

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

CHARLESTON DEPRIEST, ET AL.

PLAINTIFFS

VS.

CIVIL NO. 3:10CV663-CWR-FKB

WALNUT GROVE CORRECTIONAL
AUTHORITY, ET AL.

DEFENDANTS

HEARING

BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE
MAY 29TH, 2012
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFFS: MR. JODY E. OWENS, II
MR. ROBERT B. MCDUFF

FOR DEFENDANT EPPS: MR. JUSTIN L. MATHENY
FOR DEFENDANT BURNHAM: MR. WILSON D. MINOR

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

501 E. Court, Ste. 2.500
Jackson, Mississippi 39201
(601) 608-4187

1 (COURT CALLED TO ORDER)

2 THE COURT: You may be seated. Good afternoon.

3 MR. OWENS: Afternoon.

4 MR. MCDUFF: Afternoon, your Honor.

5 MR. MATHENY: Afternoon.

6 THE COURT: I'm waiting until my computer loads up. I
7 apologize.

8 (PAUSE)

9 THE COURT: Nijah, you can go ahead and call the case.
10 Do you have it?

11 THE CLERK: Yes, sir. The United States District
12 Court for the Southern District of Mississippi, Jackson
13 Division, *Charleston DePriest, et al., v. Walnut Grove*
14 *Correctional Authority*, Civil Action Number 3:10cv663.

15 (PAUSE)

16 THE COURT: Okay. I apologize. I'm trying to get up
17 on the system. We're here today because plaintiffs' counsel
18 has requested an emergency hearing on a matter that arose I
19 guess at Walnut Grove in the last either -- I assume in the
20 last 72 hours.

21 MR. OWENS: Yes, sir.

22 THE COURT: Okay. Mr. Owens, could you come forward
23 to explain to the court --

24 MR. OWENS: Good afternoon.

25 THE COURT: -- what you need.

1 MR. OWENS: Good afternoon.

2 THE COURT: Good afternoon.

3 MR. OWENS: Your Honor, on Saturday night going into
4 Sunday morning, class counsel was notified by a resident of
5 Walnut Grove's mother that she received a phone call that her
6 son had been in an altercation. He received --

7 THE COURT: What time did you all receive the call?
8 What time did you receive the call, approximately?

9 MR. OWENS: It was after 9 p.m., your Honor, on
10 Saturday night. We received a call, your Honor, that an
11 individual had been stabbed in the eye, had been attacked by
12 four individuals while at Walnut Grove and was in the intensive
13 care unit at the University of Mississippi Medical Center
14 having fluid relieved from their brain -- from his brain, your
15 Honor. At this point in time we assisted the individual in
16 trying to work with MDOC in allowing the mother to visit her
17 son.

18 But in light of this attack, the recent rape at Walnut
19 Grove that the court is aware of, as well as the recent
20 suicide, we thought it was prudent to bring this to the court's
21 attention, because even after the settlement, your Honor, it
22 seems that Walnut Grove is still in a state of chaos and
23 violence that is not a safe environment for any of the
24 residents there.

25 THE COURT: Is that all the information that the

1 plaintiffs' counsel received?

2 MR. OWENS: At that time, yes, your Honor. Since then
3 we have worked with Mississippi Department of Corrections and
4 Attorney General's Office to get an incident report and to find
5 out more information about what happened. We actually were
6 supplied with the incident report about two hours ago of 20
7 pages of the incident and what was alleged to have happened.

8 THE COURT: Do you know who prepared that report?

9 MR. OWENS: If I understand, your Honor, it was
10 prepared by the individual on staff at Walnut Grove.

11 THE COURT: Okay. You indicated that there were four
12 individuals who have -- that were alleged to have assaulted
13 this prisoner. Those individuals are inmates themselves or --

14 MR. OWENS: Yes, your Honor. There is some
15 discrepancy about that. We were told per MDOC that this
16 individual was involved in a one-on-one attack. However,
17 speaking to his mother who spoke to him in the intensive care
18 unit, he said that there was four individuals who attacked him.

19 THE COURT: Do you know if law enforcement has been
20 contacted?

21 MR. OWENS: No, your Honor, we're unaware of that at
22 this time.

23 THE COURT: You indicated that the court is aware of a
24 rape that has occurred there since --

25 MR. OWENS: Since the settlement was reached between

1 the parties, your Honor. This individual who was struck in
2 this attack was the individual who testified at the fairness
3 hearing on Walnut Grove and also at that same hearing the
4 individual testified of a rape he was a part of.

5 THE COURT: The individual who was stabbed in the eye.

6 MR. OWENS: No, this is a different individual, your
7 Honor.

8 THE COURT: Okay. But the individual who was stabbed
9 in the eye, how old is that individual?

10 MR. OWENS: That individual is 20, your Honor.

11 THE COURT: 20. Okay. So -- he's 20 or 21? I see --

12 (COUNSEL CONFERRED)

13 THE COURT: He's 21?

14 MR. OWENS: 21.

15 THE COURT: So the consent decree that specifically
16 applies to him is one -- is the one that's --

17 MR. OWENS: 18 and over.

18 THE COURT: -- over 18.

19 MR. OWENS: Yes, your Honor.

20 THE COURT: I guess at the time of the hearing there
21 was testimony that a rape had occurred. The court is aware of
22 at least the letter that was received that it shared with the
23 parties of a stabbing. So that's something in addition to what
24 either occurred on Saturday -- or that has actually occurred
25 since the hearing itself and since the court signed off on the

1 settlement agreement. Right?

2 MR. OWENS: That's correct, your Honor.

3 THE COURT: And the suicide occurred after the court
4 signed the settlement agreement as well. Right?

5 MR. OWENS: Yes, your Honor.

6 THE COURT: Are the plaintiffs aware of any other
7 things that have occurred that would go to any of the terms --
8 well, maybe that's too broad -- any other violent acts such as
9 those that have occurred and put the prisoners in harm's way.

10 MR. OWENS: Just a series of fights, your Honor.

11 THE COURT: Series of fights? Between the prisoners?
12 Only between the prisoners?

13 MR. OWENS: Yes, your Honor.

14 THE COURT: Not involving prisoners and guards or
15 anything.

16 MR. OWENS: Not to my understanding.

17 THE COURT: Okay. Has the plaintiff taken steps -- I
18 realize DOJ has done an exhaustive investigation at this
19 facility. Has the plaintiff taken any steps to contact DOJ
20 about any of these instances since the court entered the
21 settlement agreement?

22 MR. OWENS: No, your Honor.

23 THE COURT: What steps has the plaintiff taken to -- I
24 guess to effectuate its portion of the consent decree, its
25 obligations, that is, notifying either -- or I guess -- you've

1 hired your expert I presume.

2 MR. OWENS: Yes, your Honor. In addition, on May 8th
3 our expert -- plaintiffs' expert, Steve Martin, toured the
4 facility I believe with Deputy Commissioner Emmitt Sparkmann
5 and actually submitted the report to all parties on May 17th
6 addressing issues with the facility and observations including
7 custody, observations that -- and recommendations that included
8 staffing. And, in particular, Mr. Martin noted that the
9 facility was short-staffed and recommended improvements to deal
10 with not only the staffing but also suicide risk management.

11 THE COURT: How short-staffed did the expert find that
12 the facility was?

13 MR. OWENS: Your Honor, he kind of glosses over with
14 not specificity. But what we know today, we spoke to
15 Mr. Martin and also MDOC spoke to him, and personally he
16 recommended that the facility staff in some units could be
17 doubled as particular how many guards are on a particular pod
18 and control tower and a lack of a guard as a floater, because
19 he indicated that a series of attacks occur when guards walk
20 off the facility to transport an inmate to a particular portion
21 of the facility, and it could actually be doubled.

22 THE COURT: Does the plaintiff know if staffing is
23 reduced over the weekend as opposed to every -- you know, do
24 the number of correctional officers decrease because of just
25 regular tour of duty over the weekend? Do we have fewer CO's

1 there?

2 MR. OWENS: Your Honor, in most facilities we find
3 that to be the case. In this particular instance we talked to
4 Mr. Martin who also spoke to Mr. Sparkmann. As we understand
5 it, he looked at the staffing pattern for this incident -- when
6 this incident occurred and the facility was short-staffed at
7 that point in time. And, your Honor, Mr. Martin had indicated
8 that he is available for the court's inquiry at any time
9 including during this hearing or anytime subsequently.

10 THE COURT: Oh, okay. So should I talk with
11 Mr. Martin or is the plaintiff prepared to provide to me any
12 sort of recommendations either now or after I hear from the
13 State?

14 MR. OWENS: Specific recommendations would need to
15 come from Mr. Martin, your Honor. We do have a copy of his
16 report, but it doesn't go into specifically. I believe that a
17 conversation with Mr. Martin would provide the court the level
18 of clarity the court would probably want of individuals --
19 placement of individuals.

20 THE COURT: Okay. All right. Thank you, Mr. Owens.

21 MR. OWENS: Thank you.

22 THE COURT: And if I need to call you back, I will.

23 MR. OWENS: Yes, your Honor.

24 THE COURT: Mr. Matheny.

25 MR. MATHENY: Good afternoon, your Honor.

1 THE COURT: Good afternoon.

2 MR. MATHENY: Justin Matheny on behalf of Commissioner
3 Epps. And as I believe may have been noted, I have with me --
4 Deputy Commissioner Sparkmann is here today, and Wilson Minor
5 representing the department of education is also here.

6 THE COURT: Okay.

7 MR. MATHENY: Mr. Minor is counsel of record in the
8 lawsuit. Mr. Sparkmann, he's not an attorney. I just wanted
9 to point that out.

10 THE COURT: Okay.

11 MR. MATHENY: Your Honor, the State's prepared to
12 proceed in any way that the court would deem necessary. I can
13 explain and respond to Mr. Owens and some of the questions that
14 you had for him, but I also wanted to make sure that the court
15 was aware that Mr. Sparkmann is here to either address the
16 court -- address the court's questions either directly or from
17 the stand, however the court pleases, and can provide the level
18 of specificity with respect to some of the issues that have
19 been raised here.

20 But, just generally, if you will, your Honor, with
21 respect to the assault incident that was reported in the e-mail
22 to your Honor to -- prior to this hearing, this morning when I
23 got in the office and after being in contact with
24 Mr. Sparkmann, I got a copy of the incident report that was
25 prepared by the investigators at the facility that was the

1 20-page report that Mr. Owens referred to. And I'll be glad to
2 provide the court with a copy of that if it would please your
3 Honor.

4 THE COURT: Okay.

5 MR. MATHENY: If I could approach.

6 THE COURT: You may.

7 (DOCUMENT TENDERED TO THE COURT)

8 MR. MATHENY: Your Honor, I would also note that some
9 of the attachments to the report include medical records. And
10 so it may be if the -- if it's marked as an exhibit or treated
11 as an exhibit, it may be appropriate to redact that information
12 so that it doesn't appear in the public record.

13 THE COURT: Right. Okay.

14 MR. MATHENY: Basically, your Honor, based on the
15 report -- and I won't try to read it off to you, but what we
16 understand from the investigator who took statements from
17 witnesses and statements from the guards that were involved in
18 the incident, that it was pod 6D at the facility. And the
19 injured inmate, the one who was stabbed in the eye, was there
20 in the pod; and officers had come through the pod and asked
21 everybody to sit down. And then the floor officers left to go
22 secure a different pod.

23 When they left, the incident occurred. One inmate
24 stabbed the inmate in the -- around his eye. According to the
25 reports, another inmate tried to break up the fight. And there

1 was another inmate that was involved in the fight, so a total
2 of four individuals that were fighting together. But based on
3 the investigative report, it did not conclude that there were
4 actually four people that attacked the inmate that ended up
5 being stabbed.

6 I think, as Mr. Owens said, following the incident,
7 the tower guard who saw it going on called a -- what they refer
8 to as a code black, which is the emergency call. Guards came
9 in, got everybody down on the ground, put the individuals into
10 a cell confinement and sorted out what had happened. And the
11 inmate that was stabbed was transported to the hospital there
12 in Leake County and then on to UMC.

13 Following the incident, it's my understanding -- and
14 Mr. Sparkmann would certainly know more detail about this than
15 I, but I understand that plaintiffs' counsel contacted him and
16 sought to arrange for the victim's mother to visit with him at
17 the hospital. And I think that he also arranged for his
18 brother to visit him there while at UMC. And this was also
19 over the weekend, Saturday, Sunday -- Monday?

20 MR. SPARKMANN: Monday.

21 MR. MATHENY: It was on Monday, your Honor. The
22 report -- and you can read this for yourself, but the findings
23 of the report and the statements from the witnesses do not link
24 this up to any kind of connection to having testified at the
25 hearing -- the fairness hearing back in March in this court.

