

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION
4 - - -

5 BEFORE: HON. GEORGE B. HARRIS, JUDGE

6
7 ROBERT CHARLES JORDAN, JR.,)

8 Plaintiff and)
9 Petitioner,)

No. 44309 and
44786

10 vs.)

11 C. J. FITZHARRIS, et al,)

12 Defendants and)
13 Respondents.)

14
15 REPORTER'S TRANSCRIPT

16 EVIDENTIARY HEARING

17 August 17, 1966
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23 Reported by: MERILYN SEYBERT
24
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1 WEDNESDAY, AUGUST 17 1966, MORNING SESSION- 10:30 A.M.

2 THE CLERK: Civil Action 44309 and 44786, Robert
3 Charles Jordan, Jr. vs. C. J. Fitzharris, et al, for fur-
4 ther evidentiary hearing.

5 MR. COHLER: Ready for the plaintiff and petitioner,
6 Your Honor.

7 MR. GRANUCCI: Ready, Your Honor.

8 May it please the Court, at this time the defendants
9 are ready to proceed to call Officer Caldwell, please.

10 THE CLERK: Officer Caldwell.

11 TERRY H. CALDWELL,

12 called as a witness on behalf of the defendants, being
13 duly sworn, was examined and testified as follows:

14 THE CLERK: Will you state your full name and occupa-
15 tion to the Court.

16 THE WITNESS: Terry H. Caldwell, Correctional Officer,
17 Correctional Training Facility.

18 DIRECT EXAMINATION

19 BY MR. OAKES:

20 Q. Officer Cladwell, you stated that you are currently
21 employed as a correctional officer at Soledad State Prison.
22 Is that correct?

23 A. Yes.

24 Q. How long have you been so employed?

25 A. Three years.

1 Q. Where have you been employed or assigned?

2 A. Generally completely throughout the institution,
3 in all facets of officers' work.

4 Q. During the course of your employment, have you ever
5 been assigned as an officer to the first floor of O-wing?

6 A. I have.

7 Q. How long were you assigned to this wing?

8 A. Approximately nine months.

9 Q. During what watch was that?

10 A. The first watch.

11 Q. What nine months period was that, please?

12 A. Between approximately June of '65 until March of
13 '66.

14 Q. What days of the week did you work?

15 A. Tuesday through Sunday.

16 Q. During this period that you were assigned as an
17 officer to O-wing on the first watch-- Withdraw that,
18 please.

19 What hours of the day consist of the first watch?

20 A. Between 12:00 midnight and 8:00 a.m.

21 Q. During the period when you were an officer in O-
22 wing during the first watch, how many officers were on duty
23 in O-wing?

24 A. Myself on the first floor, and another officer on
25 the second floor.

1 Q. Did the other officer also have control of the
2 third floor?

3 A. Yes.

4 Q. Was there a sergeant on duty at that time?

5 A. No.

6 Q. Would you describe briefly your duties during this
7 watch.

8 A. We make count approximately every two hours, we
9 filled in isolation logs, made ^{call-ins} ~~callings~~ on the half hour.

10 MR. COHLER: Excuse me. I didn't hear the witness.
11 You did what?

12 THE WITNESS: We made telephone calls to the control
13 room every half hour.

14 --control and custody of the inmates.

15 MR. OAKES: Q. Would you describe your duties during
16 this period as primarily custodial in nature?

17 A. Yes.

18 Q. You were there primarily to keep control and were
19 there in case something would happen?

20 A. Yes.

21 Q. Did you ever go back into the cell area other than
22 to make a count?

23 A. Yes sir.

24 Q. For what purposes?

25 A. Security checks, any type of a problem with an

1 inmate that--

2 THE COURT: Could you speak just a little louder.

3 THE WITNESS: I say, any time we had a problem with an
4 inmate, I would have to go back.

5 THE COURT: You will have to speak a little louder and
6 a little slower. The stenographic reporter has to get all
7 this.

8 MR. OAKES: Q. How many times on an average would you
9 be back in the cell areas, other than the times you were
10 making a count?

11 A. I would say three, four times.

12 Q. A night?

13 A. Yes sir.

14 Q. That includes the so-called quiet cell area?

15 A. Yes sir.

16 Q. How long did it take you to make a count?

17 A. Of the entire wing? Or of the one section?

18 Q. Of the one section.

19 A. Two, three minutes.

20 Q. What are you required to see when you make a count?

21 A. Human flesh.

22 Q. Do you attempt to be thorough in making this count?

23 A. As thorough as possible in the length of time.

24 Q. You also attempted to be fairly rapid?

25 A. Yes.

1 Q. Why is this, please?

2 A. Well, the longer you are back there, the more noise
3 you are going to make. And this is an essential thing on
4 the first watch, is to be as quiet as possible. So the
5 less time you are back there, naturally the less noise you
6 are going to make.

7 Q. Did you have a specific time that you were required
8 to provide water or flush the commodes?

9 A. No.

10 Q. Did you normally flush the commodes?

11 A. No.

12 Q. Why not?

13 A. Because of the disturbance.

14 Q. Would you provide an inmate water during this shift
15 if he requested it?

16 A. Yes.

17 Q. How much?

18 A. As much as he would take.

19 Q. Did you ever limit him to one cup?

20 A. No.

21 Q. If a man had more than one cup in his cell, would
22 you fill up all his cups?

23 A. Definitely.

24 Q. On the average, do you recall whether most men do
25 have one cup only? Or more than one cup?

1 A. Usually two or three.

2 Q. Would you generally leave a cup?

3 A. Yes.

4 Q. During the period that you worked in the Adjustment
5 Center or O-wing, would you say that the flaps in the quiet
6 cells were more often closed? Or more often open?

7 MR. COHLER: Excuse me. Would you state the period of
8 time, counsel? Are you covering the whole period?

9 MR. OAKES: I said during the period he worked in the
10 Adjustment Center. The whole period.

11 MR. COHLER: The whole period. Thank you.

12 MR. OAKES: Q. You may answer.

13 A. Generally they were closed.

14 Q. This is true at the time in July of last year?

15 A. Yes sir.

16 Q. Were they sometimes open?

17 A. Yes.

18 Q. Were they always closed?

19 A. No.

20 Q. If a man requested his flaps to be open, would you
21 open them?

22 A. Using my own judgment, if the man had been causing
23 a disturbance no, I would not open them. But if he re-
24 mained quiet for a length of time, I would open them.

25 Q. If a man asked his flaps to be closed, would you

1 close them?

2 A. Definitely.

3 Q. Did that often happen?

4 A. Yes, it did.

5 Q. Were the doors open during that period, or were
6 they more often closed?

7 A. More often closed.

8 Q. When the flaps were closed, could you still hear a
9 person held in a quiet cell if he called out to gain your
10 attention?

11 A. Yes.

12 Q. Have you ever experienced difficulty in hearing a
13 man?

14 A. No sir. Excuse me. Other than unless there was a
15 disturbance going on some place else in the wing.

16 Q. When you were making the count and checking the
17 cells during the count, did you check the quiet cells more
18 carefully than the regular isolation cells?

19 A. Yes.

20 Q. Why?

21 A. Well, because of the type of inmates that we have
22 back there. We are always anticipating something to be
23 wrong, destroying what facilities he has or attempting to
24 mutilate himself or destruct himself.

25 Q. In making this check, would you be apt to detect

1 an unusal state of uncleanliness?

2 A. I think so, yes.

3 Q. Officer Caldwell, would you consider a cell which
4 had excrement on the floor and on the walls to be unusually
5 unclean?

6 A. Yes, I would.

7 Q. Is the existence of such a condition quite unusual?

8 A. Yes, it is, very.

9 Q. What is the prevalent odor present in O-wing?

0 MR. COHLER: Counsel, you are asking the whole wing?

1 MR. OAKES: Yes.

2 MR. COHLER: I just want to be clear.

3 THE WITNESS: Wherever you have a large number of people
4 living together, you are going to have human odors, body
5 odors. I remember when I was in the service, the dormi-
6 tories that we lived in had an odor that I was not familiar
7 with. But it is about the same odor that you would get in
8 a school gym, something like that.

9 MR. OAKES: Q. Or perhaps an Army barracks?

0 A. Yes.

1 Q. This same odor is perhaps prevalent throughout any
2 wing?

3 A. Throughout the entire institution.

4 Q. Is the same odor prevalent in the quiet cell area?

5 A. Yes.

1 Q. Perhaps a little stronger? Or about the same?

2 A. Well, because of the fact that these people are not
3 allowed to take a shower every day and clean themselves as
4 you or I would, it is a little stronger, yes.

5 Q. Do you recognize the plaintiff, Mr. Jordan?

6 A. Yes.

7 Q. Do you recall that Mr. Jordan was housed in a quiet
8 cell during the month of July of last year?

9 A. Yes, I do.

10 Q. Do you recall seeing excrement on the floor and on
11 the walls of Mr. Jordan's cell?

12 A. No, I don't.

13 Q. Do you recall smelling such a condition?

14 A. No.

15 Q. If you had smelled such a condition, do you think
16 you would recall it now?

17 A. Definitely.

18 Q. Do you recall seeing or smelling vomit in Mr.
19 Jordan's cell?

20 A. No, I don't.

21 Q. If you had smelled such a condition, do you think
22 you would remember it now?

23 A. I think so, yes.

24 CROSS-EXAMINATION

25 BY MR. COHLER:

1 Q. Officer Caldwell, how old are you?

2 A. Twenty-four.

3 Q. Would you state again, please, how long you have
4 worked on the first floor of O-wing as a correctional
5 officer.

6 A. How long I did work there?

7 Q. You are not working there now?

8 A. No, I am not.

9 Q. How long did you work there?

10 A. Approximately nine months.

11 Q. From what time to what time?

12 A. Between approximately June of 1965 until March of
13 '66.

14 Q. You said you never experienced difficulty in hear-
15 ing an inmate make a request from a quiet cell. Is that
16 correct?

17 A. I said unless there was noise elsewhere, I could
18 hear him.

19 Q. How does one tell whether or not he has heard some-
20 thing if he hasn't heard it? How does he know he hasn't
21 heard it?

22 A. Well, you don't know. You just assume that if there
23 is noise and the man is back there and he is hollering you
24 are not going to hear him. You don't know whether he is
25 hollering or not.

1 Q. How do you make the judgment that the man is not
2 hollering any more in order to open up the flaps?

3 A. Well, to my best recollection, the people in the
4 strip cells were naturally the most apt to be noisy. This
5 is the reason they are back there. It was generally the
6 rule that these were the only people making the noise.

7 However, if we continue to let him make the noise, the
8 rest of the section became usually involved. But generally
9 speaking, these were the only people that were in that
10 section making the noise.

11 Q. Was there generally noise from that section?

12 A. I wouldn't say generally. Quite a bit of the time,
13 there was.

14 Q. You say there was noise more of the time? Or not
15 noise more of the time?

16 A. Not more of the time, no.

17 Q. Then why were the flaps closed more of the time?

18 A. Because of the fact that there was always the
19 possibility of the noise starting. In other words, if the
20 flaps remained open, if a man started causing a disturbance,
21 which has happened several times, it takes some time to get
22 back there, and as has been the case several times, before
23 the officer could get back there he had agitated other in-
24 mates into going along with him and causing a general dis-
25 turbance.

1 Q. Then in order to prevent the recurrence of the dis-
2 turbance, you leave the flaps closed, is that right?

3 A. Yes.

4 Q. You said you sometimes exercise your discretion and
5 you open the flaps.

6 A. That is right.

7 Q. Why do you do that if there is cause for recurrence
8 of the disturbance?

9 A. Well, if a person has shown himself capable of
10 being quiet, I will open the flaps.

11 Q. How long does he have to be quiet in order to satisfy
12 you in your duties?

13 A. For a day, two days, three days.

14 Q. It could be as long as three days?

15 A. It could be, yes.

16 Q. You mention that inmates in quiet cells sometimes
17 destroy the facilities there. What facilities do they
18 destroy?

19 A. Their clothing, their bedding.

20 Q. You stated that your primary purpose in making a
21 check was to see "human flesh," is that correct?

22 A. This is true.

23 Q. In other words, the purpose is to tell whether or
24 not the inmate is still there?

25 A. Right. This is the purpose of the count.

1 Q. How about a security check, is that the same thing?

2 A. No, it isn't.

3 Q. What is the purpose of the security check, if it
4 differs?

5 A. A security check is to make sure that the wing is
6 secured, that all locks are locked, all doors are closed,
7 also to check for any unusual occurrences, such as a
8 possible attempted suicide or self mutilation, possible
9 escape.

10 Q. A security check, as the name implies to me, is to
11 maintain security, to make sure the man is still there and
12 is not hurting himself or cutting his bars or something of
13 that nature.

14 A. That is true.

15 Q. About how long does it take to make a security
16 check?

17 Well, let me start at the beginning. How many cells do
18 you check in making a security check?

19 A. There are 24 cells on each side in each section.
20 Like I say, we go back there maybe three, four times a
21 night, other than the counts to make these checks. So it
22 could vary. There is no set time.

23 Q. Do you check all 48 cells yourself?

24 A. Yes, I do.

25 Q. Do you check each cell on each security check?

1 A. No, I don't.

2 Q. Do you have a planned method of rotating the cells
3 you check?

4 A. This is something that we have been instructed not
5 to do, is to form a pattern.

6 Q. Do you have a means for keeping track for yourself
7 which cells you have checked and which you haven't

8 A. No, I don't.

9 Q. You try to keep track in your memory, "Last time I
10 saw this one and that one, and I will see this one this
11 time," or maybe you double up sometimes?

12 A. Possibly.

13 Q. It is a possibility you wouldn't see every cell
14 in the course of the night, is that correct?

15 A. No, it isn't.

16 Q. What do you do to keep yourself from missing a cell
17 out of 48? Do you keep track of them all in your memory?

18 A. I have worked in wings where I kept track of 131
19 cells.

20 Q. You don't write this down or anything?

21 A. No, I don't.

22 Q. About how long does it take to make an average
23 security check?

24 A. Well, I will put it this way: I mentioned before
25 that you had to make a call in every half hour. So the

1 longest I would be back there would be a half an hour.

2 Q. You have other duties as well, don't you?

3 A. I do.

4 Q. Can you estimate the average length of time to make
5 a security check?

6 A. Ten, twenty minutes.

7 Q. While you are making the security check, you are
8 keeping track in your own memory as to which cells you have
9 seen and which cells you haven't seen, and really all you
10 are looking for is to see whether or not bars are cut or
11 people are out of their cells or things of that nature. Is
12 that right?

13 A. Basically, yes.

14 Q. You have testified about a general odor in O-wing
15 as being gymnasium-like or barracks-like.

16 A. Yes.

17 Q. How did the odor strike you on the first floor of
18 O-wing when you first began working there in June of 1965?

19 A. I don't recall.

20 Q. Would you say the whole place stunk, to you?

21 A. The whole institution stunk the first day I went to
22 work there.

23 Q. How about the first floor in O-wing?

24 A. I didn't notice anything particularly strong about
25 the odor.

1 Q. Would you say that when the flaps are closed on the
2 strip cell or quiet cells and if the doors are closed that
3 this may restrict the emanation of odor from the cell?

4 A. No, it would not.

5 Q. It would not?

6 A. It would not.

7 Q. Would you explain that, please.

8 A. The cells have a ventilating system, both incoming
9 and outgoing air, to my knowledge.

10 Q. I am concerned about how the odor might get out of
11 that cell, whatever odor it is, so that you would observe
12 it up in front in the officers' area. If the flaps are
13 closed and the door is closed, doesn't this restrict the
14 odor coming out of the cell?

15 A. I would like to explain.

16 Q. Please.

17 A. The ventilating system that we have in there, for
18 some reason, I don't know why, but any strong odor such as
19 gas, human defecation invariably comes through the vents in
20 the officers' area. We don't have the--in the officers'
21 area, we don't have any windows and the door is locked all
22 the time. The only ventilation that we have is what comes--
23 it seems to me, comes from the cells, because whenever a
24 person has been--they have used tear gas back there or
25 there has been defecation in the tiers, we get it.

1 Q. Now, tear gas has a way of spreading in many direc-
2 tions, does it not?

3 MR. OAKES: Pardon me. What kind of tear gas?

4 MR. COHLER: It is my understanding the institution uses
5 only one type.

6 MR. OAKES: There are three types.

7 MR. COHLER: There are three types of containers. But
8 CN was the only type Mr. Donnelly testified to.

9 MR. GRANUCCI: There was also testimony about Mace,
10 which is a new type of tear gas.

11 MR. COHLER: Yes. I am wrong.

12 Q. Excluding Mace, which is a new type of tear gas--

13 A. We have one type. But this comes in two different--
14 one is a powder and one is a liquid, as Mr. Donnelly al-
15 ready stated--one is a vapor, rather.

16 The powder, to my best recollection, does not spread
17 itself too much. It is the vapor that--

18 Q. Let's limit our attention to the vapor tear gas.
19 When vapor tear gas is used, for whatever reason, isn't
20 the presence of that vapor tear gas noticeable from many
21 directions and in a fairly large area?

22 A. Yes, I would say so.

23 Q. On the first floor of O-wing, the west corridor,
24 there are no solid doors from the quiet cell area up to
25 the officers' area, are there?

1 A. No.

2 Q. And if you noticed tear gas in the officers' area,
3 might you not notice that as well coming through the corri-
4 dor as it may be possibly coming through the ventilation
5 system?

6 A. I seem to notice it more in the officers' area and
7 in the area that it was used rather than in the corridor.
8 Whether this is something unusual to me, I don't know.

9 Q. The question is how it might get there. It may
10 come down the corridor and be trapped in the officers' area,
11 might it not, since you say you have no doors and windows
12 in the officers' area?

13 A. This is true.

14 Q. And there are no closings on the windows in the
15 corridor, they are open, holes, six above each window space?

16 A. To my best recollection, yes.

17 Q. So you really don't know whether or not the odor
18 of tear gas came through any ventilation system or came
19 down the corridor and hung in the officers' area, do you?

20 A. I do know that quite a large amount came through
21 the ventilation system.

22 Q. How do you know that, sir?

23 A. Well, in the summer months it gets pretty warm in
24 there because of the fact we have no windows. And this one
25 ventilating--this one vent that we have in the center of

1 the officers' area, when we were--worked up a sweat or
2 something, we would stand under this and cool off. We
3 would drape a towel over it so it would force the air down-
4 ward, and I would try to remain in there for awhile. And
5 I always noticed whenever there was tear gas used back
6 there, that odor came from the vents.

7 Q. When you said "back there," you mean somewhere in
8 the first floor of O-wing?

9 A. Yes.

10 Q. Officer Caldwell, July was the second month of nine
11 that you had worked on the first floor of O-wing, is that
12 correct?

13 A. Yes.

14 Q. Is your recollection of your experience in O-wing
15 more fresh with regard to those times nearer the present
16 time? Or do you have a better recollection of the further
17 back times?

18 A. I couldn't honestly say for sure.

19 Q. All sort of jumbled together, your whole experience?

20 A. Yes.

21 Q. You can't separate out July 1965 in your recollec-
22 tion, can you?

23 A. There was nothing outstanding about the month, no.

24 Q. Can you separate out July 1965 in your recollec-
25 tion, Officer?

1 A. No, I cannot.

2 Q. Other than the fact that you may have reviewed
3 certain records to determine that plaintiff Jordan was in
4 a quiet cell in July 1965, do you have any recollection of
5 his being there?

6 A. Inmate Jordan was in the quiet cells quite often.
7 I remember a time in January. I remember a time in July.

8 Q. January 1966?

9 A. Yes.

10 Q. Do you actually specifically remember Mr. Jordan's
11 presence in the quiet cell? Or haven't you refreshed your
12 recollection with certain records?

13 A. I would say a little bit of both.

14 Q. Who else was in the quiet cell when Mr. Jordan was
15 in there in July 1965?

16 A. During the time that Mr. Jordan was in that cell?

17 Q. Right. Can you tell us the names of the other in-
18 mates that were in the quiet cells during that time?

19 A. Several others moved in and out.

20 Q. Do you recall their names?

21 A. Well, Esparza.

22 Q. In July 1965?

23 A. I believe so, yes, to my best recollection.

24 Q. Go ahead. What were their names?

25 A. Wells and Esparza.

1 Q. Can you recall any others?

2 A. Not offhand, no.

3 MR. COHLER: Mr. Grace, may I have Plaintiff's Exhibit
4 13, please. Excuse me. I meant Plaintiff's Exhibit 12.

5 Q. How certain is your recollection, Officer?

6 A. Oh, I wouldn't say it is completely certain, no.

7 Q. How certain is it?

8 A. Well, I will say I remember these three people
9 being in the strip cell during the time that I worked there
10 and--

11 Q. At the same time? In July 1965?

12 A. I believe so. I can't say I am absolutely positive.

13 Q. Officer, I would like you to look carefully through
14 Plaintiff's Exhibit 12.

15 First, let me ask you whether or not you recognize
16 these copies of an isolation log, two pages; one being
17 official visitations, and one being movements of inmates.
18 Do you so recognize?

19 A. Yes, I do.

20 Q. You are accustomed to working with those documents
21 in the course of your duties?

22 A. Yes, I do.

23 Q. Those documents are intended to reflect the names
24 of all inmates in this area, aren't they?

25 A. This reflects the names of people on isolation.

1 Q. Yes. And if Mr. Wells or Mr. Esparza were in the
2 quiet cell or strip cell at this time, their names should
3 be in there, shouldn't they?

4 A. No, not necessarily.

5 Q. All right. Would you explain that, please.

6 A. If a person was moved for creating a disturbance
7 and placed in a strip cell, he does not necessarily--there
8 are times when he is not put on isolation. He may come out
9 in two days or three days. This is not--isolation is a
10 classification, and these people are sometimes put in the
11 quiet cells for one or two days and then taken out. So
12 his name would not have to be on this.

13 Q. Would you look through there and see whether or not
14 these gentlemen were on isolation status that you have
15 mentioned.

16 MR. OAKES: We will stipulate their names do not appear.

17 THE WITNESS: From what I have gone through so far, I
18 do not see their names.

19 MR. COHLER: Q. Do you recall who was on duty with you
20 July 9th through July 20th 1965?

21 A. Yes. There were two men that were usually on with
22 me; Mr. Cecil, who was the regular second tier officer, and
23 Mr. Hendricks who worked the relief positions, two days up-
24 stairs and two days downstairs.

25 Q. Do you ever have any conversations with inmates

1 while they are in the quiet cells or strip cells during
2 your watch?

3 A. Many times.

4 Q. Who did you have conversations with July 9th through
5 July 20th in the quiet cells or strip cells?

6 A. I can't remember.

7 Q. When the flaps are closed on the quiet cells or
8 strip cells, are they all closed? Or some open and some
9 closed?

10 A. They are not all closed. Sometimes one cell might
11 be left open and the other cell closed.

12 Q. Can you recall which cells had the flaps open from
13 July 9th through July 20th, and which cells had flaps
14 closed from July 9th to July 20th?

15 A. No.

16 Q. Isn't it true, Officer, that you really have no
17 recollection of July 9th through July 20th other than your
18 general impression of what was supposed to be done during
19 the whole period you were on duty?

20 A. Basically, yes.

21 MR. GRANUCCI: Object to the form of the question as
22 overly argumentative. If counsel would rephrase it to
23 eliminate the phrase about what was "supposed" to be done,
24 and substitute in what he generally did, I think the ques-
25 tion might be more acceptable. As it is, I think it is

1 confusing and a bit unfair.

2 MR. COHLER: I would like to be able to ask both ques-
3 tions if I have to, Your Honor.

4 THE COURT: All right.

5 MR. GRANUCCI: With that understanding, I will withdraw
6 the objection.

7 MR. COHLER: I believe the witness stated an answer.
8 Did the reporter get an answer?

9 THE REPORTER: Yes.

10 MR. COHLER: What was it?

11 THE REPORTER: The answer: "Basically, yes."

12 MR. COHLER: Q. And the same is true, is it not, that
13 you have no independent recollection of July 9th through
14 July 20th; it is ~~melded~~^{melded} in with all your experiences
15 throughout the time you worked on the first floor of O-wing?

16 A. There was nothing that set it out from any other
17 times. It was a normal period.

18 Q. Would you answer the question, please.

19 A. No. It does not stand out in my mind.

20 MR. COHLER: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. OAKES:

23 Q. Officer Caldwell, you did work during the period
24 of July 9th through July 20th 1965?

25 A. Yes.

1 Q. Mr. Jordan was in the strip cell area during that
2 time, was he not?

3 A. Yes, he was.

4 Q. Aside from your independent recollection, would
5 you have recalled whether or not the cells would have been
6 in an unclean condition at that time?

7 A. I would have known, yes.

8 Q. Would you recall that now?

9 A. If there was anything outstandingly filthy about
10 the cells, such as human defecation, I would notice it be-
11 cause these things do stand out in my mind. There have
12 been times when this odor has been in the wing, and you
13 just can't miss it.

14 Q. Fine. Thank you. Now, when you check the wings,
15 what do you do?

16 A. When I--

17 Q. Or check the cells, pardon me.

18 A. As I stated before, I try to--not to stand around
19 them too long to arouse the inmates. But I shine my light
20 around the fixtures, the plumbing devices, the bars of the
21 cell, shine it on the inmate, keeping it out of his face as
22 much as possible, possibly take a glance on the bed. It
23 varies. Like I say, there is no set pattern, so you--

24 Q. Now, in checking a quiet cell, do you have to open
25 up either the door or the flap if they happen to be closed?

1 A. Generally we open the door.

2 Q. Generally you open the door?

3 A. Yes.

4 Q. You, therefore, go inside?

5 A. Might step inside, yes.

6 Q. So in order to detect, perhaps a nauseous odor, you
7 would not have to stand outside the cell?

8 A. No.

9 Q. During the course of the evening, will you not
10 detect this because you had been into the cell itself?

11 A. Definitely. If it was there, you would pick it out.

12 Q. You stated on direct examination that there are
13 two men on duty in O-wing.

14 A. Right.

15 Q. When you go back in the cell area, what procedures
16 are followed?

17 A. If I have to go back into the cell area, I call the
18 officer upstairs. He comes down. I give him my keys and
19 he opens the doors for me and I go back. I never go into
20 the cell area on my own. There is always the officer there.

21 Q. That means he has to leave his post?

22 A. Yes sir.

23 Q. And vice versa. If he goes back, you must leave
24 your post?

25 A. Yes.

1 Q. Therefore, if a disturbance were to be created
2 during this shift, he would have to come downstairs, open
3 the cell, let you inside--

4 A. Open the--

5 Q. I am sorry. Open the grille gate?

6 A. Right.

7 Q. And his floor would be left unguarded?

8 A. Right. Yes sir.

9 Q. If a disturbance were to spread, you would have to
10 obviously call for more help, is that correct?

11 A. Definitely.

12 Q. How heavily staffed is the institution during your
13 shift?

14 A. As I remember, on the first watch we have 14
15 officers taking care of 10 wings, plus four towers, plus
16 we have an outside sergeant, a control sergeant, and a
17 watch lieutenant and a watch sergeant.

18 MR. OAKES: I have no further questions.

19 RECROSS-EXAMINATION

20 BY MR. COHLER:

21 Q. Officer Caldwell, in making a security check or
22 head count, do you ever open the window flaps on the door
23 rather than opening the door?

24 A. No, I do not.

25 Q. Never?

1 A. Let me back up.

2 Q. Please. Be very careful.

3 A. I would never open the window flap because of the
4 fact I can't hardly lift it.

5 Q. I don't mean the big one. There is a little flap
6 on the door itself, isn't there?

7 A. Yes.

8 Q. That is the one I am referring to. Do you ever
9 open that to make a head count or a security check?

10 A. No, because of the fact it is a little taller--I
11 am not very tall, and I can't see into the cell.

12 Q. You mentioned on some occasions there had been an
13 odor in the wing, noticeable to you. Isn't it true that
14 on some occasions a number of inmates will throw things out
15 into the corridors which would create a large mess, which
16 would include a large odor?

17 A. During a disturbance I have never noticed a com-
18 plete difference in the change of the smell, unless, of
19 course, they had been burning. This has been the only time
20 that the odor has changed to any significance.

21 Usually what is thrown out on the tier, which is always,
22 every day, thrown out on the tier--there is paper, sand-
23 wiches, orange peelings, just general debris.

24 Q. There has been some testimony that on some oc-
25 casions inmates will throw human defecation out on the

1 officers or out into the tier, or throwing it generally.
2 Has this ever happened in your experience?

3 A. I have never had it thrown at me. However, on two
4 occasions--I can't remember the dates--there has been
5 defecation thrown on the tier itself, I believe to get me
6 to step in it or something like this. But it has been
7 there, and you can't miss it.

8 Q. Has there been a noticeable odor then?

9 A. Well, this is how I found it.

10 Q. Was there a noticeable odor?

11 A. Yes, definitely.

12 Q. You can't remember those dates, though?

13 A. No, I can't remember the dates.

14 Excuse me. I might add that these--both times were on
15 the "Max" side, the ~~D~~^{east side} side. I have never had it, while I
16 have been working there, on the west side or the isolation
17 side.

18 MR. COHLER: Thank you.

19 MR. OAKES: I have no further questions at this time,
20 Your Honor.

21 (Witness excused.)

22 MR. GRANUCCI: At this time defendant would like to
23 call Raul Mata.

24 RAUL MATA,

25 called as a witness on behalf of defendant, being duly
sworn, was examined and testified as follows:

1 THE CLERK: State your full name and occupation to
2 the Court.

3 THE WITNESS: My name is Raul Mata. I am a correctional
4 officer.

5 MR. COHLER: Your Honor, if the Clerk will hand the
6 Court the file, including the list of witnesses, it will
7 appear that this gentleman's name is not included. I under-
8 stand there is a limited purpose for which defendants call
9 Officer Mata. I would like it to be clear on the record
10 by motion, and if it is as limited as it should be, I will
11 not resist; if it is not, I will resist strenuously.

12 MR. OAKES: Your Honor, the issues of this case have
13 gone broader than what occurred in July, the issues created
14 originally by the plaintiff's complaint, we have heard a
15 lot of testimony about witnesses who were present and about
16 occurrences to them on occasions other than July last year.
17 I think it is fair that this man testify about his ex-
18 periences, which go beyond the time of July 9th to July
19 20th 1965.

20 MR. COHLER: Your Honor, I understand that Officer Mata
21 may have some testimony very relevant to the so-called
22 tear gas incident previous to Thanksgiving. Testimony has
23 been heard from inmate Esparza and inmate Wells regarding
24 that incident. I have no objections to examination regard-
25 ing that incident.

1 However, counsel has no opportunity and would be sur-
2 prised by any testimony by Officer Mata going beyond that.
3 There was considerable pretrial difficulty involving this
4 very question which was obviated through the courtesy of
5 defendants' counsel, and that was very shortly before
6 trial. On that occasion, Officer Mata was not brought into
7 the picture and no opportunity for preparation regarding
8 Officer Mata has been available.

9 I am willing to forego any objection which may lie
10 only insofar as it involves the tear gas incident. I don't
11 think I should have to face ^{testimony} at this time about Officer
12 Mata's general experience ranging the whole period of time
13 he may have been at the institution.

14 MR. OAKES: Your Honor, as I said previously, there
15 has been testimony about periods other than the period in
16 question.

17 THE COURT: Let's proceed and see what we eventuate.

18 DIRECT EXAMINATION

19 BY MR. OAKES:

20 Q. Officer Mata, how are you employed, sir?

21 A. How am I employed?

22 Q. Yes.

23 A. I work at the Correctional Training Facility at
24 Soledad.

25 Q. Dor how long?

1 A. I worked there for approximately eight and a half
2 years.

3 Q. What is your current assignment, please?

4 A. I am assigned to the isolation section in the Ad-
5 justment Center, O-wing.

6 Q. During what shift is that, please?

7 A. I work the second watch, 7:30 to 4:00.

8 Q. How long have you been assigned to this?

9 A. For approximately ten months.

10 Q. That would be beginning approximately November of
11 last year, 1965?

12 A. Yes sir.

13 Q. Do you know inmates Esparza and Wells?

14 A. Yes sir, I do.

15 MR. COHLER: Excuse me, counsel. Just so the record
16 is clear, Mr. Wells is no longer an inmate.

17 MR. OAKES: Q. Do you know a Mr. Esparza and a Mr.
18 Wells?

19 A. Yes sir, I do.

20 Q. Do you recall their being in the quiet cells in
21 November of last year, 1965?

22 A. Yes.

23 Q. Calling your attention to the period around Thanks-
24 giving of last year, do you recall an incident in which
25 there was a use of tear gas involving Mr. Esparza?

1 A. Yes.

2 Q. Would you like to relate your version of what
3 occurred at that time?

4 A. Yes sir. It was approximately November 23rd or
5 24th, and the Adjustment Center Disciplinary Committee was
6 hearing Esparza's and Wells' disciplinaries in front of
7 their cells.

8 At that time Esparza "exploded" and climbed on the bars
9 and started rattling and shouting obscenities and attempting
10 to create a general disturbance. It was impossible to
11 continue the hearing, and he was instructed by Mr. Johnston
12 and Sergeant Friedrich and myself to cease that kind of
13 behavior, and he, of course, did not comply, and the dis-
14 turbance was beginning to spread. I heard other people
15 shouting and yelling and rattling bars in the isolation
16 section. I heard bars rattling upstairs.

17 And Mr. Johnston and Mr. Friedrich conferred and
18 decided to use tear gas. And, of course, the equipment was
19 received and Mr. Friedrich--

20 Q. Let me interrupt for a moment. Was there first any
21 request to remove Mr. Esparza's clothing, or that he pass
22 out his clothing?

23 A. Yes. Yes.

24 Q. Please continue.

25 Q. And he, of course, Esparza, refused to pass out his

1 clothing and equipment. Mr. Friedrich instructed Esparza
2 numerous times, two or three times. The first time Esparza
3 went into a fighting stance and told him, "Fuck you, punk.
4 Come in and get them."

5 Mr. Friedrich again instructed him to pass out the
6 equipment, and each time was met with a defiance and a
7 challenge. As a last resort Mr. Friedrich told him that
8 if he didn't, tear gas would be applied.

9 Esparza told him, "Fuck you. It ain't no big thing.
10 Go ahead."

11 At this time, Mr. Friedrich instructed me to release
12 a short burst of tear gas. I put on a gas mask and stepped
13 into the small section right outside the bars and squatted
14 and released one short spray.

15 Esparza was approximately three-quarters of the way
16 from the bars, and he had a blanket over him.

17 I released a short spray onto the floor. He dropped
18 the blanket. He ran over. He grabbed me by the gas mask.
19 I jerked away from him, bumped my head against the wall,
20 and then I released another short spray approximately knee-
21 high. He immediately said, "I give up. Here is my clothes."
22 And he took them off and passed them out.

23 Q. Am I correct in stating then that you did not spray
24 tear gas about the upper portion--

25 A. No sir, I didn't.

1 Q. As I recall, was it two or three bursts?

2 A. It was two bursts.

3 Q. Did you empty the canister into that cell?

4 A. No sir.

5 Q. Was inmate Wells housed next to this man?

6 A. Yes sir.

7 Q. Did you spray any gas into Mr. Wells' cell?

8 A. No sir.

9 Q. None at all?

10 A. No.

11 Q. Were the flaps on Mr. Esparza's cell closed or
12 open when you left?

13 A. They were open.

14 MR. OAKES: At this time I would like to go into his
15 general duties, Your Honor, if I may.

16 MR. COHLER: Your Honor, I am hesitating to go into
17 this, but I feel that I have to object strenuously. Plain-
18 tiff's counsel submitted interrogatories propounded to the
19 Superintendent of the institution. Those interrogatories
20 have been discussed previously.

21 As Your Honor will recall from the testimony, in large
22 part the answers were "No information is available."

23 What inferences may be drawn from that is not the sub-
24 ject of my present discussion. There was a difficulty in
25 the understanding of the interrogatories apparently, and the

1 answers to them, which was brought out in discussion between
2 Mr. Granucci and myself on at least two occasions, the last
3 of those occasions was very shortly before trial was set.
4 I felt that I would be surprised by the presence of eye
5 witnesses having once been told--and I am not implying any
6 bad faith--having once been told that there was no informa-
7 tion available.

8 To obviate that problem, the courtesy was extended to
9 me to go with Mr. Oakes to the institution to interview
10 all people who were thought to have eye witness accounts.
11 This was tape recorded and transcribed. Officer Mata was
12 not one of those persons.

13 A good deal of the testimony before the Court to date
14 has been more succinct than would otherwise have been with-
15 out these informal depositions. My preparation has been
16 enhanced greatly in terms of time.

17 I do not feel it is ^{either} ~~even~~ necessary or proper for this
18 witness to go into his general experience when I have had
19 no opportunity to examine the man before in any way and
20 have relied upon the fact that he wouldn't be called. I
21 just feel it is not necessary to defendants' case, and I
22 am being unduly surprised. I don't feel it is proper.

23 MR. OAKES: Your Honor, the interrogatories raised, as
24 I recall it--and you may correct me if I am wrong, counsel--
25 the officers that were on duty at the time. This man was

1 not on duty in July.

2 Frankly, we did not decide to use this man until last
3 Tuesday at the institution when we heard how the case was
4 going, what witnesses counsel was going to call, and par-
5 ticularly as far as the incident and also the fact that we
6 visited the cell, and Your Honor was in there.

7 We have heard a great deal of testimony about changes,
8 about how the system is being conducted now. This whole
9 thing is in fact an issue, and I think the man should be
10 willing to meet such issues that have been raised at this
11 time.

12 THE COURT: Well, with respect to any of the issues,
13 that is, the incident of the tear gas, any changeovers
14 that have been made, I will hear testimony. But relating
15 to his experience as wholesale over a period of years, I
16 can't see that--

17 MR. OAKES: I was referring to the time--

18 THE COURT: We will go along. If you have any objec-
19 tions, you may reserve them.

20 MR. COHLER: Thank you, Your Honor.

21 MR. OAKES: Q. You are presently an officer in the
22 isolation side?

23 A. Yes sir.

24 Q. Will you describe your duties as the second watch,
25 second duty officer.

1 A. The security and custody of the inmates is my re-
2 sponsibility, their welfare, the general cleanliness of the
3 section, the feeding, the changing of the clothing, escort-
4 ing inmates frequently throughout the day for various com-
5 mittees. That is about the generalization of my duties.

6 Q. Your duties keep you fairly busy?

7 A. Very busy.

8 Q. Regarding the period prior to the time the auto-
9 matic flushing devices were installed, how often during
10 this shift would you flush the commodes in the quiet cells?

11 A. A minimum of twice a shift.

12 Q. What times?

13 A. The morning and in the afternoon.

14 Q. Would you flush them oftener if requested?

15 A. Yes. It was requested frequently.

16 Q. Were you quite regular about flushing?

17 A. Yes sir.

18 Q. As a general policy, are the flaps during your
19 shift left open or closed?

20 A. They were open.

21 Q. Has this been true since last November?

22 A. Yes sir.

23 Q. When might they be left closed?

24 A. When an inmate is creating a disturbance.

25 Q. How often do you clean the cell area on the isolation

1 and strip cell side?

2 MR. COHLER: Counsel, I am going to ask you to be care-
3 ful about time now. Since November?

4 MR. OAKES: Well, the whole thing is limited to that.
5 He wasn't there before then.

6 THE WITNESS: On Saturdays they are GI'd thoroughly,
7 and during the regular working week I take a trash can and
8 a broom and it is issued to the occupied cells and the in-
9 mates in them sweep out the cells. And if there is any
10 spilled food or milk or coffee, I issue a mop. And if they
11 desire to use a mop more frequently, why, it is available;
12 and also a commode brush and soap, et cetera, cleaning
13 material.

14 Q. On your general GI that you mentioned, this in-
15 cludes the quiet cells?

16 A. Yes sir.

17 Q. What procedures are involved when you clean the
18 quiet cell area? How do you go about this?

19 A. We have a hose that we use. I open all of the
20 empty cells and spray soap, and we use scrub brushes and
21 squeegees and mops and they are hosed down and washed
22 thoroughly.

23 The occupied cells, if the inmate wants to use the hose,
24 it is available and he can roll up his equipment and set
25 it up on top of the toilet and he can proceed to clean his

1 cell with the hose and soap and all of the available equip-
2 ment.

3 If he refuses, then he is asked if he wants to use the
4 mop and the other material, commode brushes and soap.

5 Q. Would you furnish a man housed in a quiet cell
6 cleaning material at other periods than on Saturday if he
7 requested it?

8 A. Yes.

9 Q. You have had occasion to place men in quiet cells?

10 A. Pardon me?

11 Q. You have had occasion to place men in the quiet
12 cells, haven't you?

13 A. Yes.

14 Q. Have you ever placed a man in a dirty cell?

15 A. No.

16 Q. By the way, Officer, a week ago yesterday, I believe
17 it was, when His Honor, Mr. Cohler, Mr. Granucci and myself
18 visited the quiet cell area, I noticed you appeared to be
19 scrubbing. Can you explain why you were scrubbing on that
20 day?

21 A. That was a Tuesday, I believe. And the reason for
22 that is I was not able to GI the quiet cell section on
23 Saturday because we had been having difficulties. We had
24 a disturbance and we were very busy and we were anticipating
25 from Saturday up to Tuesday, anticipating more difficulty.

1 However, Tuesday was kind of quiet so I proceeded to change
2 into coveralls and proceed with the cleaning of the section.

3 Q. You had not cleaned from the Saturday before?

4 A. Not from Saturday, no.

5 Q. Are you familiar with what might be called the
6 "inmate grapevine?"

7 A. Pardon?

8 Q. Are you familiar with what might be called the
9 "inmate grapevine"?

10 A. Yes sir.

11 Q. The ability of inmates to get information from one
12 another throughout the institution, even though they are
13 not face to face?

14 A. The rumors?

15 Q. Yes.

16 A. Yes.

17 Q. Is it your opinion, based on your experience, that
18 even an inmate held on O-wing could get information to
19 another?

20 A. It is very easy.

21 Q. Would it be fair to say that you spend a good deal
22 of time in the cell area?

23 A. Yes.

24 Q. Probably more so than officers on the other watch?

25 A. Yes.

1 Q. This includes the quiet cells?

2 A. Yes.

3 Q. You have a lot of contact with the inmates?

4 A. Yes, I do.

5 Q. As a general statement, how would you describe your
6 approach when dealing with an inmate?

7 A. It is an easy, soft approach.

8 Q. Why?

9 A. Because we certainly don't want to create any prob-
10 lems by being harsh with them. We have people that are
11 very excitable.

