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

LOUIS HENDERSON, ET AL
PLAINTIFF

V. CASE NO. 2:11cv224-MHT

KIM THOMAS, COMMISSIONER,
ALABAMA DEPARTMENT OF
CORRECTIONS, ET AL
DEFENDANTS

DEPOSITION OF EMMITT L. SPARKMAN

Taken at the instance of the Plaintiffs at Law Office of Robert McDuff, 767 N Congress Street, Jackson, Mississippi, on Monday, July 9, 2012, beginning at 9:00 a.m.

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EXAMINATIONS

EXHIBITS

VIDEOGRAPHER: This is video deposition of Emmitt L. Sparkman taken in the matter of Louis Henderson, et al. versus Kim Thompson, et al. Today's date is July 9th, 2012. The time now is 7:58 a.m. Counsel may now introduce themselves for the record.

MR. TAKEI: My name is Carl Takei. I am one of the attorneys for the plaintiffs in this case.

MR. LUNSFORD: We met a little bit earlier. My name is Bill Lunsford. I'm here with Mitchell Greggs. We're outside counsel to Commissioner Kim Thomas and the other wardens that have been named in this lawsuit.

MR. VINCENT: And I'm Leonard Vincent. I'm also present. I have nothing to do with this.

VIDEOGRAPHER: The court reporter may now swear in the witness.

EMMITT L. SPARKMAN,

having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. TAKEI:

Q. Good morning, Deputy Commissioner.

A. Good morning.

Q. I'm going to start with a few preliminary

questions.

A. Okay.

Q. First, is there any reason why you will not be able to answer my questions fully, truthfully, and accurately today?

A. No, sir.

Q. And if you need a break at any point to get a drink, to use the bathroom, or for any other reason, please let me know. And the only thing I ask is that you finish answering any pending questions before you take your break.

A. Okay, sir.

Q. If you don't understand my question for any reason, please let me know that you don't understand so that I can rephrase it appropriately. Can we do that?

A. Okay, sir.

Q. Have you ever been deposed before?

A. Yes, sir.

Q. How many times would you say?

A. I'm not sure the exact number. Probably more than 10.

(Exhibit 18 marked for identification.)

Q. And I'm going to show you plaintiff's Exhibit 18.

MR. LUNSFORD: Carl, I know the court reporter didn't ask us, but are we having usual stipulations, and is the witness going to read and sign?

MR. VINCENT: Yes. He'd like to read and sign.

MR. LUNSFORD: Okay. What about usual stipulations?

MR. TAKEI: All objections other than as to form are reserved. And we should also discuss additional stipulation which was raised after the last deposition, which is a stipulation that objection to form or objection to form is sufficient to preserve objections to form. And I know that there was some discussion about what that objection --

MR. LUNSFORD: We can agree that objections as to form are sufficient to reserve objections to form.

MR. TAKEI: And there's some disagreement to what constitutes an objection to form that was raised at the previous deposition, so I just want to make sure which areas are covered, which are not.

MR. LUNSFORD: Okay. In my experience, an objection to form does not include objection as to

asked and answered or an objection as to whether an adequate predicate had been laid, which would not be questions or objections as to the form of the question, but would actually be as to the placement or timing of the question.

Q. (By Mr. Takei) Okay. Turning back to you, Deputy Commissioner.

A. Okay.

Q. What is your current position?

A. I'm the Deputy Commissioner of Institutions for the Mississippi Department of Corrections.

Q. What are your responsibilities as Deputy Commissioner?

A. I'm responsible for the state prisons, private prisons, regional prisons that house Mississippi Department of Corrections offenders. Also responsible for classification, training, facilities, engineering, agriculture division, records, and the inmate grievance procedures, and treatment department.

Q. Can you please list in chronological order any other positions you've held in the field of Corrections?

A. Yes, sir. I started out in 1975 as

correctional officer for the Texas Department of Corrections. Subsequently promoted to education director, maximum security unit, and Texas Department of Corrections. Then was promoted to captain for Texas Department of Corrections. That was in 1981.

In 1982, I was promoted to major correctional officers. In March of 1984, I moved over into community corrections for county district in Brazoria County, Texas. Remained a probation officer for about four years. Then went into juvenile corrections for about 18 months as a detention superintendent and court services supervisor.

January of 1990, I was named deputy director of security for a private prison. Concept, Incorporated was the company. Stayed with that company for about almost three years.

And November 1992, I accepted the position for the Northpoint Training Center, Kentucky Department of Corrections, which was a medium security prison. I stayed there November '92 to August '96.

In September '96, I was named warden of private prison, Marshall County Correctional

Facility, Mississippi, Holly Springs, 1,000-bed medium security prison. I remained there until June 2001 and was named superintendent of Mississippi State Penitentiary from June of -- November 2002, I was superintendent of the Mississippi State Penitentiary. And then was named Deputy Commissioner of Institutions in November 2002, and have retained that position to present time.

Also, from February of 2010 to May of 2012, I've held dual roles of superintendent Mississippi State Penitentiary, along with Deputy Commissioner position.

Q. How many prisoners are in custody of MDOC?

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection to form?

MR. LUNSFORD: As to when.

MR. TAKEI: Present.

MR. LUNSFORD: What time frame? And are you including private prisons, community work centers? I mean, I think that question encompasses a whole host of different facilities and -- and circumstances.

And also, I mean, with regard to timing, I don't know how anyone can answer the question

without knowing a particular time frame.

Q. (By Mr. Takei) All right. Deputy Commissioner, at the present time, how many prisoners are in the custody of the institutions over which you have responsibility?

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection to form?

MR. LUNSFORD: Well, "responsibility," I mean, that -- that in my opinion doesn't distinguish.

Q. (By Mr. Takei) Deputy Commissioner, do you understand the question?

A. I could give you what our population is incarcerated.

Q. Okay. What is your present incarcerated population?

A. Approximately 22,000.

Q. Approximately how many of those prisoners have HIV based on the most recent figures?

A. Most recent --

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection to form?

MR. LUNSFORD: The approximate number. We don't just deal with general numbers.

Q. (By Mr. Takei) Based on the most recent

figures you have, how many prisoners have HIV out of those approximately 22,000 you named?

MR. LUNSFORD: Object to the form.

A. About --

Q. (By Mr. Takei) Well, let -- let me try and cut this a little bit more clean.

Based on the most recent figures you have, how many offenders in MDOC custody have HIV?

MR. LUNSFORD: Object to the form.

Q. (By Mr. Takei) Go ahead and answer, please.

A. I recall the last data I had was April 2012. I believe we had 206, I believe, that are HIV positive.

Q. Out of those 206, how many are male and how many are female?

MR. LUNSFORD: Object to the form.

A. I don't recall how many we have that are female. I want to say it was a very small number, like I want to say about 20 or something like that that were female.

Q. (By Mr. Takei) Including private prisons and community correction centers, how many facilities are there in the MDOC system housing prisoners?

A. Our system is we have -- we have three state prisons that are complexes. Then we have four private prisons that are operational. And then we have 15 regional prisons. And then our community work centers, along with restitution centers, I believe, because that comes up under the community correction. I believe there's 20 of those. So it's 40, basically, little over 40 correctional facilities.

Q. How many of these facilities house men?

A. How many house men?

Q. That's right.

A. Out of the state prisons, one state -- all three of the state prisons house men. Of course, one also houses female in separate prisons. Private prisons are all male. The 15 regional prisons, they are all male -- I mean, 14 are male, one is female. And then one of the remaining 14, part of it is a female facility -- female regional facility that is a separate entity by sight and sound, but they have a capacity of 75, Kemper Regional Facility.

Q. Other than the facilities you just named in your answer, are there any other facilities that house women?

A. Yes. The -- Rankin Restitution &

Satellite Facility in Pearl houses women. Of course, that comes up under the community corrections. And some of the county jails have joint state/county work programs that house female offenders.

Q. How many of the county jails house women?

A. I'm not sure how many house, but -- but the joint state/county work program, there's large programs. We have one at Marion County I believe that can hold up to 90 females. And then we just closed the Bolivar Joint county/state Work Program that housed females there. Most of them are male joint county/state, which are community work programs, but they're managed by the county sheriffs departments.

Q. And could you describe to me how the state prisons and private prisons are located around Mississippi in terms of geographical region?

A. Well, the -- the state prisons is what you --

Q. Yeah, let's address the state prisons first.

A. State prisons you have Mississippi State Penitentiary, which is located in the delta area, which is north of here, northwest of Jackson. And

you have Central Mississippi Correction Facility, which is located in the central part of the state. South Mississippi Correctional Institution is located in the southeast part of the state.

Private prisons you have Marshall County Correctional Facility, which is located in the northwest sector of the state. You have Walnut Grove, which is central east. And then East Mississippi Correctional Facility, which is east central -- east central Mississippi. And then Wilkinson County Correctional Facility, which is located in the southwest part of the state.

Regional prisons, I try to keep up with all of them as we go. They're all located all over the state. Did you need me to tell you where each one of those are too?

Q. I think that answers the question.

A. Okay.

Q. What custody levels of prisoner can become needed in each of the state prisons?

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: I -- I don't understand the question.

Q. (By Mr. Takei) Deputy Commissioner, do

you understand it?

A. It's what custodies are housed at the state prison?

Q. That's right.

A. At the state prison, Mississippi State Penitentiary, we have minimum, medium, close custody, also death row. And as under the status, we had administration segregation status and protective custody status.

At the Central Mississippi Correctional Facility, which houses male and female, we have minimum, medium, close, and administrative certification. Populate very small of females and males, and -- but no long-term protective custody status.

South Mississippi Correctional Institution has minimum, medium, close, and administrative segregation population. Very small number of in high-risk incentive program.

Q. And what custody levels a prisoner can be housed at the private prisons?

A. It's according to what prison it is. But at the Marshall County Correctional Facility they can house minimum, medium, close, and also administrative segregation status.

At the Walnut Grove Correctional Facility, minimum, medium, close, and administrative segregation status.

At East Mississippi Correctional Facility, minimum, medium, close, and administrative -- well, special management unit status. That's where our mentally ill and administrative segregation, special management unit for mentally ill.

And then for Wilkinson County Correctional Facility, minimum, medium, close custody, and administrative segregation status.

Q. Does the Mississippi Department of Corrections operate a work release program?

A. Not a -- well, work release, they have a what we call minimum community offenders that can work in the community without the supervision of correctional staff. It's not really what I'd call a work release where they're being paid to work.

Q. And what are the housing arrangements for these community facilities?

A. They -- they typically house between 80 and 100 offenders. Again, that comes up under community corrections. What housing is the open dormitory setting. These offenders, majority of them go out in the community each day and work

public service with county, waste disposal, assist, repairs in county facilities, janitorial duties, county facility. Both -- any municipal approved municipal governing or 501C company if it's approved by the Mississippi Department -- 50C1 charity group that's approved, like Habitat for Humanity. That has to be approved by Department of Corrections.

Q. Of the community corrections facilities, how many house men?

A. I want -- I believe if I'm not correct -- if I'm correct, I believe there's 19 of those that house the men. And there's one designated for a female community work center and restitution center.

Q. What's the distinction between a community corrections facility and a commun -- and a restitution center?

A. Restitution centers, they're -- they're paid. They are paid. They're run out to work. They're sentenced to the Restitution Center and they're not considered inmate status, but they join the -- it's basically a dual admission facility there. That's the difference there. But they're paid for their work. They pay off their restitution, court order fines.

Q. Are there any other restitution centers

besides the one that houses females?

A. The Hinds County Restitution Center and then there's one in Jackson. I believe it's called Jackson or Pascagoula County Restitution or Pascagoula Restitution Center of Jackson. I get them confused.

Q. Does Mississippi law require that all incoming prisoners be tested for HIV?

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: Calls for legal conclusion.

Q. (By Mr. Takei) Go ahead and answer.

A. There is a state statute, I can't cite the number, that does require that all incoming inmates are tested for HIV.

Q. I'm going to turn to former policies of MDOC. When I say "MDOC," I mean Mississippi Department of Corrections.

A. Okay.

Q. Is that okay with you?

A. Yes, sir.

Q. When you were first employed by MDOC, what was MDOC's policy regarding the housing offenders who tested positive for HIV?