1 As it's described for you there in the report, the dispute was
2 between -- between the inmates.

3 THE COURT: How old was -- do we know how -- the age
4 of the inmate who committed the assault?

5 MR. MATHENY: Did you want the names of inmates, your
6 Honor?

7 THE COURT: I don't need the names right now, just the
8 age.

9 MR. MATHENY: Okay. The person who did the
10 assaulting, his age is 20.

11 THE COURT: Okay.

12 MR. MATHENY: One other thing that I think is -- I
13 think it's relevant to the incident, your Honor, is that pod 6D
14 where the incident took place is a medium security pod at the
15 facility. The inmate that had been stabbed had been in a
16 more -- a maximum security pod for various reasons and rule
17 violations prior to this date. He had been upgraded into the
18 maximum. And then after a period of good behavior, he had been
19 downgraded into the medium unit.

20 THE COURT: Did those upgrades occur after his
21 testimony before the court at the fairness hearing, or was he
22 at maximum -- was he classified for maximum treatment when he
23 came and testified?

24 MR. MATHENY: Back in March.

25 (COUNSEL AND MR. SPARKMANN CONFERRED)

1 MR. MATHENY: It was close, your Honor.

2 THE COURT: Yeah. I mean, if -- I tell what you, I'll
3 allow you to go ahead and finish yours and I'll get
4 Mr. Sparkmann up and we can ask him questions, because he
5 probably does have more information.

6 MR. MATHENY: Yes, your Honor. And as I understand
7 it, he had been in the maximum unit; and then over a period of
8 I think 12 months of good behavior, if you will, that's when he
9 was downgraded to the medium security.

10 Also important to that -- and the court may be aware
11 and this is, of course, something that Mr. Sparkmann can
12 explain better than I, but when -- when certain inmates are not
13 supposed to be put together with other inmates for whatever
14 reason, when they tag them as not supposed to be in the same
15 unit or, obviously, not in the same cell, then that's noted in
16 their file. And there was no notation in the file for these
17 two gentlemen that were involved in the altercation that they
18 should not be in the same pod together.

19 And, in fact, the -- as I understand it, the inmate
20 who did the -- who actually stabbed the other inmate had no
21 prior incidents that would have -- would have raised -- or
22 would have caused concern about him being in that particular
23 pod.

24 As to the -- and I'm sorry. I'm going to move on from
25 the -- that incident and address a couple of the other things

1 that Mr. Owens had raised.

2 Mr. Sparkmann, of course, can testify to this better
3 than I can, but he has brought the statistical and the data
4 printouts for the Walnut Grove facility which is broken down to
5 several pages of different kinds of incidents and things such
6 as searches for weapons, findings of weapons, contraband, uses
7 of force, several different types of statistical data, and can
8 explain to the court the types of incidents that have been
9 reported and that have been going -- the information dates back
10 from July of last year and going forward to April of this year.

11 The May data is not available yet because it's not
12 reported until the 10th of the month after. But he has that
13 information and could share that with the court which I think
14 would shed light on the important issue of the notion that
15 Walnut Grove has somehow become a more dangerous place or that
16 there's been more incidents following the consent decree as
17 opposed to prior to the consent decree and I think would shed
18 some light on that issue for your Honor.

19 The third thing -- and if Mr. Sparkmann had the best
20 information about my prior two subjects, this would definitely
21 qualify. But he has been working closely with Mr. Martin, the
22 plaintiffs' expert that Mr. Owens mentioned, in addressing both
23 the -- Mr. Martin's report and the staffing issues and the
24 suicide prevention issues. He has been working with him on
25 that.

1 And Mr. Sparkmann has also been involved in what the
2 court is aware of, as we've discussed at prior hearings, but
3 the fact that GEO's contract has been terminated and a new
4 company will be coming in to run the facility. And
5 Mr. Sparkmann is well aware of all the details that are going
6 place -- being put in place in order to be able to make that
7 transition happen.

8 So if it would please the court and you have further
9 questions that would go into more detail on these subjects,
10 we'd be happy to present Mr. Sparkmann either to testify or
11 address the court and answer your questions as you would see
12 fit.

13 THE COURT: All right. Mr. Sparkmann, you can take
14 the stand, please, sir.

15 **EMMITT L. SPARKMANN,**
16 having first been duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. MATHENY:

19 Q. Would you state your name for the record, please.

20 A. Emmitt Louis Sparkmann.

21 Q. And what is your job title and position?

22 A. Deputy Commissioner for Institutions, Mississippi
23 Department of Corrections.

24 Q. And could you describe for the court what your job entails?

25 A. I'm responsible for the oversight of the three state

1 prisons, 15 regional prisons and four private prisons. I'm
2 also responsible for classification, records, agriculture,
3 training, the agriculture program, and facility and
4 engineering.

5 Q. What are your responsibilities as they exist today with
6 respect to the Walnut Grove facility?

7 A. I have oversight. As one of the four private prisons, I'm
8 responsible for the oversight and report directly to the
9 commissioner on those matters.

10 Q. Mr. Sparkmann, I will try to address the subject areas the
11 same way that I laid them out when I was addressing the court
12 earlier. But specifically with respect to the assault that had
13 occurred at the facility on May 25th, when did you first find
14 out about that?

15 A. I learned of it Saturday morning, on May the 26th. I was
16 notified by the warden as to what had occurred and the
17 procedures he had put in place after it occurred. And he had
18 reported -- he was reporting to me after being -- they had
19 investigated the majority of the night as to the incident.

20 Q. Can you describe for us what information was relayed to you
21 and what your follow-up was?

22 A. The information that was relayed to me from Warden Tripp
23 was that there been an altercation between two offenders.
24 Offender Goodson I later identified and Offender Hardin was the
25 victim of the assault. And that he had been stabbed in the eye

1 and he had one other I believe puncture wound on his back and
2 that it was a one-on-one altercation involving a gambling debt,
3 and that he had received initial treatment at the facility and
4 then at the Leake Memorial Hospital and then transported to
5 UMC.

6 It was my understanding from the warden they had contacted
7 local law enforcement to investigate. They had retrieved the
8 video that had captured the assault where they were able to
9 identify the inmate that committed the assault and he had been
10 removed from the general population and placed in segregation.

11 They had conducted a search and performed interviews,
12 preliminary interviews, to make sure it wasn't a rival gang
13 issue or something that was planned as far as being some kind
14 of facility disturbance that involved numerous other offenders.
15 From their preliminary investigation it was basically a
16 disagreement over a gambling debt, not rival security threat
17 groups. And that the offender was stable at UMC, but they were
18 concerned that the eye injury was serious.

19 Q. What did you do to follow up once you received that
20 information from Warden Tripp?

21 A. I immediately had -- well, first thing I told him was to
22 send me a summary -- a short summary of the incident as best he
23 could off the information he had so that I could relay that to
24 our general counsel and also to the commissioner of
25 corrections. And then I contacted the commissioner to report

1 the incident that had occurred.

2 Q. When did you first have any interaction with plaintiffs'
3 class counsel about the incident?

4 A. I believe it was Sunday I believe is the first I received
5 contact, I believe an e-mail from Attorney McDuff about the
6 situation. And through e-mails and phone conversations, we
7 were able to work out a visit for the next day, which was
8 Monday.

9 Q. And when you say "visit," what did you mean?

10 A. Because the victim was in the hospital. So, typically,
11 unless it's life-threatening, we don't allow visits. But I
12 worked with Attorney McDuff to get the phone number and then --
13 of the mother and we were able -- eventually, what we decided
14 to do was to get the phone number of the mother to the warden
15 where they could directly correspond and communicate where they
16 could arrange the visit on Monday.

17 And then subsequently Monday, I believe it was -- I never
18 could understand if it was her brother or the victim's brother
19 had come to the hospital and that caused a little bit of
20 confusion; but we were able to work that out through the warden
21 and allow both of them to visit on Monday, as I understand it.

22 Q. Did you do any follow-up reporting to law enforcement or
23 any other type of agency regarding the incident?

24 A. No, sir. That would have been the responsibility of the
25 Walnut Grove Correctional Facility as -- the law enforcement

1 would be Leake County Sheriff's Department is their law
2 enforcement contact.

3 Q. Would that be the typical manner in which incidents at
4 Walnut Grove would be handled?

5 A. Yes. As the -- Leake County Sheriff's Department is the
6 chief law enforcement in the county. So they would have
7 jurisdiction in that matter. Now, if they had requested that
8 MDOC assist, we would have done so.

9 Q. Have they requested that you assist?

10 A. No, sir. To my knowledge, we've had no contact with Leake
11 County Sheriff's Department.

12 Q. When did you receive a copy of the investigation report
13 that we were talking about earlier?

14 A. Well, when we were -- while myself and the warden were
15 talking, he was talking about the investigation. I told him if
16 at all possible, I would like to have a preliminary
17 investigation as early as Tuesday so we could review it and see
18 if there were other measures that we needed to take in the
19 matter. And so I received that I believe -- I believe that I
20 received it this morning I believe.

21 MR. MATHENY: Your Honor, I wasn't sure if you wanted
22 me to ask him about all the subject areas or if you wanted to
23 break them --

24 THE COURT: You can proceed as you wish.

25 MR. MATHENY: Okay.

1 BY MR. MATHENY:

2 Q. Let me also ask you, Mr. Sparkmann, about the monthly
3 statistical reporting that you get from the Walnut Grove
4 facility. Can you describe how that works?

5 A. Each one of our facilities in the Institution Division, the
6 private prisons, the state prisons and the regional prisons,
7 are all required to submit a monthly report with specified data
8 that they have to report in. We also have -- it's a national
9 database that we compile the -- that's identified certain
10 categories that we use statistical analysis that are basically
11 developed on a national model, basically what we call the
12 counting procedures, are the same that's used everywhere
13 because you need to be comparing apples to apples.

14 So each month each facility submits a monthly report that
15 includes their staffing, miles driven, medical incidents,
16 assaults, searches, education programs they're offering. It
17 just gives you a picture of the facility and what's going on,
18 grievances. It's a very comprehensive report. I believe
19 it's --

20 Q. Lots of different -- lots of different areas.

21 A. Yes, sir.

22 MR. MATHENY: Your Honor, if I could approach the
23 witness.

24 THE COURT: Yes, you may.

25 MR. MATHENY: I have a copy for your Honor as well.

1 THE COURT: All right. Thank you.

2 (DOCUMENT TENDERED TO THE COURT AND WITNESS)

3 BY MR. MATHENY:

4 Q. Mr. Sparkmann, what is the document I just handed to you?

5 A. It's the Mississippi Department of Corrections monthly
6 report for the Walnut Grove Correctional Facility with data
7 from July 2011 through May 2012.

8 Q. And is this a --

9 A. I mean through April. I'm sorry. May hadn't --

10 Q. April 2012?

11 A. Yes.

12 Q. Is this a document that MDOC prepared itself?

13 A. No, sir. What happens is the facility staff prepare and
14 enter the data, and then it's reviewed by the MDOC, Mississippi
15 Department of Corrections, compliance officer that's on site.

16 Q. How is it transmitted to you, if you know?

17 A. It's electronically. It's on one of our electronic
18 databases. This has been shared previously. Prior to
19 Mr. Martin's site visit on May 8th, I shared this information.
20 And also he's requested -- we have what we call an
21 Extraordinary Occurrence Report that any kind of out of the
22 ordinary occurrence that occurs at the facility has to be
23 generated. And we shared those with him for a specific time
24 frame, I believe from April the 10th through May the 9th, I
25 believe, from my office so he could look at different -- the

1 data and what was occurring at the facility.

2 Q. You're referring to Mr. Martin, the plaintiffs' expert in
3 this matter.

4 A. Yes.

5 Q. If you would, could you turn to page 14.

6 (COMPLIED WITH REQUEST)

7 Q. When it comes to issues such as protection from harm and
8 staffing and the like, which of the categories in this
9 statistical data is most relevant for you when evaluating
10 what's going on at Walnut Grove?

11 A. Well, you use a lot of data to determine what's going on.
12 The first thing -- the reason it's across months is I want to
13 look at what changes from month to month. And I personally
14 review the monthly reports each month and -- to determine
15 whether -- if there's a reason, if there's a spike in a certain
16 area. Or if we've identified a problem, is it being addressed?
17 Has it been decreased?

18 But, you know, you look at -- you have your medical. You
19 want to know -- identify is medical services being provided.
20 Escapes, of course, is very important for public safety. As
21 you go through, looking at your assaults at the prison based on
22 were they just assaults where there was a victim or was there
23 fights, one-on-one fights? Were there weapons involved, with a
24 weapon? Were there serious injury?

25 And that's where -- when you start on page 14, it's more of

1 the database that we're submitting into the national database
2 to track. Sexual misconduct, whether staff assaults -- because
3 that's an indication of a problem. You want to ensure about
4 your -- of course, anytime there would be a homicide, that
5 would be something that --

6 Q. Are there categories of data listed there that are
7 specifically, in your belief, more relevant to issues like
8 inmate-on-inmate violence?

9 A. Yes.

10 Q. And what are those?

11 A. The ones I would really be very concerned about, of course,
12 are the -- the -- where you have the assaults with serious
13 injury.

