

MORNING SESSION

1 THE CLERK: Civil actions 44309 and 44706, Robert
2 Charles Jordan, Jr. versus C. J. Fitzharris, et al for further
3 evidenciary hearing.

4 MR. COHLER: Ready for the Plaintiff and Petitioner.

5 MR. GRANUCCI: Ready for the Defendants, Your Honor.

6 MR. COHLER: Please call Sergeant William Thomas Frederick.

7 WILLIAM THOMAS FREDERICK,
8 called as a witness by the Plaintiff, who, being first duly
9 sworn, testified as follows:

10 THE CLERK: Please state your full name and address.

11 THE WITNESS: William Thomas Frederick, Correctional
12 Sergeant, Soledad Correctional Facility.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. COHLER:

16 MR. COHLER: Q. Sergeant Frederick, do you pronounce
17 your name as if there was an "s" at the end, as "Fredericks"?

18 A. I do.

19 Q. And you are presently employed at the Correctional
20 Facility in Soledad, California?

21 A. Yes, sir.

22 Q. About how long have you been so employed?

23 A. About nine years the 9th of this month.

24 Q. Sergeant, I would like to review your recent positions
25 with you, please. Were you a Relief Adjustment Center

1 Sergeant for one year in 1963, and 1964?

2 A. I believe so. I don't remember the exact dates, but I
3 believe so.

4 Q. And following that, Sergeant, were you Third Watch Relief
5 Sergeant for about 12 or 14 months until June of 1965?

6 A. Yes, sir.

7 Q. And since June of 1965, Sergeant, have you been the
8 Second Watch Adjustment Center Sergeant on O-Wing, and also
9 Second Watch Sergeant in A-Wing?

10 A. Correct.

11 Q. Is Unit Three of the institution composed of three wings,
12 O, A, and X-Wings?

13 A. Yes, sir.

14 Q. Within Unit Three is there Orientation and so-called
15 Close-Custody Wing?

16 A. Yes.

17 Q. And also within Unit Three, do O-Wing and X-Wing
18 presently comprise what is known as the Adjustment Center?

19 A. Yes.

20 Q. Since June of 1965, when you were assigned?

21 A. I believe so.

22 Q. On the first floor of O-Wing there are two corridors,
23 is that correct?

24 A. Yes.

25 Q. East and West?

1 A. That is correct.

2 Q. And the cells off the east corridor are known as
3 Maximum Security or "Max Row"?

4 A. That terminology has been -- well, it's known actually --
5 actually it's the Grade I Section, but this has been --

6 THE COURT: Please speak louder.

7 THE WITNESS: Actually it's the Grade I Section, the
8 east side is the Grade I Section of the Adjustment Center, but
9 the Terminology "Max Row" comes from sometime back. We
10 continued to use this terminology, but it's not correct.

11 Q. Explain what Grade I means.

12 A. The Adjustment Center is comprised of two buildings, O-
13 Wing and X-Wing, and Grade I is the first floor, Grade II
14 comprises the second and third floors of O-Wing, and Grade III
15 comprises the X-Wing, the program section of the Adjustment
16 Center.

17 Q. What does that mean, Sergeant, please?

18 A. That is the section where inmates are offered a program;
19 it is a graduated process. They may begin in O-Wing and
20 graduate to X-Wing. They have opportunities for academic
21 instruction, arts and crafts, yard facilities. They have more
22 exercise, more other privileges in terms of visits and canteen
23 privileges and so forth.

24 Q. What part of the program, as you described it, which is
25 available in X-Wing and which deals with such matters as

—1 education or counseling, is not available in O-Wing?

2 A. Would you repeat your question?

3 Q. Certainly I will. Is there a part of the program, as
4 you have described it, which is available in X-Wing but not in
5 O-Wing?

6 A. No, sir.

7 Q. No educational program?

8 A. Well, occasionally some inmates will request cell
9 correspondence courses, and at the present time we do not have
10 an instructor. When I said that the inmates are authorized
11 arts and crafts and academic courses in X-Wing, they have also,
12 until recently -- our instructor transferred and the institution
13 has been unable to hire a replacement, but when the instructor
14 was here he would, on his own, go into O-Wing and make
15 arrangements for cell correspondence courses to inmates that
16 requested same.

17 Q. Would that be true of inmates detained on the first floor
18 of O-Wing as well?

19 A. Not in the isolation section.

20 Q. That is on the other side?

21 A. On the west side, correct.

22 Q. And that has been true since at least June of 1965?

23 A. Yes, sir.

24 Q. And how many cells are there all together on the west
25 side, the isolation section?

1 A. A total of 24 cells.

2 Q. And that has been true since at least June, 1965, when
3 you were assigned?

4 A. Yes, sir.

5 Q. Are there 18 cells at the forward part of that west
6 corridor which are known as isolation cells?

7 A. Yes.

8 Q. And are there six other cells at the rear of that west
9 corridor on the first floor, sometimes known as quiet cells and
10 sometimes strip cells?

11 A. Yes.

12 Q. And is that true since at least June, 1965?

13 A. That is correct.

14 Q. You personally sometimes refer to these rear cells as
15 quiet cells and sometimes as strip cells?

16 A. Yes, sir.

17 Q. And, as best as you can recollect, Sergeant, was the
18 usage picked up from jargon of the inmates?

19 A. As far as I am concerned, yes.

20 Q. Since June, 1965, have your responsibilities included
21 those of Second Watch Sergeant for both O-Wing and for A-Wing?

22 A. Yes.

23 Q. And have you spent at least part of each day on duty in
24 O-Wing?

25 A. I don't spend as much in A-Wing. Most of my time is

1 involved in O-Wing, but I do check into A-Wing every day.

2 Q. Do you make weekly inspections?

3 A. Yes, I do.

4 Q. You go to A-Wing at least once on a given day?

5 A. Yes.

6 Q. Do you also conduct an orientation class in A-Wing?

7 A. This is correct.

8 Q. In the nature of custodial orientation where various
9 rules are explained to inmates?

10 A. Yes.

11 Q. You may explain more fully if you wish of what this
12 consists of.

13 A. Well, we make them aware of certain rules that are
14 necessary in the various housing units throughout the institu-
15 tion regarding count procedures, where they may walk, where they
16 can go and unlocks and lock-ups, and the yard, and recreation
17 facilities; and generally questions are asked concerning how
18 long they are going to be there. It is a five-week orientation
19 course and the classification process is explained somewhat at
20 their request. I don't ordinarily do this. My orientation is
21 rather brief. It depends on the group. It is a weekly group.
22 There is a total of five groups and each week I give a lecture,
23 you might say, to each group. Some groups are more talkative
24 than others. The class may be 15 or 20 minutes. Some classes
25 as much as an hour, hour-and-a-half, but we do have different

1 staff members throughout the institution -- the psychiatrists --
2 to make -- recently has a recording and the gentleman that
3 works for him comes down and makes his recording -- mail and
4 visiting officers, and the Associate Warden makes an
5 orientation lecture, the various --

6 Q. You refer to the psychiatrist. Is that a gentleman by
7 the name of Dr. Hack, H-a-c-k?

8 A. Right.

9 Q. Is he a consulting psychiatrist?

10 A. Yes, sir.

11 Q. Have you now stated all your duties which would require
12 your making a daily check, a weekly inspection, and an orienta-
13 tion weekly?

14 A. Well, I check with the officer every day. There may be
15 some inmates that have problems that he can't handle. He might
16 refer them to me. Invariably he calls me on the telephone about
17 something. Normally there is correctional counselor that
18 resides during the eight hours with the officer; because of this
19 I dedicate most of my time to O-Wing, but I do check in every
20 day.

21 Q. These duties take approximately less than half your time,
22 don't they?

23 A. Yes, sir.

24 Q. And has that been generally the case since June, 1965?

25 A. Yes, sir.

1 Q. Sergeant Frederick, would you please describe your
2 responsibility as Adjustment Center Sergeant in O-Wing as it has
3 been since June, 1965?

4 A. My duties on O-Wing consist of the safe-keeping, the
5 welfare, feeding and housing of all inmates. Also I assist in
6 maintaining the place in a clean, sanitary condition. Addition-
7 ally I set classification processes, and, also, I supervise A-Wing
8 as much as I possibly can.

9 Q. Is part of your responsibility, Sergeant, as Adjustment
10 Center Sergeant in O-Wing to train officers who have already
11 served a general institution training for the particular needs
12 in O-Wing?

13 A. Yes. I am not the personnel training officer, but being
14 a supervisor I am required to help the officers do their jobs
15 properly. There are certain situations peculiar --

16 Q. What are those certain factors which are peculiar to
17 the Adjustment Center's setting which you try to point out?

18 A. Well, the Adjustment Center is a unique situation. It
19 is an institution within an institution and people that are
20 confined there are unable to adjust in a general population.
21 They cannot, perhaps, get along with their peers and staff
22 members. They invariably violate the rules and regulations of
23 the institution. Many of them are dangerous, have inflicted
24 physical harm, have killed other people. Many of them may not
25 have done so, but they have the potential for it. And, generally,

1 inmates that are confined in there are for segregation
2 purposes to enable -- all institutions, to give the majority of
3 the general population, the majority of the inmates the
4 opportunity to progress and try to help themselves while they
5 are in prison, it becomes necessary to segregate a very small
6 minority and place them under more stern control where they can
7 be observed closely and eventually try to get them out into
8 some general population in the future.

9 Because we are dealing with this type of people, it is
10 obvious that all officers should be very careful, should be very
11 observant in the course of their duties. Cell searches must be
12 conducted; they must observe the behavior of the inmates. This
13 is constantly stressed. The custodial functions, the observa-
14 tion of people, the situation where information is relayed to
15 one another, perhaps a person's behavior will regress and it is
16 necessary to bring it to the attention of the psychiatrist, for
17 example; it is a number of things. I can't think of everything at
18 this particular moment.

19 Q. Sergeant, you spoke of some inmates who had various
20 characteristics which you say would require their being in the
21 Adjustment Center because they have the potential for being
22 dangerous.

23 A. Yes.

24 Q. How is that potential judged? Through what processes is
25 it determined that the potential exists for a given inmate?

1 A. Yes. I am not an expert on everything whenever dealing
2 with people and sometimes we can have a wrong interpretation
3 when we initially see a person, but it is when we begin to know
4 him, begin having personal knowledge and information that is
5 available in the file, the way the man has behaved in the
6 general population -- the man may not have committed serious
7 violations in terms of causing some person physical harm, but he
8 may be a management problem; he may, where there is no motiva-
9 tion for him to take advantage of the program that is available
10 to him, and he is constantly getting in trouble gambling or
11 various other illegal activities -- that require separation for
12 his own welfare and to try to help him understand what his
13 problem is and eventually --

14 Q. You mentioned a man who may have indulged in gambling.
15 Would that be considered in the nature that he ought to be
16 considered for confinement?

17 A. On some occasions, yes; other occasions, no. It depends
18 on the extent.

19 Q. Sergeant, in the course of trying to pass on to your
20 officers in the Adjustment Center that information which is
21 peculiarly important to work in the Adjustment Center, do you,
22 from time to time, give any instructions or offer any advice with
23 respect to something known as a Suicide Watch?

24 A. Yes, sir, occasionally.

25 Q. Would you tell the Court about that, please?

1 A. Well, I'm not -- in the course of my duties I'm not
2 authorized to strip any inmates unless I receive approval or
3 authorization from my superiors. However, there are a few
4 occasions when it's a matter of judgment; perhaps my superiors
5 are not there, an inmate has suffered self-mutilation, or
6 perhaps some other suicidal attempt, and my own judgment -- if
7 I feel he should be referred to the psychiatrist. Normally I
8 do so because I am not a psychiatrist and I figure that a
9 qualified person -- the case should be referred to a more
10 qualified person than I am, and if my superiors are not present
11 I use my own judgment for the safety of the inmate and may strip
12 him and place him on Suicide Watch. I would immediately notify
13 my superior and make arrangements for Dr. Hack to see him.

14 Q. How often does Dr. Hack visit the institution -- and I
15 ask you to tell the Court about the period June, July, 1965?

16 A. I believe Dr. Hack's hours of duty are five days a week
17 from 8:00 o'clock in the morning till noon. Of course he is the
18 consulting psychiatrist for all three facilities, approximately
19 3,000--3500 inmates. He has a pressing schedule and he is only
20 one psychiatrist. I believe those are his hours, to the best of
21 my knowledge. Occasionally he is unable to -- because of
22 demands placed on him -- to immediately see an inmate. He tries
23 his best. He makes himself available as much as possible,
24 particularly on emergency cases.

25 Q. Is there a record or a notation or a document of any

1 sort down in the Adjustment Center which makes available to you
2 at any given time the information as to where Dr. Hack may be
3 reached?

4 A. Excuse me; in any writing, where he may be reached?

5 Q. Is there any way at all that you have immediately at
6 hand, a way of finding out where Dr. Hack may be at that
7 moment?

8 A. First I will call the hospital. He has an office in
9 the hospital and if he is not there he leaves word where he
10 might be reached somewhere in the institution.

11 Q. Sergeant, as part of your responsibility -- well, let
12 me ask you this. Would you say that, aside from the general
13 institutional training which each officer receives, that yours
14 is the primary responsibility for training the officers in the
15 Adjustment Center for the peculiar needs of the Adjustment
16 Center?

17 A. Yes, I would think that I would be directly responsible
18 for that.

19 Q. And, in addition, the responsibility to see that your
20 officers do, in actual practice, follow the rules?

21 A. As best as is possible, yes.

22 Q. And as the Adjustment Center Sergeant who has worked
23 with your officers, you are generally able to express an opinion
24 to other personnel about an officer's ability?

25 A. Yes.

1 Q. You do your best to correct officers if rules are not
2 being properly headed or if standard practices are not being
3 followed, and you try to follow all of the rules?

4 A. Yes, sir, I try.

5 Q. And to maintain performance of all policies and
6 procedures?

7 A. I try my best.

8 Q. Sergeant, do you, in your own individual discretion,
9 decide which rules or practices are to be followed and which can
10 be ignored?

11 A. I don't understand your question. I am sorry.

12 Q. Do you exercise your own judgment in your own individual
13 discretion to decide what rules should be followed or what
14 rules should not?

15 A. I try to follow the rules and policies as well as I can.

16 Q. You treat each rule and policy with the same respect?

17 A. Well, all policies should be respected. It is my job
18 to see that they are carried out as well as I possibly can.

19 Q. You try to see that you and your officers do what is
20 supposed to be done?

21 A. Correct.

22 Q. In July, 1965, was there an officer named Hoagland
23 working for you on the first floor of O-Wing?

24 A. Yes, sir.

25 Q. And at that time was there another officer working for

1 you named Spoon?

2 A. Yes, sir.

3 Q. And in July, 1965, the Program Administrator for Unit
4 III was your immediate superior on the Second Watch?

5 A. That is correct.

6 Q. And at that time was Mr. Johnston Program Administrator
7 for Unit III to whom you reported directly?

8 A. Yes.

9 Q. And would you report to Mr. Kiepura from time to time if
10 Mr. Johnston was absent?

11 A. Yes, I would.

12 Q. Sergeant, to your knowledge do you know to whom Mr.
13 Johnston, the Program Administrator, was directly responsible?

14 A. At that time I believe -- I may be wrong -- Mr. Donnelly.
15 I don't remember when he became Deputy Superintendent. In any
16 event, if he was Superintendent at that time, Mr. Johnston
17 would report to him.

18 Q. Sergeant, Officer Spoon had been an officer on the
19 Second Watch in O-Wing, first floor, when you first were assigned
20 to the Adjustment Center?

21 A. Yes, sir.

22 Q. And Officer Spoon remained there dealing with inmates
23 on both the east side and the west side of the first floor at
24 least until July, 1965, did he?

25 A. Yes, in relief capacity.

1 Q. And, in fact, Mr. Spoon remained in that capacity
2 directly under your own supervision until about Spring time of
3 this year, 1966?

4 A. I believe so. I don't remember the exact date.

5 Q. Do you recall that it was perhaps in April, 1966, that
6 Officer Spoon was re-assigned out of the Adjustment Center?

7 A. I believe that was the date, somewhere around April or
8 March or something. I don't recall exactly.

9 Q. Was Officer Spoon, who had been working under you and
10 with whom you had been working in the Adjustment Center, re-
11 assigned without your having been consulted at all?

12 A. Yes, he was.

13 Q. And had you personally been satisfied with his performance
14 of his duties?

15 A. Yes, I was.

16 Q. You had not recommended that he be transferred?

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

18 Q. Was the re-assignment of Officer Spoon the cause of
19 concern to the other officer for the job security?

20 A. Well, some of the officers felt a little bad about it,
21 yes.

22 MR. GRANUCCI: Your Honor, I will object, hearsay.

23 THE COURT: Sustained.

24 MR. COHLER: Q. In your experience as Adjustment Center
25 Sergeant and working for almost nine years at the institution,

1 would you say that officers are generally concerned about
2 their job security?

3 A. Generally in terms of -- well, let's put it this way.
4 That is a difficult question to answer. One enters the
5 correctional field -- we are all aware of the fact that we are
6 subjected to work any and all hours, long hours at a time.
7 Generally, however, when you begin to obtain a little bit of
8 seniority, a little bit of experience and you work nights for
9 several years and then finally you begin to work days, and if
10 you are family man, as most people are, working nights, can't
11 see your children and your family, working days you can be with
12 them. There is no school in the evening for the children and
13 you can't spend some nights at home. If you have been working
14 days and then all of a sudden you get a change without any
15 notification or anything you might be a little bit concerned.
16 If you are notified well in advance then it shouldn't alter your
17 plans. You have to expect this. But everyone would like to
18 make plans, vacations and what-have-you, particularly in the
19 summer time; and if you are going to get a job-change from one
20 day to the next without any notification you would be a little
21 bit concerned. But, normally, you wouldn't be.

22 Q. You hadn't thought that Officer Spoon should be transfer-
23 red out of the Adjustment Center, had you?

24 A. No. It's just my personal opinion. I did not think he
25 should be.

1 Q. Indeed, when you learned of this, didn't you ask your
2 own superior, Mr. Johnston, why Officer Spoon had been moved
3 out of the Adjustment Center?

4 A. Yes, I did.

5 Q. And Mr. Johnston did not --

6 MR. GRANUCCI: Objection, hearsay.

7 MR. COHLER: Your Honor, this is a defendant in this
8 case. I believe it is an admission.

9 MR. GRANUCCI: I know, Your Honor, but the ordinary rules
10 would require -- if counsel wants to take advantage of the
11 additions and exceptions to the hearsay rule, the ordinary
12 foundation will show time, place and persons present.

13 THE COURT: You may establish.

14 MR. COHLER: Q. Do you recall ever having a conversation
15 with Mr. Johnston regarding the transfer of Officer Spoon?

16 A. Officer Spoon was not transferred. He was re-assigned.

17 Q. I beg your pardon. Do you recall any such conversation?

18 A. Yes. I don't recall exactly verbatim what took place,
19 but I did ask him why Mr. Spoon was re-assigned, yes.

20 Q. And that was while you both were on duty at the
21 institution?

22 A. Yes, sir.

23 Q. And what did Mr. Johnston tell you, if anything, about
24 what he knew as to the re-assignment of Officer Spoon?

25 A. Well, he eventually told me.

1 Q. Would you tell me what he told you at that particular
2 time?

3 A. He didn't know himself at that particular time.

4 Q. Did he tell you he had checked into it with his own
5 superiors?

6 A. Yes, sir.

7 Q. Did you have a subsequent conversation with Mr.
8 Johnston on the subject matter?

9 A. In what relation? I don't follow your questioning
10 there. You mean if he gave me an answer?

11 Q. He said he was going to check into it?

12 A. Yes, sir.

13 Q. You did have a subsequent conversation?

14 A. Yes, sir.

15 Q. What was the answer he gave you?

16 A. As I recall it, he told me that -- let's see. He had
17 talked to some other people and it was the opinion, I believe,
18 he stated of Mr. Donnelly, the Deputy Superintendent -- it was
19 the opinion that perhaps the strain of the assignment was
20 beginning to get to Mr. Spoon and perhaps he unconsciously
21 may be becoming slightly overbearing, possibly, in his relation-
22 ship with inmates. This is all I was told at the time. I, from
23 personal knowledge from having observed the officer in question
24 perform his duties, I, personally, felt otherwise.

25 Q. In relating the latter conversation with Mr. Johnston,

1 words such as "slightly", "possibly", and "perhaps." Do you
2 recall that those were used by him?

3 A. Yes, as near as I can recall it. This was what was
4 said; that possibly the job could be getting too much, and
5 possibly he could be overbearing.

6 Q. In your experience in the institution, and particularly
7 since you have been Adjustment Center Sergeant, Mr. Frederick,
8 how often has it happened that neither you nor the Program
9 Administrator has been consulted before a re-assignment?

10 A. I believe -- this is speaking for myself -- this is the
11 first time it's happened to me, yes, that I haven't been
12 notified, yes.

13 Q. Or to your knowledge that Mr. Johnston didn't know
14 anything about it?

15 A. I don't believe he did at the time or he would have
16 told me immediately, yes.

17 Q. To your knowledge this is the first time that you know
18 of that there had been a re-assignment without Mr. Johnston
19 knowing about it?

20 A. That I know of, yes.

21 Q. Yes. Now, Sergeant, Officer Spoon has come back to the
22 Adjustment Center?

23 A. Yes, sir.

24 Q. In fact, wasn't he brought back on July 31, 1966, about
25 two weeks ago?

1 A. I believe so, yes.

2 MR. COHLER: Mr. Grace, would you please mark for
3 identification as Plaintiff's next in order several pages
4 stapled together, top page of which is entitled "Isolation Log",
5 in the upper right-hand corner bears the writing "Item 5"?

6 THE CLERK: Plaintiff's 12 for identification.

7 THE COURT: So ordered.

8 (Isolation Log marked as
9 Plaintiff's Exhibit 12 for
identification)

10 MR. COHLER: Counsel, will you stipulate that what has
11 just been marked is produced by the Defendants?

12 MR. GRANUCCI: It is the one we gave you, counsel.

13 MR. COHLER: Your Honor, I offer Plaintiff's 12 in
14 evidence.

15 THE COURT: So ordered.

16 MR. GRANUCCI: No objection, Your Honor.

17 THE CLERK: Plaintiff's Exhibit 12 in evidence.

18 (Whereupon Plaintiff's Exhibit
19 12 was received into
evidence)

20 MR. COHLER: Mr. Grace, will you please mark as
21 Plaintiff's next in order for identification two pages stapled
22 together, the top page of which bears the heading "Segregation
23 Record", in the upper right-hand corner of which is "Item 6"?

24 THE CLERK: Plaintiff's Exhibit 13 for identification.

25 (Segregation Record marked as
Plaintiff's Exhibit 13 for
identification)

MR. COHLER: Counsel, Plaintiff's 13 --

MR. GRANUCCI: Same stipulation. No objection to its admission.

MR. COHLER: I offer it in evidence, Plaintiff's 13.

THE COURT: So ordered.

THE CLERK: Plaintiff's Exhibit 13 in evidence.

(Whereupon Plaintiff's Exhibit
13 was received into
evidence)

MR. COHLER: Q. Sergeant Frederick, I ask you to look, please at what is now Plaintiff's Exhibit 12. Please take your time in looking through this document and explain as best you can the purposes of these documents as you may have had occasion to work with them in your capacity as Adjustment Center Sergeant.

A. This is what we call an Isolation Log. It is required, to the best of my knowledge, it is required by State law to enter the names of all inmates that are undergoing isolation sentences. The top page that I am looking at is the -- normally would be the right-hand page on the book. It's a large reamer-type binder -- huge -- a little bit larger than the size of this paper here.

The second page would be on the left-hand side of the page. One side would be for official visitations, doctor calls and so forth. There is also an officer's roster where the officer on duty is required to sign his name and the hours they are on duty, and at the bottom you have the column report. We

1 also log on this portion of the piece of paper the isolation
2 count at various times of the day.

3 On the sheet where the inmates names are placed --

4 Q. Excuse me. Would you refer to it, please, as the
5 second page?

6 A. Well, it's the left side of one page.

7 Q. In Plaintiff's Exhibit 12 it is the second page that
8 you are looking at, is that correct? I ask you only to do
9 this.

10 A. This is Item 5. Is this what I am reading correctly?

11 Q. That is Item 5 as it was numbered in the production of
12 documents in the instant hearing. It is Plaintiff's Exhibit 12.

13 A. On the second page would be -- it is listed "movement
14 of inmates."

15 Q. Thank you. You may continue, please, explaining the
16 function of that page.

17 A. Well, you have the month and day of the year, and you
18 have the commitment number of the inmate and his name, and the
19 present isolation cell where he is confined and the time that
20 he was placed in the cell and the time that he would be removed
21 from isolation status, the time out. Then you have a column in
22 the right-hand corner that is listed "comments". If an inmate
23 is placed in isolation on pending disciplinary status and
24 several days later he goes before a disciplinary hearing and he
25 is issued an isolation sentence, then the officer will return to

1 this log and he will enter so many days isolation, effective
2 such and such a day.

3 Q. In other words, an inmate may be in isolation for a
4 period of time before he appears before a Disciplinary Committee?

5 A. That is correct.

6 Q. And if the disposition of the Committee is such that he
7 is ordered to isolation, he receives credit for the time he has
8 already been there?

9 A. Ordinarily. This is the general policy.

10 Q. And there are inmates -- excuse me. You refer to
11 Plaintiff's 12 on the first page thereof as listing inmates who
12 were serving isolation sentences. Would the names of inmates
13 who were actually housed in the isolation section but who had
14 not yet had a disposition or who had not yet been held to serve
15 a sentence be included?

16 A. No, sir.

17 Q. In other words, there are people actually housed in the
18 isolation section not on that list because they are not there
19 under an isolation sentence?

20 A. The only people that are, in effect, actually undergoing
21 isolation sentences.

22 Q. And the second page before you in Plaintiff's Exhibit
23 12 includes the names of persons who are on duty at the time,
24 is that correct?

25 A. Yes, the top page shows that.

1 Q. It also is supposed to register anyone who comes into
2 the isolation area, is that correct?

3 A. In the way of official disposition, yes.

4 Q. Thank you. Did you give a full explanation?

5 A. Yes.

6 Q. I ask you to look now, please, at Plaintiff's Exhibit
7 13. Would you please explain to the Court again the function
8 of each of the documents which comprise Plaintiff's 13?

9 A. This is also required, I believe, by State law; that all
10 inmates undergoing isolation or segregation status, that they
11 are -- that a record of some sort be kept on each man. And
12 this sheet is kept on each individual that is in the Adjustment
13 Center, whether he is in the Adjustment Center or isolation, and
14 we commonly refer to these as 114A's and 114B's, the A form
15 being the isolation record and the B being the segregation
16 record.

17 Q. Which comprises which page? Is it not correct that the
18 top page in Plaintiff's Exhibit 13 is 114B and what is here the
19 second page is 114A?

20 A. Correct.

21 Q. Thank you. Please continue.

22 A. However, both forms are used for the same purpose. What
23 I mean to say is that if a man is on isolation -- let's say a
24 man is assigned to the Adjustment Center; we would use the
25 segregation form. Now, if he incurred a disciplinary --

1 Q. Rather than waste all the paper and start a new sheet,
2 invariably the same form is used?

3 A. Yes, sir, they have been combined. They are presently
4 combined. It is all one form.

5 Q. I will ask you some particulars, Sergeant, as we go
6 through here, please. First of all, would you tell the Court
7 with regard to the quieter strip cells, does an inmate ever
8 leave the physical quieter strip cell itself without an escort?

9 A. No, sir.

10 Q. And is the movement of an inmate, for whatever reason,
11 such as a disciplinary hearing, from his quieter strip cell
12 under escort recorded on 114A or B?

13 A. It should be recorded, yes.

14 Q. Now, would you -- that was true in July, 1965, as well?

15 A. Yes, sir.

16 Q. Would you look, please, at what you have before you,
17 Plaintiff's Exhibit 13? Tell the Court to what inmate these
18 documents in Plaintiff's Exhibit 13 relate.

19 A. Robert Jordan.

20 Q. Do they relate, Sergeant, to more than one inmate?

21 A. No, sir.

22 Q. In other words, these 114's, A or B, are used inmate by
23 inmate so it is separate?

24 A. That is correct.

25 Q. And can you tell from looking at Plaintiff's Exhibit 13

1 when this record starts in terms of time? What is the date of
2 the first entry?

3 A. June the 28th, 1965.

4 Q. Does that refer, Sergeant, as you can tell from looking
5 at the form, to the time that Mr. Jordan was being classified
6 upon his return to Soledad?

7 A. That is correct.

8 Q. Now, looking at Plaintiff's Exhibit 13 which you have
9 before you, would you tell the Court, from what you can tell from
10 that document, when Mr. Jordan was moved to one of the six rear
11 quieter strip cells?

12 A. On July the 9th.

13 Q. Now, there are entries for dates previous to July the 8th?

14 A. Yes, sir, that is correct.

15 Q. Your Honor, have you had a chance to look at this care-
16 fully? I would ask you to ~~do so now~~, if you please, particularly
17 to the various columns to which we will be referring. I am sorry
18 I did not provide an extra copy for your use.

19 Counsel, do you happen to have an extra copy?

20 Your Honor, I plan on using Exhibit 13 rather extensively.
21 Would it be appropriate to have a short recess and have a copy
22 made? I am very sorry I neglected to do that.

23 THE COURT: That is quite all right. I think I have
24 glanced at. We can have a copy made at the regular recess.

25 MR. COHLER: Thank you.

1 MR. COHLER: Q. Sergeant, would you look, please, at
2 what -- let me start over so we are clear.

3 There is, on the left-hand side, a column under the term
4 "date", is that correct?

5 A. Correct.

6 Q. And then there is a longer space for a written entry, a
7 remark of some sort?

8 A. Correct.

9 Q. Then there are one, two, three columns, rather narrow,
10 and a fourth with room for initials, is that correct?

11 A. Yes.

12 Q. Is any entry which is made on a given date, would each
13 of those be initialed by the officer making the entry?

14 A. Yes, sir.

15 Q. I note that in Plaintiff's 13 in the first column after
16 the space for comment there appear a series of numbers going down
17 the page. Would you please explain the function of those numbers
18 and what they mean?

19 A. Well, formerly we would use the numbers to incidate the
20 behavior of the inmate on a daily basis. We no longer use this
21 number because it is not a valid indication of his behavior. I
22 don't recall -- I believe the series went from five on down to
23 one. I may be wrong -- the higher the number the worse the
24 behavior.

25 Q. The higher the number the worse the behavior?

1 A. Yes, from what I remember. We no longer use it.

2 Q. You discontinued it because it wasn't considered to be
3 accurate?

4 A. Yes. It wasn't an accurate -- as an example, normally
5 the officers, prior to going home at 4:00 o'clock, somewhere
6 between 2:00 and 4:00 o'clock in the latter part of the afternoon
7 they would sit down and make entries on each inmate under their
8 care, and they would go along -- they might put, say, a 4 or 3,
9 and five minutes later something happened that completely altered
10 this behavior pattern. So it wasn't a very good way of accurately
11 indicating a man's behavior.

12 Q. Were there occasions when officers might just pick up
13 the number from the previous entry without making an individual
14 evaluation?

15 A. No. I can't predict what each man would do. ~~Normally~~
16 I would say that he is feeding them every day, he is clothing
17 them, he is counseling them, talking to them, he is seeing them
18 every day much more than I do, and I would like to think that he
19 wouldn't just arbitrarily putting anything down; he would be, to
20 the best of his ability, he would put down what he felt the
21 inmate deserved on that date. But, as I stated, it wasn't accurate
22 and we no longer use this.

23 Q. For the record, Sergeant, would you agree with me that in
24 all cases where there has been an entry made in that column the
25 number appearing is 3?

1 A. That is correct, yes. I might add that this number here
2 was made only -- the entry here was made only by one Watch. It
3 wasn't made by the Third Watch or the First Watch. That's
4 another reason we discontinued it. The inmate was graded on an
5 eight-hour shift.

6 Q. That being the Second Watch?

7 A. Yes, sir.

8 Q. When you have been on duty, from what time of the day?

9 A. From 7:30 to 4:00 o'clock.

10 Q. 4:00 o'clock in the afternoon?

11 A. Yes, sir.

12 Q. Sergeant, would you look, for instance, please, at the
13 second entry for the date 6/30? Look all the way over into what
14 is the second of the narrow columns, and that says "no", does it
15 not?

16 A. Yes.

17 Q. Would you tell the Court what that means to you as you
18 read the document from your experience?

19 A. It means no exercise on that date. He was received on
20 that date.

21 Q. And is there anything else that you can tell from the
22 entry "no exercise"? Does that lead to any further inferences as
23 to what he may not have had available to him?

24 A. Well, according to the entry to the same date and the same
25 line, he was received in the second floor on L.T.S., II. This is

1 the terminology which we no longer use, but it meant "long-term
2 segregation, grade II". It presently means Adjustment Center,
3 Grade II. As I mentioned, he was on the second floor where he
4 would have more privileges than he would downstairs.

5 Q. I am sorry. I meant whether you could tell if "no" meant
6 no exercise. Would that mean no other privileges would be
7 available?

8 A. Except for no exercise that day, he would have the same
9 privileges that other inmates have.

10 Q. I am sorry. For instance, an inmate who had no exercise
11 would not be able to take a shower?

12 A. No, he wouldn't.

13 Q. You can't take a shower unless you are out for exercise?

14 A. No. Inmates have been known to shower in their cells,
15 but he wouldn't be able to come out and use the actual shower room.
16 no.

17 Q. Sergeant, would you look with me now, please, at Plaintiff'
18 Exhibit 13 at the entry bearing the numeral '7-1, July 1st, and
19 here we have, in the second column, do we not, an entry "yes"?

20 A. Correct.

21 Q. And what do you understand that to mean, Sergeant?

22 A. That means -- well, we are going back quite some time now.
23 In my estimation it would mean -- quarter means the exercise. The
24 "C" would mean "corridor". That means the exercise in the corridor

25 Q. Perhaps we are on the wrong line.

1 A. But other officers may use the symbol "C" and others may
2 use just "yes" or "no". In answer, the word "yes" would indicate
3 to me that on that date, July the 1st, he exercised.

4 Q. Now, let us move to the third of the narrow columns,
5 please, going over to the right on Plaintiff's Exhibit 13. There
6 is an entry "S" for the same date, is that correct?

7 A. Yes, there is.

8 Q. Can you tell from the entry capital "S" what is indicated
9 upon that document?

10 A. Well, I would say that he showered on that date, that
11 he exercised.

12 Q. Could "S" stand for shave?

13 A. It possibly could, yes.

14 Q. What leads you to conclude that, in this particular
15 instance, the "S" means shower rather than shave?

16 A. Well, the absence -- there is three columns that I am
17 looking at and each column -- it doesn't designate here what
18 each column means. So from my own knowledge and my own personal
19 experience, any time a man is out, if he does not shower, we
20 enter the symbol "R", which means that he didn't shower, or we'd
21 leave it blank on the shower portion of it. If he did, we'd put
22 "S". By the same token, when he is given the opportunity to
23 shave, if he refuses to shave the symbol "R" is placed in there.
24 If he wasn't given the opportunity to shave it would be blank.

25 Q. Then with that explanation we should be able to tell

1 something about the entry for 7/2, July 2 -- excuse me, July 3
2 on Plaintiff's 13. Would you look, please, opposite that date
3 in the second of the narrow columns and read the entry?

4 A. "No".

5 Q. And that meant no exercise?

6 A. That is correct.

7 Q. And then the third column, there is an "R", is that
8 correct?

9 A. Nothing on the third column. It's blank.

10 Q. I think we are having trouble with lines. Would you look
11 carefully opposite 7-3?

12 A. Oh, I see, excuse me. There is an "R" there. Now this
13 "R" -- in this case, if he did not exercise it is obvious that he
14 couldn't have showered. The "R" could be a refusal on his part
15 to shave. He may have been given the opportunity to shave that
16 evening.

17 Q. Now, Sergeant, see if from looking at that document,
18 Plaintiff's Exhibit 13, you could tell the Court that Mr. Jordan,
19 to whom Plaintiff's Exhibit 13 refers, was moved to a quieter
20 strip cell on July 9th, is that correct?

21 A. Yes, sir. From what I can read here, yes.

22 Q. Now, looking carefully at the document, and use both
23 pages please -- I think that will be necessary -- would you tell
24 the Court on which day Mr. Jordan left the quieter strip cell?

25 A. On July the 20th.

1 Q. And please be careful and look at the entire document
2 and tell the Court whether or not Mr. Jordan was not continuously
3 in the quieter strip cell from July 9 through July 20, 1965.

4 A. According to what I am reading, except for coming out
5 for disciplinary hearing, he was confined all during that time.

6 Q. Let us turn to the disciplinary hearing. Would you look
7 at that document, please, and tell the Court when Mr. Jordan, who
8 was placed in the strip cell on July 9th, was taken to a
9 disciplinary hearing?

10 A. On July the 13th.

11 Q. What entry are you looking at?

12 A. I am looking at a combination of both the bottom line
13 here and a continuation at the top line.

14 Q. The bottom line on Plaintiff's 13 and the top line on the
15 second page, is that correct?

16 A. Yes.

17 Q. Can you identify the initials of the person who made
18 those entries?

19 A. Those initials are mine.

20 Q. Did you, in fact, make those two entries?

21 A. Yes, sir.

22 Q. Were you present at the disciplinary hearing to which Mr.
23 Jordan was taken on July 13?

24 A. Yes, sir.

25 Q. Who else was present?

1 A. I believe Mr. Kiepura was present.

2 Q. Mr. Kiepura's capacity at that time was what?

3 A. His present capacity, Counselor, Grade II.

4 Q. You and Mr. Kiepura were there. Did you both participate
5 in the hearing?

6 A. I believe we did.

7 Q. Was there anyone else present?

8 A. The Escort Officer, Officer Spoon.

9 Q. Was Officer Spoon there in any capacity other than
10 custodial?

11 A. No, sir; strictly escort.

12 Q. He had no particular function in the hearing?

13 A. No, sir.

14 Q. Was Mr. Jordan also present?

15 A. Yes, sir.

16 Q. Was this a meeting of a committee of some sort?

17 A. Disciplinary hearing.

18 Q. A disciplinary hearing. Does the committee have a name?

19 A. Other than disciplinary hearing?

20 Q. Disciplinary hearing. Do you happen to know what rule
21 or regulation it functions under at the institution?

22 A. I couldn't tell you at this particular moment what rule
23 it would function under. It's known as a disciplinary committee,
24 disciplinary hearing.

25 Q. Mr. Grace, may I please have Plaintiff's Exhibit 3, the

1 Answers to Interrogatories? This has fallen apart, Mr. Grace. I
2 will see that it stays together.

3 Sergeant Frederick, I ask you to look, please, at documents
4 which were attached to the Answers to Interrogatories, Plaintiff's
5 Exhibit 3 here, and the one before you is what appears to be a
6 C.D.C. 115 relating to Jordan, A46604 relating to an alleged
7 incident on July 9th, 1965, correct?

8 A. Correct.

9 Q. Would you please tell the Court, Sergeant, the function
10 of a C.D.C. 115 such as the one you have before you?

11 A. It's an official form, Report of Violation of Institutional
12 Rules, submitted by a reporting officer to a Disciplinary Committee

13 Q. Could you go further? For instance, does it contain a
14 charge? Explain its total function.

15 A. Yes, sir. The person named above is the inmate, is
16 charged with a specific violation of a rule, and it's considered
17 an official report of a violation.

18 Q. Now, there is a heavy line approximately center-way down
19 the page, is that correct?

20 A. Yes.

21 Q. And there is a caption below that line: Plea, Findings,
22 and Disposition?

23 A. Correct.

24 Q. Is the entire disposition which may be made after a
25 hearing upon a violation or alleged violation of a rule such as

1 this recorded opposite "Disposition" on C.D.C. 115?

2 A. Yes.

3 Q. That is the total disposition made by the committee as a
4 committee, is that correct?

5 A. I don't follow your question. Would you repeat that,
6 please?

7 Q. Would you look, please, at the lower portion of C.D.C. 115
8 where it says "Disposition"?

9 A. Yes.

10 Q. And tell the Court whether or not whatever may be under
11 there is the full disposition ordered by the committee.

12 A. Yes. Normally this would be the case.

13 Q. Now, directing your attention specifically to the document
14 you have before you originally attached Answers to Interrogatories
15 and now part of Plaintiff's Exhibit 3, the C.D.C. 115 relating
16 to Mr. Jordan, relating to an alleged incident of July, 1965,
17 would you please read the disposition which you find?

18 A. "L.T.S. 1, 29 days isolation."

19 Q. What does "L.T.S. 1" mean?

20 A. At that time it meant long-term segregation, Grade I.
21 Presently it would be Adjustment Center, Grade I, the first floor.

22 Q. Would you explain, please, whether or not that is a
23 classification which Mr. Jordan, in this instance, would remain
24 until such further action?

25 A. Yes. Upon completion of the 29 days isolation sentence,

1 he would be assigned to the Grade I section and he would normally
2 be classified within 90 days. Ninety days would be the maximum
3 number; that is when he would be reclassified.

4 Q. The 29 days isolation which is written opposite
5 "Disposition" says what is to happen to Mr. Jordan in this instance
6 during those 29 days and the L.T.S. 1 says what his classification
7 will be following the isolation?

8 A. Correct.

9 Q. Do you see on the document before you, Sergeant, a portion
10 entitled "Action Taken By"?

11 A. Yes.

12 Q. Do you see two signatures there?

13 A. Correct.

14 Q. Could you read those signatures?

15 A. "W. T. Kiepura" and "W. T. Frederick".

16 Q. And those are the signatures of you and Mr. Kiepura and
17 were the only two people present at this hearing?

18 A. Correct.

19 Q. Were those signatures placed upon the form at the time the
20 disposition was made, do you recall?

21 A. I believe so, yes.

22 Q. Would you look just above and to the right of the two
23 signatures, please, Sergeant, where there appear to be initials?
24 Would you tell the Court whose initials those are?

25 A. "R. H. D.", Mr. Donnelly.

1 Q. Was he at the hearing?

2 A. No, sir.

3 Q. Mr. Donnelly, was Deputy Superintendent as you recall?

4 A. He was either Assistant Superintendent or Deputy, I
5 don't recall exactly.

6 Q. To the left of where you have been looking, Sergeant,
7 there is the printed part of the form which says "approved", is
8 that correct?

9 A. Yes, sir.

10 Q. And a signature appears there, is that correct?

11 A. That is correct.

12 Q. Would you read that for the Court, please?

13 A. "William Jordan".

14 Q. What position did he have, if you recall?

15 A. He is Administrative Assistant to the Superintendent.

16 Q. He wasn't at the hearing either, was he?

17 A. No, sir.

18 Q. Now, to your knowledge, Sergeant, in the normal course of
19 events did officials who initial or sign, but who have not been
20 present at the hearing, do so to indicate their approval of the
21 disposition of the case?

22 A. Yes, sir, as far as I know, that is correct.

23 Q. And do they have anything before them except the printed
24 form C.D.C. 115 itself?

25 A. No. They have the 115.

1 Q. And it is on the basis of that that they approve or
2 disapprove in some cases?

3 A. I would say it is on the basis -- I would assume that they
4 would digest the whole thing, the actual report of the violation
5 and the disposition, findings and so forth, and then approve or
6 disapprove of the disposition.

7 Q. In other words, what is found --

8 A. Yes, right.

9 Q. Sergeant, would you turn back, please, to the other
10 document before you, the 114, Plaintiff's Exhibit 13, and I
11 direct your attention to what is there, the second page, and the
12 portion thereof, where there appears some handwriting. Would you
13 please read that?

14 A. On the top, very top?

15 Q. Yes, please.

16 A. "29 days isolation", then "assigned L.T.S. 1."

17 Q. That is, in fact, the same disposition as appears on the
18 C.D.C. 115?

19 A. Correct.

20 Q. There appears a second handwriting entry below that.

21 A. "To remain in this strip cell until behavior warrants
22 change."

23 Q. You made both of these entries?

24 A. Correct.

25 Q. At the same time?

1 A. Correct.

2 Q. The second entry which reads, "To remain in strip cell
3 until behavior warrants chang," there is an entry which is found
4 nowhere on the C.D.C. 115?

5 A. Correct.

6 Q. And that particular disposition which placed Mr. Jordan
7 in the strip cell part of the isolation area did not receive the
8 approval of anyone who signed the 115? There are no other
9 initials, is that correct?

10 A. Would you repeat your question?

11 Q. Let me break it down. Are there any initials other than
12 yours opposite the disposition whereby Mr. Jordan went to the
13 strip cell?

