't give no socks or underwear at this time.
4 The reason I say at this time is because I understand it
5 changed since you (referring to the Court) got into the
6 picture.

7 MR. GRANUCCI: Object to the last remark.

8 THE COURT: It may go out.

9 THE WITNESS: Like I said, before -- getting back
10 to generally procedure, like I said -- what I told you about
11 the paper plates.

12 THE COURT: Let us break it down. I think as I
13 understand the general outline, let's break it down to food
14 and water. What if any food did you get when you went into
15 the strip cell. What if any water did you get?

16 THE WITNESS: At this time I was getting R.H.
17 I didn't get --

18 MR. COHLER: Tell the Court what R.H. is.

19 THE WITNESS: Were you ever in the service? It is
20 a block of vegetables ground up and it looks like a meat loaf
21 and it is cold -- right out of the freezer -- and sometimes
22 if you hit it on the floor it is hard and generally none of
23 the guys eat that because it is foul. Anyway that is what
24 I was getting at that first part of the 29 days? Understand
25 me? As far as the way it was, it was the same as it was

1 before, but toward the end -- the officer, he wasn't suppose
2 to but he would say go ahead and drink another cup because
3 he was familiarized with us after going on 60 days, he
4 became a part of the fixture on the wall, you know what
5 I mean.

6 MR. COHLER: What were you permitted to wear,
7 Mr. Esparza?

8 A. At that time we had coveralls and that was it, no
9 socks, no underwear, no T-shirt.

10 Q. Were your clothes ever taken away from you?

11 A. I will get to that in a minute. Anyway, let's get
12 into the showers. At that time I was trying to explain
13 something. When I told them something about the shower and
14 he said I didn't understand the word properly, I knew what
15 the word was, I said, "frequently as one week, one per week",
16 when I was talking about the showers. Sometimes we didn't
17 get to shower for three weeks, you know what I mean? To
18 me when he said as frequently -- I can't pronounce the word,
19 you know what I mean?

20 THE COURT: I understand.

21 THE WITNESS: Sometimes we didn't get to shower
22 for three weeks I am speaking of me and Wells. This is
23 another inmate that you probably will see in San Francisco.
24 We were the ones that were beyond the time that you were
25 supposed to be there, like 29 days. The showers and the

1 like, the haircut, I looked like a beetle, you know what I
2 mean? My hair came down to here. (Indicating) I couldn't
3 get no haircut and the only reason I mentioned that is
4 because when you don't take a shower and wash up then your
5 hair gets dirty and when you eat your hands it causes illness
6 and I had hepatitis several times and when I was in there --
7 at this time I felt the symptoms, the limpness and grogginess
8 coming on and I complained to the M.T.A. and they said,
9 "see us when you get out." Because you see, everybody is
10 in there and they say something is wrong with them and the
11 M.T.A's say he is trying to make excuses so that he can
12 get out of the strip cell. You know what I mean? I was
13 trying to bring this in before, I was asleep most of the
14 time when the M.T.A's came around. You are asleep, you
15 want to see them and it makes you mad to think today I don't
16 talk to an M.T.A. because I would tell them when I was sick
17 and they would laugh about it. For example, this doctor
18 would come in. I told him, I am sore in my liver and I
19 appreciate if you would give me a urinealysis or give me
20 balm to sooth me. He said no, we don't give matches. I
21 said don't play with me. I am talking about medicine and
22 he is trying to make a joke, like you make a bomb out of
23 matches. They gave me a 115. I was so disgusted with these
24 people. I might have died and they would be talking about
25 wait until you get out.

1 MR. GRANUCCI: Your Honor, could this be specifically
2 limited to time and place, particularly the latter incident?

3 THE WITNESS: O.K., the time was January -- the
4 month of January and the place was in Max Row.

5 MR. GRANUCCI: Thank you.

6 THE WITNESS: And that is the other side there,
7 you don't get no visits and there is no windows and you want
8 me to go on?

9 MR. COHLER: Just direct yourself to the strip cell.
10 Were there water basins in the strip cells?

11 A. There was no water basin in the strip cell whatsoever
12 and for a person to -- what do you call it -- a person to go
13 to the bathroom, otherwise he had to go in a corner and
14 sometimes these flaps were closed and what I was trying to
15 tell you -- they got a little hole in the floor -- in the
16 corner and you can't see and you have got to squat, take
17 off your coveralls and squat and at that time they didn't
18 give you the toilet paper that you needed. They hand a
19 small piece to you and that is your fix for the day, you
20 know what I mean? Sometimes you didn't want to go for
21 two or three days so that you would get enough paper to
22 wipe yourself, this is partly some of the reason that a lot
23 of waste was on the floor and some people get mad and throw
24 it on the walls. You know what I mean? Because you can't
25 see it unless your eyes get immune to the dark. It doesn't

1 always become that way unless people have very good eyes.
2 You know what I mean? It is pretty bad in there. That is
3 one thing they never clean them up. I can see if a guy
4 comes in there and he is crazy and he "shits" all over
5 place and throws waste all over the walls. But if they
6 washed the walls it wouldn't be a stink like that. It
7 wouldn't be so bad. They don't do that. Sometimes maybe
8 three or four weeks go by and they might give a dirty mop
9 to you and tell you to mop the floor. Did you ever smell
10 mop water when it is dirty? Do you know what I am talking
11 about?

12 THE COURT: (Judge nodding affirmatively)

13 THE WITNESS: You go and mop the floor and it smells
14 worse when you get through mopping than it did when you
15 didn't mop because it stinks. Is there any question before
16 I get into the --

17 MR. COHLER: Q. Have you described the condition
18 of the cleanliness of the cell in the 59 days that you were
19 there?

20 A. I finished saying it was dirty and there was waste
21 there, too.

22 Q. Were your clothes ever taken from you when you were
23 in the strip cell? Would you describe that incident please.
24 We are in the fall during the 54 days in the strip cell.

25 A. About the day before Thanksgiving.

1 Q. Would you tell the Court what happened at that time,
2 please?

3 A. Well, see, at that time I was taken back there
4 because I was supposed to have tobacco in the front section
5 of isolation. They said they had found some tobacco in the
6 mattress.

7 THE COURT: What did they find in the mattress?

8 THE WITNESS: Tobacco.

9 THE COURT: Tobacco.

10 THE WITNESS: And so he comes in and they are going
11 to take me to the strip cell and I finally went back there
12 and they come back and they give me 29 days more on top of
13 the other 29 days that they said I had to do and I had to
14 do it all there in the strip cell. Anyway, when I went back
15 there -- to me it was pretty upsetting because I am half dead,
16 you know, what I mean, I 'aint had a square meal in damn near
17 a month -- I 'aint had a solid meal and here they are giving
18 me 29 days, but they don't give me R.H. this time because I
19 don't think that they wanted to kill me, just to play the
20 game. They brought my friend back there too. Wells was
21 telling me to shut up because I wasn't going to be that bad
22 and they brought him back -- he'll tell you his own story.
23 I am mad because they are giving me 29 days more for having
24 contraband.

25 THE COURT: By contraband, do you mean tobacco?

1 THE WITNESS: Yes. And to me I was kind of hoping
2 to get a visit and this here blew everything for a visit.
3 They were talking about giving me a special privilege to have
4 a visit for an hour and that blew it and they put me back
5 there. What they did was to switch us -- to put Wells in
6 one cell and me in another cell. They said -- I got 29
7 days and he hadn't done anything. I am talking about Wells.
8 So they come back there and they say, "you got 29 days."
9 So I got mad and started to use foul language, you know
10 profanity?

11 THE COURT: Who was present at that time?

12 THE WITNESS: I think Mr. de Carlo, Mr. Johnston
13 and Mr. Keipura and Sgt. Friedrick.

14 THE COURT: Was that during a hearing?

15 THE WITNESS: Yes, we didn't go to the room though
16 like they always do, they came back to the strip room and
17 talked about bla-bla- and the door was open and they stood
18 in front of the door -- in front of the cell. They stood
19 in front of the cell and they came in there and I ain't
20 mistaken, I think it was Mr. Kiepora read the writeup. I
21 don't know for sure, I know they were there, aint that right?

22 MR. KIEPURA: (Addressing the Witnesses seated in
23 the Courtroom)

24 THE WITNESS: Afterward they go next door to read
25 the writeup to Wells and I got mad because they gave me 29

1 days, so I started to act like a two-year old and got up on
2 the bars, and I was banging. You see there is a metal
3 partition that when you hit it it vibrates, it makes a lot
4 of noise and I started to bang like a two-year old and they
5 came in there and told me to knockoff the noise. I kept
6 banging. So later Wells pounded on the wall and he said,
7 "man, cool it." You know, he said you already got 29 days
8 and they're waiting to stick you for more. I dummied it
9 up. So, 45 minutes more, Mr. Matea, this officer and
10 Sgt. Friedrichs and Mr. Kiepura and Mr. Cartley and
11 Mr. Johnson came back there and they were all standing
12 there like -- (Witness making monster faces) they said,
13 "throw out your clothes and mattress" and I says, "what
14 you mean?" You know. At this time the flaps were closed
15 because they closed them because I was making all that noise,
16 except the one on the door, you know, and when they opened
17 it up, I am thinking, "Wow man" because this is in November
18 and it is pretty damn cold and there is no window and there
19 is no ventilation or heating system. I told them, "Wow."
20 I says to them that it is pretty cold back here. They said,
21 "We don't care, just give us your clothes". I said, "I
22 am not going to give them to you. I'll give you the mattress,
23 but I won't give you the coveralls." They said, "If you
24 don't, we're going to tear gas you." I stood for a minute
25 and thought about it because I was never tear gassed before.

1 I said, "No, I 'aint giving you these clothes." So Sgt.
2 Friedrick and Mateo put the gas mask on, and he comes in
3 with a gun and big goggles on and he looks like a space
4 man and he comes with him. I am stupid, I am not familiar
5 with what the guy is going to do with me. I put the canvass
6 over my head and had it draped over me. He comes in and
7 starts shooting the walls like this (Demonstrating spraying
8 with a spray gun). He starts shooting all over the wall.
9 So, all of a sudden I was smelling that sweet smell because
10 that is what tear gas is like -- a sweet bitter smell, you
11 know. I found out that that canvas 'aint going to do me no
12 good and I threw it off and I reached over to them and tried
13 to make them stop. I reached through the bars and I tried to
14 pull the gas mask off his face to show that it was if it was
15 good for me it was good for him. I wanted to give him a whiff
16 of his own poison. You know what I mean? When I did that,
17 he panicked and shot me in the face with it. And I just grabbed
18 my eyes because when it hits you in the face, it is like
19 somebody is going to gouge your eye-balls out and your chest
20 is burning all to hell and your throat feels raw, like you
21 drank raw alcohol and the hair under your armpits and your
22 rectum starts to burn and your testicles start to burn.
23 Do you know what I mean? When it starts to affect you you
24 would give anybody anything they want in the cell. At that
25 time I guess he didn't hear me when I said I'd give him anything

1 in the cell and they shot in the whole can of tear gas.
2 Finally, I said I quit, you can have the damn clothes, you
3 know. At this time, he reached down and said, "throw them
4 out." You have got to double up the clothes slide them under the
5 door, with all the damn gas, you feel like you are dying and
6 it's hard to get the clothes under there and they said,
7 "we'll shoot again", and I couldn't get it under the door.
8 You know what I mean? Finally, I got my coveralls off and
9 I was trying to find some place to try and get a place --
10 I wasn't in my right mind. There was no place to go and
11 run and get away from there. I was making a lot of racket
12 and my friend next door thought they came and jumped on me.
13 He got upset and he hit the bar with his hand and knocked a cup
14 of water that was on the bars -- and the door was open and I
15 think Mr. Johnston was standing there and it got on him.
16 Mr. Johnston thought it was urine. They gave him 29 days
17 R.H. for it and they didn't do nothing to me. I guess they
18 felt shooting me with the gas was punishment. They didn't
19 give me R.H.

20 MR. GRANUCCI: The last part is speculative.

21 THE WITNESS: It isn't --

22 MR. COHLER: (Addressing the Witness) Counsel is
23 speaking to the Court, Mr. Esparza.

24 THE COURT: What is your objection, counsel?

25 MR. GRANUCCI: The last part of the witness's statement

1 is speculative.

2 THE COURT: Overruled.

3 MR. COHLER: You may continue. What happened after
4 the tear gas?

5 THE WITNESS: Anyway when I took -- what you call it --
6 when I took the mattress and coveralls out, they let me get
7 back to the cell. They gave Wells 29 days R.H. and this is
8 the reason I just am bringing this up and I want to point out
9 what happened right there. After they finished taking it out,
10 he closed the door and Mr. Mateo or Sgt. Friedrich closed the
11 last flaps, I mean -- it is undescrivable to describe to you
12 how I felt. Have you ever been a fire fighter? When you are
13 fighting a fire you are overcome by gas, or for instance, and
14 you know that feeling you're going to die because there is no
15 way to go or turn, you know what I mean? Well, anyway that is
16 what I felt because they closed the door and I had enough sense
17 to know that this stuff can kill you because I have heard how
18 it burns up some people -- their faces, and I know that with no
19 air that that thing has nothing to do but eat up the oxygen
20 in the body. I guess I panicked, anyway, I had convulsions
21 like. (Indicating a gasping noise in the throat) You are
22 trying to relieve yourself of the pain by screaming -- do you
23 understand what I mean? It may sound funny, but that is the
24 way I felt at the time. Anyway, about five to ten minutes
25 later, they came back and opened the flaps and opened the door.

1 I 'aint got nothing in there and I am butt naked. It's
2 amazing to me that I didn't get a damn cold. The gas was
3 hugging the walls because the gas pulverizes and sticks to
4 the wall and the windows and it falls down and it will still
5 burn your eyes. They left the door open which they generally
6 don't do. About two, three hours later, I would say two
7 hours later, about six o'clock -- that happened about four --
8 four twenty, I don't know, around six o'clock, the M.T.A.
9 comes over there. I am mad and I don't say nothing. Anyway,
10 he comes over and he says, "how are you?" And he got a smile
11 on his face, you know what I mean? I just looked. Wow, man,
12 this guy is sadistic that he got a smile and here I am in pain.
13 He said, "he is all right." He splits, I mean he left.
14 Anyway, all that night -- what do you call it? All that night
15 the door and windows and flaps were left open. Now at this
16 time it was cold, I mean my teeth were chattering, you know
17 when your teeth go back and forth? Anyway, my friend back
18 there -- have you been back there yet? Have you seen them?
19 There are screams and there was a little hole where somebody
20 made a little hole and generally the guys get a little string
21 out of the mattress and tie it to wet toilet paper and help
22 feed each other-- the ones that 'aint eating. The guys that
23 are eating get them a couple of sandwiches so that they won't
24 starve. Anyway, my friend next door knew the condition I was
25 in and knew how cold it was and he gave me his coveralls through

1 the door. He wasn't suppose to. He rolled them up and we
2 got a line -- and I got his coveralls and I put them on.
3 The body feels cold and the bars are cold. There is no
4 warmth anywhere. Every time you put on the coveralls, every
5 time you can hear the keys clanging and you know the guards
6 are coming, I would have to take the coveralls off. Do you
7 know what I mean? If they would have seen me with them on,
8 they would strip them again. So I threw them in the
9 corner with some toilet paper where they couldn't see it
10 or I would sit in the corner and when he split I would put
11 them back on again to get warm again. I couldn't sleep that
12 night because I had to keep warm. In the morning, Lt. Flores
13 comes, he was there too. He comes in the morning and says,
14 "how do you feel?" He is trying to play the friend part. He
15 says, "if you keep quiet we'll see what we can do to give
16 you a mattress." I went along with this and at the end
17 of the day around after chow at four o'clock they gave me
18 the mattress back and that was more or less the conclusion
19 of it, but I got out of there on the day before Christmas.
20 They let me out and it was the conclusion. Any more questions
21 that you want to ask me, Mr. Cohler?

22 MR. COHLER: I have no questions. Your Honor, do
23 you want to pursue any matter?

24 THE COURT: I think we might take a short recess at
25 this time.

(Whereupon a short recess was taken)

1 THE COURT: You may proceed, Mr. Granucci.

2 CROSS-EXAMINATION

3 BY MR. GRANUCCI:

4 Q. Mr. Esparza, have you ever been convicted of a
5 felony?

6 A. Yes, sir.

7 Q. When?

8 A. Around November 22nd.

9 MR. COHLER: Your Honor, any felony may become part
10 of the record and perhaps we can save time.

11 MR. GRANUCCI: All right. You were convicted of
12 second degree robbery in 1963 and burglary in 1960?

13 A. Yes, sir.

14 Q. Mr. Esparza, while you were in the "quiet cell"
15 in August of '65, how often were the toilets flushed?

16 A. Twice a day.

17 Q. And who flushed them?

18 A. An inmate or an officer.

19 Q. You say an inmate flushed the toilet?

20 A. Yes.

21 Q. Do you know any inmate that did this?

22 A. Yes. The inmate that works as an orderly.

23 Q. Would that be an inmate porter?

24 A. There you go. He, flushes in the morning.

25 Q. And the officer?

1 A. And the officer flushes in the night time.

2 Q. Did you ever ask to have your toilet flushed?

3 A. Yes, sir.

4 Q. And would they say they would flush it?

5 A. No, sir.

6 Q. Never?

7 A. No, sir.

8 Q. Ever asked for a mop or cleanzing powder or brooms
9 to clean up your cell?

10 A. Yes, sir.

11 Q. Do you remember who you asked?

12 A. Yes, sir.

13 Q. Who?

14 A. Mr. Mateo.

15 Q. What did he say?

16 A. They said they would do it when they had time and
17 they never had time.

18 Q. And they never gave you more than one cup of water?

19 A. What are you talking about, August or October or
20 what?

21 Q. I am talking about August.

22 A. In August they only gave us one cup of water at
23 each meal and that was twice a day.

24 Q. But afterwards --

25 MR. COHLER: What do you mean by "afterwards?"

1 Q. (To the Witness): Is this October or November
2 that you were given more water; is that correct?

3 THE WITNESS: Like I said, before -- toward the end
4 that the officer would give us an extra cup of water because
5 he got use to us being there. But, it was rare. O.K.?

6 MR. GRANUCCI: Q. Toward the end of what?

7 A. Toward the end of the sentence, O.K.?

8 Q. Toward the latter part of the 60 days?

9 A. I would say around in the month of December to be
10 more exact.

11 MR. OAKES: When did they give you the water?

12 THE WITNESS: After each meal and after breakfast
13 and dinner.

14 MR. OAKES: How about before each meal?

15 THE WITNESS: No, sir.

16 MR. OAKES: Do you remember who was on duty in the
17 evening in August?

18 MR. COHLER: I think that the two of you are speaking
19 about two different periods of time.

20 THE WITNESS: When he said August, I told them, you
21 know, what we are talking about --

22 MR. GRANUCCI: Will you please --

23 THE WITNESS: I am talking to the Judge.

24 MR. GRANUCCI: They never gave you water on the
25 midnight to eight shift?

1 A. No, sir.

2 Q. When did they give you water?

3 A. Right after breakfast and right after dinner. That
4 is approximately eight o'clock and the dinner is approximately
5 after three o'clock or four o'clock. Three thirty to be
6 exact.

7 Q. Now, Mr. Esparza, you testified under direct examination
8 that in November --

9 A. Are you talking about August right now?

10 Q. Switching over to November 1965, you got a disciplinary
11 for tobacco in the cell; is that right?

12 A. Yes, sir.

13 Q. You had more than tobacco?

14 A. No, sir.

15 MR. COHLER: I think it might be inappropriate to
16 ask about any incident going up to the strip cell. Certainly,
17 that is not relevant. If it is relevant, it goes to the
18 procedural aspect of the case. I think what the officials
19 might have written may be relevant but in view of the story,
20 if we are going to choose sides each of the incidents here
21 we're going to be here a long time.

22 THE COURT: Overruled.

23 MR. GRANUCCI: Q. November 23rd, 1965, you had
24 tobacco in the cell; correct?

25 A. How do you want me to answer that?

1 Q. Simple yes or no.

2 A. How can I give you yes or no, if you are talking
3 about if I was the possessor or was it found in the cell?

4 Q. Was it found in the cell?

5 A. Yes, sir.

6 Q. Was that the only thing that was found in the cell?

7 A. Nothing else.

8 Q. Nothing else?

9 A. My property.

10 Q. How about matches?

11 A. I mean any such stuff as rolling paper, matches
12 or tobacco.

13 Q. How many disciplinary infractions have you had since
14 you have been in Soledad?

15 MR. COHLER: Aren't there different disciplinary
16 infractions?

17 MR. GRANUCCI: I am talking about a 115.

18 THE COURT: State for the record what a 115 is.

19 MR. GRANUCCI: 115 is a written report of disciplinary
20 violations. This will be brought out later.

21 THE COURT: Does it contemplate a hearing?

22 MR. GRANUCCI: It contemplates an informal hearing,
23 Your Honor.

24 Q. Now, how many 115's have you had?

25 A. You got them in your hand right there.

1 MR. COHLER: Try and answer the question.

2 THE WITNESS: I don't know, I have been in Soledad
3 over a year and I came June 17th and since then I have had
4 several disciplinary infractions and I don't recall the
5 exact number.

6 MR. COHLER: You are only called upon to answer as
7 best you can.

8 MR. GRANUCCI: Mr. Esparza, you didn't enjoy you
9 stay in the strip cell?

10 A. No, I can't say I did.

11 Q. You didn't like it at all?

12 A. I can't say that I did.

13 Q. You wouldn't like to go back there, would you?

14 A. No, sir.

15 Q. Definitely not; is that right?

16 A. Not because of the conditions but because I am trying
17 to think positive and get out of the prison system.

18 Q. What do you mean?

19 A. Well, see, any time you take a man and treat him
20 like an animal for a certain period of time, he is bound to
21 get immune and wouldn't make any difference --

22 Q. But you say you didn't like it?

23 A. No, sir.

24 Q. On January 27, 1966, at 10:30 a.m. --

25 A. I threw a bucket of water at somebody.

1 Q. That's what I am leading up to.

2 A. Yeah, yeah.

3 Q. Did you tell Officer Nash, "Give me a pillow case
4 to pack my gear and move me to the quiet cell. I don't give
5 a damn."

6 A. No, sir.

7 Q. You didn't say that?

8 A. No, sir.

9 Q. You didn't ask Officer Nash to move you to the
10 quiet cell?

11 A. No, sir.

12 Q. What did you tell him?

13 A. He told me to get my gear and get to the quiet cell.

14 Q. You didn't say, "Move me to the quiet cell, I don't
15 give a damn"?

16 A. You know what, I am going to tell you something.
17 What you just said would be contradictory because when they
18 took me to the strip cell they took me handcuffed; if I had
19 asked to go voluntarily they wouldn't have to put me in
20 handcuffs. Just ask the Father, he went with me.

21 Q. Where did they take you from?

22 A. From Max Row.

23 Q. Where is that?

24 A. The other side of isolation. The Priest happened to
25 be in the building and he went with me. They had to handcuff

1 me. Do you understand what I am trying to tell you?

2 Q. Mr. Esparza, you testified under direct examination
3 that after the gas incident which is on November 23rd, that
4 they opened the door in the flaps five minutes later; is
5 that correct?

6 A. Yes, five or ten minutes later. Yes.

7 MR. OAKES: Q. Mr. Esparza, on page 3 lines 7-10,
8 I want you to read lines 7-10 of your affidavit.

9 THE WITNESS: (Reading to himself)

10 MR. OAKES: Q. Read that out loud, lines 7-10.

11 THE WITNESS: "Immediately thereafter all the flaps
12 and the door were closed and I was left there in convulsions.
13 I was not moved to any other strip cell to permit the tear gas to
14 be removed from the cell." There were shouts into the strip cell
15 they were talking about gas -- where I was immediately there.
16 After all the flaps and doors were closed. I was left there
17 in convulsions."

18 MR. OAKES: That is enough, thank you.

19 THE WITNESS: What has that got to do with it?

20 MR. COHLER: And let the counsel examine you.

21 MR. OAKES: Q. Mr. Esparza, it would lead one to
22 believe that they closed up that cell tight and didn't allow
23 it to be ventilated at all.

24 MR. COHLER: I don't think the counsel should
25 characterize the affidavit.

1 THE WITNESS: I know what I said. What I am trying
2 to tell you is that they did close the door and when I said
3 that I think you should take it for granted they weren't
4 going to leave it closed for ever.

5 MR. OAKES: Q. But he opened it five or ten
6 minutes later?

7 A. Five or ten minutes later, yes, sir.

8 Q. Now, Mr. Esparza, you had disciplinary action taken
9 against you for fight on May 30, 1966; didn't you?

10 A. Let's see. May 1966?

11 Q. That is this year.

12 A. Yes, sir.

13 Q. And there was a water throwing incident on January
14 27, 1966?

15 A. Yes, sir.

16 Q. And there was fighting on January 20, 1966?

17 A. Say that again?

18 Q. On January 20, 1966?

19 A. You forget to say here that these are all allegations.

20 MR. COHLER: Just answer the question, Mr. Esparza.

21 MR. OAKES: You had discipline on January 20, 1966;
22 is that correct?

23 A. They accused me of this, correct.

24 Q. And then, on December 27, 1965, you cursed the doctor?

25 A. I told you that earlier. You know what, getting back,

1 I said "no", I told you earlier that. I cursed him myself.
2 I wasn't cursing, so I would have to give you a "no" there.

3 Is that all right to explain myself, Your Honor?

4 THE COURT: Yes.

5 MR. GRANUCCI: You certainly may explain your answers.

6 THE WITNESS: Is that all right if I take a sip of
7 water?

8 THE COURT: Certainly.

9 MR. GRANUCCI: Q. November 23, 1965, did you ever
10 threaten to cut an officer's heart out?

11 A. At that time, do you know what -- you talking about
12 in English or Spanish?

13 Q. Does it make any difference?

14 A. It does make a difference when an officer threatens
15 you and you threaten him back in Spanish --

16 Q. You said it in Spanish?

17 A. Yes, and he came -- he was going to knock my head in
18 and knock my head through the wall. I said, "you do, and
19 I will cut your heart out."

20 THE COURT: Who said that?

21 THE WITNESS: Officer Montanya, I said it in a fit
22 of rage.

23 MR. GRANUCCI: Q. Did you mean it at the time?

24 A. No, sir, I don't mean it now either.

25 Q. On October 27, 1965, did you set fire to papers outside

1 of your cell?

2 A. No, sir.

3 Q. October 7, 1965, did you tell Officer Meyers, "I
4 would like to break your jaw"?

5 THE WITNESS: October of '65?

6 Q. Yes.

7 THE WITNESS: October '65 -- is that the first part
8 of October?

9 Q. October 7, 1965.

10 A. Yes, sir, I'll tell you why.

11 Q. Yes. You can explain your answer.

12 A. O.K. I'll explain. In 'E' wing they got these doors
13 and you can't talk. You're in your cell 23 hours a day and
14 my neighbor had a newspaper. You know what I mean? There's
15 a crack underneath the door, like that (Indicating) so, he
16 says, "I am going to shoot the newspaper up to you," and I
17 said, "swing it". Well, he was pushing it underneath the
18 door to me and I said, "go ahead man", so he slid the news-
19 paper and I got my hand underneath the door and I had a hold
20 of the blanket to pull it back, and Officer Meyers caught my
21 hand and yanked it from me and I got mad and I told him, "You
22 know what, I said, what's your trip?" Do you know what that
23 means? Otherwise, what's your story? Why are you going to
24 do this? He comes back and he says, "You know what, you
25 can't have that blanket and you've got a 115", and I said,

1 "for what?" He says, "for sticking your blanket underneath
2 the door when you aren't supposed to." I said, "You know
3 what man? If you feel chesty, why don't you open the door
4 and I'll break your jaw." I was made and I said it. I don't
5 disagree because I felt I was justified, and if they opened
6 the door I might have hit him. But I 'aint got no animosity
7 now, but I was mad at the time. Is that a good enough answer?

8 MR. OAKES: You understand that you are not to pass
9 things between cells?

10 A. There 'aint no rule from having the guy next door to
11 you. The infraction I broke was when I stuck the blanket
12 between the door.

13 Q. That is not proper to do this while you were in there,
14 is it?

15 A. Let me explain.

16 Q. I would like a yes or no answer.

17 MR. COHLER: You can answer that yes or no.

18 A. I don't see how I can. Some things you can answer
19 yes or some things you can't.

20 MR. OAKES: Q. Can you pass anything without the
21 officer's knowledge? Can you call for an officer and transfer
22 it?

23 A. They don't do nothin' of those kind of things. They
24 might strain themselves.

25 Q. But it is a breach of the rules to pass things from

1 cell to cell?

2 A. I couldn't answer that truthfully because I don't
3 know.

4 MR. GRANUCCI: Q. Did you set fire to your mattress
5 on August 1965?

6 A. August, yes, sir.

7 Q. Why did you do that?

8 A. Do you want to know why?

9 Q. Yes.

10 A. You see, I am booked for disciplinary infraction and
11 that was no disciplinary infraction. You know what I mean?
12 I felt to myself that this was uncalled for because my brother
13 was stabbed in San Quentin and they sent me to Duell, and
14 kept me locked up there and said that I wasn't Tracey material
15 and locked me up. They said we want to see how you do for
16 90 days. I hadn't done anything except that my brother got
17 stabbed. And then they said "bla-bla."

18 Q. Will you tell me --

19 A. Don't interrupt me. What I was trying to say was at
20 this time within myself I wasn't thinking positive. I was a
21 sporadic thinker, unpredictable and sort of bitter in a way.
22 You see, because I felt I was being locked up unjustifiably
23 and I was locked up for a long time already and I was sending
24 tobacco down to a guy underneath me and this was the same
25 Officer Meyers that addressed me there and I dropped it down

1 to him and he comes up and he says to me, "You got a 115,"
2 and I told him to, "rub it in your chest." I don't know
3 why I told him that.

4 Q. Did you tell him that?

5 A. I 'aint got no reason to lie to you. Anyway they
6 took me down to the isolation underneath "E" wing. This is
7 not the same isolation as in "O" wing.

8 Q. "X" wing is across the corridor there?

9 MR. COHLER: Main hallway.

10 A. They took me down there and they said, "we are going
11 to send you back to 'O' wing where you belong." So being
12 childish and realizing that I am going to pay for it anyway
13 and I wasn't thinking positive -- do you know what I mean?
14 So I found matches in the cell there, I got mad -- I didn't
15 get mad, I was being childish. Do you know what I mean?
16 I set the mattress on fire and broke a couple of windows and
17 the smoke got to me.

18 Q. Isn't that dangerous?

19 A. I almost died that night. The officer didn't come
20 up and the lights were out and all I could feel was the smoke.
21 I had to call for him and ask him to come and get me.

22 Q. Because you weren't thinking positive?

23 A. There you go, I wasn't thinking positive.

24 Q. You are thinking positive now?

25 A. Definitely.

1 Q. And you are with the program now?

2 A. Right. Isn't that right, Mr. Kiepora? (Addressing
3 one of the men in the Courtroom)

4 Q. Let's go back to the gas incident again.

5 A. O.K.

6 MR. OAKES: Q. Are you sure he didn't fire two short
7 bursts?

8 A. I am positive that he did more than that.

9 Q. Didn't you testify that you had a blanket over your
10 head?

11 A. I didn't testify that I had a blanket. I had a mattre
12 But when he came in he started like this (Indicating) and I
13 got the mattress and I put it on my head and the gas started
14 to come underneath it.

15 Q. Was it a mattress or a strong blanket?

16 A. It is the same thing. There is only one thing in
17 there.

18 Q. If you recall you didn't know what was going on?

19 A. I knew what was going to happen, you misunderstood
20 me.

21 Q. And he sprayed around the walls?

22 A. He sprayed up to the ceiling, you could see it, it
23 looked like a fly spray but it was a sort of a gaseous look.

24 Q. Would you explain the type of instrument that they
25 used to spray the gas in the cell?

1 A. I couldn't describe it exactly, but it looked like
2 a paint spray gun with a little thing down there.

3 Q. Did they pump it?

4 A. Looked like it to me, they were pulling a stringer.

5 MR. CHOLER: The witness described that it was a
6 spray, not a pump.

7 MR. OAKES: Q. You said it was fired in the air
8 and on the ceiling.

9 A. When I see that, I put the mattress on and I tried
10 to be covered.

11 Q. Was it in a gaseous state or powder state?

12 A. I will give you a good example. It looked like when
13 you use fly spray. Or, have you ever put hot ice in water and
14 see the white gaseous look? That is what it looked like, but
15 I was going --

16 Q. How about letting me ask the questions?

17 A. Go ahead.

18 Q. Would you say it was a powderlike substance?

19 A. It was wet.

20 Q. It was not solid?

21 A. Are you talking about that thing that goes "boom
22 boom" and comes out like tooth powder, like that? (Indicating
23 with his mouth like shooting a blow dart)

24 Q. And there was none left on the floor of the cell?

25 A. I told you when it dries, it turns into a powder.

1 Q. If it was sprayed in the air --

2 A. Any time you get -- if you pour water, one shot and
3 it goes to the window and up in the air, and then comes down.
4 It is in a watery form to begin with and when it comes down,
5 it dries up. It turns into powder, a real fine powder and it
6 will stick to the walls and floors. You know what I am talking
7 about?

8 Q. But, he did not shoot it on the floor?

9 A. No, sir.

10 Q. There would be no residue on the floor?

11 MR. COHLER: Your Honor --

12 A. Don't interrupt me. It dries up where does it go?
13 It goes to the ceiling. He shot it at the ceiling. Don't
14 contradict me. He shot it up on the ceiling and it falls and
15 went all over and finally it comes down to the ground and
16 whatever it hits, it hugs.

17 MR. OAKES: Q. Fine.

18 MR. GRANUCCI: You say a can of tear gas was used?

19 A. Almost a whole can because there was a short blast
20 when Wells got to acting up. He went over there to shoot him
21 and there was no more gas in the can.

22 Q. Now, you said they didn't give you enough toilet paper
23 when you were in the quiet cell?

24 A. In my opinion, yeah.

25 Q. But later on you were able to hide coveralls underneath

1 the toilet paper?