A. I was employed in June 2001 as

superintendent of Mississippi State Penitentiary. When I was initially employed, the population was segregated with the males in unit 28 at Mississippi State Penitentiary, and they weren't participate -- weren't allowed to integrate with other offenders.

Q. What policies, if any, existed at that time governing the participation of HIV positive prisoners in programs or activities?

A. Well, when I initially come employed, they were working towards a transition in that the male HIV population would remain segregated, but they would be allowed to participate in programs. And that was in transition when I became employed. They were in the process of training offenders, education materials, and the staff, so that was in process when I became employed June of 2001.

Q. Were you involved in that process that you described?

A. Yes, sir. As far as I was -- I didn't provide the training, but was involved in meetings and addressing any concerns staff had, offenders had. It was a transition over a period of several months to where we transitioned into where we were moving -- transporting the inmates from their housing, unit 28, into the individualized programs,

at unit 30, what we call our Front Vocational School to Mississippi State Penitentiary.

Q. How did you manage that transition?

A. Well, the key to the transition was educating and addressing concerns. Initially, it was a lot of apprehension on the part of what I saw from the staff. They were more apprehensive than the offender population. There was some apprehension on the part of the offender population, but primarily it was the staff that were concerned about what the other -- for their safety and also concerned what the inmates would do directing their fears to the HIV population. And the way it was addressed was with frequent meetings with the staff, very thorough education program. It's kind of what I called hot spots came up, issues came up, you had meetings to address those concerns, and we set target dates on implementation.

Q. Over what time period did this transition take place?

A. It -- I'm not sure how long. It was -- I believe it hadn't been going on very long when I first was employed, but I want to say like over a six-month period we progressed where we placed them in the academic and vocational programs, alcohol and

drug rehability programs.

Q. What specific steps did you take to address the staff concerns?

A. Again, education, that was the key to the whole thing. Explaining -- we started requiring that all staff annual -- additional training, annual training, of blood-born pathogens, HIV, HIV spread, what precautions you need to take. That was a requirement that all staff attend. And again, meetings to where the management met with the instructors that were going to be providing. Let them voice their concerns. Over and over addressing those concerns with education and alleviate their concerns and fears.

Q. What steps, if any, did you take to address the prisoner concerns?

A. Goes back again to education. We started requiring all offenders had to take an HIV AIDS blood-born pathogen training, how the disease is spread, what precautions you need to take, and if you take those precautions, that it addresses your concerns. And making sure that the protective barriers that you do have to prevent the spread of HIV virus is available -- was available to the offender population, making sure not only what we

educate them on what was needed to protect them was that.

Q. How did the prisoners respond to the integration of programs?

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: Integration programs.

Q. (By Mr. Takei) All right. When I say "the integration of programs," what do you understand me to be saying?

A. Where we let the HIV offenders attend programs with the offenders that were believed to be non-HIV positive.

Q. How did the prisoners respond to the integration of programs?

A. It was basically no problems at all. I mean, I can't recall of any incident that ever occurred once we -- you know, prior to this -- prior to our implementation, both staff and offenders -- there was going to be all kinds of problems, there would be violence. And once it was implemented, it was just basically you had to describe it as smooth. There was no -- they assimilated into the programs without any difficulties. The -- within a matter of weeks it wasn't even something that was brought up.

It's kind of like when you place a video camera, first, everybody is looking at the video camera wondering what -- everybody is watching it. And then after a short period of time, everybody forgets the video camera was there. So that would be the best way I would describe it, that fast.

And I contribute that to the amount of time -- it was not something that we did overnight. It was something that we did over weeks and months of making sure, meetings. And a lot of -- when you do anything that would be considered -- I considered at that time it was controversial. If you let people chew on it, get their concerns out there, talk about it before you implement it, most of the time you're going to be able -- number one, you're going to be able to address most of the concerns and -- for the staff and offenders, quiet those concerns. And by the time it gets to implementation, all the concerns have been addressed.

Q. You previously stated that security staff expressed some concerns about integration of programs. What were those concerns?

A. I think it -- when we initially integrated into the programs, it wasn't as much security staff

because we already had security staff working in unit 28 with HIV population. It was more the instructors that were going to be providing instruction, both vocational and academic. They were concerned. And those concerns were that the inmates were going to -- the ones that -- offenders that were not HIV positive would be violent towards the ones that were HIV positive and there would be all kinds of conflicts.

In reality, once implemented, I can't recall any conflict that erupted because of a person with HIV in a program with someone that was not -- that is not HIV positive.

Q. What, if anything, did you do to address those concerns?

A. Well, you -- you know, it's kind of like what I always -- if any staff brought it up to me was that, you know, I preach it over and over universal precautions and decide how the HIV virus is spread. "Are you involved in any of those activities?" If they say "no," "Then what do you have to worry about it?"

Number two, I always bring up -- and when I'm educating offenders and staff is sometimes you have a false sense of that, you know, "Well, here's

the HIV population here and all these folks are non-HIV." Well, that's not -- you don't know. You know, there's an incubation period when even a person comes into the system. Once he's tested he can still six months later be HIV positive. So that false sense of that all the HIV -- all the HIV offenders are identified, that's not necessarily so because they can convert later on. So I always tell them I look at it as "if you" -- "if you're that concerned, what you need to be looking at is all staff, all offenders, all the public you have contact with are HIV positive. If you take that position, then you have nothing to worry about if you practice universal precautions."

Q. Were programs integrated in any particular order?

A. I don't believe there were any order. I believe we started out -- we just started out with numbers and gradually the numbers grew, but I don't believe there were any particular programs that were started.

Q. What impact, if any, did program integration have on MDOC's expenses?

A. My opinion it didn't have any impact on other than the transporting of offenders because we

were still housing them separately. There may have been little bit of added expense, but I think that would be -- offset would be prior to that the offenders were not receiving vocational trades, pre-release program, alcohol and drug. They were in the unit in reduced fashion. Access to academic program, so the offset with that small transportation expense, of course, we were already transporting inmates from Front Vocational School anyway would be a reduction in your recidivism rate because anyone who completes a vocational trade, our overall recidivism rate over three years is a little -- little under 30 percent as I recall. And anyone who completes vocational trade is less than 10 percent. So that offset making those programs available to the HIV population and reducing your inmate population I think more than justifies it.

Q. And I believe you testified that the process of integrating programs had just started when you --

A. It was still in the planning stages. None of the offenders had been assimilated into the programs at that time. We were in the process of educating staff, offenders, holding meetings. I probably came in about the midway through the

transition to allow them to attend the programs with other offenders.

Q. What were the steps in the planning stages?

A. Initially, it was, of course, to develop a plan with time frames, meetings with offenders and staff. And then also starting the -- we had to train all staff, train all offenders. And I can't remember the exact time frame. I believe it was over like a six-month period as I recall.

Q. Did the planning for program integration cover anything related to HIV positive prisoners and to community corrections?

A. It did not. We still took the position that because we were going to house separately that they wouldn't participate, they would be housed at unit 28. Of course, they had a small number that when if they were serious rule violators, they would be unit 32. But that wouldn't -- that -- they were still isolated because they were in a single-cell environment. But we still had the position of we were going to separate housing, but assimilate the programs.

And so that -- because Parchman doesn't have community work center, they weren't allowed to

participate in community minimum custody. At that time, we called it I believe minimum out. They were only allowed to be minimum restricted custody.

Q. Did the policy of excluding HIV positive prisoners from community work centers change at any point?

A. In 2004, I believe was the year we changed it to where they were allowed to participate in the community work center programs. And the way I understand it, I'm not a medical professional, but we operated it off the pathways for the treatment of HIV as if they were not requiring. Because our community work centers do not have 24-hour medical care, so they had to be offenders that did not require frequent medical intervention.

So according to the pathways of treatment of HIV -- if you're HIV, work was further towards AIDS, if they were medically cleared, they could work in community work centers.

And then we started changing the ways to identify it as the offenders HIV or positive and went to medical confidential, which does not mean -- just because you're medical confidential does not mean you're only HIV positive. We have inmates that are hepatitis C. So that's the direction we started

working towards in 2004.

So those offenders were allowed if the pathways of treatment allowed them to have -- require frequent medical intervention, then they could be assigned to community work center.

Q. And what was your position in 2004?

A. Deputy Commissioner of Institutions.

Q. So following the change in policy allowing prisoners with HIV to go to community work centers what HIV-specific restrictions, if any, were imposed on the eligibility of prisoners for community work centers?

A. Again, it would only be that their medical treatment required that they be at the facility that had more frequent medical care. It was no longer than just being HIV positive restricted. It was your medical treatment plan if you were HIV positive might prevent you from going to work at community work center. But the sole factor of being HIV positive would not.

Q. Are there any significant differences between those restrictions and restrictions on prisoners with other chronic diseases?

MR. LUNSFORD: Object to form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: Significant differences. First of all, you're talking about medical issues and I don't think he's in any way expressed -- he's already said, "I'm not a medical professional." So I can't determine what -- are you asking him to identify whether there are any significant medical differences? I mean, for example, are you asking him to distinguish between the criteria for a diabetic inmate or someone with hepatitis C versus someone with HIV?

Q. (By Mr. Takei) What's your understanding of the treatment pathways criteria?

A. Treatment pathways -- offenders does a, prior to being cleared to go to community work center, medical professionals do a medical assessment. If it's determined that he does not require frequent medical intervention or chronic care clinics and have more frequently that would require daily medical, then they can be cleared to go to medical -- to a community work center. It doesn't matter what -- it's not based on their -- their particular disease. It's based on what their medical treatment is required according to that pathway.

A good example if he has -- is

insulin-dependent, he's having to have blood sugar monitored closely and a nurse has to check that daily, he's not going to be able to go to community work center. If his T-cell count. I don't know the numbers. But if he were required to have direct observed medication by a medical professional, that individual wouldn't be able to go to a community work center because we don't have 24-hour, 7-day coverage. But if he's functioning without medical intervention on a daily and weekly basis, typically, they're able to go to those community work centers?

We have different medical classifications, medical class 1 and 2, which we call healthy, able-bodied offenders are allowed -- without restrictions are allowed to go to community work centers. So whatever the chronic disease that individual had, if he fell into the medical 1 or 2, he could be assigned to a community work center.

We've even gone further than that now for all diseases, not just HIV. A medical class 3 if it -- based on what his medical intervention requirements are can be assigned to a community work center.

Q. Could you describe the housing setup inside the community work centers.

A. There all -- the -- they're mostly the same design. They're open dormitories, either single or double-set bunk, you know, bathrooms, showers. It's the best way to describe them would be that they're a military barracks type or youth camp we've all probably attended in the summertime. It's group -- those dining program activities, housing. To my knowledge, there's no cell environments. It's all dormitory housing.

Q. Are there any differences in the housing arrangements for prisoners with HIV and other prisoners in the community work centers?

A. I'm not following you.

Q. I'm sorry. Are -- are prisoners with HIV assigned to different housing of any kind within the community work centers?

A. We -- we stopped identifying offenders as HIV positive. We identify them as medical confidential. So that still would not -- just because we don't house medical confidential different than we do any other offenders. But just because you're medical confidential doesn't mean you're HIV positive.

Q. Did the integration of prisoners with HIV into community work centers result in violence,

unrest, or resistance of any kind?

MR. LUNSFORD: Object to form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: You're -- you're asking him for an opinion, right?

MR. TAKEI: I'm asking him for what he knows based on his role as Deputy Commissioner.

A. Initially, it was no -- I don't know of any concerns expressed by the offender population. Initially, there was concern of the -- as I described community work centers before, the offenders are allowed to work in community. Some of the communities that they were working heard that offenders that are HIV positive were going to be housed at some community work centers. There was some concern about that. Again, that goes back to education, work supervisors educating them.

We had the same problem when we started housing offenders that were required to take T -- they were not TB, tuberculosis, contagious, but they were on what I call INH therapy. That's what we refer to in Mississippi that they were just as preventative therapy. When they heard that, community became very concerned that they were going to be exposed to tuberculosis. Again, it went back

to educating. We held a -- basically a public meeting and had a nurse come in and explain what preventative care for tuberculosis was. Same thing, our community corrections commanders and their staff educated the public and the community workers that "hey, it's what we did with our own staff, practice universal precautions and you have no concerns."

And then again, it was because initially because of our prior segregation individuals knew who the offenders were that are HIV positive, once we stopped later on, they knew -- they say, "Oh, he came from unit 28 so he's HIV positive." As we all know in 2010 we stopped segregating off. So now it's a non-issue because they don't know who's positive and who's not positive, where from. Any time there's a move from unit 28, they -- everybody knew he was HIV positive, so there were concerns.

But again, we always try to educate our staff and offender population of you've got a false sense of security if you're saying this is the only person who's HIV positive, or I do from the education I received. HIV transmission need to be more about hepatitis B, hepatitis A, those kind of things that you can controvert.

Q. Community correction staff, were the

employers express any concerns about the integration of community work center?

MR. LUNSFORD: Object to the form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: "Employers."

MR. TAKEI: Okay. Let me --

MR. LUNSFORD: I mean, it's just employers. I think the prior testimony is pretty clear on it.

Q. (By Mr. Takei) What term would you use for the entities that are -- community work center prisoners do work for?

A. We have the community work centers municipalities. The inmates are assigned to work supervisors. And, of course, projects for 501C3 corporations. Those groups, because they do work offenders, assigned. Initially there were some concerns --

Q. Let me just make sure that we've got the terminology down. So work supervisors and projects?

A. Right.

Q. Okay.

A. Yes, sir.

Q. So did -- work supervisors were the project supervisors expressed concerns of any kind

about the integration of prisoners with HIV into community work centers?

A. Primarily it was more the municipality type work supervisors that were concerned. Most of the 501C3s, they're not on the -- they're infrequent, so they're just happy to get the labor. But some of the municipalities that have been in the program for years and they have various -- like to be very selective under who they work. They were expressing concerns. Again, it was back to education, advising them how and we were going to do this and that, you know, "If you want to participate in the program, this is" -- "you're going to need to do this. We'll provide you the education on transmission of blood-born pathogens."

And again, after a very short period of time, you never hear anything else about them.

Q. Did any of the work supervisors or project supervisors drop out of the community work programs because of the integration of HIV positive prisoners?

A. To my knowledge, none have.

Q. What impact, if any, did the integration of community work centers have on MDOC's expenses?

A. I don't believe it had any impact on

expenses because we were only sending inmates that were HIV positive that were not requiring medical intervention. So if anything, it probably reduced our expenses because a community corrections bed cost per day is less than a higher security minimum at a prison or medium at a prison. So when we moved, I was filling one of those beds because inmates that qualify for community programs are at a premium so to speak because they have to be non-violent, meet a lot of criteria. So we're basically able to assist the communities more by providing more offenders.

Q. Going to turn to the housing for female prisoners with HIV, when you first became Deputy Commissioner, what was MDOC's policy regarding housing of women with HIV?

A. My understanding at that time I was just the superintendent of Parchman, they had already stopped segregating the female population because it was such a small population. It's our statistics there's less than 20 right now HIV positive out of about 1,300. So financially, it just wasn't feasible to operate a small -- I'm speculating on why they stopped. But they integrated them in programs and housing. That was already done in

2000. I believe that was voluntarily done. But I couldn't tell you the date when that occurred.

Q. To your knowledge, was there any unrest that occurred because the women with HIV were integrated with other women?

A. I've never heard an issue on the integration of females who were HIV positive.

MR. TAKEI: Let's take a 5 or 10-minute break.

VIDEOGRAPHER: Off the record. It's 8:49.

(Off the record.)

VIDEOGRAPHER: Back on the record. It's 8:57.

Q. (By Mr. Takei) Turning back to the policies for male prisoners. Did a time -- did a time come when MDOC changed its policy regarding the housing of male prisoners with HIV in any way?

A. Yes, sir, 2010.

Q. In what way did MDOC change its policy in 2010?

A. We had moved all the HIV positive offenders, positive offenders, the majority of them, of course, you still had disciplinary or administrative segregation population, but 29A and B. And Commissioner decided -- made the decision,

of course, discussed with the staff, that we assimilate all HIV offenders into the population and stop segregating offenders. And we started -- I was given that assignment to work towards that. And we accomplished it probably in about 90 to 120 days.

Q. What were the reasons for mainstreaming the HIV positive prisoners?

A. Well, we saw, number one, how successful it had been with the programs, you know, real progess. Any time you have a specialized population, in our view, is more costly. They can only be housed at one location. And over time, we just determined that the -- segregating the population, it would benefit us more to assimilate them into the population. And that's what we decided to do.

Q. Were there any particular concerns that other prisoners had about mainstreaming the HIV positive prisoners?

MR. LUNSFORD: Object to form.

Q. (By Mr. Takei) Were any -- were any concerns expressed to you by other prisoners about the mainstreaming of HIV positive prisoners?

A. Minimal concerns. You know, "I hear you're going to do this. DCI" -- you know, "What

about this?" I get around a good bit. And again, it goes back to educating the offenders and telling them basically, "Do you really think they're going" -- "you're going be that much more unsafe if they're in here?" And I always like to use that deal, "Are you having sex with them? Are you sharing needles with them?" And when you get through with that conversation, typically, it's over with. And so minimal concerns.

Q. Were any concerns expressed to you by staff about mainstreaming HIV positive prisoners?

A. Really, no, because what -- unit 28 is an isolated unit at Mississippi State Penitentiary, but unit 29A and B is part of a larger complex. 29A and B are 2 of 12 housing units at unit 29. So staff could be pulled from other areas, those other 10 housing units to work in. So they -- they were used to the HIV offenders being there. Of course, they still had to go over if they were assigned to 29A and B to do searches. So the staff -- there wasn't the -- the apprehension of staff that you had.

Q. Did HIV positive prisoners express any concern to you about being mainstreamed?

A. We addressed that. That -- that was probably the major concern I had. I wasn't

concerned about the -- the inmates that were coming into the system because they wouldn't be what I called labeled as HIV positive because they would be identified as medical confidential, and that could be hepatitis C or whatever. Some just -- basically an identifier that they needed medical or medical attention.

But I was concerned about that population of that about 176 offenders. And the way we approached that is we met with those offenders -- and when I say "we," the staff at that unit -- talked to them about where they felt like they could be the safest housed. Unusual for prisons, but we kind of gave -- we didn't tell them they could go where they wanted to go, but gave them some options. "If you were to be given the option, where do you think you could be safely housed at?"

So someone -- some of them liked the situation of you always have this situation of -- it's kind of contrary to what they think. They like being special. So they really didn't want to be moved out. And we told them we were going to assimilate. Of course, they were maybe comfortable. There was a very few. I think the real factor was when we talked to them we said, "Where would you

prefer to be housed at given the option?" We had some that lived on the Gulf Coast, so they wanted to go to South Mississippi Correctional Institution. Or maybe they lived in southwest. We were able to negotiate with private prisons and work out situations.

And Marshall County Correctional Facility and Wilkinson, everyone was concerned about the expense. And what we said was the medical cost alone. "If it goes over this amount, we'll reimburse you at that" -- "for the actual medical cost."

So -- and then we gave assurances which we knew who that 176 were that if you experienced problems, adjustment problems, that you could contact staff, we'd intervene. So that's the way we approached it.

Q. You mentioned with this first group of HIV positive prisoners, they would be identified because of the unit that they had come from. What, if anything, did you do to address issues arising from that?

A. Well, that -- again, that's -- the way we did that was giving them some input in where they thought they could safely be housed at and address

their concerns.

Good example is a large majority of the population is from the Jackson area, so we tried to relocate as many as we could that requested to go to the Jackson area so they're closer to home. So when they saw they were going to get closer to home, that alleviated a lot of their fears. Plus, the unit in Jackson that they would be going to was older inmates, more mature inmates, so they were able to assimilate those into that population.

Some wanted to stay at Parchman so to speak and we'd move those inmates around Parchman. And we did it over probably about 90 days that we spread those inmates out.

Q. In general, in deciding to house -- in deciding where to house prisoners within the system, does MDOC take their medical needs into consideration?

A. That's the way we house -- I mean, that's part of the classification process. It's not the only situation, but we have units that are designated for medical class. We have five medical classes.

1 and 2 are basic able-bodied offenders with minimal medical problems.

3 is typically a chronic disease that's under control and may require more frequent intervention. Sometimes it's not as much. Where we started now were some medical we could place facilities.

4 and 5 typically require a lot of medical intervention, so that medical classification.

And then we have in our mental health medical classification, we have A and B is basically -- A is no mental health problems. B is sometime may experience. C is ongoing mental health treatment. And then D or E is severely mental.

And that -- those classifications play with your custody classification and assignment to facilities.

Q. Does being HIV positive result in any particular medical classification?

A. Not medical -- not just HIV positive. According to the pathways for what treatment they received, if it fell into chronic disease, they could come in a level 3. And if it progressed to AIDS and they were experiencing a lot of the serious medical problems, they could fall in the 4 and 5. It would be the medical treatment, what we call the pathways of treatment, that we determine what

their -- and their medical assessment. Not just being HIV positive.

Q. In deciding to mainstream prisoners with HIV, did MDOC consider any impact that changing policy could have on your ability to deliver medical care to prisoners with HIV?

A. Well, that -- that goes back to the medical classification. The decision and our determination was that when assessing that -- that offender's health, whether it be HIV positive or not HIV positive, if you fail 1 or 2, he could go to a facility that housed healthy, able-bodied offenders. If he failed after assessment with his -- his treatment fall into chronic care, then you'd have to assess where these -- his medical needs could be provided. And then, of course, if he's 4 and 5 that would -- his assessment, that would severely limit as anyone else, whether they had high blood pressure, heart trouble, or whatever, where they could be housed at.

Q. Did you consider whether MDOC would be able to provide necessary HIV care for prisoners with HIV if they were concentrated in a single area in Parchman?

A. Yes. And again, that goes back to our

medical classification that we have chronic care clinics for a variety of diseases. So if they're -- typically just HIV positive is not going to require chronic care clinic. If it reached the level that they did have chronic -- they would call it chronic care, so they would be housed at a facility that had chronic care clinics. If they became more ill, if the medication is not working and it progressed to AIDS and full-blown AIDS, then they would be in a medical class 4, 5 facility which is capable of providing that necessary care.

We treated it as basically the pathways of that disease on how it was to be treated, not just labeling you're HIV positive. It was what the treatment plan required.

Q. Under present policy, what prisons can a prisoner with HIV be assigned to?

A. All prisons. It's basically -- it's based on their medical needs and their treatment plan.

Q. At the time of MDOC's decision to mainstream prisoners with HIV, did MDOC contract with a private vendor for medical care?

A. Yes.

Q. What was the vendor?

A. Wexford.

Q. And what was Wexford's reaction to the decision to mainstream prisoners with HIV?

A. The majority of the Wexford medical staff were totally on board. One prime physician expressed concern. He felt like they needed to be grouped for medical care. Basically, when you pose questions, just what I laid out, "If he requires chronic care, don't you have chronic care clinics? Why couldn't he be at a chronic care clinic? If he's just HIV positive and not experiencing any medical problems, then why does he need to be segregated? You're monitoring his health or should be and when you assess medical care, if he begins deteriorating, he needs more medical care, then you would send him to a facility that can provide that necessary medical care."

And basically once those concerns were addressed, I didn't hear anything else out of them.

Q. Earlier, you mentioned an arrangement having to do with the costs of HIV care following mainstreaming of HIV positive prisoners. Can you describe that?

A. Specialized populations just -- you mean the cost, you mean private prison?

Q. That's right.

A. With the private prisons, we -- Wexford receives a per diem, per day, per inmates provide their medical care. And it comes out to be approximately for every offender that they are contract with us about $2,500 approximately.

So what we said to the private prison was, "We want you to begin taking offenders that are hepatitis C, not just HIV" -- "hepatitis C and HIV positive. And we understand that you have a concern that if they were to convert to require medication, whatever the cost."

So what the arrangement was that if that -- their cost of their medical care for that group exceeded $2,500 annually, then we would assume that cost. It gave us more flexibility in managing our inmate population in doing so, but it reduced their financial liability. And our position was "you should be providing that much medical cost to an offender," and that's what we paid to provide typical inmate in Department of Corrections.