14 A. No, just my initials only.

15 Q. Was it your discretion and your judgment at that time
16 that resulted in Mr. Jordan's being put in the quiet cell?

17 A. It was my judgment as a member of the hearing that he
18 should be placed in a quiet cell until his behavior warranted
19 change. However, I did not make the writing in the 115 itself.
20 This was made by Mr. Kiepura and obviously forgot or failed to
21 make this entry, as well as I can remember.

22 Q. Well, for whatever the reason it may not have been made,
23 the approval, the signatures of those who approved were, it was
24 based only on the 115?

25 A. That is correct.

1 Q. Now, Sergeant, is it true, and I direct your attention
2 again to Plaintiff's Exhibit 13, the 114's which you have before
3 you, would you look, please, at the dates from July 9th through
4 July 20th and look at every entry that you find for those days
5 and for the time that Mr. Jordan was in the quieter strip cell?
6 Would you please tell the Court whether there is any entry at
7 all that indicates that he had a shower?

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

9 Q. Would you be very careful about that, please?

10 A. No, I do not see an entry posted that he showered.

11 Q. No entry at all, is that right?

12 A. No.

13 Q. Now, on July 20th, Sergeant, as you can tell from the
14 form 114 which is Plaintiff's 13 here on July 20th Mr. Jordan
15 was moved and housed in a cell forward of the regular isolation
16 area?

17 A. Correct.

18 Q. And would you look now again at the 114's, Plaintiff's 13
19 here and tell the Court when, in fact, that form shows that Mr.
20 Jordan did have a shower the first time after he got out of the
21 quiet cell?

22 A. On the 24th, of July.

23 Q. That would be the fourth day, I believe, after he was
24 removed from the quiet cell or strip cell?

25 A. According to what I am reading, that is correct.

1 Q. And can you tell what officer's initials appear opposite
2 that entry for the 24th?

3 A. I believe they are Mr. Hoagland's initials.

4 Q. And what does the entry itself say?

5 A. "Corridor, exercise, and shower."

6 Q. Thank you. Sergeant, do inmates who are taken from a
7 strip cell to a shower and inmates who are taken from an isolation
8 cell use the same shower facilities?

9 A. Yes, sir.

10 Q. Thank you, Sergeant.

11 THE COURT: We will take a short recess and you can have
12 these zeroxed and copied if you wish.

13 (Whereupon a ten-minute recess ensued)

14 MR. COHLER: Your Honor, I have concluded my direct
15 examination.

16 CROSS EXAMINATION

17 BY MR. OAKES:

18 MR. OAKES: Q. Sergeant Frederick, you testified on
19 direct examination that part of your duties as the Adjustment
20 Center Sergeant was to aid and train the men, the officers under
21 your direction. As part of your training, what are some of the
22 essential things that you think the men should be aware of while
23 working in the Adjustment Center?

24 A. Well, the behavior of the inmates, the fact that they
25 are disturbed people, many of them are dangerous and they explode

1 verbally and sometimes physically, and the officer should be
2 cautioned to be careful in handling these types of people.

3 Q. Would it be fair to say that you stress using what might
4 be called a professional approach?

5 A. Yes, sir.

6 Q. Thank you. Now, I think it is Plaintiff's Exhibit 12,
7 the Isolation Log, I believe; would you say this was an official
8 or semi-official log?

9 A. Official log.

10 Q. An official log?

11 A. Yes, sir.

12 Q. Does it always accurately reflect everything that happens,
13 everything that occurs with every person that enters the Adjustment
14 Center?

15 A. Well, I wouldn't say accurately. ~~There are people that~~
16 do come into the Adjustment Center and they may come in and come
17 out and fail to sign in. We try to keep as accurate a record as
18 we possibly can under the circumstances.

19 Q. For example, do not the chaplains enter the Adjustment
20 Center?

21 A. Yes, sir, they do.

22 Q. And do their names show up on this log very often?

23 A. Well, not too often. Everyone that makes a visit to the
24 Adjustment Center is required to sign in; but, as I say,
25 occasionally, being people, will forget to sign in. Theoretically

1 they are supposed to, including chaplains and doctors, the
2 Superintendent, anyone who enters.

3 Q. Now, in your experience, does Dr. Hack, the psychiatrist,
4 visit the Adjustment Center?

5 A. Yes, sir.

6 Q. Does his name often show up on this log?

7 A. Not too often, no. He is pressed for time. He's more
8 interested in interviewing and evaluating the inmates than he is
9 in placing his --

10 Q. So it is your judgment that he is in the Adjustment
11 Center more often than would be shown by this log?

12 A. Definitely.

13 Q. Now, I believe on direct examination it was brought out
14 that Mr. Jordan's name does not show up on the isolation log
15 until the date of July 13th.

16 MR. COHLER: Excuse me, counsel, it wasn't brought out;
17 but you may certainly proceed along those lines.

18 THE WITNESS: Excuse me -- yes, his name is listed on
19 July the 13th, 1965, as being in cell 1221 at that time, and the
20 time in is dated July the 9th. This was the date that he appeared
21 before the disciplinary hearing; and appearing is 29 days
22 isolation on the comments portion of the column. It states 29
23 days isolation -- would be effective 7/9.

24 MR. OAKES: Q. Yes; in effect then a man may be moved
25 into an isolation or a quiet cell and be there for several days

1 before it would appear on this log?

2 A. Yes, sir. It only appears once he has been before a
3 committee.

4 Q. Is his move recorded in other places?

5 A. It should be recorded on the 114 sheet.

6 Q. Is every move -- pardon me. In the officers' area of the
7 Adjustment Center is there a large bulletin board?

8 A. Yes, sir. It is recorded on that, and upstairs we have a
9 roster. Of course when we talk about records we can go into many
10 other portions of the institution. The control office is notified
11 of any cell moves and the cell cards are changed, the custody
12 classification cards are changed, the mail room cards are changed,
13 the visiting cards are changed. This way the entire institution
14 has some knowledge of where a particular inmate is housed so if it
15 involves one little cell move it involves a tremendous amount of
16 paper work.

17 Q. What is the essential card?

18 A. The Custody Classification Card, the warden's card.

19 Q. And that is kept where?

20 A. That is kept in the Custody Office. It is a confidential
21 card and has a lot of information.

22 Q. But every move is aggregately and rapidly reflected in
23 there?

24 A. Yes, that is correct.

25 Q. Thank you. Now I believe on direct you did discuss

1 Officer Spoon and the fact that he was moved from the -- or re-
2 assigned from the Adjustment Center up to other duties for a
3 period of time?

4 A. Yes, sir.

5 Q. And I believe you stated you disagreed with this move?

6 A. Yes, sir, I did.

7 Q. That the move was prompted by your superiors?

8 A. That is correct.

9 Q. Would you say that you, at times, disagree with other
10 actions of your superiors also?

11 A. Yes, I would say so.

12 Q. This is in common course of conduct, I think, in all --

13 A. Yes I -- while we are dealing with people and no one is
14 perfect and I do have some disagreements, yes. I am thankful in
15 many respects that despite the disparity in rank that I feel
16 free to enter the office of the Superintendent or any of my
17 superiors and discuss a disagreement.

18 Q. Your views are well-heard then?

19 A. Yes.

20 Q. Fine. Now, in relation to Plaintiff's Exhibit number 13,
21 the Isolation or Segregation Log, I believe it is marked "Item 6"
22 also at the top but that is not relevant to this. First of all,
23 in the entry to, I believe it was 7-1, on this record you stated
24 that you thought that the "S" stood for shower, is that not correct

25 A. Yes. Of course it could be shave, but the second column

1 says "yes", which I would interpret as having exercised that date,
2 and I would interpret the "S" as showered.

3 Q. This is the second floor of O-Wing, is it not?

4 A. Yes, that is correct.

5 Q. The men exercise in groups of four, do they not?

6 A. Upstairs, yes.

7 Q. They are not single-men exercises?

8 A. No, sir.

9 Q. So there may have been four men in the corridor, correct?

10 A. Yes, sir.

11 Q. And when there are four inmates in the corridor is the
12 officer in the corridor?

13 A. Yes, sir; standing or sitting at the desk observing these
14 people. We have one officer assigned to each side of the unit.

15 Q. But is this the period when a man ~~normall~~ takes a shower?

16 A. When he is out exercising, yes.

17 Q. When he is on L.T.S. he is free to take a shower when he
18 wishes?

19 A. Any time an inmate is out of his cell exercising he is
20 free to take a shower, yes.

21 Q. Now, in shaving in L.T.S., II, the second tier of O-Wing,
22 is not the shaving done by the officers -- let me withdraw that
23 and rephrase it, please. Do the men shave in L.T.S., II during
24 the Third Watch?

25 A. They shave on all three floors, yes.

1 Q. They shave every other night?

2 A. Correct.

3 Q. One night the officer will go down and pass out razors on
4 one side and the next night on the other side?

5 A. Correct.

6 Q. Control of these razors is important, is it not?

7 A. Yes.

8 Q. Since the control of razors is quite important, and the
9 men are free to shower as they wish, could it be that the man on
10 the Third Watch marked "S" in the third column for 7-1 to indicate
11 that he shaved?

12 A. Yes, that is possible.

13 Q. In fact we are not really sure what this represents, are
14 we, Sergeant?

15 A. Well, the form-- the present form that I am looking at I
16 must admit is rather confusing. It could be possible I could be
17 wrong, yes. This is the correct symbol for each column. I could
18 be wrong. Yes, it's rather confusing.

19 Q. In fact, is there not a problem during this period with
20 this form so far as it was not too accurately kept?

21 A. Yes, to a certain degree.

22 Q. Were there not problems with men -- withdraw that. At
23 this period of time was it not kind of a common practice for the
24 officers to only indicate something that was somewhat out of the
25 ordinary?

1 A. Well, I would say so, yes.

2 Q. In other words, common, every day things they may or may
3 not mark down, depending on the press of business?

4 A. Yes. The inmates are fed three times a day, but that is
5 never logged. You don't have time to do this.

6 Q. So at that time it was kind of slow and normal things,
7 things that may have been out of the ordinary or abnormal --

8 MR. COHLER: I would like to object here to the use of
9 "abnormal." We have a form we ought to be careful with.

10 THE COURT: Sustained.

11 MR. OAKES: Q. Actually I think I am through with this
12 line of questioning in any event.

13 Now, on direct examination, referring to Plaintiff's 13,
14 the Isolation Log --

15 MR. COHLER: Excuse me, counsel, Plaintiff's 12 is the
16 Isolation Log and Plaintiff's 13 is the 114.

17 MR. OAKES: Q. I apologize. Again referring to Plaintiff
18 13, the Isolation Record on the second page as I believe they are
19 put together here which should be the 114A form, it shows "29 days
20 isolation, to remain in the strip cell until behavior warrants
21 change", is that correct?

22 A. Correct.

23 Q. With your initials?

24 A. That is correct.

25 Q. On the C.D.C. 115, and I am not sure of the Exhibit number

1 on that --

2 MR. COHLER: Counsel, it is part of the Answers to
3 Interrogatories, which, I believe, are Plaintiff's 3.

4 MR. OAKES: Q. In any event, the C.D.C. 115 which dealt
5 with that situation, I believe there is a notation to the effect
6 that the inmate was disrespectful toward the committee at that
7 time?

8 A. Yes, sir.

9 Q. Was that, in your opinion, the reason for the man being
10 kept in the quiet cell?

11 A. Yes. He was remanded back to the quiet cell as a result
12 of his behavior before the committee, yes.

13 Q. And his behavior resulting from the infraction in the first
14 place?

15 A. Yes.

16 Q. Now, in bringing a man out -- withdraw that.

17 Would you say that there is quite a bit of communication
18 between yourself, your officers and your superiors, particularly
19 the correctional counselors and the program administrators?

20 MR. COHLER: May I ask counsel to say communication about
21 what? We are being quite general here.

22 MR. OAKES: I mean generally.

23 MR. COHLER: Then I will withdraw the objection.

24 THE WITNESS: Yes. We discuss --

25 MR. OAKES: Q. Do you normally discuss cases?

1 A. Discuss cases, yes.

2 Q. Now, does a good share of this discussion deal with the
3 men that you have under your care and custody in the Adjustment
4 Center?

5 A. Yes, sir.

6 Q. Does this discussion normally deal, or often deal with when
7 a man should be removed from an isolation cell or strip cell?

8 A. Yes. Among the discussions this often arises, yes.

9 Q. And is it the general policy to bring a man out of a
10 quiet cell as soon as possible?

11 A. Yes.

12 Q. And was that the general policy in July of 1965?

13 A. It's also been that policy as far back as I can remember.

14 MR. OAKES: Your Honor, I have no further questions of
15 this man at this time. I would like to reserve the right to re-
16 call him later.

17 REDIRECT EXAMINATION

18 BY MR. COHLER:

19 MR. COHLER: Q. Sergeant, I believe I recall accurately
20 that you stated on cross examination just now that you occasionally
21 disagree with your superiors?

22 A. Yes.

23 Q. Was one such disagreement you had with your superiors
24 related to the subject matter as to whether or not water basins
25 and water pitchers ought to have been installed in the strip or

1 quiet cells?

2 A. It wasn't a real disagreement. I had reservations as to
3 whether we should furnish this equipment.

4 Q. Thank you.

5 RECROSS-EXAMINATION

6 BY MR. OAKES:

7 MR. OAKES: Q. You stated that you had reservations
8 about having this equipment placed in there. Would you like to
9 say why, please?

10 A. Yes. They were in there previously several years ago,
11 and invariably they would throw the water on the officer and
12 other staff members. Occasionally they would accumulate a large
13 quantity of urine and throw it on your face or clothing. They
14 would bang the bars with it and destroy the fixtures. I just had
15 reservations. I didn't say that they shouldn't have wash
16 facilities. I believe everyone should have washing facilities;
17 but I just couldn't quite make up my mind. I wasn't against it,
18 but I did have reservations. I just don't like to continue to
19 undergo this kind of behavior and I don't expect the officer to
20 undergo this.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. COHLER:

23 MR. COHLER: Q. Sergeant, I believe you just stated that
24 you think everyone ought to have an opportunity to wash, is that
25 correct?

1 A. Yes.

2 Q. Can you tell the Court, please, any way you could think
3 of implementing the ability of an inmate to wash while not
4 involving the dangers you said led to your reservations?

5 A. Well, I may not be able to tell you at this particular
6 moment, Mr. Cohler. Just from the time of -- in my mind at this
7 time -- well, during the time in question last year the inmates
8 were furnished with two Styrofoam cups. Many of them would
9 accumulate cups and have as many as a dozen cups there. The
10 officers, in the performance of their duties, would not leave just
11 one or two cups, they would give him as much as he desired to
12 drink and then he would invariably leave several cups, whatever
13 amount of cups were on the bars, two, three or four, he would leave
14 this water there. Generally we try to limit them to two or three
15 cups because an accumulation of debris isn't too good if they
16 accumulate too much trash so to speak. But from the top of my
17 head, I am trying to answer your question to the best of my ability,
18 at that time with the styrofoam cups it's possible that an inmate
19 could, after he drank as much water as he desired and the cups
20 were refilled, it is possible that he could use these cups to wash
21 his hands if he really wanted to wash them. He wouldn't have a
22 half-a-gallon. If he wanted to wash them he would take a cup or
23 two of water and at least wash his hands out and wash them.

24 Possibly he wouldn't be throwing this small amount on the
25 officer, but when you have a half-a-gallon of drinking water and

1 in a plastic wash basin, there is a great deal amount of liquid
2 that can be thrown and is thrown since we have installed this
3 equipment. The officers have been abused, they have had water and
4 urine thrown on them; so I can only answer to the best of my
5 ability.

6 It is exceedingly difficult. You try to help these
7 people to help themselves; you try to furnish them all the
8 necessities that any human being should have; but unfortunately
9 they abuse this equipment -- and who knows all the answers? I
10 certainly don't.

11 Q. In other words, when an inmate abuses his equipment you
12 feel that he perhaps ought not to have all the necessities a
13 human being ought to have?

14 MR. GRANUCCI: Objection, Your Honor. Argumentative.

15 THE COURT: Overruled.

16 MR. COHLER: I am merely restating the witnesses words,
17 Your Honor.

18 Do you have the question in mind? I will ask the reporter
19 to read it back.

20 (Record read by the reporter)

21 MR. COHLER: Q. I would like you to answer.

22 A. Yes. Perhaps he should be given this equipment and if he
23 abuses it perhaps it should be removed for some length of time.
24 Perhaps this should be handled this way. He could have it as long
25 as he isn't abusing equipment and degrading personnel. If they

1 do this, perhaps it could be removed for a day or so and later
2 returned to him. This is a possible answer to our problem.

3 Q. The time in July, 1965, none of this equipment was
4 available at all, was it?

5 A. No, sir, other than the stirofoam cups.

6 Q. Thank you, sir.

7 THE COURT: Sergeant -- have you completed, counsel?

8 MR. COHLER: I have, Your Honor.

9 MR. OAKES: I believe we rest, Your Honor. We have
10 completed the examination of this witness. We ask leave to
11 recall him.

12 THE COURT: I just had one question or two.

13 Sergeant, and I appreciate your general exposition of this
14 subject; it is very enlightening. There has been testimony in
15 the record that the strip or quiet cell has been used as a facility
16 in order to observe or watch potential suicides.

17 THE WITNESS: To control people, yes.

18 THE COURT: Is there any other facility in the correctional
19 institution that might afford the same type of facility -- in the
20 hospital or the like?

21 THE WITNESS: No, sir, not to my knowledge. The hospitals
22 don't have any proper staffing, the proper -- well, I would say
23 the proper structure. They have dormitory-type beds; they have a
24 bed and so forth, and it's exceedingly difficult. We are
25 presently under-staff and always have been in the Adjustment --

1 THE COURT: Do you have any records available, Sergeant,
2 with respect to the number of suicides that have been consummated
3 in the so-called strip or quiet cell?

4 THE WITNESS: In my nine years at Soledad I believe, Your
5 Honor, there were two inmates in nine years that actually committed
6 suicide.

7 THE COURT: In the cell?

8 THE WITNESS: That is correct. I can recall two men.

9 THE COURT: Do you regard the so-called strip or quiet
10 cell as a facility to be used in punitive or preventive measure?

11 THE WITNESS: I would regard the quieter strip cells as
12 a preventive and as a control factor more than anything else. I
13 don't personally think of them as punitive. Some people do.
14 There is a very thin line between punishment and control. I
15 don't think anyone is more aware of it than we; but we in
16 corrections are primarily responsible to try to help them help
17 themselves, and one way of doing this is to control them first,
18 to give them time to try to think about what he is doing and
19 perhaps straighten himself out. It's a hard answer to give you.

20 THE COURT: There is a fine dividing line?

21 THE WITNESS: I'm not a psychiatrist, but my personal
22 opinion, the quiet cells are used, and I have used them, strictly
23 as a control measure.

24 THE COURT: What rule do you have, Sergeant, with respect
25 to stripping a man per se, just taking his clothing away?

1 THE WITNESS: I'm not authorized to strip an inmate per se,
2 Your Honor, except in extreme emergencies, and it's a matter of
3 judgment; if an inmate mutilated himself, or if he attempted
4 suicide by hanging. We are obligated to protect the inmate from
5 himself.

6 Many of these men are dangerous. While they were loose
7 they would vent their anger, their potential for violence on
8 other people. But once they are locked up they seem to direct
9 the destructives toward themselves. They can't reach anybody
10 else. I don't know.

11 THE COURT: Is it your rule, Sergeant, that the only
12 occasions when you take the clothing away from the inmate is
13 when he might have some potential toward self-destruction?

14 THE WITNESS: This is the only time that I would do it --
15 in an emergency measure. There have been times where it was
16 necessary to strip a man to control a disturbance which didn't
17 have anything to do with suicide. But it was done as a control
18 factor, here again; not as a punishment factor. This was the only
19 thing we could think of at the time to prevent a full-scale riot
20 or disturbance and the destruction of State property. It isn't
21 done as a matter of general practice. I don't have the authority
22 to strip a man per se. I have to receive authorization except in
23 an extreme emergency, and the only emergency I can think of that I
24 would actually strip a man would be for his own self-protection.

25 THE COURT: Do you have available, or could you make

1 available the number of attempted suicides in the so-called strip
2 or quiet cells?

3 THE WITNESS: In the actual strip cells?

4 THE COURT: Yes; attempts at self-destruction, either
5 mutilation or the like as you described them.

6 THE WITNESS: I don't believe we have had too many
7 suicide attempts in the actual quiet cells. We have had in the
8 rest of the unit, but not in the quiet cells.

9 There is -- well, there is no cell furnishings in there,
10 and the man is in about as far back as he can go in an institution
11 and no other inmates are in contact with him. It's exceedingly
12 difficult in a quiet cell for an inmate to secure a razorblade to
13 mutilate himself, so, as a result, they may attempt suicide out
14 front upstairs in the general population or at the North or South
15 Facilities, but if they are placed in a quiet cell the risk is
16 reduced.

17 THE COURT: How would you determine, Sergeant, transferring
18 a man to a medical facility as such after an attempted suicide
19 as distinguished from a strip cell? What would be your dividing
20 line?

21 THE WITNESS: We would make this recommendation to -- a
22 psychiatrist would make this recommendation.

23 Normally, when a man exhibits self-destructive behavior
24 we feel he should be referred to the psychiatrist for psychiatric
25 evaluation. We might even make our recommendation that he be

1 considered for medical facility. The psychiatrist will interview
2 the man at great length and he will have a great deal to do with
3 whether the man is removed or not.

4 THE COURT: I have no further questions.

5 FURTHER REDIRECT EXAMINATION (Cont.)

6 BY MR. COHLER:

7 MR. COHLER: Q. May I just ask -- Sergeant, I believe
8 you just stated, in response to His Honor's questions, that due to
9 the absence of facility in the quiet cell or strip cell there was
10 really no opportunity for a man to attempt suicide.

11 A. I didn't say there was no opportunity. I said the risk
12 was considerably reduced. I don't care if -- well, if a man wants
13 to commit suicide, Mr. Cohler, he is going to do it. It is
14 unfortunate that this is part of -- you are obligated to protect
15 them from each other as well as themselves, as well as to protect
16 staff members; but all you can do is work -- place them in a
17 situation where you can control them. And such a place, unfortunate
18 is what we might call a strip cell.

19 Q. If a man, indeed, did have clothing when he was in the
20 strip or quiet cells, that would be one available means for at
21 least an attempted suicide?

22 A. Yes, sir. He could hang himself.

23 THE COURT: One further question. How do you determine
24 the length of time, let us say, in the instant case of Jordan,
25 the 29 days that you indicated as a period of time? What is your

1 measure of 29 days? How do you determine the 29 days as dis-
2 tinguished from five, ten, twenty?

3 THE WITNESS: When a man is undergoing a 29-day isolation
4 sentence he doesn't necessarily spend the 29 days in a quiet cell.
5 Often the disciplinary hearing will remand him to a quiet cell
6 with a specified number of days. Often, because of his behavior
7 they may not specify days. They may just say, "place in quiet
8 cell till behavior improves." It's always been our policy since
9 I have worked there as an officer that we do our best, remove
10 people from quiet cells as soon as possible, as soon as we feel
11 that they are able to demonstrate sufficient control to come out
12 and be housed in certain other regular cells. Unfortunately we
13 are over-populated, and despite the fact that an inmate is
14 behaving, perhaps we have no room. We can't get him out on
15 certain particular days. But ordinarily, since I have been
16 Adjustment Center Sergeant I am off on weekends, and every Friday
17 I have made a personal practice sometime during Friday to check
18 with the officers to see how the people are doing, the people
19 that may be back there during that time, to see how they are
20 doing. Often the officers themselves will recommend to me --
21 perhaps a disciplinary hearing is three or four or five days off
22 and the inmate is doing well -- the officer often will say, "well
23 this man is doing well; why don't we move him out?" Often I will
24 check the inmate files and note that they are doing well and I
25 might ask the officer, "well, is everything all right? Yes, sir."

1 And in this case every Friday I try to vacate as many as I can.

2 THE COURT: Where do you place the inmate after vacating
3 him from the quiet cell?

4 THE WITNESS: Wherever his classification requires. If
5 he is to return upstairs I will return him upstairs; if he is to
6 return on the Grade I on the other side I will return him to the
7 other side; if he is still on an isolation sentence like 29 days
8 or ten days and he might have done five, he will come out into
9 regular isolation sentence to finish his original sentence, but
10 he wouldn't do it all in the back.

11 FURTHER REDIRECT EXAMINATION (Cont.)

12 BY MR. COHLER:

13 MR. COHLER: Q. Sergeant, what might go into disposition
14 such as 29 days? His Honor asked you what might be taken into
15 consideration or what might be a controlling factor in the
16 determination of 29 days. Is it not true, Sergeant, that 29 days
17 is the maximum isolation sentence permitted without approval of
18 the Superintendent?

19 A. Without approval of the Director.

20 Q. The Director of Corrections?

21 A. No longer than 30 days, yes, sir.

22 Q. Thank you.

23 THE COURT: Thank you, Sergeant.

24 MR. GRANUCCI: Nothing further from this witness, Your
25 Honor. We ask leave to recall him.

1 MR. COHLER: Your Honor, the Plaintiff's next witness is
2 Mr. Wells, and I would like to have either an opportunity to go
3 well into the lunch hour or else to take a recess now so it is
4 not interrupted.

5 THE COURT: We will take a recess and resume at 2:00
6 o'clock.

7 (Whereupon the proceeding was adjourned until 2:00 o'clock
8 in the afternoon)
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AFTERNOON SESSION

1 MR. COHLER: Please call Mr. Wells as Plaintiff and
2 Petitioner's next witness.

3 THE CLERK: Mr. Wells.

4 WARREN WILLIAM WELLS,
5 called as a witness by the Plaintiff, who, being first duly
6 sworn, testified as follows:

7 THE CLERK: Will you state your full name and occupation?

8 THE WITNESS: Warren William Wells. I don't have any
9 occupation as of now.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. COHLER:

13 MR. COHLER: Q. Mr. Wells, how old are you, please?

14 A. Nineteen.

15 Q. Were you at one time an inmate at the Correctional
16 Training Facility at Soledad?

17 A. Yes, I was.

18 Q. Are you presently on parole?

19 A. I am.

20 Q. Approximately how long were you an inmate at the
21 Correctional Training Facility?

22 A. Oh, I was there about a year and a month the second time.
23 I was there once and left and came back.

24 Q. The last time you were there, Mr. Wells, how long were
25 you there, approximately?

1 A. A year and a month, that is the last time.

2 Q. When did you leave on parole?

3 A. June the 22nd.

4 Q. Of this year?

5 A. Yes.

6 Q. When you were at the Correctional Training Facility, Mr.
7 Wells, was there an area known to you as the isolation area?

8 A. Yes, there was.

9 Q. Was there an area known to you as the strip cell area?

10 A. Yes, there was.

11 Q. Would you please tell the Court where the strip cell
12 area and where the isolation area was at the Correctional
13 Training Facility?

14 A. Well, the isolation area section is the first floor of
15 O-Wing, the left side, and the strip cell section is the last
16 six cells on this floor.

17 Q. Have you ever been detained in a strip cell?

18 A. Yes, I have.

19 Q. And when was the first such time, please?

20 A. Well, I believe it to be either August or September of
21 1965.

22 Q. And about how many days, if you remember, were you detain-
23 ed in a strip cell in either August or September of 1965?

24 A. No more than five days.

25 Q. Can you remember about how many days it was? -- if it was

1 less than five days?

2 A. I don't know if this to be exact, but I think three.

3 Q. Were you a ward of the Youth Authority at that time?

4 A. Yes, I was.

5 Q. You had a Y.A. number, is that correct?

6 A. Yes, I did.

7 Q. At the time you were placed in the strip cell?

8 A. Yes.

9 Q. Would you please describe for the Court the physical set-
10 up of the strip cell, and I refer you specifically to doors and
11 window openings.

12 A. Well, there is a square cell with bars, and then about
13 three feet from the bars there's another wall with a door and a
14 window on the door, and next to that there's a bigger window with
15 a steel flap, and both windows have a steel flap that can be
16 closed or opened.

17 Q. Can they be closed or opened by an inmate inside the strip
18 cell?

19 A. No.

20 Q. Were the steel flaps on the door and window you were in
21 the first time ever closed?

22 A. All the time.

23 Q. The flaps were closed all the time?

24 A. The flaps were closed all the time that first time I was
25 in there.

1 Q. Did you have occasion to notice any ventilation in the
2 cell when you were in it when the flaps were closed?

3 A. Well, there's two square things up in the top in the
4 back, rear wall of the cell, but they didn't work.

5 Q. What do you mean they didn't work?

6 A. There wasn't any ventilation in the cell at all. I'd put
7 my hand up there and there wasn't no air of any sort coming out
8 either one of the squares.

9 Q. What did you wear when you were in the strip cell this
10 first time?

11 A. The first time, when I first was placed in there, were blue-
12 jean material coveralls.

13 Q. Did you have anything else to wear at that time?

14 A. No, I didn't.

15 Q. Including underwear or socks?

16 A. No socks or underwear. Just coveralls.

17 Q. Mr. Wells, at this time when you were in the strip cell,
18 how did you go to the bathroom?

19 A. Well, there's a cement block in the corner of the cell --
20 rear corner of the cell -- and it's about two feet off the ground
21 high, and there's a so-called commode in the center of this cement
22 block, and --

23 Q. That was the only facility similar to a toilet?

24 A. Yes.

25 Q. Would you please tell the Court, describing as best you

1 can, the state of cleanliness of this strip cell when you were
2 placed in it the first time?

3 A. It was filthy around the so-called commode on the wall --
4 the corner of the wall where the walls met in the corner where
5 the toilet was. There was human body waste all on the wall and
6 it was just a very strong odor in the cell. It was nasty.

7 Q. Did you ever ask for anything to clean up the cell with?

8 A. Yes, I did. The first day I was in there I asked for
9 something.

10 Q. Do you remember who you asked? I don't want you to guess.
11 If you can recall you may state.

12 A. I am not sure. I have got two names in my mind, but I
13 couldn't really say either one of them for sure.

14 Q. Would you like to say which two?

15 A. I know it was either one of the other, but I don't know.
16 It was either Officer Spoon or Officer Milo, one of the two.

17 Q. What were you told when you asked for something?

18 A. "Later on."

19 Q. That is what the officer said to you?

20 A. Yes.

21 Q. Were you ever given anything to clean up the cell with?

22 A. No, I wasn't.

23 Q. How often was food brought to you when you were in the
24 strip cell the first time?

25 A. Two times daily.

1 Q. Approximately what time of day would that have been?

2 A. Once in the morning and once about between 2:30 and 3:00
3 o'clock in the afternoon.

4 Q. What kind of food was this? Was it similar to mainline
5 food or was it something special?

6 A. Well, at this particular time it was similar to mainline
7 food, but --

8 Q. Did you eat the food that was served to you?

9 A. No, sir.

10 Q. Why not?

11 A. Because I couldn't.

12 Q. Why not?

13 A. Because of the odor and the conditions of the cell, and
14 having to use the bathroom and eat with the hands. You couldn't
15 wash.

16 Q. You never had a chance to wash your hands before food
17 was brought?

18 A. No, sir.

19 Q. Did you ever have a chance to wash at all?

20 A. No, sir.

21 Q. Did you ever have a chance to take a shower this first
22 time?

23 A. No, sir.

24 Q. Did you make any effort to try to get away from the
25 filth and odor, as you have described it?

1 A. Well, I had to sit to the front of the cell next to the
2 bars -- sideways along the cell bars to keep as far away from the
3 rear of the cell as I could. That way I was away. I tried to
4 stay away from the odor because it was -- it would make you sick.
5 And the reason that I couldn't eat my food is not that I didn't
6 want to eat. It was because they opened the door and slid the
7 food in and close it, and you can't see at that part -- there was
8 some parts of the cell you could see cracks of light like on the
9 back wall, but in the front you can't, and you have to feel around
10 for the little plate. And -- it's just -- you just don't want to
11 eat.

12 Q. You say you sat near the front part of the cell, Mr. Wells.
13 What part of the cell is this commode located?

14 A. In the rear.

15 Q. How often was water brought to you when you were in the
16 strip cell, Mr. Wells, this first time, approximately, your best
17 recollection?

18 A. I'm pretty sure it was once in the morning and twice at
19 night. Twice after the next shift came on.

20 Q. Was there a water basin in the cell of any sort at this
21 time, the first time you were in the strip cell?

22 A. No.

23 Q. Or a water pitcher?

24 A. No, sir.

25 Q. Or soap?

1 A. No, sir.

2 Q. Towel?

3 A. Nothing.

4 Q. Toothbrush?

5 A. No, sir.

6 Q. Mr. Wells, would you recognize personnel at the institution
7 known as medical technical assistants or M.T.A.'s?

8 A. Yes.

9 Q. Did they wear distinguishing clothing of some sort?

10 A. Yes; a white smock.

11 Q. Did you ever have a conversation with an M.T.A. during
12 these three days, as you recall it, the first time?

13 A. Yes, I did.

14 Q. Could you tell the Court, please, what that conversation
15 was about?

16 A. Well, I didn't know what was wrong with me at the time,
17 but the three days I'd been in there I'd been sitting most of the
18 time until sometimes I'd get up and walk to keep warm, but most
19 of the time I had sat on the floor next to the bars to stay up in
20 front of the cell.

21 THE COURT: To keep away --

22 THE WITNESS: To keep away from the back of the cell,
23 because it was kind of nasty back there and that was the cleanest
24 part of the cell. And I had a very sore pain; and I had seen one
25 of the M.T.A.'s about it. I asked him what could this be.

1 Q. Where was the pain?

2 A. In my rectum. And I asked him what could this pain be
3 caused by. He told me he wouldn't know but I'd have to be
4 checked by one of the doctors; so when I was released from the
5 strip cell and taken back to Max Row next door I seen the doctor,
6 and they told me -- they let me go to the hospital anyway; and the
7 doctor interviewed me in his office and he checked me and told me
8 that I had hemorrhoids or piles, whatever you want to call it, and
9 he asked me -- this was Dr. Kunkel, and he asked me did I want
10 them cut out, and I told him anything to be done that would stop
11 the pain, and he said okay; so they had surgery that day and he
12 made the statement in his office: had I been in the strip cell;
13 and I said, "Yes," and he asked me what I'd been sitting on, the
14 cement floor? and I said, "Yes." And he said, "That's probably
15 what brought them down." Then he went on to explain blood clotting
16 up into a knot, warmth of your body, and all' that because I didn't
17 know; and he explained it to me. So I had them removed and there
18 was no more said about that.

19 Q. You have stated that you were released from the strip cell
20 on this occasion. When was the next time you were placed in the
21 strip cell, approximately?

22 A. Now, sir, if this was the first time -- see, the first and
23 the second times in the strip cells were so close together. This
24 might have been the second time. Well, if it was the first time,
25 the second time was very shortly after this, and I would say no

1 more than two or three weeks after this.

2 Q. And about how long were you in the strip cell on that
3 occasion?

4 A. Around five days.

5 Q. Were the conditions essentially the same as you have
6 described them?

7 A. Well, it was a different cell, but it wasn't as bad as
8 that specific cell, but it was dirty still. It wasn't clean.

9 Q. In what way?

10 A. Well, I mean there wasn't as much body waste in this cell.
11 The odor was bad and things, but it wasn't that where you was
12 afraid to sit on the toilet.

13 Q. Were you in the strip cell on another occasion?

14 THE COURT: How many days, Mr. Wells, on the last
15 occasion? Five days, was it, on this last occasion?

16 THE WITNESS: The last I was just speaking of. I'm
17 pretty sure it was five days. I know I did a three-day stretch,
18 then a five-day, then a long one.

19 MR. COHLER: Q. Would you turn your attention to the
20 third time you were in the strip cell and tell the Court when that
21 was?

22 A. October the 26th of 1965, I entered the strip cell, and I
23 came out around November -- Thanksgiving holiday I came out of
24 the strip cell for about five days and I went back until
25 Christmas Eve day, the 24th of December. So I did 58 days in

1 isolation; excluding five of those days, I did them all in the
2 strip cell.

3 Q. And those five days were around Thanksgiving time?

4 A. Yes, around that period. I don't know the exact dates.

5 Q. Were you a ward of the Youth Authority at that time?

6 A. Yes, I was.

7 Q. You had a Y.A. number?

8 A. Yes, I did.

9 MR. GRANUCCI: Objection, asked and answered.

10 THE COURT: Overruled.

11 MR. COHLER: Q. What did you wear when you were put into
12 the strip cell at the beginning of that period in October?

13 A. Nothing.

14 Q. There was a period of time when you were in the strip
15 cell during the period from the end of October until the end of
16 December, approximately, that you had no clothing?

17 A. When I was put in.

18 Q. When did you get clothing?

19 A. The next day.

20 Q. Did you have clothing the remainder of those days you
21 were in the strip cell?

22 A. I did, yes.

23 Q. You have described metal flaps previously. Were the
24 flaps opened or closed when you were put in the strip cell the
25 end of October?

1 A. Closed.

2 Q. Were they ever opened at all during the time you were in
3 the strip cell?

4 A. Yes. They were opened during the time I was in the
5 strip cell.

6 Q. About how often were they open and closed and how that
7 varied, please?

8 A. They were opened -- when they first started open -- Officer
9 Nash opened -- he start -- was the one that started opening the
10 flaps on his shift in the afternoon through the night. And if we
11 didn't make too much noise or talk too loud they would stay open
12 until the morning when the next shift was working, and if didn't
13 nothing happen I guess they would probably leave them open, but
14 if Mr. Spoon was working he'd usually close them when he came on
15 if they were open. Now if they were closed when Mr. Nash came on
16 he would leave them closed. This was the first stage of this
17 50-day sentence. But after he'd been in there so long, Mr. Nash
18 began just to leave -- if they was closed when he came he would
19 open them.

20 Q. Did you ever have any conversations with Mr. Nash about
21 the flaps during this period?

22 A. Yes, I did. We had conversations with a whole lot of
23 people about trying to get them open.

24 Q. Will you tell the Court about those conversations?

25 A. Well, would it be right for me to say by somebody else?

1 Because I didn't --

2 Q. Only your own knowledge; not what some one else may have
3 told you.

4 A. Not what somebody else did that I know did?

5 Q. If you know of your own knowledge.

6 A. Alphonso Esparza, he was in there with me for the same
7 thing.

8 THE COURT: Who was that, Mr. Wells?

9 THE WITNESS: Esparza. We was both in there for the same
10 violation: inmate disturbance, making noise.

11 Okay, and when it was nearing Christmas and we wanted to
12 write letters, I wanted to write and let my mother know why she
13 couldn't come see me, but I couldn't. We would ask if we could
14 write a letter, how can you write a letter in the dark, so please
15 open the flaps. So anyway Esparza got a 115. That way they had
16 to take him to the Disciplinary Committee. He told them all about
17 how he wanted to write a letter and he should have a way to write
18 a letter and he hadn't done anything to keep from writing a
19 letter. So they said that, yes, the flaps could be opened to
20 write a letter, if he wanted to write a letter. So I don't know
21 if this was supposed to be a rule or written or anything, but that
22 was what was said in the Committee because we were able to write
23 letters. And they give us pencils and paper to write letters.

24 But now after a couple times of writing letters success-
25 fully without no intervening with nobody else, Mr. Nash came back

1 and said one night he is going to open the flaps. Well, we'd
2 have to keep the noise down because if we talk loud he is going
3 to get in trouble. He's going to get chewed out by his superior.
4 And this left us feeling that Mr. Nash wanted to open the flaps;
5 he wanted to do something for us, but if he did he could get in
6 trouble.

7 MR. GRANUCCI: I move to strike the last sentence which is
8 purely his own conclusion.

9 MR. COHLER: Your Honor, I think that the reaction of the
10 inmates in the strip cell is relevant in this inquiry and that
11 reaction should include their impression of the officers and the
12 way in which they observed the demeanor of the officer. It might
13 not have a lot of weight --

14 THE COURT: Motion is denied.

15 MR. COHLER: Q. You may continue, Mr. Wells.

16 A. And Officer Nash and his relief officer, Officer Thompson
17 Officer Nash would work five days and Officer Thompson would
18 relieve two. Those two officers -- well, they did treat us
19 different from all of the rest of them. They -- like bringing
20 water in, for instance.

21 Now, they have a little cup about the size of a Dixie Cup
22 in the room and they fill it up with water. Now, some of the
23 officers would fill it up with water and walk out, and that's the
24 truth. They would fill it up with water and walk out and that was
25 our water for that half of the day. I don't care what nobody says

1 that's what happened to me. But Mr. Nash would fill it up with
2 water and let you drink it and fill it up again till you got
3 filled up with water and leave some water in your cup. I wasn't
4 no angel. I messed up. I raised noise and things because, I don't
5 know; I didn't have anything else to do but sit in there, so I
6 figured I might as well do something. So I'd make noise and let
7 off tension and get the pressure off of me, but I wouldn't mess
8 up on his shift because he was being good; and if I messed up it
9 would step on his toes, and that probably would end up messing up
10 the only man that was doing us any real -- treating us like humans.

11 Now, I'm trying to sound like some angel or something; I'm
12 not. I've done a lot of wrong, but I don't think I've ever done
13 anything as bad to be kept in a place like this as long --

14 MR. GRANUCCI: Your Honor, I object to the conclusionary
15 statement of this witness. I think that he has lapsed over from
16 testimony into argument, and improper argument at that.

17 THE COURT: Well, it is a natural protestation that would
18 ordinarily come from a man who had been subjected to some type of
19 penal services. I will allow it.

20 THE WITNESS: Your Honor, if I'm talking wrong I'm sorry,
21 but I want to talk.

22 THE COURT: You can talk.

23 MR. COHLER: Q. Mr. Wells, I don't want to interrupt you.
24 Was there a particular incident that you can recall shortly prior
25 to Thanksgiving involving an inmate housed next door to you and

1 at least in part yourself?

2 A. There was an incident involving me -- well, it really
3 didn't involve me because they made it involve me; but this
4 inmate, Esparza, was caught with some tobacco in his cell that
5 you roll cigarettes with, and this officer had found what they
6 called a contraband because you ain't supposed to smoke. He
7 found the tobacco in his cell and we'd just got out of the strip
8 cell and we were nearing the end of the first 29 days' sentence
9 when he found it. So he said, "Okay, we're going to go to the
10 strip cell;" and Esparza, I guess he was sick of the strip cell.
11 He started arguing, "I don't want to go to the strip cell; you
12 can give me five days lock-up but please don't." So they got in a
13 verbal boisterous argument, and both of them are of Mexican
14 descent and they were arguing in Mexican, and I was in the first
15 cell and I called him because he was a good friend of mine and I
16 was tired of seeing him get hung out because they dropped the bait
17 out.

18 MR. GRANUCCI: Objection, Your Honor. That is an improper
19 conclusion.

20 THE COURT: Yes, I will strike "dropping the bait out."

21 MR. COHLER: Q. You may continue, Mr. Wells. Try to
22 limit yourself to your own observations.

23 A. Well, they was involved in a loud argument. I told the
24 inmate, Esparza, to stop arguing, just do what he says because we
25 was going to get out in a few days. Anyway Esparza had threatened

1 the man. He says, "If you keep bothering me I'm going to cut
2 your heart out." That's what he said. The man struck his chest
3 out and said, "Cut it." So they kept arguing and finally he says,
4 "No, not unless I can take my personal letters." So anyway that's
5 when I told him, "Man, be quiet; don't say nothing else;" as I
6 was saying this some officers -- I guess the officers up front --
7 had called for some more officers to take Esparza to the strip
8 cell. Well, I'd just got through telling him that and they told
9 me to, "shut up, big-mouth, you're going too."

10 So they took Esparza to the strip cell, came back and took
11 me to the strip cell.

12 Q. Two different cells?

13 A. Yes, two different. These didn't have the cement commode
14 in the corner. These had a hole in the floor.

15 And they took me back there; and on the way back there I
16 stopped to ask Sergeant Frederick, who was walking on my left,
17 why I was going to the strip cell. I slowed down my pace of
18 walking and turned toward him at an angle, and before I could
19 get it out of my mouth Officer Fontana put me in a choke-hold.
20 Sergeant Frederick grabbed me by my testicles with his fist and
21 Officer Nance grabbed both of my feet off the ground. So I was
22 off the ground and Officer Miller was hitting me in my mid-section
23 with a closed fist. They took me to the strip cell that way and
24 I couldn't breathe. I was struggling, trying to get some breath
25 and trying to get the man's hand from where it was because it was

1 hurting; and they took me in a cell and through me; and I asked
2 them what did you do that for -- I was mad, I was really mad, and
3 they told me, "We were subduing you."