14 Q. Could you point out what number that is so we could follow
15 along.

16 A. Okay. That would be -- with serious injury would be 2110.

17 Q. What page is that on?

18 A. Page 15. I'm sorry.

19 Q. 2110 on page 15?

20 A. Yes, sir.

21 Q. Okay. And what do the reporting figures there -- what do
22 those explain for us?

23 A. That tells us across -- of course, you've got reporting
24 from July 2011, and that the highest month during that period
25 was three. Across, there's never been any higher than three

1 within that time frame.

2 Q. Are there other areas that are important to being able to
3 assess issues with inmate on inmate?

4 A. Yes, you have inmate-on-inmate victims, inmate-on-inmate
5 assaults without serious injury, inmate-on-inmate fights,
6 inmate-on-inmate assaults by throwing substances. And that's
7 very -- you look at that because if inmates' going by another
8 cell, because sometimes that will lead to more serious
9 assaults. Then you have the staff assaults.

10 Q. And, just generally, in each category where they have a box
11 and a date listed, the number in there, does that represent the
12 number of reported incidents for each category?

13 A. Yes, sir.

14 Q. There are several of the categories that I see,
15 particularly on page 15, that talk about inmate incidents or
16 inmate-on-inmate incidents. Are there any other categories on
17 here that would be important to you in tracking that type of
18 activity that takes place at Walnut Grove?

19 A. Yes. You'd want to look at their use -- your uses of
20 force, because that's -- the higher the use of force, that
21 would indicate that they're having some disruptive activity.
22 What -- whatever the cause, you want to look at reasons for
23 that. Not to say it's something that's wrong, but you want to
24 look at anytime there's a spike. You want to look at
25 disruptive events.

1 You monitor your drug test, if there's been an increase in
2 drug -- positive drug tests, because that indicates there's a
3 lot of contrabands coming into the facility. You want to
4 ensure that staff are doing their searches, and with -- with
5 that number of searches, are there a number of weapons being
6 found. An indication to me that there may be the possibility
7 for potential violence is if all of a sudden you find a spike
8 in the finding of weapons. Whether it be there hadn't been any
9 assaults, but you've got weapons, maybe that's a planned
10 disturbance. Or if you've got assaults but they're finding a
11 lot of weapons, that means you've got a contraband control
12 problem.

13 All of those are key indicators that an experienced
14 facility administrator or central office person would look at
15 to see how the facility is operating and where the problem
16 areas are.

17 Q. And, again, you've provided this data with respect to
18 Walnut Grove to plaintiffs' expert in the past several months.
19 Is that correct?

20 A. Well, I provided him prior to the site visit, which that
21 way he could have measured from -- because this is a continuing
22 report of July through December. So he would have had the data
23 from July through I believe April. So he should have this -- I
24 believe he has this report.

25 Q. When was the site visit you were referring to?

1 A. I believe that was on May the 8th, I believe is when we had
2 the site visit.

3 Q. What did the site visit entail? What did you guys do?

4 A. Well, the first thing we did was had a prebriefing with the
5 warden and the chief of security. Just basically, Mr. Martin
6 outlined his basic -- how he as an expert operated and how --
7 what his procedures were. Then we went through the entire
8 facility.

9 He conducted private interviews with -- spontaneous
10 interviews and also with inmates identified. And I don't know
11 this for sure, but I believe for some interviews that names he
12 already had, but he did some spontaneous interviews also.

13 And during our tour of the facility he asked a lot of
14 questions, asking about what he observed. And then we had a
15 debriefing then that day and then continued the next day where
16 I -- we -- he and I went through the entire consent decree,
17 took what information we gathered from the on-site visit we
18 both made to kind of formulate a plan on how we'd proceed from
19 them.

20 Talked with the Mississippi Department of Corrections
21 general counsel, also with our -- because of our -- the data
22 we're able to obtain, I wanted him -- I introduced him to our
23 management information system kind of the person that does --
24 coordinates gathering the data for me so that he'd have -- know
25 that person personally and could assist him as he had requests

1 for documents.

2 And then he visited with the commissioner for a short
3 period of time just about what he intended, how he intended to
4 perform his duties for the court.

5 Q. What issues or types of issues did Mr. Martin identify that
6 you all needed to start working on?

7 A. Well, a couple of things that we felt like could be
8 addressed were immediately addressed. One was that the close
9 custody offenders were being -- receiving their meals in their
10 cell. And --

11 Q. I apologize. I hate to interrupt. When you say "close
12 custody," what does that mean?

13 A. That's the highest custody level that you can be. It's
14 not -- you have an administrative segregation status, but close
15 custody is the highest custody that you can be. And they had
16 been feeding those individuals, even though they were general
17 population offenders, in their cells.

18 And we talked about, you know, what reasons we couldn't
19 feed them in a group setting. And it was agreed that the
20 warden, Warden Brick Tripp, would initiate -- implement
21 immediately where they could be fed in a group setting. And he
22 agreed to do that, and it was implemented in the next few days.

23 We also identified that suicide-- basically, there was a
24 large number of inmates expressing an intent to do self-harm to
25 themselves. And Mr. Martin and I talked about that. And it

1 was a real concern, the system in place that -- it was
2 difficult for staff to identify those that had serious intent
3 to harm themselves versus those that were attempting to
4 manipulate housing and their situation or their status. And
5 there wasn't really an interdisciplinary team that could --
6 that was in place that had what we viewed as to do a correct
7 assessment, initial assessment and then a follow-up assessment
8 to identify those that had serious issues versus those that
9 were trying to manipulate.

10 So that became one of our -- one of our -- probably the
11 first thing that we identified needed to be addressed, that we
12 needed to totally revisit our suicide prevention plan at the
13 facility. And we talked about how we were going to do that.

14 Q. Let's talk about that in a little bit more detail. Since
15 the site visit and the discussion -- the initial discussions
16 with Mr. Martin, what have you all done to put in effect or
17 improve the suicide prevention issues?

18 A. Well, one, because it is the population that we had and
19 that the Oakley had, through a lot of revisions in their
20 suicide prevention, instead of really reinventing the wheel, so
21 to speak, we determined let's start out with Oakley's suicide
22 prevention plan and then we could modify, because our
23 population at Walnut Grove is a lot larger population.

24 Q. You're referring to the Oakley Training School?

25 A. Yes.

1 Q. Okay. So we obtained the copy of that suicide prevention
2 plan. And I called a meeting -- or general counsel called a
3 meeting, but I was able to get the parties together, Health
4 Assurance, which is -- provides medical, the GEO Group warden
5 and a select member of his staff, the private prison MDOC
6 official, myself, and the MDOC Office of Medical Compliance.
7 And we went through suicide prevention -- Oakley suicide
8 prevention policy, talked about what they had in place, issues,
9 what we would have to do to implement -- to be able to
10 implement it almost in its entirety.

11 Then we took it back, basically edited it to become a
12 Mississippi Department of Corrections suicide prevention plan
13 with forms -- forms, policies. And I believe it was Friday I
14 disseminated it out to the -- all the individuals that were in
15 the planning phase. And, hopefully, this week we'll have their
16 comments back on the draft document to begin.

17 Q. When you say individuals involved in the planning phase,
18 who are you referring?

19 A. Well, the initial planning and -- was our Office of Medical
20 Compliance, Mississippi Department of Corrections, Health
21 Assurance, GEO, the facility administration. We didn't involve
22 corporate, of course, because as of July the 2nd at midnight
23 they'll no longer be involved, but we wanted -- because the
24 facility is familiar with what the operations are now, to have
25 their input as to what the suicide prevention plan would be.

1 Q. So what is the current status of the new suicide prevention
2 procedures?

3 A. I'm waiting on comments to the draft that was disseminated
4 to those individuals. And then once I receive that, I'll share
5 it with the plaintiffs' expert and also the defendants' expert,
6 have those -- get their review and comments. My goal is to
7 have that plan finalized in the next week to ten days so we --
8 when the new operator comes in on July the 2nd, we can begin
9 training with a new vendor to put this in place.

10 Q. Could you explain to the court -- you had mentioned that as
11 of July 2nd GEO would be terminated. Can you explain where
12 MDOC is in that process and how it got there?

13 A. Yes. We requested proposals from the vendors that we were
14 aware of that offer services, both medical, mental health and
15 also prison operations. Some do it all and some just one
16 specific area, some just medical and some mental health. And
17 we closed out -- all the proposals had to be in Friday, May the
18 25th. Those proposals are in.

19 We have interviews scheduled for two of the major operators
20 this week, tomorrow and then Thursday. And, hopefully, the
21 commissioner will make a decision on the operator by Friday.
22 We're hopeful for that, optimistic on who we'll begin
23 negotiations with to work out an agreement. And then we'll do
24 a transition for approximately 30 days.

25 Q. What -- to the best of your knowledge, what do you

1 anticipate being part of this transition period that will be
2 upcoming?

3 A. Well, the main, to me, something that we'll have to work
4 through is we have staffing pattern based off what the
5 performance evaluation research to establish what the cost per
6 day can be for the state. It's been -- cost -- Planning
7 Evaluation Expenditure Research Division that works for the
8 legislature.

9 So one of the things we'll have to determine when we begin
10 our negotiations in -- and I've already asked Mr. Martin to be
11 involved and Dr. Austin involved in determine what the staffing
12 needs to be at the facility to provide a safe environment as to
13 where we come in and say, *It's going to take this much more.*

14 And that may exceed what PEER has established the cost per
15 day and then -- but we'll have to do that to honor the court's
16 decision and the consent decree that we have an agreed
17 staffing. But we'd all sit down at the table and talk about
18 staffing and where staff -- what -- the amount of staff we're
19 going to need to operate a safe prison.

20 Q. And the staffing issue -- not to backtrack too far, by the
21 staffing issue is another issue that Mr. Martin had brought up
22 following his site visit. Right?

23 A. The two -- you know, it's -- we had to establish a
24 beginning point. And the two issues that I -- I believe he
25 will agree with me that we agreed upon was the two most

1 important issues were the suicide prevention and the staffing.
2 And he -- and we talked about -- he took the information that I
3 gave him from the monthly report, from Extraordinary Occurrence
4 Reports that I described. And he was able to pinpoint certain
5 housing units in the facility where the majority of the
6 incidents occurred. And I believe those incidents were housing
7 unit 4 and housing unit 8.

8 And I relayed that -- shared his report with the warden of
9 the facility. Of course, GEO is discontinuing operations. So
10 even if they hired additional staff, they wouldn't be trained
11 and on board by the -- before they left. But we talked about
12 redeploying staff. And the warden has already done that to
13 where the protective custody unit is on 8, housing unit 8.
14 He's increased staffing there and working to increase staffing
15 at housing unit 6 (sic), because that's another housing unit
16 where they've identified that -- from what Mr. Martin and our
17 discussions are, the majority of the incidents occur in housing
18 unit 8 and housing unit 4 at the facility.

19 THE COURT: I'm sorry. I want to ask a question right
20 here at this point. You indicated that the warden or the
21 commissioner has increased the staffing right there.

22 THE WITNESS: The warden, your Honor, has deployed
23 more staff to housing unit 8 because once we shared that
24 information that more of the incidents were happening there, he
25 redeployed staff there as to make that effort.

1 THE COURT: Okay. Deployed more staff. Are those GEO
2 employees or are those MDOC employees?

3 THE WITNESS: GEO employees, your Honor.

4 THE COURT: Okay. So he will not have access to them
5 after June 30th or July 1 I presume unless the other -- unless
6 the other -- whoever you contract with maintains those
7 employees. Right?

8 THE WITNESS: Well, it's our intent when we negotiate
9 with the new agreement is that we have agreed staffing as part
10 of those negotiations to where in my -- and I believe it will
11 be more staff that we negotiate that into the agreement. And
12 our intent is, where we don't have that in any of our private
13 prison contracts now, that they have required staffing. And if
14 they don't meet that on not just numbers, but also the -- when
15 I say numbers of staff that are employed, staff on-site, what
16 we call mandatory posts. And if they don't man those posts,
17 there will be financial penalties. That's our intention with
18 the new agreement with the new vendor.

19 THE COURT: The warden currently is an employee of
20 GEO.

21 THE WITNESS: Yes.

22 THE COURT: So where he's found the areas understaffed
23 in the past, it's completely up to him to redeploy.

24 THE WITNESS: Basically, yes, sir. Well, what we're
25 doing right now is I've asked him to be evaluating what he felt

1 like if he continued as the warden what additional staff he
2 would need. He's under no obligation. He's told me he's
3 looking at that, to what improved staff -- what would improve
4 staffing for the facility. And I believe with the input he
5 provides, my knowledge of the facility and Mr. Martin's
6 knowledge, that we can come with a staffing that will make the
7 facility safer.

8 THE COURT: Other than potential civil liability
9 against the warden and/or GEO, what other incentive does he
10 have to redeploy staff or, I mean -- obviously, areas became at
11 some point in time even in the past understaffed, and I presume
12 this warden has stayed in place in everything else. Now that
13 this has occurred, he's decided I presume that areas need to
14 be -- that staff need to be redeployed. Is there any pressure
15 from MDOC or anything that sort of guides his behavior?

16 THE WITNESS: All we, your Honor, can -- it's just
17 standard terms of the agreement that they're to provide a safe
18 facility. Specific staffing requirements, no, sir, there's not
19 any in the agreement that we have right now.