12 MR. OAKES: That is all I have.

13 CROSS-EXAMINATION

14 BY MR. COHLER:

15 Q. Officer Mata, do the inmates, generally speaking,
16 who are in quiet cells or strip cells require particular
17 custodial care?

18 A. What, sir?

19 Q. Particular custodial care?

20 A. Are they allowed--I don't understand your question.

21 Q. I will start over. I am sorry.

22 With regard, generally speaking, to inmates who are
23 housed in quiet or strip cells, is a particular degree of
24 care required in terms of custody and security?

25 A. Yes sir.

1 Q. These are thought to be, generally speaking, the
2 more dangerous, hostile, volatile inmates; is that correct?

3 A. Yes.

4 Q. You are more careful about what you give them in
5 the way of potential weapons than you are of other inmates,
6 is that correct?

7 A. Yes sir.

8 Q. You are careful that when you are in the cell area,
9 the strip cell area, there must be high security in terms
10 of opening the cell doors, aren't you?

11 A. Yes sir.

12 Q. In fact, there always must be two officers present?

13 A. Not all the time.

14 Q. Would you explain that, please.

15 A. If a person has been emotionally disturbed, has had
16 sufficient time to calm down, quiet down, and after estab-
17 lishing a friendly relation with him, it is up to the in-
18 dividual's judgment at the time, if another officer is not
19 available, immediately available, if it is necessary to
20 bring this man out, if he in his judgment feels that no--
21 there will be no violence of incidents involved, he might
22 bring the inmate out by himself. But it is not customary.

23 Q. All right. For instance, and turning to bodily
24 cleanliness, for one, in order for an inmate to have a
25 shower, he must be escorted if he is coming from a quiet

1 cell, or strip cell, is that right?

2 A. That is right.

3 Q. When he is passing from a quiet cell or strip cell
4 to the shower area, he has no tools or equipment or
5 portential weapons with him, does he?

6 A. No sir.

7 Q. At least he is not supposed to. I understand, and
8 there has been testimony, I believe, that something as
9 simple as a toothbrush can be made into a very dangerous
10 weapon with other matter, is that correct?

11 A. Yes sir.

12 Q. What do you think about the potential dangerous
13 weapon use of a broom?

14 A. It can be used as a weapon.

15 Q. Or a mop?

16 A. They also can be used as weapons.

17 Q. Or parts of a bucket? All those things can be used
18 as weapons?

19 A. Yes.

20 Q. In fact, you don't even have to do very much to a
21 broom or a mop to use it as a weapon, do you?

22 A. No.

23 Q. What security precautions are taken in giving brooms
24 or mops to inmates in quiet or strip cells?

25 A. The officer is present during the time they are

1 using this equipment, and he is accountable for it after
2 they finish.

3 Q. That latter portion of your statement is in terms
4 of making sure they aren't left behind, is that right?

5 A. That is right, to make sure the inmate returns it
6 to you.

7 Q. Is there but one officer present while the inmate
8 is actually using the equipment?

9 A. That is correct.

10 Q. About how long would it take a man in a quiet cell
11 or a strip cell to use this equipment to clean out his cell?

12 A. It varies, depends on whether he is going to use
13 the hose or if he is just going to sweep it out and mop it.
14 Ten, fifteen minutes, approximately.

15 Q. During that time the officer, and yourself if you
16 were the officer, would be standing directly outside his
17 cell?

18 A. Yes sir.

19 Q. You have stated that you are very busy. Is it ever
20 possible that you don't get to every cell in all of the
21 area of your responsibility for cleaning every Saturday?

22 A. No sir. It is a difficult--it is very difficult
23 to do it, but it is done. The officer--my partner that I
24 work with holds the keys and he sits in an area where he
25 can observe me, and I take the time to go back there and

1 clean them thoroughly.

2 Q. You do it yourself personally?

3 A. I take an inmate porter with me, and I participate.

4 Q. You both do it?

5 A. Yes sir.

6 Q. Do you find any difficulty, Officer, in having an
7 inmate porter clean another man's cell?

8 A. Yes sir.

9 Q. What is that difficulty?

10 A. They just don't like to do it.

11 Q. But you have them do it?

12 A. Yes sir. They do it reluctantly.

13 Q. Do you feel the cleanliness of the cell is more
14 important than the problem that may be created by asking
15 an inmate porter to clean another man's cell?

16 A. Yes.

17 Q. Officer, please direct your attention to the period
18 before Thanksgiving, the so-called tear gas incident with
19 Mr. Esparza. I would like to see if we can straighten out
20 the timing of this as closely as possible. If you can't
21 recall, please say so.

22 Do you recall about what time there began to be a dis-
23 turbance from Mr. Esparza's cell?

24 A. Approximately 3:30.

25 Q. 3:30?

1 A. Approximately.

2 Q. Is that afternoon?

3 A. Yes sir.

4 Q. About how long did that disturbance last before an
5 officer went back to the cell-- Excuse me. There was a
6 Committee that day, wasn't there?

7 A. Yes sir.

8 Q. I am sorry. Was the Committee examining Mr.
9 Esparza or Mr. Wells?

10 A. I believe they were hearing Wells' disciplinary.

11 Q. You said before that the Committee was hearing
12 both Esparza and Wells on disciplinary. Was that an error?

13 A. No sir, that was correct.

14 Q. They were hearing both--

15 A. No, not at the same time. They were going to hear
16 both of them at this time.

17 Q. Do you recall what the incidents were leading up
18 to their examining both Wells and Esparza?

19 A. Yes sir, I do.

20 Q. Please relate that.

21 A. I had to--I had observed some contraband that was
22 brought in from the window, into the isolation section, and
23 up into the vicinity of Esparza's cell. So I proceeded to
24 search approximately three or four cells.

25 Esparza's cell was the last one. As I was searching

1 his cell, I found tobacco, which is not allowed in the
2 section, and I confiscated it. Esparza at this time
3 "exploded." He thought it wasn't fair that I should search
4 his cell like I did the rest of the other inmates, and he
5 went into a rage and shouted curses, obscenities, and I
6 decided that since he was creating a disturbance that the
7 best thing that could be done was to segregate him from the
8 section, to a quiet cell.

9 As Esparza was acting out his hostility in the corridor,
10 the exercise corridor, Mr. Friedrich and Officer Foncannon
11 arrived on the scene, and we had to order Esparza two or
12 three times to proceed to the quiet cell. He finally did so.

13 While this was occurring, Wells participated. He also
14 became unruly and shouted obscenities, and there was a lot
15 of unrest in the section. Other inmates were beginning to
16 shout.

17 So after we celled Esparza, we moved Wells also.

18 Esparza and Wells had a close relationship, and it is
19 my opinion that whenever one got into trouble, the other
20 one had to participate, to back him up or to save face.

21 And on their way back to the quiet cells, Esparza-- I
22 mean, Wells was arguing, and he stopped two or three times.
23 The last time he stopped abruptly, he had his hands
24 clenched, and he stopped abruptly and he started to turn
25 around. He is a pretty big man. He is a weight lifter.

1 so the officer behind him, thinking that Esparza was going
2 to start fighting, put an arm lock on him. And I grabbed
3 one leg and Mr. Friedrich grabbed the other.

4 Wells started struggling violently. We were having a
5 very difficult time. It was necessary for another officer
6 to enter the section and take him around the waist, and we
7 carried him back to the quiet cell.

8 Q. When you say "waist," are you using that somewhat
9 figuratively?

10 A. Yes sir. Around the waist, like this (indicating).

11 Q. The waist.

12 A. Well, around his back, let's put it that way.

13 Q. Not between his legs?

14 A. No sir.

15 Q. This was a bit of a conflagration, and you were
16 interested on holding onto a leg, weren't you?

17 A. Yes sir.

18 Q. Were you looking around to see where the other
19 officers were--

20 A. I was trying to hold onto the leg.

21 Q. You weren't very concerned about where the other
22 officers were grabbing Mr. Wells?

23 A. I remember seeing Mr. Friedrich holding onto the
24 other one, and the other officer had an armlock while Wells
25 was struggling.

1 Q. In the middle of this struggling, you were exerting
2 as much force as you could to carry out your duty properly
3 and hold onto that leg?

4 A. I was trying to hold onto him, let's put it that
5 way.

6 Q. You remember precisely where all of the other
7 officers were holding him?

8 A. Yes sir, I do.

9 Q. Let's turn back to 3:30 when Mr. Esparza began
10 making a lot of noise, rattling on the bars, climbing up
11 the bars, during the meeting. What was the next thing that
12 happened? And how long afterward?

13 A. The next thing that occurred, Mr. Friedrich in-
14 structed him to stop and he didn't. Mr. Johnston instructed
15 him to stop and he didn't. I instructed him, and he would
16 not comply with the instructions.

17 Q. Did you close the flaps to try and keep him quiet,
18 to try to keep this agitation from spreading?

19 A. I do not remember.

20 Q. You don't remember whether the flaps were closed
21 or open, is that right?

22 A. Yes sir.

23 Q. Go ahead, please. How long did he continue making
24 noise and disobeying the orders to stop?

25 A. For approximately-- I can't estimate the time.

1 Q. A matter of minutes?

2 A. At the time the other sections were becoming unruly.

3 Q. Wouldn't it have been normal procedure to close
4 the flaps?

5 A. Yes.

6 Q. That is their purpose, to stop this type of agita-
7 tion?

8 A. Yes.

9 Q. But you can't remember whether or not they were
10 open or closed?

11 A. No sir.

12 Q. Was Mr. Esparza making all this noise and dis-
13 obeying orders to be quiet for a minute? A half hour? An
14 hour? A couple of hours? Three hours? Have you any re-
15 collection?

16 A. No, he just kept on rattling bars and shouting.

17 Q. Then what happened?

18 A. Thereafter the--while he was instructed various
19 times to cease, and he didn't and the rest of the sections
20 were becoming unsettled, so he was instructed to pass out
21 his clothes, and he--he was instructed to pass out his
22 clothes, and he refused.

23 Q. At the time he was instructed to pass out his
24 clothes and he refused, who was present, as you recall?

25 A. Mr. Johnston, Mr. Friedrich, myself, and I believe

1 Mr. DeCarli.

2 Q. Was Mr. Kiepura there?

3 A. I do not remember if he was there.

4 Q. After he refused to pass out his clothes, what
5 happened?

6 A. Mr. Friedrich and then Mr. Johnston conferred, and
7 I believe they decided to obtain gas.

8 Q. Were you in on that conference?

9 A. No sir.

10 Q. Go ahead, please.

11 A. So we went up to the officers' area and waited for
12 the gas.

13 Q. "We," being all the people?

14 A. All of the group, and of course, this disturbance
15 was going on at the time, and after it arrived, why, we
16 went back and Mr. Friedrich instructed--

17 Q. All right. I want you to back up a little bit,
18 please. You say you all went out into the officers' area.
19 That is out in the front part? It opens into the east and
20 west corridor?

21 A. Yes sir.

22 Q. About how long did it take before the gas arrived?

23 A. I don't remember. Ten, fifteen minutes, or more.

24 Q. During that ten or fifteen minutes, was there
25 general agitation throughout O-wing?

1 A. Yes sir. There were people rattling upstairs and
2 there were people rattling bars downstairs.

3 Q. Was there anybody dispatched to take care of the
4 rattling upstairs?

5 A. Yes sir. I believe the officers were attempting to
6 cope with it.

7 Q. There were other officers upstairs at the time?

8 A. Yes sir.

9 Q. But the same group, Johnston, Friedrich, yourself,
10 and DeCarli, were waiting out in the officers' area; is
11 that correct?

12 A. Yes sir.

13 Q. During this ten or fifteen minutes, about how loud
14 was the general bar rattling in the O-wing section itself?

15 A. It was loud. It would stop momentarily, and it
16 would start again.

17 Q. You considered it a fairly major disturbance?

18 A. No sir. It wasn't a major disturbance, but there
19 were people participating.

20 Q. You had called for tear gas to stop something which
21 wasn't a major disturbance?

22 A. No sir. We called for gas to make Esparza stop.

23 Q. Was it just to make Esparza stop? Or was it to
24 stop Esparza because of the spread of this agitation?

25 A. It was stop stop Esparza.

1 Q. To your knowledge, there was no consideration given
2 to the fact that the agitation might spread?

3 MR. GRANUCCI: Objection, Your Honor. I think that
4 question is argumentative.

5 THE COURT: Sustained.

6 MR. COHLER: Q. Was the noise throughout O-wing about
7 at ordinary level for bar rattling noise? Or was it soft?
8 Or was it particularly loud?

9 A. Esparza would start it. He would rattle, and then
10 somebody else would rattle. He would stop and they would
11 stop.

12 Q. Could you estimate how many cells were rattling
13 their bars, how many inmates in their cells were rattling
14 their bars?

15 A. No sir, I couldn't.

16 Q. After approximately fifteen minutes, when the tear
17 gas arrived, would you go very slowly and tell us what
18 happened, please. Try to remember every detail.

19 A. We returned to Esparza's cell. He was instructed
20 to remove his clothing. He went to a fighting stance. He
21 told Sergeant Friedrich, "Fuck you. You come in here and
22 get them." Mr. Friedrich instructed him two or three times.
23 He still refused. He was defiant and challenging.

24 Finally, Mr. Friedrich told him that if he didn't he
25 would have to use gas. Esparza told him, "Well, that ain't

1 no big thing," and cussed him out. Mr. Friedrich instructed
2 me to go ahead and release one short spray.

3 Q. I think you have forgotten something. You put a
4 gas mask on, didn't you?

5 A. Before I entered the cell, yes.

6 Q. Mr. Friedrich instructed you to put the gas mask on
7 before you went into the cell?

8 A. Yes sir.

9 Q. Let's stop right there.

10 Officer Mata, what instructions have you had and what
11 training have you had, if any, in the use of tear gas?

12 A. We are trained how to use the different equipment.

13 Q. Is that when you first come to work? Or when?

14 A. This is general in service training for all per-
15 sonnel.

16 Q. When did you receive your training in the use of
17 tear gas?

18 A. This training is received around July of every
19 year.

20 Q. Every year? There is annual in-service training?

21 A. Yes sir, along with firearms and different types
22 of weapons.

23 Q. What are the instructions you receive in the use of
24 tear gas, Officer Mata?

25 A. We had an instructor there that gave us the name

1 of the equipment and how it is used.

2 Q. Can you be more specific? Doesn't he tell you more
3 about-- What does he do? What is the real training here?

4 A. He shows you the different weapons, like the gas
5 cylinders, the gas guns.

6 Q. The gas guns.

7 A. The different shells or different makeup of the gas.

8 Q. What does he explain to you about the dangerous
9 quality, if any, of tear gas?

10 A. He stated it was harmless. It was irritating, but
11 harmless.

12 Q. That it could never cause great bodily harm?

13 A. That is right.

14 Q. And it could never kill anybody?

15 A. No sir.

16 Q. When you say "no sir," you mean that is what he
17 told you?

18 A. Yes.

19 Q. Does he give you instructions on where to direct a
20 spray or a shot of tear gas?

21 A. No sir, he doesn't.

22 Q. Have you ever had any instructions in where to
23 spray or direct a charge of tear gas?

24 A. Yes sir. Mr. Friedrich has instructed us on how to
25 use it.

1 Q. What were those instructions?

2 A. He stated not to fire directly into a man's face,
3 to fire--release the gas down low.

4 Q. When did you receive those instructions?

5 A. I do not recall. It wasn't at this time. He told
6 me--he instructed me not to release gas high.

7 Q. Did he say why?

8 A. No sir.

9 Q. How often had you used tear gas, Officer Mata,
10 personally been the one to turn the knob?

11 A. About three, approximately three or four times. I
12 do not recall.

13 Q. How often of those three or four times did you use
14 it in a cell itself, as opposed to out in a corridor or a
15 general gathering of inmates?

16 A. How many times?

17 Q. Yes.

18 A. About three or four times.

19 Q. Each time you have personally used it, it has been
20 directed into a cell itself?

21 A. Yes sir.

22 Q. Were those three or four times, some of them or
23 all of them, before or after this Thanksgiving incident
24 with Mr. Esparza?

25 A. I believe it was after.

1 Q. This was the first time you had used tear gas?

2 A. No sir.

3 Q. I am a little confused. How many times before this
4 time had you used tear gas?

5 A. Before Esparza?

6 Q. Yes.

7 A. Approximately three or four times.

8 Q. I misunderstood you. Thank you.

9 THE COURT: We will take a recess for ten minutes.

10 (A short recess was taken.)

11 THE CLERK: 44309 and 44786.

12 MR. COHLER: Ready for plaintiff and petitioner, Your
13 Honor. Mr. Mata will take the stand again, please.

14 Q. Officer Mata, you were relating the incident in-
15 volving the use of tear gas prior to Thanksgiving. You had
16 stated the nature of your training and experience in the
17 use of tear gas.

18 Now, would you slowly describe for the Court, after
19 Sergeant Friedrich, among others, had ordered Esparza to
20 throw out his clothes, and when the tear gas was brought
21 and you put your mask on, what happened?

22 A. I stepped inside the outer section of the cell, and
23 I squatted, and I released a short spray of tear gas.
24 Esparza, at that time, threw his blanket down, ran over,
25 grabbed my gas mask, I pulled away from him and bumped my

1 head against the wall, and I released another short spray
2 low.

3 Q. Did this all happen very quickly?

4 A. Yes sir.

5 Q. Condensed into a matter of about a minute?

6 A. Seconds.

7 Q. You said "a short spray." Would you mind going
8 "pssst" for the length of time that you sprayed the first
9 time?

10 A. It was a very short spray, just "pssst" and I shut
11 it off.

12 Q. How does this work? There is a canister you hold
13 in your left hand?

14 A. Yes sir.

15 Q. And you turn a knob--

16 A. It has a valve on top with a small spout, and I
17 believe you turn left. And I just barely turned it, and I
18 released a short spray, and I shut it off.

19 Q. I am trying to find out what "short" means to you,
20 is all I am trying to do, Officer.

21 A. Well, I will demonstrate.

22 Q. Please.

23 A. "Pssst," and that is it, and then Esparza ran over
24 and he grabbed me by the gas mask, I jerked away, bumped
25 my head. Then I released another one, "pssst," and that

1 was enough, he gave up and passed out all of the equipment.

2 Q. You say this was all condensed into a few seconds.
3 How quickly does tear gas permeate an area?

4 A. I don't think I am--I don't think I can answer that.
5 It spreads.

6 Q. Let me ask you this: If a man had a blanket over
7 him and you were shooting it towards the floor, would it
8 be just a matter of seconds before it got inside under the
9 blanket, and he threw the blanket down and came rushing at
10 you?

11 A. I don't understand that question.

12 Q. Well, I have never had tear gas shot at me. I
13 would like the record to be clear as to how quickly it
14 takes, in your recollection, for the tear gas to be shot
15 out at the floor, rise up under a blanket, get a man to a
16 point where he feels the effects, throws down the blanket
17 and comes rushing at you.

18 A. I don't know.

19 Q. Half a minute?

20 A. I don't know.

21 Q. You couldn't say then that that was just a matter
22 of seconds?

23 A. I am talking about the actual incident itself when
24 the gassing was taking place.

25 Q. How long did it take for the short burst fired at

1 the floor to rise up under the blanket, have an effect upon
2 the inmate, have him throw down his blanket and come rush-
3 ing at you?

4 A. I don't know. As soon as I--

5 MR. GRANUCCI: Objection. I don't know that it did
6 affect him. It may have persuaded him psychologically
7 that he ought not continue resistance. It may have had a
8 physical effect on him. The question, to that extent, is
9 vague.

10 MR. COHLER: I will go back a little further.

11 Q. When you released the short burst, as you described
12 it, did Mr. Esparza thereafter throw down the blanket?

13 A. Yes.

14 Q. Did he say anything, that you recall, as he threw
15 down the blanket?

16 A. No. I don't remember him saying anything. He just
17 rushed over.

18 Q. Did he say anything like, "I give up"?

19 A. No.

20 Q. Did he cough?

21 A. No.

22 Q. He was about three-quarters of the distance of the
23 cell, is that right?

24 A. Yes.

25 Q. Away from the bars?

1 A. Yes.

2 Q. Did he spring at the bars?

3 A. He rushed over.

4 Q. He ran?

5 A. Yes.

6 Q. Now, you were standing in between the bars and the
7 wall.

8 A. Yes.

9 Q. How close to the bars were you standing?

10 A. Close enough to where as I could aim the spout of
11 the gas cylinder.

12 Q. How close do you have to--

13 A. Between the bars.

14 Q. You had to be close enough to get the spout to fit
15 between the bars, is that the idea?

16 A. Yes.

17 Q. He rushed at you. Did he actually grab your gas
18 mask?

19 A. Yes.

20 Q. Did he pull it off?

21 A. He was trying to.

22 Q. Did it come off at all?

23 A. No. I jerked away.

24 Q. You fell backwards, is that it?

25 A. I didn't fall back. I jerked away and I hit my

1 head against the wall behind me.

2 Q. As you jerked away and hit your head on the wall
3 behind you, did you release the second burst?

4 A. No. After my head bounced off the wall, then I
5 released another short spray.

6 Q. Did your head hurt from hitting the wall?

7 A. Yes.

8 Q. Did you blink?

9 A. I think I did.

10 Q. Are you as certain as to where the gas was aimed
11 for the second burst as you are as to where it was aimed
12 for the first burst?

13 A. Yes sir. It was low.

14 Q. And you are just as sure of the second burst after
15 you hit your head as you are of the first burst when you
16 stood up close and aimed it between the bars, is that right?

17 A. I didn't stand up.

18 Q. Excuse me. I didn't mean to imply that.

19 You are just as sure of the aim of the second burst
20 after you hit your head against the wall and blinked--

21 A. Yes sir.

22 Q. --as you were the first when you crouched and
23 actually held it between the bars?

24 A. Yes sir.

25 Q. Why were you so careful about holding it right

1 between the bars on the first time, and you felt you could
2 just spray immediately the second time after you bounced
3 back and hit your head?

4 A. Because I didn't want to release a high spray.

5 Q. I understand what you didn't want to do, Officer.

6 You felt it was necessary in releasing the first burst
7 to squat and actually get the nozzle or whatever it is,
8 between the bars so you could control, direct it. Is that
9 right?

10 A. Yes.

11 Q. And the second time you released it immediately
12 after you bounced back and hit your head. Is that correct?

13 A. Right.

14 Q. Was there a good deal of confusion during this
15 incident?

16 A. I wouldn't say confusion.

17 Q. Is it normal to have that many men back at the
18 strip cell area?

19 A. No sir, it isn't. But they were having a dis-
20 ciplinary hearing. The Committee itself was there.

21 Q. But there were more men there in what might be
22 considered a small area than there ordinarily are. Is
23 that correct?

24 A. There is always a group of people in a disciplin-
25 ary committee.

1 Q. Was there anyone besides yourself standing in the
2 space between the bars and the wall of the strip cell area?

3 A. No sir.

4 Q. You couldn't recall whether or not the flaps were
5 open or closed?

6 A. I know they were open when the disciplinary hear-
7 ing was taking place.

8 Q. A few minutes ago you couldn't recall.

9 A. You confused me.

10 Q. I am not trying to.

11 A. I know that, but you still confuse me.

12 Q. We will let it drop.

13 You stated that yourself, as well as Sergeant Friedrich
14 had ordered Esparza to take his clothes off. Is that
15 correct?

16 A. No. I didn't instruct Esparza to take his clothes
17 off.

18 Q. The sergeant did, Sergeant Friedrich?

19 A. Yes sir.

20 Q. Did Sergeant Friedrich tell Mr. Esparza why he
21 wanted his clothing passed out?

22 A. That's right.

23 Q. What did he say?

24 A. Well, first of all, when Esparza "exploded" and
25 was making all this noise, he was instructed to be quiet

1 and quit, and he didn't. And, of course, after the equip-
2 ment was obtained, he was instructed to remove them. He
3 was told that he would get them back as soon as he quit
4 disturbing the section. I do not recall the exact words
5 Mr. Friedrich used.

6 Q. The removal of clothing then, as you understood it
7 at the time, was an instrument of punishment and hopeful
8 deterrence as to the noise-making. Is that correct?

9 A. No sir.

10 MR. GRANUCCI: Objection to the question as argumenta-
11 tive.

12 THE COURT: Sustained.

13 MR. COHLER: That is all, Officer. Thank you.

14 REDIRECT EXAMINATION

15 BY MR. OAKES:

16 Q. Officer Mata, last Tuesday did you have any idea
17 that the Court was going to view the area?

18 A. No sir.

19 Q. There was some mention about weapons, and reference
20 was made to brooms and mops during cleaning and the fact
21 that these might be used as a weapon. Now, isn't a broom
22 or a mop quite a bit larger than the normal weapons found
23 in the institution?

24 A. Yes sir.

25 Q. When brooms and mops are being used by an inmate in

1 the quiet cell, is he not inside the cell?

2 A. Yes, he in the cell, and I pass the equipment in-
3 side.

4 Q. You are on the outside?

5 A. Yes.

6 Q. Discussing this Disciplinary Committee hearing
7 that was in process in front of Mr. Esparza's cell and Mr.
8 Wells' cell, if the flaps had been closed, would that ade-
9 quately have closed down the noise?

10 A. No sir. You can-- If a person is creating a dis-
11 turbance in the quiet cell with the falps up, you could
12 still hear him.

13 Q. Could this still disturb the rest of the inmates
14 in the wing?

15 A. Yes sir.

16 Q. How much do you weigh?

17 A. Approximately 200 pounds.

18 Q. How tall are you?

19 A. Five-nine.

20 Q. Would you say rather stocky?

21 A. Yes sir.

22 Q. How much room is between the steel front of the
23 quiet cell and the metal bars, vertical bars?

24 A. Approximately two or three feet.

25 Q. When you stooped down--

1 A. I squatted.

2 Q. --squat down, do you pretty much fill up the whole
3 space?

4 A. There isn't much space left.

5 Q. So if you were to fall backward, would you have
6 very far to fall?

7 A. No sir.

8 Q. So you would not strike your head, probably, to such
9 a state that you would lose consciousness?

10 A. No sir.

11 MR. OAKES: That is all I have.

12 MR. COHLER: That is all. Thank you, Officer.

13 MR. OAKES: Just a minute. If the Court has any ques-
14 tions--

15 THE COURT: No questions.

16 (Witness excused.)

17 MR. OAKES: I'd like to recall John Nash.

18 THE CLERK: You may resume the stand.

19 JOHN L. NASH,

20 recalled as a witness on behalf of the defendants, having
21 been previously duly sworn, resumed the stand and testified
22 further as follows:

23 THE CLERK: Will you restate your name for the record,
24 please.

25 THE WITNESS: My name is John Lewis Nash.

DIRECT EXAMINATION

1
2 BY MR. OAKES:

3 Q. Mr. Nash, you have previously testified at some
4 length in this matter. First of all, I would like to thank
5 you for your patience.

6 I should like to review, if I might, just briefly what
7 has been stated. Counsel will correct me if I misstate
8 anything, and I wish you would also, please.

9 I believe you testified that you are 34 years old, you
10 work the third watch in the isolation side, the quiet cell
11 side, and your duties also include the "Max" side or the
12 "Max" security side in O-wing; that your duties are basi-
13 cally that you make security checks during this watch, you
14 make counts, you pass out equipment, including shaving
15 equipment, supplies; you counsel inmates; you service the
16 cells, which include the strip cells; and things of this
17 nature. Is that correct?

18 A. Correct.

19 Q. I believe you testified also that you know inmate
20 Jordan.

21 A. Yes, I do.

22 Q. I would like to call your attention to--I believe
23 it is Plaintiff's Exhibit 13, the isolation segregation
24 record.

25 MR. COHLER: ^{13,}
~~1.3,~~ counsel?

1 MR. OAKES: Yes.

2 Q. I call your attention to the second entry for
3 7/9/65. I believe that states, "We seized, searched, and
4 celled, I/C moved," initials "JM." Are your initials?

5 A. Yes sir.

6 Q. Does that indicate you were on duty the evening
7 Mr. Jordan was moved to a quiet cell?

8 A. Yes sir.

9 Q. Do you recall the occasion?

10 A. I recall it vividly.

11 Q. Specifically? Or do you recall it fairly well?

12 A. Fairly well, I would say.

13 Q. What procedures are generally employed when you
14 receive a man in the watch, he is to be placed in a quiet
15 cell?

16 A. The man usually, if he is in the Adjustment Center,
17 is searched before he brought down. And when he comes down
18 to me, I go back and search his cell and I inspect his cell,
19 look for contraband, check for the cleanliness of the cell.

20 Q. You indicated that you searched the cell. Did you
21 search the cell on this evening?

22 A. Right. I did.

23 Q. How do you conduct this search?

24 A. At this time, I used my flashlight. I usually
25 started at the door, look around the commod area and the

1 bars and the ventilator. I look--it is pretty well de-
2 tailed when I search.

3 Q. Do you also check the walls, perhaps?

4 A. Yes, I do.

5 Q. During the course of such a search, would you
6 notice if there was excrement on the walls?

7 A. I would.

8 Q. Would you notice if the cell is in an otherwise
9 unclean condition?

10 A. I would.

11 Q. What would you consider to be an unclean condition?

12 A. Well, if it have foreign matter, food particles,
13 excrement or anything that shouldn't be in the cell, I
14 would call it in an unclean condition.

15 Q. Officer Nash, have you ever placed a man in an un-
16 clean cell?

17 A. I have. But I have given him stuff to clean it
18 out with. I tell him, "If you want to clean it out," or
19 give him a broom, something to clean it out.

20 Q. What dictates? Why have you placed a man in an un-
21 clean cell?

22 A. Mainly because I didn't have another one to put
23 him in.

24 Q. Would this be, perhaps, during a disturbance or
25 something going on when you needed to use the cell?

1 A. No, not necessarily.

2 Q. In other words, there were no other cells available?

3 A. No other cells available.

4 Q. Did you place Mr. Jordan in an unclean cell?

5 A. No sir.

6 Q. The conduct of your duties includes checking on
7 your inmates during the course of the evening, does it not?

8 A. Yes, it does.

9 Q. Do you recall that inmate Jordan was housed in a
10 quiet cell during the month of July 1965?

11 A. Well, about the only way I can recall is by the
12 record.

13 Q. You have reviewed the record?

14 A. Right.

15 Q. You refreshed your recollection to the extent that
16 you know he was there?

17 A. Right.

18 Q. Do you recall talking to Mr. Jordan?

19 A. I recall talking to him.

20 Q. In talking to him, did you have to be in quite
21 close proximity to his cell?

22 A. Yes.

23 Q. Would you probably enter in past the steel door?

24 A. Yes, I would.

25 Q. Furthermore, I believe you testified that you

1 serviced the cell every night.

2 A. Yes.

3 Q. Would this not require you to go inside the cell?

4 A. It does.

5 Q. Pardon me. Inside the steel door area.

6 A. Yes.

7 Q. Mr. Nash, did you ever at any time notice the odor
8 of human excrement emanating from Mr. Jordan's cell?

9 A. No.

10 Q. Would you have noticed such an odor?

11 A. I am quite sure I would.

12 Q. Would you remember it now?

13 A. I think I would. I am quite sure I would.

14 Q. Did you at any time notice the odor of vomit
15 emanating from Mr. Jordan's cell?

16 A. No sir.

17 Q. Would you have noticed it?

18 A. I would.

19 Q. Do you think you would recall it now?

20 A. I think I would.

21 Q. Officer Nash, during the course of his testimony,
22 Mr. Jordan referred to you as a "fish bull." Do you know
23 what that term means?

24 A. I have heard it used more or less for new officers.

25 Q. You do know what it means?

1 A. Yes.

2 Q. Does the term concern you?

3 A. Not too much, I don't think.

4 Q. Why not?

5 A. Well, I think I have the same approach to inmates
6 at this time as I did at that time.

7 Q. What is that approach?

8 A. Well, I use a moderate approach to them. I don't
9 try to make them afraid of me or anything. I just try to
10 be friendly.

11 MR. OAKES: I have no further questions at this time.

12 CROSS-EXAMINATION

13 BY MR. COHLER:

14 Q. Officer Nash, how long, once again, have you worked
15 as first floor O-wing officer?

16 A. Oh, I'd say approximately 14, 15 months.

17 Q. Since June of 1965?

18 A. Yes.

19 Q. You are presently working there as well?

20 A. Yes, I am.

21 Q. Officer Nash, can you separate out in your re-
22 collection any particular period of time during those 12 or
23 14 months, as opposed to your recollection of your general
24 experience?

25 A. Yes sir. We have had some disturbances there.

1 Q. Short of a disturbance, which would be a particular
2 instance, can you separate out in your recollection a
3 particular period of time, such as July 9th through July
4 20 1965, as opposed to your general experience over the
5 past 12 or 14 months?

6 A. Yes. But not where Jordan is concerned, no.

7 MR. COHLER: Miss Reporter, would you read the answer,
8 please.

9 (The answer was read.)

10 MR. COHLER: Q. You stated that you refreshed your re-
11 collection through examining various documents; is that
12 correct?

13 A. Yes.

14 Q. Before you refreshed your recollection, did you
15 have any memory of that period of time, July 9th through
16 July 20 1965?

17 A. No.

18 Q. What you are able to testify to today is only what
19 you learned from the documents you reviewed; is that
20 correct?

21 A. Yes. I have a vivid memory, but I wouldn't say it
22 would be concrete that Mr. Jordan was in the cell that--I
23 couldn't say I moved him on the 9th until I did look at
24 the documents.

25 Q. You had known that Jordan had been in a quiet cell

1 at some time.

2 A. Sure.

3 Q. You could separate out which period of time in your
4 memory.

5 A. No.

6 Q. Indeed, isn't your memory of more recent experiences
7 in the quiet or strip cell area more fresh than your memory
8 of previous times?

9 A. Sure.

10 Q. Particularly going back as far as the second month
11 you had been on duty, is that correct?

12 A. Sure.

13 Q. For instance, can you remember what other inmates
14 were in quiet cells or strip cells at the same time Mr.
15 Jordan was in July 1965?

16 A. No, I cannot.

17 Q. Or whether or not window flaps or doors were open
18 or closed on various cells during that period?

19 A. No, I can't.

20 Q. Or whether or not--

21 A. I can't distinguish which cells the flaps was open
22 and which cells the flaps was closed at the time.

23 Q. Or even whether during that period was one of the
24 occasions when a man was in a dirty cell and refused to
25 clean it up?

1 A. I don't remember any incident of that nature at all.

2 Q. You couldn't tell the Court whether an incident of
3 that nature happened during this period of time or some
4 other period of time?

5 A. Well, I don't remember any time--at any time that
6 a man was in the quiet cell and refused to clean it up.

7 Q. Oh, I am sorry. I misunderstood your testimony.
8 I didn't mean to ask you that way.

9 You looked at Plaintiff's exhibit and read part of an
10 entry including "I/C moved." Do you have that before you,
11 for July 9th?

12 A. Yes.

13 Q. Is that your handwriting, "I/C moved"?

14 A. I don't think that is my handwriting.

15 Q. The "We seized, searched and celled," is your hand-
16 writing?

17 A. I am sure that is mine.

18 Q. That was the entry with respect to which you put
19 your initials "JN," is that correct?

20 A. Right.

21 Q. After that entry, there appears "I/C moved," is
22 that correct?

23 A. Right.

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

25 THE COURT: We will take the noon recess at this time

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1 and resume at a quarter past 2:00.

2 (Whereupon the luncheon recess was taken until
3 2:15 o'clock p.m.)

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WEDNESDAY, AUGUST 17 1966 AFTERNOON SESSION - 2:15 P.M.

MR. OAKES: I don't know whether Mr. Nash was dismissed. But in any event, I would like to recall him.

THE CLERK: Officer Nash?

JOHN L. NASH,

resumed the stand, having been previously duly sworn, testified further as follows:

REDIRECT EXAMINATION

BY MR. OAKES:

Q. Officer Nash, during the course of your testimony, you stated that you had put a man in an unclean cell.

A. Yes.

Q. Is that correct?

A. Yes sir.

Q. Was that a quiet cell?

A. No. No sir, it wasn't.

Q. What was the state of the uncleanliness of that cell?

A. Well, it had some tooth powder on the floor and a couple of pieces of paper. That is all.

Q. Was the man provided an opportunity to clean up the cell?

A. Yes. I told him-- Let me relate it to you as it were.

I had some old cells--I had another cell that didn't

1 have a light, any light fixture. The light fixture was
2 broken. And I told him, which cell he would prefer, "This
3 one? Or the one that had the toothpaste in it?" And he
4 took the one that had the light. I told him I would give
5 him a broom to sweep it up.

6 Q. Have you ever put a man in an unclean quiet cell?

7 A. No sir.

8 MR. OAKES: I have no further questions.

9 MR. COHLER: No questions, Your Honor.

10 Thank you, Officer.

11 (Witness excused.)

12 MR. OAKES: Call Mr. Johnston, please.

13 THE CLERK: Mr. Johnston?

14 GEORGE F. JOHNSTON,

15 called as a witness on behalf of the defendants, being
16 first duly sworn, was examined and testified as follows:

17 THE CLERK: State your name and occupation to the Court.

18 THE COURT: George F. Johnston, Program Administrator
19 at the Correctional Training Facility at Soledad.

20 DIRECT EXAMINATION

21 BY MR. GRANUCCI:

22 Q. Mr. Johnston, what are the duties of a program
23 administrator?

24 A. Well, in my own case I have the supervision of unit
25 3, which includes the supervision of the general orderliness

1 of the unit, the cleanliness, the feeding in those wings
2 that we feed in the wings, the programs that take place in
3 the unit, the classification and disciplinary committees
4 are under my supervision.

5 Q. The wings over which you are in charge include the
6 Isolation Row, do they not?

7 A. That is correct.

8 Q. And some cells known as strip or quiet cells?

9 A. Right.

10 Q. Do your duties ever bring you into O-wing?

11 A. Many times. In fact, my office is attached to O-
12 wing.

13 Q. Do you ever visit the Isolation Row?

14 A. I do.

15 Q. The quiet cell area?

16 A. I do.

17 Q. Could you tell us how often?

18 A. Well, this is difficult to state exactly. However,
19 I go in there when the occasion demands. It could be maybe
20 twice in the same day, or it could be maybe once or twice
21 a week.

22 Q. Are you responsible for the state of cleanliness
23 of that section?

24 A. I am.

25 Q. How do you effectuate, how do you carry out your

responsibilities as to cleanliness?

A. Well, we make inspections periodically. I make them whenever I am not--my attention isn't demanded elsewhere. My sergeant or my lieutenant makes them regularly, at least once a week.

Q. If you saw something that wasn't up to your standard of cleanliness, what would you do?

A. Well, I would give an order to the lieutenant or the sergeant to take care of it.

Q. You have authority to do that?

A. Yes sir.

Q. You are one of the defendants in this lawsuit, are you not?

A. I am.

Q. Do you have any laice against the plaintiff Jordan?

A. No, I don't.

Q. Did you ever conspire with the other defendants to subject him to cruel and unusual punishment?

MR. COHLER: For the record, Your Honor, I wish to object to the question as calling for the witness' conclusion on an issue which must be decided by the Court.

THE COURT: Overruled.

THE WITNESS: I have not ever conspired with anybody about any nefarious activity.

MR. GRANUCCI: Q. And that includes activity directed

1 against the plaintiff, is that correct?

2 A. Correct.

3 Q. Now, do you remember an incident involving the use
4 of tear gas on the day before Thanksgiving of 1965, with
5 respect to an inmate named Esparza?

6 A. I don't recall the date specifically, but I do
7 recall the incident where we used tear gas to control in-
8 mate Esparza.

9 Q. Could you tell us about that incident, such as
10 you remember?

11 A. Well, we went back to the quiet cell area as a
12 disciplinary committee--

13 Q. Who was that?

14 A. Mr. Kiepura and myself and the sergeant and Mr.
15 DeCarli.

16 Q. Who was the sergeant?

17 A. Sergeant Friedrich.

18 We heard the disciplinary on Esparza and moved on then
19 to the cell of Wells, who was next door, and began to hear
20 his disciplinary.

21 At this time Esparza set up a terrific din in his cell
22 that was almost deafening, so that we couldn't make our-
23 selves heard in talking to Wells.

24 So we had to stop our disciplinary hearing with Wells.
25 Then we retired to the officers' area to discuss among

1 ourselves what steps we should take to control the situa-
2 tion. We did decide that we would like to control him with
3 tear gas and that we would take his clothing from him.

4 Q. Why would you take his clothing from him?

5 A. Well, I suspect that this is a little bit punitive,
6 but punitive with the thought in mind of gaining control
7 and restoring order.

8 Q. Was the clothing to be taken from Esparza for a
9 definite period of time?

10 A. I don't think we had stated any definite period of
11 time, no.

12 Q. Was the purpose of attempting to get Esparza's
13 clothing to bring him under control at the present time?
14 Or to punish him for conduct which had occurred and had
15 been completed in the past?

16 A. It probably was a little of both.

17 Q. All right. I wonder if you could take up the
18 narrative. As I recall, you had gone back into the
19 officers' area to await the arrival of the tear gas. Then
20 what?

21 A. Well, first I had to get permission to use the
22 tear gas. I can't recall whether I called the Associate
23 Superintendent or called Mr. Donnelly, the Deputy
24 Superintendent. But I did get permission from one of these
25 people.

1 So then we called control and had them send the gas
2 down to us. And it was then that we went back into the
3 area with the gas and that the gas was administered to
4 Esparza in the course of getting his clothing.

5 Q. How much gas did you use?

6 A. Two short bursts.

7 Q. What happened then?

8 A. I was standing actually observing the operation
9 outside the cell itself--not outside Esparza's cell, but
10 outside of Wells' cell, over by the outside wall of the
11 building. It was at that time that Wells threw what he
12 claims to have been water out in our direction. Some of
13 it hit me in the face, and it burned my eye. So I ques-
14 tioned whether it was actually water or not.

15 Q. What do you think it was?

16 A. I feel that it was urine, myself.

17 Q. Was any gas directed at Mr. Wells?

18 A. No.

19 Q. Do you know why not?

20 A. Well, I don't think we felt that it was necessary
21 to utilize gas on Wells, that he was more or less going
22 along with Esparza because of their rather close relation-
23 ship and that once we had controlled Esparza that Wells
24 probably would cease any disturbance that he was making.