And so that was the way we were able to provide -- basically, the way it assisted us in management of our inmate population.

Q. Okay. I'm going to ask two questions that use the term "direct observation medication" and

"keep-on-person medication." So I want to make sure that you understand those terms.

A. I do.

Q. Okay. What do you understand "direct observation" to mean?

A. Direct observation means medical -- trained medical professional has to observe the offender take the medication. A keep-on-person is the offender is given the medication, given education on how he's supposed to take the medication. And then whether it be for 30 days, 60 days, or 90, whatever, he takes the medication as it's prescribed, and when it expires, then they request a refill.

Q. Okay. Are there particular facilities that can't house prisoners who are on direct observation medications?

A. Yes. You've got your -- your regional prisons that they don't require all -- they don't have 24/7 coverage, so if you have someone that's on some kind of chronic medication that requires that a nurse be present, then they would be -- the community work centers do not have a nurse on site. I think they visit. And I'm -- I'm not over that, but I believe nurse only visits that side once a

month or once a week. So someone who was on direct observation couldn't be community work center that required direct observation medication.

Your state prisons and your private prisons had 24-hour medical care, so they could provide the direct observation medication.

Q. Are there any facilities that can't house prisoners who are on keep-on-person medications?

A. That wouldn't preclude an offender from being assigned there. It would -- that would fall back into this custody, his medical classification, if he fell into one of the -- if that facility could house that medical classification. He couldn't be housed there with keep-on-person. And is -- to my knowledge, all community work centers have offenders that have keep-on-person medication. All the regional prisons have offenders that have keep-on-person medication.

Q. Does that include HIV positive prisoners?

A. Yes. They had -- I don't keep up with HIVs, but they are capable. They could if it didn't require direct observe. It could be housed at regional facilities.

Q. Did MDOC give advance notice of mainstreaming of HIV positive prisoners to security

staff?

A. Yes.

Q. And what was the reaction from security staff?

A. To be honest with you, I don't recall any issues or concerns. And I think that goes back to when we started in 2001 assimilating all the HIV positive. We started requiring the education of our staff annually. It wasn't just a one -- one shot in the arm. It was -- we required annual refresher. That's part of our annual training. And our offender population, we educated. You know, I contribute to that a lot more education.

I can remember when AIDS and HIV in my career in the mid '80s came out, and a lot of hysteria. There's a lot more education now. That first scared me to death when I first -- until I, you know, became more educated, understood how it was transmitted, what you had to do, the barriers. So I think that's what -- it was just a change in the way we do things. Mississippi Department of Corrections we change a lot. We didn't have any staff on board that I --

Q. What, if anything, did you do to address the concerns of HIV negative prisoners about

mainstreaming?

A. Again, you know, they were educated. It was -- it was similar to when we did the program -- program integration. There just wasn't any concerns expressed.

The only incident that I can recall is one inmate came to me and said, "There's an HIV positive inmate. He's using the sink and I'm concerned about his body fluids."

And I said, "Do you have disinfectant to clean that area?"

"Yes, sir."

I said, "Has someone trained you how to clean that area?"

"Yes, sir."

I said, "Then what's the concern?"

He turned around, walked off, and that was it. I mean, we didn't hear anything else out of him. And that's the only incident I -- I recall anyone ever -- you just had to remind the offender population how to address their concerns.

Q. What impact, if any, did these educational efforts have?

A. Well, educating. They understand the disease. They understand that it's transmission,

number one. There's a lot more diseases they have to be concerned about than HIV. And if you're practicing universal precautions, you don't have any concerns.

And I think that's important with any offender population because you have to understand that most of our offender population comes into the Department of Corrections reading on a fifth grade level. A lot of them dropped out of school or had difficulties in school. So education is critical to making that to when we move to that when we integrated offender population.

Q. Turning back to concerns expressed by HIV positive prisoners, could you describe how you dealt with prisoners who said they didn't want to be mainstreamed?

A. You know, reassuring them if experience problems that we would intervene whether it be moving them to another location. The primary way we resolved it and I mean it was -- I don't recall any concerns is when they were given the opportunity to voice where they could be housed at, that basically took all of it away. I think there would have been more. If I would have said, "Okay, inmate, you're going to south Mississippi," and he lived in north

Mississippi, I think there would have been more pushback.

But instead, we sat down and said, "Hey, we're going to integrate this housing population. Where do you think you could best integrate into?"

"Well, I'm from Marshall County. If I get closer to home, I don't think I'll have any problem. Or "I will work in a minimum county. I can drive a tractor."

Those kind of things, if they qualified, we tried to place them. It was just kind of like a job placement where you had a layoff at a factory. You trying to find the best place for them and we didn't have any problems.

Q. Did mainstreaming trigger any prisoner violence or unrest?

A. To my knowledge, no.

Q. Other than what you've already described, did MDOC experience any other problems in connection with mainstreaming?

A. No.

Q. What effect, if any, did mainstreaming have on MDOC's ability to deliver medical care with prisoners with HIV?

A. Again, it didn't have any impact on our

ability because you're operating off what your medical classification offenders are. If an offender was experiencing medical problems, they put in a sick call. Medical provider looks at his medical record, identifies any kind of medical issues they have, and then determines what appropriate medical care was having. So if it's medical requirement or intervention, he may move to another correctional facility to provide that care. If it was not related to his being HIV positive, maybe just, you know, an in-grown toenail, whatever, then he would remain there and receive appropriate care according to what the treatment pathways required, what's required.

MR. TAKEI: Let's change the tape now.

VIDEOGRAPHER: Off record. It's 9:23. This is end of tape number one.

(Off the record.)

VIDEOGRAPHER: Back on record. It's 9:24. This is beginning of tape number two.

Q. (By Mr. Takei) In deciding to mainstream prisoners with HIV, did MDOC consider whether mainstreaming would increase the risk of HIV transmission?

A. We considered it. Did not feel it would.

Q. Why not?

A. Well, the -- just because, first, HIV positive goes back to you've got that false sense where monitoring offender's behavior, monitoring activities. So they shouldn't be allowed to participate in any of that risky behavior if we're doing our job. Always that possibility, but I don't think it could be any more than if we had if they were segregated.

Q. Post-mainstreaming in your position, could you describe how your level of concern about HIV transmission compares to your level of concern about, let's say, hepatitis?

A. Well, hepatitis A and B are transmission is a lot -- you have to be more concerned about it. I think that's -- that's something we preach to our staff. We want our staff to have hepatitis B vaccine. Whereas hepatitis A and hepatitis C, of course, because a lot of offender's history of intravenous drug use. Hepatitis C, what we found is hepatitis C transmission is a lot lower than that other hepatitis A, B, and C.

Q. And compared to HIV?

A. HIV, you know, if you're not participating in the risky behaviors that, again, goes back to

educating our staff, offenders using universal precautions. Transmission of the HIV virus is not going to happen if you're practicing universal precautions.

Q. Did MDOC's experience in integrating programs and the community work centers play any part in your decision to mainstream housing?

A. Yes. I think that was -- it was -- you know, when it first came out that we were going to integrate programs from what I understand, and everybody was concerned there was going to be a lot of inmate violence. And I wasn't one of those individuals. I just didn't believe it would be, but they were. And then once it was -- once we put it in place, the minimum problems that we had and then I think as a -- as a public, as an offender population, our staff, I think over the years everyone's became more educated on HIV and its transmission. It's not the hysteria there was in the mid '80s. And over time with education, I think there's a lot more understanding of the disease itself. So I think that played in and how we were successful in developing that plan.

Again, you know, doing it in time, ensuring everyone was informed, what was happening,

why it was happening, what we were going to do, how we were going to do it, we learned that when we integrated the program -- integrated the programs.

We took the same approach with when we integrated the house. We involved medical staff. Tell them this is what we want to do, what issues would it bring up, offender population, staff. It wasn't like we rolled in on buses 2010 and said, "All 176 get on. We're going to carry you somewhere, drop you off." It was -- every input was given. A lot of overviews to everyone where what I found in my career is that people may not like what's going on, but if you explain to them why it's going on and they understand what's going on, you'll be successful implementing whatever change it is.

Q. And what impact, if any, did mainstreaming have on MDOC's expenses?

A. You know, the thing what I would say the most is going back to what I testified to earlier is specialized populations are more expensive. Whether it's an HIV population or whether it's a unit that is for protective custody, that limits you on being able to move offenders, house where custody. You know, when you say -- kind of goes back to what I talked about I'm sure that played in, which I wasn't

there with female offenders. Our housing units are not made for 20 offenders. So -- so you -- if you continue -- if they continue to segregate, they have to staff that. Say it's a 50-bed housing, if they have to staff it for 50 beds when there's only 20 there, so it's more costly. So anytime that you've got what we call mainstream population, the fewer specialized populations you have, the less expensive it is to operate.

Q. All right. I think there's just one housekeeping matter, which I -- I showed you Exhibit 18 before. And do you recognize this document?

A. Yes, sir. This is the subpoena I received.

Q. The subpoena you received in connection with?

A. This case.

Q. And are you appearing pursuant to this subpoena?

A. Yes, sir, I am.

Q. All right. Thanks.

MR. TAKEI: No further questions.

MR. LUNSFORD: Give us just a minute and I'll have some questions.

VIDEOGRAPHER: Off the record. It's 9:31.

(Off the record.)

VIDEOGRAPHER: Back on the record. It's 9:37.

EXAMINATION BY MR. LUNSFORD:

Q. Deputy Commissioner Sparkman, we met just before today's deposition. As I said earlier, my name is Bill Lunsford and I'm actually from Huntsville, Alabama. But I, along with Mitchell Greggs, seated here, we represent the officials with the Alabama Department of Corrections who've been named in the lawsuit that we're actually here about today, the case in which you've been subpoenaed to testify.

Just as an initial matter, I do this kind of with everyone, and I know you've been through depositions before, but just to be clear, if you are confused by any of the questions that I ask or any words or phrases I use in a question, will you please let me know?

A. Yes, sir.

Q. Okay. I don't think we're going to need very many breaks because I'm hoping this proceeds on pretty quickly. I will be providing you with some documents today to look at. And I want you to take

whatever time you believe is necessary to review those documents to answer my question. So if you need additional time to review any documents I provide you, will you let me know?

A. Yes, sir.

Q. And you understand you're under oath, correct?

A. Yes, sir.

Q. Mr. Sparkman, what is your current business address?

A. Mississippi State Penitentiary, P.O. Box 1057, Parchman, Mississippi 38738. Really, I've got two. Central office is 723 North President Street, Jackson, Mississippi 39202.

Q. Which office do you spend the most time at?

A. Parchman.

Q. Other than discussions with your counsel or counsel for the state, did you have any discussion with anyone about this deposition before today?

A. I had some discussion with ACLU, yes. Just went over the -- basically what the facts of the case were.

Q. Were you provided with any documents?

A. The only documents that I recall receiving there was two letters that were sent in 2010 from I believe former Commissioner Allen, and then a -- an interrogatories response in January 2012.

Q. Okay.

A. And then the human rights I think April 2010. It was titled "Stigma" -- I can't remember.

Q. A report entitled "Sentence to Stigma"; is that correct?

A. That's correct.

Q. Any other documents plaintiff's counsel provided you with before today's deposition?

A. No, sir.

Q. Did you review the interrogatory responses?

A. I looked through them real quickly, but really, I was -- I believe my testimony was going to be about the Mississippi Department of Corrections experience, so I --

Q. Was there anything surprising or unusual that you saw in the responses to the interrogatories?

A. I really --

MR. TAKEI: Objection to form.

Q. (By Mr. Lunsford) Did you personally feel anything was surprising or unusual in the responses to the interrogatory responses that you received?

A. To be honest with you, I just glanced through them. I couldn't even recall any of the responses that were given because they were provided with my testimony based on what I was going to be -- what I understood was what our Mississippi experience was.

Q. What do you understand that the underlying lawsuit is about in your discussions with plaintiff's counsel?

A. That my underlying is that Alabama believes that -- it's the HIV population is better served to be segregated from the general population.

Q. We use that word "segregated" in a lot of different terms. And I know it has a lot of different connotations in a lot of different contexts. But how do you understand the word "segregation" as what it means when it's used in reference to the HIV offenders within the Alabama Department of Corrections?

