

1 MR. PARNES: I have no questions, Your Honor.

2 THE COURT: All right. Thank you,

3 Mr. Loveland, for being here.

4 THE WITNESS: You bet.

5 THE COURT: Call your next witness.

6 MR. ANDERSON: Rolando Tamez.

7 THE COURT: Sir, please step before the clerk
8 and be sworn.

9 THE CLERK: Good afternoon.

10 THE WITNESS: Good afternoon.

11 ROLANDO TAMEZ,

12 called on behalf of the Respondent, having been first
13 duly sworn upon oath, was examined and testified as
14 follows:

15 THE CLERK: Please have a seat in the witness
16 stand, and please state your name and spell your last
17 name for the record.

18 THE WITNESS: I'm Roland Tamez.

19 THE COURT: How do you spell the last name?

20 THE WITNESS: T-a-m-e-z.

21 THE COURT: Proceed.

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. ANDERSON:

24 Q. Officer, is it pronounced Tamez?

25 A. Yes, sir.

1 Q. What's your occupational employment?

2 A. I'm a correctional officer at Idaho Maximum
3 Security Institution.

4 Q. And what's your training for your current
5 position, just briefly?

6 A. Briefly, right now I'm currently -- I'm the
7 property officer at nights right now.

8 Q. How long have you been a correctional officer?

9 A. Five years, sir.

10 Q. And what did you do when you initially started
11 for the Department of Corrections?

12 A. I was going to -- I was attending Boise State
13 University, trying to get my degree in criminal
14 justice.

15 Q. Okay. And when you first started for the
16 department, what responsibilities did you have?

17 A. I --

18 Q. At the department.

19 A. At the department?

20 Q. Yes.

21 A. I worked in J block -- well, when I first
22 started, I worked as a response and escort officer for
23 six months. And then I worked in the units for
24 restricted housing, restricted segregation, and general
25 population tiers.

1 Q. In your work with the department, did you come
2 to know Richard Leavitt?

3 A. Yes, sir.

4 Q. About how long have you known Mr. Leavitt?

5 A. About five years.

6 Q. So you met him when you first started at IMSI?

7 A. Yes, sir. He was a janitor in B block when I
8 first started.

9 Q. And do you know where he was housed when you
10 first met him, as far as the institution itself?

11 A. At that time, I believe he was in B block or C
12 block. One of those two units.

13 Q. And would you describe what that is, as far as
14 level of confinement, the type of individuals that are
15 there?

16 A. Usually, the inmates that are in there, that
17 are housed in there, are inmates under the sentence of
18 death or inmates that are hard to manage. And they're
19 usually in their cell for 23 hours and they get out for
20 an hour.

21 Q. Was there a period of time in your
22 relationship with Mr. Leavitt -- well, how would you
23 describe your relationship when you first met with him
24 in the first months or so?

25 A. The first time I dealt with Inmate Leavitt was

1 I had a unit sergeant told me to tell him to do
2 something and Leavitt didn't really -- he didn't want
3 to follow the orders and stuff. I don't think he
4 understood that it was coming from the unit sergeant.
5 He thought it was coming from me, so... I think he was
6 talking to other inmates on the doors. And being a
7 janitor, he's not supposed to be doing that. He's
8 supposed to be working and doing his daily duties and
9 stuff. And he was -- I believe he was hanging on the
10 door, talking to other inmates and stuff. And that's
11 what I was trying to tell him, is to get off the door.

12 Q. Was there a period of time when you two didn't
13 see eye to eye?

14 A. I think that was the only time. That was the
15 only time that we didn't see eye to eye there.

16 Q. And you were able to work that relationship
17 out?

18 A. Yes, sir.

19 Q. And how would you describe the relationship
20 with him after that?

21 A. Didn't have any problems. He was -- he's
22 pretty much a model inmate.

23 Q. Have you ever seen Mr. Leavitt get mad or
24 upset?

25 A. No, sir.

1 Q. Ever observe any inappropriate behavior from
2 him?

3 A. No, sir.

4 Q. Have you ever seen him express anger towards
5 anyone?

6 A. He's had some issues with some other inmates
7 on the tiers. I believe he was upset over that. But
8 it was just conflicts with other inmates. I guess
9 that's --

10 Q. Fair to say he was able to work out those
11 conflicts?

12 A. Yes, sir.

13 Q. Okay. In, I believe you said J block, is that
14 where he was housed?

15 A. He was housed in B block.

16 Q. B block. Are there other inmates that have
17 behavior problems within that particular block?

18 A. Yes, sir. They're hard to manage inmates.
19 They are inmates that don't follow the rules, that are
20 hard to manage in a general population tier.

