

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

LOUIS HENDERSON, et al.,  
Plaintiffs,

vs. CASE NO.: 2:11cv224-MHT

KIM TOBIAS THOMAS, et al.,  
Defendants.

\* \* \* \* \*

EVIDENTIARY HEARING

\* \* \* \* \*

BEFORE THE HONORABLE MYRON H. THOMPSON, UNITED STATES  
DISTRICT JUDGE, at Limestone Correctional Facility, Harvest,  
Alabama, on Thursday, September 26, 2013, commencing at 11:03  
a.m.

APPEARANCES:

FOR THE PLAINTIFFS: Ms. Margaret Winter, Associate Director  
Mr. Carl Takei, Staff Attorney  
AMERICAN CIVIL LIBERTIES UNION  
NATIONAL PRISON PROJECT  
915 15th Street NW, Seventh Floor  
Washington, DC 20005  
  
Ms. Amanda C. Goad  
Staff Attorney  
AMERICAN CIVIL LIBERTIES UNION  
AIDS PROJECT  
125 Broad Street, 18th Floor  
New York, New York 10004

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FOR THE DEFENDANTS: Mr. William Richard Lunsford  
Mr. David Berman Block  
Attorneys at Law  
MAYNARD COOPER & GALE PC  
655 Gallatin Street  
Huntsville, Alabama 35801  
  
Ms. Anne Adams Hill  
General Counsel  
STATE OF ALABAMA  
DEPARTMENT OF CORRECTIONS  
301 South Ripley Street  
Montgomery, Alabama 36130

Proceedings reported stenographically;  
transcript produced by computer.

\* \* \* \* \*

INDEX

OPENING STATEMENT	
MS. WINTER	4
MR. LUNSFORD	17
STATEMENTS TO THE COURT	
DP	32
JT	46
MH	52
RT	61
JY	82
JB#1	
DIRECT BY MS. WINTER	101
GUY NOE	
DIRECT BY MR. LUNSFORD	109

\* \* \* \* \*

1 (The following proceedings were heard before the Honorable  
2 Myron H. Thompson, United States District Judge, at  
3 Limestone Correctional Facility, Harvest, Alabama, on  
4 Thursday, September 26, 2013, commencing at 11:03 a.m.:)

5 (Call to Order of the Court)

6 (The names of class members have been substituted with their  
7 initials pursuant to oral order of the Court. When two  
8 class members share the same initials, they are further  
9 differentiated by a number following the initial.)

10 THE COURT: The Court calls the case of Henderson  
11 versus Thomas, Civil Action Number 11-224.

12 Who do we have representing the plaintiffs?

13 MS. WINTER: Margaret Winter, Carl Takei, and Amanda  
14 Goad, Your Honor.

15 THE COURT: And I'm having some difficulty hearing you.

16 MS. WINTER: It's the fan.

17 THE COURT: I think it's that fan.

18 MS. GOAD: Use the mike.

19 MS. WINTER: Margaret Winter, Carl Takei, and Amanda  
20 Goad for the plaintiffs.

21 THE COURT: And for the defendants?

22 MR. LUNSFORD: Bill Lunsford, Anne Hill, and David  
23 Block.

24 THE COURT: Ms. Winter, how do you suggest we proceed  
25 here today?

1 MS. WINTER: I would like to give a summary of the  
2 objections. And we spent several hours yesterday again with  
3 the class members that you see here today, and I think we  
4 have -- we'll be able to present more clearly what the  
5 objections are.

6 At some point, we have approximately ten of -- no more  
7 than ten of the inmates who are present today who will be  
8 testifying. And it would be helpful if we knew before we  
9 started giving our presentation who is here from the ADOC,  
10 because I believe that it will be helpful -- the inmates will  
11 have certain questions that probably the ADOC will be able to  
12 address. And so we could -- our hope is that there may be time  
13 for a little bit of dialogue in that the inmates who testify may  
14 have particular questions that possibly, on the spot, the folks  
15 from ADOC may be able to address.

16 THE COURT: Okay. Do you want to make an opening  
17 statement now?

18 MS. WINTER: Yes, I would.

19 THE COURT: Okay. Go ahead.

20 MS. WINTER: And we have one request. When we call the  
21 inmates, we'd like, in this context, to be able to simply use  
22 their names but to ask the court reporter to only use their  
23 initials in the official transcript.

24 THE COURT: Very good.

25 MS. WINTER: Your Honor, 21 class members at Limestone

1 filed objections to certain features of the settlement. Class  
2 members have raised specific questions that they would like to  
3 address to the ADOC relating to these concerns. And we believe  
4 that the representatives who are here today we think from  
5 classification, medical, security, and the administration may be  
6 able to respond to these questions. And this may possibly allay  
7 the fears and concerns of the class.

8           The class members' objections fall into six broad  
9 categories that I'll briefly summarize. And I should say that  
10 we believe that all of their objections, apart from the  
11 objection regarding money damages, which we don't believe is  
12 rational, that all of the other objections are legitimate. And  
13 they are all issues that we anticipated and were informed of by  
14 the class during the negotiations. And the bottom line is we  
15 negotiated very hard, with good faith on both sides, and this is  
16 the best that we could do for the class. We could not do -- we  
17 could not extract more.

18           And it was our understanding based on the class members  
19 who told us how they were feeling that the overwhelmingly  
20 important thing for the men at Limestone was that all facilities  
21 be integrated, all of them. And it was also extraordinarily  
22 important that the arbitrary work release, HIV-specific work  
23 release criteria, go away. We were able to achieve that on work  
24 release and we were able to achieve full integration, but the  
25 cost of that was that this is the agreement. We could not do

1 better. We could not do better in the negotiations.  
2 Nevertheless, that doesn't mean -- and we very much support this  
3 agreement, because we think that the bottom line is that it's  
4 excellent, an excellent outcome for the class. But  
5 nevertheless, the objections that you'll hear today are very,  
6 very legitimate and well-founded.

7           So here are the six broad categories that the  
8 complaints fall into. First, the class members state: The  
9 commissioner has issued directives to staff and inmates  
10 committing to a policy of zero tolerance for abuse and violence.  
11 But class members question how the ADOC is going to demonstrate  
12 the commissioner's commitment to zero tolerance. How is that  
13 going to play out in real life? How will senior staff and the  
14 warden react if significant problems do occur at some other  
15 facility? The class members understand very well that there is  
16 provision in the settlement agreement for a training session for  
17 inmates and for staff, but they point out that a single  
18 classroom session can only do so much to overcome years of  
19 entrenched HIV prejudice. And these class members strongly  
20 believe that a great deal of active hard work and commitment on  
21 the ADOC's part will be required, more than those one-time  
22 education sessions provided for in the settlement, to overcome  
23 entrenched prejudices.

24           Class members question why there's no specific  
25 mechanism for getting help from the ADOC administration if

1 significant problems occur. And we hope that the ADOC will be  
2 able to respond to some of the class members' testimony on this  
3 point and their response might be able to provide some assurance  
4 and clarification.

5           The second main area of concern has to do with the  
6 class members' belief that there is an insufficiently robust  
7 plan to ensure medication continuity when class members arrive  
8 at new facilities. They cite the lack of a specific provision  
9 to get immediate help if there's a lapse in medication. There's  
10 one provision in the agreement that addresses this concern, and  
11 that provision is that class counsel can communicate directly by  
12 e-mail to Anne Hill, the ADOC's counsel. But class members  
13 say -- tell us they think this is inadequate because it could  
14 take days for their letter to reach us and then for us, in turn,  
15 to e-mail Ms. Hill. And a lapse of even a couple days, let  
16 alone three, four days, is too much.

17           The third major area of concern: Class members at  
18 Limestone are going to be segregated for approximately another  
19 year. The integration at Limestone -- the integration of the  
20 class members at Limestone is not going to occur until -- it  
21 will start in June 2014 and be completed November 2014. Class  
22 members object to what they see as a completely unnecessary  
23 delay in integrating Limestone and that this delay is resulting  
24 in ongoing and very significant ongoing injury. The class  
25 members say: We understand why it would take many months to get

1 the facilities throughout the system trained up and ready, but  
2 why Limestone? Everybody at Limestone is ready now, as soon as  
3 you give us -- you provide to staff and inmates the training  
4 sessions that you've already done at Tutwiler. Why should it  
5 take a year or 14 months to do that training? Why doesn't the  
6 ADOC carry out the educational training for staff and inmates at  
7 Limestone now and then gradually, over the months, proceed to  
8 integrate Limestone just as Tutwiler is already integrated?  
9 That shouldn't take a year, they say.

10           The -- you'll hear -- these men at Limestone see  
11 themselves correctly as the members of the class who are most  
12 injured. You will hear testimony that they still have to wear  
13 armbands that identify them plainly to everyone in the camp as  
14 having HIV. And this situation is somewhat in tension with  
15 paragraph II.I of the settlement agreement which provides that  
16 the ADOC may use armbands to identify housing unit assignments,  
17 quote, so long as the use of armbands does not result in a  
18 direct or indirect means of disclosure of the inmate's  
19 HIV-positive status.

20           You'll hear testimony that the inmates are still  
21 excluded from chow hall and why that's a real hardship, that  
22 they're still excluded from the honors dorm, from the  
23 residential substance abuse dorm, from the prerelease dorm. And  
24 they will testify that they don't see that these exclusions  
25 serve any useful purpose for ADOC at this point. They will



1 testify that when a class member was recently returned from  
2 Decatur Work Release to Limestone, he went into general  
3 population at Limestone. He went -- he was at Decatur; he came  
4 back to Limestone; he went into general population. Why  
5 shouldn't others who are trustworthy go into general population?

6           Class members are currently being housed in the acute  
7 care unit at Limestone along with general population inmates.  
8 If that's okay, why can't the ADOC integrate the specialty  
9 dorms? SAP is already a structured program. There are norms of  
10 behavior there. It's a therapeutic community. There's also  
11 norms of behavior in the honors dorm. They say: Why do we have  
12 to wait a year to integrate those program dorms? And after  
13 doing that, can't the ADOC step up the program just a little  
14 bit, just the way that they've -- and they have already  
15 anticipated certain deadlines. The inmates understand it's not  
16 required by the agreement for them to do this, but couldn't they  
17 start now to integrate the specialty dorms and then gradually  
18 integrate the rest of the camp without waiting till 2014?

19           The fourth major area of concern for a few inmates  
20 is going to be, in their view, a tremendous hardship to leave  
21 Limestone, to be transferred to another prison. Class members  
22 believe that after all they have already suffered under the  
23 segregation policy, now at least that the policy has been  
24 declared illegal, the ADOC should at least commit to honoring  
25 their requests to stay at Limestone if they have serious

1 concerns about safety or some other compelling reason for not  
2 wanting to transfer to another camp.

3 Under the current agreement, ADOC has committed to  
4 giving the same consideration to an inmate's request for a  
5 particular facility on the same basis as all general population  
6 inmates' requests can be considered at certain points in time.  
7 That is, under the classification manual provision, they will  
8 consider during a reclassification an inmate's request for  
9 assignment to, quote, an institution that is closer to home or  
10 for program participation. That's paragraph II.7 of the  
11 settlement agreement. But their question is, shouldn't they  
12 have a little special -- aren't they -- shouldn't a little  
13 special effort be made to accommodate the few class members who,  
14 for good reason, really are terribly worried about moving to  
15 another prison? And a few inmates will testify briefly on this  
16 point.

17 The fifth area of concern: How will the transfers from  
18 Limestone to the new facilities take place? And the agreement  
19 doesn't specify. It just says that the reassignment of class  
20 members at Limestone will occur between June 1st and November  
21 1st, 2014. That's paragraph II.F of the settlement agreement.

22 During the settlement agreement -- during the  
23 settlement negotiations that went on for quite a while, the ADOC  
24 earlier explained to us that the plan was -- the intention  
25 was --

1 MR. LUNSFORD: Judge, excuse me. I --

2 MS. WINTER: Yes.

3 MR. LUNSFORD: This is an issue that I was going to  
4 raise later; but before she goes into this issue, I don't want  
5 to waive any objection we have. This was a mediation process.

6 THE COURT: Right.

7 MR. LUNSFORD: And we object to the disclosure of any  
8 comments that were made in the course of the mediation that were  
9 not ultimately reduced to writing in the settlement agreement.

10 THE COURT: Well, I'm not following you. Is Ms. Winter  
11 disclosing something?

12 MR. LUNSFORD: Well, I'm anticipating that what's going  
13 to happen here is this relates back to certain objections that  
14 were made about statements that were -- discussions that were  
15 had during mediation about possible scenarios as it relates to  
16 how certain provisions of the settlement agreement would be  
17 carried out if an agreement was reached. And those, obviously,  
18 were not reduced to writing and were not included in the actual  
19 final settlement agreement that's before the Court for approval  
20 today.

21 THE COURT: I don't see Ms. Winter as relating what was  
22 said during the settlement agreement. I thought she was just  
23 posing questions as to what would be done prospectively now.

24 MR. LUNSFORD: She said during the course -- and we can  
25 go back and look at what the transcript said, but what I believe

1 she said was that during the course of mediation, ADOC counsel  
2 indicated, and then was about to go into that. And that's why I  
3 waited until when I did to object.

4 THE COURT: Ms. Winter?

5 MR. LUNSFORD: I'm not trying to make this difficult,  
6 and I understand Ms. Winter is not attempting to violate  
7 anything about mediation confidentiality. But I do want to  
8 preserve the objection.

9 THE COURT: Right.

10 MS. WINTER: I think this is putting form over  
11 substance. The reality is that during the course of these  
12 prolonged negotiations, we kept the class informed of the -- of  
13 those who were involved, we kept them informed of the  
14 negotiations. And once we got an agreement, we kept them  
15 informed -- they had questions, and we asked ADOC what does the  
16 agreement mean.

17 As Your Honor knows from reading the objections,  
18 there's many people -- many class members have posed objections  
19 because they are concerned that they will transfer through  
20 Kilby. And we want to -- they want to speak on that, and we  
21 want to speak on that on their behalf. It doesn't so much  
22 matter what was said in the settlement agreements. What matters  
23 is what's actually being contemplated.

24 THE COURT: Right. Well, that's what I understood. So  
25 go ahead.

1 MS. WINTER: And so our understanding or our  
2 understanding was at a certain point that what was contemplated  
3 was that every class member at Limestone would transfer through  
4 Kilby before arriving at their final destination. They would  
5 spend a period of months, some period of months between June 1st  
6 and November 1st, 2014, in a general population dorm at Kilby  
7 and from thence be -- during that time frame, they would be  
8 dispersed to their final destination, wherever the ADOC had  
9 decided to assign them. The class members are terribly,  
10 terribly concerned -- that is one of the provisions -- it's not  
11 in the settlement agreement, but they're terribly worried that  
12 that will happen for reasons that they want to testify about.

13 Now, ADOC's counsel has been extraordinarily  
14 cooperative following the signing of the agreement in having  
15 ongoing discussions with us about what ADOC contemplates and  
16 what's really going to happen. This has been terribly helpful.  
17 My current understanding -- and, you know, we want -- we want it  
18 to be corrected. If I'm saying anything that's wrong, we hope  
19 ADOC will respond correctly on this. But my current  
20 understanding from our most recent discussions with Mr. Lunsford  
21 and Ms. Hill is that the ADOC makes no guarantees and no  
22 promises, but they are going to make every effort not to have  
23 any unnecessary transfer through Kilby; that is, where at all  
24 practicable, an inmate will go -- a class member will be -- ADOC  
25 will decide what their new facility is going to be, and the

1 transfer will take place from Limestone to the new facility  
2 without an interim stay at Kilby. So many class members --  
3 there's almost universal sentiment that this is a big, big  
4 anxiety, going through Kilby, for reasons you will hear.

5 THE COURT: But you realize and I hope the class  
6 realizes that that's not a part of the settlement agreement.

7 MS. WINTER: Yes, we do. We realize it.

8 THE COURT: And I don't want promises to be made --

9 MS. WINTER: No.

10 THE COURT: -- that the class may understand that I can  
11 enforce when in fact there's nothing I can do.

12 MS. WINTER: We understand that. And we have explained  
13 to the class that this agreement is take it or leave it.

14 THE COURT: Right.

15 MS. WINTER: It's not that you are going to be  
16 rewriting the agreement. And I believe everybody understands  
17 that.

18 The reason why they, nevertheless, want to raise their  
19 concerns and explain their concerns is, in part, because they  
20 want to ask ADOC is there some other way. And our belief from  
21 how the discussions have been going and the things that the  
22 commissioner has been doing have demonstrated their interest in  
23 making this go well for everybody.

24 So my belief is, from what I see, that if there is a  
25 way to do it, they will do it. But it would be good if there

1 would be people from ADOC who could speak to this, what the  
2 current intention is. But I believe that the class members  
3 understand completely that you are not going to be rewriting  
4 this agreement, no matter what happens today. It will be -- the  
5 Court will approve it or will not approve it, but it's not going  
6 to be rewritten.

7           There is one final objection that has been voiced by a  
8 small number of class members, and that is that the settlement  
9 has no provision for money damages. The settlement speaks in  
10 paragraph II.A to the issue of money damages -- or actually, I  
11 think that's III.A.