A. Again, you know, all I can say is how we use it, but I've never viewed how and studied how Alabama does their segregation of HIV population.

Q. From your discussions with plaintiff's counsel, what do you understand them to be referring to when they say Alabama segregates -- they use that word a lot -- "segregates" HIV inmates?

MR. TAKEI: Object to form.

A. I would assume -- and again, it's all I can do because I haven't read up on all of your policies or such as that is, that they are not housed from general population, that they're separated from general population in their housing.

Q. (By Mr. Lunsford) And you understand that term means that they're not allowed the opportunity to attend programs and educational opportunities and religious services with other non-HIV inmates?

A. I really --

MR. TAKEI: Objection to form.

A. I really can't answer what Alabama is doing to be honest with you because I'm here to testify what Mississippi is doing.

Q. (By Mr. Lunsford) So you're not here to offer any opinion as to whether Alabama would have the same experience as Mississippi in how it has elected to house HIV positive inmates; is that correct?

A. All I'm here to do is to tell what

happened with our Mississippi experience, and how we used to segregate the offenders from programs, and we separated in housing, restricted them significantly, and how we moved from that, and how -- what happened when we did.

Q. Yes, sir. I understand that. And my question is a little bit different. But are you here today to offer any opinions about whether Alabama would have the same experience that Mississippi would have?

A. I can't -- I can't testify to Alabama.

Q. Have you ever been to any prison in the state of Alabama?

A. No, sir.

Q. And just going back following up on what you said a little bit earlier. You're not exactly sure how Alabama manages its HIV population in its correction system, right?

A. Not in detail, no, sir.

Q. Do you know anything about how Alabama manages HIV inmates in its custody?

A. Through just readings, and I couldn't even tell you what I've read. Just that they had separate housing. There are some kind of programs that they can participate in. But in detail again,

no, sir.

Q. Did you know former Commissioner Richard Allen?

A. I don't recall ever meeting him. I knew his -- I know his name just because -- as far as know him, no, sir.

Q. Did Commissioner Allen have a particular reputation in the correctional industry, correctional field?

A. I really -- I really don't know anything about him to be honest with you.

Q. Do you know the current commissioner, Kim Thomas?

A. No, sir.

Q. Were you aware that Commissioner Thomas was formerly the general counsel for the Alabama Department of Corrections?

A. The only thing is I saw one time that he started out as a correctional officer.

Q. Yes, he did. I was listening to his experience and it sounded a lot like yours in that you started as a correctional officer and worked your way up, and now you find yourself in a deputy commissioner spot. You understand he has a similar background, right?

A. Yes.

Q. Now, prior to today's deposition, had you ever dealt with the ACLU before?

A. Yes, sir.

Q. Tell me about that if you would.

A. Which experience?

Q. Well, how many experiences total have you had?

A. Well, dealing with ACLU in 2001 when I arrived at Parchman. I guess it was about 2002 the ACLU and the Russell to make it simple versus MDOC, et al., involved death row conditions. That was a case that -- of course, Moore, which was the HIV case, and working with that case. Presley versus Epps, which is the admin -- overall administrative segregation, which is kind of a -- it started out Russell and then once ACLU prevailed there, then they sued us under Presley versus Epps. I assume that because they're working -- because some of their attorneys work for Southern Poverty Law Center on DePriest versus MDOC, which involves youthful offender population.

And just over, you know -- have contact on regular basis on inmate issues. They can contact me or my office about concern about offenders'

conditions of confinement.

Q. So the Mississippi Department of Corrections has been sued on a number of occasions by lawyers who are employed with the ACLU; is that correct?

A. Yes, sir.

Q. In fact, there was a prior lawsuit back in 2001 at the time you first arrived at Parchman which related to the HIV population within the Mississippi Department of Corrections, correct?

A. Yes, sir.

Q. What were the allegations in that particular case?

A. I was -- that was prior to my becoming employed in 2001, but as I understand it, it was condition of confinement.

Q. In fact, that lawsuit related to a number of different issues ranging from medical care to programs, services, and opportunities available to the HIV population, correct?

A. I'm not an attorney, but yes, sir, that's the way I understood it.

Q. Because there were allegations in that case that the Mississippi Department of Corrections was not providing adequate medical treatment to the

HIV population, correct?

A. As I understand it, yes, sir.

Q. And as of the date of the filing of that lawsuit, and the time that you first arrived at Parchman, there was a policy of segregation in Mississippi with regard to HIV inmates, correct?

A. That's correct, sir.

(Exhibit 121 marked for identification.)

Q. Let me hand you first what I've marked as defendants' Exhibit 121. Mr. Sparkman, have you seen this document I've placed before you as defendants' Exhibit 121?

A. Yes, sir.

Q. And what is defendants' Exhibit 121?

A. "Sentence to Stigma, Segregation of HI Positive" -- "HIV Positive Prisoners in Alabama, South Carolina." Looks like it's authored by the Human Rights Watch and ACLU, American Civil Liberties Union.

Q. Have you seen this report before today?

A. Yes, sir.

Q. Were you aware in 2010 leading up to the issuance of this report that the ACLU was conducting an investigation in both Alabama and Mississippi with respect to HIV inmates?

MR. TAKEI: Objection to form.

Q. (By Mr. Lunsford) In other words, were you aware that the ACLU was preparing this report before it was issued?

A. No, sir, I wasn't.

Q. If I could direct your attention to page 14?

A. Yes, sir.

Q. If you look about halfway down the page, I just want to ask you about these two paragraphs that begin on page 14 and carry over to page 15. And we begin with the sentence, "In Mississippi." Do you see where I am?

A. Yes, sir.

Q. In this paragraph, it begins, "The ACLU pursued both litigation and advocacy to address medical care conditions of confinement and opportunities for programs for HIV positive prisoners." Do you see that?

A. Yes, sir.

Q. Is that your recollection of what the case in 2001 that you were mentioning earlier, is that what you recall the case involving?

A. Yes, sir.

Q. In fact, it's indicated in the next

sentence in defendants' Exhibit 121, the ACLU in that particular action was successful in proving that the -- the state of Mississippi was not providing a constitutional level of medical care to the HIV inmates, correct?

A. That's what it says here.

Q. Is that your understanding of what occurred?

A. That was prior to my time, so I don't know what was define -- I had never read the full case.

Q. Do you know what changes Mississippi Department of Corrections made in the delivery of health services to HIV inmates after this injunction that was referenced here?

A. I'm not responsible for medical care, so I -- I'm not -- that's not under my umbrella, so I'm not sure what changes were made as far as on medical care of HIV offenders.

Q. When you arrived at Parchman, was there an HIV specialist on staff?

A. I don't know.

Q. Do you know if inmates in Mississippi with HIV have ever had access to an infectious disease board certified physician?

A. As far as I know, when I came on board in

2001, we were working with the University Medical Center. I can't recall the doctor's name, but he -- he was providing -- he was consulting with the Department of Corrections on the care of offenders.

Q. Yes, sir. But do you know if that physician had any board certifications of any kind?

A. As I recall, I think his name was Dr. Chapman, and he was nationally recognized in the treatment of HIV.

Q. Yes, sir. But do you know if he was board certified?

A. No, sir. No, sir.

Q. You -- and you don't know other than just hearing about his reputation what experience or training he had in the treatment of HIV?

A. No, sir.

Q. How often was he at Parchman?

A. That I can't say.

Q. Do you ever recall seeing him at Parchman?

A. No, sir. But I would -- that -- that's possible because Parchman is spread out all over. And, you know, again, I'm not in the medical field.

Q. But you don't recall whether this Dr. Chapman came to Parchman to provide treatment?

A. No, sir.

Q. Then it indicates that in 2000, 2001 a task force was formed in Mississippi to evaluate how the Mississippi Department of Corrections was managing its HIV population, correct?

A. Yes.

Q. And do you recall that task force being formed?

A. I think it was already formed when I arrived in 2001.

Q. So in other words, when you arrived at Parchman, the implementation of the study that was done by the task force was basically ongoing; is that correct?

A. That's correct.

Q. And that -- that process, the implementation of -- of those -- those findings or decisions by the task force was essentially to allow HIV positive inmates access to certain programs, services, and activities, correct?

A. That's correct.

Q. And what kind of programs, services, and activities were there?

A. As I recall, alcohol and drug treatment, academic, anywhere from literacy all the way to GED, vocational training, pre-release, life skills, those

type programs.

Q. Where were those programs offered for the HIV inmates after the -- after the policy change?

A. At the what we call the Front Vocational School where our vocational school complex is at Mississippi State Penitentiary at our pre-release unit which is -- pre-release unit is adjacent to unit 25. And then also unit 30 where our academic programs are offered and our -- and unit 26 at that time was where our alcohol and drug programs were offered.

Q. Let me make sure I understand correctly because I'm not that familiar with where all of your facilities are located. But are you saying that all of the vocational services, programs, and educational opportunities that were made available to the HIV inmates were located within close proximity to Parchman?

A. Were at Parchman. Parchman is a major complex. At that time, it had 18 prison units. That's when I say "unit," unit, there was 18 prison units and the units had different missions.

Q. And at the point in time when -- well, let me back up for a minute.

Now, if we turn to the next page it says,

"On the issue of work release, however, the commissioner deferred decision." And it says, "In 2004, the U.S. District Court in the ongoing class action on behalf of HIV positive prisoners ordered the department to permit HIV positive prisoners to participate in work release and community corrections programs."

Is that consistent with your recollection?

A. I wasn't sure how that came about because, again, that comes up under community corrections. So I wasn't involved in as far as going -- allowing to go to the community correction facilities. I just know that we changed our position on allowing it to go into the community corrections facilities.

Q. But according to this document, it indicates it wasn't a voluntary decision, was it?

A. That's what the document says.

Q. Do you agree with that?

A. I can't -- I -- I can't disagree with it or agree with it. I don't know. I haven't seen the document from the court.

Q. So you don't know why HIV inmates were allowed in community corrections program; is that correct?

A. To be honest with you, until I saw that, I

thought that was a decision we had made in talking with the plaintiffs about that.

Q. Here it references work release programs, doesn't it?

A. Yes, sir.

Q. Does Mississippi currently have any work release programs?

A. I guess you -- when I say that, you'd have to look at what the defin -- I've always viewed a work release program is where you allow the inmate to go out into the community and work for a private industry and be paid a minimum wage.

What I refer to as our community work centers are basically community working for local and state -- well, municipalities, counties, state agencies providing services just as community work. So I don't view it as a work release because they're not being compensated at a hourly rate.

Q. And going back to my original question, does Mississippi currently have any work release centers?

A. No, sir. Unless you define -- again, it goes back to the definition. Your restitution centers could be considered a work release because they do go out and work and receive payment for that

work.

Q. How many restitution centers are there in the state of Mississippi?

A. I believe there's three.

Q. How many HIV inmates are housed at those restitution centers?

A. I don't keep up with those statistics. I wouldn't know how many.

Q. Do you know if there are any HIV inmates at those restitution centers?

A. I don't -- I don't even keep it anymore because...

Q. Let's talk just a minute about the community work centers or the community corrections programs. Those phrases seem to be used interchangeably; is that right?

A. The community -- the community corrections division is responsible for the community work centers, restitution centers. Also, your post-release probation, what we commonly refer to as probation, parole, so that comes up under the community corrections division.

Q. Are you responsible for the community corrections division?

A. No, sir.

Q. Who is responsible for that?

A. Deputy Commissioner Jerry Williams. And of course, ultimately, the Commissioner. Commissioner Christopher Epps is.

Q. But you -- despite not being responsible for those community work centers, you understand that there is a medical criteria for housing any inmate at a community work center, correct?

A. Correct. But I'm responsible for classification, so classification, the director of classification in classifying inmates classifies where they meet, whether it be security level or medical level, meet the criteria to go to be eligible for consideration for community work center or...

Q. What are the reasons why an inmate would not be eligible for housing at a community work center?

A. Criminal history. Maybe he's had an escape charge or certain crimes. It has to be a non-violent crime. His medical classification. He has to -- for a long period of time you had to be what we called a medical class 1 or 2, which is an able-bodied inmate with almost -- because there -- most of those jobs are strenuous labor.

