

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

C.B. BY AND THROUGH HIS NEXT  
FRIEND, CHARLESTON DePRIEST, ET AL.

PLAINTIFFS

VS.

CIVIL NO. 3:10CV663-CWR-FKB

WALNUT GROVE CORRECTIONAL  
AUTHORITY, ET AL.

DEFENDANTS

**MOTIONS HEARING**  
**VOLUME 2 OF 3**

BEFORE THE HONORABLE CARLTON W. REEVES  
UNITED STATES DISTRICT JUDGE  
APRIL 2ND, 2015  
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFFS: MS. MARGARET WINTER  
MR. JODY E. OWENS II  
MR. ROBERT B. MCDUFF

FOR THE DEFENDANTS: MR. GARY E. FRIEDMAN  
MR. WILLIAM T. SILER, JR.  
MR. HAROLD E. PIZZETTA, III  
MS. KRISSY CASEY NOBILE

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR  
Mississippi CSR #1253

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1 (COURT CALLED TO ORDER)

2 THE COURT: You may be seated.

3 MS. WINTER: Thank you, your Honor. I'd like to start  
4 with just a couple of housekeeping matters.

5 THE COURT: Okay.

6 MS. WINTER: And then with the court's leave, I'd like  
7 to give you a better road map than I gave you in the beginning.  
8 I think that would help us go forward.

9 THE COURT: Okay. Well, let me do what I typically do  
10 and say good morning to everybody. I'm used to saying good  
11 morning first before we do everything else. Let's -- good  
12 morning. How y'all doing?

13 MS. WINTER: Good morning, your Honor.

14 THE COURT: All right. Let's go.

15 MS. WINTER: Housekeeping matter. There were two  
16 exhibits pending from yesterday. One is Eldon -- it's  
17 Plaintiffs' Exhibit 17. It is Eldon Vail's most recent expert  
18 report. It's dated February 10th, 2015. And that was  
19 docketed, of course. It's docket number 120. And that is the  
20 most recent report with recommendations for remedies, and  
21 plaintiffs would offer that in evidence.

22 MR. FRIEDMAN: We thought it was already admitted, but  
23 no objection.

24 THE COURT: It wasn't admitted yet. I don't think it  
25 was admitted yesterday I don't think. I told them we'd take it

1 up first thing in the morning I believe. Any objection?

2 MR. FRIEDMAN: Well, no objection.

3 THE COURT: All right. It's admitted.

4 (EXHIBIT P-17 MARKED)

5 MS. WINTER: The other pending exhibit is Exhibit 22  
6 which the court tentatively allowed as a demonstrative aid.  
7 It's a chart that was made under Mr. Vail's direction  
8 summarizing findings of compliance and noncompliance of the  
9 monitors, and Mr. Friedman explained that they hadn't had  
10 enough chance to compare it for accuracy. And we would ask now  
11 that it be admitted, unless they found any inaccuracy in it.

12 MR. FRIEDMAN: Well, it was admitted for ID only as I  
13 appreciate --

14 THE COURT: Right.

15 MR. FRIEDMAN: -- things. And I would suggest that's  
16 the best way. With all that's going on, no, I have not. I'd  
17 have to go through the reports. But the reports are in  
18 evidence.

19 THE COURT: Right.

20 MR. FRIEDMAN: So whatever's there is already there.  
21 It's the same information. Assuming that's correct -- and I  
22 hadn't checked, as -- the reports say what they say.

23 THE COURT: Yeah. At this time I'm still going to  
24 treat it as a demonstrative aid only.

25 MS. WINTER: All right.

1 THE COURT: It's certainly beneficial to the court.

2 MS. WINTER: Yes.

3 THE COURT: And I'll continue to treat it as such.

4 MS. WINTER: Yes. I understand. We think that  
5 eventually it could be useful to the Fifth Circuit. So after  
6 Mr. Friedman has had adequate opportunity to review, we'd like  
7 to -- we have a request that it be admitted.

8 THE COURT: There is a slight chance that this case  
9 might not even get to the Fifth Circuit. Right?

10 MS. WINTER: That would be so grand. Let's do our  
11 best, all of us, to see that that happens.

12 The next item is -- there -- some problem arose last  
13 night that Mr. Owens would like to address regarding our class  
14 representatives. So could you hear from Mr. Owens?

15 THE COURT: Yes. Yes. Is this a matter that we need  
16 to take as a side bar or --

17 MR. OWENS: I prefer it be on the record, your Honor,  
18 if that's okay.

19 THE COURT: Okay. It will still be on the record  
20 here, but if it -- open court is fine.

21 MR. OWENS: That's fine, your Honor. With respect to  
22 our --

23 THE COURT: Make sure you talk into the mic.

24 MR. OWENS: Yes, your Honor. With respect to our  
25 clients, Mr. Evans and Mr. Owens, who are class

1 representatives, last night Mr. Evans went back to the place  
2 he's been housed currently for the purposes of this hearing,  
3 Central Mississippi Correctional Facility. He was not allowed  
4 to have a mattress or a comforter, which he previously had in  
5 the cell he was located --

6 THE COURT REPORTER: A mattress and a what --

7 THE COURT: Make sure you -- hold on. Mattress and a  
8 comforter, I believe.

9 MR. OWENS: Right, a sheet. He was forced to sleep on  
10 a concrete slab last night, which was not the case prior to the  
11 appearance at this hearing. In addition, your Honor, our  
12 witness Mr. Owens was informed by guards that the last witness  
13 who testified about conditions was killed.

14 I would -- I've spoken to Mr. Pizzetta this morning.  
15 I believe he's addressing both those issues for us, but it's  
16 something I wanted to bring to the court's attention, because  
17 it's something we're concerned about the well-being of our  
18 clients in situations like this in which they have chosen to  
19 testify.

20 THE COURT: Which of the -- which of the class --  
21 Mr. Evans?

22 MR. OWENS: Yes, your Honor. Mr. Evans was the one  
23 who was forced to sleep on the concrete slab last night.

24 THE COURT: And which is Mr. Evans?

25 MR. OWENS: Mr. Evans is wearing the glasses right

1 now.

2 THE COURT: He's the black guy.

3 MR. OWENS: He's the black guy.

4 THE COURT: I mean, well, he is. Okay. And it's your  
5 representation, Mr. Owens, that prior to last -- I guess he's  
6 permanently housed at WGCF.

7 MR. OWENS: Yes, your Honor.

8 THE COURT: But for purposes -- because of  
9 transportation issues, he's been now assigned to CMCF. Is that  
10 where he is?

11 MR. OWENS: Well, your Honor, they've been at CMCF  
12 since the filing of our witness list, since March 13th. And at  
13 the time he's been in a normal room with a normal mattress and  
14 provided sheets as he slept, but -- before last night.

15 THE COURT: And he'll be able to testify to that fact  
16 on the stand.

17 MR. OWENS: Yes, your Honor.

18 THE COURT: All right. Okay.

19 MR. OWENS: Thank you.

20 THE COURT: All right. And I guess the State will  
21 have some response to any particular testimony in that regard.

22 MR. PIZZETTA: Your Honor, Mr. Owens just informed me  
23 of that. I placed some calls to see if I could find out what  
24 happened last night. When we know, we'll respond.

25 THE COURT: All right. Thank you, Mr. Owens. I

1 appreciate that.

2 MS. WINTER: Your Honor, with your permission,  
3 clearly, I did not give you an adequate road map at the  
4 beginning; and I didn't really understand that I was giving a  
5 road map to more than the evidence.

6 If you could give me a few minutes now to resume our  
7 discussion last night, I think I can lay it out to you in a  
8 much more orderly manner so that it will become clear that what  
9 looks like the complexities of what's being heard at this  
10 motion. I think that that will turn out not to be a problem if  
11 you would permit me to hand up to the court a highlighted copy  
12 of the PLRA. I've given a copy --

13 THE COURT: Well, let me just ask this question. In  
14 the plaintiffs' response to the defendants' motion to -- the  
15 defendants filed a motion to consolidate and to continue the  
16 hearing as a part of the motion to terminate the decree.

17 And one of the points that the plaintiffs made was to  
18 cite to the court the decree itself. Now, I guess the PLRA  
19 dramatically alters contracts and agreements and consent  
20 decrees. The consent decree was negotiated by the parties;  
21 and, ultimately, it was approved by the court. It was a  
22 contract I thought.

23 MS. WINTER: Yes. We did too.

24 THE COURT: And part of the position of the plaintiffs  
25 in one of their filings was that the consent decree will



1 terminate five years from the date it is filed with the court.  
2 It was filed with the court I believe on March 26th, 2012.

3 The consent decree may, may, also terminate earlier  
4 than five years from the date it is filed with the court if the  
5 court determines that MDOC has substantially complied with each  
6 of the provisions of the consent decree and has continuously  
7 maintained substantial compliance for at least two years.  
8 Noncompliance with mere technicalities or a brief lapse of  
9 compliance during a period of otherwise sustained compliance  
10 will not constitute failure to maintain substantial compliance.

11 The court may extend this consent decree and/or any of  
12 its provisions twice, and each extension may be no longer than  
13 one year upon a finding that MDOC failed to substantially  
14 comply. That's the contractual language. That is the decree.

15 And what I heard at the end of yesterday, that the  
16 mere filing -- that the defendants' mere filing of the  
17 termination motion blew that thing out of the water and it does  
18 not exist anymore. That's why I left in a state of utter  
19 confusion, because if contracts are -- bind parties, well, I  
20 guess the question becomes to the court is whether the PLRA  
21 does something to this contractual language and says that this  
22 contractual language is of no moment anymore because the  
23 defendants have elected to terminate it. That's a contract.

24 Now, you know, maybe this is going to be some of the  
25 posttrial briefing; but if it is a contract that has been

1 agreed to by the parties that says this -- you know, I'm not  
2 going to get into the state of mind of the people who were  
3 doing it and what was said, because that's all parole evidence  
4 and all that -- if this is a contract, then am I here today or  
5 will I be here to -- or at some point in time to determine  
6 whether this contractual language has any significance  
7 whatsoever?

8 MS. WINTER: May I?

9 THE COURT: You may.

10 MS. WINTER: Your Honor, if you would permit me to --  
11 in order to answer that question, to lay out the PLRA and then  
12 to address exactly what you said and how it affects what the  
13 nature of the hearing is today, I really think it could be  
14 helpful. If you would just allow me to try to do that, to walk  
15 through the -- I --

16 THE COURT: I mean, can we do that at the end of all  
17 the testimony?

18 MS. WINTER: I think it would be helpful to do it now  
19 so that we understand -- I -- it would probably deal with a lot  
20 of objections if we could take seven minutes now to do this. I  
21 honestly think it would clear the air.

22 THE COURT: Okay.

23 MS. WINTER: I'd like to give the court a highlighted  
24 copy of the PLRA, which we provided to the defendant. A lot of  
25 the statute is irrelevant. So I simply highlighted the

1 provisions that the plaintiffs and the defendants have been  
2 talking about.

3           So if you turn to the third page of this document on  
4 termination of relief, it is 3626 -- 18 U.S. Code 3626(b),  
5 termination of prospective relief. In any civil action with  
6 respect to prison conditions in which prospective relief is  
7 ordered, such relief shall be terminable upon the motion of any  
8 party two years from the date the court granted or approved  
9 prospective relief.

10           What this language says and which the -- and what the  
11 Supreme Court has said, yes, it means what it says, is that in  
12 any prison conditions case -- and this is one -- in which the  
13 court has entered prospective relief -- and this court has done  
14 so. It entered the consent decree -- the state can move to  
15 terminate that prospective relief at any time after two years  
16 has elapsed. And that is what the defendants have done.  
17 That's that passage we're looking at here.

18           Once the defendants do bring a motion to terminate --  
19 they don't have to, but they have the option to do that after  
20 two years -- the law says that all prospective relief will  
21 terminate unless -- and now I'm looking at 18 U.S. Code  
22 3626(b)(3), the other highlighted language on that page that  
23 says "Limitation" -- this is like categorical. The Supreme  
24 Court has interpreted this language categorically.

25           It will terminate unless the court makes written

1 findings based on the record that the prospective relief is  
2 necessary to correct a current and ongoing violation of the  
3 federal right, extends no further than necessary to correct  
4 violation of the federal right, and is narrowly drawn in the  
5 least intrusive means to correct the violation. That's  
6 3626(b)(3). What defendants have done is they have brought a  
7 motion to terminate under this first section that you looked at  
8 on this page.

9 Now we need to turn to the next page under Section E  
10 where it's highlighted, where it says Procedure for Motions  
11 Affecting Prospective Relief. The first thing it says is the  
12 court shall promptly rule on any motion to modify or terminate  
13 prospective relief. The second thing is the automatic stay.  
14 And that is what is so critically important here, and it is  
15 part of the reason why plaintiffs are so eager to get findings  
16 and ruling on liability.

17 The automatic stay says any motion to modify or  
18 terminate shall operate as a stay starting 30 days after the  
19 motion is filed. The motion was filed -- motion to terminate  
20 was filed on March 13th. That means that all prospective  
21 relief will be stayed on April 12th unless you do something,  
22 which we are here asking you to do, and that is to postpone the  
23 stay for an extra 60 days which would bring us to approximately  
24 June 12th. You have the discretion to do that for good cause.  
25 And I think there's ample good cause, and we are asking you to

1 do that. That will at least give the court and the parties a  
2 little bit of breathing room.

3 That if you do that, the consent decree will be in  
4 effect until June 12th. However, we have to look at -- oh, and  
5 let me make one other point. There is nothing that the court  
6 can do about that stay. The court cannot extend that 90-day  
7 deadline to June 12th, and the reason why is --

8 THE COURT: Where do you get 90 days? I see --

9 MS. WINTER: Well, it's the original 30 days which the  
10 law says, but then it says -- under (a) it says it will go into  
11 effect on the 30th day. And then under 3 --

12 THE COURT: You can get --

13 MS. WINTER: -- postponement of automatic stay, the  
14 court may postpone the automatic stay for not more than 60 days  
15 for good cause.

16 THE COURT: Okay.

17 MS. WINTER: No postponement will be permissible  
18 because of general congestion of the court's calendar. And it  
19 also says right above that in (e)(2)(B), it says that the  
20 automatic stay -- let's assume for the moment that you do grant  
21 the full 90 days and that June 12th is the drop-dead date.  
22 That stay ends on the date the court enters a final order  
23 ruling on the motion to terminate.

24 What that means is that if the court has not entered a  
25 final order ruling on defendants' motion by June 12th, the

1 plaintiffs have no more relief until -- unless and until you  
2 enter these required findings that there is a constitutional  
3 violation.

4           So let's assume, which, of course -- I mean we hope  
5 that the court could possibly enter a final order. We're --  
6 you know, we know the kind of pressure that federal judges are  
7 under. We're not saying that you're obliged to. But it is a  
8 fact that the plaintiffs will be without relief until you enter  
9 an order at any -- at any time.

10           And starting on June 13th, they have no protection  
11 from this court until you enter an order saying -- a judgment,  
12 a final order. So what we're hoping is that you will enter a  
13 final order on the motion to terminate as soon as you can just  
14 to, hopefully, minimize the time that the plaintiffs are  
15 without any relief.

16           And I also want to say where -- I want to explain,  
17 where does that leave us today? Back in August we originally  
18 filed a motion to terminate and modify the consent decree --  
19 not -- not to terminate, to enforce and modify the consent  
20 decree. To enforce the consent decree back then, the court  
21 didn't need to do anything except make a finding that they were  
22 violating the consent decree. You didn't have to make any  
23 findings on constitution. All you have to do is to say they've  
24 clearly been violating the consent decree, I hold you in  
25 contempt or whatever.

1           But -- and the plaintiffs made the decision not just  
2 to move to enforce, but also to modify the consent decree. And  
3 the reason we did that was because it seemed to us clear that  
4 the existing consent decree wasn't good enough in light of what  
5 we had been seeing in the previous two and a half years.

6           Now, that -- to succeed on a motion to modify under  
7 the PLRA, the plaintiffs have to do exactly what they have to  
8 do on a motion to terminate. They have to prove exactly what  
9 we just looked at in this language. They have to persuade the  
10 court to make a finding that there is a current and ongoing  
11 violation of their Eighth Amendment right and here is new  
12 relief that's narrowly tailored to address that right. So  
13 plaintiffs from the beginning were coming in to prove a  
14 constitutional violation, namely, the failure to provide  
15 reasonably safe living conditions.

16           So the important thing today is that the court gets  
17 the record of the facts so that the court can reach the merits  
18 and then sort out later what -- you know, make findings that  
19 it -- what am I trying to say, that it doesn't matter. It's a  
20 distinction without a difference whether you are hearing  
21 evidence on the motion to modify and -- or enforce or the  
22 motion to terminate. It is all coming to the same thing in the  
23 end.

24           You just need the record. You need the factual record  
25 so that when this hearing is over and the parties have given

1 you posttrial briefs, the findings -- proposed findings of fact  
2 and conclusions of law, you can consider those. And then you  
3 can consider whether there is a constitutional violation. And  
4 you can also consider, if so, what's the appropriate relief; or  
5 you could postpone that second question to another date.

6 As to whether the defendants have violated the consent  
7 decree, even though the consent decree is no longer enforceable  
8 prospectively, it is still very relevant. We're not asking the  
9 court to now do it, but what the defendants have done well  
10 justifies a finding of contempt for their violation of the  
11 consent decree and I would say including their amazing  
12 repudiation of the termination proceeding that they just -- but  
13 let's leave that aside.

14 On the substance of the consent decree, they've been  
15 violating it for three years. That's what the evidence here  
16 will show. And we would ask the court if -- again, I mean, we  
17 don't presume on the court's time and the court's calendar, but  
18 you could make that finding before June 12th. You could hold  
19 them in contempt. We can file a motion for contempt and ask  
20 them to be held in contempt for their past violation.

21 We can no longer say enforce the consent decree, but  
22 we can say hold them in contempt for their past conduct. And  
23 we would -- you know, if we do that -- and we're seriously  
24 considering that -- we would hope the court could consider that  
25 in a timely way, that is, before the consent decree expires on



1 June 12th.

2 And so what happened when defendants filed their  
3 motion to terminate? Well, it threw plaintiffs into a state of  
4 astonishment. And when we first briefed their motion to  
5 continue this hearing, that's what we were focused on. We knew  
6 the importance of getting the facts before this court and  
7 getting a ruling on liability.

8 We -- what they were saying is *We want to consolidate*  
9 *these issues and postpone them until we can hear about medical.*  
10 *We want to do violence and medical all at one hearing sometime*  
11 *in the distant future.* And we're saying, *No, Judge. We need a*  
12 *record and findings and a judgment now on violence.*

13 When I originally read their -- saw that they had  
14 terminated, my immediate reaction was, they can't do that.  
15 That's a contract. They're repudiating their own contract.  
16 And when we hurriedly responded to the motion to consolidate,  
17 we said, well, we're going to show that, you know, when we do  
18 their motion to -- respond to their motion to terminate, we're  
19 going to prove to you they can't do that. They can't violate  
20 their own contract.

21 But, lo and behold, when I had 48 hours to do legal  
22 research, what I found is I don't believe there's a single  
23 decision on this. I don't believe the court has ever had  
24 occasion to address this in any reported decision that our  
25 research has been able to disclose. And the reason is because

1 nobody has ever dared do this before, repudiate their own  
2 contract.

3           However, when you look at the black letter law, it's  
4 not at all clear that we would win that argument in the Fifth  
5 Circuit or necessarily before this court or after that in the  
6 Fifth Circuit, because defendants have made it quite clear that  
7 they would intend to appeal that.

8           And I asked myself -- the plaintiffs asked ourselves,  
9 what does that do to the plaintiffs if we insist on a right to  
10 enforce a contract that will be in the Court of Appeals for  
11 years and they meanwhile -- relief will be stayed presumably  
12 for a period of years. They will have nothing.

13           We don't want to stand on niceties, *Oh, we insist on*  
14 *enforcing our rights under the contract*, when as a matter of  
15 fact we can get what the plaintiffs need under a termination or  
16 modification model, which we were intending to do anyway. It's  
17 the same standard. And -- proving an on -- a current and  
18 ongoing violation of their Eighth Amendment rights. That's  
19 what we came to court prepared to do. And that didn't change  
20 when they filed their motion.

21           What changed is that we could no longer tell the court  
22 enforce the consent decree. We can't. We just can't. You  
23 could enforce it for the next week or if you give it a -- you  
24 know, if you give us until -- the extra days until June 12th,  
25 but that's not really too realistic. In the amount of time

1 that the court -- you know, using the court's resources to  
2 render a decision that would become moot in two months more at  
3 maximum doesn't seem like a good use of anybody's time, which  
4 is why we are asking you to get the record today so that you  
5 can then reach the merits.

6           After we've built the record you can decide whether  
7 you want to rule on the consent decree, whether you want to  
8 rule on the PLRA on the constitutional issues or both. We hope  
9 that whatever you do you make a finding as to constitutional  
10 violation, because that is the only way that plaintiffs will  
11 have any protection. And until that order is entered, they  
12 will have no protection starting on June 12th.

13           When I said yesterday that the consent decree was a  
14 dead letter, this is the sense in which I meant it. They no  
15 longer consent. They have repudiated the contract. Of course,  
16 we could insist and ask this court to rule by next week or by  
17 June 12th that they can't do that, but it gets -- that doesn't  
18 get us anywhere really. What we need is the constitutional  
19 findings. And so --

20           THE COURT: That gets you -- if the court were to rule  
21 that the State is no different from any other party and when  
22 parties negotiate a contract they hammer out language in the  
23 contract, they then submit that language, they said this is the  
24 agreed-upon language -- we do it all the time in insurance  
25 disputes. We do it all the time in settlement agreements with

1 private parties -- and if the language that they've agreed upon  
2 has been adopted by the court and that they said that if there  
3 is a future disagreement, we come back to court, then the court  
4 determines whether there has been a breach of that particular  
5 contract.

6           What we're going to argue at the end of the day I  
7 think no matter what evidence I hear today and tomorrow or what  
8 issues is whether the consent decree possibly is -- whether it  
9 should be terminated earlier than the five years that the  
10 parties hammered out. They agreed that it would be in place  
11 for five years unless they can show that they substantially  
12 complied to each provision for any time -- for a two-year  
13 period or so. That's where -- that's where I am and --

14           MS. WINTER: I understand, your Honor. But here's our  
15 concern. The PLRA is -- was explicitly, is deliberately a  
16 court-stripping measure. This statute was intended to  
17 remove --

18           THE COURT: So why -- so why come to court in the  
19 first instance and get --

20           MS. WINTER: Well, we --

21           THE COURT: -- the consent decree if the court -- if  
22 the court has no power to enforce an agreement that's reached  
23 by parties? I mean, why come to me in March of 2012 with the  
24 information that was before me that caused me to enter the  
25 order, enter the consent decree, if -- if the court would have

1 no power to enforce the consent decree beyond the time -- or  
2 any power to carry the consent decree through its own terms?

3 MS. WINTER: You know, you may well be right. It  
4 may -- it's possible that an argument like that could prevail.  
5 But I can only say that even though that is exactly how my mind  
6 works and the PLRA is a stunningly -- it's a terrible sort of  
7 stripping of the court's authority in certain ways, it  
8 nevertheless -- this is the way it's being interpreted. And I  
9 don't want to gamble with the plaintiffs' rights.

10 What I do think is we would want the court to make  
11 findings that what the defendants have done here is egregious.  
12 And it is a warning to future litigants against the MDOC to be  
13 very careful about entering into consent decrees with them,  
14 because their word is not good. Their word cannot be relied  
15 upon.

16 Findings like that would be excellent, and a contempt  
17 finding for violating the previous three years of noncompliance  
18 would be extremely good. But unless the court additionally  
19 makes clear that the court is relying on a finding of current  
20 and ongoing constitutional violation, the plaintiffs get  
21 nothing. And it doesn't matter that it -- whether defendants  
22 acted in bad faith. It doesn't matter as a matter of contract  
23 that they repudiated their own contract.

24 These provisions of the PLRA were so shocking -- and  
25 I'm old enough to be around when the debate was happening.

1 There were multiple, multiple -- you know, there were all these  
2 cases that went to the Supreme Court saying, *Surely this isn't*  
3 *possible. This can't be -- this can't be right. It goes*  
4 *against everything we think about the -- you know, the powers*  
5 *of the judiciary.*

6 But it's essentially all been upheld. And, you know,  
7 there's many -- the defendants argue things that just aren't  
8 correct about -- about the PLRA, that we can't -- you know,  
9 that you can only hear evidence about today and yesterday.  
10 That's not correct. The courts have not upheld that at all.  
11 But this thing about --

12 THE COURT: One thing you need to make clear is they  
13 have an actual right to do it. If the law gives them the right  
14 to do -- to file a certain motion, I mean, they're protected by  
15 their right. I mean, I'm not going to condemn them for  
16 exercising the rights that they are allowed. Now, whether  
17 through strategy they should have done it is one thing; but,  
18 certainly, if the law allows them to do it, certainly, there's  
19 no problem with that. I mean --

20 MS. WINTER: No.

21 THE COURT: -- we file motions all the time.

22 MS. WINTER: They are allowed to do it. It just feels  
23 like they should not have. We all believed we were on the same  
24 page when we negotiated this decree. And it's a very important  
25 part of the decree for both sides, that termination provision.

1           So, yes, let's assume, which I think is probably the  
2 case, that they can move for termination now and the court  
3 can't fault them for doing what they're legally able to do;  
4 but, nevertheless, I think we all know that there's something,  
5 let's say, that doesn't smell right about entering into a  
6 promise like that and then turning around and breaking it.

7           Leaving that aside, they have violated the substantive  
8 provision of the consent decree for the last three years, and  
9 for that we think they should be punished. But the most  
10 important thing now is to get relief for the plaintiff class  
11 while there's -- you know, as soon as can be. Maybe that can't  
12 be before June 12th. I mean, it would be great if it could be.  
13 I think it's important for the parties to do findings of fact  
14 and conclusions of law to assist the court in making its  
15 decision.

16           Our main point is that we want that ruling as soon as  
17 it can be had so that they're not left too long in the lurch  
18 with no protection whatsoever. The courtroom is -- the court  
19 is closed to us after that period. There's nothing for us to  
20 come to the court and ask the court to enforce.

21           So the merits -- we're here for the merits and there's  
22 no -- the evidence is the evidence. The court can apply -- can  
23 decide afterwards what it does with that evidence, but we will  
24 have made the record. Both sides will have made the record.  
25 Not about medical. That's what the motion to -- to -- what's

1 that word? -- separate, to -- to consolidate. They were saying  
2 we want to consolidate violence with medical. Well, no, that  
3 doesn't make sense. Nobody's prepared to go forward with the  
4 medical today. So that doesn't make sense.

5 But to consolidate the motions for hearing, sure,  
6 that's no problem. It's consolidating the medical case and  
7 having it heard today, that's the problem or, alternatively,  
8 hear it all sometime in the future. No, not with our  
9 plaintiffs -- not with our plaintiff class without protection.

10 So we do think that the contract -- that this is a  
11 violation of contract. Our strong feeling is based on the  
12 existing law, that if you rule that the consent decree is still  
13 good because they have violated the termination provision, our  
14 fear is -- it's not that we don't agree with you. It's not  
15 that some court of appeals might agree with you, but it's  
16 risky. Nobody knows the answer to that question.

17 And there's reason to believe because of the way the  
18 PLRA has been interpreted, so to be strictly interpreted, they  
19 say, *No, they've moved. That's a motion to terminate. The*  
20 *thing is now stayed.* That's why we're not asking you to  
21 enforce the old consent decree except in one way.

22 There are many provisions in the existing consent  
23 decree that really just track constitutional rights. It says  
24 defendant shall provide the plaintiffs with reasonably safe  
25 living conditions. Well, that's the Eighth Amendment. So,



1 yes, we would want that. That's still valid. That's still  
2 good.

3 We want -- that's why we're starting to go provision  
4 by provision through the consent decree. Anything that is  
5 still necessary and narrowly tailored, yes, that could be good,  
6 that would be good to save that provision. And the court says,  
7 *Yes, you still need this one.*

8 Then the court looks at the alligator walk prohibition  
9 and says, *You don't need this anymore. They haven't done that*  
10 *in the last three years since I entered my initial order. No,*  
11 *we're terminating that provision.* And so you can go provision  
12 by provision, see what's still good, what isn't good, what  
13 needs to be added and what needs to be modified, because it is  
14 extremely clear under Supreme Court precedent, most recently in  
15 the Supreme Court's 2011 decision in *Brown v. Plata*, that when  
16 defendants bring a motion to terminate or the PLRA comes into  
17 play, if the court finds a violation, it's not stuck with  
18 simply either accepting or rejecting the existing provisions of  
19 the consent decree.

20 What the court needs to do is to hear the evidence  
21 about what kind of a remedy do we need today so the court can  
22 modify the existing provisions to make them meet the PLRA  
23 standard today and say, well, you need -- the plaintiffs are  
24 entitled to show, in short, in any termination hearing that new  
25 relief, revised relief is necessary to meet the current and

1 ongoing violations that are occurring today.

2           So in the end, these things have merged. Plaintiffs  
3 made a motion to modify. Defendants made a motion to  
4 terminate. The court is going to be deciding exactly the same  
5 thing based on the exact same record. Based on the record  
6 we're making now, the court will decide whether there is an  
7 ongoing and current constitutional violation; and if the -- and  
8 if the court decides there is, the court will order appropriate  
9 relief under the PLRA, which is the narrowest, least intrusive  
10 remedy that will take care of that constitutional violation.

11           So, really, as a housekeeping matter, if that is a  
12 case management matter, it seems to me that we're in a useful  
13 place here. This is -- this is a very efficient use of the  
14 court's time. It is hearing both motions in a timely way,  
15 their motion and the plaintiffs' motion, their motion that was  
16 filed two weeks ago and the plaintiffs' motion that was filed  
17 eight months ago. Based on employing the same standard, using  
18 the same evidence, the court can rule on both motions.

19           And we assume that will be after briefing and proposed  
20 findings and conclusions by both sides and -- and that that  
21 needn't be decided this week, but that -- but that we hope that  
22 that will now obviate some of the objection and -- that the  
23 defendants are making to our presentation of evidence.

24           We are showing violations of the consent decree  
25 because they are very relevant to the constitutional --

1 constitutional measure since many of those provisions -- the  
2 ones that we're relying on are simply the key provisions, the  
3 core provisions of the consent decree that are -- mirror the  
4 constitutional standard.

5 THE COURT: Thank you, Ms. Winter. Any response from  
6 the State?

7 MR. FRIEDMAN: Just a couple, your Honor.

8 MS. WINTER: Would you like to come to the podium?

9 MR. FRIEDMAN: That's fine. I will. I'm not going to  
10 use my seven minutes. We'll be here until tomorrow. I'm going  
11 to just address a few things.

12 First, let's start with the consent decree. From the  
13 beginning the plaintiffs focused in and the court has  
14 apparently focused in on one provision. Well, in our reply in  
15 support of our motion to consolidate, there's another provision  
16 that states, quote, The parties agree that all terms and  
17 conditions of this consent decree will be construed in accord  
18 with federal law, including the Prison Litigation Reform Act,  
19 period, end quote. So it wasn't waived in the consent decree.

20 The discussion made it sound like we've done something  
21 terribly underhanded by exercising our rights under federal  
22 law. I mean, you know, if there's a problem with the PLRA,  
23 somebody needs to go to Congress. I didn't -- you know, I  
24 didn't make this up. We didn't make this up. It is what it  
25 is. It may or may not be fair. I wasn't there. They didn't

1 consult me.

2           So as far as this thing about the -- if the consent  
3 decree is stayed the inmates will have nothing, no protection  
4 is ridiculous. They've got the Eighth Amendment. This is --  
5 the discussion has been -- it's like if the consent decree goes  
6 away, you know, there -- there are going to be terrible things  
7 happen just because. That's ridiculous. It really is.

8           And it's sort of insulting, the language that's been  
9 used here and, frankly, toward us. I mean, every other word is  
10 "bad faith." I'm not used to dealing with, frankly -- on this  
11 particular level in my law practice, I've never in my practice  
12 been accused of acting in bad faith so many times, frankly.

13           We're accused of entering into a promise and violating  
14 it, and that goes back to the PLRA. You know, it gives us a  
15 right to move to terminate. We moved to terminate. And that's  
16 where we are now. That's why in the beginning in opening I got  
17 up here and --

18           THE COURT: What would be the State's burden to prove  
19 if -- since they moved to terminate, what does the -- what  
20 would the State have to prove -- does it have to prove that it  
21 substantially complied with the terms of the consent decree or  
22 that there is some other metric by which the court would have  
23 to frame -- or that issue would be framed? Is there another  
24 metric that the court must use?

25           MR. FRIEDMAN: Yes.

1 THE COURT: Okay. What is the metric?

2 MR. FRIEDMAN: First of all, our burden -- the State's  
3 burden, we've got one burden and that's to show that the  
4 consent decree has been enforced for two years.

5 THE COURT: Just enforced and not complied with.  
6 Just --

7 MR. FRIEDMAN: Enforced.

8 THE COURT: -- enforced.

9 MR. FRIEDMAN: Enforced. That's what the PLRA says.  
10 Is that correct? Enforced for two years. At that point we  
11 have the right to make a motion to terminate, which we did.  
12 It's more than two years, but we did.

13 At that point the burden shifts to the plaintiff to  
14 show a current and ongoing violation of the Eighth Amendment.  
15 That's what I apparently didn't get across in opening. That's  
16 what I was trying to say. That's why current and ongoing --  
17 current and ongoing is so important here. And that's why what  
18 happened in Walnut Grove in July before all these changes took  
19 place is just irrelevant.

20 THE COURT: But current and ongoing, current from the  
21 time --

22 MR. FRIEDMAN: And --

23 THE COURT: -- current and ongoing from the time that  
24 the State filed its motion to terminate.

25 MR. FRIEDMAN: Well, current is -- we haven't found an

1 exact definition of current. And we briefed this in our motion  
2 to terminate I believe, but we haven't found an exact  
3 definition of current. The law says as of the date of this  
4 hearing, but I think it's probably -- well, it's a little  
5 broader than that.

6 It -- what happens, may happen in the future is  
7 irrelevant. That's -- we can -- we cited cases to that effect.  
8 What happens, may happen in the future is irrelevant. What  
9 happens, you know, back when it was a different facility is  
10 irrelevant. It's current and ongoing. And that's why we've  
11 been harping on this all day yesterday about, you know, there's  
12 so many changes that at some point I don't know where we start,  
13 November, December. I'm not sure when all these changes kicked  
14 in.

15 THE COURT: The court has a right to consider anything  
16 that happens during the hearing. Right?

17 MR. FRIEDMAN: During what?

18 THE COURT: During the hearing, current and ongoing as  
19 I heard -- and the State is going to verify some of this  
20 information that I've heard already, that there may be  
21 allegations of retribution.

22 MR. FRIEDMAN: Well, I mean, I -- first I heard of it  
23 was this morning.

24 THE COURT: I understand. But it --

25 MR. FRIEDMAN: But it didn't happen at Walnut Grove,

1 not at Walnut Grove.

2 THE COURT: But they are under MDOC's care, period. I  
3 don't care if they're at Walnut Grove or over there at East  
4 Mississippi.

5 MR. FRIEDMAN: Well, I can't --

6 THE COURT: The State has -- the State has custody of  
7 these people. The State chose to put them at CMCF. They could  
8 have put them over in Kemper County. They could have put them  
9 in any of its regional facilities. The State has custody of  
10 these folk. They've chosen to put them wherever they are.  
11 They have the care and control over them. So whether it's an  
12 MTC facility or one that's run exclusively by MDOC, MDOC is the  
13 one that has the responsibility of these.

14 MR. FRIEDMAN: I'm not debating that with you.

15 THE COURT: Okay.

16 MR. FRIEDMAN: I'm not -- I understand who has  
17 responsibility. Number one, I can't debate it because I have  
18 no clue what happened.

19 THE COURT: Right.

20 MR. FRIEDMAN: So, I mean, I don't -- there's no  
21 debate here. We're -- I think we're -- all I'm saying is that  
22 whatever happened didn't happen at Walnut Grove. I'm not  
23 saying MDOC's not responsible for what may or may not have  
24 happened. They were in their custody. I understand that much.

25 I'm just saying it didn't happen at Walnut Grove.

1 And, number one, I don't know what, if anything, happened.  
2 Number two, if anything did, it didn't happen at Walnut Grove,  
3 which is what we're here about.

4 THE COURT: Okay.

5 MR. FRIEDMAN: I -- well, I have been to Central  
6 Mississippi.

7 THE COURT: We were there together.

8 MR. FRIEDMAN: I had a case over there against a  
9 certain attorney. But, anyway, we won't go into specifics.  
10 Went over there twice I think. But, anyway --

11 (COUNSEL CONFERRED)

12 MR. FRIEDMAN: Believe it or not, we're in substantial  
13 agreement with what Ms. Winter has said other than the parts  
14 about us being underhanded and acting in bad faith and contempt  
15 and all. But as far as where we stand, there are a few things  
16 we don't agree with; but, generally, that is where we think  
17 things are.

18 THE COURT: Okay.

19 MR. FRIEDMAN: So --

20 THE COURT: Well, the State will be permitted to -- if  
21 the court -- if the State believes the court is exceeding, you  
22 know, you'll be permitted to make any objections, because the  
23 rules -- the law allows you to do that. And the court will  
24 rule on those objections and we'll go from there.

25 I know we have Mr. Vail here and I know we have



1 Mr. Roth here and I know there's a plan. I don't know if  
2 there's anyone else from out of state.

3 MR. FRIEDMAN: There are.

4 THE COURT: There are?

5 MR. FRIEDMAN: Right.

6 THE COURT: You know, it's my intentions to hear from  
7 the -- to get the full evidence on all of the issues. And, you  
8 know, we know there will be post-hearing briefing.

9 MR. FRIEDMAN: Yeah.

10 THE COURT: And it's still the court's intention to be  
11 through with this hearing, as the parties agreed, by tomorrow.

12 MR. FRIEDMAN: Well, I've got to tell you, I've got to  
13 be --

14 THE COURT: I understand that. So we intend to do  
15 that. And we will proceed then in a way that we think is most  
16 efficient and one that will help plug in the holes for  
17 everybody and move along as quickly as possible.

18 MR. FRIEDMAN: It was a first for me leaving court  
19 yesterday. I tried a case for a full day and after that didn't  
20 know what I was trying. So I didn't know what we were here  
21 about.

22 THE COURT: Okay. Thank you, Mr. Friedman. The court  
23 is going to take a five-minute recess; and at that time,  
24 Mr. Vail, you can return to the stand. Is there anything --  
25 well, I hope the State makes every effort -- I understand you

1 have to do some fact-finding with respect to what happened to  
2 the representative on the plaintiff class. That's going to  
3 take some fact-finding. That's going to take interviewing  
4 people and, you know, just trying to figure it out.

5 MR. FRIEDMAN: Right.

6 THE COURT: But I think I heard today that there is a  
7 possibility that a witness who's -- did I -- did I make that up  
8 in my mind --

9 MR. OWENS: That's correct.

10 THE COURT: -- that a witness who was supposed to  
11 testify is now or at least you heard that he's deceased?

12 MR. OWENS: No, your Honor.

13 THE COURT: Did you say that?

14 MR. OWENS: No, your Honor, what I said was one of our  
15 class representatives was told that the last witness who  
16 testified was killed while incarcerated, that our class member  
17 will testify to the same.

18 THE COURT: Was killed while incarcerated?

19 MR. OWENS: For his testimony against the prison. A  
20 guard --

21 THE COURT: Okay. So nothing happened to a witness in  
22 the last 24 hours.

23 MR. OWENS: No.

24 THE COURT: I was about to say, that could be done  
25 pretty easy.

1 MR. FRIEDMAN: We started with two and I think there  
2 are two over there. And it appears to me they're breathing.  
3 So I think we're okay so far.

4 THE COURT: All right. Well, we're going to be in  
5 recess for about -- for five minutes and we'll get back to you.

6 (RECESS)

7 THE COURT: You may be seated. Counsel, typically,  
8 when I say five minutes or whatever I do, I really try to do --  
9 stay on task and do that. And I apologize to you. I know that  
10 was more than five minutes taking care of some things back in  
11 the back, but I appreciate your patience.

12 Ms. Winter, are you ready to resume with Mr. Vail?

13 MS. WINTER: I am.

14 THE COURT: Mr. Vail, I'll remind you that you're  
15 still under oath. Ms. Winter, make sure your microphone is on.

16 MS. WINTER: Is it on?

17 THE COURT: Yes. You may proceed.

18 **ELDON VAIL,**

19 having previously been duly sworn, testified as follows:

20 **CONTINUING DIRECT EXAMINATION**

21 BY MS. WINTER:

22 Q. Mr. Vail, there were recent reports filed by the monitors  
23 and by defendants' expert Tom Roth, monitors' sixth report and  
24 defendant -- defendants' expert Tom Roth. Those reports make  
25 certain claims that there are important trends in the prison

1 regarding violence, don't they?

2 A. Yes.

3 Q. Do either of those reports claim that assault rates are  
4 down since the July riots?

5 A. Can I refer to the reports?

6 Q. Yes. Excuse me.

7 THE COURT: Remind the court exact -- that is not --  
8 are you talking about Mr. Roth's report or the monitors'  
9 report?

10 MS. WINTER: Mr. Roth's report is not in the record.

11 THE COURT: It's not in the record yet.

12 MS. WINTER: But we -- we have -- we can get Mr. Vail  
13 a copy of it.

14 BY MS. WINTER:

15 Q. Do you need Mr. Roth's report or the sixth report of the  
16 monitors?

17 A. I'd like to have both to respond to your question.

18 Q. The sixth report which is already in the record is  
19 Defendants' Exhibit 15.

20 THE COURT: It's Plaintiffs' Exhibit 15 or defendants?

21 MS. WINTER: It's already in.

22 THE COURT: Okay. So it's Plaintiffs' Exhibit 15.  
23 You said "defendant."

24 MS. WINTER: Excuse me. I'm sorry. Plaintiffs'  
25 Exhibit 15. And I'm sorry to say we -- we are looking for

1 Mr. Roth's report.

2 THE COURT: Just make sure you're always talking into  
3 the mic.

4 MS. WINTER: Yes. I'm very sorry for the delay.  
5 We're looking for a copy of Mr. Roth's report, which is not in  
6 our exhibits.

7 (PAUSE)

8 MS. WINTER: May I approach the witness?

9 THE COURT: Yes, you may.

10 MS. WINTER: I have a -- I have the report.

11 THE COURT: Just make sure you're talking into the  
12 mic. It helps the court reporter.

13 MS. WINTER: Pardon?

14 THE COURT: I said just make sure you're talking into  
15 the mic. It helps the court reporter.

16 MS. WINTER: Sorry.

17 (COUNSEL CONFERRED)

18 BY MS. WINTER:

19 Q. Mr. Vail, here is a copy of Mr. Roth's expert report.

20 MS. WINTER: This is Defendants' Exhibit Number 7, for  
21 the record; but we just handed Mr. Vail the expert report of  
22 Mr. Tom Roth dated February 2015.

23 (WITNESS EXAMINED DOCUMENT)

24 THE COURT: All right. Have you seen what they've  
25 given -- do you --

1 MR. FRIEDMAN: Well, it's our exhibit.

2 THE COURT: I mean -- I mean -- okay.

3 MR. FRIEDMAN: It's -- your Honor, where we left  
4 yesterday, the representation to the court by Ms. Winter was  
5 that they were just going to finish up with remedies, which --  
6 that was all of five or ten minutes. If we're going to get  
7 back into -- this -- looks like we're getting back into  
8 testimony away from remedies now. We're going to be here --

9 THE COURT: I'm going to allow it. I'm going to allow  
10 it.

11 (WITNESS EXAMINED DOCUMENT)

12 A. May I?

13 BY MS. WINTER:

14 Q. Yes.

15 A. When I look at the monitors' sixth report, I don't see  
16 specific language that says -- that identifies the pattern of  
17 the assault trend. There was some discussion of assaults, but  
18 it doesn't precisely say that it's going up or that it's going  
19 down.

20 Q. Okay.

21 A. When I look at Mr. Roth's report, what I see is that he's  
22 made some comparisons about the assault rate back to the year  
23 2012.

24 Q. Okay.

25 A. Indicating that they are down since 2012.

1 Q. Are assault rates down since the July riot?

2 A. Can I refer to another exhibit?

3 Q. Yes.

4 A. Exhibit 18 is the MTC monthly report --

5 Q. Okay.

6 A. -- that they give to MDOC.

7 Q. So that's Exhibit 18. It's already admitted, the MDOC  
8 monthly report.

9 THE COURT: Plaintiffs' Exhibit 18, yes.

10 MS. WINTER: Excuse me. Plaintiffs' Exhibit 18.

11 A. And if you look at page 4, second line up from the bottom,  
12 and then if you look at page 5, the very top line, this tracks  
13 the detail from July. And the most notable drop that I see is  
14 for the month of February. Other than that, I don't see much  
15 indication -- maybe a slight downward trend but nothing  
16 significant until the month of February.

17 THE COURT: And that would be February 2015, for the  
18 record.

19 THE WITNESS: Correct, sir.

20 BY MS. WINTER:

21 Q. Does the decrease in the assault rate in the month of  
22 February 2015 show that Walnut Grove is now a safe facility?

23 A. No, I don't think so, not a one-month drop.

24 Q. What do the monitors say about contraband in their sixth  
25 report? If you could look at Plaintiffs' Exhibit 15 at -- I

1 think it's at page 15.

2 (WITNESS EXAMINED DOCUMENT)

3 A. The monitors' report says that contraband control remains a  
4 problem, however, facility officials continue to conduct  
5 frequent searches and the presence of serious contraband  
6 appears to have diminished in the two most recent months.

7 Q. Mr. Vail, how is contraband defined in this context?

8 A. I believe the --

9 MR. FRIEDMAN: Object. He's got -- he's about to  
10 testify as to speculation. He believes. Either he knows or he  
11 doesn't know how it's defined.

12 THE COURT: How is it defined in the report was the  
13 question.

14 MS. WINTER: How is it defined by MDOC and MTC,  
15 contraband in the monthly reports? What is contraband?

16 THE COURT: Objection overruled.

17 A. Cell phones, weapons, and drug and alcohol findings.

18 BY MS. WINTER:

19 Q. Do you agree with the monitors' calculations that the  
20 presence of serious contraband appears to have diminished in  
21 the two most recent months?

22 A. The monitors' sixth report is I think dated March the 6th,  
23 and I had the opportunity to review a version of it back in  
24 February before it was final. And this language was in that  
25 report as well.



1           The reason I say that is because I'm not precisely sure  
2           which two months the monitors are referring to, whether this is  
3           December and January or January and February. Nonetheless, if  
4           you look at the last eight months of contraband findings on  
5           MTC's own report, which we can -- which I'd like to look at if  
6           I could.

7           Q. Yes.

8           A. This is Exhibit 18, page 4.

9           Q. This is the MDOC monthly summary report?

10          A. Yes, line 230(h). And if you look across the line there,  
11          if the monitors were talking about December and January, well,  
12          December was the second highest for that eight-month period.  
13          If they're talking about January and February, it is lower than  
14          December; but it's similar to November, it's similar to  
15          September, and it's similar to July. October had a much higher  
16          level of contraband finds, 88.

17          Q. So based on these figures, do you see a significant  
18          downward trend in contraband since the July riot?

19          A. No, I don't.

20          Q. You testified yesterday late in the day that in your  
21          experience as a corrections administrator there are three key  
22          indicators that a prison has a problem with violence. And you  
23          said in your experience that was group fights, that is, fights  
24          with more than between two people, assaults on staff, and use  
25          of a weapon. And you then testified that all of these

1 indicators were present at Walnut Grove at this time, and you  
2 testified that since October of this year --

3 MR. FRIEDMAN: Your Honor, I'm going to object. She's  
4 just -- she can ask him questions, but she can't just sit up  
5 here and --

6 THE COURT: Objection sustained.

7 BY MS. WINTER:

8 Q. There was an objection by Mr. Friedman yesterday about  
9 foundation. I'm simply summarizing or repeating the testimony  
10 so that -- to ask, Mr. Vail, what is the foundation for your  
11 testimony yesterday?

12 THE COURT: Well, you can ask him that question. I  
13 mean, part of the defendants' objection was leading yesterday.  
14 So objection sustained. You can ask him that foundation  
15 question that you just asked.

16 MS. WINTER: Ask him a foundation?

17 BY MS. WINTER:

18 Q. Mr. Vail, what is the foundation for your testimony and  
19 your belief that there have been 15 such events of these  
20 indicators recently?

21 A. More than one source. One of them is that MTC monthly  
22 report that we've been talking about that we just looked at on  
23 page 5.

24 Q. That's Exhibit 18?

25 A. Exhibit 18. And you can -- you can see the staff assaults.

1 That was one of the three indicators that I referenced. And  
2 there is, again, a drop in February, but before that, not so  
3 much. The other indicators, I talked about weapons and fights  
4 involving more than two people.

5 THE COURT: Hold on. Let me ask you a question. When  
6 you say Exhibit 18 at page 5, tell the court what line that is  
7 that suggests that those are staff assaults.

8 THE WITNESS: The very top line on that page begins  
9 with the letter "P."

10 THE COURT: Okay. Thank you.

11 A. The other source of information is the copies of -- the  
12 extraordinary occurrence reports that I have seen that come  
13 directly from the Mississippi Department of Corrections. They  
14 do not in their monthly report compile that data to show how  
15 many of those fights involved more than two inmates. But by my  
16 own count, there were two in February, two in January, two in  
17 December, three in November. So whatever that adds up to, nine  
18 or something like that, and then this assault data exceeds my  
19 estimate of 15.

20 BY MS. WINTER:

21 Q. Did you also receive through counsel a very recent e-mail  
22 from defendants' counsel giving you -- providing plaintiffs  
23 with information about a recent -- a very recent event, an  
24 indicator event?

25 A. On March 21st there was an incident in one of the medium

1 units where a staff was assaulted -- and I also had opportunity  
2 to see the video of that event -- where a group of inmates  
3 challenged the authority of the officers to conduct a targeted  
4 cell search. The e-mail I saw came from defendants' counsel.

5 Q. In your career as a corrections professional, have you ever  
6 had to personally respond to a disturbance or riot?

7 A. Yes.

8 Q. Can you give an example?

9 A. Well, I had to respond to a riot when I was superintendent  
10 at McNeil. That was probably the -- well, I'll just leave it  
11 at that. I responded to a riot when I was superintendent at  
12 McNeil. In my role as administrator, I was in command center  
13 operations in headquarters office when those disturbances  
14 occurred. I was on the ground in a facility in Colorado.

15 Q. Before you proceed, was the first riot that you talked  
16 about that you had personal knowledge of, was that a minimum  
17 security unit?

18 A. Yes, it was.

19 Q. Was there any loss of life in that riot?

20 A. One prisoner was killed.

21 Q. Proceed. I interrupted you I think.

22 A. No. One prisoner was killed. It took us all night long to  
23 regain control of the facility, requiring that Washington state  
24 patrol and tactical squad from another institution.

25 Q. What were the lessons, if any, that you learned from that

1 riot?

2 A. I had been superintendent or warden of that facility about  
3 six months and I had not tested the emergency response plan,  
4 but I found out that night that we did not have capacity to  
5 respond to a serious emergency.

6 Q. And that was even in a minimum security unit. Correct?

7 A. Correct.

8 Q. Did you do anything after that to prevent serious  
9 disturbances from recurring in Washington State?

10 A. Yes. I participated in a training session with the  
11 Department of Justice in how to build a good emergency response  
12 system with my supervisor at the time. And we revamped not  
13 only the plan for that facility but for the entire department  
14 of corrections.

15 Q. When you became deputy secretary after that, did you take  
16 further measures to prevent serious disturbances?

17 A. I did. Our tactical response teams had been training in  
18 silos, and it is likely that those teams will have to work  
19 together if a serious incident occurs at one of the  
20 institutions. So I instructed that our teams train together  
21 down to the level of making sure radios worked, that they had  
22 common language, that they had tactical plans that complemented  
23 each other. That was one of the things I did.

24 And then once we got those teams working together, we  
25 realized that -- I realized that the folks who were likely to

1 be assigned to incident commanders did not have that kind of --  
2 did not have the kind of familiarity with the capacity of those  
3 tactical teams in order to accurate -- in order to do a good  
4 job directing an emergency situation.

5 So we developed a joint academy between the people who were  
6 going to play the role of incident commanders and the tactical  
7 leaders, and we went off-site for -- that was a two-day session  
8 that we repeated multiple times so that folks who were likely  
9 to have -- to play the role of incident commander learn what  
10 the tactical teams could do. And we did that in the way of  
11 realtime drills.

12 Q. And when you became secretary of the department, did you  
13 focus on any particular task to prevent future riots?

14 A. Well, as soon as I had any kind of significant influence in  
15 the agency, including the time that I was secretary, we worked  
16 very hard to hire quality staff and to -- and to train them and  
17 to train them well, invest our dollars in good training.

18 Personally, consistently throughout my career I found that  
19 legitimate exercise of authority is crucial to running a safe  
20 and secure institution. In shorthand, what that means is that  
21 if the prisoner has a legitimate complaint, that it needs to be  
22 addressed and problems need to be fixed and not swept under the  
23 rug. And the third thing is --

24 Q. Excuse me for interrupting. Does that mean -- does that  
25 relate to a grievance process?

1 A. Grievance process is fundamental to the exercise of  
2 legitimate authority. The third thing is you just need to be  
3 really good at basic security practices including emergency  
4 response.

5 Q. Can you sum up the principles that you acted on to run a  
6 safe prison?

7 A. Well, what I just said around the exercise of legitimate  
8 authority is critical, but what I have learned over the years  
9 is that good security is a combination of solid, basic  
10 correctional security skills and robust programming for the  
11 inmate population so that they've got something productive to  
12 do. It takes both to run a safe and secure institution.

13 Q. How effective have those measures been in preventing  
14 serious prison disturbances in your experience in Washington?

15 A. We started tracking consistent data relative to violent  
16 infractions when I became deputy in 1999. And since the time I  
17 left, violence -- the number of those infractions had decreased  
18 at a rate of 30 percent. And I continue to follow how that  
19 department is doing. And using those same principles, they  
20 continue to drive down that rate of violence in the system.

21 Q. I'd like to now return to the consent decree, the  
22 discussion that we had started yesterday before the  
23 discussion -- the procedural legal discussion. Could you turn  
24 to Exhibit 2?

25 A. Yes.

1 Q. And could you look on page 6 at .12, about -- begins "All  
2 prisoners who have been subjected to chemicals will be  
3 immediately removed and permitted to shower."

4 A. I'm there.

5 Q. Is this provision of the consent decree still something  
6 that, in your opinion, needs to be ordered by the court to --  
7 to manage the risk of violence or of harm to prisoners?

8 A. I believe it should stay in place.

9 Q. Is there anything about it that needs to be modified?

10 A. Well, they -- Walnut Grove has not done a good job of  
11 permitting inmates to shower after exposure to pepper spray. I  
12 think that there needs to be emphasis on making sure that they  
13 do.

14 Q. Would you turn to page 7 of the consent decree on Long-term  
15 Cell Confinement.

16 A. I'm there.

17 Q. Are these provisions still necessary?

18 A. Well, they don't have long-term cell confinement. So at  
19 this moment they would not be necessary.

20 Q. Page 8, Programming and Behavior Management, number 1, RID,  
21 R-I-D, is this necessary?

22 A. No.

23 Q. Page 8.2, Behavior Management Policy with Graduated  
24 Sanctions and Positive Incentive, is this necessary?

25 A. Yes, I believe it is. This section is entitled Programming



1 and Behavior Management, and I equate incentives with  
2 programming. And to the degree those two words can reasonably  
3 be connected, I think Walnut Grove needs more programs.

4 Q. Page 8.3 about the norm being eight hours out of the cell,  
5 is this provision necessary?

6 A. No, it's not.

7 Q. And why is that?

8 A. Well, I believe that -- that that's no longer a problem.  
9 If I could comment on outside recreation, weather permitting,  
10 they don't use the big yard much and I think they'd have a  
11 calmer facility if they did, but I don't think this is  
12 necessary.

13 Q. Disciplinary Due Process and Grievances, is an order on  
14 this still necessary?

15 A. No.

16 Q. Pages 9 to 11, Suicide Prevention and Medical Care?

17 A. I have not been asked to look at that.

18 Q. Page 12, Contract Monitoring.

19 A. Yes. I think that that needs to be maintained and it needs  
20 to have more structure.

21 Q. What kind of structure do you think is needed?

22 A. I think that the audit activities or the monitoring  
23 activities that MDOC does should be documented, that problems  
24 should be identified and that they should be communicated in  
25 writing to MTC. I think MTC should be expected to respond in

1 writing that they have addressed those problems so that there  
2 becomes a record that anyone can tell what MDOC's doing in  
3 order to monitor and if MTC is complying with their direction.

4 Q. And how often would there be -- this reporting be? What's  
5 the minimal amount of time that you think would be necessary --  
6 frequency that you think would be necessary?

7 A. Well, quarterly would probably make sense.

8 Q. And what areas should such monitoring cover?

9 A. Well, whatever is in a final order or consent decree or  
10 whatever the document is, each of those areas should be covered  
11 by the monitors, by the MDOC monitors.

12 Q. So we looked at the substantive provisions of the consent  
13 decree. I'd now like to ask you if there are any additional  
14 remedies that you believe are necessary to -- either additional  
15 or some further modification of what's already there to reduce  
16 substantial risk of serious harm to the prisoners to -- of  
17 serious harm.

18 A. Yes.

19 Q. Are there any additional remedies needed regarding the  
20 profile of the population currently being housed at Walnut  
21 Grove?

22 A. Well, I think that the idea to have long-term segregation  
23 inmates out of there and to have, certainly, close custody  
24 inmates out of there and to have a reduced population does give  
25 them the best chance to be successful. And I think it would be

1 wise to keep that population stable for a couple of years to  
2 see if MTC can become consistent in their supervision of that  
3 level of inmates.

4 Q. Do you feel that that's necessary?

5 A. Yes. I think that's necessary.

6 Q. And in each of the questions that I'm asking you I want to  
7 stress that I'm not simply asking you if it would be wise or a  
8 good thing to do, but I'm really asking you to focus on what  
9 you think is necessary.

10 A. I understand.

11 Q. Is any additional remedy needed regarding an emergency plan  
12 for Walnut Grove?

13 A. It's very clear that Walnut Grove needs to have an  
14 emergency response plan that is functional, that has been  
15 tested and that staff are familiar with. That's absolutely  
16 essential.

17 Q. Are there any additional remedies that are needed to manage  
18 gangs at Walnut Grove?

19 A. I believe that they need to develop a comprehensive gang  
20 strategy that certainly deals with the issues of suppression of  
21 gang activity but also recognizes the need to further engage  
22 inmates and give them incentives that reward non-gang behavior.  
23 Like I said yesterday, there needs to be an approach that's not  
24 just stick, that's part carrot.

25 Q. Is there any additional remedy needed involving physical

1 plant security at Walnut Grove?

2 A. I continue to believe that it would be -- that it is  
3 necessary for everyone to know what the exact problem is with  
4 the cell doors and what it would take to fix them. Is it an  
5 easy fix? Is it a multimillion dollar fix? We don't know what  
6 it is. But in terms of safety, I think that we need to know.

7 Q. Are there any additional remedies needed regarding  
8 complaints of sexual abuse and harassment?

9 A. I believe that those complaints should be sent to  
10 plaintiffs and, if there's going to be court-appointed  
11 monitors, court-appointed monitors, and not just the complaints  
12 but all follow-up documentation, to see that those complaints  
13 are being appropriately investigated.

14 Q. Mr. Vail, would you agree that there has been an  
15 improvement in the level of violence at Walnut Grove during the  
16 three years of the consent decree?

17 A. Yes, I would.

18 Q. What has been driving that improvement?

19 A. Well, in my opinion, the monitors have driven much of that  
20 improvement. I also think the work of the plaintiffs' team has  
21 driven some of that improvement.

22 Q. Does MDOC need to learn to self monitor?

23 A. Yes, they do. The monitors don't work for MDOC and the  
24 plaintiffs don't work for MDOC. Most of the issues we talk  
25 about are not rocket science. They're not complex. They're

1 fairly basic corrections. MDOC needs to have the capacity to  
2 do that kind of monitoring of their vendor.

3 Q. Do you believe that MDOC is capable of doing this?

4 A. I know they are.

5 MR. FRIEDMAN: Objection. I'm going to go by lack of  
6 foundation. Just "I don't believe they are" is -- he needs  
7 to -- foundation --

8 THE COURT: He's testifying as an expert -- as an  
9 expert witness. He's been in the MDOC facilities and he knows  
10 through their action plans and all of that stuff that they have  
11 filed these exhibits with the reports and stuff that belong to  
12 them. He may answer that question. Objection overruled.

13 BY MS. WINTER:

14 Q. Do you believe MDOC is capable of doing this, of  
15 self-monitoring?

16 A. Like I just said, I know they are.

17 Q. How do you know that?

18 A. I read the monitoring reports from the YOU facility by Paul  
19 DeMuro I believe is his name and they showed --

20 MR. FRIEDMAN: Objection. He's talking about the YOU  
21 now, I think, the youth facility. We're not at the youth  
22 facility. The youth facility has been moved out years ago, or  
23 some years ago.

24 THE COURT: Right. Objection overruled. The question  
25 is whether MDOC is capable of self-monitoring I believe is the

1 question, and he said yeah.

2 MR. FRIEDMAN: But he -- I know he said yes, but the  
3 basis is because of what's going on whatever it is at the YOU.  
4 And I have no idea what's going on with the YOU. I have  
5 nothing to do with it. But we're at Walnut Grove.

6 THE COURT: I understand. I think he's -- I  
7 understand. I know there's the youth facility and there was an  
8 issue with respect to that. And now control has basically been  
9 given over to MDOC. I suspect that's going to be the next part  
10 of his testimony.

11 BY MS. WINTER:

12 Q. So --

13 THE COURT: You may proceed.

14 BY MS. WINTER:

15 Q. -- what is the basis for your opinion that MDOC is capable  
16 of getting it right?

17 A. I read the monitoring reports related to the youth facility  
18 submitted by I believe his name is Paul DeMuro.

19 Q. And do those reports tell you anything about the progress  
20 that's been made in the youth facility over the last three  
21 years since the consent decree?

22 A. There's been a great success there. There's committed  
23 leadership. There's resources. MDOC is operating the facility  
24 and it's -- I think it's a success story.

25 Q. What, as you see it, are the differences that account for

1 MDOC not attaining the level of success at Walnut Grove as it  
2 has been attaining at the Youthful Offender Unit?

3 A. They are operating a quality program there on their own  
4 without a private vendor. That's one difference. They are  
5 transparent and flexible and responsive to the concerns that  
6 the court -- I think it's a court-appointed monitor raises.

7 They address them. They incorporate them. They own them.  
8 You don't see a repeat of problems. They're raised and they're  
9 fixed. That's how the system should work, and they've done an  
10 excellent job at that facility. MDOC is capable.

11 Q. And do you see no reason why they should not be capable of  
12 doing the same thing at Walnut Grove?

13 A. I see no reason.

14 Q. Thank you, Mr. Vail.

15 MS. WINTER: We have no further questions of the  
16 witness at this time.

17 THE COURT: All right. Is the defendant ready for  
18 cross-examination of this witness?

19 MR. FRIEDMAN: Yes, sir. Is the Elmo on?

20 THE COURT: It is now.

21 MR. FRIEDMAN: Okay. You have to bear with me. I'm  
22 going to be using some of the plaintiffs' exhibits.

23 THE COURT: That's fine. You want the -- what the  
24 court has done or you already have -- you want the exhibits or  
25 you have your copy over there? It doesn't matter.

1 MR. FRIEDMAN: Well, I can use -- I mean, it doesn't  
2 matter. I can use what's in my book here I guess. Well, I  
3 tell you what, I'll come up and get them.

4 THE COURT: That's no problem.

5 MR. FRIEDMAN: It just may be a little -- give me P-1.

6 (DOCUMENT TENDERED TO COUNSEL)

7 **CROSS-EXAMINATION**

8 BY MR. FRIEDMAN:

9 Q. Good morning, Mr. Vail.

10 A. Good morning.

11 Q. Mr. Vail, let me start with your résumé. I see that you  
12 have been an expert in several cases. Is that correct?

13 A. Yes.

14 Q. And, in fact, in all of those cases, or at least most of  
15 them, you've been an expert for the plaintiffs, haven't you?

16 A. For the most part, yes.

17 Q. And for the most part, you've been hired by the ACLU or the  
18 Southern Poverty Law Center or one of their affiliates.

19 Correct?

20 A. I haven't counted up the exact number, but they frequently  
21 employed me. Yes.

22 Q. Okay. You -- you've testified that -- well, in your  
23 report -- let me see if I can find your report.

24 (PAUSE)

25 THE COURT: What number is it, Mr. Friedman?



1 MR. FRIEDMAN: P-17, which is his report.

2 (PAUSE)

3 BY MR. FRIEDMAN:

4 Q. Mr. Vail, we've alluded to this before. This is your --  
5 part of your report, isn't it?

6 A. Yes.

7 Q. In this case. And this sentence right here, read that  
8 sentence.

9 A. I'm sorry. Could you point again, sir?

10 Q. Yes, sir.

11 A. "No one suggests that you can run a prison without  
12 problems."

13 Q. Next sentence?

14 A. "Bad things happen in prison and always will."

15 Q. Now, you agree then that bad things happened in the  
16 Washington state prison when you were there. Correct?

17 A. Absolutely, sir.

18 Q. And I believe you just testified that you implemented  
19 measures to run secure facilities in Washington state.  
20 Correct?

21 A. I did.

22 Q. One of the Washington state facilities was the Monroe  
23 Correctional Complex, wasn't it?

24 A. Where Jamie Biendl died, yes, sir.

25 Q. All right. And in January of 2011 a correctional officer,

1 Jamie Biendl, was killed by a prisoner. Correct?

2 A. Yes, she was.

3 Q. And she was killed by a prisoner in the chapel of the  
4 complex. Correct?

5 A. That is correct.

6 Q. And Biendl was the only officer in the chapel at the time,  
7 wasn't she?

8 A. Yes, she was.

9 Q. And, in fact, she had let her supervisors know before that  
10 that she didn't feel safe being the only person in the chapel,  
11 hadn't she?

12 A. No.

13 Q. No, she hadn't?

14 A. That had not been -- that was not confirmed in the record.  
15 It was reported but never confirmed.

16 Q. All right. It was reported that she had.

17 A. Yes.

18 Q. All right. There were no security cameras covering that  
19 part of the chapel where she was killed, were there?

20 A. I don't recall.

21 Q. Possible there were not. You just don't know.

22 A. It is possible.

23 Q. All right. Do you think that made the Monroe Correctional  
24 Complex unreasonably undangerous -- or unreasonably dangerous  
25 because of the murder of a correctional officer?

1 A. No.

2 Q. The Walla Walla Prison was part of the Washington state  
3 complex when you were head of it, wasn't it?

4 A. Still is, yes, sir.

5 Q. And on March 2, 2011, an inmate stabbed a guard in the  
6 head, didn't they?

7 A. I don't have that recollection. It's entirely possible.

8 Q. All right. Do you recall an inmate stabbing a guard in the  
9 head and two other officers getting injured in the melee?

10 A. Not a particular incident, no, I don't, sir.

11 Q. All right.

12 A. I wouldn't dispute that it occurred.

13 Q. The -- I may mispronounce this, but Clallam -- the Clallam  
14 Bay Correctional Center, is that part of the Washington state  
15 prison system?

16 A. You did a good job on the pronunciation. Yes.

17 Q. It was a mistake, an accident, I assure you. A few days  
18 before you announced your resignation on July 1, 2011, a  
19 prisoner was in the process of escaping from the Clallam Bay  
20 Correctional Facility. Correct?

21 A. Correct.

22 Q. And the prisoner was shot dead, wasn't he?

23 A. Yes, sir.

24 Q. Did that make the Clallam Bay Correctional Center  
25 unreasonably unsafe?

1 A. No.

2 Q. Yesterday you said that with staff assaults or attacks with  
3 a weapon, you're in a whole new realm and it ups the ante.  
4 Didn't you say something like that?

5 A. Something like that, yes.

6 Q. All right. So now we've talked about a -- not only an  
7 assault on a guard but a guard being killed by an inmate. And  
8 you -- you don't dispute that another guard got stabbed in the  
9 head by an inmate. Another inmate somehow got in the process  
10 of escaping and ended up getting shot. Correct?

11 A. Correct.

12 Q. Well, does that up the ante?

13 A. You need to say more, sir. I'm not sure what you mean  
14 by --

15 Q. I'm using your words. I'm using your words.

16 A. If you want to elaborate so I can go there. You're taking  
17 isolated incidents, which are bad. You're not talking in any  
18 way about the agency's response to them. You're not looking at  
19 trends. You're not looking at the response of the department  
20 or the particular prison to learn from those experiences and  
21 manage that behavior.

22 Q. You're right. I'm talking about things that happened while  
23 you were head of the Washington state prison system that  
24 obviously were serious events. Correct?

25 A. Correct.

1 Q. All right. Were there any facilities in Washington state  
2 prison system under a consent decree while you were head of it?

3 A. No.

4 Q. Were they put under one after these assaults?

5 A. They were not.

6 Q. Mr. Vail, you've testified a lot about all the things you  
7 see that don't come up to your idea the way they should be at  
8 Walnut Grove. Correct?

9 A. That's a pretty broad question. Can you be more specific?

10 Q. You've testified a lot about problems you see at Walnut  
11 Grove. Correct?

12 A. I have. Yes.

13 Q. Will you sort of slant the facts to support your clients'  
14 position over here?

15 A. I would not.

16 Q. You wouldn't. So you wouldn't slant facts to give the  
17 wrong impression?

18 A. I would not.

19 Q. Let's look at your report.

20 THE COURT: We have -- I think Ms. Smith has it if you  
21 want to use what she has instead of your notebook. I mean --

22 MR. FRIEDMAN: All right. Well, I mean, it may be  
23 easier.

24 THE COURT: It's fine.

25 MR. FRIEDMAN: It may or may not be easier.

1 BY MR. FRIEDMAN:

2 Q. Starting on page 2, it says, "I served for seven years as  
3 deputy secretary for Washington State Department of Corrections  
4 and for four years as secretary." Correct?

5 A. Yes.

6 Q. "For the past two and a half years since retiring from the  
7 department I've served as an expert witness." Correct?

8 A. Correct.

9 Q. Do you agree that that could give somebody the wrong  
10 impression about why you left there?

11 A. No, not at all.

12 Q. In reality, you resigned on July 1, 2011, when it was  
13 publicly revealed that you were having an affair with a  
14 subordinate employee. Correct?

15 A. I developed a personal relationship with someone who worked  
16 for me, yes, sir.

17 Q. A sexual personal relationship. Correct?

18 A. Yes.

19 Q. So you resigned the day after you and this subordinate  
20 employee were caught leaving the hotel after a noontime  
21 whatever y'all were doing in the hotel. Correct?

22 A. That's correct, sir.

23 Q. I think that's been the subject of a YouTube video. Are  
24 you familiar with that?

25 A. I am not.

1 Q. It's on YouTube if you're interested. You were married and  
2 acknowledged that you had had an inappropriate relationship  
3 after that. Correct?

4 A. What was your question again, sir?

5 Q. At the time of this inappropriate relationship, you were  
6 married.

7 A. I was married, yes.

8 Q. And you acknowledged having this inappropriate  
9 relationship. Correct?

10 MS. WINTER: Your Honor, is this relevant? I don't  
11 think it is. I object on the grounds of relevance.

12 MR. FRIEDMAN: It is relevant for bias, credibility.  
13 I'm getting to something else that's also relevant.

14 MS. WINTER: I have never -- I see no relevance to an  
15 expert's expertise on correctional matters as to what they may  
16 do in their personal --

17 THE COURT: Hold on. Make sure you're speaking into  
18 the mic.

19 MS. WINTER: I see not the remotest relevance to this  
20 expert's expertise on correctional matters, whatever  
21 peccadilloes he might have had in his personal life. I do not  
22 see the connection. I do not see how it in any way affects his  
23 credibility as a correctional expert. And it seems to me the  
24 questions are only intended to harass and embarrass.

25 THE COURT: You said you might have another question

1 that might link it up. But what you pointed to in his report  
2 was "For the past two and a half years since retiring from the  
3 department," and you indicated that -- he agreed that he did  
4 retire. He retired for whatever reason. He retired. He was  
5 not fired.

6 MR. FRIEDMAN: Well, that leaves -- the point of this  
7 is that leaves the wrong impression. Yes, he retired. I mean,  
8 he might have had enough time to retire, but that's not why he  
9 left. He didn't say, you know, *I think I'll retire the day*  
10 *after I* -- he left because he -- of this problem, and he  
11 acknowledged that. And if --

12 THE COURT: How does that go -- how does that go to  
13 how the court should treat his testimony in this case?

14 MR. FRIEDMAN: It goes to his credibility, because  
15 he's -- he's already testified that he retired. That's not the  
16 end of the story.

17 THE COURT: Okay.

18 MR. FRIEDMAN: That's not all that this is about.  
19 Number two, it's bias, because he -- we'll get to that. He  
20 made a statement he had no choice. Can I ask him one question?

21 THE COURT: Yes. And before you answer, Mr. Vail,  
22 wait on me.

23 THE WITNESS: Before I answer?

24 THE COURT: No, no. Ask the question because I need  
25 to hear the question first.



1 MR. FRIEDMAN: All right.

2 BY MR. FRIEDMAN:

3 Q. In fact, you were quoted as saying, quote --

4 MS. WINTER: Objection. Excuse me. Could we approach  
5 the bench before -- before Mr. Friedman asks the next question  
6 so the court can determine ahead of time whether this line is  
7 reasonable?

8 THE COURT: You may approach.

9 (BENCH CONFERENCE)

10 MR. FRIEDMAN: Where I'm going -- the next question --  
11 he was supposedly saying, *Once I became aware of that*  
12 *possibility, I knew I had only one choice and that was to*  
13 *resign.* That's -- he was quoted in the paper saying that. So  
14 this wasn't a "Just I retired," you know. But there's also a  
15 policy issue here that I want to get into, because there was a  
16 policy that prohibited that.

17 And he's talked about policies and training on  
18 policies and complying with policies. And there's a  
19 specific -- there was a specific departmental policy  
20 prohibiting interoffice relationships, which is really why he  
21 had to go. But I think we have a right to get into that. Now,  
22 I don't have a whole lot more, but we'll move on. I think I  
23 have a right to get into that.

24 THE COURT: And that the policy -- I'm just trying to  
25 think, if there's a policy which prohibited interpersonal

1 relationships, is that policy -- I mean, he was the secretary  
2 or deputy secretary I guess at the time --

3 MR. FRIEDMAN: He was the secretary.

4 THE COURT: He was the secretary.

5 MR. FRIEDMAN: Yes.

6 THE COURT: And there was a policy that prohibited him  
7 from having an inappropriate relationship with a subordinate.

8 MR. FRIEDMAN: Right, with a person -- the parties  
9 involved were in the same chain of command. And, obviously,  
10 he's the head guy. And, obviously, she was in his chain of  
11 command since he was the head guy.

12 THE COURT: And you want to show that a breach of that  
13 policy made the prison safer or just want to sort of --

14 MR. FRIEDMAN: It goes to -- you know, he's gone on  
15 and on about training on policies. I think we have a right to  
16 ask him if he's trained on this policy; and if so and he knew  
17 about it, then he intentionally violated. And those kind of  
18 things happen, don't they?

19 THE COURT: Okay. Any response from the plaintiff?

20 MR. MCDUFF: Yes, your Honor. First thing is the  
21 policies that he has testified about are policies relating to  
22 running of the prison and safety of the prison, not to the  
23 personal behavior of the -- of the people who were employed  
24 there.

25 Secondly, there's nothing about what Mr. Friedman has

1 brought out that contradicts what Mr. Vail said in his report.  
2 As you point out, he said he retired. He didn't say why he  
3 retired. He didn't say he retired to become a consultant. He  
4 just said he retired. So, I mean, I think it's -- it's being  
5 done, as Ms. Winter said, just to embarrass him. I don't think  
6 it's probative at all. Mr. Friedman has made his record and we  
7 think the question should not be allowed.

8 THE COURT: Yeah, I agree. The only thing in his  
9 record, he says "Since retiring, I've served as an expert  
10 witness." You've suggested to him that he may have retired for  
11 other reasons or he did not disclose the reasons why he  
12 retired.

13 But I -- I think we've gone far enough into that  
14 specific area, because that was what opened the door in your  
15 mind because you said that the "since retiring" words did not  
16 tell the complete story. And now we know what the complete  
17 story is and that is sufficient. It's sufficiently dealt with.

18 MR. MCDUFF: Thank you, your Honor.

19 THE COURT: So I'm going to sustain the objection.

20 (BENCH CONFERENCE CONCLUDED)

21 MS. WINTER: Your Honor, we would move to strike that  
22 last testimony.

23 THE COURT: Well, it's -- the court will give it the  
24 consideration that -- this is a bench trial. The court will  
25 give it due consideration or give it the necessary

1 consideration based on the court's ruling. You may proceed.

2 MR. FRIEDMAN: Let me have I think -- is that P-17?

3 THE CLERK: Right there.

4 MR. FRIEDMAN: I know this is duplicative, but it  
5 would help me keep up with things. This is D-5, which is the  
6 monitors' sixth report, which is already in evidence, but I'm  
7 going to move D-5 into evidence.

8 THE COURT: D-5. I assume there's no objection. It's  
9 the same monitors' sixth report. This is duplicative.

10 MS. WINTER: Right. No objection.

11 THE COURT: You said D-5, Mr. Friedman?

12 MR. FRIEDMAN: D-5, correct.

13 THE COURT: D-5 is admitted.

14 (EXHIBIT D-5 MARKED)

15 BY MR. FRIEDMAN:

16 Q. Now, let's look at page 4 of your report, and you are  
17 referring to the fifth monitors' report. Correct?

18 A. That's what the report says, yes.

19 Q. All right. And then in the fifth monitors' report you go  
20 on to talk about the -- "among areas of noncompliance." Do you  
21 see those?

22 A. I do.

23 Q. All right. Read them.

24 A. "Among areas of noncompliance" --

25 THE COURT: Slow --

1 THE WITNESS: I'm sorry.

2 THE COURT: Slow down. What page of the report is  
3 that, Mr. Friedman?

4 MR. FRIEDMAN: Page 4.

5 THE COURT: Okay. Thank you.

6 MR. FRIEDMAN: Yes, sir.

7 A. "Among areas of noncompliance found by the monitors in  
8 their fifth report were protection from harm, reasonably safe  
9 living conditions and sufficient numbers of adequately trained  
10 staff, use of force and chemical agents and contract  
11 monitoring."

12 BY MR. FRIEDMAN:

13 Q. And then you go on to state that despite having at their  
14 disposal the assistance and advice and expertise of the  
15 monitors, MDOC and MTC seemed either unwilling -- or unable or  
16 unwilling to address some of the most fundamental problems at  
17 Walnut Grove. Correct?

18 A. That's what it says. Yes.

19 Q. Well, let's look at the sixth monitor --

20 THE COURT: For the record, this is exhibit what,  
21 because I only have a copy of the plaintiffs' exhibit.

22 MR. FRIEDMAN: Do you want a copy just so I can call  
23 them the same thing?

24 THE COURT: I've got it.

25 THE CLERK: P-15.

1 THE COURT: It's P-15. Thank you, Ms. Smith.

2 BY MR. FRIEDMAN:

3 Q. I'm going to show you a copy of the sixth monitors' report.

4 And, first of all, you've seen the sixth monitors' report,  
5 haven't you?

6 A. I have.

7 Q. And, in fact, in the sixth monitors' report there are no  
8 areas of noncompliance, are there?

9 A. Can you tell me where it is in the P exhibits?

10 THE COURT: P-15.

11 THE WITNESS: P-15. Thank you.

12 BY MR. FRIEDMAN:

13 Q. Take your time.

14 (WITNESS EXAMINED DOCUMENT)

15 A. That is correct, sir. There are no areas of noncompliance.

16 Q. And that is the most recent report.

17 A. It was not available when I wrote mine, but yes.

18 THE COURT REPORTER: It what?

19 THE WITNESS: It was not available when I wrote my own  
20 report; but, yes, in answer to his question.

21 BY MR. FRIEDMAN

22 Q. And then if you turn to page 4 of the sixth monitors'  
23 report and it says, "For this reporting period, the facility  
24 has made significant gains in each of the aforementioned core  
25 areas of operation." And then it goes on, talks about the

1 staffing. "Significantly, in the two most recent packets of  
2 the extraordinary occurrence events, officers were in a  
3 position to intervene in inmate assaults, fights, thus reducing  
4 unobserved, unchecked assaultive behavior" --

5 THE COURT: Slow down.

6 BY MR. FRIEDMAN:

7 Q. -- "assaultive behavior within the housing units (sic)."

8 So going back, in each of the aforementioned core areas the  
9 facility has made significant gains, correct, according to the  
10 monitor?

11 A. Yes. According to the monitors, that's correct.

12 Q. Therefore, there was progress between the fifth and sixth  
13 monitors' report in all the areas you referred to back in your  
14 report on page 4. Correct?

15 A. I wouldn't argue otherwise.

16 Q. Correct, then. Is that a yes?

17 A. I believe that means yes.

18 Q. All right. I just want to make sure the record's clear.  
19 So MDOC and MTC apparently are addressing some fundamental  
20 issues at Walnut Grove. Correct?

21 A. Under the pressures of the monitors and the plaintiffs,  
22 yes.

23 Q. They're doing it. Correct?

24 A. They're doing some good things. No argument there, sir. I  
25 said that in my own testimony.

1 Q. Therefore, based on the current situation, the current  
2 situation, your statement that MDOC and MTC are unable or  
3 unwilling to address fundamental problems is not correct, is  
4 it?

5 A. I disagree. I think it remains to be seen. Two or three  
6 months is not enough.

7 Q. I'm asking you, as of this monitors' report, considering  
8 the progress that the monitors have seen, the court's  
9 monitors -- this isn't somebody we brought -- the court's  
10 monitors, based on the court's monitors and based on the  
11 current situation, your statement that MDOC and MTC are  
12 unwilling or unable to address fundamental problems is not  
13 correct, is it?

14 A. I disagree based on -- may I finish? I disagree. The  
15 monitors are tracking gradual progress. You're asking me an  
16 overwhelming conclusion. It's my opinion with the fifth  
17 report, remains my opinion today that they are capable.  
18 They've done some good things. Can they sustain that more than  
19 a couple of months? We'll see.

20 Q. Again, my problem was not whether they can sustain it.  
21 That wasn't -- that wasn't my question. I'm asking as of  
22 today.

23 A. It is my answer.

24 Q. You testified about the December 2013-January 2014 incident  
25 and the July 2014 incident, and I believe you said that some of



1 this happened in -- well, most of it happened in 3, Unit 3.

2 Correct?

3 A. Which disturbance are you referring to?

4 Q. Well, let's talk about July.

5 A. Okay.

6 Q. Unit 3.

7 A. Mostly, yeah. And one pod of Unit 4.

8 Q. 4B.

9 A. Okay.

10 Q. I think you testified 4B was not close custody. Did you  
11 testify that 4B was not close custody?

12 A. I didn't believe it was. Was it?

13 Q. Yes, it was.

14 A. I'm sorry, sir.

15 Q. All right. So the July 2014 incident, riot as you've  
16 described it, happened in five pods, five zones, all close  
17 custody. Correct?

18 A. If I assume you're accurate about 4, then, yes, that would  
19 be true.

20 Q. So there was no medium security inmates -- if what I'm  
21 telling you is true, no medium inmates were involved in  
22 July 2014, to your knowledge. Correct?

23 A. Then that would be correct.

24 Q. So do you agree that the New Year's Eve disturbance  
25 occurred in close custody?

1 A. Yes.

2 Q. And the July 2014 also occurred in close custody?

3 A. Based on your representation about the nature of 4 Bravo,  
4 yes.

5 Q. And all close custody inmates have been moved out of Walnut  
6 Grove. Correct?

7 A. That's in the record. Yes.

8 Q. And, therefore, there are no close custody inmates at  
9 Walnut Grove.

10 A. Also in the record, yes.

11 Q. Therefore, it would be impossible today -- be impossible to  
12 have another disturbance in close custody at Walnut Grove.  
13 Correct?

14 A. If there's no close custody inmates, then the close custody  
15 inmates could not riot. That's correct, sir.

16 Q. Good. Okay. On page 8 of your report you're talking about  
17 the absence of an after-action report after the July 2014  
18 incident. Correct?

19 A. I'm just looking for where it says that. I'm sure it says  
20 that, but it would be good to confirm.

21 (WITNESS EXAMINED DOCUMENT)

22 THE COURT: I'll get you to just mention the exhibit  
23 number for the record. I know that's P- -- P something.

24 MR. FRIEDMAN: I think it was P-17.

25 THE COURT: Okay. Thank you.

1 MR. FRIEDMAN: We're on page 8.

2 THE COURT: Thank you.

3 MR. FRIEDMAN: I think we are.

4 BY MR. FRIEDMAN:

5 Q. Okay.

6 A. That page references the absence of an after-action report,  
7 yes.

8 Q. And you state down here that absent such a report or list,  
9 issues and problems are not clearly identified and it becomes a  
10 mystery if anything has or will change as a result. Is that  
11 what you said?

12 A. It is what I said.

13 Q. Now, you agree that after July 2014, all close custody  
14 inmates had been taken out of Walnut Grove.

15 A. I do agree.

16 Q. And we've already established that's where the incidents  
17 occurred, in close custody.

18 A. That's true.

19 Q. And you agree that the inmate population at Walnut Grove  
20 has decreased from somewhere around 1300 -- I don't have an  
21 exact number -- to somewhere 962 or less. Correct?

22 A. I never connected that with the riot; but, yes, that's the  
23 population.

24 Q. That's a significant change, isn't it?

25 A. It's a big change, yes.

1 Q. And you agree netting was installed outside around the  
2 facility to cut down on contraband.

3 A. That was the intended purpose, yes.

4 Q. That's a significant change, isn't it, or an addition to  
5 the security?

6 A. I don't see in the contraband results it worked much, but  
7 it was an effort. Yes.

8 Q. It's a positive change.

9 A. It's one I give MTC credit for initiating on their own.

10 Q. And you recommended realtime drills, didn't you?

11 A. I have, as have the monitors.

12 Q. Okay. And if you go to page 12 of your report, P-17, you  
13 talk about realtime drills that are conducted in -- this is  
14 2014, one in October, two in November, three in December.

15 Correct?

16 A. Yes.

17 Q. And you say, "I applaud prison officials for this effort."

18 Correct?

19 A. I also say I urge them to continue, and I hope that they  
20 are.

21 Q. Well, that's -- these realtime drills are a positive step,  
22 aren't they?

23 A. The fact that they have them, yes. The quality of them was  
24 pretty poor. But, you know, you've got to start somewhere.

25 Q. Having these realtime drills is a positive step, isn't it?

1 A. If they continue to evolve their complexity and include  
2 more custody staff than they've been including, they can make a  
3 real difference. What I saw in the example of the reports  
4 didn't really get that far, but I want to pat them on the back  
5 because they were at least making some minimal effort.

6 Q. And you know that body scanners have been put in. Correct?

7 A. They have.

8 Q. That's a positive step to try to control contraband, isn't  
9 it?

10 A. Again with the comment that it doesn't appear to have  
11 worked real well yet. Maybe there's some other things they  
12 need to do, but it's a positive step.

13 Q. So going back to your statement that it was a mystery about  
14 whether anything will change, things have changed, haven't  
15 they?

16 A. No, sir. You're conflating different issues. I write  
17 about absence of information, about what caused the riot and  
18 how they responded to the riot. And that's a discrete set of  
19 issues. The other kinds of things that you're talking about  
20 are different or broader. Contraband exists as a problem. The  
21 fact that they couldn't handle close custody inmates existed  
22 outside the context of the riot.

23 We don't know what happened that night. We don't know  
24 those staff who were being prosecuted, what role they might  
25 have played to the degree that it could be shared now. We

1 don't know who was held accountable. We don't know why that  
2 grenade went off. We don't know why they don't have  
3 respirators. That's what I'm referring to is a mystery because  
4 we have no after-action report.

5 Q. Well, going back to your statement -- and I don't want to  
6 get into an argument with you -- you just say, absent such a  
7 report, issues and problems are not clearly identified and  
8 becomes a mystery if anything has or will change as a result.  
9 You agree that there have been changes since July 2014.

10 Correct?

11 A. I stand on the last answer.

12 Q. Well, I want you to answer this one. You agree that  
13 changes have been made at Walnut Grove since July 2014.

14 Correct?

15 A. That's unrelated to my comment here that is in the written  
16 report, sir.

17 Q. We will let others decide whether it's related or not. Do  
18 you agree that there have been significant changes at Walnut  
19 Grove since July 2014?

20 A. Not tied to an after-action report, no.

21 Q. I'm not asking you whether it's tied to anything. I'm just  
22 asking you if significant changes have taken place at Walnut  
23 Grove since July 2014.

24 A. The population profile is different. I agree that's a  
25 significant change.

1 Q. On page 12 of your report P-17 talking about the drills,  
2 you state that "Several of the drills involved very few custody  
3 staff. I was told that the records did not reflect all who  
4 were involved." Do you see that?

5 A. I do see that.

6 Q. So you really don't know what staff were involved or how  
7 many people were involved, do you?

8 A. They gave me some records, and on those records there was a  
9 correctional officer or two. And they had an example of a  
10 larger scale drill. It was actually a search of a unit, which  
11 I really don't think was an emergency response drill. But that  
12 was in response to my question, *Why don't you have more custody*  
13 *staff involved?* And they, *Oh, we did. We did a search and*  
14 *there was lots of custody staff.* I said, *Did you document*  
15 *that?* They said, *No.* That's the context of these comments.

16 Q. So according to whoever it is you talked to, there were  
17 others involved, other staff involved in the drill. Correct?

18 A. In the one drill -- the one search that they called a  
19 drill, they were using that to tell me they were involving lots  
20 of custody staff. In the examples that they gave me there was  
21 eight, ten, 12 names. Very rarely were their job titles  
22 "correctional officer."

23 Q. Did you talk to any of the people involved, any  
24 correctional officers involved in the realtime drill?

25 A. I did not.

1 Q. On page 15 of P-17 of your report, it's talking about the  
2 cell doors. Correct?

3 A. Correct.

4 Q. And you admit that the issues with the slider doors have  
5 been fixed. Correct?

6 A. And that there's no -- yes, I do, and there's no inmates  
7 living in those units right now is my understanding.

8 Q. However, you state that other problems apparently remain.  
9 Do you see that?

10 A. I do.

11 Q. Now, you didn't talk to any staff about cell doors, did  
12 you?

13 A. Yeah, we asked the warden.

14 Q. Well, you didn't talk to any -- that was that one big  
15 meeting. Correct? You didn't talk to any staff on a  
16 one-on-one basis about the -- anything of substance when you  
17 came in January, did you?

18 A. You know, I may be wrong about this, but I don't think I  
19 had access to talk directly to correctional officers.

20 THE COURT: Make sure you're speaking into the mic,  
21 Mr. Friedman.

22 MR. FRIEDMAN: I'm sorry.

23 BY MR. FRIEDMAN:

24 Q. The question is, isn't it true, Mr. Vail, that you didn't  
25 talk to any correctional officers when you were there in



1 January of 2015?

2 A. Literally true I didn't talk to any correctional officers,  
3 no, I don't think that's true. Do you mean about this subject?

4 Q. I'm talking about -- I'm not saying "Hi. How are you?"

5 Let's talk about this subject. You didn't talk to any  
6 correctional officers about cell doors, did you?

7 A. I talked to the major.

8 Q. Major who?

9 A. Daniels.

10 Q. Who?

11 A. Daniels I believe is his name.

12 Q. Well, when did you talk to Major Daniels?

13 A. We went for an inspection down to an empty unit looking at  
14 some of the stuff that had been repaired. I might have that  
15 mixed up. But everybody was assembled. If you give me a  
16 minute, maybe I'll talk myself back to this memory.

17 But everyone was assembled in the administrative offices up  
18 front. We had been interviewing prisoners. And I wanted to go  
19 down to the units and look at them. But there was a lot of  
20 impatience around getting up to the meeting because people were  
21 waiting. So we did go down to the area where the cell doors  
22 had been fixed and we talked about them there.

23 Q. That's the sliders.

24 A. I asked questions about the other ones as well is my  
25 memory.

1 Q. And when you say that other problems apparently remain,  
2 that means you're not sure if they remain or not with these  
3 swinging doors, do you?

4 A. The nature of the problem remains a mystery to me. But the  
5 consistent reports from the inmates and I think it's  
6 acknowledged in Mr. Roth's report as well is that those hinged  
7 doors can be jammed. Apparently -- I don't know if it's  
8 maintenance. I don't know if it's design. Like I said earlier  
9 today, it would be great to get an outside independent security  
10 hardware expert in there to say, *Here's what the problem is.*  
11 *You can fix them or you can't fix them.*

12 Q. So going to back to your statement, you don't know if  
13 there's a mechanical problem as you sit here today -- well,  
14 first of all, you're not a security expert, are you?

15 A. Not a hardware expert, no, sir.

16 Q. All right. So as you sit here today, you don't know if  
17 anything's mechanically wrong with those cell door locks or  
18 not, do you?

19 A. I don't know. That would be true.

20 Q. All right. You just -- because of what inmates have told  
21 you, you just think they ought to bring somebody in -- MTC or  
22 MDOC bring an expert in to look at it.

23 A. Not just what inmates say, sir.

24 Q. All right. You're not aware of any expert hired by the  
25 Southern Poverty Law Center to come in and look at the cell

1 doors, have you?

2 A. Not to my knowledge, no.

3 Q. Are you aware? They've not in this case. Correct?

4 A. Not to my knowledge.

5 Q. Do you know of any requirement in the consent decree that  
6 there's -- as it stands right now, that the MDOC is required to  
7 go out and get a security expert?

8 A. There's no specific language that says that in the consent  
9 decree.

10 Q. And the monitors in their sixth report don't mention going  
11 out and getting an expert, do they?

12 A. I don't believe so. I've not looked at it for that issue,  
13 but I don't think so. I have no memory of that.

14 Q. But going out and getting this expert is just something  
15 you'd like to see. Correct?

16 A. I would certainly like to see it. I would argue with your  
17 word "just," just me. I think there are others who might like  
18 to see it as well.

19 Q. In your report, page 16, P-17 -- this wasn't brought up,  
20 but your report's in evidence. So let's talk about it. These  
21 are the panic buttons. You state that an additional problem  
22 reported by the inmates was nonfunctioning panic buttons in  
23 their cells. Is that right?

24 A. That's what it says, sir.

25 Q. And it says you got that information from inmates.

1 Correct?

2 A. Yes, it does say that.

3 Q. Let's look at the monitors' sixth report. And this is D-5.

4 THE COURT: It's P-15.

5 MR. FRIEDMAN: After a while I'll probably remember  
6 that, but a while hasn't gotten here quite yet.

7 THE COURT: That's fine.

8 BY MR. FRIEDMAN:

9 Q. Page 14 of the monitors' report, the monitors -- the  
10 court's monitors state, "During the most recent site  
11 inspection, Monitor Martin," who I think is sitting back here,  
12 conducted inspections inside several of the tower control  
13 stations in an attempt to gauge staff ability to detect  
14 unsecured cell doors via the control panels. Monitor Martin  
15 also queried the control officers on the general operation of  
16 emergency call buttons. While both of these systems required  
17 constant maintenance, they appeared to be operable and  
18 functioning."

19 Do you disagree with that?

20 A. I do not.

21 Q. So there's nothing wrong with the panic buttons as long as  
22 maintenance is done. And there's always maintenance. Correct?

23 A. The report says what it says, sir. I don't argue with it.

24 Q. And then it goes on to state that "When the officers make  
25 their rounds to ensure that locking mechanisms are not blocked,

1 the control officers' panel does detect these" -- "those doors  
2 that are not fully secured." Do you agree with that?

3 A. I agree that's what it says.

4 Q. You agree with the statement. Do you agree that that is a  
5 correct statement of fact?

6 A. I don't know that. I know it's in Mr. Martin's report. I  
7 have a great deal of respect for him. But have I done the work  
8 to figure this out? I have not. I haven't had that access.

9 Q. Well, if that's the case, tell me something. Why is that  
10 in your report that says an additional problem reported by the  
11 inmates was nonfunctioning panic buttons in their cells if you  
12 don't know that to be true?

13 A. The words of the statement on the page are true, that  
14 additional problem reported by the inmates. This report was  
15 written after -- or before -- I'm sorry -- Mr. Martin made that  
16 inspection. I'm happy that he did.

17 Q. Turning to page 15 of P-15 -- I think I got that right --  
18 you testified a little bit ago about the statement by the  
19 monitors about contraband. "Contraband control remains a  
20 problem. However, facility officials continue to conduct  
21 frequent searches and the presence of serious contraband  
22 appears to have diminished in the two most recent months." Do  
23 you disagree with the court's monitors?

24 A. I do in this regard, yes.

25 Q. So the court's monitors, the independent court's monitors,

1 just got this wrong. Correct?

2 A. When I testified about this earlier, I looked at the data  
3 for the eight months. I don't see a -- I do see a drop in two  
4 months, but I don't think their report was written before they  
5 had the February data. Even if I'm wrong about that, no, I  
6 don't see a significant drop in contraband over the last eight  
7 months.

8 Q. So you don't think Mr. Martin and Mr. Austin got this  
9 right. Correct?

10 A. I think a lot of both of them, but I do not think they got  
11 this one right.

12 Q. You testified a lot about the emergency response plan, and  
13 I think over and over you said that for various reasons it's  
14 not acceptable in your view. Correct?

15 A. Correct.

16 Q. You've seen the sixth monitors' report. Correct?

17 A. I've seen the sixth monitors' report. That's true.

18 Q. And the monitors are reviewing -- supposed to be reviewing  
19 compliance with the consent decree. Correct?

20 A. Yes.

21 Q. And have you noticed that the sixth monitors' report never  
22 mentioned an emergency response plan?

23 A. I have noticed that.

24 Q. So, apparently, if they're in charge of finding compliance  
25 and noncompliance with the consent decree and don't even

1 mention something, does that tell you that they don't think  
2 it's relevant to the consent decree?

3 A. No, it doesn't tell me that.

4 Q. Okay. They just thought it was relevant and ignored it?

5 A. I can't answer that for the monitors. They'd have to  
6 answer that for themselves, sir.

7 Q. I believe you testified yesterday that the emergency  
8 response plan notification was not updated. Did you testify to  
9 that?

10 A. At the time -- yes, I testified to that. Go ahead.

11 Q. You know it's been updated now?

12 A. Within the last two weeks, yes.

13 Q. Okay. Well, you know there's been a lot of turnover at --  
14 especially at MDOC recently.

15 A. When I first looked at the emergency response plan, the  
16 list included administrative staff who had not been there for  
17 over a year.

18 Q. That's not the case anymore, is it?

19 A. As of a couple of weeks ago.

20 Q. As far as you know, as a couple of weeks ago it's up to  
21 date.

22 A. As far as I know.

23 MR. FRIEDMAN: Can I get P-23?

24 (PAUSE)

25 BY MR. FRIEDMAN:

1 Q. All right. Mr. Vail, you talked about a -- yesterday I  
2 believe about a material safety data sheet for OC spray.

3 A. I did.

4 Q. And I believe you testified that it requires washing your  
5 face out with water? Is that what you said?

6 A. Well, that's one of the things I said. Sure.

7 Q. All right. Well, if I recall -- let me put this up here.  
8 Here is Exhibit 24. And on the second page of Exhibit 24, when  
9 there's just inhalation but it's not in your eyes, what does  
10 the material safety data sheet suggest?

11 A. Provide fresh air.

12 Q. Okay. It doesn't -- I know if it gets in your eyes it says  
13 water; but if it's just inhalation, it's fresh air. Correct?

14 A. May I answer?

15 Q. Go ahead.

16 A. Can you put it back up for a moment?

17 Q. Sure.

18 (COMPLIED WITH REQUEST)

19 A. It is perhaps literally impossible to not have inhaled it  
20 and getting -- if you -- inhaling and your eyes is very common  
21 as an exposure to OC. It's hard not to get it in your eyes if  
22 you got it in your mouth or your nose.

23 Q. It's hard to, but it can happen.

24 A. I cannot imagine a situation if it gets close to your head  
25 where that's true, but, okay, theoretically, yes.



1 Q. For example, I know if you're sprayed directly --

2 A. Or if you walk through a cloud.

3 Q. There are situations where the -- the OC spray could be out  
4 in the building in general and people have trouble breathing  
5 and you take them out for fresh air. Correct?

6 A. Okay.

7 Q. Is that right? Correct?

8 A. Yes.

9 Q. All right.

10 A. That's correct.

11 Q. All right. You -- on page 17 of your report you talk about  
12 gang management. Correct?

13 A. I do.

14 Q. And this corresponds I believe with something in the  
15 consent decree.

16 MR. FRIEDMAN: If I can find the consent decree.

17 (PAUSE)

18 BY MR. FRIEDMAN:

19 Q. We were about to talk about gang management. And I believe  
20 yesterday -- this is P-14. You were asked to read part of this  
21 policy statement. I think you only read down to zero tolerance  
22 for security group members. Today I want you to read the  
23 entire policy statement.

24 A. "It is the policy of the Mississippi Department of  
25 Corrections to maintain a zero tolerance for security threat

1 group members whose validation and/or actions pose a threat or  
2 potential threat to the safety of staff, offenders, the public  
3 and the security of the facility."

4 Q. And you state in your report that MDOC -- let me find it --  
5 MDOC should focus on -- focus their efforts to minimize the  
6 impact of gangs on the safety and security of that facility.  
7 Is that what you said?

8 A. I'm sorry. Are you reading from somewhere in the report  
9 there? Help me find it.

10 (COUNSEL AND WITNESS EXAMINED DOCUMENT)

11 BY MR. FRIEDMAN:

12 Q. Let me ask you this way. Do you think that MDOC and MTC  
13 should focus their efforts to minimize impacts of gangs on the  
14 safety and security of the facility? Do you believe that?

15 A. In that broadest possible policy statement language, yes.

16 Q. Okay.

17 A. The question that matters is how they're going to do it.

18 Q. All right. Now, are you aware that Walnut Grove has a  
19 security threat group lieutenant?

20 A. I am.

21 Q. You never talked to him, did you?

22 A. The position was just recently filled is my understanding,  
23 but the answer is no.

24 Q. No, you didn't.

25 A. Correct.

1 Q. Therefore, since you didn't talk to him, you couldn't  
2 possibly know what he does as far as gang validation or keeping  
3 up with intelligence or anything dealing with gangs. You don't  
4 know what he's doing since you didn't talk to him. Correct?

5 A. I don't know what he -- that person is doing. Correct?

6 Q. You have a section on page -- starting on page 20 entitled  
7 Programming. Correct?

8 A. Yes. That's true.

9 Q. And that corresponds to a section in the consent decree.  
10 The consent decree has some sections on programming. Correct?

11 A. Kind of sort of, yeah.

12 Q. Kind of sort of. Okay.

13 A. Well, the language in the consent decree is not very  
14 explicit about expectations for programming. That's one of my  
15 recommendations. I think it should be. It simply says  
16 something about incentives.

17 Q. And you state here in your report that at Walnut Grove  
18 there's a profound level of idleness and an insufficient level  
19 of meaningful programming for the inmate population. Correct?

20 A. Correct.

21 Q. And then you go on to state, In the words of the monitors,  
22 quote, while facility officials have a variety of programming  
23 plans being considered, the inmate population spends a  
24 significant portion of their waking hours with unprogrammed,  
25 unstructured time in the dayrooms of the housing units. Isn't

1 that what you said?

2 A. I quote the monitors who said that, yes.

3 Q. And you're quoting the fifth monitors' report. Correct?

4 A. The report I had available to me at the time. Yes.

5 Q. All right. Going back to P-15, the monitors, starting at  
6 page 17, have three subsections on programming and behavior  
7 management. Correct?

8 A. Correct.

9 Q. And the first one they show Walnut Grove is in compliance.

10 A. Compliance.

11 Q. And the second one they show that Walnut Grove is?

12 A. I'm sorry, sir. Your finger. Oh, there. I'm sorry.

13 Behavior. Is that part of the same one? I missed it.

14 Q. We'll go back. This is the second category under  
15 Programming, Behavior Management --

16 A. Incentives. Okay. Thank you. The finding is compliance,  
17 yes, sir.

18 Q. And the final one, out of cell time and outside recreation,  
19 the compliance rating is?

20 A. Compliance.

21 Q. So for programming and behavior management the latest  
22 report from the court's monitors shows programming is compliant  
23 in all three of the subsections. Correct?

24 A. That's what the report says.

25 Q. And, in fact, the monitors at page 18 found that

1 approximately 70 percent of the inmates are assigned to either  
2 a job, work detail and/or a rehabilitative/self-improvement  
3 program. That's right? That's what they said.

4 A. Excuse me. That -- that's what it says. That's why I  
5 asked Dr. Austin if he knew how many hours that programming  
6 consisted of, and he told me he did not.

7 Q. You didn't ask Mr. Martin, did you?

8 A. They were both on the same phone call. Dr. Austin tended  
9 to answer the questions about programs and classification.

10 Q. And then you state up here that only 13 percent of the  
11 prisoners have a job that occupies them 30 hours. Another  
12 39 percent are in educational, vocational programs for 15 hours  
13 a week. That's, by my math, 52 percent? Is that right? 39  
14 plus 13 is 52?

15 A. That's consistent with what I say there, sir, yes.

16 Q. The monitors say 70 percent; you say 52 percent. Correct?

17 A. Based on the data that was given to me dated January 1st,  
18 2015, yes.

19 Q. So, therefore, you disagree with the court-appointed  
20 monitors on that.

21 A. Absolutely not. I don't disagree.

22 Q. Well, 52 doesn't equal 70 I don't think.

23 A. Their report was written at a different time.

24 Q. Okay.

25 A. It was written after mine. That's why I wanted to get into

1 the detail of it, because there might be lots of people that  
2 got three hours a week of something to do. What matters is how  
3 much time they actually are engaged in the program. So that's  
4 why I asked Dr. Austin, *Of that 70 percent, did you get the*  
5 *information about how meaningful that program was as it was*  
6 *reflected in the number of hours they were engaged?* And he did  
7 not have that information.

8 MR. FRIEDMAN: Could I get P-16, please?

9 BY MR. FRIEDMAN:

10 Q. You were asked to identify P-16, which is the program  
11 overview for Walnut Grove. Do you remember that?

12 A. I do.

13 Q. Now, this is only programming. Correct? That's  
14 programming.

15 A. It's the program overview, yes.

16 Q. Doesn't include work details and jobs, does it?

17 A. Well, there's a category on the second page that says  
18 "Jobs."

19 Q. Okay.

20 A. I assume it includes jobs and work detail.

21 Q. All right. Well, the first page where I was looking does  
22 not include jobs, does it?

23 A. I don't see any mention on the first page of jobs.

24 Q. Okay. Well, you do admit that jobs, work assignments do  
25 keep inmates busy and, therefore, keep their minds occupied on

1 something other than bad things.

2 A. Absolutely.

3 Q. All right. And at Walnut Grove it shows there were 162  
4 inmates with jobs that averaged 30 hours a week.

5 A. That's a really small number. But, yes, that's what it  
6 says.

7 THE COURT: At this time I think it's a good time to  
8 take our noon recess. Mr. Vail, you may step down. I'm going  
9 to ask since you are in the middle of cross-examination that  
10 you discuss your testimony with no one.

11 THE WITNESS: Yes, sir.

12 THE COURT: We will come back -- it's approximately --  
13 we'll come back at 1:20. We should be able to start up then.  
14 It's about -- according to my watch, it's 12:11. All right.  
15 Court's in recess.

16 (NOON RECESS)

17 THE COURT: You may be seated. I know 1:20 is an odd  
18 time, but that's what I said. 1:30 is fine. No problem.

19 MR. FRIEDMAN: Judge, a couple of housekeeping things.  
20 I was talking to Mr. Owens about scheduling and they've got I  
21 think three witnesses. I don't know how much longer -- I don't  
22 think Mr. Vail is going to take a whole lot longer, but he's  
23 talking about three witnesses and probably taking up the rest  
24 of the day. My guys --

25 THE COURT: Do you need to take somebody out of turn?

1 Oh.

2 MR. FRIEDMAN: No, I -- I'm just talking about  
3 getting --

4 THE COURT: Let me just listen first. I'm sorry. Go  
5 ahead, Mr. Friedman.

6 MR. FRIEDMAN: I feel like I'm making some headway if  
7 you're going to listen to me. Anyway, if it's all right, my --  
8 our folks are in Walnut Grove. Can I just plan to be ready to  
9 start with them at nine in the morning, because -- we're not  
10 going to have a lot of witnesses --

11 THE COURT: Okay.

12 MR. FRIEDMAN: -- but Mr. Owens tells me he's probably  
13 going to take the rest of the day.

14 MR. OWENS: Your Honor, plaintiffs, they're only  
15 calling three witnesses the remainder of the day. Two are  
16 class representatives. One is the vice president of MTC,  
17 Marjorie Brown. And we are working with Mr. Friedman to  
18 actually take people off both witness lists. So we may be able  
19 to conclude on Friday.

20 THE COURT: Okay. No problem. You can be prepared  
21 just to call your witnesses tomorrow morning.

22 MR. FRIEDMAN: All right. Thank you. Ready to go?

23 THE COURT: Yeah. You may proceed.

24 MR. FRIEDMAN: Okay. Thank you. I need P-17.

25 BY MR. FRIEDMAN:



1 Q. All right. Mr. Vail, are you ready to go?

2 A. Yes, sir.

3 Q. All right. I'm going to put up here Exhibit 17, page 23,  
4 which is your report. And you're referring to the monitors'  
5 third and fourth reports. Is that right? Or fourth and fifth?

6 A. This quote is from the fourth report and they refer to the  
7 third report in their quote.

8 Q. Okay. And you start talking about noncompliance --  
9 noncompliance with the consent decree requirement to provide  
10 sufficient numbers of adequately trained staff. Correct?

11 A. I quote that the monitors found that MTC was in  
12 noncompliance, yes.

13 Q. All right. And that's from the third report and, again,  
14 made in the fourth report. Correct?

15 A. Yes.

16 Q. Okay. So if we look at P-15, which is the monitors' sixth  
17 report, I think we've already established -- this is page 14 --  
18 that the sixth report, the monitors found partial compliance  
19 with sufficient numbers of adequately trained staff. Do you  
20 see that?

21 A. I do.

22 Q. Do you disagree with that?

23 A. I do not disagree.

24 Q. All right. And then the monitors state that the current  
25 line staff complement of -- is 212 with 28 supervisory staff.

1 And as aforementioned, this represents a very sizable increase  
2 over the prior reporting period. A review of the -- review of  
3 the shift staffing rosters for this reporting period indicates  
4 that the two -- that two -- that for two of the three shifts  
5 all facility housing pod areas have assigned officers.

6 During the two most recent site inspections, December and  
7 January, the monitors have observed improved supervision in the  
8 housing areas by the line staff. Officers are more diligent in  
9 ensuring that cell doors are secure, rounding checks appear to  
10 be more frequent and overall staff presence in the housing  
11 areas is much improved.

12 Do you agree with that statement from the court's monitors?

13 A. I agree that that's what they reported. Yes.

14 Q. Now, do you agree with the factual statement -- the  
15 statement that they made there?

16 A. I would agree that when they were there that's what they  
17 saw.

18 Q. Well, you aren't there today. So you don't know what it's  
19 like today. Correct?

20 A. I have not been there today, that's correct.

21 Q. In fact, you haven't been there since January. Correct?

22 A. That is also correct.

23 Q. All right. So that's the last time you have personal  
24 knowledge of what is actually going on at Walnut Grove from  
25 actually being there. Correct?

1 A. From my being there, yes.

2 Q. All right. So -- now, there was a -- well, when all these  
3 inmates were taken out, taken to other places and the  
4 population was decreased down to whatever it was decreased to,  
5 you understand there's been a reduction in force of some of the  
6 officers.

7 A. I do understand this. Yes.

8 Q. All right. But you haven't been over there to see how  
9 things are staffed now, have you?

10 A. I have not been there to see. That's correct.

11 Q. And you haven't talked to any of the commanders or any of  
12 the staff over there since the RIF, have you?

13 A. I have not talked to any of those people.

14 Q. Okay. So you don't know -- sitting here, you don't know  
15 how things are staffed today, do you?

16 A. I have other concerns to the contrary based on the  
17 interviews that the investigators for SPLC and their reports  
18 where the inmates continue to say that the zones are staffed  
19 inconsistently. I don't know how that reflects to staffing  
20 levels.

21 As I said yesterday, I've had opportunity to look at  
22 Marjorie Brown's deposition; and she indicates that it's not a  
23 requirement to keep people in the zones. To me, that's what's  
24 important about staffing. So I really don't know is my answer.  
25 But I have those concerns from those other sources.

1 Q. And one of the sources is the inmates.

2 A. Yes.

3 Q. But not the staff over there. That's not one of your  
4 sources that you --

5 A. Marjorie Brown I think is part of the staff of MTC.

6 Q. Well, she's not -- she's part of the staff of MTC out of  
7 Utah. But as far as the line staff at Walnut Grove, you  
8 haven't talked to them about staffing recently, have you?

9 A. That is correct.

10 Q. All right. Now, yesterday you testified about this  
11 reclassification that was done at Walnut Grove for I think you  
12 said like -- I may have this wrong. I think you said about a  
13 third of the population or maybe it was a third of the close  
14 custody population was eligible for downgrading to medium  
15 custody. Did you say that?

16 A. About 30 percent, yes.

17 Q. All right. Now, are you aware that Dr. Austin, the court  
18 monitor, reviewed all the classifications?

19 A. I was aware that he was going to. I never heard that he  
20 actually did. So the answer would be no.

21 Q. All right. Well, would you disagree with -- if I had -- do  
22 you have any reason to disagree if I told you Dr. Austin  
23 reviewed all the classifications, the reclassifications?

24 A. I would have no reason to disagree.

25 Q. All right. And, now, Dr. Austin is a -- considered to be

1 an expert in classifications, isn't he?

2 A. Yes.

3 Q. All right. So if Dr. Austin -- and I think you're right.

4 Dr. Austin said there were 11 he found out of a couple of

5 hundred that were -- they classified or reclassified. He found

6 11 that had been misclassified and should be reclassified.

7 Correct?

8 A. The monitors' report talks about 11 who had not been

9 identified as committing violent offenses that would have

10 pushed them to close custody. Yes.

11 Q. So out of the however many were reclassified -- and it

12 was -- I think what they did, they went through all the close

13 custody and made sure the classifications were correct or

14 reclassified the ones that needed to be reclassified. Do you

15 agree with that?

16 A. Can you say that again?

17 Q. It's my understanding that the procedure was MDOC went

18 through all the close custody folks and -- to check and see if

19 the classifications were correct; and if they weren't, they

20 reclassified, which there's this 30 percent you're talking

21 about.

22 A. I assume that's what happened. Yes.

23 Q. All right. And out of those -- and that was a -- wasn't

24 that a couple of hundred approximately inmates?

25 A. It was more than 200, yes.

1 Q. And out of those well over 200, they found 11 that --  
2 Dr. Austin found 11 that were misclassified.

3 A. No. I think that's -- you messed up the numbers there a  
4 little bit. There was 90 some that were downgraded to medium  
5 custody, and the monitors said, *Keep an eye on that group*. And  
6 when the monitors came back, they discovered that 11 of them,  
7 they had not kept their eye on that issue. It wasn't 11 out of  
8 the 200. It was 11 out of the 90.

9 Q. These 11, whatever it is, out of all -- however many were  
10 reclassified, in fact, there was a problem with 11, correct,  
11 according to the monitors?

12 A. I'd give you a problem, but that would probably deserve  
13 some conversation, but --

14 Q. How about a yes or no to begin with.

15 A. 11 was the number, yes.

16 Q. Okay. And then those 11 were reclassified and shipped out?

17 A. As a result of the monitors' intervention, yes.

18 Q. Going back to your report, page 27, P-17. You state that  
19 the monitors have never found MTC to be in compliance with the  
20 consent decree regarding use of force and chemical agents. In  
21 the first four reports they found partial compliance. In the  
22 fifth report they were found to be noncompliant. Do you see  
23 that?

24 A. I see that.

25 Q. Okay. Well, in the most recent report -- I think we've

1 already covered this -- P-15, they were found to be in partial  
2 compliance. Correct?

3 A. That is correct.

4 Q. On page 36, talking about grievances, you state, "the  
5 monitors have never found Walnut Grove to be in compliance with  
6 the requirement for an adequate grievance procedure." That is  
7 what you said, isn't it?

8 A. That's what -- yes, that's what the report says.

9 Q. All right. Well, let's look at page 19 of the monitors'  
10 report. The sixth monitors' report is P-15. And this is  
11 Adequate Grievance Procedures. Correct?

12 A. It is, yes.

13 Q. And what was their finding?

14 A. They were found in compliance.

15 Q. And that is the most recent report from the monitors.

16 A. It is their sixth report and the most recent, yes, sir.

17 Q. Well, are the monitors correct and you're wrong, or are you  
18 right and they're wrong?

19 A. I think we were both correct in our respective reports.

20 They've looked at the facility since I have. I do have some  
21 concerns if the PREA, Prison Rape Elimination Act program -- if  
22 that issue is subsumed under the issue of grievance, then I  
23 would disagree with them. I think there's issues there.

24 Q. Well, they find compliance.

25 A. I understand.

1 Q. All right. And they don't -- if you look at the  
2 observation under where they talk about compliance, there's no  
3 mention of PREA there, is there?

4 A. There is not.

5 Q. You next talk about on page 36 PREA. Correct?

6 A. Yes.

7 Q. All right. And that's the Prison Rape Elimination Act. Is  
8 that right?

9 A. That's correct.

10 Q. And BJA, is that the Bureau of Justice Assistance?

11 A. I think that's the right acronym.

12 Q. And that's part of the U.S. Justice Department?

13 A. Department of -- Department of Justice, yes.

14 Q. And Walnut Grove was audited by the BJA?

15 A. I actually don't know if it was BJA, but they were audited  
16 by a person connected to DOJ.

17 Q. Okay. Some government employee, federal government.

18 A. No, I don't -- might have been a contractor. I don't know.

19 But --

20 Q. Okay.

21 A. -- I'm sure that the federal government paid for it  
22 ultimately.

23 Q. All right. Whoever it was, it wasn't controlled by MDOC or  
24 MTC, was it?

25 A. Not to my knowledge.



1 Q. It was somebody who's independent.

2 A. Presumably.

3 Q. You reviewed the latest audit, the PREA audit. Correct?

4 A. That's the BJA report we're talking about?

5 Q. Yes, the BJA.

6 A. Yes. Yes, I reviewed that.

7 Q. And it showed 100 percent compliance.

8 A. It did.

9 Q. In your report, paragraph -- I mean page 37, you say, "The  
10 BJA report that defendants produced finds Walnut Grove in  
11 100 percent compliance with the items in the audit instrument.  
12 There are, however, what appear to be discrepancies in the  
13 report." Do you see that?

14 A. I do.

15 Q. And you're referring to the BJA's report.

16 A. I am.

17 Q. So if there are discrepancies inside the report, that's  
18 something that the auditor's responsible for, isn't it? I  
19 mean, if he's got something saying two different things in the  
20 report, he wrote it. He's independent.

21 A. If there are discrepancies in the report, yes, it would be  
22 the responsibility of the auditor.

23 Q. And starting at the bottom of page 38 and going to 39 of  
24 your report, you talk about what three inmates, inmate A,  
25 inmate B and inmate C, told you about PREA. Correct?

1 A. I do.

2 Q. But you don't identify those inmates, do you?

3 A. I do not.

4 Q. So there's no way for anyone else to determine if what  
5 they're saying is true or not, is there?

6 A. Well, they could be identified, but to protect their own  
7 privacy I didn't put their names down.

8 Q. Well, absent you telling us who it is, there's no way to  
9 track this down, is there?

10 A. That's true. I'd be happy to provide those names if it's  
11 necessary.

12 Q. You didn't talk to any of the staff at the prison to  
13 determine what these inmates were saying was true, did you?

14 A. I did not.

15 Q. In fact, you didn't confirm what they were saying through  
16 any other sources, did you?

17 A. We asked for additional documentation.

18 Q. And?

19 A. And we got some.

20 Q. Some well, do you want to share with us what the some was?

21 A. Well, I was still left with questions. And as the report  
22 says, I still haven't had the opportunity to follow up on those  
23 questions. I think one of them was resolved, one of them was  
24 confirmed, and one of them remained a mystery.

25 Q. Up at the top, in fact, talking about inmate B, you make

1 the statement that he spoke about -- about the incident to a  
2 captain who says he laughed at him -- or who he says laughed at  
3 him, and to the deputy warden who he says acted as if he didn't  
4 believe him. Do you see that?

5 A. I do.

6 Q. You didn't talk to the warden, did you?

7 A. I did not.

8 Q. Or the deputy warden.

9 A. I did not.

10 Q. To see if -- not only if he acted like he said, in the  
11 estimation of this inmate, whether he really didn't believe  
12 him. You don't know, do you?

13 A. I do not know. So that's why I wrote it the way I wrote  
14 it.

15 MR. FRIEDMAN: Bear with me.

16 THE COURT: Yes.

17 (COUNSEL CONFERRED)

18 BY MR. FRIEDMAN:

19 Q. Last time you were in the facility was January 2015?

20 A. That's correct.

21 Q. How many days did you go to the facility?

22 A. I was there one day.

23 Q. One day?

24 A. One day.

25 Q. What time did you get there?

1 A. I don't remember.

2 Q. 7 or 8:00 in the morning?

3 A. I don't remember.

4 Q. Was it in that -- somewhere in that vicinity?

5 A. We got there in the morning. I don't remember exactly what  
6 time.

7 Q. During business hours?

8 A. During business hours, yes, sir.

9 Q. All right. And when did you leave, about when?

10 A. About the end of closing business hours.

11 Q. 5:00?

12 A. Roughly.

13 Q. Okay. And that was your one trip? I mean, you were there  
14 that one day?

15 A. Yes.

16 Q. All right. And you were there to get information for your  
17 expert's report?

18 A. Sure. Yes.

19 Q. All right. So you were never there -- from January to now  
20 you've never been there after 5 p.m., have you?

21 A. I have not.

22 Q. And you've never talked to a shift commander on any shift,  
23 have you?

24 A. Oh, I've talked to shift commanders, yes.

25 Q. I'm talking about in January when you were there?

1 A. A little bit. One of them, yes.

2 Q. Pardon?

3 A. Yes, I did, a little bit.

4 Q. A little bit?

5 A. Uh-huh (indicating yes).

6 Q. Well, did you talk about anything of substance with the  
7 shift commander?

8 A. Probably not.

9 Q. The shift commanders, as I understand it -- and you correct  
10 me if I'm wrong -- are in charge of deploying personnel in the  
11 housing units?

12 A. Yes.

13 Q. All right. And you've given an opinion I believe about  
14 staffing in the housing units.

15 A. I have given an opinion about where those staff locate  
16 themselves.

17 Q. Okay.

18 A. Yes.

19 Q. But you weren't there after 5 p.m. to see what was going on  
20 then. Correct?

21 A. I was not.

22 Q. And if you weren't there, you couldn't see yourself what  
23 was going on. Correct?

24 A. I could not see with my own eyes what was going on in  
25 January, no.

1 Q. And you didn't -- I think you've already said you didn't  
2 talk to the people who actually deploy the personnel.

3 A. Not about that, no.

4 Q. Therefore, you couldn't really know what was going on with  
5 staffing after 5 p.m., between 5 p.m. and sometime 7 or 8 the  
6 next morning.

7 A. If we're talking about January --

8 Q. January.

9 A. -- then that's true.

10 Q. We've already talked about the sixth monitors' report where  
11 they said that -- they made the statement about improved  
12 staffing. Do you remember all that?

13 A. We just went through that, yes, sir. I do remember.

14 Q. And I believe you also testified that inmates told you that  
15 the corrections officers were told to leave the pod when  
16 problems -- when there were problems and let inmates sort it  
17 out. Did you testify to that?

18 A. I don't think I used the words "sort it out." I know in  
19 one of my reports as I was describing the different  
20 information, the different sources I received it from,  
21 sometimes it was inmates, that, yes, inmates told me that  
22 sometimes officers were told to get out of the pod because  
23 there was going to be something coming down.

24 Q. All right. You didn't talk to staff to confirm that, did  
25 you?

1 A. No, I did not.

2 Q. Okay. So all your information came from inmates.

3 A. Regarding that issue?

4 Q. Yes.

5 A. I think that there's some -- you know, I believe that  
6 there's some documentation of that over the course of the last  
7 year or two.

8 Q. Do you have it with you?

9 A. I do not.

10 Q. It's not part of your report, is it?

11 A. I don't believe it is.

12 Q. Can you describe it? What does it look like?

13 A. No, not with any detail.

14 Q. You can't tell us what kind of documentation it was?

15 A. There have been different investigations and reports over  
16 the years where employees were disciplined for not being where  
17 they were supposed to be and something bad happened. But, no,  
18 I really can't go -- give you much reliable here.

19 Q. Okay.

20 (COUNSEL CONFERRED)

21 MR. FRIEDMAN: Tender the witness.

22 THE COURT: All right.

23 (PAUSE)

24 THE COURT: Any redirect of this witness, Ms. Winter?

25 MS. WINTER: Yes. Thank you.

**REDIRECT EXAMINATION**

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BY MS. WINTER:

Q. Mr. Friedman was just talking to you about your -- your last visit to Walnut Grove in January. Do you recall whether you were instructed -- he asked you whether you had spoken with staff. Were you instructed by defendants' counsel that you were not to talk to staff except in the presence of their counsel?

A. Yes.

Q. You testified on direct that there was a riot in your home state of Washington in a minimum custody facility.

A. I did.

Q. Are you aware of other serious disturbances that have occurred at prisons among minimum and medium custody inmates?

A. I think I also referenced the medium security private facility where I was on the ground in Colorado. And, yes, I'm aware of medium security riots in other jurisdictions as well, including Washington.

Q. Are you aware of any very recent major riot in another state involving lower custody inmates?

A. Yes.

Q. What is that?

MR. FRIEDMAN: Your Honor, I know where they're going. This is something you sustained an objection on yesterday. I think they're trying to backdoor into a situation in Texas



1 involving MTC -- an MTC facility. It has absolutely nothing to  
2 do with this. They've asked the question if he knows of any  
3 other medium and minimum security or whatever. That's fine.  
4 But as far as -- going any further is irrelevant.

5 THE COURT: Okay. Let me hear the response of  
6 plaintiff.

7 THE WITNESS: Yes, I am aware of --

8 THE COURT: No, no. Let me hear the response of  
9 plaintiffs' lawyer.

10 THE WITNESS: I apologize.

11 MS. WINTER: Yes. Yesterday I asked about MTC,  
12 whether this was run by MTC. What I'm asking today is if he  
13 knows of recent -- recent facilities. I didn't interject MTC.  
14 It seems to me that this is perfectly as relevant as any other  
15 state.

16 He's talked -- he's aware of major riots in Colorado,  
17 in Washington in minimum security, minimum/medium. And now I'm  
18 asking if he's aware of any other very recent major riot in a  
19 lower custody facility in another state.

20 I -- I fail to see why that question should be ruled  
21 out merely because that facility happens to have been run by a  
22 particular -- by MTC. The question that Mr. Friedman has been  
23 hammering away on is he has said it is impossible to have a  
24 riot now at Walnut Grove because close custody is no longer  
25 there.

1 MR. FRIEDMAN: That is --

2 MS. WINTER: And that's the relevance of this  
3 question.

4 MR. FRIEDMAN: That is not what I said. I said it's  
5 impossible to have a riot in close custody in Walnut Grove.  
6 So --

7 MS. WINTER: Yes.

8 MR. FRIEDMAN: But, again -- it's not exactly what you  
9 said. But, anyway, I let the other go because of impacting on  
10 his job in Washington state. The Washington state riots were  
11 under his tutelage. The Colorado riot again dealt with him.  
12 He was on the ground there. I understand that that may have  
13 some tangential relevance. No problem. I let it go.

14 But now we're dealing with other places that have  
15 nothing to do with Mr. Vail. He may be aware of it. You know,  
16 we can go through every state in the union, but it's irrelevant  
17 for this -- for any issue in this case. And you sustained an  
18 objection on that basis yesterday. Same thing.

19 THE COURT: Okay. I'll sustain the objection if you  
20 just want him to say -- I mean, I guess a riot can occur in any  
21 kind of facility. Is that a fair statement?

22 MS. WINTER: Yes. But the question I want to ask is  
23 have they, in fact, occurred. Do they, in fact, occur? Not  
24 can they, but have they occurred in other major riots in other  
25 minimum/medium custody facilities?

1 MR. FRIEDMAN: You know, I -- I can only --

2 THE COURT: Hold on, Mr. Friedman.

3 MR. FRIEDMAN: Yes, sir.

4 THE COURT: So what would be the relevance of --

5 MS. WINTER: The relevance is that Mr. Friedman has  
6 laid out a syllogism that he's repeated more than once. The  
7 riots in July and January at Walnut Grove occurred in close  
8 custody. There is no more close custody at Walnut Grove,  
9 ergo -- I think he said, therefore -- there can be no more  
10 riots in close custody at Walnut Grove. I want to ask the  
11 witness can there be riots, have there been riots in minimum  
12 and medium custody facilities.

13 THE COURT: You can ask that one question and I assume  
14 his answer to that would be yes.

15 BY MS. WINTER:

16 Q. Have there been riots in minimum and medium security  
17 facilities?

18 A. Yes.

19 MS. WINTER: May I ask if there has been a recent  
20 major riot in a minimum/medium facility?

21 THE COURT: No. I don't think there's any need to go  
22 any further.

23 MS. WINTER: All right.

24 BY MS. WINTER:

25 Q. Is there -- is a riot similar to the January and July riot

1 still possible at Walnut Grove?

2 A. Certainly.

3 MR. FRIEDMAN: Objection. That calls for speculation.  
4 There are a lot of things possible. That's just pure  
5 speculation.

6 MS. WINTER: Well, Mr. Friedman --

7 THE COURT: Objection overruled.

8 BY MS. WINTER:

9 Q. Is a riot or very serious disturbance similar to the  
10 January and July riot still possible at Walnut Grove?

11 A. It's possible.

12 Q. Is there a substantial risk that another similar incident  
13 could occur at Walnut Grove?

14 A. I think that there's a substantial risk, yes.

15 Q. And could you just briefly say on what you base that  
16 opinion?

17 A. The living conditions, the unpreparedness of the facility  
18 from the administration to line staff to appropriately respond  
19 if some small-scale incident breaks out. I have not seen any  
20 evidence that they've improved their capacity to stop something  
21 before it breaks out into something more serious.

22 Relatively inexperienced staffing group still. A lot of  
23 idle time. And in my estimation, all those are conditions that  
24 should something break out, it would be difficult for the  
25 current administration and staff who are there to quickly get

1 control of it and put it out.

2 Q. Does the change in the population profile at Walnut Grove  
3 obviate the risk of substantial harm from violence?

4 A. I don't want to appear particularly ignorant. Could you  
5 use another word besides "obviate"?

6 Q. Does it -- does -- let's say does it leave in place a  
7 substantial risk of serious harm?

8 A. I believe that there's a substantial risk there, yes. It's  
9 my opinion that there is.

10 Q. Does the sixth monitors' report change any of the opinions  
11 contained in your February report?

12 A. I'm going to answer a little bit carefully here. I do  
13 think -- I agree with the monitors that the change in the  
14 profile of the institution gives them a better chance of  
15 success. I don't know if that's responsive to the question,  
16 but that's my opinion.

17 Q. But the -- so you believe that they have a better chance of  
18 success, but it does not -- would it be fair to say that it  
19 does not change your opinion that there remains a substantial  
20 risk of serious harm?

21 MR. FRIEDMAN: Object to leading.

22 THE COURT: Wait before you answer that question.

23 MR. FRIEDMAN: Leading.

24 THE COURT: Objection sustained. You can rephrase  
25 your question.

1 MS. WINTER: Yes.

2 BY MS. WINTER:

3 Q. You testified earlier, didn't you, that you believed that  
4 there is a substantial risk of serious harm?

5 A. I did.

6 MR. FRIEDMAN: Objection. That's leading and she's  
7 testifying, obviously.

8 THE COURT: Objection overruled.

9 BY MS. WINTER:

10 Q. Does anything in the monitors' sixth report change that  
11 opinion?

12 A. It does not.

13 Q. Thank you.

14 MS. WINTER: I have no further questions.

15 THE COURT: Okay. Is this witness finally excused  
16 or -- if not, I mean, it's just on you.

17 (COUNSEL CONFERRED)

18 MS. WINTER: Your Honor, there is one pending exhibit.  
19 It was Exhibit 9. It was previously offered. That is the DVD  
20 of extracts of the July riot.

21 THE COURT: Right. Exhibit 9, I think it was  
22 admitted, I think. Am I right, Ms. Smith?

23 THE CLERK: I don't have it.

24 THE COURT: Oh, it was not? You move to admit  
25 Exhibit 9?

1 MS. WINTER: I believe I did; but if I didn't, let me  
2 so move now I guess.

3 THE COURT: Okay. Any objection from the defendant?

4 MR. FRIEDMAN: We don't object with the understanding  
5 that we can supplement with the full video.

6 THE COURT: Right. Exhibit 9 will be admitted.

7 MS. WINTER: Thank you.

8 (EXHIBIT P-9 MARKED)

9 (COUNSEL CONFERRED)

10 MS. WINTER: This witness, your Honor, there -- is  
11 finished in plaintiffs' direct case, subject to being recalled  
12 in rebuttal.

13 THE COURT: All right. He's your expert. So he can  
14 sit down in the audience, so -- as he has in the past. Or he  
15 can -- he'll just follow your lead. He can go somewhere if he  
16 wants to or he can stay.

17 Who do you wish to call, Mr. Owens?

18 MR. OWENS: Your Honor, plaintiffs wish to call  
19 Charles Owens to the stand.

20 THE COURT: Okay. Hold on one second, Mr. Owens.

21 MR. OWENS: Yes, your Honor.

22 (PAUSE)

23 MR. OWENS: May I inquire, your Honor?

24 THE COURT: Hold on one second. Mr. Owens -- Owens or  
25 Owen?

1 THE WITNESS: Owens.

2 THE COURT: Owens. You've heard the instructions that  
3 I've given to other witnesses. You've been in the courtroom.  
4 So I'll just ask you to follow those instructions. Okay?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: All right. Just make sure you keep your  
7 voice up.

8 You may proceed.

9 MR. OWENS: Thank you, your Honor.

10 **CHARLES OWENS,**

11 having first been duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. OWENS:

14 Q. State your name.

15 A. Charles Owens.

16 Q. Spell your last name.

17 A. O-W-E-N-S.

18 Q. Before we get started, just to be clear, are we related?

19 A. Not that I'm aware of.

20 Q. My Owens are from Terry and your Owens are from  
21 South Carolina. Is that correct?

22 A. Yes.

23 Q. Mr. Owens, how old are you?

24 A. 36 years old.

25 Q. And how long have you been in MDOC's custody?



1 A. I've been in MDOC's custody since 2003.

2 Q. So approximately 12, 13 years?

3 A. 12 years.

4 Q. And what were you convicted of?

5 A. I pled guilty to armed robbery and aggravated assault.

6 Q. You've been in the courtroom all morning when the court  
7 spoke of retaliation. Could you explain to the court any form  
8 of retaliation that you personally feel that you've been  
9 through since your participation in these proceedings?

10 A. Well, on the 13th of March I was transferred from Walnut  
11 Grove Correctional Facility to CMCF in Pearl, actually under  
12 cover of darkness. We were transferred after 6 p.m. at night.  
13 Upon arrival at CMCF, I was placed in the reception  
14 classification unit. I was placed into Section 6, which houses  
15 security threat group, high risk, long-term segregation  
16 offenders.

17 I was placed into a cell. The only bedding was a torn  
18 piece of foam that had been burned. It had hair all over it.  
19 I was given a garbage bag to use as a sheet. I was not allowed  
20 to shower. I was not allowed to come out of the cell. I  
21 remained there -- I was not given any clothing, not provided  
22 any of my prescribed medications.

23 I remained there until the following Monday when I was  
24 transferred to Section 4, which is also inside of the reception  
25 and classification unit, placed on G zone, again in a cell this

1 time no bedding at all. I mean, it didn't even have the burned  
2 mat.

3 It wasn't until the following Tuesday that I finally  
4 received some form of bedding and sheets to cover up with. It  
5 wasn't until the following Wednesday, five days later, that I  
6 was finally allowed to shower. It was ten days before I ever  
7 received any clothing. To this date I still haven't received  
8 any of my medication, to this day.

9 This morning, about 5:30, an officer came into my cell to  
10 get me. And there's some logistical things going on to where  
11 we're bringing our property with us to court because it's not  
12 known, you know, where we'll go afterwards or whatever. And I  
13 was explaining to the officer that came to get me that I'd have  
14 to bring my property with me, because he didn't want to let me  
15 bring it. And he insisted on an explanation as to why.

16 And I explained that, you know, once we testify, there was  
17 a chance that the transportation personnel may take us  
18 elsewhere. And when I said that, he asked explicitly -- he  
19 said, *You know, the last PC inmate that testified against*  
20 *someone was killed at this facility.* And, of course, my  
21 response was, *No, I was not aware of that.* But you can believe  
22 it's been residing in my mind all day.

23 Q. Thank you for that, Mr. Owens. With respect to your  
24 conditions originally when you were moved from Walnut Grove,  
25 did you reach out to anyone to fix those conditions?

1 A. I did. There was an officer -- the very next day -- you  
2 know, I arrived on the 13th, Friday the 13th of March. An  
3 officer assigned to Section 6 the following day, on Saturday,  
4 did bring a phone that -- it's on a cord so they can roll it  
5 inside the cell. And he did allow me to use that.

6 And I called my mother and asked her to communicate with  
7 the superintendent's office, because I really didn't know who  
8 else to reach out to. I asked her to e-mail the superintendent  
9 of CMCF and ask him to get me moved back to Walnut Grove,  
10 frankly.

11 Q. All right. Mr. Owens, let me ask you a question. The  
12 defendants in this case have filed an exhibit list, and they  
13 list several exhibits from Donnie McCullen and Sherry McCullen.  
14 Do you know who those people are?

15 A. Mullikin?

16 Q. Mullikin.

17 A. It would be Mullikin. Don Mullikin is my stepfather and  
18 Sherry Mullikin is my mother.

19 Q. Do you have any idea what those e-mails would have  
20 contained?

21 A. Probably pleas to get me moved back to Walnut Grove out of  
22 CMCF.

23 Q. And, Mr. Owens, why would you want to go back to Walnut  
24 Grove?

25 A. Well, comparatively speaking, compared to the conditions I

1 just described, you know, at least at Walnut Grove I can say  
2 that I had a bed. I was able to shower and able to come out of  
3 my cell.

4 And with respect to that, it's worth noting that I'm -- I'm  
5 medium security, protective custody. I'm actually in  
6 protective custody. And there's limitations on where the  
7 department of corrections can house me. They have five  
8 protective custody units. And with respect to those five,  
9 Walnut Grove is currently the only one -- I've been housed in  
10 all of them, by the way. And Walnut Grove is currently the  
11 only one that does not house close custody offenders in the  
12 same zone and sometimes in the same cell with minimum and  
13 medium security offenders.

14 So for that reason alone -- I mean, this is the same  
15 security classification of inmates that you've seen on the  
16 video yesterday. For that reason alone, Walnut Grove,  
17 comparatively speaking, I feel at this time, at this moment is  
18 comparatively speaking safer than the other protective custody  
19 zones that are available to me.

20 Q. And what type of individuals are on the other protective  
21 custody zones that you've stayed in?

22 A. Every other protective custody zone I've ever been housed  
23 in housed close custody offenders. It also included people on  
24 psychological medications, unstable, you know, people with  
25 violent rule violation reports.

1 For example, you know, I was housed in the protective  
2 custody zone at Wilkinson County Correctional Facility; and I  
3 seen numerous inmate-on-inmate assaults. I've seen inmates  
4 stabbed, likewise, at South Mississippi Correctional  
5 Institution in Leakesville just prior to --

6 MR. SILER: I'm going to object. I'm going to object  
7 to this, your Honor, on the grounds of relevance. He's not  
8 talking about the Walnut Grove facility now. He's speaking  
9 about others.

10 MR. OWENS: Your Honor, we can move on.

11 THE COURT: Yes, sir.

12 BY MR. OWENS:

13 Q. Mr. Owens, do you know why Walnut Grove doesn't have those  
14 same individuals in those custody units?

15 A. Yes. It's been conveyed through staff to me personally --

16 MR. SILER: Objection. Hearsay.

17 THE COURT: Objection sustained.

18 BY MR. OWENS

19 Q. Do you have any knowledge of why Walnut Grove doesn't have  
20 those individuals, that you know personally?

21 A. Consent decree.

22 Q. What do you mean by "consent decree"?

23 A. Judicial oversight, intervention. You know, it's obvious  
24 the reasons why the C custody were moved out of there and the  
25 people on the --

1 MR. SILER: Objection. He's speculating, your Honor.

2 THE COURT: Is the question why there are no more  
3 close custody inmates at Walnut Grove?

4 MR. OWENS: Yes, your Honor.

5 THE COURT: It is because of the consent decree, isn't  
6 it?

7 MR. SILER: No.

8 THE COURT: Oh, okay.

9 MR. SILER: But he's just -- whatever he would say  
10 would be just him guessing as to what it was.

11 THE COURT: Okay. Objection sustained.

12 BY MR. OWENS:

13 Q. Mr. Owens, you spoke that you were on PC. What does "PC"  
14 stand for?

15 A. Protective custody.

16 Q. Let's talk about your background. Why are you on  
17 protective custody?

18 A. I have a background in public safety originally. My public  
19 safety career began in emergency medical services and fire  
20 protection, emergency medical technician, firefighter.

21 Thereafter, as soon as I met the age requirement, I  
22 transitioned into law enforcement; and I was a deputy sheriff  
23 in South Carolina.

24 Q. And that's prior to being incarcerated?

25 A. Yes.

1 Q. And do you know what a rule violation report is?

2 A. Yes, I do.

3 Q. What is that?

4 A. It's a report that security staff issues if an inmate  
5 violates a rule of the Mississippi Department of Corrections.  
6 If the inmate is found guilty, then we are punished  
7 accordingly, however the disciplinary officer determines is  
8 appropriate.

9 Q. And when is the last time you've had a rule violation  
10 report?

11 A. The best I can recall, it was 2004. It's been over a  
12 decade.

13 Q. What was that violation for?

14 A. It was contraband. My security classification at the time,  
15 which doesn't even exist anymore, was D custody, which I was in  
16 for observation due to sentence length. That security  
17 classification was not allowed to have food items from the  
18 commissary.

19 I ordered some ramen noodles on the canteen just to see if  
20 they would send them. And they did. And the next day after  
21 they delivered them, they confiscated them. I was issued a  
22 rule violation report for contraband. It was ramen noodles.

23 Q. The little ones in the little pack?

24 A. Little pack, yeah.

25 Q. When did you first arrive at Walnut Grove?

1 A. I arrived at Walnut Grove August 8th of 2014.

2 Q. When did you leave Walnut Grove?

3 A. March 13th this year.

4 Q. For the purpose of this hearing, is that why you were  
5 moved?

6 A. That is what I was told.

7 Q. So approximately the last seven months you've been at  
8 Walnut Grove.

9 A. Correct.

10 Q. Have you ever been interviewed about the conditions at  
11 Walnut Grove by anyone?

12 A. Yes, I have.

13 Q. Who's interviewed you about the conditions at Walnut Grove?

14 A. Ms. Dodd. She was, as I understand it, Mississippi  
15 Department of Corrections contract monitor, compliance officer  
16 at Walnut Grove.

17 Q. And how did you come to be interviewed?

18 A. The officer assigned to our housing unit -- I was housed on  
19 Unit 4 at the time -- summoned me to Unit Manager Anderson's  
20 office. When I arrived, he and Ms. Dodd were standing outside  
21 of his office door. He told me -- Unit Manager Anderson told  
22 me that --

23 MR. SILER: Objection. Hearsay.

24 MR. OWENS: Your Honor, may I respond?

25 THE COURT: Yes.



1 MR. OWENS: There's been testimony that's come out by  
2 plaintiffs' expert Mr. Vail and I also believe it's referenced  
3 in Mr. Roth's report to interviews that were done directly by  
4 MDOC staff to inmates. I'm not eliciting this testimony for  
5 the truth of the matter asserted, whether she actually said it  
6 or not; but if you'd allow me to lay a little foundation, I'd  
7 establish that these interviews were not what they perceived to  
8 be, what's been represented to the court.

9 THE COURT: You may lay your foundation. Objection  
10 overruled at this point.

11 BY MR. OWENS:

12 Q. Mr. Owens, please continue.

13 A. Mr. Anderson told me that Ms. Dodd would see me in his  
14 office. Ms. Dodd and I then entered the office. There was a  
15 table set up in his office. We sat on opposite ends of the  
16 table, she facing the door and my back to the door. She had  
17 some paperwork that she explained to me was a survey.

18 She stated that some inmates prior to my arrival had filed  
19 a lawsuit and that a consent decree had been entered, and that  
20 what she referred to as the consent decree attorneys sent her a  
21 list of names to -- of people to interview about once a month,  
22 and that my name was on that list.

23 Q. What type of questions were you asked?

24 A. Questions such as if I had filed any grievances at the  
25 facility; if so, what the subject matter was. Case manager

1 things relevant to the case manager such as how often did I see  
2 her, did she give me copies of my classification once it was  
3 approved or denied. Medical care.

4 Q. Did Ms. Dodd speak to you about anything about  
5 confidentiality in these interviews?

6 A. She did. She stated to me before the interview began that  
7 it was, first of all, voluntary and that it would be  
8 confidential. She said that if I participated, that MTC staff  
9 would never know, hear or see any of my responses.

10 Q. And, in fact, were the interviews confidential?

11 A. No, they were not.

12 Q. Who was present during those interviews?

13 A. Into one of the preliminary questions about how long I'd  
14 been incarcerated, Unit Manager Anderson entered the office.  
15 He took a seat at his desk. And before she could even finish  
16 that question, the unit sergeant, Mr. Sparkman, and a SERT team  
17 member, Officer Stewart, also entered the office.

18 I paused thinking that, you know, it's Mr. Anderson's  
19 office, maybe they're just going to ask him a question or  
20 something and then leave. But they also took seats. She  
21 continued the interview as if they weren't even there. And  
22 they'd sit there and watch and listen.

23 Q. How, if at all, did their presence affect the interview?

24 A. Well, each and every one of my answers were exactly what I  
25 thought my unit staff would want to hear me say.

1 Q. And why would you say what you thought they wanted you to  
2 say?

3 A. Because unit staff, unit managers, unit sergeants, they  
4 control every aspect of a prisoner's life, to include your  
5 privileges, visitation, recreation, programs, job assignments,  
6 housing assignments, particularly at that time.

7 I had just submitted a request to move to another cell with  
8 someone who I felt safer being locked in a cell with at night,  
9 someone I felt more compatible with. And that request was  
10 pending. And it was Unit Manager Anderson's decision to  
11 make -- you know, to grant or deny that request. You know,  
12 frankly, fear of retaliation and retribution if I said  
13 something to negatively reflect on the unit staff.

14 Q. Had you ever seen any retaliation or retribution at Walnut  
15 Grove?

16 A. In fact I have.

17 Q. Could you give the court some examples of that?

18 A. I recall one example --

19 MR. SILER: Your Honor, let me object to this. They  
20 need to lay a foundation of what the basis of his knowledge on  
21 this is rather than just letting him get into potential hearsay  
22 and other things and saying it before we can make an objection  
23 to it.

24 THE COURT: Okay. Lay your foundation, Mr. Owens.

25 MR. OWENS: Your Honor, I believe the witness just

1 testified that he felt retaliation and fear -- fear for  
2 retaliation for the basis of his inability to feel like he  
3 could be honest in interviews particularly related to matters  
4 in this case. I think he's going to explain why he witnessed  
5 retaliation, not what he heard or said. I hadn't heard hearsay  
6 yet, your Honor, but I believe he's going to testify as to what  
7 he personally witnessed.

8 THE COURT: He's going to have to -- he needs to be  
9 able to show at least why he believes whatever happened to him  
10 or an individual was for retaliation for something that  
11 individual did. So if he -- he needs to have that knowledge or  
12 at least be able to -- that's the step you need to sort of take  
13 with him.

14 BY MR. OWENS:

15 Q. Do you have any knowledge or have you witnessed anyone  
16 retaliated against, that you felt were retaliated against?

17 A. I have.

18 Q. Could you explain what you're referring to?

19 MR. SILER: Again, your Honor, objection. No  
20 foundation.

21 THE COURT: You may -- you may answer at this point,  
22 Mr. Owens.

23 A. Another inmate I witnessed repeatedly ask to be moved to  
24 another cell because he and his cellmate both had bottom rack  
25 profiles as per medical, which is a documentation from medical

1 saying that for whatever reason you cannot get on a top rack in  
2 a cell.

3 MR. SILER: Your Honor, even at this level that's  
4 hearsay. What kind of medical record this individual had would  
5 be -- would have to be hearsay.

6 MR. OWENS: Your Honor, I don't think we're talking  
7 about the accuracy of medical records at this point. We're  
8 talking about what Mr. Owens saw and felt happen to another  
9 inmate that he witnessed.

10 THE COURT: I'll allow you to question him, counsel.

11 BY MR. OWENS:

12 Q. Please continue, Mr. Owens.

13 A. The inmate expressed to Unit Manager Anderson openly in the  
14 zone in front of myself and other inmates that he needed to be  
15 moved to another cell so that he could be assigned to a bottom  
16 rack. Unit Manager Anderson denied that request repeatedly.

17 The inmate waited until second shift after Unit Manager  
18 Anderson was gone and went to a captain on second shift who  
19 immediately moved him to another cell. When Unit Manager  
20 Anderson returned to work, he come on the zone and, you know,  
21 made a big fuss about it. There was -- you know, he took the  
22 inmate to task for going over his head or behind his back to  
23 get moved.

24 MR. SILER: Objection. Now he's speculating, your  
25 Honor.

1 THE COURT: Overruled.

2 A. The water in the cell that the inmate had been moved to was  
3 turned off. He asked if he could at least get the water turned  
4 back on. Unit manager said that he didn't care if the water  
5 got turned back on or not.

6 BY MR. OWENS:

7 Q. Do you know how many days the water was turned off?

8 A. I do not know exactly how many days. No.

9 Q. But this was the same unit manager that was in your  
10 interview?

11 A. Correct.

12 Q. Mr. Owens, what, if anything, can you tell the court --

13 MR. OWENS: Strike that, your Honor.

14 BY MR. OWENS

15 Q. Do you have any knowledge about the conditions at Walnut  
16 Grove over the last seven months?

17 A. I do.

18 Q. And what type of conditions are you knowledgeable of?

19 A. I'm aware that at least in the zone that I'm assigned to  
20 live in there's a severe contraband problem, prevalence of  
21 staff misconduct, staff not enforcing basic rules that I'm  
22 expected to abide by everywhere else that I go, PREA concerns  
23 that I've had myself.

24 Q. And that is over the last seven months?

25 A. Correct.

1 Q. Let's talk about each of those issues. When you refer to  
2 severe contraband, what are you referring to?

3 A. I've witnessed marijuana in the zone; pills that were  
4 described to me as Xanax, Lortab, Vicodin; alcoholic beverage  
5 that I was told was Everclear vodka; most notably, spice, which  
6 is extremely relevant -- prevalent -- excuse me -- you know, on  
7 the zone.

8 Q. When you say "extremely prevalent," what do you mean?

9 A. Almost on a daily basis.

10 Q. You see someone consume spice or you've seen --

11 A. Correct.

12 Q. You see it being brought into the PC pod?

13 A. I have seen it brought into the zone, yes.

14 Q. How is it brought into the zone?

15 A. Officers bring it.

16 Q. I'm sorry. Could you speak up?

17 A. Officers bring it in the zone.

18 Q. Is this generally one officer or have you seen multiple  
19 officers bring it in?

20 A. I've seen more than one officer bring it in.

21 Q. And how do they bring it in?

22 A. Well, when they give it to an inmate, they're pulling it  
23 out of their pocket. I mean, they don't walk up and down the  
24 hall with it openly I guess. But I've seen them pull the  
25 substance out of their pockets and give it to the inmate.

1 Sometimes they go into the cell with the inmate and -- you  
2 know, presumably so that they won't be on camera. Then some  
3 just don't seem to care if they're on camera or not. They do  
4 it right there at the table in the dayroom.

5 Q. And do you see inmates consume this spice?

6 A. Consistently and constantly. Yes.

7 Q. And how is it consumed?

8 A. They smoke it.

9 Q. And do you see officers partake in this consumption?

10 A. I have seen at least one officer smoke spice with inmates.  
11 Yes.

12 Q. Which officer was that?

13 A. His name was Officer Carter.

14 Q. And have you smoked spice with officers or inmates?

15 A. I have not, but that particular officer actually invited me  
16 to do so.

17 Q. How did he do so? Officer Carter?

18 A. Yes.

19 Q. How did he invite you to smoke spice with him?

20 A. He commented that -- he said they say that I used to be  
21 what he referred to as the police, and asked if I was still  
22 policing. And I -- you know, I responded that *I'm not. You*  
23 *know, I'm in here just like everybody else now.* And he said,  
24 you know, you can -- asked if I wanted to smoke with him. I  
25 was -- the impression I received from it was that he wanted me



1 to do so as confirmation that I wasn't going to report him.

2 Q. And how do you know it's spice versus tobacco or anything  
3 else?

4 A. When they smoke spice, they often become either  
5 semi-conscious, sometimes unconscious. On occasion they become  
6 aggressive. They're high.

7 Q. So, Mr. Owens, is it your testimony that you've seen  
8 inmates unconscious from drug consumption on the PC cell?

9 A. I have.

10 Q. And is medical called for or is medical attention rendered  
11 to them?

12 A. No, it's not. In fact, we -- the other inmates are often  
13 instructed by staff to assist the inmate or in the event  
14 they're unconscious to actually drag the inmate into their cell  
15 where the cell door can be secured and they won't be on camera.  
16 Throughout the entire seven-month period, I've seen medical  
17 called to my zone for someone who was unconscious from spice  
18 only one time; yet I've seen people unconscious or  
19 semi-conscious from spice almost daily.

20 Q. And that's daily over the last seven months.

21 A. Correct.

22 Q. How much of your zone uses spice, if you know?

23 A. At least 25 percent. At least a quarter of the zone.

24 Q. And you spoke of pills and I believe Everclear, which I  
25 think is a vodka. How is it getting into the zone as well?

1 A. It comes in disguised as water in water bottles.

2 Q. Who brings it in?

3 A. Officers.

4 Q. And you've witnessed this yourself.

5 A. I have.

6 Q. Is this a regular practice at Walnut Grove?

7 A. It is.

8 Q. You spoke also that you've seen staff misconduct at Walnut  
9 Grove over the last seven months. Can you give the court any  
10 examples of the staff misconduct?

11 A. Sure. Numerous examples, but one that stands out in my  
12 mind foremost is an instance when another inmate, Toby Adams,  
13 confided in me that an officer had sexually assaulted him.

14 MR. SILER: Objection. Hearsay.

15 MR. OWENS: Your Honor, again, I don't think we're  
16 going to prove whether the assault actually happened, but just  
17 the state of mind that Mr. Owens had at the time. That's why  
18 it's not hearsay. I believe he's going to testify -- I'm  
19 actually not sure, your Honor --

20 THE COURT: Hold on.

21 (PAUSE)

22 THE COURT: You can rephrase your question, Mr. Owens.

23 BY MR. OWENS:

24 Q. What have you learned from other inmates that make you  
25 believe that staff misconduct exists at Walnut Grove?

1 MR. SILER: Objection. Hearsay, your Honor. If they  
2 want other inmates to testify about things they have personal  
3 knowledge of, they ought to bring them in. To let him do it is  
4 just rank hearsay.

5 THE COURT: Objection sustained.

6 BY MS. WINTER:

7 Q. What examples of staff misconduct have you personally  
8 witnessed?

9 A. Well, aside from the examples we've already discussed of  
10 bringing in the contraband and, of course, the instance of even  
11 doing the drugs with the inmates, matters such as allowing  
12 inmates to rig their doors or to keep cell doors open when  
13 they're supposed to be secured. Not being on the zone with us,  
14 you know, that they leave the zone and stay gone for three or  
15 four hours at a time. Like I said earlier, not enforcing the  
16 rules, the basic rules that I thought were intended to keep us  
17 safe.

18 Q. You said cell doors and rigging doors. You've actually  
19 seen people rig doors before?

20 A. Yes.

21 Q. And is it your testimony that staff also sees this occur?

22 A. Yes.

23 Q. And do staff allow it to occur?

24 A. At times, yes.

25 Q. And that's something you've seen over the last seven

1 months?

2 A. Yes.

3 Q. And so what happens when the doors are rigged or not  
4 locked?

5 A. When a door is rigged, it enables the inmate to open the  
6 door, even if an officer thinks it's secure or looks at it and  
7 pulls on it and it appears to be secure. There's a device  
8 inside the locking mechanism that allows an inmate to actually  
9 use a string to pop the door open. That's commonly referred to  
10 as rigging the doors.

11 There's also an instance -- a method in which you can shove  
12 the locking mechanism inside and so that the tower -- it  
13 appears in the tower that they are secure. I've seen officers  
14 go so far as to call the control tower and ask if the door is  
15 showing secure to make sure that it appears to be secure in the  
16 control tower before they walk away and leave the door wide  
17 open.

18 Q. So just to make sure I understand your testimony, officers  
19 are at a door and know it's open and make sure that it's  
20 showing closed.

21 A. Correct.

22 Q. And do officers routinely walk through and do cell door  
23 checks on your zone?

24 A. No, they do not.

25 Q. Mr. Owens, while at Walnut Grove, have you filed any ARPs?

1 A. I have.

2 Q. And what's an ARP?

3 A. It's essentially a grievance. ARP stands for  
4 Administrative Remedy Program. Grievances are commonly  
5 referred to as ARPs.

6 Q. And approximately how many ARPs have you filed?

7 A. I don't know exactly. I would estimate at least 15.

8 Q. So you don't believe Walnut Grove is perfect, do you?

9 A. Absolutely not.

10 MR. OWENS: Court's indulgence.

11 THE COURT: All right.

12 (COUNSEL CONFERRED)

13 BY MR. OWENS

14 Q. Mr. Evans (sic), if the court will allow, is there anything  
15 you would like the court to know about Walnut Grove before we  
16 end this testimony?

17 MR. SILER: I'm going to object to that broad,  
18 open-ended question, your Honor.

19 THE COURT: Objection overruled.

20 A. I would say only that at this time, you know, I have  
21 testified that comparatively speaking I'm sure that Walnut  
22 Grove is the safest housing location available to me given my  
23 personal circumstances. Without continued intervention and  
24 oversight, I would fear for my safety and life at Walnut Grove  
25 Correctional Facility as well as the safety and lives of the

1 others.

2 Q. Thank you, Mr. Owens, for your testimony.

3 MR. OWENS: If the court doesn't have any others, I  
4 tender the witness.

5 THE COURT: All right.

6 MR. SILER: Please the court.

7 THE COURT: You may proceed.

8 **CROSS-EXAMINATION**

9 BY MR. SILER:

10 Q. Mr. Owens, are you affiliated with a gang of any sorts at  
11 Walnut Grove?

12 A. No, I am not.

13 Q. Have you ever been affiliated with a gang?

14 A. There was an instance when a gang known as the Simon City  
15 Royals when I was in the Harrison County jail did attempt to  
16 recruit me. I reported this to the unit sergeant Kenneth  
17 Rogers and the then chief of security Captain Phil Taylor.

18 Given my law enforcement background -- and I realize how  
19 crazy this is going to sound, but it was determined that with  
20 their input and with their knowledge, that I would lead that  
21 organization to believe that I was part of them, allow them to,  
22 as they call, beat me in for the purpose of relaying  
23 intelligence back to the sheriff's office in Harrison County.

24 Q. All right. How long ago was that?

25 A. Nearly 15 years ago.

1 Q. Okay. So at no time while you've been at Walnut Grove have  
2 you ever been affiliated with a gang in any way, shape or form.

3 A. No, sir.

4 Q. Now, how many years does your sentence run?

5 A. 40 years.

6 Q. And I'm sorry if you said this earlier. I may have missed  
7 it. But your -- you were convicted of armed robbery and  
8 aggravated assault. Correct?

9 A. Correct.

10 Q. Now, you have told others, have you not, Mr. Owens, that  
11 you feel 100 percent safe at Walnut Grove. Is that right?

12 A. I have stated that in the context that I laid earlier, as  
13 compared to the other protective custody zones that are  
14 available to me.

15 Q. At this time, Mr. Owens, I'm going to hand you what's been  
16 premarked as Exhibit D-40.

17 MR. OWENS: Could we see a copy, please? We haven't  
18 been provided a copy of the defendants' exhibits.

19 THE COURT: You said D-40?

20 MR. SILER: D-40, yes, sir.

21 THE WITNESS: Would it be okay if I had some water,  
22 please?

23 (COMPLIED WITH REQUEST)

24 THE COURT: Before you ask your question, Mr. Siler,  
25 give the defendant an opportunity to look over the exhibit and

1 see if there's an objection or anything.

2 (COUNSEL EXAMINED DOCUMENT)

3 MR. OWENS: Your Honor, this is the first time we've  
4 seen this exhibit. Your Honor, when we started this  
5 proceeding, we gave the defendants a big binder of all our  
6 exhibits, which was, of course, Wednesday morning. This is the  
7 first instance we've seen of this. And we think it should be  
8 stricken as a result of that. I certainly haven't had a chance  
9 to talk to my client about it. What it purports to be is a  
10 letter from him to the superintendent, but this is the first  
11 time we've seen this.

12 We were ordered to exchange documents, your Honor,  
13 which is why we brought binders of all of our exhibits and  
14 provided them to them at the start of this proceeding. This is  
15 the first time we've seen this.

16 MR. FRIEDMAN: Your Honor, if I might.

17 THE COURT: Make sure -- you've got a mic at the  
18 table. I mean, everybody --

19 MR. FRIEDMAN: I'll go stand by Mr. Siler up here,  
20 but -- the instructions of the court were that by 2:00 Tuesday  
21 we were supposed to submit exhibit lists to each other, and  
22 that was it, just submit the exhibit list. And nobody swapped  
23 exhibits because that wasn't the instruction. So both sides  
24 swapped the exhibit list, and that's all we were instructed to  
25 do by the court's order. So we did what we were supposed to



1 do.

2           And, frankly, I was -- have been concerned for a long  
3 time and, you know -- that there was no complete scheduling  
4 order in this thing. Because of the way it came about, it just  
5 wasn't. Anyway, that's -- that's -- like I say, we complied  
6 with the court's order.

7           MR. SILER: And I might also add, your Honor, that  
8 this is -- this is a document being used for purposes of  
9 impeachment.

10           THE COURT: Hold on one second.

11           (PAUSE)

12           THE COURT: Okay. I'll hear you, Mr. Owens.

13           MR. OWENS: Your Honor, in response to Mr. Friedman,  
14 out of respect for just local practice or good customs, I  
15 assumed any exhibits they would be using they would provide to  
16 us as we did them at the start of these proceedings. But we  
17 ask for a brief recess to review this document with our client  
18 and any other documents that were not provided to us to date in  
19 order to just confer.

20           THE COURT: Okay. I'm looking back at the minutes  
21 after one of our telephone conferences, and it does not make  
22 the distinction between -- I think -- I think the  
23 representation of Mr. Friedman is correct. The court only said  
24 that the witness list -- a deadline to identify witnesses, gave  
25 each side a deadline for that. Gave each side a deadline by

1 which the expert witnesses were to be deposed, if necessary; a  
2 deadline for the parties to take any depositions. And then the  
3 witness and exhibit list were due to be provided to -- the  
4 witness and exhibit list, according to this entry, were to be  
5 provided by the 31st of March.

6           The caveat with the court's -- in the court's mind, I  
7 thought y'all would exchange exhibits. And I know we didn't  
8 have a pretrial conference in this matter and all that stuff,  
9 and maybe I should have asked at the front of the case whether  
10 there were any issues with respect to the exhibits and whether  
11 there were any objections to any exhibits. And if I had asked  
12 that question at the front end, I think we would have got to  
13 this point yesterday.

14           The exhibits that have been relied on by the plaintiff  
15 to this day are exhibits that the defendant was aware of. They  
16 were either filed in the record of the court -- they were the  
17 various monitor reports -- various monitor reports and the  
18 expert reports. And there were some materials, safety data  
19 sheets, other documents of the defendant. It may have been  
20 some other exhibits. What other exhibits is it that the --  
21 that the defendant had not seen before?

22           MR. FRIEDMAN: Well, for example, the video. I  
23 just -- I mean --

24           THE COURT: But the video was a compilation of the  
25 video that --

1           MR. FRIEDMAN: I'd have to go through here and look at  
2 them. But, you know, to say that they came from us, there are  
3 hundreds of thousands of documents, you know. Yes, we may have  
4 had them in our --

5           THE COURT: I mean, they were MDOC documents is my --

6           MR. FRIEDMAN: I mean, you know, but there -- here's  
7 the problem. There was no organized deadline for document  
8 production, interrogatories or anything like that. So we  
9 didn't -- we can't know what they had, and I guess they didn't  
10 know what we had, and there was no way to find out. There was  
11 no scheduling order entered here except what you just referred  
12 to. And so we were just flying blind here in a lot of  
13 respects. But, you know, we complied with the court's order.  
14 If they want to take some time to look at it, that's fine with  
15 me. But we have complied with the court's order.

16           And, frankly, you know, they gave us their documents  
17 when we got here yesterday morning. If they'd let me know that  
18 they were going to do that, which is fine, we would have  
19 brought them -- I've got extra copies over here, but I didn't  
20 know they were going to do that, and appreciate them doing it.  
21 But we had no idea. Just voluntary on their part.

22           THE COURT: We'll start back up at 3:30, give you an  
23 opportunity to look at any documents that --

24           MR. OWENS: Your Honor, I think -- what time is it?  
25 Is it 3?

1 THE COURT: It's almost 3:00.

2 MR. OWENS: I don't think we need that long. And I  
3 know we're trying to accommodate some of the defendants'  
4 witnesses. Just 15 minutes will be fine.

5 THE COURT: We'll start back up at 3:15 then, which is  
6 still a little bit more than 15 minutes. Will that give us  
7 sufficient time to move through everybody else, or do you want  
8 to start at 3:10?

9 MR. OWENS: I think 3:10, your Honor.

10 THE COURT: 3:10?

11 MR. FRIEDMAN: Can I interplead 3:08?

12 THE COURT: It's like the GEICO commercial. We're in  
13 recess.

14 (RECESS)

15 THE COURT: You may be seated. Are we ready to go  
16 forward?

17 MR. SILER: Yes, your Honor.

18 THE COURT: I do want to make clear -- this isn't  
19 against any of the parties, obviously. We talk about what the  
20 practice is here in the court. If it's simply something that  
21 the party needs to impeach a witness with, obviously, you don't  
22 have to have a copy of it because that's a matter, of course,  
23 that will not be entered in the record if it's solely for  
24 impeachment. But any other exhibits I would hope you all have  
25 had an opportunity to at least look at. That's all.

1           You may proceed, Mr. Siler.

2           MR. SILER: Thank you, your Honor.

3 BY MR. SILER:

4 Q. Mr. Owens, in front of you I believe is Exhibit D-40. Do  
5 you see that?

6 A. Yes, sir.

7 Q. And D-40 purports to be a letter that you wrote to Mr. Ron  
8 King on March 16th, 2015. Is that correct?

9 A. It is.

10 Q. And is D-40, in fact, a letter that you wrote to Mr. King?

11 A. It is.

12 Q. All right. And it is written in your own handwriting.  
13 Correct?

14 A. It is.

15 Q. And in Exhibit D-40 would you agree with me that you make a  
16 number of statements about how safe you feel at the Walnut  
17 Grove facility and that you want to be moved back to the Walnut  
18 Grove facility as soon as possible? Is that right?

19           MR. OWENS: Objection, your Honor. He's misstating  
20 the letter.

21           THE COURT: Improper impeachment? That's not -- I  
22 don't have the letter. So I don't know. If --

23           MR. SILER: He can answer, your Honor.

24           THE COURT: And I still haven't been given a copy of  
25 the letter.

1 MR. SILER: Your Honor, would you like a copy of the  
2 letter?

3 THE COURT: That's fine. That's fine. What's your  
4 question again, Mr. Siler?

5 BY MR. SILER

6 Q. My question is, Mr. Owens, you say in this letter on a  
7 number of occasions how important it is that you get back to  
8 Walnut Grove because that's where you feel safe. Is that  
9 correct?

10 MR. OWENS: Objection. I think the distinction I'm  
11 making is the letter talks about PC at Walnut Grove, that's  
12 where he feels 100 percent safe, not Walnut Grove in general.

13 THE COURT: Okay. Objection sustained.

14 MR. SILER: Your Honor, isn't that something he should  
15 bring out on cross?

16 THE COURT: Well, I mean, it's improper impeachment.  
17 If you're going to impeach the witness with what his letter  
18 said, you need to say exactly what he said in the letter.

19 MR. SILER: All right.

20 BY MR. SILER:

21 Q. Then, Mr. Owens, let me ask you specifically. Do you see  
22 there on the first page of Exhibit D-40 where you say, "Despite  
23 whatever other problems Walnut Grove may have, their PC zone is  
24 safe and competently operated"? Do you see that?

25 A. I do.

1 Q. Okay. And that's what you put in that letter. Correct?

2 A. It is.

3 Q. All right. Look down at the last line of the first page of  
4 Exhibit D-40, and it says -- and I'll read it to you. "In  
5 short, I felt 100 percent safe in the PC unit at Walnut Grove.  
6 I was content and relatively comfortable." Do you see that?

7 A. I do.

8 Q. Okay. And then let's go to the second page, about three,  
9 four lines -- we'll start four lines from the bottom of the  
10 letter where it says "I am practically begging you to get me  
11 back to Walnut Grove ASAP." Do you see that?

12 A. I do.

13 Q. And you wrote those things. Correct?

14 A. I did.

15 Q. Now, you didn't have any problem writing this letter making  
16 this request to return to Walnut Grove, did you?

17 A. I didn't.

18 Q. And you complained in this letter about the fact that when  
19 you had been moved to another facility that you had been placed  
20 in lockdown. Correct?

21 A. Correct.

22 Q. And you did not like that. Correct?

23 A. As I described the conditions earlier, no, I did not.

24 Q. Okay. Now, you would agree with me that nowhere in this  
25 letter do you mention anything about issues with the mattress

1 in your cell, do you?

2 A. To the man in charge of the institution where I feel I'm  
3 being retaliated against, no.

4 Q. And you would also agree with me you don't mention anything  
5 in this letter about the fact that you didn't have the clothes  
6 you felt like you needed, did you?

7 A. Again, to the man in charge of the institution where I feel  
8 I'm being retaliated against, no, I didn't.

9 Q. And you don't mention anything in this letter whatsoever  
10 about not getting a shower as often as you felt like it was --  
11 you should have, did you?

12 A. Same thing. To the man in charge of the institution where  
13 I feel I'm being retaliated against for being a witness in this  
14 case, no, I didn't.

15 Q. But you didn't mind telling you didn't feel safe in his  
16 institution, you wanted to be moved back to a place that you  
17 felt safe.

18 A. What I said was I felt safe at Walnut Grove.

19 Q. All right. Have you seen the e-mails that your mother and  
20 father-in-law (sic) had sent to Mr. King requesting that you be  
21 returned?

22 A. You said e-mails plural. I haven't.

23 Q. Have you seen an e-mail that your mother and father --  
24 stepfather sent to Mr. King requesting that you be returned to  
25 Walnut Grove?



1 A. I've seen one.

2 Q. And there was nothing in that e-mail, was there, about  
3 anything other than returning you to where you felt safe.

4 A. I don't recall.

5 MR. OWENS: Objection.

6 MR. SILER: I don't mind showing him the letter.

7 THE COURT: What's your objection? Make sure you're  
8 speaking into the mic.

9 MR. OWENS: Your Honor, the exhibit that counsel's  
10 referencing is an e-mail from -- an e-mail addressed to  
11 Superintendent King. It's not an e-mail that Mr. Owens has  
12 sent. It's not an e-mail, as I understand, Mr. Owens is  
13 capable of sending, because he doesn't have access to e-mail.  
14 It's something Mr. Owens just saw when I presented it to him  
15 during the break.

16 It's hearsay. If counsel wants to authenticate this  
17 letter, he will need Mr. King to do so or the person that sent  
18 it, neither of which is Mr. Owens.

19 THE COURT: Objection sustained as to hearsay.

20 MR. SILER: All right. Your Honor, let me say that we  
21 don't -- I'm not introducing this for the truth of the matter  
22 asserted. I'm introducing it for the fact that it was sent and  
23 this is what it had in it. Whether it's true or not doesn't  
24 make any difference.

25 THE COURT: Mr. King can testify about what he

1 received and what his actions -- what he did based on some  
2 information he received. I don't know if he's listed as a  
3 witness; but as it stands, that would be hearsay.

4 MR. SILER: All right. Could I make an effort to --

5 THE COURT: Yeah.

6 MR. SILER: -- have a foundation laid?

7 BY MR. OWENS:

8 Q. Mr. Owens, do you know what your mother and stepfather's  
9 e-mail address is?

10 A. With certainty, no, I don't.

11 Q. Tell me what you think it is.

12 A. He's told me that he uses gmail.

13 Q. Do you know what the first part of that e-mail address is?

14 A. I have idea. I have no way of knowing that.

15 Q. All right. At the Walnut Grove facility, Mr. Owens, what  
16 zone were you in before you were moved earlier this month?

17 A. 8 Alpha.

18 MR. SILER: Court indulge me one moment.

19 THE COURT: Yes.

20 (COUNSEL CONFERRED)

21 MR. SILER: Your Honor, at this time we'd move for the  
22 introduction of Exhibit D-40, which is Mr. Owens' letter to  
23 Mr. Ron King dated March 16th, 2015.

24 THE COURT: Any objection from --

25 MR. OWENS: No.

1 THE COURT: -- the plaintiff?

2 MR. OWENS: No, your Honor.

3 THE COURT: All right. D-40 is admitted.

4 (EXHIBIT D-40 MARKED)

5 MR. SILER: Tender the witness, your Honor.

6 THE COURT: All right.

7 MR. OWENS: Brief redirect, your Honor?

8 THE COURT: Yes.

9 **REDIRECT EXAMINATION**

10 BY MR. OWENS:

11 Q. Mr. Owens, Exhibit D-40 is the letter that counsel provided  
12 you that you wrote on March 16th, 2015. Is that correct?

13 A. That is correct.

14 Q. All right. And how many days had you been in CMCI at that  
15 time?

16 A. That was my third day there.

17 Q. And you testified earlier that you had no mattress.

18 A. Correct. This letter was written from the cell in which I  
19 described where I had the mattress that had been burned. I had  
20 a garbage bag for a sheet, feces overflowing in my toilet,  
21 lockdown 24 hours a day. That is the context in which this  
22 letter is written.

23 When I say that the protective custody zone at Walnut Grove  
24 is competently operated, the context is at least upon intake at  
25 Walnut Grove I received clothing and bedding and medication.

1 When I say that it is safe, it is in the context that I'm not  
2 housed in the same zone with high-risk, STG, long-term  
3 segregation inmates. That is the context in which it's  
4 written.

5 Q. Thank you, Mr. Owens.

6 MR. OWENS: No further questions, your Honor.

7 THE COURT: Okay. The court has a couple of questions  
8 of this witness, and I'll allow the plaintiff to follow up  
9 first and the defendant if they choose to.

10 You indicated that you -- Mr. Owens, you indicated  
11 earlier that you still had not been provided your medication.

12 THE WITNESS: That's correct, your Honor.

13 THE COURT: I need to know what those medications are.

14 THE WITNESS: I have -- I've been diagnosed with COPD,  
15 which is chronic obstructive pulmonary disorder. For that I am  
16 supposed to have an emergency inhaler for in the event I have  
17 an attack, which is similar to an asthma attack, basically;  
18 Prilosec, which is for, basically, acid reflux disease, which  
19 it's very difficult to eat many foods without; and I'm on  
20 Baclofen, which is a medication for back pain.

21 All of this is chronic care. It's not something  
22 that's temporary. It's not something -- this is chronic care  
23 that anytime you travel or transfer anywhere within the  
24 Mississippi Department of Corrections, chronic care follows  
25 you. It is supposed to automatically continue. And for the

1 record, I have submitted numerous medical sick call requests at  
2 CMCF and I have yet to be seen or interviewed by any medical  
3 staff of any kind whatsoever.

4 THE COURT: The Prilosec that you were supposed to  
5 take, do you take that on a daily basis?

6 THE WITNESS: Yes, sir. I take it once daily and the  
7 other twice daily.

8 THE COURT: Did you have access to them or were you  
9 given Prilosec at Walnut Grove?

10 THE WITNESS: I was, every day.

11 THE COURT: The other drug that you mentioned, how  
12 often are you supposed to take that drug?

13 THE WITNESS: Twice daily.

14 THE COURT: And is it your testimony that you have not  
15 had that drug since you've been transferred to CMCF?

16 THE WITNESS: Yes, your Honor.

17 THE COURT: The fact that you have not taken those  
18 drugs, is there -- are there any other prescription medications  
19 that you're supposed to take on a daily basis?

20 THE WITNESS: No, your Honor.

21 THE COURT: It's just those two?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: The fact that you've not had those drugs,  
24 is it affecting your ability to understand and communicate with  
25 your lawyers today?

1 THE WITNESS: No, your Honor.

2 THE COURT: Okay. Is it affecting your ability to  
3 tell the truth?

4 THE WITNESS: No, your Honor.

5 THE COURT: Is Walnut Grove a nonsmoking facility?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: And you've indicated earlier that you've  
8 seen spice smoked at the facility by inmates and prison guards  
9 or officials at Walnut Grove.

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Was that your testimony?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Mr. Owens asked you many questions and  
14 related it to over the last seven months about the conditions.  
15 I want to focus on what you may have seen since January of  
16 2015. Have you seen any guards -- activity that you testified  
17 about over the last seven months, has any or all of that  
18 activity occurred since January of 2015?

19 THE WITNESS: Your Honor, with regard to everything  
20 that I testified to, with the exception of the officer that  
21 smoked spice with the inmates -- he was terminated a while  
22 back. With the exception of that one instance with that guard,  
23 everything that I've testified to in this court was ongoing up  
24 until and including the day that I left on March 13th.

25 THE COURT: And D-40, what's the date of that e-mail,

1 that letter or e-mail to Mr. King?

2 MR. OWENS: The letter itself was March 16th, 2015.

3 THE COURT: Did you ever receive a response to that  
4 letter, Mr. Owens -- did you ever receive a response -- is that  
5 a letter or e-mail?

6 MR. OWENS: It's a letter that Mr. Owens submitted to  
7 Mr. King.

8 THE COURT: Have you received a response to this  
9 letter in any way?

10 THE WITNESS: I did actually, and I referred it to  
11 class counsel.

12 THE COURT: All right. Those are the questions that I  
13 have. You may follow up, Mr. Owens.

14 MR. OWENS: No further questions, your Honor.

15 THE COURT: Any questions from the defendant?

16 MR. SILER: I do have a couple of questions, your  
17 Honor.

18 **CONTINUING CROSS-EXAMINATION**

19 BY MR. OWENS:

20 Q. Mr. Owens, this activity you've told the court in response  
21 to its questions that you witnessed regarding spice and guards  
22 and things like that at Walnut Grove, that's taken place in the  
23 unit that you reside in in Walnut Grove that you contend that  
24 you're 100 percent safe in. Is that correct?

25 A. It does take place in the unit where I live that I said

1 comparatively speaking to the other places I'm housed, yes,  
2 that -- yes.

3 Q. Okay. Now, when did you tell the attorneys here for the  
4 class that you were being deprived of clothing and water and  
5 showers and medication? When did you tell them that you were  
6 being deprived of all that?

7 A. Each meeting that we had throughout the time that I've been  
8 at CMCF, I have given them extensive notes on the ongoings at  
9 CMCF and how I've been treated.

10 Q. So for weeks you've been telling them you were being  
11 treated like this?

12 A. I can't recall the first time they came, but I did give  
13 them notes consistently with regard to how I was being treated  
14 at CMCF.

15 Q. Okay.

16 MR. SILER: Nothing further, your Honor.

17 THE COURT: All right.

18 MR. OWENS: May I?

19 THE COURT: Yes.

20 MR. OWENS: Your Honor, as an officer of the court, I  
21 do want to represent to the court that from first notification  
22 of our client's treatment, we did contact Attorney General  
23 Harold Pizzetta and have thus been in contact with him since  
24 about these issues.

25

**FURTHER DIRECT EXAMINATION**



1 BY MR. OWENS:

2 Q. Mr. Owens, counsel opposite just asked you if you felt safe  
3 with the drug usage at Walnut Grove in your zone. Can you  
4 explain what the other PC zones are like, what happens there?

5 A. Certainly. I have witnessed in every other protective  
6 custody unit that I've ever been housed in extensive  
7 inmate-on-inmate assault, stabbings. There have been  
8 protective custody inmates killed in several of the other PC  
9 units. So, again, speaking comparatively to those protective  
10 custody units, at this moment in time right now Walnut Grove is  
11 safer than those protective custody units.

12 MR. OWENS: No further questions, your Honor.

13 THE COURT: All right. You may return to your seat,  
14 Mr. Owens.

15 MR. OWENS: The next witness is Marjorie Brown.

16 THE COURT: Okay. You stay right there while this  
17 witness takes his seat.

18 (COMPLIED WITH REQUEST)

19 (WITNESS SWORN)

20 MR. OWENS: May I?

21 THE COURT: Oh, yes. Could you state your name for  
22 the record, please.

23 THE WITNESS: Marjorie Brown.

24 THE COURT: Okay. It's going to be important that you  
25 speak loudly and clearly. That microphone there is the disk.

1 You can move it up closer to you. No need to speak directly  
2 into it.

3 Please allow the attorneys to finish their question  
4 before you respond. The court reporter is taking down  
5 everything that's said. Try to avoid using "uh-huh" and  
6 "unh-unh." They type out the same and they have totally -- two  
7 totally different meanings. And make sure all your responses  
8 are verbal. Try to avoid simply nodding or shaking your head.

9 THE WITNESS: Yes, sir.

10 MR. OWENS: Your Honor, pursuant to Federal Rules of  
11 Evidence 611(c)(2), I'd like permission to call Ms. Brown as an  
12 adverse witness and lead her examination even though --  
13 although it's in plaintiffs' direct examination.

14 THE COURT: She's a -- well, what is her title so I'll  
15 know?

16 MR. OWENS: Your Honor, she's vice president for  
17 Management Training Corporation over corrections division IV,  
18 which includes all private prisons in Mississippi that are  
19 managed by Management Training Corporation which includes  
20 Walnut Grove.

21 THE COURT: Okay. You may proceed in that manner.

22 **MARJORIE BROWN,**

23 having first been duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 BY MR. OWENS:

1 Q. Good afternoon, Ms. Brown.

2 A. Good afternoon.

3 Q. We've met several times, and I think I deposed you last  
4 week. Could you state your name for the record.

5 A. Marjorie Brown.

6 Q. And you're currently the vice president of Region IV for  
7 MTC. Is that correct?

8 A. That's correct.

9 Q. And by "MTC," I mean Management Training Corporation.

10 A. Yes.

11 Q. Is it -- is it fair that I use "MTC" interchangeably with  
12 "Management and Training Corporation" throughout your  
13 examination?

14 A. Yes.

15 Q. Thank you. What does Region IV cover?

16 A. The four facilities in Mississippi and one facility in  
17 Florida.

18 Q. And what four facilities in Mississippi are there?

19 A. I'm sorry. Could you repeat the question?

20 Q. The four facilities in Mississippi, is that Marshall  
21 County, Walnut Grove, East Mississippi and Wilkinson?

22 A. Yes, it is.

23 Q. And you only supervise one facility in Florida. Is that  
24 correct?

25 A. That's correct.

1 Q. And in operations are you in charge of staffing, safety and  
2 programming as well? Is that all under the umbrella of  
3 operations?

4 A. Yes.

5 Q. MTC is not responsible for any medical or mental healthcare  
6 at Walnut Grove. Is that correct?

7 A. I'm sorry. Could you repeat the question?

8 Q. MTC is not responsible for any medical or mental healthcare  
9 at Walnut Grove.

10 A. That is correct.

11 Q. So you travel a lot to the facilities that you manage. Is  
12 that correct?

13 A. That's correct.

14 Q. And, in fact, you're in Mississippi almost every week. Is  
15 that correct?

16 A. Yes.

17 Q. And when you're in Mississippi, you visit each of MTC's  
18 prisons.

19 A. Yes.

20 Q. I'm sorry. I can't hear that well either.

21 A. Yes, I do.

22 Q. And you've been the vice president of Region IV for almost  
23 two years. Is that correct?

24 A. Yes.

25 Q. And before you were vice president of Region IV you were

1 vice president of Region I.

2 A. I was the regional director of Region I.

3 Q. And what does Region I encompass?

4 A. That encompasses Idaho, Ohio, and at the time it was also  
5 Mississippi.

6 Q. And so how many years have you been involved in  
7 corrections?

8 A. I've been in involved in corrections approximately 40  
9 years.

10 Q. 40?

11 A. Approximately. 35, 37 years.

12 Q. How many years have you been involved at MTC?

13 A. Working on my seventh year.

14 Q. And you have ownership stock in MTC?

15 A. Yes.

16 Q. So if MTC's stock is profitable, you make more money. Your  
17 stock is more valuable.

18 A. Not necessarily, no.

19 Q. In your role as the vice president over corrections for  
20 Region IV, are you the direct supervisor for each warden of the  
21 facilities that you oversee?

22 A. Yes.

23 Q. Now, I want to talk to you a little bit about your  
24 background in corrections over the last 40 years. You started  
25 as a corrections officer. Is that correct?

1 A. No.

2 Q. You started as a case manager?

3 A. I actually started as an intern; and then once I was hired,  
4 it was a counselor.

5 Q. Counselor. So you were never a corrections officer.

6 A. That's correct.

7 Q. And as a case manager, did you receive training in the use  
8 of force?

9 A. I have never specifically went through the training course  
10 for use of force, no.

11 Q. Have you ever went through any training for the use of  
12 restraints?

13 A. No.

14 Q. Have you ever been directly responsible for the use of  
15 force when a prisoner is a threat to himself or others?

16 A. Could you repeat the question, please?

17 Q. Have you ever been directly responsible for the use of  
18 force when a prisoner is a threat to himself or others?

19 A. No.

20 Q. But you do manage correctional staff. Is that correct?

21 A. I manage the wardens over the facilities.

22 Q. Are they considered correctional staff?

23 A. They are correctional staff, yes.

24 Q. And the wardens are the highest person actually at that  
25 facility at that time. Is that correct?

1 A. That is correct.

2 Q. That's the highest position for each facility.

3 A. Yes, sir.

4 Q. And at Walnut Grove who's the warden?

5 A. Lepher Jenkins.

6 THE COURT: Hold on one second. Ms. Brown, I'm going  
7 to ask you to move that disk a little closer to you and speak  
8 up just a little bit more.

9 (COMPLIED WITH REQUEST)

10 THE COURT: You may proceed.

11 BY MR. OWENS:

12 Q. There are other regional vice presidents at MTC. Is that  
13 correct?

14 A. Yes.

15 Q. And about how many?

16 A. Four. There are four other regional vice presidents.

17 Q. Do you receive communications -- do you communicate with  
18 the other regional vice presidents throughout the country?

19 A. Yes.

20 Q. About other incidents that happen at MTC facilities?

21 A. On occasions, yes.

22 Q. And you meet with them regularly?

23 A. We meet. I'm not sure if I would describe it as regular,  
24 but yes.

25 Q. And do you receive notification when an incident occurs at

1 other facilities such as a riot?

2 A. Yes. At times I do, yes.

3 Q. For instance, the incident that occurred at Willacy County  
4 Correctional Facility, would you receive notice of that?

5 MR. FRIEDMAN: Objection, your Honor. That is  
6 irrelevant. This is right back to where -- what you sustained  
7 already with Texas. That has nothing to do with Walnut Grove.  
8 If -- you know, they can ask her about Walnut Grove.

9 THE COURT: I'm going to give them some leeway.  
10 Objection overruled.

11 BY MR. OWENS:

12 Q. Do you need me to repeat the question, Ms. Brown?

13 A. Please.

14 Q. Are you aware of the disturbance that occurred in Willacy  
15 County Correctional Center operated by MTC?

16 A. Is --

17 Q. And I might be pronouncing it wrong. W-I-L-L-A-C-Y.

18 A. Is that -- could you tell me what state that's in?

19 Q. The disturbance occurred on February 15th. It was -- are  
20 you aware of any serious incidents that happened throughout the  
21 country?

22 A. That office would be in Texas.

23 Q. Yes, ma'am.

24 A. I'm not sure what county it actually was. Yes, sir.

25 Q. And MTC has a contract with the Federal Bureau of Prisons



1 in Texas. Is that -- I'm sorry. MTC has a contract with the  
2 Federal Bureau of Prisons. Is that correct?

3 MR. FRIEDMAN: Objection, your Honor. That is  
4 irrelevant to Mississippi.

5 THE COURT: Well, it -- objection overruled. Now,  
6 Mr. Vail could not talk about what he might have gleaned about  
7 this, but this is a vice president of MTC. Correct?

8 MR. FRIEDMAN: Yes, it is, but that doesn't make it  
9 relevant.

10 THE COURT: Well, I'm going to allow them some leeway  
11 to see where he's going with those questions. Objection  
12 overruled.

13 MR. OWENS: Thank you, your Honor. And I'll ask more  
14 questions on this matter.

15 BY MR. OWENS:

16 Q. Now, the facility we're talking about in Texas, it doesn't  
17 hold maximum security prisoners, does it?

18 A. And I apologize. I'm not aware of the status of the  
19 inmates that were at that facility.

20 Q. Well, are you aware that the Bureau of Prisons canceled the  
21 contract with MTC after the incident?

22 A. Yes.

23 Q. And do you know why they canceled that contract?

24 MR. FRIEDMAN: Objection. Objection. That is  
25 irrelevant.

1 THE COURT: Objection overruled. Let -- objection  
2 overruled. She can say she doesn't know, because that's the  
3 question. Or are you aware?

4 BY MR. OWENS:

5 Q. Ms. Brown -- I'm sorry. Ms. Brown, are you aware that that  
6 contract was canceled between the Bureau of Prisons and MTC?

7 A. Yes.

8 Q. And are you aware why that contract was canceled?

9 A. The facility currently is --

10 MR. FRIEDMAN: Objection. The question is is she  
11 aware of why. If she wants to answer yes or no. I'm going to  
12 object to why. It's irrelevant. Has nothing to do with Walnut  
13 Grove.

14 THE COURT: Objection overruled.

15 BY MR. OWENS:

16 Q. Ms. Brown, do you need me to repeat the question?

17 A. Yes, please.

18 Q. Do you know why that contract was canceled between the  
19 Bureau of Prisons and MTC?

20 A. Since it's not in my region, my answer would probably be  
21 speculation. The facility is empty. We no longer have inmates  
22 there. So it's -- it was canceled due to no inmates, but that  
23 is a speculation. It's not in my region.

24 Q. And just to be clear, is it your testimony today that you  
25 only know what goes on in your region?

1 A. I know what goes on in my region on that level more -- in  
2 more detail. That is correct.

3 Q. Okay. Ms. Brown, let's talk about your specific  
4 communications and visits to Walnut Grove. You testified that  
5 you visit Walnut Grove -- I'm sorry. You testified that you  
6 visit Mississippi on a weekly basis. Is that correct?

7 A. Yes.

8 Q. And do you visit Walnut Grove on a weekly basis?

9 A. I'm in Mississippi usually weekly. I'm not always at  
10 Walnut Grove every week.

11 Q. Usually, when you're in Mississippi, are you at Walnut  
12 Grove?

13 A. Usually. I can't always say that I'm at Walnut Grove; but,  
14 yes, I try to get to Walnut Grove.

15 Q. Have you been at Walnut Grove this week?

16 A. I have.

17 Q. How many days have you been to Walnut Grove?

18 A. I was there yesterday.

19 Q. And was that the only day you were there this week at  
20 Walnut Grove?

21 A. I'm sorry. I was there day before yesterday. Yes.

22 Q. And did you visit any other facilities during this visit?

23 A. Yes.

24 Q. What facilities did you visit?

25 A. East Mississippi.

1 Q. And did you visit any other facilities besides East  
2 Mississippi and Walnut Grove?

3 A. No.

4 Q. And when you are at these facilities, you do these  
5 walk-through inspections. Is that correct?

6 A. Yes.

7 Q. And you invite MDOC to do these walk-through inspections  
8 with you.

9 A. If time permits and they're available, yes.

10 Q. But you don't schedule your visits around MDOC's  
11 availability, do you?

12 A. That is correct. I do not.

13 Q. And your inspections are not formal, are they?

14 A. That is correct.

15 Q. And by "formal," I mean it's not a form you fill out for  
16 what you inspect.

17 A. Correct.

18 Q. And there's no checklist that you go by.

19 A. No, there is not.

20 Q. And you walk around with one of the wardens. Is that  
21 correct?

22 A. A warden or deputy warden or one of the shift supervisors,  
23 yes.

24 Q. And you walk around the facility?

25 A. Yes.

1 Q. And you visit what, the classrooms? You visit the  
2 classrooms?

3 A. Yes.

4 Q. And you visit medical?

5 A. Yes.

6 Q. And you visit the living units?

7 A. Yes.

8 Q. And you even pull on doors to make sure they're secure.

9 A. Yes.

10 Q. Why do you pull on those doors?

11 A. To make sure they're secure.

12 Q. Because doors being locked and secure is an important part  
13 of safety. Is that correct?

14 A. Yes.

15 Q. And during the visits you talk to staff?

16 A. Yes.

17 Q. And you also talk to inmates.

18 A. Yes.

19 Q. But you don't talk to inmates confidentially, do you?

20 A. There have been times I have spoken with inmates  
21 confidentially, yes.

22 Q. What do you speak with them about confidentially?

23 A. Various -- various things.

24 Q. Could you give me an example?

25 A. There have been times inmates just would like to tell me

1 what's going on. They would pull me to the side, ask me if I  
2 could call them up and talk to them and have a little more  
3 confidentiality. And depending on the situation, I might call  
4 them to the warden's office. And, again, I can't think of  
5 anything in particular at the present time; but it could be  
6 about their safety, could be about some family issue.

7 Q. And do you speak to staff confidentially as well outside --

8 A. I --

9 Q. I'm going to have to finish before you start.

10 A. I'm sorry.

11 Q. Do you speak to the staff regularly confidentially as well?

12 A. I do.

13 Q. And when issues come up, you speak to the warden. Is that  
14 correct?

15 A. Yes.

16 Q. And I think you testified earlier the warden is Warden  
17 Jenkins?

18 A. Yes.

19 Q. At Walnut Grove?

20 A. Yes.

21 Q. What's his first name?

22 A. Lopher.

23 Q. Would you spell that, please?

24 A. L-E-P-H-E-R.

25 Q. And Warden Jenkins has been the warden of Walnut Grove for

1 less than a year. Is that correct?

2 A. Yes.

3 Q. And before him it was Warden Neil Turner. Is that correct?

4 A. Yes. He was there for an interim period.

5 Q. And just to make sure we're clear, you've been Region IV  
6 vice president of MTC which is over Walnut Grove since MTC got  
7 the contract for Walnut Grove. Is that correct?

8 A. No. I was not the vice president when we received the  
9 contract. I was the region director.

10 Q. Region director?

11 A. Yes.

12 Q. Did that include Mississippi?

13 A. Yes, at that time.

14 Q. So as regional director, were you still over the warden at  
15 Walnut Grove?

16 A. No. The vice president would have been over the -- the  
17 warden's supervisor at the time.

18 Q. And who would be your supervisor at the time?

19 A. Al Murphy.

20 Q. And what position would Al Murphy have had?

21 A. Vice president.

22 Q. So how long have you been Region IV vice president?

23 A. Two years in June.

24 Q. Two years in June. June of what year?

25 A. I'm sorry?

1 Q. June of what year?

2 A. It would -- I'll be vice president for two years in June.

3 Q. So you became vice president in June of 2013?

4 A. Yes, sir.

5 Q. And did you have knowledge about Walnut Grove as a regional  
6 director?

7 A. Yes, sir.

8 Q. Did you interact with Walnut Grove staff?

9 A. I did.

10 Q. I'm sorry. Did you say "I did" or "did not"?

11 A. Sorry?

12 Q. Did you say "I did"?

13 A. I did interact with Walnut Grove staff at that time, yes.

14 Q. So did you know who the warden was before Warden Jenkins?

15 A. Yes, sir.

16 Q. Did you know it was Neil Turner?

17 A. Yes, sir. If it -- Neil Turner was the warden on an  
18 interim basis.

19 Q. Was there -- who was the warden before Neil Turner?

20 A. Sorry. David -- I'm sorry. His last name escapes me right  
21 now, but when the current -- when the warden -- sorry. His  
22 name escapes me right now. But Neil came in in between wardens  
23 if you will.

24 Q. You'd agree that consistent leadership is important to  
25 running a safe prison, don't you?



1 A. Yes, sir.

2 Q. And you'd agree it's an issue that Walnut Grove has had  
3 four different wardens since MTC took the contract.

4 A. I'm sorry. Could you repeat the question?

5 Q. You would agree that Walnut Grove has had four different  
6 wardens since MTC took over the contract.

7 A. We have had several wardens during the contract, yes, sir.

8 Q. And when you work with the warden, if there are issues at  
9 the prison, you would -- you expect the warden to resolve the  
10 issues. Is that correct?

11 A. Yes.

12 Q. Because you can't be at the prison all the time, can you?

13 A. No, sir.

14 Q. And the warden responds to you both verbally and written,  
15 does he not?

16 A. Yes, sir.

17 Q. And Warden Jenkins, who's currently the warden, has  
18 specific reporting requirements to Walnut Grove -- to MDOC?

19 A. Yes.

20 Q. And you expect those same requirements from him to MDOC as  
21 to MTC. If he has a requirement to produce a document, you  
22 expect to get a copy of that document, do you not?

23 A. Not necessarily.

24 Q. And in what instance would you not want the documents that  
25 Warden Jenkins has to produce for MDOC?

1 A. For an example, there's a monthly report that is required  
2 to MDOC. I don't require a copy of that monthly report.

3 Q. What's in that monthly report?

4 A. Various statistics on use of force. And I'm not really  
5 sure all the various items that's in there, but that is one of  
6 the things that are in there. Disciplinary reports, staffing.

7 Q. You're the person in corporate who's responsible for Walnut  
8 Grove. Is that correct?

9 A. Yes.

10 Q. You're the next authority past the warden.

11 A. Yes.

12 Q. And it's your testimony that the warden has to produce a  
13 report to MDOC that contains staffing and use of force  
14 incidents monthly, but you don't require the report to be sent  
15 to you.

16 A. I don't require that particular report to be sent to me.  
17 That is correct.

18 Q. Now, MTC is a contractor of MDOC. Is that correct?

19 A. Yes.

20 Q. And by "contractor," I mean you have a contract with the  
21 State of Mississippi about the management and operation of  
22 Walnut Grove. Is that correct?

23 A. Yes.

24 Q. Are you required to receive notice of serious incidents  
25 when they occur at Walnut Grove?

1 A. Yes.

2 Q. And how do you define a serious incident?

3 A. Anything unusual, out of the ordinary.

4 Q. Would that include riots?

5 A. By all means.

6 Q. Would that include off-site hospital transport?

7 A. Yes.

8 Q. And would that also include the finding of contraband?

9 A. Not necessarily.

10 Q. When you say "not necessarily," in what instances would the  
11 finding of contraband be required for you to know?

12 A. How the contraband is found and the amount of the  
13 contraband would determine if I'm notified at the time.

14 Q. So there are some contraband that can be found at Walnut  
15 Grove that you as the vice president of this area do not need  
16 to know about.

17 A. Correct. Let's call it nuisance contraband I would not  
18 need to know about.

19 Q. Is there a threshold that exists that you would need to  
20 know about in your capacity as the vice president of  
21 corrections?

22 A. Could you repeat the question?

23 Q. Is there a certain threshold of contraband that you need to  
24 know about, that you require Warden Jenkins to tell you if it's  
25 discovered?

1 A. Again, the amount of contraband, how it's entering the  
2 facility, yes, there's certain types of things that the wardens  
3 know right away to contact me. And I guess a better way to say  
4 it, if they contact MDOC in most cases and there is a policy  
5 that identifies when MDOC's notified, they usually notify me  
6 also.

7 Q. So you're notified when a staff member is assaulted.

8 A. Correct.

9 Q. Are you notified when a sexual assault complaint is made?

10 A. Could you repeat that, please?

11 Q. Are you notified when a sexual assault complaint is made?

12 A. I'm sorry. I didn't hear the last part.

13 Q. Are you notified when a sexual assault complaint is made?

14 A. Complaint is made. Not necessarily when a complaint is  
15 made.

16 Q. Are you notified when a sexual assault complaint is made  
17 between an officer an inmate?

18 A. Definitely.

19 Q. But you're not necessarily notified when a sexual assault  
20 complaint is made against inmate to inmate.

21 A. Correct.

22 Q. You testified in your deposition you don't -- you don't  
23 micromanage the warden. Is that correct?

24 A. That is correct. I try not to.

25 Q. You give a great deal of autonomy to the wardens in your

1 prisons?

2 THE COURT REPORTER: You give a great deal of what?

3 THE COURT: Autonomy. I'm sorry. I'm sorry. It was  
4 "autonomy." Right? That's what you said. Right?

5 MR. OWENS: Yes, your Honor.

6 THE COURT: I'm sorry. I'm encouraging you to speak  
7 up a little bit more. And I'm also encouraging Mr. Owens to  
8 speak up a little more too.

9 A. Could you repeat the question?

10 BY MR. OWENS:

11 Q. Yes, Ms. Brown. You give a great deal of autonomy to your  
12 wardens.

13 A. Yes.

14 Q. And you don't have a specific time line in which they have  
15 to notify you of events that are occurring that they have to  
16 report to you.

17 A. Is there a question?

18 Q. Yes, ma'am. All these are questions.

19 A. I'm sorry. MDOC has a time line on -- on the reporting  
20 period. So, yes, when things happen, there is a -- they  
21 usually notify me as soon as possible. I --

22 Q. Okay. But my -- please continue, Ms. Brown.

23 A. I don't want to stop what they need to do while they're  
24 handling the situation; but as soon as possible while the  
25 situation is occurring, they notify me.

1 Q. So my question is, do you have a specific time frame that  
2 they have to notify you?

3 A. I would say within the hour.

4 Q. And you --

5 A. If possible.

6 Q. Yes, ma'am. And you just spoke about the MDOC  
7 requirements. Are you not involved in that process when the  
8 wardens report to MDOC?

9 A. No.

10 Q. So you don't investigate things yourself when they occur?

11 A. I'm not sure I understand that question.

12 Q. Do you investigate things, as a warden has to -- yourself,  
13 do you get involved in that investigation?

14 A. I try not to. We have investigators. We have the warden.  
15 So I wait until they give me the information from the  
16 investigation. So the answer should be no. I don't  
17 investigate myself.

18 Q. And when wardens report to you, they mail the report to  
19 you? How do you interact with your wardens?

20 A. Depending on the situation, they call me or I wait to get  
21 the EOR, the small written synopsis of the incident. So it  
22 would be via e-mail or they call me.

23 Q. And do you have follow-up meetings with Mississippi  
24 Department of Corrections after these extraordinary  
25 occurrences?

1 A. Depending on the type of occurrence; but in my  
2 recollection, there have been very few times that we've had to  
3 sit down and talk about specific instances.

4 Q. But you sit down with MDOC quite often and talk about  
5 Walnut Grove, don't you?

6 A. We sit down and talk about the facilities, yes.

7 Q. And, in fact, the former deputy commissioner, you and  
8 Archie Longley, Deputy Commissioner Longley, spoke quite  
9 frequently about Walnut Grove. Is that correct?

10 A. Yes.

11 Q. And you spoke about compliance with the consent decree and  
12 Walnut Grove in general. Is that correct?

13 A. Yes.

14 Q. And you spoke to the DCI -- again, DCI Longley after both  
15 the December and the July riots. Is that correct?

16 A. Yes.

17 Q. And by December riot, I'm referring to the one that  
18 occurred December 2013. Is that correct?

19 A. Yes.

20 Q. And by the July riot, I'm referring to the one that  
21 occurred July 2014.

22 A. Yes.

23 Q. Now, these were series incidents, weren't they?

24 A. Yes.

25 Q. And people were hurt.

1 A. Yes.

2 Q. And, of course, you were concerned.

3 A. Yes, I was.

4 Q. And how long did you speak to MDOC about these instances?

5 A. I can't recall the exact time that we spent talking, but  
6 I'm sure that several meetings occurred on different items  
7 concerning both of those events.

8 Q. And you said in June you will be at two years as a  
9 vice president of Region IV over corrections. Is that correct?

10 A. Yes.

11 Q. Are these the two most serious events that you've had occur  
12 at your Mississippi facilities?

13 MR. FRIEDMAN: Objection. Again, we're just talking  
14 about Walnut Grove. It doesn't matter whether these most  
15 two -- two most serious in Mississippi.

16 MR. OWENS: Your Honor, I think it is relevant.

17 THE COURT: For MTC?

18 MR. FRIEDMAN: Again, we're here about Walnut Grove.  
19 I understand they're trying to try MTC. But the case is  
20 against MDOC having to do with Walnut Grove.

21 THE COURT: Who is in control of Walnut Grove? Who  
22 runs it day to day?

23 MR. FRIEDMAN: Well, I understand MTC does, but what  
24 goes on at other prisons is irrelevant to this case.

25 THE COURT: I'm going to overrule the objection.



1 BY MR. OWENS:

2 Q. Ms. Brown, you testified that you met with MDOC officials  
3 after the two riots I previously asked you about. Is that  
4 correct?

5 A. Yes.

6 Q. And my follow-up question before Mr. Friedman objected was,  
7 are those two riots the most serious incidents that occurred at  
8 MTC facilities in Mississippi since you've been vice president?

9 A. No.

10 Q. There have been instances where individuals have lost their  
11 life?

12 A. Yes.

13 Q. And after those incidents do you meet with MDOC officials  
14 as well?

15 A. We have -- yes. Yes.

16 Q. You spoke only about the policies at MDOC, and I'd like to  
17 ask you questions about your role and development of policies  
18 as the vice president of corrections for MTC over Region IV.  
19 Completing policies is important to running a safe prison. Is  
20 that correct?

21 A. Yes, sir.

22 Q. In fact, you've said they're essential to running a safe  
23 facility. Is that also correct?

24 A. That's correct.

25 Q. And they're essential because policies detail what staff is

1 supposed to do and how they execute their jobs. Is that  
2 correct?

3 A. That's correct.

4 Q. And policies and procedures also ensure inmates understand  
5 what rules to abide by. Is that correct?

6 A. Yes.

7 Q. And, in particular, policies and procedures are critical  
8 tools to responding to unusual occurrences and incidents, are  
9 they not?

10 A. Could you repeat that question, please.

11 Q. Yes, ma'am. In particular, policies and procedures are  
12 critical for responding to unusual occurrences and incidents.

13 A. That's correct.

14 Q. Does Walnut Grove have a set of policies and procedures?

15 A. Yes.

16 Q. Does MDOC have a set of policies and procedures that Walnut  
17 Grove has to abide by?

18 A. Yes.

19 Q. And can Walnut Grove create its own policies as necessary?

20 A. Yes.

21 Q. And who's responsible for drafting the policies for Walnut  
22 Grove?

23 A. The warden and his staff.

24 Q. And are you involved in drafting those policies?

25 A. No.

1 Q. Do you have to review changes to existing policies before  
2 they're finalized?

3 A. I'm sorry. Could you repeat that?

4 Q. Do you have to review changes to existing policies before  
5 they're finalized?

6 A. I do not.

7 Q. You don't have to approve changes to new policies either.

8 A. No, sir.

9 Q. Do you have any roles or responsibilities as it pertains to  
10 implementing policies at Walnut Grove?

11 A. I do not.

12 Q. Is the warden the only person at Walnut Grove who has to  
13 approve the policies?

14 A. I'm sorry. Could you --

15 Q. I'm sorry. I need to slow down as well. Is the warden the  
16 only person at Walnut Grove who has to approve the policies?

17 A. The warden is the final person that signs off on the  
18 institutional policies, yes, sir.

19 Q. And since Walnut Grove has had four wardens in the last two  
20 years, it's been four different people have to sign off on  
21 policies. Is that also correct? Would you like me to repeat  
22 the question?

23 A. Please.

24 Q. Since Walnut Grove has had four wardens in the last two  
25 years, it's been four different people who have had the

1 authority to approve policies.

2 A. That is correct.

3 Q. And do you receive a copy of the actual policies and  
4 procedures once they're created?

5 A. No, sir.

6 Q. And do you review the finalization of any policies?

7 A. At times I may go and review policies, but not on a regular  
8 basis. No, sir.

9 Q. But you're over the policies at Walnut Grove. That falls  
10 into your role as the vice president of -- as the president of  
11 operations.

12 A. Yes.

13 Q. I want to talk to you a little bit about the reduction in  
14 population and change in custody levels at Walnut Grove. Now,  
15 as the vice president of corrections, how do you view MDOC?  
16 Are you the client or are you the customer?

17 A. MDOC is our customer.

18 Q. And is it your role or goal to give the customer what they  
19 want?

20 A. We have a contract that we follow.

21 Q. And your goal is to follow the contract.

22 A. Yes, sir.

23 Q. And that contract can be amended, can't it?

24 A. Yes.

25 Q. And it has been amended.

1 A. Yes, sir.

2 Q. And when MTC first took over Walnut Grove, inmates on  
3 long-term segregation was housed there. Is that correct?

4 A. Yes.

5 Q. And that was in the first contract.

6 A. Yes, sir.

7 Q. Now, you don't know why the long-term seg population is no  
8 longer at Walnut Grove, do you?

9 A. MDOC decided to move the long-term seg folks out of Walnut  
10 Grove.

11 Q. And how did you learn that MDOC decided to move the  
12 long-term seg folks out of Walnut Grove?

13 A. Well, there was -- there has been discussion about that  
14 move for some time. And I think DCI Longley is where I first  
15 heard about the move --

16 Q. And that --

17 A. -- the actual move.

18 Q. I'm sorry. Were you finished?

19 A. Yes.

20 Q. And that discussion that you're speaking of, that  
21 discussion was between MDOC and the court monitors in this  
22 case. Is that correct?

23 A. Could you repeat the question?

24 Q. That discussion that you're referencing about the move of  
25 long-term seg offenders, that discussion was between the MDOC

1 and the monitors in this case. Is that correct?

2 A. That is correct.

3 Q. And by "monitors," of course I'm talking about Dr. Jim  
4 Austin and Mr. Steve Martin. Is that correct?

5 A. That is correct.

6 Q. And you know those individuals, don't you?

7 A. Yes.

8 Q. And you've met with those individuals, haven't you?

9 A. Yes.

10 Q. And when we talk about the long-term seg individuals, is it  
11 true that MTC was not involved in the decision to move those  
12 individuals from Walnut Grove?

13 A. That is true.

14 Q. MTC had no autonomy to say whether they stayed or went? Is  
15 that correct?

16 THE COURT REPORTER: I'm sorry.

17 MR. OWENS: I apologize. It's "autonomy" again,  
18 though.

19 A. I was going to ask you to repeat it.

20 BY MR. OWENS

21 Q. MTC had no autonomy, no say whether those individuals  
22 stayed or left Walnut Grove.

23 A. That is correct.

24 Q. And the contract that has been changed say that -- doesn't  
25 mention those individuals anymore, does it?

1 A. That is correct.

2 Q. So Walnut Grove currently, long-term seg offenders cannot  
3 be housed there.

4 A. That is correct.

5 Q. Because the contract was changed.

6 A. That is correct.

7 Q. If the contract is changed back, will Walnut Grove house  
8 long-term seg individuals?

9 A. We will abide by the contract that is given to us, and I  
10 can't respond about something that I'm not sure of.

11 Q. Whatever the contract says is what you'll do. Is that  
12 correct?

13 A. Repeat that question, please.

14 Q. Whatever the contract says is what you will abide by.

15 A. We do what our customers ask us to do and that is put into  
16 a contract. So right now the contract says we do not have  
17 long-term seg, and that's the wishes of our client.

18 Q. We discussed this at length before. You've reviewed the  
19 monitor reports in this case, have you not?

20 A. I have.

21 Q. And, in fact, you've helped draft the response from MTC to  
22 the monitors' reports, have you -- haven't you?

23 A. Yes.

24 Q. And you read in the past monitors' reports that the  
25 monitors' opinions, the court monitors, was that Walnut Grove

1 could not safely house long-term seg inmates. Have you read  
2 that?

3 A. I believe that is in one of the reports, yes.

4 Q. And do you agree with that?

5 A. Do I agree with that?

6 Q. Yes, ma'am.

7 A. I believe we respectfully disagreed with that in the  
8 report.

9 Q. So as of today, independent of the report, is it your  
10 testimony that Walnut Grove could safely house long-term seg  
11 population?

12 A. Right now we will abide by the contract, and the contract  
13 says we have medium security inmates.

14 Q. And my question is, Ms. Brown, as the vice president of  
15 Region IV over corrections for MTC, the company that contracts  
16 with Mississippi Department of Corrections, is it your belief  
17 that Walnut Grove can safely house long-term seg population?

18 A. Yes, I believe we can.

19 Q. And that's despite the monitors saying that you can't.

20 A. Yes. As I said, I believe that in that report we also said  
21 we respectfully disagreed at the time that comment was made.

22 Q. Yes, ma'am. When MTC first took over Walnut Grove, at the  
23 time you housed minimum, medium and close custody inmates. Is  
24 that correct?

25 A. Yes.



1 Q. And recently the custody levels have changed at Walnut  
2 Grove. Is that also correct?

3 A. Yes.

4 Q. Close custody prisoners are no longer housed at Walnut  
5 Grove.

6 A. That is correct.

7 Q. And MTC was not involved in that decision either whether  
8 close custody inmates stayed or left. Is that correct?

9 A. That is correct.

10 Q. And the contract is once again changed pertaining to that  
11 custody of inmates. Is that correct?

12 A. That is correct.

13 Q. MDOC made that decision.

14 A. Yes.

15 Q. And do you agree with that decision?

16 A. Yes.

17 Q. You agree that -- would you like to rephrase your answer,  
18 Ms. Brown?

19 A. I'll rephrase my answer, yes. I'm sorry. I believe that  
20 we are capable of handling any population. The contract was  
21 changed and we will do what the contract implies.

22 Q. So if the contract is changed for Walnut Grove to house  
23 close custody inmates, you will abide by that contract.

24 A. That is correct.

25 Q. So if that contract is changed, say, tomorrow, you will

1 immediately be willing to house close custody inmates.

2 A. That would be up to MDOC.

3 Q. I understand that. You can't control the contract because  
4 you didn't take them out. But just to be clear for the record,  
5 if the contract is changed tomorrow for Walnut Grove to house  
6 close custody inmates, in your capacity, you would allow that.

7 A. I'm not sure I understand the question.

8 Q. Okay.

9 A. We're in the middle of this hearing, and the hearing is to  
10 do what the consent decree implies. So if MDOC -- I doubt MDOC  
11 would put close custody inmates back in the facility. We're  
12 here to come up with an agreement, not to be contentious.

13 Q. Ms. Brown, I can't speak of why we're here for purposes of  
14 examination, but I'm here to ask you a series of questions.  
15 And I ask that you do your best to answer those truthfully.  
16 With respect to the maximum capacity of prisoners at Walnut  
17 Grove, that was recently reduced. Is that correct?

18 A. I'm sorry. I didn't --

19 Q. With respect to the maximum capacity of prisoners at Walnut  
20 Grove, that number was recently reduced.

21 A. Yes.

22 Q. Do you know that number as we sit here today?

23 A. We were reduced to 962.

24 Q. And the actual bed capacity at Walnut Grove is  
25 approximately 300 more inmates. Is that correct?

1 A. Approximately.

2 Q. And, currently, MTC is only paid for housing 962 inmates.

3 Is that correct?

4 A. That's correct.

5 Q. And is it true that MTC lost approximately \$1.4 million in  
6 revenue from the reduction in population?

7 A. I don't know the exact amount.

8 Q. Do you know if it was over \$1 million?

9 A. I -- I can't respond. I don't know the amount of money.

10 Q. In your capacity as the vice president of corrections for  
11 Region IV, you do have budgetary responsibilities. Is that  
12 correct?

13 A. That is correct.

14 Q. You do prepare a budget for each of the facilities that you  
15 manage?

16 A. I do.

17 Q. And that includes Walnut Grove?

18 A. Yes.

19 Q. And you present that budget every quarter?

20 A. Month.

21 Q. Every month.

22 A. Yes.

23 Q. So you presented the budget in January. Is that correct?

24 A. Yes.

25 Q. And you presented one in February?

1 A. Yes.

2 Q. And when did the population shift at Walnut Grove occur?

3 A. Within last month. I'm sorry, February.

4 (COUNSEL CONFERRED)

5 Q. I apologize, Ms. Brown. Would MTC like to see the  
6 population increase at Walnut Grove?

7 A. Of course we would, if that's what our customer wanted;  
8 but, yes, we would like to see it increase.

9 Q. I mean, profits do matter, do they not, Ms. Brown?

10 A. (No response)

11 Q. That's a question. Would you like me to rephrase it?

12 A. Yes.

13 Q. Profits do matter for a company like MTC.

14 A. Every business needs to make money to pay for itself, yes.

15 Q. So that's yes. Correct?

16 A. Yes.

17 Q. And you are paid at Walnut Grove by the inmate. Is that  
18 correct?

19 A. No.

20 Q. I'll rephrase it. You're paid by the State of Mississippi  
21 by per inmate you have.

22 A. Oh. Per diem. Okay. We're paid per -- no. We're paid  
23 actually by day, per diem.

24 Q. By day per how many people are at the facility. Is that  
25 correct?

1 A. Correct.

2 Q. So the more people you have, the more money you make.

3 A. Correct.

4 Q. You said the staff reduction -- MTC also recently laid off  
5 about 70 employees?

6 A. Yes.

7 Q. And you testified earlier that MTC has always had a  
8 staffing issue. Is that correct?

9 A. We've had some issues maintaining our staff ratios, yes.

10 Q. And particularly at Walnut Grove you've had these staffing  
11 issues.

12 A. Yes.

13 Q. In fact, the monitors' reports that you've read and that  
14 you responded to speak particularly to a lack of staff. Is  
15 that correct?

16 A. The previous reports had, yes.

17 Q. And also lack of training of staff.

18 A. The previous reports did mention that, yes.

19 Q. And when you let off 70 employees, were you concerned about  
20 your staffing issues?

21 A. Could you repeat the question?

22 Q. When you let off 70 employees, I believe it's called a  
23 reduction in force, were you concerned about staffing at Walnut  
24 Grove?

25 A. No, sir.

1 Q. When is the last time the court monitors have been there at  
2 Walnut Grove?

3 A. I can't recall the exact date, but I want to say December,  
4 January.

5 Q. The monitors have not been at Walnut Grove since the staff  
6 reduction has been -- has occurred.

7 A. That's correct.

8 Q. Because the staff reduction occurred in February.

9 A. That's correct.

10 Q. So any report that the monitors gave to the court, most  
11 recently the sixth monitoring report, that was prior to the  
12 staff reduction.

13 A. Yes.

14 Q. Did MTC consult with the monitors before the staff  
15 reduction was implemented?

16 A. I'm not -- I don't know if MTC consulted with the monitors.

17 Q. Do you know if you consulted with the monitors?

18 A. I did not consult with the monitors.

19 Q. Is there anybody else at MTC who works with the monitors on  
20 the corporate level besides you?

21 A. Yes.

22 Q. Who is that?

23 A. Sometimes the facility will call the monitors and sometimes  
24 my boss would call the monitors.

25 Q. Well, the facility is not on the corporate level, is it?

1 A. I'm sorry. You're right.

2 Q. And your boss is the senior vice president of corrections?

3 A. That is correct.

4 Q. And that's Mr. Odie Washington?

5 A. Yes.

6 Q. I want to talk to you a little bit more about staffing  
7 retention. You testified there's been high turnover rates at  
8 Walnut Grove. Is that correct?

9 A. Yes.

10 Q. And there's been challenges to fill vacancies.

11 A. Yes.

12 Q. And the high turnover rate has also had to do with the  
13 combination of terminations and staff quitting.

14 A. Yes.

15 Q. Do you know the starting salary for Walnut Grove officers?

16 A. I'm sorry. I do not.

17 Q. And you recall that's a question I asked you last week, is  
18 it not?

19 A. Yes.

20 Q. Do you know the starting salary for any correction officers  
21 at any of the four facilities that you manage in Mississippi?

22 A. It's somewhere between --

23 MR. FRIEDMAN: Object. She's -- she needs to testify  
24 about what she knows.

25 MR. OWENS: Your Honor, I think she can talk about the

1 range of it, which I think she's prepared to do.

2 THE COURT: Well, if you're asking a specific question  
3 about the range.

4 MR. OWENS: Yes, your Honor.

5 BY MR. OWENS:

6 Q. Ms. Brown, do you know the range of the starting salary for  
7 correctional officers at Walnut Grove?

8 A. Between 10 and 10 fifty.

9 Q. By 10, you mean \$10?

10 A. Yes. I'm sorry.

11 Q. And has that always been the salary since you've been the  
12 vice president of corrections?

13 A. No, sir.

14 Q. What was the salary at Walnut Grove, if you know?

15 A. I do not know.

16 Q. Do you know if it was under \$10 an hour?

17 A. I believe it was under that.

18 Q. Do you know if MTC pays officers less than MDOC?

19 A. We do.

20 Q. Do you know how much less?

21 A. I do not.

22 Q. And MDOC has made recommendations for MTC to pay their  
23 staff more, have they not?

24 A. There has been some discussion about that. Yes.

25 Q. And you've been involved in those discussions.



1 A. Yes.

2 Q. And also in those discussions with DC Longley.

3 A. Yes.

4 Q. Now, did MTC accept that recommendation?

5 A. Yes.

6 Q. And when was the staffing salary increase made?

7 A. Could you repeat that question?

8 Q. When was the salary increase made for staff?

9 A. Somewhere around September. I'm not quite sure what the  
10 salary is, because we did increase it.

11 Q. But staffing and staff layoffs would all be things that  
12 would factor into your budget. Is that correct?

13 A. Yes.

14 Q. Does MTC offer the same benefits as MDOC?

15 A. No, sir.

16 Q. Is it your opinion that a staff increase at Walnut Grove --  
17 a staff salary increase would help retain more officers?

18 A. Yes, sir.

19 Q. And you agree that adequate staffing is essential to  
20 operating a safe facility. Is that correct?

21 A. Yes, sir.

22 Q. And in addition to enough staff, those staff must be  
23 adequately trained. Correct?

24 A. Yes.

25 Q. So I want to talk to you about staff training at MTC and

1 the facilities that you manage in Mississippi. Is that okay?

2 A. Uh-huh (indicating yes). Yes, sir.

3 Q. MTC operates four prisons in Mississippi. Is that correct?

4 A. Yes.

5 Q. And is all the training at those individual facilities the  
6 same?

7 A. No.

8 Q. So, for example, is the training at Walnut Grove the same  
9 as the training at East Mississippi?

10 A. No.

11 Q. Why not?

12 A. Well, the consent decree establishes some different types  
13 of training at Walnut Grove than you would have at East  
14 Mississippi. So it's actually more training and more in-depth  
15 training at Walnut Grove.

16 Q. And you would agree that more training is a good thing.

17 A. Yes.

18 Q. And more training assures that we have more capable and  
19 trained officers.

20 A. Yes.

21 Q. And that's what MTC wants. Right?

22 A. Yes.

23 Q. Per MDOC policy, all officers have to go through three  
24 weeks of training. Is that correct?

25 A. Yes.

1 Q. But there's an additional one week of training for Walnut  
2 Grove officers. Is that correct?

3 A. Yes.

4 Q. And that's a new policy that's been implemented very  
5 recently?

6 A. No.

7 Q. How old is that policy?

8 A. We've -- actually, all the Mississippi facilities do that  
9 extra four -- fourth week, which is field training for the  
10 officers after they get out of the training class. So it  
11 should have been going on for some time.

12 Q. And by "field training," could you explain what you mean?

13 A. The new officer that graduates is assigned to an  
14 experienced officer and they mirror that officer for a week.

15 Q. But the field training was not implemented at all MTC's  
16 facilities simultaneously, was it not?

17 A. It was given to the warden and the warden implemented it.  
18 So, no, it was probably not implemented at the same time, but  
19 it's not actually a new program.

20 Q. And you don't know which facility started the training  
21 first?

22 A. I do not.

23 Q. But you made the decision to implement this additional  
24 training?

25 A. At one of the wardens' meetings we decided it was needed.

1 And that was -- that was a while back, yes, sir.

2 Q. And you decided it was needed because of the problems  
3 with -- that you were seeing in new officers. Is that correct?

4 A. We decided it would be a nice enhancement to the training.  
5 Yes.

6 Q. And did you draft any part of this field training?

7 A. Could you repeat that?

8 Q. Did you draft any part of the policy with the field  
9 training?

10 A. No, sir.

11 Q. Did you review any policy with the field training?

12 A. No.

13 Q. So as it stands, the wardens are the people who approve all  
14 the policies.

15 A. Yes.

16 Q. Is it normally a high turnover rate amongst wardens in  
17 MTC's facilities?

18 A. Not usually, no, sir.

19 Q. You do agree it's a high turnover rate that's occurred at  
20 Walnut Grove?

21 A. Yes.

22 Q. Who's the person who has design -- who has to implement the  
23 training for the field officer program at Walnut Grove?

24 A. The training coordinator.

25 Q. And do you know that person at Walnut Grove?

1 A. It's a brand-new person right now. And I apologize. I do  
2 not know her name.

3 Q. Who was the old person? Do you remember their name?

4 A. No, sir.

5 Q. And in field training the idea is that a new officer will  
6 shadow an older officer. Is that correct?

7 A. Yes, sir.

8 Q. Ms. Brown, I want to talk to you about cell doors. There's  
9 been a lot discussed over the last few days about cell doors at  
10 Walnut Grove. Since MDOC has been at Walnut Grove, there has  
11 been concerns over cell doors, has there not?

12 A. Yes.

13 Q. And there are two types of doors. Is that correct?

14 A. Yes, sir.

15 Q. And there's doors that slide open. That's one door that  
16 slides. Right?

17 A. (Nods head affirmatively)

18 Q. Is that correct?

19 A. Yes.

20 Q. And there's a door that swings open.

21 A. Yes.

22 Q. And MDOC sometimes issues memos to change the policy about  
23 doors, don't they?

24 A. Yes.

25 Q. And do you recall DC Longley issued the policy regarding

1 when cell doors could be opened?

2 A. Yes.

3 Q. And let me show you a copy of Plaintiffs' Exhibit 25 that  
4 was previously admitted.

5 (PAUSE)

6 Q. Have you seen this exhibit -- this document before,  
7 Ms. Brown?

8 A. Yes.

9 Q. Could you please read it to the court?

10 A. "Memo from Archie Longley, dated June 10th. Cell door  
11 operation. Effective immediately. Please notify staff that an  
12 officer is to be present when a cell door is opened or closed  
13 to ensure its functionality and to prevent tampering. It is  
14 imperative that cell doors are operational. Therefore, cell  
15 doors are to be inspected each time and every time a cell door  
16 is opened or closed.

17 Q. Thank you, Ms. Brown. Does this memo accurately reflect  
18 the current policy at Walnut Grove?

19 A. I'm -- I think so. I'm not there all the time, but I  
20 believe so.

21 Q. Yeah, but you don't have to be there all the time to know  
22 there's a policy in effect at the facility you manage. Is that  
23 correct?

24 A. Yes.

25 Q. I want to talk to you about the riots we discussed earlier

1 in December and July. I want to start with the December riot.

2 There was a riot on December 31st, 2013. Is that correct?

3 A. Yes.

4 Q. And there was an after-action report after that riot that  
5 was completed.

6 A. Yes.

7 Q. And approximately 16 inmates suffered serious injuries that  
8 required transport to hospitals. Is that correct?

9 A. Yes.

10 Q. And two inmates had to be airlifted to a hospital because  
11 of the seriousness of their injuries. Is that correct?

12 A. Yes.

13 Q. And the incident occurred on 3 Alpha, 3 Bravo and 3 D. Is  
14 that correct? 3 Delta. Is that familiar to you?

15 A. Yes.

16 Q. And if you need to review something, this exhibit right  
17 here is a use of force, Exhibit 36. I can provide you with a  
18 hard copy if it's helpful. I know this happened in December,  
19 but I'm not sure what you may remember. You're aware of this  
20 incident, are you not?

21 A. I am.

22 Q. And have you reviewed video footage of this event?

23 A. During that time, yes.

24 Q. And when the event happened, did you come to Mississippi  
25 afterwards?

1 A. Yes.

2 Q. And who did you review that video footage with?

3 A. I reviewed it with the investigator.

4 Q. Who was the investigator at the time?

5 A. Brady Sistrunk.

6 Q. Do you recall officers were on the zone, they were present  
7 at the time of this incident?

8 A. Do I recall?

9 Q. Yes, ma'am.

10 A. Specific officers?

11 Q. Do you recall if there were any officers on the zone when  
12 this incident started?

13 A. No, sir, I do not.

14 Q. Would you agree with me that there were no officers on the  
15 zone when this incident occurred?

16 MR. FRIEDMAN: She just testified she doesn't know.

17 THE COURT: Right.

18 MR. OWENS: Well, I --

19 THE COURT: Objection sustained.

20 MR. OWENS: Your Honor, I believe -- may I be heard?

21 THE COURT: Yeah.

22 MR. OWENS: I believe her testimony was she can't  
23 recall. I think there was some -- maybe I'm confused, but I  
24 thought she was saying there were no officers on the zone.

25 THE COURT: The question was, "Do you recall if there



1 were any officers on the zone when this incident started?" She  
2 said, "No, sir, I do not."

3 MR. OWENS: Okay. Thank you, your Honor.

4 BY MR. OWENS:

5 Q. Ms. Brown, do you think you would remember if you saw  
6 officers on the zone when you reviewed the video?

7 A. I do. I do think I would remember that. Yes.

8 Q. And, in fact, isn't it true in the December riot that  
9 officers lost control of the unit for almost two hours?

10 A. Yes.

11 Q. And this incident occurred as a conflict between gangs. Is  
12 that correct?

13 A. Yes.

14 Q. And do you agree there were systemic issues in the December  
15 riot?

16 A. Yes.

17 Q. And those systemic issues was officers' failure to follow  
18 policies and procedures?

19 A. There were several things that we could have done better  
20 during that event, yes.

21 Q. What type of things?

22 A. Following policies and procedures. We -- some of the  
23 things that were in the document that you have in front of me  
24 that we indicated. The chemical agents weren't where they  
25 should have been. We could have gotten to them faster. When

1 to go on the zone. A better callback process for the staff.

2 So I can't specifically remember the things that were listed in  
3 the report, but there were things that we did learn from that  
4 incident.

5 Q. And in the document on the screen can you -- could you  
6 explain to the court what that document purports to be?

7 A. Could you repeat the question?

8 Q. The document on the screen in front of you, can you explain  
9 to the court what the document purports to be? Do you know  
10 what that document is? Have you seen that document before, the  
11 heading of the -- can you -- I apologize. Can you see it on  
12 your screen?

13 A. I can see what's showing up there.

14 Q. Is there not anything on your screen?

15 A. That's the same thing that's on here.

16 Q. Okay.

17 A. And it says "Copy of the EOR printed from" -- I'm assuming  
18 it's a packet, the cover letter of a packet.

19 Q. That is MTC's logo --

20 A. That's Walnut Grove's logo, yes.

21 Q. And that "MTC," that stands for the company Management and  
22 Training Corporation. Correct?

23 A. Correct.

24 Q. So this is not an MDOC document. This is an MTC document.

25 A. That is a Walnut Grove document, yes.

1 Q. Okay. And the document is produced by employees of MTC?

2 A. Yes.

3 Q. Are you aware if chemical agents were available during this  
4 incident?

5 A. There were.

6 Q. There were chemical agents available?

7 A. Yes.

8 Q. Do you know if the procedure involving cell doors were  
9 followed?

10 A. I do not specifically, no.

11 Q. In your deposition you testified that "We forgot how to do  
12 our jobs." What did you mean by that?

13 A. In some of the video the officers were a little -- they  
14 were not doing some of the things they should have done in  
15 viewing the videos. That was my response to some of the videos  
16 I recalled as we were talking during the deposition.

17 Q. And of the 16 inmates who had to be transported for outside  
18 medical care, did you interview or visit any of those  
19 individuals?

20 A. I did not visit the individuals that were in the outside  
21 hospital. As we talked the day of the deposition, the ones  
22 that came back, I -- during the course of doing inspections, I  
23 did see most of those folks.

24 Q. When you say you see them, did you speak to them  
25 individually?

1 A. As I made my rounds, I talked to them. I can't  
2 specifically say those were the ones that were injured, but I  
3 did make a round to the infirmary. So if they were still in  
4 the infirmary or in the housing units they were assigned to.

5 Q. All right.

6 MR. OWENS: Your Honor, I'd like to move in Exhibit  
7 36, which is the Walnut Grove MTC's EOR report.

8 THE COURT: Any objection from the defendant?

9 MR. FRIEDMAN: We maintain our same relevancy  
10 objection, as it stands to current and ongoing.

11 THE COURT: Objection is overruled.

12 BY MR. OWENS:

13 Q. Ms. Brown, I want to talk to you --

14 THE COURT: Exhibit P-36 --

15 MR. OWENS: Yes, your Honor.

16 THE COURT: -- is admitted.

17 (EXHIBIT P-36 MARKED)

18 BY MR. OWENS:

19 Q. Ms. Brown, I want to talk to you about the July riot. Is  
20 that okay?

21 A. Yes.

22 Q. Is it correct that the July riot started due to contraband?

23 A. Yes.

24 Q. And that contraband was being introduced by staff?

25 THE COURT: It's -- I'm sorry. It's going to be

1 admitted with the caveat that a -- I don't know what that one  
2 looks like. Let me see it real quick.

3 (DOCUMENT TENDERED TO COURT)

4 THE COURT: There will have to be some redactions with  
5 respect to personal information, Social Security numbers.  
6 Exhibits are a matter of public record, but you'd be violating  
7 the law if you allowed this public -- this private information  
8 related to these specific individuals to be placed in the  
9 record. So that will have to be redacted.

10 MR. OWENS: Yes, your Honor.

11 THE COURT: And we'll allow you to substitute -- we'll  
12 give you specific instructions as to what needs to be redacted,  
13 and we'll allow you to substitute that.

14 MR. OWENS: Yes, your Honor.

15 BY MR. OWENS:

16 Q. You said that staff were complicit in the July riot. Is  
17 that correct?

18 A. I did not.

19 Q. Were staff involved in the July riot?

20 A. Were staff involved in the July -- yes, they were.

21 Q. How were they involved?

22 A. I'm sorry. Now we've moved to the July riot. Yes.

23 Q. Yes, ma'am. I'm sorry.

24 A. There were some compromised staff involved in the July  
25 incident, yes.

1 Q. And by "compromised," you mean they were involved in the  
2 behavior of introducing contraband?

3 A. Yes.

4 Q. Do you know what type of contraband they tried to introduce  
5 into Walnut Grove?

6 A. Not -- I don't recall specifically, no.

7 Q. And, in fact, several staff were -- assisted the inmates in  
8 retrieving the contraband. Is that correct?

9 A. Yes.

10 Q. And during that time, staff members let inmates out in --  
11 to receive contraband that had been thrown over a fence. Is  
12 that correct?

13 A. Yes.

14 Q. And six staff members were terminated as a result of this  
15 incident. Is that also correct?

16 A. Yes.

17 Q. Is that a lot of officers, in your opinion, to be involved  
18 in a single incident?

19 A. Yes.

20 Q. And after the incident occurred, you viewed video footage  
21 from this incident. Is that correct?

22 A. Yes.

23 Q. And you actually viewed that footage at the facility.

24 A. Yes.

25 Q. You flew from Salt Lake to Mississippi. Is that correct?

1 A. Yes.

2 Q. And you viewed that footage with people -- with other  
3 people. Is that correct?

4 A. I -- there were a few of those tapes I might have viewed by  
5 myself. But, yes, the main part of it I believe I sat and  
6 watched with the investigator also.

7 Q. Who is -- what's the investigator's name?

8 A. Sistrunk.

9 Q. And when you say you viewed them by yourself, you viewed  
10 them at Walnut Grove by yourself.

11 A. I believe I had them -- there were so many. I had them put  
12 to CD and took a few of them with me to the hotel.

13 Q. And did Mr. Sistrunk show you what was important when you  
14 viewed the video?

15 A. Yes.

16 Q. And what did you determine was important?

17 A. The actual incident, if you will. And the ones that showed  
18 inmates getting hurt. If we could see when the inmates left  
19 the building. The ones that showed the staff assisting the  
20 inmates. So the particular events themselves.

21 Q. In your deposition you testified that you also came to  
22 Mississippi to tell staff that they did a good job after the  
23 July riot. Is that correct?

24 A. Yes.

25 Q. And that was after you saw the videos.

1 A. Yes.

2 Q. And that's the videos that this court has seen as well.  
3 You actually praised staff for their response to the riot. Is  
4 that correct?

5 A. There were some staff I thought that did a very good job,  
6 yes.

7 Q. And what staff members were those?

8 A. And I can't particularly give you exact names, but the  
9 perimeter officer that saw the inmate going over the fence,  
10 The staff that went and helped get the inmate back in. So  
11 there were -- in that particular event, there were staff that  
12 did what they were supposed to do. And, yes, I thought they  
13 did a good job in containing the incident.

14 Q. I want to show you what's been marked as Plaintiffs'  
15 Exhibit 37 on the screen that you're in front of you.

16 (COUNSEL CONFERRED)

17 MR. OWENS: That will be Exhibit 9. I apologize.  
18 Plaintiffs' Exhibit 9.

19 BY MR. OWENS

20 Q. Ms. Brown, if you could pay attention to the screen,  
21 please.

22 MR. OWENS: Your Honor, do we need to take a break?

23 THE COURT: How long are you --

24 MR. OWENS: I'm not planning to do what the court's  
25 previously seen, your Honor. Just two sections and not the



1 previous video you've seen.

2 THE COURT: No, no. How much longer with this  
3 witness?

4 MR. OWENS: Approximately 15 to 20 minutes, your  
5 Honor.

6 THE COURT: Okay. Do the defendants want to save your  
7 direct of this witness? She's being treated hostile now. I  
8 mean, I don't --

9 MR. FRIEDMAN: Probably not, because she needs -- she  
10 wants to get back to Utah for Good Friday.

11 THE COURT: Okay.

12 MR. FRIEDMAN: So I'm trying accommodate that.

13 THE WITNESS: Sorry. Too late.

14 MR. FRIEDMAN: Well, anyway.

15 THE COURT: Could counsel approach then?

16 MR. OWENS: Yes.

17 THE COURT: Could counsel approach?

18 (BENCH CONFERENCE)

19 THE COURT: I guess my question is, do you intend to,  
20 Mr. Friedman, do whatever you're going to do with her today?  
21 Is that your hope?

22 MR. FRIEDMAN: What, if anything, I'm going to do.

23 THE COURT: What, if anything. Okay. I know,  
24 Mr. Friedman, there may not be anything.

25 MR. OWENS: I don't have that much left, your Honor.

1 I'm really trying to --

2 MR. FRIEDMAN: Seven minutes?

3 MR. OWENS: I won't represent that.

4 THE COURT: Put that on the record.

5 MR. FRIEDMAN: Seven minutes.

6 THE COURT: Do you want to take a break?

7 MR. OWENS: A break may help me narrow it down. I'm  
8 trying to figure out what I don't have to ask, but I'm just  
9 going through it right now. But I just didn't know if the  
10 court --

11 THE COURT: Let me ask you this. Have you got any  
12 more exhibits you're going to try to get in through her?

13 MR. OWENS: I have two. I think their July exhibit --  
14 the July exhibit and I think three e-mails that have been  
15 produced.

16 MR. FRIEDMAN: Have I seen them?

17 MR. OWENS: Mr. Pizzetta sent them to me. So I'm not  
18 sure. He's your co-counsel. I don't believe you're copied on  
19 the e-mail, but your co-counsel sent them to me regarding --

20 MR. FRIEDMAN: Are they in your exhibit book?

21 MR. OWENS: They are in your binder.

22 MR. FRIEDMAN: I don't know what's in the exhibit  
23 book, but, you know --

24 THE COURT: We'll take a five-minute break.

25 MR. OWENS: Yes, your Honor.

1 MR. FRIEDMAN: Bless you. I was getting a little  
2 tense there. Pressure was --

3 THE COURT: Okay.

4 (BENCH CONFERENCE CONCLUDED)

5 THE COURT: We're going to be in recess for five  
6 minutes.

7 (RECESS)

8 THE COURT: You may be seated.

9 (OFF-RECORD DISCUSSION)

10 THE COURT: You may proceed.

11 MR. OWENS: Thank you, your Honor.

12 BY MR. OWENS:

13 Q. Ms. Brown, we were talking about the July riot when we took  
14 a recess. Is that correct?

15 A. Yes.

16 MR. OWENS: Your Honor, permission to approach the  
17 witness.

18 THE COURT: You may.

19 MR. OWENS: Let the record reflect that I provided  
20 Ms. Brown with Plaintiffs' Exhibit 37 which is the --

21 BY MR. OWENS

22 Q. Ms. Brown, do you know what that document is that you're  
23 looking at?

24 A. Yes.

25 Q. Have you seen it before?

1 A. Yes, at the deposition.

2 Q. But you never saw the document before the deposition last  
3 week?

4 A. I don't usually see documents in this order. But I've seen  
5 individual pieces of the document before, yes.

6 Q. And could you explain what that document is?

7 A. It's a package that tells the story of the July 10th  
8 incident.

9 Q. And by telling the story, you mean what happened, what  
10 occurred. Is that correct?

11 A. Correct.

12 Q. And it's a document that was produced by MTC employees at  
13 Walnut Grove. Is that correct?

14 A. Yes.

15 Q. I want to ask you some questions about that evening. And  
16 some of the questions you might already know the answer to, but  
17 I'm providing you that to be helpful. Okay?

18 A. Yes.

19 Q. Housing Units 3 and 4 were involved in the riot. Is that  
20 correct?

21 A. I'm sorry. Could you repeat that?

22 Q. Housing Units 3 and 4 were involved in the riot.

23 A. Yes.

24 Q. And the riot started approximately 9:45.

25 A. Yes.

1 Q. And I'm looking at page 9 right now, if you want  
2 clarification, to the exhibit. A command center was  
3 established at 11:10 p.m.

4 A. I'm sorry. The page numbers?

5 Q. It's page 9, Ms. Brown. I'm looking at the time stamp of  
6 11:10 when I asked you was the command center started --  
7 established at 11:10.

8 THE COURT: The numbers may be posted down at the  
9 bottom of the pages. You'll see "PLX-37."

10 MR. OWENS: Permission to approach, your Honor?

11 THE COURT: Yes.

12 BY MR. OWENS:

13 Q. I apologize. It's really small print too.

14 (COUNSEL AND WITNESS EXAMINED DOCUMENT)

15 Q. So I just asked you is it true the document reflects that  
16 the command center was established at 11:10 p.m.?

17 A. Yes.

18 Q. And also all living units were not secure until 11:21 p.m.

19 A. According to this document, that is correct.

20 Q. And do you have any reason to think that this document does  
21 not accurately reflect what occurred in the July riot?

22 A. I do not.

23 Q. And if you look back on page 8, it says that the riot  
24 started approximately 9:45. Is that correct?

25 A. Yes.

1 Q. You think this riot was handled quickly?

2 A. I do.

3 Q. In this riot inmates were able to take complete control  
4 over housing unit 3 and chase a prisoner off the pod. Is that  
5 correct? Do you recall seeing that in the video?

6 A. Yes.

7 Q. And inmates were able to assault one another with milk  
8 cartons, broomsticks and food trays. Is that correct?

9 A. Yes.

10 Q. And inmates were also able to assault other inmates with a  
11 microwave. Is that correct?

12 A. To the best of my recollection, there was a microwave used  
13 in one of the videos, yes.

14 Q. Okay. The best of your recollection, have you seen other  
15 incidents where microwaves were being used as a weapon?

16 A. Not to my recollection, no.

17 Q. And that's in over 40 years of corrections?

18 A. Yes.

19 Q. Nine prisoners were transported to the hospital due to  
20 serious injuries. Is that correct?

21 A. Nine inmates were transported, yes.

22 Q. And numerous offenders required on-site treatment.

23 A. Yes.

24 Q. And during this incident, OC spray was used to help address  
25 the incident. Is that correct?

1 A. Yes.

2 Q. But officers did not have gas masks to keep themselves from  
3 being exposed to the OC spray. Is that correct?

4 A. I cannot recall that, but --

5 Q. Can you recall if any officer suffered any injuries related  
6 to OC spray exposure?

7 A. I do not believe any officers were injured during this  
8 incident.

9 Q. Were you aware during this incident officers released a  
10 chemical grenade inside the control booth?

11 A. I do not recall that occurring.

12 Q. Do you recall watching the video footage of a Mace chemical  
13 being released inside the control room?

14 A. Could you ask that question one more time? I'm sorry.

15 Q. Do you recall watching video footage of a Mace chemical gas  
16 being released in the control room?

17 A. I do not.

18 Q. I want to direct your attention to Exhibit 9 that will be  
19 on that screen. It's a small portion of the video that the  
20 court has seen earlier yesterday. Ms. Brown, as you look at  
21 this video, is this a video you've seen before?

22 A. No, I did not see -- did not look at this one.

23 (DVD PLAYED)

24 Q. What did you observe just happened there?

25 A. They were trying -- this is speculating, but --

1 Q. I don't want you to speculate. I want you to testify to  
2 what you just saw.

3 A. What I just saw was them opening up the chemical in an  
4 attempt to throw it out, the canister. And I don't know what  
5 happened, but something must have happened that prevented that.

6 Q. Something went wrong.

7 A. Sorry?

8 Q. Something happened that was not supposed to happen?

9 A. Again, I would be speculating. But, yes, it's not supposed  
10 to go off inside the control pod.

11 Q. You do know it's not supposed to go off inside the control  
12 pod.

13 A. I do.

14 Q. And you did witness that the small left-hand corner  
15 referenced the July -- the same day as the July riot?

16 A. I did.

17 Q. And you did reference that the top left-hand corner had  
18 "Pod 3" which we know was one of the -- where the riot occurred  
19 in July.

20 A. That is correct.

21 Q. I want to show you one more clip and I want to know if  
22 you've seen it before as noted on this annotation.

23 (DVD PLAYED)

24 Q. Can you see through that window in the control tower right  
25 now?



1 A. Yes.

2 Q. What do you see happening?

3 A. Inmates.

4 Q. Do you see what those inmates are doing?

5 A. Yes.

6 Q. Have you seen this tape before?

7 A. I have not seen this tape.

8 Q. Is this the first time you've seen this video?

9 A. I believe this is the first time I have seen this  
10 particular video. Yes.

11 Q. Can you still tell that the chemical gas is inside the  
12 control booth?

13 A. I can.

14 Q. And can you also see that there are no Walnut Grove MTC  
15 employees inside the control booth?

16 A. Yes.

17 Q. And is it true what's supposed to happen is that inside  
18 that control booth gas is supposed to be shot into the pod? Is  
19 that correct?

20 A. That is correct.

21 Q. And in doing so, the violence that we're currently seeing  
22 wouldn't be occurring or would be lesser. Is that correct?

23 A. I can't make that statement.

24 Q. All right. Well, earlier you made the statement that you  
25 came down after this riot to tell people that they did a good

1 job and a few people did. Having seen this video for the first  
2 time some eight months later, does that change your opinion  
3 about anybody's job here?

4 A. No, not of the people who I told they did a good job. No,  
5 it does not.

6 Q. And what's your position on your employees who released the  
7 gas canister inside the control tower?

8 A. Ask the question one more time, please.

9 Q. What is your position on your employees who released the  
10 gas canister inside the control panel? Did they do a great  
11 job?

12 A. Well, I can't respond to that. I would definitely like to  
13 know what went wrong on that particular canister and why it  
14 didn't go the direction it should have gone. And I know why  
15 the control center is empty. And...

16 Q. Ms. Brown, respectfully, don't you think that's something  
17 you should know before now as the vice president of the -- this  
18 prison at Walnut Grove?

19 A. Repeat your question, please.

20 Q. Don't you think that's something you should know?

21 A. What is that?

22 Q. You said you can't respond that they did their jobs. Isn't  
23 that something that the vice president of Walnut Grove  
24 corrections should know?

25 A. They were doing their job. Something could have been wrong

1 with the canister.

2 Q. And is this a video you think you should have seen before  
3 now?

4 A. Not necessarily.

5 Q. You don't always look at the videos responding to riots?

6 A. I do; but, as you know, there were quite a few videos  
7 pertaining to this particular incident. And I looked at the  
8 ones, as I indicated earlier, that were specific to the  
9 injuries, the staff involvement. So I'm not surprised that I  
10 didn't see this one, but it is one that I -- I wish I had have  
11 seen now.

12 MR. OWENS: Your Honor, plaintiffs would like to enter  
13 into evidence Plaintiffs' Exhibit 37, which is the document  
14 Ms. Brown was currently reviewing.

15 THE COURT: Any objection from the defendant?

16 MR. FRIEDMAN: Same objection.

17 THE COURT: Same objection.

18 MR. FRIEDMAN: Same relevance objection.

19 THE COURT: Objection is overruled. It's with the  
20 caveat again, because I note that there is some information  
21 that's going to have to be redacted.

22 (EXHIBIT P-37 MARKED)

23 BY MR. OWENS:

24 Q. Ms. Brown, was an after-action report done after the July  
25 incident?

1 A. It was not.

2 Q. And you stated -- testified earlier that an after-action  
3 report was done after the December incident.

4 A. That is correct.

5 Q. You testified also that after the December incident there  
6 were systemic issues that occurred. Is that correct?

7 A. Yes.

8 Q. Did you see any systemic issues in what you did review  
9 about the July riot?

10 A. There were some things we saw that we corrected; but, no,  
11 we did not see the same kind of issues that we saw after the  
12 December incident.

13 Q. But you would agree that after-action reports are  
14 important.

15 A. Yes.

16 Q. And you learn from after-action reports. Is that correct?

17 A. Yes.

18 Q. And you prevent from making the same mistakes that  
19 previously occurred.

20 A. That is correct.

21 Q. And who made the decision not to do an after-action report  
22 in this instance?

23 A. I don't know that I can say anybody decided not to do an  
24 after-action report. There just was not a report put together  
25 and called an after-action report. There were folks that we

1 all sat down, we talked about it, reviewed it, decided what  
2 kind of things we could do to have it -- prevent those issues  
3 from occurring again. But an after-action report similar to  
4 the December report was not prepared.

5 Q. And as the vice president of corrections for Region IV, you  
6 could have mandated an after-action report was done, could you  
7 not?

8 A. I could have asked for a report to be done. Yes.

9 Q. And one would have been done. And one would have been  
10 completed if you requested it.

11 A. That is correct.

12 Q. You spoke of officers that you praised, but we know that at  
13 least six officers were involved in this event. Is that  
14 correct?

15 A. Yes.

16 Q. And officers lost control of a total of five pods. Is that  
17 correct?

18 A. Could you repeat the question, please?

19 Q. Officers lost control of at least five pods.

20 A. Five pods were involved in the incident, yes.

21 Q. And we saw the officers actually sprayed themselves with  
22 gas.

23 A. Yes, we did see that video. Yes.

24 Q. And do you think the staff overall reacted well?

25 A. There were officers that I did praise for handling

1 themselves well during this incident. Yes.

2 Q. Were there any officers that you were critical of in this  
3 incident?

4 A. We fired six staff.

5 Q. I want to ask you about your staff in your zones. Do you  
6 know if the officers in that video, if they were fired?

7 A. I do not.

8 Q. I want to turn your attention to some incidents that have  
9 occurred more recently. When Walnut Grove housed close custody  
10 offenders, were officers supposed to be on the zones at all  
11 times?

12 A. Yes.

13 Q. And close custody is no longer housed in Walnut Grove.

14 A. I'm sorry. Could you repeat --

15 Q. Close custody is no longer housed at Walnut Grove.

16 A. That is correct.

17 Q. And, currently, officers do not stay on the zone when  
18 inmates are out. Is that correct?

19 A. I'm sorry. I don't believe I can answer that question.  
20 You would have to get that from the warden. I don't know if I  
21 know the exact policy when inmates are out if the officer is  
22 there. I would say yes, but I think I would be speculating.

23 MR. OWENS: Your Honor, permission to approach the  
24 witness.

25 THE COURT: Yes, you may.

1 (DOCUMENT TENDERED TO WITNESS)

2 MR. OWENS: I provided Ms. Brown a copy of her  
3 deposition which she took last Thursday.

4 BY MR. OWENS:

5 Q. Ms. Brown, if you could turn to page 164, line 14 through  
6 17.

7 A. 164?

8 Q. Page 164, line 14 through 17. Are you there?

9 A. Not quite.

10 (WITNESS EXAMINED DOCUMENT)

11 A. Okay.

12 Q. Would you review lines 14 through 17 for me, please?

13 MR. FRIEDMAN: Page 164?

14 MR. OWENS: Yes, sir.

15 (PAUSE)

16 MR. OWENS: May I approach, your Honor?

17 THE COURT: You may approach.

18 BY MR. OWENS:

19 Q. So, Ms. Brown, after looking at your deposition that you  
20 took last week --

21 A. Yes.

22 Q. -- do you remember whether officers stay on the current  
23 zones currently at Walnut Grove?

24 A. Yes.

25 Q. Did they rove back and forth between zones?

1 A. Yes.

2 Q. Walnut Grove was never required to have an officer to  
3 remain on the zone for minimum or medium custody inmates. Is  
4 that correct?

5 A. I'm sorry. Could you repeat the question?

6 Q. Walnut Grove has never required an officer to remain on the  
7 zone for minimum and medium custody inmates.

8 A. That is correct.

9 Q. And you would agree incidents happen in minimum and medium  
10 custody pods as well. Is that correct?

11 A. Yes.

12 Q. In fact, there's been several assaults and incidents in the  
13 past few months that have required off-site medical attention.  
14 Is that correct?

15 A. Yes.

16 Q. I'd like to direct your attention to Exhibit 33 and 34. It  
17 will come up on your screen, but I'll get you the hard copies.

18 (PAUSE)

19 Q. Do you see the e-mail in front of you, Ms. Brown?

20 A. Yes.

21 Q. And that's a notification from Harold Pizzetta. Do you  
22 know who Harold Pizzetta is?

23 A. Yes.

24 Q. Who is Mr. Pizzetta?

25 A. He is the assistant attorney general of Mississippi.



1 Q. Yes, he is. Could you read what that e-mail says?

2 A. "Jody: Offender Steven Heatherly was transported to UMC  
3 for medical treatment after an assault on Thursday night. He  
4 returned to the facility on Friday."

5 Q. And what's the date of that e-mail?

6 A. Monday, March 23rd, 2015, 7:23 a.m.

7 Q. In your capacity as vice president for Region IV of  
8 corrections, did you get notification of this?

9 A. I did.

10 Q. Have you received the incident report of this assault?

11 A. I believe I have.

12 Q. I also want to turn your attention to what's been premarked  
13 Plaintiffs' Exhibit 34. We're going to scroll up just a little  
14 bit for you, Ms. Brown. Is this e-mail also from Mr. Harold  
15 Pizzetta?

16 A. Yes.

17 Q. Is it also to me?

18 A. Yes.

19 Q. Could you read what occurred here?

20 A. The whole thing?

21 (WITNESS EXAMINED DOCUMENT)

22 A. Yes.

23 Q. Have you seen it before?

24 A. Well, no. If you want me to read the whole thing --

25 Q. Or you could summarize it. Have you seen it before?

1 A. Yes.

2 Q. All right. Tell the court what happened.

3 A. Probably easier. So on the morning of March 21st, at  
4 approximately 8:24 hours, a targeted cell search was conducted  
5 in unit 5, cell 21, where offenders Kendrick Young and -- well,  
6 two offenders, Officer Michael Brown, Officer Jamie Johnson,  
7 Sergeant Hall, captain, major went to the cell. While  
8 conducting the search, several items of contraband were located  
9 by Officer Brown and recorded by Sergeant Hall.

10 THE COURT: Hold on for one second. Are you going to  
11 move this into evidence?

12 MR. OWENS: Yes, your Honor, both e-mails.

13 THE COURT: Both e-mails. Is there any objection?

14 MR. FRIEDMAN: No, your Honor.

15 THE COURT: Exhibits 33 and 34 will be admitted.

16 (EXHIBITS P-33 AND P-34 MARKED)

17 THE COURT: So now she doesn't have to read the  
18 document. It speaks for itself.

19 MR. OWENS: Agreed, your Honor. Agreed, your Honor.

20 BY MR. OWENS

21 Q. Ms. Brown --

22 MR. FRIEDMAN: Your Honor, I assume this is another  
23 seven minutes.

24 THE COURT: Close to it.

25 MR. OWENS: Your Honor, two page -- two pages left.

1 If Mr. Friedman would stop trying to make jokes, we could be  
2 finished.

3 THE COURT: Okay.

4 BY MR. OWENS:

5 Q. The contraband involved in this incident included 120 grams  
6 of brown leafy substance. Is that correct?

7 A. Yes.

8 Q. A security bit and a cell phone charger. Is that correct,  
9 Ms. Brown?

10 A. Yes.

11 Q. And offenders assaulted Officer Johnson during this  
12 incident?

13 A. Yes.

14 Q. And Captain Jones sprays OC spray. Is that correct?

15 A. Yes.

16 Q. And following the incident, the offenders were placed in  
17 the recreational yard and seen by medical personnel. Is that  
18 correct?

19 A. Yes.

20 Q. And they were decontaminated by air.

21 A. Yes.

22 Q. Then they were offered a shower to decontaminate with  
23 water.

24 A. Yes.

25 Q. Now, Walnut Grove has a new policy about decontamination.

1 Is that correct?

2 A. Yes.

3 Q. And did this incident follow that policy?

4 A. Yes.

5 Q. How so?

6 A. After we talked about this, I went back and talked with the  
7 warden. And I'm told -- and, again, I apologize. I haven't  
8 read the policy -- that the policy talks about when we do have  
9 to use gas and it's multiple inmates and we don't hit a  
10 particular area of the body, that we can -- we decontaminate  
11 with air.

12 Q. Now, I showed you the policy in your deposition. Is that  
13 correct?

14 A. I believe you did.

15 Q. Was that the first time you saw the policy?

16 A. It was not.

17 Q. So you saw this policy beforehand.

18 A. I did.

19 Q. Did you approve this policy?

20 A. I don't approve policies. I look to make sure that vital  
21 areas that are -- that we need to mention are inside the  
22 policy. And what I was focused on when I looked at the policy,  
23 when I reviewed it, was that we added the eyewash station in  
24 it.

25 Q. Have you gotten further details about the exhibit that

1 referenced Steven Heatherly?

2 A. I'm sorry.

3 Q. Have you gotten any further details about the event that  
4 was on the e-mail with Steven Heatherly. Was it just that  
5 one-sentence e-mail? Steven Heatherly. Have you gotten any  
6 more information about that?

7 A. I'm not sure I understand your question.

8 Q. I'll put the exhibit back on the screen. This one right  
9 here, Ms. Brown, have you learned anything further than what's  
10 been provided to plaintiffs' counsel?

11 (WITNESS EXAMINED DOCUMENT)

12 THE COURT: I'm sorry. And so the record will be  
13 clear, that's Exhibit 33? I just want to make sure -- you're  
14 referring to this document. I just want to make sure that the  
15 record is clear.

16 THE WITNESS: Sorry, your Honor.

17 THE COURT: I'm sorry. No. This is Exhibit 33.  
18 Correct?

19 MR. OWENS: Yes, your Honor.

20 THE COURT: All right.

21 BY MR. OWENS:

22 Q. This is what was provided to plaintiffs' counsel by defense  
23 counsel. Do you know anything further about this?

24 A. I do not.

25 Q. Do you know if this offender received eight stitches on his

1 face?

2 A. I don't know how many stitches he received. No.

3 Q. Is that something that you actually have access to?

4 A. If I -- I could go to medical and ask those questions, yes.

5 Q. If you want to find out, you can find out.

6 A. Yes.

7 Q. All right. Did you receive this same e-mail, to your  
8 knowledge?

9 A. I did not receive this same e-mail. No.

10 Q. I want to talk to you about a recent sexual assault at  
11 Walnut Grove regarding Officer Howard. Are you aware of  
12 Officer Howard?

13 A. I don't specifically recall Officer Howard. No, sir.

14 Q. Are you aware of any reports of sexual assault at Walnut  
15 Grove between staff and offenders?

16 A. I am -- I'm recalling the incident you're referring to now.  
17 Yes, sir.

18 Q. And what can you recall about that incident?

19 A. It was alleged that there were sexual favors.

20 Q. By "sexual favors," what do you mean?

21 A. I don't know how blatant I need to --

22 Q. I think it's mostly big people in the courtroom. So --

23 A. He was -- and I don't recall if he was giving the blow jobs  
24 or receiving the blow jobs, but it was an inmate-on-staff  
25 sexual allegation.

1 Q. And you would agree there can be no favors between inmates  
2 and staff. Is that correct?

3 A. That is absolutely correct.

4 Q. Because that's a violation of the PREA. Is that correct?

5 A. That is correct.

6 Q. And you were notified of the PREA complaint?

7 A. I was notified of that complaint. Yes.

8 Q. Did this sexual assault also, to your knowledge, involve  
9 anal penetration?

10 A. Could you repeat the question?

11 Q. Did this sexual assault, to your knowledge, also involve  
12 anal penetration?

13 MR. FRIEDMAN: I'm going to object because this is  
14 still under investigation. It has not been proven that there  
15 was a sexual assault. I'm not saying that there was or there  
16 wasn't, but it's under investigation and I don't think the  
17 results have come back.

18 MR. OWENS: I don't think I asked -- I apologize, your  
19 Honor.

20 THE COURT: When did it occur is the court's --

21 MR. OWENS: Your Honor, it occurred in early March.  
22 And even last week at Ms. Brown's deposition she testified to  
23 having knowledge of it and being provided at least some  
24 information about it. I'd like to further inquire as to what  
25 she knows as of today.

1 THE COURT: Objection overruled.

2 BY MR. OWENS:

3 Q. And, Ms. Brown, anything involving this incident that you  
4 can't testify to I don't want you to guess or assume. Do you  
5 know if a rape kit was done?

6 A. Yes.

7 Q. Do you know if Officer Howard was terminated?

8 A. He was placed on administrative leave --

9 Q. And is he on --

10 A. -- pending the investigation.

11 Q. I apologize.

12 A. Pending investigation.

13 Q. And how long does that investigation take?

14 A. As long as it takes. And we like to try to clear it up  
15 within 30 days.

16 Q. Do you know if it's been 30 days?

17 A. I think you just said the incident just happened early  
18 March. Right?

19 Q. So you expect the investigation to be completed in the next  
20 two weeks?

21 A. Yes, sir.

22 Q. And is Officer Howard on leave with pay?

23 A. No, sir.

24 Q. Have you been involved in this investigation?

25 A. No, sir.



1 Q. Do you know how many offenders it involved?

2 A. I believe it's two. But, again, the investigation will  
3 tell if there's any more.

4 Q. And based on whatever preliminary investigations you've  
5 done to date, do you know if there has been any previous  
6 allegations of sexual assault regarding Officer Howard?

7 A. Could you repeat the question?

8 Q. Based on what -- what, if any preliminary investigation  
9 you've done to date, do you know if there have been any  
10 previous allegations of sexual assault regarding  
11 Officer Howard?

12 A. I do not know if there's any previous investigations  
13 involving this particular officer.

14 Q. When we spoke at your deposition, you testified that there  
15 was a tape of Officer Howard being in a cell for a period that  
16 exceeded the amount of time that he should have been there that  
17 directly correlates with the allegations of sexual assault. Is  
18 that correct?

19 A. That's correct.

20 Q. Have you seen that video?

21 A. I have not.

22 Q. How do you know that video exists?

23 A. I -- when I was informed of the incident, I always ask have  
24 we viewed the tapes. And I was made aware when the tapes were  
25 viewed.

1 MR. OWENS: Court's indulgence.

2 THE COURT: All right.

3 (COUNSEL CONFERRED)

4 MR. OWENS: Just one more question, your Honor, one  
5 more small line of questioning.

6 BY MR. OWENS:

7 Q. Ms. Brown, I want to show you what's been previously marked  
8 as the sixth monitors' report. This is the -- on page 52 it's  
9 the -- the new OC spray policy. Have you seen this policy  
10 before?

11 A. Yes.

12 Q. I believe it's the one we previously discussed?

13 A. Yes.

14 Q. As you note, its effective date is February 23rd, 2015. Is  
15 that correct?

16 A. Yes.

17 Q. Now, previously, you testified that even with this new  
18 policy, that when OC spray was used in the event that we  
19 discussed earlier referenced in the e-mail from Mr. Pizzetta,  
20 that it was done appropriately. Is that correct?

21 A. Yes.

22 Q. Now, this policy says that once OC spray is used, those  
23 individuals must be immediately decontaminated with water. If  
24 you see under Procedures -- I'll read it. It says when an  
25 offender has been contaminated from OC, he will immediately be

1 afforded the opportunity to be decontaminated with water prior  
2 to being escorted to medical.

3 MR. FRIEDMAN: Excuse me. He did not read that --

4 BY MR. OWENS:

5 Q. When security permits prior to being escorted to medical.  
6 Is that correct?

7 A. Yes.

8 Q. Okay. And in the incident we discussed previously you  
9 indicated that these gentlemen were first taken outside and  
10 allowed to be decontaminated by air. Is that correct?

11 A. Yes.

12 Q. And you also testified that you and the warden, if it's a  
13 procedure of multiple people, you take them somewhere else. Is  
14 that correct?

15 A. Could you repeat --

16 Q. If it's multiple people involved, you do something  
17 different. Is that your testimony?

18 A. Well, when security permits. So it was multiple folk.  
19 They were taken outside to allow them to be decontaminated.

20 Q. Do you know if anybody -- one individual was taken to the  
21 closest water supply to be decontaminated?

22 A. Could you ask the question one more time?

23 Q. Do you know if anyone was allowed to be decontaminated with  
24 water immediately?

25 A. I do not know that, but to get to the closest water would

1 have been to take them to the gas. So going outside would have  
2 been the closest way to get them decontaminated.

3 MR. OWENS: Your Honor, I have no further questions  
4 for this witness. I would like to make sure that --

5 (COUNSEL CONFERRED)

6 MR. OWENS: Your Honor, has 37 been admitted in the  
7 record?

8 THE COURT: Yes, it has been. My notes show it has  
9 been.

10 MR. OWENS: No further questions.

11 BY MR. OWENS

12 Q. Thank you for your time, Ms. Brown.

13 A. Thank you.

14 THE COURT: It was admitted subject to the conditions  
15 that there will be some redactions that will have to be taking  
16 place.

17 MR. OWENS: We'll get that to the court, your Honor.

18 THE COURT: All right. Any questions of this witness,  
19 Mr. Friedman?

20 MR. FRIEDMAN: No questions.

21 THE COURT: Okay. The court, however, does have one  
22 question because I want -- and then either -- and the plaintiff  
23 will be able to follow up based on the question that I ask. So  
24 will the defendant.

25 When Mr. Owens was speaking with you about Officer

1 Harris -- or Howard -- excuse me.

2 THE WITNESS: Uh-huh (indicating yes).

3 THE COURT: -- he asked if there had been any previous  
4 allegations. Your response was, "I don't know if there have  
5 been previous investigations." I just want to make sure you're  
6 talking about the same thing. Has your investigation revealed  
7 that there have been previous allegations --

8 THE WITNESS: No, sir.

9 THE COURT: -- against him?

10 THE WITNESS: No, sir, there has not.

11 THE COURT: Okay. And you also testified that there  
12 have not been -- as far as you know right now, no previous  
13 investigations of Mr. Howard.

14 THE WITNESS: That is correct.

15 THE COURT: All right. That was the only question,  
16 because those two things mean something different to the court.  
17 Mr. Owens, do you have any?

18 MR. OWENS: Your Honor, I actually would like to call  
19 one of my witnesses. Am I allowed to call one of my witnesses  
20 for a follow-up question?

21 THE COURT: When? In your case -- I mean --

22 MR. OWENS: No. I just -- I would represent to the  
23 court that we think our witness would offer some light on the  
24 previous --

25 THE COURT: That can be done in your rebuttal or some

1 other time.

2 MR. OWENS: Since the court made the inquiry, I just  
3 wanted to clarify I think there have been reports of previous  
4 allegations against Mr. Howard -- Officer Howard with sexual  
5 assault and threats to current offenders at Walnut Grove for  
6 quite some time.

7 THE COURT: Okay.

8 MR. OWENS: Thank you.

9 THE COURT: All right. Now, Mr. Friedman, do you have  
10 any follow-up of this witness based on the question that I've  
11 asked?

12 MR. FRIEDMAN: No, sir.

13 THE COURT: All right. Thank you, Ms. Brown.

14 MR. FRIEDMAN: Is she finally free to go? Is she  
15 released to go to Utah?

16 MR. OWENS: Yes.

17 MR. FRIEDMAN: Okay.

18 THE COURT: Well, thank you, and I hope you enjoyed  
19 Mississippi while you were here. Well, I mean, but you're  
20 here -- that's right.

21 THE WITNESS: I'm here all the time.

22 THE COURT: Yeah, you're here all the time. Well, I  
23 hope you enjoyed being in here, then.

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Take care. Have a safe trip.

1 THE WITNESS: Thank you.

2 THE COURT: Housekeeping measures. I know counsel,  
3 attorneys are all permitted to bring in your electronic devices  
4 and that is fine. Any attorney can. But if you do have a cell  
5 phone, make sure it's on silent, no vibrating and all that,  
6 because we don't need to hear all your text messages and your  
7 e-mails that are coming in.

8 Non-attorneys, however, are not allowed to bring in  
9 electronic devices. So I just say that. I don't want to see  
10 anybody go to jail on Good Friday, because you may not get out  
11 until Monday.

12 MR. FRIEDMAN: Other days are okay, though?

13 THE COURT: No, no. Is there anything further that we  
14 need to take --

15 MR. OWENS: Your Honor, I think there is. One quick  
16 second, please.

17 THE COURT: Okay.

18 (COUNSEL CONFERRED WITH PLAINTIFFS)

19 MR. OWENS: Your Honor, as always is the case, after  
20 an offender testifies and still is in MDOC's custody, there's a  
21 concern about their safety and well-being. I know Mr. Pizzetta  
22 is working with me to ensure that the things that occurred last  
23 night won't happen tonight. And we also are coordinating, to  
24 the best of our ability, where our class representatives will  
25 go when they leave this hearing.

1           THE COURT: They will remain in the custody of MDOC,  
2 and I will expect to see them here tomorrow morning without any  
3 complaint. I mean, they can have a complaint; I just don't  
4 want the complaint to be verified.

5           And, obviously, the State is taking steps to address  
6 the complaint that I heard this morning. And they have to do  
7 their own investigation and find out to substantiate it and  
8 all.

9           But parties are aware of their conduct. And parties  
10 include all of MDOC. No matter if you decide to take him to  
11 CMCF or some other facility, MDOC understands its obligation to  
12 take care of everybody that's in their custody no matter what  
13 their status are as a litigant or anything else. They have  
14 custody and control over the individual. They've been handed  
15 over to them by a court. So they are fully responsible for  
16 them.

17           MR. OWENS: Thank you, your Honor. We are  
18 appreciative of Mr. Pizzetta working with us to find the safest  
19 place possible for these individuals when they leave the  
20 hearing. Because Mr. Owens is a PC offender, he might very  
21 well choose to go back to Walnut Grove. And that's something  
22 that we will discuss with Mr. Pizzetta. But for Mr. Evans --

23           THE COURT: No. In corrections, I'm sure it's like  
24 BOP in the sense that they decide where any person is based on  
25 whatever circumstances and matrixes that they have. I have no



1 right to direct any particular person to be placed in MDOC. In  
2 BOP's facilities I can make a recommendation.

3 But MDOC may find based on all the recommendations  
4 made to them and to the defendants that their status might  
5 change in some way and they might have to be placed somewhere  
6 else. That may be one of their conclusions. I don't know  
7 that.

8 MR. OWENS: Thank you, your Honor.

9 THE COURT: All right. Is there anything else we need  
10 to take up before tomorrow morning? And if there is something  
11 we need to take up before the hearing starts, which I expect to  
12 promptly begin at 9 a.m., then just let the court know and  
13 we'll take care of it before then. I should be here. Court's  
14 in recess.

15 (EVENING RECESS)

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## CERTIFICATE OF REPORTER

I, MARY VIRGINIA "Gina" MORRIS, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 10th day of April, 2015.

s/ Gina Morris  
U.S. DISTRICT COURT REPORTER