

1 SEPTEMBER 01, 2005 , 8:51 A.M.

2 THE COURT: Would you tell us your name?

3 THE WITNESS: William T. *Montgomery*.

4 THE COURT: Would you raise your right hand?

5 WILLIAM MONTGOMERY, being first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION OF WILLIAM MONTGOMERY

8 THE COURT: Do you want to proceed on behalf of
9 the plaintiff.

00:02:05 10 MR. LYND: Thank you, Your Honor.

11 Q. Good morning, Mr. *Montgomery*.

12 A. Good morning, Mr. Lynd.

13 Q. Can you hear me?

14 A. Yes, sir, I can hear you.

00:02:19 15 Q. Do you have with you, Mr. *Montgomery*, a group of
16 exhibits?

17 A. Yes, I do.

18 Q. Mr. *Montgomery*, how long have you been on Death Row?

19 A. I have been on Death Row since December of 1986.

00:02:53 20 Q. And in what prison were you initially confined?

21 A. Southern Ohio Correctional Facility at Lucasville.

22 Q. At SOCF, did you hold any titles or positions in the
23 administration of Death Row?

24 A. Yes, I did. I was the administration clerk and I was
00:03:28 25 also the liaison for recreation.

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1 Q. Let me first direct your attention, Mr. Montgomery, to
2 Plaintiff's Exhibit for identification 1, which is a
3 five-page document entitled security level classification
4 outline.

5 Do you have it?

6 A. I'm fanning through to get it now, sir. I'm pretty
7 sure it is in this stack. Give me a second here and I will
8 locate it. Say it again, Mr. Lynd, please. Which exhibit?

9 Q. It is Plaintiff's Exhibit 1. It is entitled Security
10 Level Classification Outline.

11 A. I got it, sir.

12 Q. Good. Can you identify that document, Mr. Montgomery?

13 A. Yes, sir, I can.

14 Q. What is it?

15 A. It is -- it was a security level outline that was
16 submitted for Death Row to have A, B, and C level
17 classification within our unit.

18 Q. And did you have any connection with the preparation or
19 typing of that document?

20 A. Actually, I was responsible for typing the entire thing
21 along with the recommendation of my unit manager, the deputy
22 war dense and the warden at the time, our unit team, it was
23 actually comprised in our unit at the time. So pages one
24 through five I actually typed, sir.

25 Q. And are you in a position to say, Mr. Montgomery, on

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1 the basis of your personal experience, whether this
2 five-page document was actually used and applied at SOCF?

3 A. This, our level classification system, Mr. Lynd, had
4 existed since 1987, '88, we used the Level A, B, C system.

5 Q. But this document in particular was actually
6 implemented at SOCF?

7 A. Yes, sir. Even before the dates that's on here.

8 Q. Thank you?

9 A. You're welcome.

10 Q. Now, Mr. Montgomery, we also have Plaintiff's Exhibits
11 26-A, B, C, D, E, and F. That's a group of six pages, and I
12 would like to ask whether you have that set of pages in
13 front of you.

14 A. Give me a couple seconds, please. Yes, sir. You said
15 beginning with 26-A, right?

16 Q. 26-A to --

17 A. I can't hear you, sir.

18 Q. To 26-F. You've got them?

19 A. Yes, I do.

20 Q. And can you identify these documents, Mr. Montgomery?

21 A. Beginning with A, yes, I can.

22 Q. What are they?

23 A. A would be -- repeat, again, sir. I can't hear you.

24 Q. We don't need you to go through these documents one at
25 a time, I think, but can you identify what this series of

1 documents is?

2 A. I recognize them as being recreation schedules
3 pertaining to gym, outside, and day room for Lucasville for
4 inmates on Death Row. Recreation schedules.

5 Q. And it would appear --

6 A. You're welcome.

7 Q. -- Mr. Montgomery that they are arranged
8 chronologically, beginning with 26-A in 1991 and going to
9 26-F in 1994.

10 Is that your impression?

11 A. That is correct.

12 Q. And Mr. Montgomery, am I right in thinking that if one
13 reads these documents carefully, it is possible to calculate
14 the amount of time that different groups of Death Row
15 inmates had in different kinds of recreation?

16 A. It's very easy to calculate the times because most of
17 the schedules have the specific times written on them.

18 Q. So for example, Mr. Montgomery, would you turn to
19 Plaintiff's Exhibit 26-E. E as in Edward.

20 A. I have it in my hand, sir.

21 Q. When we look at 26-E, we see a vertical column
22 captioned "outside." Correct?

23 A. Yes, sir.

24 Q. And do we not then have beneath that the length of time
25 that different ranges would have outdoor rec on different

1 days?

2 A. Yes, you do.

3 Q. So if we were to take Range 1 to 40, Mr. Montgomery, am

4 I right in thinking that they went outside from 8:30 to

5 11:30 a.m. on Monday?

6 A. That would be correct. Three hours.

7 Q. And from 5:00 p.m. to 8:00 p.m. on Tuesday?

8 A. Yes, sir.

9 Q. And from 8:30 to 11:30 a.m. on Wednesday?

10 A. Yes.

11 Q. And from 4:30 to 7:30 p.m. on Thursday?

12 A. That's correct.

13 Q. And from 5:00 p.m. to 8:00 p.m. on Friday?

14 A. That would be correct.

15 Q. So that range 1 to 40 as I read Exhibit 26-E was

16 scheduled for 15 hours of outdoor recreation a week. Is

17 that correct?

18 A. As pertains to the outside, yes, sir, you are correct.

19 Q. In addition to the outside rec, these documents suggest

20 that prisoners were also scheduled for indoor rec. Is that

21 true?

22 A. That's also correct. The day room.

23 Q. And that would have been in addition to the outdoor

24 rec?

25 A. Yes, sir.

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1 Q. And if we look at Plaintiff's Exhibit 26-A,

2 Mr. Montgomery, the first exhibit in this series --

3 A. I got it.

4 Q. That indicates the particular gym in which indoor

5 recreation took place. Correct?

6 A. Right. That's the M-1 gymnasium schedule for Death

7 Row. Yes. Yes, it is.

8 Q. Was that the same gymnasium used by general population

9 at SOCF or a different gymnasium?

10 A. Actually, everyone utilized M-1 gym with the exception

11 of Death Row also has their own time schedules as well. We

12 all utilized it.

13 Q. You all utilized the same space?

14 A. No. We all utilized the gymnasium, yes, sir. Outside

15 we had our own recreation yard.

16 Q. I understand, but inside you utilized the same

17 gymnasium?

18 A. Yes, sir.

19 Q. Now, Plaintiff's Exhibit 26-B, B as in baby, is

20 entitled --

21 A. I have it, Mr. Lynd. I have it.

22 Q. It is entitled "weekly recreation schedule beginning

23 December 2, 1991," but that page, Mr. Montgomery, seems to

24 have some very strange words on it, like "canine dogs, raw

25 dogs, hoop Lord's, clock busters."

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1 Can you tell me what that schedule represents?

2 A. Yes, I can tell you what I want represents, though it
3 might seem strange to someone that is reading, actually,
4 what it is is team names for different teams that were
5 within the basketball league. Everyone had their own team
6 names.

7 For example, if you look down at the schedule, you will
8 notice that loop versus Death Row A league, scheduled for
9 December 3, 1991 at 6:00.

10 Loop versus Death Row means loop being the SOCF
11 correctional staff was playing against the Death Row team
12 that day.

13 Q. Are you telling me, Mr. Montgomery, that Death Row had
14 a basketball league in which the officers had a team?

15 A. Yes, sir, I'm saying that. The officers, we actually
16 played against SOCF staff.

17 Q. I see. And what about general population? Did they
18 also have a team in the basketball league?

19 A. Yes had their own team within their lesion but also had
20 a team of general population all stars, the all star teams,
21 their best of their December also played against the Death
22 Row all star teams which was best of the best on Death Row
23 which were scheduled to play on numerous occasions also.

24 Q. I see. Now, Mr. Montgomery, there came a time, did
25 there not, when Death Row was moved from SOCF to ManCI.

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1 A. Yes, sir. December, '94 or January of '95.

2 Q. And before that transfer actually occurred, did it
3 happen that any administrators at ManCI came to SOCF to tell
4 Death Row prisoners what their conditions of confinement
5 would be like at ManCI?

6 A. On numerous occasions. Basically, the same as the OSP
7 is doing now.

8 Q. Let me ask you Mr. Montgomery, let me ask you if you
9 recall which particular staff members from ManCI came to
10 SOCF to tell you about what conditions at ManCI would be
11 like?

12 A. We had major Morrison. At that time we had deputy
13 warden Artie Williams, who was deputy warden of operations,
14 Mr. Baker, who was the warden at ManCI at the time. Captain
15 Davis, who ended up being Death Row supervisor and several
16 other people. Deputy wardens and correctional staff, et
17 cetera.

18 Q. Was warden baker's first name Dennis baker?

19 A. Yes, sir. Dennis A. Baker. A as in all day.

20 Q. And did you personally have any contact with this group
21 of staff when they came to SOCF?

22 A. Yes, I did, sir. On numerous occasions. Because at
23 that time, as I mentioned to you previously, I was also our
24 recreation liaison/recreation therapist, so they actually
25 pulled me to speak with them, to speak with our unit team.

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1 Q. And where did your conversation with these ManCI
2 administrators take place?

3 A. In my unit manager's office.

4 Q. I see. And what if anything did the ManCI
5 administrators tell you would be the conditions of
6 confinement on Death Row at ManCI?

7 A. Three things that were stressed were that we would have
8 outside facilities, one built; that visiting situation would
9 take place, which would be contact visits would be
10 implemented because they had been implemented at Luc, so off
11 the top of my head, recreation and visiting, which we are
12 still waiting on.

13 Q. Let's take those one at a time.

14 If you know, was there during your period at SOCF a
15 plan to begin contact visiting with relatives?

16 A. Approximately two weeks before the April incident
17 happened at Luc, Death Row level A had a contact visiting
18 schedule implemented it was supposed to begin the Monday
19 before the unfortunate incident happened down at Luc.

20 Q. The Monday before or the Monday after?

21 A. It was supposed to begin the Monday -- the incident
22 happened I believe on a Sunday, Easter Sunday, and it was
23 supposed to be implemented that Monday.

24 Q. All right. And as you understood it, Mr. Mon tgomery,
25 what was that plan for contact visiting at SOCF to be?

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1 A. Level As. Inmates received contact visiting, which
2 would be the same day as general pop. The only exception is
3 that we would leave an hour before general pop and for
4 weekends visits we had to make reservations. During the
5 weekdays, the schedule was, you didn't have to make
6 reservations and you could come just like any other schedule
7 with the exception being that our visits ended an hour
8 earlier.

9 Q. Were those visits to be in the same area as general
10 population visiting?

11 A. Yes, sir, but we had tables that were designated for
12 Death Row visiting, which was in the back section of the
13 visiting room. We had several tables that were designated
14 for Death Row. If my memory serves me correctly, it was 10
15 to 14 tables that were long tables and five small tables.

16 Q. And I assume that the visitors would sit on one side of
17 such a table and the prisoners on the other?

18 A. Right. Same as general pop. It would be the same as
19 general pop.

20 Q. And what if any restraints would the prisoners have had
21 during that visitation?

22 A. The Level A, there were no restraints. The only thing
23 is that we sit in a designated area.

24 Q. Now, if I'm understanding you correctly,
25 Mr. Montgomery, that plan was not implemented at SOCF

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1 because of the events of April, 1993. Is that right?

2 A. If the unfortunate event would not have happened on
3 that Sunday that following Monday we would have been out in
4 the visiting room, anyone that had visits that Monday, we
5 would have been -- contact visits would have been in effect.

6 Q. But again, if I'm understanding you correctly, when the
7 staff members came from ManCI to SOCF, they told you that
8 you would have contact visiting with family on Death Row at
9 ManCI. Is that right?

10 A. That is absolutely correct, and we're still waiting for
11 it to happen, a decade later.

12 Q. Now, with regard to outdoor recreation, Mr. Montgomery,
13 there is, is there not, a fairly large outdoor recreation
14 area near DR-6?

15 A. Yes, sir.

16 Q. Was the recreation area that you were promised or told
17 about at SOCF a different recreation area than that one?

18 A. Actually, it is most definitely different, because we
19 were told that a yard would be built down here specifically
20 for Death Row like we had at SOCF. It is not the same
21 equivalent, it would be better. Our own outside recreation
22 yard that all the pods would utilize.

23 Q. I see. And I'm going to ask you, Mr. Montgomery, to
24 look at the exhibit which I believe is marked as Plaintiff's
25 Exhibit for identification 27. It is a one-page document, a

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1 diagram of some kind?

2 A. I have it, Mr. Lynd.

3 Q. Can you identify that document?

4 A. Of course I can. Outside recreation yard that I
5 designed that was supposed to be put in between ^ DR 2 and
6 DR 3, which is located directly behind DR 5. It was
7 supposed to be the outside recreation yard that was supposed
8 to be built down here for us that all the pods would
9 utilize.

10 Q. Did I hear you say that you designed this diagram?

11 A. Yes, sir, I did.

12 Q. How did that come about?

13 A. When we arrived down here, Mr. Williams, Artie
14 Williams, who was deputy warden of operations at that time,
15 Mr. Morrison, along with I believe it was Charlie
16 Henderson -- was it Charlie Henderson -- Charlie Henderson
17 and Mike Quick who were the maintenance supervisors showed
18 me the area where the yard was supposed to go and
19 Mr. Williams told me to go ahead and put what I could put in
20 that area because that's the area that would be designated
21 for our recreation.

22 When I say he told me to go ahead and put things in
23 there, I mean basketball Court and all the amenities that I
24 could fit within that area.

25 Q. And so that's what Plaintiff's Exhibit 27 is, the

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1 diagram you prepared in response to that request?

2 A. It's the outline of the diagram for what was supposed
3 to go between DR 2 and DR 3 which is located directly behind
4 DR 5.

5 Q. And was this recreation yard that you designed at the
6 request of staff ever built?

7 A. No, sir, it was not, and we're still once again waiting
8 for it to be built. Several measurements were taken,
9 maintenance came several times, but no, it was not built.

10 Q. One last question, Mr. Montgomery.

11 There has been some difference of opinion in this case
12 as to whether visits from relatives are important to Death
13 Row prisoners.

14 Do you have an opinion on that subject?

15 A. Pertaining to outside recreation yard?

16 Q. No. Pertaining to visits from family. Visits from
17 relatives. Whether or not they are important to you.

18 A. Whether or not they are important to me? I would say
19 of course they are important to me, being that my family
20 travels, the majority of my family travels in excess of 3000
21 miles to see me, they travel from the west coast, in short,
22 sir, I would say that Mr. Hock and Mr. Recommendic already
23 let me know that they basically don't care for my family
24 traveling that I should be grateful that they are giving me
25 three hours to visit.

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1 Q. Do I understand you to be saying, Mr. Montgomery, that
2 these visits from your distant relatives are important to
3 you?

4 A. They are very important considering that it takes an
5 excessive amount of money to travel from the west coast, and
6 considering the fact that OSP told me I will have a three
7 hour visit whereas at ManCI I have at least the leeway of
8 visiting from 8:00 am to 3:00 p.m. Yes, it is imperative
9 to me not only to be able to see my family but also to see
10 my attorney.

11 MR. LYND: Thank you very much, Mr. Montgomery. I
12 have no further questions.

13 THE COURT: Cross-examination.

14 MR. HOLLOWAY: Your Honor, we have no cross for
15 this witness.

16 THE COURT: Thank you. I'll ask the plaintiff's
17 to call your next witness.

18 MR. BENZA: We call Dan Wilson.

19 THE COURT: Can I ask the person, is it possible
20 to tilt the camera a little bit down and to the left so that
21 the witness' face is closer to the middle of the screen?
22 Can you tilt the camera down? If you can't do it, that's
23 fine.

24 Okay, would you raise your right hand?

25 DAN WILSON, being first duly sworn, was examined and

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1 testified as follows:

2 DIRECT EXAMINATION OF DAN WILSON

3 THE COURT: State your name and spell your last
4 name.

5 THE WITNESS: Daniel Wilson. WILSON.

6 BY MR. BENZA:

7 Q. Good morning, Mr. Wilson. Mike Ben is a here.

8 Where are you currently housed?

9 A. DRC.

10 Q. And is that on Death Row at Mansfield?

11 A. Yes, it is.

12 Q. And how long have you been on Death Row at Mansfield?

13 A. Since January of 1995.

14 Q. And prior to the move in January of 1995 to Mansfield,
15 where were you housed?

16 A. Lucasville.

17 Q. And how long were you housed at Lucasville?

18 A. Approximately two, a little over two years.

19 Q. And was that also on Death Row at Lucasville?

20 A. Yes.

21 Q. Now, you are currently housed in Death Row 6. Is that
22 right?

23 A. Yes, sir.

24 Q. And prior to being housed in Death Row six, were you
25 housed in any other pods in Mansfield?

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1 A. Prior to being housed in DR-6 I was housed in DR 4.

2 Q. All right. You were housed in DR 4? Were you housed
3 in any other units?

4 A. Yes. I was housed in DR 1 when I arrived here. Then I
5 was moved to DR 5, which was called cadre block, the first
6 honor block.

7 Q. That was called cadre, c-a-d-r-e, the first honor pod?

8 A. Yes.

9 Q. And what type of pod was that pod compared to the other
10 pods?

11 A. Cadre block? That was honor block.

12 Q. And by honor block, what do you mean by that?

13 A. It means all the inmates were out of their cells from
14 6:30 in the morning until 9:00 at night, minus count times.

15 Q. And how many inmates were housed in the cadre unit. I
16 believe 19?

17 Q. Did there come a time when Death Row five was no longer
18 operating as CAD re?

19 A. Yes. They closed it in 1997 after the incident in DR 4
20 and locked us down.

21 Q. And how did an inmate get to be housed in the CAD
22 reunit?

23 A. I believe the unit staff checked their inmate file and
24 chose them.

25 Q. Were you aware of any of the criteria used for choosing

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1 any of the inmates to be used in cadre?

2 A. No, sir, I wasn't.

3 Q. At the time that cadre was operating was Death Row six
4 in operation?

5 A. No, sir.

6 Q. I want to talk with you about Death Row six, where you
7 are currently house can you describe the layout of that pod?
8 What does it physically look like when you are inside?

9 A. DR-6, when you step in the door, there are 27 on each
10 range, with three showers in the middle point. The cells
11 are kind of angled like an arrow, and outside of the cells
12 is a large day room area with rooms, a library, laundry
13 room, kitchen, exercise room, janitor room, and conference
14 room on the opposite walls of the cells.

15 Q. And what kind of doors do you have covering the cells
16 in Death Row six?

17 A. They are solid doors that have small windows and food
18 slots in them. The window is probably --

19 Q. Go ahead. I'm sorry, Mr. Wilson. What was that about
20 the doors?

21 A. The windows are probably three inches in width by eight
22 inches long. The food slot is probably four inches wide
23 by -- four inches high by a foot or a little more long.

24 Q. And these are solid doors?

25 A. Yes, they are.

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1 Q. And are there any gaps between the door and the floor
2 or the side or top jambs of the door?

3 A. From the bottom of the door.

4 Q. And how big is that?

5 A. My cell probably has an inch by inch and a half.

6 Q. And can you describe for the Court what the atmosphere
7 is on Death Row six in terms of the interaction between --
8 first off, the inmates and the guards?

9 A. It is relaxed. We speak to them and they speak to us.

10 Q. I'm sorry. I stepped on you on that one. What do you
11 mean by relaxed?

12 A. There is no conflict between the officers and the
13 inmates. There is no conflict between the inmates and other
14 inmates. We work together.

15 Q. Do the inmates and the guards freely interact with each
16 other throughout the course of the day?

17 A. We do.

18 Q. For example, if you needed something from the laundry
19 room or something like that, you could go and approach the
20 guard and he would either assist you in getting it or go get
21 it or tell you to go get it or something to that effect?

22 A. Yes, sir.

23 Q. Okay. When you are in your cell, can you tell me, what
24 happens with the food slot on the door?

25 A. At 6:30 in the morning, the officers come open our food

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1 slot. They stay open all day long until 1:00 in the
2 afternoon. They close them until probably about supper
3 time, then they open them back up and they are left open
4 until 8:30 at night unless we want to close them ourselves.

5 Q. Okay. And when they are left open, if you are in your
6 cell and another inmate is out on recreation can he come to
7 your cell and talk through your food slot?

8 A. Yes, he can.

9 Q. And if you and the other inmate wanted to play board
10 games or chess or something to that, you could do that
11 through the food slot?

12 A. We could.

13 Q. And is it possible in Death Row six for inmate to give
14 each other materials if one is on rec and out of his cell
15 through the food slot to the other inmate?

16 A. Yes, sir.

17 Q. I want to talk a little bit about the food service that
18 goes on in Death Row six.

19 Can you tell us how food is prepared and delivered to
20 the guys in Death Row six?

21 A. Food carts, they bring the food back on a big cart, in
22 pans. The food service worker tacit out of the cart, loads
23 it into pans in the kitchen, and then he makes the trays for
24 us.

25 Q. Now, when he makes the trays, how do they insure that

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1 the food is served hot?

2 A. There are switches on the food cart that he turns on,
3 the hot cart.

4 Q. So the cart in Death Row six actually is a heating cart
5 that will keep the food hot for service?

6 A. Yes.

7 Q. And once the food is prepared, where do the guys get to
8 eat their meals?

9 A. If they are in the cell they will eat them in their
10 cells but if they are out then we sit at the day room tables
11 and eat or we go outside and eat.

12 Q. So you can actually go out into the out door rec yard
13 to eat your lunch?

14 A. If I am out there on recreation day, yes.

15 Q. I want to talk a little bit about the job situation
16 tore Death Row six.

17 First off, how many guys are housed right now in the
18 pod?

19 A. I believe 33.

20 Q. I'm sorry, do you know how many empty pods that means?

21 A. How many empty pods? Or empty cells?

22 Q. How many empty cells there are in Death Row six?

23 A. I believe three. Three cells were never used.

24 Q. They are never used?

25 A. Now, the ranges are set up for 18 and 18. The top

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1 range, there is always two cells going to be open.

2 Q. But there could be a maximum then, if 18 and 18, to
3 have 36 men housed in that unit?

4 A. Yes.

5 Q. Okay. Of the 33 men who are currently housed in Death
6 Row six, how many of them have jobs?

7 A. All of us.

8 Q. And what sort of jobs do they have?

9 A. You mean a list of jobs?

10 Q. Yes, please.

11 A. There are multiple laundry workers, multiple range
12 important tears, kitchen porter, material handlers,
13 multiple; multiple ironers, Barb ears, we did have community
14 service, but community service jobs were taken away when the
15 move was announced. We also have legal typist.

16 Q. Now, in terms, you said, there are laundry jobs, what
17 do the laundry jobs entail?

18 A. They do the DR-6 laundry. We probably have three or
19 four laundry workers upstairs, on the top range, as well as
20 three or four on the bottom range.

21 Q. And where are the laundry machines located for Death
22 Row six?

23 A. In the DR-6 has its own laundry room.

24 Q. And you guys are responsible for doing your own laundry
25 at that point?

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1 A. Yes.

2 Q. And you said that you had community service jobs up
3 until recently. What sort of jobs were there for community
4 service?

5 A. Community service workers make things that were going
6 to be sent to children in the neighborhood and schools, such
7 as seat covers, fancy envelopes, other things. We also had
8 a tailor, they just hired a tailor that was going to repair
9 our clothing.

10 Q. I want to talk a little bit about the recreation
11 facilities and rec time in Death Row 6.

12 Prior to February or March of this year, how many men
13 were let out for recollection railway and I guess at one
14 time?

15 A. 18.

16 Q. And how much would they decide which 18 would come out
17 for recreation?

18 A. One shift they would let top range come out. Following
19 shift, the bottom range would come out. Following day, it
20 would be vice versa.

21 Q. So one entire floor would come out for recreation at
22 one time?

23 A. Yes.

24 Q. And how long was each recreation period, again, prior
25 to February or March of this year?

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1 A. Prior to the announcement of the move, we were out, one
2 shift it was five and a half hours, the other shift was five
3 hours and 45 minutes.

4 Q. And you said prior to the announcement of the move.
5 What happened after the announcement that the department
6 planned to move Death Row to OSP. What changed about
7 recreation time?

8 A. The day following -- the day after they announced that
9 they intended to move us, DR-6 was locked down and they
10 began running a new rec schedule, for recreation, two
11 courts, seven guys out.

12 Q. A total of seven guys were out but two of them were
13 working?

14 A. Yes.

15 Q. And how long was each recreation period for those five
16 guys?

17 A. An hour and a half.

18 Q. I'm sorry; was that an hour and a half?

19 A. Yes, sir.

20 Q. And so prior to the announcement of the move, you had
21 18 men out for recreation for five to six hours or almost
22 six hours for half the day, but after the move was
23 announced, you had five men out at a time for an hour and a
24 half. Is that correct?

25 A. Yes.

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1 Q. Okay. Now, when you were out, again, prior to the
2 announcement of this move back in February or March of this
3 year, what could you do during the recreation period?

4 A. During the recreation period we could, if it was our
5 outside recreation day we would go outside, we could do some
6 telephones, exercise room. We could play games, cards,
7 stuff in the day room.

8 Q. Now, if it is your recreation time -- which range are
9 you housed on? Are you on upper or lower range?

10 A. On the upper.

11 Q. So if it is your recreation time, your recreation time,
12 all the upper range would be out for recreation, right?

13 A. Yes, sir.

14 Q. If you had a friend that was on the lower range, could
15 you interact with him in any way even though he was not on
16 recreation and was locked up in his cell?

17 A. Yes.

18 Q. And what sort of interaction could you have with him
19 while he was locked up?

20 A. I could go in the cell, talk to him. I could go over
21 and sit, take a chair over and sit down in front of his
22 cell, play chess, play cards.

23 Q. You also said that if it was your outdoor recreation
24 time that you could go outside. Could you describe the
25 outdoor rec yard for Death Row six?

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1 A. Outside rec yard is pretty big. We have a basketball
2 Court, we have handball Court, we have a track that we can
3 jog and run. We have a good size grass area. There is a
4 water faucet. And there is two rec cages that are used for
5 LC inmates on the days that we are not out there.

6 Q. Could you just describe the physical appearance of the
7 outdoor rec yard? For example, what do the walls
8 surrounding the rec yard look like?

9 Q. Say that again.

10 Q. What do the walls of the outdoor rec yard look like?

11 A. There is only, if I understand you, the walls on the
12 outside of the cells windows and then there is a fence that
13 goes out around the yard.

14 Q. So one side of the enclosure for the outdoor rec yard
15 is a chain link fence as opposed to a solid cinder block
16 wall?

17 A. Yes.

18 Q. And what is --

19 A. Approximately 2/3 of it is surrounded by fence.

20 Q. And what can you see when you look out through that
21 fence?

22 A. You can see the trees, all the birds, the grass area.
23 There is cows that come down through there. Just nature.

24 Q. Okay. You said that there is a running track in the
25 outdoor yard.

1 How big is that track?

2 A. We measured it, and we jogged ten laps around it, it
3 is a mile. So it would be, it is 1/10 of a mile long.

4 Q. And that goes around the exterior of the rec yard; it
5 doesn't interfere with the basket ball Court or the handball
6 Court?

7 A. No, sir.

8 Q. And you said that --

9 A. It doesn't interfere.

10 Q. And you said there is a handball wall. Is that just
11 played up against one of the walls on the side of the rec
12 yard or how is the handball Court set up?

13 A. It is a separate wall for the handball. It is near the
14 fence, you know, 10, 15 feet from the fence, but it is its
15 own wall, its own Court.

16 Q. So this is something that was actually built for
17 recreation as opposed to guys just figuring out if you hit a
18 ball up against the wall you can play handball?

19 A. Yes.

20 Q. Now, you said there is a handball Court, basketball
21 Court and running track. Is there anything else out in the
22 rec yard?

23 A. Grassy areas and a water faucet.

24 Q. And can you describe the grassy area?

25 A. Well, outside of the running track there is a little --

1 a good area where you can sit down and stuff and another
2 grassy area in between the handball Court and one of the LC
3 rec cages.

4 We sometimes use it to play football.

5 Q. Okay. Prior to your placement on Death Row six, since
6 the move from SOCF to Mansfield, when was the last time you
7 were able to go out and sit in the grass?

8 A. Prior to going to DR-6, it was Lucasville, SOCF.

9 Q. And in terms of any other time at Mansfield, there is
10 no other yard that had grass?

11 A. No, sir.

12 Q. Okay. I want to talk about some of the indoor rec.

13 When you were on the inside for recreation -- first
14 off, how many guys can go outdoors for recreation?

15 A. Prior to the announcement or after?

16 Q. Prior to is announcement.

17 A. Prior to the announcement, it was eight.

18 Q. And that would then leave about ten guys on the inside
19 for indoor recreation?

20 A. Yes.

21 Q. How would it be decided which guys could go outside and
22 which guys would stay inside during that five hour rec time?

23 A. The inmates decided. We worked with each other.

24 Q. If it was your turn to be outside, could you freely
25 come in and go out of the pod during that indoor/outdoor rec

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1 time?

2 A. Yes, I could. I still can.

3 Q. But after the move, how many guys are allowed to go for
4 outdoor recreation?

5 A. After the announcement, it was five.

6 Q. So all five have the choice of going out or staying in?

7 A. Yes.

8 Q. Now, when you are on the inside recreation, what kind
9 of recreation facilities do they have for you within DR-6?

10 A. They have an exercise room, which has a dip long
11 machine, a sit up machine, a back extension machine, and
12 then a combination of pullup bar and dip bar machine.

13 Q. Is there anything else?

14 A. Well, we have access to the DR-6 library, telephones,
15 we have access to the ice machine, microwave, laundry room,
16 kitchen room.

17 Q. Is there --

18 A. As well as to --

19 Q. Is there a ping pong table on Death Row 6?

20 A. Yes, there is.

21 Q. And until recently, was there a community television
22 available on Death Row 6?

23 A. Yes. It was posted on the wall in the middle of the
24 pod.

25 Q. And that has recently been removed?

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1 A. Yes. Two weeks ago.

2 Q. You said while you are on recreation you had access to
3 Death Row 6 library. Can you describe the library for us,
4 please?

5 A. The library is a large room, it has all different kinds
6 of books in it, magazines, newspapers.

7 I actually have a complete book listing for DR-6.

8 Q. Do you have a rough idea about how many volumes are in
9 that library, how many books or magazines do you keep there?

10 A. I have a listing of the books and the listing is 19
11 pages long. I probably would say there is a couple hundred,
12 maybe more.

13 Q. And those books are open for any inmate on Death Row
14 six to come and get and read?

15 A. Yes.

16 Q. And can you take those books back to your cell?

17 A. Most of them.

18 Q. Most of them?

19 A. There are some --

20 Q. There are some what?

21 A. There are some encyclopedias, other books, like zip
22 code books and stuff like that that I found out are not
23 supposed to be removed.

24 Q. And also, if there is a book that you want to read that
25 is not available either within the Death Row 6 library or

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1 within the Mansfield correctional institution library is
2 there a way for you to get a book from an outside library?

3 A. I believe there is an inner library loaning where we
4 fill out a form, we send it to the main library, and I
5 believe you can submit it to the Mansfield city library and
6 if they have the book they loan it to us.

