

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF ARIZONA
 3

4 Victor Parsons, et al., on)
 5 behalf of themselves and all)
 6 others similarly situated;)
 7 and Arizona Center for)
 Disability Law,)

8 Plaintiffs,)

9 vs.)

10 Charles Ryan, Director,)
 Arizona Department of)
 11 Corrections; and Richard)
 Pratt, Interim Division)
 12 Director, Division of Health)
 Services, Arizona Department)
 13 of Corrections, in their)
 Official capacities,)

14 Defendants.)
 15

No. CV 12-00601-PHX-DKD

Phoenix, Arizona

August 8, 2017

9:03 a.m.

16 BEFORE: THE HONORABLE DAVID K. DUNCAN, MAGISTRATE JUDGE

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 *(Evidentiary Hearing)*
 19
 20

21 Official Court Reporter:
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25 Proceedings Reported by Stenographic Court Reporter
 Transcript Prepared by Computer-Aided Transcription

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CHARLES RYAN

By Mr. Struck

16

By Mr. Specter

22

RICHARD PRATT

By Ms. Kendrick

41

JEFFREY VAN WINKLE

By Ms. Love

117

By Ms. Eidenbach

172

NORMAN TWYFORD

By Ms. Love

195

By Ms. Eidenbach

234

INDEX OF EXHIBITSDEFENDANTS' EXHIBITIDENTRECEIVED1 Aerial view of East Unit at Florence
Complex

139

140

2 Photographs - East Unit

140

149

3 Process and the times for the
Open nurse's line at South Unit

132

134

4 Aerial view of South Unit at Florence
Complex

150

151

5 Photographs - South Unit

152

164

6 Process and the times for the
Open nurse's line at East Unit

131

131

8 Photographs - Santa Cruz Unit
Perryville

206

216

9 Photo - Thermometer and temperature
Readings

230

234

10 Photographs Perryville Medical Unit

216

234

01:43PM

PLAINTIFFS' EXHIBIT**RECEIVED**

12	6-5-17, 6-6-17 Nursing Notes: Ashworth	116
13	Grievance L02-007-17 and documents Mr. AG	116
14	Perryville Grievance B42-008-017	116
15	5-4-17 Grievance Y02-03417	116
16	6-1-17 e-mail: Open Sick Call	116
17	5-25-17 Minutes Douglas Mohave Town Hall	116
18	12-2-16 notes 24 HNR Sick Call/IGA Contracts	-
19	1-31-17 Memo Florence Globe DW to K. Curran	116
20	11-29-16 Memo to all Florence-North inmates	116
21	Grievance A02-058-017	116
22	5-15-17 email: Open Sick Call Plan	116
23	11-23-16 emails: Open Sick Call	116
24	12-2-16 email: 12 Hour Nurses Line	116
25	4-10-17 email: Follow Up to Medical Meeting	116
26	12-7-16 email: New HNR process Perryville	116
27	12-7-16 email: Open Sick Call	116
28	Undated Document showing Nursing Line Hours	116
29	5-15-17 email: Redirection for HNR boxes	116
30	12-7-16 email: Open Sick Call Starting	
31	12-5-16	116
32	12-2-16 email: New Process for HNRs	116
33	3-17-17 email: Medical Clearance	116
34	2-16-17 email: Copy of HNR Box v Sick Call	116
35	2-7-16 email: HNRs	116
36	1-18-17 email: Identification and Standardization of eOMIS chronic care	116
37	1-4-17 email: Requested info for Corizon Inmate	116
38	3-17-17 email: Encrypted - Unpaid Claims	116
39	3-3-17 email: Pharmaceuticals	116
40	June 2017 Arizona Monthly Staffing Report	116
	6-7-17 email: Exam Tables	116

P R O C E E D I N G S

THE MAGISTRATE CLERK: Civil Case Number 12-601, Parsons, et al., versus Ryan, et al., on for evidentiary hearing.

THE COURT: Would counsel please state their appearances for the record.

09:03AM

MR. SPECTER: Donald Specter and Corene Kendrick from the Prison Law Office.

MS. EIDENBACH: Kirsten Eidenbach for the prisoner plaintiff class. Behind me is Maya Abela for the Arizona Center for Disability Law.

09:03AM

MR. STRUCK: Daniel Struck, Tim Bojanowski, Rachel Love, and Anne Orcutt for the defense.

THE COURT: Thank you very much. I also see that we have Director Ryan here this morning. I'd like to start out by addressing you, sir.

09:03AM

It is the tradition of the Supreme Court of the United States for justices of the court to read from the bench decisions which are deemed of particular importance. Although as a magistrate judge I am the lowest federal judge, I nevertheless hold in my hands the judicial power of the United States, and I must assure that this power is respected in all instances of its application. Our system of government, with its separation of powers among three branches, which has served us so well for 229 years requires no less.

09:03AM

09:04AM

1 Director Ryan, in the final paragraph of your July 27,
2 2017 e-mail, you refer to my order as, quote, "preconceived,"
3 close quote. Webster's defines preconceived to mean, quote,
4 "to form as an opinion prior to actual knowledge or
5 experience," close quote. The recent retaliation addressed in 09:04AM
6 my July 25 order was not the first time the Court addressed the
7 subject of retaliation. The Court previously conducted an
8 emergency telephonic hearing when the plaintiffs' lawyers
9 reported what they had seen with their own eyes; inmates who
10 spoke with them were immediately ticketed for the minor 09:05AM
11 infraction of having their shirttails out. I made it clear at
12 that hearing that I would countenance no retaliation of any
13 kind for actions associated with the Court's information
14 gathering function. I also made it clear that corrections
15 officials should find another time to ticket for minor 09:05AM
16 infractions than soon after inmates have provided information
17 about their medical care. I made it crystal clear that I
18 wanted no hint of retaliation that would chill the inmates'
19 willingness to come forward with information.

20 Defendants' lawyers objected during that incident 09:05AM
21 because they felt they did not have an opportunity to present
22 their side of the story. Just as now, I, of course, provided
23 that opportunity. What did defendants' lawyers do? Nothing.
24 Despite repeated invitations and reminders from me, defendants'
25 lawyers never sought or pursued their day in court on this 09:05AM

1 issue. Thus, defendants' lawyers left unchallenged the
2 on-the-scene report from plaintiffs' lawyers that they had
3 witnessed retaliation. Thus perhaps you can understand how
4 this left me with the, quote, "actual knowledge or experience,"
5 close quote, of retaliation on the yard.

09:06AM

6 Then moving forward to the recent inmate witnesses'
7 testimony before me, all of them expressed a fear of
8 retaliation. I assured them that I could count on defendants'
9 lawyers to protect them from any retaliation, even though I
10 learned at that same hearing that the witnesses had been rolled
11 up and their possessions boxed on the day of their traveling to
12 court. The defendants' lawyers remedied this misstep
13 immediately, but then I heard from plaintiffs' lawyers again
14 that their clients experienced changes in their conditions of
15 confinement immediately after their testimony to me, which they
16 perceived as adverse. Thus I had again a prima facie case of
17 retaliation. I know that these witnesses believe that they
18 have experienced retaliation. I then conduct another emergency
19 hearing where I learn more about the circumstances of these
20 adverse actions, and none of the circumstances as explained to
21 me in light of my previous admonition that there be no
22 retaliation makes sense to me.

09:06AM

09:06AM

09:07AM

23 The defendants' lawyers presented counter arguments
24 which I told them did not even pass the straight face test. I
25 described them as hyperbolic and preposterous. I then returned

09:07AM

1 all inmates to the status they were in before they testified.
2 That is the least dramatic remedial action that a court can
3 take. I did so late on a Friday afternoon upon hearing
4 witnesses -- hearing of witnesses' concern that they were in
5 danger over the weekend. So I returned us to the status quo,
6 and I afforded the opportunity for a hearing and I required
7 that there be no retaliation.

09:07AM

8 In compliance with this order, Director Ryan, you have
9 sent an e-mail directing your staff to comply with my order but
10 you included language which challenged the legitimacy of the
11 order. You and I are in the same business. Every moment of
12 our working lives we are focused on preserving the society
13 where the rule of law prevails, in other words, adherence to a
14 common understanding of principles of conduct defined by the
15 founders' constitution and the laws of our representative
16 assemblies. In our system it has been since *Marbury v. Madison*
17 the province of the judicial branch to say what the law is. If
18 one disagrees with what the law as so decreed is, then there is
19 the right to appeal or to change the law but not to undermine
20 the legitimacy of the judiciary in pronouncing the law. Thus,
21 I would think this would be something that you, of all people,
22 would understand, as you supervise tens of thousands of people
23 who have not followed the law but we hope to inculcate in them
24 an understanding of what an ordered society requires because
25 almost all of your charges will some day return to our cities

09:08AM

09:08AM

09:08AM

09:09AM

1 and towns and neighborhoods.

2 Prominent public service like you, Director Ryan, can
3 greatly influence whether we live in a society where there is
4 respect for the law, even laws with which you disagree. The
5 tone of leadership matters on this, and whether you refer to a
6 court ruling when you address your troops as, quote,
7 preconceived, close quote, or as the recently convicted sheriff
8 in our county who thought that he could do as he wished
9 notwithstanding contrary orders of the Court or references to
10 so-called judges.

09:09AM

09:09AM

11 All of this disrespect for the rule of law, something
12 I have never experienced of this kind or seen in nearly 30
13 years of being a lawyer or 16 years as a judge. I worry where
14 this all leads. I worry that it sends a message that we only
15 follow the laws that we think are right, or that we can choose
16 whether we wish to do what is necessary to follow the law.

09:09AM

17 This case is fundamentally about a failure of the
18 Department of Corrections to follow the law of this case. For
19 years, your promise to provide the health care required by the
20 stipulation has failed. This promise has not been met. All of
21 my time in this case is focused on one thing: Compliance with
22 the promise of health care in accordance with the stipulation.
23 Your comments in the context of this long-term failure to do
24 what the law requires with respect to providing health care to
25 your charges potentially thwarts my efforts to enforce the

09:10AM

09:10AM

1 stipulation and potentially commits a broader assault against
2 the rule of law. Imagine how you would feel if you directed
3 your wardens not to take a specific action but in communicating
4 that message your warden then also said to his or her staff
5 that the director's decision is preconceived, not based on the 09:10AM
6 full story, and you all are doing a great job. That is how I
7 felt when I read your e-mail. I then ordered that you provide
8 me with all written communication that was associated with
9 communicating my order prohibiting retaliation. I saw there
10 statements of your staff which indicated to me that they 09:11AM
11 embraced the core value of my order, unimpaired by your mixed
12 message. I hope that that's an accurate representation.

13 However, notwithstanding what is written, your e-mail
14 left me with a great concern that you did not fully embrace
15 your absolute obligation to follow to the letter and to the 09:11AM
16 spirit the rulings of this Court until they are reversed by me
17 or by the Court of Appeals or by the Supreme Court. That is
18 what the rule of law requires, nothing less, nothing qualified,
19 nothing diluted by disparagement.

20 We can now proceed with any preliminary matters that 09:11AM
21 counsel need to raise before we hear the witnesses. Anything
22 from the plaintiffs' side?

23 MR. SPECTER: No, Your Honor.

24 THE COURT: Mr. Struck?

25 MR. STRUCK: Yes, Your Honor. I would like to make a 09:11AM

1 few comments based upon what the Court just stated.

2 THE COURT: Surely.

3 MR. STRUCK: First of all, I want to say that Director
4 Ryan has great respect for the law. And the comments with
5 respect to the preconception in the order were based upon his
6 actually having sat in on the telephonic hearing that occurred
7 on the 21st.

09:12AM

8 THE COURT: I was aware that he was present.

9 MR. STRUCK: Yes. And I know you were aware. The
10 fact that there were eight individuals that were prepared to
11 testify, and I understand there might have been time
12 constraints by the Court that precluded that from happening,
13 and the fact that the Court made a determination that there was
14 retaliation based upon statements by counsel for plaintiff and
15 hearsay upon hearsay in some instances of some of the inmates
16 without hearing any of the evidence with respect to why these
17 actions actually took place with respect to the two individuals
18 who were concerned about being retaliated against.

09:12AM

09:12AM

19 Your Honor, I have represented not just ADC but
20 CoreCivic, every county in this state, and I will tell you I
21 have had about 1,300 lawsuits that I have defended with respect
22 to inmates. And in the vast majority of them, there's always a
23 claim for retaliation. That is something that prisoners go to
24 when they believe that something is happening that they don't
25 like, they automatically assume, well, I'm being retaliated

09:13AM

09:13AM

1 against. At no time until this case has there ever been a
2 finding of retaliation in any of the cases I have ever handled.
3 We were going to be here on September 11th, and we will present
4 evidence with respect to why these things happened to these two
5 individuals and explain to the Court that it was merely the 09:13AM
6 normal actions of prison operations. It had nothing to do with
7 this lawsuit, with the exception of the inmates who were asked
8 if they wanted to move closer to the health facility if they
9 had trouble ambulating which, by the way, they weren't forced
10 to move. They were just asked if they wanted to, which seems 09:14AM
11 to be a reasonable response to concerns that there are people
12 that are handicapped and are too far away from the health
13 facility to attend.

14 That is not retaliation. At least that's our
15 position, that's not retaliation. The concern that the 09:14AM
16 director has is with respect to the due process. And I know
17 the Court holds due process just as high as the respect for the
18 law. Due process is the cornerstone of our judicial system.
19 And we would like the opportunity, and you have granted us that
20 opportunity. But right now, we have an order of retaliation 09:14AM
21 based upon, in part, statements made by counsel for plaintiff.
22 And by my review of the transcripts, because I wasn't at the
23 hearing on the 14th or the 21st, but I understood that the
24 Court believed that in the past, he had heard from other
25 inmates who went to settlement conferences that they believed 09:15AM

1 they were retaliated against and had spoken to inmates who were
2 out of the system who believe they were retaliated.

3 The director was responding to his concern that the
4 Court was implying that there's some sort of unofficial policy
5 at the Department of Corrections to retaliate against inmates 09:15AM
6 as a result of lawsuits, and that is not the case. They take
7 retaliation claims very serious. They take misconduct claims
8 very seriously. And it was an affront to the director to being
9 told that his 9,500 employees are retaliating against the
10 inmates in their charge. 09:15AM

11 And that, I think, is where the preconception comment
12 in the e-mail came from. The director -- and I was at the
13 video conference. The director was very strong in his comments
14 to the wardens and deputy wardens that there was to be no
15 retaliation. There's no ifs, ands, or buts about the 09:16AM
16 director's position with respect to retaliation. Simply
17 because he doesn't agree with your finding that retaliation
18 occurred is not disrespect to the Court. Thank you.

19 THE COURT: Two issues: First, I don't believe
20 there's a finding on the 25th of July order with respect to 09:16AM
21 retaliation. I believe that it states that all of these
22 developments strongly suggest retaliatory action. The Court in
23 that same order sets forth the hearing for the opportunity for
24 you to present your side of the story, but I hold the status
25 quo by returning the inmates to their previous condition and I 09:16AM

1 also explain in detail how it is that the Court comes to its
2 conclusion that it's a reasonable response to the developments
3 in this case to indicate that there is a strong suggestion of
4 retaliatory action. It is, I think, wrong to characterize it
5 as being a finding of that given that we are having a hearing 09:17AM
6 on it; and secondly, I don't believe I found that 96 -- did you
7 say 9600 people had engaged in retaliatory conduct? That's,
8 again, hyperbolic, not helpful here.

9 MR. STRUCK: I'm sorry. That's how many employees are
10 at the Department of Corrections. 09:17AM

11 THE COURT: I understand. What you said is I accused
12 9600 people of retaliatory conduct. There's nothing in the
13 order that says that. That kind of hyperbole is not helpful.

14 MR. STRUCK: It is not meant to be hyperbole, Your
15 Honor, at all. 09:17AM

16 THE COURT: The transcript will indicate what it says.

17 MR. STRUCK: And the portion of the order I'm
18 referring to is on Page 3 where you state, "The temporal
19 proximity between their protected conduct and the adverse
20 actions are too close in time to reasonably be viewed as 09:17AM
21 anything but retaliatory." If that's not a finding that it's
22 retaliation, please accept my apology and I look forward to
23 presenting evidence on the 11th to show the Court that it is
24 not retaliation.

25 THE COURT: Right. As it stands, as I say, it's a 09:18AM

1 prima facie showing of retaliation un rebutted yet, but we will
2 have the opportunity to hear from the defendants on that point.
3 But I think it is wrong to characterize this as a finding given
4 that I did give you the opportunity for a hearing. Why would
5 the Court conduct a hearing if it had already decided? But 09:18AM
6 what I did is I returned to the status quo, and I also
7 cautioned again that there be no retaliation, something that is
8 been very plain, I hoped, but as I saw in this courtroom you
9 have a different saw of what the rollup and the boxing is. I
10 listened to Ms. Love explain to me why that happens. It didn't 09:18AM
11 make any sense to me, and I don't think it would make any sense
12 to a reasonable person that when someone comes off to court
13 that they need to have their possessions boxed up to protect
14 them when, in fact, they would be at court the same amount of
15 time, I imagine, that they would be at work. That's what Ms. 09:19AM
16 Love told me.

17 MR. STRUCK: Not typically, Your Honor. Typically
18 they go to Maricopa County and they spend the night at the
19 Maricopa County Jail. That's generally where inmates within
20 the Department of Corrections go. 09:19AM

21 THE COURT: Did that happen in this case with these
22 witnesses?

23 MR. STRUCK: No.

24 THE COURT: No. It didn't happen. Thank you. You
25 may sit down. 09:19AM

1 So are you going to call, or are you going to call?

2 Who is going to call?

3 MR. STRUCK: We're going to call Director Ryan.

4 THE COURT: Sir, would you please step forward to the
5 clerk of the court and be sworn.

09:19AM

6 (The witness was sworn.)

7 THE MAGISTRATE CLERK: Thank you. Please have a seat.

8 THE COURT: Good morning again, Director Ryan. If you
9 would kindly move the microphone closer. Thank you.

10 You may proceed.

09:20AM

11 CHARLES RYAN,
12 a witness herein, having been first duly sworn by the clerk to
13 speak the truth and nothing but the truth, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STRUCK:

17 Q. Good morning. Would you state your name, please?

18 A. Charles Ryan.

19 Q. And by whom are you employed?

20 A. The Arizona Department of Corrections.

09:20AM

21 Q. And what is your position?

22 A. Director.

23 Q. How long have you been the director of the Arizona
24 Department of Corrections?

25 A. I have been the director since January 30th, 2009.

09:20AM

1 Q. How long have you been with the Department of Corrections?

2 A. I began my career with the Department of Corrections in
3 1977. I retired June 30th of 2003 then I returned to the
4 Department on January 30th, 2009.

5 Q. You don't have to describe every job you have held, but
6 what's the range of positions that you have held?

09:20AM

7 A. Started as a program officer after I had served as a case
8 analyst, then I was a classification officer, classification
9 administrator. I was a deputy warden at the time known as
10 assistant superintendent of a maximum security facility. For a
11 period of time I designed, staffed, and activated all prisons
12 under construction. Then I became a warden of the Winslow
13 prison and was there for eight years. I was the senior warden
14 over Florence and Eyman for two years followed by being the
15 deputy director of institutions for seven years and then my
16 last year I was the interim director for a little less than a
17 year and then I retired.

09:21AM

09:21AM

18 Q. Now, you have been asked by the Court to appear today to
19 let Judge Duncan know how you were able to -- or how you
20 managed to -- or how you accomplished providing information to
21 the employees at the Department of Corrections with respect to
22 the judge's order not to retaliate against individuals who were
23 participating in Parsons hearings.

09:21AM

24 Can you explain how you did that?

25 A. Yes. I saw the -- attended the telephonic hearing and I

09:22AM

1 heard the judge's order to go ahead and return the inmates to
2 their former status. Following the hearing on the 21st, then a
3 number of us regrouped, we had a conversation, and I directed
4 that those inmates be returned to their former status. Then
5 the following week on the 25th an order in fact was issued by
6 the magistrate judge. I read that order. And then I crafted
7 the e-mail that has been referenced. I worked with my general
8 counsel in finalizing that. The distribution on that e-mail is
9 rather lengthy but it certainly included the executive team and
10 the wardens.

09:22AM

09:23AM

11 In that e-mail, I indicated that in a few days
12 following there would be a video conference hearing and that
13 e-mail and the order in fact would be a topic at that video
14 conference.

15 Q. In the e-mail, what was the purpose of your e-mail?

09:23AM

16 A. The purpose of my e-mail was to comply with the Court order
17 to direct all staff without exception to follow that order to
18 the letter. So that there absolutely would be no
19 misunderstanding whatsoever by any employees that there would
20 be no retaliation or harassment or intimidation against any
21 inmate in the department.

09:24AM

22 Q. Do you expect your orders to be followed?

23 A. Absolutely.

24 Q. And this e-mail went to you said who exactly did it go to?

25 A. It went to a number of employees by specific name and then

09:24AM

1 categorically it went to the executive team and all wardens,
2 and they were directed to convey that message and the order to
3 all of the employees under their charge.

4 Q. And how was that done?

5 A. It was conveyed to them electronically by e-mail with the
6 Court's order as an attachment. Thereafter, it's my
7 understanding that those wardens and deputy wardens went ahead
8 and conducted their own briefings at their facilities and units
9 and conveyed that information to their staff.

10 Q. And that would include line staff, everybody?

11 A. The line staff would have received the information through
12 a briefing as they do not have predominantly the majority of
13 them do not have e-mails.

14 Q. When you're talking line staff, we're talking about
15 corrections officers?

16 A. Yes, sir.

17 Q. Do you have respect for the Court?

18 A. Of course I do.

19 Q. Do you have respect for the law?

20 A. Absolutely.

21 Q. There was comments that were read by the Court prior to the
22 hearing with respect to a portion of your e-mail at the end
23 when you talk about that you believed that it was the judge's
24 order was preconceived. Why did you put that in there?

25 A. I put that in there after I had listened in the emergency

1 hearing on the 21st. It gave me the impression that the Court
2 was predetermining a finding. It's my understanding, I
3 believe, on the hearing on the 14th, and that information was
4 conveyed to me by counsel, that the magistrate judge had
5 indicated based on his experience in settlement cases that he
6 often believed that there was retaliation on going in the
7 Department of Corrections. So to me, that was planting a seed.
8 When I listened to the emergency hearing it was for the most
9 part, what sounded like a discussion or an encounter between
10 our counsel and the magistrate judge and the Court was --
11 conveyed that he was pressed for time and he had to catch a
12 plane. The Court also indicated that he intended as necessary
13 that he would micro manage this case.

09:27AM

09:27AM

14 Now, back to my video conference and that was a
15 meeting that probably took about an hour and half, and the
16 first 10 minutes of which at most, were devoted to the e-mail
17 and reference to the order, I asked everyone involved in that
18 hearing video conference, excuse me, if they had any questions.
19 And there were probably, round number, 100 people involved in
20 that video conference and no one asked a single question. I
21 emphasized following the fact that no one asked any questions I
22 said ensure that the order is complied with. The magistrate
23 judge is on record as saying he will micromanage this case.

09:28AM

09:28AM

24 Q. How did you convey -- I mean when you conveyed to the folks
25 on the video conference with respect to following the order,

09:29AM

1 was it done strongly?

2 A. It mostly certainly was. I read the e-mail. I believed in
3 what I wrote. I did it with emphasis. And there was no
4 question and I don't believe any uncertainty on the part of the
5 people in the conference room or with the people on the video
6 conference. I believe all people understood the message that
7 was being conveyed. You follow that order to the letter.

09:29AM

8 Q. Do you take claims of retaliation seriously?

9 A. I most certainly do.

10 Q. Why is that?

09:30AM

11 A. Because it's unprofessional. It's a violation of our code
12 of ethics. It's a violation of policy. It's a violation of
13 our investigation policies. And inmates are not committed to
14 the Department of Corrections to be subjected to harassment.
15 They are committed to the Department of Corrections and removed
16 from society and that is their sanction or their punishment.
17 They are not sent to the Department of Corrections to be
18 punished.

09:30AM

19 Q. What happens if there is a determination of retaliation
20 with respect to one of your employees on a prisoner?

09:30AM

21 A. They are subject to investigation and if it is determined
22 that the allegations are sustained against the employee then
23 they are subject to disciplinary action.

24 Q. And has that occurred over your tenure as director?

25 A. It absolutely has.

09:31AM

1 Q. No more questions.

2 THE COURT: Thank you. Any cross-examination?

3 MR. SPECTER: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SPECTER:

09:31AM

6 Q. You have -- Mr. Ryan, we have met before. You know who I
7 am, Don Specter?

8 A. I do.

9 Q. Okay. Do you have the e-mail in front of you?

10 A. I do not.

09:31AM

11 Q. May I approach?

12 THE COURT: You may.

13 MR. SPECTER: You have the e-mail.

14 THE COURT: I do.

15 By MR. SPECTER:

09:31AM

16 Q. On direct examination from Mr. Struck you just told the
17 Court that you have respect for the rule of law and respect for
18 the Court, is that right?

19 A. Yes.

20 Q. Do you believe it was respectful to the rule of law and
21 respectful for the Court for you to write in the e-mail that
22 the Court heard only one side of the story?

09:32AM

23 A. I believe that's what I had heard in that hearing.

24 Q. Do you believe it was respectful to the Court to say that
25 the Court's order was based on only bare allegations of inmates

09:32AM

1 when the Court had heard the testimony of those inmates?

2 A. I believe it was the bare information.

3 Q. Do you believe it was respectful to the rule of law and the
4 Court when you told your staff in that e-mail that the order
5 was disappointing?

09:33AM

6 A. I don't believe it was disrespectful.

7 Q. Do you believe it was respectful to the Court or to the
8 rule of law that the when you told your staff that the order
9 was issued before the Court had heard any actual evidence when
10 it actually had heard testimony of inmates?

09:33AM

11 A. I believe the Court had heard limited information, and I
12 don't believe that our counsel had been afforded an adequate
13 opportunity to examine those witnesses.

14 Q. You understand that courts in this country are supposed to
15 make their rulings based on evidence and the rule of law and
16 they are not supposed to make judgments based on their
17 preconceived ideas of what the results should be? Do you
18 understand that?

09:33AM

19 A. Fundamentally, yes.

20 Q. So do you believe it was respectful to Judge Duncan or the
21 rule of law to tell your staff that his order was preconceived?

09:33AM

22 A. Mr. Specter I do not believe that was being disrespectful
23 to the Court. Based on what I had heard, I believe that to be
24 the case.

25 Q. So isn't it true that by telling your staff all those

09:34AM

1 things that we just mentioned, that you just testified about,
2 that Judge Duncan, the message you were sending to your staff
3 was that Judge Duncan was not justified in issuing his order,
4 that it could possibly be rescinded, and some of the people on
5 your staff might understand that to mean that they didn't have
6 to comply with that order. Isn't that true?

09:34AM

7 A. No, it's not.

8 Q. Then, well, last night I was trying to find in your
9 policies that are on line a policy against retaliation against
10 prisoners for exercising their right to the Court. I couldn't
11 find it. Was I missing something, a written policy?

09:35AM

12 A. Yes. There is written policy relative to the code of
13 conduct, the code of ethics.

14 Q. I looked at those, sir.

15 A. Harassment.

09:35AM

16 Q. I didn't see any words about retaliation in those policies.
17 Am I mistaken?

18 A. I believe you are mistaken. And if I could look at the
19 policies, I don't memorize them, but I, too, looked at those
20 policies last evening as well.

09:35AM

21 Q. Okay. So the department's policy as far as you understand
22 it is to prohibit retaliation against prisoners for exercising
23 their right of access to the Court, is that right?

24 A. There is to be no retaliation against inmates for
25 exercising their right.

09:36AM

1 Q. And that's your personal policy as well, right?

2 A. That is the professional position of the Department of
3 Corrections.

4 Q. And that's your position in part because you want these
5 people who testified and others to be able to testify freely,
6 voluntarily, and provide what they believe is accurate
7 information to the Court. Isn't that correct?

09:36AM

8 A. Yes.

9 Q. Yet you made all these what I will call disparaging remarks
10 about the Court's processes and judgment and order and the
11 circumstances that led the Court to issue this order when the
12 order itself does nothing more than direct you to follow your
13 own policy. Isn't that true?

09:36AM

14 A. I don't believe I was being disparaging to the Court. I
15 think that is your statement. Whether there is disagreement or
16 not, the Court's order is that. It is the order and it was to
17 be followed and is being followed.

09:36AM

18 Q. Why did you find it necessary to make those comments about
19 the Court's order when your own policy is consistent with the
20 Court's order? Why did you make those -- why did you believe
21 it was necessary to make those comments?

09:37AM

22 A. I made those comments because I did not believe that all of
23 the information had been put forth and I wanted our employees
24 to understand that I would be working with our counsel to try
25 and present additional information to influence the Court in

09:37AM

1 its decision.

2 Q. Don't you understand that some people could have read those
3 comments and believed you were trying to undermine the
4 legitimacy of the Court's order regardless of your intent?

5 MR. STRUCK: Asked and answered.

09:38AM

6 THE COURT: Overruled.

7 THE WITNESS: Repeat your question, please.

8 BY MR. SPECTER:

9 Q. Don't you believe that some people who read that e-mail,
10 especially the last few paragraphs, could have taken that to
11 mean that you were trying to undermine the legitimacy of The
12 court's order?

09:38AM

13 MR. STRUCK: Calls for speculation.

14 THE COURT: Overruled.

15 THE WITNESS: No, I don't.

09:38AM

16 BY MR. SPECTER:

17 Q. So you were on the telephone call where you were the --
18 during the emergency status conference hearing on July 21st,
19 were you not?

20 A. Yes.

09:38AM

21 Q. And you heard what the Court said and you heard what your
22 counsel said, correct?

23 A. Yes.

24 Q. And you heard the Court say -- this is on Page 13 -- that
25 you take the issues -- the judge is referring now to Ms. Love,

09:39AM

1 and through her, you and your staff, that there will be no
2 change in the status of any kind unless you can demonstrate to
3 me that there is a danger to people on the prison yard or some
4 other very convincing reason that you take any action within
5 the facility that changes the status of somebody who comes to
6 my court to testify.

09:39AM

7 Do you recall the judge saying that?

8 A. Yes.

9 Q. And do you recall the judge saying, quote, "I essentially
10 said somebody gets a gold pass or a freedom of being written up
11 for a shirttail or any other similar minor infraction close in
12 any time to when they communicate to the plaintiffs or they
13 communicate to me. They get a free pass on that."

09:40AM

14 Do you recall that, too?

15 A. Yes.

09:40AM

16 Q. Now, after that hearing, did you take any action to follow
17 the status of the prisoners who testified in your court, I
18 mean, in this court, to find out whether they were being
19 subject to any of the kind of minor infractions that the Court
20 referred to?

09:40AM

21 A. On the 21st?

22 Q. No, subsequently.

23 A. I think we had discussion with counsel but I don't recall
24 specifically that we were focused on any individual inmate.

25 Q. So you didn't issue an order asking your staff to keep you

09:41AM

1 apprised of any change in the status or giving minor
2 infractions to the prisoners who were a subject of the hearing
3 on the 14th, is that right?

4 A. We were talking about the 21st. Now you are saying the
5 14th.

09:41AM

6 Q. Prisoners testified on July 14th. Do you understand that?

7 A. Yes, but I was not at the hearing on the 14th and I don't
8 believe at the time I had read the transcript from that
9 hearing.

10 Q. The Court in the July 1st (sic) telephone conference was
11 concerned about retaliation against those prisoners who
12 testified on the 14th. Do you understand that?

09:41AM

13 A. Yes.

14 Q. Did you take any action to direct your staff to provide you
15 with information on the change of status of any of those
16 inmates who testified at the hearing on July 14th?

09:42AM

17 A. No.

18 Q. Do you know that Ms. Ashworth testified in this case?

19 A. Yes.

20 Q. And you were aware of the fact that her cellmate was moved
21 shortly after she testified?

09:42AM

22 A. I believe that occurred within a few days.

23 Q. Right. And that you were aware that Judge Duncan ordered
24 that her cellmate be returned to Ms. Ashworth 's cell?

25 A. Yes.

09:42AM

1 Q. Did you meet with Ms. Ashworth's cellmate?

2 A. No.

3 Q. Is there a policy at Perryville which provides that the
4 inmates, including Ms. Ashworth, can open their cell door so as
5 to increase the circulation of the air during this time of
6 substantial heat?

09:43AM

7 MR. STRUCK: Your Honor, this is going beyond the
8 scope of the purpose of Director Ryan's testimony. We can
9 provide testimony with respect to Perryville and Ms. Ashworth
10 on the 11th when we have the hearing.

09:43AM

11 THE COURT: How is it related to retaliation, Mr.
12 Specter?

13 MR. SPECTER: I will show you in two questions.

14 THE COURT: Overruled.

15 THE WITNESS: Ask your question again.

09:43AM

16 BY MR. SPECTER:

17 Q. Are you aware that there's a policy of allowing prisoners
18 in Perryville and in Ms. Ashworth's unit to have their cell
19 doors open so that the air can circulate more freely?

20 A. I'm not intimately familiar with the operational procedure
21 at the unit that the inmate you are referencing is assigned.

09:43AM

22 Q. Okay.

23 MR. SPECTER: Can I approach again, Your Honor?

24 THE COURT: You may.

25 Thank you. Do you have an extra copy perhaps for Ms.

09:44AM

1 Brown?

2 BY MR. SPECTER:

3 Q. Director Ryan, what I have just handed you is an e-mail
4 that we received from Lucy Rand who is one of your counsel in
5 this case. It is dated Sunday, August 6, at 7:22 p.m. And if
6 you look at the third paragraph down, do you see that where it
7 says, "Further"?

09:44AM

8 A. Yes.

9 Q. Could you read that paragraph or that sentence please?

10 A. Certainly. "Further, the inmates in this housing area are
11 able to leave their cells open so as to receive air from the
12 common areas which increases air circulation and reduces the
13 likelihood of uneven temperatures."

09:45AM

14 Q. Right. We received information from Ms. Ashworth during a
15 phone call yesterday that she, despite this, despite what Ms.
16 Rand wrote, that she was given a ticket for having her cell
17 door open on Saturday?

09:45AM

18 MR. STRUCK: Objection, Your Honor.

19 THE COURT: Just a second. What's the objection?

20 MR. STRUCK: Counsel is testifying. That's hearsay.

09:45AM

21 THE COURT: He's asking a question based on what his
22 client told him. He can ask him. It's not dependent upon the
23 truth of the statement. He's just asking a question about it
24 overruled.

25 THE WITNESS: What's your question?

09:46AM

1 BY MR. SPECTER:

2 Q. My question is we were told by Ms. Ashworth during a legal
3 phone call on Saturday that she received a ticket for having an
4 open cell door after she was told, consistent with Ms. Rand's
5 e-mail, that she may have her cell door open in this time of
6 extreme heat in order to increase the circulation of air in the
7 cell. My question is, do you know anything about that?

09:46AM

8 A. No.

9 Q. Would you be concerned about that if it is true?

10 A. Yes.

09:46AM

11 Q. And why would you be concerned about it?

12 A. If it, in fact, has been the practice to allow the cell
13 door to be open to allow for better or more even air flow and
14 the door was not, that would be concerning.

15 Q. And would you be concerned that because of the fact that
16 Ms. Ashworth has testified in this case, in this courtroom,
17 that it is -- that the ticketing is another act of retaliation
18 or a act of retaliation?

09:46AM

19 A. My concern would not be about Inmate Ashford. It would be
20 are we consistent in our practice. Is the door going to be
21 allowed to be open so that air flow can occur, it shouldn't
22 matter who the which inmate it is.

09:47AM

23 Q. You gave a video conference about the judge's order?

24 A. Yes.

25 Q. What day was that?

09:47AM

1 A. A week ago today. So that I think that would have been
2 August 1st.

3 Q. And the video conference lasted for 90 minutes?

4 A. About 90 minutes.

5 Q. And this video conference that technology that you used is
6 it your understanding that it had any recording capabilities?

09:47AM

7 A. We do not have recording capability for that technology.

8 Q. Did you make any notes prior to the conference about what
9 you were going to say?

10 A. No.

09:48AM

11 Q. Do you know if anybody took notes during that conference?

12 A. I don't know if anybody took notes. They may have taken
13 notes in the institutions because the audience was 10 prison
14 complexes. It was the wardens, the deputy wardens of
15 operations, the unit deputy wardens, the facility health
16 administrators, the department's health service monitors, I
17 think there was the directors of nursing from Corizon, and
18 there may have also been other nurses in the conference room at
19 my office. It was attended by many of my executive team, my
20 general counsel, all three of the outside counsel here in the
21 courtroom, the AG, assistant AG Michael Gottfried, Richard
22 Pratt, the co-defendant, and some other staff.

09:48AM

09:49AM

23 Q. So I take it you didn't talk for the whole 90 minutes?

24 A. No. As I have already said earlier, I called the meeting
25 to order and I asked if the everyone on the conference and in

09:49AM

1 the conference room had read the e-mail and had read the
2 Court's order and I got a collective affirmative response that
3 they had. I took the liberty of only reading the e-mail
4 verbatim and at the conclusion of that, I asked did anyone have
5 any questions. No one asked a question. That told me they
6 understood what the requirement was to follow that order to the
7 letter, and then my final comment was ensure that the order is
8 followed to the letter. The magistrate judge is on record
9 saying he was going to micromanage this case. We then went on
10 to another topic.