2 A. One thing I forgot to tell you. The toilet paper
3 they gave was -- when I say like that, I mean it was 12 to
4 14 squares -- understand me? Plus, I had my envelopes in
5 my cell and writing paper that I had acquired and plus writing
6 paper is that big. (Indicating) And I could cover it all up
7 and put them in the corner and stand there and they would not
8 see it.

9 Q. You could hid a big pair of coveralls?

10 A. I just got finished telling you -- I could with the
11 toilet paper and writing paper, I could hid them or I could
12 put my body over them.

13 MR. OAKES: Q. Did you have writing paper?

14 A. Yes, sir. Can I say something?

15 THE COURT: Yes.

16 THE WITNESS: Before this I was explaining to you
17 that after I talked to the committee and they told me they
18 didn't see why we could not write, this is when they started
19 to let us have one piece of writing paper a night. All right?
20 I am just trying to explain so that you can understand me.
21 Right? You get misunderstood all the time around here, you
22 know what I mean? You have to use better emphasis.

23 MR. GRANUCCI: Q. Now, is it your contention that you
24 did 54 days in the quiet cell. Was it continuous or broken up
25 over a period of time?

1 A. When I went into the strip cell it was October 25th
2 or 26th, I don't remember the exact date. Four or five days
3 before -- I would say about six days or seven days before that
4 I was put into the front section of isolation for four or five
5 days when the incident of tobacco occurred. I was put back
6 in the strip cell.

7 MR. OAKES: Q. So you were back and forth, back
8 and forth from isolation --

9 MR. COHLER: You said back and forth twice, I think
10 the testimony was just once.

11 MR. OAKES: I didn't mean to make any testimony. I
12 was trying --

13 THE WITNESS: I went in there and they put us out
14 and brought us back.

15 MR. OAKES: Q. So your time was --

16 A. For four or five days, yes, sir. It didn't make
17 no difference, I was still on R.H., you know?

18 MR. GRANUCCI: One more question about the gas
19 incident.

20 A. Yes, sir.

21 Q. You said that Mr. Johnson was hit by a cup of water.
22 Was that water or was it urine?

23 A. I will give you an example.

24 Q. First answer and then give the explanation.

25 A. It was water.

1 Q. Now give me the explanation.

2 A. The explanation was -- I am going to give you an
3 example. I would rather talk to the Judge because he
4 understands me.

5 Q. You can talk to the Court, that is quite all right.

6 A. Your Honor, in the first place, you know they give
7 you one cup of water at that time. Actually you have only
8 one cup. Do you understand me? A man is not going to drink
9 his water and take his pecker out and pee in the cup and then
10 throw at a man because people don't work that way and a man
11 'aint going to urinate in a cup that he is going to drink
12 out of.

13 MR. OAKES: Q. Do you know whether or not Wells
14 had one cup?

15 A. To my knowledge he had one cup.

16 Q. Doesn't the officer bring around cups when he brings
17 water?

18 A. No, sir. He brings a pitcher of water. There are
19 six cells and if an inmate comes back there they give him one
20 cup and only one.

21 MR. GRANUCCI: Only one cup; never more than one?

22 A. Never more than one. They never give you more than
23 one cup. When they were feeding us on paper plates, they
24 used to give little cups with the mush. One of those 10¢
25 cups and a little sugar and that mush they put in a cup and

1 that cup is also your cup for coffee. You know what I mean?
2 At the end of the meal -- we all used to puncture our cups so
3 they wouldn't give them back to us and they would give us a
4 fresh one. At first they would give us dirty ones, with
5 stains -- you could see the stains on them.

6 Q. Couldn't you keep the cup if you wanted to?

7 A. No, sir. Not allowed.

8 Q. Only one cup at a time?

9 A. Yes, sir.

10 MR. OAKES: Q. You said that when you went into the
11 cell, this would be, I believe, in August, you were in checking
12 for matches, for contraband behind the grills in back of the
13 cell; is that correct?

14 A. I was what?

15 Q. Checking for matches?

16 A. Yes, sir.

17 Q. Is that correct, you said that you did not notice
18 that there was any air coming in or out; is that correct?

19 A. Yes, sir.

20 Q. Were you checking for air?

21 A. I was checking for matches. Do you want me to tell
22 you why?

23 Q. The matches, wouldn't they be down at the bottom?

24 A. No, because it is flat.

25 Q. I understand.

1 A. The ventilator is like that. There's a little
2 square and all you can get in there are your fingers. You
3 have got to grip it first and stick your fingers in there
4 and see if you can pull something from back there because
5 there might be a match or two.

6 Q. That is contraband?

7 A. Definitely.

8 Q. But, you were checking for matches and not ventilation

9 A. Yes, sir.

10 Q. You wouldn't be conscious if there was ventilation
11 or not, would you?

12 A. I was conscious because in the first place when you
13 are in a congested place, you know, you like to relieve yourself
14 by being where there is some air. To give you an example,
15 when the tear gas was shot in, a guy will stand up by the
16 ventilator so the air will hit his eyes and the gas won't
17 get there, but we're in a strip cell and these are blocked
18 off and you can't holler to other places and there's no air
19 there and you look for warmth and for any outgoing air and
20 it is congested and you start to sweat. Do you know what
21 I mean? Perspiration comes down your forehead. You want to
22 get relieved a little and you want to get a little air.

23 Q. So there is one for coolness? One brings in cool
24 air and one may bring in warm air?

25 A. No.

1 Q. Do you know anything for a fact about the ventilation?

2 A. I know it wasn't working.

3 Q. Do you know that it wasn't working?

4 A. All the way to December because when this thing got
5 into Court, they had all kinds of those -- what do you call
6 those things, those maintenance people checking and feeling.

7 Q. How do you know that?

8 A. I asked them. I thought they were F.B.I. men.

9 Q. Were they in the cells?

10 A. They came in and asked me questions. I thought they
11 were F.B.I. men because Cecil Poole was supposed to order an
12 investigation of the whole building.

13 Q. Maybe they were?

14 A. When they came in they asked me about that and I
15 told them that there was no air coming in and they said it
16 wasn't working.

17 Q. You would not expect a large draft to be coming
18 through there?

19 A. No, sir, not from the ventilator.

20 Q. It would not be your opinion --

21 MR. COHLER: I don't think it is proper, Your Honor.

22 THE COURT: Sustained.

23 MR. GRANUCCI: Q. When did those men come around
24 and inspect the ventilating system, do you know?

25 A. In December.

1 Q. Do you know when this complaint was filed in this
2 case?

3 A. Not really.

4 Q. You don't know?

5 A. No.

6 MR. OAKES: Not the exact date?

7 A. No.

8 Q. Do you know generally?

9 A. Let me see. I know generally -- let me think about
10 that. All right, generally --

11 MR. COHLER: Your Honor, would it be appropriate to
12 caution the witness not to get frayed.

13 MR. GRANUCCI: I have no further questions.

14 MR. OAKES: Q. Are there things that inmate Wells
15 told you about?

16 A. Say it again? Oh, you mean did he tell me about this?

17 Q. Yes.

18 A. The things that he told me -- we are next door, we
19 know what is going on. We can hear the men talking. I can
20 hear what he is saying.

21 May I say something to you, Your Honor?

22 THE COURT: Yes.

23 THE WITNESS: I realize that a convict is in prison
24 and under the circumstances the people who are the representative
25 of the State feel that he might show his bitterness or imbalance

1 toward the authorities doing this and I want to assure you
2 that I am not -- I would be willing to take a lie detector
3 test or sodium pentathol to prove to you that I am telling
4 you the truth and the whole truth. I want to let you know
5 that to save any explanation of these people trying to say
6 that he is talking -- you know what I mean, because I have
7 never been convicted of perjury and I like to think that
8 I am a man of my word and when I say something I don't like
9 to tell lies -- understand me? That is all I have to say.

10 MR. COHLER: That is all.

11 THE COURT: I have one or two questions.

12 Have you concluded?

13 MR. COHLER: Yes, Your Honor.

14 THE COURT: Q. What, if any, medical treatment have
15 you received since your confinement in the Institution?

16 A. What do you mean?

17 Q. Did you have any formal medical treatment? You
18 said you had hepatitis at one time.

19 A. No direct -- I am trying to get some vitamin pills
20 to build myself up. But, they said they didn't allow it.
21 One thing I want to show you that is a coincidence and I
22 wanted to be on the record, too. While inmate Jordan and
23 Wells and myself -- this is a coincidence -- we all came
24 down with piles. Do you know what piles are?

25 THE COURT: Yes.

1 THE WITNESS: Hemorrhoids. It struck me funny that
2 it would happen to all three of us from sitting on concrete.
3 Do you know what I mean? They gave me a suppository
4 and that was it. Any time you tell them something, they
5 think you are trying to gain so it is useless to talk to
6 them.

7 THE COURT: Q. Did you request any medical aid
8 after the gas incident?

9 A. No, the next morning I did. But he said he couldn't
10 help. I asked him for something for myself because I felt
11 so raw and I lost my voice and I wanted something to sooth
12 my throat because it was inflamed.

13 Q. Now, you spoke of a meat-loaf or you described the
14 food as the meat-loaf.

15 A. It is like -- it is about like this. (Indicating)
16 And it has a dry crust on the outside of it and its center
17 is a brownish red reddish colour and it has beans sliced
18 big kidney beans and when you eat it and put it in your mouth,
19 you can't eat it.

20 Q. How was it served to you?

21 A. On paper plates and it had lots of oil.

22 Q. That is the total amount of food in the quiet cell
23 that you had?

24 A. Yes, twice a day for breakfast and dinner.

25 Q. You spoke about mush. Was that in another type of

1 cell?

2 A. The first part I was on R.H. and I couldn't eat it
3 so Wells would shoot me a sandwich, so that I would not starve.
4 When he got 29 R.H's they had me on food and I was feeding
5 him and he weighs about 220 pounds and he got down to 180.

6 Q. What is your weight now?

7 A. I would say I normally weigh 140 -- I weigh 130
8 right now.

9 Q. What is your height?

10 A. Five feet eight inches. I am pretty skinny. I
11 was pretty chubby, because you'd be laying around in your
12 cell for going on three years with no exercise to exercise
13 off the excess weight, you have got on and it kind of makes
14 you get fat. But I am sure skinny now.

15 Q. What is your age?

16 A. Twenty-four.

17 Q. Where were you born?

18 A. San Diego, California.

19 Q. Now, in connection with the socalled infraction of
20 setting fire to your mattress -- and in connection with any
21 of these asserted infractions --

22 A. Does asserted mean alleged?

23 Q. Did you have any hearing at all or were you tried
24 as you indicated on the other occasion by the men coming to
25 your cell?

1 A. Do you mean was there a formal hearing?

2 Q. Was there any formal hearing?

3 A. Most of the time there is. There is a little
4 committee room and they read off on one sheet and they say,
5 "bla-bla-bla", do you plead guilty or not guilty and then
6 they find you guilty whether you plead guilty or not. Do
7 you know what I mean? It doesn't make any difference, it
8 is just a formality to make it official.

9 Q. You are inclined to use the term "thinking positive."

10 A. Yes, positive thinking.

11 Q. How did that get into your vocabulary?

12 A. I got a lady friend that's in the department of
13 education for 40 years. All of this time I had been working
14 with her and she has been trying to help me to think positive,
15 because she wants me to come out there and she wants to help
16 me. She wants for me to live with them until I get on my feet
17 and help me to live -- what do you call it? To be a good
18 citizen in society and they want to help me.

19 Q. She is a social service worker?

20 A. She was the principal for Hollenbec Junior High and
21 I met her there. In fact, at that time she wanted to adopt
22 me but they were Caucasians and they felt I might want to
23 live with Mexicans.

24 Q. Were you in an orphanage?

25 A. For three years. We were in the Volunteers of America

1 Children Home.

2 Q. After the orphanage, where did you go?

3 A. I went to San Diego to live with my grandmother
4 but she really didn't want me and I ran away.

5 Q. Your parents died?

6 A. My mother died and my father abandoned us in '47
7 and that is when I started to come to jail.

8 Q. How old were you when you first committed an
9 infraction or felony?

10 A. I went to the Youth Authorities in 1956. It was a
11 funny thing because I was in a foster home in Azusa and I
12 got drunk. I was hanging around with some friends and we
13 got drunk and the lady that I lived with asked me where I
14 got it and I said, "I stole it." I really didn't because
15 we got it from his uncle's house. She told the probation
16 officer and he took me to court and he said that I burglarized.
17 But because I was so young and I didn't know about the laws
18 or anything like that they had it down and sent me to Rancho
19 San Antonio. I was in eleven foster homes and a few
20 institutions that weren't considered bad.

21 Q. What formal education have you had? Did you have
22 grammar school and high school?

23 A. I went to school -- I went until the tenth grade.
24 My father lives in Fairbanks, Alaska, even though I don't
25 know him. He quit paying the State and they told me that I

1 had to work. So I quit school and tried to work here and
2 there and I wasn't successful.

3 Q. Have you any trade?

4 A. I am a glazier... I fix windows. I would say I have
5 had seven months or about thirteen months experience plus
6 I am a merchant seaman.

7 Q. Do you get training here of any kind?

8 A. No, I haven't for the past three years because I
9 have been --

10 Q. You spoke of your brother in San Quentin --

11 A. He is in Fulsom now

12 Q. How many brothers and sisters do you have?

13 A. I got a brother in Fulsom and I got a sister that
14 works for the Bank of America for about ten or eleven years.
15 She has never been in any trouble.

16 Q. Does she visit you occasionally?

17 A. She visited me once in San Quentin because she lives
18 in Los Angeles. I don't correspond with her too much because
19 she feels I am here to pay a debt to society and she just
20 isn't that kind of person to think that way, besides she is
21 trying to live her own life.

22 Q. You never married?

23 A. No, sir. I went to Santa Rosa to Marine's Cooks and
24 Stewards training. I use to go there and they denied -- the
25 Coastguard denied me, because I was a convict and I hitchhiked

1 back to Washington D.C. and I went to talk to the commander
2 of the coastguards and Clair Engle, the Senator and I talked
3 to Jack Shelley over the phone and they couldn't help me and
4 I came back and I worked in Miami, Florida, but I was only
5 making \$4 a day. I couldn't cut that. I went to Hawaii and
6 lived there and I came back and I wanted to be a seaman and
7 I went back to Washington, D.C. and I had a better attitude
8 and they gave me seaman's papers and I came back to San
9 Francisco. Did you ever hear of Ed Turner?

10 THE COURT: Ed Turner on the waterfront?

11 A. He is the secretary of the marine's cook and stewards.
12 They told me that they were going to go to bat for me. Are
13 you familiar with the Luraline?

14 THE COURT: Yes.

15 A. Well, they sold it and it all fell in my face
16 and Mr. Turner told me that he couldn't help me because they
17 didn't have no place for me so I had seaman's papers and I
18 couldn't go on no ship. So I started to drink and I felt
19 very negative and it got the best of me.

20 Q. Your parents were Mexican nationalists?

21 A. My father is Chilean and my mother was born in
22 Mexico.

23 Q. Where, in Mexico?

24 A. Monterey, but I don't know for sure, but my aunt is
25 a nationalist. She lives somewhere --

1 Q. Is there anything further that you desire to tell
2 the Court in connection with the hearing and in connection
3 with the allegations?

4 A. Only one thing that I can say. Like I told you
5 before -- I have nothing to gain out of this at all. I am
6 not trying to gain anything. I am not trying to use this
7 as a hammer.

8 Q. You have stated that you have no feeling of ill will
9 or hostility. I have no further questions.

10 MR. COHLER: Q. You have been told that you are
11 going to be transferred from the Institution as soon as this
12 hearing is finished?

13 A. I will be transferred as soon as the trial is through.

14 MR. COHLER: Thank you, Your Honor.

15 (Witness excused)

16 HERMAN LOUIS ALEXANDER

17 called as a witness on behalf of the Petitioner, having been
18 duly sworn, testified as follows:

19 THE CLERK: State your full name.

20 THE WITNESS: Herman Louis Alexander.

21 DIRECT EXAMINATION

22 BY MR. COHLER:

23 Q. Mr. Alexander, will you tell the Court how old you
24 are?

25 A. 24.

1 Q. Are you presently an inmate at this correctional
2 training facility?

3 A. Yes, sir.

4 Q. How long have you been there?

5 A. Since April 11, 1963.

6 Q. Is there an area in this Institution known to you
7 as isolation area?

8 A. Yes, sir.

9 Q. Are there cells within the isolation area known as
10 "strip cells"?

11 A. Yes, sir.

12 Q. Would you tell the Court where the isolation area
13 and strip cells in the area are?

14 A. Yes, sir. They are in 'O' wing on the first floor.
15 The strip cells are in back. You have to go through the door
16 and the strip cells --

17 Q. Would you please speak up and speak to the Court?

18 A. The strip cells are downstairs to the back entrance
19 and they have about five or six back there. I am not sure
20 but I was put in there in '65 because I had violent contact --
21 I was put in there because I had violent contact with an
22 inmate. So, they put me in a strip cell for six days.

23 Q. Did you say six days, I couldn't hear you?

24 A. Yes, sir.

25 Q. When you were taken to the strip cell, would you tell

1 the Court please what the door arrangements were, and the
2 window arrangement, please.

3 A. There was a door blocking my entry and bars and all
4 the doors were covered and the windows were covered.

5 Q. How were the windows and doors covered?

6 A. With flaps.

7 Q. Can they be opened from inside the strip cell?

8 A. No, there is a bar and another two feet from the
9 door another bars.

10 Q. Were the window flaps closed at all in the strip
11 cell?

12 A. All the time.

13 Q. All the time?

14 A. Yes, sir.

15 Q. Was there any light inside the strip cell?

16 A. No, there wasn't.

17 Q. Would you tell the Court please, how you went to
18 the bathroom when you were in the strip cell?

19 A. Well, we had a commode in the back -- a seat in the
20 back. Oh, it was about that big. (Indicating) I couldn't
21 use the thing because when I did the man had to come and
22 flush it at night. So I had to use it when he was coming
23 around and I figured it would around twelve at night and he
24 would come around and flush it so that it would keep me awake
25 all night and I would sleep during the morning.

1 Q. In other words, when the commode was flushed, the
2 waste came partly into the cell?

3 A. Yes, sir.

4 Q. What did you have to sleep on in the cell, please,
5 Mr. Alexander?

6 A. I didn't have anything. I slept on some paper sacks
7 that I had.

8 Q. What were you given to wear in the cell?

9 A. I didn't have nothing.

10 Q. When you say nothing, do you mean absolutely nothing?

11 A. No, sir.

12 Q. For the whole time in the strip cell?

13 A. Yes, sir.

14 Q. And when you were first put in the strip cell, was
15 there human waste or what was the general cleanliness of the
16 cell?

17 A. There was human waste on the floor, paper sacks, the
18 walls were in a terrible mess. I asked the officer to give
19 me something to clean it up and he said no, so, I took the
20 sacks that were in there and swept as best I could everything
21 to the corner.

22 Q. You tried to clean it up with the papers in the cell?

23 A. Yes.

24 Q. And how effective a job did you do?

25 A. You can imagine the floor with papers all over. But

1 I had to clean up the place so I could make me a bed.

2 Q. Was there any odor in the cell?

3 A. Yes, there was.

4 Q. What kind of odor?

5 A. Well, human body waste, you know, what kind of
6 odor that is. That is a lot of odor.

7 Q. Can you remember the conversation about something
8 to clean up the cell?

9 A. I asked an officer if I might have something to clean
10 the cell and he said he didn't have nothing. So I told him
11 all right, and I got some paper swept it myself.

12 Q. What did you use for toilet paper?

13 A. Sacks, sir.

14 Q. What did you use to clean yourself with?

15 A. I didn't have any hygienic equipment. I didn't have
16 anything. I didn't have a toothbrush, toothpaste, no towel
17 or soap.

18 Q. Would you recognize those men known as medical
19 technical assistants, if you saw them here?

20 A. Yes.

21 Q. Did you see any?

22 A. I saw M.T.A's.

23 Q. Would you tell us how they came around in the morning
24 when you were in the strip cell?

25 A. I think they came around about six a.m. and if you were

1 asleep they wouldn't stop. So one morning I was awake and I
2 wanted to see a doctor because my back was hurting and I
3 wasn't getting sleep, and they never did come.

4 Q. Did you see the doctor about your back after you
5 were out of the strip cell?

6 A. No, I didn't.

7 Q. How often was your food brought to you, Mr. Alexander,
8 in the strip cell?

9 A. Twice a day.

10 Q. Would you describe the kind of food you had, please?

11 A. What you would have on the main line for breakfast.

12 Q. Regular food?

13 A. Yes, sir.

14 Q. Did you have anything to wash your hands with before
15 you ate?

16 A. No, sir.

17 Q. You didn't have a face bowl to wash them in. Did you
18 ever have a shower in the six days?

19 A. No, sir.

20 Q. Did you ever ask to take a shower?

21 A. No, sir.

22 Q. Did you have any exercise?

23 A. I shadow boxed myself.

24 Q. I didn't hear you.

25 A. I shadow boxed with myself.

1 Q. There was no water pitcher in the cell at this time?

2 A. No, sir.

3 Q. No soap?

4 A. No, sir.

5 Q. No towel?

6 A. No, sir.

7 Q. No toothbrush?

8 A. No, sir.

9 Q. Would you tell the Court what happened to you when
10 you were released from the strip cell in July 1965?

11 A. When they told me that they were going to put me in
12 isolation -- down in the front cells -- when they opened the
13 door and released me, I was dizzy and weak, you know. So that
14 was it and they put me in the other cell and they gave me a
15 mattress and towel and soap and toothbrush.

16 Q. In forward isolation?

17 A. Not the strip cell, the one in front.

18 MR. COHLER: That is all I have.

19 CROSS-EXAMINATION

20 BY MR. GRANUCCI:

21 Q. Mr. Alexander, you were convicted of forceable rape
22 in 1959, weren't you?

23 A. No, sir.

24 Q. No?

25 A. No, sir.

1 Q. You did have a conviction in 1959?

2 A. Yes, sir.

3 Q. What was it?

4 A. They said it was rape, but I was engaged with this
5 young lady, sir.

6 Q. You had another felony conviction for assault with
7 a meat cleaver, wasn't it?

8 A. Yes, sir.

9 Q. Now, Mr. Alexander, do you have any lawsuit against
10 the defendant --

11 MR. COHLER: The witness may not know who the
12 defendant is.

13 MR. GRANUCCI: Q. Against Mr. Fitzharris, against
14 the Institution and against the State of California.

15 A. No, I don't.

16 Q. You don't?

17 A. No, sir.

18 Q. Are you a member of the Black Moslems?

19 A. I was at one time.

20 Q. But you are not now?

21 A. No, sir.

22 Q. Did the incident which resulted in you being put in
23 the "quiet cell" involve a fight where an officer was injured?

24 A. No, sir; definitely not.

25 Q. Did not?

1 A. No.

2 Q. You were fighting with other inmates?

3 A. Just one of the inmates.

4 Q. Who as it?

5 A. A Mexican-American.

6 Q. What was his name?

7 A. I don't know. I knew him by the name "Shoey".

8 Q. Marino?

9 A. Marino, yes, sir.

10 Q. Did you ever -- on Tuesday, January 25th, 1966,
11 did you tell one of the officers -- Officer Mantefell, do
12 you know him ?

13 A. No, I don't know him right off hand.

14 MR. COHLER: Excuse me, perhaps the witness doesn't
15 know him by name, counsel.

16 MR. GRANUCCI: Do you recall an incident on January
17 25, 1966? You will have to read what happened

18 Q. You came out of the house and started to go to your
19 wing and the officer told you that you would have to wait for
20 yardcall before you went.

21 A. You mean Mantefey?

22 Q. Did you tell him to "freeeze" on you, because you
23 didn't want to hear what he said, and you told the officer you ha'
24 better "frieze" because I don't care if they put me in the
25 hole..

1 A. I remember. I told him if he can't possibly respect
2 me like a man, I would appreciate it if he would stop
3 meddling. I have time to do -- a lot of time and if he is
4 going to ask me like a child -- I am not his child and I
5 told him that if he wanted me back in the hole then he was
6 going to have to put me in the hole. Because it was better
7 to be in the hole and taking it like a man than taking this.

8 Q. You didn't care if they put you in the hole?

9 A. Yes, sir.

10 Q. Does the hole mean the strip cell?

11 A. No, sir.

12 Q. What does the hole mean?

13 A. The 'X' wing. I was in 'X' wing. You get earphones
14 and a bed to sleep on and you get a pillow and you're allowed
15 to go to the canteen.

16 MR. OAKES: Q. What do you mean by the "hole" in
17 'X' wing?

18 A. It is an inmate term the hole.

19 Q. You meant 'X' wing?

20 A. Yes.

21 MR. GRANUCCI: Q. Mr. Alexander, who was the officer
22 that you asked to clean up the quiet cell?

23 A. Officer Spoon.

24 Q. He told you he couldn't do it?

25 A. Yes, sir.

1 Q. Were you ever issued any toilet paper while in the
2 "quiet cell"?

3 A. None.

4 Q. And how long were you in the quiet cell?

5 A. Six days.

6 Q. Were the flaps closed all the time?

7 A. Only when they would come back for chow.

8 Q. Never opened any time?

9 A. I don't think so.

10 Q. Didn't they open it for head count?

11 A. I don't remember head count; probably it was before
12 I got up in the morning.

13 Q. Were you making any noise in the quiet cell?

14 A. No.

15 Q. When the toilet was flushed, did it back up?

16 A. Yes, sir.

17 Q. Did you complain about this?

18 A. Yes.

19 Q. Who did you complain to?

20 A. The night officer.

21 Q. Who was the night officer?

22 A. I don't know, he is the Philippino. I don't know his
23 name.

24 Q. You were kept naked all the time?

25 A. Yes, sir, until my six days were up.

1 Q. Six days?

2 A. I went to the committee in five days, but they didn't
3 have any cells open.

4 Q. They moved you after six days?

5 A. I had ten altogether.

6 Q. You had ten altogether?

7 A. Yes, sir.

8 Q. In the strip cell?

9 A. No. When I went to the committee I did five already
10 and they had no cells open and so they kept me in the strip
11 cell but I had ten altogether for the five. You see you a
12 hole within a hole.

13 Q. So the hole is a relative term?

14 A. Yes, sir.

15 Q. In other words, if you were out on the main line and
16 they put you in the 'X' room -- now if you were in the 'X'
17 wing and they took you to isolation would that mean getting
18 into the hole?

19 A. Say it again?

20 Q. If you were in 'X' wing and you were going into the
21 hole, that would mean going into isolation from 'X' wing?

22 MR. COHLER: That is ambiguous.

23 MR. GRANUCCI: Q. Going from 'X' wing over to the
24 wing --

25 MR. COHLER: There is more than one tier, it may

1 matter which tier. Would you clarify that, please?

2 MR. GRANUCCI: Q. Let's start again. Mr. Alexander,
3 when an inmate is out on the main line and they talk about
4 going to the hole, where is he going?

5 A. What do we mean?

6 Q. Yes. Does it mean 'X' wing?

7 A. Both of them.

8 Q. Either 'X' wing or 'O' wing?

9 A. Yes, sir.

10 Q. Would an inmate in 'X' wing talk about going in
11 a hole, or would he be in a hole.

12 A. He would be talking about going to isolation.

13 Q. Yes. Would an inmate in isolation talk about a hole?

14 A. He would be talking about going upstairs. You see
15 'X' wing has three tiers -- a program, isolation program
16 on the second tier and transfer and waiting for transfer on
17 the third tier.

18 Q. So you work yourself up?

19 A. I was on the second tier.

20 Q. Are you in the strip cell, did you have any cups
21 for water?

22 A. Yes, I got water once a day.

23 Q. What time?

24 A. I got it about nine, I think it was, I couldn't
25 keep no time, it was dark.

1 Q. Morning or night?

2 A. It would be in the morning.

3 Q. And the officer would come around and pour you
4 water?

5 A. In a little plastic cup like that, kind they drink
6 coffee in and I would sip it and that would hold me over.

7 Q. Did you have more than one cup at the time?

8 A. No, only that one time.

9 Q. In the evening or any other time?

10 A. No.

11 Q. Any water with your evening meal?

12 A. They gave you coffee, I don't drink coffee.

13 Q. Did you ever save your coffee cup?

14 A. No, you got to turn it back in.

15 Q. You can't keep it?

16 A. No, you would get in trouble.

17 Q. Only water once a day and in the morning?

18 A. Yes.

19 Q. Would they give you more than one cup if you drank
20 your cup?

21 A. I never tried that, no, sir.

22 Q. Now, when was the toilet flushed?

23 A. About twelve o'clock.

24 Q. Do you know who flushed it?

25 A. I know the time that this Philippino officer -- I

1 don't know his name or one of the officers --

2 Q. Ever have an inmate porter flush the toilet?

3 A. I don't know because they flush it from in back.

4 Q. You had no toilet paper at all?

5 A. No, I didn't.

6 Q. During all the time in the hole for the six days
7 that you were in?

8 A. No.

9 Q. Did you ever ask for it?

10 A. Yes, sir.

11 Q. And what did they tell you?

12 A. They told me they didn't have any.

13 Q. Who took you out of the strip cell when you were
14 finished?

15 A. Let me see. I couldn't say for sure because I
16 can't remember.

17 Q. Was it during the day?

18 A. Yes, I got out about eight o'clock. I got out about
19 eight o'clock in the morning.

20 Q. Was it Sgt. Friedrichs?

21 A. I can't place him, sir.

22 Q. Was it Officer Holden?

23 A. Can't place him.

24 MR. GRANUCCI: Your witness, counsel.
25

REDIRECT EXAMINATION

1
2 BY MR. COHLER:

3 Q. When you were brought the one cup of water, Mr.
4 Alexander, if you drank a whole cup you wouldn't have had
5 water for 24 hours, would you?

6 A. That's right.

7 THE COURT: What sleeping facilities did you have?
8 Did you have a mattress?

9 THE WITNESS: No. I had those paper sacks that
10 were in the cell and I tore them open.

11 Q. Were they in the cell already?

12 A. Yes, sir.

13 Q. When you say, "flush the toilet", is that the same
14 facilities that is provided as the hole there for your toilet?

15 A. It is the commode. It is real big with a cement
16 block and the commode is set inside and they flush that and
17 it looks like 'aint been cleaned in a long time and they would
18 flush it in back and instead of going out like it should, it
19 would come back again. One time I was almost asleep and I
20 heard it flush and I felt it and I jumped up.

21 Q. To what extent would it flood the cell?

22 A. It would mostly be real thin, there would be no
23 heavy flood.

24 Q. Would it cover the lower deck of the cell?

25 A. It would cover so that I couldn't sleep.

1 Q. Did you make a complaint about that?

2 A. Yes, sir.

3 Q. To whom?

4 A. The night officer, three times I told him that
5 I would appreciate it if they would flush it where the stuff
6 wouldn't come in. He said he would have it fixed but he
7 never did have it fixed.

8 THE COURT: That is all.

9 MR. GRANUCCI: I have a few more questions.

10 Q. Mr. Alexander, did you put anything down the toilet
11 yourself to clog it?

12 A. No, sir.

13 MR. COHLER: That is all I have, Your Honor.

14 MR. GRANUCCI: Your Honor, at this time, out of
15 order, I would like to present a motion to the Court.

16 THE COURT: You may be seated.

17 MR. GRANUCCI: The motion is this: That Your Honor
18 actually inspect the cell under discussion. It is located
19 in the Institution here in 'O' wing. It is short walk from
20 here and this would be a convenient time for Your Honor to
21 do it. I would suggest that such an inspection be made in
22 the presence of counsel, although I think it would be better
23 if the plaintiff were not allowed to accompany us or the
24 reporter either. I don't know what counsel's attitude is
25 toward such an inspection, however, we think it would at

1 least give Your Honor some idea of the physical dimensions
2 facilities that are there.

3 MR. COHLER: I think it is within the Court's
4 discretion. I don't feel it is necessary in view of the
5 interrogatories and in view of the testimony, but if Your
6 Honor would like to make the visit.

7 THE COURT: Why do you feel it is unnecessary?
8 What are the reasons?

9 MR. COHLER: Do I understand the purpose is to see
10 what the physical setup is -- I say that a visit would not
11 reflect --

12 THE COURT: What, if any, changes have been made
13 since the incident?

14 MR. GRANUCCI: Your Honor, my witness will testify
15 to that in greater detail.

16 THE COURT: Tell me generally.

17 MR. GRANUCCI: The only changes that I am aware of
18 is an automatic flushing equipment has been installed.
19 Perhaps the presence also of a tray and basin. In all other
20 respects that cell is in identically the same condition that
21 it always has been. As a matter of fact, I have been informed
22 that they have actually delayed the painting this section which
23 was scheduled to have been done by reason of this action.

24 THE COURT: The witness has described the waste
25 matter and the conditions that prevail.

1 MR. GRANUCCI: We say that it never existed.

2 MR. OAKES: Yes.

3 MR. COHLER: If I may speak further, Your Honor,
4 there are plastic pitchers and soap, towels and occasionally
5 a toothbrush. I believe the flaps are left open more. We
6 will offer testimony and proof by evidence that the cells are
7 kept clean and in better condition than they were previously,
8 and that the attitude of the officer has changed.

9 MR. OAKES: May I address myself to that: I cannot
10 tell what conditions that you will find in the cells because
11 that changes from day to day.

12 THE COURT: If I am to attend a full dress showing
13 and everything has been so radically changed as to afford no
14 opportunity regarding the physical facts related by the
15 witnesses, it would serve no useful purpose.

16 MR. GRANUCCI: I reemphasise --

17 THE COURT: If we walk through the cells, counsel,
18 I certainly feel that the doors should be left wide open with
19 respect to every facet of that cell that has been repaired or
20 refurbished in any form and we should call and we should call
21 on witnesses from any quarter to that extent under the Court
22 process.

23 MR. GRANUCCI: No question about that.

24 THE COURT: With that understanding, I will review
25 the cells. We will take a recess.

1 MR. GRANUCCI: May I respectfully request if Your
2 Honor would remove his robes, it might make it less con-
3 spicuous.

4 THE COURT: I certainly intend to do that.

5 How many additional witnesses do you have?

6 MR. COHLER: Your Honor, I would like to make an
7 effort to finish here to day and I think it would be fair to
8 my client to call three more witnesses only.

9 THE COURT: There is one other factor in viewing
10 the cell in question and that will be done out of the presence
11 of our petitioner.

12 MR. COHLER: I am quite willing that should be done
13 and I will stipulate to it. I also understand that the
14 reporter will not be present.

15 THE COURT: I think the reporter will be excused
16 under the circumstances.

17 (Whereupon we were temporarily adjourned at
18 12:00 o'clock to return at 1:30 p.m. after
19 the lunch recess)
20
21
22
23
24
25

AFTERNOON SESSION -- TUESDAY, AUGUST 9, 1966 -- 1:30 P.M.

---oOo---

MR. COHLER: Before calling the next witness for the plaintiff, I wonder if I might move that the Court appropriate Mr. Jordan to San Francisco so there will be no problem formalities.

THE COURT: The order will be made and entered. The Clerk may enter it of record.

MR. GRANUCCI: That is agreeable.

MR. COHLER: Please call Mr. Allison.

MELVIN EUGENE ALLISON

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

THE CLERK: State your full name to the Court?

THE WITNESS: Melvin Eugene Allison.

BY MR. COHLER:

Q. Mr. Allison, will you tell the Court how old you are?

A. 19.

Q. Are you presently an inmate at the correctional training facility?

A. Yes, sir.

Q. How long have you been confined here?

A. About eight months.

Q. Were you confined here once before this previous time?

1 A. Yes, sir.

2 Q. For how long was that?

3 A. Ten months.

4 Q. Is there an area in the institution which is known
5 to you as isolation area?

6 A. Yes, sir.

7 Q. And part of the isolation area is known as strip
8 cell area?

9 A. Yes, sir.

10 Q. Will you tell the Court briefly where those are
11 found here?

12 A. In 'O' wing.

13 Q. 'O' wing is on which floor?

14 A. First floor.

15 Q. And where are the strip cells with relation to the
16 general isolation cells, please?

17 A. In the back way.

18 Q. Have you ever been confined in the strip cell here?

19 A. Yes, sir.

20 Q. Tell the Court precisely when was the first time --
21 was there more than one occasion?

22 A. No, sir, just one.

23 Q. Tell the Court approximately that was?

24 A. In '65, that is all I know, I don't remember the date.

25 Q. Do you know approximately when it was in '65?

1 A. In May.

2 Q. Do you have any recollection -- and please don't
3 guess as to what part of May that was, -- whether it was
4 the begining, middle or end?

5 A. No, sir.

6 Q. Can you recall how long you were in the strip cell
7 some time in May of 1965?

8 A. Three days.

9 Q. Was that something you were told or do you keep
10 track of the days?

11 A. I keep track of them.

12 Q. What was your identification number here at the
13 institution at the strip cell?

14 A. My number?

15 Q. Yes.

16 A. YA67027.

17 Q. What does the 'YA' stand for?

18 A. Youth Authority.

19 Q. Does that mean you were a ward of the State at the
20 time you were in the strip cell?

21 A. Yes, sir.

22 Q. Would you please tell the Court as best you can recall
23 it, the nature of the windows and doors and how these were
24 arranged at the strip cell?

25 A. I don't understand you.

1 Q. What was the cell like physically? What kind of
2 doors and window openings did they have?

3 A. Steel.

4 Q. Were there window openings?

5 A. No, there was slots and there was nothing there but
6 a piece of metal.

7 Q. In other words, the whole time you were in the strip
8 cell, was there any way to see out of the strip cell?

9 A. No, sir.

10 Q. It was closed up the whole time you were there; is
11 that right?

12 A. Yes, sir.

13 Q. Were you ever outside of this strip cell during the
14 three days that you were there?

15 A. No, sir.

16 Q. Would you tell the Court how much light there was
17 in the strip cell in May of 1965, please?

18 A. Well, it was dark and there was just a crack.

19 Q. Did you have occasion to notice any ventilation in
20 the strip cells?

21 A. No, sir, there was none at all.

22 Q. How did you go to the bathroom in the strip cell,
23 Mr. Allison?

24 A. I didn't.

25 Q. You may explain yourself and speak directly to Your

1 Honor, if you wish.

2 A. The reason I didn't use the toilet was because there
3 was human bodily waste on it and the floor itself. This is
4 the reason I didn't use the bathroom.

5 Q. You didn't feel that it would be comfortable to use
6 the toilet; is that right?

7 A. Yes, sir.

8 Q. What was the toilet facility, would you describe
9 that please?

10 A. It was just a toilet with cement around it and
11 cemented in.

12 Q. Did you have anything to clean the toilet with when
13 you were in the strip cell?

14 A. No, sir.

15 Q. Did you have anything to clean yourself with when
16 you were in the strip cell?

17 A. No, sir.

18 Q. Of any kind?

19 A. No, sir.

20 Q. What were you wearing?

21 A. Overalls, a pair of socks, underwear and a T shirt.

22 Q. Did you have occasion to wash when you were in the
23 strip cell?

24 A. No, sir.

25 Q. How often were you fed, Mr. Allison?

1 A. Twice a day.

2 Q. Will you tell the Court what you were fed?

3 A. It was regular meals except it was cold.

4 Q. And did you have any occasion wash-up in any manner
5 while you were in the strip cell at any time?

6 A. No, sir.

7 Q. Was there plastic pitchers in the strip cell??

8 A. No, sir.

9 Q. Plastic water bases in the strip cell?

10 A. No, sir.

11 Q. Will you tell the Court specifically as you recall
12 the cleanliness of the cell?

13 MR. GRANUCCI: Asked and answered.

14 THE COURT: Overruled.

15 MR. COHLER: Q. Go ahead. Generally describe the
16 condition of the cell when you were in there in May of 1965
17 using your own words.

18 A. Only thing I can think of is that it was filthy.

19 Q. What do you mean by filthy?

20 A. It was filthy and there was stuff all over the
21 floor. It was dirty.

22 Q. You need not be embarrassed. Will you tell the
23 Court as precisely as you can what it was?

24 A. (Inaudible)

25 Q. Were you given anything to clean this out with?

1 A. No, sir.

2 Q. Did you ever ask for anything?

3 A. Yes, sir.

4 Q. Can you recall the conversation that you had when
5 you asked them for something to clean up the cell?

6 A. They said 'next week'.

7 Q. Do you remember who it was who said 'next week'?

8 A. No, sir, I don't.

9 Q. How often were you given water, Mr. Allison?

10 A. Twice.

11 Q. Twice a day?

12 A. Yes, sir.

13 Q. And how much water were you given?

14 A. One cup.

15 Q. Would you recognize a person in this institution
16 known as the M.T.A. if you saw one?

17 A. Yes, sir.

18 Q. They wear distinctive clothing?

19 A. Yes, sir.

20 Q. Did you ever see an M.T.A. in the strip cell?

21 A. No, sir, I didn't.

22 Q. Did you ever have a conversation with an M.T.A.?

23 A. No, sir.

24 Q. Did you see an M.T.A. shortly after you were relieved
25 from the strip cell?

1 A. No, sir.

2 Q. And did you have a conversation with an M.T.A.
3 at that time?

4 A. Yes, sir.

5 Q. Will you tell us what it was about?

6 A. It was about a filling in my tooth that I had knocked
7 out when I got out of strip cell and the M.T.A. told me to
8 put in a ducket until I could see the dentist and I put in
9 the ducket and I didn't get nothing from him.

10 MR. GRANUCCI: Object, move to strike. It is beyond
11 the issues of this case.

12 THE COURT: Overruled.

13 MR. COHLER: I believe we have an allegation, Your
14 Honor, dealing with the nature of the medical treatment and
15 medical assistance. Interrogatories were submitted about
16 dental care and I think it is well within the issues as
17 framed.

18 THE COURT: You may answer.

19 THE WITNESS: I never heard anything about it.

20 MR. COHLER: Q. Did you ever have any attention as
21 to this state?

22 A. No, sir.

23 Q. How long after May 1965 did the conversation with the
24 M.T.A. take place? Approximately how long after you were
25 released did you ask the M.T.A. about your tooth?

1 A. It was that morning -- the next morning.

2 Q. Does your tooth hurt you now?

3 A. No, sir, it don't.

4 Q. How long would you say that it hurt you after you
5 got out of the strip cell and asked for help?

6 A. About two weeks.

7 Q. Was there any soap or towels in the strip cell when
8 you were in it in May of 1965?

9 A. No, sir.

10 Q. No toothbrush?

11 A. No, sir.

12 MR. COHLER: That is all I have at this time.

13 CROSS-EXAMINATION

14 BY MR. GRANUCCI:

15 Q. Have you been convicted of a felony?

16 A. Yes, sir.

17 Q. What was your felony? Escape from the State
18 Institution?

19 A. No, sir.

20 Q. What was it?

21 A. County.

22 Q. Escape from a County Institution, a County workfarm.
23 Now, you were confined in a quiet cell three days in May of
24 1965; is that correct?

25 A. Yes, sir.

1 Q. Were the flaps closed or opened?

2 A. Closed.

3 Q. Always?

4 A. Always except when an M.T.A. or they had a check.

5 Q. They had a head check?

6 A. Yes, sir.

7 Q. How often would they have a head check?

8 A. Two or three times a night.

9 Q. Two or three times a night?

10 A. Yes.

11 Q. So you say the flaps were open when an M.T.A. came
12 by?

13 A. Yes, sir.

14 Q. Didn't you say on direct examination that you didn't
15 see an M.T.A. while you were in the quiet cell?

16 A. I didn't have any conversation in the strip cell,
17 is what I said.

18 Q. But one came to see you?

19 A. He would open up the flap and flash the light in and
20 ask if you was O.K. and if you were asleep you missed him.

21 Q. When would he come in at?

22 A. In the morning.

23 Q. Were you asleep?

24 A. Yes, sir, I was.

25 Q. Now you say, that there was no ventilation at all in the

1 cell?

2 A. No, sir.

3 Q. Did you check the ventilation out at least?

4 A. Yes, sir.

5 Q. You didn't feel any air?

6 A. There was no movement of air.

7 Q. Were you issued any toilet paper in the cell?

8 A. Yes, sir, I was.

9 Q. How much?

10 A. It was strands about this long and that high. (Indicating)

11 Q. How many times were you issued the toilet paper?

12 A. Once a day.

13 Q. What time?

14 A. In the evening.

15 Q. What time were meals brought to you?

16 A. I don't know the time that the first meal was brought,
17 but the evening meal was at 2:30.

18 Q. Did they bring you a sack lunch at the same time
19 that you could eat later?

20 A. Yes, sir.

21 Q. They did? So in fact you had three meals a day
22 including the sack lunch?

23 A. Pardon me?

24 Q. You had three meals a day including the sack lunch?

25 MR. COHLER: I don't mean to interrupt, but I don't

1 think he understands how often food was brought.

2 MR. GRANUCCI: Q. The meals that you had -- they
3 brought food twice a day?

4 A. Yes, sir.

5 Q. But the second time that they brought food they
6 brought a sack lunch; correct?

7 A. Yes, sir.

8 Q. Now, you say the cell was filthy? How about the
9 walls of the cell? Were they filthy?

10 A. I couldn't rightly say.

11 Q. How about the ceiling of the cell, was it filthy?

12 A. Couldn't see it.

13 Q. How about the bars of the cell?

14 A. Yes, sir.

15 Q. The bars were filthy?

16 A. (Witness nodding his head, yes)

17 MR. COHLER: Excuse me, your nod doesn't go on the
18 record.

19 A. O.K., yes, sir.

20 Q. You asked for someone to clean up the cell?

21 A. Yes, sir.

22 Q. But you don't remember the officer that told you
23 he couldn't help you?

24 A. He told me next week.

25 Q. Did he say what day?

1 A. No, sir.

2 Q. Were you making any noise while you were in the
3 strip cell?

4 A. No, sir.

5 Q. How often did they bring you water?

6 A. Twice a day.

7 Q. What times?

8 A. In the morning and afternoon.

9 Q. How many cups would you get?

10 A. One cup.

11 Q. Did they let you keep an extra cup?

12 A. Yes, sir.

13 Q. How many cups did you have in the cell?

14 A. I had one I used in the morning.

15 Q. You didn't keep any extra cups?

16 A. No, sir.

17 Q. They let you use an extra cup?

18 A. Yes, sir.

19 Q. Explain.

20 A. I could have kept it but I threw the cup away. I
21 already had a cup.

22 Q. You could have kept the cup? Would they fill up the
23 cup more than once if you wanted?

24 A. They didn't fill mine up but he kept on walking.

25 Q. How did you ask?

1 A. I asked the officer.

2 Q. Who was the officer?

3 A. I don't know his name.

4 MR. OAKES: Q. Now, have you ever refused dental
5 treatment at the Institution?

6 A. No, sir.

7 Q. You never refused?

8 A. Not here.

9 Q. Were you here in December of 1965?

10 A. No, sir.

11 Q. You weren't?

12 A. Tracy.

13 Q. Did you refuse dental treatment at Tracy?

14 MR. COHLER: I would like to object. I don't think
15 that the possibility of his refusing it at Tracy has anything
16 to do with this case.

17 THE COURT: Overruled.

18 MR. GRANUCCI: I move to strike.

19 THE COURT: Overruled. You may go ahead.

20 MR. GRANUCCI: Q. Did you refuse dental treatment
21 at Tracy?

22 A. Yes, sir.

23 Q. Did you have a fight while you were here?

24 A. Yes, sir.

25 Q. With an inmate named E. D. White?

1 MR. COHLER: Excuse me, Mr. Granucci, were you
2 reading from a form that I should inspect?

3 (Mr. Granucci handing the form to Mr. Cohler
4 to inspect)

5 The reason I have asked is that I was told that
6 all of Mr. Allison's disciplinary reports have been destroyed
7 pursuant to the Youth Authorities regulation that when he
8 was released they would be destroyed.

9 MR. GRANUCCI: This is on his present commitment.

10 MR. COHLER: Would you place the date then, please?

11 MR. GRANUCCI: May 13th, 1966.

12 MR. COHLER: Thank you.

13 MR. GRANUCCI: Were you engaged in a fight with
14 inmate White?

15 A. Yes, sir.

16 Q. You were confined to quarters for that, weren't
17 you?

18 A. Yes, sir.

19 Q. On May 30, 1966, disciplinary violations were brought
20 against you for being in an unauthorized area; isn't that
21 correct?

22 A. When was this?

23 Q. May 30, 1966.

24 MR. COHLER: Perhaps the question isn't clear.

25 MR. GRANUCCI: Q. Were you watching T.V. on May 30,

1 1966, when you shouldn't have been?

2 A. Yes, sir.

3 Q. Did you tell the officer, "I don't care if you give
4 me 200 -- 115's?

5 A. Yes, sir.

6 Q. You didn't tell him in exactly those terms?

7 A. Yes, sir.

8 Q. You put a few cuss words in, did you not?

9 A. Yes, sir.

10 MR. GRANUCCI: No further questions.

11 REDIRECT EXAMINATION

12 BY MR. COHLER:

13 Q. In the strip cell what was in the sack lunch?

14 A. Two sandwiches and an orange.

15 Q. Have you ever had a chance to wash your hands before
16 you were given a sandwich to eat?

17 A. No, sir.

18 Q. Was this your first time in the strip cell?

19 A. Yes, sir.

20 Q. Were you scared about the situation that you were
21 about to face when you were being put in the strip cell?

22 A. Yes, sir, I was.

23 Q. Were you too scared to make a noise?

24 A. No, sir.

25 Q. Did you make any noise when you were in the strip cell?

1 A. No, sir.

2 MR. COHLER: That is all.

3 BY THE COURT:

4 Q. Do you know why you were placed in the strip cell?

5 A. No, sir.

6 Q. Did anyone tell you why you were placed there?

7 A. They told me for inciting a riot.

8 Q. Did you participate in a riot of any kind?

9 A. No, sir.

10 Q. What did you participate in? What did you do?

11 A. I was locked in my house. The officer came by and
12 pointed at me and said on.

13 Q. Before you were placed in the strip cell, didn't
14 somebody tell you why you were going to be placed there?

15 A. No, sir. They brought me out of the 'X' wing and
16 I asked them where I was going and they said I was going to
17 'O' wing and they gave me a mat and I changed my clothes into
18 coveralls, socks, shorts and a 'T' shirt and they took me back
19 into 'O' wing which was the strip cell.

20 Q. How was the toilet flushed?

21 A. The officer flushed it from the back or front of the
22 cell.

23 Q. How often?

24 A. He only flushed it once a day.

25 Q. Did it spill back or flush out?

1 A. No, sir, it flushed out.

2 Q. What does the official records show with respect
3 to the reasons for this man being placed in the cell?

4 MR. GRANUCCI: I can't testify. However, this
5 happened while Mr. Allison was on the Youth Authority
6 Commitment and there will be testimony that when a man is
7 released from the Institution and discharged on the Youth
8 Authority's commitment or any sort of commitment, his
9 records are destroyed. Now, we have a file on Mr. Allison,
10 but the file is based on his new commitment which is a
11 felony commitment and the other files are unavailable to us.

12 MR. COHLER: That is what I have been led to under-
13 stand. Any form written such as a 115 that was described
14 earlier -- whether or not it was in existence, there is no
15 way of knowing.

16 THE COURT: Are the records expunged or are the
17 records destroyed?

18 MR. COHLER: I was told by letters that the records
19 are physically destroyed.

20 MR. GRANUCCI: They are physically destroyed. This
21 is my understanding of it, Your Honor.

22 THE COURT: Perhaps we will hear more about this
23 later.

24 MR. GRANUCCI: I have a couple of questions.

25 RE CROSS-EXAMINATION

1 BY MR. GRANUCCI:

2 Q. Mr. Allison, you are due to be released pretty soon?

3 A. Yes, sir.

4 Q. When?

5 A. November the 6th.

6 MR. GRANUCCI: That is all the questions I have.

7 MR. COHLER: Q. You expressed to me that you might
8 not get your parole?

9 A. Yes, sir.

10 Q. I didn't hear you?

11 A. Yes, sir.

12 MR. COHLER: That is all, Your Honor.

13 BY MR. OAKES:

14 Q. This is maybe confidential but, are you due to be
15 out in November?

16 A. No, sir, it is a discharge.

17 Q. So, there wouldn't be any reason to fear?

18 A. Yes, sir, I think there would be.

19 Q. If you are out on discharge, you are discharged
20 of your offense; is that not correct?

21 A. Yes, sir, it is correct.

22 MR. COHLER: Q. Whatever the reasons may be, have
23 you been concerned what may happen if you testify in this
24 case?

25 A. Yes, sir.

1 Q. In fact, you are concerned about saying you are
2 concerned?

3 A. Yes, sir.

4 MR. COHLER: No further questions. Thank you.

5 WENDELL HARRIS

6 called as a witness on behalf of the plaintiff, having been duly
7 affirmed, testified as follows:

8 THE COURT: Do you have some religious scruples
9 about swearing?

10 THE WITNESS: My belief is Islam, Your Honor.

11 THE COURT: Do you wish to affirm?

12 THE WITNESS: Yes.

13 THE CLERK: Do you solemnly affirm under the pain
14 of penalty of perjury to tell the truth, the whole truth
15 and nothing but the truth?

16 THE WITNESS: Yes, sir.

17 THE CLERK: State your full name?

18 THE WITNESS: Wendell Harris.

19 THE CLERK: Speak a little louder because the fans
20 make so much noise and the reporter cannot hear you.

21 BY MR. COHLER:

22 Q. Mr. Harris, will you tell the Court how old you are?

23 A. 22.

24 Q. Would you try and speak up a little bit. Are you
25 presently an inmate here in this correctional facility in

1 Soledad?

2 A. Yes, sir.

3 Q. How long have you been confined here approximately?

4 A. About fourteen months.

5 Q. Is there any area in the facility known to you as
6 isolation area?

7 A. Yes, sir.

8 Q. And there is an area known as the strip cell area?

9 A. Yes, sir.

10 Q. Would you tell His Honor where the isolation and
11 strip cell areas are?

12 A. It is located in 'O' wing in the back of the building
13 in the basement.

14 Q. Are the strip cells to the rear of the isolation
15 cells?

16 A. Yes, sir.

17 Q. Have you ever been confined in the strip cells here?

18 A. Yes, sir.

19 Q. More than once?

20 A. Yes, sir.

21 Q. Can you recall, and please tell the Court approximately,
22 what was the first time that you were confined?

23 A. August 29 to August 30, 1965.

24 Q. Two days?

25 A. Yes, sir

1 Q. Do you remember the name of the officers who put
2 you in the strip cell the first time?

3 A. I think it was at this time Officer Spoon --

4 Q. S-p-o-o-n?

5 A. Yes, sir.

6 Q. Were you given a hearing in front of the disci-
7 plinary committee?

8 A. Yes.

9 Q. What happened at the hearing, please?

10 A. I was given five days longer.

11 Q. I am having a little trouble hearing you.

12 A. I was given five days longer up and sent to my room.

13 Q. Were you taken back to the strip cell after the
14 hearing?

15 A. I was taken back and I was brought back out and
16 put upstairs.

17 Q. Mr. Harris, when you were first in the strip cell
18 at the end of August 1965, what was the window and door
19 arrangements -- describe it to the Court, please?

20 A. There were hinges on the door.

21 Q. Were they shut all the time you were there?

22 A. Yes, sir.

23 Q. Did you have occasion to notice whether or not there
24 was any ventilation inside of the strip cell in August '65?

25 A. No, sir, none.

1 Q. Did you feel any air moving around?

2 A. No, sir, none.

3 Q. At any time during the two days?

4 A. No, sir.

5 Q. How much light was there in the strip cell?

6 A. None, sir.

7 Q. Will you tell the Court the general state of cleanliness
8 when you were there?

9 A. When I arrived in the cell there was nothing in the
10 strip cell. It had human defecation on the toilet and floors
11 and walls and I didn't have no toilet paper. The floor
12 was dirty and it was dirty all over the floor and there was
13 defecation and urination all over the floor and toilet seat.

14 THE COURT: Was it cleaned at any time during the
15 time you were there?

16 THE WITNESS: No, sir.

17 Q. Did you ask someone to clean it or that you wanted
18 a broom to clean it yourself?

19 A. No, sir.

20 MR. COHLER: Q. What were you given to wear, Mr.
21 Harris?

22 A. I had shorts and a 'T' shirt on, sir.

23 Q. Were you given anything to wash with at any time
24 you were there?

25 A. No, sir.

1 Q. How often were you fed?

2 A. Twice a day, sir.

3 Q. And what were you fed generally? What kind of
4 food?

5 A. French toast, or something like that for breakfast,
6 cereal, milk -- a cup of milk.

7 Q. Were you given a sack lunch at any time?

8 A. No, sir, not while I was there.

9 Q. Will you tell us how the toilet worked? How the
10 commode worked in the strip cell?

11 A. At that time I believe there was a button that
12 worked it automatically but it didn't flush.

13 Q. You couldn't flush it from inside?

14 A. No, sir.

15 Q. And how often was it flushed when you were there?

16 A. I would say about twice a day.

17 Q. Twice a day?

18 A. This time it was twice a day.

19 Q. Would you describe the odor, if there was any odor?

20 A. Yes, sir. I couldn't stand the odor because it was
21 pretty bad. I would have to sleep on the floor and I would
22 have to sleep in the cell and the toilet would not be flushed
23 or anything, sir.

24 Q. Mr. Harris, did you make noise in the strip cell?

25 A. No, sir.

1 Q. What is your religious belief, Mr. Harris?

2 A. Islam, sir.

3 Q. Does your religion have anything to say about making
4 noise?

5 A. No, sir. We can't make noise.

6 Q. Your religion says that you can't make noise?

7 A. Quite right, sir.

8 Q. Would you recognize a medical technical assistant
9 or an M.T.A. if you saw one?

10 A. Yes, sir.

11 Q. Did you talk to an M.T.A. when you were in strip
12 cell in August of 1965?

13 A. No, sir.

14 Q. When was the second occasion that you were in strip
15 cell, Mr. Harris?

16 A. I told you, sir.

17 Q. 1965?

18 A. Yes, sir.

19 Q. And were the flaps open and the windows or doors opened
20 or closed when you were in the strip cell?

21 A. Closed.

22 Q. Were they closed some time or all the time?

23 A. All the time.

24 Q. And what was the state of cleanliness in the strip
25 cell in 1965?

1 A. The same condition, sir.

2 Q. Was there an odor in the strip cell?

3 A. Yes, sir.

4 Q. Were you brought water?

5 A. No, sir.

6 Q. Were you ever brought any water?

7 A. No, sir.

8 Q. How long were you in the strip cell in October 1965?

9 A. Approximately three days -- two or three days.

10 Q. Were you given anything to wash your hands?

11 A. No, sir.

12 Q. Was there a water basin of any sort?

13 A. No, sir.

14 Q. Was there a water pitcher?

15 A. No, sir.

16 Q. A towel?

17 A. No.

18 Q. Soap?

19 A. No, sir.

20 Q. Toothbrush?

21 A. No, sir.

22 Q. Mr. Harris, when was the next time that you were in
23 the strip cell?

24 A. I believe it was February, sir.

25 Q. And about how long were you there in February of 1966?

1 A. About eleven days, I believe it was.

2 Q. Would you describe the conditions of cleanliness
3 in February of 1966, please.

4 A. Same way, sir, about the same period.

5 Q. And were the flaps open or closed then?

6 A. At this time I believe it was closed.

7 Q. And how often were you brought water in February
8 of 1966, the third time that you were in the strip cell?

9 A. I got water pretty often at this time, sir.

10 Q. How often?

11 A. I believe once a day, sir.

12 Q. Could you drink more than one cup and ask for it to
13 be refilled?

14 A. At this time, I believe you could.

15 Q. Did you see an M.T.A. at any time in the strip cell
16 in February of 1966?

17 A. No, sir.

18 Q. Did you have a conversation with an M.T.A. at any
19 time during February 1966 in the strip cell?

20 A. No, sir, I tried to get the attention of one in
21 May of 1966 -- in February I couldn't get his attention.

22 Q. You were in the strip cell in May 1966?

23 A. Correct.

24 Q. In May of 1966, did you have conversation with an
25 M.T.A.?

1 A. Yes, sir.

2 Q. Will you tell us about that, please?

3 MR. GRANUCCI: I object to the question, it is out-
4 side the issues to be tried. The question is not whether
5 Mr. Harris got adequate medical treatment or that he didn't
6 get adequate medical treatment, but the relevance of his
7 testimony is solely related to the conditions of the isolation
8 section.

9 MR. COHLER: I think that we are moving forward in
10 time and seen some changes and I would like to bring them
11 out.

12 THE COURT: All right. You may answer. Would you
13 speak up so that this lady can take it all down?

14 THE WITNESS: Yes, sir.

15 MR. COHLER: Q. Will you tell about the M.T.A. and
16 what happened in May of 1966?

17 A. I went to the hospital and got examined, sir.

18 Q. Now, in the strip cell of May of 1966, was there
19 a plastic wash basin?

20 A. Yes, sir.

21 Q. Was there a plastic water pitcher?

22 A. Yes, sir.

23 Q. Soap?

24 A. Yes, sir.

25 Q. Towel?

1 A. Yes, sir.

2 Q. Toothbrush?

3 A. Yes, sir

4 Q. How much water was given to you?

5 A. A pitcher and a basin.

6 Q. Did you get to take a shower in May of 1966?

7 A. Yes, sir.

8 Q. Was that the first time you ever got to take a
9 shower in the strip cell?

10 A. Yes, sir.

11 Q. Including all the other times?

12 A. No, sir.

13 Q. When you say, "No, sir", is it clear to you that
14 we are referring to this shower that you were permitted in
15 May of 1966 in the strip cell -- the first shower from any
16 time you had been in the strip cell?

17 A. I believe so, sir. The other times they didn't give
18 no showers.

19 MR. GRANUCCI: Your Honor, at this time I would
20 request that the testimony of Mr. Harris be limited solely
21 to the question of the relief, if any, to be afforded the
22 plaintiff. It seems to me that questions of changes are not
23 relevant on the issues of whether Mr. Jordan was deprived of
24 his civil rights during July of 1965.

25 THE COURT: Objection overruled.

1 MR. COHLER: Those are all my questions at this
2 time.

3 CROSS-EXAMINATION

4 BY MR. GRANUCCI:

5 Q. Mr. Harris, you have a lawsuit presently against
6 Mr. Fitzharris, don't you?

7 A. Yes, sir.

8 Q. You do?

9 A. I have a civil complaint, sir.

10 Q. It is a lawsuit?

11 A. Yes, sir.

12 Q. And now, do you recall why you were put in the
13 quiet cell in August of 1965?

14 A. Yes, sir.

15 Q. What was it for?

16 A. A fight.

17 THE COURT: Fighting?

18 THE WITNESS: Yes.

19 MR. GRANUCCI: Q. Now, were you fighting on October
20 4, 1965?

21 A. Yes, sir.

22 Q. February 9, 1966, were you throwing hot water and
23 coffee at an inmate porter?

24 A. I got hot coffee thrown on me. It was the other
25 way around. I got hot coffee thrown at me and I got put in the

1 strip cell.

2 Q. Now, May 2, 1966, fighting again?

3 A. Yes, sir.

4 Q. You assaulted an inmate without any provocation in
5 May '66?

6 A. No, sir.

7 Q. All right, do you want to explain you answer?

8 A. I didn't assault him, I was attacked first.

9 Q. You were attacked first?

10 A. Yes, sir.

11 Q. What was the name of the inmate that attacked you?

12 A. I can't recall his name, sir.

13 Q. Hadn't you been in a disciplinary hearing and you
14 were found guilty and came outside and attacked the first
15 inmate that you saw?

16 A. No, sir.

17 Q. It didn't happen that way?

18 A. I was attacked first so I had to defend myself, sir.

19 MR. OAKES: Q. Was there an officer with you at that
20 time?

21 A. Yes, sir.

22 Q. Wouldn't they escort you from the disciplinary hearing?

23 A. Yes, sir.

24 Q. Was not the inmate inside the front portion?

25 A. 'O' wing.

1 Q. The man you had an altercation with?

2 A. Yes, sir.

3 Q. Was he not writing something on the blackboard?

4 A. I don't recall, sir.

5 Q. He had his back to you?

6 A. Sir?

7 Q. Did he not have his back to you?

8 A. If I can recall he was facing the board.

9 Q. How could he write on the board and still be facing
10 you to attack you? How did he attack you?

11 A. He attacked me by words.

12 MR. GRANUCCI: Q. It wasn't a physical attack?

13 A. No, sir.

14 Q. You just jumped him because he attacked you with
15 words?

16 A. Sir?

17 Q. You went after him because you didn't like what
18 he said?

19 A. He said quite a bit, sir.

20 Q. All right, let's go back to August in the quiet
21 cell? The confinement in August, did they issue you any
22 toilet paper while you were in there?

23 A. No, sir.

24 Q. None at all?

25 A. No, sir.

1 Q. How about water?

2 A. No, sir.

3 Q. You didn't get any water at all?

4 A. No, sir.

5 Q. Not a drop?

6 A. Sir?

7 MR. COHLER: Are you referring to August?

8 MR. GRANUCCI: Q. Was the toilet flushed?

9 A. About twice a day.

10 Q. The toilet was flushed twice a day?

11 A. Yes, sir.

12 Q. During the August 29th confinement, you were fed
13 twice a day?

14 A. Yes, sir.

15 Q. And how about the flaps?

16 A. Closed, sir.

17 Q. All the time?

18 A. Yes, sir.

19 Q. How about a head count?

20 A. Sir?

21 Q. Did they open them for head count?

22 A. They opened the door and shined a light in.

23 Q. They opened the door and not the flaps, is that it?

24 A. Yes, sir.

25 Q. Now, October '65, flaps were closed all the time?

1 A. Yes, sir.

2 Q. How about toilet paper. Did they issue you toilet
3 paper?

4 A. I never received any toilet paper. Maybe the second
5 day I believe they did.

6 Q. The second day they issued you the toilet paper?

7 A. I was in there about three days.

8 Q. This is in October 65?

9 A. Yes, sir.

10 Q. The second day they issued you toilet paper?

11 A. The second day I received toilet paper, sir.

12 Q. Did they bring any water?

13 A. I can't recall getting any water.

14 Q. No water?

15 A. No, sir.

16 Q. They didn't bring you water the same time they
17 brought you toilet paper?

18 A. No, sir.

19 Q. No water?

20 A. No, sir.

21 Q. Flaps closed all the time?

22 A. Yes, sir.

23 Q. Now February 1966, were your flaps closed all the
24 time?

25 A. Like I said, the last time I can't recall that they

1 might have been opened once in a while.

2 Q. You can't recall February '66?

3 A. It was open now and then, sir.

4 Q. It was?

5 A. It was open now and then.

6 Q. February '66, but you say you can't recall it too
7 clearly?

8 A. Not too clearly, but it was open now and then.

9 Q. You can recall August '65 better than February '66?

10 A. I most certainly can.

11 Q. How about toilet paper in February?

12 A. Yes, sir.

13 Q. How about water?

14 A. Yes, sir.

15 Q. How many times?

16 A. About twice, sir.

17 Q. What times of the day?

18 A. Right after breakfast and right after dinner, I
19 believe it was, right after dinner and right after breakfast.

20 Q. Did they bring you tea in a plastic cup?

21 A. They brought it in a big pitcher and white cups.

22 Q. How many white cups did you have at one time?

23 A. One.

24 Q. Could you have more than one if you wanted?

25 A. I don't know, sir.

1 Q. Did you keep a cup for extra water?

2 A. I had one cup at a time.

3 Q. You couldn't keep a coffee cup or something like that?

4 A. You could, I believe.

5 Q. Why didn't you do that?

6 A. Because they wouldn't wash it out after having the
7 coffee in it.

8 MR. GRANUCCI: Mr. Harris, you were convicted of
9 a robbery in 1946, weren't you?

10 A. Yes, sir.

11 Q. Did you ever have anybody clean out your cell for
12 you?

13 A. No, sir.

14 Q. You didn't ever ask anybody to clean out your cell?

15 A. No, sir.

16 Q. Ever ask anybody in February to clean out your
17 cell?

18 A. No, sir.

19 Q. In August of '65, did you ever ask anybody to let
20 you have a mop or broom or something to clean out your cell?

21 A. No, sir.

22 Q. Would your answer be the same for October 1965?

23 A. Yes, sir.

24 Q. And would your answer be the same for February '65?

25 A. Yes, sir.

1 Q. Do you know Officer Nash?

2 MR. COHLER: Do you mean does he know a person by
3 that name?

4 A. Whowas that, sir?

5 MR. GRANUCCI: Officer Nash.

6 A. Nash, yes, sir, I believe so.

7 MR. GRANUCCI: No further questions.

8 REDIRECT EXAMINATION

9 BY MR. COHLER:

10 Q. Mr. Harris, the fighting incident at the blackboard --
11 was the verbal attack related to your religious beliefs?

12 A. Yes, sir.

13 Q. In August 1965, was it the first time you had ever
14 been in the strip cell?

15 A. Yes, sir.

16 Q. Do you recall August '65 being the first time?

17 A. I recall it because of that.

18 MR. COHLER: That's all.

19 THE COURT: Thank you.

20 (Witness excused)

21 MR. COHLER: It is my intention to call one more
22 inmate witness. I think we will have heard enough of testimony
23 in this fashion at that time.

24 SIEGFRIED PORTE

25 called as a witness on behalf of the plaintiff, having been

1 duly sworn, testified as follows:

2 BY MR. COHLER:

3 Q. Mr. Porte, are you in good health this morning?

4 A. No, I am not.

5 Q. Was there a difficulty last night and explain to
6 the Court, please.

7 A. I cut myself last night and at first I refused
8 treatment.

9 Q. Do you feel you are able to testify?

10 MR. GRANUCCI: Could the witness speak louder?

11 MR. COHLER: Do you feel that you are in good enough
12 condition to testify here today?

13 A. No, sir.

14 THE COURT: How was he injured?

15 MR. COHLER: Q. Would you like to tell us how you
16 were injured, Mr. Porte?

17 A. I cut my vein.

18 Q. Have you been checked by a doctor?

19 A. Yes.

20 Q. Do you prefer not to testify today?

21 A. I do prefer.

22 Q. You think you are strong enough to testify, I mis-
23 understood you.

24 MR. COHLER: Do you have any questions on voir dire?

25 MR. GRANUCCI: Not at this time.

I do have one question.

Q. Are you presently under sedation?

A. No, I am not.

MR. COHLER: Q. Or any other kind of drug?

A. None.

Q. Would you state your age, please.

A. 23.

Q. Are you presently an inmate here at the correctional training facility?

A. Yes, I am.

Q. And how long have you been here?

A. For two years.

Q. Is there an area known to you as isolation area?

A. Yes.

Q. And is the area known as the strip cell area?

A. Yes.

Q. Would you tell His Honor where the areas are?

A. In the strip cell and isolation.

Q. And where are they located?

A. All over actually.

Q. Is the strip cell area within the isolation area?

A. No.

Q. Toward the rear?

A. Yes.

Q. Have you ever been in the strip cell?

1 A. Yes, sir.

2 Q. When was that, please, Mr. Porte, approximately?

3 A. May 15, I believe.

4 Q. When you use the term strip cell in the affidavit
5 that you signed in this case, did you use it differently then
6 than you understand it to mean today? Would you explain to
7 the Court please the difference in your misunderstanding
8 of this term?

9 A. I believed that '0' was the whole strip cell.

10 Q. That is what you formally thought?

11 A. Yes.

12 Q. Do you not think it now?

13 A. No.

14 Q. What was the occasion for your understanding the
15 difference.

16 A. One of the guards grabbed the sheet -- grabbed the
17 affidavit out of my hand and I tried to get it back and he
18 started laughing and he said that I had perjured myself.
19 So when I went back to my cell, I kept reading the affidavit
20 and asked another inmate and he told me that the strip cell
21 is only part of it and the rest is isolation.

22 Q. You are referring to the time that you and I met
23 and we executed a document?

24 A. Yes.

25 Q. And you took a copy back with you?

1 A. Yes.

2 Q. And the document was seized by an officer?

3 A. Yes.

4 Q. Did you give him permission to take it?

5 A. No. He grabbed it.

6 MR. GRANUCCI: Objection, the rules involving search and
7 seizure don't apply here.

8 THE COURT: Overruled.

9 MR. GRANUCCI: They don't apply in an institution.

10 THE COURT: Overruled.

11 MR. COHLER: Q. When were you taken to the strip
12 cell the first time, Mr. Porte?

13 A. The first time was in March of 1965.

14 Q. March?

15 A. Yes.

16 Q. And how long were you kept in the strip cell?

17 A. 29 days.

18 THE COURT: How long?

19 MR. COHLER: Q. Do you mean in isolation or the
20 rear part of isolation in the strip cell?

21 A. The rear and front. In other words, I am getting them
22 mixed up. I was in the strip cell back there for five days.

23 Q. You were in the rear part for five days?

24 A. Yes.

25 Q. Mr. Porte, will you tell the Court whether the windows

1 were opened during the five days?

2 A. They were not, they were all shut.

3 Q. The whole time?

4 A. Yes.

5 Q. Would you tell the Court the state of cleanliness
6 of that rear strip cell during the five days, please?

7 A. There was no cleanliness, they never cleaned it out.

8 Q. Was it cleaned when you were there?

9 A. No, sir.

10 Q. What kind of dirt was in the cell, Mr. Porte?

11 A. Left over sandwich wrappers, particles of food,
12 and cups.

13 Q. Anything else?

14 A. No.

15 Q. Was there a toilet in the cell?

16 A. The first time, yes.

17 Q. And how did that work?

18 A. They controlled it by the outside, I believe.

19 Q. Was the toilet surface clean?

20 A. No, sir.

21 Q. What kind of dirt was on the toilet surface?

22 A. Stains, brown stains.

23 Q. When were you fed, Mr. Porte?

24 A. When was I fed?

25 Q. Yes.

1 A. In the morning and 2.30.

2 Q. Did you ever have a chance to wash before you were
3 fed?

4 A. No.

5 Q. Was there a water basin?

6 A. No, sir.

7 Q. Any water pitchers?

8 A. No.

9 Q. Soap?

10 A. No, sir.

11 Q. A toothbrush?

12 A. No, sir.

13 Q. Was there an odor in the strip cell at this time?

14 A. I don't know what you mean by an odor.

15 Q. Did it smell?

16 A. Yes.

17 Q. What kind of smell?

18 A. Dirty.

19 Q. Do you know what a medical technical assistant is,
20 or an M.T.A. in the Institution?

21 A. Yes, sir.

22 Q. Would you recognize one if you saw him?

23 A. Yes.

24 Q. Did you see one during the five days when you were
25 in the strip cell?

1 A. No, I did not.

2 Q. When was the next time, if you recall, Mr. Porte
3 that you were taken into the rear strip cell?

4 A. I believe in May -- toward the last part.

5 Q. How long were you kept in the rear strip cell then?

6 A. I believe it was five days at first and I went out
7 to isolation and then they took my clothes away threw me back
8 there naked for a period of four days.

9 Q. Did you go to any hearing?

10 A. No, sir.

11 Q. Did any officer tell you why you had been moved to
12 the strip cell?

13 A. Yes, sir.

14 Q. Why?

15 A. For throwing urine at another inmate.

16 Q. How often were you given water in the rear strip
17 cell in May 1965?

18 A. Two times a day.

19 Q. Were you given more than one cup of water at a time?

20 A. No, sir.

21 Q. Were the window flaps and door flaps open or closed
22 the second time in May of 1965?

23 A. They were closed.

24 Q. The whole time?

25 A. Yes, sir.

1 Q. Was there an odor in the cell at that time?

2 A. Yes, sir.

3 Q. What kind of an odor?

4 A. Fung.

5 Q. Would you describe the cleanliness of this strip
6 cell, the rear strip cell, in May 1965 when you were there,
7 please?

8 A. There was food on the wall, cups laying around and
9 the toilet was very dirty.

10 Q. How often were you fed at that time?

11 A. Twice a day.

12 Q. Were you given a chance to wash your hands or any
13 part of your body before you ate?

14 A. No, sir.

15 Q. There was a water basin there?

16 A. No, sir.

17 Q. Soap?

18 A. No, sir.

19 Q. Towel?

20 A. No, sir.

21 Q. Toothbrush?

22 A. No, sir.

23 Q. When was the next time, Mr. Porte, the third time
24 you were in one of the rear strip cells?

25 A. Just recently in '66.

1 Q. Can you remember how long it was?

2 A. April or May of '66. I was there for a period of
3 four days.

4 Q. And at that time was there a pitcher in the strip
5 cell?

6 A. Yes.

7 Q. Water basin?

8 A. Yes.

9 Q. Soap?

10 A. Yes.

11 Q. Towel?

12 A. Yes.

13 Q. Were the flaps kept open or closed?

14 A. They were all open, yes. They were kept open all
15 the time unless you wanted them closed.

16 CROSS-EXAMINATION

17 BY MR. GRANUCCI:

18 Q. You were convicted in 1964 of a first degree robbery,
19 were you not?

20 A. Yes.

21 Q. And back in 1962, you were convicted of larceny and
22 served two years; is that correct?

23 A. Yes.

24 Q. Now, Monday, July 25, 1965, you were in possession
25 of razor blade and you were disciplined for it?

1 A. Not in '65.

2 Q. '66, excuse me.

3 A. Yes.

4 Q. Then on May 15, 1965 you broke up your cell, didn't
5 you?

6 A. Yes.

7 Q. Why did you do it?

8 A. Why did I do it? I wanted to know what was going
9 to happen to me because I wrote to Mr. Petersen and I didn't
10 get no response. I figured I would get some response by
11 tearing something up.

12 Q. Did you tear up your cell on Sunday, July 28, 1966?

13 A. Yes.

14 Q. I want to show you a couple of photographs.

15 MR. COHLER: Two or all four photographs?

16 MR. GRANUCCI: All four.

17 Q. You were involved in a disturbance?

18 A. Yes.

19 Q. You were very active in it, weren't you?

20 A. Yes.

21 MR. COHLER: Are you going to have those marked
22 for identification or for any purpose?

23 MR. GRANUCCI: First I want to see if he identifies
24 them or not.

25 Q. I am going to show you a photograph, Is that a

1 fair representation of the conditions of your cell on the
2 evening of July 28, 1966, after you got through breaking it
3 up?

4 A. Yes.

5 THE CLERK: Defendant's A for identification.

6 MR. GRANUCCI: Q. I show you another photograph,
7 does that fairly represent the condition of the cell on the
8 evening of July 28, 1966?

9 A. Yes.

10 MR. CLERK: I will mark this Defendant's B for
11 identification.

12 MR. GRANUCCI: Q. Why did you break up your cell?

13 A.. Why? I'll tell you why, because I wanted a response.
14 I wrote to Mr. Gunsbar explaining my problem to him. I
15 couldn't get no response.

16 Q. Whenever you don't get a response, you break up your
17 cell?

18 A. That is the only way you can see people around here.

19 Q. Very interesting. May 11, 1966, were you disciplined
20 for wasting food?

21 A. Yes.

22 Q. May 5, 1966, gambling?

23 A. No.

24 Q. You weren't gambling?

25 A. As a suspicion, but not gambling.

1 Q. April 10, 1966, fighting?

2 A. Yes.

3 Q. Now, you have other relative minor disciplinary
4 action for being out of the area?

5 A. Yes.

6 Q. But now I want to call your attention specifically
7 to December 26, 1965. Now, keep it in mind, that December 26,
8 1965, you were absent from the wing; is that correct?

9 A. I wouldn't know, really.

10 Q. All right. Let me --

11 A. In December I was absent four times, no specific
12 dates though.

13 Q. On the 26th, did you tell Mr. Maddox that you were
14 sick and tired of being in restricted housing and to go
15 ahead and to write you up because you would rather be in the
16 hole anyhow?

17 A. Yes..

18 Q. You said that?

19 A. Yes.

20 Q. Let's go over to June -- Let's go over to May 5, 1966.
21 That is when they disciplined you for suspicion of gambling;
22 is that correct?

23 A. I wouldn't know.

24 Q. Did you storm out of the hearing room?

25 A. Yes.

1 Q. Did you demand placement in the strip cell at that
2 time?

3 A. No, I told them if they put me out of R.H. I would
4 rather be in the strip cell.

5 Q. You didn't like being in the strip cell?

6 A. No, I didn't.

7 Q. According to your affidavit, it was a horrible
8 experience?

9 A. Yes, sir, it is.

10 Q. And you asked to be put in there?

11 A. Yes, rather than be put in R.H.

12 Q. You would rather be put in the strip cell than in
13 restrictive housing?

14 A. That's right.

15 Q. You attempted escape on March 24, 1965, didn't you?

16 A. I was put out of bounds.

17 Q. Out of bounds? You were hiding in the vocational
18 area under a pile of boards?

19 A. I believe so.

20 Q. Did you intend to escape?

21 A. I wouldn't know. I was not charged with escape.
22 I was charged with out of bounds.

23 Q. Now, March 24, 1966, did you tell Mr. Conant and
24 Mr. Warner that you wanted to escape because you were asking
25 for a transfer to San Quentin and you didn't get it?

1 A. No, I did not.

2 Q. You didn't answer.

3 A. I asked for it a week earlier and they put it down
4 in the records and that might be the cause.

5 Q. They didn't ask it?

6 A. When they asked me something I refused to answer.

7 Q. They asked you if you were thinking about it or
8 was it a spur of the moment thing?

9 A. I believe so, I am not sure.

10 Q. What did you say?

11 A. I didn't answer any questions at all.

12 Q. I show you a document that purports to be a transcript
13 of the interview. Would you read down to the bottom of the
14 page and I ask you to look at that and read it.

15 A. Do you want me to read it out loud?

16 Q. No, look at it yourself.

17 (Witness reading document)

18 Q. Does it refresh your memory?

19 A. I remember the incident. Like I said, I didn't
20 answer any questions at all.

21 Q. You didn't answer any questions at all?

22 A. No, I didn't. By the way, have you got my signature
23 on it?

24 Q. No, I don't.

25 A. Thank you.

1 Q. All right. You did five days in the strip cell in
2 March of '65?

3 A. Yes.

4 Q. Did they issue you any toilet paper?

5 A. Toilet paper? Yes.

6 Q. When?

7 A. When you asked for it you got it. If they felt like
8 it you might get it now, if you didn't, you might get it
9 in a couple of hours later.

10 Q. But at least after you asked for the toilet paper
11 you got it in two hours?

12 A. You might, it all depends.

13 Q. How often did they bring you water?

14 A. They brought twice a day.

15 Q. How many cups of water did you receive?

16 A. Two cups of water.

17 Q. Each time?

18 A. No, one cup each time.

19 Q. Did they let you keep an extra cup in the cell?

20 A. No, you have cups at that time.

21 Q. No cups?

22 A. No.

23 Q. What would you do with the cup that they gave you?

24 A. They would bring you a cup.

25 Q. Could you keep a cup after you finished drinking from

1 it?

2 A. No, you couldn't keep the cup.

3 Q. Were they plastic cups?

4 A. They were not plastic but you know, a paper like
5 cups.

6 Q. Styrafoam, I think they call it?

7 A. I believe so.

8 Q. How often did they flush the toilet?

9 A. Twice a day.

10 Q. When?

11 A. Morning and before afternoon.

12 Q. Did they flush at night?

13 A. No, not that I know of.

14 Q. Now, in March, did you have any clothes to wear?

15 A. March?

16 Q. March '65.

17 A. Yes, I did.

18 Q. You had clothes then?

19 A. Yes.

20 Q. But you didn't in May?

21 A. No. Are you speaking of May 1965?

22 Q. May '65.

23 A. That's right.

24 Q. Was the cell clean in March of '65?

25 A. It wasn't clean.

1 Q. It wasn't clean?

2 A. No.

3 Q. How was it dirty?

4 A. The usual papers on the floor, food on the wall,
5 toilet bowl not clean.

6 Q. And that was it?

7 A. Yes.

8 Q. And the same thing true in May?

9 A. Yes.

10 Q. And that was generally what the dirt consisted of
11 in May too; is that correct?

12 A. Yes.

13 Q. In other words, there was food on the floor?

14 A. Food, paper and dirt on the toilet -- toilet not
15 cleaned.

16 Q. The toilet was not cleaned?

17 A. Yes.

18 Q. And that was the sanitary conditions in the cell
19 at that time?

20 A. Yes.

21 Q. You made an affidavit for Mr. Cohler. He interviewed
22 you --

23 MR. COHLER: Would you please not characterize it as
24 "making an affidavit" for me.

25 MR. GRANUCCI: Of course. In other words, you were

1 interviewed by Mr. Cohler and he gave you some information
2 and he in turn transcribed what you gave him and presented
3 it to you in the form of an affidavit; didn't you?

4 MR. COHLER: Your Honor, I don't think we ought to
5 go into the inner workings --

6 THE COURT: Proceed.

7 MR. GRANUCCI: Q. I show you page 2, paragraph 4,
8 which states:

9 "When I came into this cell there was no
10 human bodily waste smeared on the walls
11 and left on the floor."

12 MR. GRANUCCI: Read that again, please.

13 A. "When I came into the cell there was no human bodily
14 waste smeared on the walls and left on the floor. At no
15 time while I was within the cell was I given anything to
16 clean it up with. I was never visited by the Chief Medical
17 Officer or any Medical Technical Assistant."

18 MR. GRANUCCI: Thank you.

19 Now, would you read line 6 again?

20 A. "When I came into this cell there was no human --

21 Q. Doesn't it say that there was human bodily waste?
22 Please read it again.

23 A. "When I came into this cell there was human bodily
24 waste --

25 Q. You have been putting in "no", when it says, that

1 there was. The affidavit is not according to your testimony
2 this morning, or rather, this afternoon. The Statement says,
3 that there was, but you didn't tell me it when I asked you
4 about it.

5 A. I just told you.

6 Q. Now, you were there in May '66 -- May '65, excuse
7 me.

8 A. Are you speaking of '65 or '66?

9 Q. May '65. The next time you were in the strip cell
10 was April '66; is that correct?

11 A. I'm not sure.

12 THE COURT: We may take a short recess at this time.

13 (Whereupon a short recess was taken)

14 MR. GRANUCCI: Q. Mr. Porte, do you presently have
15 a parole date?

16 A. No.

17 Q. You have a time to go before before the Adult Authority,
18 don't you?

19 A. '68.

20 Q. At this time I want to offer a copy of Mr. Porte's
21 disciplinary record. This will be People's Exhibit C for
22 identification.

23 MR. COHLER: I have no objection, but I would like
24 to see what it contains.

25 MR. GRANUCCI: This is a resume of items that we covered

1 counsel.

2 MR. COHLER: Your Honor, may I ask that counsel
3 clarify the purpose for this period. For instance, there
4 is a page in the transcript of a discussion included in the
5 batch of documents and I say there has been no foundation
6 for this.

7 MR. GRANUCCI: I am interested in the records of
8 the disciplinary violations.

9 MR. COHLER: You offer this for what purpose?

10 MR. GRANUCCI: To show that Mr. Porte's opinion of
11 the Institution and his opinion of the Institution's rules.
12 Also, I move the admission of People's Exhibit A and B for
13 identification.

14 MR. COHLER: Your Honor, these are the two photo-
15 graphs which were shown to the witness. There is a good
16 deal that is often required as to foundation for the admission
17 of photographs. However, I don't feel this is worth quibbling
18 about and I should not object.

19 MR. GRANUCCI: I think it is sufficient foundation
20 and that the photographs fairly reflect the condition of the
21 cell on the evening in question.

22 MR. COHLER: There is no objection before the Court,
23 Your Honor.

24 MR. GRANUCCI: I have no further questions at this
25 time. Do you have any redirect?

1 THE COURT: Would you explain the purpose for which
2 the offer is made?

3 MR. GRANUCCI: Bias against the Institution, Your
4 Honor.

5 THE COURT: No objection.

6 MR. COHLER: No objection.

7 MR. COURT: May be marked Defendant's A in evidence.

8 MR. COHLER: Did you have any further questions,
9 Mr. Granucci?

10 MR. GRANUCCI: I have no further questions at this
11 time.

12 MR. COHLER: Mr. Porte, you said that you had broken
13 up your house or cell because you thought this was the only
14 way you could get attention for your problem. Would you tell
15 the Court, please, fully what your problem is as you talked
16 about it?

17 A. My problem is that I need to get a transfer. I have
18 written to Mr. Dunbar. I went up to the Board in January of
19 '66 and I was interviewed by three psychiatrists. They said
20 that I needed psychiatric referral and I wrote a letter to
21 Dunbar explaining this and asking him why I could not receive
22 the help if so many people thought I needed help. I wanted
23 to know why they don't give it to me. They call this a
24 rehabilitation centre, why don't they help me then.

25 Q. You have been trying to get a psychiatrist's help?

1 A. Yes, I have..

2 Q. And you have been told by psychiatrists or a board
3 that you needed psychiatric help?

4 A. Yes.

5 Q. Have you ever had an interview with Dr. Hack, the
6 consulting psychiatrist at this Institution?

7 A. Yes.

8 Q. And was that interview to determine whether or not
9 you should have help, if you know?

10 A. I believe it was to find out if I was crazy or not.

11 Q. Have you ever had any therapy or actual psychiatric
12 treatment at any Institution?

13 A. No, I haven't.

14 Q. Do you occasionally have blackouts?

15 A. Yes, I have. As a matter of fact when I came to the
16 Institution I went to visit Dr. Common and Dr. Hack to find out
17 about a training school and find out about it. I didn't get
18 no response of that either.

19 MR. COHLER: That is all.

20 MR. GRANUCCI: Q. How many times did you see Dr. Hack?

21 A. Twice in 1965. In March when I came in for escape,
22 and just recently when I cut myself and those were five minute
23 interviews.

24 Q. And you want to transfer to San Quentin?

25 A. Any where, where I can get help to benefit myself.

1 Q. You dont feel that you are getting that here?

2 A. No, I don't believe so because of the Institution's
3 officials' attitude.

4 Q. Do you think that they singled you out?

5 A. No, not myself. There are others too. There is a
6 lot of stuff that you people don't realize.

7 MR. GRANUCCI: No further questions.

8 MR. COHLER: That is all.

9 THE COURT: Did you ever suffer a head injury of
10 any kind?

11 A. I fell off a tree.

12 Q. I notice a scar at the back of your head, was that
13 the consequence of falling?

14 A. Yes.

15 Q. Did you ever suffer a skull fracture?

16 A. I do not know.

17 Q. Brain concussion?

18 A. I believe I went to the hospital for a period. I
19 was there for a period of a year and a half.

20 Q. How old were you?

21 A. About eight or nine.

22 Q. And during the time you were confined in the quiet
23 cell -- socalled the quiet cell -- were you ever permitted
24 any exercise periods of any kind?

25 A. In the strip cell, sir?

1 Q. Yes.

2 A. No, I wasn't.

3 Q. What was the maximum time you spent in the strip
4 cell?

5 A. 29 days was the maximum.

6 Q. And during that 29 days period, as I understand it,
7 you were not permitted out of the cell at any time?

8 A. No, sir.

9 Q. And your sleeping accommodations during that time,
10 did you have a mattress of any kind?

11 A. No, sir.

12 Q. How did you sleep?

13 A. They have a canvass.

14 Q. On the floor?

15 A. Yes, sir.

16 Q. There is some confusion in the records concerning
17 bodily waste. You said there was ---

18 A. Bodily waste, I don't know what that means. By waste
19 I'm speaking of is dirty food and paper, leftover sandwiches,
20 and the like.

21 Q. Counsel showed you an affidavit that you made. Is
22 there any confusion in your mind concerning that affidavit
23 that you made?

24 A. Yes, there was about the strip cell.

25 Q. What was the confusion?

1 A. My impression was that the whole place downstairs
2 was the strip cell altogether, and like I said that the man
3 kept laughing at me and said that I perjured myself. I
4 asked an inmate about it and found that it isn't so.

5 Q. You straightened it out in your mind? Have you
6 received any psychiatrist's care in this Institution?

7 A. No. I did in the Wayne County Training School.

8 Q. What was it?

9 A. I don't know what it pertained to, I know it was
10 definitely seeing a psychiatrist.

11 Q. Do you know what his name was?

12 A. Dr. Smith.

13 THE COURT: I have no further questions.

14 MR. COHLER: No questions, Your Honor.

15 MR. GRANUCCI: No further questions.

16 THE COURT: The witness is excused. Thank you.

17 (Witness excused)

18 MR. GRANUCCI: Your Honor, at this time, out of
19 order, I move the admission into evidence of the disciplinary
20 copies -- disciplinary records of inmate Esparza.

21 MR. COHLER: For the same limited purpose?

22 MR. GRANUCCI: For the same limited purpose to show
23 bias against the Institution.

24 MR. COHLER: I will stipulate that the disciplinary
25 forms of 115 or 128 as to any inmate may be similarly offered

1 and received in evidence.

2 MR. GRANUCCI: Stipulation accepted. Thank you,
3 counsel.

4 MR. COHLER: For the same limited purpose.

5 MR. GRANUCCI: Stipulation accepted, and thank you,
6 counsel.

7 THE COURT: It may be marked.

8 THE CLERK: Defendant's Exhibit D in evidence.

9 THE COURT: Gentlemen, are we going to take further
10 proceedings tomorrow morning?

11 MR. GRANUCCI: We have a problem that is this: Counsel
12 has indicated that he wants to call certain of our officers
13 as witnesses. I think it is Officer Nash and Superintendent
14 Fitzharris and Friedrich. Now, we have arranged with the
15 expectation that we would be down here for two days listening
16 to the testimony and we arranged to have the officers come to
17 San Francisco on Thursday, and the Institution has rearranged
18 the schedules and shift schedules have been rearranged
19 accordingly.

20 MR. OAKES: As a matter of fact, some of the witnesses
21 cannot be reached here.

22 THE COURT: Let us proceed on Thursday.

23 MR. COHLER: That is agreeable.

24 MR. GRANUCCI: We can keep to our schedules that way.

25 MR. COHLER: I will be happy to accommodate counsel.

1 We should like to meet with you briefly in Chambers before
2 we start on Thursday morning.

3 THE COURT: Thursday morning at 9:30.

4 MR. GRANUCCI: I concur with that request.

5 THE COURT: The Court will stand regularly adjourned
6 until Thursday morning next at 9:30 a.m.

7 The witnesses are to be heard at 10:00 o'clock.

8 (Whereupon the Court proceedings were
9 adjourned.)

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1 THE CLERK: Civil actions 44309 and 44786, Robert
2 Charles Jordan versus C. J. Fitzharris, et al, further
3 evidenciary hearing.

4 MR. COHLER: Ready for the Plaintiff and Petitioner,
5 Your Honor.

6 MR. GRANUCCI: Ready for the Defendant, Your Honor.

7 THE COURT: May the record show that in this matter the
8 Court has been in conference with attorneys for the respective
9 parties concerning procedural matters and other evidenciary
10 matters that might arise.

11 MR. COHLER: If it please the Court, Your Honor, before
12 calling Plaintiff's next witness, counsel have stipulated between
13 themselves that the complaint may be deemed amended so as to have
14 Mr. Walter Dunbar substituted for Mr. Richard A. McGee, nunc pro
15 tunc, prior to the hearing; is that correct, counsel?

16 MR. GRANUCCI: Counsel has correctly stated our under-
17 standing, Your Honor.

18 MR. COHLER: We ask The Court to so order.

19 THE COURT: That will be the order.

20 MR. COHLER: Plaintiff's next witness is Mr. Nash.

21 THE CLERK: Mr. John Louis Nash.

22 JOHN LOUIS NASH,
23 called as a witness by the Plaintiff, who, being first duly
24 affirmed, testified as follows:

25 THE CLERK: Will you take the stand? State your full

1 name and address.

2 THE WITNESS: My name is John Louis Nash. I am a
3 correctional officer at Soledad Correctional Institute.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION.

6 BY: MR. COHLER

7 MR. COHLER: Q. Officer Nash, how old are you, please?

8 A. I am 34 years old.

9 Q. And you are --

10 THE COURT: What is your occupation?

11 THE WITNESS: I am a correctional officer.

12 MR. COHLER: Q. And that is at the Correctional Training
13 Facility in Soledad, California, is that correct?

14 A. Yes.

15 Q. And your present position is what, Mr. Nash?

16 A. I work in the Adjustment Center in O-Wing.

17 Q. As a correctional officer?

18 A. Yes, sir.

19 Q. How long have you been a correctional officer in the
20 Adjustment Center in O-Wing, Mr. Nash?

21 A. Approximately 13, 14 months.

22 Q. And were you an officer on the Third Watch in O-Wing in
23 July, 1965, a little over a year ago?

24 A. Yes, I was.

25 Q. What time does a Third Watch operate, Officer Nash?

1 A. From 4:00 p.m. till 12:00 p.m.

2 Q. Are the cells on the east corridor and the first floor in
3 O-Wing generally referred to as a maximum security or Max Row?

4 A. Did you say the east side?

5 Q. On the east side, Officer.

6 A. Yes, it is. Yes, it is.

7 Q. And on the other side, the other corridor, there are two
8 different kinds of cells, is that correct?

9 A. Right.

10 Q. And toward the front are these 18 cells on this other
11 side, the west side on the first floor, generally referred to as
12 isolation cells?

13 A. Yes.

14 Q. Do these front 18 isolation cells have permanent water
15 basins?

16 A. Yes.

17 Q. Do those front 18 isolation cells have running water?

18 A. Yes.

19 Q. Can the toilets in those front 18 isolation cells be
20 flushed by an inmate inside one of those cells?

21 A. Yes.

22 Q. Are there six additional cells on that same side, the
23 west side, further back than the front 18 isolation cells?

24 A. Yes, there is.

25 Q. Is there a door in that corridor on the west side which

1 separates the rear six cells from the regular isolation cells up
2 at the front?

3 A. Yes, there is.

4 Q. Are those six rear cells sometimes referred to as quiet
5 cells and sometimes referred to as strip cells?

6 A. Yes, it is.

7 Q. And do you, yourself, from time to time refer to them as
8 quiet cells and from time to time strip cells?

9 A. Yes, I do.

10 Q. Officer Nash, do the six rear quiet cells or strip cells
11 have bar fronts and then a further wall with a door and window
12 openings onto the corridor itself?

13 A. Yes.

14 Q. In other words, there is a double-door arrangement to the
15 wall front from the bars?

16 A. Yes.

17 Q. Is that wall which in front of the bars and leads out
18 into the general corridor about two or three feet from the actual
19 bar front, from the so-called quieter strip cell?

20 A. Approximately, yes.

21 Q. Are there metal flaps over the window opening which is
22 two or three feet from the strip cell bars?

23 A. Yes.

24 Q. There is a metal flap over the window opening, and the
25 window opening in the door?

1 A. Right.

2 Q. Would you please briefly describe your duties as an
3 officer on the first floor of O-Wing, the Third Watch?

4 A. My duty is to make security checks, make counts, to
5 pass out shaving equipment and to pass out supplies, and to
6 listen to inmate complaints and to counsel inmates, write reports
7 and service the strip cells.

8 Q. And as part of your duties you mentioned taking around
9 shaving supplies; how often on the Third Watch?

10 A. I do it on the east side one night, on the next night I
11 do it on the west side.

12 Q. Alternate nights you serve one corridor and then the
13 other?

14 A. Yes, sir.

15 Q. On the west side, which contains the isolation cells and
16 the strip cells, do you service the inmates in strip cells with
17 shaving equipment as well?

18 A. No, I don't.

19 Q. You understand, do you not, that someone on the Second
20 Watch does that from time to time?

21 A. Yes.

22 Q. But you only service the front isolation cells?

23 A. Right.

24 Q. What is involved in a security check, Officer Nash? You
25 mentioned that as part of your duties.

1 A. Well, I will see if the inmates are in a good condition,
2 not hurt, or they haven't mutilated themselves, and I check to
3 see that the door is double-locked and I see if there is any
4 contraband in the cell itself.

5 Q. What do you physically do? Do you have a flashlight, or
6 how does this work? A. I have a flashlight.

7 Q. Would you tell us what you do with the flashlight and
8 how this check is made, please?

9 A. Well -- during this time of year?

10 Q. In July, 1965.

11 A. Right. During this time it is mostly light. I don't use
12 my light when I go on duty because it's light -- I can see any
13 object. I just look the cell over real good, just look at the
14 bars and the door and inside the cell.

15 Q. It is called the security check, and its primary purpose
16 is to see that all of the doors are properly locked?

17 A. Right.

18 Q. As another part of your duties on the Third Watch, do you
19 occasionally go back into a tunnel which is between the two sets
20 of cells on the two corridors?

21 A. Yes.

22 Q. For what purpose do you do that?

23 A. At this time I was flushing the toilet.

24 Q. You say, "at this time." Do you mean in July, 1965?

25 A. Right.

1 Q. When you say, "flush the toilet," you mean all the
2 toilets or just some?

3 A. On the six toilets; we refer to it as the strip cell.

4 Q. The other toilets do not require manual flushing?

5 A. No.

6 Q. Was it also part of your duties to take water to the
7 inmates in the strip cells?

8 A. Yes.

9 Q. Do you know Robert Jordan, an inmate, by sight?

10 A. Yes.

11 Q. Do you see him here today?

12 A. Yes, I do.

13 Q. Did you know Mr. Jordan by sight in July, 1965?

14 A. Yes.

15 Q. And do you remember that in July, 1965, and I am not
16 asking for a precise date, that Mr. Jordan was in one of the six
17 rear strip cells?

18 A. Yes.

19 Q. Do you remember about how long he was there?

20 A. No, I don't remember.

21 Q. A matter of hours or days or weeks, approximately?

22 A. Matter of days.

23 Q. At this time in July, Officer Nash, when you recall Mr.
24 Jordan in a strip cell for a matter of days, were the flaps on
25 the window or the door openings of the strip cells sometimes

1 closed?

2 A. Yes, they was.

3 Q. They were sometimes closed when you came on duty on the
4 Third Watch?

5 A. Yes, they were.

6 Q. In other words, they had been left closed by the people
7 on the Second Watch before your watch?

8 A. I assume they were.

9 Q. And when the flaps on the window and the flaps on the
10 door were closed, the outer door in the wall was also closed,
11 wasn't it?

12 A. Yes.

13 Q. Would you say that the flaps and the doors to the strip
14 cells were closed most of the time in July, 1965?

15 A. Yes.

16 Q. Most of the time?

17 A. Most of the time.

18 Q. And the fact that the flaps in the doors to the strip
19 cells were closed most of the time when you came on duty at this
20 time was a result of what the Second Watch had determined should
21 be done about them, is that right?

22 A. Well, I would say it was -- I just had started working
23 there. I didn't know too much about procedure at that time.

24 Q. You didn't feel that you, on the Third Watch, should
25 change the flaps and doors from what the Second Watch had done,

1 did you?

2 A. Right.

3 Q. Officer Nash, would you direct your attention now, not
4 to July, 1965, but to the present time at the Correctional
5 Training Facility, particularly in O-Wing and during the Third
6 Watch when you are on duty on the first floor; are the flaps in
7 the doors to the strip cells now left open more than they used to
8 be in July, 1965?

9 A. I would say they are.

10 Q. In fact, now they are open most of the time, aren't they?

11 A. Most of the time, I would say.

12 Q. Now, they are open really all the time except when there
13 is a disturbance of some sort? This is at the present time.

14 A. Yes, sir.

15 Q. And, at the present time, do you feel free as a Third
16 Watch officer to open the flaps and doors of the strip cells if
17 the inmates are not causing a disturbance?

18 A. I would if they promised me they would be quiet.

19 Q. And you do this now, even if they have been left closed?

20 A. Yes.

21 Q. You don't feel any compunction anymore about changing
22 what the Second Watch has done?

23 A. No, because I have been working that much longer, too. I
24 say I know more about the job and I feel more at ease.

25 Q. You didn't feel at ease about changing what the Second

1 Watch had done in July, 1965?

2 A. No. That was because I had been there a few months or
3 days or so.

4 Q. And also, at the present time, there are plastic water
5 basins and plastic pitchers in the strip cells, aren't there?

6 A. Yes, there are.

7 Q. Did the plastic water basins and the plastic water
8 pitchers come into the strip cells when the flaps in the strip
9 cells were left open more of the time?

10 A. I really can't say for sure -- but I wouldn't say for sure.

11 Q. Can you recall whether the flaps began to be left open
12 more of the time before or after the water basins and water
13 pitchers came in?

14 A. I would say around the same period. I still couldn't
15 say for sure.

16 Q. But in the same period of time?

17 A. Right.

18 Q. And, Officer Nash, are there towels and soap in the strip
19 cells?

20 A. Yes, there are.

21 Q. And were the towels and soap made available in the strip
22 cells about the same time that water basins and pitchers came in?

23 A. Yes.

24 Q. And this was approximately the same time that the flaps
25 were left open?

1 A. Yes.

2 Q. Now, there are tooth brushes in the cells, aren't there?

3 A. Yes.

4 Q. And at the same time that the water basins, water
5 pitchers, soap and the towels and the flaps were left open more
6 often?

7 A. Yes.

8 Q. Thank you, Officer.

9 THE COURT: Do you have a photograph available of the
10 so-called strip cell?

11 MR. COHLER: In motion of various matters and in part of
12 an affidavit, I believe we each have a copy and there is a copy
13 in the file.

14 THE COURT: You may proceed.

15 MR. OAKES: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY: MR. OAKES

18 MR. OAKES: Q. Now, you mentioned on direct examination,
19 did you not, that as part of your duties you were to service the
20 cells?

21 A. Yes.

22 Q. And, including servicing the cells, you mentioned that
23 you helped the men shave, or you gave men shaving equipment, is
24 that correct?

25 A. Right, sir.

1 Q. Now, including servicing the cells, do you service all
2 the cells?

3 A. Yes.

4 Q. Including the strip cells?

5 A. Right.

6 Q. But you only give shaving equipment to those men in
7 isolation cells, is that correct?

8 A. Right.

9 Q. But you do service all the cells?

10 A. I do.

11 Q. When you you were on duty between July 9th and July 20th
12 did you service the strip cells?

13 A. Yes.

14 Q. Do you flush the commodes in the strip cells?

15 A. Yes.

16 Q. Do you do that every night?

17 A. I do it every night.

18 Q. More than once, normally?

19 A. Most of the time I do it once. If they request it I do
20 it again.

21 Q. Do you do it every time it is requested of you?

22 A. Right.

23 Q. You do? Do you take water to the inmates?

24 A. Yes, I do.

25 Q. Do you take it when it is requested of you?

1 A. I take it back once a night and, if they request more, I
2 take more back.

3 Q. And did you do this between July 9th and July 20th, 1965?

4 A. Yes.

5 Q. And during that time do you recall whether or not it was
6 a normal practice on the part of the inmates to have more than
7 one cup available to them? In other words, did most of the
8 inmates have more than one Styrofoam cup in their cell?

9 A. Yes, they had more than one.

10 Q. And would you fill up both cups?

11 A. I would let them have as much water as they want.

12 Q. As much as they want?

13 A. Right.

14 Q. Have you ever restricted a man to just one cup?

15 A. No, sir.

16 Q. Thank you. Do you remember exactly what date you came
17 in to work as an officer in the isolation section?

18 A. No.

19 Q. Was it approximately before July of 1965, approximately
20 two months?

21 A. No, it wasn't that long. I can remember I went to
22 summer training around the 18th of June, I think. It must be
23 around the 1st of July somewhere.

24 Q. Right around the 1st of July?

25 A. I would say it was.

1 Q. I see. You were quite new at your duties at that time?

2 A. I was.

3 Q. You were not fully aware of all of your duties, were you?

4 A. No, I wasn't.

5 Q. Were you really aware of the type of inmates that were
6 in there to the extent that you knew --

7 MR. COHLER: Your Honor, I don't think there is any
8 foundation to the type of inmates. Objection.

9 THE COURT: Overruled.

10 MR. OAKES: Q. At the time that you first came in there,
11 you testified -- strike that. During the time of July 9th to
12 July 20th, 1965, you said the flaps were normally closed at the
13 time you came on duty?

14 A. Yes.

15 Q. They were normally closed by the Second Watch personnel?

16 A. Yes.

17 Q. And you normally left it closed?

18 A. Yes.

19 Q. Was that because of a directive from any of your
20 superiors?

21 A. No, I don't think so.

22 Q. It was just because of what you were supposed to do with
23 the flaps?

24 A. Right.

25 Q. You say now that you changed and that the flaps are left

1 down more?

2 A. Right.

3 Q. Does your -- strike that. Does your experience since
4 that period have anything to do with the fact that the flaps are
5 down?

6 A. I feel it have something to do with it.

7 Q. In other words you feel more at home? You understand the
8 men better and know who you can trust and know what type of --

9 A. I wouldn't say that.

10 Q. All right, you are surprised sometimes?

11 A. Sure I am.

12 Q. But you now feel it is a matter of your own discretion
13 whether or not you can raise or lower the flaps?

14 A. I do.

15 Q. You stated that recently there have been additions made
16 to the strip cells. There are, at times, now towels in there;
17 there are water basins in there; soap and various items such as
18 this?

19 A. Yes.

20 Q. Do you know if there are enough water basins at this
21 time to service all the cells?

22 THE COURT: All the strip cells, counsel?

23 MR. OAKES: Yes, Your Honor.

24 THE COURT: Six in number.

25 MR. OAKES: Yes.

1 MR. OAKES: Q. How many water basins do you have
2 presently available?

3 A. I don't know.

4 Q. Have you had any experience as to what has happened to
5 some of the water basins?

6 A. They get banged up sometimes, bang them against the cell
7 door.

8 Q. Can they be used as an instrument in creating a disturb-
9 ance?

10 A. Yes.

11 Q. By throwing water on an officer?

12 A. Yes.

13 Q. Have you experienced such disturbance?

14 A. Yes, I have.

15 Q. How about the soap? Have you had any experience with
16 the soap since it has been placed in there?

17 A. No one has thrown the soap at me yet.

18 Q. Fine. Now, the towels, are they always there when the
19 inmate comes in?

20 A. When, right now?

21 Q. Yes.

22 A. We give them to him when we put him in the cell.

23 Q. Would there be occasions when you would not give a man a
24 towel?

25 A. Yes.

1 Q. When?

2 A. When we think he might harm himself with it -- commit
3 suicide.

4 Q. I see. And you attempt to use your best judgment in
5 dealing with each man that is brought in?

6 A. Right.

7 MR. COHLER: Officer Nash -- I beg your pardon.

8 MR. OAKES: I have nothing further of this witness at
9 this time. I would like to excuse him subject to recall.

10 MR. COHLER: May I proceed?

11 REDIRECT EXAMINATION

12 BY: MR. COHLER

13 MR. COHLER: Q. Officer Nash, you stated on cross-
14 examination that your further experience in the strip cell area
15 has left you feeling more free to exercise your own discretion
16 in keeping the flaps open or closed; is that a fair statement?

17 A. Right.

18 Q. The flaps have been left open more at the present time,
19 have they not, when you come on duty than they were in July, 1965

20 A. Yes, I'd say they was.

21 Q. And that has to be a result of what the second watch
22 before your watch has done?

23 A. Yes, sir.

24 Q. During July, 1965, when you say your inexperience may
25 have been a factor in your not opening the flaps or doors on the

1 strip cells when they had been left closed by the second watch,
2 did any superior of yours ever tell you that you ought to feel
3 free to open the flaps and doors?

4 A. No.

5 Q. Could a superior of yours who was standing out in the
6 sally port -- is sally port a correct term? Let me back up. Is
7 there an area, an officers' area, which is at the very front of
8 both the east and west corridor?

9 A. Yes, there is.

10 Q. And you have to go through doors to get into the isola-
11 tion section and through other doors into the strip cells section?

12 A. Yes.

13 Q. Could an officer -- withdraw that. When you were stand-
14 ing out in the sally port, or officer area, could you see the
15 flaps and doors on the strip cells unless you went back into the
16 area?

17 A. I wouldn't know how to answer that. I can't visualize it
18 right now.

19 Q. Then I will withdraw it. When the flaps and doors were
20 closed as you say they were most of the time in July, 1965, how
21 well could you hear an inmate who was back in the strip cell if
22 you were up front in the officers' area?

23 A. That all depends how loud he got.

24 Q. Isn't one of the purposes of the flaps and doors to keep
25 down the noise?

1 A. Right.

2 Q. Officer Nash, when you are on duty on the first watch --
3 on the third watch -- I beg your pardon -- on the first floor,
4 do you sometimes wear a jacket?

5 A. Sometimes.

6 Q. Is this in the nature of the same jacket people on the
7 dog watch wear out of doors?

8 A. Yes, sir.

9 Q. Sometimes it is pretty cold?

10 A. That is when the wind shifts down in the valley.

11 Q. Officer Nash, can you distinguish in your own mind at
12 this time, as you testify here today, the days July 9 through
13 July 20, as opposed to other days in your general experience as
14 a correctional officer?

15 A. I really didn't --

16 MR. GRANUCCI: Objection to the form of the question,
17 Your Honor.

18 MR. COHLER: Q. I am trying to find out from you,
19 Officer Nash, whether you have specific recollection from the
20 period July 9 to July 20, as opposed to your general recollection
21 of your experience.

22 A. No.

23 Q. You do not. That is all.

24 RECROSS-EXAMINATION

25 BY: MR. OAKES:

1 MR. OAKES: Q. On direct examination you made some
2 statements concerning how well you could hear the people in the
3 quiet cells. Now, is it your opinion, based on past experience,
4 that you have any difficulty in hearing a man while he is in the
5 quiet cell and while you are up front if he wants to be heard?

6 A. Well, if he wants to be heard I can hear him with the
7 flaps up or down.

8 Q. In your opinion, based on your experience, do those flaps
9 really retard the noise that much?

10 A. Well, see, if they want to talk to another inmate down
11 in the other isolation side other than the strip cell they would
12 have difficulty talking with the flaps up, you know. They would
13 have to holler that much louder with the flaps up.

14 Q. But they still could carry on a conversation with somebody
15 else in the isolation portion?

16 A. It would be rather hard. It could be done.

17 Q. But he could get your attention with little difficulty?

18 A. Right.

19 Q. Now, you said that you sometimes wore a jacket such as a
20 fog jacket?

21 A. Right.

22 Q. Do you recall wearing a jacket anytime during July, 1965?

23 A. No, I can't recall what I wore.

24 MR. OAKES: I have no further questions at this time. I
25 would like to excuse the witness again subject to recall.

1 MR. COHLER: No further questions at this time.

2 THE COURT: Mr. Nash, I show you a photograph of the so-
3 called strip cell identified as photograph 1 to 4, and one photo-
4 reflects the flaps up and the other the flaps down. May I show
5 you these? The first photograph, as I recall, reflects the
6 flaps down, is that correct, sir?

7 THE WITNESS: Right.

8 THE COURT: And the next in order reflects the flaps up?

9 THE WITNESS: Correct, sir.

10 THE COURT: Now, tell me, how is the strip cell ventila-
11 ted?

12 THE WITNESS: Well, they have two vents inside the strip
13 cells that come from the back.

14 THE COURT: From the corridor in back? There is a little
15 corridor in back about two feet in width?

16 THE WITNESS: No. They have a mechanical suction that
17 they ventilate -- a regular vent is what it is. They would have
18 them, I think, for -- one for the heat and one for fresh air.

19 THE COURT: When the flaps are up, how does that affect
20 the ventilation in the cells?

21 THE WITNESS: I don't know.

22 MR. COHLER: Your Honor, we expect to call Mr. Nash
23 again as we intend to go into this.

24 THE COURT: While he is here I will just ask these
25 couple of questions.

1 How do the flaps affect the ventilation in the strip
2 cell? The flaps are represented by steel?

3 THE WITNESS: Right, sir.

4 THE COURT: And when the flaps are down the ventilation
5 afforded the cell goes through ordinary screen, doesn't it?

6 THE WITNESS: Right.

7 THE COURT: When the flaps are up, fully up in front of
8 the cells, how will that affect the ventilation in the cells?

9 THE WITNESS: It wouldn't be as much ventilation, but
10 there should be some in it because it has a ventilation system
11 inside the cells.

12 THE COURT: Inside the cells?

13 THE WITNESS: Right.

14 THE COURT: Now, you speak of towels. When, and under
15 what circumstances, do you refuse a man a towel in the strip cell?

16 THE WITNESS: When he is on suicide watch.

17 THE COURT: On the suicide watch?

18 THE WITNESS: Yes.

19 THE COURT: Tell me about the suicide watch.

20 THE WITNESS: If they bring a man and tell me that he is
21 subject to try to kill himself or something like that, then we
22 wouldn't give him it.

23 THE COURT: Then you would not give him a towel?

24 THE WITNESS: No.

25 THE COURT: Who would tell you whether a man has

1 suicidal tendencies or might commit suicide? Who would tell you
2 that?

3 THE WITNESS: I get it from the sergeant.

4 THE COURT: The sergeant would tell you?

5 THE WITNESS: Right.

6 THE COURT: What, if anything, then would you do with
7 that inmate who apparently had suicide tendencies?

8 THE WITNESS: If he is the quiet-type inmate, doesn't
9 make too much noise, we would place him in Cell 1, right near
10 our office where we stay, so we can keep close watch on him.
11 But if he has been creating a lot of disturbance, we'd put him
12 in the strip cells.

13 THE COURT: Only if he created a lot of disturbance
14 would you then put him in the strip cells?

15 THE WITNESS: Yes, suicide.

16 THE COURT: What, if any, clothing would you afford the
17 man?

18 THE WITNESS: We wouldn't give him anything if we
19 thought he would harm himself.

20 THE COURT: You would strip him?

21 THE WITNESS: Right.

22 THE COURT: How often, according to your recollection,
23 would you keep a watch on that man?

24 THE WITNESS: As often as we possibly could get around
25 to him.

1 THE COURT: How long would that be?

2 THE WITNESS: I'd say about every 45 minutes. All
3 depends, because I cannot go into the cell by myself. The
4 sergeant has to be there at all times.

5 THE COURT: So you have to wait for the sergeant?

6 THE WITNESS: Right.

7 THE COURT: And the sergeant's tour of duty would be how
8 often?

9 THE WITNESS: I wouldn't know. See, he have to service
10 the upstairs. He has to be upstairs to the second floor. Then
11 he has to go over to X-Wing across the corridor. I would say
12 about every 45 minutes on the hour. Unless I thought something
13 was going wrong, if I heard some unfamiliar noise or something
14 like that, I would call for help or something, go back --

15 THE COURT: In connection with a person with suicidal
16 tendencies would you close the flaps or open the flaps?

17 THE WITNESS: It all depends on the person himself. If
18 he was a quiet-type inmate we wouldn't put him back there in the
19 first place. If he was making a lot of noise we would put him
20 back and close the flap.

21 THE COURT: Do you undertake to convey the food to the
22 inmates also?

23 THE WITNESS: No.

24 THE COURT: That is not your problem?

25 THE WITNESS: That is not my problem.

1 THE COURT: In the use of tear gas, do you have occasion
2 to use tear gas in the cells?

3 THE WITNESS: I never use it, no, sir.

4 THE COURT: You never use it?

5 THE WITNESS: No, sir.

6 THE COURT: Do you know what type they use?

7 THE WITNESS: Yes.

8 THE COURT: Do you know the circumstances under which
9 tear gas is used?

10 THE WITNESS: Yes.

11 THE COURT: Will you tell me the circumstances?

12 THE WITNESS: Well, if a man wouldn't come out freely or

13 THE COURT: If a man would not come out freely from
14 where?

15 THE WITNESS: We have to move him, say. For instance, if
16 we have to move and he won't come out, and if we have to use
17 force.

18 THE COURT: Then what do you do?

19 THE WITNESS: Well, we have to call for the officer of
20 the day or of a watch to give us permission to move him or give
21 us advice.

22 THE COURT: And then what happens?

23 THE WITNESS: Well, if they say, "use gas," we'd use it.

24 THE COURT: If they say, "use gas," you use gas?

25 THE WITNESS: Right.

1 THE COURT: How do you use the gas?

2 THE WITNESS: We have a small squirt -- we just squirt
3 on the man a little container; I don't know the name of it.

4 THE COURT: Squirt it on the man?

5 THE WITNESS: Squirt it in his cell.

6 MR. GRANUCCI: Your Honor, I would like to make an inter-
7 jection. There are two different types of gas and there is --

8 THE COURT: We will go into that. Counsel has reminded
9 me there are two types of gas. Can you distinguish between the
10 two types?

11 THE WITNESS: I am not too familiar with it, because
12 most of them who does use gas, or sergeant or lieutenant or
13 someone of that caliber would use the gas; and we have a type
14 that -- a squirt can like that compressed by air. Just a little
15 container, I would say about half-a-pint, and just squeeze it.
16 It is not very much.

17 THE COURT: And then you have the other type?

18 THE WITNESS: Right.

19 THE COURT: And what is the other type?

20 THE WITNESS: Oh, it is a cylinder-type that you unscrew
21 it. It's got a valve that you unscrew, more gas comes out of
22 that.

23 THE COURT: And you afford yourself some protection, do
24 you?

25 THE WITNESS: Very seldom we use the mask.

1 THE COURT: Very seldom?

2 THE WITNESS: Very seldom.

3 THE COURT: I have no further questions.

4 MR. OAKES: This is all I have at this time.

5 MR. COHLER: Mr. Fitzharris, please. I asked that Mr.
6 Fitzharris be called.

7 THE CLERK: Mr. Fitzharris.

8 THE COURT: I suggest that the two photographs be
9 marked in evidence.

10 MR. COHLER: No objection, Your Honor. That is
11 satisfactory.

12 (Two photographs were marked as
13 Plaintiff's Exhibits 1 and 2
and received in evidence.)

14 CLETUS JAMES FITZHARRIS,

15 called as a witness by the Plaintiff, who, being first duly
16 sworn, testified as follows:

17 THE CLERK: Will you state your name and occupation?

18 THE WITNESS: Cletus James Fitzharris, Superintendent,
19 Correctional Training Facility, Soledad.

20 THE CLERK: Thank you.

21 MR. COHLER: Mr. Grace, what did you mark the photographs?

22 THE CLERK: Plaintiff's Exhibit 1 and 2.

23 MR. COHLER: And they are in evidence, Your Honor?

24 THE COURT: Yes.

25 MR. COHLER: Thank you.

DIRECT EXAMINATION

1
2 BY: MR. COHLER:

3 MR. COHLER: Q. Superintendent Fitzharris, do you prefer
4 to be called Mr. Fitzharris?

5 A. Mr. Fitzharris.

6 Q. Thank you. You are a defendant in these actions,
7 aren't you?

8 A. Yes, sir.

9 Q. Or respondent, as the case may be?

10 A. Yes, sir.

11 Q. And your present position is as Superintendent at the
12 Correctional Training Facility at Soledad?

13 A. That is true.

14 Q. How long have you been Superintendent, Mr. Fitzharris?

15 A. Since March of 1964.

16 Q. March 16, 1964, sound right? ✓

17 A. Yes.

18 Q. Have you been Superintendent continuously since that time?

19 A. That is right.

20 MR. COHLER: Mr. Grace, will you mark for identification,
21 Plaintiff's next in order, the Answers to Interrogatories in the
22 file of 44786, set of interrogatories filed May 24, 1966?

23 THE CLERK: Plaintiff's Exhibit 3 for identification.

24 (Answers to Interrogatories were
25 marked as Plaintiff's Exhibit 3
for identification)

1 MR. COHLER: Thank you.

2 MR. COHLER: Q. Mr. Fitzharris, I show you what has been
3 marked Plaintiff's 3 for identification purporting to be your
4 answers to the first set of interrogatories propounded to you by
5 the Plaintiff. I ask you to turn to the last page and tell the
6 Court whether you have signed --

7 MR. GRANUCCI: Your Honor, I object to this line of
8 questioning. I would request an offer of proof as to its
9 materiality and its relevance. There has been no claim, and I
10 don't think there can be claim that any of the defendants have
11 withheld any information from the Plaintiff, that these
12 interrogatories are anything other than full and honest answers
13 to the questions as we understood those questions. We also ask
14 that if Your Honor wants to consider the Answers to the
15 Interrogatories that the interrogatories themselves be admitted
16 into evidence. But I must object to this line of questioning
17 until there is an offer of proof as to its relevance.

18 MR. COHLER: I was asking the witness to identify his
19 signature. My next statement was that I will offer the
20 interrogatories into evidence. I don't want to go through them
21 one by one.

22 THE COURT: Do you have any objection?

23 MR. GRANUCCI: Until I know what counsel --

24 THE COURT: That would simplify the procedure.
25

1 MR. GRANUCCI: All right, Your Honor. Very well.

2 MR. COHLER: I haven't said a thing other than to ask
3 the witness to identify his signature.

4 MR. GRANUCCI: I will so stipulate that he signed the
5 interrogatories, and under oath.

6 MR. COHLER: I want the interrogatories themselves to
7 go in.

8 THE COURT: Interrogatories and the answers. That will
9 be the order.

10 (Interrogatories were marked as
11 Plaintiff's Exhibit 4 for
identification)

12 MR. COHLER: Isn't it correct that the interrogatories
13 themselves are printed and the answers printed thereafter?

14 MR. GRANUCCI: That is correct, but I also want the
15 document that proceeds those answers in the file.

16 MR. COHLER: No objection. For ease, may we have
17 Plaintiff's 3 separately; Plaintiff's 4 as the original propounded
18 interrogatories?

19 THE COURT: Plaintiff's Exhibits 3 and 4 in evidence.

20 (Whereupon Plaintiff's Exhibits 3
21 and 4 were received in evidence)

22 MR. COHLER: Q. Mr. Fitzharris, do you know approximately
23 how long was spent in answering the interrogatories which are now
24 Plaintiff's 3?

25 A. I am not sure I know what Plaintiff's 3 --

1 Q. Plaintiff's 3, Mr. --

2 A. This is the whole interrogatory?

3 Q. Is the entire --

4 A. Answer to the questions propounded?

5 Q. The entire answers, yes, sir. Approximately how long, do
6 you know?

7 A. It took to compile the information?

8 Q. Yes, sir.

9 A. I am informed by the staff it took somewhere in the
10 neighborhood of 245 man-hours of staff, plus additional non-paid
11 staff.

12 Q. 245 man-hours were spent in answering the interrogatories,
13 is that correct?

14 A. Yes, plus typists.

15 Q. Thank you. Mr. Fitzharris, in July, 1965, who was the
16 Director of Corrections of the State of California?

17 A. Walter Dunbar.

18 Q. And at that time was Mr. Dunbar your direct superior?

19 A. That is true.

20 Q. And at that time, in July, 1965, who was the Deputy
21 Superintendent at the Correctional Training Facility Central?

22 A. Robert Donnelly.

23 Q. And was Mr. Donnelly your direct subordinate with
24 respect to location of inmates, the changes and location and the
25 conditions in the isolation area?

1 A. True.

2 Q. At that time, July, 1965, who was the Associate
3 Superintendent?

4 A. I am not quite sure, but I think it was Lloyd Patterson.

5 Q. And Mr. Patterson was Mr. Donnelly's direct subordinate
6 with respect to the location of inmates, the changes and location
7 and the conditions in the isolation area?

8 A. True.

9 Q. Who is the present Superintendent?

10 A. Clem Swagerty.

11 Q. And Mr. Swagerty is presently Mr. Donnelly's subordinate
12 with respect to location of inmates, the changes and location
13 and the conditions in the isolation area, isn't he?

14 A. That is true.

15 Q. And in July of 1965, Mr. Fitzharris, who was the Program
16 Administrator in Unit 3?

17 A. George Johnston.

18 Q. And was Mr. Johnston the direct subordinate of Associate
19 Superintendent Patterson with respect to change of location of
20 inmates and conditions in the isolation area?

21 A. That is true.

22 Q. And at that time who was the Correctional Counselor,
23 Grade 2, in O-Wing, please?

24 A. I think William Kiepura.

25 Q. And Mr. Kiepura was a direct subordinate of the Program

1 Administrator, Mr. Johnston, wasn't he?

2 A. Yes, with the exception of moving people and that type
3 of thing.

4 Q. He was or was not?

5 A. He did not have authority to move people from location
6 to location. This is not his function.

7 Q. Did he have any authority at all with regard to
8 conditions in the isolation area?

9 A. Not direct authority.

10 Q. What kind of indirect authority?

11 A. Casework procedures.

12 Q. To your knowledge, as superintendent, in his capacity in
13 casework procedure, as you have called it, if there had been
14 conditions which he thought were improper, would he have
15 authority to do something to change them?

16 A. To report it.

17 Q. Who was the the Correctional Counselor, Grade 1, in O-Wing
18 on July, 1965?

19 A. I don't recall offhand.

20 Q. If I suggest Mr. Whalen, does that sound right?

21 A. Could be.

22 Q. Who is presently in that position?

23 A. Again, I am not sure.

24 Q. Mr. Fitzharris, is it fair to say that the persons you
25 have identified have not necessarily had the sole responsibility

1 for change of location, conditions in the isolation area?

2 MR. GRANUCCI: Object to the form of that question. It
3 is confusing.

4 MR. COHLER: I will try to rephrase it.

5 MR. COHLER: Q. Are there persons other than in my
6 previous questions who would have responsibility for changes in
7 location of inmates and for conditions in the isolation area?

8 A: Yes.

9 In the event of a suicide attempt the sergeant or the
10 officer might remove, on his own authority, the man in a case of
11 emergency. The doctor might order the man into the hospital.
12 There might be a need for the watch commander to move a man from
13 one section to another because of a disturbance he was creating.
14 There needs to be some leeway for emergency action.

15 Q. In other words, there is a certain amount of delegation
16 of responsibility?

17 A. That is right.

18 Q. Is it fair to say this is what might be called a team
19 approach?

20 A. I don't know what you refer to as a team approach.

21 Q. Are you familiar with the use of the term "team approach"
22 at all in your position as Superintendent?

23 A. Yes.

24 Q. Would you tell me what it means to you?

25 A. This means that a group of employees are collaborating

1 in the treatment and control of a particular inmate, or a
2 particular group of inmates -- or a particular group of inmates.

3 Q. Thank you. And can a team approach also be applied to
4 the delegation of responsibility, say, upon yourself and Mr.
5 Donnelly and Mr. Swagerty? Is there a team approach there as
6 well?

7 A. Yes.

8 Q. Is there a special term of art or term of genius at the
9 institution classification?

10 A. That is true.

11 Q. And does the classification include the determination of
12 the kind of housing and inmate should have, what privileges he
13 should be permitted?

14 A. Yes, sir.

15 Q. And classification includes classification of an inmate
16 for detention and isolation, doesn't it?

17 A. Yes.

18 Q. Are there certain rules or regulations of state-wide
19 uniformity dealing with classifications as you defined it for us
20 in its use?

21 A. Yes.

22 Q. And those rules apply to the Correctional Facility, to
23 Soledad, of which you are the superintendent?

24 A. Yes.

25 MR. COHLER: Mr. Grace, I ask that you mark as Plaintiff's

1 next in order for indentification what purports to be an Inmate
2 Classification Manual of the Department of Corrections of
3 the State of California, bearing the date May, 1961, upper right-
4 hand corner of which is written Item 3.

5 THE CLERK: Plaintiff's Exhibit 5 for identification.

6 THE COURT: So ordered.

7 (Manual was marked as Plaintiff's
8 Exhibit 5 for identification)

9 MR. COHLER: Q. Mr. Fitzharris, I show you what has
10 been marked as Plaintiff's 5 for identification. I ask you
11 whether or not this is indeed a true copy of what is known as
12 Inmate Classification Manual for the Department of Corrections?

13 A. It appears to be. I would assume so.

14 Q. Is there anything you would like to do to examine it to
15 more sure?

16 A. The only thing I could do is compare it page by page.

17 MR. COHLER: Mr. Granucci, do you stipulate that this is
18 produced --

19 MR. GRANUCCI: Certainly. I gave it to you.

20 MR. COHLER: Yes, sir.

21 MR. COHLER: Q. This, Plaintiff's 5 for identification,
22 was in effect in July, 1965, was it not?

23 A. Yes, sir.

24 MR. COHLER: Your Honor, I would like to offer this in
25 evidence just as a bulk offer without having to go through item

1 by item.

2 MR. GRANUCCI: So stipulated.

3 THE COURT: So ordered.

4 THE CLERK: Plaintiff's Exhibit 5 in evidence.

5 (Whereupon Plaintiff's Exhibit 5
6 was received in evidence)

7 MR. COHLER: Q. Mr. Fitzharris, the term "team approach"
8 which you have used applies also to classification of an inmate,
9 including classification for detention in the isolation center
10 section, does it not?

11 A. Yes.

12 Q. Would you turn to what is now Plaintiff's 5, please,
13 directing your attention to Chapter II -- that is Roman Numeral
14 II -- Section 00, subparagraph f -- and I am not giving a page
15 number because I did not find any in the document -- I think we
16 will have to go by section number -- that was Chapter II, Section
17 00, subparagraph f.

18 A. Will you repeat that again?

19 Q. Chapter II, Section 00, subparagraph f.

20 A. Perhaps we could --

21 Q. Perhaps I can help you. You may read the entire subsection
22 if you wish, but what I would like you to do for the Court is
23 read subparagraph f. I have some handwriting to mark the
24 reference. Would you read that?

25 A. "Disciplinary process as a part of the overall

1 classification process involves careful evaluation and administra-
2 tive decision by a correctional team and plays a significant role
3 in the rehabilitative process."

4 Q. That is the sense in which you have been using
5 correctional teamwork, at least in part, is it not?

6 A. I think so.

7 Q. At the time of July, 1965, and throughout the time that
8 you have been Superintendent, this directive, through the use of
9 a correctional team, has been implemented, has it not?

10 A. Yes, it has.

11 Q. Would you turn now in Plaintiff's 5 to Section 01 in the
12 same chapter? I think you will find that on the next page, the
13 closing unnumbered paragraph which is entitled Classification As
14 A Team Process. Do you find that?

15 A. Yes.

16 Q. Would you read that, please?

17 A. "Actions involving the welfare of individuals are
18 more objective and less prone to error when they result from
19 discussion by several staff members, each applying his individual
20 professional skills. The correctional team, basic to this
21 process, may vary in composition, but is in general composed of
22 individuals whose knowledge and skills are relevant to the
23 particular problem at hand."

24 Q. And again there is a correctional team approach which
25 includes disciplinary corroboration and there is group activity

1 in this regard, is that correct?

2 A. Right.

3 Q. And from time to time would this group activity or this
4 team process include yourself?

5 A. I am ex officio member of the committee.

6 Q. Have you in fact, from to time, participated?

7 A. I have.

8 Q. Does your role in the team process which we have had
9 described which affects classification and discipline include
10 responsibility to organize the classification procedures so that
11 the ends of the Inmate Classification Manual can be properly
12 executed?

13 MR. GRANUCCI: Object to the form of the question, Your
14 Honor.

15 MR. COHLER: Is it on the basis --

16 MR. GRANUCCI: It is confusing.

17 MR. COHLER: I will try to make it less confusing,
18 counsel.

19 MR. COHLER: Q. As Superintendent, is your role as part
20 of this team process, at least in part, to see that discipline
21 in classifications are done in accordance with the Inmate
22 Classification Manual, particularly in following the team process
23 approach as you have described it?

24 A. Yes.

25 Q. Would you turn now to Chapter IV, Section 01, the first

1 paragraph? Would you read the first paragraph to the Court,
2 please, which is entitled Organization of Classification
3 Procedures?

4 A. "It is the responsibility of the Warden/Superintendent
5 of each institution to organize classification procedures to
6 the end that the requirement of the Inmate Classification
7 Manual shall be executed. Institutional classification procedures
8 shall be devised to allow for efficient use of personnel and
9 for the needs of the type of inmate assigned to the
10 institution."

11 Q. And as part of your responsibility in that regard, Mr.
12 Fitzharris, you are required, are you not, to submit annually an
13 institution classification plan for the approval of the
14 Department of Corrections?

15 A. That's correct.

16 Q. And as part of your responsibilities under this team
17 approach to classification, which includes detention and isolation,
18 you personally, as Superintendent, are responsible to see that
19 the actual conditions at the institution conform with the
20 annually submitted classification plan which is approved by the
21 Director of Corrections, are you not?