25 Q. Now, directing your attention to July of 1965,

1 during that period of time, quiet cells were not equipped
2 with waterbasins, were they?

3 A. No, they were not.

4 Q. Are they now?

5 A. They are now.

6 Q. Mr. Johnston, I am going to show you an article
7 made out of plastic. I wonder if you could tell me what
8 that is, please.

9 A. This is one of the waterbasins that we have placed
10 in the quiet cells.

11 Q. But Mr. Johnston, there is something wrong with that
12 waterbasin, isn't there?

13 A. Yes. This one has been damaged by an inmate in the
14 quiet cell.

15 MR. GRANUCCI: Mr. Clerk, will you mark this exhibit.

16 THE COURT: It may be marked.

17 THE CLERK: Defendants' Exhibit H.

18 (A plastic waterbasin was marked
19 for identification as Defendants
20 Exhibit H.)

21 MR. GRANUCCI: Q. In July of 1965, Mr. Johnston, were
22 there water pitchers in the quiet cells?

23 A. There were not.

24 Q. Are there any now?

25 A. Yes, there are.

Q. I show you an item made out of plastic and ask you

1 to tell the Court what that is.

2 A. This is one of the water pitchers that we have
3 placed in the quiet cells.

4 Q. But Mr. Johnston, there is something wrong with
5 that water pitcher, isn't there?

6 A. It has been damaged by an inmate.

7 Q. A quiet cell inmate?

8 A. Yes.

9 MR. GRANUCCI: Mr. Clerk.

10 THE COURT: It may be marked.

11 THE CLERK: Defendants' Exhibit I for identification.

12 (A plastic water pitcher was
13 marked for identification as
Defendants' Exhibit I.)

14 MR. GRANUCCI: Your Honor, may these exhibits now
15 marked for identification be introduced into evidence?

16 THE COURT: They may.

17 THE CLERK: In evidence.

18 (The plastic water basin and
19 plastic pitcher previously
20 marked for identification as
Defendants' Exhibits H and I
were received in evidence.)

21 MR. GRANUCCI: Q. Mr. Johnston, how many water
22 pitchers and how many waterbasins were ordered?

23 A. We placed an order for a dozen.

24 Q. How many did you receive?

1 Q. How many sets of waterbasins and pitchers do you
2 have left?

3 A. Three.

4 Q. That is, in an undamaged condition?

5 A. Yes, that are in use.

6 Q. Now, Mr. Johnston, I want to show you a rather
7 heavy and somewhat cumbersome item which is made out of
8 canvas. I wonder if you would tell me what that is, please.

9 A. This is one of the strong blankets that we use in
10 the quiet cell.

11 Q. You are familiar with the strong blankets, are you
12 not?

13 A. Yes. I have seen quite a few of them.

14 Q. What is the condition of the particular strong
15 blanket now before you?

16 A. This is a new, unused strong blanket.

17 Q. Where are those made, Mr. Johnston?

18 A. At the Dual Vocational Institution.

19 Q. Are they in standard size?

20 A. I have never actually measured them myself, and out
21 of my observations I would say yes, that this is a standard
22 size.

23 Q. Mr. Johnston, would you step down from the witness
24 stand and help me unravel this strong blanket so we can
25 illustrate to the Court the size of it.

1 A. Yes.

2 Q. Mr. Johnston, how tall are you?

3 A. About six feet four and a half.

4 MR. GRANUCCI: And may the record show that I am six
5 feet and one-half an inch.

6 Q. This is typical of a new strong blanket--

7 A. Yes, it is.

8 Q. --that would be issued to an inmate who is placed
9 in a quiet cell?

10 A. Well, we don't always issue new ones, but we do
11 when the need arises.

12 Q. I wonder if you would place that on the floor,
13 fold it up, roll it over a second time, fold it up, and
14 fold it up again.

15 MR. COHLER: May the record show that the strong
16 blanket was folded upon the creases in which it arrived.

17 MR. GRANUCCI: The record may so indicate.

18 Mr. Clerk.

19 THE CLERK: Defendants' Exhibit J.

20 (A strong blanket was marked for
21 identification as Defendants'
22 Exhibit J.)

23 MR. GRANUCCI: Your Honor, I move the admission of
24 Defendants' Exhibit J into evidence.

25 THE COURT: It may be marked.

(A strong blanket previously marked for identification as Defendants' Exhibit J was received in evidence.)

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4 MR. GRANUCCI: Q. Mr. Johnston, how long have you been
5 in corrections work?

6 A. It will be 30 years next May.

7 Q. I wonder if you could recount for the Court your
8 background.

9 A. Well, I started work at San Quentin in 1937 and
10 worked there as an officer, correctional officer until 1942
11 when I enlisted in the Navy. I returned to work at San
12 Quentin as an officer in, I believe, December 1945. And
13 in March of 1947, after having passed a promotional examina-
14 tion, I became a parole officer.

15 I worked in paroles in both the Fresno and San Francisco
16 offices until, I believe it was, January 1951, when I was
17 recalled to active duty with the Navy in the Korean War.

18 I returned to work at the Correctional Training
19 Facility in March of 1952 as a grade II institutional
20 parole officer. That classification has since been changed
21 to correctional counselor.

22 I stayed at the training facility for about 18 months,
23 when I transferred back to San Francisco in the parole
24 office as a grade II professional officer, and about four
25 months later transferred to San Quentin as a grade II

1 institutional parole officer and remained there for five
2 years.

3 In March, I believe it was March of 1959 I--well, I
4 guess I will have to say that through a reclassification
5 of our series and expansion of our series, I again found
6 myself at grade I and had to go through promotional examina-
7 tions again, and I again passed the examination and became
8 a correctional counselor, grade II, at the Correctional
9 Training Facility in March of 1959.

10 Since that time I have taken further promotional
11 examinations, and I became a correctional counselor, grade
12 III, and my working title at that time was the classifi-
13 cation and parole representative. I had charge of all of
14 the counselors in the institution, as well as the function
15 of the Adult Authority visits and hearings of the institu-
16 tion.

17 I took further examination and became a program ad-
18 ministrator in December of 1964, and I have since completed
19 one more promotional examination and am on the promotional
20 list for associate superintendent.

21 Q. Then it is fair to say, Mr. Johnston, that you have
22 had a great deal of experience in working in the prison
23 system in California in general, and the Correctional
24 Training Facility in particular.

25 A. I would say that would be true.

1 Q. I am going to take a plastic envelope and show you
2 certain items. As I pull these out and hand them to you,
3 what I want you to do for the record, if you will, is
4 describe them so that the reporter will be able to take
5 down your description.

6 A. All right.

7 Q. Mr. Johnston, I am going to take out the first item.
8 Will you tell me what that is, please.

9 A. Well, this is a toothbrush handle that has been
10 melted and a dirk-type piece of wire--I am not just sure
11 what the wire comes from, but it looks like it might be
12 some kind of a dentist's--it has a name stamped on the side,
13 it might be made from some kind of a dentist's instrument.
14 It is a rather stiff piece of wire, and it could be cer-
15 tainly used as a dirk-type weapon.

16 Q. Do you know how such a weapon could be made?

17 A. Probably with the use of matches or by burning
18 paper in the cell, an inmate could make this if he has the
19 material.

20 Q. All right, Mr. Johnston. Leave that there. I am
21 going to take out another item, and I will ask you, just
22 as you did with the last one, to describe it to the Court.

23 A. This, I believe, is a handle of a hairbrush that
24 has been melted, with a piece of a nail clipper appended
25 to it by the same method as in the previous weapon. This

1 one doesn't appear to have been quite completed, because
2 the edges are not sharpened. However, it still could be
3 a damaging sort of weapon.

4 Q. Mr. Johnston, I will take another item out of the
5 envelope and ask you to describe this.

6 A. Well, again we have a toothbrush handle that has
7 been fashioned into a weapon by wrapping string around the
8 handle and also appending to it a small piece of metal in
9 the shape of about an inch and a half blade. It, too,
10 could be an effective weapon.

11 Q. And finally, Mr. Johnston, would you describe this
12 weapon for the Court.

13 A. Again we have a toothbrush that has been melted,
14 and a razor blade, a double-edged razor blade inserted
15 through it. Here you would have--probably not the type of
16 weapon with which you could kill, but you would disfigure
17 badly by slashing a person.

18 Q. Now, Mr. Johnston--

19 MR. COHLER: Are you going to leave the subject area
20 of these items?

21 MR. GRANUCCI: No. I am going to continue with those
22 items, counsel.

23 MR. COHLER: For the record, I want to object. I am
24 going to move to strike unless there is some connecting up
25 between these items and some period of time or people

1 involved in this lawsuit. I will wait.

2 MR. GRANUCCI: Your Honor, what I intend to do--I will
3 make the following offer of proof. I am going to elicit
4 from this witness that these items are thoroughly illus-
5 trative of the types of weapons that have been found in
6 searches of the institution in general, and the adjustment
7 center in particular. I make no claim that the plaintiff
8 has ever been in the possession of such a weapon.

9 However, there is an issue in this case concerning the
10 reasonableness of the conditions that attended petitioner's
11 confinement in the quiet cell in July of 1965. One of
12 those conditions of which he now makes complaint involves
13 the lack of a toothbrush.

14 I think that we are entitled to bring what evidence we
15 can to bear upon the reasonableness of that condition. I
16 think the availability or the amenability of toothbrushes
17 to be converted into deadly, vicious weapons like Your Honor
18 has seen, bears upon the reasonableness of the restriction
19 there involved, particularly when we heard evidence from the
20 lips of the plaintiff himself about how easy it is to get
21 contraband into a quiet cell.

22 MR. COHLER: If it please the Court, for the purposes
23 that I understand the offer to be made, which are that
24 there can be danger arising from the availability of certain
25 items such as toothbrushes, I will have no objection.

1 Counsel has offered to say that he will not claim that
2 the plaintiff has had such weapons in his possession. I
3 don't think that goes far enough. This could be pre-
4 judicial. I ask that it be stipulated that the plaintiff
5 has not had such weapons, has not been accused of having
6 such weapons, and the failure to think he has such weapons--
7 pardon me. I will restate that.)

8 ~~A~~ And that there was no thought that the possibility
9 of his having such weapons entered into his confinement in
10 the quiet cell.

11 MR. GRANUCCI: Well, I can go partway, counsel. I can
12 stipulate that the fact that he--that there was no suspicion
13 that he had such a weapon which resulted in his confinement
14 in the quiet cell in July of 1965--

15 THE COURT: They may be marked for identification pre-
16 sently. I will hear you out later.

17 MR. COHLER: Thank you.

18 THE CLERK: Defendants' Exhibits K, L, M, N for identi-
19 fication.

20 (Four items were marked for
21 identification as Defendants'
Exhibits K, L, M, and N.)

22 MR. GRANUCCI: At this moment, Your Honor, in order to
23 complete my record, I will move the admission of those
24 exhibits into evidence.

25 THE COURT: I will sustain the objection.

1 MR. GRANUCCI: Your Honor, may the sustaining of the
2 objection be without prejudice to leave to renew my motion?

3 THE COURT: It may be renewed if there be some cor-
4 relation or some link with respect to the evidentiary
5 aspect. Just a generalization wouldn't mean much to the
6 Court.

7 MR. GRANUCCI: Your Honor, I would like leave to elicit
8 from the witness that these weapons have been found in the
9 institution and are typical of such weapons that are found
10 in the institution. That is as far as I intend to go with
11 this matter.

12 MR. COHLER: Let's take it question by question, Your
13 Honor. Is that satisfactory?

14 THE COURT: Yes.

15 MR. COHLER: Thank you.

16 MR. GRANUCCI: Q. Mr. Johnston, are the weapons that
17 you have just described illustrative of weapons found in
18 searches of the institution?

19 A. Yes, they are.

20 Q. Are they illustrative of weapons that have been
21 found within the Adjustment Center?

22 A. They are.

23 Q. From time to time?

24 A. They are.

25 MR. GRANUCCI: That is as far as I intend to go.

1 Your witness, counsel.

2 CROSS-EXAMINATION

3 BY MR. COHLER:

4 Q. Mr. Johnston, turning your attention to the tear
5 gas incident involving Mr. Esparza during November, prior
6 to Thanksgiving, 1965, what was the conversation which
7 took place involving the obtaining the authority to use
8 tear gas, if you know?

9 A. Well, I don't recall the specific words that were
10 used. I know that we discussed it, and we did get the per-
11 mission, and we did use it.

12 Q. Were you personally the gentleman who called for
13 permission?

14 A. Yes.

15 Q. Do you know what kind of description you gave of
16 the circumstances, in asking for permission to use the tear
17 gas?

18 A. Again, I can't recall the words. But--

19 Q. Can you recall the substance?

20 A. I would only have to assume that I--

21 Q. Well, we had better not have assumptions.

22 A. All right then.

23 Q. Based upon your experience, Mr. Johnston, what
24 factors do you consider relevant in a determination whether
25 or not to request permission to use tear gas?

1 A. Well, there are many factors, depending upon the
2 particular incident that is taking place. In one incident,
3 you would consider one set of factors; another incident,
4 you would consider another set of factors. But I think one
5 of the primary things that we are concerned with is main-
6 taining control and order.

7 Q. You stated, I believe, on direct examination that
8 the tear gas contained was obtained from control.

9 A. Yes.

10 Q. I don't think we have had a description of control.
11 Would you describe that for the Court, please.

12 A. Control is a kind of nerve center, you might say,
13 of the institution. This is where we keep our master counts
14 or the master files for the daily institutional head counts.

15 Our PBX board is there, and we also keep certain emer-
16 gency equipment there that we can call on and obtain
17 readily without having to go outside to the armory.

18 Q. Are all types of tear gas containers which were
19 available in November 1965 available from Control?

20 A. I couldn't say.

21 Q. Did you specify which type of container you wanted
22 to have authority to use, if you recall?

23 A. I don't recall.

24 Q. How many times have you personally been involved
25 in the use of tear gas at Soledad?

1 A. By "personally involved," do you mean the super-
2 vision of the use of tear gas?

3 Q. Either present at its use, or asked to request
4 authority, or using it yourself, involved at least to the
5 extent that you were on this occasion.

6 A. Oh, probably in the order of half a dozen times.
7 I can't be too specific here.

8 Q. Don't guess. Just your best recollection.

9 Would you say that the tear gas which was used in the
10 incident involving Mr. Esparza spread to some extent beyond
11 Mr. Esparza's cell itself?

12 A. Yes, it usually does when you use tear gas in a
13 unit like that. It spreads almost throughout the unit.

14 Q. It didn't all stay in Mr. Esparza's cell, did it?

15 A. No, it definitely didn't.

16 Q. Some of it was around yourself, was it not?

17 A. It was.

18 Q. Mr. Johnston, on the six occasions that you had
19 been involved in the use of tear gas, and particularly on
20 this occasion, what is the sensation of having tear gas
21 near your face, particularly your eyes?

22 A. It causes them to water.

23 Q. To sting a little bit?

24 A. I have never really had them burn much. There is
25 a little--probably a little sensation to it, stinging

1 sensation.

2 Q. Mr. Johnston, I understand, and I am asking you if
3 you agree, that when you have tear gas around your face,
4 and particularly your eyes, and when it is burning a little
5 bit, that if you put water in your eyes it becomes very
6 stinging. Do you know that?

7 A. Not out of my own experience, because I have never
8 put water in my eyes when I have had tear gas in them.

9 Q. At the time that some liquid was thrown on ^{you} ~~your~~ or
10 spilled on you or whatever by Mr. Wells, did you know
11 whether or not water in combination with tear gas could
12 cause a stinging sensation?

13 A. No.

14 Q. In other words, you assumed it was urine because
15 of the stinging?

16 A. Yes.

17 Q. On the basis of that assumption, a man was given
18 29 days disciplinary isolation, is that right?

19 A. I don't recall what our disposition was.

20 Q. But the disposition resulted from the incident of
21 the throwing of the liquid, is that correct?

22 A. That is correct.

23 THE COURT: Throwing of what?

24 MR. COHLER: Liquid.

25 THE WITNESS: Well, now, wait a minute. I'm not quite

1 sure of that even.

2 MR. COHLER: Q. Please explain.

3 A. Yes. I don't remember whether we--

4 Q. The 115 would show it, wouldn't it?

5 A. We had-- I don't recall that we wrote a 115 on the
6 throwing of the liquid. The disciplinary that we were hear-
7 ing was over an incident in the past.

8 Q. Perhaps there is an error there.

9 A. Prior to that time.

10 Q. Mr. Johnston, you stated that you make inspections
11 periodically. During the course of those inspections,
12 there is always an examination of the cleanliness by your-
13 self in all areas, including the quiet or strip cell area?

14 A. That is right.

15 Q. About how often do you yourself personally make
16 such inspections?

17 A. Well, weekly if I can. But I can't always do it
18 weekly. So, as I said, I have sometimes delegated it to
19 the lieutenant and the sergeant.

20 Q. The most often, depending upon your schedule, would
21 be weekly?

22 A. That would be the most often.

23 Q. Do you have any recollection of how often you made
24 inspections in June, July and August 1965?

25 A. No, I don't.

1 Q. You also stated that if you observed a state of
2 uncleanliness, you followed up by ordering your sergeant
3 or lieutenant to do something about it; is that correct?

4 A. Yes.

5 Q. After you ordered them to do something about it,
6 what do you do to follow up beyond that?

7 A. Well, I check with them now and then, sometimes
8 look myself.

9 Q. You became a program administrator in December 1964,
10 is that correct?

11 A. That is correct.

12 Q. Have you been program administrator in Unit 3 since
13 that time?

14 A. No, I haven't.

15 Q. How long have you been program administrator of
16 Unit 3?

17 A. Since the latter part of April of last year.

18 Q. That includes O-wing, does it not?

19 A. It does.

20 Q. You described several items that generally could
21 be called weapons.

22 A. Yes.

23 Q. Can you tell the Court when, in fact, those parti-
24 cular items which were shown to the Court were found?

25 A. No, I couldn't. I obtained these examples from

1 our S-squad, which is a search and security squad.

2 Q. They are kept by the S-squad over a period of time?

3 A. Yes. They have quite a collection of these items.

4 Q. Several of the items you described involved the
5 use of toothbrush handles, is that correct?

6 A. That is correct.

7 Q. Toothbrushes are now available in the quiet or
8 strip cells area, are they not?

9 A. Yes, they are.

10 Q. In deciding to make them available, do you know
11 whether or not-- Withdraw that. Excuse me.

12 You have also described, and there have been marked and
13 entered in evidence as Defendants' exhibits, a plastic
14 washbasin and plastic water pitcher. You stated that there
15 was one dozen ordered, and three sets now remain. Is that
16 correct?

17 A. That is correct.

18 Q. When these were ordered, was there any expectation
19 that they might be destroyed or damaged by inmates?

20 A. I don't know whether there was or not.

21 Q. Wouldn't you say generally the inmates in the quiet
22 cell or strip cell were hostile and a destructive group?

23 A. Yes, I would say that.

24 Q. In fact, generally that is why they are supposed to
25 be there.

1 A. Correct.

2 Q. Wasn't there an expectation when the items were put
3 in the cell that they may be damaged?

4 A. I don't know.

5 Q. The inmates were put in the quiet or strip cell
6 because, at least in part, they damaged--

7 A. Maybe I misunderstand you. But if you are saying,
8 did we talk about them damaging the things before we put
9 them in there, no, we did not. If we had something up in
0 the backs of our heads somewhere that they might destroy
1 them, this might be true. I don't know.

2 Q. Isn't it fair to say that the people who are put
3 in the strip cells or quiet cells are more or less a
4 destructive lot, and it didn't even need to be said, it was
5 more or less expected that some of these would be damaged.

6 A. That is what you are saying, not me.

7 MR. GRANUCCI: Object to the question as argumentative,
8 Your Honor.

9 THE COURT: Sustained.

0 MR. COHLER: Q. When one ^{dozen} ~~dozer~~ were ordered, one dozen
1 sets, did you yourself have any estimate as to how long
2 that dozen might last?

3 A. No, I have no idea how long.

4 Q. To your knowledge have any more plastic pitchers
5 and plastic waterbasins been ordered?

1 A. Yes. I have recently replaced an order for another
2 dozen.

3 MR. COHLER: Thank you, Mr. Johnston.

4 REDIRECT EXAMINATION

5 BY MR. GRANUCCI:

6 Q. Mr. Johnston, without sounding facetious, I want
7 to ask you whether you know the difference between water
8 and urine.

9 A. I think I do, yes.

10 Q. Are you sure that the liquid that Wells threw on
11 you was not water?

12 A. I couldn't really say this, no. I assumed that it
13 was urine because it burned my eyes.

14 Q. Did it have any smell?

15 A. I can't say whether it did or not.

16 Q. You can't recall?

17 A. I can't recall.

18 MR. GRANUCCI: Your Honor, I have no further questions
19 of this witness. Perhaps the Court would have some.

20 THE COURT: I have no questions.

21 MR. GRANUCCI: May he be excused?

22 THE COURT: Yes.

23 (Witness excused.)

24 MR. GRANUCCI: Call Mr. DeCarli, please.

25 THE CLERK: Mr. DeCarli.

A. ALFRED DE CARLI,

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 for the court.

THE WITNESS: A. Alfred DeCarli, Correctional Counselor, Correctional Training Facility.

THE COURT: D-e-C-a-r-l-i?

THE WITNESS: Yes sir.

DIRECT EXAMINATION

BY MR. GRANUCCI:

Q. Mr. DeCarli, what grade of correctional counselor are you?

A. Grade I.

Q. What are the duties of a correctional counselor in grade I?

A. Well, there is many. I sit on--in on classification disciplinary hearings, censor problem mail, case work, Board reports, other duties, searching for lost items of clothing or personal property.

Q. To what section of the prison are you assigned?

A. Adjustment Center. O-wing, in particular.

Q. Your duties cause you to be in O-wing?

A. Yes.

Q. What percentage of your time do you spend in O-wing?

1 A. I am assigned full time. There is times when I
2 am elsewhere, records, mail room, or areas like that. I
3 would say 90 percent of the time in the wing itself.

4 Q. Are you in the isolation section of O-wing?

5 A. My duties take me there.

6 Q. Your duties take you there. Do your duties ever
7 take you to the area of the quiet cells?

8 A. Yes, they do.

9 Q. Mr. DeCarli, were you employed at the institution
10 in July of 1965 from the 9th to the 20th?

11 A. I was employed there, but not in the Adjustment
12 Center.

13 Q. Where were you employed?

14 A. I was at the North Facility.

15 Q. What were your duties there?

16 A. I was the training officer.

17 Q. Did you have anything to do with the placement of
18 plaintiff Jordan in a quiet cell from July 9th through
19 July 20th 1965?

20 A. I did not.

21 Q. Does the performance of your duties take you into
22 the area of the quiet cells?

23 A. Yes sir.

24 Q. Have you had an opportunity to observe the condition
25 of cleanliness of those quiet cells?

1 A. Yes.

2 Q. I wonder if you would tell the Court your
3 description of those conditions.

4 A. The first thing that I would be affected by might
5 be the smell, body, a musky odor. And after spending a
6 few minutes there, maybe a half hour, I don't notice it any
7 more. The condition otherwise, of cleanliness, I couldn't
8 tell. I would notice that there might be coffee stains on
9 the bars from cups. Aside from that, I don't know. If
10 there were filth--if there was filth in there I didn't
11 notice it.

12 Q. How about fecal matter spread on the walls?

13 A. I never seen any.

14 Q. Vomit on the walls?

15 A. None.

16 Q. Urine?

17 A. No.

18 Q. When you go back to a quietest cell area, how often
19 do you spend back there?

20 A. In some cases I have spent an hour and a half there
21 with one person.

22 THE COURT: That would be approximating the cell? Or
23 in the cell? Or where?

24 MR. GRANUCCI: I am going into that, Your Honor.

25 Q. When you are back there, where do you stand in

1 relation to the cell?

2 A. I stand on the inside, not on the inside of the
3 bars, but just across from him on the inside.

4 Q. Is that in the little ante room between the outside
5 wall and the bar gate?

6 A. Yes.

7 Q. You say you spent an hour and a half in a quiet
8 cell with a particular individual-- Withdraw that.

9 You say you spent an hour and a half visiting with an
10 individual in front of a quiet cell.

11 A. Yes.

12 Q. Do you recall the name of that individual?

13 A. This was Esparza.

14 Q. Do you recall when you made that visit?

15 A. I'm not positive. This happened shortly after the
16 gassing incident that we have been talking about. If that
17 was the day before Thanksgiving, it wasn't the next day
18 because I was off. But very possibly on Friday.

19 Q. How long did you spend with Esparza?

20 A. I estimate about an hour and a half.

21 Q. Without going into what Mr. Esparza told you, did
22 he make any complaint to you about having been tear-gassed?

23 A. He did not.

24 Q. Did you notice the effects of the tear gas?

25 A. There was slight irritation to my eyes, and that

1 was about it.

2 Q. Was it such that it was uncomfortable?

3 A. Slightly, but it didn't make me leave.

4 Q. Didn't make you leave. Is there anything in your
5 mind now that would cause you to recall the condition of
6 the cleanliness in Esparza's cell at that time you visited
7 him?

8 A. No, I don't.

9 Q. Was it any better then than the conditions that
10 ordinarily prevail in the isolation section as you observed
11 them?

12 MR. COHLER: Your Honor, the witness has already said
13 he doesn't recall the conditions. I don't think this lead-
14 ing should be permitted.

15 MR. GRANUCCI: All right.

16 Q. Could you tell us why you spent an hour and a half
17 with Esparza at that time?

18 A. Well, Esparza, as a rule, is a person who needs a
19 lot of attention, and when he gets going--I think we have
20 observed this--he just goes on and on and on. There wasn't
21 much I was doing. I was doing a lot of listening, and he
22 was telling me about his past, his problems at other in-
23 stitutions, and family, and future. He just went--he could
24 go on for hours.

25 Q. It was part of your duties to listen to the inmates

1 and talk to them?

2 A. Yes.

3 Q. What is the purpose of that?

4 A. Well, possibly to draw out some of the hostility
5 and--he has got to talk to someone, and I was familiar with
6 his past to some extent, through the files.

7 At this time I felt that he had been upset pretty badly
8 a few days before. I wasn't going to do any counseling.
9 I was just going to listen to him and let him--he had
10 settled; he was pretty, I would say, responsible at that
11 time, and he could talk without getting upset. He just
12 talked at length.

13 Q. I want to jump back a little bit to two days before.
14 Were you present at a Disciplinary Committee hearing before
15 the cells of Wells and Esparza when the tear gas was used?

16 A. Yes, I was.

17 Q. Would you narrate to us your recollection of that
18 incident?

19 A. Well, we had--the group that was mentioned earlier
20 had gone back to hear Esparza's case--and I don't recall
21 the disposition, but he wasn't happy with it. So we heard
22 it, and the disposition was given, and then we left his
23 area to go next door to Wells' cell. He also had a dis-
24 ciplinary.

25 As we attempted to hear the case on Wells, we were

1 unable to complete it because Esparza had started clamoring
2 the bars and had set up such a commotion that it was im-
3 possible to hear what Wells was talking about. So we had
4 to leave the area. We were not able to continue.

5 And we left the area, went out to the officers' area.
6 And to my best recollection, I would say that from the time
7 we left that area to the time that Esparza was gassed, I
8 would estimate it was probably eight to ten minutes in
9 which the noise I don't believe ever let up. It just built
10 up to a tremendous crescendo and state there. You could
11 hear noises from upstairs and on the "Ma" side, so other
12 people were getting irritated by then and made some attempts
13 to join in. At that time he was gassed.

14 Q. Do you know how much tear gas was used?

15 A. Two bursts, short bursts.

16 Q. They were short bursts?

17 A. Yes sir.

18 Q. Getting back to Esparza, have you had occasion to
19 counsel with him since November of 1965?

20 A. Numerous times.

21 Q. Have you noticed any improvement in Esparza?

22 A. There has been a great improvement. As a matter
23 of fact, he is being recommended for minimum institution
24 at the present time.

25 Q. Is it institutional policy, as you understand it,

1 when an inmate is confined in a quiet cell to just let him
2 sit and rot?

3 A. No, this is not the policy.

4 Q. What is the policy?

5 A. This is part of my job, to visit him whenever I
6 get in the area-- First of all, I generally go down there
7 when someone has asked for me, either from the officers'--
8 at the officers' request, at the inmates' request through
9 the officers, or a note. And when I go in to see one person,
10 I see whoever wants to see me. This is the way it is
11 throughout the wing.

12 Q. It is your duty to counsel with these inmates; and
13 what is the purpose of that counseling?

14 A. Well, I think my reports have some bearing on maybe
15 the Adult Authority. I have to present as clear a picture
16 as possible to the Adult Authority, and if I know the man
17 I think I can do a better job than if I just read the
18 records and reported on that. So I get to know these people
19 quite well.

20 Q. Do you attempt to draw them out?

21 A. Yes, their families, their background, their future,
22 problems that they have been confronted with either before
23 coming to the institution or problems that have--they have
24 been confronted with on the main line.

25 Q. Mr. DeCarli, in your opinion, is the improvement

1 that has been noted in Esparza, at least in part, related
2 to the counseling and other services furnished to him by
3 the institution?

4 A. I believe so, yes.

5 Q. Now, do you know the plaintiff?

6 A. Yes.

7 Q. Have you had occasion to counsel him?

8 A. Yes.

9 Q. What is the nature of the contacts that you have
10 had with the plaintiff?

11 A. Primarily in processing writs.

12 Q. What does that involve?

13 A. Well, there is quite a lengthy process. The writ--
14 the rough draft is picked up by myself, delivered to the
15 education department for typing, when it has been typed
16 it is returned to me and I return it to the person who
17 wanted it. He reviews it. If it is satisfactory, he will
18 ask me to provide envelopes, whatever it takes to get it
19 mailed. Also, I furnish legal paper, writing paper.

20 Q. The inmate has to pay for those legal supplies,
21 doesn't he?

22 A. Since I have been there, the inmates do not. This
23 is, I imagine, part of the procedure. But it is not very
24 expensive to provide it, it saves a lot of time, so we
25 just go ahead and provide it.

1 Q. Do you now or have you ever had any malice towards
2 the plaintiff Jordan?

3 A. No.

4 Q. Did you conspire with the other defendants to de-
5 prive him of his constitutional rights?

6 MR. COHLER: For the record, Your Honor, I object to
7 the question as eliciting a response bearing upon something
8 the Court must decide.

9 THE COURT: Overruled.

10 THE WITNESS: No.

11 CROSS-EXAMINATION

12 BY MR. COHLER:

13 Q. Mr. DeCarli, do you have an opinion as to whether
14 or not the plaintiff has improved over the past six months?

15 A. I think he is well controlled.

16 Q. Thank you. Mr. DeCarli, during the so-called gas
17 incident involving Mr. Esparza, where were you standing
18 when the gas was turned on?

19 A. I was just outside of the cell.

20 Q. More precisely, where? Near a window flap? A door?
21 Where?

22 A. No. I was in line with some of the activity at the
23 time. I was outside the cell, approximately four or five
24 feet outside of the outer door, in the area, but outside
25 the outer door.

1 Q. Was there anyone standing between you and the
2 outer door?

3 A. I couldn't say. There was activity there. There
4 were four or five around. I couldn't say at all times.
5 At times, I was in direct line.

6 Q. At the time the gas was turned on.

7 A. Yes, I was able to observe this.

8 Q. You actually saw the gas being turned on or off?

9 A. Yes.

10 Q. You saw the officer's hand turning the knob?

11 A. No. But I observed the officer holding the con-
12 tainer. I did not see the movement of his hand. He had
13 his back to me.

14 Q. There was still this noise going on?

15 A. Yes.

16 Q. Mr. DeCarli, you have related your recollection of
17 your observation as to the state of cleanliness during the
18 time that you have been in O-wing. When did you first come
19 to O-wing?

20 A. About the middle of August.

21 Q. 1965?

22 A. 1965.

23 Q. In your present capacity, Mr. DeCarli, are you
24 responsible, or at least a part of your responsibilities,
25 for the state of cleanliness and the location of inmates

1 in O-wing?

2 A. I don't believe I am responsible.

3 Q. Are you partly responsible?

4 A. If I see a condition that is a hazard, I believe I
5 would call it to my superior's attention.

6 Q. Mr. DeCarli, you say that you spoke with Mr.
7 Esparza for about an hour and a half.

8 A. Yes.

9 Q. About two days after the gassing, is that right?

10 A. Two or three days, I am not sure.

11 Q. And two or three days after the gas incident, there
12 was still enough gas around to irritate your eyes? Is
13 that right?

14 A. Yes.

15 Q. Incidentally, Mr. DeCarli, Mr. Esparza was a stamp
16 collector, wasn't he?

17 A. Not at the time.

18 Q. Not at the time of the gassing.

19 A. Right.

20 Q. But in the time that you had known him?

21 A. This has been in several months past.

22 MR. COHLER: Thank you.

23 MR. GRANUCCI: I have no further questions of this
24 witness. Perhaps the Court does?

25 THE COURT: He may be excused.

1 MR. GRANUCCI: Your Honor, would this be an appropriate
2 time for a recess?

3 THE COURT: Yes.

4 (A short recess was taken.)

5 MR. GRANUCCI: Call Mr. Swagerty, please.

6 THE CLERK: Mr. Swagerty.

7 CLEMETT L. SWAGERTY,

8 called as a witness on behalf of the defendants, being
9 first duly sworn, was examined and testified as follows:

0 THE CLERK: State your name and occupation.

1 THE WITNESS: Clemett Swagerty, Associate Superintendent,
2 Correctional Training Facility, Soledad.

3 DIRECT EXAMINATION

4 BY MR. GRANUCCI:

5 Q. Mr. Swagerty, how long have you been Associate
6 Superintendent of the Correctional Training Facility?

7 A. Since November 28 1965.

8 Q. What did you do before then?

9 A. I was Program Administrator at the California Men's
0 College in San Luis Obispo.

1 Q. What are the duties of an associate superintendent?

2 A. At the Correctional Training Facility, I am in
3 charge of three program units and Central services.

4 Q. What are the three program units?

5 A. Unit 1, Unit 2 and Unit 3. These comprise the

1 housing in the total institution.

2 Q. Do your duties also relate to the classification
3 of inmates?

4 A. Yes. Each program unit has its classification
5 committee.

6 Q. Do you know the plaintiff Robert Jordan?

7 A. Yes, I do.

8 Q. Did you have anything to do with the incident that
9 brought about his confinement in a quiet cell in July 1965?

10 A. No, I did not.

11 Q. Were you in any way connected with that confine-
12 ment?

13 A. No, I was not.

14 Q. Or with the conditions of that confinement?

15 A. No.

16 Q. Do you have any malice toward the plaintiff?

17 A. No, I do not.

18 Q. Did you conspire with the other defendants to de-
19 prive him of his constitutional rights?

20 A. No, I did not.

21 MR. GRANUCCI: Your witness, counsel.

22 MR. COHLER: Excuse me, Your Honor. For the record,
23 the same objection.

24 THE COURT: Overruled.

25 MR. COHLER: I have no questions of this witness, Your
Honor.

1 THE COURT: Thank you.

2 MR. GRANUCCI: May Mr. Swagerty be excused?

3 THE COURT: Yes.

4 (Witness excused.)

5 MR. GRANUCCI: Call Mr. Kiepura, please.

6 THE CLERK: Mr. Kiepura.

7 WILLIAM T. KIEPURA,

8 called as a witness on behalf of the defendants, being
9 first duly sworn, was examined and testified as follows:

10 THE CLERK: State your name and occupation to the Court.

11 THE WITNESS: William T. Kiepura, Correctional
12 Counselor, Correctional Training Facility, Soledad.

13 DIRECT EXAMINATION

14 BY MR. GRANUCCI:

15 Q. Mr. Kiepura, what grade of correctional counselor
16 are you?

17 A. Grade II.

18 Q. What are the duties of the correctional counselor,
19 garde II?

20 A. Administrative to a great degree, supervising the
21 grade I counselors, sitting on classification committees
22 and disciplinary committees.

23 Q. Where are you assigned as a correctional counselor?

24 A. Unit 3.

25 Q. Does that include the Adjustment Center?

1 A. It does.

2 Q. Does that include O-wing?

3 A. It does.

4 Q. Does that include the Isolation Row?

5 A. It does.

6 Q. Do your duties take you into O-wing frequently?

7 A. They do.

8 Q. Do they take you into the isolation section?

9 A. Occasionally.

10 Q. Occasionally?

11 A. Yes.

12 Q. Could you estimate how often, say, in the period
13 of a week, you go into the isolation section?

14 A. It varies, sometimes I may go in there daily for
15 two or three days in a row, again it might be once a week.

16 Q. Have you had an opportunity to observe the condi-
17 tions of cleanliness in the isolation section?

18 A. I have.

19 Q. How long have you been making visits to the isola-
20 tion section?

21 A. Two years, a little over two years.

22 Q. And you have observed the conditions of cleanliness?

23 A. I have.

24 Q. What are those conditions?

25 A. Satisfactory, in my opinion.

1 Q. Does that include the strip cells?

2 A. That includes the quiet cells, yes.

3 Q. Do you remember the Esparza incident involving the
4 use of tear gas in connection with inmate Esparza?

5 A. Some details, yes.

6 Q. Could you narrate to the Court what you remember.

7 A. Well, we were back at the cell hearing inmate
8 Esparza's disciplinary. When we finished we proceeded to
9 inmate Wells, who I believe was in the next cell, and
10 inmate Esparza apparently became somewhat distressed at
11 our decision and began to make considerable noise, so much
12 so that we were unable to hear inmate Wells and complete
13 his disciplinary hearing at that particular time.

14 We left to go back into the back end of the unit in the
15 officers' section and Mr. Johnston obtained permission to
16 use gas. When the gas came, we went back and Mr. Mata
17 then proceeded to use the gas when inmate Esparza refused
18 to follow the instructions.

19 Q. Do you know how much gas was used?

20 A. As far as I can remember, only two bursts.

21 Q. Were they long bursts? Or short bursts?

22 A. Very short bursts.

23 MR. GRANUCCI: May I have plaintiff's Exhibit No. 3,
24 please.

25 Q. Now, Mr. Kiepura, directing your attention to July

1 13 1965, did you participate in a disciplinary committee
2 proceeding Mr. Jordan?

3 A. According to the record, I did.

4 Q. Did you have any independent recollection of that
5 committee proceeding?

6 A. None.

7 Q. In fact, your sole memory is what is on the record
8 there?

9 A. Correct.

10 Q. Were you the person who wrote the disposition find-
11 ing on that, on that CDC Form 115?

12 MR. COHLER: Your Honor, in view of the witness' state-
13 ment that he has no recollection, I think the only proper
14 question is whether he recognizes his handwriting.

15 THE COURT: He may, by examination, refresh his re-
16 collection of events.

17 THE WITNESS: This is my handwriting.

18 MR. GRANUCCI: Q. Would you read what you wrote there.

19 A. "Denies bar rattling, but did spit on officer. If
20 not treated right, will spit on him again and again. Will
21 slap him in the face if he gets a chance. Vulgar and dis-
22 respectful towards committee. Disposition: LST-1, 29 days
23 isolation."

24 Q. Now, was plaintiff confined in a quiet cell at that
25 time?

1 A. I couldn't say.

2 Q. That disciplinary form and the disposition have
3 nothing on it about the confinement of inmate Jordan in a
4 quiet cell as part of the punishment, does it?

5 A. No, it does not.

6 Q. Would there be a reason for that?

7 A. Yes.

8 Q. What is the reason?

9 A. I forgot to write it.

10 Q. Ordinarily, as a matter of practice, when an inmate
11 is brought out of a quiet cell for a disciplinary committee
12 hearing and the matter is heard and determined, is there
13 a discussion as to whether he should be returned to the
14 quiet cell or not, or whether his housing status should be
15 changed?

16 A. There is a discussion.

17 Q. Based on your general practice, do you believe that
18 such a discussion occurred in this case? And I am referring
19 to general practice, not your memory.

20 A. I would assume so.

21 Q. You would assume so.

22 Now, Mr. Kiepura, do you have any malice toward the
23 plaintiff?

24 A. None.

25 Q. Did you conspire with the other defendants to

1 deprive him of his federally protected constitutional
2 rights?

3 MR. COHLER: Same objection, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: I did not.

6 MR. GRANUCCI: Your witness, counsel.

7 CROSS-EXAMINATION

8 BY MR. COHLER:

9 Q. Mr. Kiepura, if I understand your testimony cor-
10 rectly, you have no recollection of the disciplinary hear-
11 ing other than what you read from the form 115, which you
12 have *been shown* ~~shown us~~, is that correct?

13 A. That is correct.

14 Q. Even looking at that form it doesn't refresh your
15 recollection? It is only what is on the form that you know?

16 A. That is correct.

17 Q. Mr. Kiepura, how do you remember that you forgot
18 something you didn't even remember to do at the time you
19 were filling out the form, when you have no independent
20 recollection at all?

21 MR. GRANUCCI: Your Honor, objection as to the form of
22 the question as highly compound and confusing.

23 THE COURT: Sustained.

24 MR. COHLER: Q. Mr. Kiepura, you testified that you
25 forgot to write "quiet cell," or something of that nature

1 in the disposition on the form 115 which you were shown.
2 Would you explain to the Court, please, how you are pre-
3 sently able to testify that you forgot to do that.

4 A. Because, if I remember correctly, this information
5 is on the 114 form, and knowing Sergeant Friedrick and our
6 practices, I know he will not write anything down unless
7 we are decided in the committee. He wrote it down that
8 that was the decision and therefore I must have forgotten
9 it in this case.

10 Q. In other words, it is no recollection of what you
11 did or didn't do; it is a statement you are making based
12 upon what is your understanding of the general practice.

13 A. Correct.

14 Q. Regardless of the reasons for there being no in-
15 dication of "quiet cell" on the disposition which was
16 written, there was approval, was there not, on the form
17 115 itself, other than those who were in attendance at the
18 hearing?

19 A. Correct.

20 Q. Can you identify what appears to be the initials
21 RHD?

22 A. Mr. Donnelly.

23 Q. Was Mr. Donnelly present at the hearing?

24 A. No.

25 Q. Can you identify what appears to be Mr. Forden's

1 signature as his?