4 The next day we went to the Disciplinary Committee.
5 Esparza went for contraband and belligerence to an officer and I
6 went for agitation. They said I agitated Esparza into arguing.
7 I got 29 days again, plus I got restricted diet. That's the little
8 a little thing made out of a whole bunch of food put together in
9 one little compressed box. And Esparza got 29 days without R.D.
10 But when they gave it to him he was mad; and he was arguing with
11 them and screaming he didn't want 29 more days in that place,
12 because the first 29 days they said we didn't have to do it all in
13 the strip cell but we done 22 days of it and during that 22 days
14 I didn't ever get no 115. So they couldn't say that they kept me
15 back there for 22 days because I was messing up because I didn't
16 get a 115.

17 So he said, well if he kept us in there, "I know you are
18 going to keep us all of this 29 days," so they told him he was
19 beating on the front of the cell making noise and they told him to
20 give his coveralls to them and his canvas mat because he was
21 making this noise. And he told them, "No, I'm not going to give
22 my coveralls and my mat to you;" because he'd already been stripped
23 one time in there all night and he said he wasn't going to freeze
24 to death. So they went and got some tear gas and came back with a
25 little red container of tear gas and a gas mask. Officer Miller

1 stood in front of my cell and Esparza's cell -- our cells was
2 side by side -- and my flap was down because the Committee, didn't
3 take us to the Committee room -- they came to the strip cell and
4 heard us in front of the cell and told us we was guilty. So
5 that's why the flaps was down, because the Committee was back
6 there.

7 Now, all of the Committee was present. I don't know his
8 first name -- Mr. Johnston, Lieutenant Flores, Sergeant Frederick,
9 officer Mota, and I am pretty sure Counselor De Carli was there;
10 and he told them if he didn't give them his coveralls and his
11 canvas mat that he was going to have to put some tear gas in his
12 cell. Esparza told them, "Well, if that's what it's going to be,
13 but I don't think it can be worse than freezing because I'm not
14 going to give you my coveralls and canvas mat."

15 Q. Who is he?

16 A. Officer Miller. He walked in the cell with the gas mask
17 on and sprayed. All I heard was a big "sh-h-h" noise, you know,
18 loud air, and like there was a lot of people fighting in there. I
19 thought they'd went in there and physically taken them off, but
20 it was Esparza on the floor. It just made him do that. He
21 couldn't breathe and he was trying to breathe and he was going
22 into convulsions and things in there; and the man kept talking to
23 him through the thing. He eventually did shove out his mattress
24 and jumped out off his overalls.

25 Q. You didn't see any of that happening?

1 A. Well, he had to shove them out because our cells was
2 right next door together and Officer Miller came out with the mat
3 and the coveralls. And at that time I was pretty mad because I
4 hadn't said anything, and this tear gas -- it just don't stay in
5 one spot. It moves. All over the place. And it's all in my
6 cell and I'm burning up and coughing and choking, and I'm telling
7 them, "Why did you have to do that? Come in here; don't pick on
8 him. Come in here and take mine." And I threatened them to come
9 in there.

10 So with a little tear gas that they had left, he squirted
11 it in my room and closed my flaps and walked on.

12 Q. How much was there left?

13 A. Not enough to hurt me like it hurt him. He'd got the
14 majority of the can.

15 Q. Do you have more to relate about that incident, Mr. Wells?

16 A. Yes, I have a little more.

17 At night Mr. Nash came on. Mr. Nash -- Officer Nash came
18 on -- wait a minute. I'm not sure if Officer Nash came on that
19 night. I'm not positive, but whatever officer, they opened the
20 flaps and doors of Esparza's cell and they opened the door out
21 because his cell was full of it. And his throat -- he was messed
22 up. And he kept asking could he have some clothes, and they said
23 not until the man that took them came back on shift.

24 So that night I still had my canvas mat and I picked
25 thread out of my mat and made a line and took my coveralls off

1 and tied them in a ball and threw them out the hole in the screen.
2 And he made a thread -- he had a thread that he'd made before; we
3 used to fish sandwiches back to each other to eat because of the
4 ordeal he was on -- he had to eat on, because he couldn't eat
5 that. So we had two lines and I sent him my overalls that night.
6 He slept in mine. If he had got caught I would have got some more
7 time because I was violating an inmate rule of contraband line in
8 my room.

9 So the next day they gave him his clothes back about noon-
10 time. That's all I have to say.

11 Q. Mr. Wells, were you given a toothbrush at all during the
12 50 or so days?

13 A. No, sir.

14 Q. Did you get one after you were released from isolation?

15 A. Yes, sir.

16 Q. Mr. Wells, do you have an occasion to see the dentist
17 shortly after you left the strip cell?

18 A. Yes, sir.

19 Q. Tell the Court about that.

20 A. Well, when I left the strip cell I hadn't brushed my
21 teeth in so long that my gums, my front -- I had two cavities that
22 I had put in -- maybe it was on the streets -- but I had two
23 cavities in the front of my teeth up back near the gums, and I
24 hadn't brushed my teeth so that my gums had growed down over these
25 cavities or attached to them. And when I came out of the strip

1 cell and brushed my teeth -- when I first came out I was brushing
2 them quite regular and the two cavities was gone. One day, I
3 didn't know when they came out. Just one day there was a hole
4 there, then it was gone. So I put in a request to see the
5 dentist and he'd asked me, "You haven't been brushing your teeth
6 very often, have you?" And I told him, "No." He says, "That's
7 why your cavities fell out, because when you did get to brush
8 them your gums had growed down here," and when I brushed them the
9 gum broke back up and the cavity was loosened and fell out --
10 washed out. And he refilled them for me.

11 Q. Thank you, Mr. Wells.

12 CROSS EXAMINATION

13 BY MR. GRANUCCI:

14 MR. GRANUCCI: Q. Mr. Wells, you are presently on parole,
15 are you not?

16 A. Yes, I am.

17 Q. Where are you on parole?

18 A. Here in San Francisco.

19 Q. Now, you testified that you were an inmate of Soledad for
20 how long?

21 A. Around a year.

22 Q. Around a year. And the first time you went into a quiet
23 cell was when?

24 A. It was either August or September -- was my memory -- what
25 I can remember.

1 Q. I show you a document. Have you seen that?

2 MR. COHLER: May I see it?

3 MR. GRANUCCI: It is a copy of his affidavit.

4 MR. COHLER: Would you mind having it marked for
5 identification if you are going to use it?

6 MR. GRANUCCI: I am just refreshing the witness' recollec-
7 tion.

8 MR. GRANUCCI: Q. Have you examined that document?

9 A. Yeah, I looked at it.

10 Q. Does it refresh your recollection as to the amount of time
11 you spent in the quiet cell on the first instance?

12 A. It says from the 3rd to the 5th of August.

13 Q. Now, were the flaps closed all the time, Mr. Wells?

14 A. During this three-day period.

15 Q. What about when they brought you your meals?

16 A. They opened the door.

17 Q. They opened the door?

18 A. Yes.

19 Q. How long did they leave the door open?

20 A. Long enough to put the plate on the floor.

21 Q. And then closed it again?

22 A. Yes, sir.

23 Q. Did they come again to pick up the plate?

24 A. Yes, sir.

25 Q. And what did they do then?

1 A. Open the door, take the plate out.

2 Q. And closed the door again?

3 A. Yes, sir.

4 Q. How often did they bring you water?

5 A. Once in the morning and most of the time twice in the
6 afternoon.

7 Q. Twice in the afternoon? Do you know what times in the
8 afternoon?

9 A. No. There wasn't no way I could tell the time, but I
10 know once the first time would be when it was daylight and the
11 next time dark.

12 Q. The same officer would bring you water both times in the
13 afternoon?

14 A. Yes.

15 Q. Do you remember who that was?

16 A. At this period of time -- this month, I can't remember
17 exactly who was working at nights.

18 Q. Okay. Did they bring you toilet paper while you were in
19 the cell?

20 A. It was toilet paper in the cell when I came into it. The
21 only thing I was brought while I was in the cell was food and
22 water.

23 Q. They never brought you toilet paper?

24 A. No, sir.

25 Q. And you wore blue coveralls that first time?

17
1 A. Yes, sir.

2 Q. Now, the second time you were in a quiet cell was when?

3 A. I don't know exactly, sir.

4 Q. Does the date October 26, 1965, mean anything to you?

5 A. Yes. That was the third time, I think.

6 Q. It was the third time?

7 A. That was the time where I did 58 days in isolation.

8 Q. Were the flaps closed when you entered in October?

9 A. When I first went in, yes.

10 Q. They kept them closed?

11 A. They kept them closed until we had -- until Esparza
12 requested through the Disciplinary Committee that we might be
13 able to write letters to our mothers.

14 Q. Yes. Now, what about for feeding? Were they open?

15 A. They opened the door.

16 Q. Would they close it again?

17 A. Yes.

18 Q. And they took your plate out again?

19 A. Open the door and take the plate and close the door.

20 Q. And that was twice a day?

21 A. Twice a day.

22 Q. Do they ever open the flaps for a head count?

23 A. They opened the door. The flap, the small square on the
24 door -- they opened and shine a flashlight and close it.

25 Q. And that is all?

1 A. Yes. That is all.

2 Q. How many times a day?

3 A. They don't do it in the day time. They count at night.

4 Q. How many times?

5 A. I don't know, sir.

6 Q. You say they never took a head count during the day?

7 A. Well, maybe they took their head count when they feed.

8 Maybe.

9 Q. Who brought you your food?

10 A. The officer on shift.

11 Q. Did inmate porter ever bring you your food?

12 A. Not in the strip cell, no. He would be on the food cart,
13 but he wouldn't be allowed to bring the food inside the cell when
14 I was in there. This time the officer did. But later on after --
15 on the strip where I did 50 days, I think in about December
16 sometime, the inmate orderly did bring food in there, but I wasn't
17 eating food then. I was eating R.D.

18 Q. And now back to the August -- your first time in the
19 quiet cell in August. Did they flush the toilets?

20 A. Yes, they flushed them in August.

21 Q. When?

22 A. About twice a day.

23 Q. When?

24 A. Well, when I first went in the strip cell in August I can
25 remember this, that they flushed the toilet early in the morning

1 and they flushed it in the afternoon after dinner.

2 Q. Did they ever flush it at night?

3 A. No.

4 Q. How about when you were in in October?

5 A. Well, it varies in October.

6 Q. How about the second time?

7 A. Depends on what officer was on, what kind of -- how the
8 toilet would be flushed. If Mr. Spoon was working he'd flush it
9 at 4:00 o'clock in the morning and then -- then you'd have to get
10 up in the morning and use the bathroom and he wouldn't flush it
11 no more. Mr. Nash would flush it when he came on shift, and if
12 we hollered where he could hear you he'd flush it when you asked
13 him sometimes.

14 Q. He would?

15 A. Sometimes.

16 Q. Do you think Mr. Nash was pretty good to you?

17 A. I don't know. Maybe Mr. Nash was doing what he was
18 supposed to do.

19 Q. Now, you say you were sitting on the cold floor in August,
20 is that correct?

21 A. Yes.

22 Q. Did you have a mat to sit on?

23 A. Yes, I had a mat.

24 Q. Did you sit on the mat?

25 A. Well, I rolled it up and I tried to sit on it but the mat

1 was kind of dirty.

2 Q. So you preferred to sit on the floor?

3 A. Yes, I did.

4 Q. Even though the floor was cold?

5 A. Yes, I did.

6 Q. Mr. Wells, do you speak Spanish?

7 A. No, sir.

8 Q. You don't speak any Spanish at all?

9 A. A few slang words.

10 Q. A few slang words?

11 A. And a few common words such as hello and things. I don't
12 know how to speak the Spanish language.

13 Q. If two people were speaking together, would you understand
14 them?

15 A. Depends on what they was talking about.

16 Q. Supposing it involves cutting somebody's heart out?

17 A. Well, now if you are referring to Esparza, he didn't say
18 that in Spanish.

19 Q. I didn't?

20 A. No. He said it in English.

21 Q. And Officer Mota said that in English?

22 A. Said, "Here, cut it." Do you want me to tell you what
23 they said? Well, they was talking about each other, you know
24 "chingado tu madre."

25 Q. I'm afraid I don't understand things like that, Mr. Wells.

1 A. And I could understand because I was there for three years.

2 Q. Well, now --

3 THE COURT: You opened the subject.

4 MR. GRANUCCI: I suppose I did, Your Honor, I suppose I
5 did.

6 MR. GRANUCCI: Q. But, now, Mr. Wells, let us get this
7 one thing absolutely clear. When Esparza told Mota that he was
8 going to cut his heart out, was that in English or Spanish?

9 A. English, sir.

10 Q. Would you swear to that under oath?

11 MR. COHLER: Your Honor, the witness is under oath.

12 THE WITNESS: I would swear to it.

13 MR. GRANUCCI: Q. Now, did you ever give any coveralls to
14 Esparza?

15 A. Yes, I did.

16 Q. Was this before or after the gas incident?

17 A. After the gas incident.

18 Q. You are sure?

19 A. Yes, I'm sure.

20 Q. And who was present at that incident?

21 A. When they tear-gassed him or --

22 Q. When they tear-gassed Esparza?

23 A. Want me to name all the people that I can remember?

24 Q. That you can remember.

25 A. Mr. Johnston, Mr. De Carli, Mr. Kieपुरa, Lieutenant Flores,

2
1 Sergeant Frederick, and Officer Mota.

2 Q. They were all there?

3 A. Yes, sir.

4 Q. How long a burst of gas was fired into Esparza's cell?

5 A. I don't know how much it was. The can of gas is compressed
6 tear gas and it's about this big (indicating) and it's mostly
7 used to quiet down a whole lot of people, and it was squirted into
8 this small cell; and I don't know how long it was squirting, but
9 it was a lot of gas because the whole tier was up and coughing.

10 Q. The gas spread out from Esparza's cell?

11 A. Over the whole tier.

12 Q. What did they do when they finished gassing Esparza?

13 A. They closed his door and his door was opened later on
14 because the man that came on didn't understand what all this gas
15 in this cell -- he opened the door trying to get all that gas out
16 of there. My flaps were closed.

17 Q. Did you get gas in your cell?

18 A. Just a little bit because I only got a little bit.

19 Q. Officer Mota tried to gas you?

20 A. Yeah, but it wasn't very much gas.

21 Q. When did he do that?

22 A. He just walked in front of my cell and squirted. Oh, yes.
23 I threw a cup of water while they were throwing the gas, and
24 maybe that's the reason that he squirted gas at me, because I was
25 kind of hostile and I was screaming loud and I was very angry

1 because of the lack of understanding of these officials -- were
2 supposed to be the bosses and they were standing up there like
3 vultures watching this man gas this boy.

4 MR. GRANUCCI: I will ask that the word vultures be
5 stricken from the record.

6 THE COURT: Motion is denied.

7 MR. GRANUCCI: Q. Now, Mr. Wells, you say you threw a cup
8 of water --

9 THE COURT: That may be the way it appeared to him at the
10 time.

11 MR. GRANUCCI: Q. Was it accidental or did you do it
12 deliberately?

13 A. Purposely. I was mad. I wanted to throw something and
14 that was the only thing to throw was a cup of water.

15 Q. You didn't accidentally hit the bars, did you, and spill
16 the cup on the people there?

17 A. No. The people there were out in the hallway and there's
18 a screen, you know. And they were standing there while he was
19 doing this tear-gassing, and I was hollering, "Why are you doing
20 this?" I was screaming; I don't know everything I said -- some
21 bad words. I said a lot of bad things.

22 Q. But you did throw the water?

23 A. I threw the cup of water up against the screen and it
24 sprayed out.

25 Q. You are sure it was water?

1 A. I'm positive it was water -- and I know I'm under oath.

2 Q. Do you know the difference between water and urine?

3 A. Yes, I do.

4 Q. And you are sure it was water?

5 A. I'm positive it was water.

6 Q. Now this cup, was this an extra cup you had in your cell?

7 A. This was the only cup I had in my cell at this time. I
8 have had more than one cup in my cell, but I only had one this
9 time.

10 Q. They allowed you to keep extra cups?

11 A. No. Sometimes I'd get two cups in there for the purpose
12 of -- when Mr. Nash come on I would try to get them all filled up
13 and wash my hands and face.

14 Q. How would you dry your hands and face?

15 A. On my coveralls.

16 Q. You would?

17 A. Yes.

18 Q. Now, you have been sitting here throughout these proceedings
19 here in San Francisco?

20 A. Since yesterday.

21 Q. No further questions.

22 MR. COHLER: No questions, Your Honor.

23 THE COURT: No questions. Thank you, Mr. Wells.

24 MR. COHLER: Thank you Mr. Wells.

25 Please call Mr. Jordan.

Friday, August 12, 1966

3:00 P.M.

1 ROBERT CHARLES JORDAN, JR.,
2 called as a witness on his own behalf, who, being first duly
3 sworn, testified as follows:

4 THE CLERK: Would you please state your full name for
5 the record?

6 THE WITNESS: Robert Charles Jordan, Jr.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. COHLER:

10 MR. COHLER: Q. Mr. Jordan, how old are you, please?

11 A. Twenty-seven years old.

12 Q. And, except for the fact that you are here for this
13 hearing in San Francisco, are you presently an inmate at the
14 Correctional Training Facility in Soledad?

15 A. Yes, I am.

16 Q. Have you been at the Correctional Training Facility, for
17 periods of time, more than once?

18 A. I have been there twice.

19 Q. You were there once; you were transferred somewhere else
20 and brought back, is that correct?

21 A. Yes.

22 Q. When were you transferred to the Correctional Training
23 Facility most recently leading up to your present incarceration
24 there?

25 A. June of 1965. June, last part of -- June 27th, somewhere

1 of '65.

2 Q. When you were at the Correctional Training Facility, was
3 there an area known to you as Isolation?

4 A. Yes, sir.

5 Q. And an area known to you as a strip cell?

6 A. Yes.

7 Q. Would you please tell the Court where the strip cell and
8 the isolation areas are?

9 A. The strip cells are located in O-Wing, which is the
10 Adjustment Center on the first floor on the left-hand side, in
11 the back behind the grill gate separating from the regular
12 isolation center.

13 Q. Please speak as loudly as you can. Take your time,
14 any time you need to answer.

15 Mr. Jordan, have you ever been detained in a strip cell
16 at Soledad?

17 A. Yes.

18 Q. And I am referring now only to the period of time that
19 you have been at Soledad since you returned at the end of June,
20 1965, when was the first time you were put in a strip cell at
21 that period of time?

22 A. July 9th, 1965.

23 Q. And how long were you kept in a strip cell during July,
24 1965?

25 A. Twelve days.

1 Q. During the twelve days, Mr. Jordan, did you ever have
2 writing materials in your strip cell?

3 A. I had a petition and three forms that were returned to
4 me by the Court in my cell from about 13th or 14th of July, and
5 I was allowed two pieces of paper and I smuggled in a pencil
6 from my next-door neighbor, and that is all I had.

7 Q. Was there light to write by in the cell when you had
8 this paper and pencil?

9 A. No.

10 Q. Did you write?

11 A. I wrote on the two pieces of paper and I smuggled in two
12 more pieces of paper -- or three -- I forget exactly how much --
13 and I wrote on the pieces of paper, yes.

14 Q. Mr. Jordan, would you please describe the window and
15 door openings of the strip cell, as you recall it, during this
16 period in July?

17 A. The windows and the doors?

18 Q. Yes.

19 A. The door is a solid door and it has a little square in it
20 with a crossbar or -- I may be wrong about crossbar, but it has a
21 screen in front of it and it has a flap that lets down and lets
22 up, and it's got a little hook on it. When they put it up the
23 hook snaps like a night light on a door, and that keeps the flap
24 up, and they have a space -- it is not a window, it is just an
25 opening in the wall. There is no glass in it. And they have a

1 screen and they have squared bars -- they form squares -- and
2 they have a flap, a big metal flap that goes over this with the
3 same type of hook on it.

4 Q. Mr. Jordan, during the period July 9 through July 20,
5 1965, when you were in the strip cell, were these flaps ever
6 closed?

7 A. Just about all the time, yes.

8 Q. Was there a period of time when they were left open for
9 awhile?

10 A. On one occasion Officer Hoagland left them open for
11 approximately an hour, or hour and fifteen minutes, in order for
12 me to write some letters, and -- and the doors were opened
13 during my chow, which is about fifteen or twenty minutes or
14 twice a day.

15 Q. How much ventilation was there when the flaps were
16 closed?

17 A. I don't know. The ventilators that they had, as far as
18 I know, didn't work. They have ventilators in there, but they
19 do not work, and they have little cracks where they put the flap
20 up, and they have a little crack under the door, and this is all
21 the ventilation that you get.

22 Q. Mr. Jordan, would you recognize personnel at the insti-
23 tution known as a medical-technical instructor or M.T.A, if you
24 saw one?

25 A. Yes.

1 Q. They wear distinguishing clothing?

2 A. They wear white uniforms.

3 Q. Did you ever have a conversation with an M.T.A. when you
4 were in the strip cell in July, 1965?

5 A. I did.

6 Q. As best as you recall would you tell the Court, please,
7 what that conversation involved?

8 A. I had a rash on my body that I asked for treatment for.
9 I had an eye irritation that I asked for an eye wash of some type
10 for, and my knees and elbow joints were hurting and my hip
11 because I was laying on the floor, and they were bothering me
12 and I asked could I have a balm of some type for this and I
13 asked to see a doctor.

14 Q. You asked to see the doctor?

15 A. I asked to see the doctor.

16 Q. Starting with the period July 9, would you tell the
17 Court, please, the first time that you actually wrote to the
18 doctor?

19 A. I wrote to the doctor approximately the week after I was
20 released from the strip cell, which I'd say was the 1st of
21 August. I don't know -- I was in 106 when I wrote him. That
22 was up front. I'd say it was a week. I got out the 20th and I
23 guess I wrote him about the 29th or somewhere around there.

24 Q. What was the name of the doctor?

25 A. Conkle.

1 Q. Do you know what his position was at the institution?

2 A. He is the Chief Medical Officer.

3 Q. And when you wrote to Dr. Conkle, what did you write
4 about?

5 A. I told him that my stomach was bothering me and that I
6 believed -- I didn't know because I am not a doctor -- but I
7 believed that I had hemorrhoids, and I'd like to be taken to the
8 hospital and given a physical examination and some type of
9 treatment for my stomach troubles.

10 Q. Did you say anything to Dr. Conkle about your request to
11 be taken to the hospital?

12 A. Not that I can recall. I mentioned the fact that I had
13 just got out of the strip cell and I was hurting all over, but
14 primarily what I was interested in was getting some kind of
15 treatment for my stomach and for what I believed were
16 hemorrhoids.

17 Q. Did you get any response from Dr. Conkle?

18 A. No.

19 Q. Did you write again to Dr. Conkle at a subsequent time?

20 A. Twice.

21 Q. When was the next time, please, as you recall it?

22 A. Approximately November or late October, I forget exactly.
23 I wrote to Dr. Conkle and a Dr. Bailey.

24 Q. Who is Dr. Bailey, please?

25 A. Dr. Bailey is the dentist.

1 Q. What did you write to Dr. Conkle at that time, the
2 second time you wrote to him?

3 A. Essentially the same thing. I told him that I wrote
4 him once before and he hadn't answered the letter, so I didn't
5 think he had got it because I gave it to the M.T.A. instead of
6 regular mail channels so I figured the M.T.A. put it in his
7 pocket and lost it, so I was writing again and I was enclosing
8 a Request for Interview slip along with my letter and I'd
9 appreciate it if he could call me to the hospital because I
10 believed I was sick and I thought I had a serious complaint. I
11 have got a complaint and could he see me.

12 Q. Did you get any response from Dr. Conkle to that letter?

13 A. No.

14 Q. You say you also wrote to Dr. Bailey. What did you
15 write to Dr. Bailey?

16 A. I had seen Dr. Conkle when he come through. See, he
17 comes through, but he won't stop and talk to you. He will ask
18 what is wrong and keeps right on walking. All he has is a
19 formality: how are you; bye; and he is gone; and I asked him
20 to contact Dr. -- I didn't know who the dentist was -- I asked
21 him to contact the dentist because I had a filling that -- well,
22 a tooth that had chipped and I had a filling I thought was
23 coming loose, and I had a tooth decayed, and I'd like to get
24 them fixed; and he told me that I was on the waiting list. And
25 I'd talked with the M.T.A. I don't know how many times, and I

1 had seen him just about twice a week for about a month.

2 Q. The M.T.A.?

3 A. M.T.A. assistant, and he kept telling me I was on the
4 list, and I couldn't understand why I wasn't being taken up
5 since I was on the list; so I got Officer Fincannon to call
6 and find out what the dentist's name was, and I wrote him a
7 letter and enclosed the interview slip, and I sent that through
8 the regular mails and he got it and called me over.

9 Q. You saw Dr. Bailey shortly after you sent him the
10 interview slip and letter?

11 A. Yes.

12 Q. Did he do something for your teeth?

13 A. They extracted two teeth. One was chipped and the one
14 that was decayed. He extracted them and that was about three
15 days after I wrote my letter; and then he called me back again
16 and he filled the loose filling and another one; and then they
17 called me back again, and I didn't want anything done then. And
18 then I wrote him again -- no, I didn't write him; I just sent a
19 request for interview and they took me back up, till now I have
20 got all my teeth filled or worked on that I need repaired.

21 Q. You say you went back on one occasion to the dentist and
22 you didn't want anything done. Did you refuse treatment at that
23 time?

24 A. Yes. Well, we had a little misunderstanding. He wanted
25 to pull one and I didn't want it to be pulled because I don't

1 have any teeth on the top and it was a molar and if I let him
2 pull that, then I wouldn't have anything to chew on. So I
3 asked him could he fill it. He said it was very deep and he
4 didn't believe it was possible. I said, "Well, in that case I
5 don't want it pulled; I will just leave it there." So later
6 I went back and he agreed to just fill it. He examined it and
7 took X-rays and he decided it may be possible that he could fill
8 it without pulling it.

9 Q. You have told the Court that you wrote to Dr. Conkle
10 twice and, although you thought one of them may have miscarried,
11 you didn't receive a response. Did you write again?

12 A. Yes.

13 Q. Approximately when was that?

14 A. First part of February, about the 6th or 7th.

15 Q. Of this year?

16 A. Yes, '66.

17 Q. Did you see Dr. Conkle after you wrote to him in
18 February, 1966?

19 A. Yes, I seen him. I think it was within about five days --
20 six days; after I wrote him he called me over to the hospital.

21 Q. Do you happen to remember the date that he called you
22 over to the hospital?

23 A. The 14th I am pretty sure. It might have been the 15th.

24 Q. Of February?

25 A. Of February.

1 Q. And at that time what did Dr. Conkle do during his
2 examination?

3 A. He gave me a -- he looked in my eyes with a little
4 flashlight -- well, it is not a flashlight, it's -- he looked in
5 my eyes with a light and he looked in my ears. He looked at my
6 fingers; had me hold my fingers out; tapped me with a hammer;
7 looked in my throat; looked in my rectum; and felt in my groin;
8 had me cough and held the stethoscope, or whatever you call it,
9 up to my heart, and that was it.

10 Q. Did he take a urine sample?

11 A. No.

12 Q. Did he take a blood sample?

13 A. No.

14 Q. Mr. Jordan, would you turn your attention back now --

15 THE COURT: Let's take a short recess.

16 MR. COHLER: Thank you, Your Honor.

17 (Whereupon a ten minute recess ensued)

18 MR. COHLER: Q. Mr. Jordan, would you please turn your
19 attention to the period July 9th through July 20th, 1965, when
20 you were in the strip cell at Soledad? Would you tell the Court,
21 please, the state of cleanliness of the cell when you were first
22 brought to it on July 9th?

23 A. I don't know about July 9th because it was at night when
24 I came in and I couldn't see. But the next day -- you know the
25 policy between inmates; if you are put in a cell you kind of

1 shake it down to make sure there isn't any contraband that they
2 are going to blame on you. You kind of shake down the cell or
3 search the cell to see that there isn't any contraband in there
4 or something of that nature that they might try to claim is
5 yours and, therefore, give you more time in that cell or lead
6 up to something that they can give you. So I inspected the cell
7 as best I could, and it was dirty. They had stuff all over the
8 commode. They had writings on the wall and -- well, not
9 writings. I shouldn't say writings, but they had either blood
10 or beet juice or something like that. A guy wrote "hapa" --

11 MR. GRANUCCI: Excuse me, I can't hear.

12 THE WITNESS: I said somebody had wrote "hapa."

13 MR. COHLER: Q. Would you spell that, please?

14 A. H-a-p-a, or something like that. It is a Spanish word
15 that means hurrah, or something like that.

16 There was a little food droppings on the wall in the
17 back of the cell there with what I consider human defecation,
18 because -- I didn't touch it or anything like this to see for
19 sure. I just take it for granted from the smell that is what it
20 was. And that night, from laying on the floor -- which I was
21 given a mat, but I'm pretty tall and your head sticks out from
22 under the mat, so you have to lay it on the floor because there
23 is no pillows -- and I'd say there was urine on the floor
24 because of the smell, and when you walk around, which I did a
25 lot of that night, and I was barefooted, you could feel the

1 sticky on the floor.

2 Q. Was there an odor in the cell?

3 A. There was an odor.

4 Q. Would you describe the odor, please?

5 A. I can't describe the odor. All I can say, it was a
6 foul odor. It didn't exactly smell like a sewer because it
7 wasn't that foul, but it was one of those odors you just kind
8 of -- nauseous; you don't like it. You'd like to get away from
9 it, and it causes your eyes to burn. It irritates them and makes
10 you want to wipe them and close them, and it bothers you pretty
11 bad.

12 Q. Does the smell give you the impression at all that it
13 might have been the smell of bodily waste?

14 A. Yes, bodily waste plus old food, because -- old food,
15 bodily waste all mixed together and just -- it comes up smelling
16 pretty bad.

17 Q. Did you ever become ill in the sense of vomiting when
18 you were in the cell at this time?

19 A. On two occasions I became ill, yes.

20 Q. Did you vomit at either of those times?

21 A. Yes.

22 Q. Was the vomit ever cleaned up?

23 A. By myself with my hands. Nobody likes to leave that
24 stuff there, so you scrape it together with your hand, but it
25 still leaves the stuff on the floor that you can't scrape up.

1 Nobody cleaned it up but me, though.

2 Q. Was the cell cleaned at any time in any way by anyone,
3 except yourself?

4 A. No.

5 Q. Were you ever given anything to clean the cell with?

6 A. No.

7 THE COURT: Over what period of time?

8 MR. COHLER: July 9th through July 20.

9 MR. COHLER: Q. Is that the way you understood my
10 question?

11 A. Yes.

12 Q. Now, when you were first put into the strip cell on
13 July 9, 1965, Mr. Jordan, what were you permitted to wear as
14 you were put into the cell?

15 A. I wasn't permitted to wear anything. I was taken out
16 of my cell on the second tier, which was a long-term segregation,
17 medium classification, I guess, and I was taken to the
18 isolation -- to the strip cell, and I was ordered to take my
19 clothes off, and I put up what I call a vocal protest about this.
20 And I was --

21 THE COURT: You put up a vocal protest?

22 THE WITNESS: That is what I call it. It's a little
23 more than a vocal; it was a profane protest. I didn't want to
24 give them up. It got kind of sticky there, but I ended up
25 giving them up; and they put me in a cell.

1 Q. How long were you in the cell, starting with July 9th,
2 1965, without any clothing at all?

3 A. Till -- from that Friday night till the next Friday
4 evening.

5 Q. Approximately a week?

6 A. Approximately, yes.

7 Q. Did you have any clothing at all during that period of
8 time?

9 A. No.

10 Q. Do you recall a conversation on the first Monday, which
11 was the 4th day that you were in the strip cell; in July, 1965?

12 A. The Monday following the Friday? Yes.

13 Q. Do you recall -- withdraw that. Are you certain, in
14 your own recollection, with whom that conversation was held?

15 A. I'm not absolutely sure. I believe it was Officer Dodd;
16 but I couldn't be sure. I arrived at the name Officer Dodd
17 because it was only, oh, five officers it could have been. It
18 was a day officer which eliminates a couple, and there was a
19 couple more officers that I wouldn't ask for anything under any
20 circumstances; so I figured it was Officer Dodd, or it could have
21 been Officer Nance.

22 Q. You say -- go ahead.

23 A. I was through.

24 Q. You say you are certain it wasn't at least one other
25 officer because there are some people you won't ask for anything.

1 Why is that?

2 A. In O-Wing at this time -- they have changed the
3 designation of the buildings -- but at this time they had two
4 sections; one was the Adjustment Center, which was X-Wing, and
5 the O-Wing was a long-term segregation, and this wasn't an
6 Adjustment Center. This was problem inmates. These were the
7 inmates that were unmotivated who did not have any desire to go
8 along with the program, in their estimation, or had no desire
9 to conform to their program, and who they felt didn't deserve
10 any better than what they were getting, which was to sit in a
11 room and vegetate until they showed some desire to go along
12 with the program and then give them some privileges. And they
13 had a certain, what I call a type of correctional officer
14 working in there who was more or less told that these individuals
15 in this building were not to receive any special favors or
16 anything out of the way that they didn't have come by it.

17 MR. GRANUCCI: Objection. I don't like to interrupt
18 the witness, but I think we are getting into hearsay, and we are
19 also getting into remote matters and speculative matters of
20 opinion, and not direct testimony.

21 MR. COHLER: If there is a reasonable motion to strike,
22 I will agree to it.

23 MR. GRANUCCI: I move to strike.

24 MR. COHLER: How much? There has been a lot of
25 testimony. Do you want to have it read back?

1 MR. GRANUCCI: Yes. Just the part about the officer
2 being instructed.

3 THE COURT: That may go out. Yes, I recall that. That
4 portion may go out.

5 We will resume at 2:00 next Monday, at the hour of 2:00
6 P.M.

7 The plaintiff, Jordan, is remanded to custody of the
8 Marshall until the further order of this Court.

9 MR. COHLER: Thank you, Your Honor.

10 MR. GRANUCCI: Thank you, Your Honor.

11 (Whereupon the proceeding was adjourned until 2:00 P.M.
12 on Monday, August 15, 1966.)

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BEFORE: HON. GEORGE B. HARRIS, JUDGE

Defendants and Respondents.

Reported by: **MERILYN SEYBERT**

MONDAY, AUGUST 15 1966, AFTERNOON SESSION, 2:00 P.M.

THE CLERK: Civil Actions 44309 and 44786, Robert Charles Jordan, Jr. vs. C. J. Fitzharris, et al, further evidentiary hearing.

MR. COHLER: Ready for the plaintiff and petitioner, Your Honor.

MR. GRANUCCI: Ready for the defendants, Your Honor.

ROBERT CHARLES JORDAN, JR.,

recalled as a witness on his own behalf, resumed the stand and testified further as follows:

THE CLERK: Will the witness restate his name for the record.

THE WITNESS: Robert Charles Jordan, Jr.

FURTHER DIRECT EXAMINATION

BY MR. COHLER:

Q. When we recessed last Friday, I believe you were beginning to relate a conversation of Monday July 12th after you had been in the quiet or strip cell ^{since} the previous Friday. Would you tell the Court, please, whether you recall having a conversation on that Monday?

A. I do.

Q. Do you recall with whom that conversation was?

A. I don't know exactly who it was. I believe it was Officer Dodd, but it may not have been. It may have been somebody else.

1 THE COURT: Would you try to keep your voice up.

2 MR. COHLER: Q. Mr. Jordan, is there any officer
3 whom in your mind you don't think it was with?

4 A. There is two that I know it couldn't have been.
5 It couldn't have been Mr. Nash, because it was a day officer.

6 Q. Is that Mr. Nash, N-a-s-h?

7 A. Yes sir.

8 Q. Thank you.

9 A. And it couldn't have been Mr. Spoon, because I
10 wouldn't have asked him anything. Other than those two,
11 it could have been any officer.

12 Q. You mentioned you wouldn't have asked Officer Spoon
13 for anything. Would you explain that further to the Court,
14 please.

15 MR. GRANUCCI: Objection, Your Honor. I think the
16 plaintiff's feelings about a certain custodial officer
17 would not be relevant here. I think the important thing is
18 the physical condition--

19 THE COURT: Unless he relates the feeling to some abuse
20 or alleged abuse on the part of the individual, I agree.

21 MR. COHLER: Your Honor, I wouldn't want to qualify
22 what I think the witness will say as abuse, but I think it
23 bears toward the conduct of the officer as viewed by an
24 inmate.

25 THE COURT: I will allow it.

1 THE WITNESS: Mr. Spoon was an officer--he didn't have
2 much use for the inmates, and all the inmates understand
3 this. You didn't have anything extra or any favors or any-
4 thing that he didn't have to do by the orders of his
5 superiors. He didn't do it.

6 MR. COHLER: Q. What was the conversation about on
7 this Monday with whomever it was, Mr. Jordan?

8 A. I asked the officer, could he return my clothes to
9 me, my coveralls anyway, and he said that he would see if
10 he could do it.

11 Q. What happened after that? Did you receive your
12 coveralls?

13 A. No. He came back--not immediately--he came back
14 later that day and he told me he wasn't authorized to re-
15 turn my clothes to me and that he discussed this with some-
16 body. He didn't say who it was. He just said he talked
17 to somebody up front. And he wasn't authorized to return
18 my clothes to me and I would have to see Sergeant Owens,
19 as he was the one that took them from me.

20 Q. Did you see Sergeant Owens subsequently?

21 A. That Thursday, yes.

22 Q. Did you have any conversation before you saw
23 Sergeant Owens on Thursday regarding your clothing?

24 A. Not that I recall. I asked--I just asked that
25 officer, and that is the only one I asked for my clothes.

1 Q. At this time, from the Friday you had been put in
2 the quiet cell or strip cell at least through that Monday,
3 had the flaps been opened or closed?

4 A. They had been closed.

5 Q. Did you have a conversation with anyone about the
6 position of the flaps?

7 A. Yes. I don't recall the day. It was, I believe,
8 it was the 14th. I said the other day I thought it was
9 Officer Hoagland, but it was the night officer. He left
10 the flap open for me for about an hour so I could write two
11 letters. He thought I was going to write one letter, but
12 I ended up writing two. And I asked Mr. Nash, I think it
13 was Tuesday night or it might have been Wednesday, I asked
14 him if he could let the flaps down, and he told me he
15 wasn't authorized to do that--he didn't say "not
16 authorized," he just said he couldn't do it, and he said
17 I would have to see the sergeant about it. And he called
18 the sergeant for me and the sergeant told me he couldn't
19 let them down because he wasn't the one that put them up,
20 and I would have to see Sergeant Owens about it, since
21 Sergeant Owens put me in the strip cell. ^{he} ~~He~~ was the one
22 to decide to put the flaps back down.

23 Q. When you say that Sergeant Owens had put you in
24 the strip cell, do you mean physically handled your being
25 placed in the strip cell?

1 A. He was the sergeant on duty in the O-wing the night
2 that I was moved to the strip cell, and he was the one that
3 made the order that I be moved, and he was the one that
4 took the clothes and the one that put the flaps up. And
5 according to everybody else, he was the one that was going
6 to have to put the flaps back down and be the one to give
7 me my clothes back.

8 Q. Did you have a conversation with Sergeant Owens
9 when he came back on duty?

10 A. Yes. I saw him on Thursday, the following Thursday.

11 Q. Please relate that conversation as best you recall
12 it.

13 A. He came back. I asked the officer on duty--I am
14 not sure, but I think that was Mr. Nash too, or Mr. Thompson;
15 it was one of the two--and he came back and he talked to me
16 for about a half hour about the incident that I had been
17 involved in and that got me placed in the strip cell and
18 why did I do it and stuff like this, and at the end he said
19 he was going to give me back my coveralls. And he did this
20 the next night, Friday. He brought my coveralls back to me
21 and he told me that he was going to let me out of the strip
22 cell Monday. He was going to leave a note, because he
23 couldn't move me because after 4:00 o'clock on Fridays his
24 watch couldn't move anyone. And he would leave a note to
25 have me moved Monday if he had the time to do it. And he

1 let the flaps down that night.

2 Q. Did the flaps stay down until you were eventually
3 released from the strip cell?

4 A. No.

5 Q. What happened then?

6 A. The officer put them up the next morning.

7 Q. The next day you say?

8 A. The next morning.

9 Q. Did they then remain closed until you were released
10 from the quiet cell or strip cell?

11 A. No. The morning before I got out, they were let
12 down. Officer Hoagland let them down. I wasn't out yet,
13 but Sergeant Friedrick came back and told me if I didn't
14 make any noise out front that he'd let me out front. So
15 they let the flaps down since I was getting out of the
16 strip cell.

17 Q. You said, Mr. Jordan, you had your clothes taken
18 away from you on a Friday that you went in and they weren't
19 given back to you until the end of the next week. Did you
20 have any clothing at all during that period?

21 A. No.

22 Q. Were you permitted to keep your glasses?

23 A. Yes. They didn't take my glasses.

24 Q. When were you released from the quiet cell or strip
25 cell?

1 A. On the--on Tuesday, I believe, Tuesday afternoon,
2 the 20th.

3 Q. Were you taken before a Disciplinary Committee at
4 any time during the period you were in the quiet cell or
5 strip cell?

6 A. Yes, I went to the Committee on Tuesday.

7 Q. That was the first Tuesday after the Friday you
8 were placed in the cell?

9 A. Yes.

10 Q. Had you been taken to the Disciplinary Committee
11 before that Tuesday at all involving this incident?

12 A. No.

13 Q. What had you been told about why you were in the
14 quiet cell or strip cell?

15 A. I was told I was in the strip cell because I spit
16 on a correction officer.

17 THE COURT: Because you what?

18 THE WITNESS: Spit on him.

19 MR. COHLER: Q. How much water did you have during the
20 time that you were in the quiet cell or strip cell, Mr.
21 Jordan?

22 A. You mean cups? Or how much they gave me?

23 Q. Any way that you had water, yes.

24 A. They gave me all the water I wanted. They come in
25 right after breakfast or sometimes right before breakfast

1 and they pour--I had a little white cup and they would pour
2 water, and if I was awake I would drink that and they would
3 give me some more and then they would leave. And at night,
4 officer Nash always gave us all we wanted.

5 Q. What were the facilities for going to the bathroom
6 in the quiet or strip cell?

7 A. They got-- In the cell I was in, they have a
8 concrete block that is raised up off the floor. I don't
9 know how far. I am not too clear on measuring distances.
10 But it was almost knee-high off the floor, and inside they
11 have got a toilet, in the middle of the concrete.

12 Q. How often was that flushed?

13 A. Twice a day.

14 Q. Was it flushed at the same times every day?

15 A. No. It wasn't always flushed at the same time. It
16 was just sometimes they would come in real early and flush
17 it in the morning before you woke up and when you wake up
18 it would be flushed. And sometimes they would flush it
19 after dinner--in the morning sometimes they wouldn't flush
20 it--and then at night they flush it at the same time they
21 have the--they bring the water around. It is about 8:00
22 o'clock, 9:00 o'clock, somewhere around there.

23 Q. During the period when you were not permitted any
24 clothing, what did you have to sleep on?

25 A. What they called a strong blanket. It is a canvas

1 mat about--I would say about five feet long, about four
2 feet wide, something like that, five feet wide. It is two
3 little thin pieces of canvas that has got a blanket in the
4 middle of it, like a horse blanket, and it is triple
5 stitching all the way across so you are not supposed to be
6 able to open it up.

7 Q. Was the blanket which you were given at the be-
8 ginning of the period the same blanket as you had at the
9 end?

10 A. No.. We had-- Tuesday I caught this Sergeant
11 Loefsky--that is the one I talked to about getting my flaps
12 down--and I told him I couldn't sleep with this blanket.
13 You see, they have got two kinds of blankets, new ones and
14 the old ones. The new ones, like I say, they have this
15 triple stitching. It is like a quilt with stitching going
16 up and down. And you can't use it too well because it is
17 made--it is laid out on the floor and you sleep on top of
18 it. And if you try to fold it over to keep the cold off
19 you, it doesn't do any good because you have to lay flat
20 on your back or flat on your stomach, and you have to lay
21 still or it will come off.

22 So you try to get you an old blanket that somebody else
23 has already had that was had for maybe 29 days and in 29
24 days he maybe has made a sleeping bag, like a camper bag,
25 and you can get inside of it and you can sleep a little bit.

1 It is still cold because it is not thick. But it is better
2 than laying on top of it.

3 So to start off with, I had a new one and I didn't get
4 an old one until Wednesday. And then the one I did get
5 didn't have any blanket in it.

6 Q. Did you ever have a chance to wash at all before
7 you ate your meals, Mr. Jordan?

8 A. No.

9 Q. Did you ever have a chance to wash at all during
10 the period July 9th through July 20th when you were in the
11 quiet or strip cell?