22 MR. GRANUCCI: Object to the form of the question.

23 THE COURT: Overruled.

24 MR. COHLER: Q. You may answer.

25 A. What was the question?

1 MR. COHLER: May I have the question read, please?

2 (Record read by the reporter)

3 THE WITNESS: This might take a small amount of explana-
4 tion. Ultimately the responsibility rests in the superintendent
5 or the warden of the institution. However, with classification
6 committees meeting daily in three separate facilities, and
7 disciplinary committees meeting at the same time in many
8 different locations, it is physically impossible for the
9 superintendent to be on top of every single committee meeting.
10 However, this, through the chain of command, is supposed to --
11 the superintendent has to assume the responsibility for the
12 ultimate --

13 MR. COHLER: Q. I understand that there are committees,
14 Mr. Fitzharris, and we may go into that in a moment. Perhaps it
15 would be helpful if you turned to Chapter IV, Section 01, in
16 Plaintiff's 5 which is before you, on the top of the page, and
17 look at the sentence beginning in the sixth line on that page.
18 Do you have the reference?

19 A. 01?

20 Q. Would you read --

21 MR. GRANUCCI: Excuse me, counsel, what page is that?

22 MR. COHLER: Q. Would you read the sentence in that
23 section which begins with the words, "When the plan is...?"

24 A. "When the plan is officially approved by the Director,
25 the Warden/Superintendent is responsible for the conformance of

1 procedures to the plan."

2 Q. And that is the ultimate responsibility to which you
3 have referred, is that correct?

4 A. Right.

5 Q. The team approach which has been mentioned is given
6 particular emphasis, is it not?

7 A. Not as much in practice as it seems to be this morning.
8 I am confused as to the use that you are making of this word. We
9 seldom hear that term used in the institution.

10 Q. Haven't you in fact recently heard the Director of
11 Corrections, Mr. Dunbar, himself, give particular emphasis to
12 team approach?

13 A. True. That is the whole department, the whole agency,
14 the whole institution. They are all a part of a team for a
15 particular purpose, but as far as classification and discipline
16 and so forth the team approach is a word that's foreign to our
17 vocabulary.

18 Q. I am sorry. I didn't realize I was giving it more than
19 you intended. It is concerned, in part, with the delegation of
20 responsibility, various ultimate responsibility, is that a fair
21 statement?

22 A. That is fair.

23 Q. In July of 1965, Mr. Fitzharris, was there a committee
24 known as the Disciplinary Subcommittee?

25 A. There was.

1 Q. I would like to ask you several questions about the
2 Disciplinary Subcommittee as it was composed in July of 1965, and
3 it may be helpful for you to look at Appendix A, which is now
4 Plaintiff's 3. Do you have Plaintiff's Exhibit 3, which is
5 Appendix A in the Answer to Interrogatory 9?

6 A. Yes.

7 Q. In Appendix A is a classification plan which was in
8 effect in July of 1965, is that correct?

9 A. That is true.

10 Q. And is this the plan which is promulgated pursuant to
11 the directive of the Director of Corrections which is found in
12 the Inmate Classification Manual which is Plaintiff's 5?

13 A. That is true.

14 Q. That is an annually submitted plan, is that correct?

15 A. Well, it need not be only annually. We have changed it
16 from time to time as the situation called for.

17 Q. Must it be at least annually?

18 A. Yes.

19 Q. Mr. Fitzharris, I notice, in the copy at least, the copy
20 which was enclosed in your answers to interrogatories, the lower
21 left-hand corner of each page appears the date January, 1964, is
22 that correct?

23 A. That is true.

24 Q. You have said that this was the plan in July of 1965.
25 Perhaps the wrong copy was submitted with your answers, or what

1 is the explanation?

2 A. Beg your pardon? Would you repeat the question?

3 Q. As I understand your testimony, the plan, which is
4 Appendix A to Interrogatory 9, your answer is the plan which was
5 in effect in July, 1965.

6 A. Yes, sir.

7 Q. And that plan bears the date January, 1964?

8 A. That is true.

9 Q. And you have also testified that the plan is supposed
10 to be submitted at least annually, and I am offering you an
11 opportunity, for whatever reason it may be, why January, 1964,
12 plan was still in effect in July, 1965.

13 A. I think I have no answer for that at the moment. We
14 may have in our files some information that will clarify this,
15 but frequently we submit plans annually for many things, weapons
16 control, key control, many other areas besides this; and
17 frequently we get back the copy we sent in marked approved. Now
18 we may have that someplace in our files. That was not copied for
19 this particular purpose.

20 Q. I see. In other words, the same plan could be resubmitted
21 and re-approved in subsequent years?

22 A. It could be submitted without change.

23 Q. I just wanted to be sure we had the right document for
24 July, 1965. Would you turn to page 3 of the classification plan
25 which is Appendix A, to your answer to Interrogatory 9 in

1 Plaintiff's Exhibit 3, please? I ask you to direct your
2 attention to that portion which is under the heading The
3 Disciplinary Subcommittee. You may use this document to
4 whatever extent is necessary, Mr. Fitzharris, to refresh your
5 recollection. Would you please tell the Court what officials
6 could be members of the Disciplinary Subcommittee in July, 1965?

7 A. The Associate Superintendent - Custody was the chairman,
8 the Associate Superintendent - Classification and Treatment was
9 the other member. The alternates were the Captain, for one, and
10 Correctional Counselor 3 for the other.

11 Q. Was there to be a third member?

12 A. The third member will be supervising on a managing level
13 in his department.

14 Q. What does "the supervising or managing level in his
15 department" mean, as that phrased is used in the classification
16 plan?

17 A. Somebody who is in direct responsibility for the
18 activities, other employees and a large group of inmates.

19 Q. Would that include a correctional officer?

20 A. No.

21 Q. Would it include a sergeant?

22 A. It could.

23 Q. In July, 1965, could that have included a sergeant?

24 A. I think it could have. Yes, sir. He supervises other
25 employees.

1 Q. Now, Mr. Fitzharris, the classification plan contemplates
2 that the Disciplinary Subcommittee sits as a unit with all
3 members present to carry out its functions, doesn't it?

4 A. That is usually the practice.

5 Q. I am sorry. I asked you to state to the Court what the
6 classification plan, itself, contemplates, regardless of what
7 the practice may be. Does it not sit as a unit with all members
8 present to carry out the functions?

9 A. Yes.

10 Q. And there is a quorum requirement, isn't there?

11 A. I don't see any here, but yes.

12 Q. Do you see it now?

13 A. Yes, three members constitute a quorum.

14 Q. There must be three members present to properly fill
15 what this classification plan, which is approved by the Director
16 of Corrections, contemplates for the Disciplinary Subcommittee, is
17 that correct?

18 A. Right.

19 THE COURT: We might take a short recess, counsel.

20 I received, yesterday, as I indicated to counsel in my
21 chambers, a telegram directed to U. S. District Judge George B.
22 Harris, 450 Golden Gate Avenue:

23 "Kindly relate circumstances of suicide of Phillip
24 S. Millette" -- M-i-l-l-e-t-t-e -- "on June 24,
25 1965, in so called Black Hole, Soledad, California.

1 I will appear if necessary."

2 Signed Father Frank Millette, 108 California Avenue,
3 Barstow, California.

4 The telegram may be marked for identification as received
5 by the Court; and may the record further show that copies of the
6 telegram were delivered and sent to representatives of the
7 Plaintiff as well as counsel for the defendants; and the Court
8 requests at this time, and has already requested in chambers of
9 Mr. Granucci, that any and all records bearing upon the suicide
10 of the young man Millette be produced and made available to the
11 Court and counsel, that any and all psychiatric evaluations of
12 Mr. Millette be produced and made available, all and singular
13 to the facts and circumstances of the demise and suicide of
14 Millette be produced subject to further order of the Court.

15 (Telegram was marked as Court's
16 Exhibit 1 for identification,
and received into evidence)

17 THE COURT: We will take a short recess.

18 (Whereupon a ten-minute recess ensued)

19 MR. COHLER: Q. I believe you just stated that to
20 properly function according to the classification plan the
21 Disciplinary Subcommittee in July of 1965, had to have a quorum
22 of three members, is that correct?

23 A. That is correct.

24 Q. Would you look again at the Inmate Classification Manual
25 which is Plaintiff's 5? Directing your attention, please, to

1 Chapter IV, Section 06, particularly under the heading Function.

2 Do you have that before you, Mr. Fitzharris?

3 A. I think so.

4 Q. Chapter IV, Section 06?

5 A. Yes. It isn't Chapter IV. That is what is confusing.

6 It is CL IV. Does that mean Chapter IV?

7 Q. Would you tell us what it means?

8 A. I don't know.

9 Q. Shall I refer to it as CL IV? In CL IV, Section 06, is
10 the topic the Disciplinary Subcommittee?

11 A. That is right.

12 Q. Would you direct your attention within that Section 06,
13 please, under the heading Function, subparagraph 1? Now, that
14 requires a quorum of three members, just as your classification
15 plan itself did, is that correct?

16 A. That is right.

17 Q. Would you look at subparagraph 2, which I believe is on
18 the following page? Would you read that for the Court, please?

19 A. "Hears all cases involving serious infractions of rules.
20 Often these will be cases referred to Disciplinary Subcommittee
21 by the Chief Disciplinary Officer."

22 Q. Would it require a serious infraction of the rules for an
23 inmate to be confined at one of the six cells in O. Wing? ^(isolation)

24 A. No, sir.

25 Q. It would not?

1 A. No, sir.

2 Q. Under what circumstances where there was not a serious
3 infraction of the rules might an inmate be confined?

4 A. If he is creating a disturbance that is likely to upset
5 the other people in the unit he will have to be put back there
6 so that his noise and interference won't upset the whole unit.

7 Q. And in those circumstances, if you know as Superintendent
8 what procedure would be undertaken to place him in one of those
9 six cells?

10 A. With the authorization of the ranking staff, the
11 correctional officer would do it.

12 Q. A correctional officer would be considered ranking staff?

13 A. With the permission -- the watch -- depends on what time
14 of day it is and what time of night it is. A lieutenant is in
15 charge during the evening hours and during the midnight hours.

16 Q. And a lieutenant, during the hours you have described,
17 would have the authority to authorize a correctional officer to
18 place a man in one of those six cells?

19 A. Right.

20 Q. By himself?

21 A. Right.

22 Q. Without any action of a Disciplinary Subcommittee?

23 A. Exactly.

24 Q. Was that true in July, 1965?

25 A. Yes, sir.

1 Q. Would you look at the classification plan again, please,
2 Mr. Fitzharris? That is the Appendix A to Interrogatory 9.

3 A. Before you ask a question, may I clarify something that
4 just occurs to me from a past question -- why this approved plan
5 was dated January? The Central Facility was in the process of
6 reorganization to a completely different kind of classification
7 procedure and so we did not submit it. We got permission not to
8 submit it at the annual time until we had our new classification
9 procedure worked out, and I think the next -- just below this in
10 the interrogatory, is the new procedure which is dated January,
11 '66.

12 Q. Are you finished? My purpose was only to be sure we had
13 the proper plan as to July, 1965, and you are still certain, is
14 that correct?

15 A. That is right.

16 Q. That is Appendix A to your answer to Interrogatory 9?

17 A. Yes.

18 Q. Would you turn again, please, to Appendix A, which is
19 your classification plan which was in effect July of 1965, and
20 would you turn to page 3, please, under the heading of Chief
21 Disciplinary Officer? Would you read to the Court, please, what
22 is stated under Function?

23 A. "Handles minor disciplinary actions not
24 involving loss of credits, forfeitures of earnings
25 or isolation sentences, but may

1 impose suspended isolation sentences. Recommendations for
2 isolation sentences will be referred to Disciplinary Subcommittee
3 for action."

4 Q. Would the lieutenant, as you described him, at certain
5 times of the day be considered the Chief Disciplinary Officer?

6 A. Yes.

7 Q. Would he have to recommend to the Disciplinary Subcommittee
8 for an isolation sentence?

9 A. Not necessarily.

10 Q. When it says, on page 3 under Function for the Chief
11 Disciplinary Officer, recommendations for isolation sentences
12 will be referred to the Disciplinary Subcommittee for action,
13 what does that mean?

14 A. If there is a serious infraction that involves continua-
15 tion of isolation sentence, the officer who observes the event is
16 the one who prepares the report, and it goes through without
17 necessarily having the lieutenant's authorization. But what I
18 am referring, the lieutenant being the Chief Disciplinary Officer
19 is entitled or obligated to move people from place to place for
20 the good order of the institution and for the security of the
21 institution. So upon his say-so a man can be moved from even one
22 of the quiet cells to the hospital or somebody can be moved from
23 an isolation area or maximum security area to a quiet cell because
24 if necessary for the good order of the unit.

25 Q. Could an inmate be put in a quiet cell, as you referred

1 to is -- I am sorry, I will withdraw that and start again. Where
2 there was what you call a serious infraction requiring a written
3 form, would an inmate be put in a quiet cell, as you refer to it,
4 only in that instance after action by the Disciplinary
5 Subcommittee?

6 A. No; has to be done when the incident is happening. When
7 somebody is screaming and beating on the bars and creating a lot
8 of disturbance to the whole unit, and you have 16 or 18 open
9 front cells and everybody in the place can hear it when this is
10 happening at 3:00 o'clock in the morning, he has to be controlled
11 for the good of the whole unit. Now, these things are
12 cumulative. One fellow gets hollering and more and more holler
13 and it results ultimately in the breaking of cell furnishings and
14 so forth. Two weeks ago this happened and they broke up seven
15 complete sets of cell furnishings, toilets and wash basins. Now,
16 somebody had to have authority to act, and they couldn't wait
17 for a committee; so this is what I am talking about.

18 Q. Thank you; but I think I misstated my question. Let us
19 see if I can put it again. To confine an inmate in a quiet cell,
20 as you refer to it, other than at the moment, where there is a
21 written report for what you have called a serious infraction,
22 must the disciplinary subcommittee sit at some time to pass upon
23 that inmate's presence in the quiet cell, as you refer to it?

24 A. I am still confused.

25 Q. Well, we have a situation where there may not be what

1 you call a serious infraction, and in that situation at least,
2 as an example, the lieutenant could authorize placing a man in
3 a quiet cell, is that correct?

4 A. Right.

5 Q. Then there are instances where there are what you call
6 serious infractions and there is a written report.

7 A. There would be a written report in each case.

8 Q. Where there is a serious infraction and a written
9 report the inmate may be put at that time into the quiet cell,
10 as you refer to it?

11 A. Right.

12 Q. Some time the Disciplinary Subcommittee is supposed to
13 sit and pass upon whether or not he ought to stay in the quiet
14 cell, as you referred to it -- ought not the Disciplinary
15 Subcommittee act at some time with regard to an inmate in the --

16 A. This has been the practice, but I am not sure that it
17 is necessary. [These are not punishment cells primarily. These
18 are control cells.

19 Q. And what do you mean by control?

20 A. Where a man cannot or will not control himself, will not
21 behave himself, there has to be someplace where he can be
22 isolated so the others aren't disturbed.

23 Q. When would the Disciplinary Subcommittee sit with respect
24 to an inmate being placed in a quiet cell, as you refer to it?
25 When I say "when" I mean on what types of occasions.

1 A. Well, when there has been a serious infraction.

2 Q. Whenever there has been a serious infraction does a
3 Disciplinary Subcommittee come into the picture at some time?

4 A. Yes.

5 Q. And then, when the quorum of three sits at some time to
6 consider the propriety of an inmate being in a quiet cell, as
7 you refer to it, is that correct?

8 A. Yes.

9 Q. Mr. Fitzharris, is there an area at Soledad known as the
10 Adjustment Center?

11 A. There is.

12 Q. And in July, 1965, what wings composed or comprised the
13 Adjustment Center?

14 A. I am not quite sure of the opening date of the second
15 wing, but at least O Wing.

16 Q. At least O Wing? Thank you. Would you tell the Court,
17 generally, the purpose of the Adjustment Center now and in July,
18 1965, please?

19 A. The Adjustment Center is one of three of the Department.--
20 the fourth one is at Tracy which is primarily for the predominant
21 Youth Authority wards -- San Quentin, Folsom, and Soledad have
22 Adjustment Centers for those who have demonstrated that they are
23 vicious to themselves and to others and cannot get along in the
24 general population, must be segregated from the rest of the
25 institution. We have had varying programs in the various

1 Adjustment Centers. For instance, I think at that time -- I --
2 know at that time we had on the staff of the Adjustment Center
3 an instructor in arts and crafts who took selective people, tried
4 to teach them small hand crafts, taught some academic classes to
5 those who were willing and wished to learn. It was within this
6 Adjustment Center. There are gradations. Ordinarily the inmate
7 is started out when he has arrived there at a medium area where
8 he has medium privileges. He may progress to where he has more
9 and more privileges, including more exercise, more time out of
10 the cell exercising in groups, radio, phones, and so forth. If
11 he can't get along in that kind of environment he may get into
12 the maximum control where there are no earphones and no smoking
13 and this type of thing. Then if this acting out behavior
14 continues and orders a threat to the staff or inmates, or to
15 the inmate himself, then we may have to use these quiet cells.

16 Q. Is there anything in between what you referred to -- well,
17 let me back up. You referred to the maximum area. Where is that
18 located, please? Is that specific physical area?

19 A. Yes, that is on the opposite side as you indicated a
20 while ago.

21 Q. And is there something between maximum area and the
22 quiet cells, as you refer to them?

23 A. No.

24 Q. The forward 18 cells on the west corridor, sometimes,
25 perhaps, referred to as general isolation, are those considered

1 in your mind, the same as the maximum cells or the quiet cells?

2 A. Those are for entirely different purposes. Those cells
3 are used for those inmates who are convicted of violation of
4 institutional rules of a serious nature and who have been given
5 specific sentences to isolation by the disciplinary committees.
6 Also housed there from time to time are people who are awaiting
7 trial for felonies in the Superior Court.

8 Q. Any other general categories of inmate who may be in
9 this isolation area?

10 A. Suicide watch as Mr. Nash has pointed out.

11 Q. Except for those inmates who may be awaiting trial for
12 a felony and those who are on suicide watch, would any inmate
13 who was housed in the isolation area be there as a result, except
14 in the first emergency moment, of action by the Disciplinary
15 Subcommittee?

16 A. I am not sure I understand this.

17 THE COURT: Rephrase that, counsel.

18 MR. COHLER: Q. I want to exclude from my question any
19 inmate who may be awaiting a felony. I also want to exclude any
20 inmate who might be on suicide watch. The third category is one who
21 may have been just placed in isolation because of a current, then
22 existing emergency or need of the institution. With the
23 exception of those three categories, would any inmate be there as
24 a result of action by the Disciplinary Subcommittee?

25 A. I can't think of any offhand.

1 Q. In other words, a Disciplinary Subcommittee is supposed
2 to step in to the picture at some time?

3 A. Right.

4 Q. Now, is there an area within the adjustment -- I am
5 sorry. Are there inmates who bear a number which is prefaced
6 by a "Y.A." and those with an "A" only?

7 A. That is right.

8 Q. What does Y.A. stand for?

9 A. Youth Authority.

10 Q. Does that mean he is a ward of the Authority?

11 A. True.

12 Q. Not a convict, but as a ward of the Youth Authority?

13 A. True.

14 Q. Are there wards of the Youth Authority who are from time
15 to time housed in the Adjustment Center?

16 A. That is true.

17 Q. And wards of the Youth Authority are not adult are they?

18 A. Could be.

19 Q. They should not be adults?

20 A. They could be.

21 Q. They could be?

22 A. Under the Youth Authority Act they could be up to 23.

23 Q. Would you explain that, please?

24 A. Well, it is the law. They can be committed and held as
25 wards of the Youth Authority until they are 23 years old.

1 Q. Is there a limitation that they only may be placed in
2 the Adjustment Center?

3 A. No. May I explain that? The Youth Authority, when
4 they transfer somebody to the Department of Corrections, has
5 surrendered or turned over to the Department of Corrections the
6 handling of their wards in the same way that the Superior Court
7 convicts them, as convictions as adults are handled. In other
8 words, if they misbehave, if they are disciplinary problems,
9 they are handled in exactly the same way, so there is no differen-
10 tiation. I might also state that the Youth Authority wards who
11 arrive at the Training Facility are the ones that are at the end
12 of the rope. Tracy and Soledad have a large number of Youth
13 Authority wards who have become so difficult to handle the
14 Youth Authority has not the facilities nor desire to handle them
15 as wards -- as their own wards.

16 Q. I am puzzled a little bit here. I will ask you to look
17 at Plaintiff's Exhibit 5 again. That is the Inmate Classification
18 Manual of the Department of Corrections. Will you look to CL XIV
19 and would you tell the Court, when you have had a chance to look
20 at that, whether that deals specifically with the Correctional
21 Training Facility at Soledad?

22 A. If this specifically applies only to Soledad.

23 Q. Well, does it specifically apply to Soledad?

24 A. I should think so because the first paragraph is a --
25 Central, south and north of it -- and that --

1 Q. Isn't there a heading of some sort saying Correctional
2 Training Facility, as I recall correctly?

3 A. Yes, up on the border.

4 Q. Correct.

5 A. Right.

6 Q. Will you turn, please, within CL XIV to Section 03 and
7 within Section 03, subparagraph h, please?

8 A. Will you help me here a little bit? I have 14 --

9 Q. Does CL XIV, 03, subparagraph h, refer to the Adjustment
10 Center cases?

11 A. That is true.

12 Q. Would you read the first sentence, please in subparagraph
13 h?

14 A. "The Soledad Adjustment Center is designed for the custody
15 and treatment of inmates serving adult commitments presenting severe
16 behavior problems under general population of any institution."

17 Q. Is there any limitation from that directive of the
18 Department of Corrections, restricting the use of the Adjustment
19 Center to inmates serving adult commitments, as you understand it?

20 A. Well, I think we are confused on two things. Youth
21 Authority handles Superior Court commitments and Juvenile Court
22 commitments, right?

23 Q. I will have to ask you to tell us that. I would rather
24 not testify.

25 A. Well, they do.

1 Q. Would you please explain in this, if you will? I would
2 like to have the Court be able to understand what serving adult
3 commitments is in the use of the Adjustment Center at Soledad.

4 A. As I indicated, this could mean either -- it is ambiguous.
5 It could mean that he be committed under the Juvenile Court Act --
6 cannot be put in here. It could mean that no Youth Authority
7 Wards can be put in here. But as I indicated a while ago else-
8 where in the documents that may be available, the Youth
9 Authority has delegated to the Department of Corrections the
10 authority to handle Youth Authority wards in the way that they
11 handle the adult commitments, the "A." numbers, as we call them.

12 Q. Is it proper, then, to say that there is no restriction,
13 as you understand it as a superintendent, from subparagraph h,
14 Section 03 of CL XIV which you have just read with respect to
15 adult commitments?

16 A. I think that is --

17 Q. I am just trying to understand how you understand these
18 rules.

19 A. In my opinion this does not restrict placing the Youth
20 Authority wards in the Adjustment Center.

21 Q. And you have never treated it as if it did?

22 A. That is right.

23 MR. COHLER: Your Honor, would this be an appropriate
24 moment for recess? It is a convenient breaking point for me. I
25 will be glad to continue if you wish.

1 THE COURT: All right. I am working out a time
2 schedule, counsel. Would you indicate how many witnesses you
3 intend to call?

4 MR. COHLER: Mr. Fitzharris; following Mr. Fitzharris
5 a correctional sergeant named Fredrick. My examination will not
6 be particularly lengthy. Following that a parolee by the name
7 of Wells. My examination will not be length. Then the testimony
8 of the Plaintiff and my examination will not be lengthy. I
9 don't know if we will finish today.

10 THE COURT: The Plaintiff is now in custody of the
11 United States Marshall?

12 MR. COHLER: So I understand.

13 THE COURT: Is that correct?

14 MR. GRANUCCI: Yes, it is, Your Honor.

15 THE COURT: All right, gentlemen, we will resume at
16 2:00 o'clock for further proceedings.

17 (Thereupon the proceeding was adjourned until 2:00 o'clock
18 in the afternoon) AFTERNOON SESSION

19 MR. COHLER: Mr. Granucci, do you have each of the so-
20 called corrected answers?

21 MR. GRANUCCI: You received a copy of them.

22 MR. COHLER: Yes. I was going to have them marked.

23 MR. GRANUCCI: With permission of the Court I would like
24 to file some corrected answers. Counsel has already been served
25 with a copy and has acknowledged receipt thereof.

1 MR. COHLER: Do you want His Honor to have the covering
2 on it as well?

3 MR. GRANUCCI: No; the covering doesn't make any
4 difference.

5 MR. COHLER: I understand you are filing through the
6 Court.

7 MR. GRANUCCI: That is correct.

8 MR. COHLER: And after they have been filed, Your Honor,
9 I would like to have them marked for identification.

10 MR. GRANUCCI: So stipulated that they may be received
11 into evidence.

12 THE CLERK: Plaintiff's Exhibit 6 in evidence.

13 (Copy of corrected answers marked as
14 Plaintiff's Exhibit 6 and received
into evidence)

15 MR. COHLER: Mr. Grace, would you please mark for
16 identification as Plaintiff's next in order a two-page document
17 stapled together, the first page of which purports to be a
18 letter to Mr. Lynch dated July 22, 1966, from Mr. Fitzharris,
19 the original signed by Mr. Donnelly, as purports to be a copy --
20 second page purports to be a schedule of personnel on duty on
21 O Wing from July 9th to July 20, 1965?

22 THE CLERK: Plaintiff's Exhibit 7 for identification.

23 (Letter dated July 22, 1966, was
24 marked as Plaintiff's Exhibit 7
for identification)

25 MR. COHLER: Your Honor, Plaintiff's 7 for identification

1 with the covering letter should prove helpful in identifying
2 personnel on duty. It was prepared by personnel or by the
3 defendants, was produced for me by the Attorney General's office,
4 and I would like to offer that in evidence.

5 MR. GRANUCCI: No objection.

6 THE CLERK: Plaintiff's Exhibit 7 in evidence.

7 (Whereupon Plaintiff's Exhibit 7
8 was received into evidence)

9 MR. COHLER: Mr. Grace, would you mark as next in order
10 for identification, please, a two-page document stapled together
11 which purports to be a request for documents?

12 THE CLERK: Plaintiff's Exhibit 8 for identification.

13 THE COURT: So ordered.

14 (Two-page document was marked as
15 Plaintiff's Exhibit 8 for
16 identification)

17 MR. COHLER: And would you mark as Plaintiff's next in
18 order for identification three pages stapled together purporting
19 to be the copy of a letter to Mr. Lynch, the Attorney General,
20 dated July 25th, 1966, from Mr. Fitzharris, the original signed
21 by Mr. Donnelly?

22 THE CLERK: Plaintiff's Exhibit 9 for identification.

23 THE COURT: So ordered.

24 (Letter dated July 25, 1966, was
25 marked as Plaintiff's Exhibit 9
for identification)

MR. COHLER: Your Honor, Plaintiff's Exhibit 8 and 9

1 for identification together will help us to identify various docu-
2 ments and to tie them into the interrogatory answers.

3 MR. OAKES: Counsel, may we see those, please?

4 MR. COHLER: I am sorry; you gave them to me and --

5 MR. OAKES: No problem.

6 THE CLERK: Plaintiff's Exhibits 8 and 9 in evidence.

7 (Whereupon Plaintiff's Exhibits 8
8 and 9 were received into evidence)

9 MR. COHLER: Mr. Grace, would you mark as Plaintiff's next
10 in order for identification, please, a bound paper booklet purport-
11 ing to be Rules of the Director of Corrections and of the Superinten-
12 dent of the Sierra Conservation Center, Department of Corrections,
13 State of California, bearing the date 1960, with handwriting in the
14 upper right-hand corner stating "Item 1?"

15 THE CLERK: Plaintiff's Exhibit 10 for identification.

16 (Booklet, Rules of the Director of
17 Corrections, was marked as Plaintiff's
18 Exhibit 10 for identification)

19 MR. COHLER: Your Honor, I should like to offer Plaintiff's
20 10 for identification into evidence. We shall be referring
21 to that.

22 MR. GRANUCCI: No objection.

23 THE COURT: So ordered.

24 THE CLERK: Plaintiff's Exhibit 10 in evidence.

25 (Whereupon Plaintiff's Exhibit
10 was received into evidence)

1 MR. COHLER: Q. Mr. Fitzharris, is there an area at
2 the institution, the Correctional Training Facility at Soledad,
3 known generally as isolation?

4 A. There is.

5 MR. GRANUCCI: Asked and answered, Your Honor. Objection.

6 THE COURT: Overruled.

7 MR. COHLER: Q. I am trying to bring you back into a
8 frame of reference, sir. You may have answered that. Would
9 you please tell the Court where the isolation area is?

10 A. The isolation area is in a wing designated as O Wing.
11 It is on the lower floor on the, I believe, west side, the
12 left-hand side facing the wing.

13 Q. It is within what is known as the Adjustment Center, is
14 it not?

15 A. True.

16 Q. A part of it?

17 A. True.

18 Q. And are there six cells at the rear of the O Wing on
19 the first floor on the west side at the rear of the isolation
20 area?

21 A. There are.

22 Q. And are those cells, those six cells, used for purposes
23 different from the use of the forward isolation cells?

24 MR. GRANUCCI: Objection, asked and answered.

25 THE COURT: Overruled.

1 THE WITNESS: That is true.

2 MR. COHLER: Q. You personally refer to them as quiet
3 cells, do you not?

4 A. Yes, sir.

5 Q. Mr. Fitzharris, do these six rear quiet cells, as you
6 refer to them, have any different physical construction from
7 other cells in the institution?

8 A. Radically different from the whole institution -- other
9 wings you mean.

10 Q. I am referring to the six cells you refer to as quiet
11 cells. I just asked you to generally describe their physical
12 construction qualities and how --

13 MR. GRANUCCI: Objection, Your Honor. This has already
14 been gone into sometime ago, and it is unduly repetitious. We
15 know what the cells look like.

16 THE COURT: Overruled.

17 MR. COHLER: Q. Do you have the question, Mr. Fitzharris

18 A. Yes. There are seven wings that are standard wings for
19 the general population. Basically they all are the same, except
20 that they are operated just a little differently. They have
21 cells in them with beds, wash basins, toilets, lockers, towel
22 bars, and I am not sure -- I guess not any stools any more. In
23 O Wing, which was originally constructed to be for isolation --
24 these cells I have just described have solid doors with a window
25 with reinforced glass. In O Wing there are cells -- O Wing, for

1 the record consists of two floors. The upper floor has two
2 tiers on each side. The lower floor has one tier on each side.
3 All the cells in that wing operate on a different principle than
4 the rest. The cells are open cells, so-called open front cells.
5 They have bars instead of doors. The doors operate to a ratchet
6 so they cannot be pulled away from the officer controlling them.
7 The standard furnishings throughout most of it -- all but the
8 six in O Wing -- have toilets, wash basins -- I think maybe the
9 towel bars are gone -- but the usual cell furnishing, except the
10 bed springs have been removed in favor of a sheet of metal which
11 is suspended. This is because we found that inmates, by twist-
12 ing the springs could break off pieces and form from the pieces
13 of metal sharpened on the floor, using the razor -- or I mean a
14 toothbrush as a handle -- could use that as a weapon. We have
15 had many unhappy incidents. The six cells that we have been
16 referring to this morning are beyond this. They have vestibules,
17 each one of them independent from the other, each one two feet
18 ten inches deep.

19 Q. The vestibule?

20 A. The vestibule.

21 Q. Thank you.

22 A. This is in front of the sliding bar door. The bar doors
23 on the cells in O Wing are covered with what we call expanded
24 metal. It is the kind of a criss-cross metal to prevent inmates
25 from throwing food or broken up toilets or other things.

1 Q. Is that in the nature of a wire mesh?

2 A. It is a kind of a wire mesh with about an inch, or maybe
3 three quarters of an inch apperature. The metal doors, as have
4 been described, can be closed and the flaps can be closed and
5 the window in that vestibule can be closed.

6 Q. Also by a flap?

7 A. By a flap. The basic difference in O Wing and any other
8 wing is what we call interior cell construction. In a secure
9 institution such as San Quentin and Folsom the cells are built
10 back to back with a distance between the cell front and the
11 windows or the outside access to the outside. Soledad was built
12 with all outside cells with the exception of this particular
13 unit. Outside cells give each man a window in his own cell and
14 he can see -- see out as far as he can see. This is not true of
15 O Wing because there is a space, I suppose ten feet or -- ten or
16 twelve feet wide between the cell front and the wall, in which
17 there are windows. Furnishings in O Wing -- and I am going back
18 in my recollection because I was part of that place when it was
19 built -- I seem to recall very vividly that there were cell
20 furnishings, toilets and wash basins in there when I was here
21 before.

22 Q. How far back would that go?

23 A. To the building in 1952.

24 Q. Do you have any recollection when they were removed?

25 A. No. I was gone for ten years and when I came back they

1 had been removed.

2 Q. Please proceed with your description.

3 A. I am not sure which ones -- what the cell numbers are,
4 but some of them have raised concrete areas which may serve as
5 a pallet-type thing by which an inmate may spread his blanket.

6 Q. Is that in the six rear cells you refer to as quiet cells
7 that there are raised platforms?

8 A. I am not sure that they all have it, but some do. Now
9 the toilets have been removed from two of these cells so that
10 there is what is known as an oriental toilet such as I am informed
11 is fairly common in European countries.

12 Q. That being the same level of the floor?

13 A. Hole in the floor, that is right.

14 . The other four cells have the toilet or commode encased
15 in a concrete block to prevent breaking. They say that these
16 proceedings have been -- these changes have been necessary
17 because over the years this has happened. As a matter of fact,
18 two weeks ago 7 complete cells were wrecked in O Wing by the
19 breaking of the toilet fixtures and the wash bowls and some of the
20 men cut themselves in the proceedings.

21 Q. I don't want to interrupt you, but you said that this
22 change had been made. That was a change by the removing of toilet
23 fixtures sometime back in the fifties that had formerly been there?

24 A. I am digging deep in my recollection to go back to 1952.

25 Q. Do you have more before I proceed?

1 A. No. Excuse me for taking over.

2 Q. Not at all. That is the purpose for having you on the
3 stand. There is a difference between the so-called commode in
4 four of the six quiet cells, as you call them, and the regular
5 toilet facilities in other cells, is that right?

6 A. Yes, sir. The four are encased in concrete.

7 Q. In addition, at least in July, 1965, they could not be
8 flushed by an inmate within the quiet cell?

9 A. That is true. May I explain that? It is fairly common
10 among institutions for the inmates, when they are reacting against
11 the staff and want to make a lot of hubbub and work, to stuff
12 some kind of material in the toilet and then turn the toilet on
13 and hold the button until the water is running out of the cell
14 and onto the floor. This, I think, is certainly the reason for
15 that.