2 A. No, I cannot.

3 Q. Does it look to you like it says Forden?

4 A. It says Forden, yes, but I don't know it well
5 enough to identify that as his signature.

6 Q. Was Mr. Forden at the meeting?

7 A. No.

8 Q. No one was there except yourself and Sergeant
9 Friedrich, Mr. Jordan, and an escort Officer Spoon. Is
10 that correct?

11 A. I would assume so.

12 MR. GRANUCCI: Objection, Your Honor. There is no
13 testimony, at least from this witness, as to identity of
14 the escort officer.

15 MR. COHLER: Q. Mr. Kiepora, you say you were present
16 at the so-called gas incident involving Mr. Esparza. Can
17 you recall where you were standing when the gas was being
18 used?

19 A. I believe I was quite close to his cell.

20 Q. Can you recall where you were?

21 A. Not within a foot or two, no.

22 Q. Do you recall whether or not you saw Officer Mata
23 turning the control device on the gas cylinder?

24 A. No, I do not.

25 MR. COHLER: Thank you.

1 MR. GRANUCCI: No further questions of this witness,
2 your Honor.

3 THE COURT: Thank you.

4 MR. GRANUCCI: May he be excused?

5 THE COURT: Yes sir.

6 (Witness excused.)

7 MR. OAKES: Call Mr. Robert Hoagland, please.

8 THE CLERK: Mr. Hoagland.

9 ROBERT R. HOAGLAND,

10 called as a witness on behalf of the defendants, being
11 first duly sworn, was examined and testified as follows:

12 THE CLERK: State your name and occupation to the Court.

13 THE WITNESS: Robert R. Hoagland. I am a Correctional
14 Program Supervisor I at Sierra Conservation Center,
15 Jamestown, California, formerly of CTF, Soledad.

16 DIRECT EXAMINATION

17 BY MR. OAKES:

18 Q. What is a correctional program supervisor?

19 A. Well, in essence it is a correctional officer with
20 case work, case work duties; that is, he is assigned a case
21 load of 16 inmates, and he is their case worker and re-
22 sponsible for reports and communications, group counseling
23 with this 16.

24 Q. Were you a correctional program supervisor while
25 you were at Soledad?

1 A. They do not have that status there.

2 Q. When did you transfer to Sierra Conservation Center?

3 A. I reported September 1 of '65.

4 Q. Prior to that time you were an officer at the
5 California Training Facility at Soledad?

6 A. That is correct.

7 Q. How long were you an officer at the Training
8 Facility?

9 A. Approximately nine years.

10 Q. During your assignment to Soledad, were you as-
11 signed to the O-wing?

12 A. Yes sir.

13 Q. How long were you in O-wing?

14 A. Approximately seven years.

15 Q. What watch did you work?

16 A. First and second.

17 Q. During the period of July 1965, were you assigned
18 in O-wing?

19 A. Yes.

20 Q. What watch were you then working?

21 A. I worked first floor, isolation officer, second
22 watch.

23 Q. Do you know Mr. Jordan?

24 A. Yes.

25 Q. Do you recall Mr. Jordan being in a wuiet cell or

1 strip cell during July of last year?

2 A. Yes.

3 Q. Do you have any specific recollections about that
4 period?

5 A. By date? By date?

6 Q. Yes.

7 A. No, not necessarily by date.

8 Q. You have some recollections of that period?

9 A. Yes.

10 Q. Would you describe your duties while you were
11 assigned to O-wing much the same as what Mr. Mata described
12 this morning?

13 A. Yes.

14 Q. Were you required to provide water during your
15 watch?

16 A. Yes.

17 Q. How much water would you provide?

18 A. Well, the supply wasn't limited. It was to meet
19 the demand of the inmate.

20 Q. How often would you bring water?

21 A. Regularly scheduled, twice a day, in the morning
22 and the afternoon.

23 Q. Would you provide water more often?

24 A. More often?

25 Q. Yes.

1 A. Yes.

2 Q. Did you provide water more often?

3 A. Yes, I have provided water.

4 Q. Would you ever restrict an inmate to one cup?

5 A. No.

6 Q. Do the inmates often have more than one cup?

7 A. One cup of water? Or one cup?

8 Q. No. Do the inmates have more than one cup available
9 to them to hold water?

10 A. Yes, they have more.

11 Q. You allowed them to keep more than one?

12 A. Yes.

13 Q. If an inmate had two cups in his cell and you gave
14 him water, would you fill up both of his cups?

15 A. Yes.

16 Q. Would you fill up his cups, let him drink it down,
17 and leave water in the cups when you left?

18 A. Yes.

19 Q. Would that reduce the number of trips you were
20 required to make back to the quiet cell area, perhaps?

21 A. It could, yes.

22 Q. Have you ever noticed inmates washing their hands
23 with the water in these cups?

24 A. Yes.

25 Q. Do you also supply toilet paper to the cells?

1 A. Yes.

2 Q. Did they use the toilet paper to clean their hands?

3 A. They could have. I don't recall seeing any inmate
4 do that.

5 Q. You were required to clean the cell block during
6 your watch, were you?

7 A. That is correct.

8 Q. What procedures did you follow when you cleaned the
9 cell block?

10 A. I had a policy of--in the strip cell areas on Satur-
11 day was our scrub day, and we would take back the mops and
12 the scrub brushes and there is a hose back there. And we
13 would have soap powder and cleanser. And I had a friend
14 in the culinary department that would supply me with a
15 bleach, quite strong bleach, you had to take a teaspoonful
16 to a gallon of water or something like this, and we used
17 all of these articles in cleaning. And there was a toilet
18 brush.

19 Q. Did you use the bleach to clean the stools?

20 A. Yes, the whole cell with it.

21 Q. Was the equipment made available to the inmates to
22 clean their cells, particularly having in mind those inmates
23 in the quiet cells? Was equipment made available to the
24 inmates to clean their cells at times other than the weekly
25 cleaning?

1 A. Every day. Every day I had a cell broom that I
2 just left in the tunnel area where--well, it wasn't always
3 in the tunnel area either--but it was available to me and
4 the inmates would ask if they could sweep their cell, or
5 I would ask them. The broom was available every day.

6 Q. Are the quiet cells cleaned at any other times?

7 A. Are they cleaned any other times?

8 Q. Yes.

9 A. Other than on Saturdays?

10 Q. Yes.

11 A. Well, they are cleaned when the inmate leaves the
12 cell.

13 Q. Is he required to clean the cell before he leaves
14 it?

15 A. He was when I had the section, yes.

16 Q. He may be held over if he does not clean the cell,
17 is that correct?

18 A. Yes. Well-- Yes, that is correct.

19 Q. You also fed the inmates during this watch, did you
20 not?

21 A. Yes.

22 Q. What were your policies concerning the flaps during
23 the period of July 1965?

24 MR. COHLER: Excuse me. I didn't hear the question.

25 MR. OAKES: Q. What were the policies concerning the

1 flaps on the cell doors during July 1965?

2 MR. COHLER: Your Honor, I think there ought to be a
3 foundation of whether or not any policy which existed was
4 followed before the policy is stated.

5 THE COURT: You may lay the foundation.

6 MR. OAKES: Q. Was there a policy concerning the flaps?

7 A. Yes, there was.

8 Q. Did you follow the policy?

9 A. Yes.

10 Q. What was the policy, please?

11 A. The policy was that if a man was not making a dis-
12 turbance and wasn't causing a problem that might disrupt
13 the rest of the unit, the flaps would be left down. This
14 wasn't followed necessarily all the time; but at any time
15 it wasn't followed it was at the request of the inmate in
16 his cell. He would rather have his flaps up than down.
17 This has happened.

18 Q. Does this happen fairly often?

19 A. Right.

20 Q. Do you usually leave the doors open?

21 A. I left them open only during the feedings or when
22 we were scrubbing down or something like that, or unless
23 the cell was empty. If the cell was empty, the door and
24 the flaps were all down.

25 Q. When you went off duty around, I believe, 3:45 in

1 the afternoon--

2 A. Approximately.

3 Q. When you went off duty, would you normally secure
4 the strip cell area?

5 A. Yes.

6 Q. What would this include?

7 A. Well, it wasn't just the strip cell area. The
8 whole unit was secured, or that section. It consisted of
9 looking at every cell to see that the cell was on double-up,
10 and that included the strip cell area. The strip cell
11 doors were closed and the flaps were up.

12 Q. The flaps were up when you left?

13 A. Yes, the flaps were up-- Yes, when I left a unit
14 and turned the unit over to the relieving officer, the
15 third watch officer, the unit was secured. This was the
16 policy.

17 Q. Was it your policy to leave the control of the
18 flaps up to the next shift?

19 A. Yes. Well, they had an Adjustment Center sergeant
20 and an officer, and it was their watch, and they handled it.

21 Now, I would like to say here, too, that there were
22 times when I didn't--or the flaps were opened when I left.
23 But normally these were specific reasons for it; for
24 example, after I had come back and serviced the strip cells
25 as far as the water and the toilet paper and so forth, then

1 I would go flush the toilets. A lot of times orange peels
2 and et cetera were dropped down into the toilet itself,
3 and when I flushed it, it flooded the cell. So that meant
4 I had to get all of the equipment out, go back to the cell
5 and clean it up, and in a lot of cases I left the doors and
6 so forth open to facilitate the drying and so forth of the
7 cell. But the officer that was relieving me would be made
8 aware of why this was left open.

9 Q. Do you have any specific recollections about any
10 incidents concerning the doors or flaps of Mr. Jordan's
11 cell during this period?

12 A. All I can say is I remember the policy and not--
13 no, I can't.

14 Q. Do you remember any requests being made of you from
15 Mr. Jordan?

16 A. I remember one time Jordan--I was securing the
17 cells in the evening, the afternoon, and Jordan asked me
18 I would leave the door open for a minute. He wanted to
19 finish something he was writing. He was writing--well, I
20 don't know what he was writing, but he said he had a few
21 more lines to finish and would I leave it open for a few
22 minutes. So I went in and secured the rest of the cells,
23 and he--when I came back to his cell, he said, "I got a
24 few more things to do, a few more things to write," and I
25 waited momentarily while he finished, and he thanked me,

1 and I secured his cell.

2 Q. Do you think you had a fairly good relationship
3 with Mr. Jordan?

4 A. Oh, yes, I have known Jordan for what, for four
5 years, five years, something like that.

6 Q. During the course of your duties you spent quite a
7 bit of time in the wuiet cell area?

8 A. Oh, yes.

9 Q. You spent quite a bit of time inside the cells
10 themselves, in the ante room of the cells?

11 A. Yes. It was the best policy if you wanted to talk
12 to a man that was housed in a strip cell, to go in to him
13 and talk, because if he had something to say, it wasn't
14 necessarily for the entire inmate population. So you would
15 go into him inside the room and talk with him.

16 Q. A cell that contains excrement and vomit would
17 smell quite badly, would it not?

18 A. Yes indeed.

19 Q. Would it bother you to work in such conditions?

20 A. Yes indeed.

21 Q. Would you do something about such conditions?

22 A. I would.

23 Q. Do you recall such a condition existing in Mr.
24 Jordan's cell?

25 A. No, I do not.

1 Q. Would you recall such a condition?

2 A. I think so, because this wasn't a common thing.

3 If the condition like that existed and--of course, this is
4 my opinion--but if a condition like this existed in a strip
5 cell, it was caused by the man within the cell, and then
6 this showed us that we had other problems than just his--
7 than just his disciplinary, and time spent, and so forth.
8 It would mean that Dr. Hack would have to be advised or
9 consulted.

10 Q. You stated, I believe, that you worked in the
11 Adjustment Center for about seven years.

12 A. Seven years, yes.

13 Q. That is quite a period of time, is it not?

14 A. Yes, it is.

15 Q. Do you remember various changes that were made in
16 the Adjustment Center over the period of years?

17 A. Many changes, physical, as well as programming.
18 Actually, I started before it was an adjustment center.
19 It was just called O-wing.

20 Q. Do you ever recall mattresses being in the Adjust-
21 ment Center?

22 A. You mean the regulation mattresses?

23 Q. Yes.

24 A. In the strip cells?

25 Q. Yes.

1 A. Yes.

2 Q. Did that create a problem?

3 A. It did one night I will never forget.

4 Q. What was that?

5 A. There was a gentleman in one of the strip cells.
6 I can't recall which one. Somehow he got ahold of some
7 matches. He had the regulation--the thick mattresses. And
8 I think he had a blanket also. He had proceeded in tearing
9 up the mattress, taking all of the cotton out of it and
10 tearing the light canvas that encircles, makes up the mat-
11 tress. He tore this in shreds. All this he had piled up
12 in between his bars and the outside door. He lit this.
13 My father and I were on duty at the time. This was at
14 night. And we observed smoke coming out from underneath,
15 and it must have been burning fairly well, because if you
16 have been there at night, you know that the night light,
17 it isn't too much light. But we did see smoke--or we
18 smelled it first, and we went back there, opened the door.
19 And when the oxygen hit the already smoldering, it blew up
20 real good. The man was unconscious on the floor. He had
21 to be taken to the hospital. My father went to the hospital
22 for oxygen. All and all, it was a real good mess.

23 Q. Your father was a correctional officer?

24 A. He still is, yes.

25 Q. Officer Hoagland, calling your attention to the

1 period between July 9 and July 20 of 1965, do you recall
2 taking Mr. Jordan out for a shower?

3 A. Yes, I do.

4 Q. Are you sure of that?

5 A. I am positive.

6 Q. Why are you sure of that?

7 A. For several things, reasons.

8 One is-- You see, you work in an adjustment center
9 where there is maximum control, maximum custody. Everything
10 you do, you have to think about the security involved.

11 Now, Jordan was in a strip cell, and as I remember it
12 he needed a shave. He asked me if, "I could have a shower--"
13 if he could have a shower. I didn't answer him then, as I
14 recall, and when I left the unit--I told him I would check
15 and see. I left the unit, left the area. I don't recall
16 if I talked to Sergeant Friedrick or I just checked his 114
17 to see how many days he had back there. I think Jordan
18 knows the rules in regards to running the place better than
19 anybody else.

20 In any case, subsequently I did get him out for a
21 shower on the understanding that he would shave, which he
22 agreed to.

23 We came down for the shower, I escorted him down to the
24 grille gate where the shower is located, and I told him,
25 "I will get you a razor and a mirror," so he could shave in

1 the shower. And he said that he--that he had changed his
2 mind, that he didn't think he wanted a shave. I said,
3 "Well, I have changed my mind. I don't think I want to give
4 you a shower, because that was the deal. No shave, no
5 shower."

6 So he decided to shave, which he did under the shower.

7 Now, the position it put me in, as I started to say
8 originally, is that getting a man out of a strip cell is
9 not a problem. You have been down there, and Mr. Cohler.
10 If you have an opportunity to leave a strip cell, you will
11 normally do so. In most cases, the man would come out of
12 the strip cell, and he would have other housing or he
13 would--or whatever arrangements you have made for him. But
14 I had to take Jordan back to the strip cell, and I was
15 quite concerned about this. And it wasn't a good idea on
16 my part. I put myself in a bad position, and I don't
17 normally do this.

18 MR. OAKES: I have no further questions at this time.

19 CROSS-EXAMINATION

20 BY MR. COHLER:

21 Q. I am not quite sure I understand, Officer Hoagland,
22 what you meant when you said you put yourself in a bad
23 position. Would you explain that a little bit more, please.

24 A. Well, Jordan, and I don't think any of the inmates,
25 like to be housed in the strip cell, which is understandable.

1 Now, Jordan was out and he had a shower and so forth. And
2 I personally--I had a few quick moments, because I had to
3 take Jordan back to the strip cell. I was in there by my-
4 self. This was the explanation I meant to get across.

5 Q. You said you wouldn't ordinarily do that. What
6 does that mean?

7 A. I wouldn't ordinarily do what?

8 Q. You said when you were testifying just at the tail
9 end of direct examination that you put yourself in a bad
10 position and you wouldn't ordinarily do that. What wouldn't
11 you ordinarily do?

12 A. I wouldn't ordinarily get him out alone; I mean, by
13 myself.

14 Q. You would have another officer on duty?

15 A. That is right. Now, there was another officer on
16 duty.

17 Q. In other words, it is a bit of a problem to take
18 a man out for a shower from a strip cell, is that right?

19 A. It poses a problem. Not in all cases. Not getting
20 a man out of a strip cell, there is no problem at all,
21 normally.

22 Q. You also related, Mr. Hoagland, that you looked at
23 the form 114 to see how long Mr. Jordan had been in the
24 quiet or strip cell.

25 A. I may have looked at the blackboard. Or I may not

1 have done either. What I am saying is, I either talked
2 with Sergeant Friedrich, or I looked at the board, one of
3 the two, or the 114.

4 Q. Do you consider the forms 114 accurate?

5 A. In regards to how many days a man had been in the
6 Adjustment Center.

7 Q. You say you were concerned about having Mr. Jordan
8 out for a shower on this occasion because you were by your-
9 self. Is that correct?

10 A. Well, I was there to take him back by myself.

11 Q. Was there no other officer or sergeant around at
12 that time?

13 A. The sergeant had been in and had gone--he had come--
14 Sergeant Friedrich came in, in fact Jordan talked with
15 Sergeant Friedrich when he was either preparing or had
16 started to take a shower. But he left, the sergeant had
17 left the unit, the downstairs unit, as I remember, and there
18 was just the other officer and myself.

19 Q. What did Mr. Jordan and Sergeant Friedrich talk
20 about, do you recall?

21 A. I think he asked him for legal material, his legal
22 property.

23 Q. You think Mr. Jordan asked Sergeant Friedrich for
24 legal material?

25 A. Well, he has legal property, or legal material in

1 his property, and this is what I think he asked him for,
2 which he subsequently got, I might add.

3 Q. While he was in the quiet cell?

4 A. While he was in the quiet cell.

5 Q. You said you checked a blackboard or a form 114 or
6 something. Do you recall how long Mr. Jordan had been in
7 the quiet or strip cell at the time you say you took him
8 out for a shower?

9 A. He had been in at least five days, because I
10 wouldn't have gotten him out for a shower hadn't he been.
11 But the exact number, I can't say, no.

12 Q. Could it have been as long as two weeks?

13 A. Two weeks?

14 Q. Yes.

15 A. I couldn't say. I don't know.

16 Q. Now, the blackboard, does that show whether people
17 are in isolation? Whether they are in a quiet cell? Or
18 what does it show?

19 A. In Jordan's case it showed he was in the quiet
20 cell, that his name and number-- Now, mind you, it has
21 been a year--his name and number, the date he came in, and
22 if he was on isolation, his release date. I think that is
23 all.

24 Q. It shows the cell number he is in?

25 A. Yes.

1 Q. How many inmates have you given showers to in the
2 quiet cells or strip cells in the last two years on the
3 first floor of O-wing, approximately?

4 A. Well, seeing as how I haven't been down--I wasn't
5 down there a full two years, let's try, maybe, eight or
6 nine months. I think I had the "Max" section, and I moved
7 over to isolation and had it between eight to ten months
8 prior to transfer to SCC.

9 Q. Approximately the beginning of 1965?

10 A. Yes.

11 Q. From, let's say, January 1965 until September 1965,
12 about how many showers did you give inmates from the quiet
13 cells or the strip cells?

14 A. It would be only a guess, but--

15 Q. Estimate for us if you can.

16 A. Perhaps five, maybe, five or six. That is about--
17 five or six, that I could say.

18 Q. About how often do you make available a shower to
19 an inmate who is in a quiet cell or a strip cell? I am
20 asking you for your recollection, not the policy.

21 A. I am sorry, Mr. Cohler. I lost that.

22 Q. I will start over.

23 During the period from January 1965 until the beginning
24 of September 1965, you were on the second watch on the first
25 floor, weren't you? Is that right?

1 A. Yes.

2 Q. Wouldn't that be the normal time, if any, when an
3 inmate housed in a quiet or strip cell would have a chance
4 to take a shower?

5 A. No-- I am sorry, I am missing.

6 Q. You were on the second watch. Now, as I understand--
7 and I want your testimony, not my understanding--the third
8 watch doesn't give showers to people and the first watch
9 doesn't give showers to people, is that right?

10 A. You are not right.

11 Q. Correct me now.

12 A. People who are going out to court will be showered
13 on the third watch.

14 Q. All right. Let's exclude that then. Except for
15 the group going out to court, does the first watch or the
16 third watch generally offer showers to people in strip
17 cells or quiet cells?

18 A. No.

19 Q. It is generally done in the second watch, is it?

20 A. Yes.

21 Q. You were on duty during the second watch from
22 January 1965 until the beginning of September 1965, weren't
23 you?

24 A. That is right.

25 Q. You say you afforded only five or six showers during

1 that whole nine-month period?

2 A. That I can remember, that I can pinpoint, that is
3 all I can say.

4 Q. Are you telling the Court-- I just want to under-
5 stand what you mean-- Are you telling the Court that you
6 only remember five or six particular incidents? Or that
7 your best estimate is that you only gave five or six
8 showers?

9 A. That I can remember only five or six.

10 Q. How many showers would you estimate you afforded
11 inmates during that period?

12 A. Well, after a man had been there for five days, he
13 was afforded--if he was to remain back there longer, he
14 was afforded a shower if his actions--if we didn't feel we
15 had to wrestle with him or it would cause a hassel.

16 Q. Say an inmate was in the quiet cell or strip cell
17 for nine days. How would you know whether or not he had
18 been afforded an opportunity to take a shower at some time
19 within those nine days?

20 A. Normally it would be indicated on the 114 if some-
21 one had showered him.

22 Q. You would have to rely on the 114, is that correct?

23 A. Yes, or the officer--as the release are run there,
24 the officer that is assigned in Max, let's say, is working
25 during the time that the isolation officer would be off.

1 Information is relayed back and forth this way also.

2 Q. It is supposed to be relayed on a form 114, is it
3 not?

4 A. Right.

5 Q. Mr. Jordan was in the quiet cell on July 9 through
6 July 20, and you have related one time when you say you
7 took him for a shower.

8 A. And a shave.

9 Q. And a shave. Ought he not, according to the policy,
10 have received more than just one shower during that period
11 of time, if he received one even?

12 A. How many days?

13 Q. July 9th through July 20th. Perhaps we could have
14 some help.

15 Plaintiff's Exhibit 13, I believe it is, the form 114.

16 I show you Plaintiff's Exhibit 13 in this case, Mr.
17 Hoagland, and refresh your recollection if you will look
18 at the entry starting July 9th through July 20th when Mr.
19 Jordan was in the quiet or strip cell. I ask you whether
20 it is not true, if the policy had been followed, he would
21 have received at least two showers during that period?

22 A. Let's see, 7/20 is when he moved, wasn't it.

23 Moved 12:05.

24 Not necessarily, no. From the 9th to the 20th? Right?

25 Q. Let's count on our fingers. 9th, 10th, 11th, 12th,

1 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th. I get
2 about 12 days.

3 A. You are right, counsel.

4 Q. Is it true that if policy were followed, he ought
5 to have received at least two showers?

6 A. That is correct.

7 Q. You say you recall one shower. Do you find any
8 indication of the shower noted on the record?

9 A. It is not on here, no.

10 Q. It ought to have been noted, shouldn't it?

11 A. Right. I can tell you when it wasn't, to a degree.
12 But I can't tell you when it was.

13 He came in on Friday, which would be the 9th; it wasn't
14 Friday. Saturday I worked; it wasn't Saturday, as I recall.
15 Sunday and Monday I am off. And that week, Tuesday I
16 didn't work. So it would be from Wednesday on.

17 Q. The first Wednesday on?

18 A. Right. But that is as far as I can go in regards
19 to specifying a certain day.

20 Q. If an officer who is your relief officer were on
21 duty during this period on the second watch, looking at
22 that record he would not know that Mr. Jordan had been
23 afforded an opportunity for a shower, would he?

24 A. Not unless the other officer told him.

25 Q. You stated on direct examination that you didn't

1 recall this period of time.

2 A. Not by date.

3 Q. By date. Correct.

4 You also stated, I believe, that you didn't recall the
5 period of time, except for leaving the door open for Mr.
6 Jordan so he could write a little bit further; is that true?

7 A. Then; and the shower, I remember that.

8 MR. OAKES: I don't think that is quite what he stated.

9 MR. COHLER: We will let the record speak for itself.

10 Q. You have told the Court that you recall a shower,
11 a conversation during the shower, a conversation with Mr.
12 Jordan and Sergeant Friedrick at the time of the shower,
13 which days you were on and which days you were off, looking
14 at a blackboard, looking at a cell number.

15 Have you done anything to refresh your recollection
16 before testifying, Mr. Hoagland?

17 A. Not by reading any documents, I haven't, no.

18 Q. Except for and excluding counsel and anyone from
19 the Attorney General's office, have you spoken to anyone
20 before testifying about this period of time?

21 A. Yes.

22 Q. With whom?

23 A. I have spoken with some of the people who have
24 appeared as witnesses for the State.

25 Q. Including Sergeant Friedrick?

1 A. That is correct.

2 Q. Did you talk about this shower incident with
3 Sergeant Friedrich?

4 A. That is correct.

5 Q. His recollection was about just what you have
6 testified, was it not?

7 A. No. I told him.

8 Q. You told him. Did you tell him everything you told
9 the Court?

10 A. Perhaps. Perhaps I did.

11 Q. Is there anything in particular you can recall now
12 that you haven't told the Court?

13 A. Well, we were talking just today in regards to the
14 shower, and they were telling me, actually, that I would
15 no doubt be under quite extensive cross-examination because
16 it wasn't documented. But the reason--and another thing
17 that tells me this is what I have done, over and above that
18 I remember the incident, is that if Jordan needed a shave
19 and he was in a regular isolation cell out in front of the
20 screen, I would have shaved him in his cell and then
21 brought him to the shower.

22 Q. What if he were in a regular isolation cell--well,
23 let me back up a little bit.

24 You said that any time from the first Wednesday on,
25 that you took him for a shower. If he did not have another

1 shower, which wasn't also recorded after that, by the time
2 he got to an isolation cell, he may have been in need of a
3 shower. Is that correct?

4 A. Yes.

5 Q. You may have afforded an opportunity for a shave
6 and shower for an isolation cell inmate, would you not, to
7 a man who needed it?

8 A. But if I was to do that, I wouldn't have let him
9 come to the shower and shower and shave.

10 Q. Perhaps you asked him to shave in his cell and then
11 took him out for a shower and that was the deal.

12 A. Perhaps I did what?

13 Q. You asked him to shave in his cell before you took
14 him out for a shower, and that was the deal.

15 MR. GRANUCCI: Is that a question?

16 MR. COHLER: I meant it to be a question.

17 THE WITNESS: I don't follow you, counsel.

18 MR. COHLER: Q. You say there was some problem about
19 Mr. Jordan not shaving, and you didn't want to let him have
20 a shower unless he shaved.

21 A. Right.

22 Q. Is it possible, thinking back over a year now,
23 particularly thinking back to the institution at which you
24 no longer work, that the deal was that he shave in his cell
25 and then you would let him have a shower?

1 A. No, that isn't, because if I--if I had made that
2 type of a deal, then I wouldn't have escorted him. I would
3 put the man on--I would take the cell off the double lock
4 and then when he was ready I would roll the bar off front,
5 and he would come to the shower that way.

6 Q. When did you speak to Sergeant Friedrick about this?
7 Have you spoken to him more than once?

8 A. Yes.

9 Q. When was the first time?

10 A. You mean about the whole case itself?

11 Q. No. Let's talk about the shower. That is all that
12 matters right now.

13 A. Well, I can't--I said something to him about the
14 shower--or the-- what I just said, in regard to moving the
15 man out of his cell if he was isolation, or escorting him
16 if he was strip cell. This was said--I told Sergeant
17 Friedrick today.

18 Q. When was the first time, if you recall, that you
19 discussed this shower incident with Sergeant Friedrick?
20 Very roughly, Mr. Hoagland. Was it in the month of August?
21 Or earlier?

22 A. I think it possibly was earlier.

23 Q. Was it before or after the 4th of July holiday?

24 A. I can't remember just when it was. I know I--I
25 still had family living in--let's see. I am trying to think

1 I had a vacation, and during my vacation I went to Soledad
2 to see my parents and visited with Friedrich at that time.
3 I think it was probably late July, I guess.

4 Q. Could you be sure that it wasn't into the month
5 of August?

6 A. No, I couldn't. But I don't think it was.

7 Q. The first time you spoke to Sergeant Friedrich about
8 the shower incident, Mr. Hoagland, did he recall anything
9 about it at all in your conversation?

10 MR. GRANUCCI: Objection, hearsay.

11 THE COURT: Overruled.

12 MR. COHLER: Do you have the question, sir?

13 A. Yes. It was--he said something about he remembered
14 something about talking with Jordan when Jordan was taking
15 a shower.

16 Q. When Jordan was taking? Or preparing to take a
17 shower?

18 A. Well, it was one way or another. He was either
19 going into the shower, or he had taken the shower and was
20 coming out.

21 Oh, and there is one thing else I would like to add.

22 Q. Please.

23 A. When Jordan--when I brought Jordan out of the strip
24 cell, he had his clothes on, because we exchanged clothes
25 for him. He put his clothes there on the bars, as you may

1 have seen them do. They take their clothes and stick them
2 on the bars right by the shower.

3 Q. That may help us to fix the time a little bit.
4 Please continue to tell us what Mr. Friedrich said when
5 you spoke to him in July.

6 A. He said that he remembered talking with Jordan, and
7 he was preparing or had finished taking a shower.

8 Q. Did he remember anything about it beyond that?

9 A. And I refreshed his memory by saying, "Well, when
10 I took him out of the strip cell you talked to him and you
11 asked him for his legal papers."

12 Q. "He asked you for his legal papers."

13 A. He asked Mr. Friedrich.

14 Q. Was there anything else Sergeant Friedrich could
15 remember after you had refreshed his recollection?

16 A. No, not that I can think of.

17 Q. I ask you to look at the entry 7/24, the second
18 page of Plaintiff's 13.

19 A. Yes.

20 Q. Do you recognize the initials?

21 A. Yes.

22 Q. Are those yours?

23 A. Yes.

24 Q. This was the fourth day after Mr. Jordan was removed
25 from the quiet or strip cell, is that correct?

1 A. Yes.

2 Q. What is the entry there, Mr. Hoagland?

3 A. "C/EX, shower."

4 Q. You took Mr. Jordan out for a shower on that day,
5 did you not?

6 A. Yes, he had a shower that day.

7 Q. I believe you testified on direct examination, Mr.
8 Hoagland, that upon occasion you have observed inmates
9 having more than one cup of water in their cell at a time;
10 is that correct?

11 A. Yes.

12 Q. In trying to service inmates with water, you try
13 to make the rounds to as many cells in as short a time as
14 possible, do you not?

15 A. Well, there are only six.

16 Q. All right. To all of the six cells then.

17 A. And that is they are full.

18 Q. No matter how many cells there are, do you try to
19 service the water as efficiently as possible?

20 A. Yes, that is right.

21 Q. Do you stop to see what the inmate does with the
22 water after his stomach is full?

23 A. No, it is just left there on the bars. In fact, I
24 might add, upon servicing the strip cells in the afternoon,
25 on many occasions I have observed that the water I had left

1 previously was undisturbed, which I would pour out and re-
2 fill again with fresh water.

3 Q. You said that you fed the inmates. I am not try-
4 ing to say that you ~~fed~~ ^{said} anything incorrect. But to be a
5 little more accurate, you and the inmate-porter would feed
6 the inmates, is that correct?

7 A. Right.

8 Q. And the inmate porter would do the actual handling
9 of the tray? Or would you do it?

10 A. I would.

11 Q. You handled the food, and the porter pushed the
12 cart?

13 A. Right.

14 Q. You made reference, Mr. Hoagland, to scrubdown, I
15 think you called it, which was performed at least once
16 every Saturday while you were on duty.

17 A. Right.

18 Q. Would you describe very fully what is involved in
19 these scrubdowns, please.

20 A. Yes. If a cell is empty, the cell is opened up.
21 There is, in the tunnel--well, not the tunnel, really--
22 there is a door at the back right-hand wall past cell 1224,
23 and this leads into--actually, it joins to Max, Max section.
24 In the middle of this area is the tunnel area, which you
25 are probably familiar with.

1 At this entrance, just inside the entrance to the door
2 is the hose, the water hose. With the equipment that I had,
3 that I spoke of earlier, and the hose, we would sweep out
4 the cells. And I normally handled the hose myself, put the
5 water on the floor, the soap and the bleach, and if there
6 was the inmate in the cell, I would take his mattress out,
7 he would generally take his socks off, roll up his cover-
8 alls, and would be issued the scrub brush which he would
9 use, the toilet brush. And after he had a nice soapy
10 lather in there, we would again put the water in, rinse it
11 out, and the squeegee for him to use. And then after the
12 water had all been--or as much as can be taken out with
13 the squeegee, he would then dry-mop the cell. And all the
14 doors and flaps were left open.

15 Normally I would take his mattress and put it over the
16 door of the cell when it was convenient. When the cell dried
17 out he was given back his mattress.

18 The cells that were empty, on occasions I would take a
19 porter with me. But I hesitated to do this, because I
20 didn't trust the porters that much. This was a good time
21 for them to take things into their friends, and I was in-
22 terested in cleaning the cells rather than worrying about
23 this guy running around. So a lot of the times I would--
24 in fact, I would say in most cases I had my hight-top
25 rubber irrigator boots on and would be scrubbing the cells

1 out myself for another reason also, is because I had to
2 work back there and the porter didn't. I had observed
3 porters on other occasions and they didn't do the job that
4 I felt should be done back there. So I would go in myself
5 and scrub with the scrub brush the floors, the walls, the
6 toilet and the whole area to my satisfaction.

7 Q. Anything else?

8 A. Not that I can think of.

9 Q. Sure?

10 Mr. Hoagland, I was told by Sergeant Friedrick that you
11 liked to fish--

12 A. Fish?

13 Q. Fish. And you liked your new assignment out at
14 the Sierra Conservation Center, is that right?

15 A. That is right.

16 Q. It has been challenging to you?

17 A. Well, not as much as I would like, because I found
18 the job assignment up there was a little more demanding--
19 that my free time isn't like it was at Soledad.

20 Q. You have been busy?

21 A. Yes. Well, as a CPS-1, you haven't--well, maybe
22 I shouldn't go into this.

23 Q. I don't want to go into it far.

24 A. Anyway, what is involved is, there is additional
25 case work that is done on my time.

1 Q. And some of the things you are doing now are dif-
2 ferent from the things you did at Soledad?

3 A. Well, I am working with different people.

4 Q. Aside from the identity of the people, are you doing
5 different kinds of things? There is a certain adjustment
6 involved in changing jobs, is there not?

7 A. Well, coming from the Adjustment Center to this job,
8 it is a real vacation.

9 Q. It is true that there are certain procedures, new
0 things to learn?

1 A. Oh, yes, sure.

2 Q. Would you say you recall things that have happened
3 more recently better than you recall things happening in
4 the past?

5 A. Who is to say what we retain? I couldn't really
6 answer that and give the whole truth, I don't believe.

7 Q. I won't ask you to do anything you can't answer
8 truthfully.

9 A. I remember incidents that happened many years ago.

0 Q. For instance, you remember the burning mattress
1 very vividly?

2 A. Oh, yes. That is quite an experience I don't think
3 anyone would forget. I also recall an experience with
4 Jordan, when we had to--I was involved in forcibly moving
5 him from--it was a verbal attack on another inmate that he

1 felt, as he said, snitched on him. But this is something
2 else I would remember.

3 THE COURT: Have you about finished your examination?
4 We are running into a late hour.

5 MR. COHLER: That is all. Thank you.

6 REDIRECT EXAMINATION

7 BY MR. OAKES:

8 Q. Calling your attention to the entry for 7-24 on
9 that log--I think it is Plaintiff's 12--

10 MR. COHLER: 13, I think.

11 MR. OAKES: Q. --the entry is "C/EX, shower," as I
12 understand it.

13 A. Yes.

14 Q. What does that stand for?

15 A. It stands for corridor, corridor exercise and
16 shower.

17 Q. Was Mr. Jordan at this time in an isolation cell?
18 Or a strip cell?

19 A. He was in an isolation cell.

20 Q. If Mr. Jordan had been in an isolation cell, would
21 you escort him to a shower?

22 A. No.

23 Q. Is the normal procedure to be outside of the grille
24 gate, the front grille gate, when a man is on corridor
25 exercise?

1 A. Oh, yes.

2 Q. So in this instance, you would have more than
3 likely have been outside, while he was in the isolation
4 cell?

5 A. For this exercise and shower, was I outside the
6 grille gate?

7 Q. Yes.

8 A. Yes. This is a matter of rolling the bar, you roll
9 the locking device, and the man can open his door.

10 MR. OAKES: I believe I have no further questions.

11 REDIRECT EXAMINATION

12 BY MR. COHLER:

13 Q. An inmate who takes a shower from the isolation
14 section and an inmate who takes a shower from a strip cell
15 or quiet cells takes a shower in precisely the same shower
16 room, does he not?

17 A. Yes.

18 MR. COHLER: Thank you.

19 THE COURT: How many additional witnesses have you?

20 MR. GRANUCCI: Your Honor, we have four more additional
21 witnesses. We have another correctional officer whose
22 examination will be about the same length, perhaps a little
23 longer, than Officer Hoagland's. Then we have the building
24 engineer, who will testify as to the ventilation system.
25 I don't anticipate that will be lengthy. We have Mr.

1 Donnelly to come back for--and I mean this--about two or
2 three minutes of questioning and testimony. Then Mr.
3 Fitzharris for what I think will be a very short examina-
4 tion.

5 MR. COHLER: Your Honor, I would like to advise both
6 counsel, as I have informally, and Your Honor that there is
7 a possibility there will be one rebuttal witness.

8 THE COURT: Do you think we could conclude the testi-
9 mony tomorrow morning?

0 MR. GRANUCCI: We think we could, but then again, Your
1 Honor, we might now.

2 MR. OAKES: May I interrupt? The testimony of my
3 witness will not be too long, perhaps ten minutes.

4 MR. GRANUCCI: Well then, I believe we will probably
5 conclude tomorrow morning, Your Honor.

6 THE COURT: Do we have a calendar?

7 THE CLERK: Yes sir. I understand from Mrs. Blair it
8 may run 45 minutes or so.

9 (A discussion was had between the Court and the Clerk
10 not within hearing of the Reporter.)

11 MR. GRANUCCI: A possible suggestion is that we could
12 come in and go for a half hour, and then adjourn and let
13 the Court conduct the calendar.

14 THE COURT: Let us start at 9:30, and then we can re-
15 cess at 10:15 so I can go ahead with the regular calendar.

1 I will have to adjourn tomorrow at about 12:00 o'clock--
2 I have other matters during the course of the day, I have
3 an accumulation of matters, as it might appear--we will
4 see how we get along tomorrow.

5 I think we can cover all of this testimony tomorrow
6 by 12:00 o'clock.

7 MR. GRANUCCI: Your Honor, at least speaking for the
8 defendants, we will want some time to argue the case.

9 THE COURT: You can argue it Friday.

0 MR. GRANUCCI: That is fine with us.

1 MR. COHLER: I was going to ask about that, Your Honor.
2 Do you want closing argument before receipt of the
3 transcript or afterwards?

4 THE COURT: I have ordered the transcript, but I am
5 still without it. I am not sure it will be in time. I am
6 going to move along on this matter. Next week I have an
7 extremely heavy week.

8 MR. COHLER: The plaintiff would like to move as quickly
9 as possible.

0 THE COURT: All right.

1 Miss Reporter, will you ask them to get as much of the
2 transcript as is available.

3 9:30 in the morning.

4 (Whereupon the hearing was adjourned until 9:30 a.m.

5 Thursday, August 18 1966.)

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION
4 - - -

5 BEFORE: HON. GEORGE B. HARRIS, JUDGE

6
7 ROBERT CHARLES JORDAN, JR.,)

8 Plaintiff and)
9 Petitioner,)

No. 44309 and
44786

10 vs.)

11 C. J. FITZHARRIS, et al,)

12 Defendants and)
13 Respondents.)

14
15 REPORTER'S TRANSCRIPT
16 EVIDENTIARY HEARING

17 AUGUST 18 1966
18 AUGUST 19 1966
19
20
21
22

23 Reported by: MERILYN SEYBERT
24
25

1 THURSDAY, AUGUST 18 1966 - MORNING SESSION - 9:30 A.M.

2 THE CLERK: 44309 and 44786, Robert Jordan, Jr. vs.
3 C. J. Fitzharris, further evidentiary hearing.

4 MR. COHLER: Ready for the plaintiff and petitioner.

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

6 THE COURT: You may proceed.

7 MR. OAKES: I would like at this moment to call Officer
8 Hoagland.

9 ROBERT . HOAGLAND.

10 recalled as a witness on behalf of the defendants, having
11 been previously duly sworn, resumed the stand and testified
12 further as follows:

13 THE CLERK: Would the witness restate his name for the
14 record.

15 THE WITNESS: Robert Hoagland.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. OAKES:

18 Q. Yesterday afternoon, during the course of your
19 testimony you indicated that Mr. Jordan had been in his
20 quiet cell for a period of, I believe, 11 days.

21 A. That is correct.

22 Q. It was indicated at that time that he should have
23 probably had two showers during that period.

24 A. That is right.

25 Q. Have you since decided that that statement was

1 incorrect, and that he was probably only eligible for only
2 one shower?

3 A. Yes, I have.

4 Q. Could you explain that, please.

5 A. The normal policy was that a man would shower every
6 five days, but he had to complete the fifth day, which
7 would mean--I will use my hands again--from the 9th to the
8 13th would be five days, but he would have to complete the
9 fifth day, which is midnight of that day.

10 Since his showering was handled by the second watch,
11 he would be eligible for a shower on the 14th, which was
12 actually the sixth day.

13 Then his five days would start again with the 15th,
14 so it would be the 15th, 16th, 17th, 18th and the 19th
15 would be his fifth day. But he would have to complete that
16 fifth day to midnight, which would be the 20th. And the
17 20th is the day that he came out and was housed in regular
18 isolation housing, and would be eligible for the routine
19 exercise-shower that he would fall into in that section.