12 A. No.

13 Q. There were no towels, soap?

14 A. No. They don't let you have-- They didn't then,
15 anyway, didn't let you have no towels, no soap, no tooth
16 brushes, no combs, anything of that type.

17 Q. Mr. Jordan, would you think very carefully, please,
18 during the entire period you were in the strip cell or
19 quiet cell from July 9th through July 20th, were you ever
20 offered an opportunity to take a shower?

21 A. No.

22 Q. Did you in fact ever take a shower?

23 A. No. I asked Sergeant Owens Thursday, the following
24 Thursday, when he was talking about giving my clothes back
25 if I could have a shower, and he said I would have to see

1 the second watch, because he couldn't let me out of my cell
2 to take one.

3 The second watch, they weren't too happy with me, so
4 they didn't let me have a shower.

5 Q. Now, after you were released from the quiet or
6 strip cell, where were you placed?

7 A. In the fifth cell up front.

8 Q. In the general isolation?

9 A. Yes, general isolation.

10 Q. If you go to take a shower from the general isola-
11 tion cell where you were placed after you left the quiet
12 or strip cell, do you use the same shower facilities that
13 you would if you had taken it from the strip cell itself?

14 A. Yes. There is only one shower in the section. It
15 is up front.

16 Q. How long after you had left the quiet or strip cell
17 and then moved up front did you in fact have a shower?

18 A. I got out Tuesday, I believe it was Tuesday. I
19 either had a shower Friday or Saturday, one of the two days.

20 Q. Within a few days after you left the quiet or
21 strip cell?

22 A. It was about two days, two days, three days, they
23 gave me a shower.

24 Q. Are you quite certain you did not have a shower
25 during the time you were in the strip cell or quiet cell?

1 A. Yes.

2 MR. COHLER: Thank you.

3 CROSS-EXAMINATION

4 BY MR. GRANUCCI:

5 Q. Mr. Jordan, have you ever been convicted of a
6 felony?

7 A. Yes.

8 Q. What was that felony?

9 A. Assault with force likely to produce great bodily
10 harm.

11 Q. You were put in the quiet cell on what day?

12 A. On a Friday of July 9th.

13 Q. Did they take your clothes away from you when they
14 put you into the quiet cell?

15 A. Yes, that night, before they put me in the strip
16 cell, yes.

17 Q. Did they take all of your clothes off?

18 A. All of them, yes.

19 Q. Now, did you see Dr. Kunkel at all while you were
20 in the strip cell?

21 A. I saw him twice.

22 Q. Did he--

23 A. I don't know. I wouldn't say Dr. Kunkel. I seen
24 the doctor. All the time, Dr. Kunkel doesn't come around.
25 Sometimes it is Dr. Kunkel and sometimes the other doctor.

1 He is the same thing. He is a doctor.

2 Q. He is not an MTA?

3 A. No, he is a doctor.

4 Q. Do the MTA's come by regularly?

5 A. I would say they did. Sometimes I was asleep and
6 I didn't see them. But every morning I was awake I saw
7 them come back, I saw them come by.

8 Q. When you went into the cell, did you notice the
9 condition of cleanliness of the cell?

10 A. Not right then, no.

11 Q. You didn't?

12 A. No. It was night, see. They don't have any lights
13 in there, and they shut my door up, and there is no way you
14 can see anything in there.

15 Q. So you didn't know then whether the cell was clean
16 or dirty, is that right?

17 A. No-- Yes, that is right. I mean, I couldn't tell,
18 no.

19 Q. Was there any nauseating odor in the cell at that
20 time, when you first went in?

21 A. Yes, there was an odor in there, but--

22 Q. Was it a very bad odor?

23 A. Not when I first went in and--

24 Q. Not when you first went in.

25 MR. COHLER: Excuse me. Was the witness through with

1 his answer?

2 MR. GRANUCCI: Q. If you want to explain your answer,
3 Mr. Jordan, take all the time you want.

4 MR. COHLER: I couldn't tell.

5 THE WITNESS: See, when you first go in, it is not so
6 bad because as long as nobody is in the cell they have the
7 door open. So the wind is blowing through there and all
8 this. But when they put you in there, they lock the door
9 and after awhile it kind of fills up. So when I first went
10 in there, you could smell the smell, but it wasn't bad
11 enough to be complaining about.

12 MR. GRANUCCI: Q. It wasn't?

13 A. No.

14 Q. Was there human body waste smeared all over the
15 walls and floors of the cell?

16 A. There was stuff smeared on the walls.

17 Q. How many walls?

18 A. Just the back wall and the left side wall.

19 Q. Just the back wall and the left side wall.

20 A. It wasn't all up to the ceiling or anything. It
21 was a little bit here and a little bit there, like some-
22 body was playing in it or something.

23 Q. A little bit here and a little bit there. How
24 about human vomit; was there any of that smeared over the
25 walls?

1 A. Not that I could tell.

2 Q. Mr. Jordan, I am going to show you page 10 of the
3 original of your complaint filed in this action. I would
4 like you to read--

5 MR. COHLER: Which action? There are two consolidated.

6 MR. GRANUCCI: The civil rights, counsel.

7 I would like you to read page 10, the sentence starts
8 on line 4 and ends on line 6. Would you read it out loud,
9 please.

10 A. "The floors and walls of the cell were also encrusted
11 and filthy with the body and urinary wastes of the previous
12 occupants who evidently and obviously placed them there
13 deliberately."

14 Q. Now, Mr. Jordan, when you were in the cell, did you
15 write on the walls of the cell?

16 MR. COHLER: Excuse me just a minute. Would you
17 clarify the time, please?

18 MR. GRANUCCI: Q. During that whole period, from July
19 9 to July 20, did you write on the walls of the cell?

20 A. Not that I recall, no.

21 Q. You didn't write at all?

22 A. Not that I can recall, no.

23 Q. Do you have a nickname in the institution?

24 A. I have two nicknames.

25 Q. What are your nicknames, Mr. Jordan?

1 A. "Spot of Tea" and "Cadillac."

2 Q. I am going to show you a couple of photographs and
3 ask you whether they will refresh--all I want to know is a
4 yes or no answer to this question--whether after looking at
5 those photographs you can remember whether you wrote on the
6 walls of the cell.

7 MR. COHLER: At this time, July 9th to July 20th 1965?

8 MR. GRANUCCI: Q. July 9 to July 20.

9 MR. COHLER: 1965?

10 THE WITNESS: You are asking did I write this?

11 MR. COHLER: From July 9 to July 20 1965.

12 MR. GRANUCCI: Q. You didn't write that?

13 A. I wrote that, yes.

14 MR. COHLER: I think we ought to be careful about time.

15 MR. GRANUCCI: I know we have to be careful--

16 MR. COHLER: I am not sure the witness is understanding
17 you.

18 MR. GRANUCCI: Q. We are talking about this period
19 from July 9th to July 20th. Did you write this?

20 A. No.

21 Q. Did you write it then?

22 A. No.

23 Q. The same thing is true of these (indicating)? Did
24 you write that then?

25 A. No. Not then, no.

1 Q. Do you recall when you did write it, Mr. Jordan?

2 A. I have a pretty good idea when I wrote it.

3 Q. Would you tell us, please?

4 A. In about 1964, just before I went to San Quentin,
5 or one time before that, they had me and another inmate
6 named Thomas Walker locked in the strip cells for, I forget
7 how long, but we were back there a week or two together.
8 And this-- We "signed in," is what they call it. He said,
9 "I am going to put mine over here and you put yours over
10 here, and I will put yours over here and put mine over
11 there."

12 Q. But you didn't do it during this July period?

13 A. No, not that I can recall.

14 Q. Was there human body waste on the floor of the cell
15 when you went in on the evening of July 9th?

16 A. There were a few smears, but it was more on the
17 walls than it was on the floor. There was urine on the
18 floor. It wasn't smeared on the floor. It was just on
19 the floor.

20 Q. Yet you said you didn't notice the smell when you
21 first went in.

22 A. In the first place, when I first went in I wasn't
23 too interested in smelling things. I was mad. It almost
24 took physical force to get me in the cell to start out
25 with. Like I say, it takes awhile for this to build up to

1 the spot where you would notice it. The strip cells always
2 smell bad. Every time I have been back there they smelled
3 bad, and I have been back there about a million times. So
4 after awhile when you are put in the strip cell, you expect
5 a little smell. You just associate--you get it in mind
6 from the beginning it is going to smell bad, and it just
7 didn't smell as bad as it got to smelling at the time.

8 Q. When did it really get to smelling bad, Mr. Jordan?

9 A. I would say about 2:00 o'clock that night, when I
10 got cold and I was running around in the house trying to
11 keep warm and my eyes began to sting and so you stop run-
12 ning and go to rub your eyes. And when you are running, it
13 makes you take deeper breaths, and it begins to get to you.

14 Q. Now, you say the flaps were closed--they closed up
15 the flaps when you went into the cell.

16 A. Yes.

17 Q. When was the next time they opened the flaps?

18 MR. COHLER: Excuse me. You said "the next time they
19 opened" them. I don't think there is any reference they
20 were opened a previous time.

21 MR. GRANUCCI: All right.

22 Q. After they were closed, when you went into the cell,
23 when did they open them?

24 A. They opened them for count.

25 Q. When?

1 A. About every hour.

2 Q. About every hour.

3 A. Well, see, it all depends on who the officer is.

4 see, they got these night officers, and some of them they
5 don't want to wake you up. If they open the door, they
6 wake you up. So if they think you are asleep, they can't
7 see inside the cells, so they figure you may be asleep, so
8 some of them give you consideration and they will open the
9 flap and shine the light inside. Some of them, they will
10 put the key in the door and open up the door and make all
11 the noise and put the light in and holler, "Are you O.K.?"

12 Q. Wouldn't open and closing that big heavy flap make
13 just about as much noise as opening the door?

14 A. They don't open-- See, they have two flaps. They
15 have the great big one--

16 Q. They have the window flap and the door flap. Right?

17 A. One is about this big, about this wide (indicating)
18 on the door.

19 Q. Which one did they open?

20 A. They open the door flap and shine the light in.

21 Q. Didn't that make any noise?

22 A. No. It makes-- Like I say, the man was trying to
23 give you a little consideration. If he puts his key in the
24 door, it is night and it is dark and it is quiet. There is
25 not a sound in the building. And if he puts the key in the

1 door and turns the lock, it is going to make a lot of
2 rattling. He has to open the door and it makes noise when
3 it closes. This is more noise than-- They have a little
4 latchet up at the top, see, and they take the latchet down,
5 shine the light in and it doesn't hardly make any noise.

6 Q. So they opened the flaps that night for count.

7 A. Yes.

8 Q. Did they open the flaps the next day, the next
9 morning?

10 MR. COHLER: Excuse me. Do you mean for count? Or
11 open them generally?

12 MR. GRANUCCI: Q. Open them generally?

13 A. No.

14 Q. Did they open them for you for breakfast?

15 A. No. They opened the door.

16 Q. Did they leave the door open?

17 A. Yes. They leave the door open. They bring your
18 food, and the door stays open, because if they close it
19 you can't see to eat. On occasion, when Officer Spoon was
20 working, they closed the door and the flaps and everything
21 else and you do the best you can. Some of the others, they
22 keep the door open until you finish eating and then they
23 close the door.

24 Q. About how long would that be?

25 A. I don't know. I would say ten or fifteen minutes.

1 Q. Would they follow the same procedure in the evening,
2 or for the afternoon meals?

3 A. Not all the time.

4 Q. Not all the time?

5 A. No. At this time, Officer Hoagland, I believe it
6 was, sometimes he would leave the door open. And sometimes
7 he would close the door and leave the little flap open. It
8 all depends in whether he was in a rush or how he felt that
9 day.

10 Q. Depended upon how he felt?

11 A. I suppose. I don't know. This is just what he did
12 I just took it for granted if he felt like doing some work,
13 he would leave the doors open. If he didn't feel like a
14 bunch of hasseling and messing with the keys, he would go
15 on and leave the flaps down.

16 Q. You mean he would leave the door open even after
17 you finished eating?

18 A. No. They bring the food, see, and they give it to
19 you. And if they close the door and leave the flap up,
20 you have to pick at your food because you can't see what
21 you are eating. So most of the times, they leave the door
22 open while you are eating. And then they come back in
23 about, oh, ten minutes, fifteen minutes, and they pick the
24 trays back up. And when he takes the trays out, he shuts
25 the door.

1 Q. He would never leave the door open after he took
2 the tray out?

3 A. Once or twice he did, but the reason he did this,
4 he took the tray out and took it up--well, just, they have
5 a grille, grate, separating it from the main isolation
6 section. And he put the trays on the cart, and then he
7 pass out water and flush the toilets, and then he would
8 lock the door.

9 Q. But he would leave the flaps open then?

10 A. No. He would leave the door open.

11 Q. Leave the door open.

12 A. Yes, because he had come in there to give you the
13 water and the toilet paper.

14 Q. Did he leave the flaps open any other time,
15 Officer Hoagland?

16 A. No. I thought the other day that it was him, but
17 I made a mistake. It was the night officer left them open
18 one night.

19 Q. Was that Officer Nash?

20 A. It was Officer Nash or Officer Thompson.

21 Q. Officer Hoagland, then, never left the door open.

22 MR. COHLER: Excuse me. Had you finished?

23 I saw your lips moving and I didn't know whether--

24 THE WITNESS: The other day you asked me did they leave
25 them open, and I stated that I believed it was Officer

1 Hoagland who left it open because I wrote a letter. But it
2 was the night officer and Officer Hoagland doesn't work at
3 night.

4 MR. GRANUCCI: Q. Now, you wrote a letter while you
5 were in the quiet cell, is that right?

6 A. I wrote two of them.

7 Q. You wrote two letters. Were the flaps up or down
8 when you wrote the letter?

9 A. At the time I wrote the letter, one door flap was
10 left open for the express purpose of allowing me to write
11 the letter.

12 Q. Who was the officer that let you write the letter?

13 A. It was Officer Nash or Officer Thompson, one of the
14 night officers.

15 Q. One of the night officers.

16 A. Yes.

17 Q. Mr. Jordan, how did you get paper in the cell? I
18 mean, writing paper?

19 A. From my next door neighbor.

20 Q. Was this when you were in the quiet cell?

21 A. Yes.

22 Q. How did you get a pencil?

23 A. From my next door neighbor.

24 Q. Was this next door neighbor of yours also in the
25 quiet cell?

1 A. He was in the quiet cell next to me.

2 Q. How did he pass that to you?

3 A. Well, to start off with, I asked the officer, and
4 I don't believe it was Officer Hoagland--in fact I know it
5 wasn't--and I asked him for a pencil and a piece of paper
6 because I had been given a petition back from the court
7 and I wanted to answer--not answer it--I wanted to fill it
8 out. They had sent me some forms. I didn't have the form,
9 so they sent me three forms and my petition back and told
10 me to fill out the forms and send the petition back. So
11 I wanted a pencil to fill out the forms, and they wouldn't
12 give it to me.

13 Q. Who wouldn't give it to you?

14 A. Nobody. The officer, the sergeant, Friedrich, none
15 of them would give it to me. So I got mad about that, and
16 I made a few remarks about it and I was told, well, it
17 might be a long time before I get to write anything if I
18 kept on fat-mouthing.

19 Q. Who told you that?

20 A. Whoever the officer was. And I told him I thought
21 I had a right to have this material because it was legal
22 material and I had a right to access to the courts, and he
23 told me I didn't have any rights they didn't want to give
24 me. So this guy that is next to me, when they closed the
25 doors and went away, I hollered over and asked him did he

1 have any paper or pencils because I was going to write some-
2 body about it. And he told me he did, and so--

3 Q. Excuse me. I don't want to cut you off. But there
4 was something I want to clarify in my own mind. You can
5 just answer yes or no. Was this other neighbor of yours in
6 the quiet cell at the same time?

7 A. Yes, he was in the quiet cell on the other side of
8 me.

9 Q. At the same time.

10 A. Yes.

11 Q. Go ahead.

12 A. So I asked him, did he have one, and he said he did.
13 And he had his clothes and he had his mattress and he had a
14 line.

15 So that night-- It was a Tuesday night, now, because
16 we had cheese sandwiches. And he put one of these nylon
17 lines in a cheese sandwich and the officer brought it to me.
18 He told me he didn't want to eat it so the officer gave it
19 to me. And when they left they left the door open, and I
20 threw a line and he hooked it and he passed me I believe it
21 was six or seven pieces of paper and a pencil.

22 Q. Mr. Jordan, this is sort of interesting to me. You
23 say you threw a line out?

24 A. Yes.

25 Q. Did you weight the line with anything?

1 A. No. You don't have to weight them.

2 Q. You don't have to weight a line to throw it out?

3 A. No. The line is-- What you do is, you roll it up
4 and you get up at the top of your bars, because they got a
5 screen, see, and you just throw it.

6 MR. COHLER: What are you proposing to do?

7 MR. GRANUCCI: I am going to ask Mr. Jordan to pick out
8 some string.

9 MR. COHLER: Just a moment, though. Are you going to
10 establish--

11 MR. GRANUCCI: I would like to see him try to do it.

12 MR. COHLER: Well, let's establish that this is similar
13 to what he might have in his cell.

14 MR. GRANUCCI: Let's see.

15 Q. Mr. Jordan, I am going to show you a box with a
16 variety of different kinds of strings. There is some
17 fairly thin rope, there is some ordinary wrapping string,
18 and there is thread.

19 A. This one.

20 Q. All right. Let's see you try.

21 A. Where do you want me to throw it?

22 MR. OAKES: Would you need an accomplice?

23 THE WITNESS: No, I don't need any help. Where do you
24 want me to throw it?

25 MR. GRANUCCI: Throw it to me.

(The witness indicates.)

MR. GRANUCCI: Q. You threw this string when the door was open?

A. Yes.

Q. How did you hook onto the other line?

A. It is easy to hook on.

Q. What kind of a hook?

A. A button hook.

Q. A button hook?

A. You take a button off of your overalls and you tie it on and you open it, you bend the hook, you bend the button.

Q. This is like one of those metal hooks that you have on your--

A. You have-- See, after you get to the strip cell a little while, you get pretty slick at this sort of stuff.

Q. I imagine you do, Mr. Jordan. This sounds like the adventures of a certain fictional character ^{and} in the "Boy Wonder Robin."

MR. COHLER: Will we strike that, please?

MR. GRANUCCI: I think I will stipulate that can go out.

THE WITNESS: I have been back in the strip cell quite a bit, and you know, we do that all the time. If they put you on RD, your next door neighbor feeds you. If they won't let you have something, if your next door neighbor--

1 THE COURT: Put you on what? RD?

2 THE WITNESS: No, they didn't. I said if they do.
3 suppose I had a next door neighbor and he did something
4 that they thought was out of line and they put him on--it
5 is a restricted diet. It is a little block of chopped
6 celery and lettuce and all this sort of stuff, and little
7 teeny bits of meat. It is pretty unappetizing because
8 they freeze it in little blocks, and the average fellow
9 doesn't eat it.

10 THE COURT: Is that the diet throughout the day? Is
11 that all you get?

12 THE WITNESS: I have never been on it, but I have had
13 neighbors on it and they eat it twice a day, one block RD
14 and two slices of bread twice a day.

15 MR. GRANUCCI: Q. Mr. Jordan, let's get back to this
16 fishing business. I take it that is what you call it,
17 isn't it?

18 A. That is what they call it.

19 Q. The doors have to be open for you to do that, don't
20 they? Or can you get it through the flaps?

21 A. No, we get-- Even if the flaps were open, you
22 couldn't get it out.

23 Q. You couldn't get it out.

24 A. If the doors aren't open, no.

25 Q. The door has to be open--

1 A. Yes.

2 Q. --and the door to your neighbor's cell has to be
3 open, too, doesn't it?

4 A. Yes.

5 Q. I take it you have to throw more than once, don't
6 you, before you could successfully hook somebody else's
7 line?

8 A. It all depends on who it is. He wasn't much of a
9 stranger. And we threw twice, if I recall, and we succeeded
10 in hooking them up.

11 Q. The doors were open at that time?

12 A. This is chow time.

13 Q. It was chow time?

14 A. I just got through telling you, the officers--
15 See, they bring you sack lunches first, they open your door,
16 and they put the sack lunches in. And then he walks back
17 to the cart in the main part of the isolation, and he gets
18 your tray and he brings this back and he slides it to you.
19 And then--maybe your neighbor wants to give you one of his
20 sandwiches, it all depends on who the officer is--if it is
21 certain officers, forget it. There is not going to be any
22 passing. Other officers say O.K., he gives you the Sand-
23 wich, he leaves, he will go away to pick up your food, and
24 he will come back and he will pick up the tray and shut the
25 door.

1 Q. You say you did this line-throwing while meals
2 were being served and while officers were handing out
3 dinner, is that right?

4 A. The officers didn't know what was in the sandwich.
5 All they did was bring the man's sandwich, as far as he
6 knew. It is not no Manila rope. It is a thread, but it is
7 thicker than thread and a little heavier than thread. It
8 is nylon.

9 Q. How long a line is it?

10 A. It all depends on how good you and the other guy are.
11 If he is kind of bumbly, you would have to make a long one.
12 But if he is good, if he can see it, he can get it if he
13 is any good. If he is not, it might cause you a little
14 trouble because the line only throws good so far.

15 Q. I don't understand this yet, Mr. Jordan. In other
16 words, you put a line in a sandwich. Is that it? Inside
17 of a sandwich?

18 A. You have got all day, from breakfast all the way--
19 we eat breakfast about 8:00 o'clock, 8:30. You have got
20 from 8:30, the officers don't come back there unless they
21 have something to do, if they are going to get somebody to
22 take them somewhere. They never come back there to see if
23 you are quiet or acting up. They don't care what you are
24 doing. They know you are there. You haven't got away
25 because there are too many gates, doors, bars and so forth.

1 so you are there. You have all day to make all of the line
2 you want if you have got the material to make it.

3 Q. Where do you usually get the material to make it?

4 A. Off the mattress.

5 Q. Off the mattress.

6 A. Yes.

7 Q. Your neighbor, in other words-- Let me summarize
8 this, and if I am confusing you or misleading you or any-
9 thing, tell me, because I don't want to-- In other words,
10 your neighbor got a length of line and he put it inside a
11 sandwich.

12 A. A cheese sandwich.

13 Q. Then he put it inside a cheese sandwich, and one
14 of the officers brought that sandwich to you.

15 A. Right.

16 Q. You opened up the sandwich--

17 A. Took the line out.

18 Q. --and you took the line out, you knotted it at the
19 end or you--

20 A. I rolled it up, just like I did that line there.

21 Q. Rolled it up just like you did the piece of string,
22 and you threw it out the door.

23 A. Right.

24 Q. Meanwhile, your neighbor who had another piece of
25 line did the same thing.

1 A. No. He has a hook.

2 Q. He has a hook.

3 A. You have got to have a hook or it won't work. The
4 line would slide over.

5 Q. Your other neighbor, though, had a hook of some
6 sort which he tied onto another piece of line, is that
7 right?

8 A. Yes.

9 Q. And he threw his line out?

10 A. Yes.

11 Q. And hooked to yours.

12 A. Right.

13 Q. And you pulled the hook into your cell.

14 A. No. He pulls mine in.

15 Q. He pulls yours in.

16 A. Yes. You got to pull it all the way in, and he
17 ties the stuff that he is going to send, whatever it hap-
18 pens to be, on and throws it back out, because if he don't
19 throw it out it will catch on something. So he throws it
20 all the way out on the deck and you draw it in.

21 Q. And then you draw it in.

22 A. Right.

23 Q. This was done while the guards weren't watching?

24 A. Yes.

25 Q. But it was done during meal time while they were

1 passing out food in the section, is that right?

2 A. What? The fishing thing? No.

3 Q. When did you do it?

4 A. During the meal time. See, they don't stand there.
5 see, they pass out the food and they lock the big gate they
6 have between the two sections, and they go all the way back
7 up front.

8 Q. Weren't they passing out food to the other cells at
9 the same time?

10 A. No. They pass food to the other cells first and
11 then-- You know, we are the last guys that get anything.
12 They pass everything out to everybody else first and then
13 if they have anything left over, we get that. This is what
14 it amounts to. A lot of times you don't get your full
15 issue, because they run out by the time they get to the
16 last cell. You know, they get to you, when they get to you,
17 which is last.

18 Q. After they serve you though, you said that they
19 left the door open, and they are not in the wing any more?

20 A. They are in the wing. They left our area.

21 Q. Aren't they picking up trays from the earlier cells
22 that have been fed first?

23 A. No. They feed you, you are the last ones to be
24 fed. They lock the gate between the regular isolation and
25 the strip cells. They take a cart, and the inmate trustee

1 is rolling the cart, and they go back up front out to the
2 guard area on the-- or whatever they call it there, and
3 they sit down and they smoke a cigarette and they eat a
4 piece of cake or something they find on the trays that
5 they like.

6 Q. You mean they steal the food from the inmates and
7 eat it themselves?

8 MR. COHLER: Your Honor--

9 THE WITNESS: No, they are not stealing food. This is
10 part of what they get--there is no rule against officers
11 eating. In fact, they have a rule that some officer is
12 supposed to eat some of the food the inmates are eating.

13 MR. GRANUCCI: Q. That is not in O-wing, is it?

14 A. That is all over. There is supposed to be some
15 officer eat the same food as the inmates eat to block the
16 inmates from claiming something is wrong with the food.

17 Q. In any event, Mr. Jordan, you have got some writing
18 paper and pencils.

19 A. And a pencil, one pencil, yes.

20 Q. What did you do with it?

21 A. I hid it.

22 Q. Where did you hide it?

23 A. In the bars. See, they have a little sliding bar,
24 and as long as the door is not open there is about this
25 much empty space (indicating).

1 Q. Is it like a shelf?

2 A. Something like a shelf. The door slides on this
3 thing, like that (indicating), and as long as the door is
4 not open you have got about this much space with an empty
5 thing. When the door is opened it will knock anything out
6 that is in there. But the officers don't usually open the
7 doors unless you are going some place, and so you tuck
8 whatever you have to hide up there and if they happen to
9 come in and look around they don't see anything.

10 Q. To the best of your knowledge, when did you engage
11 in this little fishing expedition? What day? I won't
12 hold you to dates. But what day of the week?

13 A. I don't know. It was either the same day or the
14 day after or the day before I wrote the letter.

15 Q. It wouldn't have been the day after you wrote the
16 letter, would it?

17 A. No. I wouldn't have had anything to fish for.

18 Q. That is right. So it was the day before you wrote
19 the letter. Were you supposed to have pencils and paper
20 in the quiet cell?

21 A. It all depends on what you mean by "supposed to."
22 According to the Director's rule, I was supposed to have
23 pencils and paper and legal papers, and I was supposed to
24 be allowed to have the flaps down, and I was supposed to
25 be allowed to--

1 Q. I am just asking you about pencil and paper now,
2 Mr. Jordan.

3 MR. COHLER: Your Honor, counsel used the term "sup-
4 posed to." I think the witness should state his understand-
5 ing in full.

6 THE WITNESS: I was supposed--

7 MR. GRANUCCI: My question was restricted to pencil and
8 paper, Your Honor.

9 THE COURT: You may answer.

10 THE WITNESS: I was supposed to have it, but-- Can I
11 explain something?

12 MR. GRANUCCI: Q. Sure. Go ahead, explain your answer.

13 A. Me, myself, I wasn't getting anything from them
14 because I did something that, you know, kind of got all of
15 them. I had spit on one of their officers, see, and they
16 told me that I wasn't getting nothing.

17 Q. Who told you that?

18 A. Sergeant Friedrick told me, for one. Mr. Spoon
19 made a point to tell me, for another one, and the general
20 attitude of the officers that came in contact with me was,
21 "You are going to pay for this. This is it." I spit on
22 one of their brother officers, and they were going to see
23 that I didn't get anything that didn't absolutely have to
24 be given to me.

25 Q. In any event, five or six days later you had a

1 pencil and paper, was writing letters.

2 A. Yes. I had a pencil and paper.

3 Q. Did you write the letters when the flaps were open?
4 or when they were closed?

5 A. I wrote the letters while one of the flaps was open.

6 Q. One of the flaps was open.

7 A. Yes.

8 Q. Was this during meal time?

9 A. No.

10 Q. What time was it?

11 A. This was at night time. At the time, this Officer
12 Nash was what we call a fish bull.

13 Q. Excuse me? What did you say? Officer Nash was
14 what?

15 A. What we call a fish bull. In other words, he
16 wasn't too well aware of what was going around the in-
17 stitution or that particular place, see, and these guys are
18 the kind of guys that you can get to give you a break if
19 you just treat them with a little respect.

20 Q. He was an inexperienced officer, then, who would
21 give you the break?

22 A. Yes, because he wasn't in on being an officer like
23 the rest. He had just come off the street. He hadn't been
24 there a long time.

25 So he didn't know the general attitude, I guess.

1 because I told him that I had some legal material that Mr.
2 Kiepura gave me and I was supposed to be able to write a
3 letter back here and could he leave the flap down for me.
4 And he asked me was he supposed to--how did I get the
5 paper. And I told him a lie. I told him Mr. Kiepura gave
6 me the paper. And since Mr. Kiepura gave me the paper, it
7 should be all right since Mr. Kiepura is in the hierarchy,
8 it seems to him it might be all right if Mr. Kiepura give
9 me the pencil and paper, it would be all right for me to
10 write a letter, so he left one flap down so I could write
11 the letter.

12 Q. I want you to take a look at page 10 of your
13 original complaint, lines 17 through 25. I wonder if you
14 would read that to me, please. Page 10, lines 17 through
15 25, the original complaint.

16 A. "Plaintiff also requested that a flap be left open
17 so that some of the fresh air and light could enter the
18 cell, this request also made to both the officials and the
19 Chief Medical Officer. Plaintiff was refused again in his
20 request and the flaps remained tightly shut up. Plaintiff
21 was forced by this action to lie in a dense, rancid and
22 onerous atmosphere of putrid decay, in a perpetual gloom
23 or twilight for 23-1/2 hours a day, . . .".

24 Q. If you will, your amended complaint, starting at
25 the last line on page 3 to line 5 on page 4.

1 A. Line 5?

2 Q. Start on page 3 at the last line and then read to
3 line 5 on page 4.

4 A. "During plaintiff's confinement in said strip cell,
5 plaintiff was forced to remain in said strip cell with said
6 flaps and door of the second wall closed. As a result,
7 plaintiff was deprived of light and ventilation for twelve
8 days, except that twice a day the door of the second wall
9 was opened for approximately fifteen minutes."

10 MR. COHLER: Your Honor, before counsel proceeds fur-
11 ther, the use of the original complaint in this nature is
12 proper, at least in part, since the plaintiff himself
13 wrote it. The amended complaint is a legal document drafted
14 by counsel, no part of which was written by the witness.
15 I hope counsel will be careful which way he proceeds.

16 THE WITNESS: I said that.

17 MR. GRANUCCI: Q. You said that?

18 A. I said just what it says in there.

19 Q. But you didn't say that today, did you, Mr. Jordan?

20 A. I just got through telling you the same thing.

21 Q. Didn't you just testify that the flaps were left
22 open while you were writing?

23 A. No.

24 Q. You didn't?

25 A. No, I said I tricked the officer into leaving the flaps

1 open for about twenty-five minutes, and he closed it up
2 right after that. And the only reason he opened that flap
3 was because I had asked him before that, would he leave the
4 flaps down, and he told me he couldn't. And he said the
5 sergeant, and the sergeant told me he couldn't leave the
6 flaps--he couldn't open the flaps and leave them down.

7 But the officer, as I said, was a fish officer, which
8 means he didn't know too much about what was going on, and
9 me being in possession of the pencil and me being in
10 possession of paper, someone had to give that to me, some-
11 one had to give me that paper, and I mentioned the name of
12 one of his superiors as giving that pencil and paper and
13 giving me authorization to write it.

14 Q. That wasn't true then either, according to your
15 testimony.

16 A. No, but I wanted to write that letter. I had a
17 reason for wanting to write that letter.

18 Q. What was the reason?

19 A. Because I wanted to write somebody and tell them
20 what they were doing to me back there.

21 MR. GRANUCCI: Your Honor, would this be an appropriate
22 time for a recess?

23 THE COURT: All right.

24 (A short recess was taken.)

25 MR. GRANUCCI: Q. Mr. Jordan, before we adjourned,

1 you testified, did you not, that you wrote two letters while
2 you were in the quiet cell?

3 A. Yes.

4 Q. This was when the flaps were open, or at least one
5 of the flaps?

6 A. Yes, the door flap.

7 Q. Now, on direct testimony I think you stated that
8 Dr. Kunkel or some other doctor came around once or twice
9 while you were in the quiet cell. Is that right?

10 A. They come around every Monday.

11 Q. Do you remember whether Dr. Kunkel came at any
12 time?

13 A. I know I saw Dr. Kunkel once.

14 Q. Did you ever complain to Dr. Kunkel about the con-
15 dition of the cell, filthy conditions?

16 A. The first time he came, yes.

17 MR. COHLER: I didn't hear the witness' answer. I am
18 sorry.

19 THE WITNESS: The first time he came.

20 MR. GRANUCCI: Q. What did you say to Dr. Kunkel, if
21 you remember?

22 A. I told him, to start out with, that I was sick and
23 that I caught something from the cell. And he says, "What
24 is wrong with the cell?" And I said, "Come on in and look
25 at it." He wouldn't come inside. He stands outside the

1 door.

2 Q. Was that the outside door? Or the inside door?

3 A. The outside door. The corridor. See, he never
4 comes in the cell. He stands outside the door. I told him,
5 I said, "Just come in and take a smell and you will see
6 what is wrong with it." I said, "The whole place is messed
7 up," and he says, "Well, I don't see anything wrong with
8 your cell." And I said, "Well, you just don't want to see
9 anything is wrong with the cell." I said, "Look at all
10 that stuff there," and I pointed in the cell, "the stains
11 on the floor and stuff like this." He says, "Well, ask
12 the officers for something to clean it up," and he walked
13 off.

14 Q. Did you tell Dr. Kunkel that you had vomited in
15 your cell?

16 A. I don't know if it was Dr. Kunkel or not.

17 Q. They brought you water, didn't they, while you were
18 in the quiet cell?

19 A. The officer?

20 Q. Yes.

21 A. Yes, they brought me water.

22 Q. How many times a day?

23 A. Twice a day.

24 Q. Twice a day.

25 A. Sometimes-- I remember a couple of times they

1 brought it three times a day. Officer Hoagland, every once
2 in awhile, would make an extra trip just before he went
3 home, which was-- I don't know what time he went home--
4 he went home at 4:00 o'clock, but he come back about 3:15,
5 and he give me some water. I don't know if he gave the
6 rest of them anything. But he come back and give me some
7 water.

8 Q. This was all the water you wanted to drink?

9 A. Yeah, I had all the water I wanted to drink.

10 Q. It was your testimony that it was usually twice a
11 day, but sometimes three times a day?

12 A. I was back there twenty days, twelve days, some-
13 thing like that. Twelve days, and in those twelve days, I
14 would say two, maybe three times I got what I would say
15 extra water, which was an extra trip by the officer.

16 Q. That would be three times.

17 A. Three times, a couple of times.

18 Q. I want to show you page 3 of your declaration in
19 opposition to motion for summary judgment. I would like
20 you to read lines 25 through 29, please.

21 A. "During the time that I was in the strip cell, I
22 was given a cup of water three times a day. On each oc-
23 casion that I was offered water, I was permitted to drink
24 as much as I wanted while the officer or 'trustee' was
25 there to pour from the pitcher they carried."

1 Q. O.K. Thank you.

2 Now, Mr. Jordan, let's talk about the toilets. How
3 often were the toilets flushed while you were in the strip
4 cell during the period in July?

5 A. Usually they were flushed twice a day, once early
6 in the morning and once in the evening.

7 Q. Usually twice.

8 A. Yes. But sometimes they weren't flushed in the
9 morning.

10 Q. Were they always flushed at least twice a day?

11 A. No.

12 Q. They weren't?

13 A. No. The night officer always flushed them. He
14 made a point of flushing them.

15 Q. Would it be fair to say they were flushed sometimes
16 in the morning, sometimes in the afternoon, and always at
17 night?

18 A. No, not in the afternoon. Sometimes in the morning,
19 always at night, never that I know of in the afternoon.

20 Q. Never in the afternoon.

21 A. No. One time, I believe the inmate that was the
22 porter, he came to pick up my tray and I asked him, would
23 he flush it. And he told me--his name was Piasano--and he
24 told me he would see to it. He was an assistant cop and
25 he had a lot of privileges around there and he went around

1 in the ~~toilet~~ ^{tunnel} hisself and flushed it because there was a
2 lot of stuff in it. The officer wouldn't do it.

3 Q. In other words, only once in the afternoon they
4 flushed the toilet?

5 A. In the afternoon?

6 Q. Yes.

7 A. In the afternoon, yes, one time.

8 Q. Your declaration in opposition to motion for sum-
9 mary judgment, page 3, line 30 to page 4 line 3. Would
10 you read that out loud.

11 "During the time that I was in the strip cell, the
12 'toilet' was flushed sometimes in the morning, sometimes in
13 the afternoon and always at night, but no more than that."

14 That "sometimes in the afternoon"-- when I say in the
15 morning, that means in the morning time. But sometimes
16 they wouldn't get around to flushing the toilet until 11:00
17 o'clock.

18 Q. You wouldn't count that as the morning?

19 A. No, I would count-- Yes, I would count that as the
20 morning, yes. I would say that was in the morning.

21 Q. So then it is your testimony that the toilet was
22 flushed, were always flushed at least twice a day?

23 A. No.

24 Q. No, they weren't? I mean twice in a 24-hour day?

25 A. No, they weren't.

1 Q. They weren't?

2 A. No. They were flushed every night. They had two
3 officers working at night, Officer Nash, who, as I say, was
4 a fish officer, a new officer, and he was kind of con-
5 scientious about his job and you didn't have to worry about
6 him flushing his. And they had Officer Thompson or Thomas,
7 I don't know exactly what his name was, and he was an
8 officer, he would carry out all of his duties and he was
9 one of those type officers and you could depend on him
10 flushing them.

11 But then in the afternoon or the morning or whatever
12 you want to call it, we had Officer Spoon---

13 MR. GRANUCCI: I think we understand you, Mr. Jordan.

14 MR. COHLER: I think he ought to be permitted to finish
15 his answer, Your Honor.

16 MR. GRANUCCI: Oh, he has been over and over it.

17 MR. COHLER: You asked the question several times,
18 counsel.

19 MR. GRANUCCI: I just asked him how many times the
20 toilet--

21 THE COURT: Did you complete your answer?

22 THE WITNESS: No. I was explaining why sometimes they
23 didn't.

24 THE COURT: All right.

25 THE WITNESS: They had Officer Spoon and they had

1 officer Hayes, I believe his name was-- I don't know what
2 his name was. But sometimes they didn't get around to
3 flushing the toilets.

4 MR. GRANUCCI: Q. You say the toilets were always
5 flushed at night.

6 A. They were always flushed at night.

7 Q. All right. Page 11 of your original complaint,
8 lines 14 and 15.

9 A. "...on numerous occasions the toilets were not
10 flushed at all for the full 24-hour period."

11 Q. That is enough.

12 A. That is what I just got through saying. They
13 flushed the toilets at night, that is 9:00 o'clock or 8:00
14 o'clock, or somewhere around there, and they wouldn't get
15 flushed again until the next night at 9:00 o'clock. That
16 is 24 hours.

17 Q. You say that means they weren't flushed at all for
18 an entire 24-hour period?

19 A. They would flush them. The night officers would
20 come on and they would flush the toilets, and they flushed
21 them, I think, about 8:00 o'clock or 9:00 o'clock.

22 Q. Fine.

23 A. And then they don't flush them again, they wouldn't
24 get flushed again until he came back the next night.

25 Q. So that would be--

1 A. At 8:00 o'clock.

2 Q. That would be a 24-hour period?

3 A. That is what I meant by that.

4 Q. Did you have any extra water cups in your cell?

5 A. No-- I don't know.

6 Q. How many water cups did you have in your cell?

7 A. I had one, to start off with, and then I took one
8 off my plate and I put that one up there, and Officer
9 Hoagland let me have it. And then Officer Spoon came in
10 and he took it. He took it away. See, I had two cups, but
11 he took it. So I don't think I had the cup more than two
12 days and other times I had one cup.

13 Q. When the officers brought you water, they would let
14 you drink as much as you want; is that right?

15 A. Yes, they would always let me drink as much.

16 Q. Would they fill up the cup and leave you with a cup
17 of water?

18 A. Yes.

19 Q. So that you could drink that water later?

20 A. Yes.

21 Q. Or you could rinse off your hands with it?

22 A. You could rinse off your hands. But I want to tell
23 you, this cup is about this big and about that big around
24 (indicating), and when you drink it, it is about five
25 swallows. And there is not much to rinse your hands with.

1 Q. Did they bring you toilet paper when you were in
2 the cell?

3 A. Sometimes they did, sometimes they didn't. It
4 would all depend. Sometimes they would bring it with them
5 when they came and sometimes they wouldn't.

6 Q. What shift would bring you the toilet paper?

7 A. All of them.

8 Q. All of them.

9 A. When they come around with the water, they bring a
10 roll of toilet paper with them when they come around with
11 the water. Sometimes they don't have the toilet paper with
12 them when they come around with the water.

13 Q. You mean, you could get toilet paper at least once
14 a day?

15 A. Most times, yes.

16 Q. Most of the time once a day.

17 A. Most of the time twice a day.

18 Q. Most of the time twice a day.

19 A. Like I say, they bring it around when they bring
20 the water, but sometimes the officer forgets the toilet
21 paper stays up front. Sometimes they might be out, when
22 he comes around, he knows the next man is going to bring
23 water so you will get your toilet paper anyway.

24 MR. GRANUCCI: I have no further questions, Mr. Jordan.

25 MR. OAKES: I have a couple of questions, if I may.

CROSS-EXAMINATION

1
2 BY MR. OAKES:

3 Q. Mr. Jordan, would you say you are the most easily
4 manageable inmate in the institution?

5 A. No.

6 Q. You are not always as quiet as you have been in the
7 courtroom, are you?

8 A. No. I am not quiet at all really.

9 Q. I just have one more question. I am a little in-
10 trigued about this fishing episode that we went through
11 earlier.

12 First of all, do I understand that the sliding door on
13 the bars in the interior part of the cell has expanded
14 metal on them? They have a grille on them? Doesn't the
15 bar have a wire?

16 A. Yes, a wire.

17 Q. So the entranceway through the steel door looks
18 directly onto a mesh wire which is over the vertical bars.
19 Is that correct?

20 MR. COHLER: I don't follow that. Could you try again,
21 please?

22 THE WITNESS: I got it.

23 MR. OAKES: Mr. Jordan did.

24 THE WITNESS: See, the doorway is about--bigger than I
25 am, and I am six-one, and it is about, maybe, a foot, two

1 feet bigger than me. It is not all the way covered up with
2 wire.

3 MR. OAKES: Q. About how far would that be? About
4 how much of it is covered with wire?

5 A. I believe about that much of it at the bottom is
6 not covered with wire (indicating). That is where they
7 slide the tray. That is off the floor. That is not part
8 of the door. The door starts about that far from the floor.

9 Q. I see.

10 A. And then at the top of the door, that is about that
11 much with no wire on it (indicating). That is over your
12 head.

13 Q. When you were going through your fishing expedition
14 with your neighbor, which neighbor was it?

15 A. I don't recall who it was. They have the records.

16 Q. Would it be on your right side? Or your left side
17 as you were facing out?

18 A. I don't really recall.

19 Q. Isn't it true, if it were, say, the one on your
20 right-hand side, that you would have to go over to the
21 right-hand side of the cell where there is a steel plate
22 and throw around the corner to get to the right-hand side?

23 A. No. See, if he is on your right, well, that puts
24 his door over here and it would put your steel flap to his
25 left. So you get up on the bars and you throw your line

1 out first, see, you throw your line out the door, see, and
2 your line goes over like this where he can see it from his
3 door. And then he gets up on his door, sticks his arm out
4 and he has the hook, see, and he winds his line and throws
5 it. There is an art to it, see. You just don't throw it.

6 Q. I assume that there is.

7 A. See, you throw it and just as it gets to the end,
8 you make a little grab, and it turns the corner and it
9 plops down and you drag it back.

10 MR. OAKES: I have no further questions. I don't under-
11 stand it, but maybe he can demonstrate it for me sometime.

12 MR. COHLER: No questions, Your Honor. Thank you, Mr.
13 Jordan.

14 (Witness excused.)

15 MR. COHLER: Your Honor, but for any rebuttal witness
16 which may be necessary, that is the plaintiff's case at
17 this time.