Because of the varied minimal numbers that we're getting now that qualify for those programs, we try -- we have some offenders that we'll call medical class 3 which have some kind of medical impairment that requires ongoing treatment. They're assessed by medical to be placed.

And also, you'd have inmates that if they're requiring our levels are A, B, C, D, and E for mental health treatment. Inmates usually mental class -- mental health class A and B are only allowed to go to community work centers because if they require ongoing mental health treatment, we don't provide that at community work centers.

Q. Okay. But if I understand correctly just to summarize, if an individual has an escape history, that's considered before they can go to a community work center, correct?

A. That's correct.

Q. If an individual has a violent crime history, that's considered, correct?

A. That's correct.

Q. Is their length of sentence considered?

A. Length of sentence is considered. They have to be I believe within seven years of the earliest release possible.

Q. The medical criteria you mentioned earlier, obviously, the correctional staff didn't set that medical criteria for housing at a community work center, did it?

A. No, sir.

Q. In fact, that was set by the medical staff, wasn't it?

A. That's correct.

Q. And do you know who established the particular medical parameters for HIV inmates to be housed at community work center?

A. All I can say is our chief medical officer is Dr. Gloria Perry, so I would assume she was -- she's been the chief medical officer for over two years. So prior to that, it's always been I'm sure the chief medical officers had signed off on what the criteria would be.

Q. But you don't know what the criteria is for HIV inmates, do you?

A. No, sir. I haven't studied the path. I've seen some of the requirements, but I couldn't -- I couldn't put it in layman's terminology. Wouldn't know what I was talking about if I did.

Q. Right. You don't know the rationale

behind why those parameters were established, do you?

A. No, sir.

Q. Do you know how many or what percentage of the HIV population has satisfied that -- those criteria?

A. No, sir.

Q. And those criteria are based in large part upon the care that's available at the community work centers, correct?

A. That's correct.

Q. They're not based upon what types of jobs the individual could do, are they?

A. Well, that has -- most of the jobs are menial labor, so that would involve whether they could perform strenuous labor. If they had some kind of medical condition that would prevent that, they wouldn't be assigned to community work center.

Q. But for example, one of the exclusion criteria, something that might make an HIV inmate ineligible for a community work center would be if that Mississippi HIV inmate was on direct observe medication, correct?

A. That's correct. Because there's -- we don't have medical staff there 24/7 to direct it,

so...

Q. How many community work centers are there in the state of Mississippi?

A. Total with the restitution centers, there's 20. I believe there's 17 designated community work centers.

Q. Do you know how many HIV inmates are currently housed in the community work center?

A. No, sir.

Q. After the Mississippi Department of Corrections implemented the policy that essentially allowed HIV inmates to attend programs and -- and receive vocational services and became eligible for transfer to a community work center, do you believe that the Mississippi Department of Corrections was providing HIV inmates with access to all of the programs and services and opportunities and activities that were offered by the Mississippi Department of Corrections?

A. Are you talking about after 2001?

Q. Yes, sir.

A. No, sir.

Q. But you understand that the Mississippi Department of Corrections is a state entity. And I understand you're not a lawyer. But do you

understand is that -- is a state agency, Mississippi Department of Corrections, is required to comply with Americans With Disabilities Act; is that correct?

A. Yes, sir.

Q. Do you believe that the Mississippi Department of Corrections was depriving inmates of programs, activities, or services before essentially unit 28 was completely disbanded?

A. There are certain programs that they couldn't participate in, so...

Q. What programs were they?

A. Well, there would be programs at other facilities that maybe they -- we didn't offer. Good example would be say an offender wanted -- was eligible, had experience, and wanted to work at the print shop for the Mississippi Prison Industries in central Mississippi. If he was segregated in unit 28, he couldn't work in that program.

Q. Is it your understanding that an inmate has a right to transfer to a facility of his or her choosing?

A. No, he does not.

Q. Does the Mississippi Department of Corrections retain the right to house inmates at a

location that the department deems appropriate?

A. Yes, sir.

Q. Is it your opinion that inmates in Mississippi have the right to choose any particular program they wish to enroll in?

A. No, sir.

Q. I'm just trying to understand this. Let's go back to your print shop example. Are you saying that HIV inmates should be eligible at any point in time to enroll in the print shop services?

A. What I'm saying is that all offenders should have that opportunity and it's our decision, our final decision at Mississippi Department of Corrections where they would be, using that example, whether he was qualified or he should be assigned to that Mississippi Prison Industries' job. But to restrict him from the get go, I don't think that -- I think we've shown that there was no reason for that.

Q. Does the Mississippi Department of Corrections allow inmates to request where they are housed or request a transfer to another facility?

A. Yes, sir.

Q. How often are those requests honored in Mississippi?

A. I -- I don't know.

Q. Is the Mississippi Department of Corrections under any obligation to honor those requests?

A. No.

Q. Then how do you decide which requests are honored and which ones are not?

A. Based on the needs of the inmate.

Q. Is it based upon the housing capacity of the facilities?

A. That's one of the factors.

Q. Let's go back for a minute. We were talking about community work centers and I just want to finish up.

We were talking about the difference between work release and community work centers, but I think we have a similar understanding of work release center. A work release center is somewhere where an inmate lives and then leaves the facility during the day to work for a private employer, correct?

A. Yes. That's what I define work release.

Q. Do you know if Alabama currently utilizes work release centers?

A. I -- I don't know.

Q. Is there a difference in your opinion between the types of things that go on at a work release center versus a community work center?

A. Well, a community work center I think is more specialized. Probably a work release job would be more specialized. And one of your custody requirements are going to be very unrestricted. If a person is what I call really only sleeping at the prison, going out in the community every day, being paid a salary. He's probably -- he -- I say probably almost a hundred percent positive he's wearing community clothing, not prison clothing. He's going to simulate into the community almost like any other common citizen except at the end of the work day he's going back to the prison.

Whereas, community work center he's very much so, in Mississippi I'm speaking of, identified in prison attire. He's supervised mostly in group settings. And type work he does is mainly menial labor. Whether there may be some kind of demolition project, wastewater plants, cleaning the side of the roads, cleaning debris after emergency disasters, those type situations that -- what I find is most of those jobs are that the local governments can't -- don't either have the funding or can't find the

loans to perform those functions.

Q. So someone with a classifications background like you have, do you view the clearance for a work release facility as being different than the clearance requirements for a community work center?

A. Yes.

Q. Explain that to me if you can.

A. Well, again, it goes back to -- if you were going to a work release program, which Mississippi doesn't have a work release program, but if we did have one, it would be -- that would be almost like really a pre-release program that an inmate was fixing to be released from prison, you allow him the opportunity -- he's living in the community that he's probably going to be released into, he's found a job, he's taking classes at night at the prison, sleeping at night at the prison, but he's got a job. And when he's released from prison, he's probably going to keep that job and continue to work and hopefully be successful in his reintegration into society.

Q. With regard to the public positions that are held by community work center inmates in Mississippi, do any of those positions involve food

processing?

A. In some of the community work centers -- I really -- I can't say that on occasion they might not do some type of food processing, but I -- I couldn't give any specific.

Q. But as far as you know, it's not a regular type of job, is it?

A. No, sir.

Q. What about food service, like working at a Burger King or somewhere where inmates are serving food? Is that part of the community work program?

A. Community work center wouldn't be working at a private entity.

Q. But would they ever be serving food to the public as far as you know?

A. They might at some kind of a soup kitchen or something like that, Salvation Army assisting in serving food. That could be -- happen.

Q. But community work center inmates do not work for private businesses other than the charitable organizations, correct?

A. That's all I'm aware of.

Q. And the whole time they're working in the community, they're wearing prison --

A. Attire.

Q. -- attire, correct?
A. Yes.
Q. Which in Mississippi, what's prison attire?
A. Stripe pants, green and white -- green and white stripe pants and white shirt with "MDOC Convict" stamped on the back. That's by state law.
Q. I may have already asked this. I apologize if I do. But you never worked as part of the medical staff at any correctional facility, have you?
A. No, sir.
Q. Other than this standard CPR training or first aid training may be offered to correctional officers, you don't have any particular medical training of any kind, do you?
A. Closest thing I've got to medical training is I'm married to a registered nurse.
Q. And you've never treated anyone for HIV or AIDS, have you?
A. No, sir.
Q. Does the Mississippi Department of Corrections provide any specific training to its officers with regard to HIV?
A. Yes, sir.

Q. What training is that, other than training for just universal precautions?

A. Well, we offer a -- I believe it's a two-hour course, blood-born pathogens annually, refresher course on how to clean up spill kits, how -- just the how it's transmitted type, you can't go through the whole curriculum. And then there's a I believe in pre-service, I believe it's a four-hour block.

Q. You mentioned earlier the pathways to treatment. If you could, please, could you just explain what pathways to treatment are as far as you understand?

A. As far as I understand, it's -- as I understand it, it's the treatment plan for certain whatever disease it is, whether it's hepatitis C, HIV, or blood pressure, they have certain protocols they're supposed to follow. Much like a standard operating procedure for correctional staff. That's the way I understand it.

Q. Do you know anything particular about the pathways treatment for HIV?

A. No, sir.

Q. Going back to the Sentence to Stigma report.

A. Yes, sir.

Q. It says that, "As of March 2010, Mississippi prison officials can be credited with ending the segregation policy. According to Commissioner of Corrections Christopher Epps" -- let's see, "all prisoners will be housed according to the criteria set forth in the state classification plan rather than on the basis of their HIV status."

Do you know if this report had anything to do with the Department of Corrections changing its policy with regard to the housing of HIV inmates?

A. I didn't know anything about this report until I received it.

Q. Were you aware that this report claims to be the motivating factor in Mississippi's decision to alter its housing of HIV inmates?

A. No, sir. I wasn't aware of that.

Q. But the Mississippi Department of Corrections was under -- undergoing litigation with the ACLU at the time that it changed that policy, correct?

MR. TAKEI: Objection. Form.

A. I -- I don't know when Moore was dismissed. I can't -- I don't recall the date that

Moore was dismissed.

Q. (By Mr. Lunsford) Let me just review -- refer you to page 1 of the report. If you look at the first paragraph, if you look on the right side of the page, there's begin -- there's a sentence that begins with a capital "In," "In March 2010." Do you see that on page one, the first paragraph, about two-thirds the way down on the first paragraph. "In March 2010." Do you see that.

A. First paragraph?

Q. Yes, sir. Under "Executive Summary."

A. Okay. I got it now.

Q. This says, "In March 2010, after reviewing the findings of this report, the Commissioner of Mississippi Department of Corrections decided to terminate the segregation policy."

A. I can't say what he did.

Q. Were you aware that he altered the policy after reviewing this report?

A. All I was -- he made the decision that he was going to stop segregating the offender population and asked my opinion of it. I said, "I don't see any reason we cannot integrate them into the population." As far as I didn't know anything about him reading the report, changing his opinion

because of the report.

Q. So you can't say one way or the other whether that segment is true; is that correct?

A. That's correct.

Q. You mentioned earlier that the Mississippi Department of Corrections is taking steps to alleviate the -- or limit the transmission of HIV among inmates; is that correct?

A. I think any time you provide educational training, you're taking steps.

Q. See, that was limited to educational; is that correct?

A. Well, and then your security protocols. You know, sex between inmates is not allowed. Tattooing is not allowed. The ways that HIV is transmitted are illegal practices. So we're constant in that enforcing our rules and regulations.

Q. But even despite the best rules and regulations, we know that those things such as the use of tattooing needles, sex among inmates, the sharing of intravenous needles, that still occurs in prison, right?

A. It can, yes.

Q. In fact, that still occurs in Mississippi,

doesn't it?

A. Yes, sir, I'm sure it does.

Q. Does the Mississippi Department of Corrections provide condoms to inmates?

A. We do.

Q. For -- at all times?

A. No, sir. For conjugal visitation.

Q. Are HIV inmates allowed conjugal visits?

A. Yes, sir.

Q. Are they given condoms for conjugal visits?

A. Yes, sir.

Q. Are they allowed to have condoms on them while they're in general population?

A. No, sir.

Q. So if an HIV inmate wanted to -- a male HIV inmate wanted a condom to use with his partner in population, he would not be allowed to use that?