20 MR. OAKES: I see. I have no further questions.

21 FURTHER RECROSS-EXAMINATION

22 BY MR. COHLER:

23 Q. Let me go through this finger exercise with you
24 once again.

25 He came in the night of the 9th, is that correct?

1 A. That is correct.

2 Q. When would be the end of his first day? The mid-
3 night of the 9th? Or the midnight of the 10th?

4 A. Midnight of the 9th.

5 Q. That is one day?

6 A. Right.

7 Q. The 10th is two days.

8 A. Right.

9 Q. The 11th is three days.

10 A. Right.

11 Q. The 12th is four days. The 13th is five days.

12 A. Right.

13 Q. So on the 14th he gets a shower.

14 A. Right.

15 Q. Then the night of the 14th is the end of another
16 day, right?

17 A. No. The 15th starts his next five days, because
18 he had the shower the 14th.

19 Q. I want to see how you count the days. Then the 15th,
20 by midnight of the 15th, he would have completed one day?

21 A. That is correct.

22 Q. The 16th, two; the 17th, three; the 18th, four; the
23 19th, five.

24 A. Correct.

25 Q. So on the 20th he is eligible for another shower.

1 A. That is right.

2 Q. He didn't have a shower on the 20th, did he?

3 A. No.

4 Q. Since we have you back again, Mr. Hoagland, do you
5 remember, particularly toward the end of this period, July
6 9th through July 20th, that there was a riot or a lot of
7 trouble of some sort up at North, and several people were
8 moved down into the isolation and quiet cell or strip cell
9 area?

10 A. No, I can't--they were having trouble over there
11 with the Moslem and Nazi groups, but I can't say if this
12 was during this period.

13 Q. Without trying to characterize it, wasn't there
14 some sort of racial trouble, and a lot of people were
15 brought down into the quiet or strip cell area and the
16 isolation area about this period of time?

17 A. It could have been.

18 Q. You have been able to remember quite a few things
19 well. Do you recall whether or not Jordan was moved out of
20 the quiet cell or the strip cell into regular isolation be-
21 cause there was a need for more quiet or strip cells?

22 A. No, I do not remember that.

23 Q. Without tying you down to this particular period of
24 time, do you remember that some time around July, perhaps
25 after or before, let's just start with generally, there had

1 been difficulty, a lot of people had been moved, I believe
2 from North into the quiet cell area, into the isolation
3 area? Do you recall that much, without pinning it down to
4 time yet?

5 A. It could be, yes.

6 Q. Yes?

7 A. This could have been the case. I can't--

8 Q. Do you recall that that happened some time?

9 A. Some time, yes.

10 Q. In fact, there was a fairly unusual amount of heavy
11 custody and heavy guarding when this group of people from
12 North was moved down into the isolation area, whenever it
13 was? Do you recall that?

14 A. Heavy guarding?

15 Q. Well, let's be specific. At this time, wasn't there
16 thought to be so much trouble that even inmates in isolation
17 cells were escorted when they left their cells?

18 A. Well, inmates in isolation cells were normally
19 escorted anyway, wherever they went, other than for a normal
20 exercise period.

21 Q. Let's be careful. I think you said yesterday that
22 an inmate going from an isolation cell to his shower would
23 normally not be escorted. There would be the roll lock,
24 or whatever it is.

25 A. Well, I did say "other than exercise." Just now.

1 Q. Right. I am not trying to get you confused.

2 A. No. If a man was to come out under normal exercise,
3 then he wouldn't be escorted. He would be keyed and rolled.

4 Q. That would be the occasion for a shower?

5 A. Right.

6 Q. Wasn't there a period after this rioting or whatever
7 it was, where they brought a lot of these people down from
8 North, where there was escort even for normal exercise and
9 shower, from the isolation showers?

10 A. I don't remember, Mr. Cohler. It could have hap-
11 pened after I left. But I don't remember doing that myself.

12 Q. You don't remember escorting people from normal
13 isolation cells? Let me see if I can refresh your memory
14 a little bit better.

15 In fact, there was so much trouble that the escort
16 officers were carrying billy clubs.

17 A. I can remember that--or I know that in an emergency
18 situation like this, that the events you are describing do
19 take place. But I can't recall whether it was during the
20 period that is in the question right now. And I am sorry
21 I can't.

22 Q. All right. Don't recall any more than you can.
23 Let's just establish what has happened at some time, even
24 though you can't fix the time right now. At some time
25 there was sufficient disturbance and there was sufficient

1 need, in the opinion of the personnel at the institution,
2 that even inmates in isolation cells would be escorted when
3 they left the cells for normal exercise and showers?

4 A. This I don't remember. I can't remember doing this.

5 Q. Do you remember that that has ever happened?

6 A. Oh, yes.

7 MR. COHLER: I think that is the best recollection you
8 have. Let's see what other people can remember. Thank you.

9 MR. OAKES: I have no further questions of this witness
10 at this time. If the Court has any questions--

11 THE COURT: I have one question that may have been
12 covered earlier--I doubt that it has--and that is: When is
13 an inmate placed on restricted diet, according to your
14 judgment and opinion?

15 THE WITNESS: When I--since I was in isolation section,
16 I never--there wasn't a man in there that was on this diet.

17 THE COURT: That covers what period of time?

18 THE WITNESS: That covers eight months, from September
19 back.

20 THE COURT: What is that diet, specifically?

21 THE WITNESS: Well, it is a loaf, like a meatloaf, and
22 it is a-- I have tasted it. It is tasteless. It doesn't
23 have much flavor.

24 THE COURT: Is it hot or cold?

25 THE WITNESS: I don't think it is heated. It is not--

1 I don't think it is heated.

2 THE COURT: What portion is given, what amount is given
3 to an inmate? Once a day? Or twice a day?

4 THE WITNESS: Twice a day.

5 THE COURT: Is it like a hard sausage?

6 THE WITNESS: It is like a meatloaf.

7 THE COURT: Is it hard or soft?

8 THE WITNESS: It is not hard like an apple. I think it
9 is--it is not mushy soft, but it has a consistency. It
10 can be sliced or--

11 THE COURT: Would you have to have an order before you
12 place a man on that type of ration?

13 THE WITNESS: Oh, yes. The medical department has to
14 O.K. it.

15 THE COURT: Without a medical O.K., you would not serve
16 a man that?

17 THE WITNESS: No.

18 THE COURT: I have no further questions.

19 MR. GRANUCCI: Your Honor, could I ask a question?

20 FURTHER REDIRECT EXAMINATION

21 BY MR. GRANUCCI:

22 Q. You were an officer during your time in the isolation
23 section, weren't you?

24 A. Yes sir.

25 Q. As an officer, you had no power to order anybody

1 on an isolation diet, did you?

2 A. No, I did not.

3 Q. That would be for the Disciplinary Committee, would
4 it not?

5 A. The Adjustment Center Committee or the Disciplinary
6 Committee, yes.

7 (Witness excused.)

8 MR. OAKES: I would like at this time to recall
9 Sergeant Friedrich.

10 WILLIAM T. FRIEDRICK,

11 recalled as a witness on behalf of the defendants, having
12 been previously duly sworn, resumed the stand and testified
13 further as follows:

14 THE CLERK: Restate your name for the record.

15 THE WITNESS: William Thomas Friedrich.

16 DIRECT EXAMINATION

17 BY MR. OAKES:

18 Q. Sergeant, you have already testified at length in
19 this matter. I thank you for your patience.

20 You have stated, I believe, that you were the second
21 watch sergeant in O-wing and assigned to O-wing since June
22 1965, is that correct?

23 A. That is correct.

24 Q. I believe you have also recounted your duties and
25 responsibilities as the Adjustment Center officer during

1 the second watch.

2 A. That is correct.

3 Q. Sergeant Friedrich, have you been present in the
4 courtroom during the past few days?

5 A. Yes, I have.

6 Q. Have you heard the testimony of several defense
7 witnesses concerning an incident where tear gas was used to
8 control Mr. Esparza?

9 A. Yes, I have.

10 THE COURT: Do I understand the witness to say he has
11 been threatened in the courtroom?

12 MR. OAKES: I asked if he was present, Your Honor. I
13 am sorry.

14 THE COURT: What are the implications of this question,
15 counsel?

16 MR. OAKES: I was attempting to be brief, your Honor,
17 and ask if he had heard statements made by other defense
18 witnesses telling about the incident where tear gas was
19 used in the incident with Mr. Esparza, and whether his re-
20 collection agreed with that of the other witnesses.

21 THE COURT: All right. Go ahead.

22 MR. OAKES: I am sorry if I was not clear.

23 THE COURT: Would you speak up a little louder.

24 MR. OAKES: I am sorry, Your Honor.

25 I will state the question again:

1 Q. Have you heard the testimony of several defense
2 witnesses concerning an incident where tear gas was used to
3 control Mr. Esparza?

4 A. Yes, I have.

5 Q. Would you agree with the facts as related by those
6 witnesses?

7 A. Yes sir.

8 Q. Have you also heard the testimony relating to an
9 incident concerning Mr. Wells?

10 A. Yes, I have.

11 Q. This is an incident where Mr. Wells was forcibly
12 removed to another cell?

13 A. Yes.

14 Q. Would you like to recount your version of that in-
15 cident, please?

16 A. As best as I can recollect, yes. I was in the
17 office of the Program Administrator. I don't remember the
18 date. But an officer called me in there and told me
19 Officer Mata was on the tier with inmate Esparz, who was
20 reacting in an aggressive manner, and assistance was re-
21 quired.

22 I proceeded from the officer to the first floor of O-
23 wing. Officer Foncannon came down the stairwell, and I
24 asked him to accompany me to the first floor.

25 We both entered, and inmate Esparza had--was standing

1 with his back near the wall. He had his fist clenched, and
2 Officer Mata was trying to persuade him to go to a quiet
3 cell.

4 There was a lot of verbal ado, a lot of abusive
5 language on the part of the inmate. He was quite angry and
6 upset. I didn't immediately know why he was being removed.
7 Obviously, at this time, I felt the officer felt it was
8 his judgment that he had to move him at that time. He
9 wasn't in the cell. He was out on the tier.

10 As I entered the section, Mr. Wells, who was the person
11 in the second cell, and he was agitating the situation by
12 his behavior. He was making remarks toward the officer and
13 encouraging inmate Esparza.

14 I entered the area and I ordered Esparza two or three
15 times to move on, and he did. After two or three orders,
16 I believe, from what I can remember, he did. He proceeded
17 and went into the quiet cell.

18 Because of inmate Wells'--now Mr. Wells, formerly
19 inmate Wells--because of his behavior that he exhibited
20 there, it could have been a potential dangerous situation.
21 The inmate could have struck the officer because of inmate
22 Wells' agitation and encouragement. There were a few other
23 inmates who were making remarks. Inmate Esparza was in view
24 of several inmates in the unit.

25 It was a matter of judgment. I felt that inmate Wells

1 should also be removed to a quiet cell. They were quite
2 close friends at this time, and I felt the necessity of
3 maintaining control of the particular section.

4 So I opened the cell personally, and I explained to Mr.
5 Wells why I was moving him. He started arguing, but he did
6 come out of the cell. And he agreed by his actions, by
7 coming out, that he would go.

8 However, from the first or second cell to the quiet
9 cell is a long walk, and he stopped a few times. I don't
10 remember exactly how many. But he did stop and proceeded
11 to argue, and he was loud and boisterous. I would order
12 him, and each time he would go. Finally, the last time he
13 stopped he attempted to make a stand and had his back against
14 the cell front, and he was acting aggressively.

5 These things happened so fast, and it happened quite
6 awhile ago, so I may be wrong; but I believe he had his
7 arms rather loose as if he might strike out. I don't
8 remember exactly, but to the best of my knowledge, he was
9 acting aggressively.

10 He is a large, strong youth. What it amounted to, Mr.
11 Foncannon and Mr. Mata and I were in there at that time.
12 I believe Mr. Foncannon grabbed Mr. Wells from behind and
13 around the neck, you might say it was a shoulder-hold or
14 a neck-lock, I am not familiar with the terminology. At
15 this time I immediately grabbed his left leg and Mr. Mata

1 grabbed his right leg.

2 I recall having ahold of him around the thigh, I be-
3 lieve my left hand was underneath the knee, the hollow of
4 the knee; and my right hand I had on his upper thigh and I
5 was holding him. In fact, I was holding on quite dearly.
6 He was kicking violently and struggling. We had him in the
7 air.

8 Mr. Johnston was controlling the keys for the unit, and
9 he observed we were having considerable difficulty, and he
10 ordered Office Nance to enter the area and assist us.
11 Officer Nance came in and between the officers, three
12 officers and myself, we carried Mr. Wells and place him in
13 a quiet cell.

14 Q. Did you at that time grab Mr. Wells by the testicles?

15 A. No sir. At no time did I strike him or grab him
16 or anything like this. I did hold him. I was holding him
17 by the left leg in the area of the thigh. Now, it is
18 possible--he was kicking and I was trying to maintain my
19 balance--I had him like this (indicating), he was going in
20 this direction, and I was standing sideways holding him
21 like this (indicating). Now, it is possible that in the
22 struggle that possibly my arm or my elbow might have hit
23 him in the area of the crotch. But at no time did I de-
24 liberately or maliciously grab in the area of the testicles,
25 or strike him or anything like this, no sir.

1 Q. I call your attention to plaintiff's Exhibit 13,
2 the segregation record. I have a copy here. Is there an
3 entry there for 7/13?

4 A. Yes sir. The last line here, the top line there,
5 yes sir.

6 Q. Would you read that last line on the first page,
7 please.

8 A. "29 days isolation and then assigned, LTS-1."

9 Q. Are those initials?

10 A. Those are my initials there, yes.

11 Q. Does that indicate that you conducted a disciplinary
12 hearing on that date?

13 A. Yes.

14 Q. Did you conduct a disciplinary hearing on that date?

15 A. Yes.

16 Q. Was Mr. Jordan present at that hearing?

17 A. Yes, he was.

18 Q. Did Mr. Jordan have clothes on at that disciplinary
19 hearing?

20 A. Yes, he did.

21 Q. Do you recall the period now of July 9th through
22 July 20 1965?

23 A. Yes. I recall some of it, yes.

24 Q. Do you recall an incident in which it is your
25 opinion Mr. Jordan was preparing to take a shower?

1 A. Yes, I do.

2 Q. Would you like to recount your remembrance of that
3 occasion?

4 A. Yes. I entered the unit one morning. I don't
5 remember what day it was. But as I entered the first floor,
6 inmate Jordan was standing by the front grille gate, which
7 is next to the shower area. He was undressing, and he hung
8 his coveralls on the bars.

9 I didn't see him take a shower, but to the best of my
10 recollection he was preparing to take a shower at that time.

11 Q. I draw your attention to a very crude drawing I
12 have made on the board, or this piece of paper. Does this
13 somewhat reflect the layout of the first part of the iso-
14 lation side of O-wing in the officers' area?

15 A. Yes. The front door would be directly in front of
16 that sally port there.

17 Q. Right in here (indicating)?

18 A. That is where I entered, yes.

19 Q. The grille would be right here?

20 A. Yes.

21 Q. There is a door on the grille gate?

22 A. Yes sir.

23 Q. Is there a sally port or closed caged area here?

24 A. That is right.

25 Q. There is another door at this point, is there not?

1 A. Right.

2 Q. Are there also vertical bars along this side?

3 A. Yes.

4 Q. Is the shower located at this spot--

5 A. Yes, it is.

6 Q. --or this cell here (indicating)?

7 A. It is not a cell, but if it was a cell, that would
8 be the first cell, yes.

9 Q. The place that you saw Mr. Jordan standing, was it
10 in this area right here (indicating)?

11 A. It was right near where the two X's are.

12 Q. Right here (indicating)?

13 A. Yes.

14 Q. And his clothes were hanging here? Or here?

15 A. They were hanging on the front. Right in there, yes.
16 He was standing right near the bars.

17 Q. Sergeant Friedrich, would there be any reason for a
18 man to be in that area other than to take a shower--

19 A. No sir. Not that I know of.

20 Q. --with his clothes off, undressing?

21 A. Not undressing. He might walk up to that area if
22 he was exercising. He might walk up to that area and ask
23 a question, ask the officer, inquire about something, but
24 not while he was undressing. He would have to be preparing
25 for a shower.

1 Q. To the best of your recollection, did this occur
2 during the time Mr. Jordan was in the quiet cell?

3 A. Yes. To the best of my knowledge, yes.

4 Q. We heard some testimony yesterday by Mr. Hoagland
5 to the effect that he talked to you about this.

6 A. Yes sir.

7 Q. Was that in preparation for this case?

8 A. Yes sir.

9 Q. Would you like to recount what you were doing at
10 that time?

11 MR. COHLER: Your Honor, I would like the time to be
12 fixed first.

13 MR. OAKES: Q. Do you recall talking to Mr. Hoagland
14 about this case in July of this year?

15 A. I don't remember whether it was July.

16 Q. I am sorry. It would be June of this year.

17 A. It was a month or two months ago. I don't recall
18 the date. But I did talk to him.

19 MR. COHLER: Could it be clear, Your Honor, that it
20 was not August?

21 Could you put that question, please.

22 MR. OAKES: It was not August. August 1966, counsel?

23 MR. COHLER: Correct.

24 THE WITNESS: I don't believe so, although it's possible.
25 It might have been June, July or August, let's put it that

1 way. I don't remember exactly when I first talked to Mr.
2 Hoagland, but it could have been anywhere from one, two,
3 three--

4 MR. OAKES: Q. Well, let's put it this way. Do you
5 recall having a discussion when Mr. Cohler and myself were
6 present?

7 A. Yes.

8 Q. Do you recall that that was in July?

9 MR. COHLER: As a matter of fact, it wasn't.

10 MR. OAKES: It wasn't?

11 MR. COHLER: It was early August.

12 MR. OAKES: Q. Do you recall the discussion that you
13 had with Mr. Hoagland was prior to the discussion that you
14 had with us?

15 A. Would you rephrase the question? I am sorry. I
16 am confused now with this.

17 Q. Do you recall that the discussion you had with Mr.
18 Hoagland was prior to the discussion you had with--

19 A. Oh, yes. Yes.

20 Q. Fine. Now, where was this discussion had?

21 A. In my home.

22 Q. How was it effected? How did you get ahold of--

23 A. As I recall, members of the Attorney General's
24 office and possibly the Superintendent asked me to contact
25 Mr. Hoagland who was transferred to Sonora, and when I

1 arrived home after work I called Mr. Hoagland's father who
2 resides in Salinas. The senior Hoagland told me that his
3 son was on vacation at that time, and that he would tell him
4 to return my call. Shortly thereafter, that evening, Mr.
5 Hoagland appeared at my home.

6 Q. Do you recall during that conversation Mr. Hoagland
7 indicating to you that you had been present while the
8 shower was taking place?

9 A. He told me I was present. I don't recall this, but
10 he told me about it.

11 Q. Do you recall Mr. Hoagland being present?

12 A. No, I don't.

13 Q. Do you recall any officer? And if so, which
14 officer?

15 A. No, I don't recall any officer, which officer. I
16 mean, there was an officer there, to the best of my re-
17 collection, but I don't remember which officer.

18 Q. Do you recall Mr. Jordan being there?

19 A. Yes.

20 Q. Again directing your attention to the period July
21 9 through July 20 1965, do you recall any other occasion
22 when you might have talked to Mr. Jordan?

23 A. Yes. I had occasion to talk to him one morning,
24 I believe in the quiet cell area.

25 Q. It was during this period?

1 A. During the period that he was confined in the quiet
2 cell.

3 Q. When you talked to him in the quiet cell area, were
4 you required to unlock the door to enter his cell?

5 A. No. I unlocked the door to the grille gate that
6 leads to the quiet cell area itself. But, no, the door was
7 open when I talked to him.

8 Q. Do you recall what the discussion was about?

9 A. It was either about--I was in the area. I didn't
10 go back there specifically to see anyone in particular.
11 In fact, I don't recall why I went back there. But I was
12 back there, and inmate Jordan called to me and asked me
13 about either writing paper or legal material. I don't
14 remember which. And I was over there a few minutes, and
15 this is all I remember that he asked me about. I told him
16 I would talk with the officer and see that he got what he
17 needed. I may have talked to another inmate or so, I don't
18 recall. I then returned and passed through the isolation
19 section into the other area.

20 Q. Do you recall any overwhelming odors coming out
21 of there?

22 A. No sir, I don't.

23 Q. Do you recall that the cell was in an unclean con-
24 dition?

25 A. No, not to my knowledge. It was clean, as far as

1 I could tell. I didn't inspect the walls or anything like
2 this. I don't have any recollection of doing this. But
3 I didn't detect any odor coming from any particular cell,
4 including inmate Jordan's.

5 Q. Sergeant Friedrick, are you familiar with what
6 might be called the inmate grapevine?

7 A. Yes.

8 Q. Is it your opinion, based on your experience, that
9 this is a fairly effective means of communication?

10 A. Yes.

11 Q. Is it your opinion, based on your experience, that
12 inmates, even though held in an isolation cell or in the
13 O-wing, could get information from one to another?

14 A. Yes, very readily.

15 Q. Perhaps you might explain how some of this occurs.

16 A. Well, they communicate in various ways. They com-
17 municate through the ventilating system, many of them will
18 communicate through the plumbing system. I have often
19 seen inmates kneeling down in front of the toilet bowl
20 hollering. They communicate in this manner.

21 They pass notes out the window via fish lines that they
22 drop out the window, it goes down the building, down to the
23 various floors, and they are retrieved by whoever might be
24 exercising, and the note is addressed to a certain in-
25 dividual and the inmate is obligated to deliver the message

1 There are various means. There are contacts. We serve the
2 other units within the complex; there are many inmates who
3 bring in word from the outside, and whatever. Our food,
4 our clothing, our supplies come from outside the Adjustment
5 Center itself.

6 We search as well as we possibly can for contraband and
7 possible weapons and so forth. But there are letters, notes
8 that can be rolled up and they are quite small. There are
9 so many hiding places. They have ways of communicating.
10 It is done, let's put it this way.

11 MR. OAKES: I have no further questions at this time.

12 DIRECT EXAMINATION

13 BY MR. GRANUCCI:

14 Q. Sergeant Friedrich, during your duty as a sergeant
15 in the Adjustment Center, you have seen a great many weapons
16 made by inmates, have you not?

17 A. Yes, I have.

18 Q. Have you ever seen any weapons made out of tooth-
19 brushes?

20 A. Yes, I have.

21 Q. Could you describe the type of weapons that you
22 have seen?

23 MR. COHLER: Your Honor, we have had considerable testi-
24 mony describing these weapons. In the interest of time,
25 perhaps counsel could not pursue this with this witness.

1 MR. GRANUCCI: Well, at the present procedural posture
2 of the case, we offered into evidence three sample tooth-
3 brushes that have been converted into weapons as illustra-
4 tive of the type of thing that can be done with a tooth-
5 brush. Your Honor sustained that objection, but granted me
6 leave to renew my offer of the evidence.

7 I thought that in the interest of protecting the record
8 and also in getting further available evidence before the
9 Court which might obviate the necessity of a further offer
10 of proof, I might elicit similar testimony from this
11 witness.

12 MR. COHLER: I have no objection to an attempt to lay
13 a foundation for the offer of the evidence.

14 THE COURT: Proceed, please.

15 MR. GRANUCCI: Q. Have you ever seen weapons made out
16 of toothbrushes?

17 A. Yes, I have.

18 Q. Could you describe such weapons, please.

19 A. Yes. Sometimes the toothbrush handle itself is
20 sharpened. I imagine the--I have never apprehended an
21 inmate in the act of making a weapon. This is supposition
22 on my part. I imagine he might break a portion of it off
23 or might get a match and burn and melt a portion of it off
24 to a point and sharpen it on the concrete floor.

25 By the same token, he may secure a razor blade or some

1 other hardened piece of wire, and through the use of
2 matches he will make a connection through this wire and
3 attache an appendix to it to make the handle itself.

4 I imagine there are many ways. I am not an expert. I
5 don't make weapons.

6 Q. But you have found such weapons?

7 A. I haven't found them personally as a sergeant. As
8 an officer, I have. As a sergeant, I have had some of my
9 officers find them and show them to me. I don't recall
10 whether--it is certainly not during the incident in question.

11 Q. No. No. We are not relating--

12 A. I believe possibly I have seen one or two tooth-
13 brush type weapons, but I am not certain, during my prison
14 tour.

15 Q. During your prison tour?

16 A. Yes.

17 MR. COHLER: Your Honor, counsel just said they are not
18 relating it to something.

19 MR. GRANUCCI: We are not relating it to the plaintiff.

20 THE COURT: When you spoke to the incident in question,
21 what do you mean by the incident in question?

22 THE WITNESS: Well, what I am trying to say is that I
23 never saw any of these toothbrush weapons during the--
24 during the dates in question.

25 THE COURT: During the dates in question?

1 THE WITNESS: Yes, during July 9th to July--

2 THE COURT: When in point of time were toothbrushes
3 supplied to the inmates in your particular section?

4 THE WITNESS: I honestly don't remember. I could esti-
5 mate, Your Honor. I believe it may have been either last
6 fall around Christmastime, or possibly January or February.
7 Now, I don't remember.

8 THE COURT: Were you familiar with an inquiry made by
9 Mr. McGee concerning the conditions in the facilities?

10 THE WITNESS: No sir. The first time I had knowledge
11 about that was when it was brought out this week.

12 THE COURT: So you did not relate your period of time
13 to that event at all?

14 THE WITNESS: No sir.

15 THE COURT: You haven't any independent recollection
16 with respect to the time the toothbrushes were supplied to
17 the inmates in your particular section?

18 THE WITNESS: No.

19 MR. GRANUCCI: I wonder if I could ask the witness
20 something to clarify that, Your Honor.

21 Q. Sergeant Friedrich, have toothbrushes always been
22 available to inmates in isolation cells as distinguished
23 from quiet cells?

24 A. Yes.

25 THE COURT: We are only concerned with quiet cells,

1 aren't we?

2 MR. GRANUCCI: That is right, Your Honor. I think one
3 of the Court's questions mentioned isolation cells.

4 THE COURT: All right. Thank you.

5 MR. COHLER: Your Honor, I understand that the calendar
6 is to be heard, at least in part, this morning. My
7 examination may be lengthy.

8 THE COURT: Are there any other questions of this
9 gentleman?

10 MR. COHLER: I have cross-examination.

11 THE COURT: I suggest we pursue it. Then he might go
12 back to his occupation.

13 THE WITNESS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. COHLER:

16 Q. Sergeant Friedrick, turning your attention to the
17 so-called shower incident, please, your best recollection
18 is that although you can't remember who the officer was,
19 there was an escort officer; is that correct?

20 A. I don't remember the officer on duty.

21 Q. But there was an escort officer?

22 A. Yes. To the best of my knowledge, yes sir.

23 Q. Sergeant, perhaps you heard me ask Mr. Hoagland
24 about his recollection regarding a riotous incident of
25 some sort, I believe, up in North, which brought several

1 people into the quiet cell or strip cell area. Do you
2 remember such an incident?

3 A. I vaguely remember a riot having occurred at the
4 North Facility. It was during the time the supervisor of
5 inmates classification was in O-wing, hearing special cases.
6 The supervisor of inmates classification for the Department
7 ordinarily comes around every four months or so to Soledad.

8 Now, I don't remember what date that was. I know he
9 was there. I was in the room when hearing some of these
10 cases, participating in the hearing of some of these cases.
11 But I don't remember what day it was. I do remember that
12 it was around noon, because the hearings were discontinued,
13 and all available personnel were dispatched to the North
14 Facility.

15 To the best of my recollection, most of the inmates were
16 involved, and there was a large amount of inmates, I don't
17 remember how many, were scattered between X and O-wing.
18 The great majority, I believe, were placed in X-wing be-
19 cause of the type cells they have in X-wing, the closed door

20 Q. I don't want to take you too far into that incident.
21 What I want to find out is whether you can recall various
22 inmates being brought down into the quiet or strip cell
23 area as a result of that situation.

24 A. No, I honestly don't remember how many were brought.

25 Q. Let's try it this way: Do you remember that Mr.

1 Jordan was removed from the quiet or strip cell on or about
2 July 20 1965, because there was a need for further strip
3 cells?

4 A. No sir, not to my knowledge.

5 May I interject something here?

6 Q. Please.

7 A. To the best of my knowledge, inmate Jordan was
8 placed in the quiet cell on Friday night. Normally, the
9 inmates are not removed from a quiet cell until after the
10 disciplinary hearings. When inmate Jordan appeared before
11 the hearing, because of his behavior at the time, it was
12 felt that he should remain in the quiet cell a little
13 longer until his behavior changed.

14 We do, with but a few exceptions, we do try to get in-
15 mates out of a quiet cell as soon as we possibly can. I
16 believe it was Tuesday or Wednesday, the 13th, according to
17 the record, it may have been Tuesday or Wednesday, when
18 Mr. Jordan was remanded back to the quiet cell.

19 Ordinarily on Fridays I try to get people out of the
20 quiet cells before I go home for the weekend. I am certain,
21 sincerely, in my own mind, that whoever else was in the
22 quiet cells in addition to inmate Jordan, if I could
23 possibly have moved him or anybody else, I would have.

24 Now, I am certain we were--I am very certain in my mind
25 that we were crowded at that time, and it could have been

1 because of this riot at North Facility. I don't really
2 know. I don't remember.

3 But in any event, I could not move inmate Jordan out
4 of the quiet cell on Friday. I am off Saturday and Sunday.
5 Possibly the overcrowdedness continued over the weekend.

6 I know Monday we are often overcrowded because of the
7 weekend. And Monday all of these various committees from
8 the various facilities and the other units do come in, and
9 often it is late Monday afternoon and possibly Tuesday
10 before we can move a man out.

11 I am trying to recollect and testify to what I can
12 remember, to the best of my knowledge.

13 Q. Of course.

14 Sergeant, you have recalled the shower incident after
15 a discussion with Mr Hoagland, and you have recalled that
16 this took place some time during the time Mr. Jordan was
17 in the quiet or strip cell as you remember it. What do
18 you rely upon to fix in mind the fact that it took place
19 while Mr. Jordan was in the quiet or strip cell, during
20 that period of time?

21 A. I just remember, when I walked in, I saw him there,
22 Mr. Cohler. To the best of my knowledge, it was during the
23 time he was in a quiet cell. In all fairness, I must
24 admit that I possibly was influenced by Mr. Hoagland having
25 told me that I was the man, possibly because I have read

1 the records; but to the best of my knowledge, I did see
2 him standing there.

3 Q. Didn't you rely to a great extent on the fact that
4 Mr. Jordan had an escort officer, which would generally
5 have been the case if he had come from the quiet or strip
6 cell?

7 A. Well, I believe there was an officer standing there
8 as an escort officer. I do know that the regular isolation
9 inmates, the officer will take the cell off double lock
10 and he will return to the officers' area and place the lock
11 or bar mechanism in the open position and he will not be
12 standing there while the inmate is showering.

13 There are many things that lead me to believe that to
14 the best of my knowledge I am right, that he did take a
15 shower there. There is always the possibility I am wrong.
16 But I do not believe so.

17 Q. Would you answer the question, please, whether or
18 not a primary factor in your mind in recalling that it was
19 during the period of time he was in the quiet or strip cell
20 was that he had an escort officer?

21 MR. GRANUCCI: Objection, Your Honor. It has been
22 asked and answered.

23 MR. COHLER: It has been asked, but not answered.

24 THE COURT: He may answer.

25 THE WITNESS: Yes, I could have been influenced by that,

1 Mr. Cohler. Yes.

2 MR. COHLER: Thank you.

3 THE COURT: This witness is excused. Thank you.

4 (Witness excused.)

5 THE COURT: We will take up the calendar.

6 (The Master Calendar was heard.)

7 (A short recess was taken.)

8 MR. GRANUCCI: At this time I request permission to
9 approach the Bench with opposing counsel.

10 (A discussion was had at the Bench, not within
11 hearing of the Reporter.)

12 MR. GRANUCCI: Mr. Clerk, would you call Mr. Lovett,
13 please.

14 THE CLERK: Mr. Lovett.

15 ROLAND LOVETT,

16 called as a witness on behalf of the defendants, being
17 first duly sworn, was examined and testified as follows:

18 THE CLERK: Will you state your name and occupation to
19 the Court.

20 THE WITNESS: Roland Lovett, Chief Engineer, Correc-
21 tional Training Facility, Soledad.

22 DIRECT EXAMINATION

23 BY MR. GRANUCCI:

24 Q. Mr. Lovett, what are your duties as Chief
25 Engineer at the Correctional Training Facility?

1 A. To supervise maintenance and operation of all
2 mechanical facilities, boiler rooms, sewage plant, water
3 systems.

4 Q. Does that also relate to the heating system?

5 A. That includes all heating and ventilating systems.

6 Q. Mr. Lovett, in laymen's terms, would you please
7 give us a description of the heating system in O-wing.

8 A. Is it permissible to read?

9 Q. You may read from notes.

0 MR. COHLER: That is satisfactory.

1 THE WITNESS: Each and every cell in O-wing and the
2 officers' area is heated and ventilated by a forced air
3 system. Each cell has a supply duct entering in one upper
4 rear corner of the cell. An exhaust duct removes air from
5 officers' corner and the cell.

6 One large fan supplies air to the entire building, in-
7 cluding the officers' section. This air is heated, if
8 necessary, by a set of coils which are heated by hot water.
9 The temperature of this water is controlled by sub-master
10 controls, which in turn are controlled by an outside thermo-
11 stat, which senses the ambient air temperature and raises
12 or lowers the water temperature accordingly.

13 This system was designed by the California State De-
14 partment of Architecture and was installed originally when
15 the building was constructed.

1 The air is exhausted from the building through ducts
2 extending to all cells and the officers' area by one large
3 exhaust fan which is sized to prevent a negative pressure
4 in the building.

5 MR. GRANUCCI: Q. Mr. Lovett, I am going to show you
6 a photograph which I have already shown counsel and ask
7 you to describe what that depicts.

8 MR. COHLER: What photograph, counsel?

9 MR. GRANUCCI: The first one.

10 THE WITNESS: This is a louvered building on the roof
11 of the Administration Building at Central Training Facility.

12 MR. GRANUCCI: Now I will show you another photograph
13 and ask you what that depicts.

14 A. This is two master thermostats operated by air,
15 which senses the outside air temperature at all times and
16 controls the heating not only in O-wing, but all of the
17 other Central Facility buildings at Soledad.

18 Q. I show you a third picture and ask you what that
19 depicts.

20 A. This is the picture of the inside of one of the
21 quiet cells showing specifically the intake or supply air
22 duct louvers and the exhaust air louvers.

23 Q. Mr. Lovett, how often is the air changed in the
24 quiet cells?

25 MR. COHLER: Excuse me, counsel. I would object, unless

1 the question is phrased: How often is the air supposed to
2 be changed if the system is working as described?

3 MR. GRANUCCI: All right. That is the question.

4 Q. How often is the air changed when the system is
5 working as described?

6 A. Once every six minutes.

7 MR. GRANUCCI: I offer these three photographs.

8 THE COURT: They may be marked for identification.

9 THE CLERK: Defendants' Exhibits O, P and Q.

10 (Three photographs were marked
11 for identification as De-
fendants' Exhibits O, P and Q.)

12 MR. GRANUCCI: Q. Mr. Lovett, does that system work
13 automatically? Or is it operated by a member of the staff?

14 A. The system operates as preset continually 24 hours
15 a day, and the only thing required is preventative main-
16 tenance or perhaps repairs are required on occasion if
17 something breaks down. In other words, there is no setting
18 it manually every day for a certain temperature. It goes
19 up and down with the outside air.

20 CROSS-EXAMINATION

21 BY MR. KOHLER:

22 Q. Mr. Lovett, you stated that the air change, if the
23 system is working as described, in the quiet cell area
24 every six minutes, is that right?

25 A. Yes.

1 Q. Would that not be affected whether or not-- Let
2 me go back, if I may.

3 Have you ever seen a quiet cell or a strip cell your-
4 self?

5 A. Many times.

6 Q. You are familiar with the flap arrangement on the
7 doors and windows?

8 A. Yes sir.

9 Q. Would the change of air as you have described it
10 every six minutes be affected in any way by whether the
11 flaps are closed or open?

12 A. It would work just as effectively if the flaps were
13 closed.

14 Q. Would it work just as effectively if the flaps were
15 open?

16 A. It would.

17 Q. I will have to ask you to explain that a little bit.
18 It seems to me, as a layman, if there is a closed room or
19 an open room, it makes a difference.

20 A. Well, you are going into something pretty deep here.
21 To give a sensible explanation, I have large blueprints to
22 show you the entire system, how the entire system is--
23 building is ventilated through many ducts, which in turn
24 are broken down into many areas, and those cells, approxi-
25 mately 590 cubic feet, have about 100 cubic feet a minute

1 coming in through one of the ducts which is in the picture,
2 or one of the grilles, and circulates around and back out
3 another one.

4 The building is pressurized by having the supply fan
5 put more air into the building than the exhaust air is
6 moving. So if you have it open, there would be a small
7 balance of air that would move on out into the corridor,
8 out the open windows and so forth. If it was closed, just
9 what it was sized for.

10 Q. Would you--

11 A. If the flaps were closed.

12 Q. Excuse me. Would you say that based upon your ex-
13 perience as an engineer, and particularly your experience
14 in this institution with this system, that the flow of air
15 is such that it could be noticed by holding your hands up
16 to the vents?

17 A. It is not.

18 Q. It is not.

19 A. That is not good engineering.

20 MR. COHLER: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. GRANUCCI:

23 Q. Do you know whether the ventilating system was
24 working during July 1965?

25 A. I have searched all records, and I find no record

1 of that system being down for repairs at any time during
2 July 1965.

3 RECROSS-EXAMINATION

4 BY MR. COHLER:

5 Q. Mr. Lovett, did you inspect the system, that you
6 recall, in July 1965?

7 A. I don't recall any particular than of the many
8 inspections I have made of the system. As Chief Engineer--
9 we have a statonary engineer that operates the heating and
10 ventilating system, and I merely check with him occasionally
11 if he requests assistance or I want to see how he is doing
12 on his job. On occasions, I will go through and look at
13 the system myself.

14 Q. I notice in the picture which you described as re-
15 flecting the inside of the quiet cell, that the vents are
16 high on the wall. Is that correct?

17 A. Yes.

18 Q. The change of air would be for the whole cell?
19 Or just for that air which happened to be up? Is there any
20 circulation system built in, in terms of up and down?

21 A. The natural humidity of air coming through the
22 vents, such as this room here, you keep your flow of air
23 above the occupants. As it comes in, naturally it is
24 moving around and is on its way back out. In other words,
25 it doesn't make a circle from one vent to the other.

1 Q. Even in a square cell, or a rectangular cell?

2 A. No, it wouldn't do that.

3 MR. COHLER: Thank you.

4 MR. GRANUCCI: May the witness be excused?

5 THE COURT: Yes.

6 (Witness excused.)

7 MR. GRANUCCI: Call Mr. Donnelly.

8 THE CLERK: Mr. Donnelly.

9 ROBERT H. DONNELLY,

10 recalled as a witness on behalf of the defendants, having
11 been previously duly sworn, was examined and testified
12 further as follows:

13 THE CLERK: Restate your name for the record.

14 THE WITNESS: Robert H. Donnelly.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. GRANUCCI:

17 Q. Were you in the courtroom this morning during the
18 session which commenced at 9:30?

19 A. Yes sir.

20 Q. Did you hear certain questions posed by opposing
21 counsel respecting certain trouble at North Facility dur-
22 ing the summer of 1965?

23 A. I did.

24 Q. What did you do after you heard those questions?

25 A. I went to out a phone and contacted Deputy

1 Superintendent Black presently in charge of the institution
2 and asked him to search the North Facility records to find
3 out if a racial disturbance had occurred on July 19th or
4 20th or thereabouts.

5 Q. What did Mr. Black tell you?

6 A. Mr. Black told me over the phone that a racial
7 disturbance had occurred at North Facility on June 29 1965,
8 and that they have no record of any major disturbance at
9 North Facility during the month of July 1965.

10 Q. Now, Mr. Donnelly, I forgot to ask you the last
11 time on the stand, do you have any malice toward the
12 plaintiff?

13 A. I do not, sir.

14 Q. Did you ever conspire with the other defendants to
15 deprive him of his constitutional rights?

16 MR. COHLER: For the record, Your Honor, the same
17 objection as previously stated.

18 THE COURT: Overruled.

19 THE WITNESS: I have not conspired.

20 MR. GRANUCCI: Q. Now, Mr. Donnelly, do you have any
21 responsibilities as regard to transfer of inmates or re-
22 commending the transfer of an inmate between various in-
23 stitutions?

24 A. As a member of the classification committees and
25 also as Deputy Superintendent, being Chairman of the

1 Classification Committee, I do.

2 Q. Do you have present intention regarding the trans-
3 fer of the plaintiff to another institution at the con-
4 clusion of this case?

5 A. I do, sir.

6 Q. Would you please state that intention?

7 A. It is my intention to request that Mr. Jordan be
8 transferred from the institution at Soledad at the end of
9 these hearings.

10 Q. May I ask your reason for such transfer?

11 A. There are two.

12 Q. What are they?

13 A. One reason is that, because of the publicity which
14 this trial has received, I believe Mr. Jordan would be a
15 cause celebre, a focal point to form a leadership against--
16 not that he would necessarily be looking for this, but that
17 this would tend to form naturally around him.

18 Q. You think that this is something that might be
19 thrust upon him, is that correct?

20 A. It is possible. I also believe that if Mr. Jordan
21 were to get into any disciplinary difficulties at the in-
22 stitution following these proceedings, that there would be
23 always the question: Were we taking retribution, taking
24 revenge on Mr. Jordan because of anything that might come
25 out of these hearings.

1 Q. The purpose of the transfer then is to alleviate
2 those difficulties?

3 A. Yes sir.

4 Q. Is the purpose of the transfer to in any way re-
5 strict the power of the federal court to act in this case?

6 A. No sir.

7 Q. Not to your knowledge?

8 A. Not to my knowledge.

9 THE COURT: Will you stipulate, counsel, that any
10 decree that this Court might enter, that might be entered
11 notwithstanding the presence or absence of the petitioner
12 Jordan from the Soledad Facility?

13 MR. GRANUCCI: Your Honor, could I reserve judgment
14 on that point? We do have some tricky jurisdictional
15 problems here.

16 THE COURT: I am used to tricky jurisdictional problems.

17 MR. GRANUCCI: It is a matter that I would like to
18 consult with my clients about, and I think it is also a
19 matter I would like to consult with my superiors about.