7 Q. So that is Mansfield public library, not the department
8 of corrections library, it is actually the public library?

9 A. Yes, sir. It's a public library.

10 Q. I want to talk a little bit about religious services on
11 Death Row six.

12 Can you tell us, how do they engage or conduct
13 religious services on Death Row six?

14 A. On Tuesdays we have a chap Lynn that comes in, a pastor
15 that comes in. Guys that are signed up to go to religious
16 service if they are out for recreation they are free to go
17 to it.

18 On Fridays, a priest comes and there are approximately
19 five or six guys from both top and bottom range that they go
20 into the DR-6 library and they have their services.

21 Q. Now, when they go into the Death Row 6 library for
22 services can you describe, are the guys restrained when they
23 go in?

24 A. No, sir. The only time DR-6 inmates are restrained are
25 when they leave the block. Other wise, we have free

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1 movement.

2 Q. Is there a guard in the library with the chap lane and
3 with the inmates during services?

4 A. No.

5 Q. And is the door to the library closed during the
6 services I'm sorry. We couldn't hear your answer?

7 A. Yes. The door is closed. The officer is outside.

8 Q. And is there a glass sheet or a glass wall over the
9 library so that they can still see what is going on inside
10 the library but there is privacy between the chap lane and
11 the guys at the service?

12 A. Yes. The library has two windows, plus a window on the
13 door.

14 Q. I want to talk about phone privileges.

15 Through DR-6 in particular, but if you know whether or
16 not the phone rights are the same throughout the rest of
17 Death Row 6 -- or throughout the rest of Mansfield Death
18 Row.

19 How long do the phone calls that you make last from the
20 pod?

21 A. 15 minutes.

22 Q. And do you know if that is the same in every pod, at
23 Mansfield?

24 A. Yes. They are all 15 minutes.

25 Q. They are all 15 minutes? How many phone calls can you

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1 make in a given day?

2 A. We can make as many as I like as long as I'm out.

3 Q. So what is the time period, again, prior to the
4 announcement of the move, that you were allowed to make
5 phone calls?

6 A. I could make a phone call any time that I was out of my
7 cell.

8 Q. So if you were getting --

9 A. If I was out five and a half hours, I could stay on the
10 phone unless another inmate needed to use it. Then I would
11 get off and let him use it.

12 Q. And how many phones are located in Death Row 6 for the
13 inmates to use?

14 A. Two.

15 Q. So eight guys would divide up five and a half hours --
16 or 18 guys would divide up two phones for five and a half
17 hours?

18 A. Yes.

19 Q. And there is --

20 A. They would not all use the phones, though.

21 Q. I'm sorry?

22 A. I said yes, but not all the guys use the phones, so you
23 can usually stay on it for a while.

24 Q. And if you made a phone call, for example, to a family
25 members and your 15 members was up could you immediately

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1 call back to that same phone number and talk to that same
2 person again?

3 A. Yes.

4 Q. Is there any limit on who you can call during that time
5 that you are out on recreation?

6 A. No.

7 Q. Can you call your legal team when you are out on
8 recreation?

9 A. Yes.

10 Q. And can you call family members or friends?

11 A. Yes.

12 Q. I want to talk a little bit about the attorney visits.

13 Where do the attorney visits for Death Row six inmates
14 happen?

15 A. They happen in the conference room that is located in
16 DR-6.

17 Q. And can you describe that conference room for us,
18 please?

19 A. Inside the room there is a large table, three or four
20 chairs.

21 Q. When you go in to visit with your attorney, are you
22 restrained in any way?

23 A. No, sir.

24 Q. Is the door allowed to be closed to the conference
25 room?

1 A. Yes.

2 Q. Is there a guard posted anywhere near the conference
3 room where you are meeting with your attorney?

4 A. No. We have complete privacy.

5 Q. And is that a contact visit with your attorney or is
6 there a divider between you and the counsel?

7 A. Contact visit.

8 Q. Besides the ability to meet face-to-face with your
9 attorney, are there any other ways that you have access to
10 your counsel while housed on Death Row six?

11 A. Phone calls.

12 Q. And how often --

13 A. I can call on the prison phone, or the attorney can
14 call here and request a secure phone line for us to speak
15 on.

16 Q. You say that the attorney can call and request a secure
17 line. What about the phone line in the pod? Is that a
18 secured or confidential line that you are making the call
19 from?

20 A. No. There is a sign on the wall that says that the
21 phone calls may be monitored.

22 Q. But if you needed to speak confidentially with your
23 attorney, either immediately or sooner than he or she could
24 come to visit, could you use that phone call and ask him to
25 set up a confidential call and then he would call this

1 institution and you would have a secured phone call?

2 A. Yes, sir.

3 Q. Okay. And do you know if those arrangements for the
4 use of the phone and those types of secured and unsecured
5 phone lines are the same throughout the pods at Mansfield?

6 A. Yes, they are.

7 Q. And that comes from your experience of being housed on
8 Death Row 1, Death Row 4, and at cadre Death Row 5?

9 A. Yes.

10 Q. I want to talk a little bit now, Mr. Wilson, about the
11 transition from SOCF to Mansfield when you all were
12 transferred up there in 1995 and were you aware of any
13 discussions or promises by the department in terms of the
14 outdoor recreation yard that was going to be built?

15 A. When I arrived at Mansfield I learned that Mansfield
16 had said they were going to build us an outdoor recreation
17 yard.

18 Q. And has that yard ever been built?

19 A. They dug three holes. Then they stopped.

20 Q. Okay. And what were you told about the purpose and
21 mission of, at that time of the transfer of Death Row 5?
22 What came to be known as the cadre unit.

23 A. What was I told about the cadre unit?

24 Q. Yes.

25 A. I don't understand the question.

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1 Q. Well, when you were moved from Lucasville to Mansfield
2 was there anything that was told about what would happen to
3 the inmates housed in cadre or in Death Row 5 in terms of
4 privileges and things like that?

5 A. When I first arrived here I was in DR 1. I didn't move
6 to DR 5 until probably six months later. I don't know what
7 was promised to them directly other than recreation yard was
8 promised for all of Death Row.

9 Q. Was cadre or Death Row five promised extended
10 privileges similar to the privileges being extended in Death
11 Row 6?

12 A. Yes. Cadre had everything, approximately everything in
13 it that DR-6 now has.

14 Q. And did there come a time when they closed the cadre
15 unit down?

16 A. Cadre unit was closed in 1997, after the DR 4 incident.

17 Q. And do you know whether or not the closing of the cadre
18 unit was related to the incident on Death Row 4?

19 A. Yes, it was.

20 Q. And were any inmates who were housed in the cadre unit
21 involved in any of the actions that happened in Death Row 4
22 in 1997?

23 A. There was one inmate who was working over there that
24 got caught up in it but everybody else, no, they were not
25 involved.

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1 Q. So all of Death Row 5 had their privileges revoked
2 despite not being involved in anything that happened on
3 Death Row 4 that year?

4 A. Yes.

5 Q. Are you aware of any promises that had been made to the
6 Death Row inmate regarding contact visits with family and
7 friends?

8 A. They were supposed to begin, we were promised contact
9 visits and they were supposed to begin, I believe February
10 14 of this year.

11 Q. And have they begun?

12 A. No, sir.

13 Q. Have you ever had contact visits with family or friends
14 while at Mansfield?

15 A. No, sir.

16 MR. BENZA: If I may have just a moment, Your
17 Honor.

18 (Discussion had off the record.)

19 BY MR. BENZA:

20 Q. Just briefly, Mr. Wilson, you have filed numerous pro
21 se pleadings in this case, have you not?

22 A. Yes, I have.

23 Q. And those have been related specifically to the issues
24 of the mental health evaluations that are being conducted.

25 A. Yes, sir.

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1 Q. And why do you have concerns about the mental health
2 evaluations that are being conducted in this regard?

3 A. Because I believe that the Department Of Corrections is
4 violating our rights. They are asking, the psychiatrist
5 doing the assessments are asking Death Row inmates about
6 their Death Row cases.

7 I believe I should have an attorney present because of
8 the information that they receive in these assessments could
9 be used against us on our Death Row appeals and clemency
10 hearings.

11 Q. Did you ask to have your counsel available to you
12 during the assessment?

13 A. Yes, I did.

14 Q. And what were you told?

15 A. No.

16 Q. And do you -- were you told what that would be
17 documented as in your evaluation?

18 A. My understanding is if I do not participate in the
19 mental health assessment, that they would use my Department
20 Of Corrections records to make an incomplete evaluation.

21 Q. But in terms of your request for counsel, do you
22 understand what the documentation would be made on on the
23 form as to whether or not you would cooperate with the
24 evaluation?

25 A. The form would say that I would not cooperate.

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1 MR. BENZA: I have nothing further, Your Honor.

2 THE COURT: Cross-examination.

3 MR. HOLLOWAY: Not today for this witness. Thank
4 you.

5 THE COURT: Thank you. Would the plaintiff call
6 your next witness?

7 MR. LYND: Brian Nemeth from Youngstown.

8 THE COURT: Why don't we take a mid morning break,
9 now.

10 (Recess from ^ to ^ .)

11 THE COURT: I'll ask the plaintiff to call your
12 next witness.

13 MR. LYND: Brian Nemeth, Your Honor.

14 Witness, being first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION OF witness

17 THE COURT: Can you state your name and spell your
18 last name.

19 THE WITNESS: Brian Nemeth. NEMETH.

20 THE COURT: Mr. Lynd.

21 BY MR. LYND:

22 Q. Mr. Nemeth, where are you confined at the present?

23 A. Ohio State Penetentiary.

24 Q. And when were you placed at OSP?

25 A. February 21, 2001.

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1 Q. What is your present security classification and
2 privilege level?

3 A. I'm a level 4-A, max security.

4 Q. What pod are you in?

5 A. I'm in B-1.

6 Q. And what range on that pod?

7 A. I'm in cell 28, top range.

8 Q. Mr. Nemeth, what level of restriction is level 4-A at
9 OSP? Is it the most restrict tiff, the least restrictive,
10 most privileges, fewest privileges?

11 A. It is the least restrictive privileges.

12 Q. The least restrictive? Correct?

13 A. Yes.

14 Q. Mr. Nemeth, have you been provided certain exhibits?

15 A. Yes.

16 Q. I would like to ask you to look at Plaintiff's Exhibits
17 for identification 28-A and 28-B. They are two handwritten
18 exhibits.

19 A. Okay. I got EM.

20 Q. Can you identify those two exhibits?

21 A. They are declarations pronounced by me.

22 Q. And referring to Plaintiff's Exhibit 28-A, the first
23 and shorter of the two declarations, can you tell us what
24 that declaration is about?

25 A. This declaration includes sick call, nursing call,

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1 mental health appointments, attorney visits, family visits,
2 and any out of cell programming. That has to do with out of
3 cell time.

4 Q. Was there some statement in Dr. Mets near's report to
5 which this declaration responded?

6 A. Yes.

7 Q. And what was the statement that you considered
8 inaccurate?

9 A. In his report, I read that these activities and
10 appointments will give inmates on level 4-A extra out of
11 cell time separate from their out of cell rhyme and
12 recreation time.

13 Q. And is your experience different from that?

14 A. Yes. All these privileges -- all of these programs and
15 appointments do not give you extra out of cell time.

16 Q. Are they in fact subtract from the out of cell time
17 that you have?

18 A. Yes, they are.

19 Q. And in regard to Plaintiff's Exhibit 28-B, Mr. Nemeth,
20 can you tell us what you had in mind with that declaration?

21 A. This declaration, I made it because I wanted to get the
22 accurate amount of time that prisoners on level 4-A had out
23 of cell time and outdoor recreation.

24 Q. And as I rode this, Mr. Nemeth, it appears to have been
25 begun (on August -- on August 17, and to go through August

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1 26. Is that correct?

2 MR. HOLLOWAY: Objection, Your Honor. I believe
3 the witness could be asked questions --

4 A. Yes, that's true.

5 THE COURT: I think the questions are leading.

6 MR. LYND: I see.

7 BY MR. LYND:

8 Q. How many days, Mr. Nemeth, does the declaration in
9 Plaintiff's Exhibit 28-B cover?

10 A. This declaration reflects all out of cell time and
11 outdoor recreation from August 17 through August 26.

12 Q. And that is a period of how many days?

13 A. Ten days.

14 Q. Thank you. Now, would you take a look, Mr. Nemeth, at
15 Plaintiff's Exhibit 28-C? All right?

16 A. All right.

17 Q. Do you have access to a typewriter on Level 4-A?

18 A. No.

19 Q. Is there a prisoner job of legal typist whom you can
20 ask to type things for you?

21 A. No.

22 Q. I represent to you, Mr. Nemeth, that beginning about a
23 third of the way down the first page of Plaintiff's Exhibit
24 28-C, there is an attempt to type out what you wrote by hand
25 in your declaration.

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1 I want you to disregard the material at the top of page
 2 one and to review the remainder of page one as well as pages
 3 two and three of Plaintiff's Exhibit 28-C and I know you
 4 can't do it minutely sitting there on the witness stand, but
 5 do you have a general impression as to whether what is typed
 6 in Exhibit 28-C accurately transcribes what you wrote out in
 7 28-B?

8 A. Yes, I do.

9 Q. And what is that impression?

10 MR. HOLLOWAY: Objection, Your Honor. The witness
 11 is here. He can be asked the question. He can answer the
 12 question.

13 THE COURT: I'll sustain the objection.

14 A. It appears to be a typed --

15 THE COURT: Hold on. I'll sustain the objection.

16 I think first of all 28-A and 28-B do speak for themselves.

17 MR. LYND: Very well, Your Honor.

18 BY MR. LYND:

19 Q. Mr. Nemeth, did you make any effort to calculate from
 20 what you set out in your declarations approximately how much
 21 outdoor recreation time you receive per day or per week on
 22 Level 4-A at OSP?

23 A. Yes, I did.

24 Q. And what conclusion did you arrive at?

25 A. We did not receive outside recreation every day for the

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1 full amount of time.

2 Q. And do you have any idea how many hours a day or how
 3 many hours a week you average in outdoor recreation or would
 4 that have to be calculated from your log in 28-B?

5 A. I would estimate probably about two hours a week, two
 6 and a half hours, three hours a week at the most.

7 Q. Mr. Nemeth, are you a plaintiff in a legal action other
 8 than this case, Austin v Wilkinson?

9 A. Yes, I am.

10 Q. And what is that legal action?

11 A. Miners versus Jeep.

12 Q. If I heard you correctly, Michael, correct?

13 A. Yes. Versus Jeep.

14 Q. Is that GHEE?

15 A. Yes, it is.

16 Q. And if you know, is that case in Federal or state
 17 court?

18 A. I believe it is Federal Court.

19 Q. And if you know, what particular claims in Margaret
 20 versus GEE do you represent?

21 A. I represent all prisoners on Level 4 and level 5, that
 22 are being denied parole due to our security status or rules
 23 infractions for prison conduct.

24 Q. And as a plaintiff in Michael versus GEE, do you have
 25 occasion to require access to legal materials, law

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1 decisions?

2 A. Yes, I do.

3 Q. And how do you go about getting those on level 4-A at
4 OSP?

5 A. You have to submit a kite to the paralegal.

6 Q. Do you know whether there is a limit on how many kites
7 per day you can submit?

8 A. Yes. You can submit one kite per day.

9 Q. And what has been your experience as to how long it
10 takes you to receive the legal materials you request in your
11 kites?

12 A. On average, it would take about a week, week and a
13 half, but sometimes it will take up to two, two and a half
14 weeks.

15 Q. How many paralegals are presently at work, functioning
16 at OSP?

17 A. Just one.

18 Q. Are you aware of whether at other prisons in the Ohio
19 system prisoners sometimes serve as paralegals?

20 A. Yes, I am. Yes, I do.

21 Q. Have you ever offered your services as a paralegal at
22 OSP?

23 A. Yes.

24 Q. When was that?

25 A. That was in late May, early June of this year.

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1 Q. What happened?

2 A. Our paralegal, I noticed that she had a lot of LOEL
3 material she had to do, she had to take care of all three
4 blocks at OSP, so I volunteered my services to help her out.

5 Q. And what was the reaction?

6 A. She told me that she would have to get it approved or
7 cleared through the major and the deputy warden, Mr. Read
8 Dick.

9 Q. And then what happened?

10 A. She told me that her response was no. And that no
11 prisoners at OSP could retain jobs as paralegals, that no
12 inmates period were allowed to have slide doors between,
13 unrestrained and unescorted.

14 THE COURT: Can you repeat that?

15 BY MR. LYND:

16 Q. The court reporter, Mr. Nemeth, would like you to
17 repeat your answer to the last question.

18 A. Okay. Miss BRA's response was no, that the major,
19 Mr. Readic said I could not retain a job as a paralegal
20 because prisoners at OSP were not allowed in that area of
21 the prison, that prisoners, period, were not allowed past
22 the sliding doors leaving the blocks unescorted and
23 unrestrained.

24 Q. If a prisoner at OSP wants to make a telephone call to
25 an attorney, how do you go about it?

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1 A. You have to wait for your turn to have out of cell time
2 and you have to use the cell inside the pod. The phone
3 inside the pod.

4 Q. How many telephones are there in your pod?

5 A. There is only one telephone per pod.

6 Q. And if you call your attorney when you are out on the
7 range, is there any problem in hearing what your attorney
8 says over the phone?

9 A. Yes, there is.

10 Q. And if you call your attorney when you are out on the
11 range, is there any problem with officers or other prisoners
12 overhearing what you say on the phone?

13 A. Yes, there is.

14 Q. Do you know of any small conference room in which you
15 can receive a confidential telephone KL from an attorney?

16 A. No, I don't.

17 Q. Do you know of any way that an OSP prisoner can receive
18 a confidential telephone call from an attorney?

19 A. No, I do not.

20 Q.

21 MR. LYND: Thank you, Mr. Nemeth. That is all the
22 questions I have.

23 THE COURT: Cross-examination.

24 MR. HOLLOWAY: Just briefly, Your Honor.

25 CROSS-EXAMINATION

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1 BY MR. HOLLOWAY:

2 Q. Mr. Nemeth, I am Eric Holloway. How are you doing
3 today.

4 A. Good.

5 Q. You have talked about the amount of time your block is
6 out for outdoor rec, correct?

7 A. Yes.

8 Q. You made that based upon personal observations from
9 your cell, for your block at OSP. Correct?

10 A. Yes.

11 Q. Am I correct to say that in any given month, you could
12 also observe a correction officer in your block?

13 A. Yes.

14 Q. Also in any given month, you might see the unit
15 counselor, the unit sergeant. Is that correct?

16 A. Yes.

17 Q. In any given month, you could also see the unit
18 manager. Correct?

19 A. Yes.

20 Q. You could also see your case manager in any given
21 month, correct?

22 A. That's correct.

23 Q. In any given month, if not daily, you could see the
24 nurse on pill passout. Correct?

25 A. Yes.

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1 Q. You could also see the doctor on your block. Correct?

2 A. Well, during certain times of the week.

3 Q. You could also see during any given month a mental
4 health counselor, correct?

5 A. Yes.

6 MR. HOLLOWAY: I have no further questions. Thank
7 you, Your Honor.

8 THE COURT: Do you have any redirect.

9 MR. LYND: No, Your Honor.

10 THE COURT: Thank you. Would the plaintiffs call
11 their next witness.

12 MR. BENZA: Your Honor with your indulgence we
13 have a witness that is here to testify in person that has to
14 go back to Columbus. We would like to take them out of
15 order. We talked about the defendants. They have no
16 objection.

17 THE COURT: That's fine. Will you terminate the
18 connection, John.

19 Who would be your next witness.

20 MR. LYND: Excuse me, Your Honor and Mr. Crow, you
21 know we are going to need to come back?

22 Witness, being first duly sworn, was examined and
23 testified as follows:

24 DIRECT EXAMINATION OF witness

25 THE COURT: State your name and spell your last

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1 name.

2 THE WITNESS: My name is David Stebbins.

3 STEBBINS.

4 BY MR. BENZA:

5 Q. Good morning, Mr. Stebbins. Can you tell the Court
6 what you do for a living?

7 A. I'm an attorney.

8 Q. And do you represent a particular class of people as a
9 general matter?

10 A. Primarily I represent people that are either facing the
11 death penalty or under a sentence of death.

12 Q. And how long have you been representing people facing
13 the death penalty or under a sentence?

14 A. I began primarily in 1982.

15 Q. How long do you practice?

16 A. I practice in Ohio program arrestly although I
17 represent people in Tennessee also.

18 Q. Any other places that you represent people?

19 A. I have represented people on Death Row in Indiana, I
20 have done one trial level case in Indiana, and I did one
21 trial level death penalty case in the Federal Court in
22 Michigan.

23 Q. And what is your educational background?

24 A. I graduated from Denison University in 1970. I
25 graduated from Cleveland State, Cleveland Marshall Law

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1 School, Cleveland State University in December of 1977.

2 Q. And you have been representing Death Row people since
3 1982, you said?

4 A. That's correct.

5 Q. And in terms of the proportion of your practice, how
6 much of your practice is made up of representing Death Row
7 people?

8 A. At the moment, 85 to 90 percent.

9 Q. Typically, in your job of representing Death Row
10 inmates, what does your job require in terms of the
11 interaction between you and your client?

12 A. It varies a little depending on what stage of the case
13 I become involved in it, but in all cases, it involves,
14 requires, I should say, personal meetings with the client to
15 discuss the evidence in the case, to discuss issues having
16 to do with the penalty, mitigation, issues that went on at
17 trial, matters that the client may be concerned about that
18 were not done at trial.

19 A fair amount of personal interaction.

20 Q. And how much contact do you have to have with your
21 client in order to successfully do that?

22 A. Again, it depends on when I get into the case, but most
23 cases, in order to establish a relationship with the client
24 and to find out what the case is about, pretty much
25 regardless of what stage it is at, it requires several

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1 fairly lengthy visits. Of an hour to two hours, just to
2 meet the client and to get through the case.

3 Q. Let's focus, when we're talking about working with the
4 client, let's focus on representing the client after the
5 conviction, after the person has already been sentenced to
6 death and the population we're going to be talking about are
7 those that are currently at Mansfield so we'll talk about
8 those post conviction.

9 A. Okay.

10 Q. Have you ever visited Death Row clients at the Southern
11 Ohio Correctional Facility?

12 A. Yes.

13 Q. And can you describe the conditions for meeting with a
14 client at SOCF?

15 A. It changed a bit over the years that Death Row was at
16 SOCF, but in all of the time that we were there, there were
17 arrangements for individual private meetings, contact
18 meetings with the client. Originally these were done in a
19 room, in an attorney visiting room that was directly off the
20 main visiting room for the institution. Subsequently, it
21 was moved to what's known as J block. They had some
22 visiting rooms actually built for us in the hallway out in J
23 block for visitation, for attorney visitation.

24 Q. Now, those meeting rooms that were added to J block,
25 were those added specifically for Death Row inmates to meet

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1 with their attorneys and defense teams?

2 A. That was my understanding, yes.

3 Q. And can you physically describe what those rooms were
4 like?

5 A. They were -- it's been a while, but they were
6 approximately, I would say, eight-by-ten or twelve, they had
7 glass on one side to the hallway, there was a door, they had
8 windows which were barred windows facing out into the
9 courtyard at the prison.

10 The windows faced out into the hallway. There were
11 generally guards in the hallway, although the guards were
12 not immediately there at the window.

13 Q. Do you have an idea of about how far away from the
14 meeting rooms the guards would be posted?

15 A. Generally, there was a guard, there was a hall guard
16 that was probably, I don't know, 25 to 50 feet away I think
17 was generally the closest guard there was. Some of course
18 walked by during the course of a visit on other business,
19 and to, I think occasionally to check on you, but there were
20 sufficient windows in the visiting room that you could be
21 seen from some distance down the hall.

22 Q. In your interaction with your clients, did you have any
23 concern about the confidentiality of the topics you were
24 discussing because of those meeting arrangements?

25 A. At SOCF?

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1 Q. Yes.

2 A. No.

3 Q. Why is that?

4 A. Well, we were locked in privately, there was nobody
5 listening, and nobody could hear what you were saying.

6 Q. And why is it important for, in particular a Death Row
7 attorney, to have a confidential visit, but with any
8 attorney to have a confidential visit?

9 A. Well, for any attorney, I mean, when you are having a
10 visit with a client, you have matters to discuss about the
11 guilt or innocence of the client, the evidence that may be
12 presented, evidence the client may have about the case.

13 And any information that the client provides to me is
14 protected by the attorney/client privilege, that I cannot be
15 forced to reveal that to anybody under most circumstances.

16 If that information is presented to me and it is
17 overheard by somebody, it is not necessarily protected by
18 the attorney/client privilege. So that is one level of it.

19 Second of all, if there is somebody in range to hear
20 what is going on, clients are generally less willing to
21 share confidential information with me for obvious reasons,
22 they don't want to share it with the entire world.

23 Q. And in your experience as a lawyer, I assume you also
24 do criminal defense outside of the capital arena?

25 A. Yes.

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1 Q. In your experiences, have you ever had a situation
2 where an inmate who has testified against a client on the
3 pay cyst of things he overheard your client saying?

4 A. That's a fairly regular occurrence in both state and
5 Federal prosecutions, in my experience.

6 Q. Have you ever had the experience where a guard has
7 testified about things that your client is purported to have
8 said that the guard has overheard?

9 A. I can't say that I have had that experience in any case
10 I have worked on.

11 Q. Outside of being able to physically meet with your
12 clients at SOCF, have you had other ways of keeping in
13 contact with client at SOCF?

14 A. I'm trying to remember. It's been quite some time
15 since they were at SOCF. I believe, though, that -- yes.
16 I'm going to have to say I just don't remember. I believe
17 we had phone contact, but I don't -- I believe we were able
18 to call in and request that they call us, but I'm a little
19 fuzzy on those details I'm afraid.

20 Q. And do you recall whether or not they could call you
21 from SOCF?

22 A. They did have access and could call us collect. And
23 again, I can't give you the details, but I do recall them
24 being able to call us collect from SOCF.

25 Q. And do you recall whether or not the calls that they

1 were placing to you were on a secured or unsecured line?

2 A. No, I don't.

3 Q. And what about if you would call down to SOCF to talk
4 to a client? Do you recall whether that was on a secured or
5 unsecured line?

6 A. I don't recall that.

7 Q. I want to now move up to Mansfield.

8 Have you ever visited clients at Mansfield Correctional
9 Institute?

10 A. Yes, I have.

11 Q. And at Death Row in particular?

12 A. Yes.

13 Q. And can you describe the, again, physical meeting
14 conditions when you meet with a client at Mansfield?

15 A. Well, in general, I mean, there are six different pods
16 where Death Row inmates are housed at Mansfield. Each of
17 them has at least one room that is used for attorney visit
18 rooms. It is, in general they are four concrete walls with
19 a door. They are eight-by-ten, roughly. There is a table,
20 two chairs, three chairs. They use the room for storage of
21 other things but primarily they are used I think for
22 attorney visitation.

23 The inmates are brought in, they are kept in handcuffs,
24 they are shackled to the floor. The guards then lock the
25 door and leave, and you are left in there until you are

1 done.

2 Q. And do you have any concerns when you are meeting with
3 your client as to the privacy and the confidentiality of
4 what you talk about?

5 A. No. I mean, at Mansfield, it has been very clear that
6 you are locked in there, you are alone, there is nobody out
7 in the hall. The guards are going about their regular
8 business of running the pod, and when you bang on the door
9 when you are done they come and get you.

10 Q. And again, outside of this, the ability to meet
11 privately with your client, do you have other access to your
12 client while they are at Mansfield?

13 A. Again, they are able to place phone calls when needed.
14 They can make collect calls to a list of people, including
15 their attorneys. If I need to get ahold of them, I am able
16 to call to Bart Barry who is sort of the secretary, I guess,
17 for Death Row, and she will make arrangements for them to
18 call me, usually within the hour.

19 Q. So if your client calls you, do you know if that is on
20 a secured or unsecured line?

21 A. I believe the outgoing calls to me, if they are just
22 calling me collect, are -- I don't think those are secured
23 lines. I think those are taped phone calls.

24 Q. But is it possible for you to arrange for a secured
25 phone call with a client?

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1 A. I believe if I call in and ask for them to call me,
2 they are then brought to a different place and permitted to
3 call on an unsecured line.

4 Q. And how long does it take to set up one of these calls
5 when you initiate it?

6 A. Those usually are done within an hour, depending on how
7 busy they are. If they are busy, it will take an hour,
8 maybe two hours, but it is always the same day.

9 Q. And when you are visiting at Mansfield, you actually go
10 back into the pods to see the client, if you are there and
11 another client is out in the rec pod and needs to see you is
12 it possible for you to see that individual that day or do
13 you have to schedule a new visit?

14 A. If it is something of a very brief matter they will
15 generally permit you to talk for a minute or two. They
16 prefer if you reschedule it and set that, the meeting up,
17 but if you have something very brief, a brief question, a
18 brief answer, or something to be signed, that would be
19 permitted if you happen to see the guy out.

20 Q. And have you ever been asked by another attorney who
21 happened to know you were going to Mansfield to maybe pull a
22 person to have them sign a release form or an affidavit or
23 something to that effect and been able to add that to your
24 regular scheduled visit list?

25 A. Yes, and sometimes the guards will just take the paper

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1 up to have it signed at their cell rather than bringing them
2 out.

3 Q. In general, in terms of the interactions that you have
4 had with the staff at Mansfield, how would you describe the
5 quality of that interaction. Are they helpful, are they
6 obstinate about things? How do they interact with you?

7 A. For the most part it has been helpful. They are
8 generally helpful. They try to provide the transportation
9 out to Death Row as quickly as possible, transportation
10 back, and I don't believe I have ever had any run ins, shall
11 we say, with any of the staff there.

12 Q. In terms of the conditions that you are put in, your
13 client is put in in working with you, how do the conditions
14 at SOCF and at Mansfield facilitate or hinder your ability
15 to represent the client?

16 A. Well, they assist it a lot, because we are -- at both
17 SOCF and more particularly at Mansfield, which I have been
18 there more recently, they have been relatively accommodating
19 about setting up the meetings so that you can meet privately
20 with your client, so that you can do the necessary
21 interviews about confidential information and about other
22 information which may or may not be confidential, but
23 certainly is of a very sensitive nature.

24 Information about the client's background, for example,
25 or mental health issues, things like that, that come up in

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1 all of these cases.

2 Q. Just so we're clear, the visits with inmates or with
3 clients at SOCF and at Mansfield were all contact visits,
4 there is no divider between you and the client?

5 A. That's correct, with one exception.

6 Q. And what is that one exception?

7 A. The one exception is at Mansfield, if there is -- it
8 only happened to me once but my client was in the hole. He
9 was in DR 5, which is the disciplinary block, and he was in
10 the hole, being punished for something, which I don't recall
11 what.

12 In that situation, I was required to visit through a
13 window, where he was in one room and I was in another, but
14 he was the only person in that room and I was the only
15 person in the other room, and there was a window about
16 two-by-four with a large slot underneath it which you could
17 speak through but it was only during the 60 days or so that
18 he was in the hole that I experience had.

19 Q. And during that one visit that you had through the
20 partition, were you concerned about attorney confidences
21 being divulged through the window?

22 A. Well, there were actually two visits I had with him, we
23 were preparing for a hearing.

24 I was not concerned about attorney confidences because
25 we were both locked in rooms by ourselves, and there was no

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1 way anybody could hear us outside of either of those two
2 rooms.

3 Communications were somewhat more difficult, just
4 hearing and getting papers and communications through the
5 slot, but given the circumstances and given it was only two
6 times, I mean, it was -- it was all right for those two
7 times.

8 Q. Have you visited other clients on Death Row 5 and not
9 used the non contact visit booth?

10 A. Yes. Ordinarily on DR 5 you are put in an attorney
11 visit room just like the other five pods.

12 Q. And those are allocated, all the visiting rooms at
13 Mansfield are actually located in the pod your client is
14 housed in?

15 A. Yes. There is an attorney visit room in each pod.
16 Each of the six pods.

17 Q. Have you ever been to the Ohio State Penetentiary?

18 A. No, I have not.

19 Q. Do you have an understanding of the visiting conditions
20 that attorneys will be subjected to?

21 MR. LANDIS: Objection, Your Honor.

22 THE COURT: I'm not sure he has personal
23 knowledge.

24 MR. LANDIS: We deposed him and he said the only
25 things he knows is what he has been told so the answer

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1 necessarily implicates hearsay.

2 THE COURT: I will sustain the objection.

3 BY MR. BENZA:

4 Q. Mr. Stebbins, I want to ask you about a couple of
5 specific Death Row inmates, if you can just tell us what you
6 know of the status of their case or where the case has gone.

7 First off, do you know the inmate will Ford Barry?

8 A. Yes.

9 Q. And where is his case now?

10 A. Mr. Barry withdrew his appeals and was executed in, I
11 believe 2000.

12 Q. And how about Kevin SKUTer?

13 A. Kevin SKUTer is in Federal Court. Mr. SKUTer attempted
14 to withdraw his appeals. He was found to be incompetent to
15 make that decision by judge Marbley in the Southern District
16 of Ohio ^ .

17 Q. How about Stephen VRABEL?

18 A. I believe Mr. VRABEL withdrew his appeals and was
19 executed in 2004.

20 Q. How about Scott meaning?

21 A. Same answer. He withdrew his appeals and was executed,
22 I believe in 2004.

23 Q. What about the status of here ash WOURT?

24 A. He withdrew his appeals, he was found to be competent
25 by judge Sargus in the Southern District of Ohio. He had

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1 his clemency hearing before the Ohio parole board yesterday
2 and is scheduled to be executed on September 27 of this
3 year.

4 Q. In your experiences in working with clients on Death
5 Row, do the conditions that the men are housed in have an
6 impact on the decision that inmates may have as to
7 continuing or waiving their appeals?

8 MR. LANDIS: We object Your Honor.

9 THE COURT: I sustain it. I'm not sure he is
10 qualified.

11 MR. BENZA: Very well. I have nothing further.

12 THE COURT: Cross-examination.

13 MR. LANDIS: No questions, Your Honor.

14 THE COURT: Thank you.

15 THE COURT: Call your next witness.

16 MR. LYND: Are we ready at OSP, Mr. Crow? Thomas
17 Blackmon, Your Honor.

18 THE COURT: Would you tell us your name?

19 THE WITNESS: Thomas Blackmon.

20 THE COURT: I'm sorry. Can you state your name?

21 THE WITNESS: Thomas Blackmon.

22 THE COURT: Would you raise your right hand?

23 Witness, being first duly sworn, was examined and
24 testified as follows:

25 DIRECT EXAMINATION OF witness

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1 BY MR. LYND:

2 Q. Mr. Blackmon, are you presently --

3 A. How are you doing, Mr. Lynd.

4 Q. Mr. Blackmon, good morning?

5 A. Yes. Good morning, how are you doing?

6 Q. All right.

7 A. Can you hear me?

8 Q. Yes. Are you presently confined in an Ohio prison?

9 A. Yes.

10 Q. What prison is that?

11 A. Ohio State Penetentiary, located in Youngstown, Ohio.

12 Q. Thank you. How long have you been at the Ohio State
13 Penetentiary?

14 A. Since May 5, 1998.

15 Q. And what security and privilege level are you on at the
16 Ohio State Penetentiary?

17 Q. I'm a 4-B?

18 Q. Was there a time, Mr. Blackmon, when you were on level
19 4-A?

20 A. Yes.

21 Q. When you were on Level 4-A, was there a time when your
22 pod had an indoor gymnasium?

23 A. Yes.

24 Q. What happened to that indoor gymnasium?

25 A. They converted it back to a pod so prisoners coming

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1 from Mansfield or somewhere, they could put prisoners in
2 there. They said they had to put prisoners in there.

3 Q. They converted it back to cells for prisoners?

4 A. Yes.

5 Q. In all the time you have been at OSP, Mr. Blackmon,
6 either on Level 4-A or Level 4-B, has there ever been a
7 written schedule so that you could know in advance when you
8 would go to outdoor recreation?

9 A. No.

10 Q. How do you feel about the outdoor recreation areas that
11 now exist at OSP?

12 A. I don't care for it because -- can you hear me.

13 Q. Just speak slowly, Mr. Blackmon.

14 A. I said I don't care for it because you look around, you
15 all seeing the same walls, and you look up and all you can
16 see is the sky, you can't see the grass, you can't see
17 anything. You like confined. You got walls all around you.

18 Q. I see. Mr. Blackmon, on the basis of your permanent
19 experience and knowledge, ^ personal experience and
20 knowledge, how would you describe the relationship of black
21 and white prisoners at OSP at the present time?

22 A. Extreme, extreme paranewer.

23 THE COURT: Extreme what?

24 MR. LYND: Paranoia.

25 BY MR. LYND:

1 Q. Could you explain what you mean by that, Mr. Blackmon?

2 A. Well, we had a few incidents where blacks and whites
3 that had altercations, had fights, but like they were at
4 tacked by a white prisoners, black prisoners been inSUTD by
5 white prisoners T got their jaws BLOEK, there is the Aryan
6 Brotherhood, it is just a black and white situation.

7 Q. And directing your attention to the period of time
8 between April and June, 2005, did the assaults you have
9 described occur during that time?

10 A. Yes.

11 Q. And when did these assaults occur, during what period
12 of the day?

13 A. It varies. Sometimes on first shift, sometimes on
14 second.

15 Q. My question was unclear, Mr. Blackmon.

16 Did they occur when people were at programs, in their
17 cells, congregate rec? What kind of period in the day did
18 these assaults occur?

19 A. When they was at recreation, when they was recreating.

20 Q. And would those have been congregate recreation
21 opportunities?

22 A. Yes.

23 Q. And if you know, as a result of those interracial
24 assaults, was any change made in the OSP policies for
25 congregate recreation?

1 A. Yes.

2 Q. What was that change?

3 A. They terminated, they stopped letting prisoners have
4 congregate rec, you can't rec with anyone any more.

5 Q. And is that true for prisoners on level 4-B?

6 A. Yes.

7 Q. Is it also true for prisoners on level 5-A?

8 A. Yes.

9 Q. And is it always true that the prisoners on level 5-B
10 are required to rec alone?

11 A. Yes.

12 Q. So if I'm understanding you correctly, as a result of
13 these interracial assaults, three out of four of the
14 security levels are presently required to rec alone. Is
15 that correct?

16 A. Yes.

17 Q. Mr. Blackmon, do you have with you there an exhibit, a
18 one page exhibit, an informal complaint resolution which has
19 a label on it, Plaintiff's Exhibit for identification 29?

20 A. Yes.

21 Q. Can you identify this document?

22 A. It look like an informal complaint resolution ^ that I
23 wrote to the deputy warden.

24 Q. Would that be deputy warden REMic?

25 A. Yes.

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1 Q. And I see the date you submitted this informal
2 complaint resolution was June 5, 2005?

3 A. Yes.

4 Q. And Mr. REMic answered this informal complaint
5 resolution, did he not?

6 A. Yes.

7 Q. And he answered it, if we look at the date next to his
8 signature, on June 7?

9 A. Yes. No, June -- yes.

10 Q. And directing your attention to the last two lines of
11 his answer, what I understand those words to be is
12 "congregate part is a privilege for security reasons
13 congregate recreation has been temporarily suspended."

14 Do you read it the same way I read it?

15 A. Yes.

16 Q. Now, that was early June of this year. Correct,
17 Mr. Blackmon?

18 A. Say it again. I didn't hear you.

19 Q. I say it was in early June that you wrote this informal
20 complaint resolution and Mr. REMic responded.

21 A. Yes.

22 Q. That is almost three months ago. Correct?

23 A. Yes.

24 Q. Is congregate recreation still prohibited for railways
25 years on Level 4-B and 5-A?

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1 A. Yes.

2 Q. And when you are required to do outdoor recreation
3 alone rather than with another prisoner, does that make it
4 more difficult for you to have access to outdoor recreation?

5 A. Yes. I said yes. Did you hear me?

6 MR. LYND: I did hear you and I have no further
7 questions. Thank you, Mr. Blackmon.

8 THE WITNESS: You're welcome.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. HOLLOWAY:

12 Q. Mr. Blackmon, I'm Eric Holloway. How are you doing?

13 A. I'm fine. Thank you.

14 Q. You have testified about outdoor rec as it exists today
15 and you don't like it. Is that correct?

16 A. No.

17 Q. So you don't like outdoor rec as it exists today at
18 OSP, correct?

19 A. No. I don't like it. I dislike it.

20 Q. You did like it, though, when you first arrived at OSP
21 because you were able to see through that metal window with
22 all the holes in it. Correct?

23 A. Yes.

24 MR. HOLLOWAY: I have no further questions. Thank
25 you.

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1 THE COURT: Is there any redirect.

2 MR. LYND: No, Your Honor.

3 THE COURT: Okay.

4 THE COURT: Thank you. Would the plaintiffs call
5 your next witness.

6
7 MR. BENZA: Yes, Your Honor, we call Dorian hall.
8 Witness, being first duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION OF witness

11 THE COURT: Please take a seat, and then tell us
12 your name and spell your last name.

13 THE WITNESS: My name is Dorian hall. HALL.

14 BY MR. BENZA:

15 Q. Miss hall, can you tell us what you do for a living?

16 A. I work at the Ohio Public Defenders Office. I
17 supervise the mitigation specialists and the criminal
18 investigators.

19 Q. And how long have you been the supervisor?

20 A. Let's see. I started supervising the criminal
21 investigators in '96, and I began supervising the mitigation
22 specialists in August of '94.

23 Q. Can you pull the microphone a little bit closer to you?

24 A. Is that better?

25 Q. And how long have you been at the Public Defender's

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1 Office?

2 A. Since August of 1988.

3 Q. And in that job, have you always been in the mitigation
4 department or investigation department?

5 A. Yes. I have always been doing mitigation work.

6 Q. And what is your educational background?

7 A. I have a Bachelor's degree in Miami University in
8 psychology and SOBLS Eology and a Master's degree in Ohio
9 State University in sociology.

10 Q. And are you an attorney?

11 A. No I am not.

12 Q. But in your job are you considered part of the defense
13 team?

14 A. Yes I am.

15 Q. And in your interactions with the client population, is
16 that interaction covered by the attorney/client privilege?

17 A. Yes, it is.

18 Q. Exactly what does your job entail, both as the PRFR and
19 then also as the investigator?

20 A. As a supervisor, I assign cases and I supervise the
21 other mitigators and investigators in my office who are
22 working on either capital or non capital cases, trial and
23 appellate levels cases.

24 As a mitigation specialist I still continue to do case
25 work since becoming a supervisor, we do a lot of different

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1 things there. As a mitigator, my job is to meet with the
2 attorneys, obviously; read material about the case, the
3 discovery packets.

4 I speak to the client frequently, on developing
5 information on a biopsych on social family history and I
6 would talk to the family members of our clients, friends,
7 neighbors, teachers, coaches, parole officers, probation
8 officers, juvenile detention officers.

9 Basically, anybody I can find who knows anything about
10 my client and about their family's life.

11 Q. And when you are looking this job, does it matter to
12 you when you are doing your investigation whether this is a
13 trial level case or is this whether it is a post conviction
14 or post death sentence case, does that make any impact on
15 what you do?

16 A. No. I typically do the same work at trial level as
17 well as at post conviction or Federal cases.

18 If the case may have been done previously in our
19 office, we may not do as -- may not need to go back and do
20 as thorough an investigation at appellate level but if the
21 case has never been in our office before I'm basically
22 starting from scratch, like I would at a trial.

23 Q. And what sort of information are you looking for when
24 you are out collecting -- in particular when you are talking
25 with a client? What are you trying to get?

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1 A. Certainly I am looking for information so I can collect
2 records, so I need information on the schools they attended,
3 the grades they got, what difficulties they may have had in
4 school.

5 What extra curricular activities they were involved in.
6 I also need to have information on medical. I need to know
7 if there is any injuries, particularly brain injuries, head
8 trauma, any major disease they had, any illnesses, high
9 fevers, any post natal, prenatal and any kind of
10 complications at birth or during the parents' pregnancy, the
11 mother's pregnancy.

12 Any current illnesses, those kinds of things. Legal, I
13 want to know about all their offenses that they have been
14 charged with and information in detail about those offenses.

15 I want to know what happened, who was involved, you
16 know, who was with them, what happened in the case, those
17 kinds of information.

18 Education -- military --

19 Q. Are you looking for information about a sexual history
20 or abuse history of the client?

21 A. Certainly, I want to look at the information, family
22 dynamics and interpersonal relationships that my client may
23 have had with anybody in miss life so if there is any kind
24 of physical abuse, neglect, sexual abuse, you know, divorce,
25 intermarital problems, those are the kind of information I

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1 am looking for as well.

2 Q. At the Public Defender's office, what percentage of
3 your client base are on Death Row, or death eligible
4 individuals, either trial or at post sentence?

5 A. Mitigation specialists only work on death cases. Our
6 criminal investigators will do some work for our appellate
7 division, or our juvenile division, who handle post
8 conviction non capital cases.

9 Q. So this is a special class of job description created
10 just for Death Row?

11 A. Yes, it is.

12 Q. In terms of collecting this information, how important
13 is it to you in order to adequately do your job to have a
14 confidential visit with your client, extremely important?

15 A. Extremely important, I'm talking to a person, I'm just
16 a new person coming in, they don't know me from Adam so I
17 need to develop some trust so I need to be able to speak to
18 them on a regular basis and they need to be able to trust me
19 to trust the situation that anything they tell me will not
20 go any further than the defense team.

21 I also talk about pretty personal information, I need
22 the talk about their sexual history, there being abused,
23 personal medical history that people don't normally talk
24 about on a day to day basis with just anybody and in order
25 for people to feel comfortable to give me that information,

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1 we need to be in a quiet comfortable space so that they are
2 comfortable giving me that information.

3 Q. When you collect information from a client are you
4 relying only on the words he is saying to you?

5 A. No. Part of any kind of communication is looking at
6 the non verbal cues that I receive from the client or
7 anybody else I'm interviewing.

8 Most of the information I discuss or much of it is
9 really personal and people are very hesitant to disclose
10 that information so in looking at people's non verbal cues I
11 might be able to detect some hesitation or some discomfort
12 with the topic, some, you know, if they are avoiding the
13 issue or if they turn their head away, maybe they are lying
14 or not giving me the full information and those cues give me
15 a way of probing further or maybe even stepping back if it
16 is upsetting for a client maybe I need to take a step back
17 and kind of preface my discussion and explain why it is
18 important and then go back and go forward for the
19 discussion.

20 Q. Throughout your interview then there is a give and take
21 as to where you are going and how you are trying to gather
22 information based on how the interaction with the client is
23 going?

24 A. Definitely. YF a script. I just have general areas I
25 talk from and based on how my client or anyone I'm

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1 interviewing responds verbally or non verbally, it is how I
2 go forward in that interview.

3 Q. In a typical visit with a client, how long might that
4 visit last? In an investigative visit, not just an initial
5 meeting, but in an investigative meeting how long might that
6 last?

7 A. At least several hours, two to three hours. We're
8 talking details. We gather a lieutenant of details ^ and
9 obtain a lot of information so it takes a while to gather
10 that information. I have to trace SWUN life from where they
11 were born up to the current time and particularly if you
12 have a client in their 50 or 60 or 70 it is a lot of years
13 to cover so it will take frequent visits and lengthy visits
14 as well.

15 And a lot of times you're not going to just jump right
16 in. The first question I ask is not going to be were you
17 sexually abused by your father. You need to develop a
18 relationship, part of that is you're going to have to do
19 some give and take, chit cat, casual conversation, and then
20 move towards the information gathering process.

21 Q. And again, typically, how many visits might you have to
22 make as a general matter to do your investigation?

23 A. Again, it varies on the client as to how helpful they
24 are, how capable they are.

25 But at least, you know, three, four, maybe more times

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1 do I see them and certainly if it is a lengthy appellate
2 process I will continue to see them throughout that process.

3 I'm still in contact with clients I had at post
4 conviction 20 years ago -- not 20, but 15 years ago.

5 That I am still working on their Federal cases.

6 Q. And that was my next point. Is that investigation that
7 you do ongoing throughout the life of the case or does it
8 end once you have done your first review?

9 A. It never ends. That's the joke around the office, the
10 cases keep coming back. I guess that is good for us, for
11 our clients, but it never ends. The cases always pop up
12 with something to do on them as long as they are on some
13 appeal and then at some point we get to the clemency and
14 execution and are still working on those cases.

15 Q. Have you ever visited clients at Southern Ohio
16 Correctional Facility?

17 A. Yes, I have.

18 Q. And can you just briefly describe the meeting
19 conditions that you would meet with the client in?

20 A. Sure. I believe we met, we met at two different areas.
21 One was on J block and there is a series of three meeting
22 rooms. They were cinder block. They were together.

23 You met across a table, basically. And spoke to your
24 client, there was no class, no partition, you were in the
25 same room with your client, able to speak to them.

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1 It VAEFRD on the year we were there. Sometimes they
2 were cuffed, sometimes they were not it really depended on
3 who was making the rules at that time.

4 So that was the first area, and then the other area we
5 ended up visiting was visitation areas where the open visits
6 were for the non Death Row population where they had family
7 contact visits in the big open room.

8 Behind that area were again individual visitation
9 booths where we met with our clients and it was in a room,
10 there was no partition, there was a table, and we were able
11 to interact face-to-face.

12 Q. As far as you know, were you being treated the same
13 when you came for your client visits the same as the
14 attorneys?

15 A. I would assume so, yes.

16 Q. So you were being treated by the institution as if you
17 were part of the defense team?

18 A. Yes. I would meet with attorneys, I was in the same
19 location, when I went in with the attorneys, on the case, as
20 I was when I went in by myself.

21 Q. And do you recall when they were at SOCF whether or not
22 the clients had phone access to you?

23 A. They did. I think it -- I'm not sure how frequently
24 they had access but they did have some access. It wasn't as
25 frequently as they do now at man's feel.

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1 Q. And do you recall whether or not the phone calls that
2 they were making were on a secured or unsecured line?

3 A. I don't recall. I don't think so, but I don't recall.

4 Q. Did you ever have the ability or did you ever to do
5 call down to SOCF and arrange a phone call in to a client?

6 A. I never did that personally, no.

7 Q. I want to talk a little bit now after they moved up to
8 Mansfield.

9 A. Um-hmm.

10 Q. Can you describe the visiting rooms that you meet with
11 the clients?

12 A. Sure. We go back, there is like six pods, so we go
13 back on the pod area and there is a room that has a table
14 and it is not in the cell area but it is out where the
15 guards are at, and the room is off to the side, usually as
16 you are heading towards the recreation rec areas, it is
17 one of the rooms there, it is a solid room, there is a table
18 and a table, and we sit on either side of the table.

19 Q. And again as far as you know that's the same conditions
20 that the attorneys meet with clients in?

21 A. Yes. I have been in the same rooms with attorneys when
22 I have been to visit, question.

23 Q. And you said there is a little difference in the phone
24 contact that you had with clients since they got to
25 Mansfield, can you describe what the phone contact is?

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1 A. Yes, THECH much ^ they have much more access to phones
2 now and I think when they are out on the rec or whatever on
3 the range they are able to make a phone call to the office
4 and will call their attorneys or sometimes call us or if
5 they can't reach the attorney, they will settle for us
6 sometimes and we can get information, relate that
7 information to the attorney, so yes, there is much more
8 phone contact with the client.

9 Q. Again, do you know whether that's a secured or
10 unsecured line?

11 A. When they generally call me when they are on rec I
12 don't think it is a secured line. I think they have the
13 ability, I know our office, I don't think I personally did
14 it but our office has called in if we need to discuss some
15 legal issues with them and asked that they be placed or
16 brought out at a certain time and put on a secure line and
17 had a conversation with them there. I have been part of
18 those discussions. I have not personally done that
19 procedure.

20 Q. Can you tell us a little bit about the flexibility of
21 visits that you have when you go to Mansfield Death Row in
22 terms of seeing additional clients or interacting briefly
23 with people whom you just need something critically done
24 that day?

25 A. Certainly. Frequently we are going to see a couple

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1 different clients at a time or if they know -- everyone
 2 knows you are going to Mansfield and if someone needs a
 3 petition signed or an affidavit of independenten see find at
 4 some point they are asking if you are going up there if you
 5 can have that done. When we get up there we talk to Barb,
 6 who is usually very helpful, and she will call the pod that
 7 either we're going to go to, even if it is a different pod
 8 than the one we are having a visit on they will make
 9 arrangements so I could go in there and have the client
 10 brought out, have the client brought out and sign it so I
 11 can cannot rise it. The investigators are notaries so I am
 12 able to do that. And I can before it it down, if they need
 13 the document quickly I can do it in a day's turn around
 14 there is really no problem I think the issue is having us
 15 listed as a visitor that day and getting into the advise
 16 incarceration are ^ visitation outer front. I can go back,
 17 they add on people, particularly if they say this kind or
 18 this inmat is having a problem or wants information passed
 19 on to their attorney sometimes I have gone in and spoken to
 20 them real quickly, brought the information back.
 21 Q. I know it might come as a shock to people but sometimes
 22 lawyers wait until the day something is due like a habeas
 23 petition, have you ever had the client sign it that day in
 24 order to meet the statute of limitations EFSHLTH?
 25 Q. How many times have you gone to Mansfield, would you

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1 statement?
 2 A. I can't remember exactly. My guess is probably around
 3 50. I'm not sure. I really have not kept track of that.
 4 Q. And during those 50 or so visits that you have been
 5 there, have you gotten a feel for the amount of visit
 6 traffic there is at Mansfield coming back into Death Row?
 7 A. Yes, there is a lot of people who are visiting on legal
 8 visits. Within our office, we have a secretary who is the
 9 one who makes those arrangements so she keeps track of who
 10 is going and so we try and adjust our schedules, you know,
 11 so that we all are not going in the same pod but there are
 12 six, so hopefully you have a client, you know, several
 13 people who have clients in different pods, so you can all go
 14 in an visit your client.
 15 I have had to wait in Barb's office for an attorney to
 16 come out so that I can go back in and particularly if you
 17 are seeing several clients at once, you are kind of
 18 maneuvering things around.
 19 You may have to wait until one is done and the attorney
 20 moves to another pod, so yes, it is pretty busy.
 21 Q. Have you ever noticed at a time that every pod has
 22 somebody in it visiting?
 23 A. Yes. I have been closed out of visits, yes.
 24 Q. In general, now, it sounds like the visit conditions at
 25 SOCF and Mansfield were relatively the same.

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1 How did that visiting condition facilitate or hinder
2 your ability to do your job?
3 A. Well, certainly it helped. We're in a room, together.
4 It is a quiet space. There is no one else around a that is
5 going to be able to hear any confidential information or
6 personal information that is being spoken about, and there
7 is not a glass partition or something else that I have to
8 yell through or talk through so you are face-to-face and
9 contact, I am able to see the non verbal communication, any
10 movements, and, you know, the joke in our section that you
11 have not had a successful interview unless you made someone
12 cry, so I am able to see if the chin can KWIF earing or
13 there is some moisture in the eyes to know if that is going
14 to become a difficult topic for the person, whether I need
15 to back off or whether it is something that I really do need
16 to pursue at that time so that has been helpful and
17 certainly the staff has been very helpful and accommodating
18 to us as well.
19 Q. Have you ever visited clients at the Ohio State
20 Penetentiary?
21 A. Yes, I have.
22 Q. And how many times have you been to OSP?
23 A. I have been there two, possibly three.
24 Q. Can you describe the physical place where you meet with
25 the client?

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1 A. Certainly. The first time I went, first couple times I
2 was -- I guess they have a main area, open area, where I
3 guess the honor inmates visit and off to the side there is a
4 long hallway and a series of visiting pods or, I don't know
5 what you want to call them, which is where family and other
6 people visit and off to the other side, I guess it is three,
7 four feet across the hallway is the attorney booth.
8 That is where -- and they call it the attorney booth
9 because I think it has a slot, a thin slot that you can
10 shove paperwork through and it is slight SLEE across the
11 hall. I had one visit in the attorney booth, and other
12 visits, at least one visit in the general area along the
13 side. There are glass partitions between you and the
14 client, they are right connected to each other, next to each
15 other. All the series of visiting areas in the general
16 population area.
17 Q. I want to talk first about visiting in the attorney
18 booth. How big is the area that you are sitting in?
19 A. At least the booth I was in was slightly longer than
20 this table, so five or six feet in length I guess.
21 There is about two or three in width on my side, or the
22 attorney's side, and PROEL an equal amount of space on the
23 client's side.
24 Q. And is that space that you are sitting in conducive to
25 doing your job?

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1 A. No. The side I was on did not have a table. I take a
2 lot of notes when I interview because my memory is terrible
3 and I'm not going to bring a tape recorder in there so I
4 need a table or something to write on. Otherwise I have to
5 hold it on my lap, which is awkward, because I have to --
6 the glass partition and the little slot, it was difficult to
7 hear my client so I had to lean physically almost up against
8 the glass and the little slot to try to hear my client and
9 try to speak, so leaning and writing down are pretty much
10 impossible.

11 Q. And since you were leaning down and trying to write and
12 listen to the client were you able to pick up on any of the
13 non verbal queues that were being given ^ ?

14 A. Not at all. I was basically so focused on trying to
15 hear what was being said and make sure that my conversation
16 was understood that I didn't have any time to sit back or
17 look back and see anything that was going on facially or any
18 physical movements.

19 Q. And why, again, why would that be critical to what you
20 are doing?

21 A. Again it helps me figure out what is going on when I'm
22 talking with the person, whether it is a topic that is is
23 upsetting, whether it is a topic, maybe something I need to
24 pursue further. Whether they may be not telling me the
25 truth regarding that, or not giving the complete story.

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1 Q. Could you engage your client in a normal conversation
2 in terms of normal tones or how did you have to speak?
3 A. I had to speak louder because I was -- they couldn't
4 hear and I couldn't hear them, so they had to talk louder
5 and we had to get up really close.

6 Also, there was another visitor in the other family
7 area, and they were really loud, and I couldn't hear my
8 client because of the noise from that other individual.

9 Also, there was more than one person in the attorney
10 booth with me. They were totally unable to hear anything
11 that I said with the client. I had to keep relating
12 whatever the client said back to the other person and that
13 person made a comment, I would have to relay that back to
14 the client and it was just really cumbersome, trying to
15 communicate at all.

16 Q. And is that normal, for you to have other people -- I
17 assume this other person was a member of the defense team?

18 A. Yes. The attorney.

19 Q. And is that a normal thing, to have more than one
20 person visiting with a client at once?

21 A. Yes. Certainly we'll go in with the attorney certainly
22 for an initial visit and subsequent visits we'll go in
23 together. Sometimes I have someone on training, another
24 might gaiter, investigator will be in with me, sometimes the
25 criminal investigator and mitigator both go in at the same

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1 time to see the client so it is, you know, there is a fair
2 amount of time there is more than one person.

3 Q. During this meeting in which you could hear the other
4 person and their conversation down the hall did you have any
5 concerns about confidentiality in your discussion with your
6 client?

7 A. Yes. I mean, I had to speak loudly and they had to
8 speak loudly so obviously if I can hear someone else that is
9 speaking loudly I would assume they can hear my
10 conversations as well so I had concerns about that.

11 Q. Can you describe the conditions that your client was
12 sitting in when he was in with you in the attorney booth
13 area?

14 A. It was about an equal amount of space. I'm not sure if
15 it was a metal stool or chair or something that he was
16 sitting on. He did have a small ledge, I don't think it was
17 wide as a paper or long as a paper but he did have a ledge
18 he could write on and he was cuffed in front.

19 Q. At OSP, have you had any phone calls from the client
20 population housed there?

21 A. No, none.

22 Q. Do you have any phone access?

23 A. I have not had any contact, no.

24 Q. And does that lack of phone access hinder your
25 investigation?

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1 A. Well, yes. It would be helpful to have, if I could get
2 quick information from the client if I need that quick
3 information, if there is something going on with my client,
4 they are upset about something, they need me to contact a
5 family member, you know, because they have not heard from
6 their mother in months and they are worried about that, if
7 they have a legal question -- it is helpful for them to have
8 access to me, and for me to have access to them as well.

9 Q. You said that at least one visit you were not in the
10 attorney room.

11 A. Correct.

12 Q. Where were you meeting with the client?

13 A. I was in one of the visiting booths along the other
14 side of the wall and there is a series of, I don't know how
15 many total. They are butted up right against each other.
16 And again, there is a glass partition between the client and
17 the person who is meeting them and I think we are
18 intermingled, I know we are intermingled with family
19 members. I was kind November the middle, there was people
20 on both sides, it was extremely distracting. I could not --
21 it was really difficult to carry on any kind of
22 conversation.

23 Q. Could you pass materials through to your client if you
24 needed a waiver for records or something, did you get that
25 to the client as well?

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1 A. No. I could not pass it through. It was my first
 2 visit with my client and I needed to get releases signed so
 3 I could obtain some records so I had to have the guard take
 4 the materials, walk them around to the back, give them to
 5 the client, who then signed them, the guard had to give them
 6 a pen, too, and I was able to pick them up on the way out.

7 Q. Did OSP know that you were coming in for a visit, an
 8 attorney/client or defense team client meeting when you
 9 scheduled the visit?

10 A. Yes, we always called ahead and they always know who we
 11 are and actually I think it was the secretary that called
 12 and scheduled a visit so they always know it is from the
 13 Public Defender's office.

14 Q. And how concerned were you about confidences being be
 15 trayed in that visiting booth?

16 A. Very. I could not even address any of the issues at
 17 that point. I could hear the people, actually just a huge
 18 murmur of voices from all the different visits, so I could
 19 not -- and it got really loud and I was really afraid of
 20 going into any kind of information for fear that the family
 21 members of another inmate or even another inmate might hear
 22 because they are right next to each other. So it was just
 23 not conducive for any kind of confidential discussion.

24 Q. Do you ever -- I want to go back briefly to Mansfield.
 25 Do you ever arrange for psychological testing or other types

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1 of testing for your clients?