21 Q. But Mr. Leavitt wasn't one of those?

22 A. No, sir.

23 MR. ANDERSON: That's all I have, Your Honor.
24 Thank you.

25 THE COURT: Cross-examination, Mr. Parnes.

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. PARNES:

3 Q. Officer Tamez, when you say that he was in the
4 cell 23 hours a day and Mr. Leavitt and other inmates
5 are allowed out one hour a day --

6 A. Yes, sir.

7 Q. -- are there other inmates out at the time?

8 A. Other inmates out? He was basically a janitor
9 at the time, so he didn't have to go the 23 hours. He
10 could come out and clean. Certain areas had to be
11 cleaned. We would pull him out of the cell and he
12 would clean those areas.13 Q. And other inmates were not out on the tier at
14 that time?

15 A. No, sir.

16 Q. And so in that block inmates are taken out
17 separately?

18 A. Yes, sir.

19 MR. PARNES: I have no further questions.

20 EXAMINATION

21 QUESTIONS BY THE COURT:

22 Q. Just so I'm clear, are the other inmates
23 essentially confined 23 hours a day?

24 A. Yes, sir, besides their one hour of rec.

25 Q. And then Mr. Leavitt, though, is not so

1 limited because he does come out and does janitorial
2 work as well; correct?

3 A. Yes, sir.

4 Q. Okay. But as Mr. Parnes points out, that
5 occurs when there are no other inmates on the floor?

6 A. Correct, sir.

7 THE COURT: All right. Mr. Anderson?

8 MR. ANDERSON: No, Your Honor.

9 THE COURT: All right. Mr. Parnes, I assume I
10 didn't ask anything that --

11 MR. PARNES: No.

12 THE COURT: -- would raise any further
13 questions from you?

14 All right. You may step down. Thank you.

15 Call your next witness.

16 MR. ANDERSON: Dan Gilbert, please.

17 THE COURT: Officer Gilbert, please step
18 before the clerk and be sworn.

19 DAN GILBERT,

20 called on behalf of the Respondent, having been first
21 duly sworn upon oath, was examined and testified as
22 follows:

23 THE CLERK: Please have a seat in the witness
24 stand, and please state your name and spell your last
25 name for the record.

1 THE WITNESS: Dan Gilbert, G-i-l-b-e-r-t.

2 THE COURT: You may inquire.

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. ANDERSON:

5 Q. Officer Gilbert, would you tell us your
6 occupation, please?

7 A. I am a correctional officer employed by the
8 State of Idaho.

9 Q. And how long have you been so employed?

10 A. A little over a year and a half.

11 Q. And where do you -- where have you worked over
12 the last year and a half?

13 A. At Idaho Maximum Security Institution.

14 Q. And as a result of your employment with the
15 Department of Corrections, do you know Richard Leavitt?

16 A. I have made acquaintance with him, yes.

17 Q. Would you tell the Court how you came to know
18 Mr. Leavitt?

19 A. I was an officer assigned to the unit that he
20 was residing in.

21 Q. Would you describe that unit and how it's set
22 up?

23 A. It is a segregated unit, restricted housing.

24 Q. And that has been for the last year and a
25 half?

1 A. It was designed that way, sir.

2 Q. In that particular unit, does Mr. Leavitt have
3 interaction with other inmates?

4 A. At the time it was limited, yes. He was
5 pursuing his job there, yes.

6 Q. And what was his job?

7 A. At the time I was working that unit, he was
8 our unit janitor, or one of them.

9 Q. And would you describe what was involved in
10 being the unit janitor or what Mr. Leavitt was supposed
11 to do as a unit janitor?

12 A. He cleaned the tiers of the unit, foyers,
13 maintained, made sure that the inmates had clean
14 supplies so they could keep their selves clean and
15 stuff.

16 Q. So when you say interaction with the other
17 inmates, would other inmates be out of their cells
18 while he was doing their janitorial work, or was it him
19 going to their cells?

20 A. No, sir. It is a restricted housing. So, no,
21 they would not be out. He would go to their cells. An
22 officer was usually present.

23 Q. Would you describe Mr. Leavitt's personality
24 during the time you've known him?

25 A. During the time I've known him, he has always

1 been respectful. I don't want to say pleasant, but
2 he's always been respectful.

3 Q. Why wouldn't you say pleasant?

4 A. Well, considering the environment we're in,
5 you know.

6 Q. Sure. Have you ever observed him get upset or
7 irritated?

8 A. Irritated, maybe.

9 Q. And describe generally what would precipitate
10 that irritation that you've seen.

11 A. It would be something like during the
12 performance of his job or something, when we'd -- like
13 in passing out cleaning supplies somebody would take
14 something, you know, to use and wouldn't replace it or
15 wouldn't pass it on, I got to borrow this, whatever.
16 And so he when he was trying to do something and it's
17 like it's not there.

18 Q. And when you say irritated, would you describe
19 Mr. Leavitt's demeanor? Just explain to us what you
20 mean by irritated.

21 A. Irritated would be like, oh, man, not again,
22 you know. It's kind of hard to characterize irritation
23 to that extent. I mean, he wasn't upset, mad, like I
24 am going to go do something. It was more of a like
25 wanting to do something and something wasn't there and

1 it was like, oh, man, not again. Upsetness.

2 Q. But it wasn't something that escalated into
3 his being mad or violent?

4 MR. PARNES: Your Honor, I object as leading.

5 THE COURT: Sustained.

6 BY MR. ANDERSON:

7 Q. Was there any escalation of his behavior?

8 A. Not that I observed, no, sir.

9 Q. Did you observe Mr. Leavitt's interaction with
10 correctional officers?

11 A. In the performance of their duties, yes.

12 Q. How would you describe that?

13 A. He was always very respectful to us.

14 Q. As opposed to other inmates in his respective
15 tier, how would you characterize Mr. Leavitt's
16 behavior?

17 A. He was, I would say, a model inmate.

18 MR. ANDERSON: That's all I have, Your Honor.

19 Thank you.

20 THE COURT: Cross?

21 MR. PARNES: No, Your Honor.

22 THE COURT: All right. You may step down.

23 Thank you.

24 Call your next witness.

25 MR. ANDERSON: Lieutenant Richard Gerber,

1 please.

2 THE COURT: Sir, please step before the clerk
3 and be sworn.

4 RICHARD GERBER,
5 called on behalf of the Respondent, having been first
6 duly sworn upon oath, was examined and testified as
7 follows:

8 THE CLERK: Please have a seat up in the
9 witness stand, and please state your name and spell
10 your last name for the record.

11 THE WITNESS: First name is Richard. Last
12 name is Gerber, G-e-r-b-e-r.

13 THE COURT: You may inquire.

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. ANDERSON:

16 Q. Lieutenant Gerber, how are you employed?

17 A. For the Idaho Department of Corrections.

18 Q. And you work at the Idaho State Maximum
19 Security Institute?

20 A. Yes, sir, I do.

21 Q. What are your responsibilities there?

22 A. At the present time, I am responsible for
23 shift commander on a couple graves and a couple of day
24 shifts.

25 Q. And my understanding is you are a lieutenant?

1 A. Yes, sir.

2 Q. How long have you worked for the Department of
3 Correction?

4 A. Almost 17 years, just short.

5 Q. And that is as a correctional officer?

6 A. Corrections, yes. In security aspect.

7 Q. How long have you worked at IMSI?

8 A. Since January of 2000. So seven years.

9 Q. Where did you work previous to that?

10 A. ISCI.

11 Q. Idaho State Correctional Institute?

12 A. Yes. Yes, sir. I'm sorry.

13 Q. That's all right.

14 And do you know Richard Leavitt?

15 A. Yes, I do.

16 Q. How is it that you know Richard Leavitt?

17 A. I've known Mr. Leavitt for approximately the
18 seven years I have worked at the Idaho Maximum Security
19 Institution. I used to supervise the block that he was
20 in.

21 Q. And so you know him because he's an inmate at
22 IMSI?

23 A. Yes.

24 Q. Do you know where he's currently housed?

25 A. I know he's at Idaho maximum security, but I

1 can't tell you which block he is in at this point in
2 time.

3 Q. Could you just describe, since you've known
4 Mr. Leavitt, his type of custody status?

5 A. I'm not sure what you mean by that question,
6 sir.

7 Q. Is it ad seg, administrative segregation,
8 solitary confinement? Did he have access to other
9 inmates? I want to know a little bit about --

10 A. Yes, he is considered ad seg at this point in
11 time. He does not have access to other offenders. For
12 the most part, he's confined to his cell for 23 hours a
13 day. He gets an hour of exercise each day, five days a
14 week. He gets a shower every three days.

15 Q. And tell me how he gets to the shower.

16 A. He is escorted by staff after being restrained
17 and removed from his cell.

18 Q. Does he have a job or did he have a job during
19 that period of time?

20 A. He has had a job in the past. He hasn't
21 always been in administrative segregation.

22 Q. And what was that job?

23 A. He was the unit janitor, foyer janitor. He
24 has done janitor. In fact, he was out in our minimum
25 custody blocks, or I should say DEG block, which are

1 single officer posts for a while. And I believe he was
2 a janitor out there.

3 Q. And based upon your experience at IMSI, the
4 fact that he's a janitor at the -- did you say minimum
5 custody?

6 A. No, he's at the maximum security, but in our
7 blocks that we put what we consider our less violent
8 and less critical offenders.

9 Q. And what would that mean, as far as
10 Mr. Leavitt's behavior, for him to obtain a job like
11 that?

12 A. He would have to be very well-behaved.

13 Q. And in your interaction with him, is that your
14 experience, that he has --

15 A. Yes. Yes. Mr. Leavitt's been a model inmate.

16 Q. Was there a period of time where he had some
17 type of problem with a particular group at IMSI?

18 A. Yes, sir. He did have problems with the
19 Aryan, what we call the Aryan Knights or the Aryan
20 Brotherhood and some of our offshoot gang called
21 Skinheads.

22 Q. And approximately what period of time was
23 that?

24 A. That's probably -- well, I think he still has
25 some problems with them. But I would say approximately

1 two, three years ago. He had some issues with them.

2 Q. And when you say he had some problems or some
3 issues, what do you mean by that?

4 A. Well, they threatened him. They tend to go in
5 clicks and group up and individually attack people they
6 consider to be not so strong or not with somebody else.
7 They try to get money out of them or they try to get
8 favors or try to do whatever they can to get whatever
9 they can.

10 Q. And how is it that Mr. Leavitt would have any
11 type of interaction with these groups?

12 A. When he was in general population, they pretty
13 much had clear access to talk to him and communicate
14 with him and try to pressure him.

15 Q. So as I understand it, Lieutenant, there was a
16 period of time since you have known Mr. Leavitt that he
17 was in general population and had access to other
18 inmates?

19 A. Oh, yes. Yes.

20 Q. And as a result of that access or those
21 problems with the Aryans, what happened with
22 Mr. Leavitt, if anything?

23 A. Well, eventually he got -- he did get
24 attacked. We ended up placing him back into
25 segregation for his protection. He did -- we continue

1 to try to him back out of segregation, which he
2 achieved getting back out of segregation. He got back
3 into general population for a while, became janitor
4 again.

5 Q. And so what was his response to this attack?

6 A. He was upset. He didn't like being attacked,
7 as I don't think anyone would. Basically, we talked to
8 him. I was in investigations at the time, and we
9 discussed it and we gave him his options. And his
10 response was he didn't like it. He was willing to work
11 with us to get this problem taken care of.

12 Q. In your experience at IMSI, is that an unusual
13 or usual type of response from an inmate that has been
14 attacked?

15 A. It's unusual, for the most part, because most
16 of them will just shut up and not say a word if they
17 feel that they have got nothing to gain by working with
18 us. Most of them feel that way. To get someone to
19 cooperate with us and actually give us information and
20 work with us is pretty -- it's rare.

21 Q. But he was willing to do that, at least --

22 A. He was.

23 Q. -- with this incident? Okay.

24 MR. ANDERSON: Nothing else, Your Honor.

25 Thank you.