20 THE COURT: And what is MDOC -- what has MDOC done
21 with the warden and/or GEO since getting the signed-off consent
22 decree? Has there been any specific discussions between the
23 two entities?

24 THE WITNESS: The -- with GEO -- with us discontinuing
25 operations, there wouldn't have been any time to -- even if

1 there had been an agreement, for them to have additional staff
2 on board.

3 THE COURT: What has MDOC done with respect to GEO to
4 make sure that -- I'm sorry. Wrong paper I held up -- to make
5 sure that GEO understood what was coming down the pike? I
6 realize portions of the consent decree says, you know, within
7 90 days, and, obviously, that takes you past July 1. But,
8 obviously, the spirit I believe of the agreement was that some
9 things would I guess occur immediately, because it says "at all
10 times prisoners will be provided a reasonably safe living
11 condition and will be protected from violence." That's at all
12 times regardless if the contract ended on June 30th or
13 whatever.

14 So right now GEO has to make sure that the inmates are
15 reasonably protected. Any discussions between MDOC and GEO
16 about the agreement as it exists -- or as it existed on
17 March 26th forward? I think it was March 26th.

18 THE WITNESS: I have shared the recommendation to
19 Mr. Martin and received a commitment from the warden to try to
20 implement those staffing recommendations.

21 THE COURT: Okay. You may proceed, Mr. Matheny.

22 MR. MATHENY: I just wanted to follow up for just a
23 second on that point.

24 BY MR. MATHENY:

25 Q. When the new contract is put in place, are there incentives

1 or penalties that you anticipate being part of the new contract
2 that would be consistent with obligations under the consent
3 decree?

4 A. Yes. It's our intent that staffing will be a staffing that
5 where the plaintiffs' expert, the defendants' expert, myself
6 and the new operator will come to an agreement on what the
7 staffing should be. And that will be a part of the new
8 agreement. And then if they don't meet those staffing
9 requirements, there will be financial penalties.

10 Q. Penalties to the new operator.

11 A. That's correct.

12 Q. Aside from the staffing implementations that you've already
13 mentioned, are there other things that have been implemented
14 right away at Walnut Grove in response to the discussions with
15 the plaintiffs' expert about the issues?

16 A. Well, first, we went through -- myself and the plaintiffs'
17 expert went through the entire consent decree and identified
18 things that couldn't be really done until we had a new operator
19 in place. One of the situations, there was a concern that
20 based on an inmate's behavior that maybe the housing unit was
21 placed on what we call lockdown. And we -- we voiced that
22 concern to the warden and told him it would not be tolerated
23 and it would be monitored closely. And, to my knowledge, since
24 that conversation, there's -- there hasn't been a problem
25 there, or I haven't received any complaints.

1 Mr. Martin in his interviews had heard concerns voiced by
2 the offender population that that was something that was being
3 done. So it wasn't a lockdown, but where inmates were placed
4 basically on -- their activities were limited for like a
5 weekend or whatever. So we put the warden on notice that that
6 was something that we were aware of complaints and we were
7 going to be monitoring it very closely.

8 Q. What about the 17-and-under inmates that are housed out?
9 What changes, if any, has occurred with respect to them?

10 A. The warden has taken the proactive approach and has removed
11 them, that they were not scattered. They're placed in one
12 housing unit so they can be monitored more closely, in 7C,
13 housing unit 7C.

14 Q. Is that unit separate and apart from other parts of the
15 facility?

16 A. It's a separate housing unit, but it's a part of the
17 facility.

18 Q. Are there any other changes that have been made in response
19 to discussions with the plaintiffs' expert about the issues
20 that we've been talking about?

21 A. Primarily, what was -- we wanted to focus on the two main
22 issues that we identified during -- from the statistical
23 reports that Mr. Martin had reviewed, based on what our
24 conversations, our personal observations and we felt like move
25 on those things that we could actually have an impact on

1 immediately. And we felt like those were the two critical
2 issues that were causing the most problems at the facility was
3 the suicide prevention plan and the staffing.

4 Q. What involvement, if any, has Dr. Austin had with the
5 process? Let me ask it better. Who is Dr. Austin? Explain
6 for the court, who is Dr. Austin and what involvement has he
7 had in the process?

8 A. Dr. James Austin is the defendants' expert, as I understand
9 it. And his involvement is that he's reviewed the suicide
10 prevention plan. He made the same recommendations that it
11 needed to be more detailed, needed to be more -- have a more --
12 interdisciplinary team, which we all recognized upon reviewing
13 and discussions of what could do -- what we could do to improve
14 that.

15 He'll be looking at as far as classifications, which that's
16 one of the issues that we looked at in this instance where the
17 two offenders classified correctly based upon objective
18 classification. He hasn't been able to make a scheduled site
19 visit. He has previously visited Walnut Grove; whereas,
20 Mr. Martin, as I understand it, I believe that was his first
21 site visit.

22 Q. I hate to backtrack, but I had overlooked this earlier and
23 I do want to go back and make sure that we covered all the
24 details about the assault incident that we had been talking
25 about. I guess -- I think this is important to discuss because

1 earlier I had presented to the court some information about the
2 classification of the inmates that were involved.

3 Can you just briefly describe what the classification
4 system is? How did they get -- how did they end up in medium
5 or maximum security?

6 A. What -- your Honor, what we have is what we call objective
7 classification that it's validated. It's been determined
8 reliable. It's a system we use. And we have different custody
9 levels. There's minimum community custody, which offenders can
10 be -- work in the community without direct correctional staff
11 supervision. Then we have minimum restricted, which they are
12 out -- allowed to work what we say outside the fence without --
13 not being under the gun, but they have to be correctional --
14 under correctional supervision.

15 Medium custody is offenders that they -- it's really the --
16 the majority of our offenders are medium custody. And anytime
17 they're outside the fence, they have to be under the gun. Then
18 our highest custody is close custody which they require real
19 close supervision when they're doing jobs, even they should be
20 under direct observation at all times.

21 Then you have different statuses. You have protective
22 custody status, which is not a -- you can be any of the
23 custodies and be on protective custody. And you have
24 administrative segregation status that is an inmate that he has
25 committed such a serious rule infraction that he has to be

1 isolated from the other offenders. And then -- which it's not
2 applicable to Walnut Grove, then there's death row.

3 And it's a scoring system that's based on their age, their
4 crime. Have they had a history of escape, a history of
5 violence against other offenders, rule violation reports inside
6 prison. And there's a scoring mechanism that you reach. And
7 once you -- if you score 11 points, you would be close custody.
8 I believe it's between five and ten is medium custody, and
9 below five is minimum.

10 But there's certain restrictions. A good example, a sex
11 offender might score out with a two, but he couldn't be
12 working -- he couldn't be a minimum community. It would have
13 to be a nonviolent crime. And then it's electronically scored.

14 And we do that annual reclassification. It's scheduled
15 every year from the date of entry; but if something changes, if
16 an inmate -- a good example, the inmate that committed the
17 assault, if he's found guilty of that, that would initiate a
18 reclassification to where he would score because he had an
19 assaulted rule violation report. That would kick his scores
20 up.

21 Q. And let me ask you, after you were notified of the incident
22 over the weekend with the assault, did you have an opportunity
23 to look into the classification for the two inmates that were
24 involved in the incident?

25 A. Yes.

1 Q. And what, if anything -- what did you find as to whether or
2 not they had been appropriately classified per the policy for
3 that particular unit?

4 A. Based on the information I had, the assailant had been
5 there since January and he was initially classified medium. He
6 had no incident reports. So he fell into the medium custody
7 range. Offender Hardin had had some serious rule violation
8 reports, possessions of weapons back in 2010, I believe two
9 occasions. And that kicks your score up. But he had clear
10 disciplinary rule violation reports for a good number of
11 months. So we, in prison terminology --

12 Q. When you say "clear," what does that mean?

13 A. No rule infractions. And when -- in prison terminology,
14 what we use, those points roll off after a period of time. So
15 it rewards in positive behavior. So it scores so many points
16 for rule violation reports typically for a year. If it's an
17 assaulted offense, it can go for an extended period of time.

18 But because of that, his objective score was lowered and he
19 was able to reach the medium custody range. So then he was --
20 he qualified to go from close custody to medium custody.

21 MR. MATHENY: One moment.

22 (PAUSE)

23 MR. MATHENY: That's all the questions I have.

24 THE COURT: Okay. Does the plaintiff have any
25 questions of this witness?

1 MR. MCDUFF: Yes, your Honor.

2 THE COURT: Okay.

3 **CROSS-EXAMINATION**

4 BY MR. MCDUFF:

5 Q. Afternoon, Mr. Sparkmann.

6 A. Good afternoon.

7 Q. Was Warden Tripp given a copy of the consent decree?

8 A. Yes, sir.

9 Q. Do you know if anyone else in GEO was given a copy? Did
10 you all transmit one to any other officers of the GEO or to its
11 corporate headquarters?

12 A. I -- I couldn't say what our legal provided them.

13 Q. Okay. Do you know if Warden Tripp -- did he tell you if he
14 provided a copy of it to GEO management?

15 A. No, sir.

16 Q. Okay. He didn't tell you.

17 A. No, sir.

18 Q. Okay. All right. Now, the -- you talked about the
19 deployment of additional staff to zones -- to units 4 and 8.
20 Is that staff that was taken off of other units to be moved to
21 those particular units?

22 A. Well, what Mr. Martin during his walk-through observed is
23 there's one unit I believe that has seven offenders that are
24 long-term segregation, which ties up a good number of staff.
25 And he talked about being able if we could change those -- move

1 those inmates into -- just basically assimilate those into an
2 existing segregation unit, that they could take that staff and
3 deploy them. That was one of the ideas he had.

4 And I basically talked to Warden Tripp about that. And I'm
5 sure he has to get approval from his corporate officials before
6 he can do that, but that was some of the -- with the existing
7 staff, talking about where we could redeploy staff by moving.

8 And even as we went further into it, the close observation
9 unit, moving some of maybe -- if it was -- if we were able to
10 implement the suicide prevention plan -- this wouldn't be while
11 GEO was operating it, but it changed to how we identified
12 those -- how we addressed the suicide or self-harm gestures,
13 that that might make more staff available.

14 Q. Okay. So I just want to make clear that when you earlier
15 referred to deployment of additional staff, you were talking
16 about movement of staff consistent with the recommendations of
17 the plaintiffs' expert, Mr. Martin.

18 A. Yes.

19 Q. Okay. But not -- GEO has not hired any additional staff,
20 have they?

21 A. No, sir.

22 Q. Okay. And am I correct that GEO has an obligation under
23 the contract to provide a safe and secure prison, but that GEO
24 makes the decision about how many people to hire? Is that
25 correct?

1 A. That's correct, sir.

2 Q. Okay. And MDOC is responsible under the consent decree,
3 but GEO makes the decision about how many people to hire.

4 A. That's correct.

5 Q. Now, Mr. Martin --

6 A. If I could say.

7 Q. Yes.

8 A. Under the consent decree, if we were -- once a staffing
9 plan is agreed upon, then that would be -- that was where we
10 would have to -- whoever the operator is, if it had continued
11 to be GEO, which it's not going to be, there would have had to
12 have been an amendment to the contract to incorporate that
13 agreed upon staffing because we'd have a court order there.

14 Q. I understand. I want to come back to that in a minute.
15 But for purposes of the next month and for purposes of the past
16 however long GEO's been operating this prison, GEO's been the
17 one that makes the decision about how many people to hire.
18 Right?

19 A. That's correct.

20 Q. And Mr. Martin did a report on May the 17th that was shared
21 with both parties, and in there on page 3 he said -- do you
22 have a copy of it?

23 A. Yes, sir.

24 Q. Okay. On the fourth line he said, "The shift rosters
25 reviewed for a seven-day cycle in April indicate that only on

1 rare occasions are all housing zones in the pods fully
2 staffed." Do you agree with that statement?

3 A. Yes, sir.

4 Q. And do you agree that that statement is reflective not
5 simply of that seven-day cycle in April, but of conditions
6 generally since GEO has been in charge of that prison?

7 A. There was never a determined staffing as to how many had to
8 be in the housing unit. I agree with that.

9 Q. And do you agree that not on that seven-day cycle in April
10 but prior to that seven-day cycle and since that seven-day
11 cycle, that only on rare occasions are all housing zones in
12 pods fully staffed?

13 A. I couldn't because I hadn't -- I'd have to go on -- because
14 I know we had the staffing rosters, but I don't have the
15 staffing prior to that. So I couldn't testify to that.

16 Q. What about since then?

17 A. The -- there has been some changes in that housing unit 8
18 from my understanding from the warden the staffing has
19 increased.

20 Q. Okay. But what he says here is that only on rare occasions
21 are all housing zones in a pod fully staffed. Would you agree
22 that that's the condition at the current time?

23 A. Well, when we say "fully staffed," I -- what I would
24 testify to is that there is not a staff member present for each
25 zone.