12           We already discussed at some length that at Tutwiler  
13 why we, as class counsel, don't believe that this is a rational  
14 objection to the settlement. We've explained this at great  
15 length to the class, really have spent, I think we could fairly  
16 say, hours discussing this with the class over a period of --  
17 several meetings and letters. And what we've explained is the  
18 settlement does not affect whatever rights they might have had  
19 in the past, present, or future as individuals to bring damage  
20 claims under the ADA. One class member was going to testify  
21 very briefly on this point, but I believe he opted not to  
22 testify after the discussion yesterday. So I think there will  
23 be no inmate who chooses to testify on the question of damages.

24           Finally, just to make one quick point for the record,  
25 after we signed the settlement agreement, when the class members

1 were pressing us for details on how the integration would be  
2 carried out, we asked -- when we were asking the ADOC for  
3 further clarification, we misunderstood ADOC's counsel's  
4 explanation. What we thought they were saying and what we  
5 communicated to the class was that when the ADOC was  
6 transferring all the Limestone inmates to Kilby, they would be  
7 treated at Kilby as new admissions. And that has caused more  
8 anxiety than anything else. But since then, Mr. Lunsford has  
9 assured us that this was a misunderstanding on our part.  
10 Current class members will not be treated as newly entering the  
11 system. The very same classification procedures that are  
12 applicable to all other inmates will apply to the Limestone  
13 inmates.

14           And one other very small point. The Court raised with  
15 us before we got started whether we were going to address  
16 telemedicine, the concern about telemedicine. Actually, I was  
17 reminded that the discussion that came up yesterday with class  
18 members was won't people know, simply from the fact that we have  
19 a telemedicine appointment, that we have HIV, to which we  
20 responded, no. We were virtually positive that the ADOC intends  
21 to use their telemedicine system very widely. Whenever they  
22 need a specialty consult at a distance, that telemedicine is  
23 what they will use. And Mr. Lunsford confirmed that this  
24 morning. And so that should not be a concern.

25           The -- Mr. -- class representative JB#1 is -- will



1 testify at the end of our witnesses about his -- about being  
2 class representative and the class receiving notice of the  
3 settlement.

4 THE COURT: Do you have anything else, Mr. Lunsford?

5 MR. LUNSFORD: Thank you, Your Honor.

6 Your Honor, I thought it was important for me to  
7 address the Court at this point and provide some context for  
8 some of the testimony that you may hear in the coming moments,  
9 but I wanted to start with this. The plaintiff class in this  
10 case may believe that the biggest strategic advantage they had  
11 coming into this case was changes in science, the successful  
12 treatment of HIV within the department, or changes in the law.  
13 But that's simply not the case. The fact is that the one thing  
14 that was working to the advantage of the class before this case  
15 even appeared before you for trial was the fact that the current  
16 Department of Corrections commissioner has been part of this  
17 ongoing litigation for more than 30 years. And before we  
18 darkened your doors on the first motion to dismiss, we addressed  
19 issues related to class certification, or tried this case, the  
20 commissioner was clear in his intention to us. And that was he  
21 wanted this litigation over.

22 The settlement in this case was not intended simply to  
23 comply with your opinion. It was intended to go far beyond what  
24 was required in your opinion. And that's why we have two  
25 settlement agreements, one which will be enforced by this Court

1 and one which is beyond the reach of this Court in terms of its  
2 enforcement. The Court was very clear throughout the process on  
3 two things. When it reached its decision in December of 2012,  
4 the Court clearly stated that it was not the Court's directive  
5 to undertake a specific set of tasks to achieve compliance but  
6 that compliance was somewhere between housing HIV-positive  
7 inmates in multiple facilities, five, six, but definitely not  
8 every single facility within the department.

9           The problem with that, though, is that left the  
10 department in a very difficult quandary. If we limited HIV  
11 inmates to any set of facilities, we were necessarily still  
12 making decisions based on HIV status. And the commissioner, in  
13 what I believe is in his infinite wisdom, directed us: I want  
14 the litigation over, and I want there to be no distinction. And  
15 throughout the process, we believe that that was reflected in  
16 the mediation and how that it proceeded. We believe it's  
17 reflected in the agreement. It was very intentional. It was  
18 forward-thinking in my mind, but there are definitely  
19 challenges, challenges that will stretch our staff, challenges  
20 that will require significant changes, significant changes to  
21 the structural makeup of facilities, to the manner in which we  
22 provide medical care, and changes that will cost us significant  
23 amounts of money.

24           Because of those changes, it was necessary that we have  
25 a negotiation. I think the Court is well aware that from the

1 outset of this case, the department was always, always willing  
2 to discuss this issue, always willing to decide and to evaluate  
3 better ways to do things. And we think we've done that.

4           As I mentioned to you at Tutwiler, Your Honor, there  
5 was a process that we went through in terms of identifying how  
6 do we move forward and what are the next steps. And that  
7 process of discussion involved all levels of the Department of  
8 Corrections. And as a result of those discussions, we reached  
9 what we believed was a phased process whereby the department  
10 could successfully disband the housing practices as they related  
11 to HIV-positive inmates.

12           And as I mentioned to you earlier, that process first  
13 involved training, the training of staff, the training of  
14 inmates, the training of medical personnel. It also involved  
15 structural changes to the way we delivered medicine. It  
16 involved the renegotiation of a medical services contract that  
17 involves the provision of telemedicine. One of the things  
18 that's actually not in the agreement that's part and parcel to  
19 telemedicine is -- as you know from the trial testimony, one of  
20 the obstacles the department has always faced is the location  
21 where facilities are located and getting the necessary  
22 components in those locations in terms of electronic data  
23 communication in order to serve telecommunication --  
24 telemedicine.

25           So as part of this, the ADOC is also implementing a

1 system-wide electronic medical administration record which will  
2 allow medical staff to remotely track medication compliance for  
3 not just HIV-positive inmates, but for every inmate within the  
4 system. It involved preparation for a pharmacy, which is  
5 ongoing and has and will continue to be ongoing through the date  
6 of the transfers. It involved the training and preparation of  
7 classification personnel to disband a classification system  
8 that's been in existence since the 1980s. It also involved the  
9 training of staff for preparing for transfers.

10 But I want this to be clear, Your Honor. In going  
11 through this process, it was never the intent of the Department  
12 of Corrections to create an artificial, one-time classification  
13 system. When the process was outlined the first time and the  
14 first time I heard a process for redesignating the housing  
15 locations for these inmates, it was always intended that these  
16 HIV-positive inmates would be plugged in to the existing  
17 classification system, not that we would create a one-time  
18 system that only applied in this instance. Because to do so  
19 would be ineffective, and it would be contrary to the Court's  
20 very directive, which was undertake an individualized assessment  
21 of each HIV-positive inmate within the confines of your existing  
22 system. And that's what we understood, and that's what we  
23 intended to do.

24 There has already been reference to some discussion  
25 which has been had about a phased movement integrating Limestone

1 or doing this or doing that. The fact is that the process that  
2 has been outlined in the settlement agreement is very  
3 intentional. It is not like Mississippi, because we're not  
4 Mississippi. Mississippi had five facilities. We have 29. It  
5 was simply not viable to do a phased system which would require  
6 essentially duplication of effort every three months. It did  
7 not move the ball at all. Our goal was always to establish a  
8 process whereby after training, after the preparations were made  
9 structurally to all the facilities to house HIV inmates there,  
10 that we would have a one-time process where this group of  
11 inmates was essentially reclassified, redesignated, and then  
12 transferred just as if they were arriving for the first time  
13 into our system.

14 As the Court said throughout the course of trial, the  
15 Court always was clear with the parties that if the Court  
16 concluded there was an ADA violation, that it would be up to the  
17 department to decide what happened next, that the department  
18 would have the first opportunity to present to the Court a plan.  
19 And we believe the Court understands that the department is in  
20 the best situation to evaluate the most efficient and effective  
21 and cost-effective manner in which to do this in a timely  
22 fashion. And we believe we've done that.

23 I would like to spend just a brief moment addressing  
24 some of the issues that have already been raised. As Ms. Winter  
25 pointed out, only ten witnesses are going to appear today for

1 the class. That's an important number, I believe, simply  
2 because we have a class of over 200 inmates. And essentially,  
3 we have been through three decades of litigation to get to a  
4 resolution today where less than five percent of the class is  
5 objecting to what's being said. And many of those are not  
6 necessarily objections to the contents of the settlement  
7 agreement but to what I believe are misunderstandings.

8           Your Honor, you've been through this before; and you  
9 know oftentimes inmates simply don't understand that in this  
10 type of injunctive relief class action, there are no claims for  
11 money damages. And that's been an issue that's obviously arisen  
12 here, just like it's arisen in *Gaddis* and *Laube*. And I know  
13 you've issued opinions on that very issue. We believe those  
14 objections should be cast aside out of hand.

15           The second issue that has been raised today is  
16 medication. And I'll simply say this on the issue of medication  
17 and transfers. One of the most expensive parts of running a  
18 department of corrections is the transfer process, vans running  
19 here and there. And as you know, our department is at capacity  
20 in terms of its housing. Inmates are being moved on a daily  
21 basis because of fights, because of enemies, because of housing  
22 needs. The medical staff that exists within the Department of  
23 Collections operates under an agreement whereby they are  
24 required -- and the agreement is in fact before the Court in the  
25 evidentiary record that was presented at the trial. The medical

1 provider is required to provide medications. They're required  
2 to maintain medications for various chronic needs, including  
3 HIV, and preparations are being made to ensure that happens.  
4 You're going to hear testimony that if an HIV inmate is  
5 transferred from this location, they will take with them certain  
6 medication. And the medical staff where they are going will be  
7 notified that they are on the way, and medication will be  
8 available when they get there. This is something the department  
9 deals with every day for other chronic conditions, and we're  
10 going to deal with it in a similar fashion here.

11           There have been additional objections lodged with  
12 respect to confidentiality. And to be candid, Your Honor, some  
13 of those objections are hard to -- are hard to understand.  
14 Plaintiffs' counsel was clearly concerned throughout the  
15 discussion process about confidentiality and how the department  
16 would, in and of itself, address issues of confidentiality.

17           The simple fact is this. There's an old saying that  
18 there are no secrets in prison. That saying wasn't created  
19 simply because it wasn't true; it plays out every day in our  
20 department. The question is what is the department going to do  
21 about it. Well, it's no different than any other scenario. The  
22 Department of Corrections can create rules. It can't guarantee  
23 that every individual complies by those rules all the time in  
24 every scenario. The department can only guarantee that when  
25 there are occasions when those rules are broken and the

1 department is notified of those violations, that the department  
2 takes action. And that's exactly what we have agreed to do  
3 here.

4           But what's more important is not necessarily that we've  
5 created rules and we've expressed a commitment to follow those  
6 rules and intend to do so, we've actually gone beyond creating  
7 rules in this case. There have been numerous instances already,  
8 prior to today, that were required under the terms of the  
9 settlement where the commissioner has directed every person at  
10 every level of the Department of Corrections about a  
11 zero-tolerance policy. There's no precedent for any  
12 communication like that in the past in the Department of  
13 Corrections, a zero-tolerance policy with regard to the  
14 confidentiality of an inmate's status as an HIV-positive inmate.  
15 That's never been done before.

16           So beyond creating rules and ensuring their compliance  
17 and encouraging every person at every level of the department to  
18 follow those rules, it's difficult for the department to say  
19 much more on this issue. As the Court knows from trial, the  
20 issues of prejudice and discrimination as they relate to HIV are  
21 not simply issues that arise in a correctional context. They  
22 are issues that are present in everyday life. They're present  
23 throughout every level of our community. Simply because  
24 something happens within the four walls of a correctional  
25 facility doesn't make it necessarily all that different than



1 society. But the Department of Corrections can only act if it  
2 knows when it occurs. And the department, again, has done all  
3 it can do to ensure that every single individual working within  
4 this department knows that confidentiality is of the utmost  
5 importance.

6 I do want to address one issue that was raised before  
7 we started today, and that's telemedicine. The Court may not be  
8 aware because it was not discussed during trial, but  
9 telemedicine has been implemented already in certain respects  
10 within the Department of Corrections. April Truett, who is the  
11 HIV specialist on staff, is currently using telemedicine. Many  
12 of the inmates who have objected have attended appointments with  
13 Dr. Truett via the telemedicine system.

14 The telemedicine receiving unit here at Limestone is  
15 established in Dr. Truett's examination room. That room is off  
16 the hallway in the main part of the Department of Corrections --  
17 or in the health care unit here at Limestone. It's simply a TV  
18 hanging on a wall with a camera over the top of it, and the  
19 inmate sits in the room along with a member of the nursing  
20 staff. Members of the correctional staff and inmates at this  
21 facility are not allowed to stand at the door. They're not  
22 allowed to observe. It's not a situation where someone is  
23 present, or it doesn't occur in an open setting.

24 Obviously, every single prison throughout the system is  
25 different. The health care units are different. But the

1 medical provider who is installing those units understands the  
2 issues relative to confidentiality, understands how those must  
3 be set up in order to preserve the confidentiality of  
4 communications between the HIV specialist and the patient.  
5 Additionally, I understand from what Ms. Winter already said  
6 telemedicine does present the department with opportunities to  
7 provide other care, whether it be orthopedic, psychiatric, or  
8 any other type of speciality care that doesn't necessarily  
9 require a face-to-face examination.

10           The two remaining issues I want to talk about, one is  
11 the timing of the process and the other is the Kilby transfer  
12 issue. Both of those are related, and I'd just like to briefly  
13 discuss both of those. First of all, the timing of the process  
14 is what we negotiated. It's what we specifically agreed on.  
15 And the department was very clear in its intent with regard to  
16 the schedule. The fact is that in the next eight months, if the  
17 agreement is approved, there will be many moving parts to this  
18 process. And what the department knows from experience in  
19 instituting changes like this is that to the extent you can  
20 limit what parts are moving in different periods of time, you  
21 can eliminate problems. The goal was always to maintain the  
22 population at Limestone for a period of time in order to do  
23 other things elsewhere. That means at this time the agreement  
24 says that HIV-positive inmates at Limestone are going to remain  
25 in dorms B and C.

1           Now, why is that so important? Well, for one, there is  
2 an issue of lateral transfers; and that's discussed in the  
3 settlement agreement. The current existing DOC policy is that  
4 if I was an inmate in the Department of Corrections system and  
5 I'm housed at a facility six months or more and I have a clear  
6 disciplinary record for six months, I can then go to my  
7 classification specialist without the classification specialist  
8 soliciting it from me and request a lateral transfer. I can  
9 fill out a sheet and submit that to the classification  
10 specialist; and as you know, those aren't always honored. But  
11 to the extent that they can be honored, they often are.

12           The goal was not to place the HIV-positive population  
13 in a changing environment during the next six months in order to  
14 give every inmate every opportunity to be disciplinary free for  
15 six months, to stay in their current arrangement for six months  
16 so there were no changes. They weren't interacting with any new  
17 inmates. They weren't going to face any additional challenges  
18 that they didn't face now. For six months, if they're  
19 disciplinary free at the end of that, they're going to be able  
20 to request a lateral transfer. Can they request a lateral  
21 transfer back here to Limestone if they're disciplinary free?  
22 Absolutely. Will that be honored? If the bed space allows it,  
23 absolutely. That's why we did this.

24           There's a question about the chow hall. As we've said  
25 all along, the chow hall simply will not accommodate the number

1 of inmates that are housed at this facility. There's no way to  
2 do that. And the system is set up currently to provide meals to  
3 B and C. Well, the question is why don't you change that? Just  
4 for a period of time, why don't you send HIV-positive inmates to  
5 the chow hall? Because, again, this is built on a  
6 misunderstanding.

7           At some point, dorms B and C are going to be empty.  
8 And that's the intent. The intent is for us to empty B and C  
9 completely. Because if we -- let's just say, for instance, we  
10 attempted to move people around. There's not enough space in  
11 other areas of the camp right now to move all the dorms -- to  
12 clean out B and C completely. In fact, I saw the counts this  
13 morning, and there's only I think approximately 40-something  
14 beds that are arguably even open. The intent was to repurpose  
15 dorms B and C. They're close to the medical unit. They have a  
16 situation where inmates who have disabilities or have mobility  
17 issues could live and feed in the same location next to a health  
18 care unit. There's an RTU there that we can use for other  
19 purposes.

20           Has there been a decision as to how we're going to use  
21 B and C? Not exactly, but there are numerous opportunities for  
22 us there. And the DOC negotiated this agreement and negotiated  
23 the schedule to allow us to empty dorms B and C once the  
24 HIV-positive population gets out of that dorm and then repurpose  
25 the dorm, have the opportunity, which we rarely have, to empty a

1 dorm and, if necessary, make improvements. That's the plan and  
2 that's why we did it.

3           The issue of Kilby has been absolutely butchered in the  
4 objections. And it goes back to the old game of tell one person  
5 something and then tell them something else; and by the time it  
6 gets six people down, it's a different story than when it  
7 started. The intent of the Department of Corrections in the  
8 transfer process, Your Honor, was always to attempt to give the  
9 HIV-positive class members a fresh start, the opportunity to  
10 start over. We understood the complaints, and plaintiffs'  
11 counsel mentioned them repeatedly during trial about  
12 confidentiality and people knowing. And the question was posed  
13 at some point prior to mediation, how do you move an existing  
14 HIV-positive inmate out of Limestone into the DOC system without  
15 someone knowing that they're coming from the special unit at  
16 Limestone? How do you do that?

17           And there was a consensus at one point in time that the  
18 way you do that is you process inmates through Kilby again, not  
19 that you take them through the entire intake process, but you  
20 send them through the receiving facility, basically the  
21 operating center where every inmate who comes into the system is  
22 processed. And then you send them out from there to all the  
23 other locations so that an HIV-positive inmate from Limestone,  
24 when they got to St. Clair or to Draper or to Staton or to  
25 Holman, when they were asked where are you coming from, they

1 could say, I'm coming from Kilby. That was always the goal. It  
2 was never an intent to take away their property or mistreat them  
3 or anything like that. It was simply to give them an  
4 opportunity to be processed and to be sent out from a central  
5 location with other inmates who were being, just like them,  
6 reassigned for the first time to a new facility.

7           Now, it appears to me -- and I don't know; this is  
8 reading between the lines -- that this is an after-the-fact --  
9 maybe we should have had something in the agreement saying that  
10 you're not going to send any HIV-positive inmate to Kilby.  
11 Well, Your Honor, we couldn't agree to that even if that was  
12 proposed. And there are a number of reasons -- there's two  
13 important reasons why.

14           Number one, if you're a level IV inmate in our system,  
15 Kilby is a level IV facility. And at any point in time, if the  
16 DOC needs to, they have to assign inmates on a permanent basis  
17 to Kilby. The second reason we couldn't agree not to assign  
18 someone to Kilby is because it is a long way from Limestone  
19 Correctional Facility to Holman or to Atmore Work Release. It's  
20 a very long way. Oftentimes the transfer van is going to stop  
21 off at Kilby and leave inmates overnight. They're going to be  
22 housed there. And they may stay there for a week or two; they  
23 may stay there for a night. It just depends on the transfer  
24 process. So Kilby is -- for lack of a better word, it's the  
25 nerve center, in some ways, to the transfer process. And to say

1 that we can't send an HIV-positive inmate through Kilby or house  
2 them there on a permanent basis is not workable.

3           Again, I think it's important -- and I say this mostly  
4 for the gentlemen in the back so that they understand that where  
5 the HIV-positive inmates will go once we start the transfer  
6 process, it's almost a perfect situation, Your Honor. We can  
7 give them eight months' notice. You're going to be transferred.  
8 You have eight months. Be disciplinary free, and you can  
9 request a lateral transfer. If you're not disciplinary free,  
10 that's your own -- that's your own issue. That's not our issue.  
11 If you're not disciplinary free, we're going to treat you just  
12 like every other inmate who would be transferred. We're going  
13 to house you where there is a need -- where there are open beds.  
14 And that's the individualized assessment the Court required us  
15 to make under the opinion, and that's what we intend to do.

16           Your Honor, just in closing, I think you brought up the  
17 most important point. The reason we're here today is because we  
18 have agreed to a lengthy, well-negotiated settlement agreement  
19 that has been rewritten -- I couldn't even estimate the number  
20 of times we've revised the documents. It was revised on the eve  
21 of being signed. But we're asking the Court to approve the  
22 express terms of the agreement. The Department of Corrections  
23 specifically negotiated this agreement in this manner to allow  
24 it the freedom to do certain things that will not only provide  
25 benefit for the HIV-positive inmates but also for the department

1 as a whole going forward, important things that were part of why  
2 we could do what we did when we agreed to this.

3 And again, as I began, I'll end with the same thought.  
4 This settlement is not simply designed to just comply with your  
5 order. It's intended to end this litigation once and for all.

6 THE COURT: Your ten witnesses, why don't you have them  
7 stand. The clerk will swear them in.

8 THE CLERK: Everyone raise your right hand, please.

9 (Nine prospective witnesses are sworn)

10 THE COURT: Ms. Winter?

11 MS. WINTER: Thank you. And again, I'm going to be  
12 calling the witnesses by name, but we are asking the court  
13 reporter to only use initials in the transcript.

14 Plaintiffs call DP.

15 MS. WINTER: Your Honor, Mr. P's objection appeared in  
16 docket number 292.

17 DP, the witness, having been duly sworn to speak the  
18 truth, the whole truth, and nothing but the truth, testified as  
19 follows:

20 STATEMENT TO THE COURT

21 MS. WINTER: Mr. P, could you explain to the Court what  
22 the basis is of the objection that you noted about the lack of a  
23 pharmacy plan and wanting more specific guarantees in advance  
24 that everyone gets their proper medication.

25 THE WITNESS: Yes, ma'am.



1 Good morning, Your Honor. I had submitted --

2 THE COURT: Can you speak into the mike?

3 THE WITNESS: Yes, sir. I submitted two objections.

4 THE COURT: I don't know. Is it on?

5 MR. LUNSFORD: Why don't we turn the microphone towards

6 you so --

7 THE COURT: Good. That's a good idea.

8 MR. LUNSFORD: If we put it on the other side, then

9 that way he can look at you.

10 THE COURT: Right.

11 (Brief interruption)

12 THE COURT: Okay. Go ahead.

13 THE WITNESS: I submitted two objections, Your Honor.

14 THE COURT: Can you hear him?

15 Why don't you hold the mike. Can you take it out or is

16 it -- very good. Now, talk into it.

17 THE WITNESS: Yes, sir. I submitted two objections,

18 Your Honor. The first one concerned the maintenance of the

19 medicine that would be included in the agreement. On May 22nd,

20 we got the original proposal in which ACLU's counterproposal

21 addressed the fact that there needed to be a pharmacy plan. And

22 when the final agreement came to us, all that I seemed to locate

23 in it was a grievance procedure in case --

24 THE COURT: You said a grievance procedure?

25 THE WITNESS: A grievance procedure in case there was a

1 problem with the medication.

2           Now, we at Limestone, as a class, are very fortunate.  
3 ADOC has provided for us extremely well. Our medication here is  
4 not only kept on our person, but ADOC also maintains a supply of  
5 all our medications so that in case there is a mix-up with the  
6 pharmacy and something doesn't arrive, they can give us  
7 medication out of their stock so that our doses are not missed,  
8 which is extremely important. Overall, the care that we've  
9 gotten here has improved everyone's health, and we'd like for it  
10 to remain that way.

11           We, as a class, see that moving from one location to  
12 many locations within the state is going to provide more of a  
13 burden that possibly all those medications might not be  
14 available at all locations in case the pharmacy cannot meet an  
15 order on time. So it was discussed at length among several in  
16 the group. And as a class, the thing we came up with was simply  
17 to look at the procedure carefully. And if, for some reason,  
18 the medications can't be available, don't transfer the inmate  
19 until those medications can arrive.

20           But there was no plan at all detailed there except for  
21 the grievance procedure. And in that procedure, as it was  
22 detailed earlier, everything is done through the mails to get in  
23 contact with ACLU, which will take several days. Depending upon  
24 the time that it happens, it could be as much as a week before a  
25 letter is even arrived detailing that some medication has been

1 missed, at which time ACLU has a procedure to get in contact  
2 with ADOC people and let them know.

3 MS. WINTER: Mr. P, did you hear Mr. Lunsford's opening  
4 remarks on the subject of medicine?

5 THE WITNESS: I did. And I heard him address that the  
6 people who have KOPs would be allowed to take those KOPs with  
7 them. However, a lot of inmates are not on KOP medications.  
8 And our concern is that with the amount of HIV medications that  
9 are available and the different regimens people are on, that it  
10 presents a burden that may not be met totally on ADOC's part to  
11 have those medications in stock at all times.

12 MS. WINTER: Mr. P, turn -- you had some other points,  
13 too, in your objection. You have worked as a runner at  
14 Limestone; is that correct?

15 THE WITNESS: Yes, ma'am.

16 MS. WINTER: And you're familiar with transfer  
17 paperwork?

18 THE WITNESS: Yes, ma'am, I am.

19 MS. WINTER: And you had a particular concern that you  
20 wanted to raise about transfer paperwork?

21 THE WITNESS: Yes, ma'am. I wanted to clarify a point  
22 first in there. As far as the class, most of the inmates who  
23 have come through in past years, not recently, but four or five  
24 years ago through Kilby process, suffered a rather traumatic  
25 experience. It seems like some undue things were done to HIV

1 inmates as a whole by some of the correctional officers there.  
2 And I think when Kilby is mentioned, that's why those red flags  
3 go up. The staff has undoubtedly changed a lot, but those same  
4 attitudes may still be in existence. And so anytime Kilby is  
5 mentioned as far as a transfer, people automatically revert back  
6 to the treatment they got then. Like I said, we've been treated  
7 very well up here at Limestone. We have no problems with that.

8           The transfer process as laid out by Mr. Lunsford seems  
9 to still sound, to me personally, like going back through the  
10 receiving process at Kilby. And the problem that we had with  
11 that is that that's not a normal transfer from DOC. And our  
12 thoughts as a class is that any transfer that's done that does  
13 not conform to the norm marks us as having HIV coming from  
14 Limestone. Transfers from here, as Mr. Lunsford said, they may  
15 be going to Holman. They may be going to Bibb, Bullock. They  
16 may go through Kilby. People leave here for ATEF are held over  
17 at Kilby until bed space is available.

18           I myself have talked to other people about this, and we  
19 are wondering why a classification process cannot be completed  
20 here. And if we are classed to go to Bullock, transferred to  
21 Kilby, on the transfer sheet that's going to Kilby the reason  
22 would be listed "Bullock hold," signifying that this inmate is a  
23 normal transfer going from here to Bullock being held at Kilby  
24 just for transportation reasons.

25           The process, as far as intake, is handled a lot of

1 times by inmates; and inmates are familiar with what goes on.  
2 Inmates up here who work in the receiving process when people  
3 come in, they know where they're coming from. They most of the  
4 time know why.

5           So our problem with the whole process as it has been  
6 detailed to us -- and we don't really know the exact process.  
7 We've just been -- it's been alluded to in several documents  
8 we've received, so we've been having to put together our own  
9 kind of process for how we think it will go from that  
10 information. And the main concern of the people in the class is  
11 any deviation that's done to a normal transfer, that will show  
12 that these guys from Limestone are being done differently than  
13 other people shipped from Limestone.

14           MS. WINTER: Did you make the point a moment ago --  
15 correct me if I'm misquoting you -- that if a class member is  
16 sent to Kilby, the paperwork, in your view, from what you know  
17 of how the paperwork usually works, should just say "hold for  
18 Bullock" or "hold for Donaldson," whatever the other facility  
19 is, that that's the -- that's the norm?

20           THE WITNESS: Yes, ma'am.

21           MS. WINTER: Anything else would --

22           THE WITNESS: That seems to be a common procedure  
23 that's done daily.

24           MS. WINTER: You -- did you have an objection to the  
25 timing of some integration at Limestone?

1 THE WITNESS: I -- I did not have an objection, per se,  
2 to the timing that was done through Kilby; however, we did want  
3 to address also the option of those who wish to remain at  
4 Limestone or those who wish to remain at Decatur Work Release to  
5 possibly be coordinated through the ADOC system and  
6 classifications to allow them the opportunity to do that when  
7 transfers take place.

8 MS. WINTER: And you heard Mr. Lunsford's explanation  
9 on that process --

10 THE WITNESS: I did.

11 MS. WINTER: -- that everyone will have had an  
12 opportunity to express their preference.

13 THE WITNESS: Yes, I did.

14 MS. WINTER: Is there any other point that you want to  
15 make before we move on to the next witness?

16 THE WITNESS: No, ma'am.

17 MS. WINTER: Thank you, Mr. P.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Before you leave, did you have some  
20 questions? And how do we address these concerns he has raised?

21 MR. LUNSFORD: Which --

22 THE COURT: I mean I -- what do you propose that we  
23 do --

24 MR. LUNSFORD: Do you want me to respond to the issues  
25 he's raised?

1 THE COURT: Yes. How do you -- I'm asking both of you.  
2 How do you propose that we respond?

3 MS. WINTER: Well --

4 MR. LUNSFORD: Do you want me to go first?

5 THE COURT: There would be several different ways.

6 MS. WINTER: Yes. I think it would be helpful for  
7 Mr. -- for the ADOC to respond.

8 MR. LUNSFORD: Well, on the pharmacy plan, I mean I  
9 don't want to go too far into detail of what was proposed; but  
10 what he said about -- and just so you know --

11 I think, Mr. P, you're on KOP meds? Is that --

12 THE WITNESS: Yes, sir.

13 MR. LUNSFORD: So if an inmate is not on KOP  
14 medication, what happens is -- well, regardless, either way,  
15 their medical records are copied for a certain period of time,  
16 placed in a sealed envelope. Now, if you're not on KOP meds,  
17 what happens is whatever medication is left remaining -- and  
18 oftentimes that exceeds a 30-day supply -- goes into the medical  
19 records folder too. So these are -- and I don't know if you --  
20 these are huge blister packs. You may see cold medicine that  
21 you punch out one by one. These are much larger than that.  
22 They are cards that contain a thirty-day supply on one sheet.  
23 And so a lot of times what you see is there will be two cards  
24 stuffed in an envelope of medical records.

25 So, for example, when Mr. P -- let's say he goes to

1 Bullock and he's transferred there. If he wasn't on KOP  
2 medications, his medication would be stuck in with his medical  
3 records and it would go with him. And when he arrived there,  
4 the medical staff would open up his envelope, get out the  
5 records, and then take the medication and set up a -- take the  
6 existing medication administration record to the pharmacy, and  
7 he would be -- he would go to pill call just as if he had been  
8 there for 30 days. And then they would note what supply is  
9 remaining. And if another order was required, there's a spot on  
10 the card, if I remember correctly, where they reorder when you  
11 get to a certain number of pills left on the card.

12 Does that make sense, Mr. P?

13 THE WITNESS: Yes, sir, it does.

14 MR. LUNSFORD: So I mean to say we need a pharmacy plan  
15 doesn't really -- ignores the fact that we already have one for  
16 everyone, which is if you're on chronic medications, your  
17 medication, if you're transferred, goes with you.

18 And let's say there's an odd instance when someone --  
19 let's say they left the envelope in the van, which I don't  
20 know -- I've never heard of that ever happening. But let's say  
21 it happened and they're gone and the person goes to pill call.  
22 What they can do is they will literally go down the street to  
23 the nearest pharmacy. Or if it's Draper or Staton, Elmore,  
24 Tutwiler, one of those that's close together, they'll call  
25 another facility and say do you have extra medication that we



1 can take out of your supply. So I mean there are -- those plans  
2 exist for other medication, not just HIV, and the same will be  
3 done here.

4 On the issue of the Kilby transfer, as we've already  
5 said, the intent is to utilize the normal transfer process. And  
6 we've told plaintiffs' counsel that over and over again, and  
7 this keeps on coming up like we're sending everyone to Kilby.  
8 There is nothing in the agreement that requires us or that  
9 allows us to transfer everyone through Kilby. That's not --  
10 that's not the plan. That's not the plan at all. There was  
11 some discussion about whether that was an appropriate process,  
12 but that was never a finalized plan. And in fact, we've gone  
13 into so much detail on the transfer process that --

14 Mr. P, have you heard of a dummy jacket before?

15 THE WITNESS: Yes, sir, I have.

16 MR. LUNSFORD: Tell the Court, if you would, what's in  
17 a dummy jacket.

18 THE WITNESS: I've seen dummy files. I have not  
19 examined them, because that's something that DOC keeps  
20 theirselves.

21 MR. LUNSFORD: Okay. So --

22 THE WITNESS: It says dummy file on the front.

23 MR. LUNSFORD: Yes, sir. Thank you for that.

24 So what we have is we actually have -- sorry to pick on  
25 you, Mr. B#1, but we've got your dummy file. It's already been

1 done, but -- as you'll see when we talk about it later.

2 But the dummy file doesn't include anything  
3 identifiable with respect to HIV. It doesn't indicate that  
4 they're coming from the special unit. It just says -- it  
5 essentially indicates their history. And to the extent it  
6 indicates anything, it says they've been at Limestone. That's  
7 it.

8 So again, this Kilby issue keeps on coming up. Inmates  
9 are not going to be sent through intake like they're just  
10 arriving into the system. And to the extent that inmates are  
11 not assigned to Kilby, they're going to be transferred in the  
12 normal course to the other facilities. The concept of ever  
13 transferring them from Kilby was, again -- the intention was to  
14 prevent disclosure and to allow a buffer of housing assignments  
15 between where they ultimately are assigned.

16 THE COURT: Two questions. This fear of Kilby, address  
17 that.

18 MR. LUNSFORD: I have -- I have always heard through  
19 the prison grapevine that Kilby is -- there's a lot of talk that  
20 goes on at Kilby and that there's -- and I think, frankly, part  
21 of the process is there's less of a community there because  
22 inmates are constantly moving in and out. It's just a constant  
23 exchange of inmates, and so it's kind of this mass of people  
24 moving through one facility. And I don't necessarily understand  
25 it. I've seen -- I've been through the intake dorm. I've seen

1 the intake process. There is a process, when you come in from a  
2 county jail, where lots of times county jails will allow you to  
3 have a lot more stuff than we will necessarily allow inmates to  
4 have. And so inmates' belongings sometimes are pared down and  
5 things have to be discarded. And so --

6 THE COURT: I thought, though, that he was talking  
7 about some type of particular treatment that he received because  
8 of his HIV status at Kilby that he found objectionable.

9 Is that what you were talking about?

10 THE WITNESS: Yes, sir, it was.

11 MR. LUNSFORD: But that -- Your Honor, that's been  
12 remedied months ago.

13 THE COURT: Okay.

14 MR. LUNSFORD: I mean we're -- if you're HIV positive  
15 and you arrive in our system today, you're not housed in  
16 anywhere but the -- you're housed in the intake dorm just like  
17 anyone else. And there are -- just so the Court's aware, there  
18 are currently HIV-positive inmates today that are being held at  
19 Kilby. We are no longer transferring any more inmates to  
20 Limestone. We've stopped that process. They're being held in  
21 the permanent party dorm or the intake dorm at Kilby.

22 MS. WINTER: Mr. P, did you have any follow-up question  
23 that you wanted to ask Mr. Lunsford as a result of his  
24 explanations to you?

25 THE WITNESS: No, ma'am, Ms. Winter. I believe he's

1 clarified everything I had objected to.

2 MS. WINTER: Thank you.

3 THE COURT: I still have -- I didn't get to my second  
4 question.

5 I don't quite understand how the confidentiality aspect  
6 of the agreements is to work. And let me explain why. I know  
7 that, obviously, the department is under an obligation under the  
8 agreement to maintain confidentiality; but I would assume that  
9 to some degree, it's going to be impossible. I mean just by  
10 nature of the fact that if you have a heart problem and you go  
11 see a -- well, you have a heart problem and you go see a  
12 cardiologist, everyone is going to know that you have a heart  
13 problem. Where is the line? It's not as if all this can take  
14 place underground. Won't some revelations be made just by the  
15 nature of the fact that the people are just seeking certain  
16 types of treatment?

17 MS. WINTER: Some confidentiality -- no class member is  
18 under any illusion that confidentiality will be absolute, in  
19 part because most of them have been in the system long enough  
20 that people already know that they're HIV and there's movement  
21 within the system. And so somebody may be at Bullock who was at  
22 Limestone and who saw them in the special unit. That's part of  
23 the reason why I think they are so concerned that they remain in  
24 the special unit, because with every passing day and month,  
25 there's another person who comes in from Staton or Donaldson or

1 wherever and sees them and it gets further dispersed. The class  
2 members understand there's no absolute guarantee.

3           What I believe the real concern is, is everything being  
4 done to mitigate the problem that can be done. Mr. P's point  
5 is -- and I think that Mr. Lunsford's explanation was helpful --  
6 again, I hope it was to other class members too -- that these  
7 issues are being thought of so that the paperwork is not going  
8 to -- thought will be given so that the paperwork is the same,  
9 that there's no inadvertent disclosure.

10           There is -- sometimes the issue of the people going to  
11 see Dr. Truett -- Mr. Lunsford pointed out at Tutwiler that  
12 Dr. Truett is an infectious disease specialist. She doesn't see  
13 exclusively HIV patients. It's true that people can get a hunch  
14 or a suspicion. We can't take care of -- and everybody  
15 understands for the people coming in, they're going to be in a  
16 good situation. The new people who are already coming into the  
17 system are in a much stronger position.

18           These men understand that you can't unring the bell and  
19 there will -- their -- the knowledge of their status will be  
20 known to some people. They want there to be no -- to know that  
21 if there are deliberate disclosures, those disclosures will be  
22 punished. They want to know that there will be no careless --  
23 to the extent possible, great care will be taken to minimize  
24 inadvertent disclosures through not thinking through the  
25 process. And it sounds to me and I think to Mr. P from what

1 Mr. Lunsford was saying that there has been given real thought  
2 to this. And it may be that other witnesses will have more  
3 follow-up questions to Mr. Lunsford.

4 THE COURT: Thank you.

5 MR. LUNSFORD: Did that answer your question, though?

6 THE COURT: Yes.

7 Do you have anything else, sir?

8 THE WITNESS: No, sir, Your Honor.

9 THE COURT: Thank you very much.

10 MS. WINTER: Plaintiff calls JT. Mr. T#1's objection  
11 was filed at docket number 289 and 296.

12 THE COURT: Let him hold the mike as well.

13 **JT**, the witness, having been duly sworn to speak the  
14 truth, the whole truth, and nothing but the truth, testified as  
15 follows:

16 STATEMENT TO THE COURT

17 THE WITNESS: Your Honor, my objection is to me and the  
18 Kilby situation. I have no problem with --

19 THE COURT: Would you say that again?

20 THE WITNESS: The Kilby situation. I have no problem  
21 with the transfer personally. But however, I do have a problem  
22 with inmates at the receiving end at Kilby processing other  
23 inmates' paperwork. They -- the DOC officials do not do it.  
24 They're really just a stand-in. They're not doing nothing.

25 As a matter of fact, from personal experience, when I

1 went through Kilby in '09, I told the officer I was HIV positive  
2 and I needed -- and so they didn't put me right away in  
3 segregation. They put me in population. But he -- I was  
4 threatened because I wouldn't tell another inmate I was HIV  
5 positive. I have no problem disclosing that I'm HIV positive,  
6 but I do have a problem with inmates. The only thing -- I  
7 really don't think that the problem with the transfer is going  
8 to be -- the major problem is not going to be the inmates. It's  
9 going to be the DOC officials. I think the inmate problem going  
10 to be limited. But when it comes to DOC, I think that's where  
11 the major problem is going to come in.

12 THE COURT: What problems do you -- are you talking  
13 about?

14 THE WITNESS: I'm talking about the problem that DOC --  
15 I know they said that there will be zero tolerance. But I  
16 believe DOC will tell other inmates and other people about your  
17 HIV status. I believe they're going to cause more problems than  
18 other inmates do. That's the first part.

19 MS. WINTER: Just to clarify something you said,  
20 Mr. T#1, when you talked about your bad experience at Kilby and  
21 you said you were threatened for not disclosing your HIV status  
22 to another inmate, who threatened you? Was it an inmate or a  
23 staff member?

24 THE WITNESS: It was actually a sergeant.

25 MS. WINTER: And he told you that you had to disclose

1 your status to --

2 THE WITNESS: Another inmate. See, this inmate will  
3 ask you during the paperwork, asking us the questions about our  
4 medical status, about our medical problems.

5 MS. WINTER: So it's your testimony that an inmate was  
6 processing you in to Kilby?

7 THE WITNESS: That's correct.

8 MS. WINTER: And that inmate who was doing the  
9 processing asked you your HIV status?

10 THE WITNESS: Yes. And I -- at that time, I declined  
11 to tell him about my HIV status.

12 MS. WINTER: And then a sergeant said something to you  
13 about declining to reveal your HIV status to the inmate worker?

14 THE WITNESS: That is correct.

15 MS. WINTER: What did the sergeant say to you?

16 THE WITNESS: Well, the sergeant told me that I -- he  
17 instructed me to tell this inmate that I was HIV positive. I  
18 had -- prior to that, I had already told another officer and --  
19 but he wanted me to tell this particular inmate about my status.

20 MS. WINTER: One second.

21 (Off-the-record discussion)

22 MS. WINTER: I think you testified this happened in  
23 2009?

24 THE WITNESS: That is correct.

25 MS. WINTER: Your -- you had asked whether the



1 paperwork, the transfer paperwork, if and when you go through  
2 Kilby, will say -- whether the paperwork will say that you're  
3 coming from Limestone. Is that a concern of yours?

4 THE WITNESS: Yes, it is. I believe if the paperwork  
5 say we come from Limestone, everyone will automatically assume  
6 that we are HIV positive.

7 MS. WINTER: But many people come from Limestone.  
8 There's many more general population inmates. Did  
9 Mr. Lunsford's explanation make you feel any more secure about  
10 this situation?

11 THE WITNESS: It made -- somewhat, it did. I  
12 believe -- I believe -- in my opinion, I don't think there's a  
13 way to avoid it; but however, there is a way to limit the  
14 situation.

15 MS. WINTER: And is there anything else that you can  
16 think of other than --

17 THE WITNESS: The other problem is, again, about the  
18 KOP. I was wondering, the ones that's on KOP now, once they are  
19 transferred, will they be able to continue KOP or will they be  
20 forced to give it up?

21 MS. WINTER: No. I think Mr. Lunsford --

22 THE WITNESS: Yeah.

23 MS. WINTER: -- has already explained --

24 THE WITNESS: Yeah.

25 MS. WINTER: -- that they can stay on KOP.

1           You have raised issues about zero tolerance, because  
2 you expressed concerns about officers' treatment of some  
3 prisoners or a certain officer's treatment of prisoners  
4 regarding food carts. Would you tell the Court about that?

5           THE WITNESS: Yes. One particular guard -- I work on  
6 the chow line. And during breakfast on -- I believe it's -- on  
7 one of the morning shifts, I go get the chow cart. We have an  
8 officer, Officer Green. He treat us like he don't want to be  
9 around us. About two hours prior to chow time, he will push the  
10 carts outside the gates. Where we normally go inside the  
11 kitchen area and pick them up, he'll push them out. And the  
12 food be cold when we get to the dorm. It's only at breakfast.  
13 It's the only officer we have a problem with.

14           MS. WINTER: And do you have reason to believe that  
15 it's on the basis of your HIV status?

16           THE WITNESS: Yes. He has stated to several inmates  
17 that he didn't want to deal with us.

18           MS. WINTER: Do you feel that you have some mechanism  
19 whereby you can complain to the ADOC administration about this  
20 officer and say that this behavior shouldn't be tolerated?

21           THE WITNESS: I don't believe nothing will come behind  
22 it. At one point, there was a complaint. They removed him from  
23 that particular job for about a week. They put him in the unit  
24 where we actually lived in. But they put him right back.

25           MS. WINTER: How long ago was it that someone

1 complained?

2 THE WITNESS: I'd say about two months.

3 MS. WINTER: So in July of this year?

4 THE WITNESS: Yes.

5 MS. WINTER: And finally, you have an issue or a  
6 problem with the timing of the -- or with the settlement  
7 agreement because of the timing of the integration at Limestone,  
8 inside Limestone; is that correct?

9 THE WITNESS: That's correct. I believe -- I believe  
10 that most every inmate at Limestone wants to be integrated, want  
11 to start it here. I believe the population -- even the  
12 population inmates, they have no problem with integration. I  
13 believe that we should start here and go from there.

14 MS. WINTER: What about the armband? Do you have any  
15 problems with wearing an armband?

16 THE WITNESS: Yeah. No matter what, we had white, now  
17 we got red and purple. Either way, it's identifying us as HIV  
18 positive. We had an officer just recently, he came up to an  
19 inmate that -- he was with another staff member -- and said --  
20 asked that inmate what's he doing with this particular inmate;  
21 don't you see he's HIV positive. And so wherever we go, the  
22 armband is still going to disclose our HIV status.

23 MS. WINTER: Did you have any other points you wanted  
24 to make, Mr. T#1, or any other questions you wanted to ask  
25 Mr. Lunsford?

1 THE WITNESS: No.

2 MS. WINTER: Thank you.

3 THE COURT: Do you wish to respond?

4 Thank you very much.

5 MS. WINTER: Plaintiffs call DR.

6 (No response)

7 MS. WINTER: Is MH here?

8 Mr. H's comment is filed at docket number 297.

9 **MH**, the witness, having been duly sworn to speak the  
10 truth, the whole truth, and nothing but the truth, testified as  
11 follows:

12 STATEMENT TO THE COURT

13 THE WITNESS: My name is MH. And my concern is about  
14 the overall training of all the facilities as far as the  
15 officers and the general population. How does ADOC go about and  
16 keep it to where people will understand -- getting the right  
17 training out to all the general population mainly of the state  
18 to where they would have the right understanding for the safety  
19 of all the peoples that has the virus over the state over the  
20 time period that they have as they implement the transfers and  
21 all that stuff? I just want to get that out, because I don't  
22 understand how they're going to continue to do that with the  
23 turnover, with people moving back and forth a lot, and what kind  
24 of training are they going to give. I know they say it's going  
25 to be -- the training is coming through UAB 1917 Clinic. But

1 you got thousands and thousands of inmates in the state of  
2 Alabama. So how is that training going to be presented over the  
3 state and over the time period that they have?

4 MS. WINTER: Would you like to respond?

5 MR. LUNSFORD: Well, if you'd like me to.

6 Good morning, Mr. H. We've not met. I'm Bill  
7 Lunsford, and I represent the Department of Corrections. But if  
8 I understand your question right, your question is how much  
9 training are we going to be providing to inmates.

10 THE WITNESS: Right.

11 MR. LUNSFORD: And then as the population changes over  
12 time, how are we going to continue that process.

13 THE WITNESS: Right.

14 MR. LUNSFORD: Is that a fair statement?

15 THE WITNESS: That's part of it. Right.

16 MR. LUNSFORD: Okay. Let me start there; and then if I  
17 don't get to any of it, you tell me. Okay?

18 THE WITNESS: Okay.

19 MR. LUNSFORD: The first part is this. And you haven't  
20 received the training yet, have you?

21 THE WITNESS: No.

22 MR. LUNSFORD: Just so you know, one of the class  
23 members -- and I'm sure the Court will remember this, that one  
24 of the class members from Tutwiler, Ms. H, testified that she  
25 had been through the training and that she said the training was

1 excellent. I think that's the exact word she used.

2           The training is being offered by members of the health  
3 services team that basically organize medical services that  
4 you've been receiving since you arrived in the system. And what  
5 is happening is at every single facility in the state, this team  
6 is going to go around and they're going to provide -- they're  
7 going to have different sessions where every inmate is required  
8 to attend. And they're going to give what is probably about an  
9 hour-and-ten-minute-long training session.

10           Now, there's different parts to that training session.  
11 When you get the training, you're going to be in a room with a  
12 projector and a big movie screen, and they're going to shoot  
13 slides up on a screen that are going to go through all the facts  
14 that relate to HIV. But also -- because we didn't think it --  
15 we thought it was important to not only talk about HIV, but some  
16 of the other sexually transmitted diseases, like hepatitis C.  
17 And then at the end of that, they're going to issue a  
18 questionnaire to the inmates to see how well they're doing in  
19 picking up the information that's given during the course of the  
20 training. And then after that's done, they're going to ask for  
21 questions, and the inmates have an opportunity to ask questions  
22 about HIV or other sexually transmitted diseases.

23           And you may ask how are we going to track this. Well,  
24 before we go into every facility, we get a list of inmates and  
25 we have them sign off after they've received their training. So

1 that's going to happen in every single facility. And we're also  
2 going to be monitoring for transfers so if somebody misses it.

3 Now, here's the thing that's important. That  
4 training -- we also anticipate at some point that we're going to  
5 condense that training a little bit on sexually transmitted  
6 diseases. And I don't know if you remember this because your  
7 intake process in 2009 is different than the intake process now;  
8 but as part of the intake process, inmates are today receiving  
9 education on sexually transmitted diseases that you didn't  
10 receive. And so we hope that we can effectively continue not an  
11 hour-long training for every single inmate, because I think we'd  
12 all agree that at some point, if enough people come through the  
13 system, that probably becomes unnecessary, but an abbreviated  
14 training session that as people come in, they'll address that.

15 THE WITNESS: Is it also going to address the fear?  
16 Because people are still going to be ignorant to the facts, no  
17 matter what, inside or outside the prison.

18 MR. LUNSFORD: You raise a very important point.  
19 You're exactly right. There's a lot of misunderstanding out  
20 there.

21 THE WITNESS: Right.

22 MR. LUNSFORD: And I can tell you one of the things  
23 that is in the presentation is that HIV is something that you  
24 can catch, but there are a lot of other things that you can  
25 catch through engaging in at-risk behavior like sharing tattoo

1 needles. But they're going to discuss -- and I think it's  
2 important for us to discuss those other things in the context of  
3 HIV and other things to say, hey, HIV is obviously something you  
4 don't want to contract if you can avoid it, but there are other  
5 things out there that are as risky or are riskier in some  
6 contexts that you can also contract, and you need to know about  
7 those as well. So I think your concerns about addressing the  
8 myths, I think the presentation, when you see it, it will  
9 address all those things.

10 Are there any other questions that you have on the  
11 training aspect?

12 THE WITNESS: The other aspect is you've got one  
13 infectious disease doctor for the whole state. How is that --  
14 how would that keep the confidentiality of everybody with  
15 infectious disease because you only have one? When you look at  
16 the newsletter, when you list her name, it only has people from  
17 B and C dorm that go to see her. So how do that stop your  
18 confidentiality from getting out around the system?

19 MR. LUNSFORD: Well, that's true. I bet you don't know  
20 that Dr. Truett, who's right over there --

21 THE WITNESS: I see her. I know her. I met her.

22 MR. LUNSFORD: I know you do. I know you do.  
23 Dr. Truett, I bet you don't know she also sees patients at  
24 Kilby. Did you know that?

25 THE WITNESS: Well, I --



1 MR. LUNSFORD: In fact, of the patients she sees at  
2 Kilby, over 50 percent of those don't have HIV. There are a lot  
3 of infectious diseases within the Department of Corrections  
4 like, for example, you've probably heard about staph infections.  
5 Have you heard about those?

6 THE WITNESS: Right. Right.

7 MR. LUNSFORD: And so Dr. Truett is a valuable resource  
8 for the department. And she's going to be used, because she has  
9 time to do more than just simply provide HIV-specific care to  
10 250 inmates.

11 THE WITNESS: Right.

12 MR. LUNSFORD: So I think the problem that you're  
13 seeing right now is that the care she's providing at Limestone  
14 is --

15 THE WITNESS: This is the problem that I see, is like  
16 the appointments come on the newsletter, and it's only B and C  
17 dorms that she's seeing at this camp. So that don't hold  
18 nobody's confidentiality. It puts it out there. Do you see my  
19 point now?

20 MR. LUNSFORD: Are you aware that she's seeing inmates  
21 at Limestone --

22 THE WITNESS: At B and C dorm. I don't see nobody from  
23 I, E, D, and F and all that on the newsletter. It's only B and  
24 C. So how is that not keeping my status private?

25 MR. LUNSFORD: Well, understand that's about to change,

1 right? You understand that. I mean there's not going to be --  
2 you understand that the 200 inmates, approximately, that are at  
3 Limestone right now are not going to be here come a year from  
4 now.

5 THE WITNESS: I don't hope to be here neither, so.

6 MR. LUNSFORD: I know. But you understand the housing  
7 is going to change.

8 THE WITNESS: I understand what you're saying.

9 MR. LUNSFORD: So, for example, if there are only 20  
10 HIV-positive inmates here and she was signed up to see 30  
11 people, that wouldn't necessarily disclose your status, would  
12 it?

13 THE WITNESS: It already has been, so I mean --

14 MR. LUNSFORD: But it wouldn't by virtue of that  
15 newsletter, would it?

16 THE WITNESS: I don't think so.

17 MR. LUNSFORD: No, sir.

18 THE WITNESS: I don't know, but I don't think so. I  
19 just don't have the confidence in the ADOC. Simple as that.  
20 I'll believe it when I see it happen.

21 MS. WINTER: Thank you. If you don't have any further  
22 questions of Mr. Lunsford --

23 THE WITNESS: No, ma'am.

24 MS. WINTER: -- is there anything else you wanted to  
25 say to the Court?

1 THE WITNESS: No.

2 THE COURT: Thank you very much.

3 THE WITNESS: Okay.

4 MS. WINTER: Plaintiffs call --

5 THE COURT: It's now 12:30. Why don't we take about a  
6 30-minute recess. Then we'll come back and hear from the other  
7 inmates.

8 How long do you think your evidence will take,  
9 Mr. Lunsford?

10 MR. LUNSFORD: Twenty minutes. Maybe 20.

11 THE COURT: Pardon me?

12 MR. LUNSFORD: Maybe 20 minutes.

13 THE COURT: Very good. Thank you.

14 (Recess at 12:34 p.m. until 1:18 p.m.)

15 THE COURT: Be seated. Proceed.

16 MR. LUNSFORD: Your Honor, I did want to make one  
17 point. There's this question -- and I believe at least the  
18 last -- one of the last two witnesses have raised it -- about  
19 medication.

20 THE COURT: Right.

21 MR. LUNSFORD: And I did want to make this clear, that  
22 once an inmate arrives at a facility after they're transported,  
23 they don't have to write to these folks if they have medication  
24 issues. There are various avenues they can proceed through if  
25 they don't believe they have their medication. Number one, they

1 can notify the shift office immediately they have an issue with  
2 their medication. And the shift office at any facility will  
3 immediately notify medical if there is an issue with medication.  
4 The second thing they can do is depending on the time they  
5 arrive, they can submit a sick call request form. And those  
6 sick call request forms, based upon the processes that are  
7 available throughout the state, are triaged 24/7. So it's not  
8 like they have to write a letter to counsel in order to request  
9 medication.

10 THE COURT: Right.

11 MR. LUNSFORD: We would encourage all of the inmates,  
12 if they, on transfer, have an issue with medication, notify the  
13 correctional staff if they can't notify members of the medical  
14 staff first.

15 THE COURT: Good.

16 Ms. Winter?

17 (Brief pause)

18 MS. WINTER: Your Honor, may I check?

19 (Brief pause)

20 MS. WINTER: We can move along move quickly because  
21 Mr. Lunsford's good explanations have satisfied some of the  
22 witnesses that we now won't have to call.

23 THE COURT: Right. I thought that would probably  
24 happen.

25 MS. WINTER: Yes. It's been very helpful.



1 prohibit me from going home for up to two years.

2 MS. WINTER: I'm hoping that Mr. -- that Mr. Lunsford  
3 can address that and assure -- and assure Mr. T#2 that that  
4 won't happen.

5 MR. LUNSFORD: Mr. T#2, just briefly, when you signed  
6 up for crime bill, that was after you had a conversation with  
7 your classification specialist. Am I correct in that?

8 THE WITNESS: I was actually signed up prior to that.

9 MR. LUNSFORD: But your classification specialist is  
10 aware that you signed up for crime bill.

11 THE WITNESS: Absolutely.

12 MR. LUNSFORD: Okay. And you're scheduled to complete  
13 crime bill in February of 2014, correct?

14 THE WITNESS: That is correct.

15 MR. LUNSFORD: Okay. Just to be clear, you understand  
16 the settlement requires ADOC to install telemedicine units at  
17 all -- at various different institutions and that that won't  
18 necessarily be done until April of 2014.

19 THE WITNESS: Right. I understand that.

20 MR. LUNSFORD: Okay. So if the Department of  
21 Corrections doesn't intend to transfer anyone out of Limestone  
22 prior to June of 2014, you won't have any problem completing it,  
23 will you?

24 THE WITNESS: Right. I do -- I do understand that. I  
25 guess my concern was that they move up on the timeline, because

1 there's nothing that prohibits them from transferring us earlier  
2 than that. And also, there are other people who are required by  
3 the parole board in order to complete and make parole next time  
4 that are in trade school. And there's also another class of  
5 crime bill participants from the special unit that will begin  
6 sometime in mid-February. And so not only would that -- maybe  
7 it wouldn't affect me, but it would certainly affect some other  
8 people.

9 MR. LUNSFORD: But those are all -- that's -- all those  
10 programs, that's all information that's provided to  
11 classification, correct?

12 THE WITNESS: That's correct.

13 MR. LUNSFORD: And so if classification is aware that  
14 you're involved in a program, just so you understand,  
15 classification specialists have now been informed that no one is  
16 supposed to be removed from a program in order to be transferred  
17 unless that circumstance is unavoidable.

18 THE WITNESS: Excellent.

19 MS. WINTER: Thank you.

20 Plaintiffs call JB#2. And Mr. B#2's objection is filed  
21 as docket numbers 292 and 297.

22 THE WITNESS: Good afternoon. My issue is an issue  
23 that's been ongoing since I've been in prison. It is safety and  
24 security.

25 THE COURT: Is what?

1           THE WITNESS: Safety and security. And I am -- I am  
2 fully behind us being desegregated and I am ready to go, to put  
3 that on the record. But my issue is for the individuals that  
4 get to other prisons or if they're here or anywhere in the state  
5 of Alabama and they run into a situation to where they get  
6 backed into a corner by an inmate or an officer or a nurse that  
7 is -- what would I call it? -- violent or having malice toward  
8 that person with HIV, what would be a result or a repercussion?  
9 And then if -- if there is -- what kind of attention can we get  
10 immediately to these types of situations? Because I have seen  
11 these situations occur since I've been here in '09. And I just  
12 know prison; we're going to have bad situations occur. Is there  
13 any way we can implement a situation or a link that I don't have  
14 to write ACLU and it take seven days for the letter to get there  
15 and then seven days before a letter could get back and I'm hurt  
16 or injured mentally or physically in such a way due to the  
17 situation that has arose in prison, due to the ADOC not being as  
18 fast at extinguishing the problem? We have a pound 77 hot line  
19 for rape and sexual abuse victims here in the state; and I was  
20 wondering if a pound 22 or pound 99 line can be established or  
21 developed for individuals that feel like they've been  
22 discriminated against or they have had acts of violence come  
23 upon them from being HIV positive.

24           MS. WINTER: Mr. B#2, before you go on, is there  
25 anything that's happened recently that you're -- you know, that



1 has heightened your concern, or are you worried about bad  
2 treatment in the past?

3 THE WITNESS: We can't use anyone's names. I can just  
4 give hypothetical situations?

5 MS. WINTER: Pardon?

6 THE WITNESS: I'm not supposed to use inmates' names.

7 MS. WINTER: If you have something to say about another  
8 inmate, we'll not use their name.

9 THE WITNESS: Hypothetical. A situation occurred about  
10 a week ago. I had to go to the ACL -- ACU -- HCU, health care  
11 unit, for a mental health checkup. And we have this -- we have  
12 a new implementation where we don't go straight to the HCU  
13 anymore. We have to go to the gym to be called to the HCU so we  
14 won't have to sit out in the hallway to wait for the doctor, I  
15 guess so we won't have any disclosure problems.

16 Well, I went -- I went to the HCU. And while I was  
17 walking through the HCU going past the same hallway that the  
18 inmates sit to go to the HIV doctor, there was an HIV doctor --  
19 there was an HIV doctor there and there was an inmate in the  
20 room with her -- with him; I'm sorry -- and they were discussing  
21 their CD4 count and the viral load. And I was in the hallway  
22 and I stopped to speak to someone else, but I heard them telling  
23 that person's viral load and their CD4 count. And because I'm  
24 HIV positive, I guess I knew when I heard them say "your CD4  
25 count is" and "your viral load is," what that was. But their

1 viral load was low. It was like a hundred and something. And  
2 I -- in my mind, I was like, golly, you run around here like  
3 you're the picture -- the picture of health, but you really  
4 don't.

5 But anyway, anybody can walk past and hear these  
6 conversations in the hallway if they're just walking through.  
7 So that's disclosure being -- being out in the open right there.  
8 So that's a situation that occurred recently.

9 MS. WINTER: I don't have any -- I'm not aware of any  
10 other issue that you've raised. Is that correct, Mr. B#2?

11 THE WITNESS: No, ma'am.

12 MS. WINTER: You generally support the settlement?

13 THE WITNESS: I -- yeah. I agree with the settlement.

14 I do have one other issue, the issue about dietary,  
15 dietary and food implementation. I don't know how it's going to  
16 be implemented as far as lockup or -- they have also a second  
17 remedy to lockup which is called house arrest. And the  
18 individuals in house arrest -- whether it happens now or it  
19 happens later on when we get to the other facilities, I don't  
20 know if they have house arrest or not because I've never been to  
21 house arrest before. This is my first time in prison.

22 But they don't eat but Wednesdays and Sundays in house  
23 arrest. The only -- they eat peanut butter and jelly sandwiches  
24 during the week in house arrest, two peanut butter sandwiches or  
25 one peanut butter sandwich or one cheese sandwich. Sunday they

1 go to the kitchen and eat a hot meal. So if I'm taking  
2 medications, if I'm on these -- on this level with them, if I go  
3 and I'm in house arrest and I'm taking -- and I take like five,  
4 six pills twice a day. Is this going to be the meal that I'm  
5 going to have Monday, Tuesday, Thursday, Saturday? And then  
6 they don't have meals, I think, on Sunday. They don't have a  
7 lunch or anything like that.

8 MS. WINTER: Is this something you can address,  
9 Mr. Lunsford?

10 MR. LUNSFORD: Your Honor, I have -- I've never  
11 heard -- in the last decade of working with the Department of  
12 Corrections, I've never heard of house arrest or peanut butter  
13 sandwiches and cheese sandwiches. I have no idea. I've never  
14 heard that carried out.

15 THE WITNESS: Ma'am --

16 MR. LUNSFORD: I don't know. It sounds -- it's nothing  
17 I've ever run into, ever, in any context. I'm sure --

18 THE WITNESS: And I take --

19 MR. LUNSFORD: I mean I'm getting nods from folks with,  
20 you know, probably 60 years of correctional experience behind me  
21 going I have no idea what that is referring to.

22 MS. WINTER: Is there any -- anyone who could respond  
23 to Mr. B#2's concern about medical -- sensitive medical  
24 information being publicly disclosed?

25 MR. LUNSFORD: Well, Your Honor, this goes a little bit

1 to the point you raised, which is any policy or any issues  
2 relative to confidentiality have to recognize the realities of  
3 the environment in which we work. I mean the fact is that in  
4 any facility like this, the medical staff are not permitted to  
5 be alone with inmates. That's a security issue that's been as  
6 long-standing as I can remember of any policy in the Department  
7 of Corrections. In fact, it's not only common to the Alabama  
8 Department of Corrections, it's common across the board. And  
9 the Federal Bureau of Prisons was the original practitioner of  
10 that policy, as I understand it.

11           Now, as I understand what has been done -- and there's  
12 an NCCHC -- it's actually -- I believe it's an essential  
13 guideline in the NCCHC guidelines that says that the obligation  
14 of the practitioner is to ensure that conversations occur in a  
15 setting which is beyond the sight or hearing of anyone else.

16           Obviously, the scenario that you were in, I'm not sure  
17 that, A, the person knew you were there or could have done  
18 anything to prevent you from walking down the hall other than  
19 having someone looking down the hall at any point in time. I  
20 mean we've had a scenario -- and I recall an incident when  
21 someone was incapacitated in a yard and a nurse came out and  
22 said, "this individual has this medical condition," and the  
23 inmate sued the nurse saying you disclosed my medical condition  
24 by saying, "this person had this medical condition." Obviously,  
25 in the environment that we're in, we can only take certain

1 measures.

2           At this point in time, what you're going to see when  
3 you go to another unit is it's going to be set up much like --  
4 this is one of the larger units in the whole system. And you're  
5 going to see a telemedicine unit installed in a room, and you --  
6 we're basically faced with two choices. Either, one, you put an  
7 officer in the room to listen to the whole thing and you close  
8 the door, which we're not going to do, or what is going to be  
9 the practice, which is the door will be open, the volume will be  
10 turned down to an extent that hopefully only the patient can  
11 hear and the nurse that's there and there's an officer within  
12 close proximity so that they can be summoned.

13           And that's the reality of the circumstances that we  
14 face. We can't assure 100 percent confidentiality. And  
15 unfortunately, there's going to be circumstances like your  
16 medication. You take five medications. You're going to go pick  
17 that up one day, and somebody somewhere is going to see your  
18 medication because you're not going to keep it locked up in your  
19 storage all the time. And someone may recognize that  
20 medication. We can't prevent that.

21           So it's one of those situations where the department is  
22 committed to ensuring that there are not egregious circumstances  
23 where officers are out disclosing an inmate's HIV status. If  
24 that happens, what you should do is -- you've heard of an inmate  
25 request slip, right?

1 THE WITNESS: Right. But we don't have them up here.

2 MR. LUNSFORD: Well, you should fill out --

3 THE WITNESS: They're not available.

4 MR. LUNSFORD: You should either notify whoever the  
5 shift commander is or you should fill out an inmate request slip  
6 if they're available at the facility where you are. You should  
7 notify someone in the facility that that has occurred. Okay?

8 But, you know, Your Honor, this hits the tension that  
9 you've already recognized, which is there's only a certain  
10 amount we can do. To the extent -- I genuinely believe -- we  
11 discussed this at length, and I believe we came up with what was  
12 the best middle ground we could find.

13 MS. WINTER: I actually have a couple --

14 THE COURT: I think, though, that the real issue here  
15 for him is when he witnesses this, is there a remedy.  
16 Obviously, I think we both recognize there will be slipups. So  
17 if someone is walking down the hall and they actually do  
18 overhear this, as he says he did, whom should he call to let  
19 them know so that the practitioner can know that --

20 MR. LUNSFORD: Well, A, it depends on where it occurs.  
21 If it's in the medical unit, you should notify the physician or  
22 you should notify the health services administrator, who you  
23 know who that is. Or usually there's a sick call nurse. You  
24 can notify the sick call nurse. You should notify them that  
25 that happened. If it happens in a different setting out in, you

1 know, the yard or whatever, then it's going to need to be a  
2 shift commander or a warden by virtue of an inmate request slip.

3 MS. WINTER: I had a few follow-up questions myself.  
4 The issue of whether there is medical confidentiality in an  
5 examining room, whether it's the telemedicine room or otherwise,  
6 we have inmate -- attorney-client meetings with all levels of  
7 inmates, including group meetings, in which we have visual  
8 supervision and audio privacy simply by virtue of a glass window  
9 or door. So I'm not really understanding why an HIV  
10 consultation has to happen with an open doorway. So that's one  
11 question I have.

12 Another follow-up question from Mr. B#2's testimony, I  
13 think the reason he was talking about the peanut butter and  
14 jelly sandwiches, the concern he's trying to get at is simply  
15 when someone is on a medical diet, when the class member has a  
16 medically prescribed diet, are provisions going to be made to  
17 make sure, whatever facility that they're at, that if they're in  
18 segregation or whatever, that the correctional staff knows that  
19 they need to get their supplemental food to take their  
20 medication, their prescribed supplemental food.

21 Was that your question?

22 THE WITNESS: Correct. Because I'm -- I'm not keen on  
23 two pieces of chicken or two pieces -- or overfeeding me. I  
24 just want to get that -- the equivalent amount of food in my  
25 system so I won't be dehydrated or I won't be too in flux with

1 the medication where I'm woozy or dried out because I don't have  
2 anything in my system. And I don't want to be put in that  
3 situation and then, after this day passes by, I don't have  
4 anyone to cry to. Because crying to the State is like crying  
5 home to my mama; she can't do nothing.

6 MS. WINTER: So the agreement does say that class  
7 members are entitled to get -- you know, if they don't get their  
8 medically prescribed diets and they let us know, that we can  
9 e-mail Ms. Hill and that she will look into it. But your --  
10 your concern is what do you do meanwhile.

11 THE WITNESS: Correct.

12 MS. WINTER: I think your concern is it's about  
13 correctional staff, not medical staff.

14 THE WITNESS: Correct.

15 MS. WINTER: How do they know. How does security  
16 staff --

17 THE WITNESS: Correct.

18 MS. WINTER: -- know that you've got to get your -- the  
19 diet that the doctor says that you need.

20 THE WITNESS: Correct.

21 Can I say one more thing when you're through?

22 The other issue that I have is the first issue when I  
23 said something. I didn't hear them tell me anything about the  
24 pound 22 or 99 idea that I was speaking of. And the reason why  
25 I say that, honestly, I've seen a million situations to where --



1 discrimination, just plain ol' being lowdown and mean from DOC  
2 officers, supervisors, sergeants, lieutenants, captains. It  
3 doesn't matter. There's a range of evil that goes through the  
4 DOC just like there's a range of evil inmates that are in the  
5 DOC and here in prison on their charges. There are a range of  
6 officers, inmates, and administration affiliates that are here.  
7 And they will smile; but then when they turn their back and  
8 there's no lights on for the show, then it's cruel and unusual  
9 things going on. And I was here for a punishment; and I don't  
10 want to be punished double times even though, like I say,  
11 sometimes the situation is going to happen where I'll have to be  
12 exposed to that.

13           But when I get to another prison, I just don't want  
14 anybody putting their foot on my back or any other individual's  
15 back that has this virus going through their system. They  
16 didn't ask for this. A lot of people did not ask to have HIV.  
17 And it is so cruel for an individual to be unforgiving or  
18 uncaring or just -- just don't plain care about their situation  
19 and they expose it to another inmate. And a lot of times we  
20 have officers that will tell inmates -- their runners or will  
21 tell their friendly inmate partners that they walk with or they  
22 sit in the cubes and talk to, they'll say, why are you fooling  
23 around with this inmate; he got HIV. Or that sissy got HIV; why  
24 are you fooling with him? Why are you talking to him? Why are  
25 you communicating with him?

1 I even had a situation where my brother that I had  
2 never met before this past June came from Fountain Correctional  
3 Facility. His name is Anthony Tyrone Wilson if y'all want to  
4 call him in Mobile. But he came from Fountain to be in the F  
5 dorm program for prerelease. And my dad and his dad -- we share  
6 the same dads. We don't have the same mom. But my mom told me  
7 he was up here from his sister. His mom is dead. His sister  
8 told him that I was up here, and we got in touch with each other  
9 by passing by. And his dorm started coming over on my side  
10 frequenting our yard instead of the reverse yard that they used  
11 to be on. And he used to come sit with me at exercise in  
12 morning times and I would go out and talk to him.

13 I had a lieutenant come up. And he asked him, what is  
14 you doing on this weight pile talking to this HIV sissy? And my  
15 brother got up from lifting weights; and he was like, man, this  
16 is my half brother. And he looked at him, and he just stared at  
17 him in such a way, the man just left off the weight pile and  
18 went on in E dormitory, which is the segregation dormitory that  
19 he was headed to. He went in E dormitory and he just left. He  
20 didn't even say anything else.

21 MS. WINTER: So when did that happen, Mr. B#2?

22 THE WITNESS: This was like on June 5th or 6th or 7th  
23 or something like that, because -- reason I know, because it was  
24 just the first of June. I remember some pictures we were  
25 looking at that were dated, and they're in my room now. But I

1 was sharing the pictures with him on the weight pile.

2           And I just don't want stuff like that to happen to  
3 other people. I'm going to be open about my HIV status because  
4 I've been positive since 2003 and I don't have an issue about me  
5 being positive. I'm -- I'm the same person that was unpositive  
6 like in 2000 or 1999. But I just don't want anybody that's  
7 weaker than me to get into a situation where they get their  
8 throat cut or they get beat down or they get backed into a  
9 corner and they're not able to say, hey, help me, officer, or  
10 hey, can you please get some help for me, and then these people  
11 turn their backs.

12           Can there please be some type of phone line established  
13 just like you can pick up that line and say, pound 77, he raped  
14 me, or he told me he's going to jump on me? I just feel like  
15 there needs to be something established so the investigation can  
16 occur or something can be documented to say, hey, we're paying  
17 attention to what's going on here. It doesn't even strictly  
18 have to be for the HIVers. It could be just for people that  
19 just don't have a link to communicate or don't have a good  
20 communication or rapport with the administration at the prison  
21 they're at. They could have someone that's not affiliated, like  
22 the I&I investigation team or someone out from that come in and  
23 investigate and see what's going on. Because we're somebody's  
24 kids just like y'all. We're somebody's children. That's it.

25           MS. WINTER: Thank you, Mr. B#2.

1 THE WITNESS: That's it.

2 MS. WINTER: Thank you.

3 THE COURT: What's the response?

4 MS. WINTER: I don't know if the -- if the ADOC would  
5 respond, that would be great. I mean we were not able to get --  
6 we negotiated the agreement that we could. The provisions in  
7 there relating to medical care is that when they get in touch  
8 with us, we can get in touch with e-mail by -- with Anne Hill.  
9 There is a directive out there saying that the commissioner has  
10 a zero tolerance for abuse. There is an hour, hour-and-a-half  
11 training session for everybody. So these are not necessarily  
12 the most robust provisions. They are what we could get.

13 Our hope is that ADOC administration is listening and  
14 they may come up with an idea or they may have an idea now. We  
15 would -- you know, we would be very glad to hear any ideas that  
16 ADOC has. The agreement is what it is. What plaintiffs'  
17 counsel intends to do is to instruct all class members. We will  
18 be able to get lists of who the current class members are. We  
19 will write to them. We will tell them to let us know what's  
20 happening. We will do the best that we can to protest to ADOC  
21 if we see more than some incidental bad behavior, if we see any  
22 pattern. That's what we can do.

23 I believe that the ADOC can do more, should do more,  
24 but we weren't able to get anything more into the agreement.  
25 The ADOC -- the commissioner issued excellent, stern directives

1 to staff and to inmates. They're already posted. Everybody  
2 knows about those. That seems like a great start. It does seem  
3 like there should be -- it would be excellent if there were a  
4 more robust process for reporting and investigating complaints.

5 MR. LUNSFORD: Well, let me first respond to this idea  
6 that a hot line -- of a hot line. You know, it's impracticable  
7 for a number of reasons. But let's just -- let's just be frank  
8 about where we are, which is this is not simply about, really,  
9 HIV at the end of the day. I mean we're talking about how does  
10 a department of corrections manage its staff in remote locations  
11 that are responsible for overseeing the population they oversee.  
12 And how does this department respond to complaints of any  
13 misconduct, not just discrimination or harassment of  
14 HIV-positive inmates.

15 Now, keep in mind this, Your Honor. The locations  
16 where these inmates are going have never housed HIV-positive  
17 inmates before. Never. So when Mr. B#2 arrives wherever he's  
18 going to arrive months from now, there will be steps that have  
19 been taken, intentional steps taken to prevent the inadvertent  
20 disclosure of his HIV status. He will arrive with a sealed  
21 envelope that contains his medical records and, presumably, his  
22 medication. He will likely arrive at that facility with a group  
23 of inmates that he's never seen before.

24 He will go there, he will see the medical staff, and he  
25 will check in. And when he arrives at that facility, they're

1 not going to say are you HIV positive. That's not part of the  
2 process. So how in the world, first of all, is someone going to  
3 know he's HIV positive? Is there an inadvertent disclosure?  
4 What are the odds of that? Maybe it happens; maybe it doesn't.  
5 Maybe he goes and tells someone; I don't know.

6 But in the remote instance that an officer at the  
7 institution to which he is transferred finds out that he is HIV  
8 positive -- and I'll say this, Your Honor. I mean we can look  
9 at Mr. B#2's classification file if you would like for us to  
10 present it to the Court, but Mr. B#2 has every reason not to be  
11 very happy with correctional officers based on his disciplinary  
12 history. His last disciplinary was less than 30 -- 60 days ago.  
13 He has engaged in conduct at this facility for which other  
14 inmates at other institutions have had acts of violence taken  
15 against them by other inmates.

16 So the question is what is the department supposed to  
17 do in this situation? Well, A, number one, there is a process  
18 at every single facility for an inmate to voice a complaint  
19 against an officer. It doesn't matter that it relates to HIV,  
20 Your Honor. I mean you -- I mean, it's like we're not isolated  
21 from the world we live in. We know the stories that have been  
22 out there about allegations of misconduct by DOC officers. The  
23 DOC has been vigilant, especially under this commissioner, in  
24 looking into each and every allegation of misconduct and  
25 attempting to take some remedial action when that comes to the

1 department's attention. And I think that's the biggest  
2 challenge presented by this department, is that it has  
3 institutions across the state with hundreds of officers that it  
4 has to monitor and hold to a single standard.

5 But to create -- and again, I -- it seems to me -- this  
6 is the interpretation of Bill Lunsford of what I'm hearing --  
7 is, you know, to create a hot line where someone can report  
8 someone said something mean or inappropriate, we would spend all  
9 of our time and energies investigating those reports, most  
10 likely in instances when inmates were simply trying to seek  
11 retribution against an officer who wrote them up for something.

12 So I think going back to the central issue before the  
13 Court today, a couple things. Is the settlement, in and of  
14 itself, fair, reasonable, and adequate? The Court did not  
15 receive any evidence that any officer outside of this facility  
16 had ever taken any inappropriate action toward any HIV-positive  
17 inmate. There is no evidence that such has ever occurred,  
18 because it hasn't.

19 Have we gone, in my view, above and beyond the call of  
20 duty as it relates to our obligation? Yes. Again, it is  
21 unprecedented for a commissioner to issue the directives that  
22 have been issued in this case. That has never happened before  
23 on a system-wide basis relative to a minor portion of the inmate  
24 population. And we have, again, strengthened the rules that  
25 relate to confidentiality. The policies have been rewritten.

1 They've received those policies, and their comments to them are  
2 due back in the next three days, I believe. So we've taken  
3 steps to do that.

4 Now, the question about the hot line is this. If  
5 someone does something inappropriate that gives anyone any  
6 indication that they are being sexually harassed, sexually  
7 mistreated, they can pick up the phone and use the PREA hot  
8 line.

9 THE COURT: I'm unaware of this hot line.

10 MR. LUNSFORD: The Prison Rape Elimination Act, PREA,  
11 as we call it. It required that the department undertake a  
12 number of different system steps, which includes a hot line.  
13 And so essentially, you may remember when we walked around to  
14 some of the dorms here, there were phones at various locations.

15 THE COURT: Yes.

16 MR. LUNSFORD: And the way they pay for those remains  
17 mysterious to me. I still don't understand that exact process.  
18 But they can pick up the phone and dial a number without paying  
19 for it and report whether they have been sexually assaulted or  
20 whether there has been a threat of sexual assault -- and if they  
21 wish, that allegation can remain anonymous -- and it's  
22 investigated. And the department is under an obligation under  
23 the Prison Rape Elimination Act to investigate those complaints.  
24 So if there is an incident where someone feels threatened in any  
25 way sexually or because of something that they've done, they



1 can -- they can report that through PREA.

2 But is that a -- you know, "he said something mean to  
3 me and I think it's because I'm HIV positive." Is that the way  
4 to do it? No. But again that's hard to regulate. I mean,  
5 again, we -- I think there's a balance that has to be achieved  
6 here. Do I think that we are seeking that balance? Yes.

7 Do I believe that based on the commissioner's  
8 directives coupled with the training that's been provided by  
9 UAB -- and Rick Meriwether, who you've heard his name before, I  
10 don't know how much clearer someone could be with a group of  
11 individuals about confidentiality and HIV. We have someone from  
12 the outside world coming into each of our facilities, sitting  
13 down for an hour with officers, saying you're not going to do  
14 this anymore because here's why, because HIV -- here's what you  
15 need to know about HIV. And it's interesting. I mean I sat in  
16 the room for an hour and saw the officers' reaction to it, and  
17 it was positive.

18 So again, I'm not sure what more we can do. We  
19 obviously can't regulate people being nice. And I don't think  
20 that's what they're complaining about, but we have to prevent  
21 against abuse. And I think we're doing a very good job of  
22 erring on the side of allowing abuse as opposed to quelling  
23 complaints.

24 THE COURT: Thank you. Anything else, Ms. Winter?

25 MS. WINTER: We have a couple more witnesses.

1 THE COURT: Okay.

2 MS. WINTER: On this point, I think I just wanted to  
3 add that I do believe that if the ADOC administration at the top  
4 becomes aware of incidents as inmates complain about it and if  
5 the commissioner himself -- if, from the top, the message is  
6 communicated that officers are going to be punished if they  
7 abuse inmates based on HIV status, if that -- if there's  
8 follow-through on that, I really believe that we're quickly  
9 going to see an end to the kind of conduct that a few or some  
10 officers may be engaging in. I think we'll be over it. The  
11 message will come down from the top. And once people are really  
12 called on their bad behavior and they're punished for it, it  
13 does -- that kind of thing stops pretty quickly, I believe.

14 Plaintiffs call JY. Mr. Y's objection is filed at  
15 docket number 293.

16 **JY**, the witness, having been duly sworn to speak the  
17 truth, the whole truth, and nothing but the truth, testified, as  
18 follows:

19 STATEMENT TO THE COURT

20 THE WITNESS: First of all, good afternoon, Judge. I  
21 thank you, DOC, and the medical administration for the decision  
22 that you have made. And it's very long overdue.

23 I do have certain problems as dealing with Mr. Langford  
24 (sic) when he's discussing and trying to tell us about --

25 THE COURT: Can you pick up the mike? I can't hear

1 you.

2 THE WITNESS: The problems that I have is dealing with  
3 Mr. Langford, the way that he is trying to explain to us about  
4 the different situations. The one that comes to mind -- I go  
5 back to Mr. H. When it comes down to the continuation of  
6 education for HIV positive -- see, I've been in the back a long  
7 time, but the gates was locked down. I understand about dealing  
8 with population. When I had the white armband, I still dealt  
9 with the population in itself. So whenever this is over with,  
10 I'm sure that we all will be all right going outside the gates.

11 And when it comes down to the education part, I would  
12 like to see this to be continued, not just for an orientation  
13 for an hour. See, now, we can go back to what you were saying  
14 about 2008 or 2009. We also had those films here. They dealt  
15 with HIV, they dealt with STDs and also talked about sexual  
16 abuse, but DOC stopped it. Is this going to happen again?

17 MS. WINTER: Could you hold the mike a little closer to  
18 your mouth? At the end of your sentence when your voice drops,  
19 I can't quite pick it up.

20 THE WITNESS: Okay. We had this film before, what you  
21 was talking about. And people that came in that was orientated,  
22 but DOC stopped it. Is this going to be continued? You said an  
23 hour, that they was going to have an orientation and then that  
24 was it; but when they come in, we'll talk about it and send them  
25 on to whatever prison that they have to go to. Are they going

1 still to get this hour? That was one of my questions.

2           The next thing is about the Kilby issue. I understand  
3 that you said that, okay, we're going to go through Kilby to get  
4 transferred. It's for confidentiality. Okay. But in DOC  
5 procedure statewide it says that an inmate to be transferred is  
6 to be reclassified through that particular institution that they  
7 are in and sent to the next institution. Wouldn't that also be  
8 giving us something that's special going back through Kilby?  
9 And you're talking about confidentiality.

10           Now, the people that's coming in through Kilby, the  
11 people that's coming in through Kilby that has HIV, okay, I  
12 understand about you sending them to the reassignment dorm or  
13 whatever dorm it is at Kilby and sending them straight to  
14 whatever facility. But for us who has already been stigmatized,  
15 who has already -- all confidentiality has already been broken,  
16 regardless if you send us to Kilby, we go to another camp, we  
17 still -- people still know us. So that doesn't matter. The  
18 problem is can we get classified here at Limestone and sent to  
19 the facility.

20           The dummy jackets. Okay. Here we're going up to the  
21 parole. There's many of us who have been going up for parole.  
22 HIV is a stigmatize even in the parole board, no matter how you  
23 look at it. Okay? When we're going for parole, they see HIV  
24 positive, they kind of like shut the jacket up. We can be --  
25 done took all these different kind of programs, and half of us,

1 if you really look at statistics about the people that's leaving  
2 out on parole from Limestone special unit, it hasn't been a lot  
3 of us. We have been stopped. So the dummy jackets, does that  
4 also go with, you know, the parole board? Do they get our  
5 complete jacket? Do we -- do they get everything?

6 And when it comes down to our dietary, this goes for  
7 you and also medical. Okay. Dealing with Dr. Truett, I have  
8 congestive heart failure. She has me on a special diet. Will  
9 that follow me to any prison facility that I go to? Okay. I  
10 just wanted to, you know, get facts and get an understanding of  
11 the lawsuit. I'm not trying to bash it, because we all are  
12 ready to go or do whatever.

13 And you said there was only 40 beds that was available  
14 here in Limestone. Okay. The prison system is overcrowded.  
15 How many beds do you actually have for us to go to different  
16 prisons? Which prison that you're actually going to send us to?  
17 You only have a small amount. You said that all the prisons is  
18 going to be opened up to us. By when? November -- I think the  
19 lawsuit said 2014 that it's supposed to be opened up for us.  
20 Well, if that's the case, will the telemeds be in every place?

21 You explain about expense and cost. If the expense and  
22 cost is so great, why not go ahead and integrate us now? Why  
23 wait until later? If you've already done that for Tutwiler, why  
24 not do it for us? I understand there was just ten people at  
25 Tutwiler. Ten, 50, 20, it doesn't matter. Integration is

1 integration. We're ready to do whatever it takes.

2           And I'm sure UAB or whoever it is that's going to be  
3 giving all these orientations to the officers -- you keep  
4 hollering about the officers, the officers, the officers.  
5 Officers are not all the problem. What about these inmates? We  
6 got to live with the inmates. The officers are just doing their  
7 job. It's the inmates that really need to be educated.

8           And what about the inmates that's coming in? See,  
9 Limestone has been a hub for HIV positive just like -- just like  
10 Kilby is the hub for the transfers. So guys that came in don't  
11 know anything about HIV positive. And I know you don't  
12 understand, because you don't have the virus and no one never  
13 told you that you had the virus. If someone tells you you have  
14 the virus and that feels like that's the end of your life and  
15 you don't know anything about it, who do you talk to? There has  
16 to be a counselor, someone set up to talk to an HIV individual.  
17 You never know what kind of thoughts they may have, suicidal  
18 thoughts. It's hard to take for a person when a person tells  
19 someone that they're HIV positive. It's just like a cancer  
20 person. If a person don't know they've got cancer, go to the  
21 doctor, you have cancer, they have to have a counsel session  
22 with someone. How is that going to be set up? How is DOC going  
23 to handle it?

24           I hear all the little tweaks that you're giving us, but  
25 I need a little bit more. I need to be reassured that things

1 are going to happen the way that you say it's going to happen.  
2 When it comes down to the procedural part of Kilby, you have a  
3 guideline. You didn't go there. You said only a little bit of  
4 it. You said six months you got to stay clean; no problem;  
5 you'd be transferred. When those papers are signed, we are  
6 population. We're not going to be treated any different. Your  
7 procedure statewide says that.

8           Again, transfer from the facility to another facility,  
9 I'm not worried about who see the jacket or whatever. Like I  
10 said, our confidentiality has already been broken. So just give  
11 us what we need.

12           And if something -- what Mr. B#2 was trying to explain  
13 to you, if something happened to one of us, if a person hit us,  
14 jump on us, however it may be, what kind of disciplinary action  
15 are you going to take, official wise? Are they going to lose  
16 their job? Are they going to be suspended? Are pay going to be  
17 taken away from them? What is going to happen to them? We want  
18 these answers. That's just the bottom line to it.

19           MR. LUNSFORD: Can you kind of summarize what you want  
20 me to respond to?

21           MS. WINTER: The particular question -- Mr. Lunsford is  
22 willing to address particular questions, but you put a lot out  
23 there, Mr. Y. Could you maybe list like the three or four  
24 questions that you --

25           THE WITNESS: Sure.

1 MS. WINTER: -- had in there? And try to make them  
2 succinct so that he can, you know, figure specifically how he  
3 can --

4 THE COURT: I think Mr. Lunsford has answered some of  
5 them --

6 MS. WINTER: Yes.

7 THE COURT: -- already. For instance, the issue of  
8 delay.

9 MS. WINTER: The --

10 THE COURT: Of delay.

11 MS. WINTER: Yes.

12 THE COURT: And I guess the issue you seem to have is  
13 what if somebody just beats you up because you're HIV positive.

14 THE WITNESS: No, just -- not just that, Your Honor.  
15 It's the continuation of the education part. HIV must be  
16 educated.

17 THE COURT: Well, is the education program a continuing  
18 process, or is it a one-time thing?

19 MR. LUNSFORD: It will be a continuing process. As I  
20 indicated, the video he's talking about -- when did you arrive?

21 THE WITNESS: I've been here since 2006.

22 MR. LUNSFORD: Okay. So when you went in intake, I'm  
23 familiar with the video that you watched on intake. That video  
24 is going to -- as I understand it, that video is being phased  
25 out and some of the new training materials are being updated.



1 And there is a need currently for all inmates, as you've pointed  
2 out, to receive training on not just HIV, hepatitis C, herpes,  
3 syphilis, gonorrhea, all of those.

4 THE WITNESS: Right. STDs.

5 MR. LUNSFORD: And so that's going to continue. And I  
6 think the commissioner's directive through the office of health  
7 services has always been to address these issues. Because  
8 frankly, an ounce of prevention comes out a long way in terms --  
9 is much cheaper than treatment once we have outbreaks, which the  
10 Court is well aware we've had outbreaks of syphilis at certain  
11 facilities in other locations that we had to go in and treat.  
12 And we have to report to Public Health. And so we're very on  
13 top of that. And I think that will be -- that will be a  
14 continuing aspect of intake for all inmates, not just HIV  
15 positive.

16 THE WITNESS: Okay. What about the procedure on Kilby  
17 about reclass -- if I can remember now, there was a memo that  
18 came out -- it was through ACLU -- that stated that you said  
19 that we could be reclassified here. And the ones that stay here in  
20 Limestone, it would be less costly for them to be bused back and  
21 forth to Kilby.

22 MR. LUNSFORD: Let me -- all right. Let me -- I hope  
23 everybody hears me --

24 THE WITNESS: Okay.

25 MR. LUNSFORD: -- because I've said this I don't know

1 how many times. Every inmate that's in the special unit is not  
2 being sent to Kilby. Okay? Every inmate that is currently in  
3 the special unit, dorms B or C that are at Limestone, okay,  
4 they're not all being shipped off to Kilby. Will some inmates  
5 be assigned to Kilby on a permanent basis? Possibly. Will any  
6 inmate be sent through the intake process at Kilby? No, unless  
7 you're a newly arriving inmate, which obviously the inmates at  
8 Limestone are not. Okay?

9           Here's the thing. You were reclassified May 13th. Do  
10 you remember that?

11           THE WITNESS: Right.

12           MR. LUNSFORD: And your -- what's your current  
13 classification?

14           THE WITNESS: Medium.

15           MR. LUNSFORD: You're medium, security level IV, right?

16           THE WITNESS: Correct.

17           MR. LUNSFORD: Okay. So you're only -- you understand  
18 you're going to a select number of facilities.

19           THE WITNESS: Correct.

20           MR. LUNSFORD: Right? And those include --

21           THE WITNESS: Which I can go to a select. Because this  
22 also --

23           MR. LUNSFORD: You can. And that includes Limestone,  
24 correct?

25           THE WITNESS: Correct.

1 MR. LUNSFORD: And you -- but you understand that  
2 you're limited -- I want you to listen carefully to this  
3 question, because I don't want to go into the details of it.  
4 You understand that there's a limited number of facilities you  
5 can go to because of your underlying offense.

6 THE WITNESS: Correct.

7 MR. LUNSFORD: So what will happen is if you're  
8 disciplinary free, okay --

9 THE WITNESS: Which I see that -- you know, you see  
10 that I am, so --

11 MR. LUNSFORD: You're disciplinary free. But  
12 understand that doesn't count until -- it's basically back from  
13 June 2014. So basically, when we get to January, you can  
14 request a lateral transfer. Okay?

15 THE WITNESS: Correct.

16 MR. LUNSFORD: And your classification specialist here  
17 at Limestone is going to receive that request for a lateral  
18 transfer. And they're going to ask you -- they're going to  
19 verify that you're disciplinary free. Now, keep in mind, if you  
20 get a disciplinary while that lateral request is pending, do you  
21 know what's going to happen?

22 THE WITNESS: I --

23 MR. LUNSFORD: Your lateral request is out. And at  
24 that point, your classification specialist can send you wherever  
25 there's an open bed. Okay? Does that make sense?

1 THE WITNESS: Right. It makes sense, but what if I  
2 don't request a lateral transfer?

3 MR. LUNSFORD: If you don't request a lateral transfer,  
4 you're going to be transferred.

5 THE WITNESS: So either which way it goes, I will be  
6 transferred.

7 MR. LUNSFORD: No, because if -- you request a lateral  
8 transfer because you want to stay here at Limestone.

9 THE WITNESS: Oh, okay.

10 MR. LUNSFORD: If you want to stay at Limestone, you're  
11 going to have to request that. Okay? Does that make sense?

12 Did everybody --

13 THE WITNESS: That makes sense.

14 MR. LUNSFORD: If you want to stay at Limestone, you  
15 must submit a lateral request. Okay? Otherwise, the likelihood  
16 is that you are going to be transferred to another facility.  
17 But keep in mind, there's no guarantees that anybody stays at  
18 Limestone just like there's no guarantees -- if somebody was  
19 HIV -- not HIV positive and they were over here and they had a  
20 disciplinary and the DOC had an open bed at St. Clair, they  
21 could send them there. Okay?

22 THE WITNESS: (Nods head)

23 MS. WINTER: Thank you. I think that was helpful.

24 THE COURT: Does that answer your question?

25 THE WITNESS: That answers my question.

1 THE COURT: The bottom line is he's giving you  
2 probabilities, but he can't assure you of anything.

3 THE WITNESS: (Nods head) Sounds good to me, Judge.

4 THE COURT: Go ahead.

5 MS. WINTER: Mr. Y, you had raised a specific issue  
6 with the class counsel, and it may be that you don't want to  
7 pursue it in light of what Mr. -- other things Mr. Lunsford has  
8 explained. But you had earlier raised the question about there  
9 being currently open beds in the honor dorm.

10 THE WITNESS: Correct.

11 MS. WINTER: And folks who were currently -- general  
12 population prisoners who are currently in the honor dorm  
13 communicated to you that they would welcome an HIV-positive  
14 prisoner being in there --

15 THE WITNESS: Correct.

16 MS. WINTER: -- if the ADOC would allow it. Is that --  
17 did you want to --

18 THE WITNESS: Well, by me being in drafting -- I've  
19 been in drafting for four years as a tool man. Been in trade  
20 school since 2007. I guess you can see that. I've mixed with  
21 general population. And they know about the lawsuit, and  
22 they're welcoming us in different parts of the camp.

23 To go a little bit further, since -- as this has been  
24 the hub of HIV, why not start here and integrate? You know, why  
25 not we can't go to different dorms? Now I know that you have a

1 timeline to go by. But even between that timeline, it's a slow  
2 process. And to build that process, why not start building  
3 here? And then we can still end up transferring with general  
4 populations to Kilby two at a time or however DOC decide to do  
5 it. I don't know. you know, that's however it may be. Is that  
6 a possibility?

7 Now, I have talked to Warden Estes. And let me clarify  
8 something on that. I've heard a lot of things about Warden  
9 Estes do not want the camp open, he don't want this integrated.  
10 But this is not what he told me. I spoke to him three  
11 occasions. Two of them he told me, he said, whatever comes down  
12 from the commission through Montgomery, I'm going to do my job.  
13 The third one he said if they open the camp up, they agree to  
14 this lawsuit, if you want to stay at Limestone, I welcome you to  
15 stay at Limestone. And that came from him and it also has come  
16 from other officers. So I don't see where there is a problem  
17 why it cannot start here.

18 MR. LUNSFORD: Well, let me just be frank with you,  
19 Mr. Y. It's not part of the agreement currently. It's not  
20 something we discussed. And part of the reason why is because  
21 based on what information was known at the time the agreement  
22 was in place, it was anticipated on our end that you would be at  
23 Limestone for a very short period of time after this was  
24 executed and signed. Okay?

25 So this notion of there being eight months of time when

1 the special unit was going to stay unchanged and that you were  
2 going to stay there for a period of time -- there are -- let me  
3 say this. Part of the equation that is blank right now for  
4 whether we can move inmates to other dorms is what's going to  
5 happen to B and C when all the HIV-positive inmates are gone and  
6 what changes are going to need to be made to the physical  
7 facilities and how long is that going to take and are they going  
8 to need to be empty. Because, you know, I'll -- again, being  
9 frank with you, there have been discussions about moving inmates  
10 into B and C because there's room in B and C right now. Right?

11 THE WITNESS: Right.

12 MR. LUNSFORD: There have been discussions about how to  
13 do various things. But my -- I will tell you the guiding  
14 principle we're going to use is we're -- we want to make sure we  
15 give you and every other HIV-positive inmate every opportunity  
16 to remain disciplinary free to request that lateral transfer and  
17 not to put you in a different scenario with a different set of  
18 challenges where it's a dramatic change in your living  
19 arrangement. Okay?

20 THE WITNESS: (Nods head)

21 MS. WINTER: Thank you.

22 There were a couple of other questions out there. I  
23 don't know whether or not you can address them, Mr. Lunsford. I  
24 think that Mr. Y raised the question about whether there would  
25 be access to HIV counseling for incoming class members. And the

1 other question was he was interested in knowing whether the  
2 HIV -- whether the parole board would have access to the full  
3 classification file which will contain old HIV information in  
4 it.

5 THE WITNESS: Especially, Mr. Langford, after you have  
6 reviewed my file and you understand it, it's most important to  
7 me about the parole board, as being that I'm already up for  
8 parole even though I haven't received a date yet. And by them  
9 seeing HIV positive in my jacket dealing with my charge, that is  
10 a completely file close there. So I really feel that that needs  
11 to be out of my jacket. I need them to look at me as being a  
12 person, a person that has achieved something, that's in prison,  
13 that I have gotten better in life, not stigmatize me because of  
14 my HIV positive.

15 MR. LUNSFORD: Well --

16 THE WITNESS: I've been positive for 27 years.

17 MR. LUNSFORD: Yes, sir.

18 THE WITNESS: And I understand about stigmatism (sic).

19 MR. LUNSFORD: I don't want to cut you off, but I'm  
20 just trying to cut to the chase. Just so you know, I don't  
21 represent Pardons and Paroles. They actually have separate  
22 legal counsel and they maintain separate documents. And I --

23 THE COURT: I think what needs to be made clear, and  
24 you-all can correct me, is this litigation doesn't cover that.

25 MR. LUNSFORD: It does not. That's a very accurate



1 statement.

2 MS. WINTER: I'm sorry. I didn't hear the end of the  
3 sentence.

4 THE COURT: His concern about the impact of his HIV  
5 status on parole I said is really something that this litigation  
6 doesn't cover.

7 MS. WINTER: That's right.

8 THE WITNESS: Well, let me --

9 THE COURT: I don't think we should make any  
10 misrepresentations to him.

11 MS. WINTER: Right.

12 THE WITNESS: Well, let me correct that. My HIV  
13 positive, period, being in the jacket, whether it's parole,  
14 anywhere I transfer, I want to know is it going to be on my  
15 jacket.

16 MR. LUNSFORD: Here's what I can tell you. There's --  
17 you have to think of this. You have two sets of documents that  
18 are hanging out there on you individually. Okay?

19 THE WITNESS: Okay.

20 MR. LUNSFORD: You have a set of documents that are in  
21 a database file called IMOS. You may have heard that before.  
22 There's another set of documents that are in another location  
23 called the Vault. Have you heard Vault?

24 THE WITNESS: (Nods head)

25 MR. LUNSFORD: Vault is an electronic database that we

1 can modify. We can -- for example, if I went and looked up your  
2 housing listing on Vault -- am I correct? -- I'm sorry. IMOS.  
3 IMOS we can modify, Vault we can't. So we're going into IMOS,  
4 and there's a code in there that says you've been housed in  
5 special unit. That's going to be changed so that it just says  
6 Limestone. Okay?

7 THE WITNESS: Okay.

8 MR. LUNSFORD: Now, on the other portion of the  
9 Vault -- and this is where we ran into issues. The problem is  
10 that's like a library. It's a library of documents that date  
11 back to your presentencing report when you were sentenced  
12 originally, and it goes all the way through your current  
13 incarceration up until your last reclassification back in May.  
14 There's no -- those documents are scanned in. Okay? They're  
15 actually -- they're copied electronically so that we can't go  
16 into the contents of documents and change them. And those exist  
17 for every single inmate who has ever been through our system,  
18 and there's no way we can modify that documentation.

19 But to the extent you have a dummy jacket that goes  
20 with you and to the extent you get to wherever you're going if  
21 you don't stay here, they will access IMOS and they will see  
22 Limestone. They'll look at your dummy jacket, which says  
23 nothing about HIV. Okay? So that's the way we're addressing  
24 the classification files.

25 THE WITNESS: Thank you, Mr. Langford. That's what I

1 mean. Detail. That's what we want. Details.

2 MS. WINTER: So I believe that was all the concerns you  
3 had raised Mr. Y.

4 THE WITNESS: That's all the concerns I have.

5 MS. WINTER: Thank you.

6 THE WITNESS: Thank you again, Your Honor.

7 THE COURT: Did we talk about the counseling?

8 MR. LUNSFORD: Oh. And the same counseling -- just to  
9 be clear, the same counseling on intake that has been available  
10 since 2004 is still available today. To the extent that anyone  
11 would like counseling after they transfer, the mental health  
12 provider has been notified of this process and is aware that  
13 this is ongoing. And to the extent someone needs to request an  
14 opportunity to meet with a counselor with MHM, they can do that  
15 once they arrive at the facility.

16 THE WITNESS: Mr. Langford, due to my situation, there  
17 is a class that they have available here. Coming through  
18 classification, they do not even tell you that you can take this  
19 individual class if you need counseling. That is not always  
20 true that an individual know exactly where to go, so on and so  
21 forth. It has to also be put out there: if you have this, you  
22 can go to this counseling. You can be counseled. They don't  
23 just give you this information. DOC don't just give it to you.

24 MR. LUNSFORD: Well, I understand you've not been  
25 through the transfer process; but part of the transfer

1 documentation includes an access-to-care form that you'll sign  
2 at the facility you're arriving at from Corizon which details  
3 all of the various medical processes including the times for  
4 sick call, the times for chronic care, the dates on which dental  
5 care is provided. You'll also receive a document that indicates  
6 what mental health services are available and what you need to  
7 do to submit a sick call request form in the manner required by  
8 MHM to request counseling services. That will all be in your  
9 intake package once you arrive at the facility where you arrive.

10 THE WITNESS: Is that dealing with just mental health  
11 or --

12 MR. LUNSFORD: It's mental health and medical. It will  
13 deal with the entire process once you get to the facility.

14 THE WITNESS: (Nods head)

15 THE COURT: Thank you very much.

16 MS. WINTER: Thank you. The final --

17 THE COURT: You have one more?

18 MS. WINTER: One more, class representative JB#1. And  
19 Mr. B#1's filing is docket number 293.

20 THE WITNESS: Good afternoon, Your Honor, everybody  
21 else.

22 **JB#1**, the witness, having been duly sworn to speak the  
23 truth, the whole truth, and nothing but the truth, testified as  
24 follows:

25

DIRECT EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MS. WINTER:

Q. Mr. B#1, you're a class representative?

A. Yes, I am.

Q. You testified at the trial?

A. Yes, I did.

Q. What have your duties been as class representative?

A. My -- I represent the HIV dorms here at Limestone. I'm one of the -- really, the only one left over. Everybody else went home. I'm the last one standing.

Q. Do you relay to us concerns that class members bring to you about the settlement?

A. Yes, I have. Everybody has -- every time we have a court hearing and I come back, everybody asks me what's going on. And I do my best to relay everything to them. You know, I can't have a recorder with me when I come into court, so -- they won't let me have it here at Limestone, so I've got to do the best I can right now hand -- you know, I handwrite most of my stuff.

Q. Were you present during the mediation sessions --

A. Yes, I was.

Q. -- that resulted in this agreement?

A. Uh-huh.

Q. Do you know whether members of the class here at Limestone got copies of the notice to the class and the settlement agreements with exhibits?

1 A. Yes, they did.

2 Q. And how do you know that?

3 A. Well, they let everybody know the night before -- not the  
4 night before. That night. Excuse me. After count, everybody  
5 go to your cell; you know, we're going to be passing out legal  
6 documents that came from the American Civil Liberties and  
7 everybody has to be present. Everybody's got to sign for a  
8 copy.

9 Q. And did you -- have you ever heard of any class member who  
10 did not receive and sign for a copy?

11 A. Not that I know of.

12 Q. Mr. B#1, you yourself have some concerns or objections about  
13 the settlement agreement, correct?

14 A. Yes, I have.

15 Q. Would you tell the Court what those are.

16 A. Well, the Kilby transfer was one of the issues, but  
17 Mr. Lunsford basically told me and everybody else, this is  
18 what's going to happen and that's just it. So, I mean, I can't  
19 argue with that.

20 The other one is --

21 Q. Just before we go on, so Mr. Lunsford's explanations were  
22 helpful --

23 A. Yes, they were.

24 Q. -- to you in understanding the process?

25 A. Yeah. So I don't really have to go into depth with what my

1 objection is, which everybody else's is the same. They didn't  
2 want to go back to Kilby dealing with the humiliation and verbal  
3 and psychological abuse that most of the correctional officers  
4 there do and some of the inmates will do if they find out about  
5 your status.

6 Me myself, I'm HIV and I ain't got a problem with it. If  
7 someone else has got a problem with it, then we can deal with  
8 that my way. You know, if they don't like it, well, deal with  
9 it. As far as everybody else, other people have their concerns;  
10 and I've got to take their concerns into consideration. Because  
11 if I don't, then I'm not a good class member, you know. So  
12 that's why I have to listen.

13 There -- they don't want to deal with the humiliation. They  
14 don't want to go through intake or the receiving process. As  
15 far as what Mr. Lunsford has already told us, that basically  
16 we'll be going through a permanent party process instead of the  
17 intake process. Because if we go through the intake receiving  
18 process, it's going to be chaos.

19 Q. But you understand that Mr. Lunsford has assured you -- the  
20 ADOC has assured you that you're not going through the intake  
21 process again. You're not going to be treated as a new -- new  
22 inmate.

23 A. No. We're going to be treated as a transferred in,  
24 permanent party. That's -- that's the indication that I've got.

25 Q. So did you have any other concern that you wanted to raise

1 with the Court?

2 A. Yeah. My other objection is to the dealing with the lower  
3 court proceedings.

4 Q. You mean the state court?

5 A. State court. I feel that the federal court should have  
6 jurisdiction over this instead of the lower courts, state  
7 courts. Why? Well, because the state court will basically just  
8 look at us and say, well, denied, denied, denied; and Department  
9 of Corrections will get what they want and that will be it.  
10 We'll be lost in the paperwork again and it will be in limbo for  
11 God knows how long, and they could go back to doing whatever  
12 they choose to do. If it's in the federal jurisdiction, well,  
13 maybe they'll do what -- do what they say they're going to do.

14 And in my opinion, my true opinion, I feel that if the  
15 Department of Corrections goes against the settlement agreement,  
16 let alone the private agreement, I feel that the Department of  
17 Corrections should be penalized financially every day tens of  
18 thousands of dollars, every day until they are in compliance.

19 Q. Mr. B#1, having been at the mediation agreement, do you  
20 think it would be fair to say that class counsel and the ADOC  
21 discussed all these issues and that in order to have integration  
22 of all facilities, the trade-off for that was that half of them  
23 would not be under the federal court jurisdiction?

24 A. Yeah. I know.

25 Q. Okay.



1 A. But I still feel that the federal court should have  
2 jurisdiction over this instead of state court.

3 Q. Understood.

4 A. And may I go on?

5 Q. Yes.

6 A. My other concern is we've got roughly nine, maybe 12 guys  
7 here that are doing life without. They're going to go through a  
8 process that the rest of us are not going to be going through.  
9 If, by some chance, they end up going to Kilby or any other  
10 facility, they're going to be locked up in administrative  
11 segregation.

12 THE COURT: They're going to be what?

13 THE WITNESS: They're going to be locked up. They're  
14 going to be put in administrative segregation, AD SEG.

15 THE COURT: Who will?

16 THE WITNESS: The guys that are doing life without.

17 THE COURT: Getting what?

18 THE WITNESS: The inmates that -- the HIV inmates that  
19 are doing life without.

20 THE COURT: Okay.

21 THE WITNESS: They're never getting out of prison.

22 They're here till they get put in the ground.

23 A. Their concern is this, is that when they first came through  
24 the system, they were already put in administrative segregation  
25 for 90 days -- for whatever period of time they were in there

1 for, and they don't want to go through this again. So the  
2 Department of Corrections commissioner himself needs to assure  
3 that those guys who are doing life without don't have to go  
4 through this lockup process again. Maybe go to the facilities  
5 they need to go to because that's -- with the amount of time  
6 they have, that's where they're going to do their time at.

7 That's the only -- that's really one of the concerns -- you  
8 know, like I said, we have nine to 12 guys who are doing life  
9 without. And they're going to go through a lot of pain.  
10 They're going to be locked up. They won't be able to come out  
11 but one hour a day for exercise. They won't be given no access  
12 like the other facilities got until they get transferred to that  
13 facility.

14 Q. And have class members who have the life without sentence  
15 and who were concerned that they will be transferred from  
16 Limestone and then have to go through the administrative  
17 segregation again, have they expressed that to you --

18 A. Yes, ma'am.

19 Q. -- and asked you to communicate their concerns to the Court?

20 A. And I told them I would bring that up. I mean they're not  
21 on the list as far as the list to be here today. I strongly  
22 asked them why didn't you; you know, this is your life. This  
23 ain't my life; this is your life. You know, but you're a  
24 class -- you're a class representative. You represent us. Help  
25 us out. I said, all right. I ain't got no problem doing that.

1 So this is what I'm doing.

2 So I just need the Department of Corrections to give me some  
3 kind of positive -- what have I got to tell these nine to 12  
4 guys doing life without? I don't know what to tell these guys.  
5 Because I really don't want to be dealing with no lockup.

6 MR. LUNSFORD: I can address that now, if you want.

7 MS. WINTER: Yes. Thank you.

8 MR. LUNSFORD: Hey, Mr. B#1. How are you?

9 THE WITNESS: Hello.

10 MR. LUNSFORD: I wish you had a pen with you. It's  
11 Section 6.3.4.1. You got that? 6.3.4.1. Okay. Here's what it  
12 says. This is from the ADOC classification manual: Close  
13 custody is the least restrictive custody for life without parole  
14 inmates -- and here's the important part -- at initial  
15 classification for a minimum of 30 days.

16 Okay? So what you're hearing from the life without  
17 parole inmates is that they were stuck in close custody on  
18 intake. Okay? That only applies upon, as it says, initial  
19 classification. It doesn't apply on transfer. Okay?

20 So as I've said earlier, just to be clear, most inmates  
21 at Limestone currently, including those who have a life without  
22 parole sentence, are not going to go to Kilby. Okay? Most of  
23 those will go directly to where they -- the level V facilities  
24 where they're housed, which are Donaldson, St. Clair, or Holman.

25 THE WITNESS: Thank you. And I can assure them that.

1 Because they really believed they were going to be locked up for  
2 90 days. That was the thing they were concerned about.

3 MS. WINTER: Thank you. That was very helpful.

4 That's -- is that all that you had to say, Mr. B#1?

5 THE WITNESS: Yes.

6 MS. WINTER: Yes. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: You are a class representative?

9 THE WITNESS: Yes, sir.

10 THE COURT: I see your name here.

11 THE WITNESS: Yeah. JB#1.

12 THE COURT: Mr. B#1?

13 THE WITNESS: I'm a native of Michigan.

14 THE COURT: Native of Michigan. Thank you very much  
15 for your appearance here today.

16 THE WITNESS: Thank you, sir.

17 MS. WINTER: Your Honor, those are all the plaintiffs'  
18 witnesses.

19 THE COURT: Thank you.

20 MS. WINTER: And we appreciated very much the  
21 information that ADOC provided at the hearing.

22 THE COURT: Mr. Lunsford?

23 MR. LUNSFORD: Yes. Your Honor, the first individual  
24 we're going to call is Captain --

25 CAPT. NOE: Guy Noe.

1 THE COURT: How many witnesses do you have,  
2 Mr. Lunsford?

3 MR. LUNSFORD: I think -- I think we're going to call  
4 one.

5 THE COURT: Just this one?

6 MR. LUNSFORD: Yes, sir.

7 THE COURT: Okay. Go ahead.

8 MR. LUNSFORD: It's Noe?

9 THE WITNESS: Noe.

10 MR. LUNSFORD: I'm sorry.

11 THE CLERK: Sir, I need to swear you in. I need to  
12 swear you in.

13 (The witness is sworn)

14 THE CLERK: What's your first name?

15 THE WITNESS: Guy.

16 THE CLERK: Guy?

17 THE WITNESS: G-U-Y. Guy.

18 **GUY NOE**, the witness, having been duly sworn to speak  
19 the truth, the whole truth, and nothing but the truth, testified  
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. LUNSFORD:

23 Q. Captain, would you please introduce yourself to the Court.

24 A. My name is Captain Guy Noe. I'm an A-side captain. I'm in  
25 charge of the health care unit, B, C, D, E, F, the gym. I've

1 work for the Limestone Correctional Facility, Alabama Department  
2 of Corrections, for 15 years; been at captain for four months  
3 now. I primarily have worked on A side of the institution and  
4 have been here throughout the whole process.

5 Q. Captain, at some point in time in the last 90 days were you  
6 asked to assist with distributing certain documentation to the  
7 inmates in B and C dorms here at Limestone?

8 A. Yes, sir.

9 Q. And if you would, just explain to the Court the process that  
10 you-all went through in distributing those documents to the  
11 dorms B and C inmates.

12 A. Yes, sir. We had a list, an alpha roster, of every inmate  
13 that was assigned at Limestone Correctional Facility at that  
14 time. And what we did is we went over -- I instructed to do it  
15 after -- at lockdown. And I had a sergeant, Sergeant Mike  
16 Jones, go to the dorms. And basically they went cell to cell,  
17 and they gave every inmate at Limestone Correctional Facility a  
18 copy of the settlement and they signed for it. I had three  
19 inmates refuse. I called them to my office the next day. I  
20 give them copies of the settlement, and they still refused to  
21 sign. But every inmate that day received a copy of the  
22 settlement.

23 MR. LUNSFORD: Your Honor, at this time, we would like  
24 to offer an unredacted version of the signature sheets of all  
25 the B and C dorms at Limestone.

1 THE COURT: Very good. They're admitted under seal.

2 MR. LUNSFORD: May I approach?

3 THE COURT: Yes.

4 Q. Captain Noe, do you recognize what is before you marked as  
5 Defendants' Exhibit 3?

6 A. Yes. Got JB --

7 Q. Well, before you get to that, do you recognize the document  
8 itself?

9 A. Oh, yes, I do.

10 Q. And what is that document?

11 A. This is the sheet that -- the roster we had every inmate  
12 sign to say they received the settlement.

13 Q. And based on your involvement, the copies of the  
14 notification packet provided to the inmates, were they  
15 distributed on August the 12th of 2013?

16 A. Yes, sir, they were.

17 Q. And you will see throughout here a certain individual signed  
18 as a witness on each and every page of Defendants' Exhibit 3.

19 A. Yes, sir.

20 Q. And do you recognize that individual's signature?

21 A. Yes, sir. That's my sergeant, Mike Jones.

22 Q. I'm also going to hand you what's been previously marked as  
23 Defendants' Exhibit 2, which is the notification packet.  
24 Captain Noe, do you recognize that document?

25 A. Yes, sir. This is the document that I give to every

1 inmate in B and C dorm, every inmate -- every special unit  
2 inmate at Limestone.

3 Q. To your knowledge, Captain Noe, did any individual housed in  
4 dorm B or C as of October -- or excuse me -- August 12th, 2013,  
5 not receive a copy of the settlement packet?

6 A. Every one of them -- to my knowledge, every one of them  
7 received a copy of this document.

8 MR. LUNSFORD: That's all we have of this witness.

9 THE COURT: Anything else?

10 MS. WINTER: Nothing from us.

11 THE COURT: Thank you. Any other evidence?

12 MR. LUNSFORD: No, sir.

13 THE COURT: Okay. Thank you.

14 Anything else from counsel?

15 MS. WINTER: Nothing, Your Honor.

16 THE COURT: Mr. Lunsford, anything else?

17 MR. LUNSFORD: No, sir.

18 THE COURT: Very good. Then I consider the settlement  
19 agreement under submission. I will try to let you-all know  
20 something by no later than Monday. I know you need to know  
21 something before Monday at midnight.

22 MR. LUNSFORD: Yes, sir.

23 THE COURT: But I want to say to the inmates who are  
24 here today that I think we all recognize that these agreements  
25 are not perfect. And the essence of a settlement is that you



1 get an agreement that's not perfect, but you get an agreement  
2 that does help you and basically does vindicate the rights that  
3 you've asserted. And what you have here is an incredibly good  
4 agreement.

5           And I think that the fact that you have a commissioner  
6 who has literally devoted, it seems like, day and night to  
7 working this litigation out involving 250 inmates in the system,  
8 the fact that he's been present at these fairness hearings I  
9 think demonstrates the commitment of this department to carry  
10 out these agreements. And it's clearly not only a commitment by  
11 the department itself, but it's clearly a personal commitment by  
12 the commissioner.

13           Anything else? Thank you.

14           Court is in recess.

15           (Proceedings concluded at 2:41 p.m.)

16                                   \* \* \* \* \*

17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

This 12th day of December, 2014.

/s/ Risa L. Entrekin  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Official Court Reporter