18 THE COURT: Very well.

19 MR. GRANUCCI: Your Honor, at this time the defendants
20 will move for a nonsuit in the civil rights action and a
21 dismissal in the habeas corpus case on the ground the
22 plaintiff has not proved any deprivation of his constitu-
23 tional rights to justify relief on either theory.

24 MR. COHLER: Your Honor, I think there is at least a
25 prima facie case, and I don't think it bears extensive

1 argument.

2 THE COURT: Motion is denied.

3 MR. GRANUCCI: At this time defendants will present to
4 the Court for identification the disciplinary records on
5 Inmate Alexander.

6 THE CLERK: Defendant's Exhibit F for identification.

7 (Disciplinary Records, Inmate
8 Alexander, were marked for
9 identification as Defendants'
10 Exhibit F.)

11 THE COURT: So ordered.

12 MR. GRANUCCI: Inmate Harris'-- counsel has already
13 been furnished with copies of those records--

14 MR. COHLER: I acknowledge service. Thank you, counsel.

15 THE CLERK: Defendants' G for identification.

16 (Disciplinary Records, Inmate
17 Harris, were marked for identi-
18 fication as Defendants' Exhibit
19 G.)

20 MR. GRANUCCI: I respectfully move their introduction
21 into evidence on the same theory on which the Court ad-
22 mitted the disciplinary records of the witnesses Esparza
23 and Porte; namely, to show bias against the institution.

24 MR. COHLER: With the offer limited as previously, no
25 objection, Your Honor.

THE COURT: That will be the order.

THE CLERK: Defendants' F and G in evidence.

(Disciplinary Records, Inmates Alexander and Harris, previously marked for identification as Defendants' Exhibits F and G were received in evidence.)

MR. GRANUCCI: Our first defense witness will be Dr. Kunkel.

DR. EDWARD PAUL KUNKEL,

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

THE CLERK: State your name and occupation to the Court.

THE WITNESS: Edward Paul Kunkel, Chief Medical Officer at the Correctional Center at Soledad.

DIRECT EXAMINATION

BY MR. GRANUCCI:

Q. Where did you receive your education?

A. I am a graduate of the Indiana University School of Medicine, Bloomington, Indiana.

Q. Would you summarize briefly your professional experience.

A. Upon graduating from the medical school, I entered the United States Naval Service and spent 30 years, a little better than 30 years in the United States Navy as a Medical Officer. Having served through the various grades, I retired as a Captain in the Medical Corps of the United States Navy.

Q. Where are you presently employed?

1 A. Presently I am Chief Medical Officer at the
2 Correctional Training Facility of Soledad.

3 Q. Are you familiar with the section of the prison
4 known as O-wing?

5 A. I am.

6 Q. Do you visit that wing in the furtherance of your
7 duties?

8 A. When I am not on vacation, I visit each and every
9 cell every Monday morning.

10 Q. Does that include the Isolation Row?

11 A. Yes.

12 Q. Does it also include those cells known as strip
13 cells or quiet cells?

14 A. It does.

15 Q. Now, have you familiarized yourself with the records
16 of your medical department at the institution relating to
17 the dates of your visits during the period of July 9
18 through July 20 1965?

19 A. No, not as far as medical. I don't record my
20 visits in the medical department. We sign in when we go
21 into the Adjustment Center or to X-wing. We normally sign
22 in and out. And I have looked at the records and on the
23 two Mondays in question I personally went through the
24 Adjustment Center.

25 Q. Did you visit each inmate in the strip cells on

1 those two Mondays?

2 A. I make it a special point to see every inmate,
3 especially in the quiet cells.

4 Q. Did you have an opportunity to observe the condi-
5 tion of cleanliness of those cells?

6 A. I observe the cleanliness of all cells.

7 Q. Directing yourself particularly to the strip cells
8 or the quiet cells, what was the condition of cleanliness
9 that you observed?

10 A. Well, I can't recall the dates in question, because
11 that is far from being, but I know if there would have been
12 anything wrong from a sanitary standpoint, I would have
13 called it to the attention of the sergeant, which I have
14 done on several occasions, and corrective measures are
15 usually taken immediately.

16 Q. Do you recall making such complaints with regard
17 to plaintiff Jordan?

18 A. I do not. I don't remember.

19 Q. During this time in question, did you receive any
20 letters from Jordan requesting medical treatment?

21 A. Oh, I probably did. I receive quite a few. I
22 would like to explain to the Court how I handle those
23 letters that I receive from the Adjustment Center.

24 Q. Would you do that, please.

25 A. During the week, I receive any number of--some are

1 letters, some of them are supposed to be interview slips
2 that we receive, and I keep a record of them. I know that
3 there is no emergency, because if there is an emergency in
4 the Adjustment Center or X-wing, my MTA usually picks it
5 up in the morning and he refers it to us. And then we call
6 the inmate over to the hospital for examination.

7 If something happens after the MTA has made a sick
8 call, the sergeant calls this to our attention. Then I
9 usually send an MTA to X or O-wing and tell him to take a
10 look at him and, "If, in your opinion, you feel that a
11 medical officer should see him," we ask him to bring him
12 to the hospital and the medical officer can see him.

13 Now, regarding these letters, threats, interview slips
14 that I receive during the week, I keep a record of them.
15 On Monday morning when I go through, I look at the chart
16 that they have in the Adjustment Center, find out the name
17 of this individual, where this individual is that sent me
18 the letter, sent me the interview slip, and I chart it down
19 in my book. I carry a book with me when I go through there.
20 I make an appointment personally to talk with the individual
21 that put in the letter.

22 If he--after talking to him, if I feel that he needs to
23 be brought to the hospital for examination, then he, later
24 on, after I finish my trip, during the day he is brought
25 into the hospital for examination.

1 If I feel that he doesn't have a just complaint, I
2 don't believe what he is telling me, and he still insists
3 he has some pain, then I prescribe medication. We have an
4 MTA that follows me along and ordinary routine medications
5 are dispensed at that time.

6 Q. Now, Doctor, just to clarify the matter, do you
7 have any independent recollection of seeing plaintiff
8 Jordan in the quiet cell--

9 A. I do not.

10 Q. You do not.

11 A. I do not.

12 Q. Directing your attention to February 14th of this
13 year, did you examine plaintiff Jordan?

14 A. I did examine Jordan on that day.

15 Q. What did that examination consist of?

16 A. Well, I received-- I received another letter from
17 Jordan, I think one got into his medical jacket for some
18 reason or another, but Jordan was going to the Board in
19 May, and apparently--he had been complaining to me on my
20 rounds, and the letter he sent on--I forget now, it was
21 February sometime, February the 10th or somewhere around
22 there--for I decided, in view he was supposed to go before
23 the Adult Authority in May, he had been complaining this
24 and that, I better bring him over to the hospital and
25 examine him.

1 So I sent for Jordan and he was brought to the hospital
2 and I recollect examining him, and I couldn't find anything
3 wrong physically with inmate Jordan.

4 Q. Dr. Kunkel, based on that examination, did you
5 formulate an opinion as to his health?

6 A. He was in good health.

7 Q. He was in good health. Now, Dr. Kunkel, over how
8 long a period of time have you been visiting the Adjustment
9 Center, particularly the Isolation Row?

10 A. There was--ever since I became Chief Medical
11 Officer in 1955.

12 Q. That, of course, includes the strip cells?

13 A. It does.

14 Q. Through that period, you have had an opportunity
15 to observe the general condition of cleanliness of Isola-
16 tion Row and the strip cells?

17 A. I have.

18 Q. What has that condition been throughout the years?

19 MR. COHLER: Exactly what years are we talking about?

20 MR. GRANUCCI: 1955 through the present.

21 MR. COHLER: Your Honor, I see no foundation in the
22 record for general conditions throughout that many years
23 as they may bear on two weeks.

24 MR. GRANUCCI: Your Honor, ordinarily I would agree
25 with counsel. However, as part of the plaintiff's case, he

1 has brought out certain changes have been made in the quiet
2 cells. Your Honor has had an opportunity to inspect the
3 isolation Section generally, and the quiet cells in parti-
4 cular, and Your Honor has had, pursuant to that inspection,
5 an opportunity to observe the cleanliness of that area.

6 What I expect to elicit from this witness is, if any-
7 thing at all, whether or not there has been any change in
8 that cleanliness.

9 MR. COHLER: Your Honor will recall that we were
10 cautioned not to slip on the wet floors that had just been
11 washed. I don't see how there could possibly be any bear-
12 ing between several years of cleanliness and the day we
13 were there.

14 THE COURT: I will allow it.

15 MR. GRANUCCI: Miss Reporter, would you read back the
16 question, please?

17 (The question was read.)

18 THE WITNESS: It has been quite satisfactory. Most of
19 the time, very, very good condition.

20 MR. GRANUCCI: Q. Have you noticed any change in the
21 level of cleanliness since February of this year?

22 A. I have not.

23 Q. One further question, Doctor: What is RD? It
24 doesn't relate to plaintiff here. However, the term has
25 been mentioned, and we might explore it.

1 A. Well, RD is a diet, it is a special diet. It is
2 made up in loaf form. It contains all of the food--
3 essential food elements, carbohydrates, proteins, fats,
4 vitamins, and everything else. It is very similar to the
5 K-rations that we had during World War II. It is put up
6 in loaf form and it is served to certain incorrigibles
7 that are brought before the Disciplinary Committee, and the
8 value they receive twice a day amounts to about 2,500
9 calories. It is not too palatable a food, but it is a food
10 that you can be sustained on indefinitely. Along with that,
11 they get two slices of wholewheat bread. They get two
12 rations a day.

13 MR. GRANUCCI: Your witness, counsel.

14 CROSS-EXAMINATION

15 BY MR. COHLER:

16 Q. Doctor, if I recall correctly--and please correct
17 me if I am mistaken--you testified that on several oc-
18 casions you have told a sergeant that there was not a pro-
19 per state of cleanliness. Is that correct?

20 A. That is right.

21 Q. And sometimes it is cleaned up?

22 A. I didn't say "sometimes." I said it is cleaned up.

23 Q. I thought you said sometimes. We can check that.

24 A. I did not.

25 Q. You do not have a specific recollection in the

1 period of July when Mr. Jordan, as you have been informed,
2 was in the quiet or strip cell, have you?

3 A. No specific recollection, no.

4 Q. Then you have no recollection of whether or not
5 this was one of the times when things may not have been as
6 cleaned up as you would have liked, is that correct?

7 A. No. If the inmate would have complained to me and
8 in my own opinion I felt that certain things were wrong, I
9 would have taken steps to correct them. That is part of
10 my responsibility.

11 Q. Do you recall the names of all the inmates over the
12 past years who have told you that there was something wrong,
13 and you have taken steps to correct it?

14 A. No, I do not.

15 Q. Doctor, do you recall specifically whether or not
16 that was the occasion during the period of July?

17 A. No. If he had told me that and I found anything
18 wrong, it would have been corrected.

19 Q. Based upon your general experience and your general
20 responsibilities, if Mr. Jordan had said anything to you
21 during your rounds, you would have asked the sergeant to do
22 something?

23 A. If I felt in my opinion corrective measures should
24 have been taken.

25 Q. Do you have any specific recollection during this

1 period whether or not there was vomit in plaintiff's cell,
2 in Mr. Jordan's cell?

3 A. No, there wasn't any or I would have taken steps to
4 have had that cleaned up.

5 Q. At any time that there is vomit in the cell, you
6 take steps to have it cleaned up, is that correct?

7 A. I take steps to have it cleaned up and find out
8 what the cause of it was and whether the inmate is ill.

9 Q. Dr. Kunkel, when you referred to checking in at the
10 Adjustment Center, how many cells are there in the Adjust-
11 ment Center?

12 A. Well, usually in the Adjustment Center on one side
13 I think there is about 108, or the capacity is 108. I
14 have never counted them.

15 Q. Do you sign in when you go into the Adjustment
16 Center?

17 A. That is right.

18 Q. You sign in before you visit all 108 cells and you
19 sign after you visit all 108?

20 A. Well, sometimes we sign in, and then we go through
21 the bottom floor and then we go through the second floor.
22 And when we come down we ask them to check us out. We
23 don't know how it is checked out or whether we are checked
24 out. The main thing I am interested in is whether I am
25 checked in.

1 Q. What I would like to establish, Doctor, is how
2 many cells you see after you check in and before you either
3 check out yourself or you are checked out. How many cells
4 are there to be seen?

5 A. Wherever there is an inmate.

6 Q. What is the total cell capacity? 108?

7 A. I think it is 108.

8 Q. I am not trying to pin you down.

9 A. No, I don't know. I have never counted them. I
10 know I have to make them all, so it doesn't make any dif-
11 ference if there is 300.

12 MR. COHLER: Mr. Grace, may I have Plaintiff's Exhibit
13 13, please.

14 Q. Dr. Kunkel, I would like to show you what is Plain-
15 tiff's Exhibit 13 in this case, Isolation logs, two dif-
16 ferent kinds of pages. Is that correct?

17 A. That is right.

18 Q. You are familiar with these documents, the originals

19 A. I am familiar with this sheet. The rest I am not
20 familiar with.

21 Q. Would you kindly look through Plaintiff's Exhibit
22 13, which you have before you. On each occasion when you
23 made a visit into the Adjustment Center area, approximately
24 108 cells, tell the Court how much time you spent there
25 according to those records.

1 A. Well, the first one here shows I spent ten minutes.
2 But that is not a statement of fact. There is an error
3 there. You couldn't go through--you couldn't even go
4 through one side in ten minutes.

5 This one here, in 7:42, out 7:50. You couldn't do it
6 in that time. That is not my handwriting. I don't know
7 who checked us in. Dr. Marsh and I both were in there.

8 Q. How long was the other doctor in there?

9 A. All the same time. The MTA and everybody.

10 MR. COHLER: Thank you, Doctor. That is all, counsel.

11 REDIRECT EXAMINATION

12 BY MR. OAKES:

13 Q. Doctor, you heard mentioned the vomit in the cell.
14 If you saw a man in the strip cell and found vomit on the
15 floor, do you think he would be moved to the hospital to be
16 checked?

17 A. I would ordinarily, yes.

18 Q. Would there not be an entry in the medical records
19 reflecting this?

20 A. When they are brought to the hospital, the records
21 reflect it; but not the visits we make to the Adjustment
22 Center. If we find somebody there that needs prolonged
23 medication of a nature which may be called a "hot drug,"
24 then it is put in his records that he is on--then we will
25 usually prescribe it for a period of ten or twelve days.

1 But ordinary visits are not recorded in--

2 Q. Not for vomiting in the cell?

3 A. No. We have them checked further sometimes; say,
4 he vomited in his cell or he is--he is having blood in his
5 urine or this and that, and we send a specimen bottle over
6 and ask him to give us a sample so we can check it.

7 Q. If you would have seen a man with vomit in his cell
8 within, say, the past 13 or 14 months, particularly in the
9 strip cell, do you think you would recall it at this date?

10 A. I would not.

11 MR. COHLER: I didn't hear the answer.

12 THE WITNESS: I would not.

13 MR. OAKES: Q. You would not?

14 A. No.

15 MR. OAKES: I have nothing further.

16 MR. GRANUCCI: I have one further question.

17 REDIRECT EXAMINATION

18 BY MR. GRANUCCI:

19 Q. Dr. Kunkel, you have been named as a defendant in
20 this case. Did you ever conspire with Mr. Donnelly, Mr.
21 Fitzharris, Mr. Kiepura, Mr. Swagerty, Mr. De Carli, or
22 anybody else, to deprive the plaintiff of his federal con-
23 stitutional rights?

24 A. I did not.

25 MR. COHLER: Your Honor, I object to the question as to

1 form. It calls for a conclusion of an ultimate question
2 which will be decided by the Court as to what a conspiracy
3 may consist of. I don't think it is proper. Basic facts
4 from which inferences may be drawn, ^{that} ~~it~~ is an entirely dif-
5 ferent matter.

6 MR. GRANUCCI: Your Honor, a conspiracy is an unlawful
7 agreement, and I think that this man should be entitled to
8 testify on the issue.

9 MR. COHLER: Is he an attorney to say whether or not an
10 agreement is lawful?

11 THE COURT: You may answer, Doctor.

12 THE WITNESS: What was the question?

13 MR. GRANUCCI: Q. Did you ever conspire with the other
14 defendants to deprive the plaintiff of his federal con-
15 stitutional rights?

16 A. Oh, absolutely not.

17 Q. Do you bear any malice towards the plaintiff?

18 A. None whatsoever.

19 MR. GRANUCCI: Thank you.

20 May the witness be excused?

21 MR. COHLER: No, because I have a question.

22 RECROSS-EXAMINATION

23 BY MR. COHLER:

24 Q. Dr. Kunkel, I am sorry, but would you please tell
25 the Court what conspiracy means to you?

1 A. Well, it means we are trying to gang up on him or
2 words to that effect.

3 MR. COHLER: Thank you.

4 THE COURT: Doctor, what is your definition of an
5 incorrigible? You have used the word.

6 THE WITNESS: Well, an incorrigible is one that, I
7 think, is--the psychiatrists have given up on him and we
8 have given up on him and everybody else and there is not
9 very much hope for him.

10 THE COURT: And do you feel that the inmates of the
11 six cells commonly known as the strip or quiet cells fit
12 within that terminology?

13 THE WITNESS: Not all of them, no sir.

14 THE COURT: Do you regard the plaintiff as an in-
15 corrigible?

16 THE WITNESS: If he isn't he is certainly a borderline
17 case.

18 THE COURT: In short, Doctor, your definition contem-
19 plates a complete abandonment of any hope, isn't that cor-
20 rect, sir?

21 THE WITNESS: Well, I have gone through this gentleman's
22 records completely, Your Honor, but they are--I think that
23 the psychiatrists and a lot of the correctional people have
24 come to the point that where--that they haven't found or
25 haven't resolved a method yet of how we are going to

1 rehabilitate him or what steps should be taken for him.

2 THE COURT: Do you think that is a breakdown of the
3 individual? Or a breakdown of the prison system?

4 THE WITNESS: I don't think it is a breakdown of the
5 prison system. I think there would have to be a lot of
6 research and everything else done, but we haven't reached
7 a point yet where we know the answer.

8 THE COURT: What have been your studies in penology,
9 Doctor?

10 THE WITNESS: In penology?

11 THE COURT: Yes.

12 THE WITNESS: Only some of the books that I have read
13 in my experience at the institution.

14 THE COURT: What are the books, Doctor?

15 THE WITNESS: The books they give you when you come in.
16 I don't happen to know the names, Your Honor. You get four
17 or five books that they give you. And I have read on
18 psychiatry, the acting out and--

19 THE COURT: Have you kept abreast of the current litera-
20 ture in penology?

21 THE WITNESS: Not completely, no sir.

22 THE COURT: Well, to what extent? Would you state to
23 the Court what, if any, studies you have made of recent
24 date.

25 THE WITNESS: Penology?

1 THE COURT: Yes.

2 THE WITNESS: I wouldn't say I have made any.

3 THE COURT: Yet you assume to characterize an in-
4 dividual as an incorrigible, isn't that true?

5 THE WITNESS: Well, from the trouble they are in all
6 the time and everything, and the way they are not trying to
7 help themselves to--of the opportunities which are avail-
8 able to them at the institution.

9 THE COURT: What is the ordinary caloric intake of an
10 individual, apart from the so-called incorrigible? What is
11 the average intake of the inmate of this type institution
12 per day?

13 THE WITNESS: It varies. It varies anywhere from about
14 4,000 to 5,000 calories. I think most of them eat about
15 4,000, 3,800, 4,000 calories.

16 THE COURT: Why is an inmate placed upon an RD diet?

17 THE WITNESS: He is placed on that, I imagine, for a
18 disciplinary standpoint.

19 THE COURT: Does it have to meet with your approval or
20 your disapproval?

21 THE WITNESS: It has to meet with my approval. I
22 usually--when they call up and ask--that they want to place
23 a certain man on the RD diet, I look at his record and if
24 there is nothing in his medical record to preclude him from
25 going on that diet, it is approved. If he has diabetes or

1 any disease he shouldn't be on that diet, I tell him not to
2 put him on the diet.

3 THE COURT: Do you maintain an office independent of
4 the office you maintain in the institution?

5 THE WITNESS: No sir. I am a full-time employee of the
6 state.

7 THE COURT: All of your hours, professional hours are
8 spent in the institution?

9 THE WITNESS: Eight hours a day, and I live on the
10 station. I am subject to call 24 hours a day.

11 THE COURT: You perform surgery as well as medical--

12 THE WITNESS: I have a surgeon. I do surgery myself,
13 too. But I have another doctor with me that is a surgeon.

14 THE COURT: What determinations have you made with
15 respect to the 2,500 caloric characterization as to the RD?
16 How do you know that is 2,500 calories?

17 THE WITNESS: That is what it works out. I have the
18 formula there if you would like to see what is in it.

19 THE COURT: So the RD diet has nothing to do with the
20 dietary requirements? It is purely punitive, is that cor-
21 rect?

22 THE WITNESS: That is right. They get all of the
23 calories they need, but it isn't as palatable as the regu-
24 lar chow.

25 THE COURT: I have no further questions.

1 MR. OAKES: I have just two questions, Doctor.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. OAKES:

4 Q. Do you involve yourself in treatment of the inmates
5 other than medical treatment?

6 A. Not ordinarily, I do not, unless the psychiatrist
7 is not immediately available and we try to hold them over
8 until the psychiatrist--

9 Q. You are not usually involved in treatment in a con-
10 tinuing sense, insofar as criminology or penology?

11 A. Absolutely not.

12 Q. Doctor, do you treat medically the incorrigibles
13 the same as you do the other inmates?

14 A. Oh, absolutely. They are all human beings.

15 FURTHER RECROSS-EXAMINATION

16 BY MR. COHLER:

17 Q. You don't offer any special type of medical ap-
18 proach to a man whom you consider to be an incorrigible,
19 in terms of trying to use medical means to bring him back
20 from that status?

21 A. Well, I do a lot of counseling during the week, and
22 I do a lot of talking and everything else with an individual
23 I spend half of my time trying to talk an inmate into doing
24 this for himself and trying to get them to work something
25 out to try to get in a program--a lot of my time is spent

1 on advice, and a lot of the inmates say all they get when
2 they come to me is advice.

3 Q. Doctor, I didn't mean verbally. I mean chemically.

4 A. Chemically?

5 Q. Yes. Chemically. Through drugs of any sort.

6 A. What?

7 Q. Are you aware of drugs and have you ever used them
8 at the institution?

9 A. What kind of drugs are you talking about?

10 MR. OAKES: He is not a psychiatrist. He is a medical
11 doctor.

12 MR. COHLER: I understand that. I am just trying to--

13 THE WITNESS: What kind of drugs are you talking about?

14 MR. COHLER: Q. Any drugs.

15 A. We use drugs, naturally. That is our business.
16 But I mean, what kind of drugs do you refer to, please?

17 Q. Have you ever tried to use any medical means what-
18 soever, aside from verbal counseling, in an effort to bring
19 a man from what you might consider an incorrigible state?

20 A. I'm not talking about incorrigibles, but when they
21 get emotionally upset, naturally we use certain tranqui-
22 lizers to try to quiet them down from their emotional state.
23 But not for a continuous diet, not to continue them in-
24 definitely on it.

25 Q. What kind of tear gas is available at the

1 institution?

2 A. I beg your pardon?

3 Q. What kind of tear gas is available at the institu-
4 tion, if you know?

5 A. Oh, I don't know anything about tear gas.

6 MR. COHLER: Thank you.

7 MR. GRANUCCI: No further questions. Your Honor, may
8 the witness be excused?

9 THE COURT: Yes.

10 MR. COHLER: Thank you, Doctor.

11 (Witness excused.)

12 THE COURT: Call the next witness. We will run to
13 4:30.

14 MR. GRANUCCI: Mr. Donnelly.

15 ROBERT H. DONNELLY,

16 called as a witness by the defendants, being first duly
17 sworn, was examined and testified as follows:

18 THE CLERK: State your full name and occupation to the
19 Court.

20 THE WITNESS: Robert Henry Donnelly, Deputy Superin-
21 tendent, Correction and Training Facility, Soledad.

22 DIRECT EXAMINATION

23 BY MR. GRANUCCI:

24 Q. Mr. Donnelly, what are your duties as Deputy
25 Superintendent of the Correctional Training Facility?

1 A. As Deputy Superintendent, I am in overall super-
2 vision of the classification, treatment and disciplinary
3 functions at the Central Facility.

4 Q. Would you narrate to us your background in cor-
5 rections work, please.

6 A. I began working in the Department of Corrections in
7 March 1946 until December of 1950, at which time I was
8 recalled to active duty with the Air Force. I returned in
9 May-- Perhaps I should back up for a moment.

10 Q. Would you tell us what you did when you started.

11 A. In March 1946 I began as a correctional officer at
12 the institution at Chino, California Institution for Men.
13 I was promoted to sergeant in 1948. In June of 1950 I was
14 promoted to lieutenant of San Quentin. In December of '50
15 I was recalled to active duty in the Air Force. In May of
16 1952, I returned to San Quentin. And in 1956, I believe
17 June or July, I am not certain of the month, I was promoted
18 to captain at the institution at Tehachapi.

19 In September of 1959 I received promotion to Program
20 Administrator at the Correctional Training Facility, North
21 Facility.

22 In 1964--I am not certain of the month, sometime during
23 the summer--I came over to Central Facility as Associate
24 Superintendent of Custody.

25 In July of 1965 I was appointed to Deputy Superintendent

1 of Central Facility.

2 Q. You have held that position since that time?

3 A. I have.

4 Q. At the Central Facility, are there a pair of wings
5 known as the Adjustment Center?

6 A. Yes sir.

7 Q. What are the purposes of the Adjustment Center?

8 A. The purposes of the Adjustment Center are to pro-
9 vide us with some manner of control of the men in the
10 general population who have, for some reason or another,
11 gotten out of control.

12 There are four adjustment centers in the Department of
13 Corrections: One at--the Vocational Institution at Tracy,
14 one at Folsom, one at San Quentin, and one at Soledad.

15 To these places, gravitate the men who are adjustment
16 management problems at particular institutions.

17 Q. Was it the purpose of the Adjustment Center to
18 permanently isolate or quarantine the inmates who are an
19 adjustment problem?

20 A. No sir. The purpose of the Adjustment Center is
21 to attempt to work people back into the general population.

22 Q. Could you explain that in more detail, please, for
23 example, as to the various grades.

24 A. The Adjustment Center grade I has a very minimal
25 amount of privileges. You might say they have no privileges

1 whatsoever. Grade II have some privileges, in the purchase
2 of canteen items, radio, some books. Grade III, we have
3 group counseling, recreation out in the yard, more--a
4 greater amount of canteen that can be purchased from their
5 funds. All in all, it is an attempt to have a graduated
6 system of rewards and punishments in an attempt to get
7 people to try to work themselves back into the general
8 population.

9 Q. Now, is there more than one type of segregation of
10 inmates? Would you say that the segregation of inmates in
11 the Adjustment Center is administrative or punitive?

12 A. We have both. We have the isolation unit which is
13 punitive. We have the Adjustment Center, which is ad-
14 ministrative.

15 The punitive segregation, isolation, is determined--
16 the length of time in there is determined by a Disciplinary
17 Committee, and at the expiration of a sentence, the inmate
18 is free to be released from there.

19 The isolation section which we have in O-wing is
20 generally for the men from grades I and II who have gotten
21 into--and people from the Adjustment Center, who have got-
22 ten into difficulty within the Adjustment Center.

23 The isolation section which we have in X-wing is
24 generally the people who have gotten into trouble within
25 the general population who will be returning to the general

1 population. There may be from time to time exceptions, but
2 this is generally our practice.

3 Q. Now, within the Isolation Row, are there certain
4 cells commonly known as quiet cells or sometimes known as
5 strip cells?

6 A. Yes sir.

7 Q. What is the purpose of those cells?

8 A. The purpose of those cells is to provide us with
9 some place where we can hold and house men who have proven
10 themselves to be a source of disturbance within the unit.

11 Q. Is this within the isolation unit?

12 A. This is within the isolation unit.

13 Q. Could it also provide use to inmates who have
14 proven themselves as a source of disturbance within the
15 Adjustment Center generally?

16 A. Yes sir.

17 Q. What kind of inmate generally is confined in the
18 strip cell or the quiet cell?

19 A. It might be any kind. I guess several kinds of
20 inmates. Usually we would be speaking of the person who
21 has broken up the cell furnishings, caused flooding, beat-
22 ing on the bars, helping to agitate and get the rest of
23 the inmates agitated and disturbed, ordinarily these would
24 be the types of inmates.

25 Q. Mr. Donnelly, what sort of approval is required for

1 quiet cell confinement? Is this the sort of thing that
2 could be done at the discretion of an individual officer?

3 A. It can be done at the discretion of a ^{watch}~~bunch~~ com-
4 mander or the officer of the day.

5 Q. Would that be subject to further approval?

6 A. It would be subject to approval by the Disciplinary
7 Committee.

8 Q. What about release from the quiet cell?

9 A. Release from the quiet cell is usually recommended
10 by the officers on duty, one of the counselors, the sergeant
11 on duty, and it is generally based on the demonstrated
12 attitude of the man within the unit. If he appears to have
13 quieted down, we may try to get him out of the quiet cell.
14 If I may interject--

15 Q. Certainly. Please explain your answers whenever
16 you want to.

17 A. Adjustment Center housing is--we refer to it as
18 "expensive housing." We are not talking there in terms of
19 dollars and cents. The Adjustment Center-- Dr. Kunkel
20 referred to O-wing as having 108 cells. It has 144 cells,
21 and because of the types of inmates that are housed there,
22 the Department gives us a quota of 75 percent of the total
23 number of cells.

24 Ordinarily, we have more inmates in there than 108.
25 It is a very difficult situation where we are dealing with

1 difficult people in a crowded situation. When a majority
2 of the cells are occupied, it gives us little room to
3 separate one man who may be working on the nerves of an-
4 other. It doesn't give us much flexibility.

5 The expensiveness comes about in that it is so demand-
6 ing of staff time. Frequently, the Adjustment Center is
7 a place of upset, a place of disturbance, a place of noise
8 which upsets the entire institution as well as the Adjust-
9 ment Center.

10 I am afraid I have lost my thread of thought.

11 Q. Mr. Donnelly, have you had any experience working
12 in an adjustment center yourself?

13 A. I have never worked in one. I have worked around
14 them, I have made visits to them when I was in San Quentin.

15 One experience I had in an adjustment center was having
16 my nose receive the scar that it has right now from the
17 fist of an inmate.

18 Q. How did that happen?

19 A. A psychiatrist-- I was in charge of a third watch
20 at San Quentin, and a psychiatrist had been examining a man
21 during the day and he called back later that evening. He
22 said that he had made a mistake, he had left the man's
23 glasses with him and he was afraid he might injure himself.

24 I went in with the sergeant in an attempt to get the
25 man to give up his glasses.

1 He held onto the grille door entering the cell, re-
2 fusing to open it. The sergeant had a billy club, he
3 tapped the man's knuckles--and I mean tapped; he didn't
4 bash him--the man left go of the cell door, and we entered.
5 I kept trying to talk to him, and suddenly I received a
6 fist in the face. I grabbed for the man's arm. The
7 sergeant took the baton and hit me across the arms with the
8 baton, but we finally got the man under control and got the
9 glasses away from him.

10 Q. Mr. Donnelly, do you in your present position as
11 Deputy Superintendent have authority over the conditions
12 of confinement in the Adjustment Center, particularly the
13 quiet cells?

14 A. Yes, I do.

15 Q. That authority has been in existence since July of
16 1965?

17 A. That is correct, sir.

18 Q. Pursuant to that authority-- Let me rephrase the
19 question.

20 Have you exercised that authority to effectuate any
21 changes in the conditions of the quiet cells?

22 A. I believe not, except those on instructions from
23 the Superintendent.

24 Q. Are conditions in the quiet cells different now
25 than they were in July of 1965?

1 MR. COHLER: Your Honor, I am going to object to that
2 as ambiguous. I think we ought to be clear on conditions.
3 There have been many different kinds of conditions.

4 MR. GRANUCCI: This is a general question, counsel,
5 leading into particulars.

6 THE COURT: You may answer.

7 THE WITNESS: The conditions that are different are the
8 presence of plastic washbowls and basins, towels, soap,
9 toothbrushes, these kinds of furnishings.

10 I am sorry, not toothbrushes. The towels, soap and the
11 plastic water basins.

12 Q. Did you participate--

13 A. Excuse me. One other thing. The automatic flush-
14 ing devices for the toilets.

15 Q. Did you participate in the decision to install or
16 to furnish these towels, soap, pitchers, water basins?

17 A. I was in on the discussion with the Superintendent.

18 Q. At the time you participated in the discussions
19 with the Superintendent, were you aware of the existence
20 of this particular lawsuit?

21 A. I believe I was, yes sir.

22 Q. Were you aware that you were a defendant in the
23 case?

24 A. I don't believe-- I am sorry. I don't know. I
25 don't know whether I knew it at that time or not. I would

1 have guessed that I was.

2 Q. Was the decision to effectuate these changes
3 motivated by the existence of the lawsuit?

4 A. Well-- This is difficult for me to answer. I
5 don't believe it was.

6 Q. Answer to the best of your ability, and you can
7 explain your answer.

8 A. I think it was more-- There are always difficulties
9 in an adjustment center. We had been trying-- We have
10 been trying to budget personnel. We have been attempting
11 to find ways and means in which the personnel there can be
12 better employed. I think this was the reason for it. I
13 am not sure. It-- I couldn't say unequivocally this was
14 the reason.

15 Q. Would you say, Mr. Donnelly, that these changes are
16 permanent? Or are they rather on a tentative or experi-
17 mental basis?

18 A. Everything that you do in an adjustment center is
19 more or less experimental. We have to see whether or not
20 the thing works.

21 Penology or any of the behavioral sciences, as far as
22 I know, are not exact. They are comparatively new. I
23 don't believe anyone knows the answer. I certainly don't
24 pretend to know the answer. I am afraid of people who have
25 the answer. I think it is more a matter of attempting to

1 work with individuals, rather than to generalize that such
2 and such a thing is going to work.

3 We may find difficulties with these plastic objects
4 with certain individuals. Certainly if a man is suicidal,
5 we would certainly find difficulty with a towel.

6 But as I say, I think these things should attempt to be
7 handled on an individual basis, to the best of our current
8 knowledge and in the best of our judgment.

9 Whether the changes are permanent or not--if they
10 appear to work, they are permanent. If they appear to
11 bring other problems, greater problems, then they will be
12 done away with.

13 Q. And you will try something else?

14 A. Yes sir.

15 Q. Mr. Donnelly, do you know one William Wells?

16 A. I do, sir.

17 Q. Based on your experience, could you tell us why
18 an individual of Mr. Wells' apparently young age would be
19 confined in a place like the Adjustment Center?

20 A. My experience with--particularly with young Youth
21 Authority wards who come to the Department of Corrections
22 has been that they have been severe management problems in
23 Youth Authority institutions. If they were not, the Youth
24 Authorities would hold onto them and they would not be sent
25 to the Department of Corrections for handling.

1 Generally, when I was at North Facility and we would
2 see a 16-year old come into the North Facility, my first
3 reaction, and as I repeated it to the other staff at the
4 time, was "We've got trouble," because we had usually a
5 young man who had to attempt to prove himself to the rest
6 of the inmate population. He was usually afraid, but in
7 his fear, he could hurt people. This was a problem for us
8 in the handling.

9 Q. Now, Mr. Donnelly, I want to ask you about the use
10 of tear gas. Is there more than one type of use at the in-
11 stitution?

12 A. Yes sir.

13 Q. Let's put it this way, available for use at the
14 institution.

15 A. Yes sir.

16 Q. Would you explain the types.

17 A. The tear gas commonly referred to is chloracetophen
18 CN, which may be in a gas billy.

19 Q. A what?

20 A. A gas billy, which is a shortened billy club, I
21 would say about ten inches long, which fires a gas pro-
22 jectile; or in grenades, which throws the gas widely; or in
23 a canister, which has a valve at the top which can squirt
24 gas into the cell.

25 Q. Would that be like an aerosol can?

1 A. We have presently a new device. The name of it
2 is Mace-- I am not acquainted with the chemical makeup; it
3 has been approved by the Department for use in institutions--
4 which works to cause tearing when it strikes the skin. If
5 it were to be directed at clothing, there would be no ef-
6 fect. However, when it hits the skin, the body temperature
7 causes a reaction which causes tearing. This is in an
8 atomizer-type--

9 Q. Mr. Donnelly, can you reconcile the use of tear gas
10 with accepted notions of humane treatment?

11 A. I certainly can, sir.

12 Q. How is that?

13 A. I have had--known people, officers, and inmates,
14 who have been severely injured when tear gas was not used
15 because brute force had to be used to subdue a man acting
16 violently.

17 The use of tear gas would usually subdue a man so that
18 he is willing to accept restraint. The effect of tear gas
19 will wear off within a period of time. It is not something
20 that--not something we take pride in doing, but I have
21 known an officer to be serverely hurt by use of an iron rod
22 taken out of an inmate's bed and the officer, in an attempt
23 to go in with a mattress to overpower the inmate, stumbled
24 over another officer who was helping him, the mattress came
25 down giving the inmate a clear blow at the officer's head

1 with this steel rod.

2 With the use of tear gas, if tear gas is put in a cell,
3 the inmate is told to back up to the door, and he backs up
4 to the door, the handcuffs are put on him, and he is got
5 under control.

6 There is also something else in this, I think. That is
7 that the inmates feel they need to save face. They have to
8 show that they are men. They are going to fight. But it
9 seems generally accepted in the inmate culture, at least
10 it has been my experience, that tear gas is overpowering so
11 there is no need to put up further disturbance once the
12 tear gas has been used. I think this also helps to cut
13 down on the difficulties.

14 Q. In other words, an inmate confronted with the use
15 of tear gas could submit to authority without jeopardizing
16 his standing with other inmates.

17 A. This is my point.

18 Q. Now, is the use of tear gas a matter for the in-
19 dividual discretion of duty officers, or officers on duty?

20 A. The term "duty officer," we frequently use to mean
21 the officer of the day. The officer of the day does have
22 authority to permit the use of tear gas.

23 Q. What about an individual correctional officer?

24 A. An individual correctional officer does not have
25 the authority.

1 Q. What does an officer have to do when he is con-
2 fronted with a situation where he feels tear gas is ap-
3 propriate?

4 A. He would have to contact the watch commander. Our
5 practice is that the watch commander would contact the
6 officer of the day or the Superintendent or myself, or the
7 Program Administrator, the Captain, someone else in
8 authority.

9 However, the--the watch lieutenant has to have a cer-
10 tain amount of freedom, because sometimes things happen
11 very fast in an institution. He has to have the authority
12 to use this. If there is time, he is expected to consult
13 with someone else.

14 For example, if it were a question of a man in a cell,
15 he would be expected to contact myself, the Program Ad-
16 ministrator, or the officer of the day.

17 However, if it were a question of rackus situation in
18 a wing, he would have to act right then and would not be
19 able to wait.

20 If an inmate were attempting to cut himself or something
21 like this in a cell, he might have to go in with tear gas
22 without getting prior approval.

23 Q. Mr. Donnelly, what is a 103B record?

24 A. A 103B record would be the Associate Warden and
25 Custody Card. It is one of a series of cards that is used

1 within the Department for various purposes, various depart-
2 ments. The top of the card usually shows some sociological
3 data, the crime, the length of sentence. The foot of the
4 card shows the man's work assignment. It also shows his
5 housing assignments, classification actions, the actions of
6 the Adult Authority. The rear of the card will usually
7 reflect his disciplinary record, counseling, this kind of
8 thing.

9 Q. Does a 103B usually reflect housing status?

10 A. Yes sir, it would show the cell to which a man was
11 assigned.

12 Q. I show you one of the pages in an appendix to
13 Plaintiff's 3. Would you please describe this document.

14 A. The document that we have is a CDC form, California
15 Department of Corrections Form 115, report of violation of
16 institution rules.

17 It shows the institution at which the report is being
18 made, it is directed to the Warden/Superintendent. At the
19 top it shows the name of the reporting officer who charges
20 an inmate with violation of the rules and regulations, and
21 then lists the rules and regulations which have been
22 violated, gives the date and the time, then a brief summary
23 of the action, the signature and place of work of the
24 officer. Below this is a line, approximately one-half the
25 page, I would think, which lists the plea of the inmate,

1 the findings and disposition arrived at by the hearing
2 officer or the Disciplinary Committee.

3 Q. Mr. Donnelly, would you please read the date on that
4 form?

5 A. The date on this form is Friday, July 9 1965, 9:50
6 p.m.

7 Q. Would you please read the name of the inmate ac-
8 cused.

9 A. The name of the inmate, as given here, is "Jordan,
10 A-46604."

11 Q. Now, directing your attention to the bottom of the
12 page, I show you the initials "RHD."

13 A. Those are my initials.

14 Q. What do those indicate?

15 A. These initials indicate that I at sometime--I don't
16 have the date here--but sometime following the hearing of
17 the Committee, saw this and as the Chief Disciplinary
18 Officer, noted the fact of the action.

19 Q. Does that mean that you approved it?

20 A. It does.

21 Q. Do you have the power to disapprove disciplinary
22 action?

23 A. I do.

24 Q. Do you have the power to reduce the penalty?

25 A. I do.

1 Q. Do you review Disciplinary Committee actions in the
2 general course of your duties?

3 A. I no longer do. At the time of the period in ques-
4 tion, I did.

5 Q. When you review a disciplinary--during that period
6 of time, was the disciplinary report, the 115, the only
7 thing you had before you?

8 A. No. I also would have a copy of the 103B card that
9 we have just described.

10 Q. In other words, you would be aware of the inmate's
11 housing at the time he was disciplined.

12 A. Yes sir.

13 Q. And also at the time you reviewed the report?

14 A. Yes sir.

15 Q. Are the 103B forms kept current?

16 A. I don't understand.

17 Q. In other words-- In other words, let me rephrase
18 the question.

19 When a man's housing is changed in the institution,
20 is that change noticed on his 103B form?

21 A. Yes sir, one of the purposes of the 103B card is to
22 help us to find an inmate either at his work location or in
23 his housing.

24 Q. How quickly would the change be noted on the 103B?

25 A. It would be noted within 24 hours.

1 Q. Within 24 hours.

2 A. Yes.

3 Q. So then would it be correct to say that at the
4 time you approved the Disciplinary Committee action re-
5 lating to Mr. Jordan that accused him of violation of pri-
6 son rules on July 9 1965, you were aware of where he was
7 housed?

8 A. Yes sir.

9 Q. In other words, you knew he was housed in a quiet
10 cell?

11 A. I don't have a personal remembrance of this parti-
12 cular action, but the information was there. And now I
13 don't remember what was there under the findings of dis-
14 position, sir. But that statement might have told me some-
15 thing.

16 Q. I show this to you.

17 MR. COHLER: The same date?

18 MR. GRANUCCI: The same date.

19 THE WITNESS: I don't know if I would have known--
20 whether I would have checked the 103B card to find out if
21 Mr. Jordan were in fact in a quiet cell.

22 MR. GRANUCCI: Q. But it was available to you?

23 A. It was available, yes.

24 MR. GRANUCCI: Would this be an appropriate time to
25 adjourn for the day?

1 THE COURT: Very well. We will resume for further
2 hearing in this matter at 11:00 o'clock tomorrow morning.

3 MR. GRANUCCI: 11:00 o'clock. Very good, Your Honor.

4 MR. COHLER: Will we be going throughout the day?
5 There would be an afternoon meeting as well?

6 THE COURT: Yes.

7 Mr Jordan is remanded to custody.

8 (Whereupon, the hearing was adjourned until 11:00
9 o'clock a.m., Tuesday, August 16 1966.)

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TUESDAY, AUGUST 16 1966 - 11:00 A.M.

THE CLERK: 44309 and 44786 Robert Charles Jordan, Jr.
vs. G. J. Fitzharris, et al, further evidentiary hearing.

MR. COHLER: Ready for the plaintiff and petitioner,
Your Honor.

MR. GRANUCCI: Ready for the defendant, Your Honor.

May we call Mr Donnelly, please.

ROBERT H. DONNELLY,

recalled as a witness in behalf of the defendants, having
been previously sworn, resumed the stand and testified
further as follows:

THE CLERK: Will the witness please restate his name
for the record.

THE WITNESS: Robert H. Donnelly.

DIRECT EXAMINATION (Resumed)

BY MR. GRANUCCI:

Q. Mr. Donnelly, I believe on direct examination yesterday you testified that you participated in a decision to introduce some changes into the quiet cells; water, towels, and the like.

Do you remember what precipitated those changes or what instituted the discussion?

A. I believe the discussion--I believe, now, the discussion was as a result of an inquiry from the Administrator--the Youth and Adult Corrections Agency, Mr. Richard

1 A. McGee, whom I understand had been ^{approached} ~~appointed~~ by a member
2 of the California Supreme Court.

3 As I understand it, Mr. Jordan had submitted a, I be-
4 lieve it was an application for a writ, to the California
5 Supreme Court. It was at this time, since we--since it had
6 gotten the interest of a Justice of the Supreme Court, we
7 decided we had better take a second look at what was hap-
8 pening in the Adjustment Center.

9 Q. Was that before you became a defendant in this case?

10 A. Yes sir.

11 Q. Was it before there was any awareness that Jordan
12 had a case in the federal court?

13 MR. COHLER: Excuse me, Your Honor.

14 "Any awareness." Would you limit that, please, to the
15 witness' awareness?

16 MR. GRANUCCI: Q. Was this before you were aware that
17 Jordan had a case in the federal court?

18 A. Yes.

19 Q. Was this before you were aware that you were a
20 defendant?

21 A. Yes sir.

22 Q. Can you pin down in time the period when those
23 suggestions started?

24 A. I believe it was in the winter of 1964-65.

25 Q. '64-'65?

1 A. Yes sir.

2 Q. Or '65-'66?

3 A. I am sorry. Winter of 1965-'66.

4 MR. GRANUCCI: Counsel?

5 CROSS-EXAMINATION

6 BY MR. COHLER:

7 Q. Mr. Donnelly, can you pin down those discussions
8 any more precisely than the winter of '65-'66, please?

9 A. I don't believe so, Mr. Cohler. I spent some time
10 thinking about this yesterday, as a result of my testimony
11 here, trying to remember when these discussions took place.

12 Q. Let's go into it a little more thoroughly, and maybe
13 your recollection will be refreshed. Do you recall how
14 many discussions there were looking toward changes?

15 THE COURT: And with whom.

16 MR. COHLER: Yes, I was going to go to that next, Your
17 Honor.

18 Q. And with whom, at the same time, if you wish.

19 A. I would believe that there might have been three or
20 four such discussions.

21 Q. With whom? And if it varied from time to time,
22 please so state.

23 A. The Superintendent, Mr. Fitzharris, I believe Mr.
24 Swagerty, I believe Mr. Johnston.

25 Q. Were these face-to-face discussions in someone's office?

1 A. Yes, I think that they were-- Some of the dis-
2 cussions, I believe-- I believe one or two of them were in
3 the Superintendent's office, and I believe there were some
4 informal discussions in Mr. Swagerty's office.

5 Q. Can you recall whether or not the earlier dis-
6 cussions were in the Superintendent's office? Or Mr.
7 Swagerty's office?

8 A. I would believe that they were in the Superinten-
9 dent's office.

10 Q. Over what period of time did these three or four
11 discussions take place? I am asking for length of time,
12 not dates.

13 A. I would think they might have taken place over a
14 period of three or four months.

15 Q. Three or four months.

16 A. Yes sir.

17 Q. Was it after the final such of the three or four
18 discussions that an actual decision was made to make these
19 changes?

20 Well, let me back up a little bit. Perhaps this would
21 be helpful.

22 Did there become a time when it was actually decided,
23 "Now we will go ahead?"

24 A. Yes sir. I can't--I can't place that. There
25 obviously had to be a time when a decision was made that

1 something was to be done.

2 Q. Were you present at a conference when such a
3 decision was made, a final decision was made to move for-
4 ward?

5 A. No. As I remember these discussions, they were
6 more in the nature of what--what can we do? What is hap-
7 pening here?

8 I don't remember whether I was present at a hearing or
9 a meeting at which it was definitely decided this is what
10 we would do.

11 Q. Were there any written memoranda written to anyone,
12 including yourself, stating that a decision had been made
13 that such and such would happen?

14 A. No. To clarify, these were, as I remember, more
15 or less informal meetings. They were not any formal meet-
16 ings called specifically for this.

17 I correct myself there. I think the first two meetings
18 might have been called for this purpose, to make us, as
19 members of the staff, aware of the interest that Mr. McGee
20 and the messages that he had passed on, and that this was
21 more in the nature of, "Let's take a look at what we can
22 do."

23 Q. The first two meetings which you recall as being
24 directed expressly towards this discussion of this matter,
25 do you recall approximately how long each of those meetings

1 lasted?

2 A. No sir.

3 Q. A matter of minutes? Hours? Days?

4 A. No, I wouldn't-- I would guess--

5 Q. Please don't guess; estimate.

6 A. All right. I will estimate that it would be a
7 matter of minutes, but I don't have that accurate a re-
8 collection of a particular meeting.

9 Q. Would you say minutes approaching an hour? And I
10 don't want you to go any further than your recollection
11 will permit, but in that range?

12 A. It is an estimate. I would think somewhere between
13 a half hour and an hour.

14 Q. Your best recollection was, Mr. Donnelly, that Mr.
15 Fitzharris, Mr. Swagerty, Mr. Johnston and yourself were
16 present. Did each of you gentlemen participate in the dis-
17 cussion?

18 A. Yes.

19 Q. Who started the discussion when you were called to
20 the office?

21 A. I believe the Superintendent did.

22 Q. Would you recall, as best you can, what he said?

23 A. I have a very inaccurate or very fuzzy notion.

24 Q. Let's back up a little more and see if you can
25 recall.

1 You stated I believe, on cross-examination, that there
2 had been a communication from Mr. McGee relating--com-
3 munication ~~from~~ ^{to} him ^{from} ~~to~~ a Justice of the Supreme Court of
4 California.

5 A. Yes sir.

6 Q. How did you become aware of that?

7 A. From the Superintendent.

8 Q. At this first meeting?

9 A. Yes.

10 Q. That was, in part at least, a substance of what
11 you were told at the beginning, is that correct?

12 A. Yes.

13 Q. What was it that Mr. McGee wrote? Did he write?
14 Or did he talk? Do you know?

15 A. No sir, I don't know.

16 Q. Were you shown a letter of any sort?

17 A. No sir.

18 MR. COHLER: Counsel, a little out of order, I wonder
19 if you would take it upon yourself to ask Mr. Fitzharris
20 to check his file and see if he can find such a letter.

21 MR. GRANUCCI: Very well, counsel.

22 MR. COHLER: Thank you.

23 Q. What was the substance of what Mr. Fitzharris said
24 that Mr. McGee had informed him, Mr. Fitzharris, of?

25 A. The substance, as I remember it, was that Mr.

1 Jordan had made certain charges about the operation of the
2 Adjustment Center.

3 MR. OAKES: Objection, Your Honor. I think we are
4 getting into double hearsay. The letter would be the best
5 evidence.

6 THE COURT: Overruled.

7 THE WITNESS: And that-- I am losing my thread of
8 thought again. Could you repeat the question?

9 MR. COHLER: Q. Certainly. Would you try to tell the
10 Court as best you can recall it, what Mr. Fitzharris told
11 you at this first meeting that he had been told by Mr.
12 McGee, told or written to him, however it may have been?

13 A. As I remember it, Mr. Fitzharris had been told that
14 a Justice of the Supreme Court, California Supreme Court,
15 had made inquiries of Mr. McGee, in essence: What is the
16 situation in the Adjustment Center of Soledad.

17 Q. Mr. Fitzharris questioned each of you as to what
18 the situation was? Or how did it proceed from there?

19 A. I think, as I remember it, the Superintendent was
20 asking us, as the staff directly concerned, to take a look
21 to see if anything was out of the way.

22 Q. Did you do so?

23 A. Well, it was my instruction and the instruction of
24 the Superintendent to--Mr. Johnston and Mr. Swagerty, to
25 do so.

1 Q. Was there a second meeting, perhaps, to report the
2 findings as to whether or not anything was out of order?

3 A. I don't have a recollection of that--

4 Q. Well, did any of you-- Excuse me.

5 A. I don't have a recollection of the substance of
6 the various meetings.

7 Q. As I understand it, Mr. Donnelly, the Superinten-
8 dent had asked the gentlemen present, including yourself,
9 to see if anything might be out of order in response to a
10 request from his superior, Mr. McGee.

11 Was there a time when any report was made to Mr. Fitz-
12 harris as to whether or not anything was out of order?

13 A. I believe that Mr. Swagerty reported directly to
14 the Superintendent.

15 Q. Subsequently, in the course of these three or four
16 hearings, it was decided that changes ought to be made?
17 Is that correct?

18 A. Yes sir, I believe that is true.

19 Q. Mr. Donnelly, you testified on direct examination--

20 THE COURT: When you speak of these "changes," will you
21 be more specific, counsel, with respect to the changes, if
22 any.

23 MR. COHLER: Q. Mr. Donnelly, I would like to ask you
24 if you have not been referring to the following changes in
25 your testimony, both on direct and cross-examination so far--

1 The installation of an automatic flushing device in the
2 isolation strip or quiet cell area, the installation of
3 plastic washbasins, the installation of plastic water
4 pitchers, the availability of towels, the availability of
5 soap, and the availability of toothbrushes?

6 A. I believe more specifically we were speaking of
7 the flushing devices, the plastic devices. Frankly, I
8 don't know who made the decision about the towels and soap
9 and this kind of thing. I believe that was done by the
10 staff of the Adjustment Center itself.

11 Q. Your testimony, then, has been directed to changes
12 including, at least, the automatic flusher, the plastic
13 water basin and the plastic water pitcher, is that correct?

14 A. Yes.

15 Q. I didn't hear your answer.

16 A. Yes sir.

17 Q. You were asked on direct examination regarding the
18 use of tear gas. Is it part of your function in your pre-
19 sent office as Deputy Superintendent to, upon occasion,
20 authorize the use of tear gas?

21 A. It is.

22 Q. When are you supposed to be asked to authorize the
23 use of tear gas? Can it ever be used without your authori-
24 zation?

25 A. Yes sir. It can be used without--it can be used

1 on the authorization of the watch commander in a riotous
2 situation when time is of the essence.

3 Q. Except for an emergency such as a riotous situation
4 where time is of the essence, would you if you were on duty
5 be the person who ought to authorize the use of tear gas?

6 A. Not necessarily.

7 Q. I didn't mean to imply that you ought to authorize
8 it in every situation that it is requested. But you are
9 the person they would ask?

10 A. Not necessarily. Mr. Swagerty might be asked, the
11 Captain might be asked or Mr. Johnston might be asked.

12 Q. On how many occasions have you been asked to
13 authorize the use of tear gas that you can recall, Mr.
14 Donnelly?

15 A. Over the period of time since I have been at
16 Central Facility?

17 Q. Would you break that down for the Court first into
18 those periods of time when you were in a position where
19 you would have been asked as the person who had authority
20 to authorize the use of tear gas.

21 A. Well, I have had the authority to authorize the
22 use of tear gas since the summer of 1964.

23 Q. At that time you were in what position, sir?

24 A. Associate Superintendent of Custody.

25 Q. As best you can recall, Mr. Donnelly, since the

1 summer of 1964 when you became Associate Superintendent of
2 custody, and to date, how many times have you been asked
3 to authorize the use of tear gas?

4 A. It would be-- That is a very difficult question
5 for me to even estimate, Mr. Cohler. In the fall of 1964,
6 as I believe has already been testified to, for a period
7 of some six weeks we had a riotous--not a riotous situation,
8 but we had a situation in which the entire institution was
9 seriously disturbed. I had authorized the use of tear gas,
10 I don't know how many times during that period. I would
11 say that--

12 Q. Perhaps we can help you. Let's ^{exclude} ~~include~~ for the
13 moment the riot of 1964, which was an apparently extra-
14 ordinarily difficult time period. Excluding that period of
15 time, would the number of times you have been asked to
16 authorize the use of tear gas be 10, 20, 50, 100, 1,000,
17 what?

18 A. I would say somewhere on the order of 20.

19 Q. Do you recall any of those occasions, approximately
20 20, in which you did not authorize the use of tear gas
21 when it was requested of you?

22 A. I don't recall not authorizing the use. I do--it
23 seems to me that on a few occasions, and this might be on
24 the order of three or four, that I had asked for--after
25 hearing a description of the situation, that I had asked

1 someone else to either go in and take a look to see what
2 the situation was to see if the situation required the use
3 of tear gas, and I have myself on, perhaps, three or four
4 occasions gone personally to the area.

5 Q. Mr. Donnelly, you used the term "situation requir-
6 ing the use of tear gas." Would you please tell the Court
7 all situations which you can think of based on your ex-
8 perience.

9 A. Perhaps it would be best to begin with the in-
10 dividual situation.

11 The situation of an inmate within his cell who is
12 creating a disturbance which is beginning to cause unrest
13 throughout the rest of the wing--

14 Q. Agitation?

15 A. Agitation.

16 --a situation where an inmate within his cell is
17 threatening to harm himself and is armed--

18 Q. He is armed?

19 A. Well, he might be armed with--

20 Q. Anything he could hurt himself with?

21 A. Yes sir.

22 --a situation in which a group of inmates refuses to
23 disperse.

24 Q. That wouldn't be inmates within their cell, would
25 it?

1 A. No, no, this would not.

2 --a situation in which a group of inmates would be
3 refusing to lock up and were threatening the staff.

4 Q. Again, that is not an inmate within his cell, is it?

5 A. Right. It is not, sir.

6 Q. Without taxing your memory and your experience,
7 would you carefully, please, tell me all situation regard-
8 ing an inmate already within his cell? I think you have
9 mentioned two, disturbance or agitation and threatening to
10 harm himself. Can you think of anything else?

11 A. Yes. I can think of a situation where a man has
12 been ordered to move from his cell and he refuses to do so.

13 Q. I would like you to be very careful and see if you
14 can think of any others regarding an inmate already within
15 his cell.

16 A. At the moment, no sir.

17 Q. Mr. Donnelly, I take it that if an inmate is with-
18 in his cell, that tear gas should not be used merely to
19 enforce an order, unless that order relates to agitation
20 or threatening harm to the inmate by himself or moving of
21 the inmate to another cell?

22 A. I would guess that was accurate.

23 Q. In other words, there are many orders that must be
24 given in the course of running an institution, not all of
25 which are of such a serious nature that they ought to be

1 enforced by the use of tear gas?

2 A. Right, sir.

3 Q. If an inmate were not thought to be using his
4 clothing or about to use his clothing to harm himself,
5 would an order to remove his clothing call for enforcement
6 by the use of tear gas?

7 A. It could, sir.

8 Q. That would be a new situation. Would you explain
9 that, and why you haven't included it in your previous
10 statements?

11 MR. GRANUCCI: Object to counsel's "previous statement."
12 I think he stated it could or couldn't be, "could be or
13 couldn't be" was included in his previous statement, de-
14 pending on the circumstances.

15 MR. COHLER: I will break it down and start at the be-
16 ginning.

17 Q. I believe you just testified that there could be
18 times when it would be proper to use tear gas to enforce
19 an order for an inmate to remove his clothing even where
20 the inmate was not thought to be about to use his clothing
21 to hurt himself. Now, when could and when couldn't that
22 be the proper occasion for the use of tear gas?

23 A. Well, one obvious example, I think, would be in
24 the search of a man. Weapons can be concealed on a person,
25 and in removing a man from his cell it might be necessary.

1 to have him divest himself first so--to make certain that
2 he didn't have the weapons on him.

3 I think of one situation in which--at the institution--
4 in which a riotous situation had occurred, agitation within
5 cells, breaking, if I remember correctly, of toilets or at
6 least flooding the tiers, burning clothing, sheets and
7 this kind of thing. In an attempt to control it, we ordered
8 inmates stripped and they remained in their own cells. I
9 believe tear gas was authorized in this instance.

10 Q. I don't want to interrupt you.

11 A. No, I am through.

12 Q. If I understand you correctly, tear gas is not used
13 as a punitive instrument. It is used for particular pur-
14 poses, more in the nature of control?

15 A. Yes sir.

16 Q. Particularly, it is used to get someone out of
17 where he is to some place else? Is that correct?

18 A. Usually that is true, yes sir.

19 Q. Would you please tell the Court, Mr. Donnelly,
20 what you know about the dangerous nature of tear gas?
21 Whether it is? Whether it isn't?

22 MR. GRANUCCI: Objection to the form of the question.
23 It assumes something not in evidence, that tear gas is
24 dangerous.

25 MR. COHLER: I asked whether it is, whether it isn't,

1 counsel.

2 MR. GRANUCCI: With that qualification, I will withdraw
3 the objection.

4 MR. COHLER: Q. Do you understand the question?

5 A. Yes.

6 Q. Please go ahead.

7 A. I believe there are some few people who are very
8 allergic to tear gas. I don't know--I think I have run
9 across one such person in my experience in the Department.
10 Other than that, I believe it is the most humane way of
11 moving a man, because without it physical force might have
12 to be used.

13 Q. And that would be dangerous for both the moving and
14 the moved person, wouldn't it?

15 A. Yes sir.

16 Q. You mentioned an instance where a man may be
17 allergic to tear gas. Are you aware of any records with
18 regard to each inmate as to whether or not he is allergic
19 to tear gas?

20 A. No sir.

21 Q. Is any such information available to you when you
22 make a decision whether or not to authorize the use of tear
23 gas?

24 A. No sir.

25 Q. That would have to be discovered afterwards, if he

1 turned out to be allergic?

2 A. Yes sir.

3 Q. Aside from an inmate who may be allergic, and of
4 which you wouldn't have any knowledge at the time you
5 authorized it, are there any other situations where tear
6 gas may be dangerous?

7 A. I would think that tear gas would be dangerous if,
8 for example, a man had a heavy cold. I don't know this.
9 This would simply be an assumption on my part.

10 Q. Can tear gas have dangerous characteristics when
11 used in closed or close quarters, as opposed to an open
12 area?

13 A. I would suppose, yes.

14 Q. Even more so in an area as small as a quiet or
15 strip cell?

16 A. Yes, I suppose.

17 Q. Even more so if the flaps in the door were closed
18 in that area as small as a quiet or strip cell?

19 A. Yes sir.

20 Q. Do you have any knowledge as to how dangerous that
21 would have become?

22 MR. GRANUCCI: Your Honor, can that question be
23 limited to the quantity or the relation of the quantity of
24 gas involved? I take it the danger could be proportionate.

25 MR. COHLER: I will incorporate counsel's request.

1 Q. You may answer fully, please.

2 A. In my experience, I have known of no one who was
3 permanently damaged by the use of tear gas.

4 Q. At your institution.

5 A. Well, even at other institutions. I haven't heard
6 of anyone.

7 Q. If you had heard of someone dying from the use of
8 tear gas in closed quarters, would that affect your exer-
9 cising your discretion in authorizing the use of tear gas?

10 A. Yes sir.

11 MR. COHLER: Your Honor, this may be a little out of
12 order. I want to proceed carefully.

13 Counsel this is a Xerox of an opinion of the Court of
14 Claims, New York, 1961, found at 222 New York Supp. 2d 596.

15 It involves the death of a person from the use of tear
16 gas in a closed room by law enforcement officials.

17 MR. GRANUCCI: Objection, Your Honor. I will object to
18 the opinion as hearsay as far as the facts reported therein.

19 THE COURT: You might ask Mr. Donnelly whether the
20 opinion or the subject matter or the contents thereof was
21 ever directed to his attention.

22 MR. COHLER: That is what I propose to do.

23 THE COURT: You may do that.

24 MR. COHLER: Q. Mr. Donnelly, was it ever brought to
25 your attention that in 1961 in a court in New York, there

1 had been a lawsuit growing out of the death of a man from
2 the use of tear gas in closed quarters by law enforcement
3 officers?

4 A. I don't remember it, sir.

5 Q. You don't remember being told or not being told
6 about it?

7 A. Yes sir.

8 Q. Is there more than one kind of tear gas, to your
9 knowledge?

10 A. Well, there are various gases which are used, which
11 have been used. There are sickening gases. There are
12 nerve gases, tear gases, as we understand them, and this
13 latest item that we are using, which is called Mace,
14 M-a-c-e-.

15 Q. Do you know the chemical composition?

16 A. I do not. It reacts with the bodily heat, and our
17 instructions are it is to be used on the face.

18 Q. Did you have that particular Mace available in the fall
19 of 1965?

20 A. No sir.

21 Q. How recently have you had that available?

22 A. This has been approved by the Department of Correc-
23 tions, I believe within the last four or five months.

24 Q. Let me restrict your attention for the moment to
25 the fall of 1965, particularly around Thanksgiving time.

1 which types of gases which were available for your use, to
2 your knowledge, were there at the institution?

3 A. The type we have is, I believe, chloracetophenone.

4 Q. Known as CSDN?

5 A. No sir. I believe it is CN.

6 Q. CN. Thank you.

7 A. And this would come both--depending on the manu-
8 facturer--would be in either a liquid or a powder form.
9 But as far as I know, this is the only type of tear gas we
10 have had.

11 Q. Is that type of tear gas found in different types
12 of containers in use at the institution?

13 A. Yes sir.

14 Q. Will you describe that for the Court, please.

15 A. There are various types of containers. One would
16 be called the gas billy, which is a short truncheon, which
17 can expel a gas projectile. It is for short-range work
18 against individuals.

19 There is a gas gun, which can send projectiles some
20 distance, which would be used for large scale disturbances.

21 Q. Let me interrupt you there. I understand there are
22 two types of gas guns; one is a gas gun and one is more in
23 the nature of a shotgun. Do you have both of those, or
24 which?

25 A. No. We have just the rifle type.

1 And the other type would be a canister with a valve at
2 the top which can expel gas in varying amounts, depending
3 on how long the valve is kept open.

4 Q. Which of those three, the gas billy, the gas gun,
5 or the canister, is the largest, holds the most gas?

6 A. I believe the canister does.

7 Q. Do you know how much more it holds than the others?
8 Is this all pretty close together? Or substantially larger?

9 Perhaps I can ask it this way--

10 A. I don't know, sir.

11 Q. --would a canister, as you have described it, be
12 more appropriate for use in the outdoor area, as opposed
13 to a gas gun or a gas billy?

14 A. The canister would be more appropriate for the in-
15 door area.

16 Q. Why is that, sir?

17 A. One is the blast effect that would occur from send-
18 ing forth any projectile, and the other would be the--once
19 the gas--the tear gas gun or the billy has been expended,
20 you have expended all of your gas. You have no control
21 over the amount.

22 Q. In other words, a projectile has a certain amount
23 of gas in it and that is it?

24 A. Yes sir.

25 Q. Do you have any knowledge as to whether or not the

1 armory officers keep the canisters, the gas guns and the
2 gas billies ready at all times in the event there is need
3 for their use?

4 A. Yes sir.

5 Q. Does that keeping them ready at all times include
6 keeping them filled?

7 A. We don't refill at the institution. We send the
8 canisters--when they become empty, we send them out to the
9 manufacturers to be filled to--

10 Q. Do you send-- Excuse me.

11 A. --to our retail contact.

12 Q. To your knowledge, Mr. Donnelly, do you send them
13 out when they become empty? Or do you send them out auto-
14 matically after they have been used so that you won't have
15 just a little bit left at the bottom and reach for it in a
16 riot and have it die in a few seconds?

17 A. I am sorry to have to admit that we have had them
18 until they have died on us in a few seconds.

19 Q. I will ask you to direct your attention now to just
20 prior to Thanksgiving in 1965. Do you recall being re-
21 quested to authorize the use of tear gas at or about that
22 time?

23 A. From that description, no sir.

24 Q. Do you recall being asked to authorize the use of
25 tear gas with respect to an inmate named Esparza?

1 A. Yes, it seems that I do. I believe I was contacted
2 by Mr. Johnston.

3 Q. Mr. Johnston, the Program Administration of Unit 3?

4 A. Yes sir.

5 Q. Was that a telephone call? A face-to-face meeting?
6 A written slip? How does that work?

7 A. He called me, I believe. I believe he was in the
8 Adjustment Center and he called me on the phone.

9 Q. About how long a conversation was that?

10 A. A matter of minutes.

11 Q. And you authorized the use of tear gas at that time,
12 is that correct?

13 A. Yes sir.

14 Q. Did you authorize the use of tear gas at that time,
15 as you recall it, with respect to an inmate who was in his
16 quiet cell or strip cell and who was not to be moved there-
17 from? Do you understand the question?

18 A. Was I--

19 Q. When you authorized the use of tear gas with re-
20 spect to Mr. Esparza, were you informed and did you under-
21 stand at the time that this was not being used to move him
22 from his cell, but was to be used to enforce an order while
23 he was still to remain in his cell.

24 A. I don't remember that, Mr. Cohler.

25 Q. Mr. Donnelly, I believe you testified on direct

1 examination yesterday that ordinarily strip cells served
2 the purpose of housing inmates who had been breaking up
3 their cells, who had been flooding their cells, or who had
4 been agitating in their cells. Is that correct?

5 A. Yes sir.

6 Q. Would you tell the Court, please, whether there are
7 any other purposes to be served by housing an inmate in a
8 quiet or strip cell in the ordinary case.

9 A. Well, ordinarily the strip cell is used as a means
10 of separating the person going in there from the rest of
11 the population within the Adjustment Center. I guess there
12 could be various reasons for this.

13 Q. Are they used solely for control? Or also for a
14 means of punishment?

15 A. I believe it was Sergeant Friedrick who has al-
16 ready testified or stated that this is a very difficult line
17 to draw.

18 Q. He thought he could draw it though. I would like
19 to know if you can.

20 A. Well, I think I can draw it for myself.

21 MR. OAKES: Objection, Your Honor. I don't know he
22 does know he can draw it. I think counsel is putting
23 testimony on the record.

24 MR. COHLER: If I did so, it was unintentional. I will
25 withdraw it and we will proceed.

1 Q. To your best ability, would you distinguish if you
2 can between control and punishment with respect to the use
3 of the quiet or strip cell.

4 A. Yes sir. I would think the punishment aspect
5 would enter into it if I were immediately involved.

6 Q. Excuse me. Are you using hypothetically? Or are
7 you saying in situations where you are involved?

8 Well, let's see if we can take this a little more slow-
9 ly. You are presently the Deputy Superintendent, is that
10 right?

11 A. Yes sir.

12 Q. In your capacity as Deputy Superintendent and re-
13 sponsibilities which attend thereto, as you understand the
14 purposes and the proper functions of the quiet cell or
15 strip cell, what are those purposes in terms of control
16 versus punishment, if you can say?

17 A. The control enters into it in removing a force of
18 disturbance from the population of the Adjustment Center.
19 The punishment enters into it from the aspect that the
20 cells are not--not as well fitted as the regular cells,
21 that they are isolated more so from the--from one another
22 than any other--than any of the other cells are.

23 The type of control itself must, I believe, take on the
24 aspect of punishment of the man involved. I mean, in his
25 eyes, I don't see how he can separate it. In my eyes, it

1 is separated by the fact that when the man demonstrates that
2 he has regained some control of himself, we then bring him
3 back out.

4 Q. Let me see if I understand you now, Mr. Donnelly.
5 The purpose is, from the official point of view, as you
6 understand, and particularly your own as Deputy Superin-
7 tendent, the purpose is one of control. However, because
8 of the circumstances at the cell, it may be thought to be
9 punishment, which is the necessary part of putting him
10 there for purposes of control. Is that a fair statement
11 of what you said?

12 A. Yes.

13 Q. Now, aside from the fact that there may be a
14 punishment aspect involved when you are trying to control
15 a man when you put him into these cells, are these cells
16 used for punishment, aside from just trying to separate
17 him out?

18 A. No sir, not to my knowledge.

19 Q. What would require separating a man out such that
20 he would be controlled by putting him in a quiet or strip
21 cell?

22 A. The various things I have mentioned; the agitation,
23 breaking up of cell furnishings, flooding, these kinds of
24 things.

25 Q. "Agitation" has a very broad meaning to me. Perhaps

1 it has a more special one to you. Could you tell the Court
2 what agitation can encompass.

3 A. Agitation can encompass a man directly himself
4 starting to methodically beat on the bars, yelling and
5 screaming and attempting to incite others; it might en-
6 compass a man who, while not doing that himself, gets
7 others nearby to do that kind of thing. This is what I
8 mean by "agitation."

9 Q. I want you to explain this, and I am not trying to
10 put words in your mouth, but what you just said/ ~~it~~ seems
11 to me/ to encompass almost any conceivable rule-breaking,
12 because discipline would break down and this would lead to
13 agitation and you could go on from there. Is it any more
14 restrictive than that?

15 A. Well, I believe, Mr. Cohler, that in any situation
16 people responsible for making decisions have to make a
17 decision, and there is always this--there is always this
18 problem that someone else might have made a different
19 decision which might or might not have been better in a
20 particular situation. Somebody has to make the decision
21 as to whether or not this particular type of agitation is
22 going to cause general upset, or whether it is of a minor
23 nature and can be forgotten.

24 Q. Are there some rules which can be broken which
25 would in the ordinary course of events not be thought to

1 likely result in agitation?

2 A. Can you give me an illustration?

3 Q. Well, I was going to ask you for some. But let
4 me see if I can rephrase. Let's come at it from another
5 angle.

6 As Deputy Superintendent and formerly as Associate
7 Superintendent, would you please tell the Court, based on
8 that experience, the importance of maintaining discipline
9 and obedience to orders in the institution.

10 A. Well, this resolves down to attempting to look at--

11 Q. I am having a little trouble hearing.

12 A. This breaks down into attempting to handle men
13 individually. For example, it appears to me that if a man
14 is in a phase of minor infractions, he can be causing
15 staff--using up a great deal of staff time. But he is no
16 grave danger to the institution, even though he may be very
17 well known to staff.

18 To handle this kind of thing, I introduced at Central
19 Facility what we call restricted housing, a step between
20 the general population and the Adjustment Center.

21 On the other hand, we might on occasion have a man who
22 is found guilty of one infraction, which because of the
23 seriousness of that infraction should be placed in the
24 Adjustment Center.

25 It is an attempt, I believe--we are making the attempt--

1 to look on the men down there as individuals.

2 Does this answer the question, sir?

3 Q. Let's see if we can take that a little further, and
4 I don't mean to imply anything.

5 If an officer or sergeant or some other official gives
6 an order directly to an inmate, to what extent is it felt
7 that that order must be enforced?

8 A. Once again, I think it would have to depend on the cir-
9 cumstances at that particular time. If I can give an
10 illustration.

11 An inmate is told to go back to his wing. The serious-
12 ness of this order will depend on the situation at the
13 time. If the corridor is relatively vacant, if there is
14 nothing happening around the place, then the order--his
15 failure to go back is not a very serious one.

16 If, on the other hand, an inmate is among a group of
17 inmates who are impeding the progress of the corridor or
18 threatening someone, and the officer comes along and tells
19 him to go back to the wing, then this is a very serious
20 thing.

21 Q. Using your example of the man in the corridor alone,
22 where there is no other ~~aggravation~~ ^{aggravating} circumstance, and he
23 is ordered to go back to his wing, when you said it wasn't
24 a very serious infraction, do I understand you to mean the
25 order itself would be enforced, but his failure to obey

1 immediately would not be considered a serious infraction?

2 A. Yes sir.

3 Q. In other words, the order is enforced?

4 A. Yes sir.

5 Q. It is considered a breakdown of discipline within
6 the prison, isn't it, if an order is made and not enforced?

7 A. Yes sir.

8 Q. Orders must be enforced one way or the other?

9 A. Right, sir.

10 MR. GRANUCCI: Objection to the form of the question,
11 Your Honor.

12 THE COURT: Sustained.

13 MR. COHLER: Q. The term "strip cell" has been used,
14 Mr. Donnelly. I suggest to you that at least among ad-
15 ministrative personnel, those at your position, or your
16 superiors, the term may have originated because the cell
17 was stripped of the normal physical facilities.

18 Would you tell the Court what you know of the origina-
19 tion of this term, its use generally in penology, et cetera.

20 A. My understanding is that this is where the term
21 "strip cell" came from: Stripped of all furnishings.
22 Primarily, I guess, the cells were formed to remove weapons
23 from disturbed people. I don't know what else you may be
24 inquiring about.

25 Q. In other words, if you put a man in a cell which

1 was stripped of all furnishings, he wouldn't be able to
2 have weapons to hurt himself, hurt officials, hurt inmates,
3 he wouldn't be able to tear his cell apart, break it up,
4 flood his cell, things of that nature, is that correct?

5 A. He wouldn't be able to break up his cell too well.
6 I have seen cells at San Quentin where the bowl was encased
7 in concrete, and after a period of time the concrete was
8 broken up into fairly large chunks. One method of break-
9 ing--that was something else.

10 He can still burn his clothing.

11 Q. Matches are contraband, are they not?

12 A. They are, sir.

13 Q. Go ahead, please.

14 A. Well, contraband can be gotten into a strip cell.

15 Q. We have heard testimony to that effect.

16 Stripping a cell of its furnishings is designed to do
17 the best job yet devised to keep the man from ripping up
18 the cell or getting weapons to hurt himself or others; is
19 that generally true?

20 A. Also this control. These would be the ideas.

21 Q. That is where I want to go with you now. If there
22 weren't the danger of the man breaking up the cell and
23 making weapons out of the facilities which were in the cell
24 would there be any reason not to place him in a regular
25 isolation cell, not a strip cell?

1 A. With this agitation, yes sir.

2 Q. Would you explain that, please.

3 A. Very well. One man, a disturbed man in the unit,
4 if he is in an isolation cell or the administrative segre-
5 gation, the Adjustment Center cells, can succeed in getting
6 others to become very disturbed.

7 Q. How does that happen in the isolation section, the
8 front part of the west corridor on the first floor of O-
9 wing?

10 A. If that isolation section or the "MAX" side on the
11 other side of isolation-- if they start the rhythmic beat-
12 ing and the yelling and screaming, it is clearly audible
13 through that whole wing and also into the corridor.

14 Q. What is it about the strip cells which precludes
15 that?

16 A. Well, the use of the strip cell would be that we
17 were moved in-- May I back up?

18 Q. Certainly. Please explain yourself fully.

19 A. We have found that if we permit--and this is ex-
20 perience over the years--if we permit something within the--
21 within an isolation unit to go on, to go unchallenged, that
22 gradually aside from the noise and the burning and this
23 kind of thing, the whole unit loses discipline. My guess,
24 if I am permitted to guess, would be that the inmates, be-
25 cause of this, because of the tension they are under, the

1 fear generated, get more and more-- there is nobody there
2 to take care of them.

3 The quiet cell gives us an area to which we can remove
4 a man who is causing difficulty throughout the wing. We
5 can remove him out of that section. This gives the rest of
6 the population a chance to back down.

7 Q. In other words, there are even less privileges in
8 the quiet cell, so you have this means to say, "O.K., you
9 are messing up isolation. You go to the strip cell." Is
10 that the idea?

11 A. Yes sir.

12 Q. What happens if the people in the strip cells start
13 doing this? What do you do to them then?

14 A. Usually then, Mr. Cohler, we look to find some way
15 to--if they are--you know, if it is causing that great a
16 disturbance--ordinarily it does not--but if it were, we
17 would look to find some way of transporting him to another
18 institution.

19 Usually in a situation like that, I believe you would
20 find there were two, three, four, five men who were helping
21 to support one another in this. We would look to try to
22 separate them.

23 Q. In a situation which falls short of anything as
24 aggravated as might call for you to try to transfer a man
25 to another institution, if you have an inmate who has been

1 messing up, disturbing, rattling on bars, pounding on the
2 bar area, making a lot of noise in the isolation section,
3 the guard and the sergeant may see to it he goes to the
4 strip cell to quiet him down? That is a possible situation
5 a likely situation?

6 A. The sergeant puts--you are suggesting the sergeant,
7 through his immediate superior, the lieutenant on the third
8 watch or the officer of the day, that would be a cause--

9 Q. I am not worried about who authorizes it now. But
10 that would be a cause for moving him to the strip cell?

11 A. Yes sir.

12 Q. This isn't necessarily an inmate who has been doing
13 this for years, but he did it that time.

14 A. Well, once again, we are talking about the gravity
15 of the situation. Somebody has to make the decision. We
16 have situations in which men do make noise in which they
17 do not go to the quiet cell. ~~We have--there are 144 cells~~
18 in that wing. It has a quota of 108. We usually have
19 about 116 on an average, and as high as 126. Obviously we
20 can't put all of those men in the quiet cells.

21 So the gravity of the situation at the particular time
22 has to be judged by the staff on duty.

23 Q. You say you have a quota of 108. What does that
24 mean?

25 A. It means that because of the type of inmates with

1 whom we are dealing, that the Department sets a quota of
2 75 percent of the available cell space within the wing as
3 the quota for that wing.

4 Q. That means there can't be less?

5 A. Oh, no. We frequently go above, and we go below.

6 Q. What does it mean, that is what I don't understand.

7 A. What it means is that when we reach 109, we can
8 then begin saying to the rest of the Department, "We are
9 filling up. Don't send us any more problem children for
10 awhile." Or we call the Department to see if some of the
11 men can be transferred elsewhere.

12 Q. Let's go back to the first floor again in O-wing.
13 Depending upon the gravity of the situation, if a man were
14 agitating by rattling his bars or banging on the bars and
15 it was thought through the appropriate people in authority
16 to move him to the strip or quiet cell and he got there and
17 he began doing the same thing, then there is no place else
18 to put him unless you decide to get him transferred out,
19 and it is up to the guards or the sergeant on duty to find
20 some way to control this man. Is that correct?

21 A. If we can, yes sir.

22 MR. COHLER: Thank you.

23 MR. OAKES: I have a few more questions.

24 THE COURT: You may ask them.
25

REDIRECT EXAMINATION

1
2 BY MR. OAKES:

3 Q. Would you consider removing a man's clothes as
4 appropriate means for controlling him?

5 A. Yes sir.

6 Q. At the beginning of cross-examination Mr. Cohler
7 brought up the fact of several meetings that were had
8 between yourself and Mr. Fitzharris, Mr. Swagerty and
9 probably Mr. Johnston, and perhaps others.

10 MR. COHLER: Excuse me, just so it is clear. I didn't
11 bring that up.

12 MR. OAKES: I am sorry. I didn't mean to imply any-
13 thing, counsel. We brought it up.

14 Q. Do you often have meetings with these people?

15 A. Yes sir.

16 Q. Do you have regular meetings with them as a group?

17 A. Yes sir.

18 Q. Were the meetings which you had in which the letter
19 you had from the Supreme Court or whatever the letter was
20 from Mr. McGee that was discussed, was that meeting solely
21 concerned with that letter itself? Or might it have been
22 a general meeting?

23 MR. COHLER: Excuse me. There was more than one meet-
24 ing. Mr. Donnelly already testified to this. If you want
25 to break it down meeting by meeting, his answer was

1 different before, as to which meeting it was.

2 MR. OAKES: Counsel, I didn't think it was ever clear
3 as to how many meetings there were or when there were. I
4 just wanted to speak generally to this.

5 MR. COHLER: Your Honor, I am going to have to object.
6 The witness said, as I recall, that there were three or
7 four meetings, that the first two such meetings were
8 specifically for this purpose and that the others may or
9 may not have been. I don't think a general question as to
10 all meetings is appropriate. It is misleading and ambigu-
11 ous.

12 THE COURT: That observation was correct. There were
13 several meetings, according to my recollection. If the
14 witness has any view other than that, I think he should
15 relate it. There were several meetings that returned or
16 related to the inquiry that emanated from the Supreme Court.
17 Isn't that correct?

18 THE WITNESS: Yes.

19 MR. OAKES: My question was perhaps-- Let me rephrase
20 it.

21 Q. Of the several meetings, did the first meeting that
22 you recall specifically deal with the letter from Mr. McGee?

23 A. Well, I don't know that it was a letter or what it
24 was, but it did deal with the message.

25 THE COURT: Do you have a copy of the letter?

1 MR. OAKES: I don't at this time, Your Honor. We will
2 have to attempt to see if we can discover that.

3 THE WITNESS: But if I may say--

4 THE COURT: Certainly.

5 THE WITNESS: This was as a result of my testimony
6 yesterday, Your Honor, and I was trying last night to try
7 to remember when--what about these discussions. I am not
8 too clear on these meetings at all, and some of this is
9 guesswork, to the best of my recollection, Your Honor.

10 THE COURT: Mr. Donnelly, to the best of your recollec-
11 tion, were there any minutes made of the meetings which
12 followed in the wake of the inquiry from the Supreme Court?

13 THE WITNESS: No sir. About the only time that we have
14 minutes is when we have a formal staff meeting. We do meet
15 together and--

16 THE COURT: Did you have any memorandum?

17 THE WITNESS: No sir.

18 THE COURT: Or written memorial of any kind?

19 THE WITNESS: I don't believe so, sir.

20 THE COURT: Pardon me, counsel.

21 MR. OAKES: Q. During the course, again on cross-
22 examination, I believe the phrase "out of order" was used
23 in reference to the investigation of perhaps the Adjustment
24 Center area. Were you actually investigating to see whether
25 things were out of order? Or were you investigating to see

1 what conditions were such?

2 A. I think, as I recall it, we were taking a look to
3 see what the conditions, what the conditions were.

4 Q. Were you looking to see if any changes could be
5 made?

6 A. We were looking to see, first, if changes might be
7 in order. And obviously if they were, we would come to
8 make them.

9 MR. COHLER: I didn't get the answer.

10 THE WITNESS: I said we were looking to see if changes
11 appeared to be--if there was anything there to be changed,
12 and if we saw something that should be changed we would
13 obviously go ahead and make the change.

14 MR. OAKES: Q. On both direct examination and cross-
15 examination the subject of tear gas has been brought up.
16 I believe Mr. Cohler asked you whether or not you knew of
17 anybody who was allergic to tear gas.

18 A. Yes sir.

19 Q. Do you know of a lot of people that are allergic
20 to the results of a weapon being fired?

21 MR. COHLER: Your Honor, what kind of weapon?

22 MR. OAKES: Say a rifle, a hand gun, a shotgun.

23 A. No sir.

24 Q. You mean, if a person is shot, they are not probably
25 allergic to it?

1 A. Oh, I am sorry.

2 Q. Do you think most persons are probably allergic
3 to the use of force?

4 MR. COHLER: I think we are using the term "allergic"
5 in what I would hesitate to say is almost a facetious use.
6 I don't think this is proper examination. I object.

7 THE COURT: As the term is used, I think the objection
8 is well taken, counsel.

9 MR. OAKES: Q. Do you figure that most people can
10 suffer harm from the use of force?

11 A. Yes sir.

12 Q. As a matter of fact, you have a scar on your nose
13 as a result of attempting to control a person in the Ad-
14 justment Center situation, do you not?

15 A. Yes sir.

16 Q. Is it your opinion, based on your experience, that
17 the probabilities of harm accruing to an inmate are less
18 with the use of tear gas or the use of physical force in
19 an attempt to control him?

20 A. It is my opinion that the probabilities of harm to
21 an inmate are less with the use of tear gas.

22 Q. There was some testimony, I believe on direct and
23 I am sure on cross-examination, about the necessity for
24 maintaining control in an institution. I think you cited
25 some examples of what could occur or how occurrences do

1 happen when a man or a group of men lose control.

2 Perhaps it is relevant to discuss the situation in
3 Soledad State Prison in 1964, in the fall of 1964.

4 Counsel, do you have something?

5 MR. COHLER: There is no question pending yet, but I
6 am waiting.

7 MR. OAKES: Q. I wonder if you could relate a little
8 bit about the situation at that time as an example of what
9 happens when control is lost?

10 MR. COHLER: Your Honor, I wish to object to the parti-
11 cular question, and I think this should be limited. There
12 has been testimony, and I am sure there will be more, I
13 expect more, as to that particular situation. There was a
14 reorganization afterwards. There were efforts to realign
15 things within the institution. I don't think the question
16 should be asked, one, by way of exemplar as to what can
17 happen, I don't think we should get into details of 1964.
18 But limited beyond that, I think the repetition of the
19 general situation is appropriate.

20 This question is put as by way of exemplar, and I see
21 no foundation.

22 MR. GRANUCCI: May it please the Court, this inquiry
23 into the conditions of Soledad has been a fairly broad
24 ranging one, and I think in the interest of fairness the
25 defendants not only should but are entitled as a matter of

1 right to bring out the circumstances that motivated their
2 actions, the problems they are confronted with. After all,
3 an institution is on trial. I think it ought to have a
4 fair opportunity to defend itself.

5 MR. COHLER: Your Honor, I disagree with nothing counsel
6 has said. I don't think that answers the objection to the
7 particular question which is put.

8 THE COURT: I think, under the circumstances, this
9 witness or any other witness is entitled to make an exposi-
10 tion of the background events and so forth, and motivations
11 and intent and the like.

12 MR. COHLER: That is the only limit I wish to place,
13 and that is the foundation of my objection. Perhaps you
14 could rephrase it, counsel.

15 MR. OAKES: I think at this time I will withdraw the
16 question.

17 Q. Mr. Cohler asked you about a situation where you
18 might put a man in a strip cell or a quiet cell where there
19 is no danger of his breaking up the cell he has been in.
20 Could you ever determine, when a man is out of control, when
21 or when he may not break up the cell that he is in?

22 A. I think the only way we know that he will or will
23 not break up the fixtures in the cell is if in fact he does
24 do so. Some men do have a history of this, which probably
25 would lead us to believe that he would be capable of doing

1 it again in the future. But aside from that, we would have
2 to judge by the particular incident.

3 MR. OAKES: That is all I have, counsel.

4 RECROSS-EXAMINATION

5 BY MR. COHLER:

6 Q. Mr. Donnelly, you answered counsel's question on
7 redirect in the affirmative as to whether or not removing
8 clothing was a means of controlling an inmate.

9 A. Yes sir.

10 Q. I take it that clothing being removed might be
11 considered a proper action if there were a danger of suicide

12 A. Yes sir.

13 Q. In what other sense is removal of clothing con-
14 sidered a means of controlling an inmate?

15 A. I believe in response to one of your questions,
16 Mr. Cohler, we had the situation where this was an illus-
17 tration, where two tiers or a majority of the inmates on
18 two tiers were burning and flooding and were causing a
19 general disturbance. And in this particular instance, we
20 removed the clothes from these men.

21 Q. In other words, and I want to use the words care-
22 fully and you correct me if I am using them improperly, in
23 other words, by depriving a man of one of his privileges,
24 his clothing, he will consider himself punished to the
25 extent, you hope, that he will come under control?

1 A. Yes sir.

2 MR. GRANUCCI: Objection.

3 Well, I will withdraw the objection. I have a couple
4 of questions.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. GRANUCCI:

7 Q. Mr. Donnelly, on cross-examination counsel asked
8 you to enumerate certain situations which might call for
9 confinement in a quiet cell. Do you recall those questions?

10 A. Yes.

11 Q. Were your answers intended to be exclusive? Or
12 were they intended to be illustrative?

13 A. No, I--

14 MR. COHLER: Your Honor, I am going to interrupt the
15 witness and object to the question. I am sorry I didn't
16 say it earlier. There were several questions along this
17 line. ~~Some were asked illustratively. There were also~~
18 questions put, as I recall it, "Would you please search
19 your memory carefully," or something to that effect, "and
20 tell me if there were any others." I think we might have
21 to read the record for the witness to say what he has
22 testified about before.

23 THE COURT: I recall the incidents, counsel.

24 MR. GRANUCCI: Well, I will withdraw the question and
25 begin again and substitute another one.

1 Q. Is it true, Mr. Donnelly, that there is a whole
2 spectrum of certain situations that could involve a danger
3 of agitation or actual agitation?

4 A. Yes sir.

5 Q. Isn't it also true there is a whole spectrum of
6 circumstances, a very broad spectrum of circumstances, which
7 would require varying responses to control situations?

8 A. Yes sir. I believe this is one of the difficulties
9 I have had in answering some of the questions, is that we
10 are dealing with an institution of 1,500 men. We are deal-
11 ing with an adjustment center of some 225, 250 men. And
12 the interaction between people, different situations that
13 occur, is a very broad one. I don't--there can be any
14 number of situations requiring for any number of different
15 types of answers.

16 Q. Now, Mr. Donnelly, just to clarify a question, you
17 testified that a man's ~~clothing could be taken away from~~
18 him under circumstances where he was not attempting sui-
19 cide. Is that correct?

20 A. Yes sir.

21 Q. Would that be as a control measure, or as a puni-
22 tive measure?

23 A. In my estimate, it would be that of a control
24 measure.

25 Q. Would it be a reasonable control measure?

1 A. In my estimate, it would be reasonable under the
2 circumstances.

3 MR. GRANUCCI: Counsel?

4 FURTHER RECROSS-EXAMINATION

5 BY MR. COHLER:

6 Q. I know we are having trouble using these terms
7 "control" and "punishment." They are categories which are
8 not easy to bring down to specifics. I am not trying to
9 put words in your mouth. When you say removing a man's
10 clothing would under some circumstances be a reasonable
11 control measure, in what sense are you controlling a man
12 by removing his clothing?

13 A. In the sense that I--that I gave before of the--

14 Q. Is it what we said a few moments ago, that this is
15 withdrawal of another privilege which the man you hope will
16 consider it as a punishment and he will come under control?

17 A. This is what we hope, yes sir.

18 MR. COHLER: Thank you.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. GRANUCCI:

21 Q. Mr. Donnelly, you are a family man, aren't you?

22 A. Yes sir.

23 Q. Do you have any children?

24 A. Two, sir.

25 Q. Have you ever had to discipline your children?

1 A. Yes sir.

2 Q. Would you say it is easy to distinguish between
3 punishment and control in the family situation?

4 A. No sir.

5 Q. Pardon me?

6 A. I think at times the feelings of a parent might
7 become involved, but if you have got the interest of the
8 child at heart, I would guess that you can keep these things
9 fairly clearly in mind.

10 Q. It is not so easy in a prison situation, is it?

11 A. Well, now, I am speaking for myself. I feel that
12 the punishment happens as a result of some disciplinary
13 infraction as to extend through certain periods.

14 Q. It should be definite in duration, is that correct?

15 A. Yes. Control is something which would be used
16 which would be removed when the necessity for the control
17 apparently no longer exists.

18 MR. GRANUCCI: I see.

19 Counsel?

20 FURTHER RECROSS-EXAMINATION

21 BY MR. COHLER:

22 Q. Counsel just used the term "definite in duration."
23 Do you, Mr. Donnelly, feel that whenever a further privilege
24 is withdrawn--and let's avoid "control" and "punishment"
25 language here--that the duration of ^{removal of} that privilege ought to

1 be set at a definite time when it is withdrawn?

2 A. If it is punishment, yes sir.

3 Q. Now ^{we are} /1 back into the problem about punishment and
4 control.

5 A. Yes.

6 Q. Let's see if we can just talk about--use other
7 words.

8 If a privilege is withdrawn, for whatever reason, do
9 you feel that the period of withdrawal of that privilege
10 ought to be made definite at the time it is withdrawn?

11 A. No. I think that what you do is if--in my terms,
12 sir, if it is a withdrawal of a privilege; for example, a
13 man loses his show privileges for a period of a month or
14 four weekends, whatever it would be, two weeks, one weekend,
15 this, to my way of thinking, is a control--is a punishment
16 measure.

17 If a man is ~~disturbed outside the first showing of the~~
18 Sunday movie, and the lieutenant sends him on his way, says,
19 "You can't go in," and he comes back at noon and everything
20 is fine, and the lieutenant says, "O.K., you can go into
21 the second showing," this would appear to me to be a con-
22 trol measure. Or, if he doesn't show up--he is not under
23 control for the rest of that day, he would have lost his
24 show privilege for that weekend, but it would not to my
25 mind be a punishment.

1 Q. Should the maximum time be determined of a set
2 duration for the deprivation of a privilege?

3 A. In a punishment situation, yes.

4 Q. You say depriving a man from his show privilege
5 would be a punishment?

6 A. Yes.

7 Q. Is taking a man's clothing a punishment?

8 A. Yes sir, it would be a punishment to the man.

9 MR. COHLER: Thank you.

10 MR. GRANUCCI: Your Honor, I have no further questions
11 of this witness. Perhaps the Court would have some ques-
12 tions.

13 THE COURT: We are running late into the noon hour.

14 I have one question addressed to the inquiry made by
15 Mr. McGee. What was his official capacity at the time the
16 inquiry was made, sir?

17 THE WITNESS: ~~I believe it was as Administrator of the~~
18 Youth and Adult Corrections Agency.

19 THE COURT: As a result of the inquiry, you or the
20 Superintendent set in motion several meetings which you
21 have already discussed.

22 THE WITNESS: Yes sir.

23 THE COURT: And as I understand it, there were no min-
24 utes kept, no written memoranda of any of the events, save
25 and except that certain revisions were made, which you have

1 already dilated and indicated for the record.

2 Now, did you or someone in your behalf of in behalf of
3 the Superintendent communicate the results to Mr. McGee,
4 either orally or in writing?

5 THE WITNESS: I don't know, sir.

6 THE COURT: Do you know of your own knowledge, Mr.
7 Donnelly, whether Mr. McGee ever had any report as a result
8 of what you regard as taking a good look at the situation?

9 THE WITNESS: No sir, I do not. May I explain, Your
10 Honor?

11 THE COURT: Yes sir.

12 THE WITNESS: I don't know--I can't be too sure of this,
13 but it would seem to me that what came to the institution
14 was more in the nature of information that Mr. McGee had
15 received some inquiry from the--one of the Justices of the
16 Supreme Court.

17 I don't remember that a further report was required
18 of us. It would seem to me that we--here again, my memory
19 is hazy, but I think that we went ahead with this on our
20 own initiative because of the inquiry.

21 THE COURT: Have you since been advised that at that
22 time there was a petition pending before the Supreme Court?

23 THE WITNESS: We have been advised that there had been
24 a petition.

25 THE COURT: You were not advised at the time you made

1 the inquiry that resulted in certain revisions?

2 THE WITNESS: I don't--I don't know, sir.

3 THE COURT: All right, sir. I have no further ques-
4 tions.

5 MR. COHLER: Your Honor, counsel agreed to produce any
6 documents which may be found in the nature of correspondence
7 from Mr. McGee to Mr. Fitzharris of that nature.

8 Would you also agree to produce any responses or any-
9 thing within the general scope of responses?

10 MR. GRANUCCI: Between Mr. McGee and Mr. Fitzharris?

11 MR. COHLER: Or any--

12 THE COURT: Or any other official of the institution,
13 regarding the incident related by Mr. Donnelly.

14 MR. GRANUCCI: I believe I understand, Your Honor.

15 Yes, counsel, I will.

16 MR. COHLER: If you have questions in your own mind
17 regarding this matter, may counsel have an opportunity to
18 inspect?

19 MR. GRANUCCI: I think so.

20 MR. COHLER: Could it be more definite?

21 MR. GRANUCCI: Counsel, you see, the problem is that we
22 can drift off into all sorts of unrelated areas. I don't
23 want to promise you unlimited access to our file.

24 MR. COHLER: I didn't ask for that.

25 THE COURT: This has a specific relevance, counsel.

1 MR. GRANUCCI: Within the specific relevance, he can
2 examine all documents.

3 MR. COHLER: Thank you.

4 THE COURT: We will resume at 2:15.

5 (Whereupon the hearing was recessed until 2:15

6 o'clock p.m. of the same day.)

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1 TUESDAY, AUGUST 16 1966, AFTERNOON SESSION - 2:15 P.M.

2 MR. GRANUCCI: Your Honor, has Mr. Donnelly been
3 excused?

4 THE CLERK: I am not aware of the fact he was excused.

5 MR. GRANUCCI: Your Honor, at this time we request that
6 Mr. Donnelly be excused. We don't expect to call him
7 again.

8 MR. COHLER: That is agreeable, Your Honor.

9 THE COURT: So ordered.

10 MR. GRANUCCI: Call Dr. Hack, please.

11 THE CLERK: Dr. Hack.

12 RAYMOND L. HACK,

13 called as a witness by the defendants, being first duly
14 sworn, was examined and testified as follows:

15 THE CLERK: State your full name and occupation.

16 THE WITNESS: Raymond L. Hack, M.D., a psychiatrist,
17 the psychiatric consultant to the Soledad Correctional
18 Facility.

19 DIRECT EXAMINATION

20 BY MR. GRANUCCI:

21 Q. Dr. Hack, I wonder if you would narrate for us your
22 professional training.

23 A. I am a graduate of the University of Oregon Medical
24 School of December 1943. After my internship, I completed
25 three years of residency training in the Armed Forces,

1 where I remained for ten years until 1954, and completed
2 the rest of my training in psychiatry and became a
3 Diplomate, that is a recognized specialist, to the American
4 Examining Board, a Diplomate in psychiatry in December 1951.

5 Q. Are you a member of any professional organizations?

6 A. I am a member of the American Psychiatric Associa-
7 tion, American Medical Association, Monterey Medical
8 Society, on the staff of the Salinas Valley Memorial
9 Hospital and Monterey County Hospital.

10 Q. Have you ever testified in court as an expert
11 witness?

12 A. Yes, I have.

13 Q. What is your position at the institution?

14 A. I am the psychiatric consultant and supply all
15 psychiatric services to the Soledad institution, on the
16 basis of half-time; that is, I am there generally from
17 8:00 until 12:00, five days a week.

18 Q. Doctor, do your duties take you into that section
19 of the prison known as the Adjustment Center?

20 A. Yes, they do.

21 Q. Do they take you into that section of the Adjust-
22 ment Center known as isolation section?

23 A. Yes, they do. About--at least once to two to three
24 times per week.

25 Q. Is this in the isolation section?

1 A. Yes.

2 Q. Have you seen those cells in the isolation section
3 which have been referred to in these proceedings as strip
4 cells or quiet cells?

5 A. Yes, I have, many times.

6 Q. You know what they look like?

7 A. Yes, I do.

8 Q. Have you ever visited inmates in those cells?

9 A. Many times since I have been the consultant, since
10 February 1965.

11 Q. Have you, as a result of your visits to the Ad-
12 justment Center, and particularly the isolation section,
13 been able to observe the conditions of cleanliness in that
14 section?

15 A. Yes, I have.

16 Q. What is your opinion of those conditions?

17 MR. COHLER: Excuse me, counsel. Do you have a time
18 reference?

19 MR. GRANUCCI: Yes, I will.

20 Q. Have you been able to observe them from July of
21 last year up to the present time?

22 A. Yes, I have.

23 Q. What is your opinion of those conditions?

24 A. I would say that generally they are maintained as
25 clean as they can be within the structure of the attitudes

1 and attempts at cleanliness maintained throughout the in-
2 stitution, which are generally those roughly of what would
3 be expected in a military installation, and recognizing
4 that there are some problems inherent particularly with
5 reference to the type of the people who are housed there,
6 but generally they meet the standards seen in the rest of
7 the institution.

8 Q. Have you been able to observe the standards of
9 cleanliness that prevail, or have prevailed in the strip
10 cells from July of last year up to the present time?

11 A. Yes, I have.

12 Q. Have you been able to form an opinion as to those
13 standards of cleanliness?

14 MR. COHLER: Excuse me, Your Honor. Let's be careful.
15 I don't think there can be an opinion as to standards of
16 cleanliness. They are observed facts or--

17 MR. GRANUCCI: Well, that is true, counsel. There are
18 observed facts. But this man is a doctor of medicine, in
19 addition to being a psychiatrist, and he might be in a
20 position to testify it was his opinion they were clean as
21 a matter of fact, and also that such cleanliness was up to
22 a ~~medical~~ ^{medically} acceptable level.

23 MR. COHLER: That may be true also. I think it is com-
24 pound the way you asked it.

25 MR. GRANUCCI: Q. Have you been able to observe the

1 state of cleanliness in the quiet cells?

2 A. Yes, I have.

3 Q. What was that state of cleanliness?

4 A. I have seen it vary from what I felt was quite un-
5 clean to when they weren't occupied or when occupied by an
6 inmate who was relatively cooperative, to where they were
7 very clean and orderly, the state of cleanliness depending
8 almost entirely upon the attitudes of the inmate involved.

9 Q. You say you have seen cells unclean?

10 A. Yes.

11 Q. Were you aware of the source or cause of such lack
12 of cleanliness?

13 A. Yes. As I stated, it is the attitude of the inmate,
14 inasmuch as throughout the institution the primary re-
15 sponsibility for the cleanliness of any cell resides with
16 the inmate.

17 ~~When the inmate's attitudes are constructive, the cells~~
18 are clean. When the inmate's attitudes are destructive or
19 careless, it is represented in the cell cleanliness failure.

20 Q. This would be related to the inmate himself?

21 A. That is right.

22 Q. Now, you mentioned that you visited the Adjustment
23 Center, and particularly O-wing. Is that correct?

24 A. That is right.

25 Q. Do you make it a practice to sign in when you visit?

1 A. I do not any more, since I am such a frequent--since
2 my visits occur so frequently, I have been in and out and
3 do not sign in.

4 Q. Can you distinguish between the Adjustment Center
5 and isolation, at least within your own mind, the meaning
6 of those words?

7 A. Oh, yes, I know very definitely the difference.

8 Q. Would you tell us the difference, please.

9 A. The isolation section is-- Well, to begin with,
10 the general concept of the Adjustment Center is made up
11 actually of two wings, O and X-wing.

12 Now, within O-wing is an area on the lower left-hand
13 as one enters the floor of some 23 cells which are there
14 for the holding of people who are either charged with or
15 have been found guilty of infringements against the
16 Director's rules or the California Code. This is the
17 distinction.

18 Q. Do you feel the Adjustment Center serves a legi-
19 timate purpose?

20 MR. COHLER: Excuse me. Your Honor, first of all, as
21 a matter of form it is very broad. But beyond that, we
22 are beginning to get into what might be called expert
23 testimony. The Doctor's qualifications and background as
24 a psychiatrist are in the record. There is nothing about
25 penological background or criminology beyond this

1 institution. If he is called upon to testify as to his
2 opinion within the institution, I will have no objection.
3 But if we are going into generally accepted standards, as
4 I think this question calls for, I think we ought to have
5 more--

6 THE COURT: I will allow him to testify.

7 You may answer.

8 THE WITNESS: Will you restate the question?

9 MR. GRANUCCI: Miss Reporter, would you read the ques-
10 tion.

11 (The question was read.)

12 THE WITNESS: Yes, I do.

13 MR. GRANUCCI: Q. How so, Doctor?

14 A. The reason for the existence of the Adjustment
15 Center and the purpose that it serves is this: There are
16 certain individuals who operate on a destructive code and
17 who show themselves to be a hazard to the inmate--to the
18 inmates or to the staff, to such a degree that it is the
19 opinion of the staff, and mine often, that they require
20 greater external controls than that which is provided by
21 the general population.

22 By "external controls" I mean they require more gates,
23 bars, staffing, and different structural standards in order
24 to maintain them safe to themselves or others. And for
25 that reason, the Adjustment Center is constructive and

1 maintained.

2 Q. Dr. Hack, what do you mean by "destructive code?"

3 A. One could say that in the million and a half to
4 two million years that the human race has been in existence
5 that we have developed two ways of living.

6 I wonder if this would not be a point where I might use
7 an illustration?

8 Q. Certainly, Doctor. Would you step over to the
9 board, please.

10 A. In this million and a half to two million years of
11 experience, we have developed a system for living which I
12 refer to and others of us, particularly at our institution
13 as the "standard constructive code." Originally this was
14 developed out of the taboos of the tribal society.

15 As we know, for some 5,500 years or so, these original
16 unwritten laws or the taboos have been written and de-
17 veloped through a series of historical legal structures
18 from the Code of Hammurabi to the current California Code,
19 which is our minimum standards.

20 In addition, we have religious and moral systems, and
21 our society operates predominantly on the Judaeo-Christian
22 religious moral system. And then we are now developing
23 what might be called technical systems.

24 Now, there has been and there continues to be people
25 who live on another system for living, the antisocial or

1 destructive code, which is the absence or the opposite of
2 this code (indicating).

3 I believe this answers your question of what I had
4 reference to.

5 Q. That is what you mean by the destructive code.

6 Now, Doctor, would you care to answer this: Are the
7 inmates in the Adjustment Center generally thought to ad-
8 here to the destructive code rather than the constructive
9 code?

10 A. Generally speaking, this is the way they operate.

11 Q. Is the purpose of the Adjustment Center purely
12 segregation? Or does it serve a therapeutic end as well?

13 A. The institution provides a training and an edu-
14 cational program. In order to maintain this program in
15 operation, we have to prevent the destructive activities of
16 people operating under the antisocial destructive code.

17 If inmates are allowed to operate on the antisocial code
18 or are allowed to operate unrestrictedly, then there are
19 stabbings, riots, and some very serious and major things
20 can occur. It is one of our primary responsibilities to
21 control these people so that they cannot injure others and
22 also to prevent them from injuring themselves and encumber-
23 ing themselves with additional convictions.

24 Q. You may return to the stand now.

25 Are efforts made in the Adjustment Center to change the

1 orientation of the inmates from a destructive code to some-
2 thing more constructive?

3 A. Yes, they are.

4 Q. In what way?

5 A. In the first place, the Adjustment Center, I believe
6 has the highest ratio of staffing to inmate I believe of
7 any part of the institution; that is, there are more cor-
8 rectional counselors, I spend more time in there than I
9 would with the others, with a similar number of other in-
10 mates.

11 Q. What is the purpose of that, merely to control
12 these people in the Adjustment Center?

13 A. No. The control is maintained primarily by the
14 correctional officers. The staffing by the correctional
15 counselors and my own staffing, of the Program Administra-
16 tor, is to try to alter their orientation.

17 Q. What kind of inmate-- To be more precise, Doctor,
18 would you in psychiatric terms define the type of inmate
19 that is likely to be confined to the Adjustment Center?

20 A. He is the person who has what I call the third form
21 of illness of mankind. He is neither physically ill,
22 generally his mental operations, his intrinsic mental
23 operations are relatively intact, but when he applies him-
24 self in the social situation, he is destructive to others
25 or himself.

1 These people have been called "psychopathic person-
2 alities," "sociopathic personalities"; I like to call them
3 "socialization disorders." This whole group is what I
4 look upon as the expert group of miseries of mankind.

5 Q. People who can't relate to society, is it?

6 A. In a productive way.

7 Q. Are you aware of acts of violence, either verbal or
8 physical, that occur in the Adjustment Center?

9 A. Yes, I am.

10 Q. Is it your professional opinion, Doctor, that these
11 acts of violence are a reaction against the severity of
12 prison discipline?

13 A. No. It is my feeling that the real motivations
14 behind these acts of violence are hostilities that are
15 generated generally in the person's early life environment.
16 I think it is noteworthy that probably 60 to 75 percent of
17 ~~our people that I see are from alcoholic homes.~~

18 The traumatic homes, that is, the disturbed home, is
19 the usual thing in the historical background. This is
20 where the hostility is generated. We only deal with it.

21 Q. Is it your opinion then that if the Adjustment
22 Center prisoners were afforded more freedom and more privi-
23 leges they would be less hostile?

24 A. I would have to say in all fairness that to be
25 locked up is itself another rejection and does add to a

1 person's hostility. But on the other hand, they have all
2 of them shown before they are in the Adjustment Center that
3 they are a hazard first to the other inmates or to themselves
4 and also perhaps to the staff. Although, incidents in-
5 volving any injury to the staff are relatively rare, the
6 continual tragedy involving particularly this group of
7 people is injury to other inmates for which the staff is
8 definitely responsible to maintain a safe situation within
9 the institution with regard to other inmates.

10 Q. Now, Doctor, you have testified a few moments ago
11 that you have observed the strip cells and the Isolation
12 Row.

13 A. Yes. /

14 Q. Now, do you have an opinion as to the propriety of
15 the strip cells as a control device?

16 MR. COHLER: Counsel, are you referring to the physi-
17 cal aspects of the cell itself?

18 MR. GRANUCCI: That is right, counsel. In other words,
19 a cell stripped of furniture, stripped of facilities, with
20 the possibility of being closed up, sealed up by closing
21 up the flaps.

22 MR. COHLER: Putting to one side the allegations--

23 MR. GRANUCCI: Putting aside the allegations and
24 denials.

25 THE WITNESS: I feel that they are a necessity, that

1 a significant number of inmates require this level of
2 external control before their behavior can be brought under
3 control so they are not a hazard to themselves and others.

4 ~~MR. GRANUCCI:~~ ^{asked Granucci, "it"} "Don't you think it is a brutalizing
5 and degrading thing to put a man in a strip cell?"

6 ^{said Hack,} A. "Well, as a medical man, I think any restraint is
7 an unfortunate and an unhappy situation. Even to put a
8 person to bed for tuberculosis for a year is really a most
9 unfortunate thing. And we have made every effort to try
10 to limit the amount of restriction for disease, whether it
11 is for physical or mental or social. To this extent, I
12 do not like them. But I must recognize that in all three
13 classes of disease certain restraint is necessary. In the
14 socialization disorders or social disease, the isolation
15 cell becomes necessary, at least at this stage of human
16 development."

17 Q. Doctor, you were saying the isolation cell. Do
18 you mean the strip cell?

19 A. I mean the quiet cell or strip cell.

20 Q. Over how long a period of time have you been visit-
21 ing the isolation section of the prison, including the
22 strip cells?

23 A. Since they were built, or at least since 1956 when
24 the Adjustment Center was moved from San Quentin and set
25 up at its present location.

1 Q. Through all those years of visits, have you ever
2 observed a strip cell with an inmate confined therein with
3 human body waste spread all over the walls, where the in-
4 mate didn't do it himself?

5 MR. COHLER: Excuse me, counsel. I don't think there
6 is any foundation for the Doctor to know whether the inmate
7 may have done it himself.

8 MR. GRANUCCI: Let's hear what the Doctor says.

9 MR. COHLER: Your Honor, I am going to object, on the
10 ground that there is no evidence that the Doctor would know
11 whether or not the inmate placed such waste in the cell
12 himself. He has testified he visits.

13 THE COURT: He can state what he observed, saw.

14 THE WITNESS: If I found a cell which had excrement on
15 the walls, one of my primary responsibilities is to find
16 out why it was there. If this is a manifestation of the
17 behavior of that individual, then it is highly likely that
18 he is psychotic.

19 I have found--I don't recall whether it was in the
20 quiet cells or in the isolation section--I have seen
21 excrement on the walls. If it was due to mental illness,
22 this man was out of place in that department and was
23 promptly moved to the California Medical Facility at Vaca-
24 ville, which I can usually arrange an emergency transfer
25 within 24 to 48 hours. This would be a psychotic symptom,

1 generally speaking, which would be beyond management in a
2 place such as the Adjustment Center.

3 I know that after each of the inmates leaves the cell,
4 either he or somebody cleans that cell within my knowledge
5 to the same standards as is maintained within the rest of
6 the institution, with which I have already outlined.

7 MR. GRANUCCI: Q. Now, the first will be a broad
8 question: Over the period of your visits since 1957 to the
9 Adjustment Center, particularly the isolation section, have
10 you had an opportunity to observe the caliber and behavior
11 of the officers, correctional officers and sergeants who
12 work therein?

13 A. Yes, I have. And I have been very concerned about
14 the staff there, both from the standpoint of wear and tear
15 on them, which is really very extensive, and their behavior
16 toward the inmate. And I might say, as a contract employee-
17 ~~as a contractor, and not as an employee, I have access to~~
18 the Superintendent's office, any place in the institution.
19 Any time I see anything which is not up to what I feel
20 reasonable standard, I am able to report it.

21 Q. To fix it more definitely in time, have you since
22 the beginning of this year, 1966, had an opportunity to
23 observe the character, demeanor or attitude of the officers
24 that work in the isolation section?

25 A. Yes, I have.

1 Q. "What is your opinion, speaking as a professional
2 man, of the officers?"

3 A. "I think they are very high caliber people, doing
4 one of the most difficult jobs that the human race has to
5 offer."

6 "To be specific, there are not many men who in the face
7 of being called a mother fucking punk, and I am using the
8 language that is used there, having urine thrown at them,
9 and feces thrown at them, are still able to maintain their
10 composure and deal with these people still as human beings,
11 and still trying to find some way to get them out of this,
12 what I think is as horrible a social condition as a far
13 advanced cancer is a medical condition. I have great
14 respect for them."

15 Q. Doctor, do you know Siegfried Porte?

16 A. Yes. I know of him, yes.

17 Q. Have you ever refused him psychiatric treatment?

18 A. No, not to my knowledge. I have spoken to him,
19 and as often occurs, these people will ask for a transfer
20 to the California Medical Facility, now which requires
21 relatively my recommendation, not necessarily, but out of
22 a custom if a person is moved there for psychiatric reasons,
23 generally I make the recommendation.

24 If I refused him--if I did; I don't think that I did--
25 it would be on the basis he was not applicable for treatment

1 at that facility. At such time as I see it would be ad-
2 vantageous to him or any other inmate, I would move him
3 there.

4 Most of our inmates, or many of them, have already been
5 there, and that includes Mr. Jordan himself. I am not
6 acquainted whether Mr. Porte has been or not. I would have
7 to see the record in order to refresh my memory on that.

8 Q. Doctor, is every person who asks psychiatric treat-
9 ment necessarily amenable to treatment?

10 A. No, he isn't at all. Also, obviously there are
11 limitations, inasmuch as I on a half a time basis am re-
12 quired to provide all of the services for some 3,200 men,
13 it would be impossible for me to do so.

14 However, on a first priority basis, anybody who is ill,
15 mentally ill, and requires treatment, I will either see
16 them or refer them to a correctional counselor who I feel
17 is competent to handle their problem.

18 Q. Or you could transfer them to Vacaville.

19 A. I can transfer them to Vacaville, which I do.

20 Q. Do you know the plaintiff?

21 MR. COHLER: Your Honor, for the record at this point,
22 we may be embarking on an area where there is possible
23 privileged communication between the plaintiff and the
24 witness. I have consulted with counsel, with the witness,
25 and with the plaintiff. To protect the witness, the

1 department of Corrections, myself and Mr. Jordan, I would
2 like to ask Mr. Jordan at this time to waive any privilege
3 he may have in open court.

4 I ask you if I have spoken to you, Mr. Jordan, about
5 the nature of the privileged information that may exist
6 between you and Dr. Hack.

7 MR. JORDAN: Yes.

8 MR. COHLER: You understand that you may have a right
9 to keep that information unrevealed?

10 MR. JORDAN: Yes.

11 MR. COHLER: Will you tell the Court, speak to His
12 Honor, and say whether or not you waive any privilege you
13 may have.

14 MR. JORDAN: I waive the privilege.

15 MR. COHLER: Thank you, counsel; Your Honor.

16 MR. GRANUCCI: Q. You say you know the plaintiff,
17 Doctor?

18 A. Yes, I do.

19 Q. How do you know him?

20 A. I have seen him since about 1960, in repeated re-
21 latively annual examinations. In addition, I have seen
22 him in casual meetings within the institution and have
23 spoken to him occasionally on rounds within the institution,
24 particularly within the Adjustment Center.

25 Q. Now, with the result of your observations of the

1 plaintiff, have you formed any opinion of him?

2 MR. COHLER: Professional opinion?

3 MR. GRANUCCI: Q. Professional opinion, of course.

4 A. Beginning with my examination of April 8 1960, in
5 which I noted a very high level of hostility, with remarks
6 such as, quote, and this was made at that time, and I am
7 sure that this is very close, if not exactly the words
8 that he used:

9 The mother fuckers will have to let me go in
10 seven and a half years and then I am going to
11 kill that bitch.

12 He indicated that he was referring to his aunt, who was
13 involved.

14 I felt that he presented a problem of the diagnosis of
15 antisocial personality severe with extremely high levels
16 of latent and expressed hostility with potentially
17 destructive murderous behavior. 1960.

18 1961: I noted that he was slightly more mature and
19 slightly improved over last year, but not ready to leave
20 the Adjustment Center. He had apparently spent most of that
21 year in the Adjustment Center.

22 1962: He maintained his composure for most of the
23 examination and then launched into a long tirade about how
24 the "mother fucker policemen" were irritating him and that
25 he intended to do something about it at any time they

1 irritated him, and that he did not intend to change in this
2 or any other commitment.

3 I noted, however, that in spite of the hostile ex-
4 pressions, there was possibly less real hostility behind
5 his words, and he is apparently able to operate reasonably
6 well, at least well enough to remain free of the Adjustment
7 Center. So in 1962 we had him out of the Adjustment Center.

8 Q. There was a little progress.

9 A. Yes. And incidentally, this is--the idea of the
10 staff there is, as soon as the person enters the Adjustment
11 Center, the immediate problem is, "How are we going to get
12 him out? How can we move him to the front door of the in-
13 stitution and put him out as a reasonably safe individual
14 from the social standpoint and vocationally able to support
15 himself?"

16 1962: He appears much more composed this year than
17 ~~when seen previously and none of the hostile outbursts~~
18 developed in the interview. He appeared to be making an
19 effort to express himself constructively, and appears to
20 now have an interest in the field of cooking and baking.

21 He was apprised that he does present a considerable
22 problem for release after his long commitment to one type
23 of an institution or another, and with his long history of
24 very aggressive destructive expressions. No psychotic
25 ideation was noted.

1 That year, as I often do when I see any type of opening
2 to try to move him toward a minimum or--toward a minimum
3 institution where there will be less controls and the
4 living will be more like what we would likely meet in free
5 life, I suggested this:

6 This man has presented a very good year and
7 is beginning to show some real progress in
8 the direction of release. With his long
9 history, however, he will necessarily be re-
10 leased with a graduated reduction in custody.
11 I am wondering whether he could not be moved
12 to the barracks mess department, and in view
13 of his long incarceration [seniority] some
14 special arrangements might be made after
15 several months for him to transfer to the
16 barracks mess department.

17 So things were looking a little better.

18 In 1964 was the next report.

19 In examination he shows considerable pro-
20 jection--now he was back to blaming others
21 for his troubles, not assuming responsibility
22 for his own actions--and indicates he intends
23 to make a stand, that he is not going to do
24 anything which he is directed to do which he
25 in any way feels is not justly his job. He

1 projects liberally on the staff that they
2 are going out of their way to antagonize
3 him and irritate him, whereas actually the
4 staff has done every conceivable--has made
5 every conceivable concession to try to keep
6 him in the general population.

7 And this is true, I have spoken to staff members and
8 we have made every effort that we could to maintain him
9 free of the Adjustment Center.

10 His projections are beginning to have the color
11 of a delusion, no hallucinatory experiences are
12 elicited.

13 Then I didn't see him until 1966, because he was seen
14 at the Medical Facility during 1965.

15 Q. Excuse me. Is that the Medical Facility at Vaca-
16 ville?

17 A. At Vacaville.

18 THE COURT: How long was he there?

19 THE WITNESS: He was there for about--I believe 11 weeks,
20 ending in-- on June 28 1965, when he returned to CTF Central.

21 Their remarks, I feel are their remarks, and so I
22 would prefer not to make any comment upon them. My own
23 observation is, when I saw him on May 2 1966, I noted that:

24 He had completed a rather poor year with
25 assignment at CMF, where in the previous report

1 it was hoped he might enter into some con-
2 structive development. He had been pre-
3 viously moved to CMF, Vacaville, following
4 a suicide attempt by hanging at San Quentin.

5 Now, it is not unusual for persons who are extremely
6 hostile to alternately act out of their hostility and in-
7 jure others, or to act inwardly toward themselves and in-
8 jure themselves in a suicidal gesture.

9 Q. Doctor, excuse me. You mentioned "suicidal
10 gesture." Is there a difference between a suicidal gesture
11 and an attempt at suicide?

12 A. Yes, there is, indeed.

13 Q. I wonder if you would explain that for us.

14 A. I think a suicidal gesture, when this wording is
15 used, indicates some intent to destroy himself. It is my
16 understanding that if this was an attempt to try-- to try
17 to hang himself, and that had it not been for the alert
18 staff, he might have been successful.

19 Q. So this was an attempt--

20 A. So this is the true suicidal gesture.

21 Now, we have many self destructive gestures; such as
22 wrist slashing and so on, which serve only a purpose of
23 expressing an individual's resentment, actually sort of a
24 masochistic harassment of the staff through injury to them-
25 selves, usually done during the hours of 5:00 to 10:00 at

1 night when the staff coverage is least and thereby creating
2 the greatest disorder. These are different from true
3 suicidal gestures.

4 Q. So in other words, on the basis of your contact
5 with the plaintiff Jordan, you formed a professional
6 opinion as to his mental state and his attitudes.

7 A. Yes.

8 Q. What is that opinion, Doctor?

9 A. I continue to feel that he is an extremely hostile
10 individual; that is, his feeling tones are those which tend
11 to make him destructive. I still feel that he is a risk
12 to not only the institutional--well to the institutional
13 staff and inmates, I noted too he presents a problem in any
14 sort of a placement within the institution since we have
15 tried him at at least three or perhaps more of the in-
16 stitutions.

17 Q. Doctor, a few minutes ago you were testifying as
18 to the contrast between the destructive code and the con-
19 structive code.

20 A. Yes.

21 Q. Do you feel the plaintiff has done anything con-
22 structive lately?

23 A. Yes, I think he has.

24 Q. What is that, Doctor?

25 A. I described his behavior in 1962, where he was able

1 to remain free of the Adjustment Center. Now that was a
2 good sign. I am not exactly sure what it was that brought
3 that to an end, but it was a flame which we tried to
4 nourish, but weren't able to maintain a development.

5 I think even his writing of writs is a constructive
6 thing, because it--

7 Q. This is something he has done recently?

8 A. This is something he has done more recently and
9 required the organization of his ideas, and writing them
10 down makes him contemplate them, improves his ability to
11 handle the English language, it channels his hostilities
12 in a better way than, let us say, assaulting somebody or
13 injuring himself. So this is, in itself, a sign of improve
14 ment.

15 Q. Doctor, do you think that the plaintiff Jordan is
16 a hostile person?

17 A. Yes, I would say he was a very hostile person. One
18 other remark he made to me once, which was rather sur-
19 prising to me, since I don't believe I have ever heard it
20 from another inmate. He stated, "If a baby struck me,
21 I'd fight him." And his behavior has been all too ap-
22 parent that this is possibly true.

23 MR. GRANUCCI: Your witness, counsel.

24 MR. COHLER: Your Honor, I would like to ask for a
25 recess. This is testimony by a professional man. I am

1 not a professional. I would like to have a few moments.

2 THE COURT: Ten minutes.

3 MR. COHLER: Thank you.

4 (A recess was taken.)

5 MR. GRANUCCI: With leave of the Court, I have a
6 couple more questions on direct.

7 MR. COHLER: Quite agreeable, Your Honor.

8 MR. GRANUCCI: Q. Within the past five years, have
9 you had occasion to consult with the officials of the in-
10 stitution with respect to the use of gas?

11 A. Yes, I have.

12 Q. Did you have occasion to advise them?

13 A. Yes.

14 Q. What was the nature of your advice?

15 A. I felt that in about 1962, and from then on until
16 '64, that the external controls of the institution were not
17 really adequate and our methods were not adequate to con-
18 trol the degree of destructive behavior which we had
19 within our inmates, and that some strengthening would be
20 necessary.

21 I advised the increased use of gas over the use of
22 physical force, because it is very apparent that there are
23 less injuries resulting to the inmate or to the staff as
24 a result of the use of the gas as against physical force.

25 MR. GRANUCCI: Thank you, Doctor.

1 Your witness, counsel.

2 CROSS-EXAMINATION

3 BY MR. COHLER:

4 Q. Dr. Hack, in the course of your duties as con-
5 sulting psychiatrist--is that the correct terminology?

6 A. Yes.

7 Q. --as consulting psychiatrist, do you interview in-
8 mates? Do you as a part of your duties interview inmates
9 who are felt by you or others to require psychiatric con-
10 sultation?

11 A. That is true.

12 Q. How do such cases come to your attention? Are they
13 recommended through officials of the institution? Do you
14 observe them yourself? Or how does it happen?

15 A. The first group of inmates that I see, the first
16 priority of the work are those that are generally referred
17 by other members of the staff as showing some type of a
18 probable psychological disorder, and they wish my opinion
19 in regard to this matter. That is the first group.

20 Then I have a certain group, some eight or nine hundred,
21 almost 35 to 40 percent of the population, who are major
22 offenders originally; that is, people who have had major
23 aggressive offenses, all of the murderers, the rapists,
24 certain of the sexual crimes, crimes of unusual violence,
25 that I must see before they go before the Board. These are

1 recommended by the Adult Authority or the Classification
2 Committee.

3 Then I may, in the course of my movement about the
4 institution, see somebody that I think is ill, or they may
5 be recommended by the medical staff.

6 These are the sources, generally, of the referrals that
7 I see.

8 Q. Limiting it to your past two years experience,
9 Doctor, could you break down for the Court the percentage
10 of the categories that you have mentioned as referred by
11 the medical staff, and the category by the general in-
12 stitutional staff, and the category interviewed for the
13 purposes of the Adult Authority?

14 A. Roughly 65 to 70 percent of my work is referred by
15 the Adult Authority, about 20 percent is referred by other
16 members of the staff, and the remainder by the medical
17 personnel and myself.

18 Q. When you consult with an inmate, arising out of any
19 of these three circumstances, do you do so in an office
20 which you maintain? At the cell door? Or where does it
21 take place?

22 A. It can take place either at my office, and I main-
23 tain really three offices in the institution, one at each
24 of the facilities--

25 Q. Referring to North, South, and Central?

1 A. North, South, and Central.

2 Q. Please continue.

3 A. Or it may be in the Adjustment Center. If it is
4 in the Adjustment Center, it may be in one of the rooms, it
5 may even sometimes be in the clear area before the bars of
6 the Adjustment Center--before the barred area, out in the
7 administrative section.

8 These are the places where I would see them.

9 Q. Do you go back into the west or east corridors to
10 conduct your interviews in the course of your duties, on
11 the first floor of O-wing?

12 A. I don't remember the conducting of any Board inter-
13 views in-- Well, yes I do interview them right in the
14 cells, too, sometimes. Very often. As a matter of fact,
15 specifically in the quiet cells or the isolation cells or
16 on the other side, the east side, I believe, the maximum
17 section.

18 Q. Would you interview any inmate referred either by
19 the Adult Authority reference or the members of the staff
20 or the medical staff or yourself, would the place of the
21 interview depend on the nature of that reference? For in-
22 stance, is there a special room in which you would inter-
23 view people before the Adult Authority is to convene?

24 A. No. The place of interview is determined largely
25 by the status of the inmate and the ability to move him.

1 In order to move the inmate from the Adjustment Center to
2 my office in the hospital requires two staff men, which is
3 reasonable. For any movement to the hospital requires two
4 staff men.

5 But where he is interviewed depends largely on his
6 status. If he is apt to act out, I can't very well move
7 him to a place which would be isolated where he might make
8 some movement towards me, although I have never been at-
9 tacked since I have been there. That is about all I can
10 say in regards to this.

11 Q. Doctor, can you estimate the percentage of inmates
12 whom you interview in the course of your duties in your
13 office?

14 A. Probably 90 percent of the inmates are interviewed
15 in one of the three offices which I mentioned.

16 Q. Would most of the other ten percent be inmates who
17 are incarcerated or housed in the Adjustment Center some-
18 where?

19 A. Yes.

20 Q. Within the Adjustment Center, can you estimate, of
21 the remaining ten percent, how many of the inmates that you
22 interview are some place else in the Adjustment Center
23 other than the strip cell area or quiet cell area?

24 A. Probably about 70 percent would be outside of the
25 quiet cell area.

1 Q. In other words, 70 percent of the remaining ten
2 percent, or seven percent?

3 A. That is right.

4 Q. Of the remaining three percent of the inmates,
5 approximately, I realize this is an estimate, whom you have
6 interviewed who were incarcerated at the strip cell or
7 quiet cell area, have you interviewed all of them in their
8 cells?

9 A. Yes, I have. In that area I rarely move them from
10 their cells. I speak to them through the bars, grate out-
11 side. Occasionally I will remove them from there out to
12 an interview room. But often the reason for the examina-
13 tion there is, No. 1, to ascertain their status, watching
14 for dehydration or any negative signs indicating any sort
15 of physical or mental breakdown, or to determine whether
16 this man should be housed here or whether he presents a
17 medical problem which should be handled at the Medical
18 Facility. These are determinations which can be relatively
19 rapidly handled without the movement of the inmate from
20 there.

21 Q. Doctor, you interview them at the cell front. That
22 would mean the door would be open to the strip cell area
23 and you would be standing in the doorway, approximately,
24 as a general matter?

25 A. That is right. Standing right up to the bars where

1 I can see the entire interior of the cell and the inmate.

2 Q. It is not considered good practice to step inside
3 the cell with an inmate of this type, is it?

4 A. No. And I don't know as I have ever done so. It
5 would be a violation of the principles of security of the
6 institution and good practice, anyway.

7 Q. What other responsibilities do you have, in addi-
8 tion to the actual interviewing of inmates?

9 A. I have responsibilities in regard to advising the
10 staff, in regard to the management of any type of a prob-
11 lem which either I or they see fit to refer to me, and I
12 have extreme latitude in regard to what I might see fit.
13 Anything I feel is out of line, I am able to immediately
14 enter the Superintendent's office or anyone's office.

15 I deal with problems of other--of the personnel as to
16 whether a member of the staff is adequate or whether he is
17 well enough from the psychological standpoint for appoint-
18 ment or retention or his neurological status.

19 I also have to manage the problems of the epileptics
20 in the institution, which probably number, at least the
21 complicated epileptics, I prescribe their medication, and
22 they number probably 50 to 75 inmates.

23 Q. Doctor, could you estimate how much of the total
24 time you spend of your capacity as consulting psychiatrist
25 dispatching the various duties you enumerated, except the

1 actual interview of inmates.

2 A. The actual interview of inmates takes by far the
3 largest part of my time. Probably 95 percent of my time
4 is spent with inmates and five percent in regard to staff.

5 Q. What are the hours which you engage in work at the
6 institution, not counting time it takes to go to and from
7 the institution?

8 A. That is four hours a day, five days a week; twenty
9 hours per week.

10 Q. Is it fair to say, Doctor, that being a professional
11 psychiatrist and having as limited time as you do for work
12 at the institution, that your primary purpose when you are
13 there is to deal with the people, the inmates?

14 THE COURT: You dropped your voice.

15 MR. COHLER: I am sorry.

16 Q. Is it fair to say, Doctor, that having about 20
17 hours per week to dispatch your professional responsibili-
18 ties at the institution, that your primary goal when you
19 are there, is to deal with the inmates personally?

20 A. Yes.

21 Q. You have mentioned, Doctor, I believe on direct
22 examination that there is a variance in the state of clean-
23 liness of the cells throughout the institution, and parti-
24 cularly in the strip cell or quiet cell area. Is that
25 correct?

1 A. Yes.

2 Q. You also stated, I believe, and please correct me
3 if my recollection is wrong, that to your knowledge where
4 there was not as clean a condition as there sometimes is,
5 this has been brought about by the inmate in the cell him-
6 self.

7 A. That is true.

8 Q. What is the basis for your knowing whether or not
9 the inmate in the cell himself did it, or whether he had
10 come two hours before and it had been there when he arrived?

11 A. I would-- As I indicated before, I am rather con-
12 cerned if the cell is in an unclean status, because my
13 basic training as a medical person is that all facilities
14 should be clean. It is particularly important if the cell
15 is unclean by reason of excrement or some other body soil-
16 ings, because it might indicate the presence of mental
17 illness. It is my job to determine, and I do determine,
18 whether this is true. If this man is, through a psychosis,
19 as is frequently the case, may begin to smear the feces,
20 this is a serious sign and represents a major illness.
21 This man is beyond the management of that type of facility,
22 and I would move him.

23 I neglected to mention that we do treat, incidentally,
24 some inmates there. As a matter of fact, two of the
25 original signors of the affidavits in the current action

1 were treated by me and are currently doing quite well.

2 So--

3 Q. Continue.

4 A. So, the removal of inmates from the institution--
5 from the Adjustment Center, is not only an administrative
6 problem, but also a medical problem.

7 They might either go to Vacaville if they are really
8 ill, or I might treat them and they may go through another
9 program to the psychiatric unit, to Y-wing, or to E-wing,
10 and thence out into the general population and meet with
11 all groups and be handled that way.

12 Q. Doctor, you said that if you had occasion to observe,
13 and did in fact observe, a state of uncleanness, parti-
14 cularly human waste, you find out how it got there. How
15 do you find out how it got there?

16 A. My immediate concern is: Is this man doing this
17 smearing? If he is, it is reflected in his mental status,
18 because a hebephrenic schizophrenic, which is the type who
19 would do this type of thing, is a very disturbed individual.
20 It wouldn't take more than a freshman in medical school to
21 determine that this person was a hebephrenic schizophrenic
22 problem and shouldn't be in that location.

23 Now, I have a chance to see the cells between times,
24 when they are not occupied. And I know that not only the
25 cells, but the areas outside are clean. If they are not,

1 I have--as a matter of fact, I have suggested the more
2 rapid clearing up of debris after some of the destructive
3 incidents.

4 Q. If the gentleman in the cell, the inmate in the
5 cell, was not of the type you have described where it is
6 apparent from your observation as to whether or not he had
7 smeared the walls, what would you do to find out whether
8 or not the inmate himself in the cell had smeared the walls

9 A. Well, I would be more concerned, I think, then
10 about: How are we going to clean this thing up? This is
11 an unhealthful state.

12 I have talked with the sergeant about this not
13 more than a week or so ago. I think fecal smearing occurs
14 only with a psychotic generally. But we have people who
15 are hostile and just will not leave the cells to either
16 bathe or to clean the cell.

17 Now, I remember speaking to the sergeant. He asked me
18 very seriously: "This cell does not look good, and he
19 will not leave. Should we use force to take him out to
20 clean the cell?" We talked at some length about this, and
21 we decided that we would let it go a little longer. The
22 man was in good shape from a physical standpoint.

23 I would like to say that I have never seen a pneumonia
24 or a severe dehydration or any other serious medical ill-
25 ness out of this section.

1 So recognizing his status, we let him go and live in
2 it a little longer, rather than have to go through the
3 procedure of the use of gas to remove him to take a bath
4 or something of this sort.

5 This is a question that has already arisen in regard
6 to your client at Vacaville. At one time he was apparent-
7 ly in X-wing or one of the restricted wings and he--one of
8 the staff recognized that the air was too close and the
9 odor was not good, and he wanted to open the window;
10 whereupon your client began to curse him and threaten his
11 life.

12 So usually the unclean state of the cell is determined
13 primarily by the status of the inmate, and it was probably
14 this event, plus others, which made them determine at Vaca-
15 ville, that is, the medical facility, that he wasn't
16 applicable for their treatment.

17 Q. Doctor, I take it that the incident you related,
18 you referred to a document of some sort?

19 A. Yes, I did.

20 Q. When you are excused from the stand, would you
21 kindly find that document in the file so we may have a com-
22 plete reference.

23 Counsel, is that agreeable?

24 MR. GRANUCCI: Certainly.

25 MR. COHLER: Your Honor, I am going to have to move to

1 strike all of the testimony as being hearsay of a very
2 direct nature, the Doctor's comments as to what happened
3 at another institution. I see no foundation for that.

4 THE COURT: That may go out.

5 MR. COHLER: Thank you.

6 Q. Doctor, is there any particular way that you visit
7 the strip cell or quiet cell area? Or just as it comes up
8 in your duties?

9 A. Any time that there is a complaint of a disturbed
10 inmate, one who has involved himself in some sort of self
11 destructive gesture, has remained overly long in that area,
12 has raised the anxiety of the staff as to his mental status
13 I am asked to see him. And this is the first priority of
14 my work. So I usually see them very soon, that day or the
15 next.

16 Q. You estimated that perhaps three percent of your
17 actual interviews are conducted in the strip cell area.
18 Would that mean on the average of three out of 100 days
19 you would make your way into the strip cell area, on an
20 average?

21 MR. GRANUCCI: "Objection, Your Honor. I think that is
22 misstating the witness' testimony. It would not be three
23 out of every 100 days. It would be three percent of his
24 interviews, and a great many interviews could have taken
25 place in a given day.

1 MR. COHLER: That is true enough. I will withdraw that.

2 Q. Can you estimate about how often you do get to the
3 quiet or strip cell area itself?

4 A. I would say that I am there from one to three times
5 per week, at least, over a period of since 1960.

6 Q. That would be one to three interviews per week?
7 Or several interviews each time you went?

8 A. Generally speaking, when I go back there, there
9 may be one or two people in the area and I speak to one of
10 them. The other one wants to talk to me, so I speak with
11 him a minute. That is about the way the schedule works
12 out.

13 Q. Doctor, you have testified as to the general course
14 of your conduct in dispatching your affairs and things you
15 observe and things you do. Do you have any independent
16 recollection of any particular period of time--and I ask
17 you to direct your attention to the month of July 1965--
18 and I can ask you whether you can separate at that point
19 amidst your general recollection?

20 A. I don't remember anything of July 1965 as having
21 any great significance within the institution.

22 Q. For instance, do you recall in July 1965 ever
23 visiting with Mr. Jordan, the plaintiff, while he was in-
24 carcerated in a strip or quiet cell?

25 A. I don't remember specifically. I have seen Mr.

1 Jordan in the Adjustment Center in various locations so
2 many times, that one single incident doesn't appear in my
3 memory in any striking form.

4 Q. That would be true of many inmates, would it not?

5 A. Yes, many inmates. However, I think more striking
6 with him, inasmuch as he has spent so much time in the
7 Adjustment Center. Therefore, I have seen him there more
8 times.

9 Q. When you say you have seen him there, you mean you
10 have seen him on a professional basis?

11 A. Seen him either--usually in passing, because Jordan
12 doesn't often communicate with me in speech. He has
13 written some very good letters, some very good letters. He
14 is very literate. And I have read them. But I have been
15 continually submerged in the problem of how to deal with
16 the administrative problem of working him out of the
17 situation he is in, so I haven't been able to take any
18 action. He has been relatively like a five-ton steel ball
19 with no hand holds, which I am unable to move.

20 Q. Doctor, can you recall any visits with any inmates
21 during the month of July 1965?

22 A. I don't remember any specific one.

23 Q. I am not asking for it by name. Do you remember
24 any particular occasion with any inmate during that month?

25 A. No.

1 Q. Or any of the surrounding circumstances?

2 A. The only way I could find it would be to go back
3 over my records and to see the reports of my examinations
4 of that month.

5 Q. In none of your testimony today have you intended
6 to refer specifically to that period of time, is that cor-
7 rect?

8 A. No. Only as it is a part of the general experience.

9 Q. You also referred to your opinion as to the quality
10 of the staff as you have observed it through your long
11 experience and as a professional man who has particular
12 abilities to make such observations. Were you referring to
13 staff at all levels within the Adjustment Center?

14 A. Yes, and specifically to the correctional officers
15 who have the closest contact with the inmates.

16 Q. And I believe you also said that is not always a
17 very pleasant job.

18 A. I look upon it as a very difficult job, and
19 actually considerable care is exercised in the assignment
20 of an officer to that position as to whether he has the
21 qualities to handle the wear and tear and to present as
22 constructive approach as can be presented under the cir-
23 cumstances.

24 Q. Would you enumerate at greater length the nature
25 of the considerable care which is taken?

1 A. We have discussed, for instance, at length the
2 removal--as to how long the staff should remain there before
3 it is likely the wear and tear of the work might begin to
4 be reflected in some way in their approach to the inmates
5 or in their own mental health. We have even used the word
6 18 months in the past.

7 However, it would appear that some members of the staff
8 are able to handle the situation much better than others.
9 We haven't really worked out any deadline.

10 I know one staff member was removed momentarily and
11 reinstated. I have reference to Officer Spoon, Officer
12 Spoon was removed and I believe reinstated. My observations
13 of Officer Spoon were that he was a constructive individual
14 in that work.

15 Q. Were you involved in any discussions pertaining to
16 the reassignment or removal, as you have called it, of
17 Officer Spoon?

18 A. Not in that situation, no.

19 Q. Were you involved in any discussions involving his
20 reinstatement, as you put it?

21 A. No.

22 Q. What opportunities have you had--and since you have
23 mentioned Officer Spoon, let's take Officer Spoon--what
24 opportunities have you had within the past two years to
25 observe Officer Spoon performing his duties?

1 A. I have seen him any day that I was there and he
2 was assigned. I can't recall the schedule. I have watched
3 him at work and how he manages the inmates, his attitude.
4 I felt that they were well within acceptable limits.

5 I have been particularly impressed with other officers.
6 The current Sergeant Friedrick has been outstanding, as has
7 Officer Mata.

8 On one occasion we sent one of the program administra-
9 tors, the first assigned program administrator went to a
10 psychiatric nurses seminar to see if we couldn't learn some-
11 thing about the handling of disturbed people. They were
12 the psychiatric nurses, mainly from the Department of
13 Mental Hygiene.

14 Q. When was that?

15 A. Mr. Brown went to that seminar probably about 1962.

16 Q. Do you know when Mr. Brown stopped working in the
17 Adjustment Center?

18 A. Mr. Brown was superseded by Mr. Johnston I believe
19 last year.

20 Q. 1965?

21 A. Something like that.

22 Q. Do staff generally know who you are, Doctor, and
23 particularly in the Adjustment Center?

24 A. Well, I would say that outside of the Superinten-
25 dent and maybe a few of the other administrative people,

1 that more of the staff probably know me than probably any
2 other person, inasmuch as I have been there longer than
3 most people and have a general contact with the whole in-
4 stitution in one way or another.

5 Q. Any of the officers or sergeants or other staff
6 on duty in the Adjustment Center would know you were the
7 consulting psychiatrist, Dr. Hack, would they?

8 A. That is right.

9 Q. And they would know that you had access to all of
10 the administrative offices with great ease, more so than
11 even some of their superiors?

12 A. That is right.

13 Q. Siegfried Porte was mentioned in direct examination.
14 Are you aware, Doctor, whether or not Mr. Porte has been
15 recommended for psychiatric care by any other psychiatrist
16 or any other body?

17 A. I wonder if I might make reference to the record
18 in that case--

19 Q. Please.

20 A. --inasmuch as my mind works much better when re-
21 freshed by the words I write.

22 Q. That would be very helpful.

23 A. One of the first potential sources of justifica-
24 tion is the Adult Authority report, and he was seen at the
25 Adult Authority last at DVI, that is the Dual Vocational

1 Institute at Tracy, June 16 '66. It was advised to get
2 him into a meaningful vocational program. No recommenda-
3 tion by them directly to be moved to the Medical Facility.

4 Looking at my report here on him of April 1 1965, I
5 saw him at this time, April 1 1965, for a psychiatric
6 consultation prior to trial for an alleged attempted escape
7 at CTF North at about 4:15 p.m. March 24 1965.

8 At that time I felt that a movement to CMF Vacaville
9 was not indicated, so I didn't recommend it at that time,
10 and I wrote a one-page formal report which outlines his
11 previous life, being a second term--

12 Q. I don't mean to interrupt you, Doctor, but perhaps
13 you could look at the various Adult Authority pages. Is
14 there more than one contained in the file?

15 A. Apparently in Porte, he came in in 1964, he was
16 seen in-- Excuse me. The Adult Authority report which I
17 read was not in regard to that inmate. It was in regard
18 to his crime partner. That was an error, Your Honor, and
19 should be corrected.

20 MR. COHLER: Your Honor, I am sorry to have to proceed
21 this way. I have not had an opportunity--I have not asked
22 for it either--to reveiw the file.

23 THE WITNESS: I do not see here the Adult Authority
24 recommendation in regard to him. However, Porte-- Let's
25 see if he has appeared-- He appeared June 1 1966, and he

1 was postponed for appearance before the Board for two years,
2 till June of 1968, and they made a referral that I was to
3 see him before his next Board appearance, or some psychiatrist
4 was to see him. But he is not recommended for a placement
5 in the medical facility.

6 MR. COHLER: Q. Before you lose that piece of paper,
7 I would like to have that point marked, if I might.

8 Would you read precisely what is stated there, please.

9 A. "Miscellaneous Action: Psych referral." That means
0 that he is to be seen by me or by a psychiatrist at what-
1 ever institution he is in and a report rendered before he
2 appears for his next Adult Authority appearance in June of
3 1968.

4 Q. Who makes these entries, Doctor, do you know?

5 A. These are made by clerical personnel, and they are
6 transcribed from the formal Board action sheet.

7 Q. Is this what you would see? Or is there something
8 else that you would see?

9 A. I receive a list put out by the institution in-
10 dicating each month those people that I am to see for the
11 next month.

12 Q. And the notation is made from another document, is
13 that correct, the notation you just read?

14 A. Yes. There is a formal promulgation of Adult
15 Authority action which is made up after each of the Board

1 appearances. This is in a book form.

2 Q. Is a copy kept at the institution?

3 A. As far as I know.

4 Q. Is a copy normally kept in a jacket such as you
5 have here?

6 A. No. This is the only reference in this file.

7 Q. Thank you.

8 A. The only other referral for a psychiatrist could
9 be made by the Classification Committee.

10 Q. Is there a psychiatrist on the Classification Com-
11 mittee?

12 A. No.

13 Q. A psychologist?

14 A. No. If they desire that type of service, they refer
15 them to me.

16 There is no reference here, at least within the last
17 year, of any psychiatric--of his being recommended for a
18 formal psychiatric treatment.

19 Q. As I understand it, the only occasion you would
20 have to visit with Mr. Porte in this instance, aside from
21 another occurrence, would be when you receive a list of
22 those a month before coming up before the Adult Authority
23 and had that reference notation?

24 A. There is another incident which has occurred, how-
25 ever, in which I did see him. He involved himself in a

1 self mutilation gesture.

2 Q. I don't want to cut you off--

3 Counsel, I would like to have your help on this. I
4 would rather not go into personal lives of these other men,
5 other than counsel feels it necessary, since it was
6 elicited on direct. I am not objecting for purposes of
7 the case. I just don't want to do this to people unless
8 it necessary.

9 MR. GRANUCCI: Well, I am trying to recall some testi-
10 mony of Porte, but he did testify to that act of self-
11 mutilization.

12 MR. COHLER: If you would like to bring this out on
13 your examination, fine. But I would rather not go into it.

14 MR. GRANUCCI: You asked the question, counsel. You
15 can withdraw it if you want.

16 MR. COHLER: I don't think I asked the question to
17 which that was responsive.

18 MR. GRANUCCI: Counsel, you said: Was there any other
19 occasion, other than the--

20 MR. COHLER: No, I didn't. I asked in the absence of
21 such another occasion, he would have seen Mr. Porte only
22 by receiving the list for the month of those coming up
23 before the Board. I will be glad to have it read back.

24 MR. GRANUCCI: I will accept your version of it.

25 MR. COHLER: Q. I am sorry, Doctor. I didn't mean to

1 cut you off. Perhaps your counsel will want to ask you
2 about this.

3 A. Do you wish me to make an answer?

4 Well, there is another way which I might see him and
5 I did see him. And this is the only answer I am able to
6 provide you. I did see him because there was a self
7 destructive gesture, and this is one of the points which
8 would bring him to my attention and did bring him to my
9 attention. I have to make a decision as to whether this
10 is a bona fide suicidal gesture and he requires additional
11 management, or whether it is a self destructive gesture
12 aimed at the expression of his own hostility, irritation of
13 staff, and whatever other motive he might have.

14 Q. Doctor, I believe you have testified as to the pur-
15 poses a strip cell may serve. I believe "control" was one
16 of the terms that you used.

17 Do I understand correctly that by stripping the cell
18 and removing all of the facilities inside the cell, the
19 opportunity for an inmate to injure himself or others is
20 reduced, and this is one of the primary functions of plac-
21 ing an inmate in the strip cell?

22 A. That is one of the reasons, but not the most usual
23 reason. If we felt he were going to injure himself, we
24 might move him to--we usually use the first cell of the
25 isolation section if we feel there is any chance of injury

1 to himself, because he can be observed best by staff.

2 The primary reason for him being in the strip cell is
3 that he is usually--he has already destroyed his own cell
4 through the flooding of it or burning of it or some other
5 destruction, or he has agitated the rest of the inmates in
6 this section.

7 Now, we have a responsibility to allow these people to
8 rest and to be in a position of-- they are entitled to
9 their rest in the same way that anybody else is. If a
10 person screams and creates disorder, we know absolutely,
11 through our observations, that within a short while these
12 very short tempered people, extremely short tempered people,
13 are going to be screaming, shouting, and destroying them-
14 selves in their own cells.

15 So it is immediately contingent upon the staff to as
16 quickly as possible remove that man to a place where he
17 cannot annoy these other people, these 20 or so people who
18 might be in intimate contact or the people on the other
19 side who are only a matter of 100 feet or less from him.

20 If we do not gain control of this situation and put him
21 in a place where he will not be heard, we will have a
22 general disorder in which much of the property may be in-
23 jured.

24 As a matter of fact, two days before the Judge appeared
25 some eight, I believe, of the commodes were destroyed and

1 the cells were flooded. We were unable to gain a control
2 of it quickly enough.

3 So we must remove these people. If we don't, the
4 agitation spreads and can even spread to the upper floors.
5 These people can only stand so much noise and they will
6 join in it.

7 Q. The purpose of the quiet cell or strip cell then
8 is served by, one, removing them from the situation where
9 they were physically; and two, perhaps in that situation,
10 closing the flaps and shutting off the noise.

11 A. That is right.

12 Q. Is there any purpose to be served, Doctor, by
13 leaving the flaps closed longer than the noise is continu-
14 ing?

15 A. No purpose other than the noise may again start.

16 Q. If it were the judgment of the officer or the
17 sergeant, whoever it was who opened and closed the flaps,
18 that the noise probably had gone by, is there any legiti-
19 mate purpose, based upon your experience as a psychiatrist,
20 with a good deal of experience in prisons, to keep the flaps
21 closed?

22 A. I would say that it serves the purpose of-- we
23 seem to operate on a system of where if it is economic to
24 do something, if it is an easy expression--if some ex-
25 pression achieves a result and the negative effects are

1 minimal, let us say the system of rewards and punishments
2 works to the advantage of an action, the action is more
3 likely to be repeated. The placement up of the flaps may
4 therefore make it a little less likely that the agitation
5 be started again.

6 Q. Doctor, let me try to ask you again: In the situa-
7 tion where the agitation has ceased, and in the judgment
8 of the officers or other responsible personnel the agita-
9 tion is not likely to arise again, based upon your ex-
10 perience as a psychiatrist and in the prisons, is there a
11 basic purpose for leaving the flaps closed?

12 A. Yes, I believe there is. And that is, it is a
13 discouragement to further outbursts of potentially
14 destructive nature, such as brought about the action in
15 the first place.

16 Q. Over how long a period of time would you, based on
17 that same experience, feel keeping the flaps closed was
18 warranted?

19 A. Well, at least that night; and then the next day,
20 as is usually the problem, the man is brought out and he
21 is brought before the Adjustment Center Committee, and it
22 is determined: Well, what can we do with this man so we
23 can begin to move him out of the Adjustment Center? And
24 usually at that time we determine that, depending upon his
25 behavior, whether the flaps would have to be closed or not.

1 If he continues to agitate, we might stroll back there and
2 he might throw something at us, which means we can't even
3 maintain the area without either having ourselves diluged
4 with refuse or the inmate who happens to be assigned to
5 clean there.

6 Q. You use the term "we" when referring to the Dis-
7 ciplinary Committee, Doctor. First of all, is it your
8 understanding that the Disciplinary decides whether or not
9 the flaps remain open or closed?

10 A. No. The Adjustment Center Committee or the
11 sergeant, probably the sergeant, determines this in his
12 discussion with the staff.

13 Q. When you say "we," have you been included on dis-
14 cussions as to whether or not a particular flap ought to
15 be open or closed?

16 A. I don't think I have ever been involved in whether
17 the flaps should be opened or closed. The primary question
18 is: Where can we house this man? Can he be moved back
19 upstairs now? Has he had enough of this? Can we clear
20 him out of that area?

21 Q. I want to direct your attention as much as possible
22 to an inmate in a quiet or strip cell who may well have
23 been put there for having agitated, as you and others have
24 described it. When the inmate had stopped his noisy
25 agitation and when the officers feel that he is not about

1 to resume it--and that must be something about which you
2 cannot now testify, as to when that would be--but when they
3 do reach that time, is there any legitimate purpose for
4 keeping the flaps closed?

5 A. No, probably not. And I would--my experience has
6 been that we have begun to consider at that time: Is there
7 any legitimate reason to keep him where he is at? Can't
8 we begin to move him out?

9 Q. You said, "No, probably not," and I would like to
10 be very clear. Don't you agree that there is no reason to
11 keep the flaps closed once the agitation or the noise-
12 making or the reason for having closed the flaps has
13 expired?

14 MR. GRANUCCI: Objection, Your Honor. Asked and
15 answered several times.

16 MR. COHLER: I have had some problems here, Your Honor.

17 Would you read back the question, please, Miss Reporter.

18 (The question was read.)

19 THE WITNESS: I would say that there is no good reason.
20 They can be opened, and they can be shut as quickly as
21 they can be opened.

22 Q. You say "no good reason." You mean there is no
23 reason that you as a psychiatrist with experience in
24 penology and in the institution, could justify, is that
25 correct?

1 A. I would say that is reasonably true.

2 Q. Sir, I wish you could say yes or no in your pro-
3 fessional capacity. Can you answer that?

4 A. I will answer it yes, then.

5 Q. Thank you. Doctor, you have testified that upon
6 occasion cells have not been as clean as other cells. You
7 have also testified that there have been occasions when it
8 has been difficult to move the inmate from the cell in
9 order to clean it up.

10 A. That is right.

11 Q. And that moving the inmate in such a circumstance
12 may, indeed, result in greater problems; such as the use
13 of tear gas or possible injury to the inmate or the staff.

14 A. That is true.

15 Q. Now, except for the situation where you can't move
16 the man for any of these various reasons or where the man
17 can't be moved, is there any justification for permitting
18 a cell not to be cleaned, in your opinion as a psychiatrist,
19 and based upon your experience within the prison walls?

20 A. I would like to say this, that there is another
21 problem here; that it is the responsibility primarily of
22 the inmate to clean his own cell, and it is of some conse-
23 quence and a serious problem in the management of the
24 Adjustment Center or any other part of the institution to
25 ask another inmate to clean a cell which has been disturbed

1 by another person, particularly in the Adjustment Center
2 where the man who is the porter is himself an Adjustment
3 center inmate.

4 Q. Probably from X-wing?

5 A. Maybe from X-wing, maybe from O-wing.

6 So we have to consider that perhaps the man should
7 clean up his own cell after he has made a mess of it. We
8 can scarcely ask--or it presents a problem in asking an-
9 other inmate to clean up his cell. It may be, if he is--
10 there would be no problem if the inmate were psychotic.
11 The cell would be cleaned after he left. If the inmate
12 were not, then he would be expected to clean his own.

13 Q. Doctor, I want to exclude from all of these ques-
14 tions a situation where the inmate can't be moved from his
15 cell because of physical difficulties. Please bear that
16 in mind. As a psychiatrist and a man who has worked inside
17 this type of institution for several years, what purpose
18 do you feel is served by leaving a cell in an unclean state?

19 A. Well, I personally don't like to see a cell in an
20 unclean state, and when I see the area and it is not clean,
21 I usually make a remark about it and ascertain why. Now--

22 Q. I am not attempting to fix any blame on you for
23 the state of the cell. There has been testimony in this
24 case, Doctor, which you may not have heard. Some people
25 have testified they have been in cells that have not been

1 clean. It may very well be that these were at times when
2 you had not had an opportunity to inspect the cells.

3 Now, I think it is fair to ask you to assume an unclean
4 cell. I am asking you whether or not, on the basis of your
5 professional experience as a psychiatrist and having been
6 with this institution for sometime, what purpose is served
7 by leaving a man in an unclean cell?

8 MR. GRANUCCI: Objection, Your Honor. That question
9 is rather compound and complex.

10 MR. COHLER: I will try to make it very simple.

11 THE COURT: I think the Doctor understands it.

12 THE WITNESS: I will answer it. It is a compound and
13 complex question. There is nothing served by leaving him
14 in there in a dirty state, but on the other hand there may
15 be a problem as to whether we can ask another inmate to
16 clean his cell when we don't have enough staff to more than
17 barely supervise the situation. So it may be impractical
18 if he will not clean his own cell, which is done by all of
19 the other nonpsychotic inmates.

20 MR. COHLER: Your Honor, I will have to move to strike
21 the "as is done by all the other nonpsychotic inmates."
22 There is no foundation for that observation.

23 MR. GRANUCCI: I think there is a foundation.

24 THE COURT: Motion is denied.

25 MR. COHLER: Q. Doctor, again excluding the situation

1 where the inmate in the cell cannot be moved for one reason
2 or another so that the cell may be cleaned, and it may be
3 compound--you said it was compound, and you said that there
4 was no purpose to be served, but there may be circumstances.
5 Let me break it down.

6 I am referring only to purposes. [What legitimate pur-
7 pose is served, in your opinion as a psychiatrist and based
8 upon your experience in the institution, by leaving an in-
9 mate in an unclean cell?

10 A. Another purpose might be, as I have answered, is
11 that it would be against the best interests of staff-inmate
12 relationship to ask some other inmate to clean his cell if
13 he won't do it.

14 Q. How about having the staff clean his cell?

15 A. We don't have that many staff.

16 Q. There are so many unclean cells that you don't
17 have enough staff to keep them clean?

18 MR. GRANUCCI: Objection.

19 THE WITNESS: No.

20 THE COURT: Sustained.

21 THE WITNESS: There isn't enough staff to conceivably
22 clean the cells. In O-wing there is usually not more than
23 two officers assigned downstairs during the day, and maybe
24 two upstairs, and they are occupied by the movement of
25 inmates. And we don't have enough time any place in the

1 institution for staff to clean cells.)

2 MR. COHLER: Q. I started out excluding a situation
3 where an inmate can't be moved for one reason or another
4 so his cell may be cleaned. I would also like to exclude
5 the administrative problem of finding people to do it.
6 putting aside those two factors, based on your experience
7 as a psychiatrist and particularly within this institution,
8 is there any legitimate purpose to be served by leaving an
9 inmate in an unclean cell?

10 MR. GRANUCCI: Your Honor, I wonder if I could request
11 counsel to make that question more specific. He talks
12 about unclean cells. It could conceivably be relevant as
13 whether the inmate dirtied the cell himself or not.

14 MR. COHLER: I want to find out if it is. I will ask
15 it generally. If the Doctor so feels, ^{he} ~~I~~ will so state.

16 THE WITNESS: What I think has now been done is, you
17 have made the question--you have removed so many elements
18 of the real situation that the question can no longer be
19 answered, because it is not a practical question.

20 MR. COHLER: Q. You don't feel qualified to answer as
21 a--

22 MR. GRANUCCI: Objection as to the form of the question
23 Your Honor.

24 THE COURT: Sustained.

25 MR. COHLER: Q. Can you explain your answer, Doctor,

1 why you can't answer the question?

2 A. If the inmate has dirtied his own cell and is not
3 psychotic, then a staff problem, a staff-inmate problem
4 exists for us to ask--and an inmate to inmate relationship
5 problem exists, the relationship between that inmate and
6 the man who is going to have to do the cleaning--that we
7 have to be careful that we don't ask an inmate to do some-
8 thing which he might feel is degrading. He might clean up
9 his own cell, but he might not want to clean up the mess
10 of somebody else, and this is a touchy point and one we
11 have to observe.

12 Q. Let me ask it this way, Doctor: Based upon your
13 professional experience as a psychiatrist and your ex-
14 perience in this institution, do you feel the potential
15 difficulties and problems of the staff-inmate and the inmate
16 inmate nature which you have just described outweigh the
17 potential difficulties and absence of purpose to be served
18 in leaving a man in an unclean cell?

19 MR. GRANUCCI: Objection to the form of the question,
20 because the question is incomplete. It does not--again,
21 in the hypothetical question, it is not clear or certain
22 whether the inmate dirtied the cell or not, whether it was
23 dirtied by another inmate, whether the inmate was capable
24 of cleaning up the cell, whether the inmate was willing to
25 clean the cell.

1 MR. COHLER: I will incorporate the factor of the in-
2 mate having dirtied the cell himself. That is the only
3 factor I have heard the Doctor allude to among those you
4 mentioned.

5 Q. Do you have the question, Doctor?

6 A. If the inmate dirtied the cell himself, I would
7 feel that--and he was willing to clean it up, and appear
8 voluntarily, and shower, and would so communicate to the
9 staff, I don't think we would have any problem getting it
10 done.

11 MR. COHLER: Your Honor, I will have to move to strike
12 it as nonresponsive.

13 THE COURT: Motion is denied.

14 MR. COHLER: Q. If the inmate is not willing to clean
15 up his own cell, do you feel that the factor of diffi-
16 culties arising out of inmate-staff relationships, in ask-
17 ing another inmate to clean up that cell, outweigh any
18 problem of the inmate staying in an unclean cell?

19 A. I feel that the problems of staff relationship do
20 outweigh his inconvenience, yes, indeed. At least, up to
21 the point of health beyond which I have not seen.

22 Q. Based on your professional experience and your
23 contact with the plaintiff Mr. Jordan, do you feel he
24 could be aided by psychiatric help?

25 A. Yes, I think he could. But he hasn't become

1 amenable yet to current methodologies or with the staff
2 which is available. There are only in the United States
3 a little more than 50 psychiatrists who have any associa-
4 tion with the penal institutions of that number, 25 are in
5 this State, and only a half of one of those is at Soledad.
6 So there are problems in regard to applying ourselves to
7 him, and even--many psychiatrists frankly state that this
8 type of problem is not even approachable. I think it is.
9 And I have maintained my interest in Soledad because I
10 think the problem of the socialization disorders is the
11 most major problem which is now before us. The threat to
12 society is no longer the bacteria, as it once was in the
13 Middle Ages. But we are going to have to develop pre-
14 ventive and treatment procedures to handle our socializa-
15 tion disorders, or Mr. Hoover can report every six months
16 that the crime rate is up.

17 MR. COHLER: Thank you, Doctor.

18 REDIRECT EXAMINATION

19 BY MR. GRANUCCI:

20 Q. Doctor, you testified on both direct and cross
21 that during your visits to the Adjustment Center over your
22 period of working at Soledad you examined the conditions of
23 cleanliness.

24 A. Yes.

25 Q. Within the past six months, have you noticed any

1 change in the conditions of cleanliness, either for the
2 good or for worse?

3 A. I have noted the appearance of the plastic wash-
4 basins and so on--

5 Q. I am talking about the cleanliness, physical clean-
6 liness?

7 A. Actually, no significant change.

8 Q. Now, counsel asked you a number of questions about
9 inmates in dirty cells. When you attempted to answer those
10 questions, were your answers based on the assumption that
11 the inmate had dirtied the cell himself?

12 A. Yes. I might add here that the record reflects
13 that he was not a good housekeeper even when he was in the
14 general population. As a matter of fact, I have written
15 that into my report as being one of the negative things
16 which we were still unable to overcome. This is material
17 elicited from him in our discussions.

18 Q. Dr. Hack, you mentioned on cross-examination that
19 there was an incident involving a number of inmates on a
20 destructive rampage a few days before His Honor appeared
21 at the institution. Is that correct?

22 A. That is right.

23 Q. In your professional judgment, was that incident
24 related to this case?

25 A. I think it was, yes.

1 Q. How so?

2 A. I think it was of a demonstration type venture.
3 I think that was a part of the motivation.

4 RECROSS-EXAMINATION

5 BY MR. COHLER:

6 Q. Doctor, you mentioned that Mr. Jordan had been
7 somewhat of a housekeeping problem, that he has told you
8 that himself. That was related to the spreading of news-
9 papers around his cell, not human body waste, wasn't it?

10 A. That is right.

11 MR. COHLER: Thank you.

12 MR. GRANUCCI: Your Honor, I have no further questions
13 of this witness, but he would certainly be willing to answer
14 of His Honor's questions.

15 THE COURT: I have a very few counsel.

16 I will be as brief as I can, Doctor. Doctor, have you
17 made any requests recently or in the course of your ex-
18 perience at Soledad for additional help in your field of
19 psychiatry?

20 THE WITNESS: Yes, annually. The problem is that
21 psychiatrists seem to like metropolitan areas. We have had
22 quite a problem in recruiting. There has only been one
23 actual assigned psychiatrist there since the institution
24 was opened. I am, at this moment, however, considering
25 dropping my private practice and have made application to

1 work full time.

2 THE COURT: But you do put in a pretty full week,
3 nevertheless?

4 THE WITNESS: That is right.

5 THE COURT: A four-day week?

6 THE WITNESS: It is five days, a half a day.

7 THE COURT: In your opinion, was Soledad Facility
8 conceived or otherwise constructed for the housing of the
9 criminally insane?

10 THE WITNESS: No.

11 THE COURT: What, if any, facilities do you have for
12 that, Doctor?

13 THE WITNESS: We can handle limited acute psychotic
14 problems, which often happen. An inmate may suddenly
15 develop an acute psychosis. We can house him in one or
16 two places, either the upstairs Adjustment Center, above
17 the area of which we are speaking, which is mainly used for
18 transients, for people who are in protective custody
19 situations, nonviolent type persons. We can house them
20 there. Or we can house them in the hospital. And under
21 medication, which is one of the things we do, the standard
22 of tranquilizing and psychotropic drugs are used, probably
23 in the Adjustment Center to the largest extent than any
24 part of the institution, so that we can handle them at least
25 until we see that they are either going to improve or they

1 are beyond our capacity, in which case we are immediately
2 able to transfer them.

3 THE COURT: Doctor, during the course of your testimony
4 this afternoon, you have dilated and discussed at some
5 length the question of cleanliness as it may be intertwined
6 with the psychiatric features that are involved in connec-
7 tion with an inmate or a cell or the like.

8 THE WITNESS: Yes.

9 THE COURT: Directing your attention to the solitary
10 aspects of the so-called strip cells, do you agree with
11 the concept that notwithstanding solitary, that a certain
12 degree of cleanliness should prevail?

13 THE WITNESS: Yes, it should.

14 THE COURT: May I ask you, Doctor, what if any re-
15 commendations have you made during your post or during your
16 career at this facility with respect to any devices that
17 might be used by the inmates and/or the devices that might
18 be installed in the cells, looking towards cleanliness?

19 THE WITNESS: None specifically, since the cells were
20 constructed on lines which already provided for minimal
21 needs, and I knew of no other devices which might aid an
22 inmate who had already destroyed a cell which provided
23 generally--

24 THE COURT: Let us forget momentarily the cells that
25 were destroyed. Confine yourself to my question.

1 THE WITNESS: Yes.

2 THE COURT: Doctor, have you ever permitted yourself
3 to be locked momentarily in a strip cell?

4 THE WITNESS: No, I have--that is--I have not, no.

5 THE COURT: I take it that if you had not permitted
6 yourself to be locked momentarily in a strip cell, you have
7 not permitted yourself to be locked in a strip cell with
8 the flaps up?

9 THE WITNESS: No, but there is--

10 THE COURT: Will you answer the question, Doctor.

11 THE WITNESS: Yes.

12 THE COURT: What is the answer?

13 THE WITNESS: No, I have not.

14 THE COURT: Doctor, are you familiar with the general
15 mode or method of the elimination of waste matter in the
16 strip cells?

17 THE WITNESS: Yes.

18 THE COURT: How are waste matters eliminated? How are
19 they eliminated, Doctor, bodily waste matter?

20 THE WITNESS: Bodily waste matter is deposited in a
21 single opening which has to be hand flushed. The opening
22 was in the floor.

23 THE COURT: So-called Oriental type?

24 THE WITNESS: So-called Oriental type, yes.

25 THE COURT: In the center of the cell?

1 THE WITNESS: Well, no, to the rear, to the right rear,
2 normally where the commode would be in the normal isolation
3 cell, with an opening. And this is where the material
4 would have to be placed, and then a staff member has to go
5 through, or normally had to go through and make a flushing
6 of that device. Since there is--there may be a way to--
7 one of the problems is flooding in that area--

8 THE COURT: All right, Doctor. Will you pause for a
9 moment and consider yourself inside one of the cells in
10 question with the flaps up. Do you concede that there isn't
11 any light in the cell, Doctor?

12 THE WITNESS: Yes.

13 THE COURT: It is absolutely dark.

14 THE WITNESS: Not quite, because these are not, as the
15 so-called solitary confinement cells of former years where
16 there was no light. There is a slight seepage of light.

17 THE COURT: Very slight.

18 THE WITNESS: Very slight.

19 THE COURT: Mindful of the conditions under which a
20 man is confined in a cell in question, how do you propose
21 he maintain his personal bodily cleanliness, his hands and
22 the like?

23 THE WITNESS: He is provided with--is provided with
24 the toilet tissue. He is supposed to be removed to be--
25 he is supposed to be removed to be showered.

1 THE COURT: When? And how often?

2 THE WITNESS: I believe at least every five days was
3 the minimum.

4 THE COURT: So for a period of five days, at least,
5 his body, if he is stripped, and his hands equally, would
6 be the subject of some degree of contamination. Isn't
7 that correct?

8 THE WITNESS: Yes, but as--

9 THE COURT: Is it correct, Doctor, or is it not?

10 THE WITNESS: For a period of five days he possibly
11 might be quite soiled.

12 THE COURT: Yes. And quite contaminated.

13 THE WITNESS: Yes.

14 THE COURT: Of course, you observed those conditions
15 from time to time when you looked into the strip cell, did
16 you not, Doctor?

17 THE WITNESS: Yes, except that generally speaking only
18 a few of the strip cells were occupied, and it is not my
19 impression that people stayed continuously in the cells
20 that long.

21 THE COURT: As a matter of fact, Doctor, your observa-
22 tions were not regarding cleanliness, were they, but rather
23 the psychiatric field? Isn't that true?

24 THE WITNESS: Mainly psychiatric. But I am concerned
25 about the cleanliness. Here is a medical problem.

Now
THE COURT: ~~No~~ Doctor, you said that excrement on the walls and the like, or about the cells, might well occasion you to conclude or make a finding that the inmate might possibly be regarded as psychotic. How would you make a differentiation between a psychotic inmate and one who by reason of the lack of light and lack of other facilities became more or less dirty with his own filth? How would you make the distinction?

THE WITNESS: Well, the psychotic inmate has a definite sort of a pattern. As I said, the hebephrenic schizophrenic who reaches the point of smearing walls--

THE COURT: You have used that before.

THE WITNESS: --is a very obvious type of a problem.

THE COURT: That is a specific problem, Doctor. That is a specific problem that is ordinarily rather remote, isn't it? It is not the usual.

THE WITNESS: It is not the usual, no.

THE COURT: It is not a pattern of conduct that ordinarily you would find in an inmate confined in this type institution? It is a bizarre sort of thing, isn't it?

THE WITNESS: Yes. But it does occur.

THE COURT: Not quite often though.

THE WITNESS: Not often.

THE COURT: Let's confine ourselves to the cell in question, to the degree of light, to the lack of

1 cleanliness, to the lack of apparent facilities for a man
2 to either bathe or wash his hands. I address the question
3 again to you, Doctor, mindful of your constant surveillance
4 over these cells or at least casual surveillance: Did you
5 at any time during the course of your career make a re-
6 commendation regarding any device or facility that might
7 be used by the inmate?

8 THE WITNESS: No devices or facilities. I have made
9 the recommendation that he ought to be taken out and
10 cleaned one way or another.

11 THE COURT: That the inmate ought to be taken out?

12 THE WITNESS: That the inmate ought to be taken out and
13 the cell should be cleaned.

14 THE COURT: Was that prompted by a physical observation
15 you made of any inmate?

16 THE WITNESS: Yes.

17 THE COURT: Will you state the name or identity of the
18 inmate.

19 THE WITNESS: I don't know.

20 THE COURT: What was the condition of his body?

21 THE WITNESS: If I entered a cell and the cell smelled
22 badly, I feel this is an unhealthful situation. As was
23 made an effort at CMF, as I have alluded--

24 THE COURT: Is it not true, notwithstanding the stench
25 or smell, many of these inmates were permitted to and

1 forced to eat their meals in that stench and odor?

2 THE WITNESS: I don't know as they were forced to.
3 It is true that if they were going to eat, that they might
4 have to eat under those circumstances.

5 THE COURT: They wouldn't go to the cafeteria, would
6 they?

7 THE WITNESS: No.

8 THE COURT: Do you know, from your records or your own
9 knowledge, Doctor, whether any of the strip cell inmates
10 received or had the privilege of using the showers at any
11 time?

12 THE WITNESS: As far as I know, they have, yes. I
13 made direct recommendations that they be moved and showered.

14 THE COURT: Do you know whether your recommendations
15 were ever carried out, Doctor?

16 THE WITNESS: No, except that I have seen that the
17 inmates were clean or the cells vacated the next time I
18 appeared. And I know that we have had no pneumonias,
19 enteric diseases or other infections as a result of this.

20 THE COURT: I have no further questions.

21 MR. COHLER: No further questions, Your Honor.

22 MR. GRANUCCI: I have no further questions. May the
23 witness be excused?

24 THE COURT: Certainly.

25 MR. GRANUCCI: Thank you.

(Witness excused.)

1 THE COURT: Do you have additional witnesses for
2 tomorrow, counsel?

3 MR. GRANUCCI: Yes, Your Honor.

4 THE COURT: We will start at 10:00 o'clock and we
5 will run to 5:00 o'clock tomorrow.

6 MR. GRANUCCI: That is certainly agreeable with us.

7 MR. COHLER: Certainly.

8 MR. GRANUCCI: I certainly don't think we will conclude
9 our side of the case by tomorrow.

10 THE COURT: Then we will have to run a half a day
11 Thursday. I have other commitments on Thursday.

12 MR. GRANUCCI: Fine, Your Honor.

13 MR. COHLER: Thank you, Your Honor.

14 (Whereupon the hearing was adjourned until 10:00
15 o'clock a.m., August 17 1966.)

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