A. It's illegal activity in prison.

Q. Now, as you sit here today, we really can't say whether any inmates have contracted HIV while they've been in the custody of the Mississippi Department of Corrections, right?

A. I don't understand your question.

Q. We don't know if any inmate in the

Mississippi Department of Corrections has contracted HIV while they're incarcerated?

A. Our -- probably our medical staff could tell you that. There may have been inmates that came into the system that they tested negative and then for some reason there was some kind of exposure incident or something that they were tested and they may have tested positive, but that's as far as me being aware, I mean, I couldn't say.

Q. Were you aware we sent a subpoena to your department for those records?

A. That would have to come up -- I wouldn't have that information.

Q. Were you aware we asked for records indicating inmates who tested positive while in the custody of the Mississippi Department of Corrections? Were you -- I'm just asking if you were aware.

A. No, sir.

Q. So if the medical staff told us, "We don't have any of that information or we don't keep any of those records," then -- then you wouldn't have anything to disagree with that, would you?

A. No, sir.

Q. So as far as you know as you sit here

today, you can't identify the number of inmates who have tested positive for HIV while they're in the custody of the Mississippi Department of Corrections, can you?

A. No, sir. I can't -- I can't identify it, no, sir.

Q. Does the Mississippi Department of Corrections test for HIV when inmates are released?

A. No, sir.

Q. Were you aware that Alabama does that?

A. I don't -- I don't recall if I was -- I think I read somewhere that they were.

Q. Do you know how often inmates in the Mississippi Department of Corrections system are tested for HIV?

A. It would be only as -- you mean as the entire population?

Q. Yes, sir.

A. Only upon entry. But if there was some kind of exposure incident, they can request an HIV test.

Q. That's depending on them requesting it, correct?

A. That's correct.

Q. And as you mentioned earlier, there is a

lagged area of time when individuals who contract HIV test won't -- are -- are not symptomatic and may not test positive for HIV, correct?

A. That's correct.

Q. And so as we sit here today, we can't say that -- and I want to make sure I understand what you're saying. You're not sitting here today telling us no one has ever contracted HIV while incarcerated in Mississippi?

A. No, sir, I'm not telling you that.

Q. Because we just don't know that, do we?

A. No, sir, we don't.

Q. Does the Mississippi Department of Corrections screen for hepatitis A and B at intake?

A. That I can't answer.

Q. Does the Mississippi Department of Corrections vaccinate individuals for hepatitis A or B?

A. Again, that's a medical question I couldn't -- I can't -- I wouldn't know.

Q. Does the Mississippi Department of Corrections provide treatment for hepatitis C?

A. Yes, sir.

Q. Does that treatment include the currently available chemotherapy program?

A. All I know is, again, they have H -- hepatitis C pathways, and they follow those pathways. As far as defining what those pathways are, I couldn't tell you that.

Q. Do you know if those pathways are consistent with the Federal Bureau of Prisons guidelines for treatment?

A. No, sir. That's something a professional would have to answer.

MR. LUNSFORD: Let's take a brief break.

VIDEOGRAPHER: Off the record. 10:22.

(Off the record.)

VIDEOGRAPHER: Back on the record. It's 10:27. This is beginning tape number three.

Q. (By Mr. Lunsford) Mr. Sparkman, on direct, you were asked a number of questions about violence and unrest among the inmate population in Mississippi after the various policy changes. And you indicated that to your knowledge you were not aware of any particular instances of violence, rioting, or unrest; is that correct?

A. That's correct.

Q. Now, before today's deposition, did you review or obtain the incident reports that had been completed with regard to the HIV inmates in

Mississippi?

A. No, sir.

Q. Did you review any particular -- well, let me back up. But the DOC in Mississippi does have a process for documenting incidents which would include incidents of violence among inmates, correct?

A. That's correct.

Q. That's kind of part and parcel to any corrections system, right?

A. Yes.

Q. Does the Department of Corrections, how does it maintain that information? Is it electronically?

A. Yes.

Q. And are any particular codes assigned to different types of incidences?

A. Yes.

Q. So, for example, there's a code with regard to inmate violence between two inmates, right?

A. Inmate -- offender on offender assault, with a weapon, without a weapon, offender assault on staff with a weapon, offender assault on staff without a weapon.

Q. There's also codes that relate to various types of sexual offenses, correct?

A. Yes, sir.

Q. In fact, I noticed in some of the documents we received that there's been some recent changes in how you all assign various different types of sexual offenses, correct?

A. Right.

Q. So but at one time, you all distinguished between sex among inmates as well as, for example, an inmate who exposed himself to an officer, correct?

A. Correct.

Q. But now there's one consolidated sexual offense code, correct?

A. Correct.

Q. Now, before today's deposition, did you go back and look at any of the statistics with regard to the incidences of violence prior to 2001 or 2010?

A. No, sir. But daily, and I -- very seldom do I ever miss a day. I review every extraordinary occurrence report that occurs in the state. That's the first thing I do when I get up every morning is review all the past incidents. That's where I come up with my testimony that I don't recall any -- ever

seeing any type of incident. Typically, they say what the assault occurred, they had argument over this, whatever. I don't recall ever coming -- somebody said, "He was assaulted because he was HIV" or "HIV assaulted an offender because he made some kind of threat about it." I don't ever recall any.

Q. You don't recall that ever being documented in an incident report, correct?

A. No, sir.

Q. But on the incident reports, do they indicate whether one -- one or the -- both of the inmates involved in the incident are HIV positive?

A. No, sir.

Q. So unless the officer puts down "this involved an HIV issue," you wouldn't know that, would you?

A. Well, also, on any serious incidents we have, our corrections investigation division investigates those and I review every one of those investigations out of the institution division. And again, I don't recall any ever findings or conclusions that this was caused because he was HIV or an HIV offender assaulted another offender because of it had -- it was related to HIV.

Q. So you're sitting here, and I just want to

understand what you're saying and what your knowledge is. You're saying you're not aware of any such instances, correct?

A. And I review all the incidents that occur.

Q. But you're not saying such an incident never occurred, are you?

A. I can't say it's never occurred, but as far as any reported incidents, I don't recall ever seeing any.

Q. Well, we can go down that road, but every incident isn't reported, is it?

A. No, sir.

Q. It should be, right?

A. Right.

Q. But it's not, right?

A. No, sir.

Q. Do you review incident reports for every facility?

A. Yes, sir.

Q. Do those include private prisons?

A. Yes, sir.

Q. Explain to me the relationship between the state prisons and the private prisons.

A. When you say "explain the relationship," what do you mean?

Q. Well, you refer to them differently. There's -- you've referred to "ou state prisons" and you've referred to "private prisons."

A. Well, they house our inmates, but there certain -- they house -- each one has a separate agreement and they identify what type offenders are housed there. A good example is Marshall County Correctional Facility. Its mission is to house Mississippi Department of Corrections offenders that are medium and close custody medical class 1, 2, and 3, a certain -- they could have certain number of hepatitis C offenders and HIV offenders, with the cap on what the cost.

The East Mississippi Correctional Facility is for an offender population, all levels of security except death row, except -- but they all have to be a mental care, mental health C, D, or E, except for small cadre of offenders for support inmates that do not experience any mental health problems.

Q. But I'm getting a little bit different direction on the private prisons issue. Does Mississippi Department of Corrections employ the officers in private prisons?

A. No, sir.

Q. And does the Mississippi Department of Corrections employ the medical staff in private prisons?

A. No, sir.

Q. So, essentially, the private prisons in Mississippi are run by private corporations, correct?

A. Well, they have to be -- they're operated, but they have to be operated under our guidelines. Just like on incident reports, they have to submit those -- the criteria for our incident reports, so reporting is just like for a state prison. Also, we have a compliance officer there to monitor that.

Our medical staff, all the regional private and state prisons are on electronic medical record. All the medical reporting is in accordance with our electronic medical records, so it's apples to apples.

Q. Now, there have been instances of violence at the private prisons, haven't there?

A. There's been instances of violence at every state, private, and regional.

Q. There was a recent event that did receive some publicity though at one of the private prisons in the city, wasn't there?

A. Which one?

Q. Do you recall one that was significant and involved a number of different officers getting injured and a large number of inmates? I can't remember the exact date.

A. I think you're referring to the CCA facility that housed federal inmates.

Q. That -- but that's a private prison, correct?

A. But that's not one.

Q. I understand. But that's a private prison in Mississippi, correct?

A. That's correct. But we have nothing to do with it.

Q. Has there ever been a riot in a Mississippi prison?

A. Yes, sir.

Q. Have you ever been at the prison when there was a riot?

A. Yes, sir, I have.

Q. In your experience, what kind of things cause riots in prisons?

A. What kind of things? Primarily in this day and time, it's a security threat groups, opposing security threat groups. I've seen them

riot over food. I've seen them riot over changes in policies as far as visitation. Canteen prices too high. It could be feel like they're being mistreated by staff. Hot weather, tempers spark. I mean, disturbances occur for variety of reasons.

Q. But usually they're not reasons that -- they don't riot over things that are happening outside of the prison, right?

A. Well, there's been situations where I've seen that, you know, where something happened in the community and that that caused tension, racial tension. Maybe some incident happened. As I recall back when the Rodney King situation happened, there were some disturbances.

Q. Does the Mississippi Department of Corrections house inmates receiving dialysis at a particular location?

A. Yes, sir.

Q. Where is that?

A. Well, when I say that, we have housed inmates at the Central Mississippi Correctional Facility. They receive dialysis there. But we do have inmates that are transported like Mississippi State Penitentiary receive dialysis.

Q. So there's not one dedicated facility in

Mississippi where inmates receive dialysis?

A. Majority of them receive at Central Mississippi.

Q. But they're -- in other words, if you're an inmate in the Mississippi Department of Corrections and you're receiving dialysis, you're not going to one facility for certain, are you?

A. Not for certain, no, sir.

Q. What about for hepatitis C treatment? Is there one facility where everyone receiving hepatitis C treatment is sent in Mississippi?

A. No, sir.

Q. Is there one facility in Mississippi where all inmates go who are receiving extensive psychiatric or mental health treatment?

A. The majority of the mental health, but it's not exclusive, is at the East Mississippi Correctional Facility. But once that there is -- they're able to stabilize to where they could be transferred to another facility, they would be able to. They would only -- they only remain there as long as a significant mental health treatment is provided.

Q. But as you said earlier, there's not one exclusive facility for mental health treatment; is

that correct?

A. That's correct.

Q. I want to go through a couple of documents we received in response to our subpoena.

(Exhibit 122 marked for identification.)

Q. I'm going to hand you what I've marked as defendants' Exhibit 122, and ask you if you recognize this document that's marked as defendants' Exhibit 122.

A. I've never seen this, but I recognize what's on it. It identifies some of the prisons or our prisons at -- state prisons, private prisons, regional prisons, community work centers.

Q. Does defendants' Exhibit 122 appear to be a list of all the housing units at the various correctional institutions utilized by the Mississippi Department of Corrections?

A. Yes, sir.

Q. If you see any that are missing, tell me, please.

A. I believe all of them are on here.

Q. I want to compare this document 122 with this other document, which is defendants' Exhibit 123.

(Exhibit 123 marked for identification.)

Q. I'll represent for the record, Mr. Sparkman, defendants' Exhibit 123 is a document we also received in response to our subpoena, which is a listing or categorical numbering of HIV inmates housed in the Mississippi Department of Corrections by housing unit.

A. Okay, sir.

Q. Does that look -- does that information look familiar to you?

A. Well, I don't keep up with where the HIV offenders are. I mean, that's where we stopped in 2010, so I assume whoever provided this information had medical records that they were able to identify where they were located.

Q. If we could though, let's just run through these. I want to look at these two lists and make sure I under -- understand where various individuals are housed. If we look, this document indicates that as of April 2012, there were 206 HIV positive inmates in the custody of the Mississippi Department of Corrections, right?

A. Yes, sir.

Q. And then it breaks those 206 inmates out by approximately 11 different facilities. I just want to run through these, make sure these are

correct. But it indicates that -- that four HIV positive inmates were housed as of April 2012 in unit 25; is that correct?

A. That's our pre-release, yes, sir.

Q. And then -- and where is the pre-release unit located?

A. Mississippi State Penitentiary.

Q. Then it indicates that 26 -- in unit 26, there's 7 HIV inmates, right?

A. That's the minimum custody unit, Mississippi State Penitentiary.

Q. Where is unit 29 located?

A. Mississippi State Penitentiary. It's a unit that has two divisions. One is for minimum and medium custody and then Division 2 is for close custody and death row.

Q. And as of April 2012, how many HIV positive inmates does this indicate were in unit 29?

A. 18.

Q. Then the next unit we have listed is unit 30. Where is that located?

A. Mississippi State Penitentiary.

Q. What is unit 30?

A. Unit 30 is where we provide 400 -- about 400 beds are for alcohol and drug treatment. Our

academic vocational programs, that's where they're housed at.

Q. How many beds are there in unit 30?

A. 864.

Q. How many HIV inmates as of April 2012 were in unit 31?

MR. TAKEI: Bill, are you asking what the document says or what --

MR. LUNSFORD: Well, we -- we sent him a subpoena too.

Q. (By Mr. Lunsford) I don't know if you're aware of that, but we sent you a subpoena as well requesting this same information or received one consolidated response.

A. Based on this document here, two.

Q. Do you understand -- do you have any reason to believe that that's inaccurate in any way?

A. No, sir.

Q. What is unit 31?

A. Unit 31 is basically our step-down unit, convalescent care unit. Inmates that typically are -- if they're not in hospital care, some of our most ill inmates are there having significant medical problems, whether it be from dementia, serious medical problems that require frequent

medical -- medical class 4 or 5.

Q. Where is unit 31 located?

A. Mississippi State Penitentiary.

Q. And then this also indicates that two inmates were housed in Mississippi State Penitentiary Hospital; is that correct?

A. Yes, sir.

Q. So if we just add up that list, that indicates how many -- how many HIV positive inmates are located at the Mississippi State Penitentiary?

A. You want me to add them up?

Q. Yes, sir, if you would, please.

A. I believe it's 54.

Q. Are any of the housing units listed on -- on the right column at the very top, are any of those housing units at Mississippi State Penitentiary?

A. Yes, sir, unit 28.

Q. What is unit 28?

A. Unit 28, we just reopened. And primarily, it's a minimum security unit.

Q. So that would bring the total number of HIV inmates at the Mississippi State Penitentiary to what?

A. 58.

Q. And then this document also indicates there's 73 HIV positive inmates at CMCF; is that correct?

A. Yes, sir. But as you can see, there's a number of different units at CMCF.

Q. Right.

A. Same thing with SMCI. There's three different areas.

Q. Do you know if any HIV positive inmates are housed at any private prison?

A. I'm -- I'm pretty certain there are some housed at private prison.

Q. As you sit here today though, can you testify under oath whether there are any HIV positive inmates?

A. No, sir. As I testified earlier, I don't -- we don't -- security doesn't -- institution division doesn't keep up with who's HIV positive anymore. That's something that the medical department does only for medical treatment of offenders.

Q. Well, I hate to ask it this way, but I don't know any other way to ask it. Do you know any reason why we would have subpoenaed your department for records indicating where HIV inmates were housed

and not receive that information if they were housed there?

A. And I can't say that there are any housed, but I know that we have the capability and have agreement with private prison that HIV offenders can be housed at Wilkinson, Marshall, and at one of the four or five private prisons, that they can be housed there. But as far as why there's not any there, I couldn't answer. That's something medical staff would have to answer as to why there's not any housed. I -- I assume that there were some housed.

Q. Let me refer back to the top of this sheet that's marked as defendants' Exhibit 23 that we received from your department. What is LeFlore SF?

A. That's a community work center. They call it a satellite facility, but there -- that's really community work center.

Q. So if this document is correct, the Mississippi Department of Corrections has one HIV positive inmate at a community work center; is that correct?

A. Yes, sir.

Q. Do you have any reason to believe that that's not correct?

A. I just have to go on what the data that

the medical department -- I assume the medical department provided this. That's only one that would have that data.

Q. Are you aware of any HIV positive inmates housed in any regional facilities of the Mississippi Department of Corrections?

A. Just being frankly, I don't know where any of the HIV positive are housed. We don't -- as far as classification department, that's not part of our classification.

Q. Are you aware of any HIV inmate who's ever been housed at a regional facility?

A. I couldn't say whether they've been or haven't been. They can be housed there based on if they meet the criteria.

Q. Are you aware of any HIV positive inmate in the Mississippi Department of Corrections system who's ever been housed in a regional facility?

A. There's no reason they couldn't be housed.

Q. I'm not asking -- my question is a lot simpler than that. Question is, do you know if any one HIV positive inmate who has ever been housed at a regional facility here in Mississippi?

A. No, sir.

Q. Do you know of any -- any -- any HIV

positive inmate who has ever been housed at a community work center in Mississippi?

A. No, sir.

Q. Are you aware of any HIV inmate who has ever been housed at a restitution center?

A. No, sir.

Q. Do you know if any HIV positive inmates are currently eligible to be housed at a community work center?

A. When you say "eligible," are you talking about based on security classification?

Q. Based on any classification or any requirements which would apply for housing in a community work center?

A. We can electronically identify all inmates that are eligible for placement at a community work center, but for whatever that's just the initial screening. Then you go into screening on whether they meet the medical criteria, if there's something on their criminal history or prior behavior that would preclude them or their disciplinary status. But as far as what I call a first draft cut of who's eligible, meeting the criteria non-violent crime within seven years of their earliest release date and they have -- they're minimum custody, they may

be eligible. But when you go in the screening process that looking at the entirety of their basically what I call their institution record, their medical record, which includes mental health, that may restrict them from being able to.

Q. Let me ask it this way: Are you aware of any HIV positive inmate who's ever been deemed eligible to be housed at a community work center?

A. I couldn't identify someone by name, but I, you know, recall inmates looking at the movement sheet going from a certain where we had 29A and B going to a community work center, but I couldn't give you a specific name.

Q. And you don't know how many times that's occurred?

A. No, sir.

Q. Are you aware of any HIV inmate who's ever been housed at pre-release center?

A. I know of four on this report.

Q. That would be the four referenced where?

A. At unit 25.

Q. I'm talking about the -- the independent pre-release centers at Flowood, Pike, and Quitman.

A. No, sir.

Q. So just to be clear, you're not aware of

any HIV inmate ever being housed at the Flowood pre-release center; is that right?

A. Not by name, no, sir.

Q. Or by number?

A. No, sir.

Q. Or -- or just by anecdotal occasion that you know that they went there?

A. Seems like I -- someone has mentioned that they had an HIV offender. But again, we don't -- we don't -- as far as other than medical staff, we don't maintain those records who are HIV positive.

Q. But here's -- here's the long and short of the problem I'm having here, Mr. Sparkman. You've testified a lot about all this integration and all these things that have happened in Mississippi. And meanwhile, looking at the ACLU lawyer that's sitting here. And I've heard you say that over and over again, but yet, as you sit here today, you can't testify under oath that an HIV inmate has gone to every single facility in Mississippi; is that right?

A. Because we don't maintain that.

Q. But you can't say that, can you?

A. I can say they went to a lot of facilities. And looking at this document, I'm wondering in your subpoena did you not request state

prisons because I don't see anything about regionals and private prisons on there. And I -- based on some financial data that I heard discussion with where a report was requested where they requested reimbursement for the inmates going over the $2,500, I know that some were in private prison. Now, can I testify that there's some there today, no. But I know there have been because they requested reimbursement.

Q. My question was a little bit different than that. My question was, you can't sit here and testify today that HIV inmates in Mississippi have been housed at every single facility in Mississippi?

A. And I can't say they haven't either.

Q. But that's "no," right? You can't say that, can you?

A. No, sir.

MR. LUNSFORD: Let's go off the record. Take a brief break.

VIDEOGRAPHER: Off the record. 10:54.

(Off the record.)

VIDEOGRAPHER: Back on the record. It's 11:00 a.m.

Q. (By Mr. Lunsford) Mr. Sparkman, I know that you've had some questions about the document

that we received from the attorney general's office in Mississippi in response to our subpoena, so I wanted to clear something up.

I -- I looked back at my notes from the beginning of the deposition and I don't take very good notes, which means this is an extraordinary coincidence. But I wrote down that you testified earlier in April 2012 the Mississippi Department of Corrections had 226 HIV positive inmates. Do you recall testifying to that?

A. Yes, sir.

Q. Where did you get that number from?

A. I think I called somebody in the medical department and asked that, I believe.

Q. Do you believe that information was accurate?

A. I have to assume because I don't -- I don't maintain those records.

Q. Did you ask them for the total number of HIV inmates?

A. Yes, sir.

Q. So when you heard 206, you presumed that was everyone that's in the custody of the Department of Corrections in Mississippi, right?

A. Yes, sir. Might not -- maybe I wasn't

clear. Maybe they thought I was just talking about state prisons, but that's what I assumed.

Q. But just so we're clear, the -- the list that I provided you with that's marked as defendants' Exhibit 123, if you add up the various numbers at each institution, that adds up to 206, doesn't it?

A. Yes, sir.

Q. In fact, that list includes the state prisons in Mississippi, doesn't it?

A. Yes, sir.

Q. It includes also community work centers, doesn't it?

A. That's considered state facilities.

Q. It also includes the county jail, doesn't it?

A. Yes, sir.

Q. And so the information that we received in response to our subpoena was consistent with the same number that you received when you called the office service, right?

A. Yes, sir.

MR. LUNSFORD: That's all I have at this time.

FURTHER EXAMINATION BY MR. TAKEI:

Q. Do you routinely have access to information about the number of prisoners with HIV at any given facility?

MR. LUNSFORD: Object to form.

MR. TAKEI: What's your objection?

MR. LUNSFORD: Any particular facility.

Q. (By Mr. Takei) Do you routinely have access to information about where prisoners with HIV are housed within the system?

A. No, sir.

Q. How would you obtain that information?

A. From the medical department. Because to my knowledge, they're the only ones that maintain that.

Q. And how long has that been a situation?

A. Since 2010 basically is what -- because we no longer had the -- as far as class, that wasn't classification criteria after we decided to integrate the population of HIV offenders.

MR. TAKEI: No further questions.

FURTHER EXAMINATION BY MR. LUNSFORD:

Q. Mr. Sparkman, we subpoenaed certain records from your office. You aware of that?

A. Yes, sir. I turned it over to our attorney, yes, sir.

Q. Do you know if those documents were ever provided to us?

A. They told me they were.

MR. LUNSFORD: That's all I have at this time.

VIDEOGRAPHER: Off the record. It's 11:03. This concludes our deposition.

(Off the record.)

(Time noted: 11:03 a.m.)

(Signature/Not Waived)

Original: Carl Takei, Esq.

Copy: William R. Lunsford, Esq.

CERTIFICATE OF DEPONENT

DEPONENT: Emmitt Sparkman
DATE: July 9, 2012
CASE STYLE: Henderson, et al vs. Thomas, et al
ORIGINAL TO: Mr. Takei, Esq.

I, the above-named deponent in the deposition taken in the herein styled and numbered cause, certify that I have examined the deposition taken on the date above as to the correctness thereof, and that after reading said pages, I find them to contain a full and true transcript of the testimony as given by me.

Subject to those corrections listed below, if any, I find the transcript to be the correct testimony I gave at the aforestated time and place.

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This the ____ day of _____, 2012.

_____

State of Mississippi
County of _____

Subscribed and sworn to before me, this the _____ day of _____, 2012.

My Commission Expires:

_____ _____

Notary Public

CERTIFICATE OF COURT REPORTER

I, Robin G. Burwell, Court Reporter and Notary Public, in and for the State of Mississippi, hereby certify that the foregoing contains a true and correct transcript of the testimony of Emmitt Sparkman, as taken by me in the aforementioned matter at the time and place heretofore stated, as taken by stenotype and later reduced to typewritten form under my supervision by means of computer-aided transcription.

I further certify that under the authority vested in me by the State of Mississippi that the witness was placed under oath by me to truthfully answer all questions in the matter.

I further certify that I am not in the employ of or related to any counsel or party in this matter and have no interest, monetary or otherwise, in the final outcome of this matter.

Witness my signature and seal this the 20th day of July, 2012.

_____

Robin G. Burwell, CCR
CCR #1651

My Commission Expires: