

Exhibit 31



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Transcript of Garry Adams

Date: September 23, 2020

Case: Reyes -v- Clarke, et al.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

- - - - - x
NICOLAS REYES, :
Plaintiff, :
v. : Civil Action No.
HAROLD CLARKE, et al., : 2:19-CV-00035-JMJ-PMS
Defendants. :

- - - - - x
REMOTE DEPOSITION of GARRY ADAMS
Wednesday, September 23, 2020
10:00 a.m.

Job No.: 317726
Pages: 1 - 301
Reported By: Michelle M. Yohler, CSR, RMR, CRR

Transcript of Garry Adams
Conducted on September 23, 2020

246

1	A Yes, that is my signature.	16:06:38
2	Q And above this list of signatures in the	16:06:43
3	box, it states, By signing below, I certify that	16:06:45
4	the contents of the below listed have been	16:06:48
5	explained to me.	16:06:51
6	So by you signing this, are you	16:06:54
7	acknowledging that someone explained the contents	16:06:57
8	of this document to you?	16:07:00
9	A Yes.	16:07:01
10	Q You signed this as a supervisor?	16:07:01
11	A Yes, I did.	16:07:10
12	Q And do you recall when this was?	16:07:11
13	A Really can't recall. Don't remember.	16:07:18
14	Q Based off your title, lieutenant, would it	16:07:20
15	be any time after 2014?	16:07:23
16	A Yes. Based off of that, yes.	16:07:25
17	Q Now, do you recall if someone did, in	16:07:27
18	fact, come to explain the contents of this	16:07:37
19	document to you?	16:07:39
20	A I -- I don't recall. If I signed it, they	16:07:39
21	did. I just don't recall it.	16:07:43
22	Q Do you recall any other PREA audit at any	16:07:47

Transcript of Garry Adams
Conducted on September 23, 2020

247

1	time after 2014?	16:07:50
2	A I don't recall any, no.	16:07:54
3	MS. MARTINEZ: Okay. Ian, if we could	16:08:00
4	please go back to the first page.	16:08:02
5	BY MS. MARTINEZ:	16:08:07
6	Q Are you there, Mr. Adams?	16:08:13
7	A Yes, ma'am.	16:08:14
8	Q If we're looking at Number 1, which is	16:08:14
9	115.15. Do you see that?	16:08:20
10	A I do.	16:08:22
11	Q Okay. And in that section -- within that	16:08:23
12	section it states, quote, Offender strip searches	16:08:27
13	must be conducted in a professional and respectful	16:08:32
14	manner and in the least intrusive manner possible	16:08:35
15	consistent with security needs, end quote.	16:08:35
16	Do you see that written there?	16:08:40
17	A Yes, I do.	16:08:41
18	Q Can you -- can you sum up for me what	16:08:44
19	strip search procedure is.	16:08:53
20	A Okay. Any time an offender exits their	16:08:54
21	cell, they must complete a strip search. We ask	16:08:59
22	the offender to step to the center of the cell,	16:09:02

Transcript of Garry Adams
Conducted on September 23, 2020

248

1	spread out their arms, see the bottom of their	16:09:06
2	feet, see -- squat and spread their butt --	16:09:09
3	buttocks and cough. And then we have them turn	16:09:16
4	around, show the palms of their hands, under their	16:09:21
5	arms, lift their penis, lift their testicles, and	16:09:24
6	open their mouth and look inside their mouth.	16:09:31
7	And then once they do that, they get	16:09:33
8	clothes back and they get dressed to come out of	16:09:37
9	the cell.	16:09:40
10	Q Is asking an offender to spread their	16:09:40
11	buttocks, squat, and cough consistent with this	16:09:53
12	retraining?	16:09:58
13	A I don't see it in here.	16:09:58
14	Q I'm sorry?	16:10:13
15	A I do not see it in -- in this retraining	16:10:14
16	anywhere.	16:10:19
17	Q In 115.15 that we were just looking at, I	16:10:19
18	believe it's the last sentence that states,	16:10:31
19	Offender strip searches must be conducted in the	16:10:35
20	professional and respectful manner and in the	16:10:38
21	least intrusive manner possible consistent with	16:10:41
22	security needs.	16:10:44

Transcript of Garry Adams
Conducted on September 23, 2020

249

1	Do you see that last sentence there?	16:10:45
2	A I do see that.	16:10:47
3	Q Do you believe that asking an offender to	16:10:48
4	spread their buttocks, squat, and cough is	16:10:51
5	consistent with the requirement that a strip	16:10:54
6	search be done in the least intrusive manner	16:10:56
7	possible?	16:10:59
8	A Yes, I do.	16:11:00
9	MR. FAIRBANKS: Objection, form.	16:11:01
10	BY MS. MARTINEZ:	16:11:02
11	Q Why?	16:11:03
12	A Because we have to see if they're	16:11:03
13	concealing anything in their cavity, and by	16:11:06
14	squatting and coughing, that would reveal that.	16:11:10
15	Q The same question but for asking an	16:11:14
16	offender to lift his penis and testicles, is that	16:11:18
17	consistent with this training?	16:11:22
18	A Yes --	16:11:23
19	Q To --	16:11:33
20	A -- it is.	16:11:33
21	Q Okay. To clarify, consistent with the	16:11:35
22	last sentence here that a strip search be done in	16:11:37

Transcript of Garry Adams
Conducted on September 23, 2020

300

1 C E R T I F I C A T E O F R E P O R T E R

2
3 I, MICHELLE M. YOHLER, a Certified
4 Shorthand Reporter within and for the County of
5 Cook, State of Illinois, do hereby certify:

6 That previous to the commencement of the
7 examination of the witness, the witness was duly
8 sworn to testify the whole truth concerning the
9 matters herein;

10 That the foregoing deposition transcript
11 was reported stenographically by me, was
12 thereafter reduced to typewriting under my
13 personal direction and constitutes a true record
14 of the testimony given and the proceedings had;

15 That the said deposition was taken
16 remotely before me at the time and place
17 specified;

18 That I am not a relative or employee or
19 attorney or counsel, nor a relative or employee of
20 such attorney or counsel for any of the parties
21 hereto, nor interested directly or indirectly in
22 the outcome of this action.

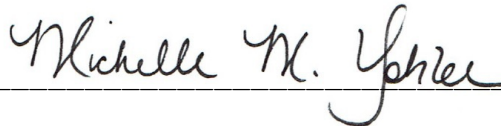
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Transcript of Garry Adams
Conducted on September 23, 2020

301

1 IN WITNESS WHEREOF, I do hereunto set my
2 hand and affix my seal of office at Chicago,
3 Illinois, this 4th day of October, 2020.

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9 Michelle M. Yohler, CSR, RMR, CRR

10 Certified Shorthand Reporter

11 CSR No.: 84-4531

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Exhibit 32

CONTAINS CONFIDENTIAL MATERIAL

Kiser, Jeffery

October 8, 2020

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

NICOLAS REYES, :
Plaintiff, : Case No.
vs. : 2:19-CV-00035-JPJ-PMS
HAROLD CLARKE, et al., :
Defendants. :

*** CONTAINS CONFIDENTIAL MATERIAL**

Remote videotaped deposition
of JEFFERY KISER
Thursday, October 8, 2020; 9:28 a.m.

BEFORE:

Gail L. Inghram Verbano,

BA, CSR, CRR, RDR

Henderson Legal Services, Inc.

202-220-4158

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CONTAINS CONFIDENTIAL MATERIAL

Kiser, Jeffery

October 8, 2020

363

1 (Continued from confidential
2 portion of the transcript.)

3 BY MR. SWIRSKI:

4 Q. All right. Paragraph 27,
5 Mr. Miles swore in this affidavit that, quote:
6 "I have personally witnessed CO Bradley Taylor,
7 CO Barry Mullins and Sergeant Larry Collins tear
8 up and throw out inmate grievances rather than
9 properly process them."

10 Do you see that?

11 A. Yes.

12 Q. I'll represent to you that former
13 Nurse Boyd of Red Onion testified in this case
14 that she personally observed corrections officer
15 and their superiors tearing up inmate grievances.

16 Have you heard of that?

17 MS. ECKSTEIN: Object to form.

18 THE WITNESS: No.

19 BY MR. SWIRSKI:

20 Q. Have you received many complaints
21 in your years at Red Onion from offenders who
22 said they had filed grievances which then went

CONTAINS CONFIDENTIAL MATERIAL

Kiser, Jeffery

October 8, 2020

364

1 missing?

2 MS. ECKSTEIN: Object to form.

3 THE WITNESS: As far as many, I
4 can't -- you know, I don't know the exact number.
5 But I have had complaints during rounds about
6 grievance, I've not seen this, I've not seen
7 that.

8 But anything found -- and I can't
9 remember -- that, Hey, they were lost or what
10 have you.

11 But once I looked into them, a lot
12 of times they were slow being processed and
13 different things.

14 BY MR. SWIRSKI:

15 Q. Have you over the years had to
16 observe strip-search procedures with offenders
17 before they go out for rec out of the segregation
18 units?

19 A. Yes.

20 Q. And at times do they have to open
21 their buttocks to show that they have no drugs or
22 weapons?

CONTAINS CONFIDENTIAL MATERIAL

Kiser, Jeffery

October 8, 2020

365

1 **A. Yes.**

2 Q. And they have to lift their penis
3 to show the same, no weapons, no drugs?

4 **A. Yes.**

5 Q. Segregation offenders are not
6 allowed to leave the facility to go buy drugs on
7 the street; correct?

8 **A. No.**

9 Q. The only source of drugs that a
10 Level S offender can get is from another
11 employee; right? A staffer, because they get to
12 leave; correct?

13 MS. ECKSTEIN: Object to form.

14 THE WITNESS: No.

15 BY MR. SWIRSKI:

16 Q. Let me rephrase that.

17 What are the sources of drugs into
18 Red Onion?

19 **A. That we have found, through books.**

20 **In other words, the binder of books have some box**
21 **that will be sent in, third party. Different**
22 **types of personal property.**

CONTAINS CONFIDENTIAL MATERIAL

Kiser, Jeffery

October 8, 2020

366

1 And unfortunately, fake legal mail
2 that has to be opened in front of the offender
3 and give to the offender.

4 And staff. Staff have brought
5 illegal substance in.

6 Q. Last year you saw the termination
7 of two Red Onion corrections officer who admitted
8 they smuggled drugs in; correct?

9 A. This -- this is -- and I'm not for
10 sure -- Counsel, ongoing criminal investigation.

11 MS. ECKSTEIN: So if there's an
12 ongoing criminal investigation -- your answer
13 would implicate an ongoing criminal investigation
14 and you're prohibited from providing that
15 information, I would advise you not to answer.
16 If there's public information you can provide,
17 you should feel free to do that.

18 And Ms. O'Shea can correct me if
19 I'm wrong with that instruction.

20 THE WITNESS: Okay.

21 BY MR. SWIRSKI:

22 Q. All right. Let's go to

1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, Gail Inghram Verbano, Registered
4 Diplomate Reporter, Certified Realtime Reporter,
5 Certified Shorthand Reporter (CA) and Notary Public,
6 the officer before whom the foregoing proceedings
7 were taken, do hereby certify that the foregoing
8 transcript is a true and correct record of the
9 proceedings; that said proceedings were taken by me
10 stenographically and thereafter reduced to
11 typewriting under my supervision; and that I am
12 neither counsel for, related to, nor employed by any
13 of the parties to this case and have no interest,
14 financial or otherwise, in its outcome.

15
16
17
18 *Gail Inghram Verbano*

19 Gail Inghram Verbano, CSR, DTR, CRR
20 CA-CSR No. 8635



Exhibit 33



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Transcript of James Lambert

Date: October 15, 2020

Case: Reyes -v- Clarke, et al.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

NICOLAS REYES,

Plaintiff,

vs.

Case No. 2:19-cv-00035-JMJ-PMS

HAROLD CLARKE, et al,

Defendants.

VIDEOTAPED DEPOSITION OF

JAMES LAMBERT

Via videoconference

Thursday, October 15, 2020

10:06 a.m. EST

Job No.: 319404

Pages: 1 - 249

Stenographically Reported By:

Alison C. Webster, CSR-6266, RPR, RMR, CRR, RDR

Transcript of James Lambert
Conducted on October 15, 2020

109

1	Q.	Okay. How does an offender in SM0 get their meals?	12:46:53
2	A.	Staff carries it to them --	12:47:03
3	Q.	So they --	12:47:06
4	A.	-- through the tray slot.	12:47:07
5	Q.	And they eat inside their cell?	12:47:10
6	A.	Correct.	12:47:13
7	Q.	Inside their cell, are lights on all the time?	12:47:14
8	A.	Yes. You have lights during the -- the daytime, and	12:47:17
9		then they have a small light for nighttime, a dimmed	12:47:21
10		light.	12:47:28
11	Q.	Does every cell have a window to the outside?	12:47:28
12	A.	Yes.	12:47:31
13	Q.	Is that window frosted?	12:47:32
14	A.	I don't -- what's the definition of "frosted"?	12:47:38
15	Q.	Sure. Is the window completely see-through or is it	12:47:40
16		textured in such a way that an offender can't get a	12:47:46
17		completely clear view of what's outside?	12:47:50
18	A.	Yes, that's correct.	12:47:53
19	Q.	Okay. Thank you. So regardless of their level, if a	12:47:56
20		prisoner in segregation leaves their cell, do they	12:48:07
21		have to be restrained?	12:48:11
22		MR. FAIRBANKS: Objection, form.	12:48:12

Transcript of James Lambert
Conducted on October 15, 2020

110

1	MS. PIAZZA: I'll rephrase.	12:48:15
2	BY MS. PIAZZA:	12:48:17
3	Q. When an offender at SM0 leaves their cell, do they	12:48:18
4	have to be restrained?	12:48:22
5	A. Yes.	12:48:24
6	Q. Can you describe how they're restrained?	12:48:25
7	A. Full restraints, hand restraints and leg restraints,	12:48:29
8	and two certified officers have to be present.	12:48:33
9	Q. And what are the restraints made out of?	12:48:36
10	A. What's the restraints made out of? I have no idea	12:48:40
11	what they're made out of.	12:48:43
12	Q. Are there chains used?	12:48:51
13	A. On the leg restraints, there is a small chain that	12:48:51
14	goes from one leg to the other.	12:48:54
15	Q. Okay. And so, just to clarify, the offender's hands	12:48:56
16	are constrained?	12:49:05
17	A. Yes.	12:49:07
18	Q. And when a prisoner in segregation leaves their cell,	12:49:08
19	do they have to submit to a strip search?	12:49:18
20	A. Yes.	12:49:20
21	Q. Can you describe the strip search procedure for me?	12:49:21
22	A. Offender will bring -- will hand out all of his	12:49:25

Transcript of James Lambert
Conducted on October 15, 2020

111

1 clothes, he'll step to the center of the cell, and 12:49:27
2 he'll go through a routine strip search, raise left 12:49:30
3 foot, right foot, open his mouth. Once he goes 12:49:34
4 through the proper strip search, the officers will 12:49:38
5 search the clothing and then he'll return the clothing 12:49:42
6 to the offender. The offender will step back to the 12:49:44
7 center of the cell and put his clothes on. 12:49:47
8 Q. Okay. Do any staff have discretion to decide whether 12:49:49
9 or not to administer a strip search when an offender 12:49:57
10 leaves a cell? 12:50:00
11 A. No, ma'am. It's procedure. 12:50:02
12 Q. Do offenders ever complain to you about the strip 12:50:03
13 search procedure? 12:50:11
14 A. Yes. 12:50:12
15 Q. Did any of their complaints cause you concern? 12:50:12
16 A. No, ma'am. You're talking about the strip search? 12:50:18
17 Q. Yes. 12:50:23
18 A. No. No, ma'am. 12:50:23
19 Q. Did you ever raise their concerns to a supervisor? 12:50:28
20 A. About the strip search? No, ma'am. I agree with it. 12:50:33
21 Q. Okay. And when an offender in segregated housing is 12:50:41
22 outside of their cell, are they kept on a leash? 12:50:43

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Transcript of James Lambert
Conducted on October 15, 2020

112

1	A.	No, ma'am.	12:50:46
2	Q.	Okay. In your experience at Red Onion, have you seen	12:50:52
3		prisoners in long-term restrictive housing deteriorate	12:50:55
4		mentally or physically?	12:50:59
5	A.	No, ma'am.	12:51:05
6	Q.	Have you ever observed an offender in long-term	12:51:05
7		restrictive housing refusing food?	12:51:10
8	A.	Yes.	12:51:14
9	Q.	Have you observed an offender in long-term restrictive	12:51:16
10		housing experience weight loss?	12:51:20
11	A.	Yes.	12:51:23
12	Q.	Have you observed an offender in long-term restrictive	12:51:23
13		housing engage in self-harm?	12:51:31
14	A.	Yes.	12:51:34
15	Q.	Have you seen an offender in long-term restrictive	12:51:35
16		housing experience hallucinations?	12:51:41
17		MR. FAIRBANKS: Objection, form.	12:51:46
18		MS. PIAZZA: I'll rephrase.	12:51:50
19		BY MS. PIAZZA:	12:51:51
20	Q.	Have you witnessed an offender in long-term	12:51:52
21		restrictive housing speaking to people who aren't	12:51:57
22		present in the cell with them?	12:52:01

Transcript of James Lambert
Conducted on October 15, 2020

164

1 A. And offender's what? 14:43:23

2 Q. I can rephrase the question. 14:43:25

3 Does whether or not an offender 14:43:28

4 participates in the hearing affect your 14:43:29

5 recommendation? 14:43:33

6 A. I mostly -- I mostly just go off the evidence that's 14:43:36

7 provided. Sometimes an offender will be out for 14:43:39

8 recreation and, you know, I don't -- if I go over and 14:43:44

9 ask the offender, do you want to appear or come to 14:43:49

10 attend to his meeting, and he says no, I'm not gonna 14:43:51

11 hold that against the offender that he's outside, 14:43:54

12 recreation, enjoying the sun and everything. If he 14:43:57

13 don't want to come in for the hearing, I'm not gonna 14:43:59

14 hold that against him. I'm basically going to go off 14:44:03

15 the evidence provided. 14:44:06

16 But on the flip side of that, if I have an 14:44:08

17 inmate in the cell, acting out, and he's being very 14:44:11

18 disgruntled, very argumentative, and he just don't 14:44:14

19 want to be that way, then that could have an affect in 14:44:19

20 my decision. It depends on the situation. 14:44:23

21 Q. Okay. Can you think of an instance when that 14:44:25

22 happened? 14:44:31

Transcript of James Lambert
Conducted on October 15, 2020

165

1 A. You know, occasionally you'll do hearings, an offender 14:44:34
2 will be on the rec yard. I don't recall an 14:44:40
3 individual, but I do remember going to the outside 14:44:43
4 recreational cages and asking offenders if they would 14:44:45
5 want to participate in the hearing, and they would 14:44:48
6 tell me, you know, I just come out for rec, can you 14:44:50
7 just, you know, conduct the hearing for me, or let's 14:44:53
8 conduct the hearing here, or just, no, just let me 14:44:55
9 enjoy my rec, and I don't have a problem doing that. 14:44:59
10 You know, I understand that this is 14:45:02
11 important to them, but I do understand that they get 14:45:04
12 just a limited time outside and I'm not gonna hold 14:45:07
13 that against them. 14:45:10
14 Q. Okay. Is it, in fact, against policy to hold it 14:45:11
15 against an offender if they don't want to participate 14:45:19
16 in the hearing? 14:45:21
17 A. I don't have -- I don't recall if it is or ain't. 14:45:22
18 Q. Okay. Can you recall any instance where you had an 14:45:25
19 interpreter present at an ICA hearing? 14:45:32
20 A. No, ma'am, I've never used an interpreter. 14:45:35
21 Q. Is it fair to say that, without your recommendation 14:45:39
22 that an offender progress a level, they're not going 14:45:46

Transcript of James Lambert
Conducted on October 15, 2020

166

1	to progress a level?	14:45:50
2	A. Either way. I can recommend to or not. It's	14:45:53
3	basically up to the unit manager and the CHAP if they	14:45:58
4	progress up. All I can do is make the recommendation.	14:46:03
5	They can take in regards to my recommendation or they	14:46:06
6	can go -- they may feel totally opposite against	14:46:10
7	what -- from my evidence and choose to go a different	14:46:15
8	route.	14:46:17
9	Q. Can you recall any instance where you didn't recommend	14:46:20
10	that an offender progress, but they did?	14:46:24
11	A. I can recall a time that I did recommend for them to	14:46:38
12	progress and they didn't, is the only thing I can	14:46:43
13	remember.	14:46:48
14	Q. So to be clear, the answer to my question is, no, you	14:46:49
15	can't recall any instance where you didn't recommend	14:46:54
16	they advance, and they did?	14:46:59
17	A. Correct.	14:47:02
18	Q. Okay.	14:47:02
19	MS. PIAZZA: All right. Crystal, could we	14:47:09
20	pull up the file Lambert ICA compilation?	14:47:12
21	Crystal, did you hear me?	14:47:30
22	PLANET DEPOS TECH: Yes, ma'am.	14:47:32

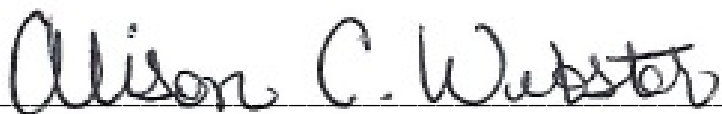
Transcript of James Lambert
Conducted on October 15, 2020

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, ALISON WEBSTER, certify that this deposition was taken virtually on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.



ALISON C. WEBSTER, CSR-6266, RPR, RMR, CRR, RDR
Notary Public,
Oakland County, Michigan.

My Commission expires: May 1, 2023

Exhibit 34

Boyd, Terie

February 23, 2020

1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

NICOLAS REYES,	:
	:
Plaintiff,	:
vs.	:
	:
HAROLD CLARKE, Director of the	:
Virginia Department of	:
Corrections; A. David ROBINSON,	:
Chief of Corrections Operations,	:
JEFFREY KISER, Warden of Red	:
Onion State Prison; EARL	:
BARKSDALE, Former Warden of Red	:
Onion State Prison; RANDALL	:
MATHENA, Security Operations	:
Manager and Former Warden of	:
Red Onion State Prison; ARVIL	:
GALLIHAR, Chief of Housing and	:
Programs; AMEE DUNCAN; LARRY	:
COLLINS; JUSTIN KISER;	:
CHRISTOPHER GILBERT; GARRY	:
ADAMS; JAMES LAMBERT; WILLIAM	:
LEE,	:
	:
Defendants.	:

CASE NO.:
2:19-cv-00035-
JPJ-PMS

The Deposition of

TERIE BOYD

Norton, Virginia

Sunday, February 23, 2020

2:00 p.m.

Job No: 48461

Boyd, Terie

February 23, 2020

38

1 Q. Can you think of any specific like
2 activities you're describing right there? What sorts
3 of things do you mean they would do to get it over
4 with before they got permission?

5 A. Refuse rec, showers.

6 Q. Refuse showers?

7 A. Yes, refuse showers. I wouldn't -- as far
8 as refusing the food, I can say yes, some sergeants
9 may have known because they were really tight knit
10 with some of their officers. But as far as, like,
11 majors, captains, I don't think they would've -- the
12 captains and the majors that I knew, I don't think
13 they would have agreed with some of that.

14 Q. Was denial of showers for Red Onion
15 prisoners common or uncommon in your time there?

16 MR. FAIRBANKS: Objection, form.

17 MR. SWIRSKI: You can answer.

18 THE WITNESS: It wasn't uncommon. They
19 were refused, depending on whether the inmate was
20 acting out or made the officer mad or -- they would
21 refuse them stuff.

22 BY MR. SWIRSKI:

Boyd, Terie

February 23, 2020

39

1 Q. Did you ever see an instance where an
2 inmate at Red Onion wanted a shower and the CO denied
3 it?

4 A. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. Does the CO have to document that type of
8 incident?

9 A. **The boards that are beside their windows,**
10 **they document everything on the boards.**

11 Q. And in that instance, what does a CO
12 write, "refused by prisoner" or something?

13 MR. FAIRBANKS: Objection, form.

14 THE WITNESS: That, I don't really --
15 that, I don't know really what they wrote on those
16 forms.

17 BY MR. SWIRSKI:

18 Q. And you mentioned denial of recreation.
19 Can you elaborate on what you meant by that?

20 A. **They would be denied being taken out to**
21 **the cages, like outside. Or in segregation, they**
22 **were inside but they still had the -- they could**

Boyd, Terie

February 23, 2020

40

1 still see the sky and everything. Yes, I have seen
2 that.

3 Q. Was it more than once?

4 A. Yes.

5 Q. More than a dozen?

6 A. I would say yes.

7 Q. Okay. And let me split it up.

8 Denial of rec, more than a dozen times?

9 A. Yes.

10 Q. Denial of showers, more than a dozen
11 times?

12 A. I don't think, no. No, not for showers,
13 no.

14 Q. Okay.

15 A. I think it was more for rec because of the
16 two officers, and the ones that were in -- that went
17 outside, it was that whole thing of having to shackle
18 them, walk them outside, take their coats and
19 everything.

20 But as far as the segregation rec, I would
21 say in segregation, I seen more refusals for rec in
22 segregation, the inmates that were in segregation,

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Donna A. Peterson, the officer before
3 whom the foregoing proceedings were taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the proceedings; that said
6 proceedings were taken by me stenographically and
7 therefore reduced to typewriting under my
8 supervision; and that I am neither counsel for,
9 related to nor employed by any of the parties to this
10 case and have no interest, financial or otherwise, in
11 its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this ____ day of
14 _____, ____.

15
16 My commission expires: June 30, 2020

17 Reg. #7231839

18
19 _____
20 NOTARY PUBLIC IN AND FOR THE
21 COMMONWEALTH OF VIRGINIA

22

Exhibit 35

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

ERIC DEPAOLA,)
Plaintiff,)
v.) Civil Action No.:
H. CLARKE, et al.,) 7:16-cv-00485
Defendants.)

D E P O S I T I O N

A transcript of the deposition of AMEE DUNCAN taken on October 3rd, 2018 at Red Onion State Prison, 10800 H. Jack Rose Highway, Pound, Virginia 24279 by JESSICA DORTON-DEAL, a Notary Public at Large for Virginia.

1 understood the -- we have two phases of the IM pathway
2 in the IM closed pod in Delta Building. And I just
3 clarified that I understood correctly that offenders,
4 to move from Phase 1 to Phase 2, have to show a year
5 of charge -- infraction-free behavior before they
6 advance to Level 2 IM-Closed.

7 Q So is it true that it takes about a year
8 for a prisoner to move from IM-1 to IM-2?

9 A Yes.

10 Q And they need to -- the prisoner needs
11 to work in order to achieve that promotion, if you
12 will?

13 A Yes. Basically, you know, and that was
14 something I was clarifying with him. Really that is
15 the main factor there is that you're infraction-free
16 stable adjustment to that setting.

17 Q So moving from IM-1 to IM-2 is something
18 that the prisoner has to earn?

19 A Right.

20 Q Okay.

21 A And that's in the IM-Closed because, you
22 know, once you get back over in Level S, you've got
23 the IM-0, 1, 2. Once you're in IM-Closed, it's Phase
24 1 and Phase 2. So that's to move from Phase 1 to
25 Phase 2 in IM-Closed.

1 Q And moving from -- moving from IM-0 to
2 IM-1 is also something that the prisoner needs to earn
3 and they need to work at it.

4 A Yes. Correct.

5 Q How long -- and we'll get into this in
6 more detail later.

7 A Okay.

8 Q But how long does it take approximately
9 for a prisoner to move from IM-0 to IM-1?

10 A That is a minimum of 180 days, with --
11 and meeting the other criteria that's set for that.

12 Q One hundred eighty days is a minimum.
13 Is there a maximum?

14 A No.

15 Q Okay, and it all depends on the
16 accomplishments of the prisoner, whether or not
17 they're able to move within 180 days or later?

18 A Correct.

19 Q Okay. Did you talk -- do you remember
20 any other discussion you had with Mr. Stallard?

21 A The only other discussion with him was
22 just incentives and how they increase from Phase 1 to
23 Phase 2. Telephone calls go from 10 to 15 a month
24 from Phase 1 to Phase 2. Phase 2 can earn a contact
25 visit where Phase 1 is still a non-contact visit. I

1 think that was really the two biggest things, you
2 know, and it was just incentives what increases.

3 Q That's -- those incentives are
4 memorialized in a document, correct?

5 A Yes.

6 Q All right, and you had access to that
7 document?

8 A Yes.

9 Q Why did you need to talk to Mr. Stallard
10 if you could just get that information from the
11 document?

12 A To clarify that I was understanding
13 correctly that was the practice that we follow and,
14 you know, mainly just for clarification to make sure.

15 Q Do you remember any other discussion you
16 had with Mr. Stallard in preparation for today's
17 deposition?

18 A No. There was no other discussion.

19 Q Let me back up for a minute just for the
20 record. Can you clarify who Mr. Swiney is?

21 A He is the unit manager of Delta
22 Building. That's where our Level 6 and IM-Closed
23 offenders are housed.

24 Q All right, and Delta Building is
25 Building D?

1 A Yeah. I know we've got a whole section
2 we touch on the -- but you know, there's also -- oh,
3 an important part of the evidence-based practices is
4 that things are -- the outcomes and the -- that it's
5 measurable, that it's attainable for the offender,
6 that it's measurable for us to prove, yes, it works,
7 no, it doesn't work.

8 BY RICHARD VORHIS: Could we take possibly a five-
9 minute break? I'd be interested in getting some water
10 and that way she can review the document a little bit.

11 BY JAIME CROWE: Sure. Sure.

12 BY RICHARD VORHIS: All right. So we're off the
13 record?

14 BY JAIME CROWE: Yeah.

15 OFF RECORD (10:25 AM)

16 BACK ON RECORD (10:35 AM)

17 BY JAIME CROWE: We back on? All right.

18 CONTINUED QUESTIONING BY JAIME CROWE

19 Q Are you ready to proceed?

20 A Yes.

21 Q All right. Have you had a chance to go
22 through the document?

23 A Yes.

24 Q All right. So my question -- I wasn't
25 trying to overcomplicate things, but my question is

1 whether or not you know what science the Virginia
2 Department of Corrections derived from in preparing
3 this step-down plan.

4 A Right, and again, on PX-72, that's kind
5 of what I had touched base on before we took a base,
6 the principles of EBP that we use. Again, I touched
7 back on them. But as they're listed, the risk
8 management, as I'd said, you know, that we do
9 assessments for offenders. Changing our culture here.
10 You know, again, we went from warehousing offenders,
11 pulling rec and shower all day long and that's -- you
12 know, and long distance programming. We changed the
13 way we operate, the way, you know -- we found that
14 communicating with offenders to be more effective than
15 just housing offenders. We found that, you know, more
16 increased rec time was productive for them. It was
17 better for us. So we changed the culture of our staff
18 and offenders. The responsivity principles are
19 listed, motivation principles, again, I said, you
20 know, that we do -- we're trained in effective
21 communication and motivational interview and we're
22 looking at motivators, privileges and things to
23 promote and motivate offenders to change behavior for
24 desired outcomes for their benefit, for the benefit of
25 the institution, for lifelong change. So those

1 things, again, those are listed through the page 39,
2 40 and 41, sanctions and incentives. You know, and
3 you earn it. We've again, like I said -- measurable.
4 We can see what's effective and what's working. We
5 can communicate to the offender, hey, these are the
6 areas you need to improve on. This is what we're
7 looking at, those type of things.

8 Q I guess my question was a little bit
9 more specific.

10 A Okay.

11 Q Do you know whether it was the science
12 that they were drawing from, was it psychology, was it
13 sociology? Do you know specifically what science?

14 A I do not know specifically.

15 Q Okay. Do you know whether or not in
16 preparing the program, the creators of the program
17 relied on any studies?

18 A No. I do not know.

19 Q Okay.

20 A Again, the development of the program, I
21 was not a part of.

22 Q And just for the record, do you know
23 whether they relied on any consultants in preparing
24 the plan that would be scientists, for example?

25 A The only thing that I know firsthand of

1 A Yes, there is.

2 Q One is going to SM and the other is
3 going to IM, correct?

4 A Yes.

5 Q And if we focus on the right side for a
6 moment, those are the IM levels, right?

7 A On the right side, yes, those are the
8 IMs.

9 Q And it begins with IM-0, correct?

10 A Mm-hum.

11 Q And it goes to IM-1?

12 A Yes.

13 Q And then, it goes to IM-2, correct?

14 A Yes.

15 Q And what exactly do IM-0, 1 and 2
16 represent?

17 A An advancement in the program,
18 compliancy, meeting requirements and expectations and
19 an increase in incentives.

20 Q Okay. Those are -- are these different
21 privilege levels?

22 A Yes, they are.

23 Q All right, and do you think that this
24 accurately reflects the pathway for inmates in the IM
25 pathway?

1 A Yes, in that they advance from 0 to 1 to
2 2, obviously no detail is included in here. But this
3 is the pathway in which you progress.

4 Q And then, the next step after IM-2 is
5 Security Level 6. Is that right?

6 A Yes, that is correct.

7 Q And it says closed pod, right?

8 A Yes.

9 Q What does that mean? What is the closed
10 pod?

11 A The closed pod is, again, the IM pathway
12 back to a population setting. At this time, that is
13 as far as an IM offender -- an offender on an IM
14 pathway, that is as far as they can progress. That's
15 maxed out at currently the incentives that we have to
16 offer. And they're housed there. Again, they're
17 still reviewed biannually by the external review team.
18 And there's always a possibility of being overturned
19 back to an SM and getting to progress on to a Level 5.
20 But for the most part, at this point, that's the best
21 quality of life we can provide offenders at Red Onion
22 as IM offenders to serve their time.

23 Q Okay. So, and according to the chart,
24 there is no progression beyond Security Level 6,
25 closed pod, according to the diagram, correct?

1 A Correct.

2 Q Okay, and then the other pathway is the
3 SM pathway, correct?

4 A Yes.

5 Q And it starts with SM-0, correct?

6 A Correct.

7 Q And it goes on to SM-1 and then it goes
8 to SM-2, correct?

9 A Yes.

10 Q And those are also privilege levels?

11 A Yes, they are.

12 Q And SM-0 is a level with the least
13 number of privileges, correct?

14 A Yes.

15 Q And within those three, SM-2 is the one
16 with the higher level of privileges, correct?

17 A Yes.

18 Q And it's the same thing with the IM --
19 the IM levels. IM-0 has the least privileges,
20 correct?

21 A Mm-hm.

22 Q And IM-2 has the most privileges,
23 correct?

24 A Yes.

25 Q Okay. After SM-2, a prisoner in that

1 BY RICHARD VORHIS: Yes, the court reporter has a
2 copy.

3 BY JAIME CROWE: Okay. Thank you. Do you guys
4 have it?

5 BY ANN-MARIE WHITE: Mm-hmm.

6 BY JAIME CROWE: All right.

7 CONTINUED QUESTIONING BY JAIME CROWE

8 Q And let me know when you're ready.

9 A I'm ready.

10 Q Okay. So this chart has the pathways
11 both for IM and SM, correct?

12 A Yes, it does.

13 Q And at the top of this chart, there's
14 IM-0.

15 A Yes.

16 Q And again, that's the most restrictive
17 level in the IM pathway, correct?

18 A Yes.

19 Q Followed by IM-1, IM-2, IM SL-6, right?

20 A Yes.

21 Q And then, we have the pathways for SM,
22 correct?

23 A Yes.

24 Q And it begins with SM-0, which is the
25 most restrictive in that pathway, followed by SM-1,

1 correct?

2 A Yes.

3 Q SM-2?

4 A Yes.

5 Q SM SL-6, right?

6 A Yes.

7 Q And then, we have the two step-down
8 levels, correct?

9 A Yes.

10 Q And then structured living.

11 A Yes.

12 Q Is -- are the privilege and confinement
13 conditions of IM-0 and SM-0 the same?

14 A Will you repeat that, please?

15 Q Yeah. I'm trying to find out if there's
16 any difference between the privilege and confinement
17 conditions of an inmate in IM-0 and an inmate in SM-0.

18 BY RICHARD VORHIS: And to the extent that she is
19 personally aware of the privileges on the SM pathway,
20 that's fine. She's still not speaking as a 30(b)(6).
21 She can certainly speak to the -- as a 30(b)(6)
22 witness on the IM privileges.

23 BY JAIME CROWE: Well, the question is
24 interrelated. But that's fine.

25 CONTINUED QUESTIONING BY JAIME CROWE

1 A No. The housing and the privileges are
2 the same through the process. It's just I guess your
3 end result, so to speak, you step down through the SM
4 pathway. Your end result and your goal is you're
5 shooting for general population. The incentives
6 increase the same. SM-0/IM-0 offenders get two phone
7 calls per month. IM-1 offenders, SM-1 offenders get
8 three phone calls per month. So those increase
9 equally. But the end result is IM offenders, IM-
10 Closed Level 6, best quality of life for time to serve
11 versus SM offender, end goal is make it to Level 5 and
12 then eventually hopefully to a lower Level Security
13 altogether.

14 Q Okay. So in this -- in this chart, IM
15 SL-6 -- strike that. In this chart, a prisoner in IM
16 SL-6 would have the most privileges in the IM pathway,
17 correct?

18 A Yes.

19 Q A prisoner in IM SL-6 would not be
20 transferred after that to SM-0, would he?

21 A No. If the external review team said,
22 you know, we feel at this time, you know, the threat
23 and the potential for, you know, serious or deadly
24 harm is -- you know, we feel like he's shown long
25 enough stable adjustment that we feel we can start to

1 slowly integrate him back into a full Level 5 or, you
2 know -- well, it has to be a Level 5 initially --
3 security level, we do not require an offender to
4 transfer to the SM and start the program all over
5 again.

6 Q Okay.

7 A They will pick up at the level -- if he
8 is an IM SL-6, he would pick up as an SM SL-6 and work
9 his way from there.

10 Q Thank you. Please turn to PX-72.
11 That's that one right there. And if you would turn to
12 page 24? And if you would, go to the second full
13 paragraph on page 24 that begins IM strategies. Okay?

14 A Yes.

15 Q The second sentence in that paragraph
16 says SL-6 currently is the lowest security level for
17 this dangerous population. Do you see that?

18 A Yes.

19 Q And that's referring to prisoners in the
20 IM pathway, correct?

21 A Yes.

22 Q Does SL-6 in this document, does that
23 mean Sl-6 Closed Pod?

24 A Yes.

25 Q And let's go to tab three -- I'm sorry,

1 offender's cell could be just upside-down, papers
2 everywhere, bed, you know, mattress in the floor. It
3 could, could be completely out of compliance, windows
4 covered, door -- couldn't see in the cell because he's
5 got the lights blocked out. He could mark him for
6 poor cell compliance that day or three days, that
7 week, even. I could come in, you know, later in the
8 day and he's completely compliant with his cell, you
9 know? And they do that, you know, they do one thing
10 for one person and one thing for another to try to
11 play you against each other, and depending on your
12 position, you know. And officer doesn't have, doesn't
13 sit down and do an offender's classification, you
14 know? So they don't, I'm trying to put it to where
15 you, to understand it. You know, they know that they
16 rely on a counselor to complete classification to earn
17 their good time. So they, they're, you know, have a
18 tendency to be much more respectful to -- respectful
19 to a counselor because they feel like they got a lot
20 more at stake with the position that the counselor
21 holds versus an officer. Does that make sense, what
22 I'm trying to say? So I would say no.

23 Q Okay.

24 A I apologize.

25 Q Well, let me ask you another question,

1 then. Maybe this will help. Is there any policy or
2 guideline that allows a unit manager to change or make
3 a physical correction on the form?

4 A No, but there's none either that says
5 they can't.

6 Q Are the prisoners given a copy of the
7 IM status rating chart?

8 A No, they're not given a copy.

9 Q Are they allowed access to it?

10 A I think the -- something, you know,
11 that, like -- if I want to take it to the door and
12 discuss it with them, yeah, I can tell you, show you,
13 yes, this is where you're lacking. But as far as
14 provide them the -- no.

15 Q If we go back to page four with respect
16 to the ratings system, the romanette one says, the
17 unit manager or designee will track each offender's
18 charges." Do you see that?

19 A Yes.

20 Q And is the use of the word charges
21 there synonymous with a disciplinary infraction?

22 A Yes, it is.

23 Q And those charges then are tracked on
24 the status rating chart, is that correct?

25 A Yes.

1 Q And there's a reference there to the
2 unit manager's designee, do you see that?

3 A Yes.

4 Q Who would the unit manager designate to
5 be his or her proxy?

6 A Typically the lieutenant, the building
7 lieutenant is the next in the chain of command in the
8 housing unit. If I am on vacation for a week, that
9 was who will assume that role in my absence.

10 Q How often will the designee replace the
11 unit manager?

12 A Just in their absence. You know,
13 unless, yeah, I would just say in the unit manager's
14 absence is when the lieutenant would assume that duty.

15 Q Okay. Turn your attention to page 12
16 of the step-down policy.

17 A Okay.

18 Q I want to talk a little bit about the,
19 the reviews that prisoners in the IM pathway receive,
20 okay?

21 BY RICHARD VORHIS: Which document? I'm sorry.

22 BY JAIME CROWE: Same document.

23 BY RICHARD VORHIS: Okay.

24 CONTINUED QUESTIONING BY JAIME CROWE

25 Q So if you look at page 12 --

1 A Mm-hum.

2 Q The document says that the DTT may
3 include but not limited to the following individuals
4 or their designees, and then it lists chief housing
5 and programs, right?

6 A Yes.

7 Q IPM cognitive counselor?

8 A Yes.

9 Q Unit manager?

10 A Mm-hum.

11 Q Investigator/intelligence officer?

12 A Yes.

13 Q Qualified mental health professional?

14 A Mm-hum.

15 Q Counselor or counselors.

16 A Yes.

17 Q And then it says counselors directly
18 involved in the management of the offenders being
19 reviewed should be utilized, right?

20 A Yes.

21 Q Correctional officers, and it says when
22 possible, line staff members directly involved with
23 the management of the offenders being reviewed should
24 be involved, correct?

25 A Yes, that's correct.

1 Q If you go to page six, please, of the
2 document?

3 A Mm-hum.

4 Q And turning your attention to F1A, so F
5 is Level SIP SAM and step-down.

6 A Mm-hum.

7 Q One is following a successful period in
8 IM or SM, offenders will be eligible for advancement
9 at step-down from Level S to their first introduction
10 into general population and security Level 6, do you
11 see that?

12 A Yes.

13 Q And then A says, "Prior to advancement
14 to Security Level 6, each offender will be formally
15 reviewed by the institutional classification
16 authority, ICA, in accordance with the operating
17 procedure 830.1, facility classification management,"
18 period, close quote. Do you see that?

19 A Yes.

20 Q And is that accurate?

21 A Yes.

22 Q What is the institutional
23 classification authority?

24 A Typically, well, those ICA's are
25 conducted by the building lieutenant. And they,

1 they'll review the offender's, again, his programming
2 infractions, just his responsible behavior goals.
3 This information, I guess kind of your secretaries,
4 your counselor, so they're present too. But they'll
5 gather all this information. Offender's notified 48
6 hours in advance, hey, we'll be doing a formal hearing
7 on you, ICA hearing. They're present, the offender's
8 present for that. That can make a statement and then
9 we'll make a determine -- the lieutenant will make the
10 determination or the ICA will make the determination
11 at that time, what's appropriate for the offender.
12 Now, Level S, when you're talking about ICA's, you're
13 talking about housing status. You don't do ICA's for
14 privilege statuses. But in this case with the Level
15 6, you will do a formal security level, reduction in
16 security level and all that again before they can move
17 from Level S back over to Level 6. So that would be a
18 security level classification as well.

19 Q You mentioned that the ICA is headed by
20 a lieutenant, is that right?

21 A Yes. At -- for purposes in the housing
22 unit, the way that works, yes. A lieutenant is the
23 ICA, then an administrative review would be the unit
24 manager and then if it doesn't require anything beyond
25 Red Onion, the final review would be from the chief of

1 housing and programming. But there's other
2 circumstances where it goes beyond the, you know,
3 outside the institution to the regional level as well.

4 Q Would counselors be involved in the
5 reviews?

6 A Counselors are, again, involved. They
7 are more, like I said, the secretary. They, you know,
8 have the information and provide it to the ICA, and
9 then the counselor initiates and generates the
10 documentation in CORIS for it to get passed to each
11 level of review.

12 Q And are correctional officers involved
13 in the review?

14 A No.

15 Q Okay. Is there any interaction between
16 the ICA and the dual treatment team?

17 A We, yes. I mean, the lieutenant can be
18 present in a dual treatment team. Typically, they're
19 not. Again, you know, like I say, that doesn't, the
20 list of people that are required, it doesn't limit it
21 to those people, but the counselor would be more so
22 the one that brings the information back from the dual
23 treatment and compiles it for preparation for ICA
24 hearings and gives the factual information to the
25 lieutenant to consider for the ICA hearing.

1 level, no.

2 Q Okay. Let me ask you this: under
3 administrative review, it says decision approved and
4 then it says internal status change to intensive
5 management one, is that right?

6 A Yes.

7 Q Did that occur?

8 A Yes, they, obviously it did, because I
9 approved a level 1.

10 Q Okay. So the ICA, according to the
11 document, recommends remaining in IM-0, but upon
12 administrative review, the decision is to change his
13 status to IM-1, is that correct?

14 A Yes, I changed, what I'm telling you is
15 at the time, right now telling you, I'm telling you
16 that I cannot say 100% sure, looking at this date, I
17 can say I know for a fact that Mr. DePaola was a zero
18 at that time.

19 Q On 4-5-16?

20 A Right.

21 Q Okay.

22 A Because -

23 Q And you don't think that turning the
24 page and looking at Virginia Department of Corrections
25 form that says he was at zero is enough confirmation

1 of that?

2 A This is a housing status review. It
3 is, is he eligible for general population or does he
4 remain in segregation? I wouldn't have used this
5 process to say I'm making him an IM-1. I can change
6 that without a formal due process. What I'm saying
7 is, he may very well indeed, we had done external
8 review, his status had been updated and she put it in
9 incorrectly so I corrected the error. But the review
10 that I'm doing here is based on his housing status and
11 in segregation, not his privilege status that he has
12 advanced to in the program.

13 Q When you say that no due process is
14 required to move him up to IM-1 -

15 A Right.

16 Q - does that, are you saying that no due
17 process is required to move a prisoner from IM-0 to
18 IM-1?

19 A Right. I don't have to serve him that
20 48 hour notice and say, "I'm going to review your
21 privilege status."

22 Q And does it work the other way, so that
23 no due process is required if you're changing a
24 prisoner's status from IM-1 to IM-0?

25 A No.

1 Q Under comments - strike that. Let me
2 back up for a minute. No due process is required
3 either if you're seeking to move the prisoner from IM-
4 2 to IM-0?

5 A No, because it is a privilege status.

6 Q Under administrative review, it says
7 comments: "Remain segregation. DePaola has not
8 completed the requirements of the step-down program at
9 this time." Do you see that?

10 A Right, yes.

11 Q Okay. What requirements was Mr.
12 DePaola expected to complete that he had not yet
13 completed?

14 A He had to progress from a IM-0 to IM-1
15 to an IM-2, 180 days each level. He had to meet the
16 responsible behavior goals. He had to be within the
17 parameters of the infractions, disciplinary
18 infractions that an offender can obtain on each level,
19 plus review by the dual treatment team.

20 Q I'm so confused. So -

21 A It is very confusing.

22 Q Yes, so -

23 A I understand.

24 Q Mr. DePaola was an IM-2, and the reason
25 he was dropped to IM-0 was for a grooming violation,

1 and that grooming violation was dismissed. And yet
2 Mr. DePaola was not returned to IM-2.

3 A Because he came in compliance only
4 after refusing to become compliant. Therefore after,
5 it's real easily, you know, if I've got these
6 privileges and nobody's holding my feet to the fire,
7 I'm going to continue to do what I do. But when I,
8 there are consequences and I lose my television, which
9 is a golden ticket here, I lost my television because
10 I wasn't complaint and now all of a sudden, I want to
11 be compliant so I can grab that TV right back up?
12 There's no, there's no merit in our program if that's
13 how we operate. So he was placed back as a result of
14 him refusing to be compliant. Now, the hearings
15 officer obviously said, "Mr. DePaola, I've seen you
16 before the hearing, you're in compliance. I'm not
17 going to uphold this charge." But it doesn't negate
18 the fact that he refused to come in compliance when
19 given the opportunity, therefore the result of that
20 was you were placed back and have to progress again.

21 Q And the reason that, your understanding
22 of the reason that the charge was dismissed was
23 because he shaved, is that right?

24 A Yes, but it was after given the
25 opportunity and, and refusing the opportunity to come

1 in compliance.

2 Q If we go back to PX-14, which was, I'm
3 sorry, not PX-14, PX-12?

4 A Yes.

5 Q Where he was going to have an ICA
6 hearing.

7 A Mm-hmm.

8 Q Do you remember back then what your
9 recommendation was going to be?

10 A This is, again, a housing review, not a
11 privilege, and that's what I, that's, and I know it's
12 hard to understand when you don't deal with it hands
13 on every day. Every single housing review that has to
14 be conducted within 90 days has their internal
15 privilege status listed. So although it shows and it
16 says each time ICA recommends the internal status
17 change, that's because we have to show that internal
18 status. But indeed, what we are reviewing is the
19 offender's housing status. Again, he was at a zero.
20 He had not met the requirements, so his housing status
21 was to remain in segregation until completion of the
22 program.

23 Q You're aware that the grooming policy
24 at the time had a maximum penalty for noncompliance of
25 reprimand, correct?

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CERTIFICATE OF TRANSCRIBER

I, BENJAMIN GRAHAM, do hereby certify that this transcript was prepared from audio to the best of my ability.

I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of this action.

October 10, 2018

DATE

BENJAMIN GRAHAM

Exhibit 36



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CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Date: September 22, 2020

Case: Reyes -v- Clarke, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

BIG STONE GAP DIVISION

Case No. 2:19-cv-00035-JPJ-PMS

-----X

NICOLAS REYES, :

Plaintiff :

v. :

HAROLD CLARKE, et al., :

Defendants :

-----X

CONTAINS CONFIDENTIAL PORTIONS

Videotaped Deposition of RANDALL C. MATHENA

Conducted Virtually

Thursday, September 22, 2020

9:33 a.m. EST

Job No.: 321745

Pages 1 - 353

Reported by: Lisa M. Blair, RMR, CRR

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

78

1	for how the warden could get someone out of	11:10:05
2	long-term restrictive housing working with the	11:10:08
3	ROC, correct?	11:10:10
4	A. Correct.	11:10:11
5	Q. Were any exceptions permitted for any	11:10:14
6	individual offenders who did not complete all	11:10:18
7	their programming under the Step-Down Program?	11:10:23
8	A. No, none that I'm aware of.	11:10:29
9	Q. Did the corrections -- the CCO, the	11:10:40
10	chief of corrections operation, that was David	11:10:47
11	Robinson at the time that you started as warden,	11:10:50
12	correct?	11:10:52
13	A. Yes, sir.	11:10:55
14	Q. Did the CCO have the authority to	11:10:55
15	remove someone from long-term restrictive housing	11:10:58
16	who did not follow the precise procedure that you	11:11:01
17	laid out a few minutes ago?	11:11:04
18	A. That is not listed in policy. And	11:11:12
19	any director or deputy director, they can	11:11:15
20	supersede any policy like that. So I would have	11:11:21
21	to say: Could it happen? Yes.	11:11:23
22	Q. If, as warden of Red Onion after the	11:11:56

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

79

1 development of the Step-Down Program and after the 11:12:00
2 first two or three months that you were in that 11:12:03
3 job, if you believe that an offender did not 11:12:05
4 belong in restrictive housing because they didn't 11:12:10
5 pose a safety risk, could you still not remove 11:12:12
6 that person from restrictive housing unless they 11:12:18
7 had completed the Step-Down Program? 11:12:21
8 MS. ECKSTEIN: Object to form. 11:12:24
9 THE WITNESS: They have to complete the 11:12:25
10 Step-Down Program. 11:12:26
11 BY MR. AGRAHARKAR: 11:12:27
12 Q. As warden, did you have any 11:12:35
13 responsibilities with respect to mental health 11:12:38
14 services? 11:12:40
15 A. Mental health services was 11:12:41
16 supervised -- and currently still is supervised -- 11:12:42
17 primarily by the mental health team in the region 11:12:46
18 and the mental health team at headquarters. The 11:12:49
19 warden had what I call dotted line responsibility. 11:12:54
20 Basically that's as simplified as to make sure 11:12:59
21 they're there every day and that they make rounds. 11:13:02
22 Other than that, the supervision and the clinical 11:13:06

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

80

1 I have no supervision of. 11:13:07

2 Q. You said it was supervised primarily 11:13:11

3 at the regional level; is that right? 11:13:12

4 A. Yes. 11:13:14

5 Q. Who at the regional level were the 11:13:16

6 supervisors of mental health services at Red Onion 11:13:20

7 when you were the warden? 11:13:22

8 A. Dr. Lee. 11:13:35

9 Q. So your testimony is that your only 11:13:43

10 responsibility as warden was to make sure that the 11:13:48

11 mental health team were there every day and were 11:13:51

12 making rounds, correct? 11:13:56

13 MS. ECKSTEIN: Object to form. 11:14:00

14 THE WITNESS: Yes. Daily operational 11:14:02

15 things under the warden, clinical, those type 11:14:06

16 of decisions are made by mental health IR. 11:14:10

17 BY MR. AGRAHARKAR: 11:14:12

18 Q. Did those responsibilities change 11:14:24

19 over time while you were warden? 11:14:25

20 A. No. 11:14:29

21 Q. By the way, the first three months 11:14:32

22 that you were at Red Onion, did you have authority 11:14:33

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

1 the institutional program manager on it also at 05:08:54

2 that time? 05:08:57

3 A. I think the treatment officers were 05:08:57

4 always included, but I can't remember the 05:08:58

5 treatment or program supervisor being involved at 05:09:01

6 that point. 05:09:04

7 Q. Would someone preside over it? 05:09:09

8 A. Normally it would be the highest 05:09:11

9 ranking, which would be the unit manager. 05:09:12

10 Q. Okay. And what about the -- was 05:09:15

11 there an evidence-based practices manager? 05:09:17

12 MS. ECKSTEIN: Object to form. 05:09:24

13 THE WITNESS: That was the CHAP. 05:09:27

14 BY MR. AGRAHARKAR: 05:09:29

15 Q. Okay. 05:09:30

16 A. In the very early stages in the 05:09:31

17 Department of the position of CHAP, they may have 05:09:34

18 early on been called EVP managers and that evolved 05:09:39

19 into a CHAP. But that was, I don't know, probably 05:09:47

20 even before the Step-Down. 05:09:51

21 Q. I see. Who was that person in the 05:09:57

22 2011 to 2015 time frame? 05:09:59

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

297

1 A. I don't think I had an EVP manager 05:10:02

2 back then. 05:10:09

3 Q. But you did have a CHAP; is that 05:10:10

4 right? 05:10:12

5 A. The CHAP in 2012 -- spring/summer of 05:10:12

6 2012 is when the CHAP position was created, and 05:10:23

7 that's when we filled the position. There was not 05:10:26

8 one there prior. 05:10:28

9 Q. And was that person expected to 05:10:28

10 attend the Building Management Committee meetings 05:10:30

11 as well? 05:10:33

12 A. No. 05:10:34

13 Q. Okay. Was the Building Management 05:10:36

14 Committee the only entity that could move 05:10:37

15 offenders from one privilege level to the next? 05:10:41

16 A. I mean, anybody in the chain of 05:10:43

17 command could, yes. I mean, you're talking 05:10:50

18 anybody from the CHAP to the assistant warden to 05:10:52

19 myself. 05:10:57

20 Q. So you had the authority to move 05:10:58

21 someone from one privilege level to the next, even 05:11:00

22 without the involvement of the Building Management 05:11:05

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

298

1	Committee team?	05:11:05
2	A. Yes, because I'm the warden. But	05:11:08
3	I've never done that, and I would never do it.	05:11:12
4	Q. And the CHAP had that authority as	05:11:16
5	well?	05:11:17
6	A. Yes.	05:11:18
7	Q. And the assistant warden had that	05:11:18
8	authority?	05:11:21
9	A. Yes.	05:11:22
10	Q. Did the unit manager have that	05:11:23
11	authority?	05:11:25
12	A. No. It had to be through the BMC,	05:11:26
13	the Building Management Committee.	05:11:32
14	Q. How did the BMC report to you or	05:11:34
15	others in your chain of command who were not in	05:11:40
16	the Building Management Committee?	05:11:42
17	MS. ECKSTEIN: Vishal, you are talking	05:11:44
18	about when he was warden, right?	05:11:47
19	MR. AGRAHARKAR: I'm sorry?	05:11:50
20	MS. ECKSTEIN: You're talking about the	05:11:51
21	period when he was warden?	05:11:52
22	BY MR. AGRAHARKAR:	05:11:53

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

299

1 Q. Yes. I'm just focused right now on 05:11:53

2 the period when you were warden. 05:11:55

3 A. I don't remember. I think there may 05:12:00

4 have been a document that they had conversations, 05:12:06

5 because I required them all to have meetings with 05:12:08

6 the CHAP and the assistant warden after they had 05:12:10

7 the Building Management Committee, but I don't 05:12:13

8 remember whether there was a document involved. I 05:12:14

9 want to think there was, but I can't swear to it. 05:12:17

10 Q. That document would have been -- what 05:12:23

11 kind of document are you talking about? 05:12:26

12 A. I don't -- I just think there may 05:12:31

13 have been a document involved that documented what 05:12:36

14 they had done in the building, I mean, as far as 05:12:38

15 what their decisions were in the building. And 05:12:42

16 then they went to the assistant warden and the 05:12:44

17 CHAP with it. But again, I don't know. It's been 05:12:47

18 too long. 05:12:49

19 Q. So the Building Management Committee 05:12:50

20 was primarily involved in determining whether 05:12:52

21 offenders could move from one privilege level in 05:12:56

22 the pathway that they were on to the next, 05:12:58

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CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

331

1	A.	Their primary role, especially from	06:09:46
2		the SAM standpoint. They are primary information	06:09:52
3		based upon what they see and what their clinical	06:09:58
4		observations are.	06:10:00
5	Q.	And when was the SAM pod created?	06:10:01
6	A.	At Red Onion, 2012.	06:10:09
7	Q.	SIP pod at the same time?	06:10:18
8	A.	Yes, sir.	06:10:20
9	Q.	And how many spaces or cells did it	06:10:26
10		have available around that time?	06:10:30
11	A.	22 single bunk cells to start out	06:10:40
12		with.	06:10:43
13	Q.	Is that just SAM, or SAM and SIP	06:10:45
14		combined?	06:10:47
15	A.	Originally it was SAM and SIP	06:10:47
16		combined. We eventually grow -- grew, excuse me.	06:10:51
17		We eventually grew into 43, which would have been	06:10:54
18		a bigger pod. And that was still SAM on the	06:10:58
19		bottom and SIP on the top tier, something like	06:11:01
20		that.	06:11:05
21	Q.	When did it grow?	06:11:06
22	A.	Probably 2013.	06:11:18

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CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

332

1 Q. Did it stay at that larger size for 06:11:24

2 the rest of your time as warden? 06:11:26

3 A. No, it was downside -- excuse me, it 06:11:28

4 was downsized toward the end to another -- back to 06:11:28

5 a 22 pod. 06:11:34

6 Q. Why was that? 06:11:36

7 A. Because we just didn't have the beds 06:11:39

8 or the needs for that many SAM at the time or SIP. 06:11:40

9 And it would have been a waste of space to have 06:11:43

10 them in a big pod when you can put them -- and 06:11:46

11 offenders feel more comfortable, too -- which is 06:11:49

12 important with this group of offenders -- they 06:11:51

13 feel more comfortable in a smaller environment. 06:11:54

14 Q. Who would decide whether to place 06:12:00

15 someone who is in level S making their way through 06:12:02

16 the pathways into the SAM or SIP pod? 06:12:04

17 A. That would be the warden. The 06:12:12

18 warden -- let me go back to that. To reduce a guy 06:12:15

19 from S to 6 takes the approval of the warden. To 06:12:18

20 place a guy in the SIP or SAM pod, it takes a 06:12:23

21 collaborative effort between the mental health and 06:12:27

22 the building management team. 06:12:30

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CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

333

1	Q.	And I'm trying to -- okay. So	06:12:41
2		first -- if I understand you correctly, first	06:12:47
3		someone who have to be reduced from S to 6, and	06:12:49
4		then they would have to be evaluated to determine	06:12:54
5		whether they should be placed in SIP or SAM pod;	06:12:59
6		do I have that right?	06:13:02
7	A.	That is correct, sir.	06:13:03
8	Q.	And in order to go from S to 6, the	06:13:08
9		only way that that happens is through the	06:13:10
10		process -- the process as we described earlier	06:13:12
11		with respect to the segregation reviews and the	06:13:15
12		Dual Treatment Team and the warden's review,	06:13:19
13		correct?	06:13:23
14	A.	Yes, sir.	06:13:24
15	Q.	Were there any people who were placed	06:13:30
16		in SAM or SIP pod who were making their way	06:13:33
17		through the privilege levels, but without making	06:13:38
18		it through that entire process of the Challenge	06:13:43
19		Series and the other reviews?	06:13:46
20	A.	No, sir, none during my tour.	06:13:50
21	Q.	Was that even possible under the	06:13:57
22		policy?	06:13:59

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

334

1	A.	No.	06:13:59
2		MS. ECKSTEIN: Vishal, are you finishing	06:14:06
3		up?	06:14:08
4		MR. AGRAHARKAR: Yes. Pretty close to	06:14:09
5		done.	06:14:11
6		BY MR. AGRAHARKAR:	06:14:12
7	Q.	Do the prisoners in SAM pod receive	06:14:12
8		more mental health care monitoring than prisoners	06:14:15
9		in level S during your time as warden?	06:14:19
10		MS. ECKSTEIN: Object to form.	06:14:22
11		THE WITNESS: Repeat that, please, so I	06:14:23
12		have a good understanding of what you're	06:14:24
13		asking.	06:14:25
14		BY MR. AGRAHARKAR:	06:14:25
15	Q.	Yeah. Do -- I'll ask it a different	06:14:26
16		way.	06:14:30
17	A.	Thank you.	06:14:30
18	Q.	Do prisoners who are in the SAM pod	06:14:31
19		receive more mental health monitoring or care than	06:14:34
20		those who are in level S?	06:14:40
21	A.	I can't say they received more	06:14:44
22		monitoring, because I think that would be -- I	06:14:46

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

Conducted on September 22, 2020

335

1	believe it's equal, but I can say while they're in	06:14:50
2	the SAM pod they have more interaction --	06:14:55
3	interaction face to face, body to body, not	06:14:58
4	between a door with the mental health	06:15:02
5	professionals. Also, they have group programming	06:15:04
6	and task and jobs that they do there versus what	06:15:06
7	they would have in level S.	06:15:14
8	Q. And you mentioned that a team of	06:15:18
9	professionals would come together to decide if	06:15:21
10	someone was appropriate for the SAM pod, correct?	06:15:23
11	A. Yes, sir.	06:15:26
12	Q. Did that have a meeting, or did that	06:15:27
13	take place in one of the other meetings we've	06:15:29
14	already talked about? What was the context in	06:15:31
15	which those decisions were made?	06:15:34
16	A. Normally it was done within	06:15:36
17	conjunction with the Building Management	06:15:39
18	Committee.	06:15:40
19	Q. Did the Building Management Committee	06:15:45
20	meet with respect to people who had been already	06:15:48
21	placed in level 6?	06:15:52
22	Do you understand my question?	06:16:00

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Randall C. Mathena

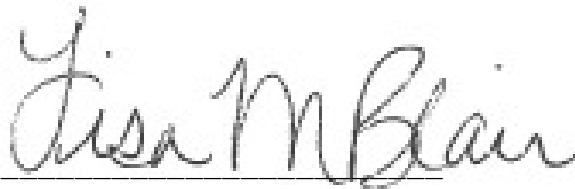
Conducted on September 22, 2020

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2
3 I, LISA M. BLAIR, RMR, the officer before whom the
4 foregoing deposition was taken, do hereby certify
5 that the foregoing transcript is a true and
6 correct record of the testimony given; that said
7 testimony was taken by me stenographically and
8 thereafter reduced to typewriting under my
9 direction; that reading and signing was requested;
10 and that I am neither counsel for, related to, nor
11 employed by any of the parties to this case and
12 have no interest, financial or otherwise, in its
13 outcome.

14 IN WITNESS WHEREOF, I have hereunto
15 set my hand and affixed my notarial seal this 7th
16 day of October 2020.

17 My commission expires October 31, 2020.

18
19 
20

21 Lisa Blair, RMR, CRR

Exhibit 37

Gallihar, Arvil

August 21, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

-----X

NICOLAS REYES,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CASE NO.
	:	2:19-cv-00035-
	:	JPJ-PMS
HAROLD CLARKE, Director of	:	
The JPJ-PMS Virginia	:	
Department of	:	
Corrections; A. DAVID	:	
ROBINSON, Chief of	:	
Corrections Operations,	:	
JEFFREY KISER, Warden of	:	
Red Onion State Prison;	:	
EARL BARKSDALE, Former	:	
Warden of Red Onion State	:	
Prison; RANDALL MATHENA,	:	
Security Operations Manager	:	
and Former Warden of	:	
Red Onion State Prison;	:	
ARVIL GALLIHAR, Chief of	:	
Housing and Programs; AMEE	:	
DUNCAN; LARRY COLLINS;	:	
JUSTIN KISER; CHRISTOPHER	:	
GILBERT; GARRY ADAMS; JAMES	:	
LAMBERT; WILLIAM LEE,	:	
	:	
Defendants.	:	
	:	

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VIDEOTAPED DEPOSITION OF ARVIL GALLIHAR
VIA LIVE LITIGATION
AUGUST 21, 2020

REPORTED BY: Susan L. Ciminelli, CRR, RPR

Gallihar, Arvil

August 21, 2020

91

1 A. Okay. The dual treatment team is 12:25:51
2 something completely different. The dual treatment 12:25:56
3 team was utilized when somebody was being made Level 12:26:00
4 S. For instance, if an offender had been sent from 12:26:06
5 another institution, and had been classified as 12:26:13
6 Level S to us, we would meet with that offender. We 12:26:18
7 would speak to him. We'd go over his records. We'd 12:26:22
8 go over everything that we could find on him. And 12:26:25
9 we would question him about the reason. We would 12:26:28
10 glean all the information that we could from the 12:26:31
11 records. And we would try to make it as accurate as 12:26:34
12 possible, the determination to which pathway that 12:26:37
13 offender needed to be on. The treatment team -- or 12:26:42
14 the dual treatment team consisted of staff from Red 12:26:44
15 Onion, as well as staff from Wallens Ridge. 12:26:48
16 Q. So the dual treatment team had nothing to 12:26:57
17 do with evaluating an offender's progress through 12:27:00
18 the step-down program, is that correct? 12:27:07
19 A. At one -- there is one place where they 12:27:09
20 do. As far as individual steps from the -- 12:27:13
21 throughout the step-down, no. But as the offender 12:27:19
22 reaches the point where he is going to step-down 12:27:24

Gallihar, Arvil

August 21, 2020

92

1 from Level 6 to Level 5, the dual treatment team 12:27:26
2 does meet on that. And they have to okay it, and 12:27:30
3 then send it to the warden for review. 12:27:35

4 Q. And is that true also when an offender is 12:27:38
5 stepping down from Level S to Level 6, or does the 12:27:42
6 dual treatment team not have any part in that 12:27:46
7 transition? 12:27:50

8 A. It's been a couple of years since I've 12:27:50
9 been there, so I'm not -- I don't think that they 12:27:57
10 did between S to 6. But I know that they did from 6 12:28:03
11 to 5. 12:28:06

12 Q. And you were on the dual treatment team, 12:28:07
13 correct? 12:28:12

14 A. Yes. 12:28:12

15 Q. And is what you just testified about the 12:28:12
16 role of the dual treatment team through your entire 12:28:24
17 time as chief of housing, or were there any changes 12:28:29
18 in how it worked? 12:28:32

19 A. Primarily, throughout my time as the 12:28:33
20 chief of housing -- when I first became chief of 12:28:45
21 housing, the dual treatment team would meet about 12:28:49
22 offenders being made Level S, but the offenders 12:28:58

Gallihar, Arvil

August 21, 2020

93

1 weren't present. 12:29:02

2 After a certain point, and I can't tell 12:29:03

3 you the time, after the first six months to a year, 12:29:07

4 somewhere in that area, I insisted that we started 12:29:12

5 interviewing the inmates as a team, to try to 12:29:17

6 determine the reason behind what they did to become 12:29:23

7 Level S. And thereby, my hope was that we would 12:29:28

8 make a good decision, a sound decision as to whether 12:29:33

9 to put them on IM or SM status. 12:29:37

10 Q. And I'll get back with the dual treatment 12:29:41

11 team in a second. Going back to the building 12:29:52

12 management committee, what decisions got made at 12:29:54

13 those monthly meetings? 12:29:56

14 A. As I spoke of earlier, the biggest 12:29:57

15 decisions was whether an offender would progress 12:30:05

16 through the step-down, as far as through the 12:30:11

17 different incentive levels, such as SM-0 to SM-1 to 12:30:15

18 SM-2. Same on the IM path. 12:30:21

19 We would try to make those decisions, if 12:30:25

20 the offender -- as to whether the offender had 12:30:28

21 earned the right to progress, or as I said before, 12:30:31

22 even if we needed to keep him the same or make him 12:30:35

Gallihar, Arvil

August 21, 2020

94

1 go backward, we would try to make those decisions. 12:30:40

2 Q. And how would decisions get made in the 12:30:43

3 building management team? 12:30:50

4 A. Well, we would review the documentation 12:30:55

5 that we had. And you've already decided some of it, 12:30:58

6 as far as the responsible behavior goes. We would 12:31:02

7 like at the rating sheets that you showed earlier. 12:31:06

8 We would look at the number of charges that they 12:31:09

9 had. We would have the treatment officers speak of 12:31:12

10 the participation in the Challenge program. 12:31:20

11 And then we would take all that and have 12:31:25

12 a discussion as to whether the offender was ready to 12:31:28

13 move forward. And then we would base our decisions 12:31:32

14 on what we had seen, and what we would talk about. 12:31:39

15 And then we moved the offenders into whatever 12:31:41

16 incentive level that we deemed accordingly. 12:31:43

17 Q. And would it be -- just in terms of how 12:31:46

18 the decision got made, was it you would reach a 12:31:57

19 consensus, or was it a majority vote, or how would 12:32:00

20 you actually make decisions on particular offenders? 12:32:03

21 A. For the most part, it was a -- we would 12:32:05

22 reach a consensus. We would dialogue about each 12:32:08

Gallihar, Arvil

August 21, 2020

95

1 offender. These meetings would take a while, and we 12:32:17
2 would dialogue. And we would talk about it. And 12:32:19
3 our effort was truly to determine whether the 12:32:22
4 offender had indeed reached the point that he needed 12:32:24
5 to progress. 12:32:27

6 Q. In determining whether someone had 12:32:28
7 reached a point where they need to progress, you 12:32:36
8 mentioned some of the documents that you looked at. 12:32:40
9 If someone did not -- going back to this chart on 12:32:45
10 VDOC 762, page 59, if someone was at SM-0. And 12:32:51
11 they, for example, did not meet this requirement to 12:33:01
12 have no more than six core or incomplete responsible 12:33:06
13 behavioral goals within the last 90 days, would that 12:33:13
14 mean that they could not progress to SM-1? 12:33:17

15 A. Yes. 12:33:21

16 Q. And it didn't matter how long they had 12:33:21
17 been at SM-0, if they didn't meet this particular 12:33:30
18 requirement, the consensus decision would be that 12:33:33
19 they couldn't progress to SM-1, right? 12:33:36

20 A. That's what the policy said, yes. 12:33:39

21 Q. And this isn't in 830.A, correct? This 12:33:43
22 is just in the guidance document, correct? 12:33:48

CERTIFICATE OF NOTARY PUBLIC

I, SUSAN L. CIMINELLI, RPR, CRR, the officer before whom the foregoing proceedings were taken, do hereby certify that the proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in this proceeding, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Susan L. Ciminelli

Notary Public in and for
District of Columbia

My Commission Expires: November 30, 2021



Exhibit 38



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Transcript of Jessica King

Date: June 1, 2022

Case: Thorpe, et al. -v- Virginia Department of Corrections, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

----- x
WILLIAM THORPE et al., :
Plaintiffs :
vs : Case No.
VIRGINIA DEPARTMENT OF : 2:20-cv-00007
CORRECTIONS et al., :
Defendants :
----- x

Videotaped deposition of
JESSICA KING

VIA VIDEO/TELECONFERENCE
WEDNESDAY, JUNE 1, 2022
10:01 a.m. EASTERN TIME

Job No.: 450795
Pages: 1 - 325
Reported by: Lisa V. Feissner, RDR, CRR, CLR

1 responsible behavior goals and program participation 10:59:23
2 goals that we were talking about earlier, right, in 10:59:25
3 terms of personal hygiene and such, yes? 10:59:28
4 A Yes, ma'am. 10:59:32
5 Q And there are three ratings for each, 10:59:33
6 poor, acceptable, and good; is that right? 10:59:35
7 A Yes, ma'am. 10:59:38
8 Q Okay. And that's what we were talking 10:59:39
9 about earlier in terms of checking the box for 10:59:40
10 hygiene standards, cell compliance, right? 10:59:45
11 A Yes, ma'am. 10:59:48
12 Q Okay. So taking a look at the fourth row 10:59:49
13 down, which is labeled, SM-0 to SM-1. 10:59:53
14 Do you see that? 10:59:59
15 A Yes, ma'am. 10:59:59
16 Q Those are the strategic management paths 10:59:59
17 of the step-down program within the -- within the 11:00:03
18 level S, correct? If a prisoner is designated level 11:00:09
19 S, this is the strategic management plan, right? 11:00:18
20 (Cross-talk.) 11:00:22
21 MS. O'SHEA: Object to form. 11:00:23
22 MS. NEWMAN: Let me try to clean up that 11:00:24

1 question. I'm sorry. I'll try to clean up that 11:00:26
2 question. 11:00:28

3 Q This is referring to the strategic 11:00:28
4 management path for level S offenders, right? 11:00:30

5 A This is referring to the SM level goals. 11:00:33
6 This particular document for the SM offenders in 11:00:38
7 step-down. 11:00:44

8 Q Okay. You said that more succinctly than 11:00:45
9 I did. 11:00:48

10 Now, taking a look at that larger middle 11:00:49
11 column where it says, to move -- I read this as 11:00:54
12 saying that to move from SM-0 to SM-1, the prisoner 11:00:58
13 must have no more than six poor or incomplete within 11:01:05
14 a 90-day review period. 11:01:09

15 Do you see that? 11:01:11

16 A Yes, ma'am. 11:01:11

17 Q Okay. So going back to my question on 11:01:11
18 how would you reconcile -- if multiple individuals 11:01:15
19 were giving ratings for each of these categories, 11:01:21
20 how would you reconcile those reports? 11:01:25

21 A That, we would do -- we had a form made 11:01:32
22 in C building that had the blocks, and it was 11:01:41

1 counselor, unit manager, officer. I think mental 11:01:43
2 health may have been on it. It's been a minute 11:01:47
3 since I've done one of these. 11:01:49

4 And we would go down those -- the cell 11:01:51
5 compliance, personal hygiene, count, respect, 11:01:55
6 participation. For me, I didn't observe count. I 11:02:00
7 didn't do count. So count was always an NA for the 11:02:02
8 counselor. 11:02:05

9 We would have those building management 11:02:07
10 or the committee meetings every week, and we would 11:02:10
11 decide on a rating for that week. You know, this 11:02:14
12 week, had this offender been -- had his cell been in 11:02:18
13 compliance the majority of the week. You know, was 11:02:24
14 that a poor, was that an acceptable, or did he have 11:02:27
15 a good week? 11:02:30

16 So we would try to put all of those 11:02:32
17 factors together and come up with one rating when I 11:02:35
18 was there. 11:02:41

19 Q Okay. Thank you. That makes sense. I 11:02:41
20 understand. 11:02:47

21 Now, when -- were there any -- did you 11:02:48
22 have any guidance or policies or procedures that 11:02:54

1 A Yes, and in department head meetings. 12:00:28

2 Q Okay. Was there any mechanism for 12:00:32
3 keeping track of who had reviewed the policy or 12:00:36
4 reviewed the email? 12:00:42

5 A Depending on what policy it was, 12:00:44
6 sometimes we would have initiatives come down from 12:00:47
7 headquarters where a -- like a security policy was 12:00:50
8 changed, and all security staff had to sign off on 12:00:55
9 that. 12:00:58

10 And that was my responsibility to ensure 12:01:00
11 that all security staff had reviewed it and they had 12:01:01
12 signed off, noting that they understood the changes. 12:01:04

13 Q Okay. Were there any other types of 12:01:07
14 policies that you recall that were updated that 12:01:10
15 required all of a particular staff to sign it and 12:01:13
16 make sure they understood the changes? 12:01:17

17 A So usually, those were just kind of 12:01:20
18 security-related, transportation policies, if 12:01:22
19 anything was changed, life, safety, health, then we 12:01:25
20 needed to make sure everybody understood. 12:01:31

21 Q Okay. And was updating the policies a 12:01:32
22 formal process? 12:01:37

1 A On my end, yes, because I had to meet 12:01:40
2 with the department heads if we were changing an 12:01:44
3 internal policy to let them know why we were doing 12:01:48
4 that to be in compliance with the departmental 12:01:50
5 policy. 12:01:55

6 It was also a meeting with the warden and 12:01:56
7 then the steps I referred to, to get it approved, 12:01:59
8 which was to go through the region. 12:02:02

9 Q Okay. Switching gears a little bit, I'd 12:02:04
10 like to talk about COMPAS evaluations. Could you 12:02:11
11 tell me what a COMPAS evaluation is. 12:02:16

12 A A COMPAS evaluation evaluates their 12:02:20
13 criminogenic needs. When I say that, I meant the 12:02:23
14 inmates. They're done at every annual review, and 12:02:27
15 then they're done upon release to the probation 12:02:30
16 district. 12:02:36

17 Q Do you know why VDOC chose to use the 12:02:36
18 COMPAS evaluation specifically? 12:02:39

19 A I don't. 12:02:42

20 Q Did the use of COMPAS change over time? 12:02:45

21 A It got more -- it got lengthy. There was 12:02:49
22 more to it as the time went on. 12:02:56

1 Q So -- and prisoners are given COMPAS 12:03:01
2 evaluations on a yearly basis? 12:03:04
3 A Yes, ma'am. 12:03:07
4 Q Every prisoner is? 12:03:08
5 A Supposed to, yes, ma'am. 12:03:11
6 Q Okay. And is that a Red Onion policy, or 12:03:12
7 is that VDOC policy more generally? 12:03:19
8 A It's DOC policy. 12:03:21
9 Q Okay. How does COMPAS assess mental 12:03:24
10 health? 12:03:29
11 A There are particular questions that are 12:03:30
12 geared toward mental health and other things, and it 12:03:34
13 gives us a sliding scale, like a bar graph that 12:03:42
14 tells us kind of what areas that we need to focus 12:03:46
15 on, on meeting their criminogenic needs. 12:03:51
16 MS. NEWMAN: If we can take tab 31 and 12:03:58
17 put that on screen. And in particular, I'd like to 12:04:00
18 take a look at the page number ending in Bates -- 12:04:10
19 well, actually, let's actually introduce this 12:04:18
20 document first. 12:04:20
21 (Exhibit King-4 marked for identification 12:04:23
22 and attached to the transcript.) 12:04:24

1 BY MS. NEWMAN: 12:04:24

2 Q Ms. King, I'm showing you what's been 12:04:24

3 marked as Exhibit 4. 12:04:29

4 Do you know what this document is, 12:04:39

5 Ms. King? 12:04:41

6 A Yes, ma'am. This is a segregation review 12:04:41

7 chart that each counselor keeps. 12:04:43

8 Q If you turn to what I think is the third 12:04:50

9 page of the document, there's a risk assessment. 12:04:53

10 Do you see that? 12:04:57

11 A Yes, ma'am. 12:04:58

12 Q And then turning the page again, is this 12:04:58

13 the COMPAS evaluation? 12:05:06

14 A Yes. It's the printout of the results. 12:05:09

15 Q Okay. And you see there's a bar there 12:05:12

16 that says, Depression or mental health? 12:05:15

17 A Yes, ma'am. 12:05:18

18 Q Okay. Do you know what factors COMPAS is 12:05:19

19 taking into account when arriving at a scale for 12:05:26

20 mental health issues? 12:05:32

21 A I do not. 12:05:34

22 Q Do you know if it takes into account 12:05:37

1 hygiene and grooming as a factor? 12:05:40

2 A I don't know. 12:05:45

3 Q How does Red Onion use the mental health 12:05:46

4 score on the COMPAS assessment? 12:05:56

5 A What we does at Red Onion, if they had a 12:05:58

6 high bar in the mental health, we would refer them 12:06:01

7 to mental health services and try to get them into 12:06:07

8 some mental health groups. That way, we knew that 12:06:10

9 mental health was aware of some of the issues that 12:06:13

10 were going on. 12:06:16

11 Q Would it affect their security level? 12:06:18

12 A No. 12:06:23

13 Q Would it affect the path that they were 12:06:26

14 put on? 12:06:28

15 A Yes, it could. 12:06:31

16 Q How so? 12:06:34

17 A We have a pathway that's technically not 12:06:37

18 IM or SM. It's a SIP/SAM pathway for offenders with 12:06:44

19 mental health needs or those that were highly 12:06:50

20 probable to being taken advantage of. So it was a 12:06:53

21 6, but we would evaluate them for that program to 12:07:01

22 SIP/SAM because it was more mental health based. 12:07:06

1 (Reporter interruption.) 12:07:15

2 Q And if we could go back to Exhibit 1, 12:07:25

3 which I believe is tab 3 of your binder, and if we 12:07:30

4 could go to page 14 of this document, which is Bates 12:07:52

5 stamp ending in 702. 12:07:55

6 A Mm-hmm. 12:08:01

7 Q So the SIP/SAM path that you're referring 12:08:02

8 to is -- if you look at security level, the left 12:08:08

9 hand bar, Security Level 6 on this chart, you have 12:08:16

10 four boxes under RO SP, D Building, SL-6 GP. And two 12:08:21

11 of those boxes refer to Secure Allied Management and 12:08:28

12 Secure Integration Pod. 12:08:32

13 Are those the SIP and SAM paths that you 12:08:35

14 were talking about? 12:08:39

15 A Yes, ma'am. 12:08:39

16 Q Okay. How would an individual be 12:08:40

17 placed -- I thought you testified earlier that an 12:08:49

18 individual moving from, say -- moving into Red 12:08:52

19 Onion, and their initial classification, if they're 12:08:58

20 a candidate for the step-down program, they're put 12:09:00

21 in -- you would never move directly to Level 6. You 12:09:04

22 would move to Level S and then progress through to 12:09:08

1 MS. O'SHEA: Object to form. 13:14:10

2 A Yes. 13:14:11

3 Q Okay. And then it moves on to the dual 13:14:12

4 team treatment review? 13:14:19

5 A Yes. 13:14:20

6 Q Okay. And the members of -- for the dual 13:14:20

7 treatment team review, is it generally everybody on 13:14:31

8 that team who meets and makes decisions as to the 13:14:35

9 path that a particular inmate needs to be put on? 13:14:38

10 A Yes. 13:14:41

11 Q And how are disagreements resolved? 13:14:44

12 A We talk it out. We dialogue and discuss 13:14:49

13 kind of our issues and our viewpoints on it. 13:14:53

14 Q And the policy -- or the step-down plan 13:14:56

15 provides that, if it's difficult to reach a 13:15:01

16 consensus, the team should default to the safer 13:15:06

17 option, right? 13:15:09

18 A Yes. 13:15:10

19 Q So err on the side of a higher security 13:15:11

20 rating than a lower one, right? 13:15:15

21 A Yes. 13:15:16

22 Q So a more -- so err on the side of -- in 13:15:17

1 the case of deciding between the IM path and the SM 13:15:24
2 path, erring on the side of assigning an inmate to 13:15:27
3 the IM path; is that right? 13:15:32
4 A Yes. 13:15:33
5 Q Okay. And then we have the institution 13:15:34
6 classification authority, right? 13:15:43
7 A Mm-hmm. 13:15:45
8 Q Who is on the institution classification 13:15:46
9 authority? 13:15:49
10 A That's the counselor and the unit manager 13:15:51
11 and the lieutenant. 13:15:53
12 Q Okay. So it's three individuals? 13:15:55
13 A Mm-hmm. Yes. Sorry. 13:15:58
14 Q Were you ever a part of the institution 13:16:00
15 classification authority? 13:16:03
16 A Yes. 13:16:05
17 Q So you would be part of the dual 13:16:06
18 treatment team review and then also the 13:16:11
19 classification authority? 13:16:17
20 A Yes. 13:16:17
21 Q And is that the same for the unit manager 13:16:23
22 and the lieutenant? 13:16:25

1 A Yes. 13:16:26

2 Q And what is the difference between the 13:16:26
3 review that the dual treatment team conducts and the 13:16:38
4 review that the institution classification authority 13:16:41
5 conducts? 13:16:44

6 A The institutional classification 13:16:45
7 authority changes the security level. So they do 13:16:48
8 the paperwork to change the level on CORIS and on 13:16:50
9 paper. 13:16:56

10 The dual treatment team changes the 13:16:57
11 status, so it's an IM status or it's an SM status. 13:17:02
12 So you're assigned a status by the dual treatment 13:17:06
13 team. You're placed in a security level by the 13:17:09
14 institutional classification authority. 13:17:14

15 That is also the same thing that happens 13:17:16
16 once you progress through the different steps. It's 13:17:19
17 an ICA hearing to go from SM-0 to SM-1. It's a 13:17:23
18 formal hearing showing that you've done what you're 13:17:28
19 supposed to have done. 13:17:30

20 Q Okay. And is it always all three 13:17:33
21 individuals on the ICA, the institution 13:17:43
22 classification authority, when making those level 13:17:46

1 determinations? 13:17:49

2 A When you do a formal hearing like an ICA, 13:17:51
3 the counselor and the lieutenant are present at the 13:17:54
4 hearing. The paperwork is then submitted to the 13:17:57
5 unit manager for approval. 13:17:59

6 Q Okay. So the unit manager is the one 13:18:01
7 that ultimately makes the decision? 13:18:04

8 A Yes. 13:18:07

9 Q Is that kind of dual tier institution 13:18:19
10 classification authority review provided for 13:18:26
11 anywhere in the step-down manual or in the operating 13:18:33
12 procedures? 13:18:40

13 A The ICA should be detailed in the 13:18:42
14 operating procedures. It's under classification. 13:18:47

15 The dual treatment team should just be in 13:18:51
16 the step-down process. But to that, I'm -- that's 13:18:54
17 my opinion. I'm not a hundred percent sure. 13:18:59

18 Q Yeah. What I'm trying to find out is 13:19:01
19 more whether this procedure of having the counselor 13:19:03
20 and the lieutenant attending the hearing and then 13:19:14
21 the unit manager making the decision, is that 13:19:17
22 provided for in the operating procedure? 13:19:20

1 2020, right? 13:25:59

2 A I don't have a record of that. I'm not 13:26:06

3 sure what you're looking at. 13:26:09

4 Q Sure. If I represented to you that we 13:26:11

5 have updated plans dated those dates, does that 13:26:18

6 sound right to you? 13:26:22

7 A I don't know. 13:26:25

8 MS. NEWMAN: Okay. If you can turn to 13:26:32

9 tab 4 of your binder. I think we're up to Exhibit 13:26:34

10 7. 13:26:45

11 (Exhibit King-7 marked for identification 13:26:46

12 and attached to the transcript.) 13:26:46

13 BY MS. NEWMAN: 13:26:46

14 Q Can you take a look at this document. 13:26:47

15 Do you recognize it? 13:26:49

16 A Yes. 13:26:54

17 Q And what is it? 13:26:55

18 A This is the step-down plan. 13:26:55

19 Q And it's updated March 4th, 2014, right? 13:26:57

20 A Yes. 13:27:00

21 MS. NEWMAN: If you can turn to tab 5 of 13:27:03

22 your binder. This can be marked as Exhibit 8. 13:27:04

1 (Exhibit King-8 marked for identification 13:27:08
2 and attached to the transcript.) 13:27:16
3 BY MS. NEWMAN: 13:27:16
4 Q Do you recognize this document? 13:27:18
5 A Yes, ma'am. 13:27:19
6 Q What is it? 13:27:20
7 A Step-down plan. 13:27:22
8 Q And it's dated August 2015, right? 13:27:23
9 A Yes, ma'am. 13:27:26
10 MS. NEWMAN: Can we take a look at tab 6. 13:27:29
11 This will be Exhibit 9. 13:27:35
12 (Exhibit King-9 marked for identification 13:27:36
13 and attached to the transcript.) 13:27:44
14 BY MS. NEWMAN: 13:27:44
15 Q Do you recognize this document? 13:27:44
16 A Yes, ma'am. 13:27:45
17 Q What is it? 13:27:45
18 A Step-down plan. 13:27:46
19 Q And it's dated September 2017, right? 13:27:47
20 A Yes, ma'am. 13:27:49
21 MS. NEWMAN: And then tab 7, this will be 13:27:52
22 marked as Exhibit 10. 13:28:03

1 (Exhibit King-10 marked for 13:28:04
2 identification and attached to the transcript.) 13:28:05
3 BY MS. NEWMAN: 13:28:05
4 Q Do you recognize this document? 13:28:07
5 A Yes, ma'am. 13:28:08
6 Q What is it? 13:28:09
7 A Step-down plan. 13:28:11
8 Q And it's dated February 2020, right? 13:28:12
9 A Yes, ma'am. 13:28:14
10 Q Does that refresh your recollection? 13:28:16
11 A They're not the same thing. 13:28:19
12 Q What do you mean, they're not the same 13:28:22
13 thing? 13:28:24
14 A This is the step-down plan. 830.A is the 13:28:25
15 operating -- the local operating procedure. 13:28:31
16 Q Right. And the step-down plan was 13:28:33
17 amended in 2014, 2015, 2017, and 2020, right? 13:28:40
18 A Yes, ma'am. 13:28:47
19 Q But the operating procedure was amended 13:28:48
20 only in February of 2018, correct? 13:28:52
21 A Yes, ma'am. 13:28:55
22 Q Do you know why that is? 13:28:57

1 A Because somebody didn't do their job. 13:29:05

2 Q Do you know whose responsibility that 13:29:10

3 would have been? 13:29:11

4 A There was a disagreement about that when 13:29:14

5 I came back to Red Onion. 13:29:17

6 Q What do you mean? 13:29:21

7 A One said -- evidence-based practice 13:29:24

8 manager thought it was the operation manager's 13:29:29

9 responsibility. The previous operations manager 13:29:31

10 thought it was his responsibility. 13:29:34

11 Q So it just didn't get done? 13:29:38

12 A Exactly. 13:29:40

13 Q Okay. Were you responsible for making 13:29:41

14 sure that the operating procedure got updated when 13:29:45

15 you returned to Red Onion? 13:29:48

16 A Yes, ma'am. 13:29:50

17 Q And what was that process like? 13:29:52

18 A I met with the evidence-based practice 13:29:54

19 manager and looked over the current step-down, the 13:29:57

20 plan that they had approved last, and we made some 13:30:01

21 changes to the operating procedure to reflect the 13:30:04

22 current plan. 13:30:07

1 Q What were those changes? 13:30:09

2 A I don't remember. 13:30:14

3 Q So you took over -- did you end up taking 13:30:23

4 over responsibility for the update to the step-down 13:30:26

5 operating procedure, or -- well, I'll stop there. 13:30:29

6 Did you end up taking over responsibility 13:30:34

7 for -- 13:30:37

8 A I took over for the operating procedure, 13:30:37

9 yes. 13:30:40

10 Q Even though that wasn't really your 13:30:43

11 responsibility? 13:30:46

12 A It was an operating procedure. It was my 13:30:47

13 responsibility. 13:30:50

14 Q Oh, I see. Okay. 13:30:50

15 Now, when you returned to Red Onion in 13:30:53

16 2017, you were the operations manager. 13:31:07

17 Who was the operations manager before 13:31:09

18 you? 13:31:10

19 A Sherry Shortridge. 13:31:12

20 (Reporter interruption.) 13:31:18

21 A Sherry, S-H-E-R-R-Y. 13:31:21

22 Q The step-down program covers all 13:31:35

1 prisoners at Red Onion and Wallens Ridge with a 13:31:42

2 Level S security rating, right? 13:31:46

3 A S and 6, yes. 13:31:49

4 Q That was my next question. 13:31:51

5 The step-down program also covers all 13:31:53

6 prisoners with a Level 6 security rating, right? 13:31:55

7 A Yes. 13:31:59

8 Q And Level S is a non-scored security 13:31:59

9 level; is that right? 13:32:06

10 A Yes. 13:32:08

11 Q Okay. It's reserved for offenders who 13:32:08

12 must be managed in a segregation setting? 13:32:11

13 A Yes. 13:32:14

14 Q So I'd like to go back to the -- if we 13:32:15

15 can go back to Exhibit 1 and go back to the flow 13:32:56

16 chart on page -- I think it's 14. 13:32:58

17 This flow chart shows the path that 13:33:11

18 inmates assigned to Security Level S take when 13:33:18

19 progressing through the step-down program, right? 13:33:21

20 A Yes, ma'am. 13:33:24

21 Q Approximately -- well, how long -- for IM 13:33:26

22 prisoners, the IM pathway is -- actually, this one 13:33:35

1 is not a good version to show for this question. 13:33:43

2 Let's take a look at instead -- take a 13:33:47

3 look at Exhibit 9, which is the 2017 version of this 13:33:55

4 document. And if I could direct your attention to 13:33:59

5 page 17. I don't know if we can rotate this. Oh, 13:34:15

6 it already is rotated. Look at that. 13:34:19

7 So for IM prisoners in the IM pathway, 13:34:21

8 it's divided into IM-0, 1, 2, and IM SL-6 phase 1 13:34:26

9 and IM SL-6 phase 2; is that right? 13:34:33

10 A Yes. 13:34:36

11 Q And for SM prisoners, the SM pathway is 13:34:37

12 divided into SM-0, SM-1, SM-2, SM SL-6 phase 1, and 13:34:47

13 SM SL-6 phase 2, right? 13:34:55

14 A Yes. 13:35:00

15 Q Is that correct? Okay. 13:35:01

16 If it's not correct, correct me. 13:35:03

17 A But there's more -- there's more in the 13:35:06

18 SL-6 than just step-down 1, step-down 2. If they're 13:35:10

19 getting ready to go home within, you know, the year, 13:35:18

20 then they go to reentry, or if they're suitable, 13:35:21

21 they'll go to SIP/SAM. Those are all things that 13:35:26

22 can come out of that SL-6 category. 13:35:28

1 Q Okay. And that's reflected on page 18, 13:35:33
2 right? 13:35:36
3 A Yes, ma'am. 13:35:36
4 Q Great. 13:35:37
5 For a prisoner who is not eligible yet 13:35:42
6 for reentry or the SIP or SAM paths, is there a 13:35:46
7 minimum amount of time that IM prisoners need to 13:35:55
8 spend at each privilege level before progressing to 13:35:59
9 the next level? 13:36:02
10 A I think it's six months. 13:36:04
11 Q So you need to spend six months in IM-1, 13:36:08
12 right? 13:36:15
13 A Yes. 13:36:16
14 Q Six months in IM-0 -- sorry, I should 13:36:16
15 have started there -- and six months in IM-2? 13:36:22
16 A Yes. 13:36:24
17 Q Okay. So that's a total of 18 months to 13:36:24
18 progress through IM-0 to IM-2? 13:36:28
19 A Yes, ma'am. 13:36:32
20 Q And then the step-down plan requires that 13:36:35
21 IM prisoners have a 12-month successful charge-free 13:36:41
22 prison in IM closed phase 1 before progressing to IM 13:36:47

1 closed phase 2; is that right? 13:36:52

2 A Yes, ma'am. 13:36:56

3 Q So that's another 12 months to get from 13:36:57

4 IM-0 to IM closed phase 2? 13:37:05

5 A Yes, ma'am. 13:37:10

6 Q So for IM pathway prisoners, it takes an 13:37:13

7 offender a minimum of 30 months to progress to the 13:37:19

8 end of the IM pathway, right? 13:37:22

9 MS. O'SHEA: Object to form. 13:37:25

10 A Two and a half years, yeah. 13:37:27

11 Q And the SL-6 -- IM closed phase 1 and IM 13:37:33

12 closed phase 2 are part of the Red Onion SL-6, 13:37:41

13 right? 13:37:48

14 A Yes, ma'am. 13:37:49

15 Q Okay. And that's pretty -- that's the 13:37:50

16 end of the line for the IM pathway, right? 13:37:57

17 A Yes. 13:38:03

18 Q Okay. So then moving on to the SM 13:38:12

19 pathway, there's also a minimum amount of time that 13:38:16

20 prisoners need to spend at each privilege level 13:38:20

21 before progressing to the next, right? 13:38:22

22 MS. O'SHEA: Object to form. 13:38:24

1 A Yes, ma'am. 13:38:25

2 Q And the step-down plan -- because the 13:38:31

3 step-down plan says that SM prisoners must meet the 13:38:35

4 standards as set for each status for the period of 13:38:40

5 time required to be eligible for advancement, right? 13:38:42

6 MS. O'SHEA: Object to form. 13:38:45

7 A Yes, ma'am. 13:38:46

8 Q What's the minimum amount of time a 13:38:47

9 prisoner could spend in SM-0? 13:38:52

10 A 90 days. I mean -- yeah, 90 days. 13:38:56

11 Q And that's the same for SM-1 and SM-2? 13:39:00

12 A Yes. 13:39:05

13 Q And I think we've already talked about 13:39:08

14 what the decision-making process there looks like. 13:39:13

15 What's the minimum amount of time a 13:39:15

16 prisoner could spend in phase 1 of step-down if 13:39:19

17 they've progressed out of SM-2? 13:39:22

18 A I'm not sure. I'm not -- I don't know if 13:39:30

19 it's 90 days or if it's less. It's a program built 13:39:34

20 into the program. So I'm not sure. 13:39:37

21 Q Is there a policy or procedure that would 13:39:40

22 provide that length of time? 13:39:43

1 A It should be in the plan, but I don't 13:39:45
2 know if it is. But it's the time it takes to 13:39:49
3 complete the programs that are in step-down 1, 13:39:57
4 step-down 2. 13:40:00

5 Q Is there -- what kind of review needs to 13:40:01
6 take place for a prisoner to progress from step-down 13:40:04
7 1 to step-down 2? 13:40:07

8 A Those are internal reviews. Those are 13:40:10
9 done right at the facility. To change 13:40:13
10 classification, it needs a dual treatment -- not 13:40:19
11 dual treatment, but external review. 13:40:22

12 So from SM-2, they'll stay at that 13:40:24
13 platform until we do an external review where they 13:40:27
14 will then be recommended for a 6 and then a pathway 13:40:30
15 in 6. 13:40:34

16 Q Okay. So when a prisoner is progressing 13:40:35
17 from SM-2 to SL-6, they need to go through the dual 13:40:38
18 treatment team review first, right? 13:40:46

19 A Yes, because it's a change in security 13:40:48
20 level. 13:40:50

21 Q And how often does that dual treatment 13:40:51
22 team review take place? 13:40:54

1 A ICAs are based on the date that you were 13:42:17
2 made a certain level. So there's a 30-day, a 13:42:22
3 60-day, and a 90-day. And once you've hit your 13:42:26
4 90-day, you'll have them every 90 days. 13:42:30

5 Q Okay. So it could be -- 13:42:33

6 A In the beginning, you have an initial, 13:42:44
7 which is day 1. 13:42:46

8 Q Yep. 13:42:47

9 A Then you'll have one day 7 because you've 13:42:47
10 been there for a week. And this is just to go along 13:42:50
11 with code of Virginia to make sure that we're not 13:42:55
12 having somebody back in segregation that's not 13:42:59
13 supposed to be there. And then they'll do one at 30 13:43:01
14 days. They'll do another at 60 days. Then they'll 13:43:04
15 do one at 90 days. And those are called 90-day 13:43:08
16 hearings. 13:43:11

17 And that's just to assess your behavior. 13:43:12
18 And then after that, it goes to a 90-day period. 13:43:15

19 Q Okay. So make sure I get this right. 13:43:18

20 So it's 90 days from the date that the 13:43:23
21 dual treatment team reviews the change from SM-1 to 13:43:27
22 SL-6, and 90 days after that, the ICA team will meet 13:43:33

1 and implement that change? 13:43:41

2 A No. No, no, no. 13:43:44

3 Q Sorry. 13:43:46

4 A Okay. When we're assigning to step-down, 13:43:49

5 the dual treatment team meets. They come up with 13:43:53

6 their recommendation. That day or the next day, the 13:43:57

7 ICA committee meets, as the -- the inmate can waive 13:44:00

8 his rights to 48-hour notice or not waive his 13:44:07

9 rights. 13:44:10

10 If he doesn't waive his rights, then 13:44:11

11 three days later, we come back, and we do a formal 13:44:14

12 hearing with him to let him know that he's been 13:44:16

13 placed in step-down and he's SM or he's IM. 13:44:18

14 When they've gone to SM-2, external 13:44:23

15 review team meets to determine whether he can go on 13:44:28

16 to Security Level 6. 13:44:33

17 The next day after the external review 13:44:36

18 team is finished meeting, the ICA committee will 13:44:39

19 meet with the offender to let them know the 13:44:43

20 recommendations of external review, and that is put 13:44:46

21 in the system that next day. 13:44:48

22 There's always hearings going on. 13:44:55

1 Q Yeah. Okay. There's a lot of reviews 13:44:57
2 here, so that's why I'm just trying to make sure I 13:44:59
3 understand. 13:45:02

4 So if you take a look at pages 17 and 18 13:45:02
5 of Exhibit 9, can you show me where the SM path 13:45:08
6 moving from SM-2 -- I don't see the biannual 13:45:20
7 external review team as being a part of the decision 13:45:26
8 to move a prisoner from SM-2 to SL-6. 13:45:34

9 MR. SWIRE: Was that Exhibit 9, you said? 13:45:48

10 MS. NEWMAN: Exhibit 9, tab 6. 13:45:51

11 MR. SWIRE: At what page? 13:45:52

12 MS. NEWMAN: Page 17. 13:45:54

13 Q Do you see what I'm looking at, though? 13:47:05
14 The pathway from SM-2 to SL-6 just seems to go 13:47:07
15 through the dual treatment review. 13:47:12

16 A And it might. It's been a minute since 13:47:17
17 I've done it. I thought it went through external 13:47:21
18 review. I might be wrong. 13:47:26

19 Q Okay. And then you said that the ICA is 13:47:29
20 the one that actually conducts the hearing as to 13:47:34
21 whether the prisoner is going to be put in Level 6 13:47:37
22 or moved to a different path or moved to a different 13:47:41

1 portion of special management; is that right? 13:47:45

2 A Yes, ma'am. 13:47:49

3 Q So if the dual treatment team is making 13:47:52

4 the recommendation, then what is the ICA doing? 13:47:55

5 A They're conducting the formal hearing 13:48:01

6 with the inmate so that they're aware of everything 13:48:03

7 that's going on, and they're making the required 13:48:05

8 changes on the computer. 13:48:09

9 Q Okay. But are they actually making any 13:48:11

10 decisions? 13:48:13

11 A No. 13:48:14

12 Q Okay. And we've been looking at the -- 13:48:29

13 Exhibit 9, which is the 2017 update. Is it your 13:48:32

14 understanding that the program and the time frames 13:48:36

15 were the same in previous iterations of the 13:48:41

16 step-down program? 13:48:45

17 A I think so. 13:48:47

18 Q Now, is there a minimum amount of time 13:48:50

19 that a prisoner has to spend in step-down phase 2 13:48:58

20 before he can be eligible to progress to Level 5? 13:49:02

21 A I don't know. 13:49:06

22 Q Who needs to conduct that review? 13:49:16

1 A For SM-2 to go to Level 5, that is 13:49:22
2 external review. 13:49:28

3 Q Okay. And that only meets once every -- 13:49:28
4 twice a year, right? 13:49:30

5 A Twice a year, yes. 13:49:32

6 Q So it's really a minimum of six months, 13:49:33
7 right? 13:49:36

8 MS. O'SHEA: Object to form. 13:49:37

9 A Yes. 13:49:37

10 Q Now, if you look on page 18 of Exhibit 9, 13:49:57
11 which is tab 6 of your binder, if you look at the 13:50:01
12 box that's labeled, Step-Down Phase 2, with the 13:50:08
13 arrow that goes to, Building Management Committee 13:50:11
14 Review conducted for appropriate classification, 13:50:13
15 what does the building management committee -- what 13:50:21
16 are they reviewing for? 13:50:24

17 A Appropriate classification, whether they 13:50:29
18 should go to ROSP GP, WRSP GP, if they should go to 13:50:30
19 Sussex 1 GP, or if they should go to the SAM unit, 13:50:38
20 which is the Security Level 5 at Wallens Ridge. 13:50:39

21 Q And GP, that means general population? 13:50:45

22 A Yes, ma'am. 13:50:47

1 the different levels, then we will do a quick 14:45:50
2 orientation with them to let them know kind of what 14:45:55
3 the program is, what the objectives are, how you can 14:45:57
4 meet your next level, and then we try to give them 14:46:01
5 the first two, the journalling series, because those 14:46:04
6 are not done in a group forum. 14:46:09

7 Q And what documents are provided to 14:46:11
8 prisoners during the orientation? 14:46:13

9 A It's been a minute. I don't remember. I 14:46:21
10 do know that the books were given. 14:46:25

11 Q Okay. Are accommodations given to 14:46:28
12 prisoners with mental disabilities to ensure they 14:46:39
13 fully understand the program? 14:46:42

14 MS. O'SHEA: Object to form. 14:46:43

15 A Yes. 14:46:43

16 Q Okay. So for example, if a prisoner had 14:46:45
17 severe ADHD and had difficulty focusing, how would 14:46:50
18 he become acquainted with the program? 14:46:54

19 A Our treatment officers were in charge of 14:46:58
20 the programming aspects of it. They would come 14:47:01
21 around and talk to everybody. And if somebody -- 14:47:04
22 with an instance like that, would typically be 14:47:10

1 pulled out and have a group session one-on-one to 14:47:13
2 where they could retain their focus. Treatment 14:47:16
3 officers handled all of that, and they were beyond 14:47:22
4 exceptional. 14:47:25

5 Q And in the orientation, are there 14:47:27
6 opportunities for prisoners to ask questions? 14:47:30

7 A Yes. 14:47:33

8 Q Do prisoners sign a statement indicating 14:47:38
9 they understand the step-down program? 14:47:41

10 A They sign their ICA hearing form showing 14:47:42
11 that they understand that they were ICA'd to a 14:47:48
12 higher security level, and that it would indicate 14:47:52
13 that they've been assigned to the step-down. 14:47:55

14 Q Do you conduct any tests to see whether a 14:48:00
15 prisoner has actually understood the program after 14:48:04
16 intake and orientation? 14:48:07

17 A No, ma'am. 14:48:10

18 Q Okay. So we've talked a bit about the 14:48:18
19 building management committee. But could you 14:48:21
20 briefly describe what it is. 14:48:26

21 A The building management committee is the 14:48:30
22 counselor, the treatment officers, the unit manager, 14:48:33

1 and security officers that work in the building. 14:48:36

2 We get together, and we review those 14:48:40

3 daily charts that we talked about earlier this 14:48:42

4 morning, just kind of for everybody to be on the 14:48:45

5 same page as to where the inmate is with their 14:48:49

6 programming, because not everybody is part of the 14:48:52

7 programming; how their behavior is toward mental 14:48:54

8 health, how their behavior is toward other staff, 14:48:59

9 you know, if they're complying with security 14:49:02

10 policies and procedures or practices, if they're 14:49:04

11 handling count and those kind of things, that 14:49:07

12 they're doing what they're supposed to. 14:49:10

13 Those were very informal meetings where 14:49:13

14 we got together as a group collectively and talked 14:49:16

15 about where each offender was in that stage or on 14:49:18

16 that day. 14:49:22

17 Q Okay. And if you could turn to -- let's 14:49:23

18 take a look at the latest iteration of the step-down 14:49:29

19 program -- Exhibit 10. And just if you could flip 14:49:32

20 to page 50. 14:49:41

21 So in addition to reviewing and 14:49:52

22 discussing the ratings on this form, did the BMC 14:49:57

1 also review to make sure that other requirements for 14:50:02

2 progression from one level to the next were met? 14:50:05

3 A Yes. 14:50:08

4 Q And after the BMC met to discuss this -- 14:50:09

5 well, first of all, how often did the BMC meet? 14:50:26

6 A We met weekly. 14:50:29

7 Q And then at the end of -- now, I 14:50:31

8 understand that every 90 days, the ICA would review 14:50:43

9 the prisoner status; is that correct? 14:50:50

10 A Yeah, that's per policy. If it happened 14:50:54

11 to fall within those 90 days that the ICA did the 14:50:58

12 review, then we could change the status. But that's 14:51:03

13 why we did everything on a weekly basis, because 14:51:06

14 everybody was in a different stage of the program. 14:51:09

15 Everybody was reviewed weekly, but it wasn't 14:51:13

16 formally documented until that 90 days. 14:51:16

17 Q All right. And then at the 90-day mark, 14:51:19

18 the members of the BMC who were also part of the 14:51:24

19 ICA, when that meeting fell on a 90-day period -- at 14:51:30

20 the end of a 90-day period, then a recommendation 14:51:36

21 would be made to progress the prisoner? 14:51:40

22 A Yeah. Recommendations were made every 14:51:44

1 week, but they had to meet this criteria before the 14:51:47
2 ICA could act on it. So one of the recommendations 14:51:52
3 may be, you know, we'll review 45 days or, you know, 14:51:55
4 two months. Right now, it doesn't meet criteria to 14:52:03
5 advance. 14:52:08

6 Q So what I'm trying to understand is when 14:52:11
7 the ICA conducted its 90-day review and made a 14:52:16
8 decision, was that -- that was based on the findings 14:52:24
9 of the BMC? 14:52:28

10 A Yes. 14:52:31

11 Q Okay. And were those 90-day reviews by 14:52:32
12 the ICA -- were those full hearings, or were 14:52:35
13 those -- 14:52:41

14 A Yes, those are -- sorry. Those are 14:52:41
15 formal hearings. So yeah, they're full hearings. 14:52:45

16 Q Did the ICA ever contradict the BMC's 14:52:47
17 decision? 14:52:57

18 MS. O'SHEA: Object to form. 14:52:57

19 A No. 14:52:58

20 Q And members of the ICA, were they also 14:53:01
21 members of the BMC? 14:53:05

22 A Yes. 14:53:07

1 Q So it makes sense that the ICA wouldn't 14:53:10
2 contradict the BMC, right? 14:53:13

3 A Yes. 14:53:16

4 Q Okay. Now, what are BMC monthly internal 14:53:16
5 status reviews as opposed to the weekly meetings? 14:53:28

6 A They're the same thing. We would do them 14:53:34
7 weekly, but at the end of every month, we still had 14:53:37
8 to review everybody's status. We reviewed them 14:53:42
9 every week, but they were documented on a monthly 14:53:46
10 basis. 14:53:49

11 Q Okay. Did the BMC make its 14:53:52
12 recommendations to the ICA in writing? 14:53:57

13 A No. 14:54:02

14 Q So how was the BMC's recommendations to 14:54:08
15 the ICA communicated for any given prisoner? 14:54:12

16 MS. O'SHEA: Object to form. 14:54:17

17 A The counselor that's assigned to the 14:54:18
18 building was part of the BMC. They gave their 14:54:20
19 opinions. Once the meeting was over, the counselor 14:54:26
20 would go and conduct the ICA hearing with the 14:54:32
21 lieutenant. 14:54:35

22 Q Okay. 14:54:37

1 weeks and that was something that they hadn't 15:00:09
2 normally been doing, then that would be an 15:00:13
3 acceptable. It's based on the inmate and their 15:00:16
4 totality of their behavior. Okay, yeah, you have 15:00:20
5 your light covered today. Everything else in your 15:00:24
6 cell was compliant. I'm going to give that an 15:00:27
7 acceptable, and I'm going to tell you, hey, listen, 15:00:30
8 going forward, if you want a good rating, this needs 15:00:33
9 to come out or this needs to change. 15:00:38

10 Good would be compliant in all factors, 15:00:43
11 that every time you were offered a shower, you took 15:00:45
12 a shower. Every time that they did count, you stood 15:00:48
13 the way you were supposed to. You did everything 15:00:52
14 according to procedure. 15:00:54

15 Respect was one of those variables, you 15:00:57
16 know, are you cussing me today, or are we having a 15:01:00
17 nice conversation, or are you just not wanting to 15:01:03
18 talk to me today. That is completely acceptable, 15:01:06
19 and it may be a good thing that day. 15:01:09

20 Q Do prisoners receive a training on how to 15:01:11
21 meet responsible behavioral goals? 15:01:23

22 A They receive -- as part of their intake 15:01:25

1 or orientation process into Red Onion, they receive 15:01:30
2 a rules and regulations book, and it talks about 15:01:34
3 personal hygiene. It talks about cell compliance. 15:01:38
4 There's a picture drawn of how we're supposed to 15:01:40
5 have everything neat and tidy and orderly. When 15:01:43
6 you're supposed to stand for count, what counts you 15:01:47
7 stand for. 15:01:50
8 So there is that, that the counselors 15:01:51
9 review with all new intakes, but not specifically 15:01:55
10 designed to the step-down program. 15:01:58
11 Q Okay. So there isn't something that 15:02:04
12 would tell them what it means to be acceptable, have 15:02:05
13 acceptable responsible behavior versus poor 15:02:08
14 responsible behavior? 15:02:11
15 A No. 15:02:14
16 Q Okay. And do correctional officers or 15:02:15
17 counselors or unit managers receive training on what 15:02:25
18 responsible -- what the different levels of 15:02:30
19 responsible behavior are? 15:02:34
20 A No. 15:02:36
21 Q How do staff make observations on 15:02:41
22 inmates' behavior? 15:02:45

1 MS. O'SHEA: Object to form. 15:02:46

2 A Kind of what I was referring to earlier. 15:02:49

3 If you worked with the inmates, you know their 15:02:52

4 personality type, and you know what's normal for 15:02:56

5 them, what is a good day, what's an okay day, and 15:03:00

6 what's just a bad day. So you're able to 15:03:04

7 communicate with them because you get to know them. 15:03:09

8 So it's not something that you can 15:03:13

9 measure and say, if this, this, and this happens, 15:03:16

10 then this is what the outcome is going to be. 15:03:20

11 It's everybody's personal opinion based on their 15:03:23

12 level of knowledge of the inmate. 15:03:27

13 Q So that -- and that level of knowledge 15:03:35

14 will change and grow as the inmate spends more time 15:03:38

15 in the program and as counselors and officers and 15:03:45

16 unit managers spend more time with the inmate? 15:03:49

17 A Yes. 15:03:53

18 Q How is program participation evaluated? 15:03:57

19 A That's all done through the treatment 15:04:01

20 officers because they provide the programs, they do 15:04:05

21 all the instructing. So whether they participated 15:04:09

22 that day or whether they didn't, whether they did 15:04:15

1 their homework or they didn't, whether they were -- 15:04:17
2 you know, came to programs or they refused to come 15:04:21
3 out. 15:04:23

4 Q And what's the difference between 15:04:33
5 incomplete, complete, and positive effort? 15:04:38

6 A Complete would be they completed the 15:04:43
7 required program for that level, or whatever the 15:04:45
8 program they were in for that week. 15:04:48

9 Incomplete, they've not finished it yet, 15:04:49
10 or they've decided that they're not going to 15:04:52
11 progress and not do the program. 15:04:55

12 And positive effort is, they're 15:04:57
13 communicating with the treatment officers and 15:04:59
14 they're working the steps in that program. 15:05:02

15 Q So within the programs, are there weekly 15:05:06
16 deadlines that the prisoners are expected to meet? 15:05:12

17 A No. 15:05:17

18 Q So how is it judged whether -- on a 15:05:18
19 weekly basis, whether the prisoners' status in 15:05:24
20 program participation is complete or incomplete? 15:05:33

21 A It would be more along the lines of 15:05:37
22 incomplete if they refused to come to programming. 15:05:41

1 Complete wouldn't happen until they completed that 15:05:45
2 course, that book or whatever number they were in. 15:05:48
3 Typically, it was a positive effort that week or 15:05:52
4 there was no effort, which means they didn't come to 15:05:55
5 programming. 15:05:58
6 Q Okay. So complete just means you 15:05:58
7 finished the Challenge Series Journal 1? 15:06:04
8 A Yes. 15:06:10
9 Q Incomplete means you haven't finished the 15:06:12
10 Challenge Journal Series 1, or it means -- well, 15:06:19
11 I'll stop there. 15:06:24
12 A Typically, what incomplete would mean -- 15:06:25
13 because it's a factor that we judge on whether 15:06:29
14 they're enrolled, going to programs, or if they've 15:06:33
15 just said, huh-uh, not doing it, I'm going to sit 15:06:37
16 right here. So that would be an incomplete program 15:06:40
17 because they're refusing to participate. 15:06:44
18 Q Okay. And so positive effort is -- 15:06:47
19 A They're coming to programs, and they're 15:06:58
20 at least attempting to work through the books. 15:07:01
21 Q Okay. How is a prisoner's participation 15:07:06
22 in programming related to their security risk? 15:07:26

1 A It's not. But as a means of measuring 15:07:31
2 change, the programs are put into place to help 15:07:40
3 change that pattern of thought and that train of 15:07:45
4 thought. And when the program was designed, they 15:07:49
5 put in these programs, and these different steps 15:07:53
6 progressed from 0 to 1 to 2 and then on out. 15:07:57

7 So it doesn't measure whether or not they 15:08:02
8 are going to be a security risk. 15:08:05

9 Q Okay. Similarly, how does cell 15:08:11
10 compliance relate to a prisoner's security risk? 15:08:22

11 A Cell compliance is just one of those 15:08:29
12 things where you're following the rules or you're 15:08:32
13 not. So you're in compliance or you're not. So are 15:08:36
14 you a rule breaker or a rule follower, which doesn't 15:08:43
15 have anything to do with security risk unless you 15:08:47
16 have items hid in a messy cell. 15:08:50

17 But, like, that was just something that 15:08:54
18 they -- when they developed the program, thought 15:08:57
19 that was something good to look at. 15:08:59

20 Q Okay. Same thing with personal hygiene, 15:09:02
21 same question. How does it relate to a prisoner's 15:09:06
22 security risk? 15:09:10

Transcript of Jessica King
Conducted on June 1, 2022

191

1	A	It doesn't.	15:09:10
2	Q	Standing for count, does that relate to a	15:09:12
3		prisoner's security risk?	15:09:16
4	A	It doesn't.	15:09:17
5	Q	What about respect?	15:09:21
6	A	It doesn't.	15:09:23
7	Q	How do -- how does staff, counselor, the	15:09:27
8		unit manager, and the officer -- how do they judge	15:09:39
9		poor respect versus acceptable respect?	15:09:44
10	A	For me -- sorry. There was an ambulance	15:09:52
11		outside. Making sure it wasn't here.	15:09:55
12		For me, if, you know, somebody that	15:09:59
13		normally talked to me every day when I made rounds a	15:10:05
14		couple times a day suddenly stopped talking to me,	15:10:09
15		that would raise an alert for me. Same thing if	15:10:11
16		somebody never talked to me and they decided they	15:10:15
17		were going to talk to me that day.	15:10:17
18		Poor behavior is cursing and throwing	15:10:19
19		things and telling me they're going to kill me.	15:10:24
20		Acceptable is, you know, sometimes you	15:10:27
21		might cuss me, sometimes you might not.	15:10:30
22		Good is, we've had a good conversation	15:10:33

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1 that day, or you've decided not to talk to me, and 15:10:35

2 that's kind of normal. 15:10:38

3 For me, that was how I did my ratings. 15:10:41

4 Q Did others who did ratings view things 15:10:44

5 differently than you did? 15:10:49

6 A I don't know. I mean, that was -- 15:10:51

7 Q Well, when you -- for example, when you 15:10:55

8 went to the BMC meetings and you talked through the 15:10:57

9 chart that you were looking at for a particular 15:11:02

10 inmate for that week and figuring out what box to 15:11:04

11 check for each one, did you observe that other 15:11:10

12 participants in the BMC meeting had different 15:11:14

13 observations or different -- different observations 15:11:17

14 than you did? 15:11:21

15 A They might have had different experiences 15:11:23

16 than I did. You know, one day, cell 1 may just cuss 15:11:26

17 me until a fly wouldn't land on me, but they were 15:11:32

18 super nice to the unit manager, very respectful, did 15:11:37

19 everything that they were supposed to. 15:11:40

20 Same thing with security. They did 15:11:41

21 everything they were supposed to do that day. So my 15:11:44

22 rating would have been bad; their rating would have 15:11:47

Transcript of Jessica King
Conducted on June 1, 2022

228

1	A	If we had an incident occur, everybody	16:09:40
2		may have had to have responded to one location, and	16:09:47
3		rounds might have been missed. But that's only on	16:09:52
4		an individual basis of an incident occurring	16:09:57
5		somewhere that needed immediate attention.	16:10:00
6	Q	Okay. Have you ever seen staff skip or	16:10:04
7		postpone recreation time due to a lack of available	16:10:08
8		staff to supervise the recreation?	16:10:11
9	A	Yes.	16:10:15
10	Q	Have you ever seen staff skip or postpone	16:10:17
11		shower time due to a lack of available staff to	16:10:21
12		supervise showers?	16:10:23
13	A	No.	16:10:24
14	Q	You previously worked as the ADA	16:10:43
15		coordinator at Red Onion, correct?	16:10:45
16	A	Yes, ma'am.	16:10:47
17	Q	What years were you in that position?	16:10:49
18	A	'17 to '19.	16:10:54
19	Q	And what were your key responsibilities	16:10:57
20		as the ADA coordinator?	16:10:58
21	A	What I would do is, I would take any kind	16:11:02
22		of requests from an inmate, if they had a disability	16:11:05

1 that was something that I could help them with, if 16:11:10
2 they were hard of hearing, if they couldn't read or 16:11:13
3 write, if they had -- you know, they needed a step 16:11:18
4 in their shoe, lots of physical, you know -- I'm 16:11:26
5 trying to think of the word -- disabilities. 16:11:35
6 Physical disabilities is mostly what I dealt with. 16:11:40
7 But I personally wasn't trained to handle any kind 16:11:44
8 of mental health disability. That would have had to 16:11:50
9 come from mental health. 16:11:51
10 Q Okay. Did you -- so you didn't work with 16:11:52
11 individuals experiencing serious mental illnesses as 16:12:00
12 part of your role? 16:12:05
13 A No. That was handled by the mental 16:12:07
14 health -- the psychology associates at the 16:12:11
15 institution or the psychiatrist that would come in. 16:12:14
16 Q Okay. Did you ever notice that inmates 16:12:16
17 were unable to access privileges or complete certain 16:12:23
18 tasks in the step-down program because of an SMI? 16:12:29
19 A Yes. 16:12:34
20 Q In what circumstances? 16:12:37
21 A Have trouble understanding the material 16:12:40
22 that was presented. I can't remember the guy's 16:12:51

1 name, but the treatment officer learned that he 16:12:54
2 couldn't read, so it hadn't been documented anywhere 16:12:58
3 prior to that. And he sat with him and read the 16:13:03
4 book to him so that he could finish the challenge 16:13:05
5 series to finish the program. 16:13:09

6 Q How long was it before someone noticed 16:13:11
7 that he couldn't read? 16:13:14

8 MS. O'SHEA: Object to form. 16:13:17

9 A Too long. But I don't know exactly. 16:13:22

10 Q Are we talking years? 16:13:26

11 MS. O'SHEA: Object to form. 16:13:29

12 A I don't know. 16:13:31

13 Q So you're not sure if it was six months 16:13:35
14 or a year or two years? 16:13:37

15 A Well, if they refuse programming, you 16:13:41
16 don't know why they refuse unless they tell you. 16:13:43

17 And usually, educational skills are assessed at 16:13:48

18 intake, and we were not an intake facility at that 16:13:53

19 time, so we had to rely on records that were sent to 16:13:58

20 us. 16:14:00

21 Refusing programming, it could be a whole 16:14:04

22 list of reasons why. But through dialogue and that 16:14:06

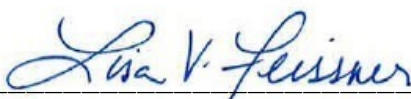
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C E R T I F I C A T E

I, Lisa V. Feissner, RDR, CRR, CLR, do hereby certify that the witness was first duly sworn by me and that I was authorized to and did report said proceedings.

I further certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; that reading and signing was not requested; and that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken; and that I have no interest, financial or otherwise, in this case.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of JUNE, 2022.



Lisa V. Feissner, RDR, CRR, CLR

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

Exhibit 39

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

ERIC DEPAOLA,
Plaintiff,

Civil Action No. 7:16-cv-00485

vs.

H. CLARK, et al.,
Defendants.

Thursday, September 27, 2018
Wise, Virginia

Deposition of

JOHN T. FLEMING,

a witness, was called for examination by counsel on behalf of the plaintiff, pursuant to notice and any and all purposes as permitted by law, taken at the law office of Jeremy B. O'Quinn, 532 W. Main Street, Wise, Virginia beginning at 9:00 a.m., before Rosemary P. Guthrie, Court Reporter and Notary Public for the Commonwealth of Virginia, when there were present on behalf

LINDA C. MILLER
Court Reporter
P.O. Box 124
Norton, VA 24273
(276) 679-1000

1 experiences with the plaintiff in this case,
2 Eric DePaola.

3 A Uh-huh.

4 Q Do you know Eric DePaola?

5 A Uh-huh.

6 Q Yes?

7 A Yes.

8 Q Who is Eric DePaola?

9 A He's an offender at Red Onion State
10 Prison.

11 Q How long have you known Mr.
12 DePaola?

13 A Five years.

14 Q You've know Mr. DePaola since
15 you've been a correctional officer at Red
16 Onion?

17 A Yes, sir.

18 Q Before you became a correctional
19 officer at Red Onion you had no interactions
20 with Mr. DePaola?

21 A No.

22 Q Do you know the crimes for which
23 Mr. DePaola was sentenced to prison?

24 A No.

25 Q Do you know what led to Mr.

1 DePaola being transferred to Red Onion?

2 A No.

3 Q Do you know whether Mr. DePaola is
4 assigned to particular pathway at Red Onion?

5 A No.

6 Q Do you know whether he is assigned
7 to the IM pathway?

8 A Yes, he's in IM.

9 Q What is the IM pathway?

10 A They go to Delta 6, which is an IM
11 -- well it's actually -- there's two phases of
12 IM closed pod now. There's Phase 1, which
13 Mr. DePaola is in, he's in Delta 4 now.
14 That's the first phase of IM closed and then
15 Delta 6 is IM Phase 2 closed.

16 In Delta 6 they get to walk to rec
17 and showers unrestrained. Once Mr.
18 DePaola makes it to Phase 2 he's -- I mean
19 it's technically a population pod but they're
20 still fully restrained. They come out and
21 they roll sports, they have jobs. Once he
22 makes it to the Phase 2 side of IM closed
23 pod he gets to walk to rec and shower
24 unrestrained. He still has a job, he rolls
25 sports.

LINDA C. MILLER
Court Reporter
P.O. Box 124
Norton, VA 24273
(276) 679-1000

1 Q Okay. So because I have no
2 experience whatsoever with Red Onion I'm
3 going to ask you just some basic questions.

4 So when you refer to the IM closed
5 pod, what are you referring to?

6 A It's Intensive Management, that's the
7 pathway that Mr. DePaola's on. It's kind of
8 hard to explain. It's the highest that an IM
9 can go without -- like every year a group of
10 higher individuals from the state come
11 together and they have a dual team meeting,
12 and then they can reclassify the IMs back to
13 SM status which lets them go to population.

14 So when he gets to the IM closed
15 pod that's as far as IMs can go until they
16 get reclassified to SM.

17 Q Do you know how inmates get
18 reclassified from the IM pathway to the SM
19 pathway?

20 A No, sir.

21 Q Who does that classification?

22 A Higher ups. They, it's people from
23 outside of the prison, from outside of Red
24 Onion. They come in, I think it's the head
25 mental health lady for the state, just a lot

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the record I'll note that Mr. Vorhis received a copy of the deposition notice well in advance of the deposition.

MR. O'QUINN: Sure.

[Signature waived.]

[The deposition concluded at 10:08 a.m.]



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Court Reporter
P.O. Box 124
Norton, VA 24273
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Exhibit 40



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Transcript of Michael Clayton Younce

Date: May 26, 2022

Case: Thorpe, et al. -v- Virginia Department of Corrections, et al.

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1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF VIRGINIA

3 RICHMOND DIVISION

4 - - - - - x

5 WILLIAM THORPE, et al., :

6 Plaintiffs, :

7 v. :

8 VIRGINIA DEPARTMENT OF : Case No. 2:20-cv-0007

9 CORRECTIONS, HAROLD :

10 CLARKE, et al., :

11 Defendants. :

12 - - - - - x

13
14 Virtual Videotaped Deposition of

15 MICHAEL CLAYTON YOUNCE

16 Thursday, May 26, 2022

17 9:02 a.m. CST

18
19 Job No.: 448365

20 Pages: 1 - 287

21 Reported by: THERESA A. VORKAPIC,

22 CSR, RMR, CRR, RPR

1 participated in it. A lot of the ICAs were 13:18:22

2 conducted by the lieutenant and the counselor with 13:18:26

3 other people present. 13:18:28

4 Q Would it vary from one meeting to the 13:18:30

5 next? 13:18:33

6 A It could. 13:18:33

7 Q Would it sometimes be just one person? 13:18:35

8 A No. 13:18:39

9 Q So it would always be multiple people? 13:18:41

10 A Yes, to the best of my knowledge. When I 13:18:43

11 did them, it was. 13:18:46

12 Q Would the prisoner participate in those 13:18:52

13 reviews? 13:18:54

14 A Yes, the ones I did, we did at the 13:18:56

15 prisoner's door where they could have input. 13:19:01

16 Q Okay. So that's where they would always 13:19:03

17 happen, at the prisoner's door? 13:19:05

18 A Mine. 13:19:08

19 Q Yes, yours. Would the prisoner be able to 13:19:09

20 make a statement during those reviews? 13:19:24

21 A Yes. 13:19:26

22 Q Were they long statements or relatively 13:19:33

1 short? 13:19:34

2 A Oh, lord, I don't remember, I mean, how 13:19:36

3 long the statements were. I guess it just 13:19:42

4 depended on what the particular offender wanted to 13:19:44

5 say. I can't remember what they were, to tell you 13:19:47

6 the truth. 13:19:50

7 Q How long would these reviews last? 13:19:57

8 A You mean time frame? 13:20:00

9 Q Uh-huh. 13:20:01

10 A I don't know, five minutes some of them, 13:20:06

11 some of them longer, depending on how much 13:20:08

12 interaction and how much discussion there was. 13:20:11

13 Q Do you recall the types of factors you 13:20:13

14 would take into account to make your decision? 13:20:18

15 A I do not. I'm sure whatever it was in 13:20:23

16 policy that we were going by was the factors. 13:20:26

17 Q Would you refer back to the policies 13:20:31

18 regularly? 13:20:35

19 A When I was working here, yes. 13:20:37

20 Q How would you schedule these 90-day ICA 13:20:51

21 hearings? 13:20:56

22 A The counselor actually scheduled them. 13:20:57

1 They would go around and serve the offender and 13:21:00
2 tell them they were going to have a hearing and 13:21:04
3 what date it was going to be. And then we would 13:21:05
4 go back and do the ICA hearing and the lieutenant 13:21:07
5 would go, whoever was assigned to do it. 13:21:10

6 Q Would you review the status rating charts 13:21:23
7 during those meetings? 13:21:27

8 A I don't remember to say if I did or 13:21:28
9 didn't. 13:21:33

10 Q Do you remember other documents you may 13:21:33
11 have reviewed during those 90-day ICA hearings? 13:21:35

12 A I do not. I don't remember what I would 13:21:39
13 have reviewed. 13:21:42

14 Q And would you keep records of these 13:21:47
15 reviews? 13:21:54

16 A Records of what? 13:21:55

17 Q Records of these reviews. 13:21:56

18 A I'm sure they were filed in the inmate's 13:21:58
19 file somewhere. 13:22:02

20 Q Do you know if somebody would be taking 13:22:04
21 notes? 13:22:06

22 A The counselor, usually. 13:22:06

Transcript of Michael Clayton Younce
Conducted on May 26, 2022

152

1	(A certain document was marked Younce	13:32:25
2	Deposition Exhibit 5 for identification,	
3	as of 05/26/2022.)	13:32:27
4	BY MS. DEMOULIN:	13:32:27
5	Q And this is a document that is marked	13:32:29
6	Bates No. VADOC-00061227.	13:32:31
7	I'll give you a minute to familiarize	13:32:55
8	yourself with the document since it's only one,	13:32:58
9	and you can tell me when you're ready.	13:33:00
10	A I'm ready.	13:33:02
11	Q Do you see the second half of the document	13:33:03
12	you have a line for internal status review and	13:33:05
13	then you have a line for administrative review.	13:33:07
14	What is the difference between those two	13:33:12
15	reviews?	13:33:14
16	A I'm not sure. I do not remember what the	13:33:27
17	difference was.	13:33:31
18	Q Do you know whether the administrative	13:33:31
19	review was -- how would I put this?	13:33:36
20	Do you know whether the administrative	13:33:45
21	review reviewed the decision of the internal	13:33:47
22	status review?	13:33:49

1 A I do not know. 13:33:55

2 Q Do you know if there were two different 13:33:57

3 reviews? 13:34:01

4 A No, ma'am, I do not. Without looking at 13:34:01

5 the policy, I do not. 13:34:06

6 Q That is totally fine. 13:34:13

7 I'm seeing here that you signed the 13:34:29

8 internal status review comments. Do you see that? 13:34:35

9 A Yes, ma'am. 13:34:42

10 Q And then you also signed the 13:34:42

11 administrative review; is that correct? 13:34:46

12 A That is the way it looks, yes, ma'am. 13:34:50

13 Q It looks to me like the internal status 13:34:52

14 review was the ICA review because it says "ICA 13:35:03

15 Younce, Michael." 13:35:11

16 Does that mean anything to you? 13:35:16

17 A Apparently, that means that I did the 13:35:18

18 review. 13:35:20

19 Q So that would be the ICA review? 13:35:23

20 A That's the way it looks, yes, ma'am. 13:35:25

21 Q That's also the way it looks to you. 13:35:27

22 Okay. 13:35:29

1 Was there a body that would review the 13:35:30

2 decisions of the ICA? 13:35:32

3 A Apparently, I reviewed the decision the 13:35:37

4 way it looks on this form. 13:35:40

5 Q Yeah. It looks that way to me, too. 13:35:42

6 And I was just curious whether there was a 13:35:45

7 formal process that would require you as the unit 13:35:48

8 manager to review all of the results of the ICA 13:35:51

9 hearings. 13:35:56

10 A I do not remember if I had to review them 13:35:57

11 all or not. I'm not a hundred percent sure. 13:36:00

12 Q Let's move on and talk a little bit about 13:36:04

13 the External Review Team, which I know you 13:36:11

14 mentioned you do remember some about. 13:36:16

15 A Uh-huh. 13:36:20

16 Q Do you have any recollection as to who 13:36:23

17 would have sat on the External Review Team? 13:36:27

18 A It was outside people from throughout the 13:36:30

19 state. 13:36:35

20 Q So you never sat on the External Review 13:36:38

21 Team? 13:36:42

22 A I sit -- I was in the external review one 13:36:42

1 So I'm on the same page we were just on, 14:21:53
2 which is Page 12, and it says -- Point E says: "A 14:21:55
3 corrections officer must inspect each restorative 14:22:04
4 housing unit cell whenever the inmate is removed 14:22:08
5 from the cell." 14:22:11

6 Do you see that? 14:22:12

7 A Yes, I do. 14:22:13

8 Q And then it says: "This inspection is a 14:22:14
9 general review of sanitation conditions and is 14:22:18
10 scanned for contraband." 14:22:22

11 A Yes, ma'am. 14:22:25

12 Q What kind of contraband did you find in 14:22:26
13 Building C? 14:22:30

14 A I don't -- I'm not sure what kind of 14:22:39
15 contraband we found. To say general things or 14:22:41
16 something specific, I don't remember. Several 14:22:46
17 things could be contraband. To say what type of 14:22:46
18 contraband we found, I don't remember. 14:22:50

19 Q Would the cell be searched every single 14:22:51
20 time the inmate goes to shower? 14:22:54

21 A As the policy says, it's to conduct a cell 14:22:56
22 inspection and it's not specifically searched. 14:22:59

Transcript of Michael Clayton Younce

Conducted on May 26, 2022

190

1 It's a cell inspection looking around. It's not 14:23:01

2 specifically searched to say. 14:23:07

3 Q I understand. So you could search it, but 14:23:08

4 you don't always do it? 14:23:12

5 A You could, correct. But it's more of a 14:23:13

6 scan for contraband, that type of search. 14:23:16

7 Q When a prisoner moved from IM 0 to IM 1 or 14:23:28

8 IM 1 to IM 2 and through the SM program, did that 14:23:36

9 affect your correction officer's workload due to 14:23:46

10 additional privileges being available to these 14:23:50

11 prisoners? 14:23:52

12 A I don't remember. I'm sure it did, but I 14:23:53

13 don't remember what the extra privileges was. I'm 14:23:55

14 sure it probably affected the work. 14:24:01

15 Q From our discussion so far, I can tell 14:24:03

16 doing a good job sounds important to you, but I 14:24:09

17 don't want to put words in your mouth. 14:24:12

18 Was doing a good job important to you when 14:24:14

19 you worked in Building C? 14:24:16

20 A My reputation, myself means more to me 14:24:22

21 than anything. And doing a good job is what's 14:24:25

22 always been instilled in me by my dad and other 14:24:27

1 people, and that's what I want to do. 14:24:31

2 Q Were there times where you felt unable to 14:24:37

3 do your job the way you wanted to? 14:24:41

4 A Not that I can recollect. 14:24:42

5 Q Were there ever any resources that you 14:24:53

6 thought would help you perform your job better? 14:24:55

7 A I'm sure there was, but to sit here and 14:25:04

8 think right now, I can't think of anything but I'm 14:25:06

9 sure there was at the time if I was still -- you 14:25:09

10 know, still here, I'm sure I could think of things 14:25:11

11 that would help. 14:25:14

12 Q I understand. 14:25:15

13 Did you have an opinion on the step-down 14:25:23

14 program when you worked in Building C? 14:25:25

15 A An opinion, no, ma'am. 14:25:33

16 Q Did you form one thereafter? 14:25:34

17 A No, ma'am, not really. 14:25:36

18 Q You obviously were already working at some 14:25:39

19 points prior to the step-down program being 14:25:42

20 introduced with special housing prisoners, right? 14:25:45

21 A Yes, ma'am. 14:25:50

22 Q Did you think that the step-down program 14:25:51

1 was an improvement over the situation that existed 14:25:53

2 prior to it being introduced? 14:25:58

3 A I did. 14:25:59

4 Q In what ways? 14:26:05

5 A As I stated earlier, it was something that 14:26:07

6 the offender could read and he knew exactly what 14:26:09

7 it took to get back to general population to give 14:26:11

8 them a laid out path of what they needed to do and 14:26:14

9 what they needed to complete in order to get there 14:26:20

10 instead of having to sit and wonder what you have 14:26:22

11 to do. 14:26:25

12 Q Was there anything else? That's enough 14:26:30

13 if -- 14:26:35

14 A That's all I can think of at the moment. 14:26:36

15 Q -- give you an opportunity. That's fair 14:26:38

16 enough. 14:26:40

17 MS. DEMOULIN: Would you like to maybe 14:26:52

18 take a five- to ten-minute break now and then 14:26:54

19 reconvene? 14:26:56

20 THE WITNESS: Yes, ma'am. 14:26:57

21 MS. DEMOULIN: What does everyone need, 14:27:01

22 the court reporter and everyone else, five or ten 14:27:02

Transcript of Michael Clayton Younce
Conducted on May 26, 2022

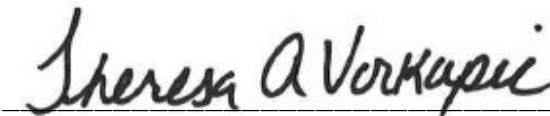
287

1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2 I, Theresa A. Vorkapic, Certified
3 Shorthand Reporter No. 084-2589, CSR, RMR, CRR,
4 RPR, and a Notary Public in and for the County of
5 Kane, State of Illinois, the officer before whom
6 the foregoing deposition was taken, do hereby
7 certify that the foregoing transcript is a true
8 and correct record of the testimony given; that
9 said testimony was taken by me and thereafter
10 reduced to typewriting under my direction; that
11 reading and signing was not requested; and that I
12 am neither counsel for, related to, nor employed
13 by any of the parties to this case and have no
14 interest, financial or otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal this 8th day of
17 June, 2022.

18 My commission expires November 6, 2023.

19 
20

21 THERESA A. VORKAPIC

22 NOTARY PUBLIC IN AND FOR ILLINOIS

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