09:50AM

09:50AM

11 MR. SPECTER: No further questions.

12 THE COURT: Thank you. Any redirect?

13 MR. STRUCK: No, Your Honor.

14 THE COURT: Director Ryan, let me assure you the last
15 thing I want to do is micromanage your prisons. I only do that
16 because you haven't been able to deliver what you promised to
17 deliver, and that was compliance with the stipulation's
18 requirements with respect to providing health care. And so the
19 stipulation has a mechanism to address that failure, and that
20 mechanism requires me to first give an opportunity to you all
21 to try again, to try something else to see if you can work it
22 out on your proposal. If that fails, then one of the options
23 that's open to me is to come up with the mechanism myself.
24 That's not the best method. That means micromanaging. It
25 means me jumping into your chair and trying to figure out what

09:50AM

09:51AM

09:51AM

1 I can't figure out, and that is all of the years of knowledge
2 and experience that you have.

3 But notwithstanding all of those years and experience,
4 you haven't been able to perform what I thought would be at the
5 time we settled the case pretty straightforward and likely to 09:52AM
6 occur, and that is compliance with the stipulation. And what
7 we have now, more than two years out, is what I previously
8 described as abject failures to comply with the stipulation.

9 So that means I jump into your chair and I micromanage. And I
10 don't want to do that. But I can only do it to even a marginal 09:52AM

11 degree of success if I have full information, and that's why I
12 visited the yard. I learned a couple things there that your

13 lawyer suggested maybe I can pull out of my head things that I
14 learned that are unrelated to what comes into the testimony in

15 the Court. But I'm the fact finder and the law decider here in 09:52AM
16 this case, so I'm both. So I pay attention to what I do. I

17 visited one of the health clinics. It was so hot in that

18 health clinic that I sweated so profusely that your lawyer

19 offered me paper towels. And my hearing aid was destroyed by

20 the amount of water in my ear. So it was that hot in that 09:53AM

21 health clinic. I don't know what the temperature was, but I

22 knew that it was untenable.

23 So I observed that. And that's in the context of the

24 case where I have this performance measure that requires that

25 inmates who are receiving medication that exposes them to a 09:53AM

1 greater risk of heat intolerance and ability to regulate their
2 temperatures is an issue in my case. So I observed those
3 things, but you could easily say to me, well, there are
4 imperfections about your observation there. It's not the whole
5 story. And unfortunately, I can't always get the full story 09:53AM
6 because the full story would be requiring that I have your
7 knowledge and experience of your many years and also have a
8 good conduit of information. My conduit of information is
9 impaired because I'm not on the yard. I would like to live
10 there, actually, for a while, so that I could see myself how it 09:54AM
11 works and understand it better.

12 But I can't do that. And so the next best thing is
13 the conduit of information that comes from the plaintiffs from
14 the monitors, and from the inmates themselves who testify. And
15 that's important to me because just as you sit in this witness 09:54AM
16 chair five feet away from me so did those inmates and they
17 talked to me, and I was able to address credibility in a way
18 slightly different than what Mr. Struck said with respect to
19 his understanding that retaliation is a frequent theme and is
20 not to be trusted. 09:54AM

21 I must tell you that the witnesses who testified in my
22 court seemed incredibly credible to me. And it may well be
23 that they are not telling the truth about the issues with
24 respect to retaliation, but there was nothing that gave me any
25 hint of that when they testified in front of me. So I had all 09:55AM

1 of this in my head when you say that I embarked on an
2 impermissible preconceived order that was unfortunate, in your
3 words, I think.

4 But I guess the question that I asked in a broad
5 sense, I would ask to you directly. If you directed one of 09:55AM
6 your wardens to do something that the warden thought was not
7 appropriate because it was preconceived, not based on the whole
8 story, and then that warden took your command to do what you
9 had directed, and instead, communicated to the staff this is
10 what the director says to do, but as you consider this 09:55AM
11 directive from the director, understand also that it was based
12 upon preconceived information, it was faulty, and you are all
13 doing a great job. How would that make you feel as the
14 director if you saw that circumstance among one of your
15 wardens? 09:56AM

16 THE WITNESS: Judge Duncan, if, in fact, something
17 like that occurred, and they did not comply with the directive,
18 then I, in fact, would have a real problem with that. In the
19 case of your order, it has been complied to to the letter. And
20 I took it, Your Honor, I took it seriously, what you said. 09:56AM
21 Just because I may not, with all due respect, agree with
22 everything that you communicate, I followed your order and I
23 would not violate the order. And I did not do what has been
24 suggested by plaintiffs.

25 THE COURT: And I guess I just would make this final 09:56AM

1 observation, and that is, how I worry about the danger of
2 including the additional language that you did, even though you
3 believe that the order was complied with, you honestly can't
4 know because you can't know what happened with every
5 interaction of your corrections officers at the lowest level,
6 middle level, highest level, you can't know about all of those
7 interactions. But the best you can do is to tell them in as
8 plain and straightforward words as possible do not do this.

09:57AM

9 But I will just say to you, and I understand your
10 response it to, that if I were a director of corrections and I
11 knew that a warden had communicated my command to do something
12 but in the same breath had said that it was preconceived and
13 faulty, I would worry that even though I was getting a report
14 back that everybody had complied with my order, that I would
15 not necessarily be getting the whole picture because I had
16 communicated that it was okay by sort of a wink wink nod nod to
17 continue violating the order. And that's how I read it.

09:57AM

09:58AM

18 So I understand that you have a different view but I
19 wanted to make you understand that I think that my reaction was
20 not unreasonable for the reasons that I have just expressed.

09:58AM

21 Just one more question, if I could, and that is: One
22 of the exhibits attached in response to my order that we
23 received the written documents associated with your
24 communication of the July 25 order, one of the documents
25 mentioned another video conference on the 10th of August. Was

09:58AM

1 that a mistake or is there another planned video conference on
2 this topic?

3 THE WITNESS: Judge Duncan, I'm not aware of another
4 video conference.

5 THE COURT: Okay. All right. And then the last thing 09:58AM
6 that I will have to say is, get me out of this business of
7 micromanaging your operation. And the simple pathway to doing
8 that is to make sure that when Mr. Struck or Mr. Bojanowski
9 stand up in court on a monthly basis they tell me the
10 performance measures are being met at 85 percent across the 09:59AM
11 board, we get there. I'm out of your hair. And what's more
12 important is that the health care promise that was made to the
13 inmates is being delivered, and that's what I'm here for. And
14 I will be micromanaging until we get into that position but
15 there's an easy pathway out of it. You have the complete 09:59AM
16 control to do it. So I hope you do. Thank you, sir.

17 THE WITNESS: Judge, thank you for taking the time.
18 And I can assure you that we will comply with your orders to
19 the letter. There was no intention to be disrespectful to the
20 Court. I believe, with all due respect, I want you out of this 10:00AM
21 case as bad as everybody else.

22 THE COURT: I don't have any doubt about that.

23 THE WITNESS: So we will continue to stay after our
24 vendor to fulfill their requirements to perform.

25 THE COURT: And I'm sure you have read the transcript 10:00AM

1 and you understand one of the issues that I have previously
2 identified, and that is the cross current of economic
3 incentives that run between both the vendor and the State of
4 Arizona that can be counter to the purposes of the stipulation.

5 I serve as a corrective to that, and you have to keep 10:00AM
6 that in mind that there may be what looks to be a sound
7 economic decision either by the vendor or the state but one
8 that potentially could be much worse for the State if it
9 enables me or requires me to try to correct it in the means
10 that are available to me. So I think I appreciate the chance 10:01AM
11 to be able to talk to you here today. Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You may step down.

14 So now we can proceed with the witnesses that we had
15 previously identified regarding the HNR issue. Is that how you 10:01AM
16 anticipate proceeding, Mr. Struck?

17 MR. BOJANOWSKI: Your Honor, before going forth with
18 the evidentiary hearing we think that we would like to know the
19 answer to the question of the amicus issue. Because if, in
20 fact, the Court grants that, then I would anticipate that the 10:01AM
21 Fennemore Craig attorneys would examine some of the witnesses
22 today.

23 So I was hopeful that, perhaps, the Court would
24 address that issue before we got into the evidence over the
25 next -- and the hearing tomorrow, the status hearing. So I 10:02AM

1 know -- I believe it's fully briefed at this point, and I was
2 thinking just as a matter of logistics it may be more efficient
3 to know that up front rather than on the back end.

4 THE COURT: I can give you the answer that is the
5 answer for today, and that is that a written order is in
6 preparation. It is not issued yet. So at present they are not
7 in the case as amicus or any other way.

10:02AM

8 MR. BOJANOWSKI: Your Honor, I believe the plaintiffs
9 have the next witness. They have indicated, I believe, through
10 e-mail that they wanted to have Mr. Pratt testify.

10:02AM

11 THE COURT: Okay. All right.

12 MS. KENDRICK: Were you about to call a break, sir?

13 THE COURT: Why don't we take a 10-minute break. That
14 way we won't have to interrupt so that we we'll get back.

15 Thank you.

10:03AM

16 (Recess from 10:02 a.m. until 10:16 a.m.)

17 THE COURT: Is everybody assembled who we need?

18 We're back on the record. Yes, Mr. Struck.

19 MR. STRUCK: Very quickly, I wanted the Court to know
20 that we have contacted the warden at Perryville regarding the
21 allegation of Ms. Ashworth. Not only did she not get a
22 disciplinary violation, she's never had one during her stay at
23 Perryville. So that is inaccurate.

10:16AM

24 THE COURT: Okay. Thank you.

25 (The witness was sworn.)

10:16AM

1 THE COURT: Good morning, Mr. Pratt.

2 THE WITNESS: Good morning, Judge.

3 RICHARD PRATT,

4 a witness herein, having been first duly sworn by the clerk to
5 speak the truth and nothing but the truth, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. KENDRICK:

9 Q. Good morning.

10 A. Good morning.

10:17AM

11 Q. Welcome back.

12 A. Thanks.

13 Q. We missed you last month.

14 In front of you is a binder that has some of the
15 exhibits that we'll be going through this morning, so I just
16 wanted to direct your attention to it.

10:17AM

17 And we're here today to talk about the open sick call
18 system, which my understanding is you are familiar with that
19 program and that policy?

20 A. Yes.

10:17AM

21 Q. Could you turn to Tab 31, please.

22 A. Okay.

23 Q. This is an e-mail that you sent on December 2nd of 2016 to
24 the Monitoring Bureau, and the subject line is: New process
25 for HNRs at Eyman, Florence, Lewis, Perryville, Tucson, and

10:17AM

1 Yuma. And your opening statement is, "Based upon a recent
2 court order, changes will be implemented in the way that
3 inmates will be able to submit HNRs." Doesn't that sentence
4 make it sound like court ordered the open clinic?

5 A. Not in my opinion, no.

10:18AM

6 Q. Have you ever told anyone that the Court ordered this
7 change from the old system of collecting the HNRs to the new
8 one of the open clinic?

9 A. No.

10:18AM

10 Q. Whose idea was it to go to the open clinic system?

11 A. This was a mutual decision between the Monitoring Bureau
12 and Corizon in collaboration to try to determine a better way
13 to have inmates access healthcare.

14 Q. Who at Corizon?

15 A. I the leadership. I don't know specifically, but the
16 entire leadership.

10:18AM

17 Q. Did they propose the idea?

18 A. I don't recall whether it was their proposal or our
19 proposal, but this was ongoing discussions in the way we can
20 improve access to healthcare.

10:18AM

21 Q. When did you guys start discussing this?

22 A. I don't know.

23 Q. Was it in October?

24 A. We have talked about improvements ever since the contract
25 came into place.

10:19AM

1 Q. So was it before the Court's November 10 order?

2 A. We have talked -- again, we have talked improvements on an
3 ongoing basis whenever we get together in ways to improve the
4 system.

5 Q. So you can't say that it was in response to the Court's
6 order?

10:19AM

7 A. No.

8 Q. When you presented this new concept to your staff, did
9 anybody express concerns or reservations about the system?

10 A. No; possibly questions because it was something that hadn't
11 been done before, but no reservations or concerns.

10:19AM

12 Q. Okay. And in your e-mail, in the second paragraph, in the
13 next to last sentence, you write, HNR boxes will not, not
14 capitalized, be removed from the yards, parenthesis, at this
15 time, close parenthesis. This covers all HNRs regardless of
16 the discipline.

10:20AM

17 Was that accurate?

18 A. Yes.

19 Q. I'd like you to flip to Tab 18. These are handwritten
20 notes from December 2nd, 2016, at 1000 hours for a
21 teleconference that was called 24 HNR slash sick call slash IGA
22 contracts. Do you recognize this individual's handwriting?

10:20AM

23 A. No.

24 Q. You see on the third line it says Carson slash Richard. Is
25 that you?

10:20AM

1 A. I assume so, yes.

2 MS. KENDRICK: Your Honor, I'm sorry to interrupt. I
3 just realized that some of the witnesses on defendants' list
4 are in the courtroom, and I would like to invoke the Rule.

5 THE COURT: All right. Would we take care to identify 10:21AM
6 who those witnesses are and to have the Rule enforced?

7 MS. LOVE: Mr. Trujillo and Mr. McWilliams will not be
8 testifying today.

9 THE COURT: Does that satisfy your inquiry?

10 MS. KENDRICK: If that's the extent of it, yeah. 10:21AM

11 THE COURT: Okay. Thank you.

12 MS. KENDRICK: Sorry.

13 BY MS. KENDRICK:

14 Q. If you go down -- do you remember being on this
15 teleconference on December 2nd? 10:21AM

16 A. No, I don't.

17 Q. Do you have any reason to doubt that the notes that were
18 taken by this individual during the teleconference do not
19 reflect what he or she was hearing at the time?

20 A. I have never -- 10:21AM

21 MR. BOJANOWSKI: Note an objection. There's no
22 foundation as to who authored this, where it came from. I
23 can't identify it and the witness has not identified it,
24 either.

25 MS. KENDRICK: Your Honor, defendants produced this as 10:21AM

1 responsive to the open clinic document. So in terms of
2 authentication it was clearly in their possession.

3 MR. BOJANOWSKI: It's not a self-authenticating
4 document.

5 THE COURT: The question is sustained. The question 10:22AM
6 is faulty because it says, "Do you have any reason to doubt
7 that the notes that were taken by this individual during the
8 teleconference do not reflect what he or she was hearing at the
9 time?" This witness would have no way of knowing what the
10 person who took the notes was hearing at the time. Perhaps a 10:22AM
11 different question could be whether or not after review of the
12 notes, whether there's anything in the notes that the witness
13 disagrees with. You can ask that question if you want.

14 BY MS. KENDRICK:

15 Q. Have you had a chance to review the notes? 10:22AM

16 A. No, I have not.

17 Q. Why don't you take some time and take a look.

18 A. And the question again?

19 Q. Do you have any reason to doubt anything that is written
20 there is not accurate? 10:23AM

21 MR. BOJANOWSKI: Same objection.

22 THE COURT: Overruled.

23 THE WITNESS: Whoever wrote this I can only assume
24 that this is what their understanding was.

25 BY MS. KENDRICK: 10:23AM

1 Q. Okay. So do you see under Number 1, 24 HNR slash sick call
2 the fourth dash that says HNR boxes stay, and underneath it
3 can't force IMs, inmates, to bring HNR to medical?

4 A. Yes.

5 Q. Do you remember having any discussion with Mr. McWilliams
6 or these others individuals listed as being present about why
7 you cannot force inmates to bring HNRs to medical?

10:24AM

8 A. No.

9 Q. If you turn to Tab 24.

10 A. Okay.

10:24AM

11 Q. At the bottom of the page, there is an e-mail sent by an
12 individual named Lisa Yanez on December 2nd, 2016 at 11:23 a.m.

13 Do you know who Ms. Yanez is?

14 A. She reports to Mr. McWilliams.

15 Q. And at the bottom of the page she writes, "Follow-up from
16 discussion today." And then if you turn the page, "HNR boxes
17 must be kept. They are not going away."

10:24AM

18 Does this refresh your memory of this meeting?

19 A. No.

20 Q. Do you know why on December 2nd the custody operations and
21 Healthcare Services Monitoring Bureau were saying that HNR
22 boxes must stay?

10:25AM

23 A. There was no determination made that they were going to
24 absolutely be removed at that time, as I recall.

25 Q. Okay. If you go down about nine bullet points, on her

10:25AM

1 e-mail it says, "Hold Corizon to the 12-hour nurse's Line 7 to
2 7."

3 What does that mean?

4 A. I'm not sure how that's to be interpreted. To me, it
5 sounds as if they wanted to have nurse line running 12 hours a
6 day. 10:25AM

7 Q. Isn't it the case that you have previously told the Court
8 in declarations that nurse's line runs from 7 to 7?

9 A. No. There's availability, but nurse lines don't run 7 to 7
10 typically. 10:26AM

11 Q. And if you see the last bullet point that is in bold and
12 underlined, it says, "Follow up each day to ensure Corizon is
13 checking all HNR boxes." What does that mean?

14 A. I can't speak for the person who wrote this. Apparently,
15 they are asking that someone from operations looks at or talks
16 with Corizon to make sure that the HNR boxes are empty each
17 day. 10:26AM

18 Q. Were you aware that operations staff had instructed the
19 wardens and the deputy wardens to make sure that they were
20 emptied? 10:26AM

21 A. No.

22 Q. If you could turn to Tab 27.

23 This is an e-mail exchange between Kathleen Campbell
24 and Mark Haldane. Those are both people that report to you,
25 correct? 10:27AM

1 A. Kathleen does, yes.

2 Q. And does Mr. Haldane report to Ms. Campbell?

3 A. Yes.

4 Q. If you turn to the second page of the e-mail, Mr. Haldane
5 writes, "Sumi reported that according to Rolly Maldonado, as
6 soon as the sick call is in place and implemented that the HNR
7 boxes were going away. I said that was in direct contradiction
8 to what I was told today, which is that they were never going
9 away because it is an access to care issue."

10:27AM

10:27AM

10 Did you participate in a meeting on December 7 with
11 the monitors where they were told the boxes are not going away?

12 A. I don't recall that the monitors were ever told the boxes
13 were never going away.

14 Q. Do you have any reason to think that Mr. Haldane is
15 misremembering what he had been told earlier in the day?

10:28AM

16 A. I have no reason to doubt what his memory is.

17 Q. If you flip to Exhibit 30.

18 THE COURT: Now, you refer to it as Exhibit 30. I
19 don't think it's been admitted.

20 MS. KENDRICK: I'm sorry, Your Honor I misspoke. Tab
21 30.

10:28AM

22 BY MS. KENDRICK:

23 Q. And Sumi Erno is the Facility Health Administrator at
24 Perryville, is that correct?

25 A. She was.

10:28AM

1 Q. Until when?

2 A. I believe a couple months ago.

3 Q. Okay. This e-mail is from December 7 so she was the
4 director or administrator then?

5 A. She was the health administrator at that time, yes.

10:28AM

6 Q. So if you turn to the second page, she is listing the
7 schedule for all of the various yards at Perryville. Do you
8 see that at the top, "The Corizon FHA has stated discourage
9 inmates from using HNR box"?

10 A. Yes.

10:29AM

11 Q. Do you think that's contradictory to what Mr. Haldane said
12 that very same day that boxes were not going away because it's
13 an access to care issue?

14 A. No.

15 Q. You think those two ideas can exist together?

10:29AM

16 A. The desire was to have the inmates actually bring the HNRs
17 into the open sick call as opposed to using the HNR boxes at
18 that time.

19 Q. But at this time in December, publicly you were still
20 saying that the HNR boxes were present for people to access.
21 Is that correct?

10:29AM

22 A. They were not being removed at that time, that's correct.

23 Q. Okay. I'm going to show you something that was previously
24 filed on the docket with this Court. It's Docket 1873-1.

25 THE COURT: Do you have an extra copy for Ms. Brown?

10:30AM

1 MS. KENDRICK: I gave you two.

2 THE COURT: Could you run it over there? I'm sorry to
3 make you a runner. It's easier for you to do it on your
4 circuit. Thank you.

5 BY MS. KENDRICK:

10:30AM

6 Q. Mr. Pratt, this is a declaration that you signed under
7 penalty of perjury and filed with the Court on January 18th,
8 2017. If you want to just take a look at it and see if you
9 remember this declaration.

10 A. Yes.

10:31AM

11 Q. Did you write this declaration?

12 A. No. It was written by my legal staff for me to agree to.

13 Q. Okay. Did you review it before you signed it?

14 A. Yes, I did.

15 Q. Did you make any changes to it?

10:31AM

16 A. I don't recall if I did or not.

17 Q. Okay. If you could turn to Page 3 on the bottom, it's
18 Paragraph 20. Could you read that, please?

19 A. "If an inmate wishes to submit an HNR outside of the hours
20 in which the clinic is open for his slash her housing unit, the
21 inmate may submit the HNR in the HNR collection box. The HNR
22 will be triaged by nursing staff and the inmate will be seen
23 during the next open period for his slash her housing unit such
24 that the inmate is still seen within 24 hours of the HNR
25 request. And the HNR is still tracked for Performance Measures

10:31AM

10:32AM

1 36 and 37."

2 Q. So as of January 18, you were telling the Court that the
3 HNR boxes were available for the prisoners, correct?

4 A. Yes.

5 Q. And did you give any indication to the Court that the HNR
6 boxes could potentially be removed?

7 A. I don't know if I did or not.

8 Q. Do you see any indication in Paragraph 20?

9 A. No. Not in Paragraph 20.

10 Q. Okay. If you could please turn to Tab 23. This is an
11 e-mail sent on February 16th, 2017, from a person named Roland
12 Maldonado at Corizon. And it's addressed to you and to Mr.
13 McWilliams. Who is Mr. Maldonado?

14 A. Mr. Maldonado works for Corizon. He is Rhonda Almanza's
15 boss.

16 Q. And in his e-mail that he's forwarding to you, he is
17 telling you, quote, "Please find a graph below revealing that
18 the sick call process is reverting back to an HNR box system.
19 I suspected based on my experience in other states that if
20 allowed to use the box or come to an open call that the
21 population will always take the easiest route and go to the
22 box. I'd like to hear your thoughts on numbers and whether the
23 deterioration in open call process will meet your slash Court's
24 needs."

25 Do you remember this e-mail or this chart showing the

1 utilization?

2 A. Not -- no. I don't recall this, but it's obvious that I
3 have seen it.

4 Q. Is this what prompted the beginning of a discussion about
5 removing the HNR boxes?

10:33AM

6 A. I don't know if this prompted it or if these were ongoing
7 discussions.

8 Q. Well, if it was an ongoing discussion was it ongoing before
9 January 18th?

10 A. It may have been up for consideration, yes.

10:34AM

11 Q. When you represented to the Court that the HNR boxes were
12 there and in place?

13 A. Yes.

14 Q. Then on the third page of the e-mail there's a chart that
15 shows for six prisons, Eyman, Florence, Lewis, Perryville,
16 Tucson, and Yuma, for each week, the number of patients who
17 requested medical care, mental health care, or dental care via
18 HNR box versus going to the open sick call. What about these
19 numbers were concerning to you or Mr. Maldonado?

10:34AM

20 MR. BOJANOWSKI: What tab are you on, Corene.

10:35AM

21 MS. KENDRICK: Still on 33.

22 BY MS. KENDRICK:

23 Q. I guess let me back up. Mr. Maldonado expresses concern in
24 his e-mail and encloses this chart as the basis for his
25 concerns. Upon reviewing this chart, do you share his

10:35AM

1 concerns?

2 A. He indicates that sites report that inmates prefer the HNR
3 box to the open sick call process as they do not have to wait
4 to be seen. When they use the box they are called down to be
5 seen by the nurse at that time as opposed to waiting in turn
6 and then he lists all the numbers. 10:35AM

7 Q. Right. But what is it about the numbers on their face that
8 would cause concern for him or potentially for you?

9 A. This doesn't show any concern for me.

10 Q. Okay. So you did not share the concern that some people
11 were still using the boxes? 10:35AM

12 A. No. It is simply a fact that people are still using the
13 boxes.

14 Q. Okay. If you could turn to Tab 29.

15 A. Okay. 10:36AM

16 Q. This is an e-mail that you sent on May 15 of this year with
17 the subject line "Redirection for HNR boxes on minimum and
18 medium yards." And it's addressed to some people on your
19 staff; Ms. Barlund, Ms. Headstream, Ms. Campbell, Dr. Taylor,
20 and then Ms. Almanza from Corizon, correct? 10:36AM

21 A. Correct.

22 Q. And you are asking them for feedback on, you call it,
23 quote, repurposing the HNR boxes effective June 12. You, in
24 your e-mail say that some requests should be exempt from
25 medication refills. Why did you feel that way? 10:37AM

1 A. Inmates don't -- they don't need to be seen for a
2 medication refill. It's simply something they can submit.
3 It's not going to require them to be seen by nursing staff.

4 Q. Right. And then the last sentence of your e-mail you came
5 up with other examples such as a person who is running out of
6 catheters or someone who needs to review his medical records,
7 correct?

10:37AM

8 A. Correct.

9 Q. And in response, your employee, Ms. Campbell, says that she
10 believes that HNR boxes should be completely removed. And she
11 says, quote, "I don't know what will stop the inmates from
12 dropping an HNR in the box wanting to be seen on sick call
13 line. I think by removing the HNR boxes it would eliminate
14 this issue."

10:37AM

15 What exactly is -- she's characterizing prisoners
16 putting HNRs in boxes as issues. Does that mean it's a
17 problem?

10:38AM

18 A. That's not the way I read it, no.

19 Q. Do you think it's a problem that they still use boxes?

20 A. No.

10:38AM

21 Q. Do you agree with her that they should be completely
22 removed and people getting medication refills be forced to go
23 to the clinic?

24 A. No. I have never said that.

25 Q. And then Dr. Taylor says in response to Ms. Campbell,

10:38AM

1 quote, "I completely agree with Kathy," with a smiley face,
2 right?

3 A. Correct.

4 Q. Okay. I want to go back to your declaration, the January
5 18th one. On Paragraph 22, you state to the Court that if an 10:38AM
6 inmate has an urgent or emergent need for medical care outside
7 the hours in which the clinic serves his/her housing unit,
8 security staff may initiate an ICS or contact medical staff who
9 may either request that the inmate be brought to an open
10 medical clinic or may come to the inmate's location. 10:39AM

11 So it's up to custody officers to decide whether a
12 person requires medical care after hours?

13 A. Ask that again, please.

14 Q. Based on your statement here, it's up to custody officers
15 to decide whether a person is going to need medical care, 10:39AM
16 right?

17 A. No.

18 Q. Whose deciding then, if not the officer?

19 A. Security staff can call an ICS or an emergency if, in their
20 opinion, there's a medical emergency taking place. 10:40AM

21 Q. Right. So you are asking security staff, correct?

22 A. Asking them what?

23 Q. To make the determination about whether it requires an
24 emergency response?

25 A. In their opinion, if they feel that it requires an 10:40AM

1 emergency response they can call the ICS at any time, yes.

2 Q. COs don't have medical training beyond basic first aid,
3 right?

4 A. They receive some basic training, but, yes, it's first aid.

5 Q. Basic first aid?

10:40AM

6 A. Correct.

7 Q. Do you think it's appropriate for officers to take this
8 gatekeeping role in accessing medical care?

9 A. The officers are not gatekeepers for medical care. They
10 are another set of eyes and ears on the yard to bring emergency
11 issues, or issues that they feel are required to be seen by
12 medical. But they are not the gatekeepers.

10:40AM

13 Q. If you could turn to Tab 41.

14 THE COURT: How does someone in compliance with your
15 Paragraph 22 description, "If an inmate has an urgent or
16 emergent need for medical care outside the hours in which the
17 clinic serves his or her housing unit, a security staff may
18 initiate an ICS," how is it that the security staff is not
19 serving as a gatekeeper role in that function?

10:41AM

20 THE WITNESS: It's not their ultimate determination.
21 If an inmate wants medical care, the officer can call medical,
22 explain the issue to them. Medical becomes the gatekeeper at
23 that point to say, yeah, we need to see them right now or we
24 will come to the yard. Again, if an ICS is put forth then
25 there will be a response from medical.

10:41AM

10:41AM

1 THE COURT: So is it your testimony that if an inmate
2 says I need medical care that it is not within the province of
3 the correction staff to say I'm not going to relay that
4 information to medical officer?

5 THE WITNESS: I can't speak for each individual 10:41AM
6 officer, Judge. But I will tell you that if an inmate says I
7 have a headache, are you okay? The officer will talk to them.
8 The officer can report that to medical. But I guess
9 technically if you are saying the officer -- he's the conduit.
10 He's not necessarily the gatekeeper, but he is the conduit to 10:42AM
11 go to medical.

12 THE COURT: He's also the switch. He's also the
13 vowel. He or she is saying, yes, I'm going to allow that
14 information to pass through the conduit or not. So that's what
15 I'm trying to focus on, is when you say they are not the 10:42AM
16 gatekeeper, it seems like they are the vowel. They are the
17 gatekeeper because they are making, in the first instance, the
18 determination of what the inmate is saying, I need medical
19 care, and the officer is saying I don't think you do so I'm not
20 going to allow it to pass through the conduit. It sounds like 10:42AM
21 from what you are saying that's something the correction
22 officer is free to do.

23 THE WITNESS: The officer does have that ability, yes,
24 sir.

25 THE COURT: Thank you. 10:42AM

1 BY MS. KENDRICK:

2 Q. And, Mr. Pratt, if the officer declines to call an ICS, is
3 there some sort of higher power or alternative that the
4 prisoner can go to to seek further assistance?

5 MR. BOJANOWSKI: Note an objection. Foundation. 10:43AM

6 THE COURT: Overruled.

7 THE WITNESS: I'm not exactly sure who the -- or what
8 are you saying. If an inmate requests from an officer I want
9 to go see medical?

10 BY MS. KENDRICK: 10:43AM

11 Q. So here's an analogy. I file a motion and I ask Judge
12 Duncan to do something and he says no, I can go to the Ninth
13 Circuit Court of Appeal and ask them for permission. Is there
14 any sort of higher level to the officer who says no when the
15 request is made, or is that the end of it? 10:43AM

16 MR. BOJANOWSKI: Same objection.

17 THE COURT: Overruled.

18 THE WITNESS: I don't know the answer to that. That's
19 probably a better question for operation staff to explain how
20 that system works. The inmate also has the availability of, as 10:43AM
21 far as a grievance or a complaint, to put that in writing if
22 they desire.

23 BY MS. KENDRICK:

24 Q. Okay. Could you turn to Tab 25 please. This is another
25 e-mail from Ms. Erno at Perryville dated April 10th, 2017 with 10:44AM

1 the subject line follow-up to medical meeting last week re:
2 ICS. And she opens it to say, "To clarify access to care:
3 From our HSTM and DO," and she proceeds to list policies from
4 the technical manual and the order. She then writes underneath
5 it, "If no ICS is called, what is the inmate refusing? How is
6 medical supposed to assess inmate if no HNR is submitted or no
7 ICS is called?"

10:44AM

8 Does that help you understand the questions that Judge
9 Duncan and I have been asking?

10 A. I understand what you are asking.

10:45AM

11 Q. So if an ICS is not called, is there a record made of it?

12 A. There may be from the operations side. If the officer is
13 doing rounds he may make notes to that effect. I don't know.

14 Q. So you don't know if they are required to document every
15 time they have been asked for an ICS in their response?

10:45AM

16 A. I do not.

17 Q. Okay. Could you turn to Tab 41.

18 And this is an e-mail chain again from Perryville from
19 June of this year. If you could turn to the third page,
20 there's an e-mail written by Adalia Cerrillo. She's listed as
21 Assistant Facility Health Administrator. And can you read the
22 second sentence of her e-mail?

10:46AM

23 A. The Tuesday June 6th?

24 Q. Yes.

25 A. Second sentence?

10:46AM

1 Q. Yes.

2 A. "Originally when we opened up" --

3 Q. Second sentence.

4 A. "DOC is refusing to transport inmates to where we have the
5 proper equipment to complete certain medical procedures."

10:46AM

6 Q. And then she goes on to say that when they set up the open
7 sick call at Lumley Unit, they set up a nurse line that used a
8 massage table for an exam chair, or exam table? Does she say
9 that?

10 A. Yes.

10:46AM

11 Q. And she goes on to say that they need a full exam table
12 because Dr. Enciso cannot do paps on this yard?

13 A. Yes.

14 Q. And then at the end of her e-mail she notes, "This is going
15 to affect our CGAR measure, Performance Measure 42, for
16 follow-up encounters."

10:47AM

17 Were you aware of this problem at Lumley?

18 A. No.

19 Q. If you turn to the second page of the e-mail sent the same
20 day, June 7th, by the ADON assistant director of nursing, Ms.
21 Ellison, she writes that, "If the inmate is housed in CMU,
22 closed management, we are told by custody staff that the inmate
23 cannot be brought to the Lumley medical area. Custody staff
24 insists that because these inmates must be restrained, escorted
25 by two security staff, the 21 area must be shut down and they

10:47AM

10:47AM

1 are a risk for injury and will not be brought to medical."

2 Do you see this as officers playing the gatekeeping
3 role in access to medical care?

4 MR. BOJANOWSKI: Same objection.

5 THE WITNESS: It could be interpreted that way, yes.

10:48AM

6 BY MS. KENDRICK:

7 Q. Do you personally interpret it that way?

8 MR. BOJANOWSKI: Same objection.

9 THE WITNESS: If there are other issues going on from
10 a security standpoint, purely security, where they cannot make
11 this happen, I can't speak to whether or not this person is
12 still going to be seen by medical or if it's going to happen
13 immediately or what is going to happen to get that inmate to
14 medical. This is the first time I have ever seen this e-mail.

10:48AM

15 BY MS. KENDRICK:

10:48AM

16 Q. Okay. And then finally, on the first page of this e-mail
17 chain, Mr. Haldane, your monitor at Perryville, he does recite
18 some of the policies regarding the fact that clinical
19 encounters must occur in an appropriate clinical setting. And
20 he states, "It is not appropriate to conduct OB/GYN exams
21 without an exam table with stirrups." He then goes on the
22 fourth paragraph to say, "The medical room on B yard has no air
23 conditioning. With humidity and heat it is not appropriate to
24 have clinic stock there as it will exceed 78 degrees."

10:48AM

25 Were you aware that the open clinic room on Lumley

10:49AM

1 yard was not air conditioned?

2 A. No.

3 Q. Do you agree with Mr. Haldane's assertion that a clinic
4 without air conditioning is not an appropriate place to store
5 medication?

10:49AM

6 A. If the temperatures exceed 78 degrees, yes.

7 Q. And you stated that you were not aware of this problem. Do
8 you know if a proper exam table versus a massage table was ever
9 put in at the Lumley clinic?

10 A. I don't.

10:49AM

11 Q. And if a patient wants to see mental health, she has to
12 physically go to the nurse's line and submit an HNR there,
13 right?

14 A. Yes.

15 Q. And wait to be seen by a nurse, right?

10:50AM

16 A. She will be seen when she presents the HNR.

17 Q. Okay. And are the prisoners charged \$4 for this triage
18 encounter?

19 A. In most circumstances, yes.

20 Q. Are you concerned that this \$4 charge would create a
21 disincentive for people to seek mental health care?

10:50AM

22 A. No.

23 Q. Why not?

24 A. Why?

25 Q. Because if they have to pay \$4 to see a nurse before they

10:50AM

1 can see mental health?

2 A. They are being seen. They are being evaluated by the nurse
3 to see what their issues are. If it's something emergent they
4 are taken care of right away. Otherwise it's a referral to
5 mental health and there will be no charge for mental health.

10:50AM

6 Q. Nobody is charged for mental health?

7 A. No. That's not what I said.

8 Q. Who is charged for mental health care?

9 A. Most inmates are charged. But you have got SMI, minors,
10 folks that are in infirmaries, they are not charged.

10:51AM

11 Q. Okay. So --

12 THE COURT: Just to make sure that I understand, so if
13 somebody has a mental health care issue, they have to pay \$4 to
14 explain that to the nurse who asks basic questions such as are
15 you a threat to yourself or threat to others, what are you
16 feeling, and records that information. And then that nurse
17 decides whether or not a referral is appropriate to a mental
18 health care specialist. Is that right, what happens?

10:51AM

19 THE WITNESS: Basically, yes.

20 THE COURT: And each of those times, the first time
21 with the nurse and the second time with the mental health
22 specialist, lower case S, meaning just the wide range of mental
23 health providers, each of those encounters results in a \$4
24 charge?

10:51AM

25 THE WITNESS: No. The initial encounter would; a

10:51AM

1 referral would not.

2 THE COURT: So the subsequent visit with the mental
3 health specialist does not ever involve a \$4 charge if they
4 paid the \$4 originally?

5 THE WITNESS: Yes.

10:52AM

6 THE COURT: Okay. Thank you.

7 BY MS. KENDRICK:

8 Q. If a person comes to open clinic with an HNR to see mental
9 health and they refuse to be seen on nurse's line, is the HNR
10 still passed on to mental health?

10:52AM

11 A. I don't know if it's always passed on, no. If an inmate
12 refuses, it's kind of counterintuitive to have an inmate bring
13 in an HNR and say, I don't want to be seen.

14 Q. I don't want to be seen by the nurse, the nurse's line.

15 A. If an inmate is having some sort of a medical or mental
16 health issue, it's up to the nurse to triage that and refer
17 them appropriately. And if they are having significant issues
18 they can be seen right away. That's the purpose of better
19 access to healthcare through this process.

10:52AM

20 Q. Okay. Could you turn back to your declaration from January
21 18th, Paragraph 11?

10:52AM

22 A. Okay.

23 Q. You state that, "The open clinic was developed by Corizon
24 and ADC in direct response to the Court's November 10th, 2016
25 order requiring outside transports and was intended to ensure

10:53AM

1 defendant's compliance with Performance Measure 37 which
2 requires that inmates be seen within 24 hours of submission of
3 a health needs request for routine medical care."

4 Could you please read Paragraph 12?

5 A. "HNRs for routine dental care and mental health care 10:53AM
6 continue to be addressed through referrals to dental and mental
7 health staff and must be seen within the timelines provided in
8 the stipulation."

9 Q. So a January 18th request for dental and mental health were
10 not forced to go to the nurse's line? 10:53AM

11 A. Prior to that, no.

12 Q. So when was that changed?

13 A. I'm not exactly sure of the date. But that, again, that is
14 the process for the open nurse line.

15 Q. Did you or your counsel ever provide any clarification to 10:54AM
16 the Court regarding Paragraph 12 of your declaration?

17 A. Not that I know of.

18 THE COURT: So this representation in 12, accurate as
19 you swore that it was on the day that you issued it, thereafter
20 became no longer true. Is that correct? 10:54AM

21 THE WITNESS: After the 12th?

22 THE COURT: No. After the date that it was executed,
23 which was on the 18th of January.

24 THE WITNESS: January 18th? I'm not understand the
25 question, Judge. 10:54AM

1 THE COURT: Paragraph 12 says, "HNRs for routine
2 dental care and mental health care continue to be addressed
3 through referrals to dental and mental health staff and must be
4 seen within the timelines provided in the stipulation." So
5 that was true, we can agree, on the 18th of January 2017. But 10:55AM
6 what Ms. Kendrick has just elicited from you is that sometime
7 after that, that no longer became true?

8 THE WITNESS: No. That's not the case. They are
9 still referred. It's just whether or not they are referred at
10 the time that they see the nurse or if they put it in an HNR 10:55AM
11 box they are referred from the HNR box.

12 THE COURT: I see. All right. That clarifies my
13 question. That seems to cast a different light on it, Ms.
14 Kendrick.

15 BY MS. KENDRICK: 10:55AM

16 Q. We can move on.

17 THE COURT: I'm sorry?

18 MS. KENDRICK: I'm ready to move on.

19 THE COURT: Well, again, when you make points that
20 seem to get a purchase with me and I ask subsequent questions 10:55AM
21 that seem to undercut that, it would seem reasonable to say,
22 oh, it looks like my supposition of my question wasn't
23 accurate. If I'm missing something that means that your
24 question still has some purchase, tell me what that is. But it
25 looks like the question by the answer has been cleared up. 10:56AM

1 BY MS. KENDRICK:

2 Q. Just when was it? What was the date that this change was
3 made?

4 A. I don't know specifically the date, but it had to be
5 relatively close to this, the time of my declaration.

10:56AM

6 Q. Okay. And neither you nor your counsel decided to update
7 us about it?

8 MR. BOJANOWSKI: Note an objection, Your Honor. I
9 think I'm confused. I'm unaware of a change that's been made.

10 THE COURT: That's what I'm trying to focus on.

10:56AM

11 I'm sorry for over speaking you. Go ahead.

12 MR. BOJANOWSKI: I think the witness has testified
13 that there hasn't been a change, quote, unquote, that the
14 policy is still consistent. They see the nurse, there is a
15 referral if needed. And that's what was happening in January
16 and is still happening today. That's my understanding of the
17 witness's testimony.

10:56AM

18 THE COURT: Hold it just a second.

19 I understand what you said, Mr. Pratt, with respect to
20 the referrals continuing to be made that there was no change
21 there. But what the change is that is raised by the question
22 is whether HNRs were thereafter still sufficient to initiate
23 these referrals. And you told the Court on the day of the
24 affidavit that HNRs for routine dental care and mental health
25 care continue to be addressed, and then after that HNRs no

10:57AM

10:57AM

1 longer became -- no longer were the mechanism for these
2 referrals. You had to go to the open line. Is that what you
3 are saying the change is?

4 THE WITNESS: No. I'm not even actually describing a
5 change. It's a change in the delivery of the HNR. Where that
6 HNR comes from is inconsequential. That referral is still
7 going to take place whether it comes through an HNR box or an
8 inmate hands that HNR to the nurse.

10:57AM

9 THE COURT: And where do we stand today with respect
10 to this statement: "HNRs for routine dental care and mental
11 health care continue to be addressed through referrals." Does
12 that continue to be true?

10:58AM

13 THE WITNESS: That continues to be true.

14 THE COURT: Is there anything else that I'm missing?

15 MS. KENDRICK: Well, Your Honor, it's very ambiguously
16 written, which probably makes sense since it was written by
17 counsel. But the previous paragraph talks about compliance
18 with Performance Measure 37, which has to do with the timelines
19 for medical care treatment, and that making people come to the
20 clinic was to address that problem. Paragraph 12 refers to the
21 timelines to dental and mental health care, which are contained
22 in Performance Measure 98 and, I believe, 103.

10:58AM

10:58AM

23 So when you read it like that, it appears, reading
24 Paragraph 11, that this is designed to address people
25 requesting, quote, routine medical care, and then the next

10:59AM

1 paragraph says routine dental care and mental health care
2 continue to be addressed through referrals. So continue to be
3 could be interpreted to mean that it was continuing to be the
4 way it was before. So if it was the case, then when did it
5 switch that everybody had to go to the clinic, not just people
6 holding the HNRs that said I have a sore throat?

10:59AM

7 THE COURT: Okay. Thank you.

8 BY MS. KENDRICK:

9 Q. And I think we have just muddied the waters instead of
10 clearing it.

10:59AM

11 Tab 15, Mr. Pratt. This is a complaint, informal
12 complaint response to a prisoner at Yuma. I request that you
13 please only use his initials and not his full name. It's dated
14 April 4th, 2017, by Carlie Myers, the director of nursing at
15 Yuma. And it states that the prisoner submitted an informal
16 complaint regarding an HNR written by you stating you were
17 hearing voices. You state you were advised you would not be
18 charged for the visit since it was mental health related. You
19 state that you now have a \$4 charge for that visit.

11:00AM

20 Could you read the next paragraph, please?

11:00AM

21 A. "I reviewed your medical file and do see that you were seen
22 on nurse line March 16, 2017 for hearing voices. You are
23 charged for that visit as you were seen by the nurse regarding
24 your complaint. You then referred -- you are then referred to
25 mental health where there is no charge for that. You, at any

11:00AM

1 time, could have refused the nurse line and still be referred
2 to mental health. The charge will remain on your banking
3 statement."

4 Q. Okay. Is that according to policy? Does that follow
5 policy?

11:01AM

6 A. Yes. A charge, unless this inmate is SMI, yes, the charge
7 would be appropriate.

8 Q. So he could have refused the nurse line and still been
9 referred to mental health?

10 A. If the nurse chose to pass that on, yes.

11:01AM

11 Q. And if he refused nurse line and was referred to mental
12 health would he avoid that \$4 charge?

13 A. No, he should not. At that point, I mean, if he was seen
14 on the nurse line and he had an evaluation, then the charge
15 would remain. It would be appropriate.

11:01AM

16 Q. Right. But Ms. Myers is saying here that he could have
17 refused the nurse line and still been referred to mental
18 health.

19 A. At the discretion of the nurse, yes.

20 Q. So if you refuse nurse line are you still charged \$4?

11:01AM

21 A. When you see mental health, is that at that point what you
22 are talking?

23 Q. No. If he's at nurse line with his mental health HNR and
24 says I don't want to pay \$4, I'm refusing.

25 A. No. He should not be charged at that point.

11:02AM

1 Q. Okay. So that would -- from her response, is it fair to
2 conclude that a person with a mental health request can refuse
3 the nurse line, not be charged \$4, and still get referred to
4 mental health?

5 A. It's possible, yes.

11:02AM

6 THE COURT: Possible but not required, right?

7 THE WITNESS: Correct.

8 BY MS. KENDRICK:

9 Q. If you flip to Tab 34, this is an e-mail that Dr. Taylor
10 sent you on February 7. And she is sending it to you with high
11 importance saying that nursing staff at Perryville have been
12 told to only see mental health HNRs that are, quote, "emergent"
13 and the routine should be sent to mental health and not seen on
14 nurse's line. And then she says several of the other prison
15 officials on the call said the same thing.

11:02AM

11:03AM

16 Do you remember this issue?

17 A. No.

18 Q. And you forwarded it to Ms. Almanza at Corizon Health and
19 said, "For discussion tomorrow before court." Do you remember
20 that discussion with Ms. Almanza before court?

11:03AM

21 A. No, I don't.

22 Q. Do you know what happened as to whether or not mental
23 health staff -- I mean mental health HNRs, excuse me, that are
24 routine could just be sent to mental health without being seen
25 on nurse's line?

11:03AM

1 A. That's not the way the process was designed. If that was
2 happening at some locations, it would be directed to Corizon to
3 say, they need to be seen by nursing staff, all of them.

4 Q. So based on Ms. Taylor's e-mail here, was this something
5 that Corizon was doing on their own accord?

11:04AM

6 A. That's what her e-mail says, yes.

7 Q. This wasn't something that you guys had instructed them to
8 do?

9 A. Absolutely not.

10 Q. Did you direct Corizon to stop doing this, or did Dr.
11 Taylor?

11:04AM

12 A. I don't recall specifically if I did that. My routine
13 method would be to take this straight to Ms. Almanza and say,
14 they all need to be seen by mental health, as I would assume
15 Dr. Taylor would do the same thing.

11:04AM

16 Q. Do the nurses that run nursing line have special mental
17 health training?

18 A. Such as?

19 Q. Are they mental health RNs?

20 A. No.

11:04AM

21 Q. Are all the nurses that conduct nurses lines RNs, or can
22 licensed practical nurses to nurse's line?

23 A. The only ones that can do assessments are RNs.

24 Q. Okay. And originally, you all were only doing open clinic
25 at six prisons, is that correct?

11:05AM

1 A. I don't know. I will take your word for it.

2 Q. Eyman, Florence, Lewis, Perryville, Tucson, Yuma?

3 A. Okay.

4 Q. And now you are rolling it out to the other four prisons,
5 is that correct?

11:05AM

6 A. Yes.

7 Q. And are these going to operate 7 to 7?

8 A. Open nurse line will run at various times throughout the
9 day at prisons. I'm not saying that they were open 7 to 7 for
10 everybody at every yard, but they are running every day at
11 every facility, yes.

11:05AM

12 Q. And when did they start doing the open clinic at the four
13 other prisons?

14 A. I don't know specifically when they started that.

15 Q. Was it this summer?

11:05AM

16 A. I think it was in June.

17 Q. Did you -- are you aware of any pushback from custody staff
18 or health care staff at these four institutions about switching
19 to an open clinic system?

20 MR. BOJANOWSKI: Note an objection. Relevance.

11:06AM

21 THE COURT: Overruled.

22 THE WITNESS: Yes. I was made aware of one staff
23 member's concern over this by stating that if -- wanting to go
24 back strictly to no open boxes because for some reason she felt
25 that the inmate population was abusing it and spending the time

11:06AM

1 coming to medical and just being able to get out of the yard
2 with an HNR and then roaming around and not actually going to
3 medical and then returning back to their housing unit.

4 BY MS. KENDRICK:

5 Q. Did anybody from operations share that concern, the
6 security concern of people milling around the clinic?

11:06AM

7 A. No.

8 THE COURT: Can I interrupt for just a second? You
9 said that this person wanted to go back strictly to no open
10 boxes. Was that a misstatement? Did you mean to say that the
11 person wanted to go back to open boxes in an HNR system?

11:07AM

12 THE WITNESS: No, sir. She indicated that she wanted
13 just the boxes again. She didn't want the ability for them to
14 walk in with an HNR.

15 THE COURT: So the term "no open boxes" --

11:07AM

16 THE WITNESS: I'm sorry.

17 THE COURT: That was a misspeaking, really.

18 THE WITNESS: No open clinic. I'm sorry.

19 THE COURT: Thank you.

20 BY MS. KENDRICK:

11:07AM

21 Q. Who was this individual?

22 A. I don't recall the name. It was one of the Corizon nurses.

23 Q. Which prison?

24 A. I don't remember even which prison it was.

25 Q. All right. Let's go to Tab 22. So this is an e-mail from

11:07AM

1 May 15th that was sent to you by Troy Evans. He works for the
2 Department as a monitor at Safford and Douglas, correct?

3 A. Correct.

4 Q. And he forwarded it to you and two of your colleagues. And
5 he forwards a message from the Facility Health Administrator
6 Ann Mullen at Safford. Is this the individual you were
7 referring to?

11:08AM

8 A. No. I don't believe so. Again, to my recollection, it was
9 a nurse that was running one of the nurse's lines.

10 Q. Okay. And she says in the e-mail, "We are not broken at
11 Safford complex. It is a fact that Safford has the best
12 medical run and team." And then she says, "They tried this
13 many years ago and changed. Why do we always go backwards?"

11:08AM

14 Do you know what she's referring to?

15 A. No, I don't.

11:08AM

16 Q. How long have you been at ADC?

17 A. 2000.

18 Q. 2000. Okay. And in the time since you were there did they
19 ever have this open clinic model prior?

20 A. No.

11:09AM

21 Q. Okay. Who is Jim Taylor?

22 A. Jim Taylor is a regional person that works for Corizon.

23 Q. And Mr. Taylor also says in an e-mail, "I am surprised
24 about this. McWilliams said the rural complexes would not be
25 changing."

11:09AM

1 Do you know why the change was made?

2 A. For consistency.

3 Q. And then on the next page, Ms. Mullen states that she wants
4 the box to remain for routine dental care. Do you have any
5 idea why somebody might want to keep the box for requests for
6 dental care? 11:10AM

7 A. No.

8 Q. Could it be that there's a 90-day time frame to be seen for
9 dental care?

10 A. Whether an HNR is handed in or it's put in a box, I don't
11 see how that would affect a wait time. 11:10AM

12 Q. Okay. So if you could flip to Tab 16, this is regarding
13 Douglas prison.

14 A. Okay.

15 Q. And Vicki Smith is the health services administrator at
16 Douglas prison? 11:10AM

17 A. At that time she was, yes.

18 Q. Does she still work for Corizon?

19 A. I don't know.

20 Q. Did she used to be the regional director? 11:10AM

21 A. No.

22 Q. Of operations?

23 A. No.

24 Q. Okay. So she is sending an e-mail that says that it is a
25 notification to prisoners at Douglas about open clinic. And in 11:11AM

1 her e-mail, she says, quote, "We're attempting to, quote,
2 'train' the inmates to report within the first 15 minutes of
3 sick call anyway, so I think this will work. When they get
4 turned away for that 30 minutes, they will learn quickly."

5 Were you aware that the prisoners at Douglas were told 11:11AM
6 that they had to arrive at sick call in the first 15 minutes it
7 was open?

8 A. No.

9 Q. If you can turn the page there are the notifications that
10 went out. And at the bottom of the page, can you read what's 11:11AM
11 underlined?

12 A. Inmates arriving for open sick call will have 15 minutes to
13 arrive following the start of sick call.

14 Q. Okay. And above that the hours that are listed, those are
15 not 7 to 7, correct? 11:12AM

16 A. Correct.

17 Q. In fact, it's 8 to 10:30 for one yard and then 1330 to 1500
18 for another yard?

19 A. Med pass and sick call for off-site workers is 4:30 in the
20 morning to 5:30; med pass for other inmates, all other inmates, 11:12AM
21 6:30 to 7:30. Sick call for all other inmates on the north
22 yard is 8 a.m. to 10:30 and sick call for all other inmates at
23 south yard is 1330 to 1500.

24 Q. Okay. Can you read this memo, the second paragraph, what
25 it states? 11:12AM

1 A. "Requests for dental will be brought to open sick call for
2 review, however, dental clinics will not be operating under the
3 open sick call procedures. Likewise, those seeking mental
4 health assistance will also present with an HNR to open sick
5 call for further referral from nursing. Open sick call does
6 not apply to providers as a referral must be made from nursing
7 to see a provider."

11:13AM

8 Q. So when there's a referral here to the request being
9 reviewed, does that involve an actual physical examination and
10 assessment at nursing line?

11:13AM

11 A. Yes.

12 Q. Back to the first page in Ms. Smith's e-mail and her
13 statement, "When they get turned away for that 30 minutes they
14 will learn quickly." What do you take that to mean?

15 A. It's an education to let the inmates know that if they are
16 late they will have to wait until the next day.

11:13AM

17 Q. Are you aware of any other prison institutions or units
18 where they have a policy that the patients must arrive in the
19 first 15 minutes that the clinic is open in order to be seen?

20 A. No.

11:14AM

21 Q. Did you know that Douglas had implemented this policy?

22 A. No.

23 Q. Are you aware of any policy that a prisoner cannot be seen
24 more than once in the same day on open clinic?

25 A. No.

11:14AM

1 Q. Is it permissible for nurses to turn someone away on the
2 basis that the person was seen earlier in the day?

3 A. It would be case specific. I don't know. Depending upon
4 what the patients problems were.

5 Q. Okay. If you could turn to Tab 13.

11:14AM

6 THE COURT: Before you move on, could you tell me if
7 it's important for me to know what the difference is between
8 med pass and sick call? I gather what we've been talking about
9 is sick call. But this med pass is not a procedure I'm aware
10 of.

11:15AM

11 THE WITNESS: Med pass is simply where it's direct
12 observation therapy. They are not keep-on-person medications.
13 They are handed each pill individually each day.

14 MS. KENDRICK: The prisoners call it pill line.

15 THE COURT: Thank you. Now I know what it is. I
16 didn't know that term.

11:15AM

17 BY MS. KENDRICK:

18 Q. So Tab 13, please. And this is a grievance that was filed
19 at Lewis-Stiner prison with a response of February 17. Again,
20 I ask that we all endeavor to not use this inmate's name.

11:15AM

21 If you could turn to Page 2, could you please read the
22 highlighted text in this patient's grievance regarding December
23 8, 2016?

24 A. The highlighted section reads, "On 12-8-2016, my chest
25 pains had occurred. I went to medical. I was not feeling

11:16AM

1 right. My blood pressure was 110 over 10. Two nurses check if
2 with the same results. I was still cleared to go back to
3 building. If had gotten worse CO2 blank called ICS."

4 Q. Okay. Blood pressure of 110 over 10, if that's true that
5 would be dangerous, right?

11:16AM

6 A. Yes.

7 Q. What can happen to a person if their blood pressure is very
8 low?

9 A. They could die.

10 Q. They could go into shock?

11:16AM

11 A. They could die.

12 Q. Okay. And if you just flip back to Page 1, which is the
13 response to the grievance, do you see any reference to December
14 8, 2016 in this response?

15 A. Do I see a reference to what?

11:17AM

16 Q. This response instead, the response instead refers to the
17 person being seen on February 3rd and being seen on February
18 9th, 2017. But is there any response to the complaint
19 regarding the treatment on December 8th, just on the first
20 page?

11:18AM

21 A. I don't see any reference to December.

22 Q. Okay. So that would be an incomplete grievance response?

23 A. Well, they didn't address the issue from December, correct.

24 Q. Okay. Could you turn a few pages on that tab to a document
25 that's Bates numbered AG 0001.

11:18AM

1 MR. BOJANOWSKI: Where are you at, Corene.

2 THE WITNESS: Where's the Bates stamp on these?

3 BY MS. KENDRICK:

4 Q. Bottom right corner. I apologize.

5 A. Oh. I have got it. Okay.

11:18AM

6 Q. Okay. Does this appear to be a printout from eOMIS for
7 this same person?

8 A. It does.

9 Q. And what is the date of the encounter?

10 A. December 8th, 2016.

11:19AM

11 Q. And the time?

12 A. 7:42 p.m.

13 Q. And what does the subjective line say?

14 A. Chief complaint: Inmate brought to medical hub for
15 complaints of chest pain.

11:19AM

16 Q. And was his blood pressure taken?

17 A. Yes, it shows in here that it was.

18 Q. What does it show it was?

19 A. 110 over 10.

20 Q. All right. And could you please read the highlighted
21 sentences under history of present, under notes?

11:19AM

22 A. Under the objective section?

23 Q. Yes, sir.

24 A. "Inmate advised that he had been seen twice in the last
25 four hours including complaints about chest issues and cleared

11:19AM

1 by medical and by the practitioner. Advised inmate he needed
2 to follow up with HNR for continued issues. Inmate states he
3 did fill out HNR already."

4 Q. Is that an appropriate response by nursing staff?

5 MR. BOJANOWSKI: Objection.

11:20AM

6 THE WITNESS: Judgment call. I don't know.

7 MS. KENDRICK: You have no opinion about this?

8 MR. BOJANOWSKI: Same objection.

9 THE COURT: Overruled.

10 THE WITNESS: I would look at this and I would say I
11 would highly question the blood pressure.

11:20AM

12 BY MS. KENDRICK:

13 Q. Question the blood pressure or question the response by the
14 nurse to the blood pressure?

15 A. The blood pressure itself.

11:20AM

16 Q. Okay. Could you turn the page please. This is an outside
17 specialist report dated October 28th, 2016, by a pediatric
18 cardiologist.

19 A. Is it possible to go back for a second?

20 Q. Sure.

11:20AM

21 A. If you go beyond is the highlighted area on that objective
22 note.

23 Q. Uh-huh.

24 A. It indicates that the inmate was advised he would have to
25 wait as he had been cleared twice in four hours and he could

11:21AM

1 return to his housing unit. The inmate stated okay. I'm being
2 denied care. He was told he had been seen and cleared. He
3 stated again I was denied care at 7:30 and walked out. No
4 apparent distress, no apparent issues, and he returned to his
5 housing unit at that point.

11:21AM

6 Q. Okay. So let's go to the next page. So this is a report
7 for the same gentleman from Arizona Pediatric Cardiology from
8 October 28th, 2016. Could you please read the highlighted text
9 that's under history of present illness without saying his
10 name?

11:21AM

11 A. "Mr. Blank is a 22-year-old male with a prior history of a
12 ventricular septal defect requiring surgical closure. He
13 underwent pediatric surgical closure which demonstrated
14 significant aortic insufficiency. He therefore underwent
15 aortic valve repair with plication."

11:22AM

16 Q. And then in the next paragraph what is highlighted?

17 A. "He has also received multiple doses of nitrates for relief
18 of chest pain which gave him profound hypotension and severe
19 headaches."

20 Q. What's hypotension?

11:22AM

21 A. Low blood pressure.

22 Q. Do you still question the blood pressure reading that the
23 nurse got?

24 A. I do.

25 Q. Then on the third page of the report, the second page of

11:22AM

1 the report under plan and recommendations, does it say
2 follow-up visit in two months?

3 A. I'm sorry. Where are you directing me to?

4 Q. The next page.

5 A. Yes. Plan and recommendations, follow-up visit in two
6 months, echocardiogram complete EKG, oxygen saturation.

11:22AM

7 Q. Based on this nursing note from December 8th, 2016, two
8 months later when he was to return to the cardiologist he's
9 still suffering hypotension?

10 A. Based upon the objective findings, yes.

11:23AM

11 Q. Is there a problem with broken blood pressure machines at
12 Lewis-Stiner unit?

13 MR. BOJANOWSKI: Your Honor, I will have to object.
14 It's getting into quality of care issues which is well outside
15 the scope of this hearing.

11:23AM

16 THE COURT: Overruled.

17 THE WITNESS: Not that I'm aware of.

18 BY MS. KENDRICK:

19 Q. So you have no basis to question the accuracy of the blood
20 pressure machine that measured him at 110 over 10?

11:23AM

21 A. Personally, no.

22 Q. Okay. And you are quite familiar with the issue that we
23 have discussed in front of the Court for the past few months
24 about the Corrective Action Plan at Perryville from October
25 2016 for Performance Measure 39 that said nurses would need to

11:23AM

1 see people twice before they could make a referral to the
2 provider?

3 A. Yes.

4 Q. And 39 is the one that says if a nurse refers a patient to
5 a provider the patient must be seen within 14 days. Right?

11:24AM

6 A. Correct.

7 Q. And the concern was that this Corrective Action Plan at
8 Perryville could impact the scores for Performance Measure 39,
9 correct?

10 A. Yes.

11:24AM

11 Q. And the Court previously found the defendants non-compliant
12 with Performance Measure 39 at Perryville, right?

13 A. Right.

14 Q. It's also part of the outside order the Court issued on
15 November 2016?

11:24AM

16 A. The community resource, yes.

17 Q. And this requirement would also mean that the patients were
18 being charged \$4 twice, correct, because they had to be seen on
19 nurse's line two times?

20 A. If they are seen twice, yes.

11:24AM

21 Q. And I believe that Ms. Campbell, who works for you,
22 submitted a declaration to the Court recently about this issue?
23 Are you aware of that?

24 A. I don't know.

25 Q. I will show you a copy of it and we can talk about it.

11:25AM

1 May I approach?

2 THE COURT: You may.

3 BY MS. KENDRICK:

4 Q. So if you turn to the first page of Ms. Campbell's
5 declaration at the bottom of Paragraphs 8 and 9, she states
6 that this CAP went into effect at Perryville in October 2016
7 and that she approved this CAP by mistake. Correct?

11:25AM

8 A. That's what it says.

9 Q. Okay. And then on Paragraph 13, she says that she inquired
10 with site leadership at Perryville about when the practice
11 stopped and she was told it stopped when the open clinic came
12 on line at Perryville in early December. That's what it says,
13 correct?

11:26AM

14 A. Correct.

15 Q. And do you have any idea who the site leadership are at
16 Perryville that she may have consulted?

11:26AM

17 A. At that time, I believe it was Sumi Erno who was a health
18 administrator.

19 Q. Okay. And are you aware of this issue coming up at any
20 other prison?

11:26AM

21 A. No. Not particularly, no.

22 Q. Okay. So is it your testimony that it only happened at
23 Perryville?

24 A. No. I can't say that definitively but I know when this
25 issue came up, I'm not sure what facilities we were talking

11:26AM

1 about, but it was never condoned or agreed to.

2 Q. Okay. And after you learned about this Perryville
3 Corrective Action Plan, what steps did you take with Corizon to
4 ensure that all institutions and all units knew that this was
5 not an acceptable practice? 11:27AM

6 A. I would have brought this to Corizon's leadership's
7 attention and said, this is not an acceptable practice, as
8 would Kathy Campbell, as would Vanessa Headstream, as would Dr.
9 Taylor.

10 Q. And did they -- did the Corizon people, did you ask the 11:27AM
11 Corizon people to, for example, send an e-mail or have a
12 meeting with all of their facility health administrators or
13 medical directors or nursing directors to discuss that this is
14 not an acceptable policy?

15 A. I didn't direct them to do that, no. 11:27AM

16 Q. So you did not.

17 Do you know if Corizon did take such steps?

18 A. To my knowledge they did, yes.

19 Q. What did they tell you they did?

20 A. Through their education, they bring in their FHAs they 11:27AM
21 bring in DONs, they bring in their site leadership and they
22 have these discussions on a regular basis.

23 Q. So you were told by Corizon people that they specifically
24 instructed the FHAs and the DONs to not do this?

25 A. I was told that Corizon passed the word on to its staff 11:28AM

1 that this is not an acceptable practice, yes.

2 Q. Okay. Could you please turn to Tab 21. This is an inmate
3 grievance from Florence Institution dated April 27. Could you
4 turn to Page 27, read the highlighted text in the prisoner's
5 grievance?

11:28AM

6 A. "On April 4th, 2017, I reported a sick call line at 8:30
7 a.m., waited until 10 a.m. when I was told by CO Blank to come
8 back after count. I returned at 12 p.m. to sick call line and
9 waited until 1:30 p.m. At that time I was asked -- or I asked
10 CO Blank for my ID and HNR back because waiting three hours to
11 see a nurse was too long and that sitting on a concrete bench
12 that whole time worsens the pain and I could not stand the pain
13 any longer."

11:29AM

14 Q. And could you turn to the next page, which is a response by
15 the Assistant Director of Nursing dated April 20th, 2017 and
16 please read the second highlighted paragraph.

11:29AM

17 A. The first highlighted paragraph?

18 Q. The second.

19 A. The second paragraph is not highlighted.

20 Q. Okay. The one that begins with "Your concern."

11:30AM

21 A. That's not highlighted. I'm sorry.

22 "Your concern has been researched, including a review
23 of your medical records. I am providing you with the following
24 response. Per policy a patient must be seen by the nurse three
25 times prior to being scheduled with the provider. I have

11:30AM

1 placed you on the provider line for follow-up next week. As
2 far as the wait time for open sick call, it is first come,
3 first serve. This is a large yard with a lot of inmates."

4 Q. So is this the first time that you learned that Florence
5 was telling prisoners that they had to be seen three times on
6 nurse's line?

11:30AM

7 A. Yes.

8 Q. So that means the patient was charged \$12, right?

9 A. I don't know.

10 Q. Well, each visit is \$4, correct?

11:30AM

11 A. Potentially, yes. I don't know if he was charged or not.

12 Q. Why would he not be charged \$4?

13 A. The nurse may have chosen not to charge him. I don't know.

14 Q. So you have no reason to say he was not charged?

15 A. Nor do I have reason to say that he was.

11:31AM

16 Q. Okay.

17 THE COURT: The standard rule is every time you come
18 to nurse's line you get charged \$4.

19 THE WITNESS: That's correct.

20 MR. BOJANOWSKI: Note an objection, Your Honor.

11:31AM

21 That's not exactly true because there are certain
22 classifications.

23 THE COURT: That's true.

24 MR. BOJANOWSKI: Such as if the person were indigent,
25 SMI, et cetera.

11:31AM

1 THE COURT: Yes. That's right. Thank you.

2 BY MS. KENDRICK:

3 Q. Plaintiffs first brought this issue of people being told
4 they had to be seen multiple times on the line to your
5 attention and the Court's attention in the winter, right?

11:31AM

6 A. I'm not sure when, but I know we have covered this ad
7 nauseam, and we have always stated it has never been our policy
8 that an inmate has to be seen more than once for referral.

9 Q. Okay.

10 THE COURT: And it wouldn't make me so sick, I
11 wouldn't be in an ad nauseam situation if it had been redressed
12 the first time we raised it. And then I raise it again, and
13 Dr. Taylor and others tell me it's completely resolved. And I
14 see something dated 4/2017, long after the nausea should have
15 been occurring and resolved and cured, and this person is
16 saying not only twice but three times. You can understand how
17 this would be somewhat alarming to me when I have been told
18 repeatedly by people in the courtroom that this was not going
19 on.

11:31AM

11:32AM

20 THE WITNESS: And alarming to myself as well and to
21 Corizon leadership and everyone else. When I see something
22 like this I cringe, because it's not policy. But I can't
23 control every situation for every person out there. And I wish
24 I could, but I just can't.

11:32AM

25 THE COURT: The respondent here from N. Williams, RN,

11:32AM

1 ADON, where is she in the hierarchy of things? Do you happen
2 to know?

3 THE WITNESS: The assistant DON at the facility would
4 report to the Director of Nursing at the facility.

5 THE COURT: Okay. Thank you.

11:33AM

6 THE WITNESS: It's a few steps removed from the
7 leadership.

8 THE COURT: Thank you.

9 BY MS. KENDRICK:

10 Q. And this is a first level response because it says Inmate
11 Informal Complaint Response. Is that your understanding?

11:33AM

12 A. Yes.

13 Q. And the first page of this document is the inmate grievance
14 response that is signed by Spencer Sego, the Facility Health
15 Administrator, correct?

11:33AM

16 A. Correct.

17 Q. And it states that the grievance is substantiated and
18 resolved and final. So this is as high as it goes, correct?

19 A. At the facility level, yes, that's correct.

20 Q. Okay. Do you see anything here in Mr. Sego's response
21 repudiating the response that was provided to the first level
22 by the ADON?

11:33AM

23 A. I would have to review this response based upon the actual
24 grievance itself.

25 Q. In those two paragraphs written by Mr. Sego, does he say in

11:34AM

1 it that RN Williams is incorrect about the policy?

2 A. No, he does not. Again, without reviewing the grievance
3 itself, I don't know if this was brought up in the grievance or
4 if this was just part of an informal.

5 Q. So when I asked you previously about all the steps that you 11:34AM
6 had taken since first learning about the Perryville situation,
7 you said that you asked the people at Corizon to take care of
8 it and to let people know.

9 A. Yes.

10 Q. What are you planning to do now when you get back to the 11:34AM
11 office about this?

12 A. Well, I don't think I have to do a whole lot because
13 Corizon leadership is sitting at the back of the courtroom and
14 they are hearing exactly what I'm telling you in my
15 frustrations. And that message needs to go back to the field 11:34AM
16 through Corizon.

17 Q. And are you going to take any steps to follow up to ensure
18 that every nurse is trained that this is not the policy?

19 A. I will work with Corizon on how they deliver that message,
20 yes. But I'm not going to direct them in exactly what they 11:35AM
21 have to do.

22 Q. Well, they are your contractor, right?

23 A. They are.

24 Q. So if the person who holds the contract asks a vendor,
25 subordinate vendor to do something, shouldn't they do it? 11:35AM

1 A. They should do it but I'm not going to tell them how to do
2 it.

3 Q. Are you going to suggest how they do it?

4 A. I will work with them on the way to deliver that message,
5 yes.

11:35AM

6 Q. So I think the last time that you testified, I think it was
7 in April or May, you said that the contract was up for renewal
8 and you had two bidders. Are you still in that stage reviewing
9 the bids?

10 A. We are.

11:36AM

11 Q. Okay. And you are still negotiating with both bidders?

12 A. We haven't gotten into negotiations yet.

13 Q. So you are aware of the performance measures about timely
14 referrals to specialty care?

15 A. Yes.

11:36AM

16 Q. And that the Court has found defendants non-compliant with
17 some of them?

18 A. Yes.

19 Q. And I believe it may have been you or others, that one of
20 the reasons it was so difficult for Corizon was because of the
21 AHCCCS rates that they have to pay?

11:36AM

22 A. As far as availability of providers, yes.

23 Q. Has ADC received complaints about Corizon not paying money
24 owed to specialists?

25 A. Yes.

11:36AM

1 Q. When?

2 A. I received one a couple of days ago.

3 Q. And what was that for?

4 A. It was related to claims that were made that hadn't been
5 paid yet, and it was just brought to my attention.

11:37AM

6 Q. How much?

7 A. I don't know.

8 Q. Who is the vendor or specialist?

9 A. It was one of the hospitals.

10 Q. Okay. And you said that was a couple days ago?

11:37AM

11 A. Yes.

12 Q. Okay. Could you turn to Tab 37. And this is a series of
13 e-mails that you are on from March 17, 2017, and the subject
14 line is unpaid claims, correct?

15 A. Correct.

11:37AM

16 Q. And if you flip to the start of the e-mail chain, which is
17 on Page 4, it's sent by a person named Laura Slacian from
18 Gilbert Hospital?

19 A. Yes.

20 Q. Her title is Director of Patient Financial Services?

11:37AM

21 A. Yes.

22 Q. And she opens her e-mail saying, "Attached is the
23 outstanding for Florence Hospital at Anthem: \$1,228,715.74.
24 This amount outstanding for hospital is unacceptable. These
25 outstanding bills go back to February 2016."

11:38AM

1 Do you remember getting this e-mail?

2 A. I do.

3 Q. Is this the one you are referring to or a different one?

4 A. No. I have received one since then.

5 Q. Was it also from Ms. Slacian?

11:38AM

6 MR. BOJANOWSKI: Your Honor, we'll object to this line
7 of questioning. Again, we are so far outside the HNR box
8 process at this point.

9 THE COURT: True enough, but I have Mr. Pratt here on
10 the issue of striking concern to me with respect to whether or
11 not people who are integral in the performance measures
12 generally are being paid. So you may continue. The objection
13 is overruled.

11:38AM

14 BY MS. KENDRICK:

15 Q. The more recent one, was it also from Ms. Slacian?

11:39AM

16 A. I believe it was, yes.

17 Q. Was it regarding the same bill to Florence Anthem?

18 A. No.

19 Q. It was a different bill?

20 A. Yes.

11:39AM

21 Q. Do you know if this \$1.2 million in arrears was ever paid
22 by Corizon?

23 A. I know Corizon addressed it. There were several e-mails
24 going back and forth. There were problems with some of the
25 claims. And it was totally addressed. And then I was

11:39AM

1 surprised to see an e-mail a couple of days ago from the same
2 party saying that there's some more outstanding things over the
3 last, I think, over the last two months.

4 Q. Okay. Can you read the paragraph that begins, "We are not
5 contracted with Corizon"?

11:39AM

6 MR. BOJANOWSKI: Same objection.

7 THE COURT: Overruled.

8 THE WITNESS: "We are not contracted with Corizon, and
9 we are not obligated to accept AHCCCS rates for these services.
10 Florence Hospital at Anthem and Gilbert Hospital continue to
11 serve the inmates of Corizon in good faith and accept reduced
12 payments for services rendered. However, Corizon has not acted
13 in good faith by paying for these services per the AZ Prompt
14 Payment guidelines. I continue to have to constantly follow up
15 and literally beg you for payment of our bills."

11:39AM

11:40AM

16 BY MS. KENDRICK:

17 Q. And the next paragraph?

18 A. "Please accept this e-mail as demand for payment of all
19 unpaid invoices. Payments must be made by March 24th, 2017.
20 Until such time that payment is received we will be unable to
21 provide elective radiology and other elective outpatient
22 services."

11:40AM

23 Q. Since Florence Anthem and Gilbert Hospitals were refusing
24 to provide elective outpatient services, do you know where
25 prisoners were going for these services?

11:40AM

1 A. I don't. Not specifically, no.

2 Q. Could their refusal to see these patients explain
3 non-compliance with the performance measures regarding
4 specialty care in March?

5 MR. BOJANOWSKI: Your Honor, we'll object. There's 11:41AM
6 got to be some evidence here of patients not being seen, and
7 we're talking, you know, we get these broad brush strokes of,
8 well, this is a possibility that patients weren't seen. Is
9 there a list of patients that counsel has that were not seen.

10 THE COURT: Well, the question is actually directed to 11:41AM
11 the answer that you offered, Mr. Bojanowski, so the objection
12 is overruled. We'll hear the answer.

13 THE WITNESS: I can't point to a direct correlation,
14 because there are other providers that should be able to
15 provide that same service. And I don't know what other 11:41AM
16 elective outpatient services they are talking about, and
17 radiology is available at most facilities. So unless this is
18 after hours radiology or something along those lines, again,
19 it's -- can you say it's possible? Of course. Anything is
20 possible. But I can't make a correlation with that 11:42AM
21 specifically.

22 BY MS. KENDRICK:

23 Q. Okay. So Mr. Pratt, my question was with regard to their
24 possible performance on these performance measures in March
25 being adversely affected. And I will represent to you based 11:42AM

1 upon what information you provide me and the Court that in
2 March of this year, Eyman's score was 64 and Florence's score
3 was 59.

4 So again, my question is whether or not you think that
5 their refusal to accept elective specialty appointments
6 adversely affected the performance on these performance
7 measures.

11:42AM

8 MR. BOJANOWSKI: Same objection.

9 THE COURT: Overruled.

10 THE WITNESS: The same answer. I don't know the
11 reasons for non-compliance specifically during that month there
12 were. I don't know how many of these elective radiology or
13 elective outpatient services, if any, were actually refused. I
14 know that's what the letter says, but I don't know that that
15 happened.

11:42AM

11:43AM

16 BY MS. KENDRICK:

17 Q. Okay. So when we come in here every month for our status
18 hearings one of the exercises that we go through is that we go
19 through the non-compliant performance measures. And Mr.
20 Bojanowski announces what the numbers are for a given month and
21 then offers explanations as to why numbers are what they are.
22 Is that correct?

11:43AM

23 A. Correct.

24 Q. You have participated in this?

25 A. Yes, I have.

11:43AM

1 Q. Do you have any memory of when we discussed the March
2 performance results that the fact that Corizon had not paid the
3 hospital was offered as an explanation for non-compliance?

4 A. I don't.

5 Q. So you said you got an e-mail a few days ago. Is it,
6 again, with the Florence Anthem Hospital?

11:43AM

7 A. Yes.

8 Q. Do you remember roughly how much is at issue?

9 A. No idea. No, I don't.

10 Q. Is it more than a million dollars?

11:43AM

11 A. I don't know.

12 Q. Is it \$100?

13 A. I don't know.

14 Q. Back when you were dealing with this issue in March, did
15 you discuss this unpaid bill with Director Ryan?

11:44AM

16 A. I don't recall if I spoke directly with Director Ryan on
17 this or not.

18 Q. Do you think this is something that would be important to
19 raise with him in your weekly meetings?

20 A. Typically we talk about everything about the contract, so I
21 wouldn't be surprised if this came up in a conversation.

11:44AM

22 Q. Could it potentially adversely affect patient care?

23 A. Yes, potentially.

24 Q. Okay. If you could turn to Tab 36. This is another
25 e-mail. And if you go to the second page, it's November 21st

11:44AM

1 and November 22nd. It's from Kathleen Campbell to you and it's
2 referring to a bill from Mount Vista Hospital. And Kathy
3 Campbell writes to you, quote, "Because it wasn't an emergency
4 and he is an alien, AHCCCS doesn't pay and Corizon is
5 responsible for paying his bill. Apparently Corizon isn't
6 recognizing that they are responsible for the bill."

11:45AM

7 Is that true that Corizon is responsible for paying
8 the bills for non-U.S. citizens?

9 A. Yes.

10 Q. And then if you flip to Page 1, you forwarded this e-mail
11 to Ms. Almanza at Corizon on November 23rd. And then the very
12 next entry is on January 3rd. You re-sent it to Ms. Almanza
13 and asked her for follow-up. What inspired your January
14 e-mail?

11:45AM

15 A. They probably hadn't gotten a response yet.

11:46AM

16 Q. So do you keep some sort of flag system with your e-mail if
17 you don't get a response it reminds you to follow up again?

18 A. I will, typically, as in this case, I copied myself on the
19 e-mail so it comes back to me and I leave it open until it's
20 resolved.

11:46AM

21 Q. To your knowledge, did Corizon ever pay for this patient's
22 care?

23 A. To my knowledge they did, yes.

24 Q. Are you aware of other times when Corizon failed to pay
25 outside specialists for medical care for non-U.S. citizens?

11:46AM

1 A. No.

2 Q. This failure to pay is concerning, correct?

3 MR. BOJANOWSKI: Note an objection. He testified they
4 did pay.

5 THE COURT: Is that a general failure to pay? 11:46AM

6 MS. KENDRICK: No, the failure to pay for --

7 THE COURT: Four months.

8 MS. KENDRICK: For four months. Is that concerning?

9 THE WITNESS: In this case. If there was a dispute or
10 misunderstanding on the responsibility for it, I can understand 11:47AM
11 why it wasn't paid in the first place, yes.

12 BY MS. KENDRICK:

13 Q. Would it be reasonable to have a concern that Corizon's
14 utilization management team has a disincentive to approve
15 outside specialty requests for a non-U.S. citizen? 11:47AM

16 MR. BOJANOWSKI: Note an objection.

17 THE WITNESS: I don't know anything about that
18 practice or process at all.

19 THE COURT: I didn't hear if there was an objection.

20 MR. BOJANOWSKI: There was, Your Honor. 11:47AM

21 THE COURT: What is it?

22 MR. BOJANOWSKI: I think she's making some kind of
23 allegation that has no basis in fact that somehow utilization
24 management is actively engaged in a process whereby they refuse
25 to pay for alien citizens, or aliens. 11:47AM

1 THE COURT: Overruled.

2 BY MS. KENDRICK:

3 Q. Is there some reason to have some concern about this
4 happening?

5 MR. BOJANOWSKI: Same objection. 11:47AM

6 THE COURT: Overruled.

7 THE WITNESS: No. There is no policy or procedure or
8 reason for them to do that, no.

9 BY MS. KENDRICK:

10 Q. I'm not talking about a written policy. So what is the 11:48AM
11 basis for you saying there's no reason to be concerned of this
12 incentive?

13 MR. BOJANOWSKI: Same objection. If we could have
14 some evidence showing it's actually happening.

15 THE COURT: Don't need any. Thank you. Overruled. 11:48AM

16 THE WITNESS: I don't know that there is an incentive.
17 I'm not sure where that's coming from. Utilization management
18 pays claims every day through Corizon. And this is the only
19 one that I can even reference, only because it's here, as to
20 being related to an alien. I have not heard of this anywhere 11:48AM
21 else.

22 BY MS. KENDRICK:

23 Q. Okay. Are you aware of any other situations when Corizon
24 hasn't paid an outside hospital or specialist besides the three
25 that we have talked about here? 11:48AM

1 A. No. I know there may be cases where there's questions with
2 their utilization management on the extent of bills, where
3 there's questions on whether or not bills are appropriate based
4 on hospitalization days. That's all part of their utilization
5 management process.

11:49AM

6 Q. Could you turn to Tab 39.

7 A. Okay.

8 Q. And is this a letter that you wrote?

9 A. Yes.

10 Q. And it's dated January 19, 2017, and it's addressed to Ms.
11 Almanza at Corizon. The subject is November 2016 contract
12 sanctions?

11:49AM

13 A. Yes.

14 Q. And in your second paragraph, you state, "In accordance
15 with contract amendment Number 10, the maximum amount of
16 sanctions is \$90,000 per month."

11:49AM

17 Who at ADC agreed to amend the contract to cap the
18 sanction amount to \$90,000?

19 A. This was done through our procurement office.

20 Q. Were you involved in this decision to cap the fine?

11:50AM

21 A. I was involved in the discussions, yes.

22 Q. Okay. Did you agree with the decision to cap the fine?

23 A. Yes.

24 Q. Why?

25 A. I agreed.

11:50AM

1 THE COURT: Why? Why did you agree? You otherwise
2 would have complete unlimited, presumably, sanctioned ability
3 to impose fines based upon the number of failures and you
4 agreed to cap that. Why?

5 THE WITNESS: Just to make a common sense decision in 11:50AM
6 the moment as to what seemed reasonable at that time.

7 THE COURT: And why did you think it was reasonable at
8 the time?

9 THE WITNESS: It seemed punitive at that time.

10 THE COURT: Wasn't that the purpose of the measure, to 11:51AM
11 be punitive as a punishment for failure to comply?

12 THE WITNESS: It is.

13 THE COURT: So if you have a graduated punitive
14 measure meaning that you can impose greater sanctions for
15 greater violations, why wouldn't that be in the State's 11:51AM
16 interest?

17 THE WITNESS: It is in the State's interest, and this
18 is something that was not in place before. This was a step up
19 in the sanctions.

20 THE COURT: So the cap was an increase in the 11:51AM
21 sanctions?

22 THE WITNESS: This cap is based upon certain -- well,
23 the letter goes on to explain how that works. But any
24 performance measure that has the potential of extending the
25 stipulation, that would be at a \$5,000 sanction for that 11:51AM

1 performance measure.

2 THE COURT: This is bringing back a recollection that
3 I had forgotten, and maybe you can lay more foundation if my
4 recollection is in error. But I do think what Mr. Pratt is
5 saying is true that this was part of a mid-correction or an 11:51AM
6 amendment to the contract that provided for this sanction that
7 didn't previously exist or am I remembering that incorrectly?
8 I just can't keep it in my mind at this moment.

9 BY MS. KENDRICK:

10 Q. Didn't the contract previously have a sanction of \$1,000? 11:52AM

11 A. There were much lesser sanctions leading up to this, Your
12 Honor.

13 Q. But was it capped?

14 A. No, it was not.

15 Q. So the dollar amount was less per sanction but every single 11:52AM
16 violation they would get dinged for it?

17 A. It had changed through time as we went on through this
18 process as to how we were sanctioning them. We used to do it
19 on a quarterly basis, and then we went to -- when we entered
20 into the stipulation itself we went on a month-to-month basis 11:52AM
21 for them.

22 THE COURT: And was your view at the time you adopted
23 this amendment that it was a more punitive measure?

24 THE WITNESS: Yes.

25 BY MS. KENDRICK: 11:52AM

1 Q. And on that same page, your next sentence after that is
2 that you note that this is the ninth consecutive month that
3 Corizon's lack of compliance with the stipulated agreement has
4 resulted in a \$90,000 sanction. Is that correct?

5 A. Correct.

11:53AM

6 Q. Since January 19th, how many more of these sanctions
7 letters have you written?

8 A. Every month we write a sanction letter.

9 Q. And every month since January 19th has it been \$90,000?

10 A. It has.

11:53AM

11 Q. So we're up to 14 months in a row?

12 A. I'd have to look at the last one, but yeah, I will take
13 your word for it.

14 THE COURT: How does Corizon pay the sanction?

15 THE WITNESS: It's actually withheld from the payment
16 that goes to them. It's an offset.

11:53AM

17 BY MS. KENDRICK:

18 Q. And then so just on the third page of your letter, the
19 second paragraph, you note that based upon the findings for
20 November, the monthly assessment would be 75 times 5000 or
21 \$375,000, but because the limit is set at 90,000, the fine will
22 only be 90,000, correct?

11:53AM

23 A. Correct. Correct.

24 Q. Do you think the cap should be removed?

25 A. It will be in the new contract.

11:54AM

1 Q. And I think you said earlier, we were talking about nurse's
2 line that it's RNs that do nurse's line?

3 A. Yes.

4 Q. Okay. Could you turn to Tab 34. And go to the next to
5 last page. There's a chart. Do you see it?

11:54AM

6 A. Yes.

7 Q. And it's listing various prisons and then Performance
8 Measure 37 and Performance Measure 39. And what does it say
9 for Lewis Prison under Performance Measure 37?

10 A. LPNs were completing sick call.

11:55AM

11 Q. Were you aware of that happening at Lewis?

12 A. No.

13 Q. Is it within a licensed practical nurse's scope of practice
14 to provide treatment at nurse's line?

15 A. They can also operate under the direction of an RN.

11:55AM

16 Q. Okay. What is the immediate solution for this to the
17 right?

18 A. Only RNs will be assigned to complete the assessment
19 portion of sick call.

20 Q. And with regard to the fines, you have testified previously
21 that Corizon has to pay offsets for having unfilled positions,
22 is that correct?

11:55AM

23 A. Correct.

24 Q. Do you know how much the offset was last month, roughly?

25 A. I do not, no.

11:56AM

1 Q. Okay. Could you turn to Tab 40. This is the June 2017
2 monthly staffing report, correct?

3 A. Yes.

4 Q. And on the statewide list, it shows 5.75 of 10 contracted
5 medical directors and 7.2 of 14 staff physician positions are
6 filled?

11:56AM

7 A. Yes.

8 Q. So that would be sanctionable?

9 A. Yes.

10 Q. And then a little further down about halfway, it shows
11 dental director, 7.5 of 10 positions are filled for a 75
12 percent fill rate. So that would be sanctionable, too?

11:56AM

13 A. Yes. It depends on what pool they fall into as far as
14 being a sanctionable group.

15 Q. But the high level positions?

11:57AM

16 A. Yes.

17 Q. You have testified. Okay.

18 THE COURT: Could you remind me, what is the sanction?

19 THE WITNESS: It's based on groups of providers and
20 different disciplines here; nurses, providers. The hours
21 themselves are combined as a group and then they are looked at
22 in total as far as what percentage of time they spent. If they
23 are less than 90 percent over more than 60 days then there's an
24 offset.

11:57AM

25 BY MS. KENDRICK:

11:57AM

1 Q. Okay. And the Phoenix Prison is where the inpatient mental
2 health unit is, correct?

3 A. Yes.

4 Q. And the most seriously mental health patients are housed
5 there?

11:58AM

6 A. The acute mentally ill.

7 Q. Acute. Could you flip a few pages to the Phoenix chart.

8 A. Okay.

9 Q. And if you look at the bottom third where this mental
10 health staff is listed, does it show zero percent psychiatric
11 director?

11:58AM

12 A. Yes.

13 Q. And then for psychiatrist, one out of 1.5 positions is
14 filled, 67 percent?

15 A. Correct.

11:58AM

16 Q. For psychologists, .5 of 3.0 are filled for 17 percent?

17 A. Correct.

18 Q. For mental health director, Ph.D., zero of 1.0 are filled?

19 A. Yes.

20 Q. For recreational therapists, 1.0 of 2.0 are filled for 50
21 percent?

11:58AM

22 A. Yes.

23 Q. For psych tech, 5.8 of 12.1 are filled?

24 A. Yes.

25 Q. For 48 percent?

11:59AM

1 A. Yes.

2 Q. Okay. And the Tucson Prison is where you guys have the
3 large infirmary, correct?

4 A. We've got infirmaries at Tucson, Florence, Perryville.

5 Q. How many beds is the Tucson one, roughly?

11:59AM

6 A. The number's escaping me.

7 Q. Is it the largest one?

8 A. It is the largest, yes.

9 Q. And you also have an in-patient unit kind of like inpatient
10 medical for people who can't live in -- you call it outpatient
11 housing?

11:59AM

12 A. Assisted living type patients.

13 Q. That's it.

14 A. Yes.

15 Q. Okay. And you also have one of those complexes?

11:59AM

16 A. Yes.

17 Q. If you could turn a couple pages to the Tucson report.

18 A. Uh-huh.

19 Q. On the second line for staff physician, it shows that the
20 contract calls for 3.5 physicians at this prison and zero are
21 filled?

12:00PM

22 A. Yes.

23 Q. And for RNs, they are supposed to have 39.1 and instead
24 there's 26.8?

25 A. Yes.

12:00PM

1 Q. Or 69 percent? And also for mental health, only one out of
2 two psychiatrists and 2.4 out of 4 psychologists, correct?

3 A. True.

4 Q. And you stated you don't know how much Corizon has had to
5 pay for penalties because of the failure in June to staff these
6 positions?

12:00PM

7 A. Not specifically in June. I know we have offset them in
8 ballpark numbers about \$3 million since the beginning of the
9 contract.

10 Q. I believe you testified in May that it was 3.3. Has there
11 been more since May?

12:00PM

12 A. I'm just talking ballpark numbers. I don't have them
13 memorized.

14 Q. And you said in the new contract that there's not going to
15 be the cap on the fines. Is there going to be the 90 percent
16 cutoff for staffing in the new contract, or will it be required
17 to be 100 percent staffed?

12:01PM

18 A. Required to be 100 percent.

19 Q. Okay. And in the new contract, will the vendor be
20 responsible for paying all contempt fines if they are imposed?

12:01PM

21 MR. BOJANOWSKI: Note an objection.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know where that's at in the
24 contract.

25 BY MS. KENDRICK:

12:01PM

1 Q. Are you involved in negotiating the contract?

2 A. Yes.

3 Q. Okay.

4 A. As I said, we haven't gotten into negotiations yet.

5 THE COURT: When does that happen?

12:01PM

6 THE WITNESS: I would anticipate in the next couple
7 months.

8 THE COURT: Is it March of next year?

9 THE WITNESS: No. The contract itself with Corizon

10 has been extended to marry up with our fiscal year. So it ends
11 actually June 30 of 2018.

12:01PM

12 THE COURT: Thank you.

13 BY MS. KENDRICK:

14 Q. And I just want to go back in closing to the discussions we
15 were talking about earlier that you had with Corizon when you
16 guys decided to move to the open clinic system. Was -- at any
17 time was there any discussion about how this change would
18 impact persons with disabilities?

12:02PM

19 A. I'm sure that's all part of the conversation, yes.

20 Q. You don't specifically recall?

12:02PM

21 A. If there was going to be anything adversely affecting
22 anyone's ability to submit an HNR we would have covered it.

23 Q. I have nothing further.

24 THE COURT: Thank you. What we'll do is we'll take
25 our noon recess. I gather there is some examination the

12:02PM

1 defendants would like to conduct with this witness. Is that
2 true?

3 MR. STRUCK: Yes, sir.

4 THE COURT: Sir, if you would come back at 1:15 we'll
5 take it up again. Thank you.

12:03PM

6 (Recess from 12:03 p.m. until 1:17 p.m.)

7 THE COURT: Thank you. Before we turn to defendants,
8 I noted, or thought as I was leaving the bench, that none of
9 the documents that were shown to Mr. Pratt during his
10 examination by plaintiffs were admitted in evidence. And I
11 think virtually all of them are not otherwise on the Court's
12 docket. Was that the intention.

01:18PM

13 MS. KENDRICK: Yes, Your Honor. We were just going to
14 wait until the end of the day versus doing it one at a time,
15 but whatever you prefer.

01:18PM

16 THE COURT: So at some point you are going to move for
17 their admission?

18 MS. KENDRICK: Yes, sir, but since some of them are
19 used with different people, some of the exhibits are used with
20 different people we would wait until the end until all of them
21 had been used and admit them together. If you want us to start
22 piecemealing them --

01:18PM

23 THE COURT: I just want to do something that's
24 efficient. And often times it's most efficient to do it at the
25 time that the exhibit is being presented to the witness.

01:18PM

1 However, because these were documents largely produced by
2 defendant, maybe there wouldn't be some number of objections.
3 I don't know. I would just ask that at the end of the day
4 today and that before tomorrow, keeping in mind that if there
5 is going to be an evidentiary objection you would like to 01:19PM
6 address it with the witness you may lose that opportunity if
7 the witness is no longer around. You need to take some care to
8 make sure that we don't run out of time and that if we do that
9 maybe you can, between now and tomorrow, figure out a way to
10 decide on how to address this and maybe resolve some if not all 01:19PM
11 of this.

12 MS. KENDRICK: Would you like us to move into evidence
13 the exhibits that were used with Mr. Pratt?

14 THE COURT: Do you wish all of them to become
15 evidence? 01:19PM

16 MS. KENDRICK: Yes, sir.

17 THE COURT: Does the defendant have an objection to
18 that wholesale introduction?

19 MR. BOJANOWSKI: I think there was just one exhibit
20 that we really had an objection to, and that would be at Tab 01:19PM
21 number 18, the handwritten notes of a meeting that have no
22 author on it and no foundation laid as to who prepared it.

23 THE COURT: That would seem to be a meritorious
24 objection. Any response to that, Ms. Kendrick?

25 MS. KENDRICK: Well, first of all, this was how it was 01:20PM

1 objected -- presented to us, and so we have no way of figuring
2 out who wrote it. When it was produced to us it was not
3 identified from whom it was gathered.

4 My belief is just based upon the time frame between
5 that and that subsequent e-mail that was written by Mr.
6 McWilliams' assistant that summarized a meeting that happened
7 earlier in the day that it was the same individual, Ms. Yanez,
8 who wrote it. Mr. McWilliams is here, and, I mean, we could
9 ask him a simple question for the purpose of establishing
10 whether this is his assistant's handwriting.

11 THE COURT: Mr. Bojanowski, do the defendants know who
12 prepared what has been marked for identification as Exhibit 18?

13 MR. BOJANOWSKI: May I have a moment, Your Honor?

14 (Discussion off the record.)

15 MR. BOJANOWSKI: It is not Ms. Yanez's handwriting and
16 we don't know whose it is.

17 THE COURT: Well, I don't have a foundation for this
18 document therefore.

19 MS. KENDRICK: Well, then I guess we would move for
20 everything but the exhibit at Tab 18 to be moved into evidence.

21 THE COURT: I gather there's no objection?

22 MR. BOJANOWSKI: Correct, Your Honor, the rest of them
23 are e-mails and such that have been identified by witnesses.

24 THE COURT: All right. So that would be what's been
25 marked for identification as Exhibits 12 through 41, with the

1 exception of Number 18, will be received into evidence.

2 Thank you. You may proceed.

3 MS. LOVE: Your Honor, we have discussed the following
4 approach with plaintiffs' counsel to which they agree. We will
5 be presenting four witnesses today on operations side to 01:22PM
6 testify to various physical plant issues as well as ICS
7 allegations related to Ms. Ashworth. Because they need to be
8 in another location tomorrow, plaintiffs' counsel has agreed
9 that we can take them out of order. We'll proceed with those
10 four witnesses today, and then if we still have time left in 01:22PM
11 the day, which we probably will, Mr. Pratt will retake the
12 stand.

13 THE COURT: Very well. Thank you.

14 MS. LOVE: Defendants call Deputy Warden of Operations
15 Jeff Van Winkle. 01:23PM

16 THE COURT: Warden Van Winkle, would you please step
17 forward to the clerk of the court to be sworn.

18 (The witness was sworn.)

19 MR. SPECTER: Your Honor, before the witness testifies
20 could we have a continuation of the Rule. The witnesses should 01:23PM
21 be left outside.

22 THE COURT: Have you identified witnesses who would be
23 subject to the Rule?

24 MR. SPECTER: I would be relying on defense counsel.

25 MS. LOVE: They are out of the courtroom. 01:23PM

1 THE COURT: Thank you.

2 Good afternoon, sir.

3 THE WITNESS: Good afternoon, Your Honor.

4 THE COURT: You may proceed.

5 JEFFREY VAN WINKLE,

6 a witness herein, having been first duly sworn by the clerk to
7 speak the truth and nothing but the truth, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LOVE:

11 Q. Sir, would you please state your full name for the record.

12 A. Jeffrey Van Winkle.

13 Q. By whom are you employed?

14 A. Arizona Department of Corrections.

15 Q. How long have you been employed by the Arizona Department
16 of Corrections?

17 A. This October will be 18 years.

18 Q. What is your current position?

19 A. I am the deputy warden of operations for the Florence
20 complex.

21 Q. How long have you been the deputy warden of operations at
22 the Florence complex?

23 A. Since March of 2016.

24 Q. Warden, can you please explain for the Court what your
25 duties are as deputy warden of operations at the ASPC Florence

01:23PM

01:24PM

01:24PM

1 complex?

2 A. I am in charge of daily operations at Florence complex, any
3 and all operations, and assist the warden as needed.

4 Q. And within the command structure that you operate under,
5 who do you directly report to?

01:24PM

6 A. Warden Kevin Curran.

7 Q. And who reports to you?

8 A. I have several staff that report to me. Major, captain at
9 operations, everybody under them, several staff.

10 Q. What is your educational background?

01:24PM

11 A. I have a Bachelor of Science in Administration of Justice.

12 Q. And can you take us through the basics of your career with
13 the Arizona Department of Corrections for almost the last 18
14 years telling us what kind of positions you have held at what
15 custody levels?

01:25PM

16 A. I have been at every custody level with the exception of
17 closed custody. I started as a Correctional Officer II. I
18 promoted to Correctional Officer II, sergeant. And from there
19 went to CO-4. From CO-4 went to ADW and from there went to
20 deputy warden and then was promoted to deputy warden of
21 operations. Like I said, various custody levels throughout
22 with the exception of closed custody.

01:25PM

23 Q. What does the term ADW mean?

24 A. Associate deputy warden.

25 Q. Where did you serve as associate deputy warden?

01:25PM

1 A. At Browning Unit at Eyman complex.

2 Q. What custody level was that?

3 A. That's maximum custody.

4 Q. How long did you serve as ADW at the Browning Unit?

5 A. One year.

01:25PM

6 Q. DW means what?

7 A. Deputy warden.

8 Q. How long were you a deputy warden?

9 A. Deputy warden for six years.

10 Q. At what location?

01:25PM

11 A. I have been a deputy warden at Aspen Unit in Phoenix
12 complex; a deputy warden at South Unit at Florence complex;
13 deputy warden at North Unit at Florence complex; deputy warden
14 at SMU-1 at Eyman complex; and now deputy warden of operations
15 at Florence complex.

01:26PM

16 Q. At the Florence complex, how many total employees do you
17 all have on the security side?

18 A. Total of 1039 employees at the complex, 954 of which are
19 security staff.

20 Q. How many units are there at the Florence complex?

01:26PM

21 A. There are five units total.

22 Q. And what are the names of those units?

23 A. We have Central Unit, East Unit, South Unit, North Unit,
24 and Globe Unit.

25 Q. Does each unit have its own medical unit?

01:26PM

1 A. Yes, ma'am, they do.

2 Q. I'd like to now turn your attention and talk to you about
3 the East Unit at the Florence complex.

4 Do you know what the capacity that the allowable
5 capacity is for inmates at that unit?

01:27PM

6 A. East Unit has a capacity of 680.

7 Q. Do you know what the approximate current count is at East
8 Unit?

9 A. I do not, but I have it in my notes if I am allowed to look
10 at my notes, ma'am.

01:27PM

11 Q. Yes. Are those notes that you prepared for today to tell
12 us statistics as to population levels?

13 A. Yes, ma'am, it is.

14 Daily count at East Unit as of today is 673.

15 Q. What is the custody level of the East Unit?

01:27PM

16 A. It's medium custody, general population.

17 Q. Is it an open yard?

18 A. Yes, ma'am, it is.

19 Q. Can you explain for us, what does an open yard mean?

20 A. Open yard allows the inmates to move around the yard
21 throughout the day, normally between the hours of 6 in the
22 morning, could be 5 in the morning, all the way up until the
23 yards are closed at 8:00 at night. They are allowed to go to
24 work, go to programming, recreation throughout the day as they
25 please. It's an open dorm-type setting.

01:27PM

01:28PM

1 Q. In the open dorm-type setting there at the East Unit are
2 there counts that are conducted on a daily basis?

3 A. Yes, ma'am. We have five formal counts that are conducted
4 throughout the day each day.

5 Q. What is the purpose of a count?

01:28PM

6 A. It is to account for every inmate incarcerated with the
7 Department of Corrections.

8 Q. What happens with respect to an inmate who, during a time
9 of count, may be, for instance, at a program, at education or
10 down at the medical unit? Do they have to return to their
11 housing area?

01:28PM

12 A. No, they do not. There is an option for an out count. Out
13 counts are done at the area that they are at and turned into
14 count movement. And the officer assigned to that area then
15 accounts for the inmate during that formal count.

01:28PM

16 Q. How does an officer perform what you have termed as an out
17 count?

18 A. They complete an out count form, meaning every inmate that
19 is at that particular area is placed on the form along with
20 their ADC number, and that form is turned into count movement
21 which is preparing the count. And during the count that
22 particular officer assigned to that area physically does a face
23 to ID check of that inmate and accounts for the inmate during
24 the count.

01:29PM

25 Q. And on the East Unit, the East Unit has its own medical

01:29PM

1 unit, correct?

2 A. Yes, ma'am, it does.

3 Q. Can you tell us what time the counts are performed on a
4 daily basis?

5 A. We have daily counts at 0400, 11:00; we have counts at
6 1600, 2030 and 2300 hours.

01:29PM

7 Q. If an inmate is at the medical unit on East, on the East
8 Unit during the time of count, do they have to return to their
9 house? Is it a requirement they return to their dorm?

10 A. No, ma'am. They can be placed on an out count.

01:30PM

11 Q. Is there a specified person or staff member who would do an
12 out count for an inmate would be at medical?

13 A. It would be the medical Correctional Officer II that's
14 assigned to the medical area.

15 Q. Is there a medical officer, correctional officer assigned
16 to the medical unit there at East Unit on a daily basis?

01:30PM

17 A. Yes, ma'am.

18 Q. What is -- what functions do the medical officers perform?

19 A. They provide security for the medical area. They also
20 will, as the inmates come up, they will take the inmate's ID to
21 allow the nurses to know that there is an inmate waiting to be
22 seen.

01:30PM

23 Q. Can you describe for us in detail at the level that you are
24 able to explain for us how does the officer take the ID cards
25 and let the medical personnel know that somebody is there to

01:30PM

1 see that an inmate is there to see medical?

2 A. As the inmate comes up to the door or window of medical he
3 will hand his ID to the officer. The officer has a board
4 system that he places the ID on that shows the order in which
5 the inmate came up, and they are seen accordingly.

01:31PM

6 Q. You stated earlier that the East Unit is a dorm setting?

7 A. Yes, ma'am.

8 Q. Can you explain for us what that means?

9 A. An open dorm setting, it's not a singular cell. Dorms will
10 have beds within it that is an open setting to where they are
11 not enclosed by four walls.

01:31PM

12 Q. Is there a dorm at the East Unit where ADA inmates are
13 housed?

14 A. Yes, ma'am. There's actually an entire cluster, which is
15 Abel cluster.

01:31PM

16 Q. How many inmates are capable of being housed in Abel
17 cluster?

18 A. There are 66 beds in Abel cluster.

19 Q. And what makes Abel cluster different from another dorm
20 with respect to ADA the physical plant?

01:32PM

21 A. Some of the openings of the actual bed areas have been
22 enlarged to allow wheelchair access. There has also has been
23 ADA style bars set up in the shower hut where they go and take
24 a shower, use the restroom, have sinks available to them.

25 Q. Are you aware of how many -- currently how many inmates

01:32PM

1 that you have at East Unit who utilize wheelchairs?

2 A. At East Unit there are a total of 14 inmates in
3 wheelchairs.

4 Q. Does the East Unit provide any assistance or aid to inmates
5 in wheelchairs to help them get around the unit as far as
6 wheeling themselves around, or do they just have to wheel
7 themselves?

01:32PM

8 A. No, ma'am, they do have aides assigned. Currently there
9 are eight assigned to East Unit.

01:33PM

10 Q. How does that work as far as the assignment of the aides?
11 Is an aide assigned to a specific inmate? Are they assigned
12 just to perform the function of assisting an inmate in a
13 wheelchair? How does that work?

14 A. They were just assigned to perform the function of getting
15 an inmate to and from a certain area. They are not assigned
16 specifically to an inmate. So one of the eight inmate ADA
17 aides could actually push two or three inmates throughout the
18 day to different areas.

01:33PM

19 Q. If an inmate is utilizing a wheelchair and, for instance,
20 is in their housing unit, in their dormitory, and they need
21 assistance to be pushed to medical, how would the inmate summon
22 or call an aide to come help push them?

01:33PM

23 A. So the officer assigned to each cluster is required to do
24 security checks. They are required to do those within the hour
25 every hour throughout their shift throughout the day. The

01:34PM

1 inmate has the ability to tell the officer, can you please get
2 an ADA porter up so I can go to medical? And at that time the
3 officer would call and get an inmate aide up to assist.

4 Q. Are the inmate aides who assist with pushing the
5 wheelchairs, are they stationed in like a certain location like
6 an Uber station, perhaps, waiting to be called out?

01:34PM

7 A. No, ma'am. They would be assigned to their particular dorm
8 and that is their job function. So if they are called out then
9 they report and assist the ADA inmate wherever they need to go.

10 Q. The inmates who are assigned as wheelchair aides, do they
11 receive pay for doing that work?

01:34PM

12 A. Yes, ma'am. They are paid through our WIPP system.

13 Q. I want to turn now your attention to the South Unit at the
14 Florence complex and take you through the explanation of
15 similar subject matter we just talked about. On the South Unit
16 what is the capacity of that South Unit?

01:34PM

17 A. South Unit's capacity is 965 inmates.

18 Q. Do you know what today's count is, approximately?

19 A. Today's count at South Unit is 896 inmates.

20 Q. What is the custody level at the South Unit?

01:35PM

21 A. South Unit is medium custody sex offenders.

22 Q. Is it also an open yard concept?

23 A. Yes, ma'am. Same style, open dorm setting.

24 Q. Is there also a medical unit at the South Unit?

25 A. Yes, ma'am, there is.

01:35PM

1 Q. As far as inmates who may go to the medical unit at South,
2 is it the same as or a different way of inmates getting their
3 order, so to speak, of being seen if they go to the open nurse
4 line?

5 A. It's the same concept as East Unit that was previously
6 explained.

01:35PM

7 Q. Does the South Unit have any ADA dorms?

8 A. Yes, ma'am, it does. It's got Dorm 7, which is completely
9 ADA. It's got Dorm 8, Abel and Baker run that are ADA, and
10 it's got Dorm 1, Charlie run, that is considered ADA.

01:36PM

11 Q. Is it a similar situation there where the setup to
12 accommodate ADA inmates is physical plant-wise, ADA showers?

13 A. Yes, ma'am.

14 Q. ADA restrooms?

15 A. Yes, ma'am.

01:36PM

16 Q. And clearance levels to allow for wheelchairs?

17 A. Yes, ma'am, in all three areas.

18 Q. At the South Unit, are you aware of how many inmates at the
19 South Unit require the use of a wheelchair?

20 A. There's a total of 34 inmates that are wheelchair bound at
21 South Unit.

01:36PM

22 Q. Do you also have wheelchair aides at the South Unit?

23 A. Yes, ma'am. There's a total currently of 51 assigned.

24 Q. Is there a reason that at the South Unit there are more
25 wheelchair aides that hold that position than inmates who

01:36PM

1 actually use wheelchairs?

2 A. No particular reason. The deputy warden recently assigned
3 more aides to that position with the movement of the medical
4 area in South Unit to accommodate those inmates that are a
5 little further away from medical.

01:37PM

6 Q. The wheelchair aides at the South Unit, are they likewise
7 paid for their work?

8 A. Yes, ma'am.

9 Q. Is it the similar setup as East Unit where if an inmate
10 needs the assistance of a wheelchair aide then a call is put
11 out to have an aide respond and help an inmate wherever they
12 may be?

01:37PM

13 A. Yes, ma'am.

14 Q. Where is the medical unit located currently at South Unit?

15 A. It is currently towards the front of the unit entrance by
16 the admin area as you enter South Unit.

01:37PM

17 Q. Is this a new location?

18 A. Yes, ma'am, it is.

19 Q. When did the medical unit relocate?

20 A. July of this year.

01:38PM

21 Q. And we'll use some diagrams and pictures later to walk us
22 through exactly where the move is. But generally speaking,
23 where was the, what we term, old medical unit at the South
24 Unit?

25 A. It was all the way in the back unit, one of the last areas

01:38PM

1 next to Dorm 9 which is the furthest from the entrance to South
2 Unit.

3 Q. When did plans begin to move the physical location of the
4 medical unit from the back of the unit up close to the front to
5 the current location?

01:38PM

6 A. There's been plans in place for quite some time. I'm not
7 exactly sure of the exact date that that took place. I can
8 tell you with all certainty it's been about a year that those
9 plans were being made to move the medical unit.

10 Q. What was the reason, or reasons, for the decision to move
11 the medical unit from the back of the unit up closer to the
12 front?

01:38PM

13 A. First and foremost, it was for security for the medical
14 staff. Of course, being a medium custody sex offender unit,
15 there was concerns with predominantly female medical staff
16 nurses that were walking all the way across the yard, all the
17 way to the back of the yard. So it was a little bit more
18 security minded to place it towards the front as well as
19 convenience for those staff.

01:39PM

20 The area where dental is currently, that did not
21 change, and that's where medical is currently located. So
22 there was a separation between dental and medical as well.

01:39PM

23 Q. Have you, yourself, had an opportunity to go down there and
24 look at the new medical unit?

25 A. Yes, ma'am, a few times.

01:39PM

1 Q. Based upon the size, just talking pure size, is the new
2 location bigger than the old medical unit?

3 A. Yes, ma'am, it is. The waiting area is larger by far.
4 There's more office space for medical staff, mental health
5 staff, and it just -- it's a better setup than the old medical
6 unit as far as space goes.

01:40PM

7 Q. Prior to December of 2016, how did inmates at the Florence
8 complex, and specifically we'll look at both the South Unit and
9 the East Unit, how did they seek medical care?

10 A. Previous they would submit a health needs request and that
11 health needs request would be placed in a box. Medical would
12 get the health needs request and process it as they saw fit.

01:40PM

13 Q. And was there a change in approximately December of 2016 as
14 to that process?

15 A. Yes, ma'am.

01:40PM

16 Q. What was the change?

17 A. We now conduct open nurse's line where the inmate fills out
18 an HNR, but instead of submitting it now brings it up with them
19 to the medical area and is seen by a nurse.

20 Q. Is there a certain time at the -- let's take the East Unit
21 specifically. Let's break it down by units, okay?

01:41PM

22 A. Yes, ma'am.

23 Q. At the East Unit, is there currently a schedule as to when
24 the open nurse line is available to the inmates?

25 A. Yes, ma'am. It's also posted on the yard for the inmates

01:41PM

1 to know.

2 Q. In addition to -- well, where is it posted? Is it like a
3 piece of paper posted?

4 A. Yes, ma'am. It's a piece of paper posted and posted on the
5 inmate bulletin boards.

01:41PM

6 Q. Does the East Unit have a television system where
7 notifications are also made to the inmate population as to
8 goings on at the complex or the unit?

9 A. Yes, ma'am. We have a CCTV system and those schedules are
10 also posted on them.

01:41PM

11 Q. I want to show you what we have marked as Defendants'
12 Exhibit Number 6. And for the Court, we -- hopefully it's in
13 front of you but we did provide in folders defendants exhibits.
14 Yes.

15 Your Honor, may I approach?

01:42PM

16 THE COURT: You may.

17 BY MS. LOVE:

18 Q. Warden, if you could take a look at the document that we
19 have marked as Exhibit Number 6 and tell me if you recognize
20 that document.

01:43PM

21 A. Yes, ma'am, I do.

22 Q. What is that document?

23 A. This is the document that is posted so that all inmates
24 understand the process and the times for the open nurse's line
25 at East Unit.

01:43PM

1 Q. Now, what time is the nurse open, nurse line open to the
2 inmates at the East Unit?

3 A. From 0700 in the morning until 1630 at night.

4 Q. Do you see on the document that the date of that document
5 is November 30th of 2016?

01:43PM

6 A. Yes, ma'am.

7 Q. Is the schedule still, as we sit here today, the same as it
8 was on this dated memorandum of November 30 of 2016?

9 A. Yes, ma'am, it is.

10 MS. LOVE: Defendants move to admit Defendants'
11 Exhibit Number 6.

01:43PM

12 THE COURT: Any objection?

13 MS. EIDENBACH: No, Your Honor.

14 THE COURT: Defendants' 6 will be received.

15 BY MS. LOVE:

01:43PM

16 Q. And according to the schedule the open nurse line is
17 available to the inmates at the East Unit seven days a week,
18 correct?

19 A. Yes, ma'am, it is.

20 Q. At the East Unit, is it based upon a building schedule such
21 as, for instance, Abel cluster needs to go up to see the open
22 nurse line between certain hours of time within the whole time
23 span it's open during the day, or is it just open to everybody
24 the entire span of time?

01:44PM

25 A. At East Unit it's open to everybody throughout the day, no

01:44PM

1 specific building schedule.

2 Q. Are there any specific provisions made for inmates who may
3 be at work, at programs, or at education during the time period
4 that the open nurse line is open?

5 A. No, ma'am. At East Unit, all the inmates are usually done
6 by 1400 hours at the unit. So they would have time after they
7 are done with programming, education, work to go to the open
8 sick call line.

01:44PM

9 Q. Now, turning your attention to the South Unit, is there a
10 schedule as to the time that the open nurse line is available
11 to inmates on the South Unit?

01:44PM

12 A. Yes, ma'am, also posted also on CCTV.

13 Q. I'd like to show you what defendants have marked as
14 Defendants' Exhibit Number 3. Can you take a look at that
15 document and tell me whether or not you recognize it?

01:45PM

16 A. Yes, ma'am, I do.

17 Q. What is this document?

18 A. This is the memorandum that is posted at South Unit that is
19 letting the inmates know what the process is for open nurse's
20 line as well as the hours.

01:45PM

21 Q. You see the first page of this document is dated December 5
22 of 2016, is that correct?

23 A. Yes, ma'am.

24 Q. And towards the bottom there is an open sick call hours
25 stating that sick call hours are seven days a week, is that

01:46PM

1 correct?

2 A. Yes, ma'am. But those hours were changed, and there is an
3 addendum on that second page that shows what the current hours
4 are at South Unit for open nurse's line.

5 Q. So the current hours of operation of the medical unit at
6 South is Page 2 of Exhibit Number 3?

01:46PM

7 A. Yes, ma'am, it is.

8 Q. Now, looking at Page 2 of Exhibit Number 3 with the sick
9 call hours at seven days a week, this one is broken down with
10 time periods per housing unit, is that correct?

01:46PM

11 A. That is correct.

12 Q. Is there a reason that at South Unit there is a breakdown
13 for hours for the open nurse line for inmates by housing unit s
14 versus East Unit it's open all day to everybody?

15 A. No, ma'am. The deputy warden of that particular unit
16 thought that it would be best to run the schedule in this
17 fashion compared to East Unit. They thought it would be better
18 to leave it open all day.

01:46PM

19 Q. You notice at the bottom of the list of Page 2 of the
20 exhibit from 1400 hours to 1830 hours it states ACI inmates
21 return from work in emergencies. What does that mean as far as
22 the schedule is concerned?

01:47PM

23 A. South Unit has an ACI yard where they employ about 200
24 inmates and this gives them the opportunity to be seen on the
25 open nurse's line when they return from work. Sometimes they

01:47PM

1 don't get home from work until after hours, and this allows
2 them that time to be seen.

3 MS. LOVE: Defendants move Exhibit Number 3 into
4 evidence.

5 THE COURT: Any objection?

01:47PM

6 MS. EIDENBACH: No, Your Honor.

7 THE COURT: 3 is received.

8 BY MS. LOVE:

9 Q. Turning back, I want to ask you a couple more questions
10 about the schedule. If you turn to Page 2 as to the current
11 schedule, I'm looking at the first block of time from 0700 to
12 0830 hours. It states that is the time period for Housing
13 Units 7, 8, and 9, is that correct?

01:47PM

14 A. Yes, ma'am.

15 Q. If an inmate does not -- if an inmate goes to the medical
16 unit, let's say hypothetically at 8:00, so it's between the
17 hours of 7 and 8:30, but is not seen by 8:30 does the inmate
18 have to go return back to their dormitory and wait for the next
19 day to be seen? How does that work?

01:48PM

20 A. No, ma'am. He will automatically be seen, if he came up
21 and got in line, he will be seen that day.

01:48PM

22 Q. So fair to say then that the building schedule is that the
23 inmate needs to physically get to the medical unit during the
24 time period assigned to their housing unit, and once they are
25 there they are still going to be seen while the medical unit is

01:48PM

1 open. Would that be fair?

2 A. That's correct.

3 Q. Now, Housing Unit 7, 8, and 9, are any of those housing
4 units ADA units?

5 A. Yes, ma'am. Dorm 7 and Dorm 8 Abel and Dorm 8 Baker runs
6 are both ADA.

01:49PM

7 Q. Housing Units 7, 8, and 9, are those housing units located
8 towards the back of the unit?

9 A. Yes, ma'am. All three of them are towards the very back of
10 the unit.

01:49PM

11 Q. So those would be the three units that are the furthest in
12 distance from the current location of the medical unit?

13 A. Yes, ma'am.

14 Q. Those are housing units that also used to be closest to the
15 old medical unit?

01:49PM

16 A. Yes, ma'am.

17 Q. Are there any provisions that have been put in place since
18 the medical unit located up front in July of this year to
19 afford for inmates in wheelchairs who may be housed in 7, 8,
20 and 9 to be able to get up to the medical unit during the 7 to
21 8:30 time period?

01:49PM

22 A. Couple of things happened. The deputy warden making this
23 change understood that those dorms as being ADA were closer to
24 medical at the time and with the change they would be further.

25 He gave inmates in Dorm 7 and 8 an opportunity to move down to

01:50PM

1 1 so that they are closer to medical if they chose to do so.
2 Only two inmates chose to do so. They were moved down into
3 Dorm 1. The others chose to remain there.

4 Because of that, as mentioned earlier, the deputy
5 warden has employed more ADA aides to assist those inmates in 01:50PM
6 those two dorms down to medical. And in order to help with
7 them getting down there in a timely fashion, they allow those
8 inmates and those aides to come out 15 minutes before the yard
9 opens after formal count is completed so they can get down
10 there and they can get in line first. 01:50PM

11 Q. So is it essentially a situation where the nurse's line
12 opens at 7 a.m. for unit 7, 8, or 9, but those inmates who are
13 in a wheelchair are able to leave for the medical clinic at
14 approximately 6:45 a.m.?

15 A. Yes, ma'am. 01:51PM

16 Q. As deputy warden of operations of the Florence complex, is
17 this system with the changes that you have just spoke about
18 implemented in July of this year something that you, yourself,
19 approved of?

20 A. Yes, ma'am. 01:51PM

21 Q. And have you had the opportunity since these new systems
22 have gone into place to observe inmates making their way up to
23 the newly located medical unit at the times appointed in the
24 schedule?

25 A. Yes, ma'am, a couple of times. 01:51PM

1 Q. You spoke of the opportunity of inmates housed in 7 or 8 to
2 choose whether or not they would like to move closer to the
3 medical unit?

4 A. Yes, ma'am.

5 Q. Is there a housing unit that's located closer to the
6 medical unit that is also ADA outfitted?

01:51PM

7 A. Yes, ma'am. Dorm 1 Charlie run is also ADA outfitted.

8 Q. How was it communicated to the inmates, the ADA inmates in
9 Units 7 and 8 that they had the opportunity, if they chose to
10 do so, to move up closer to the Unit Number 1, Housing Unit 1?

01:52PM

11 A. The deputy warden of the unit and the associate deputy
12 warden of the unit went to those two dorms, explained the
13 changes with medical, and asked any of the inmates if they
14 would prefer to move down closer to medical, which would be
15 Dorm 1 Charlie run.

01:52PM

16 Q. And of those inmates that were given that opportunity, two
17 chose to move up front to Unit Number 1?

18 A. Yes, ma'am.

19 Q. Do you have any opinion as to why it was only two inmates
20 that chose to take that opportunity?

01:52PM

21 A. Dorm 7 of South Unit is the only dorm that I'm aware of,
22 and there might be one or two other ones, but Dorm 7 is AC
23 cooled. Dorm 8 and Dorm 1 Charlie are swamp cooled.

24 Q. The opportunity that the inmates were -- the ADA inmates
25 were provided to move up closer to Unit Number 1, was that a

01:53PM

1 one-time chance of you better take it or leave it now and
2 there's never going to be another chance?

3 A. No, ma'am. It was conveyed to the inmates that if they
4 choose to move up that that would be accommodated.

5 Q. If an inmate, let's say tomorrow or today, decides that
6 they would rather live in the ADA accommodated areas of Unit
7 Number 1, how would an inmate go about expressing to the
8 administration that they would like to make a move?

01:53PM

9 A. They can do it in person. They can do it to any one of the
10 security staff knowing they could talk to the deputy warden
11 about the move or they can submit an inmate letter to the
12 deputy warden asking for that move and, as I stated, it would
13 be accommodated.

01:53PM

14 Q. Were there any actions taken to document the inmates who
15 were provided the opportunity to move up to the Unit Number 1
16 but declined to do so at this time?

01:54PM

17 A. Yes, ma'am. They were advised to write an inmate letter to
18 state whether they wanted to move or if they declined to move
19 and did not want to move.

20 Q. What was the reason for asking the inmates to write an
21 inmate letter to say whether or not they chose to take the
22 opportunity to move up to Unit Number 1?

01:54PM

23 A. The deputy warden stated he did that so that an inmate
24 wouldn't come back and state I was never offered this
25 opportunity and they are not allowing me to move.

01:54PM

1 Q. I would like to show you what we have marked as Defendants'
2 Exhibit Number 1. Do you recognize what this document is?

3 A. Yes, ma'am. It's an aerial view of East Unit at Florence
4 complex.

5 Q. I'm going to bring you a pen, and what I would like for you
6 to do is so that plaintiffs' counsel and the Court can see I
7 would like for you to mark for us at the East Unit where the
8 medical unit is located.

9 A. Yes, ma'am.

10 MS. EIDENBACH: Your Honor, may I approach so I can
11 see what the witness is marking?

12 THE COURT: You may.

13 BY MS. LOVE:

14 Q. Why don't we do this. I have a methodology here. So where
15 the medical unit is located could you circle that area and mark
16 it with the Number 1.

17 Next, could you mark with a circle and a Number 2
18 where the chow hall is located for the East Unit?

19 And then with a circle and a Number 3 could you please
20 mark where Abel cluster is located?

21 Warden, does the aerial photograph of ASPC Florence
22 East Unit with the designations of locations of medical, the
23 chow hall and Abel cluster fairly and accurately represent the
24 locations of the physical plant there at the facility
25 currently?

1 A. Yes, ma'am.

2 MS. LOVE: Defendants move to admit Exhibit Number 1.

3 THE COURT: Any objection?

4 MS. EIDENBACH: No objection, Your Honor.

5 THE COURT: Number 1 will be received.

01:57PM

6 MS. EIDENBACH: Could you remind us what Exhibit

7 Number we're on so I can start putting the numbers on?

8 BY MS. LOVE:

9 Q. Warden Van Winkle, can you take a look at defendants'

10 Exhibit Number 2 that's in front of you? It's a multi-page

01:58PM

11 exhibit. Flip through that and tell me if you recognize what

12 you are looking at.

13 A. Yes, ma'am, I do.

14 Q. We are going to now take you all on a photographic tour of

15 the East Unit. So I would like to just go through these

01:58PM

16 photographs page by page and ask you questions as to what we're

17 seeing in the photograph with relation to the medical unit and

18 the location of the Abel cluster.

19 A. Yes, ma'am.

20 Q. So the first page, and we'll just go in order, can you tell

01:58PM

21 us what the photograph at Page 1 of Exhibit Number 2 depicts?

22 A. This is a ramada that provides shade and a seating area for

23 inmates that is out front of the medical unit at East Unit.

24 Q. Is the Abel cluster depicted in this photograph at Page 1

25 of Exhibit Number 2?

01:59PM

1 A. Yes, ma'am, it is. It is the Quonset huts in the back of
2 the picture.

3 Q. If this photograph were of a wider viewpoint, would we see
4 the medical unit nearby Abel cluster?

5 A. Yes, ma'am. As you are looking at the picture, the medical
6 unit would be off to your right.

01:59PM

7 Q. The ramada that we see depicted in the photograph with a
8 picnic bench underneath that, is that an area where inmates who
9 are waiting to see medical in the open nurse line are permitted
10 to wait?

01:59PM

11 A. Yes, ma'am, it is.

12 Q. Are inmates permitted to wait for the open nurse line in
13 the -- underneath the large tree that is located adjacent to
14 the ramada?

15 A. Yes, ma'am, they are.

02:00PM

16 Q. If you now look to Page 2 of Exhibit Number 2. Can you
17 tell us what this photograph depicts?

18 A. This is a smaller shade structure with a bench that is just
19 to the right of the ramada that you just viewed. And in the
20 background is the front of the medical unit at East Unit.

02:00PM

21 Q. Inmates who are waiting for the open nurse's line, are they
22 permitted to wait under this ramada in the forefront that has
23 the bench?

24 A. Yes, ma'am.

25 Q. Are they permitted to wait under the tree area?

02:00PM

1 A. Yes, ma'am.

2 Q. And then up in the building that's in the background, is
3 that the medical unit?

4 A. Yes, ma'am, it is.

5 Q. There is a structure that appears to be to the right of the
6 medical unit that appears that there are tables underneath.
7 What is that?

02:00PM

8 A. That's an additional shaded waiting area for medical.

9 Q. Let's go to Page 3 of Exhibit Number 2. Can you describe
10 for us what this photograph shows?

02:01PM

11 A. This is a culmination of the two shaded areas that we just
12 spoke about in front of the medical unit.

13 Q. Page 4, can you describe for us what this photograph
14 depicts?

15 A. This is the inside of Abel Hut 5, which is ADA, of a
16 housing area depicting the area is large enough for wheelchair
17 access for an ADA inmate.

02:01PM

18 Q. As deputy warden of operations there at the Florence
19 complex, do you walk the units?

20 A. Yes, ma'am. I'm required to tour the units at a minimum of
21 once a month.

02:01PM

22 Q. When is the last time that you walked the East Unit?

23 A. I was there on Friday.

24 Q. When you were there on Friday did you observe the open
25 nurse line?

02:02PM

1 A. Yes, ma'am, I did.

2 Q. Approximately what time were you there at the East Unit
3 observing the open nurse line?

4 A. Approximately 6:00 in the morning.

5 Q. Were there inmates waiting to see medical at the time?

02:02PM

6 A. Yes, ma'am, there was.

7 Q. Do you remember how many?

8 A. Approximately eight to nine inmates.

9 Q. Did you have any conversations with the inmates who were
10 waiting for medical?

02:02PM

11 A. Yes, ma'am, I did.

12 Q. What conversations did you have?

13 A. I asked them how they were doing and then asked them if
14 they had been waiting long. The line had not started as of
15 yet, and I asked them what their normal wait time has been
16 typically. And the response I got from one particular inmate
17 was we usually wait about 15, 20 minutes.

02:02PM

18 Q. Turn now to the next page, Page 5 of Exhibit Number 2.

19 What does this photograph show?

20 A. This is a picture of a shade tree that is to the left of
21 the ramada we spoke about in the first picture.

02:03PM

22 Q. Again, a place for inmates who may wait to see medical?

23 A. Yes, ma'am.

24 Q. Now, if inmates are waiting in these different areas that
25 we have already seen so far, we have seen three ramadas, we

02:03PM

1 have seen a couple of large shade trees, how would an inmate
2 know that it's their turn over at the medical building if they
3 are outside waiting in these areas?

4 A. They have to give their ID to the officer when they go up.
5 The officer, when it's the inmate's turn, if he has not brought
6 the inmate into the waiting area, would make a call for the
7 inmate to come up to medical to be seen.

02:03PM

8 Q. When you say "make a call" how does that happen?

9 A. He either is going to step out the door and call the
10 inmate's name verbally, or he could also call main control and
11 have the inmate paged to medical immediately.

02:04PM

12 Q. Is there an intercom paging system?

13 A. Yes, ma'am, there is.

14 Q. Are there any plans at the East Unit to add misters to any
15 of the waiting areas for medical?

02:04PM

16 A. Not to my knowledge.

17 Q. Now, Page 6 of Exhibit Number 2, what does that show us?

18 A. That shows us the ADA shower that is within the shower hut
19 for Abel cluster. Abel cluster has one designated hut for
20 showers, bathroom, sinks.

02:04PM

21 Q. Page 2 of Exhibit Number 2, what does that show us?

22 A. This is a bathroom in the same hut, ADA accessible.

23 Q. Page 8 of Exhibit Number 2.

24 A. This is a picture of Abel cluster. There is a ramada
25 located in the middle of the cluster.

02:05PM

1 Q. Is this a different ramada from what we have seen so far in
2 the photographs or just a duplicate?

3 A. No, ma'am. This is a different ramada, different shade
4 area.

5 Q. Is this also a ramada that inmates waiting for medical
6 could stand under?

02:05PM

7 A. Yes, ma'am, they could.

8 Q. Page 9 of Exhibit Number 2, what does that show us?

9 A. That shows us another ramada within Abel cluster.

10 Q. How many ramadas, covered ramadas, to your knowledge, are
11 available for inmates to wait underneath while they are waiting
12 for the open nurse line?

02:05PM

13 A. At a minimum, five.

14 Q. Turning now to Page 10 of Exhibit Number 2, what does the
15 photograph on Page 10 show us?

02:06PM

16 A. This is the inside of the medical area where the waiting
17 area is for inmates waiting to be seen.

18 Q. And is Page 11 of Exhibit Number 2 another viewpoint of
19 that same waiting area?

20 A. Yes, ma'am, it is.

02:06PM

21 Q. We see five chairs in these two photos that are showing the
22 same area. Is it then that the maximum occupancy of the inside
23 waiting area of the medical unit at East approximately five
24 inmates?

25 A. Yes, ma'am.

02:06PM

1 Q. How does that work? Is there an order to which it's
2 determined whether an inmate may stay and wait inside, indoors
3 to wait for to see medical versus outdoors? Is it first come,
4 first serve who is in the line first, or is there a different
5 analysis as to who gets to wait inside versus outside?

02:06PM

6 A. As the inmate comes up, as I said, gives the ID, the first
7 five that give their ID would be the five that would be brought
8 in for the waiting area. As they are seen, the security
9 officer for medical will bring in inmates as needed to fill
10 those seats and so on and so forth.

02:07PM

11 Q. Turn now to Page 12 of Exhibit Number 2. What does this
12 photograph show?

13 A. This was inmates waiting in line for the open nurse's line
14 on 8-4-17.

15 Q. And also a shaded area?

02:07PM

16 A. Yes, ma'am. There is shade over the front of the medical
17 area.

18 Q. What is that white box that is shown in the middle of the
19 photograph, if you know?

20 A. That's the med refill box for East Unit.

02:07PM

21 Q. Is there a med refill box located anywhere else on East
22 Unit besides this location?

23 A. No, ma'am. Medical is the only box available.

24 Q. How close is the medical unit to the Abel cluster, if you
25 know, in distance?

02:08PM

1 A. According to Google maps, it's 297 feet.

2 Q. Is that something you, yourself, did a Google analysis of
3 the distance?

4 A. I actually had my maintenance supervisor do that for me,
5 ma'am.

02:08PM

6 Q. Do you know what the approximate distance is between the
7 medical unit and the chow hall at East Unit?

8 A. I don't have that exact number, however, it's approximately
9 the same distance.

10 Q. And the inmates on the East Unit, they eat their meals in
11 the chow hall?

02:08PM

12 A. Yes, ma'am, they do.

13 Q. There's just one chow hall?

14 A. Yes, ma'am, broken up into two sides.

15 Q. Page 13 of Exhibit Number 2, what does this show?

02:08PM

16 A. This is the waiting area we discussed earlier that is to
17 the right of medical.

18 Q. Just a closer up view this time?

19 A. Yes, ma'am, it is.

20 Q. Page 14 of Exhibit Number 2, can you tell us what this
21 shows us?

02:08PM

22 A. This shows us the front of medical in proximity to Abel
23 cluster which is off to the left.

24 Q. So the area to the right that shows fencing, is that the
25 medical unit?

02:09PM

1 A. Yes, ma'am, it is.

2 Q. And then the hut that is with the door facing us in the
3 photograph, is that the Abel cluster?

4 A. Yes, ma'am. That's one hut within the cluster.

5 Q. How many clusters, or how many huts are in the Abel
6 cluster?

02:09PM

7 A. There are eight.

8 Q. Page 15 of Exhibit Number 2, is this just another
9 photograph of the waiting area adjacent to the medical unit
10 that we looked at previously?

02:09PM

11 A. Yes, ma'am, it is.

12 Q. Page 16 of Exhibit Number 2, what does this show us?

13 A. This shows us the front door to the medical area; also a
14 drinking fountain available for the inmates.

15 Q. Where does pill call happen on the East Unit?

02:10PM

16 A. Pill call happens in this particular area outside of the
17 window to the right of the inmate sitting in the picture.

18 Q. And Page 17 of the Exhibit Number 2, is that just another
19 photograph of the water fountain that is there at the medical
20 unit outside?

02:10PM

21 A. Yes, ma'am.

22 Q. Is this just to the left of the water fountain, is that the
23 pill call window that you spoke of?

24 A. Yes, ma'am, it is.

25 Q. And Page 18 of Exhibit Number 2, just another viewpoint of

02:10PM

1 the waiting area adjacent to the medical unit?

2 A. Yes, ma'am, it is.

3 Q. And Page 19, is that a close-up of the medical refill box
4 at the medical unit on East Unit?

5 A. Yes, ma'am, it is.

02:10PM

6 Q. And Page 20 of Exhibit Number 2, does this photograph
7 depict the medical unit at East Unit?

8 A. Yes, ma'am, it does, along with the ADA ramp in the front
9 of the building.

10 Q. That was going to be my next question. We do see stairs in
11 the forefront up to the medical unit. Is this ramp to the left
12 of the stairs the way the inmates who are utilizing wheelchairs
13 make their way up to get in line for the medical unit?

02:11PM

14 A. Yes, ma'am, it is.

15 MS. LOVE: Defendants move to admit Exhibit Number 2
16 into evidence.

02:11PM

17 THE COURT: Any objection?

18 MS. EIDENBACH: No, Your Honor.

19 THE COURT: Defendants' 2 is admitted.

20 BY MS. LOVE:

02:11PM

21 Q. I'd like to show you now what defendants are going to mark
22 as Exhibit Number 4.

23 Warden Van Winkle, can you tell us what Exhibit Number
24 4 is, if you know?

25 A. This is an aerial view of South Unit at Florence complex.

02:12PM

1 Q. And what I'd like for you to do, we're going to go through
2 a similar process as we did for the aerial unit for East Unit
3 where I would like you to follow my coding system, if you can.
4 And we'll mark locations of certain buildings on South Unit.

5 A. Yes, ma'am.

02:12PM

6 Q. Does this aerial photograph of South Unit at ASPC Florence
7 fairly and accurately depict the locations of the building
8 currently on South Unit?

9 A. Yes, ma'am. I would just like to point out it is within
10 the red-lined area of the photo.

02:13PM

11 Q. That was going to be my next question. On this photograph
12 what does that -- what do the red borders show?

13 A. That shows the area of South Unit.

14 Q. Can you please mark for us -- how about we just use a line
15 and the Number 9 for where building Number 9 is located on
16 South Unit.

02:13PM

17 A. Is it a line with the Number 9, ma'am?

18 Q. With the Number 9 indicating building Number 9.

19 A. Yes, ma'am.

20 Q. Can you also mark with the Number 8 where building Number 8
21 is located. Same for building Number 7.

02:13PM

22 And then with a Number 1, will you mark where building
23 Number 1 is. And when I use the term "buildings" for buildings
24 1, 9, 8 and 7 as marked on Exhibit Number 4, are those the
25 housing units where inmates live?

02:14PM

1 A. Yes, ma'am. Those are the dorms.

2 Q. Can you also, using the word "old," can you draw a line and
3 indicate for us where the old medical unit was located, the
4 medical unit that was before July of this year?

5 And then with the word "new" and a line could you show
6 us where the new medical unit is located, the one that is
7 current?

02:14PM

8 Defendants move to admit Defendants' Exhibit Number 4.

9 THE COURT: Any objection?

10 MS. EIDENBACH: No, Your Honor.

02:15PM

11 THE COURT: Defendants' 4 is admitted.

12 BY MS. LOVE:

13 Q. Also in front of you, I have placed Exhibit Number 5, which
14 I would like to go through with you for counsel and for the
15 Court. It is another photo tour. And as you look through
16 Exhibit Number 5 and flip through the multi-page exhibit, can
17 you tell me if you recognize generally what the photographs are
18 of?

02:15PM

19 A. Yes, ma'am. These are photos of South Unit.

20 Q. Page 1 of Exhibit Number 5, can you tell us what this
21 photograph shows?

02:15PM

22 A. This shows the med refill box that is located on the chow
23 hall at south South Unit, the dining hall.

24 Q. What I'd like for you to do is switch back to Exhibit
25 Number 4 that is in front of you, which was the aerial

02:16PM

1 photograph of the South Unit. Could you use the word "chow"
2 and could you draw a line and show us where on that aerial
3 photograph the chow hall is located?

4 A. Yes, ma'am.

5 Q. At the South Unit are there medical refill boxes located in
6 any other area at South Unit besides here at the chow hall?

02:16PM

7 A. Yes, ma'am. There's also one located at the medical area.

8 Q. Is there a reason that on the South Unit there are two
9 locations for the medical refill box versus the East Unit where
10 there are medical refill boxes only at the medical unit?

02:16PM

11 A. As you can see from the photo, there's quite a bit of
12 difference between the health unit at South Unit and the chow
13 hall. The yard being as large as it is, the deputy warden
14 wanted to ensure that there are areas where an inmate, say,
15 from Dorm 9 didn't have to walk all the way across the yard to
16 medical in order to drop off a med refill request.

02:17PM

17 Q. In total at South Unit, how many housing units are there?

18 A. There are nine dorms.

19 Q. Page 2 of Exhibit Number 5, what does this photograph show
20 us?

02:17PM

21 A. This shows us the outside of Dorm 1.

22 Q. Are we able to tell, or can you describe for us with this
23 photograph, where the medical unit is currently located in
24 relation to this Dorm Number 1?

25 A. This picture is showing Dorm 1 with medical would be on the

02:17PM

1 left of the dorm.

2 Q. Page 3 of Exhibit Number 5?

3 A. I'm sorry. As I look at this photo, it's actually behind.

4 So it would be behind us from this photo as we're looking at

5 Dorm 1.

02:18PM

6 Q. It would be behind Dorm 1?

7 A. It would be behind us as we are looking at the dorm, if

8 that makes sense.

9 Q. Page 3 of Exhibit Number 5, what does this photograph show

10 us?

02:18PM

11 A. This shows us one Charlie inside Dorm 1 which is ADA.

12 Q. Page 4 of Exhibit Number 5, what does this show?

13 A. Also inside 1 Charlie run in Dorm 1 at South Unit.

14 Q. Page 5, is that another photograph of 1 Charlie run at the

15 South Unit?

02:18PM

16 A. Yes, ma'am, showing that it is ADA accessible with

17 wheelchair.

18 Q. Do you know how many inmates are living in Dorm 1 that use

19 wheelchairs, if you know?

20 A. I do not have that information.

02:19PM

21 Q. Page 6 of Exhibit Number 5, what does this show?

22 A. This shows Dorm 1, Charlie run's bathroom which is ADA

23 compliant.

24 Q. Same question for Page 7 of Exhibit 5.

25 A. Yes, ma'am. Shows the inside of Dorm 1, Charlie run

02:19PM

1 bathroom/shower area, ADA accessible.

2 Q. And Page -- if you skip one ahead to Page 9 of Exhibit
3 Number 5, what does this photograph show?

4 A. This is the bathroom inside of Dorm 7, which is also ADA
5 accessible.

02:19PM

6 Q. What does Page 10 of Exhibit 5 show us?

7 A. The shower area within the same bathroom and Dorm 7, ADA
8 accessible.

9 Q. Is Page 11 of Exhibit Number 5 another viewpoint of the ADA
10 shower and Dorm Number 7?

02:20PM

11 A. Yes, ma'am, it is.

12 Q. And what does Page 12 of Exhibit Number 5 show us?

13 A. This is the inside of Dorm 7 showing the one side of the
14 run.

15 Q. Is Page 13 another photograph of the inside of Dorm Number
16 7?

02:20PM

17 A. Yes, ma'am, it is, showing wheelchair accessibility within
18 the dorm.

19 Q. And Page 14 of Exhibit Number 5, is that just the outside
20 of Dorm Number 8?

02:20PM

21 A. Yes, ma'am, it is.

22 Q. Is Dorm Number 8 also a dorm that has ADA accommodations?

23 A. Half of it, two runs, 8 Abel and 8 Baker runs.

24 Q. Page 15 of Exhibit Number 5, what does that show us?

25 A. This is the inside of Dorm 8, and it is ADA accessible in

02:20PM

1 the bathroom area.

2 Q. What about Page 16, what does that show?

3 A. The shower area within Dorm 8 also showing ADA
4 accessibility.

5 Q. Page 17 and 18, does this show the inside of the South Unit
6 dorm?

02:21PM

7 A. Yes, ma'am, it does, Dorm 8.

8 Q. Is Dorm Number 8 also outfitted with ADA accommodations?

9 A. Yes, ma'am, half of it. Abel and Baker run.

10 Q. If you skip ahead a couple pages to Page 20 of Exhibit
11 Number 5, does that show the shower in Dorm Number 8 the ADA
12 shower?

02:21PM

13 A. Yes, ma'am, it does.

14 Q. And Page 21 of Exhibit Number 5, can you tell us what this
15 shows?

02:21PM

16 A. This is the front of the new health unit at South Unit.

17 Q. In the photograph we see inmates gathered, correct?

18 A. Yes, ma'am.

19 Q. And do you know what those inmates were doing gathered in
20 this photograph?

02:22PM

21 A. No, ma'am. I can only assume it is an open nurse's line
22 where it's a pill call.

23 Q. Are there benches in the outdoor area right there in front
24 of the medical unit for the inmates to sit while they are
25 waiting for the open nurse line?

02:22PM

1 A. Yes, ma'am, there is.

2 Q. Is there a water fountain or water jug to provide them with
3 water?

4 A. Yes, ma'am. You can actually see it in the picture. It's
5 off to the right.

02:22PM

6 Q. That is what?

7 A. That is a water fountain.

8 Q. Are there mister systems that cool the outdoor waiting
9 unit?

10 A. Yes, ma'am. Along the front of the blue overhang there is
11 a mister system in place.

02:22PM

12 Q. If you switch to the next page, Page 2 of Exhibit Number 5.
13 To the left, it appears that there's a ramada with a table
14 underneath. Do you see that?

15 A. Yes, ma'am, I do.

02:23PM

16 Q. Is that an area where inmates who are waiting for the open
17 nurse's line can also wait?

18 A. Yes, ma'am, it is.

19 Q. Next page, 23. Can you tell us what this photograph shows
20 us?

02:23PM

21 A. This is postings on the outside of the health unit letting
22 inmates know what the hours of operation are.

23 Q. And Page 24, the next page, can you tell us what this
24 photograph shows us?

25 A. Again, it's a posting out in the front of the medical area

02:23PM

1 telling inmates what the open sick call hours are for South
2 Unit.

3 Q. Next page, which is 25 of Exhibit Number 5, can you tell us
4 what this photograph shows?

5 A. This is the inside waiting area of the health South Unit. 02:23PM

6 Q. Can you tell us what is on the left side? Looks like it's
7 the black and yellow almost tape like?

8 A. Yes, ma'am. That area is actually to assist us with the
9 inmates coming in and lining up for pill call. As you can see
10 in the middle of the picture, the open half door is where pill 02:24PM
11 call takes place.

12 Q. So this is to, for lack of a better word, guide the line to
13 pill call?

14 A. Yes, ma'am, it is.

15 Q. So some inmates who are waiting for pill call do have the 02:24PM
16 opportunity to, for at least a portion of the time, wait inside
17 while they are waiting for pill call?

18 A. Yes, ma'am, they do.

19 Q. And Page 26, is that another viewpoint of the line area to
20 pill call? 02:24PM

21 A. Yes, ma'am, it is.

22 Q. What is -- do you see in the back of the photograph, it
23 looks almost like a window with bars down, vertical bars. What
24 is that?

25 A. That's the officer station within the health unit. 02:24PM

1 Q. And that is where a correctional officer is posted?

2 A. Yes, ma'am, it is.

3 Q. Next page, Page 27, what does that show us?

4 A. That shows us the waiting area within the area we just
5 recently viewed in the health unit.

02:24PM

6 Q. And this is an indoor waiting area for the inmates waiting
7 for nurse's line?

8 A. Yes, ma'am, it is.

9 Q. And is it the same situation as East Unit that you
10 described before that depending on the order that the inmates
11 are going to be seen and not open nurse's line, those who are,
12 so to speak, up next may wait inside in these chairs?

02:25PM

13 A. Yes, ma'am, same system in place. Inmate comes in, hands
14 the correctional officer their ID and they are placed on a
15 board in line.

02:25PM

16 Q. Next page, Page 28. What does this show us?

17 A. This shows us the med refill box that is located on the
18 South Unit health unit.

19 Q. So we have a med refill box that's there at the medical
20 unit and also one at the chow hall?

02:25PM

21 A. Yes, ma'am.

22 Q. Page 29, is that just a closer viewpoint of the med refill
23 box at the medical unit?

24 A. Yes, ma'am, it is.

25 Q. And Page 30 of Exhibit 5, is that another view of the line,

02:25PM

1 the traffic line for pill call within the medical unit?

2 A. Yes, ma'am. This particular side of the line is for the
3 nurse's line.

4 Q. Okay. So once, as the line goes for both pill call and
5 open nurse line at the South Unit, as the line is forming and
6 medical personnel are making their way through the inmates,
7 inmates are waiting in this inside area for both pill call and
8 nurse's line?

02:26PM

9 A. Yes, ma'am. That's correct.

10 Q. Next page, Page 31 of Exhibit Number 5. What does this
11 show us?

02:26PM

12 A. This shows us to the right the front of the new health
13 unit, to the left the shade structure that we viewed earlier,
14 and in the distance is Dorm 1 and shows you the proximity of
15 Dorm 1 to the health unit.

02:26PM

16 Q. Page 32 of Exhibit 5, is this just another photograph of
17 the front of the medical unit?

18 A. Yes, ma'am, it is.

19 Q. The shaded area. What about Page 33? Is this another
20 viewpoint of the inside of the medical unit where the traffic
21 lines are forming for the open nurse line and pill call?

02:27PM

22 A. Yes, ma'am.

23 Q. And Page 34 of Exhibit Number 5, what does that show?

24 A. This shows the front of the South Unit health unit with the
25 misting system.

02:27PM

1 Q. Page 35, same thing but a couple inmates waiting?

2 A. Yes, ma'am.

3 Q. To the right of the photograph, is that the drinking
4 fountain you were speaking about earlier?

5 A. Yes, ma'am, it is.

02:27PM

6 Q. Finally, Page 36 of Exhibit Number 5, is this another
7 photograph of the ramada waiting area for the medical unit?

8 A. Yes, ma'am. And in the distance is Dorm 1.

9 Q. Have you, yourself, walked the distance between housing
10 unit Number 9 at the back of the unit up to the medical unit?

02:27PM

11 A. Yes, ma'am, I have, several times.

12 Q. How recently have you done that?

13 A. I did it on Thursday of last week.

14 Q. Do you know how long, approximately, it took you to walk
15 from building Number 9 up to the medical unit?

02:28PM

16 A. It was approximately seven minutes.

17 Q. Did you take a video of that walk that you made from
18 building Number 9 up to the medical unit?

19 A. Yes, ma'am, I did.

20 Q. Did you narrate that video?

02:28PM

21 A. Yes, ma'am, I did.

22 MS. LOVE: And this is a little different, Your Honor,
23 because we don't have the technology in the courtroom. I will
24 provide this proposed exhibit to plaintiffs' counsel over the
25 evening. It's on a disk so obviously I can't move it into

02:28PM

1 evidence because we're not going to show it but I will see if
2 tomorrow it would be stipulated into evidence.

3 MS. EIDENBACH: So we're not going to watch it right
4 now?

5 MS. LOVE: Correct.

02:28PM

6 MS. EIDENBACH: Okay. Got it.

7 BY MS. LOVE:

8 Q. What is the condition -- first let me ask you this: Is
9 there a sidewalk pathway from building Number 9 all the way up
10 to the medical unit?

02:29PM

11 A. Yes, ma'am, there is.

12 Q. What about same question for building Number 7?

13 A. Yes, ma'am.

14 Q. And building Number 8?

15 A. Sidewalks from every dorm to and from, yes, ma'am.

02:29PM

16 Q. So every housing unit on South Unit has a walkway system
17 that would lead them to the medical unit?

18 A. Yes, ma'am, it does.

19 Q. And what is the, in your opinion as deputy warden of
20 operations, the condition of the sidewalks that make their path
21 from every housing unit up to the medical unit at South Unit?

02:29PM

22 A. The sidewalk is in very good shape.

23 Q. Any potholes?

24 A. No, ma'am.

25 Q. Any areas where there's just no sidewalk at all?

02:29PM

1 A. No, ma'am.

2 Q. Any hills?

3 A. No, ma'am.

4 Q. Are you aware of any incidents, let's say, since the
5 medical unit moved up front in July of inmates having any
6 problems getting to medical in a wheelchair because of the
7 condition of the sidewalk?

02:29PM

8 A. No, ma'am.

9 Q. I want to switch gears now and talk to you about the ICS
10 process.

02:30PM

11 A. Yes, ma'am.

12 Q. Is ICS a term that, as deputy warden of operations, you are
13 familiar with?

14 A. Yes, ma'am, it is.

15 THE COURT: Can I interrupt for just a second? I
16 don't think you moved for admission of 5.

02:30PM

17 MS. LOVE: I did not, Your Honor. Thank you. At this
18 time defendants do move for the admission of defendants'
19 Exhibit Number 5.

20 THE COURT: Any objection?

02:30PM

21 MS. EIDENBACH: Yes, Your Honor. We object to Page 23
22 because the description provided on the face of the exhibit
23 does not accurately describe what we're looking at. We're
24 actually, according to the sign, it's indicating that we're
25 looking at the place where pill call is held not the place

02:30PM

1 where nurse line is held. So we object on that ground. It's
2 inaccurate.

3 MS. LOVE: Your Honor, if we would have the
4 opportunity I could further question the witness as to whether
5 there was a mistake made in the description.

02:31PM

6 THE COURT: Because the pictures aren't numbered could
7 you count from backwards and tell us which one this is we're
8 talking about, Ms. Eidenbach?

9 MS. EIDENBACH: It's the one that says insulin hours:
10 Right at the top.

02:31PM

11 THE COURT: Thank you.

12 MS. EIDENBACH: Yeah.

13 MS. LOVE: It's 14 pages from the back.

14 THE COURT: Thank you.

15 BY MS. LOVE:

02:31PM

16 Q. Warden Van Winkle, are you at that page, 14 pages from the
17 back?

18 A. Yes, ma'am, I am.

19 Q. Which is Page 23 of Exhibit Number 5. Does the photograph
20 here depict the schedule for the open nurse line or for pill
21 call?

02:31PM

22 A. This is for pill call.

23 Q. And did you make a mistake in your testimony before if you
24 did describe it as the schedule for the nurse's line?

25 A. Yes, ma'am. If I said nurse's line then that was a

02:32PM

1 mistake. Yes, ma'am.

2 MS. LOVE: Defendants move for admission of Exhibit
3 Number 5.

4 THE COURT: What I will do is I will correct the
5 description where it says South Unit open nurse line schedule
6 to say South Unit pill schedule. Will that address the
7 plaintiffs' objection?

02:32PM

8 MS. EIDENBACH: Yes, Your Honor, it will. Thank you.

9 THE COURT: Thank you. 5 is received.

10 BY MS. LOVE:

02:32PM

11 Q. Warden Van Winkle, will you please explain for us what the
12 term ICS means to you?

13 A. ICS is short for instant command system. It's a system we
14 use within the prison system any time there is any kind of
15 incident. It can be called by officers, all security staff,
16 non-security staff. And it allows us to use plain text on the
17 radios so that everybody can explain what's going on and
18 there's no confusion and we can get help to the immediate area.

02:32PM

19 Q. When you say "help to the immediate area" is that
20 restricted to help needed for a medical condition?

02:33PM

21 A. No, ma'am. ICS can be called for any incident within the
22 prison system.

23 Q. What kinds of incidents would an ICS be activated for?

24 A. It could be for medical, it could be for fights, assaults,
25 it could be for mass movement of inmates, it's basically any

02:33PM

1 incident that is not normal daily routine.

2 Q. And when an ICS is called, are there a certain complement
3 of persons who are designated to respond based on the kind of
4 incident? How does that work?

5 A. Yes, ma'am. Designated staff are on the ICS team, so when
6 an ICS is activated those particular members are the responders
7 for that incident.

02:33PM

8 Q. And an ICS team would be made up of what kind of personnel?

9 A. It could be made up of security staff within the unit. It
10 is security staff that are designated. For the most part it's
11 made up of Correctional Officer IIs, but it can also be
12 comprised of Correctional Officer IIIs, sergeants.

02:34PM

13 Q. And is the ICS team something that is designated every
14 single day per shift?

15 A. Yes, ma'am, it is. It's part of our roster system.

02:34PM

16 Q. Are there a certain number of people assigned to an ICS
17 team on any particular shift?

18 A. Depending on the size of the unit, yes, ma'am. Normally
19 for a smaller unit you could have three to four members.
20 Larger unit you could have five, six members.

02:34PM

21 Q. You explained just a moment ago, and correct me if I'm
22 wrong; I don't want to put words in your mouth, an ICS could be
23 called for a medical incident.

24 A. Yes, ma'am.

25 Q. What does that mean? What would a medical incident be that

02:35PM

1 an ICS could be activated for?

2 A. Again, something out of the norm if, say, for instance, we
3 had an inmate that is complaining of shortness of breath, chest
4 pains, any kind of medical distress, then an ICS can be called
5 for that particular inmate so that we can get staff and medical
6 personnel down to the inmate. 02:35PM

7 Q. If an ICS is called for a medical incident, do medical
8 personnel respond to the inmate? Is the inmate taken to
9 medical? How does that work?

10 A. It's going to depend on the situation. More times than not 02:35PM
11 medical staff will respond to the inmate if it's a serious
12 issue or is deemed a serious issue.

13 Q. If there is a medical ICS, how is that -- we are using the
14 term activated. How does that happen? Does somebody call on a
15 radio? Does somebody call on a telephone? 02:36PM

16 A. The staff member more times than not is utilizing the radio
17 calling it out so all staff on the unit are aware of it.

18 Q. Are there literal certain words that must be used on a
19 radio call?

20 A. Yes, ma'am. Staff are trained to utilize their name first, 02:36PM
21 stating that they are activating ICS, and then their location
22 and what the nature of the incident would be.

23 Q. What categories of staff members are permitted to call an
24 ICS when it comes to a medical incident?

25 A. Any staff member. 02:36PM

1 Q. From warden down to line officer and everything in between?

2 A. Yes, ma'am. Anybody that is working within the unit has
3 the ability to call an ICS for any incident that's out of the
4 norm.

5 Q. If an officer, if a line officer who is, for instance, 02:36PM
6 doing security walks in a dormitory, sees a need to activate an
7 ICS, does that line officer have to seek permission from any
8 other employee in order to call an ICS?

9 A. No, ma'am. He can just activate the ICS.

10 Q. Are correctional officers trained in what medical 02:37PM
11 situations could necessitate the calling of an ICS?

12 A. Yes, ma'am.

13 Q. Please tell me about that training.

14 A. They are trained within our academy, so while they are
15 going through the academy then they are trained on ICS 02:37PM
16 procedures. There is a policy on ICS as well, and, of course,
17 experience as they go through the job would necessitate when
18 they should call ICS and when they should not.

19 Q. Are there certain physical conditions or signs and symptoms
20 that correctional officers or any staff are trained to be a 02:37PM
21 catalyst to calling an ICS?

22 A. Every officer is also trained in basic first aid CPR. They
23 are trained in those trainings to look for an inmate in
24 distress such as I have described earlier, an inmate that is in
25 obvious distress or is verbalizing that he is in pain or having 02:38PM

1 chest pains or shortness of breath; an inmate that is bleeding
2 profusely; those type of scenarios.

3 Q. And a supervisor does not have to approve the activation of
4 an ICS if called by a correctional officer?

5 A. No, ma'am, they do not.

02:38PM

6 Q. Do any security side personnel have the authority to
7 contact medical personnel that may be on duty at the unit to
8 consult with or talk about whether an ICS should be issued
9 based upon verbal communications from an inmate?

10 A. No. An officer has the discretion to call an ICS when they
11 see fit.

02:39PM

12 Q. In the normal day-to-day functioning of the Florence
13 complex, and based upon your years of experience in
14 corrections, is there ever a situation where a supervisory
15 staff may call down to medical to get some guidance on whether
16 or not an inmate is presenting with symptoms or a condition
17 that would necessitate the activation of an ICS?

02:39PM

18 A. Yes, ma'am. I have actually seen where officers and
19 supervisors have called medical to let them know what's going
20 on with an inmate if an inmate is complaining of any kind of
21 discomfort. Our policy also allows for the shift commander to
22 call medical and tell them that they will see a particular
23 inmate for a particular condition.

02:39PM

24 Q. As deputy warden of operations at the Florence complex, are
25 you notified as to any and all ICS's that may be called

02:40PM

1 complex-wide?

2 A. Yes, ma'am. We have a paging system where every ICS that
3 is called is put out to every administrator at the complex.

4 Q. And when you say a paging system, what do you mean by that?

5 A. So, for instance, if an ICS was activated at East Unit, 02:40PM
6 that activation goes through their main control. Their main
7 control notifies all East Unit staff of the ICS. They then
8 call our communications at the complex and let our
9 communications staff know that East Unit has gone under ICS for
10 a particular issue. And at that point our communications 02:40PM
11 officer that received that information puts that out in an
12 e-mail to all staff at the complex.

13 Q. As deputy warden of operations, are there occasions where
14 you might receive a phone call from staff explaining to you
15 what the nature of the ICS and what the status is? 02:41PM

16 A. Yes, ma'am. Depending on the nature of the ICS, if it's
17 something serious, the deputy warden, ADW or the captain, will
18 normally call myself or the warden and let us know what's going
19 on.

20 Q. When you say "something serious" what would be a serious 02:41PM
21 situation that would prompt you receiving a phone call to where
22 you are talking directly to another person as to what the ICS
23 is about?

24 A. There are several different instances. A lot of them are
25 outlined in our policy in regards to significant incidents. 02:41PM

1 But it could be a number of different things that we deem
2 serious. I could go through a list if needed. I could give
3 for instances. If an inmate, for instance, was assaulted very
4 badly, was stabbed, those are significant incidents that we
5 would be notified on.

02:42PM

6 Q. If an inmate requires transport out of the complex for
7 emergency medical care, is that something that you would
8 generally receive a phone call about?

9 A. Yes, ma'am, it is.

10 Q. As deputy warden of operations, do you meet regularly with
11 medical personnel for your complex?

02:42PM

12 A. Yes, ma'am, we do, once a week.

13 Q. And who generally from the medical side attends the
14 meeting?

15 A. The facility health administrator is at the meeting. The
16 director of nursing is at the meeting. Mental health personnel
17 are at the meeting. And then we have all of the
18 administrators, the management team at Florence complex from
19 the warden down to the deputy wardens and the associate deputy
20 wardens of each unit.

02:42PM

21 Q. If you take the period of the last two months, have you had
22 an opportunity to review whether or not there have been any
23 ICS's involving inmates who are either waiting for the pill
24 line or waiting for the open nurse line in which heat was a
25 factor to a medical condition?

02:42PM

02:43PM

1 A. Yes, ma'am.

2 Q. And what did you find upon your review?

3 A. We have had no incidents.

4 Q. Is that for East Unit?

5 A. That is for the complex.

02:43PM

6 MS. LOVE: Thank you, Warden. I have no further
7 questions.

8 THE COURT: Thank you. We'll take a 15-minute break,
9 sir, and then the attorney for the plaintiffs will have an
10 opportunity to ask you questions. You can step down. Just
11 come back into the courtroom at 3:00.

02:43PM

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Recess from 2:43 p.m. until 3:00 p.m.)

15 THE COURT: Thank you. Couple of housekeeping matters
16 first. The clerk of the court, as no surprise to the lawyers,
17 has a procedure with respect to marking items for
18 identification that are anticipated to be introduced as
19 exhibits. And it seems that both sides really have forgotten
20 the normal practice of this courthouse and how to do that. And
21 although the defendants produced an exhibit list, it wasn't one
22 that could be used because of the numbering system that was
23 employed. And I think and rely upon the fact that you all know
24 how to do this.

02:43PM

03:00PM

25 And it just is much more helpful for the clerk of the

03:00PM

1 court if you follow the practice that's used in the courthouse
2 generally, and that is marking the items that you anticipate
3 moving to introduce in accordance with the standard procedure
4 of the court in advance so the clerk of the court doesn't have
5 to do it on the fly while we're working through the documents.
6 She's got a number of jobs to do all at once, and adding an
7 additional one to her that could be easily avoided by the
8 lawyers doing what they normally do, usually, and that is
9 marking them in advance.

03:00PM

10 And the other point, it's been -- the clerk has told
11 me that Ms. Rand has called in but she's never announced for
12 the record. And so the record doesn't reflect her presence
13 here and so we need to address that. If Ms. Rand is still on
14 the phone, you need to announce or be introduced by one of your
15 co-counsel. But in any event, you can't call in and not be on
16 the record so we need to be careful of that.

03:01PM

17 MS. RAND: Okay. Your Honor, this is Lucy Rand from
18 the Attorney General's Office representing the defendants.

19 THE COURT: All right. Thank you. Please be seated,
20 sir.

03:01PM

03:01PM

21 Ms. Eidenbach, you may proceed.

22 MS. EIDENBACH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. EIDENBACH:

25 Q. Good afternoon.

03:02PM

1 A. Good afternoon.

2 Q. I'm going to try to walk through this pretty methodically
3 so we kind of stay on the same page.

4 First, I'd like to ask you whether you have any
5 expertise in determining whether or not construction or an
6 accommodation complies with the ADA.

03:02PM

7 A. No, ma'am, I do not.

8 Q. Is there someone at your facility who does have that
9 expertise?

10 A. Yes, ma'am, there is.

03:02PM

11 Q. Who is that person?

12 A. That would be our maintenance supervisor.

13 Q. And what is his or her name?

14 A. Her name is Lila Meyer. She's the PPOA for Florence
15 complex.

03:02PM

16 Q. And does Ms. Meyer review then all of the construction and
17 the accommodations that are made to achieve compliance with the
18 ADA?

19 A. Yes, ma'am, she does.

20 Q. Okay. And has Ms. Meyer told you that the accommodations
21 that you have recently made that we're going to be walking
22 through are, indeed, compliant with the ADA?

03:03PM

23 A. No, ma'am. We have not had that conversation.

24 Q. Do you know whether she's made any assessments yet?

25 A. I do not. However, every single addition or change to the

03:03PM

1 physical plant has to go through her for approval and her
2 review.

3 Q. Before it occurs?

4 A. Yes, ma'am.

5 Q. So she reviews the plans first?

03:03PM

6 A. Yes, ma'am.

7 Q. So is it your testimony today that the changes that have
8 been made, particularly to Building 1 on South Unit, are ADA
9 compliant?

10 A. Yes, ma'am.

03:03PM

11 Q. And how do you know that?

12 A. If it was constructed and the changes were made, again,
13 going through Ms. Meyer, then I am assuming that those were
14 made and that they are ADA compliant for approval.

15 Q. But you have no actual knowledge that they are, indeed,
16 compliant?

03:04PM

17 A. No, ma'am, I do not.

18 Q. And to your knowledge, has Ms. Meyer done an assessment of
19 the final construction product?

20 A. Yes, ma'am.

03:04PM

21 Q. She has. And does she create written findings that
22 delineate her assessment?

23 A. I'm not sure of that, ma'am.

24 Q. You don't know whether she writes -- takes any notes or
25 writes down anything in terms of whether she's found something

03:04PM

1 to be compliant or non-compliant?

2 A. I don't have that information, ma'am.

3 Q. How does she communicate her findings to you ultimately?

4 A. She will discuss them over the phone or come in my office
5 and we'll discuss any of the changes that are being made to the
6 complex.

03:04PM

7 Q. Okay. You testified earlier that when people are waiting
8 at medical to be seen and they may have scattered to one of the
9 shady areas to wait outside for their name to be called, one of
10 the ways they are alerted is through like a PA system or
11 announcement. Is that correct?

03:05PM

12 A. That option is available to the medical officer, yes,
13 ma'am.

14 Q. Okay. And what accommodations are made for prisoners who
15 have hearing impairments to make sure that they hear their name
16 being called and they don't miss their place in line?

03:05PM

17 A. I don't have that information for East or South. I'd have
18 to get with the deputy wardens and get with what their process
19 is for that.

20 Q. Do you have that information for any yard at Florence?

03:05PM

21 A. No, ma'am. I would have to get that information.

22 Q. Okay. And the same question relating to the signs that are
23 posted regarding the hours that the open clinic is available to
24 particular housing units or, you know, work or emergency
25 situations, how do you -- what accommodations have been made

03:06PM

1 for folks who cannot read or who are hearing impaired -- I'm
2 sorry -- visually impaired?

3 A. Again, ma'am, I'd have to get with the deputy wardens to
4 find out what's been done thus far.

5 Q. Okay. When someone arrives at the medical unit you
6 testified that the medical officer takes their ID, puts it on a
7 board, and they are put on a wait list. This is at East Unit?

03:06PM

8 A. Yes, ma'am.

9 Q. Do you know whether they keep a log of people coming up to
10 medical? So is it written down anywhere who has handed their
11 IDs over, or is it just the ID is put up there and that's the
12 only action taken by the medical officer?

03:06PM

13 A. Again, ma'am, I'm not sure of any log. I'd have to get
14 with the deputy warden to find that information out.

15 Q. Okay. Moving for a moment to South Unit. You just, to
16 clarify your testimony, the folks who decided not to move from
17 their current ADA housing to Building 1.

03:07PM

18 A. Yes, ma'am.

19 Q. They signed refusals or waivers that are kept on file?

20 A. They filled out an inmate letter stating that they were not
21 interested in moving.

03:07PM

22 Q. Okay. But they can change their mind at any point?

23 A. Yes, ma'am, they can.

24 Q. Okay. Are you aware of how many people at East Unit
25 prisoners at East Unit use canes?

03:08PM

1 A. I don't currently have that information, ma'am.

2 Q. What about other non-wheelchair mobility assistance devices
3 like walkers or --

4 A. I only have the numbers for the wheelchair-bound inmates,
5 ma'am.

03:08PM

6 Q. Is that true also for South Unit?

7 A. Yes, ma'am.

8 Q. Are you aware of any prisoners at East or South Unit who
9 use canes or other mobility non-wheelchair mobility devices,
10 not the number, just the existence of these people?

03:08PM

11 A. Yes, ma'am.

12 Q. Do you know if they have assistance aides provided to them?

13 A. An ADA assisted aide would be for any inmate that is ADA --
14 made by medical as ADA. So if they have a walker and they need
15 assistance then the ADA aide would be able to assist them as
16 well.

03:09PM

17 Q. Who decides whether or not an aide gets assigned to a
18 prisoner?

19 A. The aides aren't directly assigned to any particular
20 inmate.

03:09PM

21 Q. So who decides then whether a particular prisoner has
22 access to the aides who work as assistants?

23 A. I'm sorry?

24 Q. Do they get a chrono or SNO, something from medical saying
25 yes, I'm mobility impaired. I have access to these aides? And

03:09PM

1 if so, who makes that decision? Do they show it to the officer
2 if they are in need of assistance?

3 A. I'm not aware of any chrono or any type of documentation
4 given to the ADA inmate to tell him he has aides available.
5 But if he asks for assistance then the aides are available to
6 assist. 03:09PM

7 Q. Even if that person hasn't been declared by medical as
8 mobility impaired under the ADA?

9 A. I would have to check into their exact job duties as an ADA
10 aide. 03:10PM

11 Q. Okay. Do you know when the deputy warden hired additional
12 ADA aides at South Unit?

13 A. Just by word of mouth from the deputy warden at South Unit,
14 he stated that additional aides were hired once the new health
15 unit was put in place. 03:10PM

16 Q. Which was approximately when?

17 A. July.

18 Q. Do you know if there are similar plans to hire more pushers
19 or aides at East Unit?

20 A. Not that I'm aware of. When I spoke to the deputy warden
21 at East Unit he stated that they are hired as needed. 03:10PM

22 Q. Okay. And how do they measure the need?

23 A. I can only assume at this point, ma'am. I would have to
24 talk with him to find out.

25 Q. Okay. 03:11PM

1 A. My assumption would be the need for them according to how
2 many inmates are asking for assistance compared to what they
3 currently have employed.

4 Q. Other than remaining where they are, are there any
5 consequences if a prisoner declined to write an inmate letter
6 to move from house 7 or 8 to house 1 on South Unit?

03:11PM

7 A. No, ma'am. No consequences.

8 Q. And is it your testimony that every wheelchair user on
9 Florence East and Florence South has access to an ADA aide at
10 least once per hour every hour that the open clinic is open and
11 every day that it's open?

03:11PM

12 A. It's as needed. I did not specify, nor do I know, whether
13 or not it's every hour that the open clinic is open. It's as
14 needed by the ADA inmate.

15 Q. Okay. But so there's no specification that they have this
16 at least once per hour every hour the clinic is open?

03:11PM

17 A. No. But with the posted hours, the ADA aides know when the
18 inmates need to be up to medical for a pill call. For
19 instance, an inmate in a wheelchair at South Unit that needs to
20 take daily meds, the ADA porter knows that he needs to be up
21 there every single day, and he gets out 15 minutes early before
22 the yard opens.

03:12PM

23 Q. What is your understanding between the difference between
24 an ADA aide and an ADA pusher?

25 A. One and the same.

03:12PM

1 Q. Okay. So in your estimation there's no difference between
2 the two?

3 A. No, ma'am. I believe that's the same WIPP code for that
4 particular job duty.

5 Q. Do you remember where you learned that?

03:12PM

6 A. I'm sorry?

7 Q. Do you remember where you learned that?

8 A. I actually used to be in charge of capacity and WIPP as a
9 CO-4 at East Unit.

10 Q. Have you received training on the ADA?

03:13PM

11 A. No, ma'am, I have not.

12 Q. And at East and South Unit there are no individually
13 assigned aides or pushers, correct?

14 A. Correct.

15 Q. The move from, or the option to move from Housing Unit 7
16 and 8 to Housing Unit 1, was this done after July 14? Do you
17 know?

03:13PM

18 A. I don't know the specific date for that, ma'am.

19 Q. Do you know whether it was done in response to the
20 testimony of one of our testifying prisoners?

03:13PM

21 A. No, ma'am. Speaking to the deputy warden at South, he made
22 it clear that it was done when the health unit was established
23 in the new location.

24 Q. Okay. We're going to look at a picture of this shortly.

25 But we have seen that there are chairs inside the medical areas

03:14PM

1 for people who are waiting to be seen can sit while they are
2 waiting?

3 A. Yes, ma'am.

4 Q. And do you know if these chairs are all designated for the
5 open clinic, or are some also used for pill call?

03:14PM

6 A. I don't have that information. Initially speaking with the
7 deputy warden they were for the nurse's line inmates that were
8 waiting.

9 Q. Just the nurse's line?

10 A. Yes, ma'am. As I witnessed the pill call, the inmates
11 moved through the line. For the most part most of the inmates
12 were already inside standing in line so there was no need for a
13 waiting area on the day that I observed pill call at South
14 Unit.

03:14PM

15 Q. Okay. We have seen now that on the units there is, on
16 South Unit, there's a box, med refill box at chow and at
17 medical?

03:15PM

18 A. Yes, ma'am.

19 Q. There are two locations, correct?

20 A. Yes, ma'am.

03:15PM

21 Q. When did this happen? Have there always been two boxes?

22 A. To my knowledge, the second med refill box was placed at
23 the health unit in the new location when the new location was
24 opened.

25 Q. And was the box at the chow hall ever taken down?

03:15PM

1 A. No, ma'am. That was designated as an HNR box prior to our
2 change to a med refill box.

3 Q. But it never got taken down?

4 A. No, ma'am.

5 Q. Okay. You have testified that several areas in Buildings
6 7, 8, and 1 are ADA compliant and ADA accessible. Is it your
7 testimony that the areas you have so identified are compliant
8 with the ADA construction standards?

03:15PM

9 A. I can't make that statement, ma'am.

10 Q. Okay. So you are not sure whether the showers, the cells,
11 or the bathrooms in Buildings 1, 7, and 8 Abel and Baker are,
12 in fact, compliant with the ADA?

03:16PM

13 A. Not without speaking to my maintenance supervisor, ma'am.

14 Q. Ms. Meyers. Do you have any records of any previous
15 findings she's made, not in the new construction Building 1,
16 but are there files that tells you, yes, this meets the
17 guidelines? That's how I reached my conclusion that Mrs.
18 Meyer does, or you just go on the assumption that if you don't
19 get any news from her all is well?

03:16PM

20 A. There's no file that I'm aware of, ma'am. I would have to
21 check into that.

03:17PM

22 Q. So she writes down no findings to your knowledge?

23 A. Again, I'm not aware of that, ma'am.

24 Q. Is it your testimony that the ramps leading to the medical
25 units are compliant with the ADA construction standards, for

03:17PM

1 example, for the slope?

2 A. I would have to check into that as well, ma'am.

3 Q. What did you base your testimony on earlier, then, when you
4 said that these were ADA accessible and ADA compliant areas?

5 What facts did you use to come to that conclusion?

03:17PM

6 A. Based on the bars that were installed for assistance for
7 ADA inmates and the area is large enough for wheelchair access.

8 Q. But you have no knowledge as to whether those changes
9 actually comply with the ADA requirements?

10 A. No, ma'am.

03:18PM

11 Q. You testified earlier that you don't know of anyone who has
12 had trouble navigating -- anyone who is in a wheelchair or who
13 is mobility impaired who has had trouble navigating a sidewalk
14 or getting to medical in its new location. What are you basing
15 that on?

03:18PM

16 A. There have been no ICS's in regards to an inmate falling on
17 the sidewalk.

18 Q. So that's the only measure as to whether people have
19 difficulty doing it?

20 A. That and the fact that I was a deputy warden there for a
21 year and there was never an issue with that, ma'am.

03:18PM

22 Q. Do you -- have you talked to any of the prisoners to find
23 out if they are having trouble navigating that?

24 A. No, ma'am, I have not.

25 Q. Have any of your subordinates talked to any of the

03:19PM

1 prisoners to find out if they are having difficulty navigating?

2 A. Not to my knowledge, ma'am.

3 Q. Do you know of any prisoners who simply have not accessed
4 medical because the trip was too arduous or difficult?

5 A. No, ma'am, I do not.

03:19PM

6 Q. With respect to ICS's, when a prisoner requests an ICS be
7 called for medical reasons, is there any record made of that
8 request when it's denied? I understand that there's a log when
9 ICS's actually occur. But is there some record of requests
10 that are made and then denied?

03:19PM

11 A. No, ma'am, not that I'm aware of. Inmates don't request
12 ICS. If they have a medical need then they will talk to the
13 officer. Again, it's the officer's discretion on whether the
14 ICS is actually activated or not or the officer can call
15 medical and say, I have got an inmate with this particular
16 issue. Can you see them at this time?

03:20PM

17 Q. So you are testifying that prisoners don't ask for ICSs to
18 be called when they feel they are experiencing a medical
19 emergency or an acute medical situation?

20 A. Normally they are not asking for an ICS to be called. They
21 are simply telling the officer I have got this medical
22 distress. I need help.

03:20PM

23 Q. And if the officer decides, in their estimation, that
24 there's no need to call an ICS and the ICS is not called,
25 there's no documentation anywhere that any of this occurred?

03:20PM

1 A. No, ma'am.

2 Q. You mentioned that you have ICS teams. Is that true for
3 both East and South?

4 A. Yes, ma'am. That's complex-wide. That's actually Arizona
5 Department of Corrections wide.

03:21PM

6 Q. And has that been around for a while or is this a new team?

7 A. That's been around for as long as I have been in the
8 Department.

9 Q. Where would that designation be listed? Like on the board
10 when they come in or is it a weekly schedule that's printed out
11 and handed to staff? How do they know that they are on the ICS
12 team?

03:21PM

13 A. It is designated in briefings with the officers.
14 Supervisors let them know that they are on, whether it be an A
15 team or B team, strike team.

03:21PM

16 Q. So when they are designated as part of the ICS team do they
17 remain part of that team then for some time?

18 A. Just for their shift.

19 Q. Just the shift?

20 A. Yes, ma'am.

03:21PM

21 Q. Okay. And what type of -- do they have any special
22 training or instructions when they are a member of that team?

23 A. They are a response team, so they are responding to an
24 incident to assist the staff member that called the ICS.

25 Q. And when they are on the ICS team, is that their only

03:22PM

1 responsibility, or are they tasked with other duties during the
2 course of their shift?

3 A. No. They are posted as usual in their designated areas for
4 the day. They are a responder if an ICS is activated.

5 Q. Okay. I'm going to try to match up the rest of the
6 questions with the pictures so that we can -- so if you can
7 pull out Exhibit 2, please. There's no easy way to do this.
8 If you can count in 13 pages to the page that has the
9 designation East Unit health unit outside waiting area.

03:22PM

10 A. Yes, ma'am.

03:23PM

11 Q. Do you know when that was built?

12 A. I do not have that knowledge, ma'am.

13 Q. Is it new construction?

14 A. Not to my knowledge, no, ma'am.

15 Q. Did you see it in June of this year?

03:23PM

16 A. I can't answer that with all certainty as to when that was
17 constructed.

18 Q. So you are not sure if it was there in June 2017?

19 A. I'm 100 percent sure it was there in June of 2017, yes.

20 I'm sorry.

03:23PM

21 Q. That's okay. So it's more than a month old?

22 A. Yes, ma'am.

23 Q. Or two.

24 A. Yes, ma'am.

25 Q. All right. Now, if you can go a couple pages further to

03:24PM

1 the 16th page with the designation East Unit health unit water
2 fountain.

3 A. Yes, ma'am.

4 Q. If you notice, there is a sign posted on the wall that
5 says, "No loitering on ramp."

03:24PM

6 A. Yes, ma'am.

7 Q. What is that sign meant to prohibit?

8 A. I don't have that information, ma'am. I would have to get
9 with the deputy warden of the unit.

10 Q. So you don't know what loitering means in the context of
11 your complex?

03:24PM

12 A. I do know what loitering means, however, inmates were not
13 being directed not to loiter when I was there watching them
14 with pill call.

15 Q. Okay.

03:24PM

16 A. So they were on the ramp.

17 Q. And so you are unsure whether they are allowed to actually
18 wait on the ramp while waiting for open clinic or pill call?

19 A. Yes, ma'am. I would have to get with the deputy warden to
20 find out what their procedure is for that.

03:25PM

21 Q. Okay. All right. Now going to Exhibit 5. Do you have any
22 knowledge of mold infestation in the ADA bathrooms on South
23 Unit?

24 A. No, ma'am, I do not.

25 Q. Would you know about that if it was an issue?

03:25PM

1 A. There's a possibility I could be informed by maintenance if
2 they were aware of it, yes, ma'am.

3 Q. But it would be outside the course of their normal duties
4 to inform you if they found mold and decided to power wash the
5 ADA showers?

03:25PM

6 A. Yes, ma'am. Unit deputy warden would be in charge of
7 taking care of that.

8 Q. So then you would also have no knowledge of a large hole in
9 Building 7's ADA shower that's filled with mold?

10 A. No, ma'am.

03:26PM

11 Q. Okay. So Exhibit 5, let's pull out Page 3 with a
12 designation South Unit, Dorm 1, C run, Exhibit -- or Page 5
13 with a designation South Unit Dorm 1, C run. Sorry. And Page
14 12 with the designation South Unit Dorm 7 run. I guess we can
15 look at Page 13 as well. Those have the same designation.

03:27PM

16 So on Pages 12 and 13 which are the Dorm 7
17 photographs.

18 A. Yes, ma'am.

19 Q. Do you see wheelchairs in those pictures?

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

03:27PM

21 Q. And they are actually inside the sort of dorm or bed area
22 that the prisoner is in, right?

23 A. Yes, ma'am.

24 Q. The wheelchair fits right up next to the bed and the entire
25 cell is accessible to the prisoner in his wheelchair?

03:27PM

1 A. Yes, ma'am.

2 Q. Okay. Now, if you look back at the earlier page, two
3 pages, so looking at Page 3, which is the first one, do you see
4 a wheelchair there?

5 A. Yes, ma'am.

03:28PM

6 Q. That's parked outside the cell?

7 A. Yes, ma'am.

8 Q. But it's your testimony that these cells are actually
9 wheelchair accessible, right?

10 A. Yes, ma'am.

03:28PM

11 Q. And then if we look at the following page we see the width
12 of that sleeping or dorm area as compared to Pages 12 and 13.
13 Do you think that the significantly narrower structure and
14 smaller size of these could have contributed to very few
15 prisoners being willing to move?

03:28PM

16 A. Ma'am, I have no idea why the inmates moved and why they
17 did not. I'm only assuming why they were moving as far as the
18 air conditioner in Dorm 7.

19 Q. Did any of them state in their inmate letters why they did
20 not want to move?

03:29PM

21 A. No, ma'am, they did not.

22 Q. Did you review the inmate letters?

23 A. A small portion of them. I did not review all of them.

24 Q. Why not?

25 A. I didn't have a chance to go through them.

03:29PM

1 Q. But you would agree that the dorm areas in Dorm 1 are
2 significantly smaller than those in Dorm 7 and, in fact, the
3 wheelchair does not move through the entire dorm area? So the
4 entire dorm area is not actually accessible to the prisoner?

5 A. Correct.

03:29PM

6 Q. But you consider these ADA compliant nevertheless?

7 A. Yes, ma'am.

8 Q. We're going to move to Page 21, which is designated South
9 Unit health unit 2.

10 A. Yes, ma'am.

03:30PM

11 Q. This is the new health unit or the old?

12 A. This is the new health unit.

13 Q. The new. Okay.

14 A. Yes, ma'am.

15 Q. What was that building used for previously?

03:30PM

16 A. That was the programs area where the CO-3s and CO-4 offices
17 were.

18 Q. Okay. And how long has the water fountain been there? Was
19 it there when it used to be programming, or is it a new
20 installation?

03:30PM

21 A. That's been there for as long as I can remember, ma'am.

22 Q. And you testified that there are misters in that area?

23 A. Yes, ma'am.

24 Q. That they are recently installed?

25 A. Yes, ma'am.

03:30PM

1 Q. Are they on all day?

2 A. I would have to get with the deputy warden on the length of
3 time. I believe they are on for the entirety of when the
4 health unit is open.

5 Q. Can the medical staff request they be turned off?

03:31PM

6 A. I'm sure they could, ma'am, yes.

7 Q. And would that be accommodated?

8 A. That would be up to the unit deputy warden or associate
9 deputy warden on the reasons for them turning it off.

10 Q. So would you consider too much water on the sidewalk to be
11 an appropriate reason to request the misters be turned off?

03:31PM

12 A. Possibly, yes, ma'am.

13 Q. In June or July or August in Florence?

14 A. Probably not. I would not make that choice as a deputy
15 warden to turn them off during those times.

03:31PM

16 Q. If we go to Page 27 with the designation South Unit health
17 unit inside waiting area. We see six chairs. I know this is
18 nitpicky, but you testified there were seven. So where is the
19 other chair? Do you know?

20 A. I don't recall testifying there were seven chairs, ma'am.

03:32PM

21 Q. Both Corene and I wrote it down in our notes. So you are
22 now correcting that and saying there are six chairs?

23 A. Yes, ma'am. If there's six chairs in the picture there are
24 six chairs.

25 Q. Are these designated for nurse's line, or are they both

03:32PM

1 used for both pill call and nurse's line or open clinic line?

2 A. The deputy warden of the unit told me it was the health
3 unit waiting area. He didn't designate whether it was for both
4 pill line and nurse's line.

5 Q. And do officers, medical officers or officers who are sort
6 of out and about near medical, have the discretion to request
7 inmates wait outside instead of inside in these chairs?

03:32PM

8 A. They would have the ability to do that, yes, ma'am.

9 Q. And are you aware of that happening since July 14?

10 A. No, ma'am, I'm not.

03:33PM

11 Q. So it would surprise you to know, then, that Officer Hoss
12 has had the prisoners removed from the chairs and had them wait
13 outside?

14 A. Again, I'm not made aware of that, ma'am.

15 Q. Who would be aware of that, if anyone?

03:33PM

16 A. The unit administration, if they have gotten complaints
17 from the inmates.

18 Q. Getting close.

19 Do you know if your officers take temperatures in the
20 housing units?

03:34PM

21 A. Yes, ma'am, they do.

22 Q. Do they also take temperatures in the medical unit?

23 A. No, ma'am, they do not.

24 Q. Okay. Have you -- are you aware of the procedure that they
25 use to take the temperature?

03:34PM

1 A. Yes, ma'am, I am.

2 Q. Do they hold the temperature reader -- I have never seen
3 one -- up to the vent in order to get a temperature reading and
4 then down at the ground to get a secondary reading? Is that an
5 accurate description of the procedure that they use?

03:34PM

6 A. Yes, ma'am, it is.

7 Q. So they don't measure the ambient temperature in the room.
8 They measure it right up against the air conditioning vent and
9 then down at the floor?

10 A. They are walking into the dorm, they are shooting it up
11 high and they are shooting it down low.

03:34PM

12 Q. So they are measuring the temperature in areas where people
13 are not?

14 A. No. This is in the dorms.

15 Q. No. No. No. I mean up towards the ceiling and down
16 towards the floor. They are not measuring where people
17 actually are standing or sitting or laying?

03:35PM

18 A. They are taking two readings in there, and one is high and
19 one is low. Where the low point would be I'm not exactly sure,
20 ma'am.

03:35PM

21 Q. But no middle reading. And do they sometimes hold the
22 temperature gauge directly up to a vent that's blowing cold
23 air?

24 A. Not that I'm aware of, ma'am.

25 Q. Okay.

03:35PM

1 THE COURT: Which of the units are air cooled and
2 which are refrigerated?

3 THE WITNESS: Most of the units are air cooled. Yes,
4 sir.

5 MS. EIDENBACH: Your Honor, can I have one moment to
6 confer with my co-counsel?

03:36PM

7 THE COURT: You may.

8 MS. EIDENBACH: I think I'm just about done.

9 I have no further questions, but I would like to
10 request a copy of the written list that Mr. Van Winkle prepared
11 to assist him with his testimony on the stand.

03:36PM

12 THE COURT: You mean the list that included the number
13 of the inmates?

14 MS. EIDENBACH: The counts.

15 THE COURT: That were in the count of these given
16 days?

03:36PM

17 MS. EIDENBACH: Yes, Your Honor.

18 THE COURT: Is there anything else on that piece of
19 paper?

20 THE WITNESS: Other than just the unit counts, no,
21 sir. ADA beds and the feet for the dorms to the health unit.

03:36PM

22 THE COURT: Any objection to a photocopy for all
23 counsel of this?

24 MS. LOVE: If I can just look at it really quick
25 first.

03:37PM

1 THE COURT: You may.

2 MS. LOVE: No objection.

3 THE COURT: Do you need the original back, sir?

4 THE WITNESS: No, sir, I do not.

5 THE COURT: Thank you very much. I gather there's no

03:37PM

6 redirect.

7 MS. LOVE: No redirect, Your Honor. Thank you.

8 Defendants call Deputy Warden of Operations Twyford.

9 THE COURT: Sir, if you would step forward to the

10 clerk of the court here so that she may administer the oath.

03:37PM

11 THE MAGISTRATE CLERK: I'm sorry, sir. I did not hear

12 your name.

13 THE WITNESS: Norman Twyford.

14 (The witness was sworn.)

15 THE COURT: Good afternoon. Welcome.

03:38PM

16 THE WITNESS: Good afternoon.

17 NORMAN TWYFORD,

18 a witness herein, having been first duly sworn by the clerk to

19 speak the truth and nothing but the truth, was examined and

20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. LOVE:

23 Q. Good afternoon. Please state your name for the record.

24 A. Norman Twyford.

25 Q. Mr. Twyford, who is your employer?

03:38PM

1 A. The Arizona Department of Corrections.

2 Q. How long have you worked for the Arizona Department of
3 Corrections?

4 A. Since November of 1998.

5 Q. What is your current position with the Arizona Department
6 of Corrections?

03:38PM

7 A. I'm a deputy warden of operations at the Arizona State
8 Prison Complex, Perryville.

9 Q. How long have you been the deputy warden of operations at
10 Perryville?

03:38PM

11 A. Since May of 2016.

12 Q. What is your educational background?

13 A. I have a Master's of Arts from Webster University, George
14 Herbert Walker School of Business. I have a Bachelor's in
15 occupational education from Wayland Baptist University. I'm a
16 Certified Corrections Executive through the Arizona -- American
17 Correctional Association. And I'm a certified public manager.

03:39PM

18 Q. Describe for us, Warden, what are your duties as deputy
19 warden of operations at the Perryville complex?

20 A. I act as a warden in her absence. I have direct oversight
21 over the physical plant, food service, motor pool, and the
22 offender information unit and the chief of security in complex
23 operations.

03:39PM

24 Q. Can you take us through, a quick run through of the kinds
25 of positions that you have held with the Arizona Department of

03:39PM

1 Corrections during your career?

2 A. I was a CO-1 and a sergeant; I was a training officer and
3 staff development in training for two years; I was a sergeant
4 with the Correctional Officer Training Academy. I was a
5 lieutenant and a captain, a major, deputy warden of compliance,
6 a deputy warden over the units, and now the DWOC. That was
7 spread out a little over 10 years at Perryville, three trips to
8 Lewis, and one to Phoenix, Alhambra.

03:40PM

9 Q. What different custody levels have you worked during your
10 career?

03:40PM

11 A. All custody levels.

12 Q. What is the total inmate capacity of the Perryville
13 complex?

14 A. May I refer to my notes?

15 Q. Yes, you may.

03:40PM

16 A. Thank you. It's one that I didn't prepare myself for. Our
17 count is at 4,000. But I have the San Pedro Unit and the Santa
18 Cruz Unit.

19 Q. So the Santa Cruz -- well, let me back up. How many
20 housing units are there at the Perryville complex?

03:40PM

21 A. There are eight units that house inmates; the San Pedro
22 Unit, the Santa Cruz Unit, the Lumley Unit, the Piestewa Unit,
23 Santa Rosa Unit, the San Carlos Unit, the Santa Maria Unit.
24 And complex, if you count it as a unit, they have an IPC, a
25 watch unit and the minors.

03:41PM

1 Q. And the inmate population at the Perryville complex are the
2 female inmates, correct?

3 A. All females, yes.

4 Q. The Santa Cruz Unit at Perryville, do you know what the
5 approximate inmate count is of the Santa Cruz unit?

03:41PM

6 A. The inmate count of the Santa Cruz unit today is 766.
7 Their capacity is 768. There's two vacant beds currently.

8 Q. What is the custody level of the Santa Cruz Unit?

9 A. Medium custody.

10 Q. And describe for us what the living units are like at the
11 Santa Cruz unit. Is it a dorm setting? Is it a cell setting?

03:41PM

12 A. They are two-person cells.

13 Q. Is the Santa Cruz Unit an open yard?

14 A. Yes.

15 Q. And what does it mean in the world of corrections and
16 within the Arizona Department of Corrections to be an open
17 yard?

03:42PM

18 A. The yard opens up shortly after the 0400 formal count
19 occurs, and the inmates return to their cell or they are out
20 counted during the subsequent formal counts and they lock down
21 at 2000.

03:42PM

22 Q. During the day of open yard, are the inmates on the Santa
23 Cruz Unit free to go in and out of their cells?

24 A. Yes.

25 Q. Free to come and go to education?

03:42PM

1 A. Yes.

2 Q. Programs?

3 A. Yes.

4 Q. Medical?

5 A. Yes.

03:42PM

6 Q. And with the cell configuration of the Santa Cruz Unit is
7 the situation where you walk into, inside of a building and
8 there's cells, or do the cell doors open to the outside? How
9 does that work?

10 A. They open to the outside. There's an overhang on the upper
11 run and the lower run, and you are just outside.

03:43PM

12 Q. During times of count at the Santa Cruz Unit, are inmates
13 required to return to their cells for count?

14 A. If they are not otherwise engaged under the supervision of
15 another corrections supervisor who has them on an out count
16 ahead of time, yes.

03:43PM

17 Q. Does the Santa Cruz unit have its own medical unit?

18 A. Yes.

19 Q. If an inmate is at the medical unit during the time of
20 count, is an inmate required to go back to their house, their
21 cell, or can they remain in medical?

03:43PM

22 A. They should remain in medical and they absolutely do. The
23 correctional officers assigned as a medical officer will take
24 countability of the inmate and submit out counts.

25 Q. Does the same situation apply if the inmate is education or

03:43PM

1 programs, for instance, during the time of count?

2 A. Yes.

3 Q. I want to switch your attention now to the San Pedro Unit
4 at Perryville. At the San Pedro Unit, what is approximately,
5 if you know, today's current count?

03:44PM

6 A. Today is 428 and the capacity is 432. They have four
7 vacant cells.

8 Q. What is the custody level at the San Pedro Unit?

9 A. Minimum.

10 Q. At the San Pedro Unit, is it the same physical plant in
11 which inmates live in cells versus a dorm setting?

03:44PM

12 A. Yes.

13 Q. Two-person cells?

14 A. Two-person cells.

15 Q. Are the buildings configured such that the cell door opens
16 to the outside versus on the interior of the building?

03:44PM

17 A. Yes.

18 Q. Does the San Pedro Unit also have its own medical unit?

19 A. Yes.

20 Q. During times of count, if an inmate at the San Pedro Unit
21 is down at medical, is it the same situation at Santa Cruz
22 where the inmate would be subject to an out count such that
23 they could stay down at medical?

03:44PM

24 A. Yes.

25 Q. If you know, do you know whether there are inmates housed,

03:45PM

1 back to the Santa Cruz Unit, are there inmates housed at the
2 Santa Cruz Unit that are in wheelchairs?

3 A. Yes.

4 Q. And how many, if you know?

5 A. I have it right here. At Santa Cruz there's three inmates
6 who are bound to a wheelchair. 20 inmates have an intermittent
7 need for the wheelchair depending on the conditions that they
8 have that require it or not.

03:45PM

9 Q. Are there inmates at the Santa Cruz Unit who serve as
10 wheelchair aides that assist inmates who may need to be pushed
11 around the unit?

03:45PM

12 A. Yes.

13 Q. Do you know how many inmates on Santa Cruz are employed in
14 this position?

15 A. There's currently 17 employed in that position to push
16 people. The three that have full time bound to their
17 wheelchair have their own individual one, and the other 14
18 serve as a fleet because not all 20 at the same time are
19 requiring the assistance of the aides.

03:45PM

20 Q. Are you aware of -- or do you know which unit inmate
21 Dominique Keys lives on?

03:46PM

22 A. Yes, I do.

23 Q. Which unit?

24 A. Santa Cruz.

25 Q. Do you know if Inmate Keys is assigned a wheelchair aide?

03:46PM

1 A. Yes, I do.

2 Q. Is she assigned on an intermittent basis or a full time
3 basis?

4 A. A full time basis.

5 Q. And do you know how long that has been in place that she
6 has been assigned full time, I guess, so to speak, wheelchair
7 aide?

03:46PM

8 A. Exact date I don't. It was recent. We had a change in the
9 assignments of the wheelchair pushers.

10 Q. Tell me about the change in the assignments in the
11 wheelchair pushers.

03:46PM

12 A. We previously had sort of an Uber system of wheelchair
13 pushers on demand where there was a crew of inmates that are
14 assigned and work as wheelchair pushers that would be
15 dispatched to, you know, do their job. And since changing, I
16 don't have the exact dates, but as of recently, maybe two
17 weeks, the ones that are bound to the wheelchairs get their own
18 individual wheelchair pusher.

03:47PM

19 Q. Do you know who Ms. Keys' wheelchair pusher aide is?

20 A. I have to think about her name. It's her cellmate.

03:47PM

21 Q. And does Ms. Keys' cellmate get paid for her work in aiding
22 Ms. Keys in pushing the wheelchair?

23 A. Yes, she does. It's a WIPP job, which is the Work
24 Incentive Pay Plan.

25 Q. Was there any particular reason that you are aware of as to

03:47PM

1 why the change has happened in the last few weeks to assign --
2 to go away from the Uber system to an inmate aide assignment
3 situation?

4 A. To alleviate any doubt with the inmates who are bound to
5 the wheelchairs that they had inaccessibility, so they assigned
6 them their own. The system we had prior was working well, and
7 this one is working equally well.

03:48PM

8 Q. Do you have the same system in place as to individualized
9 assignments or, I guess, personal assignments of wheelchair
10 aides at the San Pedro Unit?

03:48PM

11 A. Yes. There's seven wheelchair bound inmates at the San
12 Pedro Unit.

13 Q. And they all have individually assigned wheelchair aides as
14 well who are paid?

15 A. Yes.

03:48PM

16 Q. I want to talk to you now, switch gears a little and talk
17 to you about how inmates -- and we'll take them one by one --
18 but how inmates on the Santa Cruz and San Pedro Units at
19 Perryville seek medical care.

20 A. Okay.

03:49PM

21 Q. Currently, if an inmate desires to see anybody in the
22 medical unit, whether it's a nurse, whether it's a doctor,
23 provider of any level, how does an inmate go about seeking
24 medical care?

25 A. They would fill out the health needs request and then they

03:49PM

1 would show up to the open medical lines between the hours of 7
2 to 9. They would check in. They would hand the medical
3 officer their identification card. They would wait in a
4 waiting area to be cleared. Now, if the inmate has an
5 authorized program or work assignment that otherwise has them
6 occupied between the hours of 7 to 9, they can come back
7 between the hours -- what unit are we on?

03:49PM

8 Q. I'm sorry?

9 A. What unit are we on?

10 Q. Santa Cruz.

03:49PM

11 A. They can come back between the hours of 12:30 and 3 and we
12 will run that identical protocol for them there so they don't
13 have to miss work, education, or programming.

14 Q. Does the medical unit at Santa Cruz, does the medical unit
15 close down between the hours of 9 a.m. and 12:30? How does
16 that work?

03:50PM

17 A. No. They are still seeing inmates. The open sick call
18 line is for the inmates that have care they want to be seen
19 today for. If they were ever -- appointments are still
20 running. The people are still getting seen by providers and
21 people are still getting seen for multiple other issues that
22 they have appointments to come back in here, so they are
23 simultaneously seeing inmates who line up and wait to see
24 medical with their HNR, and they have the lines they are
25 running to see people who come back who have been previously

03:50PM

03:50PM

1 scheduled.

2 Q. If an inmate at the Santa Cruz Unit shows up with a written
3 HNR between the hours of 7 and 9 a.m. but are not -- let's say
4 there's 15 inmates in line and they don't get to all 15 between
5 the hours of 7 and 9, are the inmates all turned back to the
6 housing unit because they can't be seen in that two-hour
7 window?

03:51PM

8 A. No. 7 to 9 is just to check in. The inmates will be seen
9 until they are done being seen. We will keep them until we've
10 seen them all.

03:51PM

11 Q. Does the same process -- is the same process in place at
12 the San Pedro Unit?

13 A. Yes. The differences among the yards is who has p.m. jobs
14 and a.m. jobs. So San Pedro is almost half the size of Santa
15 Cruz. So the p.m. window for the inmates that are otherwise
16 occupied in the morning is a bit smaller. It's 12:30 to 2 as
17 opposed to 12:30 to 3.

03:51PM

18 Q. And inmates, whether it's the Santa Cruz yard or the San
19 Pedro yard, if the inmate is working a job such that they can't
20 make it to the line during the normal open line hours, they are
21 provided a different period of time to go to the line either
22 before or after work?

03:51PM

23 A. Correct.

24 MS. EIDENBACH: Your Honor, may I approach?

25 THE COURT: You may.

03:52PM

1 BY MS. LOVE:

2 Q. Warden, before you is Defendants' Exhibit Number 8 for
3 identification. If you could look at the documents contained
4 in Exhibit Number 8 and let me know whether or not you
5 recognize the documents contained therein.

03:52PM

6 A. I put this together myself. Yes, I recognize them.

7 Q. And since you put it together yourself, can you tell us
8 generally what this packet is at Exhibit Number 8?

9 A. Page by page?

10 Q. Just generally, then we'll go page by page.

03:53PM

11 A. These are photographs that demonstrate the visual layout of
12 the units that the inmates are on, the path that they take to
13 the medical and the distance and their cell environments that
14 they are in.

15 Q. This is for the Santa Cruz Unit at Perryville, correct?

03:53PM

16 A. Yes. Exhibit 8 is all Santa Cruz.

17 Q. This is something you, yourself, prepared, correct?

18 A. Yes, I did.

19 Q. Let's go through page by page. And Page 1 of Exhibit
20 Number 8, can tell us what this photograph depicts?

03:54PM

21 A. It is the walking path that one would take from Inmate
22 Keys' cell to medical. It's approximately 800 feet. And I
23 walked it myself, and it took me three and-a-half minutes.

24 Q. If you could, do you have a pen up there in front of you?

25 A. I do.

03:54PM

1 Q. If you could for us, to make it a little more clear on the
2 photograph, if you could circle the building that Inmate Keys
3 lives in and mark that with the Number 1. And you have done
4 that for us?

5 A. Yes.

03:54PM

6 Q. Could you then, with a Number 2, either with a line drawn
7 or on the building, indicate for us where the Santa Cruz
8 medical unit is?

9 A. Okay.

10 Q. And can you also indicate with either a line or a line and
11 the Number 3 where the chow hall is located for the Santa Cruz
12 Unit.

03:54PM

13 A. There are four kitchen buildings at Santa Cruz with two
14 operational kitchens. I have to think for a second. And that
15 is just outside the -- no. That's the other building. This is
16 Number 3.

03:55PM

17 Q. Can you move the microphone a little closer to you?

18 A. Yes.

19 Q. Okay. And you stated that you, yourself, have walked the
20 distance from Ms. Keys' cell to the medical unit, is that
21 correct?

03:55PM

22 A. That is correct.

23 Q. And you measured it on Google maps?

24 A. I did.

25 Q. What did you find as to the distance?

03:55PM

1 A. 800.83 feet on Google maps and approximately three
2 and-a-half minutes to foot walk it.

3 Q. Is there a sidewalk pathway consistently from Ms. Keys'
4 cell all the way to the medical unit?

5 A. The entire pathway to the medical unit from Ms. Keys' cell
6 is paved.

03:56PM

7 Q. Have you had the opportunity to prepare a videotaped walk
8 of that pathway from the building where Ms. Keys lives up to
9 the medical unit?

10 A. Yes, I did.

03:56PM

11 Q. How would you describe the nature of the condition of the
12 sidewalks from the building that Ms. Keys lives in all the way
13 up to the medical unit?

14 A. It's a sidewalk in fair condition. It has some of minor
15 blemishes on the side or areas but nothing that can't be
16 avoided.

03:56PM

17 Q. That can't be what?

18 A. That can't be avoided or circumvented.

19 Q. When you say "can't be circumvented" what do you mean by
20 that?

03:56PM

21 A. Oh, for example, toward the education buildings prior to
22 the marking area of Number 2, there is a patch of concrete and
23 an asphalt patch in the center and concrete, and the asphalt
24 patch is somewhat uneven, but there's a direct path to either
25 side of it. And I frequently see the inmates just take the

03:57PM

1 other path with the wheelchair to go around it.

2 Q. Are you aware of any inmates who are in wheelchairs having
3 trouble getting from their building in their housing unit to
4 medical based upon any roughness in the sidewalk?

5 A. I'm unaware of any inmates that can't make it to medical or
6 have expressed difficulty because of the conditions of the
7 sidewalk.

03:57PM

8 Q. Can you please now turn to Page 2 of Exhibit Number 8 and
9 describe for us what this photograph shows.

10 A. This is the view of the building that the Inmate Keys lives
11 in, which is the Santa Cruz Building B-Wing 4, and that is the
12 bar that takes you down to the wheelchair ramp.

03:57PM

13 Q. As you sit here looking at this photograph right now, are
14 you able to pick out Inmate Keys' cell or the approximate area?

15 A. Yeah. I might miss it by one or two just because it's dark
16 in the back.

03:58PM

17 Q. Could you draw a circle around the general vicinity that
18 you recall Ms. Keys' cell being located?

19 A. Yes. I did.

20 Q. Is Ms. Keys' cell located on the lower level of that
21 building or on the upper level?

03:58PM

22 A. It is on the lower level.

23 Q. Are you -- and you told us earlier that Ms. Keys is in a
24 wheelchair. Are you aware of that?

25 A. Yes.

03:58PM

1 Q. Is there a ramp, a sidewalk ramp, that gives her access to
2 that lower level of the building and her cell?

3 A. Yes.

4 Q. Is that depicted in the photograph at Page 2?

5 A. Yes.

03:59PM

6 Q. Look now, if you would, at Page 3 of Exhibit Number 8. And
7 describe for us what this photograph shows.

8 A. Another example of the wheelchair ramp at the Santa Cruz,
9 the same one that was in the picture previous.

10 Q. And that does lead down to Ms. Keys' cell?

03:59PM

11 A. Yes.

12 Q. Page 4 of Exhibit Number 8. Please describe for us what
13 you see there.

14 A. That is an angle of the exit area of the wheelchair ramp
15 leading down to Ms. Keys' cell.

03:59PM

16 Q. And Page 5 of Exhibit Number 8, can you explain to the
17 Court and to plaintiffs' counsel what this photograph depicts?

18 A. That is the opposite angle of the one previous, and that's
19 Ms. Keys right there sitting at her cell front.

20 Q. In the wheelchair?

04:00PM

21 A. In the wheelchair.

22 Q. If we look at this photograph at the very, I guess, back,
23 so to speak, of the photograph, you can see an open door. Do
24 you see that?

25 A. Yes.

04:00PM

1 Q. Do you know what's in that room?

2 A. That is the ADA shower.

3 Q. And if you turn to the next page, which is Page 6 of
4 Exhibit Number 8.

5 A. That's what's behind the door you saw at the end of the
6 hall.

04:00PM

7 Q. And that is the shower?

8 A. Yes.

9 Q. That you just spoke of?

10 A. Yes.

04:00PM

11 Q. Next page, Page 7 of Exhibit Number 8, can you tell us what
12 that photograph shows?

13 A. That is the -- in the health unit area or medical offices,
14 rather, of the Santa Cruz Unit.

15 Q. And we see inmates sitting, in the back of the photo,
16 inmates sitting, looks like, on a bench or a seat. Is that
17 correct?

04:00PM

18 A. That is correct.

19 Q. Do you -- did you yourself take this photograph?

20 A. I did.

04:01PM

21 Q. Do you know what those inmates were doing that are sitting
22 on the bench in the back?

23 A. Waiting to see medical.

24 Q. Is there a medical refill box located on the Santa Cruz
25 Unit?

04:01PM

1 A. Yes.

2 Q. Where is it located at?

3 A. To the right of the door entering this unit and you can
4 depict a RX.

5 Q. Could you circle for us the H -- or I'm sorry -- the
6 medical refill box that you see in the photograph that you just
7 told us about?

04:01PM

8 A. Yes.

9 Q. On the Santa Cruz Unit are there medical refill boxes at
10 any other locations other than the box you just circled on the
11 photograph for us?

04:01PM

12 A. No, there's not.

13 Q. Page 8 of Exhibit Number 8, what does this photograph show?

14 A. A close-up of the box I circled on the previous page.

15 Q. And Page 9 of Exhibit Number 8, can you describe for us
16 what this shows?

04:02PM

17 A. This is the pill pass window, and it's adjacent to that
18 inmate holding area that you saw two or three pictures ago.
19 And that is a water pump and a water filter that feeds the
20 misting system that surrounds the inmate waiting area.

04:02PM

21 Q. Is there a certain temperature or time of day that the
22 misters would be on for inmates waiting to see medical?

23 A. Any time it's over 100 degrees we do the climate controls
24 or if it's uncomfortable and it's worthy of doing the climate
25 controls like the misting system we'll turn it on as well.

04:02PM

1 Q. For inmates who are waiting to see medical, and they are
2 outside, is there water provided to the inmates?

3 A. That was on the very first picture that you saw was an
4 enclosed Igloo with ice water that is available to the inmates.

5 Q. If you can go back in time four photos.

04:03PM

6 A. Okay.

7 Q. Go backwards to the photograph that is titled: Santa Cruz
8 Medical Inmate Waiting Area, August 4, 2017, approximately
9 3:30. Does that photograph show the water?

10 A. Yes, it does, yellow and red Igloo inside an enclosed
11 locked cabinet.

04:03PM

12 Q. Besides the overhang that we see here right in front of the
13 medical unit, are there any additional areas where inmates
14 waiting to see medical can be in the shade?

15 A. Yes. Directly across from here is the wall of the
16 visitation area. And in the morning, the morning sun will
17 shine toward the waiting area that's right here. And within
18 eyeshot across from there the inmates will congregate on the
19 shaded side. But 11:00, 10:00, depending on the summer/winter
20 hours, the shade covers the holding enclosure you see in this
21 picture and they congregate there.

04:03PM

22 Q. If you can turn to the last page of Exhibit Number 8, which
23 is Page 10 of Exhibit Number 8. Can you describe for us what
24 this photograph shows?

25 A. So the door that we saw entering into the medical unit

04:04PM

1 adjacent to the medication refill box, this is the view
2 entering there. Off to the right is the officer's desk where
3 they take the inmates IDs and check them in. And then to
4 the -- that was the left in the picture. And to the right of
5 the picture is a nurse that sees and triages the inmates. And
6 all of the other doors are either treatment rooms, a restroom,
7 or tool Sharps container or storage area.

04:05PM

8 Q. This area that's shown at the last page of Exhibit Number
9 8, is this a high traffic area when the medical unit is running
10 and open nurse line is running?

04:05PM

11 A. Very much so.

12 Q. Does the Santa Cruz -- in the medical unit at the Santa
13 Cruz Unit, is there a physical plant area or capability to
14 provide an indoor waiting room for the inmates?

15 A. Not at Santa Cruz. Every bit of space is devoted to
16 medical discipline that is providing services to the inmates.

04:05PM

17 Q. You spoke a moment ago that when inmates come up for the
18 open nurse line that they check in.

19 A. That's correct.

20 Q. How does the check-in process work, to your knowledge?

04:05PM

21 A. The inmates come up for the open sick call. The officer
22 allows them in, takes their ID, writes their name down on a log
23 of sorts, and organizes their names and their IDs in a
24 chronological order so that a nurse can pull people off in a
25 first come, first serve basis.

04:06PM

1 Q. If an inmate is then waiting outside for their position in
2 line and to be seen, how do they know that they are next up,
3 they are next in line. It's their turn next?

4 A. The nurse or the staff member will come out and say, hey,
5 I'm looking for inmate whomever, and they come.

04:06PM

6 Q. To your knowledge, how does the pill call line work at the
7 Santa Cruz Unit?

8 A. The inmates come up for the pill call. They line up, hand
9 their ID. The medical person scans their ID, gives them
10 their -- what is the word -- their -- hands them their pill
11 swallows, ensures they have swallowed it and go with the
12 exception of inmates in wheelchairs who go to the front of the
13 line during the pill passes.

04:07PM

14 Q. The inmates that are in wheelchairs that go to the front of
15 the line, is that a process that has been put in place by
16 staff?

04:07PM

17 A. I believe it was borne of the inmates and their own basic
18 civilities among themselves to move people in and out through
19 these processes.

20 MS. LOVE: Defendants move Exhibit Number 8 into
21 evidence.

04:07PM

22 THE COURT: Any objection?

23 MS. EIDENBACH: No, Your Honor.

24 THE COURT: 8 is received.

25 BY MS. LOVE:

04:07PM

1 Q. Warden, I'd like for to you take a look at what defendants
2 have marked as Exhibit Number 10 for identification. And let
3 me know if you recognize the documents contained in Exhibit
4 Number 10.

5 MS. EIDENBACH: Your Honor, may I approach again?

04:09PM

6 THE COURT: You may.

7 THE WITNESS: Yes, I do.

8 BY MS. LOVE:

9 Q. Is this packet -- why don't you generally describe for us
10 what is contained in this packet, Exhibit Number 10, just
11 generally.

04:09PM

12 A. It's similar to Exhibit Number 8 in that it's an overview
13 of the unit and the photographs of the medical area and the
14 medical waiting areas.

15 Q. Is this something you, yourself, prepared?

04:09PM

16 A. I did myself, yes.

17 Q. If you can take a look at Page 1 of Exhibit Number 10 for
18 us, and I want to go through the same process as we did before
19 with the Santa Cruz Unit and with -- we're going to start
20 backwards. I'm going to mess you up on numbering. You can use
21 the Number 2 and mark where the medical unit is.

04:09PM

22 A. Okay.

23 Q. Warden, are you aware of what location at Perryville Inmate
24 Angela Ashworth lives?

25 A. Yes.

04:10PM

1 Q. Where does she live?

2 A. She lives on Building B.

3 Q. On San Pedro Unit?

4 A. San Pedro Unit.

5 Q. With a Number 1, can you mark which building Ms. Ashworth
6 lives in?

04:10PM

7 A. Yes.

8 Q. Did you measure the distance from where Ms. Ashworth lives
9 on the San Pedro Unit to the medical unit on San Pedro?

10 A. I measured it and I walked it, yes.

04:10PM

11 Q. And what was that distance?

12 A. On the Google maps it came out to 19 -- 1199.88 feet,
13 approximately 1200 feet.

14 Q. Did you take a video of the pathway of walking from the
15 building where Ms. Ashworth lives up to medical like you did
16 related to Ms. Keys?

04:10PM

17 A. Yes, I did.

18 Q. And do you remember how long, approximately, it took for
19 you to walk from the building where Ms. Ashworth lives up to
20 medical?

04:11PM

21 A. Approximately four minutes.

22 Q. How would you describe the nature of the sidewalks on the
23 San Pedro Unit, first, just generally?

24 A. Sidewalks are intact, and any abnormalities are noted and
25 easily circumventable.

04:11PM

1 Q. Is there a sidewalk pathway from the building where Ms.
2 Ashworth lives consistently to the medical unit?

3 A. Yes, there is.

4 Q. So it's not a situation where there's a dirt field you have
5 to cross with no sidewalks?

04:11PM

6 A. You do not have to cross the dirt field. You can take the
7 sidewalk the entire way.

8 Q. And the San Pedro Unit is an open yard as you described
9 earlier, is that correct?

10 A. Yes.

04:11PM

11 Q. If you look at Page 2 of Exhibit Number 10, can you tell us
12 what this photograph shows?

13 A. This is Building B where Ms. Ashworth lives.

14 Q. And can you mark with an X generally the building area
15 where Ms. Ashworth lives?

04:12PM

16 A. This should be over in this area.

17 Q. If you look at Page 3 of Exhibit Number 10, can you
18 describe for us what this photograph shows?

19 A. This is the medical area of the San Pedro Unit.

20 Q. Where does pill call happen at the San Pedro Unit?

04:12PM

21 A. Right next to the water cooler on the bench next to the
22 young lady sitting to the left of the water cooler as you look
23 at the picture.

24 Q. Is there a shaded area for inmates to wait at the San Pedro
25 Unit for the open nurse line?

04:12PM

1 A. Yeah. The physical plan of San Pedro is a bit different in
2 that the overhang that you see in this picture versus the one
3 you saw in the Santa Cruz Unit is much deeper and provides much
4 more shade.

5 Q. Is the system at the San Pedro Unit for inmates to get in
6 line, so to speak, for open nurse line the same as Santa Cruz
7 where the inmates come with their identification and they
8 provide it to the officer?

04:13PM

9 A. Yes.

10 Q. Page 4 of Exhibit Number 10, could you describe what that
11 photograph shows us?

04:13PM

12 A. It's just a different angle to demonstrate the depth of the
13 overhang to provide the shade for the inmates waiting. You can
14 make out off on to the right the feet of the inmate at the
15 bench close there. The purpose of this was to see the door
16 that is to the right of the picture is a multi-purpose room
17 that was previously used for a women in recovery program that
18 we are in the middle of relocating that program so we can make
19 that an indoor waiting area for medical.

04:13PM

20 Q. Page 5 of Exhibit Number 10, tell us, if you could, what
21 this photograph shows.

04:14PM

22 A. That is an angle from the back of that room. That is
23 intended to be an indoor waiting room for medical. And it
24 shows the door entrance we were looking at moments before. And
25 the door to the right in the picture enters into medical as

04:14PM

1 well through a back hallway.

2 Q. When do you plan for the project to start, to convert this
3 area into an indoor waiting room for the inmates?

4 A. I don't have a deadline for this to be completed, but we
5 typically move quickly on these once the decision is made.

04:14PM

6 Q. Has a decision been made for this to occur?

7 A. This is going to be the indoor waiting room for San Pedro
8 medical.

9 Q. Page 6 of Exhibit Number 10, can you please tell us what
10 this photograph shows?

04:15PM

11 A. This is the same shot that I took at Santa Cruz where you
12 open the door into medical showing the officer stationed to the
13 right -- or excuse me, to the left, and the medical nurse's
14 desk off to the right and the office spaces.

15 Q. Is there a medical refill box located on the medical unit
16 at San Pedro?

04:15PM

17 A. There is. You are going to have to go back unless it's --
18 you are going to have to go back a few pages to Page Number 3.
19 So in the same spot at Santa Cruz as it was at San Pedro, right
20 underneath the no smoking sign to the right of the entrance
21 door, that's the medication refill box.

04:15PM

22 Q. Can you, with your pen, draw a circle around that medical
23 refill box -- sorry -- medication refill box?

24 A. Yes.

25 Q. On San Pedro Unit are there any other medication refill

04:16PM

1 boxes located anywhere else besides at medical?

2 A. No.

3 Q. If you switch to the second to the last page of Exhibit
4 Number 10 which is Page 6, can you describe for us what this
5 photograph shows?

04:16PM

6 A. This would be the last page that I have. This one?

7 Q. Next to the last. The one that's in your right hand.
8 There you go.

9 A. This is the one I just described. The entrance into the
10 medical where the officer's off to the left, the nurse is on
11 the right, and the treatment rooms around the periphery.

04:16PM

12 Q. Last page of Exhibit 10, can you tell us what this exhibit
13 shows?

14 A. Just a sign outside of medical relating to the inmates the
15 times that the open sick call for the inmates are 7 to 9 for
16 inmates who aren't in school or working and then 12:30 to 2 for
17 the inmates who would be getting off of school or work.

04:16PM

18 Q. Is there similarly posted a schedule for off sick call
19 hours on the Santa Cruz Unit located at the medical unit?

20 A. There wasn't at the time I took the picture. I'm certain
21 that there is now because I said that it needed to be posted.
22 These are exposed to the inmates, and if they wanted a scratch
23 piece of paper or something it wouldn't be much for them to
24 pull it off the wall.

04:17PM

25 Q. Besides seeing the posting at the medical unit as shown

04:17PM

1 here, the last page of Exhibit Number 10, whether it's the
2 Santa Cruz Unit or San Pedro Unit, is there any other way the
3 inmates would know what are the hours for open nurse line?

4 A. Each inmate gets an orientation when they come to the unit
5 and the open sick call process is explained to them there. And
6 it's also on our CCTV Channel 13, informative channel, that
7 repeats information that the inmates need to know.

04:17PM

8 Q. As the deputy warden of operations there at the Perryville
9 complex, do you have working knowledge of the cooling systems
10 that are used to cool the inmate housing units?

04:18PM

11 A. Yes, I do.

12 Q. I want to speak to you now about the cooling system used in
13 the building where Ms. Keys lives on the Santa Cruz Unit. And
14 if you could generally describe for us how are the cells on the
15 Santa Cruz Unit cooled in the summertime?

04:18PM

16 A. Okay. They use evaporative coolers to cool, or swamp
17 coolers to cool the units. There's three main types of units
18 that cool it and two different ducting configurations. So we
19 have a 10,000 CFM, cubic feet per minute, unit that pushes air
20 to 16 cells and provides cooling for 32 beds. And we have a
21 six or eight CFM, 6 or 8,000 CFM unit that pushes air, cooled
22 air, to eight cells or 16 beds in the unit.

04:19PM

23 And the reason that you see these different sizes is
24 the institution has upgraded the evaporative cooling as
25 technology allows us. And it was built in 1981, and it

04:19PM

1 initially had a 6,000 pushing the 16 cells and a 4,000 pushing
2 the eight cells and it used a straw media.

3 We're currently using the MasterCool system which has
4 either a six-inch honeycombed cardboard media which the water
5 flows over the media and the air is sucked, the outside dry air
6 is sucked through, cooled and moistened and forced into the
7 cell for the 8,000 and CFM units and the 12-inch honeycombed
8 cardboard media for the 10,000 CFM units.

9 Q. The cells on -- in the building where Ms. Keys lives, are
10 there windows in those cells?

11 A. There are windows in Ms. Keys' cell.

12 Q. Are the windows, do the inmates have the ability to open
13 the windows?

14 A. They do not. At one point in the construction they did,
15 but over time and the aging building and the shifting, they
16 would open up and then couldn't be secured because of just the
17 shifting of the building. So we were able to secure all of
18 them and we welded them shut.

19 Q. By use of the cooling system there in the building where
20 Ms. Keys lives, did inmates have the opportunity to leave their
21 cell doors open?

22 A. Both San Pedro and Santa Cruz they have the opportunity to
23 have their cell doors open with the exception of when we lock
24 down for count and when we close the yard.

25 Q. What is purpose of allowing the inmate's cells to remain

1 open if they choose?

2 A. Well, it's an open yard for one, so they can have their
3 cells open. But they believe that it helps them with the
4 circulation in the air flow. There is 525 cubic feet per
5 minute getting forced into that cell and we have a forced
6 exhaust that goes out and draws the air out regardless if the
7 door is open or closed.

04:21PM

8 Q. If the, for instance, if Ms. Keys' cell door is closed is
9 there any air that could flow underneath her cell door in and
10 out, or is it literally flush with the cement?

04:21PM

11 A. No. There's a space underneath the door and we have a
12 sweep. It's demonstrated in one of the pictures previously.
13 You could see the sweep that's on the bottom of the door to
14 prevent critters and insects from coming in as well as the
15 exhaust fan that forcibly sucks the air out of the cell.

04:22PM

16 Q. Are inmates who live in the building where Ms. Keys lives
17 permitted to have fans in their cell?

18 A. Absolutely. It's approved inmate property for any inmate
19 at Perryville.

20 Q. Do you all there at the Perryville complex monitor the
21 temperatures in the inmate cells on the Santa Cruz unit and the
22 San Pedro Unit?

04:22PM

23 A. Yes, we do.

24 Q. How do you do that?

25 A. We take random cell temperatures throughout the day and we

04:22PM

1 log them.

2 Q. And how do you take the temperature?

3 A. We have a thermometer that you walk into the cell and take
4 the temperature.

5 Q. Are there required numbers of times per day that the
6 temperature is monitored?

04:23PM

7 A. Yes. I didn't commit that to memory or put that in my
8 notes, but they are several times a day at noon, 1400, 1600,
9 and 1800, and 2000.

10 THE COURT: And the yard is closed at 2000 hours?

04:23PM

11 THE WITNESS: Yes.

12 THE COURT: So the doors are closed at 2000 hours?

13 THE WITNESS: Yes, unless there are occasions when the
14 doors will be open after 2000 hours to mitigate extreme heat.

15 So if at 2000 hours we're taking temperatures and they are in
16 an acceptable threshold in the low 80s or high 70s the doors
17 will be closed. If the inmates complain hey, it's getting hot
18 in here after the yard closes at 2000 we'll take the
19 temperature. If it is unreasonable they will get permission
20 from the shift commander to let them keep their doors cracked,
21 so they can. But we will secure it at each formal count and
22 crack them open if that be the case.

04:23PM

04:24PM

23 THE COURT: What is the threshold temperature that
24 would allow for that?

25 THE WITNESS: 86, above 86 degrees.

04:24PM

1 BY MS. LOVE:

2 Q. Is that 86 degrees for nighttime hours, daytime hours,
3 everything?

4 A. Yes.

5 Q. What kind of mitigation actions besides opening doors, if
6 any, additional that can be taken to address temperatures that
7 pass the 86 degree threshold?

04:24PM

8 A. Opening doors is obviously one of them. Another one is to
9 go work on the evaporative cooling system on the roof. We have
10 inmate maintenance workers who are trained in the emergency
11 repairs of these units. There's not a lot of parts; the fan,
12 pads, and a water pump that flushes it over there. And we'll
13 take an officer and an inmate work crew and go on to the roof
14 of the building and service the unit itself if there's any
15 malfunction.

04:24PM

04:25PM

16 Q. Are there circumstances under which inmates may be moved
17 out of their cells to a different location if certain
18 temperature thresholds are reached?

19 A. Yes. We were previously housing the pregnant inmates at
20 San Pedro Unit, and when the temperature would get over 86
21 degrees we would relocate them temporarily or overnight to the
22 visitation area, and they would sleep in visitation, which is
23 an air conditioned area. We since moved the pregnant inmates
24 off of the San Pedro Unit to the San Carlos unit which is a
25 Butler building style unit which has an AC unit not evaporative

04:25PM

04:25PM

1 cooler.

2 Q. When did this change in operations happen?

3 A. Again, a few weeks ago. I don't have the date.

4 Q. What was the reason for the change, if you know?

5 A. For the inmates' health and to avoid any accusations that
6 we weren't treating them accurately -- or carefully.

04:26PM

7 Q. Do you have any information whether or not the cooling
8 system has malfunctioned, not been in working order at the
9 Santa Cruz Unit in the last two months?

10 A. No. We have people on the roofs of the Santa Cruz Unit on
11 a regular basis ensuring that the planned -- preventive
12 maintenance and planned maintenance are occurring. There's a
13 maintenance employee dedicated to that unit that works Monday
14 through Friday and as part of their daily routines is to
15 service the unit. And without exception they see every
16 evaporative cooler during the summertime months a minimum of
17 once a week. And they respond to every allegation or every
18 complaint that it's uncomfortable to verify that all of the
19 systems are working, the two parts of the system, the exhaust
20 fan is sucking the air out and that the cooler is wetting the
21 pads on all sides and forcing the air in.

04:26PM

04:26PM

04:27PM

22 Q. Do you have -- let's take the last two-month time frame.

23 Do you have any information that would lead you to believe that
24 the air flow or ventilation system in Inmate Keys' cell
25 specifically was not in working order?

04:27PM

1 A. No. I have nothing.

2 MS. LOVE: Your Honor, may I approach?

3 THE COURT: You may.

4 You mentioned MasterCool. Is that a trade name?

5 THE WITNESS: It's a brand name.

04:27PM

6 THE COURT: Brand name. And do you know what the
7 maximum cooling capacity is of such a system when the ambient
8 humidity is relatively low such that an evaporative cooling
9 system would work?

10 THE WITNESS: There's a chart available that I don't
11 have with me now, but at 2 percent humidity and 100 degrees
12 still pushes air out ideally at under 80 degrees in the 70s
13 which is a drastic change from 110 degrees dry air. So the
14 higher the humidity the less the evaporative cooling works
15 because the air is already wet and wetting it any more doesn't
16 cool it as much as dry air.

04:27PM

04:28PM

17 THE COURT: You mentioned 100 degrees producing a
18 temperature under 80. So if we changed the ambient outside
19 temperature to 110 degrees, you would, I gather, be able to
20 reduce it to about 20 degrees to 90? Is that what you are
21 thinking?

04:28PM

22 THE WITNESS: No, because it's not a perfect 20
23 degrees under every scenario it falls under. Even with the
24 conditions of the humidity being identical, the differences
25 between the outside temperature and the air coming in have

04:28PM

1 variations depending on each.

2 THE COURT: Right. But I gather it doesn't get any
3 better. If you get 20 degrees offset at 100 degrees you
4 probably don't get any better than 20 degrees offset at 110.

5 THE WITNESS: The example I gave you was 110 degrees
6 bringing it down below 80.

04:29PM

7 THE COURT: That's actually not what you said
8 according to the court reporter. You said 100 degrees would
9 bring it under 80.

10 THE WITNESS: In that case I misspoke.

04:29PM

11 THE COURT: You meant to say 110 would take it --

12 THE WITNESS: To under 80 degrees at 2 percent
13 humidity. That sticks to my head when I reviewed the graft.
14 It's like a multiplication table with the humidity across the
15 top and the temperature on the side and gives you the ranges of
16 its capacity as they go.

04:29PM

17 THE COURT: Thank you.

18 THE WITNESS: Thank you.

19 BY MS. LOVE:

20 Q. Warden, if you could look at what defendants have marked as
21 Exhibit Number 9 for identification and let us know if you
22 recognize what is in the packet at Exhibit 9.

04:29PM

23 A. That is a picture of the thermometer that we use to take
24 the temperatures in the cell.

25 Q. Is this -- are these photographs that you, yourself,

04:30PM

1 prepared?

2 A. These are photographs I took myself, yes.

3 Q. If you could take a look at Page 1 of Exhibit Number 9.

4 Will you tell us what this photograph shows?

5 A. That the outside air temperature on July 14th at 12:30 was

04:30PM

6 103.3 Farenheit.

7 Q. What complex were you taking this measurement?

8 A. In the top of the ADA ramp on the Santa Cruz Unit outside

9 Inmate Keys' cell.

10 Q. And why were you doing this on July 14th, 2017, at

04:30PM

11 approximately 12:30 p.m.?

12 A. I received a call that there was an allegation of

13 inoperable cooling systems at Santa Cruz. And they didn't have

14 any way for the air to recirculate.

15 Q. And this device that is shown with the measurement here in

04:31PM

16 the photograph, is this a device that is regularly used at the

17 Perryville complex to take the temperature?

18 A. I took it from the control room and it's the same one the

19 officer uses, him or herself, as they go do the temperatures.

20 Q. So you, yourself, were assessing the temperatures?

04:31PM

21 A. Yes.

22 Q. If you will look at Page 2 of Exhibit Number 9, will you

23 tell us what Page 2 shows?

24 A. Inmate Keys' cell door.

25 Q. What about Page 3?

04:31PM

1 A. The temperature outside Inmate Keys' cell door at 12:30
2 just from moving from the sun to the shade it went to 90.1
3 degrees.

4 Q. This is, again, a temperature that you, yourself,
5 personally assessed?

04:31PM

6 A. Yes.

7 Q. As depicted in this photograph?

8 A. Yes.

9 Q. The next page, Page 4 describe for us what this photograph
10 shows.

04:32PM

11 A. This is the inside of Inmate Keys' cell on July 14th.

12 Q. And the next page, Page 5, what does this show?

13 A. This is the supply and the exhaust vents in Inmate Keys'
14 cell. The one with the vertical slats that's located on the
15 upper right, that is where the air comes in. And the one off
16 to the edge here, off to the left, is where the air leaves.

04:32PM

17 Q. When you say "where the air comes in" the one with the
18 vertical slats, that's where the air, the cool air is being
19 pumped, so to speak, into the cell?

20 A. Yes, the supply.

04:32PM

21 Q. Next page, Page 6. Can you describe for us what this
22 photograph shows?

23 A. That's just a close-up of the same supply cell and the
24 dimensions are 8 by 10.

25 Q. Page 7 of Exhibit Number 9, describe for us what this

04:32PM

1 photograph shows.

2 A. That is a recirculation vent that is also in the cell, but
3 it's only operational in the winter months when we turn the
4 heater on. So you have the heat coming into the room and being
5 recirculated through here because it's more economical to 04:33PM
6 reheat heated air with the electrical heating system but with
7 the cooling you can't re-cool humid air. That's why it has an
8 exhaust and not a recirculation or a return if you would call
9 it that.

10 Q. If you can switch to the next page, please, Page 8 of 04:33PM
11 Exhibit Number 10. I'm sorry, Exhibit Number 9. Explain for
12 us what this photograph shows us.

13 A. The exhaust vents and the dimensions which are six inches
14 by six inches.

15 Q. The exhaust vent is associated with the cooling system? 04:33PM

16 A. With cooling system, correct.

17 Q. The last page of Exhibit 9, Page 9, please describe for us
18 what this photograph shows?

19 A. The velocity of the air coming into the unit is 944 feet
20 per minute, and the temperature of the cooled air coming into 04:34PM
21 the unit is 81.3 degrees Fahrenheit. So I referenced 525 cubic
22 feet per minute earlier that is getting pumped into the cell.
23 The opening of the cell being 8 by 10 covers 80 square inches
24 and a square foot is 144 inches. It's 55 percent of 144 so 55
25 percent of the 944 feet per minute that the velocity coming out 04:34PM

1 of here equates to approximately 525 cubic feet per minute
2 going into the cell.

3 Q. And this temperature of 81.3 degree air at the velocity of
4 944 feet per minute, was that at approximately 12:30 p.m. on
5 July 14th of 2017?

04:35PM

6 A. Yes.

7 Q. And that's something you, yourself, personally measured?

8 A. Yes.

9 THE COURT: With respect to this last picture where
10 you show the 944 cubic feet per minute.

04:35PM

11 THE WITNESS: Just feet per minute.

12 THE COURT: Just feet per minute?

13 THE WITNESS: Yes.

14 THE COURT: Was the cell door open or closed?

15 THE WITNESS: The cell door at this point was open,
16 but I have re-created this in a closed cell door environment in
17 other cells with the exact same results. I don't have it here.
18 The exhaust pushes more -- much more velocity goes out of the
19 cell because it leaves through a 6 by 6 as opposed to coming in
20 the cell that comes in at an 8 by 10.

04:35PM

04:35PM

21 MS. LOVE: Warden, I have no further questions.

22 THE COURT: Thank you. Now the plaintiffs' attorney
23 will have an opportunity to ask you questions. Before you step
24 away, Ms. Love, I don't think you moved for the admission of
25 either 10 or 9.

04:36PM

1 MS. LOVE: Correct. Thank you, Your Honor.

2 Defendants move for admission of Defendants' Exhibit Number 9
3 and 10.

4 THE COURT: Any objection?

5 MS. EIDENBACH: No objection to either.

04:36PM

6 THE COURT: It will be received. Thank you.

7 What I'm going to do is change out the ones that you
8 have.

9 THE WITNESS: I already gave you 8, I believe.

10 THE COURT: How about 9.

04:36PM

11 THE WITNESS: There you go, sir.

12 MS. EIDENBACH: Does the witness still have the
13 exhibits that were moved in by my co-counsel this morning or
14 are they --

15 THE COURT: They are over here. Just tell us which
16 ones you would like. This book you mean?

04:37PM

17 MS. EIDENBACH: Yep. Perfect.

18 CROSS-EXAMINATION

19 BY MS. EIDENBACH:

20 Q. Good afternoon.

04:37PM

21 A. Hello.

22 Q. Are you ready?

23 A. I am.

24 Q. Great. It sounds like you did quite a bit to prepare for
25 today's hearing. In addition to the documents that you have

04:38PM

1 already described particularly relating to the air conditioning
2 and swamp cooling systems, did you review any other documents
3 in preparation for today?

4 A. Quite a few. I can't recall off the top of my head what
5 all of them were.

04:38PM

6 Q. Can you recall broad categories?

7 A. I reviewed the morning count this morning. I reviewed our
8 policies relating to institutional emergencies and our POST
9 orders and --

10 Q. It's not a memory test, so that's fine.

04:38PM

11 A. Yeah.

12 Q. And did you speak with anyone regarding your testimony
13 today?

14 A. I spent some time with my physical plant manager confirming
15 the information about the evaporative cooling systems. I spoke
16 to the facility health administrator about inmate emergencies
17 related to heat intolerance. I spoke to counsel.

04:38PM

18 Q. Did you speak to any of your superiors?

19 A. I spoke to my warden. And that would -- yes.

20 Q. Okay. So you testified about the area in front of Mrs.
21 Keys' cell?

04:39PM

22 A. I did.

23 Q. Do you recall -- and let me see. We'll pull this up. If
24 you look at Exhibit 8, Page 4, which is designated Santa Cruz
25 Building, B-Wing 4, lower run, August 4, 2017, approximately 3

04:40PM

1 p.m.

2 A. I don't have that.

3 Q. You don't have Exhibit 8 anymore. I'm sorry. It's the
4 pictures you took. There won't be an Exhibit 8 in there.

5 A. I'm on Page 4.

04:40PM

6 Q. Okay. So as we look at this, there's a wet spot in front
7 of the wall.

8 A. Yes.

9 Q. Is that a drain?

10 A. It is a -- leads to a drain.

04:40PM

11 Q. It leads to a drain. Okay. And is that even with the
12 sidewalk?

13 A. No. The channel there is to prevent water from flowing
14 over onto the sidewalk and take it to the drain.

15 Q. Okay. And is this the step that Ms. Keys, when she was
16 trying to wheel herself out of there, her wheelchair wheel got
17 caught on this and she was tossed head first into the wall? Is
18 that the drain?

04:41PM

19 A. I'm unaware of Ms. Keys' particulars except that we had an
20 ICS for an unwitnessed fall, and I believe that was the
21 location she was found.

04:41PM

22 Q. Okay. And are repairs being done to this drain?

23 A. Yes. We have intentions of improving upon it without
24 ruining its purpose, which is to keep water from flowing over
25 on to the sidewalk which would just be making it narrower.

04:41PM

1 Q. Was that prompted by the accident that Ms. Keys was
2 involved in?

3 A. It certainly raised to the level of our attention.

4 Q. Has Ms. Keys been told she will likely have to be moved
5 away from her cell in order for that to be repaired?

04:42PM

6 A. I can't testify to what Ms. Keys was told. I did not tell
7 her and I'm unaware of anyone else telling her that.

8 Q. So you have no personal knowledge, you didn't discuss a
9 custody move with any of your staff members?

10 A. Of Ms. Keys?

04:42PM

11 Q. Relating to Ms. Keys and the repair of the drain that
12 caused her fall?

13 A. On the contrary. And if my staff were having a
14 conversation and I became aware of it, I would do everything I
15 can to assure that her living conditions don't change while we
16 do this.

04:42PM

17 Q. Okay. Do you know if there are any plans to make an indoor
18 waiting area at Santa Cruz Unit similar to the one you
19 described at San Pedro?

20 A. No.

04:42PM

21 Q. No?

22 A. No. I'm unaware of any plans to create an indoor waiting
23 area at Santa Cruz.

24 Q. Why not?

25 A. The different physical plants, all of the space -- they are

04:43PM

1 not identical physical plants, although they look similar.

2 There isn't an empty space being used as a multi-purpose room at
3 Santa Cruz as San Pedro.

4 Q. So there's a lack of space, not a lack of need?

5 A. The mitigations that we have in place are the misting
6 systems outside of there to satisfy the need.

04:43PM

7 Q. Okay. Are you aware that Ms. Keys has received a new
8 wheelchair?

9 A. I am.

10 Q. And this occurred after the July 14th hearing?

04:43PM

11 A. I believe it did.

12 Q. Have you procured other new wheelchairs?

13 A. Yes, we have.

14 Q. And do you know how many?

15 A. I do not.

04:43PM

16 Q. You do not. Okay.

17 On Santa Cruz, where are prisoners able to obtain HNR
18 forms?

19 A. They can get them from the correctional officer who is
20 walking the yard and has face-to-face contact with them at a
21 minimum of every hour on San Pedro. And at Santa Cruz there's
22 one permanently assigned to the housing unit control room which
23 I can circle on this if you would like.

04:44PM

24 Q. Actually, that would be great.

25 THE COURT: Let me trade out then the one you have

04:44PM

1 there for the one that's already been marked on. Thank you
2 sir.

3 BY MS. EIDENBACH:

4 Q. So you said the housing control unit is on Pedro?

5 A. No. No.

04:44PM

6 Q. Cruz?

7 A. They can get it from both places. Each unit has the same
8 places available for the inmate to get the HNRs. The housing
9 unit control room officer is a permanent assignment where they
10 are statically posted in this one office and control the gates
11 to ingress and egress out of that unit. And so there's always
12 someone at the window. If you come up and say, hey, I need an
13 HNR there will be someone there.

04:45PM

14 At San Pedro, it's a minimum custody unit so the
15 officer goes into the control room only for the need of filling
16 out paperwork or doing something, but they are always out among
17 the inmates doing security checks. So if the inmate said I
18 need that, they can say meet me outside the control room and I
19 can get you one. And the CO-3s during business hours have them
20 in their office as well to get them. And if they show up to
21 medical they can get an HNR there. So between the control room
22 officer, the programs officer, the CO-3 and the medical unit
23 they would have access to get the health needs requests.

04:45PM

04:45PM

24 Q. Do officers have any discretion to providing HNRs to
25 prisoners?

04:46PM

1 A. No.

2 Q. Would it then surprise you to hear that your officer deny
3 HNRs to prisoners when they request them?

4 A. It would surprise me.

5 Q. Are officers trained on HIPAA?

04:46PM

6 A. Yes.

7 Q. And are they trained that it's not permissible for them to
8 inquire as to prisoners' medical conditions in order -- or make
9 it contingent, make the receipt of an HNR contingent upon the
10 prisoner sharing her medical condition with the officer?

04:46PM

11 A. If an officer did that, the officer would be in the wrong.

12 Q. Okay. What hours do the misters run?

13 A. There's no set time for the misters to run. Any time it
14 gets over 100 degrees they are on without question. However,
15 it could be under 100 degrees and worthy of the misters being
16 on and the medical officer will turn them on if someone said
17 they are uncomfortable.

04:47PM

18 Q. When you took the pictures of Ms. Keys' cell, approximately
19 how long did it take you? How long were you in her cell?

20 A. I believe less than five minutes.

04:47PM

21 Q. Okay. And how much of that time was spent with the door
22 closed?

23 A. Zero with the door closed.

24 Q. So you simulated the closed door temperature readings at
25 another location?

04:47PM

1 A. I said that I have gotten similar to identical results in a
2 closed cell on other buildings there. The day in question, I
3 was, on the 14th, sent down to take pictures to refute an
4 allegation.

5 Q. Okay. But you didn't spend any appreciable amount of time
6 in her cell to assess the comfortability and you also didn't
7 spend any time in there with the door closed. Is that correct?

04:48PM

8 A. That's correct, yes.

9 Q. Are you aware that at the July 14th hearing Ms. Rand from
10 the Attorney General's Office read off temperature readings
11 from cells at Perryville that were well into the 90s?

04:48PM

12 A. I am not aware of Ms. Rand's testimony.

13 Q. So you are not aware of readings well into the 90s at your
14 complex?

15 A. I'm aware that the temperatures have reached into the 90s
16 and we have implemented mitigations.

04:48PM

17 Q. And you said that these mitigations were implemented to
18 refute allegations that were made against you, but they weren't
19 implemented to keep those who are in your custody safe. Is
20 that right?

04:49PM

21 A. No.

22 Q. You have not once, sir, mentioned the well-being of the
23 prisoners in describing your mitigation attempts. So I'm just
24 curious as to whether that was an unintentional omission, or
25 whether these mitigation attempts or mitigations were put into

04:49PM

1 place in order to refute allegations and protect yourself from
2 future allegations.

3 A. Everything we do is for the benefit of the inmates as it
4 relates to climate control. These mitigations of leaving cell
5 doors cracked or moving inmates' houses, we have been doing
6 them for years before this lawsuit ever existed.

04:49PM

7 Q. Are you aware if there are any inmates who use canes or
8 other non-wheelchair mobility assistance devices at San Pedro?

9 A. I believe they exist. I did not educate myself on how many
10 or who they are for today's hearing.

04:50PM

11 Q. Is the same true for Santa Cruz?

12 A. The same the true for Santa Cruz.

13 Q. Do you have any idea how many of those folks there are on
14 either of those yards?

15 A. I do not.

04:50PM

16 Q. Do you know whether they have access to ADA aides?

17 A. I don't have the answer to that question.

18 Q. And are they assigned ADA aides?

19 A. I don't have the answer to that question.

20 Q. Do you have any training on the ADA?

04:50PM

21 A. We have annual training which includes and has included ADA
22 through our leadership academies, through the correctional
23 officer training academy and the annual refresher training at
24 some point.

25 Q. And who makes assessments of the ADA housing and the ADA

04:51PM

1 facilities at Perryville to determine if they are indeed
2 compliant with the ADA?

3 A. That would be between my facility, excuse me, the facility
4 maintenance administrator and occupational safety consultant, I
5 believe.

04:51PM

6 Q. Can you give us their names?

7 A. James Cummings and Nathaniel Witt.

8 Q. And do they put their findings into writing? Do they
9 create reports? Spreadsheets? How do they present their
10 analysis and is it in writing?

04:51PM

11 A. I'm unaware.

12 Q. So you have never seen an analysis?

13 A. Not that I can recall right now.

14 Q. Have you spoken with them about whether or not the facility
15 is ADA compliant?

04:51PM

16 A. I have.

17 Q. And what prompted that?

18 A. For example, we moved the location of our detention unit
19 which prompted us to have to create an ADA ramp similar to the
20 one that is pictured at Santa Cruz but on a different unit to
21 facilitate inmates going into detention who might be wheelchair
22 bound. And both my occupational safety consultant and my
23 physical plant manager were brought into the discussion to
24 assure that the drop-per-foot, I don't know what it is,
25 something like one inch per foot on the decline of the ramp,

04:52PM

04:52PM

1 that the ramp was long enough, that the turnaround was long
2 enough, and that the hand rails were at the right length to
3 adequately install this ADA ramp.

4 Q. And both of these people have the expertise necessary to
5 determine that those changes would be compliant with the ADA?

04:52PM

6 A. I believe they do. I don't have any firsthand knowledge of
7 their credentials outside the positions that they were hired
8 into.

9 Q. So you base your belief solely on the fact that they
10 obtained the position that they are in?

04:53PM

11 A. Yes, and the required training that they are to go through
12 as well.

13 Q. So you understand and you are aware of what training they
14 go through?

15 A. There is an OSHA academy, and I don't -- I'm not familiar
16 with the curriculum that's carried out in the OSHA academy that
17 all physical plant staff have to attend. It's a week-long in
18 our Tucson location. And to my understanding, that's what
19 brings them up to the level and knowledge to do their jobs.

04:53PM

20 Q. So it's OSHA training not ADA training, though. Is that
21 correct?

04:53PM

22 A. I can't speak to if it's not ADA training because I have
23 never been there. We just call it the OSHA academy.

24 Q. I'd like now to have you turn your attention to the white
25 notebook to Tab 41. I will give you a few minutes to just read

04:54PM

1 over this and ask you a few questions about it.

2 A. Is this a string of e-mails? Start from the bottom up?

3 Q. Yes.

4 THE COURT: While the deputy warden is reading, let me
5 ask you about how many more questions you have.

04:56PM

6 MS. EIDENBACH: This is my last line of questioning.
7 So just this e-mail and then I believe that I'm done or very
8 very close to being done.

9 THE COURT: Thank you.

10 THE WITNESS: Okay.

04:56PM

11 BY MS. EIDENBACH:

12 Q. Ready? Okay. So let's start with from the last page and
13 work our way forward. First, have you seen this string of
14 e-mails before?

15 A. This is the first time I have read this particular string
16 of e-mails.

04:56PM

17 Q. Were you aware previously of the circumstances that are
18 described in this e-mail chain?

19 A. Not this specific circumstance. I'm aware that we had to
20 overcome some obstacles to set up an appropriate examination
21 room on the unit so that inmates didn't have to be taken all
22 the way up to the Lumley medical, that we could provide
23 services to them closer to the buildings.

04:57PM

24 Q. And have the situations described in this e-mail chain been
25 remedied?

04:57PM

1 A. I don't have an answer to that. I know the air
2 conditioning has been remedied. That's one that we have
3 installed an air conditioner.

4 Q. So now there's an air conditioner in that medical unit?

5 A. Yes.

04:57PM

6 Q. On B yard?

7 A. On B yard.

8 Q. Do you have any information about whether or not an
9 appropriate table has been provided so that pap smears can be
10 conducted?

04:58PM

11 A. I was just down there, and I'm scratching my head to think
12 of the table that I saw, whether it was a gurney used as an
13 exam table or if we got another table with stirrups. And I
14 cannot recall.

15 Q. Is that issue on your radar, though? If it's not currently
16 rectified, is it something that is in the works or were you
17 just not even aware this was an issue?

04:58PM

18 A. I was aware that we had challenges getting -- the first
19 challenge was getting an IT line in there for Corizon staff to
20 do their charting, and we overcame that. The next one was the
21 air conditioning, and we overcame that. This one on June 6
22 specifically I don't know. I do know we care about Performance
23 Measure 42. And the similar mitigations that we have had, if
24 we can't accommodate them on here because of something we're
25 not doing then we'll move heaven and earth and move the inmate

04:58PM

04:59PM

1 to where they need to go to get the treatment.

2 Q. So then are you surprised at the allegation that you are
3 refusing to transport inmates to where the proper equipment is
4 housed?

5 A. This can be explained away by an overzealous officer who is
6 getting mixed messages between his supervisor. When they -- I
7 mean, it would be speculation for me to explain how something
8 like this could have happened. But they say, hey, we're going
9 to take this up here, and the officer or supervisor says no,
10 I'm told that lasts a day. And then they get redirection and
11 clearance and then we make the move occur.

04:59PM

04:59PM

12 Q. So if this was something that you knew about it would be
13 something that you would take steps to rectify because it's not
14 the appropriate response from an officer to refuse to take
15 somebody to the place where proper medical equipment is housed?

04:59PM

16 A. Correct.

17 Q. Is Lumley the only medical unit where you have had issues
18 with exceedingly high temperatures?

19 A. No. Define exceedingly high temperatures, I suppose.

20 Q. Above 78 degrees, I guess, to be exact.

05:00PM

21 A. Above in the medical unit or inmates living areas?

22 Q. No, in a medical unit.

23 A. Oh, in the medical unit? Those are significant emergencies
24 to us and our physical plant managers. There have been times
25 when the HVAC system failed in a medical unit. We take

05:00PM

1 immediate steps to relocate the medication. We have -- I have,
2 my goodness, over 20 portable air conditioning units, not
3 evaporative coolers, that can be dispatched from my warehouse
4 to anyplace to help mitigate temporary outages. We have -- and
5 then we have our physical plant staff get on the roofs and
6 repair them as quickly as we can.

05:01PM

7 Q. I'm asking about this just because of what happened on B
8 yard. And I'm wondering whether there are other medical units
9 that suffer from that same defect.

10 A. I can clarify that for you. So B yard was previously the
11 office that that medical unit, that they are referring to, was
12 previously a kitchen that was run on swamp coolers only. And
13 so when they identified the space and said, hey, we need to
14 put -- our intention is to put medical here, that ran into a
15 multitude of things that we had to do. For example, I said the
16 IT had to be run in there and the air conditioner was installed
17 in there, a hand washing sink had to be installed in there.

05:01PM

05:01PM

18 And I believe we started with a gurney, and I can't speak
19 factually about what ended up as the exam table that was on
20 there.

05:02PM

21 Q. In your discussions about mitigations, was there any
22 discussion held about how to handle having prisoners in there
23 who are on psychotropic medications that are particularly
24 sensitive to heat?

25 A. Clarify your question. Are you asking me if when we

05:02PM

1 discuss medications, are we considering that inmates are going
2 to be treated in a health unit in excessive heat that's going
3 to have a desperate impact on their psychotropic medications or
4 their mental health because of their psychotropic medications?

5 Q. You just asked me a longer question than I asked you.

05:02PM

6 A. Is that the gist of the question?

7 Q. Can you clarify what the medical room on B yard is? Is it
8 just where the medications are housed?

9 A. No. There's no medications in that medical yard on B yard.

10 There is a pill pass at Lumley on B yard which does have an air
11 conditioner, and then there is an examination treatment room
12 separate from that that we installed the air conditioner on.

05:03PM

13 Q. And so the medical unit where prisoners were seen was
14 reading -- having temperature readings above 78 degrees. That
15 is what this e-mail is saying.

05:03PM

16 A. Okay. Yes.

17 Q. Correct? First page.

18 A. On June --

19 Q. It's the second paragraph up from the end of the last.

20 A. Yeah. I'm just -- this last chain doesn't have --

05:03PM

21 Q. It reads -- I will read it aloud. "The medical room on B
22 yard has no air conditioning. With humidity and heat it is not
23 appropriate to have clinic stock there as it will exceed 78
24 degrees."

25 My question is are prisoners being seen in that

05:03PM

1 medical room?

2 A. Not since we put the -- before then? I assume they were
3 and I can only assume based off of this information, I can't
4 say definitive seeing an inmate in there. I know it came that
5 they had no air conditioning, it rose to our level, and we
6 immediately rectified it by installing an air conditioner in
7 there.

05:04PM

8 Q. I'm asking you if, in your attempt to mitigate that,
9 because here it's talking about clinic stock but it's not
10 mentioning the impact that this is going to have on prisoners
11 who are on psychotropic medications and who, therefore, have a
12 particular sensitivity to heat. And I'm wondering whether that
13 was part of the calculus as you were attempting to mitigate and
14 rectify this situation. Because those prisoners are
15 particularly susceptible, and we're worried about medication,
16 but I don't see a mention about prisoner well-being.

05:04PM

05:04PM

17 MS. LOVE: Objection, Your Honor. Compound. Where's
18 the question versus testifying?

19 THE COURT: Overruled.

20 THE WITNESS: I'm certain that Mr. Haldane is equally
21 concerned about the inmates on psychotropic medication and the
22 condition of the temperature inside that cell as is equally
23 that the clinic stock can't be in there. We, when it came to
24 my level, that we had a space without air conditioning, my only
25 response is to put air conditioning in there for the betterment

05:04PM

05:05PM

1 of the patient care and the clinical stock and the inmates who
2 would be adversely affected by the psychotropic medications in
3 a cell or room more than 78 degrees.

4 BY MS. EIDENBACH:

5 Q. And are you aware of any other medical unit suffering from 05:05PM
6 the same defect at Perryville?

7 A. Currently, no.

8 Q. Would you expect to be aware of them if they were
9 occurring?

10 A. If they were occurring, I meet with my health service team 05:05PM
11 and my contract monitors on a weekly basis, and if -- hopefully
12 before I would be notified of this either through our
13 electronic work order system or a nurse complaining to me, and
14 we immediately take action and rectify these situations.

15 Q. Okay. I have two final questions: One, you mentioned 05:06PM
16 that, I think this was on Pedro, that when prisoners check in
17 to open clinic that it's logged. Is there actually a written
18 log that it's written down when somebody checks in to open
19 clinic?

20 A. It's more of a scratch paper for the officer to do their 05:06PM
21 daily work. One comes in, one is seen, is checked off. They
22 have a redundant system of the inmates' ID card stacked in such
23 an order that it's first in, first out, and their own little
24 notepad to see who they are going to see, who has already been
25 seen so they can leave. For the most part they use that so 05:07PM

1 they have the information available if they have to do an
2 inmate out count if they are going to keep them over count and
3 count their inmates.

4 Q. So yes, are those logs saved?

5 A. No.

05:07PM

6 Q. The final question is, when prisoners are taken up to
7 visitation when the temperatures have exceeded, I think you
8 said pregnant prisoners were taken up to visitation when temps
9 were too high, what happens to anyone who needs ADA

10 accommodations in that situation. Are there mitigating
11 accommodations that can be made for people who need air
12 conditioning but have mobility issues?

05:07PM

13 A. I don't believe we had that situation occur while we were
14 using that protocol of pregnant inmates going up to the
15 visitation area at San Pedro. And now it is no longer a
16 consideration because the pregnant inmates have all been moved
17 to the San Carlos unit.

05:07PM

18 Q. But you don't have any ADA accommodations in visitation
19 were that situation to arise?

20 A. I believe the restroom in our visitation that the inmates
21 would use is ADA accessible.

05:08PM

22 Q. But not the bed?

23 A. Correct.

24 Q. Okay. I have no further questions.

25 THE COURT: Thank you very much. Ms. Love, I can't,

05:08PM

1 because of the hour, afford you the opportunity for any
2 redirect. Is this witness one of the witnesses that was
3 unavailable tomorrow?

4 MS. LOVE: Correct, but I have no further questions.

5 THE COURT: That solves that problem. Thank you very
6 much. Appreciate your time today, sir.

05:08PM

7 With respect to tomorrow, I have heard, just from
8 listening to what you have all said about the Rule and the
9 witnesses, that there's some reduction in the witness list.
10 How many witnesses do we anticipate tomorrow morning?

05:08PM

11 MS. LOVE: Your Honor, from me handling operations
12 side I have two short witnesses tomorrow, a sergeant and a CO-2
13 who will testify. And then I believe Mr. Pratt will return to
14 the stand.

05:09PM

15
16 MS. LOVE: Ms. Kendrick and I had some conversation
17 about scheduling, and we may request the Court reschedule it to
18 another day to keep all the medical people together, the
19 nursing staff and Mr. Pratt's finalizing. Given the agenda for
20 tomorrow, we had had a discussion before she had to leave today
21 that perhaps what we would do is make arrangements between our
22 offices to select another day to finish up those witnesses.
23 That was our intention, anyway.

05:09PM

24 THE COURT: Trying to combine what you both said, does
25 that mean that we'll have Ms. Love's two short witnesses and

05:09PM

1 then perhaps not have your witnesses tomorrow?

2 MR. BOJANOWSKI: Correct.

3 THE COURT: So we'll then be back together at 9 a.m.

4 Thank you all very much.

5 (Proceeding concluded at 5:10 p.m.)

05:10PM

C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 16th day of August, 2017.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR