

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

PRISON LEGAL NEWS, a project of
The HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

vs.

No. CV 11-01761-PHX-GMS

PAUL BABEU, individually and in
his official capacity as Sheriff
of Pinal County, Arizona; PINAL
COUNTY, ARIZONA; Sergeant TONYA
DELGADO, in her individual and
official capacities; Detention
Aide ALYSSA ROMERO, in her
individual capacity; Detention
Aide LAURENDA HENSLEY-SALISBERRY,
in her individual capacity;
Detention Aide CHERYL MCBIRNIE,
in her individual capacity;
Detention Aide JOHN JOHNSTON, in
his individual capacity;
Detention Aide LAUREN MCVICKER,
in her individual capacity;
LORETTA VALDEZ, in her individual
capacity; DALTON GAY, in his
individual capacity; ERICA CHAVEZ
in her individual capacity; DENA
KELLY, in her individual capacity
Sergeant AMADO MARTINEZ, in his
individual and official
capacities; Sergeant LEONARD
ARNOLD, in his individual and
official capacities; Training
Specialist DAVID LINDERHOLM, in
his individual and official
capacities; Lieutenant FRANCIS
HAWKINS, in her individual and
official capacities; Lieutenant
DENNIS RUSHING, in his individual
and official capacities;
Lieutenant MATTHEW HULL, in his
individual and official
capacities; Lieutenant DARREN
RUSHING, in his individual and

1 official capacities; Lieutenant |
VERNITA GANT, in her individual |
2 and official capacities; |
Lieutenant MICHELE MCNEELY, in |
3 her individual and official |
capacities; Lieutenant GILBERT |
4 HOYAS, in his individual and |
official capacities; Captain |
5 TERRY JOHNSON, in his individual |
and official capacities; Captain |
6 JAYME VALENZUELA, in his |
individual and official |
7 capacities; and Deputy Chief |
JAMES KIMBLE, in his individual |
8 and official capacities, |
9 Defendants. |

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DEPOSITION OF GARY DELAND

DATE: October 31, 2012
TIME: 9:30 a.m.
LOCATION: St. George Executive Suites
169 West 2710 South Circle, Suite 203A
St. George, Utah 84790
REPORTED BY: Russel D. Morgan
Certified Shorthand Reporter
License Number 108442-7801

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A P P E A R A N C E S

For the Plaintiff Prison Legal News:
BLAKE THOMPSON
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Phoenix, AZ 85012
(602)263-1700

1 I N D E X

2 EXAMINATION BY: PAGE:
3 MR. THOMPSON 4

4

5 E X H I B I T S

6 Plaintiff's Exhibit:

7 1 Subpoena 8
8 2 Expert Statement and Report 45
9 3 Nashville NSA 2012 Conference Program 75
10 4 Pinal County Facility Procedures 137
11 5 Expert Report of John L. Clark 144
12 6 Pinal County Facility Procedures,
Rev: 11/09/11 162

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14 (Exhibits attached to the transcript.)

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1 GARY DELAND,
2 called as a witness by the Plaintiff, who, having
3 been duly sworn by me, was examined and testified
4 as hereinafter set forth.

5 --oOo--

6 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

7 BY MR. THOMPSON:

8 Q Good morning. My name is Blake Thompson. I
9 am the counsel for the plaintiff in this case. Can you
10 state your name for the record.

11 A Yes. Gary Walter DeLand.

12 Q And can you spell that?

13 A G-a-r-y, W-a-l-t-e-r, D-e capital L-a-n-d.

14 Q Have you had your deposition taken before?

15 A Yes.

16 Q Approximately, how many times?

17 A Oh, a few dozen, I guess. I have never
18 counted.

19 Q Have those always been for on behalf of a
20 defendant?

21 A Not always, but, certainly, in the vast, vast
22 majority of the cases, that's true.

23 Q Do you remember any particular cases in which
24 you were an expert on behalf of a plaintiff?

25 A A case in 2004, I believe in Arizona. I think

1 it was called Valenzuela, or something like that,
2 against the Arizona Department of Corrections. Prior to
3 that time, it would be several years, a suicide case in
4 Kane County, Illinois. But I don't recall what year
5 that would be. Certainly, probably, sometime in the
6 1980s, I guess.

7 Q And did you testify in court in any of those
8 cases?

9 A The case in -- yeah, both of them. Both of
10 them. Both of them were Federal District Court.

11 Q And were you testifying as an expert on those
12 cases?

13 A Yes.

14 Q Have you ever had your deposition taken in a
15 case about jail mail or publication policy?

16 A Yes.

17 Q What case or cases was that?

18 A The only one that comes to mind is a case
19 called Cheshire vs. PLN.

20 Q So, you don't remember any other cases besides
21 that, that you testified regarding mail or publication
22 policies of a correctional facility?

23 A No. I can't swear that it never has before,
24 but if it has, it's been a very long time ago. I don't
25 recall it.

1 Q Okay. Also just for the record, I want to
2 note that Lance Weber, who is general counsel for the
3 Human Rights Center, is on the line via conference call.

4 MS. STATON: Okay.

5 MR. THOMPSON: Did you say something, Georgia?

6 MS. STATON: I just said all right.

7 MR. THOMPSON: Okay. Sorry. It's kind of
8 quiet.

9 BY MR. THOMPSON:

10 Q So, I know you are familiar with these rules,
11 but just to go over them, the court reporter is going to
12 transcribe my questions and your answers. You'll have
13 an opportunity to revise your responses. But any
14 changes you make, I'll have the ability to ask you about
15 them later. And, of course, especially because we are
16 on videoconference, you need to answer verbally and not
17 by nodding or gestures.

18 If I ask you a question that you don't
19 understand, please let me know. Do you have any
20 questions about the form of the deposition?

21 A No.

22 Q Okay. And is there any reason today you
23 wouldn't be able to answer my questions fully or
24 truthfully?

25 A No.

1 Q No medication of any kind that's impairing
2 you?

3 A No.

4 Q Okay. I am going to mark this as Exhibit 1.
5 (Exhibit No. 1 was marked for identification.)

6 MR. THOMPSON: It's the subpoena for
7 documents.

8 MS. STATON: Okay.

9 BY MR. THOMPSON:

10 Q Have you seen this document before?

11 A Yes, I have.

12 Q And what is it?

13 A It is a subpoena for information or objects or
14 to permit inspection of premises, although, I think this
15 is just for production.

16 Q And did anyone ask you to produce documents
17 responsive to these requests?

18 A Yes. The subpoena indicates which documents
19 were requested.

20 Q And did anyone ask you to produce documents
21 responsive to these requests?

22 A Well, the subpoena did, but not individually.
23 That's what I was relying on to know that I was being
24 requested to provide certain kinds of documents.

25 Q So, how did you receive the subpoena?

1 A I don't know. Whether it was in the mail or
2 by email. But, at some point, it was on my desk.

3 Q And did you provide documents to counsel for
4 defendants?

5 A Some. But not all of those. I had objections
6 to some. So, went over them with Georgia Staton, the
7 attorney for defendants, then provided those documents
8 that were available, those documents that we felt were
9 not overly burdensome and so on.

10 Q And what were your objections?

11 A Do you want to go through them individually?

12 Q If you can just tell me what you remember of
13 your objections?

14 A Well, in part such things as notes. When I
15 take notes, as soon as I complete the notes, whether
16 it's a walking tour or interview or whatever, I go ahead
17 and transcribe that into the outline of the report I'll
18 be writing. Then the notes themselves are never saved.
19 As I begin writing, then that information is there. I
20 incorporate it or don't incorporate it based on whether
21 it's sufficiently relevant. There's also requests for
22 testimony given in past depositions and whatnot. I
23 don't save any of those.

24 There were a number of things that were asked
25 for that I just simply don't save that I don't maintain.

1 There are other things, I don't recall right off the top
2 of my head, that would have been a very extensive
3 process to try to locate them.

4 Q What kinds of documents would require a very
5 extensive process?

6 A Like I said, off the top of my head, I
7 couldn't tell you exactly. Let me see what was asked
8 for and it might be of some assistance. Okay.
9 Producing all communications and any documents that may
10 have come to me at some point in time. I don't save all
11 the email that I receive. I receive a couple hundred
12 emails a week, at least. And so, when I'm through with
13 them I get rid of them.

14 Let's see. Things that I read that didn't
15 rely on, I think was in there. That could have been an
16 endless amount of documents that I reviewed at one time
17 or another. So, there were a number of such things that
18 would have taken a lot of time and then probably
19 produced nothing anyway.

20 Q So, emails, in regard to Request Number Two,
21 which are communications about this case, were there
22 emails regarding this case that you would have deleted
23 before responding to this?

24 A There may have been. But what I asked was
25 that the attorneys provide all of them. I am sure that

1 they are much better record keepers than I am with
2 respect to email, because it would be part of their
3 case. So, I asked them for help in assembling those.

4 Q Was there anyone else you communicated with
5 about this case by email?

6 A No.

7 Q Is it your understanding that the attorneys
8 provided the emails between you and them that would have
9 been discoverable?

10 A That's my understanding, yes. The other
11 concern I had is not knowing for sure what the federal
12 rules allowed and what they didn't allow. It was
13 necessary for me to confer with them about what would be
14 provided and what would not.

15 Q Can you explain what you were describing
16 earlier about taking notes and then incorporating them
17 into another document?

18 A Yes.

19 Q Are you talking about handwritten notes?

20 A Yes.

21 Q So, what kinds of handwritten notes did you
22 have regarding this case?

23 A There would have been some handwritten notes
24 that I would have made when I interviewed Montano and
25 Kimble. Since I didn't tour the facility, there

1 wouldn't be notes on that. There would be a very
2 minimal number of notes in this particular case. But,
3 in response to your question about why, I find when I
4 have toured facilities or taken a lot of notes, it's not
5 an exact transcription of what happened. I wait until I
6 get ready to write my report. And very often I'm not
7 quite sure in all instances what I meant by certain
8 notations that I had made. So, I found it very useful,
9 before I ever do anything like that, I look at the
10 complaint, identify each of the areas I'm likely to
11 opine in. Then, after I have toured a facility or done
12 interviews, whatever, while everything is still fresh in
13 my mind, I incorporate those notes in a more narrative
14 fashion into my, under each one of those various
15 opinions.

16 Then when I get ready to actually start
17 writing the report at some point, I can determine what's
18 relevant, what needs to be incorporated in that opinion.
19 And I have a more accurate record of what I saw, what I
20 observed, what was said.

21 Q And you throw away the handwritten notes?

22 A Yes.

23 Q That's your general practice?

24 A Yeah. That's my constant practice, not
25 general.

1 Q Why is it that you don't keep the handwritten
2 notes?

3 A Well, for one thing, I found many years ago,
4 when I did save them, I was asked about notations and
5 notes. You know, it had been a long time since I had
6 taken them. I couldn't always answer the question
7 because it was no longer fresh in my mind. Since I am
8 not required to maintain those notes, I came up with a
9 better process where I could have more accurate
10 information, I could have information put together while
11 it was still fresh. Then there was no need to maintain
12 those notes any longer. So, I don't.

13 Q So, you don't keep them because you are not
14 required to keep them; is that correct?

15 A Well, I'm not required to keep them. But they
16 are also no longer valuable since I already put that
17 information where it will be the most use to me and
18 where I can more accurately put it into my report.

19 Q So, in this case, how long after you took
20 written notes did you incorporate them into some other
21 document?

22 A Probably within a few hours, because I
23 simply -- when I went back to the motel that night, I
24 was there doing some training, both of them were
25 available, so I asked them questions about this. And

1 so, when I went back to the motel that night, I went
2 ahead and took what notes I had made, put them into the
3 outline and then discarded them.

4 Q When you say you put them into that outline,
5 is that a document on the computer?

6 A Yes.

7 Q So, did you provide certain documents to
8 counsel for defendants?

9 A You mean in response to?

10 Q Yes.

11 A Yes. I don't recall exactly what was
12 provided. I guess I could take another quick look to
13 see what was provided. I think there was a lesson
14 outline. Let's see. I think I also provided an
15 affidavit in a case called City Weekly vs. Cache County.
16 Probably provided -- I think I provided my expert report
17 in DeWitt. PLN vs. DeWitt. I may also have provided --
18 well, City Weekly was an expert report, what would have
19 been an affidavit, would have been PLN vs. Cheshire, I'm
20 sorry. Those things I know that I provided. I don't
21 recall for sure if I provided anything else. Probably
22 an updated CV.

23 Q Had counsel for defendants provided you with
24 some documents prior to that?

25 A Yes.

1 Q And what types of documents were those?

2 A There were what turned out to be several
3 binders full. But they said that they would provide on
4 a video disk, CD, to view all of those documents, so I
5 didn't have to cart everything into the deposition.

6 Q So, they didn't provide your copies of the
7 documents, they provided their own copies of the
8 documents?

9 A Correct. They would have been the same since
10 I also make it a practice never to make notes on any of
11 the documents. I keep them pristine. And, as I read
12 them, if something comes up, I type it into that same
13 outline that we have talked about.

14 Q So, did you take any written notes on other
15 paper as you were reviewing a deposition transcript, for
16 instance?

17 A No. As I'm reading the deposition transcript,
18 if there's something I thought was relevant, I would
19 type the entirety of the text or, at least, at the very
20 least, a reference to it into the appropriate place in
21 my outline. You'll see places in my expert report where
22 I have done that.

23 Q So, did you have any written notes on this
24 case that were thrown away other than the notes from
25 your conversations with Montano and Kimble?

1 A No. I can't say that at no time I didn't jot
2 down the name of something or other that I was going to
3 look for in the next few minutes. But it would just be
4 a reminder to me to do something else. But those would
5 never survive more than a few minutes after I used it.
6 I would wad it up and throw it away.

7 Q When was the first time you heard about this
8 case?

9 A I couldn't tell you exactly. It seems like it
10 was earlier this year. I know it was a while after it
11 had been filed. I heard that it had been filed, but was
12 not aware I was going to be involved with it. I don't
13 remember exactly when I was called. If I had to guess,
14 it would probably be late winter, early spring. But I
15 could be off on that.

16 Q How did you hear that it had been filed?

17 A I heard it secondhand from a fellow by the
18 name of Jim Chip who does some work with me. He had
19 heard it directly from one of the people at Pinal
20 County. He had been doing some inspections of their
21 facility. And they mentioned it.

22 Q What kinds of inspections was he doing?

23 A An inspection to compare their practices to
24 Arizona's guidelines, jail guidelines, helping them with
25 that.

1 Q So, was he hired by Pinal County or by someone
2 else?

3 A Someone else. I don't know. Pinal County
4 probably didn't hire them. It was probably a group
5 called AARMS who provide the software to do those
6 inspections.

7 Q Can you explain what AARMS is?

8 A Yeah. It's a company that does, that provides
9 internal inspection software for jails.

10 Q So, what did he tell you about this case?

11 A Just that they had been sued. He didn't have
12 a lot of information on it. He hadn't seen the
13 complaint. Neither had I at that time, of course, so it
14 was just a point of information.

15 Q So, why did he tell you, I am asking?

16 A Because we interact periodically. He also --
17 AARMS also, or the individual who runs AARMS also
18 supervises something called NIJO, National Institute of
19 Jail Operations, which provides jail training. And he
20 does some work for them as well. So, he became aware of
21 it. And he told me. I see Mr. Chip probably, or talk
22 to him probably weekly, at least, on one matter or
23 another. I also use him sometimes to set up training
24 for the Utah Sheriff's Association. So, there's
25 interaction between people that have various different

1 functions.

2 Q So, why did he think you would be interested
3 in this particular case?

4 MS. STATON: Objection. Foundation. Wait.
5 Wait. Let me -- because there is a time lag, Gary, it's
6 going to be a little difficult. But I'll do the best I
7 can. I'm objecting to the last question on form and
8 foundation.

9 A I can't tell you why, you know. I mean,
10 obviously, he has his own reasons. But it would be best
11 to question him.

12 BY MR. THOMPSON:

13 Q So, you don't know why?

14 A He didn't say for these reasons I'm telling
15 you this. He told me what it was. And I leave his
16 motivation for him to answer.

17 Q Why did he tell you about the case?

18 A That they had been sued. That they had been
19 sued, an issue involving PLN.

20 Q Did he just tell you what the issue was?

21 A Yeah. I don't think he knew any more than
22 that. At least, based on what he explained to me, he
23 said that they had been sued by PLN.

24 Q So, he didn't tell you what the issue that
25 they were being sued about was?

1 A No. And he knew that I had been involved with
2 a PLN case in Cache County.

3 Q Was his inspection there covering mail
4 operations?

5 A I'm sure that over the, you know, several
6 different periods of time when he would go in on those
7 inspections, that would be one of the several issues
8 that he would ultimately look at. But I know at the
9 time he was there he was only partway through that
10 process of inspecting them. At least, that's my
11 understanding.

12 Q So, why was AARMS hiring someone to do an
13 inspection of the jail?

14 A Well, they do that all over the country.

15 MS. STATON: Objection to the form and
16 foundation.

17 A AARMS does work in Alabama. They do work in
18 Arizona. They do work in Utah. They do work in a
19 variety of different states. Some in Wyoming. Some in
20 Kansas. I don't know all the places that they have
21 stuff going on. But, they have to have people, usually
22 either local people or others that they are familiar
23 with, go out and do that. I know Mr. Chip was involved
24 in Alabama. I know he was involved in Arizona. AARMS
25 hires him to do the work. That's up to them.

1 BY MR. THOMPSON:

2 Q So, you described AARMS as a company that
3 provides software, correct?

4 A Yes.

5 Q So, is someone hiring them to do an
6 inspection?

7 A No. Actually, Arizona countys' insurance pool
8 contracted with them sometime back to do that, for not
9 just Pinal County, but for any of the counties that were
10 participating that asked for assistance with those
11 inspections.

12 Q So, the Arizona countys' insurance pool hires
13 AARMS, then AARMS hires someone else; is that correct?

14 A They contracted with AARMS. I don't know for
15 what period of time. And then for, I think there's 13
16 of the counties in Arizona which they cover. And those
17 would be the ones that he would be concerned about,
18 those would be the ones that he would be interested in.

19 Q And then does AARMS produce a report to the
20 county?

21 A They -- yeah. They would -- it's an online
22 inspection system which provides realtime data on what's
23 happening with any of the guidelines that they are
24 looking at, what progress they have made and so on. But
25 it's all on website firewall. It's not a paper system.

1 Q So, is it correct that when someone like Mr.
2 Chip goes in, he's going in to set it up, then the
3 county is inputting data as time goes on?

4 A No. As I understand it, AARMS already has it
5 set up. And all they have to do then is provide pass
6 codes for individuals at the individual agencies who are
7 going to be authorized to get into the system and make
8 any data entries. What Mr. Chip would do, it's a system
9 that has been referred to as inside-out. That is
10 instead of the auditors coming in first and doing the
11 inspections, saying, okay, fix all these things, that
12 system, as I am aware of it, requires the jail commander
13 to do the initial inspections and audit.

14 Then a follow-up auditor from the outside will
15 come in and look only at those things they claim to be
16 in compliance with. There's no sense saying you are out
17 of compliance with A, if they have already recognized
18 that and they are working to try to fix it.

19 So, what will happen is that individual will
20 then come in, it could be Mr. Chip, it could be somebody
21 else, whoever else they hire, and look at those things
22 they believe that they are compliant with, which may
23 take a less charitable view of and tell them what they
24 need to do to come into compliance. So, that's his
25 basic role. He doesn't set anything up. That's set up

1 by AARMS already.

2 Q So, what's the end result of an inspection
3 conducted by Mr. Chip? Is it a written report? Is it
4 something else?

5 A No. The end result is the client agency knows
6 where they stand with respect to any given set of
7 standards or guidelines to which they are being
8 inspected. That's the purpose, I think, if I'm not
9 mistaken. ASIF also has a code where they can get in
10 and look at any of the jails that are participating,
11 that they are insuring, so they can also get a sense of
12 what progress is being made. The whole idea is to try
13 to get people to move forward, do it in a way that what
14 their efforts are not immediately discoverable,
15 otherwise, people are not willing to find their worts,
16 as you might guess. So, it's a way of trying to force
17 people to find those things that are not fully compliant
18 or compliant at all, I suppose, in some cases with the
19 guidelines that Arizona has adopted to run those 13,
20 maybe 14 jails. I don't know exactly how many are
21 participating.

22 Q Is there a written report that's produced at
23 the end? Or how does the jail know what areas the
24 inspector has determined that are not compliant?

25 A Because the record is all made online. At any

1 given time, with the system, you can look and see what
2 the jail inspector has done, his notes on what they need
3 to do. If the jail inspector realizes they are
4 noncompliant, because they didn't have a written policy
5 on a particular topic or they had a policy that did not
6 include the issues, all of the things that were
7 required, then you may find his notes recognizing that.
8 And you may also find in a compliance section that they
9 have now rewritten the policy and electronically
10 attached it to the file.

11 Or to take an odd example, let's say you have
12 gasoline next to the furnace. You can also attach a
13 picture that it's no longer there, and here's where it
14 now is. Not that anybody would put gasoline by a
15 furnace, I suppose. But the idea is at any given time
16 they can pull up a screen and see by color code every
17 standard that they are noncompliant, partially compliant
18 or fully compliant with. So, it's much better than a
19 written report. It provides you realtime data on where
20 you stand on any given standard.

21 Q Those determinations of where someone is at is
22 based on the judgment of the inspector?

23 A Yes.

24 Q So, after you heard from Mr. Chip that first
25 time, when was the next time you heard about this case?

1 A It had to have been, I'm guessing, at least a
2 couple of months. I just don't have that information at
3 my fingertips. But I know for certain it was not right
4 away. I had no -- I did not believe I was going to be
5 doing anything with it. But then I got a call from Miss
6 Staton saying that they would like my assistance on the
7 case. Unfortunately, it was a very short timeline that
8 I had to work. And I had other work going on. So, I
9 agreed to take it and get as much done as I could in the
10 time available to me.

11 Q Do you mean it was a very short time between
12 when they called you and your expert report was
13 completed?

14 A Yes. I am very often scheduled out three or
15 four months. Not very often, it's almost a given. And
16 I don't usually like to take cases that I don't have at
17 least three or four months before a deliverable product.
18 I have done a lot of work with Miss Staton. And we
19 talked about the difficulty getting it done in a short
20 time. We agreed I would do it.

21 Q So, how long did you have approximately?

22 A I don't recall. It was -- well, I just don't
23 recall. It was far less than my normal three to four
24 month requirement. Or, you know, there's sometimes when
25 I have that much time, but I already had my time already

1 booked out. I have four or five expert reports or
2 training sessions. I haven't been home for three weeks
3 for example now. Indiana last week. Alabama the week
4 before. And Kentucky the week before that. So, I have
5 to, look at my schedule to see whether two months, three
6 months, four months is too tight.

7 Q What did you understand you were supposed to
8 be offering opinions about in this case?

9 A Well, I was told that they had conceded an
10 issue involving post cards, so I would not be talking
11 about that. Basically, what they wanted me to look at
12 was the policies, procedures and actions of the Pinal
13 County officials with respect to accepting or rejecting
14 publications, PLN, of course, being one. And, also, to
15 look at that in the context of what they were trying to
16 accomplish in their jail. And that's what I did.

17 Q And you are testifying as a rebuttal expert
18 here, correct?

19 A I don't know if I was asked to be a rebuttal
20 expert. I was just told I was testifying as an expert
21 witness. In all cases, or on nearly all cases, not all,
22 the expert witness for the other side's already issued a
23 report before I do. But what I consider a rebuttal
24 report is when we both replied, and then I'm, you know,
25 replying yet again to that. So, my initial expert

1 report I have never thought of as a rebuttal.

2 Q So, you weren't told that you were supposed to
3 be limited to responding to the opinions of the expert
4 for the plaintiff in this case?

5 A Oh, yeah. But that's pretty typical. I look
6 at two things. One is the complaint, the operative
7 complaint. And the other is the expert witness for the
8 other side. So, I was responding both to the complaint
9 and to the expert witness. If issues were moot at that
10 point, issues had already been resolved, then that was
11 out of play. So, of course, the plaintiff's expert
12 didn't talk about post cards, thus, neither did I. That
13 was no longer on the table.

14 Q My question is, were you told that you were
15 limited to rebutting the opinions expressed in the
16 expert report of the plaintiff's expert?

17 A It's possible. I don't recall being given
18 that specific instruction. I was being asked if I could
19 put an expert report together. And it was certainly in
20 response to both the complaint and the plaintiff's
21 expert. I don't recall being given any specific limits
22 that I would be prohibited from discussing.

23 Q What did you do to prepare to write the expert
24 report?

25 A Went through documents that I was provided,

1 depositions, policies and procedures. Any reports that
2 had been written. Like I said, there was a few binders
3 full of materials that ultimately were printed out to
4 work from. Certainly, expert report, those kinds of
5 things. Once I had reviewed those enough that I had a
6 sense of where I was going and identified which things
7 were particularly relevant to what I would be doing,
8 then I started actually constructing the report itself,
9 actually started filling in the narrative.

10 Q So, did you read all the deposition
11 transcripts from beginning to end?

12 A Some that I considered most important I read
13 beginning to end. Some that, as I would go through
14 them, I didn't think was providing a whole lot of
15 additional information I didn't read beginning to end.
16 But, for example, if I wanted to know about training or
17 I wanted to know about when somebody learned or thought
18 they learned what policy was, then I would go into
19 depositions and use the index in the back to find all
20 possible references to that topic and then go read those
21 and bring it in. You know, I didn't need to read where
22 each officer went to school and what grades they got,
23 any of that sort of thing. But anything I considered
24 relevant to any of the opinions, I could go to the index
25 in the back. And as I would exhaust that opinion, I

1 would see if there was anything I thought was important
2 to add. So, did I read every single page of the stuff
3 they gave me? Of course not, no.

4 Q So, you said some of them you thought were
5 more important you would read beginning to end. Do you
6 remember which ones those would have been?

7 A No. Like I said, it was not so much -- well,
8 yes, I would. DeNiro. I read DeNiro's two volumes.

9 Q Who is that?

10 A Or, no. Excuse me. I got mixed up.
11 Montgomery. Wait a minute. No. Yours is DeNiro? Your
12 expert witness?

13 Q No.

14 A Isn't he? Montgomery. Who the heck is your
15 expert witness then?

16 Q Our expert witness is John Clark.

17 A Thank you. I'm writing three expert reports
18 right now. So, I apologize. So, it was Clark I read,
19 yes.

20 Q His deposition?

21 A No. His report -- yeah, I think his, the only
22 report. DeNiro, who I just mixed up, is the case I have
23 to have finished by day after tomorrow. That's a whole
24 different case, so I apologize for that. His was a
25 two-volume deposition.

1 Q So, any deposition transcripts in this case?

2 A Okay. Let's go back and re-do this one.

3 Probably from the problem of having too many things you
4 are working on simultaneously. Kimble's, I did.

5 Montano's I did. Any others I would have just simply
6 looked for specific information that I wanted in there.

7 I know that there were people that worked, for example,
8 in the mail room that talked about when they learned
9 they didn't accept publications or where they came to
10 those conclusions. So, some of those I read much of the
11 deposition and some of it I read simply those parts that
12 I could discover from the index that they would be
13 talking about.

14 Q So, besides reading the documents that were
15 provided, did you do anything else to prepare for the
16 expert report, to write the expert report?

17 A Well, as I mentioned, when I was in Pinal
18 County doing some training, they were doing some
19 regional training for themselves and several other
20 counties, I took the opportunity, since both Chief
21 Deputy Kimble and Captain Montano were there, to talk to
22 them when I wasn't actually doing the instruction.
23 There were two of us that were instructing at that time.
24 So, that gave me an opportunity, when the other
25 instructor was working, to take them aside, sit down

1 with them, go through the information that I needed to.

2 And mostly, probably, Kimble was the most valuable, more
3 so than Montano.

4 Q Why is that?

5 A He just seemed to have more information that I
6 was actually looking for. He also was seeing it from
7 the top of the sheriff's administration down. Montano
8 works for Kimble.

9 Q So, how did you decide to talk to those two
10 men?

11 A They were available. Also, because Kimble, in
12 particular, is more in a policy setting role. I really
13 wanted to talk to him. I don't recall all the specifics
14 I was looking for for Montano. But I am familiar with
15 him. I have known him from contact in the training
16 programs we have done. And he was there. So, I asked
17 him questions about it. Kimble was the most useful in
18 terms of providing information.

19 Q So, did you decide who you wanted to talk to
20 and ask to speak to them or are those just the people
21 that were provided to you?

22 A Well, I could have gone into the jail and
23 talked to other people, but I was mostly concerned about
24 policy issues. And since Kimble signs the policy and
25 Montano was the captain, those were the two people I

1 thought I could glean the most from in terms of
2 timelines, policy, what was done, why it was done. The
3 individuals working in the mail room had all been
4 deposed under oath, so I had their testimony to work
5 with.

6 Q And how did you pick Commander Montano as
7 opposed to any of the other --

8 A Well, in part, because I'm familiar with him.
9 In part, because he was there. And, in part, because
10 he's got a high position. It's an administrative level
11 position within the jail. So, I got the information I
12 was looking for from a combination of talking to him and
13 to Kimble. You know, the sheriff, I talked to the
14 sheriff, but not about this case. I figured what
15 information the sheriff might have Kimble would have and
16 then some.

17 Q How long did you speak to Mr. Kimble for?

18 A If I had to guess, I would say probably 20
19 minutes or so.

20 Q And did you speak separately with Commander
21 Montano or was it at the same time?

22 A No. It was separately. And his was probably
23 shorter. Maybe 10, 15 minutes at the most.

24 Q And where was that conversation? Was that at
25 the jail?

1 A There's a training room there at the
2 jail/sheriff's complex. And I -- there was -- I can't
3 recall. It was a break room or another room that we
4 retired to and talked. It might have been the break
5 room.

6 Q So, did you enter an actual jail facility?

7 A Not on this occasion. I have been in that
8 jail before, but I didn't see that touring the jail was
9 going to have, you know, provide any useful information
10 in this particular case. If it had been a conditions or
11 confinement case or some use of force or other incident
12 that occurred, I would want to be inside the facility
13 for sure.

14 Q So, you did not speak with any of the mail
15 room staff, correct?

16 A No.

17 Q You did not speak with any prisoners, correct?

18 A No.

19 Q And you didn't speak with anyone else besides
20 Kimble and Montano; is that correct?

21 A No. Not in respect to this case. Obviously,
22 I talked to a lot of people when I was there. But, to
23 clarify the question, not in response to this case, no.

24 Q What were you at the jail for? What was the
25 training you were there for?

1 A Pinal County decided sometime back they wanted
2 to do a number of trainings courses, one or two a year.
3 This one was a civil liabilities, prisoner rights
4 presentation. Mostly prisoner rights, which an attorney
5 by the name of Carrie Hill and I did. They did one more
6 recently this spring -- or, no, this summer. Or maybe
7 even late fall, I guess. Yes, probably August or
8 September, which was on mental health issues. That one,
9 Steve Sampson out of Georgia and I did that.

10 Did a brief, I think, four hours in that one.
11 He did the rest of the training for two days.

12 Q So, this prisoners' rights training, was that
13 the one you were there for when you spoke to Mr. Kimble
14 and Montano about this case?

15 A Yes.

16 Q When was that?

17 A I can consult with that -- where's the CV I
18 gave you? It would be in there. I can find that for
19 you quite easily. Let's see, with Steve Sampson that
20 would have been August of this year. The other training
21 would have been August of last year, it looks like.

22 Q So, the civil liabilities and prisoner rights
23 training was August of last year; is that correct?

24 A Yeah. So, whichever one of the two I talked
25 about. I thought it was the civil liabilities training,

1 but, you know, those are the two dates that I trained
2 according to this, so if that's an accurate date for the
3 training, it would be one of those two sessions.

4 Q So, in August of 2012, you were there for a
5 mental health training; is that right?

6 A Yes. Let me also see what date it says in my
7 expert report that I talked to them. That's even
8 easier. Hopefully. Okay. August 16th, 2012 is when I
9 would have talked to them. So, it would have been the
10 second training program. I guess. Anyway, I talked to
11 James Kimble August 16th, 2012. And I know it was
12 during a training session. In either case, I was there
13 with another instructor, so I had time away from the
14 podium.

15 Q Have you ever been in a mail room in the jail
16 there?

17 A No.

18 Q Why did you not think that was relevant to
19 this case?

20 A Well, it was, basically, a policy and practice
21 case. I wasn't sure what looking at the physical
22 features of the mail room would add to the discussion.

23 Q And you didn't think that talking to the mail
24 room staff would be helpful?

25 A They had already been deposed and had

1 testified under oath. So, that's what I chose to rely
2 upon, sworn testimony rather than a subsequent
3 discussion.

4 Q So, did you draft the report yourself, the
5 expert report?

6 A Yes. In the entirety.

7 Q Did you have any help doing that?

8 A No.

9 Q Did you provide any draft reports to counsel
10 for defendants?

11 A Yeah. I believe before they got the final
12 report I sent them, asking them if there was anything
13 else that they thought needed to be included in the
14 scope of the report. And Georgia found a bunch of typos
15 for me to correct.

16 Q So, did you add any other topics to the report
17 at that point?

18 A No. She didn't ask for me to expand the
19 report, so I didn't.

20 Q And have you done any additional work on this
21 case since you submitted the expert report?

22 A Two things. One was to try to respond to the
23 subpoena duces tecum. And the other was to spend some
24 time last, yesterday afternoon and last night reviewing
25 my report and a few other documents prior to giving a

1 deposition.

2 Q Have you been provided with any other
3 documents since you submitted your report?

4 A Let's see, Georgia sent me copies of exhibits
5 that you would be using today. I got those late last
6 night, and, really, didn't having any time to do
7 anything with them, then this morning looked and saw it
8 was basically the same materials I reviewed yesterday,
9 for the most part: Copies of the policies and
10 procedures, my expert report, Clark's report.

11 Q Do you plan to modify your report before
12 trial?

13 A No. Well, let me add one caveat to that. In
14 reviewing my report last night, I went through and found
15 that 4.5, I had made a reference in my report and called
16 it 4.3. So, I would certainly want to add a note. Then
17 replicated that 4.3 as I was writing constantly. So,
18 there's probably a dozen, a dozen and-a-half 4.3s in
19 there that are supposed to be 4.5. So, if I was asked
20 to clean that up, I would do so.

21 Q Other than those, you don't have any other
22 plans to modify your report?

23 A No. I can't think of anything that would go
24 in there. And I haven't been asked to.

25 Q And in preparing for this deposition, did you

1 speak to anyone to prepare?

2 A Sure. Spoke with Georgia Staton.

3 Q And when was that?

4 A For maybe 10 minutes on the phone yesterday.
5 Yesterday afternoon. Then I also -- she had gotten a
6 note from somebody, or a call from somebody, that I
7 wanted to speak to her this morning. But that was
8 inaccurate. So, she called. And I said, no, nothing
9 special. And I was headed out the door when she called
10 me.

11 Q So, have you worked with Chief Kimble prior to
12 this case?

13 A Chief Kimble had been in some training classes
14 I had done in the past. Also, during the time that we
15 did our initial training program for them, the prisoner
16 rights program, I had had an opportunity to speak with a
17 woman by the name of Nicole Yusif, who works for them
18 and found her to be, have developed a very, very good
19 prisoner grievance program. So, you know, I have talked
20 to Kimble a couple of times about whether I could bring
21 her out to our annual conference in Utah, and then also
22 scheduled her for an annual conference seminar at the
23 National Sheriff's Association.

24 So, I think AARMS has also now included Kimble
25 on one of their committees -- not AARMS. NIJO.

1 N-I-J-O. has put him on one of their committees to
2 review training issues.

3 So, yeah, I see Kimble from time to time. I
4 see him at conferences. I see him at training sessions.
5 So, but I do so much training around the country, and I
6 have done a bunch in Arizona, so they called and asked
7 if I would do it for them as well.

8 Q What's your relationship with NIJO?

9 A NIJO is an appendix to the National Sheriff's
10 Association. It was created to develop a national
11 training program and national model policies program,
12 which will probably be kicked off early next year, and a
13 jail standards or guidelines program that the National
14 Sheriff's Association wants to begin doing
15 certifications on next year. All of that they have kind
16 of outsourced to NIJO. And the fellow who runs that,
17 Tate McCotter, T-a-t-e, capital M-c-C-o-t-t-e-r, has
18 included, like I say, included him on one of his
19 committees. And I also happen to sit on that committee.

20 Q So, what's your relationship to NIJO?

21 A I provide training for them. I provide a lot
22 of materials for them to use in what they are doing.
23 And I am also on their training committee.

24 Q So, do you have contracts with them to do the
25 training?

1 A No. Pretty much everything is handshake.
2 They call and say we've got training set up in Wheaton,
3 Illinois. We have training set up in Orange Beach,
4 Alabama or Washington, Indiana, wherever it may be, then
5 I schedule it and go.

6 Q But they compensate you for that?

7 A Oh, yes, absolutely. When we do that type of
8 training we get compensated.

9 Q In the trainings you do for Pinal County, are
10 those through NIJO or is that a separate arrangement
11 between you and the county?

12 A That was a separate arrangement between me and
13 the county. I do a lot of training on my own that does
14 not go through NIJO. But that was a separate contract
15 with DeLand & Associates. Separate handshake, I guess.
16 We don't have a written contract.

17 Q And so, under that agreement with Pinal
18 County, how many training sessions are you providing?

19 A Well, I have done two. And it will be up to
20 them whether they want to continue to sustain the
21 program. They have, like I said, invited other counties
22 in. And, at the last session we did, a couple of the
23 other counties said, is there any way that we could
24 sponsor it in the future so this training moves around
25 the state. Whether they do that or not, I don't know.

1 If they do, then it would mean that Pinal County would
2 not be taking the lead perhaps in all the future ones.
3 They were hoping to do at least a half dozen programs
4 over the next four years.

5 Q How much do they compensate you for doing
6 that?

7 A I think -- I'm thinking that was about \$2,500.

8 Q For each session?

9 A Yeah. Not each day, but each session, yes.

10 Q So, you have done two sessions for \$2,500 per
11 session?

12 A Right.

13 Q And you said they want to do a half dozen over
14 the next four years, half dozen more?

15 A Yeah, four to six. They talked about four to
16 six. They said if we can keep the interest up we can
17 maybe do as many as half a dozen. But that's all
18 speculation at this point, of course.

19 Q Who are you training when you go there?

20 A It's jail administrators and supervisors, for
21 the most part, although, we do see some line officers
22 come to the training as well.

23 Q So, what level in the jail? Are we talking
24 lieutenants?

25 A It could be. Of course, small jails may not

1 have more than a lieutenant running the whole thing,
2 where others may have majors, commander, chief deputies.
3 So, rather than trying to look at rank so much, it's
4 better to look at functions. So, the chief executives,
5 mid-level managers or supervisors for larger facilities
6 might be two separate tracks. And, like I say, then
7 you'll also have some line level people.

8 The mental health program we did, we also saw
9 a bunch of nurses and medical people, mental health
10 people from some of the jails, because Steve Sampson was
11 a renowned instructor, and they wanted to hear what he
12 had to say.

13 Q How many people attended this most recent
14 session you were there for?

15 A I would say probably around 50. Certainly
16 more than 40, but it quite easily had been 50. It might
17 even have been more than that. The first session was a
18 little less than that. It would have probably been in
19 the 40s for sure. But this one could have easily
20 exceeded 50.

21 Q And who was at the first session? Was that
22 the same group of people you described?

23 A Yeah. It was a smaller number of counties
24 that attended. They got word of what had taken place at
25 the first one, so we had more people interested in doing

1 so. Like I say, now the interest in hosting this
2 developed as resulted of it.

3 Q So, how many people from Pinal County were at
4 that first training?

5 A First session, they were probably two-thirds.
6 Second session they were probably half or less. But
7 that's just a guess, of course.

8 Q So, two-thirds of how many?

9 A Two-thirds of 40, say, depending on how
10 accurate my estimating is. They probably had, roughly,
11 the same number of people at the second one. Maybe a
12 little less, because it was a more narrow focus. But we
13 had more people attended overall.

14 Q Can you describe the content of that first
15 training?

16 A Yeah. I did a basic overview of 1983 and 1988
17 for them. Some discussion of the Prison Litigation
18 Reform Act. Then Carrie Hill and I split up the
19 substantive issues. I ordinarily do searches, use of
20 force, duty to protect and prisoner discipline. She
21 does medical and mental health conditions of confinement
22 issues, first amendment, Pria. Although she didn't do
23 Pria at that session. That wasn't done at that
24 particular training session. Oh, and she also does the
25 Religious Freedom Restoration Act. And RLUIPA,

1 Religious Land Use and Institution Persons Act, which
2 deal with prisoner religious issues. Since that has a
3 higher standard than the constitution does in that area.

4 Q So, you don't do any training on mail
5 publication issues?

6 A Occasionally. But once -- Carrie and I train
7 together. And I apportion that to her. Last spring, I
8 know I did one or two sessions, because neither one of
9 us could be there for the full three days. I could do
10 two days, she could do two days, so we kind of played
11 around with the schedule. And I did -- trying to think.
12 It was probably Orange Beach, Alabama last year, or this
13 spring, I should say. And San Bernardino County, I
14 think I did the mail issues there.

15 Q And do you have written materials that you
16 provide to the people being trained about mail issues?

17 A Yeah. For the regular training programs we
18 do. We have written materials. I think we employed
19 those, the portion of that training outline that dealt
20 with mail issues as part of the package we responded to
21 the subpoena duces tecum on.

22 Q So, do you use the same packet or same
23 training materials for your training?

24 A Until the law changes. Until something comes
25 up that says it's time to change this. So, you know, if

1 I put out a training outline with five or six topics in
2 it, and Carrie puts out a training outline with five or
3 six topics in it, you can be sure that one or more of
4 those have had some modification. But we don't change
5 just to be changing.

6 Q So, if we were provided materials from the
7 Alabama first amendment training, would that have been
8 the same materials that were provided to the people in
9 Pinal County who were trained in August of 2011?

10 A No. Because she did that training. I didn't.
11 She did the training at Pinal County. So, she's a
12 PowerPoint presenter. And I don't use PowerPoint, so
13 you notice -- the case law would be similar, obviously,
14 but we use very much different outlines.

15 Q And what issues does she cover in the first
16 amendment session of her training?

17 A Mail visits, telephones, privacy and
18 communication or lack of. And then, although, she
19 touches on religion from a First Amendment standpoint,
20 RLUIPA, Religious Land Use and Institutionalized Persons
21 Act is what she focuses on.

22 Q In terms of mail issues, does she cover any
23 different material than you cover in your mail training?

24 A It's probably the same. Obviously, her
25 emphasis would be different. She might cite some cases

1 differently than I cite since there are any number of
2 cases out there, I suppose. I might pay more attention
3 to a case such as Cheshire, PLN vs. Cheshire, because
4 that was a case I testified in, at least at deposition,
5 before the summary judgment came down.

6 Q And, approximately, how many hours have you
7 spent working on this case so far?

8 A I'm not sure in terms of hours. If I had to
9 guess, you know, charging 300 an hour, if you divide
10 that into how much I've charged them, and I don't know
11 that exactly, but I would be surprised if it's more than
12 15,000. You know, probably a little less. It could be
13 a little more, I suppose. If you want to do the math,
14 you can probably come to a number.

15 Q So, that's about 50 hours, maybe?

16 A Sounds about right. Not as much as I do on
17 some other cases, but --

18 Q Okay. Let's take a brief break.

19 A Just about ready to ask for one.

20 (Whereupon, a brief recess was taken.)

21 BY MR. THOMPSON:

22 Q I am going to mark the expert report as
23 Exhibit 2. For the record, this is Defendant's Expert
24 Disclosure Statement, which includes the expert report
25 of Gary W. DeLand.

1 (Exhibit No. 2 was marked for identification.)

2 BY MR. THOMPSON:

3 Q Can you turn your attention to page 4?

4 A Okay.

5 Q So, it says you are the executive director of
6 the Utah Sheriff's Association?

7 A Yes.

8 Q What are your responsibilities for the Utah
9 Sheriff's Association?

10 A Among other things, I oversee the jail
11 inspection system and the standards which they are
12 inspected to. I run the Jail Commander Certification
13 Academy training program, other in-service training
14 programs for jails. We have 29 counties. 28 of them
15 have jails. So, we train all of them. I also provide
16 technical assistance to the jail commanders when they
17 have questions with respect to whether policies are
18 correct or those kinds of things.

19 I have also put on a conference each year,
20 which is law enforcement and corrections for the
21 association. I think this year we had about 800
22 attendees. I have been doing that for about the last
23 16, 17 years. Those are the main things that I do for
24 them. I also, of course, attend their monthly business
25 meetings, except those times when I am out of town, and,

1 basically, serve at the pleasure of the sheriffs.

2 Q So, is it a full time position?

3 A No. In fact, several years ago I asked them
4 to reduce my contract amount from 50, from 55,000,
5 whatever they were paying me, down to about 30, 35,
6 somewhere. I don't remember the exact number even,
7 because it was requiring too much of my time working for
8 them. So, with some of the money that I gave back to
9 them, or with the money that I gave back to them, they
10 hired somebody else to do some of my responsibilities,
11 which included the legislature, which I don't like to
12 do.

13 Q So, does the Utah Sheriffs Association have
14 other staff?

15 A Let's see, they have somebody who oversees the
16 vendors at the conference. They've got -- and she also
17 handles fund raising for the association. There's also
18 an individual who handles the legislature, as I
19 mentioned, which I do nothing on that. And then we have
20 one other person who basically handles our financial
21 side. All of us are actually contract employees or
22 contractors, not employees.

23 There's also an individual who works free for
24 the association, other than we provided him a vehicle,
25 who actually is the hands-on for our jail inspection

1 program. He's got MS and needs a special vehicle, so we
2 bought him one. But he works, other than that, for free
3 for us.

4 Q So, are you the one that conducts all the
5 training for the sheriffs association now?

6 A I am the one who sets it up. And I conduct a
7 lot of it. Like, a couple of weeks I'll be in Park
8 City. But I'll be sharing that responsibility with
9 Lieutenant Shawn Stewart, so we'll be doing three days
10 of training, but I'll be doing one of those days.

11 Q Does the Utah Sheriffs Association have jail
12 standards?

13 A Yes.

14 Q Did you draft those?

15 A I drafted those about 17, 18 years ago, before
16 they had hired me. As a matter of fact, it was after I
17 had written their standards that they hired me.

18 Q And so, how many days a year are you doing
19 training for jail staff, would you say?

20 A In Utah, you mean, or all over the place?

21 Q Let's start with Utah. How many days a year
22 are you doing training for Utah jail staff?

23 A If -- let's see --

24 Q Approximately.

25 A Accounting the fact that I may only do a

1 couple of days, hours on one day and then a couple more
2 the next, working with other instructors, it would
3 probably be something in the neighborhood of half a
4 dozen days a month, sometimes more, sometimes less. So,
5 conservatively, at least four days a month.

6 Q In Utah?

7 A Yes.

8 Q And, then, what about other training of jail
9 staff? How often are you doing that?

10 A Well, in the past, I have tried to limit the
11 time I have been doing training. But since I have been
12 helping NIJO set up training programs, I have done quite
13 a bit of training this year. I have done three-day
14 programs in San Bernardino, Orange Beach, Indiana, just
15 this past week. Back to Orange Beach for a two-day
16 session. Let me look at my CV again.

17 Q That's all right. I got the idea.

18 A Yeah. I don't like to travel, and got kind of
19 tired of that. But to make the training program
20 working, I have been taking a lot more training.

21 Q So, it says you are a member of the training
22 committee for the National Sheriffs Association; is that
23 correct?

24 A Yes.

25 Q What does that entail?

1 A Well, it's the training committee of the
2 Committee of Executive Directors and Presidents. So,
3 there's two different committees I am on involve
4 training at NSA. And if you'll look, it says Presidents
5 and Executive Directors Committee. And all those
6 committees that are underneath that, including the
7 training committee, are part of that. It's a
8 subcommittee of the main committee.

9 Q So, what does that subcommittee do?

10 A It, basically, provides trainers, or
11 recommends trainers for our -- we meet three times a
12 year, that committee. So, part of those sessions are
13 business and part training. So, we look at lining up
14 individuals that can provide relevant training. Also,
15 recommend trainers and training topics to the various
16 other executive directors of the sheriff's association.
17 We don't actually conduct any training on our own.

18 Q And when was the last time you worked full
19 time in a correctional facility?

20 A 1992.

21 Q And where was that?

22 A I ran the Utah Department of Corrections. And
23 the prisons and halfway houses were part of that
24 process, or that organization, I should say.

25 Q So, at that time, were you working in a

1 correctional facility though?

2 A No. I was working -- my office was located
3 separate from that, but made it a point, at least two
4 days a week, sometimes more, to be at the prison,
5 meeting with staff, sometimes pulling shifts with two or
6 three in the morning, whether I needed to make sure I
7 knew what was going on and to stay current in the kinds
8 of problems my staff were dealing with, going out on
9 Christmas Eve with candy to them in Salt Lake.

10 Q So, when was the last time you were actually
11 working five days a week full time in a correctional
12 facility?

13 A That would be at the Salt Lake County Jail in,
14 probably, 1979. Then, you know, the part-time basis, in
15 and out of Utah's jails all the time, working with them.

16 Q And when you do the training that you do now
17 in jails in Utah, or any other place you described, are
18 you actually in the jails doing the training or are you
19 doing that in a separate room somewhere?

20 A Varies. It varies. You know, the recent
21 training we did in Indiana was a room adjacent to the
22 jail. It was part of the jail building. The week
23 before that in Alabama it was a hotel in Orange Beach.
24 So, wherever they want us, that's where we go. It was
25 inside the criminal justice complex adjacent to the jail

1 in Pinal County. But not right inside the bars,
2 certainly.

3 Q So, what kind of work do you do now that has
4 you actually inside the jail, you know, in housing units
5 or areas like that?

6 A In my own state, because I'm, you know, a
7 technical assistance provider and oversee, you know, I'm
8 in charge of the jail inspection program. I have the
9 opportunity or the need on some occasions to go sit down
10 with jail commanders at different places. We also hold
11 our monthly business meetings in a variety of locations
12 around the states which gives me an opportunity to go
13 into the jail, whichever county we are there, and sit
14 down with the jail commander, tour his facility, talk to
15 his staff. So, it's a wide variety of opportunities and
16 different functions when I'm there.

17 Of course, then I also, in most instances
18 where I'm doing expert witness work, tour the jails
19 there. Like I say, this one was more of a policy and
20 practice issue, so I didn't worry about it.

21 Q And when you say you oversee the jail
22 inspection program here in Utah, what does that mean?

23 A Well, since I put the standards together
24 originally, I now keep the standards up-to-date. I
25 brought in this individual who, like I said, he's

1 retired. He's working free for us with the exception
2 that we buy him a vehicle. So, he and I talk every
3 couple of weeks about the progress different jails are
4 making. If some of them are not making the progress we
5 want, I either call the jail commander or the sheriff on
6 the phone. Or, if it's convenient, we'll drive over to
7 spend some time with them to try to get them cranked
8 back up again.

9 Q So, are you actually doing any inspections, or
10 is that all the other person in the organization?

11 A No. We have four part-time inspectors that we
12 have trained, almost all but one of whom are former jail
13 administrators or mid-level managers, all of them with
14 exceptional experience, in any event. So, what I do is
15 have them do the inspections. And then I train them on
16 what they will do.

17 Q I would like to turn your attention to page 6
18 of your report.

19 A Okay.

20 Q In paragraph 5 --

21 A Yes.

22 Q -- you say you provided training and/or
23 technical assistance for other jurisdictions concerning
24 how to outline format, write and validate policy
25 procedures on manuals. Can you explain what outline,

1 format, write and validate means?

2 A Yes. Especially when I was doing a lot of
3 work for the National Institute of Corrections, they had
4 me doing a lot of this. And by that, I mean, before you
5 start writing standards, you know, the important thing
6 is to outline and determine what are the topics that
7 they are even going to need to include. You know,
8 basically, an outline becomes a table of content under
9 which any number of individual standards will be placed.

10 Format. How are you going to assemble the
11 standard? Are you just going to have a brief statement
12 saying, hey, do this, do this, do this? Or, my approach
13 that I train to, at least, is to have the text of the
14 standard, which is what we want you to do, much like
15 policy in a manual would be what we want you to do.
16 Then a rationale statement.

17 I have told people you shouldn't trust what I
18 tell you to do unless there is a reason for it. So,
19 what is the basis for that particular standard? You
20 know, usually they are legal based, the ones we are
21 doing. But there may be studies that have been done by,
22 say, Arizona State University or the department of
23 justice or someone else that has really good data that
24 justifies doing something a particular way.

25 Then we have a compliance discussion, which

1 would be not, you know, somewhat similar to procedure in
2 a manual. Everybody's under the same constitution, but
3 a 50 bed jail and a 5,000 bed jail are, obviously, going
4 to approach things differently. So, basically, try to
5 keep between the digits. You know, here's what you
6 basically have to do to comply. You figure out how you
7 want to do it within these limits. So --

8 Q What does validating the policies and
9 procedures manual mean?

10 A Part of it is what I just mentioned with
11 regard to the rationale statements. Most places I go to
12 do not provide a rationale for the policy and
13 procedures. So, when you begin asking why you do it
14 that way, it's because some other county did it or an
15 AJA manual suggested they do it, or some other such
16 thing. So, validating is getting people to take a hard
17 look at why they do what they do, number one.

18 And, number two, to contrast their policies
19 and procedures with the case law; you know, get with
20 their county attorney. They can look at our training
21 outlines, but those aren't legal advice, they are simply
22 training guides. But we recommend that they get
23 together with whoever their legal provider is and make
24 sure they have sufficient research to know whether their
25 policies are on track or not. So, that's, you know,

1 what we are talking about validating. That's,
2 basically, what I am talking about.

3 Q Have you put together any documents on how to
4 write like a policy and procedure manual?

5 A Back in the early '80s I did, because we used
6 it. And I see a lot of it in the training programs I
7 did. But I haven't seen those outlines for probably a
8 couple of decades.

9 Q So, are those used anymore, to your knowledge?

10 A I doubt it. I'm sure other people have come
11 up with their own ideas about how to do things. In my
12 instruction, I bring up policies and procedures and talk
13 about state created liberty interests and rationale
14 statements and so on, but it's not a how to, it's just,
15 basically, some of the things they need to be aware of
16 when they are writing policy manuals.

17 Q So, when you give those presentations, do you
18 have materials that describe your philosophy for how to
19 right a policies and procedures manual?

20 A No. I hand out materials that would simply
21 talk about why we have policy manuals, and those two
22 things I just mentioned to you, probably a page, page
23 and-a-half of an outline, I'm guessing.

24 Q And where do you give that training? Who do
25 you give that to?

1 A Well, it depends on what people ask for. If
2 they just want prisoner rights, I don't do it. If they
3 want prisoner rights and civil liability, then we add
4 that to the training outline. For example, just
5 recently, this last training session we did, that was
6 part of it. The week before, it was not. So --

7 Q When you say the last one, which one do you
8 mean?

9 A Washington, Indiana.

10 Q Was this discussion of how to draft policies
11 and procedures part of a training you did in Peoria,
12 Illinois of 2011?

13 A I have to look at the training outline. I'm
14 not sure. I thought this was mostly a prisoner rights
15 thing. I would have to look at it. The training is not
16 how you draft them, the training is simply here's some
17 things to keep in mind when you do draft them. If I do,
18 and I haven't for a long, long time, but NIC used to
19 send me out to do that type of training. And we would
20 spend two days teaching them how to write, having them
21 write various aspects of a policy, then breaking down
22 what was right and what was wrong with it. And over the
23 course of two, sometimes three days, actually, we had
24 some as long as a week, you know, people left with,
25 hopefully, an understanding of how to write a policy.

1 But I haven't done anything like that in decades. Now
2 it's just a 15 minute discussion as part of protecting
3 yourself against liability.

4 Q You say in your report that you wrote jail
5 standards for Michigan and Alabama and Arizona; is that
6 correct?

7 A Yes.

8 Q So, does that mean you wrote them from
9 scratch?

10 A No. I wrote the Utah standards, as I
11 mentioned. And they are all legal based. So, I'm going
12 to do it for Arizona. They are in the Ninth Circuit
13 Court of Appeals, obviously. They also have state
14 statutes in the ARS, or Arizona Revised Statutes. So,
15 what I would do then, is update or modify those
16 standards to meet Ninth Circuit Arizona District Courts
17 and, if appropriate, any state court cases, which we
18 didn't run into many that have helped. And make sure
19 that anything that was written was consistent with the
20 Arizona Revised.

21 Then there was a committee that would go
22 through. And they would adjust what I had written to
23 their needs unless it was something that was far enough
24 off track that I said no.

25 Alabama, almost nothing in statute, but they

1 have got 11th Circuit case law. And they have Alabama
2 District Courts. So, you know, in writing Michigan's,
3 which they have not adopted yet, but, same thing. Look
4 at the statutes. You looked at Sixth Circuit case law
5 there, then modify what's already been written to fit
6 that requirement.

7 Q So, who is commissioning you to write these
8 standards in these other states like in Michigan?

9 A Michigan, it was the Michigan Sheriff's
10 Association. And they are the reason they haven't been
11 adopted yet, is they are working with their risk
12 management people to fund getting this thing together.
13 I don't know when that will happen.

14 Q So, you have already drafted a standards, but
15 they haven't been issued; is that correct?

16 A That's right. In Alabama, it was an Alabama
17 risk management firm, but they only do 45 counties out
18 of, I don't know, some, probably close to a hundred
19 counties in Alabama. So, the standards are only
20 applicable to those counties, because they want the
21 counties they insure to follow them. Although, I was
22 training two weeks ago there. There were a number of
23 counties I heard ask the representative of that group if
24 they could buy in and use the standards as well. So, it
25 just depends. In Arizona, it was Arizona Counties

1 Insurance Pool that funded the initial project. Not
2 sure how it's funded now, whether they get paid by the
3 individual counties or what.

4 Q And, in Michigan, is it an insurance pool
5 also?

6 A Yes. Well, they are the ones who will
7 ultimately fund it. But it was the Michigan Sheriff's
8 Association that asked that we do it. Then I was
9 fortunate there. They offered us an attorney who had
10 researched the statutes for me, which saved me that
11 responsibility.

12 Q So, do you start with kind of a template from
13 the Utah standards, then adopt it to the local law?

14 A Yes. You know, if the Tenth Circuit is
15 different than the Sixth or the Michigan or whatever
16 other Federal District Courts have taken a different
17 approach than, say, the Utah, then, obviously, I have to
18 reflect that.

19 Q You also described some jail policies and
20 procedures manuals you have written in Utah. If you
21 look on page 14 --

22 A Actually, it's on 13 and 14 on my copy.

23 Q Yes. So, on page 14, it looks like in the
24 last 10 years you have written policies and procedures
25 manuals for four jails here, is that correct, the four

1 counties?

2 A Iron County, Uintah County, Millard County and
3 Cache County.

4 Q So, what's your role in writing those manuals?
5 Are you drafting those entirely yourself from scratch?

6 A Yes. What we do is, you know, there's an
7 endless number of chapters that could go in a manual.
8 So, I agree to do 200 or 150 or whatever number of
9 chapters they want. Then I give them a list of the
10 various topics they could ask for. Some people already
11 have policies they feel comfortable with in some area or
12 may not want to put out money that may not have any
13 liability attachment. So, I let them prioritize what
14 they want written and which ones they want done first.
15 Then, over the course, usually is a couple of year
16 project, because it takes them a while, when I write, to
17 go through it and make suggestions on changes and so on.

18 Q So, then are those manuals you drafted revised
19 by counties or do you give them a finished product?

20 A Well, it just depends. In, for example,
21 Millard County that's mentioned there, all I do is
22 provide them the draft. It's up to them what they do
23 with it after that. With regard to Cache County, they
24 wanted a finished product. Then they paid a lot more
25 for it, of course. So, I would send them a draft. They

1 had a series of committees, depending on what the topic
2 was that reviewed that. They would then put their
3 comments in, make their suggestions. Then, unless what
4 they wrote was a clear violation, in my judgment, of the
5 constitution, or something it was going to get them in
6 trouble, that's the way I redrafted it for them, then
7 sent the finished product to them.

8 Toward the end, they started saying, look. We
9 can even do our own finished product if all we are doing
10 is changing, you know, typos or very minor things that
11 don't have a great deal of impact. And I agreed to do
12 that as well.

13 Q So, are those policies and procedures manuals
14 changing since you finished them?

15 A Sure. In fact, I built in a requirement that,
16 at a minimum, every 18 months they have reviewed the
17 manual and -- reviewed individual chapters. Each
18 chapter will have a different suspension date, of
19 course. Most of the time they will find they have made
20 little changes, six months out, eight months out, then a
21 new 18 month review date is attached to it. But, yes,
22 it's intended that they do that, because laws change or
23 maybe what I wrote didn't work out so well.

24 Q So, are you involved in those changes?

25 A No. No, that's all on them. That would be a

1 separate contract.

2 Q And for those four counties on page 14, did
3 you write the sections of those policies and procedures
4 manuals regarding mail publication issues?

5 A Yes. Each of the four, I did. They may be a
6 little different from jail to jail. But if somebody
7 made changes in them, and I don't know for sure, I
8 couldn't tell you with respect to every single chapter
9 what happened, but, yeah, I would have written all four
10 of those.

11 Q Those four counties, bigger or smaller or
12 about the same size as Pinal?

13 A Let's see. I think Pinal County has about
14 400,000 residents. So, the ones that I was writing for,
15 this county we are in now, it is just under, I think
16 it's 180, 175,000 last I heard, so it would be half that
17 size. Iron County, Millard County, and Uintah County
18 would be substantially smaller.

19 Q And have you written mail policies for any
20 other correctional facilities?

21 A Let's see, yeah. Summit County several years
22 ago, a lot of that policy would now be outdated, but
23 several years ago I wrote one for Summit County. Let me
24 just take a quick, quick, quick look. Sonoma County, in
25 the 1980s. Again, that's so long ago I'm sure most of

1 what I have written is outdated. I did a complete
2 manual for them. Arizona Model Detention Guidelines, as
3 a result of those being written, I was asked to do a
4 model policy manual which could or could not be used by
5 the various counties that were interested. However, we
6 terminated that contract about three-quarters of the way
7 through. And I don't recall ever getting to mail on
8 that one. Certainly, they got to a point where they
9 said, you know, we are getting to where we can now write
10 using your format and so on. Would you mind if I
11 terminated the contract? I told them it would be a
12 great idea, since I don't really like writing manuals,
13 and I didn't have the time.

14 Q So, did you write a model mail policy for that
15 manual?

16 A No, I don't believe I did. Because I remember
17 when I was talking it seems like I had a conversation
18 with Bill Hardy on an entirely different matter on
19 another day. And it seemed to me he said, too bad you
20 didn't write the mail policy, you know, for Pinal
21 County. Something to that effect.

22 Q What did he mean by that?

23 A Well, I guess he had been sued. And so, I
24 guess he thought somehow if I wrote it it would be less
25 likely that would be the case. I don't know if that's

1 true, but that was, again, another manual that was
2 written. But, like I say, that contract we terminated
3 about three-quarters of the way through. So, I don't
4 recall ever getting to the mail policies.

5 Q That was a contract with --

6 A With ACIP, Arizona County Insurance Pool. So,
7 they own that manual. Then we had a whole series of
8 manuals at the Utah Department of Corrections. You
9 know, many, many years ago, when none of this case law
10 was around, I had written it for Salt Lake County. I
11 have also written for a private correctional operation
12 called Promontory, and also for the Purgatory
13 Correctional Facility. But that was in the late 1990s.

14 Q Okay. Can I turn your attention back to
15 page 4?

16 A Sure. Okay.

17 Q So, you list that you were a senior adviser
18 for the Iraq Minister of Justice?

19 A Yes. And Department of Prisons part of that,
20 because they also had courts. It had nothing to do with
21 the courts.

22 Q So, were you employed by the United States?

23 A Yes. There were two pockets of money over
24 there; one for the military and one for what's called
25 CPA, which is the civilian side. Coalition Provisional

1 Authority. So, I was being paid with the money that
2 came through, I guess it would be Justice and the State
3 Department. Much of that money was money that had been
4 seized from the Iraqi Government, you know, the box cars
5 full of hundred dollar bills that might have been around
6 when they came in.

7 Q So, in Note 2 on page 4, you say you helped
8 establish the Iraqi Correctional Services Training
9 Academy?

10 A Yes.

11 Q What was that?

12 A Well, when we came in, we were under order to
13 stand up as many facilities as we possibly could,
14 because we were simply being housed on bare ground with
15 concertino wire around it and, generally speaking, slit
16 trenches where they would burn off the waste. At
17 Abughraib, for example, they had a place called Camp
18 Victory. And that's all that was when I got there, was
19 just sectioned off with concertino wire enclosing and
20 separating the prisoners. Ask the question again. I am
21 not sure I got everything that you were asking there.

22 Q I understood the response. So, you said in
23 footnote 2 you renovated open federal detention and
24 prison facilities. Can you describe what you mean by
25 open?

1 A Yeah. One of the things that happened over
2 there was, there would be some damage, obviously, from
3 the fighting. Abughraib was shot up pretty good. But
4 that was the least of the problems. The facilities that
5 we found had simply been -- vandalized isn't even the
6 word -- stripped might be a better word, and sold. You
7 know, the seal would be gone, the glazing or what you
8 call the glass would be gone. Tile would be taken up
9 off the floors. So, what you had to do is go back and
10 rebuild. In fact, they had just built a place, I think
11 it's in one of these documents, Kan Ban'i Saad. Brand
12 new facility. I think there's like 4,000 beds. My team
13 arrived there a month ahead of me. And it was a brand
14 new pristine facility. But some Arabs had moved into
15 it. And when they told them to get out, they produced
16 guns. So, they came back with the military. And they
17 produced international journalists. So, it was a bit of
18 a standoff.

19 And while that was going on, they tore the
20 prison down, literally. Where there was one single
21 building probably twice the size of this room left, an
22 administrative building, even the walls had been torn
23 down and sold. I mean, they are really good.

24 We built a place called Karck, or were working
25 on it. Laid down tile. Next day, came back. All the

1 tile was gone. There was a guy three blocks away
2 selling it. So, what we did was have to go back and
3 rebuild the facility that had been stripped of security
4 equipment, locks, bunk beds. A lot of them we didn't
5 even bother to provide beds for them. But whatever had
6 been there was no longer there. So, we had to go
7 rebuild it all.

8 Q So, that was one of the facilities that was
9 renovated and open that you managed?

10 A Yeah. Abughraib, we really liked that
11 facility for one reason, and that was it was really big.
12 It had been built by a German construction firm. It was
13 well designed and built. And the damage was repairable.
14 The downside to it, it was right on the edge of the
15 Sunii Triangle. And they were mortared every night.
16 But there were so many beds that once we tore out the
17 kitchen and rebuilt it and put in a hospital and those
18 things, when I left we actually cut the ribbon on it.
19 But it didn't have any inmates in it because we had --
20 all the locks hadn't arrived yet. And we were still
21 waiting for a shipment of locks. But, General Campbell
22 felt because our tour was up, he wanted us to be there
23 when they cut the ribbon even though there wasn't any
24 prisoners there. So, that came a month or so. I don't
25 know how long after we left they started putting

1 prisoners in it.

2 Q So, when did you leave there?

3 A September.

4 Q September 2003?

5 A 2003, yes. I had offered to go home, come
6 back and extend, but at that time they weren't doing
7 that. Then, later, they were. But I had gone ahead and
8 lined up a whole bunch of work thinking I could not do
9 that, so I never got back.

10 Q So, you say here that the Abughraib facility
11 was turned over to the US Army Military Intelligence
12 Unit?

13 A Right.

14 Q So, when was that?

15 A Well, I left in September. Lane McCarter
16 left, then General Campbell that we worked for, we all
17 left September -- there was a general over there who
18 since has been kicked out of the army, demoted, and then
19 had to leave by the name of Janis Carpinski. As soon as
20 I left, something we had refused to do before, because
21 of which money we were using to rebuild this place, they
22 had tent cities, we had the hardened facilities for the
23 government. She went ahead and turned over for housing
24 these military intelligence prisoners.

25 Also, a very professional unit out of Nevada,

1 the 72nd or 73rd MP Company followed home a month after
2 us. And they brought in a group from, I guess, Upper
3 Appalachia. And you saw the problems that were caused
4 there then a couple of months later. So, you know,
5 everything had changed. General Campbell was gone. I
6 was gone. Lane was gone. Our whole team was gone. And
7 now the military unit that provided security, they were
8 also gone. So, it was all brand new faces with the
9 exception of Carpinski.

10 Q So, when you were there, were there two
11 separate facilities, one to house Iraqi prisoners?

12 A Three. You are talking about in Abughraib?

13 Q Yes.

14 A Three. When I say first got there, there was
15 Camp Victory, which it was inside the walls, but it was
16 nothing more than concertino wire and dirt. By the time
17 I left, they had put tents in there and latrines. But
18 then they also opened another unit which they referred
19 to as IFs, interment facilities. Also, on the Abughraib
20 grounds, in a huge, huge area, you know, Abughraib is a
21 place, but in this case it was three separate places.
22 And the interment facility was built in units of 500.
23 You would have tents and support facilities also in
24 tents for 500 inmates at a time. I think at the time I
25 left there was somewhere between 2,000 and 2500 in Camp

1 Gancie -- G-a-n-c-i-e, if I remember the spelling
2 correctly. So, there were three facilities, three
3 operations going on simultaneously at Abughraib, a
4 prisoner of war camp, a IF facility unit, and then what
5 we were building for the Iraqi government.

6 Q What was the part that you were building
7 called?

8 A Just simply referred to it as Abughraib. But
9 it was the hardened facilities. It was the brick and
10 mortar.

11 Q So, is it your testimony that they moved, the
12 military intelligence unit moved into the brick and
13 mortar facility that you had participated in putting
14 together?

15 A Yes. Which my understanding was that they
16 weren't supposed to do that. That was money, you know,
17 came out of this plot which was to do things for the
18 Iraqi Government.

19 Q So, who were you funded by?

20 A We were funded by CPA. The military funded
21 the other two operations over there.

22 Q Have you given any presentations at
23 conferences about prisoner mail issues?

24 A Maybe a long time ago. I can't think of
25 anything in recent days that I have.

1 Q You don't remember anything particular in the
2 past?

3 A Well, what do you mean past?

4 Q You say a long time ago.

5 A Oh, back in the days when I was, you know,
6 working with NIC a lot, I did a lot of training at ACA
7 and whatnot. There could have been a program which
8 included that, among other things, that I have been
9 talking on. But I don't recall it being a specific
10 topic that I actually provided training on.

11 Q Did you give a presentation at the National
12 Sheriff's Association conference in Nashville this year
13 about prisoner mail issues?

14 A No.

15 Q Were you going to give a presentation there?

16 A Before the explosion, you mean?

17 Q Yes. What happened?

18 A Well, we were all sitting around having dinner
19 one night, about 9 o'clock. And there was a hellacious
20 explosion which took out about 75 yards of that big
21 hotel complex.

22 Q So, what was the presentation you were going
23 to give?

24 A The next day it was going to be on, basically,
25 the PLN issues. It was becoming a hot topic.

1 Q What do you mean by PLN issues?

2 A Well, publications. But PLN, there are a lot
3 of cases around the country, as you know, where PLN has
4 sued. You know, the DeWitt case, and a bunch of cases
5 up in Washington, Oregon. Pick a state. So, a lot of
6 attention was given to that. So, in fact, even then I
7 didn't know until I got to the conference I was speaking
8 on that. I thought I was speaking on use of force and
9 searches. But things had gotten juggled.

10 But, in any event, I would have been happy to
11 speak on it except the place blew up. So, they canceled
12 all the training programs which were due on that, I
13 believe it was a Wednesday. And we had a whole track of
14 training that was going to go on that was jail related.

15 Q What do you mean you thought you were speaking
16 about use of force?

17 A Well, when I originally talked to Tate
18 McCotter, he said, would you be willing to do a couple
19 of workshops? Sure. What do you want me to talk on?
20 He said, what do you want to do? I said, well, my
21 preference would be those two. He says, okay. We'll
22 work it out.

23 Q What do you mean those two?

24 A Oh, those two would be use of force and
25 searches. The Florence decision, I think, by then had

1 come down. In any event, when I got there, I had found
2 that Carrie Hill had wanted to do one of those topics.
3 They had requested different kinds. They just said,
4 would you mind doing that? No. That's fine. I don't
5 take lesson outlines to those national conferences
6 anyway, because you don't know how many people you are
7 going to have in your room. You could have 10. You
8 could have 210. And besides, I don't get paid to train
9 when I go there, so I'm not going to put out the money
10 to develop outlines. I simply stand up and talk based
11 on what I already know.

12 Q So, you didn't have any materials for that
13 discussion on --

14 A No. I probably wouldn't have anyway, not
15 knowing that I was going to be speaking on that. But I
16 didn't prepare any materials on the two topics I thought
17 I was going to teach either. Like I say, if you are not
18 being paid, you are just asked to come in and do a brief
19 workshop, or a couple of them --

20 Q So, what were you planning on talking about?

21 A Well, what would have been talked about was,
22 as I had worked it out in my mind, I would talk about,
23 first of all, what the First Amendment requires with
24 respect to being able to communicate with people in the
25 outside world, who people should be able to talk to.

1 Talk about the fact that others may want to communicate
2 with inmates and, perhaps, have an editorial interest
3 such as publishers.

4 Second would be, you know, how you screen
5 materials. Are you allowed to read it. Those kind of
6 things, third. Fourth, wherever we are at this point in
7 our discussion would be, if you are not going to allow
8 it in, what are the criteria that you can use, how you
9 avoid content based screening, and then how you go about
10 allowing appeals, usually the grievance process for
11 staff -- or inmates. And then written notice with
12 instructions to the sender, you know, the publisher, in
13 this case, you know, PLN or Time Magazine or whoever it
14 would be that may want to send something in.

15 Q So, those are all kind of general topics?

16 A Yeah.

17 Q Was it going to be specifically about PLN in
18 any way?

19 A PLN was the catalyst more than the star of the
20 show. I don't remember how they advertised it. My
21 guess is that would be one way to get people in there,
22 is to put PLN somewhere in your discussion, in your
23 description.

24 (Exhibit No. 3 was marked for identification.)

25

1 BY MR. THOMPSON:

2 Q So, for the record, this is a 5-page document.
3 It's not the whole conference program, but it was a
4 couple hundred pages. But this is the introductory
5 pages. And then on the page it describes this
6 discussion we have been having. Do you see that?

7 A Yes, I do.

8 Q On page 57, the program?

9 A Yes.

10 Q So, is that the presentation we have been
11 discussing?

12 A It is. Like I say, I didn't write this little
13 blurb here. But I would have talked about those things,
14 probably. But I would have started, you know, with the
15 more basic approach to it so there was a foundation
16 against which to apply anything I was going to be
17 talking to. So, we did talk First Amendment. We did
18 talk about rights to receive, rights to inspect and
19 review, all those things, and then got to PLN, since
20 that's also listed here.

21 Q What does it mean that PLN is trying to sucker
22 jail administrators into rejecting subscriptions to
23 their publication?

24 A Well, I didn't write that, so --

25 MS. STATON: Wait. Objection. Form and

1 foundation. Go ahead, Gary.

2 THE WITNESS: Okay. Like I say, I didn't
3 write that. I do know there's a general feeling among a
4 lot of administrators, and even some trainers, that PLN
5 puts out actually a pretty good product. I subscribe to
6 it. They had gotten to where they seem to be trying to
7 pursue litigation almost as much as publish. By that, I
8 mean calling jails and saying we are going to send a
9 whole bunch of free subscriptions into your jail,
10 knowing it would be a very difficult thing for jails to
11 accommodate that.

12 Now, suddenly knowing that you can't get
13 pornographic materials into a jail, putting ads for
14 porn, now, I don't think the ads themselves are a
15 problem, because there's nothing titillating about the
16 ad itself. But, a lot of jail commanders I have talked
17 to when I am doing training sessions around, or when I
18 am listening to Carrie Hill do a training session raise
19 that issue, you know, can't we keep it out because of
20 the ad? No. But the materials we can't have in the
21 jail, and turning materials away if they try to get them
22 in.

23 So, I'm sure that's why this was crafted in
24 the fashion that it was, is that PLN has become a very,
25 very important issue to jail commanders. They see all

1 these big awards. I think DeWitt was nearly \$600,000,
2 in attorneys fees, mostly. But there was somebody from
3 the state of Washington in one of the classes we did a
4 while back that said they had two or three cases there
5 with six figure awards. So, I know they are out there.
6 I see the awards listed periodically on the internet
7 when I am doing research on the PLN. So, it's not
8 surprising that that kind of rhetoric would be used by
9 the people who put these programs together.

10 Q So, do you agree with that statement that's
11 written here, that PLN seems to be trying to sucker jail
12 administrators into rejecting subscriptions to their
13 publication?

14 A I don't know if I would use the word "sucker,"
15 but I do think it's fair to infer that they are
16 encouraging people to turn down what they are offering.
17 You know, take Cache County, for example. They just
18 said there is no way we can handle all of that. I said,
19 well, I have already written your policy and procedures
20 on that. You don't have to worry about it. And you
21 have got subscriptions in the library. That's all that
22 matters. As long as you can get the materials to the
23 prisoners we weren't keeping PLN out, for example. We
24 were simply deciding how they would achieve access to
25 it. And so, we were ahead of the curve.

1 You know, I get called a lot on cases,
2 probably four or five times I can think of, where they
3 say we have been sued by PLN. Would you take the case?
4 I say, can I ask you a question upfront? Yes. Tell me
5 what your policy says with respect to publishers.
6 Because you win these kinds of cases at the front end,
7 not the back end. If you don't have the policies in
8 place, then it makes it tougher for you to deal with it.

9 Q What do you mean, what kind of policies?

10 A For example, take the case we are dealing
11 with. Pinal County did not have a policy at the time
12 the suit was filed that specifically provided a remedy
13 for the publisher. So, that's one of those cases where
14 if you didn't get at the front end, that's the policy
15 that provided for that. You already have an issue that
16 is going to be at best, incredibly difficult to defend.

17 Q Is there anything else about the Pinal County
18 policy here that fits that description of kind of
19 waiting too long and not handling it at the front end
20 that's caused a problem here, in your opinion?

21 A No. But if they had called me before --

22 MS. STATON: Excuse me. Let me just object to
23 the form. Go ahead, Gary.

24 A If they had called me in advance, prior to all
25 of this when the case was first filed, I would have made

1 the same observation then as I have with these other
2 individuals who have contacted me.

3 BY MR. THOMPSON:

4 Q What do you mean made the same observation?

5 A That you need to have in policy a remedy, an
6 appeal process for publishers who have a right to expect
7 that their editorial comments will be available to the
8 prisoners unless it meets a criteria based on safety,
9 security, order, discipline, whatever that would be a
10 legitimate penological interest.

11 Q So, is there anything else you would have
12 advised them before this litigation had been filed?

13 A Just on the basis of the phone call, probably
14 not.

15 Q Have you ever viewed their policy?

16 A If I reviewed their policies, I can't think of
17 anything off the top of my head. I'm sure we are going
18 to get into their policies at some point today. Then we
19 can look at that directly. But that would be the main
20 issue. That's the one that makes it tough to defend.

21 Q You said earlier that you thought it would be
22 fair to infer that PLN was encouraging correctional
23 facilities to not accept their terms. Is that your
24 opinion?

25 A At least not accept the materials in the

1 fashion they are provided. And the reason I say that is
2 not just some thought that's been bouncing around in my
3 head, but from being in training classes, talking to
4 jail and prison officials, you know, at conferences I
5 attend or speak at or whatever else. When PLN comes up,
6 that's one of the first things that we used -- when we
7 see somebody saying we are going to send all these
8 subscriptions in that have suddenly overburdened our
9 mail room, or when we see ads for materials the inmates
10 couldn't get sent to their cells anyway, that's the
11 impression that a lot of my fellow corrections
12 professionals have inferred from that.

13 Q I guess I'm trying to understand where PLN, in
14 your opinion, that PLN is encouraging the materials they
15 rejected. With respect to the ads, you are saying that
16 PLN may be including the ads so that the materials are
17 rejected?

18 A I'm telling you that's been something that's
19 been discussed among other corrections professionals
20 that I come in contact with on a very frequent basis.
21 PLN would probably be pleased to know how much they are
22 talked about in the system. Or not. But I can't speak
23 to exactly what PLN have in mind when they do that, so I
24 won't say what their intentions are. But I can tell you
25 that that is a very commonly held inference among many

1 of the people that I have talked to, or who have called
2 me with respect to, hey, we just got something in from
3 PLN demanding we do all these things, and include all
4 these subscriptions and so on.

5 Q So, you referenced a number of subscriptions.
6 I'm trying to understand how that fits in with your
7 statement about PLN encouraging jails who reject them.
8 Can you explain that?

9 A Well, again, I'm not going to say what their
10 intent is, okay, but in terms of how it's being
11 discussed nationally, if you have a mail room that is
12 already working somewhat near capacity, and they'll
13 assign a number of staff there that it takes to do that,
14 then, all of a sudden, you are starting to receive large
15 numbers of subscriptions that you have to process. And
16 you have to understand as well, jails only house
17 prisoners normally for a relatively short period of
18 time, which also then creates the problem of, what do I
19 do with the subscription after the inmate's gone? How
20 do we process that? Can we just throw it away? Do we
21 have to forward it? Where do we forward it to? There
22 are all kinds of problems that go with subscriptions.
23 And because of those issues, jail officials are
24 reluctant to accept subscriptions. Prisons, it's easy
25 for them. They have people for a long time. They can

1 do what they are going to do.

2 So, one of the things I have recommended, when
3 I have been asked, is that you can get around that by
4 putting subscriptions in your library. Then any
5 prisoner can check it out whenever he wants to. But all
6 we are talking about now is based on this blurb in here,
7 is, what are the impressions of PLN? I can tell you
8 that's a commonly held impression by any number of
9 people that I talk to around, at the conferences,
10 training programs, whatnot.

11 Q The impression is sending a quantity of
12 subscriptions so that they will be rejected?

13 A Yeah.

14 Q To try to overwhelm the mail room?

15 A Well, I don't think they care about, that's
16 their intent, overwhelming the mail room per se. But,
17 like I said, the impression, the inference that's being
18 drawn by any number of other people in the system is
19 that PLN does this to make it more likely they will
20 litigate.

21 You know, I share that opinion to some degree.
22 Like I say, I don't have anything to know what's going
23 on in the minds of those people at PLN. But that's
24 been -- when I ran the prison, for example, PLN came in.
25 Since that time, it was, I know by a director after me,

1 they stopped accepting it. And they got sued. And I
2 think they lost. But until somebody can explain to me
3 why every single, you know -- not every single
4 prisoner -- but a whole group of prisoners, many of who
5 may not be there by the time the first subscription
6 arrives, they are going to get free subscriptions, when
7 we can just as easily put it in the library and
8 negotiate that with PLN any time they wanted to, it does
9 certainly leave that inference hanging in the air.

10 Q So, you said you share that opinion to some
11 degree, that PLN is sending subscriptions in order to
12 pursue litigation; is that correct?

13 A Yeah. What I am basically saying is, I can
14 certainly see how people could arrive at that conclusion
15 or that inference. Because I have trouble figuring out
16 why they need a whole bunch of subscriptions if we are
17 more than willing to provide subscriptions through a
18 library, or why there would be ads for pornographic
19 materials which inmates couldn't receive anyway.

20 You know, if somebody in PLN said we do it for
21 these reasons, and they have any kind of logical
22 justification for that practice, then it might make more
23 sense to me. Right now, I just have trouble
24 understanding the why. And a lot of other people have
25 come to some pretty firm conclusions about that as they

1 have had to deal with some issues.

2 Q So, is that the opinion of people in Pinal
3 County that you have talked to?

4 A I don't recall talking about --

5 MS. STATON: Wait. Object to the form and
6 foundation.

7 THE WITNESS: We need to have this delay a
8 little quicker. Sorry.

9 MS. STATON: Yeah. I'm doing the best I can
10 here.

11 THE WITNESS: Yeah, I know. Okay. Could you
12 re-ask the question since I got us off track?

13 MR. THOMPSON: Can you read that back?

14 (Record read.)

15 A I don't remember addressing that specifically
16 with them. That conversation has been too long ago. I
17 just know it's a, like I said, a fairly common theme
18 across other jail people around the country that I deal
19 with on a fairly frequent and random basis.

20 BY MR. THOMPSON:

21 Q So, you don't remember talking to anybody at
22 Pinal County about why this litigation happened?

23 A No. I could -- if somebody corrected me that
24 I did, that would be fine. I just don't recall any such
25 conversation. My only concern, when I was talking to

1 Kimble and Montano on those interviews, was about how
2 they handled the publications, you know, the timeline
3 for when those things changed, what they remembered
4 about the process and why different changes took place.
5 I don't recall ever getting into any proposed inferences
6 with respect to why PLN does what they do.

7 Q Have you worked on other cases in which you
8 have worked for defendants who are being sued by PLN?

9 A Yes.

10 Q Which cases are those?

11 A PLN vs. Cheshire. That was a Cache County,
12 Utah case. I was called at the 11th hour when they
13 decided that they were not happy with their current
14 expert in DeWitt, PLN vs. DeWitt or PLN vs. Bertha
15 County, however it's captioned, and did write a quick
16 expert report there. And I was also contacted by PLN
17 vs. Columbia County. Initially, I wasn't going to take
18 it. Then I agreed. Then they decided they were going
19 to mediation. So, just short of shredding the file, I
20 got called back and asked if I would put an expert
21 report together.

22 Q So, are you drafting that report now?

23 A No. I told them that the timeline they had
24 was too short. I already told them what my schedule was
25 like, and they would to have to do without it.

1 Q So, you are not working on that case?

2 A Well, they haven't fired me yet. I don't
3 know. If they get an extension. And I don't know that
4 they have or if they are even trying. But if for some
5 reason I had time to do an adequate report for them. I
6 am not going to just change the caption on an expert
7 report I have already done and send it to them. But
8 right now, no. They called us recently as last week
9 again, seeing if there was anything I can do to knock
10 that out. And the answer was no.

11 Q How did you become involved in those PLN
12 cases? Did you know the attorneys?

13 A People called me. I did not know the
14 attorneys in DeWitt. I did not know the attorney in
15 Columbia. I did know previous, from other cases, Miss
16 Staton. And the attorney on the Cheshire case actually
17 used to work in my legal office when I ran the
18 Department of Corrections, so I knew him very well.
19 Frank Myler.

20 Q So, the attorneys in those cases all reached
21 out to you?

22 A Everybody did. You know, I certainly didn't
23 call Pinal County or, even though it was in my own
24 state, I didn't call Cache County. I am plenty busy. I
25 turn down probably about one out of every five or six

1 cases I get called on just for nothing more than I don't
2 have time or they have too tight of a requirement for
3 deliverables.

4 Q All right. Let's take a break.

5 (Whereupon, a brief recess was taken.)

6 BY MR. THOMPSON:

7 Q I want to move on to page 17 of your report.

8 A Okay.

9 Q So, the bottom paragraph, you say that
10 defendant's existing policies and procedures
11 unambiguously allowed approved publications to be
12 received for PCJ prisoners. In your opinion, what
13 constitutes a publication under defendants' policies,
14 you know, when this litigation was filed?

15 A In general it would be something that is sent
16 by a publisher, someone who publishes any sort of
17 document and then wants it to be sent in by subscription
18 or whatever other means by purchase. So, it could be a
19 magazine. It could be a newspaper. It could be PLN, of
20 course.

21 Q And why do you understand publications to be
22 defined that way?

23 A Because those are the things that normally are
24 being sent to jails that fall into that category. You
25 know, that's basically the way that jails, including

1 when I am writing, they may be defined as a publisher
2 publishes something and gets subscribed to and sent in.
3 We normally separate those from books. You know, even
4 though there's a publisher, obviously, for books as
5 well, but those are usually dealt with as a separate
6 issue.

7 Q So, when you refer to publications for
8 support, you are not referring to books?

9 A No. There's a very similar process for
10 reviewing them to see whether they can come in or not.
11 But there's a different, you know, process with respect
12 to what you do if you deny them. So, you know, there
13 are some differences. But the publications that we are
14 talking about in this context would be, you know,
15 magazines, documents such as PLN, anything that a
16 publisher sends in, some type of periodical, perhaps.
17 But it could be one or several issues of a periodical.

18 Q I just want to understand. So, when you talk
19 about publications here, you are not talking about
20 books; is that correct?

21 A No. They are a separate related issue. If I
22 don't allow a particular book in, we don't send to the
23 publisher and the author and everybody else an
24 opportunity to argue about that. But we do with
25 periodicals. We do with publications as I have

1 described them.

2 Q But book issues are not covered in your expert
3 report; is that correct?

4 A No. I don't think I wrote anything on books.
5 I wouldn't have intended to, because I didn't recall
6 being any -- I may have referenced library or something,
7 but --

8 Q So, if we go to the first opinion on page 18,
9 A-1.1 --

10 A Yes.

11 Q -- can you explain what you mean on the bottom
12 of page 18 when you say in the last paragraph, "Clark,
13 in his expert report, neither discusses nor seems to
14 understand that changes must be made in a deliberate,
15 thoughtful and effective manner." What do you mean by
16 that?

17 A Looking over Clark's background in his
18 material that he submitted, he's worked for the Bureau
19 of Prisons, sufficiently familiar with them or
20 Corrections Corporation of America, other large firms
21 that have facilities scattered about the country, that
22 there is, even though there may be some minor
23 differences from facility to facility, the core policy
24 and procedures tend to be the same. In fact, Bureau of
25 Prisons, I think, publishes theirs in the CRFs. In any

1 event, that's quite different. And he did not seem in
2 his report to give any attention to that. It's quite
3 different from coming in to a new operation where there
4 is no central theme where the operational philosophy,
5 the understanding of laws, where the organizational
6 structure is so much different than what you are going
7 to put into place. You know, reading his, then
8 wondering what he would have done. For example, when I
9 took over the Department of Corrections, where it was
10 really a horrible operation, what was there to rely
11 upon? You know, they didn't have anything in writing
12 that would have been terribly useful to us. We ended up
13 having to start from scratch. That process actually
14 took two or three years to get all of the basics of
15 policies in place. And we were starting, literally, the
16 first month we were there, writing them.

17 So, I did not think that Clark gave any
18 attention or had any interest in looking at what it
19 means to come into something totally fresh with nothing
20 in place, or very little in place, perhaps, that you
21 plan on keeping, that you want to take a bad situation
22 and make it good.

23 Q And what do you mean on page 18? You kind of
24 talk about this same issue in the second to last
25 paragraph on page 18 about, "I have had the experience

1 of completely reorganizing and changing existing
2 policies, procedures, practices and culture of the Utah
3 State Department of Corrections, and previous to that
4 the Salt Lake County Jail."

5 A Yes.

6 Q So, is that your understanding of what was
7 required here in Pinal County?

8 A Yes. For example, when I ran the Salt Lake
9 County Jail, they didn't have written policy and
10 procedures when I came down. When I took over the
11 Department of Corrections, they didn't have a policy
12 manual such. They had what they call letters of
13 instructions, which were a whole bunch of contradictory
14 memoranda and, you know, some cases, letters that were
15 stuck in one file that you could go through and see if
16 you could find anything that made any sense.

17 So, when we started looking at how we were
18 going to classify it, looking at the classification
19 system, it was not going to work the way we needed to
20 work it to work. They had no written prisoner
21 discipline process. They had already recently been sued
22 over their mail issues on how they were handling mail,
23 including attorney mail. So, basically, what we are
24 doing was not just starting from scratch, but changing
25 the culture, having to find people to put in place that

1 could actually make it happen. You can order all the
2 things you want at the top, but they don't hit the
3 bottom through the chain of command. So, we were
4 restructuring. I brought in a lot of folks from the
5 outside, because I found that a lot of the people I was
6 going to be working with were not capable of doing or
7 not willing to do what we needed to do to turn this
8 place around.

9 Q So, my question was, is that your
10 understanding of what the situation was in Pinal County
11 before this current administration came in?

12 A Very much so, yes.

13 Q Why do you think that?

14 A Because that came out of discussions that I
15 have had with the two individuals that I talked about.
16 And long before the suit was filed, I just remember in
17 casual conversation with Paul Babeu when he put on a
18 presentation in an NSA conference I was at. We talked
19 to him. How are things going? New sheriff. All that
20 sort of thing. And he said, Well, we are trying to
21 change, turn the whole thing around. I am not keeping
22 the same people at the top. I am bringing other people
23 in that have experience. I also know from talking to
24 Kimble and Montano in connection with this particular
25 case.

1 Q So, what is your understanding with what the
2 issues they had when they came in?

3 A They felt the operation itself was too loose.
4 That, perhaps, people were promoted to the top that
5 couldn't get the job done. They felt, you know, that
6 there were some policy and procedures that were outdated
7 or certainly not what they were going to be looking at.
8 I think I mentioned earlier one of the best grievance
9 policies I have seen, including better than some I have
10 written, is the one that they use there that Michele
11 Yusif and, I think, Montano put together. But I think
12 Michele Yusif did.

13 So, what they have been trying to do is
14 professionalize. You know, Kimble can rely on what he
15 knew from the Department of Corrections in Arizona and
16 Illinois. Montano, I think, had background, he told me
17 in Arizona. So, they were trying to pick and choose
18 from the various places they worked to see what would
19 work a heck of a lot better than was the case in Pinal
20 County. So, you know, that's the basis for what I
21 wrote.

22 Q So, did you know Sheriff Babeu before he
23 became sheriff of Pinal County?

24 A No. I only knew him after he got elected. He
25 had a very distinctive appearance, bald headed, and

1 young handsome fellow. So, when I saw him at the
2 conference, you know, National Sheriff's Conference, the
3 first time I ever talked to him, because he was doing a
4 presentation to one of the committees, I liked his
5 presentation. So, the next thing I talked to him about,
6 same thing, was would you like to come out and do a
7 presentation at our annual conference, which he agreed
8 to do.

9 Beyond that, if I see Paul at a conference, or
10 if I happen to run into him when I'm there doing a
11 training session, not the first one, but I did the last
12 one, then we say hello and talk like with any other
13 sheriff that I know.

14 Q So, when you come into a situation like you
15 described at Utah State Department of Corrections, what
16 are the most important steps to take to identify what
17 the problem areas are?

18 A Well, the first thing you do is, you have to
19 try to look at everything that's going on in the system.
20 So, you know, for example, I would go to the prisons
21 themselves. We had two of them at the time I got there.
22 Three at the time I left. And I talked first to the
23 administrators themselves to find out what their view
24 was of what they were doing, you know, what their
25 objectives and philosophies were, that kind of thing,

1 find out how much that was going to square with what I
2 wanted.

3 Also talked to supervisors to see how they
4 went about moving the messages up and down the chain of
5 command and what their own views were of the system. A
6 lot of them were very candid. Not all of them, as it
7 would turn out, were terribly competent, which was
8 another problem. And then spend time with line level
9 people, because you found out you have a somewhat
10 different message at each level of the system.

11 But I found that even making these
12 walk-arounds, you know, was not sufficient to know all
13 this stuff. So, I had something going for me, because I
14 had the resources that they do not have, for example, at
15 Pinal County. And that was I had an eight man or eight
16 person auditing unit plus support staff, secretaries and
17 whatnot that had been put in place by the legislature
18 slightly before I was hired to take the job.

19 So, I sat down with them. And I gave them
20 their marching orders. One of the things I need is, how
21 competent are my people? So, I need you to go into all
22 the training that's been done, which turned out to be
23 almost none; the personnel files, to see what kind of
24 discipline issues we are dealing with; performance
25 evaluations to see how they are being rated there. I

1 sadly found out a crappy system, had 93 percent of their
2 people that were rated as top level superior, which told
3 me a great deal about my supervisors who were rating
4 them. So, there were all kinds of things we did.

5 First of all, I had to find out who the
6 players were. Second thing is I had to become very
7 familiar with the physical plants, the different
8 facilities. The Oquirrh units, you know. I won't give
9 you all the names so you won't have to spell them. But
10 we have a number of different prison units at each site,
11 and so I wanted to see how they operated and see what we
12 were going to have to do differently, then look for
13 policy and procedures. Then had that very big
14 disappointment there.

15 Look at their training system. Found out what
16 training money they had went to train the high
17 executives at retreats and almost no training at all for
18 lower staff levels. And, at that time, there was no
19 training requirement under state law that really put
20 them under the gun. So, I went to the legislature to
21 get that changed.

22 Q So, like in Pinal County, how do you recommend
23 people go about implementing a training system?

24 A With respect to training, there is probably
25 two main things I would have them look to. Number one

1 is, what are the basic training requirements that will
2 provide you an understanding of the legal and
3 operational requirements for your facility. And there
4 are some standard models out there. In fact, even in
5 Arizona they have an academy system they can go through.
6 So, that's a good start. The other is to look at
7 developing training programs that are targeted. So, for
8 example, you know, obviously, SWAT teams are going to be
9 trained to the things that they do. If you are going to
10 have people responsible for investigating major
11 incidents, that they understand what laws they are
12 applying, use of force is different in the street, the
13 laws are different in the street than they are in a
14 jail. So, get those properly trained.

15 If you have people who are responsible for
16 prisoner discipline, are they up to speed on everything
17 that's now required are or they simply using old systems
18 they have used forever, which may be outdated under the
19 law.

20 Q Is there any particular training for mail room
21 staff that you would recommend to someone like Pinal
22 County?

23 A I didn't in this case. This was over with by
24 then. But what they had already told me was that after
25 they found out things were not going well, they

1 developed a training program on their own. And they had
2 the supervisors train the staff then as to what the
3 appropriate measures were that they should be taking.
4 So, where they had already done that and they weren't
5 asking me at this point, there was no need to, you know,
6 tell them to start training, they were already doing
7 that.

8 In my own mail room, since it was actually
9 part of one of the early lawsuits that had taken place
10 just both before I got there and another one right after
11 I arrived, it required going in, sitting down, having
12 them explain how they functioned, how they came to the
13 conclusions which things could be rejected and which
14 couldn't, why they were calling some things legal mail
15 one day and not legal mail the next and so on. So, once
16 we had had that opportunity, then simply put new
17 policies together and said this is how you function from
18 now on.

19 So, we did have mail room issues as well. And
20 once we got that together, we did it mostly by policy
21 and procedure, although, we did have a couple of
22 two-hour training programs to lay out the basics that
23 they needed to know. And I taught those personally.

24 Q When was this?

25 A 1985. You know, it was kind of a running

1 thing that went on. But 1985 was when the biggest part
2 of the explosion hit corrections when I arrived, where
3 we start making major changes in terms of how we did
4 business there.

5 Q When you are talking about kind of job
6 specific training, my question was whether mail room
7 staff are the type of staff that would generally get job
8 specific training in terms of what you recommend to
9 people?

10 A Yes. Yes. You know, if you've got people who
11 are going to be working only in the medical unit, I
12 don't need to train them in mail. If they are only
13 going to be in the mail room, I don't need to train them
14 on medical. That kind of thing. So, you want to have
15 training as nearly as possible job specific. Then you
16 can provide the general training as well. But if there
17 are specific things that you need your grievance people
18 or classification people or discipline people to know,
19 then they need to receive some training in that area.

20 Q You talked about going in and sitting in the
21 mail room, visiting with the staff?

22 A At the Department of Corrections?

23 Q At the Department of Corrections.

24 A Yes.

25 Q So, as you are advising sheriffs or jail

1 management, do you advise them to go visit the mail room
2 in any kind of --

3 A No. The reason that it jumped to the top of
4 my priority lists, ordinarily it would have been way
5 down the list, you know, important security issues, use
6 of force, you know, those things that keep the prison
7 secure and the inmates safe, staff safe would be the top
8 issues. But, as I mentioned, we had already had a mail
9 case just before and a mail case right after where we
10 had screwed up. So, that got my attention. You get
11 sued, that immediately changes your priorities very
12 quickly. So, that's what happened. Got that taken care
13 of went, back to our priority list.

14 Q So, this discussion in A-1.1 about
15 reorganizing and restructuring major organizations, is
16 that responding to something specifically in Mr. Clark's
17 report?

18 A In a sense, yes. Because, as I mentioned
19 before, in reading Clark's report, he was opining with
20 respect to things they should have done and so on
21 without being able to look at the environment in which
22 they worked. You know, I have tried to make a point
23 that different places through here that there's a big
24 difference between moving from one facility to another
25 in the Bureau of Prisons and then basing your opinions

1 on your experience in that regard and having to come
2 into a jail you have never been in before with policies
3 that are remarkably different than anything you have
4 seen before, I can take you to 10 jails and you can get
5 10 entirely different approaches to running it, because
6 sheriffs are elected, and they run it accordingly.

7 Q What's your experience with the Bureau of
8 Prisons that leads you to believe that underlies the
9 description of differences in a BOP and county jails
10 that you described in your report?

11 A For one thing, I had the opportunity to review
12 large numbers of their policies which they make
13 available. And it's not hard to do. And one of the
14 things I found in them is that those policies tend to be
15 written to be system wide. You can tweak a policy based
16 upon, you know, they have minimum security and maximum
17 security facilities and so on, but how they handle mail,
18 for example, is not going to change through the system.
19 How they handle prisoner discipline is going to be the
20 same, my experience, pretty much through the system.

21 In some of my training classes, we have had
22 Bureau of Prisons' personnel in there. In fact, back in
23 the, gosh, late '70s early '80s I did a training program
24 or two that were largely for or were heavily attended,
25 that would be a better way to put it, by Bureau of

1 Prisons' personnel. I have also been on speaking panels
2 from time to time with Bureau of Prisons' people. And
3 forgot his name now, but one of their attorneys that
4 handled a lot of the litigation for them. So, I had an
5 opportunity over the years to talk.

6 You know, and an analogy to that would be CCA,
7 Corrections Corporation of America, where they have
8 80,000 prisoners. If I am in Idaho or I'm in Arizona or
9 I'm in Michigan, or wherever I may be, if they have
10 facilities, there are certain commonalties that run
11 through it. Now, maybe who they contract with will
12 require very specific things separately, like they do in
13 Idaho. But they still maintain their own setup policies
14 and then adjust them to fit.

15 So, you know, it's just hard to, if you
16 haven't done it before, to see how much different it is
17 to walk into an environment, jails, plural, where there
18 is the commonalty of approach is not there at all
19 compared to what you would get in a big organization
20 that needs to have, you know, a common theme on how they
21 run things.

22 Q Okay. Can I point you to page 19 of the
23 report?

24 A Sure.

25 Q The last paragraph. Well, let me just give

1 you a minute to read that last paragraph.

2 A Okay.

3 Q So, that paragraph is talking about how long
4 it takes to write policies and procedures, correct?

5 A Right. A single policy, you can write in a
6 fairly short time. But to put together what you need
7 and go through the priorities that you need, that takes
8 a long time.

9 Q So, how does that relate to what your opinion
10 is about Pinal County? Do you have an opinion about the
11 policies, you know, or do you have some opinion about
12 how long it took them to write policies in Pinal County?
13 I am trying to understand how this is relevant to this
14 case.

15 MS. STATON: Hold it. Let me object to the
16 form of that question. A form objection. Go ahead,
17 Gary.

18 A Okay. I don't know exactly how long it took
19 them to write any policy or their policy as a whole, or
20 even if they are totally through it now. But, in
21 talking to them -- and, also, it seems like I got some
22 of that from Kimble's deposition, they had to
23 prioritize, which is the same thing I have done. What
24 are the policies we have to have the quickest? Which
25 are the ones that have the greatest impact on personal

1 safety, on institutional security and so on. And so,
2 what I am trying to make sure that whoever reads this
3 report understands is, that's not like turning on a
4 light switch. And, in fact, you start quickly writing
5 policies without understanding your system reasonably
6 well, then you are completely rewriting them later
7 because you screwed up one.

8 Q So, do you have any opinion about whether the
9 length of time it took them to write policies caused the
10 problems that happened that are the subject of this
11 litigation?

12 A Well, it certainly would contribute.

13 MS. STATON: Object to the form. Go ahead,
14 Gary.

15 A It would certainly contribute to them becoming
16 aware of any problems in the mail room, because if what
17 you are really focusing on, your primary intent is the
18 safety, security related policies and procedures or the
19 prisoner management things, such as discipline and
20 classification, which, you know, and supervision that
21 drive the system, obviously, you are going to put those
22 at the top. So, it would take longer for them to work
23 their way into doing a complete evaluation of the mail
24 room. Just like with lower priority policies when I was
25 writing, some of those don't get done until the second

1 year. But, on the other hand, they weren't causing us
2 problems. Mail probably wouldn't have got done with me
3 as quickly as it did but for a couple of lawsuits, one
4 before and one after I got there.

5 So, that's basically what I was trying to
6 point out, is, you can't flip a witch. To write
7 policies, you have to begin to understand, you know, the
8 organization. And if you think about it, Kimble, and
9 the sheriff are both new to the process. They are new
10 to the system. They are new to the sheriff's office.
11 Kimble came from outside, Montano and some others. So,
12 that provided that lack of institutional knowledge and
13 the need to become more acquainted with the system
14 before you start launching a whole bunch of policies.

15 BY MR. THOMPSON:

16 Q So, on page 21, having that opinion A-1.3, so
17 here you are saying, as I understand it, that, again,
18 you are saying to expect a perfect knowledge of all
19 constitutional and statutory law that defines prisoners'
20 rights is asking a lot.

21 A It is.

22 Q Are you saying that as a legal matter or as
23 a --

24 A As a practical matter. For example, we
25 stopped doing it now, but we used to do a pretest and a

1 posttest for our three-day training programs. You have
2 a lot of people with a lot of experience in jails, a lot
3 of administrators and supervisors. And they were
4 passing the tests that we provided them on legal
5 questions sometimes as low as 60 percent, and a high
6 mark might be in the 80s, low to mid 80s. That means
7 there's 60 to 15 percent of information you don't know
8 and you don't -- you know, I have always asked the
9 question when you start, how many of you spend 20 hours
10 a week in the law library, before I talk about where you
11 can get the information that you need.

12 That was one thing I was trying to point out.
13 It does not excuse not following clearly established
14 law. Okay? The fact that they didn't know that they
15 were supposed to send stuff to the publisher doesn't
16 mean, okay, you are exempt then. You still had to send
17 an appeal notice to the publisher. But what it does say
18 is, it's very hard to know all of that stuff. If you
19 notice the next page, I transitioned into the Prison
20 Litigation Reform Act where Congress tried to deal with
21 that by having a grievance process that prisoners,
22 unfortunately, not PLN, but prisoners had to go through
23 if they were suing to give us a chance to fix things.
24 That was a great way for people who can't have that
25 perfect knowledge of everything that's expected of them

1 to be able to fix it, you know, as Pinal County
2 ultimately did without having to litigate all these
3 things. Congress found that there was an easier way, a
4 more effective way to do things than simply litigate
5 them.

6 Q Is it your understanding here that no prisoner
7 alerted the jail to their inability to receive PLN?

8 A I don't know, to tell you the truth. I am
9 sure at some point when I read that I would have known
10 that. But I don't recall now. I apologize. I don't
11 know what specific notice. My guess isn't important, so
12 I won't try to.

13 Q Did you review any documents in which any
14 prisoners notified the jail that they were unable to get
15 PLN?

16 A You know, I may very well have. I don't
17 recall whether that was in the form of a grievance or --
18 I would say one of the problems with taking a number of
19 cases at the same time and then having this many 3-ring
20 binders full of information is you can't remember every
21 single thing you read. So, those things that were
22 important to the individual opinions I went back and
23 reviewed. But I can't tell you, as we sit here now,
24 whether I ever read any particular prisoner complaining
25 about PLN. If they did, who they complained to, whether

1 it was the mail room and it stayed there or whether it
2 was the sheriff or somebody else up the line.

3 Q So, this opinion A-1.3, is that responding to
4 something that Mr. Clark had opined about?

5 A It all is in the same basis that I talked
6 about the previous opinion, that, you know, again, from
7 a slightly different tack, Mr. Clark worked for a system
8 with enormous resources, a large legal staff, and people
9 who can vet policy and procedure when it's written
10 initially, and then get it out into the system. That
11 policy and procedures when a law changes take place, get
12 it out of the system. Mr. Clark would not have to be a
13 lawyer because his organization is well staffed with
14 those kinds of folks.

15 So, one of the things I was trying to point
16 out, or two things, actually, from that opinion. One
17 is, that just simply electing somebody or hiring
18 somebody doesn't make them a constitutional expert,
19 number one. And number two, that Congress, somewhat in
20 recognition of that, required everything to go through a
21 grievance system. Mr. Clark's organization, prior to
22 PLN, the courts already required theirs to go through
23 the grievance system because they had a court approved
24 grievance system. So, you went through that before you
25 could sue. They had that benefit for years. Now, with

1 PLRA, which has been around, I think since '95, '96,
2 that extended to everybody, but it only applies to the
3 prison you are suing, is my understanding. So, it
4 wouldn't have required PLN, I guess, to go through that
5 process, at least not to my awareness.

6 Q You were talking about vetting policies. What
7 is your understanding about whether the mail policies at
8 issue in this litigation were vetted by anyone outside
9 the jail?

10 A I'm sure that they were not. If they had
11 been, I'm sure they would have told me about that. In
12 fact, Kimble said the first thing that he really knew
13 about the mail policies is an issue is when they were
14 sued. So, I would be very surprised if he could testify
15 accordingly when he had some outside expert come in and
16 evaluate it.

17 Q So, in opinion A-1.5 on page 22 --

18 A Sure. Looks like we skipped 1.4.

19 Q I don't think there is an A-1.4.

20 A No. I misnumbered them.

21 Q In A-1.5 --

22 A Yes.

23 Q -- what is your understanding of how Chief
24 Kimble and Commander Montano learned about the problems
25 in the mail room?

1 A They got sued by PLN in the incident case.

2 Q So, is it your understanding they had no
3 previous awareness that newspapers and magazines were
4 not being allowed?

5 A That's my understanding.

6 Q And what's your understanding, from speaking
7 to them, about what they did once they learned about the
8 lawsuit?

9 A What I was told, I believe by both of them,
10 but for sure Kimble, was that once they did that they
11 looked at their written policies as they were, trying to
12 figure out exactly what they were required to do, then
13 over time, published a series of policies 4.5 to resolve
14 that. I think the first policy they published may not
15 have -- I can't remember whether it had the procedures
16 for appeal the way they are now. But what they have
17 tried to do is just keep fixing that policy, moving it
18 forward to where they thought it needed to be, again,
19 similar to the approach that I have recommended with
20 people, write it, review it, write it, review it.

21 Q So, is it your understanding that they were
22 revising the policy before this litigation was filed or
23 only after?

24 A My understanding was that they were revising
25 it after. I think, I don't remember the words he used,

1 but it seemed like Kimble had said something to the
2 order that that was not on his radar, or that was not
3 his high priority at the time, that he was working on
4 bigger issues when the suit came down.

5 Q So, if this new administration had put forth a
6 mail policy before this litigation was filed, would that
7 change any of your opinions?

8 A Well, it might. But they already had a policy
9 that you had to accept publications that was established
10 before the lawsuit was ever filed. And, yet, the people
11 in the mail room weren't following that policy. So,
12 would it have helped? Hopefully so, but, under that you
13 can lead a horse to water thing. You can have a policy,
14 which they had clearly in place, with reference after
15 reference after reference to publications being
16 accepted, and they still didn't.

17 Q What do you recommend to jail management when
18 they implement a new written policy? What do you
19 recommend they do to make sure it's followed through?

20 A First thing, to make sure that staff read it
21 and have continued access to it. The second is that
22 they put a training/orientation session together so that
23 they can explain the new policy, explain where the
24 changes have occurred, and instruct staff that they will
25 be enforcing the policy from hereafter now that it's in

1 place. And, you know, if you are talking about
2 something like a mail room and that the whole issue has
3 to do with publications, it's not a long training
4 program. Here's what we consider publications to be.
5 Here's how you receive them. Here's the criteria for
6 determining whether they can or can not be accepted.
7 And here is the procedures that you will implement to
8 ensure that the sender and the receiver both have their
9 opportunity to challenge your decision, and that you
10 will not be making those decisions in the mail room.
11 The decision will go up to the chief deputy or to a
12 commander or captain, somebody of higher rank than the
13 people that made the original decision. So, that's
14 basically what would go into the training.

15 Q In A-1.6, you talk about Chief Kimble becoming
16 aware of the misapplication of the policy?

17 A Yes.

18 Q And so, what is your understanding of what the
19 mail room staff misunderstood or misapplied?

20 A Well, what they were misapplying is the policy
21 itself, because the policy did not prohibit
22 publications, newspapers or publications. So, my
23 understanding is, although the policy was in existence
24 they were not following it. In fact, I know from
25 looking at some of the depositions of the people in the

1 mail room that Sergeant Martinez or Kuykendall or other
2 unnamed persons told them when they came in it was a
3 progressive knowledge, if you will, knowledge in
4 italics, upon which they were relying on this
5 institutional history. So, that's what they were
6 relying on rather than somebody saying maybe I should
7 look at the policy.

8 Q And why, in your opinion, were they relying on
9 that progressive history?

10 MS. STATON: Wait. Objection to form. Object
11 to the form of the question. Foundation.

12 A Well, that would not be terribly unusual.
13 Across the board, one of the things that I find I have
14 to do in my training a lot is -- well, when I am talking
15 about writing policy, for example, rationale statements.
16 Why? Why do we have this policy? If we are going to
17 have a policy of opening inmate mail, or we are going to
18 have a policy of reading inmate mail, why? It has to
19 serve some legitimate penological interest. Or there
20 has to be some legal requirement for it. Or somebody
21 has to come up with a damn good reason why we should be
22 doing it. So, there needs to be a stated and understood
23 rationale for what you are doing. I kind of lost part
24 of your question. Am I at all --

25

1 BY MR. THOMPSON:

2 Q My question is, why do you think the staff was
3 relying on --

4 A Right. In that process, in doing that
5 training, I ask people, where did you get your policy
6 manual from? Most of them don't know. But when you
7 finally get to somebody who does, or when you are doing
8 a technical assistance assignment or doing a jail
9 review, it usually is, well, it came out of the ACL
10 manual, which is not a good place. That's how the
11 county next door does. We borrowed their manual to
12 write ours. Or, it's conventional wisdom, it just
13 seemed like a good idea at the time without realizing
14 the courts, or even state statues may have a different
15 view of how you should be handling it.

16 Q What's your understanding of where the mail
17 policies at issue here came from?

18 A Prior administrations. That seemed fairly
19 clear from the depositions of the mail room officers I
20 read.

21 Q But the mail policies that were drafted under
22 this administration, it is your understanding those were
23 drafted from scratch by the jail management or was there
24 some template that they were using?

25 A You know, that's a question I should have

1 asked but did not.

2 MS. STATON: Let me object. Object on form
3 and foundation. Go ahead.

4 A I don't know where that first policy signed by
5 Kimble came from, how he put that together. It wasn't a
6 question I asked nor was it information volunteered.

7 BY MR. THOMPSON:

8 Q Do you suggest that jail staff use a
9 particular template when starting, say, a new mail
10 policy? I mean, you described a couple of things you
11 think are maybe not a good idea, which is the ACA, the
12 jail next door, conventional wisdom. Is there anything
13 you do recommend people use to draft a mail policy?

14 A Yeah. Legal requirements, for starters. You
15 know, this wouldn't be an issue if they had met all the
16 legal requirements. We would not be sitting here now.
17 So, that's the first thing. What is required by the
18 constitutions or statutes of the United States or your
19 home state in this case, Arizona, that would be the
20 first thing.

21 The other is then to take those policies and
22 tailor them to the manpower, the philosophical approach
23 that you want to take. You may have a right to read
24 mail, but maybe you don't want to. All those kinds of
25 things. So, you stand between the ditches, so to speak,

1 tailor that to fit how you choose to operate your own
2 facility. But first thing I recommend people look at is
3 the legal requirements and then validate or vett their
4 policies accordingly if they already exist, or write
5 them originally, keeping those things at the front of
6 the parade.

7 Q So, Opinion A-1.7 on page 23, where you say
8 that the mail room practices began prior to election of
9 Sheriff Babeu and Chief Kimble. What's the relevance of
10 that to this case?

11 A Only that they did have something in place
12 that caused the people in the mail room to believe they
13 were properly handling the mail. So, taking that
14 information and looking at those depositions, you know,
15 it provides an explanation, not an excuse, but an
16 explanation for why they were handling things the way
17 they did.

18 Q Circling back to my previous questions about
19 your process for gathering information, so when you met
20 with Chief Kimble and Commander Montano, you took
21 written notes, correct?

22 A Yes.

23 Q How many pages are we talking about?

24 A There weren't that many, because there weren't
25 that many questions. There might have been two or three

1 pages, two pages, probably, of, and this is just
2 guessing, but mostly what I was concerned about was, you
3 know, how the matter was being currently handled, how
4 they discovered it. I had already read, of course, by
5 that time much of the case, so I was verifying some
6 information somewhat. But it didn't require an awful
7 lot of notes.

8 Q What did they tell you? You said you were
9 asking how the matter was being currently handled? So,
10 how did they tell you about what they were doing in
11 August that --

12 A What they were doing when I had that
13 discussion?

14 Q Yes.

15 A They believed that they had finally fixed the
16 problem, because they had plugged in the missing pieces
17 of that. Then, in terms of enforcing compliance, they
18 had had training sessions with the individuals involved,
19 had the supervisors participate in that training so that
20 the message was coming from the horse's mouth, so to
21 speak, the people who would be supervising the mail room
22 would also be participating in the training.

23 And then, from that time on, using that,
24 basically, that AARMS system, that would become an issue
25 that they would check to see that it remained current.

1 Q So, how is that being tracked in the AARMS
2 system?

3 A Well, on the AARMS system, you know, policy is
4 clearly there. And when you have an outside auditor
5 come in, the outside auditor can then, especially
6 knowing this is an existing problem, or a previous
7 problem, I should say, not existing, check to make sure
8 the mail staff is indeed handling things the way they
9 were supposed to. But the primary things they did was
10 change the policy, provide the training. Those were the
11 two critical issues. Then a third would be irrespective
12 of how they went about choosing to enforce it that they
13 did, you know, that they made sure that that was
14 continuing to, or move forward now that they have
15 retrained them.

16 Q So, I'm trying to understand what your
17 understanding is about how they are enforcing it. What
18 are they doing now, to your knowledge?

19 A Well, they, for the most part, put the onus
20 back on the individual supervisors. They have a
21 responsibility, if they want to remain supervisors, to
22 supervise. But my understanding was the onus for
23 ensuring the policy would be followed would be relying
24 on the supervisors who now know the new policy for sure,
25 who participated in the training and are now going to be

1 the ones that oversee that group of folks. So, they
2 will also be the ones that evaluate, do performance
3 evaluations and so on. So, they are the proper people
4 to assign that responsibility to. And that's my
5 understanding of how they did it.

6 Q And is it your understanding that mail
7 practices are being tracked through the AARMS system?

8 A Only in a general way. The individual, you
9 know, the AARMS system's probably not looking over
10 anybody's shoulder, obviously, except when the inspector
11 comes in, then the inspector would talk to staff, would
12 look at any documentation they might have on how they
13 function. But since any outside inspection is going to
14 be, you know, wide intervals, really, the onus falls to
15 them to do it themselves. And they can internally audit
16 themselves. That's the main purpose for having the
17 AARMS system was requiring internal auditing. And they
18 then can go in, yeah, we know our policies are in place,
19 we know this, this and this, but periodically check to
20 make sure it's being followed.

21 Q So, is your opinion in this case based on any
22 knowledge about whether there has been any AARMS
23 inspection related to the mail room recently?

24 A There had been AARMS inspection, but I don't
25 know if it was related to the mail room per se. I don't

1 have an opinion as to what impact the AARMS system has
2 had or necessarily will have. The real impact is going
3 to be from the self-audit portion of that system where
4 the administration and supervisors determine how they
5 are going to ensure that that is enforced.

6 Q But your opinion is not based on any knowledge
7 of whether or how they are using, whether or not Pinal
8 County is using the self-audit system; is that right?

9 A No. No. That's kind of a side issue. The
10 primary way you should do that is, because that's not
11 specifically what AARMS would be looking at, is through
12 your supervisors and then you supervising your
13 supervisors.

14 Q And on page 24, on the end of the first
15 paragraph, I just want to ask you about the last
16 sentence. What do you mean by the practice of denying
17 publications was not a policy adopted by all these
18 people?

19 A Well, the last policy that was written before
20 the suit was filed was clear that these publications
21 were allowed in. That was the one that was changed on
22 July 8th, 2010, and then became effective on July 18th,
23 2010. So, the policy was in place at the time the suit
24 was filed. So, when I say the practice of denying
25 publications was not a policy adopted by Sheriff Babeu,

1 Deputy Kimble or the commanders, that's what I mean.
2 Kimble had signed a policy that was in existence prior
3 to the lawsuit being filed, which has reference after
4 reference to allowing those things in.

5 MR. THOMPSON: Okay. Let's take a break.
6 Half hour?

7 MS. STATON: Yeah. I would like a mini script
8 only. I don't want the full size so it's four pages to
9 a side, one side only. All exhibits attached plus an
10 E-Tran.

11 (Whereupon, a lunch recess was taken.)

12 BY MR. THOMPSON:

13 Q So, I want to ask you about opinion A-2.1 on
14 page 24 about evaluating the credibility of witnesses.

15 A Yes.

16 Q What is the basis for that opinion?

17 A Well, my understanding is that the credibility
18 of witnesses is a jury question. So, I try to avoid
19 anything I write of saying somebody is or is not
20 credible. I might look at facts that are contrary to an
21 opinion, or something of that order, and call those into
22 question. But I'm not going to say at any point that
23 Mr. Clark or a particular witness is not credible.
24 That's, my understanding, is a jury question. That's
25 all that means.

1 Q So, as a legal matter, you are saying you
2 think it's a jury question?

3 A Right.

4 Q Okay. On page 25, A-2.2, can you explain why
5 Mr. Clark's experience at the BOP does not assist him in
6 understanding the operation of a county jail?

7 A It may assist him in understanding the
8 operation of the county jail, but it does not, in my
9 judgment, since he hasn't had the experience of running
10 county jails or having to deal with the fact that every
11 county jail is unique and operates with a separate set
12 of policies, philosophies and whatnot, that he has the
13 same background to make that evaluation, or, even as a
14 good one, for example, where Kimble does, where Kimble's
15 worked in different procedures, all in entirely
16 different systems. It's an experiential thing.

17 Q Sorry. I didn't understand the last part
18 where you said about comparing them to Kimble. Can you
19 explain?

20 A Yeah. For example, Kimble has worked in
21 Illinois Department of Corrections. So, that was a
22 system independent on its own. Then he went to Arizona,
23 quite a different system, different philosophy of
24 operation, different policies, different procedures,
25 different requirements. And then he was asked to come

1 to Pinal County, which is now a big switch, is no longer
2 in a prison system with its resources, and prison
3 systems have more resources than jails, generally.

4 Now, he's had to take on yet another entirely
5 different approach to running a corrections facility.

6 And each time he moves from one to another, the quality
7 of the agency that he's going to, and the quality of
8 their policies, the manner in which they function is
9 going to be quite different and, in this case, a
10 substantial drop in terms of how well an organization
11 was running before they got there.

12 Q So, you are drawing a distinction between,
13 like, a system of correctional facilities and a single
14 kind of jail facility like we have in Pinal County here,
15 is that what I am understanding?

16 A Well, perhaps I'm not explaining myself
17 clearly. Basically, what I am trying to say is, that if
18 Clark, you know, he's a corrections professional. He's
19 got a very decent background. I don't question that in
20 the slightest. But he has not had to insert himself
21 into an independent jail system at any time in his
22 career or move from one entirely different system to
23 another. You know, he's been able to, enviably, stay
24 within the same umbrella of the Bureau of Prisons. I
25 don't think very many people appreciate the degree of

1 difference among jails even in the same state in terms
2 of how they function and how an elected official brands
3 what he's doing in his own way.

4 So, it would have been much more helpful, I
5 suppose, if Mr. Clark had that background. But he seems
6 to be, in my judgment, and he references the Bureau of
7 Prisons from time to time, he seems to be coming at
8 things from his experience in that well funded, well
9 ordered, heavily resourced, great legal team approach to
10 running a facility. And then you just move within that
11 system, pick up on the mild differences between the
12 facilities and go on.

13 Q So, you have referenced a couple times the
14 difference in resources between the BOP and the Pinal
15 County Jail. Can you explain why that's relevant here?

16 A It's huge. If you have people who are, as the
17 Bureau of Prisons does, who are steeped in, trained in,
18 are constantly involved in dealing with corrections law
19 issues, then you've got people who can provide the
20 necessary information to people who do the manual
21 writing. If you have people who can put the manuals
22 together and make sure that everything that's written is
23 in a similar format is consistent with what the basic
24 needs, objectives, and mission of the agency are, then,
25 you know, you have a great step up on anybody else. But

1 that's not what happens when you move from prison system
2 to prison system to jail system, as was the case with
3 Kimble. The first two are a substantial difference.
4 Then the move to the third one was a huge difference.
5 And jails don't run the same as prisons. Their
6 classifications systems have to be different by
7 necessity. Prisons receive their, well, receive
8 prisoners from jails. They come with presentence
9 investigation reports, so we know all about their
10 background, those kinds of things.

11 Jails get whoever comes in off the street.
12 You could have somebody that's wanted in nine states for
13 murder, and if they only shoplifted at the 7-Eleven, you
14 don't know that about them. So, classification, intake
15 procedures, how well do you know the people that are
16 working for you? There is a variety of differences from
17 jails and prisons. And these are things that Kimble
18 would had to have begin to learn and master as he moved
19 from prison systems into the unique nature of jails.

20 Q So, if you look on page 26 of your report in
21 the bottom of the first paragraph, the last sentence of
22 that paragraph says, "And in the latter assignment,
23 Kimble was responsible for undertaking the daunting task
24 of reorganizing and redirecting the operation,
25 management, policies and culture of that jail."

1 A Yes.

2 Q So, what is your understanding of how Chief
3 Kimble is responsible for reorganizing the operation of
4 the jail?

5 A Where did I get that information?

6 Q Yes.

7 A I got it from him that that was the task he
8 was given by Sheriff Babeu. That particular jail was
9 not running at the level they believed it should have.
10 That there were things that were known before they got
11 there, I don't know what all those things might be, that
12 the facility was not one of the better operations in the
13 state. But, for whatever reason, they determined the
14 direction had to change. And then that requires
15 evaluating, doing all the things we have talked about
16 before.

17 Q So, were there specific issues that they were
18 aware they needed to solve?

19 A Undoubtedly. But he didn't get into what
20 those individually were.

21 Q And what do you mean by that he was
22 responsible for reorganizing and redirecting the
23 policies?

24 A Well, that's what the sheriff asked him to do,
25 is reorganize the entire operation. When you do that,

1 you can't leave the policies behind, obviously, because
2 the policies are what document what you are doing
3 differently. They document what you are requiring and
4 how you require it to be done. So, as you make changes,
5 as you evaluate the need for change, you have to also
6 make a part of that being changing policies and
7 providing training to implement the policies.

8 Q So, is there anything in particular about the
9 policies of Pinal County that he explained to you to be
10 re-organized?

11 A He didn't talk about any specific policy. He
12 just talked in general about how much they believed
13 changes had to take place in order to have this be a
14 quality facility.

15 Q And what's your understanding of why their
16 culture needed to be reorganized?

17 A Well, culture, generally, deals with, when we
18 talk about it in the terms that I am, has to do with how
19 people view their responsibilities, their job, how they
20 view the function at the jail, all of those things
21 independent of necessarily particular policies or
22 procedures. In this instance, well, as we see in this
23 particular case, there, apparently, is not a lot of
24 follow-up in terms of whether policy and procedures are
25 accurate, whether there was an inadequate amount of

1 training, that the things they were doing at various
2 levels in the jail may not comport with the legal
3 requirements. So, you had, you know, to make sure that
4 security, make sure that a variety of things that they
5 considered to be high priority items got dealt with
6 quickly. But when you are changing -- maybe a better
7 way to discuss it is to look at what I found myself
8 going into the Utah State Prison system.

9 Basically, it had been run by people who had
10 an entirely different approach. Security and safety
11 were not the big issues. It was the more touchy, feely
12 social work aspect of things. Those are the people that
13 I replaced. When you talk about changing the culture
14 there, they looked at everything differently. So,
15 whether it's a more modest change or a big change, you
16 still have to alter the culture. And the process is
17 writing policies, training and supervising and letting
18 people know where things are changing and what you
19 expect of them.

20 Q So, when you talk about policies and
21 procedures not being adequate, not having an adequate
22 amount of training, are you referring to what happened
23 in the previous administration of Pinal County?

24 A Yes. It's something that we have already
25 talked about in my deposition, is how they got their

1 information on what is the policy of the facility. And
2 that was, well, it was just passed on from one
3 individual to the next as opposed to having those things
4 dealt with in policy and training, you know. So, you
5 know, that's basically what I am referring to is that if
6 that's the administrative approach, if that's the
7 administrative culture, you know, that everything's
8 running fine, so why worry about it, we'll worry about
9 things when they go wrong, that's something that needs
10 to change. And that's what they were trying to do. But
11 they were setting their priorities in areas that they
12 considered it to be more important, as Kimble explained
13 it to me.

14 Q Okay. On page 26, opinion A-2.3, I am having
15 a little trouble following what you are saying here.
16 Can you read that and try to explain to me?

17 A From the beginning to the end?

18 Q Just the opinion part. That one sentence.

19 A Okay. It's my opinion that Clark's rush to
20 brush aside as not credible the failure of so-called low
21 level staff to forward any questions regarding what the
22 correct policy was regarding magazines, newspapers and
23 pamphlets is wrong. In his opinion, if you recall, he
24 writes about administrative staff incorrectly blaming
25 lower level staff for what happened. And, you know, if

1 they had questions about what policy was, they had the
2 opportunity to ask them. And so, this is basically
3 referring to his opinion in that regard, that he
4 discounted and strongly opined against the
5 administration saying they should have told us if they
6 had any questions about this, we did not know that they
7 were not following policy, that they had misinterpreted
8 the policy. I don't know how much it was
9 misinterpretation and how much wasn't even -- it wasn't
10 even being referenced, because the language is pretty
11 clear that we do accept publications.

12 Q So, it says above that is not credible, the
13 failure of so-called lower level staff. You are not
14 saying that lower level staff did forward questions?

15 A Right. What I am saying is, the extent the
16 opinion that he was giving, that, essentially, it was
17 the administration's fault and that low level staff
18 can't be blamed for any of this, and I am paraphrasing
19 what he said, of course, I don't think that was
20 credible, you know, the action, or the opinion, I should
21 say, was not credible in light of the facts that are out
22 there.

23 Q So, I just want to clarify. I think you said
24 this earlier, but is it your opinion that Chief Kimble
25 and the jail commanders were not aware of the mail room

1 staff practice of denying newspapers and magazines?

2 A That's my understanding from what I have read
3 and from my discussions with both Kimble and Montano.

4 Q And is your opinion that that lack of
5 knowledge on their part was reasonable?

6 A Well, in light of the frame of reference that
7 I applied, that when you come into a new system, and
8 you've got several hundred things to change, or a
9 hundred things to change, you know, number 99 on the
10 list, you know, you can't learn everything at once. You
11 can't know everything that's happening at once. It's a
12 system that runs 24/7. And there's all kinds of things
13 going on. So, I think that it's absolutely reasonable
14 for them to approach it in the way that they did, by
15 setting priorities and trying to resolve those
16 priorities as they went. And, especially where you have
17 a grievance capability of what, under ordinary
18 circumstances, where if there's a problem, that staff,
19 or prisoners, I should say, could bring to the attention
20 of their concerns, and they get a chance to fix it
21 before litigation is filed. Second, in this case the
22 litigation came from outside, which makes that
23 problematic for them.

24 But there's any number of things, I would say,
25 in any jail in the country, and probably any facility

1 that I have ever run, clearly, there are things that go
2 on that I don't know about, and things that any
3 administrator is going to be surprised exist. But all
4 you can do is continue to push forward to find out as
5 much as you can, when these things come up, deal with
6 them.

7 Q So, if I'm understanding you correctly, you
8 are saying it's reasonable that their lack of
9 acknowledgment was reasonable in the mail room, was
10 reasonable because they weren't prioritizing the most
11 important issues, and so it's reasonable that they
12 hadn't gotten to that issue yet; is that correct?

13 A Yes. And it's also reasonable --

14 MS. STATON: Wait. Wait. Object to the form
15 of that question. Now go ahead, Gary.

16 A The reasonableness would also be based upon
17 the fact that they can't be all places at all times. At
18 some point in time, if you have this many things to do,
19 you can't do them all by flipping a light switch. So,
20 that's why I said it's reasonable. It's reasonable to
21 adopt an approach where you try to prioritize the most
22 important issues, those issues that involve life,
23 safety, those issues that involve serious security
24 concerns, supervision of inmates, meeting the basic
25 essentials of life for prisoners. Then, as you move

1 through that priority list, hopefully, you get to mail
2 before it becomes a problem.

3 In this case, that was not true. But they
4 then did what they had to do. They went ahead,
5 determined that the change was needed, made it, then
6 conducted training to implement it. So, the approach is
7 not unreasonable.

8 Q On page 27, your opinion A-2.4, it's your
9 opinion that mail room staff misunderstood the written
10 publications, policies and procedures. Why do you think
11 they misunderstood the written policies and procedures?

12 A For two reasons. One, they were relying on
13 passed down information. And, secondly, it doesn't
14 appear anybody bothered to read the policies where the
15 language was very clear that publications are allowed.
16 Reference after reference after reference to how you
17 accept, how you turn away, the whole issue of the
18 acceptance of publications.

19 Q And what do you advise jail staff on how to
20 avoid this problem of relying on oral histories?

21 A Well, I tell you only what I have done. And
22 it does crop up in my training. When I took over the
23 Department of Corrections, we rewrote policies. We also
24 put out tests on each policy. At any given time, a
25 supervisor would be required to administer a test which

1 I decided was the appropriate one, you know, this
2 policy, that policy. And then we found out how much
3 their people knew about it. That's one way. There's a
4 variety of ways to do it. One is to appoint competent
5 supervisors, give them their marching orders, and let
6 them know they have to meet their supervisory
7 responsibilities, which include, in this case, the mail,
8 and to enforce policies if they want to continue to be
9 supervisors.

10 You know, the problem with delegation, and the
11 only way we can run an operation is through delegation,
12 you have to depend on the quality of the people to whom
13 you delegate. And that's not always everything you
14 might like it to be. You have to depend on the chain of
15 command for the information that flow up and down. It's
16 an imperfect approach that you have to delegate. And,
17 yet, it's essential. And it's the only way you can run
18 things. So, those of us who live in that environment
19 simply put things in place and then deal with the
20 problems that flow out of it anyway.

21 Cognitive skills of individuals, motivation of
22 individuals, attention to detail of individuals all play
23 into that. And there is no way it's ever going to
24 change because we staff jails with human beings, not
25 robots.

1 Q On page 28, in opinion A-2.5, in paragraph A
2 you talk about the difference between policies and
3 procedures and practices.

4 A Yes.

5 Q So, what is your opinion here about policy 4.5
6 that you have referenced in your report? Is that, in
7 your understanding, a policy or a procedure?

8 A It's both. It's a policy, which is what we
9 want you to do. And it's a procedure, which means how
10 we want you to implement it. So, it's both.

11 Q And when you train jail staff, do you usually
12 have two separate documents, a policy document and a
13 procedure document, or do you have one document?

14 A I recommend you have one document so you don't
15 have to go look in two places. Start out the chapter
16 with here are policy statements, and then you can finish
17 with procedures. And you may, within a single policy,
18 have two or three sections where you repeat that
19 process. In this section of this particular policy, you
20 know, one might talk about reading mail. One might talk
21 about screening mail. One might talk about rejecting
22 mail. But in each one of those sections you'll have
23 what our policy is, then the procedures of how you carry
24 it out, but all in the same document, I recommend.

25 Q Then in paragraph B you talk about official

1 practices versus unofficial practices.

2 A Yes.

3 Q Can you explain the difference between those
4 two?

5 A Yes. This is an area I had a strong
6 disagreement with Mr. Clark. He talked about there was
7 an official practice. And that was not to accept it.
8 Well, what's official is what's written. What's
9 official is what has been adopted. And what's official
10 is what Kimble affixed his signature to. That's
11 official. A practice, irrespective of what a policy or
12 procedure may be, is simply how people actually perform.
13 So, in this case, you have a policy and procedure
14 Chapter 4.5, that say, publication, publication,
15 publication, publication. Then you have a practice
16 which they were engaged in, which was to avoid allowing
17 those things to come in. So, practice is different than
18 procedure.

19 Practice is different than policy. They can
20 be the same if you have a written policy and procedure,
21 and the practice carries that out. Then the practice
22 becomes official at that point. But you can not have,
23 as Clark has said in his expert report, an official
24 practice when it's never been blessed, if you will, by
25 the administration, and where it is clearly, clearly

1 contrary to what has already been written, signed and
2 was in place before the lawsuit was filed.

3 Q So, you are saying official practice can't
4 exist if it's contrary to the procedure?

5 A No. A practice can exist, but not an official
6 practice.

7 Q Correct.

8 A Because the only thing that's official is what
9 the agency and the responsible authority have deemed to
10 be how we are -- what we want and how we are going to do
11 it. So, you know, practices can become official, I
12 guess, if you want to attach that word to them, once
13 they become in alignment with what the official policies
14 and procedures require.

15 Q And if jail management was aware of a
16 practice, but it was contrary to what was written down
17 in the policy, would you consider that an official
18 practice?

19 A I'm not sure I understood the question. Can
20 you try again?

21 Q If jail management were aware of a practice,
22 and it was contrary to what was in the written policy,
23 would you consider that an official practice?

24 A Arguably so. If they --

25 MS. STATON: Let me object. Let me object to

1 form and foundation. Go ahead.

2 A Arguably so. If they have full knowledge that
3 this is what's going on and are basically just saying,
4 oh, hell, we don't have time to change our written
5 policy and procedures, let's just leave it there, they
6 are doing it the way we want it done, so why bother
7 ourselves with changing policy, then they have probably,
8 by omission, created an official practice. But that
9 would require actual knowledge of how things were done
10 and a reasonably conscious decision to let it continue
11 on.

12 BY MR. THOMPSON:

13 Q Okay. So, let's move on to the actual written
14 policy.

15 (Exhibit No. 4 was marked for identification.)

16 BY MR. THOMPSON:

17 Q This is the January 31st, 2010 policy.

18 A Okay. Take a second to look at it. Okay. I
19 haven't read it all, but I have read enough to get a
20 sense of what's there.

21 Q Okay. So, you say in your opinion B-1.1 that
22 it was the official policy of the PCJ to permit
23 publications to be received by prisoners?

24 A Yes. The time the lawsuit was filed, that was
25 the case.

1 Q So, I asked you this earlier, in general, but
2 in relation to this specific policy, do you understand
3 publications refer to newspapers and magazines and
4 books?

5 A Yes.

6 Q So, you think it include books?

7 A Yeah. Individual policies, individual
8 agencies can choose to list those any way they want. In
9 policies I have written, I have separated books from,
10 basically, what you might call periodicals or
11 subscription items. Because the way that you review
12 them is different. And the way that the law applies to
13 them are somewhat different. So, it's not that they are
14 not published. As I mentioned earlier in my testimony,
15 they are published, but we don't have to notify the
16 author and the book publishing company that this
17 particular book is not on our list of allowed books.
18 So, it's not that it's not a publication. It's simply I
19 like separating them in the policies and procedures so
20 that we group like things together.

21 Q So, what in this policy, in the Pinal County
22 policy makes it clear to you that publications refers to
23 newspapers and magazines and books?

24 A Let me go back to what I was looking at here
25 until I find it. Okay. The first thing they talk about

1 at 4.5.6 on publications. All publications are subject
2 to screening and review. If you are not going to accept
3 them, there's no reason to screen them or review them.
4 You just send them back where they came from.

5 Q My question is, how do you know how
6 publication is defined?

7 A Oh. Let's see. Let me move to the front.
8 They have a definitions section. See if they have it in
9 there. They don't. They don't define it there. So, it
10 could be defined the way I defined it or it could be
11 different. In this case, if they talk about books in
12 the same context, then they would be defining it
13 somewhat differently than I do. And that's not a
14 problem. It just simply means we define it differently.
15 But books weren't an issue in this particular case, so I
16 didn't worry about books.

17 Q Do you see on page PCS038 of this policy on
18 Exhibit 4 in 4.5.6.2?

19 A Yes.

20 Q What do you understand recognized publisher,
21 distributor or authorized retailer to mean?

22 A It's not defined, so I couldn't tell you. For
23 sure, obviously, the publisher and the distributor,
24 which -- ordinarily, what I certainly write in policy is
25 the publisher and book clubs. Those are the two hardest

1 things to manipulate. Distributors could mean book
2 stores. It could mean Ebay, I suppose. And that, I
3 would not agree with. For example, when you are talking
4 about book stores, here in St. George there used to be a
5 book store called the Avalet. A very close friend of
6 mine and a law abiding woman happened to mention to me
7 when we were having coffee over there one day that she
8 buys books for friends at the Texas Department of
9 Corrections prisons, and then she takes a bunch of books
10 she's read and includes them, and then they mail them
11 all off at once. So, she didn't realize she was
12 violating the policies and procedures of the Texas
13 prison system, nor did the bookstore. And she was not
14 nefarious. She didn't have hacksaw blades and drugs in
15 those books. But the point is, it's very easy to
16 manipulate. If you know someone who owns a book store
17 and is willing to do that for you, that's very easy to
18 do. You buy a book and insert what you need to, hide
19 things in the binding where they are hard to get.

20 One of the reasons why, especially hard-bound
21 books need to come from those sources, is because they
22 are incredibly difficult to search. You can slide
23 needles into the hard bindings. You can do all kinds of
24 things.

25 Q So, this policy of January 2010, why do you

1 think that after 18 months of this policy being in place
2 the mail room staff still misunderstood it, in your
3 opinion? This lawsuit was filed in September of 2011,
4 correct?

5 A Right. As I said before, I can't explain why
6 mail room people didn't bother to read policy, so I
7 don't have an answer to your question specifically as
8 you have asked it. I can only say that the policy
9 allowed it. It was in place. A series of policies
10 after this continued to allow publications and went
11 further in their discussions. And, still, they didn't
12 read it. So, I don't know why. That's a question best
13 asked in deposition to one of them.

14 Q Do you see on the first page of this policy,
15 it says in the top right-hand corner that it supersedes
16 the April 5th, 2005 policy?

17 A I do.

18 Q Did you review the April 5th, 2005 policy?

19 A No. Didn't consider it necessary to what I
20 was opining on.

21 Q Why is that?

22 A Well, because that policy was no longer valid,
23 and that it had already been replaced a couple of times,
24 at least, by the time the suit was filed. So, I'm more
25 concerned about what the policies were that were in

1 place at the time that the suit was filed. And, you
2 know, in future cases, that's how I would look at it
3 unless there was some overriding reason to go back and
4 do a historical review, you know, back to the beginnings
5 of the jail.

6 Q So, do you know whether newspapers and
7 magazines were allowed under that April 5, 2005 policy?

8 A I don't know it under policy. I only know
9 what people testified to in their depositions, that they
10 were relying on word passed on to what the policy was.
11 So, where that came from, whether that was in that
12 earlier addition, I couldn't tell you. It's just why
13 they did it, I don't know. I can only tell you they
14 didn't do what they were supposed to do, and that was
15 relate their responsibilities back to what was written
16 in policy.

17 Q So, if someone came to you and said they were
18 putting in place a new policy like this one in Exhibit 4
19 to allow newspapers and magazines for the first time,
20 what would you advise them as to how to implement that
21 policy? What steps would you take?

22 A Well, the first thing -- to implement the
23 policy or to write the policy?

24 Q Implement the policy.

25 A Follow it. Here's the policy. Here's what it

1 says to do. Do you have any questions? We'll give you
2 an hour. Give them an hour or two orientation or
3 training class. And then, when it's through, here's the
4 policy. You have heard the explanations. It's your job
5 to carry it out. So, at that point, the way you
6 implement it, when that's what you are dealing with, is
7 to make sure that they understand they are supposed to
8 follow it. Now -- well, that answered the question.

9 Q So, the orientation that you described, would
10 that be for mail room staff or for all officers at a
11 jail?

12 A It would only be for officers in the jail who
13 in some way had to deal with the mail. Now, the mail
14 room policy, as written, may also talk about how it gets
15 handed off, for example, to staff from the mail room to
16 get from that to individual prisoners. So, in that
17 case, yes, you would provide training at least on those
18 portions of the policy that were germane to the duties
19 of those other persons.

20 Q And what would you do to make sure that that
21 policy was being implemented?

22 A Well, we have gone over this several times.
23 But the main way that you do that is you assign
24 competent supervisory staff who understands the policy
25 to be present in the mail room on a daily basis to make

1 sure it happens. And, certainly, another thing that you
2 do is you notify your grievance staff if they are
3 getting grievances on people not being provided the
4 publications that they were entitled to, that the
5 grievance officers know to bring that to your attention.
6 So, you know, there's a variety of ways that might take
7 place.

8 Q Okay. I want to mark the expert report of
9 John Clark as Exhibit 5.

10 (Exhibit No. 5 was marked for identification.)

11 BY MR. THOMPSON:

12 Q I want to turn your attention to page 12 of
13 his report.

14 A Okay.

15 Q Do you see those bullet points in paragraph --

16 A I see the bullet points to which you are
17 referring, yes.

18 Q So, do you disagree with Mr. Clark on that
19 those steps should have been taken?

20 A To some degree.

21 Q Which ones do you disagree with?

22 A Well, obviously, the first one changed the
23 policy. That's good. Change the inmate handbook,
24 obviously, at some point, that should be done as well.
25 The policy writers and handbook writers might be two

1 different groups of people, so that may potentially fall
2 between the cracks. I was thinking of my own operation
3 and saw where that could potentially have happened.
4 But, yes, you should change the handbook. Change the
5 website. Heck, I wouldn't have known I had anything on
6 my website about that. That's one area that I'm not
7 sure if policy writers would ever think about. It would
8 be something you should probably do, yes. But did it
9 have any effect on how staff operated? Did the handbook
10 have any effect on how the staff operated? I guess my
11 disagreement is only to the extent that these apply to
12 this particular case. And the handbook had nothing to
13 do, nor did the website have anything to do with what
14 they were doing.

15 The other thing is promulgating the new policy
16 through brief announcements and locations generally
17 visible to all the prisoner population, such as bulletin
18 boards in housing areas. Well, there's an awful lot of
19 policies we write, including the mail policies, that we
20 don't want them to have access to. We will let them
21 have access to information included in there, some
22 limited information, but the security procedures and
23 other kinds of things dealing with mail we would never
24 want the inmates to have. So, if what he was saying --
25 it says the new policy, it doesn't say portions of the

1 new policy or the fact that we are now accepting
2 publications. He says "promulgate the new policy
3 through brief announcements and locations visible to all
4 prisoner population." So, I am not entirely sure what
5 he means there, but if he means they should have the
6 policy, they shouldn't. It should not be on their
7 bulletin board. For one thing, the bulletin board would
8 be awfully thick. The second, you just don't want them
9 to have all that information.

10 Q Sure. So, you disagree with promulgating or
11 putting actual policy on the bulletin board, but if by
12 brief announcements he meant a short summary of the
13 policy, do you disagree with that?

14 A No. If all he was intending to do was, say,
15 on a prisoner bulletin board or announcement or
16 whatever, we just changed the policy, I don't have a
17 problem with that. You can now get publications. Sure.
18 That's fine.

19 Q I think we just talked about that. But to
20 clarify, you don't disagree with that that says ensure
21 the jail staff are trained on the new policy?

22 A Oh, no. Quite the opposite. I think that was
23 well stated. You know, and the other couple of things
24 that I talked about aren't bad things to do. In fact,
25 they are very good things to do. But it just doesn't

1 have much to do with how the mail room operates.

2 Q I want to clarify. On page 13 of his report,
3 he talks about jail staff members not being aware of a
4 policy to change -- of the policy changed to allow
5 newspapers or magazines. I think you said this before.
6 I want to clarify. You don't have any opinion on why
7 they were unaware, right? You said you didn't know; is
8 that right?

9 A That's right. I did bring up the fact that
10 someone testified why they were doing it the way they
11 did. But beyond that, no.

12 Q Okay. And do you have any opinion on why, as
13 it says on page 13, the inmates reported that
14 correctional officers had told them that newspapers and
15 magazines were not allowed? Do you have any opinion why
16 they might have been told that?

17 A No.

18 Q On page 31 of your report, opinion B-1.3, you
19 talk about the jail adopted a process of routinely
20 updating policies and procedures?

21 A Yes.

22 Q And then, in the basis for opinion, you talk
23 about you know what that process of updating was. Can
24 you explain what your opinion is about how they were
25 routinely updating policies and procedures?

1 A Well, obviously, the one policy came out prior
2 to the lawsuit which allowed publications but did not
3 have a specific requirement with regard to how to deal
4 with publishers and how they can appeal the process.
5 So, once they got sued, they found out that was
6 necessary to change.

7 They also deal, I know, with ICE prisoners and
8 others. So, I know that I have seen within their policy
9 and procedures they have several places where they have
10 to make exception for ICE prisoners. So, that,
11 obviously, plays into it when those started appearing in
12 the policy and procedures.

13 I think I mentioned early on that when I do
14 train with respect to policy and procedures, I tell
15 folks to review an update on a constant basis. That's
16 what they were trying to do. It doesn't have to be a
17 major constitutional violation that you are facing. You
18 just find that what we are doing could be done better in
19 a different way, or we now have a different client on
20 board like ICE or the marshal service that needs these
21 things done somewhat differently. Or we are finding out
22 that inmates are complaining about something and, quite
23 frankly, it's legitimate, so, we'll change it.

24 So, there is an endless number of reasons why
25 you update. But I noticed that they have done so. And

1 there were updates even after the initial policy drafted
2 following the lawsuit.

3 Q So, is it your opinion about this, just based
4 on seeing the different mail policies, or was there
5 something that Chief Kimble told you that leads you to
6 believe that they have a process of routinely updating
7 the policies?

8 A Combination of the two.

9 Q So, what is it that he told you?

10 A Just that they continued to update their
11 policies. Not just mail room policies, but all the
12 policies that they find. You know, when you come in,
13 and you are having to move as quickly as possible,
14 something I'm quite familiar with, you'll find that the
15 stuff you put together to get it out quickly, after
16 further consideration could have been better written,
17 could have been more clear in its explanations. Any
18 number of things. So, when you then have the time
19 you've gotten through most of your priorities, you fix
20 that. Or, when it's called to your attention, even if
21 you haven't got to it, there's a variety of ways you put
22 yourself in a position of changing things. But I don't
23 recall exactly how we discussed it, only that we did
24 discuss his ongoing process of trying to keep these
25 policies up to snuff.

1 Q And do you have anything on the jail's
2 practices for implementing new written policies?

3 A Well, the only one that I am directly familiar
4 with -- well, actually, that's not true. There's two
5 that I am somewhat familiar with. One would be the mail
6 room. And there was testimony that I picked up from
7 depositions of staff. And then, also, discussions, I
8 suspect, with Kimble. I can't remember that precisely
9 at this moment, of what they did to implement it. That
10 was provide the new policy, to provide a training
11 program, have the supervisors who were key to the
12 process participate in the training.

13 The only other one I can think of that I have
14 been familiar with where they went through that process,
15 and I happen to know about it, were the grievance
16 policies. That's because I was so impressed with their
17 grievance policies that I sat down and talked to those
18 that were involved and went through that process with
19 them and ended up asking Nicole to come actually train
20 for us.

21 Q So, on page 32, you list five different
22 policies. I just want to clarify. The only policy
23 about which you are expressing an opinion about how it
24 was implemented is the policy after this lawsuit was
25 filed, right?

1 A Well, yes. Although, I do reference the
2 failure to implement that one aspect of things in the
3 previous policy. So, one plays off the other,
4 obviously.

5 Q Okay. But you don't have any opinion about
6 whether what they did to implement these 2010 and early
7 2011 policies was adequate or not?

8 A The only thing that I asked about was how they
9 implemented the policy changes period. And I don't
10 recall asking them, did you repeat that process exactly
11 each time this thing went out? If there were only minor
12 changes, they probably didn't do anything except call it
13 to the attention of their supervisors. But I'm only
14 saying that because that's how I would do it, and that's
15 how it would normally be done.

16 When you have major change, that's when he was
17 talking to me about how they went ahead and fixed the
18 problem that got them into trouble.

19 Q The policy change after the lawsuit was filed?

20 A Right.

21 Q Okay. B-1.4 on page 32, you talk about the
22 process for appeal which you referenced a couple times
23 earlier today?

24 A Yes.

25 Q My question is, what's the basis for your

1 opinion about the need for an appeal process? Is it a
2 legal opinion or opinion about what is good corrections
3 practice or both?

4 A Well, certainly it's good corrections
5 practices. But I base it even more on the supreme
6 courts recognizing that it was necessary. And that was
7 based on the fact, if you don't mind my talking about my
8 impressions of what the court has said, that the
9 publisher had a right to have the editorial content
10 received by others. And unless there was content that
11 affect safety, security, order, discipline, you know,
12 that sort of thing, no, you couldn't keep it out.

13 Q So, why do you say it's good correction
14 practice?

15 A Well, it's good corrections practice because
16 there's a certain amount of follow-through then that's
17 necessary on any decisions that you make. And it also
18 documents decisions. If all do is throw the item away
19 or, say, you know, put another stamp on this and send it
20 back, the process doesn't get documented. So, I think
21 it's good corrections practice, because now that you
22 have the responsibility to give both the prisoner and
23 the publisher their day in court, so to speak, you have
24 one documented in the grievance system, and you've got
25 one documented in whatever logs or files that you

1 contain that information.

2 Q Why is that documentation helpful?

3 A Well, it's very helpful because of situations
4 like that we are in right now, number one. It's also
5 very helpful because if you have that documentation
6 available, then you've got something for Kimble and his
7 supervisors to review. What was it to review? You
8 know, if you just send it back and there is no notation
9 made, there's no documentation that occurs as to what
10 happened. So, it's a nice way to leave the
11 administration, maybe even your supervisors in the dark
12 if there's no requirement that you document. And so,
13 the documentation becomes automatic with either the
14 grievance system or the publisher's appeal.

15 Q So, in opinion B-2.1, about the handbook, you
16 say on page 33 that Clark's reliance on the handbook
17 language was mistaken. Why do you think it's mistaken?

18 A Well, because it had nothing to do with how
19 the mail room operated. The handbook did not have to be
20 distributed to the mail room. It had to be distributed
21 to the prisoners. And since the prisoners didn't work
22 in the mail room, the prisoners didn't, you know,
23 process mail, then it was -- might be useful to them,
24 but it wouldn't have any impact on the mail room besides
25 not reading their own policies and procedures, why would

1 they read the handbook.

2 Q You don't think the prisoners' understanding
3 of the policy as described in the handbook would have
4 any effect on whether the jail might receive notice that
5 the policy's not being followed?

6 A Potentially so. My experience with prisoners,
7 if they are unhappy, whether it's a matter of policy or
8 matter of practice, if they are unhappy with what they
9 are doing, and they have a grievance system available to
10 them that allows them to grieve it, they are more
11 concerned about getting the item to the attention of the
12 people who may or may not do something about it rather
13 than concerning themselves with whether a practice and
14 policy are in perfect alignment. So, I would be
15 surprised that there are many, if any, prisoners that
16 would say, oh, heavens, I can't file a grievance because
17 it says right here that this is their policy. If you've
18 got their policy, you can grieve their policy. So, I
19 don't see how that had any effect on the prisoners.
20 There might be somebody that looks at that and decides
21 not to, I suppose, but I don't think so.

22 Q And so, when you ran the Salt Lake County
23 Jail, did you have an inmate handbook at that point?

24 A Yeah. Actually, we did. We did.

25 Q So, did you, I guess in that situation, or in

1 other situations, have you drafted inmate handbooks
2 before?

3 A Yes.

4 Q And do you give jail management any training
5 or recommendation as to how an inmate handbook should be
6 revised?

7 A No. To tell you the truth, I never give them
8 any advice like that. The only thing we had in our own
9 system is when policies changed. There was a list of --
10 it was called a distribution list. And I believe, but
11 would not want to testify under oath that I am
12 absolutely sure, that the handbook was on that list.

13 Q What do you mean by the handbook was on the
14 list?

15 A The distribution list. What we provided to
16 the prisoners was two things: One was the handbook.
17 What they relied on the most, however, was what we
18 called the resource manual, prisoner resource manual.
19 And I don't necessarily recommend others do this. In
20 fact, sometimes I recommend they don't. What we would
21 do is take our actual policy and procedures on certain
22 key issues, eliminate those pages that had things that
23 inmates should not see, and redact other things. Then
24 they had our policies minus those that they were not
25 allowed to have. That made it a lot easier than going

1 back to change handbooks, because as we wrote a new
2 policy on the distribution list, the redacted policy of
3 this will go in the resource handbook. So, you had a
4 book in each of the living areas that they could
5 reference.

6 Q I just want to clarify what you were saying
7 with the distribution list. You are saying that the
8 person who is responsible for updating the handbook was
9 on the distribution list?

10 A What I am saying, I believe so, but I would
11 not want to testify absolutely that that was true. Pam
12 Elliot, I recall, was the name of the person who handled
13 policy and procedures. We did have a distribution list
14 for her. And it would have been logical to assume it
15 would have been. But I don't recall for sure that it
16 was.

17 Q And what's your experience as to how often
18 prisoners rely on and review an inmate handbook in jail
19 facilities?

20 A I have no idea.

21 MS. STATON: I am objecting to form and
22 foundation.

23 A Okay. The answer remains the same. I have no
24 idea. I have never done a study and asked them how many
25 times a week they do or don't reference these things.

1 BY MR. THOMPSON:

2 Q I mean, is it important to document, in your
3 opinion, for setting rules for prisoners?

4 A Well, the handbook serves, it's most important
5 purpose is the inmates use it properly, is to understand
6 how they file a medical request, how they do, how they
7 do, how they do. It's mostly a book of how to do. And
8 then the other things are prohibited. These are the
9 things that you either can not do or must do in order to
10 avoid being disciplined. So, those are the purposes it
11 serves. One is to constrain conduct or define
12 appropriate and inappropriate conduct. And the other is
13 to provide information to prisoners on how they access
14 various services in systems. I don't know exactly how
15 it's approached in Pinal County.

16 Q When you do training for jail management
17 staff, do you address how to use the inmate handbook or
18 what to put in it or anything like that?

19 A I don't recall ever having done a training
20 program where I have taught about the handbook. It's
21 entirely possible at some point it's come up. But it's
22 not in my lesson outline, certainly. I do talk about
23 prisoner orientation. Then there's, you know, you can
24 do it however you want to.

25

1 Q So, when you talk about prisoner orientation,
2 is there any training you give about how to involve a
3 handbook in that orientation?

4 A No. I have written policies on it, but I
5 haven't actually -- well, that's not true, now that I
6 think about it. It does come up in training when we are
7 talking about admission processes. And that is that you
8 need to have some means of notifying prisoners about the
9 things that I just talked about. You know, the Los
10 Angeles County Jail, for example, has a major production
11 on screen, you know, in English and one in Spanish. And
12 people who speak Farsi, or some other language, can have
13 a telephone on their ear while they lay out a lengthy
14 explanation. Then you are told if you have questions,
15 ask.

16 A lot of times handbooks become what the Sears
17 Catalog used to be in the old days in an outdoor toilet,
18 something that's used for scratch paper, used for
19 purposes unintended. I know when I first put the
20 handbooks out in the Salt Lake County Jail, for example,
21 we put them up on the wall, and half of them were torn
22 up the next day. So, then we put them on and said, you
23 need to know this is your ticket to have the television
24 on. If you want the television on, let us know that by
25 having these on the wall. If you decide you don't want

1 to watch television for the next 30 days, tear these up.

2 Then they stayed up.

3 The Department of Corrections, we relied much
4 more. I think we still had a handbook. I know we had a
5 handbook, but we relied much more on this resource
6 manual because it had much more information on it.

7 Q Okay. Let's take a break.

8 (Whereupon, a brief recess was taken.)

9 BY MR. THOMPSON:

10 Q Do you have an opinion about whether prisoner
11 mail rules should be on a jail's website?

12 A I suppose they are useful to people who are
13 writing in, but I don't recall that we ever had ours on
14 a website. So, no, I don't have an opinion of that
15 type.

16 Q Do you do any training now on, you know, what
17 jail rules or practices should be on a website open to
18 the public?

19 A No. I don't think the word "website" has come
20 up in my training in all the time I have been doing it.

21 Q And do you have an opinion on whether the
22 information on the jail's website in this case would
23 have affected the problems at the jail in terms of
24 rejecting newspapers and magazines?

25 A Not at all. Like I said --

1 MS. STATON: Hold it. Let me object to the
2 form and foundation.

3 A Not at all. Mail staff -- or, excuse me --
4 yeah, the mail room staff was not going to go to the
5 website to see what they ought to do if they really
6 wanted to know written signed policy and procedures.
7 And I doubt PLN checks websites before they send their
8 stuff out. They send it out all over. Jails get it all
9 the time. They are going to send it. And they are
10 going to expect the jails to deal with it appropriately.
11 So, the website, I think, is a total nonstarter in this.

12 Q I want to clarify. I was asking if you have
13 an opinion on whether or not the website affected a
14 problem here. And your answer was not at all. And you
15 do have an opinion you don't think it had any impact on
16 the rejection of newspapers and magazines?

17 A Yeah. When I said not at all, that is my
18 opinion.

19 Q Okay. Moving to Section C of your report on
20 page 34.

21 A Yes.

22 Q So, is it your understanding that the jail
23 previously had a policy that limited mail to post cards
24 and one-page letters?

25 A Yes.

1 Q And is it your understanding, did the jail
2 previously have a policy which limited incoming mail to
3 postcards only?

4 A Since the postcards was not on the table, I
5 read it, but I can't tell you exactly what was in there.
6 I know that they had a postcard in one page. As I
7 recall, I thought perhaps the one page actually made
8 their defense of the postcards more difficult. But
9 that's all. I don't recall. Since I wasn't asked to
10 opine on it I became vaguely familiar with it, and it
11 would be inappropriate for me to opine much about that.

12 Q You say, in your opinion C-1.1, the changes
13 made have adequately addressed the issues in this
14 litigation. So, can you explain what that opinion is
15 based on?

16 A Pretty much everything we have talked about so
17 far. If the issue is that they are not providing
18 adequate due process to publishers, and they now have a
19 policy that requires them to do so, and they have a
20 process that has to be followed, if they had a policy
21 that didn't even allow publications to come in and
22 that's now been addressed, not just through policy, but
23 now through training and stricter oversight, that's what
24 that refers to.

25 Q So, is that based on a written policy you

1 reviewed?

2 A Based on written policy and discussions with
3 the two officials that I have referred to, Montano and
4 Kimble.

5 Q What do you mean, in subsection (c) of C-1.1,
6 that any question about allowing publications were not
7 resolved?

8 A Point me to where that is. Oh, I see it.
9 Yeah, there should no longer be -- I mean, the policies
10 have now addressed the topic. There should be no
11 question in anybody's mind that publications are
12 allowed. There should be no doubt in anybody's mind
13 that due process is required through the grievance
14 system for prisoners and through the mails with an
15 appropriate opportunity for appeal for the publisher.
16 So, I'm not sure what there is left to resolve.

17 Q Was there something in the updated policy that
18 specifically clarified the issue for you? And I can
19 show you --

20 A Yes.

21 Q -- the policy, if that's helpful.

22 A Well, I can't remember exactly where
23 everything appears in all the policies. But let me look
24 at them one at a time until I find what I am looking
25 for.

1 Q Sure.

2 (Exhibit No. 6 was marked for identification.)

3 BY MR. THOMPSON:

4 Q So, this is the November 20th, 2011 policy,
5 which was the first policy that followed the lawsuit.

6 A Okay. Let me just quickly move through it.

7 Okay. There's two places where it discusses it,
8 actually. The first, if I can refind it. The first
9 starts at Mail Refusal, 4.58. And the general statement
10 procedures with respect to mail refusal, they deal with
11 the issue for inmates and also for the publisher. And
12 at 4.5.8.5, any publication or other mail is rejected if
13 any publication or other mail is rejected. The sender
14 shall also be notified in writing of the reason the mail
15 was rejected and the process for informally appealing
16 the rejection.

17 Then it goes on 4.5.8.6. If the sender wants
18 to appeal the denial of the publication, the challenge
19 shall be forwarded to the chief deputy within seven
20 working days of the sender receiving the notification of
21 denied mail. Then it goes on from there about what he
22 will do. Also, if you move to 4.5.13, where the policy
23 discusses publication review process --

24 Q Sorry. Can you clarify what number? 4.5. --

25 A 4.5.13.

1 Q Okay.

2 A Let me see what I am looking for now there.

3 Okay. Moving on down the page at 4.5.13.5, notification
4 of denied mail form shall be completed and sent to the
5 inmate and sender of the affected publication. And
6 then, of course, that would refer back to what they have
7 already talked about. So, it appears both in the
8 general mail, and it also appears -- general incoming
9 mail, and it also appears in the publication review
10 process.

11 Q So, in reference to your statement about any
12 question about allowing approved publications is now
13 resolved?

14 A To me, yes, it is.

15 Q So, the two sections you just pointed me to
16 were about notifications of denied mail, right?

17 A Right. To both inmates and to the publisher.

18 Q So, what in the publication leads you to
19 believe that the question about allowing publications at
20 all is resolved?

21 A Well, that was resolved even before the
22 lawsuit. If you look on page 29 of my report, there's
23 an exhaustive list of the issues with respect to
24 allowance of publication. So, now that the mail room's
25 actually required to read policy, they are actually

1 required to apply that instead of what somebody told
2 them has been the practice for some number of years.
3 That issue is resolved already. The second issue is
4 taking care of the publishers and their appeals. So,
5 and they did not strip out of the policy, you know, as
6 they wrote subsequent policies, the fact that
7 publications are allowed. So, it was allowed before,
8 it's allowed now. So, there should be no question that
9 publications can come in. The second question is what
10 happens if you have to turn one down. And that is
11 resolved in this one.

12 Q So, on page 34, part C that we were looking
13 at, about allowing approved publications, there's
14 nothing in the policy that's changed that leads you to
15 believe that? Is that something that in your opinion is
16 based on conversations with jail management or --

17 A My opinion is based on the fact that --

18 MS. STATON: Hold it. Let me object to the
19 form of that question. Okay. You can go ahead and
20 answer.

21 THE WITNESS: Okay. Is there any way to turn
22 her volume up? Well, we are near the end of the depo
23 anyway. Okay. Well, I am basing my opinion on, just
24 conversations you ask? No. I'm basing my opinion on
25 the fact that the requirements are all now in one place.

1 You know, each new policy has taken care of that. And
2 now they have been trained to it. And now that the
3 supervisors are being held responsible for ensuring they
4 carry it out. So, where before they were going on
5 inappropriate information to develop a nonofficial
6 practice, now they have official policies, official
7 training, if you will, and supervisors who have been
8 given their marching orders.

9 BY MR. THOMPSON:

10 Q You mentioned supervisors being held
11 responsible a couple times. Is there anything in
12 particular that you are aware of that they are doing to
13 hold supervisors responsible that they weren't doing
14 before?

15 A Well, yes. And I can't tell you exactly how
16 they deal with their supervisors in all situations. But
17 there was certainly a level of frustration that Kimble
18 mentioned to me that, apparently, the supervisors hadn't
19 been reading the policy either because, for the most
20 part, the immediate supervisors knew what was going on
21 or had participated in the process. So, now that they
22 do know, now that they have to carry it out, it would be
23 a violation of their -- I don't remember what they call
24 it, code of conduct or what, that requires officers to
25 carry out policy and procedures as written and leaves

1 them subject to discipline if they don't. So that's
2 pretty much a standard approach for dealing with that.

3 Q I want to clarify one thing on page 36 of your
4 report.

5 A Sure.

6 Q Paragraph 4. This is in opinion C-1.2.

7 A Okay.

8 Q You discuss that you have written policy and
9 procedure manuals. And you describe this process to do
10 so.

11 A Yes.

12 Q I want to clarify, is this the process that
13 you generally use to write a policy and procedure
14 manual?

15 A It's exactly the process I use.

16 Q All right.

17 A The review that it mentions there I do before
18 I send it out. Then the client agency also reviews it.
19 And then, when all those reviews have taken place, then
20 it's written in final form.

21 Q Can I bring you back to Mr. Clark's report?

22 A Okay.

23 Q It's on page 15 of his report in paragraph 28.

24 A Okay. Let me read that.

25 Q Sure.

1 A Okay. This has to do with an inmate receiving
2 four pages of material that had been copied from a book.
3 Those materials were denied with notification.

4 Q Sorry. That's paragraph 29, I think. Can I
5 have you focus on 28 first?

6 A Oh, sorry. Let me read that then.

7 Q So, my question is, did you review any logs
8 showing what publications have been denied since this
9 lawsuit was filed?

10 A No.

11 Q Okay. I guess I have the same question with
12 respect to paragraph 29. If you had a chance to read,
13 did you review any notifications of mail being returned?

14 A No. You are talking about the pages copied
15 out of books?

16 Q Yes.

17 A No. I'm not aware of that. It wasn't -- the
18 first time I saw that was in his expert report.

19 Q And you haven't reviewed those documents since
20 then?

21 A No. And I would agree with him, by the way,
22 that they should have allowed those in. That's not a
23 problem.

24 Q In paragraph 28 or 29?

25 A Twenty-nine.

1 Q You agree that pages copied out of books
2 should be allowed?

3 A Right. There's nothing in the policies and
4 procedures that allows that. There's something that
5 says you can't tear things out of books, because that
6 alters the book itself. So, the only thing I can assume
7 is that was somehow a misunderstanding of what the
8 provision of policy wanted.

9 Q And then at the end of paragraph 29 about
10 inmates being notified of newspaper clippings or pages
11 copied from magazines, do you also agree that would not
12 be problematic?

13 A Yeah, those should be allowed.

14 Q So, based on page 37 in your report, paragraph
15 B3 of C-1.3 --

16 A Yeah.

17 Q -- so you are discussing the jail's efforts to
18 train staff?

19 A Um-hmm.

20 Q And you say staff received training and
21 instruction from supervisors. Do you have any knowledge
22 of what that training or instruction was?

23 A Not specifically. I mean, that is, I haven't
24 seen any training outlines or whatnot. Chief Kimble,
25 when we talked, indicated that what they were training

1 to was the new policy itself. And then, having
2 discussion about it, asking for anybody, you know, any
3 questions anybody might have about the policies as
4 written.

5 Q So, is there any other basis for your opinion
6 that that training was adequate other than what Chief
7 Kimble told you?

8 A No. That's what it would be based on, his
9 explanations. And then, of course, in Linderholm's
10 deposition, in several of the individual officers'
11 depositions they talk about having, you know, Linderholm
12 helped deliver it, the other individuals talked about
13 having received it. So, there seems to be a commonalty
14 of testimony with respect to what happened with respect
15 to the training.

16 Q I think we have covered this, but I want to
17 clarify as it relates to this opinion. You are not
18 expressing an opinion on whether the training that
19 occurred before the litigation was adequate or
20 inadequate, are you?

21 A I don't even know if they did it before. I
22 never asked.

23 Q Okay. So, you are not expressing any opinion
24 on that?

25 A No.

1 Q Okay. In subsection (c)(2), on page 37 of
2 your report, you say that the PCJ recognizes the value
3 of reading material for prisoners. What's the basis for
4 that opinion?

5 A Well, they have a jail library. They have
6 jail library services, for one. You don't put a library
7 together, I guess you don't think they ought to have
8 reading materials available to them. And, since the
9 lawsuit, they have made sure now they can also get their
10 publications. They have always been allowed to get
11 books, as long as it was within the procedures that were
12 required.

13 Q What's your knowledge of the jail library
14 services based on? Have you visited a library?

15 A No. I asked if they had a library. Yes.
16 They said an extensive library is, I think how it was
17 described to me. But that would be better questions
18 probably asked to, you know, the officials themselves on
19 how extensive their library is.

20 Q So, your opinion is based on the fact that
21 they have a library?

22 A Yes.

23 Q So, you are not aware of what materials are in
24 the libraries, so just books or just magazines or just
25 newspapers?

1 A Yes.

2 Q You are not aware of that?

3 A Yes, you are correct, I'm not. Is that a
4 better way to answer that?

5 Q Yes. So, on page 38, you express an opinion
6 about Pinal County policies as compared to the BOP
7 policies?

8 A I do.

9 Q So, have you reviewed the BOP mail publication
10 policies?

11 A I don't know that I have looked at that
12 particular policy. I have looked at lots and lots of
13 different policies and procedures at different times
14 from the Bureau of Prisons. But whether that was one of
15 them, I couldn't tell you, certainly not in recent
16 times, if I did. But I have read them enough that I
17 know they are very competent policy and procedures, well
18 written, well researched.

19 Q So, you say that the jail is free to adopt its
20 own policies and procedures. Is there anything about
21 the BOP policies that you think is not appropriate for a
22 county jail facility like Pinal?

23 A Sure.

24 Q What would that be?

25 A Oh, classification, housing.

1 Q Sorry. Just in terms of mail and publication?

2 A Oh. No. They are entitled to receive
3 publications. And they are entitled to, you know, have
4 appeals from both inmate and the publisher. But how
5 they choose to put those together so they accomplish
6 those things is up to them.

7 Q So, I just want to clarify, because you say in
8 C-2.2, that the BOP policies and procedures are neither
9 binding or likely the best approach for PCJ?

10 A Right.

11 Q I want to understand what you mean by they are
12 not the best approach. Are you talking about procedures
13 other than mail, or is there something particularly
14 about the mail policies that are not the best approach?

15 A I am talking about procedures other than mail.
16 He references in his report, as you may have noted,
17 their policy and procedures from time to time, but as if
18 that was, you know, perhaps where these folks ought to
19 be. You know, their policies probably would have been
20 helpful in many respects in drafting initial policies
21 before Babeu and those people got there, or even in the
22 first set of policies afterwards. But each individual
23 jail is unique. And they are going to craft those
24 according to how they believe they ought to come
25 together as long as they meet the necessary

1 requirements. You know, the Bureau of Prisons has to
2 deal with volumes issues that small jails don't.
3 There's a variety of things that could come into play,
4 how they are distributed in a huge facility or huge sets
5 of facilities.

6 Whether or not you can communicate by mail
7 between prisons isn't an issue. For example, for Pinal
8 County, because it's one facility, so there would be
9 issues. But in terms of the specific things we are
10 talking about in this case, I don't have a problem with
11 the general requirement that those three things occur.

12 Q All right. Can I take a two-minute break? I
13 need to check on something real quick.

14 A Absolutely.

15 Q About done.

16 (Whereupon, a brief recess was taken.)

17 BY MR. THOMPSON:

18 Q One thing I forgot, the very last opinion.

19 A Mine or his?

20 Q Yours. I just wanted to confirm, so you are
21 not expressing any opinion on the postcard and one-page
22 letter policy, right?

23 A No. I understood the issue had been conceded,
24 so there was no sense going there.

25 MR. THOMPSON: I have no further questions.

1 But we would reserve our right to recall Mr. DeLand if
2 there are other documents that are produced that were
3 relevant. Georgia, do you have any questions?

4 MS. STATON: I reject your so-called
5 reservation. That's an issue you can take up with the
6 court.

7 MR. THOMPSON: Okay.

8 MS. STATON: And we will read and sign.

9 MS. STATON: Why don't you send it to me.
10 Then I'll pass it on to you.

11 THE WITNESS: Good. That will provide a good
12 record of where it's been.

13 (Whereupon, the proceedings were concluded at 2:51 p.m..)

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C E R T I F I C A T E

STATE OF UTAH
COUNTY OF WASHINGTON

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE
TAKEN BEFORE ME, RUSSEL D. MORGAN, A CERTIFIED SHORTHAND
REPORTER IN AND FOR THE STATE OF UTAH, RESIDING AT
WASHINGTON COUNTY, UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOTYPE,
AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO
TYPEWRITING, AND THAT A TRUE AND CORRECT TRANSCRIPTION OF
SAID TESTIMONY SO TAKEN AND TRANSCRIBED TO THE BEST OF MY
ABILITY IS SET FORTH IN THE FOREGOING PAGES 5 to 177.

RUSSEL D. MORGAN, CSR
LICENSE #87-108442-7801

November 11, 2012.

1 November 13, 2012

2 Gary Deland
3 c/o Georgia A. Staton
4 Jones Skeleton & Hochuli
5 Phoenix, AZ 85012

6 IN RE: Prison Legal News v. Paul Babeu, et al.

7 Dear Mr. Deland:

8 Please be advised that, pursuant to California Code
9 of Civil Procedure Section 2025.520 or Federal Rule of
10 Civil Procedure 30, the original transcript of your
11 deposition, taken October 31, 2012, in the
12 above-referenced matter, has been completed and is now
13 ready for your reading, correcting, and signing, by
14 appointment at our office, Capital Reporting Company,
15 1050 Northgate Drive, Suite 180, San Rafael, California
16 94903.

17 Pursuant to the applicable rules, the transcript
18 will be available for 30 days. Any errata changes must
19 be signed by the deponent within the 30-day time
20 period.

21 The official transcript for the noticing counsel,
22 with exhibits, will be mailed in accordance with said
23 rules, depending on the action of the deponent.

24 Please do not hesitate to contact us if you have
25 any questions.

Best Regards,

RUSSEL D. MORGAN, CSR
LICENSE #87-108442-7801

cc: Original Transcript
All Counsel

1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3 I, GARY DELAND, do hereby
4 acknowledge I have read and examined the foregoing pages
5 of testimony, and the same is a true, correct and
6 complete transcription of the testimony given by me,
7 and any changes or corrections, if any, appear
8 in the attached errata sheet signed by me.

9

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23

24

25 Date

GARY DELAND

1 Capital Reporting Company
1050 Northgate Drive, Suite 180
2 San Rafael, California 94903
(415) 499-DEPO (3376)
3

4 E R R A T A S H E E T

Case Name: Prison Legal News v. Paul Babeu, et al.

5 Witness Name: GARY DELAND

Deposition Date: October 31, 2012

6 Page No. Line No. Change/Reason for Change

7

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24 _____

25 Signature

Date

<p style="text-align: center;"><u> </u> \$ <u> </u></p> <p>\$2,500 40:7,10 \$600,000 78:1</p> <hr/> <p style="text-align: center;"><u> </u> <u> </u></p> <p>1:4,5,6,7,8,9,10, 11,12,13,14,15,1 6,17,18,19,20,21 ,22,23,24,25 2:1,2,3,4,5,6,7,8, 9</p> <hr/> <p style="text-align: center;"><u> </u> 1 <u> </u></p> <p>1 4:7 8:4,5 1.4 110:18 10 31:23 37:4 60:24 74:7 102:4,5 1050 179:10 181:1 108442-7801 2:18 11 178:20 11/09/11 4:12 11-01761-PHX- GMS 1:6 11th 59:1 86:12 12 146:12 13 20:15 22:19 60:22 149:2,13 179:1 137 4:10 14 22:20 60:21,22,23 63:2 144 4:11 15 31:23 58:2 107:7 169:23 15,000 45:12 150 61:8 16 46:23 162 4:12 169 2:15</p>	<p>16th 34:8,11 17 46:23 48:15 88:7 175,000 63:16 177 178:13 18 48:15 62:16,21 90:8,12 91:23,25 143:1 180 63:16 179:10 181:1 18th 121:22 19 103:22 1979 51:14 1980s 6:6 63:25 1983 42:16 1985 99:25 100:1 1988 42:16 1990s 65:13 1992 50:20</p> <hr/> <p style="text-align: center;"><u> </u> 2 <u> </u></p> <p>2 4:8 45:23 46:1 66:7,23 2,000 70:25 2:51 177:13 20 31:18 107:9 200 61:8 2003 69:4,5 2004 5:25 2005 143:16,18 144:7 2010 121:22,23 139:17 142:25 153:6 2011 44:9 57:12 143:3 153:7 165:4 2012 2:13 4:9 34:4,8,11 178:20 179:1,8 181:5</p>	<p>2025.520 179:7 203A 2:15 20th 165:4 21 106:16 210 74:8 22 110:17 23 117:7 24 121:14 122:14 24/7 132:12 25 123:4 2500 70:25 26 126:20 130:14 27 134:8 2710 2:15 28 46:14 136:1 169:23 170:5,24 29 46:14 166:22 170:4,12,24 171:9 2901 3:9</p> <hr/> <p style="text-align: center;"><u> </u> 3 <u> </u></p> <p>3 4:9 75:24 30 47:5 161:1 179:7,11 300 45:9 30-day 179:12 31 2:13 149:18 179:8 181:5 315 3:3 31st 139:17 32 152:21 153:21 33 155:16 3376 181:2 34 162:20 167:12 35 47:5 36 169:3 37 171:14 173:1</p>	<p>38 174:5 3-ring 108:19</p> <hr/> <p style="text-align: center;"><u> </u> 4 <u> </u></p> <p>4 4:3,10 46:3 65:15 66:7 139:15 141:18 144:18 169:6 4,000 67:12 4.3 36:16,17 4.3s 36:18 4.5 36:15,19 111:13 136:5 137:14 165:24 4.5.13 165:22,25 4.5.13.5 166:3 4.5.6 141:1 4.5.6.2 141:18 4.5.8.5 165:12 4.5.8.6 165:17 4.58 165:9 40 41:16 42:9 400,000 63:14 40s 41:19 415 181:2 415)433-6830 3:4 45 4:8 59:17 499-DEPO 181:2</p> <hr/> <p style="text-align: center;"><u> </u> 5 <u> </u></p> <p>5 4:11 53:20 144:7 146:9,10 178:13 5,000 55:3 50 41:15,16,20 45:15 47:4 55:3 500 70:22,24 55,000 47:4 57 76:8 5-page 76:2</p>
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