16 Q. Similar problems are just where you have have a wash
17 basin in a cell --

18 A. Exactly.

19 Q. -- or a water pitcher?

20 A. Exactly.

21 Q. You described certain flaps over the windows and door in
22 the quiet cell, as you refer to it. Would you tell the Court,
23 please, the purpose of those flaps?

24 A. Basic purpose of the flaps is to cut down any loud noise
25 or loud acting out behavior that might be disturbing to the

1 balance of the unit -- other inmates in the unit.

2 Q. Mr. Fitzharris, you used the term quiet cells. Do
3 other administrative personnel or Mr. Donnelly use the term to
4 your knowledge?

5 A. I think the word quiet cells has come into our vocabu-
6 lary fairly recently because we found this was not descriptive
7 of what we were talking about. I think we found that people
8 thought we were stripping the inmates rather than the cells, and
9 what the strip cell means is that the cell has been stripped of
10 its furnishings.

11 Q. You sometimes use the term strip cell, yourself?

12 A. I suppose I have in the past.

13 Q. In a normal conversation would you use quiet cell?

14 A. Always. I am not sure whether I have ever called it
15 strip cell. I couldn't say that, but in my philosophy and my
16 recollection I have always thought of it as being a quiet cell.

17 Q. Have you ever heard Mr. Donnelly call it a strip cell?

18 A. I can't say that for sure.

19 Q. Mr. Fitzharris, is there any written policy or rule
20 regarding the use of the flaps on these quiet cells or strip cells?

21 A. I think not.

22 Q. Would you look, please, at your Answer to Interrogatories,
23 which is Plaintiff's Exhibit 3? Mr. Grace, could we have those?
24 I am going to direct your attention to page 28, answer to
25 interrogatory 22c, I believe. Would you look at interrogatory

1 22c, the question itself, and tell the Court whether or not that
2 interrogatory doesn't ask about a wall which is a couple of
3 feet beyond the front of the bar part of the quiet cell, in the
4 vestibule area that you have described previously.

5 A. "State the nature of the wall referred to in
6 interrogatory 22b, if there be such a wall, including the
7 means within and upon such wall, if any, for permitting air
8 or light to enter said cell itself."

9 Q. Would you look at 22d which asks for names in answer to
10 22c, I believe?

11 A. Shall I read the name?

12 Q. No; I just want to write this down so we understand
13 what we are talking about. Is that right?

14 A. That is what the interrogatory said.

15 Q. Would you look at 22f, please? Does not 22f ask whether
16 or not there was a policy, formal or informal, regarding the
17 adjustment or handling?

18 A. Will you bear with me a minute until I find f? We have
19 a page missing, 28 to 30.

20 Q. It seems that page 29 was inserted before 28 rather than
21 afterwards.

22 A. Oh.

23 Q. We are now on page 29, interrogatory f. After you read
24 that I will ask you whether or not it is fair to say that that
25 interrogatory asks whether or not there was a policy, formal or

1 informal, regarding the adjustment of flaps.

2 A. Exactly.

3 Q. 22g, the next interrogatory, asks that you state in full
4 the nature of said policy, if any, and by whom and when it was
5 promulgated, is that right? A. Right.

6 Q. Would you read your answer to 22g, which asks for the
7 nature of the policy, please?

8 A. "Windows are left open at all times unless inmate is creat-
9 ing a disturbance. If the inmate is creating a disturbance, the
10 flaps are to remain closed until the disturbance subsides.' This is
11 based upon Director's Rule 4510 issued by the Director of Corrections;
12 our copy is marked 'Reissued 2-25-60'. The author of this policy
13 is unknown but it is assumed that it was issued at the time this
14 institution was activated, inasmuch as the staff working in the
15 O Wing in 1954 stated at that time that this was the policy at
16 that time."

17 Q. Mr. Fitzharris, I will show you what is now Plaintiff's
18 6 which are quoted interrogatories, and I believe you will agree
19 that the quotation marks should not have been used in the
20 answer. Apparently that was not a direct quotation, is that
21 right?

22 MR. GRANUCCI: Your Honor, I will object in his attempt
23 to impeachment. It is improper impeachment. There has been no
24 foundation laid.

25 MR. COHLER: I am not attempting to impeach. I

1 want to make sure we have the right things before the Court before
2 we refer to the rule.

3 THE COURT: All right.

4 MR. GRANUCCI: For that limited purpose I withdraw the
5 objection.

6 THE WITNESS: Amended interrogatories as quotation marks
7 should not have been used in this answer.

8 MR. COHLER: Mr. Grace, may I have Plaintiff's 10, the
9 rule book, please? Thank you.

10 MR. COHLER: Q. The reference in your answer to 22g
11 referred to Director's Rule 4510, is that correct?

12 A. This is right.

13 Q. And, although it is not a quotation, I ask you now to look
14 within Plaintiff's Exhibit 10, the rules of the Director of
15 Corrections, at Director's rule 4510, please.

16 A. "Any inmate undergoing confinement in isolation who wastes
17 food, becomes unduly aggressive, persists in loud and boisterous
18 behavior or who fails to obey the orders of the employee in charge
19 of isolation may be placed in a quiet cell by the custodial officer
20 in charge of the shift. The length of such confinement in a quiet
21 cell shall be determined by the Disciplinary Committee."

22 Q. Was it in rule 4510 which states a policy about the
23 control of the flaps in the quiet cell?

24 A. Beg pardon?

25 Q. Was it in rule 4510 which states the policy about the contro.

1 of the flaps -- your answer on it?

2 A. There is nothing in 4510 that says anything about flaps.

3 Q. Can you tell the Court, please, what the source of
4 the policy was which was stated in the answer of interrogatory
5 22g as to the control of the flaps?

6 A. I think the implication in the Director's rule 4510 is
7 that somebody who persists in loud and boisterous behavior and
8 fails to obey orders may be placed in a quiet cell, and the
9 implication is that he be kept there until such behavior stops;
10 and I think this is a pretty accepted policy.

11 Q. In other words, the Correctional Training Facility has
12 been implying from Director's rule 4510 that the flaps shall
13 be used for the purpose of controlling noise?

14 A. That is right.

15 Q. Is there any written policy on that matter of controlling
16 the flaps?

17 A. No, I don't believe so and I doubt that one could be
18 written because I think it is a matter of individual judgment
19 as to when the noise is disturbing to other inmates and when
20 it has subsided.

21 Q. Do you play any part in the formation of the informal,
22 unwritten policy regarding the control of the flaps in the
23 quiet cells, as you refer to them?

24 A. No.

25 Q. Do you know who did?

1 A. No.

2 Q. You don't know how that policy came into being?

3 A. No.

4 Q. Mr. --

5 A. This is along with the removal of cell furnishings. It
6 would have happened during the time I was gone.

7 Q. You have not changed that informal policy since you
8 have been superintendent?

9 A. No.

10 Q. At any time to date?

11 A. No.

12 Q. Mr. Fitzharris, is there any written policy or rule
13 regarding the clothing which an inmate in a quiet cell, as you
14 refer to it, is supposed to be supplied?

15 A. Yes, there is.

16 Q. Was that written policy, and if you would like to you
17 may refer to page 37 of your Answers to Interrogatories -- the
18 answer to interrogatory 22hh --

19 A. 37?

20 Q. I believe it is on page 37.

21 A. The policy as quoted here?

22 Q. Just one moment, please. Let me catch up with you.
23 Would you read your answer to interrogatory 22hh, please,
24 regarding the policy, or regarding the clothing provided an
25 inhabitant of a quiet cell?

1 A. No records are available. The policy was: 'All
2 inmates living in 'O Wing' and on the first tier
3 of 'X Wing' shall be clothed in coveralls,
4 one pair of shorts, one pair of socks,
5 and one T-shirt. Do you want to go on?

6 Q. We are going to come back in just a moment. Will you
7 tell the Court, what is the source said to be the quotation
8 there?

9 A. "Post Orders, Second Watch, First Floor Officer, dated
10 June, 28th, 1965."

11 Q. Would you now look at the corrected answers, please,
12 which are Plaintiff's Exhibit 6? I believe there is a change in
13 the source reference. I would like to have that clear. This is
14 22hh. Would you tell the Court what the quotation was written
15 from according to the corrected interrogatory answers, please?

16 A. The quotations are from Program Operation Outline for X
17 and O Wings, dated May 1st, 1965, pages 4 and 5, section C and
18 D, not from posted orders.

19 Q. Mr. Grace --

20 A. May I --

21 Q. I am going to go into this in a minute, but I want to
22 get the document before you.

23 MR. COHLER: Mr. Grace, would you please mark for
24 identification what purports to be a memorandum dated May 1,
25 1965, subprogram operation outline for X and O Wings, consisting

1 of 12 pages stapled together with a space for a signature and
2 a space for approval by C. J. Fitzharris, Superintendent, first
3 page of which has "Item 2" in handwriting in the upper right-
4 hand corner?

5 THE COURT: May be marked.

6 THE CLERK: Plaintiff's 11.

7 MR. COHLER: I should also like to move it be admitted
8 into evidence.

9 THE COURT: So ordered.

10 THE CLERK: Plaintiff's Exhibit 11 in evidence.

11 (Whereupon 12-page memorandum was
12 marked Plaintiff's Exhibit 11 for
13 identification and received into
evidence)

14 MR. COHLER: Q. Mr. Fitzharris, I show you what is
15 now Plaintiff's 11 and ask you to look at the last page of this
16 mimeographed copy. Do you recall whether an original or some
17 form of this memorandum was in fact signed by Mr. Donnelly?

18 A. I don't recall.

19 Q. Is there a memorandum of this nature or the original
20 thereof lodged in any official document or sent to any other
21 officials so that it may, in the normal course of affairs, be
22 signed?

23 A. I should think so. There are places where we keep such
24 documents.

25 Q. And in a normal course of affairs Mr. Donnelly would have

1 signed at least one of these documents?

2 A. He would have signed the stenciled.

3 Q. You would also have signed?

4 A. Probably.

5 Q. Can you recall whether or not in fact you approved this
6 memorandum; and please look through it as you wish to refresh
7 your recollection. Perhaps a date will help you. It is dated
8 May 1, 1965.

9 A. I couldn't be positive that I signed it or didn't sign it.

10 Q. In some sense did you approve it? Have you ever seen it
11 before?

12 A. I couldn't say that either. I have seen similar documents,
13 we have talked about the same things, but whether this formalized
14 document has been issued or not issued I don't know -- or signed
15 or not signed, I can't --

16 Q. You may keep this for your assistance. Can you tell the
17 Court what purposes that memorandum served when it was issued?

18 A. Well, this leads back to what I was hoping to explain a
19 little while ago.

20 Q. I hoped it would. That is why I asked you.

21 A. Thank you. In October of 1964, there was considerable
22 unrest and violence, racial attacks, one group against the other,
23 for a period of about three months. The first occasion was when
24 one group attacked another and 16 people were stabbed and one was
25 killed in one of the rooms. We found that in our analysis, and I --

1 anybody who has talked to us has agreed, that what happened at
2 Soledad had been the fact that we did have an Adjustment Center
3 there, many of these difficult people were being transferred
4 there for treatment and, like so many other institutions and so
5 many other places, when a new one comes along you take out the
6 least bad one or the ones that have been getting along a little
7 better than anybody else but not necessarily good. We decided
8 in around the first of the year in 1965, to clamp down on some
9 of this stuff to make that institution a safe place for
10 personnel and inmates alike; and I went on the radio and I told
11 them all this, that it was not -- it was our responsibility to do
12 what we could to protect these inmates. When you had found
13 inmates going around with a copy of a magazine in front and rear
14 to keep from being stabbed or when they took messhall trays and
15 put under their jackets then it's time to do something. So we
16 decided that, as bad as it was or as makeshift as it was, we
17 needed more space because we were turning these Adjustment
18 Center clients back out into the main line and were accumulating
19 them, because your better people get paroled or released or
20 transferred to camps or something, so you come to a place where
21 you've got the distillation of this whole group. The need to
22 control these people was apparent, and so we created X Wing. We
23 diverted funds that were planned for some other projects and we
24 made that into a more secure type of a wing than it was origin-
25 ally planned for. We introduced gun guards in there and we

1 intended to put what we would call long-term segregation people
2 in there, people whose record and their behavior showed that
3 they were dangerous. The construction -- the reconstruction of
4 this thing took several months; and so at the time we are now
5 discussing, in this May of 1965, and something else we are
6 talking about here, is an unclear area when we were moving in
7 another direction, experimenting with progress. True, as we
8 said this morning, the committees consisted of several people;
9 but when we found that -- this is at that time -- we had two
10 associate superintendents, one in charge of custody and the
11 other in charge of classification and treatment, we found that
12 they were spending two to two-and-a-half days of their week
13 dealing with these disciplinary problems; and, true, they knew
14 all the bums in the place, but they didn't know any good people
15 and they weren't out there supervising, promoting and fostering
16 the program for the 95 per cent, so that in this effort to try
17 to -- to convert into some kind -- some other kind of an operation
18 we did many things of an experimental nature, some things that
19 have worked out and some that haven't. But, at the same time,
20 we were planning and had approved, and went into effect sometime
21 in the fall of 1965, a re-organization -- administrative re-
22 organization, which is shown in the interrogatory how this has
23 changed since then; so that the confusion, I think, in these
24 documents and some of the things that are said here must exist
25 during a transitional period. So I can't say for sure -- I know

1 there were many, many conferences about this same time. We
2 undertook to train a whole group of staff people for this new
3 operation -- I can't -- new organizational plan of Central
4 Facility. Our plan was to put a correctional counsel who was
5 a social worker in each one of the wings so he'd be close to the
6 clientel and to cut down the case load from 600 to 150. To do
7 this we had to sacrifice correctional officers and hire others.
8 People had to be trained in a new concept, so many of the top
9 administrative personnel, for months, were involved in this
10 training process, this planning process, this change-over, along
11 the line there some place. It was our plan and our philosophy
12 to get this disciplinary function down to a lower level and put
13 our higher echelon of people on a program -- development program
14 for the other 95 per cent or 98 per cent, because actually we
15 are talking, in O Wing, a hundred and two people, I think there
16 were the other day, out of thirty one hundred in the whole
17 institution. So it didn't make sense to have those two high-
18 powered people working on these hoodlums.

19 Q. I didn't hear you.

20 A. It didn't pay to have these two high echelon people
21 working with these small groups of disciplinary cases.

22 Q. Disciplinary Subcommittee?

23 A. Right. Well, even in classification -- the classification
24 is not only disciplinary but classification; but, anyhow, we
25 wanted more emphasis on the classification, the training and

1 treatment and constructive work with the better people, the more
2 amenable people. And so, in this area, this point in time,
3 there was a lot of confusion, and I don't mean to be evasive in
4 trying to -- not identify documents or not say that we were not
5 at that point operating in a certain way. I am sure that in
6 many, many instances we were in violation of the Director's rules.
7 Many times we'd find a better way to do things, more expeditious
8 way, and it's years before the Director's rule catches up with
9 them. You establish a procedure, demonstrate it, then recommend
10 it for a change in the manual, because that manual applies state-
11 wide and it can't spell out every little thing that you do. That
12 is why we have the staff we do.

13 Q. I hope you didn't get the impression I thought you were
14 evasive about identifying documents.

15 A. I felt that I was not satisfying your question.

16 Q. I merely want to find out what we have before us and the
17 only way I know how to do it is this way. I do want to work with
18 it, though, and see how far we can get with the documents you have
19 identified. Would you look at page 4, please, of what is now
20 Plaintiff's Exhibit 11, and look particularly at item C which is
21 labeled Clothing, is it not?

22 A. That is true.

23 Q. Would you read item 1 under item C?

24 A. "All inmates living in O Wing and on the 1st tier of X Wing
25 shall be clothed in coveralls, 1 pair shorts, 1 pair socks and

1 one tee-shirt."

2 Q. Now, looking back at page 37 of your Answers to
3 Interrogatories, answer to interrogatory 22hh, do you agree with
4 me that that is an accurate quotation, except I think there is
5 a clerical error -- I think that T-shirt in the answer to the
6 interrogatory was spelled T-e-e. In the other source it was
7 T-shirt -- other than that it is an accurate quotation, is that
8 right?

9 A. I think so, as far as I can see.

10 Q. Now, would you turn back to Plaintiff's 11, the memoran-
11 dum, and again under C, Clothing, read item 2, please?

12 A. I don't -- what page, please? "No shoes are authorized
13 to these inmates. Slippers (Hosp. Type) may be issued."

14 Q. Again looking back at 22hh, and I think you are going to
15 have to turn to page 38 of your answers, do you agree that is
16 an accurate quotation except for your clerical error? The actual
17 source reportedly quoted was abbreviated.

18 A. hh?

19 Q. Yes, on page 38 of your Answers to Interrogatories.

20 A. "No shoes are authorized for these inmates. Slippers,
21 hospital-type, may be issued."

22 Q. Except that there was a clerical error in that, your
23 answer to the interrogatory, hospital-type was spelled out, is
24 that correct?

25 A. Yes.

1 Q. Now, looking back again at Plaintiff's 11, please, the
2 memorandum from which portions were purportedly quoted in 22hh, turn
3 over to the next page, please, page 5, entry 7, which is still
4 under item C, Clothing; would you read entry 7?

5 A. "Strong blankets" may be issued to inmates assigned to strip
6 cells or to those who destroy their bedding or to suicide risks
7 temporarily in place of clothing."

8 Q. Would you look back to 22hh on page 38 and read the next
9 sentence there? Starts with "Strong blankets".

10 A. "Strong blankets may be issued to inmates assigned to quiet
11 cells or to those who destroy their bedding or to suicide risks
12 temporarily in place of clothing."

13 Q. Mr. Fitzharris, is it correct that in your answer to the
14 interrogatory the word "strip cell" was removed and the word "quiet
15 cell" was replaced? In other words, the original source was not
16 properly quoted?

17 MR. GRANUCCI: Objection. This is immaterial.

18 THE COURT: Sustained.

19 MR. COHLER: Q. Would you continue reading your answer to
20 22hh, please, Mr. Fitzharris?

21 A. "In addition, the following items are permitted in the cells
22 in this area: Toilet paper, soap, comb, dentures, wedding ring,
23 envelopes, canteen ducats (only those on his person upon arrival),
24 toothbrushes, religious reading material, religious metal, eyeglasses
25 (Prescription only)."

1 Q. That is the total statement of policy, is it, with respect
2 to clothing in your Answers to Interrogatories in subparagraph hh?

3 A. That is all in hh.

4 Q. Yes. Would you turn back to the memorandum, please,
5 again under Clothing, item C, and would you read item 3 which is
6 on page 4, please?

7 A. "Authorized inmates living on the 2nd and 3rd tier of
8 "X" Wing may wear regulation inmate clothing to be issued by
9 size. Clothing will be limited to: 1 pr. pants, 1 pr. socks,
10 1 pr. shoes, 1 shirt, 1 t-shirt, 1 pr. shorts, 1 towel,
11 1 handkerchief."

12 Q. That is item 4. That is quite all right. Would you read
13 item 3, please?

14 A. Oh, excuse me. "Inmates who are considered extreme
15 suicide risks may be temporarily stripped of their clothing
16 with the approval of the responsible P.A. or the O.D. Written
17 report required with copy to Psychiatrist."

18 Q. What does P.A. stand for?

19 A. Program Administrator.

20 Q. And O.D.?

21 A. Officer of the Day.

22 Q. And are written reports with a copy of the psychiatrist's
23 report -- where would those reports be found?

24 A. In the psychiatric file.

25 Q. Is there also a copy of the file --

1 A. No, that would be in the Central file.

2 Q. Are those documents retained for a period of time?

3 A. I think as long as the inmate is active -- as long as
4 the file is active with us.

5 Q. What would you do in the event that an inmate left the
6 institution?

7 A. No, I mean the Department of Corrections.

8 Q. Suppose an inmate was wholly discharged on parole or
9 anything like that. What would happen to the written reports
10 and the copies regarding the suicide risks?

11 A. I am not sure of exactly what is gleaned or taken out
12 of the file and destroyed, but the records office in the archives
13 in Vacaville have a policy of what kind of documents are
14 destroyed -- obviously all inmate letters and things like this.
15 I am not quite -- I don't know what they do retain, actually,
16 besides the commitment papers and, I guess, the summary and this
17 kind of thing, but I couldn't say.

18 Q. In the event that an inmate who was on suicide watch
19 became deceased in the institution, would those copies of those
20 reports be retained, or do you know where they would go?

21 A. No, I don't.

22 Q. Do you know who was occupying the office of P.A. or
23 Program Administrator or O.D. in June, July, 1965?

24 A. Mr. Johnston was Program Administrator in July. I am
25 not sure -- there was a change in administration there about

1 that same time, and I couldn't say exactly, but either Mr.
2 Brown, who is also a Program Administrator, or Mr. Johnston.

3 Q. And are the persons who come into O.D. -- do they vary
4 from time to time?

5 A. Vary weekly.

6 Q. Would it be possible to ascertain who the O.D. was on any
7 given date in June or July, 1965?

8 A. I think so. I am not sure how long we retain those
9 records, but I should think we would keep a file.

10 Q. In whose office?

11 A. In my office. The reason I hesitate is because I asked
12 my secretary to give me this and I got the one for the current
13 year.

14 Q. Who was the psychiatrist at the Correctional Training
15 Facility in June or July, 1965?

16 A. Dr. Raymond Hack is the psychiatric consultant. We
17 have no staff psychiatrist. Dr. Hack spends half-time with us.

18 Q. Are there any psychologists as opposed to psychiatrists?

19 A. We have no psychologists.

20 Q. On a consulting basis either?

21 A. None.

22 Q. Mr. Fitzharris, the next questions I would like to ask
23 you deal with the period, specifically, from July 9th through
24 July 20th, 1965. Do you know whether or not Officer Caldwell
25 was on duty on the first floor of O Wing at that time?

1 A. Not of personal knowledge, no.

2 Q. I think we can refresh your recollection or help you
3 here. There is a schedule, Plaintiff's Exhibit 7 --

4 A. This comes from the written record and I have no
5 personal knowledge of who was on what.

6 MR. COHLER: Mr. Granucci, can we have a stipulation
7 that this is accurately taken from records?

8 MR. GRANUCCI: To the best of my knowledge it is, Mr.
9 Cohler. I was going to object to your questioning Superintendent
10 Fitzharris about his personal knowledge of officers on duty
11 at that time because I don't think it is material. However,
12 if you want to introduce that particular calendar I will have no
13 objection.

14 MR. COHLER: It is already in. I just want to help
15 with the names.

16 MR. GRANUCCI: I object whether it is material --

17 THE COURT: You may proceed.

18 MR. COHLER: Q. This is a document purporting to be a
19 schedule which was prepared by personnel at your institution,
20 is that correct?

21 MR. GRANUCCI: That is correct, Mr. Cohler.

22 MR. COHLER: Q. Relying on that, which is Plaintiff's
23 7, do you know who Officer Caldwell is?

24 MR. GRANUCCI: Objection. Immaterial.

25 THE COURT: Overruled.

1 THE WITNESS: No, I don't

2 MR. COHLER: Q. Do you know whether or not, in the
3 course of preparation of Answers to Interrogatories, Officer
4 Caldwell was interviewed?

5 MR. GRANUCCI: Objection. Immaterial.

6 THE COURT: Overruled.

7 MR. GRANUCCI: Your Honor, may I be heard? May it
8 please the Court, we were served with a lengthy list of
9 interrogatories in this case. I represent to the Court that we
10 did our best to answer. I assisted in the preparation of those
11 answers. On the advice of people in the office, on the advice
12 of my consultation with authorities both during the time and
13 subsequently, I reached the conclusion that there was no legal
14 obligation on the part of the defendants to interview officers.
15 We realized this when we were required to give names, and we did
16 give names. We did not interview them at that time, and I would
17 so state to the Court. Now, counsel is trying to draw an
18 inference here that I think is improper. If we had gone into
19 Court here and made a motion to limit the interrogatories insofar
20 as they would have required us to interview prospective
21 witnesses and give the results of that interview to the plaintiffs,
22 Your Honor would have sustained a motion because that sort of
23 information is beyond the scope of interrogatories. Instead we
24 attempted to answer the interrogatories as best we could; and
25 that is why I suggest that any questions as to interviews of

1 defense witnesses are improper. Furthermore, those questions
2 would, I think, call for privileged material.

3 MR. COHLER: May I be heard, Your Honor? Interrogatories
4 were asked and they were intended to be comprehensive, and I
5 hope they were. A considerable amount of time -- I believe the
6 witness said he thought 245 hours were spent answering. It was
7 the only discovery technique which the appointed counsel thought
8 was available. It was designed to find out what the defendants
9 knew about the conditions in this cell in which the Plaintiff
10 was. This is not a corporation where there is a duty to find
11 out what the knowledge of a corporation is, the knowledge of
12 its personnel. A corporation is an entity, a form. Mr.
13 Fitzharris is a superintendent. He is not a corporation. I
14 think there are two legitimate purposes in proceeding. First, I
15 would like to find out just how much Mr. Fitzharris did know
16 about this period of time, and, I think, who assisted in the
17 preparation of interrogatory answers. This is not privileged
18 matter. These are sworn answers under oath.

19 THE COURT: Wouldn't it affect the chain of command,
20 more or less?

21 MR. GRANUCCI: We gave them that, Your Honor.

22 MR. COHLER: I am not sure we are talking about the same
23 thing, counsel.

24 THE COURT: First of all you have to establish the chain
25 of command, do you not?

1 MR. COHLER: We did that.

2 THE COURT: And then you attempted to inquire with
3 respect to the responsibility of the warden as to acts and
4 conduct, isn't that correct?

5 MR. COHLER: Correct.

6 THE COURT: In the course of that investigation, no
7 doubt, the warden had occasion to inquire of the attaches.

8 MR. COHLER: That is the point. From what counsel has
9 just said, I didn't think he did.

10 THE COURT: I can't see privilege, counsel, under the
11 circumstances.

12 MR. GRANUCCI: Your Honor, we could have moved --

13 THE COURT: You could have moved perhaps, and what my
14 ruling would be is still speculative and problematical.
15 You did not move and I will permit these questions.

16 MR. COHLER: I think it is relevant to find out and I
17 will be candid how much the superintendent of this facility can
18 find out about a particular cell in his institution which has
19 particular uses, with 245 man hours being used, or the United
20 States District Court has taken an interest in the case should
21 be of some concern. I think it is relevant to know how much
22 he can find out.

23 THE COURT: This witness has been responsible and I
24 would suggest you ask him the question.

25 MR. COHLER: I would like to. Thank you, Your Honor.

1 MR. COHLER: Q. Mr. Fitzharris, could you tell us
2 whether or not you interviewed, or caused to be interviewed, any
3 officer who was on duty July 9th through July 20th, 1965, on
4 the first floor of O Wing before you answered the interrogatories?

5 A. No.

6 Q. You did not interview or cause to be interviewed, is
7 that correct?

8 A. That is right, if that was the question.

9 Q. And why not, sir?

10 A. Because at the period of the interrogatories -- were not
11 addressing themselves to the questions that seemed to be at
12 hand. I don't think that -- anyplace that I recall in the
13 interrogatory, asked anything whether the cell was dirty or
14 whether it wasn't.

15 Q. Well, it did ask about how the flaps were handled. Would
16 you turn, please, to interrogatory 22e?

17 A. Could you give me the page number, please?

18 Q. I will see if I can find it myself. It is on page 28 of
19 your answers, Mr. Fitzharris.

20 A. 28?

21 Q. Yes, sir. And I would like to read your answer. Do
22 you have it before you?

23 A. Yes.

24 Q. "No information is available as to whether or not any
25 of the above persons" -- and you had listed the persons who may

1 have handled them previously -- "whether or not any of the above
2 persons during the period in question . . ."

3 It was your answer, was it not, that no information was
4 available as I read it?

5 A. Documentary information. We do not record in our records
6 when the flaps are opened or when they are closed, and we
7 presume this meant from the record.

8 Q. What led you to presume that, sir?

9 A. We had to presume a lot of things, not being learned in
10 the law and not having any access to what was going on. We had
11 to have some use -- some imagination to get the job done.

12 Q. You did have the assistance of counsel and --

13 MR. GRANUCCI: Objection, called for privileged material.

14 THE COURT: As to the subject matter of any discussion,
15 certainly it would be.

16 MR. COHLER: I don't want --

17 THE COURT: With respect to representation, I think the
18 witness is entitled to answer, and I assume you would stipulate
19 he has had the advice of counsel?

20 MR. GRANUCCI: I would so stipulate. That is right,
21 Your Honor, and he did.

22 MR. COHLER: Q. With the advice of counsel did you
23 think that interrogatory 22e called for records rather than
24 information?

25 A. We didn't have advice of counsel on each point. That is

1 what I am getting at. Yes, we had the advice of counsel in --

2 Q. Please don't tell me what he said.

3 A. No, but what I am saying is that we had to make some
4 assumptions on the situation because we didn't have day-to-day
5 consultation.

6 Q. Would you turn to interrogatory 22i and read the
7 question, please?

8 A. That's on page --

9 Q. That is 29. I am sorry, the very next page, 29.

10 A. 29? That is d.

11 Q. I beg your pardon. Line 20, page 29, "describe all
12 documents."

13 A. I think we are again mixed up in pages.

14 Q. Yes, I think that 29 appears in the opposite page. Do
15 you have it?

16 A. Yes.

17 Q. Would you read that for the Court, please, the question
18 not the answer?

19 A. "Describe all documents reflecting the information
20 stated in response to subparagraph c through h of interrogatory
21 22 and with respect to each such document state its location."

22 Q. 22i is the one that asked you whether or not you had
23 any record about that matter?

24 A. Right.

25 Q. Why did you think you were --

1 MR. GRANUCCI: Objection. The question is argumentative.

2 THE COURT: Sustained.

3 MR. COHLER: Q. Aside from anyone in the Attorney
4 General's Office who may have assisted you, what staff members
5 participated in that, please, and I am excluding typists and
6 clerical help.

7 A. I have a list of them in my briefcase back there.

8 Q. I will be glad to have them brought to you.

9 A. We had conferences of the administrative staff -- we had
10 the conferences of the administrative staff on, I should say
11 five -- virtually five full days. This would include the Deputy
12 Superintendent, the Assistant Superintendent, the Program
13 Administrator and, on some occasions, Sergeant Frederick, Mr.
14 Kiepora, Mr. DeCarli. I thought this detailed out more of the
15 personnel, but primarily we assigned -- we assigned one
16 lieutenant who has been having a training -- a year of training
17 as a correctional counsel who, being familiar with both the
18 records and the procedures, to spend full time to get this job
19 done. He spent a full ten days doing nothing else, and he got
20 the information together from the various documents and from the
21 various staff members.

22 Q. He got information both from documents and from staff
23 members?

24 A. Advice as to where to go or --

25 Q. Did he get any information from anyone -- withdraw that.

1 I think I interrupted you. Will you proceed?

2 A. I am in error. I thought this document reported names,
3 but it is by area: stenotypist, personnel office, business
4 office, maintenance department, medical department, administra-
5 tive offices, personal interview, top staff, four hours.

6 Q. Do you have any recollection of what personal interview,
7 top staff, four hours involves?

8 A. I presume the people I just described who attended
9 these meetings.

10 Q. Were you present?

11 A. I think so.

12 Q. Do you recall --

13 A. I was present more than four hours when we had these
14 meetings, certainly.

15 Q. You mentioned that Sergeant Frederick was one of the
16 personnel involved in helping prepare answers. Do you know
17 whether or not Sergeant Frederick was involved in helping to
18 prepare the answers relating to controlling of flaps and
19 availability of opportunities for an inmate in a strip cell
20 to clean himself?

21 MR. GRANUCCI: Objection. Your Honor, I think we are
22 getting far away from the issues in this case. We are very
23 happy to litigate the issues to get to the merits. The trials
24 and tribulations of these defendants in answering a complicated
25 set of interrogatories shouldn't be used as evidence against

1 them, particularly when there are no claims of deception, no
2 claim of withholding, and counsel cannot claim that he hasn't
3 been afforded full cooperation in the case.

4 THE COURT: Counsel, at the very threshold of an in-
5 vestigation of this kind the matters of discovery are not as
6 easy of approach, let us say, as compared to the ordinary civil
7 controversy and, peculiarly enough, the information and knowledge
8 rests within the domain of the warden and several deputies; and
9 I think full scope should be given to the matters of discovery,
10 both in interrogatories as well as the other matters, and I
11 feel that counsel should be given some liberality. I think,
12 however, that we have gone about as far as you can go.

13 MR. COHLER: This was the last. I mentioned Sergeant
14 Frederick because he was to be the next witness. I would like
15 to learn what was learned from him with regard --

16 MR. GRANUCCI: I would object on the ground of immater-
17 iality.

18 MR. COHLER: Again I would like to find out what kind of
19 information the Superintendent is able to amass in 245 hours to
20 answer questions directly on point; the particular cell, the
21 particular plaintiff, the particular time period.

22 THE COURT: You may answer.

23 MR. COHLER: Thank you.

24 MR. COHLER: Q. Mr. Fitzharris, do you know what infor-
25 mation was obtained from Sergeant Frederick in preparing the

1 answers to interrogatories, particularly with regard to the cell
2 in which the plaintiff was detained, a so-called strip cell, from
3 July 9th through July 20th?

4 A. I have no knowledge of what the lieutenant might
5 have discussed with Sergeant Frederick. All I know is what
6 information Sergeant Frederick gave to us in meetings with the
7 Attorney General's staff and in our own meetings.

8 Q. Thank you. Mr. Fitzharris, would you turn to your
9 answer to 22, paragraph cc, please?

10 A. Can you give me the page number, please?

11 Q. I am looking for it myself and I will give it to you as
12 soon as I can. I believe you will find that on page 36 to your
13 answers to interrogatories. When you get there please read the
14 question and the answer.

15 A. 36 in --

16 Q. Right. It is on line 25, subsection cc.

17 A. "State the opportunities, if any, made available to
18 persons confined in said cells for exercise of any sort
19 outside of said cell."

20 Q. Let me just interrupt you. It says "to the person con-
21 fined," and the reference to the plaintiff, if we back up far
22 enough, we will find that. Is that your recollection? Will
23 counsel stipulate to save time?

24 MR. GRANUCCI: Again, I am at a little bit of a loss.
25 If he is trying to elicit that inmates confined in quiet cells

1 are not allowed a period of exercise I would stipulate --

2 MR. COHLER: Your Honor, this interrogatory was addressed
3 as to what, in fact, happened to the plaintiff in this cell
4 during the period, and I am offering --

5 MR. GRANUCCI: I would object. I don't know whether
6 counsel is attempting to impeach the witness or not. If he is,
7 I think it is improper.

8 MR. COHLER: It is not offered for impeachment and I
9 will limit it.

10 MR. GRANUCCI: If it is offered for the substantive
11 fact in issue I will stipulate.

12 MR. COHLER: You will stipulate that no opportunity was
13 made available to the person confined in the strip cell?

14 MR. GRANUCCI: Outside the cell the exercise --

15 MR. COHLER: Yes, he couldn't come out of his cell.

16 MR. GRANUCCI: For exercising.

17 MR. COHLER: That is what the cell is for, exercising.

18 MR. GRANUCCI: You say that he was brought out of the
19 cell for another purpose.

20 THE COURT: The petition was setting up exercise in
21 said cell in order to keep himself warm.

22 MR. COHLER: I am talking about outside the cell that --

23 MR. GRANUCCI: Let me make a brief explanation. The
24 ordinary prisoners undergoing isolation, as a matter of general
25 practice, are allowed outside of their cells for one hour a day.

1 This is one of the privileges that they have while confined in
2 isolation, limited privilege though it may be. This privilege
3 of an hour a day outside the cell exercises is not made
4 available to prisoners confined in quiet cells, and I would
5 agree that this is what happened with Jordan.

6 MR. COHLER: Your Honor, the answer is already in the
7 record.

8 THE COURT: That satisfies --

9 MR. COHLER: We can drop the matter. The answer is
10 already in the record, but to save time it is not necessary --

11 THE WITNESS: I don't find any reference to Jordan at
12 all. It is "a person" all the way through, as far as I have
13 gone.

14 MR. COHLER: Q. That can be cleared out among counsel.
15 I think I am not going to examine you further in that regard.

16 Mr. Fitzharris, there was an interrogatory calling for
17 your knowledge as to changes which had taken place in the quiet
18 cells. I believe that is interrogatory 23.

19 A. Give me a page number.

20 Q. Page 39. To save time I would like to merely summarize,
21 and, counsel, please make sure I am correct. The interrogatory
22 called upon you to answer as to certain conditions in the strip
23 cell in the period of time from July 21 through April 20, 1966.
24 In other words, what changes had been made in that period? Now
25 would you turn to page 40, please, in your answer q which states, doe

1 it not, that water containers and wash basins were furnished to
2 all quiet cells?

3 A. It does.

4 Q. And the date given below that answer to subparagraph r
5 is March 14, 1966? Is not that the date when water containers
6 were furnished to all quiet cells?

7 A. Yes.

8 Q. To your knowledge, do quiet cells now have soap, towels
9 and toothbrushes?

10 A. To my personal knowledge, I haven't inspected them, you
11 know, frequently enough to be sure; but the staff assures me
12 that this is being done.

13 Q. Do you know when the soap, towels and toothbrushes were
14 first made available in the quiet cells, as you refer to them?

15 A. I do not know.

16 Q. Do you know whether or not it was the same time when the
17 water basins and pitchers were made available?

18 A. I recall no discussion at all, no.

19 Q. Was there a discussion about the installation of water
20 containers?

21 A. There was.

22 Q. Who was a party to that discussion, please?

23 A. I am not sure. I know I was, and I presume Mr. Donnelly.
24 I don't know who else -- maybe Mr. Johnston.

25 Q. When did you first become aware, Mr. Fitzharris, that the

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1 plaintiff in this action and the petitioner in the companion
2 consolidated action had filed an action against you alleging
3 facts related to the conditions in the quiet cell, as you call
4 it?

5 MR. GRANUCCI: Your Honor, could counsel be requested
6 to clarify that question a bit? The reason I make this
7 objection, or motion if you will, is because Plaintiff Jordan
8 has filed a great many actions against the defendant.

9 THE COURT: There are only two at least that we are
10 presently entertaining; that is a civil rights action and the
11 plea.

12 MR. GRANUCCI: Is counsel referring to this case?

13 THE COURT: I assume he is.

14 MR. COHLER: I meant to. I realize that many petitions
15 have been filed and I was going to ask if the witness knows when
16 he first became aware this civil rights action had been filed.

17 THE WITNESS: Well, I don't know. We had -- Mr. Jordan
18 wrote to the Attorney General's Office and we had inquiry from
19 them. We wrote a report. There was another inquiry from our
20 central office. I don't know where that originated, and we
21 wrote an answer to that. This was long before, and I think
22 there were several actions filed in the Superior Court of
23 Monterey County. Let me -- may I say this? The installation of
24 water pitchers and water basins was not to -- as a result of
25 the Judge appointing counsel or that the suit was being taken --

1 being given attention. This, like many other things, you have
2 to go -- you have to make what progress you can; and I am not
3 at all sure we are going to take them out, because we bought
4 them March 14th. Apparently we supplied -- we bought a dozen
5 water pitchers and we now only have three left and we have
6 ordered more; and then, as was testified by Mr. Nash, water
7 is thrown on the personnel and the thing has to be re-evaluated.
8 Now what we are going to do about it I don't know, but certainly
9 we haven't got the answer now. But progress and change has to
10 be made. We deliberately -- the O Wing, the total O Wing came
11 up for maintenance painting on a regular schedule this past few
12 months. They painted the upstairs and looked so nice, and Mr.
13 Swaggerty wanted to paint this downstairs, and I said we better
14 not, we are not going to change this area so they think we are
15 polishing or covering up something. But the water pitchers, I
16 think primarily in my mind at that point, was to save a lot of
17 officers time, which is pretty thin down there, and I thought
18 for about \$18 or \$20, whatever the cost, we could get that back
19 in terms of time that the officer goes down there twice a shift
20 to give water to the inmates down there. I was convinced, and
21 still am, that inmates were given all the water that they wanted
22 to drink at the time of the servicing, and that water was left
23 behind in a cup.

24 MR. COHLER: Q. What convinced you of that?

25 A. I have been told that by staff. I have personally seen

1 several of these Styrofoam cups along on the bars. Now I
2 couldn't recall whether they had water in them or not, but at
3 least they were there.

4 Q. You are satisfied that you have been able to obtain
5 knowledge from your subordinates that inmates in strip cells get
6 enough water?

7 A. Right; in the same sense that, when I saw the menu for
8 those days and I believe the food manager served that kind of
9 food, and the staff says they gave water, I believe they gave
10 the water.

11 Q. And you are satisfied that the cells were kept in a
12 clean condition?

13 A. To my personal knowledge; I have no knowledge to the
14 contrary.

15 Q. And that the so-called commodes were flushed sufficiently
16 often?

17 THE COURT: Commodes what?

18 MR. COHLER: Flushed.

19 THE WITNESS: There is a question of judgment. I don't
20 think anybody ever said that they were flushed enough, because
21 they should be flushed every time they are used. But in the
22 course of events they were flushed, to my best information,
23 twice per shift; with the exception, sometimes, on the first watch
24 when the men objected to being awakened at night when the
25 water was running.

1 MR. COHLER: Q. And you are satisfied, as superintendent,
2 from what you have been told by your subordinates, that the
3 toilets were, indeed, flushed twice per shift?

4 A. Right.

5 Q. You don't feel that any other steps as superintendent
6 are necessary since you are able to rely upon the information
7 you receive from your subordinates?

8 A. I certainly do believe that there are other things
9 necessary. We have the reports they submit and we have inspec-
10 tion with other staff. I had counted not long ago 2900 toilets
11 in that facility, and I can't inspect every one of them.

12 Q. I didn't mean to say you should, sir.

13 A. The point is, you have to rely on subordinates. We have
14 a 3100 man -- 3100 plus man institution, three facilities, and
15 32 vocational training instructors and 23 teachers, and I can't
16 go to every one of those places. I have got to rely on
17 immediate supervisors and on up the line. I am the superintendent
18 for the facility and I have delegated much of this responsibility
19 for the immediate operation of these various areas to the
20 deputies and hold them responsible for it. But I just cannot
21 possibly give that kind of attention to say that this -- but when
22 you have 725 or 750 employees, whatever it is, you just have to
23 rely on people.

24 Q. You mentioned that there had been some concern about
25 painting the walls downstairs in O Wing because there may have

1 been an inference drawn from that that you were cleaning things
2 up and putting on a good show. Was there that kind of concern
3 when there were discussions with regard to putting in water
4 pitchers and water basins?

5 A. No.

6 MR. COHLER: That is all, Your Honor.

7 MR. GRANUCCI: Your Honor, would it be appropriate to
8 call recess at this time?

9 THE COURT: Certainly. You can take a short recess at
10 this time, say ten minutes.

11 (Whereupon a ten minute recess ensued)

12 THE COURT: We will adjourn, if it is agreeable, at 4:30.

13 MR. GRANUCCI: Quite agreeable.

14 CROSS-EXAMINATION

15 BY MR. GRANUCCI:

16 MR. GRANUCCI: Q. Superintendent Fitzharris, on your
17 direct examination reference was made to "team approach." Would
18 you explain that, please?

19 A. Team approach is a new word that is growing into the
20 vocabulary, I think not only of corrections but I think of
21 society; and in our context we are talking of any large, or any
22 group of knowledgeable people representing a variety of
23 disciplines who bring their common knowledge to bear on a
24 particular problem or a particular group of problems or, in our
25 case, upon an inmate's behavior and his training and treatment.

1 Q. That could refer to any group of people concerned with
2 an inmate, could it not?

3 A. Yes.

4 Q. Implication being that they should work together and
5 exchange knowledge?

6 A. Pool their knowledge of what is available.

7 Q. Now, during June and July of 1965, you testified that
8 the institution was going through a period of re-organization.
9 Does that mean a part of a continuing pattern of change and
10 development at Soledad?

11 A. Well -- may I explain what this is? When the institution
12 was built we first built a 700-bed capacity barracks-type Butler
13 building facility and we operated there for three or four
14 years. During that time the present, what is now known as
15 Central Facility, was planned and constructed. It was always
16 the plan to tear down those buildings once the main institution
17 was built. When the Central Facility was built the warden and
18 the staff all moved to Central Facility and they left a token
19 group at the old place as a farm operations group and they cut
20 back population and they left it in charge of a captain. And
21 the captain eventually was found to be of such responsibility
22 that they eventually reclassified the position to Associate
23 Superintendent. Well, along in the area there was a warden who
24 was at California State Prison at Soledad, originally in the law,
25 and eventually it was changed to Correctional Training Facility

1 by the Legislature, and the warden was then the superintendent.
2 When the Central Facility was built the superintendent then
3 continued to be in direct administrative charge of that unit,
4 and also responsible for the operation of the South Facility.
5 Then, in the late fifties, additional site -- an additional
6 building was built on the site housing 1200 inmates; and this
7 was then staffed with a complimented staff under the supervision
8 of a deputy. This was operated almost as an autonomous unit
9 with its own chaplains and coaches and everything with very
10 little relationship to Central Facility; but at the same time the
11 superintendent was responsible for the operation through the
12 deputy, but actually could spend very little time there because
13 of the involvement in the Central Facility and South. So, in
14 the early fifties, or '55 I guess it was, we conceived the idea
15 of changing the administrative structure and putting these
16 three facilities on the same basis, all three reporting to the
17 superintendent, as outlined in the interrogatories, and having
18 the superintendent then have a little more time, a little less
19 detail in the one place and more time to devote to the other
20 two. And this we have been developing. Then, at the same time,
21 we tried to think of ways that we could make our program more
22 effective and, as I indicated, we made these three programs,
23 units, within the Central Facility, each one under the super-
24 vision of a program administrator. Once an inmate is in one
25 of these units he stays in the unit, and for all intents and

1 purposes that is his little prison within the Central Facility.
2 The program administrator is warden of it. The disciplinary
3 is handled, for the most part, right in that unit. The
4 classification is handled within that unit, and his correctional
5 counselors and so forth are operating with this smaller group.
6 Now, as I indicated before, we have made adjustments in our
7 staffing pattern of correctional personnel so that we could
8 afford to hire these other treatment personnel. So this was a
9 part of a picture that was evolving and being approved by the
10 Department of Finance and the legislative analysts and everybody
11 that has to approve this after our department approves it, when
12 we had all this trouble I described, with assaults and murder
13 and so forth, and the creation of X Wing. So we have three
14 things that were coming together there all at one time, and I
15 don't know whether we will ever have three more or we will have
16 one of them consecutively or concurrently, but I hope they
17 aren't as wide-spread as we have had.

18 Q. Superintendent Fitzharris, as part of that re-organization
19 you described, would that involve pushing the decision-making
20 responsibility or process down the level of staff? In other
21 words, to make it closer to the individual?

22 A. Yes.

23 Q. Involved --

24 A. Yes, that is right.

25 Q. Is there a justification for that?

1 A. Yes, indeed. As I said, this program unit which
2 encompasses about 600 men is staffed by a Program Administrator,
3 a Lieutenant, a Correctional Counselor II, a Sergeant, and I
4 think it is four Correctional Counsel I, the beginner level.
5 These people are the ones who have been dealing with many --
6 these people are the ones who have had close relationship, and
7 as a part of this program we put their offices -- each has an
8 office right in one of the cells, that is a cell has been
9 converted into an office so that the staff is getting closer to
10 where the inmate lives and operates; and we feel that the
11 disciplinary problems and the classification procedures have
12 been enhanced by the fact that we know them better.

13 Q. Now, Superintendent Fitzharris, let me ask you this. On
14 the basis of your obvious experience in the field of penology,
15 is a noisy inmate a danger to the tranquility of the institution
16 or the good order of the institution?

17 MR. COHLER: Your Honor --

18 THE WITNESS: I think so.

19 MR. COHLER: Your Honor, if we are going to go far into
20 questions eliciting opinions, certainly an opinion as to what
21 happens at the institution, how it is run, is clearly
22 appropriate from this witness; an opinion as to the nature of
23 inmates which goes beyond that, I think, we ought to have voir
24 dire before we elicit such answers.

25 THE COURT: Overruled.

1 MR. GRANUCCI: Miss Reporter, may we have that last
2 question read?

3 (Record read by the reporter)

4 THE WITNESS: Well, if we are talking about an inmate
5 who is obscene, profane, acting out, or just a hail-fellow-well-
6 met kind of guy that is also mouthing off are two different
7 things. The thing we are concerned about, primarily, in this
8 discussion, I guess, are the people who, within their cells,
9 shout obscenities and make all kinds of noise and scream and
10 holler and arouse other people. The weaker, in terms of the
11 more susceptible, will join in, and the first thing you know it
12 is unpopular not to do it, with everybody else. And so there
13 can be noises that could be heard for a half a mile with damage.
14 It is a hysterical kind of reaction so that these things must
15 be controlled or you do have chaos.

16 MR. GRANUCCI: Q. (And would you say that the quiet cells
17 described in your direct examination is a proper means of such
18 control of noise?

19 A. I don't know. I just don't know what is the proper
20 means. The best we have so far.)

21 Q. Mr. Fitzharris, I am showing you a blue bound volume,
22 approximately eight inches by eleven inches, and a couple of
23 inches thick. Do you know what this is?

24 A. Yes, sir.

25 Q. What is it?

1 A. A Manual of Correctional Standards.

2 Q. And what is that Manual of Correctional Standards?

3 A. This is a compilation of opinion of the best minds in the
4 field of corrections published under the auspices of the American
5 Correctional Association.

6 Q. Now, does the American Correctional Association include
7 penologists from other states as well as California?

8 A. Other countries as well.

9 Q. Does it include officials or those connected with Federal
10 prisons?

A. It does.

11 Q. Is that textbook a generally accepted authority of good
12 penal practice?

13 A. It is. This is a standard that we all try to achieve.

14 MR. COHLER: Counsel, I am going to offer no objection
15 of anything you wish to offer from the book you have described.

16 MR. GRANUCCI: Your Honor, I would like to place this in
17 evidence.

18 THE CLERK: Defendant's Exhibit E in evidence.

19 THE COURT: So ordered.

20 (Whereupon Manual of Correctional
21 Standards was marked as Defendants'
22 E for identification and received
into evidence)

23 MR. GRANUCCI: Q. Then would it be fair to say that in
24 operating your Adjustment Center and Isolation Row in the Adjustment
25 Center you attempt to conform with the standards set out in that

1 volume?

2 A. Yes, sir. I would hope, though, that we can go beyond those
3 standards and do something even better.

4 Q. In what way?

5 - (A. I don't know, but I certainly -- nobody's happy with
6 having to treat human beings like this, but some human beings
7 can't be treated otherwise, that we know of.)

8 Q. Now, there was some mention on direct examination that in
9 June of 1965, or rather in July of 1965, the toilets in the quiet
0 cells were flushed externally. A. Right.

1 Q. Is that the case now? A. It is not.

2 Q. How are they flushed now?

3 A. Automatically. Timing device in the alley instead of
4 the buttons. It is a pre-set time. I think -- I am not sure
5 whether it is 19 or 21 minutes apart.

6 Q. Would that timer be something like one would expect to
7 see in a photography laboratory or developing tank?

8 A. Yes. I have one in my own darkroom where you turn it to
9 so many minutes you want it to work and it gradually goes up and
0 then the light turns off, but at this point, after the lever
1 makes its way around to the zero point, the toilet's all flushed.

2 Q. And then what happens?

3 A. It resets automatically.

4 Q. Whose idea was it to install that device?

5 A. Mine.

1 Q. Do you remember when you first got the idea?

2 A. I don't believe I do.

3 Q. Was it motivated by your being a defendant in this
4 particular law suit?

5 A. It was not. I want to explain this a little bit. As I
6 said about the water, this is expensive in staff time, and to
7 have staff opening this door to this long tunnel, going the
8 length of the tunnel and pushing five or six buttons twice a
9 shift is tying up an officer when he is needed or could be
10 needed elsewhere.

11 Q. Now, Superintendent Fitzharris, on direct examination
12 you mentioned that the towel bars are no longer included in the
13 isolation cells.

14 A. I am not sure of that. I may have overstated, but I
15 think they are out because they do make fine weapons.

16 MR. GRANUCCI: Your Honor, that is all at this time. I
17 intend to call Superintendent Fitzharris as a defense witness
18 later on in the proceedings. However, if the Court wishes to
19 ask any questions, I would be perfectly agreeable at this time.

20 MR. COHLER: I have but a very few questions.

21 THE COURT: Do you reserve the right to recall?

22 MR. GRANUCCI: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. COHLER:

25 MR. COHLER: Q. Mr. Fitzharris, you said on cross-

1 examination that you thought that the quiet cell was a proper
2 means -- and I don't want to misstate you -- but, as I recall, it
3 was a proper means of evaluating the problem of the inciting type
4 of inmate, is that approximately correct?

5 A. May I have it read back?

6 Q. I don't want to misquote you, but you said the quiet
7 cell was a proper means, at least in part?

8 A. I think I said something to the effect, it is the best
9 we have now.

10 Q. Right. And when you said that about the quiet cell,
11 didn't you mean a quiet cell which is, as you have been told by
12 your officers and as you understand it, one where there is water
13 served twice a watch or the toilets are flushed regularly or the
14 cell is kept clean, where there are now towels, soap and wash
15 basins and water pitchers?

16 MR. GRANUCCI: Your Honor, that question is a bit
17 compound.

18 MR. COHLER: I will break it down.

19 MR. COHLER: Q. In so stating, with regard to a quiet
20 cell -- I will withdraw that. Would you say the same if the
21 quiet cell was not cleaned for weeks at a time?

22 A. Certainly not.

23 Q. Would you say the same if there was not water supplied
24 regularly to the quiet cell?

25 A. Certainly not.

1 Q. Would you say the same if inmates in the quiet cells were
2 not permitted an opportunity to shower regularly at least once a
3 week?

4 A. Just depends on circumstances.

5 Q. Shower regularly once a week, if possible?

6 A. If possible.

7 Q. Would you say the same if the toilets in the quiet cells
8 were not flushed regularly?

9 A. Yes. You mean --

10 Q. You would?

11 A. Would this be an ideal situation, if the toilets were
12 not flushed regularly, the best we have?

13 Q. The best you have.

14 A. No, I wouldn't say so.

15 Q. Thank you.

16 THE COURT: I have one or two questions. I am not
17 altogether clear in my mind respecting the duration of the time
18 fixed in connection with the incarceration of any individual in
19 the so-called strip cell or quiet cell. I am mindful that the
20 petition before the Court alleges that he served a period of
21 29 days. Was it on one occasion?

22 MR. COHLER: The particular point in question was
23 approximately 13 days, Your Honor, July 9th through July 20.

24 THE COURT: Well, there was a witness yesterday who
25 allegedly served a longer period of time.

1 MR. COHLER: There was a witness Tuesday who was close
2 to 60 days, of which all but four or five was in the strip cell
3 area, and there will be a witness after Mr. Frederick who will
4 similarly testify.

5 THE COURT: Let us take a cross section of the three or
6 four and take mean average of 20 days, Mr. Fitzharris. Now,
7 when is the 20-day period meted out to the inmate?

8 THE WITNESS: I don't think it is meted out, Your Honor.
9 I think that there are some cases where the inmate, by virtue
10 of his history and his behavior and his attitude and so forth,
11 is assigned to this kind of housing. The same --

12 THE COURT: You mean by "this kind of housing" the strip
13 cell?

14 THE WITNESS: The strip cell.

15 THE COURT: Yes?

16 THE WITNESS: If he shows cooperation, keeps quiet and
17 behaves, and seems to be capable of making adjustment elsewhere,
18 sometimes the sentence is modified.

19 THE COURT: And who would make the appraisal with
20 respect to the modification, sir?

21 THE WITNESS: The reports coming from the officers
22 through the sergeants, coming to the lieutenant and Program
23 Administrator.

24 THE COURT: Let us take a given case of Inmate X. Let
25 us assume that Inmate X uses bad language or throws cups or does

1 something as an infraction. Is he tried before the mass or does
2 he get a hearing?

3 THE WITNESS: He gets a hearing. The infractions of
4 the Director's rules which were brought in here can be roughly
5 divided, I suppose, into what would be called felonies and mis-
6 demeanors in our area. A small thing where a warning and
7 reprimand will suffice -- I am talking about the main line --
8 this is handled by the Program Lieutenant in the unit. If
9 anything -- any penalty short of going to isolation can be
10 administered by the Program Lieutenant or unit.

11 THE COURT: Now, in connection with the matters that I
12 have undertaken to hear, and the several inmates that we had
13 before us, do you recall, Mr. Fitzharris, whether in any of
14 those instances, after confinement in the strip cells with a
15 given period of time, whether or not there was any modification
16 based upon conduct in the strip cell?

17 THE WITNESS: I don't know that of personal knowledge.

18 THE COURT: My point is quite obvious. In other words,
19 if a 20-day interval is meted out or given at the outset and if
20 the conduct in the cell, however undesirable it may be, is
21 modified, what opportunity does the man have to go back to
22 another quarter?

23 THE WITNESS: The staff is in daily consultation about
24 these various people because over a period of time the officers
25 assigned to these 18 or 20 people get to know them quite well --

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1 they have to bring them meals, mail, count them, talk to them,
2 they have to counsel with them, they have to give advice -- so
3 they know them quite well, and this information is almost daily
4 a matter of discussion among the staff. I should point this
5 out, I guess, that nobody -- none of the shifts like to have to
6 go back with this personal service to these people and that it
7 is an extra duty to do on the shift, to take water back, to flush
8 the toilets and to do all these things, so they are anxious for
9 somebody to get out, not to keep them in, as soon as they
10 think they can be handled otherwise; but --

11 THE COURT: When does the punitive aspect of this type
12 of incarceration expend itself and when does the preventive
13 measure enter?

14 THE WITNESS: Well, I suppose that -- we hope that it is
15 all preventive, that from the very worse place that the progress
16 is up.

17 THE COURT: Those are purely philosophical thoughts,
18 are they not? Let us talk about the realities.

19 THE WITNESS: Yes. But there is a progression through
20 the Adjustment Center to the main line. Now, this depends on
21 the individual and his past history and background. Many men
22 have the venacular, holds their mud, not blow up, be seemingly
23 cooperative for a month or so, and then --

24 THE COURT: Let us take the petition before the Court.
25 He is known as a writ maker, is he not, a writ writer?

1 THE WITNESS: I would say so. / /

2 THE COURT: Would you regard him as the screaming,
3 yelling type of guy?

4 THE WITNESS: Generally speaking I don't know enough
5 about his actual behavior, but I do know that when he arrived
6 at Soledad he did make fuss and I have had -- I don't recall
7 the officer's name -- telling me that he had warned him on
8 several occasions to stop yelling, noise-making, and so forth,
9 and he didn't cooperate; and this was prior to the actual event
10 that led up to his being put back there. But he, at that point,
11 was brought in about an intermediate level. He was not a
12 maximum -- he was not on isolation, but he was about ready to
13 go out. Now, as an example of progression, prior to -- I think
14 about the time that this Court took an interest, there was an
15 attempt made independently of this action to move him into X
16 Wing, and, because of some alleged or fancied problem he had with
17 the officers there, he rebelled and wound himself back into
18 it. Actually it was necessary for officers to subdue him
19 physically.

20 THE COURT: And one other question concerning the
21 psychiatric consultant; what is the province of the psychiatric
22 consultant, generally?

23 THE WITNESS: Well, his primary job is to interview and
24 evaluate the men who are to appear before the Adult Authority,
25 who have certain circumstances, background or violence background.

1 to give the Adult Authority some psychiatric evaluation. He
2 also makes time to work with us on some of our problem cases and
3 he has had, at one time -- and we had to abandon it for lack of
4 staff and lack of time -- a program going within O Wing whereby
5 he, personally, supervised this small group of men and was able
6 to accomplish something with several of them. I think -- did
7 one of them testify? I think one testified the other day, or
8 was going to, the one who eventually made his way over to our
9 South Facility, and he is now working out on the farm.

10 THE COURT: Well, let us take a specific. Yesterday
11 afternoon Mr. Porter testified, do you recall -- you may have
12 been absent at the time -- I think he was the last witness --
13 and he had attempted some self-destruction either the night
14 before or some period of time before, and he requested psychiatric
15 aid and help -- and we might infer that his baser conduct would
16 be afforded a predicate for asking psychiatric help. Do you
17 know, Mr. Fitzharris, how or in what manner he may obtain
18 psychiatric help?

19 THE WITNESS: Of course the California Medical Facility
20 at Vacaville is a medical center and they have quite an
21 extensive psychiatric staff; but the need throughout the
22 department is so great that it is not possible to give everybody
23 who has this kind of a borderline need this attention. In
24 addition to that -- and I know nothing of Mr. Porter's particular
25 case -- but it could well be that he is what might be known as a

1 postpsychotic. We have some in this Adjustment Center who slip
2 in and out of psychosis. They, one day, are just as rational
3 and sensible as anybody, and the next day they are seeing bugs
4 on the wall. Certainly the psychiatric help is thin and we have
5 now a package of staff requests, including psychiatrists and
6 psychologists or psychiatric social workers, whatever we can
7 get, plus additional correctional officers to establish a
8 psychiatric unit at the facility. We have had psychiatrist
9 positions that we couldn't fill because we are down in the
10 country and psychiatrists don't like to be away from the
11 universities and so forth, big hospitals; so that we have had
12 difficulty filling what positions we have had. And, as a result,
13 one of them -- the one whose position was transferred to
14 Vacaville -- is a kind of residency. But there is a continual
15 need that we have to strike a point where this can be furnished.
16 Now, the next thing that must be said is that, if a man is an
17 Adjustment Center case, then he has two problems; he must be
18 controlled and he must have help.

19 THE COURT: Let us take Porter. Again, for purposes
20 of illustration, do you regard that the strip cell would be
21 conducive to his aid or help in assuming he be psychotic?

22 THE WITNESS: Well, the first thing that a violent
23 psychotic must have is control. Some places they use straight-
24 jackets. In old days they used tranquilizers; so the control
25 must be there.

1 THE COURT: Do you know whether or not Porter was,
2 himself, a violent person?

3 THE WITNESS: I don't know his history, sir. I do note
4 that I think it was on August 1st that he was one of the ones
5 who broke up his toilet and wash basins.

6 THE COURT: The photographs were shown you --

7 THE WITNESS: And he admitted he broke the toilets. This
8 dates back to -- this is a hysterical kind of thing that grows.
9 One person does it and a lot of other people join in. Dr. Kunkel
10 may offer some testimony later to what his observations have
11 been about these self-mutilators. Oddly enough, he was telling
12 me -- I shouldn't give his testimony -- but he was telling me a
13 while back that these self-mutilations occur only when the
14 staffing is the thinnest in the early evening, when the
15 correctional officer and staffing is thin and when there is only
16 one medical technical assistant in the office. There has never
17 been, according to Dr. Kunkel a tendon, an artery or a nerve
18 cut. So we are not sure that these people are committing
19 suicide. And the chaplain told me a while back he asked one of
20 his paritioners that he visited, he said, "Did you really want
21 to commit suicide?" And the man said, "Chaplain, if I wanted
22 to commit suicide I'd know where to cut."

23 THE COURT: Do you have any recollection of the number
24 of suicides that have been attempted in your facility within the
25 course of the scope of this hearing?

1 THE WITNESS: This is if every self-mutilation is an
2 attempted suicide? There have been quite a few, but apparently --

3 THE COURT: What would you mean by "quite a few?" A
4 hundred?

5 THE WITNESS: I think we have had in the last -- since
6 this -- I don't know if you mean to tie it to this hearing --
7 but since, say, the last six months or probably 45 -- these add
8 up to scratches that aren't even sutured. But we have had one
9 man there that three times in one evening attempted to cut
10 himself and none of those times -- I think we transferred him to
11 Vacaville. Some of these people we have sent, where Dr. Hack
12 and the medical staff feel that they are medical problems and
13 need attention, they are moved to Vacaville.

14 THE COURT: By special order?

15 THE WITNESS: Yes, sir.

16 THE COURT: In accepting the inmate from the Youth
17 Authority I suppose you have a complete evaluation?

18 THE WITNESS: Yes, sir. The same as we do for the
19 case number.

20 THE COURT: I assume an evaluation was made with respect
21 to the Millette boy?

22 THE WITNESS: I know nothing of that case at the moment.

23 THE COURT: Are you familiar with that case at all?

24 THE WITNESS: Only that it happened and there are some
25 things that happened that I don't recall the detail.

1 THE COURT: Do you recall talking to the father or the
2 mother of the boy?

3 THE WITNESS: I don't know. I think Mr. Black, the Deputy
4 Superintendent, North Facility, may have talked to them, and,
5 as I recall, and this is strictly pulling it out of the air, that
6 the father was understanding. There may have been some
7 knowledge in the family, but I know nothing of the case at the
8 moment.

9 THE COURT: Is Mr. Black still with your facility and
10 available for testimony?

11 THE WITNESS: Yes, sir, he is the one that is running
12 the place while we are all up here.

13 THE COURT: I have no further questions
14 Any more questions of this witness?

15 MR. COHLER: Not at this time, Your Honor.

16 MR. GRANUCCI: Not at this time, Your Honor.

17 THE COURT: One other question, Mr. Fitzharris, and it is
18 born of a certain change-over with respect to practice, and I
19 know that you would rather not have afforded, in connection with
20 water and the like, but I assume you approved the use of the
21 basin and the use of the pitcher and so forth?

22 THE WITNESS: I may have suggested it.

23 THE COURT: And it did meet with your approval, whether
24 you suggested it or not?

25 THE WITNESS: Yes, sir.

1 THE COURT: And you reaffirm that it was not born of
2 the incident of the lawsuit or anything like that, although it
3 was coincidental?

4 THE WITNESS: Consciously I don't connect it that way.

5 THE COURT: It was sheer coincidence?

6 THE WITNESS: If Your Honor had not taken an interest
7 in this case we would have done it anyway, let me put it that
8 way. If I can think of any better way to furnish water without
9 having those pitchers broken up, I will try to do that.

10 THE COURT: With respect to the ventilation in the strip
11 cells, I assume there will be testimony on that?

12 MR. GRANUCCI: Yes, Your Honor, there will be.

13 THE COURT: When the flaps are closed?

14 MR. GRANUCCI: That is what I am referring to, Your
15 Honor.

16 THE COURT: All right. We will adjourn then.

17 MR. COHLER: Your Honor, may I ask a question or two?

18 MR. COHLER: Q. Mr. Fitzharris, when were the first
19 discussions held looking forward to the installations of water
20 pitchers and basins?

21 A. I don't recall.

22 Q. Can you give the Court an approximate date?

23 A. No.

24 Q. Was it before last Christmas of 1965?

25 A. I can't fix that in my recollection at all. This was

1 part of a lot of things. I have no way to peg it.

2 Q. Were there several discussions that you can recall?

3 A. Let me back up on this a little bit. I know that it
4 wasn't very long after we decided to do it that we got them. I
5 was surprised how fast we got them.

6 Q. A matter of weeks or less?

7 A. Yes, I'd say a couple of weeks maybe.

8 Q. At this time this Court had taken an interest, as you
9 put it, earlier?

10 A. I don't know what time -- I don't know just when the
11 Court decided to act.

12 W. Do you know approximately when counsel was appointed
13 for the Plaintiff?

14 A. I do not.

15 Q. When did you first become aware of this action, Mr.
16 Fitzharris?

17 A. I don't mean to be evasive.--

18 Q. I am not saying you are. I just want to find out --

19 A. -- but I must point out that we have a hundred to a
20 hundred fifteen actions going through my office a day -- I mean
21 a week -- a month, and Mr. Jordan has had a good share of them.
22 Mr. Jordan had many petitions; he had many letters to various
23 people on this point; and I frankly cannot, without looking at
24 some records, know when this Court did appoint counsel.

25 Q. You don't recall when you became aware that the Court

1 had appointed counsel, is that correct?

2 A. Yes.

3 Q. Thank you.

4 MR. GRANUCCI: No further questions.

5 THE COURT: Thank you, Mr. Fitzharris.

6 We will resume, then, tomorrow at 10:00.

7 (Whereupon the proceeding was adjourned until 10:00 A.M.
8 on Friday, August 12, 1966)

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