2 A. Yes, we do.

3 Q. And how do they conduct that type of testing at
 4 Mansfield?

5 A. We'll call ahead and insure that the inmate is going to
 6 be uncuffed because the testing requires some hand movement
 7 so we notify them ahead of time that the client may need to
 8 be uncuffed, and typically the experts meet back in the same
 9 area where we visit, and they need a table because, like the
 10 IQ test and neurological testing requires the manipulation
 11 of some things so they need a table for the inmate to work
 12 from and for them to have access, they need a quiet,
 13 confidential area.

14 There is a concern about validity of testing if they
 15 don't have an area for testing that is conducive to that. I
 16 know there is some, in psychology there are some rules as to
 17 what kind of area they need to have tests. You can't do it
 18 sitting over there in a courtroom or anything like that.
 19 They need to have access for manipulation and some of the
 20 testing, it is part of the observation of the person that is
 21 giving the test that is important as well. They will make
 22 notes on how long, how the person struggled to answer a
 23 question. Some of the testing is timed, so you need -- and
 24 that, particularly an IQ test the timing is factored in and
 25 so you need to have that, a conducive atmosphere where

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1 people are going to be able to do the testing easily and in
2 a quiet area where you will not be disturbed.

3 Q. Have you ever arranged psych testing for a client at
4 OSP?

5 A. No, we have not. Basically, we thought about it and we
6 considered, we tried doing it, but there was facility there
7 or area we could do the testing.

8 The visitation area and the attorney booths are not
9 acceptable for psychological testing. It cannot be done in
10 those areas.

11 Q. So it is very possible that a client who is housed on
12 Death Row at OSP has a valid claims and says he cannot be
13 executed because he is meanly regarded because there is no
14 facility to test IQ?

15 MR. LANDIS: Your Honor, I object.

16 THE COURT: It's leading.

17 BY MR. BENZA:

18 Q. In terms of conducting IQ testing is the attorney
19 meeting room capable of accommodating an IQ test?

20 A. At OSP?

21 Q. At OSP.

22 A. No, it is not.

23 Q. And why is that?

24 A. Well, for the IQ, one I need a quiet area and also the
25 psychologist needs to have contact with the client, they

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1 have to set up for the performance part of the test, they
2 have to set up some of their, for the subtests and then the
3 client has to have hands available and has to manipulate
4 that information so there is no way you can do it with a
5 partitioned area as well as the noise would be too
6 distracting, you are going to have to have the client
7 concentrate. Otherwise the test is just not valid at all.
8 It will not give an accurate portrayal of the IQ.

9 Q. I want to talk in particular about a visit with your
10 client, James Were --

11 THE COURT: How much more do you have?

12 MR. BENZA: About two minutes.

13 THE COURT: Go ahead.

14 BY MR. BENZA:

15 Q. Did you ever have a visit at OSP with Mr. Were?

16 A. Yes, I did. My last visit there was with James.

17 Q. And how would you describe that in terms of the success
18 or failure of that meeting with Mr. Were, from your
19 perspective?

20 A. Not very successful. I was not able to -- we were not
21 able to communicate totally effectively. I missed some of
22 the information he was giving me and I believe he did as
23 well. He kept saying what did you say and I kept having to
24 ask him to repeat it as well so I don't think there is
25 communication and that's when the gentleman was really loud

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1 in the visitation area and there were only two people
2 visiting, two visits on that side and it was extremely loud,
3 just totally distracting.

4 Q. Did you get a sense of Mr. Were's satisfaction with the
5 interview and meeting that he had?

6 A. I got a sense of general frustration coming from him
7 about the situation and the conditions there.

8 Q. And do you know what Mr. Were did to himself several
9 days after your visit?

10 A. My understanding is that he attempted suicide.

11 MR. BENZA: I have nothing further, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. LANDIS:

14 Q. Hello.

15 A. Hi.

16 Q. When I took your deposition about three weeks ago, you
17 had mentioned the attorney visitation area at OSP just one
18 time, is that true?

19 A. Yes.

20 Q. And you said that you could pass documents that day,
21 that particular visitation area, correct?

22 A. Yes. We did pass documents, yes.

23 Q. Did you ever ask the staff to tell the loud person down
24 the hall to quiet down so you could talk?

25 A. No, I did not.

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1 Q. Have you ever asked for the mental health counseling
2 area to be used at OSP for any kind of testing that you
3 refer to?

4 A. No, I was not aware there was any.

5 Q. Do you have any evidence that people were listening in
6 to your conversations at any time at OSP?

7 A. I had no evidence. I didn't see anyone lurking around
8 trying to hear what we were trying to say, no.

9 Q. You have no evidence?

10 A. No.

11 MR. LANDIS: That's all, Your Honor.

12 THE COURT: Thank you. We'll recess. We'll come
13 back about 12:40. So we'll stand adjourned until then.

14 (Recess from ^ to ^.)

15 SEPTEMBER 01, 2005, 12:50 P.M.

16 THE COURT: Call your next witness.

17 MR. LYND: Your Honor, the plaintiffs anticipate
18 calling two brief rebuttal witnesses at the close of
19 defendants Defendant's case tomorrow afternoon.

20 With that exception, we rest.

21 THE COURT: You can't reserve rebuttal witness.
22 You can call rebuttal witnesses if they bring something up
23 that the rebuttal witnesses respond to.

24 MR. LYND: I'm just alerting the Court to that
25 possibility.

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1 THE COURT: Do you move the admission of any
2 exhibits.

3 MR. LANDIS: Yes, Your Honor. We have been
4 discussing them, and we're prepared to tell the Court which
5 would be admitted without objection and which ones would
6 require an objection.

7 THE COURT: What exhibits do you move the
8 admission of, Mr. Lynd.

9 MR. LYND: We would, going in order, Your Honor,
10 to begin with, move the admission of Plaintiff's Exhibits 1
11 through 12. Do you want me to continue all the way through.

12 THE COURT: Yes.

13 MR. LYND: We also move 16 through 20, 22 through
14 28-B, and 29.

15 THE COURT: Does the defendant object to any of
16 those.

17 MR. LANDIS: Yes, Your Honor. We have objections
18 to only the following of those exhibits moved by the
19 plaintiff.

20 We object to Number 20. It was a letter from an
21 attorney to an inmate.

22 THE COURT: Are there any others?

23 MR. LANDIS: Yes, Your Honor.

24 THE COURT: Just give me the number. We'll come
25 back to it.

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1 MR. LANDIS: We object to 20 and to 28-A, B and C.

2 THE COURT: Did you offer 28-C?

3 MR. LYND: No, but we do offer 28-A and B as to
4 which defendant said that they speak of themselves and we
5 think they should be allowed to speak ^ for themselves.

6 THE COURT: So without objection, the Court will
7 receive Exhibits 1, 2, 3, 4-A, 4-B, 4 C, 4 D, 4 E, 4 F, 5,
8 6, 7, 8 S, 8 B, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24,
9 25, 26-A, 26 B, 26 C, 26 D, 26 E, 26 F, and 27 ^ back there
10 27 D is 26 D.

11 I'll sustain the objection as to Plaintiff's
12 Exhibit 20, finding it to be hearsay. As to 28 A and B,
13 I'll sustain the objections to both of those, again finding
14 them to say hearsay.

15 And I believe I also indicated that also 29 had
16 been offered and it will be received without objection.

17 So with that, does the plaintiff rest.

18 MR. LYND: Yes, Your Honor.

19 THE COURT: Okay. Would you call your first
20 witness.

21 MR. LANDIS: Yes, Your Honor, I call Terry
22 Collins.

23 DIRECT EXAMINATION

24 BY MR. LANDIS:

25 Q.

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1 THE COURT: Mr. Collins, you remain under oath
2 from yesterday.

3 THE WITNESS: Yes, Your Honor.

4 BY MR. LANDIS:

5 Q. Mr. Collins, when did you begin planning the move of
6 Death Row from Mansfield to the Ohio State Penetentiary?

7 A. The actual talk of the transfer and the possibility of
8 the transfer was probably more than a year ago. The actual
9 planning probably started sometime in November of last year.

10 Q. You now describe for the Court previously the
11 monetary aspects that motivated the beginning of the
12 conversation.

13 Have there been -- have you discovered any side
14 benefits concerning this move besides money?

15 A. The primary driving force was the monetary help to the
16 budget by reduction of the positions but as we looked at it
17 and as warden Houk and his staff were asked how they would
18 deal with the move and what could they provide there and how
19 would they provide it I think I found that the ability to
20 move it there has created opportunities and things on Death
21 Row that we couldn't do at Mansfield.

22 Q. Like what?

23 A. The opportunity for more out of cell time for a greater
24 number of individuals, the meals, the way they are going to
25 serve the meals were the main things that I seen.

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1 Q. How does the security and the architecture of the
2 building affect the ability to give additional out of cell
3 time and programming to Death Row inmates if they are moved
4 to the Ohio State penitentiary?

5 A. Of course the Ohio State Penitentiary is a newer
6 building, was built and designed to have better lines of
7 sight of supervision, it was built to have better
8 supervision and control, it was built with greater
9 technology, cameras, use of cameras, control centers, the
10 way the building was designed.

11 So as a result of it being a new building and
12 architecturally being designed as a high security prison,
13 therefore the operation inside the prison allowed you to do
14 more things in a more secure manner.

15 Q. Previously, you had not cut staff at the Ohio State
16 Penitentiary even when you closed a block, you had
17 testified.

18 Is it typical to take staff out when you close the
19 block at an institution?

20 A. Yes, it is.

21 Q. And has that been done in other institutions in Ohio?

22 A. It has, and several other places, yes.

23 Q. Describe for the Court why you didn't hear, you began
24 to yesterday?

25 A. As the cell block was closed at the Ohio State

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1 Penetentiary, of course we have been involved with this case
 2 now for four, maybe close to five years, the turmoil of
 3 people coming and going, what was going to happen in
 4 reference to was there going to be less people, was there
 5 going to be more people, were 4-As coming in, how many 5s
 6 would be coming in, what was the dynamics of that
 7 population, how many under mental health evaluation may
 8 leave, how many may come back, not knowing what the
 9 population may or may not be tuberculosis given time,
 10 waiting to see how the tied was turning in reference to how
 11 the institution would be used, was it going to be a mission
 12 change at that particular facility, I had made me believe it
 13 was best to leave the staff there because I was so uncertain
 14 as to how the building was going to be used and what may be
 15 in the building and if I take the staff today and two weeks
 16 from now have to put them back, it can be just causing of
 17 turmoil for me and the funding changes and things that we
 18 have to do in that aspect.

19 Q. What has been the cause of this unTERT tea?

20 A. The fact that we continue, as I said, for the last
 21 four, maybe close to five years to be involved with this
 22 particular action and determining what was going to be in
 23 the facility, what was not going to be in the facility and
 24 what type of mission did that facility actually have.

25 Q. Do you see the Ohio State Penetentiary as a

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1 multi-mission facility?

2 A. Well, I think it has to become a multi-mission
 3 facility. I think that's, you know, with having Death Row
 4 there it creates another mission, so now you have a high
 5 security mission with a level 5s, you have a maximum
 6 security operation with the level 4s and then you have the SU
 7 SINTH and distinct population of Death Row, which makes it a
 8 multi-mission operation.

9 Q. What effect does that have on the amount of staff that
 10 is required to stay at the Ohio State Penetentiary?

11 A. Well, of course moving the Death Row inmates into the
 12 Ohio State Penetentiary, of course it is going to open that
 13 cell block back up.

14 One of the reasons, as we looked at this, I know I
 15 testified to it in deposition, the Ohio State Penetentiary
 16 when it was first opened was fully staffed and all blocks
 17 were up and operational and running.

18 The only physical change to that structure that would
 19 require potentially additional staff was in the area of the
 20 recreation areas that were built in the past couple years,
 21 so as we were making the calculations in reference to
 22 staffing, that's why we added staff, that they would need
 23 some additional staff for the recreation areas, but the fact
 24 that it had been fully staffed, the fact we never took the
 25 staff away and the fact that those blocks were at one time

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1 up and running was a decision that we looked at as we were
2 contemplating this move.

3 Q. You had been asked about a couple of alternatives to
4 moving Death Row to the Ohio State Penetentiary.

5 Like Toledo. Why wouldn't you move it to a place like
6 Toledo?

7 A. Well as I look at Toledo, the structure of that
8 building would require some major renovations in reference
9 to the recreation, probably building a structure similar to
10 what we had at Southern Ohio Correctional Facility or
11 building a similar structure to what we have at the Ohio
12 State Penetentiary.

13 I didn't get any cost estimates on that, but the cost
14 estimates between Lucasville and the ones we put in at the
15 Ohio State Penetentiary was probably going to run somewhere
16 around six million dollars to do those same things today,
17 plus Toledo never had blocks that were open there, we never
18 staffed those blocks, they were never given staff to operate
19 those blocks. We would have to give them staff to do that.

20 So putting the staff there, making the recreational
21 changes, there was probably going to have to be other staff
22 added, I didn't do a complete analysis of what that staff
23 would be because I would have to ask medical an mental
24 health experts to review that but I knew that it would have
25 to be other staff added to that particular prison based on

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1 the numbers that they currently had, and the fact that the
2 medical and mental health operations there are private
3 contracted, they are people who do those are private
4 contractors, we would have to ask them to be involved with
5 that.

6 Even though there would have been a reduction in
7 Mansfield staff, and could have been some reduction in the
8 Ohio State penetentiary staff taking that with the a
9 additional structure changes and additional staff you would
10 have to have I concluded it would cost us seven million
11 dollars if we went to Toledo.

12 Q. In contrast, at the Ohio State Penetentiary, what kind
13 of additional capital improvements would be necessary?

14 A. Are you speaking of capital improvements that would be
15 necessary at Toledo?

16 Q. At Ohio State Penetentiary. If you get the chance to
17 try out Death Row there.

18 A. I don't believe there is going to have to be any, what
19 we would GIEN as capital expenditures for that. There is
20 going to have to be some additional outlets put out in the
21 cell block open areas, some purchase of some equipment, but
22 it would not be considered to be major capital expenditures.

23 Q. How does the mission of Death Row fit with the use of a
24 building that was originally designed for level 5s?

25 A. I don't think the architecture of the building

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1 determines the operation inside the building. The fact that
 2 you can place Death Row there and give them opportunities
 3 that they -- that currently don't exist for the greater
 4 majority of numbers of inmates on Death Row, the type of
 5 building we have would allow us to do that, so I think it
 6 becomes an operational procedure rather than strictly
 7 architectural procedure.

8 Q. When had you hoped to make the move of Death Row to the
 9 Ohio State Penetentiary?

10 A. The original plan was to have everything completed so
 11 we could start the cost savings on staff by July 1.

12 Q. What is the effect been of the delay?

13 A. Well, as we continue with the delay, the further we go
 14 into the fiscal year, which started on July 1, means that
 15 staff that -- it has two effect one, we're paying staff that
 16 we may not necessarily need to pay, which in essence creates
 17 money to the bottom line of the budget that eventually I'm
 18 going to have to make up somewhere else, cost the
 19 department, in some other prison, some other piece, part of
 20 the operation so we don't get a full year's BEB fit ^
 21 benefit of the savings.

22 It also hurt us from the standpoint of we are creating
 23 vacancies in other prisons. Our desire has not been and
 24 will not be unless absolutely positively necessary to lay
 25 off staff. As I testified TOERL year, we went throw two

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1 major prison clothings in the State in the last two years
 2 and laid off Steve will ^ several hundred staff as a result
 3 of that it is a complicated complex decision and certainly
 4 disrupts not only the operation, but personal lives of
 5 staff, so we were hoping not to lay anyone off.

6 As we are creating vacancies in other agencies, parts
 7 of the agency to hopefully allow officers that may want to
 8 transfer from Mansfield so we can reduce our numbers there
 9 that need to be reduced, they are starting to create some
 10 problems for us across the department in reference to
 11 creating additional vacancies.

12 Furthermore, I have ordered the regional directors as a
 13 result of not being able to reduce positions and as a result
 14 of not starting our savings plan as quickly as we had hoped
 15 in July to tell all the prisons to create further vacancies
 16 so we can eventually get the numbers down to what we need to
 17 be so instead of asking somebody to not fill five positions,
 18 now E we are asking them not to fill tense positions, which
 19 can create issues.

20 It creates issues in a couple of area one is security,
 21 because a majority of our people are correction officers.
 22 Of greater concern I do have to keep security positions
 23 filled, I have to have staff there to fill the security
 24 positions so as a result insure STOOKSs will have to start
 25 making determinations do they want to fill the case manager

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1 position, do they want to fill the unit manager position,
 2 fill the unit position, recreation business, account clerk,
 3 business office, come sorry, all the ancillary and support
 4 service areas suddenly also become subject to reduction in
 5 service services as you make these decisions.

6 So it is creating a hardship in reference to the
 7 budget, creating a hardship in the number of vacancies we
 8 have to create to meet the budget.

9 Q. Tell me what that did to the system of transfers within
 10 the department.

11 A. We held for a number of months probably close to a year
 12 the inability for officers to do what we refer to as lateral
 13 transfers.

14 Typically, we will, about every quarter, ask and allow
 15 for what we call posting of lateral transfers so if you are
 16 a correctional officer at LEB on non correctional
 17 institution and you want to transfer to the Toledo
 18 correctional institution you can place your name on the list
 19 to be transferred to that particular prison and they are
 20 selected by seniority as to how many positions they can
 21 fill.

22 We didn't do that for a long time, we put a freeze on
 23 that, hoping to create vacancies that event CLOE these
 24 Mansfield staff could go into. There was a number of
 25 grievances filed about that by the union, contract people,

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1 our AFS me contract.

2 ECHKT CLOE I did, after we were postponed, we owner
 3 CLOE ^ originally thought the move of the Death Row inmates
 4 would be June and we WOT we would be able to do that, have
 5 in in place by July 1, we thought we would be in Court by
 6 the end of June, that got moved to July, August, up to now
 7 so I did post a lateral transfer for staff back in July and
 8 I didn't allow anybody to transfer into Mansfield, I only
 9 allowed for transfers out of Mansfield. Some staff did that
 10 and ^ take that and there will be some movement across the
 11 State, basically because when I did that it allowed for some
 12 movement and allowed to help some of those staff out who
 13 were making long distance travel and renting apartments and
 14 all that from one end of the State to another but also
 15 knowing that I have cut back and hired freezing, put a
 16 freeze on hiring of certain positions, that we'll be able to
 17 make some of those up and create some vacancies in the
 18 meantime so I did in July allow for transfers, and some of
 19 those will occur probably here shortly.

20 Q. I would like to talk about the difference police
 21 station between the Mansfield Death Row and the plans at the
 22 Ohio State Penetentiary.

23 Would you please turn to Exhibit B, which I have
 24 available for projection if the Court likes.

25 Do you have that in front of you and Your Honor do you

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1 have a set of those exhibits as we?

2 THE COURT: I do. But if you are going to use
3 that, do you have it turned on?

4 MR. LANDIS: It appears to be on. It is powered
5 up.

6 MR. LANDIS: Your Honor if you have a copy. It I
7 not essential it be projected. The witness has one and I
8 have provided one to your staff. And one is provided to the
9 Plaintiff's staff as well.

10 THE COURT: Why don't you go on. I'll get
11 somebody to get et turned on.

12 MR. LANDIS: Very good Your Honor. Do you have a
13 set of the defendants' exhibits?

14 THE COURT: I do.

15 MR. LANDIS: You do? Okay.

16 BY MR. LANDIS:

17 Q. Exhibit B says Death Row privileges and it is a
18 comparison. How was that chart developed, Mr. Collins?

19 A. When we made the decision, and the director said to go
20 ahead and start planning for the move of Death Row to the
21 OSP, we called together warden Houk, warden Brad SHA, I
22 believe the regional directors were involved in that and
23 started talking about what type of things would we need to
24 do to make the transfer from Mansfield to OSP and one of the
25 things that they were told to do was look at the privileges

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1 that currently exist at Mansfield and what would be
2 permissible and proposed for the move to the Ohio State
3 Penetentiary.

4 This particular exhibit is a draft, I assume it is the
5 last draft, there were several drafts that went back and
6 forth for that comparison.

7 Q. In what way were the -- you mentioned warden Bradshaw.
8 From where is warden Bradshaw?

9 A. Warden Bradshaw is the warden at Mansfield correctional
10 institution.

11 Q. And warden Houk, where is he from?

12 A. He is the warden at the Ohio State Penetentiary.

13 Q. In what way were they involved?

14 A. Both of them were asked, warden Bradshaw's expertise
15 would certainly be what was currently existing at Mansfield.
16 Warden Houk's expertise would be to tell us what could be
17 done at the Ohio State Penetentiary. From my level as the
18 assistant director and from the regional director's level
19 and from central office, we proposed how things should occur
20 in making decisions on how things should occur, and asked
21 for the wardens to operationally tell us, one, is it
22 feasible and two, can it be done, and direct, give guy dance
23 on getting that done and warden Houk has done an excellent
24 job in making the proposals and in showing us how things
25 would be done and guaranteeing us the operational aspects

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1 would be done as proposed.

2 Q. Mr. Collins, if you flip through Exhibit B I I notice
3 there is a category for something called out of cell time.
4 And there is no mention of how the inmates will take meals,
5 as to whether they are congregate or not.

6 Why isn't that in this comparison?

7 A. I don't figure that out of cell time and meals to be
8 privileges. I figure it is good operational practice to do
9 those in the most secure but least restrictive environment
10 that you can, so as they were talking about out of cell time
11 and eating privileges, or eating out of cell and how that
12 was going to be done, congregate or in cell I didn't
13 consider that to be privileges so that is part of this
14 particular list. I consider it to be good correctional
15 management as to how you deal with those issues.

16 Q. Have you ever heard inmates say they could exchange
17 property with other inmates at Mansfield, but had concerns
18 about doing that at the Ohio State Penetentiary.

19 What concerns do you have as a correctional
20 practitioner about the exchange of property between inmates?

21 A. Well, I have great concern about how that PROET is
22 exchanged. It would certainly be a means to move contraband
23 rather easily if you allow property to be exchanged.
24 Without that property being shaken down by some officer. So
25 that would be one concern.

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1 A secondary concern that I would have, we control the
2 amount of property that inmates possess and maintain. If
3 that property is lost or stolen, they could file a small
4 claims action for that, and we could very well settle those
5 and do, the wardens have authority to settle those type of
6 claims for up to I believe it is \$300 before it actually
7 gets in small claims they do it through a grievance process
8 so they don't have to pay the filing fees to the Court of
9 Claims.

10 So there would be a concern on my behalf that property
11 could be given to one person, the person who gave the
12 property say it was lost, and particularly if it was a Reece
13 ENT packup or that and if it was said that we lost or
14 destroyed the property we could be subject to pay for it but
15 I also think you have to put it in the context of what type
16 of property you're talking about also.

17 If it's one guy wants to give another guy a cup of
18 coffee, some instant coffee to make a cup of coffee, I don't
19 see that as a may junior issue.

20 Typically, that is done out in the open area of the
21 cell block, it is not by movement from cell to cell. It is
22 typically done in the open.

23 I would not be happy if I found that they were massing
24 ^ passing magazines back and forth that were not searched
25 by correction officer, that's corrects an expert way to move

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1 contraband, because I have seen it happen if they are
 2 passing property by what they call fishing I have extreme
 3 concerns one in the institution is allowing that to occur,
 4 that is an excellent means to move items, I have seen it
 5 done. Where items were passed from one side of the cell
 6 block to another, in fact I saw it move from one cell block
 7 outside the windows to another cell block by means of
 8 fishing so I would have extreme concerns about that from the
 9 standpoint of security.

10 Q. Turning back to Exhibit B, what do you find significant
 11 about the comparison of privileges?

12 A. I believe in review of the privileges, I believe that
 13 the privileges at OSP are equal to and in many instances
 14 greater than Mansfield, for the greater whole of all the
 15 inmates on Death Row.

16 Q. What do you mean by the greater whole?

17 A. Well, there are 36 inMANTS as I believe the number is
 18 now in what we refer to as the extended privilege. As I
 19 have testified in both my depositions before this Court
 20 yesterday, I am sure that those individuals when they move
 21 to OSP, the same amount of privileges they have there may
 22 not be as great as what they would have at the Ohio State
 23 Penetentiary.

24 However, I also know that there is 160 other inmates on
 25 Death Row who will get greater privileges by coming to Ohio

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1 State Penetentiary, so when I say the aggregate good of the
 2 whole, I'm talking about more inmates are going to get
 3 greater privileges than what currently exist, and I'm not
 4 saying that those 36 out of roughly 190, 197, might not have
 5 as much as they had before, but on the other hand, as I said
 6 yesterday also, correctional reality says there may be some
 7 changes and weeks made and I would leave that up to warden
 8 Houk and his staff, who I have full confidence in, so make
 9 sure that what has been proposed and if there needs to be
 10 changes and add some things and we can do that within our
 11 security, then that would certainly be allow able.

12 Q. I would like you to turn to exhibit Y as in yankee.

13 Is this the form could be given to Death Row inmates
 14 concerning the prospective transfer?

15 A. Yes.

16 Q. Why are we using this form instead of the policy with
 17 which this Court is familiar and has been litigated
 18 previously in this case.

19 A. The existing policy, which was called 1111 ^ 11107 is
 20 now 53 CLS 05, 04, I'm not sure what the last number is,
 21 talks about placement at level 4, level #5SHGS if you go to
 22 the policy it says it doesn't fall to Death Row inmates. It
 23 doesn't fall in that level, they are in their own distinct
 24 classification of Death Row. This form is drawn to give to
 25 each of the inmates saying that they would be transferred to

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1 the Ohio State Penetentiary and allowed for them if they had
 2 some objection to that that they could write seeking to have
 3 conference with, hearing, conversation with the unit staff
 4 about that.

5 Of course it would depend on what that objection was.
 6 The idea and the intent behind the objection was that
 7 somebody may say to us, you know, I had problems with Joe,
 8 and I am concerned that when I get to the Ohio State
 9 Penetentiary, I might be in the same cell block, I may have
 10 to recreate, eat with that individual and I don't think it
 11 would be in the best interests of either of us to do that,
 12 if they were at Mansfield it would not probably not unless
 13 there was a cell move internally, which would probably be
 14 asked for, or there was some other security issue, to let us
 15 know there may be something of that nature because we're
 16 attempting to avoid problems, if there was an objection that
 17 merely I don't want to go, I don't think that would be
 18 something that would create a hearing, because there is
 19 really not an issue from that standpoint, as I can see.

20 Q. Why isn't there an issue?

21 A. Well, we have to move individuals across the department
 22 from various institutions. When we closed institutions we
 23 moved individuals to other institutions. We have to run as
 24 effective and efficient an operation as we can and
 25 considering the budgetary issues and making sure that we --

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1 that the best use of what we have and the best use of staff
 2 we have and the fact that I didn't see this transfer as
 3 individuals losing things, I thought individuals were
 4 gaining things, and them not ^ they were not going there as
 5 a level 4 or 5, they were being treated completely
 6 different.

7 Q. Is this the kind of form that someone got when they
 8 have left Lima, when Lima was closed?

9 A. I think the only thing that occurred when we closed the
 10 orient and Lima, both institutions were level 1 and Level 2,
 11 meaning we had inmates there that fell in both security
 12 classifications, and I think we picked out prisons that had
 13 open bed space, and we posted that and said if you have an
 14 interest in bog to pick way correctional institution or to
 15 London correctional institution, whatever security levels
 16 fell within the group of inmates there you can put your name
 17 on that but if they didn't put their name on that, then
 18 wherever we had beds, that's where they would have been
 19 transferred.

20 We would have given them a form advising them that they
 21 were being transferred to another prison. It would have
 22 been not been this type of form or this particular form I
 23 guess would be better said. This form was drawn up
 24 specifically for the move of Death Row inmates but there is
 25 notice saying that you are being transferred to another

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1 prison and that will happen in seven days, but we don't give
2 out the particular date that it is going to occur because of
3 security reasons and typically has the address of the prison
4 on there.

5 Q. I would like to turn for a moment concerning some of
6 the testimony that you have been asked about when Death Row
7 left Lucasville.

8 You were warden then, is that right?

9 A. That's correct.

10 Q. What is your recollection about any reputations made to
11 Death Row inmates when the move was made from Lucasville?

12 A. There is none that I'm aware of. I did not walk the
13 ranges of Death Row at that time and say things were going
14 to happen. I was in the midst of rebuilding the prison at
15 that particular time, and I remember walking Death Row, but
16 not specifically about the move.

17 I do remember that I was in the receiving discharge
18 area the morning they can leave. I was in there, I was
19 there to see the buss leave, and make sure when the people
20 were transferred, that it was done in a proper manner.

21 Q. What do you recall about that day?

22 A. Well, I had some staff get mad at me because it was in
23 February, and I got down there, they had already loaded the
24 bus about half full, we were using 44 passenger buss and
25 they had to put coats on the inmates and I made them get

1 everybody get back on the bus and put coats on and several
2 staff were aggravated with me.

3 One of the staff that was there, we brought staffing
4 from other institutions, his brother was on Death Row, and I
5 didn't let him ride the bus that was carrying the Death Row
6 transports. He wasn't too happy with me about that, but
7 EFBally came and said he thought it was a pretty good idea
8 that he didn't after I thought about it.

9 So I do recall that particular event.

10 Q. Why did Death Row move from Lucasville in the first
11 place?

12 A. Actually for a couple reasons. The thought process
13 about moving Death Row, because we were reconstructing the
14 entire penitentiary, they were going to have to be moved
15 somewhere so we could reconstruct K side of Lucasville.

16 I certainly wasn't involved with all the decisions,
17 because I wasn't central office at that time, I was the
18 warden at the prison, so my job was more operational rather
19 than the overview of aspects of why and where to go.

20 But the discussion basically boiled down to two
21 reasons. One, we were going to have to move somewhere, but
22 I think the overriding reason was it was felt that having
23 Death Row in the same institution where the executions on
24 curt and the fact that staff typically on Death Row in
25 prisons that have and house long term inmates, the same

1 staff typically working there, and even though staff are to
 2 keep a professional distance, it also become accustomed to
 3 seeing individuals and staff typically relate to inmates the
 4 way inmates relate to them. And Death Row, as I testified
 5 TOERL year, typically was very few problems, in fact when
 6 you walk through Death Row, most everything is yes, sir, no,
 7 sir, typically very quiet and clean and respectful, so staff
 8 typically respond to individuals the way they are responded
 9 to.

10 But there was a concern about, I guess what I could
 11 refer to as what we say in hostage negotiations the stock
 12 home syndrome, that it probably wasn't good for the staff to
 13 have the executions occur in the same prison where they
 14 supervised inmates for a number of years and it probably
 15 wasn't go for the inmates to have fellow inmates they had
 16 been with for a number of years to be executed in the same
 17 institution.

18 Q. I would like to point to the future and what your
 19 involvement will be with this move in the future.

20 Will you continue to be involved?

21 A. Well, most certainly. Most people probably think I'm
 22 too involved, but I will certainly monitor and watch warden
 23 Houk and his staff as to how they proceed. I will give
 24 advice, I will give reference. I will ask questions. I
 25 will go there and look. We'll send security administrators

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1 there to look, we'll send regional directors there to look,
 2 we'll send program administrators to do to work. We do
 3 audits of all our prisons on a yearly basis, they do
 4 internal management audit, ACA audit, ACA mock audit so they
 5 get some type of audit every year were you there will be a
 6 number of people that will watch that I have the fullest
 7 confidence in warden Houk and his staff that they will do
 8 the things, the right way, and do as proposed and make sure
 9 had a the mission that they have to serve will be done the
 10 best possible way.