20 THE COURT: Until you do, we will hold the petitioner
21 in the custody of the Marshal here.

22 MR. GRANUCCI: I would be prepared to give Your Honor
23 an answer by tomorrow morning.

24 THE COURT: All right.

25 MR. GRANUCCI: Your witness, counsel.

FURTHER RECROSS-EXAMINATION

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1 BY MR. COHLER:

2 Q. Mr. Donnelly, would it be possible for you to state
3 on the record that there is no punishment element whatso-
4 ever contemplated at this time in any form in any move
5 which may be made of Mr. Jordan?

6 A. Yes sir.

7 Q. And that his conduct, particularly during the past
8 six months, as it may be viewed by the authorities at the
9 institution, will be passed along to any transferee in-
10 stitution?

11 A. That is our intention, yes sir.

12 MR. COHLER: Thank you, Mr. Donnelly.

13 THE COURT: Mr. Donnelly, do you have any jurisdictional
14 right or authority over the so-called Youth Authority in-
15 mates; that is, with respect to the transfer of Youth
16 Authority inmates to your Facility, sir?

17 THE WITNESS: No sir. The transfer of Youth Authority
18 inmates is reserved to the Youth Authority. All transfers
19 of Youth Authority wards between institutions is done by
20 the Youth Authority itself, and not by the institution.

21 THE COURT: Then the order of the Youth Authority--
22 Let us take the illustration of the young man who testified,
23 19 years of age, who admittedly was in some difficulty--
24 you have to accept that transfer, do you?

25 THE WITNESS: Yes sir. According to the law of the

1 State of California, as I understand it, the Youth
2 Authority may place any of their wards in any of the in-
3 stitutions of the State, whether the Department of Mental
4 Hygiene, well, whatever it is.

5 THE COURT: And the wisdom, or lack of wisdom of the
6 transfer in question would not be for your discretion at
7 all?

8 THE WITNESS: Except if a transfer might appear unwise
9 to me, I might make recommendation to the Youth Authority.
10 But I have no authority to change their action.

11 THE COURT: How long has that practice been engaged in
12 in the transfer of the Youth Authority inmates to your
13 facility?

14 THE WITNESS: Well, actually, the Youth Authority, I
15 believe, has been placing wards in the Department of Cor-
16 rections institutions for quite some time, Your Honor. The
17 situation at Soledad, we have worked very closely with the
18 Youth Authority because North Facility has been for some
19 time almost, not quite, but almost half Youth Authority
20 wards. The numbers of wards at North Facility has been
21 gradually diminishing. I believe right at the moment it
22 might be somewhere in the nature of 225. When I was at
23 North Facility, we have had as high as 550 wards at North
24 Facility, out of a total population of about 1,200, ap-
25 proximately half of the population.

1 Now, when the Youth Authority wards at North Facility
2 got into difficulty, the Youth Authority did give the North
3 Facility the authority to transfer the men to the Adjust-
4 ment Center for holding purposes.

5 THE COURT: Do you know of any reason why Soledad is
6 selected as a facility to house that type of inmate, as
7 distinguished from any other facility that might be avail-
8 able?

9 THE WITNESS: I believe it has been the question of
10 population pressures on the Youth Authority.

11 THE COURT: Population pressures?

12 THE WITNESS: Yes. The numbers of wards as opposed to
13 the number of beds that are available. They are presently
14 opening an institution at Stockton, and I believe this
15 accounts, in part, for the gradually diminishing number of
16 Youth Authority wards that are at North Facility.

17 THE COURT: No further questions.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. OAKES:

20 Q. Mr. Donnelly, would the Youth Authority determina-
21 tion to transfer a ward to CTF have to do with the fact of
22 the type of inmates, primarily the age group of inmates
23 normally housed at CTF?

24 A. Yes, I believe it is a combination of those things.
25 When it would come down to a question of needing bed space,

1 I believe they would operate on the principle that the more
2 acting out inmate would come to North Facility, and the
3 less acting out inmate or more amenable inmate to the
4 Youth Authority.

5 Q. They would prefer to send them to CTF rather than
6 San Quentin?

7 A. Yes sir.

8 Q. Because of the age factor?

9 A. Yes.

10 Q. Would also the fact that the Training Facility is
11 a training facility? I know you can't speak for the Youth
12 Authority, but do you believe this to be the case?

13 A. I believe that the Youth Authority is concerned
14 about the atmosphere in which the youth is being housed,
15 and I believe North Facility, despite some training op-
16 portunities, does have the reputation of being a place in
17 which the wards may be better able to conduct themselves.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. COHLER:

20 Q. Mr. Donnelly, you have referred to the North
21 Facility several times. Now, when the ward of the Youth
22 Authority is transferred to Soledad, is that a transfer to
23 North Facility? Or precisely what is it a transfer to?

24 A. The Youth Authority may transfer and has transferred
25 wards to both North Facility, or they might refer the ward

1 to Central Facility.

2 Q. Do they specify which?

3 A. Yes, they do.

4 Q. Has it ever happened, to your knowledge, that a
5 ward transferred to Correctional Training Facility North
6 has been placed in the Adjustment Center, which is in the
7 Central Facility?

8 A. Yes sir.

9 Q. Would you tell the Court, please, in what manner
10 that is jurisdictionally proper, from your point of view,
11 when the assignment was originally to North, and he is then
12 placed in the Central Facility?

13 A. I was present in North Facility when this question
14 arose. I became concerned over wards being placed in the
15 Adjustment Center, and we received permission, because of
16 the necessity of trying to operate North Facility, we
17 received the authority to move wards temporarily from North
18 Facility to the Adjustment Center, the fact being then, I
19 think at the next appearance, which would be the following
20 month, of the Youth Authority at Soledad, the case of the
21 ward could be brought up to the Youth Authority for de-
22 termination as to whether or not he should be returned to
23 North Facility, transferred to, perhaps, another institution,
24 or released, or kept in the Adjustment Center, whatever the
25 disposition of the Youth Authority might be.

1 Q. Is it fair to say that the transfer to Central,
2 including the Adjustment Center, was contemplated as a
3 temporary population problem relieving transfer?

4 A. No sir. Transfers from North to the Adjustment
5 Center?

6 Q. Yes.

7 A. No sir. To the best of my knowledge it--

8 Q. As far as the authority from the Youth Authority
9 Board to do so, did they contemplate that you have open
0 access to moving them to the Adjustment Center whenever you
1 felt proper in your own discretion? Or was this to relieve
2 you of a particular problem at North?

3 A. This was simply to provide us with a method of
4 controlling inmates who might have been acting up.

5 Q. Including confinement not only in the Adjustment
6 Center, but in the quiet or strip cell area if you felt
7 necessary?

8 A. I believe that was the understanding. The Adjust-
9 ment Center has been visited by members of the Youth
0 Authority.

11 MR. GRANUCCI: No further questions of this witness.
12 May he be excused?

13 THE COURT: Yes.

14 (Witness excused.)

15 MR. GRANUCCI: Your Honor, I had planned at this time

1 to recall Superintendent Fitzharris. I would ask leave not
2 to do so. His testimony would be short. I would ask leave
3 instead to call him tomorrow morning for short testimony.

4 Without going into too many of the details, the reason
5 for my delay relates to the Court's request for corres-
6 pondence between the office of Mr. McGee and the office of
7 Mr. Fitzharris. I ask now that these proceedings be con-
8 tinued until tomorrow morning, at which time we would ask
9 leave to recall Mr. Fitzharris.

10 MR. COHLER: May I say two things, if it please the
11 Court?

12 First, I think it was inadvertent, counsel, but it was
13 not only the office of Mr. McGee, but that would include
14 the office of Mr. Dunbar and anyone--

15 MR. GRANUCCI: Yes. Sacramento.

16 MR. COHLER: Secondly, Your Honor, I would like to be
17 advised, if it is possible, if we may move directly into
18 argument following the conclusion of the testimony tomorrow
19 morning, or what the Court may contemplate in that line?

20 THE COURT: How much testimony do you intend to have?

21 MR. GRANUCCI: Five minutes, or less, of direct, and
22 then as much cross as counsel feels is appropriate.

23 MR. COHLER: And I am going to ask that the Court for
24 leave to recall Mr. Jordan for two questions.

25 THE COURT: I think, under the circumstances, you could

1 advance into the arguments, if you desire to do so.

2 MR. GRANUCCI: At the present time, Your Honor?

3 THE COURT: Or have the matter stand over. I under-
4 stand the transcripts are not available, counsel.

5 MR. COHLER: Your Honor, I am prepared to go into argu-
6 ment following the conclusion of testimony tomorrow
7 morning with, of course, the understanding that recollection
8 of testimony may not be as accurate as it would be with the
9 use of a transcript. There has been only one of me taking
10 notes. Perhaps other counsel, with two, would have better
11 notes.

12 MR. GRANUCCI: Your Honor, ordinarily I would say I
13 would be prepared to start now. However, the testimony is
14 not complete, and we are the defendants in this case, and
15 I think we should have the opportunity to answer the
16 plaintiff's argument before we start.

17 THE COURT: When would you prefer to go forward, counsel?

18 MR. GRANUCCI: As soon as counsel finishes his argu-
19 ment.

20 MR. COHLER: That is satisfactory.

21 THE COURT: Under the circumstances, if it be agree-
22 able to counsel, we will go forward with the arguments to-
23 morrow.

24 MR. GRANUCCI: That is fine, Your Honor.

25 MR. COHLER: Satisfactory.

1 MR. GRANUCCI: Your Honor, about how much time would
2 Your Honor want to limit the arguments to?

3 THE COURT: I have said this before, but I guess it
4 bears repetition.

5 I never try to place limits on argument. It is pretty
6 much within the bounds of counsels' own demands and the
7 demands of the case.

8 Do you think you can conclude the arguments tomorrow?

9 MR. GRANUCCI: I think I could, Your Honor. My own
10 experience has been primarily in the Appellate Court of
11 the State and in this Circuit where they do rather stringently
12 limit time.

13 MR. COHLER: Your Honor, I have no experience in any
14 court prior to this, but I feel that in the absence of the
15 transcript I will be able to be as succinct as possible
16 and contemplate within an hour, with responses, also, to
17 questions from the Bench if the Court so desires.

18 THE COURT: We will proceed on that basis, and if the
19 demands of the arguments run over, or if the matters re-
20 quire additional attention, we will continue over until
21 Tuesday of the following week.

22 MR. GRANUCCI: I don't think that will be necessary.
23 But is quite agreeable.

24 MR. COHLER: Thank you, Your Honor.

25 THE COURT: On this memorandum submitted to the Court,

1 I should like an opportunity to go over it, and we will
2 discuss it later.

3 MR. GRANUCCI: I will not mention that memorandum
4 further, Your Honor, until Your Honor has let us have his
5 opinion on it.

6 THE COURT: We will resume the calendar tomorrow at
7 9:30.

8 (A discussion was had between the Court and the Clerk
9 Not within the hearing of the Reporter.)

10 THE COURT: I would suggest renewing the matters at
11 hand in this case of Jordan at 10:30 tomorrow.

12 MR. COHLER: Shall we commence argument immediately
13 following evidence?

14 THE COURT: As soon as Mr. Fitzharris is excused from
15 the stand.

16 MR. COHLER: And the two questions of the plaintiff.
17 Thank you, Your Honor.

18 (Whereupon the hearing was recessed until 10:30 a.m.
19 Friday, August 19 1966.)

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1 FRIDAY, AUGUST 19 1966 - MORNING SESSION - 10:30 A.M.

2 THE CLERK: 44309 and 44786.

3 MR. COHLER: Ready for the plaintiff and petitioner,
4 Your Honor.

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

6 May it please the Court, counsel have conferred and
7 agreed that the following statement should be read into the
8 record, with Your Honor's approval, of course, regarding
9 the inquiry addressed by telegram to the Court from the
10 father of Philip Millette, deceased.

11 "All records presently available within the Department
12 of Corrections relating to Philippe Millette, deceased,
13 when made available, the original documents to the Court
14 and Xerox copies to opposing counsel.

15 In chambers opposing counsel related the views of an
16 independent psychiatrist, known by reputation to the Court,
17 and I related the views of Dr. Hack, consulting psychiatrist.

18 "After discussion, it was the judgment of all counsel
19 and the Court that the matter of the apprent suicide of
20 Philip Millette bore no relevance to the instant litigation."

21 THE COURT: That is a correct statement.

22 MR. GRANUCCI: Thank you, Your Honor.

23 I also want to thank the Court for the opportunity to
24 read this statement into the record.

1 THE COURT: Very well, sir.

2 MR. GRANUCCI: Call Mr. Fitzharris, please.

3 THE CLERK: Mr. Fitzharris.

4 CLETUS J. FITZHARRIS,

5 recalled as a witness on behalf of the defendants, having
6 been previously duly sworn, resumed the stand and testified
7 further as follows:

8 THE CLERK: Will the witness please restate his name
9 for the record.

10 THE WITNESS: Cletus J. Fitzharris.

11 DIRECT EXAMINATION

12 BY MR. GRANUCCI: Q. Mr. Fitzharris, I believe that during
13 your previous testimony you testified that certain changes
14 were inaugurated in Adjustment Center procedure following
15 discussions between yourself and your staff.

16 A. That's right.

17 Q. Would you please tell the Court whether you have
18 attempted to refresh your recollection concerning this
19 matter during the interval?

20 A. On the changes that were--

21 Q. On the changes that were inaugurated?

22 A. Well, this relates back to the testimony of Mr.
23 Donnelly--

24 Is this what you have reference to?

25 Q. That is right, Mr. Fitzharris.

1 A. Mr. Donnelly's testimony was to the effect that
2 Mr. McGee had made some representations to me or to the
3 institution, which was not true--not--I represented to him,
4 I told him that Mr. McGee had made inquiry. May I relate
5 to the--

6 Q. Please relate the circumstances of that inquiry.

7 A. I can't relate the time, but at a meeting of all of
8 the wardens and superintendents of the Department of
9 Corrections, plus other staff people, Mr. McGee, as he
10 usually does at one of these meetings, takes a little time
11 to brief us on many things that are happening in the legis-
12 lative end of things, the research and various things that
13 are going on of which he is aware and wants to bring us
14 aboard.

15 As a part of this discussion, he mentioned that he had
16 had conversations with one of the Supreme Court Justices--
17 I don't know which one--concerning a writ that had been
18 filed.

19 Q. Mr. Fitzharris, to interrupt you, did he say what
20 inmate had filed the writ?

21 A. He did not state any inmate, nor did he say what
22 institution. I have no certain knowledge where that writ
23 came from.

24 Q. Proceed.

25 A. His caution was that in these days when the Courts

1 are taking a more searching look at human rights, that all
2 caution should be observed in dealing with the inmates in
3 disciplinary matters. That is as far as I can recall what
4 was said at that particular point.

5 Now, whether at that meeting or the subsequent meeting
6 of the wardens and superintendents, I am not sure, but Mr.
7 Dunbar again made the same point, again referring to all
8 wardens and superintendents, making no reference to any
9 particular case or no specific institution, but again
10 cautioning all of us as to the need to keep an eye out for
11 the rights of the individual.

12 Q. Mr. Fitzharris, if these comments had been directed
13 to conditions at Soledad, do you think your memory would
14 be clearer?

15 A. I am positive. One doesn't like to be embarrassed
16 in front of his peers.

17 Q. Or his superiors, either, I take it.

18 Now, following these two--following these meetings or
19 consultations with Mr. McGee and Mr. Dunbar, did you
20 receive a memorandum from Mr. Stutsman?

21 A. That is right.

22 Q. Have you examined this copy of the memorandum?

23 A. I have.

24 Q. Is that copy substantially accurate?

25 A. I think so.

1 MR. GRANUCCI: Your Honor, I would like to interject
2 here. Your Honor asked for a search of the files for a
3 correspondence between, generally speaking, the Sacramento
4 office of the Department of Corrections and Mr. Fitzharris'
5 office. A search was made at Soledad.

6 Q. Is that correct, Mr. Fitzharris?

7 A. That is true.

8 Q. Were these documents found there?

9 A. No. If I may, I might explain that my secretary
10 is on vacation and the substitute was unable to find any
11 file that bore this. But I do recall that particular--

12 MR. GRANUCCI: However, Your Honor, I will represent
13 to the Court that a search was requested in Sacramento.
14 The documents were found. They were read over the phone to
15 my secretary, who transcribed them from the telephone con-
16 versation.

17 THE COURT: I will accept the documents through your
18 office.

19 MR. COHLER: Yes, Your Honor. This is the best avail-
20 able evidence, and there is no objection.

21 MR. GRANUCCI: Of course, on the other hand, we re-
22 serve any other objections. But certainly this is the best
23 available evidence.

24 THE COURT: Very well.

25 MR. GRANUCCI: I am not prepared to vouch for the

1 actual verbatim accuracy of these transcriptions. I will
2 vouch for their substantial accuracy.

3 THE COURT: Very well.

4 MR. GRANUCCI: Q. Now, was the first item of corres-
5 pondence a memorandum dated February 1 1966, from Mr.
6 Stutsman, Chief Deputy Director of the Department of
7 Corrections, to all wardens, subject inmate discipline?

8 MR. COHLER: Excuse me.

9 THE COURT: One moment, counsel.

10 Have you had an opportunity to examine these?

11 MR. COHLER: Yes, Your Honor, I have copies.

12 With respect to counsel's pending question--

13 Are you asking, counsel, whether this is the first such
14 document as found? Or are you asking for the witness'
15 recollection? I think we ought to be careful there.

16 MR. GRANUCCI: I am representing that these three are
17 all copies--are what was found of the correspondence. Now,
18 I am asking the witness about his recollection.

19 THE WITNESS: Aside from the date, I think the informa-
20 tion therein and the signature thereon, it is substantially
21 --it is. I don't remember the date offhand.

22 MR. GRANUCCI: I offer this as defendants' next for
23 identification.

24 THE COURT: So ordered.

25 THE CLERK: Defendants' R for identification.

(A letter dated February 1 1966 to All Wardens and Superintendents, was marked Defendants' Exhibit R for identification.)

MR. GRANUCCI: Q. Now, in reply to that memorandum addressed to all wardens, did you in turn send a reply, addressed to Director Dunbar?

A. I did.

Q. Is it dated April 13 1966?

A. That is true.

Q. Is this a copy or a transcription of that?

A. Insofar as I can tell, it seems to be, and the logic of the whole--this is a cover letter.

Q. That is a cover letter.

Defendants' next for identification.

THE CLERK: Defendants' Exhibit S for identification.

(Copy of a letter dated April 13 1966, Mr. Fitzharris to Mr. Dunbar, was marked for identification as Defendants' Exhibit S.)

MR. GRANUCCI: Q. With the cover letter, was there included a memorandum to yourself from R. H. Donnelly, subject, inmate discipline, dated April 12 1966?

A. That is true.

MR. GRANUCCI: Defendants' next in order for identification.

THE CLERK: Defendants' T for identification.

(A copy of a letter dated April 12 1966, Mr. Donnelly to Mr. Fitzharris, was marked for identification as Defendants' Exhibit T.)

MR. GRANUCCI: Q. Directing your attention to the memo of February 1 1966-- Incidentally, Mr. Fitzharris, do you have a copy of that?

A. In my briefcase in the back there. It is in the second or third row.

Which one are we talking about now?

Q. The one dated February 1 1966, the third sentence of the third paragraph.

To the best of your understanding, what were the questionable practices referred to in that sentence?

MR. COHLER: Counsel, are you asking what the--

MR. GRANUCCI: What the witness' understanding of that was.

MR. COHLER: Of that was at the time he received the letter?

MR. GRANUCCI: That is correct.

THE WITNESS: I didn't know.

MR. GRANUCCI: Q. You didn't know?

A. As I recall, there had been no items brought to anybody's attention in any of these meetings, there was nothing specified in this memorandum. I took this to mean that "whoever is doing something wrong, stop it."

1 Q. Have you or did you subsequently, pursuant to that
2 memorandum, undertake a review of Adjustment Center pro-
3 cedures? Or had that been undertaken previously, if you
4 can remember?

5 A. I can't exactly place it, but I am sure, from my
6 usual method of procedure, that when I come home from one
7 of these meetings and something has been emphasized by the
8 Director or the Administrator or some other member of the
9 staff, that seems to me to bear some looking into or need
10 some action, I usually get set on doing it right away.

11 Q. Fine.

12 A. So I presume that we had some discussions prior to
13 receiving this. But I have no positive recollection.

14 Q. Now, there is a letter dated--the next exhibit,
15 dated April 13 1966, from yourself to Mr. Dunbar, the
16 second paragraph dealing with the installation of an auto-
17 matic flushing device for the Oriental toilets in the strip
18 cells, would you read the next sentence, please.

19 A. "This eliminates the possibility of staff becoming
20 involved in other matters and not flushing the toilets
21 with regularity."

22 Q. What did you mean by that sentence?

23 MR. COHLER: Your Honor, I think the document speaks
24 for itself.

25 MR. GRANUCCI: I think the document does not speak for

1 itself.

2 THE COURT: He may explain.

3 MR. GRANUCCI: The witness is entitled to explain.

4 THE COURT: He may explain.

5 THE WITNESS: My point was simply this, that if the
6 Adjustment Center is in the state of fieve and in the state
7 of riot and we are adding additional personnel to try to
8 bring the thing under control, as we do frequently, we
9 can't always depend on an officer's thinking at that time
10 that, "This is now the time to flush the toilets." Besides,
11 it is a time-consuming thing to unlock, go down in the
12 tunnel, flush the toilets, come back and lock the tunnel.

13 So in the conservation of staff time in an urgent
14 situation, and the fact that the human element enters this
15 thing, always will and always would, this is what I had in
16 mind.

17 Q. The next sentence refers to the availability of
18 water and personal hygiene materials to inmates in strip
19 cells so that hygiene may be maintained. Would you please
20 explain to the Court your point in that sentence.

21 A. Well, I think we had reviewed this matter of the
22 supplying of washbasins and the pitchers for the water, and
23 at that point we had already installed them.

24 Q. Now, the memorandum from Mr. Donnelly to yourself
25 dated April 12 1966; second page, paragraph B, that paragraph

1 makes reference to an apparent deviation from strict ad-
2 herence to the Director's rules. Mr. Fitzharris, what was
3 that deviation?

4 A. The only one that I can think of, and I haven't had
5 a chance to spend too much time thinking and certainly
6 haven't had a chance to review the records, but the only
7 one I recall at the moment, was that it was the custom and
8 practice in the past, and contrary to the Director's rules,
9 that if an inmate persisted in boisterous, obscene,
10 obnoxious behavior, verbal or otherwise, and continued to
11 do this in spite of repeated warnings, the step prior to
12 having to take him back to the quiet cell was to recommend
13 a five-day, what they call cell exercise, which means he
14 is not turned out into the corridor to pace up and down the
15 long corridor, but rather is encouraged to use isometric
16 exercises. At least, he is assigned to his cell without
17 his daily exercise.

18 Now, at that point we found that the officers were
19 recommending this to the sergeant and the sergeant was
20 approving it, and while it wasn't a great deviation, because
21 regulations provide that the program administrator could
22 approve it, nevertheless, we went one step further and made
23 it so that the disciplinary committee would have to approve
24 it.

25 This is the only deviation from any regulations that I

1 can think of.

2 MR. GRANUCCI: Very good, Mr. Fitzharris. Now, to sum
3 up: To the best of your knowledge, were the changes in
4 the Adjustment Center procedure occasioned or motivated
5 by this lawsuit?

6 A. I am positive, in my own mind, that they were not.
7 There was a discussion had in file of last year concerning
8 the deprivation of inmates in quiet cells of their clothing,
9 and I was told by the staff that one of the serious reasons
10 --one of the serious reasons--was that we had had a suicide
11 by the use of the coveralls; and, two, there had been fre-
12 quently burning of the clothing and mattresses and so forth.

13 In September--and this we didn't remember the other
14 day--but in September of last year, certainly long before
15 this suit was involved, we sent out I have forgotten how
16 many coveralls and how many blankets to be fireproofed so
17 they could be issued to people we thought would be inclined
18 to burn their furnishings.

19 Q. Fine. Thank you, Mr. Fitzharris.

20 A. May I continue to say that in my sincere feeling,
21 none of these so-called improvements were occasioned by
22 this lawsuit. They would have happened if this lawsuit
23 had not been filed.

24 Q. Mr. Fitzharris, yesterday you heard the testimony
25 of Mr. Donnelly, that Mr. Jordan would probably be moved

1 at the conclusion of this lawsuit.

2 A. Yes.

3 Q. Now, are there plans to move him while the case is
4 under submission?

5 A. There are no plans at all at the moment. This is
6 Mr. Donnelly's recommendation, and this has to be acted
7 upon by a classification committee and it has to be approved
8 by a representative of the Director's office. This has not
9 been done, nor has it been requested.

10 Q. What will be done with the plaintiff while the case
11 is before the Judge for his decision and before he decides
12 it?

13 A. I would hope that plaintiff could be remanded to
14 the custody of the Marshal. However, if not, we will re-
15 turn him back to Soledad and he can continue to live in
16 his same cell.

17 Q. Now, Mr. Fitzharris, did you ever conspire with
18 any of the other defendants to bring about a deprivation of
19 the plaintiff's constitutional rights?

20 MR. COHLER: Same objection, Your Honor.

21 THE WITNESS: Never.

22 MR. GRANUCCI: Q. Do you have any malice toward the
23 plaintiff?

24 A. None at all. Only disappointment.

25 MR. GRANUCCI: Your witness, counsel.

CROSS-EXAMINATION

BY MR. COHLER:

Q. Mr. Fitzharris, in addition to the meetings of the wardens and superintendents, which I think you said took place on two occasions--

A. I didn't say two occasions.

Q. I misunderstood. Once. Is that correct?

A. I wasn't sure.

Q. All right. One or two occasions.

Outside of the actual meetings themselves, and so as to avoid the embarrassment before your peers and superiors which you related, was there any private conversation with you at all from anyone in the Sacramento office regarding the subject matter you have testified to?

A. Yes, informally the Director, Director Dunbar talked to me, I think maybe during a coffee break or some time informally, at least, and indicated that people, inmates being put in the quiet cells without clothing should be watched very carefully. At that time I recall telling him that we had already provided for the fireproofing of coveralls, and this would probably alleviate a good deal of the problem.

Q. Outside of the meetings themselves, there was conversation relating to the same general subject matter, directed at you as Superintendent--not "at you" excuse me.

1 --conversation with you as Superintendent of the
2 Correctional Training Facility. Is that correct?

3 A. Only on this one issue, one topic.

4 Q. Mr. Fitzharris, reference has been made to a
5 memorandum which is Defendants' Exhibit T for identifica-
6 tion, from Mr. Donnelly to yourself. I believe you have a
7 copy before you. April 12th is the date on the transcript
8 copy.

9 I believe you testified that that memorandum was in
10 the works before the memorandum from Mr. Stutsman to all
11 wardens, which is Defendants'--

12 MR. GRANUCCI: Objection. He is misstating the testi-
13 mony. There was no testimony that this memorandum was in
14 the works before the memorandum of February 1st. It was
15 his testimony that there were changes for review or under
16 investigation.

17 MR. COHLER: All right. I am sorry. I will start
18 over.

19 Q. I believe you testified, Mr. Fitzharris, that
20 review was under consideration before Mr. Stutsman's
21 memorandum to all wardens, Defendants' R for identification,
22 had been received. Is that correct?

23 A. Right.

24 Q. Mr. Donnelly's memorandum bearing the date April
25 12th, Defendants' T for identification, starts off in the

1 following manner, does it not?

2 "The following is in reply to Mr. Stutsman's
3 letter of February 1, 1966, subject as above."

4 A. Yes.

5 MR. COHLER: Those are all of the questions I have.
6 However, defendants have not moved the admission in evi-
7 dence of their exhibits for identification R, S and T. I
8 would like to have these marked as Plaintiff's Exhibits,
9 if they are not going to move them in evidence, so they may
10 come in.

11 MR. GRANUCCI: It is our position, Your Honor, that
12 any evidence of change in this case is irrelevant and im-
13 material. We have maintained this position throughout the
14 proceedings. We have marked these exhibits for identi-
15 fication pursuant to the direction of the Court.

16 Now, I will not stipulate to the admission of them into
17 evidence. In fact, I think the Court should not even con-
18 sider them, because I think that they relate to matters of
19 change, and those matters of change themselves are irrele-
20 vant in this proceeding.

21 MR. COHLER: Your Honor, these are documents which have
22 both served to refresh the memory of this witness, which
23 were thought to possibly exist by Mr. Donnelly, and which
24 appear, by Mr. Donnelly's testimony, to have been generated
25 at least in part from inquiry of the California Supreme

1 Court or a Justice thereof on some informal basis.

2 The present witness has stated that there was dis-
3 cussion at a meeting of wardens and superintendents regard-
4 ing the Court's view of human rights. These documents
5 appear to have been generated, at least in part, related
6 to such discussion.

7 The changes are very much ^{an} ~~in~~ admission, or at least
8 support the inference of an admission as to whether or not
9 human rights were properly protected previously. That is
0 the very heart of this case.

1 As far as relevancy goes, I see no foundation for an
2 objection.

3 THE COURT: The objection is overruled. They may be
4 marked.

5 Do you propose to mark them as Plaintiff's exhibits?

6 MR. COHLER: I would be happy to have them as Plaintiff's
7 exhibits, unless the defendants want to keep the same
8 letters and have them--

9 MR. GRANUCCI: I have no objection to them carrying the
0 same letters. But I do not want to waive my subsequent--

1 MR. COHLER: I will stipulate that counsel's record is
2 protected.

3 THE COURT: Perhaps they could be marked on behalf of
4 the Court.

5 MR. GRANUCCI: That is agreeable.

1 MR. COHLER: I will be happy to have them as Plaintiff's
2 exhibits.

3 THE COURT: Very well.

4 THE CLERK: Plaintiff's Exhibits 14, 15 and 16.

5 MR. COHLER: Corresponding to Defendants' for identi-
6 fication, R, S and T.

7 THE COURT: They may be marked.

8 (Copies of three letters pre-
9 viously marked for identifica-
10 tion as Defendants' Exhibits R,
11 S and T, were marked for identi-
fication as Plaintiff's
Exhibits 14, 15 and 16.)

12 MR. COHLER: I move their admission in evidence.

13 THE COURT: They may be marked.

14 THE CLERK: In evidence.

15 (Copies of three letters pre-
16 viously marked as Plaintiff's
17 Exhibits 14, 15 and 16 for
identification, were received in
evidence.)

18 MR. GRANUCCI: I have no further questions of this
19 witness, Your Honor. May he be excused?

20 THE COURT: Yes.

21 (Witness excused.)

22 MR. GRANUCCI: Your Honor, that concludes the presenta-
23 tion of defendants' witnesses. I do have some motions.

24 MR. COHLER: Excuse me. Do you want to move after your
25 case?

1 MR. GRANUCCI: I want to move before I submit my case.

2 THE COURT: Do you have any rebuttal at all, counsel?

3 MR. COHLER: Your Honor, I am going to move admission
4 of documents which have been produced by the defendants
5 and ask two questions of the plaintiff.

6 MR. GRANUCCI: This is the Wells disciplinary file.
7 It was subpoenaed from the California Youth Authority.

8 THE COURT: May I see it? This is as to Wells?

9 MR. GRANUCCI: This is as to Wells. Your Honor, Youth
10 Authority records, being confidential, are not readily
11 available, and we had to obtain a subpoena to get them.
12 Having obtained the subpoena and having received the file,
13 we copied the documents. We introduce those into evidence
14 for the same purpose that the other disciplinary records
15 were introduced.

16 MR. COHLER: Limited to showing bias?

17 MR. GRANUCCI: Limited to showing bias.

18 MR. COHLER: Your Honor, so the record may be clear,
19 I have not reviewed the documents. However, I would not
20 object to the offer for the same purpose.

21 I would like the record to be clear that I do not re-
22 present Mr. Wells, and make no representation as to whether
23 or not he would want his documents, which the Youth
24 Authority Board considers private, to be entered into evi-
25 dence.

1 MR. GRANUCCI: Now, my second motion is to expand the
2 consideration by this Court of the disciplinary records
3 presently before it on the plaintiff's inmate and X inmate
4 records. Those records were introduced to the Court to
5 show bias. I now move that the Court expand its considera-
6 tion of those records inasmuch as those records constitute
7 information which was before the defendants and could
8 lead them to draw conclusions about the propriety of Adjust-
9 ment Center and for quiet cell confinement.

10 MR. COHLER: Your Honor, I shall object rather strenu-
11 ously to this for several reasons.

12 First, the reports themselves are clear hearsay, an
13 objection which was not raised as to the limited offer.

14 Secondly, this would mean that the reports came in on
15 that basis after the opportunity for plaintiff and
16 petitioner to present any answering side of stories or
17 things of that matter, not as to what the incident reported
18 was, but as to what happened in the hearing committee.

19 As I understand it, the offer is designed to show what
20 information the committee acted on. That is pure hearsay
21 in those documents. Inmates who are spoken of in those
22 reports may have a very different version of what was told
23 the committee. The opportunity for that testimony is--

24 THE COURT: In view of the original ruling and the
25 limited nature thereof, my ruling will remain as it is.

1 MR. COHLER: Thank you, Your Honor.

2 THE COURT: The documents are limited in purpose and
3 scope.

4 MR. COHLER: Thank you, Your Honor.

5 MR. GRANUCCI: My next motion, Your Honor, is to intro-
6 duce the exhibits--I do not recall the specific numbers--
7 the toothbrush weapons.

8 THE CLERK: I will give you the numbers on those.
9 Defendants' Exhibits for identification K, L, M and N.

10 MR. COHLER: Your Honor, I object on the following
11 grounds: The testimony which was elicited regarding the
12 weapons amply demonstrates that weapons are found, weapons
13 are dangerous, and this is the common occurrence. The
14 weapons themselves have been shown affirmatively to have
15 absolutely no relevance at all to the time period or the
16 people involved in this lawsuit.

17 THE COURT: Sustained.

18 MR. GRANUCCI: My next motion, which I make before I
19 submit to the Court, but I ask the right to reserve argu-
20 ment on the motion in the course of my argument is this:
21 To dismiss this case as against the defendants the State of
22 California and the Correctional Training Facility at
23 Soledad. I made the motion previously during the pretrial
24 proceedings. It was denied, but the Court allowed me leave
25 to renew the motion. I herein renew it, and will present

1 argument upon this point at the time of argument of the
2 case.

3 THE COURT: I will reserve my ruling.

4 MR. COHLER: In addition to reserving your ruling, Your
5 Honor, I think the record should be clear and we should be
6 careful here as to when, if this motion be granted, it is
7 effective. We are going to have some rebuttal testimony
8 and there is going to be final argument, and I don't want
9 to have a risk of a new trial.

10 THE COURT: I reserve the ruling.

11 MR. COHLER: Thank you.

12 MR. GRANUCCI: Having presented our motion, we conclude
13 our case.

14 THE COURT: Very well.

15 MR. COHLER: Your Honor, with leave of Court, I will ask
16 Mr. Jordan to resume the stand. Mr. Jordan?

17 ROBERT CHARLES JORDAN, JR.,
18 *on his own behalf*
19 called as a witness in rebuttal ~~by the plaintiff,~~ having
20 been previously duly sworn, was examined and testified as
21 follows:

22 THE CLERK: Restate your name for the record.

23 THE WITNESS: Robert Charles Jordan, Jr.

24 DIRECT EXAMINATION

25 BY MR. COHLER:

Q. Mr. Jordan, if you will please direct your attention

1 to July 20 1965, when you were removed from the strip cell
2 through at least July 24th, a Saturday, and tell the Court
3 whether or not at that time inmates in isolation, not the
4 strip cell area, were under escort when they left the cell
5 for exercise or for a shower.

6 A. Yes.

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

8 THE COURT: Will you read the question and answer,
9 please.

10 (The record was read.)

11 THE COURT: They were escorted, were they, the inmates?

12 THE WITNESS: Yes, all of them were.

13 THE COURT: By whom?

14 THE WITNESS: By officer--if I can explain it?

15 THE COURT: Yes.

16 THE WITNESS: The night before I was released from the
17 strip cell, they had what they call a noise riot in the
18 whole building, and the officers--the program administrator
19 and everybody else showed up, and they stripped everyone
20 in isolation. They stripped--

21 THE COURT: Including the six cells, they stripped the
22 whole isolation area?

23 THE WITNESS: Yes. They took the mattresses, the blan-
24 kets, the sheets, the clothes, and every article in the
25 house used to make noise or anything like this.

1 They they had--these guys were over there for some type
2 of riot or some noise. All of them were YA's.

3 THE COURT: All of them were Youth Authorities?

4 THE WITNESS: Yes, YA's. And they were talking about
5 if the cells were open they were going to fight and do this
6 and they were calling the officers out. So every time some
7 one in that section, they let them shower, they let them
8 exercise. And the officer would come with a club and open
9 the man's cell, and they said, "All right, you shower,"
10 and he'd go shower, and the officer would stand right there
11 and he'd even walk for five minutes against the wall. He
12 couldn't come against the cell. He had to stay on the wall
13 side.

14 MR. COHLER: Q. Just so it will be perfectly clear,
15 that applied to inmates in the isolation as opposed to the
16 strip cell area as well, did it not?

17 A. Yes, that was isolation.

18 CROSS-EXAMINATION

19 BY MR. GRANUCCI:

20 Q. Mr. Jordan, you are sure this happened--

21 A. Oh, yes, I am sure.

22 Q. I hadn't finished the question.

23 Are you sure this happened around the 20th of July or
24 just before you got out of the quiet cell?

25 A. It happened before I got out of the quiet cell,

1 and everybody was stripped when I came out. In fact, when
2 I was up front they brought two of us up to the strip cell,
3 and they took us up front and they gave us mattresses and
4 they gave us our clothes, and we were the only guys in
5 there so we had to put up with a lot of mouth from these
6 guys about, "How come they can have theirs and we can't
7 have ours? They must be snitchers or something." You
8 remember this.

9 MR. GRANUCCI: O.K., Mr. Jordan. No further questions.

10 MR. COHLER: No questions, Your Honor. Thank you, Mr.
11 Jordan.

12 (Witness excused.)

13 MR. COHLER: Mr. Grace, I ask to be marked next in
14 order for identification what purports to be copies, 21
15 pages in total stapled together, represented to me by
16 opposing counsel to be the totality of documents found re-
17 lating to psychiatric examinations, interviews, reports,
18 bearing on the plaintiff.

19 MR. GRANUCCI: No objection to their admission into
20 evidence if plaintiff offers them.

21 THE COURT: This is a compilation of the psychiatric
22 examinations?

23 MR. COHLER: Yes, and the purpose of my making the
24 offer, Your Honor, is that Dr. Hack read portions thereof.
25 I think the record ought to be complete. The plaintiff and

1 petitioner have advised me that his waiver of privilege
2 applies equally to these documents. He has no personal
3 objection if there be any privilege.

4 THE COURT: Is that correct, Mr. Jordan?

5 MR. JORDAN: Yes sir.

6 MR. COHLER: I would like the record to be complete,
7 rather than just excerpts from various reports as read on
8 the stand by Dr. Hack. I offer them in evidence.

9 MR. GRANUCCI: No objection.

10 THE COURT: What is Mr. Jordan's age at the present
11 time?

12 MR. COHLER: 27, Your Honor.

13 MR. GRANUCCI: That is correct, Your Honor.

14 MR. COHLER: I may state to the Court--

15 THE COURT: I notice some of these are signed by an-
16 other gentleman.

17 MR. COHLER: That is correct. I am advised by counsel
18 that some of these reports came from other institutions,
19 other places where Mr. Jordan has been.

20 THE COURT: This is the compilation, counsel?

21 MR. GRANUCCI: That is the compilation, Your Honor.

22 THE COURT: Very well.

23 THE CLERK: Plaintiff's 17 in evidence.

24 (A compilation of psychiatric
25 reports on Mr. Jordan were marked
for identification as Plaintiff's
Exhibit 17 and received in evi-
dence.)

1 MR. GRANUCCI: Your Honor, we have some surrebuttal,
2 very short.

3 MR. OAKES: Call Mr. Hoagland, please.

4 THE CLERK: Mr. Hoagland.

5 ROBERT R. HOAGLAND,

6 called as a witness in surrebuttal by the defendants, having
7 been previously duly sworn, was examined and testified as
8 follows:

9 THE CLERK: Will the witness restate his name.

10 THE WITNESS: Robert Hoagland.

11 DIRECT EXAMINATION

12 BY MR. OAKES.

13 Q. Mr. Hoagland, did you just hear the testimony of
14 the plaintiff on the stand?

15 A. Yes, I did.

16 Q. Do you have any idea, sir, what he is talking about?

17 A. No, and I mentioned this yesterday. I have no
18 knowledge of this incident he is talking about.

19 Q. Do you recall any incidents during this period when
20 you would be escorting men out of the isolation cells when
21 they were out of the isolation cells?

22 A. No, I don't remember.

23 MR. OAKES: I have no further questions.

24 MR. COHLER: No questions, Your Honor.

25 THE COURT: Thank you.

(Witness excused.)

1 MR. COHLER: The plaintiff has no further evidence to
2 offer.

3 THE COURT: Is the matter submitted on the evidence?

4 MR. COHLER: Yes, Your Honor.

5 MR. GRANUCCI: Submitted for the defendants, Your Honor.

6 THE COURT: We will take a five-minute recess and then
7 go into the arguments.

8 (A short recess was taken.)

9 MR. COHLER: I hope to be as brief as possible.

10 THE COURT: No restrictions on argument.

11 MR. COHLER: Thank you, Your Honor.

12 I think the evidence which we have heard and the events
13 which have been described through various witnesses is of
14 the type which sticks in the mind. I think the memories of
15 some of the inmates and the former inmates who have testi-
16 fied are indelibly impressed with these scenes. And some
17 of these scenes are things most of us would normally expect
18 to have passed from the scene a long time ago in our history.

19 There are two actions consolidated before the Court;
20 a petition for habeas corpus and an action under the so-
21 called Civil Rights Act.

22 As appointed counsel, I do not wish to abandon the
23 petition for habeas corpus. I feel the Court should con-
24 sider the disposition available under that petition and
25 the issuance of the writ if the Court feels in its

1 discretion that no other remedy is going to root out the
2 evils we have had described, ^{no} no other remedy can ade-
3 quately protect the plaintiff's rights.

4 The civil rights action, so-called, is founded on juris-
5 diction under 28 USC Sections 1343 and 1331, and I think
6 the jurisdiction is clear.

7 The statutes themselves are designed generally to pro-
8 tect civil rights under the United States Constitution.

9 Section 1983 deals with individual or unilateral action
10 which violates a person's rights. In this case, the con-
11 tention is that the plaintiff's rights have been violated.

12 Section 1985 refers to conspiratorial behavior toward
13 the same end.

14 THE COURT: Pardon me, counsel. May I interrupt you
15 just a moment?

16 MR. COHLER: Please.

17 THE COURT: Do you regard this as a class action?

18 MR. COHLER: Your Honor, the complaint was not framed
19 as a class action. Consideration was given to that at the
20 time, and subsequently. My understanding of the new rules
21 of Federal Civil Procedure, and I have not reviewed them
22 closely, but my understanding is that the requisite of
23 representation has been somewhat increased in some respects.
24 For a single individual to have brought class action in
25 this instance was not in my discretion at the time and my

1 judgment at the time appropriate, I did not do so, nor am
2 I moving the Court to amend the complaint to conform to the
3 evidence in that regard.

4 Cognizant, however, that rulings which may affect the
5 plaintiff's incarceration may also affect others, and like-
6 wise cognizant that we have heard from inmates on a ^{basis}, which
7 the Court may infer, represents what we would hear from a
8 great many other inmates, counsel has not attempted to
9 search out those inmates who had the worst possible situa-
10 tion. The inmates and former inmates heard by the Court
11 as witnesses were taken from a list submitted in answers
12 to interrogatories propounded by the plaintiff to Superin-
13 tendent Fitzharris.] From that list, only those available
14 at the Correctional Training Facility were interviewed,)
15 and affidavits from all of those persons were submitted.
16 For various reasons, not all of those persons testified,
17 nor were they called by the defense.

18 I do not consider it a true class action, a hybrid
19 class action, a spurious class action in the formal sense.
20 I think the evidence is indicative of what happens to a
21 large group of people.

22 Plaintiff need only prove that his rights were deprived
23 he was deprived of his constitutional rights and that that
24 happened under the color of State law.

25 I refer the Court to Marshall v. Sawyer found at

1 301 F.2d 639, a Ninth Circuit case decided in 1962, and
2 further to Antelope v. George, 211 F.Supp 657, from the
3 District Court in Idaho, also in 1962.

4 Your Honor, the constitutional rights at issue in this
5 case are found under the 14th Amendment to the Federal
6 Constitution, particularly the due process clause. It has
7 been held, and in fact, the defendants conceded in motions
8 for summary judgment and to dismiss, that the standards of
9 cruel and unusual punishment as stated in the 8th Amendment
10 are considered under this due process clause. As cited
11 by the defendants in that memorandum, the authority for
12 that proposition is Robinson v. California, 370 U.S. 660,
13 a 1962 Supreme Court case.

14 In accord, very recently in the Fourth Circuit, Driver
15 v. Hinnant.

16 THE COURT: What is the citation?

17 MR. COHLER: I beg your pardon. 356 F.2d, 761, the
18 Fourth Circuit, early this year 1966.

19 The language of the 8th Amendment, which is dealt with
20 through or incorporated in, however the phrase may be used,
21 the due process clause of the 14th Amendment, refers to
22 cruel and unusual punishment. There is no testimony as to
23 the usual or unusual nature of the conditions which have
24 been described, except that they seem to prevail at this
25 institution, or so the evidence has shown.

1 But I do not feel that the Court ought to be concerned
2 about the strict language of the "and unusual."

3 For instance, in the Robinson v. California case just
4 cited to the Court, the Supreme Court of the United States
5 held that a law in California, a statute, convicting for
6 addiction to narcotics constituted cruel and unusual
7 punishment. Clearly, that was not unusual. It was a
8 statute being enforced until the decision.

9 Likewise, the Driver v. Hinnant case, just cited to the
10 Court, went off on the same rationale involving chronic
11 alcoholism, clearly again there was no requisite of "and
12 unusual." The sense of the constitutional prohibition is
13 that this isn't right, it is a breach of human dignity, it
14 is going too far.

15 The language of "cruel and unusual punishment" in con-
16 nection with the 14th Amendment due process clause has
17 come inside the prison walls before this Court may rule in
18 this case, in Talley v. Stephens found at 247 F. Supp 683.
19 In November of 1965 the Eastern District of Arkansas District
20 Court, a Federal Court, held with respect to a State prison
21 that an inmate could not be put to hard labor where he was
22 not physically capable of hard labor; this was cruel and
23 unusual punishment.

24 I think it is fair to say that the law in this area,
25 as far as rationale goes, a doctrine goes, is not too

difficult, as always the application of the law may not be as easy.

I would like to clear a little more underbrush here, if I may, particularly with respect to the responsibility of superiors.

The defendants in this case are, by and large, superiors, down a chain of command as described by Superintendent Fitzharris. The defendants in this case, many of them, have not had personal knowledge of the events described by plaintiff's witnesses.

There has been talk of policy, procedure, what ought to be done, rules, et cetera. That does not relieve the defendants of responsibility.

As stated by the Court in Talley v. Stephens, just cited, the Eastern District of Arkansas case in November of last year, and I quote as found at page 692:

"It is also true that the record does not disclose that respondent"--

There the warden, Your Honor, a superior official, in a position of superiority--

"authorized or had personal knowledge of some of the events mentioned herein. However, it *must* not be overlooked that respondent is in charge of the Penitentiary and is responsible for the acts of his subordinates, including trusty

1 guards. He is not relieved of that responsi-
2 bility by personal ignorance of abuses
3 practiced in fields and barracks."

4 Although the facts are different in this case than that,
5 the principle is the same.

6 In addition--

7 THE COURT: Wasn't that case concerned with a number
8 of lashes to be administered to inmates?

9 MR. COHLER: There were three petitioners or plaintiffs
10 in that case, as I recall it, Your Honor. Different cir-
11 cumstances were involved with respect to each inmate. The
12 holding, as I recall, was more closely with respect to the
13 hard labor situation rather than corporal punishment. I
14 may be mistaken in my recollection.

15 THE COURT: I remember integrated in the case was a
16 matter of corporal punishment.

17 MR. COHLER: Yes, that was discussed.

18 This is clearly, I would say, enough under Section 1983,
19 which deals with unilateral action of a defendant or any
20 person.

21 Section 1985 refers to a conspiracy. A conspiracy was
22 described by Dr. Kunkel as ganging up, Dr. Kunkel is not
23 an attorney and is not expected to state the law and I do
24 not believe that is a statement of the law. Conspiracy is
25 more in the nature of ~~corroboration~~ *collaboration*, group action, working

⁴⁷¹
collaboration

1 toward the same goal. ~~corroboration~~ is a term which Mr.
2 Fitzharris himself used to describe a team approach, which
3 the Director of Corrections had emphasized in a speech Mr.
4 Fitzharris related. This is group action. You don't have
5 to have a written agreement for conspiracy. This has been
6 settled for a long time.

7 In this case the group action was intended to effect
8 certain programs, was intended to permit certain types of
9 incarceration, was intended to permit certain types of
10 removal of privileges.

11 Those who propose, promulgate and supervise the pro-
12 grams working together take the responsibility for seeing
13 that it is not abused and that the practice follows the
14 proper procedure. I think that this is sufficient group
15 activity toward that goal to constitute conspiracy.

16 I want to state at this time, Your Honor, that Mr.
17 DeCarli defendant and Mr. Swagerty defendant were not at
18 the institution and in this area at the time of July 1965.
19 In the event damages are awarded, I do not think they
20 should be held for damages. In the event injunctive relief
21 of any sort is awarded, they are clearly in positions of
22 responsibility held by others before them, and ought to be
23 the subject of injunctive relief as well as the other
24 defendants.

25 I think it is clear on the evidence in this case the

1 policy which is supposed to be followed has not been in
2 many cases. And in other cases, even the policy is not up
3 to minimum constitutional standards.

4 The defendants' evidence consists almost throughout of
5 simple statement that, "We do what we are supposed to";
6 "We follow policy"; "It was always that way"; "I would have
7 noticed anything unusual."

8 I think it is fair to say that the defendants who work
9 at the institution cannot be expected to remember these
10 events as well as those who were subjected to them. The
11 defendants see these things every day. They might not be
12 able to sort out the time very well. But the man who is
13 put in that cell will remember it. And he will remember
14 the specifics, as the testimony shows.

15 It would have been asking something almost inhuman for
16 the guards, correctional officers, sergeants who heard Mr.
17 Fitzharris say that he relied upon his subordinates, to come
18 forward and admit that they didn't do what they were sup-
19 posed to do. That was the nature of most of the questions:
20 "Was there a policy? Did you follow it? Did you do what
21 you were supposed to do?" I don't think any witness can
22 come forward and say, "I didn't do what I was supposed to
23 do." I don't think there is much weight to that testimony.

24 That testimony must be balanced against specific re-
25 collection and close narration by several inmates and former

1 inmates, and I will turn to that in a moment, if the Court
2 please.

3 There is also uncontradicted evidence that the policy,
4 so-called, was not followed in practice. Your Honor will
5 recall the forms 114, plaintiff's Exhibit 13 in this case,
6 the sign-in sheets, the movement sheets down in the isola-
7 tion section. Where the inmates are moved from cell to
8 cell, they are supposed to be marked down they were moved.
9 Cell exercises indicated. Showers are indicated. Shaves
10 are indicated.

11 There has been a problem of a shower in this case, and
12 I will come to that at a later point in time. But the
13 defendants themselves say in trying to explain away the
14 shower situation as to whether or not Mr. Jordan had a
15 shower when he was in the quiet cell or strip cell, that
16 they don't keep the records that well.

17 Well, those records are vital. If it means anything
18 to these people to have a man take a shower, the only way
19 they can tell whether or not he had one within the past
20 five days, according to their policy, is to look at that or
21 happen to hear it from someone in passing.

22 Those records are not incidental, technical records
23 which are kept to be sent off somewhere where they are not
24 used. They are used daily. Each officer so testified,
25 that he used that in the normal course of business.

1 There has been a lot of testimony that the men working
2 down there are very busy, and I think that may have a good
3 deal of bearing on just how much they do of what they are
4 supposed to do. It may be that in being so busy, they
5 don't sign in as well.

6 THE COURT: Is it not virtually conceded, counsel, that
7 they were undermanned?

8 MR. COHLER: Your Honor, it is conceded that they were
9 understaffed, underfinanced, and under pressure, and had
10 a very tough job to do.

11 There are problems in this case of two different nature
12 The defendants have very real problems. We have heard very
13 candid testimony, particularly from the upper administra-
14 tive defendants. There are very real problems at this
15 institution which they are trying to work out, and I think
16 they are trying in good faith to work them out and have so
17 demonstrated to the Court.

18 But there is a second kind of problem. The defendants'
19 problems, understaffed, underfinanced, with a tough job to
20 do, cannot be reason for letting a man have his constitu-
21 tional rights be deprived. Whether or not Mr. Jordan's
22 rights were taken from him, that is a question for this
23 courtroom.

24 It is not up to the Court to decide the best way to run
25 a prison. But it is up to the Court to decide that if men

1 are to be incarcerated in special punishment cells called
2 "strip cells" or "quiet cells," that there has to be
3 enough staff, there has to be enough resources available
4 to see to it that a man's rights are not taken away from
5 him. That is the concern of the Court.

6 In addition to the isolation log movement sheet which
7 wasn't filled out, and where men were busy, and where there
8 was understaffing, there is a disciplinary called the CDC
9 115. Several are in evidence for a limited purpose, to
10 show bias.

11 Here is an area where the institution itself recognizes
12 the importance of a hearing, the importance of an inmate
13 telling his story, the importance of discipline which is
14 meted out fairly; or if it isn't, resentment and hostility
15 may be built up, as seems to be the case in many instances,
16 according to the testimony.

17 The CDC 115, the disciplinary report, is not a quick
18 sign-in type piece of paper. It is very important, and it
19 is acknowledged to be important.

20 The disposition on the form 115 is written by someone
21 present at the hearing. There is approval given by super-
22 iors who were not at the hearing, based upon what is
23 written.

24 Mr. Donnelly, the Deputy Superintendent, said that
25 there were other files available to see where a man might

1 be at the moment. He didn't look at those in Mr. Jordan's
2 case, and it didn't appear that he did so generally.

3 It is what is on that piece of paper which is important.
4 The disposition in this case, which happens to be before
5 the Court, of Mr. Jordan--and I don't think that Mr. Jordan
6 brought this case knowing that his 115 hadn't been filled
7 out correctly. He brought it for other reasons.

8 In this case, which happened to come up for other
9 reasons, the 115 report itself did not show the disposition
10 which was made. Sergeant Friedrich, acting unilaterally,
11 made an entry that the plaintiff was to be placed in a
12 quiet or strip cell "until behavior warrants change."

13 It is my understanding that these quiet cells or strip
14 cells are something special. There are only six of them.
15 They have to be reserved for particularly difficult cases,
16 some of which are incorrigible, as Dr. Hack has said. Care
17 must be taken in putting a man in a quiet cell or strip
18 cell. It is supposed to be the last thing you do to him.
19 You want to reserve those.

20 But no superior had a chance to pass upon the wisdom
21 of assigning Mr. Jordan to the quiet cell or the strip cell.

22 I think that bears in two ways. First of all, it is
23 not supposed to be done that way, by their own rules. An
24 error of that nature, I don't think is an inadvertent mis-
25 take. Perhaps it is.

1 Mr. Kiepura testified that he didn't remember anything
2 at all about the hearing; he only knew what was in the docu-
3 ments. For some reason, he was able to remember what he
4 had forgotten at the hearing itself to write down, that
5 Mr. Jordan was supposed to go to the quiet cell.

6 Whether or not Mr. Jordan's going to the quiet cell
7 was actually discussed between Mr. Kiepura and Sergeant
8 Friedrich at the meeting, no superior knew of the dis-
9 position, and the superior approved the form as written.

10 There were also supposed to be three people at the
11 meeting. There were only two. This also may be attributed
12 to understaffing. It is a rule which is considered im-
13 portant by the Superintendent, and it wasn't followed.

14 Sergeant Friedrich emphasized that a man's clothing
15 couldn't be taken away by himself alone, that this required
16 approval. With regard to Mr. Esparza and the so-called
17 tear gas incident, Officer Mata said that Sergeant Fried-
18 rick ordered Esparza to take off his clothes. Sergeant
19 Friedrich said that he had requested authority for the use
20 of tear gas and to remove his clothes. But I think if
21 anything is clear about that incident, it is clear that the
22 tear gas was ordered because Esparza wouldn't take his
23 clothes off. So there was an order to take off clothes
24 before there was a request for the authority. And it was
25 to follow up on that order, made without a request for

1 authority that the extraordinary measure of tear gas was
2 used.

3 THE COURT: Wasn't it a blanket used as sort of a
4 shroud over his head rather than clothing?

5 MR. COHLER: It was both, Your Honor. There was a
6 blanket that was used as a shroud over his head, as I re-
7 call the testimony, and he was ordered to throw out all
8 his clothes except, as Sergeant Friedrich said, his shorts,
9 I believe; perhaps his socks as well.

10 Sergeant Friedrich testified he wouldn't have been left
11 in the cell with just his shorts before that. He was told
12 to roll out his blanket, step out of his clothes, as I
13 recall it.

14 The flaps are supposed to be open except when there is
15 a disturbance. It is clear from all sides that the flaps
16 were closed most of the time.

17 However, there is also a lot of testimony here that the
18 flaps were only closed when there was a disturbance. Maybe
19 this all fits together.

20 Officer Caldwell said you have to leave the flaps closed
21 until you are sure the man won't start agitating again. He
22 says that is two or three days. And, of course, everyone
23 says they move the man out of the quiet cell or strip cell
24 as quickly as they can.

25 So, isn't it quite possible that the flaps are closed

1 while the man is in the quiet cell or strip cell, because
2 for two or three days they have to be closed because he
3 might agitate and as soon as he stops agitating they move
4 him out. The result, as Officer Nash testified to directly,
5 is that the flaps were closed most of the time.

6 That is also true of the testimony from the inmates and
7 former inmates with respect to their various occasions in
8 the quiet or strip cell.

9 It is interesting to note with respect to the flaps
10 that Officer Nash, and I believe other officers, testified
11 that if an inmate wanted more water he could get it on re-
12 quest, and that in fact the request for water could be
13 heard up at the officers' area, even though the flaps were
14 closed.

15 Now, these are the flaps used and designed and justified
16 to stop noise. Whether or not any noise could be heard
17 from that cell with the flaps closed, it seems probable
18 that the noise would sound more like agitation than a
19 legitimate request for water.

20 With respect to clothing, Your Honor, and what an in-
21 mate might be permitted to wear inside the quiet or strip
22 cell, the rule as read by Mr. Fitzharris is that clothing
23 may be removed only temporarily, only for a suicide watch,
24 and only with a note to the psychiatrist or the officer of
25 the day.

1 Plaintiff's testimony that he was without clothing for
2 eight days is uncontradicted. There are people who say it
3 doesn't work that way. And there are people who say, "Well,
4 I don't remember one way or the other." But no one said
5 that during those eight days they remember seeing Mr.
6 Jordan with his clothes on.

7 There is a lot of general recollection about what is
8 supposed to happen and what might have happened. But that
9 testimony is virtually uncontradicted, and I submit that
10 even if it is contradicted, it must prevail.

11 The man didn't say he didn't have clothes at all. He
12 said he didn't have them for eight of these 12 days. I
13 believe Mr. Jordan would recall that.

14 No one has had the audacity to come forward and say that
15 Mr. Jordan was on suicide watch. He did have a history of
16 what appears to be an attempted suicide at Vacaville. He
17 was permitted his glasses, certainly a dangerous weapon for
18 mutilating himself. He was permitted a pencil, which he
19 had to steal to write to the Court; certainly a dangerous
20 weapon. And his flaps were closed, which would pretty much
21 preclude a suicide watch type of observation. Here again,
22 the policy was not followed. Procedure was not followed.

23 I don't think the clothing is a trivial mistake. Some-
24 body has to take your clothes. They just don't forget,
25 they aren't forgotten to be written down, logged somewhere.

1 In fact, Mr. Fitzharris just told us a few moments ago
2 there was a very real problem about inmates having clothing
3 in the quiet or strip cells, that there was a fire problem.
4 I think it is a fair inference from what Mr. Fitzharris
5 said that to his knowledge that until they could arrange to
6 have these things fireproofed, there were many occasions
7 when inmates in quiet cells weren't permitted their clothes.
8 The plaintiff has testified his was one such instance.

9 There have been a lot of abstractions about control and
10 punishment. There has been various discussion from various
11 witnesses on this subject.

12 Mr. Donnelly said, Deputy Superintendent Donnelly, that
13 a punishment must have a certain maximum time, the time
14 must be certain as to the maximum amount of punishment. In
15 the plaintiff's own case, Sergeant Friedrick put him in a
16 quiet or strip cell until his behavior warranted change.
17 It is true his isolation sentence was 29 days, but there is
18 a marked difference between isolation and quiet cell.

19 Reference has been made to the hearing, to the number
20 of people present, to what was written down on the 115
21 disposition regarding Mr. Jordan. I would like to touch
22 briefly on what might be called the procedural due process
23 aspect of this case.

24 It is the plaintiff's major contention that under the
25 conditions as testified to by plaintiff's witnesses no man

1 can be incarcerated in these cells. As a part of that
2 contention, there are certain aspects which I shall point
3 out to the Court in a moment, which even if they were as
4 the defendants say they are, no man can be put in that cell.

5 There are certain limited functions which can be justifi-
6 fied for a strip cell. It is, in the very strict sense,
7 a control measure to prevent a man from destroying himself,
8 destroying State property, and arousing the inmate popu-
9 lation. I will avoid the term "agitation," if possible,
10 because it seems to be almost all encompassing.

11 If this most severe type of confinement, and I don't
12 mean severe in a colored sense, but it is severe; it is a
13 stripped cell, with no furnishings and no facilities. At
14 least, it ~~wasn't~~ ^{was} until recently.

15 If a man should be put in that situation, there must
16 be a good deal of care taken that he is not abused, in-
17 tententionally, unintentionally, by understaffing or whatever,
18 that while he is down there right near the rock bottom of
19 having the necessities for survival, that he doesn't lose
20 them.

21 To put a man in that situation should take a good deal
22 of thought by people who are accustomed to thinking in
23 larger terms than, "Where do we move this man today?" and
24 "Who do we go with tomorrow?"

25 One man, at the second highest level, just above

1 correctional officer, one man ought not have the discretion
2 to put a person, as in this case the plaintiff, in this
3 most severe cell, regardless of the conditions in that cell
4 "until behavior warrants change."

5 Any person, even within the prison walls, is entitled
6 to a little bit more of a hearing. Now, there are no rules
7 of evidence in these hearings, there aren't judgments--

8 THE COURT: Aren't there areas as contended for by the
9 respondents or defendants that could center around emer-
10 gency aspects?

11 MR. COHLER: Exactly, Your Honor, and I was just about
12 to exclude that situation. There may be emergencies of
13 many natures. There may be a real riot. There may be a
14 particular inmate causing a problem. There may be a fire.
15 There may be a stabbing. There could be any number of
16 things easily imagined. There is no reason that the quiet
17 cell or strip cell could not be used on that occasion.

18 But when it comes time to making a disposition, and it
19 appears to take some time sometimes to get to this hearing
20 committee, but whenever it is deemed proper to have a hear-
21 ing at some point, somebody besides one person at the
22 second ^{lowest} ~~highest~~ level in the institution ought to decide
23 whether the man remains there and ought to decide more than
24 "until behavior warrants change."

25 I am not trying to interfere with the discretions to

1 handle, and plaintiff does not submit discretion should be
2 interfered with to handle anything of an emergency nature.
3 But of course emergencies expire, and the matter should
4 receive attention. "Emergency" is a word that can be
5 abused as well.

6 Now, aside from the statements of policy offered by
7 defendants, policy which is shown by their own testimony
8 not to be fulfilled in some very important areas, on the
9 other side, the plaintiff's witnesses, those who are and
10 were inmates, have told their story. And I might say it
11 appeared to me to be much a telling of stories, rather than
12 a neatly packaged examination which might have been re-
13 hearses in some nature. I certainly discussed this case
14 with all of those men. I assure the Court nothing was re-
15 hearses. Stories were told, questions were asked from the
16 Bench, and there was what I would call a rather thorough
17 cross-examination.

18 These stories were also told at Soledad in the presence
19 of the very highest personnel at the institution, and in
20 the presence of guards. I believe it is fair to say that
21 if the inmates who were testifying knew they were telling
22 lies, they would know that their keepers knew they were
23 telling lies, and there would be room for reprisals--and I
24 am not accusing anyone of trying to make reprisals--but
25 there would be room for reprisals, at least from the

1 imagination of the man on the stand.

2 MR. GRANUCCI: Your Honor, I must object to this line
3 of argument. Plaintiff's attorney is actually testifying
4 now to things that happened when he secured the affidavits
5 from the plaintiff's witnesses.

6 MR. COHLER: I will strike all of that.

7 MR. GRANUCCI: There was no evidence of that in the
8 record. He must restrict his argument to evidence.

9 MR. COHLER: I am sorry, Your Honor. I will be happy
10 to have it from the record. I mentioned it in passing. It
11 may be stricken upon stipulation.

12 MR. GRANUCCI: So stipulated.

13 MR. COHLER: Your Honor, the men who testified in the
14 room, whether it was real or imagined, may well have
15 thought that if they weren't telling the truth and it would
16 be known to those who kept them in custody, that they would
17 have reprisals against them through one means or another.
18 And I am not accusing anyone of attempting reprisals.

19 THE COURT: Are you undertaking to represent to this
20 Court that-- that factor would enter the mind of the
21 ordinary man under those circumstances?

22 MR. COHLER: Correct.

23 THE COURT: There is no charge that any reprisal has
24 been made or would be made.

25 MR. COHLER: Absolutely.

1 THE COURT: All right. We might take a recess now,
2 counsel, until 2:00 o'clock.

3 MR. COHLER: Thank you, Your Honor.

4 (The noon recess was taken.)

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1 FRIDAY, AUGUST 19 1966 - AFTERNOON SESSION - 2:00 P.M.

2 MR. COHLER: May it please the Court:

3 Your Honor, before recess I had discussed, at least in
4 part, the testimony offered by the defendants as to general
5 policy, and following it some of the problems that arose
6 in that testimony.

7 The witnesses for the plaintiff who are and were inmates
8 testified to their own recollection of their own personal
9 experience, which hopefully are unique experiences and
10 might well be remembered.

11 For instance, we have heard quite a bit of testimony
12 from both sides regarding the so-called Esparza tear gas
13 incident.

14 In part, there is a conflict among the defendants'
15 witnesses, perhaps not significant, but perhaps noteworthy.

16 Sergeant Friedrick said that he himself called for
17 authorization for the tear gas, as I recall it. Mr.
18 Johnston testified that he was the one that called. Of
19 course, it is possible that they both called or that it
20 was just a poor recollection.

21 Mr. Esparza says that he got shot right in the face or
22 sprayed, whatever the proper term is, with the tear gas.

23 Officer Mata, admittedly the officer who did the tear gas
24 ~~using~~ ^{shooting}, testified to two short bursts. However short the
25 bursts were, they clearly had their effect. The tear gas

1 was present not only in the cell. It was also present in
2 the corridor. And it was also present two or three days
3 later when Mr. DeCarli felt the tears in his eyes during an
4 hour and a half interview with Mr. Esparza.

5 Now, before shooting the second burst Mr. Mata had his
6 gas mask grabbed at by Mr. Esparza and his head knocked
7 against the wall. Apparently he didn't fall down, according
8 to his testimony.

9 It seems to me a very fair inference, and a very
10 natural inference, that when his gas mask was grabbed at
11 and he hit his head against the wall, in that small space,
12 that he would have released a shot of tear gas. He didn't
13 take the same careful aim as he did when he crouched down
14 and aimed between the bars, as he felt was necessary for
15 the first burst. It seems to me an entirely natural, un-
16 intentional reaction to let fly with that nozzle the second
17 time. I am not saying it was aimed at Mr. Esparza's face.
18 But I think it is very easy to believe and the Court ought
19 to conclude as a matter of fact that that is where it went.

20 As to the duration of these bursts, how long they
21 actually lasted, I don't think is significant. They had
22 their effect. As a matter of fact, no other witness said
23 that he saw the handle turned. There was testimony from
24 defendants' witnesses present at the scene that there was
25 a great deal of noise, which was still continuing, which

1 was at least in part the cause of the use of the tear gas.
2 I doubt that anyone heard the noise. In fact, there was
3 testimony that the noise was not heard.

4 It would seem unlikely that those without gas masks
5 would be standing right up in that little galleyway between
6 the outer wall and the bars of the cell where Officer Mata
7 was operating.

8 There is some confusion in the record about what Mr.
9 Esparza had said leading up to this incident. There is
10 testimony about "I'll cut your heart out."

11 As I recall it, Mr. Esparza himself was a little con-
12 fusing in his testimony on this point, as to what language
13 it was in. I think the testimony will bear out the possi-
14 bility that he said it twice, in Spanish and in English.
15 It seems quite plausible that he would say it in Spanish
16 to an officer who was Spanish-speaking and would say it in
17 English for the benefit of other inmates as part of the
18 agitation of which the defendants have spoken so often, the
19 saving face, the leading of the gang that has been re-
20 ferred to.

21 In any event, Mr. Wells said he heard it in English or
22 Spanish, and I am not even sure now. But it was different
23 from one of the statements that Mr. Esparza made. And I
24 believe that is the only conflict that even comes close
25 among the testimony of the plaintiff's witnesses to having

1 any significance. And that is a very small part of a
2 fairly collateral incident itself.

3 Now, tear gas, Your Honor, is something that ought to
4 be treated with respect. In the course of examination, I
5 made reference to a case Titcomb v. New York, the citation
6 of which is 222 N.Y.State 2d 596, the case arising in the
7 Court of Claims in New York in 1961. In that case \$20,000
8 damages were awarded for conscious pain and suffering
9 before death, the death resulting from the use of tear gas
10 in a closed room which, as related in the report of that
11 case, was about the same size the testimony shows the strip
12 cell to have been.

13 Another citation I wish to refer to the Court is
14 Chaudoin v. Fuller, 192 P2d 243. This case was in the
15 Supreme Court of the State of Arizona.

16 THE COURT: 192 P. ^{judice} 2d?

17 MR. COHLER: Yes, Your Honor, at page 243.

18 In that case, the Supreme Court of Arizona sustained a
19 holding of the lower court that the sheriff's conduct in
20 firing tear gas into the face of a prisoner was a wanton
21 and reckless assault; \$10,000 damages was awarded in an
22 action against the deputy sheriff's superior.

23 There has also been a good deal of testimony about the
24 further portion of this so-called tear gas incident which
25 involved Mr. Wells, housed next door in another strip cell.

1 Mr. Wells testified under oath that he was positive
2 that it was water he threw at the officers. Mr. Johnston
3 felt the sting and assumed it was urine. Mr. Johnston
4 didn't smell the odor of urine. Of course, it is possible
5 that in those surroundings no one would notice the dif-
6 ference, the smell of the urine on him/ or from the general
7 conditions as testified to.

8 This case in particular is a case about the plaintiff
9 and the time that he spent in a strip cell, so-called. The
10 case, Your Honor, has come a long ^{way} ~~ways~~ from the time that
11 Mr. Jordan was in that very cell during this very period
12 of time and with a smuggled pencil and smuggled paper he
13 wrote a letter to the outside world. We are past the point
14 where statements of general policy can provide the answer.
15 We are past the point where this action can be called
16 sham and frivolous. We are past the point where the Court
17 can be told that it has no jurisdiction over subject mat-
18 ter of this type.

19 I would like to pause for a moment and comment about
20 the term "strip cell." On its face, one would think this
21 would be a rather innocent usage. Professionally there has
22 been testimony that it means "stripped," stripped of
23 physical facilities; stripped for a good purpose in its
24 intent, to eliminate self destruction, destruction of State
25 property, and to control ^{an} ~~and~~ inmate.

1 A cell as barren as that must be used with caution, it
2 is true.

3 Now, Sergeant Friedrich thought he picked up the term
4 from the inmates. It seems plausible inference to me, Your
5 Honor, that the inmates used the term "stripped" to in-
6 dicated what happens to them; they are stripped, like they
7 are kept quiet, as opposed to the facilities in the cell.

8 Even so, standing alone, I would not think this of
9 particular significance. But there has been a somewhat
10 curious defensive attitude about the use of the term.

11 Someone substituted the term "quiet cell" for "strip
12 cell" in a quotation in a sworn answer to interrogatories.

13 MR. GRANUCCI: Your Honor, I object to counsel relying
14 on that matter in argument, because an objection to the
15 very question was sustained.

16 MR. COHLER: It was sustained as argumentative, Your
17 Honor. This is argument.

18 THE COURT: You may proceed.

19 MR. COHLER: Thank you, Your Honor.

20 My purpose in noting that is not to imply bad faith in
21 answer to our interrogatories, but I think it is indicative
22 of a defensive attitude, for some reason, about the term
23 "strip cell." Perhaps that in itself is indicative of the
24 fact that people don't always have clothing in these cells.

25 Now, control, one of the so-called legitimate functions

1 of the strip or quiet cell is thought by Mr. Donnelly to
2 mean a graduated system of rewards and punishments; control
3 is imposed with the hope the inmate will think it is pun-
4 ishment, so the inmate will be deterred.

5 Admittedly control and punishment are abstractions
6 which overlap. The testimony of all has been to that effect

7 But control as a legitimate rationale for a cell barren
8 of all normal facilities must be taken very narrowly to
9 serve its legitimate purpose. When it gets to be used in
10 a punitive manner, it gets to be abused, and other privi-
11 leges are taken away when the punishment aspect of the
12 strip cell begins to fail its purpose.

13 I asked the witnesses several times, you may recall, and
14 I again pose the question to you: Where is the dividing
15 line between the preventative aspects and the punitive
16 measures? Where is that line?

17 May I suggest the following to the Court:

18 In trying to control an inmate from hurting himself or
19 destroying State property or hurting other inmates or
20 affecting the general prison population, he must, one, be
21 isolated, and ~~isolation~~ ^{isolation} cells serve that purpose; and he
22 must, two, be put in surroundings where he has nothing
23 around to use on himself or to destroy which belongs to the
24 State.

25 Control in this sense would mean putting a man in a

1 strip cell with furnishings which are indestructible or
2 thought to be as harmless as possible without depriving the
3 man of ordinary essentials for survival.

4 Now, when it gets to a point where flaps are left
5 closed longer than the noise which apparently causes them
6 to be closed is existent, when it gets to the point where
7 there is no facility for a man to keep himself clean, to
8 wash himself before he eats, we have moved over into the
9 punishment area, I suggest, Your Honor, and punishment of
10 a cruel and unusual nature, because there is no need to
11 control a man by keeping his hands dirty when he eats a
12 sandwich, there is no need to control a man by keeping him
13 from light and air, there is no need to control a man by
14 keeping him in filth, even if it is self-made filth.

15 If the defendants take the position that a man must be
16 put in a cell without the normal facilities for washing
17 and in a cell where there is no light to enable him to
18 properly see to use the facilities, and if the man be
19 psychotic, perhaps, such that he would mess up his own cell
20 intentionally with bodily waste, putting a man in a cell of
21 that nature must carry the concomitant responsibility to
22 see that he isn't left in his own filth, to see that he can
23 wash before he eats, and that he does get air, except where
24 the flaps must be used to keep down the noise, which ap-
25 parently is their purpose.

1 I would characterize that as punishment, Your Honor,
2 in those circumstances, because the control of the man is
3 no longer effected by those means, except by means of
4 punishment as a deterrent. That kind of punishment, we
5 submit, is unconstitutional.

6 There has been discussion in the same line regarding
7 food and a restricted diet. Dr. Kunkel has testified that
8 the restricted diet contains adequate calories for human
9 needs.

10 THE COURT: 2,000.

11 MR. COHLER: I think he said 2,600, I am not sure.

12 THE COURT: I thought it was 2,000.

13 MR. COHLER: Even if the caloric count is sufficient
14 in that meatloaf type cold restricted diet loaf, it ap-
15 parently is unpalatable, at least so some witnesses have
16 testified.

17 Now, it may be that when it leaves the kitchen it is
18 palatable. But it may be that it is unpalatable in the
19 surroundings in which it must be eaten. Indeed, some
20 witnesses testified that they didn't even eat normal food
21 in these circumstances because of the filth and the odor
22 and the stench and the nauseous nature of the cell.

23 Use of a restricted diet is denial of another privilege
24 which could be called control, or, I suggest, should be
25 called punishment. I am not prepared to argue the use of

1 a restricted diet alone is unconstitutional. But use of
2 restricted diet for punitive purposes in the arena where
3 all other conditions as alleged are present, is part of
4 the totality of the unconstitutional confinement.

5 It was interesting for me to hear Sergeant Friedrich
6 make the statement that it is sometimes necessary to de-
7 prive inmates of the ordinary essentials for survival.

8 Before testimony was taken in this court, I didn't know
9 whether an opening statement would be called for. I
10 drafted a very brief one. In that statement I had written,
11 "I shall not burden the record with elaborate statements
12 of what we expect the evidence to show. The plaintiff will
13 show generally that he was confined by the defendants in
14 what is known here as a strip cell, and that he was de-
15 prived of the ordinary essentials for survival."

16 Sergeant Friedrich had not made that statement in our
17 so-called informal interview.

18 I suggest that in laymen's language nothing comes
19 closer to what the law knows as cruel and unusual punish-
20 ment than depriving a man of the ordinary essentials for
21 survival.

22 In addition to the failure of specific testimony on
23 the part of the defendants and some contradictions and a
24 general absence of recollection of this specific period,
25 ~~The~~ ^{the} Court has before it the specific testimony from

1 plaintiff's witnesses, and plaintiff himself has testified
2 that during the precise period in time in which he was
3 confined he was confined for 12 days. The cell was dirty
4 when he entered, and each of the plaintiff's witnesses has
5 testified that the cell was dirty when he entered, except
6 Mr. Porte. Mr. Porte testified that there was dirt. He
7 said on testimony here that there was not human bodily waste.

8 According to the answers to interrogatories, Mr. Porte
9 was in the cell the plaintiff was later confined in in the
10 middle of May, almost two months before plaintiff's con-
11 finement.

12 If the Court should find that Mr. Porte was in the cell
13 without human bodily waste, he was the only inmate who so
14 testified, and he would have been in that cell about two
15 months before the plaintiff himself was placed there.

16 The plaintiff has testified that the cell in which he
17 was placed had the flaps closed almost all the time, except
18 when he persuaded Officer Nash to leave them open. And I
19 think perhaps Mr. Hoagland said that he left the door open.
20 I am not sure I have the officers correct.

21 But for those few minutes, the flaps and the door were
22 closed the whole time.

23 For the first eight days, the plaintiff testified that
24 he had no clothing at all--none--in the cell which he said
25 was filled with human excrement and in which he said he

1 himself vomited and he said was ^{generally} ~~general~~ nauseous.

2 Plaintiff, as with the other inmates, and as was ad-
3 mitted during this period of time, had no opportunity to
4 wash before his meals.

5 The plaintiff requested medical treatment by two letters,
6 and a third. The first two were not responded to by Dr.
7 Kunkel.

8 As the plaintiff himself said, and of course it was
9 speculation, they may have miscarried. Dr. Kunkel had no
0 record of it either. It is not very adequate medical treat-
1 ment if the request for treatment miscarries. There is no
2 opportunity to even begin treatment, much less than see
3 whether the treatment is adequate.

4 Finally, on February 14th the plaintiff was seen by
5 Dr. Kunkel. That was three days after the appointment of
6 counsel in this case. At that time the plaintiff com-
7 plained of stomach difficulties, among others, and his
8 testimony was--and this is uncontradicted by the doctor--
9 that he received no blood test and no urine sampling.

0 I am not a doctor, and I don't know what is proper for
1 a physical when a man is complaining of a stomach ailment.
2 But I have always had-- Well, I better not say that.
3 Excuse me.

4 Now, there has been some question about a shower
5 allegedly taken by the plaintiff during the time he was

1 confined in the strip cell or quiet cell. We submit, and
2 I think it is abundantly clear on the record, that the testi-
3 mony of Officer Hoagland and Sergeant Friedrich is nothing
4 but a mistaken recollection.

5 The isolation log which was supposed to show the move-
6 ment of Mr. Jordan if he were to take a shower, reflected
7 no shower during the period in question, July 9 through
8 July 20, and it did show a shower on Saturday, July 24th.

9 Mr. Fitzharris' answer to interrogatories states
10 specifically with reference to Mr. Jordan and with respect
11 to this period of time that plaintiff had no opportunity
12 to exercise. Sergeant Friedrich testified that you can't
13 take a shower without having an opportunity to exercise.

14 Mr. Hoagland said that part of his recollection of Mr.
15 Jordan taking a shower at this time is based upon a con-
16 versation he remembers overhearing between Sergeant
17 Friedrich and Mr. Jordan regarding the plaintiff's legal
18 papers. Sergeant Friedrich, on the other hand, said, yes,
19 there was such a conversation, but it took place back at
20 the quiet cell or the strip cell. Now, that can't be any
21 part of Sergeant Hoagland's proper recollection if
22 Sergeant Friedrich's testimony is from good memory.

23 I think the testimony shows clearly that the basic
24 factor relied upon to indicate to these gentlemen in their
25 testimony that it was during the time the plaintiff was in

the strip cell is that he was ^{escorted} ~~escorted~~ at the shower. The plaintiff testified, the last testimony that was heard by the Court, was that there were special circumstances through Saturday, July 24th when all inmates from the isolation, as well as the quiet or strip cells, were escorted, a practice which is not generally prevalent, according to Mr. Hoagland himself. It is very true that the plaintiff, according to the records themselves, had a shower on that Saturday. According to the plaintiff's testimony he must have had been escorted.

I suggest that is the basis for the misunderstanding, and that there was no shower at all for the plaintiff during the 12 days he was in the quiet cell or strip cell. Even if there was a shower, it would have been only on the sixth day, as I count it, or after five days, as they count it. That is not very often to wash either, when there is no other way to wash.

Officer Hoagland, incidentally, on surrebuttal, didn't have recollection of this period. He couldn't recall whether or not what Mr. Jordan testified to was accurate. On the other hand, he seemed to recall the shower very vividly the other day.

Your Honor, we suggest that the plaintiff's case has been proven easily by a preponderance of the evidence. It is a long way from a close question in my view. There is

1 an abundance of evidence with a very credible line running
2 through it and very few contradictions among those people
3 who I doubt are accustomed to testimony in court and who
4 were cross-examined skillfully.

5 There is corroboration from inconsistencies among the
6 defendants' testimony itself. There is corroboration from
7 the records which are supposed to be kept accurately,
8 according to State law. There is corroboration from the
9 answers to interrogatories. And there is corroboration by
10 way of admissions with respect to the changes which we
11 heard most fully about this morning for the first time.

12 It is true and we may take it as true, it seems from
13 the testimony, that it was not this case which triggered a
14 reexamination of the conditions of the institution. It
15 was an inquiry, according to Mr. Donnelly, triggered by
16 another court and passed through the highest part of the
17 Department of Corrections to take a look, to see what was
18 happening. According to Mr. Donnelly, they took a look,
19 saw what was happening, decided they had better make some
20 changes. According to Mr. Fitzharris, that is because the
21 court was beginning to--

22 THE COURT: Is it or is it not true that this case was
23 before the Supreme Court of California at one juncture?

24 MR. COHLER: Your Honor, the questions were put in
25 terms of "this case." I think they may have been understood

1 by the witnesses to mean this case, No. 44786, in this
2 court, before Your Honor, with these defendants. Perhaps
3 the record ought to have been made more clear in that
4 respect.

5 THE COURT: Well, is it or is it not true that the
6 petitioner undertook to exhaust his remedies in the State
7 of California?

8 MR. COHLER: That is true, Your Honor. The Court may
9 take judicial notice--

10 THE COURT: Wasn't that a condition ^{precedent to} ~~preceding~~ coming
11 to this Courthouse?

12 MR. COHLER: Yes, Your Honor. The Court may take
13 judicial notice of the files of the Supreme Court of
14 California to establish that, if necessary.

15 I don't think more need be said about the changes, Your
16 Honor. It seems there was a good deal of resistance to
17 making these changes. There were many problems in employ-
18 ing these changes. We have heard quite a bit of testimony
19 about how hard it is to have water thrown at you, how the
20 defendants' exhibits, the pitcher, the bowl, were ripped up.
21 They lost many, they had to buy more. It doesn't seem
22 they are really enjoying these water pitchers down there,
23 and these waterbasins. It wasn't a change which they
24 thought was, at first, to be such a good idea. Mr. Fitz-
25 harris isn't sure that they are going to keep it.

1 But they made it. And it seems to be abundantly clear
2 that it was made in response to someone higher up in the
3 system, and to an inquiry from a court. The admission is
4 just as strong whether it is this Court or another Court
5 or the Director of Corrections. It is an admission that
6 they looked around, found out it wasn't up to snuff, and
7 decided they had better make some changes, which they did.

8 As I see it, Your Honor, the defense in this case is
9 that it just didn't happen the way the plaintiff's wit-
10 nesses have stated. I suggest to the Court that the upper
11 administrative personnel, the defendants in this case, are
12 not all that aware of what happens in their own institution.
13 Mr. Fitzharris directed the work of men for 245 hours to
14 find out what happened. This was after an inquiry had been
15 received from his own superiors to find out what had hap-
16 pened. This was after the Court's intention to look into
17 the matter was clear. This was not a casual look-around.
18 This was, I am sure, an attempt to find out what was hap-
19 pening.

0 The answers were generally, "The policy is," and "No
1 information is available as to specifics."

2 Understaffed and underfinanced as they may be, the
3 defendants are obliged to see that constitutional rights
4 are not deprived/ if they place a man in a special cell,
5 to see that that cell, and the use of that cell, is not

1 abused.

2 The statements of general cleanliness and general
3 ventilation and, "nothing went wrong or I would have
4 remembered it," and the six-minute change of air in the
5 cell, even if the flaps were open or closed, according to
6 the engineer, and the fact that the air couldn't be felt
7 by the hand of someone holding it up to the vent.

8 Mr. Caldwell, the officer, said that he used to stand
9 in front of this vent to feel the air, that it was warm
10 back there. Their ventilation system wasn't as good in
11 the officers' area. He felt the air coming through the
12 ventilation shaft.

13 None of the inmate witnesses felt any air coming
14 through their part of the ventilation system.

15 Mr. DeCarli's eyes stung two or three days after the
16 tear gas incident. That wasn't moved out by the ventila-
17 tion system.

18 Sergeant Friedrich says there is a grapevine, and I'm
19 sure there is; and that the ventilation system is a good
20 deal a part of the grapevine, and I'm sure it is; and that
21 the men are in the strip cells because they are agitators,
22 and I'm sure many of them are. Maybe something is clogging
23 up that ventilation system back in the strip cell to cut
24 off the grapevine.

25 Mr. Hoagland gave the most specific testimony as to

1 cleanliness. Mr. Hoagland got down on his hands and knees,
2 with a wash bucket, brooms, mops, the rags, the cleanser,
3 and he even got a special bleach, apparently from the dis-
4 pensary, apparently not normally supplied. These cells
5 must have been pretty dirty to require that special bleach.

Now

6 ~~One~~ of the officers noticed an odor in the area.

7 Officer Caldwell said the whole place stunk when he came
8 to work, but not particularly in this area. Now, I suggest
9 that even with the automatic flusher, and particularly
10 before that when it was flushed even twice a watch, as it
11 was supposed to be, and twice a day, as the testimony has
12 been, that there was bound to have been some odor emanating
13 from the cells from commodes which were flushed that less
14 frequently; just the law of averages. There must have been
15 odor back there, Your Honor, and I don't find that the
16 statement that there was no odor ~~very~~ convincing as to the
17 state of cleanliness.

18 I would like to turn for a moment to the question of
19 relief, if the Court please. Perhaps it is not out of
20 order to relate ~~to~~ an incident that happened to myself
21 riding in a cab this morning. The cab driver who was
22 driving me related that he had been in an accident awhile
23 back, sustained some \$3,500 out-of-pocket expenses, had a
24 lawsuit for \$25,000, and that he would be delighted with
25 \$10,000.

1 The Courts, in negligent actions, award for pain and
2 suffering every day, a good deal; tort actions.

3 The plaintiff has proven, we submit, that he was de-
4 prived of constitutional rights, fundamental human dignity.
5 If damages are awarded for pain and suffering when you
6 break a rib or twist a neck, what kind of damages repair
7 a man's memory? How whole can a man be made?

8 I don't think that this is just an emotional argument.
9 I think this is a very real argument. This man ought to be
10 made whole, Your Honor. I don't think the \$25,000 claim
11 and prayer for compensatory damages compared coincidentally
12 with what the cab driver is claiming when he suffered
13 \$3,000 out-of-pocket, is at all unrealistic.

14 This even happens within the prison walls. I read in
15 the paper that Mickey Cohen got \$100,000 for being hit
16 over the head in prison under the Civil Rights Act because
17 he wasn't protected well enough by the guards.

18 It must be sure, and the Court must make sure, that
19 the plaintiff is not subjected to this treatment again,
20 and injunctive relief must be framed to that end. The
21 enforcement of injunctive relief is not an easy matter in
22 a case of this sort. Enforcement of injunctive relief
23 depends upon showing a violation of the injunction, in
24 essence, a trial de novo, putting a burden upon counsel
25 for both sides, a member of the private Bar and the very

1 busy Attorney General's office, to insure proper adherence
2 to any injunction which this Court may issue.

3 Even more so, it takes the courage of an inmate to
4 come forward as Mr. Jordan did. Your Honor heard testimony
5 of inmates who seemed inured to these conditions. Some of
6 them didn't even seem to mind going down there. This was
7 taken as a part of their life. Very few men would come
8 forward in those circumstances, aside from any fear of
9 reprisals.

10 The Court will remember Mr. Allison who, real or
11 imagined, said that he was afraid to testify. He even
12 said he was afraid to tell the Court that he was afraid.

13 The plaintiff, as stated by Dr. Hack, is a man who
14 knows his rights. And he has come to this Court to have
15 those rights vindicated and has sought reasonable relief,
16 which we submit should be offered and ordered in full.

17 In awarding the plaintiff in this action, both in-
18 junctively and by way of damage award, the Court does more.
19 The collateral effects are not to be overlooked.

20 I am not even speaking particularly of the institution
21 or the prison system. There is a good deal of talk these
22 days about the absence of respect for law and order. And
23 there is a lot of talk about people taking the law into
24 their own hands. Inmates in institutions may be particu-
25 larly suspect to that type of approach. They may feel that

1 they can't "buck" the system." An order from this Court
2 will prove to these men that you can get relief the right
3 way, through the channels of the law. When those men hit
4 the streets again, all of society ~~must~~ ^{may} be rewarded.

5 Your Honor, the plaintiff submits that his prayers be
6 granted in full. Thank you.

7 MR. GRANUCCI: May it please the Court:

8 We have been through a rather long two weeks; long for
9 the plaintiff's very learned counsel, long for ourselves,
10 long for the defendants, long for the Court as well. I
11 do not intend to unduly extend these proceedings by lengthy
12 or prolix oral argument. But there are some basic points
13 I have to make, and I want to make them clearly and if
14 possible, succinctly.

15 First off, I want to renew our motion to dismiss on
16 the part of the State of California and the Correctional
17 Training Facility, a political subdivision of that State.
18 If there is any certainty at all in this rather unsettled
19 area of civil rights litigation, it is this: That neither
20 the State nor a political subdivision thereof is a proper
21 party defendant under the Civil Rights Act. The Court of
22 Appeals for this Circuit has definitively so ruled in the
23 Williford case, a case cited by the defendants in their
24 motion to dismiss.

25 Moreover, the State is not a proper party in a habeas

1 corpus proceeding. This is clear in the case Bohm v.
2 Alaska, Roseborough v. California, Morehead v. California,
3 all cases in the Court of Appeals for this Circuit.

4 Consequently, this case doesn't involve abstract
5 political institutions, abstract State body, abstract con-
6 cepts; it involves flesh and blood people on both sides.
7 The defendants are as flesh and blood as the plaintiff and
8 his supporting witnesses, and any judgment the Court enters
9 runs not against the State; it runs against them.

10 Now, the law, briefly: We must keep in mind that we
11 are dealing with a quite narrow and yet at the same time
12 quite elusive question of law. The plaintiff, in order to
13 obtain any relief at all against the defendants, must show
14 by a preponderance of the evidence that he has been sub-
15 jected to cruel and unusual punishment, a violation of the
16 8th Amendment to the Constitution, which 8th Amendment is
17 applied against the States by the 14th Amendment and which
18 is in turn effectuated against the State officers by the
19 Federal Civil Rights Act, which is only co-extensive with
20 constitutional rights.

21 We also should keep in mind this: That in the wisdom
22 distilled of generations the law has developed that matters
23 of prison discipline and internal procedures are, absent
24 constitutional questions, of course, reserved to the manage-
25 ment of the States.

1 I need not belabor the point. Suffice it to say that
2 plaintiff's argument to the contrary, procedural due pro-
3 cess is entirely out of order in the prison setting.

4 So we get down to the facts. But before we get to the
5 facts, I would remind the Court again that we are not deal-
6 ing with what is penologically the most advanced concept,
7 we are not arguing about what is the most desirable concept,
8 whether they are undesirable; but whether the conditions
9 of the plaintiff's incarceration were so extreme as to
0 constitute cruel and unusual punishment. This concept of
1 cruel and unusual punishment is a limited one.

2 Arguments have raged back and forth about the desirabil-
3 ity of the death penalty. I am using this argument as an
4 illustration solely. However, no court has ever held that
5 capital punishment is itself cruel and unusual. It may be
6 undesirable, a point much debated, but not cruel and un-
7 usual, at least in the eyes of the law, at least as ap-
8 plied to the 8th Amendment.

9 We get down to the bare bones of the case: What were
0 the conditions of plaintiff's confinement from the 9th day
1 of July 1965 up until the 20th day of July 1965? And do
2 those conditions amount to cruel and unusual punishment?

3 I suggest, Your Honor, that in determining whether
4 those conditions did constitute cruel and unusual punish-
5 ment, the rule of reason carries a great part. Most of the

1 decisions that discuss cruel and unusual punishment dis-
2 cuss them in terms of being excessive or disproportionate.
3 When you refine it out, the decisions, I think, talk in
4 the terms of whether the conditions imposed or the penalty
5 imposed is reasonable in the light of the offense.

6 So, what were the conditions of plaintiff's confinement,
7 were they reasonable? That is the issue here.

8 On the 9th day of July, plaintiff was placed in a quiet
9 cell in O-wing at Soledad Correctional Training Facility.

10 We have said, and we have proven, that he was put in a
11 clean quiet cell. Officer Nash specifically so testified.
12 He was in that cell, he serviced it, he found it was clean.

13 Officer Hoagland testified to the practice that pre-
14 vailed of keeping it clean. I noted with a sense of
15 frustrated amusement, if you will, counsel's argument that
16 Mr. Hoagland was there with the scrub brushes and the
17 bleach and the mops and the brooms so the cells must have
18 been pretty dirty. Well, I think, as I will allude to
19 later, this is an example of "You're damned if you do and
20 you're damned if you don't." You are condemned by and
21 criticized if you leave the cells dirty; you are criticized
22 if you clean up the cells.

23 But regardless of what plaintiff thinks about it, the
24 fact is that that cell was clean.

25 A second point: He was furnished a strong blanket

1 instead of a conventional mattress. It looks like a barely
2 adequate, if that, means of sleeping. But it can be
3 folded over, contrary to what plaintiff said in his com-
4 plaint. It is made of canvas. It has a blanket in it. It
5 has some wamrth. And there is a reason why that type of
6 facility is furnished instead of a mattress.

7 Remember Officer Hoagland's testimony about the sad
8 experience of his father, the inmate that tore his mattress
9 apart, set it afire in a quiet cell and caused injury to
10 himself and to the senior Hoagland.

11 This is a point to keep in mind with regard to the
12 mattresses and everything else. I think the plaintiff
13 demonstrated it more than anybody else, more clearly. It
14 is easy to get contraband into those quiet cells, very
15 easy indeed.

16 You saw the plaintiff so adroitly throwing out the fish
17 line. I stood over here, right about here (indicating),
18 asked plaintiff to throw the line, and he hit me right in
19 the face, just as I am sure he intended to do.

20 Now, with the possibility of getting in contraband that
21 easily, is it any wonder that a strong blanket would be
22 furnished instead of a mattress?

23 Now, flaps, getting to the testimony of flaps: The
24 policy is that we leave the flaps down. Some of plaintiff's
25 witnesses testified that the flaps were up. Officer Nash

1 testified that when he came on duty most of the time, the
2 flaps were up. Officer Caldwell testified that in the
3 mornings, the midnight-8:00 o'clock shift, the flaps were
4 sometimes up, sometimes down. Officer Nash at first felt
5 a little hesitant about moving the flaps because of his
6 inexperience. He was, in that peculiar jargon of the
7 plaintiff, a "fish bull."

8 But in any event, the flaps were there. Sometimes
9 they were up. And we say sometimes they were down. And
10 I think we can believe Officer Hoagland, and we can be-
11 lieve Sergeant Friedrich about that.

12 Is it unreasonable to have a cell with flaps? Isn't
13 there a compelling need to prevent riots, to prevent
14 agitation from spreading? Shouldn't officers be very care-
15 ful? And I think they were careful about the flaps, and
16 I think that as far as the flaps goes, it shows an
17 exercise of judgment according to the circumstances that
18 were present to the officers.

19 Now, the toilet: Our testimony was that the toilet
20 was flushed twice per shift, six times a day. Now, that
21 doesn't sound like the sort of thing, the sort of facility
22 that any one of us would like to have in our homes. But
23 it is a necessity in a prison setting, as are so many other
24 things. Inmates flood their cells. It is easy to flood a
25 cell, from the testimony. All you do is you take some

1 material, perhaps clothing, put it in the toilet, press
2 the button and away we go. And you have the beginnings of
3 a disturbance which could turn into a riot.

4 So very properly, then, those toilets are not subject
5 to the inmate's own control. They weren't then, they
6 aren't now, and they are never going to be.

7 Water: Again, the plaintiff testified that he got
8 water three times a day, as much as he wanted. The guards
9 testified that there was always a little water left over,
10 left over in the cells so the man could drink it later or
11 wash his hands with it.

12 Efforts to increase the availability of water have not
13 been entirely successful. This is not disputed.

14 Only three sets of water pitchers and basins remain
15 out of a dozen that were originally ordered. Apparently
16 the occupants of quiet cells don't particularly agree or
17 support efforts to ameliorate the conditions of quiet cell
18 confinement.

19 The fact remains that plaintiff, using some water from
20 his cup and a little toilet paper could have at least
21 washed his hands. He never said that he didn't have enough
22 toilet paper.

23 Now, he lacked a toothbrush, too. I would like to talk
24 about this a little bit, because this does seem, when you
25 first look at it as a free man, that it would be a bit

1 extreme not to give a man a toothbrush.

2 There was testimony, however, that those toothbrushes
3 could be converted into weapons, and again we thought the
4 ease with which the contraband can be smuggled into a
5 quiet cell.

6 Now, the fact that toothbrushes are being furnished
7 now doesn't mean that it was unconstitutional not to furnish
8 them last July. States, after all, are afforded a great
9 latitude of available choices. The question is not whether
10 it is better to furnish a toothbrush than not to furnish,
11 but was it entirely devoid of reason, entirely unjustifiable
12 for the defendants not to have furnished the plaintiff a
13 toothbrush in July of 1965.

14 There was testimony from Sergeant Friedrick that he had
15 seen weapons made out of toothbrush handles. I submit this
16 was the reason that the toothbrushes were not furnished.

17 Clothing: Again, policy is to grant clothing. Usually,
18 quiet cell occupants are granted clothing. However, as was
19 elicited from the witness stand, there had been a suicide
20 accomplished sometime previously by the use of coveralls.
21 Defendants were confronted with that situation. Perhaps
22 bearing on the side of safety, they were more anxious to
23 take clothing--or were more cautious to take clothing away
24 from the inmates than--

25 THE COURT: Were there any suicidal tendencies noted

1 in connection with petitioner Jordan?

2 MR. GRANUCCI: I believe there was, Your Honor.

3 THE COURT: May I ask you to enumerate them, if any.

4 MR. GRANUCCI: Mr. Clerk, may I have Plaintiff's
5 Exhibit 3, the answers to interrogatories.

6 These answers to interrogatories were admitted into
7 evidence at the motion of plaintiff. In his disciplinary
8 file, which is appended thereto, six pages back, it is
9 noted that on Sunday February 14, 1965, plaintiff at least
10 made an attempt to hang himself.

11 Now, I am in no position to argue that this was either
12 a legitimate suicide attempt, or what I might want to call
13 an exhibitionist type of attempt. But the record is in
14 the file, and it was introduced by the plaintiff.

15 THE COURT: That was February?

16 MR. GRANUCCI: February of '65.

17 Also, the taking of clothing has been used and justified
18 as a control measure. I will get to that presently.

19 The shower: I think there was a shower. I am con-
20 vinced of it. Of course, these are just my views of the
21 evidence and my views of the evidence are not evidence
22 themselves.

23 But Sergeant Friedrich and Officer Hoagland both
24 testified to a shower.

25 I think that plaintiff's attempt to discredit their

1 testimony is a bit contrived. Officer Hoagland, it will
2 be remembered, testified that he would have no reason to
3 be in this area (indicating) if a man were on regular
4 corridor exercise.

5 Now, the plaintiff attempted to contradict that testi-
6 mony by stating that there was a great disturbance around
7 the time in question, people were brought in from North
8 Facility, if I remember his testimony this morning correctly.

9 Of course, we have Mr. Donnelly's testimony that he
10 checked the records and he found that the only record of a
11 major disturbance at North Facility was June 29 1965, two
12 weeks before plaintiff was put in that quiet cell.

13 Now, I approach the next subject rather gingerly be-
14 cause I am not before the Court attempting to disparage or
15 blacken anyone's character. Suffice it to say that the
16 plaintiff is one of a class of inmates that is extra-
17 ordinarily difficult to control.

18 I think Dr. Hack put it very succinctly when he
19 described the plaintiff as a five-ton steel ball without
20 handles. Perhaps plaintiff, by the process of involving
21 himself in this litigation, by the process of cooperating
22 with counsel, by the process of helping prepare the lawsuit,
23 maybe he has given himself a handle. If he has, I think
24 we are all happy to that extent. If he has, then this suit
25 has served at least one purpose.

1 But the fact is that he is an extraordinarily or has
2 been an extraordinarily difficult inmate.

3 What do you do with a man like that?

4 I was rather taken with the ease, the almost super-
5 ficial ease, with which counsel articulated his theories
6 of punishment and control. In a sense it was articulate,
7 but it was inconsistent. First, quiet cells were un-
8 constitutional, then quiet cells may be all right but you
9 have to use them carefully; you can use them for a control
10 measure but not for a punishment measure; you can take
11 away clothing for a control measure but not for a punish-
12 ment measure. All so easy, all so straight-forward. I
13 suppose we all tend to think that way.

14 Defense counsel, too, were used to finely drawn juris-
15 dictional questions, used to precise questions of law; in
16 the case of learned counsel, used to precise business
17 documents; in the case of defense counsel, used to the
18 precision of the rules on appeal and the rules regarding
19 the rule of criminal judgment.

20 But when you get down inside the Adjustment Center, it
21 just doesn't work that way. And if there is any voice that
22 should be listened to, it is the voice of Sergeant
23 Friedrick. He said, "I have trouble drawing the line be-
24 tween control and punishment. It has got to be done on the
25 basis of individual judgment, the facts of the individual

1 situation, and as you see it then."

2 Now, in this same connection, much cross-examination
3 was directed to whether a specific set of conditions would
4 occasion a specific response on the part of the correc-
5 tional officers who testified.

6 Is it possible, given the complexities of human nature,
7 given the difficulty, the compound difficulties that con-
8 front the defendants and their staff, given also the in-
9 experience of the defense witnesses in testifying, is it
10 possible for them to sit on this witness stand and spell
11 out with fine precision what they would do in a given
12 situation? It is a matter of judgment.

13 Now, I want to say a word about a collateral matter,
14 the Esparza gas incident. It shouldn't have been in the
15 case at all. It was objected to, the objection was over-
16 ruled. I mean no criticism, but as the result of that
17 ruling we produced evidence of our own.

18 Counsel dismisses it as incredible, unworthy of belief,
19 as he has dismissed most of the defense case. The fact
20 remains that two short bursts were fired. That is all.
21 As little gas was used as would be necessary to control the
22 man.

23 THE COURT: Is there any reference to gas mentioned in
24 the memoranda that was received this morning?

25 MR. GRANUCCI: The memoranda--

1 THE COURT: The three exhibits. My recollection is
2 that there was a specific reference to the use of gas.

3 MR. GRANUCCI: There was a reference to that. It was
4 a reference to the fact that for at least a year previous
5 to the date of that memorandum, it has been the policy to
6 require permission, supervision, and a prompt medical
7 examination afterwards. All of those conditions were
8 carried out in the Esparza matter.

9 I put it up to Your Honor: Is it more human to use
10 gas? Or is it more human to go in and wrestle with a man?

11 It is time, in approaching this very question, that we
12 put aside the horror story of World War I and look at the
13 realities. If you want to encourage physical wrestling,
14 the possibility of assault, the possibility of permanent
15 injury, the best way to do it is to prohibit the use of
16 gas. These defendants were careful with that tear gas.
17 There is no doubt about that at all.

18 There was talk by plaintiff that he was denied medical
19 treatment, his letter to Dr. Kunkel was ignored. I don't
20 believe that was Dr. Kunkel's testimony. Dr. Kunkel testi-
21 fied he answered the letters by visiting the plaintiff. He
22 observed nothing other than that the plaintiff was in good
23 health, a condition which his examination of February 4
24 1966 confirmed.

25 Much has been made in argument about the fact that the

1 disciplinary form on the report that was made out during
2 plaintiff's confinement in the quiet cell did not reflect
3 the fact that he was to remain in the cell "until behavior
4 warrants change."

5 From this, plaintiff has spun out the theory that his
6 confinement in the quiet cell was without possibility of
7 review by Mr. Donnelly or persons at that level.

8 Yet Mr. Donnelly's testimony was that when he reviewed
9 the 115 forms for his signature, he always had before him,
10 or at least available to him, the inmate's cell status,
11 the record which is promptly kept and promptly noticed of
12 where the defendant was housed, the form 103B.

13 Now there is something else that plaintiff attempts to
14 make out. He doesn't say it, but the inference is that
15 Sergeant Friedrich added to the form 114, the segregation
16 record, the fact that plaintiff was to remain in the quiet
17 cell until his behavior warranted change. From that, he
18 infers that the sergeant did that without permission of
19 Mr. Kiepura, and from that he infers that his constitutional
20 rights were denied.

21 Two answers to that: Mr. Kiepura, I believe, and I am
22 stating my recollection of the testimony, Your Honor, testi-
23 fied that ordinarily as a matter of practice the cell
24 housing or quiet cell housing was discussed with Sergeant
25 Friedrich who made the notation. Mr. Kiepura, frankly,

1 candidly admitted he forgot to write it down on the 114.

2 I think that is an example of a harmless error, to borrow
3 a term from the judicial setting.

4 I think it is inappropriate because the cases hold that
5 procedural due process doesn't apply in the prison setting.

6 In any event, plaintiff seeks to argue that he was im-
7 properly kept in the quiet cell an undue length of time.
8 However, when he was brought out after a few days, the
9 record notes that he was still vulgar and disrespectful
10 before the committee, and it was quite reasonable then to
11 return him to a quiet cell until behavior warranted change.

12 Sergeant Friedrich said that on the weekends before he
13 went off he tried to get as many people out of the quiet
14 cells as possible. It is an obvious conclusion that
15 plaintiff's release was considered and was not carried out
16 because it was still premature.

17 Something else about that disciplinary committee hear-
18 ing: Counsel argues that plaintiff's testimony is un-
19 contradicted, that he was without clothes for eight days.

20 Sergeant Friedrich testified from the stand that when
21 the plaintiff came out for that disciplinary hearing, he
22 had his clothes on.

23 Now, let's talk about the evidence of changes: We have
24 objected to that coming in, except insofar as limited to
25 injunctive relief. I think to that extent it is proper,

1 because the Court, if it is to intelligently frame an in-
2 junction, which I don't think it should, should know what
3 the present conditions are.

4 But to use the changes as admissions of guilt, really
5 puts the defendants in an untenable position. If there is
6 any validity at all or any merit at all, or any legitimate
7 purpose at all to be served by suits brought by inmates
8 challenging, trying to collect damages from their warden
9 and guardians, it is that by allowing such suits an improve-
10 ment of prison conditions will be effectuated.

11 Now this proposition is a debatable one. My authority
12 for that is Justice Duniway's language in Willow v. Dixon,
13 which I have cited in the memorandum.

14 In any event, if the purpose of the Civil Rights Act
15 is to encourage change, then using evidence of change as an
16 admission of guilt really defeats the purpose of the Act.
17 It is self-defeating. Again you are liable if you change
18 and you are liable if you don't change. If you change you
19 admit you are guilty in the past; if you don't change you
20 are stubborn, incorrigible, adhering in brutal, sadistic
21 ways.

22 Really, Your Honor, what is the solution to this
23 dilemma? Well, I think I have the solution. The fact is
24 that change is a false issue in this case.

25 THE COURT: Counsel, how could change be a false issue

1 in this case when we find it, or find the causative
2 relationship centered in and around the several pieces of
3 writing that the Court received this morning? How could
4 it be immaterial?

5 MR. GRANUCCI: Very easy, Your Honor, because what we
6 have is ultimately a problem of law.

7 THE COURT: These changes were not spontaneous.

8 MR. GRANUCCI: They were not spontaneous, Your Honor.

9 THE COURT: You agree on that?

10 MR. GRANUCCI: I wholeheartedly agree.

11 THE COURT: And a causative relationship or the causa-
12 tion, if you please, must be found some place.

13 MR. GRANUCCI: Quite so.

14 THE COURT: Where, in your opinion, counsel, do we find
15 the cause and causation for the changes?

16 MR. GRANUCCI: The inquiry from the State Supreme Court
17 Justice to Mr. McGee's office.

18 THE COURT: And if that inquiry, in turn, from the
19 Supreme Court Justice had centered around a petition for
20 writ of habeas corpus, and if in turn that petition for
21 habeas corpus had as the plaintiff therein the present
22 plaintiff before the Court, then the cause and causation
23 would be the instant suit, would it not?

24 MR. GRANUCCI: Yes, it would. But it would still be
25 a false issue.

1 THE COURT: We will take a short recess.

2 (A short recess was taken.)

3 MR. GRANUCCI: May it please the Court, before we took
4 our recess the Court posed a question to me about why the
5 issue of change is a false issue, even conceding for argu-
6 ment that a Supreme Court Justice of the California Supreme
7 Court was interested in the case, that such interest was
8 conveyed to the Department of Corrections in Sacramento
9 and eventually filtered its way down to this institution.

10 How can I call that a false issue? I insist that it
11 is, for this reason. What are we litigating here? Are we
12 litigating whether the conditions of plaintiff's confine-
13 ment in July 1965 was the most desirable penology, the most
14 advanced, the most practical, the most reasonable? No.
15 Not at all. We are litigating their constitutionality.
16 That is what this case is all about.

17 Now, those conditions in July of 1965 must, as far as
18 constitutionality is concerned, stand or fall on their own
19 merits. No amount of subsequent change could make an un-
20 constitutional condition constitutional. And I respect-
21 fully submit to this Court that no amount of change could
22 make a constitutional condition unconstitutional.

23 Efforts to improve, I don't think are relevant in the
24 constitutional setting of this case. However, the evidence
25 of change does have another interesting aspect, and it is

1 this:

2 Advocates of federal intervention by way of habeas
3 corpus and the Civil Rights Act have often argued that as
4 much as the federal courts dislike intervening in State
5 affairs, it is necessary when the States fail to do their
6 duty.

7 Here we have evidence that before this case even came
8 into a federal court there was State action involved, that
9 it had generated an inquiry into conditions generally, an
10 effort to change, an effort which I regretfully state to
11 the Court has not been entirely successful. One of the
12 important things, the water pitchers and the water jugs
13 apparently are not working out too well.

14 That is why I say the evidence of change is a false
15 issue. Why, you know what it is? It is like a layman
16 commenting on a matter of law. Remember, I asked the
17 defendants on the stand whether they conspired against the
18 plaintiff, whether they had malice, and counsel very dili-
19 gently objected on the grounds that this was a lay con-
20 clusion on an issue of law. Well, it is the same thing.
21 It is the same thing.

22 Now, a word about conspiracy. The plaintiff says the
23 defendants conspired to deprive him of his constitutional
24 rights. Plaintiff, now, with considerable adroitness
25 attempts to convert the conspiracy theory into a rather

1 refined concept of respondeat superior. I don't think it
2 will work. I don't think it will work at all. There was
3 no conspiracy here, nothing intentional, nothing malicious.
4 The respondeat superior argument, I submit, is quite in-
5 appropriate.

6 Now, I want to talk about the defendants a minute, not
7 just the defendant officials, but the guards and custodial
8 people themselves, because it is they who are really on
9 trial before this Court just as much as the officials are.
10 It is their performance of their duties that has been
11 called into question.

12 Plaintiff says again that the defendant officials didn't
13 know what was going on. Well, we heard what was going on.
14 We heard it from the lips of the custodial officers. A
15 well intentioned attempt to substantially comply with
16 policies in a very difficult situation.

17 Again it is somewhat ironic that plaintiff will commend
18 the defendants for trying to do a very, very difficult job
19 and--if I don't misquote him--actually trying to do their
20 best, and yet at the same time dismiss their testimony as
21 unworthy of credit.

22 I am not going to comment on credibility of anybody,
23 Your Honor. I think the Court can judge that for itself.

24 The officers testified fully and frankly what was
25 favorable, what was not so favorable. The defendant

1 officials did the same; what was favorable what was not so
2 favorable.

3 I remember in a pretrial proceeding a remark from the
4 Bench that the State of California should welcome an in-
5 quiry into prison conditions in order that the truth may
6 be known and they may be vindicated from the charges, if
7 that be appropriate.

8 I wouldn't go so far as to say we welcomed this trial.
9 It has been a great strain on everybody. But we did and
10 we have put everything in that could possibly bear on the
11 case.

12 Now, as the Court takes the case under advisement, under
13 submission, I implore Your Honor to consider the position
14 of these defendants and the custodial officers as well.
15 It is very true that they are charged with one of the most
16 difficult jobs that could be given to any human being,
17 controlling the almost uncontrollable, volatile, explosive
18 types of inmates.

19 Now, suppose this Court grants damages. Do you realize
20 what effect that will have? Why, what it will mean is this.
21 It will mean that every inmate confined in the Adjustment
22 Center will realize that if he can provoke an incident, if
23 he can somehow provoke the use of force, or if he can get
24 himself placed in a quiet cell, he has a good chance of
25 collecting money from his custodial officers. Is this a

1 desirable situation? Is this what this Court wants to do?

2 I don't think so.

3 On the other hand, consider the position of the de-
4 fendants. To award damages here not only undermines the
5 prison discipline, but it has this other effect, it makes
6 the prison administrators, it makes custodial officers
7 leery about imposing discipline, leery about controlling
8 volatile and violent inmates.

9 Counsel just mentioned the Mickey Cohen decision in
10 which Mickey Cohen was awarded \$100,000 or so damages--
11 and I don't know that it was under the Civil Rights Act;
12 I think it was under the Federal Tort Claims Act, because
13 ironically enough the Civil Rights Act does not apply to
14 the Federal Government--but in any event, Mickey Cohen was
15 assaulted by a violent inmate and he collected damages on
16 the theory that the prison officials did not control the
17 inmate.

18 So again, condemned if you do control, condemned if
19 you don't.

20 Please consider the position of these defendants when
21 Your Honor takes under advisement the question of damages.

22 Remember, it is not an abstract entity, the State of
23 California. It is damages against flesh and blood in-
24 dividuals.

25 Injunctive relief: Another very difficult matter. How

1 can we sit back, either counsel or myself, and with all
2 due respect the Court, too, and anticipate the almost
3 infinite variety of difficult emergency situations which
4 will be confronted by the defendants and their staff in
5 the performance of their duties? It is easy for learned
6 counsel to brush aside emergencies, but it is the man on
7 the spot who has to make a judgment of what is an emergency
8 and what isn't and how much he can do without violating
9 the Court's order and how much he can't do, and again on
10 the other side the possibility that conforming convicts may
11 be injured or killed if they guess wrong.

12 Now, much has been made about the fact that the record-
13 keeping during this period in question was not all that it
14 should have been, at least in the opinion of the plaintiff.
15 And perhaps it was not as complete as I would have liked it
16 either.

17 Keep in mind, however, that there is no constitutional
18 mandate on the defendants to keep full records.

19 Counsel narrated a personal experience. I narrate one,
20 too.

21 I was in the hospital a couple of years ago. One of
22 the things that impressed itself upon me was the myriad of
23 records that were kept, all sorts of records. I wondered.
24 This didn't seem to be necessary. This was going beyond
25 what I thought was even adequate practice. All sorts of

1 charts, all sorts of checks, all sorts of records. Then
2 I realized, this is done to provide a record in case there
3 is a malpractice case, in case anything is ever questioned
4 they will have a lot of evidence.

5 As a matter of law, it makes good sense. But let's
6 put that situation in prison context and see where it takes
7 us.

8 If Your Honor holds errors in record-keeping against
9 us, what I think it will mean is this; is that considerable
10 attention will be directed in the future to keeping of
11 records, just papers for the sake of paper, forms for the
12 sake of forms. The record will doubtless be more accurate
13 than the records we have here.

14 But don't think think the time could be more produc-
15 tively spent working and counseling with inmates, personal
16 contact, personal counseling?

17 You know, I was struck by Mr. DeCarli's testimony here
18 that he spent an hour and a half counseling with inmate
19 Esparza. And he had spent much time other than that. But
20 one of the things that disappointed me, on the other hand,
21 was the fact that Esparza said that his improvement, which
22 is admitted, had nothing to do with the institution; it
23 was all to do with a lady on the outside.

24 Be that as it may, the time of the staff should be
25 spent as much as possible in working with people, and not

1 working with forms. Consider the effect of any judgment
2 or decree on that.

3 Finally, we get back to where we started, the question
4 of whether plaintiff's conditions of confinement in July
5 1965 were cruel and unusual.

6 I think that persuasive authority might be found in
7 support of our case from the Manual of Correctional
8 Standards. That manual is before the Court. Copies of
9 what I thought was the appropriate part were furnished to
10 counsel.

11 Now, that manual was written largely by California
12 people, it is true. However, the Association of Correc-
13 tional Standards has on its governing Board members of
14 federal prison systems, members of prison systems from
15 other States and other countries. It sets out the standards
16 to which Mr. Fitzharris said the institution tries to con-
17 form.

18 Quiet cells are specifically provided in that manual.
19 Restricted diet is specifically provided in that manual as
20 a proper disciplinary device.

21 So the conditions of confinement, the fact of the
22 quiet cells, the fact of the flaps, that is not unusual.
23 In fact, it is standard practice. Even the Oriental toilets
24 without outside controls, that is considered standard
25 penological practice.

1 So, insofar as there has been an attempt on the part
2 of these defendants and the officers and the staff as well
3 to conform to good penological practice, there cannot be
4 said to have been cruel and unusual punishment. They have
5 been attempting to conform to good practice, not deviate
6 from it.

7 Your Honor, I suppose when I sit down I will think of
8 about half a dozen other things that I should have said,
9 but I feel now I have presented in argument all of the
10 salient features, all of the important points that the
11 Court should remember in taking this case under submission.
12 We have done our best to satisfy the Court as to the
13 factual conditions as they existed. We have tried to show
14 the necessity and the reasonableness for these conditions.

15 We submit this case with satisfaction at the showing
16 that we have made. We also submit it with confidence in
17 the Court to reach a just decision, a decision that will
18 take into account the need of these defendants, the diffi-
19 culties of these defendants, the good intentions of these
20 defendants, the dedication of these defendants, the skills
21 of these defendants.

22 Wouldn't it be a wonderful world if there weren't any
23 prisons? Wouldn't it be a wonderful world even if there
24 wasn't any need for an adjustment center in any prison?
25 Wouldn't it be a wonderful world if there was no need to

1 control anybody because there was no such thing as un-
2 controllable violence?

3 Well, we are never going to see such a world, not in
4 this life. When this case is over, the defendants' job is
5 going to be just as difficult tomorrow as it is today and
6 it was in July of 1965.

7 But we respectfully submit this case and we confidently
8 submit this case and we know that the Court will issue a
9 just decision.

10 Thank you very much, Your Honor.

11 MR. COHLER: If it please the Court, I had full in-
12 tention of making no response to counsel's argument. But
13 I would like to note a few factors as rapidly as possible.

14 First, with respect to the changes, a matter which I
15 don't think bears more argument. But I would like to note
16 some factors in this regard.

17 Mr. Fitzharris said this was a response to a probe
18 regarding human rights, not mere improvement.

19 It is suggested here I think perhaps, at least by im-
20 plication, that if the Court admits evidence of that nature,
21 there is a damned if you do and damned if you don't.

22 I suggest to the contrary. If the Court didn't have a
23 full hearing involving evidence of all nature, there
24 wouldn't have been any change at all, improvements or human
25 rights, whatever. It was inquiry, triggered in some manner

1 from a court, the highest court in the State of California,
2 and then we had changes.

3 The California Supreme Court Justices or the single
4 Justice is not a layman such as a witness stating what is
5 a conspiracy and what isn't.

6 Reference was made to a major disturbance in North
7 Facility at the end of June, not the end of July 1965, in
8 connection with a shower problem. The plaintiff did not
9 testify that there was a major disturbance of such a nature
10 that it might be kept in special records. There was
11 hearsay as to what the record showed through the telephone
12 call. There was no objection to the hearsay, but the
13 weight of what the record showed, what was looked for.

14 All the plaintiff said was that there were people who
15 had to be under escort from isolation cells, not quiet
16 cells, through Saturday, July 24th, to take a shower. And
17 therein ^{lay} ~~like~~ the escort and the basic factor which Mr.
18 Friedrick and Mr. Hoagland thought led to a shower in their
19 recollection during the quiet cell period, and we contend
20 was just nothing but a mistake.

21 Counsel has unintentionally, I am sure, misconstrued
22 my argument to the Court with respect to control and pun-
23 ishment. I do not suggest that the line of constitutional-
24 ity be couched in terms of control or punishment.

25 The Court addressed a question regarding suicidal

1 tendencies of the plaintiff. The record is, as counsel
2 read to the Court and suggested to the Court, that there
3 was an attempt of some sort by the plaintiff upon his own
4 life the previous February.

5 That, however, is shown conclusively to have nothing
6 at all to do with the nature of the plaintiff's confinement
7 in July 1965.

8 His clothing was taken for eight days, says the plain-
9 tiff, and was given back to him. Why given back if this
10 was a suicide problem? There was no testimony about a
11 suicide watch. There was testimony that the flaps were
12 closed. That would preclude a suicide watch. The plaintiff
13 had his glasses, clearly weapons or potential weapons for
14 self mutilation. The plaintiff was permitted to keep a
15 pencil, equally useful to hurt himself if that was a prob-
16 lem.

17 Nor has there ever been any evidence in this case, that
18 I can recall, that the plaintiff went around breaking up
19 his cell or anything of that nature. And not even that
20 rationale was available for the quiet cell confinement.

21 In closing counsel made rereference to opening the flood-
22 gates to the claims of prisoners and, again, it was a
23 damned if you do and damned if you don't type of argument.

24 Your Honor, the floodgates are open and should be open
25 for full compensation for any man whose constitutional

1 rights have been deprived.

2 THE COURT: Is the matter submitted on the arguments?

3 MR. COHLER: Yes, Your Honor. Thank you.

4 MR. GRANUCCI: The matter is submitted for the de-
5 fendants, Your Honor.

6 THE COURT: I think in closing I should say a word to
7 counsel representing the plaintiff as well as counsel re-
8 presenting the defendants.

9 I have participated in these courts now for close on
10 to 21 years. I think apart from the gravity of the situa-
11 tion confronting the Court, that I have never had a more
12 refreshing experience than I have had in connection with
13 the presentation of this cause.

14 The Court, consistent with our policy and having passed
15 the threshold on the motion for summary judgment, and after
16 recognition had been given to the fact that we had to take
17 testimony in view of the issues delineated in the pleadings,
18 the Court undertook to appoint counsel.

19 In doing so, we invited Mr. Cohler to undertake the
20 very arduous and expensive, at least to himself, representa-
21 tion of the plaintiff Mr. Jordan.

22 I have one recollection of the zeal and devotion of
23 counsel in this case that compares with this early recollec-
24 tion. It was many, many years ago. It was the case of
25 United States of America v. Grady Webb. It involved a

1 bank robber. I appointed a Mr. O'Connor, the partner of
2 Harold Faulknor. We tried the case for about three weeks.
3 That case left a lasting impression upon me with respect
4 to the sacrifices that lawyers make in preserving the fine
5 traditions and the background and vitality that lawyers
6 should have, particularly the trial advocate.

7 I understand that Mr. Cohler has concluded the presenta-
8 tion of his first case in court. His attitude and his
9 demeanor, his general regard for colleagues on the other
10 side of the controversy, his respectful demeanor of wit-
11 nesses, and in singular the totality of his conduct,
12 brought to me again the realization that the art of
13 advocacy is still present. We should, in turn, note for
14 the record that this young man has given unstintingly of
15 his talents.)

16 The comments that I have to make for Mr. Cohler are no
17 more or less applicable to defense counsel. Mr. Granucci
18 and Mr. Oakes both have undertaken to provide the Court
19 with every bit of evidence that might aid the Court in the
20 final solution of this problem. The case is not without
21 difficulty, and I am deeply appreciative of the services
22 they rendered to the Court. In like manner, the general
23 decorum, the general attitude of these men has been a
24 source of great comfort to this Court.

25 I close the chapter in this case with the thought that

1 the problem now rests with me, and you gentlemen have
2 given me everything possible to solve that problem.

3 Thank you.

4 (Whereupon the matter was submitted.)

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15 CERTIFICATE OF REPORTER

16 I, *Marilyn Seybert* Official Reporter,

17 certify that the foregoing pages *384 through*
18 *are* ~~is~~ a true and correct transcript of the
19 matter therein contained as reported by
20 me and thereafter reduced to typewriting
21 to the best of my ability.
22
23
24
25