1 Q. Okay.

2 A. It hasn't been established that that's the staffing
3 requirement.

4 Q. That it hasn't been established by contract.

5 A. That's correct.

6 Q. That's what you're saying.

7 A. Yes.

8 Q. Okay. But --

9 A. Or any other document that established that there had to be
10 a staffing person in each zone -- in each housing unit.

11 Q. Okay. Now, the -- the last sentence in that paragraph,
12 Mr. Martin says, "Moreover, the facility routinely operates
13 without a dedicated cadre of utility officers necessary for a
14 variety of support service functions such as recreation,
15 escorting and other ancillary areas of the facility." Do you
16 agree with that statement?

17 A. Yes, sir.

18 Q. Now, Mr. Sparkmann, do you agree that the understaffing
19 described by Mr. Martin contributed to the incident of last
20 Friday where Mr. Hardin was stabbed in the eye?

21 A. I couldn't say that that contributed to it because even if
22 you would have had someone right there, from what I -- what I
23 recollect as the -- how the incident occurred, I don't believe
24 a -- that would have prevented it. That's just speculation
25 because --

1 Q. Right.

2 A. -- he came up without any prior notice and from -- and,
3 again, I'm testifying from the reports I've received. And that
4 he assaulted without any warning of any kind. And so it would
5 have been very unlikely that someone could have prevented the
6 assault.

7 Q. Okay. But according to the investigation that you've
8 received, no guard was present on the zone at the time the
9 stabbing occurred. Is that right?

10 A. That's correct, but I can't testify that if one had been
11 present that that would have stopped the assault.

12 Q. Sure. But I gather that assaults generally occur less
13 frequently if a guard is present than if a guard is not
14 present. Do you agree with that?

15 A. It's according to the situation. I'd have to testify to
16 that.

17 Q. I'm asking generally. Generally speaking.

18 A. Well, generally, and when you -- if you take that
19 situation, there is a -- the person was being observed, because
20 someone saw the assault occur.

21 Q. Yes. But in terms of a guard being present on the zone, an
22 assault is less likely -- is less likely to occur than if a
23 guard is not present. Would you agree with that statement?

24 A. I'd have to say yes.

25 Q. Okay. With respect to the staffing, I'm -- GEO has I guess

1 one more month where they're operating Walnut Grove. Are there
2 payments that will be made to GEO under the contract that will
3 be made after July 1 --

4 A. I'm not sure.

5 Q. -- for services previously rendered? In other words, GEO I
6 assume gets paid every so often under the contract. Is that
7 right?

8 A. My understanding of the contract is they're paid a per diem
9 for how many inmates are at the facility on a given day.

10 Q. And their contract requires them to operate a safe and
11 secure facility.

12 A. That's correct.

13 Q. Do you know whether any payments are made after the fact?
14 In other words, they'll be leaving on June 30th I guess. Will
15 some money still be owed by MDOC to GEO after July 1?

16 A. They will bill the department of corrections because
17 they're billed on a monthly basis.

18 Q. Okay.

19 A. So, as I understand it, they would bill at later date for
20 June 1st through June -- I guess through July the 2nd at
21 midnight, because there's only two days in that month.

22 Q. Given the sort of understaffing or inadequate staffing
23 that's described by Mr. Martin in his report, could the MDOC
24 tell GEO that in order to fulfill its requirement of providing
25 a safe and secure facility during these remaining 30 days it

1 needs to send some additional personnel from some of its other
2 corporate operations to help out at Walnut Grove during the
3 last month?

4 A. I don't believe we'd have any -- they'd have any
5 contractual obligation.

6 Q. Well, they do have a contractual obligation to provide a
7 safe and secure facility, don't they?

8 A. Well, I don't -- I'm not an attorney, but I don't -- it
9 doesn't require staffing and I -- I'm -- I couldn't answer if
10 you could require them to or not. That's something legal would
11 have to advise me on.

12 Q. Okay. The recommendations that Mr. Martin made about
13 redeployment, particularly to zone 4 -- or to pod 4, the --
14 when were those accomplished? Do you know?

15 A. I didn't -- I didn't said they'd accomplished zone 4.

16 Q. I thought you did?

17 A. I said housing unit 8.

18 Q. And I thought you said 8 and 4.

19 A. I said I recommended and discussed with Warden Tripp about
20 housing unit 4, but that hadn't been implemented yet.

21 Q. Okay. Is he going to be implementing that recommendation?

22 A. He's attempting to get approval, as I understand it.

23 Q. From GEO?

24 A. Yes.

25 Q. But did you say this: Have more personnel been assigned to

1 zone 8 as to this point?

2 A. That's what I -- he has informed me of that.

3 Q. That has happened.

4 A. Yes.

5 Q. And he's waiting on approval for -- why does he have to
6 have approval from corporate to move staff from one zone to
7 another? Do you know?

8 A. Well, anytime you're shifting staff, because it -- that
9 involves moving inmates from another housing unit, the part of
10 the plan Mr. Martin had -- was closing down a housing unit,
11 moving inmates into another area, I'm sure they want to look at
12 the liability situation on moving those offenders into another
13 housing unit.

14 Q. Do you know how long ago he contacted corporate about the
15 particular recommendation of increasing this -- of deploying
16 staff from one unit to unit 4?

17 A. No, sir.

18 Q. And do you have any idea from Warden Tripp as to when he
19 expects to hear back from the corporate headquarters about
20 that?

21 A. I have not received a date.

22 Q. Did he give you any suggestion of when he would hear?

23 A. No, sir.

24 Q. Okay. Mr. Sparkmann, regarding the prisoners who are under
25 18 --

1 A. Yes, sir.

2 Q. -- the consent decree, I believe, provides that by December
3 they will be moved to Central Mississippi Correctional
4 Facility. Is that right?

5 A. That's correct, sir.

6 Q. Is there a possibility that they can be moved sooner in
7 terms of preparation of CMCF?

8 A. Are you -- in my opinion?

9 Q. Yes.

10 A. No, sir.

11 Q. Okay.

12 A. And for these reasons, we've got to hire staff. There's
13 got to be some physical plant modifications, that -- we're
14 going to have to create positions. Those renovations will
15 take -- and then we're going to have to train staff because --
16 to -- because -- well, the decision's been made that this is
17 going to be a totally different operation, policies and
18 procedures. So that's going to take time there.

19 Q. Now, in terms of the current housing unit, you mentioned
20 they -- are they now all in unit 7C?

21 A. Yes, sir.

22 Q. Are any inmates who are older than 17 in unit 7C?

23 A. I can't testify. I don't believe there are, but I couldn't
24 say that for a fact.

25 Q. Okay. Is that something you can check on --

1 A. Yes.

2 Q. -- and report back to us about?

3 A. Yes, sir.

4 Q. And you said that in terms of the suicide prevention
5 policies, that you expect comment back from the people who are
6 reviewing it within a week to ten days. Is that right?

7 A. I'm hoping to have the comments back from the ones that
8 were in the initial meeting this week. And then I want to
9 share it with the plaintiffs' expert and also the defendants'
10 expert, have their comments before we move any further forward.

11 Q. And do you have any sort of rough idea of when that suicide
12 prevention plan can actually be implemented?

13 A. I'm -- it's going to require the new operator, because
14 we're going to have -- it's going -- they're going to have to
15 be trained. And from what -- studying the policy from Oakley
16 juvenile, it's an eight-hour training. So it will take a
17 period of time to get those trained. We're -- also it's going
18 to require 24/7 mental health at the psychologist level
19 available. So I -- I anticipate fully implemented, I'm
20 optimistic, August the 1st. I'm -- that's my -- that's my
21 goal.

22 Q. Okay. And is there going to be a new medical provider at
23 Walnut Grove?

24 A. I'm not -- right now the individuals -- the group we're
25 involved in talking about implementation and has agreed in

1 principle to what we talked about with the Oakley policy is
2 Health Assurance.

3 Q. That's Health Assurance. And is their contract -- I guess
4 I'm wondering, is their contract up for renewal just as GEO's
5 contract would have been?

6 A. I believe it's -- I believe it's existing and continues.
7 So I don't believe there's any intention of changing it.

8 Q. Okay. Let me go back to, if I can, briefly to Mr. Hardin,
9 the man who was stabbed in the eye and who's in the hospital
10 now. Do you have any idea of how long he's expected to be at
11 UMC?

12 A. No, sir.

13 Q. Okay. Do you have any idea what -- whether there is a plan
14 afterwards to -- once he leaves UMC, to send him elsewhere for
15 treatment, like to the Parchman hospital or some other place?

16 A. That would be determined after the 72 hours. Well,
17 Dr. Perry, our Office of Medical Compliance, will determine
18 what his treatment plan is after his release from the hospital
19 as far as medical.

20 Q. And when you say "after 72 hours," what do you mean?

21 A. I misspoke on that because I don't believe the 72 hours
22 applies to Walnut Grove.

23 Q. Okay. Mr. Sparkmann, you were kind enough to arrange for
24 Mr. Hardin's mother to see him in the hospital. We have --
25 none of us -- none of his lawyers have had a chance to visit

1 with him because we didn't want to interfere with her visit.
2 Would it be possible to arrange it so that someone from -- one
3 or two people from our -- from the plaintiffs' attorneys' team
4 could go visit him in the next day or so?

5 A. As long it's attorney of record. And that's what the
6 policy -- I'll sure make every attempt to work with you on
7 that.

8 Q. Thank you very much. And once we get a HIPAA release, can
9 you also help us, if we need help, in expediting a copy of his
10 medical records so we can look at his medical records?

11 A. Dr. Perry and her office I'm sure will accommodate you on
12 that, but I don't want to speak for her on that. But I've
13 never found her not to be cooperative.

14 Q. Good. Thank you. Do you know -- did someone on staff at
15 Walnut Grove notify Mr. Hardin's mother on Saturday of this
16 injury?

17 A. I can't -- I couldn't speak to that. I don't -- I don't
18 know.

19 Q. Do you all have -- I know you and I talked about another
20 injury recently to an inmate at East Mississippi Correctional
21 Facility. And, again, you were kind enough to help us arrange
22 a visit for his mother and you allowed one of the lawyers to
23 visit him as well. But what is the general policy -- I'll ask
24 for Walnut Grove specifically -- of notifying parents when a
25 prisoner is injured so badly that he has to go to the hospital

1 and spend the night in the hospital?

2 A. Unless it is life-threatening and the medical -- Office of
3 Medical Compliance on the visit request would make that
4 determination. They make the first determination on if his
5 life is in danger. And then the follow-up, then the warden
6 would be contacted as to security requirements as to whether a
7 visit could be allowed based on the security.

8 Q. I'm not talking about a visit. I'm talking about just
9 notifying the parents.

10 A. It's not a -- unless it life-threatening.

11 Q. Parents aren't even notified --

12 A. No, sir.

13 Q. -- unless it life-threatening.

14 A. Now, that will change with the 17 and younger because we're
15 going to revise our policies.

16 Q. And in light of the fact that Walnut Grove is under a
17 consent decree and you have -- once we have alerted -- once
18 we've alerted you to things we've learned, you've been very
19 cooperative with us and shared information. Would it be a
20 problem for you all, once you learn of incidents at Walnut
21 Grove that send someone to the hospital overnight, to at least
22 inform the attorneys about it in case we don't otherwise hear
23 about it?

24 A. Well, my protocol is to contact our attorneys and --

25 Q. Okay. They can inform us.

1 A. Yes, sir. I don't want to --

2 Q. I understand. But you can contact them right away when
3 something like this occurs.

4 A. Yes, sir.

5 Q. Okay.

6 A. And that system is in place.

7 Q. You -- just a few more questions, Mr. Sparkmann. Page 15
8 in the monthly statistical reports.

9 A. Yes, sir.

10 Q. I was looking at item 2106. That's inmate-on-inmate
11 completed nonconsensual -- looks like "nonconsensual." Do you
12 know what goes after "nonconsensual"? Is that sexual assault?

13 A. I believe so.

14 Q. Or sexual contact?

15 A. I believe so.

16 Q. And then 2170 is inmate-on-inmate attempted nonconsensual,
17 presumably sexual contact.

18 A. Yes.

19 Q. 2180, allegations of inmate-on-inmate nonconsensual, again
20 presumably sexual contact. 2190, inmate-on-inmate abusive
21 sexual contact. 2200, allegations of inmate-on-inmate abusive
22 sexual contact.

23 And I'm trying to sort of figure out the differences
24 between those. In some places there's -- two of the entries
25 have "allegation." Does that mean allegations have been made,

1 but the prison officials have not confirmed whether they were
2 true?

3 A. They were not substantiated.

4 Q. They were not substantiated. So that means an
5 investigation was done and they were not substantiated.

6 A. And I'd -- I'd have to provide the definitions.

7 Q. Okay.

8 A. This is -- we're using the national defining criteria as to
9 what -- what makes it fall into a certain category. So I can't
10 recite them from memory. So I think it would probably be
11 better to provide -- our research division could provide you
12 the specifics on what it -- what makes it fall into what
13 category.

14 Q. Okay. That would be great if y'all could do that. That
15 would be very helpful.

16 A. And, in fact, I'll just ask them to provide for all the --
17 not just those, for all of them, if that's okay.

18 Q. And do the officials at Walnut Grove who do this reporting,
19 do they -- do they have these definitions?

20 A. Yes, sir.

21 Q. Okay. I'm -- just three more categories of questions, very
22 quickly. We had -- we'd heard from Mr. Hardin's mother. She
23 somehow got the impression that there was another Walnut Grove
24 inmate in the UMC intensive care unit. I don't want to ask
25 about any names or any details. But do you know if there is

1 another inmate there?

2 A. Not to my knowledge. Attorney -- I can't say for a fact
3 without checking, but I don't believe there is.

4 Q. Okay. I know you said you had not personally spoken to the
5 Leake County Sheriff's Department, that that's a responsibility
6 of Walnut Grove. Have you been told whether or not they
7 contacted the sheriff's department about this incident?

8 A. As I recall it, when the warden gave me his initial
9 briefing, that he was contacted -- not he, the sheriff's
10 department.

11 Q. Okay. The last thing I want to ask you about is the new
12 vendor in the transition. What happens on June 30th when GEO
13 leaves? You had talked about a transition phase. How long do
14 you anticipate that transition lasting?

15 A. It's July 2nd at midnight is when the GEO is --

16 Q. I'm sorry. July 2nd. And then is there a transition phase
17 after that?

18 A. No, sir.

19 Q. You mentioned transition phase.

20 A. The transition, once we -- we establish who the new vendor,
21 which I hope to be this Friday --

22 Q. Okay.

23 A. -- because we're going to do our interviews and we'll begin
24 negotiations, but even in negotiations, there will be a
25 transition, that 30-day period of where they will start

1 interviewing the staff that are present there, bringing in
2 their policies and procedures, their post orders, making sure.
3 And that transition will run from -- basically, from June the
4 4th to July the 2nd when they take over operations.

5 Q. So GEO leaves and the new vendor moves right in.

6 A. They're right in.

7 Q. Okay. And I assume they will keep some staff. Some point
8 they may -- they may remove some people, hire other people.

9 A. You know, it stands to reason that -- it's a small
10 community -- the majority of the -- what we call line staff and
11 mid-managers I anticipate will stay in place, unless there's
12 some reason during interviews that they decide not to offer
13 them employment. As far as the higher upper management, GEO
14 may offer them positions and -- and I'm sure MTC will interview
15 them and determine whether they want to bring in some of their
16 own managers from other sites or if they want to offer them
17 employment.

18 Q. You mentioned "MTC." Is that a --

19 A. MTC -- there's two. MTC and LaSalle Southwest are the two
20 companies that are scheduled for interviews.

21 Q. Okay. Now, you mentioned that plaintiffs' expert, Steve
22 Martin, and the MDOC expert, Dr. James Austin, are going to
23 make recommendations to you about what staffing levels are
24 necessary to comply with the consent decree. Is that right?

25 A. Kind of what I envision the way it's going to work is we'll

1 take the existing staffing and sit down and either do a
2 conference call or, hopefully, I'd like to see us even, if we
3 could all get together and go through it and -- because all
4 three of us have experience, and the new operator, whomever
5 that may be, and sit down and go through and talk about
6 positions here, positions there, what is needed, why this one
7 would be -- or his deployment. Just like what Mr. Martin
8 talked about, do we need to deploy more here? Where do we need
9 additional staff? Could we do some of it with just
10 redeployment? Just basically have a roundtable as to what
11 type -- what the staffing, and then come to an agreement on
12 what -- hopefully, come to an agreement on what the staffing
13 needs to be.

14 Q. With the vendor.

15 A. Yes, sir.

16 Q. And do you believe the staffing is going to -- in order to
17 comply with the consent decree, that you're going to need more
18 staff than Walnut Grove currently has?

19 A. In my personal opinion, yes.

20 Q. And your plan is to -- I want to make sure I'm right about
21 this -- in terms of these negotiations is to obtain as part of
22 the contract or part of the written commitment an agreement by
23 the new vendor to provide the staffing levels that you all
24 believe are appropriate.

25 A. Well, and when -- it's going to be a situation where we all

1 sit and talk about the staffing, you know. And I -- when I say
2 I believe it's going to be more, if someone -- if someone could
3 convince me they could operate it and do the services that
4 we're all comfortable with with the existing staffing -- I'm
5 not sure that's -- in my opinion, somebody's got to show me
6 that. But I'm not going to say you have to have. But you
7 asked me what my opinion was.

8 Q. Right. But whatever you end up believing at the end of the
9 day is necessary, you're going to require that of the new
10 vendor. Is that right?

11 A. When we all -- part of it is -- in the consent decree is
12 that the plaintiffs and the defense will agree with the
13 staffing pattern.

14 Q. Okay.

15 A. So once we agree on it and we present it to them, that --
16 my intent is to recommend to the commissioner it be part of the
17 total agreement.

18 Q. Okay. Because I believe our time line provides that from
19 90 days after March 26th, there is I believe a proposal put
20 forth by MDOC as appropriate staffing pattern and we review
21 that. And that may not be completed until after your contract
22 negotiations are complete, that process.

23 A. Well, by June the 26th we should have the staff because
24 they'll be -- whomever the vendor is will be selected in early
25 June, hopefully on the first day of June. So the staffing will

1 begin -- talks begin at that time. So I see no reason that we
2 can't establish what the staffing can be by that June 26 -- it
3 won't all of them be employed, trained and in place, but at
4 least we'll know what that staffing number -- that's -- that's
5 my intent.

6 Q. And has the consent decree been shared with both of the
7 vendors who have applied --

8 A. Yes.

9 Q. -- for the contract?

10 A. Yes.

11 Q. And do you anticipate that your contract will require the
12 vendor who is selected to comply with the consent decree?

13 A. Absolutely.

14 MR. MCDUFF: One moment, your Honor.

15 (COUNSEL CONFERRED)

16 BY MR. MCDUFF:

17 Q. Mr. Sparkmann, we talked about staffing at Walnut Grove.
18 Does MDOC have staff available at other institutions that it
19 could spare to go to Walnut Grove during this last month while
20 GEO is sort of leaving the place? Because you can imagine
21 we're a bit concerned that GEO doesn't care that much anymore.
22 They're just ready to get out. They haven't been providing
23 enough staffing previously, and that someone else may have to
24 take steps to ensure that the staffing is adequate. So that's
25 what I'm asking is whether MDOC has the resources to do that.

1 A. In my opinion, we're staffed to the -- minimal staffing is
2 what we provided at our facilities. Also I'd be very concerned
3 about bringing in staff that wasn't trained on that facility
4 and bringing them in. In my opinion, it would cause more
5 disruption than it would provide a benefit. That's my opinion.

6 MR. MCDUFF: Your Honor, I have nothing further.

7 THE COURT: All right. Mr. Matheny, do you have
8 anything in redirect?

9 MR. MATHENY: A couple of follow-ups, your Honor, if I
10 may.

11 THE COURT: Okay.

12 **REDIRECT EXAMINATION**

13 BY MR. MATHENY:

14 Q. Mr. Sparkmann, you had talked with Mr. McDuff about
15 policies and procedures for the staffing and the suicide
16 prevention that you're working with Mr. Martin on completing.

17 A. Yes, sir.

18 Q. So I can be clear, where in the process are you with the
19 suicide prevention policies?

20 A. We have a draft that went to the parties that are present
21 right now, GEO on-site, MDOC Office of Medical Compliance,
22 Institution Division and Health Assurance, and they're
23 reviewing those policies.

24 Q. And when are -- or at what point will those have to be
25 reviewed by Mr. Martin and plaintiffs' counsel?

1 A. Well, I'm -- hopefully, once I get comments from those
2 parties back in, then I would share with Mr. Martin. And I'm
3 sure he'll -- well, I'll share it with the Attorney General's
4 Office who will share it with the plaintiff and then they'll
5 share it with Mr. Martin. I would say a week. Hopefully, this
6 week, but no longer than a week.

7 Q. But would it be fair to say that it depends upon all the
8 parties that are involved in conducting their reviews and -- to
9 develop the best policies for the suicide prevention as
10 possible?

11 A. Yes, sir.

12 Q. I also wanted to make sure so we could be clear about the
13 staffing. Is it fair to say that the recommendations that were
14 in Mr. Martin's report that you discussed with Mr. McDuff, that
15 those are just part of the overall staffing policies that will
16 need to be developed and put into place?

17 A. Yes, sir. What he was identifying was the immediate areas
18 that he felt like needed to be addressed with some
19 recommendations. But as far as the overall facility staffing,
20 we're having -- hopefully, the facility is going to -- people
21 that manage the facility day-to-day will be honest and open
22 with us because GEO's leaving about what they actually feel
23 could operate the -- what they need to operate the facility.

24 Q. And like the suicide prevention policies, those staffing
25 policies, that's going to require input from more than just

1 Mr. Martin and plaintiffs' counsel and the attorneys. Is that
2 right?

3 A. Yes, sir.

4 Q. So before they can be put into place, what all -- what kind
5 of review or who all needs to review it before it can be
6 finalized?

7 A. Well, you're going to need the facility management team.
8 You're going to need my and the private prison staff to review.
9 You're going to need Dr. Austin to review it. Mr. Martin, of
10 course. When you're looking at staffing, you're not just
11 looking at correctional staffing. You're going to need to look
12 at the medical staffing, the mental health staffing, treatment
13 staff as to what treatment needs are, all those folks, and have
14 their input.

15 I mean, I can sit at my desk and decide or Mr. Martin or
16 whatever, but I think a collaborative effort -- and that's what
17 we're trying to do now is to have the best staffing plan, the
18 best suicide prevention plan that meets the needs of the
19 facility put in place.

20 Q. And right now you are on track to have those staffing and
21 suicide prevention policies completed and reviewed and gone
22 through the process, you know, on time.

23 A. I believe so. Yes.

24 Q. Last thing I wanted to ask you, Mr. McDuff at several
25 points had raised issues about asking GEO to do this or that

1 and decisions that GEO makes. With respect to the staffing,
2 have you made any request or recommendations to GEO regarding
3 staffing that they have not complied with?

4 A. No, sir. And to be frank and honest is our training
5 requires seven weeks. So hiring additional staff, they would
6 need -- they would not be on board. And it would be past their
7 contracts when they would be able to be able to perform as
8 independent employees. So there's no guarantee that the new
9 facility would offer those individuals employment. So I just
10 don't believe we can do that.

11 Q. And why would it be important to follow that process with
12 regard to the staffing before adding any new guards?

13 A. Well, one of the things, you want a stable workforce and
14 you don't want to put an untrained person out there. An
15 untrained person in some incidents would be worse than having
16 somebody at all. They can cause more problems. So you need
17 trained staff that know -- had went through the required
18 training so they can perform their duties and responsibilities
19 successfully.

20 Q. Thank you, Mr. Sparkmann.

21 THE COURT: Okay. We're going to take a 15-minute
22 break for my court reporter. Mr. Sparkmann, you may step down
23 for now, but I will have some follow-up questions. And I will
24 give each of the counsel an opportunity to follow up on the
25 questions that I ask. We're going to take a 15-minute break

1 for the court reporter.

2 (RECESS)

3 THE COURT: You may be seated.

4 **EXAMINATION**

5 BY THE COURT:

6 Q. Mr. Sparkmann, I have some follow-up questions with respect
7 to what I'll call Exhibit 2, the monthly reports. You
8 indicated that there are certain definitions. I guess there's
9 a table or a glossary of definitions that people know about?

10 A. Yes, your Honor. There's a -- basically, a manual for the
11 back -- that back section from --

12 (EXAMINED DOCUMENT)

13 A. Starting at, your Honor, I believe about 850 is where
14 there's a -- we have a manual. It goes into a national
15 database that we compile, which is submitted to us from each
16 facility. And then it goes into a national database for --
17 most of the correction systems in the United States participate
18 in it, and they wanted a uniform data collection.

19 Q. And I presume the term "serious injury," "serious" is
20 defined?

21 A. Yes, sir.

22 Q. Okay. And that would include -- do you know what "serious
23 injury" includes, or what it excludes?

24 A. Your Honor, I --

25 Q. I don't want you to be guessing, but in your view, the word

1 "serious injury "-- because it's listed there in 2110,
2 "assaults with serious injury."

3 A. From what I understand, it's -- and I -- I'm almost
4 positive, it's any kind of injury requiring more than typical
5 first aid.

6 Q. Now, I do know -- also I do know that at one time DOJ
7 was -- and I have not gone back and looked at the Department of
8 Justice findings, and I don't know what period of time those
9 findings take place. But I guess my question is, do those
10 findings go beyond July 2011, some of the incidents that they
11 reported in their report? Do you know?

12 A. Your Honor, I believe their report was prior to July 2011.
13 I believe. I'm not positive, but I believe that's correct.

14 Q. Okay. It may be that they did not go beyond March 2011.

15 (PAUSE)

16 Q. Now, with respect to incidents that occur at the facilities
17 such as Walnut Grove, is it the department of corrections'
18 position that -- does the -- well, is it the department of
19 corrections' position that it is the responsibility of GEO to
20 contact law enforcement officers or law enforcement authorities
21 and do all the follow-up and make sure that the local law
22 enforcement authorities are apprised of everything?

23 A. That's required -- if a criminal act is committed, it's
24 required in our policies and procedures that they would contact
25 local law enforcement.

1 Q. Okay. And what does MDO -- that who would? GEO would.
2 Right?

3 A. Yes, sir.

4 Q. Okay. And what does MDOC have in place to make sure that
5 is actually done?

6 A. Our compliance officer monitors that on-site.

7 Q. Okay. And, obviously, GEO -- I mean MDOC -- once it's
8 reported to law enforcement, it doesn't do anything else.

9 A. We don't follow up. No, sir. It's the decision of local
10 law enforcement whether to pursue it or not. Now, if local law
11 enforcement -- if it something we receive additional
12 information -- our corrections investigation division in some
13 cases will receive information about -- say, an incident
14 happened and maybe something comes to their attention, they'll
15 work with law enforcement on that -- on that particular case.

16 Q. Has MDOC learned what item, piece of equipment, what was
17 used to stab this inmate with? What was actually used?

18 A. My understanding was it was a piece of metal. It was not
19 recovered. It's believed that the offender or -- was able
20 to -- or someone was able to flush it down a toilet. They have
21 the high-pressure toilets, and they assume -- because there was
22 a search of the -- of the housing unit and the offenders in the
23 area and they weren't able to locate the weapon. And so they
24 spec -- and it's pure speculation that it was flushed in the
25 toilet.

1 Q. What steps does it -- well, back during our hearing back in
2 March, the court learned that correctional officers were
3 involved in and affiliated with gangs, for example. What has
4 MDOC done to investigate on its own whether the item was
5 provided to the individuals by one of the guards?

6 A. In this incident here?

7 Q. In this incident here.

8 A. We hadn't --

9 Q. MDOC has -- I know the statements were taken by GEO.
10 Right?

11 A. Yes, sir.

12 Q. GEO is doing the investigation.

13 A. The administrative part, yes, sir.

14 Q. Right. But this court has already determined that GEO's
15 employees, right, I think, were involved or have been involved
16 in gang-related activity? So has MDOC taken upon itself
17 anything to, you know, make sure that the -- that those in
18 charge of investigating are not those same ones who actually
19 perpetrated the -- or who were actually involved in the
20 misconduct, if any?

21 A. The safeguard there, your Honor, would be that the Leake
22 County Sheriff's Department would be doing the investigation of
23 the assault. And so during their interviews, if that
24 information were to come forward, I'm confident either they --
25 if they felt comfortable -- if they didn't feel comfortable

1 contacting GEO officials, they would contact the Mississippi
2 Department of Corrections and said, you know, as a sister law
3 enforcement agency with MDOC, that *We discovered that GEO*
4 *officials were involved in providing or were involved in the*
5 *assault.*

6 Q. Now, if it is determined -- I guess this goes down to the
7 fundamental question here. If it is determined that this place
8 is not adequately staffed, what can the State of Mississippi --
9 what can MDOC do to make sure that it's adequately staffed
10 while the new contract -- or prior to the new contract being
11 implemented with the next vendor? What is it that MDOC can do?
12 In your view, can MDOC require GEO to bring on new -- to bring
13 on additional employees, not necessarily new employees? I
14 mean, what is it that MDOC can do, in your view?

15 A. In my view, your Honor, all we can do is make a request of
16 GEO that there are incidents and they need to increase
17 staffing. You know, if it's determined there was insufficient
18 staffing in a housing unit at a certain particular time and
19 request for additional assets, then they would be under no
20 obligation contractwise. By the time we litigated it or had a
21 dispute over the agreement, the contract would, in my opinion,
22 end.

23 Q. So, ultimately, whose responsibility? Maybe this is a
24 question I asked Mr. Matheny. But, ultimately, whose
25 responsibility is it to make sure that at all times prisoners

1 are to be provided with a reasonably safe living condition and
2 will be protected from violence and other physical or sexual
3 abuse by staff and other prisoners? Whose responsibility is
4 that? Is it MDOC's responsibility or it is GEO's
5 responsibility?

6 A. By the agreement, GEO is responsible, your Honor, I mean.
7 But, ultimately, legally, I -- I'm not -- I don't have a legal
8 degree. MDOC would have to be the ultimate responsibility.

9 Q. Now, you indicated earlier that when they're -- only in
10 cases of life-threatening injuries is a family member notified
11 of when the inmate is admitted or sent to the hospital, only in
12 life-threatening injuries.

13 A. Yes, sir.

14 Q. So there --

15 A. Yes, your Honor.

16 Q. Potentially, there -- any injury that is not -- I mean, you
17 know, life-threatening means a lot. If someone got their
18 finger cut off, for example, that would not necessarily be
19 life-threatening. Right? And the family might not be
20 notified.

21 A. That's correct, your Honor.

22 Q. And in this instance here, the guy was only stabbed in the
23 eye. I realize there may be some damage or some fluid on his
24 brain or something like that. Did MDOC consider that a
25 life-threatening injury?

1 A. Well, we -- MDOC, it would be up to our medical authorities
2 to advise us if it was life-threatening.

3 Q. Okay. In this instance was the family members -- was a
4 family member notified or did they --

5 A. I --

6 Q. Excuse me.

7 A. I wasn't advised that it was life-threatening by the
8 medical officials.

9 Q. You were not advised?

10 A. No, sir. That's a --

11 Q. So there was no need for MDOC to notify the family even in
12 this instance?

13 A. It would be the responsibility of GEO to notify -- if their
14 medical officials or Health Assurance had advised them this is
15 life-threatening, then at that point they would have contacted
16 his emergency contact.

17 Q. Okay. That would be GEO. GEO would contact.

18 A. Yes, your Honor.

19 Q. Only in cases where there was an injury that was
20 life-threatening.

21 A. Yes, your Honor.

22 Q. And the medical side or Health Assurance or whoever it was
23 makes that determination as to what is life-threatening.

24 A. Yes, your Honor.

25 Q. Now, are the attorneys for the state notified of all

1 incidents where the -- a prisoner is sent to the hospital for
2 an injury sustained?

3 A. That would be a judgment -- I'm notified of any serious
4 incidents. And then it's based on my judgment or the person --
5 if I'm out of state, the person that's acting in my capacity
6 would make the decision if it was serious -- a serious enough
7 incident to where the attorneys would be contacted.

8 Q. Okay. Now, is the -- are you, as the deputy commissioner,
9 notified of only the serious injuries or all injuries, I mean,
10 that calls for reporting to the hospital?

11 A. It's dependent upon the type incident that -- you know, if
12 an offender had chest pains and went to the hospital, they're
13 going to file -- they do what we call an Extraordinary
14 Occurrence Report. Anytime an offender leaves, I would be
15 notified electronically by a report.

16 Like on this situation here because it was assault with a
17 weapon, I was contacted telephonically. But I review daily --
18 99 percent of the time every day I review all the extraordinary
19 occurrence reports for incidents that happen within the state
20 at the four state -- the four private, 15 regional and three
21 state prisons. So if I have a question as to what happened,
22 then I would contact -- I contact them.

23 Q. Is that -- is that the responsibility that falls on your
24 shoulders only? I mean, because you said 15 sites plus -- 15
25 correctional institutions --

1 A. Yes, sir.

2 Q. -- plus four privately run ones.

3 A. Yes. Yes, your Honor.

4 Q. That's 19. And I think you may have mentioned a couple
5 others. You may have. I don't know.

6 A. Electronically I'm notified of those incidents and I -- and
7 if -- with Walnut Grove I review them closely. And if it's a
8 determination I need to contact our general counsel and the
9 Attorney General's Office, I do so. And I immediately did so
10 with this situation here. I generated an e-mail and told them
11 that there had been an incident.

12 Q. But I guess my question is, are you the only one who
13 receives that information on a daily basis?

14 A. No, sir. The extraordinary occurrence reports goes to all
15 upper management.

16 Q. Okay.

17 A. What I -- what I -- I personally review them daily. Even
18 when I'm off duty, I review them to make sure that I know
19 what's going on in the system unless I'm somewhere that doesn't
20 have access, remote access.

21 Q. Okay.

22 THE COURT: I have no more questions. Either side may
23 follow up based on the questions that I've asked.

24 MR. MCDUFF: Nothing further, your Honor.

25 MR. MATHENY: Your Honor, I didn't have any questions,

1 but I did want to clear up two little items real quick.

2 THE COURT: Okay.

3 MR. MATHENY: The first item was the exhibits. We had
4 been talking about them earlier today, and I realized that I
5 had forgotten to ask to have them marked. So I was going to
6 ask if -- I think you referred to the statistical printout as
7 Exhibit 2.

8 THE COURT: Right. The ones that you gave me I will
9 mark. I will allow you to do a redacted one for the one that
10 contains those medical records, or we could file them under
11 seal, whichever pleases the parties.

12 MR. MCDUFF: Your Honor, I'm going to object to the
13 report being admitted as an exhibit at this time. It's a
14 preliminary investigation. It's not complete. It's hearsay.
15 And I guess it is a business record, but this incident only
16 occurred a few days ago. We certainly haven't had a chance to
17 look into it. And I would hate for the record just to be this
18 report. So for that reason, we'd object to it. If the court
19 does want to admit it, I'd ask that it be put under seal.

20 THE COURT: Okay. The court will admit it under seal,
21 just for my reference. In case I make any future findings, I
22 might rely on something that was presented to the court today.

23 MR. MCDUFF: Thank you, your Honor.

24 MR. MATHENY: I did want to make sure that we took
25 care of that item. The other thing, your Honor, was I didn't

1 have a chance to go through the entire document with a
2 fine-tooth comb, but in looking back at the DOJ findings that
3 your Honor mentioned earlier, it's my understanding from
4 looking back through here that it's referring to events and
5 records from 2009 and 2010, prior to the statistical data that
6 appears on Exhibit 2 that Mr. Sparkmann was discussing.

7 THE COURT: Exhibit 1 will be the report and it will
8 continue to be under seal. The GEO report, I guess this is the
9 report of -- report of investigation. And number 2 will be the
10 monthly reports, the statistical data. And the court is only
11 making these a part of this record because they're referred to
12 at this hearing. And if the court needs to have the parties
13 supplement in any way, it will. I'm not suggesting at all that
14 to find that the investigation, number one, is complete; number
15 two, I'm not in any way finding that it's thorough. Well,
16 those points are clear to me.

17 MR. MATHENY: -- I believe Mr. Sparkmann has the
18 original from Exhibit 2 that he was testifying from, if I could
19 give that to the court.

20 THE COURT: That will be fine.

21 (EXHIBITS 1 AND 2 MARKED)

22 THE COURT: All right. Mr. Sparkmann, you may step
23 down for purposes right now. You may be recalled.

24 I realize it's 4:19. When I started this, I asked the
25 plaintiff what they might recommend or be inclined to request.

1 And I do know the plaintiff mentioned that their expert was
2 actually here. I have room on my calendar in case we go beyond
3 this afternoon, and I'll just tell the parties I do have
4 tomorrow -- portions of tomorrow open. I actually have all day
5 open, but I don't expect anything to take all day. But I want
6 to let you know that on the front end in case we get bogged --
7 in case you do want to call your expert and we do and I have,
8 you know, more questions than you might have anticipated. So I
9 just tell you that now. But you may call your next witness
10 or --

11 MR. OWENS: Your Honor, point of clarification, our
12 expert is actually not physically here.

13 THE COURT: Oh, okay.

14 MR. OWENS: Mr. Martin is available by telephonic
15 conference if need be, but he's not physically here.

16 THE COURT: All right. Well, you may proceed then.

17 MR. OWENS: Your Honor, in light of MDOC's admission
18 and -- of the staffing deficiencies at Walnut Grove and
19 commitment to work on those staffing deficiencies with the new
20 contractor, as well as MDOC's by the commissioner to facilitate
21 our ability to be able to interview our client tomorrow at the
22 hospital and offer to expedite those records however possible,
23 at this time we'd like to talk to our experts before asking the
24 court of any other relief. However, we are amenable to any
25 other relief the court would deem appropriate at this time as

1 well.

2 THE COURT: Okay. Any response, Mr. Matheny?

3 MR. MATHENY: Briefly, your Honor. What I believe
4 that Mr. Sparkmann's testimony here today established was that
5 the consent decree as we know -- you didn't need the testimony
6 to establish this. The consent decree says what it says, and
7 it has time frames and requirements that were -- that we
8 negotiated for months and appeared before the court and were
9 approved.

10 And the implementation of the staffing policies --
11 development and implementation of the staffing policies and the
12 suicide prevention and the other things that are required of
13 the Walnut Grove facility per the consent decree, I believe
14 Mr. Sparkmann's testimony established that he's working closely
15 with their experts and that things are on track to comply with
16 the agreement.

17 And as Mr. Owens indicated, some of the smaller,
18 relatively minor issues that have come up in terms of being
19 able to have a visitation with the inmate in the hospital and
20 other things is something that can be worked out with the
21 parties. And the State is committed to resolve those issues.

22 So with all that in mind, respectfully, your Honor, I
23 don't believe that any relief from the court is necessary at
24 this time. With respect to this incident or anything -- I'm
25 not even sure what they've asked for, your Honor, to be clear.

1 But I know that my position is that they should not be granted
2 any relief as we sit here today.

3 Instead, MDOC would like the opportunity to continue
4 to work in good faith with plaintiffs' counsel and plaintiffs'
5 expert and comply with the consent decree, which we believe we
6 are in compliance with as we stand here before you today, your
7 Honor.

8 THE COURT: Okay. I'll just be candid with you,
9 Mr. Matheny. I realize the State -- I guess since this matter
10 was heard back on March 26th, the court has received evidence
11 or allegations or admissions that four serious things have
12 occurred since the parties signed off on their consent decree
13 and submitted it to the court, I do believe.

14 I think at the hearing the testimony established that
15 there was some fracas that occurred a few days before the
16 hearing, that Monday. I think the hearing was on a Thursday,
17 and that preceding Monday there was a fight on the premises in
18 the presence of a guard or two. I think the testimony
19 established there was not enough guards there, I think.

20 I know Mr. Owens mentioned a rape and the letter that
21 the court received about a month ago that he shared with the
22 parties on May 11th, evidence of a stabbing and a suicide. Now
23 you have this additional stabbing. So I realize the parties
24 have worked together on the time frame.

25 My real concern, though, is, as I heard from the State

1 today, there is nothing that the State can do to increase the
2 amount of security, the number of correctional officers there.
3 GEO I assume has no incentive to invest in the cost of
4 providing additional CO's at Walnut Grove because they are
5 about to -- well, they have announced to the world that they're
6 going to pick up their -- they're going to pick up whatever
7 they have there at Walnut Grove and leave June 30th. So they
8 have no incentive I think to invest money or capital, whatever
9 it is, for additional correctional officers.

10 And what I heard Mr. Sparkmann say is that there's
11 really nothing that the State can do because they don't
12 withhold payment on the -- he doesn't know whether or not the
13 contract allows the State, for example, to sort of dock GEO for
14 this instance, for example, because GEO only has to submit
15 its -- I presume submit its invoice at the end of June or,
16 for example, at the end of May.

17 So for June -- for the month of May, for example, all
18 they're going to do is submit an invoice. And I would
19 imagine -- and show their census data for the month of May, and
20 they're going to receive whatever they would normally receive
21 under the terms of the contract. I don't know if it's -- the
22 contract is divided into 12 monthly payments or what, but they
23 are set to receive that. And for June nothing will change.

24 You know, what happens if they decide to start
25 reducing their costs even more at the facilities? There's

1 nothing -- and that's why I pose that question. What is it
2 that -- who's responsible and what is it that MDOC can do to
3 make sure that it meets its obligation in making sure that I
4 think it's at all times that the prisoners are, you know,
5 reasonably safe. If the plaintiffs are not asking for anything
6 at this point and something happens again next week, what are
7 they to ask for then? I guess you say it's left up to them to
8 ask.

9 MR. MATHENY: Your Honor -- and I apologize. My point
10 was simply this, that with no specific request for relief, with
11 no specific solution proposed, my objection is simply that
12 without any such request, it's very difficult for me to be able
13 to respond to the no request, if you will, your Honor.

14 That was my position, that I simply wanted to state
15 that, because I wasn't clear what it is that the plaintiffs
16 were asking for in response to this specific incident that led
17 to the hearing today that the court needed to do in order to --
18 to remedy the situation. That was all I was intending, your
19 Honor.

20 THE COURT: Okay. Is there a specific response,
21 request from the plaintiff other than being able now -- the
22 State has said definitely you can interview your client. The
23 attorneys could have access to the -- to your client even
24 though he has not sustained a life-threatening injury and his
25 family wasn't notified. But now you have access to do that for

1 sure.

2 The State is going to work with the parties to make
3 sure that the -- that he has access to his medical records
4 through HIPAA or otherwise on, hopefully, an expedited basis.
5 I realize the medical records in MDOC's control, you can do
6 that on an expedited basis. All you could do is ask UMC to
7 provide its medical records on an expedited basis. Is there
8 anything else that the plaintiffs have requested specifically
9 today?

10 MR. MCDUFF: Your Honor, just sort of responding to
11 your question and to Mr. Matheny's point and then I'll get to
12 the specifics, you know, these -- this consent decree provides
13 for some very long-range solutions to a problem that has been
14 years in the making. And so we understand that it is going to
15 take time to get this prison to where it's a safe place.

16 We're very disturbed about these incidents and this
17 pattern of incidents. And that's the reason we asked for this
18 hearing today, so that we could inform you about them and that
19 we could explore the issues that we all have explored with
20 Deputy Commissioner Sparkmann today, including whether there is
21 an option for increasing staff for the next month.

22 And then, of course, we also wanted to explore what's
23 going to happen with the new vendor and would that vendor be
24 required to put in more staff and to comply with the consent
25 decree, would that be part of the contract. And I was pleased

1 to hear he said that will -- at least compliance with the
2 consent decree will be part of the contract.

3 The question for what to do over the next month,
4 that's really something we want to discuss with our expert
5 before deciding whether to ask you for any specific relief. I
6 mean, I think there's a question about whether we can get other
7 people in from GEO's -- from GEO's other facilities throughout
8 the country, whether there's time to do that and whether that
9 makes sense.

10 Deputy Commissioner Sparkmann mentioned that MDO -- if
11 we could try to get other MDOC people. They are thinly staffed
12 in other places and that trying to bring them into a new prison
13 may create more problems than it would solve. I don't know if
14 that's true, but that's something we want to discuss with our
15 expert before deciding whether to ask for that.

16 So that's why we don't -- because it's sort of -- the
17 complicated nature of the problems, we want to talk to our
18 expert before we decide whether we should ask you for some
19 specific solution. I was -- we did learn about this particular
20 incident, the stabbing in the eye, from the victim's mother.
21 Now, she had learned it from a call from somebody. And it may
22 well have been another inmate in the prison who had a cell
23 phone. She didn't know who called her. Once I informed
24 Commissioner Sparkmann about what we had learned, he responded
25 promptly.

1 And if I'm understanding him correct today, he says in
2 the future that when there is a hospitalization out of Walnut
3 Grove that requires an overnight stay, he will inform the
4 attorneys and the attorneys can inform us.

5 THE COURT: No, I don't think he said that.

6 MR. MCDUFF: Oh, I misunderstood him.

7 THE COURT: I don't think he said that. And, you
8 know, we went down this road about what was life-threatening.
9 And if you heard that, maybe he said it about children less
10 than 17 maybe.

11 MR. MCDUFF: Well, let me ask this then while we're
12 here. And that is, because we have a Walnut Grove consent
13 decree in place, can we at least for the next month -- can
14 Commissioner Sparkmann notify the attorneys if there is a
15 hospitalization out of Walnut Grove stemming from an incident
16 of violence that requires an overnight stay? Can he inform
17 them and can they inform us so we'll know about it? I think
18 that's something that's a very reasonable -- reasonable
19 request.

20 MR. MATHENY: Your Honor, my -- Mr. Sparkmann can do
21 that.

22 THE COURT: Okay.

23 MR. MCDUFF: Okay. All right.

24 MR. SPARKMANN: What I was testifying, I can contact
25 any incidents of violence. I thought you meant anytime -- did

1 I testify that anytime they went to the hospital that I was
2 going to contact y'all. But on any violence, yes. If you give
3 me who the contact person, I'll be glad -- I can do that.

4 THE COURT: He's saying any incident of violence, not
5 any incident of hospitalization, I know which would include
6 violence, but --

7 MR. MCDUFF: And I'm assuming -- yeah. I mean, if
8 somebody has chest pains and has to go to the hospital, I don't
9 know that we necessarily need to be informed of that. But,
10 yeah, if it is an incident of violence that leads someone to go
11 to the hospital, we would like to be informed of that.

12 THE COURT: Right. And I -- and I presume from my
13 understanding of the consent decree that that information would
14 at least be provided to the monitors at some point in time.

15 MR. MCDUFF: At some point, yes, sir.

16 THE COURT: But I do think it's important, because
17 we're talking about this one-month no man's period where GEO
18 has the incentive to leave. That's my concern.

19 They have been incentivized to leave. All they have
20 to do is work with the State and help the State through the
21 transition as it brings in the new vendor. But they have every
22 incentive -- as a profit-making entity, they have every
23 incentive to reduce their cost. So -- and if that means
24 short-staffing it enough, making sure that the work gets done,
25 but definitely not overextending, then I don't think they have

1 any incentive to overextend.

2 And I don't think it's unreasonable, at least from
3 May 29th through July 1, that the plaintiffs' counsel is
4 informed of all of these things, violent acts as well as
5 hospitalizations, I mean, because it's the violent acts among
6 and between staff and inmates, if you will, though either
7 inmates and inmates, that has really caused the -- you know,
8 that they brought to the court to be -- you know, they sought
9 relief for that. And at this stage nothing -- nothing will be
10 in place because the -- the full 90 days won't be up until
11 about June 26th or 27th. And I realize the parties are going
12 to have to exchange things and do things to reach agreement on.

13 But it appears that for a period of time, if no
14 stop -- if no stopgap is entered, some of these incidents,
15 including the one that just happened, could fall through the
16 cracks. We don't want that to happen.

17 MR. MCDUFF: And I do know, your Honor, that Deputy
18 Commissioner Sparkmann is spending -- he's obviously a very
19 busy man, but he is spending a significant amount of time
20 monitoring Walnut Grove. And we appreciate him continuing to
21 do that during this particular period because, as you
22 suggested, it is a period of time that is fraught with the
23 potential for further problems.

24 THE COURT: Right. Well, what I will do is give the
25 parties until Friday. You could give me some language that you

1 all can agree upon. Or I'll say Monday, which will be June
2 the --

3 MR. MCDUFF: 4th I believe, your Honor.

4 THE COURT: -- 4th, to give me a proposed agreement
5 for this month, I mean, because I do think it needs to be
6 there. I'm concerned that this incident happened. I'm
7 concerned that it happened to someone who came and testified.
8 I'm concerned that it happened when there was no guard. The
9 opportunity came about when there was no guard present.

10 The court is, you know, completely mindful of the
11 testimony that I heard where often a CO's involved in gangs
12 recruiting people. The hypotheses can run wild as to how this
13 individual -- who was this individual that got the shank? How
14 did he get it? Who did he talk to? You know, we could
15 speculate all day long.

16 And I realize that, you know, it's all speculation.
17 But what if one of the guards got this person to do it who has
18 no past record, who's virtually a clean guy? *If you do it,*
19 *nothing will happen to you,* just all these infinite sort of
20 possibilities. But because the correctional officers have been
21 so tainted by the findings of DOJ and this court, you know, the
22 officer merely turns his back while this happens or goes away
23 while this happens.

24 And I don't know what the investigation of the
25 sheriff's department is going to reveal. But in 90 days the

1 investigation might conclude that an officer aided and abetted
2 or assisted or offered or counseled or did whatever, allowed
3 this incident to happen. In that case, that would be a very
4 bad thing for the department of corrections and GEO.

5 So I do think for the next 30 days, at least before
6 the full details of the consent decree are in place, the
7 parties are to be mindful of having some real stringent
8 measures in place to account for the stopgap. So I would
9 encourage you all to work with one another and make it as
10 restrictive as necessary.

11 MR. MCDUFF: Thank you, your Honor.

12 THE COURT: All right. So thank you all for bringing
13 this to the court's attention. As you know -- well, you all
14 saw my order. You know how concerned I am about this facility
15 in particular because this is the one where evidence has been
16 presented to me. But in the future if you need any hearing,
17 the court will do whatever it can do to make sure that the
18 matter is heard as soon as possible, just as I did today.

19 So we need to make sure that the State lives up to its
20 obligation to even protect those who have violated the law in
21 the past, and they need to make sure that those -- that this
22 consent decree -- that the State complies with the consent
23 decree to the fullest.

24 You know, ultimately, I mean, you know, I realize the
25 State has contracted on legitimate policy choice to enter in

1 this contract with these private prison facilities; but,
2 ultimately, it is the State's obligation I do believe to make
3 sure that the Eighth Amendment rights of these prisoners are
4 protected.

5 I don't think you could step aside and leave all of
6 that to the private vendors without running into consequence or
7 breaching your obligations to live up to the Eighth Amendment
8 and everything else. So I just say that.

9 But I appreciate the parties for working together, and
10 I appreciate you all for being here today on such short notice.
11 But I think it's important that we try to make sure that we're
12 all on the same page in making sure that this consent decree
13 works in the best possible way possible for the State and the
14 affected parties. Court's adjourned.

15 (HEARING ADJOURNED)

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CERTIFICATE OF REPORTER

I, MARY VIRGINIA "Gina" MORRIS, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 29th day of May, 2012.

s/ Gina Morris
U.S. DISTRICT COURT REPORTER