11 Q. What kind of orientation do you have in mind for the
 12 staff at the Ohio State Penetentiary in order to receive
 13 Death Row there?

14 A. Well, I think it is important that the staff there talk
 15 with staff at Mansfield, some of them should go there and I
 16 think some already have gone there to look at the operation
 17 of Death Row.

18 I think there MEEDZ to be some orientation to the fact
 19 that, as I have testified to a couple times, that Death Row
 20 inmates typically don't cause problems, and because they
 21 have caused problems and because there are succinct
 22 classification of Death Row, that you may see some
 23 privileges that were beyond what you think would be given
 24 for individuals who have long term sentences.

25 So I think that's an orientation process that needs to

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1 be made as this group comes in, but as I also think that
 2 staff typically respond to how they are responded to by the
 3 inmate population, and knowing the Death Row population, I
 4 think it is going to be a period of time where there will be
 5 some anticipation, apprehension, but I think eventually,
 6 that smooths over when they say that this group will not be
 7 creating issues, will not be supervision problems, custody
 8 problems, assault, that type stuff.

9 I think that that apprehension goes down and becomes
 10 the normal working environment that you see inside a prison.

11 Q. What authority have you given to the warden of the Ohio
 12 State Penitentiary to adopt and make changes and accommodate
 13 the addition of Death Row inmates there?

14 A. I have given warden Houk the full opportunity and
 15 authority to do what he believes needs to be done to make
 16 recommendations to us if he wants to make changes and would
 17 fully support him in making those changes.

18 And making sure that things are done correctly.

19 And I have fullest confidence in warden Houk that he
 20 can do that.

21 Q. Do you have concerns about Death Row being at the Ohio
 22 State Penitentiary?

23 A. No.

24 Q. How come?

25 A. I think it's a secure prison. I think it is staffed

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1 well. I think the staff there will adjust well to dealing
 2 with the Death Row population. I think the warden and his
 3 staff will insure that we're doing the things that were
 4 proposed, doing the things they said they would do. We are
 5 going to monitor to make sure that happens, so I don't have
 6 any concerns about that move.

7 Q. What would be the harm to the department or the inmates
 8 if there was a ruling that you could not move Death Row?

9 A. Well, certainly I would have to look at, because the
 10 primary purpose here is reduction in budget, so the first
 11 thing I'm going to have to do is try to figure out where do
 12 I make up that particular move and how do I make up that
 13 number of positions and where do they come from.

14 And I, quite frankly, I don't know all the things that
 15 I would have to do because I have not really sat and thought
 16 about how I would deal with that particular problem. But it
 17 would certainly cause harm and distress in trying to
 18 maintain our budgetary issues.

19 Q. What do you believe would be the effect on the HIN mate
 20 of such a ruling?

21 A. I don't know that I can say. I mean, I suspect there
 22 is probably some inmates at Mansfield that are saying put me
 23 on a bus and let's go and there are probably others that are
 24 thinking I don't even want to see the bus.

25 So I don't know what effect that may have. I mean, I I

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1 believe it is going to be better there, but I don't know
 2 what is on people's minds individually as to whether or not
 3 they believe it would be good or bad.

4 MR. LANDIS: Thank you. I have no further
 5 questions Your Honor.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. LYND:

9 Q. Hello again?

10 A. Hello.

11 Q. Mr. Collins, did I understand you to say that it was
 12 MRS motion for ^ Plaintiff's motion for an injunction that
 13 prevented you from beginning the transfer from ManCI to OSP
 14 on June 15?

15 A. I don't think I specifically said that motion. We had
 16 made plans to move shortly after June 16. Then there was
 17 discussion and I was asked to hold off until the end of
 18 June. We agreed to do that. I think we were going to have
 19 a hearing sometime either at the end of June, mid July.
 20 Then that got moved to August and then got moved to today.

21 Q. Isn't it a fact, Mr. Collins, that the department
 22 committed itself to making a mental health assessment of
 23 each potential transferee both at the ManCI level and at
 24 Columbus before a single prisoner was transferred?

25 A. That would have been done, yes.

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1 Q. And that process has not yet been completed, has it?

2 A. Well, it hasn't been:ly completed. You are absolutely
 3 correct. However, the greater majority of the inmates have
 4 been, and I believe that probably at least 130 of the
 5 inmates have been completed by the numbers that I have seen
 6 recently.

7 Q. So that your idea was to begin moving some inmates
 8 whose mental health assessments had been completed while
 9 others had yet to be assessed?

10 A. Well, the move wouldn't be that we would move any of
 11 the buses and put everybody on buses and one day have the
 12 transfers done. It would have been planned out over a
 13 period of time. And we would have moved people as they
 14 became I will jib and as ^ eligible and as we had the
 15 security to do that.

16 Q. You are aware that Defendant's expert, Dr. Mets near,
 17 stated in his report that as of the date in August when he
 18 submitted it, the chief psychiatrist's review of twelve
 19 inmates is not yet completed and about 23 Death Row inmates
 20 have not yet been evaluated through the initial screening
 21 process?

22 A. I have not seen Dr. Mets near's report, nor have I
 23 talked to Dr. Mets near about that. So I don't know what
 24 those numbers are there.

25 Q. I think you said, Mr. Collins, that any complete

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1 assessment of the Toledo alternative would require
2 consultation with medical and mental health experts?

3 A. I did say that, yes.

4 Q. What consultation with medical and mental health
5 experts have you done as to the staffing needs for medical
6 and mental health if Death Row prisoners were transferred to
7 OSP?

8 A. As I said yesterday, I knew the fuss gel team was going
9 to the Ohio State Penetentiary and I'm sure they would tell
10 me as they have at other prisons about the staffing
11 patterns, so I knew that was going to occur.

12 I previously had talked to our chief of medical
13 services about the medical there, and had talked to the
14 chief of our mental health services, but also, you asked me
15 the question in my deposition about mental health, I and I
16 think it was said there by the attorney that was
17 representing me that the discussion about mental health
18 staffing would be by an expert that would be testifying in
19 this case, which would be Dr. Mets near.

20 Q. That might affect your monetary calculations, might it
21 not?

22 A. I think it might have some minor. I don't think he is
23 going to come in and say I have to have a hundred staff
24 members. He might say I need one or two. I don't know
25 that, they may or may not, but as I also testified yesterday

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1 and testified in my deposition, that 9 in 1 is what I know
2 today. Correctional reality tells me that it might be a
3 little less, might be a little more. The bottom line
4 remains that the financial consideration to the budget will
5 be several million dollars.

6 Q. Now, you said that your evaluation of medical needs at
7 OSP would be made by the fuss he will team, correct?

8 A. Correct. The fuss he will team did go there, yes.

9 Q. And have you read their report?

10 A. Yes, I did.

11 Q. And are you aware that the team interviewed Alberta
12 Williams, health care administrator at OSP, and that she
13 told the team that OSP with its present prisoner level needs
14 four more nurses because the nurses don't have time to
15 attend to all duties in a timely manner?

16 A. You're absolutely correct. She did say that. But
17 about two paragraphs after that she said the staff members'
18 time has doubled here. It only used to take them three
19 hours to do their job, now it takes them six hours to do
20 their job. So they still have two hours left in the day to
21 complete their job.

22 Q. What about the fact that attorney Fred Cohen, the head
23 of the medical investigation team, states in his conclusion
24 that miss Williams commented to him that she believes the
25 nurses complaints have increased work load are legitimate?

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1 A. Well, I would assume their complaint in their mind
2 would be legitimate if they were only working three hours a
3 day and now they are having to work six but unfortunately I
4 pay them for eight.

5 Q. Were you aware that nurse Barbara Peterson, a member of
6 the team, found that at OSP, the tight security measures in
7 this facility have an impact on all aspects of nursing care?

8 A. They did mention that in their report, yes.

9 Q. And that another member of the team, nurse may deLamar
10 reported that custody activities sometimes collide with
11 health care operations, that such occurrences became more
12 frequent between late April and the end of June, and that
13 more frequent use of force on C block resulted in no
14 officers available to transport inmates for sick call?

15 A. I don't know that that's exactly what she said. I
16 assume you are reading from that document. She did say that
17 sometimes security had clashes with medical. I would also
18 be willing to agree that sometimes medical clashes with
19 security.

20 Q. Were you informed that one nurse told the medical
21 investigation team that often it takes all day to see six
22 patients at nurse's sick call because of various
23 interruptions such as responding to emergencies?

24 A. There was discussion in the report, yes.

25 Q. And that one of the recommendations of nurse lam JAR, a

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1 member of the team, is that OSP should be included in future
2 staffing studies to determine staffing needs?

3 A. Yes. She did say that we should continue to study the
4 potential staffing needs there, yes. She said we should
5 study that.

6 Q. Do you think it is all together responsible to begin to
7 put additional prisoners on the buss before you have
8 accurately determined what the mental health and medical
9 staff needs at OSP would be?

10 A. Yes, sir. I believe it would be ^ we are being
11 absolutely responsible in our decision to make this move.

12 Q. Now, I was a little confused, Mr. Collins, by your
13 attorney's questions concerning the comparison chart of
14 Death Row privileges at OSP and ManCI.

15 A. Yes.

16 Q. I'm right in thinking, am I not, that this is the only
17 such char that prisoners at ManCI have received?

18 A. I'm not sure that they received it. There was
19 discussion about that. I don't know that was passed out. I
20 believe it was, but I can't be absolutely sure that it was.

21 Q. And do you have that exhibit in front of you?

22 A. Yes.

23 Q. Would you turn to page two? And you will note that
24 what is listed as proposed for OSP Death Row under
25 recreation is a period of at least one hour, seven days per

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1 week, indoor or outdoor, parentheses, outdoor at least two
2 days per week, in groups of eight or less.

3 Are you with me? The top of page two, left hand
4 column?

5 A. Are you talking about the proposed OSP?

6 Q. Yes. Recreation.

7 A. Mine didn't read exactly like that, no.

8 THE COURT: I think you are describing Mansfield.

9 MS. LYND: What you need is X.

10 MR. LYND: Just a moment, Your Honor.

11 BY MR. LYND:

12 Q. Are you at Exhibit X?

13 A. I'm at Exhibit B.

14 Q. Are you at exhibit X of Defendant's Exhibit book? I
15 beg your pardon for that confusion.

16 A. Okay.

17 Q. X?

18 A. X. Okay. I have not looked at X. It was B that I
19 looked at in reference to questions from our attorney.

20 Q. I think your attorney asked you to look at X and now I
21 am asking you to do the same.

22 A. I never looked at X.

23 Q. In any event, let me ask you to look at X.

24 Have you got it now?

25 A. I have X available, yes.

1 Q. Turn to page two and look at the top of the left hand
2 column.

3 A. Okay.

4 Q. It says, let me read it again, recreation. Period of
5 at least one hour, seven days per week, indoor or outdoor,
6 parentheses, outdoor at least two days per week, close
7 parentheses, in groups of eight or less.

8 Correct?

9 A. Yes. That is what X says. As I testified to earlier,
10 when Mr. Landis was asking me about Exhibit B, there were
11 several drafts of this, and I also testified yesterday that
12 I told the Ohio State Penetentiary that I was requiring five
13 hours in a weekly period of time for mandatory minimum of
14 outdoor recreation. They did write this. But the Exhibit B
15 talks about the five hours, so I'm sure there was a change,
16 as I said earlier, when I testified, I had seen several
17 drafts of this, so I don't know the dates of these. I can
18 only tell you what I testified to yesterday, that there has
19 to be five opportunities for one other recreation five times
20 a week in a seven day period.

21 Q. ^ one hour recreation five times a week in a seven
22 day period?

23 Q. Turn back to Exhibit B for a moment. B as in betly
24 ham.

25 Are you there?

1 A. Yes.

2 Q. Upper right hand corner?

3 A. Upper right hand corner of page one?

4 Q. Yes. It gives a date, does it not?

5 A. It says -- upper left hand corner says Death Row
6 privilege comparison draft 4/25/05.

7 Q. That's April 25, correct?

8 A. Correct.

9 Q. Now turn to Exhibit X again.

10 A. Okay.

11 Q. And Exhibit X, Mr. Collins, and our confusion is
12 because it was called Exhibit B and a ^ in a submission of
13 defendants at later date, Exhibit X was submitted to the
14 Court on May 11. Two and a half weeks later.

15 A. I don't know when it was submitted to the Court. There
16 is no date on this particular Exhibit X. There is no date
17 on that, so I don't know when it was written. I don't know
18 what was --

19 Q. Let me show you --

20 A. Could I finish, please?

21 Q. I beg your pardon?

22 A. I don't know when it was submitted to the Court. I'll
23 testify again, as I have testified to before both here in my
24 deposition, that recreation will be five one-hour periods
25 outdoors in a seven day period, opportunity to go outside.

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1 Q. Let me see if I can help with the date, Mr. Collins.

2 I'm putting on the screen a document called Defendant's
3 notice of filing of documents pertaining to the transfer of
4 Death Row inmates to the Ohio State Penetentiary, it is
5 document 556, it is filed May 11, 2005.

6 Would you agree? The document number and the date are
7 at the top?

8 A. All right. I can barely see it on this screen but I'm
9 not going to argue about it.

10 Q. May I approach the witness and show him?

11 THE COURT: No. Do you have a copy of the defense
12 exhibits up there?

13 A. I'm not going to argue about the date.

14 Q. Okay. And there is attached to this May 11 document,
15 Mr. Collins, a Death Row privilege chart and I'm going to
16 put on the screen page two of that chart, filed by
17 defendants with the Court on May 11. The only such chart
18 I'm aware of that defendants have ever filed with the Court
19 and the only such chart to my knowledge ever given to
20 prisoners at ManCI, and I ask you to read the provision on
21 recreation at the top of the left hand column and ask you if
22 it doesn't project at least two days of outdoor recreation
23 per week at the Ohio State Penetentiary.

24 A. That's what it projects yes.

25 Q. Is it fair to say that defendants have been confused

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1 and inconsistent in what they have represented to the Court,
2 to plaintiffs, and to prisoners?

3 A. I don't know if they have been confused. There has
4 been a lot of discussion about outdoor recreation but I
5 reiterate again, I have told the warden, I have told the
6 regional director, I told the security administrators that
7 five days of opportunity for outdoor recreation in a seven
8 day period will be offered.

9 I said that in my deposition. I have testified to it
10 twice in this courtroom. And it will be offered.

11 Q. So if the Court were to conclude, Mr. Collins, that
12 that projection was unrealistic, that it was inconsistent
13 with the present experience of prisoners on Level 5-A and
14 that the mathematics didn't check out, would that be a
15 reason for the Court to prevent the transfer from ManCI to
16 OSP?

17 MR. LANDIS: Objection.

18 THE COURT: Sustained.

19 BY MR. LYND:

20 Q. With regard, Mr. Collins, to your comment about a stock
21 home syndrome, let me see if I understood what you meant and
22 if I did not, correct me.

23 I think you may have said that if a group of
24 correctional officers associates day to day and face-to-face
25 over a long period of time with men sentenced to death, some

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1 kind of bond, some kind of compassion, some kind of sympathy
2 develops between those two groups of people. Is that what
3 you meant?

4 A. Well, that's basically what I said, yes.

5 Q. And you said that because the instrument of execution
6 was located at Lucasville, it seemed inappropriate to you to
7 have within the same institution the prisoners sentenced to
8 death and the guards experiencing this stock home syndrome
9 like feeling.

10 Correct?

11 A. That was the reason that central office when they made
12 the decision to make that move and the director said that we
13 were moving, the psychological impact which is KWATD to
14 stock home syndrome, being around people for a number of
15 years, could create yes,.

16 Q. Do you think that in the ten and a half years that
17 Death Row has been at ManCI that a stock home syndrome like
18 feeling has developed between the prisoners sentenced to
19 death and the officers assigned to guard them?

20 A. I would suspect there probably has for some officers,
21 not for others.

22 Q. Is that a reason for disrupting that situation, and
23 moving that group of men to OSP?

24 A. No.

25 Q.

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1
2 MR. LYND: I have nothing further, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LANDIS:

5 Q. You were shown -- you were actually read to by Mr. Lynd
6 from the report of the fuss he will team as you called it
7 for Mr. Cohen and his team of medical practicers.

8 In fact, the defendants have marked this, it is Exhibit
9 J as in July yet in your boom. Would you please turn to
10 page two of that, which I have also shown on the screen?

11 A. Excuse me. J?

12 Q. J as in Juliet?

13 A. I have it, page two.

14 Q. The fuss he will team notes the OSP at my earlier
15 visits and now my most recent visit is a prison facility of
16 an entirely different on the, and at the bottom says the
17 inmates I then inviewed frequently would be express the
18 desire to be any place other than OSP in the old base but in
19 each of these areas there has been substantial progress made
20 in accommodating the human needs of the inmates.

21 Is that consistent with your observations over the
22 years of OSP?

23 A. Yes.

24 Q. In what way?

25 A. Well, when the prison was first opened, of course being

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1 high security, there was a multitude of staff moving inmates
2 with a number of staff, very little if any, in fact probably
3 not any out of cell time.

4 I recall at one point in time there was an issue about
5 black gloves, I was chastised by several people over black
6 gloves, I was the regional director at that time, as I
7 recall, and we had discussion about black gloves being used
8 to transport people, hold on the handcuffs and all that and
9 then it became put it your back pocket and in my opinion it
10 was kind of a means of intimidation and we got rid of those
11 and they were only supposed to use them for if they have
12 cell extraction and movement and things of that nature so
13 there was a lot of discussion.

14 So I think the prison evolved, when it was first opened
15 it was basically no inmate contact, high staff intensity
16 movement, and now we have moved it to more out of cell time,
17 recreation, the Level 4 inlathes being there, being out in
18 the open area of the pod, so I think there has been an E
19 involvement of the staff ^ .

20 MR. LANDIS: This concludes my examination of this
21 witness Your Honor.

22 THE COURT: Thank you. Who is your next witness.

23 MR. LANDIS: Warden Houk.

24 MR. LYND: Your Honor, recross?

25 THE COURT: What has he brought up for the first

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1 time he did not deal with.

2 MR. LYND: The FUSL report.

3 THE COURT: You dealt with that didn't you.

4 MR. LYND: I did but not in respect to the
5 quotation that he offered.

6 THE COURT: Why don't you go ahead. It is
7 supposed to be limited to something he brings up for the
8 first time and something that is kind of a surprise.

9 It is supposed to be a narrow recross.

10 MR. LYND: Thank you, Your Honor.

11 REXCROSS-EXAMINATION

12 BY MR. LYND:

13 Q. Mr. Collins, do you have Exhibit J open in front of
14 you?

15 A. Yes.

16 Q. Would you turn to page 38?

17 A. Yes.

18 Q. Is this part of the OSP site visit report of Dr. Ron
19 SHAN ski? Turn back to Page 32. I think you can see the
20 beginning of this segment of the report. ^ SHANSKY ^ ?

21 A. This page would be part of a number of pages that Dr.
22 SHAN ski, as they put the FUSL team together is a multitude
23 of individuals, this section was from Dr. SHAN ski, correct.

24 Q. And Dr. SHAN ski is, is he not, the only medical doctor
25 on the team that visited OSP?

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1 A. I believe he was the only doctor, doctor who made that
2 particular visit.

3 Q. So referring again to Page 38, I want to read the last
4 paragraph of that page to you and make sure that you are
5 aware of it.

6 MR. LANDIS: Your Honor may I object?

7 THE COURT: I don't know that this responds to
8 anything they brought up and if the document is received --

9 MR. LYND: Your Honor, it is responsive to the
10 comment that Mr. Landis quoted about the general progress at
11 the institution.

12 This is Dr. SHAN sky's perception of the critical
13 area in which progress has not occurred ^ .

14 THE COURT: Wouldn't this be hearsay? Isn't this
15 hearsay?

16 MR. LYND: To no less than a degree --

17 THE COURT: There probably should have been an
18 objection to his question.

19 MR. LYND: I think it is an important comment on
20 the State of medical care at the institution. And whether
21 it is prepared --

22 THE COURT: I don't think it adds much. I'm aware
23 of the tension between the doctors and the nurses. It has
24 been part of this case as we've gone through and there has
25 been a lot of materials on it already.

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1 MR. LYND: That's fine Your Honor.

2 THE COURT: We'll take about a ten minute break.

3 We'll try to keep on track. We'll reconvene about 2:15.

4 Fussell Metzner.

5 (Recess from ^ to ^ .)

6 THE COURT: Back on the record. I will ask the
7 defense to call your next witness.

8 MR. LANDIS: We call mark Houk.

9 Witness, being first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION OF witness

12 BY MR. LANDIS:

13 Q.

14 THE COURT: Please tell us your name and spell
15 your last name.

16 A. My name is MACR, C. Houk. HOUK.

17 Q. What is your present position?

18 A. Warden of the Ohio State Penetentiary.

19 Q. Did you start in the department as a corrections
20 officer?

21 A. Yes, I did.

22 Q. Where?

23 A. Pick way correctional institution.

24 Q. DPU move up to a position where you got experience
25 writing policy for the warden?

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1 A. Yes, I did. As a sergeant at Grafton correctional
2 institution.

3 Q. At Lorain, did you get to Lorain eventually, then?

4 A. Yes, I did. After being at Grafton for a short period
5 of time I transferred to Lorain correctional as a
6 lieutenant.

7 Q. What jobs did you do there?

8 A. After lieutenant, I was the inspector of institutional
9 services and the administrative assistant to the warden.

10 Q. Did you obtain any education during this time?

11 A. Yes, I did. KOIM pleaded my Bachelor's degree while at
12 Lorain.

13 Q. Where did you make deputy warden?

14 A. The northeast pre-release center here in Cleveland.

15 Q. Did you spend any time in central office?

16 A. Yes. Twelve weeks as a security administrator.

17 Q. Where did you first become a warden?

18 A. The London correctional institution in London, Ohio.

19 Q. What is the security level at London?

20 A. It is a medium and minimum security level.
21 Institution. Level 1 and Level 2.

22 Q. Have you been warden elsewhere?

23 A. Yes. I was also warden at the southeastern
24 correctional institution in Lancaster, Ohio, which is as
25 well a Level I and Level 2 institution.

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1 Q. Did you start a program at London called the
2 Renaissance program?

3 A. Yes. The program was brought to me by the recovery
4 services staff, and it is a program that involves family
5 contact with the inmates throughout the program process.

6 Q. How does that work?

7 A. What it is, it's a seven week process where the family
8 members must come and first interact with the institution
9 staff, recovery service staff, the begin some counseling and
10 some information exchange and the third week, they actually
11 start working with the family members in the visitation
12 room, family and the inmate together.

13 Q. Working toward what?

14 A. Working toward mending relationship problems, and
15 helping them -- helping the family members learn how they
16 can assist their loved one in reentering society upon their
17 release.

18 Q. What effect did that program have on you?

19 A. This program was really the first time in my career, it
20 brought everything together from the standpoint of security
21 and programming. It really meshed both processes. I always
22 had the philosophy and thinking and I knew that good
23 programming is good security, but this really meshed because
24 I spent time with them during their first session, and one
25 session, maybe the third or fourth session, and the final

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1 session, where they received a certificate of completion,
2 they actually share a meal, the family members share a meal
3 with their loved one and the staff that has been involved in
4 the program, and I stayed and spent that time with them and
5 shared a meal with them and got a lot of feedback from the
6 family member and the inmates of what the program had done
7 for them.

8 And like I said, it kind of really meshed everything
9 and opened my eyes completely to what the function and
10 responsibility of our department is.

11 Q. Have you been able to put some of that to work at the
12 Ohio State Penetentiary since you have been warden?

13 A. Yes. One piece that we have done that kind of goes
14 down that path is we held a graduation for the 4-A inmates
15 that they were permitted to invite a visitor, an approved
16 advisee to come and take part in the graduation
17 ceremony.

18 Q. What experience have you had in the past with Death
19 Row?

20 A. In 1997, after the riot on Death Row, I was assigned
21 the, as part of the use of force committee, that
22 investigated that riot. Use of force portion of that riot.

23 Q. Were you involved in any litigation as a part of that
24 task?

25 A. Yes.

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1 Q. How?

2 A. I was called by Mr. Lynd to testify at a hearing in
3 this courthouse.

4 Q. You currently have a classification at the Ohio State
5 Penetentiary with privileges greater than level 5.

6 What is that called?

7 A. Excuse me?

8 Q. What is the privilege level greater than Level 5 that
9 you have at Ohio State Penetentiary?

10 A. Level 4.

11 Q. Do you have a individual why that will assist the Court
12 in understanding the plan that you would have for Death Row
13 at the Ohio State Penetentiary and illustrate the
14 differences between Mansfield and your plan for Death Row
15 inmates there?

16 A. Yes, DWOE.

17 Q. Does that include some of the level 4-A congregate
18 activity?

19 A. Yes, it does.

20 MR. LANDIS: Your Honor, I would propose the show
21 the video I showed. It is a four minute video and have him
22 narrate it. I don't know if he can run the pause button
23 from where he is.

24 THE COURT: I'm not sure myself.

25 BY MR. LANDIS:

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1 Q.

2 THE COURT: Is there a play button on the --

3 MR. LANDIS: It says play on my screen. I think
4 it is playing. It indicates the tape is rolling.

5 (Discussion had off the record.)

6 MR. LYND: We'll come back to that, Your Honor ^ .

7 MR. LANDIS: We'll come back to that Your Honor.

8 THE COURT: Somebody is supposed to be coming up.

9 MR. LANDIS: They would be welcome.

10 BY MR. LANDIS:

11 Q. An issue was raised about the differences between these
12 4-As that we talked about at the Ohio State Penetentiary and
13 what you had planned for inmates on Death Row once they get
14 to the Ohio State Penetentiary.

15 Have you thought about what the differences are for us?

16 A. Yes. There is actually several differences.

17 Q. If you need to refer to notes, please do so to refresh
18 your recollection.

19 A. As for property differences, inmates on Death Row at
20 the Ohio State Penetentiary will be permitted to have hot
21 pots, and these items are permitted at Mansfield as well.
22 So they will be permitted to bring them with them. Hot
23 pots, type writers in their cells, if they currently possess
24 a guitar or ban Joe they will be permitted to bring that.

25 They can have electric fans, small night light type lamps,

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1 desk lamp would be a better term than night light, desk lamp
 2 they will be permitted to bring. They will also be afforded
 3 an additional locker box in their cell to maintain legal
 4 material as well as arts and crafts material.

5 We are also, there is going to be a multi-plug adaptor
 6 provided for them so they can utilize more than one
 7 appliance, small appliance at one time. They will also have
 8 access to an ice machine during their out of cell time,
 9 access to base.

10 As for visitation, they will be permitted merit visits
 11 and semi-contact visits, which differs from 4-A inmates and
 12 commissary purchases, they will be permitted to make a
 13 purchase of up to \$240 in a month's time being \$60 a week
 14 versus the 4-A inmates are permitted to purchase \$160 worth
 15 of commissary in a month's time.

16 With the extended privilege inmates, there will be some
 17 additional differences. One of the pods in D block will be
 18 made into an indoor gymnasium area and another pod will be
 19 made into a multi-purpose area, which will be used to
 20 facilitate religious services, any type of konk great
 21 programming, as well as community service activities.

22 Also in the extended privilege area, we will be
 23 permitting the cuff ports to be opened if so desired. Along
 24 the lines of recreation equipment, they will be permitted
 25 medicine balls, jump ropes, stability balls, and our

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1 recreation department is going to also facilitate some
 2 fantasy sport lesion for the inmates on Death Row ^ .
 3 Those items are all Death Row, not just exclusive to
 4 intended privilege. Those recreation are for all Death Row
 5 inmates.

6 Such items in the commissary they will be permitted to
 7 purchase will be soda, ice cream, a small mirror, typing
 8 paper, and as well as rib bones.

9 One other thing that they currently do at Mansfield
 10 that we will be doing at OSP is they permit the Death Row
 11 inmates to purchase food items from a local vendor, example
 12 may be a donut sale, to the inmates. They can purchase a
 13 dozen donuts and we will be doing that for them
 14 occasionally. That's something that we generally use as a
 15 community service and a portion of profit will go to a local
 16 Charity.

17 Q. Okay. And these again are differences between 4-A and
 18 the proposed conditions for Death Row?

19 A. Correct.

20 Q. I see we have some help.

21 Q. Can you could police look at the monitor and explain to
 22 the Judge what he is seeing?

23 A. Your Honor, this is the outside recreation area at
 24 Mansfield. It is very difficult to shoot a basket. There
 25 is a great deal of chain link fence surrounding them as

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1 well.

2 The next item that you will see is the outdoor
3 recreation area at the Ohio State Penetentiary, which has a
4 basket ball hoop and plenty of space to put a good arc on a
5 ball and there is also a pullup bar, dip station and situp
6 station in that area, in the corner below the officer right
7 there. This is also observed by staff from a control
8 center, via camera, as well as officers on the top of the
9 cage and from the side where the stairs come up.

10 This is a typical indoor housing area for Death Row at
11 Mansfield. The area, the chain link area is their indoor
12 recreation area. The table can seat for people.

13 This is a pod area at the Ohio State penitentiary, and
14 there is a table there for four. We will be adding another
15 table for four such that eight inmates can be in that area
16 at one time to eat their meals in a congregate manner.

17 This is the hallway that leads down to Death Row 1
18 through 5 at Mansfield correctional. This is the -- the on
19 left is the entrance door to the inmate visitation area,
20 where family visits are conducted, which the family visits
21 are done in such a manner that they are open behind the
22 advise tors.

23 The inmates are the areas open behind the inmates as
24 well as the advise tors, so there is noise traveling from
25 each separate visit area into the other and also they

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1 utilize a telephone to have their communications so really
2 you can only communicate with one person that you are
3 visiting with at this point.

4 And this is an XAL many of visitation at the Ohio State
5 Penetentiary. On your left, on the screen at this point, is
6 the attorney visit area and you notice the shelf. It
7 doesn't appear to be four inches wide. It is about eleven
8 to twelve inches wide.

9 This is the typical feeding of meals at the Mansfield
10 correctional institution on Death Row. In this part of the
11 Death Row, all of their meals are served in their cell.

12 This is how all of the inmates will be served their
13 meals at the Ohio State Penetentiary unless of course they
14 are in the isolation block, the isolation pod, where
15 disciplinary inmates will be held.

16 One difference with the general population of Death Row
17 will be in that area, there is a cuff port type food port
18 cut into one of the windows, and the meals will be passed
19 through there. The extended privilege area will be passed
20 with the door open.

21 Q. Thank you. If we could have the document camera, I
22 would like to turn your attention to Defendant's Exhibit B,
23 as in BRAVO.

24 Thank you.

25 Were you involved in developing this comparison chart?

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1 A. Yes.

2 Q. What was your involvement?

3 A. I was involved in providing information and preparing
4 the document of what is currently proposed to happen. Upon
5 the transfer of Death Row to the Ohio State Penetentiary.

6 Q. I would like you to turn to Exhibit X as in x-ray. Is
7 this an earlier version of the same Death Row privileges
8 comparison?

9 A. Yes, it is.

10 Q. Which one was given out to the inmates when the move
11 was first announced?

12 A. I'm not certain.

13 Q. Okay. Why is there a change between X and B?

14 A. We made the decision that inmates on Death Row will
15 have the opportunity to go out to the outdoor recreation
16 areas five times a week, one hour per time.

17 Q. Is this a work in progress?

18 A. Yes. Yes. The entire process is in flux. There are
19 changes that could arise at any point.

20 Q. Tell me this. I notice that there aren't any
21 categories for total out of cell time or what congregate
22 activities would be available.

23 Why isn't that here and what are the answers to those
24 questions?

25 A. The out of cell time specifically we wanted to address

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1 the five hours out of cell five times out of cell one hour
2 each time for outdoor rec. That opportunity.

3 Out of cell time can be any time the inmate is out of
4 his cell, whether it is in the day room area, in a program,
5 all those things encompass out of cell time.

6 Q. How much out of cell time do you plan for Death Row
7 inmates when they arrive at the Ohio State Penetentiary?

8 A. The plan is to have them out approximately 35 hours a
9 day -- a week. 35 hours a week.

10 Q. I think I said that first.

11 A. Yes.

12 Q. And what is the plan for meals for lunch and dinner?

13 A. For lunch and dinner they will be congregate, if their
14 pods and it will be done by range, so each inmate will have
15 the opportunity to come out and eat a meal with his
16 respective range, lunch and dinner. Breakfast will be
17 served at the cell port.

18 Q. Each cell door has a cuff port or a pass through area.
19 Is that right?

20 A. Correct.

21 Q. What are your plans for those for the Death Row
22 inmates?

23 A. For the extended privilege area, the cuff ports will
24 remain it please open and the general population of Death Row
25 and the segregation unit, the cuff ports will remain closed

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1 unless they are feeding or access is needed.

2 Q. While we are talking about communications --

3 THE COURT: Can I ask you a question? What's the
4 numbers on those? The people with extended privileges. How
5 many of the 190 would be in that class and how many would be
6 in the isolation class and how many in the general
7 population class.

8 THE WITNESS: Currently my understanding is that
9 there are 36 inmates on what they call their DR-6, which is
10 their extended privilege area. We have -- those 36 inmates
11 will transfer to the Ohio State Penetentiary and remain in
12 that section.

13 THE COURT: There was almost testimony that more
14 people qualified for that classification than there were
15 cells at Mansfield.

16 THE WITNESS: Yes, sir.

17 THE COURT: Would the others that otherwise
18 qualified for it, would they have the cuff ports open or
19 would they still be closed?

20 THE WITNESS: What our plan is is after the
21 transfer occurs, we will move, we will transfer the original
22 36 into a housing unit that will be considered extended
23 privilege.

24 I have the capacity to increase that number to 64.

25 And after an evaluation period, after the move, we will

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1 begin looking at and screening the remaining inmates, the
2 remaining 160 if 190 were coming to us we'll be screening
3 them to see if they meet the criteria of at least three
4 years conduct report free and possibly move them into the
5 other pods to increase the number of inmates in extended
6 privilege to 64.

7 THE COURT: I guess what I'm getting at, there has
8 been earlier testimony that one of the failures at OSP would
9 be the doors and I assume that what happens with the cuff
10 ports being open, there is more ability to communicate
11 through the cuff port area with other cells.

12 So are you going to limit the cuff port being open
13 initially to 36, and then accommodate a maximum of 64.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Why wouldn't you do it for everybody
16 that hasn't had a conduct problem in more recent times.

17 THE WITNESS: It would be very difficult to
18 facilitate having those inmates in a specific pod area with
19 separations, and I would not want to have inmates that are
20 permitted to have their cuff port open and inmate that must
21 have their cuff port closed in the same area.

22 THE COURT: Why would you want to -- what would be
23 the worry about having anybody's cuff port open?

24 THE WITNESS: It is a security issue.

25 THE COURT: It is kind of a throwing issue?

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1 THE WITNESS: A throwing issue. They can throw
2 things out of the cell, they can reach and grab an
3 individual that is walking past, whether it be an inmate or
4 staff member.

5 THE COURT: Why don't you go on.

6 BY MR. LANDIS:

7 Q. The Court also asked about the lock down or secure
8 area. How many inmates from Death Row do you anticipate
9 putting into that area?

10 A. We would be designating one pod, which can house up to
11 16 inmates.

12 As for inmates being placed in that area, a great deal
13 of it depends on their actions. It will be the security
14 control disciplinary control and local control area. As for
15 the current number that they have at Mansfield, I'm not
16 aware of a number. So it would be a pod up to 16 inmates.

17 Q. Do you have plans to keep 16 inmates there necessarily?

18 A. No. If such warranted, yes, we have space for 16,
19 but -- unless there is some reason to house an inmate in
20 that area, I have no intentions of putting them there.

21 Q. Do you anticipate being able to house more than 36
22 people in an extended privilege area once they get to OSP?

23 A. Yes. A total of 64.

24 Q. I wanted to talk about the ability to communicate once
25 they get there. Dr. Coopers had talked about isolated

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1 confinement as typically 23 hours in the cell a day and no
2 social contact.

3 Is that what Death Row inmates will experience at OSP?
4 A. No. They will experience the opportunity to be out of
5 their cells up to 35 hours in a week, where they can
6 communicate amongst each other and if they are from -- if
7 they live on the top range, and are in the day room area on
8 the lower range, they are free to communicate with the
9 inmates in the cells on the lower range, and I find it
10 interesting, what Dr. Kupers said.

11 During his visit I was in a cell and he was in the cell
12 next to me, and he asked that I speak in a normal tone of
13 voice at the cell door, and it appeared in our conversation
14 and him responding to me, it appeared as though he was
15 moving back in the cell as he started at the front of the
16 cell to the middle and then to the rear of the cell, and he
17 acknowledged hearing me speak in a normal tone of voice at
18 each stage as we did the exercise and then when we both
19 exited the cell, I asked him if he was able to hear, and he
20 gave me an affirmative response.

21 Q. Did you have to raise your voice?

22 A. No.

23 Q. Did he also ask you to help test the privacy of the
24 medical area in the security perimeter and also the, what's
25 been called the barber shop, or the multiple use area?

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1 A. Yes. We tested the barber shop.

2 Myself and Mr. Mancini were in the barber shop area. I
3 believe Mr. Mancini was in the actual booth in that room and
4 I was in the room speaking as though I would be a counselor
5 or psychiatrist, and as we exited the room, Mr. Kupers again
6 gave an affirmative response that he was unable to hear our
7 communication or that it was appropriate. We received an
8 affirmative response from him.

9 Q. What has been your observations since you have been
10 warden as to the ability of inmates to communicate with each
11 other from one cell to another?

12 A. They communicate all the time. And I communicate with
13 them through their cell doors just as they could someone in
14 the cell next door to them. Granted I am standing in front
15 of the door and not beside the door but I carry on
16 conversations with them where they are speaking in a low
17 tone of voice, so the person in the cell next door to them
18 cannot hear them and I hear them fine.

19 Q. Could you tell us, you have been in a lot of prisons,
20 how loud is OSP compared to other places?

21 A. The penitentiary is a very quiet place. For the type
22 of inmate that we house and the -- it being a more higher
23 security facility.

24 Relating it to an isolation unit at London, let's say,
25 it is KWI iter than the isolation unit at London would be.

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1 It is very quiet.

2 Q. I would like to talk some more about the planning for
3 the move.

4 Among inmate concerns, how important is it that they be
5 housed with people that they already know or with whom they
6 are comfortable?

7 A. That's one of the biggest things that they addressed to
8 me in my walk throughs at man's VEELD is that hey, I have
9 been serving time with this guy next to me for the last 15
10 years, and I would like to continue that. We get along.

11 I've had that kind of discussion with them. I had one
12 individual that went as far as to say the three guys on each
13 side of me I've spent time with for the last ten to twelve
14 years, and our plan is that we're going to accommodate that
15 the best we can. We will receive the rosters of cell
16 locations from Mansfield the day of the move and we will
17 start at one end of a range, example top range, and D block.
18 D 1, we'll put the guy that's in the end cell at the
19 start -- at one end and just put the next eight guys in a
20 row, right around the range. So they will be living with
21 the same inmates that they had been living next to. Unless
22 of course we receive information from Mansfield that there
23 have been issues between those two inmates and that would
24 possibly facilitate a change of their housing assignment.

25 Q. Some issues have been raised about the family

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1 visitation, and you showed that they are in fact not open in
2 the back to allow noise pollution, let's say.

3 Do you have plans for family visitation at OSP for when
4 Death Row gets there?

5 A. Yes, we do. The visitation booths that we saw on the
6 video are going to be retrofitted for a type of semi-contact
7 visit and I would like to show you, Your Honor, the device
8 that we plan to use.

9 MR. LANDIS: We have what has been marked as
10 Exhibit R as in Romeo and it is heavy and perhaps we can get
11 some help lifting it up for you.

12 MR. HOLLOWAY: May I approach.

13 THE COURT: Yes.

14 THE WITNESS: Should we put it here?

15 THE COURT: No. Lift it up.

16 THE WITNESS: In between the visitors, this will
17 be placed, consider this just a prototype, the entire window
18 in between the two visitors will be lexsan with this
19 opening. This opening will be on the inmate's side, and
20 they will open for them to be able to hold hands and have
21 physical contact during their visits.

22 The ledge, we did not have a good example or you
23 could not really see the ledge on either side of the
24 visitation boot at OSP but it is the same length as the
25 ledge in the attorney visit booth so it is about 11 to 12

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1 inches and I feel that you would be able to facilitate a
2 case at the beginning of a visit and at the end of a visit
3 as the normal practice is in contact visitation.

4 BY MR. LANDIS:

5 Q. You have been here to hear some issues concerning
6 attorney visitation. Had you had any complaints about
7 attorney visitation until we prepared for this case?

8 A. No. I had not heard any complaints about attorney
9 visitation. As they said, hearing communication from booth
10 to booth, I had not received any complaints about that
11 whatsoever.

12 Q. When did you learn about these concerns?

13 A. Approximately a week ago.

14 Q. What did you do to investigate those concerns?

15 A. What I did was personally went to the attorney booth as
16 well as the family visitation booths and had staff get in
17 the booths on either side of me, and you can definitely hear
18 noise from the other booths. It is difficult, you really
19 have to concentrate to hear what is being said, but you can
20 hear noise and voices from other areas.

21 What we have done, I have our maintenance department
22 involved in searching for a method for us to minimize that
23 to the point that you cannot hear more than a murmur.

24 We do not feel that it can totally go away because the
25 ventilation system as in any building is a duct work system

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1 and there is going to be some noise that will trans -- go
 2 from duct work area to duct work area but we are in the
 3 process of looking for a phone board, a sound dead evening
 4 board that would be our first set to put on the ceilings of
 5 the ^ attorney visit booths and the family visit booths as
 6 well.

7 That is our first step.

8 The second step, if that does not resolve the problem,
 9 we're going to move to a, for lack of a better term, a white
 10 noise machine above in the ceiling. The maintenance
 11 department feels that that may deaden the noise transferring
 12 from area to area.

13 If that does not work there is another device out that
 14 there is a cylinder that we can hang from the ceiling and
 15 the maintenance department has even suggested piping in just
 16 a very low music into each cell to limit the ability to hear
 17 from booth to boot.

18 THE COURT: What about the complaint that there
 19 should be contact visits with the attorneys or the
 20 comparison that the testimony had about contact visits at
 21 Mansfield?

22 THE WITNESS: We've had --

23 THE COURT: Do you have any rooms that can
 24 accommodate that.

25 THE WITNESS: At this point we do not have rooms

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1 that can accommodate that.

2 THE COURT: Maybe I misunderstood the testimony.
 3 What about the barber shop room or the barber room? Is
 4 there one of those at each spot?

5 THE WITNESS: Yes. In each block, Your Honor.
 6 There is one in each block, and that is actually -- in our
 7 plan, that is the third step of attorney visits. What we
 8 have now since changed since hearing a great deal of these
 9 concerns is going to a semi-contact, utilizing a
 10 semi-contact area for attorney visit rooms.

11 THE COURT: You mean with a similar window to the
 12 one you have shown?

13 THE WITNESS: Yes.

14 THE COURT: But would they still be in close
 15 proximity to all the other families.

16 THE WITNESS: Yes, Your Honor and that's why we
 17 are working on eliminating the noise transfer from booth to
 18 booth.

19 THE COURT: Okay.

20 THE WITNESS: And we also, there is a possibility
 21 of separating, putting booths, we put the sound devices,
 22 sound deadening devices in, separating them booth by booth.

23 We do all our visitation by reservation, so if we
 24 only have three reservations for family visits and we can
 25 space them apart, and put the attorneys all the way at one

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1 end, we will do that.

2 THE COURT: But physically, there is just no
3 option that's available in terms of a separate room similar
4 to the one that's been described in Mansfield.

5 THE WITNESS: Correct.

6 BY MR. LANDIS:

7 Q. And that would be true if I asked the question outside
8 the security perimeter of the block?

9 A. Correct.

10 Q. I mean, obviously you could theoretically put appear
11 attorney in the cell with the guy but you don't do that.

12 How come?

13 A. Correct. That would be a safety risk for the attorney,
14 the inmate, and the staff.

15 Q. You just heard about this. Are you open to additional
16 kinds of work on this topic?

17 A. Yes, I am.

18 Q. What good -- I wanted to ask you about outdoor
19 recreation. We've heard a lot about calculations, the
20 ability to get stuff done on YUT door rec.

21 What is good correctional practice in planning the use
22 of outdoor rec for an incoming population like you're
23 planning for here?

24 A. Well, the first thing you have to do is look at the
25 numbers, what your facility can handle when it comes to

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1 total population, total inmate population, and the number
2 that you expect to be coming to you.

3 What we have done is we have taken a number of inmates
4 and we did all of our figures that 100 percent of them will
5 take 100 percent of the opportunities to go outdoors, to the
6 outdoor recreation area, which would be the five times a
7 week, one our each session.

8 And then we have divided that ^ by the number of
9 inmates and the number of areas that we have, and the number
10 of periods, recreation periods that we can facilitate in a
11 day's time.

12 Q. I direct your attention to Defendant's Exhibit I as in
13 India. What is this?

14 A. This is our calculations and figures on our ability to
15 facilitate outdoor recreation.

16 Q. And how was this worked up?

17 A. We used the same process that I just explained, by, you
18 notice where we say, where it says recreation periods, those
19 are the lengths of time that it takes to facilitate one hour
20 of recreation for an inmate.

21 We did a time study with staff and used inmates as an
22 example. The process of the officers walking into the pod,
23 walking to the cell, restraining the inmate, the inmate
24 coming out, moving to the leg iron bench, leg irons being
25 appear employed, going to the sallyport to the elevator,

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1 down the elevator and into the recreation area and that can
2 be done in about three and a half minutes, two and a half
3 minutes each direction. Excuse me.

4 Seven and a half minutes each direction.

5 So hence the hour and 45 minute periods for a
6 recreation period. Hour and 15 minutes, excuse me, hour and
7 15 minutes.

8 Q. And what was the result of your study?

9 A. That we can do it. And we actually have a little time
10 left over.

11 Q. And that is based but on a hundred percent of the folks
12 wanting to come when you asked them?

13 A. Correct.

14 Q. What's been your experience on correctional reality
15 concerning what inmates actually say yes when they are asked
16 to go outside?

17 A. Depending on the time of year it is between 40 percent
18 and 60 percent.

19 Q. I would like you to compare that with post orders at
20 Mansfield correctional, if you can turn to Exhibit N as in
21 November.

22 If I could attract your attention to paragraph 68.

23 A. I'm there.

24 Q. First of all, Exhibit M deals with what part of the ^
25 N deals with what part of the Death Row population at

1 Mansfield?

2 A. At the top of the page it says general population
3 housing.

4 Q. And what does this -- what does the actual post order
5 call for them to get?

6 A. It directs the staff to give them five one hour out of
7 cell recreation periods a week.

8 Q. And does that mean outdoor or out of cell?

9 A. I read it as meaning out of cell. It does not specify
10 indoor or outdoor.

11 Q. If you look at Paragraph 69, it talks about indoor or
12 outdoor.

13 Am I right?

14 A. Yes.

15 Q. If you could turn to Exhibit O, as in Oscar, and that
16 deals with what part of the population, for Death Row?

17 A. Special management. DR 5.

18 Q. If you could turn to Paragraph 61, please. What is it
19 that the post orders require them to get by way of
20 recreation?

21 A. No less than five one-hour periods of out of cell
22 recreation time.

23 Q. Next, if you could turn to the Mansfield post order for
24 Death Row, under P as in PAPA and look at paragraphs 54 and
25 59 and this is the extended privilege, the 36 people we

1 heard so much about?

2 A. Yes, DR-6. 54, you said?

3 Q. Yes. 54 and I also note 59.

4 A. 54 speaks to five one hour out of cell recreation
5 periods a week.

6 Q. And 59 I think deals with how many folks can congregate
7 at once?

8 A. A maximum of five inmates may partake in recreation at
9 one time.

10 Q. We had heard things about the fact that greater numbers
11 than that had been allowed to congregate at Mansfield until
12 recently. I guess in excess of the post order.

13 If, and I ask you this as a warden, if you have a
14 security problem at OSP after Death Row moves there, like
15 this escape attempt that they had at ManCI, what would a
16 warden's reaction be to that? What would your reaction be
17 to that?

18 A. Immediately, the entire population would be locked down
19 and we would begin an investigation process.

20 When I say the entire population would be locked down,
21 if we had such a breach, that would be for a short period of
22 time.

23 The individuals that were involved in that breach would
24 obviously be locked down for a much longer period of time.
25 Through the evaluation process we would determine where our

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1 flaws were and work to correct them.

2 Q. Would you consider security changes?

3 A. Most definitely, that's what our evaluation would be
4 looking at.

5 Q. Would it be typical, then, to go back to what the post
6 order requires? Would that be unusual?

7 MR. GILBERT: Objection. Leading.

8 A. No, it would not be.

9 THE COURT: Sustained as to form.

10 BY MR. LANDIS:

11 Q. I would like to turn turn first who what Dr. Cooper
12 calls the culture of the staff, a hard thing to get hold of,
13 but of the staff at the Ohio State Penetentiary are there a
14 number that have worked in non Supermax prisons before?

15 A. Yes. We have 89 correction officers that have worked
16 at other facilities.

17 Q. And what education levels are there among your staff?

18 A. We have a great deal of staff that have associates
19 degreessh Bachelor's degrees. I believe we have seven that
20 have Master's degrees and a few Ph.Ds. I believe we have 49
21 staff have Bachelor's degrees.

22 Q. The staff that you have working with level 5s, do they
23 routinely, do some of them routinely work in other areas
24 with less harsh security classifications?

25 A. Yes. We have what we call the relief pool, and on the

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1 officers that are regularly assigned to a post, on their
 2 good days or on their vacation, personal days, we have a
 3 relief pool that rotates into those positions and they as
 4 well work every single post at the penitentiary as well as
 5 every post at the correctional camp.

6 Q. What is the security level of the correctional camp?

7 A. The correctional camp is Level I. The lowest security
 8 possible in the State classification system.

9 Q. What has been your observation as to whether there is a
 10 culture of punishment at OSP?

11 A. I have not seen that culture since I have been there.
 12 The interaction that I see between staff and inmates is very
 13 similar to what you would see at a home donor a southeastern
 14 correctional institution ^ London ^ the only difference is
 15 that it is between a cell door in most areas, that being
 16 5-A, 4-B, and 5 B.

17 Their communication is very near what you see at
 18 southeastern and London, and I have seen staff members,
 19 correction officers be very compassion at with inmates in a
 20 time of needing to talk to someone.

21 Q. Who will be the -- have you picked a unit administrator
 22 for Death Row if it moves to OSP?

23 A. Yes. We have selected miss Laura Johnson, in the
 24 yellow, as our unit manager for Death Row.

25 MR. LANDIS: And she is standing, for the record.

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1 THE WITNESS: Yes.

2 MR. LANDIS: Thank you.

3 BY MR. LANDIS:

4 Q. Some inmates have raised questions about mass
 5 punishment at Mansfield after that escape.

6 Do you do mass punishment at the Ohio State
 7 Penitentiary?

8 A. No, we do not do mass punishment at the penitentiary.
 9 The prime example is currently, as I believe mentioned
 10 earlier today, Level 5 B, 5-A and 4-B are currently on a non
 11 congregate status and the level 4-A inmates have not been
 12 affected by that. They continue to congregate in numbers of
 13 eight, as many as eight for their meals and for recreation,
 14 and that is not mass punishment.

15 Q. Has there out of cell time been changed because of this
 16 other incident?

17 A. No. The 4-A inmates' out of cell time has not been
 18 changed.

19 Q. Are they guaranteed a certain number of out of cell
 20 hours?

21 A. No. We have never set a time frame, an hour per week
 22 amount that 4-A inmates are permitted out of their cells.

23 Q. Do you have concerns about how Death Row will work out
 24 at the Ohio State Penitentiary?

25 A. Do I have concerns? Any change, you have concerns

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1 about. Are they drastic concerns? No.

2 Q. Do you think there will be an adjustment for the staff
3 and how will that work?

4 A. When you change a mission of a facility, there are
5 always changes that occur, and they will go through a
6 process of learning how to communicate and deal with a
7 different population as they did when they transferred from
8 a lower security prison to work at the penitentiary.

9 All those changes human nature.

10 MR. LANDIS: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 MR. LANDIS: That completes my examination, Your
13 Honor.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. GILBERT:

17 Q. Good afternoon, warden Houk?

18 A. Good afternoon.

19 Q. By way of your background, you have indicated that you
20 have had a number of positions in the department of
21 corrections and rehabilitation.

22 When did you start in the cyst TEP?

23 A. 1987 ZM and in terms of.

24 Q. And in terms of your experience as a warden, how many
25 years has that been?

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1 A. I think we're working on three and a half.

2 Q. And I understand that you were a, you were a warden at
3 London?

4 A. Yes.

5 Q. Where is London? In southern Ohio?

6 A. No. London is about 30 miles west of Columbus.

7 Q. And that is a medium security prison?

8 A. Medium, a level 1 and Level 2.

9 Q. Out of five levels, correct?

10 A. Yes.

11 Q. So they are in the lower areas of security?

12 A. Yes.

13 Q. How long were you a warden at London?

14 A. 15 months.

15 Q. And then you were at a facility known as southeast
16 correctional institution?

17 A. Southeastern correctional, yes.

18 Q. And where is that?

19 A. That is in Lancaster, Ohio, which is southeast of
20 Columbus.

21 Q. That is another level 1 and Level 2 facility?

22 A. Yes.

23 Q. And how long were you there?

24 A. 13 months.

25 Q. And then of course you are now at Ohio State

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1 Penetentiary, is that correct?

2 A. Correct.

3 Q. And how long have you been there?

4 A. 10, 11 months. About 11 months.

5 Q. So in approximately three years, you have been to three
6 different institutions. Correct?

7 A. Correct.

8 Q. You have never had any operational or administrative
9 functions in the department relating to Death Row. Is that
10 correct?

11 A. No.

12 Q. Okay. Other than you mentioned that you were on some
13 kind of use of force committee involving Lucasville. When
14 you were asked by Mr. Landis what experience did you have
15 with Death Row, you indicated, correct me if I'm wrong,
16 something to do with being on a use of force committee in
17 Lucasville in 1997 as your only experience in Death Row
18 matters?

19 A. I believe I said Mansfield.

20 Q. Okay.

21 A. It was 1997 in Mansfield.

22 Q. That was in an investigative capacity, correct?

23 A. Yes.

24 Q. And that specifically dealt with the area of use of
25 force regarding guards on inmate or inmates on guards or

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1 what?

2 A. Any type of force that was utilized by any staff that
3 was involved in that incident.

4 Q. So you were not specifically there to deal with
5 conditions of confinement, were you?

6 A. No.

7 Q. You had no supervisory responsibility regarding inmates
8 at Mansfield Death Row, correct?

9 A. No.

10 Q. You had no operational responsibilities regarding
11 inmates in Death Row at Mansfield, correct?

12 A. Correct.

13 Q. So as you sit here today, warden, you have had
14 absolutely no experience in the management, operations, or
15 systems regarding actual Death Row conditions. Correct?

16 A. Correct.

17 Q. Now, there was some discussion about this program that
18 you were involved in, and I forgot where, Renaissance
19 program, which did a lot of work with family interactions,
20 and you made the quote, it good programming is good
21 security.

22 That was geared toward low security inmates, correct?

23 A. Correct.

24 Q. Who were eventually about to be released into society.

25 A. Some of them had lengthy sentences to finish.

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1 Q. But ultimately would be leaving prison, because the
2 terms of their sentences were limited.

3 A. Correct.

4 Q. These were not livers, correct? ^ livers, correct?

5 A. To be lones I cannot answer the question. One of them
6 may have been.

7 Q. This is a program where there was ongoing and repeated
8 interactions with family members and inmates?

9 A. A seven-week period.

10 Q. Now, you talk about the situation at 4-A which you now
11 have experience with being in Mansfield -- I'm sorry at OSP
12 for eleven months, that you seem to be proud of the fact
13 that you had this graduation ceremony where the 4-A inmate
14 would be allowed to bring one visitor.

15 Do you have any prospect of having a program similar to
16 the Renaissance program or the graduation program for Death
17 Row inmates?

18 A. Not at this point. That is not part of our plans. We
19 have not got EP that far.

20 Q. Now, the video we saw today and we saw earlier
21 yesterday, in the beginning of the opening, would you agree
22 with me that the video does not portray the Mansfield
23 attorney visitation setup for Death Row inmates?

24 A. No. We did not see that on the video.

25 Q. Is it that you didn't want to present them a more

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1 accurate comparison between Mansfield and the Ohio State
2 Penetentiary?

3 A. I did not select what was placed on the video.

4 Q. So you had nothing -- who was involved with selecting
5 what to show on the video and what not to show on the video?

6 A. I was handed the video and told to narrate it.

7 Q. Well, you were not -- strike that.

8 You are involved in this process of developing the
9 conversion or the transferring of inmates from Mansfield to
10 OSP, are you not?

11 A. Yes, I am.

12 Q. And you seem to be quite an advocate for the viability
13 of this transfer, are you not?

14 A. Yes, I am.

15 Q. Do you know who prepared the video?

16 A. Mr. Carlos Martinez.

17 Q. And who is Carlos Martinez?

18 A. He is a video technician for the department of
19 corrections.

20 Q. But didn't somebody sit down with Carlos Martinez and
21 tell him what we want to show in Court during this coming
22 hearing?

23 A. Your Honor, I do not know who sat down.

24 Q. Okay. You don't know? All right.

25 Now, did you go to Mansfield? You went to Mansfield,

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1 did you not?

2 A. Yes. I have been to Mansfield.

3 Q. How many times did you go to Mansfield to look at Death
4 Row in preparation for this move?

5 A. I believe we made seven visits.

6 Q. And during what -- give us a window of time from when
7 to when?

8 A. From the end of November of '04 to the most recent
9 being within the last three weeks.

10 Q. Now, the Judge spoke to you about the attorney
11 visitation situation.

12 Let's be very clear about this. You will not be able
13 to provide the Death Row inmates at Ohio State Penetentiary
14 the same or similar arrangement that exists at Mansfield,
15 which is to say a room, a private room, closed off, with
16 full contact visits between attorney/client or mental health
17 worker and client where papers can be spread out on a
18 conference table and have complete privacy and
19 confidentiality.

20 You cannot provide that under any circumstances as the
21 plan now exists. Is that correct?

22 A. At this time, on this date, the answer to that is no.

23 Q. Now, at Ohio State Penetentiary, the two blocks that
24 are going to be set aside for housing for prospective Death
25 Row inmates are B and D. Is that correct?

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1 A. Correct.

2 Q. And the remainder of the inmates that are currently
3 present at OSP are A and C.

4 A. Correct.

5 Q. Okay. These are units that are over one another,
6 correct? In other words, the B and D block are vertical,
7 are they not?

8 A. No, they are not.

9 Q. They are side by side?

10 A. They are across from each other.

11 Q. Okay. Do they sit -- do they share the same outdoor
12 recreation area?

13 A. B and D block, do they share?

14 Q. Yes?

15 A. No.

16 Q. How do you assign outdoor recreation for those two
17 blocks? Are they different areas of outdoor recreation?

18 A. They would be utilizing the entire population will be
19 utilizing all of the recreation areas at the penitentiary.

20 Q. And will it be assigned on an availability basis, in
21 other words, there won't be a specific outdoor recreation
22 that an inmate will always go to, correct?

23 A. Depending on your pod, there will be -- you will go to
24 the same outdoor recreation area once you are assigned to a
25 pod.

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1 Q. Now, you were at Mansfield, and you saw the extended
2 privilege DR-6 outdoor recreation, did you not?

3 A. Yes.

4 Q. Once again, that area was not shown on the video
5 either, was it?

6 A. Correct.

7 Q. But you have heard testimony in this hearing that it is
8 quite large, 20,000, 21,000 square feet, with a track and
9 other amenities. Correct?

10 A. Correct.

11 Q. You heard that? You will not be able to provide
12 anything remotely comparable to that --

13 A. Correct.

14 Q. -- to that facility --

15 A. Correct and nor would I want to.

16 Q. Okay. So for those 36 people, you will agree, they
17 will lose a significant privilege that they enjoyed for many
18 years in Mansfield when they are, if they are sent to OSP.

19 Correct?

20 A. The key to that is privilege. Yes.

21 Q. So that your answer is yes.

22 A. Yes.

23 Q. Now, let's talk about family visitation. We did see in
24 the video, I think it was like a rust color, orange color
25 room with bars where the inmate would stand or sit inside

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1 that little cage or room and the family member would be
2 outside, correct?

3 A. No. I think you're referencing the holding area prior
4 to entering the visitation area.

5 Q. And what was that for? That's not a Avisation room?

6 A. That is not Avisation area. That is where the inmate
7 will stay until their advise tore comes to visit them.

8 Q. Did we see Avisation area?

9 A. Yes, we did.

10 Q. How would you describe that. Are there bars?

11 A. Yes, there are bars. There is a ledge and when -- on
12 the video you saw a chair with a ledge in front of it, the
13 telephone was to the left and in front of you was a window,
14 that yes, had bars and it appeared to be about three inches
15 apart.

16 Q. And there was -- was there a glass or plastic over
17 those bars?

18 A. Yes. There is a sheet of lexsan over those bars.

19 Q. Were you aware that prior to February or March of this
20 year, of 2005, that there were plans to modify the
21 visitations so that there would be some contact with advise
22 tors by the inmates?

23 A. Yes, that's why we have planned our semi-contact
24 visitation.

25 Q. But that one was different at Mansfield was it not?

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1 A. Yes, it is different.

2 THE COURT: Let him finish the answer.

3 MR. GILBERT: Sorry.

4 A. Yes, it is different because structurally at our
5 facility what we have designed is more functional for us.

6 Q. But at that facility, the inmate would be capable of
7 actually kissing their loved one, not just holding hands?

8 A. I believe it would be difficult.

9 Q. There would be more areas to touch with the proposed
10 Mansfield change, which never went into effect, versus the
11 one you have. Correct?

12 A. By the width of the bars, from what it appears, it
13 would be very near the same.

14 Q. Now, with respect to outdoor rec, and in particular in
15 recent months, did you have an occasion to speak with some
16 inmates, and I will give you their names, but do you
17 remember talking to some inmates, actually making random,
18 having random interviews with some inmates to determine how
19 their rec is going and if they are getting their outside
20 recreation?

21 A. Yes. I speak to inmates all the time.

22 Q. Did you speak to a John so JATS?

23 A. Yes.

24 Q. Randy Coleman?

25 A. I spoke to a Coleman.

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1 Q. Robinson, inmate Robinson?

2 A. I believe so.

3 Q. And how about session, Anthony session?

4 A. No, sir.

5 Q. Well, the ones that you spoke to, did they uniformly
6 tell you that they were not getting the recreation, outdoor
7 recreation that they are supposed to get?

8 A. No, they did not.

9 Q. They said that they were getting all the recreation?

10 A. They were saying that they were getting the opportunity
11 to have the recreation.

12 Q. Now, speaking of outdoor recreation, you testified on
13 direct that you made some calculations that would -- in
14 which you indicate that it will be possible to provide at a
15 hundred percent of the inmates taking advantage of the
16 opportunity, it could be done, correct?

17 A. Yes.

18 Q. Now, those calculations are predicated on the fact
19 that -- let me get the particular defense exhibit up here.

20 I forget what it is. The one with the calculations.

21 Do you see there, warden --

22 A. Which exhibit?

23 Q. It is Exhibit I. Do you see the recreation periods?

24 A. Yes.

25 Q. It is true that the recreation periods go until 10:15

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1 at night.

2 A. Correct.

3 Q. Do you know whether at Mansfield the recreation periods

4 would go to 10:15 at night?

5 A. I can't answer that.

6 Q. You didn't check on that, to see what their period of

7 operation was for recreation?

8 A. No.

9 Q. You realize that in the winter periods, that after dark

10 it gets colder and the weather can get nastier?

11 A. I live in society. Yes, sir.

12 Q. And is it realistic to be able to project that people

13 would take advantage of outdoor recreation in the later

14 hours of the evening?

15 A. They very well -- they may. We provide them clothing

16 to assist with them making that decision.

17 Q. But if most people, don't they think of outdoor

18 recreation during light hours, or maybe not?

19 A. I have been at facilities, worked at facilities where

20 we run outdoor recreation until 9:00 in the evening.

21 Q. Now, last year, when you had the -- last year, during

22 the winter, isn't it true that when temperatures dropped

23 below a certain degree the outdoor recreation was

24 cancelled?

25 A. Up to some point and then we changed that.

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1 Q. Well, what was it originally, before you changed it?

2 A. It varied on the conditions and the temperature.

3 Q. Do you remember what the temperature was?

4 A. It varied from 32 degrees to 45 degrees.

5 Q. So when was it changed to it doesn't matter how cold it

6 gets?

7 A. I believe it was in March that we provided skull caps,

8 gloves, thermal shirt and jackets.

9 Q. Isn't it because of the fact that you wanted to be able

10 to make sure everybody had the, quote, opportunity, end

11 quote, to have recreation, that you extended the hours and

12 the temperature limits?

13 A. Sir, I want the inmates to have an opportunity to get

14 outdoors. We spent 6.1 million dollars on recreation areas,

15 and if they want to go out, if we can facilitate them going

16 out twice a day, if Jason Robb is the only inmate that wants

17 to go out in a day and he wants to go out for two sessions,

18 we'll take Jason Robb out for two sessions. That is what I

19 want to work towards. That is what we are working towards.

20 Q. Now, to get outside, you have to take an elevator. Is

21 that correct?

22 A. Correct.

23 Q. Mansfield didn't have an elevator. They just took the

24 cuffs off and let them walk out into the recreation area?

25 A. Depends on what -- they did not have an elevator,

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1 you're correct, but it depend on what area you are in.

2 We're speaking of, concerning their restraint level.

3 Q. But when you have -- I recall being there during the
4 visit, you have to go through a hallway, to an elevator, and
5 then the elevator would go I believe down, usually --

6 A. Correct.

7 Q. To get to the area where you go outside, to those
8 recreation areas.

9 That requires a guard to do that, right?

10 A. No, it does not.

11 Q. They are allowed to go on the elevator, unescorted?

12 A. 4-A inmates currently to. All other inmates are
13 escorted.

14 Q. And what about Death Row? Will they be unescorted?

15 A. Correctly. Death Row will be going unescorted. We
16 will start two at a time, and as time goes past, if we feel
17 they can handle going four at a time we'll move up to four
18 at a time.

19 Q. Now, hasn't it happened that there have been
20 difficulties with the elevator system or the door to the
21 outdoor recreation area?

22 A. As any mechanical device, you may have problems.

23 Q. And how often does that happen?

24 A. I have not kept track of it, sir. As one has broke
25 down, the maintenance department responds or we make

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1 appropriate calls to facilitate the repair as quickly as
2 possible.

3 Q. You indicated that the retrofitted lexsan glass window
4 that you showed us today will be the one that will be
5 allowed for Death Row inmates. Correct?

6 A. Yes.

7 Q. And only Death Row inmates?

8 A. And only Death Row inmates, unless they are in the
9 segregation block.

10 Q. Has that been put in yet? Have they been put in yet?

11 A. No. This is a prototype.

12 Q. And you are waiting to see what happens with this case
13 before you put them in?

14 A. Correct.

15 Q. Is that correct in?

16 A. Correct. Physically responsible.

17 Q. Mr. Landis went over a variety of quarters that
18 compared, I believe they were Exhibits O and P, that were
19 dated March 15, '05.

20 ^ quarters is orders ^ ?

21 A. I did not look at the list.

22 Q. Basically, to make the point that even the extended
23 privilege inmates at Mansfield were only getting five hours
24 of outside recreation per week, one hour, and that your
25 proposed plan for Death Row at OSP would be just as good if

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1 not better?

2 A. The opportunity. Correct.

3 Q. The opportunity. Do you notice that the dates of those
4 orders are March 15, '05?

5 A. I would have to look at the document.

6 Q. Take my word for it. They are.

7 A. Certainly.

8 Q. Okay. But you heard testimony by other inmates who
9 have been living there for ten years to say that the
10 privileges were much more liberal at Mansfield for lengthy
11 period of time before March 15, '05.

12 Correct?

13 A. In the extended privilege area, yes ZM and even.

14 Q. And even in the other privilege areas, right?

15 A. I cannot agree with that.

16 Q. The record will speak for itself.

17 But do you -- you wouldn't agree, or would you, that
18 the restrictions were imposed, the taking away of privileges
19 in Mansfield were imposed in order to make it imperative
20 that what you are proposing at OSP?

21 Q. What's your question again?

22 Q. I'll try to rephrase it.

23 Would you agree or disagree with the proposition that
24 the department of Rehabilitation & Corrections took away
25 privileges at Mansfield in March of '05 so that it would

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1 appear that the newly created less privileges at Mansfield
2 could comport with the changes at OSP?

3 A. I disagree.

4 Q. You think it is just a coincidence that things were
5 taken away in March of 2005?

6 A. It was not a coincidence. There would be management
7 reasons, I'm sure.

8 Q. You don't know those reasons, correct?

9 A. No, sir.

10 Q. Now, you deny that there was a culture, a punishment
11 regarding guards at OSP.

12 Are you aware of a beating that took place last week,
13 an alleged beating, let's say, of a prisoner, Hamilton, who
14 claimed he was assaulted by officers who were escorting him?
15 Are you aware of that?

16 A. I have not heard a claim of an assault. There was a
17 use of force yes,.

18 Q. There was a use of force. That means a guard used
19 force on an inmate, whether it may be justified or
20 unjustified, correct?

21 A. Correct.

22 Q. Has it been investigated yet?

23 A. No, sir.

24 Q. What happened to that guard? Is he on administrative
25 leave or anything?

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1 A. No, sir.

2 Q. So he is still working there?

3 A. Yes.

4 Q. Do you know that inmate Hamilton had to be taken to St.
5 Elizabeth hospital for stitches?

6 A. Yes.

7 THE COURT: How much more do you have.

8 MR. GILBERT: I will be done by the time,

9 hopefully by 4:00. I have ten to 4:00.

10 THE COURT: It takes a few minutes, I guess. If
11 you are going to be finished, we'll let you keep going.

12 MR. GILBERT: I will be done by 4:00.

13 BY MR. GILBERT:

14 Q. With respect to B and D blocks, B block shares a
15 recreation area with A block, is that correct?

16 A. Correct.

17 Q. And D block shares a recreation with C block?

18 A. Correct.

19 Q. And with respect to the clothing they are allowed
20 during the winter months, there are no boots provided the
21 inmates when they go out in cold weather?

22 A. Correct. We shovel, but there is snow in the areas.
23 We shovel it.

24 Q. They are only allowed to wear these canvas shoes, if
25 they can't afford tennis shoes. Correct?

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1 A. Correct.

2 Q. You indicated on direct testimony that you have never
3 heard about a problem with attorney visitation until last
4 week. Is that correct?

5 A. Correct.

6 Q. And how did that come about?

7 A. Through review of depositions, from counsel.

8 Q. Do you know Joe will hem?

9 A. Yes.

10 Q. Did you meet with him this summer, sometime this summer
11 regarding his concerns about attorney visitation?

12 A. He toured the facility. I took him on a tour.

13 Q. When is that?

14 A. As you said, earlier this summer, as for a date --

15 Q. Is he an inmate?

16 A. No.

17 Q. Do you know where he is from?

18 A. The Public Defender's office.

19 Q. And this was much earlier than last week, was it not?

20 A. Yes.

21 Q. So when you say that it was last week was the first
22 time you heard about a problem, the fact of the matter is
23 that you heard from the public defender about his concerns
24 about attorney visitation earlier than that.

25 A. He expressed no concerns to me. He actually gave an

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1 affirmative response to what he saw. He did not express any
2 concerns to me during his visit.

3 Q. In temples of the present staffing of COs, are there
4 245 COs at OSP ^ ?

5 A. 242, I believe.

6 Q. 242. And how many of those, how many of those have
7 never worked at any other prison?

8 A. If somebody can do the math for me, we have 89 that
9 have worked elsewhere, so we are roughly --

10 Q. 153?

11 A. Let's do it. That's good.

12 Q. 153 COs have never worked in another prison, correct?

13 A. Correct.

14 Q. And of the 89 that have worked in other prisons, how
15 many have been involved in inmate contact? I'm not talking
16 about transporting and other supportive services, but
17 actually worked day to day in interaction with other
18 inmates?

19 A. I don't understand the question.

20 Q. You said 89 out of 242 have had -- have worked in other
21 prisons in the system.

22 A. Okay.

23 Q. Can you testify to that, warden?

24 A. Yes, sir.

25 Q. Do you know how many of those actually worked in jobs

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1 as correctional officers with interactions with other
2 inmates?

3 A. A hundred percent of them, because we are the only
4 institution in the State that is solely celled, where there
5 is no interaxe.

6 Q. Now, I'm talking now staffing levels. The two blocks
7 that are proposed to go to OSP, the death penalty blocks,
8 how many guards are necessary to staff a block?

9 A. We will be staffing it with eight correction officers
10 on first and second shift, and --

11 Q. Is that 16?

12 A. And three correction officers on third shift.

13 Q. That's 19 total. Is that correct?

14 A. For a day.

15 Q. For a day?

16 A. Yes.

17 Q. And so if we multiply that by -- is that for five days
18 or a whole week?

19 A. That is for one day. On each shift.

20 Q. I mean, if you were going to hire staffing for a block
21 that had no staff, how many new guards would you need, for
22 each pod? For each block?

23 A. Approximately -- I didn't bring my pen up.

24 THE COURT: What's the numbers? Does he have the
25 screen in front of him?

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1 A. It would be 19 times approximately 2, so we are looking
2 at 38. So if you were to -- if this move doesn't go
3 forward, you would get rid of 38 -- I'm sorry the use that
4 word -- you could lay off 38 staffing members for B and D
5 block. Is that correct.

6 A. With the relief factor, yes.

7 Q. And that also might impact the need for supportive
8 personnel in terms of pod food delivery, program attic
9 delivery and other kinds of security staff to support the
10 inmate population in those two blocks. Is that correct?

11 A. As warden Collins has testified to he has not removed
12 staff from RTO.

13 Q. Pardon?

14 A. As warden Collins testified, he has not removed staff
15 from our TO.

16 Q. What I'm saying is, I'm not trying to create a
17 speculative answer but if Mansfield continues on a permanent
18 basis not to be allowed any more inmates than what is the
19 current population, it stands to reason that at least 38
20 guards or correctional officers would have to be laid off of
21 those two blocks. Correct?

22 A. I believe the number warden Collins has testified to
23 concerning Mansfield is 91.

24 Q. I'm talking about OSP.

25 A. I'm sorry. You said Mansfield.

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1 Q. I'm sorry. OSP. At least 38 would be, would have to
2 be eliminated.

3 A. Quick figures, yes.

4 Q. And that would eliminate, because the population is
5 down, that might limit the need for other supportive
6 personnel in food delivery, program delivery, security
7 operations, maintenance, technical, all kinds of things.
8 Correct?

9 A. We would have to evaluate that to determine those
10 needs.

11 Q. But at least it would be 38? Okay.
12 Right?

13 A. Yes. Quick figures, yes.

14 MR. GILBERT: One moment.

15 BY MR. GILBERT:

16 Q. My co-counsel says that that 38 would only take care of
17 five days a week, there would still be two days left over of
18 staffing.

19 A. This is figured with a relief factor.

20 MR. GILBERT: One moment.

21 BY MR. GILBERT:

22 Q. In terms of staff training, has there been any staff
23 training initiated to accommodate Death Row?

24 A. No. I do not feel there is training necessary.

25 Q. And has there been any policy documents written other

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1 than these charts regarding the proposed changes in Death
2 Row?

3 A. We have some things in draft form.

4 Q. But nothing that's been officially drafted, is that
5 correct?

6 A. They are in draft form.

7 Q. But nothing that has official DRC policy. Correct?

8 A. Correct.

9 MR. GILBERT: No further questions.

10 THE COURT: We're going to take about a five
11 minute break while we try to connect. Let me just ask
12 first, do you have any redirect?

13 MR. LANDIS: I would prefer to hold it, Your
14 Honor. I think we should get on. I may. And I would not
15 like to get in the way.

16 THE COURT: We'll still take about five minutes.

17 MR. LANDIS: Thank you, Your Honor.

18 (Recess from ^ to ^ .)

19 Witness, being first duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION OF witness

22 BY MR. MANCINI:

23 Q.

24 THE COURT: State your name and spell your last
25 name for the court reporter.

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1 THE WITNESS: Jeffrey Metzner. METZNER.

2 THE COURT: Mr. Mancini.

3 MR. MANCINI: Thank you, Your Honor.

4 BY MR. MANCINI:

5 Q. Dr. Metzner, can you hear me?

6 A. Very well.

7 Q. Thank you. How are you today?

8 A. I'm fine thank you.

9 Q. Thank you. Doctor you would you be kind enough to tell
10 us what your occupation is?

11 A. I'm a psychiatrist with a specialty in forensic
12 psychiatry with a subspecialty in correctional psychiatry.

13 Q. Are you Board certified?

14 A. I am. I'm Board certified both in general psychiatry
15 as well as in forensic psychiatry.

16 Q. Doctor, would you be kind enough to go into -- what is
17 your educational background?

18 A. I graduated from the University of Maryland medical
19 school during 1975, I then did a four year psychiatric
20 residency, which included an optional on the forensic
21 division of the Colorado State Hospital, it was then called
22 the Colorado State Hospital.

23 I completed my residency during 1979. I subsequently
24 became Board certified as soon as I was eligible to take the
25 test.

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1 Q. Doctor, are you licensed in more than one state?

2 A. I am.

3 Q. What other state?

4 A. I am licensed in the States of Colorado, Georgia, New
5 Mexico, Pennsylvania, and California.

6 Q. Okay. Now, do you have an affiliation with the
7 American Psychiatric Association?

8 A. I do. I have been a long time member of the APA but I
9 also have been a former chair of what is called the counsel
10 sill on psychiatry and the law and I'm current chair on the
11 committee on judicial action and the committee on judicial
12 action is the committee that recommends to the Board of TRS
13 tease of the APA which am I cuss briefs that we want to
14 submit. 90 percent of the submissions are to the U.S. ream
15 Court although we do some state courts and some circuit
16 courts.

17 Q. Doctor, in what settings have you practiced psychiatry?
18 Hospital settings?

19 A. The full range. When I started out, I was in general,
20 a general psychiatrist with a significant proportion of my
21 practice being an inpatient practice.

22 I have always done forensic psychiatry and for
23 beginning in 1980 I began doing correctional psychiatry.
24 Most of my work now is working for either judges, special
25 Master's, or plaintiffs or defendants in class action suits

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1 in jails and prisons that involves mental health services.

2 Q. Doctor, have you held any academic positions?

3 A. I have. For probably ten years now I am a clinical
4 professor of psychiatry and pediatrics at the School of
5 Medicine of the University F Colorado.

6 I'm also the associate director of the forensic
7 fellowship program for the department of psychiatry at the
8 same institution.

9 Q. Have you published any books or articles?

10 A. I have not published any books. I have published both
11 articles and chapters with heavy emphasis, although not
12 exclusive, on correctional psychiatry issues.

13 Q. The articles that you have published and so on, are
14 they listed in your curriculum vitae that's been marked as
15 Defendant's Exhibit D here?

16 A. Yes.

17 Q. Okay. Thank you.

18 Now, doctor, doing what you have been doing, you have
19 had occasion to evaluate the delivery of mental health care
20 in prisons and jails, or prisons?

21 A. Yes. Both prisons and jails.

22 Q. Have you had occasion to evaluate the effects of
23 prisons on the mental health of the prisoners?

24 A. Yes.

25 Q. You have testified in Court regarding jail or prison

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1 conditions, am I correct?

2 A. Correct.

3 Q. On both the plaintiffs' side and the defendants' side?

4 A. Correct.

5 Q. Are those cases set forth in the, in an attachment to
6 the report which you just?

7 A. It's a rule 26 A attachment.

8 Q. Thank you. Doctor, is there psychological literature
9 on the mental health effect of is on laid confinement? ^ ?

10 A. Yes.

11 Q. Is there a lot? Is it sparse?

12 A. I think the good literature is sparse.

13 Q. And what do you mean by that?

14 A. Well, there is a fair amount of literature in which I
15 think it is not very scientific and is more anecdotal ors
16 say like and really not based on controlled studies ^ .

17 Q. Okay. Doctor, with regard to isolated confinement,
18 what type of conditions do you need to have an adverse
19 effect upon the mental health of individuals, and what type
20 of individuals do you need to be impacted upon?

21 A. Well, let me tell you what I think is not
22 controversial. There are two operational definitions. One,
23 when I'm referring to isolation, I'm generally talking about
24 a condition of confinement where people are locked down,
25 usually 23 hours a day, sometimes 22 hours a day. So they

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1 ever locked in their cell for long periods of time during
2 the day and frequently for many days, many weeks, many
3 months.

4 Then the other operational definition I'm going to talk
5 about is people who have serious mental illnesses, and in
6 general, the definition of serious mental illness is not
7 controversial. Usually almost everyone would agree in the
8 field that a serious mental illness is minimally
9 characterized by people who have psychiatric illnesses which
10 are at least intermittently associated with psychotic
11 features or significant functional impairments.

12 So with those two operational definitions, I think it
13 is not controversial that persons who have serious mental
14 illnesses if they are placed in isolation for a prolonged
15 period of time, and I would say prolonged periods of time,
16 again, won't be controversial if you talk, start talking
17 four weeks or more, that it generally will have an adverse
18 effect and the adverse effect will either be they will get
19 worse or they won't get better.

20 Now, there are some people where it has no effect on,
21 but there is enough people that it has that kind of adverse
22 effect, and I think that that's not controversial.

23 Then using the same operational definition of
24 isolation, the question is what happens if you put a person
25 in those conditions who do not have serious mental

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1 illnesses.

2 Now, again, I think it is not controversial that most
3 people will experience such conditions as being unpleasant,
4 they frequently become irritable, it is not uncommon to see
5 them become anxious, it is not uncommon to see them feel
6 disforric, just not feel right ^ many of those people
7 gradually will adjust to those conditions of confinement.

8 Where I think it is controversial is there are some
9 people who say that placing a person who does not have a
10 serious mental illness in such conditions will cause them to
11 have serious mental illness.

12 I don't believe that that is accurate. There are some
13 people who say that and that is why I say it is
14 controversial.

15 Q. Okay. Doctor, in how many states have you visited
16 prisons or jails?

17 A. Over 30 states.

18 Q. Over what period of time are we talking about?

19 A. The first prison system that I was involved in was
20 in -- that I was really involved in was 1980, which was
21 Colorado, and so it has been for 35 years.

22 Q. Have you been a monitor with regard to any of these
23 conditions, cases?

24 A. I have been a monitor and I have always been monitors
25 an special Master's with judges, experts slash consultant.

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1 Q. Are you currently monitoring or under one of those
2 relationships now?

3 A. I am. I'm currently in the following places. I'm the
4 special master and judge's expert in the ma dried case,
5 which is be I can bay.

6 I'm with a different judge, different special master,
7 I'm one of the monitors or one of the experts in the Coleman
8 case, which is all the California prisons including be I can
9 bay.

10 I am also the Special Master's expert in the BROURD
11 county jail, which is in Florida. I'm also now the monitor
12 in the Albuquerque county jail case. In the Cook County
13 jail case I have been the Judge's consultant, that's been
14 fairly inactive recently, though.

15 I'm trying to think if there are any other cases where
16 I'm an active monitor. They are the ones that come to mind
17 right now.

18 Q. Okay. Doctor, did you serve as a monitor for the
19 department of Rehabilitation & Corrections at one time?

20 A. I did. In Ohio, yes, I did.

21 Q. And what case was that?

22 A. That was the Dunn case. Dunn v Voinovich.

23 Q. And what did that deal with?

24 A. That was a system-wide class action case that involved
25 the adequacy of the mental health service system wide and it

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1 was settled by a settlement agreement with a monitor and
2 experts.

3 I was one of the monitor's experts, and as I recall, it
4 went, from start to finish of the monitoring phase was about
5 five years.

6 Q. Doctor, during that monitor ship, did you visit the
7 Ohio State Penetentiary?

8 A. I don't think during the monitor ship that I did. I
9 think some of the monitors did, but I don't believe that I
10 was at OSP during the monitoring.

11 Q. Is that because it just opened toward the end of the
12 five years of the decree in Dunn?

13 A. It was for two reasons. One because it just opened and
14 if my memory serves me correct, the department agreed not to
15 have seriously mentally ill there. So at least from my
16 perspective there wasn't anything to monitor. I think that
17 the monitor went there to make sure things were in place,
18 that that actually was occurring.

19 Q. And so Ohio took it upon itself to exclude the
20 seriously mentally ill from the Ohio State Penetentiary, am
21 I correct?

22 A. That's my understanding.

23 Q. Now, doctor, did I ask you and did we retain, the
24 department retain you to serve as an expert witness for
25 purposes of the trial of this case in 2000-2001?

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1 A. Yes.

2 Q. At that particular time did you visit the Ohio State
3 Penetentiary?

4 A. I did.

5 Q. Do you remember, recall how many times?

6 A. I think it was at least three times.

7 Q. Thank you. So your visit here now is not the first
8 time you have visited the Ohio State Penetentiary, am I
9 correct?

10 A. You are correct.

11 Q. Okay. Now, doctor, this time, what did the department
12 ask you to do?

13 A. The department asked me to do an assessment relevant to
14 potential psychological issues that could arise if the Death
15 Row from Mansfield was transferred to OSP, and two, to also
16 provide some consultation, assessment based on Dr. Kupers'
17 anticipated testimony as demonstrated by I think it was the
18 July 15 document which was entitled, I think, potential
19 themes.

20 Q. Okay. Now, once you accepted the assign many, what did
21 you do?

22 A. Well, I did several things. First of all, I got as
23 much relevant discovery that was available to review, number
24 one; and I also eventually made two trips out to Ohio, one
25 was on August 11, in which I site visited during the morning

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1 OSP and in the afternoon Mansfield, and then I came back for
 2 another site visit which was exclusively at Mansfield, and I
 3 think it was on, I believe it was Tuesday, August 15 or 16,
 4 where I was at Mansfield.

5 Q. Okay. Doctor, you eventually prepared a report which
 6 we submitted to this Court, correct? You prepared a report
 7 that we filed with this Court, am I correct?

8 A. Yes.

9 Q. In your report, did you list on page three the sources
 10 you relied on for the record?

11 A. I did.

12 MR. MANCINI: For the record, that's been marked
 13 as Defendant's Exhibit E.

14 BY MR. MANCINI:

15 Q. Doctor, what was the first site visit?

16 A. The first site visit was at OSP during the morning of
 17 August 11.

18 Q. Would you tell us what you did, your findings and so
 19 on?

20 A. Yes. I initially met with warden Houk, and reviewed --
 21 at that point I had Mr. Nathan's report and wanted to make
 22 sure that the information contained in there was accurate,
 23 so I reviewed pertinent aspects of the report with warden
 24 Houk, and then I also toured the housing units which were
 25 being proposed to be used for Death Row, and during that

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1 tour I had the opportunity to ask relevant questions around
 2 what the conditions were going to be like.

3 During that tour I also had a chance to meet with the
 4 chief psychologist and to talk with a couple of the
 5 correction officers as well.

6 Q. All right. Then what did you do.

7 A. Well, you are also asking me for my findings.

8 I have reviewed -- you know, I specifically was
 9 interested in what the cells were going to be like, what the
 10 out of cell time was going to be like, and what kind of
 11 programming was going to be available and what kind of
 12 mental health screening was going to be there.

13 What I essentially found is that the plan was -- well,
 14 there were two things, and I will do it in, try to do it in
 15 the context of giving some comparisons to Mansfield.

16 I think it was the two housing units that were going to
 17 be used for Death Row I believe were housing units D as in
 18 David and B as in baker and I think D was going to be used
 19 for the extended privilege Death Row inmates and B was going
 20 to be used for the other inmates.

21 In D, two of the housing pods were not going to be used
 22 to house inmates. One was going to be converted into a
 23 multi-purpose room; the other one was going to be converted
 24 into essentially an indoor gymnasium.

25 I looked at the schedule for the -- the advantage that

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1 the extended privilege unit was going to have at OSP
 2 compared to Mansfield was, one, it was going to have a
 3 higher capacity for number of inmates that could be housed
 4 there at Mansfield. They only had room for 36 inmates and
 5 they could at least double the number at OSP.

6 The one disadvantage for extended privilege inmates at
 7 OSP as compared to Mansfield is that their yard was not
 8 nearly as nice as the yard at Mansfield.

9 They were going to -- when you looked at the schedule
 10 for the unit B as in baker for the non extended privileged,
 11 for the general population, so to speak, Death Row inmates,
 12 the advantage was is they were going to have 35 hours of out
 13 of cell time. They would be able to congregate in groups of
 14 eight. They were going to have meals in a congregate
 15 manner. The 35 hours would include five hours of outdoor
 16 rec.

17 And that compared to what inmates at Mansfield were
 18 telling me, that they would generally get 1.5 to maybe 2
 19 hours per day of out of cell rec time.

20 The other things that I recall on D, David unit, the
 21 cell ports were going to be open throughout the day; both
 22 unit were going to have semi-contact visitation. And what I
 23 mean by semi-contact visitation, there was going to be a
 24 lexsan cover that would be opened so that people could at
 25 least hold hands, touch hands.

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1 The disadvantage at least was, I looked at the attorney
 2 visits, and the last I heard, at Mansfield the attorney
 3 visits were complete HEE contact with a big conference
 4 table, they were still working on the logistics of how, what
 5 they were going to have at OSP, although it was clear that
 6 they were mandated to do it where they would have adequate
 7 sound privacy.

8 My conclusion -- oh. Well, my conclusion in looking at
 9 the proposed conditions at OSP for Death Row, assuming that
 10 they were implemented as planned, had the following
 11 conclusions.

12 One, that although the Death Row would be housed in a
 13 facility that was a Supermax facility, the Death Row would
 14 not be treated as if it was a Supermax environment, and I
 15 don't -- and in my opinion, there would not be harmful
 16 effects for Death Row to be placed at OSP as long as the
 17 plans that were told to me and that, some of which are in
 18 writing, are implemented, and the other thing that was clear
 19 was that part of the procedures is that people with serious
 20 mental illnesses were going to be excluded from Death Row at
 21 OSP to be on the very conservative side and they had a
 22 process in place which I learned more about when I went to
 23 Mansfield.

24 The programming, they also had in cell programming at
 25 OSP, which is not designed to replace out of cell

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1 programming but is designed to supplement out of cell
2 programming and I was very familiar with the in-cell
3 programming from my previous experience at OSP and I think
4 that they have very good in-cell programming and I have
5 recommended to various correctional systems around the
6 country to call up OSP to get copies of the tapes that they
7 use because I think they are very useful.

8 That was basically my assessment.

9 Q. Doctor, would you comment on the day rooms at the Ohio
10 State Penetentiary?

11 A. Yes. The day rooms are large, much bigger than at
12 Mansfield. They allow for having meals in a social fashion,
13 and they allow people to walk around and socialize when they
14 are outside -- when they are in the day room. And I guess
15 the other thing that I would say is the OSP physical plant
16 is relatively new and there is nothing decrepid about it, it
17 looks like it is a new physical plant and it has been well
18 maintained, and I wouldn't say that about Mansfield. I
19 wouldn't say that about the -- the extended privilege
20 housing unit at Mansfield is not bad, but the other housing
21 units in Mansfield are -- the physical plant is not good.

22 Q. Did you check on the program booths at the Ohio State
23 Penetentiary?

24 A. Yes. There are -- each unit had on the second floor
25 six programming cells which can be used for a variety of

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1 different out of cell therapeutic programming.

2 They also have on the first floor what they call the
3 barber shop, which I recommended to them to change that name
4 to a programming cell. They have adequate space, at least
5 one cell that in my opinion is adequate, that offers
6 adequate sound privacy.

7 Q. I'm sorry, doctor. I didn't hear you.

8 What was your evaluation of the barber shop? I'm
9 sorry?

10 A. That it offers adequate sound privacy for individual
11 contacts.

12 Q. At that particular time, did the Ohio -- the OSP staff
13 provide you with a list of congregate activity programming
14 and so on? Did we give you some material on that?

15 A. Yes. I saw a proposed schedule for the 35 hours.

16 Q. Okay. You checked the visiting booths?

17 A. I did.

18 Q. Did you find any problems?

19 A. No, no. I thought, you know, it was my understanding
20 the visiting booths were going to be modified to allow for
21 the semi-contact, and I thought the visiting booths were
22 fine.

23 Q. What about the attorney visiting booth?

24 A. The attorney visiting booth, it depend how many
25 attorneys. There were some sound issues, and as I -- and

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1 they were incomplete. As I understand it, they are going to
 2 put some shelves on there, so they will have some working
 3 space. In my later discussions with the other key people
 4 was that they were going to fix the sound problem. So if
 5 they fix the sound problem, I think the attorney booths, the
 6 attorney visitation area will be adequate.

7 Q. Okay. Doctor, anything else with regard to your
 8 findings at OSP?

9 A. Well, the answer is yes. And it is in the context of
 10 responding to some of the concerns or issues or findings
 11 that Dr. Kupers reported.

12 For example, as I understand Dr. Kupers' report or
 13 opinion, one thing he says is that the culture of the
 14 correctional staff at OSP is oppressive and dehuman
 15 izing/degrading to inmates, and therefore if you move Death
 16 Row there, that is going to spill over because, in Dr.
 17 Kupers' opinion or understanding, very few of the correction
 18 officers have worked outside of a maximum, Supermax setting.

19 Well, I have an opinion about that. I happen to
 20 disagree for a number of reasons, and they include the
 21 following.

22 First of all, a significant proportion, as I understand
 23 it from the warden, of those correction officers who
 24 primarily work at the Supermax also provide periodic
 25 coverage at the camp, which is on the same campus, and I

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1 know of no allegation or evidence that the camp is being run
 2 as a Supermax. It is being run as a camp.

3 Number two, I have also had experiences in Supermax
 4 which have been oppressive and which have been found to be
 5 unconstitutional and oppressive in which if you create a
 6 different environment within that Supermax that that
 7 environment, the correction officers have a very different
 8 culture, then in that same Supermax where you have a
 9 different environment.

10 So I don't agree that you just have one culture
 11 throughout the institution, and so I don't agree that if the
 12 conditions are established as planned, if things are
 13 implemented as planned, that the Death Row housing units are
 14 going to feel or look like a Supermax.

15 So that is some other findings that I have.

16 Q. Would the fact that it's a multi-purpose facility be a
 17 hindrance to going ahead with what we are doing here?

18 A. I don't think so. I think there is -- I worked or
 19 consulted or monitored many facilities that are
 20 multi-purpose, and a lot depends on leadership and
 21 resources.

22 Q. Okay. Doctor, what about the architecture at OSP. Is
 23 that a stumbling block?

24 A. I don't believe that the architecture at OSP is a
 25 stumbling block. I think that the housing units at OSP for

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1 Death Row, again, excluding the housing unit at 6, I think
 2 at Mansfield, are far superior to the housing units at
 3 Mansfield and they are at least, I think you could argue one
 4 way or the other whether Mansfield is better or not but it
 5 is not -- I mean, Mansfield, whether housing unit 6 at
 6 Mansfield is better or not.

7 And I think it would be, with the yard on housing unit
 8 6 you probably would say it is a little bit better.

9 Q. Doctor, at this time, let me take you -- let's go to
 10 your tour of Mansfield, tell us what you did there and your
 11 findings, and then we'll come back to -- I'll lead you into
 12 your report and how you addressed Dr. Kupers' themes?

13 A. Okay. I had two different trips to Mansfield. The
 14 first one was during the afternoon of August 11. I had a
 15 physical plant tour, accompanied as I was at OSP by the
 16 warden of each institution.

17 I met with the director of mental health, Dr. Coffee at
 18 Mansfield, and reviewed in detail the mental health
 19 screening process that has been ongoing around transfer
 20 issues to OSP.

21 I also observed one of the mental health clinicians,
 22 Deanna Osgood in doing some rounds in several of the housing
 23 units, and I also talked on first visit I talked
 24 individually at the cell front and in the rec area with a
 25 handful of inmates and when I went back on the following

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1 week --

2 MR. LYND: For give me, Dr. Metzner. We have the
 3 same problem here as with the visit from miss wood Ford in
 4 California.

5 When attorney ManCI knee originally told me that
 6 instead of coming on August 11 and 12, Dr. Metzner would
 7 come on August 11 and return on August 16, it was indicated
 8 that there would be a supplemental report based on any new
 9 data and findings in the August 16 visit.

10 But there has been no supplementary report. I
 11 think Rule 26 clearly requires it. And I would ask that Dr.
 12 Metzner's testimony about Mansfield be limited to his visit
 13 of August 11.

14 MR. MANCINI: First of all, he was invited and
 15 declined to come. Secondly, Dr. Kupers talked about Jeff
 16 Metzner talking -- he opened the door to this yesterday with
 17 his testimony in terms of his critique of Dr. Metzner's
 18 talking to these inmates and so on.

19 THE COURT: The problem, though, is that Rule 26
 20 says that the expert is limited to the scope of the report.
 21 And if there is a rebuttal report, you know, you can expand
 22 that some, but without the report, you are basically limited
 23 to the fairly specific description given in the first
 24 report.

25 MR. MANCINI: I understand that, but with regard

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1 to this visit, the only thing different is he is telling you
 2 that he went and talked to inmates. That is what Kupers was
 3 talking about yesterday. With regard to his findings,
 4 everything -- it will be limited to what was his initial
 5 report. Nothing is changed on that. All he did was go
 6 interview inmates.

7 THE COURT: I don't have a copy of the original
 8 report. So I'm not certain as we sit here how broad it is
 9 or not. I think it is frankly kind of a minor point and I
 10 didn't think Dr. Kupers leveled any criticism other than a
 11 suggestion that he had a different impression in terms of
 12 the, you know, what the inmates' positions were and/or --
 13 and I thought you cross-examined him on that very issue as
 14 to how reflective his sampling was.

15 MR. MANCINI: Your Honor --

16 THE COURT: So I don't think, I'm not sure why we
 17 are spending time and beyond that, I'm not sure, I thought
 18 the doctor had just gone through and given his whole,
 19 basically his whole opinion on the situation.

20 Are you just going to have him repeat it?

21 MR. MANCINI: I asked one question. We would have
 22 been done a minute later.

23 THE COURT: You just led into it, you said to him
 24 now we are going to go to what your report is and the
 25 question I have is I thought he just went through all his

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1 opinions on the case and I'm -- I was going to ask him why
 2 are we revisiting the opinions he's just expressed.

3 MR. MANCINI: We're not. The screening and things
 4 he did this at Mansfield, first visit. I'll limit it, be
 5 more than happy to limit his testimony to his first visit.
 6 Fro problem.

7 THE COURT: Why don't you go on to another
 8 question.

9 MR. MANCINI: Okay.

10 BY MR. MANCINI:

11 Q. Doctor, please limit your testimony with regard to
 12 Mansfield to your first visit.

13 A. Okay.

14 Q. Okay? Tell him what you did there and your findings.

15 A. Okay. Well, I think I have told you what I did. What
 16 my findings were is I thought that the mental health
 17 screening process that was being followed to attempt to
 18 insure that no one with serious mental illness from Death
 19 Row would be transferred to OSP was being implemented in an
 20 effective fashion and in fact was working, that they had
 21 identified people, additional people who met criteria for
 22 exclusion, and they were excluding them.

23 I guess the other thing that I found --

24 Q. Doctor, excuse me one minute.

25 Stay on that subject for a minute. With regard to the

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1 screening process, would you explain to the Court what you
2 found they were doing with regard to inmates who declined to
3 be evaluated? Would you explain what they did?

4 A. Yes, people who declined to be evaluated had a
5 psychiatrist review the medical and mental health records,
6 and review any other collateral information that they
7 thought would be helpful, such as disciplinary report,
8 classification reports, I think that the vast majority, I
9 think 75 percent of the inmates were refusing clinical
10 interviews, so I think there was over a hundred
11 classification files that had been reviewed in addition to
12 what I have just mentioned.

13 Also, the other thing that the evaluating psychiatrist
14 would do is talk with miss Osgood, who made regular round in
15 that unit, who knew these inmates pretty well, so that was
16 the process that was in place.

17 Q. Did they have -- I'm sorry. Go ahead.

18 A. And then -- well, that's all I have to say about that.

19 Q. All right. Please, go on with your findings.

20 A. The other finding I had was with the small number of
21 inmates that I talked to, what was interesting was the
22 amount of misinformation that was present around what the
23 conditions at OSP would be like, that no one had a concept
24 that they were planning to have 35 hours of out of cell
25 time, they were pretty convinced that it was going to be

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1 treated like a Supermax; and they were surprised to hear
2 other wise.

3 Q. Okay.

4 A. Any additional findings, I guess -- no additional
5 findings.

6 Q. With regard to your report, your analytical framework
7 was to take what Dr. Kupers said and address each concern?

8 A. Yes.

9 Q. Would you take a look at what's been marked here as
10 Defendant's Exhibit A and if we have not covered the

11 concern, please address that and we'll go through this and
12 complete your testimony for the day.

13 A. Okay. I have already covered the issue around culture.

14 One of the issues was Dr. Kupers talked about Death Row
15 syndrome and inmates essentially becoming so despondent that
16 they were volunteering to waive their appeals, and the
17 implication was that if they went to OSP, there would be a
18 Death Row syndrome related to the Supermax environment.

19 My opinion about that is I disagree. I think there is
20 first of all controversy around the existence or the meaning
21 of Death Row syndrome, but even if you assume there is a
22 Death Row inchrome, I found no evidence of a Death Row
23 syndrome at Mansfield and in my opinion, if the plans are
24 implemented as we discussed, there won't be a Death Row
25 syndrome at OSP as well.

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1 Q. Doctor --

2 A. Yes?

3 Q. Is the Death Row syndrome or phenomenon recognized as a
4 diagnosis by the American Psychiatric Association?

5 A. No.

6 Q. Is it listed as a diagnosis in the book they publish?

7 A. No.

8 Q. The DSM-IV? The answer is no?

9 A. The answer is no.

10 Q. Please, go ahead.

11 A. And then Dr. Kupers also thought that there is a
12 document that compares OSP and Mansfield around privileges
13 and Dr. Kupers basically said that was misleading and
14 inaccurate, and again, I think it is not misleading and
15 inaccurate. That's what the plan is to be implemented.

16 My assessment of Dr. Kupers' issues around attorney
17 visits and the nature of the attorney visits, I think that's
18 a legal issue, not a psychiatric issue.

19 Dr. Kupers' -- and I'll just, we've already touched on
20 it and I'll just mention that Dr. Kupers basically says that
21 people will become clinically worse even if they don't have
22 serious mental illnesses if they are moved to OSP because it
23 will be a Supermaximum facility and I disagree for the
24 reasons that I have already given.

25 Dr. Kupers also essentially stated that inmates were

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1 perceiving what was going on as being very unfair, and
2 therefore if you think it is unfair that whatever problems
3 they have and whatever -- well, if you perceive things to be
4 very than fair, then you are going to have a higher
5 prevalence of mental disorder.

6 I know of no literature that supports that connection.
7 I don't necessarily disagree that the inmates perceive
8 things as unfair. I do disagree that what is being done to
9 them is particularly unfair.

10 Then Dr. Kupers also states that the institution, OSP,
11 will need more mental health staff because they are going to
12 get more people with mental illness.

13 I agree that they are going to get more people with
14 mental illness, they are probably going to get 20 to 30
15 people that are going to require some kind of mental health
16 intervention. None of these people will meet the criteria
17 for serious mental illness because OSP is so well staffed
18 with mental health people.

19 I think it is unlikely that they are going to need more
20 staff, but I think it needs to be reassessed after -- if the
21 transfer occurs after about six months to see if I'm right
22 or not.

23 But I think they have enough staff to start off and
24 provide adequate treatment to 20 or 30 people.

25 Then Dr. Kupers also talked about need for significant

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1 training of correctional staff related to the pervasive
 2 culture issue I already addressed. I disagree they need any
 3 more training for reasons that I have already stated.

4 And Dr. Kupers thought that the mental health
 5 assessments were really inadequate. The screening mental
 6 health assessments were inadequate because so many inmates
 7 were refusing to participate in direct interviews.

8 I also disagree because these inmates have been there a
 9 long time, the mental health staff know them, and they have
 10 an adequate screening procedure in place when people refuse
 11 mental health assessments.

12 So that's -- I think I have covered the various issues.

13 Q. In sum --

14 A. My summary is that I do not think moving the Death Row
 15 inmate to OSP would be harmful from a mental health
 16 perspective. It is also my opinion that the environment
 17 that is being proposed is not a Supermax environment.

18 Q. And that is predicated upon the ORC implementing what
 19 they promised to do. Is that correct?

20 A. That's correct.

21 MR. MANCINI: Thank you, doctor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. LYND:

25 Q. Good afternoon, Dr. Metzner.

1 A. Hello, Mr. Lynd.

2 Q. We accompanied each other on August 11, did we not?

3 A. Yes, we did.

4 Q. Dr. Metzner, in response to attorney ManCI knee's
 5 questions, you indicated that you had been the mental health
 6 expert in this case for the State of Ohio and would have
 7 participated in our trial had we not settled that issue.

8 Correct?

9 A. Yes.

10 Q. And in preparation for the trial, you produced a report
 11 in September, 2001.

12 A. That's probably correct. I have not looked back, so I
 13 will accept your representation.

14 Q. And in that report, you said that as you found OSP at
 15 that time, it had adequate policies and procedures for
 16 identifying OSP inmates who begin to exhibit symptoms of a
 17 serious mental illness during their incarceration at OSP.

18 Do you remember that?

19 A. I believe that is also correct.

20 Q. And I want to ask --

21 MR. MANCINI: Your Honor, objection. The cross is
 22 limited to my direct.

23 MR. LYND: I think it was established that Dr.
 24 Metzner had visited OSP in 2001 --

25 THE COURT: I think he can ask the question. Go

1 ahead. The alternative was if the doctor wants to wait
2 until they come back on the rebuttal case and you will just
3 have to make the doctor appear tomorrow if you want to do it
4 in that fashion. You would just have to appear tomorrow if
5 counsel is correct in objecting that it is beyond the scope.

6 BY MR. LYND:

7 Q. But in fact, Dr. Metzner, your own report of September,
8 2001 indicated that between February and May of 2001,
9 earlier that same year, central office mental health staff
10 had come to OSP and as a result, approximately 14 prisoners
11 were found to be seriously mentally ill and transferred back
12 to SOCF.

13 Isn't that true?

14 A. I think that's correct.

15 Q. These were apparently prisoners who had been missed by
16 the local mental health people at OSP but were picked up by
17 the staff from central office.

18 A. Not necessarily. There might have been some of that.
19 It is also possible just like in a reception center, you can
20 have a negative mental health screen and later have a mental
21 illness become apparent so of those 14 I don't know how many
22 were -- should have been picked up on the initial screen
23 versus how many appropriately weren't picked up on the
24 initial screen but had an underlying disorder to begin with,
25 which then became exacerbated once they got there. So I

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1 don't know the answer to that right now.

2 Q. You also commented in that report that in July, 2001, a
3 total of 87 OSP prisoners were reviewed by the mental health
4 staff at OSP to determine whether any met the newly expanded
5 OSP exclusion criteria. Do you remember?

6 A. That sounds vaguely familiar. The other thing that is
7 beginning to remind me and I would have to look in my
8 report, but I seem to think, remember, and this is just my
9 memory, that people had been transferred at one point --
10 well action I don't know. I have to look at my report.

11 So anyway, yes, that's probably accurate.

12 Q. So in September, when you made your report, you also
13 commented on the fact that in July, 2001, there had been a
14 further screening of 87 OSP prisoners by OSP mental health
15 staff.

16 A. You know, it might be helpful if you give me a minute I
17 might be able to find my report on my computer so I have a
18 context of what you're talking about.

19 Q. Why don't you do that.

20 A. Is this the September 24, 2001 report?

21 Q. That's it. And I'm referring to page eight.

22 A. I'm almost there. I'm just reviewing a little bit
23 before then to get a context.

24 Q. That's fine.

25 A. Okay. Let me clarify something you had asked me and

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1 respond and give you an answer about that.

2 I think you first asked me whether I said in this
3 report that the screening process was fine and then you
4 later pointed out but they were finding people, how could
5 that have been if the screening process were fine.

6 Well, if you read my report, what it says is during the
7 first six months -- let me tell you what page I'm on. I'm
8 on page six. It is under the section entitled "mental
9 health screening."

10 During the first six months following opening of OSP,
11 the mental health screening process at SOCF -- and that as
12 you know is Lucasville and that's where 90 percent of the
13 inmates transferred from, initially came from, fluctuated
14 related to the opening process which often resulted in SOCF
15 having to do screenings of 50 inmates in a very short period
16 of time. Similar problems occurred at OSP which meant that
17 the initial mental health screenings were often not
18 completed within a 14 day timeframe.

19 And then I go over what the procedure was prior to
20 March, 2001 and the inference that comes from that is that
21 there were significant problems in the initial screening
22 process, and then you will see in that same section I say
23 "the mental health screening process has changed since
24 March, 2001." And then I tell you what the change is.

25 So it is not surprising to me that later on, they went,

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1 central office and other people went back and did some
2 rescreening because the screening process initially was
3 faulty. They subsequently fixed the screening process.

4 Let me go, I have not gotten to page eight where you're
5 talking about, so let me find that. I'm still and here is
6 where this 87 comes from and this is page seven, the bottom
7 of page seven.

8 During July, 2001 the mental health records of inmates
9 at OSP who had a history of mental health treatment two
10 years prior to their admission were OSP or were identified
11 by mental health as being a concern or who had been admitted
12 to OSP since June, 2001, were reviewed by Patrick bigs, BHT
13 and John bow tear YUS Ph.D, the records were reviewed in
14 order to determine whether any of the inmates appeared to
15 meet the newly expanded OSP exclusion criteria. A total of
16 87 records were reviewed with three inmates determined to
17 require further assessment relevant to possibly meeting
18 exclusion criteria and they were subsequently interviewed
19 and one of the three out of the 8th 7 were subsequently
20 found to meet exclusion.

21 So these 87, new 87 assessments were done in the
22 context of being ultra conservative because they changed the
23 exclusion criteria.

24 Q. But I take it, Dr. Metzner, that it is your view that
25 by the time those 87 were screened in the summer of 2001,

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1 the screening process had been fixed, as you put it.

2 A. Well, let me read on before I answer that.

3 You know, what I have to know, and if you want me to
4 take the time I will do it but the issue would be is the
5 current screening process being used the same as what was
6 being used in March, 2001 after they changed it.

7 If the answer is yes, then my answer would be yes. If
8 no, then I would have to see what the change was to
9 determine why they made that.

10 I don't think, again, going by memory, I don't think
11 that there is a dramatic change, but I have not been asked
12 to review that, so I don't know.

13 Q. Well, for the moment, Dr. Metzner, I am dealing only
14 with your evaluation of the screening process in September,
15 2001, as it had been carried out by the OSP mental health
16 staff a couple of months earlier.

17 And here is the question I want to ask you. If you
18 note that within a period of months after the writing of
19 your report at least a dozen more of the 87 whose names and
20 numbers I'm prepared to read into the record were
21 transferred out of OSP because of mental health problems,
22 would that cause you to consider revising your judgment that
23 the mental health screening process was adequate as of the
24 fall of 2001?

25 A. Well, it would cause me to ask the following questions,

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1 which would then help me answer that.

2 One, I would need to know of those -- you mentioned,
3 you said 14 people?

4 Q. I said at least a dozen more.

5 A. A dozen more. The first question would be to look at
6 whether the people who were subsequently found to meet
7 exclusion criteria, was there screening done as it was
8 supposed to have been done, so was the revised March policy
9 and procedure followed.

10 So if it wasn't followed, then the issue is not that
11 you had a bad policy and procedure. The issue would be that
12 the implementation was not being followed. That would be
13 one decision question.

14 Then another one would be let's assume that it was
15 followed. Then the question is, as I said before, were
16 these people, could you have done a different screen which
17 would have picked them up then, or they didn't have evidence
18 of a serious mental illness then, but had an underlying
19 serious mental illness or a new mental illness that
20 subsequently developed.

21 So you would have to know that. So you would have to
22 do a QI and the kinds of QIs I would also want to look at is
23 who did the screening. Were these done by five different
24 screeners or was it by the same screener and maybe you have
25 a problem with the clinician doing the assessments.

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1 I can't answer that question. It would certainly give
2 me pause to come up, say that needs to be looked at.

3 Q. But if in fact it is true, that 14 people were
4 transferred as SMI in early 2001, and if my representation
5 is correct that an additional twelve or more were
6 transferred not long after, then you would be wrong in what
7 you said in your recent report when you said very few
8 inmates have been transferred due to serious mental illness.

9 Whatever the process was, whoever's fault it was,
10 simply as a quantitative matter, if what I'm representing to
11 you is correct, it is not true, that very few inmates have
12 been moved out of OSP because of serious mental illness?

13 A. I would disagree, because I think you have some very
14 misleading statements.

15 First of all, the initial transfers in early 2001, I
16 have already said, as my report says, that you had a faulty
17 screening process.

18 So that is -- and then if you talk about twelve people,
19 so if you subtract those initial ones, if you then are
20 talking about at least twelve people since March action
21 2001, over four years, I would not call that a lot of people
22 ^ .

23 Q. Not over four years, over a period of months. In any
24 event, let's move on.

25 A. Okay.

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1 Q. I want to address one of your conclusions about
2 Mansfield which had to do with the mental health screening
3 process that is now going on.

4 Do you know how many psychiatrists are involved in that
5 process?

6 A. Let me look at my report and see if I have an answer
7 for that. No. I know it is more than one, but I don't know
8 how many. My memory was that we're talking two or three,
9 but I don't know for sure.

10 Q. Do you know whether those psychiatrists were given some
11 kind of standard protocol or format to guide their
12 assessments?

13 A. Well, I know that one, they were -- they sight at OSP
14 to have a feeling what OSP was like and two they had access
15 to the standard operating procedure which is applicable to
16 the mental health assessment which provides a form that
17 gives structure, gives a structured protocol, I would say.

18 So to that extent the answer is yes.

19 Q. Do you know if the psychiatrist who did the assessments
20 were specifically instructed not to inquire into the
21 circumstances of the kinds that had caused those prisoners
22 to be sentenced?

23 A. No, I don't know. I don't know one way or the other on
24 that.

25 Q. And do you know whether or not they made such inquiry?

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1 A. Again, I don't know. As I can tell you -- as I said
2 before, I think only 25 percent of the inmates consented to
3 an interview, so most of the evaluations did not involve
4 interviews.

5 Q. Do you know why the prisoners did not consent to be
6 interviewed?

7 A. Yes. My understanding is on advice of their defense
8 attorneys, that many of these, probably most of them already
9 had pending appeals and they were concerned about that
10 information being used against them.

11 Q. You think that was an understandable concern?

12 A. I think it is an understandable -- it depends what
13 the -- do I think it is -- yes, it is an understandable
14 concern.

15 Q. Am I right in thinking that at the tap Supermax in
16 Illinois you make the recommendation that mental health
17 records should not be included in the prisoner's mental file
18 to as so avoid mental health records being used for an
19 improper purpose?

20 A. That is correct.

21 Q. And would you also support one of Dr. Kupers'
22 recommendations that you did not discuss, that the mental
23 health assessments being done at Mansfield should be
24 rigorously separated, hopefully by Court order, from the
25 prisoner's other files so that they could not be used in

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1 future in appeals or clemency proceedings in the way that
2 prisoners and their counsel fee?

3 A. I certainly support keeping mental health records
4 confidential. I'm not sure that you can keep them out of
5 all legal proceedings but to the extent that you can, I
6 would certainly support that.

7 Q. And as to whether or not the prisoner attended the
8 evaluation, it is also your opinion, is it not, expressed in
9 your deposition in that same case, that in rendering
10 diagnoses, it is always much better to have the prisoner
11 present.

12 A. Oh, yes. Yes. That's correct.

13 Q. So that the assessments made in the absence of the
14 prisoner would necessarily be less reliable than if the
15 prisoner had participated?

16 A. I think that's accurate.

17 Q. Incidentally, Dr. Metzner, your report in this case was
18 very helpful in providing some preliminary numbers as to
19 what the assessments were reporting, and you said among
20 other things that -- I think you said, surely I got it from
21 your report, that --

22 A. It is on page seven.

23 Q. Pardon?

24 A. It is on page seven.

25 Q. My concern is that the figure I have seen, and I

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1 confess I don't see it on this page at this moment, is that
 2 the number of persons who had been tentatively tabbed for
 3 possible exclusion was something like 41, and if that is so,
 4 my question was going to be how you felt they had, could
 5 adequately be accommodated by a single housing unit of 34
 6 cells at the Warren correctional institution?

7 A. Since you are not looking at me, that's a question for
 8 me?

9 Q. Yes.

10 A. Okay. Well, I would say two things.

11 First of all, I wasn't asked to take a look at Warren
 12 but if they have, they only have 34 cells at Warren, you
 13 have 41 people, they are going to need more room is what my
 14 initial opinion would be.

15 Q. Dr. Kupers also expressed in his testimony yesterday an
 16 opinion that if the seriously mentally ill or
 17 psychologically vulnerable prisoners on Death Row at ManCI
 18 were being successfully main streamed at the present time,
 19 it might be detrimental for that group of prisoners to
 20 separate them off and put them by themselves in a different
 21 institution.

22 Do you have an opinion?

23 A. Let me think about that. You are using the word main
 24 stream in the context of GP, Death Row inmates?

25 Q. Exactly.

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1 A. I would want to know more about what the program at
 2 Warren is going to be, whether since it is going to be just
 3 inmates with serious mental illness, whether that means they
 4 are going to have the opportunity to do more mental health
 5 programming then what they are currently doing in Mansfield.

6 I think there is probably pros and cons to that. That
 7 there is probably some anning RA see that there are some
 8 people who have serious mental illness who main stream and
 9 that is good. And then there are other people who have
 10 serious mental illness who are main streamed who may not be
 11 doing so well.

12 So I would have to, I would want to look at the
 13 functional, the functioning of those 41 people.

14 Q. Incidentally, Dr. Metzner, if you are correct in what I
 15 understand to be your conclusion, that confinement at OSP
 16 for Death Row prisoners from ManCI would be as good or
 17 better than their present situation, why screen them for
 18 serious mental illness and psychological vulnerability.

19 Doesn't the act of screening pre-suppose that they are
 20 about to be sent into a more challenging and rigorous
 21 setting?

22 A. You know, that's a very good question, and I think this
 23 was not advice that I gave to the department. I think the
 24 department is taking an extremely conservative stance in the
 25 context of this litigation, and I think if what I'm saying

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1 is accurate you could in fact put people with serious mental
2 illness in the environment that I'm talking about without
3 harm.

4 Q. What have you been told or what did you learn about the
5 psychological impact on some Death Row prisoners at ManCI
6 when they heard about the proposed transfer to OSP?

7 A. Psychological impact.

8 Q. Let me be more specific, Dr. Metzner.

9 Have you investigated the suicide of ManCI prisoner
10 Martin Kolesar on May 7, 2005 ^ ?

11 A. I have not.

12 Q. No one told you that Mr. Kolesar was from Youngstown
13 and had been sentenced for the murder of a Youngstown police
14 officer?

15 A. I don't know anything about that case.

16 Q. Have you looked into the effects of the transfer
17 announcement on Death Row prisoners who had previously been
18 confined at OSP?

19 A. I did not personally examine their records. I just
20 have -- I have information that I don't think is more
21 than -- it is not information that I would use in a
22 professional way.

23 Q. Were you made aware that two such prisoners, Michael
24 Bengé and Robert Van Hook, had been transferred to Oakwood,
25 the prison psychiatric facility, because of their response

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1 to the transfer announcement?

2 A. I don't think so.

3 Q. And with regard to the mental health situation at OSP,
4 into which the Mansfield prisoners are to be transferred,
5 have you either the first time or this last time made
6 inquiry into the three successful suicides that did occur at
7 OSP some years ago?

8 A. You're going to have to tell me what you say occurred.

9 Q. They occurred between 1998 and 2000.

10 A. I am sure that I would have looked at those in the
11 earlier portion of the case, not related to the Death Row,
12 but I don't have memory of that, but that is the kind of
13 things I would look at.

14 Q. For example, and I realize you may not remember this,
15 do you know that the third successful suicide, Richard Pitts,
16 took that action just after receiving an adverse decision in
17 his legal appeal?

18 A. Again, I don't have memory of five years ago, four
19 years ago, looking at that case, those cases.

20 Q. Well, speaking of the last two months, Dr. Metzner,
21 what if anything did OSP staff tell you about the four
22 serious suicide attempts at OSP during that period?

23 A. I did not look at that issue.

24 Q. And I realize that you wouldn't have known this before
25 your report, but no one told you that two such attempts

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1 occurred last Thursday and Friday?

2 A. That's correct.

3 MR. LYND: If I could have just a moment.

4 (Discussion had off the record.)

5 BY MR. LYND:

6 Q. You mentioned your conversations with prisoners at
7 ManCI on August 11. And I think you said that those
8 prisoner conversations were relatively brief, occurred
9 either at the cell front or through the recreation bars.

10 Correct?

11 A. Yes.

12 Q. Moreover, Dr. Metzner, they were conducted sufficiently
13 loudly that it was difficult for the folks touring with you,
14 including myself, not to overhear what was being said.

15 Also correct?

16 A. That wouldn't surprise me. I didn't talk with you
17 guys about that, but that wouldn't surprise me.

18 Q. In any of your conversations with prisoners did they
19 bring up the fact that they felt certain things had been
20 promised to them when they moved from Lucasville, the
21 Southern Ohio Correctional Facility, to ManCI, that were
22 then not forthcoming and I reference in particular contact
23 visits with friends and relatives, and a large recreation
24 yard like the yard at SOCF.

25 A. We're still limiting this to August 11 and not August

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1 16.

2 A. Yes, we are.

3 Q. I think some of that on August 11 was probably brought
4 up. I'm not sure which ones. But I think some of that was
5 brought up?

6 Q. And have you made any independent inquiry as to whether
7 that apprehension on the part of, let's say some ManCI
8 prisoners is justified, whether the historical facts bear it
9 out?

10 A. I made some investigation, and I think there is some
11 history that bears it out.

12 Q. And yet in your assessment of the proposed transfer to
13 OSP, you appear to assume contrary to the historical record
14 that the promised or intended changes will come to pass, do
15 you not?

16 A. Well, I do that for a number of reasons. You know, I
17 Monday E tore systems that have been found unconstitutional,
18 that are even CLOE found constitutional.

19 And they are usually found unconstitutional because
20 exactly what you are describing that happened perhaps at
21 Mansfield happened other places and that doesn't mean it is
22 going to happen, you get new wardens, you get new
23 leadership, you get new, a lot of things.

24 So I think even institutions and systems are able to
25 change, and, so yes, that is my -- that has been my

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1 experience and that is what I'm basing it on.

2 Q. Let me be sure I understand what you just said.

3 It has been your experience that despite a historical
4 record of non performance under new administrators and
5 whatnot, prison systems did do what they later said they --

6 THE COURT: Let me just -- I don't think he can
7 predict what is going to, you know, with certainty, what is
8 necessarily going to happen and the question is non helpful.
9 He has given his prefatory comments that he is giving his
10 opinion based upon the belief that the changes outlined will
11 take place.

12 MR. LYND: Let me just ask him, if I may, so make
13 sure we're all on the same page.

14 BY MR. LYND:

15 Q. Dr. Metzner, is it a fair summary of your conclusion
16 that the conclusion is based on the assumption that the
17 changes described to you would in fact take place at OSP?

18 A. Yes.

19 MR. LYND: I have nothing further, Your Honor.

20 THE COURT: Thank you. We'll recess for tonight,
21 and then we'll reconvene, be here at 10:30 and soon as these
22 sentencings are over we'll get to it. It mate be at
23 10:#30SHGS may be a little bit later. But I appreciate it
24 if you could get here by 10:30.

25 But unless there is something further, we'll

1 adjourn for the day. Thank you.

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